gedy: *Remains of the BMW in which three Tulane University roomates were ned. Two died in the flames; one escaped, but with 90 pecent of his body burned.*

MWs: The '90s' Pinto Cases?

. jury says carmaker knew U.S. gas tanks were defective.

By Mark Ballard
SPECIAL TO THE NATIONAL LAW JOURNAL

/ ORLEANS—In a case with similarito suits involving exploding Ford Pina jury in federal district court found N knowingly installed gas tanks ıe to explosions in its 300-series auobiles—but the jury refused to award ıages to the three drunken victims.
This case was about whether the car designed properly, and the jury ıd that the car was not," says Mr. ry, a friend of Michael Carte, 22, who in the collision. But "people have bias against drinking and driving."
he "crashworthiness" suit alleged a defectively designed fuel tank had ed the fiery deaths of two students the almost total burning of a third. the "drinking and driving probably ısed the jury," said New Orleans' y & Andry partner Jonathan B. y, who represented one of the plainthe Carte family, of Columbus, Ohio. .S. District Judge Stanwood R. Duval ıpril 14 entered the judgment dising with prejudice *Laurence Busse v. erische Motoren Werke A.G.*, 96-

l least two similar suits are prepar'or trial. Both involve BMWs whose tanks ruptured in side-impact colli. *Iris & Steven Goldstein v. BMW* CV-94-18061, was filed in Phoenix's rior court, and *Peggy Marshall v. / A.G.*, 93-14505, is pending in the District Court in Austin, Texas.
MW's attorneys, who either refused mment for the record or were unable, had argued in court that the ank design was safe.
though he secured a finding of de'e design, which surely will help tiffs in the other cases, Mr. Busse's ney, Larry E. Coben, of Scottsdale, s Coben & Associates, said, "Partial ·ies are of no use. The young man s the money. So we lost the case."
·. Coben said that between 1977 and , BMW sold 190,000 cars in the U.S. the same fuel tank design. In 1985, redesigned its fueling system. : conceding that three incidents are ıany, Mr. Coben noted that a mere ·es in 1.4 million cars sold caused Pintos to be removed from the mar n the 1970s. Statistically, almost as many 300-series BMWs as Pinxperienced problems, he claimed. said Mr. Coben "we haven't been o learn a lot about other incidents."
. trial, BMW engineer Joachim Elsof Germany, testified that the comknew of only four cases in which mpact collisions caused a fuel spill: ıree incidents that led to suits in America and a 1979 case in Germany.

On Aug. 29, 1990, the day before classes started at Tulane University, three roommates, who'd met for the first time earlier that day, went out drinking. They returned home at 4 a.m. Mr. Carte was driving; the car's owner, 19-year-old Thomas Lincoln, rode shotgun. According to autopsy reports, Mr. Carte had a blood alcohol level of 0.21—more than twice Louisiana's legal intoxication limit; Mr. Lincoln's was 0.18.

Mr. Carte lost control while turning off St. Charles Avenue onto Broadway, Tulane's fraternity row. Depending on the expert, he was traveling 10 to 30 miles an hour faster than the posted speed. The 1977 BMW 320-I skidded across the intersection, slammed broadside into a light pole, flipped and caught fire.

Nineteen-year-old Laurence Busse, who'd stretched out in the back seat, shimmied out the car's sun roof, but more than 90 percent of his body had been burned. Mr. Carte and Mr. Lincoln screamed for help until they burned to death. Other than the burns, the three had minimal cuts and bruises.

Mr. Busse was hospitalized for more than a year and required extensive surgery to replace appendages burned off in the fire. NLJ

D.A. Isn't Legit, So Dealer Walks

Prosecutor's temporary assignment was too long.

By Harvey Berkman
NATIONAL LAW JOURNAL STAFF REPORTER

A FEDERAL JUDGE has thrown out the guilty plea of a California drug dealer whose case was handled by a county prosecutor designated a special assistant U.S. attorney for most of the past 12 years—three times as long, the judge said, as federal law allows.

While his ruling gave him "significant pause"—as it imperiled "perhaps dozens of [federal] cases" Sacramento County prosecutor Dale Kitching has handled as a special assistant since 1989—U.S. District Judge Lawrence K. Karlton said his decision was nonetheless compelled by Mr. Kitching's lack of statutory authority to handle the matter. The judge scored both the Justice Department—responsible for naming special assistants—and the U.S. attorney's office for the Eastern District of California for their lax handling of the appointments.

"[A] fact which emerged relatively clearly from the evidentiary hearing [is that] no one was minding the store," said Judge Karlton, of Sacramento, in an April 9 written opinion. "[I]t appears that no one in the [U.S. attorney's] office had the responsibility of insuring that Special Assistants actually had the current authority to represent the United States [and] that no one at the Department of Justice had such responsibility either. This is hardly a matter of small concern, given the awesome authority and discretion reposed in United States Attorneys and, by extension, their Assistants." *U.S. v. Navarro*, S-94-390.

In the evidentiary hearing, Nancy Simpson, chief of the Narcotics and Violent Crime Section of the Sacramento U.S. attorney's office, said she supervised Mr. Kitching as closely as she would an actual assistant U.S. attorney. But Judge Karlton said neither the degree of supervision nor the lack of actual prejudice to Mr. Navarro was relevant under the federal statute concerning the temporary appointment of state or local government employees to federal agencies. That law limits such assignments to four years—an initial two-year term and one two-year extension.

After his first appointment as a special assistant, on June 17, 1985, Mr. Kitching received nine extensions and reappointments, the most recent coming in September 1996 and lasting until this August. The purpose of such appointments was to facilitate cooperation between local and federal law enforcement. The case at hand arose when a Sacramento County drug dealer agreed to help Mr. Kitching catch other dealers in exchange for keeping his case in state court—and away from stiff and inflexible federal sentences.

Among the dealers he turned over was Mr. Navarro, who his appellate lawyer, Brenda Grantland, of Mill Valley, Calif., said was one of the informant's own subordinates. Mr. Navarro received 12 years in prison—four times as long as the informant—after pleading guilty in federal court to possession with intent to distribute methamphetamine and cocaine.

They Don't Go On Forever

Ms. Grantland, a sole practitioner, said she was examining other appellate issues when she recalled a friend who had once served as a special assistant, but for only a limited period of time.

"It stuck in the back of my head that those appointments don't go on forever," she said. In researching the appointment statute, she said, she found no other cases in which it had been interpreted in the context of special assistant U.S. attorneys.

But Judge Karlton said the result of the violation was clear, citing *U.S. v. Providence Journal Co.*, 485 U.S. 693 (1988), in which the Supreme Court dismissed a case for want of jurisdiction when the lawyer purporting to represent the federal government in fact lacked the authority to do so.

The Sacramento U.S. attorney's office did not return calls for comment. The Department of Justice said it was studying the decision and had not yet decided whether to appeal. NLJ

April Fools' Joke Leaves Lawyers Cold

Few laughs for fake article about discipline.

By Cynthia Scanlon
SPECIAL TO THE NATIONAL LAW JOURNAL

WHEN ATTORNEYS in Arizona received their April issue of The Maricopa Lawyer, they read a story on the front page announcing that the Arizona Supreme Court and the governor's office had partnered to create a new "privatized" disciplinary system for Arizona attorneys.

The article gave enough information on the front page to seem authentic. But the 5,000 readers of The Maricopa Lawyer were directed to turn to Page 41 for the rest of the story, and the newspaper only had 23 pages.

All the lawyers were told was that, under the new system, effective June 1, the governor supposedly was going to appoint a panel of five individuals to oversee and act as judges in disciplining attorneys in the state, and only the governor would know the identity of the members of these new arbiters of attorneys' fates. The panel, to be called the Legal Discipline Review Board, also would be so far removed from the state bar control that it would be located in another building. Yet it would be funded by state bar dues.

What the article didn't say—what the entire issue failed to mention—was that the new system was fiction; the article was intended as an April Fool's Day joke.

Problem is, the punchline may have been too subtle. Readers in Maricopa County, which includes Phoenix and is one of the largest in Arizona, didn't catch that the article was a gag simply because it jumped to a nonexistent page.

The State Bar of Arizona, the Maricopa County Bar Association and the newspaper have received dozens of phone calls from lawyers asking about the new disciplinary board. When told it was an April Fool's joke, "There is a very long pause," said The Maricopa Lawyer Managing Editor Howard Armstrong. "It takes a few seconds to register."

When they do get it, some lawyers aren't in the mood to laugh about possible reform of Arizona's attorney discipline system. The state Legislature has been considering similar overhaul proposals, and the issue is red hot. Instead of being amused, some lawyers are actually angry.

Said William R. Jones, principal of Phoenix's Jones, Skelton & Hochuli, the article was not only a "very bad" prank but also a "dangerous joke." Arizona attorneys are working hard to establish good relations between law professionals, the Legislature, the governor's office and the public. But, he said, "crap like this sets us back immeasurably." The newspaper's stunt, he added, is an "outrageous demonstration of bad judgment."

Mr. Armstrong said the editorial board for three years had considered running a false article for their April edition, until taking the plunge. The "Maricopa Lawyer is so straight and serious; it was highly unusual for us to do this," Mr. Armstrong said. "But lawyers like to have fun, too."

If the paper tries a similar stunt in the future, he promised, it would work harder to avoid misunderstandings by, say, jumping a false story to an actual page that would say outright, "April Fools'!" NLJ