Gently Persistent

The Un-Hero.

No chest-pounding. No end-zone dance.
Instead, a skilled mediator gently and persistently keeps all parties focused on finding solutions to the problems at hand. Until resolution is reached.

Steve Kruis – calmly relentless.

Gently Persistent

The Un-Hero.

No chest-pounding. No end-zone dance.
Instead, a skilled mediator gently and persistently keeps all parties focused on finding solutions to the problems at hand. Until resolution is reached.

Steve Kruis – calmly relentless.
Let ForensisGroup’s technical advantage give you the edge.

Consultants, Experts, and Expert Witnesses
Forensic Business, Construction, Engineering, Medical, Scientific, Technical

1-800-555-5422
www.ForensisGroup.com experts@ForensisGroup.com

ForensisGroup® THE EXPERT OF EXPERTS®

Experts Consulting Nationwide & Throughout California, Nevada and Arizona • Including Las Vegas, Los Angeles, Reno, Sacramento, San Diego, San Francisco
# TABLE OF CONTENTS

November/December 2007

## DEPARTMENTS

<table>
<thead>
<tr>
<th>Page</th>
<th>Department</th>
<th>Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>Perspective</td>
<td>How to interview a Supreme Court justice with aloha spirit.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>By Laura S. Taylor</td>
</tr>
<tr>
<td>8</td>
<td>President’s Page</td>
<td>The outgoing president says thank you.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>By Jill Burkhardt</td>
</tr>
<tr>
<td>10</td>
<td>Letters</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Book of Business</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Heard on the Street</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>World View</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>52</td>
<td>MCLE Questions</td>
<td></td>
</tr>
<tr>
<td>54</td>
<td>Photo Gallery</td>
<td></td>
</tr>
<tr>
<td>58</td>
<td>Sustaining Members</td>
<td></td>
</tr>
<tr>
<td>60</td>
<td>Advertisers’ Index</td>
<td></td>
</tr>
<tr>
<td>61</td>
<td>Directory of Experts and Consultants</td>
<td></td>
</tr>
<tr>
<td>62</td>
<td>Rewind</td>
<td></td>
</tr>
</tbody>
</table>

## FEATURES

<table>
<thead>
<tr>
<th>Page</th>
<th>Title</th>
<th>Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>24</td>
<td>Ending or Mending: The Brave New World of Digital Rights Management</td>
<td>Copyright law in the Information Age is uncharted territory.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>By Julie Cook</td>
</tr>
<tr>
<td>28</td>
<td>Point/Counterpoint: The Court and the Diocese</td>
<td>Was the bankruptcy filing fair?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>By Richard L. Stevenson and Irwin Zalkin</td>
</tr>
<tr>
<td>32</td>
<td>Heather Rosing</td>
<td>Meet the new Bar president.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>By James W. Talley</td>
</tr>
<tr>
<td>38</td>
<td>Bob Goff and Restore International</td>
<td>On a trip to meet world leaders, an attorney met those in need.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>By Dean Nelson</td>
</tr>
<tr>
<td>42</td>
<td>Tribal Justice: The ICSC Upholds the Law and Tradition</td>
<td>The Intertribal Court of Southern California integrates tribal customs</td>
</tr>
<tr>
<td></td>
<td></td>
<td>with legal decisions.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>By Alice Solovey</td>
</tr>
</tbody>
</table>

On the cover: New Bar President Heather Rosing photographed by Lauren Radack. Location courtesy of the Japanese Friendship Garden Society of San Diego.

San Diego Volunteer Lawyer Program’s popular LAF-Off returns Thursday, March 13, 2008 to the House of Blues where SDVLP netted $33,000.00 in 2007. Some of the contestants head to San Diego State University November 14 to audition for a spot on *Jimmy Kimmel Live*. SDVLP and *San Diego Lawyer* will be following their journey.

San Diego Lawyer™ (ISSN: 1096-1887) is published bi-monthly by the San Diego County Bar Association, 1333 Seventh Avenue, San Diego, CA 92101-4309. Phone is (619) 231-0781. The price of an annual subscription to members of the San Diego County Bar Association ($10.00) is included in their dues. Annual subscriptions to all others $50.00. Single copy price $10.00.

Periodicals postage paid at San Diego, CA. POSTMASTER: Send address changes to San Diego Lawyer 1333 Seventh Ave., San Diego, CA 92101-4309. Copyright © 2002 by the San Diego County Bar Association. All rights reserved. Opinions expressed in San Diego Lawyer are those of the author only and are not opinions of the SDCBA or the San Diego Lawyer Committee.
The San Diego County Bar Association (SDCBA) is pleased to announce that it has expanded its endorsement of Ahern Insurance Brokerage (AIB). AIB and the SDCBA have enjoyed a working relationship that began in 2004, when the agency became the Endorsed Insurance Broker for Professional Liability Insurance coverage. In an effort to continue providing SDCBA members with quality insurance products that are competitively priced, AIB is now offering additional lines of insurance coverage. SDCBA members have exclusive rights to purchase many of these products at discounted rates, enhanced benefit levels, and with simplified underwriting requirements.

FOR ADDITIONAL INFORMATION PLEASE VISIT WWW.AHERNINSURANCE.COM
[PERSPECTIVE] BY LAURA S. TAYLOR

Island Justice

On July 6, 2007, I experienced a moment of near panic as I read an e-mail advising that in a little over a week I would interview Justice John Paul Stevens in front of hundreds of people in “aloha attire.” How would I harmonize Hawaiian garb and a serious discussion with the most senior member of the Supreme Court? Happily, I resolved my fashion dilemma and enjoyed a conversation that will be a highlight of my legal career.

The interview took place in Honolulu at the annual Ninth Circuit Judicial Conference. For several months, my fellow interviewers, Judge Robert Lasnik, chief judge of the Western District of Washington, and Andrew Gordon, a partner at McDonald Carano Wilson in Las Vegas, and I struggled to frame the perfect set of questions for our 45-minute discussion. He put Bush/Gore questions off-limits, but otherwise left us free to ask anything, while he reserved his right to refuse to answer. Ultimately, we framed questions that fell into three broad areas.

First, we sought insight as to how the Supreme Court has changed over the past 37 years. For example, our review of articles and opinions led us to believe that Justice Stevens might note a more caustic tone in opinions and a less cordial relationship between the justices. He surprised us, however, with the response that the less complimentary comments in his recent opinions were nothing new. Second, we explored more recent Supreme Court opinions, requiring Justice Stevens to speak to stare decisis and “super” stare decisis.

Finally, we made more personal inquiries. When asked if he had identified a fellow justice to tell him “when it was time to leave the bench,” Justice Stevens responded with a forceful yes, but he immediately added that he had to be careful as that instruction often followed his dissent from an opinion authored by his designee. He discussed the meaning of his self-designation as a “judicial conservative,” but he refused to apply this term to any other member of the Court, stating that he did not wish to “label” his fellow jurists. Similarly, when asked which of his fellow justices he would choose to judge his own case, he named Justice Souter, but he quickly added that he would be comfortable with any of his fellow jurists, calling all of them “fair minded.”

In response to the obvious question raised by my early reference to aloha attire, I can confirm that Justice Stevens did not wear a bowtie, but he also did not don a Hawaiian shirt. I can also confirm that Justice Stevens possesses the attributes we all value in a judge: wisdom, discernment, humor and gracious demeanor. Thus, I remain immensely grateful for the opportunity to wear a lei and converse with this outstanding jurist.

Laura S. Taylor is the administrative partner in the San Diego office of Sheppard, Mullin, Richter & Hampton LLP. She practices principally in the area of bankruptcy, creditors rights and commercial law. Her most frequent partner in judicial dialogue is her husband, the Honorable Timothy B. Taylor. She is expected to join the U.S. Bankruptcy Court for the Southern District of California in January 2008.
Priority Banking makes you the priority.

You give your clients the highest level of service. Why shouldn’t you expect the same from your bank? Priority Banking¹ is a banking solution that delivers a higher level of attention, convenience and competitive pricing to successful attorneys like you. You’ll have a dedicated banker who will personally assist you in selecting the products and services that best fit your needs. You’ll also have access to a comprehensive range of fee-free and discounted banking services, including no-fee ATM access worldwide². Welcome to the bank that makes you the priority.

Enjoy the advantages of a personal banker, call 888-818-6060 or visit us online.

¹Requires minimum combined balances of $100,000 or more, which can be maintained in a combination of qualifying accounts. Two business checking accounts are free of the regular monthly service charge. Other charges, such as overdraft fees, will still apply. Fee will apply for accounts closed within 90 days of opening. You may be assigned to another program or product if you no longer meet the minimum balance requirement of Priority Banking. See our All About Business Accounts & Services Disclosure and Agreement for details.

²Union Bank will rebate any fee that an owner or operator may charge for use of their non-Union Bank ATM.
A Heartfelt Thank You

It has been an unbelievable honor to serve as president of this incredible organization for the past year. At every event I attended (and I’m pretty sure they numbered in the hundreds), I met members who had great ideas for the Bar—where it is heading and what can be achieved. We have so much forward momentum, and I got to be front and center of all that energy.

That energy came from the members, the leaders of our sections and committees and the Board members with whom I was so fortunate to serve. The first-year class—Stacy Fode, Dan Holsenback, Dan Link, Liza Suwczinsky and Howard Wayne, along with YNLD president Cirrus Alpert—hit the ground running, picking up a full load of responsibility and bringing great energy to the board. Patrick Hosey, Charlie Kim, Russ Kohn, Jerri Malana and Michelle Mitchell made up the second-year class and showed the board that hard work and humor make for a winning combination. Mike Battin, Lea Fields, Brian Funk, Bud Klueck and Kristi Pfister served as vice presidents and brought invaluable insight and leadership to the table. Andy Albert, as immediate past president, brought a depth of experience and wisdom that was unparalleled. And I cannot possibly overstate how much have I relied on Heather Rosing, the president-elect, a woman of limitless energy, enthusiasm and judgment.

For all the great vision of the board and the hard work of the section and committee chairs, there would be no functioning Bar without the staff. We have an amazing staff that manages to accomplish much more than their numbers would suggest. This is achieved through incredible hard work and dedication and is inspired by a highly professional senior staff: Fran Cote, finance director extraordinaire and oh so much more; Jeanmarie Bond, CLE director and, for many members, the cheerful face of the Bar; and our newest senior staff members, Karen Korr (communications director) and Wanda Meyers (membership director), who immediately embraced the Bar and their new positions as if they’d been here for years. I offer a special acknowledgment and thank you to Pat Robinson, program director of PCC, and Michelle Chavez, director of LRIS, as well as to Briana Wagner, the incomparable executive director of the Bar Foundation.

That leaves me with SJ Kalian to thank. When our past executive director, Sheree Swetin, was very sick, SJ (immediate past executive director of Consumer Attorneys of San Diego) agreed to serve as deputy executive director, supporting Sheree. As it turns out, Sheree was not well enough to continue serving as an active executive director. SJ had not signed on to be a full-time executive director; she hadn’t been given the title of executive director; she never had the benefit of being transitioned gracefully into the position of executive director—yet she assumed those very responsibilities. She assumed them without fanfare and without regard to the personal sacrifices involved (which were not inconsequential). She did it out of loyalty to Sheree, to Andy Albert and to this Bar. SJ quietly took over leadership of this organization and literally kept it going. We all owe her a debt of gratitude—but none more than I.

So I thank you, SJ. And thanks to the staff. Thanks to the board and the leaders of the sections and committees. Thanks to you, the members. It’s been an amazing year, and I will never, ever forget it.
Witkin’s influence in the courtroom is measurable.

The Witkin Library:
- Summary of California Law, 10th
- California Procedure, 4th
- California Criminal Law, 3d
- California Evidence, 4th

Witkin has been cited more than 20,000 times by the California Supreme Court and Court of Appeal.

What makes Witkin so persuasive with the courts? We think it’s the rigorous methodology that our editors use to synthesize absolutely everything relevant to an issue – caselaw, statutes, rules, law review articles, and practice works – into the main discussion. Nothing is buried in a footnote. The result is clear, integrated, comprehensive analysis, faster recognition of trends, and a sharp eye for conflicts in the law.


For more information, call your local West representative at 1-800-762-5272.
As a post-script to Judge Howatt’s melancholy story of the eviction of the Cupeno, it was only as recently as 1987 that the last surviving speaker of the Cupeno language, Roscinda Nolasquez, died at the age of 94 on the Pala Indian Reservation. Linguistically isolated on a reservation where another language was predominant and severed from their traditional lands and way of life, the Cupeno slowly assimilated.

Thus, the unique cultural outlook represented by their language was lost for all time.

We need to learn a lesson from this, and make efforts – while there is still time – to support and promote other surviving native languages in San Diego County, including Luiseno and I’ipay/Ti’ipay, before they too fade away and deprive us of their unique worldview, accumulated over hundreds of generations. Both the government and the tribes themselves should take an active role in raising awareness of the surviving languages to increase their prestige as a way of encouraging new learners.

Time is short, and once a language is lost, very little can be done to recover the intellectual resources it held for future generations. We are all lessened by the loss of each such treasure house of human thought.

James Fife
La Mesa

I noticed an error in your article about Gary Aguirre. You stated that “Mr. Aguirre won, successfully arguing that the PSA pilots, not air traffic controllers, were responsible for the crash.” I’m not sure that anyone was found to be responsible for the crash. I do remember that PSA did not contest liability. Mr. Aguirre, I and a number of other attorneys tried only the issue of damages before Judge Jack Levitt.

Roger M. Keithly Jr.
San Diego
Proud to Welcome

Judge Frederick Mandabach brings 27 years of distinguished judicial service from the San Bernardino Superior Court.

Judge Mandabach served as one of the premier family law experts in the San Bernardino County court system.

Judge Mandabach was the recipient of the Family Law Judicial Officer of the Year by the California State Bar.

Areas of Specialization

Hon. Frederick Mandabach (Ret.)

Family Law
Commercial Contract/General Business

Also Available Through ADR Services, Inc.

ADR SERVICES, INC.

Erin Jackson, Manager
225 Broadway, Suite 1400
San Diego, California 92101

tel 619.233.1323
fax 619.233.1324
www.adrservices.org
As we learned in the previous issue, relying on reference checking is only part of the hiring process. With the shortage of legal secretaries and the employment climate in California, making the right decision in hiring has never been more important. You don’t want to hire somebody else’s nightmare.

Most likely, before you interview a candidate, the legal administrator or the firm’s human resources manager has scrutinized the résumé for typographical and grammatical errors (it should be perfect) and has done a preliminary screening interview to ensure that the candidate meets the basic requirements.

Be prepared for the interview with these top 10 tips for a successful interview and hire:

1. Remember that this is the best the candidate is going to look—make sure it fits your firm’s culture when ratcheted down for the average workday. It isn’t going to go up.
2. Don’t do all the talking. Let the candidate know briefly what’s expected, describe your work style, and then ask questions based on what’s most important to you.
3. Listen carefully to the candidate’s grammar and manner of speaking. Does it convey the message you want to convey to your clients?
4. Beware the candidate who speaks ill of the current or a former employer—that could be you down the road. Ask the candidate how much notice he or she would need to give the current employer and pass on anyone who says less than two weeks.
5. Inquire about gaps in employment or overlaps—either could spell trouble.
6. It’s important to like the person—you spend a lot of time working with a secretary. Don’t settle for someone who’s not a fit.
7. Ask why the candidate has left each former employer, and listen for solid reasons for making a job change.
8. Ask what the candidate likes about being a legal secretary—and then listen for answers such as “I like the variety of work and supporting the lawyers to help them deliver to our external clients,” and “I see the lawyers as my clients.” Beware if the answer is “It pays the bills.”
9. If the candidate has the experience you want, the personality that clicks, and is interested in the position, consider offering a signing bonus or “grandfathering” vacation benefits. For someone who’s worked at another firm for several years, going from four weeks to two may mean the candidate won’t accept your offer.
10. Be ready to make a decision quickly. Today’s tight legal secretaries’ market is much like the housing market two years ago: multiple offers above the asking price.

By having a plan and devoting the time to the interviewing process, you will have a better chance of a successful outcome.

Patti Lane is legal administrator for McKenna Long & Aldridge LLP, a certified legal manager, and past president of the International Association of Legal Administrators. plane@mckennalong.com
Is there a better way to run your back office?

Introducing LexisNexis® PCLaw™ 8
*The leading time & billing software

“We are truly impressed with LexisNexis PCLaw Version 8. The program is totally reliable and on those rare occasions when technical support is needed, they excel in friendliness, knowledge and response time. A truly excellent program with numerous timesaving must-have features.”

Brenda Hawthorne
A. Julien Landry Professional Corporation

To download a white paper on how PCLaw Version 8 can improve the efficiency of your back office, log on to lexisnexis.com/pclaw8

Question of the Month:

If You Had to Return to One Job That You Had in the Past, What Job Would It Be?

The prior job I would return to is receptionist at a luxury car dealership. Nothing makes dealing with lawyers seem more pleasant than working with car sales people who are on commission. They were vicious, but it always made for a lively workplace! Besides, who doesn’t love the new car smell?

—Margie Cartwright
Career Counselor, University of San Diego School of Law

In high school, I worked in a movie theater. I got to see all the movies, and eat all the popcorn I wanted, for free.

—Todd Stevens
Keeney, Waite & Stevens

I worked my way through college by playing music, so I would return to that. I would accept gigs at the St. Regis Hotel, which has a bay window overlooking the ski slopes in Aspen, Colorado, and at the Princeville Hotel in Kauai, Hawaii.

—Terry Plummer
Law Office of Terry Plummer

I would return to guiding day-hikers in Denali National Park.

—Charlie Bird
Luce, Forward, Hamilton & Scripps, LLP

I would go back to leading nature hikes for the State Park Service at Torrey Pines State Reserve. Torrey Pines is such a beautiful place, and introducing people to our local chaparral environment and local Native American history was a treat...and I got to wear shorts to work every day!

—Hon. Cindy Davis
San Diego Superior Court Commissioner

I have been working nonstop since I was 13, so this is an interesting question for me. I would return either to the painting gig that I had as a teenager (I painted designs on flower pots and popcorn cans for a boutique) or to working at Saks Fifth Avenue, which I did during college. Basically, it's a toss-up between my passion for art and the 30 percent discount I got at Saks!

—Karin Wick
Law Office of Karin Wick

I would return to my job as an interregional firefighter, also known as a “hotshot.” For two years I was a member of this elite forest fire fighting crew, based in northern New Mexico. I was the first woman on my team. At first, the men would do PT. and leave me inside to mop the barracks. But after the first fire, they saw how hard I worked and then it was like having 20 big brothers. It was a wonderful experience. We traveled throughout the United States—Florida, Montana, Wyoming, New Mexico, California, Idaho, etc.—and we slept outdoors. It was a chance to do good and to serve; hard work, but rewarding work.

—Mary Lehman
Law Offices of Mary A. Lehman, Appellate Law Specialist

Mary D. McCoy is a shareholder with McCoy, Tierince & Robertson, APLC. She represents consumers in lemon laws, auto fraud, and Fair Debt Collection Practices Act and Fair Credit Reporting Act cases. LDM@MTRLaw.com
INDEPENDENT RETIRED JURIST AVAILABLE FOR DISPUTE RESOLUTION

Mediations • Arbitrations
Settlement Conferences
Trials • Discovery
Special Master References

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

Hon. Charles W. Froehlich Jr. (Ret.)
655 W. Broadway, Ste. 1000
San Diego, CA 92101
Phone: (619) 696-5785
Fax: (619) 234-4786
info@charlesfroehlich.com

Hon. Alice D. Sullivan (Ret.)
11512 El Camino Real, Ste. 370
San Diego, CA 92120
Phone: (658) 792-1330
Fax: (619) 702-1248
ads@privatejudge.com
www.privatejudge.com

Hon. Vincent P. DiFiglia (Ret.)
101 W. Broadway, Ste. 810
San Diego, CA 92101
Phone: (619) 238-1921
Fax: (619) 238-1170
vdfiglia-milliken.com

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

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

Each jurist serves separately and independently of every other jurist listed. There is no sharing of fees or expenses except for the cost of placement of this announcement.
To describe New Orleans in the aftermath of Katrina as “A Tale of Two Cities” would be fair but incompletely descriptive.

The first “city” is the one well known to travelers from all across the globe. It’s a city that rewards visitors with good food, good music and charming, walkable neighborhoods.

The world hasn’t yet tumbled to the fact that most of what visitors identified as the quintessential New Orleans is back up and running. The city’s most famous bars and restaurants as well as its historic housing stock were built on the high ground nearest the Mississippi. You can still have café au lait and beignets at the Café du Monde, located just across from Jackson Square in the French Quarter. Or take a muffuletta out of the Central Grocery and eat it on the Moonwalk while watching Ol’ Man River roll by. Step into a quieter world at the Napoleon House and have a Pimm’s Cup while listening to classical music.

The grand New Orleans restaurants are back—Galatoire’s, Antoine’s, Commander’s Palace—and you’ll discover grand new restaurants as well, such as Ralph’s on the Park, run by Ralph Brennan.

Interested in music after your great meal? You’ll find lots to choose from—Ellis Marsalis at Snug Harbor, trad jazz at the Palm Court or in Preservation Hall, rhythm ‘n’ blues at Tipitina’s, and diverse national and local musicians in the House of Blues’ sumptuously renovated French Quarter building.

Golfers who’ve not been to New Orleans recently will admire the Audubon Golf Club’s scenic jewel of an executive course laid out amid upstate oaks with a view of nearby university spires and some of best greens in the state. Or you can take on the challenge of Pete Dye’s TPC course, site of the PGA Tour’s Zurich Classic.

New Orleans also has a vibrant downtown art community in the Central Business District. On White Linen Night, they close the streets and open their doors so pedestrians can browse with a glass of wine in hand. One block away are the Contemporary Arts Center and the Ogden Museum of Southern Art, both notable buildings in their own right that house many wonderful works of art.

But what about the “other” city? It’s there to be seen as well. Many square miles of devastated property remain, looking not much different from the way things looked after Katrina’s waters receded.

If you don’t know a local who will take you on the “misery tour,” you can ride around on your own and see the devastation wrought by the greatest natural disaster in this country’s history (or, as many locals would say, the greatest man-made disaster, attributable to poorly constructed levees). The destruction defies description. You’ve got to see it to understand it. And we want visitors to see it, because our city’s recovery depends on widespread understanding of what happened here.

But the “tale of two cities” is inadequate if the description stops here. We’re also a city in recovery, with neighborhoods coming back through the dedicated efforts of residents who have banded together in groups like the Broadmoor Improvement Association. We’re a city of volunteers—students, church members, first responders and many others, who have come from cities all across America to participate in the rebuilding of New Orleans.

My wife’s favorite T-shirt has emblazoned across its front the words “ReNew Orleans.” Renew it we will.

We invite visitors to join us and see what’s happening here. You’ll find one or several cities to welcome you and make your visit enjoyable and meaningful.~

David Marcello runs the clinical program at Tulane Law School; dmarcello@tulane.edu. His classmate at Tulane Law School was Bill Kammer of Solomon Ward Seidenwurm & Smith, who encouraged him to write this article; wkammer@swsslaw.com.
CAREER: Licensed in 1947 as a California bail bondsman; no one's been at it longer.

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

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

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

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

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

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

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

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

http://www.kingstahlmanbail.com/

George Stahlman, Owner
Wilhelmina has made multiple inquiries with the U.S. Citizenship and Immigration Services (USCIS), the government agency responsible for processing these applications. She has even gone so far as to request the assistance of her U.S. senator, Barbara Boxer. The reply to all inquiries is that mandatory security checks are pending and that nothing can be done until those checks are completed.

Wilhelmina’s problem, unfortunately, is not uncommon. According to USCIS, approximately two-thirds of naturalization applications filed today have security check holds delaying their adjudication. Including cases filed under prior protocols, almost 170,000 naturalization applications are awaiting security checks. Background check delays in other areas, such as green card applications, appear to be similar. In San Diego, approximately 50 percent of the individuals who appear for permanent residency interviews have their cases continued because of security checks.

Wilhelmina’s case raises two basic questions. First, is there anything that can be done to force the completion of Wilhelmina’s applications? Second, will taking such steps endanger Wilhelmina’s present status? Both of these questions are more complex than they first appear.

Under several different laws passed after the terrorist attacks on September 11, 2001, most applicants for immigration benefits must undergo two investigations. The first is a fin-
MAXIMIZE YOUR PRACTICE

Increase your Personal Injury or Workers Compensation leads with the Rainmakers at Walker Advertising

- Join the attorney advertising group that has consistently delivered pre-screened leads to our attorney members.
- Get your share of the 97,884 calls screened annually.
- Benefit directly from strategic advertising with 59,605 television spots, 7,450 radio spots, 234 newspaper ads and 1,468 outdoor ads annually.

Call 1-800-409-0909 now
start maximizing your practice today!
gerprint check. The individual appears at one of several application support centers where digital fingerprints are taken and sent electronically to the FBI for a review of their fingerprint database. Generally, the fingerprint reviews are completed within a few days.

The second investigation is a name check, where all available law enforcement databases are searched electronically for individuals with the same or a similar name and the same or a similar date of birth. If there is a hit, then an individual review of the record in question must be made to determine whether the hit is for the individual applying for the benefit, and if it is, whether the record reveals a reason why the individual should not receive the benefit. While most name checks are completed within 30 to 60 days, for a significant percentage of individuals, the checks take a great deal longer.

There have been several complaints about the name check system. A hit may reflect many things, including that the individual reported a crime to the police, that the individual was a potential witness in a case, or that the individual was arrested but not charged with a crime. None of these incidents, absent other factors, are enough to prevent a person from immigrating or becoming a citizen of this country. Another problem is that the system requires an individual clearing of each hit, meaning that an FBI officer must review the record in question.

When an individual is stuck with a name check delay, there is little that can be done outside of a mandamus action in the local federal district courts. In the past, the filing of a mandamus action was considered grounds for requesting that the name check be expedited. However, as the number of stuck cases has grown, USCIS determined that the filing of an action in federal court will no longer lead to an expedite request with the FBI.

Individuals who have had an interview on a naturalization application are the only group that clearly has jurisdiction to go to federal court. By law, USCIS has 120 days from the date of the interview to make a decision, or the individual may request de novo review in the district court. In a brazen effort to thwart this provision of the law, in 2006 the USCIS issued a memo wherein it stated that it would not schedule a naturalization interview until both background checks are complete. Because Wilhelmina has not been scheduled for a naturalization interview, she is one of the many who cannot use this provision.

Wilhelmina’s only recourse is filing a mandamus action in federal court.

Filing an action in federal court generally brings the full attention of the USCIS and other agencies to the matter. If there are any grounds for denying the benefit sought, they will come to light. With that in mind, a fuller discussion of Wilhelmina’s personal and immigration history is necessary.

Wilhelmina has been working in California, her husband is going to medical school in New York. Wilhelmina says that she was anxious to get her American citizenship and would be a good time for her to work overseas. She is anxious to get her American citizenship because she has an offer to be the director of a not-for-profit girls’ school system in Afghanistan. Thus, she does not anticipate spending much time in the United States for the next several years, and she wishes to preserve her right to return to this country. Wilhelmina eventually admits that she and her husband are having marital problems, in part because she had an affair while in Afghanistan which resulted in the birth of a child, and her husband is contemplating filing for divorce.

There are many requirements for naturalization. In addition to being a permanent resident, there is a physical presence requirement. A spouse of a U.S. citizen living in a marital union must be a permanent resident for three years and be physically present in the United States for at least 18 months. According to USCIS, the requirements must be met at the time the naturalization application was filed, the date of the interview, and the date the person is sworn in as an American citizen. In Wilhelmina’s case, although she may have met the physical presence requirement in 2005 when she filed her application, her lengthy trips after filing for naturalization make her ineligible today.

How could Wilhelmina make such a mistake? The problem lies in the complicated nature of permanent resident status, residency for naturalization purposes, and the other requirements for naturalization.

A lawful permanent resident is someone who has a home in the United States that she has no intention of abandoning. The government looks at overall time spent away from the United States, employment in the United States or overseas, family in the United States, and other evidence of the temporary nature of the foreign sojourn. Some long-term absences may be temporary; others may not. In Wilhelmina’s case, there are many indications, including her permanent employment offer, that her home is no longer in the United States. A close look by the government, such as might
San Diego Resolution Experts

JAMS has a national reputation, regional focus and local solutions to all your ADR needs, including Mediators, Arbitrators & Special Masters

HON. THOMAS ASHWORTH III (RET.)

LINDA C. FRITZ, ESQ.

HON. J. RICHARD HADEN (RET.)

HON. WILLIAM J. HOWATT, JR. (RET.)

HON. ROBERT E. MAY (RET.)

HON. KEVIN W. MIDLAM (RET.)

HON. THOMAS R. MURPHY (RET.)

HON. WILLIAM C. PATE (RET.)

JOHN M. SEITMAN, ESQ.

HON. RAYMOND F. ZVETINA (RET.)

JAMS SAN DIEGO RESOLUTION CENTER
401 “B” Street • Suite 2100
San Diego, CA 92101

619.236.1848
www.jamsadr.com
RESOLUTION CENTERS NATIONWIDE
occur after the filing of a mandamus action, might bring a challenge to Wilhelmina’s underlying permanent resident status.

Wilhelmina’s marital situation may also come under scrutiny should she file a mandamus action. An unresolved question for naturalization eligibility would be whether or not she is living in marital union with her husband, given their separate homes and her travels overseas. In addition, because she immigrated based on a marriage to a U.S. citizen, USCIS may investigate whether or not she entered into a fraudulent marriage.

To immigrate to the United States, an individual generally must have an employer or a relative willing to “sponsor” the individual to come to the United States. The sponsor, called the petitioner, files a visa petition describing why the individual qualifies to come to the United States and provides appropriate supporting documentation. Only certain types of employment and certain family relationships qualify for the filing of a visa petition. In addition, there is an annual limit on the number of individuals who can immigrate. Most of the family-based categories have at least a four-year backlog, with some waits lasting 20 years or more.

There is one very tempting exception to the arduous process described here. By law, spouses, parents and minor children of a United States citizen are quota-exempt and are exempt from maintaining lawful status in the United States. In other words, aside from the administrative processing time (presently four to six months), a spouse of a U.S. citizen can become a permanent resident as soon as the spouse files the appropriate paperwork with the USCIS, even if the foreign spouse overstayed her visa or worked without permission. According to USCIS, 26.8 percent of all legal immigrants—almost 340,000 individuals—immigrated as spouses of American citizens in 2006.

Understandably, the government is concerned that some individuals marry solely to immigrate to the United States, and several safeguards are built into the system. First, immigration officers interview all marriage-based cases, and such officers have authority to investigate suspected fraudulent marriages. Officers have been known to show up at the family home in the middle of the night to see whose clothes are hanging in the bedroom closet, who is present in the house, and how many beds are being used.

Second, couples married for less than two years when the permanent resident status is granted are subject to a condition. The noncitizen spouse is granted permanent resident status for two years. Three months before the two years expires, the couple must file a Petition to Remove the Condition (form I-751) together with evidence that they have held themselves out as husband and wife for the previous two years. Exceptions to this requirement exist for the noncitizen spouse who has been abused by the citizen spouse or where the marriage has ended but the noncitizen spouse has substantial evidence that it was entered into in good faith. If there is a formal finding that a noncitizen engaged in marriage fraud, that person is permanently barred from immigrating or even visiting the United States.

Wilhelmina’s initial case was approved one month before she and her husband were married for two years, thereby making her permanent resident status “conditional.” When she and her husband signed the I-751 in 2004, Wilhelmina and her husband were both attesting under penalty of perjury that all of the information on the form was true. Their signatures also authorized the government to investigate their marriage. The child resulting from the affair was born after the I-751 was submitted, and thus this information was not included.

There is no magic piece of evidence that will convince the USCIS that a marriage is valid or fraudulent. Living apart is not in and of itself a sufficient reason for the USCIS to find marriage fraud. While it is obvious that Wilhelmina and her husband are estranged today, one important question is when did the estrangement begin? If it was after the grant of conditional resident status, it might be that Wilhelmina can document the gradual worsening of the relationship and any efforts she or her husband made to preserve the marriage. Are there telephone records showing calls between California (or Afghanistan) and New York? Are there e-mails between the two? Do Wilhelmina and her husband have photos of themselves in happier times?

Have they sought marriage counseling?

If Wilhelmina and her husband were estranged when they were first interviewed, a follow-up question would be, did they disclose their estrangement to the USCIS officer? A marriage does not have to be perfect to support immigration of the noncitizen spouse, and individuals struggling with their marriage are still allowed to process their cases. However, depending on what was asked and said at that first interview, a failure to disclose their struggles may cause the USCIS to suspect marriage fraud. The burden of proof in immigration proceedings always lies with the party seeking the benefit.

Wilhelmina is correct that the delays in her case are insupportable. Under the Administrative Procedures Act and other laws, the USCIS and other government agencies have a duty to adjudicate cases in a timely manner. Had her applications been ruled on promptly, Wilhelmina would not find herself in her present legal limbo. On the other hand, it is not completely clear that Wilhelmina played by the rules.

Kathrin Mautino, a State Bar-certified legal specialist in immigration and nationality law, practices immigration law with her father, Bob Mautino, at Mautino & Mautino. kathy@mautino.org
WE SERVE ANYTHING,
ANYWHERE
STATEWIDE · NATIONWIDE · WORLDWIDE
1-800 PROCESS
1 800 process.com
"If we don't serve it, you don't pay"
U.S.A. Only
SERVING A SINGLE PIECE OF PROCESS EVERY 2.2 MINUTES OF EVERY DAY, 365 DAYS A YEAR.
A DIVISION OF GUARANTEED SUBPOENA SERVICE
est. 1965
ANY STATE · ANY NATION · ANYWHERE
Ending or Mending?

THE BRAVE NEW WORLD OF DIGITAL RIGHTS MANAGEMENT

In Aldous Huxley’s Brave New World, the sleep-teaching machine repeats: “Ending is better than mending. The more stitches, the less riches.” On February 6, 2007, Steve Jobs, CEO of Apple Inc., shook the copyright world with an open letter titled “Thoughts on Music,” posted on the Apple Web site at www.apple.com/hotnews/thoughtsonmusic. He proposed to end, rather than mend, the current system of digital rights protection on MP3 technology. In the open letter, Jobs seemed to be responding to recent European criticisms of Apple’s iPod and its inability to play songs from other downloading systems because of Apple’s system of digital rights management (DRM) protection.

Digital rights management systems block unauthorized users from playing protected music. Publishers use them to control access to copyrighted works. For example, FairPlay, the system Apple uses, allows music downloaded from Apple’s iTunes Store to be played on up to five computers and an unlimited number of iPods. However, songs that are not encoded with FairPlay technology cannot be played through Apple products and songs encoded with FairPlay cannot be played on other companies’ products.

By Julie Cook
The power to completely overturn the current copyright regime is left up to Apple, Microsoft and the Big Four.

The first option is to keep the current system, codified in the DMCA. This proposal would maintain the competition among different subscription music services and their compatible mp3 player technology. Consumers would not have the freedom to access music from the service they preferred or alternate between various players. A second option would be to create a licensing agreement for other parties to use Apple’s FairPlay DRM technology, which would allow interoperability between songs downloaded on iTunes and other MP3 players. Jobs dismissed the second option because DRM relies on keeping the encrypted locks secret. Once a lock is hacked, it can be leaked throughout the Internet, and then the copyrighted and digitally protected work can be downloaded an infinite number of times. According to Jobs, the best option for all, particularly for consumers, would be to get rid of DRM entirely.

Protecting copyrighted works from being copied by new technology has been a gray area of American copyright law for more than a hundred years. The seminal case regarding copying technology is 

Firestone Tire & Rubber Co. v. United States, 366 U.S. 206 (1961), where the Supreme Court held that copying copyrighted songs onto player piano rolls was not infringement. This opened the field for later technologies that transcribed copyrighted information into a new form. The seminal case regarding copying technology is


The most vocal proponents of maintaining the current system of digital rights management are those that profit the most from DRM employment. Foremost among these are the Big Four major record companies: Warner Music Group, Universal Music Group, SonyBMG and EMI Recorded Music. These four companies own about 70 percent of the world’s music and 85 percent of the distribution rights. Those most opposed to DRM, “copy-leftist” organizations like the Electronic Frontier Foundation and the Creative Commons, push for an end to all digital rights protection and all copyright protection in general. They support a free marketplace where music and other works of artistic expression can be made available.

DRM is an outgrowth from the 1998 Digital Millennium Copyright Act (DMCA). In general, the DMCA was designed to deal with copyright issues brought on by new technologies, particularly the Internet. The DMCA prohibits users from circumventing locks even if no direct infringement occurs. Any “technological measure that effectively controls access to a work protected” under the DMCA is considered a lock, and anyone who attempts to circumvent it in order to gain inappropriate access to the material is treated as an infringer. Anyone who “manufactures, imports, offers for sale, or otherwise Traffics devices” in any technology, product, service, or device . . . that is primarily designed “to circumvent locks is likewise held to be an infringer. The DMCA is widely perceived to be a move toward favoring corporate copyright owners and disfavoring copyright users.

Jobs suggested three ways to deal with the distaste surrounding the current state of digital rights management. The first option is to keep the current regime, codified in the DMCA. This proposal would maintain the competition among different subscription music services and their compatible mp3 player technology. Consumers would not have the freedom to access music from the service they preferred nor alternate between various players. A second option would be to create a licensing agreement for other parties to use Apple’s FairPlay DRM technology, which would allow interoperability between songs downloaded on iTunes and other MP3 players. Jobs dismissed the second option because DRM relies on keeping the encrypted locks secret. Once a lock is hacked, it can be leaked throughout the Internet, and then the copyrighted and digitally protected work can be downloaded an infinite number of times. According to Jobs, the best option for all, particularly for consumers, would be to get rid of DRM entirely.

Protecting copyrighted works from being copied by new technology has been a gray area of American copyright law for more than a hundred years. The seminal case regarding copying technology is 

The most vocal proponents of maintaining the current system of digital rights management are those that profit the most from DRM employment. Foremost among these are the Big Four major record companies: Warner Music Group, Universal Music Group, SonyBMG and EMI Recorded Music. These four companies own about 70 percent of the world’s music and 85 percent of the distribution rights. Those most opposed to DRM, “copy-leftist” organizations like the Electronic Frontier Foundation and the Creative Commons, push for an end to all digital rights protection and all copyright protection in general. They support a free marketplace where music and other works of artistic expression can be made available.
available to the public at little or no cost. They argue that “digital restrictions management” is anti-competitive, restricting use in ways not mandated by law. Consumers are not free to choose downloading programs or MP3 players that they prefer. Instead, consumers are locked into one of several giants in the field such as Apple, Microsoft and Sony.

Furthermore, there is evidence that digital rights management does not work effectively. Digitally protected songs account for only about 20 songs per person in Apple’s estimation.8 The rest of an iTunes subscriber’s songs, the ones filling up the iPod owner’s megabytes of storage, must come from legitimately owned CDs, which do not have digital rights protection, or from illegal downloads. Consequently, the vast amount of consumer-playable music is not even protected by a DRM system.

Recognizing the need to at least weaken DRM restrictions, Congress proposed legislation to lessen the legal ramifications of circumventing digital protection. On February 27, 2007, Rep. Rick Boucher (D-VA) introduced H.R. 1201, the Freedom and Innovation Revitalizing U.S. Entrepreneurship Act of 2007, abbreviated FAIRUSE.9

Presented three weeks after Jobs’ open letter, FAIRUSE sets forth six ways that statutory damages can be minimized when someone circumvents DRM protection. These exemptions are for acts of circumvention that are carried out solely for the following purposes: (1) educational use; (2) to “avoid personally objectionable content”; (3) when the circumvention is only for private access within a personal network archival use; (4) for works in the public domain; (5) for criticism, comment, news reporting, scholarship or research; and (6) archival use.10 If the new bill passes, it will likely pave the way for a greater relaxing of DRM protection. However, it only applies to especially good-faith circumvention. Most scenarios of digital locks circumvention are done for purposes not included in the FAIRUSE bill. Instead DRM circumvention occurs mostly when MP3 files are circulated around a small group or even college campus-sized population. The present system of penalties for that kind of circumvention is still in place.

The power to completely overturn the current copyright regime is left up to Apple, Microsoft and the Big Four. They will control whether music can be accessed for free or for a fee, and then what can be done with the songs. EMI is the first of the Big Four to respond to Jobs’ challenge. In May of 2007, EMI released all of its songs for sale through the Internet without DRM restrictions, albeit at $1.29 per song instead of 99 cents.11 Amazon.com has stated it will offer all of EMI’s catalog, along with those of 12,000 other independent labels, for sale DRM-free. The new online music downloading store is set to open within the year.12 It will be the first rival of the iTunes Music Store to offer music without digital rights restrictions. It remains to be seen if the other major labels will also reduce DRM protection, or increase the number of DRM-free songs available. If further music stores profit from DRM-free offerings, one would surmise that this would create added pressure on the labels to release more. Although none of the others of the Big Four have responded to EMI’s announcement, Jobs “predicted that half of the songs available on iTunes would be sold without restrictions by the end of the year.”13

It is of note that Jobs attended EMI’s conference, which was held in London where EMI is headquartered. Is Jobs, feeling the heat of European criticism,14 trying to assuage Europe and escape pressure by pointing the finger at the Big Four recording companies?15 Is he hoping they will be forced to change their regimes while Apple only profits from an increase in legally purchased music through its iTunes store? Or is his belief in freedom of choice for consumers sincere? It looks as if some recording companies are digging in their heels to maintain the current DRM system,16 and some analysts are warning of a backlash from DRM removal.17 But others in the industry, like EMI and Apple, are showing consumers that this indeed may be the end for digital rights management.18

Julie Cook is a third-year law student at Thomas Jefferson School of Law. She is also a reformed illegal mp3 downloader. cookjm@tjsl.com. Al Harnois, patent attorney at Qualcomm and Technology Editor of San Diego Lawyer, helped with the story. aharnois@qualcomm.com.

1Aldous Huxley, Brave New World, 49 (1931).
3Id. at §1201(a)(A).
4Id. at §1201(a)(2)(A).
5Id. at §1201(a)(2)(A).
6Though Jobs quickly nixed licensing FairPlay, others in the industry responded favorably to that possibility. “Apple’s offer to license FairPlay to other technology companies is a welcome breakthrough and would be a real victory for fans, artists and labels,” the Recording Industry Association of America said. John Markoff, “Jobs calls for end to music copy protection,” New York Times, February 7, 2007. Found at www.nytimes.com/2007/02/07/technology/07music.html?ex=1174363200&en=56c5643ca841492c&ei=5070 (last visit
Protecting copyrighted works from being copied by new technology has been a gray area of American copyright law for more than a hundred years, starting with *White-Smith Music Publishing Co. v. Apollo Co.*, 209 US 1, (1908), where the Supreme Court held that copying copyrighted songs onto player piano rolls was not infringement.

ed March 18, 2007).

5A&M Records Inc. v. Napster Inc., 239 F. 3d 1004, 1042 (9th Cir. 2003).

6Id. at 1021-22.

7Anthony Maul, “Are the major labels sandbagging online music? An antitrust analysis of strategic licensing practices,” 7 NYU J. Legis. & Pub. Pol’y, 365, 368 (2004). Quoting In re Time Warner et al., FTC File No. 97-1-0070 (2000). See www.ftc.gov/os/2000/05/edamusement.htm (last visited March 8, 2007). Note that at the time of this article, Sony and BMG had not yet merged, thus the “majors” were made up of five companies.


14In January, iTunes was found to violate Norwegian law because it restricted its use to iPods only. The government’s consumer ombudsmann gave Apple until October 1 to make changes. France is currently forming a commission to look further into digital rights restrictions. See Eric Pfanner, “No bravos in EU for Apple,” *International Herald-Tribune*, February 7, 2007. Found at www.iht.com/articles/2007/02/07/business/apple.php (last visited March 18, 2007).

15See Markoff, supra note 4.


17Id.

18Jefferson Graham, “EMI in talks to dump copy protection,” *USA Today*, February 12, 2007. Found at www.usatoday.com/tech/news/2007-02-12-emi-copy-protection_x.htm (last visited March 18, 2007). It is interesting to note that Warner is the biggest proponent of the current system and the only wholly United States–owned company among the Big Four (EMI is wholly British and Sony/BMG are both American and German), and the two music companies that have been most open to unprotected formats.
Much has been written about the issues surrounding the filing of Chapter 11 bankruptcy by the Roman Catholic Diocese of San Diego ("Diocese"). Deeply ingrained in the reaction by many members of the community is the deep-seated outrage over the sexual abuse of children at the hands of parish priests and the perception that "the Church" ignored the problem and protected the violators. However, not much has been written about in the mainstream press from the perspective of the Diocese. Though many interesting, bankruptcy-specific issues are involved when a nonprofit religious institution such as the Diocese files for Chapter 11 protection, such as what property the Diocese owns, those topics are beyond the scope of this article. The author hopes to give the reader a better sense of perspective in thinking about why the Diocese would decide to proceed as it has.

The lawsuits filed against the Diocese primarily allege that the Diocese was negligent in hiring/training/supervising the offending priests. By filing for the reorganization under Chapter 11 of the U.S. Bankruptcy Code, the Diocese sought to avail itself of an efficient system in which to not only treat all the victims/claimants fairly and equitably but also to preserve its financial ability to carry out its mission of supporting the 99 parish communities, 16 missions, 45 elementary schools, five high schools, two universities, 276 priests, 122 deacons, 296 religious sisters and 20 religious brothers depending on it.

Fairness to the victims/claimants is achieved by filing for Chapter 11 in a couple of ways. First, each claimant will attain compensation much more quickly and efficiently via the Chapter 11 process. These 143 individuals have filed claims in more than 120 different cases spread across different counties. With a single forum in which to mediate or estimate the value of their claims, the claimants will be spared waiting for years as their respective cases make their way through the state court system. In addition, there is a real risk that, if the cases were

continued on page 30
After four years of failed settlement talks, the Roman Catholic Diocese of San Diego reached a $198.125 million settlement with 144 sexual abuse victims on September 7, 2007. The Diocese had filed for bankruptcy on February 27, right before trial was to begin on the molestation charges. Although a settlement has been reached, there is still debate as to the appropriateness of the bankruptcy filing that resulted in the staying of the trial.

Shielding the Truth

BY IRWIN ZALKIN

On Tuesday, February 27, 2007, after weeks of negotiations with Superior Court Judge Anthony Mohr in Los Angeles and on the eve of the first of four jury trials to commence in San Diego by victims of childhood sexual abuse against Bishop Robert Brom, the Roman Catholic bishop of San Diego, Bishop Brom filed a petition for Chapter 11 bankruptcy. As a result, the pending jury trials were automatically stayed as were all other state court proceedings involving the debtor, the Roman Catholic bishop of San Diego, a corporation sole.

The public relations mantra of the Roman Catholic bishop of San Diego (hereinafter the “Debtor”) has been that the case was filed in order to “fairly, justly, and equitably compensate victims of sexual abuse by clergy and others associated with RCBSD without compromising RCBSD’s stewardship and its mission” (disclosure statement dated March 27, 2007).

How has the Chapter 11 affected victims? In the view of the victims, the Chapter 11 proceeding was filed first and foremost to keep an institutional secret, preserved by every bishop, including Robert Brom, since the Diocese was founded in 1936. This bankruptcy was filed in large measure to prevent the public airing of the salacious and provocative facts that would reveal the truth of the insidious sexual abuse of children over the past 50 years.

While Bishop Brom purports to have filed the bankruptcy in order to deal fairly with all victims, the list of abuse of the bankruptcy process—and ultimately of the sex abuse creditors—is well defined by Judge Louise De Carl Adler in her order to show cause why the case should not be dismissed, filed August 10, 2007, following the filing of a detailed 175-page report by the court-appointed independent expert R. Todd Nielson, CPA.

The Nielson Report, in addition to previous findings by Judge Adler, reveals that Bishop Brom and his legal representatives have deliberately understated the debtor’s assets in sworn financial schedules. The bishop has made material misrepresentations as to the ownership of cash assets to...
addressed in state court, then the first few successful claimants could eat up the Diocese's available assets. For example, in May 2007, a jury in New York awarded $5.9 million to a single victim in a case against the Diocese of Rockville Center; another victim in that case was awarded $5.5 million. If that amount were the benchmark here, the $95 million the Diocese has offered to compensate the claimants would be exhausted before the 18th case were concluded, perhaps even sooner if one considers the legal fees and costs, which also must be paid from the Diocese's available assets, that would accumulate if these cases proceeded in state court.

There should also be a concern for fairness to the Diocese. The 143 claims of abuse filed against the Diocese were for behavior going back, in at least one case, to the 1930s. The bulk of the allegations relate to conduct from the 1970s and earlier. The Diocese has identified allegations against approximately 38 individual priests as credible. Of those 38 priests, approximately 20 are known to be deceased.

Recognizing the severe emotional harm suffered by victims of childhood sexual abuse and that it often takes time for victims to report the abuse, there still exists a fundamental unfairness in allowing many of these cases to proceed to trial. Aside from the obvious issues related to the damage the passage of time does to memories, availability of records, and so on, there is nobody other than the alleged victim to say what happened in many cases against the Diocese. Moreover, there is the risk of juries applying today's standards of care to judge Diocese administrators for conduct that occurred several decades ago. Our understanding of the treatment and proper handling of sex offenders is vastly different in 2007 than it was in the 1930, '40s, '50s or even '70s.

Nobody denies that sexual abuse by priests is intolerable. Our system of law is premised on wrongdoers financially compensating those who have been wronged. Our system is also built on concepts of fairness. In filing for Chapter 11 bankruptcy, the Diocese chose a course of action that enabled it to be fair not only to the various claimants injured so long ago but also to today's nearly 1 million Catholics in San Diego and Imperial counties.

In filing for Chapter 11 bankruptcy, the Diocese chose a course of action that enabled it to be fair not only to the various claimants injured so long ago but also to today's nearly 1 million Catholics in San Diego and Imperial counties.

Richard Stevenson is a sole practitioner in San Diego, practicing in the areas of consumer bankruptcy and debtors' rights. rl@rls-law.com
either banks and state government or the bankruptcy court.

Dilution of assets has been the game plan for dealing with creditors. In its filing of the first set of schedules required to be signed under oath by the Debtor in the Chapter 11 proceedings, the Debtor omitted any reference to its ownership of a subsidiary corporation or the two major properties it deeded to that corporation. After creditors brought this omission to the Debtor’s attention, it acknowledged its “oversight” and amended the schedules to include information regarding Catholic Secondary Education Diocese of San Diego Inc., which it refers to as a “third party.”

Before the filing of the Chapter 11, and as recently as June 7, 2006, Bishop Brom acknowledged and thanked Sam Skaggs of the ALSAM Foundation for its generous gift of $50 million to be used for the construction of the new Mater Dei Catholic High School in south San Diego (June 7, 2006, letter from Bishop Brom to L.S. Skaggs). Although this was a restricted gift, it had a “mandatory forgiveness” provision, meaning that as long as it was used for the purpose intended it would be forgiven in four or possibly five years. However, before the filing of the Chapter 11 case, this gift was converted into a secured loan. The security offered by the Debtor was not only the Mater Dei High School site but also the Marion High School site (the high school being replaced by Mater Dei) in Imperial Beach.

By the date of the filing of the Chapter 11 case, the Debtor had drawn down $35 million of the $50 million gift/loan. In the statement of financial affairs (“SOFA”) filed by this Debtor as part of the Chapter 11 case, it reflects this gift as a liability of $70 million. It created a $70 million liability by showing that the $35 million was secured by two properties and simply doubled the “liability.”

Contrary to Bishop Brom’s public relations reference to the plan as a “settlement,” it is not. It requires victims to give up the right to jury trials, while preserving to the debtor the right to raise statute of limitations and all other defenses.

In short, the RCBSD bankruptcy is nothing more or less than a strategy to continue to hide the truth and devalue the claims of rape and molestation victims.

Irwin Zalkin is with Zalkin & Zimmer. tmz@zalkin.com

www.craighiggs.com
On December 7, 2007, the San Diego County Bar Association will swear in its eighth woman Bar president, Heather L. Rosing. Heather will also have the distinction of being one of the youngest San Diego County Bar presidents in its 108-year history.

Heather’s roots are in the state of Illinois, where she grew up in the city of Waukegan, the daughter of William Rosing, a prominent Lake County Illinois family law attorney, and Patricia Albano, a former schoolteacher. Heather says her father instilled in her a work ethic and taught her always to be professional and civil in her dealings with others as a lawyer. Heather proudly reported that he was the recipient of a prestigious ethics and civility award from the Lake County Bar Association.

Heather credits her mother, Patricia, with inspiring her to be creative, travel, and always be everything she could be. It was Heather’s mother who also planted the seeds that led to Heather becoming an avid reader and a self-proclaimed bookaholic. Heather has hundreds of novels and classics on her bookshelves; however, she confesses to an Archie Comics addiction, of which she has collected nearly 3,000 issues.

Heather has one sibling, younger brother Bob Rosing, who is married and presently pursuing a master of business administration degree at Arizona State University. She describes Bob as a good friend, trusted confidant and a great travel companion.

While in high school, Heather starred in several theatrical productions, such as Oh Dad, Poor Dad, Mama’s Hung You in the Closet and I’m Feeling So Sad, and was voted Best Actress her senior year. Indeed, Heather set off to the University of Illinois with theatrical ambitions, and ultimately earned a bachelor of science degree in broadcast journalism. While at the University of Illinois, she had the opportunity to spend five months at Kansai Gaidai University near Osaka studying Japanese, which Heather describes as an amazing and enriching experience.

After spending several of her summers during college working at a state prosecutor’s office in Illinois, Heather decided to follow in her father’s footsteps and pursue a career in law. She was accepted at Northwestern University School of Law in downtown Chicago, where she spent the next three years. Heather enthusiastically reports that she loved the challenges and debates that law school provided. While in law school, Heather further developed her social conscience, especially in the areas of environmentalism, civil liberties, women’s rights and diversity. Not surprisingly, after serving as the social chairperson of the Student Bar Association during her second year of school, Heather was elected student body president in her third year, thus providing a precursor of her impending SDCBA presidency. She was also awarded the Wigmore Key for the student who contributed the most to the history and traditions of the law school.

When asked whether she thought it was significant that she would be sworn in as only the eighth woman president in the San Diego County Bar Association’s history since 1899, she stated she is pleased that it is no longer unusual for a woman to hold a leadership position in the profession. She also thanks those who came before her—particularly Wells Lyman, Andy Albert and Jill Burkhardt—for all they have taught her and their support and encouragement, which gave her the confidence to run for the position.

As for her ascent to the Bar presidency and how it occurred, Heather states that she became involved in SDCBA and Lawyers Club activities early in her career.

BY JAMES W. TALLEY
THE PRESIDENTIAL BRIEFING

Favorite Web site? www.sdcba.org, of course!

Favorite legal movie? My Cousin Vinny

Favorite vacation spot? Sonoma Valley

Newsworthy acquaintances? My husband Scott and I met Forbes magazine editor Steven Forbes and his daughter on a trip to Costa Rica, and we still exchange holiday cards with them each year.

Toughest challenge? Finding time to workout and eat right

What would you do with a $10,000 cash gift? Donate half to the San Diego Volunteer Lawyer Program and San Dieguito River Valley Conservancy. The balance would go toward an Antarctic cruise!

Person you would most like to interview? Sir Edmund Hillary

The first question you would ask during the interview? How he made it to the top [of Mount Everest] in 1953. I climbed to over 18,000 feet in 1996, and felt like I was going to die!

Trivia about yourself? I was the Hula-Hoop champion of Waukegan, Illinois, when I was in grade school.

Country you would most like to visit? Perhaps New Zealand in the hope we might run into Sir Edmund on his home turf!

She credits the Klinedinst firm with allowing her to grow both as a lawyer and as a bar leader, and thanks her mentor, John Klinedinst, for the opportunities she has been given. Heather describes her firm as a special place where lawyers are given tremendous resources and support in order to aid in their personal and professional development. Today, Heather practices in the area of professional ethics and responsibility, and defends lawyers in professional negligence cases.

Heather’s transplantation from Illinois to San Diego began when she was interviewed on campus during her third year at Northwestern School of Law by several law firms from across the country, including the small Klinedinst San Diego firm. She recalls that the Klinedinst firm took a video of her interview and mailed it back to California so that every attorney with the firm could review it and give their input. At the time, the Klinedinst firm had one office in San Diego, and had one female attorney. Presently, the firm has four offices statewide and 60 diverse and talented attorneys, which makes Heather proud. Heather has risen through the ranks to become the chief financial officer of the firm, and the first female equity shareholder.

San Diego attorney Mark Schechter, who has opposed Heather in multiple cases, describes her as a zealous advocate for her clients who is always prepared. He also credits her with the ability to balance civility and professionalism in her dealings with opposing counsel, and adds that Heather has established a solid reputation as a legal ethics guru.

In 2003, Heather married Scott Carr, an expert in Internet-based marketing. Scott owns Javelin Web and Media, which provides Web design and marketing assistance to law firms and other professionals. Over the past few years, Scott has served SDCBA by, among other things, producing and directing several videos for SDCBA events. His company also produced the Web site and brochures for the San Diego Volunteer Lawyer Program’s LAW Off comedy event in March.

Today, Heather and Scott reside in University Heights with their small but feisty dogs, Pugsley and Iggy. Heather first met Scott in 1997 at a San Diego Downtown Rotaract Club meeting. Scott was president of the club at the time. At the annual Stepping Up to the Bar, the two will experience a role reversal exactly 10 years later as Heather is sworn in as president of the Bar. Heather is deeply appreciative of Scott’s support of her bar activities and her career. The fact that he accompanies her to most Bar events makes the experience even more fun for her.

Outside of their conjoint professional endeavors, they share a love of travel, including trips together to Chile, Thailand, Greece, Brazil, South Africa, Russia, China, Turkey, Croatia and Bellagio, Italy, where they were married.

U.S. District Court Judge Janis Sammartino, formerly Presiding Judge, Superior Court, provides an insightful scouting report on what SDCBA members can expect from their next Bar president. During her time as assistant presiding judge and presiding judge, Judge Sammartino worked with Heather as a Bar leader. She is very impressed with Heather’s enthusiasm, energy and leadership skills. She also points out that Heather, given her unique combination of leadership and dedication along with her great sense of humor, will make it very enjoyable for the board of directors in 2008. Judge Sammartino also credits Heather with a willingness to take on challenges that others might shy away from, which will serve the county Bar and its board of directors well.

This article is now in recess until December 7, when Heather is sworn in as the San Diego County Bar Association’s 109th Bar president.

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

**SDL:** You have established a reputation as an authority in legal ethics. You were in fact the co-chair of the SDCBA Legal Ethics Committee in 2006. What influence will this have on your presidential agenda?

**Rosing:** A high priority on my agenda is a professionalism and civility campaign. This is something I am very excited about. The committee in charge of the campaign will be reexamining the SDCBA Code of Conduct, sponsoring mixers and CLEs and publishing articles in San Diego Lawyer and the Bar Report on the topics of professionalism, civility and ethics. We’re hoping to reinforce with our legal community the importance of—as well as the advantages of—being civil with other lawyers and with the bench.

**SDL:** Diversity has been a high priority on the agenda of recent bar presidents. What are your plans regarding diversity during your presidency?

**Rosing:** Promoting diversity in our profession and in Bar leadership positions is definitely one of my goals for 2008. To me, diversity means diversity of race, gender, area of practice, geography and viewpoints. President Jill Burkhardt and I have been working closely with the SDCBA’s Ethnic Relations and Diversity Committee, chaired by Marvin Mizell, to brainstorm on ideas to accomplish this goal. In 2007, we drafted a diversity pledge for law firms and legal departments to sign, and I’m committed to obtaining even more signatories in 2008. We are also exploring the possibility of a student pipeline project, and are committed to working more closely with the minority bar associations.

**SDL:** This spring, the SDCBA suffered the loss of executive director Sheree Swetin. What can you tell us about selecting a new executive director?
Rosing: We’ve engaged the services of a professional search firm to assist our local search committee. The committee recognizes that it will be difficult to replace the tremendous talents that Sheree provided us, but is still working hard to find the best person for the position. We’ve attracted some top candidates already.

SDL: When can the San Diego County Bar Association anticipate a new executive director will be in place?

Rosing: We hope to have a new executive director in place by December of this year. We also thank Acting Executive Director SJ Kalian for all of her hard work in helping us through this interim period.

SDL: Each year the future of the SDCBA building is a topic of interest. What can you advise us as to the status of the current facility at Seventh and A and the current plans regarding the existing facility, that is to stay or find a new location?

Rosing: We are very fortunate to own the fabulous facility that we currently occupy. We have our past Bar leaders to thank for their foresight in purchasing the building. The current SDCBA building committee, chaired by past president Andy Albert, is actively exploring all of our options, including the possibility of renovating the existing bar building. We should know more soon.

SDL: U.S. District Court Judge, formerly Presiding Judge, Superior Court Janis Sammartino believes that your presidency will be characterized by a combination of strong leadership and a good sense of humor. What can you tell us about your approach to the presidency?

Rosing: I want members of the SDCBA to get enjoyment and value out of their membership. We offer so many great educational, social and community service-related opportunities, and I hope our members will continue to take advantage of them. I also strongly encourage our attorneys to become involved in bar leadership roles because I believe they will find, as I have, that such active participation is tremendously rewarding.

-By James W. Talley

---

Ethics Lawyer
David Cameron Carr

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


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

Stepping Up to the Bar:
Friday, December 7, 5pm
FRAGOMEN
Fragomen, Del Rey, Bernsen & Loewy, LLP

Leading the Way in Global Corporate Immigration

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

Hirson Wexler Perl
ATTORNEYS AT LAW

FRAGOMEN
merge together as One.

For more information, please contact:

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

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

* Affiliated through Fragomen Global Immigration Services, LLC
the Goffs saw evidence of the rampant bonded labor market, where children are sold to mudelales, or slave traders, so that families can pay off financial burdens such as medical bills and dowry debts. The children are put to work in the equivalent of a slavery camp, but the trader demands such high fees, with interest, and pays sometimes 25 cents per day, that there is little hope for the children to pay off the debt and be released.

BY DEAN NELSON
As a specialist in construction-defect law in both San Diego and Washington state, Bob Goff is used to making deals with tough clients. But he made a deal of epic proportions in recent years with an unlikely group—his kids. And the deal ultimately shifted his focus from construction flaws to human ones.

“I was sitting at my kitchen table with my bride of 21 years and our three kids, and it was right after the September 11 attacks,” he says, from his spare office in a cookie-cutter strip mall. “We all knew that something had gone terribly wrong with the world, and I threw an idea out for their consideration. I asked the kids if they could have five minutes with a world leader, what would they ask?”

Adam, 9, gave an age-appropriate answer and said he would ask if the leader would like to come hang out at the Goff home for a while.

Richard, 11, said he would ask the leader what his or her source of hope was.

Lindsey, 13, said she would ask that if the world leader would not come to the Goff home, could the Goff kids go to the leader’s home and videotape an interview with them.

That got the Goff kids thinking. What if they wrote letters to world leaders and asked for a meeting with them to ask these questions? And that’s what prompted Bob Goff to put his offer, literally, on the table. “If you get a yes from a leader,” he told his kids, “I’ll take you there.”

The kids researched on the Web and wrote more than 1,000 letters to presidents, vice presidents, prime ministers and ambassadors. Incredible, they received 29 invitations for meetings—some in the different countries’ government centers and some in embassies the countries have in Washington, D.C.

One response, from the office of the prime minister of Malaysia, was curt, but accepting.

“I’ll meet you in Kuala Lumpur in two weeks,” the message said.

Tony Blair, prime minister of England, sent a personal note that he would be unable to meet with them, but he thought their idea was great.

Before long, the U.S. State Department was calling, asking Goff if he knew that his kids were planning a trip to Bulgaria and that they had been corresponding with government leaders around the world. “I told them, ‘Yeah, I’m taking them!’” Goff says, laughing.

When the children met with the vice president of Bulgaria a few months later in Sofia, a videotape recording of the event shows him saying, “I am more nervous about meeting you than meeting George Bush. And when I get nervous, I get hungry!” He clapped his hands and servants brought in trays of kid-friendly food.

In his national radio address a short time later he began by saying, “Let me tell you about three new friends…”

“The best part of this is the unlikeliness of it,” says Lindsey. “All of these leaders were saying yes to three nobody kids from San Diego.”

In addition to meeting with leaders from Malaysia, Bulgaria, and the President of Israel, Team Goff, as Bob likes to call them, met with officials from Jordan, Egypt, Morocco, New Zealand, Bolivia, Norway, Switzerland, Liechtenstein and others.

At the Hungarian embassy in Washington, D.C., the ambassador treated the kids to his own secret avocation. He told them he was in a rock band with other diplomats called the Coalition of the Willing. Then he produced his favorite, fire engine–red Fender Stratocaster guitar and showed his solo skills.

At each meeting the kids asked what the leaders put their hope in, and they also asked what young people could do to help achieve peace in the world. Most leaders said their hope was in the future generations and that young people could achieve peace simply by becoming friends with other kids across national boundaries.

The meetings ended with the Goff kids presenting a gift to each leader. It was a small box, exquisitely wrapped. Each leader carefully opened the box. Inside was a key.

“This is a key to the front door of our home,” Lindsey would tell them. “All of our friends have a key to our house, and now...”
you’re our friend. Our house is open to you, just as you opened your house to us.”

But while these meetings produced goodwill, they also revealed some deeper, more disturbing issues that meant the Goffs could not simply return to their lives as they had enjoyed them. After the Malaysia meeting, he was told. Suddenly, Goff’s attention shifted from the most powerful people in the world to the least powerful.

“That trip ruined a perfectly good legal career,” he says. “On that 60-hour trip home I concluded that, while I loved the practice of law, I could not continue it in a business-as-usual fashion.”

The experience gave him a sense of a higher calling, he says.

“I sensed that there was a better use of my skills than simply being a hired gun litigating civil matters,” he says. “It was time for a change of trajectory, not because I didn’t love practicing law but because of the gravitational pull exerted by recognizing that I had something to contribute to ease the pain of others.”

For two years he traveled back and forth to India in an effort to end illegal slavery, drawing inspiration from William Wilberforce, the British Parliament member who fought for the abolition of slavery in the late 18th century.

“There are more people on the earth right now enduring slavery and slavery-like conditions than there were in 1833 when Wilberforce died,” he says. “The conclusion is obvious: we need a new abolition movement to complete the work, ending slavery in fact as well as in law.”

Goff and some local human rights workers met secretly with bonded slaves, documented their stories, then presented their findings and the statutes to local officials. Within days, police began raiding the slavery camps to arrest the operators and free the workers.

“We felt that the fight needed to be taken to the bad guys,” he says.

But Goff knew that just setting workers free wasn’t the answer. They still needed jobs. He and the others started a company called Snekiethar, which means “friend” in Tamil, where the former slaves could make products out of bamboo.

Back in the United States, the effort grew into a nonprofit group called Restore International, an organization created to get a country’s own laws enforced and to take action on behalf of the poorest of the poor who have no voice in the system and are routinely taken advantage of. Restore’s investigators outfitted themselves with hidden cameras and microphones and began visiting the brothels in villages to reveal the number of children on the market. The investigators then brought those tapes to local law enforcement, which then raided the brothels and arrested the owners. But because Restore is upsetting deep-seated economic and traditional businesses, the effort is not always welcome.

At times the Restore staff has had to badger the local police into conducting the raids. They have also been threatened by local
brothel owners. Sometimes it is more than threats. One investigator was recognized by a brothel owner who had been busted by the police, who then gathered a group to attack the staffer and other Restore workers with rocks and fists. Soon the street was filled with angry brothel owners who bloodied Goff and the others, destroying their car.

"Here I was, a middle-aged American lawyer in one of the worst neighborhoods in South Asia, bleeding, surrounded by an angry mob, and yet I had a peace knowing that I was where I should be, doing what I should be doing—helping locate and rescue girls who were forced into prostitution and keeping them out of the sex racket for good," he says.

More recently, Goff and Restore have turned their attention to finding ways to help children in Uganda who have been caught up in the country's 20-year civil war, where thousands have been killed and more than 20,000 children have been abducted and made to be child soldiers. The war has displaced 1.4 million people within its borders, which has created "enormous justice issues," Goff says. So many Ugandan adults have fled the country or been killed that the average age in Uganda is now just 15 years old.

Restore started two schools in northern Uganda. "The nation's future leadership is in the hands of these kids," Goff says.

As they are doing in India, Restore is working with local organizations and law enforcement to free girls from working in brothels. This year alone, more than 30 girls have been rescued and placed into schools outside of the capital where they can recover and heal.

Restore's next strategy was to gather the majority of the Ugandan judiciary to discuss the rights of the country's children, the plight of those caught up in child prostitution and other forms of human trafficking. Taking a cue from his kids, Goff asked former U.S. Attorney General John Ashcroft and the former chief justice of the Missouri Supreme Court if they would accompany Restore's team and participate in a judicial conference recently. They also said yes, and even the president of Uganda attended to show support for the efforts to end human trafficking and protect the rights of the country's children.

"Wilberforce showed that individuals can make a difference if we care enough and are willing to act," Goff says. "The issues we work on are serious, grim and revolting. But it doesn't really seem like work because it feels so good to be spending my days bringing justice to children around the world who are about the ages of my own kids."

"I'm naïve enough to believe that creativity, love, making friends and even having fun can be a part of this work."
Anthony Brandenburg took the road less traveled when he retired as a Superior Court commissioner; he became Chief Judge Brandenburg. Two years ago, in a ceremony filled with ritual and symbolism, Brandenburg was sworn in as the first chief justice of the Intertribal Court of Southern California (ICSC).

Brandenburg accepted arrows from each tribe participating in the ICSC, tied the arrows together with a strip of leather, and held them aloft as a sign of unity during the swearing-in ceremony. According to tribal legend, a senior Indian leader sought peace among arguing tribes. First, the leader held one tribe’s arrow over his head, then he broke the arrow over his knee. Next, the leader took an arrow from each tribe and attempted, unsuccessfully, to break the combined arrows. Point taken: In Unity There Is Strength.

Eighteen federally recognized tribes reside in San Diego County. Brandenburg explains that some of the tribes are small, having from 50 to 30,000 members, and tribes may be interrelated, yet each tribe is sovereign regardless of its size. In 2002, six San Diego tribes set up the ICSC using a U.S. Department of Justice grant. “Funding for the ICSC comes exclusively from Bureau of Justice grants,” says Brandenburg, “and no money comes from gaming.”

The tribes originating the ICSC were the La Jolla Nation of Luiseno Indians, the Rincon Band of Mission Indians, the Mesa Grande Band of Mission Indians, the Pala Band of Mission Indians, the Pauma Band of Mission Indians and the Santa Isabel Band of Diegueno Indians. Currently, 10 tribes have joined the ICSC. “Separate court systems are not cost-effective,” explains Brandenburg, so an intertribal court system seemed wise. “Each tribe sets up its own courthouse and the judge travels between them, using the laws, customs and traditions of the appropriate tribe.”

The ICSC can hear civil cases involving Native Americans having difficulties in Southern California. Public Law 280 gives California tribes exclusive jurisdiction in civil regulatory matters and some authority to decriminalize issues such as speeding. “Most attorneys know nothing...
Judicate West is proud to offer the services of several of San Diego’s finest and most talented mediators. Each is acclaimed for their skill, integrity and diligence in resolving all types of challenging disputes.


As many leading trial lawyers do, trust these talented mediators with your next dispute. Please call for further information or to schedule your case.

619-814-1966  www.judicatewest.org

Downtown L.A. • West Los Angeles
Long Beach • Santa Ana • San Diego

WHEN IT COMES TO PROTECTING YOUR WORKPLACE ENVIRONMENT, CHOOSE A HIGHLY EXPERIENCED TEAM.

Wingert Grebing Brubaker & Goodwin LLP offers a choice from among highly experienced trial attorneys, negotiators and independent investigators in its Employment Practice Group. Whether it’s counseling corporate clients, investigating workplace complaints, defending the alleged wrongdoer or guiding the client through whistleblower allegations, our commitment is to utilize all of our skills and resources to reach resolutions and solve problems in today’s ever changing world of workplace relationships.

You have a choice when it comes to protecting the workplace environment. Turn to the experienced lawyers you can trust at Wingert Grebing Brubaker & Goodwin LLP.

619.232.8151  www.wingertlaw.com
RINGLER ASSOCIATES®

SAN DIEGO • LAS VEGAS
STRUCTURED SETTLEMENTS

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

Congratulations

Jim Frantz, Esq. of
Frantz Law Group

On Structuring Over $13,690,000.00 in Tax-Free, Expected
Future Benefits for His Client During the Past Year.

Manuel R. Valdez CSSC
Manny J. Valdez CSSC
MRValdez@ringlerassociates.com • Insurance License 0623820 • MJValdez@ringlerassociates.com • Insurance License 0C76437
1230 Columbia Street • Suite 970 • San Diego, CA 92101 • 888-471-7051 • 619-231-3334 • 619-231-3335
www.ringlerassociates.com

CHOOSE A BETTER & MORE SUCCESSFUL
EXPERT WITNESS

- EXPERT WITNESS DIRECTORY — CALL US FOR YOUR COPY TODAY
- APPROVED MCLE PROVIDER FOR ATTORNEYS AND LAW FIRMS
- MONTHLY CHAPTER MEETINGS AND WORKSHOPS
- ANNUAL EXPERT WITNESS SUMMIT AND CONFERENCE
- AN ASSOCIATION OF CONSULTANTS PROVIDING FORENSIC SERVICES
- ONE RELIABLE SOURCE FOR HUNDREDS OF EXPERT WITNESSES IN ALL DISCIPLINES
- EXPERT WITNESS DIRECTORY ONLINE AT WWW.FORENSIC.ORG

949.640.9903 PHONE | 888.322.3231 CA TOLLFREE | 949.640.9911 FAX | www.FORENSIC.org | info@FORENSIC.org
about Public Law 280,” says Brandenburg. The ICSC can also try cases involving non-Indians coming onto a reservation and committing health or welfare infractions. Typical cases involve child welfare, trespass, and hunting and fishing infractions. Another area of dispute might involve who can be enrolled in a tribe, since defining a tribe member by percentage of Indian blood is a complex issue. Remedies available include an exclusion ordinance when public health, safety or welfare is threatened on Indian lands. The exclusion ordinance was invoked in the case of a woman repeatedly involved in stealing and starting fights on the reservation; she was denied access to the reservation.

Customs and traditions are integral to Indian life and may impact court procedure. In dealing with children, Brandenburg explains, accepted customs may “include a child having five mothers or a man acting as ‘Mom,’ and there is nothing wrong with a family in which the children are raised by ‘aunties’ or grandmothers.” In keeping with this community-family heritage, Brandenburg might order restorative justice for an errant youth in the form of having him or her do community service, as in helping an aunt.

Another strong Indian tradition is oral history, because many tribes have no written language. “The hearsay rule is kind of out the window,” explains Brandenburg, “so that an elder having knowledge of the dispute at hand can testify, as this may be the only relevant information available.”

Brandenburg regrets that “in the past, there was often a sense of the Indian reservations as being lawless, when in reality that was not true.” There were, however, gaps in the law, so that some tribal ordinances and county ordinances could not be enforced by the state on reservation property.

Brandenburg would like his legacy to include substance and spirit. “I hope that the ICSC still exists in the future,” says Brandenburg, “with a tribal justice center, including a courthouse, library and additional attorneys.” Brandenburg adds, “My theme has always been to improve the quality of life of the people in Indian country. Through my efforts I hope to ensure safety and security.”

Alice Solovay, a staff writer for San Diego Lawyer who practices law in Ocean Beach, welcomes story ideas. alice@solovay.net

---

Legal Cents
Billing, Bookkeeping, & Accounting Services

Turning Your Time into Money
Time is money, and the Legal Cents team efficiently handles your business requirements to free up your time, so you can enhance your profitability!

BILLING
Tracking Time and Costs, Electronic Invoicing, Posting Payments, Sending Past-Due Letters

BOOKKEEPING
Cash Flow Reporting, Posting/Paying Vendor Bills, Managing Accounts Payable/Receivable, Legal Trust Account Maintenance

ACCOUNTING
Accounting System Setup/Maintenance, Cash Flow Analysis, Financial Reports, Strategic Tax Planning, Tax Preparation

Since 1996, Legal Cents has specialized in supporting small businesses and legal professionals throughout San Diego County.

Legal Cents, a division of Frontline Tax Services, Timothy E. Horning, CPA LLP
2667 Camino Del Rio S, Ste. 205
San Diego, California 92108
Tel: (619) 338-0677 www.legalcents.com

Serving San Diego since 1987
The Litigators of Little Italy

We have been part of the Little Italy community since 1988. It has been a pleasure to see redevelopment at work. Little Italy has been converted into a dynamic community alive with residents, businesses and, of course, fine Italian dining.

—DANIEL L. GUEVARA

You see the same business landscape across America—the same chain restaurants, the same megastores, etc. Little Italy is a breath of fresh air because it’s not cookie-cutter. There’s a creativity to the enterprises here.

—SEAN M. FOLDENAUER

There’s lots of light, air and attractive architecture on a human scale.

—WILLIAM J. PHIPPARD

Little Italy has a wonderful legacy of food, spirits and family events. With quaint restaurants, cozy cafés and great people watching, this is a prime location to wine and dine clients, business partners and friends. Its proximity to downtown makes it ideal for fun and business.

—FRED C. JAMES

—PABLO C. PALOMINO

Little Italy Contact Information
Little Italy Association, 1668 Columbia Street, San Diego, CA 92101, 619-233-3898
Web site: littleitaly.sd.com
E-mail: mail@LittleItalySD.com
Location: Just northwest of downtown, between Front Street and Pacific Highway (east to west) and between West A Street and Laurel Street (south to north); India Street is the heart of Little Italy.
Distances to Courthouses (miles): Downtown, 7/10; El Cajon, 18; Vista, 42; South Bay, 11

Little Italy Events and Attractions
• Annual Little Italy Precious Festa (October)—Corso degli Artisti (Street of the Artists), Gesso Italiano (Italian Chalk—Little Italy’s Street Painting Event), food and craft booths, Italian Motorsport Show, stickball tournament, and bocce ball tournament at Amici Park
• Annual Little Italy Italian Motorsport Show (November)
• Annual Little Italy Carnevale (February), with Venetian mask and costume competitions
• ArtWalk (April)
• Annual Festivale Siciliano (May)—music, dance, and cuisine of Sicily
• Stickball—League play from February to June, plus two stickball tournaments in September and October
• Street Banners—Banners on the streets of Little Italy honor the contributions of Italian Americans
• Piazza Basilone—Little Italy’s war memorial to local veterans, at the intersection of India and Fir (see photo)

Little Italy History
With origins in the 1920s, Little Italy is one of San Diego’s oldest continuous neighborhood business districts, at one time hosting 6,000 Italian families. The demise of the tuna industry and construction of Interstate 5 in the 1960s caused Little Italy to suffer serious decline. However, since the early 1990s, Italian-American and non-Italian businesses, residents and community organizations have worked to reinvigorate the area by featuring a wide array of restaurants, creative architecture, public art and amenities.
Since 1984, I have practiced law in a home once occupied by Maria Camarda, the matriarch of a family of Sicilian fishermen. The neighbors would often drop by to share memories of Maria and the old days in Little Italy. Today my grandchildren love walking from the yellow house to Mona Lisa Pizza.

—LAUREL WOOLF

Why do I love working in Little Italy? How about four great coffee shops within three blocks of each other and more Italian restaurants than I can count. And don’t forget the pizza at Solunto’s and everything at Extraordinary Desserts (a must for any chocoholic). Oh yeah, we’re just three blocks from the courts.

—MILES D. GRANT

If a client wants marble hallways, they go to the firms in the high rises. My clients like the bohemian atmosphere we have created. They consider us friends. The only problem with Little Italy is there are too many good places to eat.

—PAUL MIROWSKI

I ride my bike to work from Coronado and love to eat here, Mexican Fiesta for breakfast, Solunto’s for lunch.

—SCOTT S. HARRIS

Little Italy is a wonderful community and an even better place to practice. Our office is located on the border of Little Italy and downtown, making the commute hassle-free and court appearances easy. Best of all, we’re surrounded by some of the best eateries in San Diego, and no they’re not all Italian!

—SCOTT WADDLE

Little Italy is an oasis within walking distance of the courts. I love to relax at Indigo Grill (I should own stock). Whenever I’m stressed, I walk to Masquerade. It has fabulous pomegranate oil lamps. Just walk up India Street from Beech and your nose will take you there. You will de-stress instantly.

—MARY FRANCES PREVOST

My nostalgia for the Old World is gratified with a hearty meal at Filippi’s. On the days I want to be pampered, Po Pazzo Restaurant is my choice, and when I simply want a great sandwich, it’s Mimmo’s. Little Italy is a small piece of Europe, and I am thankful to practice law in such beautiful surroundings.

—BILJANA KOVACEVIC

The India Street Design Center is an old converted brick warehouse right in the heart of Little Italy. The firm of Mirowski & Foldenauer was lucky enough to take over the end unit with a porch (a former loading dock) that overlooks the San Diego Bay. The specially designed shingle is the only attorney shingle in Little Italy.

Dean Schiffman is a San Diego attorney and expert witness. dean@LawAndNumbers.com
DISPUTES CAN BE COMPPLICATED.

MIKE DUCKOR
CAN HELP YOU FIND A WAY OUT.

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

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

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

---

DIALOGUE ON DIVERSITY

Thank you to our sponsors:

Acc America
Association of Corporate Counsel
San Diego Chapter

This event was made possible by the support of Law Firm sponsors:
DLA Piper US LLP
Klinedinst PC
Littler Mendelson PC
Luce Forward Hamilton & Scripps LLP
McKenna Long & Aldridge LLP
Pettit Kohn Inggrassia & Lutz PC
Wilson Petty Kosmo & Turner LLP

As well as our Bar Association Sponsors:
Earl B. Gilliam Bar Association
Filipino American Lawyers of San Diego
Korean American Bar Association of San Diego Lawyers Club of San Diego
Pan Asian Lawyers of San Diego
San Diego La Raza Lawyers Association
South Asian Bar Association of San Diego
Tom Homann Law Association
DAVID B. MOON, JR.
Judge of the Superior Court, Retired

PRIVATE DISPUTE RESOLUTION

Mediation - Arbitration - Settlement Conferences
Discovery and Special Master References

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

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

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

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

RINGLER ASSOCIATES®
SAN DIEGO • LAS VEGAS
STRUCTURED SETTLEMENTS

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

Congratulates
KEN SIGELMAN, Esq. of the
LAW OFFICES of KEN SIGELMAN

On Structuring Over $17,500,000.00 in Tax-Free, Expected.
Future Benefits for His Client During the Past Year.

Manuel R. Valdez CSSC  Manny J. Valdez CSSC
MRValdez@ringlerassociates.com • Insurance License 0623820 • MJValdez@ringlerassociates.com • Insurance License 0C76457
1230 Columbia Street • Suite 970 • San Diego, CA 92101 • 888-471-7051 • 619-231-3334 • 619-231-3335
www.ringlerassociates.com
Self-Evident E-Mails

Picture Thomas Jefferson in today’s world. He is sending what he calls his “original rough draught” of the Declaration of Independence by e-mail to the drafting committee of John Adams, Benjamin Franklin, Roger Sherman and Robert R. Livingston. Of course, the Crown’s royal governor has heard about these renegades and has decided to tap their Internet providers to see what they were up to.

The constabulary contacts Jefferson’s Internet provider and observes that Jefferson has sent some e-mails with attachments to the other known troublemakers. The government smells a conspiracy brewing. Armed with information regarding to and from whom Jefferson’s e-mails were sent and received, the British agents get a warrant for full interception of his e-mails and attachments. They check the metadata and know exactly when Jefferson sent the e-mails and when Franklin suggested using the phrase “it is self-evident” that all men are created equal rather than Jefferson’s original “we hold these truths to be sacred and undeniable.”

As a lawyer—and as a person who would prefer not to be hanged as a rebel—Jefferson should have been wary of at least four significant confidentiality concerns regarding his e-mails.

First, in a recent case, the Ninth Circuit ruled there is no Fourth Amendment protection for the “to” and “from” address portions of e-mails, so the government can view these portions with little problem under the Patriot Act, United States v. Forrester, 2007 U.S. App. LEXIS 17622 (No. 05 50410, No. 05 50493), decided July 25, 2007, rehearing pending. Under the law, the government is able to contact the Internet provider and secure sender or recipient information without a warrant. Under 18 U.S.C. §3121-27 (amended Oct. 2001), the prosecuting agency is required to obtain a court order, but there is no requirement that the order or application for the order be made available to the public or the defense (see Forrester).

Second, Jefferson may lose any protection for e-mails he sends to his compatriots once they forward his e-mails to other people, such as the constabulary (see Com. v. Proetto, 771 A.2d 823, 830-31 (Pa. Super. Ct. 2001)). Several cases have held that individuals lack any expectation of privacy in transmissions over the Internet or in e-mail that has already arrived at the recipient (see Id.; see also United States v. Lifshitz, 369 F .3d 173, 190 (2d Cir. 2004)).

Third, when Jefferson attached to his e-mail the Declaration in a Word document, it contained metadata—that is, electronic information embedded in the document, such as a revision log listing the last 10 edits of the document, the names of the people who worked on the document, and, in some cases, fragments of previous versions of the document. Ironically, the recent British government of Tony Blair was embarrassed when it published on its web site a dossier on Iraq’s security and intelligence organizations that contained the metadata on all the members of the government who had worked on the document (see New York State Bar Association Opinion 782 (Dec. 8, 2004)). An attorney who received Jefferson’s metadata may have no ethical obligation to refrain from viewing or using that metadata (see Maryland State Bar Association Comm. on Ethics Opinion 2007 09 (Oct. 16, 2006)). For example, while Maryland lawyers who produce electronic materials in discovery must take reasonable measures to avoid the disclosure of confidential informa-
tion embedded in metadata within a document, Maryland lawyers who receive electronic discovery materials may have no ethical duty to refrain from viewing or using metadata (see id.). In contrast, Florida and New York committees have taken the position that a lawyer has both a duty to refrain from reviewing or using metadata and a duty to notify an adversary of inadvertent production (see New York State Bar Opinion No. 749 (Dec. 14, 2001); see also Florida Bar Opinion 06-02 (Sept. 15, 2006) (commenting on receipt of metadata outside of the discovery context) (all opinions available at legalethics.com)).

Fourth, what if Jefferson started getting unsolicited e-mails from a Tory neighbor in Virginia who knows nothing of Jefferson's revolutionary ideas? What if the neighbor was asking for legal advice on a situation in which he was involved with the British government, revealing data that could help the new Continental Army win the Revolutionary War? Luckily for our future as Americans, the San Diego County Bar Association has issued an ethics opinion stating that information from an unsolicited e-mail is not confidential, so Jefferson would be free to pass the information on to General Washington (see San Diego County Bar Association Ethics Opinion 2006-1, available at sdcba.org/ethics/ethicsopinion06-1.htm). That is, of course, if Jefferson's indiscriminate use of e-mail does not get him and his compatriots hanged before he has a chance.

All attorneys should think about these issues when drafting their next e-mails.

Michael L. Crowley is a criminal defense attorney in San Diego and a State Bar–certified criminal law specialist. mlcrowley@usa.net. Erin Penning is an associate with the law firm DLA Piper in San Diego (erin.penning@dlapiper.com). Both are members of the San Diego County Bar Association's Ethics Committee. The views expressed in this article are their own and do not necessarily reflect the views of their offices or of the Legal Ethics Committee.
MCLE
Self-Study Questions

November/December 2007
Residing in Limbo

1. Due to several different laws passed after the 9/11 terrorist attacks, most applicants for immigration to the United States must undergo three different security checks.
   True ☐ False ☐

2. The USCIS recently determined that filing a mandamus action in the local Federal District Court will no longer lead to an expedite request with the FBI.
   True ☐ False ☐

3. Most security name checks are completed within six months.
   True ☐ False ☐

4. The USCIS has very clear and strict guidelines and requirements that must be followed when applying for permanent resident status.
   True ☐ False ☐

5. All marriage-based cases for permanent residence are subject to an interview by an immigration officer.
   True ☐ False ☐

6. A spouse of a U.S. citizen can become a permanent resident as soon as the spouse files the appropriate paperwork with the USCIS, even if the foreign spouse has overstayed a visa or worked without permission.
   True ☐ False ☐

7. The U.S. Citizenship and Investigative Services (USCIS) is the government agency responsible for processing naturalization applications.
   True ☐ False ☐

8. By law, USCIS has 120 days from the date that an individual has had an interview on a naturalization application to make a decision, or the individual may request de novo review in District Court.
   True ☐ False ☐

9. When undergoing a name check, for naturalization purposes, a “hit” reflects only those criminal records that can be retrieved through state and federal databases.
   True ☐ False ☐

10. To immigrate to the United States, an individual generally must have an employer or a relative willing to “sponsor” the individual.
    True ☐ False ☐

11. By law, spouses, parents, and minor children of a U.S. citizen are quota-exempt and are exempt from maintaining lawful status in the United States.
    True ☐ False ☐

12. If there is a formal finding that a noncitizen engaged in marriage fraud, that person has seven years to clear his or her record before filing again for a visa to enter the country.
    True ☐ False ☐

13. Living apart is, in and of itself, sufficient reason for the USCIS to find marriage fraud.
    True ☐ False ☐

14. The burden of proof in immigration proceedings always lies with the party seeking the benefit.
    True ☐ False ☐

15. The spouse of a U.S. citizen is eligible to file for naturalization five years after receiving permanent resident status.
    True ☐ False ☐

16. In San Diego County, one-half of the individuals who appear for permanent residency interviews have their cases continued because of security checks.
    True ☐ False ☐

17. Filing an action in Federal Court is rarely a successful means to bringing the full attention of the USCIS and other related agencies to the matter.
    True ☐ False ☐

18. A lawful permanent resident of the United States is someone who has a home in the United States with no intention of abandoning.
    True ☐ False ☐

19. According to USCIS, slightly more than one-quarter of all legal immigrants to the United States immigrated as spouses of American citizens in 2006.
    True ☐ False ☐

20. Under the Administrative Procedures Act, and other laws, the USCIS and other government agencies have a duty to adjudicate cases within five years.
    True ☐ False ☐

HOW TO RECEIVE 1 HOUR OF MCLE CREDIT

Answer the test questions on this page. Each question has only one answer. Mail the page and the completed form below to San Diego County Bar Association, 1333 Seventh Avenue, San Diego, California, 92101. Include a check for $20, made payable to the San Diego County Bar Association, to cover the processing fee.

NAME

LAW FIRM/ORGANIZATION

ADDRESS

CITY, STATE, ZIP

TELEPHONE

STATE BAR #

E-MAIL

Tests must be submitted within this issue’s current 60-day publication date to receive a Certificate of Completion and a copy of the questions and answers. Certification:

The San Diego County Bar Association is a State Bar of California approved MCLE provider. The San Diego County Bar Association certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education.
Thomas E. Sharkey, Esq.

Mediator • Arbitrator • Discovery Referee • Special Master

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

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

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

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

Private Dispute Resolution from a Name You Know and a Reputation You Trust.

CERTIFIED FAMILY LAW SPECIALISTS
Our firm has over 60 years of legal experience

Areas of Practice:
- Dissolution
- Custody
- Visitation
- Child and Spousal Support
- Community Property
- Asset and Obligation Division
- Guardianship
- Mediation
- Wills, Trusts and Estate Planning
- Immigration
- Personal Injury

12636 High Bluff Drive, Ste 200 | San Diego, CA 92130
Tel: (858) 755 3300 Fax: (858) 755 3387 | www.mlsmlaw.net
PHOTO GALLERY

Evening in La Jolla

PHOTOGRAPHS BY LAUREN RADACK

Battle of the Bands
PHOTOGRAPHS BY LAUREN RADACK

BATTLE OF THE BANDS:  A. Nick Estrada (lead vocals), Alex Ciullo (lead guitar) Legal Tender  B. David Siegel - Legal Tender  C. Chuck Kish (vocals/guitar) - Temecula, CA - Gym Bishop  D. Evette and Tom Hogue  E. Brooks Bedwell, Brendan Reed, Rachel Kushiner, Alex Catero  F. Rick Mraz (Rock Justice - Bass Guitar)  G. David Christopher, sales manager (bass) - The Edge  H. Mike and Max Stephenson, Sergio Estrada  I. Candace Terry  J. Paul Mirowski  K. Buckey Handley, physician (lead vocals/guitar) - The Edge  L. Gary Schons (one of the judges)  M. Gaylord Stewart, Melinda Sanchez
PHOTO GALLERY

Law Students Reception
PHOTOGRAPHS BY BARRY CARLTON

SDVLP DINNER
PHOTOGRAPHS BY BARRY CARLTON

LAW STUDENTS RECEPTION  A. August Miller  B. Jaejung Kim, Christine Trang, Anita Margolis, Liza Gavilanez, Devin Taylor, Parada Kovadi, Anika Padhier, Stacy Fode.  C. Napoleon Jones  D. Tony Soliman, Thomas Mason, Meg Snider, Ron Styn  E. Brian Funk, Dana Coy  F. Alex Lowder, Dennis Dawson.

SDVLP DINNER  A. Brett Schreiber, Ben Cramer, Sanjay Paul, Jessica Wieland  B. Katherine Pother, Barbara Murray, Michael Lipman  C. Jennifer Yoo  D. David Noonan

56 SAN DIEGO LAWYER • NOVEMBER/DECEMBER 2007
The Board of Directors gratefully acknowledges the support of the sponsors for the 10TH ANNUAL

THE SAN DIEGO COUNTY BAR FOUNDATION is the charitable arm of the San Diego County legal community, and in partnership with the San Diego County Bar Association, strives to provide access to justice by investing in sustainable results and advocacy for people and communities in our region that are impacted by poverty, abuse and discrimination.

Since its inception, the Bar Foundation has granted over $1.5 million to over 30 legal aid and public interest organizations that provide law related public service programs. Bar Foundation grants help children, the elderly, the sick and disabled, victims of domestic violence, immigrants, refugees and asylum seekers throughout the county.

THE DANIEL S. LEDERMAN FOUNDATION

EVENF SPONSORS

Ahern/ELT Employee Benefits
Maryly & Peter Benzian
Ethos & Laura Boyer
Bing & Company, Inc.
John & Jeannie Bucher
John Bucher Real Estate Company
Chapin Wheeler LLP
Davidson Attorneys
DefenseWeb
Dowling & Yahnke, Inc.
seeds
C. Hugh Friedman &
Hon. Lynn Schenk
James & Angel Gilpin
Higgs, Fletcher & Mack LLP
Holsenback Taylor
Hosey & Bahrambeigui
InterCasting Corporation
Irving Hughes
Randy & Liza Kay
Klinedinst P.C.
Garrison “Bud” Klueck
Kramm Associates, Inc.
Court Reporters
La Belling & McNamara, LLP
Latham & Watkins LLP
Legalstaff of San Diego
LexisNexis
McKenna Long & Aldridge LLP
Colin & Alexis Murray
Navigant Consulting, Inc.
Peterson Reporting, Video & Litigation Services
Kristi & Dick Pfister
Ringler Associates
Eddie & Amy Rodriguez
Nancy Stagg & Charles
Bethel
Thornes Bartolotta McGuire
VOCEL, Inc.
Wilson Sonsini Goodrich & Rosati
Wingert Grebing Brubaker & Goodwin LLP

HOST SPONSORS


This list reflects sponsors as of October 1, 2007. Contributions received after that date will be reflected in future publications.
SUSTAINING MEMBERS

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

PATRON MEMBERS
Marc D. Adelman
W. Davis Smith
James Ellis Schneider
Al L. Clarke
Ezekiel E. Cortez
Genaro Lara
James P. Frantz
Stephen M. Hogan
A. Jason Kerckhoff
Harold O. McNeil
William E. Nelson
David Baxter Norris
Thomas J. Warwick, Jr.

BENEFACCTOR MEMBERS
Leslie C. Detwiler
Vatche Chorbajian
Douglas A. Glass
Alvin M. Gomez
Garrison “Bud” Kluck
Monty A. McIntyre
Paul H. Neuhrath, Jr.
Ronald W. Noya
John R. Sorensen

FRIEND MEMBERS
Peggy S. Onstott
Jill L. Burkhardt
Marvin E. Mizell
Jared P. Hanson
Doc Anthony Anderson, III
Pamela J. Scholefield
Carrie A. Downey

Kristi E. Pfister
Amanda Fay Benedict
Ann C. Durham
Henry Harmeling, IV
Mark-Robert Blumenthal
Jedd E. Bogage
Kenneth H. Stone
Philip P. Lindsley
Jeffrey A. Wydra
Linda Cianciolo
Kyle Niki Shaffer
Lisa R. Zonder
Teresa E. Dietz
Darlene A. Dorman
David B. Dugan
Barbara R. R. Saltzman
Peter L. Fagan
Pamela D. Ferry
Marc B. Geller
Alan L. Geraci
Kenneth N. Greenfield
Kevin K. Johnson
Steven R. Liss
R. Anthony Mahavier
Mark C. Mazzarella
John J. McCabe Jr.
Carla Nasoff
Barry A. Pasternack
Susan E.H. Ragsdale
John H. Reaves
Alan Wiener
Bonnie J. Wilson
Joel R. Wohlfeil
Russell S. Kohn
Kelly R. Waggonner

WHO IS THIS PROMINENT MEMBER OF SAN DIEGO’S LEGAL COMMUNITY?

Please submit answers by November 21 to mkruming@aol.com. Your name will be entered in a luncheon-for-two at Dobson’s restaurant drawing. Congratulations to Sheryl Graf, a family law and criminal defense attorney in El Cajon who grew up on a 110-foot wood hulled sub chaser in San Diego Bay. Sheryl won the September drawing after correctly identifying recently retired Superior Court Judge Lillian Lim. Thanks to everyone who participated.

EXPERT APPEAL.

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

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

SULLIVAN HILL LEWIN REZ & ENGEL
A PROFESSIONAL LAW CORPORATION
THE POWER OF MEMBERSHIP

Members of the San Diego County Bar Association enjoy the following benefits:

Meaningful Community Service Opportunities.
Social Events.
Sports Leagues.
A one-of-a-kind network of attorneys and judges.

By leveraging the collective power of more than 10,000 members, the SDCBA brings you valuable high quality products and services.

- Air Travel
- Attractions
- Athletic Club
- LEXISNEXIS
- San Diego Employers Association
- Web and Media
- Education Resources, SunTrust Bank
- Continuing Legal Education
- Liability Insurance through Ahern Insurance Brokerage
- Bar Report
- San Diego Lawyer Magazine
- Legal Ethics Quarterly
- San Diego Lawyer Directory

SAN DIEGO COUNTY BAR ASSOCIATION

Get a complete list and details at www.sdcba.org
## James H. Mayer, Esq.

### Mediation Services

**Areas of Expertise**
- General Commercial and Business
- Real Estate
- Corporate and Securities
- Employment
- Personal Injury
- Construction
- Environmental

**Experience**
- 13 years as a Mediator
- 40 years as an Attorney
- Retired Partner, Pillsbury Madison & Sutro LLP
- Formerly with Bates Edwards/Endispute Mediation
- Serves on San Diego Superior Court and NASD Mediation Panels

Honors Graduate of Dartmouth College and Harvard Law School
Rear Admiral, USNR (retired)

**Contact Information**
7924 Ivanhoe Ave.
Suite 3
La Jolla, CA
858-551-5525
fax 858-551-5554

**Solutions. Savings. Satisfaction.**

---

## Advertisers' Index

<table>
<thead>
<tr>
<th>Advertiser</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADR</td>
<td>11</td>
</tr>
<tr>
<td>Ahern Insurance</td>
<td>5</td>
</tr>
<tr>
<td>Barker Koumas &amp; Olmsted</td>
<td>10</td>
</tr>
<tr>
<td>Bond Services of California</td>
<td>60</td>
</tr>
<tr>
<td>John Bucher Real Estate</td>
<td>64</td>
</tr>
<tr>
<td>David Carr</td>
<td>36</td>
</tr>
<tr>
<td>Hon. Geary Cortez</td>
<td>51</td>
</tr>
<tr>
<td>Duckor Spradling Metzger &amp; Wynne</td>
<td>48</td>
</tr>
<tr>
<td>Century 21</td>
<td>10</td>
</tr>
<tr>
<td>First Pacific Bank</td>
<td>36</td>
</tr>
<tr>
<td>Forensic Expert Witness</td>
<td>44</td>
</tr>
<tr>
<td>Kevin Forrester</td>
<td>51</td>
</tr>
<tr>
<td>Fragomen</td>
<td>37</td>
</tr>
<tr>
<td>Gold Card Jurist</td>
<td>15</td>
</tr>
<tr>
<td>Guaranteed Subpoena</td>
<td>23</td>
</tr>
<tr>
<td>Craig Higgs</td>
<td>30,31</td>
</tr>
<tr>
<td>JAMS</td>
<td>21</td>
</tr>
<tr>
<td>Judicate West</td>
<td>43</td>
</tr>
<tr>
<td>King Stahlman Bail Bonds</td>
<td>17</td>
</tr>
<tr>
<td>Kruis Mediation</td>
<td>2</td>
</tr>
<tr>
<td>Forensis Group Inc.</td>
<td>3</td>
</tr>
<tr>
<td>Legal Advisors (Steven Sears)</td>
<td>51</td>
</tr>
<tr>
<td>Legal Cents</td>
<td>45</td>
</tr>
<tr>
<td>Lexis Nexis</td>
<td>13, 63</td>
</tr>
<tr>
<td>Lit Econ</td>
<td>53</td>
</tr>
<tr>
<td>James Mayer</td>
<td>60</td>
</tr>
<tr>
<td>David Moon</td>
<td>49</td>
</tr>
<tr>
<td>Moore, Lewis, Shulman, Moore</td>
<td>53</td>
</tr>
<tr>
<td>Ringler Associates</td>
<td>44, 49</td>
</tr>
<tr>
<td>San Diego County Bar Foundation</td>
<td>57</td>
</tr>
<tr>
<td>SDCBA</td>
<td>48, 59</td>
</tr>
<tr>
<td>Sullivan Hill</td>
<td>58</td>
</tr>
<tr>
<td>Thomas Sharkey</td>
<td>53</td>
</tr>
<tr>
<td>Thomson West</td>
<td>9</td>
</tr>
<tr>
<td>UCSD</td>
<td>27</td>
</tr>
<tr>
<td>Union Bank</td>
<td>7</td>
</tr>
<tr>
<td>Walker Advertising</td>
<td>19</td>
</tr>
<tr>
<td>Wingert, Grebing, Brubaker &amp; Goodwin</td>
<td>43</td>
</tr>
</tbody>
</table>

---

---

---

---
DIRECTORY OF EXPERTS AND CONSULTANTS

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

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

ESTATE AND TRUST TAX OUR SPECIALTY: We solve your biggest estate and trust tax problems. We find out what you might not know and protect you from potential liability. Compliance research, preparation of returns, administration. www.golembcpas.com (619) 497-1800; e-mail daryl_golemb@golembcpas.com.

THE PERENNIAL PROBATE PROBLEM –SOLVED!! Your client is in probate, inheriting or administering real estate but short on reserves to settle estate debts and cover costs. Typical mortgage lenders require that the probate be fully closed first. This creates a classic “Catch 22” situation that can tie up a probate indefinitely. With over 28 years of specialized mortgage banking experience, we routinely fund mortgage requests (even while in probate) that lenders typically refuse to consider. At Ernst Financial Services, my personal goal is to help you expedite the closure of your clients probate with the best rates and services in the mortgage industry. Affiliate member SDCBA. Tel: (760) 634-6800 www.ErnstFinancialServices.com

SECURED ARCHIVED FILES ELECTRONICALLY We can convert your archived paper files into digital data. The password protected and encrypted files are readily available to print, fax, e-mail or view either in black and white or color even if the paper is colored, the signatures are in blue ink or colored pictures are part of the file including double sided pages. Phone: 619.795.7091 www.securearchivedfiles.com Fax: 619.294.6520

FOR ADVERTISING INFORMATION, CONTACT 619-231-0781
Earlier this year, the Balboa Park Committee previewed a planned renovation project at the Old Globe theater complex. At the heart of the renovation is the flattening and replacement of the theater in the round, the Cassius Carter Centre Stage.

In its place will be a new, still intimate, theater—but with a back stage, and a new name: Sheryl and Harvey White Theatre, on the heels of $6 million donated by the Whites, a Qualcomm co-founder. (In 2005, a press release from the Old Globe Theatre stated that with a $10 million donation from Conrad Prebys, the Globe's main stage and Cassius Carter Centre Stage would be renamed the Conrad Prebys Theatre Center.)

But what about Cassius Carter? Is the honor bestowed to him simply razed with the building? This remains the fundamental problem in San Diego: we acknowledge, but hardly care, about our roots.

So, for the sake of Cassius Carter, a brief history.

He was born in Virginia in 1857 into a well-to-do family whose fortunes went, well, south following the Civil War. He eventually moved his law practice and new bride to San Angelo, Texas, in 1883. The next year, he was elected county attorney. He was defeated for reelection in 1886 and headed for San Diego in 1887. Carter was politically active in San Diego and earned a reputation of being an outstanding student of Shakespeare. (According to the San Diego Historical Society biography of Carter, his former law partner in Texas claimed that if all of the plays of Shakespeare were lost, Carter could have reconstructed them from memory.)

Carter was selected to be the Democratic nominee for district attorney in 1902, won and took office in 1903. He served in that position for three years (a pretty good run in those days, as the DA slot was a regular revolving door; according to the DA history posted online, 23 men held the office in the county's first 20 years). Carter’s predecessor, Adelbert Sweet, later formed the firm that became the backbone of Luce, Forward, Hamilton & Scripps.

Carter declined a movement to run for the office of Superior Court judge in 1908 and died in 1909 at the age of 52. A local historian at the time, William Smythe, called Carter a “brave and honest soul. He was so brave that he could not help being honest; so honest that he could not help being brave. His opinions, seldom popular, were always sincere. …He thought his own thoughts, walked his own path, if he thought and walked alone. Not many men have the courage or the honesty to do it.”

How is it that a theater in the Old Globe complex was named for Carter? Another lawyer in town, Lowell Davies, became the legal adviser to the Old Globe board in 1937 and then was elected to the board in 1939. He was president of the board for 31 years (1945-1976) and remained on the board until his death in 1983. His personal papers include a letter written by Carter to the editor of the San Diego Sun, dated 1905, noting with regret the low attendance at a performance he had attended at a local theater. The text of the letter had been sent to Davies from Carter’s son, Armistead Carter, in 1968. In 1969, the original restaurant facility adjacent to the Old Globe Theatre, known as the Falstaff Tavern, was remodeled to become the 225-seat Cassius Carter Centre Stage.

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

Powerful Client Development resources …

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

exclusive Research Solutions …

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

customizable Practice Management tools …

Fully integrated services to drive productivity and profitability

the only NITA® endorsed Litigation Services …

Covering the litigation process in the way that litigators work

Where do you find them?

A: LexisNexis® Total Practice Solutions

lexisnexis.com/tps

A MEMBER BENEFIT OF

SAN DIEGO COUNTY BAR ASSOCIATION
LAWYERS REPRESENTING LAWYERS.
RAISING THE BAR IN LEASE NEGOTIATIONS FOR OVER 20 YEARS.

La Bella & McNamara, LLP • Hecht, Solberg & Goldberg & Bagley, LLP • Wright & L'Estrange Sullivan, Hill, Lewin, Rez & Engel • Wingerter, Frank, Hart & McFall, APLC • Andersen, Mann & Hilbert, LLP Miller & Huver • Neil, Dymott, Frank, Ham, Krause, Kalfayan, Benink & Slavens, LLP Stephenson, Worley, Garratt, Schwartz, Garfield, Krause, Kalfayan, Benink & Slavens, LLP White & Oliver, APC • San Diego County Bar Association • Ehrman, White & McAuliffe, LLP Greco & Traficante • Copeland & Tierman • Andersen, Mann & Hilbert, LLP • Law Offices of Virginia C. Nelson McKenna & Cuneo • Gentes & Garcia • Law Offices of Peter J. Hughes, APC Cleary & Sevilla, LLP • Law Offices of Virginia C. Nelson • Lasry, Laube, Byer & Valdez, LLP La Bella & McNamara, LLP • Hecht, Solberg & Goldberg & Bagley, LLP • Wright & L'Estrange Sullivan, Hill, Lewin, Rez & Engel • Wingerter, Frank, Hart & McFall, APLC • Andersen, Mann & Hilbert, LLP Miller & Huver • Neil, Dymott, Frank, Ham, Krause, Kalfayan, Benink & Slavens, LLP Stephenson, Worley, Garratt, Schwartz, Garfield, Krause, Kalfayan, Benink & Slavens, LLP White & Oliver, APC • San Diego County Bar Association • Ehrman, White & McAuliffe, LLP Greco & Traficante • Copeland & Tierman • Andersen, Mann & Hilbert, LLP • Law Offices of Virginia C. Nelson McKenna & Cuneo • Gentes & Garcia • Law Offices of Peter J. Hughes, APC

1010 2nd Ave., Suite 1830, San Diego 619.235.9940  www.johnbucher.com

JOHN BUCHER
REAL ESTATE COMPANY
Tenant Representation for the Legal Profession.
619.235.9940  www.johnbucher.com