

Meet the Honorable Gonzalo P. Curiel

By Olga May



Judge Curiel was sworn in as a district judge on October 1, 2012, but he is no stranger to the bench or to the federal community. In fact, his career prior to this appointment was so rich and varied that his new position should present few, if any, surprises. He can find something in his past experience to relate both to the judiciary and to any member of the bar, civil or criminal.

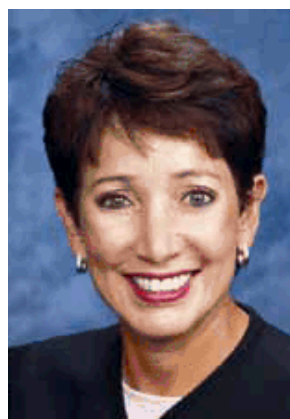
Born in East Chicago, Indiana, Judge Curiel received his Bachelor of Arts Degree from Indiana University in 1976 and his Juris Doctorate from the Indiana University School of Law in 1979. His first job was in a small civil firm of James, James & Manning, which handled both plaintiff's and defense work.

In 1986, he left Indiana for California. For three years, he worked at another civil law firm, Barbosa and Vera, again doing a variety of plaintiff and defense work, including representing municipalities. In 1989, he came to the Southern District of California for the first time and joined the United States Attorney's Office. He became a Deputy Chief, and then Chief of the Narcotics Enforcement Division. In 2002, he moved to the United States Attorney's Office of the Central District of California and worked in the Narcotics Division there. His prosecutor career totaled over 30 trials. He enjoyed trial work and speaks highly of the defense bar that represented the other side.

(see "Judge Curiel" on page 6)

Brown Bag Lunch: Inside the Courtroom of Judge Irma E. Gonzalez

By Jack Leer and Nicholas Nadhir



U.S. District Court Judge Irma E. Gonzalez and her clerks opened their courtroom to members of ABTL and the Federal Bar Association on January 30, 2013 for a brown bag lunch. Judge Gonzalez discussed her thoughts on subjects ranging from the Southern District's pilot patent court project to how she handles requests for side bars. Here are some of the highlights from her talk.

Background

After earning her JD from Stanford, Judge Gonzalez began her career with a judicial clerkship in Tucson, Arizona. She later practiced as an Assistant U.S. Attorney in both Tucson and Los Angeles. In 1981, she relocated to San Diego and joined Seltzer, Caplan, Wilkins & Mc-

(see "Judge Gonzalez" on page 8)

Inside

The ABCD's of Practicing Before the Federal Magistrate Judges	
March 19, 2013	p. 2
President's Letter	
Richard D. Gluck	p. 4
Update on Changes in San Diego Federal and State Courts	
By: David J. Aveni	p. 5
Taking Depositions in Japan	
By Paul Reynolds	p. 7
Environmental Laws 40 Years Later	
By: Andre Monette	p. 9
Presentation is Key - Visual Communication at Trial	
By: Lori McElroy	p. 10

The



's

of Practicing Before the Federal Magistrate Judges

A ROUNDTABLE DISCUSSION FEATURING MAGISTRATE JUDGES

Hon. Jan M. **A**dlerHon. David H. **B**artickHon. Karen S. **C**rawfordHon. Mitchell D. **D**embin

Please join the ABTL for this topical and entertaining roundtable discussion with four of the Southern District's federal magistrate judges. Whether you are an experienced practitioner or new to the bar, you won't want to miss this opportunity to learn something you didn't know about the preferences, proclivities and personalities of our esteemed panel. To help make the ABC&Ds as easy as 123, Bob Rose, one of San Diego's top trial lawyers, will moderate the discussion and help you learn what's new, what's effective and what to avoid.

Event Details

Date: Tuesday, March 19, 2013

Time: 5:30 pm Cocktails, 6:00 pm Dinner,
6:45-7:45 pm Program

Location:

The Westin San Diego, 400 W. Broadway

Refund Deadline: Wednesday, March 13, 2013

Parking: Valet \$14.00, Self Park \$5.00

Register online at: <http://abtl.org/sandiego.htm>

Sponsored by



President's Letter

The Impact of Funding Cuts On The Courts - And What Lawyers Can Do To Help

By Richard D. Gluck



Richard D. Gluck

Much has been written recently about the funding crisis our state courts face in this era of ever-shrinking budgets. Sadly, all of the ink that has been spilled appears to have had little effect, as the legislature seems perfectly content to continue treating the judiciary not as a co-equal branch of government, but rather as a convenient piggy bank from

which it can take funds to pay for other agencies and programs it deems more critical to California's citizens. As an organization comprised of trial lawyers and judges, ABTL has publicly decried these cuts and urged the Legislature to provide courts with adequate funds with which to carry out its important functions. We have written letters, met with legislators, and coordinated with other bar associations in an effort to give voice to the constituencies most directly affected by the seemingly endless cuts in court funding — the judges, clerks, and staff who work in our courts, the lawyers who practice in those courts, and, most importantly, our clients who depend on those courts to provide a safe and impartial place to have their legal disputes resolved.

The purpose of this column is not to repeat yet again all of the reasons why such drastic cuts in court funding are a bad idea, or to describe the deleterious effects those cuts already have begun to have on our judicial system. I am neither naïve nor arrogant enough to believe that anything I write here will cause the Legislature to suddenly rethink its priorities and restore the court's budgets (although I certainly would welcome such a development). Rather, I write simply to urge our lawyer members to do whatever we can as consumers of court services to minimize the day-to-day impact these cuts have on our practices. So what we can we do? Here are a few suggestions.

First, we can use the San Diego Superior Court's new e-filing system, which will begin on March 4, 2013. According to a study that the San

Diego Superior Court IT Department conducted, if lawyers use the new e-filing system on just 50 percent of civil filings, the savings in time to the Court will be equal to roughly 20 full-time clerks. Given that the Court has been forced to cut dramatically the number of staff in the clerk's office, it is easy to see that using the e-filing system will help greatly with backlogged filings. San Diego's e-filing system will be the same as the system the Orange County Superior Court is using.

Second, we can stop filing so many demurrers and discovery motions. There were almost 4,000 demurrers filed and heard in San Diego Superior Court in 2011 (the last year for which statistics are available). Although the Court does not maintain data on the results of such motions, it probably is safe to assume that while some of these motions were productive, not many were outcome determinative. That certainly was the opinion expressed by the judges and practitioners who spoke at a recent program on the ethical issues the court-funding crisis raises for lawyers. But regardless of whether or not demurrers effectively advance the litigation ball, one thing is certain, the surfeit of demurrers is burdening our overtaxed courts, as evidenced by the following statistics.

Following the recent reductions in civil judicial assignments, there are now only 15 independent calendar departments and three limited civil departments hearing civil motions (30 percent fewer than in 2011). So if we file another 4,000 demurrers this year, each department will have to work up and decide approximately 222 demurrers. Add to this total another 100 or so contested discovery motions (as opposed to discovery matters decided informally with the Court's assistance), and it is easy to understand why our courts are struggling to handle their jam packed law-and-motion calendars, especially since court staff, including shared research attorneys, are being furloughed two days each month. Indeed, anecdotal evidence already indicates that many departments are setting hearing dates three or more months in the future.

The good news, according to Superior Court Judge Jeffrey Barton, is that the Court's "ability to try cases remains undiminished." Judge

President's Letter

continued from page 3

Barton reports that "there will be minimal to no delay in getting ready cases into a courtroom for trial." Of course the key phrase in that sentence is "ready cases." If it takes three, four, or even more months to obtain timely hearing dates on dispositive motions, it will be difficult to get our cases ready for trial in a timely manner. And remember, while we all have a duty to zealously represent our clients, the ABA Model Rules of Professional Conduct also suggest that we have a duty to "make reasonable efforts to expedite litigation consistent with the interests of our clients." So I encourage all of us to heed Judge Barton's sage advice to "start thinking of law and motion as an asset and to utilize it only when it is outcome determinative in whole or in part." As Judge Barton notes, "by realistically meeting and conferring and using law and motion only when truly necessary, we can lessen the impact of these service reductions on the public." While these steps admittedly are no panacea for all of the ills these budget cuts have inflicted, they should at least help to reduce their impacts on our daily practices.

Farewell To A Friend -- Dirk Vincent

The news that I had been dreading finally came. My partner and friend, Dirk Vincent, had lost his fight with ALS, or Lou Gehrig's disease as it is more commonly known. Like Lou Gehrig, Dirk was stricken in the prime of his life and while at the top of his game. Dirk was a litigator and trial lawyer. The kind of litigator and trial lawyer we should all aspire to be. He was fearless, courageous, tenacious, creative, organized, focused, and driven. But he was never a jerk -- not to obstreperous opposing counsel or even the most hostile witness. He treated friend and foe alike with respect and graciousness. If we all treated each other the way Dirk treated people, the practice of law would be immeasurably better and way less stressful. But don't think for one minute that Dirk's kindness was a sign of weakness. As the hundreds of opponents that Dirk defeated over the years would surely attest, Dirk was a formidable opponent, able to use his razor sharp mind and laser-like focus to devastating effect. Dirk proved every day that you could be both a successful and zealous advocate and a decent human being.

As great a litigator and trial lawyer as Dirk was, he was an even better husband and father. Nothing was more important, and nothing gave

him more pride, than his wonderful wife and three great kids. No great trial victory ever made him smile as broadly as watching his kids play soccer, play the piano, run a race, sing a song, or put on a show. Dirk's ability to balance a successful and busy litigation practice with a happy family life was remarkable. Trust me, Dirk was no absentee father or husband. He coached soccer and little league, took his family on exciting adventures, and was there for all of the big -- and most of the little--events in life.

Dirk also was a teacher, passing on to budding young lawyers the skills and knowledge he had acquired through trial and error over his 20-year career. I feel better about our profession knowing that there are hundreds of young lawyers out there carrying with them the lessons they learned from Dirk.

Dirk faced his illness with the same steely resolve and grace with which he faced every challenge. I learned several months after the last case that Dirk and I tried together that he had been diagnosed with this insidious disease many months before the trial began. He never once let on that anything was wrong. I worked side-by-side with him every day for 6 weeks and had no idea that he was ill and had effectively been given a death sentence. While I'd probably have curled up in the fetal position and cried about the unfairness of it all, Dirk put on his game face and gave a bravura performance in what would be his last great victory.

It was my great pleasure and privilege to be Dirk's partner and to practice and try cases with Dirk for 12 years. There is no one with whom I'd have rather linked arms and gone to battle. With Dirk on my side I felt like we just couldn't lose. I will miss him greatly. I will miss his incredibly dry sense of humor. I will miss playing golf with him. I will miss trying cases with him. I will miss enjoying a great bottle of wine with him. I will miss being able to call him or walk into his office and have him reassure me that the bad fact or document that I'm convinced has doomed our case is in fact not that big a deal. But mostly, I will miss being his partner and friend.

Rich Gluck is of counsel to Bernstein Litowitz Berger & Grossman, where he prosecutes class and direct actions under the federal and state securities laws on behalf of institutional investors and shareholders.



Update on Changes in San Diego Federal and State Courts

By: David J. Aveni

ABTL has been providing periodic updates to its members regarding the important changes that have been taking place in the San Diego federal and state court systems. Below is the latest information on these transitions.

Superior Court Downsizing Project Completed

The San Diego Superior Court has completed its downsizing project, reducing the number of independent calendar departments from 22 to 15. Cases affected by these closures have been reassigned to the remaining departments and those departments are in the process of resetting vacated dates. Judge Thomas Nugent, whose independent calendar department was closed, is now handling civil settlement conferences on a full-time basis.

The South and East County civil business offices now only accept civil harassment restraining order filings. To help offset the increased workload being handled by the remaining staff, the Court no longer permits over-the-counter access for certain types of filings.

Superior Court Launches e-File System

The Superior Court's e-File system launches on March 4, 2013. As part of the e-File project, the court will image documents in all new civil and probate cases countywide. Parties to civil and probate cases will be able to electronically file documents with the court through the designated e-File service provider, One Legal. Special thanks to all ABTL members who used the e-File service during the soft-launch to help the court test the system. The court reports that the soft launch was a great success.

The e-File system will provide substantial benefits to the court, particularly in light of the sizeable staffing reductions the civil business office suffered due to budget cuts. With fewer employees, the burden on the business office from handling case filings has increased. The e-File system will help offset this increased workload by increasing efficiency. The court estimates that if e-File is used on only 50 percent of its civil cases, the system will result in time savings for its business office equivalent to roughly twenty full-time clerks. Such efficien-

cies will greatly help reduce the backlog in processing filings. Thus, litigants and their counsel can help lessen the burden on the clerk's office by using the e-File system.

The e-File system also benefits the court by decreasing document processing and storage costs, and it provides a considerable benefit to litigants due to the increased accessibility of case materials. In preparation for the launch of e-File, ABTL recently provided its members and their staff three days of one-hour information and training seminars on the new system. ABTL thanks Foley & Lardner and Morrison & Foerster for hosting these training seminars.

United States District Court Move Completed

The United States District Court for the Southern District of California has completed its move into the new U.S. Courthouse Annex. Beginning February 11, 2013, the courtrooms in the Edward J. Schwartz courthouse have been renumbered to provide a consistent numbering system in both buildings. Going forward, courtrooms will be identified by a number, representing the floor, and a letter, representing the specific courtroom. Courtrooms 1A through 5D are located in the Schwartz Courthouse and Courtrooms 13A through 15B are located in the Courthouse Annex. A full updated listing of the locations of judges and courtrooms is provided on the Court's website at: "Public Notice – Change of Address."

ABTL wishes to thank Judges Barton and Bencivengo for their continued assistance in keeping ABTL members informed on court changes. ABTL will continue to provide Court Updates as further information becomes available.

David J. Aveni is a senior associate with Foley & Lardner LLP and a member of the San Diego ABTL Board of Governors. His practice focuses on complex securities litigation and general commercial litigation matters.

Judge Curiel

(continued from page 1)

In 2007, he was appointed to the San Diego Superior Court, where he presided over independent calendar and civil trials. His appointment also included a time with the family court. Judge Curiel recalls that particular period as one of the biggest challenges in his judicial career. "It's important work. I have only the greatest respect for those who have done it for years." Judge Curiel generally speaks fondly of his years on the state bench and working with the state bar and judiciary. "I am lucky to have had that experience in handling the calendar and dealing with the parties. It also whetted my appetite for a variety of civil issues." He is also well familiar with discovery issues and understands their context, even though in the Southern District they are usually handled by magistrate judges.

Judge Curiel's general expectations of counsel are simple: professionalism, civility, and efficiency. Southern District is a busy one. Judge Curiel appreciates any effort made to resolve at least some issues, limit their number, be succinct, and maximize efficiency in the use of the court's time. Counsel should look to the heart and soul of the case, cut through piles of paper, and focus on things and strategies that move the case forward. Judge Curiel's orders will try to identify the flaws in the arguments and provide guidance on how to cure them.

With the view to efficiency, Judge Curiel has set certain procedures for civil and criminal cases, available on the Southern District's web site.

In particular, civil hearings are held on Fridays at 1:30 p.m. Counsel need to obtain a date for the hearing by calling the law clerk before filing. Motion papers must be filed and served the same day, and the court will set a briefing schedule. Motions for summary judgment should be accompanied by a separate statement of undisputed material facts.

Court's time, especially for a recently-appointed judge, has innumerable demands on it and has to be used wisely. Oral argument will usually be held on dispositive motions, such as summary judgments, dismissal with prejudice, or preliminary injunctions. Otherwise oral argument is granted on a case-by-case basis, as needed. If the court decides to hear oral argument, the court will contact the parties or issue an order.

Trial dates are set during the pretrial conference. At the conference, the court will also schedule the motion in limine hearing date. Judge Curiel conducts his own voir dire, but may permit follow-up voir dire by counsel. Counsel will exercise peremptory challenges using the "Double Blind Method," simultaneously exercising their challenges. The first eight persons who survive the challenges will constitute the jury. The court will set a reasonable time limit for the trial and keep track. Upon request, the courtroom deputy will let the parties know how much time has been spent and how much remains.

Judge Curiel's past experience could not have prepared him better for his current position and made the transition easy. His cases have touched on virtually every type of civil law, from commercial to intellectual property. His career was built on hard work, interest in every new area of law he encountered, and respect for his colleagues and opponents. Now he is developing yet new expertise and mastering new areas of law specific to federal practice. Some of it may be a challenge; all of it is a new learning experience he looks forward to. So does the federal bar look forward to working with a new, thoughtful, hard-working, and diversely-experienced district judge.

Olga May is an attorney at Fish & Richardson P.C.'s San Diego office. Ms. May's practice includes intellectual property and civil litigation.



The views and opinions expressed in this newsletter are solely those of the authors. While these materials are intended to provide accurate and authoritative information in regard to the subject matter covered, they are designed for educational and informational purposes only. Nothing contained herein is to be construed as the rendering of legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel.

Use of these materials does not create an attorney-client relationship between the user and the author.

Editor: Lois M. Kosch
(619) 236-9600
lkosch@wilsonturnerkosmo.com

Editorial Board:
Eric Bliss, Richard Gluck, Alan Mansfield,
Olga May and Shannon Petersen

©2012 Association of Business Trial Lawyers - San Diego | All rights reserved.



Taking Depositions in Japan

By Paul Reynolds

I was recently fortunate enough to spend a week taking depositions in Tokyo, Japan. Here I share with you the lengthy and involved process of setting up the depositions, along with the unusual experience of taking the depositions in a fascinating country.

The Process From the U.S.

The Consular Convention

The process of taking depositions in Japan for U.S. litigation is unique. While Japan is a party to the Hague Convention of 1965 on the Service Abroad of Judicial and Extra Judicial Documents in Civil Litigation (which concerns service of process), it is not, unlike most major industrialized nations, a party to the Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters of 1970 (which concerns deposition and document discovery). As such, the deposition process under Hague convention does not apply. Rather, the much more limited and onerous provisions of Article 17 of the U.S.-Japan bilateral Consular Convention of 1973 (15 UST 768) (the Consular Convention) control.

As interpreted by Japan, the Consular Convention's provisions (1) do not allow for any document discovery and (2) do not allow for subpoenas to compel testimony via deposition. So unless the witness you want to depose is a current employee of a corporate party opponent (or, under certain circumstances, of its parent corporation), the testimony must be given voluntarily.¹

Assuming you have a willing witness, the Consular Convention, as interpreted by Japan, prescribes four primary limitations:

1. The deposition must be taken on U.S. consular premises;
2. It must be presided over by a U.S. consular officer;
3. It must be taken pursuant to a U.S. court order/commission; and
4. Any non-Japanese participant traveling to Japan must apply for and obtain a Japanese Special Deposition Visa.

As interpreted and enforced, the deposition must be conducted in either the U.S. Embassy in Tokyo or the U.S. Consulate in Osaka;

it is strictly forbidden for a deposition to occur in any other place, such as a hotel conference room, law office, or even a U.S. military base, even if by agreement. Non-compliance, if discovered, will result in immediate deportment. Further, depositions by telephone or video conference are not permitted.

Reserving the Room

The first thing you will need to do is reserve a room in the Embassy or Consulate. A significant amount of lead time is required, as the Tokyo Embassy has only one deposition room and the Osaka Consulate two. In my case, we reserved the room approximately nine months in advance. You can check available dates by calling the Embassy or Consulate. (Please see the "Resources" section at the bottom of the article for contact information.) The non-refundable reservation fee is currently \$1,283. It will cover however many days you reserve; it is not a daily fee. Payment must be made by a certified bank or cashiers' check or an international money order, which you should send via international express mail.

Hiring a Court Reporter and Translator

You will need to arrange for a court reporter, videographer, and translator. Generally speaking, you will need to pay to fly the court reporter and videographer and their equipment, and pay for their lodging, food, and other travel expenses. I was, however, able to locate a company that has American-certified reporters and videographers that reside in Japan. We ultimately retained this company, American Realtime (see Resources section), which allowed us to substantially reduce reporter and videographer travel expenses. Further, working with people who go through the Japanese deposition process on a routine basis is also invaluable for getting logistical questions answered.

You will also need to retain an interpreter if, as likely, the witness is not a native English

Judge Gonzalez

continued from page 1

Mahon. Three years later, she was appointed as a Magistrate Judge for the Southern District, a position she held until 1990 when she became a San Diego County Superior Court judge. In 1992 Judge Gonzalez was appointed to her current position as a District Court judge for the Southern District of California. From 2005 to 2012 she was the Chief Judge.

Judge Gonzalez currently has a full case load consisting of approximately 190 criminal cases and 135 civil cases. Despite this, she remains very active within the legal community, working with the FBA, ABTL, and Lawyers Club. She is also a founding member of Latinas in Law.

In March 2013 Judge Gonzalez will take senior status as a judge, allowing her to take a lighter case load and opening a position for the appointment of a new judge. The Southern District – one of the busiest in the country with approximately 5,200 felony cases in 2012 – currently has a full complement of judges consisting of thirteen judges and five senior judges. A committee chaired by David Noonan will assist Senator Feinstein with identifying new candidates for the seat Judge Gonzalez intends to vacate.

Patent Pilot Court

The Southern District of California is one of only a few courts that have been selected to be a patent pilot court. Judge Gonzalez is one of five judges in the Southern District who have been designated to handle patent cases. The pilot program allows other judges to re-assign patent cases to one of the five patent judges. Although patent cases are more complex and take more time, Judge Gonzalez says they are a relatively small portion of her case load. Even with the pilot program, only about 10 percent of her cases are patent cases.

Court Procedures

Judge Gonzalez does not have her own written chamber rules. She simply asks that attorneys comply with the local rules of the court.

Judge Gonzalez schedules motion hearings for both civil and criminal matters on Mondays. Attorneys that need to schedule a date for a hearing should call her chambers to speak with her clerk. Thereafter, attorneys need to be aware of Judge Gonzalez's "24- hour rule." This rule requires an attorney to be ready to file her

motion papers within twenty four hours of requesting a hearing date.

Judge Gonzalez told us the most typical motions she hears are motions to dismiss and she rarely hears oral argument on such motions, unless the motion is likely to be dismissed with prejudice. According to Judge Gonzalez, 98 percent of granted motions [to dismiss] are granted without prejudice. Judge Gonzalez tries to get her orders out within thirty days of oral argument. She has no problem with attorneys calling to check on the status of their order, but did warn that when attorneys call the clerk to check on the status of their order they must not discuss merits of the case or the pending motions with her clerks. Attorneys "crossing the line" and discussing substantive issues with, or seeking legal advice from, the clerks will not be allowed.

Trial Preparation

Judge Gonzalez said she has "significant involvement in trial preparations." At the pre-trial conference Judge Gonzalez will give you a date for your motions in limine and a trial date, usually six months out from the conference. She sets pre-trial disclosures and hears motions in limine several months before the trial date, believing it is important for everyone to know what witnesses and exhibits will be coming into evidence well in advance of trial. Once set, her trial dates are fixed "almost in cement." She sets time limits for trial, giving each side a set number of hours to put on their case. She rarely allows lawyers to go over those time limits.

According to Judge Gonzalez, voir dire is an important time for the attorneys to connect with jurors. She always allows attorneys to conduct their own voir dire of the jury, though she sets strict time limits for doing so. She also uses juror questionnaires after every trial. Based on juror input on these questionnaires, Judge Gonzalez says the importance of being respectful at all times in front of the jury cannot be overstated.

Judge Gonzalez instructs all lawyers trying cases in her department that she does not allow side bars during trial, except under the most unusual circumstances. If attorneys want to bring a matter to her attention outside the presence of the jury, she prefers to handle such matters before the jury arrives, over the lunch break, or the end of the day.

(see "Judge Gonzalez" on page 15)



Environmental Laws 40 Years Later: Do the Costs Outweigh the Benefits?

By: **Andre Monette**

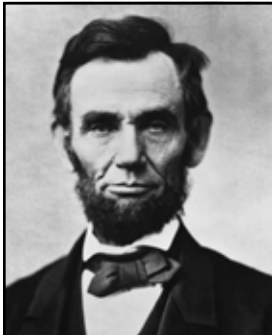
Many of the nation's toughest environmental laws were passed in the late 1960's and early 1970's when it seems the American people first realized that there could be a limit to the natural resources at our disposal. Congress took action, passing a litany of environmental regulations that were signed into law with bipartisan support. After more than 40 years of progress, it is increasingly clear that fully implementing many of these landmark environmental laws will require tough decisions about the costs and benefits involved.

The Clean Water Act and the requirements it imposes on the Los Angeles River provide an excellent snapshot of tough cost and benefit decisions that are required to implement what some believe to be unnecessary regulation. Bringing the urban, largely channelized body of water

into compliance with the act's goals will take an enormous investment of resources, time and effort. It will require efforts across jurisdictional boundaries and will require every individual within the Los Angeles River watershed to take responsibility for their impacts on water quality in the river. Not surprisingly, this level of investment raises questions about whether the goals set for the water body are attainable or even appropriate.

Over 50 miles long, the Los Angeles River flows from the suburbs of the San Fernando Valley to the ocean in Long Beach. Along the way, the river passes through 14 cities and numerous and diverse neighborhoods. Originally, the Los Angeles River meandered through wetlands, marshes, willow, alder and sycamore, providing desperately needed water for the region. In the late 1930s, the Army Corps of Engineers initiated flood control projects and lined 80 percent

(see "Environmental Laws" on page 16



Helping Lawyers Follow Lincoln's Advice That is Still Good Today

"Discourage litigation....
There will still be business enough."

- Abraham Lincoln, Esq.



Monty A. McIntyre, Esq.

Relentless Optimist ® | Mediator, Arbitrator, Discovery Referee & Special Master

Email: monty.mcintyre@gmail.com | Web: www.montymcintyre.com

"Mr. McIntyre ranks among the best
of the scores of mediators I've used over the years."

- Executive VP, General Counsel and Secretary for an NYSE company

Business/Complex | Construction | Class Action | Employment | Insurance Coverage/Bad Faith
Intellectual Property | Medical Malpractice | Personal Injury | Probate
Professional Liability | Real Estate | Trade Secrets | Wrongful Death

TO SCHEDULE, contact Monty A. McIntyre at (619) 990-4312 or Mary Beth McIntyre at (858) 245-5143

Presentation is Key - *Visual Communication at Trial*

By: **Lori McElroy**

After all of the painstaking discovery work that goes into a case, what a win or loss really comes down to is presentation during trial. A successful presentation will prove its point through a combination of words and visuals in a manner that builds confidence and trust with the audience. Attorneys are often very well versed in the art of language, but are not always so comfortable with the creation and use of visual aids. Visual communication can play a major role in persuading how a jury interprets information.



Studies show that over a 72-hour period, visual aids can increase viewer retention by 45 percent. Statistics like this make it obvious that a tool as powerful as visual aids should not be overlooked or underutilized, as it could be the key to ensuring a win. The two most common forms of presenting visually in the courtroom are traditional hard boards and digital projection. Both of these have benefits and shortcomings that should be taken into consideration.

Traditional hard boards are not given the credit they deserve in the technical society in which we live. Many seem to think that high tech is the way to go, but boards definitely still have their place, and probably always will. However, they do have some drawbacks, such as the fact that they can be cumbersome to transport to, and maneuver around the courtroom. They also need to be completely finalized ahead of time, because last minute edits and reproduction can be problematic.

The benefits of boards when applicably used are vast though. There are no surprises or technical mishaps to worry about. Even if boards have an interactive aspect such as flipping pages or dry erase capabilities, their performance is a known entity. In cases that are document heavy, boards are ideal for key exhibits in conjunction with a digital presentation. They remain in front of the jury box, emphasizing their points, burning into the memory of the jurors, and are often taken into deliberation. Boards have an unspoken tangible value due to the increased use of the internet. Technology allows anyone to post anything they want or be anyone they like, from the far reaches of the universe with anonymity. Thus, boards are subconsciously given more validity, "It's here, it's real, I can touch and see it, so it's true". Boards also offer an interactive aspect which many disregard. They allow the

attorney a reason to get up close and personal with the jury. Pivotal information can be left off and scribbled in by hand for impact and shock value, drama that typing just doesn't achieve. It also allows for theatrical embellishments such as waving arms, pointing and thumping to emphasize an argument. This sort of passionate execution has an immeasurable impact on jury attentiveness, retention, and the attorney-juror relationship.

On the other hand, digital presentations are extremely popular. They are the premium solution for document rich cases, where not every item is a crucially important exhibit. Pretreatment and on the fly customization can be made to exhibits. For example, you can easily highlight and call out one important sentence within a text document so that the jury doesn't lose focus on extraneous information. Digital presentations are good for maintaining attention (especially that of younger jurors), because they are more similar to watching television or surfing the World Wide Web. The two most widely used trial software programs, Sanction and TrialDirector, have wonderful tools for the organization of documents. Folders can be created for the various stages of trial, and there are various methods of searching to find specific exhibits quickly and easily. One of the most impressive benefits of using these programs is the ability to import video testimony or depositions and have the synchronized transcript scrolling right beside it.

Digital presentations are absolutely sensational if done properly, but if not, the consequences can be punishing. Creating a precise presentation magnifies the authors' responsibilities. First and foremost, they must be completely comfortable with the software and hardware being used, or be willing to hire someone who is. A lot of practice is required in making sure the

Presentation is Key

continued from page 10

presentation is seamless and error free. Planning and preparation for any foreseeable problem, such as bringing extra projector bulbs, is a must. The propane always runs out during your game day barbeque, not when you're just cooking for yourself. Even with all of the rehearsal in the world, the potential for computer issues beyond your control still exists.

Regardless of the presentation style that works for the attorney, or if it is a combination of the two, there are some key factors to keep in mind for success. A complicated, confusing, or poorly executed presentation can do more harm than good, as it reflects those attributes on the attorney and their client. Train with the chosen media and play to its strengths while working around its weaknesses. All presentations should be clear, simple and brief (a good rule for most things in life). *"Our life is frittered away detail... Simplify, simplify."* – Henry David Thoreau

Lori McElroy is Creative Director of REDROMAN creative, a design studio specializing in legal communications for over 13 years. Lori is an independent contractor partnering with DTI and Esquire Solutions. Her client list includes fortune 100 firms, government agencies, and sole practitioners among others. She provides consultations to develop concise and professional corporate identities, marketing materials, newsletters, presentations, proposals, and trial exhibits. She can be reached at 619.772.3335 or redromancreative@gmail.com.



concise & professional design

LORI MCELROY
Creative Director

redromancreative@gmail.com
619.772.3335

corporate identity · marketing · newsletters
presentations · proposals · trial exhibits

San Diego Volunteer Lawyer Program's



Featuring
All Star Performers
from Years Past

When
Thursday, March 21, 2013
5 p.m. Reception | 6 p.m. Performance

Where
House of Blues, Downtown San Diego

Information
www.lafoff.com

Depos in Japan

continued from page 7

speaker. I was given several good recommendations from American Realtime, and others can be found through a Google search.

Depending on the case subject matter and the degree of acrimony or distrust between counsel, your opponent may decide to hire its own “check translator” to ensure they agree with your translator’s translations. This is apparently a not uncommon practice, but it was not done in my case.

Obtaining the Order and Commission

Next you will need to submit to the court an order and commission (a single document) that appoints the consular officer at the Embassy or Consulate to administer the deposition. You should do this at least six weeks before the deposition dates. The proposed order and commission must identify the names of the deponents (including any Rule 30(b)(6) categories), dates and times of the depositions, and the identity of all counsel who will attend and question or object (to be safe, list all counsel on your side

that might possibly attend). It must also identify the name of the court reporting service you have retained to transcribe and videotape the testimony. (Anyone who would like a copy of the one we used may contact me by e-mail; see the Resources section.)

A few points of interest about this process, which are not noted on the Embassy’s website: First, if you are taking multiple depositions, it is sufficient to list the witnesses along with the date range over which all the depositions will be taken; it is not necessary to identify the precise date on which a particular witness’ testimony will be taken—a good thing, given that you will need to submit the order and commission more than a month before the depositions occur. Second, if your case is pending in federal court as mine was, to be safe be sure that the District Judge, and not the Magistrate Judge, signs the order/commission (there are stories of the consular officers not accepting ones signed by a Magistrate Judge). Third, once the order/commission is signed, you will need to send a certi-

(see “Depos in Japan” on page 13)

AT JAMS, YOU FIND EXPERIENCE. KNOWLEDGE. FAIRNESS. SERVICE.

AND AN UNSURPASSED PANEL OF NEUTRALS.



Hon. Thomas
Ashworth III (Ret.)

Hon. J. Richard
Haden (Ret.)

Hon. William J.
Howatt, Jr. (Ret.)

Hon. Jeannie
Lowe (Ret.)

Hon. Robert
E. May (Ret.)

JAMS has continually strived to set new standards in dispute resolution, including a highly selective recruiting process that helps us build the strongest neutral panels possible. Nowhere is this any truer than in San Diego, where our neutrals draw upon a deep knowledge of the region. To learn more about JAMS in San Diego, call us at 619.236.1848.



Hon. Kevin W.
Midlam (Ret.)

Hon. Thomas R.
Murphy (Ret.)

Hon. William
C. Pate (Ret.)

John M.
Seitman, Esq.

THE RESOLUTION EXPERTS



JAMS San Diego Resolution Center | www.jamsadr.com
401 B Street | Suite 2100 | San Diego, CA 92101

Depos in Japan

(continued from page 12)

fied copy—stamped with the raised seal of the court—to the Embassy or Consulate. It must be received at least 30 days before the date of the first deposition.

At the same time, you will need to send a payment for the statutory deposition fees. They are currently \$309 per day. Again, the fees must be paid via certified or cashiers' check or international money order.

Getting the Deposition Visa

Although it is not normally required for an U.S. citizen to get a Japanese visa to enter Japan, you will need to obtain a special "deposition visa" from Japan's Consulate in the U.S. if you are to "participate" in (i.e., ask questions at or lodge objections at) a deposition in Japan. The closest consular office to San Diego is in downtown Los Angeles; but if you live in San Diego, Imperial, Riverside, Santa Barbara, San Louis Obispo or Arizona, you can mail your materials in rather than having to appear in person. You must provide to the Consulate a letter, on letterhead, that states (a) the name and location of the court issuing the order/commission, (b) the name and occupation of each witness, (c) a summary of the case, and (d) the dates of your arrival and departure, airline and flight numbers, and hotel information (this final category is not noted as required on the Japanese Embassy's website, but it is indeed required). You must also provide a copy of the court order/commission (this version need not have a raised seal), your passport, and two passport photos. It is a good idea, and well worth the modest additional expense, to engage the services of a passport and visa service to assist you in this process.

The visa will not issue until the Japanese Consulate in the U.S. has received word from the U.S. Embassy or Consulate in Japan (via the intermediary of the Japanese Foreign Ministry) that the deposition has been fully cleared, including that all fees have been paid. In our case, for whatever reason, the clearance did not come until less than a week before the depositions began even though the fees had been paid in full weeks earlier. Perhaps this is the common practice.

Sending the List of Participants

The final step is to fax or e-mail to the Embassy or Consulate a letter identifying all people who may be present in your party. Make sure

you include any client representatives who might be observing the depositions. If you want to bring your laptop into the Embassy or Consulate, the letter must identify it by make, model, and serial number. (You cannot bring your phone in, so don't bother listing it.) This letter is to be received at least two weeks before the depositions begin.

Exhibits and Related Logistics

If you are dealing with any decent volume of exhibits, you will want to have copies made and sent to your hotel before you leave. Yes, the shipping is very expensive (it cost me about \$500 to ship a bankers' box of one set of three exhibit binders one way); but the facilities for litigation-style copying in Tokyo appear to be non-existent, and even small volume copying is prohibitively expensive (not to mention rendered on a different paper size).

Also, you might want to rent a Japanese mobile phone. Although some, but not all, U.S. mobile phones work there, the rates can be very expensive. You can save a substantial amount of money by renting a phone in Japan. I ordered mine before I left, and it was waiting for me at my hotel when I arrived.

The Process and Experience in Japan

Travel and Getting Around

Before heading to Japan, be aware that Japan Standard Time is 16 hours ahead of Pacific Standard Time and 17 hours ahead of Pacific Daylight Time (Japan does not follow daylight saving time). So jet lag is a significant issue (and always seems to be worse when traveling west-to-east). If at all possible, you should try to arrive several days before the depositions begin to allow your body to adjust. Flight time is about 11 ½ hours. Between that and the time difference, you will arrive a day ahead: my flight left Los Angeles on a Thursday afternoon and arrived in Tokyo Friday evening. Although my depositions did not begin until Monday morning, I needed every bit of that time to be sharp (and I am usually not affected much by jet lag).

I traveled from Los Angeles, where many direct flights to Tokyo are available from many different airlines. Since my trip, however, Japan Airlines has begun non-stop service from San Diego to Tokyo on the new Boeing 787.

(see "Depos in Japan" on page 14)

Depos in Japan

(continued from page 13)

Since I went to Tokyo and not Osaka, my observations are limited to the former; but many of them will likely hold true about Osaka as well.

Tokyo's Narita airport is about 40 miles from downtown Tokyo. Taking a taxi will set you back about US\$250-300. Seriously. There is a nice express train, the Narita Express that costs about \$35 and will drop you off at Tokyo Station, the central train and subway station, where you can catch a taxi or subway to your hotel. Another good option is a limo bus that departs from the airport and will take you to your hotel with no more than two or three stops at other hotels first. It is about the same price as the train, but runs less often.

If you want to stay in a full-service hotel within walking distance of the U.S. Embassy, your options are essentially two: the Hotel Okura or the ANA Intercontinental. I stayed at the Okura, which is directly across the street from the Embassy and is a fine and historic grand hotel. It costs about \$400 a night. If you don't mind staying a cab ride away, there are many other options; indeed, Tokyo has some of the finest hotels in the world.

A word on prices. Tokyo is currently ranked the most expensive city in the world. Even for someone accustomed to prices in other major world financial capitals like New York or London, Tokyo is eye-wateringly, vertiginously expensive. As seen, some items, like hotel room rates, are comparable to New York standards; but most everything else—particularly taxis and food—is significantly higher. Lunch for one at a hotel, for example, will likely exceed \$100; a fancy dinner for two would be difficult to keep under \$500. Three miles in a taxi will cost about \$25.

Tokyo is an enormous city. In fact it is, by a factor of about 40 percent, the world's largest metropolitan area, at over 33 million people. As such, Tokyo has one of the world's great subway systems, and I used it extensively. But if you are intimidated by "urban exploration," it might not be a viable option for you. Indeed, navigating Tokyo is a challenge. Many of the signs are not in Romaji (i.e., Roman letters), but only in the logographic Kanji and Hiragana characters. Further, only the largest arterial streets have names; addresses are located by block number. Many of the block number signs, usually posted on a small plaque attached to a corner building, are difficult to locate or even missing. You will

need a good map that identifies block numbers if you plan to walk around.

Adding to this difficulty, outside of the major hotels, most Japanese speak little if any English. A phrase book is practically a necessity. And if you are taking a cab somewhere, its best to have the concierge at your hotel write its address in Kanji on a piece of paper that you can give to the cabbie.

To save money on food, try to avoid eating at hotels to the extent possible. But even food outside of hotels is quite expensive by U.S. standards; and then there are the issues of finding and getting to the restaurant and the likely language barrier once there. If this does not dissuade you, Tokyo has an amazing selection of restaurants, both eastern and western; many think it is the world's greatest restaurant city. Indeed, if you are comfortable stepping out of the protective confines of your hotel and navigating the city, there are many amazing cultural experiences to be had.

Finally, the climate in Tokyo is very similar to New York City's—hot, humid summers, moderately cold winters, and pleasant springs and falls. The dress is relatively formal—at least by California standards.

The Embassy, the Deposition Room and Related Logistics

The U.S. Embassy in Tokyo opens at 9:00 a.m. You might want to get there about 10 minutes before to get a good place in line, but generally they will take deposition participants to the front of the line. You must go through a metal detector, and all phones and other electronics must be checked at the security desk (apart from any laptops you have pre-cleared, by serial number, with the Embassy).

Once inside the Embassy, you are shown to the deposition room. It is rather small, and is poorly ventilated. Our depositions had ten people in the room, which was extremely tight and the realistic maximum. (I am told that of the two depositions rooms in the Osaka Consulate, one is considerably larger than the Tokyo room and the other considerably smaller.) There are no photocopy, telephone, message, or other facilities available inside the Embassy. If you have brought a laptop in, you are not allowed to connect it to a data source. If you need to make a phone call or check your messages or e-mail,

Depos in Japan

(continued from page 14)

you will need to leave the premises and then check back in through security.

You probably will not be shown to the room before about 9:10. You will then have to wait for a consular officer to arrive to administer oaths to the stenographer, videographer, and witness. (Although the Consular Convention requires the officer “preside over” the depositions, this requirement is apparently interpreted to mean merely administering the oaths.) Several days, this did not happen until about 9:30. The first day will also require time for stenographic and videographic equipment; the equipment can be left in the room overnight.

Time is very much an issue while taking the depositions. You will be required to leave the Embassy at lunch time, from 1:00 to 2:00 p.m. By the time you get back in, it will probably be about 3:15. You will be required to leave at 4:00. No exceptions whatsoever are allowed. In fact, at about 3:55, you can expect a U.S. Marine knocking on your door and standing there until you wrap it up.

Given these limitations and, especially, the substantial additional time required for translation (which effectively doubles the time of the process), you will have precious little time. Plan accordingly.

Conclusion

The process of setting up and taking a deposition in Japan is quite involved and there are a number of important limitations—most notably the requirement for a voluntary witness. That said, the entire experience was fascinating, as was the country and culture of Japan. I hope my observations on the process and experience will be useful to others who are fortunate enough to also take depositions in Japan.

Judge Gonzalez

(continued from page 8)

The Importance of Reputation

Of particular interest to all those who attended, Judge Gonzalez confirmed that building and maintaining a good reputation is crucial to an attorney’s success. She routinely discusses with her clerks the quality of attorneys’ written papers and in some cases even before the clerks have reviewed the papers she will point out to her clerks that the attorneys “are good lawyers,” and therefore they can expect the papers to be well written. With the



Paul Reynolds is Principal of Reynolds APC; he specializes in complex business and securities litigation. Paul Reynolds: 619-696-6900; preynolds@reynoldsapc.com

RESOURCES

U.S. Embassy, Tokyo: 011-81-3-3224-5174; <http://japan.usembassy.gov/e/acs/tacs-7116.html>

U.S. Consulate, Osaka: 011-81-6-6315-5914

State Department website regarding Japan Judicial Assistance: http://travel.state.gov/law/judicial/judicial_678.html

Japanese Consulate, Los Angeles: 213-617-6700; http://www.la.us.emb-japan.go.jp/e_web/e_m02_06_01.htm

American Realtime Court Reporters (since acquired by Planet Depo): 888-433-3767; <http://www.americanrealtime.com/>

Hotel Okura, Tokyo: 011-81-3-3582-3707; <http://www.hotelokura.co.jp/tokyo/en/>

ANA Intercontinental Hotel, Tokyo: 011-81-3-3505-1111; <http://www.anaintercontinental-tokyo.jp/e/>

Rentafone Japan: 011-81-75-496-8187; <http://www.rentafonejapan.com/>

Ambassador Passport and Visa: 310-828-7878; <http://www.ambassadorpassportandvisa.com/>

ⁱ Note that testimony can be compelled under the arduous Letters Rogatory process, which takes about a year to execute and involves a Japanese court asking the witness a series of written questions, translated into Japanese, which has been forwarded by the U.S. court through diplomatic channels; other than writing the questions, the lawyers are not involved.

ⁱⁱ For example, the address of the Hotel Okura is 2-10-4 Toranomon, Minato-ku, Tokyo, Japan. Starting from the largest unit, Tokyo is the prefecture; Minato is one of the 23 wards, or municipalities, of the prefecture; Toranomon is the name of one of the 30 or so districts within that ward; 4 means that it is located in the second “chome,” or sub-division, of the Toranomon district; 10 means it is located on block number 10 of sub-district 4; and 2 refers to the number of the house or business on that block—and to make matters more confusing, the house numbers are assigned based on the age of the building and as such do not always run consecutively.

judges meeting once a week to discuss administrative issues, the effect of a good or bad reputation can be long-lasting. “Judges remember, and they talk,” she said.

Jack Leer is a partner with Caldarelli Hejmanowski & Page, LLP and the current Secretary of the San Diego Chapter of ABTL; Nicholas Nadhir is a senior at St. Augustine High School and an intern at Seltzer Caplan McMahon Vitek, A Law Corporation.

Environmental Laws

(continued from page 9)

of the river with concrete. This forever changed the character of the river, turning it from a free flowing stream into a storm water conduit.

Ironically, what was then considered progress, allowing much of the Los Angeles Basin to be settled without risk of flood, is now viewed as degradation. Moreover, the changes to the structure of the river, and its use since the 1930's as a regional storm drain have made compliance with the standards assigned to the river under the act extremely difficult. Nonetheless, the Clean Water Act mandates that the State of California develop and implement for the river, and mandates that any entities who discharge into the river comply with any and all limitations necessary to achieve those targets. The allocation of resources required to achieve those goals has led some to question the propriety of the designations. This has, of course, spawned litigation over whether the Clean Water Act applies, and if so, who is responsible for compliance.

One of the Clean Water Act's primary requirements is that states designate Water Quality Standards for every navigable water within their boundaries. The Water Quality Standards define the water quality goals for the water body

by designating the beneficial uses and by setting criteria to protect those uses. Beneficial uses may include fishing, swimming, boating, aquatic habitat, agriculture navigation or others. Water Quality Standards serve two main functions: they allow for assessment of water quality in a water body and they provide a basis for determining what effluent discharge limitations may be allowed in order to protect the designated uses of the water body.

The Clean Water Act required Water Quality Standards to be adopted shortly after passage of the act. This means that many of the designations were adopted at a time when the desire to achieve meaningful water quality improvements in each and every water body in the nation was driven by a national ethos of emergency. Rachel Carlson's Silent Spring was 10 years old, and the 1969 fire on the Cuyahoga River was fresh in the collective memory. In compliance with the act, states adopted narrative and numeric standards for all water bodies within their jurisdiction, including those that were completely channelized and barely resembled the free-flowing streams they once were.

(see "Environmental Laws" on page 17)



San Diego/619.233.1323 | Orange County/949.863.9800



Downtown LA/213.683.1600 | Century City/310.201.0010

www.ADRSERVICES.org



Cary Miller, Esq.



Michael Roberts, Esq.

Environmental Laws

(continued from page 16)

Some states took the opportunity to develop highly aspirational standards. Others chose to adopt the minimum necessary. In all cases, the EPA retained the authority to reject a state's standards and instead promulgate its own. This includes situations where if the EPA determines that another standard is necessary to meet the requirements of the act. As can be imagined, not all states were ready to adopt a "fishable, swimmable" standard for every water body in their jurisdiction. Existing industrial uses and the natural conditions of some water bodies meant compliance with this standard was unlikely. Moreover, some states didn't want the federal government imposing standards on them. Naturally this resulted in litigation.

One 1980 key case that was the *Mississippi Committee on Natural Resources v. Costle* in which the EPA refused to approve a numeric dissolved oxygen standard adopted statewide. Mississippi had gone as far as to adopt a "fishable swimmable" standard for the water body at issue but the EPA believed the numeric criteria adopted would not actually attain the required result. The courts backed the federal government and held that EPA retains the discretion to require a higher standard if it determines that the standard is necessary to comply with the act.

Nonetheless, Water Quality Standards are not set in stone. In fact, it is required that standards be reviewed on a three-year basis. However, revisions must meet requirements from the original standards and the EPA must approve all revisions. This will almost always require extensive testing and documentation that the current designation is unattainable. Developing the scientific basis for revision is expensive and time consuming. Additionally, it is a public process that very quickly becomes a political decision about whether, as a society, we are willing to dedicate the resources necessary to attain the designated use.

The Clean Water Act additionally requires states to monitor all water bodies within their jurisdiction and develop a list of those that are not attaining their designated Water Quality Standard. The act requires that the state establish Total Maximum Daily Loads ("TMDLs") for each listed water. A TMDL defines the specified maximum amount of a pollutant which can be discharged into the waters at issue from all combined sources.

The first Water Quality Standards for the Los Angeles River were adopted as part of the Water Quality Control Plan for the Los Angeles River Basin ("Basin Plan"), in 1975. The most recent version of the Basin Plan designated full body contact recreation and commercial fishing as existing or potential uses for the Los Angeles River. While these designations meet the goals of the Clean Water Act, they are far from a reflection of current "on the ground" conditions.

For example, to meet the full body contact standard for bacteria, the Los Angeles River must have a specific mean concentration of *E. Coli*. However, the actual *E. Coli* levels in the Los Angeles River and its tributaries exceed these limitations up to 100% of the time. Even the reaches or tributaries with better water quality exceed the indicator bacteria water quality standards roughly 50% of the time. To address this long term impairment, the Los Angeles Regional Water Quality Control Board developed and adopted a TMDL for indicator bacteria in the Los Angeles River and its tributaries in July, 2010.

The TMDL was controversial for a number of reasons. Foremost was the fact that it is based on the full body contact recreation standard. Entities who discharge into the Los Angeles River watershed argued vehemently that vast portions of the river are channelized, closed to public access, and thus unlikely to be used for full body contact recreation. As such, they claimed, imposing the high full body contact recreation standard simply did not make sense and that the estimated \$5.4 billion price tag for compliance was simply too high to impose on municipalities and other dischargers given the benefits to be gained.

Second, the dischargers argued that compliance was simply not feasible. The largest source of bacteria pollution for the Los Angeles River is storm water and dry weather flows directed off of city streets and into the river. The bacteria are present in discharges from individual properties to the municipal storm drain system and thrive once they enter the system. All of these flows reach the river at some point because it is the low point that drains water off of the land and into the ocean. Thus, the river's role as a regional flood channel is in many ways the cause of its inability to meet a full body

Environmental Laws

(continued from page 17)

contact standard. This ongoing use is also one of the reasons the estimated price tag for meeting compliance is so high.

The Los Angeles River illustrates the tension between compliance with environmental goals and the costs and benefits associated with meeting those goals. What had been considered progress has changed the character of the river to the extent that attaining a "fishable swimmable" water quality in many stretches is not feasible, or at the very least will cost billions of dollars. Nonetheless, the Clean Water Act requires that this work take place. Because cities are ultimately liable for paying for the compliance, dedicating funds to this effort will mean an increase in taxes and fees or a decrease in services.

Unnecessary and outdated regulation is a problem that can be found throughout history. As Aristotle opined, "Even when laws have been written down, they ought not always to remain

unaltered." Working through the legal processes necessarily to alter laws can be frustrating and take years, if not decades. However, the effects of outdated regulation can potentially be devastating - evidenced by the more than \$5 billion in costs to bring the Los Angeles River into compliance.

Andre Monette is an associate in the Environmental Law & Natural Resources Practice Group of Best Best & Krieger LLP in San Diego. Monette works with both public and private clients in matters involving water quality, water rights, wetlands, and state and federal hazardous and solid waste issues. He also works extensively with water districts, cities, counties, and school districts on matters involving the Federal Clean Water Act and California's Porter Cologne Water Quality Control Act. He may be reached at Andre.Monette@bbklaw.com



EXCEPTIONAL SERVICES

Our Resolve. Your Resolution.

You know us and we know the challenges confronting you in litigation. You can count on us to bring our experience, skill and tenacity to the table to ensure an effective process. It's our singular purpose and we achieve it with exceptional results.

Dispute Resolution. It's what we do and we take it personally.



**west coast
resolution group**

A Division
of NCRC

Our Resolve. Your Resolution.

westcoastresolution.com 619.238.7282

Association of Business Trial Lawyers – San Diego

2013 Officers and Board Members

President

RICHARD D. GLUCK

Vice President

MARISA JANINE-PAGE

Secretary

JACK R. LEER

Treasurer

BRIAN A. FOSTER

ABTL Report Editor

LOIS M. KOSCH

Judicial Advisory Board Chair

HON. JANIS L. SAMMARTINO

Leadership Development Co-Chairs

BRIAN A. FOSTER

ANNA F. ROPPO

Membership Chair

ROSS H. HYSLOP

Program Chair

PAUL A. TYRELL

Immediate Past President

HON. M. MARGARET MCKEOWN

Past Presidents

HON. JAN M. ADLER

PETER H. BENZIAN

CHARLES V. BERWANGER

MICHAEL DUCKOR

EDWARD M. GERGOSEAN

HON. J. RICHARD HADEN (RET.)

HON. MAUREEN F. HALLAHAN

FREDERICK W. KOSMO, JR.

MARK C. MAZZARELLA

ANNA F. ROPPO

ALAN SCHULMAN

HON. RONALD L. STYN

HOWARD F. SUSMAN

CLAUDETTE G. WILSON

ROBIN A. WOFFORD

MERYL L. YOUNG

MARK C. ZEBROWSKI

ANNA ROPPO

HON. MARGARET MCKEOWN

Executive Director

PAT SCHMIDT

Board of Governors

HON. LORNA A. ALKSNE

MICHAEL A. AMON

FELIPE J. ARROYO

DAVID J. AVENI

COURTNEY L. BAIRD

HON. JEFFREY B. BARTON

HON. ANTHONY J. BATTAGLIA

LYNN M. BEEKMAN

HON. CATHY ANN BENCIVENGO

ROBERT J. BORTHWICK

GARY K. BRUCKER, JR.

MICHELLE L. BURTON

HON. GONZALO P. CURIEL

HON. DAVID J. DANIELSEN

ROGER A. DENNING

MARY C. DOLLARHIDE

HON. KEVIN A. ENRIGHT

CHAD R. FULLER

DANIEL E. GARDENSWARTZ

RANDY S. GROSSMAN

CHARLES T. HOGE

ROBERT M. HOWARD

VALENTINE HOY III

HON. MARILYN L. HUFF

HON. JOAN R. IRION

ROBERT G. KNAIER

ALAN MANSFIELD

GUILLERMO MARRERO

BRIAN D. MARTIN

THOMAS W. MCNAMARA

HON. THOMAS P. NUGENT

WILLIAM M. O'CONNOR

HON. RONALD S. PRAGER

HON. JOEL M. PRESSMAN

ROBERT D. ROSE

ANTHONY M. STIEGLER

SUSAN G. TAYLOR

HON. TIMOTHY B. TAYLOR

Judicial Advisory Board

HON. CYNTHIA G. AARON

HON. PATRICIA YIM COWETT (RET.)

HON. STEVEN R. DENTON

HON. IRMA E. GONZALEZ

HON. WILLIAM Q. HAYES

HON. HERBERT B. HOFFMAN (RET.)

HON. RICHARD D. HUFFMAN

HON. JOAN M. LEWIS

HON. FREDERIC L. LINK

HON. WILLIAM H. McADAM

HON. WILLIAM R. NEVITT, JR.

HON. LEO S. PAPAS (RET.)

HON. LAURA H. PARSKY

HON. RONALD S. PRAGER

HON. RANDA TRAPP

Emeritus Board Members

WILLIAM S. BOGGS

HON. PETER W. BOWIE

LUKE R. CORBETT

CHARLES H. DICK

HON. IRMA E. GONZALEZ

HON. JUDITH L. HALLER

HON. WILLIAM J. HOWATT, JR. (RET.)

HON. J. LAWRENCE IRVING (RET.)

HON. RONALD L. JOHNSON (RET.)

HON. ARTHUR W. JONES (RET.)

MICHAEL L. KIRBY

MICHAEL L. LIPMAN

HON. JEFFREY T. MILLER

DAVID E. PERRINE (IN MEM.)

ABBY B. SILVERMAN

ROBERT G. STEINER

WILLIAM F. SULLIVAN

REG A. VITEK

MICHAEL J. WEAVER

SHIRLI F. WEISS



PRSRT STD
U.S. POSTAGE
PAID
PERMIT 2325
SAN DIEGO, CA

PMB #386
1010 University Avenue #113
San Diego, CA 92103



Project Management

"Our experienced, professional staff of Senior Project Managers and Data Analysts provides world-class service, constant reporting, and attention to detail."

e-Discovery ESI

"We provide industry-leading processes, tools, and capacity for all aspects of electronic discovery, from forensic data acquisition to advanced file processing and data conversion."

Hosting & Review

"DTI offers a variety of powerful data hosting and review systems, ensuring that the right tool is applied to each project's unique requirements."

Facilities Management

"With operations on-site in over 100 of the nation's most prestigious law firms, DTI is among the largest and most respected Facilities Management service providers in the industry."



619.234.0660

501 West Broadway | Ste. 400 | San Diego | CA | 92101

Data Discovery | Early Evidence Assessment | Custom Document Databases
Discovery Research Services | Scanning and Coding Services | Document Management Services

DTI

Visit us online at dtiglobal.com