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On the cover: Marcus Lewis, August Hunter and Billy Phillips, photographed at La Jolla Presbyterian Church by Lauren Radack.

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The Loss of Everything

A t the age of 45, my father went to law school. He worked full time, so he attended school at night. After graduating, he realized he wasn’t happy as a 50-year-old first-year associate, and hung out his own shingle as an intellectual property attorney. He ran a successful practice out of his Rancho Bernardo home until October 22, 2007, when the Witch Creek fire came.

A phone call awakened my mother but she didn’t answer, letting the answering machine do its job instead. About 20 minutes later, the doorbell rang. By the time my mother got to the front door, she was greeted not by a person but by thick black smoke. She then listened to the message on the machine. They had to evacuate. Immediately. Expecting to spend a lot of time waiting to return home, my father grabbed one book from his collection that was 30 years in the making. It did not occur to them this would be the last time they’d see their home.

My parents made it to my downtown loft, where we watched the news with an intensity and urgency that is difficult to describe. Then we saw it. The news ticker at the bottom of the screen listed homes destroyed on Aliento Court. There it was: 11523. The time was 11:47 a.m., and my parents were homeless.

My parents spent the next few hours vacillating between shock and sorrow. My father could only mutter, “My books, my books.” All my mother could manage was “Everything. We’ve lost everything.”

Without experiencing it, it is impossible to grasp the concept of losing everything. The magnitude of what needs to be done to reach a state of normalcy is difficult to convey. Absurdly nothing has come easily. Here is one example. Remember, my father ran his law practice out of the house. He was wise enough to back up his data regularly. However, he now had no computer. He ran his law practice out of the house. He was wise enough to back up his data regularly. However, he now had no computer. He spent a week with the new computer set up on empty boxes. Because the program he used to do the backups was a few years old, the new version could not read the files. He found an older version of the program, but it wasn’t compatible with Vista. Furthermore, because all of his physical files were destroyed, my father has no way to contact clients, or even to determine who they all are. He contacted two through their Web sites. Another two contacted him. As for the rest, my father can only wait.

For years, my mother had been nagging my father to replace the carpet. As my folks now say, be careful what you wish for.
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During my first few months leading the San Diego County Bar Association (SDCBA), I have had the opportunity to meet so many great people. And those I already knew, I have gotten to know much better. These people are mainly, although not exclusively, attorneys and judges. They are our SDCBA board members; the chairpersons of our 54 sections and committees; leaders of the minority, specialty, and geographic bar associations; and attorneys who volunteer their time in our legal community for whatever cause or goal speaks to them.

The one thing all of these people have in common is a love of being involved in something greater than themselves. With very few exceptions, I have noticed that those in our profession who participate in nonprofit groups are happy and excited about their contributions, and find their professional lives are richer and more fulfilling because of it. I call this The Joy of Being Involved. It may sound hokey, but I think it is true.

With our busy schedules, it is so easy to forget about opportunities that exist outside of our paying jobs and our homes. There are many wonderful groups out there doing so many wonderful things within our profession. The SDCBA, with its many subgroups and community-service programs, is certainly one of them. But there are dozens of others. There are groups that help with access to justice issues, such as the San Diego County Bar Foundation, the San Diego Volunteer Lawyer Program and the Legal Aid Society of San Diego, to name a few. There are organizations that seek to increase diversity in our profession, so clients can know there are lawyers and judges who can relate to them, their backgrounds and cultures. There are groups seeking to preserve the rich history of our legal community, such as the First San Diego Courthouse, Inc. There are groups that work to advance professionalism and ethics in our legal community, and ones that seek to provide networking and Continuing Legal Education opportunities to lawyers in certain practice areas. The list goes on.

I can tell firsthand about The Joy of Being Involved. I joined SDCBA’s legal ethics committee years ago. It was a terrific experience, and I was thrilled to be selected as the co-chair. Seeking an even more intense level of involvement with an organization I had grown to love, I ran for, and was elected to, the board of directors. My desire to contribute grew and culminated in being elected president. And now, with every day that passes, I become more and more thankful for being given the chance to participate as a volunteer in such a tremendous group.

So the purpose of this column is to suggest to you two things. First, find a legal-community organization that does things you care about. Second, get involved—it will bring a certain joy to your professional life that can be achieved no other way. And keep in mind that getting involved can take up a lot of your time or just a little bit of it, depending on your other obligations. It is completely within your control to customize your experience.

So please take a look at your options. I wish for you too to experience The Joy of Being Involved!
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LETTERS TO THE EDITOR

The “Hearts on Fire” article [by Claude Walbert] in the January issue is terrific.
Candace Carroll
Sullivan, Hill, Lewin, Rez & Engel

I wanted to tell you how much I enjoyed two of your pieces in the January issue.
Judge Ehrenfreund has inspired so many attorneys who have appeared before him with his intellect and old-school civility. It was fun to get a little glimpse into his personal side...I could almost hear him singing, French accent and all.

Jim Hill’s “Integrity Personified” profile of Abe Lincoln was equally enjoyable. I have been to Springfield and visited Lincoln’s law offices and home. It’s true: If you close your eyes you can almost see and hear him. Hill’s piece really captured the essence of what made Lincoln a model for us all.
Phyllis A. Shess
Deputy District Attorney
Director of Sex Offender Management

Errata Lindsay J. Reese wrote the article titled “Women, Equality, and San Diego Law Firms” in the January/February issue. Her tagline should have read, Lindsay J. Reese is an attorney with Ross, Dixon & Bell, LLP. www.rdblaw.com.

We inadvertently omitted Brian J. Lawler, a San Diego attorney-pilot, in our January/February profile on attorneys who fly. Before and while attending law school, Lawler served on active duty in the United States Marine Corps as a Weapons and Sensors Officer in the F/A-18D Hornet. Since 2001, he has been active in the Marine Corps Reserve where he holds the rank of lieutenant colonel.

Announcements How did your parents inspire you in your legal career? E-mail Keith Rutman at krutman@krutmanlaw.com no later than March 15 with comments of 25 words or fewer, and include your name.
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Almost nothing irks me more than wasting my time. So, after one too many times of having to run antivirus and anti-spyware software on my Windows-based PC, I bought an Apple computer. In fact, I bought two Apples: a desktop iMac and a laptop MacBook.

I had grown increasingly frustrated with my home PC. It took too long to boot up, and I frequently had to run my Webroot Spy Sweeper software to rid it of malware.1 Malware includes “viruses, worms, Trojan horses, spyware, dishonest adware, and other malicious and unwanted software.”2

While a firewall can be used to block unwanted incursions, it has little effect when teenagers also use the computer. Although a firewall allows end users to monitor the traffic that enters a computer, it is the end user who decides whether to allow traffic to enter in the first place. In order to play games or access youth-oriented Web sites, my teenage children often allow entry of malicious traffic. I can’t monitor them every time. It’s just not practical. Again, there is that time issue.

The conventional wisdom is that malware authors are not motivated to write programs to attack Apple computers because Apple’s share of the computer market is small relative to the market for Windows-based computers. This is the notion of “security by obscurity.”3 However, with its growing popularity, the Apple computer may become more of a target—in which case, I may have to migrate to Ubuntu, a community-developed, Linux-based operating system that is collecting a following among the technologically savvy.4

Is the Apple computer perfect? No, but I will take any minor inconveniences over the barrage of malware that confronts me on my PC. After all, I don’t have an I.T. department to keep my teenagers from accessing problematic Web sites.

One example of a slight inconvenience is having to use two fingers instead of one on my MacBook to delete a character at the position of the cursor. I have to press the function key with my left pinkie finger and the delete key with my right pinky finger. Having to use both pinky fingers simultaneously to access keys at the opposite ends of the keyboard is an unnatural movement for this QWERTY-keyboard-trained touch-typist.

Don’t get me wrong; I still use my PC. But I use it offline where it can’t be corrupted by malicious Web sites. And I’ve found a particularly good use for it—as a repository for personal files.5

Apple of My Eye

Albert Harnois is a technology editor for San Diego Lawyer and is a senior intellectual property attorney for Bridgelux Inc. albertharnois@mac.com

1 See www.webroot.com.
2 “ ‘Security through obscurity’ (sometimes security by obscurity) is a controversial principle in security engineering, which attempts to use secrecy (of design, implementation, etc.) to provide security.” www.wikipedia.org, accessed Nov 11, 2007.
4 Walter S. Mossberg is a technology columnist for The Wall Street Journal, who concludes that Ubuntu is not ready for the mainstream user. His review can be found in The Wall Street Journal archives, Sept. 13, 2007, Personal Technology, and on the Internet.
5 Offline means that my Windows-based PC is not connected to the Internet. I had my desktop iMac, laptop MacBook and a RICOH Aficio MP 161 business printer networked and connected to the Internet via an Airport base station and a Linksys router.
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Discovering the Lost City

Machu Picchu, recently named a Wonder of the World, is easily the biggest draw for tourists to Peru. This lost Incan city, rediscovered only within the last 100 years, has no trouble living up to the lofty title of World Wonder. At an average of about 3,000 meters, or approximately 9,842 feet in elevation, the entire Sacred Valley region is defined by loftiness.

Most travelers spend some time in Cusco, once the center of the Incan empire, before embarking on any excursions to Machu Picchu. My five weeks in Cusco served two important purposes. The first was acclimatization. Avoiding altitude sickness was no small task for a San Diegan accustomed to sea level. The second purpose was more of a cultural preparation that added immeasurably to my experience.

Founded by the Incans sometime around the 12th century, Cusco was conquered by the Spanish in the 1500s. Although the city adopted the Spanish language and the Catholic religion, resentment for the conquest still exists centuries later. Maps use the Spanish names for streets and plazas, but Cusqueñans and street signs all use the original names in the Quechua language. Also slightly confusing is the way in which Cusqueñans have managed to blend religious practices. The majority of residents are devout Catholics; Holy Week is marked with daily processions through the city’s central Plaza de Armas. In contrast, the most celebrated holiday in Cusco is Inti Raymi, the festival of the sun, an Incan religious ceremony marking the winter solstice. The ceremony involves days of parades and dancing, culminating in a reenactment of an animal sacrifice to the Sun God, ensuring a good annual harvest. It is hard to imagine that the same people could so fiercely embrace two such divergent traditions.

The focus on retaining its rich history throughout its modern development has had a profound effect on Cusco as a tourist destination. While hugely dependent on the tourism industry, Cusco does not cater to it quite in the way one might expect. Cusqueñans are very proud there are no American fast-food chains in Cusco. There are also no movie theaters or malls. Past plans to put a McDonald’s in the plaza and a luxury hotel at the base of Machu Picchu were met with protests from locals and historians alike. The Inca Trail leading to Machu Picchu still maintains strict regulations on the number of hikers that can enter the four-day, 33-kilometer (approximately 20.5-mile) trail each day, and there must be a licensed guide for every 10 hikers.

After five weeks in Cusco, trading in my coffee addiction for a yen for coca tea and replacing matinées with high-altitude hikes, I was prepared to fully appreciate the Inca Trail and its final destination, the lost city of Machu Picchu.

Without a written language, written numbers or functional use of the wheel, the Incan people built cities of massive stone structures that have survived several centuries of earthquakes and wars. They created stone joints that fit together so precisely there was no need for mortar. Surrounded by the mysticism and ingenuity of an ancient people, I could not bemoan the lack of a hamburger or a good cappuccino. Four days of steep ascents on uneven stone walkways was a small price to pay to see what had long been a Wonder of the World, even without the title.

Jennifer Day is a file clerk for Casey, Gerry, Schenk, Francavilla, Blatt & Penfield, LLP. jenny@cglaw.com
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Justice Wiener joins the following distinguished panelists:

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Spring Blooms

With spring fast approaching, we thought it only appropriate to explore some great outdoor dining options in America’s Finest. Here are some of our favorite alfresco spots:

C Level
C Level is the casual restaurant adjacent to the more-formal Island Prime on Harbor Island. Sit on the deck and sip the Prime Champagne Cocktail (Marie Brizard Pêche, lemon and lime juice and champagne) while noshing on the Deborah’s Skirts on Fire Salad and watching cruise ships pass against a jaw-dropping backdrop of the downtown skyline.

Piatti
This institution in La Jolla Shores has an enchanting outdoor courtyard reminiscent of an Italian villa. Piatti’s patio is a great place for a leisurely lunch or a romantic dinner.

Brockton Villa
Brunch and mimosas above La Jolla Cove—is there a better way to spend a Sunday morning?

Point Loma Seafoods
Indulge in the world’s best crab sandwich amid the marina and fishermen. We also strongly recommend the rolled fish tacos and the fried scallop sandwich.

The Ocean Terrace at George’s at the Cove
A great venue for watching the sunset. Try George’s famous smoked chicken, broccoli and black bean soup.

Stratford Court Cafe
Enjoy breakfast or lunch in a lovely garden on the grounds of an early-1900s Cape Cod-style home in Olde Del Mar.

What are some of your favorite outdoor dining spots? Let us know at gil@cabrerafirm.com.

Avenue 5
—an alternative to the usual downtown haunts
Located on Fifth Avenue in Bankers Hill just north of Laurel, Avenue 5 offers a fresh, clean menu. This is not the place for huge, gluttonous meals; this is a place for a satisfying lunch or a three-course dinner that leaves you perfectly satiated. Avenue 5 has a modern and professional interior, very reasonable prices and is located a stone’s throw from downtown—making for a good business-lunch venue. It also has a nice bar for an after-work cocktail.

Avenue 5’s menu changes regularly, but here are a couple of items we strongly recommend: For lunch, the house burger is composed of high-quality and nicely seasoned ground beef, simple Dijon mustard and a choice of blue, Brie or cheddar cheese on a sesame-seed bun. Lettuce, pickled onion and a tomato slice come on the side along with a simple mixed green salad. Truffle-oiled fries can (and should) be ordered on the side. This is a solid burger and a perfect lunch portion, meaning one could actually go back to work without needing a nap. For dinner, the wild mushroom tortellini appetizer is not to be missed. It includes grilled sweet corn, champagne grapes and Madeira broth. It is addictive. ✯

Krista Cabrera is an attorney with Wilson, Petty, Kosmo & Turner. Gil Cabrera is an attorney and principal at The Cabrera Firm. They love family, food and law—pretty much in that order. Check out their food blog at whatwedig.com.
Daniel M. White and Susan Oliver are pleased to announce that

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Moving on Up, Out and Over

John J. Hargrove, bankruptcy judge for the Southern District of California, retired January 4, after more than 22 years on the bench. He was chief judge from 2001 to 2006. Sheppard Mullin partner Laura Taylor was appointed to succeed Judge Hargrove. Her law clerk will be Linda Fox, a former Sheppard Mullin partner. San Diego bankruptcy attorney Margaret Mann joined Sheppard Mullin after Taylor’s departure. Mann most recently led Heller Ehrman’s restructuring and insolvency practice and served as the firm’s national hiring chair.

Former Littler Mendelson lawyers Tina M. Fryar and Michelle S. Park recently opened an employment law boutique firm, Park Fryar LLP, one of the few women- and minority-owned firms in San Diego. Fryar and Park are past presidents of Pan Asian Lawyers of San Diego. Fryar was also recently sworn in as the new president of the Earl B. Gilliam Bar Association.

Stacy Fode, immediate past president of Lawyers Club of San Diego and current SDCBA board of directors member, has been named a partner in the Brown Law Group. Jon Andrews left Gordon and Rees to start his own firm. Bob Bell has been reelected to another term as managing partner of Luce Forward.

Although switching firms can be noteworthy and exciting, there are some exceptions to the “rule of mobility.” Lawyers such as Reg Vitek, Jerry McMahon, David Casey, Roy Bell and Bill Boggs have spent their careers at the firm where they started. Boggs, for example, has been with the same firm for 35 years: Gray Cary, now called DLA Piper.

Longtime member of the Earl B. Gilliam Bar Association and Lawyers Club of San Diego, Judicial Appointments Secretary Sharon Majors-Lewis has been nominated for the ABA’s Margaret Brent Women Lawyers of Achievement Award.

Rupa G. Singh, outgoing president of the San Diego chapter of the Federal Bar Association, has been appointed by the California State Bar Board of Governors to its Judicial Nominees Evaluation Commission. She will be only the third South Asian to serve on the JNE Commission and the first South Asian to represent District 9 (San Diego).

Peter H. Klee, a partner at Luce Forward, was invited to become a fellow in the American College of Trial Lawyers, an organization that only accepts the top 1 percent of trial lawyers in the United States and Canada. He will join other prominent local attorneys, including Luce Forward colleague Bob Steiner.

Mary Pendleton, a founding and managing principal of Balestreri, Pendleton and Potocki, received the San Diego Defense Lawyers’ Attorney of the Year award.

Passing: Retired Superior Court Judge Dan Tobin, and Jay Wheeler of Chapin Wheeler and formerly of Latham & Watkins.

Please send your information about comings and goings of local lawyers and judges, bench appointments, awards and significant accomplishments (both legal and nonlegal) to wendy.mazzarella@sdcda.org. Photos are also welcome.
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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.
Inadvertent disclosure is a significant issue on the front burner of ethics law. Modern cases involve volumes of paperwork and increased reliance on e-mail and other “quick” methods of transmitting information, and both haste and human error create plenty of opportunities for inadvertent disclosure. Once one side inadvertently receives a “nugget” from the opposing party, the battle is on. What is the ethical responsibility of the recipients? How much can they read? Do they have to return the document? Can they copy it first? And what are they supposed to do with the information they have already seen, particularly if it could lead to a revamping of their litigation strategy?

Inadvertent disclosure involves the competing interests of the duty of loyalty and diligent representation of a client against the duty of fairness and duty to maintain an even playing field. The long-awaited decision from the California Supreme Court in *Rico v. Mitsubishi Motors* has finally arrived.

The *Rico* court considered what actions are ethically required of a lawyer who inadvertently receives privileged documents. The court concluded that according to the authority of *State Compensation Insurance Fund v. WPS Inc.*, the attorney may only read as much as is necessary in order to determine the documents are privileged. Once that is determined, the attorney must notify opposing counsel immediately and make an effort to resolve the situation.

In *Rico*, lawyers for Mitsubishi held a litigation strategy session during which one of the participants took notes. One of Mitsubishi’s lawyers, James Yukevich, printed out only one copy of the notes, which he kept to himself. The notes were not labeled as either “work product” or “confidential.”

Weeks later, Yukevich arrived early to depose a plaintiffs’ witness at the office of plaintiffs’ counsel, Raymond Johnson. Yukevich left his notes in the conference room to go to the restroom and returned to find plaintiffs’ counsel and representatives in the room by themselves. He was permitted back into the room to retrieve his belongings after a short delay. Somehow, Johnson came into possession of Yukevich’s notes from the strategy session. He claimed the court reporter gave them to him; the court reporter denied any memory of the issue. It was subsequently ruled that Johnson acquired the notes through “inadvertence.”
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CAREER: Licensed in 1947 as a California bail bondsman; no one’s been at it longer.

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

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

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

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

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

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

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

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

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Nonetheless, Johnson made valuable use of the document. Recognizing it as a “powerful impeachment document,” which he admitted he knew Yukevich had not intended to produce, he copied it for his experts and co-counsel and used the information a week later in the deposition of a defense expert.1 Once the document came to light, defendants moved to disqualify plaintiffs’ lawyers on grounds they unethically utilized Yukevich’s work product, resulting in irreversible prejudice to the defendants.5 The trial court held the notes were privileged work product and that Johnson had acted unethically in his use of the notes.10 Consequently, the court disqualified plaintiffs’ attorneys and experts.11

The California Supreme Court began its analysis by recognizing the document as protected attorney work product.12 The court cited various authorities defining attorney work product, including a definition protecting writings containing an attorney’s impressions, conclusions, opinions, or legal research or theories.13 Yukevich’s document contained a summary of the experts’ statements in addition to his own comments and personal impressions.14

The plaintiffs relied on Aerojet-General Corp. v. Transport Indemnity Insurance15 to argue that because the document was received through inadvertence, Johnson had a duty to use the nonprivileged portions of the document to the benefit of his client.16 The court rejected this argument, finding there were no portions of the document at issue that were “unprivileged.”17 Having distinguished Aerojet on the privilege issue, the court turned to State Fund, where the inadvertently produced documents at issue were clearly identifiable as subject to the attorney-client privilege.18 While Yukevich’s document was not marked as privileged, as the material at issue was in State Fund,19 the court noted the lack of such prominent markings makes them no less privileged.20 Accordingly, the Rico court adopted the State Fund standard, which was intended to be applied prospectively.

When a lawyer who receives materials that obviously appear to be subject to an attorney-client privilege or otherwise clearly appear to be confidential and privileged and where it is reasonably apparent that the materials were provided or made available through inadvertence, the lawyer receiving such materials should refrain from examining the materials any more than is essential to ascertain if the materials are privileged, and shall immediately notify the sender that he or she possesses material that appears to be privileged. The parties may then proceed to resolve the situation by agreement or may resort to the court for guidance with the benefit of protective orders and other judicial intervention as may be justified.21

The Rico court recognized this rule as consistent with the state policy to preserve the rights of attorneys to thoroughly investigate all aspects of their case, and as practical enough to address the modern reality of the often massive nature of document production.22 The court also recognized that “[a]n attorney has an obligation not only to protect his client’s interests but also to respect the legitimate interests of fellow members of the bar, the judiciary, and the administration of justice.”23

This article does not constitute legal advice. Please shepardize all case law before using.

Wendy Patrick Mazzarella is chair of the San Diego County Bar Association Ethics Committee and a member of the California State Bar Committee on Professional Responsibility and Conduct.
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• Carlsbad Art in the Village (August)
• Carlsbad Village Street Faires (May and November)
• Fiesta del Barrio (September)
• New Village Arts Theatre (www.newvillagearts.org)
• TGIF Jazz in the Park

Practicing in Carlsbad has been a wonderful 30-year ride. For the spirit of old Carlsbad, there’s Grand Avenue Bar & Grill, run by a former civil litigator. My favorite is the steak sandwich smothered in onions.

—RICHARD L. BORG

Here I can balance my life. My wife and I walk to the restaurants. The chicken and rice soup with cilantro is my favorite at Fidel’s Norte. Vigilucci’s is romantic for Italian. And for court, I hop on the Coaster.

—RICHARD DUQUETTE

I can look out my window and see what today’s exercise will be—surfing at Ponto Beach or jogging with my dog. I can work at home, and clients actually enjoy coming to Carlsbad.

—ERIC HANSCOM

Carlsbad is convenient for North County clients and offers many attractions (welcomed distractions from work): the ocean, outlet stores and the flower fields. And the meatloaf at Bistro West will rival your mother’s.

—KARINA COCHRAN

For stress, there is nothing like lunch at the beach or our outlet stores. I also like Fidel’s Norte, Tip Top Meats (a low-carb paradise), the Grand Deli for the best pancakes, and Vigilucci’s at sunset.

—MARY CATALDO

Since moving my practice from Orange County to Carlsbad in 2006, things have been great. My solo practice has grown. I consider Carlsbad to be the land of opportunity!

—MICHAEL H. RITTER

There have been three city attorneys in our history. It started with one attorney in 1952 at the first city council meeting in the boiler room at the Twin Inns, and on the same steps in our photo.

—RONALD R. BALL
(CARLSBAD CITY ATTORNEY)

I love the beaches, lagoons, trails and the Village. I see lots of exciting things coming—beachfront hotels, health clubs, medical offices and mixed-use developments. It’s rewarding to be in such a wonderful community.

—SONDRA BODDY
(CARLSBAD PLANNING COMMISSIONER)

Practicing in Carlsbad is paradise. Clients seem to pay their bills on time with a smile, and the lawyers are genuinely nice. You can settle a case in Fidel’s or the Four Seasons.

—VINCE AIELLO
Practicing in Carlsbad after 35 years in Sacramento is like when I first practiced as a young lawyer. I like how the village, with its many restaurants, is nestled against the shoreline.

—Dale Ordas

My small office in “Olde Carlsbad” is quiet, comfortable and easy to find. But I never tell prospective clients that it was originally the Carlsbad mortuary. It might spook them!

—Lynn Behymr

Several mornings a week I can walk on the beach to start my day. It’s a continuing reminder that we live and work in paradise. And we have many fine restaurants nearby.

—Terry McNiff

Carlsbad maintains a small-town feel while doing business with big-city business acumen. If I need to relieve stress, I can think through legal issues while jogging on the beach at lunchtime.

—Jane Mobaldi (Carlsbad Assistant City Attorney)

As a Los Angeles transplant, I have found this area much more laid-back. There seems to be less stress in the courts and with most attorneys in this area.

—Alan F. Marblestone

I got pulled into the business side of things rather than practicing law and found that to be a good fit. Carlsbad is a great place to work, live and play. You have to try King’s Fish House.

—Lee Adams

Carlsbad is to San Diego County what Beverly Hills is to Los Angeles County. Plus we have collegiality, the weather, the ocean, and a great nearby courthouse. This is the American Dream.

—Bill Kamenjarin

Having over a dozen restaurants where lunch is served alfresco, all within walking distance of the office, can’t be beat. If there is a better place to practice, I’d like to know.

—Daniel Burke

We have the amenities of a big city with a small-town feel. The saying “Where everybody knows your name” isn’t just a sitcom cliché. I can power-walk along the beach, the perfect antidote for a busy day.

—Sejal Majithia

Carlsbad means a combination of collegiality and professionalism not matched in other parts of San Diego. It has been very pleasant to work here and to watch Carlsbad grow over the past nine years.

—John DiCaro

Dean Schiffman is a San Diego attorney and expert witness. deans@LawAndNumbers.com. Our thanks to Ocean House for hosting our photo shoot.
Left to right: former Bar presidents Regina Petty, Melinda Lasater, Jill Burkhardt and Candace Carroll. Photograph by Lauren Radack.
Near the end of 2007, past Bar presidents Melinda Lasater, Regina Petty, Candace Carroll and Jill Burkhardt joined San Diego Lawyer in a round table discussion to talk about the challenges and opportunities they found as women lawyers and presidents. Below is an excerpt from that meeting.

Looking back at the timeline, the first Bar president who was a woman, that was in 1985. Why did it take so long for there to be a woman as the San Diego County Bar president?

Lasater: Well, I think it took a while for women to understand what the political path was. Ann Perod was actually the one who, I think, should have been the first woman president of the County Bar. She had done all of the appropriate things.

And after her, Bonnie Redding also had done all the appropriate projects, had been active, was well respected, and she was the year before me and was not elected president. Actually, she was two years before me. So when I was on the board, they turned to me and said, "Okay. This is what we have to do."

What do you mean by the path and politics?

Lasater: Well, the County Bar has politics just like any other board or office. There are some political realities, and I think it took the women a while to figure out the full picture.

Carroll: One of the things that was happening then was that San Diego was in the process of transforming itself from, not a small town exactly, but a small city where everybody knew everybody else. So the term "good old boy" had a lot of meaning here.

Petty: I clerked in other cities at law firms that were very
active in their local bar association, so I had an opportunity to get a sense of where the profession was in metropolitan areas, and so suffice it to say, when I first got to San Diego, we were behind the times.

Can you be more specific?

Petty: The fact that it was still considered monumental that in the foreseeable future a woman would be president of the County Bar. The fact that the senior associate—and at that time, it would have been the early ’80s—and junior partners of the largest law firms in town were almost completely lacking in diversity.

I summed it up then and continue to sum it up today as: It struck me as being a small town in Iowa. And I actually didn’t expect to stay.

So what was it like to break through this sort of old boys club?

Carroll: The one thing that San Diego had when I got here was the Lawyers Club. When I got here, I had little kids. I had twin infants, so I didn’t do anything for a couple of years except barely make it to work. But when I went to the Lawyers Club and started being active, one of the first things they had was you [Lasater] speaking on being the first woman Bar president, which was nice because it told us, “You can be Bar president. This is an avenue that’s available to you.”

Lasater: And Lawyers Club was supportive, absolutely. The one person I found in this community who was absolutely instrumental in educating women, frankly, is Lynn Schenk.

Petty: In my case it was more promi-
ently Marilyn Huff. When I feel too busy to do anything but be self-centered just to get through my own day, I try to remind myself of the time they took to reach out to me. I didn’t have to go to them.

Lasater: That supporting aspect, I think, is extremely important because that’s not necessarily how women had traditionally approached each other, but in the legal community they did that and the good old boys caused the good old girls to develop. And we had just a wonderful core group, including Lynn Schenk, Jenny McConnell, Sherry Reed, Bonnie Redding and Ann Perod, and I’m probably going to skip somebody.

Burkhardt: Ann brought people in. I had the similar experience a short time later. Abby Silverman bringing me into Lawyers Club and then the support—I got the encouragement to run for Lawyers Club president and for the San Diego County Bar board, and then the encouragement just gets stronger and stronger to the point where you almost can’t give no for an answer.

That sounds like there was a lot of support and outreach, but what did you have to fight for?

Lasater: Respect.

Carroll: One of the things that started happening is women started going on the bench. Louise Adler, who was then Louise Malugen, became a bankruptcy judge, and not only did she become a bankruptcy judge—meaning no disrespect to anybody else who ever sat on the bankruptcy court—she was the best bankruptcy judge anybody had ever seen. She’s really smart and she’s really prepared, and maybe she’s just an example of women knowing they have to work twice as hard, but, by God, once she was on that bankruptcy bench there was nobody appearing in court who did not know anymore that women were good.

In your career, in general, how did you deal with—I have a huge list. How did you deal with earning the same amount as your peers, your male peers?

Burkhardt: I’ve been accused of being naïve, but I don’t think there’s ever been a gender discrepancy during the time I’ve been practicing law. I’m pretty sure I made as much money as my male peers from the beginning of my career.

Lasater: You were in the public sector.

Petty: What size firm?

Burkhardt: Baker and McKenzie.

Petty: Big firms, true. Smaller firms, not necessarily.

Burkhardt: I didn’t come into the legal community until the ’80s. A lot of that was behind us.

Lasater: Probably so.

Petty: Well, the professional statistics would say otherwise, but I haven’t parsed them to see why that is, what the explana-

Briefing on the Presidents

Here are brief looks at the legal backgrounds of the women presidents of the Bar. Virginia Nelson, Adrienne Orfield, Stephanie Sontag and Heather Rosing were unable to attend the round table. SDL asked each of them, what will the San Diego legal community be like for women lawyers in five years? Their answers are included with their bios.

Melinda J. Lasater
1985 President
Superior Court Judge
University of San Diego Law School/Rollins College

Virginia C. Nelson
1990 President
Law Offices of Virginia C. Nelson
University of San Diego Law School

“It’s not possible to generalize about the challenges women lawyers will face in the next five years. Women and men as well, of different ages and stages, will face different issues. Regardless of gender, age or stage, the question always seems to be, how does one best compose their life right now given the current situation? I believe the key is to maximize new technology for peak efficiency and productivity. Also, identify the amount and type of legal work that motivates and invigorates, the personal life that nurtures and restores, and retain a sense of humor. Things are rarely in perfect balance. There is no one way to answer the question, and once we think we have the right composition, everything changes. That’s what keeps life interesting!”
partners in law firms, rainmakers of women in this community as around at the huge achievements partners in law firms. Looking more women accepted as equity with men. Also, I would like to see though women cannot compete of the best “women lawyers,” as opinion) in the best lawyer lists, and I’m disappointed to see lists of the best “women lawyers,” as though women cannot compete with men. Also, I would like to see more women accepted as equity partners in law firms. Looking around at the huge achievements of women in this community as partners in law firms, rainmakers and top trial lawyers, it is clear that women can do it. It may be that some women (and men, of course) opt out of the pursuit of those goals because of other responsibilities and commitments such as family. In my opinion, our final goal is to make sure the decision is a personal one and not a limitation in opportunity.”

Jill L. Burkhardt 2007 President Office of the United States Attorney Harvard Law School/University of Minnesota

Heather L. Rosing 2008 President The Klinedinst Firm Northwestern University Law School/University of Illinois

“I think the challenges women lawyers in San Diego will face in five years are similar to those they face today. One of the biggest issues involves part-time or flex schedules for attorneys (both male and female) raising children. While some law firms and governmental agencies offer such arrangements, many do not. There is also the issue of the misperception that part-time attorney mothers are not partnership material or are not motivated to succeed in the profession. It is our job to educate these employers on the benefits of offering such arrangements, and encourage them to implement part- or flex-time policies that are workable for them and the employees. Women lawyers have come a long way in the last 30 years, but there is still much to be accomplished. I would encourage young female lawyers particularly to take note of where change is needed, and to take action to effectuate that change.”

How did you deal with other women in the profession: competition, superiors, associates or other women working under you who looked to you as a role model?

Lasater: I didn’t realize that women tend to be harder on each other. At that point in time there was not necessarily the same tendency to mentor other women because they were fighting so hard to make their own way. We hadn’t yet grasped the idea that we need to mentor each other as well.

Carroll: I went to law school because of the women’s movement. By the time I was in school, I already knew that we needed to support each other and that one of us wasn’t going to get ahead unless all of us get ahead.

Lasater: I think the original group of women that came in numbers, which would be Judy McConnell [and] Lynn Schenk, they knew that and they implemented it, which I think was helpful.

Then we had a whole influx of women who had no clue. They just sort of thought everything was equal and everything was wonderful. They didn’t understand that they too had a role to play.

Burkhardt: I think there’s a new generation of women—behind the one you were referring to who thought everything was just fine—who think the system is not just fine, that this system needs to be changed from within in terms of better
work options for people with a variety of priorities where it’s not necessarily “I will get ahead. I recognize that I need to do three times the work to get the recognition, so I’m prepared to go in with a commitment to devoting my life to this firm, this agency, this workplace to the exclusion of all else.” And there is a new front, if you will, a new feminist front that wants to address these issues. I sense that some of the earlier generations of women are not supportive of that approach and there’s a message coming back of “You should do it the way we did it and you’re making us all look bad by suggesting that all women aren’t happy giving 120 hours a week to their workplace.”

Lasater: The old superwoman doesn’t live here anymore. I don’t think that there is a lot of that type of reaction. Does it exist? Probably someplace.

Petty: I don’t perceive that that is the dominant view. Law firms are very flat. Public law departments are flat. There are not a lot of different places to be that makes it easy within the legal profession to create a path that works for any particular individual to achieve balance. If you want to have a more balanced lifestyle, you can have that, I think, in almost every firm in America today, but you will make less money.

Burkhardt: That’s well explained, but I don’t have as positive an outlook as you do, at least at the part of your statement where you said that you believe that in almost every firm in this country a woman who’s willing to accept less money can strike the balance she desires. I think it’s still the exception in law firms. Even where it’s available, there is a cost that’s much, much greater than a financial cost.

Fascinating topic. The notebook is closed. This conversation could go on for hours.

Petty: You’re brave to put us together in one room.

Emily Grant is an associate at Herold & Sager. egrant@heroldslaw.com

San Diego Lawyer wishes to thank Esquire Deposition Services and certified shorthand reporter Debby M. Gladish for their assistance in recording this round table discussion.
Where I, as a criminal defense attorney, to tell you that I have studied the life of a former gang leader, you might get the wrong idea. My purpose in studying his life has been to learn from him and to better appreciate the benefits he brings to the San Diego community.

His name suits him, as a massive man: August Hunter. I have seen Hunter stand erect, feet apart, and ball his meaty hand into a fist. “When I was leadin’ the gang, I was like AT&T—I could really reach out and ‘touch’ someone, if I had to,” explains Hunter, swiping frighteningly at the air. Hunter’s shaved head would make him look menacing, were it not for his dark, discerning eyes set behind a delicate pair of wire-rimmed glasses. His lips—bedecked with a well-trimmed salt and pepper mustache—are usually closed in a relaxed way, giving Hunter’s face a serious but peaceful look.

I first met Hunter in 2002 when we worked together as volunteers at Otay Mesa’s Donovan Prison, where Hunter still counsels inmates. There I realized that Hunter’s language is effective for its plainness and just funny enough to make it stick.

I remember one day when—in Hunter’s estimation—a large audience of men needed to be instructed on their speech and attitude. “Do you got a mouth problem?” he growled. “Do you need a checkup from the neck up?”

Born in 1960, Hunter’s descriptions of his childhood hint at the violence that would come into his life. “Growing up in New Orleans,” he says “I was an active kid, a fighter.” When he was 11, his parents divorced and Hunter moved with his mother to Long Beach, where he was quickly caught up in the local street gangs. Within
a decade, he would be leading the Rollin’ 20 Crips, a predominantly black Long Beach gang. Back then, Hunter was one of the gang’s “youngsters,” as he calls them. “The youngsters in the gangs are vicious,” he says. “They’ll have a mother call her son to the door... to blow his brains out. They’re heartless!”

By age 20, Hunter was serving his first term in a California prison. “When I first got to prison, there was this one inmate—a big guy—who called the shots in the yard,” he recalls. “He started messin’ with me and I punched him. The whole prison watched him hit the dirt. That gave me a reputation.” Four years later, Hunter was headed back to prison, shackled to his seat on the prison bus. “The guy who testified against me was on the bus,” he says. “He saw me sittin’ there with all my homies. He was scared and told me, ‘Man, I’m really sorry.’ He knew I could have him ‘done’ in prison. But I gave him a pass.”

Yet Hunter stayed close to the gangs until the late 1990s, when his San Diego connection began to grow. His brother worked at a pharmaceutical company on Torrey Pines Road in La Jolla, so Hunter got a tour there. “Man, I could never do somethin’ like this,” he told his brother. But somehow the tour got Hunter a job interview at another company nearby, a week later. “Walking in there, I thought, ‘What am I doing here? They’re gonna laugh at me.'” he recalls.

Yet Hunter stayed close to the gangs until the late 1990s, when his San Diego connection began to grow. His brother worked at a pharmaceutical company on Torrey Pines Road in La Jolla, so Hunter got a tour there. “Man, I could never do somethin’ like this,” he told his brother. But somehow the tour got Hunter a job interview at another company nearby, a week later. “Walking in there, I thought, ‘What am I doing here? They’re gonna laugh at me,’” he recalls.
“Inside, the guy asked me, ‘What’s your name?’ When he said that, I almost turned around and walked out. But I said, ‘I’m August Hunter.’ Then he said, ‘We know about you, and the job is yours. We’ll train you.’ A week later I was working as an environmental-safety inspector in the labs, wearing a white coat. Heh heh... their human-resources people still can’t figure out how I got in there.”

Hunter’s year on Torrey Pines Road gave him a stable foundation on which to build. First, a co-worker invited him to counsel Santana High students after the 2001 shootings there (a few years later, Hunter and shooter Andy Williams would meet and talk). Around that same time, Hunter began attending the Rock Church, then in Mission Valley, getting guidance from pastors Miles McPherson and John Leeder. Leeder helped Hunter establish his work at Donovan Prison. Before long, the Rock hired Hunter as an associate pastor, a position he now holds.

One terrifying night in 2002 clarified the importance of Hunter’s ties to San Diego. He had gone back to his old Long Beach neighborhood to visit a close friend from his gang days. Standing in the friend’s front yard, Hunter became wary. Down the street was a specter-like figure in a black hooded sweatshirt and sneakers. Hunter tells the story in a solemn voice that still betrays the stress of that night’s events: “The guy started coming at us. Everything went into slow motion... like I was in a trance. He pulled up his sweatshirt and took a gun out of his belt. I could see it was a .45 automatic with an extended clip. I yelled, ‘Look out!’ BOOM! I remember yellow fire a foot long coming out the barrel. My friend got the first round in the face. I turned around and tried to run, but I fell on my stomach. I stayed down like that. Then, BOOM! BOOM! BOOM! I opened my eyes to see what was happening. My friend was next to me getting shot in the back. That gun was right there by me, and I thought about grabbin’ it. But I could see the guy’s eyes... they were red devil eyes. It felt like he had to use up all his energy and ammunition before he’d stop shooting my friend. When he did, he ran off. Right then I heard God say, ‘August, I can’t pro—
tect you if you don’t stay close. Look at what can happen in this world. That shook me up, bad. I got back to San Diego.”

In 2004, Hunter began attending a weekly men’s breakfast at La Jolla Presbyterian Church (LJPC). When the need arose, he stepped in to help 93-year-old La Jolla resident Harold Worrell with weekly coffee duty for the group. Now, on most Wednesday mornings, the former Long Beach gang lord and the frail World War II veteran can be found conversing in the church’s stainless-steel kitchen, where their two very different worlds mix amid the smell of fresh coffee.

Hunter’s relationship with LJPC continues to grow, and its people have responded. They began by tackling Hunter’s dire transportation needs—fixing up an old Chevy van provided by the Rock, with help from Miramar Auto Center—and then mustered...
financial support for Hunter’s day-to-day work with parolees. The parolees themselves began showing up at the weekly breakfast to share their stories and to simply enjoy their newfound friendship with the La Jolla community. In turn, Hunter is planning a day trip to Donovan for the LJPC deacons.

These days, when not with his fiancée, Becky, Hunter spends most of his time in Donovan Prison’s tiny cinder-block chapel. The chapel faces directly onto the main prison yard, so that hundreds of inmates pass by its open door each day. “I know how to talk to these guys. Some of them even knew me when I was in the gangs,” says Hunter. He attributes his effectiveness to solid support from the prison’s administration and to his leadership skills from the streets. “In the gang,” he says, “I learned how to ‘feel’ a person, how to sense if he was good or bad, fake or real. Now that helps me here, on a whole new level.”

Hunter’s work in the chapel mitigates the influence of the race-based prison gangs that dominate the yard. His palpable integrity works to draw in white and Hispanic inmates. “If I favor the black guys,” he says, “the other guys pick up on that right away.” Billy Phillips was one white inmate who flourished under Hunter’s influence. Phillips’ cellmate, Rick Slaton, followed. Slaton was a fearsome former street fighter and a leader among the white inmates. He credits Hunter’s humor-filled message of hope for his turnaround (see youtube.com for McPherson’s interview of Slaton).

When Phillips and Slaton were released, the Rock hired Phillips to help manage its new Point Loma facilities. Slaton now splits his time between steady construction work and professional “mixed martial arts,” where he enjoys a 9-1 record in heavyweight competition. He trains at Unleashed Fitness & Training Center in La Mesa, where he donates time to teach the discipline of martial arts to kids off the street. Hunter comes by to watch, often with an impressionable youngster in tow.

Although Hunter is walking a new path, he is doing so in constant pain from a degenerating hip joint. His long treks to the prison chapel can be excruciating. Yet somehow the painful malady gives him a prince-ly stride. Perhaps fittingly, another of Hunter’s recent parolees, Marcus Lewis, describes himself as “joined at the hip” with Hunter as he works to rebuild his own life.

Hunter’s particular story is faith based, but its lesson is general—that community matters. In his teens, having lost contact with his father, Hunter attached himself to the community of gangs. Later, with his ability to draw others to himself, Hunter brought community, of a sort, to his gang-banging “youngsters.” In prison, Hunter won community through conflict.

Yet in San Diego, Hunter has found lasting community. The people of its churches, businesses and even its prison have helped bring Hunter to faith, peace and purpose. Hunter, in return, is enriching that same community. The August Hunter I know has parolees breakfasting with parishioners, provides our own at-risk youth with true stories of hope, and causes our hearts to consider more carefully the value of those who share his past.

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Such frustrating obstacles can spoil a perfectly peaceful Sunday afternoon. But any golfer will tell you these traditional course hazards are nothing compared to being on the receiving end of a bad slice.
Normally, the dangers associated with golf are not serious in nature. Many avid golfers experience lower-back pain, tendonitis or an occasional sunburn. However, according to a report by the U.S. Consumer Product Safety Commission, in 2003 more than 50,000 golfers sustained injuries serious enough to land them in the emergency room.

Despite these eye-opening statistics and frightening news stories about brain damage and death from the impact of golf balls, the rate of serious injury in San Diego is not all that high.

Mark Woodward, golf operations manager at Torrey Pines North Golf Course, says the layout of the popular municipal course is very open, which results mostly in near hits. “We really only get three to four incidents a year,” he says, “but the few we do get seem to be pretty serious.”

Last summer, the California Supreme Court confirmed the genteel game includes considerable inherent dangers and, for the first time, put it on the same level as hard-hitting sports such as football.

In an opinion written by Justice Carol Corrigan for a 6-1 majority, the high court held in *Shin v. Ahn* that being struck by a carelessly hit ball is an inherent risk of golf. The justices concluded that golfers breach their duty of care to other players only by intentionally injuring them or engaging in conduct so reckless as to be totally outside the range of ordinary activity involved in the sport.

Deputy City Attorney John Riley has worked on a few golf cases during his two and a half years with the San Diego government, and he believes the court’s holding is dead on.

“I’m comfortable with the standard being reckless conduct beyond that normally involved in the sport,” he says. “I think there’s some level when everyone would agree, or at least 12 jurors would agree, that a golfer’s actions went beyond negligence.”

According to Riley, courts assume some level of negligence in every compet-
itive sport. “You may negligently throw the bat,” he says. “You may negligently jump the line in a game of touch football before the snap of the ball and hit somebody off-guard. You may be penalized within the sport or you may be socially ostracized, but simple breach of etiquette or rules does not equal reckless conduct.”

What exactly qualifies as “reckless conduct” is up to the trier of fact in each individual case, but the court does illustrate the issue with some guidelines. In determining whether a golfer acted recklessly, both the nature of the game and the totality of the circumstances surrounding the shot must be considered. Some relevant conditions include the golfer’s skill level, impediments that obstruct his or her view, the distance and angle between the plaintiff and defendant, and the steps the golfer took before teeing off.

Shin was the first California Supreme Court case to address the issue of inherent risk in noncontact sports, a question that had been left open since 1992, when the court adopted a rule in Knight v. Jewett eliminating any duty to avoid injury-causing carelessness between flag-football participants. When asked whether the new decision would impact the City of San Diego, which hosts the 2008 U.S. Open golf tournament at Torrey Pines in June, Riley scoffed at the idea. Any liability for errant golf shots, he says, would be on the shoulders of the individual golfer who took the shot.

“I don’t see Shin impacting the city’s liability except in the most absurd sense, and it wouldn’t even be based on this case,” he says. “It would be based on notice: If Happy Gilmore’s out there driving golf balls into the crowd, and the city’s aware of that, they have to ask Happy to stop.”

Riley adds that it is common practice for large golf tournament promoters, such as those who hosted the 2008 Buick Invitational at Torrey Pines in January, to hold harmless and indemnify the city, absent sole or willful negligence on the part of San Diego. Whether such an agreement will be reached between the city and the promoters of the U.S. Open is yet to be established.

While Riley agrees the primary assumption of the risk doctrine should apply to both contact and noncontact sports, he does not believe the 2007 ruling will change the way golfers approach the game. “You should know the inherent risks of the sport you’re playing and make your decision accordingly,” he explains. “Twenty years ago I might have decided to play touch football, but I’m not going to play it now because I’d probably be banged up and hurt for a week or two.”

Despite the potential implications of the Shin case, golfers are likely to continue using the same risk-benefit analysis they always have. But even if they become more vigilant, the fact remains that some golfers will end up paying dearly for another player’s mistake.

Erin Drenning is a Pro Bono Program staff attorney at the Legal Aid Society of San Diego Inc. erind@lassd.org
In the Face of Fire

The Superior Court responds with a near-flawless plan

Above: The burned house of Scott Himelstein’s father, photographed by Scott Himelstein.
Fires are wild and unpredictable forces of nature; they can turn on a dime and consume everything in their path. Often all we can do is get out of the way and let them take their course, planning for the time when man’s will overtakes nature’s power and restores what we believe is the proper balance. Of course, we can prepare for fire season, we can prepare our response to an outbreak, and we can prepare for the eventual rebuilding.

By Keith H. Rutman
In this case, ironically enough, because the wildfires burned so long last October, the Superior Court had time to prepare its response plan. After the 2003 wildfires when the court was closed for three days, one might think disaster plans simply could be pulled off the shelf and implemented. Newly seated Presiding Judge Kenneth So, however, was not so lucky.

It was not that court staff was unavailable due to evacuations or that facilities were in the path of an oncoming blaze, but rather that the sheriff called out virtually all courtroom deputies and a good portion of jail deputies to serve on fire duty. Once the decision was made, with Sheriff Bill Kolender determining the length and scope of the deployments, Judges So, Kevin Enright (the newly seated Assistant Presiding Judge), Jeffrey Fraser (Presiding Criminal), Linda Quinn (Presiding Civil), Executive Officer Mike Roddy, Public Relations Officer Karen Dalton, and Darlene Dornan (Counsel for the court) really had “little to do” but get ready for the eventual day when the courts would reopen for business.

The first order of business was getting Chief Justice Ronald George to issue a declaration of emergency that would suspend statutes of limitation, grant extra time for processing unlawful detainers, extend temporary restraining orders, toll speedy-trial dates and the like. State law used to only allow the governor to issue such an order, but after 9/11, Government Code §68115 was amended to allow the chief justice to do so. The reason? For security reasons, during the 9/11 crisis then-Governor Gray Davis was hidden by the State Police in an undisclosed location and no one could locate him. During the fires, Governor Arnold Schwarzenegger was on (or close to) the front lines, so George was contacted. Promising all the assistance the county needed, he quickly signed the appropriate orders following applications submitted by So (who thought
the days of preparing emergency applications were probably over when he assumed office. A further extension was granted once the length of the closure was ascertained.

The major task facing the court was how to reschedule all the appearances that would be missed, and it selected the obvious solution: Move them back a week, and assign them to departments other than those where they regularly would be heard, giving priority to in-custody criminal defendants. This required a level of cooperation among the District Attorney’s Office, the City Attorney’s Office, Probation, the Public Defender and Alternate Public Defender, and retained counsel. Remarkably, there was not one contested continuance or a mistrial. On the civil side, there were only three mistrials declared due to the unavailability of a witness, a juror and an attorney (one in each case). Many temporary orders were issued in probate matters, and the family courts were also remarkably well managed. In an ironic twist, the court actually saved money by getting a head start on the reopening and by not accruing any overtime during the closure.

Given the magnitude of the devastation, the scope of human impact, and considering this was the first time the entire County of San Diego was closed for business, it would be hard to fault anyone for a less-than-perfect response. But for a model example of a successful disaster-response plan, we need search no further than the San Diego Superior Court. In light of the challenges during the crisis, the Court’s extended family showed visionary leadership—from “front line” Supervising and Assistant Supervising Judges Joel Pressman (North County), Robert Trentacosta (South County), Herbert Exharos (East County), Susan Huguenor (Juvenile Court), and Lorna Alksne (of the Family Law Court); to the members of the bench and their staff; to the leaders, members and staff of the offices of the District Attorney, City Attorney, Public Defender, Alternate Public Defender, Sheriff’s Department, San Diego Police Department and Probation Department.

The public and bar owe them all a debt of gratitude for ensuring their commitment to justice did not suffer as so many other residents of the county did.

Keith H. Rutman is a solo practitioner and a longtime contributor to San Diego Lawyer.

San Diego Lawyers Help Community

Last fall, in response to the devastating fires, the San Diego County Bar Association, in collaboration with the San Diego Volunteer Lawyer Program and the Legal Aid Society of San Diego, provided pro bono services to fire victims. Together, they gathered and trained more than 130 volunteer lawyers and staffed a disaster hotline for fire victims seeking legal advice.

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Volunteer attorneys greatly impact the plight of immigration detainees

BY ROB HUIE
At any given time, San Diego’s population includes more than a thousand immigrant detainees at the San Diego Correctional Facility, a jail in Otay Mesa referred to as “CCA” after the for-profit entity that operates it. These detainees are parties to deportation (“removal”) proceedings that are pending in San Diego Immigration Court, or they are pursuing appeals from removal orders of that court. Federal law provides that they are allowed to have counsel, but “at no expense to the Government” (8 U.S.C. §1362).

As a group, immigration detainees are badly in need of legal assistance, by any measure. In recent years, the representation rate in immigration court proceedings has been around 35 percent; among detainees, the rate drops to 16 percent for fiscal year 2007. The detainees are housed in prison conditions in a foreign country with an unfamiliar legal system, few resources at their disposal, and with language and cultural differences that pose barriers to effective self-representation. Some of them are refugees dealing with the psychological and physical effects of torture or mistreatment.

There is a lot at stake for many of the detainees. For a person seeking asylum, an order of removal can mean return to a country where he or she will face persecution, imprisonment, torture or death. Carmen M. Chavez, executive director of Casa Cornelia Law Center in San Diego, observes that for many of her clients, “a removal proceeding is effectively a death-penalty case.” For other detainees, removal means separation from family, or the disruption of lives that have been established in this country.

Notably, not all immigration detainees are aliens. Sometimes U.S. citizens are also detained, typically individuals who are stopped at a port of entry and who appear “foreign,” speak little English, have limited resources and lack appropriate documentation. Last year for example, the Casa Cornelia Law Center in San Diego represented a U.S. citizen who was detained at CCA for six weeks until his family was able to produce a U.S. passport at an immigration court hearing. While a six-week detention is unusual, Chavez reports that in some cases citizens are deported after they admit to being citizens of another country—possibly in order to avoid being jailed while awaiting a hearing. “United States citizens are deported every day,” she says.

The Current State of Legal Services
Organizations that seek to provide legal services to immigration detainees face barriers of their own. Many legal-services organizations receive funding from the Legal Services Corporation, a federal entity with a $350 million budget. Under federal regulations, organizations that receive these funds can only provide assistance to U.S. citizens and “eligible aliens,” certain aliens who are lawfully present in the United States (45 C.F.R. §1626.1). These organizations are not allowed to represent undocumented aliens using federal funds or funds from any other source.

Casa Cornelia, which does not receive any federal funding, provides free representation to many detainees who are seeking asylum. After sending questionnaires and conducting screening interviews, Casa Cornelia accepts around 45 asylum cases per year, handling some through its staff attorneys and farming out the rest to volunteer attorneys. In addition to asylum cases, Casa Cornelia and its volunteers provide representation in removal proceedings to unaccompanied children (who are detained at two facilities in East County, in conditions more favorable than those at CCA) and assist immigrant women and children who are victims of domestic violence. Casa Cornelia’s mission is to help immigrants who have suffered human and civil-rights violations, and most
detainees fall outside this group.

All immigration detainees are provided by the government with the List of Free Legal Services Providers—a list of attorneys who may be willing to provide pro bono legal services. “The list” is maintained by the Executive Office of Immigration Review (EOIR), in Falls Church, Virginia, the agency within the Department of Justice that operates the immigration courts and the Board of Immigration Appeals. Federal regulations provide that, to get on the list, an attorney must submit a declaration that he or she “provides free legal services to indigent aliens” and “is willing to represent indigent aliens in immigration proceedings pro bono” (8 C.F.R. §1003.63).

Rose Kasusky, former executive director of Casa Cornelia, expresses concern that the list “may give false hope to detainees” or a false sense to the public generally of the availability of pro bono legal representation. Because there are no clear guidelines for what an attorney is undertaking by placing his or her name on the list, there is some concern that the list is subject to abuse as free, government-sponsored advertising. Indeed, EOIR has recently stated that it intends to strengthen the requirements for appearing on the list.

New Developments

In recognition of current needs in San Diego, the American Bar Association (ABA) (in cooperation with the federal courts, EOIR’s pro bono office, and numerous other organizations) is launching the Immigration Justice Project of San Diego. The project, which is projected to have a three-person staff, will conduct presentations and give basic legal information to groups of detainees at CCA. The ABA project will also recruit, train, and mentor volunteer attorneys to provide pro bono legal services.

Why should attorneys volunteer to help immigration detainees? One answer is to promote “due process.” More concretely, there are many children or adults who need help, in cases where help can make a significant difference. Unlike federal regulations for funding legal services, the California State Bar’s resolution on pro bono work—which urges attorneys to devote at least 50 hours per year to providing legal services to indigent individuals or to organizations that help the poor and disadvantaged—does not discriminate based on the recipient’s immigration status.

Additionally, representation of immigration detainees helps the immigration courts run more efficiently. Elaine Komis of EOIR’s public affairs office explains, “Experience has shown that individuals who receive pro bono representation are more likely to have their cases completed faster. This results in fewer court hearings and less time spent in immigration court proceedings.” This means a lower administrative burden not only for the immigration bureaucracy (including the immigration courts and the Board of Immigration Appeals), but also for the federal courts. Nationwide, more than 50 percent of immigration appeals are handled by the 9th Circuit; to the extent that the court is able to handle these appeals more efficiently, it has

Because there are no clear guidelines for what an attorney is undertaking by placing his or her name on the list, there is some concern that the list is subject to abuse as free, government-sponsored advertising.
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Atorneys interested in volunteering or getting further information can contact any of these individuals or organizations directly:

Casa Cornelia Law Center
Carmen M. Chavez at 619-231-7788, ext. 321 or cchavez@casacornelia.org

ABA’s Immigration Justice Project of San Diego
Irena Lieberman at Lieberman@staff.abanet.org

Catholic Legal Immigration Network Inc. (CLINIC)
Carol Pelton at cpelton@cliniclegal.org

EOIR Pro Bono Office
online at usdoj.gov/eoir/probono/probono.htm

San Diego Volunteer Lawyer Program
www.sdvlp.org

more resources to devote to other types of appeals. Obviously, representation of detainees improves not only the efficiency, but also the quality of adjudication. It also means less time in detention and lower detention costs to the government.

Providing representation or even basic legal information to detained migrants also helps curtail the practice of unlicensed “notarios” claiming to be immigration lawyers or specialists and defrauding victims who are unfamiliar with the U.S. legal system.

It would be a mistake to assume that, with the ABA’s project under way in San Diego, the legal needs of detainees are being met. Any organization’s effort to coordinate volunteer attorneys is, of course, meaningless without actual volunteers. Casa Cornelia, which has so far succeeded in managing a high volume of asylum cases and in representing all unaccompanied minors, has never turned away a volunteer attorney.

The commitment of volunteers is an important part of the picture. Another part is making it easier and more appealing for attorneys to volunteer and enabling volunteer attorneys to make better use of their limited resources. Organizations—such as Casa Cornelia, the ABA’s Immigration Justice Project, the Catholic Legal Immigration Network (which recruits volunteer attorneys to write appellate briefs in immigration matters), EOIR’s pro bono office, and others—help by screening cases, matching volunteer attorneys with clients or providing training and support. Other suggestions have been offered to make it less difficult for volunteer attorneys to communicate with their clients. A brief meeting with a client detained at CCA in the remote reaches of Otay Mesa can easily take half a day, and migrants detained at the facility in El Centro face an even more daunting task of finding representation. These obstacles could be overcome by transporting to the immigration courts in downtown San Diego not only those detainees who have court appearances, but also those detainees who need to meet with their counsel. Technological solutions such as videoconferencing have also been proposed. Carmen Chavez explains that communicating with a detained client involves dealing with obstacles created by geography and bureaucracy—and describes minimizing these obstacles as part of the broader goal of “enhancing access to justice.”

Indigent detainees may share the need for help, but there is no one typical immigration case. Although asylum cases are frequently time-consuming, other volunteer opportunities (like representing six to eight unaccompanied children at a hearing in immigration court) take little more than a day, reports Kasusky. Additionally, some local attorneys are involved in providing assistance to immigration detainees in ways other than direct representation—for example, by participating in inspections of CCA or lawsuits filed by the American Civil Liberties Union over overcrowding and poor medical care at CCA.

Robert S. Huie is a litigation associate at Latham & Watkins LLP in San Diego.

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1. Six-week detention periods are quite common for immigration court detainees.  
2. Casa Cornelia Law Center, headquartered in San Diego, accepts more than 100 asylum cases each year.  
3. The California State Bar’s resolution on pro bono work suggests attorneys should devote at least 50 hours per year to providing legal services to indigent individuals or organizations helping the poor and disadvantaged.  
4. Unlicensed “notarios” claiming to be immigration lawyers or specialists are notorious for defrauding immigration detainees.  
5. The List of Free Legal Services Providers maintained by the Executive Office of Immigration Review (EOIR) has clear guidelines about what attorneys will be undertaking by placing their names on the list.  
6. Federal law provides that parties to deportation proceedings are allowed to have counsel but at no expense to the government.  
7. The American Bar Association, along with numerous other organizations, is launching the Immigration Justice Project of San Diego to ease the burden on immigration courts in San Diego.  
8. Two-thirds of all immigration appeals nationwide are handled by the 9th Circuit.  
9. Experience has shown that individuals who receive pro bono representation are more likely to have their cases resolved faster.  
10. In recent years, the representation rate of immigration detainees by pro bono counsel has been approximately 50 percent.  
11. For many people seeking asylum, a removal proceeding is effectively a sentence to death.  
12. Federal regulations provide that to get on the List of Free Legal Services Providers, an attorney must submit a declaration that he/she “is willing to represent indigent aliens in the immigration process.”  
13. Pro bono representation of detainees typically results in less time in detention and lower detention costs to the government.  
14. Transporting detainees downtown for court appearances and meetings with counsel at the immigration courts, along with videoconferencing, are among solutions that have been suggested to overcome obstacles faced by pro bono attorneys.  
15. Many legal services organizations seeking to provide legal services to immigration detainees receive federal funding from the EOIR.  
16. The California State Bar’s resolution on pro bono work, much like federal regulations, discourages attorneys from representing non-U.S. citizens in immigration proceedings.  
17. Not all immigration detainees are aliens, as U.S. citizens who appear “foreign” are frequently detained.  
18. Under federal regulations, organizations that receive funds from the Legal Services Corporation can only provide assistance to U.S. citizens and “eligible aliens.”  
19. It is estimated that a meeting with a detainee in El Centro will take half a day.  
20. Because it is Casa Cornelia’s mission to help immigrants who have suffered civil and human rights violations, many detainees fall outside of this organization’s focus.
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Federalist Society Dinner

The San Diego chapter of the Federalist Society celebrated its 15th anniversary with a dinner at The Prado in Balboa Park January 17. Former Attorney General Ed Meese was the featured speaker.
Pan Asian Lawyers of San Diego/Filipino American Lawyers of San Diego held an annual dinner January 25 at the Sheraton San Diego Hotel & Marina. California Supreme Court Justice Marvin Baxter was the featured speaker.

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You’d never know it by looking at him, but the late District Court Judge John Rhoades was a pretty funny guy. His portrait hangs in the Weinberger U.S. [Bankruptcy] Courthouse, on the first floor. Take a look sometime—not only because of the stern portrait, but it will also give you a good excuse to take in San Diego’s most beautiful courthouse.

Judge Rhoades, who died last fall at the age of 82, was a respected member of the federal bench for 22 years. But here’s the rub: He had an alias! I reprint for you now the following passage from “DICTA Welcomes,” taken from the November 1967 issue of Dicta Magazine (grand forerunner to SDL):

DICTA is proud to welcome JUAN CAMINOS un licensiado internationale. He was born in Tijuana, May 5, 1930. He is married to the beautiful and ample Consuelo Maria Elena de la Luz natividad Gonzales-Gonzales. They have 13 or 14 or 15 children. Juanito (as he is called by his intimates) was graduated from the School of Hard Knocks in 1950 and immediately enrolled in Wicks. After taking Wicks a record of 33 times, he was graduated cum fraud. He served as a private in the Mexican Army and distinguished himself at the bloody “invasion of U.S.C. Freshmen” battle at the downtown bullring. He is a sole practitioner and recently opened a posh office in Jamul where he specializes in quickie interlocutories from the Jamul Justice Court. He spends his leisure hours bar-hopping and doing the Buggaloo.

If you don’t believe me, go down to the San Diego County Public Law Library and look up this edition of Dicta, page 21. I didn’t do that—my copy came from Juan, I mean, John Rhoades. He sent it over unannounced last summer, so I am sure he wouldn’t mind this reprint.

According to Cheryl Dunn Soto, his law clerk during his final five years on the bench, Rhoades was well known for his dry wit. She related several great stories about him in a recent tribute (The Federal Bar Association Newsletter, Fall 2007), including an encounter during sentencing with a defendant who spoke in a thick southern drawl. The defendant told Rhoades that he planned on being a songwriter and had written one about his recent incarceration. Rhoades, of course, had him perform it; the song included some guitar riffs, which the defendant (sans guitar) imitated until Rhoades finally stopped him and explained that “the court reporter cannot take down ‘brrring, brrring, brrring.’ ”

We’ve talked before in these pages about Rhoades being instrumental in the restoration of the old custom house into the Bankruptcy Courthouse (hence his portrait). He also was a strong advocate of modern art, and supported the placement and preservation of the 60-foot “Excalibur” piece (representing the sword of justice) that still sits between the Schwartz Courthouse and the Federal Office Building on Front Street.

Our legal profession had many examples of dry wit “in the day” (see old Dicta issues regarding the Bar Dinner, for example). Now, with everyone PC and overregulated, the profession is just simply “dry.” What a shame. Judge Rhoades will indeed be missed. ~

George W. Brewster Jr. is a senior deputy county counsel for the County of San Diego. sandbrews@aol.com
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