

## President's Column

### Who Is a Consumer Attorney?

by R. Christian Hulburt

*Chris Hulburt is CASD's President for 2004. He is a partner at Hulburt & Bunn with CASD Past President Benjamin Bunn. Mr. Hulburt was named the CASD Trial Lawyer of the Year in 2000, Consumer Advocate of the Year in 1998, and received the President's Award in 1996 and 2002. He handles personal injury and medical malpractice cases, coaches youth basketball, and tries to keep up with his wife, Annalee, and their four children. He can be reached by e-mail at: [chris@hulburt-bunn.com](mailto:chris@hulburt-bunn.com).*

There are at least two fundamental truisms about voluntary associations such as the Consumer Attorneys of San Diego: (1) the nature of the organization depends almost entirely on the identity of its members; and (2) the vitality of the association depends almost entirely on its ability to respond to the changing identity and needs of its members. This year we will confront these truths directly by answering the question: Who is a Consumer Attorney?

The question is not a new one. It has been asked in different versions since the founding of the original San Diego Trial Lawyers Association, and it will likely be asked again in the future. The current inquiry follows what for many was a startling revelation on the CASD ListServe (group e-mail service) last year. Available to all members of CASD at no cost, in the last few years the ListServe has become an invaluable tool for member communications about all issues related to our practices. ListServe is described as the "700-member law firm" because it allows a member to post an inquiry about an expert, judge, lawyer, case, statute, motion, or other issue, and expect almost immediate responses from dozens of other members.

Of course, posting the question on the ListServe necessarily reveals to everyone

else something about the lawyer's thinking, concerns, problems, or efforts. So the surprise was understandable last year when a member made an inquiry for information about an issue in a case and received a response from the defense lawyer on the other side. Almost immediately, active users of the ListServe were concerned. "How can we call this a virtual law firm when our opponents are down the hall and listening?" was a concern of many.

### **The Rules Have Changed**

Then-President Tracee Lorens wisely convened a Town Hall Meeting, inviting anyone interested to participate in an open discussion about the membership and the ListServe. We reviewed the current Bylaws detailing the criteria for membership and the evolution of the criteria. CASD was founded as a "plaintiffs' trial bar". For many years, lawyers could be members of CASD so long as 50% of their practice was plaintiff's work. Approximately four years ago, the Board undertook a complete review and update of the Bylaws and, as part of that process, rewrote the membership criteria. The express purpose of the revision was to make membership more restrictive -- to more overtly identify the association as an organization of plaintiffs' lawyers.

Current CASD membership criteria excludes a lawyer who "regularly defends . . . personal injury, wrongful death or workers' compensation litigation, unless in the judgment of the Membership Committee, the nature of the applicant's practice is consistent with the consumer-oriented goals of this Association." Though this change was made several years ago by a vote of the members at the annual meeting, it seems to have gone largely unnoticed by most members until recently.

The list of all members was available for review at the Town Hall Meeting and

revealed that we probably have several members who met the old 50% criteria, but do not meet the new “regularly defends” criteria. I do not think anyone is trying to sneak in. Rather, it seems likely that we invited them in years ago, and now have changed the rules without really calling it to their attention. Member comments at the Meeting were candid, genuine, and frequently passionate. The very identity of the organization was at issue. It was a powerful meeting, and, for me, very persuasive. It was agreed that the Membership Committee (chaired by Ken Sigelman, Gayle Blatt, and Joel Wohlfeil) will explore the issue again, open the membership criteria meetings to all interested members, and expressly invite anyone who wants to participate. These Committee Meeting times will be announced on the Calendar section of our web site and on ListServe so that interested members can attend.

It is expected the Membership Committee will contact those members whose practices seem to regularly include defense work, and ask them to compare the nature of their work to the current membership rules. Since the issue was raised last year, several lawyers have looked at the rules for the first time, and voluntarily withdrawn their membership. Quite frankly, I suspect this will continue this year with little controversy. However, the Committee will develop a fair process to allow it, when necessary, to respond to an inquiry or dispute about anyone’s eligibility, and ultimately may decide that further revisions of the Bylaws are necessary to most accurately define CASD.

Just as “the life of the law is experience,” so too is the life of the organization. It cannot be denied that the nature of the practice is dramatically different today from the presumed “good old days” generations ago. If the life blood of the organization is its members, we have an obligation to the members to define and enforce the criteria for

membership.