Making Their Case
San Diego Students Tackle the Mock Trial Competition

plus
GOING SOLO PAGE 6
ATTORNEYS OF THE GASLAMP PAGE 20
GENTLY PERSISTENT

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Solo Lessons

A
ter 14 years of firm practice, I decided to try solo practice. Some things I learned during my first year may be helpful to others considering it.

You are the entire law firm, from receptionist/office clerk to managing partner/administrator and everything in between. I gained new respect for my former secretary when I spent all morning trying to get out two one-paragraph letters. It’s important to set up time-saving procedures so non-billable administrative matters don’t eat up your time. I cut back on office trips by buying a scale and calculating postage at www.usps.com. Heavier pieces go flat-rate priority mail. I can pay online and print out the label. Learned: Think creatively to solve routine problems.

If, like me, you start without significant clientele, overhead considerations are really important. I work from home, which has pros and cons. Some people find it distracting (as if working in a law firm isn’t distracting). I initially hate my motivation to go anywhere I had to put on “real” clothes. The new solo needs savings (I won’t use credit in this economy) and has to accept it will probably be necessary to draw from savings during the first year. Learned: Take a new approach to monetary planning.

Since you are the rainmaker, networking is vital. Even in this technology-driven world, human contact and word-of-mouth referrals are key to developing a law practice. Once, I might have walked out of a large reception on arrival because I just was not up to talking to so many strangers. Now I go to give and meet new strangers as I can. I discovered I actually like doing it. Learned: It’s possible to re-create yourself.

You are also in an interrelated position—the associate. Organization and planning are more important than ever to avoid spending significant non-income-producing time without completing projects. To really grow your practice, you need to set written goals with deadlines and measurable ways to achieve those goals. Prioritize, make lists and schedule activities. Learned: Those people harping on goal-setting know what they are talking about.

Finally, do not forget to ask for help and advice. This year I have met many wonderful and friendly souls who were willing to share their experiences and offer help. Learned: You really aren’t alone. ✸
Making Change

Change is the law of life. And those who look only to the past or present are certain to miss the future.
—John F. Kennedy

There is no doubt that we are living in a time of change. From the excitement in Washington, D.C., to what is going on locally in San Diego, we are forging ahead in new directions. And here at the San Diego County Bar Association, we are experiencing an evolution as well.

As we continue to grow and thrive as an organization, it is important that we adopt and embrace new and different practices that will aid in our ability to work together. Part of the SDCBA’s goal has been to engage in more sophisticated and streamlined communications, to better suit the needs of our members. It was with great pride that we introduced in January our new website: www.sdcba.org.

By now, I hope you have visited our site to explore its myriad features. If so, you will have found that not only does the site look great, but it allows you to easily register for SDCBA programs, track your own MCLE credits, view a comprehensive legal community calendar, discuss legal issues with colleagues through our new e-communities, and much, much more.

Our e-communities provide each SDCBA Section and Committee with an entirely new level of interaction for group members to communicate and share knowledge. The e-communities also allow Sections and Committees to share relevant news with the membership of the SDCBA, as well as the general public. In the coming months, we will be introducing additional features that will make our website even more user-friendly and serve as a great resource for SDCBA members, the legal community and the community at large. To get the most out of your membership, I urge you to explore the new website and use it as a tool in your practice, to connect and exchange documents with Section and Committee colleagues, access web-based CLE programs and to receive up-to-date information regarding news and events in the legal community.

Another exciting change here at the SDCBA is the creation of our new Law Practice Management & Marketing Section, which resulted from the merger of the Small Solo Practice Section and Law Practice Management & Marketing Committee. Chaired by Joseph Mandour, Michael Conger and Randall Christian, the new Section aims to provide extensive educational programming, networking and marketing strategies relevant to small firms and solo practitioners.

Finally, in the midst of all the wonderful change at the SDCBA, I wish to highlight something that has not changed: the tireless work of our sister organization, the San Diego County Bar Foundation. Since its inception, the Bar Foundation has never wavered from its mission to provide access to justice, and it has awarded more than $1.5 million in grants to more than 30 legal aid and public-interest organizations. Without your continued support and generous donations, these grants would not be possible.

As we focus on community service and “Lawyers Giving Back” this year, please remember that the good work done by so many worthy charitable organizations in San Diego depends heavily on financial assistance. “Giving” comes in many different forms—and this includes reaching into your pockets. While you may struggle to find time to volunteer for one of our many SDCBA community service programs, please consider making a monetary donation to the Bar Foundation. Together, the members of the SDCBA and the Bar Foundation can continue to help those in need. And now more than ever in our tough economic climate, San Diego needs our assistance. Please join us to help change the lives of others for the better.

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SAN DIEGO LAWYER
March/April 2009

SAN DIEGO COUNTY BAR ASSOCIATION

JERRILYN MALANA

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Congratulations on your very informative "Going Solo and Staying Small" in San Diego Lawyer [January/February 2009]. I went solo in 2000 after midsize experience, and you really nailed it. All of the things you mentioned such as electronic filing, office sharing, creating practice as business, etc., I have done. The difference is, I had to learn the slow way by the school of hard knocks. I think anyone who is planning on going solo should read your article, take your advice, and implement it.

Great job!

Chris Newton
Newton & Associates

I enjoyed your "Going Solo" piece.

Matthew Herman
Herman & Stade

Chris Newton
Newton & Associates

I truly enjoyed your article about "Going Solo and Staying Small" and especially liked your suggestion about seeking a business coach. I just graduated, take the bar in a few weeks and have high hopes to one day open my own solo practice. I hope to join the ranks in May!

Eric Geni

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Tech Tools to Love

As technology continues to expand and become more affordable, solo, small-firm lawyers and even mega-firm lawyers can significantly increase their productivity and leave more time for marketing, client work and even leisure. Some tools that could help:

ACROTAB. Most users’ familiarity with Acrobat is limited to PDFs. However, this application is much more robust, and the full version provides many features helpful to the practice of law.

The use of Acrobat for e-mailing documents in PDF should continue to be the standard for several reasons: No metadata is sent with a PDF; it preserves your intellectual property (or at least makes the recipient respect the material); Acrobat Reader is free, so everyone can open a PDF; and you can use it to watermark to discourage copying.

It can be frustrating for recipients to receive multiple attachments. Acrobat includes “from many to one,” which allows the user to combine several documents, in the order desired, in a wrapper. When sent using this feature, all the documents appear in one PDF.

Comment tools that allow a user to put digital “sticky notes,” highlights and make cross-outs and additions are much easier to decipher than handwritten notes. Another useful feature of the full version: A user can scan a form into Acrobat, select typewriter mode and then fill in the form on screen. No more hunting around for a typewriter to complete a preprinted form.

ANAGRAM. This application enables a user to highlight text anywhere, hit a shortcut key and have the data sent into Outlook in the correct fields. This can be especially helpful in adding contacts from e-mails (highlight the signature block, hit the shortcut key, and the information populates your contacts).

COLLABORATION TOOLS. Tools exist, including Google Docs & Spreadsheets and Adobe Buzzword, that allow users to collaborate so that more than one person can edit a document simultaneously, rather than e-mailing it back and forth and trying to keep track of all the changes. Once the collaboration is complete, the document can be converted to a DOC, XLS or PDF file.

DOCUMENT INDEXERS. For lawyers who want the convenience of a document management system without the high cost, several applications can index documents, e-mail and s and allow users to quickly find what once was lost. Examples include Google Desktop, X1 and Copernic.

MULTIPLE MONITORS. Multiple monitors have been shown to increase productivity and accuracy by as much as 18 percent. They can be particularly helpful in editing documents when cutting and pasting from several sources, as well as in viewing large spreadsheets, which can be viewed across all screens. The technology to support multi-monitor computing is affordable and has become standard within operating systems and LCD displays. Users report a very low learning curve.

ONE PHONE NUMBER. Grand Central, an application recently acquired by Google, allows users to have one phone number “for life.” Users can choose which phones ring so they never miss a call. The service also includes a voicemail box.

FIGHTING LAPTOP THEFT. Enroll your equipment in Absolute Software’s Computer Asset Tracking Software (www.absolute.com), and if your laptop is stolen, they guarantee to either recover it within 60 days or pay you up to $1,000. Optionally, you can have data remotely deleted on the stolen laptop (go to www.losdata.com). It works by alerting Absolute whenever someone logs in to your laptop.

With increasing pressure from clients on billable rates, implementing some or all of these tools will allow lawyers to make the most of their minutes and get more done in less time.

Patti Lane is firm-wide director of administrative services for McKenna Long & Aldridge. She can be reached at plane@mcannalona.com.
Moving on Up, Out and Over

MOVING ON: U.S. Magistrate Judge Leo Papas has notified the court that his last day as a federal judge will be July 31. Rather than a retirement, he and his wife, Bes, are calling the departure “a change of direction, since I will continue to pursue my passion as a mediator, just in a different environment.”

ADVISING: Candace Carroll of Sullivan Hill, Lewin, Ret & Engel will head an advisory committee to screen candidates for U.S. Attorney, marshal and federal judges. Established by U.S. Senator Barbara Boxer, the committee also includes Janice Brown of the Brown Law Group, Robert Fellmeth of USD Law School, Sister (and lawyer) Sally Furay, former Imperial County Superior Court Judge Analia Gutierrez, Deputy Attorney General Erik Hiramatsu and Gregory Vega of Seltzer, Caplan, McIvor, Vink.

INAUGURATION: San Diego’s legal community was well represented at the inauguration of President Barack Obama on January 20. The list included San Diego County Bar President Jerriana Malu, Lawyers Club President Nadia Bermudes, Criminal Defense Bar Association President Michael Cowley and many local attorneys and law students, including Tiffany Bailey, Gerald Blank, Janice Brown, David Casey, Marjorie Cohen, Emily Cowley, Julie Greenberg, Elizabeth Gramet, Edward Hastings, Traci Howard, Karen Iauros, Lou Katz, Alex Kreit, Patricia McQuater, Rhett Rehosti, Sherry Thompson and Susan Wio. Please e-mail me if you also attended this historic event. (Inauguration pictures are on pages 50 and 51.)

TRAVELS: Magistrate Judge Louisa Porter recently led a group of magistrate judges from across the United States on a judicial education trip to study criminal justice reforms in Chile. They met with the Chief of the Supreme Court, Urbano Main, attended a seminar at the Heidelberg Center and lunched with the U.S. ambassador and Chilean government officials at the home of Ambassador Paul Simon.

MOVING: Bob Brower, managing partner here of McKenna Long & Aldridge since it opened downtown in 1991, has joined Jones Day in its Carmel Valley office. Chris Humphreys succeeds him. • Don McGrath, executive assistant city attorney for the last four years with Mike Aguirre, has returned to the private sector. • Laan McIntyre has joined forces with Deborah Wolfe — recently inducted into the American Board of Trial Advocacy — at Wolfe Legal Group. • Former Heller Ehrman attorneys Richard Kaufman, David Charapp and Dr. Leslie Oveman have joined Foley & Lardner. • Ross Simmons has relocated his office. What makes the move unique, however, is that he has yet to leave the building. Rom has practiced from The Penthouse in Rancho Bernardo since 1991, occupying (in chronological order) suites 220, 100, 157, 234, 290 and now 104. "It’s the only commune I know, and I’d never be able to find the hallway without it," he says.

CANINE COMPANION: When attorney Jennifer George gave a lecture on animal law at the San Diego County Law Library’s North County site in January, she brought along Wynn, an 18-month-old yellow Lab/golden retriever being trained with Canine Companions for Independence. Jennifer practices equine law and is a lifelong dog lover.

PASSING: Billy Hulse Frank, founder and longtime director of Senior Citizens Legal Services, died January 19. • Robert Thomas, former assistant district attorney, died January 15. • Ball bandmate George "King" Stahlman died February 13.

GILLIAM BAR: Doc Anthony Anderson III was sworn in — along with the new board of directors — as president of the Earl B. Gilliam Bar Association.

WENDY PATRICK MAZZARELLA is a deputy district attorney and can be reached at wmp@sdca.org. DRIVEN: WTK ESQ. If you spot a vanity license plate with a legal twist, please e-mail muffling@sdca.com by April 1. You might win a meal for two at Jimmy Carter’s Mexican Cafe in Bankers Hill.

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San Diego Lawyer 15
Donald Detisch
Choosing the career path: A small-firm and solo attorney offers insights

DESCRIBE THE JOURNEY FROM LAW SCHOOL TO YOUR PRACTICE TODAY.
I've practiced law for 58 years. Before law school, I proudly served two tours in Vietnam as a U.S. naval officer. In 1970, I graduated from Hastings School of Law and then worked as a deputy city attorney for the city of San Diego from 1971 until 1983. While with the city's civil litigation division, I handled mainly land use and real estate matters, with emphasis on eminent domain. I really enjoyed the challenges with these areas of law and so continued on this path after going into private practice. I was a principal in a small partnership in San Diego from 1983 through 2002. I practiced solo since that time.

WERE YOU ALWAYS INTERESTED IN EMINENT DOMAIN AND LAND USE?
No. Initially I planned to work five to six years for the city, get my feet wet in civil law and then go into private practice. However, a slot came open in the litigation division in real estate, and I accepted the opportunity. This was a great way to build a foundation of real estate and land use law that serves me today.

ANY "HOT" ISSUES WITH EMINENT DOMAIN?
Briefly, a couple of areas come to mind. First is when government acquires private property from owner A and turns it over to owner B for private redevelopment. While not new, it's contentious because in the traditional model of eminent domain, the government acquires and retains private property for better public use—a new freeway or school as examples. Second, inverse condemnation matters involve private property owners rather than government initiating eminent domain actions, demanding damages or acquisition based on diminished property value and/or damages.

SUGGESTIONS FOR BALANCING THE BUSINESS AND PRACTICE OF LAW?
A good bookkeeper and/or office manager, even part-time, is worth his or her weight in gold. As for marketing, word of mouth is still best. I have a website, but developing a solid reputation with clients and colleagues is what builds a practice.

WHAT GAPS MUST NEW ATTORNEYS OVERCOME?
There are "growing pains" between theory and practice that all beginning attorneys face. Internships are scarce. I recommend volunteering at legal clinics and nonprofits to gain practical experience. Another way we can assist beginning attorneys is by developing a post-graduation "residency" program similar to what the medical field offers to gain hands-on experience.

SHOULD NEW ATTORNEYS GO INTO GENERAL PRACTICE OR FIND A NICHE?
A beginning attorney at a large firm might specialize immediately, but a beginning solo attorney needs to be more of a general practitioner. Areas for solos to consider might be criminal defense, domestic relations and personal injury. As the practice develops, create a niche that interests you and fills a community need.

“"A beginning solo attorney needs to be more of a general practitioner. Areas to consider might be criminal defense, domestic relations and personal injury. As the practice develops, create a niche that interests you and fills a community need.

ANY FUNNY STORIES YOU’D SHARE AFTER PRACTICING 38 YEARS?
Well, one I’d prefer forgetting is the time my suit pants split down the seam in trial. Graciously, a recess was granted, pants repaired, and we continued. Another time during an eminent domain case, we conveyed the judge and jury for a field trip to view a property. The property owner led the way but unfortunately couldn’t locate his own property, and we got lost.

WHAT DO YOU DO FOR FUN?
I run, play piano. I've backpacked in the High Sierra Mountains. I love fly fishing, and I've fished in Sunriver, Oregon, and overseas in England and Ireland.

Brian Brunke is an attorney in Pacific Beach and can be reached at brian@windvenue.com.

For marketing, word of mouth is still best. I have a website, but developing a solid reputation with clients and colleagues is what builds a practice.

TIPS ON PARTNERSHIPS
Synergy of practice areas is important. Also, one aspect that gets overlooked is that some areas of law, like bankruptcy, can be cyclical. Therefore, one partner may bill more or less than the other from one cycle to the next. Trust and compatibility are extremely important.

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Farm-to-Table Cuisine

There has been a wonderful movement in the San Diego dining scene the last few years: More and more restaurants are focusing on local, seasonal, organic food, which makes sense given the abundance of produce, meat and seafood products grown and raised in the area. There are so many reasons to eat locally and seasonally: Food tastes better and is better for us, we are supporting local farmers, fishersmen, and so on, and eating locally is good for the environment. While the list of eateries offering local, seasonal cuisine is long, we’ll highlight a few favorites.

Starfish is a gem of a restaurant in South Mission Hills with a hip, adult vibe. As is the case with all true farm-to-table restaurants, the menu changes regularly depending on what is available and in season. We always start a meal at Starfish with the day’s mixed fry: bits of fresh veggies, meat, olives or whatever else is fresh that day, with a delicious aioli for dipping. The sausage board is also a nice starter, consisting of house-made salami and various accompaniments. For entrees, there is always a comforting jidori chicken with changing side dishes, and the Brandt filet steak is excellent. Don’t miss the ice cream sandwich for dessert.
3175 India Street, San Diego, CA 92103
619-358-9766 * www.starfishandsd.com

Whisknladle is all about fresh and local food, and just about everything is made in-house, including the butter, the pasta and the sausage. Some of our recent favorites here are the date and chorizo fries, which offer the perfect savory/sweet marriage, and the flatbread with grape, bacon, rosemary and fontina. The burger with artisan cheeses and an egg is to die for.
1044 Wall Street, La Jolla, CA 92037
619-551-7575 * www.whisknladle.com

The Linkery is gaining a worldwide reputation for its house-made sausages. Mains served here are obtained only from independent farmers and co-ops. The menu changes weekly, and The Linkery site has a great blog where you can learn all about what’s on the current menu. You are always guaranteed several types of just-made sausages will be offered. There are also some interesting wine choices from local areas such as Baja.
3794 30th Street, San Diego, CA 92104
619-255-8778 * www.thelinkery.com

Sea Rocket Bistro: A new addition to the North Park restaurant scene, Sea Rocket does a great job of realizing the goal to always "acquire the freshest and most local food and drink we can possibly find." The fresh bread (from Cardamom Bakery next door) with lime-bean spread is a perfect start. For heartier fare, you can’t go wrong with the pan-seared market fish with seasonal vegetables (filet and butternut squash on a recent visit). If you are lucky enough to visit during lobster season, try the spicy lobster risotto, which is rich and flavorful. The local ales on tap, such as the 30th Street Pale Ale, go nicely with all of the entrees.
3382 30th Street, San Diego, CA 92104
619-255-7049 * www.searocketbistro.com

INSIDE TIP
Looking to save some money in this economy? Next time you are planning a nice dinner out, call ahead and ask about the corkage fee. Most restaurants have reasonable corkage fees, which means you can save on the major alcoholic markup by bringing your own bottle. For instance, The 3rd Corner, which offers a great wine selection and menu, has a $5 corkage fee.
2265 Bacon Street, San Diego, CA 92107
619-223-2700 * www.thethirdcorner.com
897 South Coast Highway 101, Encinitas, CA 92024
760-942-2104 * www.thethirdcorner.com

Krista Cabrera is an attorney with Wilson, Petty, Kaufman & Turner and can be reached at kcabrera@wpk.com. Gil Cabrera is an attorney and principal with The Cabrera Firm and can be reached at gcabrerafirm.com.
Modern Law Amid Old Memories

Local lawyers find a practice home surrounded by 19th-century charm in the Gaslamp Quarter

San Diego’s Gaslamp District, also known as the Gaslamp Quarter, was developed after a wharf was built at the foot of Fifth Avenue by Alonzo Horton in 1870. During the 1880s, area residents included many gamblers and prostitutes, including Wyan Earp and Ida Bailey, who founded numerous gambling halls, saloons and brothels in the red-light district. The area was a popular Navy Navy destination until 1912, when city officials cracked down on activity there (as the story goes, the judge stayed a fine of $100 per brothel employee, conditioned on a promise to leave San Diego, whereupon nearly every employee complied by purchasing a round-trip train ticket).

The modern Gaslamp District, which stands with energy and activity, is a result of years of quality urban redevelopment. Restaurants and shops now occupy former brothels and saloons; many businesses (such as law firms) are housed in the upstairs portions of these. Several historic buildings have been relocated to the Gaslamp Quarter from other parts of San Diego, with their 19th-century architecture restored.

GASLAMP DISTRICT LOCATION
Downtown from Broadway to Harbor Drive and from Fourth Avenue to Sixth Avenue

DISTANCE FROM COURTHOUSES
Downtown, 0.3 miles; El Cajon, 16 miles; Vista, 41 miles; South Bay, 11 miles

NEARBY ATTRACTIONS
San Diego Convention Center, Petco Park, state and federal courts, Seaport Village, Horton Plaza, San Diego Trolley

MORE INFORMATION
www.gaslamp.org
www.enterandsd.com/gaslamp.html
gocalifornia.about.com/cs/san_diego/g/gaslamp.htm

Dean Schifferm is a San Diego attorney and expert witness. He can be reached at dean@LastAndNumbers.com.

"The train robber Will ‘New’ Carver, a member of Butch Cassidy’s Wild Bunch gang, is said to be my great-great grandfather. So practicing criminal defense in the Gaslamp Quarter, Sheriff Wyatt Earp’s former haunt, is like living a Wild West fantasy every day.

—J.W. CASTVER, Law Office of J.W. Carver"

"It’s a rare and wonderful experience to work in a place just a short walk from home, a client’s offices or the courthouse, while still being a 10-minute car ride from the airport.

—PETER BENJAMIN SINCLAIR, Clerk & Sinclay"

"I like being close to the courts and the constant flow of people, all moving with a purpose. Everything I would want is within walking distance. And I am close to Kans Market, where I can get a discussion of current events together with the finest lntell soup in the world.

—RUSS LITTLE, Law Office of Russell Little"

"The Gaslamp area is very convenient for access to court, meetings, other firms, friends, restaurants, freeways, the airport and the train.

—NICHOLAS LETO, Vietmann & Leto"

"Every day I drive by the tall ships and public artwork on Harbor Drive. I get a kick out of seeing history juxtaposed with the modern-day harbor. I also like having only a five-minute walk to the court and a 15-minute drive to the surf.

—TODD CARDIFF, Law Office of Todd Cardiff"

"The older buildings and the relaxed attitude of the lawyers make this home for me, after being in Chicago for years. The murmurs at Petro don’t clash like the ones at Weigler Field, and the hawks don’t sell beer. But it gives me a good feeling to wander through the Gaslamp and stop at a pub or two on the way to a Friday-night game.

—SEAN SIMPSON, Simpson & Moore"

"Everything—the courthouses, great restaurants, theaters, dance clubs, UPS and post office—is conveniently located. The beautiful view of Broadway out of the window and the colorful Grant Hotel helps me not feel trapped at work.

—IOMA ANTONIYAN, Law Office of Iona Antonian"

"There’s nothing like the downtown vibe to make you feel alive. My office is minutes from the downtown civil, criminal and family law courthouses. Dobson’s restaurant, a landmark meeting place for lawyers, is in the same building. I can even run my errands without getting in my car.

—MELISSA LUBIN, Law Office of Melissa Lubin"

"Besides working downtown, I live downtown, making my commute virtually nonexistent. I get to do other things instead of being stuck in traffic. There is a great variety of restaurants and stores, so everything I need is here.

—RICHARD MAFHOUL, Clerk & Sinclair"

"In the Gaslamp, there is energy everywhere. When there is stress in the office, there is no better place for lunch. My favorite watering hole are The Bitter End, Osteria Pasevica, Dobson’s and The Tilted Kilt. When the Padres are playing, we walk from my office, grab a drink on the way and walk to Petco Park.

—LARRY Sidoropoulos, Laureti & Sidoropoulos"

"Our firm built our office on Fourth Avenue in 1988, at a time when lawyers could not be found in the Gaslamp. Our building replaced the Apache A-Go-Go. It has been a great location—close to the courts, City Hall and all the action on Fifth Avenue.

—JOHN WERTZ, Wertz McDade Wallace Mott & Brower"
THIS YEAR, 145 students from nine high schools across San Diego County took part in a Mock Trial academic competition, with the assistance of local attorneys and judges. The winning local team, Otay Ranch High School, now advances to March's statewide contest in Riverside for a chance to compete at the national level.

Since 1990, the Constitutional Rights Foundation has implemented the Mock Trial Competition program in high schools throughout 34 California counties, including San Diego. According to the foundation's website, the program was created "to help students acquire a working knowledge of our judicial system, develop analytical abilities and communication skills and gain an understanding of their obligations and responsibilities as participating members of our society."

Each fall, participating students receive a hypothetical criminal case, case law summaries, exhibits, witness statements and a simplified compilation of the rules of evidence. Prior to the competition, students examine the case materials, conduct legal research and practice simulating the various courtroom roles of attorneys, witnesses, clerks and bailiffs as they prepare for the countywide showdown in February.

The Constitutional Rights Foundation had approached San Diego legal associations in 2002 to gauge local interest in the program, and a San Diego County Bar Association committee was formed, with Chrysea Starnes and Kim Thao Hoang (both deputy district attorneys) serving as chairs. Starnes had been invited to help coach a team from Los Angeles and was greatly impressed with the students' ability to understand the facts and apply them to the law, make proper objections and formulate coherent opening statements and closing arguments. She says she was "hooked and begging to come back for more." She traded her mission to make the program successful in San Diego County.

Starnes, who helped reestablish the program here in 2007, has since served as cochair of the Mock Trial Competition committee with Hoang. The San Diego program is sponsored by the San Diego County Bar Association, the Lawyer Referral & Information Services, the San Diego District Attorney's Office and the San Diego Superior Court. The program recently received a grant from the California Bar Foundation to assist with the 2009 competition, thanks to Julie Myers, a member of the committee, who was instrumental in obtaining the grant.

Hoang, who is also the chair of the District Attorney's Diversity Pipeline and Student Outreach Committee, says she feels privileged to be a part of this worthwhile program. "It is tremendously important to motivate youth, steer them toward higher education and inspire them to explore specific career fields," she says. The promotional video for the program, which can be found on the San Diego County Bar Association's website (www.sdcb.org), demonstrates how everyone involved in last year's competition believed the program was an enriching experience, she says. "The at-
torneys and judges were amazed at how dedicated and tal-
ented the students are.”

Hoang is particularly impressed with the motivation of the volunteers involved with the program, which would not be achievable without the valuable assistance of the nu-
merosous attorneys and judges who offer their time to the program each year. In San Diego this year, 61 attorneys serv-
ed as team coaches and trial scours, and 14 judges and com-
missoioiners presided over the trials.

Denise Asher, of Asher Mediation, served as an attor-
ney sotger for last year’s competition as well as this year’s. She says they are expected to score the students on their preparation, how well they use the facts against the law in arguing their case, whether they properly raise objections and examine witnesses, and their overall presence in the courtroom. Asher was amazed at how well-prepared and poised the students were during the competition. She con-
siders the program an opportunity to give back to the San Diego community.

“This is a wonderful circumstance where attorneys and judges can give the students a positive way of viewing the legal profession,” says Asher.

Hon. Linda Quinn of the San Diego Superior Court also participates in the program. She acts as a presiding judge over the competitions, where she makes rulings on evidentiary objections. She says she decided to become involved because it seemed like a great opportunity for high school students, and the positive feedback she receives from the students is “obvious by watching their participation” during the competitions.

“I was deeply moved by the hard work of the students throughout the competition and by their euphoric excitement during the award ceremony,” says KIM-THOA HOANG.

“Theyir commitment and desire to do well in the com-
petition is evident, and the overall intensity of the experi-
ence shows that the students are putting a lot into the program,” says Quinn.

In 2008, the team from Orchay Ranch High School won the San Diego competition; they won again this year, beating newcomer Bishop’s School by 2 points. They ad-
vance to the state championships on March 20 and 21 at the Riverside Hall of Justice—and perhaps to the national championships, May 6-10 at the Fulton County Cour-
thouse in Atlanta, Georgia.

Vincent Martinez, a teacher of administration of jus-
tice and U.S. history at Orchay, became involved with the program through the school’s Academy of Criminology & Justice. “We started fielding a team three years ago, and I’ve enjoyed the experience immensely,” says Martinez, who

believes the program is important to the community be-
cause it pairs students with attorneys “who not only serve as coaches but, more important, as professional mentors.” He adds that the students’ return rate to the program each year is a testament to its success. The positive experience occa-
siolly extends beyond high school—one student from Orchay Ranch now competes on the Mock Trial team.

Stamov thrilled when it was announced that the Orchay Ranch team had won the countywide competition in 2008. “I can’t even explain the overwhelming joy and emo-

tion the students expressed,” she recalls. “My whole heart filled with pride for all of the students involved, because it was such a wonderful moment to see that all of their efforts had come to this and that they were successful!”

Hoang echoes Stamov’s delight: “I was deeply moved by the hard work of the students throughout the competition and by their euphoric excitement during the award ceremony.”

How do Stamov, Hoang and other area attorneys and judges manage to find the time to participate with the San Diego Mock Trial Competition?

“If you really have a passion for something—you find the time and make it happen because it is so important to you,” says Stamov, who stresses how grateful she is to every-
one involved with the Mock Trial Competition, including the students, teachers, attorneys, judges and the members of her committee. “I am so thankful to everyone who has taken as much of an interest and passion in this program as I have. Without them, it would not be possible.”

Michelle Gruver, the director of the Lawyer Referral & Information Services and the administrator of the Mock Trial Competition program, acts as contact person for the program and liaisons between the participating schools and attorneys in San Diego County. She says the program is al-
ways looking for attorneys and judges to volunteer. If you would like to assist with future Mock Trial Competitions, please e-mail mijuven@sdcha.org.

Wendy Disnap is a student at Thomas Jefferson School of Law and is a law student editor of San Diego Lawyer magazine. She can be reached at disnaph@ujbhil.edu.
How does a San Diego cultural institution find itself the subject of a federal investigation, mixed up in charges of tax fraud, even involved in a death? The story starts with the very simplicity of the objects it displays.

The Mingei International Museum celebrates the beauty of use in folk art, crafts and design from all eras and cultures of the world. This dedication is set forth in its mission statement: "Mingei International Museum is dedicated to fostering the understanding and appreciation of art of the people (mingei) from all cultures of the world.'

Established in 1978 by Martha Longenecker (since October 2005, the founding president and director emerita), the Balboa Park museum collects, conserves and exhibits these arts of daily use, made by anonymous craftspeople of ancient times, from traditional cultures past and present and by historical and contemporary designers. Guided by that mission, museum director Bob Schneider, in his 15th year with the Mingei, oversees a staff of nearly 40 along with the 18,000-item collection (most of it not on display) and is leading the museum and its second facility in Escondido into a new era. The Mingei obtains much of its funding from individual donations but receives city and county funding, too, and has substantial earned income. Its contribution provides funds for purchase of art objects, and it regularly looks for exhibition underwriting from appropriate sponsors.

The entrance to Mingei International Museum's current exhibition, "India Adorned."

Photographs by Anthony Scaggs, courtesy of Mingei International Museum.
mingei: “art of the people,” from the Japanese for “all people” (min) and “art” (gei)
—term coined by famed Japanese scholar Dr. Soetsu Taniguchi

Regrettably, museums such as Mingei International themselves are at times the victims of fraud and deception.

According to a lawsuit filed by her family, that is where the story took a tragic turn. That weekend in jail, Brown began to suffer from stomach problems, and over the next few days her health worsened, to the point that she was unable to attend a scheduled court appearance. The civil lawsuit filed against the jail guards claims that inmates told a guard she had been vomiting something that “smelled like excrement.” The guard did not respond, the suit alleges, and inmates tried to help her. After the evening lockdown, inmates allegedly heard Brown call for help, and, it is alleged, some began to pray for her. The suit says a guard told Brown, lying on the floor of her cell, to get up and that she would have to wait until morning to see a nurse or doctor. She died about 2:30 a.m. An autopsy revealed she had suffered a perforated ulcer, and acute peritonitis had set in. This type of condition generally requires immediate surgery.

Both the criminal investigation and the civil suit continue. No one has yet been charged.

For more information on the history of Mingei International, its collection and its exhibitions schedule, please visit www.mingei.org.

Keith Rumian is a San Diego lawyer and can be reached at kruman@beesmanlaw.com.

1. Turhan’s Art on Authentic Memorabilia, Antiques, Objects of Art and National Museums states that all heirlooms, regardless of value, are property and cannot be removed from the country without a license.
2. The amount of an indictment would start from elements determining the value of the items on their tax returns.  

Former SCDA editor Thomas Henry Jr., a partner in the law firm of Henry & Callih, who commemorates once a month from his primary residence in New Mexico, serves on the board of trustees as Mingei’s legal counsel, a role he has had since the mid-1980s. (Other attorneys have sat on the board, such as its current secretary, James Mulvaney, and Jack Charnley.) A trusts and estates practitioner, Henry first served on the board of the Museum of Man for six years and as a member of the UCSD Foundation before being recommended to Longenecker by another attorney, based primarily upon his interest in folk art and willingness to serve. He attributes his agreement to serve, though, primarily to Longenecker’s persuasiveness.

The board’s diversity in membership and breadth of experience (as supplemented by a 15-member international advisory board) is generally able to address the varied issues that come before it, and Henry has brought to the table his legal knowledge in issues relating to labor law, real estate, charitable giving and tax law, government grants and nonprofit foundation law. From time to time, however, outside legal counsel is needed.

One recent incident highlights the need for outside legal expertise. In recent years, the Mingei had received donations of pieces of pottery, bracelets, rings, vases and beads of Thai origin dating back to the Ban Chiang era (circa 1000 B.C. to 200 A.D.), which, unknown to the museum, may have been removed from Thailand without proper licensing and made their way into the United States. The original location where the Ban Chiang culture was discovered was named a World Heritage Site in 1992 and is considered the most important prehistoric settlement area yet discovered in Southeast Asia. These antiquities wound up in several collections at various museums, including the Los Angeles County Museum of Art, the Bowers Museum in Orange County and others, each of which soon found itself being visited by a team of federal agents.

While no charges have been filed, affidavits filed by agents of the Internal Revenue Service to obtain several search warrants averred that the agents had probable cause to believe the removal of these antiquities without a proper license, and their subsequent donation, had violated the Archaeological Resources Protection Act, the federal conspiracy statute and various criminal tax statutes. Consequently, federal agents, armed with search warrants, seized the antiquities at issue, but asked the Mingei to act as custodian/caretaker of the items pending the conclusion of the investigation. Mingei International has cooperated completely with the investigation.

The action comes after multiple claims by Italian and Greek officials that several prominent American museums purchased art that had been looted from these countries. To resolve these charges, many of the museums returned the artifacts to their native lands. However, such remedial action did not prevent the Italian government from charging the Getty Museum’s former antiquities curator with knowingly buying looted art, a charge she denied.

Olsen, a collector and importer who specialized in Ban Chiang antiquities, introduced Hoyt to Jonathan and Carl Markell, who selected objects from Olson’s collection and helped Hoyt donate them to various museums. The affidavit alleges that Jonathan Markell fabricated appraisals that inflated the value of the objects (hence the tax fraud). To bolster the authenticity of the appraisals, he affixed Brown’s electronic signature to a representation that she had personally inspected the appraised items.

Brown was initially portrayed as a victim of the scheme who was unknowingly taken advantage of by the Markells. However, the discovery of documents sent from Olson revealed that Brown offered to sell Olson dreams of looted Thai antiquities. Her motive? Money. According to the affidavit, to put her mind at ease about the potential consequences should they be discovered, Markell told her in an e-mail, “If you are nervous about doing this, please rest assured that the Republicans are still in office, the IRS does not have enough personnel to review small-time appraisals, and the appraisals are very well written and will never be challenged.”

Confronted in a Los Angeles hotel by Hoyt about her duplicity, Brown initially denied involvement but soon came clean. She was arrested and taken to a Seattle area federal detention center. That same afternoon, a grand jury had indicted her on one count of wire fraud for allowing Markell to use her signature on an inflated appraisal.

Balboa Park Bench
By Del Corcoran
DISCUSSIONS with a D.C. Lawyer

Bob Bennett shares his thoughts on legal and political matters

BY JODI CLEESATTLE

ON THE LEGAL HORIZON

Bennett, who has spent his entire legal career in Washington, D.C., doesn’t foresee any big shift in the prosecution of federal cases under President Barack Obama, but he does expect a new emphasis on certain issues.

"I don’t think there will be many changes in how the new administration will go about prosecuting cases, but I think we will see a little shift in emphasis," he says. "We’re going to see more civil and criminal work in the environmental area. On the civil side, we’re going to see more with civil rights issues. Those were two areas that received very little attention in the last administration."

Given the current economic climate, he expects to see continued investigations into the financial sector. "Not because of the change in administration, but because of what’s going on in the world financially, we’re going to see a lot of prosecutions in the area of finance—businesses, companies, stocks and bonds, traders. There’s going to be a continued emphasis on going after the high-level financial people," he predicts. "When the government gives away billions of dollars, somebody is going to say, ‘Okay, but we have to go after the bad guys.’"

Bennett, of course, has made a career out of defending clients some might consider "bad guys," or at least guys who had the bad luck to get caught up in corporate or government scandals. Among others, he defended U.S. Secretary of Defense Caspar Weinberger during the Iran-Contra scandal of the 1980s; former White House counsel and secretary of defense Clark Clifford in the Bank of Credit & Commerce International scandal in the early 1990s; former New York Times reporter Judith Miller, who was jailed for contempt of court in 2005 for refusing to testify before a federal grand jury investigating the leak of CIA agent Valerie Plame’s identity; and former U.S. deputy secretary of defense Paul Wolfowitz, who resigned as World Bank president in 2007 over controversy regarding his relationship with an employee.

Bennett is probably best known, though, for representing President Bill Clinton during the Paula Jones sexual harassment lawsuit and the Monica Lewinsky sex scandal.

"I never knew him before I represented him," says Bennett. "I had previously represented people close to the Clintons. I got a call one day asking whether I would meet with [Hillary] Clinton. I met with her for a full hour. I guess it went well, because then they asked me to represent President Clinton.

Bennett, who has taken some criticism for his handling of the Paula Jones lawsuit, which settled while on appeal from the dismissal of the case, says he found President Clinton to be a cooperative client. "He’s extremely intelli-
THE CONSIGLIORE
Knowing when to speak up and when to keep quiet, when to litigate and when to cut a deal is all part of being a good lawyer—and it's a balance that's become even more important in representing clients in white-collar cases, Bennett says. White-collar defense as we know it today didn't exist when he started out as a federal prosecutor in 1967.

"In those days, white-collar defense was pretty nonexistent. White-collar defense lawyers became very sought after as the government started going after people. I was very lucky that I got into this as the practice started to boom."

But as the practice has grown, so has the difficulty of defending corporations and corporate executives. Bennett says the government can exert enormous pressure on companies, requiring them to turn over the results of internal investigations in exchange for deferred prosecutions, and using the threat of indictment to secure cooperation.

I used to consider myself a defense trial lawyer. Now, I consider myself a very good cooperato...
THE NEXT WAVE IN LAW

From the decline of venerated traditions to the growing trend toward virtual shingles, the practice of law is undergoing a wave of change. Blog publisher and attorney Catherine Elefant takes an educated guess at what the future holds for legal practices.

By Catherine Elefant

Law is the world’s oldest profession, but will the next decade bring its demise? That’s the premise of The End of Lawyers, a thought-provoking book released in November 2008 by U.K. legal scholar and futurist Richard Susskind, who bluntly argues that disruptive legal technologies and standardization of legal services will erode the need for lawyers.

Indeed, if the end of 2008 was any indication, Susskind’s predictions are already coming to pass. Look around—large firms are in crisis, under substantial pressure from clients to cut costs. Spurred by a faltering economy, big law’s corporate clients have metamorphosed the expectation to object to paying a premium for law firm pedigree alone. Instead, some corporate clients are dumping overpriced firms that won’t discount their rates; others are micromanaging staffing decisions—demanding that firms outsource document review to India and/or forbidding inexperienced associates-in-training from handling their matters.

As a result, big law is crumbling under the weight of its highly leveraged business model in which profits derive from billing for hundreds of associate hours. In the first quarter of 2008 alone, three firms that were roughly 500 lawyers in size collapsed when the economy tanked, railroading partners jumped ship, and efforts at merger failed. As of the end of the year, 52 Am Law 200 firms nationwide had shed a total of 1,752 lawyers, according to lawshacks.com/lawoff-trader.

On the solo and small-firm side, the news isn’t much better. Automated document-preparation services continue to gain traction as a low-cost alternative to lawyers, despite cautionary tales regarding these services’ accuracy. Meanwhile, with legal services priced out of range, more litigants than ever are representing themselves pro se, even in critical matters like divorce and child custody disputes or civil cases involving consumer protection or contract issues. Today, courts in all 50 states and the District of Columbia have established self-help centers for lawless litigants, which may draw as many as 100 people each day.

With these developments as a backdrop, could the prospects for lawyers be any worse as we enter 2009? Hardly. Though the faltering economy looms large, at the same time, opportunities abound for innovative, forward-looking lawyers who can devise ways to leverage or create fresh business models willing to devise new products and services.

For growth areas in a down economy, foreclosure, bankruptcy, consumer credit and landlord/tenant work (with emphasis on evictions) practices will remain strong at least through the end of 2009.

Micro-Trends

Two forces will drive legal practice areas this year: the economy and the new Obama administration. With the recession expected to continue through 2009, lawyers need to focus on practice areas like estate planning to remain prosperous. Since clients typically view wills and trust preparation as discretionary expenses they can defer until their financial situations improve. Likewise, the economy may push more small-business clients to dispense with lawyers for simpler, routine matters like business formation or basic contracts and handle these tasks themselves. On the flip side, with unemployment rates up, more individuals are starting their own businesses because they can’t find jobs, thus expanding the pool of small-business owners with a possible demand for legal services.

Divorce work is also taking a hit in this economic climate. Though some might think increased financial stress would drive more people to split, many couples can’t afford to divorce until home values and reinvestment accounts—assets subject to distribution in divorce—are reborn. Still, some divorce attorneys are noticing an uptick in support modification disputes, increasingly common as clients’ financial circumstances tail off from unemployment or salary cuts.

As for growth areas in a down economy, foreclosure, bankruptcy, consumer credit and landlord/tenant work (with emphasis on evictions) practices will remain strong at least through the end of 2009. The lowest interest rates in 50 years will reinvigorate the real estate market, producing more work for real estate and construction lawyers. Special-education litigation will also pick up, since a tight economy means fewer families can afford private education for special-needs children and will seek accommodation in public schools under IDEA laws. With layoffs rampant and new jobs tough to find, wrongful termination suits will grow. In particular, watch for discrimination claims by higher-paid, older workers or flex-time female employees, who often bear the brunt of downsizing initiatives, as well as the evolution of "failure to inform" cases, where a company cuts a recent employee recruited from another position without having disclosed that the company was on the brink of collapse. Many solos with traditional practice areas like trusts and estates, elder law or family law may find an international
In a technology-dependent world, trust matters more than anything. Though clients appreciate the convenience of online interaction, many still crave the personal touch.

Component to their practice as citizens leave the country for employment opportunities or for a lower cost of living for retirement. Unfortunately, a shaky economy will spawn a wave of story-related lawsuits, such as malpractice and disciplinary actions. When clients spend their last dime to hire a lawyer, they expect results, and if they don’t get them, they will sue for malpractice. Desperate for work, many lawyers are more likely to accept cases outside of their core expertise, or matters from "red flag" clients with a greater propensity to sue their lawyers.

As for disciplinary matters, the sad fact is that financial stress drives many lawyers to do the unthinkable, such as dipping into client trust accounts to cover the bills. I predict that bar associations, in recognition of this danger, will step up trust account monitoring in 2009.

THE NEW ADMINISTRATION

With a new president occupying the White House, we’ll see a stream of fresh policy initiatives emerge, reflecting Obama’s top priorities. As the new administration steps up efforts to combat climate change, look for practice areas such as green-tech IP, green building and construction, clean-energy startup counseling and Sarbanes-Oxley environmental disclosure disputes and compliance (e.g., defense against environmental enforcement actions) to take off. Moreover, as a beneficiary of Web 2.0 technologies—after all, many credit Obama’s victory to his campaign’s heavy use of social media tools—the new administration will likely implement policies to stimulate high-tech industries.

Many observers also expect the Obama regime to reinvigorate regulation in fields like antitrust, banking and healthcare, where clients will need lawyers who can advise on impending changes and represent them in resulting disputes. Litigation may pick up, as a Democratic Congress eases federal restrictions that insult drug companies and other industries from suit under state consumer laws, and prohibits companies from forcing employees to arbitrate disputes.

Finally, changes in other national policies, such as immigration, tax, employment and bankruptcy, may give rise to practice specialties that simply don’t exist today. For example, some experts believe Congress will enact legislation to protect gays from job discrimination, which would open up a completely new niche practice area for employment lawyers.

My advice for lawyers on how best to capitalize on the changes ahead: Set up an e-mail subscription or RSS (really simple syndication) to legislative tracking services like GovTrack and to websites of the federal agencies that will issue regulations to implement the administration’s policies.

PRACTICE TRENDS

Entering 2009, virtual law offices will gain traction as the public grows more comfortable doing business over the Internet—and as the economy leaves some lawyers no choice but to work from home to reduce overhead. For example, in May 2008, Cranston, Rhode Island, family law attorney Christopher Pearrell took his practice entirely online; he will pass on the savings to clients. Other regarded as somewhat fly-by-night, home virtual offices gained credibility when former big law attorney Craig Johnson launched Virtual Law Partners, an entirely virtual firm (comprising large-firm experience) that handles IP licensing, securities regulations and other high-end corporate matters.

Pew’s Theresa Erickson is an expert on surrogacy law—and has little use for a physical office because she has a national and international practice. She predominantly works with clients out of state and across the world who use the laws of California to create their children via gestational surrogacy, sperm donation and egg donation within the state. Since much of the practice is handled via phone and e-mail, she rarely meets clients face to face. Erickson maintains an office almost for posterity’s sake, but it is not necessary; her website draws clients, as does her blog and other online presence.

Lawyers uncomfortable with the home-office concept, or who lack the discipline to work from home, can take heart—brick-and-mortar offices aren’t going away any time soon. With scandals like the Madoff Ponzi scheme and fraudulent mortgage schemes that duped buyers into taking on far more debt than they could ever repay, distrust of professional service providers remains fresh. Once deceived clients may need the reassurance of a physical office and a personal handshake to gain comfort with a lawyer. And with the real estate market at an all-time low, there’s never been a better time to lock in a low-cost office rental rate long term.

Growing interest in online offices will drive demand for "software as a service solution," such as practice management tools RocketMatter or Choo, or VLO Tech, an online system that supports a virtual law office, with administrative features and secure portal for communication with clients. Meanwhile, lawyers hoping to remain competitive will turn to Web 2.0 and social media tools such as Facebook, LinkedIn or Twitter to expand their marketing reach and build relationships with potential clients and referral sources online. For lawyers who represent clients before government agencies, integration of Web 2.0 technologies is imperative. Many attribute Obama’s victory to his campaign’s effective use of social media, and the launch of the site Change.gov demonstrates that these technologies will continue to play a dominant role in his administration.

Collaborative technologies—either sites like JDSupra.com that offer lawyers a site to publicly display their work product, or systems like wikis or Google docs, which allow lawyers to cooperate in producing work product—hold enormous potential and will experience some growth in the coming year. But with the economy faltering, I predict that lawyers’ competitive instincts will keep them from fully exploiting the potential of these systems. Thus, while many will use JDSupra to upload promotional marketing materials and perhaps a few publicly filed documents that are readily accessible elsewhere online, few will share meaningful work product that might prevent others from reinventing the wheel.

THE LONGER TERM

Even as lawyers capitalize on short-term opportunities, they must keep an eye on the future, because the change that has impacted other industries—news media to recording to automakers—will impact the legal profession as well. As Canadian lawyer Jordan Furlong writes in his blog Law21: Dispatches from a Profession on the Brink, technology and economic downturns are taking a toll everywhere. Customers no longer subscribe to paper news, preferring online sources instead. Music buyers would rather purchase single songs and download them online than trek to a record store for a CD with 10 songs they’ll never listen to. Car buyers are demanding hybrids either as a hedge against volatile gas prices or to help the environment, but the Big Three automakers have been slow to respond. Technology has fostered customization—and indeed, Web 2.0 tools have further bred the expectation. But many of these industries haven’t updated their business models to respond to customer wants.

Nor have most lawyers. For decades, we’ve been billing by the hour, despite client interest in flat billing and other alternative systems that would give certainty to the final bill. Large firms offer one-stop shopping, even though many corporate clients have the ability to use
technology to assemble a team of experts closely tailored for the needs of each project. Most firms refuse to provide clients with unbundled or limited services, instead offering only full-service products.

To succeed in the have-it-your-way future, firms must offer a range of products and services to suit client needs and price points. For some, this may mean developing and automating preparation of contracts, then simply giving quick review to the final product. Instead of drafting each agreement from scratch, clients may desire unbundled services—for example, to have a lawyer draft an LLC that the client will file at the relevant office. They may ask a favored employment lawyer to work with a preferred corporate lawyer to craft appropriate terms for a merger. To provide these services cost-effectively, lawyers must leverage technology tools that let them collaborate seamlessly and expedite document generation.

Lawyers can also use technology to build client relationships. They can add value by keeping clients informed with newsletters and blog that highlight useful information, saving them the trouble of wading through the daily flood of information. Lawyers can also offer products like “service agreements,” similar to those offered by contractors, where for an annual fee the lawyer will review, say, a client’s corporate documents or custody support agreement. By providing this entirely online (the lawyer would review documents and provide an assessment by e-mail), lawyers can keep the service economic for their firm. Plus, as with any routine service—such as air conditioning or car care—it often uncovers problems that must be addressed, thus resulting in more work for the firm.

In a technology-dependent world, trust matters more than anything. Though clients appreciate the convenience of online interaction, many still crave the personal touch. Sites like Facebook and Twitter enable lawyers to offer clients a peek inside their personal life, giving a sense of what they’re like as people. And soon, online video conferencing such as Skype will grow common, further adding a human dimension to an online relationship.

Many lawyers will resist change, insisting that the profession is somehow immune. But associations, often dominated by well-connected lawyers, will likewise dig in their heels and potentially throw up barriers to certain online tools. For example, some banks have taken to characterizing blogs as “advertising,” thus subjecting them to onerous prior restraint requirements. However, as I’ve discussed, blogs also provide a powerful tool to keep clients informed and should not be discouraged. Likewise, efforts to collaborate could potentially be stymied by archaic bar rules on fee splitting. As innovative lawyers develop new business models that threaten old ways of doing business, they may need to challenge the bar before such changes can come to pass.

Change in our profession is inevitable. As I discussed at the outset, the foundations of the traditional lawyer business model—the billable hour, associate leverage—are giving way, with clients no longer willing to tolerate the high fees. At the same time, the door is open for us, empowered by technology and liberated from stereotypical expectations of the successful lawyer in a plush conference room, to reinvent the way we practice law, to replace outdated precedents with new ones.

Could the future be any brighter?

Carolyne Elefant is a Washington, D.C. lawyer who is the creator of MyShingle.com and author of Sole by Choice: How to Be the Lawyer You Always Wanted to Be. She can be reached at elefant@ myshingle.com.
The MySpace Suicide
Prosecution Stirs
CONTROVERSY

Figuring out who you can trust gets trickier with every advance in electronic interaction, such as social networking

BY DAVID CAMERON CARR

Public attention was gripped last year by the prosecution of Lori Drew for using a phony MySpace account to trick 13-year-old Megan Meier, a schoolmate of her daughter, into thinking she had been romantically rejected by a teenage boy. Megan committed suicide. Drew was prosecuted by the U.S. Attorney in Los Angeles, charged with one count of conspiracy and three counts of accessing a computer without authorization and via interstate commerce to obtain information to inflict emotional distress. Each count carries a maximum penalty of five years in prison. She was ultimately convicted only on the three misdemeanor counts of accessing a computer without authorization; the jury deadlocked on the more serious conspiracy charge, apparently concluding, strangely, that Drew did not intend to harm Megan.

The facts were horrifying: The mother of a teenage girl fabricates a phony identity to harass her daughter's schoolmate and to inflict emotional damage on her, damage so extreme that the young girl hangs herself in her closet. But one remarkable aspect of the case was the application of federal criminal laws, intended for different purposes, to a type of antisocial behavior in a form that did not exist several years ago: MySpace, a social networking website.
Social networking sites have become extremely popular with teenagers and young adults in the last decade. Thinkers who study the accelerating integration of digital technology into our culture confidently predict that virtual social networks will to some degree displace more traditional social networks and become a predominant medium for many forms of interaction, including business.

“A social network service focuses on building online communities who share interests and activities or who are interested in the interest or activities of others,” says St. Louis attorney Michael Downey. “Most social networks are Web based and provide a variety of ways for users to interact, such as e-mail and instant messaging services.” Social networks include not only those that cater to general or youth populations, such as Facebook or MySpace, but, increasingly, those that address the world of business, such as LinkedIn.

As more of our collective lives are lived in cyberspace, the distinction between communication and action breaks down, in an environment where the low trustworthiness of information is masked by its immediacy.

Where society and business go, lawyers go as well. The peculiar properties of the digital world (twice rules developed for a nonmediated or a lightly mediated world, the familiar world of personal interaction we evolved in, the world where symbols are exchanged in the expensive, slow medium of paper, the world we have lived in since Johannes Gutenberg and his movable type. We have been down this road before, as regulators cope with the impact of evolving technology on communications.

Take the most basic rule regarding lawyer ad-

DIGITAL TECHNOLOGY IS CHEAP! One of the first consequences of the digital age was the ever-increasing amounts of "spare" or unwarranted information we’re exposed to. Everybody is on the Internet, all of the time, selling everything all at once, because we can all afford to.

IT IS OUT OF CONTROL. The nature of the technology defies boundaries, geographical as well as social. For instance, Mrs. Drew was prosecuted in Los Angeles despite the fact her conduct and in terrible consequences all took place in Missouri. Or did it? Cyberspace is everywhere, and it is nowhere. Venue was found in Los Angeles because the MySpace computer servers were physically present there, but this seems like a quaint legal fiction unrelated to the locus of real events, which really was poor Megan’s MySpace page. But there is no police force or prosecutors in cyberspace—at least not yet.

IT IS IMMEDIATE. Unlike television, print and radio, digital technology is capable of massive transfer of information in both directions, and every direction, almost instantaneously. The consequences of this are far-reaching.

First of all, interactions through digital media can mimic the aboriginal nonmediated communications of personal interaction, the increasing rare phenomenon of human beings interacting in person. I say “mimic” because interactions through media, even digital media, transmit far less information than personal interaction. Face-to-face communication involves the transfer of vast amounts of nonverbal information, which we understand quickly because we evolved to process it quickly through millions of years of cultural evolution. This is why truly important meetings (including those critical events called “debates”) still take place in person. Digital technology does not yet have the “bandwidth” to fully replicate personal interaction.

And yet interaction allows us to mimic personal interaction, thus making possible the creation of virtual communities like MySpace, or the evolving business community of LinkedIn. With interaction comes the illusion of trustworthiness. Yet this is at the same time the most untrustworthy of media. Consider the vast amount of time and money spent on Internet security, including passwords, software and efforts to educate the public about the technology we
all use but often know alarmingly little about. Because of the highly mediated and nature of digital information—i.e., it can be manipulated—this illusion of trustworthiness can be deadly.

So it was with Megan. This is what enabled Mrs. Drew’s reprehensible behavior, whether you characterize it as a crime or not. A similar but less deadly deception occurs when people fall for "phishing" schemes involving phony but real-looking e-mail messages or websites. There is something about the Internet, about digitally mediated information, that invites irrational trust. Pedophiles trolling digital chat rooms still get fooled by the "undercover" police officers.

As the last example shows, the flip side of immediacy is the illusion of anonymity. A New Yorker cartoon from some years back showed two canines sitting in front of a computer monitor, one saying, “The great thing about the Internet is that no one knows you’re a dog.” The Internet furnishes invaluable opportunities to post protected by an anonymous screen name. As a result, many comments range from rude to profane to threatening, such that many sites post only after review, eliminating especially abusive commentary.

The anonymity problem raises one of the first big legal ethics issues to be faced in recent years. It comes up in the admissions contest. Good moral character is a prerequisite for admission to the bar in most states. California’s definition of good moral character is typically expansive: “Good moral character” includes, but is not limited to, ... (but also) respect for the rights of others....” Abusive speech, even speech that might be prosecuted by the First Amendment, may be inconsistent “except for the rights of others” and may be used to deny admission. Yale law students apparently posted abusive messages on a site called Autodidact, suggesting that female law students be raped. This controversy has raised the question of whether bar admissions committees should require the disclosure of all screen names an applicant has used in any online forum. These rules are the beginning of a body of law regulating conduct in the increasingly complex virtual worlds being created by digital technology. From commentary sites to social networking sites to real-time chat rooms to the increasingly detailed virtual worlds based on gaming technology, such as Second Life, technology is progressing toward some of the more esoteric possibilities envisioned by science fic-

There is no police force or prosecutors in cyberspace — at least not yet.

Lawyers are participating in all manner of digital forums, chat rooms to Second Life.” Legal ethicists and rule makers are struggling to apply traditional rules. Some of the applications seem straightforward but ignore the nature of the medium. California State Bar formal opinion 2004-166 deals with attorneys seeking clients in a man-child chat room, who must conform to the basic rule of California Rule of Professional Responsibility 1-600 (“not deceptive”). But while acknowledging that such solicitation might be intrusive or coercive, significantly, the opinion does not equate a chat room with personal interaction or telephonic conversation, despite the immediacy.

But what of the true problem? As more of our collective lives are lived in cyberspace, the distinction between communicators.

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S A N D I E G O L A W Y E R

44
Keeping Your Eye on the Client

When the Securities & Exchange Commission began investigating Look Back, Inc., for stock options backdating, its board of directors appointed a special committee to conduct an inquiry. That committee in turn engaged Ansley Andy as special counsel to perform an independent review. Andy engaged Careful & Count, forensic accountants, to assist.

Lawyers from Dewey, Cheatham, Ubert represented Look Back in the SEC investigation. That firm also represented three Look Back directors, as defendants in private securities litigation that accused them of engineering the backdating scheme, and represented those three directors as targets of the SEC investigation.

Andy completed his investigation. At the request of Look Back's general counsel, Andy presented his written report—an 110-page document—and specific facts at a special board meeting. Present were the special committee and Look Back's entire board, including the three director defendants. At the general counsel's request, the Dewey lawyers also attended. Andy enjoyed the audience.

Later, plaintiff's counsel in the securities case demanded all of Andy's investigative materials, including his report to the special committee, and all of his communications with both the special committee and with Careful & Count.

Andy thought he understood both the law and his obligations as his client. A lawyer who receives a communication subject to the attorney-client privilege must claim the privilege whenever another party seeks disclosure.1 In addition, a California lawyer has the ethical obligation to protect, at all peril to himself or herself, his or her client's confidences.2

Andy vigorously asserted the attorney-client privilege on behalf of Look Back, its board and the special committee. He also asserted his own work-product privilege.3 Had Andy, however, done enough to protect the privileged communications? Or had he forgotten to ask a fundamental question?

When the client is an organization, it acts through its highest authorized officer overseeing the particular engagement. Thus, in dealing with an organization's directors, a lawyer must make clear the identity of the client for whom he or she acts whenever it appears that the organization's interests are or may become adverse to those of the constituted body. The lawyer is dealing.4

Andy's role was to be the special committee's, responsible to investigate the backdating charges—alleging charges against three fellow directors. The question he failed to ask: Who is my client?

Did Andy's report to the entire board affect the committee's privilege—even though it was the board's committee? Possibly. Andy, however, might be able to argue that the board—at least if the three accused directors had stepped out—was by extension his client as well, because it will act based on the special committee's report. Arguably, a unity of interest exists between the board—without the three directors—and its special committee. But Andy did not stop there.

The three directors have, for now at least, conflicting interests with the company and its board. In addition, the general counsel appears to be Look Back's attorney, not counsel to the board. And then we have the Dewey lawyers.5

Although California law presumes that communications between a client and lawyer are confidential, the attorney-client privilege can be waived if any holder of the privilege has disclosed a significant part of the communication or has consented to its disclosure.6 That is precisely what Andy faces here. Worse, if his conduct results in producing to the lawyers using Look Back, what might have otherwise been protected confidences, he may have violated § 6081(b)(1) and Rule of Professional Conduct 3-100.

He may also have failed his duty of competence.8

In a Northern California case,9 the court held that attorney-client privilege and work product protection had been waived for witness interview notes of outside counsel who conducted an investigation into stock options practices. The lawyers had shared the substance of their notes, but not the notes themselves, with the SEC. The law firms and government's written confidentiality agreements, specifically providing that disclosure to the SEC was not a waiver, meant nothing.10

Is Andy's rollback the joint defense, or common interest, privilege? At least from one point of view, everyone seems to prevail in the SEC investigation and the private litigation. Probably not.

A lawyer's letters to the for directors and officers, candidly analyzing evidence and risks of exposure, were not protected in spite of a joint defense agreement: there was no attorney-client relationship between the lawyer and the carriers. Joint defense doctrine applies only to co-parties in the same litigation sharing confidential communication as part of a joint effort to establish a common defense.11

Had Andy given his report only to his clients, the special committee, cautioning it to formulate its conclusions without explicitly sharing his communications, he would have protected his client's confidences as well as the attorney-client privilege. If only 7.

Edward McIntyre is an attorney with Solenem Ward Selfsoweren & Smith. The views expressed in this article are his own and do not necessarily reflect the views of the San Diego County Bar Association or its Legal Ethics Committee. He can be reached at emcintyre@sssdal.com.

1 Evidence Code § 955.
2 Business & Professions Code § 6081(b)(1) (Rule of Professional Conduct 3-100).
4 Rule of Professional Conduct 3-100.
5 The Dewey lawyers' conflicting roles, representing the company before the SEC and the three accused directors before the SEC, is not the primary source of the conflict, but is the prime source of the litigation.
6 Evidence Code § 977. Fisher v. United States, 245 U.S. 391, 493 (1916). (To invoke the attorney-client privilege, a party must demonstrate: (1) a communication between client and lawyer; (2) intended to be and was in fact kept confidential; and (3) for the purpose of obtaining or providing legal advice.)
7 Evidence Code § 912.
8 Rule of Professional Conduct 3-100.
11 Id. at In re Corporate, 107 F.R.D. 417 (S.D. Cal. 1993) (Duke, M.J.).

For another look at disclosure problems, see page 48.

BY EDWARD M. McINTYRE

When the client is an organization, it acts through its highest authorized officer overseeing the particular engagement. Thus, in dealing with an organization's directors, a lawyer must make clear the identity of the client for whom he or she acts whenever it appears that the organization's interests are or may become adverse to those of the constituted body with whom the lawyer is dealing.
The MUDDY WATERS of Waiver and Disclosure

Federal Rule of Evidence 502 aims to clear some of the murk involved in inadvertent disclosure.

BY KENNETH WITHERS

It's a situation every experienced lawyer has faced: Hundreds, perhaps thousands, of client documents must be reviewed for privilege before they can be produced to opposing counsel in response to a discovery request.

And the stakes can be high. If a privileged document is inadvertently produced, its privileged status, and that of other privileged documents, may be forfeited. Each of the 50 states and 13 federal circuits has developed complex rules of evidence to determine whether the inadvertent disclosure of a privileged document constitutes "waiver" of the privilege and, if so, the scope of that waiver. These rules are not consistent, and the same inadvertent disclosure that might not constitute a waiver of privilege in one jurisdiction could be claimed as a waiver in another. The nuance has been lost on any client involved in litigation in multiple jurisdictions, the strictest procedures for privilege review must be followed to avoid any possible inadvertent disclosure—at tremendous cost and effort.

**Rule 502 may prevent an inadvertently disclosed privileged document from being used as evidence, but it doesn't "unring the bell" of privileged information.**

During 2008, Congress created Federal Rule of Evidence 502, which establishes a uniform standard in all federal proceedings to determine whether an inadvertent disclosure constitutes a waiver of privilege, and to limit the scope of any such waiver. More important, it allows a federal judge to issue an order allowing parties in discovery to exchange documents freely without waiving privilege, and declaring that such an order will bind litigants in other federal and state courts, with respect to the evidence rules in those states. This new rule has the potential to significantly reduce document review costs and associated anxiety in litigation.

"This solves the previously disturbed landscape and dire consequences that could previously occur in this area," according to U.S. Magistrate Judge Anthony Barbaglio of the Southern District of California. But Judge Barbaglio advises attorneys not to rely entirely on judicial intervention, and to work with opposing counsel to reach an agreement.

"Counsel will undoubtedly find that a predetermined plan would have provided a better outcome in their case than one thrust upon them by a reviewing court," he says.

Will counsel avail themselves of Rule 502, enter into agreements to use streamlined document review procedures and get these agreements entered as court orders? It remains to be seen. Rule 502 may prevent an inadvertently disclosed privileged document from being used as evidence, but it doesn't "unring the bell" of privileged information, nor does it abrogate a lawyer's duty under California's Business & Professional Code §6006.11(e) to "maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client."

Browning Maren III, a litigation partner at DLA Piper, doubts that Rule 502 will have any immediate effect on the cost and burden of privilege review. "I'm appalled to say that more people don't know Rule 502 exists," he says, noting that expensive, time-consuming, multiterrier privileged review has become a way of life for many litigators. "And I suspect that old habbits die hard." 2

Kenneth Withers is director of judicial education and content for The Sedona Conference. He can be reached at kwithers@sedona.net.

For another look at disclosure problems, see page 46.
**Historic Inauguration**

Members of the San Diego legal community attended the inauguration of President Barack Obama on January 20.
Reaching Out

PHOTOGRAPHS BY LAUREN RADACK

A team of San Diego County Bar Association attorneys helped build a new home in Carlsbad for a needy family as part of Habitat for Humanity. Go to www.sdcb.org to learn about other volunteer opportunities.
Swearing-In Ceremony
PHOTOGRAPHS BY BARRY CARLTON

Newly admitted attorneys were sworn in December 4 at the Sheraton Harbor Island Hotel during a semi-annual ceremony that attracted family, friends and colleagues.

Specter Breakfast
PHOTOGRAPHS BY LAUREN RADACK

U.S. Senator Arlen Specter spoke at a breakfast on December 16 sponsored by the San Diego County Bar Association, the Bar’s Young/New Lawyers Division and the McClellan Law Firm.

Procrastinators and Ethics
PHOTOGRAPHS BY CHAS MUCKENHALLER

Attorneys and judges served as panelists on January 29 during a Procrastinators Workshop presented by the Legal Ethics Committee of the San Diego County Bar Association.

Iranian American Bar
PHOTOGRAPH BY RAMIN HARI

The Iranian American Bar Association–San Diego held in dinner and fund-raiser on January 15 at Did Mar’s Al Bore restaurant.
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Who is this prominent member of San Diego's legal community?

Please submit answers by April 1 to mkräuning@sdde.com. Your name will be entered to win a luncheon for two at Dobson's Bar & Restaurant in downtown San Diego. Congratulations to Ed Chapin of Chapin Wheaton, who won the January drawing after correctly identifying criminal defense attorney Bob Grimes of Grimes & Warwick. Thanks to everyone who participated.
From Lawyer to Librarian

But for Leland Stanford, much of the legal lore of San Diego would be lost. If you Google his name, up pops numerous references to his books, newspaper writing and articles in the Journal of San Diego History. Besides being the county’s law librarian and founder of Balboa Law School (now California Western), he was at times a preacher, a poet, a writer and a disbarred attorney.

Stanford, one of three lawyer brothers, was born in Nebraska in 1901 and moved to San Diego in 1906. He is distantly related to California Governor Amasa Leland Stanford, founder of Stanford University. He was student body president at San Diego High School and went to Stanford University (A.B. in 1924, LL.B. in 1923, California Bar in 1926). He worked his way through Stanford by waiting tables and preaching at the Mayfield Methodist Church and became known nationally as the student who preached his way through college.

Under his tenure as librarian, the San Diego County Law Library was moved from the courthouse basement (its usual home from 1891 to 1958) to its own building. In 1961, Stanford helped create the Law Library Justice Foundation, which provides financial aid to the library and special collections and sponsors legal lectures and scholarships.

In the middle of all this sunshine shined a large black cloud, not one you’ll find in a book jacket biography, and barely referenced in his papers at the law library. In 1939, the State Bar investigated allegations that Stanford “had himself appointed trustee of funds of a 75-year-old woman client and thereafter used trust funds to erect a home for himself” (Stanford v. State Bar [1940] 15 Cal.2d 721). While Stanford did not deny that he used funds of the trust to purchase property, he maintained he did so with the woman’s approval for the purpose of protecting her interest in the property and to secure regular income for her. The court noted that many of San Diego’s “most prominent men and women...testified to the good reputation of [Stanford] in his home community,” but the administrative committee of local attorneys found him guilty of the charges. The court upheld the disbarment, citing “overwhelming evidence.”

Stanford’s younger brother, now 95, recalls the disbarment as “devastating to the whole family.” Dwight stated the charges were a “bunch of baloney” and prevailed upon Leland to seek reinstatement, in part because Dwight’s own practice (he became a member of the Bar in 1936) was affected by the scandal. Leland was, in fact, reinstated in 1951 but never again practiced law. He was, said Dwight, “the most competent fellow I ever knew in my life—he was brilliant. He still wrote briefs for various firms while working as the law librarian.”

Stanford passed away in 1981, 10 years after retiring.

Senior U.S. District Court Judge Howard Turrentine was one of the local attorneys participating in the State Bar investigation and was president of the San Diego County Bar Association when Stanford was appointed law librarian in 1948. He won’t comment on Stanford, other than to say “he was a great librarian, but that’s where it stops.”

Judge Victor Bianchini (ret.) studied in the law library when it first opened in 1958 and remembers Stanford as elegant, reserved and old-school. Judge William Enright, Senior U.S. District Court Judge (and SDCILA president in 1965), recalled him as an effective librarian who spent his career living down the disbarment.

Perhaps Stanford tried to atone by leaving generously into his history. In 1950 he started writing judicial and attorney profiles for the San Diego Daily Transcript; these became a book, Psychiatrists of Justice, proceeds of which, as with all of his books, went to the Law Library Justice Foundation. From 1961 to 1963, he wrote a Transcript column, “Tracks on the Trial Trail” (after a book), then three more books: Legal Love of the Barr, Ninety Winbreaker Years and San Diego Lawyer You Should Know. He also set up the Pioneer Room on the second floor of the law library—a shrine of sorts to legal history and, in a way, to Leland Stanford himself.

George Brewster is a senior deputy county counselor for the county of San Diego. He can be reached at sandisrec@cox.net.

This portrait of Stanford was unveiled in 1971 in recognition of the retiring librarian’s 23 years of service. Left to right: Robert Steiner, Hon. Byron Lindsey, Leland and David Stanford. Photograph courtesy of San Diego County Public Library.
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Megham Kruming is a kindergarten teacher at Johnson Elementary School.