COMMUNITY SERVICE:
Lawyers Giving Back
Resolution pivots on the skills of the mediator, who must know the law, understand human nature, and be able to visualize original solutions to complex situations. Most of all, a mediator must be confidently and gently persistent.

Steve Kruis – all of the above.
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AS A PRINCIPAL IN THE FIRM.

MS. WOLF CONTINUES HER CONSULTING PRACTICE IN THE AREAS OF PERSONAL ECONOMIC LOSS ANALYSIS, BUSINESS DAMAGES, BUSINESS VALUATION AND FORENSIC ACCOUNTING.
FEATURES

28 2008 Year in Review
Here's a snapshot of what the local legal community was up to last year.

30 By Leaps and Boundaries
San Diego’s Fourth District Court of Appeal, Division One, has changed homes a few times en route to its current quarters.
By Claude Walbert

41 The Crossroads
The intersection of Front and C Streets offers an ever-changing collage of scenes.
By Elizabeth Blust

44 The Journey to Judge
In the first of three stories about newly elected Superior Court Judge Evan Kirvin, the focus is on the campaign.
By Gil Cabrera

46 Going Solo and Staying Small
We explore the benefits and drawbacks of being on your own, rather than working for a large law firm.
By Alice Solovay

FEATURE DEPARTMENTS

24 Profile
Abraham Lincoln’s birthday affords us an opportunity to find out more about the man.
By Dean Schiffman

34 Civility, Integrity and Professionalism
In the fifth in a series examining the standards of our profession, three judges share their views regarding the trends toward — and away from — civility.
By Alidad Vakili

DEPARTMENTS

6 Perspective
Teaching and encouragement of kids comes in many forms.
By Rob Shields

8 President’s Page: Community Service
The SDCBA president introduces the 2009 Community Service Campaign.
By Jerrilyn Malana

12 Ethics
The need for confidentiality isn’t clearly spelled out in some situations.
By Wendy Patrick Mazzarella

16 Briefly
Judge Howard Turrentine discusses law clerks, East versus West and being all over the map.
By Sarah Van Cott

18 Et Al.
Appointments, awards and the comings and goings of local lawyers and judges.
By Wendy Patrick Mazzarella

20 Workplace
The dynamic duo of the managing partner and the legal administrator.
By Patti Lane

22 Order
Traversing the savory spectrum from fine dining to fast food.
By Krista Cabrera and Gil Cabrera

50 Photo Gallery

56 Sustaining Members

58 Rewind
The Criminal Justice Memorial recognizes dedication.
By William Howatt Jr.

60 Advertisers’ Index

61 Directory of Experts and Consultants

62 Closing
Photos that capture a slice of the local legal life.
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Learning from Teaching

BEFORE STARTING law school, I devoted a semester to teaching kindergarten gym class and a semester teaching high school communication and debate. (My real motivation in teaching high school was to coach the baseball team.) Those two semesters convinced me I had the energy to pour into the lives of kids. Now, as a dad to 5-year-old triplets, helping, nurturing and coaching kids has taken on new meaning.

My firm, Wilson Petty Kosmo & Turner, has “adopted” a third grade class at Walter Porter Elementary and reads to them on a weekly basis. Many of the kids come from disadvantaged homes, and some do not receive encouragement at home. Between stories, I make it a point to talk about what is going on in their lives. We talk about what it takes to be successful in school and how they can set and achieve their goals. It is inspiring to see how these kids change throughout the year.

As a dad, one of my greatest passions is spending time with my kids. For the last two years, I have coached my own kids’ baseball team at Eastlake Little League. This year my kids actively recruited their friends, so our team is primarily made up of their classmates. Not only is coaching kindergartners fun, it gives me a chance to connect with my own children in a different role than they normally see at home. Watching children accomplish something they have been practicing, whether it is hitting the ball, running the bases or just learning to work as a team, is rewarding.

I also spend a significant amount of my free time mentoring a group of 25 students from my church’s high school group. I know that the teen years are a critical time. Decisions made in high school can affect the rest of their lives, and I want to help them make the right choices.

Rob Shields is a partner at Wilson Petty Kosmo & Turner and can be reached at rshields@wkpt.com.
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Making a Difference with Community Service

“We don’t accomplish anything in this world alone . . . and whatever happens is the result of the whole tapestry of one’s life and all the weavings of individual threads from one to another that creates something.”

—Sandra Day O’Connor

During my year as SDCBA president, I want us to create something special—a greater kinship among SDCBA members, a greater bond within our legal community and a positive perception of lawyers in our community at large. I truly believe that we can create all of this and more through the SDCBA’s 2009 campaign, “Community Service—Lawyers Giving Back.” At this time next year, I hope we can all look back with great pride in knowing that, collectively, we have made a difference in our community.

I grew up right here in San Diego County. I attended Castle Park High School in Chula Vista, earned my undergraduate degree from UC San Diego and my J.D. from California Western School of Law. San Diego is truly my hometown. It is such an amazing place to live and to practice law, and I am grateful for all that San Diego has given me.

Through Lawyers Giving Back, I hope that many others will also experience the warmth and generosity of our community.

As attorneys, judges and law students, our SDCBA members possess unique skills to help the community. Lawyers Giving Back will encourage our members to contribute to the betterment of our community in various ways, including engaging in volunteer service, providing pro bono legal services, serving on a nonprofit board of a charitable organization or becoming a mentor to an underprivileged child or young adult. Lawyers Giving Back asks members to find a cause, or several causes, that they are passionate about, and it challenges them to give back. There are so many different ways to serve—whether it be getting gritty with our Community Service Committee and helping to build a home through Habitat for Humanity, or assisting distressed homeowners during the foreclosure crisis at our HOME (Home Owners Mobile Education) clinics, or reading to underprivileged elementary school children with our Children at Risk Committee.

As part of our campaign, we are asking all SDCBA members to dedicate at least 50 hours of volunteer service in 2009. Community service opportunities will be highlighted in the SDCBA publications Bar Report, San Diego Lawyer and This Week at the Bar, as well as on the SDCBA Web site in the Volunteer Opportunities section.

If you truly do not have time to engage in “hands-on” service, then please open your pocketbook and give back in dollars to help worthy charitable organizations. There is no question that we are facing challenging economic times. Our community needs us now more than ever, and it is time we “raise the bar” on our service efforts.

I am honored and privileged to serve as your president. I sincerely look forward to working with you at one or more of our community service projects in 2009.
Habitat for Humanity

Free law clinic at Kobey's Swap Meet

Fall Facelift

Lawyer at Your Library

SAN DIEGO COUNTY BAR ASSOCIATION

LAWYERS GIVING BACK
RAISING THE BAR ON COMMUNITY SERVICE

www.SDCBA.org
This month, the SDCBA launches its new website, complete with up-to-the-minute updates, various online CLE options, a comprehensive legal community event calendar, easy online event registration, a membership directory and interactive member communities.

Look for more information about our new website in Bar Report, and This Week at the Bar. We look forward to sharing the new site with you soon.

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“King” Stahlman
Bail Bonds
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CAREER: Licensed in 1947 as a California bail bondsman; no one’s been at it longer.

NICKNAME: His nickname was given him by himself via an Oceanside police officer who noticed his license plate was BBK, and the cop said; “Hey does that stand for Bail Bond King?”

EARLY DAYS: Born on June 26, 1923, in Glendale, California. Served in the Navy during World War II and received the Purple Heart when his ship sank at Guadalcanal.

FAMILY: Beverly, his wife of 40 years, died in 2003; two grown kids. His father was a Los Angeles, Hollywood and Fallbrook (where he owned an avocado ranch) lawyer whose clients included Shirley Temple, Errol Flynn, Walter Pidgeon, ‘Bugsy’ Siegal and Mickey Cohen.

PASSION: Golf. Once had a 9 handicap; supports countless golf tournaments in the legal community. His other passion is work, where at age 82 he still works six days a week, and loves every minute of it. Never takes a vacation.

PETS: Ace, a Golden Retriever, and two cats, Heidi and Tiger.

ADMires: Former President Ronald Reagan, whom he met at the Hotel del Coronado.

ASPIRATIONS: Ran for Mayor of San Diego in 1967 against Frank Curran.

THE PROFESSION: “It's fascinating. You meet some characters. I'm one myself. I relate to them.”

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“SUZIE TELLS ME you are a lawyer. That’s great! I really need to talk to you about my daughter’s latest DUI…” One minute, you’re just another stranger elbowing your way to the finger sandwiches and mini-quiches; the next, you’re someone’s new best friend and confidant. And it’s not just at cocktail parties that lawyers experience this phenomenon.

Attorneys who spend a lot of time in the courthouse have all been approached by ordinary folks, lost in what to them is a foreign world, who are drawn to anyone with a suit and a briefcase for answers to their questions. Sometimes they just want to know how to find the Probation Department. Frequently, however, they are seeking some free legal help with whatever problem brought them there in the first place.

The attorney-client relationship ideally should be formed deliberately, with full knowledge and intention of both the client and the lawyer. Unfortunately, though, attorneys can sometimes inadvertently, through words or conduct or both, lead a potential client to believe they are communicating in confidence, though the lawyer has no intention of forming a legal relationship. This unintentional creation of a legal relationship, especially one without much information upon which to base advice, not only gives rise to potential malpractice exposure but also may cause the attorney to be conflicted out of representing the paying client on the other side of the case should the opportunity arise.

CALIFORNIA FORMAL OPINION 2003-161

The State Bar of California Standing Committee on Professional Responsibility and Conduct Formal Opinion 2003-161 examines circumstances in which a communication made in a non-office setting by a person seeking legal advice may be entitled to protection as a confidential communication when the lawyer makes no agreements of confidentiality and does not accept the case. The opinion concludes that the communication may be entitled to protection under two circumstances:

• if an attorney-client relationship is created by the contact, or
• even if no attorney-client relationship is formed, the attorney’s words or actions induce in the speaker a reasonable belief that the speaker is consulting the attorney in confidence, in his or her professional capacity, to retain the attorney or to obtain legal services or advice

Even if no attorney-client relationship is formed, depending on the circumstances, the lawyer may have a duty...
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to keep the information confidential. The opinion first examines whether the person seeking advice is a “client” for purposes of the privilege, and concludes that the critical factor in determining this issue is the conduct of the attorney. The next question is whether the communication is confidential. The opinion lists four factors to consider:

- the presence of nonessential people who can hear the communication
- the reason the person is speaking to the attorney
- the actions taken by the attorney to advise the speaker that the information is not confidential
- the extent to which the information is public knowledge or of a sensitive nature to the speaker

The opinion notes that the attorney-client privilege is an evidentiary privilege (citing Cal Evid Code Sections 952-955) that “permits the holder of the privilege to prevent testimony, including testimony by the attorney, as to communications that are subject to the privilege.” It explains that California Business and Professions Code Section 6068(e) is broader than the attorney-client privilege because it covers all information acquired during the course of the professional relationship “that the client has requested be kept secret or the disclosure of which would likely be harmful or embarrassing to the client.” (citations) The opinion concludes that an attorney may owe a duty of confidentiality under Cal. Bus and Prof Code Section 6068(e) and CRPC 3-310(E) to persons who never actually become clients.

Even if no attorney-client relationship is formed, depending on the circumstances, the lawyer may have a duty to keep the information confidential.

Wendy Patrick Mazzarella is the chair of the San Diego County Bar Association Legal Ethics Committee. The views expressed in this article are her own and do not necessarily reflect the views of the San Diego County Bar Association or its Legal Ethics Committee. She can be reached at wendy.mazzarella@sdcba.org.
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Please join us for this silver anniversary tribute, an occasion to remember and celebrate the many ways our legal community improves San Diego’s quality of life through philanthropy.

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5:30 pm – Cocktail Reception South Poolside
7:00 pm – Dinner and dancing in the International Ballroom

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Judge Howard Turrentine

Judge Howard Turrentine is a senior judge for the United States District Court for the Southern District of California in San Diego. In 1968, he was appointed by Governor Ronald Reagan as a San Diego County Superior Court judge. In 1970, President Richard Nixon appointed Judge Turrentine to the U.S. District Court for the Southern District of California. From 1948 to 1949 he served as the president of the San Diego County Bar Association.

How have you been able to keep up with presiding in courtrooms from coast to coast?

In 1984, I took senior status, and as a senior judge I chose to carry a criminal calendar and a half civil calendar, which gave me time to hold court in other districts. I have held court in Houston, Texas; Tampa, Florida; the Southern District of New York; and the Eastern District of New York, Brooklyn. Each time, I was in the various districts from four to six weeks. In 1976, I spent two months in Chattanooga, Tennessee. The judge in Chattanooga took considerable abuse because he had integrated the schools.

What was the biggest difference between the New York and California courts?

All federal courts operate under the same Federal Rules of Civil Procedure and Criminal Procedure. The courts in other districts are much more formal than we are here in San Diego. The jurors arrive in coat and tie or dresses, and the ladies often wear hats. Here, jurors frequently show up in tank tops, shorts and T-shirts. In San Diego we convene court at 9 a.m. In other districts, the courts seldom start before 10 a.m.

“I had a wonderful mother who let me make my own mistakes, and there’ve been a few in my life.”

What are some of the qualities you look for when you choose a law clerk?

What I look for is not only an individual with top law school grades but also one who, prior to coming to law school, had taken part in outside activities, such as an athlete in college, a debate student, one who drove a bus in the National Park Service or had a military record. A judge spends more hours living with a law clerk than he does his own wife. So you have to have somebody you feel you can associate with for five or six days a week for a period of years... somebody you can rely upon. Not a “causer”—someone who is carrying a banner to do away with the death penalty, et cetera.
Would you like to name a few of your most memorable law clerks? They were all very special, but I could mention those few who have gone into public service. Tom Christiansen is one who was on the municipal bench and died unexpectedly in France. Al Hartoonian, Superior Court Judge; Dick Murphy, San Diego mayor; and Victor Vilaplana, who served as a harbor commissioner.

What is the most significant way your role as judge has changed since your career began?
There’s been a change in my calendar. You know, I’m close to 95 years old. I no longer handle contested cases.

What is one fact most people don’t know about you?
My wife and I have been in more than 50 countries throughout the world for more than a cup of coffee. We’ve been to Antarctica twice, India, China, Europe many times.

What was your favorite place on the map?
If I had a choice to go back, Antarctica. It’s so pristine, so quiet. And New York City. It’s the greatest city in the world.

Who are some of the mentors who helped shape your judicial career?
Judge James Carter, who was, up until 1956, District Court Judge of the Division of the Southern District, which was Los Angeles. In 1965 we became our own Southern District Court. He was probably the best I’ve ever run into in my career. Admiral Russell Berkey, with whom I served in World War II. He was a great man and a great leader. Everything about him, you’d want yourself to be. And of course I had a wonderful mother who let me make my own mistakes, and there’ve been a few in my life.

Do you have any children?
I have two children, a son who is a lawyer. He was the head of the civil division in Washington County, Stillwater, Minnesota. I have a daughter who is a professional photographer and artist in San Francisco. I have two grandchildren and one great-grandchild.

What is left on the map in your travels?
We will probably go to New York and London in the near future. 😊

Sarah Van Cott is a graduate of Thomas Jefferson School of Law. She can be reached at sarahvancott@hotmail.com.

“The courts in other districts are much more formal than we are here in San Diego. The jurors arrive in coat and tie or dresses, and the ladies often wear hats. Here, jurors frequently show up in tank tops, shorts and T-shirts.”
Moving on Up, Out and Over

GROUNDBREAKING: Thomas Jefferson School of Law broke ground October 29 on an eight-story new facility in San Diego’s East Village. Construction was due to start in November, with an opening scheduled during the 2010-2011 academic year. “When the new campus building is finished,” Mayor Jerry Sanders told the gathering, “the Thomas Jefferson School of Law will have come full circle and back to its roots in downtown San Diego.” The ground floor of the contemporary facility will include a café, bookstore and legal clinic operated by the school. TJSL is currently located in Old Town.

JUDGES: Ninth Circuit Judge M. Margaret McKeown will chair the Committee on Codes of Conduct of the Judicial Conference of the United States, the national policy-making body for federal courts. She was appointed to a three-year term by U.S. Supreme Court Chief Justice John Roberts. • Superior Court Judges William Kennedy and Michael Wellington will retire in January. • The Oliver Wendell Holmes Jr. Chapter of the American Inns of Court was officially renamed the Fiorenzo V. Lopardo Chapter to honor a judge with an identity and connection to the San Diego legal community who epitomized the principles of the American Inns of Court. Judge Lopardo, who died in 2004, served in North County from 1971 to 1987.

AWARDS: Latham & Watkins received the La Mancha Award for Distinguished Pro Bono Legal Service from Casa Cornelia Law Center for donating more than 6,000 attorney hours (more than 30 lawyers participated) to handling asylum cases. • Professor Kenneth Klein of California Western School of Law received the California State Bar President’s Pro Bono Service Award. • Mark Cumba of Wilson Petty Kosmo & Turner received the 2008 Chicago-Kent College of Law Young Alumni Award. • Marjorie Cohn of Thomas Jefferson School of Law received the Peace Scholar of the Year Award (for excellence in scholarship and dedication to peace education) from the Justice Studies Association.

FIRM MOVES: Robert Copeland, James Mercer III, Kirt Shuldberg and Michael Umansky have joined Sheppard, Mullin, Richter & Hampton as partners from Heller Ehrman. • Jessica Wolff joined Cooley Godward as a partner from Heller Ehrman.

NEW DIRECTORS: Tina Fryar, Duane Horning, James Lund, Marcella McLaughlin and Gita Varughese have been elected to three-year terms on the San Diego County Bar Association Board. They were sworn in during the Bar’s annual holiday mixer, “Stepping Up to the Bar,” on December 5 at the Bar Center. Lund will serve as the North County representative.

FUTURE LAWYERS: So many lawyers wanted to coach teams in this year’s High School Mock Trial Competition that several were turned away. The San Diego finals are set for February 7 at Superior Court, 220 West Broadway. The winning team goes on to the California finals in Riverside in March, and that winner heads to Atlanta in May for the national championships. The competition is sponsored by the San Diego County Bar Association, LRIS, Superior Court and the DA’s office.

Wendy Mazzarella is a deputy district attorney and can be reached at wendy.mazzarella.org.
Q: What’s the best surfing spot for a California lawyer?

A: California Forms of Pleading and Practice. It’s the place to be for attorneys who need to deal with all the complexities of California law.

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One of the most pivotal relationships in any law firm is that of the legal administrator and managing partner. It’s been referred to as the “dynamic duo”—a sort of superhero combo that can take a firm from good to great. In talking with managing partners and legal administrators about a successful leadership relationship, common themes emerged. Most agree this team is important to the success of a law firm.

What do managing partners want?
They want to be kept informed—no surprises. The legal administrator who allows the managing partner to be confronted by another partner about something the administrator has implemented, but about which the managing partner isn’t aware, does the firm a disservice. Partners expect the managing partner to know what’s going on, and the managing partner expects the administrator to keep him or her fully informed.

The managing partner looks to the administrator to be well-versed in industry trends and on top of what other firms are doing. Administrators must be “jacks of all trades” and on the cutting edge of technology, employment practices and client development.

Managing partners want their legal administrators to act like owners and be invested in the firm’s success. They want the administrators to demonstrate their ownership view to the staff through their actions.

Legal administrators must possess superior financial skills and be able to provide the managing partner with the reports and information he or she needs to lead the firm—in the format and depth of detail that suits the managing partner’s needs.

The managing partner looks to the administrator to be a change agent and a voice to the staff, managing the support staff in the firm’s objectives. The administrator must be a leader of the staff and act as liaison between staff and attorneys. This can be a balancing act, to be part of firm management while at the same time ensuring that the staff has a voice.

What do administrators want?
Administrators want the managing partner to share his or her vision of the firm’s future with them. The number-one issue cited by administrators was lack of access to managing partners, or a sense that they have to rush meetings with them because of the partner’s schedule.

Administrators want the trust and confidence of the managing partner in handling the business aspects of the firm, and they want (and need) the managing partner to “have their backs” when rolling out new initiatives or imposing or enforcing firm policies, particularly with lawyers.

They want the managing partner to recognize administrators as leaders in the firm. To that end, they want the managing partner to support their professional development. To be on the cutting edge and on top of industry trends, legal administrators need the support of managing partners to attend continuing education. That support isn’t just financial; they must be supported in their time out of the office in pursuit of that education. Continuing education is required of lawyers, and administrators should also be required to attend continuing education.

Administrators and managing partners agree they must be “on the same page” in their face to the firm, and lead as a team. Disagreements must be behind closed doors. As a strong, functioning and cohesive management team, this duo can make a good firm great.

Patti Lane is legal administrator for McKenna Long & Aldridge. She can be reached at plane@mckennalong.com.
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When It’s Time for the Top

Every now and then, a “fine dining” occasion pops up. Perhaps you need to impress an important client, or maybe it’s time to celebrate a special occasion. Although San Diego is not New York or San Francisco, we do have some top-notch venues that guarantee a memorable dining experience. Two stand out to us as “the finest of the fine”: Addison at The Grand Del Mar (5200 Grand Del Mar Way, San Diego, CA 92130, 858-314-1900; www.addisondelmar.com) and El Bizcocho at the Rancho Bernardo Inn (17550 Bernardo Oaks Drive, San Diego, CA 92128, 858-675-8500; www.elbizcocho.signonsandiego.com).

Addison is an experience. Driving up the winding road to the restaurant, you get the sense of being transported to a woodsy wonderland. Once you arrive, you are taken into service heaven. One example: You are personally escorted to the restroom, and you return to a fresh folded napkin, linen covering up that itsy-bitsy red wine stain you left on the tablecloth and, of course, your beverage refilled. Soon after you sit down at your spacious booth, a sommelier comes by with a champagne cart and performs a monologue about the various varietals on offer. The same happens later with the cheese cart, and again with after-dinner drinks.

There are only two dining choices: a prix fixe four-course meal in which you select what to have at each course, or a prix fixe chef’s choice seven-course meal. Each course is a work of art, and many of the flavors are bold and have a gastro-chemical flair (let’s just say foam is involved). You can allow the sommelier to select wine pairings (a wise choice) or simply order a bottle.

Before Addison arrived on the scene, El Bizcocho was it for truly fine dining in town. El Biz has won many awards from prominent food magazines and is known in San Diego and beyond as an elegant restaurant with first-class service and excellent food. It offers prix fixe tasting menus (with either five, seven or 12 courses) with the option of wine pairings.

The food at El Biz leans more conventional than the modern menu at Addison. The most recent tasting menu offers some comfort-food favorites such as roast lamb or a rib-eye pavé, and of course, chocolate lava cake is on the dessert menu. You dine in an elegant room filled with hushed tones. The waiters are incredibly knowledgeable about the menu, and the service is flawless.

INSIDE TIP

On the other end of the dining spectrum: We are still surprised how many people do not know about In-N-Out’s Secret Menu. The basic menu is just the beginning; there are several off-menu items there are delicious. For instance, ordering a burger “Animal Style” means the beef is cooked with mustard and includes extra spread, pickles and grilled onions. Fries “Animal Style” come with grilled onions, American cheese and spread. The hungry carnivore can order a 3×3—the three patties of beef and three slices of cheese. See other Secret Menu items at www.in-n-out.com/secretmenu.asp.
The San Diego County Bar Association’s 100 PERCENT CLUB is a special category of membership that indicates an outstanding commitment to the work done through SDCBA programs and services in the legal profession and the community. These firms (five or more lawyers) are members of the 100 PERCENT CLUB, having 100 percent of their lawyers as members of the SDCBA.

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Why did you bring that damned long-armed ape here?"

That scornful question was uttered in 1855 by prominent Pittsburgh attorney Edwin Stanton. His listener was Philadelphia lawyer George Harding, Stanton’s co-counsel for the defense in a high-stakes patent case then being tried in Cincinnati.

The “long-armed ape” was Illinois lawyer Abraham Lincoln, then 46 years old, whom the defense team had retained only as a precaution when the trial was first slated for Chicago. He had dutifully followed the defense team to Cincinnati when the trial was moved there.

“He does not know anything and can do you no good,” continued Stanton. Back in Springfield and bitterly disappointed, Lincoln reported to his law partner that he had been “roughly handled by that man Stanton.” This limited encounter between the two busy lawyers, marred by Stanton’s demeaning treatment of Lincoln, would prove to have immense historical significance.

The Legacy of Lincoln

On Abraham Lincoln’s 200th birthday, we examine the life and work of our 16th president, and that of his indispensable secretary of war, to learn more about lawyering and leadership

“Why did you bring that damned long-armed ape here?”
It can be argued that Lincoln’s legal career was hindered by his empathic nature, his contemplative lawyering style and the time he spent in politics, the Illinois legislature and the U.S. Congress. Yet by 1860—the year he received the Republican presidential nomination—the lanky Lincoln had become one of the best lawyers in the West. He had just begun to enjoy the full financial fruits of his legal career. Then came his presidency and the American Civil War. After the first tortuous year of the war, President Lincoln sought to replace his initial choice for secretary of war, a Republican crony who had performed pitifully. Lincoln—always astute—remembered Stanton’s hard-charging performance in the patent case and offered him the post in January 1862, despite Stanton’s status as a leading Democrat. Stanton, like Lincoln, quit his lucrative law practice to serve the country. Of course the offer would not have come about had Lincoln remained bitter about Stanton’s harsh 1855 assessment of his abilities.

The appointment was a brilliant move by Lincoln. The two men worked out an historic division of labor—Stanton’s fierce thoroughness now directed toward the horrendous task of running the War Department, and Lincoln’s deliberative mind and discerning spirit newly devoted to the subtle politics of the war and the broader fate of the nation. As Stanton undertook the complex four-year trial of prosecuting the Union war effort against a rebellious South, he was profoundly transformed as a human being by Lincoln’s genius and goodness. In the fall of 1863, Stanton wrote to Harding about his newfound respect for the president: “No men were ever so deceived as we at Cincinnati.”

As the war wound down in the spring of 1865, a reelected President Lincoln delivered his second inaugural address “with malice toward none,” inviting the entire nation—North and South—to consider its responsibility for the horror of slavery. A month later he was shot in the head, while at the theater.

Edwin Stanton spent that evening organizing the search for Lincoln’s killer, returning to his dying friend’s side in the morning. There, Stanton probably noticed, as did a fellow Cabinet member, that the now-shirtless Lincoln did indeed have long, massively muscled arms—not those of an ape, but rather the arms symbolic of one who had determinedly held the nation together during four years of ghastly peril.

As Stanton managed the manhunt over the days that followed, he could not help but “break down and weep bitterly” at the mere mention of Lincoln’s name. He would eventually rejoice at his 1869 appointment to the U.S. Supreme Court by President Ulysses Grant, although Stanton died three days later at age 53.

BY DEAN SCHIFFMAN

The two men worked out an historic division of labor—Stanton’s fierce thoroughness now directed toward the horrendous task of running the War Department, and Lincoln’s deliberative mind and discerning spirit newly devoted to the subtle politics of the war and the broader fate of the nation.

Gathered around a treasure trove of Lincoln material are (left to right) Paul Kennerson, Dean Schiffman, Jim Granby, Bill Peck and Jim Hill. Peck, a retired Superior Court clerk, parlays his Lincoln resemblance into educational opportunities (see www.history-alive.com). Other Lincoln fans not shown: Steve Cologne, Hon. Bill McCurine and Monty McIntyre. Kennerson’s collection includes Lincoln’s 1862 Report of the President to Congress; a period copy of the Declaration of Independence, published late night July 4, 1776, considered the conceptual foundation for much of what Lincoln said and did, especially the Gettysburg Address; an 1863 first edition in book form of the proceedings at Gettysburg, including Lincoln’s Gettysburg Address; 1857 first edition of the Dred Scott decision, published for popular consumption by the Supreme Court’s official reporter; 1858 first edition of the Lincoln–Douglas debates, published by Lincoln for the 1860 presidential campaign; 1861 first edition from the Government Printing Office of Lincoln’s First Inaugural Address; a pocket copy (the small pink item) of the Emancipation Proclamation, published privately before Lincoln signed and issued the final Proclamation. The pocket copy was distributed to the black soldiers of the Massachusetts 54th Regiment, to show fellow black soldiers and runaway slaves proof of the coming emancipation.
In looking for a standard for good lawyering, we would have trouble if forced to choose between Lincoln and Stanton. Lincoln's patient, contemplative style would prove unrealistic as a broad standard in an adversarial system that admits to the value of hard-fought battles. On the other hand, it is dismal to imagine a legal system where Stanton-like thoroughness and aggressiveness are the only dominating elements, without the heart and vision offered by individuals like Lincoln.

We also learn from the decade-long interaction between Lincoln and Stanton that empathy and courtesy are the traits that can keep us from destroying valuable relationships. They are the traits that police our propensity for judging others harshly and too quickly, before experience can inform us more accurately. They are the traits that hold us in union. Surely it is the melding of great energy and a sense of the central human purposes of life that drives our greatest lawyers.

Dean Schiffman is a San Diego lawyer. He can be reached at dschiff1@san.rr.com.

For more on Lincoln, the author recommends Team of Rivals: The Political Genius of Abraham Lincoln by Doris Kearns Goodwin and Lincoln by David Herbert Donald, from which the images of this article are drawn.

“... We are excited to present this year’s Law Week theme, which celebrates Lincoln’s vision of a united America.”

LAW WEEK 2009

The San Diego County Bar Association’s Law Week 2009 commemorates Lincoln’s bicentennial with a full week of events. Its theme, “A Legacy of Liberty,” allows participants to explore Lincoln’s continuing impact on the nation by focusing on youth and their interest in law and justice.

“We are excited to present this year’s Law Week theme, which celebrates Lincoln’s vision of a united America,” explains Alexander Gruft, Law Week 2009 committee chair. The Bar’s events and volunteer opportunities during Law Week 2009 include a poster, essay and video contest, Youth Day in Court and the KNSD Ask a Lawyer program and Free Law at the Mall events.

Paul Kennerson poses with Lincoln’s Second Inaugural Address.
Thomas E. Sharkey, Esq.

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THE SAN DIEGO LEGAL COMMUNITY was busy in 2008. Here’s a look back at the people, events and accomplishments of the past year. If we omitted anyone, please contact mkruming@aol.com.

Moving Up
Scott Burns, Deputy Director of the White House Office of National Drug Control Policy
Marjorie Cohn, President, National Lawyers Guild
John Noyes, President, American Branch of the International Law Association
Michael Ming-shian Tsai, Minister of National Defense for Taiwan
Laura L. Rogers, Director of the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking at the U.S. Department of Justice

Retirements
SUPERIOR COURT
Patricia Cowett, Judge
Edward Huntington, Judge
Christine Pate, Judge
Alan Clements, Commissioner
Michael Goodman, Commissioner
Dianne O’Connor, Commissioner
Robert Rankin, Commissioner
Duncan Werth, Commissioner

Passings
John Benassi, Lawyer
Hideo Chino, Commissioner
Shirley Condra, Lawyer
Walter Diamond, Author, Benefactor
Harrison Hollywood, Judge
Serena Layoun, Lawyer
Franklin Mitchell Jr., Judge
Richard Speidel, Law Professor
Jay Wheeler, Lawyer

Arrivals
U.S. DISTRICT COURT
Michael Anello, Judge
SUPERIOR COURT
Carlos Armour, Judge
Katherine Bacal, Judge
Ana España, Judge
William Gentry Jr., Judge
Robert Kearney, Judge
Robert Longstreth, Judge
Dwayne Moring, Judge
Polly Shamoon, Judge
Gregory Pollack, Judge
Sim von Kalinowski, Judge
John Blair, Commissioner
Tamila Ipema, Commissioner
Terrie Roberts, Commissioner

At Law Week Luncheon 2008: Terrie Roberts, Anthony Young, Erika Hiramatsu, Vincent Bartolotta Jr., Ray Aragon, Laura Padilla, Elaine Alexander, Melissa Díaz, Rachel Humphreys, Carmen Chavez

HOME Clinic participants
Authors

JUDGES
George “Woody” Clark, Justice and Science: Trials and Triumphs of DNA Evidence
THOMAS JEFFERSON SCHOOL OF LAW
UNIVERSITY OF SAN DIEGO
Lesley McAllister, Making Law Matter: Environmental Protection and Legal Investigations in Brazil

Celebrations
Ferris & Britton, 40th birthday
(founded in 1968)

Honors
Kenneth Klein, California State Bar President’s Pro Bono Service Award

Jerrilyn Malana, new SDCBA president
Oral argument in the courtroom at 620 Ash Street on May 12, 1931, with Justices Barnard, Marks and Jennings. Clerk is M.C. Allen.

Photo courtesy of the San Diego Historical Society and the Court of Appeal
TO SEE THE JUSTICES at the Fourth District Court of Appeal, Division One, at oral arguments or to read their opinions is like watching the hands on a fine Swiss watch as they move, seemingly by themselves. But we know that inside the watchcase is an intricate machine that keeps the hands moving. A staff of 75 is the court’s driving mechanism. Here’s a glimpse of the court’s history and the staff at work over the years.

The Beginning
For a half-century, California’s only appellate court was the state Supreme Court, created in 1849 during the march toward statehood. The Supreme Court originally had three justices. The workload grew so rapidly that by 1889 five commissioners were helping the court, which by then had seven justices.

In 1904, voters approved intermediate appellate courts. The following year, justices took office in three appellate districts, located in San Francisco, Los Angeles and Sacramento. The Fourth Appellate District was created in 1929. It had jurisdiction in 10 Central and Southern California counties and was formed because lawyers from those areas had grown tired of journeys to the distant Second District Court in Los Angeles, according to a centennial history of the appellate courts.

“A Traveling Circus”
The Fourth District was originally a circuit court, the only one of its kind in California. For the first four months of the year, the three circuit-riding justices sat in Fresno, followed by equal amounts of time in San Diego and then San Bernardino, taking advantage of seasonal changes in the days before air conditioning. With each shift, case files and everything else necessary for the court moved too. In those early years, beginning in 1929, the court clerk was responsible for the move, starting with the first clerk, M.C. Van Allen. Sometimes he even arranged lodging for the justices. One staff attorney compared the moves to managing “a traveling circus,” according to court staffers with the longest memories of the court’s several transformations. And the budget for the moves was severely limited; long-distance calls, in those days when cell phones weren’t even a dream, were limited to three minutes to avoid excessive toll charges.
**Boundaries Change**

As the population of Southern California grew, the Fourth District boundaries shifted, and more justices were seated, eventually leading to the state’s only appellate court whose divisions have different geographical jurisdictions. In 1961 the new Fifth District took jurisdiction over the Central California counties.

The Fourth District’s Division Two was created in 1965, with its headquarters first in San Bernardino and then in Riverside. Today it has seven justices who hear cases from Riverside, San Bernardino and Inyo counties. The eight justices in Division Three, created in 1982, preside over Orange County filings.

**ONE LOAD OF FURNITURE** slid through the rear door of a moving van and splintered on A Street. When the court held an open house to show off its new headquarters, a justice from the Second District in Los Angeles jealously asked how they had managed to get new furniture.

Division One in San Diego, with 10 justices, hears cases from Imperial and San Diego counties. A unique history of Division One was written by former Presiding Justice Gerald Brown and updated by Webster Burke Kinnaird, who recently retired after serving as managing appellate court attorney, the top staff attorney position.

**Finding a Home**

The Fourth District’s first session was in San Bernardino during October 1929. The first San Diego session, in May 1930, was held in the stately Superior Court building on Broadway, long since demolished and replaced by the boxy Superior Court at 220 West Broadway. Soon after that first San Diego session, the appellate court began a series of moves: to the Bank of Italy building at Fifth and Broadway, the Electric Building on Sixth Avenue, then a building on Ash. In 1963 the court went to the State Building on Front, and in 1988, after again outgrowing the available space, it moved into its present location in Symphony Towers, 750 B Street.

**A Familial Court**

The State Building court was anything but luxurious, with its prison-made furniture and movable metal space dividers. But the justices and staff somehow made the atmosphere comfortable, even familial, recall the two staffers with the longest service. They are Kinnaird, hired in August 1976, and Stephen M. Kelly, hired in January 1978, who now is the chief clerk for the three divisions of the Fourth District.

In 1976, when Kinnaird joined the court as a research attorney, Division One had four justices, seven staff attorneys, four secretaries and a clerk with four deputy clerks. The staff lawyers’ offices were constructed along a corridor, and the doors were always open, Kinnaird recalls. Justices and staff lawyers met mornings in the fourth-floor cafeteria for coffee and informal talk; afternoons they gathered in the library, where a communal coffeepot steamed.

Kelly says that in the late 1970s when he picked up the mail, he would have only a handful to distribute. Today, boxes of mail arrive daily. Stamps for outgoing mail in those early days were individually licked. Then, Kelly says, the court acquired a simple gadget that eliminated licking: a porcelain wheel that revolved into a tiny water reservoir.

Making copies of opinions was a special problem. Each was the product of a laborious process of cutting and pasting handwritten or typed segments of an opinion, done over and over until the final version was ready to be typed with a dozen carbon copies. Last-minute changes to the final version likely meant that the entire opinion had to be retyped. Anyone seeking to modify the last version faced secretarial wrath, Kinnaird says.

Finally, in 1979 the state provided a newfangled, and expensive, copying machine. But after a trial period, the court was told it wasn’t making enough copies to justify the expense. State officials put the court’s machine on probation: Show need by making more copies, or lose the machine. A generous but unidentified person invited other state offices to help themselves to the copier. The next year, state officials agreed that the surprisingly heavy use justified a copying machine for the Fourth District.

**Technology Comes to Dockets**

Traditional ledgers, in which all steps of the court’s cases were summarized in beautiful handwriting, became obsolete around 1976. For a few years, docket cards were kept on cards, stored in a cart that could be wheeled to the justices’ chambers. When a decision became final, the cards were bound and stored. In 1983, with the change to computerized record-keeping, the cards were phased out, Kelly recalls. But the ledgers, bound in handworked leather, continued to serve a purpose: Stacked, they provided cozy seats for staffers while eating lunch.

**To the Towers**

By the 1980s the Fourth District was again running out of room, despite having appropriated every available space as other state functions moved to new offices. So, over the 1988 Fourth of July weekend, the court moved to Symphony Towers. Off-duty Marines, paid $10 per hour and fueled by pizza, helped complete the move over the four-day weekend.

One load of furniture slid through the rear door of a moving van and splintered on A Street, Kelly recalls. When the court held an open house to show off its new headquarters, a justice from the Second District in Los Angeles jealously asked how they had managed to get new furniture.

**Deputies and Doghouses**

The three divisions of the Fourth District have 34 people under Kelly’s supervision, 13 of them in San Diego’s Division One. Besides deputy clerks, he has responsibility for a receptionist, an accountant and a human relations specialist. The deputy clerks are assigned, based on the last digit in the case number, to individual cases for which they are solely responsible.

When a case has been fully briefed, the clerk takes the file to the assigned justices. That file is called a doghouse, Kelly says, but “no one knows why it’s called that.”

One veteran deputy clerk handles all cases that go to oral ar-
Arguments. There is no court reporter to record oral arguments; instead, each hearing is taped. That method of preserving the arguments began in the mid-1980s, Kelly recounts, when the first tape recorder unexpectedly arrived by express mail. The delivery caused considerable head-scratching because “nobody knew what it was for,” he says.

Path to a Decision
A chart showing the paths of appeals through Division One shows 35 possible steps, connected by a web of lines. Writ petitions follow paths almost as complex.

Staff attorneys play a role at many steps, but it’s a mistake to believe they do the work taxpayers believe is done by the justices, says Kinnaird, the retired managing staff attorney. Some lawyers once suspected the staff attorneys of being “the hidden judiciary” because their research and writing skills could unduly shape an opinion. If that was ever true, it certainly isn’t today, he says, because the justices guide the work of staff attorneys at every step.

Each justice is assigned two chambers attorneys. Three staff attorneys are assigned to writs, and a dozen more work on appeals through the central staff. Very concisely, here are a few of those 35 possible steps on the case paths: After initial briefs are filed, the managing attorney sends routine cases to central staff for preparation of a draft opinion, which is then sent to the assigned judge. Difficult cases are randomly assigned to one of the justices, who with chambers attorneys prepares a draft opinion. Other members of each three-justice panel contribute if necessary to the opinion, or they can dissent. If oral arguments are presented, the justices hold a conference afterward. They can order supplemental briefing before an opinion is filed.

Approximately 2 percent of the more than 2,000 annual dispositions, most of which uphold the trial court, are reviewed by the state Supreme Court, according to court studies.

Although the staff of Division One is largely invisible to the lawyers who battle out appeals and to the public, their contributions are laudable. Kinnaird says that the cases heard during his 32 years as a staff attorney have shaped the history of the region and “have affected every aspect of life in San Diego.”

Claude Walbert is a veteran San Diego journalist. He can be reached at clauwal@myway.com.
EDWARD CHAPIN: What we want to accomplish in this exercise is to get observations from members of the bench regarding the state of civility, integrity and professionalism as part of the practice of law in San Diego County. You see discovery disputes, you see lawyers in trial, and you see the good, the bad and the ugly. We want to focus on where you think lawyers can do a better job, in hopes of elevating the level of practice of law, as well as improving the image of lawyers in our community. What are some positive things you see in your day-to-day practice?

JUDGE STORMES: Most lawyers make a real attempt to be prepared. I conduct early neutral evaluation conferences in every civil case I’m assigned. When I first started doing those, I thought lawyers didn’t come in very prepared for those conferences. The word has gotten out that it is really a good opportunity to reach an early settlement of the case if you’re prepared, the client’s prepared and you’ve talked about what your settlement range might be. Since I’ve been on the bench for the past eight and a half years, I’ve seen a definite trend for the better in counsels’ preparation. So that’s one of the positive things I have seen.

JUDGE BARTON: Generally, the level of professionalism and integrity is high. At any given time, I’m handling about 550 cases. And it will only be in a handful where there are problems that come to my attention. Those tend to stand out, and you tend to focus on them because they consume time and effort. But in terms of courtroom demeanor and behavior, I can only think of one occasion where I’ve had to take a lawyer on based on conduct in the courtroom. So I think that’s basically not much of a problem. Many of the disputes between the lawyers get han-
by the lawyers, and the judge never sees them. And so, as a judge, you need to keep in mind that you do see the cases where the civility falls apart and not let that skew your perception of what’s going on out there, because there are another 500 cases where I’m not seeing those problems.

JUDGE PRESSMAN: For the most part, we find the attorneys working well together. In Criminal, particularly in serious felony cases, the criminal lawyer and the criminal bar is much more civil than the civil bar. They’re forthcoming, they seem to have mutual respect and trust for one another, the discovery is open and complete, and there isn’t any money involved. And so egos somehow don’t seem to get as frayed as often as in civil. I do the minors compromise calendar, the settlement calendar, as well as felony trial calendar, and I have the wheel on civil. So I have a pretty good view of all aspects of the cases. And for the most part, I never have problems with attorneys. It’s when you start dealing with pro pers or clients in settlement conferences that things start getting out of hand. There has been a showing of a great deal of respect amongst attorneys, at least in my courtroom. So I don’t see it as a problem. I have a problem, though, with preparation. I don’t see as much preparation, particularly for settlement conferences. People need to know what they want. They need to know how to get there. And I don’t necessarily see that as much as I’d like to see it.

CHAPIN: So the civility element is pretty well covered, but professionalism—in terms of being there on time, being ready and knowing what to do—is where you think the system breaks down?

JUDGE PRESSMAN: Well, there are a couple of aspects, particularly in settlement conferences. Oftentimes there are cases the attorneys have taken that they should never have taken. They should never have been filed. And the settlement conferences are not advocacy. It’s more “Please help me get…“
It’s my role taking care of them. It’s embarrassing, and it’s not professional. Attorneys need to learn, particularly private, small, independent practitioners, how to say no to clients in taking the case initially and getting out of the case before it gets to the point where they have to go to trial.

CHAPIN: We talked about the positives. What are some things you see that are negative that, in a perfect world, we wouldn’t have?

“I would say it’s a regular occurrence that insulting or just nonproductive language is in e-mails that are then attached to one side or the other’s papers in a discovery dispute.”
—Judge Barton

JUDGE BARTON: I often attach, as exhibits, e-mails that lawyers push the send button on that they should not have. In the old days, dictating a letter and having it typed up and sent back to you, then looking at it the next day or so, gave you time to reflect and not send it. I would say it’s a regular occurrence that insulting or just nonproductive language is in e-mails that are then attached to one side or the other’s papers in a discovery dispute. So that’s one. The second is a typical scenario of one side sending out voluminous discovery to the other side, and the other side then just objecting to all of it. And the “meet and confer letters” that cross in the mail where there’s really no meeting and no conferring. It’s just basically setting out their legal positions, which I think one of the guidelines in here [the SDCBA Attorney Code of Conduct and Guidelines for Professional Advocacy] addresses—that you shouldn’t use your meet-and-confer opportunity to basically set forth the points you’re going to make in the ultimate dispute before the judge. I’ll have lawyers on ex-parte where they’re seeking to have their motion heard on a shortened term basis, and I’ll ask, “Have you talked about this?” And it’ll be clear they’ve never spoken about the issue. Instead, it’s been the “meet and confer” letters back and forth. Those are the two things I think are problematic.

JUDGE PRESSMAN: Well, I totally agree with what Judge Barton said. It’s amazing what’s attached to the pleadings and by way
“I think that lawyers who conduct themselves at the highest level of professionalism do themselves a service, do their clients a service. They are acting not just as advocates, they’re acting as counselors.”
—Judge Stormes

of correspondence between attorneys. These threatening e-mails that really get vituperous are really outrageous. But on another aspect, one of the things that I find most frustrating is when counsel cite cases they’ve never read, and they cite them for propositions they don’t stand for. They’re officers of the court. One of the things I learned, which I didn’t know as a lawyer but I know now as a judge, is that if you misrepresent something to a judge, if you bend the truth a little bit... well, your reputation is everything. And judges talk. I didn’t know that. It was a surprise to me. If you get the reputation of misciting cases, of misrepresenting the law, that reputation will stay with you. I had no idea of the extent it did.

“One of the things I learned, which I didn’t know as a lawyer but I know now as a judge, is that if you misrepresent something to a judge, if you bend the truth a little bit... well, your reputation is everything.”
—Judge Pressman

JUDGE STORMES: I agree with the business of the vituperous e-mails. I’m just shocked when I read some of the things lawyers call each other, including all kinds of inappropriate language, character assassination. I just can’t believe it. I just can’t imagine ever sending an e-mail like that. The rule I had when I was a lawyer was if you had a letter with strong language in it, put it in your desk overnight and read it again in the morning when your own anger had calmed. And then you read it and you thought, “This tone is terrible.” Or if you didn’t want to read it, take it to one of your colleagues and say, “What do you think?” But it’s so easy just to shoot off an e-mail when you’re mad. And you may regret it afterwards, but you’ve created a wall with that other lawyer, and it’s hard to get around that wall once you’ve created it.

CHAPIN: This takes us to an area that comes up from time to time—whether nice guys and gals finish last. In other words, is adherence to the high standards of civility, integrity and professionalism, something that, if you do, you’re going to come out second, or is there a benefit potentially to practicing in that manner?

JUDGE BARTON: I think there are a number of benefits. First, if you do every-

San Diego Lawyer wishes to thank Hutchings Court Reporters, LLC, Jim Hutchings, general counsel Jeffrey Koller and court reporter Jeannette Kinikin for their assistance in preparing a transcript of the Civility, Integrity and Professionalism roundtable discussion. Thanks also go to Chapin Wheeler, LLP for hosting the event.
thing per code, you’ll never be able to prosecute more than, or defend more than, one case at a time. So if you want to have a realistic practice of law with multiple cases and setting your calendar weeks in advance because you’ve got to fit it all in, you can’t be dealing with a practice where people are noticing depositions without calling you and 10 days’ notice and all of that. So from a practical standpoint, you need to do it to survive and be successful. Second, it’s my perception that juries look at lawyers with . . . I don’t want to say suspicion, but question.

**CHAPIN:** Healthy skepticism.

**JUDGE BARTON:** They look at the lawyer wondering whether that lawyer is straight with them or whether they’re going to be trying to pull something over on them, or whether they can rely on them. And the way you handle the case all the way through; you don’t suddenly change and become someone else when you try the case. That kind of sincerity, professionalism, respect and all of that is conveyed to the judge. The judge often knows what’s going on. And I think the jury does as well.

**JUDGE STORMES:** I totally agree with Judge Barton on that point. I think that lawyers who conduct themselves at the highest level of professionalism do themselves a service, do their clients a service. They are acting not just as advocates, they’re acting as counselors. And when you conduct yourself with integrity and professionalism, you’re sending this signal to your client that “I’m being your counselor here. You may not like exactly what I say, you may not agree with it, but this is what I think is the best thing to do” and not just acting as a hire for your client. I think that’s very important as well. It does the profession overall a service because the community, as you say, views lawyers with skepticism, and we need to do something to elevate the impression that people

“It’s so easy to shoot off an e-mail when you’re mad. And you may regret it afterwards, but you’ve created a wall with that other lawyer, and it’s hard to get around that wall once you’ve created it.”

—Judge Stormes
have of lawyers in the community, because it is an honorable profession.

JUDGE PRESSMAN: A lawyer’s stock and trade really are his words and how true they ring.

JUDGE BARTON: What I would say in conclusion is that the true test of civility and professionalism is being able to use it and live by it in the truly impossible situation where you have someone on the other side who is just not playing by the rules of the game and is misrepresenting everything. Perhaps you're a defense attorney and they’ve got a better case, and you're getting killed in the case too. And so you see very little reward in that particular case on that particular day. At that point I think you just have to understand that the reward is long term, that your reputation is forever, and what you do will be seen, heard and will form the basis for your professional reputation. So even when it’s hardest, you have to do it.

CHAPIN: Thank you all very much.

San Diego Lawyer will continue to cover Civility, Integrity and Professionalism matters in upcoming issues. For more information, check the San Diego County Bar Association Web site at www.sdcba.org.

Alidad Vakili is an associate in the corporate department of Bell, Boyd & Lloyd LLC and can be reached at avakili@bellboyd.com.
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The intersection of Front and C Streets in downtown San Diego is a crossroads in varied senses of the word. A literal crossroads of two city streets and trolley line, it is also a crossroads of the rich and poor, of the detached and the tuned-in and, of course, those who are in trouble with the law and those who would help them.

The southwest and northwest corners shoulder the massive San Diego County Courthouse, with a two-story bridge over C Street that connects the main courthouse building with a detention facility. The northeast corner bears the San Diego County Public Law Library, cradled by the San Diego Central Jail and the Chamber Building. The southeast corner houses “Bail Bond Row” and several small restaurants.

**THE PHOTOS** ON THESE PAGES CAPTURE GLIMPSES OF THE CALM AND THE CHAOS OF FRONT AND C

The intersection of Front and C Streets in downtown San Diego is a crossroads in varied senses of the word. A literal crossroads of two city streets and trolley line, it is also a crossroads of the rich and poor, of the detached and the tuned-in and, of course, those who are in trouble with the law and those who would help them.

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THE SAN DIEGO COUNTY PUBLIC LAW LIBRARY, in existence since 1891, moved to its current building in 1958. The last renovation was in 2002, but director Robert Riger looks forward to a broader redo, pending funding from library donors and other contributors, that would consolidate staff areas and improve traffic flow for patrons. Some employees suspect that the fifth floor of the library, located over the jail’s garage, is haunted. “There are creaky things, probably because it’s an old building,” says Tina Jagerson, an employee of the library’s South Bay branch inside the Chula Vista courthouse. “But I think it could be a ghost. I’ll hear somebody in the next aisle, but when I go over there, no one is there.” Other employees report books falling off shelves, and motion-sensitive lights coming on when no one is around. The reflected detention facility, connected to the courthouse by one bridge and to the jail by another, is currently being leased from the county by the federal government and run by a private prison-management company, GEO Group. Many of the inmates are being held on charges related to immigration, but any federal crime can get you in.

PHOTO BY MICHAEL YOUNG

Freddy Guerrero planted a garden around the tree in front of Guerrero Bail Bonds a few years ago. Owner Henry Guerrero says his son maintains the garden “to make the morning more enjoyable” for the women who walk to the restaurants down the street. “His mother gardened at home while Freddy was growing up,” says employee Antonio Elizondo, “so it was natural for him to want to do something unique here.”

PHOTO BY JAMES BLUST

THE LONG SHADOWS OF EARLY MORNING nudge life into the streets, like a slow stretch as the city wakes from darkness. A bicycle offers a smooth transition from the pace of dawn to the cadence of high noon.

PHOTO BY MICHAEL YOUNG

This man was one of three people pushing empty wheelchairs along C Street.

PHOTO BY JAMES BLUST
Attorneys and their clients or co-counsel stride between the office and the courthouse. Frustrated family members of new inmates speak in harsh tones on their cell phones outside the jail. Homeless people, lucent and less so, seek out a spot to sit or to rant. Drivers turn the wrong way down the one-way streets, and pedestrians scurry to make the WALK signal. If the courthouse is the heart of the legal community, the pulse beats strongly on these arteries.

Elizabeth Blust is a 3L at California Western School of Law. She can be reached at egblust@law.cwsl.edu. Michael Young is a senior planner with Rick Engineering. James Blust is an engineer with Solar Turbines.
In early 2008, after almost nine years at the D.A.’s office, Kirvin began thinking seriously about applying for a state court judgeship. He went so far as starting to fill out the governor’s judicial appointment application when he learned through the grapevine that Judge William Kennedy was retiring at the end of his term, meaning there would be an open seat on the bench in the upcoming election. Upon hearing of this opportunity, the first thing Kirvin did was talk with his wife of more than six years, Bryn, herself a deputy district attorney in the major violators unit. He knew the commitment involved in running for office and wanted to make sure Bryn was willing to accompany him on this journey. She was excited about the opportunity and encouraged him to run.

Before making the final decision to run, Kirvin wanted to be sure his boss, District Attorney Bonnie Dumanis, would support and endorse him. Though Kirvin had worked for Dumanis for several years, he had no idea what her response would be. “Thankfully, she was very supportive,” he says. With that, he filled out the candidate intention materials and paid the necessary fees necessary to get his name on the ballot.

Kirvin hired a professional campaign consultant to assist with the technical aspects of running for office, but the campaign was a grass-roots operation grounded in his family and friends. His campaign manager, Irv Blevins, was one of his best friends from junior high school, and everyone in the Kirvin family did what they could. His in-laws came up with the idea of hanging a giant Kirvin sign on the side of a building next to a busy highway.

As a lifelong San Diegan, Kirvin found supporters pouring out of the woodwork. When he visited the street he grew up on, there was a Kirvin for Judge sign in front of almost every house.

By February 1, 2008, Kirvin was at an event almost every night. He says, “My theory was if I wasn’t at a campaign event, I was wasting a night.” He attended every function he could, some with as few as eight people, and claims, “Those small events were sometimes the most fruitful, because I got to speak one-on-one with people.” His nightly routine was to attend events, then stay up until 2 or 3 a.m. returning phone calls, e-mails and text messages and planning the next day’s events. Kirvin did all this while maintaining his full-time job as a deputy D.A.

He also set out to obtain endorsements from every law enforcement and legal group he could. This usually involved finding out...
who the president of a particular group was, sending a cover letter and résumé and trying to set up a meeting. There was no order or formality to this process, he says, just the luck of getting someone on the telephone and meeting with a particular group.

Obtaining the endorsement of The San Diego Union-Tribune was a unique experience. The U-T met with Kirvin and his opponent at the same time, which he says made his meeting with the editorial board feel more like a debate. Kirvin ultimately obtained the U-T stamp of approval early in the newspaper’s endorsement period, which meant his name was reprinted in the paper every week. “That endorsement alone was very valuable,” he says.

On election night, Kirvin was cautiously optimistic. Although his opponent’s signs were everywhere and he was working very hard, Kirvin had received a higher rating from the San Diego County Bar Association, plus the coveted U-T endorsement. He gathered a small group of family and close friends at a downtown hotel to await the election results. Kirvin’s campaign manager planned to give the results of the absentee

ballot count, which are released shortly after the polls close. “I knew 40 to 50 percent of the electorate now votes absentee,” Blevins says, “so we would have a feeling of our chances after that was announced.”

Prior to that announcement, and before the candidate himself knew the results, Kirvin spoke to his supporters and thanked them for all of their tireless efforts, saying, “Win or lose, I wanted to say thank you so much for all you did. We could not have done it without you, and this little party is for you and all of your efforts. Now, if we are ahead by about 5 points or more in the absentee ballot vote, that is probably good news.”

Blevins then stood, with a dry-erase board in hand, and announced the results of the first numbers released: Kirvin had more than a 16 percent margin over his opponent. The crowd erupted in celebration. Kirvin’s wife, anxious to give her husband a huge hug, flung her glass of wine over her shoulder and into the pool.

After hugs and congratulations were shared, the crowd walked over to Golden Hall to await the final results. By midnight, Kirvin’s opponent called to congratulate him on his victory, and he was officially Judge-Elect Kirvin.

Gil Cabrera is the principal at The Cabrera Firm, APC. He can be reached at gil@cabrerafirm.com.
What are the benefits and drawbacks to being on your own in a legal career, rather than working for a large firm? We offer voice-of-experience guidelines to two approaches.

BY ALICE SOLOVAY
LIVING LARGE IN A SMALL FIRM

Bill Hargreaves practices family law in a small firm in Symphony Towers. Hargreaves & Taylor consists of two partners, two associates, four paralegals, a receptionist/administrator and a part-time bookkeeper/office manager. “There is nothing more satisfying than seeing the law firm you created enjoying its work,” he says. “Staff drama is minimal, business is good, and there are no serious financial issues. These times should be enjoyed; they are usually short-lived.”

A learning curve definitely preceded Hargreaves’ smoothly functioning office. “Finding the right practice area coming out of law school is tricky,” he warns. “Taking time, in the early part of a legal career, to try different things is helpful.” In the beginning, Hargreaves did both criminal and civil work and got much trial experience. “Once I started doing family law, I realized it was a good fit to my desire to help people—or,” he jokes, “a fit with my co-dependent nature.”

Hargreaves’ legal career began with a small firm and went on to a partnership with two University of San Diego Law School classmates before forming the present practice. “I became hooked on the freedom of solo small-firm practice, despite the fact that it limited my income and benefits for a number of years. My friends at large firms were working late nights and weekends to meet billable-time goals; I was relaxed and happy at work as long as I could manage to meet my own personal and practice overhead.”

Happiness aside, however, he warns that “Opening up a law practice is a financial and administrative challenge and does not happen without trial and error.” Among the sometimes costly errors were learning how to create and follow a budget and business plan, plus learning how to guide, mentor and energize staff. “Hiring a business coach has helped me through this,” he admits, “and I would recommend it—the cost is made up in increased productivity and good collections.”

Another challenge is finding partners. “There needs to be mutual trust and respect and good communication for any partnership to have a lasting quality,” advises Hargreaves. “Money issues create more partner disputes than any other. We have an arrangement where all client fees go into a single pot, all overhead expenses are paid, and the partners then split profit on a percent basis that varies from year to year based on a loose formula that considers individual productivity and ‘rain-making.’”

The firm’s bookkeeper helps with economic management. Production and accounts receivable are regularly monitored; i.e., the firm has billable-time goals and tries to keep receivables at a minimum. “Our goal is zero receivables,” says Hargreaves. From the time a client is retained, paying legal costs is discussed, either by the lawyer or, if the lawyer is not comfortable with such discussions, by a staff person.

Among his recommendations for containing overhead costs in a small practice: Acknowledge the importance of having an excellent support staff. “To have an excellent support staff requires a ‘non-skimpy’ financial commitment, both for salaries and benefits,” he advises.

Other financial lessons: “Operating on credit to pay ordinary/recurring expenses is a recipe for disaster,” he warns. His office limits borrowing to major capital improvements, like furniture or computers, and repays the loans as quickly as possible. Whether to buy or lease is a decision answered by the CPA who prepares the office’s statements and tax returns. Usually items that will not be replaced frequently, like furniture and computer hardware, are purchased; those replaced more frequently, like copy machines, are leased.

“They don’t—or didn’t when I was there—teach law office management in law school,” says Hargreaves. His office tries to have weekly partner meetings to review productivity and accounts receivable. Budget review is done monthly and quarterly. He keeps a schedule of things to do on a weekly, monthly, quarterly and annual basis, and all of these management procedures are calendared.

“I think the biggest mistake I made early in practice,” he recounts, “was failing to admit that I needed help understanding how to operate the business side of a law practice—and running a good business is what creates happy employees and profits to distribute to the law firm owners.” Hiring the business coach helped with that issue.

“A good marketing plan is part of a good business plan,” notes Hargreaves. He advises having a good Web site, but feels the decision to advertise is individual. His firm relies on referrals from past clients and their spouses, lawyers who don’t handle family law, and other professionals.

Another important part of office management is having an employee manual that describes staff duties, vacation/personal time off policies, holidays, etc. “The employee manual puts the employee’s expectations into words and allows the staff person a better understanding of what is expected,” he says.

In summary, Hargreaves says that “maintaining a healthy practice is an ongoing challenge requiring a continuous need for hands on, where challenges present us with opportunities for growth, both personal and professional, and an excitement that cannot be found outside the confines of operating as a sole practitioner or small firm.”

Flying solo? See next page for hints on handling a practice.
PUTTING IT INTO PRACTICE

Solo practitioner Janet Ambrozek is a certified specialist in tax law who uses her knowledge of English, Spanish and French to fill the legal niche of performing tax and real estate and business transactions for individuals who are either resident noncitizens or nonresident noncitizens of the United States. After law school, she worked as an associate for a small San Francisco firm whose practice was limited to plaintiff’s class action litigation. She moved to San Diego to join a firm here, then left that firm with one of its partners to start a new practice. After five years, she set up her own solo practice in 1987.

“Even though I have no partners, I have never had an isolated office,” says Ambrozek. “Instead, I have either shared office space with a larger firm, either as a subtenant or as a subtenant with an of-counsel relationship. As a result, I have always had access to conference rooms and have been able to share support personnel such as receptionist, secretary or legal assistant.”

“An attorney must remember to treat his or her practice as a business.”

Among her recommendations for the attorney wanting to pursue a solo practice:

- I recommend a “paperless” office—I know that’s an oxymoron, but having all files stored electronically can save space and money.
- It is also possible to have a virtual office anywhere—attorneys and clients do much work by cell phone or other mobile devices.
- As “must-haves,” I suggest: one or more networked computers, a decent multifunction printer/copier/fax machine and a separate good-quality scanner, since so much work, at least in my transaction practice, gets done electronically that the ability to scan, e-mail or fax documents is essential.
- All attorneys must advertise and/or network. In a larger firm, an associate starting out may not be expected to do this work initially, but eventually all attorneys must, at least to some extent. Attorneys advertise every time they do work for a client.
- Networking is important in any business, perhaps more so for solo practitioners, as a way to stay in touch with other attorneys. Because I practice in a very specialized area, and most of my advice is tax-centered, I get many of my referrals from immigration attorneys and accountants.
- Become educated in timekeeping issues and alternatives. You can do it yourself with good software, or use an outside service.
- Try to find another attorney with a similar practice who will agree to be available in the event of your illness or vacation, and who will ask you to do the same in return. This is also a requirement for professional liability insurance.
- A word of client development advice I once heard from a successful lawyer was surprisingly easy: Every morning, call one client—not for any specific purpose, just to stay in touch.
- Staying in touch with attorneys, accountants, bankers or other professionals who may make referrals is always helpful. Sending a letter of thanks to anyone who makes a referral is important.
- Have a good sense of the worth or your advice and work product, and make sure the client understands it as well.

Caveats? Mistakes to avoid for the solo practitioner? Ambrozek warns:

- Unfortunately, law school doesn’t teach us how to practice law. My advice to someone who wants to have her or his own practice would be to start out at a large- or medium-size law firm and learn as much as you can from experienced attorneys. I don’t think I would have been as good an attorney without the guidance I received from my partner.
- One can’t have a practice without clients, so the sooner an attorney develops his or her own client base, the better.
- An attorney must remember to treat his or her practice as a business. While it is a service business, and the relationship with clients is one of its more satisfying aspects, it is nonetheless a business. Never undertake work with a new client without a written fee agreement and a retainer.
- Fringe benefits of office life such as retirement plans and health benefits also involve expenses to be considered.
- I am very conservative regarding economic management of an office. I did not start out from law school on my own, so I had resources available and have not had to take out any loans. I think borrowing to expand your practice (as for business travel or additional education) is money better spent than loans for fancy office furnishings.
- Time management for a solo involves more administrative details to contend with than at a larger firm. There is the danger of procrastination in solo office management—of not sending bills in a timely manner.
- Perhaps the least attractive aspect of solo practice is not readily having a partner to bounce questions off. Actively participating in a practice section (Business, Tax, International, Estate Planning) of the San Diego County Bar Association is one solution, as is developing a network of attorneys in your practice field who are willing to exchange ideas and strategies with you.
- Networking and speaking engagements are all part of business development. The difficult part for a solo practitioner is finding the time to do one or more of these.
- I wish I had taken more risks. In retrospect, I think it would have been easier if I had found one or more other attorneys in similar or complementary fields with whom I could have formed a partnership.

Thinking about trying a solo practice? Ambrozek reminds you to educate yourself, to remember that solo does not mean isolated—and to enjoy the gratifying sense of your own worth.

Alice Solovay practices law in Ocean Beach and can be reached at alice@solovay.net.
A wider perspective:

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The San Diego County Bar Association, SDCBA’s Ethnic Relations and Diversity Committee and the California Minority Counsel Program, in partnership with the Association of Corporate Counsel’s San Diego chapter and the Minority Corporate Counsel Association, presented the second annual Dialogue on Diversity CLE event on October 24. Attendees were treated to an energetic and engaging discussion of diversity within the legal profession, featuring speakers Michael Williams, general counsel of Sony Electronics; Tara Bedeau, executive director of the California Minority Counsel Program; and Ruthe Catolico Ashley, chair, American Bar Association Presidential Advisory Council on Diversity in the Profession.
Jerrilyn Malana was sworn in as the San Diego County Bar Association’s 2009 president on December 5 at the SDCBA holiday mixer, Stepping Up to the Bar, held at the Bar Center. New board members were also installed during the annual event, launched with a speech by Heather Rosing, who serves on the board for another year as immediate past president.
Jill Sullivan

Chad Wheeler, Ken Fitzgerald, Jill Sullivan, Ed Chapin, Gloria & Douglas Wolf

Heather Rosing, Pat Hosey, Jill Sullivan, Erwin Chemerinsky, Ed Chapin, Thomas Girardi, Ken Fitzgerald, Hon. Cormac Carney

Jay Wheeler Civility Seminar

The San Diego County Bar Association’s inaugural Jay Wheeler Civility seminar, “Be Civil, Grow Rich: The Benefits of Civility, Integrity and Professionalism in the Practice of Law,” included panelists Hon. Cormac Carney, Erwin Chemerinsky and Thomas Girardi discussing of the title values from the perspectives of a jurist, a scholar and a trial lawyer. The November 20 event covered topics such as the role of lawyers as truth seekers and roles in pursuing justice.
Powerhouse attorney Robert S. Bennett was featured December 1 at "In the Ring: The Trials of a Washington Lawyer," a CLE program for the Association of Business Trial Lawyers of San Diego, the Federal Bar Association and the SDCBA. Bennett spoke about high-profile cases, challenges and the coming changes in Washington.
Earl B. Gilliam Bar Association Awards Dinner

PHOTOGRAPHS BY BARRY CARLTON

Norman Early Jr.'s keynote address highlighted the Earl B. Gilliam Bar Association's 32nd annual awards and scholarship dinner, on November 1, which also served to install Doc Anthony Anderson III as president, along with his board of directors.

Criminal Justice Memorial

PHOTOGRAPHS BY BARRY CARLTON

A dedication ceremony on October 31 celebrated the 52 judges, prosecutors and defense attorneys who have been honored with a memorial plaque in the Criminal Courts Building. Ronald George, chief justice of the California Supreme Court, spoke at the plaque dedication, along with Hon. William Enright, Hon. David Gill, Daniel Lamborn and Charles Sevilla. Biographical sketches for each of the honorees are accessible on the SDCBA Web site at www.sdcba.org/memorial.html. (See Rewind on page 58 for more about the memorial.) Family members and those on the memorial proudly posed with the plaque.
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Who is this prominent member of San Diego’s legal community?

Please submit answers by February 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 Robert Lauchlan of McKenna Long & Aldridge, who won the previous drawing after correctly identifying Assistant U.S. Attorney Randy Jones in the November/December issue. Thanks to everyone who participated.
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left to right: Briana Wagner, Executive Director; Colin Murray, Immediate Past-President; Meredith Brown, President and John Bucher, Endowment Chair
By William Howatt Jr.

Honor Set in Stone

Chief Justice Ronald George and Judge William Enright dedicated the Criminal Justice Memorial in late October 2008. This memorial honors the memory of judges, prosecutors and defense attorneys who, throughout the history of San Diego jurisprudence, distinguished themselves in the practice of criminal law. These individuals have formed a rich heritage and tradition of full and fair criminal trials in San Diego. They provide inspiration and encouragement to our future professionals.

Due process and fairness are essential to a criminal justice system and can only be achieved by the combined efforts of those individuals who daily practice in criminal courts to assure the promises of the Constitution. This memorial recognizes 52 San Diego strong but fair judges, ethical and vigorous prosecutors and dedicated defense counsel who have demonstrated a profound belief in our constitutional guarantees of a fair trial and the rule of law.

Judge Enright and Peter Hughes chaired a committee of 14 judges, prosecutors and attorneys who culled through history and local memory for individuals to be honored. The committee's initial selections were then peer reviewed by local specialty bar associations and interest groups. Judge Enright urged a search for men and women who have brought dignity and respect to the administration of the local criminal justice system. The honoree must have been a part of the proud tradition of the San Diego Bench and Bar.

Among the honorees are Judge Benjamin I. Hayes, who traveled between San Diego, Los Angeles and San Bernardino to hold court; superb defense counsel Mary Harvey, the first woman to graduate from the University of San Diego School of Law; Marie Herney, who was both a prosecutor and a defense attorney; James Don Keller, district attorney in this county for 25 years; Judge William Low, once assistant district attorney and then 21 years as a judge in San Diego County, who distinguished himself by his judicial temperament and sense of fairness; John O’Laughlin and Barton Sheela, who after their service in the D.A.’s office became leading defense counsel; William “Bert” Ritchey, a former San Diego police officer and outstanding defense attorney; and Justice William Arthur Sloane, the last California Supreme Court justice from San Diego. All these and more have short biographies listed on the San Diego County Bar Association’s Web site (www.sdcba.org).

For two and a half years, the committee met to achieve the goal set by Judge Enright and Peter Hughes. The committee was rounded out by Nelson Brav, Judy Clarke, Hon. David Gill, Robert Grimes, Hon. William Howatt Jr., Hon. Richard Huffman, Daniel Lamborn, Alex Landon, Charles Sevilla, Milton Silverman Jr., Hon. Howard Turrentine and Thomas Warwick Jr.

The black granite on which the memorial is etched was quarried in India, shipped by sea to Long Beach, trucked to Georgia to be cut and shaped, driven to San Diego, where it was polished and engraved, and then hand-carried to the second floor of the old courthouse. Since it was too heavy for the elevators, it took eight men to carry the memorial up the stairs. Nelson Brav and Alex Landon shepherded this part of the project from inception to conclusion.

In perpetuating the memory of these men and women, the legal community recognizes their dedication to the practice of criminal law and their tradition of service to the community, which provides an example of honorable service for future practitioners. “While we live, so will they.”

Hon. William Howatt Jr. retired as Presiding Judge of Family Court. He currently works for JAMS.
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Bar Night at the Opera 63
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Brinig & Company 3
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David Cameron Carr 38
CastleLyons 61
Hon. Geary Cortes 59
Eyewitness Expert Testimony 61
Field and Test Engineering 59
Forensis Group, Inc. 14
Fragomen, Del Rey, Bernsen & Loewy 21
Craig Higgs 37, 39
JAMS 13
John Bucher Real Estate 64
Judicate West 40
King Stahlman 11
Kruis Mediation 2
Law Offices of Daral B. Mazzarella, APC 55
Lawyer Referral Information Services 36
LexisNexis 19
Lit Econ LLP 59
Hon. David B. Moon 49
National Conflict Resolution Center 33
Red Boudreau Trial Lawyers Dinner 15
Ringler Associates 40, 55
San Diego County Bar Foundation 57
Thomas Sharkey 27
Stephenson Law Office 59
UCSD Extension 27
Justice Wiener 36
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Left to right: USD Law School Dean Kevin Cole, law professor Hugh Friedman (who was honored for his 50 years of excellence in teaching) and Chief Justice Ronald George.
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