

The **BARRISTERS BULLETIN** of the South Bay Bar Association

December 2002

PAGE 1

VOLUME 28 NUMBER 9

PRESIDENT'S MESSAGE

For my last message as President of the South Bay Bar Association, it was suggested I write about what I promised when I was installed as your President as well as my many accomplishments for the year. When finally I sat down and contemplated what my initial promises and subsequent accomplishments were, I wondered whether I should truly write my last article about what was, 1) promised, 2) anticipated, 3) attempted, and finally, 4) accomplished! Well, after thinking about it for about a second, the first was easy, I never promised anything. The second and third were likewise easy, anything I attempted and/or anticipated throughout the year I now forget, and the last, I have proof that I actually accomplished it. With that said, since you already know what I accomplished in 2002, I won't bore you by reiterating those too numerous to list accomplishments I was able to achieve this year.

This article must be used to praise those persons who were instrumental in keeping the SBBA alive, active, running smoothly and efficiently for the year 2002.

Thank you Peter Pettler for laying the way by allowing my job to begin with little headaches because of your hard work and perseverance in 2001. Special kudos to our Executive Director, Shannon Shockley for stepping in and quickly catching on. To our Lawyer Referral expert, Nicole Watson, whom I truly admire for her can-

continued on page 4

What's Inside

<i>What's Happening</i>	1
<i>Tort Tactics –Heavy Equipment Litigation</i>	3
<i>Ode to Owen Petersen</i>	4
<i>Pro Bono Program</i>	4
<i>Remembering Owen Petersen</i>	5
<i>Our Bar Association Needs You - More Than You Think</i>	7
<i>Tara's Picks</i>	7
<i>Mystery Photo?</i>	8
<i>Lawyers, Liberty and Learning</i>	10

WHAT'S HAPPENING

By James M. Hallett

Notes on the retirement luncheon for **Lynn Robinson**:

As most of you know, Lynn has been a court clerk for 30 years here in Los Angeles County. Her retirement luncheon on October 27, 2002 was special, not just because it was Lynn, but because it was one of those remarkable occasions where a variety of job classifications came together.

Attendees included judges, attorneys, court reporters, clerks, bailiffs and legal secretaries. We all contribute in equal measure, but it took Lynn to bring us together in quite this way.

The luncheon was put together by **Marilynn Holcomb**, the clerk in Dept. F and **Cheri Friedel**, the reporter in Dept. H. The topical centerpieces, done by Lynn and **Barbara Morinello**, of the clerk's office, featured a sandy beach next to the courthouse. The courthouse was in the form of a paper box complete with a four-sided digital photo of the building itself.

Judge Jane Johnson came back from downtown to acknowledge Lynn, and that Court of Appeal Justice who never seems to forget his South Bay roots showed up, as he (**Justice Gary Hastings**) so often does, and spoke of his time "working for Lynn."

Commissioner John Slawson emceed the event. All speakers referred to Lynn's charitable work, helpfulness and perfectionist personality. (**Randy Kimose** commented on the sign on Lynn's desk: "Your failure to plan ahead does not constitute an emergency on my part.")

Lynn's lengthy resume in the Clerk's office includes working for Commissioner Slawson, Judge Johnson, **Judge James Satt**, **Commissioner Lee Ragins**, **Commissioner Bruce Mitchell**, Justice Hastings, **Judge Hiroshi Fujisaki**, **Judge Francis J. Hourigan**, **Judge William Ross**, **Judge John Shidler**, **Judge Dana Senit Henry**, **Judge George Dell**, and **Judge Bernard Selber**. Her CV is a walk down memory lane.

Her considerable volunteer work has included chairing the Los Angeles County Forum of Legal Secretaries and serving as president of the South Bay Legal Secretaries Association.

Lynn used her retirement party to announce the retirement of another courthouse institution, Court Clerk **Jim Givens**. Self-effacing as ever, Jim is retiring a few months earlier than planned and is slipping away quietly. He managed even to slip out of Lynn's luncheon before she could acknowledge him with flowers she brought for the occasion.

Several people shared, on behalf of all of us, the sadness in Lynn's life, as her husband, **Russ Collins**, struggles with lung cancer. Judge Hourigan reminded us that, not only has Lynn clerked for him, but Russ, before he retired from the Sheriff's Dept., was

continued on page 8

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Opinions expressed in the Bulletin are not necessarily those of the SBBA, its officers, directors, or members.

The South Bay Bar Association Barristers Bulletin is published monthly, except February and August. Articles on topics of interest and letters from readers are welcomed and will be published as space allows. Submitted materials will be subject to editing and approval of content, with final approval for form and content to be under the authority of the Editorial Staff.

Articles, announcements and advertising copy are due by the 15th of the month preceding publication. Please submit your contribution to: South Bay Bar Association, 3465 Torrance Blvd., Suite C, Torrance, CA 90503, Tel. (310) 543-9773, Fax (310) 543-3273, E-mail: dir4sbba@aol.com

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CALENDAR OF EVENTS

SOUTH BAY BAR ASSOCIATION

The South Bay Women Lawyers' Section

Cordially invite you to attend
a Cocktail Reception
On behalf of the
Richstone Family Center
On Wednesday, December 18th, 2002
6:00 p.m. to 8:00 p.m.
at Agnew & Brusavich
20355 Hawthorne Blvd., Torrance, CA 90503

****NOTE: Please have your credit card available when calling the SBBA to make a reservation. Reservations cannot be made without a credit card. For Reservations for all SBBA meetings – Call SBBA at (310) 543-9773**

Be sure to check out our website for up-to-date information on upcoming events!

www.SouthBayBar.org

SAVE THE DATE!

**SBBA Annual Judges Night
and Installation Dinner**

Date:	Friday, January 31, 2003
Place:	Palos Verdes Country Club 3301 Via Campesina, Palos Verdes Estates
Time:	6:30 p.m. Cocktails/Music 8:00 p.m. Dinner
Prices:	\$85.00 per person

IMPORTANT INFORMATION REGARDING SBBA LUNCHEONS

- ◆ The South Bay Bar Association will charge \$25.00 for those SBBA members who make reservations 5 business days in advance for MCLE luncheons, those SBBA members who pay at the door will be charged \$35.00.
- ◆ Non-member attorneys will be charged \$50.00 if reservation is made in advance and \$60.00 at the door.
- ◆ Non-lawyers will be charged \$35.00 if reservation is made in advance and \$45.00 at the door.
- ◆ In advance means that payment has been received by the SBBA 5 business days prior to the luncheon date.
- ◆ **We are now requiring that a credit card number is provided when making the reservation to ensure payment is made. It is essential that we collect payment from those who make reservations and fail to attend the luncheons.**

IMPORTANT — SBBA EVENT POLICIES

Discounts. The SBBA offers a discount for any person who reserves and pays for an event at least 5 days in advance of the event. Payment can be made by mailing or delivering a check to the SBBA at 3465 Torrance Blvd., Suite C, Torrance, CA 90503, or charging it on a Visa or Master Card by calling (310) 543-9773. In order to receive a discount, payment must be actually received by the SBBA at least 5 business days before the date of the event.

Reservations. Please reserve for events as early as possible. In the event there is not adequate seating at an event, those persons who have reserved and paid for their reservations 3 days or more in advance will be given priority as to seating. Others

will be seated to the extent they can be accommodated. Your early R.S.V.P. and pre-paid reservation will enable the SBBA to ensure that there is adequate seating at its events enable it to avoid being charged for guarantees which are not met.

Cancellation. If the SBBA offices does not receive an adequate number of R.S.V.P.s at least 5 days prior to any event, the event will be canceled without further notice. Anyone who has reserved will be contacted.

Refunds. A full refund will be given if the SBBA cancels an event or if a reservation is cancelled more than 3 business days prior to an event. Otherwise, amounts paid will not be refunded.

TORT TACTICS

Heavy Equipment Litigation – Forklifts, Backhoes and Other Earthmoving Devices

by Lawrence R. Booth of Booth & Koskoff

Almost a decade ago we first became involved in heavy equipment litigation in a tragic case of a young man who was rendered a triplegic after being crushed by the boom of a backhoe. Since that time, we have dealt with numerous cases of various types of earthmoving and other equipment used in construction and trucking, as well as warehouse work. There are two common denominators to these cases. First, the victims sustain terrible injuries or often die and the defendants have deep pockets. These machines are manufactured by a select few companies who sell all over the world. The attorneys who tend to defend these cases are extremely good, often specializing in these cases only and literally travel the United States to litigate from state to state. Knowledgeable plaintiff attorneys do the same. After our first big case, we had calls from all over the country. The funniest one was from an attorney in Alaska who wanted a copy of our file until he found out it was in 102 boxes.

The Attitude of Manufacturers

After doing a number of these cases, it has become clear that the goal of manufacturers is not to make the safest machine possible, as required by the law of products liability, but instead to make a product which will achieve maximum sales. Sales make money. Lawsuits can be dealt with. And as a result of the expert attorneys who work for the defense, in large measure these cases are settled for a song or won outright. So litigation becomes cheap, even though the very same safety issues are litigated year after year, and win or lose, nothing changes. There is just no financial incentive to change. Unlike automobile litigation, there is no watchdog federal agency, although those of us who do automobile defect litigation often believe that NHTSA is part of the

political process and in trial is part of the problem, rather than an agency dedicated to real change. In heavy equipment cases, there is no agency at all.

OSHA maintains databases on these cases and it would be a simple matter for the manufacturers to consult them and address these safety issues as they appear. They don't do that and regularly lie about past accidents and even past cases against them, despite the ease to prove that their responses in discovery are wrong. They seem to count on the fact that there is no database for lawsuits in the entire country.

Getting Started

The first thing to do in taking on one of these cases is to familiarize yourself with the operation of the machine, whether it is a forklift, backhoe, skip loader or whatever. Watch one of these things in operation, even if you have to hire someone to give you a lesson. Some years ago, I had a complicated case involving a tractor trailer truck accident and the attorney who brought me into the case actually took a full-fledged course on truck driving.

Then get a copy of the Operating Manual and any company produced training films and watch them over and over again. Each time you do you will see something new. As you become more familiar with the machinery and the issues in the case, you will find that there is a huge gap between the people who write these manuals, produce these videos and the legal department. The spin that the lawyers want to put on the case often doesn't fit the words produced out of the mouth of the defendant.

Then when you file suit, find a local defendant to sue to keep the case out of the federal court. Usually, the product is sold by some local dealer. These defendants love the federal court because of the requirement for a unanimous verdict and small panels, along with heavy-handed judges. You can usually

avoid the federal court and you should do so.

Investigation and Expert Advice

In automobile defect cases, because of various networking, manufacturers often obtain information on potential cases before a hint of a lawsuit. In plane crash cases, manufacturers, as well as airlines, are notorious for getting to the scene and often the aggrieved family almost before the dust stops settling. This is not true in heavy equipment litigation where, because these cases usually involve a death or serious injury, OSHA often becomes involved and they never contact the manufacturer. As a result, the plaintiff attorney has a huge advantage which should never be sacrificed. It is a cardinal sin to contact the manufacturer or any potential defendant other than by serving the lawsuit. It is equally bad strategy to file suit until the plaintiff's attorney has absolutely completed investigation and worked closely with a liability expert. Get all your ducks in line before you invite the duck hunter to visit the field.

The OSHA investigator should be contacted by your investigator before he completes his report, which often takes some time. The tenure of the report can be influenced by a cooperative effort. OSHA can only cite an employer for any violation of federal or state OSHA regulations, so they are really not looking for a defect in the machine design. Nevertheless, we have often seen OSHA inspectors, who either on their own or with a little guidance, include in their report and later testify that a contributing factor was some safety defect in the product.

We are currently doing a forklift case in South Carolina where the OSHA inspector recommended to the employer that they install a screen or barricade between the driver and the mast. This is a case where the driver was crushed to

continued on page 6

President's Message

Continued from page 1

dor and conscientiousness, thanks. A sincere round of applause to my admirer, James Hallett who has always been instrumental and proficient in editing our Barrister's Bulletin and keeping us up to date with his, "What's Happening" Article. A much overdue thanks to our Bulletin publisher, George Haddad of INET Graphics, who kicks me in the butt when my article is overdue and who is always judicious in getting out the Bulletin. A very special thanks to our Board Secretary, Richard F.G Thomas who was always there with good ideas and solutions in my times of need. To my 2002 Board, without their generous commitment, we would not have a local bar. To those members of the South Regional Capital Case Panel who allowed me some humor toward the end of my term. Many thanks to our advertisers that contribute to our existence. Last, but not least, to the loyal judiciary and our SBBA members who collectively attend our meetings, making each of them worthwhile and who remind us why we need a local bar.

As to up-coming events, please mark your calendars:

- 12/18/02 South Bay Women Lawyers Holiday Cocktail Reception on behalf of the Richstone Family Center
- 01/31/03 SBBA Annual Installation and Judges Night

Thank you for allowing me to be of service to each of you as the SBBA President for the year 2002.

Sincerely,

SUSAN E. HARGROVE
2002 President- South Bay Bar Association



IN MEMORIAM
Owen D. Petersen
1944-2002

OWEN PETERSEN

He was quiet. He was solid. He loved to laugh and play.
He possessed a certain something which drew folks Owen's way.
He observed and thought things over. He then, with wisdom, spoke.
He appreciated logic and loved a funny joke.
We so cherished Owen's humor. He loved his family dear.
As a man who cared for others, he'd often volunteer.
He was generous with his talents; he wisely gave and took.
To maintain his Life's sweet balance, he'd ski, hunt, bowl and cook.
There's another thing about him which made all folks rejoice...
It's the splendor, rich and mellow, of Owen's deep bass voice.
Owen's voice was such a treasure, evoking faith and fun
whether used for "invocation" or a friendly "one-on-one."
It was awesome and yet gentle. It inspired and caressed.
It encompassed the Grand Canyon and a mother's tender breast.
It was charged like falling water; quite grand, like Nature's art.
'Twas our way of knowing Owen... the window to his heart.
Owen's voice will live forever, roaming calmly, though with zest,
not alone for how it sounded, but the love that it expressed.
We will hear it in waves crashing. We'll see it in the sun.
In velvet darkness find it, and praise for jobs well done.
We will hear it fill the silence at times our minds are awed
and feel it deep within us when we talk with God.

Bless you, Owen,
Marc & Gaylan Frederic
and members of the Del Amo Rotary Club
October 28, 2002

Pro Bono Program

We are currently scheduling Attorneys for our Pro Bono Program at the Torrance Courthouse from 9:00 a.m. to 12:00 noon on Wednesdays.

This is a great outreach program to become involved with. Please contact the SBBA today to reserve a date on our calendar.

Thank you!

Remembering Owen Dale Petersen

by Allen Stilson

The measure of a life is sometimes thought of in external values such as education, career, awards, and other such achievements. But the real, true, and heavenly value of a life can best be seen in the role one plays with his family, and this outpoured into friendships. Seen as a husband by my sister, Kathy, and as father by his children Debra, Michelle, and Brian, Owen stood tall and strong. Cassie, Chad, Christopher, and Catie saw him as a giant of a grandfather—no man could have counted more. Owen's mother, Evelyn, and his sister, Judy, saw him as the ultimate in a son and brother. All of Owen's family found him a great treasure of high value.

After his father's death Owen became his mother's mainstay, her support and strength. He let his mother know she wasn't as alone as she felt—he was with her, standing behind her, providing whatever he could of his mother's needs. That never changed—Evelyn says she could count on him anytime she needed him. She couldn't have had a better son.

Judy, his sister, saw this and felt included. Owen was a very caring person, and she saw him as taking care of every need for every one. She said, "If you were thirsty, he brought a drink. If it rained, he had the umbrella." Judy had frequent migraine headaches, and Owen never tired of offering sympathy and help.

At home, Owen was 'King of His Castle'. And he made Kathy his Queen. He cared for her in every way, being a strong example of what a husband should be. Kathy's chronic illness made some activities difficult for her, and Owen always considered this, never complained, and provided ways to make life easier. Mornings are hard for Kathy, so Owen always made her breakfast that included a special orange juice concoction with powered vitamins because swallowing pills has never been Kathy's 'thing.' Her birthday is two days before Christmas, and Owen very often planned a special birthday occasion for her with family and friends to be certain she didn't feel overshadowed by the holidays. When flowers bloomed in their yard he'd bring in a vase of bright blossoms after his morning walk, and place them near where she was.

Together Owen and Kathy made home the center of unconditional love for their children. Each one felt their father's special concern and guidance. Several of Owen's family mentioned they never saw him angry or impatient, even when facing a catastrophe like a wrecked car. As father Owen regularly planned special activities with his children, and in recent years this has extended to the grandchildren.

Once the girls were married Owen still contributed to their lives in every way he could. He took care of all the family cars, seeing that they were well maintained. Computers, his special hobby, received Dad's knowing touch and updates. He worked with the husbands on repairs or improve-

ments on each home, so if something needed attention, Dad was always called. Debbie and Shelly could count on Dad's kitchen creations if there was a family dinner, birthday party, or just a get-together. Owen loved to cook, watched TV cooking shows and listened to them on the radio. The kitchen was where you would often find him.

Having a son was a real blessing to Owen, and he and Brian were constant companions. Together they went on regular fishing and hunting expeditions, and every Sunday Owen & Brian worked together on projects with the cars, boat, or the house. Brian says that when he asked his Dad for help his Dad always provided it unconditionally, Owen taking great care to teach Brian all he knew about tools and cars.

Owen grew up in North Dakota, and the family still has a farm there. Every summer the Petersen family loaded the car, sometimes with bikes, etc, hanging from the outside, and headed for their second home there. These weeks were times of great happiness for them all, the memories of them always bring smiles and laughter. This is where Owen seemed to feel he most belonged, and he shared these roots with his family so that their hearts and lives go deep into the soil of his childhood home.

In recent years Owen's greatest joy has been his four grandchildren, a boy and girl from each daughter. He never said "no" to babysitting, and would drive miles to Corona to pick them up or deliver them. Owen and the four grandchildren, two in a stroller, and two walking or riding their own bikes, along with the family dog, made many trips through the neighborhood on their regular walks. Cassie learned how to count to 100 by counting cars as they passed them by. Breakfast was always a fun way to start the day, and Owen either made special omelets or animal pancakes to the children's delight. Most recently Owen secured a plot of ground in a community garden area, and after a family trip to the nursery, each child was helped to plant his own selection of flowers and vegetables. Owen's gentle hand was teaching them the difference between weeds and plants, and how to reap a harvest of color and good taste.

When I walked into the house Tuesday morning Cassie was the first one to greet me with, "I'm going to miss my Papa.." Christopher said, I'm going to miss our walks, and the animal pancakes, and little Catie said, "Papa's heart broke, and he died." Chad is too little to speak his thoughts, but his eyes were full of questions and wonder as he incorporated himself into the profound sadness around him.

Owen was King of his Castle, a leader that was followed through love and respect. His mind, his heart, and his hands were always ready to meet any family members needs, and he gave of himself in abundance. As son and brother, or as husband, father, and grandfather Owen will always be in the



TORT TACTICS

continued from page 3

death when a horizontal bar on the mast pinned him as he somehow inadvertently actuated a hand lever which lowers the mast. This is not the first time such an accident has happened. As a matter of fact, there are two other cases in South Carolina alone. The employer is a large trucking company which has about 200 forklifts. Following the OSHA recommendation, they built and installed simple steel frames that separate the driver from the mast area at a very minimal cost. They do not interfere with vision or any operation and now the employees of that single company have the safest forklifts in America. Under some state laws, but not all, the OSHA investigator is permitted to testify as to his recommendations. What a powerful witness when stacked up against the professional experts produced by both sides.

Usually the OSHA investigator will talk to the witnesses first, but obviously, statements should be secured from all such witnesses as soon as possible. Most, if not all of the witnesses, will be fellow employees with the injured plaintiff or decedent. There will often be some resistance to this from the employer, which doesn't understand their role in the case. More often than not, the employer and the plaintiff's attorney are on the same side since the employer or its workers compensation carrier will be attempting to obtain a refund of benefits paid in the form of a lien. In some states, the comparative negligence of the employer reduces the recovery, but even in those cases where it does not, it may play a role in winning or losing. Therefore, it is obviously to the benefit of the employer to cooperate with the investigation and getting an attorney involved for the employer will usually help in this effort.

It is essential to perform a patent search even if the plaintiff's attorney has prior experience. New patents are issued all the time and even if a safety device is patented after the date the machine is manufactured, this can be introduced to show the state of the art and feasibility. The nirvana of heavy equipment litiga-

tion is when the defendant manufacturer adds a safety design change after this particular model is sold because it undercuts any claims that the change is unnecessary or causes other problems. Patent applications require that a statement be included which describes the necessity for the patent. In the backhoe case mentioned at the beginning of this article, we found a patent by the same manufacturer. It seems that an engineer at the defendant's own plant had almost lost a leg in a similar inadvertent actuation event. Another engineer went out and with the cooperation of the defendant patented a device to absolutely prevent such accidents. His description of the necessity for the patent reads like a final argument for the plaintiff. It was installed on all models and for one year there were no accidents until it was removed. Our plaintiff was seriously injured after this removal. Why it was removed was a big issue in the trial, but the plaintiff argued that it was because of a fear of losing sales. You never know what you will find. In one case, we discovered a patent which was put into production and were astonished to find that the engineer was my next door neighbor. In many states, these subsequent changes are admissible, even if done by the same manufacturer as the defendant. This is an exception to the rule that subsequent changes are not admissible and is based on the idea that the evidence proves feasibility. In California, the leading case of *Ault v. International Harvester*, 13 Cal.3d 113, 117 Cal.Rptr. 812 (1974), is based on an interpretation by the California Supreme Court of our evidence code which prohibits such evidence to show negligence. Since a products liability case is not based on negligence, at least in one count, the prohibition does not apply.

Blame the Victim

It is universally true that defendants always want to blame the victim or at least his employer for failure to train properly. The easy answer to this argument is that the defendant is subject to a much higher standard of care. Products

liability law is based on the notion that the manufacturer has an absolute duty to make the safest product within the state of technology and to be aware of past accidents and to spend whatever time is necessary to fashion solutions. The plaintiff's or decedent's employer, much less the victim himself, is probably blissfully unaware of the risks, certainly has not researched past accidents, has not been previously sued for the same infraction and therefore is in a far less advantageous position to prevent the accident.

As a practical matter, no employer is going to start modifying a forklift or backhoe or other machine because of some concern over safety until an accident happens or until some OSHA investigator may recommend a change. By that time, it is a little too late for the victim and his family whose lives have been unalterably changed forever.

There will be a major concentration by the defendant on the training received by the victim. Big employers often have written training programs on safety accompanied with training videos. Manufacturers have similar programs. Nonetheless, this evidence can be turned on its head with a concentration to detail. In our first backhoe case, I must have read the Operator's Manual and watched the defendant's safety video a hundred times until I saw a major defect in these presentations. A backhoe is basically two machines merged into one. One end is a loader or bucket while the other end is a scoop attached to a large boom. The operator's seat turns completely around to allow him to operate one end or the other. Many models have pedals on the boom end which allows the operator to swing the boom from side to side. There have been many serious accidents where these booms accidentally strike victims because these pedals are inadvertently actuated. Some type of equipment is usually tossed behind the seat with the seat facing toward the loader and lands on a pedal which controls boom swing. The defendant always tried to blame the

continued on page 9

Our Bar Association Needs You - More Than You Think

Next year our bar association will celebrate its 50th anniversary. For many of us, we take our bar association for granted. It has always been here and it will always be here, but will it?

As a non-profit organization, we have very limited means to pay our bills on a monthly basis. Our main source of revenue is our annual membership dues. The general meetings and luncheon meetings are priced at a break-even cost.

To illustrate just how important each paying member is to our bar association, consider the following. It takes over fifty-one members dues just to pay rent for one year. Like any other business, we have monthly expenses that include phone, insurance, wages, payroll taxes, office equipment, supplies, etc. And, like your law practices, expenses continue to rise each year.

In order to survive, we need to either increase our membership or increase our membership dues. In the last two years, your board of directors have put a lot of effort into reducing the bar associations expenses. We have reduced expenses as low as possible, without sacrificing the quality of service we provide to our members.

You are important. Our local bar association is important. We need you to attend our functions, we need your continued membership and we need you to bring in new members. We need you to keep our bar association fun and enjoyable.

As we approach the start of our next fifty years, we should strive for 500 members. This goal is really not that difficult to achieve, if we all put a little effort in it. Our annual dues are less than most attorneys' hourly rate. I doubt that you can find any other way to obtain MCLE credit as inexpensively as through our bar association. We all know a great number of potential members; people we work with, attorneys that we share the same building with and attorneys that we have cases against. All you need to do is ask them if they would be interested in joining or invite them to a meeting as your guest.

You do make a difference. If you haven't been to a meeting recently, please attend. If you have, we appreciate your support and ask that you invite a guest for the next meeting.

Your Secretary – *Rick Thomas*



TARA'S PICKS

by Tara McGuinness

A Must See

Bowling for Columbine, a film by Michael Moore, opened recently. According to Stuart Jeffries of "The Guardian" in an article written at the time of the Cannes Film Festival "(i)t's moving and occasionally funny analysis of gun violence in the US was greeted warmly by critics yesterday." Typical British understatement, if I ever heard it!

This movie is hilarious, thought provoking, tear jerking...and more...much Moore. In fact, with the possible exception of the Rocky Horror Picture Show viewed in the wee hours of the morning, this is the only movie I remember the audience erupting into applause at the end of the film (...in a Torrance theater no less...and it's a documentary!!!) See it!

Concert Review

Many of you know the legendary *Bob Dylan* recently preformed in Los Angeles for three nights at the newly and beautifully refurbished Wiltern Theater. It was a double treat.

The 1930s Art Deco Los Angeles landmark was fortunately saved from the wrecking ball by preservationists, thank God! (I dare say we don't need another high rise occupied by more insurance defense attorneys in the Mid-Wilshire district.)

The concert was classic! A 61 year old rock 'n roller should be an inspiration to us all. This guy will not fade away and there is no sign of burn out either. Dylan keeps re-inventing himself and has more vitality than ever as he tours the world. (My Irish cousin saw him in Stockholm this winter and raved about the show.) He performed a great mix of a few new recordings and old standards, opening with "Maggie's Farm" and closing with an acoustic version of "Knockin' On Heaven's Door" (which I am told he performed for the Pope) and "All Along the Watchtower." Bob Dylan has the uncanny knack of taking an old classic and making it sound new. He performed a timely "Blowin' In the Wind" and saluted a few peers by performing "Brown Sugar" and Neil Young's "Old Man" (which were more readily recognizable than his renditions of his old classics) and he paid tribute to his dying friend Warren Zevon with "Accidentally Like a Martyr", "Lawyers Guns and Money" (which confirmed my suspicion that there were a lot of lawyers in the audience) and Mutineer.

The next time bob Dylan performs at a venue like the Wiltern, you should see it. He is an inspiration and you wont feel "too old for this."



Mystery Photo



Can you identify this distinguished attorney?

No one guessed the correct identity of this attorney last month – so here’s a few hints to help you.

She likes to hike the Grand Canyon and has been practicing in the South Bay for over 27 years. ‘Nuff said.

If you can identify this little dolly, call Shannon at (310) 543-9773. As always, the first person (or persons) to guess correctly win our usual “valuable” prize – *special recognition* in the next issue of the Barristers Bulletin.

If you have a “Mystery Photo”(of yourself or someone else in your firm) please send it to **Jim Hallett or to Shannon Shockley at SBBA.**

Thanks!

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WHAT’S HAPPENING

Continued from page 1

his bailiff. Many of us remember Russ as one of those old-style, Mayberry cops, less of a body-builder and more of a friendly persuader. Thoughts of Russ permeated this otherwise happy occasion.

Joan Wells Davis, wife of **Marty Davis**, died October 12, 2002 at age 47 from complications of lung cancer. Although Joan was not a lawyer, she was known to just about any lawyer who dealt with the law offices of Marty Davis and **Chris Carico**. As Chris said at Joan’s funeral, Joan turned that office into a family.

Marty’s notes at Joan’s memorial service read in part as follows:

“We traveled the world together. And now it is going to end to soon. Over the horizon, we will take separate paths until the time when we come together again, as husband and wife, as lovers, as companions and especially as friends. And even though we must leave each other for a while, we will never really be apart, for she is my wife, Joan, she is the biggest part of what I have grown to be, and I love her with all my heart.”

Ron Rothman suffered a heart attack in February during a trial in the Long Beach courthouse. He made it through the day and was hospitalized that night. Since February he has gone through seven (7) angioplasties and five (5) stints.

It is good to be able to report that Ron is looking as youthful as ever and is back in the criminal courts where he belongs.

It turns out that **Terry McGaughey** is a former FBI special agent. Law enforcement is apparently a family business with him; his father is a former member of the Los Angeles Police Commission.

Jon Mercant is active in not only his local Redondo Beach Rotary Club but is also now organizing youth services at the District level, specifically as the Rotaract District Chair.

This year’s Red Mass was celebrated on October 8, 2002 instead of its usual May date so that it could be held in the new Cathedral of Our Lady of the Angels in downtown Los Angeles. Cardinal Mahoney officiated at the proceedings, and Southern California lawyers came close to filling up this newest downtown monument.

Located catty-corner from the Ahmanson Theater, this magnificent cathedral is well worth a look whenever you are in the neighborhood. Not only is the architecture extraordinary, but everything from the ethnically mixed sculpture of Mary to the fascinating tapestries are compelling.

The Red Mass Advisory Committee included **Jack Delavigne, Dan DuRoss, and Justice Robert Mallano**. Sponsors included **Michael Shook, Michael Norris, Tara McGuinness** and **Judge Jack Hourigan**.



TORT TACTICS

continued from page 6

victim not only for tossing the equipment behind the seat but for standing in the so-called zone of danger next to the boom. However, we discovered that their own safety video shows an operator putting a tool chest behind the seat in the area of these pedals and their manual shows an operation where the potential victim must stand in the zone of danger with the engine on. Another case of the legal department not being coordinated with the people who produce these "safety" aids.

Safety Devices and Failure to Warn

Forklifts get involved in a litany of accidents, usually involving tipping or running over other people. The type of litigation in which we have been involved deals with operators being injured or killed by the mast. Masts go up and down and they also tilt. We have had two cases in which the victim was crushed between the mast and the body of the machine when the mast was tilted toward the machine. We also have dealt with cases in which the victim is crushed when the mast comes down and somehow he is located between the operator's area and the mast in front of him. Either way, the simple solution is to put a barrier between the operator and the mast area. Another solution is to move the hand controls to a lower location. They are usually next to the dashboard. The seat can be equipped with an OPS. An OPS is an operator presence sensor such as is often seen in golf carts and lawnmowers where the engine shuts

down when the operator stands up. Here there are controversial issues as to how you dump the hydraulics so that the mast controls are also rendered inert. Instead of these solutions, manufacturers try to put the onus on the potential victims by decals. Manufacturers love decals.

It is an axiom of safety engineering that you first try to design out the problem and then only as a last resort do you give up and simply warn the public. Safety design of hardware is always the vastly preferred option because it takes out of play all manner of events. It doesn't matter how well trained the operator may be, it doesn't matter if he is completely alert for his entire shift and distractions which are frequent on noisy jobs are totally irrelevant. Instead, manufacturers put on those pesky decals and write manuals which no one has ever read. The reason they call these cases "accidents," is because something unexpected always happens. The operator loses his balance, he trips or whatever. No one ever puts his head in the area of a mast and deliberately actuates the hand controls.

Backhoe accidents are usually related to the fact that they are dual-purpose machines. Basically, they dig up a hole or trench with the scoop on the boom and then pick up the dirt with the loader and dump it in a truck or next to the ditch. The foot pedals behind the seat when it faces the loader are "live" and yet not being used. Anything placed on one of these pedals will cause the boom to move and potentially crush

someone. This has happened with equipment, someone stumbling while climbing into the machine and in one case even with a large thermos bottle. OPS devices, seat facing switches, hand-operated switches, pedal covers, pedal locking devices and other ideas are just some of the solutions which have been offered or actually used. Nonetheless, manufacturers prefer warning decals. The reason is sales and a perception that operator inconvenience affects sales.

Operator Inconvenience and Sales

While they will deny it to their dying breath, the attitude of manufacturers of heavy equipment and automobiles is that sales are king. Anything which may reduce market share is viewed as anathema. In our first backhoe case, we were able to convince a jury which rendered a staggering verdict that the only reason the patented safety lock on the pedals was removed was because of operator complaints about the speed of operations, despite the fact that during this one-year interval, there were no inadvertent actuation accidents. Serious federal regulation would level the playing field and remove competitive advantage, but that takes political will. Anyway, we are probably better off without such regulation because it will be watered down and used as a shield in lawsuits just like automobile manufacturers have done for decades with auto defect cases.



Got An Interesting Article or Announcement? We'd Really Like to Hear About It!

If you have any articles or special announcements on topics which might be of interest to our readers, please send them to us. Articles and/or announcements submitted will be published as space allows and will be subject to editing and approval of content, with final approval for form and content to be under the authority of the Editorial Staff. Articles, announcements and advertising copy are due by the 15th of the month preceding publication.

Please submit your contribution (in electronic form if possible) to:

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Lawyers, Liberty and Learning

by Rodney W. Wickers, Member of the South Bay Bar Association (“SBBA”)

SBBA lawyers and judges went into high schools earlier this year as part of the SBBA and Torrance Unified School District (“TUSD”) Remembrance of the 9/11 Tragedy. The teachers’, lawyers’ and students’ uniformly positive response made it clear that a continuing relationship between the SBBA and the TUSD high schools is both beneficial and essential to community education and development of American values.

The interrelationship between these most important of American values, liberty and education, has been recognized since the days of our founding fathers. James Wilson, a Pennsylvania representative and signatory to the Constitution in his Study of the Law in the United States, 1790, said, “Law and liberty cannot rationally become the objects of our love unless they first become the objects of our knowledge.” As attorneys, our education has taught us how important the law is to protecting our liberties. It is because of this professional education that the Bar has a distinct responsibility to the community.

Certainly we educate not only in our services to our individual clients but also in the community by nurturing and protecting in our everyday practice the principles that make this country what it is today. The 9/11 Tragedy reminds us that our country must be constantly vigilant for those values that make America different from the rest of the world.

Benjamin Rush, a Pennsylvania representative and signatory of the Declaration of Independence, in a letter to David Ramsey in April of 1788 said, “Where there is no law there is no liberty and nothing deserves the name of the law but that which is certain and universal in its operation upon all the members of the community.”

Lawyers can make a vital contribution to the public school system and the education of our youth. James Madison in a letter to Littleton Dennis Teackle on March 29, 1826 drove home the essential connection to liberty and education, “The best service that can be rendered to a country,

next to that of giving it liberty, is in diffusing the mental improvement equally essential to the preservation, and the enjoyment of the blessing.”

Perhaps we didn’t need to be reminded of how important the American legal system is to the continuing vitality of American values. But certainly the aftermath has reinforced the vital role that lawyers can play. The lawyers and judges of the SBBA gave generously of their time to go into the high schools in remembrance of 9/11 and share their thoughts about the great American rights.

The SBBA and the TUSD is building on that foundation to create a permanent relationship that allows the teachers to bring attorneys into their classrooms on a regular basis, to both educate and enlighten students about the important American values found and anchored in the laws of the United States. As lawyers we do not “go forward to defend freedom and all that is good and just in our world” on battlefields and in wars but everyday in our practices we protect American values for ourselves, our clients and our communities.

Attorneys, of course, are the first line of defense against unjust actions in our clients’ lives and can be a significant force for the improvement of our laws. We participate at the legislative level and the courts to both write and test the laws to make them just. One of the most important elements of our American values makes justice the mediator against the kinds of acts of which we were reminded.

Please volunteer your services to continue our program with the TUSD by contacting Rodney W. Wickers at (310) 540-2520 or by email at rodslaw@covad.net to volunteer for the attorney panel which will be invited into the TUSD high schools by the teachers. Prior to your first class you will receive an outline of the topic area and materials that will assist you in the presentation. Please continue to share your valuable time with the students of the TUSD.