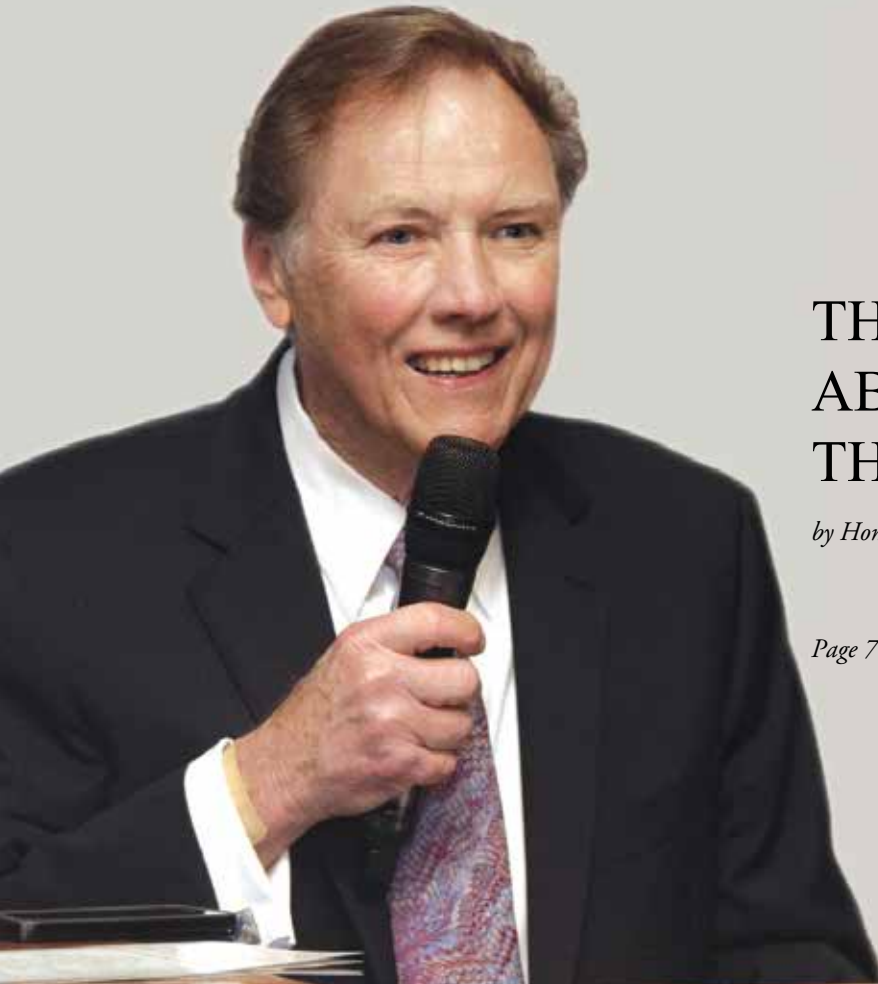


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THE PRACTICE OF LAW IS ABOUT SO MUCH MORE THAN JUST THE LAW

by Hon. Frederick H. Bysshe (Ret.) with forward by Rabiah A. Rahman

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PRESIDENT'S MESSAGE

by Douglas K. Goldwater

A couple months ago, I started my President's Message with a question that, tongue-in-cheek, I claimed was often asked of me. This month, I begin with a question that I am *actually* frequently asked. When the topic of practice areas arises when speaking with colleagues in my firm, other attorneys within our Bar Association, prospective clients, or just members of the community, the routine inquiry is: "How (or why) do you practice family law?"

While I did not take a deep dive into the history of VCBA presidents, I did look far enough back to see that it has been quite some time since a lawyer specializing in family law has served in this role. As such, I am taking this opportunity to give our community some insight into why family law is both intellectually stimulating and personally rewarding. Before I began regularly practicing in family law, I had, through my firm, opportunities to gain experience in other areas of the law. After exploring those other areas, however, I realized that family law was the right one for me.

Saying that family law is fast-paced is an understatement. Since family law practitioners deal with the daily lives of their clients, the cases develop in real-time. Every day is different and you never know what will unfold each day you step into the office. As a result, family law provides an opportunity to gain a significant amount of courtroom experience, as the clients' activities and needs often require *ex parte* proceedings, law and motion, and trials or evidentiary hearings. Moreover, as mentioned above, family law, due to its crossovers with various other areas of the law, is intellectually stimulating. An effective family law attorney needs a solid understanding of real estate, corporate, estate planning and tax laws in addition to the Family Code. Also, believe it or not, the laws of the Evidence Code and the Code of Civil Procedure apply as well.

The most gratifying part of practicing family law, however, is the opportunity to help the clients through one of the most difficult times in their lives. Family law attorneys

truly are "Counselors at Law." While we do not act as mental health professionals, family law practitioners routinely counsel their clients not only through the trauma of losing of their relationship, but also on how to best approach their decision-making – in terms of their relationships not only with their estranged or ex-spouse but also, more importantly, with their children. Because the parties are often lost in the heat of the conflict, an effective family law practitioner has the opportunity to assist their clients to not just focus on winning the individual battles, but also to step back and look at the big picture of how those individual battles may impact the rest of their lives and their children's lives. From my perspective, there is nothing more personally or professionally rewarding than when clients express thankfulness not just for helping them get through their divorce, but also for helping them maintain their good character throughout the process.

Practicing family law has also given me the opportunity to see true heroes at work. Now, we often think of the word "hero" to refer to the *super* variety that we see in every other movie that comes out in Hollywood, or to the first responders who routinely save lives and property, as we have directly experienced over the past couple years in our community. There are, however, other heroes – people we meet in our daily lives but whom we do not necessarily appreciate for what they do. Those heroes are the single parents who balance full-time jobs with raising their children to become productive members of society. It is an extraordinary feat to be an involved, devoted parent who also advances their career to a level sufficient to support a family.

Speaking of everyday heroes, in February's issue of *CITATIONS*, **Dave Ellison** and **Tom Hinkle** penned a lovely tribute to their legal assistant, Arlene Briggie. It was refreshing to see such an article. Over the years, the focus is routinely on our county's bench and bar, but the county is replete with other "heroes" who contribute to the advancement of our legal community. Whether of legal assistants, court clerks, process servers or

court reporters, there are stories within our community that should be told. I invite you to e-mail me information regarding some of these members of our local community who deserve attention for what they do.



To that end, I want to spotlight one of these "heroes." My long-time legal assistant, Angela Perry, is one of those parents of whom I am in awe. She advanced her career while single-handedly raising and supporting her child. Angela put herself through paralegal school while pregnant with her son, Dalton, because, as her sister, Tiffany, said in admiration, "She really wanted a good, stable job so that she could support Dalton and give him a good life." She worked hard throughout Dalton's life to ensure that he had a roof over his head, while also balancing her work commitments so she could be there for his school and life events. Dalton "learned a lot about strong women and hard work from Angela," Tiffany explained. Indeed, Angela's efforts to instill good values and a strong work ethic led Dalton to proudly serve our country in the Navy for several years. Now, Dalton is coming home following the completion of his service and will still find his mother hard at work with our firm – except for when she is reading this article (Angela – get back to work!).

Doug K. Goldwater is a partner at *Ferguson Case Orr Paterson, LLP*. His practice focuses on family law. He can be reached at (805) 659-6800 or at dgoldwater@fcoplaw.com.

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VENTURA COUNTY TRIAL LAWYERS DINNER ANNUAL JUDGES NIGHT

Photos courtesy of Victoria Borjesson, JP McWaters, and Telegenics



HAVE YOU HEARD?

The VCBA's Court Tour Program will be honored with a VC Innovates' Pathfinder Award at 11:30 on May 9 at Spanish Hills. Originally housed under the "Lawyers Wives" program, the CTP began in 1977, and was subsumed under the VCBA in 1991. Interestingly, the first CTP tour was given by Peggy Purnell and **Hon. Melinda Johnson (Ret.)**. Tickets for the Pathfinder Awards Ceremony can be purchased at <https://pathfinder2019.eventbrite.com>.

Through the tireless efforts of **Charmaine Buehner**, Victoria Borjesson, **Hon. Steven Z. Perren** and Michael Planet, the VCBA will publish a catalogue of the history behind every subject whose portrait is hung in Courtroom 22. The publication will be highlighted during a panel discussion presented by **Hon. George Eskin (Ret.)**, **Bill Paterson**, **Justice Perren**, and **Hon. Henry J. Walsh**, and moderated by **Hon. Melinda Johnson (Ret.)** at the Saticoy Club at 6 p.m. on May 9. MCLE is available. See enclosed flyer for more details.



Congratulations to **Kathryn E. Clunen**, who will be honored May 2 by the Pacific Coast Business Times as one of its 40 Under 40 award winners. The award goes to young professionals based on their involvement in the business community. Katie practices with the Dion Law Group. She is president of the Jerome H. Berenson chapter of the American Inns of Court.

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THE PRACTICE OF LAW IS ABOUT SO MUCH MORE THAN JUST THE LAW

by Hon. Frederick H. Bysshe (Ret.) with forward by Rabiah A. Rahman

The Ventura County Trial Lawyers Association held its annual “Judges Night” on March 26, at the Tower Club in Oxnard. VCTLA honored Hon. Patricia M. Murphy as the 2019 Judge of the Year, and unveiled formal portraits of Hon. Charles W. Campbell (Ret.) and Hon. Frederick H. Bysshe (Ret.) to be hung in Courtroom 22 of the Hall of Justice.

Many memorable remarks were made that evening, but I was particularly moved by the words and sentiments expressed by Judge Bysshe. His comments serve as a reminder to the legal community of the ways members of the profession can impact society, especially if they do the “right thing.” I reached out to Judge Bysshe and requested permission to publish his speech in its entirety.

There are three things that I have loved most in my life: my family, my friends and the law. I have practiced law now for 57 years, nearly 50 of which were in Ventura County, and I can say unequivocally that I have never wanted to do anything else. This is a **noble profession**. It is the basis of our democracy and the bulwark against injustice and tyranny. Regardless of where you practice in the breadth of the profession, you work for your clients, and you also work for fairness, on behalf of a truly “civil” society, and based on the rule of law.

Yes, there do exist self-serving attorneys – those whom the rest of us wish would leave the law and do something – anything – else. Fortunately, they are a tiny minority. The vast majority of attorneys care about their clients, care about what is fair, care about working toward a just society – a society that listens to the weak, as well as to the powerful. And while the powerful have many to speak for them, you are the only voice for the weak.

I cannot tell you how appalled I was when, after the Washington fiat regarding Arab travelers – a fiat later declared unconstitutional by the courts – people were suddenly and unexpectedly stranded at international airports around this country, merely because of their Arab descent. And how proud I was when

lawyers in all those cities dropped what they were doing, picked up their laptops and drove to those airports. I followed the protests online, and what I heard from the people protesting outside those airports was, “Let the lawyers through!” Expecting no pay of any kind, lawyers converged because what was happening was unjust. We all saw the photos of lawyers sitting on the floor in waiting rooms, computers in their laps, working for free – because it was the right thing to do. It is who we are and a profession of which I am proud to be a member.

The Ventura County Trial Lawyers are distinguished in their selflessness and commitment to pro bono work. In the midst of your paying clients, you take cases for which you will not get paid, you volunteer at legal clinics, you support the self-help project at the courthouse, you serve on not-for-profit boards throughout the County to provide free legal advice on organizational matters. You take on difficult cases with little hope of being paid – because it is the right thing to do. You work for fairness and justice here, as do our colleagues throughout this state, this nation and abroad – because it is the right thing to do.

Additionally, the members of this bar, whether in public or private practice, are the original source of the Ventura County bench, a bench which enjoys a state-wide reputation for the quality of its judiciary and for the innovative leadership of its staff. In the years that I served as chief settlement judge, I had many opportunities to chat informally with attorneys from other counties, particularly from Los Angeles. Whether they were plaintiff or defense lawyers, from large or small firms, they were unanimous in their praise for the professionalism and friendliness of our court-wide judicial team, “It is such a pleasure to try a case in Ventura County.”

Let me make one final comment about our bench. We are currently in an era when commentators speaking about the federal judiciary invariably cite them as Obama judges or Trump judges. In Ventura

County, you never hear judges defined as Deukmejian judges or Brown judges. In a system where, by its nature, trials result in “winners and losers,” the “losers” rarely if ever blame the result on judges because they are “conservative” or “progressive,” or have certain political agendas, or were appointed by a Republican or Democratic Governor. Judges in Ventura County have a reputation for decisions based on the law and not what outcome they might personally prefer.

Imperfect though it may be, the rule of law is the very essence of our society and distinguishes our democracy and its legal system from so many other forms of government. The rule of law provides predictability, offers the promise of equality and makes fairness not only possible, but real.

That law, that rule of law, is important not only here in this county, but nationally and internationally. For it is only the rule of law that gives us hope of a world society in which it is possible for peaceful relations among countries that share that rule of law and help keep in check the countries whose dictators reject that rule. We, and what we do and believe in, are needed now more than ever before.

It has been my privilege to be a part of this profession – as prosecutor, as trial attorney, as judge, and now as private mediator. I am deeply grateful for this honor, bestowed by members of this profession in which I have spent my life. I thank you all very much.



Hon. Frederick H. Bysshe is a retired Ventura County Superior Court Judge and is now a mediator with Alternative Resolution Centers.



Rabiah A. Rahman is an associate with Myers, Widders, Gibson, Jones & Feingold, LLP.

MAXIM BENEFITS

by Brian Nomi

In the course of doing legal work, I've found that there are principles that can do much to help guide a lawyer on the business and profession of law. Some of these can be found in the Civil Code, which has an entire section entitled "Maxims of Jurisprudence." (Civ. Code, §§ 3509-3548). It's well worth a look. A lot of great maxims are in here, and their authority is beyond question. If you ever have a chance to put one into a legal brief, it's guaranteed to impress the judge and confound opposing counsel.

Some examples from the Civil Code include: "He who consents to an act is not wronged by it" (§ 3515), and "[t]he law neither does nor requires idle acts." (§ 3532).

One legal maxim that I've never quite understood is in section 3537, which reads simply, "[s]uperfluity does not vitiate." Superfluity means that there is too much of something, and to vitiate means that the thing is negated or lessened. I can assure you that if you write or talk too much or in a superfluous manner, you will definitely lessen, weaken and vitiate your argument. Nobody's ever given me a good example of this maxim and shown me how to apply it in the real world.

Other great legal maxims have been found through my years of working with various lawyers around Ventura County. I spent several years working at the (former) biggest law firm on the block, and many times had the privilege of hearing wisdom that's been condensed to maxims. Some of the best:

"Your first loss is your best loss." By the late **Ron Gill**. When legal representation or a business deal goes bad, many times you are motivated to invest more time and energy in pursuing the deal, rather than just taking your loss and moving on to something else. It also applies to clients who decide not to pay for your legal work, but insist that you keep working with a promise to pay you later, somehow. Long experience teaches that it's best to take this modest first loss, and sever the relationship. Continuing with the case invites you to incur worse and worse losses.

"It's better to sit on the beach and not get paid, than it is to work and not get paid." By **Scott Samsky**. Also very true. Not much more explanation needed. The only exception is that it's good and honorable to take pro bono cases for deserving clients. But this maxim is one hundred percent true for clients who are not deserving and who simply can't (or won't) pay you for the work you are doing and time you are spending away from your family.

"I have no recollection of that case. No memory at all." By **Bill Schneberg**, recently retired eviction lawyer. You will have many clients over the years. Especially in practices where you are doing similar work over and over (like eviction cases, which typically take about a month), you will find that the cases blur in your memory over time. A case that you are working on hot and heavy today becomes the one you forget all about later. So don't get too caught up in any one case, and remember to have a decent work/life balance. You're probably going to forget about that case next year anyway.

"Never sell anything." By **Ken High**. This is totally true as it pertains to real estate. Whenever I've sold a house/land, I've regretted it. Whenever I've held long term, it's worked out really well. The only caveat that Ken made was that it's OK to do an exchange, such as a 1031, if you want.

"You only get one chance to fire me." By **Mike O'Brien**. Very wise and true. If a client fires you, and then later comes back to try to rehire you, it's always best to refuse. The relationship is broken and very unlikely to be fixed. One funny thing about this is that it's the pro bono clients who are most likely to fire me. I've represented nearly 3,000 paying clients since starting my practice in 2007, and only been fired twice. Among pro bono clients I've take on, the rate is nearly fifty percent. I'm not sure why that is, but I think it has something to do with a

sense of entitlement that pro bono clients develop when they know you are working for free, which becomes very unhealthy in the lawyer-client relationship. Adhering to this rule will save you a lot of time and grief. Clearly there are exceptions and some of my pro bono clients have been very grateful and cooperative. But I never let any client fire me twice.

"It's better to have no clients than bad clients." By my Army friend Adam Siegler, who is not a Ventura County guy. If you have no clients, it is not hard to walk over to the office of fellow lawyers, take friends out to lunch, give a talk in front of a few trade groups, and then magically find that you have a bunch of clients. I've lived that story, including my experience after returning from a year in the Army in Iraq. But when you have bad clients, or nonpaying clients, you will find your time and energy sucked away. Much better to be selective, and only take on the good clients, even if this means you have no clients for a while.

"A fool does not delight in understanding, but only in revealing his own opinion." Ok, this is not from any local lawyer, it's from the Book of Proverbs (18:2). But it highlights that it's better to keep your mouth shut. Listen and understand. Don't be the person who talks all the time, revealing nothing but your own opinion.

"Stay away from the client who is in it for the principle." I attribute this to **Larry Hines**, but I'm sure many other lawyers would echo the sentiment. The truth of this point is very obvious. Avoid clients who are willing to fight to the last drop of your blood.

And finally a few maxims that are related to the business, as opposed to the profession of law:

"You'll never get rich working for someone else." **Mark Fang** told me this. You need to work for yourself.


Find a way to make this happen, because employees will only be paid what the employer wants to pay. Or to put it another way, "Why put a limit on the amount of money you can make?" This is a quote from **Thomas Malley**. It's a very good reason for being a solo practice lawyer.

"It's no trick to making money, if all you want is to make a lot of money." This is from *Citizen Kane*. Don't believe me, click here: <https://www.youtube.com/watch?v=87indycxudo>.

If you do the right thing, and enjoy your work, you can still make a lot of money in the practice of law. As my friend **Lindsay Nielson** put it, "we're blessed to be lawyers who can work on a lot of interesting cases." The reality that I've seen working with real people on real cases is so much more interesting than any work of legal fiction. So yes, even if you make a lot of money, you can still have a fun time and do a lot of good in the practice of law. Or to put it another way, the superfluity of interesting work and money does not vitiate the value of the business and profession of law.




***Brian Nomi** is a sole practitioner and an Army JAG officer.*



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A TRIBUTE TO WOODY DEEM

Part One: Two DAs

by Michael Bradbury

Mike Bradbury was Ventura County District Attorney for 27 years. His memories of his mentor, former District Attorney Woodruff J. Deem, offer a fascinating history of a slice of Ventura County legal history, including the different attitudes that prevailed half a century ago. In the process of profiling Deem, Bradbury also shares much of his own story. CITATIONS offers Bradbury's account in several installments.

I grew up in a ranching community in the far reaches of Northern California. My dad and favorite uncles were cops. From the time I was a kid, that is what I wanted to be as well. My father, who had become a chief of police, pointed me toward the FBI knowing that it required a law or accounting degree. Since I was terrible at math, I would have to become a lawyer.

During my third year at the University of California Hastings College of the Law, I was accepted for an FBI Academy class to start shortly after the bar exam. I ignored the interview invitations from law firms and government law offices posted on the law school's bulletin board because I had my dream job in hand and nothing else interested me. That is, until I met Woodruff Janus Deem.

Deem was the district attorney of Ventura County, a place I had never heard of. A classmate had urged me to take the only open slot left on the interview signup sheet because, as he related, "You're not going to believe this guy. Among other strange questions, he asked me why I wasn't married, as though there was something wrong with that." Since I had nothing better to do at the time, and my buddy was insistent I had to experience this force of nature, I signed up and went to an interview.

The interviewer stood as I entered the room. He was tall and fit, stood ramrod straight, was impeccably dressed, and pinned me – through bushy eyebrows – with a steely gaze. He shot out his hand for the firmest handshake I had yet experienced. "Please sit down," he said. "Whatever possessed you to get married before graduating from college and then attend law school with a wife and two small children at home, while working three jobs?" When I explained how important it was for me to come

home to my wife and those two little faces each night, I thought I noticed a slight smile. Nevertheless, the tough questions made the interview feel more like a cross-examination. But toward the conclusion, Deem surprised me with an invitation to visit his office, adding "all reasonable expenses paid." I didn't know it at the time, but I had touched a chord important to him: family and children.

A month later I was up bright and early to make sure I could find the DA's office in time for my meeting. It was located in the beautiful old Ventura Courthouse at 501 Poli Street. Dedicated in July 1913, this neoclassic style building was designed by architect Albert C. Martin, a respected Los Angeles architect who was originally from Ventura. This courthouse served the citizens of Ventura County until 1979, when the courts and other county offices moved to their current Victoria Avenue location. The Poli Street facility is now the City of San Buenaventura's City Hall.

The Ventura DA's interviews were to take place over two days. I was first given a tour of the office, which took up most of the fifth floor. Deputies' and investigators' offices ran along both walls, with views of the mountains on the north side and the ocean on the south. Clerical desks were arranged down the middle. Deem's office was at back and just outside sat his secretary, Ann Shields.

I was interviewed by several deputies, including **George Eskin**, now a retired Santa Barbara Superior Court judge; **Ted Muegenburg, Jr.**; **John McCormick**; **Scott Dool**; **Edwin L. Laing**, the Assistant DA; **John Hunter**, who later became a Ventura Superior Court judge; **Omer Rains**, who would go on to serve in the California Senate; and **Edwin Osborne**, who was part of the County Counsel's office at the time of the interview, and later became County Counsel and then a Superior Court judge. The theme of the interviews was that this is a no-nonsense office of young lawyers who try cases, not deal them, a highly honest and ethical office. They told me I would be in the office for two years, get a lot of trial experience, and then be able to take my pick of private firms.

The final interview was with Deem. He quickly got down to basics: "I'm prepared to offer you a position as a law clerk. Upon passing the bar you will be sworn in as one of my deputies. You will make a little over \$500 a month. Give me two years and then go to the FBI; you will be a much better agent." I accepted on the spot.

Almost 34 years later I walked out of the office for the last time as a prosecutor.

Deem left the DA's office in 1973 to teach at Brigham Young University Law School. He had been born in 1913 in Salt Lake City, on the spot where the Salt Palace Convention Center and Sports Arena now stands. His grandfather insisted he be named after Wilford Woodruff, the then-president of the Church of Latter Day Saints. He was given the middle name "Janus" for being the first child; Deem was the eldest of ten children.

Deem decided to become a lawyer early on. He said, "My first-grade teacher made me want to be an attorney. When I was a discipline problem, she kept me after school and lectured me that to get satisfaction out of life, I must do things for others instead of getting attention only for myself. When she told me I could be another Abraham Lincoln, I made up my mind that I wanted to be a lawyer."

Deem's father had several different jobs and was often away from the family; at times they were unaware of his whereabouts. He eventually suffered what was then called a "nervous breakdown," and disappeared. Deem's mother was left to raise the children by herself while on "relief." When his family moved to California, Deem remained in Utah to attend Weber College. He lived with an aunt and worked to earn his keep. He later he moved to California to be near his family, and spent the next two years at Occidental College, where he graduated Phi Beta Kappa in 1936.

Deem's first job after college was as a clerk for the Civilian Conservation Corps. However, with greater employment opportunities in Washington, D.C., he moved there and became a United States Capitol police officer. With this came the opportunity to pursue his destiny. He entered Georgetown

Law School, continuing to work nights as a police officer for his first two years while attending classes during the day. During his last year in law school he worked as a law clerk for a Congressional committee "rooting out communists in the National Labor Relations Board."

Deem graduated from law school in 1940 as valedictorian and winner of the moot court competition. His first job after graduation was with the Reconstruction Finance Corporation, investigating fraud in defense contracts. He then spent a year on the staff of general counsel of the National Association of Manufacturers, (NAM).

World War II was now in full swing, and Uncle Sam came calling with a draft notice. Deem returned to California courtesy of the government and was assigned to Camp Roberts for basic training. The Army then sent him to Numea, New Caledonia, the New Hebrides, the Island of Banika (near Guadalcanal) and finally to officers training back in the U.S.

In the summer of 1945, Deem's next assignment was to report to the Chinese Language School in Berkeley, where he was to learn Cantonese and then be loaned to Chiang Kai Shek for guerrilla warfare behind Japanese lines. Fortunately, the war

ended and Deem was discharged in 1946 without seeing combat. He returned to his position with the NAM.

Next installment: Love, marriage, and long days.

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PRESERVING PATENT RIGHTS

by Richard Lyon

Disclosing the details of an invention prior to filing a patent application can result in the loss of all or part of an inventor's patent rights.

Disclosure can occur in various ways. The three most common types include releasing a printed publication describing the invention, public use of the invention, and a sale. A printed publication, as the name implies, requires that a description of an invention be printed. However, this printing need not be on paper. Rather, the printing can be in electronic form, such as a website or an email. Also, as the name implies, the description of an invention must be published, meaning the description is circulated and accessible to the public. The degree of circulation and accessibility varies widely depending on the circumstances. Even a single copy of the invention description available in only one location can be enough in some cases. In addition, a publication anywhere in the world can qualify as a disclosure. Granted, to qualify as a disclosure, the description of the invention must meet an enablement standard, which is defined as enabling "a person of ordinary skill in the applicable art to practice the invention." Of course, such a standard is somewhat subjective, and it is often difficult to determine when the enablement line has been crossed. As such, the best policy is to err on the side of caution and forego publishing any description of the invention prior to filing a patent application.

A public use of an invention can also be a disclosure. A public use occurs when an invention is used by a non-inventor prior to the filing of a patent application, even if the use was done in secret. The only exception is if the non-inventor was obligated to the inventor to keep the invention secret. A non-disclosure agreement between the inventor and the non-inventor can create such an obligation. Any public use of the invention by the inventor would also be deemed a disclosure. Public use can take various forms, some of which are not very intuitive. A public demonstration of the invention is considered a public use disclosure. This is true even if the

invention is not readily evident from the demonstration. For example, say the invention is a new longer-life battery and the features of a smartphone containing this battery are demonstrated. The battery invention can be considered publicly disclosed even if the longer life feature is not mentioned and the battery cannot be seen from the exterior of the smartphone. Another example involves making and selling a product that is produced using an invention, even though a purchaser would have no way of knowing the invention was used in making the product.

The last of the three most common forms of disclosure involves a sale. In the United States, if an article embodying an invention is commercially sold, or even offered for sale regardless of if the sale is completed, this can be deemed a disclosure. As recently confirmed, this is the case even if the sale or offer was kept secret. (See *Helsinn Healthcare S.A. v. Teva Pharms. USA, Inc.* (2019) 586 U.S. ____.) Granted, the embodiment of the invention sold or offered for sale must have been ready for patenting. That is, there must be an operating prototype or at least sufficient descriptive materials (e.g., drawings, text, videos, and so on) in existence to prepare a viable patent application based on the prototype or descriptive materials, or both. What constitutes a viable patent application in this context has been the subject of many court cases. However, in general it is said that a sale or offer to sell is sufficient disclosure if the existing prototype and/or descriptive materials would "enable a person of ordinary skill in the applicable art to practice the invention." It should be noted that only the elements of an invention that exist in the prototype and/or descriptive materials at the time of the sale (or offer to sell) would be considered disclosed. Thus, if the invention is improved prior to filing a patent application, the new elements would not be deemed disclosed.

Obviously, the best course of action is to avoid any of these forms of disclosure prior to filing a patent. This includes getting non-disclosure agreements signed by all non-inventors that have access to the invention

details. That being said, there are things that can be done to mitigate the loss of patent rights. For example, if it is discovered there will be imminent disclosure that cannot be stopped, a provisional patent application can usually be quickly filed to preserve the patent rights until a full patent application can be filed. A provisional patent application is a less formal, interim application. However, filing a provisional patent application in such circumstances is less than ideal as it must still meet the aforementioned enablement standard and does not preclude having to file a formal patent application within a year from the provisional application's filing date.

Unfortunately, if a disclosure occurs before a formal or provisional patent application can be filed, patent rights will be lost in most foreign countries. The United States is, however, an exception. In the U.S., a disclosure does not immediately preclude filing a patent. Rather, such a disclosure starts a one-year period in which a patent application can be filed. A cautionary note: Similar inventions by others that are disclosed or filed during this one-year window can be cited against the patent application once it is filed. Thus, it is best not to wait until the end of the one-year period to file the patent application.

It is also important to document and preserve any disclosure made prior to filing a patent application, as well as the date the disclosure occurred. The date falling one year from the earliest disclosure date should be docketed as the deadline for filing a follow-on patent application. Finally, the documentation associated with any disclosure and its date should be retained, even after the patent application is filed should the resulting patent ever be challenged.



Richard Lyon is a partner at Lyon & Harr, LLP and has been practicing patent and trademark law for 25 years.

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PITCHESS MOTIONS IOC TEAM 7



Left to right: Michael Morrow, Gary Jacobs, Wendy C. Lascher, Iva Oza, Benjamin Maserang and (not pictured) Vivian Christiansen, Andy Viets and a stuffed dog-like animal.

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| CONTESTANT | DATE | | | NAME | | GENDER | | HEIGHT | | WEIGHT | | TOTAL |
| NANCY AYERS | 3/12/19 | 8 | | SOPHIE | | GIRL | 10 | 20.5 | 9 | 7.1 | 9 | 36 |
| DEBORAH MEYER-MORRIS | 3/17/19 | 3 | | CASSIDY | | GIRL | 10 | 20.5 | 9 | 7.4 | 6 | 28 |
| ELANO CUZZO | 3/31/19 | 0 | | LIANA | | GIRL | 10 | 22 | 7.5 | 7 | 10 | 27.5 |
| DEBI JURGENSEN | 3/31/19 | 0 | | REYNOLDS | | BOY | 0 | 20.5 | 9 | 6.10 | 16 | 25 |
| KELSEY GONZALES | 3/31/19 | 0 | | KELSEY | | GIRL | 10 | 19.2 | 9.5 | 7.6 | 4 | 23.5 |
| WENDY LASCHER | 3/28/19 | 0 | | YSIDORA | | GIRL | 10 | 20 | 9.5 | 7.13 | 0 | 19.5 |
| MARIA PORCHE | 3/31/19 | 0 | | NATALIE | | GIRL | 10 | N/G | 0 | 7.5 | 5 | 15 |
| MEGHAN CLARK | N/G | 0 | | AINSLEY | | GIRL | 10 | N/G | 0 | N/G | 0 | 10 |

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