IMPARTIAL ADVOCACY

“I just wanted to say how impressed I was with how you handled our mediation. You were very understanding and helpful yet remained professional and were careful not to take sides.”

– Letter from real estate broker participant in residential real estate matter

Steve Kruis – impartially helping both sides reach resolution.

Kruis Mediation
Reaching Resolution since 1993

The Koll Center • 501 W.Broadway, Suite 1330 • San Diego, CA 92101
Phone: 619.702.8834 • Fax: 619.702.2030 • Steve@KruisMediation.com • www.KruisMediation.com
At Casey Gerry, handling personal injury matters for over 60 years has provided us with the perspective and experience necessary to consistently succeed at reaching just resolutions. Our history, track record and skills are respected within the legal community and amongst our peers. Call 619-238-1811 to arrange a free consultation or visit www.caseygerry.com for more information.

Dedicated to the Pursuit of Justice

110 Laurel Street, San Diego, CA 92101  •  619-238-1811
1901 Camino Vida Roble, Suite 121, Carlsbad, CA 92008  •  760-743-8448
www.caseygerry.com
**FEATURES**

18 **To a Degree**  
Online law schools provide another path to a law degree. After studying in Pennsylvania, the author was sworn in to the California Bar in San Diego.  
By Michael Miscoe

20 **Hosey Gears Up**  
Patrick Hosey steps up to the presidency of the San Diego County Bar Association.  
By Alidad Vakili

28 **The Arts in Law**  
We take a look at the many ways the arts are woven into the lives of lawyers and judges.  
**Take Note!**  
The local legal profession makes music outside of office hours.  
By Wendy Patrick Mazzarella

31 **The Framework for Art Law**  
The rules for what goes on the wall may not be simple.  
By Jeffrey Slattery

35 **Dancing Lessons**  
Law professor William Lynch learned much more than the limbo when he took up dancing.  
By Greg Shibley

37 **Humor’s Helping Hand**  
Not everything should be taken seriously in legal matters.  
By Ken Turek

38 **Race to the Top**  
Thomas Jefferson School of Law has a head start on the U.S. District Court.  
By George Brewster

12 **Et Al.**  
The comings and goings of lawyers, judges and the rest of the legal community.  
By Wendy Patrick Mazzarella

14 **Ethics**  
An investigation into the ethics of fees.  
By David Cameron Carr

16 **Order**  
Party time for the holidays means finding private rooms, and area restaurants are happy to help.  
By Krista Cabrera and Gil Cabrera

DEPARTMENTS

06 **Briefly**  
Lawyer and cartoonist Stu Rees draws on a unique client base.  
By Brian Brunkow

08 **President’s Page**  
It’s been an exciting year for the SDCBA.  
By Jerriyn Malana

12 **Et Al.**

14 **Ethics**

16 **Order**

40 **Photo Gallery**

44 **Sustaining Members**

45 **Directory of Experts and Consultants**

46 **Closing**

ON THE COVER: Patrick Hosey. Photograph by Lauren Radack.
Your law firm can benefit from the exclusive Professional Liability insurance program developed by the dedicated team at Ahern Insurance Brokerage and XL Insurance.

Meeting the insurance needs of law firms for over 20 years, our comprehensive program is designed with today's changing exposures in mind, and with a long-term commitment to the San Diego marketplace.

San Diego County Bar Association members can benefit from:
- Coverage carrying an A (Excellent) rating by A.M. Best and Admitted in California
- A financially stable, global company
- Customized policy features available only to SDCBA members
- A reputation for fair, efficient and responsive claims handling
- Service delivered by dedicated law firm insurance specialists

Call today to take advantage of this valuable SDCBA member benefit.

XL INSURANCE

AHERN INSURANCE BROKERAGE
LAW FIRM INSURANCE SPECIALISTS

TO LEARN MORE, VISIT WWW.AHERNINSURANCE.COM OR CALL 1-800-282-9786

“XL Insurance” is a registered trademark of XL Capital Ltd and the brand may be used by its insurance company subsidiaries. Coversages underwritten by Greenwich Insurance Company and Indian Harbor Insurance Company. Rating accurate as of August 7, 2009.
Stu Rees
This attorney draws on a unique client base

Stu Rees now calls San Diego home, after graduating cum laude from Harvard Law School in 1997. An attorney and well-known cartoonist himself, Stu has carved out a unique professional niche and creative outlet.

You started cartooning at Harvard—just not enough to do? There was plenty of law. I was looking to up the fun quotient.

Do you recall your first cartoon? The caption was “#1 advantage of being a judgment-proof student: copyright infringement,” and I drew lots of famous characters like Dilbert, Calvin, etc.

You draw and write text. Any preference? Writing’s definitely my favorite. It’s amazing how a mediocre joke can become great with proper editing. Just tweaking a couple of words can dramatically affect the result. Not unlike being a lawyer.

And you’re self-taught? Totally. My art style comes from emulating the best features of the most famous cartoons.

What inspires your cartoons? Real life. The best jokes comment on what actually happens to people. With lawyers, there’s no shortage of material.

Where can we see your cartoons? www.stus.com.

Are you a cartoonist or lawyer? Both. There’s commonality: Lawyers and cartoonists are in the business of choosing words with absolute care and leading their audience down a prescribed path with no alternate interpretations. Being a lawyer made me a cartoonist, and being a cartoonist has made me a better lawyer.

How did you learn syndication law for cartoonists? I wrote a line-by-line analysis of the Universal Press Syndicate boilerplate contract for my final law school paper. I interviewed dozens of syndicated cartoonists and analyzed their actual contracts and situations. These cartoonists coached me because they were excited to train somebody who would later be able to help them. There were (and are) no other lawyers specializing in this field.

What are the “sticky” points when negotiating contracts in your niche? The Internet is killing newspapers, so fights over money and term length are getting harder as the pie shrinks.

How do the tea leaves read for newspapers? Newspapers constantly run stories about how they’re dying. Believe them. Eventually, news will move online. Newspapers with quality websites and content will survive.

Any pressing legal issues coming up within your field? Monetizing online viewership.

Brian Brunkow (brian@mindvenue.com) is a Pacific Beach attorney and freelance writer.

Find more of the interview with Stu Rees at www.sdcba.org.
COST-EFFECTIVE DISPUTE RESOLUTION

Hon. Mac Amos
(Hon.
Patricia Cowett
Ret.)
(Hon.) Edward Huntington
Ret.)

Hon. Anthony Joseph
Ret.)
(Hon.) Edward Kolker
Ret.)
(Hon.) Gerald Lewis
Ret.)
(Hon.) Robert O’Neill
Ret.)
(Hon.) Wayne Peterson
Ret.)

Hon. Sheridan Reed
Ret.)
(Hon.) H. Lee Sarokin
Ret.)
Michael Duckor, Esq.
Jobi Halper, Esq.
Michael Roberts, Esq.

LOW ADMINISTRATIVE FEES.
QUALITY PANELISTS. EXCELLENT SERVICE.

Ashley Predmore, Manager
225 Broadway, Ste. 1400
San Diego, CA 92101

www.adrservices.org

tel 619.233.1323
fax 619.233.1324
email ashley@adrservices.org
The achievements of an organization are the results of the combined effort of each individual. —Vince Lombardi

2009 marked the 110-year anniversary of the San Diego County Bar Association, and it has truly been a memorable year for our organization. We continued with our rich history of service to our members, the legal community and the community at large. Our accomplishments for the year are many, and in my final column as President, I wish to highlight a few for you.

In January, we proudly launched our new website. With its enhanced technology, our website has allowed the SDCBA to engage in more effective and streamlined communications. Our members can easily register for events and CLE programs, track their CLE credits and view a comprehensive community calendar. Our members also have the ability to discuss legal issues and share documents with colleagues through our “e-communities” and listserves. These listserves have become a popular tool for members to exchange practice information, and they allow Sections and Committees to readily disseminate important announcements.

This fall, we also rolled out our new electronic voting system for the Board of Directors election. The electronic age has significantly changed the way we practice law, and the SDCBA has evolved to keep pace with these changes as part of our continuous effort to remain a valued partner to you and your practice.

During these uncertain economic times, we recognized that many members were seeking creative ways to build their books of business, but other members were looking for career options. To address these diverse interests, we hosted multiple networking and business development events, created our new Law Practice Management & Marketing Section and hosted programs on job strategies and alternative career paths. We added several new Member Benefit providers, who provide discounts on a wide range of products and services to our members. We partnered with other professional organizations such as the California Society of CPAs to facilitate business opportunities for our members. In October, we presented a joint program with CalCPA on the latest trends in the economy so our members could better plan for 2010.

In 2009, we offered more than 250 hours of live and web-based CLE programs with top-notch presenters. We also provided our members with timely information through our various electronic and hard-copy publications including This Week at the Bar, Bar Report, San Diego Lawyer Magazine, CLE Update, Legal Ethics Quarterly and For the Record.

We also continued our important work in promoting diversity in the legal profession. Our Diversity Fellowship Program was launched in partnership with the Association of Corporate Counsel; and we presented our third annual “Dialogue on Diversity” event, which featured a thought-provoking presentation on cross-cultural issues in the courts.

We worked closely with our law schools (California Western, Thomas Jefferson and USD) and their career services offices to provide effective programs to help law students transition smoothly to the practice of law. We continued our outreach to our sister bar associations, and partnered with them on numerous programs throughout the year. In September, the SDCBA co-hosted the California State Bar’s annual Bar Leaders Conference, where we welcomed bar leaders from across the state to our Bar Center.

On the lighter side, we held various events for our members to mix and mingle in social settings including our annual Golf Tournament, YNLD Casino Night and Padres Night. We enjoyed arts and culture events through our successful “Bar Night at the Opera” with the San Diego Opera, and “Night at the Museum” at the Museum of Contemporary Art. In December, we have planned a special evening with the San Diego Ballet so our members can enjoy the classic Nutcracker performance during the holiday season.

As many of you know, the program closest to my heart has been our “Lawyers Giving Back” campaign. Our members enthusiastically responded to our call to action to provide at least 50 hours of pro bono or volunteer service during the year. Our members volunteered at numerous events and programs such as the Ask-A-Lawyer clinics, foreclosure HOME Clinics, Children at Risk Committee programs, San Diego Book Project, Law Week activities, Wills for Heroes program, High School Mock Trial Competition, Habitat for Humanity “build day,” FaceLift projects with Community Housing Works, Father Joe’s Villages gardening project and our Beach Clean Up. We also launched an innovative pro bono project to assist active-duty military personnel through our new Servicemembers Civil Relief Act program. These are just a handful of the
WORK SMARTER NOT HARDER.

Intelligent California legal resources from West:

- Westlaw®
- KeyCite®
- Westlaw PeopleMap
- ProDoc®
- Legal Calendaring
- West Case Notebook™/West LiveNote™
- The Witkin Library
- West LegalEdcenter®
- Case Evaluator
- CFLR® DissoMaster® Suite
- Miller & Starr Library
- California Pleadings, Motions & Memoranda
- The Rutter Group California Practice Guides™

For more information, call 1-800-762-5272.
many wonderful programs where our members “stepped up” to volunteer their time. If you have not already done so, please check out the SDCBA’s interactive “Guide to Giving Back” and our community service video on our website. I know you will be inspired to make a positive difference in our community after reviewing the Guide and watching the video. Special kudos to our “Bar Stars” who have already met the 50-hour challenge!

Our success as an Association would not be possible without the efforts of our hard-working staff led by Executive Director Ellen Miller Sharp. Thank you to Ellen and the staff at the SDCBA for their dedication and commitment. The SDCBA’s depth and breadth of programs is also a tribute to our volunteer leaders involved at all levels of our organization. We are grateful to our Chairs, Co-Chairs and many (many) members of our Sections, Committees and Divisions who have volunteered countless hours to make our programs and events so successful. Our Association continues to remain strong and vibrant because of your collective efforts.

Last but not least, I wish to thank my fellow Board members for their volunteer service during the year: President-Elect Pat Hosey; Past President Heather Rosing; Vice Presidents Stacy Fode, Dan Holsenback, Dan Link, Liza Suwczinsky, and Howard Wayne; Treasurer Tim Richardson; Secretary Elizabeth Balfour; Directors Tom Buchenau, John Gomez, Marvin Mizell, Tina Fryar, Duane Horning, Jim Lund, Marcella McLaughlin and Gita Varughese; and YNLD Representative Alex Calero. I sincerely appreciate your dedication, wisdom and teamwork—and most of all, your friendship. My very best wishes to Pat Hosey for much success in the coming year as he takes over the reins on December 4 at our annual SDCBA holiday reception.

It has been a great honor to serve as President of the SDCBA. The year has been filled with unforgettable experiences, and the journey has been incredibly rewarding. Thank you for the opportunity to serve.

Warmest regards,

JERRILYN MALANA

SAN DIEGO COUNTY BAR ASSOCIATION
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.)

HON. ANTHONY J. BRANDENBURG (RET.)

HON. ALAN B. CLEMENTS (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 • 619.236.1848
401 “B” Street • Suite 2100 • San Diego, CA 92101

Visit our new, enhanced website for unrestricted access to our national roster of more than 250 neutrals and their bios: www.jamsadr.com
Moving on Up, Out and Over

**STEPPING UP:** Patrick Hosey will be sworn in as president of the San Diego County Bar Association during Stepping Up to the Bar on December 4 at the Bar Center. Also sworn in will be newly elected board members.

**APPOINTMENT:** Assistant U.S. Attorney William Gallo has been appointed to a seven-year term as U.S. Magistrate Judge, succeeding Leo Papas, who retired.

**ELECTION:** Presiding Justice Judith McConnell of the 4th District Court of Appeal has been elected to a one-year term as chairperson of the Commission on Judicial Performance.

**AWARDS:** Attorney Rita Hanscom will be honored in Monte Carlo on November 22 as the Best Master Athlete of 2009 by World Masters Athletics. Rita and her husband, Superior Court Judge Richard Hanscom (ret.), will fly to Nice and then on to Monte Carlo. The award will be presented during the International Association of Athletics Federations gala. The Prince of Monaco traditionally presents the award. Rita is a deputy attorney general in the Bureau of Medi-Cal Fraud and Elder Abuse.

Hon. Napoleon Jones

Hon. Robert Trentacosta

U.S. District Court Judge Napoleon Jones (Judicial Council Lifetime Achievement Award), Superior Court Judge Randa Trapp (Sankofa Award), Administrative Law Judge Vallera Johnson (NBA Women’s Division Award) and Assistant U.S. Attorney Randy Jones (Sankofa and President’s Awards) were honored by the National Bar Association during its annual meeting here in August. About 1,800 attorneys, judges and their families attended the event, which was held in San Diego for the first time. Judge Trapp, who became involved with the NBA during her student days at Georgetown Law Center, cochaired the convention.

David Casey Jr. received the American Bar Association’s Pursuit of Justice Award.

**LEADERSHIP:** Superior Court Assistant Presiding Judge Kevin Enright will become presiding judge on January 1, succeeding Kenneth So. Robert Trentacosta, who’s now supervising judge of the Criminal Division, was elected the new assistant presiding judge.

**COURTS:** Sam Hamrick, clerk of the U.S. District Court, says that the Case Management/Electronic Case Files (CM/ECF) system has been used to keep the case records in the court for more than three years. During that time, almost 11,000 attorneys have registered as CM/ECF users, and some 302,000 cases have been maintained on the system. The court had planned to upgrade to CM/ECF version 4 in October, which should bring some improvements. The CM/ECF help line can be reached at 866-233-7983.

**SWEARING IN:** New attorneys will be sworn in during ceremonies starting at 10 a.m. on December 1 at the Sheraton Harbor Island Hotel.

Wendy Patrick Mazzarella (wendy.mazzarella@sdcda.org) is a deputy district attorney.
What's the best surfing spot for a California lawyer?

California Forms of Pleading and Practice.

It's the place to be for attorneys who need to deal with all the complexities of California law.

As a California lawyer, you know that the waters aren't always clear. With so many laws on the books, and emerging areas of law popping up all the time, you need the kind of research tool that makes you smarter, stronger, tougher and better. With California Forms of Pleading and Practice, you're up-to-date and ahead of the curve.

With so much more than just forms, it provides today's critical analysis from the most authoritative practitioners in their fields. You'll find checklists, forms, legal background and research guides all integrated into one convenient source. With more updates than the competition, you'll not only know your facts cold, but get better coverage of new topics.

Also experience the confidence of relying on the California Official Reports, from LexisNexis, the Official Publisher.

www.lexisnexis.com/carightsolution

A MEMBER BENEFIT OF

SAN DIEGO COUNTY BAR ASSOCIATION

TOTAL PRACTICE SOLUTIONS

LexisNexis®
The sun beat a merciless staccato on my brow as I walked across MacArthur Park toward my office building. I worked my way up the stairs to the second floor and the glass door that announced my name to the world in black block letters: PHILBROOK McCoy—ETHICS INVESTIGATOR. Already I could tell that this would be no ordinary day. Beyond the letters was a moving shape that meant a visitor.

I pushed the door open. Before she could announce herself, her perfume did it for her. It shouted “expensive” and “movie biz,” and the rest of the package lived up to the billing. She stood up and stabbed me with two of the bluest eyes this side of Solvang.

“Philbrook McCoy? The E.I.?”

“Good guess, but you had some help from the door.”

“I am Dagmar Oakland. I’m here about an ethics rap.”

“Sure . . . what else? I have to say, though, you are a cut above my average miscreant.”

“I’m not in trouble. It’s my boyfriend, Basil. And he didn’t do anything wrong! It’s that lawyer we hired, Paul Tapley. He’s to blame.”

Her accent confirmed it: Wherever she was originally from had been buried by some Tinsel Town voice coach. I sat down behind my desk. “Sure, it’s always the lawyer’s fault. Why don’t you tell me what happened?”

“My boyfriend, Basil Clark—he’s English and a marvelous actor. But he was here illegally, and they deported him. We went to see Tapley to try to delay the deportation. I paid him $100, and he did nothing. Basil is gone now, and Tapley won’t give me the money back. Can he get away with that?”

“I’ll give you a lawyer’s answer: It depends. Lawyers usually earn their money by providing services. And Rule of Professional Conduct 3-700(D)(2) requires that they return any part of a fee that has not been earned when their employment terminates. But the rule explicitly recognizes another way to earn their bread, something called a ‘true retainer.’ That is a fee paid not for services but for the lawyer’s availability.”

I opened the bottom drawer of my desk and pulled out my bottle of rye and two paper cups. “The ‘true retainer’ is really a hangover from an earlier time, when we actually had too few lawyers to service people’s legal needs. Now, of course, this burg is crawling with them, but there was a time when you had to pay a lawyer just to guarantee that he would be available for you and not to the other guy in some future dispute you might have.”

“A little early for liquor, isn’t it, Mr. McCoy?”

“It’s never too early when your beat is ethics,” I said, filling both cups. “Call me Philbrook. Was there any sort of written agreement with Tapley? Not that it decides the issue. Lawyers sometimes designate a fee as a true retainer or nonrefundable in their written fee agreements, but that doesn’t make it so. Take a gander at Matthew v. State Bar (1989) 49 Cal.3d 784. Despite the guidance of the rule and the case law, lawyers continue to think they can charge nonrefundable fees for services, so much so that the Commission for Revision of the Rules of Professional Conduct has proposed Rule 1.5, explicitly banning nonrefundable fees. Care to join me?”

“Thank you, Mr. . . . Philbrook.” She took the paper cup with both hands, shaking a little. “Tapley gave me a written contract; it says the $100 was the down payment on a $250 fee ‘to secure an extension of time’ on his deportation.” She sipped the rye and relaxed. “Please, call me Dagmar. Isn’t there anything I can do? Basil hasn’t 2 cents to rub together, and I spent my last $100 helping him.”

“The honchos at the State Bar take a dim view of lawyers taking money and then not doing the work. Pay them a visit. Here is the address.”

She took the slip and stood to go. I had a warm feeling that I would see those blue peepers again, but it could have been the whiskey. “And if you have any trouble, Dagmar, come see me. I’ll be here. And so will the rye.”

David Cameron Carr (dccarr@ethics-lawyer.com) is a San Diego lawyer.

With the AAA, the neutral you select will be exactly that. Neutral.

Neutral selection is of vital importance to any alternative dispute resolution (ADR) case. The American Arbitration Association® (AAA) provides access to some of the best neutrals in the business, right in San Diego. AAA® helps you select well-screened, expertly trained neutrals for your case, then works with you to provide conflict checking along with full-service arbitration and mediation.

To find out more about how the AAA can help you find the best neutral for your arbitration or mediation case, call 619-239-3051 or visit www.adr.org.

American Arbitration Association
Dispute Resolution Services Worldwide
American Arbitration Association, 600 B Street, Suite 1450, San Diego, CA 92101
As the holidays approach, law firms are often in need of private dining options at local restaurants to celebrate the year’s accomplishments and welcome the season. Luckily, many restaurants have private rooms where such gatherings can be hosted. Here are a few of our favorites.

An East Village eatery featuring a private room that holds up to 19, Cowboy Star Restaurant & Butcher Shop is a unique restaurant decorated in what we’d call a “ranch chic” style. Lots of wood and western décor make this a kitschy, fun venue. The food is top-notch, using prime beef from some of the best local and natural growers. For lunch, Cowboy Star offers a petit steak special each day with the chef’s selection of sides. The crab BLT is divine.

640 10th Avenue, San Diego, 619-450-5880, www.thecowboystar.com

Another downtown option is lunch favorite Bandar in its new, larger and more refined location, which has a separate dining room that seats up to 40. Bandar serves excellent Persian food, and plenty of it. One of our favorites is adas polo: marinated chunks of charbroiled chicken served with a mixture of saffron rice, currant raisins, lentils and dates.

837 Fourth Avenue, San Diego, 619-238-0101, www.bandarrestaurant.com

Downtown’s fine Indian restaurant Monsoon offers a curtained-off area that seats between 20 and 30. The vibe is glitzy and festive. You cannot go wrong here with the samosas (crispy lamb, chicken or potato and pea-stuffed pastries) and any of the classic Indian curries, such as tikka masala, madras and sagwala. Monsoon makes a great option for groups because it is best to eat the food here family-style.

729 Fourth Avenue, San Diego, 619-234-5555, www.monsoonrestaurant.com

Café Lavande, one of our favorite spots in La Jolla, is a hidden gem on Girard featuring a beautiful outdoor courtyard. The private room seats approximately 20, and the main dining room can be reserved for larger parties. The menu is classic French. Try the chicken blanquette, which features pasta, English peas, pearl onions and chicken breast in a cream sauce.

7644 Girard Avenue, La Jolla, 858-459-9940, www.cafelavande.com

Del Mar’s Sbicca Bistro is a North County option that provides excellent California cuisine with sophisticated, coastal ambiance. For a smaller group of eight to 16, the Wine Room upstairs is available for private parties. In this room, patrons dine at a large rectangular table surrounded by racks of wine.

215 15th Street, Del Mar, 858-481-1001, www.sbiccabistro.com

INSIDE TIP
Speaking of holiday parties, an alternative to reserving a private room at a restaurant is to cater a lunch event at the office and let everyone go home early. This route is much appreciated by employees and can be very affordable. Some local catering options include Waters Fine Foods (www.waterscatering.com) for a delicious, gourmet spread and Phil’s Barbecue (www.philbsbbq.net) for classic, hearty fare such as ribs, fries and onion rings. Bandar (mentioned above) also offers great catering choices.

Krista Cabrera (kcabrera@wilsonturnerkosmo.com) is an attorney with Wilson Turner Kosmo. Gil Cabrera (gil@cabrerafirm.com) is an attorney and principal with The Cabrera Firm.
innovative global immigration solutions

Fragomen is the world's leading global corporate immigration law firm. For more than 50 years, we have focused solely on delivering strategic immigration solutions to our clients. Our service areas include:

Temporary Work Visas ~ Intra-Company Transfers ~ Professionals & Investors ~ Entertainment and Sports Professionals
NAFTA Visas ~ Labor Certifications ~ Family Related Petitions ~ Outbound Global Immigration
Consular Processing ~ Employer Sanctions (I-9) ~ Immigration Policy Development

Gary Perl, Partner
gperl@fragomen.com

Fragomen, Del Rey, Bernsen & Loewy, LLP
11238 El Camino Real, Suite 100
San Diego, CA 92130
Phone: 1 858 793 1600
www.fragomen.com

FRAGOMEN
ATTORNEYS AT LAW

WHO'S WHO LEGAL
Corporate Immigration Law Firm
of the Year - 2005, 2006 & 2007
the four-year program at Duquesne offered the advantage of an ABA-accredited program but the disadvantage of losing 20 billable hours a week just driving back and forth.

Advances in Internet bandwidth provided the solution. I found a program, completely online, that provided a path to licensure. While not exactly self-paced, the program offered the flexibility that would (in theory) let me continue to run my business and spend at least some time with the family. The downside was that ABA accreditation was not possible for wholly online programs.

Fortunately, California permits distance-learning schools to register with the California Bar (presuming certain standards are met), so students who complete these programs have the opportunity to sit for the California Bar Exam. This comes at a small price: Students from nonaccredited fixed-facility schools and registered distance-learning schools must take the California First-Year Law Student’s Examination (the Baby Bar Exam), a one-day exam with four essays and 100 MBE-style questions testing knowledge of contracts, torts and criminal law. The pass rate is relatively low.

Online education or distance learning truly serves individuals like me who are geographically prohibited from attending a fixed-facility accredited school or are time-limited due to an existing business or career—or both. My classmates were in their late 30s and 40s; some were substantially older. Most had a desire to learn more about the legal system and the law. Some, however, were motivated to change careers and practice law, or plan to use their law degree to progress in current law-related professions.

Some still argue that completing law school online is not the same as going to a “real” law school. In addressing such a challenge by a Concord alumnus seeking to take the Massachusetts Bar Exam, the Massachusetts Supreme Court found that the Concord texts and curriculum are virtually identical to what is found in ABA-accredited institutions (Mitchell v. Board of Bar Examiners, 897 N.E.2d 7 [Mass., 2008]). Concord students are required to read and analyze cases, are interrogated as to the rationale behind the holdings of the assigned case and are required to research and write analytically, persuasively and argumentatively. Concord students can attend elective classes over the Internet with students of ABA-accredited institutions. They can also participate in independent-study electives and externship programs similar to those for ABA-accredited institutions.
The educational process at Concord is not the same as at ABA-accredited fixed-facility schools. Concord students have the ability to communicate one-on-one with professors more frequently than students at many fixed-facility law schools. Because of the Internet, Concord students enjoy virtually unlimited access to their professors. The Internet also allows Concord to provide lectures by leading professors in a subject area from ABA-accredited schools. Concord students can review these lectures, as well as classroom discussions, as often as necessary.

The in-person Socratic experience is considered an important part of learning to be a lawyer, but this method of instruction is not precluded in online interaction. Additionally, face-to-face is not the only way to provide such experience. My undergraduate education, service as a combat branch U.S. Army officer and 12 years as a lecturer and healthcare service coding and compliance expert witness certainly provided “trial under fire” experiences.

Until standards are developed by the ABA to properly evaluate this educational medium, no presumption can be made regarding the quality of education offered by a completely online institution. I suspect the ABA will ultimately recognize the viability of this medium and develop appropriate accreditation criteria.

I have never regretted my choice, especially since it provided the tools and support I needed to pass the bar examination. I would like the opportunity to take the Pennsylvania Bar Exam, but unfortunately, as with most states, the ability to sit for the Pennsylvania Bar Examination is for the most part restricted to graduates of ABA-accredited institutions.

After passing the California Bar Examination, I came back to California to be sworn in. While I could have taken the oath locally and submitted the forms and fees by mail, it seemed more efficient to simply fly out and get sworn in live. A deposition the following day in Las Vegas (I was the deponent) made the decision to attend the swearing-in ceremony in San Diego last year that much easier. I would have likely done it anyway, since admission to the California courts as well as the U.S. District Court for the Southern District of California was accomplished all at one time.

While my decision was originally motivated by efficiency, the experience provided much more. In addition to capping off a long, hard-fought process, the formality of the event, as well as the words of wisdom from those who preceded us, helped me to realize a sense of accomplishment. My emotions on seeing my name on the pass list for the Bar Exam (I did that online as well) were limited to simple relief. But participating in the swearing-in ceremony generated a bit of pride as well as happiness at being able to share my accomplishment with hundreds of other newly sworn-in colleagues.

Upon returning home, I became my first client and set to work to determine how to become licensed in Pennsylvania. After researching the procedural rules and available case law (all bad), I drafted and presented a motion and brief to the Pennsylvania Supreme Court for a nonprecedential waiver so I could sit for the Pennsylvania Bar Exam. As expected, this motion was denied in a per curiam decision. I suppose Pennsylvania, one of the few states that does not permit even online CLE, was not quite ready to accept the fact that a competent legal education can be obtained from a nonaccredited, let alone wholly online, law school. Despite this setback, licensure in California provided the pathway to admission in the federal courts, and as a health law attorney, I can reasonably restrict my practice to federal law issues.

Now that I have passed what many will agree is one of the hardest bar examinations in the country, I find that my learning process is just beginning. I am now learning concepts such as drafting motions, briefs, evaluating procedural options, researching specific issues to support a client’s position, honing deposition skills and other things new lawyers need to learn. As with law school, I do this part-time while continuing to work as a healthcare coding and compliance expert. The difference: Now I get some weekends off and can manage to quit work by 9 each night.

Michael Miscoe (mmiscoe@codingexperts.com) is admitted to the Bar in the state of California as well as to the practice of law before the U.S. District Courts in the Southern District of California and the Western District of Pennsylvania.
This year, we will be laying the groundwork for the next 10 to 20 years, and my hope is that future generations of attorneys will be able to recognize the foresight of the 2010 Board of Directors and the positive impact of the changes we will implement."
Patrick Hosey steps up to the presidency of the San Diego County Bar Association

Pat Hosey is accustomed to a good challenge. He’s battled opponents on the ice as a hockey player, raced outriggers across open ocean and dragon boats across Asia, recently competed in his first triathlon in more than 10 years and litigated in some of San Diego’s most highly visible court cases. Challenges fuel Pat Hosey, propelling him to meet his goals—both figuratively and literally.

BY ALIDAD VAKILI    PHOTOGRAPHS BY LAUREN RADACK
n 2010, Hosey will take on the year-long challenge of leading the San Diego County Bar Association, and he couldn’t be more ready. “Today, more so than in years past, the legal community has the opportunity and obligation to be a leader in the community, especially given the current environmental, economic and technological challenges our professional generation is facing,” he says.

“This year, we will be laying the groundwork for the next 10 to 20 years, and my hope is that future generations of attorneys will be able to recognize the foresight of the 2010 Board of Directors and the positive impact of the changes we will implement.” It doesn’t take long to realize that Hosey takes a holistic view of the Bar Association and its long-term objectives, which he often expresses with his unusually quick and dry sense of humor.

The second of four children, Hosey was raised outside of Boston, where he first learned to play hockey, which, according to him, all young boys “just do” in Boston, akin to the way kids in San Diego learn to surf. He earned his undergraduate degree from Syracuse University, where he studied international relations/economics, played hockey and rowed on the Division I crew team. Four years of 5 a.m. team workouts in the winter in upstate New York taught Hosey the value of perseverance, individual effort in a team context and how to remain steadfastly focused on mutual goals in an intensely competitive setting, core values to which he attributes his strength as a litigator.

After college, but before law school, he spent three years rowing with the U.S. National Crew Team. In his spare time he completed Ironman triathlons and discovered the joys and agony of marathon running.

Law school then brought Hosey to San Diego (he had previously taken some time off to ski in Colorado) and California Western School of Law, where he joined and later became co-captain of one of the school’s most recognized mock trial teams. In law school, Hosey met his wife, Sherry Bahrambeygui, when she joined the mock trial team; together they successfully competed in mock trials nationally. Hosey stayed in San Diego after law school to settle down and begin a new life with Sherry, claiming she “said she would move anywhere in the world with me as long as it was north of Mount Soledad, south of the Del Mar Racetrack and west of Interstate 5.” They were engaged in Dublin while on an American Ireland Fund trip and were married later that year. They are the proud parents of twin 10-year-old sons Liam and Ryan, who recently took an interest in hockey, reigniting Hosey’s passion for the sport.

After a stint with a large law firm, Pat started his own solo practice. In 1999, he and his wife merged their practices to create Hosey & Bahrambeygui, a firm that emphasizes personal injury, employment litigation, health law and business litigation.

In his practice, Hosey has represented clients in a wide range of litigation and trial matters, varying from wrongful death to multimillion-dollar business disputes. As a result of his vigorous advocacy, he has received awards and recognition for his extraordinary trial verdicts as well as published appellate opinions on cutting-edge legal issues. He is a frequent lecturer at continuing education programs, law schools and professional organizations, and has long been a vibrant and
Q. Favorite book?
A. *Trinity* by Leon Uris.

Q. Favorite quote?
A. “Take the most direct line to the puck and arrive in ill humor” (by Brett Hull).

Q. Most difficult challenge you faced?
A. Maintaining a sense of balance between family and work.

Q. Proudest moment of your legal career?
A. Getting out of law school, second only to getting into law school.

Q. Most exotic place you have been?
A. Snake Alley in Taiwan.

Q. If you had one wish, what would it be?
A. For my family to be healthy and happy, and then eternal youth.

Q. Person you most admire?
A. My wife. You can’t imagine what she puts up with.

Q. What do you most value in a leader?
A. The ability to lead without people feeling like you are trying too hard.

Q. What quality do you most like in a person?
A. Yoda-esque wisdom. I was going to say “a sense of humor” but needed to get a Muppet plug in.

Q. Favorite pastime?
A. Hockey and skiing.

Q. Favorite restaurant?
A. Donovan’s

Q. Favorite place to go with your family in San Diego?
A. The beach, of course.

Q. Person you would most like to have dinner with?
A. My wife, and just my wife.
Litigation Support 101

Litigation Support is the fusion of traditional law practice and modern technology. Litigation Support teams work directly with attorneys and paralegals to help win cases.

Explore the role of Litigation Support and the various hardware and softwares used in a contemporary law office environment.

When: Sat., 9am-12pm, Jan. 9-Feb. 13 (6 mtgs.)  
Where: UCSD Extension, Sorrento Mesa Center  
6925 Lusk Blvd., San Diego  
Credit: 2 units | Fee: $300  
Instructor: Saeid Ahmadian, Luce Forward

Learn more at extension.ucsd.edu/law  
or call (858) 882-8000.

Open Every Wednesday.

Finding resolution in the courts has become more difficult than ever, especially with statewide closures on the third Wednesday of each month. Make the call and find the resolution you and your clients are looking for... even on a Wednesday.

To schedule an appointment, call Mark Kaufman, Judicate West  
at (619) 814-1966.

(619) 687-2550 San Diego | (760) 729-2797 North County | (619) 814-1966 Scheduling  
©2009 Andrew Albert Mediation
Hosey's desire to give back and his desire to create a stronger leadership role for the legal profession will foster some of the initiatives he will develop during his presidency. One of the principal challenges he intends to tackle is how to cultivate a greener legal community. He feels that the legal profession has a duty to be responsible not just to clients and community but also to the environment as responsible global citizens. Hosey recognizes the shifts occurring in the way people communicate and run their practices, so as increasing numbers of lawyers utilize the digital world for many of their legal needs, such as e-filing, e-commerce and e-CLEs, he will strive to lead the Bar Association in improving the profession’s sense of responsibility to the environ-

---

**Q&A WITH PAT HOSEY**

**SA N D I E G O L A W Y E R:** You cochaired the Civility, Integrity and Professionalism Committee of the Bar. What was your goal with that committee, and how do you plan to advance that goal during your presidency?

**PAT HOSEY:** The goals of the CIP Committee were actually born two years before the campaign, when the Bar’s board members noticed a prevalent lack of civility, integrity and professionalism in the legal community, especially among the younger attorneys. The plan going forward is to focus on the continuity of the CIP campaign, especially as it relates to the relationship between the bench and the bar, which will be the topic of a number of CLEs.

**SDL:** How do you propose to lead the Bar in 2010?

**HOSEY:** The Bar Board has some great and talented people. I’m the president this year, but it is their board and their objectives. In essence, my role is really part director, part conductor and part lion tamer. And I get to make a lot of speeches. I’m just glad it pays so well.

**SDL:** What do you see as your biggest challenge as president?

**HOSEY:** How am I going to get two heli-skiing trips in this year and still play hockey two to three times per week? Actually, living up to the expectations resulting from the past several Bar presidents and hopefully in the process increasing the relevancy and importance of the Bar Association in a socially and fiscally responsible manner.

**SDL:** What is the most meaningful case you have ever worked on?

**HOSEY:** In the words of my mentor, Brian Monaghan, it is the case I am working on right now.

**SDL:** What is something most people don’t know about you that defines you as a person?

**HOSEY:** I am the father of twin boys, and I’m okay with the fact that everyone knows my wife is smarter than me.

**SDL:** When you look back upon your presidency, what would you like to be most remembered for?

**HOSEY:** Having led a talented group of the Bar Board of Directors in a difficult time and reoriented the direction and motivation of the Bar in a direction that can be maintained in the future.
Who Says You Have to Wait ‘til New Years to Achieve Your Resolutions?

Asher Mediation

402 West Broadway, Suite 400
San Diego, CA 92101

619-595-3178 p
619-595-3150 f

denise@ashermEDIATION.com

Happy Holidays

Looking for a team that can handle the impossible?

Depend on your LOCAL experts for non-judicial foreclosures

Foreclosure Resources combines in-depth knowledge and experience in real estate foreclosure in these areas:
• Commercial
• Vacant Land
• Construction Loans
• Unified Sales
• Residential

FORECLOSURE RESOURCES, INC. 1 8885 Rio San Diego Drive, Suite 135, San Diego, CA 92108
619.325.4336 www.foreclosureresources.net
ment and our communities. “Attorneys as a group often have a leading role in creating and maintaining laws and advancing policy,” he says. “I hope we can encourage our community to take a more proactive approach on the issue of the environment. We can either lead the way, or we'll have to get out of the way. This association has a long tradition of leading the way, and that’s how we are positioning ourselves.”

Hosey sees the role of education being vital in this endeavor, and he plans to increase the number of continuing legal education programs that focus on this issue. For example, one of the programs he plans to develop will teach solo and small firms how to go paperless. He knows the role technology will continue to play, both in environmental issues and in how the legal community and the Bar Association’s programming evolves.

“It is also our goal to continue making the benefits provided to our membership more accessible through technology while balancing the benefits of technological access with the risk that attorneys may become disconnected from personal interaction with the legal community,” he says. “Confronting this digital isolation will be a big challenge. We need to come up with a strategic plan to ensure that we are fulfilling our role as the leading organization for our legal community and keep our constituency connected in a meaningful way.”

According to Hosey, one part of achieving his goal of keeping the constituency connected is to increase interaction between the bench and the bar and to infuse within that interaction a strong sense of civility, integrity and professionalism—and (in classic Hosey humor) “to have a couple good parties along the way” to draw the legal community together.

Asked what he admires the most about former SDCBA presidents, Hosey says it is their willingness to take risks, claiming that some of the best and most respected plaintiffs attorneys are those who haven’t played it safe. He says he also has a strong admiration for lawyers who aren’t overly concerned with process: “Many attorneys that I work with are process-oriented. They are so focused on the process that they just don’t see the end goal.”

The SDCBA is confident that the legal community will see Hosey differently: as a president who always has his eye on the ultimate goal.

Alidad Vakili (alidad.vakili@klgates.com) is an attorney with K&L Gates LLP.
Just as you’ve always suspected, lawyers and judges have interesting lives outside of work, too. A large number of lawyers and judges in the San Diego community are passionate about music and have performed as musicians for a number of years. Many of these practitioners describe their music involvement as an integral part of balancing their lives.

Judge John Thompson has been playing in rock bands since eighth grade. He is currently the keyboard player and rhythm guitarist for Night Shift, a classic-rock band that has played throughout Southern California since 1996, with an average 80 gigs per year. While it’s in stark contrast to his day job, Judge Thompson says playing music at night has become a way of life and a welcome release from the pressures associated with high-profile criminal trials. See the band at www.nightshiftrocks.com.

When he’s not working as a patent litigator at Fish & Richardson, Chris Marchese plays lead guitar for Brew 102, formed about seven years ago. He played guitar and sang in numerous rock bands in high school and college. You can catch Brew 102 every few months at Kava Lounge.

Judge Roger Krauel’s association with music started with listening to his family’s 78 rpm records, followed by drum lessons in the fourth grade. In high school, he was marching at Friday-night football games; managing a 17-piece band that played homecoming, prom and graduation dances in the San Gabriel Valley; and rocking with the Piranhas. By college, he was
paying his own way by teaching drums; working nights with various pop, rock and jazz bands; playing with pit bands for musical theater; touring summers on the West Coast with a lounge band; and performing with community symphonic orchestras. After law school in San Diego, he played with the S.D. Lawyers’ dance band and several jazz groups, including an East Coast Dixieland festival and the annual San Diego Thanksgiving Dixieland Jazz Festival. Today, Judge Krauel plays with a trio as part of Sunday church services, is a member of a traditional jazz group that plays annual concerts in Balboa Park and elsewhere in San Diego County, and sits in with various groups as a sub drummer. He says he does not plan to quit his day job.

A lively group of defense attorneys (with a token prosecutor) have performed together over the last several years, most recently under the name Blues Alliance. Band members include drummer and manager Jeff Carver, Tim Riley (vocals), Michael Squibb (keyboard), Jeff Estes (guitar), Brian White (harmonica) and the author, Wendy Patrick Mazzarella (who also plays in the rock band Bridget Brigette), on electric violin. They have performed in the St. Patrick’s Day Parade and at Athens Market, law-enforcement parties and at the Del Mar Fair.

A key entry in San Diego’s legal/musical history is Law in Motion, formed in 1980 by five friends all working at the time as attorneys in the California Attorney General’s Criminal Division: Jeffrey Joseph (bass, vocals, harmonica, flute), now assistant dean and chief counsel of Thomas Jefferson School of Law, private practitioner Steven Zeigen (vocals, tambourine), Supervising Deputy Attorney General Steven Adler (lead guitar, vocals), Judge Michael Wellington (rhythm guitar) and Gary Schons (percussion), senior assistant attorney general in charge of the Trials, Writs and Appeals section of the attorney general’s office in San Diego. Throughout the ’80s, the band pursued a busy schedule playing parties, charity events and fund-raisers. They also competed in an historic “Battle of the Legal Bands” at the Palomino Club in Hollywood, where they appeared as the only all-lawyer band. In the mid-’80s the five were joined by Michael Andrew of Luce, Forward, Hamilton & Scripps on keyboards. Increasing family and professional demands have decreased the frequency of appearances in recent years, but they recently appeared at the Waterfront downtown and as guest judges in a contemporary Bar-sponsored “battle of the bands.”

Contributing to the San Diego County Bar Association functions has been the trio of former SDCBA Board members Wells Lyman on guitar (who also sings in his church choir), the author on violin and Meredith Brown on vo-

Far left: Law in Motion
Left: Jeff Carver singing in New Orleans
Bottom left: Thomas Penfield playing guitar
Below: Wendy Patrick Mazzarella on fiddle
Bottom: Law in Motion
cals, sometimes with singer Judge Joan Weber and saxophone player Judge David Gill. Other Bar events have been graced with the talents of Judge Rudi Brewster (clarinet) and Judge Marilyn Huff (piano), who perform together as Judicial Harmony.

Professor Hugh Friedman of USD Law School has played clarinet and saxophone with the San Diego County Lawyers’ Band during the 1960s and ’70s, when they played for the Blackstone Balls at the Hotel Del, and the State Bar conventions here, in Disneyland and at the Century Plaza, and in Monterey and San Francisco. He has also been involved in the nightclub and concert scene, including Milligan’s in Bird Rock, and at Mardi Gras in Mahogany Hall on Bourbon Street in New Orleans. Currently, you can catch Hugh at the Rancho Bernardo Library, where he gives free concerts.

Jay Sacks, staff attorney-supervisor with San Diego Superior Court, has sung with Schola Pacifica since its formation in 1993. The group was founded by Benedictine monk Ken Nielsen and specializes in Gregorian chant but also sings polyphonic music from the medieval, Renaissance and Baroque periods. Jay is also a member of the Renaissance group Courtly Noyse, in which he sings tenor and plays the recorder, krummhorn, cornetto, gembshorn and percussion.

Attorney Jim Vallee started Dirk Debonaire & the Boat People during law school and played his first gig at the Windjammer in Cardiff a week before the bar exam. The group, for which he played guitar and was lead singer, put out a CD in 1982 called Debauchery featuring the hit single “Surf Party.” Since then, Jim has been through several music groups and released more CDs. While he retired briefly, he came back in the mid-’90s with Captain Dirk & the Yacht Lizards, which morphed into Dirk Debonaire & the Yacht Lizards.

Other local lawyer musicians include Jacqueline Oliver, who is a concert pianist and jazz/blues vocalist, professional drummer Eric Ganci, singer Erin Drenning, Tim Campen, Deputy District Attorney Robert Eichler and Michael Pudeff. Deputy Attorney General Dennis Dawson plays alto sax in the Dennis Dawson Jazz Ensemble, together since the early ’80s, for private events like weddings and receptions, socials and Bar events.

Tom Penfield, president of the Bar Association of Northern San Diego County, used to play guitar in a band called Legal Tender, which includes Dave Siegel, Jim Holtz and Scott Lee.

On the classical music front, a group of lawyers contribute to the San Diego cultural scene as part of the La Jolla Symphony & Chorus. Symphony members include the author on first violin and Ken Fitzgerald of Latham & Watkins on trumpet; chorus members include solo attorney Otto Sorenson, Steve Marsh of Luce, Forward, Hamilton & Scripps, Karen Erickson of Sharp Healthcare, David Hertzel (former general counsel at Accredited), California Western School of Law Professor John Noyes and Deputy Attorney General Erika Hiramatsu.

Other classical musicians include Judge Yuri Hoffman, who began playing classical piano in Germany at age 7. He studied under various professionals in Baden
The rules behind what goes on the wall may not be as simple as you’d think

BY JEFFREY SLATTERY

Art abounds in our lives, adorning our homes and offices, the shops and restaurants we frequent, the hotel rooms we visit while traveling. From photos and posters to paintings and sculpture, we appreciate the richness art brings to places. Filling the blank walls of a new space is practically instinctual, with myriad choices of what we might feature. For legal professionals, diplomas are de rigueur, along with certificates, awards and the like. From there, anything goes, with law offices, courthouses, law schools, bar associations and libraries displaying art for a variety of purposes. Some seek to make a statement, selecting art that bespeaks practice areas or personalities; others opt for particular colors or patterns, perhaps evoking a particular feeling; still others look only to fill a gap on the wall.

Whose Art Is It, Anyway?

Whatever the motive or medium, legal issues can arise when works of art are displayed, because the rights of an artist who created a given work (and the copyright owner, if different from the artist) may be at odds with the rights a purchaser has in the work itself. This is true for one-of-a-kind originals and mass-produced copies, whether from a museum, an auction, a department store, a gallery or a garage sale. Under federal and state law, the artist or a third party may have rights to control use of the artwork itself, and those rights may trump the personal-property rights of a purchaser who displays and later sells a work.

The right to publicly display a given work of art (or a copy) is among the rights afforded under federal copyright law to the owner of copyright in
the original work. Typically, the artist or his/her employer is the initial owner of copyright, though the rights may be subsequently licensed or transferred to a third party. It is important, however, that absent a specific grant in a written agreement, none of the individual rights afforded under copyright automatically transfer to a purchaser of a given work; instead, those rights remain with the copyright owner.

According to the Copyright Act, "to display a work 'publicly' means (1) to . . . display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or (2) to transmit or otherwise communicate a . . . display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times." According to the Copyright Act, "to display a work 'publicly' means (1) to . . . display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or (2) to transmit or otherwise communicate a . . . display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times." Under those definitions, hanging a work of art in a private home would not normally infringe on the right of public display, because the typical private home is not normally open to the public; hanging the same work in a law office, courtroom or library would, however, be problematic, because such areas are typically open to the public. That result is counterintuitive for many consumers, who regard the rights they hold in a piece of art as equivalent to other items of personal property with which, once purchased, they can do whatever they like. With art, an important purpose is display, and it is reasonable to expect that consumers are likely to display the art they purchase in a public place.

Congress answered this quandary by creating a statutory privilege, allowing public display of lawfully purchased art in limited circumstances. Specifically, the purchaser “is entitled, without the authority of the copyright owner, to display that copy publicly, either directly or by the projection of no more than one image at a time, to viewers present at the place where the copy is located.” Displaying a work of art in the office would fall within the privilege and does not infringe on the copyright owner’s interests. Note, however, the limiting language concerning projections, and consider the Internet. Uploading an image containing a work of art serves to project that work to any number of viewers who are not present at the place where the artwork is located. The result is infringement of the copyright holder’s right of public display. Therefore, legal professionals (and others) must use caution when images on their website include works of art. Examples include photos of the lobby, offices or staff, if artwork is visible in the photo.

The potential for infringement exists even for works many would not necessarily classify as art, like images reproduced and sold en masse by print publishers and retail chains. With these, the original artist has likely transferred all of his or her copyrights to the publisher or store in question, such that the rights remain enforceable by the publisher or store as the current copyright owner. Whatever the source, unless the work is clearly in the public domain—such as works by artists who have been dead for many years (70 or more is a common guideline, though not absolute)—the potential...
for a copyright infringement claim exists.

Assuming an infringement suit is viable, some defenses could be raised, especially if the artwork appears in the background of an image with a decidedly different primary subject, such as a person. The trouble with such defenses is they are presently very tenuous, with little precedent in California or the Ninth Circuit, making them risky and potentially expensive to rely upon. If there is any question, trouble can be avoided by simply posting website images that do not contain any purchased artwork, or obscuring the artwork with photo-editing software.

**The Good Stuff**

Artists have additional rights under the federal Copyright Act when their works are considered “fine art.” Commonly referred to as “moral rights,” these additional rights include attribution and integrity. Attribution allows artists to ensure they are credited as creators of their works; integrity allows artists to prevent “intentional distortion, mutilation, or other modification” of their work. These rights are separate from the work itself and its copyright and are not transferable; rather, they are enforceable unless waived in writing by the artist. For purposes of federal law, a work is considered fine art if it exists in fewer than 200 consecutively numbered copies, each signed by the artist.

California has also promulgated rights of attribution and integrity applicable to fine art, in the Art Preservation Act. For the most part, the rights afforded under California law closely mirror those of federal law. However, California’s definition of “fine art” is far more subjective than the federal code, looking to whether the work is of “recognized quality” rather than the number of copies. To determine whether a work of fine art is of recognized quality, the trier of fact shall rely on the opinions of artists, art dealers, collectors of fine art, curators of art museums and other persons involved with the creation or marketing of fine art.

One likely effect of this difference is a reduced chance of being sued by an artist, because the costs associated with providing such testimony could be significant, though expert witness fees are recoverable. California and federal statutes also differ in the scope of attribution: While both allow artists to insist on credit for their work, California allows artists to insist they not be credited.

Whether California’s Art Preservation Act will ultimately protect artists’ rights as the legislature hoped is unlikely. Very few cases have been brought in the nearly 30 years it has been on the books, and in two cases, the courts noted that California’s act “appears” to be preempted by federal law. Either way, respecting an artist’s rights of attribution and integrity is very simple: Keep the artist’s name visible (or obscure it, if the artist so requests), and don’t alter the work.

**Done Deal**

When moving to a new office or redecorating, it may also be time to change the art on display. Old works might be placed elsewhere in the office, moved to the home or given away. If, however, a work of fine art is sold in California (or anywhere by a California resident) for more than $1,000, a profit
was made and the artist is still alive and a U.S. citizen or California resident, the artist must be paid 5 percent of the gross proceeds from the sale.21 If the artist cannot be found, the seller must remit payment to the California Arts Council.22

Jeffrey Slattery (jslattery@tjsl.edu) is a visiting assistant professor at Thomas Jefferson School of Law.

2 Id. at § 201.
3 Id. at § 202.
4 Id. at § 101.
5 Id. at § 109(c).
6 See Perfect 10, Inc. v. Amazon.com, Inc., 508 F.3d 1146, 1159-60 (9th Cir. 2007).
7 Id. The same circumstance also constitutes an infringement of the right to reproduce. See Mafi Inc. v. Peak Computers, Inc., 991 F.2d 511, 517-18 (9th Cir. 1993).
10 From the French “droit moral,” traditionally including a set of rights individual to artists, including attribution, integrity, initial publication (or withholding from publication) and withdrawal from the market if the work no longer represents the views of the artist. In the United States, only attribution and integrity have been codified; the others have been variously supported and rejected by the courts.
11 17 U.S.C. § 106A.
12 Id. at §§ 106A, 113(d) (the latter providing special rules for works that are permanently affixed to a building).
13 Id. at § 106A(c).
14 Id. at § 101.
16 Id. at § 987(b)(2).
17 Id. at § 987(f).
18 Id. at § 987(c)(4).
19 Id. at § 987(d) (where a “just and valid” reason exists).
22 Id. at § 986(a)(2).
California Western law professor William Lynch is known for his no-nonsense approach to teaching. Thorough and concise, he expects no less from his students. His Ivy League accent and unwavering composure bespeak an almost-old-fashioned sophistication you don’t expect in a Southern California classroom. He still makes his students stand when they answer his questions. He has been a judge advocate in the U.S. Navy, special counsel to the Secretary of the Navy, an associate dean, a coach for the National Moot Court Team—and now … a ballroom dancer?

That’s right, the man who spends weekdays picking apart tort law and the Evidence Code spends evenings and weekends doing the fox trot, the waltz and the tango.

It started 20 years ago, when his daughter was getting married. To prepare, Lynch begrudgingly took a few lessons. At first, he felt “foolish” and
“out of control” but kept on with it for his wife’s sake. Before he knew it, he’d caught the bug. The wedding came and went, but the dancing remained, and now he’s hooked.

What he calls his “breakthrough moment” came at a ballroom in San Luis Obispo, when a woman approached him for a dance. “I was a 65-year-old sex symbol!” he jokes. He declined—Lynch only dances with his wife—but the experience got him to relax about making mistakes. After all, if strange women were hitting on him, he must be doing something right.

Nowadays, dancing is a full-time hobby for the Lynches. They take trips all over the world to meet up with other enthusiasts. Although they don’t compete, they took lessons early on from a former world competitor who wouldn’t let them get away with poor technique. The discipline dancing demands is what intrigues Lynch (“There is a right way and a wrong way to do everything,” he explains). The better they get, and the more praise they receive because of it, the more they’re motivated to get even better.

It goes deeper, though. Lynch says what he really enjoys about dancing is the closeness it fosters with his wife, both physically and emotionally. Whereas many couples their age are separated by their interests, the Lynches share a hobby in which, most of the time, they are actually embracing. “We conquered the problems of dancing together,” he muses, “and anything you do together . . . cements the relationship.”

It’s also had an effect on his professional life. Lynch used to get frustrated with students for not grasping basic concepts; now he has greater empathy for the struggling pupil performing under pressure. “When I first started learning to dance,” he says, “I felt lost. I would try as hard as I could, and I wasn’t succeeding.”

Lynch’s advice for youngsters: Learn to dance. “Don’t tell me you have no talent,” he says. “Nobody was more club-footed or off-time than I was when I started.” More importantly, he adds with a sly smile, “Women love it, and any man who can dance immediately becomes attractive.”

Class dismissed.

Greg Shibley (gds@shibleylaw.com) is a San Diego lawyer.
**Humor’s Helping Hand**

BY KEN TUREK

Our work as lawyers is very difficult. The conflict and pressures we face are not normal or healthy. How do we lead a balanced life when our workdays are so often contentious? Humor can help or hurt us in two very important ways, and I have the scars to prove it.

Humor can first help us deal with others. Most truly successful lawyers use humor to include, not exclude. Their humor makes fun of themselves or the situation but seldom ridicules anyone to hurt or gain advantage. Quite simply, smart-aleck humor is easy and counterproductive, while inclusive humor is a helpful hidden art form. Ask yourself, who would a jury like more: Joan Rivers or Ellen DeGeneres? I have learned that there is great power in DeGeneres’ type of vulnerability.

The emphasis we lawyers place on civility relies on these same principles of respect and understanding of others. Whether we are being funny or serious, the basic rule of civility is the same: Don’t use your skill unfairly to hurt or gain advantage.

Humor also helps us deal with ourselves. I coach and consult with lawyers on balance and fulfillment issues, and I see patterns in that work. One of those patterns involves perspective. No matter what the work-life issue is, if we first look humorously at the situation we can gain perspective and move more easily toward resolution.

The humor/civility connection exists here too. We tend to think civility only applies toward others, but it applies to ourselves too. Lawyers share characteristics of perfectionism and pessimism, which make us so hard on ourselves. Seeing humor in our mistakes allows us not only to respect and understand our humanness but to forgive ourselves.

In the end, a lawyer’s balance is always shifting. Humor provides a handrail.

---

Ken Turek (kteurek@elthlaw.com) is a lawyer with Endeman, Lincoln, Turek & Hater and won the 2009 LAF-OFF stand-up comedy competition at the House of Blues.
Race to the TOP

BY GEORGE BREWSTER

The U.S. District Court and Thomas Jefferson School of Law are both building new facilities in downtown San Diego. Which one will be completed first? In upcoming issues, we'll include photos of the progress, along with tidbits about the San Diego legal community. These pictures were taken the week of October 5. Please submit legal tidbits to sandbrews@aol.com.

LAKE JENNINGS is named for water expert and lawyer William H. Jennings, who died in 1983. He had time to enjoy the recreational reservoir, though, as it was named in his honor in 1964.

THE HOLDER OF CALIFORNIA STATE BAR no. 1 was William Harrison Waste of San Francisco (California Supreme Court Chief Justice, 1926-1940; district attorney, 1903-1906). Bar no. 3 was given to Samuel M. Shortridge, whose wife, Clara, was the first woman admitted to practice in the state.

THE CASSIUS CARTER CENTRE STAGE in Balboa Park was named after a San Diego district attorney (1903-1906) who was known as an outstanding student of Shakespeare.

SAN DIEGO COUNTY BAR FOUNDATION 12TH ANNUAL GALA

An Evening in La Jolla
at the home of Craig & Susan McClellan

We would like to acknowledge and thank our sponsors for their generosity.
A special thanks to Craig & Susan McClellan for the use of their home.
Night at the Museum
PHOTOGRAPHS BY LAUREN RADACK
At the California State Bar’s annual meeting in San Diego, lawyers and judges attended a reception at the Museum of Contemporary Art, presented by the San Diego County Bar Association, the California Judges Association and the State Bar of California.
Law Student Reception

PHOTOGRAPHS BY LAUREN RADACK

Lawyers and judges attended a reception and Section and Committee Fair on September 15 for law students from California Western, Thomas Jefferson and University of San Diego.
Evening in La Jolla
PHOTOGRAPHS BY GARY GATES
Craig and Susan McClellan hosted the 12th annual fund-raiser for the San Diego County Bar Foundation in September.

Justice for All
PHOTOGRAPHS BY BARRY CARLTON
The San Diego Volunteer Lawyer Program honored SDCBA's Certified Family Law Specialists and others during its Justice for All awards dinner on September 17.
REAL PROPERTY DISPUTE RESOLUTION SERVICE

"ONE MAN'S WORD IS NO MAN'S WORD; WE SHOULD QUIETLY HEAR BOTH SIDES." [Goethe]

CAN'T FIND REAL PROPERTY EXPERTISE FOR A.D.R.? NOW YOU CAN! USE A PRACTICING, AV-RATED (FOR 30 YEARS), SAN DIEGO REAL PROPERTY LAW SPECIALIST TO ASSIST IN THE RESOLUTION OF YOUR CLIENTS’ REAL PROPERTY DISAGREEMENTS.

GARY STEPHENSON
525 B STREET, SUITE 1500
SAN DIEGO, CA 92101
gary@rpadr.com
www.rpadr.com
gary@garystephensonlaw.com
www.garystephensonlaw.com
(619) 235-6389 (O)
(619) 858-4719 (F)
(619) 972-7000 (C)

FLEXIBLE DAYS AND HOURS
(including evenings and weekends)

SPECIALIZING FOR
36 YEARS IN REAL PROPERTY LAW ONLY

PANELIST IN 38+ C.E.B.
REAL PROPERTY LAW PROGRAMS

Remember the 40/800 Rule Before Your Next Mediation or Arbitration

With 40 years of legal experience and over 800 matters settled as a neutral, Judge David Moon (Ret.) will help bring the resolution your case deserves. Judge Moon handles a wide array of general and complex civil litigation, including:

Probate
Trusts and Wills
Eminent Domain
Real Estate
Personal Injury

Professional Malpractice
Commercial Disputes
General Business
Insurance/Coverage
Employment Law

For information or to schedule your next mediation or arbitration, please call: (858) 759-6119 or visit www.JudgeDavidMoon.com

Hon. David B. Moon, Jr. (Ret.)
Experience when it matters most.

P.O. Box 972, Rancho Santa Fe, CA 92067 • (858) 759-6119 • dbm@judgedavidmoon.com
Sustaining Members
The San Diego County Bar Association gratefully acknowledges its Sustaining Donation Members.

PATRON MEMBERS
Marc D. Adelman
Robert Caplan
Ezekiel E. Cortez
John G. Davies
Shawn Anthony Doan
James P. Frantz
Louis E. Goebel
Charles F. Gooder Sr.
Stephen M. Hogan
A. Jason Kerckhoff
Genaro Lara
Harold O. McNeil
Gerald S. Mulder
William E. Nelson
David Baxter Norris
James Ellis Schneider
W. Davis Smith
Kenneth H. Stone
Thomas J. Warwick Jr.

FRIEND MEMBERS
Edward J. Babbit
Candace Bremond
Linda Giancilo
Vivian V. Doering
Darlene A. Dornan
David B. Dugan
Ann C. Durham
Peter L. Fagan
Charles W. Froehlich Jr.
Tina M. Fryar
Marc B. Geller
Vatche Chorbajian
Gordon D. Cruse
Teresa E. Dietz
William E. Ferguson
Alvin M. Gomez
Monty A. McIntyre
Robert M. Miller
Paul H. Neuhrath Jr.
Ronald W. Noya
Michael Reed
John R. Sorenson
William L. Todd

Who is this prominent member of San Diego’s legal community?

Please submit answers by December 7 to mkruming@aol.com. Your name will be entered to win a luncheon for two at Dobson’s Bar & Restaurant in downtown San Diego. Congratulations to Susan Hack of Higgs, Fletcher & Mack, who won the September drawing after correctly identifying Jan Mulligan of Mulligan & Banham. Thanks to everyone who participated.
DIRECTORY OF EXPERTS AND CONSULTANTS

EYEWITNESS EXPERT TESTIMONY: 39 years of forensic psychology experience with pretrial consultations and frequent court testimony regarding factors known to influence the validity of eyewitness reports. 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

REAL ESTATE EXPERT WITNESS SERVICES:
37 years of experience in the residential development industry. Substantial entitlement, land development and homebuilding résumé. MBA from USC, California Contractor’s and Broker’s licenses. Areas of expertise include: joint venture and partnership disputes, due diligence evaluation, entitlement issues, homebuilder and broker disputes, and standard of care issues, to name a few.

Please refer to website for more information, www.castlelyons.net, or contact Michael K. Ryan, President, at 619-787-5988.

WE LOVE THE WORK YOU HATE: Preparing estate and fiduciary tax returns (forms 706, 1041 & 541). Researching prior years’ tax returns to assure full compliance. Estate administration. We find out what you might not know and protect you from potential liability. We even provide personal financial management services for the elderly. No charge for initial consultation.


FOR ADVERTISING INFORMATION, CONTACT 619-231-0781

ADVERTISEMENT
THE DOWNTOWN OFFICE OF GARY SCHONS, who heads the Criminal Division of the California Attorney General’s San Diego office. Barry Carlton (barry.carlton@doj.ca.gov) is photo editor of San Diego Lawyer.

CARDS AND PHOTOS sent to Gary personally by President Barack Obama (sure he did).

FAUX JADE STATUE OF CONFUCIUS holding a child, given to Gary by his former brother-in-law, a cop, who thought every film noir lawyer had one in his office.

BOOM BOX loaded with Bob Marley’s Rastaman Vibration (reggae induces great legal writing).

GENUINE VOODOO DOLL employed when unfavorable opinions were received from the Court of Appeal.

MINIATURE GOLF BAG and golf club–shaped pens, a gift from one of Gary’s DAGs.

ONE OF THE SCORES OF COMPLAINTS the office receives from other governmental agencies.
Managing a successful law firm takes a lot of work, and sometimes you need a Partner to address the day-to-day business challenges in your practice.

Look no further than the SDCBA, your Partner in meeting your essential needs.

From networking and business development opportunities, to saving you money on your professional liability insurance, to putting you in touch with experts on case-related issues such as structured settlements or colleagues who handle similar matters, the SDCBA supports the interests of your practice and your firm.

The SDCBA continues to add value by offering you discounts on a wide range of products and services.

To learn more about the benefits of your SDCBA Partnership, visit:

www.sdcba.org/essentialpartner
LAWSYERS REPRESENTING LAWYERS.
RAISING THE BAR IN LEASE NEGOTIATIONS FOR OVER 20 YEARS.

La Bella & McNamara, LLP • Hecht, Solberg & Bagley, LLP • Wright & L'Estrange
Sullivan, Hill, Lewin, Rez & Engel • Winger, Brubaker & Goodwin, LLP • Levine, Steinberg,
Miller & Huver • Neil, Dymott, Frank, Harr & McFall, APLC • Andersen, Mann & Hilbert, LLP
Stephenson, Worley, Garratt, Schwartz, Garcia & Krause, Kalfayan, Benink & Slavens, LLP
White & Oliver, APC • San Diego County Attorneys, APC • Ehrman, White & McAuliffe, LLP
Greco & Traficante • Copeland & Tierman • Potecki • Law Offices of Virginia C. Nelson
McKenna & Cuneo • Gentes & Garcia • Law Offices of Peter J. Hughes, APC
Cleary & Sevilla, LLP • Law Offices of Peter J. Hughes, APC
La Bella & McNamara, LLP • Hecht, Solberg & Bagley, LLP • Wright & L'Estrange
Sullivan, Hill, Lewin, Rez & Engel • Winger, Brubaker & Goodwin, LLP • Levine, Steinberg,
Miller & Huver • Neil, Dymott, Frank, Harr & McFall, APLC • Andersen, Mann & Hilbert, LLP
Stephenson, Worley, Garratt, Schwartz, Garcia & Krause, Kalfayan, Benink & Slavens, LLP
White & Oliver, APC • San Diego County Attorneys, APC • Ehrman, White & McAuliffe, LLP
Greco & Traficante • Copeland & Tierman • Potecki • Law Offices of Virginia C. Nelson
McKenna & Cuneo • Gentes & Garcia • Law Offices of Peter J. Hughes, APC
La Bella & McNamara, LLP • Hecht, Solberg & Bagley, LLP • Wright & L'Estrange
Sullivan, Hill, Lewin, Rez & Engel • Winger, Brubaker & Goodwin, LLP • Levine, Steinberg,
Miller & Huver • Neil, Dymott, Frank, Harr & McFall, APLC • Andersen, Mann & Hilbert, LLP
Stephenson, Worley, Garratt, Schwartz, Garcia & Krause, Kalfayan, Benink & Slavens, LLP
White & Oliver, APC • San Diego County Attorneys, APC • Ehrman, White & McAuliffe, LLP
Greco & Traficante • Copeland & Tierman • Potecki • Law Offices of Virginia C. Nelson
McKenna & Cuneo • Gentes & Garcia • Law Offices of Peter J. Hughes, APC

JOHN BUCHER
REAL ESTATE COMPANY
Tenant Representation for 
the Legal Profession.

1010 2nd Ave., Suite 1830, San Diego 619.233.9940 www.johnbucher.com