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Your Resolution: Denise Asher

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A Lawyer Looks at 50

Attorney Dan Lawton, who recently turned 50, reflects on a few things he has learned.

• I’ve been to the summit of Mount Kilimanjaro twice. No matter what happens to me the rest of my life, I won’t forget how Africa looked from up there in the dark on those two cold, clear mornings. You can see the curvature of the Earth from up there.

• As your lawyer, I’m not your friend. But I’ll do things for you that your best friend can’t, or won’t.

• The smaller the legal matter you are asked to handle, and the less money you are being paid to handle it, the more complex and time-consuming it will prove to be.

• Don’t tell me “no regrets.” If you live an honest life, you’ve made some mistakes and regret some things. Making amends, learning from it and not dwelling on it is what you have to do.

• Being in the ocean on a winter morning and seeing the orange ball of the sun starting to peek over the horizon beats almost every other good feeling I can have about being alive.

• Some lawyers whine about how much stress they’re under, but they’re babies. Stress is raising three kids, working as a night watchman in a shipyard for a dollar an hour and making the mortgage every month. I never heard my grandfather complain about it.

• According to my uncle Bob Lawton, there were three things you had to do to practice law successfully: Do excellent work; continually generate new clients; and bill and collect. He retired from practice in 1984. Today the technology of law practice is light-years ahead of what it was in his time, yet what he said is timeless for all lawyers in private practice everywhere.

• You have to have some fun practicing law. If you don’t, it’s a long time to be in misery.

• If asked to counsel a child on how best to pick a career, I might tell him, “Find your passion, but if possible, choose something that requires no homework.”

Dan Lawton (dlawton@lawtonlaw.com) is the principal of Lawton Law Firm.
Let’s face it: practicing law today is different than it has ever been before. Many of us who have been at this for a little while have practices that have evolved far past what we could have ever imagined in law school, and yet are working in areas and with technologies that our younger colleagues had mastered before they had graduated high school. But as the proverb goes, the more things change, the more they stay the same. What is true and meaningful and paramount to all of us as lawyers is our ability to ensure that justice is served, and that justice is accessible to all. As a professional community, there are obstacles that we will contend with. It is critical that we “Pave the Path” for the future of our legal community and our justice system by ensuring that our future path and the path to justice is unobstructed. This year, we will work on programs and initiatives that allow us, the current members of the legal community, to Pave the Path for the future.

The SDCBA is growing and evolving, both in numbers and in our consistent growth and expansion to adopt programs that support our mission and better serve our members. This year, we will be considering options for the Bar’s “home,” as we create a more certain path that will allow for our further development as a legal community.

This year, we will also examine each of our unique paths, as attorneys, judges and legal professionals, and how each of us can influence the paths of others—through serving as a mentor, reading to schoolchildren, coaching a high school Mock Trial team or hosting a summer intern through our Diversity Fellowship Program. To “pave the path” is to lead the way into the future and leave a trail for future generations to follow. Each of us found our way to this profession in a different way, and it is incumbent upon us to guide others during their journey, and as they find their way down their own unique paths into the legal profession.

And most notably, we will actively work to ensure adequate and stable funding for our courts, the third co-equal branch of government, to ensure true access to justice for all. As lawyers, we are especially knowledgeable about the importance of a fully funded judicial system, and we see the negative impact underfunded courts can have on our clients, peers, families and fellow business members of our community. We know that the legal maxim holds true—Justice Delayed Is Justice Denied—and it is incumbent upon us to see that justice is truly served.

Throughout this year, our charge in paving the path will be to continue to ensure that members get what they need to successfully practice in San Diego, that children receive opportunities to be exposed to the legal profession through the mentorship and guidance lawyers in our community can provide, and that San Diego’s citizens are getting access to justice by advocating for adequately funded courts.

I encourage you to help us, to add your voice, your ideas, your suggestions—as your “brick” as we continue to Pave the Path—whether it be by volunteering for the Servicemembers Civil Relief Act program, advocating for a fully funded judicial system, serving as a mentor or hosting a summer intern through the Diversity Fellowship Program.

Learn more about the campaign at www.sdcba.org/pavingthepath.
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Many thanks to the SDCBA for asking the law schools to report to our colleagues in the bar about significant developments in San Diego legal education. San Diego is among the most welcoming cities in America for law students and new attorneys. Thank you.

The law schools have agreed to report to you regarding common topics of concern. We will do that over three issues. We begin by addressing some of the criticisms of legal education expressed in the popular and legal press.

Recent news stories note that American legal education is under pressure to adapt its traditional teaching methods. These stories reference the need expressed by law firms nationally to hire law school graduates with real-world skills, which can be hard to find, given the traditional emphasis on classroom learning in many law schools.

What is missing from this coverage is the fact that a significant number of law schools across the country, notably including those in San Diego, have for some years done just what these writers suggest. Schools sponsor pro bono and public interest programs, clinics and internship programs to expose and educate students to key lessons in the legal field found beyond the traditional classroom.

At California Western, for example, our second-year STEPPS course allows students to role-play issues such as professional judgment and creative problem solving in a classroom setting that models a small law firm. Working professionals from San Diego’s legal community act as supervising attorneys and paid actors appear as “clients” presenting real-life cases and legal questions. In this setting, students are able to work through issues such as attorney-client privilege, negotiating fees and other mechanics that can challenge new attorneys.

Many second-year students take their first steps toward a lifelong commitment to pro bono service as they pursue unpaid work with nonprofit and other organizations in San Diego and elsewhere. Last year, more than 100 students were accepted into our Pro Bono Honors Society in recognition of the nearly 12,000 hours they contributed to local and national public-interest groups. In 2010, California Western’s commitment to pro bono service was recognized through our appointment to President Obama’s Higher Education Community Service Honor Roll with Distinction, and by the State Bar of California’s Pro Bono Service Award.

In their third year, California Western students continue to pursue pro bono work, and the majority of students participate in our Clinical Internship program, which gives them supervised hands-on experience working in law offices and government agencies. Students must commit at least 20 hours per week, offering them the chance to interact with supervising attorneys and others in a professional setting, exercise discretion and judgment, and develop the skills they need to enter practice.

The goal of our sequential curriculum is to produce graduates with the knowledge, skills and perspective needed to launch their professional career and thrive in the long term as successful lawyers. We hope to meet the current and future need for attorneys who reflect the diversity of our communities, and who can serve their clients ethically and professionally.

All three law schools in San Diego, and many law schools across the country, have good programs that prepare students to join the legal profession. I look forward to reading the continued conversation in San Diego Lawyer as my colleagues share their thoughts on this and other topics.

Steven Smith (ssmith@cwsl.edu) is Dean of California Western School of Law.
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What’s on Your Plate?

Personalized license plates have stories to tell about the lawyers who chose them. Besides being a conversation piece, they can sometimes provide work possibilities.

You could say that my family loves vanity plates. My father, who fought in the Battle of Midway, had a personalized license plate that honored his Marine days: VJ 8 1945, meaning “Victory over Japan, August 1945.”

In 1996, I married a doctor who specializes in obstetrics. He came up with OB WAHN during the initial era of Star Wars (Wahn is his last name). NOWOREZ was next, after a sabbatical in laid-back Australia, where people would say, “No worries.” BAJA TRIP reflected his love of traveling to Baja for surfing. His current plate is I 4 ALOHA, as he is the author of the Cabo and Coral Go Surfing children’s books that teach the aloha spirit of kindness, sharing and respecting our Earth.

After I graduated from law school, my husband came up with my plate, JST SETL—that is, “Just settle the case.” I’ve had this plate for 16 years, and it’s given me a ton of mileage. One lady even followed me to a flower stand, where she informed me she needed help with a legal problem. She was clearly in distress, so I gave her some referral numbers. I’ve been asked if I am a mediator or therapist. And once, I had my plate misinterpreted. A man in the REI parking lot thought it meant “off to court for tennis.” And some automatically assume she is a court reporter.

Lea Fields-Bernard, staff counsel and a committee consultant with the city of San Diego, also teaches trial practice at Thomas Jefferson School of Law and serves as a pro tem judge for small claims court. She worked for 10 years as a prosecutor with the city attorney’s office and later had her own trial consulting business. With all her days in the courtroom, it is only logical that her license plate reads OFF 2 CT.

Lea’s plates over the years reflect her life at specific periods. In her early 20s, her tag was NDPNDNT (independent). When she worked as a paralegal for five years, prior to attending law school, her license plate was QSI ESQ (quasi esquire). She created her current plate as soon as she passed the bar examination, celebrating her achievement. Lea is proud to be a lawyer. The road for her was difficult, as she went to school at night to obtain her undergraduate degree and didn’t attend law school until she was in her 30s.

Lea receives positive comments about her plate, usually from other lawyers at legal events. However, it is sometimes misinterpreted to mean “off to Connecticut” or “off to court for tennis.” And some automatically assume she is a court reporter.

She says her plate came in handy when her vehicle was rear-ended (she describes it as “a fender bender”). While taking down her license plate, the other driver realized that Lea was a lawyer and said, “Don’t worry about it.”

Aleida Wahn (noworez@aol.com) is a sole practitioner; Ian Friedman (ifriedman@sandiego.edu) is a 2L at University of San Diego Law School.
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The California Business and Professions Code (B&P Code) sets out the requirements for designating someone as a “paralegal.” It is important that we provide appropriate oversight to protect our clients—and ourselves—including regular interaction with and supervision of paralegals we employ.

B&P Code section 6450(a) defines a paralegal as a person who holds himself/herself out as a paralegal, who is qualified by education, training or experience, who either is employed by or contracted by an attorney or law firm and who performs substantial legal work under the direct supervision of an active member of the State Bar of California. It is unlawful for a person to identify himself or herself as a paralegal on any advertisement, letterhead, business card or sign, or elsewhere (including on a bill to a client), unless he or she has met the qualifications of B&P Code section 6450(c) and performs all services under the direction and supervision of an attorney who is responsible for all of the services performed by the paralegal (B&P Code section 6452(a)).

Among other things, a paralegal is allowed to do case planning and management; legal research; interviewing clients; fact gathering; drafting legal documents; and make recommendations to the supervising attorney. Strictly prohibited acts for a paralegal include providing legal advice, representing a client in court, drafting a legal document for anyone other than the supervising attorney or engaging in the practice of law (B&P Code § 6450(b)).

B&P Code section 6450(d) requires that every two years, any person who is working as a paralegal shall be required to certify four hours of mandatory continuing education in legal ethics and four hours of mandatory continuing legal education in either general law or in an area of specialized law. It follows that unless a paralegal meets these mandatory continuing legal education credit requirements, he/she is not allowed to be designated as a paralegal. As a member of the attorney’s staff, the paralegal can continue to perform work, but the attorney is not allowed to bill the client for that paralegal’s time. While the paralegal is responsible for keeping a record of his/her certifications, the certification of the continuing legal education requirements shall be made with the paralegal’s supervising attorney.

If not being able to bill for the paralegal’s time isn’t enough to motivate us to make sure our paralegals are properly certified with MCLE credits, B&P Code section 8455 provides any consumer injured by violation of this chapter of the code with the right to seek redress in court; the prevailing party is entitled to attorneys’ fees, in addition to costs.

Deborah Wolfe (dwolfe@wolfelegalgroup.com) is an attorney with the Wolfe Legal Group.

Unless a paralegal meets the mandatory continuing legal education credit requirements, he/she is not allowed to be designated as a paralegal.
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JUDICIAL RECEPTION

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5:30 p.m. - 8:00 p.m.
SDCBA Bar Center

www.sdcba.org/judicialreception

SAVE THE DATE

SAN DIEGO COUNTY BAR ASSOCIATION

GOLF TOURNAMENT

Friday, March 30
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Rancho Bernardo Inn

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www.sdcba.org/judicialreception
When John [Holt] came to San Diego, he was very poor. He had only one suit. He had no money with which to purchase a lot and build a law office. He had no place to draw his legal documents. John didn’t have a plot to plea in.”

Judge Franklin Orfield delivered that memorable line at the Westgate Hotel on June 6, 1980, to a Bar crowd gathered to honor one of their own marking 50 years of practice. Speakers included DeWitt “Dutch” Higgs, then-Mayor Pete Wilson, William Schall, Frank Rhodes, Judge Gil Harelson, Neil Morgan, William Bailey, Alex Cory and Paul Wells. A classic roast in the Friars Club vein, its subject was John Holt, one of the town’s more flamboyant attorneys. Holt himself said he handled half the divorces in San Diego and was responsible for the other half.

What is of particular interest is the parallel universes occupied by Holt and Higgs, whom Wilson later described as “a lawyer’s lawyer” who “brought to the profession a scrupulousness and professionalism that you would like to think is the model.” Higgs, of course, was a founding partner of the firm Higgs, Fletcher & Mack. His statue sits in the rotunda of the Hall of Justice, and rumor has it litigators rub the top of that likeness for good luck before heading into trial.

By all accounts, both Higgs and Holt were well liked in the legal community, although their practice styles were wildly different. What endears a lawyer to his or her community?

Holt was born in 1902 in Lebanon, Missouri, and later went to Colorado, where he received his law degree in 1929. That December he moved to San Diego, arriving with $40 and two suits in an old Model T Ford. He was paid $25 to write speeches for Tom Whelan, who was then running for district attorney. Holt passed the California bar in 1930 and started working for the district attorney’s office, which he left in 1936.

Higgs was born in Soldier, Idaho, in 1907. His father, a country doctor, later moved to San Diego, and Higgs and his new wife followed in 1930. He worked driving trucks while attending night school at Balboa Law College (now California Western) and was in its first graduating class. He passed the bar in 1934. Higgs could not find work with any of the town’s large firms but hooked up with an older workers’ compensation attorney, Marcus Robbins, forming the firm Robbins and Higgs. Robbins died in 1936.

That year, Holt partnered with Edgar Hervey and was elected as SDCBA President 1936.

DeWitt “Dutch” Higgs and John Holt, each with a very distinct style, both became legendary in the San Diego legal community.

**THE STATS**


**John Holt**

- Born September 1902 in Lebanon, Missouri
- Died fall 1989
- University of Colorado School of Law (1929)
- California Bar 1930
- Deputy district attorney (1930-36), under D.A. Tom Whelan
- Private practice (criminal, family law)
- SDCBA President 1936

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*SAN DIEGO LAWYER* January/February 2012
President. Hervey, a colorful criminal defense attorney later appointed to the Superior Court, frequently quoted Shakespeare and the Bible in his arguments. Their partnership ended with a well-publicized feud. (Holt had studied theater at the University of Colorado, appearing in many productions including Shakespeare’s plays; he, too, often quoted the Bard. It’s said the two were simply too similar in flair and ego; at the 1980 roast, Judge Gil Harelson stated that Holt had said of Hervey: “He’s the kind of guy who would like to die in his own arms.”)

Higgs, meanwhile, joined the firm of Weinberger and Miller. During a case for that firm, he met Ferdinand Fletcher, then assistant city attorney. In 1938 he and Fletcher formed a partnership, which became Higgs, Fletcher & Mack in 1950.

Higgs developed an interest in water litigation, and later aeronautical and public entity matters (including city attorney for Chula Vista). Politics, however, became his passion. He joined the SDCBA Board of Directors as a young lawyer and by 1938 was a well-respected trial attorney.

After his stint as SDCBA President in 1940, Higgs became an examiner on disciplinary matters for the State Bar, where one of the cases he heard involved Leland Stanford, the county’s law librarian.

Stanford had founded Balboa Law School with his brother, Dwight, so there is some irony that later he came before a bar disciplinary court including one of the school’s first graduates.

Higgs’ role with the State Bar led to his election to its Board of Governors; in 1955 he became the first San Diegan to be President of the State Bar. Along the way he became friendly with then-Governor Pat Brown, eventually resulting in his appointment to the Board of Regents of the University of California, which he chaired from 1968 through 1970.

While Higgs went deeper into politics, Holt turned to a more lucrative line of work: divorce. He left behind a stellar career in criminal defense and put his theatrics to work toward, well, everything. He was famous for his gold Rolls-Royce, with stories told about his lending the Rolls to the children of friends to use for a first date or going to the prom. He had a large cape with a red lining, which he would whip off in court and float down onto his chair. He became the town’s premier divorce lawyer, kept on retainer by a number of wealthy men worried that their wives might sue for divorce and hire Holt. (Orfield claimed Holt handled 10 times more divorce cases than anyone else in town.)

Judge Franklin Orfield recalled that

THE STATS

{ DeWitt “Dutch” Higgs }

Born December 1907 in Soldier, Idaho
Died December 1994
Balboa Law College (1934)
California Bar 1934
Private practice (civil, founder of Higgs, Fletcher & Mack)
SDCBA President 1940
The Sons’ Tales

In public, John Holt was flamboyant, a showman and a well-respected (and feared) trial lawyer. Dutch Higgs was also a well-respected trial lawyer, unflappable but low-key. Outside of the public eye, what were they like?

Darrell Holt, now 77, is the only child of John Holt, adopted at age 7. A CPA who lives in La Mesa, Darrell recalls his father as two different people: the public Holt, humorous, impeccable dresser, flashy and in his element in the court or partying with judges; and the private Holt, who was tough, inflexible and “didn’t like anybody crossing him. Period.” When out of the public light, Holt wanted to be left alone — while golfing, he didn’t want people bothering him.

As Holt got older, especially in his 70s, he became more and more difficult to deal with at home and in business, according to Darrell; he became very litigious, suing neighbors and friends. While Holt was a romantic (he loved traveling to Paris, loved the art of Henri de Toulouse-Lautrec, loved Sherlock Holmes, loved his cars and was a ladies’ man), he also liked being in control — of the courtroom stage and of his reputation. “His reputation was everything for him,” says Darrell. “My father couldn’t stand criticism or what he perceived as the staining of his reputation.”

Although very lucrative, family law had its dangers. Holt carried a gun in his car. The owner of a cab company, embittered by his divorce, threatened Holt with physical harm. Holt, the attorney for the Teamsters Union, had four large members of the union pay a visit to the cab company owner to ensure Holt’s future safety. It worked.


Craig Higgs remembers seeing Holt at Bar functions and described him as well dressed, flashy and always in the mix of conversations.

As to his father, Craig says Higgs (like Will Rogers) “never met a person he didn’t like — he enjoyed people and found joy in every day of his life.” He says his dad made it “easy being his son.” Craig had thought about being an architect, but in college, he found his talents lay elsewhere. Encouraged by his father (and watching him in trial), Craig went to USD Law School. He worked with the city attorney’s office in the criminal division for a year before joining his father’s firm in 1972. And 40 years later, he is still there.

Craig recalls no real differences between the public and private Higgs; in fact, his father enjoyed combining his three passions: family, law and golf. Even as a member of the Board of Regents during the 1970s, Higgs kept his home phone listed and frequently took calls from students, protesters and others.

When Craig became President of the SDCBA in 1984, he asked his father for advice. His dad noted that when he was President in 1940, he knew all 300-some members by their first names. The membership in 1984 was about 8,000. Craig says his dad wryly remarked, “There’s not much I can do for you.” — George Brewster Jr.

Holt put his heart and soul into his cases. “He was excellent in the courtroom, always prepared, and extremely dramatic in the things he did. Most people couldn’t get away with the things John did.”

Holt is feted on the Bar’s Criminal Justice Memorial for his dramatic courtroom appearances. He is quoted: “Each case was a drama . . . I would dress to attract the attention of jurors . . . I would start with a strong witness, structure it right, and work the jury up to a certain point in the evidence, then quit.”

In 1980, for the celebration of Holt’s 50 years in practice, then-Mayor Wilson declared it John T. Holt Day in San Diego and stated that the list of whereases in the proclamation “can’t begin to do justice to a brilliant career as a thespian, as a lawyer.”

Newspaper reporter Frank Rhodes called Holt the darling of the working press because he had given them so much dramatic copy. “When you’re in his presence, the air becomes electrical . . . I’ll never forget how distinguished he looked. His hair was coal black, and so was his mustache. And he had on the most beautiful cashmere sports coat I’ve ever seen . . . John Holt has that priceless gift of meeting somebody . . . and making that person feel that he would rather meet that person than anyone alive. I walked away thinking, ‘Hell, this guy is Dale Carnegie’s teacher.’

“But as time went on, I found that wasn’t a [phony] part of the John Holt personality; that he was sincere in it; that he meant that; that he had an abiding interest in people; that he was savvy enough to know he can learn as much from the janitor as he can from the owner of the building.”

Higgs also spoke at the event, saying, “John has never really been shy or modest. Many years ago, before he entered into the ill-fated partnership with Ed Hervey, he apparently talked with Bill Green, who was then in the district attorney’s office with him, at the same time Ferd [Fletcher] and I were talking with Bill about forming a partnership. Bill came in one day, and he said, ‘Holt wants to go in with me. But,’ he said, ‘the guy is nuts. He told me he thinks we both can make $10,000 a year.’

“It was a lot of fun in the old days. We all did some divorce work upon
Defendant or plaintiff, she will fight for you.

Kathryn Karcher receives 2011 Street Fighter of the Year award for excellence in representing plaintiffs on appeal.

Practice Area: Product Liability

Background: Plaintiff hard disk drive manufacturer experienced 1.7 million hard disk drive failures that were thought to be caused by short circuiting in a driver chip on the mother board. The problem was found to have been caused by the substitution of fire retardant chemical in the molding compound of driver chips fabricated by defendant semiconductor manufacturer.

A Demonstrative That Made a Difference: For arbitration, an 8-minute animated technology tutorial was created that explained chip fabrication, hard disk drive operations, and mechanism of failure. This condition was particularly common to areas of the world experiencing high heat and humidity, where the use of red phosphorus instead of antimony and bromine caused phosphoric acid to leach out of the molding compound. The leaching formed metallic growths that bridged some leads of the chip, causing it to short out and the drive to fail.

Outcome: Confidential settlement.

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he couldn’t emphasize enough the importance of preparation—and how the lack of it is a betrayal to your client. He also stressed that “justice cannot prevail unless a lawyer goes by the high road with honor, no matter how arduous, how difficult and how slow that might be. Never by the low road with dishonor . . .”

“There has been some slight reference to my going down the primrose path. Well, if anyone should suggest that I had to be pushed or argued or bludgeoned into going down the path, they’re mistaken. When I looked at the primrose method and saw some of those dillies being fooled around with by my raffish and Rabelaisian friends, the speed and alacrity with which I dove into the primrose meadows would have made Superman look like a piker.

“When I heard all that singing and dancing, and heard all those delicious squeals off in the bushes, I thought, ‘This is for me.’

“And we laughed, and we danced, and we loved, and we wept, and we drank deeply of the wine of life.”

In 1989, Holt passed away at age 87. Higgs passed away on his birthday in 1994, also at 87. Upon his passing, retired U.S. District Court Judge Lawrence Irving (who had worked at the Higgs firm) said, “Dutch Higgs was a role model for all young lawyers—one of the greatest men I’ve ever known.”

In a recent joint interview, attorneys Paul Wells and Bob Steiner, who knew both Holt and Higgs, agreed that the two were good friends, saying Holt was flamboyant and sentimental while Higgs was effective and down to earth. Both were well respected in the community; no question they were very successful.

Clearly Higgs and Holt were secure in their abilities—and what others perceived as conviction and/or leadership, propelling both to become president of the Bar at an early age. Both were well-read, meticulous in preparation and sticklers for detail. Their word was their bond. They were tough in court but civil in life. But mostly, both were, in their own way, passionate.

George Brewster Jr. (sandbrews@aol.com) is a senior deputy county counsel with the Office of County Counsel.
“If we do not maintain justice, justice will not maintain us…”
-Francis Bacon

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THE INNS

FIGHTING ON

The William L. Todd Jr. Inn of Court embodies the University of Southern California Trojan slogan—as is only fitting for an Inn of Court formed to bring USC alumni together.

BY CHRISTOPHER TODD

• Fight on.
• Tommy, on a granite base, with inscriptions describing the ideal Trojan—faithful, scholarly, skillful, courageous, ambitious—sword in right hand, shield in left, preparing for conquest of the opponent.
• The Spirit of Troy marching band.
• Walking from campus toward the Coliseum, kicking the metal lamppost on the way.
• Through the Coliseum peristyle, down the concrete tunnel (“Don’t Crowd,” says the stenciled paint) and out into a sea of Cardinal and Gold.
• Traveler and Song Girls.
• Players bound out from the locker room onto the field. Cardinal jerseys with gold numbers, no names on the back. Gray face masks. Black cleats.
• Tradition.
• Student Body Right. Or the next-best play, Student Body Left.
• Beat the Irish.
• Flush twice, it’s a long way to Westwood.
• Heisman Trophies.
• Student-athletes. (The author discourages snickering.)
• National championships.
• First and second finger raised, not in the peace sign but in the “V” for victory.
• Fight on!

Does any of this have anything to do with the American Inns of Court? At the William L. Todd Jr. Inn of Court, all of these things have everything to do...
“The Todd Inn of Court is a wonderful marriage of two of the things that are dearest to me: the practice of law and my Trojan family. The bond that exists between USC alumni, even those who attended the school generations apart, creates the perfect foundation for an Inn of Court, where it is imperative to have strong relationships among the members to foster truly open discussions and debates regarding legal and ethical issues, regardless of the members’ typical practice areas and clientele.”

David Majchrzak Klindinst Todd Inn President, 2011-2013

“My interest in organizing the San Diego Legion Lex Inn of Court was the result of my service as a Master of the Welsh Inn. I felt we needed an organization for USC Law in San Diego. Judges DiFiglia, Harelson and Irving served on the Organizing Committee, along with lawyers Ron Endeman, Rory Wicks and Shelley Carder. We were chartered by Chief Justice Malcolm Lucas of the California Supreme Court in October 1992 and are still going strong. Fight on!”

Hon. William Todd Jr. (Ret.) Todd Inn founder

“I find the Inn of Court very valuable for a number of reasons: 1. I attend most of the legal presentations, which assist me in learning information about a variety of matters. 2. Almost all of my continuing education comes from the Inn’s legal presentations. 3. As a senior Inn member, I stay connected with younger members. 4. Lastly, I enjoy the camaraderie of the yearly dinner and the monthly refreshment get-togethers at our Inn meetings.”

Stephen Frantz Offices of Stephen Frantz

“As soon as I joined the Todd Inn, I felt welcomed by all the other members, in large part due to our common sense of ‘Trojan family’ heritage. Because all members share something other than the law, we can initially connect on what is admittedly somewhat of a superficial basis (mostly involving football). But from those beginnings, I’ve developed long-term friendships and connections with other Trojans from different generations, different practice areas and different practice environments, which has truly been not only fun but also fulfilling.”

Sarah Evans Schwartz Semerdjian Ballard & Cauley

“The Todd Inn of Court offers all of the benefits of other chapters of the American Inns of Court, plus one more—association with alumni and friends of the University of Southern California. The Todd Inn is less formal and does not mandate participation in programs like other Inns, but provides excellent education and time to discuss Trojan football after the programs. I have truly enjoyed my membership in the Todd Inn of Court.”

Bob Gaglione Gaglione Law Group
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EYEWITNESS EXPERT TESTIMONY: 43 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.

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with the Inn. The Todd Inn melds the core tenets of the American Inns program — improvement of skills, professionalism and ethics — with those of the ideal Trojan — faithful, scholarly, skillful, courageous and ambitious — to form a warm and collegial professional group. Where the American Inns of Court program adopted the traditional English model of legal apprenticeship and modified it to fit the particular needs of the American legal system, the Todd Inn took the American Inns system and combined love of the law with love of the alma mater. The only alumni-based Inn of Court in San Diego, the Todd Inn embraces among its members USC alumni — law school and undergrad, including current students at each of the three local law schools — as well as friends of the university.

The Todd Inn is blessed with an exceptionally strong membership and counts or has counted among its members the following stalwarts of the San Diego legal community, all USC Law grads: Hon. Vincent DiFiglia (’70); Hon. Gilbert Harelson (’48); the late Hon. Harrison Hollywood (’60); Hon. Richard Huffman (’65); Hon. J. Lawrence Irving (’62); Hon. Margaret Mann (’81); the late Hon. Leland Nielsen (’48); Hon. Ronald Prager (’69); the late Hon. David Thompson (’55); the Inn’s namesake, Hon. William Todd Jr. (’57); and the late Hon. Howard Turrentine (’39).

Since the Todd Inn was chartered as Inn #180 in October 1992, all the key principles of the American Inns movement have been championed, including excellence in advocacy; understanding of and appreciation for the adversary system of justice; educational experiences to enhance legal abilities; collegiality among all legal professionals; development of skills for law students and new lawyers; transmission of ethical values from one legal generation to the next; and building upon the genius of the common law, in the model of the English Inns of Court.

Kindred spirits with the more than 25,000 judges, attorneys, legal scholars and law students involved in the American Inns program, the Todd Inn’s approximately 60 regular members share
learned skills and approaches to difficult and interesting legal and ethical issues at monthly dinner meetings. The meetings are always tinted with Cardinal and Gold, whether through a visit from the Law School dean, by an informative CLE from a university attorney or, during the informal social hour following the educational programs, by the fun exchange of stories of our times on campus.

In addition to members who have served as bench officers, the Todd Inn also boasts current practitioners in virtually every area of practice, including mediator Matt Argue ('89); appellate specialist Richard Benes ('75); civil litigator Shelley Carder ('89); retired litigator Ron Endeman ('66); general practitioner Steve Frantz ('66); civil trial specialist and neu-Dan Stanford ('75); environmental lawyer Rory Wicks ('78); and former San Diego City Attorney John Witt ('60)—all USC Law unless noted otherwise.

The Todd Inn was conceived in the summer of 1992, after its founders enjoyed initial Inn of Court experiences in the Louis M. Welsh Inn. To enhance alumni connections through the Trojan family, Justice Todd, Judge DiFiglia and Mr. Endeman applied for an Inn charter on behalf of the Legion Lex alumni group, a support group for USC's law school. The application was accepted by the American Inns of Court Foundation, and on October 28, 1992, the Inn was chartered at a celebration dinner at La Jolla Country Club by chartering officer and then Chief Justice of the California Supreme Court, Malcolm Wright (USC undergrad, '00); civil litigator and SDCBA historian Frank Drummond (USC undergrad, '03); litigator Paul Jonna (USC undergrad, '06); litigator Vanessa Negrete (USC Law, '05); and last but not least, the Todd Inn’s newly elected president, Klinedinst attorney and former member of the Spirit of Troy marching band, Dave Majchrzak (USC undergrad, '99).

Over its two-decade tenure, the Todd Inn has developed a solid heritage of quality legal education consistent with the American Inns ideals. The Todd Inn has contributed top-of-the-line programs for the annual Joint Inns dinner, securing guest speakers for the midyear gala such as nationally renowned USC law professor Susan Estrich in 2001, acclaimed 9/11 mediator Kenneth Feinberg in 2006 and most recently, in January 2011, former San Diego mayor, U.S. senator and California governor Pete Wilson.

Where the American Inns of Court program adopted the traditional English model of legal apprenticeship and modified it to fit the particular needs of the American legal system, the Todd Inn took the American Inns system and combined love of the law with love of the alma mater.

tral Bob Gaglione (USC undergrad, '81); healthcare specialist Mary Geerdes (a great friend of USC); Deputy Attorney General Martin Hagan (USC undergrad, '83); business litigator Lee Hejmanowski ('93); legal malpractice specialist David Hendricks ('87); transactional specialist Michael Hulme ('86); trusts and estates specialist and former SDCBA President Eric Lodge ('68); securities litigator Mike McCloskey (USC undergrad, '79); civil trial lawyer John McCormick ('65); bankruptcy specialist Michael O’Halloran ('81); Deputy D.A. Pat O’Toole (USC undergrad, '75); Deputy Attorney General Sharon Rhodes ('85); legal malpractice specialist Lucas (USC Law, '53). The Todd Inn was off with a bang, and its legacy, just like the Trojan legacy, continues.

While adhering to the American Inns model, the Todd Inn’s pupillage for newer attorneys and law students is less formal than in other Inns. However, the Todd Inn is strongly committed to developing mentoring relationships with all who are new to the law and who share a love of USC. In keeping with that emphasis, the Todd Inn is proud to include young up-and-comers among its current membership, including Schwartz Semerdjian partner Sarah Evans (USC undergrad, '00); Kirby Noonan associate Christopher

Chris Todd (ctodd@wingertlaw.com) is a partner with Wingert Grebing Brubaker & Juskie.
Whether or not you agree with the methods or the message of Occupy San Diego, if you are an attorney, you have probably thought about the legal issues that come into play with any kind of large-scale demonstration in a public place. A lawyer’s role in this movement can depend on various factors: Lawyers may be activists themselves; attorneys for the activists get involved because they believe in the cause or want to protect the activists’ rights; lawyers for the police and the mayor’s office become involved because it’s their job to advise city officials on the law. Law professors get pulled in by media outlets looking for insight for their audiences. And judges and their clerks must demonstrate their understanding of the law in rulings on civil and criminal actions related to the movement.

Lawyers for Mayor Jerry Sanders aid him in “supporting the rights of the people to assemble and speak, while also maintaining a healthy and safe environment,” says Darren Pudgil, communications manager for the mayor. To keep the city running smoothly, the mayor’s office...
has to uphold the rights of the activists while accommodating other citizens who also have a right to use the public spaces being “occupied.” The very aspect of the public space that makes it an ideal place to get one’s message out to the masses may also make it unsuitable for a long-term occupation, since many people travel through it every day. People who did not see Civic Center Plaza during the two months of the Occupy San Diego encampment might not be aware of the physical impact such a large, ongoing demonstration has on the space. For example, Pudgil points out, “When the encampment was removed at the end of November, the grass had to be replanted.” Some might argue that a new lawn is a small price to pay for freedom of expression; some might cite this as a reason the protesters should have been cleared out sooner. Others might argue that the movement is not over yet, so fixing the grass already was premature. Taking all these opinions into consideration, the attorneys who advise the mayor must ultimately rely upon the law to make their recommendations.

With such a large-scale demonstration, city officials had to consider how many police officers to assign there—which means pulling them from other areas or paying for overtime—and how to handle trash, hygiene and noise. The city often invokes sanitation and loitering ordinances to address concerns about crowds without infringing on free speech and assembly rights.

One such ordinance forbids a person from placing an object on public property. Three protesters sought a temporary restraining order (TRO) on the basis that this code, San Diego Municipal Code section 54.0110, is overbroad, but U.S. District Judge William Hayes denied the TRO. City Attorney Jan Goldsmith says he agrees with the judge. “First Amendment rights are important and must be respected,” says Goldsmith, “but they don’t allow a takeover of public property.”

Although the lawyers who advise the police were not available to comment, anyone who has lived through a criminal procedure class can appreciate the nuances of advising police officers on the legal aspects of making arrests, of when to be lenient and when to enforce even minor rules. It can be frustrating for the activists, as well, when the same officers who provided crowd control to guide their march through the city streets are called upon the next day to clear out their encampment and arrest them.

“Most of the participants have never had a bad experience with police before Occupy,” says attorney Adriane Bracciale, a member of the San Diego chapter of the National Lawyers Guild (NLG). When the officers begin making arrests, the protesters “think the police have transformed,” she says, “but really it’s just not that often that people exercise their rights for more than 24 hours at a time,” and the police start looking for ways to clear people out of the public areas.

The local chapter of the NLG provided “know your rights” training to help participants understand the difference between what really is a police order and what merely appears to be such. The idea

“The very aspect of the public space that makes it an ideal place to get one’s message out to the masses may also make it unsuitable for a long-term occupation.”
is that, armed with knowledge of the law, protesters can choose to cross the line that will get them arrested, rather than stumbling across it. But it is not always a bright line.

In addition, says Bracciale, “The NLG might educate demonstrators about consenting to searches, about asking an officer if they are free to leave and about what to do if they are arrested.”

“With Occupy, we’re not the legal arm of the movement,” says Kate Yavenditti, a family law attorney and guild member locally since 1982. “We have to ask. We don’t impose ourselves. In L.A., the guild was involved with negotiations. In San Diego, we’ve been asked to provide legal observers and to help with pro bono criminal defense. Then we step back.

“We have to be careful,” she continues. “If we’re going to be observing, we can’t be participants. We have to decide whether to be a part of it or to be a neutral observer.”

Lawyers’ roles are rooted in their desire to protect justice and enforce the rule of law equitably for all people. That lawyers will differ in approaches and opinions is what makes the practice of law a dynamic profession. However large or small the impact of the movement turns out to be, the attorneys who were involved in some aspect of Occupy San Diego—and perhaps those of us who were just observers—will have a greater understanding of the difficulties of balancing the rights of individuals with the rights of the community.

Elizabeth Blust (egblust@blustlaw.com) is a solo practitioner.
“Armed with knowledge of the law, protesters can choose to cross the line that will get them arrested, rather than stumbling across it.”
As parents age, deciding how best to care for them becomes a dilemma for many. Here is one San Diego lawyer’s story.

BY CHRISTINE PANGAN
mother was having some difficulties.

“It was just rough,” Susan says of that time period. “She’d been married to him for 59 years, and now she was on her own.”

While some may struggle with the decision to have a parent move in, Susan says it was always the plan that her mother would live with her. Elain had said she never wanted to be in a home, and Susan had promised to keep her at home if she could. So in June 2007, Elain moved in.

Elain could not drive, so Susan would take her to her various appointments. There were visits with doctors every two to three weeks—“the plethora of doctors that you end up going to when you’re elderly and you have medical conditions. And just haircuts, the things you don’t think about that you do for yourself as just a normal part of your life,” Susan says. “It’s like having a child. You take on the responsibility for them to make sure those things are taken care of.”

**Getting to Know Elain**

Susan helped Elain go through her things when she moved in. There were items from Susan’s childhood and specific things Elain wanted to give Susan’s kids. And of course there were pictures, and Susan was able to ask Elain about relatives.

When Susan was away, her husband, Manny, and her daughter Casey would check in on Elain and keep her company. “Everyone was very good about helping out and making sure she was not left alone or lonely,” Susan says.

With this role reversal of caring for her parent, Susan found it invaluable to get to know her mom as a person, not just as a parent. “There was a lot of opportunity for good conversations and to learn a lot,” Susan says. “We had a good relationship.”

They watched black-and-white movies at night. They discussed the favorite foods Elain used to cook so Susan could learn how to prepare them. Susan learned about Elain’s life before she met Susan’s dad and about what she endured during World War II. The camera on Susan’s Blackberry came in handy to capture short videos of Elain talking.

She learned to respect her mother’s treasured independence. Elain still had opinions and thoughts about things and was capable of making decisions. “They don’t want you to take over anything they’re still even slightly capable of doing,” Susan says. “You have to learn to respect that, even though physically they might not be able to do certain things anymore. You still have to respect their independence and decision-making.”

**Balancing Home and Work**

One of the biggest challenges for Susan was the loss of her ability to do things she wanted to do, such as take vacations or go to conferences. Elain was in no condition to travel, and Susan did not want to leave her alone.

“There were several conferences I couldn’t attend,” she recalls. “There were a couple of conferences I had to leave early because something happened and I had to be home.

“And that was a challenge—making sure that I was still able to fulfill my obligations at work and take care of her the way I wanted to at the same time,” Susan says. “There was sometimes a conflict between the two.”

There were also legal and moral questions for Susan. Though she was never Elain’s conservator, she was concerned that if she had assumed the responsibility for her mother’s care, she might be liable for any injuries her mother might suffer due to a fall. She wondered if perhaps she had to have someone there to watch her all the time.

“If I left my mom at home and some-
In March 2011, Elain fell and broke her arm. When she was released from the hospital, she was sent to a rehabilitation facility for 30 days. The facility was a convalescent home.

“I knew, after that visit . . . that’s not someplace I would ever want to have her stay permanently,” Susan says. “That just confirmed in my mind that I would do everything I could to keep her at home.”

At that point, Susan knew she had to get help from a caregiver.

Choosing a Companion
First, Susan asked people she knew for referrals. She talked with friends to see what they had done. She read through an eldercare directory a neighbor gave her. She went online, looked in the newspaper, read pamphlets from the convalescent hospital. Some providers she found online never responded to her e-mails.

Finally, she found Senior Life Assistance. They advertised in the newspaper and were also listed in the eldercare directory. After an initial interview, they brought potential

WHO ARE THE CAREGIVERS?
More than 65 million people—29 percent of the U.S. population—provide care for a chronically ill, disabled or aged family member or friend during any given year, spending an average of 20 hours per week providing care for the loved one. The typical family caregiver is a 49-year-old married, employed woman caring for her widowed 69-year-old mother who does not live with her. Approximately 66 percent of family caregivers are women, and more than 37 percent have children or grandchildren under 18 living with them. Among adults living in the community and in need of long-term care, 78 percent depend on family and friends as their only source of help; 51 percent of care recipients live in their own home, 29 percent live with their family caregiver, and 4 percent live in nursing homes and assisted living.

Source: National Family Caregivers Association

thing happened to her, would I be responsible?” Susan asked. “That really ended up being more of a moral decision . . . which is another reason I ended up getting a caregiver.”

“We did everything we could, but still she managed to fall . . .”

Elain’s medical conditions became worse over time. She became increasingly unable to take care of herself and eventually needed extra help.

“She started falling, and I was afraid to leave her alone in the house, although we made all the modifications,” Susan says. “We had a ramp built, we had rails put in the hallways, we had grab bars installed, all those precautions.”

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caregivers for a visit.

“I think if I hadn’t felt so comfortable with the people I ultimately hired, I would have just continued interviewing,” Susan says. “They’re going to be in your home, taking care of your loved one around your possessions, and you have to feel comfortable.”

Just as important, Elain had to feel comfortable, so she was also involved in choosing. The caregiver’s personality had to mesh with Elain’s.

“The first caregiver she chose reminded her of her next-door neighbor when she lived in Salem [Oregon],” Susan says. “She had an instant comfort with her. And Jeanette had taken care of her elderly mother before she died . . . they could relate to a lot of things.” A talkative and upbeat person, caregiver Jeanette was a good fit for Susan’s mom.

A second caregiver had more experience in giving medicine, bed baths and turning Elain so she would not get bed sores. What Elain liked about caregiver Kay was her practical and gentle nature. She was alert for symptoms of pain and

RESOURCES

SDCBA Elder Law Section’s 2012 chairs are Maya Miller (maya@calderfirm.com) and Chris Walton (CWalton@webbwalton.com).

County of San Diego Aging & Independence Services (www.ais-sd.org and www.sandiego.networkofcare.org/aging) provides more than 30 different programs and services to older adults, people with disabilities and their family members, to help keep clients safely in their homes and promote healthy and vital living.

ElderCare Locator (www.eldercare.gov) is for caregivers who live in another state and want to find services near their loved one.

ElderHelp of San Diego (www.elderhelpofsandiego.org) provides personalized services and information for the area’s growing population of seniors to help them remain independent and live with dignity in their own homes. Support services include companionship, transportation, home sharing and more.

Elder Law and Advocacy (www.seniorlaw-sd.org) offers free legal assistance and health insurance counseling for seniors.

Southern Caregiver Resource Center (www.caregivercenter.org) is a private, independent nonprofit organization that provides services inclusive of all issues related to caring for adults with chronic and/or disabling conditions.
discomfort. However, Susan explains, “They were not hired to be nurses. They were hired to be caregivers, to be companions to her, to fix her meals, to make sure she was clean, all those things.”

It was especially important that Elaine liked having Jeanette and Kay around, because she initially did not want anyone in the house taking care of her. Susan was able to convince her by telling her, “Mom, it’s more for me than for you, so I can go to work and be comfortable knowing that you’re taken care of.” Elaine accepted having a caregiver as an accommodation to her daughter.

The two caregivers from the agency alternated during the week. They cared for Elaine during the day so that Susan could focus on her job and did not have to worry about her mother injuring herself. She would be fed, bathed and have general assistance with her activities. “It was the best decision I ever made,” Susan says.

Calling in Hospice
Elaine started to have more problems after her release from the convalescent home in April 2011. She would sleep during the day and be up at night. Susan would stay up with her but would have to be at work the next day. “It was very difficult,” Susan says. “Time was different for her than it was for me.”

Eventually, the caregivers alerted Susan that it was time to call hospice. “And that, again, was a huge benefit of having them there,” she says.

When hospice was called in, a registered nurse came twice a week. Medications were prescribed to help her sleep. If Susan had a question at any time, hospice was very responsive and could answer her 24/7.

“There was always a registered nurse on call to answer your questions, and they didn’t make you feel stupid or that you were bothering them . . . they were very, very caring,” Susan says. She could count on hospice to assure her fears and tell her if something was typical. “They could calm you,” Susan says. “They were very good about educating you about the process of dying.”

The caregivers worked with hospice to ensure that her mother was well cared for. With such a high emotional toll, Susan found that having a good support system was the most important consideration in caring for her elderly parent. “They were wonderful—both the caregivers and hospice,” she says. “I couldn’t have done it without them, I really couldn’t have.”

Role Model Remembered
For Susan, her mother had always been a role model. Someone who always helped people, Elaine had a very generous nature. When her parents first married, Susan’s father had a very ill uncle living in an “old people’s home,” as Elaine called it. Elaine was so upset at his treatment there that she took him home to care for him herself until he died many years later. “She felt it was the right thing to do,” Susan explains.

On June 24, 2011, Elaine passed away at age 86. Everyone was able to say their goodbyes.

“I really felt honored to be there when she passed . . . you know, holding her hand, and it was nice,” Susan says of her mother’s last moments. “I would have felt really bad if I wasn’t able to do that.”

Though Susan was able to be there for her mother, just as her mother had cared for her husband’s ailing uncle, she says it is not for everyone. “You’re going to have to make a commitment to do it,” she states. “It’s not for everybody. It isn’t. It’s nice if you can do it, though.”

Christine Pangan (cipangan@yahoo.com) is a staff attorney with Legal Aid Society of San Diego.
San Diego Lawyer is tracking the construction of the new Federal Courthouse. This photo was taken in December 2011. Barry Carlton (bjcarlton@cox.net) is a supervising deputy attorney general with the California Attorney General’s office.
A YEAR IN REVIEW

SDCBA members connected with their colleagues, courts, careers and the San Diego community at a multitude of events in 2011. Pictured here are just a few highlights.

Dialogue on Diversity
Andrew Steckler, Hon. David Rubin, Hon. Sharon Major Levy, Hon. Brenda Harbin-Forté
September 20

SDCBA Children at Risk Committee Literacy Day Read-In at Porter Elementary School
Readers were divided between both campuses.
June 24

Summer 2011 FaceLift Project
June 11

The Senior Community Centers Lunch
Part of the Bench-Bar Community Outreach.
July 27

2011 Golf Tournament
Reid Middleton, Ed Lee
March 31

Law Week Poster and Essay Contest
Winners, students K-12, were announced at the annual Law Week Luncheon.
May 3

Bench-Bar Beach Clean Up
November 5
Fall 2011
FaceLift Project
Rick Norton, Andrew Moher
October 22

Stepping Up to the Bar
December 2

Law Student Welcome Reception
Neema Shojaei, Tom Ruane, Melissa DeLeon
September 27

San Diego Unified School District’s End of the Year Partner/Volunteer Awards Ceremony
SDCBA’s Children at Risk Committee was named “Partner of the Year.” Lori Moore, Richard Pray, Lillie McMillan, Dan Link, Danielle Hickman, Lori Mendez
May 25

San Diego High School Mock Trial Competition
February 1, 3 & 5

A Year in Review continues on page 42.
The two groups were obscured by darkness and the distance between them. One group was police, funneling cars through traffic cones that formed a checkpoint. The other was protestors, among them teenagers holding hand-lettered signs that warned of the checkpoint.

Such scenes have become familiar at Escondido’s twice-monthly traffic checkpoints. To many residents they symbolize, and add to, the gulf between the city and its Hispanic majority—because drivers caught without a driver’s license at a checkpoint suffer severe financial punishment.

As far back as December 2009, the American Civil Liberties Union and El Grupo, an umbrella organization of civil rights activists, sent a letter that warned the city of the corrosive effects of such traffic enforcement, saying it has “strained the Police Department’s relationship with community members and created a public safety concern, in that residents will be
less likely to come forward to report crimes or contact the police when in need of assistance.”

Escondido Chief of Police Jim Maher stands by his enforcement policy. He says that over the last two years, he has cut by 40 percent the number of hit-and-run accidents, the blame for which he places largely on unlicensed drivers. (In 2007, the fatal/injury accident rates in Escondido were California’s second highest at 100, decreasing to 80 in 2008 and 68 in 2009.)

The emotions aroused by the checkpoints have deeply affected the community and reportedly provoked Chief Maher to make his case recently to at least one church’s congregation. Maher was not immediately available for comment, but in an earlier interview he had said that he’s “tired of activists telling lies about me.”

The strict driver’s license enforcement has never been publicly discussed by the Escondido City Council, says Councilmember Olga Diaz.

The checkpoints are intended to deter driving under the influence of alcohol or drugs and to detect drivers who don’t have a license. Before the 2009 letter from El Grupo and the ACLU, the city operated checkpoints intended solely to detect unlicensed drivers. The letter warned that such checkpoints violate state law.

Undocumented immigrants can’t get a California driver’s license. Formerly, a number of states issued a license without proof of residence, but by the end of 2010 only three—Utah, New Mexico and Washington—continued that practice.

Maher says California should change its laws so that undocumented immigrants can seek a license. Then they would have to pass a driving test and obtain insurance, he says.

When a driver without a license is detected, the vehicle is impounded for 30 days, under state law that changed January 1. After the bill signed into law in October by Governor Jerry Brown takes effect in 2012, the car can be released on the spot to the registered owner or to a person with a valid license who is authorized by the owner to drive the car.

“Hell yeah, we’re excited” about the new bill, says a jubilant Carmen Miranda, who describes herself as an activist. She and her daughters regularly protest at the checkpoints. Two years ago they were the only ones there, but now the number is rising toward 50. Libertarians and other activists have joined the protests, she says.

And the political views of the protesters are beginning to play a role in Escondido. The 2010 census shows that in this city of 144,000, 48.9 percent are Hispanics; 40.4 percent are white non-Hispanics. In 2000, when the city had 10,000 fewer residents, Hispanics made up 38.7 percent of the residents. Miranda plans to run for one of the two open city council seats in the 2012 election, as does incumbent Councilmember Diaz.

Miranda ran unsuccessfully in earlier elections, despite having been named Citizen of the Year by a previous police chief and having served under Maher on the chief’s advisory committee. She says she resigned because of disagreements over the chief’s policies.

Maher took the department’s top post
shortly after the council tried, and failed, to force landlords to refuse to rent to undocumented immigrants. One of its first priorities, he says, was to create policies for dealing with the increasing Hispanic community. One thing he emphasized, Maher says, was that “illegal immigrants are not our issue unless they’re criminals. The police department is not interested as long as they’re here to work and take care of the kids.”

He says that over the years he has established other practices, such as not allowing federal agents at the checkpoints. He won’t let patrolmen call Border Patrol agents for interpretation, because the agents automatically detain illegal immigrants.

“I absolutely don’t do that,” Maher says.

Border Patrol and Immigration & Customs Enforcement (ICE) agents can’t ride along with police patrolmen, although that may have happened in the past, according to Maher. The department works closely with ICE, he says, but only when a patrolman recognizes someone from a previous arrest or the person can’t show any sort of identification. According to Maher, if an officer stops someone and decides there is reason to call ICE, the person is still released if he has no criminal history. It is important to note that the Escondido Police Department is the only one in the county (and perhaps the state and the country) with ICE agents stationed within headquarters.

Through Operation Joint Effort, begun in May 2010 with ICE, almost 600 foreign nationals have been taken into custody by ICE, the chief says. Those people had been previously deported, had a criminal record or were ICE fugitives. In a press release about the operation, the police department says that people who “have no criminal history and have not been ordered removed from the country have nothing to fear from this program.”

Says Maher, “We have the exact right policy for any part of the country.”

Victor Torres, a lawyer and activist, says the Hispanic community remains skeptical about the policies Maher has put in place. Community members regularly report departures from the policies to him, he says, such as alleged ride-alongs by ICE agents. Miranda agrees, saying that many in the Hispanic community fear the police.

Councilmember Diaz says residents’ distrust of city government increased after attempts to crack down on day-labor gathering places and to limit parking around rental properties. According to the 2010 Census, 49 percent of Escondido’s residents live in rentals, which often are shared by several families.

But heading the list of complaints are the impounds at checkpoints. Not only the vehicles are lost. Child car-seats and stuffed toys, tools, janitorial equipment—all goes off on the tow trucks, activists say.

Lieutenant Tom Albergo, head of the police traffic division, says an inventory is made before a vehicle is towed, and that people can claim their possessions at the impound yard.

Albergo says the overtime service at the checkpoints is paid for by grants of federal funds (distributed by the California Office of Traffic Safety) and a smaller grant from the Berkeley School of Education. The grants total approximately $305,000 for the current fiscal year, he says.

Chief Maher says he lowered the cost of the police impound release form from $180 to $100 because checkpoint expenses were paid by the grants. Albergo says the police department profits nothing from the towing, impounds and sales at auction, despite community suspicions that the checkpoints are huge money-makers for the police. (Private tow yards, of course, do make a profit.)

Some California cities have taken cuts from tow-yard profits and used the money for excessive salaries, the state attorney general found after an investigation of the city of Maywood. Other cities, including Los Angeles and Oakland, stopped 30-day impounds on their own.

Whether or not anyone profits from the impounds, car owners pay dearly. To retrieve the vehicle, the registered owner must pay the police department for a release, pay for the tow to the impound yard and pay fees for storage. The total adds up to $1,300 or more. If the registered owner can’t pay, the vehicle can be sold at auction.

Many try to avoid the checkpoints by doing their own checking—on Twitter. Maher follows along too, from the time the checkpoint is announced, 24 hours in advance, through setup and operation. People who frequent bars have a special interest in the tweets, he says. In this time of social media, police reports show a checkpoint will catch only two or three drunken drivers.

In the last four months of the fiscal year that ended October 1, Escondido police impounded 118 vehicles, according to the department.

The question of whether impounds are even constitutional has been raised in many states. California is no exception. Lawyers have argued the question, judges have differing interpretations of the law, and legislators have struggled to write laws that fit the crime of driving without a license.

So far, no class-action lawsuit against Escondido’s impounds has even come close to a trial. One lawsuit, filed by an Escondido resident whose truck was impounded and lost to auction, was dismissed without explanation by the plaintiff’s lawyer, says Michael McGuinness, assistant city attorney for litigation.

Another potential class-action suit, which has three Escondido residents among 20 others from around the state, has been wandering the courts since 2007 and is still active, says McGuinness. That lawsuit, Salazar v. Schwarzenegger, was dismissed in U.S. District Court. It went to the 9th Circuit on appeal and was affirmed except for two counts, which the appeals court said belonged in state court and has since been sent there, says Cynthia Anderson-Barker, a Los Angeles lawyer representing the plaintiffs. The U.S. Supreme Court is also being petitioned for review of other parts of the case, she says.

Since the law changed in January on impounds for lacking a valid driver’s license, Albergo says, the department will have to plan checkpoints where there’s room to park the cars until claimed. Otherwise, he doesn’t expect much change.

“We’re here to enforce the law,” he says. Claude Walbert (clauwal@myway.com) is a San Diego journalist.
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No, I don’t need a “Motion to Compel Answer”.

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Victor Manuel Torres

CORRECTION  | In “Caution Signs Ahead” in the November/December 2011 issue, the photo of California Western School of Law Professor Timothy Casey was inadvertently identified as that of NYU Law Professor Stephen Gillers. San Diego Lawyer apologizes for the error.

Win a Free Lunch!

NAME THAT BUILDING
Please submit answers by February 15 to martin@kruming.com. Your name will be entered in a drawing to win lunch for two at Dobson’s Bar & Restaurant in downtown San Diego. Congratulations to Harlan Zaback of Berman & Riedel, whose name was drawn from those who correctly identified the County Bar Center in the November/December issue.
The following members of the legal community passed away during 2011.

**Judges**
Hon. Robert Conyers
Hon. Thomas Duffy
Hon. Howard Boyd Turrentine
Hon. William Alton Yale

**Lawyers**
Tom Adler
Alec Cory
C. Michael Cowett
John Davies
Vivian Doering
Myron Klarfeld
Larry McClellan
James Mulvaney
William Schwartz Jr.
Pamela Slick
Christine Trevino

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The State Bar’s swearing-in ceremony for new attorneys was held on December 2 at the Sheraton Harbor Island Hotel.
PHOTO GALLERY

stepping up
to the bar

photographs by
lauren radack

More than 400 attorneys and judges attended the annual Stepping Up to the Bar, the SDCBA’s annual holiday reception on December 2 at the County Bar Center.

Hon. William Enright, Hon. Gonzalo Curiel

Megan O’Toole, Rachael Callahan

President Marvin Mizell

Hon. Joe Littlejohn (Ret.); President Marvin Mizell

Stan Kottle, Sergio Feria, Alvin Gomez

Christine Mizell

Brian Mackey, Paul McGuire, Chuck Zhang
PHOTO GALLERY

Randy Willert, Hon. Cindy Davis, Rick Alter

Laura and Jacob Beers

Bron D’Angelo, Cameron Gharabiklou

Klaudia Azarova, Sergei Tokmakov

Mika Read, Michael Giorgino, Norma Swan

2012 New Lawyer Division Board Swearing In

Marilyn Anderson

SAVE THE DATE
Join your colleagues at Bar Night at the Opera on April 27 featuring Rossini’s The Barber of Seville. For more information check the online calendar at www.sdcba.org.
Superior Court Judge Julia Kelety, President of the San Diego Law Library’s Board of Trustees, spoke during a celebration in December marking the completion of the library’s renovation. A grand gala reopening is set for February 25.

Photo by Barry Carlton (bjcarlton@cox.net), a supervising deputy attorney general with the California Attorney General’s Office.
Get the most of your SDCBA membership in 2012 by reviewing all the benefits of your membership. Check www.sdcba.org/benefits for the most up-to-date listing of benefits available to you and then tackle the following checklist.

**2012 Law Firm Checklist**

- **Get covered with AHERN Insurance Brokerage (AIB).** Let SDCBA Preferred Provider AIB review your rates and compare your current policy with their current offerings to make sure you are getting the most for your money. AIB offers a full line of coverage for your practice at a discounted rate working with XL Insurance, The Hartford and Carolina Casualty to give you all the insurance coverage you need.

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