Federal Prosecutor to Lead County Bar
 Feeling stranded when it comes to insurance coverage?

With over 50 years of experience insuring the success of San Diego’s legal community, Barney & Barney focuses on our clients’ personal and business needs. Our team works with you to ensure your success.

**Sponsored Programs in**
Medical & Dental • Disability & Life • Long-Term Care

**Other Products Available:**
Professional Liability • Workers’ Compensation
Office Package • Automobile • Homeowners

858.457.3414
www.barneyandbarney.com
CA Lic 0C03950

**BARNEY & BARNEY LLC**
An Aonuzzi Global Partner

Endorsed Vendor
Reach Accord with Satisfaction.

Markus • Kruis • Mediation turns stalemates into settlements. Our neutral panel members have mediated more than three thousand complex disputes throughout the Pacific Southwest.

When you want a skilled and dedicated attorney-mediator at the negotiating table for your personal injury, real property, employment or other litigation, contact Markus • Kruis • Mediation at 619.239.2020. Where you’ll reach accord with satisfaction.

MARKUS • KRUIS
♦ ♦ MEDIATION ♦ ♦
Accord & Satisfaction™

402 W. Broadway, Suite 700 • San Diego, CA 92101 • Phone: 619.239.2020 • Fax: 619.239.5050
www.agreement.com
## TABLE OF CONTENTS

### FEATURES

**16** Fantasy Land: Contractual Development in Online Gaming  
Virtual worlds challenge intellectual property rights.  
By Eric Overholt

**26** Blawg On: A Survey of Legal Web Logs  
The number of legal blogs is rising every minute.  
By Alice Solovay

**28** Standards of Decency: Dress Codes in the Professional World  
The point of professional dress is to make you look like an instrument of your profession.  
By Candace Carroll

**32** Cover Story: Meet the Bar’s New President  
SDL spends some quality time with Jill Burkhardt.  
By James W. Talley

**44** It Was the Best of Times, It Was the Worst of Times: Racing Against Diabetes with Terry Sutton  
The “World’s Luckiest Man” talks about his cross-country bicycle ride.  
By Alice Solovay

**48** Office Holiday Parties  
Tis the season to celebrate – with caution.  
By Michael Fuller

**52** Meet, Greet & Learn: Law Students and the Bar  
In a competitive job market, connections and networking are priceless.  
By Joel W. Christiansen

**On the Cover:**  
At the Lowell Davies Festival Stage, Jill Burkhardt awaits her upcoming role as Bar president.  
Photograph by Lauren Radack

### DEPARTMENTS

6 **Perspective**  
A colleague remembers Jane Hahn.  
By John Scherling

8 **President’s Page**  
The law students are coming!  
By Andrew S. Albert

10 **Letter to the Editor**

12 **Heard on the Street**  
Preparation and rituals help win cases for some superstitious lawyers.  
By Alice Solovay

14 **Briefly**  
SDL interviews Judge Desiree Bruce-Lyle.  
By Vic Bianchini

50 **MCLE Questions**

54 **Photo Gallery**

58 **Advertisers’ Index**

60 **Sustaining Members**

61 **Directory of Experts and Consultants**

62 **Rewind**  
In San Diego, all the world’s a courtroom.  
By George W. Brewster, Jr.

### FEATURE DEPARTMENTS

22 **MCLE: Tempest in a T-Shirt: The First Amendment and Equal Protection in Harper.**  
The interaction between harassment law and the First Amendment is a difficult one. Note: Questions for MCLE can be found on page 50.  
By Jason R. Frye

42 **Profile: The Esquires of Escondido**  
Amid rapid growth, Escondido lawyers stay “small” town.  
By Dean A. Schiffman

52 **Ethics: Cooking the Settlement**  
What happens when lawyers stray outside the recipe for permissible negotiation strategies?  
By Richard D. Hendlin and Luis E. Ventura
WE’VE GOT OUR CLIENTS COVERED.

CAN YOUR CURRENT BROKER PROMISE THE SAME FOR YOUR FIRM?

Thorsnes Bartolotta & McGuire sought a professional brokerage expert in current insurance trends and insightful market forecasts. The firm selected Ahern Insurance Brokerage (AIB), an independently owned insurance brokerage firm specializing in business and professional liability insurance for the legal community.

“When asked why Thorsnes Bartolotta & McGuire selected AIB, Vincent J. Bartolotta, Jr., founding partner, said, ‘Their knowledge, proven service and most importantly their integrity—I can trust what they tell me.’”

–Vincent J. Bartolotta, Jr.,
Founding Partner of Thorsnes Bartolotta & McGuire

AIB provides Thorsnes Bartolotta & McGuire with comprehensive insurance products including professional and general liability, property, workers’ compensation, employment practices liability insurance, and bonds.

AIB

AHERN INSURANCE BROKERAGE

REPRESENTING OVER 1,200 LAW FIRMS

TELEPHONE: 800.282.9786 x101
WWW.AHERNINSURANCE.COM
Of Laughter and Courage

I quit my job to work with Jane Hahn. Jane came to me last year with a proposition. She had co-tried and won a patent infringement case with the Washington, D.C.–based intellectual property firm Sughrue Mion. Sughrue wanted Jane to help open its new San Diego office, and Jane wanted me to help her.

Now, I liked my job at the U.S. attorney’s office. I worked with great people, had interesting cases, the pay and benefits were good, and, even after 15 years, I still enjoyed standing up in court and saying, “John Scherling for the United States.”

So why give that up? Because I knew that, working with Jane, we would build a great office, win a lot of cases and, along the way, have fun. I had worked with Jane at both Gibson, Dunn & Crutcher and the U.S. Attorney’s office, and I knew that once Jane set her sights on a goal it was hers. Growing up in Seattle as the eldest daughter of a father who was a counselor in a low-income elementary school and a mother who sewed the clothes of her four children, Jane literally swam to the top in high school with the fastest 100-yard freestyle in the country. She continued on as the first student from her school to attend Harvard and, ultimately, founded and managed her own dynamic and successful law firm, Hahn & Adema.

I also knew that Jane was smart. We’re not just talking about high intellect, but common sense, street-fighting smarts. And she had the guts to champion cases that other attorneys would reject as unwinnable, unpopular or unprofitable, such as the case of an elderly local businesswoman facing the loss of her hotel (the jury verdict amounted to more than $20 million and Jane received an Outstanding Trial Lawyer Award) or that of five U.S. Border Patrol agents fired for allegedly throwing rocks at undocumented immigrants (they were reinstated after arbitration).

Most successful people are bright and tenacious. But Jane also embodied an unusual and refreshing fusion of compassion, candor, enthusiasm and humor that not only got results in the courtroom but made working with Jane a joy. If you were anywhere near Jane you were guaranteed to hear her laugh, and you could not help laughing yourself. Tragically, Jane died in July at age 45 after her breast cancer—thought to be in remission—resurfaced.

With Jane’s inspiration, however, we’re still going to build a great office, win a lot of cases and, along the way, have some fun. Maybe not as much fun without Jane, but we’ll give it our best. ■

John Scherling litigates intellectual property cases with the San Diego office of Sughrue Mion and is of counsel to Hahn & Adema. He may be contacted at jscherling@sughrue.com.
Q: Powerful Client Development resources …

Such as Martindale-Hubbell®, the #1 service for identifying expert counsel

exclusive Research Solutions …

Including Shepard's® and The Wall Street Journal Online in association with LexisNexis®

customizable Practice Management tools …

Fully integrated services to drive productivity and profitability

the only NITA® endorsed Litigation Services …

Covering the litigation process in the way that litigators work

Where do you find them?

A: LexisNexis® Total Practice Solutions

lexisnexis.com/tps

A MEMBER BENEFIT OF

SAN DIEGO COUNTY BAR ASSOCIATION
The Law Students Are Coming, The Law Students Are Coming!

If we had only known then what we know now, how different would many of our career paths have been? How did we find our way (or is “stumble” a better verb) into our specialty areas of practice? How much would we have benefited from regular interaction with practicing lawyers in the legal communities where we attended law school?

The San Diego County Bar Association, in conjunction with the three law schools located in San Diego County—Thomas Jefferson, Cal Western and University of San Diego—have embarked on a bold initiative. Beginning with this school year, all students at our local law schools have been offered membership in the SDCBA, paid for by their law schools. We are now in the process of welcoming more than 2000 law students. Many of you participated in the welcoming reception for our law students on September 20 hosted by the Bar and well attended by our state and federal judges, along with our general membership. Several events are planned for the year, including “What They Don’t Teach You in Law School,” “How to Apply for a Summer Clerkship,” and advice on career planning. As part of their membership, participation in all Bar sections and many CLEs will be available to our law student members.

This process began in 2005 when our board of directors, motivated by the desire to increase law student participation, voted to reduce dues for law students. Past president Wells Lyman chaired the Law School Relations Committee this year and took this vision to the next level. Board member Lea Fields worked tirelessly on this project with the help of past president Chris Todd and board member Kristi Pfister. Their efforts were coordinated with the career development staffs of the three law schools with the goal of designing an all-inclusive program for the law students.

The most important aspect of the experience, and what will make the difference for our law students, is the direct contact these students have with our practicing lawyers, the members of the SDCBA. Toward that end, I ask all of you to take the time to share your experiences with our new law student members. Attend the events planned for our student members. Greet them at the sections and committee meetings. Welcome them at CLE events. Offer to answer their questions. Share your experiences.

The law is a business, but it is first a profession. When I began practice many years ago, I was taken by the willingness of lawyers to offer me their insights and their guidance. Although I was thrown into a competitive environment, I was impressed, motivated and encouraged by the many lawyers who extended a helping hand. It helped me through the difficult transition I faced as a young lawyer. Like all who came before me, I felt as though everyone knew more than me. Somehow I made it, in part due to the insights and support I received from my more experienced colleagues. I learned the valuable lesson of what separates the law, what makes it a profession, not merely a business. It helped me develop the pride I have always had in being a lawyer, part of the most noble of professions.

Please take the time to seek out our new law student members. Welcome them and encourage them. San Diego is not only America’s finest city, it is America’s finest legal community. Help to ensure that we pass this on to the next generation.

PS. With this, my last president’s column, I want to thank each of you for allowing me the honor of being your 2006 Bar president. I have enjoyed the most rewarding year of my professional life. You have given me memories that will keep me warm for a lifetime!
Nurturing the law.
FOUNDATION OF THE STATE BAR OF CALIFORNIA

The future of law is in your hands.

When you support the Foundation of the State Bar of California, you help build a better justice system for all Californians through law-related community projects, law school scholarships, and education programs for seniors, young adults, kids, and parents. Please stay involved. For information on how you can support the Foundation of the State Bar of California, visit www.fsbcal.org.

A message from West, a corporate sponsor of the Foundation of the State Bar of California, providing legal publishing and related services to California lawyers.
CALL TO ACTION!

Ever had the desire to see your name in print? Ever wonder how we come up with those fabulous features and departments every month? Ever think “I’d like to write for San Diego Lawyer some day”?

Well, here’s your chance to start the New Year on a new foot. Come to our editorial meetings and put your mark on the San Diego Bar’s magazine!

Where: San Diego Magazine offices, 1450 Front St. (downtown at Beech and Front)

When: The first Tuesday of every month, 5:15-6:15pm
Richard’s bank

understands the intricacies and demands of his legal profession

arranged the loans to remodel the firm and his home

provides a private banker who’s both resourceful and responsive

regards his client referrals as a personal responsibility

never settles for less than a perfect partnership.

Invest in you®

Banking Services • Trusts • Investment Management
Luanne B. Bas, Senior Vice President & Regional Director, San Diego Downtown Private Bank, (619) 230-3777
Carlee A. Harmonson, Vice President & Regional Director, Personal Trust, (619) 230-4579
Bob Emerson, Vice President & Regional Director, San Diego Private Bank, (858) 552-2042
Joni A. Kirk, Vice President & Regional Manager, Personal Trust, (858) 552-2063

This is not a commitment to lend. Loans subject to credit approval.

Visit us at unionbank.com
How do you assure a win? Preparation and talent will surely help, but maybe, just maybe, you can gain advantage in a less rational way. Michael Jordan always wore the baby blue shorts of his school, North Carolina, under his Bulls uniform for good luck. Perhaps attorneys could benefit from a similar plan? Superstition, rites, rituals? Couldn’t hurt!

The Red Tie. Bruce Henderson admits, “I will quite often wear my red ‘San Diego’ tie when I want good luck in a case.” Does it work? “I've come to believe that it works against, rather than for, me,” he jokes. “Nevertheless, I keep finding myself wearing it when I'm particularly nervous about an outcome. Does that mean that I'm perverted or that I'm masochistic?”

Court Case Candle. Leslie Gallagher purchased her “Court Case” candle in a magic shop in New Orleans. It promises to bring wins at trial, and she lights it for important cases. She also purchased an “Erzulie Danto” doll, her woman’s spiritual companion, said to be the strong female spirit incarnate. Perhaps good luck at trial and enhanced female powers can flow from Africa, to Haiti, to New Orleans, to San Diego, to the courtroom.

Goofy Time. Watching 6-foot-7-inch Michael Hungness, it is easy to imagine his college basketball-playing days. Hungness wears a Goofy-the-basketball-player watch to depositions. The second hand is Goofy's arm holding the basketball, perpetually inching toward a slam-dunk. “It’s fun to watch deponents and lawyers focus on my wrist, their necks twisting as they try to track Goofy's arm movement and their amusement when I catch their glance,” he explains. “And it eases them, turning an adversarial situation into a more congenial climate.”

Pick a Number. Elaine Heine admits to having two good-luck rites. “If there's a number to pick, I always pick something that ends with a two or is a derivative of two, Heine says, adding, “or the number two itself.” Heine’s other good-luck ritual? “I always kiss my children before a big hearing or settlement conference.”

The Money Suit. Dapper E. Scott Himelstein has utilized his secret gris-gris for the past five years. For every settlement conference, job interview and the first day of every trial, Himelstein wears his green suit. Green? “Olive green,” explains Himelstein, who affectionately calls the garment “the money suit.”

Under Wraps. Erika Hiramatsu insists, “I don’t really have a good-luck charm. … I do have a favorite suit that I wear because I feel good in it, it's more comfortable, I enjoy wearing it.” What does the “not-really-a-good-luck suit” look like? “If I describe it, people will keep watching and trying to guess ‘Is that the suit?’ so I’ll just keep it under my hat” (which, coincidentally, is a good place for a favorite suit).

Singing in the Car. Sierra Spitzer qualifies her “habit” by explaining, “It’s more tradition than superstition, but I make a point to release nervous energy on the car ride over to an important legal meeting by a good loud sing-along session to a favorite tune.”

Stop to Smell the White Carnation. Although Vincent Bartolotta Jr.’s signature ritual is a white carnation in his lapel, it’s less of an incantation than it is a reminder. For the 32 years following his service as a Marine in Vietnam, Bartolotta has worn the carnation whenever he wears a suit. “It’s my own private way of remembering, of recognizing the guys who didn’t make it back from Vietnam,” explains Bartolotta, “and it fulfills a promise I made to myself at that time to stop and smell the flowers.” When he feels tension during a trial, he reaches over, sniffs his boutonniere, and the stress dissipates. Dressed informally and therefore flower-less on a family visit to Pittsburgh, Bartolotta was surprised when his 87-year-old aunt brought out an old family photo album and showed him his grandfather, playing at an Italian club, wearing a white carnation. In Florida for a men's soccer tournament, Bartolotta was regaled with family stories of his paternal great-great-great-grandfather, who also wore a flower. Nature or nurture?

Alice Solovay, a staff writer for San Diego Lawyer who practices law in Ocean Beach, welcomes story ideas. E-mail her at alice@solovay.net
“King”
Stahlman
Bail Bonds

“Let Me Help You Out”

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.”

http://www.kingstahlmanbail.com/
Superior Court Judge Desiree Bruce-Lyle is assigned to Juvenile Delinquency. Born in Accra, Ghana, and raised in both Ghana and Zambia, she attended law school at the University of Zambia and in 1978 immigrated to the United States. She earned an LLM at Boalt Hall before taking the California Bar exam and becoming a deputy county counsel in San Diego. Later she was appointed to the workers’ compensation bench, and she was appointed a Superior Court judge in 2001.

Her husband is a mediator with the National Conflict Resolution Center, and together they enjoy the theater and movies and watching soccer—especially the Ghana team. Her eclectic choices for favorite musicians are Bob Marley and James Taylor, and her favorite author is Alexander McCall Smith, who writes a detective series about the number one ladies’ detective agency in Botswana. Columnist Vic Bianchini interviewed her recently.

What is the most important quality in a judge?
Integrity.

What do you enjoy most about the job?
I have a passion about what I am doing—the ability to talk to kids who come into courtroom. I try to get them to develop a sense of being and to believe in themselves. Through guidance and interaction, I try to make a difference in their lives.

What advice do you have for lawyers who appear before you?
Be prepared and be cognizant of courtroom conduct.

What is the most difficult aspect of the job?
The constant struggle to do what is right for the kids in the face of limited resources.

How did you learn about your appointment to the Superior Court?
I received a call from judicial appointments secretary Burt Pines. I was attending a workers’ compensation seminar at the time. Needless to say, I wasn’t able to stay and concentrate very long after that call.

What do young people teach you?
About how much we are in danger of losing our leaders of the future. But they do teach me hope. I have the opportunity through community outreach to come into contact with kids who are doing constructive things with their lives, and having contact with those kids gives me that hope.

What traits describe the best lawyers?
The ones who are consummate professionals.

Who is your life’s mentor and role model?
My dad. After serving for years as a Supreme Court justice in Ghana, there was a military coup that became a threat to judicial independence. He left for Zambia, started at the bottom of the ladder as a magistrate, and worked his way up the ladder all the way to the Supreme Court as a justice in Zambia.

What is your favorite quote?
“We have nothing to fear but fear itself.”

Update
After graduating from the University of San Diego Law School, Herbert Katz founded and was a senior partner of Hinchy, Katz, Witte and Wood before being appointed to the U.S. Bankruptcy Court here. In 1983, he left the bench to join Gendel, Raskoff, Shapiro & Quittner, a bankruptcy law firm in Los Angeles. When the firm disbanded, he continued practicing law in the Los Angeles area before retiring in 2003 and becoming a mediator. “I am working in the office each day and handle about three or four mediations (primarily business litigation) per week,” he says.

Vic Bianchini welcomes suggestions and feedback: veb@mediationjudge.com.
Moving forward to neutral.

Full-time neutral is now standard.

Andrew S. Albert has served the legal community, representing Plaintiffs and Defendants in a wide variety of litigation since 1978. He has now officially shifted gears, committed to serving as a full-time neutral and exclusive panelist with Judicate West.

His experience will help all parties find the common ground in any dispute. For scheduling, call Mark Kaufman, Judicate West case manager at (619) 814-1966, and find the resolution you and your clients are looking for.

(619) 687-2550 San Diego | (760) 729-7979 North County | www.albertmediation.com

©2006 Andrew Albert Dispute Resolution. All rights reserved.
Contractual Development in Online Gaming

BY ERIC OVERHOLT
When William Shakespeare wrote, “All the world’s a stage, and all the men and women merely players,” he could not have envisioned the intricate world of online video games.
Men and women are not just mere players in these virtual worlds; they create and customize virtual identities that actively shape the virtual world around them.

Teenagers across America have played “Dungeons and Dragons,” a role-playing game (RPG) that enables players to role-play with characters such as human warriors, stealthy rogues and magical elves.

What made the game so attractive was that the characters were fully customizable. Little nuances of the story were played out when each player assumed the role of his or her character. Each game created a unique story based on the character of the player’s alter ego. Each player actively created the storyline as the game progressed.

Today, RPGs are played on computers and video game consoles in homes all over the world. The paper and pencil of yesteryear’s games have been replaced in video games by top-of-the-line graphics. In-depth battle statistics and dice have been replaced by intricate battle systems defined by computer algorithms. Instead of talking across the table to each other, players now interact with other players via online chat.

Video game developers have created intricate RPGs in online worlds, offering even more possibilities and gaming experiences than the old paper-and-pencil games. These games are so massive, some boasting more than 10 million players, that they are called massive multiplayer online role-playing games (MMORPGs).

These online worlds are created using a client-server model. A player runs client software, which controls the player’s character. A server runs a persistent world. The persistent world is a virtual fantasy world that is used as the setting for the role-playing game.

While the game developers create the overall game content, the players wholly create the characters. Video game developers give players a blank slate with the ability to fully customize their own character. Players must choose the character’s profession, job and various other abilities. Much like an author, the video game players customize every detail of their character, including the character’s physical attributes, race, gender, skin color and height. This graphical representation of the character is referred to as an “avatar.”

Despite the level of originality and hard work that the players put into creating their character, most commercial MMORPGs, such as the popular “Final
Fantasy” game, expressly control a player’s intellectual property in the player’s character. To play “Final Fantasy XI,” players must agree to a term of service (TOS) agreement submitting that they do not own any intellectual property in their characters. The game’s software license agreement states that the game’s developer Square Enix shall be the “sole owner of any and all data you [the player] generate through your use of the … Service.” The agreement also forbids the transfer, rental or sale of a character to any third party. Any products that are “created from, based on, or in connection with the licensed software shall be the property of [Square Enix].”

Any attempt by players to assign their character or sell their character to another player will result in termination of the account. Also, any story that the player might create based on the player’s own adventures in this game also belongs to Square Enix. However, the terms of these types of license agreements are not always enforceable. These terms are presented to the players even before they install the game in a manner that is commonly referred to as “clickwrap,” a term derived from the more commonly known method of licensing that is called “shrinkwrap.”

Shrinkwrap agreements are printed on the outside of the software box or on the wrapping. The agreement between the software manufacturer and the user is created as soon as the user opens up the packaging.

A clickwrap agreement is posted on a computer screen, usually in a dialog box, before a software user installs the software. The agreement requires a manifestation of affirmative assent on the part of a user to either agree to the terms by clicking the “I Agree” button or reject the terms by clicking the “I Do Not Agree” button. To install the purchased software, the user must agree to the clickwrap license terms.

Enforceability of clickwrap terms has met with mixed success in the United States. In Comb v. Paypal Inc. 218 F. Supp. 2d 1165 (N.D. Cal. 2002), a clickwrap agreement with take-it-or-leave-it terms was found to be a contract of adhesion and therefore was held to be procedurally unconscionable. The availability of alternative sources was not enough to defeat a showing of procedural unconscionability. This means that even though players have the choice of playing a different video game, the agreement was still found to be an adhesion contract. The court also found that the provision giving Paypal sole discretion to unilaterally terminate and freeze accounts was substantially unconscionable.

Cases in other jurisdictions, such as ProCD Inc. v. Zeidenberg, 86 F.3d 1447 (7th Cir. 1996), have upheld clickwrap provisions. The court stated that the defendant had accepted the terms by clicking his approval and that he could have rejected the terms and returned the product.

One MMORPG called “Second Life” avoids the controversy over character ownership by expressly granting users the intellectual property rights to their own creations. “Second Life” focuses on creating living spaces and allowing for fully customizable environments. The game allows players to use a computer scripting language called Linden Scripting Language (LSL) to customize the game.

LSL allows players to create their own objects, behaviors, clothes, houses and more.
For example, a player could write a script to create a bowling ball, which is an object. The player then could write a behavior script to cause the bowling ball, once a character in the game picks it up, to fly around in a circle and shoot fireworks out of the finger holes. Players who create objects are expressly granted the right to own, bargain and sell their created objects and behavior scripts.

Unlike most other MMORPGs, “Second Life” encourages trading objects. The game developers have created a monetary system that is linked to real-life U.S. dollars. U.S. dollars can be exchanged for play money, called Lindens, in “Second Life.” According to O’Reilly Radar, a web site that focuses on new technology, the exchange rate was $314 Linden to $1 U.S. in May 2006. Players can use these Lindens in the game to buy user-created objects.

When bestowed with intellectual property rights and an economy of scale such as the one in real life, players can make a living by playing video games to sell their objects, scripts and characters. However, this is not legal with the majority of commercial MMORPGs, like “Final Fantasy XI,” which do not allow players to sell their items or characters. It will be interesting to see whether a new wave of video game consoles such as the Sony Playstation 3 and Nintendo Wii will bring home the intellectual property issues that are presented in MMORPGs.

Eric Overholt is a recent Thomas Jefferson Law School graduate. Currently he works as a law clerk at the firm of Hiden, Rott & Oertle in Mission Valley.
If a case is important to you, it’s important to us.

When a dispute is too important to be handled by anyone else, attorneys and their clients turn to The Resolution Experts at JAMS.

JAMS SAN DIEGO RESOLUTION EXPERTS

Hon. Thomas Ashworth III (Ret.)
Linda C. Fritz, Esq.
Hon. J. Richard Haden (Ret.)
Hon. Gilbert Harelson (Ret.)
Hon. Robert E. May (Ret.)

Hon. Kevin W. Midlam (Ret.)
Hon. Thomas R. Mitchell (Ret.)
Hon. Thomas R. Murphy (Ret.)
Hon. William C. Pate (Ret.)
John M. Seitzman, Esq.
Hon. Raymond F. Zvetina (Ret.)

619.236.1848 • www.jamsadr.com
SAN DIEGO RESOLUTION CENTER: 401 “B” Street • Suite 2100 • San Diego, CA 92101
May the government limit speech that creates a hostile environment for members of a group but is not directed at any particular person? The interaction between harassment law and the First Amendment is a difficult and unsettled one because much of what harassment law seeks to prohibit, the First Amendment seems to protect. Constitutional scholars have published countless articles analyzing the tension between these two domains, but few cases litigating such issues have actually been decided. One such case is the recent Harper v. Poway Unified School District, 2006 U.S. App. LEXIS 9879 (April 20, 2006), which looks at the above question as it arises in the special context of a public school. In Harper, the Ninth Circuit Court of Appeals addressed the issue of whether a Poway High School student had the right to wear, at school, a T-shirt expressing religious condemnation for homosexuality. In a split decision, the Ninth Circuit affirmed the district court’s decision to deny Chase Harper’s motion for a preliminary injunction to permit him to return to his school wearing the shirt; the underlying suit continues, however, and both sides of the case have compelling arguments.

The First Amendment and Equal Protection
As with many First Amendment suits, the court’s analysis in this case was closely tied to the factual context within which the plaintiff’s claim arose. On April 22, 2004, Harper wore a T-shirt to school to protest Poway High School’s decision to allow a student group, the Gay-Straight Alliance, to hold a “Day of Silence” to promote tolerance toward all students, regardless of their sexual orientation. On the front of Harper’s shirt was the handwritten message: “BE ASHAMED, OUR SCHOOL EMBRACED WHAT GOD HAS CONDEMNED,” and on its back: “HOMOSEXUALITY IS SHAMEFUL ‘Romans 1:27.’” When Harper refused to remove the shirt, his second-period teacher sent him to the school’s administrative office, where administrators isolated him in a conference room to study on his own for the remainder of the day for having violated the school’s policy against “hate behavior including derogatory connotations directed against sexual orientation.” (School administrators also suggested that Harper’s T-shirt violated California Education Code §201(a), which provides that “[a]ll pupils have the right to participate fully in the educational process, free from discrimination and harassment.”) Although Harper was not suspended and

in Harper v. Poway Unified School District
no record of disciplinary action was placed in his file, he sued, claiming that his First Amendment rights to free speech, the free exercise of religion, and freedom from establishment of religion had been violated.

In affirming the lower court, the Ninth Circuit applied the constitutional standard for evaluating the scope of a student’s First Amendment rights to free expression in the schoolhouse set forth in Tinker v. Des Moines Indep. Community School District, 393 U.S. 503 (1969). In Tinker, the Supreme Court held that students could not be suspended from school for wearing black armbands protesting the Vietnam War, famously declaring that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” But the Tinker court also recognized that while such rights exist, they must be limited where the speech in question would “impinge on the rights of other students.”

First, Kozinski denied that Poway Unified School District (PUSD) students have a general right not to be offended. While some students were likely offended by Harper’s T-shirt, Kozinski maintained that the “‘rights of others’ language in Tinker can only refer to traditional rights, such as those against assault, defamation, invasion of privacy, extortion and blackmail, whose interplay with the First Amendment is well established.”

Kozinski maintained that the “‘rights of others’ language in Tinker can only refer to traditional rights, such as those against assault, defamation, invasion of privacy, extortion and blackmail, whose interplay with the First Amendment is well established.”

“Impinge on the rights of other students” or would result in “substantial disruption or material interference with school activities.” It was these principled limits on the rights of students to freely express their views that the Ninth Circuit majority invoked in deciding Harper.

In applying this standard to the facts of this case, Judge Stephen Reinhardt’s majority opinion based its holding not on the alleged disruptions caused by Harper’s T-shirt (as the court below did) but on a finding that the T-shirt’s message would “collide with the rights of other students in the most fundamental way.” Reinhardt analogized verbal assaults on sexual orientation with those on race or religion, reading them all as attacks on a core identifying characteristic that has the potential to injure the welfare of students who are so characterized. In supporting this finding, the court cited studies describing the harassment that gay students face, the psychological harm it may produce, and evidence that pervasive harassment of this sort is a cause of substantially lower academic performance among high school students subjected to it. For the majority, then, the central constitutional issues at stake in the case concerned the rights of minority students to equal protection, not the rights of student speakers to express their views.

Judge Alex Kozinski’s powerful dissent rejected this analysis and argued instead that this application of the school’s policy against “hate behavior” amounted to an instance of impermissible viewpoint discrimination on the basis of a student’s newly promulgated right to be free from certain offensive speech.

With these arguments in mind, I met with attorneys on both sides of the legal battle over Harper’s T-shirt: Jack Sleeth, a partner with Stutz Artiano Shinoff & Holtz and one of the lead attorneys representing PUSD, and Robert Tyler, general counsel at Advocates for Faith and Freedom, a non-profit law firm representing Harper that is dedicated to protecting religious liberty and Christian family values.

Unsurprisingly, perhaps the only point of agreement between these two attorneys is that Harper is something of a test case to determine whether gays are to receive the protection that the state thinks they should. Sleeth believes he has a strong case for the constitutionality of such laws, arguing that the school did not censor Harper’s T-shirt for the viewpoint it expressed but because its message infringed upon the rights of other students “to participate fully in the educational process, free from discrimination and harassment.” But Tyler argues that whatever the school’s motive, because federal constitutional law trumps state law, any state statutory right gay students enjoy not to be offended must give way where such a right comes into conflict with First Amendment prohibitions on viewpoint discrimination.
In lawsuits there are always winners and losers, but what is interesting about this case is that however the underlying suit is decided, the result will likely leave unsatisfied certain intuitions many of us have about the scope of our constitutional protections. One does not have to agree with the viewpoint that Harper’s T-shirt expressed to see the force of UCLA Law professor Eugene Volokh’s observation that “a First Amendment limited by rights to be free from offensive viewpoints may be used as a tool for suppression of one side of public debates (about same-sex marriage, about Islam, quite likely about illegal immigration and more) while the other side remains constitutionally protected and even encouraged by the government.”

At the same time, even Judge Kozinski admits “sympathy” for “defendants’ position that students in school are a captive audience and should not be forced to endure speech that they find offensive and demeaning.” And if it can be shown that such speech is not only offensive to such students but also infringes upon their rights, then there may be no clean way of resolving the constitutional dilemma this case poses.

Although the Ninth Circuit affirmed the district court’s decision to deny Harper’s motion for a preliminary injunction, the district court has not yet addressed his underlying First Amendment claims, and the ultimate outcome of the district court case—to say nothing of the appeals that are likely to follow—remains undecided. Rulings on two motions for summary judgment are pending in the district court case, with a trial to follow only if both motions are denied. Because of the complexity of the constitutional issues raised by this case, and because both attorneys Sleeth and Tyler are committed to exhausting all necessary and available appellate options to secure a win for their respective clients, a quick resolution of the underlying issues in this case is unlikely.

Jason R. Frye, currently a panelist at Appellate Defenders Inc., focused on First Amendment issues as a law student at Boalt Hall and has a Ph.D. in philosophy from UCSD. He can be reached at jrfrye@gmail.com.
The number of legal blogs is rising quickly, up in the hundreds – if not thousands – by the time this article is published. Legal blogs, also called “blawgs,” are web logs that include comments about subject matter having legal implications. Blawgs are often created by lawyers as a means for developing new business or to influence policy. There is a blawg for most areas of law. The following is a diverse list of blawgs that legal practitioners, policy makers, and businesses may find informative.

www.blawg.org — Online directory and guide of legal blawgs.
http://juris.metanovus.com — Juris Novus provides headlines and news from multiple blawgs.
http://www.scotusblog.com/movabletype/ — SCOTUBlog spotlights the U.S. Supreme Court.
http://samuelalito.blogspot.com/ — Includes outspoken comments from Judge Samuel Alito, Jr. of the U. S. Court of Appeals for the Third Circuit.
http://volokh.com — The Volokh Conspiracy is legal commentary from UCLA's Eugene Volokh and a host of other law professors; leans conservative/libertarian.
http://www.denniskennedy.com/blog/ — Blawg by Dennis Kennedy, the 2001 TechnoLawyer of the Year by TechnoLawyer.com.
http://www.inter-alia.net/ — Inter Alia is an Internet legal research blog that offers a free weekly newsletter and provides references to up-and-coming blogs through its blawg of the day.
http://barelylegalblog.blogspot.com/ — Blawg run by two recent law school grads.
http://www.opiniojuris.org/ — Opinio Juris is dedicated to reports, commentary, and debate on current developments and scholarship in the fields of international law and politics.
http://patentlaw.typepad.com/ — Patently Obvious is a patent law blawg.

The blawg list is provided for information only and does not reflect the legal opinion of the author or San Diego Lawyer magazine. Readers are encouraged to submit articles regarding legal web sites and blogs that are relevant to technology, policy, and business to Al Harnois at aharnois@qualcomm.com.
FRAGOMEN
Fragomen, Del Rey, Bernsen & Loewy, LLP

Leading the Way in
Global Corporate Immigration

U.S. IMMIGRATION  GLOBAL IMMIGRATION  I-9 COMPLIANCE  EXPORT CONTROL

Hirson Wexler Perl
ATTORNEYS AT LAW

FRAGOMEN merge together as One.

For more information, please contact:
Gary B. Perl, Esq.
11238 El Camino Real, Suite 100
San Diego, CA 92130
Phone: (858) 793-1600
Email: gperl@fragomen.com
www.fragomen.com

Boston, MA
Brisbane, Australia*
Brussels, Belgium
Chicago, IL
Coral Gables, FL
Frankfurt, Germany
Dallas, TX
Hong Kong*
Irvine, CA
Iselin, NJ
London, UK*
Los Angeles, CA
Melbourne, Australia*
New York, NY
Perth, Australia*
San Diego, CA
San Francisco, CA
Santa Clara, CA
Singapore*
Stamford, CT
Sydney, Australia*
Troy, MI
Washington, DC

* Affiliated through Fragomen Global Immigration Services, LLC
When I’m in court or at gatherings with other women attorneys, I often see women attorneys who simply are not dressed professionally. This is not really surprising. All our lives we’ve been bombarded with the message that what makes a woman valuable is being beautiful and sexy. As a result, most of us have spent our lives attempting to look beautiful and sexy. The chances are, even in law school nobody told us anything different. Certainly, the last time I judged moot court at a local law school, some of the female participants were dressed as though they were about to go clubbing.

If you think about the rationale behind professional garb—whether it’s judges’ robes, clerical collars or business suits—the point of it is to diminish your individuality and make you look only like an instrument of the profession you serve. That’s why the height of professional dress for lawyers is a dark business suit: it makes us look neat, tailored and serious—important not because of how beautiful we are but because of our professional status.

While I’m not suggesting that women attorneys wear dark suits all the time, there are nevertheless standards for professional dress, which our colleagues, our courts and our clients expect us to follow. Also, a lot of us remember those not-so-long-ago days when male lawyers didn’t take us seriously, hit on us continually, and refused to hire us because their wives “wouldn’t put up with it.” We who spent so many years overcoming that sex-object stereotype are put off by women attorneys who dress in a way that seems to validate that stereotype.

So here are my ten tips—all based on actual observation—for achieving a professional look:

BY CANDACE CARROLL
1. Do not wear anything (except pantyhose) that is skin tight. Remember, the point is NOT to look sexy, but to look businesslike. I recently saw a young woman wearing a dark pantsuit in court which looked completely professional until she turned around, whereupon her pants were revealed to be so tight in the rear that nothing – no wrinkle, no cleft, no dimple – was left to the imagination. This, believe me, is not a professional look, and I’ll bet the judge and the jury didn’t think so either.

2. Do not wear extremely short skirts. Knee length is short enough. Otherwise, too much is revealed when you bend or sit.

3. Do not wear extremely low-cut blouses. A professional look never includes cleavage.

4. Do not wear a camisole under a jacket, pretending that it’s a blouse. Camisoles are cut much lower than blouses, and everyone can tell it’s a camisole even if you’ve kept your jacket on. This is not a professional look.

5. Avoid sexy hairdos. Very long, thick, wavy hair falling below your shoulders does not look professional. Put it up or pull it back. Shorter or jaw-length hair is safer, and makes you look more groomed. This is not to say that you cannot look feminine. Fluffy, wavy or curly hair is fine, as long as there isn’t too much of it, it doesn’t fall over your eyes, and you don’t look as if you’ve just gotten out of bed.

6. Most see-through clothing is not professional. I have occasionally seen somewhat sheer blouses over opaque camisoles which pass muster, but in general, revealing clothes are not professional. (I once saw a woman wearing a largely transparent blouse present oral argument in a federal Court of Appeals. The judges, all male, appeared so alarmed and distracted that I don’t think they heard a word she said).

7. Bizarrely painted nails are a no-no. Forget the polka dots, patterns, and two-tone jobs. Attractively-shaped nails in a reasonably neutral color are best.

8. Unusually high heels (more than 2 inches), platform shoes, and other unusual footwear that calls attention to itself (for example, straps that wind halfway up the leg) do not look professional.

9. Heavy, musky perfume is not professional.

10. Do not wear anything – even on casual day – that looks like underwear; that involves extra straps or layers of apparent underwear peeking out at the neckline or below the hem of your blouse; or that exposes, or threatens to expose, a rift of skin at the waist or hip. It may be the current fashion, but it’s not a professional look.

And a final word: in my experience, you’d be wise to remember these rules for all events connected to your profession, including the office picnic and the Christmas party. Obviously, a black-tie Christmas party permits you to wear a spaghetti-strap dress and/or a lower neckline than you’d wear to the office, but you should still use good judgment. If your professional colleagues see you dressed like Madonna in concert, you may permanently change your image in their minds, and the image they remember won’t be professional, no matter how you look on Monday morning.

Candace Carroll is an appellate attorney with Sullivan, Hill, Lewin, Rez & Engel in San Diego.
DISPUTES CAN BE COMPLICATED.

MIKE DUCKOR
CAN HELP YOU FIND A WAY OUT.

For over 20 years, Mike has been retained for assignments throughout the State of California and Western States as a private mediator and arbitrator in complex construction defect litigation, employment-related claims, financial services matters, securities litigation and professional liability cases.

- Fellow of the American College of Civil Trial Mediators
- Fellow of the International Academy of Mediators

401 West A Street Suite 2400
San Diego, CA 92101
Telephone (619) 231-3666
Facsimile (619) 231-6629
duckor@dsmwlaw.com • www.dsmwlaw.com

RINGLER ASSOCIATES™
SAN DIEGO • LAS VEGAS
STRUCTURED SETTLEMENTS

... the nation's oldest and largest settlement annuity company ... 
built by locally-based experts providing personal service...

Congratulates Gayle Blatt, Esquire, 
of the Law Offices of
Casey, Gerry, Schenk, Francavilla, Blatt & Penfield

On Structuring $1,100,053.00 ($2,720,429.00 in Tax-Free Expected Future Benefits) for her clients during the past year.

Gayle Blatt, Esquire

Manuel R. Valdez CSSC  
MFValdez@ringlerassociates.com  
California Insurance License # 0623820

Manny J. Valdez CSSC  
MJValdez@ringlerassociates.com  
California Insurance License # 0C76457

610 Ash Street, Suite 1900, San Diego, CA 92101
877-231-3334 • 619-231-3334 • Fax 619-231-3335

www.ringlerassociates.com
INDEPENDENT RETIRED JURIST AVAILABLE FOR DISPUTE RESOLUTION

Mediations • Arbitrations
Settlement Conferences
Trials • Discovery
Special Master References

Hon. Gerald J. Lewis (Ret.)
600 W. Broadway, Suite 1800
San Diego, CA 92101
Phone: (619) 238-2843
Fax: (619) 696-7419

Hon. Howard B. Wiener (Ret.)
501 West Broadway, Suite 1900
San Diego, CA 92101
Phone: (619) 338-6561
Fax: (619) 338-6594
Justice HBW@aol.com
www.howardwiener.com

Hon. Charles W. Froehlich Jr. (Ret.)
655 W. Broadway, Ste. 1600
San Diego, CA 92101
Phone: (619) 699-5780
Fax: (619) 234-4786
info@charlesfroehlich.com

Hon. Herbert B. Hoffman (Ret.)
750 B Street, Suite 3300
San Diego, CA 92101
Phone: (619) 595-8025
Fax: (619) 595-5450
judgehbh@aol.com

Hon. Vincent P. DiFiglia (Ret.)
101 W. Broadway, Ste. 810
San Diego, CA 92101
Phone: (619) 236-1321
Fax: (619) 236-1170
vpd@difiglia-milliken.com

Hon. Alice D. Sullivan (Ret.)
12528 High Bluff Drive, Suite 300
San Diego, CA 92130
Phone: (858) 752-3601
Fax: (858) 792-1248
ads@privatejudge.com
www.privatejudge.com

Hon. James R. Milliken (Ret.)
101 W. Broadway, Ste. 810
San Diego, CA 92101
Phone: (619) 236-1321
Fax: (619) 236-1170
jrm@difiglia-milliken.com

Each jurist serves separately and independently of every other jurist listed. There is no sharing of fees or expenses, except for the cost of placement of this announcement.
Jill Burkhardt with husband
Bill Vornsand and sons
Adam, 9, and Alex, 12.
Meet the Bar’s New President

BY JAMES W. TALLEY

The San Diego County Bar Association’s new president, Jill Burkhardt, is the fifth of six kids in a small-town family from Mequon, Wisconsin, on the outskirts of Milwaukee. She says that negotiating the complex interrelationships between the eight members of her family helped her develop "people skills."

After high school, Burkhardt spent four years at the University of Minnesota, where she put herself through school by working in the university’s food service department and earned a bachelor’s degree in political science. She found time to volunteer at a rape crisis center, an experience that she described as very rewarding.

Burkhardt attended Harvard Law School, and while in law school, she volunteered at the local legal aid society and worked as a teaching assistant and research clerk. She was also active with the Women’s Law Association and involved in campus politics, taking part in rallies and marches on the issues of the day, including apartheid, violence against women and insufficient diversity among tenured professors at Harvard Law.
As Judge Bashant states, “Jill is extremely bright, hardworking, loyal and very diplomatic.”

You don’t have to talk to Burkhardt for long before you realize you don’t really know Burkhardt unless you know “Jill and Bill.” Burkhardt first met and started dating Bill Vornsand in high school when they were both 16. During Burkhardt’s second year of law school, Vornsand moved to San Diego and Burkhardt split her summer between clerkships with the San Diego civil defense firm of McGinnis, Fitzgerald, Rees, Sharkey and McIntyre and the U.S. Attorney’s office. Upon graduation, Burkhardt joined the San Diego office of Baker and McKenzie, which at that time was the world’s largest law firm. For the first time in three years, Jill and Bill were living in the same city. They were wed within a year and have been happily married for the past 17 years. They have two sons, Alex, 12, and 9-year-old Adam.

In her years with Baker and McKenzie, Burkhardt was a civil litigator with a strong employment law focus. When Burkhardt joined the firm, half of its members were women, making it a very accommodating place for a newly admitted female lawyer looking for attorney role models. She acknowledges fellow firm members Abby Silverman, Chuck Dick and Cynthia Bashant (now a Superior Court judge) as influential mentors who taught her the verities of the practice of law. She obtained valuable trial experience, not only representing Baker’s clients but also as a volunteer prosecutor for the San Diego district attorney and county counsel offices. These experiences whetted her appetite to become a criminal prosecutor, which became a reality in 1994 when she was hired as an assistant U.S. attorney with her first assignment in the Trial Section. She is currently assigned to the Narcotics Enforcement Section where she investigates and prosecutes major international drug organizations.

Burkhardt was first exposed to San Diego County Bar organizations when
fellow associate Abby Silverman invited her to attend a Lawyers Club of San Diego luncheon. Burkhardt soon got involved with Lawyers Club’s committees and was later elected to a three-year term (1994-1997) on the board of directors and served as its president in 1997-1998. Burkhardt notes that it was both an honor and a thrill to have been president during the Lawyers Club 25th anniversary year. She points out that her committee and board membership, as well as her presidency of the Lawyers Club, provided great training for her last four years of service on the San Diego County Bar board and prepared her to serve as president. Burkhardt continues to serve on the Lawyers Club advisory board. She has also provided pro bono legal service with the San Diego Volunteer Lawyer Program, including its restraining order clinic.

After taking a few years off from full-time work as an assistant U.S. attorney and her leadership role with Lawyers Club, she was elected to the San Diego County Bar board in 2002. Her three-year term was marked by her considerable involvement in (1) conducting a membership survey in her first year; (2) serving both as secretary and co-chair of the board’s membership committee in her second year, during which the County Bar’s membership increased by 1000 members; and (3) serving on the Governance Committee in her third year, which led to establishing a new one-year president-elect position, a new immediate past president position and a leadership outreach committee.

If any conclusion can be drawn about what the San Diego County Bar can expect from Burkhardt as its president, it is simply that you can’t typecast her. While she aggressively enforces the law, she simultaneously supports changes to ensure equality, both in opportunities for and treatment of those who come in contact with law enforcement. While proud that she graduated from Harvard Law School, she is more proud of her service to the less fortunate, which has included volunteer work at the rape crisis clinic and the San Diego Volunteer Lawyer Program. She is proud to be an assistant U.S. attorney but is equally proud of being the mother of two wonderful kids and a partner to her husband. Burkhardt is proud of her leadership roles with both Lawyers Club and now the San Diego County Bar Association, but she is more concerned with making the practice of law an attractive goal for people of color and the disadvantaged.

Judge Bashant, her former associate and mentor, was not surprised at all that Burkhardt was elected as the SDCBA president. As Judge Bashant states, “Jill is extremely bright, hard-working, loyal and very diplomatic.” Bashant also praises Burkhardt for her incredible facility for multitasking, including balancing her volunteer and Bar leadership work with her challenging U.S. Attorney’s office career, while simultaneously raising a family.

Silverman, former managing partner at Baker and McKenzie, says she “recognized Jill’s leadership and potential soon after she joined the firm” and credits Burkhardt with “having a team player mindset and never letting her ego get in the way of giving others the credit they are due.”

Given Burkhardt’s leadership record with both Lawyers Club and the last four years with the San Diego Bar Association board of directors, her 2006-2007 presidential year is guaranteed to be dynamic, productive and fun!

James W. Talley, an attorney with Escondido-based Galyean, Talley & Wood, is a former member and vice president of the San Diego County Board of Directors.

She says that negotiating the complex interrelationships between the eight members of her family helped her develop “people skills.”
### Arbitration Mediation

**Special References**

Vincent P. DiFiglia  
James R. Milliken  

Judges of the Superior Court, RETIRED  
Members of the American Board of Trial Advocates  

101 West Broadway, Suite 810  
San Diego, California 92101  
Tel: 619-236-1321 Fax: 619-236-1170  
www.DiFiglia-Milliken.com

Effective mediation can make even the biggest conflicts disappear.

Our renowned mediators include:  
Meredith Alcock, Esq.  
Robert F. Ames, Esq.  
Douglas H. Barker, Esq.  
Shaun K. Boss, Esq.  
William Eddy, Esq.  
Greta Giavis, Esq.  
Timothy Riley, Esq.  
Thomas E. Sharkey, Esq.  
Herbert J. Solomon, Esq.  
Colin W. Wied, Esq.

### Presidential Briefing

A few interesting bits of information about the new president:

**Q.** Favorite web site:  
**A.** TruthorFiction.com

**Q.** Favorite legal movie:  
**A.** To Kill a Mockingbird

**Q.** Favorite vacation spot:  
**A.** Paris

**Q.** Two newsworthy classmates from Harvard Law:  
**A.** Yvonne Campos (Superior Court judge and former White House fellow) and Susan Povich (just because she was the daughter of Connie Chung and Maury Povich)

**Q.** Toughest challenge:  
**A.** Balancing family and career

**Q.** What she would do with a $10,000 cash gift:  
**A.** Take a fabulous family vacation

**Q.** Person she would like to interview:  
**A.** Sandra Day O’Connor

**Q.** First question she would ask during that interview:  
**A.** Would you come and speak at a County Bar event?

**Q.** Trivia about herself:  
**A.** Nearly died in second grade due to burst appendix

**Q.** Country she would most like to visit:  
**A.** New Zealand
Discover

Intellectual Property

It all starts with an idea...

Explore the principles of intellectual property

For novices or seasoned professionals—grow your knowledge in the areas of:
• Patents  • Patent Prosecution
• Trademarks  • Copyrights

With UCSD Extension’s Professional Certificate in Intellectual Property you will:
• Learn essential concepts in patents and trademarks
• Discover the process of obtaining and protecting copyrights
• Focus on your area of interest, whether it’s the arts, bioscience or technology
• Earn MCLE credit with each class

Learn more at a FREE info session:
Wednesday, November 29, 6:30 – 7:30 p.m.
Saturday, December 9, 10:00 – 11:00 a.m.
Thursday, January 4, 6:30 – 7:30 p.m.
Location: 6925 Lusk Blvd., San Diego, 92121

extension.ucsd.edu/law

For more information:
Felicia Arredondo
(858) 882-8027
farredondo@ucsd.edu

make
mole hills
of mountains...

MEDIATE

HON. THOMAS R. MURPHY
401 B STREET SUITE 600
SAN DIEGO, CA 92101
TEL 619 236 1848 FAX 619 236 9032
Q. Over the past few years, our membership has heard a lot about the existing Bar center and plans to develop a new one. What can you tell us about the current status of this issue?

A. Our current Bar center has served our membership well for 16 years. Unfortunately, it is an aging building with substantial structural issues, which we cannot ignore. The Bar Association has established a building and facilities committee comprised of board members and experts from the San Diego legal and real estate development communities to analyze the Bar’s facilities needs and options.

Q. What has this blue ribbon committee been tasked with doing?

A. The committee has been asked to identify the facilities needs of the Bar, to assess the state of the Bar building at 7th and A, and to evaluate all possible options. These include repairing and remodeling the current building or possibly acquiring or developing a new Bar center to best meet our members’ needs.

Q. It has been nearly seven years since a female president led the San Diego County Bar Association. What are your thoughts on that gap?

A. Well, I am disappointed that there was such a long gap between Stephanie Sontag and myself, but I’m considerably more concerned that the Bar has had only one president of color in its entire history. I know the Bar is committed to being inclusive, not only in its membership but also in its leadership, but when our leadership doesn’t consistently reflect the diversity of our membership and our legal community, it sends the wrong message. One thing I am very interested in is increasing the attractiveness of the Bar, the San Diego legal community and the practice of law in general to people from all backgrounds.

Q. How do you plan to advance that goal during your presidency?

A. The Bar has been presented with a great opportunity. Our three local accredited law schools—USD, Thomas Jefferson and Cal Western—have offered to pay or subsidize the Bar dues for their students in order to encourage all interested students to be members of the Bar. If we make the most of this opportunity, we have the potential to show all local San Diego law students what the Bar has to offer. This has the potential to increase the diversity, not only of the Bar’s members but also the pool of qualified Bar leaders. In addition, we will continue to pursue Bar leadership diversity through the recently established outreach committee. I am also very interested in supporting...
pipeline initiatives—these are efforts directed at increasing diversity among attorneys by creating more opportunities for people of color and people from challenged backgrounds to excel at every point in the “pipeline”—not just in law school but in college and high school.

Q. How would you describe your leadership style?

A. I am most fortunate to have served on four Bar boards, each with a wealth of talent and experience. The other directors with whom I serve are unbelievably intelligent, articulate and devoted. I am filled with respect and admiration for each of them. In that context, how can anyone “lead” with anything but great respectfulness and humility? I believe that if I simply listen more than I speak, it is inevitable that this board will reach the highest quality decisions.
Distance from Escondido to Courthouses (miles)
Downtown: 30; El Cajon: 36; North County: 13; South Bay: 37

Escondido Facts
Located 18 miles inland, 100 miles south of Los Angeles, and 30 miles northeast of San Diego. 37 square miles. Population: 141,000
Escondido claims a mix of small town friendliness and big-city buzz, surrounded by avocado and citrus groves. Lori Holt Pfeiler, Mayor.

History
Escondido was discovered by Spanish explorer Juan Bautista de Anza, in 1776. The area later became part of “The Devil’s Corner,” a land grant in 1843 by the Mexican Governor Manuel Micheltoren. In 1886, the Escondido Land and Title Company acquired the land grant, laid out the town site, and divided the valley into small farms. Escondido was incorporated in 1888.

Of Interest
Escondido History Center (321 North Broadway), 2 lakes (Dixon Lake and Lake Wohlford), golf courses (Eagle Crest Golf Club, Escondido Country Club, Meadow Lake Golf Club, Reidy Creek Golf Course), wineries (Belle Marie Winery, Ferrara Winery, Orfila Vineyards, Vineyard at Escondido), San Diego Wild Animal Park, the California Center for the Arts, Escondido, Welk Resort Center. Escondido was once named by Money Magazine as the Best Place in the West in which to retire.

Events
Cruisin’ Grand (Friday night display of vintage cars along Grand Avenue), Dixon Lake Trout Derby (November), Escondido Civic Faire (May), Escondido Street Faire (May and October), Farmers Market (Tuesday on Grand Avenue), First Night Escondido (family-oriented New Years Eve celebration), Grape Day Parade & Festival (first Saturday after Labor Day), Independence Day Celebration, Jaycees Christmas Parade.

Bar Association of Northern San Diego County Web Site
www.bansdc.org

City Web Site
www.ci.escondido.ca.us

Escondido Attorneys apply their best legal skills in serving their clients’ needs. They volunteer to assist in projects which help the city, and they provide hours of pro bono help to people in need who cannot afford to pay.

Vivian Velichkoff Doering

I have a home office and my wife is a stay-at-home mom for our two girls. Escondido has a small town feel which is great for raising a family. I enjoy taking the kids to “Cruisin’ Grand” on Friday evenings to check out the classic cars and get a hot chocolate from His Place Cafe. The Wild Animal Park is nearby. My wife and I also enjoy relaxing at the local restaurants on Grand Avenue or wine tasting at Orfila Vineyards & Winery.

Brian Simpson
I love having an office downtown. I can walk to great places to meet colleagues and friends. Within two blocks we have everything from basic to gourmet fare, including Vincent’s Sirinos, Champion’s, 150 Grand, A Delight of France Bakery & Bistro, R. O’Sullivan’s Irish Pub, Continental Deli, and Bistro 221. Can you tell I like to eat?

Jacqueline Skay
Law Offices of Jacqueline Skay

I love practicing law in Escondido. I couldn’t handle the traffic elsewhere. I’ve got a three-mile trip between my daughter’s school, work and home. I can be at the beach, the mountains, or the desert in less than an hour. The attorneys in Escondido share a camaraderie that you don’t see in other towns.

Stacy Edwards
Black & Edwards

Escondido is a growing, dynamic city that will never lose its small town feel. Walk down Grand Avenue any day and you are sure to bump into a colleague taking their clients to lunch. Escondido means “hidden” and the great working environment for Escondido attorneys is a well-treasured secret.

Jeffrey Epp
Escondido City Attorney’s Office

Escondido has preserved its rich traditions and small town identity. There is a great deal of pride that comes with protecting the legal interests of the citizens in this community. Best downtown lunch: R. O’Sullivan’s Irish Pub or La Tapatia Restaurant & Cantina, on Grand Avenue.

Scott Liljegren

Dean Schiffman is a San Diego attorney and expert witness. He can be reached at his web site, www.LAWandNUMBERS.com.
Attracted by the For Sale sign, Tom J. Efferson walks into the Cajun restaurant, Louisiana, to discuss its purchase from Nap O. Leon. Leon invites Efferson to inspect the restaurant. In moving an old stove, Efferson discovers what appears to be a trove of amazing Cajun recipes, which he concludes will make for a fantastic cookbook. He makes no mention of them to Leon, returns the recipes to their location and moves the stove back into place.

A few days later, Efferson has his lawyer, John Adams, communicate a $200,000 offer to Leon. Leon asks his attorney, John Hancock, to handle negotiations and to make a counteroffer of $500,000, which he does in inordinately large penmanship. Adams makes a counteroffer of $275,000, stating that this is the maximum Efferson will pay. Unbeknownst to Hancock, Efferson had authorized Adams to agree to as much as $400,000 for Louisiana because of the anticipated profit from publishing the recipes, the existence of which neither has disclosed.

Leon is incensed by the $275,000 offer and instructs Hancock to inform Adams that the king of Spain has offered $325,000, even though there have been no discussions with the king (other than the normal Friday evening takeout order of jambalaya). Induced by this...
false outside offer, Efferson instructs Adams to make a $315,000 counteroffer, which Leon accepts.

Adams drafts the purchase agreement but mistakenly types in $325,000 instead of $315,000. Hancock and Leon notice the error but say nothing. When Adams receives the fully signed agreement, he notices the mistake and calls Hancock. Hancock states that the agreed price was $325,000 and that “a written deal is a written deal.” Efferson sues for reformation of the agreement.

Judge Ben Franklin hears a settlement conference during which Hancock states to the judge that the agreed price was $325,000. He nonetheless offers to settle at $320,000. Adams responds that he only has authority for the agreed price of $315,000. After further talks, the case settles at $317,000.

With the use of his special bifocal ethics glasses, which he invented, Judge Franklin looks into the past and sees the events and posturing that has taken place. He holds a special meeting with the two attorneys. “The both of you have committed some potentially serious ethics violations during negotiation,” he says. The attorneys are shocked. “Mr. Adams, you made some potentially material misrepresentations and omissions during purchase negotiations. Not only did you fail to mention the Cajun recipes, you also stated to Hancock that $275,000 was the most Efferson would pay. Then in the judicial settlement conference, you stated to me that your settlement authority was $315,000. However, you had been given authority for up to $400,000.”

“Wait a minute,” responds Adams. “These comments are fair play in negotiations.”

“Do not be so certain,” says Franklin. “ABA Model Rule 4.1(a) prohibits lawyers from knowingly making false statements of material fact or law to third persons. The rule acknowledges that certain types of statements, such as estimates of price or a party’s intentions as to an acceptable settlement, are ordinarily not considered statements of material fact.” (See ABA Formal Op. 06-439, “Lawyer’s Obligation of Truthfulness When Representing a Client in Negotiation: Application to Caucused Mediation,” pp. 1, 6.) “However, a party’s actual bottom line or the lawyer’s settlement authority are consider material facts and certainly cannot be misrepresented to a judge,” he added. (Id. at p. 4; Calif. Rule of Prof. Conduct 5-200(B) [prohibition against misleading judge and making false statements of fact].) “You can, of course, respectfully decline to disclose such information.

“You, Mr. Hancock, fare no better. Despite knowing that the agreement contained a mistake and that the agreed price was $315,000, you repeatedly stated that it was $325,000. Such an error is certainly grounds for reformation,” says Franklin, (Stare v. Tate (1971) 21 Cal.App.3d 432), “and your statements are misrepresentations of fact and not permissible settlement posturing. You also fabricated the offer from the king of Spain, and such false negotiation tactics may be grounds for actionable fraud” (Beavers v. Lampligheters Realty Inc. (Okla.Ct.App. 1976) 556 P.2d 1328).

“But the ABA Model Rules are not binding in California,” Hancock interjects.

“This is true,” says Franklin. “However, the rules of ethics in California are found not only in the Rules of Professional Conduct and the Business and Professions Code, but they are also adopted as common law rules developed through case law. Our courts often look to the ABA Model Rules as appropriate sources to fashion rules of ethics.” (See, e.g., City and County of San Francisco v. Cobra Solutions Inc. (2006) 38 Cal.4th 839, 852.) “Consequently, one cannot consider the ABA Model Rules and ABA Formal Opinions as irrelevant. I strongly suggest you do not ignore them.”

Richard D. Hendlin is a deputy attorney general with the California Attorney General’s office, and Luis E. Ventura is an associate with Epstein Grinnell & Howell, APC. Both serve on the SDCBA’s Legal Ethics Committee. The views expressed in this article are their own and do not necessarily reflect the views of their offices or of the SDCBA Legal Ethics Committee.

The rules of ethics in California are found not only in the Rules of Professional Conduct and the Business and Professions Code, but they are also adopted as common law rules developed through case law.
IT WAS THE BEST OF TIMES.

IT WAS THE WORST OF TIMES.

RACING AGAINST DIABETES with TERRY SUTTON.

By Alice Solovay.
erry Dutton, self-professed “World’s Luckiest Man,” spent June 11 through June 23, 2006, bicycling across America. Dutton serves as deputy court counsel at the Air Pollution Control District. In his fortieth year surviving diabetes and two years post–open heart surgery, Dutton formed a relay team with wife Patty and successfully bicycled more than 3,000 miles from Oceanside to Atlantic City. He started the non-profit Racing Against Diabetes Foundation as a crusade to get people moving against diabetes.

Paraphrasing Spiderman’s credo, Dutton believes that “With great luck comes great responsibility.” He notes that existing diabetes organizations have been educating people by shouting “Diabetes is coming! Diabetes is coming!” but education alone has not made people take action. “The health belief model that health educators have applied forever—the theory that people will adopt healthy behaviors if you tell them the consequences—quite obviously doesn’t work,” explains Dutton, “so I want to apply a social model to change the country.” Since staying fit has granted Dutton the “great luck” of an active life, Dutton feels the “great responsibility” to motivate others to “get the message out everywhere, to everyone, to form teams with families and friends, to train and to commit to the race against diabetes.”

How was the trip? “It was the best of times, it was the worst of times,” he jests. What was the “best” part? Dutton set a record for the ride in the 50-plus age group and motivated others to get moving in defense of health.

What was the “worst” part? Dutton hated the ride back: two SUVs with five bicycles and much equipment. Riding was difficult at night and in downpours. There were tornado warnings and heat rash. “It was brutal,” recalls Dutton. “Although the desert was not as hot as I expected, some stretches along Freeways 40 and 10 got as cold as 36 degrees and I had to ride, jump onto a car to get warmed up, and then ride again.” In eastern Colorado, Dutton encountered 70-mph crosswinds that slowed his bicycle progress to a mere 5.2 mph, “so I got off and walked for a while, at eight miles per hour.” Climbing the mountains was tough, and Dutton quickly lost seven pounds due to dehydration. Patty spelled him by doing some of the climbing legs, especially in the super-steep Alleghenies.

“I’d never do it again in a thousand years,” Dutton states, adding, inconsistently, that he is pursuing funding for the next race in which he will “circumnavigate” the United States, riding more than 6,000 miles in 60 days. Dutton believes that if he gets close to people, he can get them to commit to lives of improved health. “I want to engage people in little towns,” he explains, “get them to ride with us for an hour, a mile, a trip.”

Alice Solovay, a staff writer for San Diego Lawyer who practices law in Ocean Beach, welcomes story ideas. E-mail her at alice@solovay.net.
ADR SERVICES, INC. SM

DELIVERING CONSISTENT RESULTS THROUGH CREATIVE SOLUTIONS

Featured Neutrals

Hon. Mac Amos (Ret.)
Hon. Charles Froehlich (Ret.)
Hon. Anthony Joseph (Ret.)
Hon. Gerald Lewis (Ret.)
Hon. Robert O’Neill (Ret.)
Wayne Peterson (Ret.)
Hon. Sheridan Reed (Ret.)
Hon. H. Lee Sarokin (Ret.)
Carl Flick, Esq.
Michael Roberts, Esq.

Specialty Areas

Antitrust
Civil Rights
Class Action
Commercial Contract
Complex Litigation
Construction
Discovery
Elder Care
Eminent Domain
Employment
Entertainment
Environmental/Toxic Torts
Expert Witness
Family Law
Fee Disputes
Franchise
Health Coverage
Homeowners’ Association
Insurance
Intellectual Property
Legal Malpractice
Lender Liability
Maritime
Medical Malpractice
Municipalities
Official Misconduct
Partnership Dissolution
Party-Arbitrator
Personal Injury
Probate
Products Liability
Professional Liability
Real Estate
Securities
Toxic Mold
Wage & Hour

Conference Rooms

For More Information Or Scheduling, Please Contact:

Holly Glass, Manager
225 Broadway, Suite 1400
San Diego, California 92101
(619) 233.1323 Tel
(619) 233.1324 Fax

www.adrservices.org
The San Diego County Bar Foundation is a not-for-profit foundation established to improve public awareness of the legal system in San Diego County, the administration of justice and the delivery of legal services through the distribution of its funds. Supported by voluntary contributions from the San Diego community, the Bar Foundation supports, funds and encourages the creation of public service programs which promote education, citizenship and the ideals of justice.

Since its inception, the Bar Foundation has granted over $1,000,000 to non-profit organizations throughout the county that provide law-related public service programs. Bar Foundation grants help children, the elderly, the sick and disabled, victims of domestic violence, immigrants and asylum seekers throughout San Diego County.

The Board of Directors gratefully acknowledges the support of the sponsors for the
9th Annual
an evening in La Jolla

The San Diego County Bar Foundation is a not for profit foundation established to improve public awareness of the legal system in San Diego County, the administration of justice and the delivery of legal services through the distribution of its funds. Supported by voluntary contributions from the San Diego community, the Bar Foundation supports, funds and encourages the creation of public service programs which promote education, citizenship and the ideals of justice.

Since its inception, the Bar Foundation has granted over $1,000,000 to non-profit organizations throughout the county that provide law related public service programs. Bar Foundation grants help children, the elderly, the sick and disabled, victims of domestic violence, immigrants and asylum seekers throughout San Diego County.

The Board of Directors gratefully acknowledges the support of the sponsors for the
9th Annual
an evening in La Jolla

The San Diego County Bar Foundation is a not for profit foundation established to improve public awareness of the legal system in San Diego County, the administration of justice and the delivery of legal services through the distribution of its funds. Supported by voluntary contributions from the San Diego community, the Bar Foundation supports, funds and encourages the creation of public service programs which promote education, citizenship and the ideals of justice.

Since its inception, the Bar Foundation has granted over $1,000,000 to non-profit organizations throughout the county that provide law related public service programs. Bar Foundation grants help children, the elderly, the sick and disabled, victims of domestic violence, immigrants and asylum seekers throughout San Diego County.
The holiday party season is almost here, and many of you are planning to attend your firm’s annual holiday party. Unlike some of the more lean years, many firms are pulling out all the stops this year to have a party that shows their attorneys and staff a great time and thanks them for a solid year of hard work.

Although many of the larger law firms have moved to the UTC/Carmel Valley areas, several are holding their events downtown in the up-and-coming East Village. “Although in the past we held our holiday party at the Torrey Pines Hilton, this year we moved it to the Solamar downtown,” says Brian Behan of the Carmel Valley office of Morrison & Forester. According to Behan, they wanted to have a more sophisticated and upscale event and so chose the more hip Solamar in place of the more corporate Torrey Pines Hilton. “The holiday party lets us all see the more personal side of the people we work with,” says Behan.

According to Cindy Vargas from the San Diego office of Baker and McKenzie, they are holding their annual party at the San Diego Yacht Club. “We had our party last year at the House of Blues downtown but moved to the Yacht Club for the first time this year,” she says. Unlike the parties at some of the other firms, the Baker and McKenzie party is designed for an abundance of mixing between the attorneys. Instead of a formal sit-down affair, they stick to heavy appetizers and informal seating so that attendees from both San Diego offices mix together during the party.

Other firms are not only celebrating downtown, but they are also bringing attorneys from other offices to San Diego. Robert Bell, managing partner of Luce Forward, notes, “We invite attorneys from all of our offices to San Diego for our holiday party. This year we chose to hold it at the Omni Hotel near the ballpark, which is a great venue.”

In response to questions about attorney behavior at these parties, one emerging theme is that the new crop of lawyers are behaving much better nowadays than in past years. “Associates are smarter these days,” says Bell. “We really don’t have problems at
our holiday parties, and, of course, we offer taxi vouchers or hotel rooms to anyone who has had too much to drink.”

Behan concurs. “We have a pretty mellow office here and haven’t really experienced trouble at our parties.”

Of course, we have all heard of or witnessed partygoers who, after several cocktails, made poor career choices by thinking that the holiday party was the perfect time to impress that senior partner they wanted to meet all year. I dare say that some of us have even been that partygoer. While an impression was almost certainly made, it probably wasn’t the desired one.

And staying out of trouble at the firm holiday party is highly recommended. Remember, this is a work function quietly masquerading as a holiday party. Your boss is there. Your boss’ spouse is there. So this is not really the right time to show off your new break-dancing skills. The last thing you want to see in your inbox on Monday morning is a camera phone picture of you in mid-head spin on the dance floor.

You can now count on the fact that every single person at the party, from the bartender to the named partner, will have a camera phone. Thus, every possible embarrassing activity you choose to participate in is guaranteed to be captured for all to see and enjoy at a later time. Spilling your beer on the managing partner’s spouse: click. Slow dancing with the new paralegal from the tenth floor: click. Curling up to take a little nap in the corner near the stage after your fourth kamikaze shot: priceless click.

And don’t think for a minute that your so-called friends will save you from yourself. They won’t. Besides, they aren’t your friends, they are your coworkers, and they will be the first ones with their cell phone out, poised to capture your holiday party antics as you blithely saunter into the hotel fountain. You can be their fodder for an entire year of picture-posting fun, right until the next year’s party when with any luck you convince them to have the first of the kamikaze shots.

Michael Fuller is a partner of Knobbe Martens Olson & Bear and a writer for San Diego Lawyer.
1. The 9th Circuit Court of Appeals affirmed the lower court’s decision in Harper v. Poway Unified School District, citing California Education Code § 201 (a) which provides that “[a]ll pupils have the right to participate fully in the educational process, free from discrimination and harassment.”

True □ False □

2. It was because of Tinker v. Des Moines Indep. Community Sch. Dist. that the Supreme Court famously declared that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

True □ False □

3. While the 9th Circuit Court has affirmed the District Court’s decision to deny Harper’s motion for summary judgment, the District Court has not yet addressed the underlying First Amendment claims and the ultimate outcome of the District Court case remains undecided.

True □ False □

4. The major point of agreement between attorneys representing the two opposing sides of the Harper v. Poway Unified School District case is that censorship is only permissible if the viewpoint being censored impinges upon the rights of students “to participate fully in the educational process, free from discrimination and harassment.”

True □ False □

5. UCLA Law Professor Eugene Volokh is of the opinion that “a First Amendment limited by rights to be free from offensive viewpoints may be used as a tool for suppression of one side of public debates while the other side remains constitutionally protected and even encouraged by the government.”

True □ False □

6. While Harper’s teacher sent him to Poway High School’s administrative office for a dress code violation, he was isolated by school administrators for “imposing on the rights of students to participate fully in the educational process.”

True □ False □

7. Judge Stephen Reinhardt’s majority opinion in Harper, based its holding on a finding that the message being conveyed by Harper would “collide with the rights of others students in the most fundamental way.”

True □ False □

8. Because of the complexity of the constitutional issues raised in Harper v. Poway Unified School District, it is speculated that a quick resolution of the underlying issues in this case is highly unlikely.

True □ False □

9. One of the key issues remaining to be determined in Harper v. Poway Unified School District is whether or not Harper should be suspended from school.

True □ False □

10. The constitutional standard for evaluating the scope of a student’s First Amendment rights to free expression in the public school system is set forth in Boroff v. Van Wert City Board of Education dissent that “school officials are not free to decide that only one side of a topic is open for discussion because the other side is too repugnant or demoralizing to listen to.”

True □ False □

11. Judge Kozenko also cited Judge Ronald Lee Gilman’s statements made in the Boroff v. Van Wert City Board of Education dissent that “school officials are not free to decide that only one side of a topic is open for discussion because the other side is too repugnant or demoralizing to listen to.”

True □ False □

12. In his dissenting opinion, Judge Alex Kozenko argued that the “rights of others” language in Tinker only refer to traditional rights, such as those against assault, defamation, invasion of privacy, extortion and blackmail, whose interplay with the First Amendment is well established.”

True □ False □

13. Much of what harassment law seeks to prohibit, the First Amendment seeks to protect.

True □ False □

14. While acknowledging that the views that Harper’s t-shirt expressed may offend gays and their supporters, Judge Kozenko argued that the degree to which they would be offended was not sufficient to cause Harper’s isolation at school.

True □ False □

15. In Tinker, the Supreme Court held that students could be suspended from school for wearing black arm bands because such an action could constitute “substantial disruption or material interference with school activities.”

True □ False □

16. The “Day of Silence” planned by the Gay-Straight Alliance at Poway High School was intended to increase student awareness of the right of minority student groups to assemble.

True □ False □

17. As with many First Amendment suits, the 9th Circuit Court’s analysis in Harper was closely tied to the constitutionality of the District Court’s decision.

True □ False □

18. Rulings on two motions for summary judgment in Harper are pending in the District Court case, with a trial to ensue only if both motions are denied.

True □ False □

19. As with many First Amendment suits, the 9th Circuit Court’s analysis in Harper was closely tied to the constitutionality of the District Court’s decision.

True □ False □

20. Rulings on two motions for summary judgment in Harper are pending in the District Court case, with a trial to ensue only if both motions are denied.

True □ False □
DAVID B. MOON, JR.
Judge of the Superior Court, Retired

PRIVATE DISPUTE RESOLUTION

Mediation • Arbitration • Settlement Conferences
Discovery and Special Master References

General and Complex Civil Litigation including:
Probate • Trusts and Wills • Real Estate • Eminent Domain • Personal Injury
Professional Malpractice • Contracts • Construction Defect • Commercial Disputes
General Business • Insurance/Coverage • Employment Law

• Superior Court Judge 23 years
  – Independent Civil Calendar 5 years
  – Probate Judge 5 years
• Instructor, Civil Mediation, National Judicial College
• Private Dispute Resolution since 2001

www.judgedavidmoon.com • Email: dbm@judgedavidmoon.com
Available throughout San Diego and Orange Counties

P. O. BOX 972
RANCHO SANTA FE
CALIFORNIA 92067
(858) 759-6119
FAX: (858) 759-6127

Thomas E. Sharkey, Esq.
Mediator • Arbitrator • Discovery Referee • Special Master

► More than 40 years as an active trial lawyer in state and federal courts in a wide variety of cases
► Fifteen years experience as a mediator and arbitrator including serving as a JAMS neutral
► Expertise in the following areas:
  • Aviation
  • Business/Commercial
  • Complex Litigation
  • Construction Defect
  • Employment Law
  • Insurance/Coverage
  • Intellectual Property
  • Personal Injury/Wrongful Death
  • Product Liability
  • Professional Malpractice
  • Real Estate
  • Securities/Investment Disputes

San Diego • Orange • Los Angeles • Riverside • San Bernardino • Imperial

Pepperdine University
mediation training
Member of the American
College of Trial Attorneys
Member of the American
Board of Trial Advocates

501 West Broadway, Suite 540 • San Diego, CA 92101
(619) 239-8499

Private Dispute Resolution from a Name You Know and a Reputation You Trust.
In a competitive legal job market, connections and networking are priceless. That’s what law students in San Diego and across the country are finding as local Bar associations—including the San Diego County Bar—play a major role in getting them involved with the legal community.

By Joel W. Christiansen
“Law students make great local connections by attending some of the continuing legal education (CLE) seminars and section meetings and talking to lawyers,” explains Britt Bellinger of the Milwaukee (Wisconsin) Bar Association. At the meetings, “law students are side by side with attorneys who are active in a practice area that interests the student. The students are really demonstrating that they are interested in the practice and willing to take initiative. Attorneys are very receptive to these kinds of students.”

The same is true of making connections during social events. Like many other Bars, the Alameda County Bar Association in Oakland hosts an annual golf outing that includes law students. Kavita Comoglio, a membership specialist at the Alameda County Bar, tells of one law student last year who joined a foursome with local attorneys. “After a day of golf, that student had learned much about the lawyers and their practices,” says Comoglio. Local Bar associations in Pittsburgh and Boston report similar stories of law students successfully networking at Bar-sponsored events.

In San Diego, one of the main perks for law students attending County Bar events is getting to meet and talk directly with local lawyers and judges. Matt Butler of Nicholas & Butler, a business litigation law firm, supports this involvement. “Being involved [in the County Bar Association] gives the law student connections for career development, and it is a great source for answers to questions that you cannot ask your boss,” he says. “It also looks great to employers because that student is actively seeking relationships that are fruitful for the development of business.”

Lou Helmuth, assistant dean for Career Services at California Western School of Law, says students should not be intimidated if Bar events attract experienced lawyers. “Lawyers understand what it is like to be a law student,” he says. “They were all in your shoes.”

Now that County Bar membership is sponsored by California Western, Thomas Jefferson, USD and Western Sierra, law students have a free and easy way of becoming involved. “Bar association participation can help you be happy in your practice by helping to remind you that you are part of a professional community,” notes Helmuth.

Joel W. Christiansen, a second-year student at California Western School of Law, may be reached at christiansenj@gmail.com.

EXPERT APPEAL.

More than 25 years’ appellate experience in areas such as contract disputes, insurance and indemnity issues, wrongful termination, bankruptcy, intellectual property, personal injury, constitutional rights, and family law. Duke University School of Law. Former president of the San Diego County Bar Association and of California Women Lawyers.

(619) 233-4100 | www.shlaw.com

Candace Carroll
YOU HAVE A CHOICE.
Wingert Grebing Brubaker & Goodwin LLP has been defending other lawyers in legal malpractice actions for over 35 years. Led by Charles Grebing and Alan Brubaker, the firm’s legal malpractice group includes some of the most experienced trial attorneys in Southern California.
When it comes to defending your practice, nothing is more important than experience. Who are you going to turn to?

WINGERT GREBING BRUBAKER & GOODWIN LLP
619.232.8151 www.wingertlaw.com
PHOTO GALLERY

Evening in La Jolla

PHOTOGRAPHS BY CAROL SONSTEIN

PHOTO GALLERY

County Bar Softball
PHOTOGRAPHS BY BARRY CARLTON

Justice Scalia visits USD

PHOTO GALLERY
Law Student Reception
PHOTOGRAPHS BY BARRY CARLTON
ADVERTISERS’ INDEX

ADR 46
Ahern Insurance 5
Andy Albert Dispute Resolution 15
Ashley Mediation Centers 10
Barker Koumas & Olmsted 39
Barney & Barney 2
Bond Services of California 39
John Bucher Real Estate 64
David Carr 60
Hon. Geary Cortes 25
Diamond View Tower 19
Di Figlia & Milliken 36
Duckor Spradling Metzger & Wynne 30
Executive Law Group 20
First Pacific Bank 10
Forensic Expert Witness 58
Fragomen 27
Gold Card Jurist 31
JAMS 21
Judicate West 63
King Stahlman Bail Bonds 13
Legal Advisors, Inc 60
Lexis Nexis 7
Lit Econ 10
Markus Kruis Mediation 3
James Mayer 25
David Moon 51
Thomas Murphy 37
National Conflict Resolution Center 36
Niddrie, Fish & Buchanan 58
Ringler Associates 30
Ringler Associates 52
San Diego Bar Foundation 47
SDCBA Member Benefit 59
Sullivan Hill 53
Thomas Sharkey 51
Thomson Group 9
Union Bank of California 11
UCSD 37
Colin Wied 54
Wingert, Grebing Brubaker 54

SAN DIEGO LAWYER • NOVEMBER/DECEMBER 2006
What is Membership Worth to You?

Probably a lot more than you know. Leveraging the collective buying power of more than 8,000 members, the Bar brings you incredible discounts on high quality products and services. Professional tools include outstanding CLE, award-winning publications, dynamic sections, committees, as well as comprehensive legal ethics opinions and an ethics hotline. Chief among the many benefits are:

**Significant Insurance Discounts**

**LAWYERS PROFESSIONAL LIABILITY** - Through exclusive partnerships, members have access to comprehensive lawyers professional liability insurance, including provisions not typically available on the open market, with savings of 15 to 20 percent. The Bar has endorsed Ahern Insurance Brokerage and XL Capital as its partners to provide this comprehensive coverage. For more information on the program, visit www.aherninsurance.com/sdcb or call W. Brian Ahern at (800) 282-9786 x101.

Additional Coverage - Lawyer members qualify for special discounted rates from Barney & Barney for dental, disability income, life, medical and workers' compensation insurance plans. Call (800) 321-4696 for a quote.

**Free Electronic Legal Research**

SDCBA VERSUSLAW - Members receive extraordinary access to free electronic legal research through SDCBA VersusLaw at the Bar’s members-only Web site. The SDCBA is the only bar association in California and one of only a few in the nation to provide this groundbreaking service, which includes full-text of decisions from appellate courts in all 50 states, all federal appellate courts, all federal district courts and more. Log on to sdcb.org to access this cost-saving benefit.

**Other Discounts**

**LEXISNEXIS** - Call (866) 836-8116 or visit lexisnexis.com/partners/barassociations for special packages and pricing.

**AZTEC IMAGING** - Members get a 40% discount on products and services from Aztec Imaging. Go to aztecimaging.com or call (619) 258-1400.

**AIR TRAVEL** - Great Circle Aviation, LLC operates 'air taxi' service out of Carlsbad's Palomar airport at a discount for Bar members. Go to liflyfast.com.

**ATHLETIC CLUBS** - San Diego Athletic Club offers members a special rate and one free week. Call (619) 239-3622.

**ATTORNEY COACHING** - Christine Elliot offers discounted attorney coaching services to members. Call (858) 277-4804 or visit beyondsuccess.us.

**ATTRACTIONS** - Get discounts on admission to Universal Studios, the San Diego Zoo and the San Diego Wild Animal Park. Call the Bar Center at (619) 231-0781.

**OFFICE SUPPLIES** - Members can purchase office supplies at a discount through Staples. Contact Laurie Annett at (619) 641-0026, ext. 228.

**SAN DIEGO EMPLOYERS ASSOCIATION** - Members are eligible to join the SDEA at a discount. Call (858) 679-7332.

Get a complete list and details at sdcb.org.
SUSTAINING MEMBERS

The San Diego County Bar Association gratefully acknowledges its Sustaining Donation Members.

PATRON MEMBERS
Marc D. Adelman
Andrew S. Albert
Robert Bruce Arnold
Al L. Clarke
Anton A. Ewing
Stephen M. Hogan
A. Jason Kerckhoff
Genaro Lara
Harold O. McNeil
David Baxter Norris
Lillian M. Ritt
Robert C. Ryan
James Ellis Schneider
W. Davis Smith
Todd F. Stevens
Thomas J. Warwick Jr.

BENEFACTOR MEMBERS
Vatche Chorbajian
Leslie C. Detwiler
William O. Dougherty
James D. Floyd
James P. Frantz
Douglas A. Glass
Louis E. Goebel
Monty A. McIntyre
Janice F. Mulligan
William E. Nelson
Ronald W. Noya
John R. Sorensen
Kenneth H. Stone

FRIEND MEMBERS
Steve Allen
Doc Anthony Anderson III
James T. Atkins
Gastone Bebi
Jedd E. Bogage
J. W. Carver
Linda Cianciolo
Dawn E. Davies
Cindy Dobler Davis
Deborah L. Ditter
David B. Dugan
Ann C. Durham
Ross Adam Epstein
Julia M. Garwood
Alvin M. Gomez
Kenneth N. Greenfield
Patricia F. Herman
Garrison “Bud” Klueck
Douglas D. Law
Philip P. Lindsley
R. Anthony Mahavier
Donna J. McClay
Peggy S. Onstott
Kristi E. Pfister
Susan E.H. Ragsdale
Judi M. Sanzo
Pamela J. Scholefield
Milton J. Silverman Jr.
Bonnie J. Wilson
Lisa R. Zonder

Ethics Lawyer
David Cameron Carr

Legal Ethics Advice/Expert Testimony
State Bar Discipline Defense
Bar Admissions and Reinstatement

619-696-0526
www.ethics-lawyer.com

Stu’s Views
© Stu All Rights Reserved www.STUS.com

Instead of invading Earth, we’re just going to wait for it to be de-populated by the HMOs.
DIRECTORY OF EXPERTS AND CONSULTANTS

EYEWITNESS EXPERT TESTIMONY: 37 years of forensic psychology experience with pretrial consultations and frequent court testimony regarding factors known to influence the validity of eyewitness report. Pretrial consultation can include choosing foils for live lineups and selecting jurors. Trial testimony includes charts to explain the results of scientific research demonstrating factors known to influence eyewitness identification accuracy. Thomas R. MacSpeiden, Ph.D. (619) 291-4808, Fax (619) 291-4426, e-mail: macspeidenphd@nethere.com

MARINE CONSULTANTS AND EXPERT WITNESSES: Personal Injury, Oil Spill, Collision, Grounding, Capt. C.R. Nugent and Associates, Master Mariners and First Class Pilots. Phone (858) 273-1858: Fax (858) 273-1858 e-mail: cnugent478@aol.com

PLUMBING AND MECHANICAL: Ed Fox Consulting provides over 35 years of plumbing and mechanical expertise with witness and consulting services for construction defect and personal injury claims, including investigation, mediation, arbitration and trial testimony, UPC and UMC codes, standard of care, construction, responsibility allocation, and repair recommendations. CA licensed - ICBO/IAPMO Certified Plumbing and Mechanical Inspector; Registered Construction Inspector. Contact: Ed Fox Toll free 1-(800) 286-3123; San Diego (760) 782-3224 / Fax (760) 782-3225 www.edfoxconsulting.com

FOR ADVERTISING INFORMATION
CALL STEVE MOSEMAN AT 619-231-0781
All the World’s a Courtroom

What keeps me going in the law biz are the quirky stories that pop up from time to time. Generally speaking, people are categorized by their occupation but are defined by what they do in their spare time (the “miscellaneous” section of their resume).

Not surprisingly, engaging in the theatrical arts frequently comes up as a side interest among lawyers and judges, and center stage is the Old Globe theater complex in Balboa Park.

The late Hon. Robert Baxley, who passed away this year at the age of 76 and who while in practice billed himself as the “miscellaneous lawyer,” was well known for his lifeguard days before hitting the legal surf. But he majored in drama in college and appeared in plays performed at San Diego State, the Old Globe, the Coronado Playhouse and the La Jolla Playhouse. At the Old Globe, he performed in a Shakespearean montage alongside a young Dennis Hopper, who didn’t have an easy ride in this particular play; according to Baxley, Hopper was so nervous that his hand was sweaty, and when he pulled out his sword it slipped out of his hand and stuck in the floor. Bax left a budding career in the theater and went back to the beach.

The Cassius Carter theater in Balboa is named for county of San Diego district attorney Cassius Carter (1903-1906), known in these parts as a classical Shakespearean and legal scholar. He served as the toastmaster at the County Bar’s first big dinner event, the 1901 centennial of the installation of John Marshall as chief justice. Carter is quoted as saying: “Drama is the noblest form of human expression. A people that has no love for great plans and good players will show itself to be lacking in social development, in humane politics and in intellectual and moral life.”

Although not a lawyer, June Moeser has been deeply involved in local legal history. She was the first policewoman in Chula Vista and Imperial Beach (starting in 1955), then the first female marshal in the South Bay, and continued her community service as the first female foreperson of the San Diego County grand jury (1977-1978). But before entering law enforcement, Moeser performed at the Old Globe and won a best actress competition in 1949, along with a scholarship (which she turned down). In the 1980s, Moeser and a small group of dedicated judges, lawyers, historians and community leaders raised the necessary capital and political will to have San Diego’s first courthouse rebuilt on its original footing in Old Town. She remains an active member of that courthouse’s non-profit board.

Incidentally, one of the more celebrated trials that occurred in the Old Town courthouse was the trial (and subsequent hanging) of Yankee Jim. This story was made into a play, The Ballad of Yankee Jim, which was first performed in 1966. The author of the play, Frances Bardacke (now 87), saw a world premiere of one of her plays (A Winter Patriot) at the Old Globe in 1975.

Exit, stage left.

George W. Brewster Jr. is a senior deputy county counsel for the county of San Diego.
If you think location has no bearing in resolving disputes, think again.

Judicate West has just expanded to new offices high atop Emerald Plaza. You now have access to 17 conference rooms with breathtaking views of downtown. You can even take a break on our new expansive deck, with its million dollar view of San Diego Bay.

If you have other matters to attend to, you won’t have to go far. Within three blocks, you have easy access to state and federal courts, all legal services, and fine dining. If you’re ever running late, you can even drop off your keys with the valet. Our new office has everything to help you get your dispute resolved as quickly and efficiently as possible.

Bring us the next case you need resolved, and see the difference at Judicate West.

If you think location has no bearing in resolving disputes, think again.

Judicate West has just expanded to new offices high atop Emerald Plaza. You now have access to 17 conference rooms with breathtaking views of downtown. You can even take a break on our new expansive deck, with its million dollar view of San Diego Bay.

If you have other matters to attend to, you won’t have to go far. Within three blocks, you have easy access to state and federal courts, all legal services, and fine dining. If you’re ever running late, you can even drop off your keys with the valet. Our new office has everything to help you get your dispute resolved as quickly and efficiently as possible.

Bring us the next case you need resolved, and see the difference at Judicate West.

You already know John Bucher. 
But have you met John Bucher?

John Bucher is proud to announce the addition of his son John Bucher, Jr. to his winning brokerage team. Uniquely qualified to represent tenants in the negotiation of office building leases and real estate acquisitions, John Bucher Real Estate Company is the legal community's #1 choice for expert lease negotiations. Navigate San Diego's premiere office buildings on our website, www.johnbucher.com.

Put the power of two Buchers behind you.

Tenant Representation for the Legal Profession