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A Year of Connections

The ways to reach out to one another expand even more

As this year comes to a close, we thank you all for connecting with the SDCBA—to your careers, colleagues, courts and communities. We have networked, learned, helped our community and connected to one another in countless ways, and we hope that you find the time to visit our online photo gallery to reflect on all that we have accomplished and all the fun that we have had this year.

While we will continue to connect throughout the year through our member publications and our website, we also invite you to connect with your Association in new ways, through social media. The SDCBA is proud to have launched our Facebook and Twitter pages this year, and we will soon be active on LinkedIn as well. In 2012, we will also be revitalizing our website in a new and innovative way, allowing you to more easily connect with the information that matters most to you. Our goal is to connect to each of you, as legal professionals, and to allow you to connect with one another.

In 2012, we will continue to update our Connect Campaign page on our website, to keep you apprised of upcoming events, and as always, we invite you to connect with us in person at our many networking, educational and community service events at the SDCBA Bar Center and throughout the community.

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Thank you once again for connecting with us, and we wish you a happy, relaxing holiday season with plenty of time to connect with your colleagues, family and friends.
Thank you. I wish there was a more powerful way to express my gratitude, but for lack of better phrase or term, I feel compelled to offer each and every one of you a most sincere and heartfelt thank you.

At the beginning of the year, when I wrote my first column for this magazine, I shared that it was important to me for attorneys to “connect” in person: to get out of their offices, put down their smart phones and come together to regenerate the in-person “big-small town” collegiality our legal community has always been known for. Whether my message was heard, or whether you just needed to get out of your offices to enjoy some of our envied San Diego weather, I appreciate all of you who got out, joined in and made meaningful connections, and contributed to our dialogue with one another throughout the year.

I can’t tell you how many of you I have had the good fortune of connecting with this year, at an astounding number of legal community events, at the courthouse, over countless plated lunches, before-work coffees, after-work cocktails, at meetings, at Continuing Legal Education seminars, at mixers, at our law schools and even just walking down the street. It has been a pleasure getting to know all of you and hearing about what you do to contribute to the great strength of our legal system.

2011 has been a jam-packed year for the CONNECT campaign, and our Bench-Bar connection has been one of the most visible. We had unprecedented judicial turnouts at our signature Bench-Bar events, including our Judicial Reception and annual Bench-Bar Luncheon, in addition to our community service initiatives: serving lunch to seniors and the annual Beach Clean Up. Our judicial officers really made the time to connect with the Bar this year, and while I am incredibly appreciative of their efforts, the words “thank you” once again seem inadequate.

We embraced the concept of connecting wholly as an organization and a community, with attendance at a record number of events, including our unique signature programs such as Dialogue on Diversity, our Law Student programs and our newly revamped golf tournament at the Rancho Bernardo Inn. As the backbone of our organization, our nearly 70 sections, committees and divisions hosted hundreds of events and provided hundreds of hours of high-quality, low-cost CLE programming. The leadership of our sections, committees and divisions is one of the driving forces behind our success, and I am grateful for all that they have done this year to educate and serve.

Thank you to my fellow Board members for all of their hard work, dedication and service during the year: President-Elect Marvin Mizell, Past President Patrick Hosey, Vice Presidents Robert Gerber, Duane Horning, James Lund, Marcella McLaughlin, Gita Varughese, Treasurer Jon Williams, Secretary Christopher Alexander, Directors Jeffrey Joseph, Sheryl Graff, Nadia Bermudez, Alex Gruft, Patrick Ojeil, Nory Pascua, Victor Torres, Thomas Penfield and NLD Representative Anna Romanskaya. This board is smart, thoughtful, hard working, meticulous and giving, and their work this year has made a true difference to the organization.

And for managing all of the logistics behind all of the thousands of connections, thank you to Ellen Miller-Sharp, the SDCBA’s Executive Director. Words truly cannot express my gratitude for Ellen and her talented and diligent staff, for all that they do to keep us moving in the right direction and to ensure that we are firing on all of our proverbial cylinders each day.

I will likely forget to thank a few people, and for that I apologize. But I would be most remiss if I didn’t recognize my brilliant and beautiful wife, Nicole, who allowed me to attend an incredible amount of legal functions throughout the year and accompanied me to an incredible amount of legal functions, with her amazing grace and style and a consistent smile on her face. I would not have been able to dedicate so much of myself to the SDCBA without her at my side. I feel blessed every day that she agreed to marry me.

And I also owe an immeasurable debt of gratitude to the District Attorney’s Office, particularly Rear Admiral Patrick McGrath and District Attorney Bonnie Dumanis. Bonnie has always advocated for the Bar Association’s mission and has allowed me to make my service to the SDCBA a priority. Patrick McGrath is a leader and a mentor who has allowed me to grow as an attorney and taught me the importance of leading gracefully. My colleagues at the District Attorney’s Office continue to inspire me with all of their hard work and dedication toward protecting the victims of San Diego County.

I am proud to pass the gavel on to next year’s president, who will work hard to ensure the SDCBA is the best it can be. I have every confidence that my respected colleague Marvin Mizell will continue to lead this amazing organization down a path toward continued success.

Wishing you all the best, Marv!
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Turning the Technology Page

The future looks likely to produce a lot less paper for the San Diego Superior Court

No longer do most attorneys use traditional books for research or typewritten letters for communication. These and other aspects of a law office have been sped up by e-mail, fax, voicemail, smart-phone communications, chat capabilities, text messaging and related technology.

“There has been a revolution in the impact of technology on the legal profession,” says San Diego Superior Court Judge Jeffrey Barton of Department 69. “Communication is much more instantaneous than in the old days of handwritten telephone messages and letters in the mail. Things move faster and more efficiently now. The downside is that there is sometimes less deliberation in the process.”

Judge Barton, chair of the San Diego Court Technology Committee, has long been an advocate of technology and its integration into the workplace. Under the leadership of Presiding Judge Enright, the San Diego Superior Court has implemented a conversion to a “green” paperless program, including e-filing and imaging components. (See “The Case for E-Filing” in the September/October issue.) For the latter, documents are filed with the court, scanned by court personnel, and the image becomes available electronically to judicial officers, court staff and the public as provided by law. As of November 1, the court has implemented imaging in all 15 Central Division Civil Independent calendar departments. Four additional Central Division departments will implement imaging in December. Plans are also being made to roll out imaging in the remaining departments downtown, and in the East County and Probate Divisions early next year. The court plans to implement the first phase of a simultaneous e-filing project in mid-2012.

The e-filing and imaging conversion mark an important advancement in technology and productivity for the local court. However, not all paper will disappear from the court. Legal research by clerks and judges will still be partially carried out using traditional books.

“I will still use paper, primarily with secondary materials such as the three-ring-binder series like Civil Procedure Before Trial,” says Judge Barton. “There are times when flipping the pages in an area you are interested in, or going through a detailed table of contents, leads to things that are helpful and also helps the thought process in a way unlike online research results. On short, isolated issues, I can find things faster in Jefferson’s than I can online.”

While books remain a useful resource, Judge Barton says technology has greatly improved overall productivity within and outside of his department.

“I have an online research capability app on my iPad, so I can do research from home or on the road. I also work on e-mails and draft rulings remotely.” However, he says lightheartedly, “My Boolean search skills (or lack thereof) occasionally give me results with more hits than I would care to share and do little to advance progress on the problem I am looking into. Plain language, on occasion, is only slightly better.”

Technology provides tremendous advantages, but as Judge Barton advises everyone: “Knowing how to not send ‘heat of the moment’ e-mails is an equally important skill.”

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E-Filing Elsewhere
Besides California, 20 other states have adopted some form of electronic filing and paper-reducing procedures (23-APR CBAR 50, “The Move Towards Electronic Filing”). One of the first efforts nationwide to achieve a paperless courthouse occurred August 1990 in a probate department of the Orange County Superior Court, which purchased a $1.3 million computerized document-processing system (articles latimes.com/1990-08-02/business /fI-1990_1_superior-court).

IMAGING DEPARTMENTS
Departments participating in the Imaging Project as of November 1:

Department 60
Judge Lisa Foster
Department 67
Judge William Dato

Department 61
Judge John Meyer
Department 68
Judge Judith Hayes

Department 62
Judge Ronald Styn (non-e-file cases)
Department 69
Judge Jeffrey Barton

Department 63
Judge Luis Vargas (non-construction defect cases only)
Department 70
Judge Randa Trapp

Department 64
Judge William Nevitt Jr.
Department 71
Judge Ronald Prager (non-e-file cases)

Department 65
Judge Joan Lewis
Department 72
Judge Timothy Taylor

Department 66
Judge Joel Pressman
Department 73
Judge Steven Denton

Department 67
Judge Richard Strauss

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Making a Splash

A swimming retired judge and a surfing deputy attorney general share the water

To hear retired Judge Tony Joseph tell it, his rough-water swimming habit is no big deal. “There are a ton of ocean swimmers,” he says, “and many are involved in the legal profession.”

But to the partner who paddles alongside Joseph on a surfboard, keeping him on course in longer races, 74-year-old Joseph (pictured below) is an impressive character.

Tim Patterson, a supervising deputy attorney general in the California Department of Justice’s Environmental Section, met Joseph in the mid-1970s when both worked in the attorney general’s office.

“He loves the ocean and so do I, but I’m a surfer,” Patterson says. “Tony and I used to go surfing way back when, and then he got into the rough-water swimming.”

Patterson began accompanying Joseph on his rough-water swims in the ocean and bays in 1993, and the two have swum and paddled together every summer since. Formerly, Joseph would complete seven or eight rough-water swims every summer, though he’s “cut back” to six or seven in recent years. He’s competed in the La Jolla Rough Water Swim, the Oceanside Pier Swim, the Newport Beach 2-Mile Pier-to-Pier Ocean Swim, the Alcatraz Sharkfest Swim and Coronado’s Fourth of July Rough Water Swim, and he places about half the time. He was the oldest swimmer in this year’s Alcatraz event, he says.

Joseph’s routine includes swimming most days with the UCSD Masters swimming program. But the open water calls to him.

“You’re with the natural elements,” he says. “There are large waves. There’s lots of fish life. That’s all part of the experience.”

The large waves are the reason for the partner. “Tim paddles along on his surfboard and keeps me going in the right direction during races,” Joseph says, noting that while some shorter races don’t allow paddlers, many longer races require them. “We used to do the 5-mile races. Tim really earned his keep then.”

The paddling isn’t nearly as strenuous as swimming, Patterson explains, but he says he gets almost as wet: “His left arm splashes down, and I get splashed constantly.”

“The swimmer can’t really see very well,” he adds. “The water’s always moving up and down. It’s not like a swimming pool. The paddler is up higher and can see better. Without a paddler, the swimmer has to interrupt his stroke to look up and see where he is.”

Joseph, who sat on the bench of the San Diego Superior Court from 1979 to 1999 and served terms as supervising judge of Family Court and of the North County Division, says rough-water swimming is as good for the brain as the body.

“When you’re swimming in the ocean, it’s easier to think things through,” he says. “It’s very repetitive, you have your own stroke, and it gives you time to think.”

According to Patterson, though, Joseph has an unusual habit when swimming.

“Tony is unique among swimmers,” he says. “He counts every stroke he takes in his head. He’s figured out how many strokes it takes to go a mile or a half-mile, and that’s how he figures out where he is. Can you imagine counting to several hundred or thousand? Everybody is amazed he does that.”

Jodi Cleesattle (jcleesattle@gmail.com) is a deputy attorney general with the California Department of Justice.
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Marvin Mizell on Skyline Drive, walking the path across the street from his alma mater, Morse High School.
On December 2, Marvin Mizell will become the 103rd President of the SDCBA, and the Association’s first African-American male president. Mizell’s path to the presidency, much like his leadership style, has been steady, smart and consistent.

Mizell, who works on felony criminal appeals for the Attorney General’s office, may be an unassuming man, but there is no mistaking that he has been and will continue to be an effective and successful leader in San Diego. Described by his peers as deliberate, focused and decisive, Mizell is looking forward to working to pave the future path for the 112-year-old SDCBA throughout 2012.

“San Diego’s legal community is thriving, but this is also a time of challenges and changes for both our legal community and the greater San Diego community at large,” Mizell says. “I look forward to leading the charge as we consider our next steps and take this journey together toward future success.”

Mizell’s peers have no doubt that Mizell will efficiently lead the charge, with his strong will, unparalleled integrity, quiet confidence and passions for ensuring access to justice, supporting diversity and inclusion-related causes and for ensuring opportunities for San Diego’s youth.

“Marvin has dedicated his life to public service,” says outgoing SDCBA president Dan Link. “He is devoted to the San Diego legal community and to ensuring access to justice for all. It is no surprise that he is leading one of the largest, most powerful legal organizations in the state of California.”

Others who have served with Mizell on the SDCBA Board of Directors agree with Link’s assertion. Mizell, who was elected to the Board during past president Jerrilyn Malana’s term, is “a thinker, who is very analytical in his decision making and who consistently attacks challenging problems head-on,” according to Malana.

Prior to his election to the Bar Board of Directors, Mizell served as the President of the Earl B. Gilliam Bar Association (EBGBA) in 2002. As President, Mizell wrote a resolution against Proposition 54, the Racial Privacy Initiative, which was adopted by many legal organizations in San Diego, including the SDCBA. He was honored for his work on Proposition 54 as the recipient of the EBGBA’s Frederick Douglass Community Service Award in 2003.

Mizell then became involved with the SDCBA’s Ethnic Relations and Diversity Committee and was Chair of that committee in 2006. As Chair, he helped to write the SDCBA’s Diversity Pledge, which encourages legal employers and entities to sign a pledge to implement relevant goals and practices to improve and retain diversity. Today, more than 40 legal employers and entities have signed the pledge.

Mizell was elected to the SDCBA Board in 2007. While serving on the SDCBA Board, Mizell has been responsible for, among other things, overseeing protocols and activities for the SDCBA’s sections and commit-
Marvin gives 100 percent of himself to every task and every challenge that comes his way,” says attorney Tom Buchenau, who formerly served on the Board of Directors with Mizell. “Marvin has an incomparable ability to analyze every aspect of an issue and make smart, well-thought-out decisions. I know he will serve our legal community well in the coming year. ”

Mizell was admitted to the state bar in 1997 and began working for the California Office of the Attorney General one year later. He has remained at the Attorney General’s office ever since, responding, as a state prosecutor, to felony criminal appeals in state appellate courts and habeas corpus petitions primarily in federal court. Mizell has, with success, briefed hundreds of cases, argued three cases in the Ninth Circuit Court of Appeals and argued two death penalty cases in the California Supreme Court.

“As a deputy in the Criminal Division of the California Attorney General’s Office, Marvin has always and enthusiastically taken on new challenges to hone his legal and appellate advocacy skills,” colleague Peter Quon says. “Besides being a skilled appellate prosecutor, Marvin also tried felony cases during the six months he served as a specially appointed deputy district attorney in the Superior Court division, North County. “Marvin is a mentor to the law students in the Attorney General’s internship program and to students at Morse, his former high school. He readily shares his enthusiasm for the practice of law with those students.”

Mizell’s storied path to success began in the blue-collar southeast San Diego neighborhood of Skyline, where he grew up. Mizell, 42, who was born in Paradise Hospital in National City, is the youngest son of a stay-at-home mom and a naval chief petty officer who have been married for nearly 45 years.

“My father’s hard-work ethic and my mother’s love and compassion led directly to who I am today,” says Mizell. Mizell was quickly recognized as the smartest kid at Fulton Elementary School, a distinction that wasn’t particularly popular with his classmates. While still doing well academically as an eighth grader at Keiller Middle School, Mizell balked when his Samuel F.B. Morse High School teacher Bob Lunsford suggested he enroll in Morse’s independent studies program — the highest track at the school.

“I remember thinking there was no way in hell I would let them put me in that program as a ninth grader at Morse,” says Mizell. Mizell was quickly recognized as the smartest kid at Fulton Elementary School, a distinction that wasn’t particularly popular with his classmates. While still doing well academically as an eighth grader at Keiller Middle School, Mizell balked when his Samuel F.B. Morse High School teacher Bob Lunsford suggested he enroll in Morse’s independent studies program — the highest track at the school.

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Q AND A WITH MARVIN MIZELL

By Genevieve Suzuki

What made you decide to run for San Diego County Bar Association President? First and foremost, I am lucky enough to have the support of the AG’s office and my family. My hope is that my presidency will mean something to this community, and that those who have seen and helped to guide my path will help me to inspire our youth to believe in the fight for justice and to also believe that they can become an attorney regardless of their station in life. Most importantly, I want my son, who is 12 years old, to realize, by my example, that there is nothing in life he cannot accomplish if he puts his mind to it and works hard.

What are your goals for your presidency? The SDCBA is a solidly run organization with an outstanding board of directors, emerging young leaders and dedicated and talented chairs of sections and committees, as well as staff. Thus, the first goal is always to leave the organization in as good a shape as you found it. Beyond that, my main goals are to finalize or implement plans in regard to our current building; assist in our capacity as lawyers with working toward increasing funding for the courts; increase participation in SDCBA and our legal community’s programs that help young students; to do more for our members who are underemployed or unemployed; to increase membership across the legal spectrum; and to improve access to justice in any way possible.

What do you see as some of your challenges as President? Among our challenges will be figuring out how the Bar Center will operate in the future and what needs we will have for our future home, in addition to supporting access to justice through assistance with court funding. Of course, one of the greatest challenges will be the inevitable problem that arises that I cannot foresee. So, ask me about six months into my presidency; then I can tell you what the greatest challenges have been.

How will you overcome the challenges? I will overcome the challenges with the assistance of the SDCBA board and staff and by being calm, deliberate, thorough and decisive. Maybe I’m crazy, but I actually look forward to it.

What would you like to say about your tenure as President when it’s over? I want to be able to say that I performed the duties of president to a high level, that I achieved my goals, particularly in inspiring young students, and that I had a part in making the SDCBA an even better organization than it already is.

and taught by Bob Lunsford in that program, I probably would never have even thought about attending college,” says Mizell.

His first insights into the legal system came at age 16, when one of Mizell’s fellow Morse football teammates became angry and “sucker punched” him while running plays without gear. Mizell’s jaw was broken in two places.

Mizell’s parents hired attorney Robert Francavilla to represent them in a suit against the school and school district. “This was my first experience with the legal system, outside of what I had seen on television,” Mizell says. Ironically, part of the settlement he received helped to fund his college education. “We did not really have money for college, and yet we weren’t poor enough for need-based financial aid,” Mizell says.

While an undergraduate at San Diego State University (SDSU), Mizell’s passion for learning was truly ignited. As the first person to attend college in his family, Mizell felt it was incumbent upon him to maintain his drive to succeed and prove that success was within his grasp. Even with that drive to succeed, Mizell stunned himself by doing so well his first year at SDSU. “From that point forward,” Mizell says, “I expected excellence of myself.”

In 1992, Mizell became the first person in his family to graduate from college, graduating from SDSU cum laude with a bachelor’s degree in sociology. “After I graduated, I became interested in law school only because one of my SDSU professors, Dr. Norman Chambers, suggested it,” says Mizell.

After a tough academic year as a 1L at the University of California, Davis, School of Law, Mizell says he seriously considered not returning to law school. Mizell, who has personally vowed to never walk away from a challenge, however, had an altruistic reason for pushing through and graduating.

“I feel like I got an opportunity that very few people who grew up in southeast San Diego had. I felt like ‘if I flunk out, I flunk out—I’m not going to quit.’ Luckily when I pressed the gas, I had another level to go to, and did much better my last two years at Davis,” Mizell says. He hopes that his story will help to inspire other similarly situated law students.

One of Mizell’s mentors throughout his legal career, retired Superior Court Judge Joe Littlejohn, confirms that quitting was never a real option for Mizell, who he says is equally passionate about serving the legal profession and serving as a role model. “The legal profession and San Diego County will be well served during Marvin’s term in office. His dedication to the SDCBA and his commitment to his chosen profession will make his tenure a labor of love,” says Judge Littlejohn. “There is nobody better suited to lead the County Bar than someone with such an intrinsic knowledge and passion for our legal system, the San Diego community and the pursuit of justice.”

Mizell is excited about beginning his term as President, stating: “I know that it will be a challenge, but I’m looking forward to all of it. I have fortunately been able to handle every challenge in my career, and I am confident that this will be a year full of accomplishments for the SDCBA.” Mizell is encouraged by the love and support of his family, including his parents, who still live in San Diego, his wife, Lucy, and their 12-year-old son, Nathan.

“I’m not sure what is going to come next, but I’m excited about all that I will experience along the path,” says Mizell. “This is a great time for the SDCBA, a time of challenges and triumphs, and I’m inspired by all that we will do together throughout this journey.”

Genevieve Suzuki (gancog@yahoo.com) interviewed Marvin Mizell for this article.
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Casa de Esperanza
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Center for Community Solutions
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Children’s Advocacy Institute at the University of San Diego
Coming Home to Stay
The Community Resource Center
The Crime Victims Fund
Elder Law and Advocacy
Hannah’s House
Home of Guiding Hands
Homeless Court
International Rescue Committee
Kids Included Together
Kids Turn San Diego
La Casa, Inc.

Labor Training and Community Development Alliance
Las Villentas
Legal Aid Society of San Diego
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The Enright Inn of Court takes the spotlight in this issue, as San Diego Lawyer continues its series about the local Inns of Court.

PHOTOGRAPH BY BARRY CARLTON


INSIDE

JUDICIAL INSPIRATION

The Honorable William Enright is the extraordinary force behind the American Inns of Court movement in San Diego

BY HON. MAUREEN HALLAHAN

“There is no greater honor than to have the Inn named after me.” This quote from retired Judge William Enright reflects the importance of the American Inns of Court movement in his career. He says, “The American Inns of Court, with its monthly meetings, is the only mentoring program actively assisting young lawyers as they come into the practice of law.”

As has been noted in other articles in this series, the American Inns of Court concept began as a discussion in the late 1970s among the U.S. members of the Anglo-American Legal Exchange of lawyers and judges, exploring the idea of creating a program similar to that in existence in England to train young lawyers by fostering excellence, integrity, ethics and collegiality.

Then-Chief Justice Warren Burger was concerned about what he believed was becoming a lost art: the art of advocacy. He was also troubled that there was no training in law equivalent to the residency program in medicine to teach the advocacy skills necessary to assure the integrity and continuity of our judicial system. And so, in 1983 he formed a committee of the Judicial Conference of the United States to explore the American Inns of Court concept, which he believed could assist with advocacy training and promote the goals of legal excellence, civility, professionalism and ethics on a national level. The committee agreed, and the American Inns of Court was formed.

Judge Enright, in addition to being one of the most influential figures in the bench and bar in San Diego’s history, is the force behind the American Inns of Court in San Diego. In the early 1980s, he was tasked by his colleague, Judge Howard Turrentine, to review the American Inns movement and determine if such a concept would be viable here. Judge Enright satisfied himself that an Inn of Court would be a valuable local addition and provide the necessary mentoring to young lawyers. He led a committee of San Diego judges and prominent trial lawyers in exploring the formation of an Inn of Court in and for the San Diego legal community. Without the respect and admiration of his colleagues on the bench and the bar, Judge Enright would not have been able to convince the best trial lawyers and judges to devote their time, energy and expertise to this endeavor. He successfully conveyed to all involved not only his dedication to ethics, integrity and compe-
“The American Inns of Court seek to maintain and elevate professionalism, civility and ethical standards in our legal community. We strive to advance advocacy skills. It is the only organization where the torch is being passed to the next generation of trial lawyers.”
Hon. Kevin Enright
Presiding Judge
San Diego Superior Court

“As one of the founding members, I was honored to be part of a group that bears the name of a giant in the legal community: Judge William Enright. The judges and lawyers who were asked to be founding members represented diversity among the bar and judiciary. We have maintained that diversity 20 years later. Our Inn was the first Inn to ensure that the members have dinner in connection with the meetings. The act of ‘breaking bread’ together creates an atmosphere of community that we strive to maintain.”
Hon. Irma Gonzalez
Chief Judge
United States District Court, Southern District of California

“My first Inn meeting was in 1992. The program focused on voir dire, and the new Inn members served as jurors. Doug Reynolds was a demonstrator, and I was absolutely dazzled by his abilities. Membership has been rewarding on many levels, and I know it has made me a better lawyer.”
Susan Hack
Higgs Fletcher & Mack

“What’s so unique to the Enright Inn is the diversity of personalities and wealth of legal and life experiences. From appellate justices to lawyers with anywhere from five to 40 years of practice to the brand-new rookie lawyer, we have it. This breadth of legal and life experiences manifests itself at each meeting in such interesting ways that no matter what your level of practice you always leave the meeting with something useful—a pearl!”
Vincent Bartolotta Jr.
Thorsnes Bartolotta McGuire

“The stellar members of the Enright Inn plan meetings that are both fun and educational. At our last meeting Judge Eyherabide dressed up as Nancy Grace (complete with blonde wig!). With interesting presentations, and our signature last meeting at Petco Park, our Inn has it all—fun, camaraderie and CLEs!”
Angela Mullins
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tence but that those ideals were furthered by the American Inns movement.

In 1983, Judge Enright and his committee formed the first Inn of Court in San Diego, the Louis M. Welsh Inn. He was its first president and held that position until 1989. He is still an active member and regularly attends meetings and events.

The Welsh Inn was extremely successful, and its membership grew rapidly. Because of this, Judge Enright and others on the Welsh Executive Board believed the formation of another Inn was appropriate. In 1991, Judge Enright called upon Justice Howard Wiener (now retired) to spearhead that effort. Justice Wiener assembled prominent lawyers and judges to assist, including Virginia Nelson, Susanne Stanford, Judge William McCurine, Judge Kevin Midlam and Judge James Milliken. It was this core group that founded the William B. Enright Chapter of the American Inns of Court in 1991. This year we celebrate our 20-year anniversary.

Members of the Enright Inn of Court carry a sense of responsibility to uphold Judge Enright’s commitment to excellence, professionalism, ethics and mentoring. Virginia Nelson expressed her pride of our membership this way: “Ever since our organizational Masters meeting on February 15, 1991, the Enright Inn of Court has been a source of creative educational experiences, camaraderie and first-rate mentoring. Our namesake, Judge Enright, returns year after year to inspire and encourage our membership, to stimulate, debate, challenge and fortify our profession so that we can be the best lawyers we can possibly be.”

The Enright Inn is the largest Inn in San Diego County, with more than 160 members in essentially three categories: Masters (judges and lawyers with more than 10 years of experience), Barristers (lawyers with 10 or less years of experience) and Associates (less than five years). The Enright Inn does not have law student members or involvement with law schools.

Membership is divided into seven teams, each of which includes Masters, Barristers and Associates. The teams are led by two Masters, and the programs are planned a year in advance. Each team meets and prepares a program to be presented to the total membership at an evening meeting, once a month. The meetings begin with a social gathering at 5 p.m.; the program begins at 5:30 and ends at 7. We promote collegiality by serving beverages beforehand and a buffet dinner during the meetings.

Great programs are the hallmark of the Enright Inn. The programs are unique, educational and entertaining, and we try to be innovative and current in our topics. Last year we used a hypothetical that had everything—movie stars, a college football quarterback with a promising NFL career, the opening of a new restaurant in La Jolla, drinking and driving, a car accident resulting in serious injury—and included issues involving insurance and civil and criminal liability. In the hypothetical (drawn from a case that was pending before the court of appeal), a grand jury had returned an indictment for felony drunk driving, and a personal injury action had been filed. The programs used this hypothetical to discuss everything from grand jury proceedings to parallel criminal/civil proceedings to handling the press to trial etiquette.

We began this year with a lively program on “Sex and Murders” with a guest

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THE INNS

performance by “Nancy Grace,” played by our own Judge Eugenia Eyherabide, discussing with the panelists the tactics in prosecution and defense of recent national cases. We end each year in May with our signature Petco Park program, which includes panelists and sports figures discussing some aspect of sports law, a ticket to that night’s Padres baseball game and Friars Bucks for dinner at the ballpark.

“The opportunity to participate over the years in the Enright Inn of Court has been an extraordinary experience,” says Master and Executive Committee member Thomas Sharkey. “The monthly hands-on educational programs on a variety of legal topics and issues are a unique, practical method to learn and maintain essential skills necessary to the successful practice of law. In addition, participating in the Inn’s activities provides an opportunity for new as well as more experienced lawyers and judges to develop respect for, and lasting professional relationships with, one another. I am grateful and proud to be a member of the Enright Inn of Court.”

The Enright Inn benefits members in different ways. For the judges, who can become isolated and detached from lawyers, it is a proper and refreshing way to be exposed to the bar. For the Masters, it is an opportunity to give back and to influence a future generation of lawyers, providing insight and experience through teaching and the inevitable and entertaining “war stories.” For the Barristers, the next leaders of the legal community, it is a place to learn from the Masters and select and adapt the methods and approaches to litigation that suit their personal style and legal specialty. For the Associates, the future of the profession, it is a time to enjoy the personal and direct interactions with leaders in the community. In turn, Associates and Barristers give Masters insight into what the next generation of lawyers is doing and thinking.

The Enright Inn is unique, colorful and dedicated to the principles of the Inn movement: ethics, integrity, mentoring, collegiality and advocacy. As Master and Executive Committee member Justice Judith Haller says, “With Judge Bill Enright as our namesake, we have always known our focus: Mentor new members of our profession; strive for excellence; share our collective wisdom and keep learning. This year promises to be as rewarding and enjoyable as the past 20.”

Judge Enright’s continued participation in our Inn is inspiring to our members.
Although he has long been on senior status with the United States District Court, he remains active and committed to the principles that govern his life and career in the law. His respect for all people, his dedication to the rule of law, his demand for the highest ethical standards and his continued commitment to mentoring live on in those whose lives and careers he touches. We strive to carry this message in every program.

If you are interested in finding out more about the Enright Inn of Court, please visit http://www.innsofcourt.org/Content/InnContent.aspx?id=204. We look forward to sharing our information with you.

Hon. Maureen Hallahan is a Superior Court judge and the President of the Enright Inn of Court.

Thank you to Justice Howard B. Wiener (Ret.) and attorney Susan Hack for their contributions to this article.

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If you’ve ever been called to jury duty downtown, chances are you’ve heard one of Judge David Gill’s speeches to potential jurors. Why does he do it, decade after decade?

BY ELIZABETH BLUST
PHOTOGRAPH BY MICHAEL YOUNG

Many of us have been there. We get our summons for jury duty and sit in the jury lounge for hours—only to be dismissed. “Why did I bother?” we think. But Superior Court Judge David Gill asks us to think otherwise.

“A lot of people don’t appreciate how their presence can settle cases,” says Judge Gill. They may think they’ve wasted their time, but he says the pressure of knowing that the jury is right there, waiting, prompts many last-minute settlements.

A judge since 1974, Gill has seen his share of cases that do go to trial, of course. Early in his judicial career, he sought to relay the importance of jury service to the jurors themselves.

“Shortly after joining the Superior Court (in 1979),” Gill says, “I decided to listen in on a jury commissioner’s speech to the potential jurors in the jury lounge, mainly so I wouldn’t say anything inconsistent to the jurors once they were in the courtroom.

“I sat in on [longtime Jury Commissioner] Gerry Stevens’ talk. Gerry was legendary in juror circles; she was a great ambassador for the justice system. I asked if she would like a judge to be...
Gill began giving a brief speech to the potential jurors each morning in the jury lounge and has been doing so ever since. He doesn’t remember whether he got approval from the presiding judge; he thinks he just took it upon himself to do it.

“I’m not naïve enough to think that many people arrive enthusiastic about jury duty. If they’re too enthusiastic, we wonder if they’ve got an agenda or an ax to grind. Sometimes I get there early and watch people come in,” Gill says. “They immediately go to the farthest corner, like we won’t see they’re there.

“My goal is to break the ice, put them at ease.” He reminds his audience that the trial system requires a mutual effort from attorneys, judge and jurors—and that it’s the process, not the outcome, that matters. He knows of at least one attorney who came to jury duty thinking “How can I get out of this?” — but “then heard my speech and remembered how important this is.”

Having given his speech almost every weekday for more than 30 years, Judge Gill strives to keep his material fresh. He talks about the Padres or the Chargers during their seasons; he uses the Sunday Union-Tribune’s “This week in history” or other sources for items of historical interest; and he draws from current events and life experiences. “I’m constantly looking for what’s topical to weave into my remarks,” he explains, “but the basic message stays the same. We want to be sure we provide a process that facilitates substantial justice.

“For most people, their only contact with the courts will be through traffic court, small claims and jury duty,” Gill says, “so we have only a few opportunities to make a positive impression on the public and to build the court’s reputation in the community.”

Over the years, San Diego County’s jury system has evolved in several ways—shorter time commitments; summonses drawn from state ID and driver’s license holders as well as from registered voters; elimination of categorical exemptions of attorneys, clergy and doctors—to make the experience more pleasant for jurors while also providing a richer, more diverse cross-section of the population for the jury pool. “Virtually all eligible people can now receive a summons,” Gill says. But the “one day or one trial” system also means that the court must issue more summonses to get the yield it needs, so people get called more often than in the past.

“Most people who get picked say good things,” says Gill. “We receive relatively few complaints—mainly from people who sat in the jury lounge all day and didn’t get picked.”

With all his appearances before the jury pool, Judge Gill has become something of a celebrity. “My wife kids me because when we’re out and about—getting pizza, going to a Padres ballgame, church, wherever—people will give me that ‘Where do I know that person from?’ look.” Sometimes they’ll ask if he’s a judge. One former juror asked him, “Aren’t you that comedian from the jury lounge?”

While Gill knows that humor helps his message resonate with jurors, he and the half-dozen other judges who speak to the jurors if Gill is unavailable take their responsibility seriously. He is chair of the Judges’ Jury Committee, a standing committee that provides policy guidance and oversight for both the daily trial jury summons process and the annual selection of the grand jury.

“We’re the envy of a lot of people [in other jurisdictions] who come here to observe. They can’t get their judges to participate,” he says. “It’s a tribute to the quality of the court staff that we don’t have many problems. We’ve become a model nationwide for jury services.”

So next time you get called for jury duty, take to heart Judge Gill’s message: “Most of what you do as jurors is common sense and basic fairness.” When citizens take the time to serve on a trial jury, they are serving the community and ensuring justice—even if they sit in the jury lounge and never get called.

Elizabeth Blust (egblust@blustlaw.com) is a sole practitioner in San Diego.
Michael Young (plandiego@san.rr.com) is an urban planner in San Diego.
San Diego Lawyer is tracking the construction of the new Federal Courthouse. This photo was taken in October 2011, with an inset of the Hall of Justice as seen from the construction site. Barry Carlton (bjcarlton@cox.net) is a supervising deputy attorney general with the California Attorney General’s office.

ALL RISE
PHOTOGRAPHS BY BARRY CARLTON

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For attorneys, social networking presents an ethical obstacle path.

BY PAMELA WILSON
Linkedin, Twitter, Facebook—social networking tools proliferate faster than spam clogs an inbox. These rapidly spreading platforms pose challenges for lawyers as highly regulated professionals. Unlike most business owners, lawyers must follow complex ethical rules regarding advertising, solicitation of business, formation of attorney-client relationships and confidentiality communications. Yet promoters of social media seem blissfully unaware of their prescriptions for electronic marketing are mostly inapplicable to attorneys.

Marketers are sometimes oblivious to the stringent rules governing communications with clients, prospective clients, and the public. Many such gurus overlook the ethical rules lawyers must follow, which renders most advice on using social media of little value to attorneys—even dangerous to apply.

Some advocates suggest the conundrum is not as daunting as it appears: Lawyers need only identify key Rules of Professional Responsibility and apply them to social media. Former San Diego consumer fraud attorney Tracy Thrower Conyers is passionate about the value of Internet marketing for lawyers. “You have to understand your relevant professional responsibility rules,” she advises. “It’s the same rules with new tools. You just have to use common sense.”

John Nevius, a professional engineer and attorney at Anderson Kill & Olick, studied social networking because he enjoys pursuing cutting-edge strategies to reach potential clients. “At first, I was a little taken aback when I got these form requests to join someone’s circle,” he recalls of the first invitations he received for Linkedin. “But you can’t help someone if they don’t know who you are.”

For years Nevius published articles in legal and trade journals to demonstrate his expertise to prospective clients. More recently, he has embraced social media to promote his law practice. “Even though we are dealing with new technology, it’s not like we need a new set of rules,” he says. “If you think about what you are doing, the old rules still apply.”

Nevius and social media professional Kris Ruby jointly presented a San Diego County Bar Association webinar titled “Establish Your Personal Brand by Utilizing Social Media.” The two have spoken on new marketing methods to many lawyers’ groups. Ruby, of Ruby Media Group, contends it is crucial for attorneys to post a professional profile on Linkedin.

“There is more trust built with Linkedin than with a firm bio,” claims Ruby. The site encourages client testimonials and allows viewers to read profiles of other professionals to whom a lawyer is connected. “You get a more well-rounded perspective of who someone is,” says Ruby. “And typically Linkedin is more concise and readable” than a law firm’s website—but makes it easy to jump to the firm site for more detailed information.

California Rule 1-400 and California Business and Professions Code section 6157 et seq. address advertising and solicitation. Rule 1-400 states, “A ‘communication’ means any message or offer made by or on behalf of a member of the Bar concerning the availability for professional employment of a member or a law firm directed to any former, present or prospective client.”

The State Bar Board of Governors’ Standards for 1-400 provide in part that a “communication” that contains testimonials about a lawyer must include an express disclaimer that the endorsement does not constitute a guarantee or prediction of the outcome of the reader’s legal matter. This requirement can be unwieldy to implement on social media sites. To comply with 1-400, an attorney who asks a contact to write a recommendation must advise the endorser to include a disclaimer, such as

“This testimonial or endorsement does not constitute a guarantee, warranty or prediction regarding the outcome of your legal matter.” The recipient of a recommendation cannot edit an endorsement; the disclaimer must be included by the person giving the reference. Any advertisement directed to the general public, regardless of the medium, is subject to 1-400. A quick review of dozens of lawyers’ Linkedin pro-

Deputy Public Defender Mary Jo Barr finds Twitter a rich source of information crucial to case investigations.

“You can get to people’s information without actually having to say ‘Be my friend.’ Just follow the breadcrumbs.”

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“Even though we are dealing with new technology, it’s not like we need a new set of rules,” attorney John Nevius says. “If you think about what you are doing, the old rules still apply.”

yers who have been around a long time, for different reasons.”

New lawyers, Casey finds, “don’t think about professional responsibility, because a lot of law students have never had a professional life.” He helps aspiring lawyers recognize that “Your professional life is different from your personal life.”

Cal Western students identify key ethical rules that must be applied to social networking, such as the duty of confidentiality. Says Casey, “There are new challenges . . . You are required to take ‘reasonable’ steps to ensure confidentiality. But what was reasonable in 2001 might not be reasonable in 2011.”

The California State Bar has not issued advisory opinions specifically applying Rules of Professional Conduct to social networking. At Cal Western, students review opinion letters from states that have issued relevant guidance. The State Bar of Texas requires preapproval, Casey says, for any advertising other than “tombstone” information limited to a law firm’s contact specifics. “If you updated your Facebook with ‘I just had a jury verdict,’ that could be considered an advertisement about a past success and subject to prereview.”

Another crucially important ethics requirement is Rule 1-400’s admonition that communications from lawyers may not contain any untrue statement or any matter that is false, deceptive or which tends to confuse, deceive or mislead the public. It is clear that any content an attorney posts electronically must be scrupulously accurate. Less obvious is the fact this rule also applies to what lawyers may and may not do when conducting informal discovery on the Internet.

Bar associations disagree whether lawyers can hide their identity or motives when attempting to gain information by “friending” strangers on social media sites. New York University School of Law Professor Stephen Gillers, writing in a recent edition of the ABA Journal, cites a 2009 opinion by the Philadelphia Bar Association’s ethics committee that concluded attorneys and their agents must fully disclose motives for making a “friend” request. In contrast, Gillers adds, the New York City
Bar concluded in a 2010 opinion that an attorney or agent who uses his or her real name and profile to send a “friend request” to an unrepresented person need not disclose the reason for the request.

The San Diego County Bar Association recently issued an ethics opinion siding with Philadelphia. SDCBA Opinion 2011-2 says a plaintiff attorney may not send an innocuous “friend” request to high-ranking executives of a represented corporate defendant to gather information critical of the company. Doing so violates the rule against lawyers directly or indirectly contacting parties an attorney knows are represented by counsel (Rule 2-100). The hypothetical assumes the high-ranking executives qualify as part of the represented corporation due to their roles at the company. The lawyer’s case-related motive for seeking access to executives’ restricted web pages qualifies the request as a communication “about” the plaintiff’s case. Even though the lawyer makes the “friend” request in his/her true name, nondisclosure of his/her motive arguably violates a lawyer’s duty not to deceive (Cal. Bus. & Prof. Code §6068(d)). Although some cases have construed this duty as limited to misrepresentations to judges, Opinion 2011-2 concludes a lawyer’s duty not to deceive should be broadly construed and applies even to unrepresented witnesses in a matter.

Given the multitude of Internet applications, this issue may be moot. San Diego Deputy Public Defender Mary Jo Barr finds Twitter a rich source of information crucial to case investigations. Lawyers mine this data extensively to advance their cases. “If someone tweets about a case, it can pop up in a search . . . You can get to people’s information without actually having to say ‘Be my friend.’ Just follow the breadcrumbs.”

Does participation in social media get business? Many lawyers doubt it, but Pluggedinlawyer.com blogger Conyers believes social networking is effective. “Consumers are definitely turning to the search engines, if not to find their service providers then definitely to do their due diligence,” she says. “The more active you are on social media, the higher your digital profile.”

While the business argument may still be in debate, it’s uncontested that lawyers who venture into social media to promote their practices can’t leave the Rules of Professional Responsibility behind. The requirements still apply, even if many nonlawyer social media professionals don’t know it.

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Practice Area: Breach of Contract

Background: In the wake of a multi-state E. coli O157:H7 breakout stemming from contaminated hamburger patties sold at fast food restaurants, plaintiff sued one of its meat suppliers for breaching its contract to furnish food safe for human consumption. Damages were sought to recover lost sales revenue in the tens of millions of dollars.

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Inn Side View

The author (a Master at one of San Diego’s American Inns of Court) paid a visit to the Middle Temple Inn of Court in London

BY MONTY McINTYRE

In April 2011 I visited my 25-year-old daughter, Erin, who is working for a year in London. While there, I thought it would be fascinating to visit one of the four English Inns of Court. This is the story of our delightful visit to the Middle Temple Inn of Court.

The English Inns of Court provide training to young people who want to become barristers, the trial lawyers in the English courts. The training is provided by Benchers (the senior members of the Inn) and other barristers, and generally takes about a year to complete.

I’m a Master in the Enright Inn of Court in San Diego, the second American Inn of Court established in San Diego. The American Inns provide training for younger lawyers similar to that provided by the English Inns.

Just as I had hoped, there is an ongoing, informal relationship between the American Inns of Court and the English Inns. Based upon a “letter of friendship”
between the Inns, the American Inns will fax a letter of introduction for an American Inn member to help arrange a visit and tour of one of the English Inns.

I ultimately decided to visit the Honourable Society of the Middle Temple. The Inn’s name derives from the Knights Templar, who owned the Middle Temple land for about 150 years and built the Temple Church, which was part of the plot in Dan Brown’s book *The Da Vinci Code*. Several Knights Templar are buried in the church, which Brown’s book describes as a church near the center of London that reputedly holds a major secret regarding Jesus and Christianity. As I learned during our tour, however, the church holds no secret. But the success of *The Da Vinci Code* has created a considerable interest in the church, and this, our guide told us, has “rightly put the church back on the map.”

The Knights Templar lost the property after their downfall at the hands of King Philip IV of France. The King was bankrupt, while the Templars had amassed great wealth. Not surprisingly, the King became convinced that the Templars practiced idolatry, were blasphemers and were guilty of sexual immorality. In 1307 King Philip ordered James of Molay, the Grand Master and a Frenchman, to come to Paris and bring with him the treasure of the order. James obeyed and was arrested, together with all the members of the order in France. Torture produced the necessary “confessions,” and 60 Templars were burned on Friday the 13th. This is reputedly the origin of Friday the 13th being considered unlucky. The order was suppressed thereafter, and its land in England was taken over by the King.

The Middle Temple and the Inner Temple came to own the former Templar land under the charter of King James VI and I in the 1600s. The King apparently needed to save money, and it was costly to maintain the Temple Church. The solution: The land was granted to the Middle and Inner Temples to be used to train young lawyers, but they also had to agree to maintain Temple Church in perpetuity. They still do so today.

The highlight of our tour inside the Inn was enjoying lunch in Middle Temple Hall, a magnificent hall built in 1562 that is 101 feet long, 41 feet wide and spanned by a gorgeous double hammer-beam roof. You’ve probably seen Middle Temple Hall dressed up as the Hogwarts dining hall in the Harry Potter movies. At the front of the hall is the High Table, where the Benchers sit. The table is made from 29-foot planks from a single oak, reportedly a gift from Elizabeth I.

In 1586 Sir Francis Drake visited the Middle Temple and regaled the members with stories of his successful expedition against the Spanish Indies. The hatch cover of his ship, Golden Hind, was later used to make the present Middle Temple “cup-board.” Since then, the cup-board has been the center of the Middle Temple ceremonies; on it is laid the book that members sign when they are “called to the Bar” and officially become barristers.

At the other end of the hall from the cup-board is a splendid, elaborately carved huge wooden screen made in 1574. The screen was extensively damaged during the German bombing in World War II, but the rest of the building survived intact. After the war the screen was so well repaired that the joins cannot be seen.

After our lunch, we saw a signed copy of the American Declaration of Independence. I didn’t expect an English Inn to have a copy, and I was surprised and delighted to learn that five members of the Middle Temple Inn had signed the Declaration of Independence. Later, nine members of the Middle Temple Inn signed the Constitution of the United States. Apparently many young men from England sailed to the Colonies to seek their fortune in those days, and barristers did so as well.

The two Emery Molyneux Globes, the earliest globes to be made in England by an Englishman, were spectacular. Made in 1592 and modified in 1603, the globes show no continent of Australia—it had not yet been discovered!

We also got to see the beautiful gardens outside along the Thames River. In early April the flowers were just starting to bloom, and although it was a little cool and windy that day, the garden was glorious.

Our fascinating tour of the Middle Temple Inn was one of the highlights of the trip. If you’re in London and are able to get an introduction through the American Inns of Court, I highly recommend that you visit one of the Inns of Court. Like me, you’ll be glad you did.

Monty McIntyre (mcintyre@scmv.com) is a partner with Seltzer Caplan McMahon & Vitek.
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VANITY PLATES
Congratulations to Bob Gerber of Sheppard Mullin for submitting the LTG8 (I litigate) license plate. If you spot a personalized plate that is law related, please e-mail it (and a photo, if possible) to martin@kruming.com by December 12. You might win a $25 Starbucks gift card.

NAME THAT BUILDING
Please submit answers by December 12 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.

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Can I have a pony?

Do you have your parents’ signed liability waiver?

Win a Free Lunch!
William “Billy” Mayne and Bertha Johnson were San Diego conversation topics for months in the late 1800s. The grand jury first indicted Mayne on a charge of intent to procure an abortion on Johnson, a 21-year-old immigrant from Sweden. The case, conducted behind closed doors, was tried quickly to a not-guilty verdict. The San Diego Sun noted that the all-male jury, when discharged, congratulated Mayne.

The grand jury also indicted Mayne for attempt to murder Johnson by poison. Prior to that trial, Swedish Vice Consul J.B. Nielsen wrote to Judge W.L. Pierce requesting a continuance so Assistant District Attorney Eugene Daney (later a San Diego Superior Court judge) could try the case. Nielsen also suggested “the jury be carefully selected from married men and family fathers.”

The trial began November 25. Johnson testified that she began working as a waitress at a hotel where Mayne was a boarder. He took an interest in her, but she refused his advances. In January 1889 she went to work at another restaurant. Mayne continued to pursue her. On January 20, Mayne came to Johnson’s room where she was lodging, locked the door and forced her to swallow a liquid. He then raped her. She testified she’d called for help several times but no one came to her aid. Mayne told her that if she told anyone, he would kill her.

Johnson changed lodging houses, and on April 25 Mayne again came to her room and ravished her. He told her he would marry her, but she was not to tell anyone. Yet again Mayne came to Johnson’s room and violently raped her. She told him she was pregnant, and he promised he would marry her. However, he kept putting off the marriage.

She testified that she met Mayne on the street on June 6 to discuss marriage. He gave her a small vial of fluid and said this would relieve her “trouble.” They would be married in Tacoma, he told her, and he would follow shortly after she arrived. Once she was registered at a Tacoma hotel under an assumed name, she was to take the medicine. It would not taste good, he said, but she would be fine after a while. She told him she didn’t have money for the trip but would let him know when she was able to go.

Johnson took the vial to druggist and chemist Augustus Lang, who found the contents to be 95 percent carbolic acid and 5 percent water. Dr. D.B. Northrup testified that had Johnson ingested half of the bottle, as Mayne had instructed her, it would have caused her death. Daney’s theory was that Johnson would have been in a city not of her residence, under an assumed name, and her death would have had the appearance of a suicide.

Dr. D.B. Northrup testified that had Johnson ingested half the bottle, as Mayne had instructed her, it would have caused her death. Daney’s theory was that Johnson would have been in a city not of her residence, under an assumed name, and her death would have had the appearance of a suicide.
He admitted he’d had intercourse with Johnson but claimed it was consensual. (Defense attorney Ferral had frequently inferred a lack of chastity on the part of Johnson.) On cross-examination, Daney asked Mayne, “What motive would the girl have to come here and swear falsely?” His answer: “The only theory is, I suppose, that she is infatuated and wanted me to marry her and shoulder the responsibility of the child, but she is only clay in the hands of other people.”

Asked why he thought Daney was backing the girl, Mayne shot back: “You have got an idea that my friends will not support you in your political aspirations. You promised to support me for jailor, but you failed to live up to your promise.”

After 11 days of trial and many hours of deliberation, the jury deadlocked: eight for conviction, four for acquittal. The jury was discharged, and the court outlined the violations in defense counsel’s conduct. Judge Pierce said, “You may, perhaps, be so lost to the influence which guides honorable men that the penalty will be no punishment…” Ferral was sentenced to five days in jail, to be served forthwith. Daney confirmed that the case would be tried again.

The second trial began in February 1890 with Daney again the prosecutor and a more respectful Ferral as defense counsel. Judge John Campbell from San Bernardino had traded places with Judge John Aitken, who had recused himself. The all-male jury was quickly selected. The previous sniping and bickering between attorneys was avoided, and the testimony closed rapidly. The judge recessed to chambers with counsel to prepare the jury instructions.

Johnson got up and walked to the defense table, where the water pitcher was located. She poured a glass of water, took a sip and put the glass down. Then she pulled out a gun, walked over to Mayne and fired a shot at his head. The bullet entered above his collar, shattered a portion of his spine and lodged in his neck. Her next two shots missed, since the first shot caused Mayne to lower his head. Restrained by a San Diego Union reporter, Johnson cried, “He has ruined me! He has ruined me! Oh, take me away; they may kill me right now.”

The judge and the attorneys returned to the courtroom. Daney went to Johnson, who told him, “I couldn’t get justice, and I don’t care what they do with me.”

Dr. Northrup said the wound did not immediately appear to be serious. Mayne told him, “I didn’t deserve to be shot down this way.” He was moved to a friend’s house (and would physically recover in a few days). Johnson was arrested, taken to jail and charged with assault with the intent to commit murder. The Scandinavian communities in San Diego and San Francisco immediately began to raise funds for her defense and bail.

After a recess, Daney suggested that Ferral waive the appearance of his client and the case be submitted to the jury without argument. Ultimately the jury again deadlocked: seven for conviction, five for acquittal. Daney said he would continue to seek justice even if he had to resign from the district attorney’s office and act as Johnson’s defense counsel.

In March 1890, the grand jury reported they had thoroughly investigated the shooting and recommended that Bertha Johnson not be prosecuted for shooting Billy Mayne.

On May 16, 1890, the district attorney dismissed the charges against Mayne, stating he had insufficient evidence to warrant a conviction.

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Hon. William Howatt Jr. is a retired Superior Court judge who currently works for JAMS.
This September 20 event at the Bar Center featured a panel discussion on judicial diversity and the path to the bench. Dialogue on Diversity was sponsored by Higgs Fletcher & Mack, Hutchings Court Reporters, Proven Staffing, Sheppard Mullin, Union Bank and the University of San Diego School of Law Graduate Programs.

Lawyers and judges welcomed law students from California Western, Thomas Jefferson and the University of San Diego on September 27 at the Bar Center. Thank you to event sponsor GEICO.
EVENING IN LA JOLLA
PHOTOGRAPHS BY DOUGLAS GATES
Candace Carroll and Len Simon hosted the San Diego County Bar Foundation’s annual charity event at their home on September 17.
PHOTO GALLERY

JUSTICE FOR ALL CELEBRATION

PHOTOGRAPHS BY BARRY CARLTON

The annual awards event of the San Diego Volunteer Lawyer Program was held on September 22 at the Museum of Man in Balboa Park.

CRIMINAL JUSTICE MEMORIAL

PHOTOGRAPHS BY LAUREN RADACK

Five members of the legal community—Tom Adler, Hon. Napoleon Jones, Hon. William Mudd, Hon. Donald Smith and Hon. Howard Turrentine—were honored during a ceremony on September 23 in the Presiding Department of Superior Court.
PHOTO GALLERY

BENCH-BAR LUNCHEON
PHOTOGRAPHS BY LAUREN RADACK

The SDCBA’s second annual Bench-Bar Luncheon was held October 26 at the U.S. Grant Hotel. Thank you to event sponsor Hutchings Court Reporters and to the U.S. Grant Hotel, venue sponsor.
New lawyers registered with the State Bar during swearing-in ceremonies earlier this year at the Sheraton Harbor Island Hotel. A ceremony will be held December 2 for those who passed the July 2011 California Bar Exam. 

Eric Ganci (eganci@gancilegal.com) is with the Law Offices of Eric P. Ganci.
Law firms in San Diego County have chosen the San Diego County Bar professional liability program available through Ahern Insurance Brokerage.

Combined years experience that structured settlement experts and Preferred Providers Manuel and Manny Valdez bring to SDCBA members.

Credit you will receive from Torrey Pines Bank when purchasing a remote deposit capture scanner that allows you to deposit checks into your account directly from your office.

Number of square feet of available office space in San Diego County¹. Commercial real estate expert Jeffrey Chasan at Grubb & Ellis will help find the perfect place in that square footage for your new office.

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Of staffing clients say staffing firms offer a good way to find people who can become permanent employees³. Contact PROVEN to save 25% on the staffing costs of temporary or contract employees.

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Amount in dollars you pay for a subscription to San Diego Magazine with your SDCBA Membership.

Savings on your annual subscription to the San Diego Business Journal.

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Your savings on Vu TelePresence systems for high definition teleconferencing systems.

San Diego County residents are saving money on their car insurance, and you could too with the special SDCBA discount through GEICO.

¹Source: Grubb & Ellis Office Trends Report – First Quarter 2011
²Touchpoint Metrics study of 12 month period
³Source: American Staffing Association

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