SAN DIEGO LAWYER
THE JOURNAL OF THE SAN DIEGO COUNTY BAR ASSOCIATION
JUL/AUG 2014

CIVIL SERVICE:
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WORKSHOPS BEGIN

State of the Courts
Court Funding Update
Richard Dreyfuss on Civics Education

Back row (L-R): Hon. Pamela Parker, Lei Udell, Ed Silverman, Gina Catalano, Kevin Green, Sara Raffer Lee, Rupa Singh, George Schaefer; Middle row: Kimberly Stewart; Front row: Hon. Judith Haller, Hon. Joan Irion
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### ON THE COVER

Civil Appellate Self-Help Workshop Organizers

PHOTOS BY DOUGLAS GATES PHOTOGRAPHY
His Resolve: Putting 30 years of Litigation Experience to Work

Your Resolution: Rick Barton

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Proudest career moment: I prosecuted a pimping case where the juvenile offender had used force and fear, by choking and beating his 13-year-old victim, to control her and keep her employed as his prostitute. The victim was terrified of the pimp and of testifying against him. With the help of a victim advocate, we were able to help the victim overcome her fear, convict the pimp, remove the victim from his control, and provide her with county services to get her off the streets.

Birthplace: Saigon, Vietnam

I have this romantic idea that if I weren't an attorney, I'd be a fiction editor in New York, sharing an artsy postage-stamp-sized New York apartment with three “actors,” hanging out at the local indie coffee spot, and immersing myself in thousands of stories—looking for the next best seller. Then the rational side of me chimes in and I face the reality of having three roommates in a cramped apartment, hanging out at the local coffee spot because I can't afford more than coffee on a junior-assistant-to-the-junior-editor’s-salary, and working 18-hour days running errands for the junior editors who get to read thousands of poorly written manuscripts. Thank goodness I'm an attorney.

The best thing about being a prosecutor is being able to seek justice for victims, help citizens navigate an often overwhelming criminal justice system, and occasionally make new law. My work in the District Attorney’s Office has given me the opportunity to practice law at both the trial and appellate level.

Last vacation: Orlando, Florida. Loved the manatees and thunderstorms. Hated the mosquitos.

Favorite web site: www.theonion.com

Hobbies: I'm a bookworm. I love to read. When I can pull away from my books, I like to go hiking, pretend I know how to paint, watch movies, go to the theater, try new restaurants, and travel.

Favorite movie: “Lord of the Rings”— all three.

Favorite musical artist and/or group: Yo-Yo Ma, Sarah McLachlan, Tracy Chapman, Counting Crows, Lifehouse, soundtrack to “Wicked”… the list is too long.

Favorite food: Ben and Jerry’s Dublin Mudslide Ice Cream. Alas, it’s in the flavor graveyard.

Why do you belong to the SDCBA? I enjoy attending the CLEs provided by the SDCBA, as well as events the SDCBA co-sponsors with the many minority bar organizations in San Diego. I also appreciate the support the SDCBA staff provides to minority bar organizations. This past April, the SDCBA staff was wonderful when they helped me to coordinate co-sponsorship, space, and advertising for the Pan Asian Lawyers of San Diego’s Judge & Law Student Diversity Mixer.

What makes San Diego’s bar so special/unique? The San Diego County Bar’s numerous opportunities for involvement encourages relationship-building. I have made many good friends through the San Diego County Bar. The new facilities are also amazing, and it’s wonderful that members can use the space to host events, meetings, or just to get some work done.
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Hey!

As a small firm practitioner, I was curious about how many of our members, new attorneys and veterans alike, practice in a firm with less than 6 attorneys. We’ve noticed the shift to smaller firm sizes as a trend on a national level, and it is interesting to see how we measure up. Some interesting stats for our small/solo superheroes!

What kind of firm do you work for? Large firm? Mid-sized? Government/Public Agency? No matter the size or type of your firm, your SDCBA membership caters specifically to you. Visit the SDCBA’s home page “portals” to see what your bar association can do for you.

Areas of law practiced by small firms/solo practitioners including:
- Real Estate
- Clean Tech
- Construction
- Immigration
- Personal Injury
- Juvenile
- Mediation
- Estate Development
- Taxation
A new development in medicine called bioprinting promises far-ranging benefits, from inexpensive test beds of bioprinted human tissue for drug trials—potentially saving time and money on drug development costs—to complete, bioprinted organ replacements—allowing patients to receive healthy organs sooner. Needless to say, this trend holds great promise for the health care field and for consumers.

Recently, I was invited to present a paper at the Cross-Straits Biopharmaceutical Industry Conference, held for Chinese and Taiwanese companies in Taipei, Taiwan late in May 2014. I selected bioprinting as my topic because it is both interesting and promising, it involves copyright law (the area in which I have focused most of my professional writing), and because one of the leading practitioners of the technology is Organovo, a San Diego start-up company.

A form of 3D printing, bioprinting is a technology in which a machine under software control deposits layers of biological material (biological inks) and an inert, biocompatible substance called “hydrogel,” one on top of another, until a three-dimensional structure is complete. At that time, the hydrogel is removed, and the tissue (made of living cells) is allowed to grow to maturity.

Although the bioprinting of human tissue sounds rather like science fiction, the technology is here today. Organovo hopes to bring to market this year 3D tissues for experimental use (testing various drugs and agents for possible in vivo application). Several other U.S. startups are developing the technology, each hoping to capture a large share of a potentially enormous market. Eventually the companies hope the technique will generate tissue for direct use in patients to replace damaged tissue, and in the future, possibly entire organs.

As with any technology so potentially important, practitioners are concerned with protecting their innovations for as long as possible, to allow them to exploit their superior knowledge, skill, and inventiveness.

Indeed, the law encourages innovation by means of the intellectual property system—including patents, trademarks, copyrights—and other kinds of unfair competition law, like trade secrets. Usually high tech enterprises like Organovo and its competitors get the most mileage out of patents and trade secrets, with the others playing an important, but subordinate, role.

For bioprinting, however, copyright law could play a key role. This may be surprising, but it shouldn’t be: copyright is one of the most-used kinds of protection for software, and bioprinting relies on proprietary software. Patents can also apply to software, but copyright is much easier, faster, and cheaper, and it lasts a lot longer—95 years, compared to 20 years for most patents.

For all that, though, copyright has a drawback—it protects only the “expression” of the software, not the ideas or the functionality. The law has a test for “expression” in software, but it is rather difficult to apply, and the results are frequently hard to predict. About the clearest thing one can say is that if someone copies your software verbatim, you have a case. Beyond that, it gets muddy very fast. But win or lose, when it comes to software, copyright is a key player.

Niels Schaumann is President and Dean of California Western School of Law.
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Macbeth gestured toward the man sitting in his office. “Sarah, meet Tommy O’Toole, a distinguished member of the bar. Please join us.”

Duncan appeared at Macbeth’s door. “Nephew, come in. You know Tommy.”

“Well, Tommy, the floor’s yours.”

“I represent a homeowners association. Of a common interest development.”

Duncan interrupted. “Construction defect lawsuit?”

Tommy nodded. “For the common areas. Some homeowners have their own lawsuits.”

Macbeth steered the conversation. “How can we help?”

“I meet regularly with the Board. Update them on the litigation. Discuss strategy, cost, the usual stuff.”

“Sounds fine. The Board’s your client.”

“Some individual homeowners want to attend my meetings. That’s why I am here.”

“I assume the Board members understand they have to keep what you discuss with them confidential.”

“I remind them before each meeting.”

“You’re concerned the other homeowners’ presence might waive the attorney-client privilege?”

“Precisely. But some Board members—friends of other homeowners—think allowing them is a good idea.”

Sarah smiled.

Macbeth continued. “Sarah knows what I’m about to say. You may be able to do it. But it could be tricky.”

“How so?”

“A new case—our court of appeal, in fact—applied the common interest doctrine to a situation not unlike yours.”

“Common interest doctrine?”

Macbeth nodded toward Sarah. She explained. “Some courts have used Evidence Code sections 912 and 952 to find that the privilege is not necessarily waived even though a non-client is present.”

“Really?”

“Very briefly, the non-client must be there to further the client’s interest. It must be a matter of joint concern. And it’s essential that everyone reasonably expects the information will remain confidential.”

“Tell me about the case?”

“A homeowners’ association filed suit. So did individual homeowners. The court reversed a trial court’s order that the homeowners had to answer questions about what was said at the attorney meetings.”

“Could help.”

“It may. The court found the Board had a duty to keep the homeowners informed about the common area litigation. It might affect the value of their units.”

“That’s reasonable.”

“It also found the communications’ content and circumstances advanced the common interest.”

“That helps me.”

“And the communications were reasonably necessary.”

“Sounds like I am on good ground.”

Macbeth cleared his throat. “I agree with the court in that Seahaus La Jolla case. But there are real dangers you have to consider.”

“Like what?”

“The common interest doctrine is always an after-the-disclosure analysis. It’s intensely fact specific.”

“Yes, but ….”

“A court may disagree with you. Or get it wrong. And the privilege is gone.”

“I see your point.”

“Look at the trial court in Seahaus La Jolla. Required an expensive writ proceeding.”

“True.”

“Also, the larger the audience, the harder to contain the conversation. People talk. To family. Friends. People at work.”

“I can’t disagree.”

“The Board’s one thing. But a bunch of homeowners. With their own lawsuits. Their own agendas. That’s something quite different.”

“You’re right there.”

“The attorney-client privilege is statutory. Judges understand it. But the common interest doctrine’s really a ‘non-waiver doctrine.’ It’s judge-made law.”

“Good point.”

“If the Board wants to invite other homeowners, I’d make sure that its members understand all the risks. The potential negative consequences. Before they invite their fellow owners in.”

“A great point, Macbeth. Thanks. All of you. Every time I come here I learn something.”

EDITOR’S NOTE.
The case to which Sarah and Macbeth referred is Seahaus La Jolla Owners Association v. Superior Court ____ Cal. App.4th _____, 2014 WL 948494 (March 12, 2014) (4th Dist., Div. 1).

For the common interest doctrine also see OXY Resources California, LLC v. Superior Court (2004) 115 Cal.App.4th 874.

Edward McIntyre (emcintyre@swsslaw.com) is a partner with Solomon Ward Seidenwurm & Smith, LLP and past-chair of the SDCBA Legal Ethics Committee.
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This month we had the opportunity to chat with Phillip Rudolph, Executive Vice President and General Counsel for Jack in the Box. What immediately strikes you about Dave is his passion for what he does and the importance he places on team work. When asked about his job, he was quick to respond, “Every day I enjoy my job. I enjoy working with all the lawyers, the business people. Every day is fun.”

How did you find your way to your current position?
I had experience as U.S. GC, International GC, and Deputy GC at McDonald’s Corporation. The hamburger law background was a plus when Jack in the Box was looking to fill the position of its retiring GC back in 2007.

What is something that drives you?
Taking care of my family. I have three kids that are now grown and scattered about the country. Everything I do ultimately comes back to making sure I am able to take care of my family. To make sure they are in the best position to succeed in life.

What is one of the biggest challenges you deal with as in-house counsel?
Only a small percentage of my role is providing legal work. Actually, a large percentage of what I do is managing people. A big challenge is keeping our lawyers motivated. In-house lawyers are in a flat mode. I consider it a big part of my job to make help with and manage the professional growth of my staff. My challenge is as a leader and a motivator.

How do you define outside counsel’s role?
Outside counsel is a provider of a service. His or her role will vary depending upon the nature of the service I’m seeking. But in all cases, outside counsel needs to understand my business, and make an effort to understand the things I care about as in-house counsel. He or she needs to offer practical solutions that correspond to my client’s business needs, rather than simply legal solutions that look good on paper but that lack practical application to our business.

What practice areas do you typically find yourself engaged in on a regular basis?
Most of what I do wearing my "legal hat" involves managing and leading my legal staff rather than actually practicing law. To the occasional dismay of my head of litigation, I will occasionally find myself dabbling a bit more heavily in our litigation activities, but only because I’ve been a litigator my entire career, and the habit is hard to break. I also spend a decent amount of time in the ethics, compliance and governance arenas, because driving a strong culture of integrity throughout the Jack in the Box organization is something I take very seriously (a passion that is happily shared by our leadership team and our Board of Directors).

Life Notes:
Number of years in practice: 31 years
Undergrad: University of California at Irvine
Law school: University of Chicago Law School

Favorite book: All-time favorite: *Midnight’s Children* by Salman Rushdie. More recent favorites: *The Life of Pi* (Jann Martel) and *Jamrach’s Menagerie* (Carol Birch). These latter two books have some superficial similarities, but they are both just incredibly well-written and thought-provoking stories.

Favorite quote: Changes from time to time. Currently this chestnut from Warren Buffet: “Somebody once said that in looking for people to hire, you look for three qualities: integrity, intelligence, and energy. And if you don’t have the first, the other two will kill you. You think about it; it’s true. If you hire somebody without [integrity], you really want them to be dumb and lazy.”

Hobbies: Golf (which I enjoy but am terrible at), and running (a recent affliction which I don’t enjoy and am terrible at). I also like autographed memorabilia – mostly books and random sports items.

Quick Facts:
Jack in the Box was founded in 1951 and was the first major hamburger chain to develop and expand the concept of drive-thru dining. Also, in addition to the iconic Jack in the Box quick service restaurant brand, we also own, operate and franchise Qdoba Mexican Grill restaurants – a fast casual Mexican dining concept. Currently there are approximately 2,200 Jack in the Box restaurants operated by the Company or by franchisees, and approximately 600 Qdoba restaurants operated by the company or by franchisees.

- **Employees:** Jack in the Box has approximately 20,000 employees.
- **Legal Department:** Jack in the Box’s legal team includes seven attorneys and 13 support staff.

*Alidad Vakili (alidad.vakili@klgates.com) is a corporate attorney with K&L Gates LLP.*
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Many probably chose law school because we didn’t like math. That hasn’t changed. But the profession is changing, and the changes are rapid. Until the mid-90s, you could only send e-mail to others on the same network. AOL was then the largest network, but it did not connect its customers to the outside, the “Internet” until 1995. Nothing was ever the same. In 1997, two Stanford students registered the domain name “google.com”. Google grew in several directions, and in 2007 Gmail went public. Today there are about 450,000,000 Gmail accounts. The times have changed.

A current concern should be cybersecurity. We owe our clients a duty to preserve their confidences, and we hold large amounts of client information on our systems and servers. We store some of it in the “cloud,” and we even have the confidential documents of litigation opponents within our domains. Yet our profession has been identified as particularly vulnerable to hackers and intellectual property thieves. Clients have worked to tighten up their defenses, and we must do the same.

The thief does not have to be Chinese military to threaten our defenses. The special agent in charge of the FBI’s relevant office in New York recently allowed that hundreds of law firms are being increasingly targeted by hackers. Sometimes the invader will be an unethical competitor; sometimes it’s a teenager with a home computer.

The weakest link in any law office’s security can be its professionals and employees. Short, simple passwords are always a concern. Any password of less than twelve varied characters represents unnecessary risk. Test the ones you are using and visit Stan Gibson’s Password Haystack site at www.grc.com/haystack.htm. You can quickly determine how vulnerable they may be. Add a few more characters and observe the increased difficulty a hacker might face.

A similar concern is the propensity of some to download documents, open files attached to suspect e-mail, visit dangerous sites, or click on malicious links. Only education and training can minimize the risk that a single employee can compromise your whole system and your clients’ confidential information. If your staff uses computers, and those computers are connected to a network, you must train them to minimize risks and avoid malware, shark phishing, and hacking. A defense chain can be no stronger than its weakest link.

William Kammer (wkammer@swsslaw.com) is a partner with Solomon Ward Seidenwurm & Smith, LLP.
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Mysterious, confusing and intimidating are words even some skilled lawyers use to describe what it’s like to handle an appeal before the 4th District Court of Appeal.

Imagine what it must feel like to someone who goes it alone without a lawyer to represent them.

“The appellate court seems to be an aspect of the legal system that is shrouded in mystery,” said San Diego County Superior Court Judge Pamela Parker, former president of the Legal Aid Society of San Diego Inc. Parker was a senior appellate attorney at the 4th District Court of Appeal Division One from March 2012 until September 2013, when she was appointed to the bench.

Some of that mystery is about to be removed, thanks to the collaboration of the San Diego County Bar Association’s Appellate Court Committee, the 4th District Court of Appeal Division One, the Legal Aid Society of San Diego and the San Diego Law Library.

The four groups have created a Civil Appellate Self-Help Workshop to help people who represent themselves in civil appeals.

“It’s been a long time coming,” said Kimberly Stewart, managing attorney of the 4th District Court of Appeal Division One and co-chair of the workshop subcommittee.

In an informal study Stewart did in 2010, she found that people represented themselves without lawyers in 29 percent of the cases before the 4th District Court of Appeal Division One in 2009 and in 35 percent of the cases in 2010.

The types of cases with people representing themselves “ran the gamut,” Stewart said, with family law cases accounting for the biggest single category of cases.

Although Stewart hasn’t updated her study, anecdotally, she said her impression is that the numbers have stayed about the same or risen slightly.

“People just cannot afford lawyers,” Parker said. “I’ve had many people – friends of mine, fellow congregants at my church who know I’m a lawyer and know I’ve become a judge – they have steady work and they say ‘I just can’t afford a lawyer.’”

The problem is that the appeal process has many steps, deadlines and procedures which can be difficult to follow. People sometimes think an appeal is a chance for them to retry a case they lost in the lower court, Stewart said.

“The Court of Appeal is not a redo of
what happens in the trial court,” Stewart said. “There’s a presumption that the jury, the judge did the right thing.”

“There are all kinds of traps for the unwary,” Parker said.

In her time as an appellate attorney with the court, “I could see the self-represented litigants really struggle with the rules and procedures the appellate court requires,” Parker said. “A lot of appeals were being dismissed or rejected or denied because they didn’t know how to present their issues.”

That was troubling to the appellate justices, Stewart said.

“The court would rather resolve appeals on their merits than dismiss cases for non-compliance,” Stewart said. That’s where the workshop comes in.

After the initial workshop presentation, one to two volunteer lawyers will meet with each person individually to go over any specific questions, Silverman said, but the lawyers won’t help prepare the appeals.

“The workshop is to give information, not legal advice, because the court is one of the sponsors and the court can’t give legal advice,” Silverman said.

The group will meet at the San Diego Law Library, 1105 Front Street, San Diego, on the third Tuesday of each month at 4:00 p.m.

The law library got involved as a sponsor because that’s where people went for information on filing and appeal, said assistant director Gina Catalano.

“It’s really a natural fit,” Catalano said. “We see a lot of self-represented litigants at the law library.”

The library has many resources from online information to how-to guides which are available free to the public, but people can easily get tripped up on something as simple as understanding the terms they come across.

“It makes such a big difference when they have someone who can talk to them and kind of walk them through it,” Catalano said.

The idea for the workshop came from Kevin Green, who chaired the Bar Association’s Appellate Court Committee in 2010, and others who were inspired by a newspaper article about an appellate self-help clinic for indigent civil litigants, which assists pro per litigants in the 2nd District Court of Appeal in Los Angeles.

“I was thinking about goals and projects and things we could do. I read about it and a light bulb went off,” Green said. “If they can do it, why can’t we?”

Although the Los Angeles clinic was the inspiration, Green and Rupa Singh, who chaired the Appellate Court Committee in 2013, said the San Diego plan turned out to be very different.

“Unlike the court in L.A., our court didn’t want to get into the business of providing advice,” Singh said. “We’re just going to give information to help people.”

Los Angeles also has a paid director and San Diego relies entirely on volunteers.

The San Diego workshop has drawn praise from California Chief Justice Tani Cantil-Sakauye, who said “self-help programs are critical to ensuring equal access to justice for low and middle-income Californians, especially in this era of limited fiscal resources.”

She added, “I applaud the collaborative efforts of the Fourth Appellate District, the San Diego County Bar Association, the San Diego County Law Library and the Legal Aid Society of San Diego in establishing the Civil Appellate Self-Help Workshop, as well as the ongoing commitment of the many volunteers who have invested their collective time and energy to make this workshop a reality.”

Volunteer lawyers will meet for free for two hours with people who are filing or defending a civil appeal by themselves, said Ed Silverman, former chairman of the Bar Association’s Appellate Court Committee and chairman of the committee’s Civil Appellate Self-Help Workshop Subcommittee.

To attend the workshop, the participant should be a party to a pending civil appeal and should register by calling 619-471-2781, Silverman said.

The session will start in a seminar format with a recorded video message from Associate Justice Joan Irion and a power point presentation outlining the steps someone must follow, said Silverman, who will moderate the workshop.

Ray Huard (rayhuard@hotmail.com) is a freelance writer in San Diego.
CIVIL/APPELLATE SELF-HELP WORKSHOPS

Workshops will be open to the public from 4:00 – 6:00 p.m. on the third Tuesday of each month at the San Diego Law Library.

Upcoming Workshop dates:

- August 19
- September 16
- October 21
- November 18
- December 16

To learn more visit: www.sdcba.org/appealtevolunteer.

For more information, contact Ed Silverman at esilverman@sllbv.com.

September 17
5 p.m. - 8 p.m.
Dialogue on Diversity
Explore the topic of diversity and inclusion challenges in the legal profession.

September 23
5:30 p.m. - 7:30 p.m.
Law Student Welcome Reception and Section, Committee and Law Related Organization Fair

October 31
12 p.m. - 1:30 p.m.
Annual Bench-Bar Luncheon
Discuss topics of mutual interest with members of the bench and bar.
The Cure for What Ails Us

By Richard Dreyfuss, The Dreyfuss Initiative

I’ve been waiting for a decade for someone else to put two parts of our national puzzle together – why we are in free fall decay and why we won’t do anything about it – but my fear for my kids has made me run out of patience. So I’m giving you the answer because I fear you’ll never come to it on your own:

The cause for what is clearly ailing us is that we stopped teaching ourselves who we are. What’s right and wrong for us. We are a nation bound only by ideas. We stopped teaching our civic values to our children. So we have no idea anymore what America really is. The present generation that grew up without this purposeful education in values doesn’t know how much it has disconnected us from our past, our fellow countrymen and our place in the world of nations. Puzzle piece number one. We have only learned to deny how important these things are. Puzzle piece number two.

Kids don’t know they need to learn about being good Americans. So they don’t come home and complain they aren’t learning the enlightenment values that defined us as a people and brought light into the darkness of the world, a world where class were subjugated, thoughts to be punished and liberties were for the privileged few but only if granted to the governed. Of course their parents didn’t learn it well either. But they got a better dose of it though because they were closer to the generation who did learn American values and fought battles to keep them and were made stronger by having them. Not only Japan and Germany but the depression itself still built on itself before that time. Our civic value system is built on the accrued strength of all the generations before us – taught how we came to be, why we were different, what a safe haven we could be, how the values of intellectual spiritual and ethical freedoms made us better and how vigilant we had to be to keep from losing it, or having it taken away.

We have stopped rigorously teaching civic authority and the clarity of thought necessary to be true citizen-partners in this country. So cynicism beats common-sense to a pulp, and the ideology of “me first” trumps “we the people.” We’ve stopped flexing our intellectual muscles because thinking has begun to make our heads hurt, and we invented sound bite grenades of “American exceptionalism” and “America the loser, America the bully” and meaningless phrases from the left and right that we lob at each other, rather than tend to the more difficult business of training our students to be citizens.

Lawyers we are told love equality and level playing fields and justice. You want a more just America? You want less lazy ethical lapses, more accountability, less senselessness in our public dialogue, a leaner more agile more mature country? Than teach it again. If we want less advantage taking, less mindless name calling, more substantive comprehension of our problems and more willingness to solve them rather that be satisfied with screaming at one another, we need to educate it back into existence.

Attorneys understand our laws and our Constitution, serve as the gatekeeper to notions of freedom and liberty. And understand they can also be easily manipulated because these can easily be taken away without vigilant oversight. So stop allowing our children’s minds to be warehoused as we take away their capability of thinking their way out of our problems. Civic authority, clarity of thought, debate, discussion, opposing views, context, civility. These things must be used with purpose, rigor, passion and wit. If not, you can watch America as an idea wither and be blown away.

Bolt wrote in A Man for All Seasons, “The law is a causeway upon which, so long as he keeps to it, a citizen may walk safely.” What path do our children walk along today? Who will teach them to do so? Lawyers – like teachers – have been this country’s favourite targets and favourite heroes. But they are inescapably the ones who gain more and lose more as we decide whether to undertake this fundamental course correction. Don’t think about your country, think about your children. Then go make yourselves heard. And join our national effort to bring civics back into our classrooms.

Richard Dreyfuss is an Academy Award Winning actor and founder of The Dreyfuss Initiative (www.thedreyfussinitiative.org), an organization which focuses on civic education, and was the keynote speaker at the SDCBA’s Annual Law Week Luncheon & Celebration of Community Service in April.

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STATE OF THE COURTS

Reports from the Bench
T he past five years have been a consistent drumbeat of doom and gloom when it comes to the trial courts’ budget. We now have a new state budget; we know that this year will not be quite so rosy in comparison to the past. Last year, we found some solace in the fact that our budget was not cut as it had been in previous years. This year, even with new money in the budget, the Superior Court will need to implement in additional cuts in access and services.

The Judicial Branch’s budget advocacy started out with such great hope and enthusiasm as we embraced “access to justice” as a core American value. Sadly, the situation deteriorated quickly. Our bench and bar legislative lobbying efforts were ultimately a failure even though both houses had proposed a $300 million increase for the trial courts. Legislators were told about and said they understood our need for a minimum of $262 million in new funding to avoid further harm. In San Diego, our share of the new money gets hit with a double whammy. First, under the new funding allocation model adopted by the Judicial Council in 2013, San Diego will receive less than we have received historically. Our share is diminished to the benefit of those courts who have been even much more grossly underfunded. On top of that, the measures by which our workload is evaluated indicate that our filings are down which will then translate into a further reduction in the allocation of money.

Unfortunately, it appears we are going to take other hits as well. For example, the cost of our employees’ health and retirement benefits continues to increase. Historically, portions of those have been unfunded. This year will be no different. Likewise, there is a shortfall in funding based upon Department of Finance projections on fines, fees and assessments. Their number was revised to the detriment of the trial courts - about $70 million. The governor recognized this and gave the trial courts about $31 million to offset the $70 million shortfall in funding. We will take a share of this revenue loss as well.

At the end of the day, this means that the unfortunate local cuts in service that we have previously made (with the hope that they would be temporary) look now to be more and more permanent. 25% reduction in work force. No civil courts in East and South. No civil business office in either location. Fewer civil courts and staff in Downtown and Vista. Significant delays in processing paperwork. Longer waits. No court reporters in Civil and few in Family. Reductions in family law services. Closed courtrooms. In addition to those prior cuts, we are now looking at as much as a $9 million shortfall which can only be addressed by a further reduction in expenditures – reduction in people and services.

We, at the court, are headed for a series of very tough and unhappy discussions about priorities and more reductions in access and service. Good ideas to solve even legitimate needs can no longer be considered unless they effect a cost savings or at a minimum are cost neutral. One of the great ironies in this crisis has been the insistence that we achieve greater efficiencies. The cuts that we have been forced to make and the ones that will come introduce nothing but delay, inefficiency and ineffectiveness.

Think about this. The current California state budget, as structured in this time of persistent and historic drought, now has a handsomely funded “rainy day” reserve. The reality is California trial courts face an access to justice drought and there is no significant rainfall in sight.

Hon. David Danielsen is Presiding Judge of the San Diego Superior Court.
We start this year in a similar fiscal situation as we did last year. We received some relief in the budget with rent increases and health care costs and are hopeful that after five years of mandatory furloughs we will be able to discontinue furloughs permanently. This means that there is now more time that the employees can dedicate to processing and researching the cases before us. Though this is a small step in the right direction, we still maintain a 15% vacancy rate in our staffing and are working hard to keep up with the workload.

The court’s juvenile dependency filings have been up somewhat during the past year compared to the year before, as have the number of criminal appeals. Further, the entire Fourth District is continuing to address the consistently high workload in Division Two (Riverside); since January 2014, Division One has received 60 fully briefed cases from the Riverside court and Division Three (Santa Ana) has taken 128 such cases. This court and the Judicial Council supported Senate Bill 1190 to add two justices to Division Two, but the bill died in appropriations. We plan to pursue legislation again.

Despite the challenges that have faced the court in the last year, the time to disposition in juvenile dependency appeals has remained similar to the preceding year, while the time from full briefing to disposition in criminal appeals has steadily decreased over the last two years. We are also remaining fairly current on our non-priority civil caseload, except as to the larger and more complex cases, which are still backlogged. However, the court is making inroads in this area too; although we started the year with a backlog of 45 non-priority civil cases that had not yet been assigned, as of June 30, 2014, we had 26 such cases. Since this time last year, the amount of time it takes from when a civil case is fully briefed to the filing of the opinion has been reduced to just over 6.5 months.

This year’s budget gave the judicial branch clear direction to manage our resources to promote efficiency, effectiveness and access to justice. The Fourth District has made some significant strides in this regard within this past year. Division One now serves notices, orders, opinions and remittiturs to the parties and the Superior Courts electronically. This not only provides better service to the bar and public, but also creates significant efficiencies within the court. We are examining ways to work with electronic documents throughout the court and will soon be able to greatly expand the types of documents we receive electronically. Further we are identifying ways to provide access to court documents on-line.

We do not anticipate any vacancies on the court. The court has not had a vacancy on the bench since Justice Dan Kremer retired in 2003. Our court and the Chief Justice are committed to improving civic awareness, learning and engagement in California. The court held a special oral argument session at Brawley Union High School where students viewed oral argument and then were able to question the court and attorneys on the judicial process. Law school students are invited to attend oral argument held each month and the justices of the court are each engaged in a variety of civic organizations representing the court.

Our court has a unique relationship with the San Diego County Bar’s Appellate Court Committee and other local organizations. Beginning in May of this year, a project created to provide information about appellate procedures to litigants who are representing themselves on appeal was successfully implemented by the collaborative efforts of the court, the Appellate Court Committee, the Legal Aid Society of San Diego and the San Diego Law Library. The court greatly appreciates the work of the volunteers involved in this project and encourages all members of the Bar to get involved in efforts to promote access to justice, locally and across the state.

Hon. Judith McConnell is Administrative Presiding Justice of the Court of Appeal, Fourth District, Division One.
2013-2014 was marked with transitions and difficult financial times. We completed the move to the new courthouse, which was in full operation by the end of January 2013. On April 19, 2013, the courthouse was officially dedicated in a ceremony accompanied by the music of the United States Marine Corps Band. The dedication also celebrated the 100th anniversary of the Jacob Weinberger United States Courthouse. The new courthouse was the venue for our first local swearing-in ceremony for three members of our delegation to the House of Representatives.

In the summer of 2013, we opened the Nursing Mothers Room in the Schwartz Courthouse. The Nursing Mothers Room provides a convenient, private, and quiet location for pregnant or nursing mothers. I am proud to say that our Nursing Mothers Room is one of the only such facilities in a federal courthouse.

Former Chief Judge Irma E. Gonzalez took senior status in March of 2013 and fully retired on October 25, 2013. I have been Judge Gonzalez’s colleague since September 1986. She has been a friend, mentor, and extraordinary leader for all of our judges. Her advice, counsel, and daily support will be greatly missed. Judge Cindy Bashant, formerly an Assistant United States Attorney and Superior Court Judge, was appointed by President Obama and was sworn in to replace Judge Gonzalez on May 8, 2014.

Magistrate Judge William McCurine retired on February 7, 2014. Jill Burkhardt was selected by the District Judges to replace Judge McCurine and was sworn in as our newest Magistrate Judge on March 11, 2014. Judge Burkhardt is a former President of the San Diego County Bar Association and served our district as an Assistant United States Attorney.

John Owens, formerly an Assistant United States Attorney in our district, was appointed by President Obama to the Ninth Circuit and sworn in on April 25, 2014. His chambers are in the Schwartz Courthouse. On November 30, 2013, Sam Hamrick retired from federal service as the Clerk of our Court and began his leadership as the Executive of the Riverside Superior Court. The Court is appreciative of Sam’s outstanding leadership in running the Clerk’s Office for twelve years. Sam planned, organized, and implemented the move to the paperless digital age and our new courthouse. These were the biggest changes in our court since 1976, when the then new Edward J. Schwartz Courthouse was opened. We will miss Sam. His legacy is the outstanding employees who work for the Clerk’s Office. After a thorough national search, the District Judges appointed John Morrill as the Clerk of Court. John Morrill has worked for our Court for almost 24 years. We are proud to have him at the helm.

Perhaps 2013 will be most remembered for the three financial crises that threatened to shut us down. There was the “financial cliff” in January, the sequestration and debt ceiling crisis in April, and the government shut-down in October. We were faced with the challenge of the Clerk’s Office, Probation, and Pretrial Services each working with about 70 percent of authorized staff. Hiring and promotions were frozen and spending was substantially curtailed. But through the efforts of Sam Hamrick, David Sultzbaugh, Lori Garafolo, and all of the court employees, we were able to avoid layoffs and furloughs. Indeed, it was due to the efforts of everyone, doing much more with much less, that we got through each crisis. If there is anything good that came out of the crises, it is the sense of unity that was created.

Hon. Barry Moskowitz is Chief Judge of the United States District Court Southern District of California
On April 5, 2013, the Jacob Weinberger Courthouse in downtown San Diego celebrated its 100th Anniversary. Jacob Weinberger was the first resident San Diego Federal District Court Judge. Over its 100 years, the Jacob Weinberger Courthouse served as post office and custom house as well as a courthouse. Our court has been privileged to occupy this beautiful piece of San Diego history since 1994.

We celebrated this milestone in San Diego legal history in several ways. First we unveiled new exhibits located in our ground floor lobby which depict the history of the building and the life story of Judge Weinberger. Judge Weinberger was intimately involved in the drafting of the State of Arizona Constitutional Convention, presided over high profile federal cases, and named as his greatest joy performing naturalization ceremonies. The exhibits also provide a timeline of the history of the Weinberger Courthouse including photographs of the building through the years and historical information regarding the city of San Diego during the same time period.

Our Court celebrated the Courthouse’s birthday with an anniversary ceremony on the Courthouse steps and participated in another ceremony jointly with the other members of the Federal Judiciary as we also celebrated the construction of the new Federal Courthouse.

While the Bankruptcy Court is housed in one of our county’s most historic buildings, we are also on the leading edge of technology on a national level. Our Court was a prototype court for the Federal Court’s CM / ECF Electronic Filing System. Now, we are participating in the further innovation of electronic filing as a Monitor Live Operations (“MLO”) Court for the Next Generation of the CM / ECF System. Being a MLO Court ensures that we will be involved in the earliest stages of the project and allows input in the testing phase Next Generation CM / ECF functionality. Testing of new components has begun, and our Court, we expect to receive software for local installation and testing in October of 2014. One of the key changes in the Next Generation System for practitioners is the ability to use the case management system to maintain one account across all courts (Appellate, Bankruptcy, and District) and to obtain one time access in all courts in which they have permission to e-file. This should significantly improve the functionality of CM / ECF on a national basis. We are proud to be involved in this important effort designed to provide better access for all users.

During 2013 and after approximately two years of consecutive record level filings, we experienced a welcome decline in the level of bankruptcy case filings. This reflects the positive changes in our local economic environment. But this break in filings has also given us a chance to work on not only managing and reducing the enormous case load created during the recession, but also to make headway on a series of projects important to the Court and those who appear before us.

To improve the processing of Chapter 11 cases by individuals, a new standard form Combined Plan and Disclosure Statement for Individual Chapter 11 Cases was drafted during 2013 and has now been adopted by the Court. This document will not be appropriate in all cases, but in many it will allow practitioners to represent their clients more inexpensively and more effectively. Bankruptcy Judges Louise DeCarl Adler and Christopher Latham worked with a committee of local lawyers in this project.

In addition, projects involving Local Rules, Local Forms, and projects intended to provide valuable information to pro se are in process.

Finally, the members of this Court continue to make efforts designed to serve our community, in professional committee memberships and leadership roles designed to improve the administration of justice both nationally and internationally, and in broader court service at the appellate level. I am immensely proud of what we achieved during the last year and look forward to our continued service to the community.
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An Alternate Route to Justice

Homeless court offers participants special guidance

By Rebecca Blain

Court was in session all over San Diego on Wednesday, June 11 – not just in the Hall of Justice, and not just in Vista, but in the Veterans Village of San Diego (VVSD). On this afternoon nineteen-year-old Jennifer (not her real name, although she is a real person), is waiting in a VVSD conference room with dozens of other defendants. Everyone here has been cited for a misdemeanor or infraction. Jennifer is here because she has thousands of dollars of unpaid trolley tickets, many of which have been sent to collections. The judge appears and Jenny’s name is called. She walks to the front of the room, says hello to the judge, the public defender, and the city attorney, and receives the final disposition of her case: Her trolley fines have been expunged. She shakes the judge’s hand and leaves.

Jennifer has just participated in Homeless Court – one of San Diego’s most novel alternative criminal justice systems. Homeless Court and its two “cousins” – Veterans Court and Stand Down – are the brain child of legal professionals who felt compelled to address the growing need of providing alternative resolutions for non-felonious defendants who were on the margins of society.

Jennifer was a homeless teen for years before she participated in Homeless Court. She routinely hopped the trolley without paying the fare, and ultimately amassed over $2,000 in trolley fines – all of which were left unpaid. But Jennifer also made contact with Stand Up for Kids – a San Diego non-profit providing daily meals, showers, and laundry facilities to street kids. Jennifer would come to Stand Up for Kids regularly. Eventually she was encouraged to get into transitional housing. And from there she took the initiative to secure social welfare benefits, including cash aid (a portion of which she applied to the purchase of a bus pass). To any outside observer Jenny was making leaps and bounds. But now she had a problem: She was over $2,000 in debt.

Steve Binder of the San Diego Public Defender’s office, one of the driving forces behind Homeless Court, sums up Jenny’s Homeless Court appearance in two words: “collaborative justice.” Rather than simply handing down fines, probation, and the like, Homeless Court treats a defendant’s objective progress as payment for their non-felonious behavior.

Homeless Court first took root in San Diego in 1989, and at that time was available exclusively to veterans who had found themselves on the margins of society. “We look to criminal cases to restore order in the community,” Binder says, “but the reality for veterans was that it was pushing them further outside our society.” Homeless Court was a solution. If a veteran could show that he was receiving treatment or other services through a non-profit program, he could present those accomplishments to the Court and have his penalty reduced or entirely eliminated. The veteran’s decision to take steps toward a safe and healthy lifestyle was taken as payment-in-full for his debt to the community. As Binder explains, Homeless Court recognizes “individual safety of the participants also promotes public safety.”

Behind every Homeless Court participant is a wealth of agencies – most of them non-profit, and some of them run entirely by volunteers – that are committed to the restoration of homeless veterans, teens, and other individuals who have found themselves on the fringe. These agencies (‘providers’ in the Homeless Court vernacular) meet every month at DLA Piper’s downtown office to both discuss the particulars of Homeless Court and share information about their resources. Later in the month, each provider sends the Public Defender’s office an ‘interest list’ of program participants who would like to resolve their matters in Homeless Court. The participant has a counseling session with the public defender and other volunteers, and he brings with him an ‘advocacy letter’ from his provider – a letter explaining, in essence, the treatment he’s completed, the accomplishments he has made through his organization, and the steps he has taken to secure a more positive future. A week later he’ll return to VVSD for his Homeless Court session to receive the disposition of his case. He’ll speak with the judge, and receive his outcome in the presence of representatives from San Diego’s City Attorney and District Attorney offices. Lisa Missett, a deputy District Attorney, has been participating in Homeless Court sessions for two years. She says that while standard fines and fees are an income source for San Diego, it’s ultimately “a benefit to the community that [Homeless Court participants] can get a fresh start.”

Successfully resolving a case through Homeless Court becomes a badge of honor for many adults and teens who have otherwise spent years ducking and/or fighting the criminal justice system. For Binder, the cause couldn’t be more worthy: “It is incumbent on us as a nation to help guide participants back through individualized treatment programs that address their trauma and restore them to valued citizens in our community again.”

Rebecca Blain (blain@tbmlawyers.com) is an associate with Thorsnes Bartollotta McGuire LLP.
San Diego’s collaborative court programs provide adult and youth offenders with alternative solutions to the traditional adjudicative process. By addressing underlying issues that result in individuals revolving through the criminal justice system, the programs aim to prevent recidivism, improve quality of life, and preserve public safety. Look for more in-depth coverage on each of these programs in upcoming issues of San Diego Lawyer.

**ADULT PROGRAMS**

**Behavioral Health Court**

**Purpose:** To restore behavioral health and reduce criminal activity among mentally ill offenders through high-intensity, individualized treatment, close supervision, and custody alternatives.

**Location:** Central

**Program Length:** Varies upon need

**Collaborating Agencies:** Court, District Attorney, City Attorney, Public Defender, HHSA, Probation Department, Sheriff, and community-based organizations

**Drug Court**

**Purpose:** To place non-violent, non-sexual, non-serious felony offenders in treatment programs as an alternative to incarceration; to increase public safety by reducing drug-related crimes and assist participants in leading healthy, drug-free, and productive lives.

**Locations:** Central, East, North and South

**Program Length:** 18 months with five treatment phases

**Collaborating Agencies:** San Diego Superior Court, District Attorney, City Attorney, Public Defender, numerous police departments, and HHSA

**Homeless Court**

**Purpose:** To assist homeless people who are attempting to reenter society by strengthening self-sufficiency and sobriety.

**Location:** Central

**Program Length:** Varies

**Collaborating Agencies:** Court, District Attorney, Public Defender, and community-based organizations

**Mandatory Supervision Court**

**Purpose:** To address the emerging needs of offenders and improve the link between in-custody programming from the Sheriff with re-entering the community under supervision of the Probation Department.

**Locations:** Central Division, with cases from all four divisions

**Program Length:** Varies

**Collaborating Agencies:** San Diego Superior Court, District Attorney, Public Defender, Probation, Sheriff, and community organizations

**Reentry Court**

**Purpose:** To provide non-violent parolees and persons on post-release community supervision (PRCS) who are facing new prison commitments with substance abuse and mental health treatment.

**Location:** Central

**Program Length:** 18 months with five phases

**Collaborating Agencies:** Court, District Attorney, Public Defender, HHSA, Probation, Sheriff, SDPD, Department of Corrections and Rehabilitation, and community-based organizations

**Veterans Treatment Review Court**

**Purpose:** To assist high-needs veterans with Military-Related Mental Health Problems by providing a combined program of judicial supervision, justice partner collaborative efforts, and appropriate treatment and support.

**Location:** East County

**Program Length:** Varies

**Collaborating Agencies:** San Diego Superior Court, District Attorney, City Attorney, Public Defender, Probation, Dept. of Veterans Affairs, and community organizations

**JUVENILE PROGRAMS**

**Juvenile Drug Court**

**Purpose:** To help minors who are on probation and struggling with addiction maintain a drug-free life through frequent court appearances, random drug testing, and group and family counseling.

**Locations:** Juvenile Court and North County

**Program Length:** Nine months

**Collaborating Agencies:** Court, District Attorney, Public Defender, HHSA, and Probation Department

**Juvenile Dependency Drug Court**

**Purpose:** To provide alcohol and substance abuse treatment to the parent(s) of minors whose addiction prevents them from being adequate caregivers in order to protect children from potential abuse and to successfully reunify families when possible.

**Locations:** Central and North County Division

**Program Length:** Nine months

**Collaborating Agencies:** San Diego Superior Court, county Health & Human Services Agency, the Dependency Legal Group of San Diego, and CASA (Voices for Children)
How do we ensure “justice for all” when our courts cannot operate effectively due to budget constraints?

In San Diego County, families and businesses are experiencing the effects of the nearly $1.2 billion dollars in cuts to California’s judicial branch between 2007 and 2012. Although the San Diego Superior Court began planning for budget cuts in 2008, the Court was forced to implement large service cuts in 2012 and 2013. Those service cuts, including a significant reduction in staffing and reduced service hours, impact the Court’s ability to address the demands on its system. Without a fully funded court, we are effectively – and at times literally – closing the doors of our local justice system. Restoration and reinvestment in the judicial branch is critical to the ongoing success of our local economy.

Businesses are the biggest users of the civil justice system. Unresolved business disputes tie up capital and the inability to timely resolve these disputes leads to uncertainty, causing businesses to either halt activity or restrain their use of capital. Decreased court staff and reduced hours are creating significant backlogs and increased wait times for basic court services, which are having a significant effect on our local businesses. For example, routine law and motion matters are being scheduled six to seven months into the future; in the past, those motions used to be scheduled and heard in as little as 16 days. All civil business offices in the East County Division (El Cajon) and South County Division (Chula Vista) have been closed and consolidated into the Central Division in downtown San Diego. Court users in those regions must now travel downtown to file and prosecute civil and unlawful detainer (landlord/tenant) cases. As a result of the closures, caseloads jumped from 500-600 cases to 900-1,100 cases per judge, further delaying all civil operations. The elimination of court reporters in civil, probate, and family law departments severely compromised the integrity of unreported court proceedings and the ability of parties to preserve issues for subsequent appeal.

San Diego families are also feeling the effects from years of budget cuts. For example, the time to obtain a Family Court Services appointment used to average two weeks for first-time appointments and three weeks for returns. Those same appointments are now taking an average of eight and ten weeks, respectively. It is taking the Family Law Facilitator approximately five weeks to process orders and up to eight weeks to prepare judgments in family law disputes. Child custody evaluations are currently taking over 12-16 weeks to process, threatening the safety and stability of children and families in our communities. Because these families cannot estimate when their matters will be resolved, they are putting stress on other local and publicly funded community resources, including law enforcement.

In an attempt to combat the severity of the cuts, our courts have increased efficiencies – streamlining processes and consolidating operations. Efficiencies already implemented include building standalone online public applications for traffic and family law, “in-sourcing” IT functions previously handled by outside vendors, and opening full and part time civil settlement departments to help offset the effects of civil court closures. While these efficiencies are admirable, these

By Richard Huver and Heather Riley, Co-Chairs of the SDCBA Court Funding Action Committee
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measures alone cannot counter $1.2 billion dollars in cuts.

In 2013, the SDCBA produced the first-ever Report on the State of the Judiciary in San Diego County. In 2014, we have completed an update to that report which again shows that restoration and reinvestment are the only solutions to our “justice drought.”

Please help us spread the word that cuts to our court budget are affecting our community. We need a fully funded court system in order for our community to thrive. Please read our 2014 update and share with us all of the ways our underfunded courts are affecting you and your clients at www.sdcba.org/courtfunding. Ensuring that we have a properly funded court system is the only way our courts can provide justice for all.

Richard Huver (rhuver@huverlaw.com), a solo practitioner, and Heather Riley (hriley@allenmatkins.com), senior counsel with Allen Matkins Leck Gamble Mallory & Natsis LLP, are members of the SDCBA Board, and Co-Chairs of the SDCBA’s Court Funding Action Committee.
WEAPONS HOLD

A legal practitioner’s guide to the Lautenberg Amendment

By Gary Barthel

History of the Lautenberg Amendment

The Gun Control Act of 1968 was the foundation for gun control in the United States and is best known for prohibiting convicted felons from possessing firearms. However, few people realize that there was a Public Interest Exception built into the law. Specifically, the Gun Control Act of 1968 allowed military personnel, law enforcement personnel, and other government employees who were required to possess a firearm for official use, to continue to possess firearms despite a felony conviction.

In 1994, Congress enacted a domestic violence amendment to the Gun Control Act of 1968. In particular, the 1994 amendment prohibited anyone subject to a protective order for harassment, stalking, or making threats to an “intimate partner” from owning or possessing a firearm. Again, the 1994 amendment exempted military personnel, law enforcement officers, and government officials who were required to possess a firearm for official use.

In 1995, Senator Frank Lautenberg from New Jersey sponsored a bill that would also keep firearms out of the hands of anyone convicted of a misdemeanor crime of domestic violence. In 1996, Congress passed the Domestic Violence Offender Gun Ban, which came to be known as the “Lautenberg Amendment.”

Important Aspects of the Lautenberg Amendment

The Lautenberg Amendment prohibits the purchase, transportation, possession, and use of firearms or ammunition by anyone convicted of a misdemeanor domestic violence offense or has a restraining order issued against them for an act of domestic violence. Accordingly, the Lautenberg Amendment extends the ban to possess firearms from convicted felons to those convicted of misdemeanor domestic violence offenses.

The Lautenberg Amendment also makes it a felony for anyone to sell or provide a firearm or ammunition to anyone they knew, or reasonably should have known, was convicted of a misdemeanor domestic violence offense or had a restraining order issued against them for an act of domestic violence. Since the Lautenberg Amendment does not contain a grandfather clause, the prohibition to possess a firearm applies to any misdemeanor domestic violence conviction that pre-dates the enactment of the Lautenberg Amendment. Therefore, there may be many people who mistakenly believe the Lautenberg Amendment does not apply to them because they were convicted of a misdemeanor domestic violence offense before Lautenberg.

Since the Lautenberg Amendment applies to anyone convicted of a misdemeanor domestic violence offense or has a restraining order issued against them for an act of domestic violence, it effectively abolished the Public Interest Exception. Therefore, the prohibition to possess a firearm under the Lautenberg Amendment applies equally to military personnel, law enforcement, and other government personnel required to possess a firearm for official use.

Is the Public Interest Exception Really Abolished Under the Lautenberg Amendment?

Since the passage of the Lautenberg Amendment, military servicemembers and law enforcement officers convicted of a misdemeanor domestic violence crimes, before and after the passage of the Lautenberg Amendment, have lost their careers due to their inability to possess a firearm so they can perform their duties. Obviously, a military member or law enforcement officer who cannot possess a firearm is not compatible with further service, or are they?

While the Lautenberg Amendment intended to abolish the Public Interest Exception, some exceptions still exist. In the military a vast majority of military personnel who are convicted of a misdemeanor domestic violence offense are separated, but a few potential exceptions still exist.

Normally a servicemember who has been convicted in the United States of a misdemeanor domestic violence offense is deemed non-deployable for overseas missions that require the possession of a firearm. However, if a servicemember is already serving outside of the United States, they may continue to perform their assigned duties until they return to the United States.

Additionally, military personnel who fall under the provisions of the Lautenberg Amendment may still be able to serve in the military if they are assigned to a position or unit that does not give them access to firearms and ammunition. Note that crew serve weapons, such as tanks, mortars, artillery, and missile launchers are not considered firearms under the Lautenberg Amendment. Therefore, a servicemember who has been convicted of a misdemeanor domestic violence offense may continue to perform their duties with regard to these crew serve weapons.

Finally, anyone convicted of a misdemeanor domestic violence case can seek to have the conviction expunged. If the conviction is expunged and the expungement order does not limit the individual’s right to possess weapons, then the restrictions of the Lautenberg Amendment would no longer apply. In the case of military or law enforcement personnel, the individual could successfully complete their career.

Gary Barthel (gbarthel@garybarthel.com) is a solo practitioner and Co-Chair of the SDCBA’s Military Law Section.
You've filed an action, waited the appropriate time for the opposing party to respond, and you're ready to take a default. But if your opposing party is in the military, you should not get the default judgment unless you follow the provisions in the Servicemembers Civil Relief Act (SCRA). In any civil law court, including family and small claims actions, active duty servicemembers have certain protections against default judgments.

If a servicemember has not made an appearance in the case, upon request for default, Section 201, (50 USC § 521) applies. This section states the court shall appoint an attorney to represent the servicemember. In San Diego County, the San Diego County Bar Association and the North County Bar Association sponsor a Servicemember Civil Relief Act Pro Bono Program Panel (The Program). The Program links volunteer attorneys with the court and liaisons from the Armed Forces in an attempt to contact the servicemember for the limited purpose of discovering if they are entitled to a stay of proceedings based on military service. On the court's own motion, or as requested by counsel for the servicemember, the court will initiate an initial 90-day stay of proceedings.

"The process of obtaining a default may seem frustrating when trying to move a case forward, but, it is designed to 'Protect those who have been obliged to drop their own affairs to take up the burdens of the nation.'"

If a default is granted against servicemembers, they can re-open the case if the court finds the military service materially affected their ability to present a valid defense and the application is made within 90 days of their leaving active military service.

The process of obtaining a default may seem frustrating when trying to move a case forward, but, it is designed to "Protect those who have been obliged to drop their own affairs to take up the burdens of the nation." Boone v. Lightner 319 U.S. 561, 575 (1943).

Volunteers are always needed for pro bono representation of servicemembers for the limited scope of obtaining a stay. In 2013 alone, 130 cases were referred to the SDCBA's Program. Of those, 66 were family law cases. If you are willing to volunteer, please contact the San Diego County Bar Association through Michel Chavez at mchavez@sdcba.org or the North County Bar Association through Mary Cervantes at bansdc@northcountybar.org.

Angela Anderson (angela.b.anderson@usmc.mil) is Director of Legal Assistance for the Marine Corps Recruit Depot San Diego and Co-Chair of the SDCBA's Military Law Section.
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San Diego does not want for interesting legal history.

The telling of that history, on the other hand, is dependent upon diminishing sources. This article focuses far too briefly on two men of whom it can be said so simply and yet so true, love the law. And for a legal historian, they have proven invaluable as living connections to our stranger than fiction past. I am deeply indebted to them for their stories and guidance over the years.

Upbringing

Steiner is the son of Fred Steiner, a local lawyer who practiced in a broad spectrum of criminal and civil trial work, and maritime law (which included a seat on the Portuguese Fishing Commission). Fred Steiner was the first college graduate – and first lawyer – in the family, born in Iowa but made his way to San Diego (he couldn't afford the train back) and set up shop with Harrison Sloane in 1930. Son Bob was born in 1932 as one of four children; in 1938 his father went off to war, and earned the DSC, Bronze and Silver stars in Normandy before being killed in action in 1944. His mother went back to teaching and got all four of the Steiner kids through college and grad school.

Bianchini’s father was from Naples, Italy and met his mother in San Diego; she was legally blind and he was career military (Navy). Son Victor, one of six siblings, was born in San Pedro in 1938, but moved around a lot – to New Jersey, Newfoundland, and eventually, Coronado. His father was gone during World War II for five years, with tough times for the family in Paterson, New Jersey. Victor has worked at one job or another since the age of eight as a shoe shiner, golf caddie, newspaper boy (his income from selling newspaper subscriptions exceeded his father’s meager military pension).

The Law. And Politics.

Steiner was still on active duty with the Army when he learned he had passed the bar, and took leave to be sworn into the bar in 1957. He got out in 1958, and was hired by Fred Kunzel (Luce, Forward, Kunzel & Scripps, until Kunzel was appointed to the Federal bench). He has stayed with that firm, now known as McKenna, Long & Aldridge, for 56 years and counting – he has been a partner since 1964. While his father was a Democrat, his mother was Republican, and Steiner has been a true Red since the days of Truman. He was President of the SDCBA in 1972, the year a group of women lawyers founded Lawyers Club of San Diego; and a member of ABOTA since the mid-60s, as well as an active member of the American Inns of Court, founding (along with Bill Enright and others) the Welsh Inn in 1984. A career highlight was his 1978 induction into the American College of Trial Lawyers. He and his wife of 60 years, Ann, have two daughters and a son.

Bianchini was released from officer candidate training as a 2nd lieutenant in the U.S. Marine Corps to attend USD School of Law, from which he graduated in 1963. He went to clerk for U.S. District Court Chief Judge Carter from 1963 to 1964, then entered active duty with the Marine Corps and served as a combat correspondent.
and photojournalist and combat air crew in Vietnam from 1965 to 1966, and then to the reserves retiring as a Colonel in 1991. He is unabashedly liberal, and he and his five siblings grew up in a liberal household. He was on the SDCBA Board from 1978 to 1980 serving as Treasurer and Vice President, and was active with the law library’s Board of Trustees and the Foundation (including terms as President of each). In 1968-69, he was a U.S. Commissioner for the District Court, and a Magistrate Judge from 1974 to 1982, when he was appointed to the Municipal Court. He was elevated to the Superior Court in 1998, retiring from that court in 2002. He continues to mediate with Judicate West and performs judicial duties as a Magistrate Judge in both Eastern Washington and California. He started sabre fencing when he was 72, and won the National Championship for his age group (70-79) in 2012-13, and placed 6th in the World Championships in 2011 and 7th in 2013. He and his wife, Marie, have been married 30 years, and he has three daughters.

**Passion**

Both men love to tell tales, and they do so with obvious passion. They are each a product of difficult upbringing; and probably because of that, they keep charging forward and stay active in the legal community. They are both lions in the winter, and they have been and remain a historian’s best source, because they were involved early on in this legal community and knew the players. (Heck, they ARE the players.) This is not by any means a complete biography of either man—each has a resume with pages of Boards, Commissions, Committees and good deeds. Each has mentored hundreds (probably indirectly, thousands) of men and women interested in the law, and we are a better community for it.

George Brewster, Jr. (george.brewster@sdcounty.ca.gov) is Chief Deputy for the Office of County Counsel.

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Shereef Moharram, Partner (top left); Mark S. Manion, Partner (top right); Craig A. Parton, Partner (seated left); Melissa J. Fassett, Partner (seated right)
On Friday, May 16, 2014, the Law Offices of Baker, Burton & Lundy presented a cy pres award donation of $93,940 from the Anti-trust Natural Gas Settlement to the Legal Aid Society of San Diego (LASSD).

This cy pres award donation was the final money left from the class action settlements administered by Epiq Class Action & Claims Solutions of Portland, Oregon, which provided over $4 billion to California consumers and businesses harmed by anti-trust activities. The case was heard in San Diego Superior Court by the Honorable Ronald S. Prager.

LASSD is very fortunate to have over 40 major ongoing funder accounts. However, each of those funders set forth specifically how their funds are to be used. These funds all have restrictions on their use. A large non-profit legal aid organization, in order to operate smoothly and efficiently, while meeting new and emerging needs of its client communities, and at the same time constantly improving its infrastructure, must have access to funding that is virtually unrestricted.

Cy pres awards have been used as “seed money” to begin new projects on behalf of clients, as down payments for the purchase of office space that insulates the legal aid organization’s infrastructure against the vagaries of the economy and rental increases, and as funding of an endowment to generate income in perpetuity for the organization.

While designation of cy pres awards to legal aid organizations is per se appropriate in California, by statute (CCP § 384), the application of the cy pres doctrine under federal law has been evolving as courts face complex and unique circumstances in particular cases. While our Ninth Circuit has never expressly addressed the distribution of cy pres awards to legal aid organizations, other federal jurisdictions throughout the country have long recognized that organizations providing access to justice for poor, underserved and disadvantaged people are, indeed, appropriate beneficiaries of cy pres distributions.

The Board of Directors, the staff, and the clients of LASSD are honored by and forever grateful to those individual attorneys and law firms that have contributed to closing the justice gap in San Diego by designating LASSD to receive cy pres awards.


Gregory Knoll (gknoll@cheear.org) is CEO/Executive Director and Chief Counsel for the Legal Aid Society of San Diego, Inc.
Written works by local lawyers

The Legal Mind authored by Daniel Park aims to shine a light on the inner workings of the legal system. "The legal system is often shrouded in mystery and my goal is to dispel the mysteriousness," says Mr. Park who hopes his book will bring a deeper appreciation of the legal system, an understanding of how disputes arise, and tools to better address conflicts.

Mr. Park is Chief Campus Counsel at the University of San Diego, CA. He also teaches Introduction to the Legal System to paralegals at UCSD Extension. His greatest passions in life are his sons, writing and music. "I am a big Bob Dylan and Beatles fan." Mr. Park plans to continue writing and looks forward to the publication of his short stories collection called Love in the Dark and Other Stories.

Mark-Robert Bluemel, a solo practitioner in San Diego, is the author of The Grommets: The Secret of Turtle Cave, an adventure book featuring three teenage surfers. In writing this book, Mr. Bluemel hopes to inspire youngsters to discover the joys of surfing and dispel the negative stereotypes associated with surfers. As an avid surfer since the age of 15, Mr. Bluemel enjoys the adrenaline rush of surfing and takes spin, Pilates, and yoga classes, all to increase his strength and become a better surfer.

Writing allows Mr. Bluemel to share his passion for surfing, address important issues like autism, and give back to the community. As a child, Mr. Bluemel credits his love of reading with giving him a "great deal of pleasure, insight and personal growth." He hopes to share these benefits with today's young readers.

Benita Ghura (bghura@sdcpl.org) is a Reference Librarian with the San Diego County Public Law Library.

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- Daily Journal Judicial Profile, August 17, 2012

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The San Diego County Bar Association’s 100 PERCENT CLUB is a special category of membership that indicates an outstanding commitment to the work done through SDCBA programs and services in the legal profession and the community. The following firms (five or more lawyers) are members of the 100 PERCENT CLUB for 2014, having 100 percent of their lawyers as members of the SDCBA.

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DISTINCTIONS & PASSINGS

Distinctions

◆ Candace Carroll, Of Counsel to Sullivan Hill Lewin Rez & Engel (Sullivan Hill), was recently elected to the San Diego Opera Board of Directors, and Sullivan Hill associate Jennifer Chang was appointed to the board of directors for Lawyers Club of San Diego.

◆ Attorney Bill Earley was recently named CEO of the San Diego-Imperial Counties Chapter of the American Red Cross.

◆ San Diego Superior Court Judge David Berry was named to the San Diego Law Library’s board of trustees.

◆ Frederick Schenk, partner with Casey Gerry Schenk Francavilla Blatt & Penfield, was recently appointed to the 22nd District Agricultural Association’s board of directors by Governor Jerry Brown.

◆ The San Diego County District Attorney’s Office was recently honored with the National Association of Counties’ 2014 Achievement Award.

Passings

◆ Attorney Dale Larabee passed away on June 27. Dale practiced law for over 40 years, served on the San Diego Trial Lawyers Association board of directors, and served as a panelist for the SDCBA’s Lawyer Referral & Information Service for many years. He founded the Kensington Miracle Mile Relay, which he presided over for 30 years, and the Kensington Litter Pickers, for which he picked up trash in the Kensington neighborhood monthly for over 15 years.

SDCBA Earns Honors

Ellen Miller-Sharp (right), Executive Director of the San Diego County Bar Association (with lead judge Addy Kujawa, Executive Director of the American Association of Orthopaedic Executives) accepts the “Gold Circle” award from the American Society of Association Executives at their conference in Washington D.C. on June 17. The SDCBA won the award in the “New Product or Service Launch” category for the debut of its new headquarters, the Bar Center at 401.
PHOTO GALLERY

BENCH BAR MEDIA EVENT
Photos by Vendela Mitchel
Lawyers, judges and media discussed high profile civil cases with big business implications during “To Seal or Not To Seal: What You Don’t Know Could Be On Purpose” on June 4. Attendees enjoyed a special reception following the program.

NIGHT AT THE ZOO
Photos by Jason de Alba, Mind in the Shutter Photography
Colleagues, family and friends mingled at the San Diego Zoo’s Treetop Venue during the SDCBA’s Night at the Zoo on June 20. Thank you to event sponsors Client Conflict Check, Inventus, Inter Alia Lawyers, Judicate West, Write Law, Law Offices of Ben Aguilar, Law Offices of Benjamin J. Cheeks, Brigid Campo, Rachael Callahan, Contreras Law Firm, Law & [M] ocean, Mission Legal Center, and Rábago Business & Tax Law APC.
SERVING LUNCH TO SENIORS
Photos by Jerrilyn Malana

Members of the bench and bar volunteered to serve lunch to senior citizens at the Bench Bar Community Outreach – Senior Community Center Lunch event on June 24.

ASK-A-LAWYER
SDCBA attorney members helped provide free legal information to the public during the SDCBA’s Law Week Ask-A-Lawyer event on April 29.

WILLS FOR HEROES
On May 17, attorney volunteers drafted estate planning documents for members of the San Diego Police Officers Association.
COLOR OF JUSTICE
Attorney volunteers spoke with high school students during Color of Justice, a Law Week “jet mentoring” program presented by the National Association of Women Judges Color of Justice Program, the SDCBA and the San Diego Superior Court.

LA RAZA LAWYERS AMISTAD AWARD CEREMONY
Photos by Nadia Bermudez
San Diego La Raza Lawyers Association (SDLRLA) members mingled at SDLRLA’s Amistad membership mixer on May 22.

THLA ANNUAL DINNER
Photos by Jeff Brown
The Tom Homann LGBT Law Association hosted their 21st Annual Awards and Installation Dinner on May 15.

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