Law in the Environment
Looking at the Legal Profession’s Carbon Footprint

plus

FANS OF FACEBOOK
PAGE 16

DIRTY JOBS FOR LAWYERS
PAGE 28
THE INTEGRITY OF COMPROMISE

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Court Practice

At Claremont McKenna College, Derek Emge (sounds like “M G”) would stare down from his dorm room window at Suzanne, the school’s pretty black-haired tennis star, as she practiced on the court below. Even today it’s “love-all” for the Emges, and the court is still where they practice—now together, as lawyers.

Although the Emges came unprepared to their first day of law school at the University of San Diego—being just back from their honeymoon—the two were soon headed down the road to success. That road, however, took a precarious twist.

“The doctors confirmed it when she was 2,” remembers Suzanne. “Our daughter Allison was profoundly deaf. I quit my job at a law firm to teach her full time. I was scared. But as Allison caught on, it became fun for Derek and me.”

After years of effort by the family and two cochlear implants for Allison, says Derek, “It changed the way we look at everything. You evaluate the ups and downs of life differently once you’ve gone through something like this with your child.”

But the hard work is done, and the fruit of the Emges’ efforts is ripening to its fullest. A recent move to South Mission Beach provided the perfect base of operation for the active foursome. Son Zack, a nationally ranked competitive surfer, can start his day right out their front door. “We moved down here to be where he was most of the time,” says Suzanne. Allison’s struggles as a youngster gave her the extra grit to excel in school and sports, including competitive beach volleyball. As avid runners, Derek and Suzanne make good use of the beach and boardwalk.

Derek continually manages a dozen or so employment- or consumer-related class action suits.

Suzanne assists. “I screen five to 10 potential plaintiffs per day through our website,” she explains.

Derek has noticed an increase in the numbers. “With the economy the way it is, people are more focused on not being abused, and they are asking for legal help.”

When life served up some difficult circumstances, these two San Diego lawyers returned with skill and determination. Advantage Emge.

Dean Schiffman (deanschiffman@gmail.com) is a San Diego criminal defense attorney.
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’Cause you’re not standing out
Like flashy sparkles in the water
Or stars in the sky”

—Kermit the Frog

Being green. Going green. Carbon footprint. Environmental sustainability. Sure, we’ve heard the buzzwords, seen the documentaries, watched celebrities, hippies and activists talk of our generation’s responsibility to save the planet, and maybe even been lectured by our kids. Is this the new “it” cause, or have we got good reason to get on board? If we do, how hard will it be “being green”?

Like it or not, resources are limited, and the competition for those resources is increasing. Couple this with a world population that is expected to double in 25 years, client expectations that their representative stay current with contemporary issues, and a legal profession that is notorious for its use and overuse of paper products, and the need to rethink how we practice seems clear. Did you know that it is estimated that the average attorney generates up to 100,000 sheets of paper each year (or 50 pieces of paper in an hour)? If we learn to adopt and familiarize ourselves with more environmentally friendly practices, perhaps it may be possible for us to make a difference in our bottom lines as well?

This year, the SDCBA is not only presenting seminars to help its members shift to “greener” practices, but we are challenging each of you to focus on planning for tomorrow—to sustain resources and help us to lay the groundwork today for what future generations of lawyers will need to be successful. Here are a few simple ways you can begin to make your firm a bit greener:

• **Reduce the amount of paper in your office.** Available technologies allow us to send, receive, review and revise documents simultaneously inside and out of the office. When you must print, print double-sided, reuse scrap paper, and buy recycled products whenever you can.

• **Digitize your files for storage.** If you don’t do it already, revise your retainer agreements to reflect that files will only be stored electronically instead of storing the actual hard copies. Electronic storage allows easier access to the materials, saves storage costs and decreases retrieval fees. Plus, all that paper can be recycled.

• **Unplug for the night.** Just because you’re not working doesn’t mean your machines aren’t. When you head out of the office for the night, make sure that your computers, printers and other peripherals are turned off for the night as well. Defaults can be set on your computer that will put it in “standby” mode when it hasn’t been used for more than 10 minutes, and shut down entirely if not used for a few hours. Not only will this save energy, but it can also increase the life of your systems.

• **Transition your transit system.** Telecommuting is officially mainstream, so consider trying it a few times a month. Besides saving yourself some of the stress of road rage, you will save some energy and money along the way.

• **Recycle.** At least 90 percent of office paper can be recycled. Be sure that all office personnel have easy access to recycling bins, and that your building provides for the collection of recyclables.

The SDCBA will adopt greener practices this year to help reinforce our commitment to lessening our profession’s environmental impact. We will also be ready for the future by embracing new technologies and making responsible changes using methodologies that haven’t been available to us previously.

One example of change we are excited to announce is the new and improved SDCBA San Diego Lawyer Directory. For the first time ever, the SDCBA will be providing you with a completely searchable directory of all of the attorneys in San Diego County (in addition to our online member directory at www.sdcba.org). This will be the first time that you will be able to easily access attorney data from your computer or PDA, with the SDCBA providing you with the same high-quality and comprehensive directory as we have before, only now in a more environmentally friendly manner.

This year, you will begin to notice less paper products coming to you from the SDCBA, and more technologically enhanced practices and guides. I hope that you will enjoy joining in our journey to lead San Diego legal professionals in making a global difference. Isn’t it great to be green?
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I just finished reading the January/February edition of San Diego Lawyer and the Rewind column on Edwin Stan Conant (“Who Goes There?” by George Brewster Jr.). What a wonderful vignette. Stan was my first boss when I started practicing law, and he was a great guy. Stan tried 16 death penalties at a time when death meant death. He lost only one, which was reversed on appeal.

He was a tremendous mentor and one of the sweetest guys who ever tried a case. The staff usually met for lunch at the San Diego Hotel (where our offices were right over the kitchen—thus the continual differing aromas that wafted through the air conditioning). Stan would sit and listen to what his lawyers were doing and rejoiced at every victory as though it were his own.

Tom Adler

Nelson Brav forwarded to me a copy of the January/February San Diego Lawyer article about Edwin S. Conant and John Francis Perry. I thoroughly enjoyed the article. It brought back fond memories of Stan Conant in the 1960s at Defenders.

So, a sincere thank you from Retirement Land.

Alan Douglas

I happened to read the pieces by Claude Walbert, Laura Shingles, David Cameron Carr, Kathrin Maurino and George Brewster Jr. Although I am not connected to the legal profession, I found the overall January/February San Diego Lawyer informative and fascinating.

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Independence Night

Black sheets of rain danced across the freeway in the LED headlights. The damp air seemed to make the new-car smell even stronger. Windshield wipers beat in rhythm with the White Stripes on satellite radio. Tom Stockman drove on through the night. He did not hear the song. A different soundtrack played in his head.

"Tom, you are one of our bright stars. I have been managing partner of this firm for 10 years, and I haven't been impressed with any new hire as much as I am with you. In your first year you billed nearly 2,700 hours. Most associates struggle to meet our minimum of 2,100. Everybody here likes you. You have maintained a can-do attitude despite the layoffs that have demoralized other associates. The quality of your legal work is very good. This is why I assigned you to work with Herb on the ZeroCore case.

"We haven't talked much since your interview. But when a client complains, I have to get involved. I've learned that you don't say no to a client, especially a client like Yoyodine. I know Dr. Whorfin is difficult to work with, but she took a gizmo she made in her garage and turned it into a Fortune 500 company. That's why we put you on this case. You know how much is at stake. I'm not just talking about the billion dollars ZeroCore is asking for. I am talking about the survival of this firm. Firms like Yoyodine hire us because we have a reputation for aggressive litigation.

"Tomorrow at 10, you, me and Herb are meeting with Ed Benes. Whorfin wanted to be there, but I convinced her not to come. And we are going to tell Ed that we will do the discovery responses the way they want. He has three in-house lawyers who are perfectly capable."

The rain had not let up when Tom reached home. Sleep would not come, and he dared not take a pill. I have to be sharp tomorrow, he thought, and looked at the clock. Tomorrow had become today. He rose and pulled his laptop from its black Italian leather case.

It did not take him long to find the answer he already knew. ABA Model Rule 2.1 stated in Comment 1: "In representing a client, a lawyer shall exercise independent professional judgment and render candid advice... A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client."

"I know it's wrong, Tom thought, but do I have to go along with it? His fingers pecked at the keyboard. Soft ocher light began to filter through the second-story window.

"A member shall not suppress any evidence that the member or the member's client has a legal obligation to reveal or to produce," stated California Rule of Professional Conduct 5-220. Sanctions were bad enough, but there was also the possibility of discipline.

"Tom knew Rule 26(g) of the Federal Rules of Civil Procedure required him to sign the discovery responses after making a reasonable inquiry. How could he do that when Ed Benes and his in-house crew would be in charge of that inquiry? Herb had told him it was a cost-saving move, but Tom knew he was being cut out. He had noticed a change after he had forwarded the discovery requests and an e-mail message outlining the electronic discovery protocol.

Herb and Ed were old law school buddies. Herb was the master of hardball litigation. Tom remembered what he'd said when he first started working on the ZeroCore case: "To succeed in this firm, you must develop a kamikaze attitude." All too well, Tom was beginning to see what he meant.

He wandered down the circular staircase and across the hardwood floor of his living room and went out to meet the dawn. The air was still and cold, the eastern sky a backdrop of orange clouds. The rain had stopped, leaving gleaming drops on his new Audi R8 in the driveway. I sure do love this car, he thought. Suddenly, he remembered his old Volkswagen, the car that had carried him for so many years, through college and law school. He hadn't given it a second thought since he bought the Audi.

"I loved that car, too," Tom said out loud.

He knew what he was going to do. Everything changes, he thought. Everything.

David Cameron Carr (drcarr@ethics-lawyer.com) is a San Diego lawyer.
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Beyond the Taco Shop

We’ve tackled the best burger, best pizza and best sushi in San Diego. It is now time to talk about traditional Mexican food. As a border town, we have an amazing array of options when it comes to Mexican cuisine. Most of us stick with the taco shops (which obviously have their rightful place in our hearts), but every now and then, San Diegans should enjoy something beyond carne asada burritos or fish tacos. Here are some of our favorite spots.

Mole is available at many establishments in town. Our favorite, however, is Cantina Mayahuel’s mole special, offered Tuesdays and Fridays at this University Heights hole-in-the-wall. (This was in our previous column as an inside tip, but it is so good we felt compelled to mention it again.) Order both types—a traditional dark mole with strong hints of chocolate and their own red mole with a sweeter taste to it—and they’ll serve it to you on one beautifully arranged platter. Another special experience is the Yucatán seafood stew, available only on Saturdays.

2934 Adams Avenue, San Diego, CA 92116-1508, 619-283-6292, www.cantinamayahuel.com

A lunchtime favorite is Tacos El Paisa in the Lincoln Park community, which offers street tacos in the traditional way. These are flavorful, bite-sized tacos; we can easily eat three or four if we are hungry. We recommend trying several of the different meat fillings. We especially like the adobada (barbecued pork) and the carne asada gordita. All orders are accompanied by a tray of hot carrots, cucumbers, grilled onions and different salsas.

840 South 47th Street, San Diego, CA 92113, 619-262-5128

Most attorneys know about Barrio Logan’s Las Cuatro Milpas. There is always a line out the door, and it is always worth the wait. Pork is the primary ingredient in all of the dishes. We enjoy the chorizo con huevo (a bowl of ground Mexican chorizo, egg, salsa and heat) and the rolled tacos. The chorizo con huevo comes with fresh handmade tortillas that alone make the trip worthwhile.

1857 Logan Avenue, San Diego, CA 92113, 619-234-4460

We thank Chula Vista attorney Glen Googins for introducing us to Mariscos Mazatlán, a South Bay spot with a different regional twist to Mexican food. The camarones zarandeado (or anything with the zarandeado sauce) offers a burst of flavor and spice for which your taste buds will be longing days after. The menu is quite extensive, and a few trips will likely be necessary to sample everything.

1287 Third Avenue, Chula Vista, CA 91911, 619-422-3311, www.mariscosmazatlan.com

Inside Tip

One aspect of Mexican dining many people have not experienced is high-quality sipping tequila. A number of places in town have amazing selections and will serve tequila with a sangrado (a spicy tomato juice) side shot that makes it a heavenly experience. Cantina Mayahuel (above) has an amazing selection, as does downtown’s El Vitral. El Vitral also offers a tequila seminar and three-course dinner for $30 every first and third Thursday. 815 J Street, San Diego, CA 92101, 619-236-9420, www.elvitralsrestaurant.com

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In January 2010, Chapman University School of Law’s AMVETS Legal Clinic celebrated its one-year anniversary. This pro-bono clinical program offers invaluable experience to students while providing free legal representation to veterans, service members and their families. Through a cooperative effort with the non-profit AMVETS of California, the clinic gives representation in private disputes not covered by the military’s JAG Corps.

In its first year of operation, the AMVETS Legal Clinic handled 160 cases while recovering more than $2.2 million for military families. Operating on the campus of Chapman University, the clinic has represented California troops from around the world, from Texas to Japan and Kansas to Germany.

The high volume of cases has lead to the creation of the AMVETS Legal Clinic Pro Bono Legal Network, a case-referral system for local practitioners who can help in the following areas:

- Family Law
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- Debt-Related Matters
- VA & Military Disability Claims
- Miscellaneous Civil Litigation

To join the AMVETS Legal Clinic Pro Bono Legal Network please call (714) 628-2692, or email Director Kyndra Rotunda at krotunda@chapman.edu or Office Coordinator Kiana Boyce at kboyce@chapman.edu. For information about Chapman's Military Personnel Law Center or the AMVETS Legal Clinic, please visit www.chapman.edu/law/programs/clinics/amvets.asp. Your support is greatly appreciated.
“I was one of those arrogant lawyers who came out of a large Wall Street law firm, joined a firm that already had clients and felt I didn’t need to do any client development to be successful. Of course, I was wrong. But I lived with my illusions for many years. Fortunately, I also had an interest in ‘doing good’ and participated in community activities and charity boards, occasionally under pressure from clients. I began to see that those with whom I worked in such organizations and efforts came to me for legal issues, one by one. A significant portion of my practice can be traced to such individuals and the people they referred to me. The same is true with casual social relationships that, over time, resulted in legal work or client referrals. My guess is that this happens to all lawyers. I have also learned that clients sometimes go elsewhere if there is no social interaction with them.”

— Marshall Lewis, Lewis, Hoxie & Spear

“Do you use social networking in your practice?”

“Although I have an account and friends on Facebook, I don’t use social networking in or to market my practice. Like anything else we do in our daily lives, social networking may have a positive or negative impact on our professional lives depending upon how we are perceived. Its effect is highly intangible.”

— Ron Oberndorfer, Fishbeck & Oberndorfer

“I don’t use Facebook often, but I do use LinkedIn a lot to help my clients. I’m a business attorney, and my clients look to me for connections and introductions, not just legal documents. For example, if a client needs to meet someone at Apple, I can quickly check who I know at Apple and make the introduction. With most companies my clients want to work with, I’ll know someone at the company or I’ll know someone who knows someone.”

— William Eigner, Procopio, Cory, Hargreaves & Savitch

“I interact with others in my field, and experts I trust, directly through Twitter, blogs and social networking sites. Using these technologies is now an essential part of staying up to date in my practice, establishing a reputation and building relationships.”

— Art Neill, UCAN/New Media Rights

“How would you spend a sabbatical if you had one? Please e-mail comments to lmshingles@gmail.com (or send a message via Facebook) by April 1.

Connect with both the SDCBA’s Young/New Lawyer Division and the Lawyer Referral and Information Service on Facebook. The SDCBA’s Facebook fan page is coming soon!

Laura Shingles (lmshingles@gmail.com) is a 3L at California Western School of Law and law student editor of San Diego Lawyer.
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EVERY CALIFORNIA LAWYER uses an estimated 100,000 pages of paper a year. That is one of many memorable details Steve Kelly recalls from his service on a committee in the 1990s that recommended all court pleadings be filed on recycled paper.

Kelly, clerk of the Fourth District Court of Appeal in San Diego, heard paper makers predict that retooling their mills would be too difficult. Printer and copier-company representatives doubted their machines could handle recycled paper, which witnesses described as dusty and likely to jam.

At the time, only a few environmental lawyers were fighting to reduce the legal profession’s consumption of natural resources. Now, 15 years later, consciousness of our impact on the environment is much greater, and claims that recycled paper would jam copiers seem quaint. But the legal community still consumes electricity, paper, computers, transportation and myriad other business supplies and services. Manufacturing, operating and disposing of all these generates greenhouse gases (GHGs). The buildings we work in—indeed, all buildings—are the single largest energy users in the U.S. economy.

As long ago as the late 1800s, scientists such as Joseph Fourier predicted that increased production of carbon dioxide and other atmospheric byproducts of industrial activity could warm the Earth’s climate by trapping the sun’s energy. The term “greenhouse gas” recalls how greenhouse windows allow the sun’s heat to enter while preventing it from escaping back into the atmosphere, warming the interior. Predictions that carbon dioxide and other gases enveloping the planet would cause similar warming were generally disregarded until recent decades, when new methods allowed researchers to verify that temperature changes are occurring. There is now widespread scientific consensus that climate change is under way.

Before this was widely accepted, Sierra Club lawyers convinced the California Supreme Court to adopt Rule of Court 2.101. Now, every time a lawyer files a pleading in state court or serves it on a party, he or she certifies, by making the filing, that the document has been printed on recycled paper. Contrary to the chaotic scenarios predicted, Kelly reflects, “It happened so easily. Nothing has been impacted. The machines work fine.”

Looking forward, though, what more could be done?

San Diego’s federal courts have been early adopters of changes to reduce the profession’s carbon footprint. Our bankruptcy court was one of only five nationwide to test a prototype e-filing program in the mid-1990s. Now, after 11 years of voluntary e-filing, Clerk of Court Barry Lander says his office has “pretty much eliminated paper files. . . . We used to spend about $20,000 per year on file folders. We don’t buy them now.”

Beginning March 1, electronic filing of bankruptcy cases became mandatory for all parties represented by counsel, Lander notes. Even before that, 85 percent of cases here were filed electronically, reducing pa-
per consumption and eliminating the need to transport and store hard files in document depositories. The court’s file room is now mostly empty, a place for storing items like old furniture.

At the U.S. District Court, change is also under way as the court enters its third year of mandatory e-filing. Sam Hamrick, clerk of court since 2002, laughs as he recalls walking through the files section recently: “I looked to the right and looked to the left, and there were no file folders! E-filing is really starting to make an impact.” The court is “much less of a paper environment” than in the past, he says.

The addition to the federal courthouse, now under construction just west of the existing building, is designed to achieve a silver rating under the Leadership in Energy and Environmental Design (LEED) protocol of the U.S. Green Building Council. Hamrick’s current office on the fourth floor of the federal building has a bird’s-eye view of the construction site of the new tower due to go up directly to the west. He and the court’s architect, David Allen, can see deep into the “big dig.”

Measures to achieve LEED certification for the addition include site preparation and operation. Dirt removed to make room for the foundation was “as clean as a beach,” Hamrick says, and is being resold. Runoff is filtered on site before discharge into the storm-water system, and a new pedestrian plaza between the courthouse buildings will have permeable surfacing to reduce runoff. When possible, building materials and furniture have been sourced from manufacturers within 250 miles, to lessen transportation impacts, and produced from sustainable sources to reduce natural-resource depletion. Hamrick expects the addition to be completed by December 2012.

The Superior Court building currently in the planning stage is also designed to meet LEED criteria. Court spokeswoman Karen Dalton says the new courthouse will be an elongated structure with upper-floor setbacks to open up air space, maximize street views to the bay and allow afternoon sunlight to reach surrounding streets. The design includes energy-efficient heating, air conditioning and electrical systems and low-water-use plumbing fixtures. Windows increase natural light, while carpet, woodwork, paint, and furniture choices emphasize recyclable and low-emission materials.

On the e-filing front, however, local courts have to wait for state leaders to act before they can implement changes seen in the federal courts. Currently, the Rules of Court authorize e-filing only for class actions and complex and consolidated cases. Scientists are pursuing countless technological innovations to power our contemporary standard of living with non-GHG-producing inventions. Many observers argue that embracing a “green” future could be economically more favorable for society in the long run. But it is unclear how much time is left. Disconcerting scientific findings indicate climate change can suddenly spiral out of control if a convergence of variables reaches a tipping point.
In the meantime, change is resisted by those who fear they will pay the costs of implementing it in the short term. Attorneys are key players in this controversy because our job of advocating on both sides of any issue gives us a natural role in the debate. We are also among the professionals tasked with devising legal solutions to this challenge. Scientific solutions to global warming are achievable; the unanswered question is whether humans will implement them in time.

How the San Diego County Bar Association can help attorneys prepare for and adapt to emerging technologies is a particular interest of Bar President Patrick Hosey. We are also among the professionals tasked with devising legal solutions to this challenge. Scientific solutions to global warming are achievable; the unanswered question is whether humans will implement them in time.

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“I LOOKED TO THE RIGHT AND LOOKED TO THE LEFT, AND THERE WERE NO FILE FOLDERS! E-FILING IS REALLY STARTING TO MAKE AN IMPACT.”

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How the San Diego County Bar Association can help attorneys prepare for and adapt to emerging technologies is a particular interest of Bar President Patrick Hosey. Technological change and sustainability are related, in his view, because “any time you are communicating through an electronic means” there should be less paper used, reduced transportation costs, and so on. He believes that 10 years from now the vast majority of court appearances will be electronic, and many more depositions will be conducted via videoconference.

This is the first year the Bar’s Attorney Directory will be available in a digital format. It is searchable, and for the first time, users will be able to access lawyer contact information directly from their computers. Members are encouraged to use the online version and will pay a small fee if they would like a hard copy of the directory.

The Bar Association aims to create greener standards and uniformity regarding use of recycled paper, two-sided printing and compostable dinnerware and utensils for events and programs. Bar leaders are now urging section organizers to provide reading material electronically in advance, in lieu of paper copies.

“Change always meets opposition,” Hosey says, adding, “By the end of the year we hope to accomplish a lot of these things.”

Cultures adapt to changing circumstances or fail. A key obstacle to reducing climate
change is that most countries do not require producers of GHGs to pay the cost of warming the Earth, nor mandate that this cost be passed on to buyers in the price of products.

“Cost externalization” from business to society describes the way enterprises shift some of the true cost of environmentally harmful activity to others, thereby maximizing profits. The manufacturer who dumps industrial waste into a river, evading the cost of pollution-control devices, has externalized some costs by shifting the economic toll to downstream residents who are impacted by effluent.

**PAT HOSEY BELIEVES THAT 10 YEARS FROM NOW THE VAST MAJORITY OF COURT APPEARANCES WILL BE ELECTRONIC, AND MANY MORE DEPOSITIONS WILL BE CONDUCTED VIA VIDEO CONFERENCE.**

Governments at all levels are now debating regulatory plans to monetize the production of GHGs so industries will have a financial incentive to reduce emissions. Examples include “cap and trade” systems that cap the production of GHGs for a region, assign permitted GHG production units or “credits” to key emitters and set up an exchange where producers trade credits at market rates. This scheme creates an economic incentive to reduce pollution because businesses can sell unused credits to the highest bidder. However, some critics contend market-based systems are less effective and fair than outright bans. California is the first U.S. state devising a cap-and-trade system, due to begin in 2012.

Though climate change is a monumental worldwide problem, individuals will make a difference, because societal change comes about when critical numbers of people shift course. Law firms can follow the lead of our courts by consistently recycling paper and electronics, substituting on-site water filter dispensers for bottled water, printing drafts dual-sided and promoting transit programs that entice employees out of cars and into mass transit. At my firm, we enrolled in the American Bar Association’s Climate Change Challenge, adopting sustainable office practices.

On February 1, the Superior Court launched a pilot comprehensive recycling program at the Hall of Justice that includes glass, plastic, cardboard and aluminum. If the trial is successful, Dalton says, court leaders hope a commingled recycling program will be implemented in all courthouse locations as early as April.

At federal court, Hamrick is proud of his office’s very popular transit program. “About 70 percent of the clerk’s office staff is taking advantage of it,” he says. Employees receive a transit subsidy for trolley, bus or Coaster passes, and carpools are eligible for free parking. The program has greatly reduced the number of employees who park downtown, lessening the impact of solo drivers.
In addition to championing sustainable practices at the office and at home, attorneys can find both paid and pro bono work drafting legislation, litigating, lobbying and advising on measures to combat climate change. We can also contribute our expertise by serving in elective and appointive public office and on boards and task forces of corporations and trade associations, where decisions are made to adopt political and organizational initiatives helping our environment.

Many lawyers have implemented green measures in their personal and workplace routines. Others are advocating for change in the public arena. If a critical mass of attorneys adopt this course, the carbon footprint of San Diego’s legal community should shrink by 2015.

Pamela Lawton Wilson (pwilson@wertzmcdade.com) is a shareholder at Wertz McDade Wallace Moot & Brower and a LEED®-Accredited Professional.

Drip, Drip
Out of 10 San Diego law firms surveyed, one uses bottled water regularly, two offer it only to clients, and seven provide pitchers of filtered water for meetings and have installed filtered systems in the kitchen/break rooms.

Compiled by Patricia Lane (plane@mckennalong.com).
Virtual Practice Makes Virtually Perfect

remaining professional and impressive to those prospective clients who may not have met me otherwise.

These companies can also forward your mail and provide you with a physical business address, which is essential for protecting your home and family from unwanted guests. These companies also provide office space for daily or monthly use, as well as receptionist services and conference rooms.

As for phone systems, VOIP (Voice Over Internet Protocol), which I have been using for about four years, has become just as good, if not better, than traditional phone companies and systems. The phones are inexpensive, and you can route your calls to wherever you and your employees are located.

Of course, with gas prices rising, a move toward contract workers and telecommuting employees can be a bonus for those without office space. I have two employees who live quite a distance from our office, and I provide them the opportunity to work from home two days per week. It saves on gas, and it is great for morale. With the Internet, Skype, cell phones and instant messaging, we are connected all day just as if they were in the office together.

Our office has finally converted to a paperless system. New, simple-to-use scanners not only save paper, they also allow all of my employees (and me) to access each and every file no matter where we are located. This is a huge cost-saver that allows us to fax, save or print entire case files wherever we are. Along with our Microsoft Small Business Server 2003, our entire desktop is available through any private or public computer, without the loss of security. We have converted to an Internet-based fax service, which has cut down on toner and paper costs. This service also prevents us from not receiving an important fax due to a paper jam or a machine being offline.

My firm maintains a traditional office space for my 15 employees, mostly because I am more productive when I am away from my home. Although I spend quite a bit of time on the road, I am able to stay productive because of today’s technology and the virtual business plan I have created. Remember, however, that you need to look at how going completely virtual will work for you before you make the jump. I prefer to look at my current situation as semi-virtual, due to my time spent traveling and being on the road and the fact that most of my clients do not come into my office for counsel.

Although I am only actively licensed in the state of California, our state’s laws regarding third-party reproduction provide me with clients from the rest of the world. By using the latest and greatest in technology, I am able to give them the sense that they are with me in my office for our appointments, whether by Skype or online conferences. Because of this technology, I can also be available for overseas clients during times I would normally not be available due to the various time zones.

My clients love to see my face and speak with me “in person,” which helps our office develop a trust with them. And the setup of these programs is actually easier in many ways than installing Word on your computer. Often the programs are self-explanatory, and they are ready to use within 10 minutes.

In addition, the use of videos of my staff on our website has also helped the rest of the world connect with us in ways they wouldn’t otherwise. Although professionally made videos can be expensive, they help prospective clients get a look into you as an attorney and as a person. Do not go cheap on this aspect of your business; a video that looks like it was done with a personal camera and without proper editing will really make you look worse than if you had foregone the videos altogether.

Along with videos, we also make our office available to clients via instant messaging. This can get out of hand if not managed correctly from the very beginning. It is important that clients understand the
boundaries, which include allowing time to respond. Clients need to be informed that we are not always available 24 hours a day. Communicating this has worked very well for us for the last few years and has not generated any complaints from our clients, as they can check in every so often and get their case status without spending the time to make a call or send an e-mail.

We request that every client accept office communications through e-mail. This not only saves trees and money on postage, it allows clients to receive communications much faster than via regular mail. And if we do not receive a response from an e-mail within 48 hours, we follow up with a phone call to ensure receipt, since e-mails with attachments often go to junk-mail boxes, which are not always checked.

In deciding whether a virtual (or semi-virtual) office will work for you, you need to sit down and see what your clients expect from you. You also need to figure out if working from home will be a blessing or a burden. Our office is flourishing with the semi-virtual option, but I do not expect that we will ever forgo the physical space, because of my work habits, as well as the sheer number of staff.

But if you decide that you want to cut costs and make the move, or even chose to open a completely virtual firm, it is important to have a plan to utilize from the very beginning. Make a list that addresses office space and your options regarding faxing, phones, going paperless, telecommuting and programs that permit client communications and computer access when not in the office. Also ensure that you revise your engagement letters with clients to permit these options, as well as set the boundaries I mentioned.

You can go all the way to virtual, or do it piecemeal as I have done, and still enjoy your practice without the typical restraints and costs of yesteryear. Just make certain you create a plan that works for you and gives you the tools to implement these ideas in the best way possible.

Theresa Erickson (terickson@ericksonlaw.com) is managing partner of Erickson Law, PC.

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What is your job? I am the designated legal advisor to the city’s Environmental Services Department (ESD). I am a member of the department’s executive team as well as its Long-Term Resource Management Strategic Planning Steering Committee. ESD handles refuse collection, curbside recycling and yard-waste collection and disposal; operates the Miramar Landfill; maintains the eight closed landfills; operates various recycling programs; provides programs for underground storage tank management, hazardous, universal and electronic waste management and lead and asbestos abatement; manages the city’s franchise agreements with private solid waste collection companies, etc. With respect to all of these programs and activities, I provide legal advice; draft and review contracts; prepare written legal opinions; advise the mayor’s office and the city council; provide representation before various regulatory agencies; negotiate settlement agreements; draft documents, such as the city’s recycling ordinance and its lead hazard prevention and control ordinance, contracts, resolutions, council policies and regulations; respond to public record requests, etc. I also provide legal advice to various task force groups related to ESD programs and initiatives.

Do you ever get down and dirty? I occasionally don a pair of boots and go traipsing around the landfill for site visits. For example, last year the city constructed a huge new module for the disposal of trash at the Miramar landfill. It was quite a complex project, and I wanted to better understand the scope and the potential legal issues, so I went out to watch the progress for an hour or so. The dirtiest I’ve ever gotten was probably when I had to go through boxes and boxes of dusty old files stored in a trailer at the Miramar landfill. I couldn’t stop sneezing for hours afterwards, but I found what I was looking for!

Do you give tours? I don’t give tours of the landfill, but ESD staff offer tours on occasion.

Your environmental hero/heroine? All the folks at ESD who work so hard each day to protect our environment and promote a more sustainable future for our community.

Is there a nickname for your job? I guess you could say I’m the trash queen.

Shelly Caterino (caterino-11@sandiego.edu) is a 2L at University of San Diego Law School.
WENDY BULGER
General Counsel for the Zoological Society of San Diego

What is the capacity of your work with the zoo? No two workdays are ever the same. The Zoological Society of San Diego is a private, nonprofit conservation organization that operates the San Diego Zoo, the zoo’s Wild Animal Park, the Institute for Conservation Research and conservation programs around the United States and the world. I am responsible for all legal matters such as contracts and transactional, litigation management, risk management and compliance support, intellectual property, selecting and managing outside counsel, advising the CEO and executive team and participating in strategic planning.

What are some misconceptions about zoo law? The most common misconceptions are that there shouldn’t be enough work at such a happy place to occupy a lawyer, and that I get to work hands-on with the animals.

We are a global business with 3,000 employees and nearly 5 million visitors a year. We are continually improving animal habitats—construction—and creating new ways to connect people with wildlife and conservation. Each time we start a project like the zoo’s Elephant Odyssey or our consulting project in Al Ain, it touches my desk. We also rely on a small cadre of outside counsel for special expertise.

My work is all about the animals, but I typically see them only when I visit the zoo on weekends with my 2½-year-old daughter and 5-month-old son.

What’s your work with elephants? People, and children in particular, fall in love with elephants. Seeing an elephant in person is an experience no other medium can replicate. We’re helping to create future conservationists.

The Zoological Society imported seven African elephants from Swaziland in 2004 to save them from culling due to overpopulation. The import permit faced legal challenges posed by animal-rights activists who sought to block us from bringing the elephants to the Wild Animal Park. The permit was defended, and we ultimately prevailed. We are also helping the Los Angeles Zoo defend attacks on their elephant-exhibit expansion. Our elephants are doing wonderfully in their new home.

One thing that will stay with me is a comment made during a hearing before the District Court by a lawyer for the animal-rights activists who sought to block our import permit. She told the judge that her clients would rather see these animals culled...
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than come to the Wild Animal Park. I’ve kept that transcript to remind me of the kind of unhealthy extremism that exists.

What was the case about law and rhino feces? I received a call from our endocrinologist, who had just completed a six-month study on endangered wild African white rhinoceroses. Her study involved collecting feces samples as the rhinos moved from one South African location to another, to determine the stress effects of the moves. The feces samples were to be transported back to our San Diego labs for diagnostic testing, the results of which would complement a five-year study that could not be replicated. Due to the remoteness of the research location and lack of freight methods, the only viable way to get the samples to the States was to check them as passenger luggage in a large, green, 40-to-50-gallon Coleman cooler, marked "Keep Frozen."

After numerous discussions with airline representatives, our researcher was confident her samples were safe. Unfortunately, the researcher’s suitcase made it to the States but the rhino feces were lost in transit. The cooler turned up 30 days later, but the value of the samples had perished.

My job was to determine if there was any legal recourse to recover the value of these samples. This was pricey poo. We quickly learned all about the Warsaw Convention, contracts of carriage and various other ways the airlines had done a stellar job making sure they were not responsible. In short, we were out of luck.

How did your knowledge of animals affect your attitude toward law? I am a lifelong animal lover and proud to work for a zoo. Zoos are now conservation and education centers that do more than merely exhibit animals. We actively work to protect the species in our care from extinction in the wild. The laws and regulations governing what we do are intended to protect animals, and that’s our goal as well. It frustrates me when activists use the law wrongly to fight zoos that are part of the solution, when there is so much more beneficial work to be done to protect animals.

Alice Solovay (alice@solovay.net) practices law in Mission Beach.

THOMAS ZELENY
Chief Deputy City Attorney
University of California, Berkeley
(B.S. in mechanical engineering); Thomas Jefferson School of Law

What is your job? I advise the city’s Public Utilities Department on legal issues related to the collection and treatment of sewage. I work on issues we may have with contractors, regulatory compliance and related litigation, contract negotiations and generally help the department with day-to-day operations.

What do you like about the job? I see a wide variety of legal issues. I work with great people on a mission to keep the sewer sys-
tem up and running as efficiently as possible. Most people don't think about what happens after they flush. How we collect and treat sewage is fascinating. Technology has developed to the point where we think we can safely turn our sewage into drinking water. I enjoy the engineering aspect of the work as much as the legal aspect.

Do you ever get down and dirty? Absolutely. The city attorney's office has always encouraged its lawyers to get out of the office and see issues firsthand. My next field trip is to open one of the huge digesters at the Point Loma plant to see a “hair mat.”

Do you give tours? The department gives tours of its wastewater facilities. There are also some video tours online.

Your environmental hero/heroine? City Councilmember Donna Frye.

Is there a nickname for your job? Nothing that I can repeat in public.

—Shelly Caterino
SAN DIEGANS CERTAINLY HAVE BOASTING RIGHTS. We have the sun, the beach, the weather—and the list goes on. We also have loads of restaurants. From the charming to the plain, the Zen-like to the deafening, San Diego is sprinkled with just about any type of eatery one could hope to enjoy.

One aspect, however, may receive little attention from most foodies: the piece of paper on the outside window adorned with a large blue capital letter. I'm referring to our restaurants' rating system, where “A” means excellent, “B” means average and in need of improvement, and “C” is a failing grade.

According to its website, the San Diego County Department of Environmental Health Food and Housing Division (www.co.san-diego.ca.us/deh/food/food.html) “seeks to increase life expectancy and the quality of life by promoting public health and safety. . . . Our commitment is embedded in our goals and objectives that focus on reducing risks that can lead to foodborne illness.”

While attorneys are not directly involved in the grading process, they do advise hearing officers and refer restaurant operators for prosecution. But these instances are rare, because restaurants respond quickly to food violations—probably due to the fact that they have letters attached to their establish-

When it comes to ratings, San Diego restaurants strive for more than a simple passing grade

BY JESSIE ZAYLÍA
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Senior Deputy County Counsel Rod Lorang explains that it is a rare occasion when a restaurant operator must appear before a hearing officer, and an even more rare occurrence when the Department of Environmental Health (DEH) refers an operator for prosecution. Hearings occur when the county is considering whether to revoke or suspend a restaurant operator’s license.

Hearings in the world of food safety, however, run unlike many others. “The food program,” Lorang says, “is different than other types of agencies.” Whereas an attorney serves as a hearing officer in most agencies, the head of the food safety program is the hearing officer when an operator repeatedly fails to rectify food-related violations. San Diego County counsel, therefore, advises the hearing officer on the law before the hearing begins.

If the outcome of the hearing is negative, DEH may refer the matter for prosecution. DEH can also refer operators for prosecution independently when extreme conditions pose serious risks to the public and thus require immediate attention. Lorang explains that although independent recommendation for prosecution is extremely rare, “One example occurred when restaurants were serving illegally imported unpasteurized cheeses.” The Office of County Counsel becomes involved on behalf of the public to the degree necessary to protect it from foodborne illness.

Private attorneys can also help prepare restaurants and advise operators as to the

The ratings of San Diego restaurants amount to nearly all “A”s, likely due to the fact that no operator wants a “B” or—heaven forbid—a “C” on his or her door when the surrounding competition boasts “A”s.

ment where the public can easily view them.

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benefits of food safety. (The common problems make for fascinating—if sometimes alarming—reading. One blog from a non-local attorney, Bill Marler, caught my eye: www.marlerblog.com. It is thorough and focuses a great deal on prevention, which is better for the public, the pocket and the company’s image.)

Some restaurant insurance firms argue that the restaurant grading system deceives rather than aids the public. After all, the letter grade relates only to food safety and not to other aspects of restaurant health and safety, such as the integrity of the building. However, the grade visible at the outside of the building seems to motivate restaurateurs to fix any food-related problems and to continue practicing safe food habits more than any other factor.

Like it or not, the grade is the quickest way to alert potential guests about the risk they take when they enter an eating establishment. Furthermore, the ratings of San Diego restaurants amount to nearly all “A”s, likely due to the fact that no operator wants a “B” or—heaven forbid—a “C” on his or her door when the surrounding competition boasts “A”s.

For quick data covering San Diego restaurant inspections from January 1, 2006, through December 31, 2007, go to interactives.signonsandiego.com/inspections. To test this site’s ability to provide large-scale data at a glance, I input 92101, the ZIP code for downtown San Diego, and was provided with 409 results. At a glance, anyone can view the number of violations—as well as repeat violations for each restaurant—within an area in San Diego County.

Before you go out, you also can search for the rating of any restaurant within San Diego County at www2.sdcounty.ca.gov/FFIS. This site is very user-friendly. I tested it by entering the name of our own Pokéz at 947 E Street and discovered that as recently as March 2009, Pokéz has an “A” rating. With that, I’m ready for some vegetarian (or vegan) Mexican cuisine. ¡Adios!

Jessie Zaylia (jzaylia@gmail.com) is a 2L at University of San Diego Law School.

“Agree, for the law is costly.”
-William Camden

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The U.S. District Court and Thomas Jefferson School of Law are both building new facilities in downtown San Diego. Which one will be completed first? In upcoming issues, we’ll include more photos of the progress, along with tidbits about the San Diego legal community. These pictures—third in our “Race to the Top” series—were taken the week of January 25. Please submit legal tidbits to sandbrews@aol.com.

HOW’S THE CONSTRUCTION GOING?
“In 2010, the new courthouse is a race to the base rather than the top, focusing on excavation and foundation. Our project is on track.” — Hon. Irma Gonzalez, Chief Judge, U.S. District Court, Southern District of California

“The LEED Gold facilities for the Thomas Jefferson School of Law are progressing ahead of schedule, enabling the school to start classes in January of 2011.” — Rudy Hasl, Dean, Thomas Jefferson School of Law

“Attorneys who practice in federal court are excited that construction is underway. We understand that the project is off to a good start.” — Ted Fates, President, Federal Bar Association, San Diego Chapter

THE FIRST WOMAN admitted to the practice of law in California, Clara Shortridge Foltz (1849-1934, Bar no. 2596), practiced briefly in San Diego. She was the first woman to run for governor of California, at age 81.

SUPERIOR COURT JUDGE DEAN SHERRY kept in his department a framed document certifying he was sane. He received this certificate following his recovery from Bataan, the Death March and subsequent mistreatment in Japanese prison camps during World War II. He would proudly point to this document whenever a lawyer challenged his judgment.

THE FIRST AMERICAN INDIAN JUDGE in San Diego Superior Court may have been Morgan Lester, a.k.a. Little Owl, or it may have been Alpha Montgomery, who was part Cherokee by virtue of the fact that his father was a “buffalo soldier” adopted into the tribe.

THE FIRST SAN DIEGO COURT TERM was May 6, 1850, with Presiding Judge Oliver S. Witherby. A recreation of that courthouse can be found on its original foundation, with a portrait of Witherby hanging in the courtroom.
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Inns of Court

U.S. Supreme Court Justice Sandra Day O’Connor (ret.) addressed the annual Joint Dinner Meeting of the San Diego Inns of Court on January 11 at the La Jolla Marriott.

PHOTOGRAPHS BY BRYAN KOCI

Hon. Joan Weber, Hon. Laura Parsky, Marilyn Moriarty

Deborah Dixon, Hon. Sandra Day O’Connor (ret.), Amy Simonson

Geraldine Valdez

Stephanie Baril, Johanna Schiavoni

Hon. Yuri Hofmann

Hon. Leo Papas (ret.)

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Night at the Opera

PHOTOGRAPHS BY LAUREN RADACK

Bar Night at the Opera on February 5 was presented by the SDCBA and ACC–San Diego and sponsored by Davidson Attorneys and Union Bank.
By 1900 there was a wide range of local courts, including police courts and city courts, in California. The Superior Court had become backlogged. The idea for a municipal court was proposed by John Shenk, associate justice of the California Supreme Court, along with Judge Leslie Hewitt of the Los Angeles Superior Court.

It was anticipated that the municipal courts, by hearing the less complicated matters, would reduce the workload of the Superior Court. The first municipal court was established in 1924 in Long Beach with five judges; then came Los Angeles in 1925 with 24 judges and San Francisco in 1930 with 12 judges.

A committee of the San Diego County Bar Association was formed in 1937 to consider establishing a municipal court in San Diego; it included attorneys Fred Kunzel, chairman; Thomas Whelan, district attorney; Dayton Ault, city attorney; E.I. Kendall, deputy district attorney; and John Hewicker, past president of the Bar. The committee strongly supported combining the current four city justice courts and the one police court into a municipal court. Hewicker predicted the San Diego Municipal Court would be the most economical in the state. He also argued that the creation of the municipal court would relieve the overcrowded police court, which routinely held night court sessions of 200 or more traffic tickets. The San Diego Union and Evening Tribune wrote editorials in favor; the San Diego County Board of Supervisors supported the proposal as well. The local election of April 27, 1937, confirmed the proposition to establish the court by an almost two-to-one margin.

Presiding Judge Alden Ames of the San Francisco Municipal Court came to San Diego to assist in setting up the municipal court procedures and practices. Judge Ames, in a luncheon speech to the Bar Association, noted that in addition to removing congestion from the Superior Court, there were additional benefits: a greater dignity attaching to the decisions of the municipal court; an opportunity to train judges for higher judicial posts; and a general stepping up of efficiency in preparing and presenting cases.

On July 1, 1937, County Clerk James McLees swore in the five judges of the San Diego Municipal Court: former Justice Court Judges Philip Smith, Eugene Daney, Dean Sherry and Joe Shell and former Police Court Judge Clarence E. Terry. The court was located in the Spreckels Building in space formerly occupied by the city’s justice courts and had jurisdiction over all misdemeanors committed within the city, civil cases involving damages of $1,000 or less, unlawful detainer actions and some lien cases as well as traffic cases.

The judges had an annual salary of $5,000. The court employed one secretary/clerk; nine clerks; one stenographer; one marshal; an interpreter; and five deputies. The entire court operations budget was $71,620 for the first year, whereas the justice courts and police court had a combined budget of $77,592—a savings of almost $6,000.

The San Diego Municipal Court served the community with distinction for 61 1/2 years until it was absorbed into the Superior Court on December 1, 1998, during the “unification” of the California court system.

Hon. William Howatt Jr., who retired as presiding judge of Family Court, currently works for JAMS.
Thank you for renewing your San Diego County Bar Association (SDCBA) membership, and your commitment to the San Diego legal community. The SDCBA strives to be your “Essential Partner” in 2010, and here are a few ways your “Partner” can help you:

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- **Meet new colleagues and friends.** Through the SDCBA’s networking events, members have an abundance of opportunities available to expand their networks. Visit the online calendar (www.sdcba.org/calendar) for information on meetings, CLEs and social events.

- **Put the experts to work for you.** Get in touch with structured settlement specialists Manuel Valdez and Manny Valdez of Ringler Associates for expertise on arranging your clients’ structured settlements. When looking for new office space, Commercial Realty Advisers can aid you in your search, and offers SDCBA members a cash back rebate. Consult with the experts at Law Firm Merchant Account whose merchant account system was developed specifically for attorneys and law firms.

- **Learn more.** Use the SDCBA’s professional development tools to keep up with the ever-changing needs of your clients and advances within your practice area. The SDCBA provides over 200 hours of CLE each year and with over 60 specialty Sections and Committees the opportunity to learn and engage in something new at the Bar Center is never far off. Visit www.sdcba.org/CLEcatalogue, for a complete listing of available CLE courses.

- **Get greener.** The TERIS team of experts can help you to improve your practice’s data and document processes so that your firm uses less paper. Plus, members who use any of the TERIS products or services for the first time will enjoy a special discount on services.

If you have any questions regarding your membership or need assistance, please contact our staff at 619-231-0781. Thank you for continuing to contribute to the success of the SDCBA and our legal profession.

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Who is this prominent member of San Diego’s legal community?

Please submit answers by April 1 to mkruming@aol.com. Your name will be entered to win a luncheon for two at Dobson’s Bar & Restaurant in downtown San Diego. Congratulations to Dolores Lopez of The Legal Aid Society of San Diego, who earned a luncheon with Bob Gaglione of the Gaglione Law Group, featured in the January/February issue. Thanks to everyone who participated.
EYEWITNESS EXPERT TESTIMONY: 39 years of forensic psychology experience with pretrial consultations and frequent court testimony regarding factors known to influence the validity of eyewitness report. Pretrial consultation can include choosing foils for live lineups and selecting jurors. Trial testimony includes charts to explain the results of scientific research demonstrating factors known to influence eyewitness identification accuracy.

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THE OFFICE OF MIKE NEIL of Neil, Dymott, Frank, McFall & Trexler, commanding general at Camp Pendleton during the Gulf War. Barry Carlton (barry.carlton@doj.ca.gov) is photo editor of San Diego Lawyer.

MIKE DONNED GANGSTER DUDS for a 1984 Bonnie and Clyde party.

THE MARINE CORPS STEIN was a gift. Mike entered the military at age 25 and already had a law degree.

A FELLOW QUAIL hunter presented Mike with this bird.

AT THIS LONG-AGO Christmas party, all the partners did the hula.
“If we do not maintain justice, justice will not maintain us…”

-Francis Bacon

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Kids Included Together
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