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How I Spent My All Star Summer

“Tennis! There’s something on the front porch for you!” my mom called out.

I saw a bag on the porch and when I looked closer I saw that it had Solana Beach Majors All Stars written on it. The bag had a new baseball, a jersey, sunflower seeds, a Snickers bar and a certificate announcing my spot on the Majors All Star team.

I was really excited. When I went to the first practice and saw who was going to be on the team, I knew we were going to be good.

We started playing tournaments. We kept winning games and ultimately became District 31 champions, Section 6 champions, Division 3 champions and the champions of Southern California, which led us to the Western Regional Tournament in San Bernardino where we beat San Jose to become the best team in all of California!

In San Bernardino, we stayed in dormitories for 10 days. In addition to playing San Jose, we also played the state champions from Utah, Hawaii, Arizona and Nevada. We made it to the championship game: Solana Beach vs. Arizona. The winner would advance to Williamsport as the West Region Champion.

Arizona got a two-run homer in the first inning, which set the tone for the rest of the game. We had chances to catch up, but we never did. We lost 7-3. I was really sad and still am. I still can’t believe that we were only one win away from going to the Little League World Series. It seemed like everywhere I went, people knew who I was and had followed our team’s success. That was cool! We all got to do some fun stuff: for instance, we went on the field at both a Padres and a Chargers game and we got to meet the players, and the city of Solana Beach had a parade in our honor. So, even though we missed Williamsport by one game, I got to spend my summer playing the game I love with a great group of guys. My summer was the experience of a lifetime! :)

Trevor Semerdjian is the 13-year-old son of Dick Semerdjian, founding partner of Solvante Semerdjian Eades Bolden & Company LLP. Trevor was a member of the 2007 Solana Beach Little League Majors All Star Team that was the finalist of the U.S. Western Region and State of California Little League Champions.

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New Year, New Focus

It is a great honor to serve as president of an organization as strong and as vibrant as the San Diego County Bar Association, and I am looking forward to every minute of it. I know this will be an incredible year for our organization and all our members.

Throughout my term, I plan to focus on:

- Exploring a possible renovation of our building
- Increasing the participation of law students and young and new lawyers in our organization
- Working with the other bar organizations in the community to co-sponsor events and initiatives
- Increasing the capabilities of our Web site

My main initiative in 2008 is a multifaceted professional and civility campaign. The goal of the campaign is to get the word out about the importance of, as well as the advantages of, having professional and collegial relationships with your adversaries, and with the bench. I believe that San Diego is a legal community that is still largely defined today by the good relations between our attorneys, and between the bench and bar. This collegiality within the profession helps to maintain a positive image in the greater San Diego community. Equally important, it serves the clients by keeping the costs of representation at reasonable levels, and it makes the job more pleasant for all of us. The unfortunate reality, however, is that our traditionally high standards of professionalism and civility have been declining, and the important message that civility and zealous advocacy are not mutually exclusive has gotten lost. My goal is to do something about that.

During my upcoming term as president, I will take steps, through this campaign, to create a greater awareness within the community of the importance of maintaining the highest standards of ethical conduct, and civil and professional relationships. Legal community leaders Ed Chapin and Patrick Hosey have agreed to work with me in leading this effort as co-chair of the campaign committee. Twenty years ago, Chapin was on the committee that drafted the SDCBA Code of Conduct. He will now lead us in revising, updating and promoting that code. Our mission statement is to "establish, enforce and encourage adherence to a Code of Conduct... and establish aspirational objectives and standards by which attorneys will be judged by their peers, the court and their clients."

On a final note, I would encourage each and every member of our fine organization to find a way to become more involved in the work of the SDCBA. It is through the development of relationships in this context that we will truly achieve our goals for professionalism and civility.

Thank you for allowing me the opportunity to serve as your 2008 SDCBA president. I’m looking forward to an incredible year!

HEATHER ROSING
The Bar’s New Executive Director

On December 7, the San Diego County Bar Association announced its selection of Ellen M. Miller to become the organization’s executive director. No stranger to San Diego, Miller took her B.A. in history and political science from UCSD and later directed the San Diego Superior Court’s Civil Mediation Program. In that capacity, she developed and directed nationally recognized mediation programs for the court. Miller comes back to San Diego from the American Bar Association’s Washington, D.C. office where she served as the section director of the ABA’s Section of Dispute Resolution. She was awarded the California Dispute Resolution Council’s Barnett Award for Outstanding Contribution in 2002. She was also the first nonjudicial recipient of the Los Angeles County Bar Association Dispute Resolution Services’ E.ml Gumpert Judicial Award in 2003.

Miller was selected for the executive director position following a six-month nationwide search led by Jill Burkhardt and a committee comprising current and former SDCHA leaders, including several Superior Court judges. The committee also sought insight from individual bar members throughout all levels of membership, leaders of local law-related organizations and other constituent groups.

The Bar’s New President

S

worn in at the annual Stepping Up to the Bar Holiday Gala December 7, Heather Rosing became the eighth woman president of the Bar. Heather earned her undergraduate degree in broadcast journalism from the University of Illinois and her law degree from Northwestern School of Law in Chicago. She came to San Diego when she accepted an offer from the Kinneir firm, and in her specialty she represents legal professionals against malpractice allegations. Heather has since become CFO of her firm and the first female equity shareholder. Her priority as president is the Campaign on Civility, Integrity and Professionalism, as well as forming a new committee that will emphasize the importance of these traits in the profession. She also plans to continue the Bar’s outreach to law students and young lawyers and promoting diversity in leadership positions at the Bar.

The 2008 Board of Directors:
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Jill Burkhardt – Immediate Past President
Patrick Hovey – Vice President
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Sections and Committees:
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ANNOUNCEMENTS

Above, left to right: Vergas Mason, Alexandra McHale, Kyle Smith (UCSD student winner), Dan Lawton and Roger Gare

Jenny Kimound Lrut visited San Diego State University in November looking for the funniest student on campus as part of a national contest. Entertainers Vergas Mason and Alexandra McHale hosted the event, which was co-sponsored by Cultural Arts & Special Events of Associated Students at SDSU. Attorney Dan Lawton, who competed in San Diego Volunteer Lawyer Program’s LAF-Off, watched.

The 2008 LAF-Off is set for March 13 downtown at the House of Blues from 6 to 8 p.m. Tickets are $60 for general admission and $100 for VIP which includes a special reception. Proceeds support SDVLP’s legal service programs to benefit disadvantaged San Diegans.

Ever had the desire to see your name in print? Ever wonder how we come up with those fabulous features and departments every month? Ever think “I’d like to write for San Diego Lawyer some day”?

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San Diego Lawyer welcomes your comments. Send them to Editor, c/o SDCLA, 1553 Seventh Avenue, San Diego CA 92101. Or e-mail us at mkrumring@sdcom. We reserve the right to edit submissions for clarity and space considerations.

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Earning a ‘Piece of the Pie’

Easily in your career, it’s hard to focus on anything besides billable hours, but sooner than you think, you’ll be considered for partner. More than ever, becoming a partner means bringing something to the table in terms of business generation. If you don’t have clients you have developed, what do you have to offer the other partners to exchange for a piece of the pie?

Start to develop your own book of business now by having a plan. Keep these tips in mind:

• Consider that every encounter is a potential client — you never know who might need your services or have friends or family who might.
• Develop your database of contacts and keep it current. Use it to keep in touch and make your contacts aware of your expertise. Send clippings and articles of interest to your contacts, it’s so easy to send a PDF as an attachment, along with a cover e-mail. A handwritten note enclosing something of interest is even better.
• Network with your colleagues in your firm, those you meet through client matters and your college and law school classmates.
• Learn about the clients’ businesses. This will enhance your ability to represent the client and will enhance your relationship as well. Clients want to know that you care about them, and showing an interest in their business demonstrates your caring.
• Learn to write without lawyers. Publications are always looking for articles that help the layperson understand legal issues. Be the expert.
• Develop strong public speaking and presentation skills.
• Learn to “work a room” and make the most of cocktail parties and receptions.
• Remember names.
• Learn to play golf. A tremendous amount of business takes place on the golf course — don’t be left in the gallery.
• Say yes to attending the functions your firm supports, as well as those of the Bar Associations. This is the best way to develop relationships with other lawyers who may well refer work to you. Being the one to say yes when a partner is trying to fill a table for his or her favorite charity is a good career move. When you go, notice just how many successful lawyers are there as well. It’s not a coincidence.
• Dress the part. Clients expect a certain level of professionalism — especially when their livelihood, their children or their freedom is concerned. When you walk into a meeting, the participants should know that you are the lawyer.
• Develop good client service skills and return emails promptly. Failure or slowness in returning phone calls is the number one complaint of clients, and this lack of communication causes more clients to change lawyers than poor legal work.
• Have regular lunches or drinks with potential clients and referral sources. Your friends and former classmates are starting up the ladder just as you are. Now’s the time to get them thinking about you so that when they are in a position to send legal work, you’ll be ready.
• If your firm doesn’t have a mentor program, find your own. Even if the person doesn’t know it, he or she can be a “stealth” mentor from whom you can learn marketing and business generation skills.

It takes years to develop the skills to attract and keep clients. Start now and when you’re up for partner, you’ll be ready.

Patti Lane is legal administrator for McKenna Long & Aldridge LLP, a certified legal manager, and past president of the International Association of Legal Administrators. patti@mcclaw.com
Riches of India

Our U.S. style of matter-of-fact business negotiations may be considered rude. For example, we don’t typically enjoy leisurely cups of tea or elaborate dinners before getting down to the negotiations. And, Indians don’t like to say “no,” whereas you may think the attorney across the table is conceding your point, he or she may just be exercising politeness while thinking it over or even disagreeing.

India has more than 1 million lawyers, second in number to the United States. Most practice solo or in small family-owned firms, and legal fees vary considerably. A lawyer is considered less prestigious and is not as well paid as an engineer, doctor or high-tech worker.

Almost all law is federal (Indian). State court decisions may be appealed directly to the Supreme Court. The court backlog is more than 30 million cases.

It could take longer than a decade to bring a pending case before a judge. Avoid choosing India as the controlling law or the venue for dispute settlement. Foreign lawyers are prohibited from practicing Indian law and may act only as “foreign legal consultants” advising on the law of their home jurisdiction. Transactions may be based on laws from the United States, but due diligence and final negotiations typically occur in India. Many U.S. and U.K. firms have formed affiliations with Indian firms or set up “liaison offices” in India.

This is an exciting time to do business in India, where opportunities abound. But before you jump in, make sure you have a basic understanding of India’s legal and business culture in order to act effectively and appropriately on behalf of your U.S. clients.

S. Elizabeth Foster is a partner with Luce, Forward, Hamilton & Scripps. Lee Foster serves as an advisor to the Executive Committee of the California State Bar International Law Section and is the chair of the San Diego World Trade Center.

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ATTORNEYS AT LAW

WHO'S WHO LEGAL
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of the Year - 2005, 2006 & 2007
Interview with Judge Ehrenfreund

BY HARVEY LEVINE
EDITED BY COURTNEY A. SMITH

You’ve been a judge now for more than 30 years. What makes a good judge? Keep an open mind, listen to both sides; be prepared; be aware of your biases. Don’t let them affect your rulings.

Sometimes a judge has to rule contrary to his or her personal beliefs. How do you handle that situation? One example is the three-strikes law under which I often had to impose prison sentences that I felt were excessive. I reconciled this by reminding myself that the law evolved from a democratic process, not by an autocrat.

What was your most memorable trial? The Fotoneut antitrust case. The trial lasted 21 months and at the time was reportedly the longest civil jury trial in U.S. history.

You’ve performed in many plays, including Macbeth, A Streetcar Named Desire, Death of a Salesman, to name a few. You received the Old Globe Award for ‘Incident at Vichy.’ Don’t forget Gigi. I had to sing and dance in that one.

No kidding. What did you sing? “Thank Heaven for Little Girls.” [At this point the judge broke into the song with a French accent and a sparkle in his eyes.] 2

The complete interview may be found at www.sdhba.org/advbriefs

HARRY B. LEVINE specializes in the litigation of insurance bad faith, business tort and punitive damages litigation at Levine, Steinberg, Miller & Huesz. hlb@levinesteinberg.com. COURTNEY A. SMITH is a journalism major at Point Loma Nazarene University. csmith@plnu.edu

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Like a Judge and a Gavel, Food and Lawyers Go Together

We are writing this column because we assume that most attorneys, like us, love food—talking about it, eating it and talking about eating it. Do you agree that a high percentage of lawyers are foodies? And if so, why do you think we love food so much? Let us know at gc@cabrerafirm.com or (619) 400-4880.

LOCAL ATTORNEYS’ FAVORITE LUNCH AND DINNER SPOTS

We asked a sampling of local Bar members to tell us their favorite lunch and dinner spots. The result of our informal survey was an eclectic selection of San Diego eating establishments, ranging from local dives-in-the-wall to some of the finest restaurants in town, many of which were well-kept secrets.

FAVORITE LUNCH PICKS

U.S. District Court Judge: Rady Beeswter. Athens Market, Point Loma Seafoods.
Chief Magistrate Judge: Leo Papas. Athens Market, Rainwater’s for more private business lunches.
USF Law Professor: Hugh Friedman. Old Triste, “a solid, unassuming Northern Italian fare of excellent fish, veal, steak, and pasta dishes—a quiet environment where one can have a reunion with old friends or do some business.”
District Attorney Bonnie Dumanis. The University Club, Terraces at Town and Country Resort & Convention Center.
Civil defense attorney: Claudette Wilson. Sushi Ora in Pacific Beach for true sushi enthusiasts. Otherwise, Café Japengo in the UTC area where non-sushi items are available.

Dinner picks:

Mediterranean: Scott Markus. Top of the Market, Bertard at Mister A’s and The Prado in Balboa Park for dinner because “Meditarians don’t have lunch.”
Judge Papas. Carritas Urupapan in Lemon Grove for the “best carnitas” and Greek Style Chicken in El Cajon where the chicken is so good, even my mother preferred it to her own excellent chicken dishes.
Dumanis. Indigo Grill and Trattoria Fantastica.
Batty. The Linksley in North Park.
Bunn. The relatively new Blue Coral at The Avenue in La Jolla for steak, seafood and a great atmosphere and bar area.

What are your favorite lunch and dinner spots? Please e-mail us at gc@cabrerafirm.com.

Plainville’s attorney: Ben Buna. The Mission near Petco Park where one can rub shoulders with Padres executives.
Acadia Pharmaceuticals’ General Counsel: Glenn Batty. Caliente in Sorrento Valley (causal) with its pollo asado burrito. The Grill at Torrey Pines (more formal) for the fish and chips (or try the Drug Store Burger). Kristen Cabrera is an attorney with Willms, Patry, Kromer & Tsiaras. Gil Cabrera is an attorney and principal at The Cabrera Firm. They love family, food and law... pretty much in that order. Check out their food blog at www.thatfoodblog.com.
UC San Diego Extension

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I've been flying for 33 years—to France, Alaska, Russia and places in between. Aviation is a perfect mix for a lawyer. If I am not flying on one of my cases, I am shuttling other lawyers to some hard-to-get-to place.

—GERARD BLANK

My fifth-grade teacher told me stories of the RAF and World War II. So I became a pilot and a flight instructor, flew cargo and then flew three years with American Eagle. When I realized I couldn't afford my own plane, I went to law school.

—MARK R. VELASQUIZ

Over the last 30 years, I have represented fixed-based operations in litigation throughout California. I fly to their jurisdiction for court, a perfect excuse to own an airplane.

—JAMES F. POOKRYN

Flying is exhilarating and peaceful. You can break the bounds of gravity and slip through the air with no particular place to go. It is the best video game in the world.

—NANCY L. VAUGHAN

Above: A 29-year law enforcement veteran, Deputy Sheriff Rich Crandall has served as a flight instructor to numerous attorneys.

While the law is very challenging, it is not as challenging as flying my Cessna 310 in bad weather conditions, or the bush-and-mountain flying course I completed in Talkeema, Alaska.

—EDWARD R. COLLINS

Aviation is a major part of my practice. I began flying after high school. Sixty years later I am still flying and still love it. Some people like golf. I like to fly.

—THOMAS E. SHARKLEY

I can best express my love of flying through John Gillespie Magee Jr. and his poem High Flight: "One I have slipped the surly bonds of Earth, And danced the skies onangan-sil- ened wings...." Our field is in El Cajon is named after this pilot who died over London in 1941.

—ROBERT GUSCOM

Our thanks to the City of San Diego’s Ernie Gwoll and Michael Tussey for hosting our Montgomery Field photo shoot.

Dean Schiffman is a San Diego attorney and expert witness. dean@L盛世aimbers.com

PROFELE
BY DEAN A. SCHIFFMAN

Just Plane Lawyers
San Diego’s Attorney-Pilots Have Altitude and Attitude

TIMELINES
This writer found San Diego’s attorney-pilots to be a spirited and devoted group. More than one of them admonished me to be sure to spell “hangar” with two letter As. I was treated to two flights (in Jerry Blank’s Piper Malibu Mirage and Todd Macaluso’s Russian L-39 Albatros fighter jet), one of which implicated an airport bag (I only have the Right Stuff to write stuff). Todd donates rides in his Russian jet to charity auctions. An aircraft fender bender at the photo shoot was handled with lawyer-like courtesy (the aircraft in the photo are owned by the lawyers and judges shown). I learned that recently retired San Frazier now flies his plane to clown ministry gigs for military families, that Bob Griccom has his law offices right at Montgomery Field and that flights together among these attorneys can be either to a distant deposition or to lunch on Catalina Island.

RESOURCES ON THE WEB
Aircraft Owners and Pilots Association (www.aopa.org); General Aviation Manufacturers Association (www.gama.aero); Landings; FAA.gov; Lawyer Pilots Bar Association (www.lpla.org).

San Diego Airports
Lindbergh Field (San Diego County Regional Airport Authority); Montgomery Field, Brown Field (City of San Diego); Agua Caliente Airport, Borrego Valley Airport, Fallbrook Airport, Gillespie Field, Jacumba Airport, Oceano Airport, McClellan-Palomar Airport, Ramona Airport (County of San Diego).

Flying is more than getting from A to B. It is about a new perspective. At 15,000 feet, all of your problems become trivial, and you can undertake a feat once reserved for eagles.

—GRANT GUCKLER

Third Year, Pepperdine School of Law

Jim: Our ’79 Cessna Centurion is nicknamed the Easter Egg because of its purple and pink paint scheme. It has carried us to Australia, Canada, the East Coast and points in between. It is our “off-road vehicle” as well as part of my aviation practice. Phil: The law requires dedication and attention to detail, as does flying. It’s a great way to get above it all. It also influenced our next generation; my sons are at the Air Force Academy, soon to be flying fighter jets. That’s where aviation has taken us.

—JAMES F. POOKRYN

AIRCRAFT OWNERS AND PILOTS ASSOCIATION

FLYING IS MY PASSION, MY IDENTITY AND MY FATE. WHEN I AM "WHEELS OFF," I AM TOTALLY FREE—JUST ME, MY AIRPLANE AND MY GOD. AWESOME!

—HON. LOUISA S. PORTER

FLYING ALLOWS ME TO EXPERIENCE PASSIONS IN LIFE THAT CAN ONLY BE DONE IN THE AIR. EARNING THE PRIVILEGE TO BE A PILOT IS AN ACCOMPLISHMENT THAT CAN BE CELEBRATED FOR A LIFETIME.

—DEPUTY SHERIFF RICH CROSSLAND

FLYING NOT ONLY MAKES COURT APPEARANCES OUTSIDE SAN DIEGO CONVENIENT, BUT ENABLES IMPROMPTU PLEASURE TRIPS. AND I DON’T MISS THOSE AIRPORT SECURITY LINES THAT HAVE BECOME SO TIME-CONSUMING IN RECENT YEARS.

—REG A. VITEK
In the beginning, or, at least, many years ago, when people owned real property, they also owned the right to do as they wished on that property—from the center of the earth to as high in the sky as they might reach. Then came the gold miners and the oil wildcatters with their purchase and sale of mineral rights—right beneath the growing cornfields.

The last straw came in 1903 when the Wright brothers used the airspace above Kill Devil Hill, North Carolina for their flying machine experiments. Other adventurers soon followed suit and on above public and private property all around the country. Within the next 23 years, Congress was forced to recognize air travel as a new form of commerce. In their collective wisdom, our representatives and senators decided to "get with it" with federal regulation of the aviation business before the individual states got into the act.

THE AIR COMMERCE ACT OF 1926

In 1926, Congress passed—and the president signed—the Air Commerce Act, officially declaring exclusive sovereignty of the airspace of the United States to the government. Over the years the Air Commerce Act has been codified, modified, rewritten, changed, altered, adjusted and renamed. It may now be found at Title 49 Section 40101, et seq. U.S. Code. Federal preemption over the regulation of airspace is express. Nobody else can write the rules. States may regulate their own airspace, but their regulation may not interfere with the federal regulation of airspace.

Lockheed v. City of Burbank was the seminal case establishing express federal preemption of the use of airspace. It came as one result of an attempt by the City of Burbank, California to regulate aircraft noise by imposing curfew restrictions on the use of the privately owned airport. It didn't work. However, San Diego's curfew survived because it was imposed by the airport operator, not by a separate local government.

Objects affecting the use of navigable airspace are regulated by the Federal Aviation Administration through Part 77 of the Federal Aviation Regulations (14 CFR Part 77) under authority of 49 U.S.C. 44718. It is noteworthy that Part 77 applies to "any object of natural growth, terrain, or permanent or temporary construction or alteration." Thus a building, a tree, or even a hill that intrudes into "navigable airspace" is subject to a determination that it presents a hazard to "air navigation."

Upon such determination, corrective action is available to the FAA ranging from removal of the object to routing aircraft away from or around it. As with most federal safety regulation, the government provides ample guidelines to help the public comply with its regulations. For example, FAA Advisory Circular No. 70/460-2K, "Proposed Construction or Alteration of Objects That May Affect the Navigable Airspace" is available free from the FAA's Web site at www.faa.gov, as is 14 CFR Part 77.

NOTICE

The first requirement is notice. When anyone proposes a structure—building, antenna, tower, bridge—anything that "may affect the navigable airspace" (which extends from the ground up in the vicinity of airports), the proponent is required to notify the Federal Aviation Administration's Air Traffic Division. Notice is required for construction anywhere that will exceed 200 feet above ground level, or a gradient of 100 to 1 for a horizontal distance of 20,000 feet from the nearest point of runways of any airport whose longest runway exceeds 3,200 feet in length.

The FAA provides a convenient form for this purpose. FAA Form 7460-1. Notice of Proposed Construction or Alteration is available free from the FAA's Web site, and contains the addresses and phone numbers of the appropriate FAA regional office to notify. The completed FAA Form 7460-1 must be submitted at least 30 days before the earliest of (1) the date the construction is to begin, or (2) the date of filing for a construction permit.
ADMINISTRATIVE APPEALS

A person who is not satisfied with the results of the FAA's study may petition the FAA administrator for a discretionary review of the finding. The petition must be submitted within 30 days of the Determination of Hazard.

The FAA administrator will review the petition to decide whether to study just the proposal, whether to conduct a full-blown public hearing or whether the petition is not ripe for administrative review.

Public hearings regarding objects that may affect the navigable airspace are fact-finding hearings, and such hearings are not adversarial. A presiding officer is designated, evidence is received, witnesses are sworn, examined and cross-examined, and a verbatim transcript is prepared.

After reviewing all the relevant evidence produced at the hearing, the FAA administrator will resolve any questions based on the weight of the evidence, and make his or her determination, stating the reasons and basis.

The administrator will then issue an appropriate order to be served on all parties. An aggrieved party may appeal the administrator's decision to an appropriate Federal Circuit Appeals Court. However, unless there is a strong showing the decision was arbitrary or capricious, the appellate courts will defer to the judgment of the FAA, based upon its expertise in enforcing the regulations it has promulgated.

Standards for obstructions are listed in detail in 14 CFR Part 77, and explained in detail in Advisory Circular 707/760-2K. Anyone who is thinking about constructing any type of structure within 4 miles of an airport (or anywhere else if it will exceed 200 feet above ground level) is well-advised to review Advisory Circular 707/760-2K before investing too heavily.

SAN DIEGO V. SUNROAD

The Sunroad Spectrum building is located about 3,500 feet northwest of Runway 10L at Montgomery Field. At 180 feet above ground level, it intrudes into airspace reserved for circling approaches to that runway. That caused the FAA to increase the circling altitude by 500 feet, making the circling approach almost useless. In this instance, Part 77 required notice to the FAA at least 30 days before the application for a construction permit was filed.

You may wonder why the FAA has, over the years, issued "hazard determinations" for condominium projects in the Lindbergh Field approach zone along Sixth Avenue across from Balboa Park, and for parking garages on India Street. Those projects were built despite exceeding the standards of 14 CFR Part 77. Many of those structures are "shielded" by the terrain of the Laurel Street Hill. That hill—the terrain itself—causes Lindbergh Field to have a steeper-than-usual approach path, which is prominently noted on the airport approach chart. By appropriately marking and lighting the structures, the hazard was mitigated.

GENERAL AVIATION ACTIVITY

Many individuals, along with a few city council members, think our general aviation airports are only cute little parking lots for the toys of a few wealthy boys. The aircraft based there are not toys. They are the tools of commerce. They are the means by which many of our citizens get to and from high-level jobs throughout the Southwest; the ter-
minus for injured patients being brought to our hospitals by air ambulance; and the means by which goods are delivered by Federal Express, United Parcel Service and other cargo handlers, including "bush planes," the cancelled checks that must be delivered promptly to feed our economic engines.

Montgomery Field accommodates more than 260,000 landings and takeoffs each year, making it the 11th busiest general aviation airport in the country. In 1988, Robert R. Oltlager, working with Gen. Chuck Yeager and using accepted economic methods, calculated the dollar value of Montgomery Field to the local economy at $14 million annually.

At that time, Montgomery Field had only one home-based corporate jet and a total of 360 airplanes altogether. Montgomery Field now houses 15 corporate jets, 60 multi-engine/turboprop airplanes and 40 helicopters among its total of almost 600 home-based aircraft.

Montgomery Field supported more than 2,000 high-paying local jobs in 1988. That figure is almost doubled by the increased number of business aircraft now based there. Our other general aviation airports—McClellan-Palomar at 204,000 annual operations in 1995, housing 500 business aircraft, generated $59 million annually for North County’s economy; Gillespie Field, with more than 800 based aircraft and more than 200,000 operations per year; and even sadly neglected Brown Field, with only 150,000 operations each year, all contribute significant amounts of business dollars to the economy of San Diego County.

Developers may view the airport with envy, drooling over the number of office towers and condominiums they could build on those already flat acres. The city council may hear of the additional real estate taxes that could be levied on property from which the city now gets only $250,000 direct annual revenue. This property does, however, generate more than $11.5 million for our economy each year. And after all, the city also gets very little direct revenue from the network of freeways in citizens use every day to get to work and to deliver their goods. Commerce would stop dead if all of that infrastructure was relegated to the surface streets.

Bob Gririm is a retired professional pilot and FAA aviation safety inspector who has practiced aviation law and conducted an aviation consultancy since December 1991. Bobgririm@bogglobal.net

1 Calculated on a 1988 cost-sharing basis.
2 U.S.C. §9033. Sovereignty and use of airspace, (a) Sovereignty and Public Rights of Flight.— (i) The United States Government has exclusive sovereignty over airspace of the United States up to a height of 18,000 feet mean sea level and has a public right of transit through the contiguous airspace.
3 49 U.S.C. § 40106. "Public use" airspace above the minimum altitude of flight prescribed by regulation, including airspace needed to maintain safety to the unlawful landing of aircraft.
4 Palisado v. City of San Diego, 130 Cal. 629 (1908). The California Supreme Court held that a residential property was not "public use" of a highway because it did not serve the "common use of the public".
NEWSWORTHY/CASES

Microsoft v. Altos Locates
$1.5 billion patent verdict set aside
John Garman of Fish & Richardson
Counsel Partners in the Prime Company
$325 million verdict
Harvey Lawler of Levine, Steenbergh, Miller & Hoyer
United States v. Francisco Javier Aramburo Perez (drug case)
United States v. Brent Hillary, former Congressman
Randy "Duke" Cunningham case

ARRIVALS

Bench
- Ken So, Presiding Judge, Superior Court
- Kevin Enright, Assistant Presiding Judge, Superior Court
- Gary Butte, Judge, Superior Court
- Maureen Halahan, Judge, Superior Court
- Napoleon Jones, Judge (senior status), U.S. District Court
- Ken Katz, Commissioner, Superior Court
- Harry Powazek, Judge, Superior Court
- Pati Rakevich, Commissioner, Superior Court
- Joel Woehl, Judge, Superior Court

Bar
- Karen Hewitt, U.S. Attorney, San Diego

Law Schools
- Kevin Cale, Dahn, University of San Diego School of Law
- Sharon Majores-Lewis, Judicial Appointments Secretary for Gov. Arnold Schwarzenegger
- Thomas O'Brien, U.S. Attorney, Los Angeles (USD Law graduate)

RETIRES

Superior Court
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- Lenie Brinkman, Judge
- Ron Dominitz, Judge
- Ray Edwards, Judge
- Thomas Hendrix, Judge
- Jarret Kiters, Judge
- Lillian Lin, Judge
- John Sammartino, Judge
- Margaret Wagner, Judge
- Charles Woldersham, Judge

LEAVING

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  Secretary for Gov. Arnold Schwarzenegger
- Carol Lam, U.S. Attorney, San Diego
  to Qualcomm
- Bill Lesch, Lawyer
- Frances Townsend, Homeland Security
  Advisor to President George W. Bush

Passings
- Everett Dobbin, Lawyer
- Mike Bollman, Judge
- Benjamin Boresta, Lawyer
- Weissy Buttermore, Judge
- Frank England, USD Law Professor
- Benjamin Hamrick, Judge
- Mary Harvey, Lawyer
- Heidi Lundblad, USD Law Student
- Timothy MacNeill, Lawyer
- Frank McCarthy, Lawyer
- Tom Mitchell, Judge
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- Shari Swett, San Diego County Bar Association
- Al Wallace, Lawyer

HONORS

- James Herrington, President, American Academy of Matrimonial Lawyers
- Merv Thompson, 2007 Border States Classic XVII Bodenbender & Figueroa Contest: Masters Over 60, first; Masters Over 50, fourth.
2007
SAN DIEGO LAW
IN REVIEW

William Acosta. The Anatomy of
Tenure: A Documentary History of
Filibugs & Parens
Arthur Campbell. Trial & Error: The
Education of a Freedom Lawyer.
John Noyes. International Law
Stories with Laura Dickerson and
Mark Jones (co-edited).

JILL Burkhardt
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Books

CAIFORNIA WESTERN
SCHOOL OF LAW

Jacqueline Slotkin. It's Harder
in India: Essays by Women Lawyers
Achieving Work-Life Balance (co-
authored with her daughter, Los
Angeles attorney Samantha Slotkin
Goodman).

Thomas Jefferson
SCHOOL OF LAW

Marjorie Cohn. Workers
Republic: Six Ways the Bush
Gang Has Defied the Law.
Eric J. Mitnick. Rights, Groups
and Self-Invention. Group-
Differentialized Rights in Liberal
Theory.
Susan Bismarck. The Global
Workplace: International and
Comparative Employment Law-
Cases and Materials with Roger
Blancpain, William R. Corbet, Hilary
K. Josephs & Michael J. Zimmer.
Professor Richard Scott. The Law
of the European Union, Vol. 2:
Economic Law and Common Policies,
a supplement to the original volume
of the same name, published in 2005
(publiched with three co-authors).

SAN DIEGO SCHOOL OF LAW

Karen C. Burke. Federal Income
Taxation of Corporations and
Stockholders (West Group, 6th ed.,
forthcoming 2008).
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Faculty," a chapter in Beyond the
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Leadership.
Robert C. Felnett. Chapter on
child advocacy in the fourth edition
of Health and Welfare for Families in
the 21st Century (Harcourt Brazil).
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Guide — Corporations (23rd edition;
The Rutter Group).
Yeale Kamias. Leading
Constitutional Law Cases: Materials
for a Compact Course (with Choper,
Falk & Shiffrin; Thomson-West).
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Remedies Law (with Russell Weaver
and Elaine W. Shoben; West
Concise Hornbook Series).

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Books

University of San Diego
School of Law

Lesley McAllister. "Litigating
Climate Change at the Coal Mine."
In Adjudicating Climate Change: Sub-National,
National, and Supra-
National Approaches (Cambridge
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Grayson M.P. McCouaih.
Gratuitous Transfers (with Clark, et
al; West Group).
John (Jack) H. Micne. Golf Law: The
Real Rules of Golf (American Bar
Association).
Grant Morris. "Golf Law:
Structures and Procedures," in
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Psychosomatic Disorders and the Law
(John Wiley & Sons).
Frank Partnoy. Corporations Law
and Policy: Materials and Problems
(with Jeffrey D. Baum and Alan R.
Palmiter; Thomson West). "Gap
Filling, Hedge Funds, and Financial
Innovation?" in Bookends-Norma
Papers on Financial Services (with
Randall Thomas; Brookings
Institution Press).
Michael D. Ramsey. The
Constitution’s Text in Foreign Affairs
(Harvard Press).
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Unequal Taxation of Equals
(Vendelis Publishing).
Jorge A. Vargas. California Maritime
Myths. Explorers & Gray Whales.
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book on bankruptcy law with U.S.
Bankruptcy Court Judge Bruce A.
Markell (Lexis-Nexis).

Attorneys

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Women in American Law.
Eric Fagan. How to Defend Your
Own Civil Suit (self-published).

Judes

Norbert Ehrenfreund (retired). The
Nuremberg Legacy: How the Nazi
War Crimes Trials Changed the
Course of History.
William J. Howatt Jr. (retired),
History of Bench & Bar and Family
Law Issues.

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Zaki Zehawi spent his first six years in Libya. Then, to escape pervasive government oppression, the family immigrated to the United States, arriving one day before the Fourth of July.

When terrorists attacked the World Trade Center and the Pentagon September 11, 2001, Zehawi was 26. He already held dual Libyan and French citizenship, but the attacks spurred him to become an American citizen. "I wanted to be the government know where my allegiance is, that I'm American and I'm an American because I love my country," Zehawi says. He was naturalized in 2002.

In 2004, Zehawi joined Federal Defenders of San Diego Inc. and a year later a Washington judge appointed the San Diego office to represent men the government believed were linked to terrorism. They had been rounded up in the Middle East and were imprisoned at Guantanamo Bay Naval Base in Cuba.

"Zehawi was shaken by what he learned through his preliminary research. He says the detainees' due process rights were being ignored. "It's something you read about, but it's always in another country," he says.

Many detainees were imprisoned after being accused of ties to terrorism by people seeking a reward. They had been held for years without seeing a lawyer, charged with no crime, forbidden to see evidence against them, told they had no right to challenge their detention in U.S. courts.

Many detainees were imprisoned after being accused of ties to terrorism by people seeking a reward. They had been held for years without seeing a lawyer, charged with no crime, forbidden to see evidence against them, told they had no right to challenge their detention in U.S. courts.

By Claude Walbert

Libya," Zehawi says. Other lawyers from the Federal Defender's office agree. "It's a new era in constitutional law," says Stephen D. Denil, another lawyer from the nonprofit office that represents detainees.

"It's hard to deal with as an attorney," Denil says. "We have clients who don't know the charges against them." Government lawyers assert that detainees can be held indefinitely at Guantanamo without the right to habeas corpus. Although that challenge to confinement is one of the Constitution's inviolable rights, set out in Article 1, Section 9, the government argues that it does not apply to foreigners held abroad.

The San Diego lawyers disagree. "This issue will be looked back on as a black on our Constitution," says Heather R. Rogers, also a defender lawyer. The way these people have been treated is unprecedented in the history of our country.

"The more the lawyers learn about the treatment of the Guantanamo detainees, Rogers says, "the more on fire I become. I feel more strongly than ever about the type of law I practice."

Originally about 800 detainees were certified at Guantanamo, although exact numbers have never been disclosed. More than half of the detainees have been released. The government says 14 of the remaining 360 are "high-value" detainees who either committed acts of terrorism or possess knowledge of those who did. Government lawyers plan to try them in military tribunals but have not announced plans for the return of the detainees.

Elle M. "Tig" Johnston III, another of the San Diego defenders, said most of the
detainees "are devoid of intelligence value. At the worst, they pose very little risk." Eventually, they will be released, like those before them, but only a few at a time because the government doesn't want the embarrassment of a mass release, he says.

"If you're still there, it's because they don't have any place to send you," Johnston says. "It's very hard to stomach."

The genesis of the unprecedented legal black hole in which the detainees find themselves dates to the 9/11 attacks. The government, needing space to imprison men captured in the battle for terrorism, chose isolated Guantanamo Bay. In January 2002 the detainees began arriving, and some filed crude habeas corpus petitions, called "postcard" petitions—which were often simply a few handwritten sentences on scraps of paper asking for a judicial hearing, says Dersik.

But the government conditioned that the detainees had no such right, relying on a 1950 U.S. Supreme Court ruling that no United States court has jurisdiction over aliens in the U.S. confined abroad. The base in Cuba is merely leased land under agreements signed in 1903 and 1954, government lawyers argued, so it didn't count as U.S. territory.

The government position led to a legal tangle involving court decisions and counter-vailing measures in the political arena, some in Congress, and others from the executive branch. An appeals court agreed that the detainees had no rights under the U.S. Constitution, but the U.S. Supreme Court reversed the decision.

Petitions continued to flow to the courts, and in October 2005 a District of Columbia District Court judge appointed more than a dozen Federal Defender offices across the nation, including San Diego, to join pro bono law firms and civil rights organizations representing detainees.

Besides Zehawi, Rogers, Johnston and Dersik, lawyers from the San Diego office who have taken part in detainee defense are Executive Director Reuben C. Cahn, Chief Trial Attorney Sherron J. Charlick and Chief Appellate Attorney Steven F. Huschek. Zehawi has since moved to the San Diego County Public Defender's office.

Congress stepped in to legislatively remove court jurisdiction over detainees' habeas petitions with the Detainee Treatment Act of December 2005. The U.S. Supreme Court in June 2006 held that the act didn't apply to Guantanamo petitions already filed.

It was against this sesa. legal background that the San Diego lawyers continued the struggle over a question that transcends partisan politics: The Constitution says that only in "cases of rebellion or invasion" can habeas corpus be suspended, so is it lawful to withhold the right from detainees? Only once, during the Civil War, has the right to habeas corpus been suspended.

The U.S. Supreme Court was expected to hear arguments on that question late in 2007. "I didn't have any idea of the slowness— I thought it would be like normal litigation," says Rogers.

The pace of their cases was just becoming apparent when three of the San Diego defenders and an investigator, Luciano Silva, arrived in Yemen in January 2006. At that time, Rogers, Zehawi and Johnston hadn't met the two Yemenis and the adolescent Afghan who were their clients. Later they were assigned a fourth client, another Yemeni. The Afghan and one Yemeni have since been returned to their native countries.

One task for the San Diego lawyers was to create trust among families of detainees. "You need the tribe to vouch for you," Rogers says.

"There were many questions about our interest in the detainees and if we could work in their best interests," says Zehawi.

Their trip was arranged by the U.S. government. They made travel arrangements on their own and spent two weeks in Yemen without bodyguards. A few hours after they arrived, the lawyers met with families seeking word of when their relatives were coming home, Rogers recalls. She had no answer. They could be sent to some third country where they would be imprisoned again.

"To look at them without an answer was unprecedented for me as a lawyer," Rogers says. "It was a low moment."

Johnston says the Yemenis were skeptical about the U.S. justice system, yet they shared tea and meals with the lawyers. "There was a lot of hospitality," he says.

Back in the United States, the lawyers began the process of gaining permission to see their clients. They had to clear a visit with the Justice Department, Defense Department and the Administrative Office of the Courts.

It was October 2006 when they finally arrived at Guantanamo. One night, they gathered at an outdoor grilling area with their Arabic interpreter to prepare a Middle Eastern meal. A car seemed to be dangling them, they say. They never learned why the car was there, but it could have been normal base security.

The lawyers already expected that everything they said or did on the steely military base would be surreptitiously recorded, although they had received secret-level clearances after months-long investigations. The clearances are necessary to receive classified information vital to the detainees' defense.

Steven F. Huschek, chief appellate attorney in the Federal Defenders' San Diego office, says reports of the government's extensive electronic eavesdropping also aroused suspicions. "It instills a bit of paranoia," Huschek says.

They have returned to Guantanamo twice, in March and August 2007, while the legal battle over habeas corpus swings in and out in the courts, Congress and the president's office. The lawyers are forbidden from publicly talking about whatever evidence exists against their clients, but they know little in any event.

"I don't think we've ever had a case where you would want to find out something about your client you go on Wikipedia," Rogers says.

But the difficulties of representing the detainees has only ignited their determination. "The conditions under which these people are held are in total disregard of the values underlying the Constitution, of international law, of any decent standard of how people should be treated. They are deeply corrosive of the values that supposedly all of us hold as Americans," Huschek says. "I'm very proud to be a participant in fighting back."

Claude Widner is a veteran San Diego reporter and longtime contributor to San Diego Lawyer.

On December 5, 2007, the U.S. Supreme Court heard arguments concerning the legal rights of the detainees at Guantanamo. The Court decided to hear the case in June after turning down the detainees' appeal in April.

www.craighiggs.com
Abraham Lincoln is well-known for his struggle to preserve the United States during the Civil War, but less well-known are his legal views on professional responsibility and truthful advocacy. After attending law school and being admitted to the bar in Illinois, Lincoln practiced law in Springfield. He never became a full-time lawyer, but his legal practice provided him with a strong foundation in law and helped him develop his skills as a trial lawyer.

It was in Springfield that Lincoln became one of the best, even feared, trial lawyers in Illinois. Remnants of Lincoln’s law practice are still there in the carefully preserved structures. In his writings, and in the written reminiscences of contemporaries who practiced law with him.

Our first stop was the law office of Lincoln and Herndon. Bill Herndon was Lincoln’s junior partner, friend and biographer. Lincoln was an experienced trial lawyer with a wide and varied practice throughout the 8th Circuit of Illinois. His practice included commercial, real estate, civil, bankruptcy, and personal injury cases. As we entered the building, we walked up a narrow flight of stairs to Lincoln’s office in the back. Dark hardwood floors, a couple of hanging light fixtures, and a large desk with stacks of books constitute the office. I could almost hear the high-pitched voice of Mr. Lincoln saying, “Resole to be honest at all events; and if in your own judgment you cannot be an honest lawyer, resolve to be honest without being a lawyer.”

In referring to take one case in which the client suffered $600 from a widow with six children, Lincoln told the client to remember that “some things legally right are not morally right.” He went on to say that “the best lawyer is the man who never has a case.”

We are fortunate that Lincoln and his contemporaries have written full accounts of his approach to the law, professional responsibility, ethics and civility to clients and lawyers. From the litigation perspective, Lincoln believed lawyers had an obligation to be peacemakers and avoid unnecessary litigation. He would not take a case that he believed was false or unjust. His advice to lawyers:

“Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser—in fees, expense, and waste of time—never stir up litigation. A worse man can scarcely be found than one who does this.”

In short, Lincoln was a man of integrity and honesty, and his words and actions continue to inspire lawyers today.
years later, after winning the presidency, in a striking display of civility, magnanimity and practicality, Lincoln appointed Stanton as secretary of war. Lincoln explained his rationale for choosing a cabinet composed of men who generally thought they were his superiors: "We needed the best men. I had looked the party over and concluded that these were the very strongest men. Then I had no right to deprive the country of their services." When Lincoln was asked why he should not take the opportunity to destroy his enemies, he reportedly replied: "Don't I destroy my enemies when I make them my friends?" Overcoming any ill feelings toward Stanton, Lincoln assured Stanton's prodigious talents for himself and for the country, Stanton became a close advisor, friend and ardent supporter.

But Lincoln's willingness to win over his adversaries and his commitment to high ethical standards should not obscure the fact that Lincoln was driven, ambitious and a relentless advocate of his positions. In his written communications he would often deliver a tough message tempered in poetic language. In his Second Inaugural Address, for example, he asked that the South be judged for its actions in supporting slavery, but in the same sentence, judged it fairly:

"Both read the same Bible and pray to the same God and worship the same God and are subject to the same laws, as we are that we should be divided, my friends?"

Always the lawyer, Lincoln cross-examined Gen. George McClellan for his lack of aggression as if McClellan was on the witness stand. In one letter to McClellan, Lincoln wrote, "You remember my speaking to you of what I called your over-cautiousness. Are you not over-cautious when you assume that you cannot do what the enemy is constantly doing? Should you not claim to be at least as equal in prowess, and act upon the claim?" McClellan was eventually dismanted.

The old state Capitol building is where Lincoln practiced before the Illinois Supreme Court and delivered his "House Divided" speech in which he proclaimed to a startled audience that "A house divided against itself cannot stand." He went on to predict with deadly accuracy that the United States was destined to become either all slave or all free but could not remain both. Nearby is Lincoln's home, a large two-story house. Lincoln's shaving mirror hangs high on the wall, a reminder of his six feet four inches in height.

Lincoln's tomb was our final stop. It's surrounded by a green park with large oak trees. Lincoln's remains lie in an underground vault encased in cement. In 1901, during a renovation of the tomb, his lead casket was cut open and the top portion of the casket was removed. Either out of curiosity or perhaps to foresee and the rumors that his body had been stolen, a small number of people were allowed to look upon Lincoln's face before the casket was lowered into the vault and sealed forever under tons of cement. According to witnesses, Lincoln was remarkably well preserved, his face the color of brown, whiskers on his chin, hair still black, and the tattered fragments of an American flag still visible in the casket.

If you need a spark of legal inspiration, a break from the dull state of your computer monitor or just a quick getaway with family or friends, consider a trek to Springfield.

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ETHICS

The Lawyer as Huckster

The Advertising Battle Continues Three Decades After Bates

BY DAVID CAMERON CARR

A Chicago law firm laced with controversy this year with a billboard placed in a downtown district known for its nightlife. The firm of two female attorneys specializes in marital dissolution cases. The advertisement featured photos of two well-endowed bodies of both genders with the tagline: “Life is Short. Get a Divorce!”

These lawyers had learned about one of the fundamental rules of advertising: Sex sells! They had also learned about targeting your market. The billboard was placed in a downtown neighborhood known for its clubs and nicknamed “the Viagra Triangle.” Their business reportedly soared after the ad went up.

The “Life is Short” billboard conjured the worst fears about lawyer advertising since it was ruled constitutionally permissible 30 years ago in Bates v. Arizona. The lawyer as huckster, a pure business entrepreneur using modern advertising techniques to drum up unnecessary, maybe socially harmful, litigation. The whistling sound you hear may be the disentangling taxonomicists in Bates spinning rapidly in their graves. Or maybe it’s the deceased members of the majority (Justice Stevens still alive).

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By a one-vote majority, Bates applied the then-emerging commercial speech doctrine to hold that states could not prohibit "non-deceptive" lawyer advertising under the First Amendment. Bates arose out of a newspaper advertisement by two lawyers operating a low-cost legal clinic touting the reasonable prices charged for simple legal services (such as uncontested marital dissolution). The majority believed that the public had a vital interest in truthful information about the availability and affordability of legal services to assure "informed and reliable decision-making." Also expressed was the hope that advertising would lead to a decrease in the cost of legal services and an increase in their availability.

Of course, the Bates minority expressed a different view. Justice Powell:

"Until today, controlling weight has been given to the danger that general advertising of such services too often would tend to mislead rather than inform. Moreover, there has been the further concern that the characteristics of the legal profession thought beneficial to society—a code of professional ethics, an imbedded sense of professional and public responsibility, a tradition of self-discipline, and duties as officers of the courts—would suffer if the restraint on advertising were significantly diluted."

Thirty years on, the world without lawyer advertising that the Bates court confronted seems quaint. Consider the discipline case involving the famed King of Tort, Melvin Belli (Belli v. State Bar (1974) 10 Cal.3d 824). Belli was the prototype of the modern celebrity lawyer. Gifted with endless self-promotional energy, he seemed to be everywhere in the pre-Bates era: representing Jack Ruby, chanting with the Zodiac killer on his radio program, hobnobbing with the Rolling Stoner at the disastrous Altamont concert in 1969, appearing as an alien on Star Trek. But the State Bar of California took exception to Belli's code of personality. It prosecuted him under old Rule of Professional Conduct 2, which prohibited any form of advertising, for employing a business agent to book him on a lecture series and for appearing in ads for Glenfiddich Scotch whisky. The California Supreme Court found only the sketch ad in violation and reduced the sanction to 30 days suspension.

Both the majority and the minority in Bates would probably be aglet at the results of their decision: not just a racy billboard, but saturation advertising by lawyers and firms utilizing every possible medium, including television ads featuring giant lawyers touting over buildings and lawyers comparing themselves to pet bulls; large law firms seeking to "beautify" themselves with trade names and slogans in business magazines; advertising supplements purporting to designate the "superlawyers" among us; many, maybe most, lawyers and firms publishing Web sites promoting their business.

Lawyer advertising still produces outrage in some quarters of the profession who are of a like mind to Justice Powell. But the public seems to take it in stride—perhaps because they are ignoring most of it. Someone once wrote that the average American consumer is exposed to 3,000 advertising messages each day. Even if that is exaggerated, it certainly seems like 3,000. The public appears to view legal services as just another commodity. Maybe this accounts for the malaise that the only people who complain about lawyer advertising are competitor lawyers.

By a one-vote majority, Bates applied the then-emerging commercial speech doctrine to hold that states could not prohibit "non-deceptive" lawyer advertising under the First Amendment.
to carry the flame of Justice Powell's dissent.

Icons are a prominent feature of modern advertising, a symbol that cuts through the clutter of higher thinking and sticks in the consumer's mind. For the Florida personal injury firm Page & Chandler, that icon was a pit bull.

The firm made the pit bull its mascot, using the pit bull image in its television ads, website and the easily remembered 1-800-PIT-BULL. The Florida Bar prosecuted them on discipline charges, alleging that the pit bull was degrading to the profession's image and violated Florida rules banning representations regarding the quality of legal services. The hearing referee recommended dismissal of the charges, finding that the use of the pit bull was "carefully done" and concluding that it was protected First Amendment speech.

The Florida Supreme Court thought otherwise. Invoking "the breed of dog known as the pit bull, demand[s] all lawyers and thereby harm[s] both the legal profession and the public's trust and confidence in our system of justice," Chandler and Page were publicly admonished. To the surprise of many, the U.S. Supreme Court declined to hear the case, leaving the Florida decision intact.

This year, New York disciplinary authorities promulgated new advertising rules. Part of the impetus for the new regulations was a New York task force study of lawyer advertising. It found a third of lawyer advertisements deceptive in some aspect. The new regulations were challenged in a lawsuit filed by law firm Alexander & Catalano (known for its advertising showing firm lawyers towering over buildings and its slogan, "The Henry Hitter") and a consumer group, Public Citizen. The federal court, applying the Central Hudson test, found most proposed new regulations unconstitutional.

The battle over lawyer advertising will never end, as lawyers continue to seek new ways to stand out from the competition and regulators strive to preserve Justice Powell's ideals. Stay tuned for further developments.

David Cameron Carr is a sole practitioner and a member of the San Diego County Bar Association Legal Ethics Committee. The opinions are his alone. dcarr@ethics-lawyers.com

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Women, Equality, and San Diego Law Firms

BY LINDSAY J. REESE

In spring 2007 the Lawyers Club Equity Committee conducted its 16th annual equality survey of San Diego's private firms and public agencies. The survey gathers information from private law firms with 15 or more attorneys in their offices and public agencies in San Diego, in an attempt to track the advancement of women and nonwhite attorneys in the San Diego legal community.

The survey showed that San Diego firms and agencies are struggling with the same issues as many national firms. Despite the fact that women have been graduating law school in equal numbers to men for the last 15 years, they are still underrepresented in partnership and leadership roles.

In spring 2007, 35 percent of all attorneys in the private firms surveyed were female. Females made up 22 percent of the partners in those firms, and 45 percent of associates. Compared to 2006, the percentage of female partners increased by 1 percent, and the percentage of female associates decreased by 1 percent. When compared to the results from 1999, the percentage of female partners in private law firms has increased by only 3 percent (from 19 percent to 22 percent) in the last eight years.

Only 20 of the 45 firms surveyed responded to questions regarding the number of female lawyers occupying leadership positions within their San Diego office. Of those firms, only 16 had women in those positions, but of the 16 firms the number of female lawyers in leadership roles equaled or exceeded the number of male attorneys in leadership roles in only three firms.

Nonwhite attorneys (e.g., African American, Alaska Native, American Indian, Asian, Hispanic, Pacific Islander, multiracial) are also underrepresented in San Diego private firms. Only 23 firms responded to questions regarding ethnic diversity, and in those firms only 11 percent of all attorneys were nonwhite. In eight of the 23 firms that responded, the percentage of nonwhite attorneys was less than 10 percent. Two firms had no nonwhite attorneys at all. There were only six firms in which the percentage of nonwhite attorneys exceeded the 15 percent mark.

In six of the firms, the percentage of nonwhite female attorneys exceeded 10 percent; four of the 24 firms employ no nonwhite female attorneys.

Women and nonwhite attorneys were better represented in the public sector, although men still dominate top-level positions. In 2007, eight agencies in San Diego had more than 50 percent female attorneys and the remaining agencies surveyed were all in the 40 percent range. However, women held only 35 percent of top-level positions in the public agencies surveyed. This is the same percentage reported in 2006. Since 1999, the percentage of women holding top-level positions has increased by less than 1 percent a year (from 33 percent to 39 percent).

The percentage of nonwhite attorneys in the public sector was 23 percent. All of the responding public agencies had some nonwhite attorneys, the lowest being 6 percent. On average, 12 percent of attorneys at the agencies surveyed were nonwhite and female.

To read the entire survey, please go to www.lawyersclubandsd.com and click on 2007 Equality Survey.

Lindsay J. Reese is an attorney with Rob.

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Self-Study Questions

1. Part 77 of the Federal Aviation Regulations applies to "Any object of natural growth, terrain, or permanent or temporary construction or alteration."  
   True  False

2. Any business or entity planning a project "anywhere" that will exceed 100 feet above ground level, or at a gradient of 100 to 1, for a horizontal distance of 10,000 feet from the nearest point of any runway of any airport whose longest runway exceeds 3,200 feet must provide notice of construction. 
   True  False

3. Very tall objects, such as radio towers exceeding 2,000 feet in height, are presumed to be hazards to air navigation. 
   True  False

4. Unless there is a strong showing that a FAA administrator's decision on a proposed petition was arbitrary or capricious, appellate courts will defer to the decision of the FAA. 
   True  False

5. The City of San Diego receives approximately $400,000 in direct annual revenue from the operations at Montgomery Field. 
   True  False

6. "Navigable airspace" means airspace within 100 feet of the minimum altitude of flight prescribed by regulations, including airspace needed to ensure safety in the takeoff and landing of aircraft. 
   True  False

7. The Air Commerce Act of 1926 officially declared that the United States government has exclusive sovereignty over the airspace of the United States. 
   True  False

8. The curfew restrictions imposed for Lindbergh Field survived administrative review because they were imposed by the city council. 
   True  False

9. Each of the 50 states is entitled to regulate its own airspace in so much as its regulations do not interfere with the federal regulation of airspace. 
   True  False

10. FAA Form 7460-1, which provides notice of proposed construction or alteration, must be submitted at least 60 days prior to the date a construction project is to begin. 
    True  False

11. Upon review of a construction or alteration proposal, the FAA will issue a Determination of Hazard (or No Hazard) to Air Navigation, based on the projected impact on the safe and efficient use of navigable airspace by aircraft. 
    True  False

12. The Sunroad Specular building, 3,500 feet northwest of Runway 10L at Montgomery Field, sits 150 feet above ground level, intruding into airspace reserved for takeoffs and landings to that runway. 
    True  False

13. Montgomery Field accommodates more than 260,000 takeoffs and landings each year, making it the 11th busiest general aviation airport in the country. 
    True  False

14. A Determination of No Hazard to Air Navigation, issued by a FAA Regional Air Traffic Office upon review of a petition provides an approval for beginning construction of a proposed project. 
    True  False

15. By appropriately marking and lighting structures that are shielded by the local terrain, hazards can be deemed mitigated, allowing projects that exceed the standards of 14 CFR Part 77 to be constructed. 
    True  False

16. Montgomery Field currently houses 15 corporate jets, 60 multi-mission/turboprop airplanes, and 40 helicopters in its total of 600 home-based aircraft. 
    True  False

17. The Federal Aviation Administration, in conjunction with the United States Department of Commerce, has full control over aircraft noise, preempting state and local rules. 
    True  False

18. Lockheeds v. City of Burbank was the seminal case establishing federal preemption of the use of airspace. 
    True  False

19. A proponent who is not satisfied with the results of a FAA study of a proposed project may petition the FAA administrator for discretionary review of the finding, providing that the petition is submitted within 60 days of the Determination of Hazard. 
    True  False

20. Gillespie Field, housing more than 800 home-based aircraft, is the 11th largest general aviation airport in the country. 
    True  False

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SAN DIEGO LAWYER
Stepping Up to the Bar

PHOTOGRAPHS BY LAUREN RADACK

2008 SDCBA President Heather Rosing, the 2008 SDCBA Board of Directors, and the first-ever YNLD Board of Directors were sworn in at the SDCBA’s annual Stepping Up to the Bar Holiday Gala. The event was held at the SDCBA Bar Center on December 7.

Dialogue on Diversity

PHOTOGRAPHS BY BARRY CARLTON

Dialogue on Diversity, a unique CLE and networking event, was co-presented by Minority Corporate Counsel Association (MCCA) and the SDCBA. The event’s keynote speaker was MCCA Executive Director Veta Richardson. The program was co-presented by Association of Corporate Counsel of San Diego and California Minority Counsel Program, and supported by DLA Piper, Kohnsin, LeVier Mendelson, Luce Forward, McKenna Long, Pettit Kohn, and Wilson Petty Kravitz & Turner, as well as Lawyers Club of San Diego, San Diego La Raza Lawyers Association, Earl B. Gilliam Bar Association, Tom Homann Law Association, Pan Asian Lawyers of San Diego, South Asian Bar Association of San Diego, Filipino American Lawyers of San Diego, and Korean American Bar Association of San Diego. The event took place at the SDCBA Bar Center on October 16.

The SDCBA’s annual Golf Tournament was held on October 8, Columbus Day, at the Rivieras Golf Club in Mission Valley. The Chairs for the 2009 SDCBA Golf Tournament were Steven Wedeking and Anthony Thompson.

Golf Tournament

PHOTOGRAPHS BY GREG LAMBERT

DIVERSITY A, Theodore Roberts B, Andrew Jones C, Melissa Turner D, Cassandra Kinosh D, Vista Richardson E, Jamil Muhammad, Regina Petty F, Alan Tar General Counsel, LG Electronics, Jennifer Adkins, Diversity Outreach Chair, SD County Bar Association, Lev-Chais Wilson, President, Earl B. Gilliam Bar Association (she is in the back row with her pink shirt), Katy Rosal, President, Lawyers Club of San Diego (she is in the front row with red shirt), Nony Patra, President, Filipino American Lawyers of San Diego, Tino Foye, President-Elect, Earl B. Gilliam Bar Association, Marty Lawrence, Regional Governor, National Asian Pacific American Bar, Association, Jimmy Yoo, President, Korean American Bar Association of San Diego, Jon Hollings, Executive Director, Association.
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Please submit answers by January 19 to mclin@sdop.org. Your name will be entered to win a lunch/eous for two at DeluTou’s restaurant. Congratulations to Jack McBride, who won the November drawing after correctly identifying attorney David Casey Jr. of Casey Gerry Schenck Frangville Blatt & Pfreund, former president of the American Association for Justice (formerly the American Trial Lawyers Association). Thanks to everyone who participated.

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Pasqual Beilhes was a 19-year-old French sheepherder in the Alpine/Escondido Canyon area. Warren Webb was the 18-year-old son of a prominent rancher. Emma Everhart was hired by Warren's father to be the first Alpine schoolteacher.

Emma lived with the Webb family. Pasqual and his brother Pierre grazed their sheep a couple of miles from the Webb ranch. Warren's father was frustrated with the frequency of the Beilhes' sheep getting into his vineyard and gardens so he began holding the sheep until Pasqual could pay for the damages.

On November 15, 1875, Warren herded 50 or more sheep into a corral to keep them until the damages were paid. Pasqual offered all he had—two dollars—to get the sheep back. Warren refused to accept this small sum. After midnight, Emma saw Pasqual looking into the window of her room. She awakened Warren. He checked outside and found the sheep in the corral. He did not see Pasqual but found footprints around the back of the house near Emma's window.

After 1 a.m. Emma again heard rustling outside her window and called out to Warren and his father. Warren went outside and confronted Pasqual in the road at the front of the house. They argued for a short time and Warren saw that Pasqual was armed with a shotgun. He called on his father to bring out their shotgun. Now the two were both armed.

According to the testimony of Emma, Warren called out to Pasqual, "Don't cock your gun." Warren's father heard the sound of two distinct clicks, which he recognized as the cocking of the shotgun by Pasqual. Both Mr. Webb and Emma heard Warren yell, "Papa, he's going to shoot me." There was a shot and Pasqual fell in the road, mortally wounded.

The coroner's inquest was held at the scene 10 hours later, with the body of Pasqual still in the road where he fell. The coroner's jury was composed mainly of neighbors of the Webb family. At the inquest it was established that Pasqual's shotgun was fully loaded, cocked and ready to fire and only a short distance from his right hand. He also had a loaded revolver in a holster found underneath his body. Could it be that the scene had been rearranged by the Webbs to promote the impression of self-defense? The first person to the scene were summoned an hour or more after the shooting. It was clear that Pasqual had been shot at very close range. Basing its finding primarily on the testimony of Emma Everhart and Warren's father, the coroner's inquest determined that it was justifiable homicide.

Pasqual's brother Pierre complained that the shooting was murder and not justifiable. The district attorney filed a complaint and a preliminary hearing was held. Before the hearing, Warren was interrogated before he boarded a ship headed north and placed in the custody of the sheriff. During the hearing, a hired hand of the Webb family testified that he heard Warren say that if Pasqual came to get the sheep he would shoot him. Emma was not called as a witness. At the conclusion of the hearing, Warren was held for trial on a charge of murder. But the grand jury, a month later, refused to issue a true bill and Warren was freed.

William J. Howatt Jr. recently returned as providing judge of Family Law Court.
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UPENDED. The Red Bull Air Races roared into San Diego last fall. Barry Carlton, a deputy attorney general and photography editor of San Diego Lawyer, captured the drama. If you have a photograph you're particularly proud of, please e-mail Barry at lawpixels@cox.net for consideration of your photo on the Closing page.