Los Angeles Lawyer

April 2012 / $4

Semiannual Guide to Expert Witnesses

EARN MCLE CREDIT

Special Jury Instructions
page 25

Audits of Attorney Tax Returns
page 12

Sentencing Realignment
page 15

Contempt Proceedings
page 18

Price and Privilege

Los Angeles lawyer Elisha E. Weiner examines the potential waiver of privileges in litigation financing page 20

PLUS

Legality of Wiretaps
page 30
In addition to the strength of its new business law program, Chapman Law:

- Is a U.S. News “Top School” and is consistently ranked in Princeton Review’s Top 10 for “Quality of Life”
- Provides individualized instruction, with one of the nation’s lowest student/faculty ratios
- Has a stellar faculty that includes a Nobel laureate in economics, four former clerks to U.S. Supreme Court justices, former deans and a host of scholars from the country’s best law schools
- Provides a broad range of clinical programs that address issues in constitutional jurisprudence, entertainment contracts, immigration law, family violence, elder law, tax law and dispute resolution
- Offers certificate programs in advocacy and dispute resolution, business law, entertainment law, environmental/land use/real estate, international law and tax law
- Is located in the heart of Southern California, near state and federal courts, major law firms and corporations

For more information about Chapman Law, please call 877-CHAPLAW or lawadm@chapman.edu
Clients don’t care about...almost...winning

The financial advisor you use can affect the ultimate result.

We deliver better results through:
▲ Investigative capabilities that discover otherwise-hidden evidence
▲ Experience-directed research and analysis that delivers right answers the first time
▲ Better-trained full-time personnel with focused, relevant experience
▲ Technology that provides responsive, cost-effective answers
▲ Persuasive visual presentations, by consistently following our proven methodology

Because of this, we have an unequalled track record in successful court testimonies and substantial client recoveries.

Call us when you need:
▲ Damage analysis & related testimony
▲ Bankruptcy & restructuring analysis
▲ Business & asset valuations
▲ Electronic discovery & computer forensics

▲ Economic & market studies
▲ Fraud & other investigations
▲ Forensic accounting & audits
▲ Statistics & econometric modeling

To avoid mistakes, follow the online advice at www.fulcrum.com, or call us at 213-787-4100 to get a free no-obligation consultation.
20 Price and Privilege
BY ELISHA E. WEINER
Courts are divided on whether an exchange of confidential information with third-party litigation financers waives the attorney-client privilege.

25 Special Instructions
BY ELISABETH FRATER
Attorneys should consider proposing a neutral, nonargumentative set of jury instructions that pinpoint the specifics of the case.

Plus: Earn MCLE credit. MCLE Test No. 213 appears on page 27.

30 On Tap
BY KENNETH HERZINGER AND MARK MERMELSTEIN
Federal courts are scrutinizing the increased use of wiretaps in insider trading investigations.

39 Special Section
Semiannual Guide to Expert Witnesses

Los Angeles Lawyer
the magazine of
the Los Angeles County
Bar Association
April 2012
Volume 35, No. 2

COVER PHOTO: TOM KELLER
Paying Highest Referral Fees (Per State Bar Rules)
Representing executive, technical, and administrative employees
statewide with integrity, passion and expertise!
Honored to receive regular employment referrals from
over 100 of California’s finest attorneys
Super Lawyers 2012
Stephen Danz
& Associates
| 877.789.9707 |
Main office located in Los Angeles and nearby offices in Orange County & Inland Empire
11661 San Vicente Boulevard, Suite 500, Los Angeles, CA 90049
www.employmentattorneyca.com

 ARE YOUR CLIENTS ASSETS REALLY SECURE IN A BANK SAFE DEPOSIT BOX?

THERE IS AN ALTERNATIVE:
BIOMETRIC IDENTIFICATION / NO NAME OR PHOTO ID REQUIRED
HIGH SECURITY / ADT GUARDS ON-SITE / 7 DAYS A WEEK

USPRIVATEVAULTS.com
| t: (888) 948-8778 |
9182 West Olympic Blvd
Beverly Hills, CA. 90212

Copyright © 2012 by the Los Angeles County Bar Association. All rights
reserved. Reproduction in whole or in part without permission is pro-
hibited. Printed by R. R. Donnelley, Liberty, MO. Member Business
Publications Audit of Circulation (BPA).

The opinions and positions stated in signed material are those
of the authors and not by the fact of publication necessarily those of
the Association or its members. All manuscripts are carefully considered
by the Editorial Board. Letters to the editor are subject to editing.
Walzer & Melcher LLP is known for its expertise in handling complex divorce cases and premarital agreements. The firm is committed to resolving contested cases by settlement. Where that cannot be achieved, the firm provides strong and effective representation in litigation.

Woodland Hills, California
(818) 591-3700

www.walzermelcher.com
www.drprenup.com
Stephen A. Malley, principal of the Law Offices of Stephen A. Malley in Los Angeles, California, offers specialized and experienced counsel in U.S. and International tax and business planning, transnational business structures, international licensing, pre-immigration tax planning, and estate planning for U.S. taxpayers especially for individuals and families with foreign interests and for foreign families with U.S. beneficiaries or U.S. based assets.

TEL 310.820.7772 | FAX 310.820.8870 | samalley@malleyglobal.com

12424 WILSHIRE BOULEVARD, SUITE 1200, LOS ANGELES, CALIFORNIA 90025
Generations of California Lawyers can’t be wrong...

For over 3 decades, LMIC has been insuring the legal profession in California. We have built long term relationships based on trust, reliability and responsiveness. Those qualities are proven over time and are hard to replace. Our experience gives us credibility that our policyholders have come to rely on.

That is why our typical policyholder has been insured with LMIC for over 10.7 years and our “preferred” policyholder for over 14. They have enjoyed the benefits of membership including policy premium credits, dividends*, and over 50+ hours FREE online MCLE.

Our MCLE is designed to educate our policyholders in preventing malpractice, improving their practices and satisfying their compliance needs. Member lawyers also have access to our toll free one-on-one hotline, where they can consult with lawyers who are knowledgeable on issues concerning loss prevention and professional responsibility.

Now you know what our policyholders know.

LMIC

We offer more than just an insurance policy.

www.LMIC.com or call (800) 252-2045

*Dividends are paid at the sole discretion of the Company’s Board of Directors and past dividends do not guarantee the payment or amount of future dividends.
By now, members of the Los Angeles County Bar Association have probably given up any hope of reading serious legal scholarship in this column, at least during my term as editorial board chair. So, let me provide the next best thing: rambling witticisms about things that bug me but you never really noticed until I wrote about them and now—thanks a lot, Swenson—they bug you too.

Is anyone bothered by the fact that one risk of taking most prescription sleep medications is sleepwalking? If not, then you probably won’t mind the other side effects (actual warnings for all brands of prescription sleep medication): sleep-eating, sleep-driving, sleep-talking on the phone, and sleep-having sex, all without remembering it the next day. If you’re driving around with an In-N-Out burger in one hand and your cell phone in the other calling all your ex’s, at what point are you no longer considered to be sleeping? No wonder you want a sleep aid, after being out carousing all night! Ironically, the warnings also advise you not to drive a motor vehicle after taking a sleep medication. I guess sleep-driving doesn’t count. Still, I recommend using your neighbor’s car, just in case anything goes sleep-awry.

There are also drugs to help control obsessive compulsive disorder (OCD). I know some business lawyers who could use this, preferably before they go through a 150-page contract inserting commas before “and” in every list. Really, it’s grammatically correct with or without the comma. But here’s the funny thing about medication for OCD. Once you get your OCD under control, you forget to stay on schedule for taking your medication for OCD. So, only people with OCD can really get their OCD under control. But then they can’t because…this is making my head spin. I better sit down. I just want to make sure the seat is clean. Really clean.

By the way, one stated risk of OCD medication is sexual dysfunction. Not a problem. Just take the sleep medication. And after relieving your dysfunction in a drugged stupor, you can sleep-wash your hands as often as you want and you won’t even remember it in the morning.

Medications to lower cholesterol also contain warnings. For example, you are advised to seek medical help if you have swelling of your face and lips. Why seek medical help? It’s like getting a free Botox treatment on the side. You already had to give up at least one of the four food groups—you know, fat, sugar, salt, and carbs—because of your high cholesterol; you may as well get something out of this. We all know that nothing tastes good without the four food groups. Of course, there can be too much of a good thing. Like the deep fried stick of butter at the county fair. Ouch. I just felt my cholesterol go up, and I’ve never even been to the county fair!

Even common aspirin has side effects, like dyspepsia. That’s a medical term for upset stomach. Doctors diagnose dyspepsia to justify charging $300 for 15 minutes. Otherwise, your mother can diagnose your upset stomach for free. By the way, the word “dyspepsia” combines the Greek for “bad” and “Pepsi,” which may be why dyspepsia is characterized by things like bloating and belching. Of course, it’s hard to distinguish that from how I feel after drinking “good” Pepsi.

Don’t even get me started on the side effects of the medications for sexual dysfunction: chest pain, fainting, irregular heartbeat, ringing in the ears, loss of hearing, loss of vision, dizziness, seizures, hives, headaches, heartburn, diarrhea. Wait… I can do what? For how long?

Side effects, schmide effects. Sign me up.

Ken Swenson is in-house counsel for Bank of America in Los Angeles. He is the 2011-12 chair of the Los Angeles Lawyer Editorial Board. He can be reached at swensonatlal@aol.com.
The Easiest Way to Get Paid!

- Save up to 25% off standard fees
- Control cash flow & increase business
- Accept credit cards for retainers
- Avoid commingling client funds

LawPay's unique processing program correctly separates earned and unearned transactions keeping your firm compliant. The process is simple. Begin accepting payments today!

LawPay
CREDIT CARD PROCESSING
AffiniPay is a registered ISO/MSP of Harris, N.A., Chicago, IL

Recommended by Over 60 Bar Associations

Accept payment online through our Secure Payment Link

866.376.0950
www.LawPay.com/lacba
Learning to Differentiate between Judicial and Obiter Dicta

STAR DECISIS REQUIRES lower courts to follow the holding of a higher court’s opinion, but practitioners and judges often fail to understand exactly what should be done with the dicta. Some dicta are useless, but others can be dispositive. Knowledge of the tests that courts use to evaluate dicta is essential for every lawyer.

The preponderant weight that courts give to dicta, however, is a notoriously nonuniform area of law, as is the nomenclature that courts use to label different types of dicta. For practicing lawyers, however, a practical first step is to familiarize themselves with their jurisdiction’s dictum law. Most courts divide dictum into two categories: obiter or judicial. While these terms are the most widely used, other courts make up their own phraseology. The Ninth Circuit, for example, sometimes distinguishes between obiter dicta and considered dicta. Regardless of what names are used, lawyers must understand why one dictum is not necessarily just as good as the next.

Courts often refer to obiter dicta as “mere dicta” because these are frequently “by the way” remarks with no persuasive value. To rise to the esteemed level of judicial dictum, an opinion generally needs to contain a comprehensive discussion of the matter at hand. In many courts, judicial dictum is as binding as a holding. At a minimum, courts typically treat judicial dicta as persuasive. Although far too many opinions seem to classify dictum as obiter or judicial by using the “I know it when I see it” test, this luxury is unavailable to practitioners, who need something better for their dictum-based arguments. While each dictum that bears on a case deserves individual scrutiny, some guidelines help facilitate this analytical process.

Obiter Dicta

The starting point for understanding obiter dictum comes from its most famous example: footnote 4 to the U.S. Supreme Court’s decision in United States v. Carolene Products Company. The holding in Carolene Products answers the question of whether Congress had a rational basis to pass an economic regulation affecting interstate commerce. In footnote 4, the Court went on a “what if” frolic, suggesting that a “narrower scope” of review might be appropriate for legislation affecting fundamental rights. Footnote 4 is obiter dictum because it has no bearing on the decision and was given short shrift analytically. (As an aside, years later footnote 4 led to the creation of the “strict scrutiny” doctrine, thereby fundamentally changing the landscape of modern constitutional analysis.)

Footnote 4 is a classic example of the “we are leaving this issue open” breed of obiter dicta. Other commonplace examples include analogies, illustrations, and hypotheticals. On occasion, a court may insert obiter dictum to make a pedantic point, such as whether the correct expression is “attorneys’ fees,” “attorney’s fees,” “attorney fees,” or “attorneys fees.” Some courts consider any statement in a footnote to be obiter dictum. One of the few hard-and-fast rules is that dissenting and concurring opinions—no matter how reasoned—are wholly obiter dicta.

Judicial Dicta

A number of categories of dicta generally constitute judicial dicta. The Supreme Court, for example, has explicitly concluded that when “a decision rests on two or more grounds, none can be relegated to the category of obiter dictum.” Whenever an appellate opinion provides remand instructions to a lower court, those statements are judicial dicta. A handful of courts have held that statements serving as a "guide for future conduct" constitute judicial dicta. Finally, although it is sometimes hard to tell simply by reading an opinion, if the dictum at issue was a subject of a briefing or argument before the court, it is likely judicial dictum.

These are only some of the tests that courts have applied to separate immaterial from important dicta. Practitioners should become familiar with the dictum laws and jargon of their jurisdiction so as to accurately gauge the weight accorded to the dictum at issue.

To rise to the esteemed level of judicial dictum, an opinion needs to contain a comprehensive discussion of the matter at hand.

1. See, e.g., United States v. City of Hialeah, 140 F. 3d 968, 974 (11th Cir. 1998); United States v. Baird, 85 F. 3d 450, 453 (9th Cir. 1996); McCoy v. Massachusetts Inst. of Tech., 850 F. 2d 13, 19 (1st Cir. 1991).
2. E.g., Acieves v. Allstate Ins. Co., 68 F. 3d 1160, 1164 (9th Cir. 1995).
3. E.g., Curr-Spec Partners, L.P. v. Comm’r, 579 F. 3d 391, 399 & n.43 (5th Cir. 2009) (citation omitted).
10. See, e.g., J. L. v. Mercer Island Sch. Dist., 592 F. 3d 938, 951, 954 (9th Cir. 2010).

Damon Thayer is a member of the insurance coverage, bankruptcy, and employment practice groups at Jenner & Block LLP in Los Angeles. He serves on the Barristers Executive Committee.
IT’S MORE THAN JUST A REFERRAL
IT’S YOUR REPUTATION

Catastrophic Injuries
Product Liability
Motor Vehicle
Insurance Bad Faith
Premises Liability

THE EXPERIENCE YOUR CLIENT NEEDS
THE INTEGRITY YOU DESERVE

CDRB has established a reputation as the law firm
to whom other Attorneys refer their cases

Some of the referral fees paid
to Attorneys in the last few years

<table>
<thead>
<tr>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1,120,000</td>
</tr>
<tr>
<td>$960,000</td>
</tr>
<tr>
<td>$702,900</td>
</tr>
<tr>
<td>$555,614</td>
</tr>
<tr>
<td>$497,720</td>
</tr>
<tr>
<td>$446,785</td>
</tr>
<tr>
<td>$268,111</td>
</tr>
<tr>
<td>$216,346</td>
</tr>
<tr>
<td>$151,684</td>
</tr>
<tr>
<td>$150,000</td>
</tr>
<tr>
<td>$108,742</td>
</tr>
<tr>
<td>$103,333</td>
</tr>
</tbody>
</table>

Cheong, Denove, Rowell & Bennett
10100 Santa Monica Boulevard, Suite 2460, Los Angeles, CA 90067
310-277-4857   www.CDRB-Law.com
IN LIGHT OF THE MARCH 2011 RELEASE of a revised Attorneys Audit Technique Guide to assist revenue agents who audit lawyers and law firms, the legal profession may be facing increased scrutiny by the IRS. Audit techniques guides are produced by the IRS to provide industry-specific guidance to IRS revenue agents. The Attorneys Audit Technique Guide provides background information about the legal profession, identifies issues unique to the industry of which the revenue agents should be aware, and sets forth specific techniques that the revenue agents should follow in conducting audits of attorneys.

The release of the revised audit guide was followed in October 2011 by news that a prominent law firm partner was being charged with making and subscribing false personal income tax returns. On November 2, 2011, Leslie Jacobs, then a senior partner in the competition, antitrust, and white-collar crime group at Thompson Hine LLP, pleaded guilty to the felony violation of Internal Revenue Code Section 7206(1)—willfully making and subscribing a false tax return. The criminal information against Jacobs alleged that he understated his taxable income on his 2004 to 2007 returns by a total of more than $250,000 by overstating his business expense deductions. He was eventually sentenced to a year plus one day in prison. Business expense deductions are just one of several issues the audit guide instructs revenue agents to scrutinize when examining an attorney’s return.

Audit techniques guides have been issued as part of the IRS’s Examination Specialization Program. Previously known as the Market Segment Specialization Program (MSSP), the Examination Specialization Program was established by the IRS to enhance voluntary compliance and increase the effectiveness and efficiency of revenue agents by focusing on the tax compliance of a particular industry.

Through the Examination Specialization Program, returns involving issues, industries, and professions that are identified by the IRS as market segments needing audit attention are assigned to identified revenue agents who are trained in the area or who receive specialized research materials. Prior to the development of the Examination Specialization Program, the IRS would group returns on the basis of income or asset levels and types of returns and assign them to revenue agents accordingly. As a result, revenue agents would audit returns involving a wide variety of industries, each presenting unique issues. The knowledge that the revenue agent would gain auditing one return would not necessarily assist the revenue agent in conducting any future audits. With the Examination Specialization Program, returns are now sorted by market segment. The revenue agents develop an expertise in certain areas and are better able to learn the unique business practices of a particular industry. The audit technique guides also promote consistency among the treatment of taxpayers nationally.

The new audit guide revised and updated an earlier version of the MSSP Attorney Audit Techniques Guide that was first published in 1993. The revised audit guide describes the requirements for practicing as an attorney, identifies the accounting, banking, and record-keeping practices commonly used in the profession, outlines steps and techniques to follow in conducting an audit, and highlights issues that revenue agents should focus on in examining an attorney.

A revenue agent’s focus will vary depending on an attorney’s area of expertise—certain concerns are more prevalent in some practice areas than others. For example, the contingency fee arrangement common for personal injury attorneys presents some unique issues that are discussed in the audit guide. The type of law firm entity also will affect the issues focused on by a revenue agent, with a sole proprietorship presenting tax issues that differ from a partnership or a corporation.

Lacey Strachan is an associate and Dennis Perez is a principal in Hochman, Salkin, Rettig, Toscher & Perez, PC, a Beverly Hills firm that specializes in tax litigation and controversy and tax planning.
tains issues that the IRS has identified as common areas of attorney noncompliance and that likely will be scrutinized during an audit.

**Unreported Income**

Revenue agents will be looking for any income received by the attorney that was not reported on the attorney’s tax return. At the beginning of the audit, a revenue agent will determine the typical payment arrangements made with clients in the attorney’s practice. The audit guide describes the differences among the common fee arrangements—including specific retainers, annual retainers, and contingent fees, as well as referral fees that may be received from other attorneys.13

Revenue agents will verify an attorney’s reported gross income by reviewing and comparing the attorney’s timekeeping and billing records, bank account information, and accounting journals and ledgers. Particular attention will be paid to withdrawals from client trust accounts.14 The revenue agent will reconcile withdrawals from the client trust account with the attorney’s other accounts. Each of an attorney’s bank accounts, including personal accounts, will be examined by a revenue agent. Personal bank accounts will be analyzed to determine whether any fees received from clients were deposited directly into the attorney’s personal account instead of into a business account.15

Another resource available to revenue agents to determine an attorney’s gross income is the Financial Crimes Enforcement Network (FinCEN) information reports. Designed to help combat money laundering and other financial crimes, these reports will notify the IRS when a taxpayer conducts certain cash transactions involving more than $10,000. The first report is the Currency Transaction Report (FinCEN Form 104), which is used by financial institutions to report deposits and withdrawals greater than $10,000.16 Another report relied on is FinCEN Form 8300 (the Report of Cash Payments Over $10,000 Received in a Trade or Business), which must be filed by any business, including law firms, to report cash payments received in excess of $10,000.17 Other reports reviewed by revenue agents include Reports of International Transportation of Currency and Monetary Instruments (FinCEN Form 105), Currency Transaction Reports by Casinos (FinCEN Form 103), Reports of Foreign Bank and Financial Accounts (Treasury Form TD F 90-22.1), and Suspicious Activity Reports (Treasury Form TD F 90-22.47).18

The audit guide instructs revenue agents to also investigate whether an attorney had unreported noncash income.19 For example, a transactional attorney who forms partnerships and corporations may accept an interest in the entity as payment for legal services.20 The value of the interest is income to the attorney that must be reported. The audit guide also draws attention to situations in which an attorney trades legal services for other services or performs legal services to pay back a loan.21

While examining whether an attorney has any unreported income, the revenue agent will also determine whether the income is being reported in the proper year. Revenue agents will scrutinize attempts by attorneys to defer income. Most attorneys are cash basis taxpayers, which means that income must be recognized in the year it is received.22 In the case of retainers and prepaid fees, the amount must be reported as income in the year received even if the services will not be performed until a later year.23

Under the doctrine of constructive receipt, a cash basis taxpayer is taxed on income when it is subject to the demand of the taxpayer and there are no substantial limitations or conditions on the right to receive it.24 In an example the IRS provides, a criminal defense attorney working as a court-appointed attorney on an indigent defense panel attempted to defer income by delaying the submission of required monthly bills to the county for payment. The audit guide explains that the attorney would be considered to be in constructive receipt of the income, because the attorney only needed to submit a billing statement to receive the payment for the services, the payment was subject to the demand of the taxpayer, and there were no substantial limitations or conditions on the attorney’s right to receive it.25

Another income deferral method that agents will be looking for when conducting an attorney audit involves contingency fee cases in which a settlement or judgment is received and deposited into a client trust account. Because the contingency fee amount is determinable and available as soon as a client’s settlement or judgment is received, although resting in a client trust account, it is includable in income in the year received.26

**Deduction of Business Expenses**

Revenue agents will be scrutinizing whether the expenses taken on an attorney’s return are deductible and properly substantiated. This is a particularly important area to be aware of in light of the recent criminal case against Jacobs, which was based on improper deductions from his law firm partnership income.27 An area that frequently presents issues in the returns of attorneys are entertainment and recreation expenses. The Internal Revenue Code provides that entertainment, amusement, and recreation expenses are not deductible unless they are “directly related to” or “associated with” the active conduct of the taxpayer’s trade or business.28 To be deductible, the taxpayer must satisfy the substantiation requirements of IRC Section 274(d), and the amounts are subject to a 50 percent disallowance.29

The IRS will generally determine that entertainment expenses are not “directly related to” the active conduct of the taxpayer’s business when there are “substantial distractions” at the event creating little or no possibility of engaging in the active conduct of a trade or business.30 The Treasury Regulations explain that such may be the case with meetings or discussions at nightclubs, sporting events, and other essentially social gatherings.31 As an example, the audit guide offers the case in which an attorney was disallowed a deduction for the cost of a party thrown at a country club that was attended by clients, because no business discussions took place at the party.32

A revenue agent will also determine whether any expenses deducted are, in fact, personal expenses and thus, not deductible. If a revenue agent determines that an expense is a hobby of the attorney instead of a business expense, such as a wine cellar at the office, the deduction will be disallowed.33 Corporate credit card purchases will also be reviewed to determine whether any are personal in nature, including living expenses.34 If a law firm pays an attorney’s personal expenses, the amounts will be treated as either income to the attorney or as constructive dividends, in the case of shareholders of C corporations.35

**Advanced Client Costs**

When examining deductions, revenue agents are also instructed to determine whether the attorney is deducting costs that will be reimbursed later by the client. In contingency fee cases, attorneys commonly pay the litigation expenses on behalf of their clients, with the agreement that the amounts will be recovered out of a future settlement or judgment. These amounts are referred to as advanced client costs— an issue that is particularly prevalent with personal injury attorneys, who may not recover the costs for years, if at all.36

The IRS takes the position that advanced client costs should be treated as loans to clients if an attorney expects to be reimbursed for the costs.37 Some attorneys instead deduct these costs and include the amounts in income if the costs are later reimbursed. Because it can take years to resolve a case, the IRS generally disallows this method on the basis that it has the potential to distort income and requires that the amounts be treated as loans to clients.38 If the costs are never reimbursed, the attorney may deduct the amounts as bad debts.39

Los Angeles Lawyer April 2012 33
Because of the uncertainty surrounding whether a settlement or judgment will be reached in a case, many object to this method on the ground that there is no guarantee of reimbursement. Revenue agents are advised to look at an attorney’s case selection, fee advancement processes, and success rate to determine whether there is an expectation of reimbursement.\(^{40}\)

The Ninth Circuit has drawn a distinction on this issue between “net fee” contingency contracts and “gross fee” contingency contracts.\(^{41}\) In a net fee contract, the attorney is reimbursed for costs before the contingency fee percentage is calculated and paid from the settlement or award proceeds. In contrast, costs are not separately reimbursed with a gross fee contract—the attorney only receives the negotiated percentage of the award.\(^{42}\)

The Ninth Circuit has held that litigation costs are not client advances when the attorney has entered into a gross fee contract because, as a matter of law, the client has no obligation to repay the money expended.\(^{43}\)

The IRS’s position is at odds with this precedent whether an attorney has been filing the tax liability, revenue agents will also investigate whether any payment of at least $600 made to a client or former client is a gross fee arrangement and “gross fee” contingency contracts.\(^{44}\) In a net fee contract, the attorney is reimbursed for costs before the contingency fee percentage is calculated and paid from the settlement or award proceeds. In contrast, costs are not separately reimbursed with a gross fee contract—the attorney only receives the negotiated percentage of the award.\(^{42}\)

The audit guide addresses two issues that frequently come up in audits of attorneys: whether fee arrangements and client lists are protected by the attorney-client privilege. The general rule is that fee arrangements and the identity of clients do not constitute a protected communication.\(^{52}\) However, the Ninth Circuit has recognized an exception to this rule—documents will be protected by the attorney-client privilege if disclosure of their information would be in substance a disclosure of a protected confidential communication.\(^{53}\) Moreover, while the specific fee arrangement is not protected, any portions of an engagement letter, retainer agreement, or any other correspondence that reveals the client’s motivation for creating the relationship, the nature of legal services provided, or the attorney’s litigation strategy will be protected.\(^{54}\)

Through the publicity surrounding the recent indictment of a prominent law firm partner, the IRS is hoping to deter attorneys from making the same mistakes. For attorneys, a criminal conviction may also mean being barred from practicing law—a conviction of a tax crime could cost a lawyer his or her California State Bar license.\(^{55}\)

The Attorneys Audit Technique Guide is part of an effort by the IRS to increase voluntary compliance among attorneys. It is important for attorneys to be aware of the potential areas of vulnerability and focus on ensuring their tax filing and payment practices are in compliance with the Internal Revenue Code and regulations.\(^{1}\)

---

7. IRM 4.10.3.2, and 4.28.1.1.1.
8. IRM 4.28.1.1.
10. Attorneys ATG at 3.
14. Id.
15. Attorneys ATG at 16.
16. Attorneys ATG at 17.
17. Id.
19. Attorneys ATG at 31.
20. Id.
22. Attorneys ATG at 28, 45.
25. Attorney ATG at 31-32.
29. I.R.C. §55274(a), (d), (o).
32. Attorneys ATG at 33.
33. Attorneys ATG at 33, 44.
34. Id.
35. Attorneys ATG at 34.
36. Attorneys ATG at 34-35.
37. Attorneys ATG at 34.
38. Id.
39. Attorneys ATG at 35.
40. Boccardo v. United States, 56 F. 3d 1016 (9th Cir. 1995).
41. Id.; Attorneys ATG at 35.
42. Boccardo, 56 F. 3d at 1018-20.
43. 1997 FSA LEINIS 442.
44. I.R.C. §5041.
45. Attorneys ATG at 43.
46. I.R.C. §5050.
47. Attorneys ATG at 43.
48. Attorneys ATG at 10.
49. Id. (citing Reisman v. Caplin, 375 U.S. 440 (1964)).
50. See In re Osterhoudt, 722 F. 2d 591 (9th Cir. 1983); Coloso v. United States, 306 F. 2d 633 (2nd Cir. 1962).
52. Attorneys ATG at 10-11.
53. Bus. & Corp. Code §5101 provides that conviction of any crime involving moral turpitude constitutes a cause for disbarment or suspension. Section 6102 further provides that the Supreme Court shall “summarily disbar the attorney if the offense is a felony...and an element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement.” Bus. & Corp. Code §5102(c). The Rules of Procedure of the State Bar of California also provide that even if a crime does not involve moral turpitude, an attorney can be disciplined if the crime involves “other misconduct warranting discipline.” R. of Proc. of the State Bar of Cal., tit. IV, pt. C, St. 3.4.
Realignment of California’s Criminal Justice Policies

MOST CRIMINAL OFFENDERS will be released back into society, and while some people may desire that criminals simply be locked up and the key thrown away, the reality is that California cannot afford to have as many prisoners as it does. As Penal Code Section 17.5 states, “[C]riminal justice policies that rely on building and operating more prisons to address community safety concerns are not sustainable, and will not result in improved public safety.” The statute directs California to “reinvest its criminal justice resources to support community-based corrections programs and evidence-based practices that will achieve improved public safety.” To effect this new policy, low-level felony offenders “who do not have prior convictions for serious, violent, or sex offenses” should be housed in “locally run community-based corrections programs, which are strengthened through community-based punishment, evidence-based practices, improved supervision strategies, and enhanced secured capacity” in order to “improve public safety outcomes among adult felons and facilitate their reintegration back into society.”3 This new policy is called realignment, and the California Legislature has plainly declared its intention to realign its policies regarding incarceration and treatment of low-grade felony offenders.

Realignment includes community-based punishment, provided by local public safety entities directly or through community-based public or private correctional service providers. Other ideas include flash incarceration, intensive community supervision, home detention with electronic monitoring or GPS, mandatory community service, restorative justice programs such as mandatory victim restitution, mandatory substance abuse treatment, work in lieu of confinement, mandatory random drug testing, and other evidence-based practices that have been demonstrated to reduce recidivism. Reduction of recidivism is the stated goal of realignment.3 While cynics may argue that realignment is just a plan by the state to shed prison inmates and foist them off on the counties, the legislature has stated otherwise.3

Three Prongs
There are three prongs to realignment, each of which results in the shift of felony defendants from the state’s prisons and into county jails. One prong creates “county jail felonies” for which felons are to be housed in county jail. Another prong creates post-release community supervision (PRCS), which shifts supervision to the counties and replaces parole for many inmates. Finally parole itself is realigned to, once again, shift some parolees who violate their parole from state prison to county jails.

Realignment’s first prong became effective October 1, 2011, after which certain felons sentenced for specified felony crimes were no longer to be sent to state prison but instead to a county jail. Realignment has generally not, however, changed the sentence that a defendant can receive for committing a given felony. The sentencing scheme for felonies, which normally involves a triad of potential sentences such as 16 months, two years, or three years behind bars, remains the same. In theory, a defendant receives the same sentence that he or she would have received prior to realignment’s effective date. What has changed is that qualifying defendants will be incarcerated locally rather than in California’s prison system.

Crimes in California are divided into three categories. There are infractions, such as speeding, which are punishable by fine only and do not carry a jail sentence. Misdemeanors are defined as crimes carrying a fine and/or a sentence to a county jail. A person cannot be imprisoned in the county jail on a single misdemeanor charge for more than one year. Felonies are crimes punishable by death or imprisonment in the state prison. It has been the fact of imprisonment in the state prison that defined a crime as a felony.

Realignment did not create any new crimes, nor did realignment change the fact that crimes are either infractions, misdemeanors, or felonies. What the legislature did was redefine the nature of a felony to include a sentence to county jail. Penal Code Section 17(a) now defines a felony as a crime punishable “with death, by imprisonment in the state prison, or notwithstanding any other provision of law, by imprisonment in a county jail under the provisions of subdivision (h) of Section 1170.”

The legislature amended Penal Code Section 1170(h), which creates county jail felony sentences. Subdivision (h)(1) specifies that for crimes for which the term of imprisonment is not specified in the statute defining the crime, the “offense shall be punishable by a term of imprisonment in a county jail for 16 months, or two or three years.” Subdivision (h)(2) states that when the term of imprisonment is specified in the statute defining the crime, then the offense “shall be punishable by imprisonment in a county jail for the term described in the underlying offense.” These changes apply “prospectively to any person sentenced on or after October 1, 2011.”4

Not all crimes or defendants qualify for county jail. Both must meet a standard that has come to be called non-non-non, N-3, or triple-n. The three “nons” or nots are 1) not a serious felony,2 2) not a violent felony,6 and 3) not required to register as a sex offender.7 The defendant cannot have a prior conviction for a serious or violent felony and cannot already be a sex offender registrant. Out-of-state prior convictions for crimes that are the equivalent of a California serious or violent felony are also disqualifiers. Juvenile crimes, however, are not disqualifiers. The final disqualifier, which is fairly rare, is an enhancement pursuant to Penal Code Section 186.11, commonly known as the white collar crime enhancement.

For example, a male defendant is charged with possessing cocaine in violation of Health and Safety Code Section 11350. He has several prior convictions for felony drug possession and went to prison for one of those but has no convictions for serious or violent felonies and

Albert Camacho and Mark Harvis are Los Angeles County Deputy Public Defenders assigned to the appellate branch. The authors express gratitude to Fresno County Senior Deputy Public Defender Garrick Byers, who has written extensively on realignment.
is not a sex offender registrant. He has numerous misdemeanor convictions, including one for resisting arrest and another for battery. He also has refused to undertake drug treatment in his current case.

Prior to October 1, 2011, Health and Safety Code Section 11350(a) specified that a person who possesses cocaine “shall be punished by imprisonment in the state prison.” Because the term is unspecified, Penal Code Section 18 applies, and it establishes that the term of imprisonment is 16 months, two years, or three years in state prison. Health and Safety Code Section 11350 now states that a violation of its terms “shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.” Newly amended Penal Code Section 18 retains the 16-month, two-year, or three-year sentencing scheme but now applies it as a “county jail felony.” The crime is an N-3 because it is not on the serious felony list, not on the violent felony list, and does not require sex offender registration. The crime is therefore punishable by 16 months, two years, or three years in a county jail rather than state prison.

The next question is whether the defendant himself is also an N-3. He has prior convictions, but they are neither serious nor violent felonies. In addition, he is not a sex offender registrant. This makes him an N-3, and the sentence will be served in county jail. A previous stay in prison does not disqualify him from the county jail sentence. The prior misdemeanor history is irrelevant and is not a disqualifier.

This is how realignment applies when the crime and defendant are N-3s. The legislature, however, retained certain crimes that are otherwise N-3 (neither serious nor violent nor requiring sex offender registration) as state prison felonies, meaning that upon a conviction an executed sentence will be served in state prison and not the county jail. According to Fresno County’s Garrick Byers, who has examined the legislation to determine which N-3 felonies remain punishable by imprisonment in the state prison, there are at least 80 otherwise N-3 felonies that will be served in state prison. The legislature did this by amending the statutes so that each specifies that punishment will be in state prison for a specified term.

An example is Penal Code Section 222, which makes it a felony to administer a stupefying drug to another person to assist in the commission of a felony. Prior to realignment, the statute simply stated that a person who violates this law is “guilty of a felony.” The legislature, however, amended the statute so that it now reads that upon conviction the perpetrator is “guilty of a felony punishable by imprisonment in the state prison for 16 months, or two or three years.”

Byers also notes that there are an additional number of otherwise N-3 felonies for which the statutes specify only that upon conviction the person is guilty of a felony but do not specify that the sentence is to be served in the county jail pursuant to Penal Code Section 1170(h). As a result, an executed sentence for these crimes will be served in state prison. Penal Code Section 115, which makes it a felony to offer a forged instrument for recording in a public office, is one of these crimes. It specifies only that the perpetrator “is guilty of a felony,” and therefore an executed sentence will be served in state prison.

**Sentencing Options**

Other than changing where a defendant will do custody time, realignment did not change a court’s ability to place a person on probation or craft an alternate sentence, such as deferred entry of judgment, assuming the person otherwise qualifies. On the other hand, the legislature specifically denied courts the power to dismiss disqualifiers. However, if the defendant, the court, and the district attorney all believe that a defendant should do his or her time in county jail rather than in state prison, the defendant may not be out of luck. If the defendant’s charged crime is not an N-3, the problem can be fixed by charging a different crime. The district attorney may agree to charge the defendant with a crime that is an N-3 as part of a negotiated disposition and seek to have the disqualifying crime dismissed.

Defendants in realignment cases should be able to challenge allegations of disqualification. In similar situations (for example, in cases involving strikes), the prosecutor must plead and prove allegations that affect sentencing, thus allowing the defendant to challenge them. The realignment statutes, however, do not contain a specific provision that the prosecution must prove disqualifiers. In Proposition 36 cases, for example, defendants have the ability to challenge disqualifying priors, with the determination ultimately made by the trial court. Another example is Penal Code Section 186.11, for which the disqualifying enhancement must be pleaded and proved. Due process would seem to require that a defendant have the ability to challenge a disqualifier. Ultimately, courts and the legislature may determine this issue.

Realignment is designed to incarcerate some defendants in county jails and to make sure that others who are deemed to be more serious criminals or who have committed more serious crimes are housed in state prison. The place where a defendant will be housed remains a matter of statutory definition.

The defendant facing a cocaine possession charge will benefit from realignment and be sentenced as a county jail felon. The usual determinate sentencing rules apply, and realignment has changed nothing in the formulation of a felony sentence. The defendant will not be granted probation, and because of his prior drug convictions, he is ineligible for deferred entry of judgment. He is also ineligible for probation under Proposition 36 because he has refused drug treatment. The court is therefore obliged to select a term—low, middle, or high—and put together a sentence with concurrent terms or consecutive terms using a third of the midterm and add appropriate enhancements, if any.

Many defendants have several crimes or enhancements charged simultaneously. As long as all the charged crimes are county jail felonies, however, the sentence will be served in the county jail. If there is a mix of county jail felonies and state prison felonies to be sentenced consecutively, the sentence will be served in state prison. The statutory scheme is silent, however, about where the time will be served when there is a mix of sentences to be served concurrently.

**The Split Sentence**

Persons who receive a county jail felony sentence are released without what is called a tail, which means no probation or parole. Once released, a former county jail felony prisoner reports to nobody and has no conditions on release. Release without immediate supervision is a departure from traditional felony sentencing. A person placed on probation for a felony has been, and will continue to be, supervised by a probation officer. Prior to realignment, a person sent to prison would be released on parole, required to report to a parole officer, and be given various terms and conditions of parole that must be obeyed. A county jail felon, on the other hand, just walks out the door unless the court decides to impose a new realignment creation known as the split sentence.

Penal Code Section 1170(h)(5) explains that a court may sentence a county jail felon to county jail but, after setting the term, suspend execution of its concluding portion. During the suspended time, the person shall be “supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation.” The period of supervision is mandatory and may not be terminated early except by court order.

This new scheme does not quite appear to be probation, and it definitely is not parole. What makes split sentence supervision (SSS) different is that for every day the person serves out of custody and under supervision, one day is credited to the term of imprisonment that the court has imposed. This reduces the term a person may serve if SSS is violated.
and the person is returned to custody.

In the case of the cocaine possession defendant, the court decides he should be sentenced to three years of formal probation, with the condition that he serve 180 days in the county jail. Having examined the defendant’s record, the court also decides that should the defendant violate probation, he will be sentenced to the middle term of two years.

If the defendant violates probation the day after he finishes serving the 180 days, he will be sentenced to two years in the county jail minus his 180 days credit for time already served. If he violates probation the day before the expiration of his three-year probation term, he would still be sentenced to serve two years in the county jail (with credit for the 180 days already served). There is no credit against incarceration for the days spent on probation but out of custody.

If, on the other hand, the court gives the hypothetical cocaine possession defendant a split two-year sentence and decrees that he will be released after serving 180 days (including credit for good behavior and work time), execution of the remaining year and 185 days will be suspended, and he will serve the remainder of the sentence out of custody and under SSS. Every day that he is on SSS, his potential sentence for a violation decreases by one day. If he violates SSS the day after he finishes serving his 180-day sentence, he will be sentenced to serve another year and 184 days in the county jail, because he gets credit for the one day he was out of custody on SSS. This result is not much different from a regular probation violation.

The difference becomes more pronounced, however, the longer the former prisoner stays out of trouble. If he violates SSS six months after he is released from jail, he only has to spend one year in custody because he received a two-year sentence, served 6 months in jail, and served 6 months out of custody on split sentence supervision, giving him 12 months total credit and leaving one more year to serve. Finally, if he violates SSS the day before it expires, the court would sentence him to serve only the one day that is the remainder of his suspended sentence.

**Section 4019**

The legislature has also reworked the credits that defendants receive on their county jail sentences. Penal Code Section 4019 generally governs the amount of credits a person receives for time served in county jail. Although the sentencing provisions in realignment apply to all persons sentenced on or after October 1, 2011, the credits provision of Section 4019 only applies to crimes committed on or after that date.

Section 4019 now indicates that for persons confined in a county jail, city jail, industrial farm, or road camp, “[it] is the intent of the Legislature that if all days are earned under this section, a term of four days will be deemed to have been served for every two days spent in actual custody.” This is a change from the credits rule as it previously existed. At that time, county jail inmates essentially served two-thirds of their sentence, receiving six days credit for every four days served. In addition, the previous law did not allow a deduction for credits unless a person was committed for six days or longer.

The statute now gives the credit deduction to persons committed for four days or longer. Persons who receive county jail felony sentences will actually serve about half their sentences (at least theoretically) when credits for good behavior and work are applied. Persons who receive state prison sentences will also receive the same “four for two” credit for presentence incarceration. Persons convicted of violent felonies, however, are limited to a 15 percent credit reduction. Convicted murderers do not earn any conduct credits. In addition, inmates assigned to a county conservation camp or who are inmate firefighters earn a deduction of two days for every day served.

How much time will county jail felons really do? Sheriffs will be the ones to answer. Jails may release inmates early to ease overcrowding. There is also the question of money: How long will sheriffs keep county jail felony inmates in their jails if the state stops paying for it? Although some inmates may be released early, defendants should be informed that early release cannot be promised and they should expect to be released no sooner than allowed by law. With the state in a serious budget crisis, expectations are being realigned for all its residents, including those being sentenced to punishment for their crimes.

---

1. PEN. CODE §17.5(a)(3)-(6).
2. PEN. CODE §17.5(a)(6)-(9).
3. See Pen. Code §17.5(b), which states: “The provisions of this act are not intended to alleviate state prison overcrowding.”
4. PEN. CODE §1170(b)(6).
5. PEN. CODE §1192.7.
6. PEN. CODE §667.5(c).
7. PEN. CODE §290.
8. PEN. CODE §1170(b)(4).
9. PEN. CODE §1170(e).
11. PEN. CODE §186.11(b)(1).
12. PEN. CODE §1000(a)(1).
14. PEN. CODE §1170(b); PEN. CODE §1170.1(a).
15. PEN. CODE §1170.1(a).
16. PEN. CODE §4019(b).
17. PEN. CODE §4019(h).
19. PEN. CODE §4019(e).
20. PEN. CODE §2933.1.
21. PEN. CODE §2933.2.
22. PEN. CODE §4019.2.
Vindicating the Judicial Process through Contempt Proceedings

SOMETIMES A PARTY, EXPERT, OR COUNSEL may disregard or refuse to comply with a court order. In these circumstances, the court’s power to find a person in contempt can be a tool to ensure compliance. It is possible, however, that a court will not initiate contempt proceedings or otherwise use its contempt power unless requested. Accordingly, attorneys can play a vital role in initiating contempt proceedings and proving contempt, and they should be familiar with the rules and procedures related to contempt.

It may be necessary to initiate contempt proceedings to vindicate the judicial process or to protect a litigant’s rights. After Dr. Conrad Murray’s trial for involuntary manslaughter in the death of Michael Jackson, the trial court found Dr. Paul White, one of the defense experts, in contempt of court and fined him $250. During what has been described as a contentious cross-examination, White violated the trial court’s order that he not testify about what he learned from speaking to Murray. Despite numerous warnings from the prosecutor and the trial court, White repeatedly referenced his discussions with Murray—a clear violation of the trial court’s order. White was also accused of violating a gag order when he spoke to a reporter and called the deputy district attorney a “scumbag.” Ultimately, the trial court did not find White in contempt of the gag order. During White’s contempt hearing, the deputy district attorney argued that White was purposefully attempting to sabotage the trial. Regardless of White’s intentions, it is clear that he disregarded the trial court’s order that he not testify about what he had learned from speaking to Murray, showed disrespect to the judicial process, and frustrated the deputy district attorney.

Dealing with an opposing party, expert, or counsel who disregards and refuses to obey a court order is not only extremely frustrating but also can dramatically affect the outcome of litigation and a party’s rights. If the prosecutor and the trial court in Murray’s trial had ignored White’s violations of the court’s order while he was testifying, the outcome of the trial could have been different. In fact, if White had not been repeatedly admonished and corrected during his testimony, in the worst case scenario, a mistrial could have resulted. Beyond affecting the outcome of litigation, when an opposing party, expert, or counsel violates a court order, it could immediately affect a party’s rights and ongoing business. For example, if an expert gains access to a party’s trade secrets pursuant to a protective order but then disseminates those trade secrets to the party’s competitors, the party’s business could be immediately and irremediably harmed regardless of the outcome of the pending litigation.

Given the potentially high stakes and the irreparable harm that can occur when an opposing party, expert, or counsel violates a court order, attorneys should know how to initiate contempt proceedings and prove contempt. A finding of contempt against an opposing party, expert, or counsel will not only vindicate the judicial process and potentially a litigant’s rights but also could affect the outcome of litigation. For example, a party that is found in contempt will likely lose credibility with the court, which could affect that party’s future success in the litigation and facilitate settlement. The party may also be ordered to pay the costs and attorney’s fees of the party that initiated the contempt proceedings.

Moreover, courts have long acknowledged the rule that “[a] party to an action cannot, with right or reason, ask the aid and assistance of a court in hearing his demands while he stands in an attitude of contempt to legal orders and processes of the courts.” For example, it is well settled that the court of appeal “has the inherent power to dismiss an appeal by any party who has refused to comply with the orders of the trial court.” Accordingly, initiating contempt proceedings against an opposing party, expert, or counsel, and proving contempt, can vindicate the judicial process, protect a party’s rights, and be strategically advantageous.

Initiating Contempt Proceedings and Proving Contempt

Although a finding of contempt can be powerful and affect the outcome of litigation, attorneys should exercise some restraint when initiating contempt proceedings. Contempt is a serious matter, and it would be inappropriate to initiate contempt proceedings every time a party violates a court order. For example, most attorneys would refrain from initiating contempt proceedings if an opposing party knowingly files a brief a single day late in violation of a court order, for there are other, potentially more effective, ways to deal with such a situation. A party that initiates contempt proceedings at every possible opportunity will likely lose goodwill with the court and be treated as an annoying playground tattletale. Thus, attorneys should exercise reasoned judgment when initiating contempt proceedings. The foundation of that judgment should be a clear understanding of the basic procedures for initiating contempt proceedings and proving contempt. Importantly, “[t]o invoke the power of contempt without knowing or learning the law is misconduct.”

Broadly defined, contempt of court is an act that obstructs the administration of justice. Code of Civil Procedure Section 1209 lists several specific types of contempt of court, including:

- Disobedience of any lawful judgment, order, or process of a court.
- Abuse of the judicial process or judicial proceedings.
- Disorderly or insolent behavior, a breach of the peace, boisterous conduct, or violent disturbance, which interrupts judicial proceedings.
- Misbehavior by an attorney, clerk, sheriff, coroner, or other person, who performs a judicial or ministerial service.
- Any other unlawful interference with the judicial process or judicial proceedings.

To find an individual in contempt, a court need only conclude that 1) there was a valid court order, 2) the individual had actual knowledge of the order, 3) the individual had the ability to comply with the order, and 4) the individual willfully disobeyed the order. These basic elements are applicable to the two general categories of contempt:

Jeffrey R. Makin is an associate in the Litigation Group of Arent Fox LLP’s Los Angeles office.
void. In In re Koehler, contempt proceedings were initiated against attorney Henry Koehler because he failed to pay a $10,000 discovery sanction. The court found Koehler in contempt and ordered him to serve five days in jail, which he did. However, he did not pay the $10,000 sanction. Seven months later, without any charging affidavit, the court issued an order to show cause directed to Koehler regarding contempt for his continued failure to pay the sanction. The court held a hearing, found Koehler in contempt, and ordered him to serve another five days in jail. Less than two months later, again without any charging affidavit, the court issued another order to show cause directed to Koehler regarding his continued failure to pay the $10,000 sanction. Although it failed to serve the order to show cause personally on Koehler, the court nonetheless held a hearing, found Koehler in contempt, and ordered him to serve another five days in jail. Koehler then filed a petition for writ of habeas corpus, which the court of appeal took up as a petition for writ of prohibition.

The court of appeal reaffirmed the importance of the procedural safeguards that are guaranteed to an individual accused of contempt and found several errors regarding the third round of contempt proceedings against Koehler. First, there was no initiating affidavit for the indirect contempt proceedings, and indirect contempt proceedings without an initiating affidavit are void. Second, the order to show cause was not personally served on Koehler. Third, the contempt was not proven beyond a reasonable doubt—i.e., there was no evidentiary support for every element of contempt. Specifically, there was no evidence that Koehler had the ability to comply with the trial court’s order that he pay the $10,000 sanction, especially since the trial court had previously appointed an attorney for Koehler because he could not afford to pay an attorney. Accordingly, the court of appeal held that the trial court had improperly denied Koehler due process of law and reversed and annulled the trial court’s third finding of contempt.

As the court of appeal’s holding in Koehler demonstrates, contempt is a serious matter, and the accused individual’s rights must be protected; otherwise, any finding of contempt is invalid. Significantly, a finding of contempt can have drastic effects. In Koehler, for example, the trial court caused a discipline referral to be submitted to the State Bar, and the court of appeal noted that the referral was apparently effective because Koehler had been disbarred.

Because contempt is such a serious matter, attorneys who are familiar with the standards related to contempt can also initiate contempt proceedings, as appropriate, against an opposing party, expert, or counsel. As news articles such as those about White demonstrate, there will be times when contempt proceedings are necessary and warranted, and attorneys can assist the court in vindicating the judicial process and ensuring compliance with court orders. Moreover, attorneys who are familiar with the standards related to contempt will be prepared to spring into action to protect their clients’ rights, especially since contempt proceedings can dramatically affect the outcome of litigation.
Price and Privilege

While litigation financing offers hope to plaintiffs with limited resources, an exchange of confidential information with the financer may waive the attorney-client privilege.

LITIGATION FINANCING is a rapidly expanding industry that employs a variety of creative business models. Regardless of the exact litigation financing approach used, attorneys and clients must be wary of inadvertently waiving the attorney-client and attorney work-product privileges by sharing privileged information with a litigation finance provider.

In general, a litigation finance provider, or financer, funds part of a claim—a lawsuit or arbitration—in return for a portion of the proceeds, if any, from the resulting judgment or settlement. If the claim results in insufficient proceeds, the financer loses its investment. The exact model varies depending on the type of claim (most commonly, commercial, personal injury, patent infringement, price fixing, or antitrust disputes or lawsuits), whether the funded party is the plaintiff or defendant, and whether the funds go directly to the client or to the client’s lawyer.

All litigation financing models have one thing in common: The financer needs to evaluate the strength of a client’s claim or claims in order to gauge the potential risks and benefits of its investment. To minimize the potential risks, financers should have access to the most accurate and complete information about a claim as possible. There are several categories of information a financer can analyze: 1) publicly available documents already filed with the court, such as pleadings, motions, hearing transcripts, and court orders, 2) discoverable documents and sources of information, and 3) nondisclosable, privileged documents and information. By providing privileged documents and information to a potential financer, however, the client or his attorney may inadvertently waive the attorney-client privilege or the attorney work-product privilege, thus making the documents and information discoverable.

A confidential disclosure of information between a client and an attorney made in order to obtain or give legal advice is privileged.1 Likewise, a writing reflecting an attorney’s impressions, conclusions, or theories is privileged as attorney work product.2 Generally, disclosure of privileged information to a third party waives the privilege.3 There are situations, however, in which disclosure of privileged information to a third party would not waive the privilege.

Under federal law, there is no waiver of the attorney-client privilege if the common-interest privilege applies. However, the only district court decision analyzing the attorney-client privilege in the context of litigation financing held that the common-interest privilege does not apply when privileged com-

Elisha E. Weiner is an associate at Hobart Linzer LLP. Her practice areas include commercial, business, real estate, and entertainment transactions and litigation.
communications are disclosed to a potential financer. Financers are finding that, under federal law, the work-product doctrine may afford more protection. Indeed, there is no waiver of the work-product privilege under federal law if the disclosure to the third party does not substantially increase the likelihood that an adversary would come into possession of the materials.

Under California law, waiver of both the attorney-client privilege and the work-product privilege are analyzed together using common law waiver principles. Despite the fact that there are no published decisions on point, California appears to be amenable to maintaining the privilege of documents transmitted to third parties during negotiations if the parties did not intend to waive the privilege and made efforts to maintain the confidentiality of the communications.

Due to the unsettled nature of the law, financers, attorneys, and clients are, and reasonably should be, wary of injuring a client’s case by sharing privileged information. However, as the understanding and appreciation of the value of alternative litigation financing increases, legislators and courts would do well to adopt statutes or regulations financing increases, legislators and courts would do well to adopt statutes or regulations. However, as the understanding and appreciation of the value of alternative litigation financing increases, legislators and courts would do well to adopt statutes or regulations. However, as the understanding and appreciation of the value of alternative litigation financing increases, legislators and courts would do well to adopt statutes or regulations.

Federal Privileges

“Generally, voluntary disclosure of a privileged attorney-client communication to a third-party waives the privilege.” In Union Carbide Corporation v. Dow Chemical Company, the Delaware District Court, quoting the Third Circuit Court of Appeal, enunciated an exception to the general rule, which has been followed by many federal courts across the United States. Privileged information communicated to third parties may “retain a protective shield if the parties have a common legal interest, such as where they are co-defendants or are involved in or anticipate joint litigation....[T]he key consideration is that the nature of the legal interest be identical, not similar, and be legal, not solely commercial.”

Despite the Union Carbide court’s attempt to clarify the doctrine, trial courts remain unclear as to how common the interests need to be and what is meant by a legal as opposed to a commercial interest. Will a court find that a client and financer have sufficiently similar interests? Are the interests of the client and financer sufficiently legal, or merely commercial?

A developing line of cases suggests privilege is waived when otherwise privileged communications are used for a commercial purpose, such as to negotiate the sale of goods or a company. However, some courts take a more flexible approach suggesting that the common interest need only be similar, and that once a communication is legal in substance, it does not lose that status and somehow become commercial by mere communication to a third party.

The case that has caused the most sleepless nights among members of the litigation financing industry is Leader Technologies, Inc. v. Facebook, Inc., which involved a discovery dispute over access to documents transmitted to potential financers. The case involved a patent infringement dispute, in which Facebook sought to compel production of documents that Leader had shared with potential litigation financers. Leader asserted that the documents remained privileged under the common-interest privilege.

After giving a thorough analysis of the common-interest privilege, the federal magistrate concluded that the law was unsettled and unclear on how common or legal the interest needed to be. While the magistrate noted that the trend was in favor of allowing discovery and that ethical guidelines published by the Pennsylvania and New Jersey state bar associations suggested the potential of waiver, he also noted policy considerations such as the “need for litigation financing companies and the truth-seeking function of litigation.” Ultimately, the magistrate allowed for the discovery because Leader failed to satisfy its burden to establish a common interest privilege between itself and the litigation financing companies but noted that the documents would not necessarily be admissible at trial.

Two decisions in the Northern District of California exemplify the extent of the division among federal courts. What does it mean for the interests between the client and financer to be “legal”? Must the communication be related to litigation or merely require analysis of the legal doctrine?

In Hewlett-Packard Company v. Bausch & Lomb Inc., the plaintiff sought discovery of an attorney opinion letter that Bausch & Lomb had transmitted to GEC during negotiations for GEC to purchase Bausch & Lomb. The court noted the Union Carbide statement of the common-interest privilege and analyzed various policy considerations. The court stated, “Unless it serves some significant interest courts should not create procedural doctrine that restricts communication between buyers and sellers, erects barriers to business deals, and increases the risk that prospective buyers will not have access to important information that could play key roles in assessing the value of the business or product they are considering buying.”

The Hewlett-Packard court found that GEC and Bausch & Lomb had a potential common interest in the outcome of patent litigation, because it would affect the value of the business GEC was interested in purchasing. Therefore, the legal advice contained in the opinion letter was privileged and remained so despite communication to a third party. The third party’s own interest in maintaining the confidentiality of the document also played a role in the court’s decision. Because the court held that the attorney-client privilege was not waived, it declined to address the argument that the documents would have also been protected under the work-product privilege.

In Nidec Corporation v. Victor Company of Japan, the plaintiff subpoenaed documents from third-party bidders of Victor Company of Japan (JVC). The court quashed the subpoena, because the documents were available from a more direct, convenient, and less burdensome source (i.e., the defendants). The court also offered the parties guidance regarding discovery of those documents from JVC that had been transmitted to the third-party bidders.

The court explained that “properly read,” only found a common interest because of the clearly anticipated joint litigation regarding the validity of the patent. Whereas in Nidec, the third party was “simply considering buying a majority share of JVC.” The Nidec court specifically disagreed with a more expansive reading of Hewlett-Packard and noted, “While the JVC litigation abstract might have been helpful to facilitate the potential commercial transaction, it did not further a common legal strategy in connection with the instant litigation.” Consequently, the Nidec court found that the common interest had to be directly related to litigation in order to be sufficiently “legal.” The court, however, did note that waiver of attorney work-product is not as easily found.

Though few courts seem to address the distinction, it is well settled that the federal work-product privilege is more difficult to waive than the attorney-client privilege.

The relevant question, though, is, How much more difficult? Work product protection only applies to materials “prepared in anticipation of litigation or for trial.” Depending on the jurisdiction, the litigation for which the materials were prepared may need to be more imminent than in others in order to benefit from the protection. The burden then shifts to the party attempting to compel discovery to prove that the discovery is necessary.

As a Central District of California court has explained, “[T]he work product protection is waived where the disclosure of an otherwise privileged document is made to a
third party and that disclosure enables an adversary to gain access to the information."\textsuperscript{23} Furthermore, "[t]he purpose of the work product doctrine is to protect information against opposing parties, rather than against all others outside a particular confidential relationship."\textsuperscript{24} On this basis, a district court denied a motion to compel discovery in a case involving patent litigation funding, because the documents were protected by the work-product privilege after the parties had entered into a confidentiality agreement so that disclosure to the third-party financer did not substantially increase the likelihood that an adversary would gain access to the information.\textsuperscript{25} All the federal courts operate with the understanding that federal privilege doctrines are "governed by the principles of the common law...in the light of reason and experience."\textsuperscript{26} This means "federal courts have the flexibility to develop rules of privilege on a case-by-case basis."\textsuperscript{27} But, federal courts should exercise this discretion to expand the rules of privilege only when it would protect "a public good transcending the normally predominant principle of utilizing all rational means for ascertaining truth."\textsuperscript{28}

While the Leader court found that balancing these considerations permitted discovery, a federal court would be well within its discretion to follow the Hewlett-Packard decision in denying discovery of privileged information communicated to a financer. Even the Leader court recognized some of the important public benefits of the litigation financing industry. In light of the highly deferential "clear error" standard of review, a decision denying discovery would likely be affirmed.

Even if the attorney-client privilege is found to have been waived by disclosure of a document to a third party without a common legal interest, the disclosure would not necessarily make the communication available to an adversary. If the communication at issue is also protected by the attorney work-product privilege, then an advocate should always argue that the more stringent protection remains. When attempting to maintain the privilege shield, attorneys should argue the public benefits of litigation financing, the prejudice to the client from disclosure, the applicability of the work-product privilege, and the prejudice to the client from admissibility.

**California Waiver Doctrine**

While there are no cases directly on point, analysis of privilege laws in California provides some guidance for how state courts will approach litigation financing arrangements. The federal court in Hewlett-Packard suggests that "legal" is meant to refer to the type of advice sought from the attorney, rather than the use to which the knowledge is put. California courts agree that the attorney-client privilege is not limited to litigation-related communications.

The California Evidence Code provides that disclosure to a third party, in confidence, of a communication that is protected by the attorney-client privilege, "when disclosure is reasonably necessary for the accomplishment of the purpose for which the lawyer...was consulted, is not a waiver of the privilege."\textsuperscript{29} This is an expressly broader protection than under federal law. The common-interest privilege has not been recognized by statute in California.\textsuperscript{30} Instead, "the common interest doctrine is more appropriately characterized under California law as a nonwaiver doctrine, analyzed under standard waiver principles applicable to the attorney-client privilege and the work product doctrine."\textsuperscript{31} Work product protection may be waived "by the attorney’s disclosure or consent to disclosure to a person, other than the client, who has no interest in maintaining the confidentiality...of a significant part of the work product."\textsuperscript{32} This standard arguably could provide less protection from discovery than the federal work product protection because the interest is in maintaining confidentiality generally, not merely protecting the document from discovery by an adversary. In California, both the attorney-client privilege and the attorney work product protection are usually analyzed together, and waiver of one privilege waives the other.

While the procedural posture of STI Outdoor LLC v. Superior Court\textsuperscript{33} is complicated, it set out a favorable rule and broad standard in California. The STI court explained that the attorney-client privilege is not limited to litigation-related communications. Indeed, in that case, the court found that disclosure of privileged communications to a third party with whom STI was negotiating did not waive the attorney-client privilege, because it was reasonably necessary to further the interest of both parties in finalizing negotiations.\textsuperscript{34}

In OXY Resources California LLC v. Superior Court,\textsuperscript{35} the court applied the STI ruling to a more procedurally analogous situation. OXY sought to protect communications made to a third party in the course of negotiations that eventually gave rise to a lawsuit. The court held that a confidentiality agreement provides evidence of a reasonable expectation of confidentiality but is not dispositive. Because the documents did not become privileged solely on the basis of the confidentiality agreement, the court remanded to the
trial court to determine whether the documents were privileged, and then to determine whether that privilege had been waived.36 When analyzing whether the privilege was waived, the court must “determine whether the disclosures were reasonably necessary to accomplish the purpose for which the parties consulted their attorneys in finalizing the negotiations.”37

California appellate courts have not yet confronted the issue of litigation financing. However, based on the reasoning of STI and OXY, courts could hold that disclosure of privileged information to a financer does not waive the privilege. Disclosure to the financer must be made in confidence and must be reasonably necessary to accomplish the goal of finalizing negotiations between the client and financer. A confidentiality agreement is recommended to formalize the parties’ intent to maintain confidentiality.

**Toward a Financer’s Privilege**

Financers, of course, are risk averse. To encourage third-party litigation financing, it would be beneficial for California to enact legislation to formalize a financer’s privilege and allow financers to conduct necessary due diligence without fear of waiving privileges and injuring the case in which they may want to invest. Privileged information could provide for a more accurate evaluation of the strength and value of a case. Examples of privileged information may include an opinion letter from the attorney regarding the strengths and weaknesses of the client’s or opposing side’s claims, a discussion with the client or his or her attorney concerning the client’s motives and goals regarding the lawsuit, and the attorney’s notes from witness interviews or depositions.

Opponents of litigation financing argue that it will increase the amount of frivolous litigation. Of course, given an attorney’s ethical duty not to file frivolous lawsuits, the real concern is probably more accurately stated that they believe litigation financing will increase the number of weak cases filed and litigated. However, weak cases are still entitled to their day in court. Parties should not be able to use the exorbitant cost of litigation as an opportunity to do others harm.

While it is has been suggested that clients may be more likely to litigate when they do not have their own skin in the game, a client still has to find a financer willing to invest in a lawsuit. If the financer does not have available all the information that a client possesses with which to evaluate a case, a client may be able to convince a financer that the lawsuit is stronger than it is, thus securing financing for a weak case. The more information, including privileged information, that the financer has, the better it will be able to weed out weak cases.

Opponents also argue that the increase in litigation of weak cases will result because financers are willing to invest in a weak case if the potential payoff is high enough. Financers, though, would rather invest in two strong cases than one weak case. Similarly, greater accuracy on the amount at issue will reduce the number of weak cases worth “gambling” on.

If a financer is better able to evaluate how risky an investment is, the cost of making the money available can be lower. This is similar to the reason why the interest on a loan increases as the term of the loan lengthens: The longer it takes to pay back the principal, the less likely the lender is to recover that principal. And similarly, as in the insurance industry, the more likely the insurer is to lose money on the insured, the higher the premium charged. If financers have more certainty regarding the strength of cases, there is not as much need to see as high of a return on each investment.

Litigation financing is not a new concept. Contingency fee agreements and insurance are common ways to finance litigation beyond the traditional model in which the client pays. An attorney who is about to invest time, energy, and money into a case for only the potential of recovery, though, has access to significant privileged information before deciding to enter into a contingency fee arrangement. Likewise, an insurer also has access, without fear of waiver, to privileged information in deciding whether to defend an insured. This access to information is what allows a contingency-fee lawyer or an insurer to weed out weak cases and accurately evaluate the value of a case. Financers have the power to affect the amount and type of cases that reach the courts. How could it possibly be a good idea to handicap them by limiting the amount and type of information they have available to inform their investment decision?

The litigation financing industry is an exciting opportunity for creative investors. There are strong legal and policy arguments that courts could use to support the emerging industry. Financers, clients, and their attorneys, however, need to be aware of the current unsettled nature of privilege and waiver law as it relates to third-party disclosures of privileged information.

---

1 Fisher v. United States, 425 U.S. 391, 403 (1976); EVID. CODE §952.

Continued on page 29.
WHILE JURY INSTRUCTIONS first come into play toward the end of trial, it is critical that their preparation not be an afterthought. Before the first witness takes the stand, the trial attorney should have special jury instructions in hand to assist the jury in reaching a favorable verdict. A litigant is entitled to correct and nonargumentative instructions on every theory of the case supported by substantial evidence, whether or not that evidence is considered persuasive by the trial court, so it is foolhardy to squander the opportunity. Moreover, in criminal cases, the failure to anticipate the need for special instructions, also known as “pinpoint” instructions, can lead to claims of ineffective assistance of counsel. In civil matters, poorly drafted instructions often lead to a reversal of judgment. Thoughtful and well-conceived instructions explain the essential elements of civil claims or criminal offenses and highlight all viable defenses that the standard instructions overlook.

The California Rules of Court define “special jury instructions” (as opposed to “approved” Judicial Council instructions) as those that are derived from other than approved sources, “those that are specially prepared by the party, or approved instructions that have been substantially modified by the party.” Special jury instructions can be a useful tool in all practice areas. In every case in which the standard CACI or CALCRIM instructions are silent on a particular legal issue, an opportunity awaits to tell the jury how the evidence should be considered. Additionally, litigators must be vigilant to make a proper record when a court denies a requested instruction or when the opponent’s erroneous instruction is read to the jury.

Writing Special Instructions
Before sitting down to craft proposed special instructions, practitioners must be aware of the decisional guidelines and parameters the courts have set. In many respects, the authority regarding the requirements of special jury instructions applies equally to criminal and civil cases. First, special instructions cannot be argumentative. As the California Supreme Court explained in People v. Wright, the wording of instructions must be neutral. In Wright, the defendant was convicted of armed robbery fol-

Elisabeth Frater is a deputy attorney general at the California Department of Justice, Office of the Attorney General in Los Angeles.
lowing a robbery at gunpoint involving several masked men. The sole evidence against the defendant at trial was eyewitness identification. The trial court rejected five special jury instructions that the defendant had requested regarding the accuracy of eyewitness identification.

For instance, an instruction offered by defendant Wright and rejected by the court highlighted certain items of evidence and urged the jury to consider those items in determining whether the defendant was guilty beyond a reasonable doubt. The second version of Wright’s special instruction read, “In determining whether a reasonable doubt exists as to the guilt of Mr. Wright you may consider that: 1. All of the robbers wore masks; 2. The testimony of Inspector Cisneros regarding Peter Marino’s comments at the time he viewed defendant Wright’s photograph; 3. The testimony of Inspector Cisneros regarding whether or not he showed Erica Albertsen defendant Wright’s photograph, and whether or not she recognized that photograph; 4. The testimony of Inspector Cisneros regarding Stephanie Sung’s comments at the time she signed defendant Wright’s photograph; 5. People’s Exhibit Number 20, a pink card with the name Stephanie Sung.”

The appellate court in Wright found that the trial court properly rejected this instruction because it did not direct the jury’s attention to facts relevant to its determination of the existence of reasonable doubt, or state in a neutral manner the relevant factors supported by the evidence. In other words, a defendant is entitled to a special instruction that specifically directs the jury attention to facts developed on cross-examination. However, where a proposed instruction focuses exclusively or primarily on the testimony of one witness, it runs afield of well-settled law that it is improper to single out a particular witness and to charge the jury how this evidence should be considered.

In a parallel civil case, Munoz v. City of Union City, the court explained the rationale for rejecting a proposed special instruction: “If the instruction embodies detailed recitals of fact drawn from the evidence, in such a manner as to constitute an argument to the jury in the guise of a statement of the law, it is improper. The matter may be entirely legitimate as argument by counsel, for when so used, the jury knows that it comes from an interested source and may weigh and consider it accordingly.”

Similarly, special instructions cannot too strongly emphasize a party’s theory of the case. In Taha v. Finegold, a personal injury lawsuit involving a pedestrian who was struck by a truck, the defense prevailed at trial by persuading the jury through 16 special instructions that the plaintiff did not keep a continuous lookout for approaching traffic as he crossed the street. In contrast, the court only gave three instructions that referred to the corresponding obligations and duties of the truck driver. On appeal, judgment for the defendant truck driver was reversed. The court reasoned that because of the overemphasis on the plaintiff’s actions, the jury was likely given the impression that a higher duty rested upon the plaintiff than on the defendant. Special instructions will also appropriately be denied if they are repetitive, and a court need not give a requested pinpoint instruction if it merely duplicates other instructions already being given.

While it might be obvious that the trial court is not required to give instructions that are incorrect statements of law or are incomplete or misleading, counsel must be vigilant to assess whether clarifying instructions should be submitted to the jury. For example, in the employment discrimination case Pantoja v. Anton, the court of appeal ruled that while the instruction given was a correct statement of law, in the context of the facts of the case, it was error to give the instruction without clarifying instructions. At the request of the defense in Pantoja, the court gave a special jury instruction based on the seminal case of Lyle v. Warner Bros. Television Productions, which involved a discrimination claim by an employee who worked on the television show Friends and held that evidence of hostile, sexist statements is relevant to show discrimination on the basis of gender. A central fact in Lyle was that sex jokes were common at the comedy show’s workplace. The defense’s requested instruction in Pantoja was virtually a quotation of the holding in Lyle. But without clarifying instructions, the Lyle instruction seemed to limit the defendant’s actionable behavior to sexual innuendo and coarse language, when in fact it could have included gender-based abusive language and unwanted touching. The judgment for defendant was reversed because at a minimum, the jury should have been instructed that abusive language or behavior of many kinds, not just sexual innuendo, can potentially create an actionable hostile workplace environment.

Similarly, the failure to request clarifying instructions in a criminal case led to a claim of ineffective assistance of counsel in People v. Garren. The Garren court held that upon a defense request supported by sufficient evidence, the court must instruct that the jury may consider the effect of “antecedent threats or assaults against the defendant on the reasonableness of defendant’s conduct.” But the court concluded that this was a specific point, not a general principle of law, and therefore the trial court was not obligated to instruct on this issue absent a request by defendant. Ultimately, the Garren court rejected the defendant’s contention that his attorney’s failure to request instruction on this topic rendered his assistance ineffective and found instead his attorney’s failure to develop this point and to request instruction was an objectively reasonable tactical decision.

Crafting Special Instructions
It is necessary in certain cases that the trial lawyer work collaboratively with the court to develop appropriate special instructions. A party is not entitled to have the jury instructed in any particular phraseology and may not complain on the ground that his or her requested instructions are refused if the court correctly gives the substance of the law applicable to the case. Additionally, while it may be more persuasive to the court to be presented with special instructions that have been drafted with the specific language lifted directly from the case law, it is not necessary. It is sufficient if the cited authority at least suggests that a particular factor or rule of law can be extracted from the case and be fashioned into an appropriate instruction.

Further, practitioners should also confidently redact and modify existing instructions if the facts warrant it. For example, in Logacz v. Limansky, a medical malpractice case, a woman allegedly died as the result of the professional negligence of the defendant doctor. The defense was that the woman’s obesity and sedentary habits were contributing factors to her death. At trial, the plaintiffs requested a jury instruction on concurrent causation so they could argue that the defendant’s negligence, even in the presence of the negligence of others, could be found to be a legal cause of her death. However, the requested instruction was denied because the court claimed it had not been properly redacted. On appeal, the doctor claimed that the court was justified in refusing the requested instruction because it referred to “injury instead of death.” The court of appeals approved of this argument, stating, “We also see no reason why the trial judge could not have made the interlinear change required to conform the printed instruction to the particular facts of this case if a realistic concern existed that the jury might have been confused by the reference to injury.”

Special instructions may be appropriate even when there are standard instructions that seemingly fit the bill. For instance, in Gdowski v. Louis, the parties owned adjoining properties. Following heavy rains and flooding, one neighbor claimed that the others were responsible for her loss because their landscaping had altered the natural flow of the
MCLE Test No. 213

The Los Angeles County Bar Association certifies that this activity has been approved for Minimum Continuing Legal Education credit by the State Bar of California in the amount of 1 hour.

1. Pinpoint instructions may delineate the theory of a defendant’s case.
   - True
   - False

2. People v. Wight holds that a court may properly reject an instruction that fails to state relevant factors supported by the evidence in a neutral manner.
   - True
   - False

3. Clarifying instructions contain detailed recitals of facts drawn from the evidence.
   - True
   - False

4. California Rule of Court 2.251 defines special jury instructions.
   - True
   - False

5. In Taha v. Finegold, the judgment for the defendant was reversed because the requested instruction was not properly redacted.
   - True
   - False

6. The claim of ineffective assistance of counsel in People v. Garvin was based on:
   - A. People v. Watson
   - B. People v. Garvin
   - C. People v. Moore

7. False.
   - True
   - False

8. In Munoz v. City of Union City, the plaintiff alleged retaliation by a community college district and the board of trustees in LeMons v. Regents of University of California.
   - True
   - False

9. In People v. Wright, the trial court rejected five special jury instructions regarding corroborating evidence.
   - True
   - False

10. There is no automatic reversal due to instructional error merely because a trial court has failed to properly instruct a jury.
    - True
    - False

11. Whether a defendant has established a reasonable probability that a result more favorable would have been reached in the absence of an error is the standard enunciated in:
    - A. People v. Watson
    - B. People v. Garvin
    - C. People v. Moore

12. False.
    - True
    - False

13. In Mize-Kuzman v. Marin Community College District, the court held that trial courts cannot rely on federal jury instructions even when there is no CACI instruction on point.
    - True
    - False

14. Lynch v. Birdwell holds that special instructions will be denied if they are repetitive.
    - True
    - False

15. Fish v. Los Angeles Dodgers Baseball Club holds that a litigant is entitled to correct and nonargumentative jury instructions.
    - True
    - False

16. False.
    - True
    - False

17. At the request of the defense, the court gave a special jury instruction based on Lyle v. Warner Bros. Television Productions in:
    - A. Suman v. BMW of North America, Inc.
    - B. Pantoja v. Anton
    - C. Bowman v. Wyatt
    - D. None of the above

18. The plaintiff alleged retaliation by a community college district and the board of trustees in LeMons v. Regents of University of California.
    - True
    - False

19. In People v. Wright, the trial court rejected five special jury instructions regarding corroborating evidence.
    - True
    - False

20. There is no automatic reversal due to instructional error merely because a trial court has failed to properly instruct a jury.
    - True
    - False
 Courts have long looked askance at an appellant’s claims of erroneous instructions when the record makes clear that the errant jury instruction was either submitted by the party or that the party failed to object. The doctrine of invited error bars appellants from attacking a verdict that resulted from their own jury instruction.

properly instructed jury, because decisional law defining liability based upon a defendant adjacent landowner’s diversion of the natural flow of water made clear that traditional negligence principles did not apply.23

Instructional Error
After a trial, the losing party is likely to review the record for instructional error, whether the instruction was a special instruction or a form instruction. Reversal due to instructional error is an area in which criminal and civil standards diverge. There is a high standard for reversing a civil case on these grounds, and there is no automatic reversal merely because a trial court has failed to properly instruct a jury.24 Judgment may not be reversed for instructional error in a civil case unless it meets the miscarriage of justice standard dictated by Article VI, Section 13 of the California Constitution.25 In other words, standard dictated by Article VI, Section 13 of the California Constitution.25 In other words, a civil court should consider in determining whether the error resulted in a miscarriage of justice. The courts also look for prejudicial error, finding it where it seems probable that the instructional error affected the jury’s verdict.26 As the State court put it, the determination of prejudice “depends heavily on the particular nature of the error, including its natural and probable effect on a party’s ability to place his full case before the jury.”27

Instructional error in a civil case was found in Bowman v. Wyatt,28 a personal injury case. The plaintiff in Bowman brought a lawsuit against the city of Los Angeles and one of its workers when the plaintiff’s motorcycle collided with a dump truck driven by the worker. The case involved significant disputed issues, including whether the driver was an independent contractor or city employee. In its analysis, the Bowman court first sought to determine whether the jury instruction that described the factors the jury should consider in determining whether the driver was an employee or an independent contractor correctly stated the law. The instruction given at trial erroneously instructed the jury that if it found the city had the “right of control” over how the driver performed his work, then the driver was an employee. Through this lens, the appellate court found that the instruction misled the jury into understanding that the “right of control” was the sole factor to consider in deciding this crucial issue, when in fact the law in California sets out multiple factors to consider when distinguishing between an independent contractor and an employee. In this case, since there was substantial evidence from which the jury could have concluded that the driver was an independent contractor and absolved the city from liability, the instruction was prejudicial.

The standard for instructional error in criminal cases was recently discussed by the California Supreme Court in People v. Moore.29 Moore is helpful to consider even though the instructions subject to complaint were from CALJIC. Defendant Moore was charged with two counts of robbery and two counts of murder resulting from the stabbing of his two victims during a robbery of their jewelry. Because Moore was found in possession of the victims’ jewelry, the court gave an instruction based on CALJIC 2.15: “If you find that the defendant was in conscious possession of recently stolen property, the fact of such possession is not by itself sufficient to permit an inference that the defendant is guilty of the crimes charged. Before guilt may be inferred, there must be corroborating evidence tending to prove defendant’s guilt. However, this corroborating evidence need only be slight and need not by itself be sufficient to warrant an inference of guilt. As corroboration, you may consider the attributes of...
LITIGATION FINANCING
Continued from page 24.

4 In re Syncor ERISA Litig., 229 F.R.D. 636, 643 (C.D. Cal. 2005) (citing United States v. Pacheco, 913 F. 2d 1375, 1379 (9th Cir. 1990)).
6 In re John Doe Corp., 675 F. 2d 482, 489 (2nd Cir. 1982); Nidec Corp. v. Victor Co. of Japan, 249 F.R.D. 573 (N.D. Cal. 2007).
8 Leader Techs., Inc. v. Facebook, Inc., 719 F. Supp. 2d 373 (D. Del. 2010).
9 Id. at 376.
10 Id. at 377.
11 Id. at 376.
12 Hewlett-Packard Co., 115 F.R.D. 308.
13 Id. at 309.
14 Id. at 311.
15 Id. at 309-312.
16 Nidec Corp. v. Victor Co. of Japan, 249 F.R.D. 573 (N.D. Cal. 2007).
17 United States v. Massachusetts Inst. of Tech., 129 F. 3d 681, 687 (1st Cir. 1997).
19 Smithkline Beecham Corp. v. Apotex Corp., 232 F.R.D. 467, 473 (E.D. Pa. 2005) ("Generally, a reasonable anticipation of litigation requires existence of an identifiable specific claim or impending litigation at the time the materials were prepared.").
20 Garman v. United States Dept. of Justice, 238 F. Supp. 2d 284, 294 (D. D.C. 2003) ("The D.C. Circuit has explained that this privilege ‘extends to documents prepared in anticipation of possible litigation, even if no specific claim is contemplated.’ ") and Fox v. California Sierra Fin. Servs., 120 F.R.D. 520, 524 (N.D. Cal. 1988) (“There is no requirement that the litigation have already commenced in order for the work-product doctrine to be operative, however, there must be more than a remote possibility of litigation.
22 In re Syncor ERISA Litig., 229 F.R.D. 636, 643 (C.D. Cal. 2005) (citing United States v. Massachusetts Inst. of Tech., 129 F. 3d 681, 687 (1st Cir. 1997)).
23 United States v. AT&T, 642 F. 2d 185, 192 (D.C. Cir. 1980).
27 Trammel, 445 U.S. 40, 47 (suggesting that a privilege “excluding relevant evidence” will only be established when “a public good transcends[s] the normally predominant principle of unilicing all rational means for ascertaining truth”).
28 Evid. Code §912(d).
30 Id. at 879-99.
31 Id. at 899.
33 E.g., see NER. REV. STAT. §25-3306: “No communication between the attorney and the civil litigation funding company as it pertains to the nonrecourse litigation funding contract shall limit, waive, or abrogate the scope or nature of any statutory or common-law privilege, including the work-product doctrine and the attorney-client privilege.” This law is a great start, but financiers should be aware that it may only protect against disclosure of documents and information related to the financing contract rather than information related to the claim as well.
35 CODE CIV. PROC. §128.7; FED. R. CIV. PROC. 11.
36 U.S. Chamber Institute for Legal Reform, Comments to ABA Commission on Ethics 20/20, Alternative Litigation Financing Working Group Issues Paper at 132-162, 164 (slightly paraphrasing the concern stated in the October 2009 paper).
37 U.S. Chamber Institute for Legal Reform, Selling Litigations, supra note 42, at 132-162, 164 n.3 (“There is a price for everything.”).
38 Anglo-Dutch Petroleum Int’l, Inc. v. Haskell, 193 S.W. 3d 87, 96-101 (Tex. App. 2006); see also U.S. Chamber Institute for Legal Reform, Selling Litigations, supra note 40, at 3.
REFERRING TO WIRETAPS, Lanny Breuer, assistant attorney general for the Criminal Division of the U.S. Department of Justice (DOJ) recently said, “We have begun increasingly to rely, in white collar cases, on undercover investigative techniques that have perhaps been more commonly associated with the investigation of organized and violent crime.” Confirming this, FBI agents have employed wiretaps and recorded telephone conversations with cooperating witnesses in insider trading cases, resulting in an increase in insider trading prosecutions, including the trial, conviction, and sentencing of Raj Rajaratnam, the former head of the Galleon Group, and more recently, the indictment of Rajat K. Gupta, former head of McKinsey & Company and a former member of the board of directors of Goldman Sachs. Gupta’s arrest is the latest in a string of insider trading investigations, arrests, and trials conducted by the U.S. Attorney’s Office in Manhattan. The same team that successfully prosecuted Rajaratnam brought the case against Gupta, and the government can be expected to continue to use wiretap evidence in insider trading cases, raising the issue of the tactic’s legality.

Insider trading cases have historically been based on circumstantial evidence, including trading records and phone records. This made them hard to prosecute. The results of two investigations of the same acts show the difference between the older method of making cases and the use of wiretaps. The SEC investigation of Rajaratnam using traditional techniques did not obtain enough evidence to charge him, but in a criminal case based on the wiretap evidence, the government was able to obtain a conviction on all 14 counts.

In the past, the typical insider trading case brought by the SEC or DOJ would start as an inquiry by the Financial Industry Regulatory Authority (FINRA), formerly the enforcement arms of the New York Stock Exchange and the National Association of Securities Dealers. When there is a spike in the trading volume or significant change in the market price of a public company’s stock, FINRA runs a computerized program referred to as Stock Watch that identifies suspicious trades (e.g., large block trades or profitable trades two to four weeks before the event or announcement that triggered the stock price and volume movement). The inquiry can be triggered by positive or negative information, provided it has a significant effect on the company’s stock price and trading volume. FINRA then contacts the company or companies involved and requests a chronology of events leading up to the
announced or event that triggered the change, a list of persons and entities (the working group list) that knew about the information before it was released to the public, and copies of the company’s insider trading policies.

The Galleon case began out of a routine SEC investigation using traditional techniques.5 The SEC, upon receiving several tips regarding improper trading, began investigating Sedna Capital, a hedge fund operated by Rajaratnam’s brother Rengan. Soon after analyzing Sedna’s trading records, however, the focus of the investigation turned to Raj. The SEC used the traditional investigation techniques in its arsenal, including document subpoenas for phone records, trading records and company documents, and took the deposition of Raj Rajaratnam and others. (Remarkably, he allegedly continued to engage in the insider trading scheme even during the SEC investigation.) The investigation did not yield any “smoking gun” evidence against Rajaratnam, illustrating the failings of the government’s traditional white collar techniques.

After that failed effort to bring a civil case, the SEC referred the matter to the U.S. Attorney’s Office for the Southern District of New York.7 After turning a Galleon Group employee, Roomy Khan, into a cooperating witness, the U.S. Attorney’s Office sought and obtained several wiretap warrants from three different federal district court judges.8 The taps led to thousands of hours of incriminating conversations and showed that insider trading was not only more prevalent than the government had suspected but had become a systematic business model for some on Wall Street.

SEC Enforcement Director Robert Khuzami recently stated that he believes that recent insider trading cases reflected systemic misconduct. He described the current cases as potentially more dangerous than past ones, which he viewed as opportunistic rather than the result of a business model based upon collusive behavior.

**The SEC’s New Approach**

On another front, led by a new director of enforcement, Robert Khuzami, the SEC started employing new investigatory tactics.9 In January 2010, the SEC created five specialized units to focus on different types of securities fraud. One unit was tasked with investigating insider trading, large-scale market abuses, complex manipulation schemes, and abusive short selling. According to the SEC, the unit utilizes highly sophisticated trading programs and analyses to identify trading returns by hedge funds, other institutions, and individuals that may be the result of insider trading.10 Specifically, the SEC indicated that it is shifting from an event-driven to a trader-based approach and will be taking a closer look at investors who earn an abnormal return—i.e., outperform the market.11 The trader-based approach will look for patterns in related trades by a single trader or connected group of traders. The SEC indicated this technique would give it a greater ability to detect relationships among traders and bring cases against trading networks. It also announced that it is developing a new automated bluesheet system12 and new whistle-blower provisions to bolster enforcement.

The government credits these new enforcement techniques with uncovering an insider trading scheme between a trader, a middleman, and the tipper, Matthew Kluger, who worked at three top-tier law firms. The scheme had allegedly been ongoing for 15 years and had netted $32 million.13 These new tactics and the government’s use of wiretaps have resulted in four criminal convictions after trial,14 at least 21 guilty pleas, over 27 criminal indictments and complaints, and more than 30 SEC civil complaints. Overall, there can be little doubt these new tactics have been effective. The Rajaratnam case is a clear example. With traditional tactics, he escaped prosecution. With wiretaps, he was convicted, fined $10 million, ordered to forfeit $53.8 million, and sentenced to 11 years in federal prison. Rajaratnam was also ordered to pay a $92.8 million civil penalty to the SEC, the largest ever in an insider trading case.15 But are these new tactics legally permissible?

**Legality of the Wiretaps**

Lawyers have raised a number of issues relating to the legality of wiretap evidence in insider trading cases. So far, every federal district court that has addressed the issue has ruled the evidence admissible, but no appellate courts have. The most significant legal challenge was mounted by Rajaratnam. Judge Richard J. Holwell of the Southern District of New York denied Rajaratnam’s motion to suppress the government’s wiretaps in the Galleon insider trading case, allowing wiretap recordings to be used as evidence for the first time in a criminal insider trading case. Judge Holwell’s ruling ended—at least at the trial court level—many months of argument over the legality and admissibility of the wiretap evidence and many rounds of briefing.

In his motion to suppress, Rajaratnam advanced three primary arguments that the wiretaps were inadmissible: 1) the use of wiretaps under Title III of the Omnibus Crime Control and Safe Streets Act in an insider trading case was unconstitutional, 2) the government’s wiretap application did not demonstrate the requisite probable cause needed for the issuance of a wiretap, and 3) the government failed to demonstrate the necessity of the wiretaps.16

The court’s first holding was that Title III wiretaps may be used to investigate insider trading, even though insider trading is not one of the offenses enumerated in Section 2516 of the statute.17 The court reasoned that as long as the government obtained the wiretap in connection with an offense for which Title III specifically permits wiretapping, any additional evidence it intercepts incidentally may be used to charge and prosecute other offenses. The government’s wiretap application described evidence establishing probable cause for wire fraud and money laundering—both crimes for which wiretapping is expressly authorized. The fact that the government ultimately only charged the defendants with insider trading and not wire fraud or money laundering did not invalidate the wiretaps. The court concluded that the government sought in good faith to investigate wire fraud through its wiretaps and that the incidental crime of securities fraud could therefore properly be investigated and charged using the wiretaps.18

This analysis relied on the government’s ability to establish that it was investigating money laundering and wire fraud in good faith and that the evidence of insider trading it obtained was only incidental to its investigation of fraud and money laundering. This may work once or twice, but after a time it must become clear when investigations are in fact looking into insider trading. The government may not always be able to convince courts that it was investigating in good faith something other than insider trading and that insider trading charges arose incidentally.

The court’s second holding—an evaluation of probable cause to issue the wiretap warrant—focused on disclosure of information concerning the credibility of the informant Khan.19 Specifically, the affidavit of the agent in support of the warrant application failed to disclose that Khan had previously pled guilty to felony wire fraud. Rajaratnam argued that this evidence—bearing on her credibility—should have been disclosed in the warrant application and that it be, the wiretap would not have issued. Judge Holwell acknowledged that it was “particularly disturbing” that the “highly-relevant information regarding [the informant’s] prior criminal record for fraud” had not been disclosed in the application.20 However, after a review of the remaining evidence in the affidavit, including evidence corroborating the informant’s information, the court concluded that the affidavit contained sufficient evidence of probable cause to support the original wiretap application.

The court’s third holding, the necessity Continued on page 36.
Dear Jack:

As you know, Bryan Stow, a San Francisco Giants fan, was brutally attacked by two men in the Dodger Stadium parking lot on opening day, March 31, 2011.

On May 22, 2011, Los Angeles Police Department (LAPD) SWAT officers arrested my client, Giovanni Ramirez at an East Hollywood apartment complex. LAPD Chief Charlie Beck said at a news conference that day, “I believe we have the right guy. I wouldn’t be standing here in front of you. I certainly wouldn’t be booking him later on tonight. You know this is a case that needs much more work, but we have some significant, significant pieces to it that leads me to believe that we do indeed have the right individual”.

Mr. Ramirez agreed to take a LAPD polygraph examination, to be conducted on June 1, 2011. I retained your services as a nationally known and respected polygraph examiner. You agreed to polygraph my client at Los Angeles County Men’s Central Jail, on that day prior to the LAPD examination. Further, you agreed to monitor the LAPD polygraph examination in an observation room within Parker Center (LAPD Headquarters).

After you polygraphed Giovanni Ramirez, as you departed the jail, you telephoned me. You said, “LAPD arrested the wrong guy, Giovanni Ramirez was not on Dodger stadium property on March 31, 2011”.

On June 1, 2011, you accompanied me to Parker Center to monitor the LAPD polygraph examination. The respect shown to you by the LAPD polygraph personnel comforted me. You advised them that Mr. Ramirez passed your exam as you handed them your report.

Although this case had many interesting facets, central to Giovanni Ramirez being eliminated as a suspect, were your “non deceptive” polygraph results.

It is a tribute to your reputation that polygraph testing conducted by you is so well received and respected by the prosecution, as well as the defense. You saved my client’s life...thank you.

Very truly yours,

DONALD B. MARKS
ANTHONY P. BROOKLIER

MARKS & BROOKLIER LLP

ANTHONY P. BROOKLIER
"Selecting The Right Neutrals
California’s Foremost Mediators"

The Academy is pleased to recognize over 60 neutrals. At www.CaliforniaNeutrals.org you can search by subject matter expertise, location and preferred ADR service in just seconds. You can also determine availability by viewing many members’ ONLINE CALENDARS, finding the ideal neutral for your case in a way that saves both time and money.

The National Academy of Distinguished Neutrals is an association of mediators and arbitrators who have substantial experience in the resolution of commercial and civil disputes. All members have been recognized for their accomplishments through the Academy’s peer nomination system and extensive attorney-client review process. Membership is by invitation only and is limited to individuals who devote substantially all of their professional efforts to ADR practice.

To access our FREE National Directory, please visit www.NAIDN.org/directory and select your preferred state.
“ral Has Never Been Easier”

RS & Arbitrators Profiled Online

neutral across Southern California, including...

Kenneth Byrum
(661) 861-6191

George Calkins
(310) 309-6206

R.A. Carrington
(805) 565-1487

Hon. Eli Chernow
(818) 995-3584

Steven Cohen
(310) 315-5404

Tim Corcoran
(909) 798-4554

Doug Glass
(619) 234-7790

Reginald Holmes
(626) 432-7222

Robert Holtzman
(310) 282-2200

Carl Ingwalson
(858) 581-1125

Joan Kessler
(310) 552-9000

Linda Kilbanow
(626) 204-4000

Steve Mehta
(661) 284-1818

Jeffrey Palmer
(626) 795-7916

Barry Ross
(818) 840-0950

Deborah Rothman
(800) 616-1202

Myer Sankary
(818) 231-2965

To find the best neutral for your case, visit our California members at

www.CaliforniaNeutrals.org

Need a top-rated mediator or arbitrator outside of California? Please visit www.NADN.org
of the wiretaps, was the most controversial. Title III requires that the wiretap application contain a “full and complete statement as to whether or not other investigative procedures [h]ad been tried and failed or why they reasonably appear[ed] to be unlikely to succeed if tried or to be too dangerous.”22 The court reserved its harshest criticism of the government for its evaluation of the evidence presented at the evidentiary hearing on this issue,23 noting that the government had made a “glaring omission” in the wiretap application by failing to disclose the SEC’s extensive, multiyear investigation.24 The government had failed to disclose not only the existence of the SEC investigation itself but also the millions of documents, witness interviews, and deposition of Rajaratnam taken by the SEC, all of which the criminal authorities relied upon in pursuing their own investigation. The court held that this “nearly full and complete omission of what investigative procedures in fact had been tried... deprived [the issuing judge] of the opportunity to assess what a conventional investigation of Rajaratnam could achieve...”25 The court further concluded that such a “glaring omission” evidenced the government’s “reckless disregard for the truth.”26

Having found there to be a material omission in the government’s presentation, the court, instead of throwing out the wiretaps, went on to examine whether the wiretap would have been necessary and appropriate had the fact and extent of the SEC investigation been disclosed in the initial wiretap application. The court noted that the failure of other techniques as defined in Title III did not require that those other techniques uncover no evidence. Holwell pointed to the SEC chronologies, which “strongly suggested that Rajaratnam had been careful to exchange nearly all of his inside information by telephone,” stalled a traditional investigation.27 Therefore, the court concluded that, even though the government had recklessly omitted key information from its wiretap application, the wiretaps were necessary to uncover the full extent of the insider trading. Therefore, despite finding that the government’s investigatory team had made material omissions from its wiretap application on numerous fronts and in so doing, displayed a “reckless disregard for the truth,” the court refused to suppress the fruits of that misconduct. These issues are sure to be rehashed on appeal.

United States v. Goffer

A related insider trading prosecution put to the test another wiretap requirement—that the tap is executed so as to minimize interception of “communications not otherwise subject to interception.”28 In United States v. Goffer, defendant Craig Drimal argued that scores of marital communications between him and his wife had been improperly intercepted. In that case, FBI agents were monitoring Drimal’s communications from a nearby house or using Drimal’s cellphone as a “roving bug” to record conversations in his bedroom. Drimal moved to exclude the wiretaps because FBI agents had recorded privileged conversations between his wife and him, including ones in which they had “deeply personal and intimate discussion about their marriage.” Judge Richard J. Sullivan criticized the FBI agents, saying their failure to stop recording when the calls became obviously personal was “nothing short of disgraceful.” While the court suggested that the Drimals may have civil redress against the government for violating their constitutional privacy rights, it did not believe that the government’s action was egregious enough to warrant preclusion of the wiretaps. Further evidencing the powerful nature of the wiretap evidence, roughly a week after the court’s ruling, Drimal pled guilty to securities fraud. He was sentenced to five years in custody and ordered to pay $11 million in restitution.29

Key Takeaways

The use of wiretaps in white collar cases has changed the game. Anyone who has heard the Galleon case knows that they are powerful evidence for the prosecution. Indeed, a member of the jury in another case, United States v. Jiau, cited the wiretap tapes as key evidence in deliberations.30 By being able to play audio recordings of the defendant in open court, the prosecution has essentially nullified the defendant’s ability to rely on his or her Fifth Amendment right to remain silent, long considered by practitioners to be one of the most powerful tools available to defendants in insider trading cases because it shields from the jury direct evidence of the defendant’s state of mind.

Wiretaps as evidence at trial have also given the government greater leverage for turning a target into a cooperating witness. Wiretaps will place greater importance on
defense counsel’s ability to suppress recordings prior to trial. A case may be won or lost after an evidentiary hearing. One open question, however, is how often the government will use wiretaps in future white collar cases. Budget crises and lack of funding may limit the government’s ability to monitor the wiretaps. Furthermore, the government will also continue to face significant constitutional hurdles. Rajaratnam appealed Judge Holwell’s ruling to the Second Circuit. If the appeal is granted, it could affect the government’s ability to utilize wiretaps in future cases. It nevertheless seems a safe bet, based on the government’s success rate in recent insider trading trials based on wiretaps (4-0 on all counts), that wiretaps will become a regular part of the government’s arsenal in white collar criminal cases.

With wiretaps in mind, companies and individuals who trade on the stock market can develop means to avoid finding themselves as the target of an investigation. The best first step is not to trade on inside information. This alone, however, is no guarantee that a company or trader will not become involved in an insider trading investigation as the result of a legitimate business practice. One may become a target simply by trading in similar stocks as others involved in some sort of impropriety or by having “abnormal” returns. A recent study by independent academics showed that trades by members of the U.S. House of Representatives earn significantly positive abnormal returns, and a portfolio that mimics the purchases of House members beats the market by approximately 6 percent annually.32

For individuals, successful techniques include complying with their employer’s insider-trading policy, trading only in open trading windows, using a 10b5-1 trading plan, and avoiding short sales or sales of complex derivative securities. Another successful technique involves considering every business interaction as one in which the person on the other side may be a government agent. When in doubt about a transaction, another technique is to consult with the organization’s legal department, designated compliance officer, or an outside attorney. Consulting with an attorney prior to entering into a proposed transaction may allow the trader to assert a defense that he or she acted on the advice of counsel.

For companies and financial institutions, one successful technique is to have a robust, up-to-date anti-insider trading program.33 To be successful, the organization should provide regular training to employees regarding the program. It should also encourage employees to alert their superiors or compliance representatives when issues arise, and it should promptly investigate any reports of
malfeasance that it deems to have merit. To the extent an employee acts inappropriately, the company will more easily be able to defend itself in any regulatory action arising from that employee’s conduct by demonstrating that the employee was acting against the culture and policy of the company.

7 Matthew Goldstein & Svea Herbst-Bayliss, supra note 7.
9 See letter from Robert S. Khuzami to the Honorable Charles E. Grassley, supra note 5.
10 Id. at n.3. For a definition of bluesheets, see, e.g., http://www.sec.gov/news/testimony/2010ts092210k.htm.
16 Id. at *3-6.
17 Id. at *7-8.
18 Id. at *11.
19 Id. at *6 (quoting 18 U.S.C. §2518(1)(b)).
20 Id. at *2.
21 Id. at *15.
22 Id. at *17. (emphasis in original).
23 Id. at *19.
24 Id. at *21.
CORNERTHONE RESEARCH
633 West Fifth Street, 31st Floor, Los Angeles, CA 90071-2005, (213) 553-2500, fax (213) 553-2689, Web site: www.cornerstonelegal.com. Contact George G. Strong, Jr., Richard W. Dalbeck, Katie J. Galley, Elaine Hanwood, or Carlyn Irwin. Cornerstone Research provides attorneys with expert testimony and economic and financial analyses in all phases of commercial litigation. We work with faculty and industry experts in a distinctive partnership that combines the strengths of the business and academic worlds. Our areas of expertise include identifying and supporting expert witnesses in intellectual property, antitrust, securities, entertainment, real estate, financial institutions, and general business litigation.

FULLCRUM INQUIRY
888 South Figueroa Street, Suite 2000, Los Angeles, CA 90071, (213) 767-4100, fax (213) 767-1300, e-mail: full@fullcrum.com. Web site: www.fullcrum.com. Contact David Nolte. Our professionals are experienced CPAs, MBAs, ASAs, CFAs, affiliated professors, and industry specialists. Our analysis and research combined with unique presentation techniques have resulted in an unequal record of successful court cases and client recoveries. Our expertise encompasses damages analysis, lost profit studies, business and intangible asset valuations, appraisals, fraud investigations, troubled company consultation, statistics, forensic economic analysis, royalty audits, strategic and market assessments, computer forensics, electronic discovery, and analysis of computerized data.

G. L. HOWARD, CPA
10147 Los Alamitos Boulevard, Los Alamitos, CA 90720, (562) 431-9844, fax (562) 431-9102, e-mail: geary@howardcpa.com. Web site: www.howardcpa.com. Contact Gary Howard, CPA, G. L. Howard, CPA, has focused on litigation support and forensic accounting since the founding of our firm in 1986. We work with some of the most prominent attorneys in SoCal. Our CPAs can analyze, verify, and quantify the economic damage in all types of matters. We have particular expertise in large, complex, high-stakes, complicated tax controversy matters both civil and criminal, after ego, voluntary disclosure, economic damages, experienced court appointed referees, and expert witness testimony. See display ad on page 1.

GLENN M. GELMAN & ASSOCIATES
CERTIFIED PUBLIC ACCOUNTANTS AND BUSINESS CONSULTANTS
1940 East 17th Street, Santa Ana, CA 92705, (714) 667-2600, fax (714) 667-2836, e-mail: rsquare@mgmpca.com. Web site: www.mgmpca.com. Contact Richard M. Squar. Winner of Inside Public Accounting’s 2008 “Best of the Best” award given to only 25 firms across the country, Glenn M. Gelman and Associates provides these litigation support services: expert witness testimony, strategy development, document discovery, deposition assistance, computation of damages, arbitration consulting, forensic accounting, investigative auditing, rebuttal testimony, fiduciary acquisitions, and trial exhibit preparation. Our areas of expertise include: business interruption, loss of earnings analysis, breach of contract, partnership dissolution, profits distribution, tax consequences of settlements, reconstruction of accounting records, reimbursement and fraud, contract costs, lost profits, contract claims, damage computations, and malpractice cases. Our comprehensive case list is available upon request. Our practice focuses on closely held entrepreneurial firms in the following industries: construction, real estate development, equipment leasing, auto parts (wholesale and retail), manufacturing, and professional services. Honored by Construction Link as the “Best Accounting Firm for the Construction Industry” Glenn M. Gelman has been appointed and served as Special Master in litigation support matters and has testified over 30 times. Our comprehensive case list is available upon request. See display ad on page 61.

GURSEY SCHNEIDER LLP
1885 Century Park East, Suite 900, Los Angeles, CA 90067, (310) 552-0960, fax (310) 557-3949, e-mail: purzycki@gursey.com or gki@gursey.com. Web site: www.gursey.com. Contact Roseanna Purzyck or Gary Krountz. Forensic accounting and litigation support services in the areas of marital dissolution, civil litigation, business valuation and appraisal, goodwill, business disputes, malpractice, tax matters, bankruptcy, damage and cost-profits assessments, insurance claims, court accounting, tracing, and entertainment industry litigation. See display ad on page 46.

HARGRAVE & HARGRAVE, AN ACCOUNTANCY CORPORATION
12121 Wilshire Boulevard, Suite 700, Los Angeles, CA 90025, (310) 576-1090, fax (310) 576-1080, e-mail: terry@taxwiz.com. Web site: www.taxwiz.com. Contact Terry M. Hargrave, CPA/ABV/CFF, CFE. Litigation services for family law and civil cases. Past chair of California Society of CPAs’ Family Law Section, business valuation instructor for California CPA Education Foundation. Services include business valuations, income available for support, tracing separate property, litigation consulting, real estate litigation, mediation, fraud investigations, damage calculation, and other forensic accounting work.

KRYCLER, ERVIN, TAUBMAN, AND WALHEIM

DIANA G. LESGART, CPA
ACCENT ACCOUNTING SERVICES
22024 Lassen Street, Suite 106, Chatsworth, CA 91311, (818) 986-7140, fax (818) 986-7146, e-mail: Lesgart3@msn.com. Contact Diana G. Lesgart, CPA, CFE, CVA, CFF, AN ACCOUNTANCY CORPORATION. Specialized accounting and litigation support services in the areas of family law litigation, including tracing of separate and community property assets, pension plan tracing, forensic accounting, business valuations, goodwill calculation, expert testimony, cash available for support, Moore-Morrison calculation, fraud investigations, real estate analysis, community property balance sheet. Over 25 years of accounting experience with 20 years litigation support specialization. Appointed as Section 730 accounting expert. Ms. Lesgart’s profile can be found at http://www.uditpro.com/DianaGLesgartCPA. Expert is English/Spanish bilingual. See display ad on page 55.
MAYER HOFFMAN MCCANN PC
3710 Kiroyo Airport Way, Suite 200, Long Beach, CA 90806, (562) 256-7052, fax (562) 256-7001, e-mail: mrrosenca@verizon.net. Web site: www.mrosenca.com. Contact Michael D. Rosen. We are litigation consultants, forensic accountants, expert witnesses. Our mission is to tell the financial story that underlies every business litigation matter, and to convey that story in a clear and concise manner to the trier of fact. Our findings allow a realistic assessment of the case and support settlement efforts. Our work is designed to render conclusive opinions and to withstand cross-examination. We specialize in business damages (lost profits and loss in value), personal damages (lost earnings), and business valuation.

SCHULZE HAYNES LOEVENGUTH & CO.
660 South Figueroa Street, Suite 1280, Los Angeles, CA 90017, (213) 627-8280, fax (213) 627-8301, e-mail: kschulze@schul泽haynes.com. Web site: www.schulzehaynes.com. Contact Karl J. Schulze, principal. Specializes in business analysis and accounting, lost profits, economic damages, expert testimony, discovery assistance, business valuations, construction claims, intellectual property recovery, financial analysis and modeling, major professional organizations, and have experience across a broad spectrum of industries and business. Degrees/licenses: CPA, CFE, ABV, PhD-economics. See display ad on page 55.

SMITH DICKSON, AN ACCOUNTANCY CORPORATION
1810 Von Karman Avenue, Suite 420, Irvine, CA 92612, (949) 533-1020, fax (949) 533-0549, e-mail: debbie.dickson@smithdickson.com. Web site: www.smithdickson.com. Contact Deborah Dickson, CPA, CPA 25 years, testifying 15 years, audits, reviews, evaluations of companies, financial statement and business profitability analysis, document review, reconstruction of accounting records, asset, note, capital, expenses, cash flow tracing, lost revenues, lost profits, economic damages, business dissolution, business valuations, IRS, FTB, EDD, and SBE tax controversy/negotiations, industries, professionals, medical, manufacturing, distribution, real estate, construction, escrow, and title.

THOMAS NECHES & COMPANY LLP

WHITE, ZUCKERMAN, WARSAVSKY, LUNA & HUNT

ZIVETZ, SCHWARTZ & SALTSMAN, CPAS

ADA/DISABILITY DISCRIMINATION
HAIGHT CONSULTING
1738 Palos Verdes Drive, Palos Verdes, CA 90272, (310) 454-2898, fax (310) 454-4516, Contact Marcia Haigh, SHERPA—CA, human resources expert knowledgeable in both federal and California law. Twenty-five years’ experience in human resources management experience plus over 20 years as a Human Resources Compliance Consultant in California. Specializations include sexual harassment, ADA/disability discrimination, other Title VII and FEHA discrimination and harassment, retaliation, FMLA/CPPA, safety, and wrongful termination. Courtroom testimony and deposition experience. Retained 60 percent by defense, 40 percent by plaintiff. Audit employer’s actions in preventing and resolving discrimination, harassment, and retaliation issues. Assess human resources policies and practices for soundness, for comparison to prevailing practices, and for compliance. Evaluate employer’s responsiveness to complaints and effectiveness of employer investigations. Assist counsel via preliminary case analysis, discovery strategy, examination of documents, and expert testimony.

APPRAISAL & VALUATION
FULCRUM COUNCIL
888 South Figueroa Street, Suite 200, Los Angeles, CA 90017, (213) 787-4100, (800) 691-1030, e-mail: drolle@fulcrum.com. Web site: www.fulcrum.com. Contact David Roll. Our professionals are experienced CPAs, MBAs, ABVs, CAs, affiliated professionals, and industry specialists. Our analysis and research combined with unique presentation techniques have resulted in an unequalled record of successful court cases and client recoveries. Our expertise encompasses damages analysis, lost profit studies, business and intangible asset valuations, appraisals, fraud investigations, troubled company consultation, statistics, forensic-economic analysis, royalty audits, strategic and market assessments, computer forensics, electronic discovery, and analysis of computerized data. Degrees/licenses: CPAs, ABVs, MBAs, and MAICs in accounting, finance, economics, and related subjects. See display ad on page 1.

HARGRAVE & HARGRAVE, AN ACCOUNTANCY CORPORATION
12121 Wilshire Boulevard, Suite 700, Los Angeles, CA 90025, (310) 576-1090, fax (310) 576-1080, e-mail: loriweinstein@aol.com. Contact Peter Lattey NCARB, CA license, MAIBC, LEED AP. Has over 35 years of international experience in architecture and construction. He has worked for and with major architecture/engineering firms and general contractors and owned and managed his own architecture/engineering firm. He knows design and construction from all sides. He understands how all the parts and parties of a building project should work together and how things can go wrong when they don’t. He knows construction contract administration and was coauthor of the manual of construction contract administration for AECOM North America. Mr. Lattey specializes in construction defects, design deficiencies, construction delays, water intrusion, mold damage, forensic architecture, construction contract administration, consequential damage, solutions to defects and problems, design contract issues, property condition surveys and construction contract issues. He reviews drawings, specifications, and contracts for technical competency and for industry standards. He analyzes issues and causes of the problem and responsibilities of the parties involved, including design professionals, owners, contractors, and authorities. Initial consultations in person or by phone are free. See display ad on page 48.

JEFFREY PHILLIP WEINSTEIN, AIA
3347 Motor Avenue, Suite 200, Los Angeles, CA 90034, (805) 785-0010, e-mail: wwein@jpwla.com. Web site: www.jpweinstein.com, Contact Jeffrey Phillip Weinstein, AIA. Specializes in development entitlements, design standard of care, construction project management, claims and defects, A/E/C agreements. Expertise includes building envelope and water intrusion, zoning and building codes, erosion/erosion, destructive testing and repairing, schools (ISA), hospitals (CSI-HPD), condominiums, commercial/retail/mixed-use projects.
Call in the EXPERTS.

Bringing quality experts into the 21st Century.

Pro/Consul, Inc.
Technical & Medical Experts

15,000 DISTINGUISHED EXPERTS IN MULTIPLE DISCIPLINES.

"Pro/Consul's ability to locate appropriate expert witnesses is unsurpassed."

1-(800) 392-1119

Listed and recommended by the A.M. Best Company

- Rigorous standards
- Tailored service
- Prompt turnaround
- Free initial consultations
- Free resume book
- Reasonable rates

LOCAL OFFICE
Pro/Consul Inc.
1945 Palo Verde Avenue, Suite 200
Long Beach, CA 90815-3443
(562) 799-0116 • Fax (562) 799-8821
Hours of Operation: 6 a.m. - 6 p.m.
experts@msn.com • ExpertInfo.com

A.D.R. Division
1-877-ARBITER
Retired Judges • Attorneys
Medical Doctors • Technical Experts
TASAmed Has Your Medical Expert®

• Outstanding local and national Experts in more than 1,000 healthcare categories – even hard-to-find specialties
• Services include prompt, customized searches, referrals, resumes, and your initial interview calls with experts
• 5 decades of referral experience

A Division of The TASA Group, Inc.
800-659-8464
www.tasamed.com
tasamed@tasanet.com

EXPERT WITNESS SERVICES

• Bankruptcy - Interest Rates
• Banking - Lending & Operations
• Lender Liability, Letters of Credit, Guarantees
• Forgery, Credit Cards, Ponzi Schemes, Checking and Savings Account Disputes
• Consumer, Commercial, Real Estate, Construction Loans & Regulatory Issues
• Credit Damages, ID Theft
• Appraisal and Expert referrals

~ 35 years experience ~
CEO, Director, Sr. Loan Officer, State, Bankruptcy, & Federal Court
THOMAS TARTER
ANDELA CONSULTING GROUP
818-380-3102 or 818-884-2525
E-Mail: ttarter@earthlink.net
www.commercepartners.org

Testified as expert (30+ cases) for both plaintiff and defendant. Thirty years of design/build experience, 20 years as expert witness. Degrees/licenses: BA Arch, Washington University; BArch, SCI-ARC MRED (Master RE Development) USC; CA License Architect #12822.

ATTORNEY FEES

LAW OFFICES OF PHILLIP FELDMAN

AUDIO/VIDEO FORENSIC

AUDIO ENGINEERING ASSOCIATES

AVIATION

ARGOS ENGINEERING
44 Argos, Laguna Niguel, CA 92677, (949) 363-8205, fax (949) 429-5972, e-mail: john@prattcics.net. Web site: www.argos-engineering.com. Contact John D. Pratt, PhD, PE. Litigation consulting, inspections, expert reports, patent infringement and validity analysis, deposition, and trial testimony.

BANKING

ADVISORS/EXPERTS @ MCS ASSOCIATES
18881 Von Karman, Suite 1175, Irvine, CA 92612, (949) 263-8700, fax (949) 263-0770, e-mail: experts@mcsassociates.com. Web site: www.mcsassociates.com. Contact Norman Katz, managing partner. Nationally recognized banking, finance, insurance, and real estate consulting group (established 1973). Experienced litigation consultants/experts include senior bankers, lenders, consultants, economists, accountants, insurance underwriters/brokers. Specialties: lending custom, practices, policies, in all types of lending real estate, subprime, business/commercial, construction, consumer/credit card, banking operations/administration, trusts and investments, economic analysis, valuations/damages assessment, insurance claims, coverages and bad faith, real estate brokerage, appraisal, escrow, and title insurance.

ANDELA CONSULTING GROUP, INC.
16311 Ventura Boulevard, Suite 845, Encino, CA 91436, (818) 380-3102, fax (818) 501-5412, e-mail: ttarter@earthlink.net. Contact Thomas A. Tarter, managing director. Former CEO of two banks. Lending, forgery, endorsements, letters of credit, guarantees, lender liability, checking accounts, credit cards, credit damages, and bankruptcy. Expert witness, litigation consulting. Expert referral service escrow, corporate governance, mortgage banking, and real estate. Over 900 cases national and international. See display ad on page 42.

BUSINESS

FORENSIGROUP

EXPERT WITNESS SERVICES SINCE 1991
3452 East Foothill Boulevard., Suite 1160, Pasadena, CA 91107, (800) 555-5422, (826) 795-9500, fax (826) 795-1950, email: experts@forensigroup.com. Web site: www.forensigroup.com. Contact Mercy Steenwyk, managing director. Over 10,000 cases Forensigroup has provided experts. 8,000 clients have retained experts from us. We respond in one hour or less. Forensigroup is an expert witness consulting services and consulting company, providing experts, expert witnesses, and consultants to law firms, insurance companies, and other public and private companies. Our expert witness consultants have thousands of disciplines: construction, engineering, business, accounting, intellectual property, computers, IT, medical, real estate, insurance, product liability, premises liability, safety and others, including experts in complex and hard-to-find disciplines. Let us give you the technical advantage and competitive edge in your cases. Referrals, customized searches, and initial phone consultations are free. See display ad on page 43.

ROBERT C. ROSEN
Citigroup Center, 444 South Flower Street, Suite 602, Los Angeles, CA 90071, (213) 362-1000, fax (213) 362-1001, e-mail: robertrosen@rosen-law.com. Web site: www.rosen-law.com. Specializing in securities law, federal securities law enforcement, securities arbitration, and international securities, insider trading, NYSE, AMEX, NASD disciplinary proceedings, broker-dealer, investment company and investment adviser matters, liability under federal and state securities laws, public and private offerings, Internet securities, and law firm liability. AV rated. Former chair, LACBA Business and Corporations Law Section, LLM, Harvard Law School. More than 38 years practicing securities law, 12 years with the U.S. Securities and Exchange Commission, Washington, D.C. Published author/editor of securities regulations, including multivolume treatises. See display ad on page 44.
BUSINESS APPRaisal/VALUATION

ADVISORS/EXPERTS @ MCS ASSOCIATES
18881 Von Keman, Suite 1175, Irvine, CA 92612, (949) 263-8700, fax (949) 263-0770, e-mail: experts@mcsassociates.com. Web site: www.mcsassociates.com. Contact Norman Katz, managing partner. Nationally recognized banking, finance, insurance, and real estate consulting group (established 1973). Experienced litigation consultants/experts include senior bankers, lenders, consultants, economists, accountants, insurance underwriters/brokers. Specialties: lending customes, practices, policies, in all types of lending (real estate, subprime, business/commercial, construction, consumer/credit card), banking operations/administration, trusts and investments, economic analysis and valuations/damages, assessment, insurance claims, coverages and bad faith, real estate brokerage, appraisal, escrow, and title insurance.

BRIAN LEWIS & COMPANY
10900 Wilshire Boulevard, Suite 610, Los Angeles, CA 90024, (310) 475-5676, fax (310) 475-5628, e-mail: brian@brianlewis-cpa.com. Contact Brian Lewis, CPA, CVA. Forensic accounting, business valuations, cash spendable reports, estate, trust, and income tax services.

CMM, LLP
5700 Canoga Avenue, Suite 300, Woodland Hills, CA 91367, (818) 986-5070, fax (818) 986-5034, e-mail: tmowrey@cmmcpas.com. Web site: www.cmmcpas.com. Contact Scott Mowrey. Specialties: consultants who provide extensive experience, litigation support, and expert testimony regarding forensic accountants, fraud investigations, economic damages, business valuations, family law, bankruptcy, and reorganization. Degrees/license: CPAs, CFAs, MBAs. See display ad on page 59.

CORNERSTONE RESEARCH
633 West Fifth Street, 31st Floor, Los Angeles, CA 90071-2005, (213) 553-2500, fax (213) 553-2699, Web site: www.cornerstone.com. Contact George G. Strong, Jr., Richard W. Dalbeck, Katie J. Galley, Elaine Harwood, or Carlyn Irwin. Cornerstone Research provides attorneys with expert testimony and economic and financial analyses in all phases of commercial litigation. We work with faculty and industry experts in a distinctive partnership that combines the strengths of the business and academic worlds. Our areas of expertise include identifying and supporting expert witnesses in intellectual property, antitrust, securities, entertainment, real estate, financial institutions, and general business litigation.

FULCRUM INQUIRY
888 South Figueroa Street, Suite 2000, Los Angeles, CA 90071, (213) 787-4100, fax (213) 891-1300, e-mail: drofe@fulcrum.com. Web site: www.fulcrum.com. Contact David Nolte. Our professionals are experienced CPAs, MBAs, ASAs, CFAs, affiliated professors, and industry specialists. Our analysis and research combined with unique presentation techniques have resulted in an unequalled record of successful court cases and client recoveries. Our expertise encompasses damages analysis, lost profit studies, business and intangible asset valuations, appraisals, fraud investigations, troubled company consultation, statistics, forensic economic analysis, royalty audits, strategic and market assessments, computer forensics, electronic discovery, and analysis of computerized data. Degrees/licenses: CPAs, CFAs, ASAs, PhDs, and MBAs in accounting, finance, economics, and related subjects. See display ad on page 59.

GURSEY SCHNEIDER LLP
1888 Century Park East, Suite 900, Los Angeles, CA 90067, (310) 552-0960, fax (310) 557-3488, e-mail: swasserman@gursey.com. Web site: www.gursey.com. Contact Stephan Wasserman. Gursey/Schneider is an accounting firm specializing in forensic accounting, litigation support services, business valuation, and appraisal services for a variety of purposes, including marital dissolution, gift and estate planning, eminent domain, goodwill loss, business disputes, malpractice, tax matters, bankruptcy, damage and cost-profit assessments, insurance claims, and entertainment.
Do You Have A Case Involving Dogs?

aggression behaviors training
breeding rescue evaluations
• temperament cruelty service dogs

Specializing in Rottweilers and Pit Bulls
— EVALUATIONS, CONSULTATION, BITE INVESTIGATIONS —

Jill Kessler • Dog Expert | 310-573-9615 | e-mail: jillkessler@mac.com

www.JillKessler.com

Do You Have A Case Involving Dogs?

aggression behaviors training
breeding rescue evaluations
• temperament cruelty service dogs

Specializing in Rottweilers and Pit Bulls
— EVALUATIONS, CONSULTATION, BITE INVESTIGATIONS —

Jill Kessler • Dog Expert | 310-573-9615 | e-mail: jillkessler@mac.com

www.JillKessler.com

SECURITIES

Securities & Business Law
SEC Enforcement Defense
International Business & Securities
Class & Derivative Actions
Insider Trading
NYSE, AMEX, FINRA Disciplinary Proceedings
Broker-Dealer, Investment Company & Investment Adviser Matters
Liability Under Federal & State Securities Laws
Internet Securities
Securities Arbitration
Law Firm Liability

Robert C. Rosen
AV Rated, Former Chair, LACBA Business & Corporations Law Section LLM, Harvard Law School.
38 years practicing Securities Law, 12 years with the U.S. Securities and Exchange Commission, Washington D.C. Published Author of Securities Regulations, including eight volume treatise.

Rosen & Associates, P.C.
LAW OFFICES
Citigroup Center • 444 S. Flower Street, Suite 602 • Los Angeles, CA 90071
Tel. 213/362-1000 • FAX 213/362-1001
Web site: Rosen-law.com E-mail: robertrosen@rosen-law.com

industry litigation. Gursey/Schneider has over 30 years of experience as expert witnesses in litigation support. See display ad on page 46.

HAYNE & COMPANY, CPAS
4910 Campus Drive, Newport Beach, CA 92660-2119, (949) 724-1880, fax (949) 724-1889, e-mail: sgabrielson

HOGGINS, MARCUS & LOVETT, INC.
800 South Figueroa Street, Suite 710, Los Angeles, CA 90017, (213) 617-7775, fax (213) 617-8372, e-mail: info@hmllnc.com. Contact Mark C. Higgins, ASA. The firm has over 30 years of litigation support and expert testimony experience in matters involving business valuation, economic damages, intellectual property, loss of business goodwill and lost profits. Areas of practice include business disputes, eminent domain, bankruptcy, and corporate and marital dissolution. See display ad on page 48.

MAYER HOFFMAN MCCANN PC

NORA C. OSTROFE, MBA, CEA, AVA
HAGEN, STREIFF, NEWTON & OSHIRO, ACCOUNTANTS PC
660 South Figueroa Street, Suite 1000, Los Angeles, CA 90017, (510) 388-4415, fax (510) 740-0190, e-mail:nostrofe@msn.com. Contact Nora Ostrofe. Services available: Affordable, professional, detailed valuation of economic loss in the following practice areas: personal injury/wrongful death (including maritime and medical malpractice), employment law, business interruption, and marital dissolution (including business and pension valuation). Reasonable rates.

RGL FORENSICS
Los Angeles Office: 800 South Figueroa Street, Suite 980, Los Angeles, CA 90017, (213) 996-0900. Contact Alan Lurie, alurie@us.rgl.com or Bob Jones, bjones@us.rgl.com. Orange County Office: 425 City Drive South, Suite 200, Orange, CA 92866, (714) 740-2100. Contact Hank Kahr, hikahr@us.rgl.com. RGL Forensics is an international firm of forensic financial experts exclusively dedicated to damage analysis, fraud investigation, and valuation. Serving the legal, insurance, and business communities for more than 30 years, the firm is unique in its ability to combine investigative accounting, business valuation, fraud, and forensic technology expertise. For attorneys, we discover and define financial value in transactions and civil and criminal disputes, and when necessary provide expert witness testimony in court and arbitration proceedings. For more information about RGL and its 23 offices worldwide, please visit www.rgl.com.

SCHULZE HAYNES LOEVEGUTH & CO.
660 South Figueroa Street, Suite 1280, Los Angeles, CA 90017, (213) 627-8280, fax (213) 627-8301. e-mail: kschulze@schulzehaynes.com. Contact Karl J. Schulze, principal. Specializes: forensic business analysis and accounting, lost profits, economic damages, expert testimony, discovery assistance, business valuations, construction claims, corporate recovery, financial analysis and modeling, major professional organizations, and have experience across a broad spectrum of industries and business issues. Degrees/licenses: CPA, CVA, CFE, ABV, PhD-economics. See display ad on page 55.
We are experts in damages, accounting and valuation.

Don’t settle for less.

▶ Expert witnesses and litigation consultants for complex litigation involving analyses of lost profits, lost earnings and lost value of business, forensic accounting and fraud investigation

▶ Other areas include marital dissolution, accounting and tax

▶ Excellent communicators with extensive testimony experience

▶ Offices in Los Angeles and Orange County

Call us today. With our litigation consulting, extensive experience and expert testimony, you can focus your efforts where they are needed most.

White Zuckerman Warsavsky Luna Hunt LLP

Certified Public Accountants
Los Angeles Office
818-981-4226
Orange County Office
949-219-9816

www.wzwlh.com    E-mail: expert@wzwlh.com
THOMAS NECHES & COMPANY LLP

WHITE, ZUCKERMAN, WARSAVSKY, LUNA & HUNT

ZWETZ, SCHWARTZ & SALTSMAN, CPAS

CHEMISTRY

CHEMICAL ACCIDENT RECONSTRUCTION SERVICES, INC.
9121 East Tanque Verde Road, Suite 105, Tucson, AZ 85749, (903) 645-3369, e-mail: service@chemaxx.com. Web site: www.chemaxx.com. Contact Dr. Michael Fox. Comprehensive chemical accident investigation—specializing in complex industrial chemical accidents and chemical related consumer product injuries, chemical fires and explosions, chemical labeling, chemical packaging, handling and shipping, burns, warnings, labels, MSDSs, disposal, safety, EPA, OSHA, DOT, propane, natural gas, hydrogen, flammable liquids, hazardous chemicals, aerosols (hairspray, spray paint, refrigerants), DOT certified (hazardous materials shipment), Certified Fire and Explosion Investigator, OSHA Process Hazard Analysis Team Leader, PhD Physical Chemistry. Extensive experience in met-
John Cosgrove, PE, has over 45 years’ experience in computer systems and has been a self-employed consulting software engineer since 1970. He was a part-time lecturer in the UCLA School of Engineering and LMU graduate schools. He has provided an invited article, “Software Engineering and Encyclopedia of Software Engineering.” He is a Certified Forensic Consultant (CFC), holds the CDFP, is a member of ACM, ACEFI, FEWA, a life senior member of EEE Computer Society, NSPE, a Fellow of the National Academy of Forensic Engineers (an affiliate of NSPE), and a professional engineer in California. Formal education includes a BSEE from Loyola University and a master of engineering from UCLA.

COSGROVE COMPUTER SYSTEMS, INC.
7411 Earlham Avenue, Playa del Rey, CA 90293, (310) 823-9448, fax (310) 821-4021, e-mail: jcosgrove@computer.org. Web site: www.cosgrovecomputer.com. Contact John Cosgrove.
When you need more than just numbers...you can count on us...

Contact Michael Krycier
PHONE (818) 995-1040
FAX (818) 995-4124
E-MAIL MIKE@KETW.COM
VISIT US @ WWW.KETW.COM
1580 VINTNER BOULEVARD, SUITE 1040
SHERMAN OAKS, CALIFORNIA 91403

ARCHITECTURE CONTRACTS & CONSTRUCTION
Expert Witness • Consultant
Litigation Support

Construction errors
Delay of job • Forensic analysis
Green building • Mediation

Over 30 years of international experience. From single family residential to major civic projects.

Peter Lattey
310-968-3252
lattey@sbcglobal.net

CA Licensed architect
NCARB, MAIBS, LEED Accredited Professional

KGA, INC.

THE McMULLEN COMPANY, INC.

URS
915 Wiltshire Boulevard, Suite 700, Los Angeles, CA 90017, (213) 966-2549, fax (213) 966-2525, e-mail: michael.mikenai@urs.com. Expert witness for entitlement, causation damages on design, construction, and geotechnical environmental disputes. Experienced in all types of construction projects. See display ad on page 61.

JEFFREY PHILLIP WEINSTEIN, AIA
3347 Motor Avenue, Suite 200, Los Angeles, CA 90034, (323) 798-0010, e-mail: weedolphi@urs.com. Web site: www.jefweinstein.com. Contact Jeffrey Philip Weinstein, AIA. Specialties: Expert in development entitlements, design of standard of care, construction management, claims and defects, A/S/C agreements. Expertise includes building envelope and water intrusion, zoning and building codes, errors/omissions, destructive testing and repair, schools (DSA), hospitals (OSHPD), condominiums, commercial/retail/mixed-use projects. Testified as expert (35+) cases) for both plaintiff and defendant. Thirty years of design/build experience, 20 years as expert witness. Degrees/licenses: BA Arch, Washington University, BArch, SCI-ARC: MRED (Master RE Development) USC, CA License Architect #12822.

CONTRACTORS LICENSING (CSLB)
ROBERT B. BERRIGAN, ESQ.
MATTHEY SEARS LINKERT & JAIME LLP
P.O. Box 15711, Sacramento, CA 95813-1711, (916) 978-3434, fax (916) 978-3430, e-mail: rberri@mathenysears.com. Web site: www.mathenysears.com, Specialties: Contractor licensing issues, proper license class to perform work, B & P section 7031 issues. Contractor State License Board (CSLB) investigations and disciplinary proceedings, obtaining licenses or documents from CSLB. Also violations of subleasing and subcontracting Fair Practice Act. Expert witness at trial, arbitration. Degrees/licenses: BA, JD, Commercial Pilot, SEL, ME.

DAVID KALB AND MCHALE BROWN
1225 8th Street, Suite 580, Sacramento, CA 95814, (916) 443-0667, fax (530) 756-7557, e-mail: rdcalpe@cox.com. Web site: www.ContractorsExpertWitness.com. Contact David or Michael at Capitol Services Inc. David and Michael are two of the foremost contractors licensing experts in California. Declarations, consultation and expert testimony. B&P Codes including 7031, classification determination, contractor’s license requirements for particular project; reviewing contracts, permits, and certified license files. As president of Capitol Services, David has assisted contractors, the construction industry, and legal community for over 20 years in dealing with the Contractors Board and other state agencies. Michael retired from the California Contractors State License Board in 2010 after 25 years of service. He served as chief of the Licensing division as well as chief of Legislative Affairs.
CORPORATE INVESTIGATIONS

FULCRUM INQUIRY

Contact David Holtz. Our professionals are experienced CPAs, MBAs, ASAs, CFAs, affiliated professors, and industry specialists. Our analysis and research combined with unique presentation techniques have resulted in an unequaled record of successful court cases and client recoveries. Our expertise encompasses damages analysis, lost profit studies, business and intangible asset valuations, appraisals, fraud investigations, troubled company consultation, statistics, forensic economic analysis, royalty audits, strategic and market assessments, computer forensics, electronic discovery, and analysis of computerized data. Degrees/licenses: CPAs, CFAs, ASAs, PhDs, and MBAs in accounting, finance, economics, and related subjects. See display ad on page 1.

WHITEx, ZUCKERMAN, WARSAVSKY,
LUNA & HUNT

Contact Barbara Luna. Expert witness testimony for complex litigation involving damage analyses of lost profits, unjust enrichment, reasonable royalties, lost earnings, lost value of business, forensic accounting, fraud investigation, investigative analysis of liability, marital dissolution, and tax planning and preparation. Excellent communicators with extensive testimony experience. Prior Big Four accountants. Specialties include accounting, breach of contract, business interruption, business dissolution, construction defects, delays, and cost overruns, fraud, insurance bad faith, intellectual property including trademark, patent, and copyright infringement, and trade secrets, malpractice, marital dissolution, personal injury, product liability, real estate, securities, tax planning and preparation, IRS audit defense, tracing, unfair advertising, unfair competition, valuation of businesses, and wrongful termination. See display ad on page 45.

DOCUMENT EXAMINER

SANDRA L. HOMEWOOD, FORENSIC
DOCUMENT EXAMINER
1132 San Marino Drive, Suite 216, Lake San Marcos, CA 92038, (760) 981-0250, fax (760) 510-8412, e-mail: homewoodqdle@comcastglobal.net. Contact Sandra L. Homewood. Highly skilled and experienced document examiner and expert witness in many complex and high profile civil and criminal cases with fully equipped document laboratory. Specializing in handwriting and handwriting identification, handwriting of the elderly in financial elder abuse cases and will contests, and examination of altered medical and corporate records. Trained in government laboratory including specialized training by the FBI and Secret Service. Former government experience includes document examiner for the San Diego Police Department crime lab, Arizona State crime lab, and San Diego County District Attorney’s office. Currently in private, criminal, and civil practice.

DOGS

JILL KESSLER, GRAD. CERT., CPOT
341 North Grenola Street, Pacific Palisades, CA 90272, (310) 573-9615, fax (310) 573-1304, e-mail: jillkessler@mac.com. Web site: www.jillkessler.com.

Jill Kessler, grad. cert., CPot, has been in private practice providing legal counsel with a powerful resource for expert testimony and litigation support. Currently in private, criminal, and civil practice.

ECONOMIC ANALYSIS

MAYER HOFFMAN MCCANN PC

As an Expert Witness in Real Estate Litigation, Attorney LAWRENCE H. JACOBSON has consistently been on the Winning Team

• Real estate and mortgage brokers’ standard of care
• Lawyer malpractice in business and real estate transactions
• Interpretation of real estate documents


LAWRENCE H. JACOBSON AB, UCLA 1964, JD UCLA SCHOOL OF LAW 1967
Tel 310.271.0747 fax 310.271.0757 email law.jac@lhjpc.com www.lawrencejacobson.com

LAW OFFICES: 9401 WILSHIRE BLVD. SUITE 1250, BEVERLY HILLS, CA 90212

Confidence At The Courthouse.
Business litigation is increasingly complex. That is why we believe valuation issues must be addressed with the same meticulous care as legal issues. Analysis must be clear. Opinions must be defensible. Expert testimony must be thorough and articulate. HML has extensive trial experience and can provide legal counsel with a powerful resource for expert testimony and litigation support.

For More Information Call 213-617-7775
Or visit us on the web at www.hmlinc.com

BUSINESS VALUATION • LOSS OF GOODWILL • ECONOMIC DAMAGES • LOST PROFITS
ECONOMIC DAMAGES

ADVISORS/EXPERTS @ MCS ASSOCIATES

19891 Von Karman, Suite 1175, Irvine, CA 92612, (949) 263-8700, fax (949) 263-0770, e-mail: experts@mcassoc.com. Web site: www.mcsassociates.com. Contact: Andrew Hornichter. Founded in 1986, MCS Associates specializes in forensic accounting, litigation, and business valuation. Experience in business litigation, and to convey that story in a clear and concise manner to the trier of fact. Our findings allow a realistic assessment of the case and support settlement efforts. Our work is designed to render conclusive opinions and to withstand cross-examination. We specialize in business damages (lost profits and loss in value), personal damages (lost earnings), and business valuation.

SCHULZE HAYNES LOEVENGUTH & CO.

660 South Figueroa Street, Suite 1280, Los Angeles, CA 90071, (213) 627-6830, fax (213) 627-6031, e-mail: kschulze@schulzehaynes.com. Web site: www.schulzehaynes.com. Contact Karl J. Schulze, principal. Specializes: forensic business analysis and accounting, lost profits, economic damages, expert testimony, discovery assistance, business valuations, construction claims, corporate recovery, financial analysis and modeling, major professional organizations, and have experience across a broad spectrum of industries and business issues. Degrees/licenses: CPA, CFA, CE, ABV, PhD-economics. See display ad on page 55.

THOMAS NECHES & COMPANY LLP

633 West 5th Street, Suite 2800, Los Angeles, CA 90071-2039, (213) 624-8150, fax (213) 223-2304, e-mail: tneches@thomasesnces.com. Web site: www.thomasesnces.com. Contact Thomas M. Neches, CPA, ABV, CVA, CFE, CFF. Accounting, financial, business valuation, and statistical analyses to assist attorneys in litigation. Expert testimony for federal courts. Cases: antitrust, breach of contract, fraud, intellectual property, lost business value, lost profits, wrongful death, and wrongful terminations. Industries: banking, construction, entertainment, insurance, manufacturing, retail, securities, and wholesale. Credentials: certified public accountant/accrued knowledge in accounting, banking, construction, entertainment, insurance, manufacturing, retail, securities, and wholesale. Areas of expertise include: business interruption, loss of earnings, economic damage in all types of matters. We have participated in numerous complex litigation cases. Selected by Inside Public Accounting as recipient of 2008 “Best of the Best” award given to only 25 firms across the country. Our practitioners represent closely held entrepreneurial firms in the following industries: construction, real estate development, equipment leasing, auto parts (wholesale and retail), manufacturing, and professional services. Glenn M. G. Hornichter has been appointed and served as Special Master in litigation support matters and has testified over 30 times. Our comprehensive case list is available upon request. See display ad on page 61.

HIGGINS, MARCUS & LOVETT, INC.

800 South Figueroa Street, Suite 710, Los Angeles, CA 90071, (213) 617-7756, e-mail: expert@wzwlh.com. Web site: www.wzwlh.com. Contact Mark C. Higgins, ASA. The firm has over 30 years of litigation support and expert testimony experience in matters involving business valuation, economic damages, intellectual property, loss of business goodwill and lost profits. Areas of practice include business disputes, eminent domain, bankruptcy, and corporate and marital dissolution. See display ad on page 49.

MAYER HOFFMAN MCCANN PC

appraisals, marital dissolutions, eminent domain, insurance losses, business interruption, goodwill, economic analysis, investigative auditing, loss of earning, commercial damages, and lost profits. Expert witness testimony preparation, settlement negotiations, and consultations. See display ad on page 43.

**ECONOMICS**

**ADVISORS/EXPERTS @ MCS ASSOCIATES**

18881 Von Karman, Suite 1175, Irvine, CA 92612, (949) 263-8700, fax (949) 263-0770, e-mail: experts@mcsassociates.com. Contact Norman Katz, managing partner. Nationally recognized banking, finance, insurance, and real estate consulting group (established 1972). Experienced litigation consultants/experts include senior bankers, lenders, consultants, economists, accountants, insurance underwriters/brokers. Specialties: lending custom practices, policies, in all types of lending real estate, subprime, business/commercial, construction, consumer/credit card, banking operations/administration, trusts and investments, economic analysis and valuations/damages assessment, insurance claims, coverage and bad faith, real estate brokerage, appraisal, escrow, and title insurance.

**CMM, LLP**

5700 Canoga Avenue, Suite 300, Woodland Hills, CA 91367, (818) 996-5070, fax (818) 996-5034, e-mail: smowrey@cmmcpas.com. Web site: www.cmmcpas.com. Contact Scott Mowrey. Specialties: consultants who provide extensive experience, litigation support, and expert testimony regarding forensic accountants, fraud investigations, economic damages, business valuations, family law, bankruptcy, and reorganization. Degrees/license: CPAs, CFAs, M&As. See display ad on page 59.

**FULCRUM INQUIRY**

888 South Figueroa Street, Suite 2000, Los Angeles, CA 90071, (213) 787-4100, fax (213) 891-1300, e-mail: drhoef@fulcrum.com. Web site: www.fulcrum.com. Contact David Nolte. Our professionals are experienced CPAs, MBAs, ASAs, CFAs, affiliated professors, and industry specialists. Our analysis and research combined with unique presentation techniques have resulted in an unequaled record of successful court cases and client recoveries. Our expertise encompasses damages analysis, lost profit studies, business and intangible asset valuations, appraisals, fraud investigations, troubled company consultation, statistics, forensic economic analysis, royalty audits, strategic and market assessments, computer forensics, electronic discovery, and analysis of computerized data. Degrees/licenses: CPAs, CFAs, ASAs, PhDs, and MBAs in accounting, finance, economics, and related subjects. See display ad on page 1.

**ELDER ABUSE**

**HAMPTON HEALTH, LTD**

**JOHN H. FULLERTON, MD, MRO, CMD, CFP, FACOG, AGSF, FAAHPM**

1700 California Street, Suite 470, San Francisco, CA 94109, (415) 460-5532, fax (415) 459-2774, e-mail: katemcelroy@gmail.com. Web site: hamptonhealthltd.com. Contact Kate McElroy, PA-C. We represent real estate owners, developers, and tenants in disputes related to residential or commercial real estate. Specialties: consultants who provide extensive experience, litigation support, and expert testimony regarding fusion. degrees/license: CPAs, MBAs. Specialties: consultants who provide extensive experience, litigation support, and expert testimony regarding fusion.

**INSURANCE BAD FAITH EXPERT**

**Clinton E. Miller, J.D., BCFE**

Author: How Insurance Companies Settle Cases

39 YEARS EXPERIENCE

Qualified Trial Insurance Expert in Civil & Criminal Cases Nationwide


Tel. 408.279.1034 | Email: cemcom@aol.com | Fax 408.279.3562

www.quikpage.com/M/millerjd/

**BOARD CERTIFIED ORTHOPEDIC SURGEON**

**MARC J. FRIEDMAN, M.D.**

6815 Noble Avenue, Van Nuys, California 91405

Tel. 818.901.6600 ext. 2810 • Fax: 818.901.6685 • Email: mfriedman@scoi.com

Web Site: www.scoi.com

**Education:**

Princeton University and Cornell Medical School

**Certificate:**

Board Certified Orthopedic Surgeon

**Memberships:**

Fellowship Sports Medicine

Fellow American Academy of Orthopedic Surgeons

Fellow in the Arthroscopy Association of North America

Fellow in the International Arthroscopy Association

Fellow in the International Knee Society

Fellow in the American Orthopedic Society of Sports Medicine

ACL Study Group

Certified QME, IME, AME

**Specialties:**

Sports Medicine, Arthroscopic and Reconstructive Surgery of the Knee and Shoulder, and Knee Replacement

**Appointments:**

Assistant Clinical Professor, Division of Orthopedics

UCLA School of Medicine

World Cup Soccer Team Physician

Physician Specialist XXIII Olympic 1984


**Publications:**

60 Publications including handbook for Orthopedic Surgeons on Prosthetic Ligament Reconstruction of the Knee

**Presentations:**

Lectures extensively with over 375 presentations worldwide

Does LACBA have your current e-mail address?

The Los Angeles County Bar Association is your resource for information delivered via e-mail on a number of subjects that impact your practice.

Update your records online at www.lacba.org/myaccount or call Member Services at 213.896.6860.
HAMPSON HEALTH, LTD.
- Internal Medicine
- Geriatrics
- Personal Injury
- Adult Hospital Medicine
- Long Term Care
- Medical Malpractice
- Elder Abuse
- Medicare Fraud for DOJ, FBI, OIG

HAMPSON HEALTH, LTD.
JOHN H. FULLERTON, MD, MBI
CMD, CFAP, ASGF, PASHPM
415.460.5332 tel | 415.459.2774 fax
1700 Colfax Street, Suite 470, San Francisco CA 94109
http://hamptonhealthltd.com

AmFS
Pursue the Right Cases, Retain the Best Experts.

Cost effective case reviews and the most comprehensive network of Board Certified medical experts in the nation.

Free Consultation with a Medical Director
(800) 275-8903
www.amfs.com

BOARD CERTIFICATIONS:
- Addiction Medicine (ABAM), Licensed as a Medical Review Officer (MRO)
- Geriatrics (ABAM)
- Hospice and Palliative Medicine (ABHPM)
- Internal Medicine (ABIM), Geriatrics (ABIM)

CLINICAL FACULTY AT STANFORD, YALE, USC AND UCSF
reviewed more than 1700 CALIFORNIA STREET, SUITE 470, SAN FRANCISCO CA 94109

GLENN M. GELMAN & ASSOCIATES
CERTIFIED PUBLIC ACCOUNTANTS AND BUSINESS CONSULTANTS
1940 East 17th Street, Santa Ana, CA 92705, (714) 667-2600, fax (714) 667-2600, e-mail: rsusan@gmpcpa.com, Web site: www.gmpcpa.com, Contact Richard M. Squar. Glenn M. Gelman and Associates provide a variety of high-quality services traditionally associated with the “Big Four” firms along with the personal attention that is the hallmark of local firms. Our litigation support services include: embezzlement and fraud, expert witness testimony, strategy development, document discovery, deposition assistance, computer forensics and accounting, arbitration consulting, forensic accounting, investigative auditing, rebuttal testimony, fiduciary accounting, and trial exhibit preparation and reconstruction of accounting records. Winner of Inside Public Accounting’s 2008 “Best of the Best” award given to only 25 firms across the country. Our practice focuses on closely held entrepreneur firms in the following industries: construction, real estate development, equipment leasing, auto parts (wholesale and retail), manufacturing, and professional services. Glenn M. Gelman has been appointed and served as Special Master in litigation support matters and has testified over 30 times. Our comprehensive case list is available upon request. See display ad on page 61.

EMPLOYMENT/DISCRIMINATION/HARASSMENT/RETAILATION
BRIAN H. KLEINER, PHD, MBA
Professor of Human Resource Management, California State University, 551 Santa Barbara Avenue, Fullerton, CA 92835, (714) 679-9705, fax (714) 679-9600, Contact Brian H. Kleinier, PhD. Specialties: The evaluation of workplace policies and practices pertaining to: discrimination/harassment prevention efforts (training, interactive process, reasonable accommodation), investigations, corrective actions (discipline, termination), hiring, compensation/wage and hours/ERISA-violence, OSHA, appraisal, promotion, CFRA/cfA, retailation, and RIFS. Experience: Former human resource manager for Ford Motor Company. Over 100 consulting clients. Trained thousands of managers, 500+ publications. Have been retained in 50+ legal cases, have given deposition testimony, 200+ times and trial/ arbitration testimony 60+ times.

HAIGHT CONSULTING
1726 Palisades Drive, Pacific Palisades, CA 90272, (310) 454-2988, fax (310) 454-4516. Contact Marcia Haight, SPHR—CA. Haight Consulting’s expert knowledge is indestructible in both federal and California law. Twenty-five years’ corporate human resources management experience plus over 30 years as a Human Resources Compliance Consultant in California. Specializations include sexual harassment, ADA/disability discrimina-
ENVIRONMENTAL ENGINEER

W2I INC. (ENVIRONMENTAL ENGINEERS) 1717 28th Street, Bakersfield, CA 93301, (661) 326-1112, fax (661) 326-6480, e-mail: mwylison@w2iinc.com. Web site: www.w2iinc.com. Contact Mary Jane Wilton. BS, petroleum engineering/environmental assessment #00050. Specialties include regulatory compliance, air, and water quality.

ESCROW

ADVISORS/EXPERTS & MCS ASSOCIATES 18881 Von Karman, Suite 1175, Irvine, CA 92604, (949) 263-8700, fax (949) 263-0770, e-mail: experts@mcsassociates.com. Contact Norman Katz, managing partner. Nationally recognized banking, finance, insurance, and real estate consulting group (established 1973). Experienced in escrow, title, appraisals, mortgage lending, annexations, zoning, and other escrow-related matters. Specialties include escrow, appraisal, and transactional expertise.

ESTATE PLANNING, TRUST AND PROBATE LAW

EDWARD M. BURGH, ESQ. 25200 Orchard Street, Suite 130, Woodland Hills, CA 91367, (818) 955-1110, fax (818) 757-1110, e-mail: emburgh@taxprobatelaw.com. Web site: www.taxprobatelaw.com. Contact Edward M. Burgh, Esq. CPA. Specializes in significant trust and estate planning and expert witness in probate litigation in LASC and administrative hearings, inheritance and taxation matters appeals of probate decisions. Professor of law teaching tax, estate planning courses, and probate planning procedures. JD, CPA, FAIMA, Taxation Law Specialist (State Bar of CA). Education: BA, University of Chicago; JD, University of Chicago LS. Certifications/licenses—Law, CA; CPA—IL. Consulting/expert witness experience—Civil, LASC and Federal Court. Criminal: Federal Court (Tax Criminal).

EXPERT REFERRAL SERVICE

PRO/CONSULT TECHNICAL AND MEDICAL EXPERTS 1945 Palo Verde Avenue, Suite 200, Long Beach, CA 90815, (800) 392-1119, fax (562) 789-8821, e-mail: experts@mrc.com. Contact Rebecca deButts. Right expert right away! We are listed and recommended by the A.M. Best Company. We welcome your rush cases! 15,000 medical and technical experts in over 3,000 fields in all 50 states and territories. 24/7 referral service.

TASA (TECHNICAL ADVISORY SERVICE FOR ATTORNEYS) EXPERTS IN ALL CATEGORIES Contact Heather Wilkerson, (800) 523-2319, fax (800) 329-9272, e-mail: tasa@tasa.com. Web site: www.TASA.com. The TASA Group is your timesaving, cost-effective source for superior, independent Testing and Consulting Experts in all fields and locations. We offer over 10,000 diverse categories of experts, hard-to-find specialties in technology, business, the arts, and sciences, including 1000+ medical areas. Our experienced Referral Advisory target your specific criteria and connect you with experts available to discuss your case. There is NO CHARGE for our search and referral services unless you retain an expert. They charge a flat fee or retain an expert referral. Plaintiff/Defence; Civil, Criminal. Visit TASA.com, where you can search expert profiles by expertise key-word, order a Professional Sanction Search™ on an expert’s disciplinary action, order a Challenge History Report™ 2.0 on an expert’s past testimony, and request an expert’s resume for your online form. Explore TASA.com and Knowledge Center to read expert-authored articles and view archived Webinars for attorneys. To receive invitations to our free, expert-led Webinars for attorneys, register at www.TASA.com/knowledgecenterregistra- tion.aspx. Benefit from 56 years of TASA Group experience. See insert in this issue and display on page 42.

EXPERT WITNESS

AMFS MEDICAL EXPERTS NATIONWIDE 6425 Christie Avenue, Suite 260, Emeryville, CA 94609, (900) 275-8903. Web site: www.amfs.com. Medical experts for malpractice and personal injury cases. AMFS is America’s premier medical expert and consulting company. We are a trusted partner with the legal community and provide a superior method of retaining medical experts. For over 20 years, AMFS has provided board-certified experts in over 10,000 malpractice and personal injury cases. • Board-Certified experts in all medical specialties • Practicing physicians with legal experience • No cost attorney consultations • Record review and testimony • Independent Medical Examinations (IME) and autopsies • Essential affidavits and reports. Discuss your case at no charge with one of our Medical Directors, who will identify and clarify your case issues to ensure you retain the appropriate specialist. • Cost-effective initial case reviews for merit. Have your case reviewed for merit by members of our 50+ member multispecialty Physician Advisory Panel. Review and select expert CVs. Our experience, resources, and large proprietary database enable us to quickly identify and interview a large number of potential medical experts on your behalf and provide you with the CVs of those who are best suited to your case. Ask about our new Expert On-Call service. See display ad on page 52.

EXPERT WITNESS WEB SITES

EXPERT4LAW—THE LEGAL MARKETPLACE (213) 896-6581, e-mail: forensics@acta.com. Web site: www.expert4law.com. Contact Melissa Alzaco. Still haven’t found who you’re looking for? Expert4law—The Legal Marketplace is the best online directory for finding expert witnesses, legal consultants, litigation support, lawyer-to-lawyer networking, dispute resolution professionals, and law office technology. This comprehensive directory is the one-stop site for your legal support needs. Available 24/7/365. Brought to you by the Los Angeles County Bar Association.

FAILURE ANALYSIS

4X FORENSIC ENGINEERING LABORATORIES, INC. 16371 Gothard Street, Unit F, Huntington Beach, CA 92647, (714) 450-8500, fax (714) 450-8598, e-mail: 4x@4xforensic.com. Web site: www.4xforensic.com. Contact Phil Van Herle. 4X Forensic Engineering Laboratories is a full-service forensic engineering laboratory. We provide expert witness and analytical and testing services in the following areas: Fires and Explosions, Electrical and gas product defect investigations, thermal and fire modeling and laboratory testing. Water/Wastewater: Materials, corrosion and failure analysis of plumbing products. Failure Analysis: Metallurgy, product testing and computer-assisted stress analysis. Material Testing: Automotive, construction equipment and premises liability.

KARS ADVANCED MATERIALS, INC. Testing and Research Labs, 2528 West Woodland Drive, Anaheim, CA 92801-2606, (714) 527-7100, (714) 527-7169, e-mail: info@karslab.com. Web site: www.karslab.com. Contact Drs. Ramesh J. Kar or Narash J. Kar. Southern California’s premier forensic laboratory for material testing, classification, and matching of: (a) metal/metallic, (b) structural/forensics laboratory. Registered professional engineers with 30-plus years in metal/metallic/structural/forensics failure analysis. Experienced with automotive, bicycles, tires, fire, paint, plumbing, corrosion, and structural failures. We work on
both plaintiff and defendant cases. Complete in-house capabilities for tests. Extensive deposition and courtroom experience (civil and criminal investigations). Principals are fellows of American Society for Metals and board-certified diplomates, American Board of Forensic Examiners. See display ad on page 55.

**COOK**

**KGA, INC.**


**FAMILY LAW**

**BRIAN LEWIS & COMPANY**

10900 Wilshire Boulevard, Suite 610, Los Angeles, CA 90024, (310) 475-5676, fax (310) 475-5268, e-mail: brian@brianlewiscpa.com. Contact Brian Lewis, CPA, CVA. Forensic accounting, business valuations, cash spendable reports, estate, trust, and income tax services.

**GURSEY-SCHNEIDER LLP**

1888 Century Park East, Suite 900, Los Angeles, CA 90067, (310) 552-0960, fax (310) 557-3488, 20055 Hawthorne Boulevard, First Floor, Torrance, CA 90250, (310) 370-6122, fax (310) 370-6188, e-mail: swasser@gursey.com or isolm@gursey.com or katzl@gursey.com. Web site: wwww.gursey.com. Contact Scott Movroy. Specialties: consultants who provide extensive experience, litigation support, and expert testimony regarding forensic accountants, fraud investigations, economic damages, business valuations, family law, bankruptcy, and reorganization. Degrees/license: CPAs, CFEs, MBAs. See display ad on page 59.

**HARGRAVE & HARGRAVE, AN ACCOUNTANCY CORPORATION**

12121 Wilshire Boulevard, Suite 700, Los Angeles, CA 90025, (310) 576-1090, fax (310) 576-1080, e-mail: terry@taxwizard.com. Web site: wwww.taxwizard.com. Contact Terry M. Hargrave, CPA/ABV/CFF, CFE. Litigation services for family law and civil cases. Past chair of California Society of CPAs’ Family Law Section, business valuation instructor for California CPA Education Foundation. Services include business valuations, income available for support, tracing separate property, litigation consulting, real estate litigation, mediation, fraud investigations, damage calculation, and other forensic accounting work.

**HAYNE & COMPANY, CPAS**

4910 Campus Drive, Newport Beach, CA 92660-2119, (949) 724-1880, fax (949) 724-1889, e-mail: sgabrielson@hayneca.com. Web site: wwww.hayneca.com. Contact Steven C. Gabrielson. Consulting and expert witness testimony in a variety of practice areas: commercial damages, ownership disputes, economic analysis, business valuation, lost profits analysis, fraud/forensic investigations, taxation, personal injury, wrongful termination, professional liability, and expert cross examination. Extensive public speaking background assists in courtroom presentations.

**KRYCER, ERVIN, TAUBMAN, AND WALHEIM**

15003 Ventura Boulevard, Suite 1040, Sherman Oaks, CA 91403, (818) 995-1040, fax (818) 995-1424. Web site: wwww.info@ketwca.com. Contact Michael J. Krycier. Litigation support, including forensic accounting, business appraisals, family law accounting, business and professional valuations, damages, fraud investigations, and lost earnings. Krycier, Ervin, Taubman and Walheim is a full-service accounting firm serving the legal community for more than 20 years. See display ad on page 48.

**ZIVETZ, SCHWARTZ & SALTSMAN, CPAS**


**FAMILY PRACTICE**

**ELLIOT D. FELMAN, MD**

1304 15th Street, Suite 310, Santa Monica, CA 90404, (310) 260-2525, fax (310) 260-7575, e-mail: drfelman@felmanlink.net. Contact Mary Lou Purdy. Expert review and testimony, plaintiff or defense, teaching faculty UCLA School of Medicine and Western University School of Health Sciences. Former expert reviewer for California Medical Board.

**ARGOS ENGINEERING**

44 Argos, Laguna Niguel, CA 92677, (949) 363-6205, fax (949) 429-5972, e-mail: john@argosengineering.com. Web site: wwww.argosengineering.com. Contact John D. Pratt, PhD, PE. Litigation consulting, inspections, expert reports, patent infringement and validity analysis, deposition, and trial testimony.

**FEES & ETHICS**

**JOEL MARK**

**ARGOS CARLTON & BOWMAN**

1000 Town Center Drive, 6th Floor, Ontario, CA 91761, (909) 585-6464, fax (909) 585-6465. Web site: wwww.argosengineering.com. Contact John D. Pratt, PhD, PE. Litigation consulting, inspections, expert reports, patent infringement and validity analysis, deposition, and trial testimony.
room presentations.

professional liability, and expert cross examination.

tigations, taxation, personal injury, wrongful termination,
ness valuation, lost profits analysis, fraud/forensic inves-
damages, ownership disputes, economic analysis, busi-

Contact Steven C. Gabrielson.

ahornichter@cbiz.com. Web site: www.MHM-PC.com,

10474 Santa Monica Boulevard, Suite 200, Los Angeles,

ADVISORS/EXPERTS @ MCS ASSOCIATES
18881 Von Karman, Suite 1175, Irvine, CA 92612,
(949) 269-8700, fax (949) 263-0770, e-mail: experts
@mcsassociates.com. Web site: www.mcsassociates

FINANCIAL STATEMENTS
MAYER HOFFMAN MCCAIN PC
10474 Santa Monica Boulevard, Suite 200, Los Angeles,
CA 90025, (310) 268-2000, fax (310) 268-2001, e-mail:
almicheller@cbiz.com. Web site: www.MHM-PC.com,
www.CBEZ.com. Contact Andrew Hornichter. Special-

THE BEST LEGAL MINDS
IN THE COUNTRY
TALK TO US

- Metallurgical Failures
- Corrosion & Welding Failures
- Glass & Ceramic Failures
- Chairs / Ladders / Tires
- Automobile/Aerospace/ Accidents

- Bio-Medical/Orthopedic Implants
- Plumbing/Piping/ABS Failures
- Complete In-House Laboratory Testing & Analysis Facilities
- Expert Witnesses/Jury Verdicts
- Licensed Professional Engineers

Contact: Dr. Naresh Kar, Fellow ASM, Fellow ACFE
Dr. Ramesh Kar, Fellow ASM, Fellow ACFE

www.karslab.com ■ email: info@karslab.com

Los Angeles Lawyer April 2012 55
appraisal, marital dissolutions, transactional due diligence, financial reconstruction, fraud investigation, family limited partnerships, commercial damage and lost profits, and business interruption. Experienced expert testimony and tax controversy representation.

Contact: Contact Michael McMullen.

4X FORENSIC ENGINEERING LABORATORIES, INC.
13671 Gothard Street, Suite F, Huntington Beach, CA 92647. (714) 450-8500, fax (714) 450-8599, e-mail: philh@4xforensic.com, Web site: www.4xforensic.com.
Contact Phil Van Herle.
4X Forensic Engineering Laboratories is a full-service forensic engineering laboratory. We provide expert witness and analytical and testing services in the following areas: Fences and Explosions. Electrical and gas product defect investigations, thermal and fire modeling and laboratory testing. Water Loss: Materials, corrosion and failure analysis of plumbing products. Failure Analysis: Metallurgy, product testing and computerized stress analysis. Accident Reconstruction: Automotive, trucks, construction equipment and premises liability.

CHEMICAL ACCIDENT RECONSTRUCTION SERVICES, INC.
9121 East Tanque Verde Road, Suite 105, Tucson, AZ 85749, (800) 645-3369, e-mail: service@chemaxo.com. Web site: www.chemaxo.com. Contact Dr. Michael Fox. Fox specializes in chemical accidents, specifically in complex industrial chemical accidents and chemical related consumer product injuries, chemical fires and explosions, chemical labeling, chemical packaging, handling and shipping, burns, warnings, labels, MSDSs, disposal, safety, EPA, OSHA, DOT, propane, natural gas, hydrocarbons, flammable liquids, hazardous chemicals, aeroplane (harmful, spray paint, refrigerants), DOT certified (hazardous materials shipment), Certified Fire and Explosion Investigator, OSHA Process Hazard Analysis Team Leader, Ph.D-Physical Chemistry. Extensive experience in metallurgy, corrosion, and failure analysis.

THE McMULLEN COMPANY, INC.

FORENSIC ACCOUNTING
CORNERSTONE RESEARCH
633 West Fifth Street, 31st Floor, Los Angeles, CA 90071-4434, (213) 553-2500, fax (213) 553-2699, e-mail: info@cornerstoneresearch.com, Web site: www.cornerstoneresearch.com. Contact George G. Strong, Jr., Richard W. Dalbeck, Kate J. Galley, Elaine Harwood, or Caryn Irwin. Cornerstone Research provides attorneys with expert testimony and analysis in all phases of commercial litigation. We work with faculty and industry experts in a distinctive partnership that combines the strengths of the business and academic worlds. Our areas of expertise include identifying and supporting expert witnesses in intellectual property, antitrust, securities, financial reconstruction, fraud investigation, investigative auditing, loss of earnings, commercial damage, and lost profits. Expert witness testimony preparation, settlement negotiations, and consultations. See display ad on page 43.

GLENN M. GELMAN & ASSOCIATES CERTIFIED PUBLIC ACCOUNTANTS AND BUSINESS CONSULTANTS
1940 East 17th Street, Santa Ana, CA 92705, (714) 667-2600, fax (714) 667-2600, e-mail: rsgan@gmgcpa.com. Web site: www.gmgcpa.com. Contact Richard M. Squar. Since 1983, our firm has specialized in providing forensic accounting and litigation support services that give our clients an edge. We provide the quality and depth traditionally associated with Big Four firms with the personal attention and fee structure of a local firm. Our litigation support services include: forensic accounting, investigative auditing, embezzlement and fraud, expert witness testimony, strategy development, document discovery, deposition assistance, computation of damages, arbitration consulting, rebuttal testimony, fiduciary accountancy, and reconstruction and reconstruction of accounting records. Winner of Inside Public Accounting’s 2008 “Best of the Best” award given to only 25 firms across the country. Our practice focuses on closely held entrepreneurial firms in the following industries: construction, real estate development, equipment leasing, physician practices, manufacturing, and professional services. Glenn M. Gelman has been appointed and served as Special Master in litigation support matters and has testified over 30 times. Our comprehensive case list is available upon request. See display ad on page 61.

RGL FORENSICS
Los Angeles Office: 800 South Figueroa Street, Suite 980, Los Angeles, CA 90017, (310) 996-0900. Contact Alan Lunre, alunre@rgl.com or Bob Jones, bjones@rgl.com. Orange County Office: 625 City Drive South, Suite 290, Orange, CA 92868, (714) 740-2100, Contact Hank Kahans, rhkans@rgl.com. RGL Forensics is an international firm of forensic financial experts exclusively dedicated to damage analysis, fraud investigation, and valuation. Serving the legal, insurance, and business communities for more than 30 years, the firm is unique in its ability to combine investigative accounting, business valuation, fraud, and forensic technology expertise. For attorneys, we discover and define financial value in transactions and civil and criminal disputes, and when necessary provide expert witness testimony in court and arbitration proceedings. For more information about RGL and its 23 offices worldwide, please visit www.rgl.com.

WHITE, ZUCKERMAN, WARSAVSKY, LUNA & HUNT

ZIEVTZ, SCHWARTZ & SALTSMAN, CPAS

FORENSIC ANALYSIS
BRIAN LEWIS & COMPANY
10900 Wilshire Boulevard, Suite 610, Los Angeles, CA 90024, (310) 475-5676, fax (310) 475-5678, e-mail: brian@blc-llc.com. Contact Brian Lewis, CPA, CVA. Forensic accounting, business valuations, cash spendable reports, estate, fraud, and income tax services.

FRAUD INVESTIGATIONS
MAYER HOFFMAN MCCANN PC

GANGS
MICHAEL MUNOZ
9663 Santa Monica Boulevard, Suite 931, Beverly Hills, CA 90210, (310) 281-3123, fax (310) 858-8535, e-mail: mmunoze@ymail.com. Specialties include 22 years with LAPD. Expertise in gangs, gang intelligence, narcotics, undercover intelligence operations, photo and lineup identifications, homicide investigations, and various situations involving criminal activity. Testified in state and federal court. Expertise and experience in special weapons and tactics, also hostage negotiations. Languages spoken: English, Spanish, Italian and Latin. Certified and Panel of Expert Witnesses for the Superior Court and Federal Court.

GEOTECHNICAL ENGINEERING
SHEPARDSON ENGINEERING GROUP, INC.
10035 Prospect Avenue, Suite 101, Sanite, CA 92071-4998, (619) 449-9820, fax (619) 449-9824, e-mail: dlewis@shepardsongroup.com. Contact Don Shepardson. Over 47 years as a Geotechnical Engineer of Record on residential, commercial, and government projects. Projects range from 6,000 AC subdivisions to multinational commercial buildings. Over 40 years of experience as a designated expert with extensive court experience, including electronic data presentations. Professional engineer license in 10 states, prior contractor license in engineering, concrete, and grading (inactive).

GERIATRICS
HAMPTON HEALTH, LTD
JUFF H. FULLERTON, MD, MRO, CMD, CFPC, FACG
1700 California Street, Suite 470, San Francisco, CA 94109, (415) 460-5532, fax (415) 459-2774, e-mail: katemcclory@ymail.com. Web site: hamptonhealthllc.com. Contact Kate McClory. Services available: Board Certified in Internal Medicine, Geriatrics, Hospice, Palliative Medicine, Addiction Medicine, & Home Health Certification. Licensed Medical Review Officer. Expertise: Medican Fraud cases for the Government, Toxicology/DA, Elder Abuse including criminal damage of lay caregivers, assisted living, hospice and long- term care, and demented relatives during end-of-life phase. Hospital, Ambulatory/Out-Patient, PI, Medical Malpractice, & LTC Medical/Legal Hospice Directors. Testified over 175 times and reviewed over 750 cases in the past 10 years. See display ad on page 52.
HANDWRITING
SANDRA L. HOMEWOOD, FORENSIC DOCUMENT EXAMINER
1132 San Marino Drive, Suite 216, Lake San Marcos, CA 92038, (760) 931-2529, fax (760) 510-8412, e-mail: homewoodsl@hbsglobal.net. Contact Sandra L. Homewood. Highly skilled and experienced document examiner and expert witness in many complex and high-profile civil and criminal cases with fully equipped document laboratory. Specializing in handwriting and handprinting identification, handwriting of the elderly in financial elder abuse cases and will contests, and examination of altered medical and corporate records. Trained in government laboratory, including specialized training by the FBI and Secret Service. Former government experience includes document examiner for the San Diego Police Department crime lab, Arizona State crime lab, and San Diego County District Attorney’s office. Currently in private, criminal, and civil practice.

HOSPICE/PALLIATIVE MEDICINE
HAMPTON HEALTH, LTD
JOHN H. FULLERTON, MD, MRO, CMD, CFP, FACP, AGSF, FAAHPM
1700 California Street, Suite 470, San Francisco, CA 94109, (415) 660-5532, fax (415) 459-2774, e-mail: katemcelroy@gmail.com. Web site: www.thomasneches.com. Contact Kate McElroy, PA-C. • Business valuation • Forensic accounting • Damages calculation • Financial accounting • Business valuation • Database analysis

ACCOUNTING EXPERTS FOR BUSINESS LITIGATION

Thomas Neches & Company LLP
633 West 5th Street, Suite 2800
Los Angeles, California 90071-2039

voice: (213) 624-8150
e-mail: tmn@thomasneches.com

www.thomasneches.com
MECHANICAL ENGINEERING
4X FORENSIC ENGINEERING LABORATORIES, INC.
16371 Gothard Street, Unit F, Huntington Beach, CA 92647, (714) 450-8500, fax (714) 450-8599, e-mail: phil@4xforensic.com. Web site: www.4xforensic.com. Contact Phil Van Herle. 4X Forensic Engineering Laboratories is a full-service forensic engineering laboratory. We provide expert witness and analytical and testing services in the following areas: Fires and Explosions: Electrical and gas product defect investigations, thermal and fire modeling and laboratory testing. Water Loss: Materials, corrosion and failure analysis of plumbing products. Failure Analysis: Metallurgy, product testing and computerized stress analysis. Accident Reconstruction: Automotive, trucks, construction equipment and premises liability.

ARGOS ENGINEERING
44 Argos, Laguna Niguel, CA 92677, (949) 363-8205, fax (949) 429-5972, e-mail: johndpratt@cox.net. Web site: www.argos-engineering.com. Contact John D. Pratt, PhD, PE. Litigation consulting, inspections, expert reports, patent infringement and validity analysis, deposition, and trial testimony.

THE CADMUS GROUP, INC.
8105 Irvine Center Drive, Suite 150, Irvine, CA 92618, (949) 790-0010, fax (949) 790-0020, e-mail: John.Flynn@cadmusgroup.com. Web site: www.cadmusgroup.com. Contact John Flynn, Principal. Plumbing, mechanical (heating, ventilating, A/C) and electrical (power, lighting), energy systems, residential and nonresidential buildings, construction defects and delay analysis, cost to repair, construction claims, mold, and green/LEED buildings. Experienced testifiers.

THOMAS L. LISTON, P.E.
329 South San Antonio Road, Suite 5, Los Altos, CA 94022, (650) 948-1830, fax (650) 948-3030, e-mail: liston@sbcglobal.net. Web site: www.jurispro.com/liston. Contact Tom Liston, PE. Carbon monoxide, HVAC, plumbing, fire and explosions.

MEDICAL
AMFS MEDICAL EXPERTS NATIONWIDE
6425 Christie Avenue, Suite 260, Emeryville, CA 94608, (907) 275-8903. Web site: www.AMFS.com. Medical experts for malpractice and personal injury cases. AMFS is America’s premier medical expert witness and consulting company. We are a trusted partner with the legal community and provide a superior method of retaining medical experts. For over 20 years, AMFS has provided board-certified experts in over 10,000 malpractice and personal injury cases. • Board-Certified experts in all medical specialties • Practicing physicians with legal experience • No cost attorney consultations • Record review and testimony • Independent Medical Examinations (IME) and autopsies • Essential affidavits and reporting. Discuss your case at no charge with one of our Medical Directors, who will identify and clarify your case issues to ensure you retain the appropriate specialists. Cost-effective initial case reviews for merit. Have your case reviewed for merit by members of our 50+ member multispecialty Physician Advisory Panel. Review and select expert CVs. Our experience, resources, and large proprietary database enable us to quickly identify and interview a large number of potential medical experts on your behalf and provide you with the CVs of those who are best suited to your case. Ask about our new Expert On-Call service. See display ad on page 52.

HAMPTON HEALTH, LTD
JOHN H. FULLERTON, MD, MRO, CMD, CFP, FACP, AGSF, FAAHPM
1700 California Street, Suite 470, San Francisco, CA 94109, (415) 460-5532, fax (415) 459-2774, e-mail: katemcelroy@gmail.com. Web site: hamptonhealthltd.com. Contact Kate McElroy, PA-C. Services available: Board Certified in Internal Medicine, Geriatrics, Hospice, Palliative Medicine, Addiction Medicine, & Home Health Certification, Licensed Medical Review Officer. Expertise: Medicare Fraud cases for the Government, Toxicology/DUI, Elder Abuse including criminal.
defense of lay caregivers accused of homicide of demented relatives during end-of-life phase. Hospital, Ambulatory/Out-Patient, PI, Medical Malpractice, & LTC. Medical/Legal/Directory. Testified over 750 times in the past 10 years. See display ad on page 52.

TASAMED LOCAL AND NATIONAL MEDICAL EXPERTS (A DIVISION OF THE TASA GROUP, INC.)

Customized Expert Referrals in all medical Areas. (800) 659-8464, fax (800) 850-8272, e-mail: tasamed@tasamed.com. Web site: www.TASAMED.com.

Contact Linda Bartolotti. FIND THE TESTIFYING OR CONSULTING MEDICAL EXPERT YOU NEED quickly with one call or click to TASAMED. We refer supertop, independent, experienced medical experts—including hard-to-find-specialists—for case merit reviews, testimony at deposition or court research, IMEs, and more in 1,000+ medical fields. Our skilled Referral Advisors • target your criteria, • forward resumes for your review, and • help arrange your initial telephone screening interviews with experts. • No charge unless you designate or engage an expert we represent • Plantiff or defense • Local, regional, national, international. • Exceptional personal service. Sample categories include anesthesia, cardiology, dentistry, emergency medicine, forensic pathology, general surgery, hospital administration, neurology, nursing homes, OBGYN, oncology, orthopedics, pediatrics, pharmacology, plastic surgery, psychiatry, radiology, and more. Visit TASAMED.com, where you can search expert profiles by expertise keyword, order a Professional Sanction Search™ on an expert’s disciplinary action, order a Challenge History Report™ 2.0 on an expert’s past testimony, and request an expert on our online form. Please see our insert in this issue and display ad on page 42.

MEDICAL/CARDIOVASCULAR DISEASES

HAROLD L. KARPMAN, MD, FACC, FACP
Cardiovascular Medical Group of Southern California, Inc. (800) 997-1128, (310) 553-3567, fax (310) 553-4538, e-mail: jsrutch@neoma.com. Web site: www.neoma.com.


LABORATORIES, INC.

4X Forensic Engineering Laboratories, Inc. 16271 Gothard Street, Unit F, Huntington Beach, CA 92647, (714) 450-8500, fax (714) 450-8599, e-mail: ph@4Xforensic.com. Web Site: www.4Xforensic.com.

Contact Phil Van Herle. 4X Forensic Engineering Laborato ries is a full-service forensic engineering laboratory. We provide expert witness and analytical and testing services in the following areas: Fires and Explosions, Electrical and gas product defect investigations, thermal and fire modeling and laboratory testing. Water Loss: Materials, corrosion and failure analysis of plumbing products. Failure Analysis: Metalurgy, product testing and computerized stress analysis. Accident Reconstruction: Automotive, truck, construction equipment and premises liability.

CHEMICAL ACCIDENT RECONSTRUCTION SERVICES, INC.

9112 East Tanque Verde Road, Suite 105, Tucson, AZ 85749, (800) 645-3289, e-mail: service@chemaxo.com. Web site: www.chemaxo.com. Contact Dr. Michael Fox. Comprehensive chemical accident investigation—specializing in complex industrial chemical accidents and chemical related consumer product injuries, chemical fires and explosions, chemical labeling, chemical packaging, handling and shipping, burns, wounds, labels, MSDS, disposal, safety, EPA, OSHA, DOT, propane, natural gas, hydrogen, flammable liquids, hazardous chemicals, aerosols (hairspray, spray paint, refrigerants), DOT certified (hazardous materials shipment), Certified Fire and Explosion Investigator, OSHA Process Hazard Analysis Team Leader, PhD-Physical Chemistry. Extensive experience in metallurgy, corrosion, and failure analysis.
and expert witness testimony. IME, AME, QME and
Ext 2810.
Orthopedic shoulder and knee, consulting,
site visits, clear and convincing testimony.
indications of their normalcy, unusualness,
and foreseeability. Official data, cinematography,
and visual effects. Determining
and risk identification. Movie industry applications,
homeland security applications, air pollution, transport,
boat/ship/aircraft accident reconstruction, property
climatic conditions, flooding, waves, specialist in auto/

KARS ADVANCED MATERIALS, INC.
Testing and Research Labs, 2528 West Woodland
Drive, Anaheim, CA 92801-2636, (714) 527-7100, fax
(714) 527-7169, e-mail: info@karslab.com. Web site:
www.karslab.com. Contact Drs. Ramesh J. Kar or
Naresh J. Kar, Southern California’s premier mate-
rials/mechanical/mechanical/structural/forensics labora-
tory. Registered professional engineers with 30-plus
years in metallurgical/forensic/structural failure analysis.
Experienced with automotive, bicycles, tires, fire, paint,
plumbing, corrosion, and structural failures. We work on
both plaintiff and defendant cases. Complete in-house
capabilities for tests. Extensive deposition and court-
room experience (civil and criminal investigations). Princi-
pals are fellows of American Society for Metals and
board-certified diplomates, American Board of Forensic
Examiners. See display ad on page 55.

METEOROLOGY
AIR, WEATHER, AND SEA CONDITIONS, INC.
P.O. Box 512, Pacific Palisades, CA 90272, (818) 645-8632, fax (310) 454-7569, e-mail: AirWeather@aol.com. Web site: www.weatherman.org. Contact Jay Rosenthal, AMS Certified Consulting Meteorologist (CCM). Experienced and authoritative expert testi-
mory, reports and analyses of wind, rain, storms,
climatic conditions, flooding, waves, specialist in auto/
boat/ship/aircraft accident reconstruction, property
damage, slip and falls, construction, mold issues,
nonreleasable security applications, air pollution, transport,
and risk identification. Movie industry applications,
cinematography, and visual effects. Determining
unusualness, normalcy, and foreseeability. Official data,
site visits, clear and convincing testimony. See display
ad on this page.

NURSING/SURGERY/MEDSURG
MED-LINK CONSULTATION
3362 Budleigh Drive, Hacienda Heights, CA 91745, (626) 333-5110, fax (626) 968-5094, e-mail: DorothyHybrook
Broctrum@com. Contact Dorothy Pollock, RN, LNCC. Registered nurse with over 40 years of clinical experience. Non-testifying services include case analy-
sis/for merit, chronology, translation, written reports,
medical record organization. DME/IME accommodation
including CD recording and written report. Expert wit-
ness and testifying services, including affidavit, attesta-
tion, declaration, and trial. Courtemoon experience both
plaintiff and defense.

ORTHOPEDIC SURGEON
ROBERT A. BAIRD, MD
16300 Sand Canyon Avenue, Suite 511, Irvine, CA
92618, (949) 727-8366, fax (949) 727-1883, e-mail: rb
Orthopedic surgery, Sports Medicine, Experienced in
IME, QME, AME Evaluations, Medical/Legal Reports,
and Expert testimony, Personal Injury, and Workers’
Compensation. Satellite offices in Gardena and Santa
Ana, California.

WILLIAM B. STETSON, MD
191 South Buena Vista Street, Suite 470, Burbank,
CA 91505, (818) 848-3030, fax (818) 848-2228, e-mail:
wester96264@aol.com. Web site: www.sportsmedicine-
.com. Contact W. Stetson, MD. Dr. Stetson is fellow-
ship-trained in arthroscopic surgery of the shoulder,

Matthew Lankenau
213-996-2549
matthew.lankenau@urs.com

Dispute Resolution & Forensic Analysis
- Design/Construction Claims
- Environmental Claims
- Bid/Cost/Damage Analysis
- Construction Defect Analysis
- Delay/Acceleration/Disruption Analysis
- Expert Witness Testimony
- Insurance/Bond Claims

URS
URS is the nation’s largest engineering, consulting and construction services firm. URS specializes in the resolution of construction disputes.

Technical Expertise
- Architecture
- Engineering
- Scheduling
- Construction Management
- Cost Estimating & Auditing
- Environmental
- Geotechnical

Clear, plain-language and convincing expert testimony, reports and analyses to reconstruct weather, climate, storm, and atmospheric conditions at location and time of interest.

Wind and rain and ice assessments, and indications of their normalcy, unusualness and foreseeability.

Authoritative, certified data acquisition, preparation of exhibit materials, site visits and evaluations of reports for legal and insurance matters including building projects, mold, and accidents, homelands and alternative energy applications.

Excellent client references provided on request.

CONTACT US
Jay Rosenthal CCM
AMS CERTIFIED CONSULTING METEOROLOGIST
NATIONAL WEATHER SERVICE WEATHER SPOTTER
Phone (562) 645-8632 or 310-454-7549
Fax 310-454-7569
E-mail: AirWeather@aol.com
www.weatherman.org
P.O. Box 512, Pacific Palisades, CA 90272

Los Angeles Lawyer April 2012 61

wstet96263@aol.com. Web site: www.sportsmedicine-
.com. Contact W. Stetson, MD. Dr. Stetson is fellow-
ship-trained in arthroscopic surgery of the shoulder,

kneecap, elbow, and ankle. He is an Associate Clinical
Professor of orthopedic surgery at the USC Keck School of
Medicine. He also has extensive experience in sports
medicine and orthopedic trauma.

PATENTS
ARGOS ENGINEERING
44 Argo, Laguna Niguel, CA 92677, (949) 363-8205,
fax (949) 429-5972, e-mail: johnpratt@cox.net. Web site:
www.argos-engineering.com. Contact John D.
Pratt, PhD, PE. Litigation consulting, inspections,
expert reports, patent infringement and validity analysis,
deposition, and trial testimony.

FALLBROOK ENGINEERING
355 West Grand Avenue, Suite 4, Escondido,
CA 92025, (760) 489-5400, fax (760) 489-5412,
e-mail: veronicav@fallbrook-eng.com. Web site: www.
Fallbrook Engineering provides expert witness services
in the areas of IP (patent infringement, invalidity, claim
construction and trade dress), personal injury, product
liability, and product failure analysis. Our professionals have represented plaintiffs and defendants. We have done analysis, prepared declarations, been deposed, and testified in court. We have years of design and development experience making us effective expert witnesses in all matters involving medical devices. Visit our Web site at www.fallbrook-eng.com.

PEdiATriC EXPeRt wITnESS
MICHAEL WEINRAUB, MD, FAAP
515 South Flower Street, Suite 3600, Los Angeles, CA 90071, (213) 236-3660, fax (213) 236-3663, e-mail: weinraub@gbglobal.net. Web site: www.michaelweinraubmd.com. Experience in general pediatric care applied to your legal questions. Contact Dr. Michael Weinraub, Board Certified Pediatrician, Child abuse and neglect, Munchausen syndrome by proxy, shaken baby syndrome (SBS), lead poisoning, fetal alcohol spectrum disorder (FASD), pediatric malpractice, childhood injury and product liability, developmental disabilities (autism), health care of foster children, and adoption/custody evaluation for health supervision concerns.

PERSONAL INJURY
KGA, INC.

WHITE, ZUCKERMAN, WARSAVSKY, LUNA & HUGH
15400 Ventura Boulevard, Suite 300, Sherman Oaks, CA 91403, (818) 981-4226, fax (818) 981-4278, 4 Park Plaza, 2nd Floor, Inglewood, CA 90301, (424) 219-9116, fax 424 219-9095, e-mail: expert@wzw.com. Web site: www.wzw.com. Contact Barbara Luna, Expert witness testimony for complex litigation involving damage analyses of physical property including real estate, real estate intangibles, business interruption, business dissolution, construction defects, delays, and cost overruns, fraud, insurance bad faith, intellectual property including trademark, patent, and copyright infringement, and trade secrets, malpractice, personal injury, death, and liability, tax planning and preparation, real estate consulting group (established 1973). Experienced in examination and evaluation of disputed documents, including wills, deeds, checks, contracts, medical records, anonymous notes, journals, sign-in sheets, etc., involving handwriting and signatures, ink, typewriting and printing processes, obliterations, indendations, and alterations questions. Fully equipped laboratory, including VSC-4C and ESIDE.

PSYCHOLOGY/PSYCHOLOGICAL ASSESSMENT
BRIGHT MINDS
JUDY HO, PHD, ABPP
12011 San Vicente Boulevard, Suite 402, Los Angeles, CA 90049, (310) 745-8867, e-mail: drjudyho@msn.com. Web site: www.quickdoc.com. Dr. Ho provides forensic evaluations used in legal settings to document a wide variety of psychologically relevant information, including personal injury, work-related emotional injury, worker’s compensation, fitness for duty for high stress jobs, child custody, the capacity to adequately parent a minor child, evaluation of malingered and deception, employment discrimination and harassment, and professional licensing disputes. She provides expert testimony regarding psychological testing methods, results, and conclusions. Dr. Ho has a specialty board certification through ABPP, has published empirical studies and book chapters, provides clinical consultations, and is a tenure-track faculty member at Pepperdine University Graduate School of Psychology.

QUESTIONED DOCUMENTS
RILE, HICKS & MOHAMMED
1323 South Main Drive, Suite 216, Lake San Marcos, CA 92078, (760) 931-2529, fax (760) 510-8412, e-mail: homewoodqde@sbcglobal.net. Web site: www.rilehicks.com. Certified by American Board of Forensic Document Examiners; testified more than 700 times. Members: ASQDE, SWAFDE, SAFDE, AAFS, FSS, FCSFS, ASTM. Decades of experience in examination and evaluation of disputed documents, including wills, deeds, checks, contracts, medical records, anonymous notes, journals, sign-in sheets, etc., involving handwriting and signatures, ink, typewriting and printing processes, obliterations, indendations, and alterations questions. Fully equipped laboratory, including VSC-4C and ESIDE.

SANDRA L. HOMewood, FOREnSiC DOCUMENT EXAMINER
1132 San Marino Drive, Suite 216, Lake San Marcos, CA 92078, (760) 931-2529, fax (760) 510-8412, e-mail: homewoodqde@sbcglobal.net. Contract Sandra L. Homewood. Highly skilled and experienced document examiner and expert witness in many complex and high profile civil and criminal cases with fully equipped document laboratory. Specializing in handwriting and hand-printing identification, handwriting of the elderly in financial elder abuse cases and will contests, and examination of altered medical and corporate records. Trained in government laboratory, including specialized training by the FBI and Secret Service. Former government experience includes document examiner for the San Diego Police Department crime lab, Arizona State crime lab and San Diego County District Attorney’s office. Currently in private, criminal, and civil practice.

REAL ESTATE
ADVISORS/EXPERTS & MCS ASSOCIATES
10881 Von Kanmann, Suite 1175, Irvine, CA 92612, (949) 263-8700, fax (949) 263-0770, e-mail: experts@mcsassociates.com. Web site: www.mcsassociates.com. Contact Norman Katz, managing partner. Nationally recognized banking, finance, insurance, and real estate consulting group (established 1973). Experienced litigation consultants/experts include senior bankers, lenders, consultants, economists, accountants, insurance underwriters/brokers. Specialties: lending customs, practices, policies, in all types of lending real estate, subprime, business/commercial construction, consumer/credit card, banking operations/administration, trust and investments, economic analysis and valuations/damages assessment, insurance claims, coverage and bad faith, real estate brokerage, appraisal, escrow, and title insurance.

THE EXPERT WITNESS, & MONARC REALTY
50 West Lemon Avenue, Suite 6, Monrovia, CA 91016, (626) 337-3818, fax (626) 337-0878, e-mail: chubb@monarc.com. Contact Charles A. Gabriels. Expert consultation and testifying in fields of real estate and construction. Thirty-six years of experience in real estate and construction.

50 West Lemon Avenue, Suite 6, Monrovia, CA 91016, (626) 337-3818, fax (626) 337-0878, e-mail: chubb@monarc.com. Contact Charles A. Gabriels. Expert consultation and testifying in fields of real estate and construction.

PLASTIC AND COSMETIC RECONSTRUCTIVE SURGERY
JEFFREY L. ROSENBERG, MD

PLUMBING
4x FORENSIC ENGINEERING LABORATORIES, INC.
16371 Goffard Street, Unit F, Huntington Beach, CA 92647, (714) 452-8580, fax (714) 452-8580, e-mail: phil@4Xforensic.com. Web site: www.4xforensic.com. Contact Phil Van Heres. 4x Forensic Engineering Laboratory is a full-service forensic engineering laboratory. We provide expert witness and analytical and testing services in the following areas: Fires and Explosions;
wrongful termination. Courtroom testimony and deposition experience. Retained 60 percent by defense, 40 percent by plaintiff. Audit employer’s actions in preventing and resolving discrimination, harassment, and retaliation issues. Assess human resource policies and practices for soundness, for comparison to prevailing practices, and for compliance. Evaluate employer responsiveness to complaints and effectiveness of employer investigations. Assist counsel via preliminary case analysis, discovery strategy, examination of documents, and expert testimony.

ROOFING AND WATERPROOFING

KGA, INC.


SECURITIES

CORNERSTONE RESEARCH

633 West Fifth Street, 31st Floor, Los Angeles, CA 90071-2005, (213) 553-2500, fax (213) 553-2599, e-mail: info@cornerstone.com. Web site: www.cornerstone.com. Contact George G. Stricker, Jr., Richard W. Dalbeck, Katie J. Galley, Elaine Harwood, or Carolyn Irwin. Cornerstone Research provides attorneys with expert testimony and economic and financial analyses in all phases of commercial litigation. We work with faculty and industry experts in a distinctive partnership that combines the strengths of the business and academic worlds. Our areas of expertise include identifying and supporting expert witnesses in intellectual property, antitrust, securities, entertainment, real estate, financial institutions, and general business litigation.

MARKET CONSULTING CORPORATION


ROBERT C. ROSEN

Citigroup Center, 444 South Flower Street, Suite 602, Los Angeles, CA 90071, (213) 362-1000, fax (213) 362-1001, e-mail: robertrosen@rosen-law.com. Web site: www.rosen-law.com. Specializing in securities law, federal securities law enforcement, securities arbitration, and international securities, insider trading, NYSE, AMEX, NASD disciplinary proceedings, broker-dealer, investment company and investment adviser matters, liability under federal and state securities laws, public and private offerings, fraud and securities violations. Contact Dr. Dennis Stainken.

DARYL THIBAULT, JD., CPP

3659 India Street, Suite 201, San Diego, CA 92103, (818) 297-9959, fax (818) 297-9062, e-mail: Daryl@pes.com. Web site: www.pes.com. Contact Dar-
**Appraisals and Valuations**

COMMERCIAL, INDUSTRIAL, OFFICE, RESIDENTIAL, estate homes, apartments, land, eminent domain, special-use, easements, fractional interests, and expert witness. Twenty-five years of experience. All of Southern California, with emphasis in Los Angeles County and Orange County areas. First Metro Appraisals, Lee Walker, MAI, (714) 744-1074. Also see Web page: www.firstmetroappraisals.com.

**Business Opportunities**

WANT TO PURCHASE MINERALS and other oil/gas interests. Send details to: P.O. Box 13557, Denver, CO 80201.

**Computer Forensics**

E-DISCOVERY: FULL E-DISCOVERY SERVICES... YOU GIVE US THE MOUNTAIN, WE GIVE YOU THE MOLEHILL: Tiff production, de-duplication, redaction, Bates stamped data, and electronically stored information (ESI) production. Computer forensic: full forensic computer lab. Recovering deleted text files (documents), graphics (pictures), date codes on all files, e-mail, and tracing Internet activity. Intellectual property cases, family law, employment law, probate resolution, asset verification, criminal law (prosecution or defense), etc. Litigation support, trial preparation, experienced expert witnesses, and professional courtroom displays. DATACHASERS, INC. P.O. Box 1861, Riverside, CA 92516-1861, (877) Dataexam, (877) 328-2392, (951) 780-7892, e-mail: Admin@DatChasers.com. Web site: www.DatChasers.com.

**Consultants and Experts**

NEED AN EXPERT WITNESS OR OTHER LEGAL SPECIALIST? Make your job easier by visiting www.expertlaw.org. Sponsored by the Los Angeles County Bar Association, expertlaw—the Legal Marketplace is a comprehensive online service for you to find exactly the experts you need.

**LACBA Products**

2012 Judge in a Flash (JIF) available now! The LACBA Judge in a Flash gives attorneys lightning-fast access to information on Los Angeles Superior Court judges and how they manage cases. LACBA member price $75, non-member price $99. Visit www.lacba.org/judgeinashash or call (800) 456-0416.

**Motorcycle Offered — Free**

HONDA 1988 GL1500 MOTORBIKE FOR FREE, DUE TO MY LATE GRANDSON’S DEATH. If interested contact dannywebber862@gmail.com.

**Office Space**

LAWYER WANTED TO SHARE A LAW OFFICE BUILDING IN POMONA: Courthouse close, phone-fax, DSL, furnished, some reception, copy machine access, library, phone, $2,500/month, inquire at office, PO Box 1613, Pomona CA 91769-1613, (626) 692-6856. This ad is for a tenant, not an employee. Please do not try to apply for a job here.

PRIME SANTA MONICA LOCATION. On Wilshire and 20th, fifth-floor offices with ocean views. 1 or 2 executive window offices, secretarial, reception, or flexible combination. $1,800 to $4,000 per month includes copier, fax, Internet, and amenities. Garage parking for additional fee. Carl@lambertinc.com or call (310) 453-9656.
INDEX TO ADVERTISERS

Affiniscape Merchant Solutions, p. 9
Tel. 866-376-0900 www.lawpay.com

Amis Insurance Brokers, p. 2
Tel. 800-282-9786 www.amisinsurance.com

Air, Weather & Sea Conditions, Inc., p. 61
Tel. 800-469-8652 www.weatherman.org

American Language Services, p. 43
Tel. 818-645-8632 www.weatherman.org

American Medical Forensic Specialists, Inc., Tel. 310-829-0741 www.ALSglobal.net.

American Language Services, Tel. 818-645-8632 www.weatherman.org

Amis Insurance Brokers, Tel. 800-282-9786 x101 www.aherninsurance.com

April 2012

Affiniscape Merchant Solutions, p. 9
Tel. 866-376-0900 www.lawpay.com

Amis Insurance Brokers, p. 2
Tel. 800-282-9786 www.amisinsurance.com

Air, Weather & Sea Conditions, Inc., p. 61
Tel. 800-469-8652 www.weatherman.org

American Language Services, p. 43
Tel. 818-645-8632 www.weatherman.org

American Medical Forensic Specialists, Inc., Tel. 310-829-0741 www.ALSglobal.net.

American Language Services, Tel. 818-645-8632 www.weatherman.org

Amis Insurance Brokers, Tel. 800-282-9786 x101 www.aherninsurance.com

April 2012

Affiniscape Merchant Solutions, p. 9
Tel. 866-376-0900 www.lawpay.com

Amis Insurance Brokers, p. 2
Tel. 800-282-9786 www.amisinsurance.com

Air, Weather & Sea Conditions, Inc., p. 61
Tel. 800-469-8652 www.weatherman.org

American Language Services, p. 43
Tel. 818-645-8632 www.weatherman.org

American Medical Forensic Specialists, Inc., Tel. 310-829-0741 www.ALSglobal.net.

American Language Services, Tel. 818-645-8632 www.weatherman.org

Amis Insurance Brokers, Tel. 800-282-9786 x101 www.aherninsurance.com
ON SATURDAY, APRIL 14, Trial Advocacy and the Litigation Section will host the courtroom skills workshop, which provides instruction on basic courtroom skills for civil and criminal cases. The first part of the program consists of a lecture and demonstration on how to call and excuse witnesses, mark exhibits, lay evidentiary foundations, make and respond to evidentiary objections, use demonstrative evidence (including location diagrams), impeach witnesses, and move exhibits into evidence. The second part of the program is a workshop in which participants practice the skills covered in part one and receive constructive feedback on their performance. Written course materials will be distributed via e-mail prior to the first class. A correct e-mail address is necessary at the time of registration. The workshop will take place at the Los Angeles County Bar Association’s mock courtroom, 1055 West 7th Street, 27th floor, Downtown. Parking is available at 1055 West 7th and nearby lots. On-site registration begins at 1:00 P.M., with the program continuing from 1:30 P.M. to 5:30 P.M. The registration code number is 011600.

$250—CLE+ member
$350—LACBA member
$500—all others

3.75 CLE hours

The Los Angeles County Bar Association is a State Bar of California MCLE approved provider. To register for the programs listed on this page, please call the Member Service Department at (213) 896-6560 or visit the LACBA Web site at http://calendar.lacba.org, where you will find a full listing of this month’s LACBA programs.

ON SATURDAY, APRIL 21, the Center for Civic Mediation, the State Bar of California Family Law Section ADR/CDR Standing Committee (South), and the Los Angeles County Bar Association Family Law Section will host a program featuring an address by the Honorable Scott Gordon, Supervising Judge of the Family Law Departments, Los Angeles Superior Court. In addition, distinguished family law professionals will speak on such topics as growing a business in a shrinking economy, dealing with sabotage of the CDR process by inexperienced professionals or those with hidden agendas, expanding legal relationships (RDPs, putative spouses, same-sex marriages), and using new technology and traditional marketing to promote one’s practice. The program will also cover ethical concerns in the face of unusual or unconscionable agreements or unequal bargaining power. The program will take place at the Straus Institute for Dispute Resolution at Pepperdine University, 24255 Pacific Coast Highway in Malibu. On-site registration will be available beginning at 8:30 A.M., with the program continuing from 9 A.M. to 2:00 P.M. The registration code number is 011396.

$145—general admission
4 CLE hours, including 1 hour of ethics

When to Object, What to Object, How to Object

ON WEDNESDAY, APRIL 4, the Litigation Section’s Trial Practice Inn of Court will host a program to help attorneys network with other legal professionals in an intimate, relaxed setting while learning the how, what, and when of objections. With the right strategy, a litigator can win the objection game. The program will take place at the Los Angeles Athletic Club’s Empire Room, 431 West 7th Street, Downtown. Parking is available at the L.A. Athletic Club for $4.50 with club validation. The Los Angeles Athletic Club’s parking entrance is on the east (right-hand) side of Olive Street. The club’s main entrance is on the north side of 7th Street between Olive and Hill. On-site registration will begin at 5:30 P.M., with a meal and reception beginning at 6:30, followed by the program from 7:30 to 8:30 P.M. Inn of Court membership is required; members may attend for free. The program’s registration code number is 011396.

1 CLE hour
How PIPA Can Be Effective at Combating Internet Piracy

EARLIER THIS YEAR, TWO BILLS designed to combat foreign online piracy were defeated in the wake of massive online protests by Google, Wikipedia, and other Web sites. The Senate version of the defeated antipiracy legislation was known as the Protect Intellectual Property Act (PIPA). PIPA would have authorized the U.S. Department of Justice to seek court orders in rem against foreign Web sites directed at the United States that have “no significant use other than engaging in, enabling, or facilitating” copyright infringement. These actions would only be available if, through due diligence, an owner or operator could not be located. PIPA would have authorized private rights of action against “rogue websites” under certain circumstances.

A distinct bill, introduced in the House of Representatives, was called the Stop Online Piracy Act (SOPA). Under SOPA, any foreign-based Web site directed at the United States that was “committing or facilitating” the sharing of unlicensed works could have been subject to a shutdown. As attorneys for individual recording artists, songwriters, and filmmakers, we hope to see new legislation proposed that reflects the legislative intent of PIPA while eschewing the ambiguities that plagued SOPA.

In 2011, PIPA passed unanimously through the bipartisan Senate Judiciary Committee. Soon thereafter, vast numbers of tech companies, bloggers, and Internet users participated in large-scale public relations campaigns and online protests against SOPA and PIPA. Protesters identified the bills as virtually identical, predicting that both bills would result in widespread censorship of the Internet. Strange bedfellows Huffington Post and Fox News inaccurately described the two bills as the “Internet Censorship Bills.”

On January 18, 2012, Wikipedia blocked access to its content in order to illustrate the bills’ alleged potential censoring effects. Google redacted its logo on its home page in a similarly symbolic gesture. Blogs voiced concerns that each of the two bills would inevitably result in widespread Internet censorship. Within days of the protests, lawmakers announced that the bills would not proceed to a vote.

SOPA and PIPA shared many characteristics, but we believe that there was never a viable reason to think that widespread Internet censorship was an inevitable byproduct of either bill. Nevertheless, we believe that SOPA left open the possibility of chilling noninfringing activity, while PIPA was much more carefully drafted and did not deserve to be vilified as promoting censorship of noninfringing activities.

Under PIPA, the only Web sites that could have been blocked were those having “no significant use other than” the sharing of unlicensed copyrighted works. Under SOPA, theoretically, any site “committing or facilitating” the sharing of unlicensed copyrighted works could have been subject to a shutdown, even if the site had engaged in significant noninfringing activities.

Both bills would have allowed federal courts to require U.S.-based companies to cease doing business with foreign Web sites found to be violating copyright laws on a widespread basis. Such companies could include “rogue website” advertisers as well as payment facilitators such as PayPal.

The bills also originally had provisions that were designed to block or reroute Domain Name Service (DNS) requests for “rogue websites” dedicated to infringing activities. This methodology was particularly troublesome to opponents of the antipiracy bills, because blocking a DNS record requires ISPs to lower security levels, which could in turn make noninfringing Web sites more vulnerable to hackers. News reports have indicated that the bills’ sponsors agreed to remove DNS-filtering mechanisms from any redrafts of their antipiracy bills.

We believe that PIPA should be analyzed on its own merits and not equated with its more ambiguous SOPA counterpart.

We believe that PIPA, as a model for future legislation, should be analyzed on its own merits and not equated with its more ambiguous SOPA counterpart. Under SOPA, it would have been relatively difficult for any judge to determine whether a given Web site was “dedicated to” infringing activity and therefore subject to such action, particularly if the given Web site engaged in both infringing activity and noninfringing activity. “Rogue websites” were much more narrowly defined in PIPA, and therefore would have been far easier to identify as criminal enterprises whose only purpose is to profit from the distribution of stolen intellectual property. Since ambiguities in SOPA could have lead to some curtailment of noninfringing activity, we believe that new antipiracy legislation should be modeled on PIPA, eliminating controversial DNS-blocking mechanisms. Such legislation can be an important tool for curtailing online infringement, thus enabling content owners—including individual musicians and filmmakers—to combat the unlicensed distribution of their copyrighted works.

Many framed the fight over antipiracy legislation as a case of Hollywood versus Internet users, or a battle by conglomerate content owners to protect their shareholders’ interests. That characterization is inaccurate. The livelihoods of individuals—songwriters, recording artists, and independent filmmakers—are at stake in the debate about how to combat piracy. Copyright protection, guaranteed by the U.S. Constitution, was designed to allow creative people to focus on their crafts and be paid for the use of their work. For this reason, we hope to see a redraft of PIPA that omits troublesome DNS-blocking mechanisms.

THE MOST IMPORTANT LEGAL TECHNOLOGY EVENT ON THE WEST COAST!

MAY 22-23, 2012
THE WESTIN BONAVENTURE HOTEL LOS ANGELES

MAY 22
2008 vs. 2012: Lessons from Lehman Brothers

KEYNOTE
Kevin Genirs
General Counsel,
Investment Banking,
Barclays Capital
Former General Counsel,
Investment Banking,
Lehman Brothers

WWW.LEGALTECHSHOW.COM

EDUCATIONAL SPONSORS:
IN ASSOCIATION WITH:
FROM THE PUBLISHERS OF:
SOLO ATTORNEY
BY DAY, GUITAR
SOLOS BY NIGHT.

Phil Wormdahl
Criminal Defense Attorney
Salt Lake City, Utah

WestlawNext

“As a solo criminal defense attorney, I strongly believe that every person charged with a crime deserves an aggressive defense. That’s why I use the WestlawNext® iPad® app. I just type something in and it instantly gives me the most relevant results. It’s great in the courtroom and when I’m out on tour with my U2 tribute band, living life on — or should I say os — The Edge.”

WestlawNext is at the top of this attorney’s setlist.
westlawlifestyle.com