

THE CENTURY CITY LAWYER

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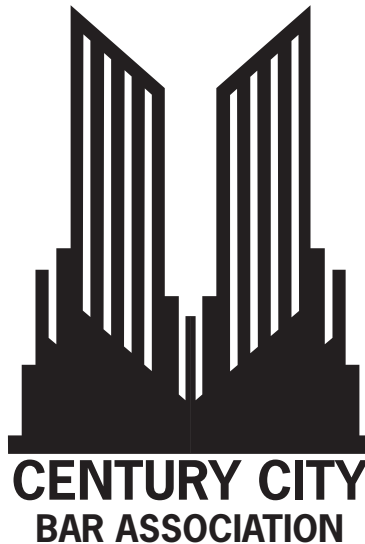
EXECUTIVE COMPENSATION ISSUES IN FINANCIALLY-TROUBLED COMPANIES

By Brian L. Davidoff and Jeanne C. Wanlass

In the wake of the bankruptcies recently filed by such companies as Lehman Bros., Mervyn's and Circuit City, as well as the forecast spread of the financial troubles suffered by the real estate and automotive industries, a prudent executive should be aware of compensation and liability issues arising both before and after a company files a bankruptcy case.

COMPENSATION IN BANKRUPTCY

Probably the first question that crosses most people's minds upon learning that their company has financial troubles or has filed a bankruptcy case is: "Will I continue to get paid?" The answer to this natural concern depends on many factors, but certain types of payments to high-level executives face a higher standard of scrutiny after a bankruptcy is filed.



Post-Petition Services

Before a bankruptcy case is filed, the amount of compensation is determined by the executive and the company and is generally based on the value of his or her services in the marketplace. After a bankruptcy filing, however, insiders of a debtor corporation must have

their compensation approved by the Bankruptcy Court. For corporations, insiders include the directors, officers, or persons in control of a corporation and their relatives and in the case of partnerships, the general partners. 11 U.S.C. Section 101(31)(B). To obtain approval, a Notice of Setting/Increasing Insider Compensation detailing the amount of compensation and other perquisites is filed with the Court and served on the company's major creditors and the Office of the U.S. Trustee (which has responsibility for reviewing the activities of chapter 11 debtors). If no objection is filed, then the payments may be made, including those post-petition payments not paid while waiting for approval. If an objection is filed, the parties may either resolve the amount and nature of the compensation among themselves or have the Court determine what compensation is appropriate.

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for:

APRIL 7, 2009

Century Plaza Hotel

6:30 p.m.

**The Century City Bar Association's
Annual Installation Dinner**



Meet and Greet Hundreds of Association Members.

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Five of the Best Lawyers In The Community

A MESSAGE FROM THE PRESIDENT



We are all given precious few years in this life. Yet, as we live our lives and go through our years, some of them will seem to fly by, and some will not be remembered for much, if at all. Not so regarding 2008. As 2008 comes to a close, I know that many of us will look back and recall the dizzying – and disturbing – swings of the stock market, the bailouts, the emergency meetings of government officials, and a new world order in the context of one of the most difficult economic climates of our lifetimes. I also know that many of us will look back and recall the electrifying

and transformational election of Senator Barack Obama as the 44th President of the United States. Has there ever been a President, save President Lincoln, with as much riding on his shoulders?

As we look back on 2008, may I suggest that an important lesson has been learned by us and about us for the world to see, and I'm proud of it. America learned it does not have to repeat the past. As Americans, we can break the mold. Simply because we think we are permanently affixed to a career, or a firm, or a behavioral pattern, or simply because something has always been a certain way in Washington, Sacramento, or at City Hall, we now know, more than ever, that we can create change. The bureaucratic inertia or "That's just the way it is" excuse for refusal to be creative has just declined in value. John Lennon was not the only dreamer. The unthinkable is now thinkable. Senator Obama has just proven that. Keep that in mind the next time you are presented with a difficult case or legal challenge for a client.

Of course, as 2008 comes to a close, great and many challenges lie ahead for our profession and our country. We can expect more belt-tightening from clients, and we can expect to see more layoffs by firms from whom we never would have expected them before. What we need to do as a profession, more than ever, is to provide quality and ethical representation and counseling for our clients, and to not only advance the cause of justice, but to do so efficiently.

The Century City Bar Association continues to play an important role in our legal community. We depend on your financial support for our existence, and we urge you to keep that in mind when your annual dues become due soon. Why should you remain (or become) a member of the Century City Bar Association? We plan to promote or present educational or networking events throughout the year that we believe you will find beneficial and relevant to your practice. We have sponsored or co-sponsored a number of quality events, and in the coming year, we will continue our mission to serve the legal profession and the Century City Bar community by promoting professional excellence, education, service, and civic involvement. I am especially proud of our new website and logo design (www.centurycitybar.com), which I think speaks volumes concerning our renewed commitment to be fresh and dynamic in the coming year and years. Please go navigate to the site and you will see what I mean.

Best wishes to you in the holiday season!

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THE NEW FEDERAL RULE OF EVIDENCE 502
WAIVER LIMITATIONS ON THE ATTORNEY-CLIENT
AND WORK PRODUCT PRIVILEGES

*By Steven M. Weinberg, Cowan DeBaets, Abrahams & Sheppard LLP**

On September 19, 2008, new Federal Rule of Evidence 502 was signed into law and became immediately effective. The purpose of new FRE 502 is to create a meaningful way to address inadvertent disclosures of privileged material, an issue that always was vexing under the common law, and which became alarmingly problematic with the recent introduction of federal and state electronic discovery rules.

During deliberations on the bill leading to the new Rule, the Advisory Committee stated that the new Rule was enacted for two primary purposes:

1. It resolves some longstanding disputes in the courts about the effect of certain disclosures of material protected by the attorney client privilege or the work product doctrine—specifically those disputes involving inadvertent disclosure and selective waiver.
2. It responds to the widespread complaint that litigation costs for review and protection of material that is privileged or work product have become prohibitive due to the concern that any disclosure of protected information in the course of discovery (however innocent or minimal) will operate as a subject matter waiver of all protected information. This concern is especially troubling in cases involving electronic discovery. *See, e.g., Rowe Entertainment, Inc. v. William Morris Agency*, 205 F.R.D. 421, 425-26 (S.D.N.Y. 2002) (finding that in a case involving the production of e-mail, the cost of pre-production review for privileged and work product material would cost one defendant \$120,000 and another defendant \$247,000, and that such review would take months). *See also Report to the Judicial Conference Standing Committee on Rules of Practice and Procedure by the Advisory Committee on the Federal Rules of Civil Procedure*, September 2005 at 27 (“The volume of information and the forms in which it is stored make privilege determinations more difficult and privilege review correspondingly more expensive and time-consuming yet less likely to detect all privileged information.”);

Hopson v. City of Baltimore, 232 F.R.D. 228, 244 (D.Md. 2005) (electronic discovery may encompass “millions of documents” and to insist upon “record-by-record preproduction privilege review, on pain of subject matter waiver, would impose upon parties costs of production that bear no proportionality to what is at stake in the litigation”).

“The rule seeks to provide a predictable, uniform set of standards under which parties can determine the consequences of a disclosure of communications or information covered by the attorney-client privilege or work product protection. Parties to litigation need to know, for example, that if they exchange privileged information pursuant to a confidentiality order, the court’s order will be enforceable. For example, if a federal court’s confidentiality order is not enforceable in a state court then the burdensome costs of privilege review and retention are unlikely to be reduced.” Report of the Advisory Committee on Evidence Rules (letter to Hon. David F. Levi, May 15, 2006).

A stimulus for this legislation was the problem created with new Federal Rule of Civil Procedure 26(b)(5)(b), one of the new electronic discovery Federal Rules, which provides for the use of a claw back procedure for inadvertently disclosed privileged information. The procedure is similar to that used in claw back type agreements, which are formal agreements between parties under which production of privileged documents or information is presumed to be inadvertent, the privilege is not waived, and the receiving party must return or destroy the material containing the privileged information until the issue is resolved. A similar type of agreement, the “sneak peak” agreement, allows lawyers to preview each others’ data collection before production and designate those items which they believe are responsive to the discovery requests. The producing party then reviews the much smaller data set for privilege, and produces those documents that are responsive and not privileged from that set. Notwithstanding the imprimatur of agreements of this kind under the amended Federal Rules of Civil procedure, it was not at all clear whether these types of agreements would be binding on third parties

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EXECUTIVE COMPENSATION ISSUES IN FINANCIALLY-TROUBLED COMPANIES

By Brian L. Davidoff and Jeanne C. Wanlass

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Post-petition payments to employees, including executives, are considered “administrative” expenses of the estate and are therefore entitled to be paid before most of the corporation’s unsecured pre-petition debts. 11 U.S.C. Sections 503(b)(1)(A)(i) and 507(a)(2).

After watching executives from bankrupt companies such as Enron and WorldCom receive large retention bonuses and severance payments while regular employees and retirees suffered, however, Congress amended the Bankruptcy Code in 2005 to address some of those abuses. Under the Bankruptcy Abuse Prevention And Consumer Protection Act of 2005 (“BAPCA”), certain payments to insiders are especially scrutinized. An insider cannot receive payments from a debtor which are designed to induce him or her to remain with a debtor after a bankruptcy filing unless the Bankruptcy Court specifically finds that: (1) the payments are essential to retaining that insider because he or she has a bona fide job offer from another business at the same or a greater rate of compensation; (2) his or her services are essential to the survival of the business; and (3) either (i) the amount of the payment is not greater than 10 times the mean payment of a similar kind made to non-management employees during that year or (ii) the amount of the payment is not more than 25% made to the insider for any purpose during the prior year. 11 U.S.C. Section 503(c)(1). Likewise,

severance payments to the debtor’s insiders are also prohibited unless they are part of a program generally available to all full-time employees and the amount of the severance is not greater than 10 times the amount of severance given to non-management employees during the same calendar year. 11 U.S.C. Section 503(c)(2).

Outstanding Payment For Pre-Petition Services

If the company has, prior to the bankruptcy filing, failed to pay wages, salaries or commissions, including vacation, several and sick leave pay, earned by an employee in the 180 days before the bankruptcy is filed, up to \$10,000 of his or her claims for these amounts are entitled to “priority” status. 11 U.S.C. Section 507(a)(4). Priority status allows those creditors to be paid before the company’s general unsecured creditors, but after administrative creditors.

Preferential Payments

A preferential payment is any transfer from the debtor to a creditor in satisfaction of a prior debt made within certain deadlines before the bankruptcy case was filed. 11 U.S.C. Section 547(b). Executives should be aware that payments made to insiders (including officers and directors) which were made by the debtor corporation during the year before the bankruptcy is filed must be reported on the debtor’s bankruptcy filing. This reporting allows a chapter 7 or 11 trustee, or in some situations a committee of the company’s largest unsecured

creditors, to file a lawsuit to have the funds returned to the corporation if appropriate. 11 U.S.C. Section 547(b). While in most situations salaries are defensible, loan repayments and executive bonuses are at risk and require more careful consideration. For example, if an insider causes his or her loan to a debtor corporation to be repaid before its agreed terms, that payment may have to be returned to the debtor’s bankruptcy estate.

In this era in which the actions of officers and directors appear to be subject to greater scrutiny, executives are well-served by paying close attention to these issues.

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OUR MISSION AND WHAT WE DO

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MISSION STATEMENT

The mission of the Century City Bar Association is to enhance the unique quality and strength of the attorneys within Century City and adjoining areas.

The Century City Bar Association strives to provide excellence in continuing education, strengthen the influence and pre-eminence of the members of the Century City legal community through business development, honor excellence in the legal profession and enhance the community through pro bono service.

CENTURY CITY BAR ASSOCIATION SECTIONS

What do these sections do?

Each section has one or more section chairs that sponsor a few programs throughout the year. These programs, depending on the section, may be held during lunchtime or in the evening, and are usually at a restaurant or conference facility in the Century City area. The topics and speakers are chosen by the section chairs, but often the suggestions come from our members. All of our programs offer MCLE credit. Listed below are our sections.

Alternative Dispute Resolution	Bankruptcy & Creditor's Rights	Business Litigation
Business Transactions	Criminal Law	Entertainment Law
Family Law	Labor & Employment	Intellectual Property
Land use and Environmental Law	Real Property	Tort Litigation
Trusts & Estates		Young Lawyers

What else do we do?

We publish a monthly periodical called Century City Lawyer. This publication includes notice of our upcoming section programs, articles from and about our members, and lead articles from experts in their field of law and advertisements directed to the legal profession. We also remind our members about the benefits of membership through the publication of ads and services negotiated for their exclusive use.

We have an Annual Installation Dinner Awards Ceremony where, in addition to installing new officers and recognizing those who contribute to our association, we recognize those in our legal profession who have contributed to our practice during the year or during their lifetime.

We have joint networking programs with other groups and organizations. These quarterly social events have proven to well attended and a useful resource to connect with others in the Century City law and business community.

We have an Annual Swearing In ceremony where we make it easy for new admittees to join the State Bar of California.

We have a constitutional law luncheon in the fall where we bring in experts to speak about current issues.

We are members of the Business and Law Development Council of the Century City Chamber. We are active in the community supporting various charitable organizations. Many of our members participate in these organizations and contribute time and/or money to them.

THE NEW FEDERAL RULE OF EVIDENCE 502
WAIVER LIMITATIONS ON THE ATTORNEY-CLIENT
AND WORK PRODUCT PRIVILEGES

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(the majority position being that they are not), and, even more compelling, whether privileges nonetheless were waived by document reviews covered by such agreements.

Rule 502 standardizes the federal procedure for dealing with waived or inadvertently disclosed information otherwise protected by the attorney-client or work product privileges:

Inadvertent Waiver. Rule 502(b) provides that an inadvertent disclosure “in a federal proceeding or to a federal office or agency” is not a waiver if the holder “took reasonable steps to prevent disclosure” and “promptly took reasonable steps to rectify the error.” The Advisory Committee notes state that the two-prong “reasonable steps” prerequisite is “flexible.” In the context of complex electronic discovery, the Advisory Committee states that a party using “advanced analytical software applications and linguistic tools” for privilege and work product screening (e.g., searching for key words) may be found to have taken such “reasonable steps” to prevent disclosure.

Scope of Waiver. Under Rule 502(a) if a waiver is found as to particular information or communication, it will not apply to undisclosed information or communications relating to the same subject matter unless “fairness” requires a broader waiver extending to related undisclosed information or communications, such as, as the Advisory Committee notes, “in order to prevent a selective and misleading presentation of evidence to the disadvantage of the adversary.”

Party Agreements. Rule 502(e) provides that claw back, sneak peek and similar agreements are binding only as to the parties to these agreements, unless they are part of a federal court order, such as a Rule 26 protective order.

Effect on Other Courts. Under Rule 502 (c), a federal court may order that the privilege is not waived by disclosure connected with the litigation pending before the court, in which case the disclosure is also not a waiver in any other federal or state proceeding. Rule 502(f) provides that FRE 502 applies to state court proceedings, to federal court-annexed and federal court-mandated arbitration proceedings, and in the circumstances set out in the Rule. And notwithstanding Rule 501, this FRE 502 applies even if state law provides the rule of decision.

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father Bud started the ranch about 76 years ago. Bud is now in his 90s, but is still spry and sharp. Bud has written a fascinating book about his life titled *Indian Trails & Grizzly Tales*, which can be found at Amazon.com, as well as a great book of common sense survival skills in the wilderness titled *The Woodsman And His Hatchet*, which all backpackers and wilderness hikers should read and carry with them. Bud visited us at the end of our trip and regaled us with stories from his many trips into The Bob. Mick Cheff is a quiet, salt-of-the-earth guy. He is definitely a chip off the old block, and a great person to be around.

By Ed Swanson

Heaven In Montana

Charity auctions are a lot of fun. You often can find unusual items or events (I still remember two walk-on parts in the Harrison Ford movie *Air Force One* being auctioned at my son's elementary school years ago), and help out the organization at the same time. Last spring, my wife and I attended an auction for the Pasadena Casting Club and, being in the spirit of the occasion, decided to bid on a one-week wilderness trip offered by Cheff Guest Ranch in Montana. I'm not sure what I was thinking at the time: the trip was on horseback, and I did not know how to ride. However, the brochure for the trip was filled with spectacular photos of the Bob Marshall Wilderness, and if I could do the rides at Magic Mountain, how much harder could a horse ride be? In addition, I had never been to Montana, and was anxious to see the "Big Sky" state for the first time. We bid, we won, and when July rolled around we headed to Charlo, Montana for what proved to be one of the most amazing vacations of my life.

I knew nothing about the Bob Marshall Wilderness, where our trip would take place, so I did some advance reading about it. "The Bob" consists of over 1 million acres in northwestern Montana. It is one of the best-preserved mountain ecosystems in the world, and extends for about 60 miles along the Continental Divide. The elevation ranges from 4,000 ft. to over 9,000 ft. above sea level. The Bob also is prime habitat for Grizzly bear, moose, elk, black bear, mountain goat, bighorn sheep, and other large mammals.



Charlo, Montana is the home of the Cheff Guest Ranch, and is about 1,300 hundred miles by road from Los Angeles. The Cheff Ranch is owned and operated by Mick and Karen Cheff. Mick's

We arrived at the Cheff Guest Ranch in the early evening on a Friday, and met the two other guests who would be accompanying us, Monica and Ray from New Jersey. The four of us were asked whether we wanted to spend two days riding the 28 miles in to the first camp at the South Fork, or wanted to do the 8 hour ride in a single day and have an extra day to fish and relax at the camp. We all agreed to do the ride in a single day, which meant getting up at 5:30 the next morning.

After a quick breakfast Saturday morning, we drove to the horse corral, passing both elk and deer on the drive. At the corral I was assigned my horse, Clancy. Mick's choice of horse for each rider reflected careful thought regarding the needs of each. In my case, Clancy was a smart horse that would keep me on the trail without any direction required by me. Of equal importance over the next week, Clancy was as sure-

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Heaven In Montana

By Ed Swanson

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footed as any of the other horses and never faltered during the trip no matter how bad or narrow the trail. Clancy took away a lot of the worries I had as a newbie rider.

The trip itself was exactly as the Cheffs describe it on their website: a once-in-a-lifetime experience. The gear is brought in separately by Mick and some helpers on pack mules, while the guests and a couple helpers ride in at their own pace.

The ride the first day was hard – eight hours of riding in a single day can be pretty exhausting. However, the scenery was so breathtaking as we climbed up and over the mountains that I generally loved the ride, at least



until the last few hours. In the late afternoon we arrived at the first camp, which is located near the South Fork of the Flathead River. The South Fork is a famous fishing location, and the next day I tried my first attempt ever at fly fishing. I managed to catch six fish in a few hours, and if I had been experienced at hooking and reeling in fish, I

would have caught several times that number of fish. (Since I am a believer in the fish-and-release approach to fishing, the number of fish caught merely was a personal challenge.)

On the third day of the trip, we rode about 10 miles to the primary camp. Along the way, we saw moose, elk, deer, and visited a ranger station with an amazing view. The rangers provided us with lemonade and cookies, and gave us a tour of the headquarters and of the nearby wreckage of a small plane that crashed there about 60 or 70 years ago.



When we neared the primary camp, we needed to ford the South Fork River. I was so busy

taking pictures that I did not notice at first that Clancy was wandering down the middle of the river a bit, but we managed to get back to the others without incident. The main camp was along the Holbrook Creek about a half mile or so from The South Fork, and featured wall tents for sleeping, an enormous wall tent for the meals,

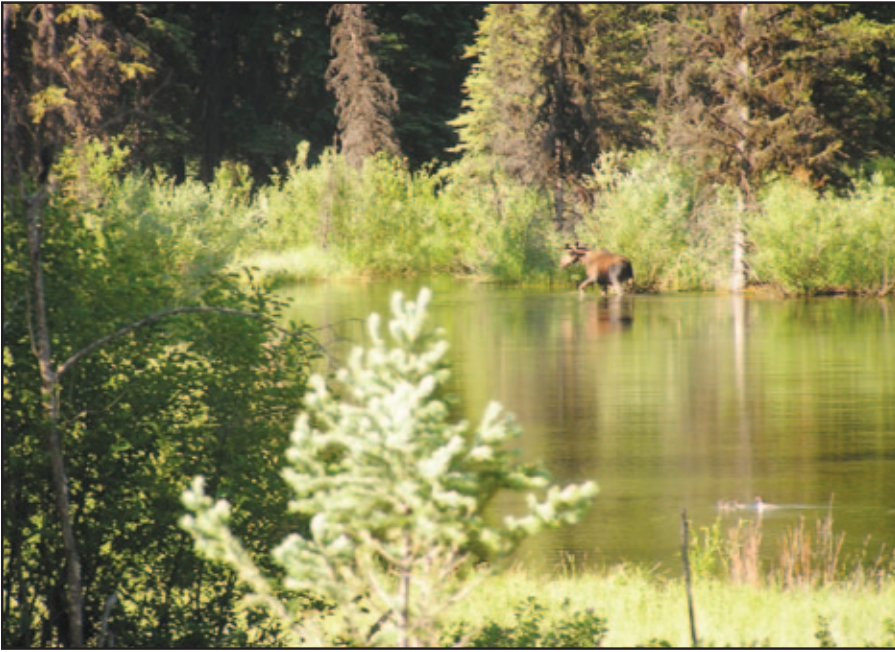
a solar-powered shower, and a corral for the horses. The tents for the guests were near the creek, and its bubbling song was a joy whenever resting in the tent or sitting outside it. The camp was visited while we were there by both elk and deer, and the fishing in the creek was as outstanding as in the South Fork. We remained at the main camp for the rest of the trip, and used it as a base for short or daylong trips to nearby locations. The fishing was surpassed only by the amazing beauty of the Bob Marshall Wilderness.

Karen provided delicious meals that nicely complemented the enormous appetite I had each day. The main camp has an oven that Mick carries in and out each summer on pack mule, so Karen could bake bread and desserts and roast meats. After dinner everyone would sit around and chat or play games for a while, before heading outside to a large campfire by the creek.

Mick, Karen, and their help made sure that every guest was having a good time. This personal attention turned a wonderful trip into one that was absolutely

Heaven In Montana

By Ed Swanson



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heavenly. If you enjoy the outdoors, are not afraid of riding a horse, and want “the memory of a lifetime” (as so well put in a great SF movie), you should consider joining Mick and Karen Cheff for one of their wilderness trips into The Bob Marshall Wilderness. I intend to return there again as soon as possible.

THREE FEMALE BLASTS FROM ROCK’S PAST

The Pacific Amphitheatre each summer provides a series of oldies-but-(hopefully)-goodies performers during the Orange County Fair. Such performances are a crapshoot: if it is a group, you don’t know how many of the performers really were with the group at its zenith (a prior year’s Jefferson Airplane performance included only founder Paul Kantner from the original group and was possibly the worst rock performance I have ever experienced), and regardless of whether it is a group or individual, you do not know how well the person can sing anymore.

Nevertheless, this past August I attended a performance at the Pacific Amphitheatre by Pat Benatar and her husband, guitarist Neil Giraldo, with opening acts by Patty Smyth (formerly with Scandal), and Terri Nunn (of Berlin). This was an “oldie” show at its very best. Smyth’s voice isn’t what it once was, but she still put on a spirited performance, while Terri Nunn and Pat Benatar exhibited the talent that made them rock stars 20 years ago. What better way to spend a warm summer day than taking in a fair, followed by some good ole’ rock under the stars?

RESULTS FROM PRIOR TRIVIA CONTEST

Congratulations to Christopher Yin, Alicia Banzil, Dani Nissani, Scott Evans, Therese Barron, and David J. Masutani, who knew all or most of the trivia questions in the last article. The answers are below:

1. Miss You: The Rolling Stones
2. You’re The One That I Want: John Travolta and Olivia Newton-John
3. Three Times A Lady: The Commodores
4. YMCA: The Village People
5. Night Fever: The Bee Gees
6. Dust In The Wind: Kansas
7. If I Can’t Have You: Yvonne Elliman
8. With A Little Luck: Wings
9. Hot Blooded: Foreigner
10. Take A Chance On Me: Abba

NEW TRIVIA CONTEST: 25 YEARS AGO

1983: Ronald Reagan is President of the US. Margaret Thatcher is Prime Minister of the United Kingdom. Microsoft Word is first released, as is Lotus 1-2-3. McNuggets are introduced by McDonald’s. The following songs were hits during the year. How many of the artists can you identify? Please keep those emails coming, whether or not you know the answers. The email address is, of course, etswanson@att.net.

1. Do You Really Want To Hurt Me
2. All Night Long (All Night)
3. Uptown Girl
4. Little Red Corvette
5. She’s A Beauty
6. Back On The Chain Gang
7. Sexual Healing
8. Rock The Casbah
9. Come On Eileen
10. Flashdance... What A Feeling

Media and the Law

By Debra S. Frank, Esq.

In the world of high profile litigation, lawyers often prepare for any contingency - motions, jury selection, delays, evidentiary hearings, surprise testimony - except one: media coverage. Notable exceptions notwithstanding, most lawyers find themselves unprepared for the press onslaught that can greet a major trial. Include the celebrity factor and a trial can quickly transcend all reasonable proportions; the attendant commentary, which itself is a career opportunity for enterprising attorneys, is enough to vanquish the toughest of litigators. Indeed, the nature of TV and electronic news demands a new class of lawyers, professionals who are as communicative outside the courthouse as they are inside it. Law schools also have a duty to include some form of instruction about media and its longtime influence on these matters, since the next generation of attorneys - call them the YouTube Generation - already gets its information, distilled and thoroughly analyzed, from countless news sites. This newly defined landscape can be a real boon to lawyers, strengthening their ability to answer unexpected questions and further key arguments, while educating the public about the legal system.

There may be a natural inclination among attorneys to avoid the press. This approach, while understandable and hypothetically sound, can actually undermine a client's argument and an attorney's reputation. Silence before the press - an entirely acceptable strategy, though not without its hazards, in the pre-digital age - is an invitation for falsehood, innuendo and negativity among today's arbiters of influence, or consumers of news. An attorney's ability to navigate this landscape, including the intelligence to successfully develop key relationships with reporters, can go a long way toward shaping the public's attitude toward a given lawyer. Take, for instance, the way the press can (and often does) conflate a suspect's alleged crimes with a defense attorney's attempt to answer these allegations. If a lawyer remains silent - if he or she simply ignores the press - the media can just as

easily create their own narrative about this attorney's "intransigence" or "hostility."

Examples of this union, or the begrudgingly yet mutually beneficial partnership that can exist between lawyers and media, abound. Starting with the Nuremburg tribunals - the first internationally broadcast criminal proceedings where the world literally had a stake in the outcome - to any number of considerably less important cases that bookend the evening news, a pattern clearly develops: reporters can influence popular opinion about the accused or the legitimacy of a legal argument. O.J. Simpson certainly

proves this rule - his criminal trial will long be a primer about press relations - which demands further attention. (The Simpson case is, as we already know, a metaphor for divergent views about race, class, justice and the manifold ways journalists interpret these issues. But the way the respective legal teams handled themselves, and the reactions they received from reporters, is also particularly interesting.)

Simpson's defense attorneys remind us that past achievements matter. That is, many of these lawyers - F. Lee Bailey and Alan Dershowitz, specifically - have well-established connections with media, having

previously argued high profile cases and authored books about equally riveting subjects. This ability - the inclination to speak to reporters, while advancing discreet points of law - is at the core of a lawyer's success. (Notice that Mr. Simpson's reputation - and the divided opinions about his guilt or innocence - has little to do with the effectiveness of his lawyers, when presenting themselves to the press. Translation: it pays to court the media.)

The Simpson case is merely one of several examples of the intersection between law and celebrity in Los Angeles. More recent trials - including the child custody hearings involving Britney Spears and her former husband, or the murder trial of actor Robert



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THE BENEFITS OF BECOMING A MEMBER

There has never been a better time than now to be part of the CCBA! Our growing list of benefits and perks offers to our members one of the finest amenities packages around. From special incentives with other organizations such as the LACBA, to discounts at your favorite Century City eateries, the CCBA is better than ever before! Just take a look...

If you just take advantage of half of these benefits you will have already made your money back!



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Laws Regulating Nonprofits Can Be Daunting For Some Attorneys and Philanthropists

By Courtney Waggoner, Esq.

The proliferation of nonprofits is resulting in more oversight and scrutiny by federal, state and local governments.

According to the Urban Institute and the National Center for Charitable Statistics, as of 2006 there were over 2.3 million 501(c)(3) nonprofit organizations in the United States. Further, this number is an increase of over 36% from the data available in 1996. While Internal Revenue Code Section 501(c)(3) provides for federal income tax exemption for organizations organized and operated exclusively for religious, charitable, scientific, educational and other purposes (none of which may inure to the benefit of any private shareholder or individual) many individuals with philanthropic intentions are not aware of the legalities involved with the establishment, maintenance and effective functioning of a nonprofit organization. Nonprofits can be excellent clients as long as you keep in mind their specific legal needs due to their unique 501(c)(3) status.

One of the threshold determinations that a client should make is whether to establish a corporate entity, as opposed to functioning as an unincorporated association. Even though most states, including California, now provide certain statutory protections for unincorporated associations which are similar to those accorded to corporations, there are reasons that incorporating may be advantageous for your client, including the fact that the obligation of a corporation to observe corporate formalities may force your client to put more thought, time and consideration into the operations of the organization (See California Corporations Code Section 18000, et. seq.) However, it should be noted that a nonprofit corporation in California is governed by statutes similar to those concerning for-profit corporations, particularly with relation to corporate compliance. As such, nonprofit corporations must file biennial statements with the California Secretary of State and are required to observe other formalities to guard against the alter

ego theories of liability. Further, in filing the articles of incorporation, one should be aware of the language required by the IRS that is required to appear in the organization's charter.

After clearing the organizational hurdle, the next step in getting a nonprofit off the ground involves the applications for state and federal tax exemption. When dealing with public charities and private foundations (more specifically, those organizations claiming exemption under Internal Revenue Code Section 501(c)(3)), the organization must file IRS Form 1023 with the Internal Revenue Service's Exempt Organization Unit and Form FTB 3500 with the California Franchise Tax Board. As previously mentioned, in order to qualify for 501(c)(3) status, an organization must operate for charitable, religious, educational or other purpose specifically provided for by the Internal Revenue Code. In addition, there are strict restrictions placed upon public charities and private foundations relating to the influencing of legislation and political activities, which could threaten an organization's 501(c)(3) status. Therefore, it is best to have a full understanding of your client's intentions and goals, as some may prove to fit better within the purview of a different nonprofit classification under the Internal Revenue Code (i.e. business leagues (I.R.C. §501(c)(6)) or social welfare organizations (I.R.C. §501(c)(4)).

In California (and in a significant number of other states), public charities and private foundations soliciting funds from the public are required to complete an initial registration and annual renewal registration with the California Office of the Attorney General's Registry of Charitable Trusts. In addition, the California Attorney General retains the jurisdiction to commence actions against charities violating charitable solicitation and other numerous regulations on behalf of the public (See California Government Code Section 12580, et. seq.) As such, it is important that your client has a working knowledge of the statutes governing its fundraising efforts. By understating the limitations and

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Media and the Law

By Debra S. Frank, Esq.

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Blake, which attracted its own share of B-celebrity groupies, or the media speculation about the rape accusations involving Los Angeles Lakers star Kobe Bryant (the alleged incident having occurred in Colorado) – all prove the same point: that Hollywood is both an entertainment capital and a legal world unlike any other, where lawyers need to know the intricacies of this relationship, both for themselves and their clients. Indeed, lawyers need to have the ability to handle crises (of the celebrity kind) when clients – take the case of a temporarily jailed hotel heiress as an example of this phenomenon – come before an aggressive press corps and a public hungry for gossip.

Going before the press is perhaps an attorney's best chance to move popular opinion, while also - and here I must state the obvious - building a reservoir of potential work among people who may need legal representation. Individuals have very partisan attitudes about certain lawyers, at least when viewed through the prism of the modern talk show circuit. In that arena, and it really is a combative forum where critics pounce and questioners rarely have the patience for deliberative answers, a lawyer's job becomes more challenging and essential: he or she must counter attempts by opponents to demonize a client, thus upholding the very principles of justice, and make people think. If a lawyer can accomplish these things, then he or she will quickly develop a name among the broader public.

Developing these skills should be part of a lawyer's career, starting with the legal education he or she receives. Today's law students have incredible facility with interactive media and online communication; they deserve the opportunity to fully prepare themselves for life as both advocates and professionals who can handle the press. Acquiring that training is both a necessity – media are more aggressive than years before – and a benefit: it hones the art of eloquence and thought.

Debra S. Frank (DSFrankLawOffice.com) is a certified family law specialist with offices in Century City, a member of the Los Angeles County Bar Association Family Law Section Executive Committee and its Secretary, editor of its annual Family Law Symposium book, and a mediator for the Los Angeles County Bar Association Family Law section. She regularly serves as a moderator and presenter for family law programs. She just completed three-year terms as a Commissioner for the Family Law Advisory Commission, Board of Legal Specialization and as the Chair of the Financial Issues South subcommittee of the State Bar Family Law Executive Committee. She is a Board Member of the Association of Certified Family Law Specialists (ACFLS) and its Newsletter Editor for the 2008-2009 term. She has authored articles in family law including the chapter "Marital Agreements" in 2008 CEB book California Marital Settlement & Other Family Law Agreements, Third Edition and the chapter "Stock Options and Benefits under Executive Business Plans" in 2008 CEB book Dividing Pensions and other Employee Benefits in California Divorces.

Laws Regulating Nonprofits Can Be Daunting For Some Attorneys and Philanthropists

By Courtney Waggoner, Esq.

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disclosures required in soliciting charitable solicitations, organizations will be able to adopt appropriate plans to maximize their donations while avoiding the common solicitation pitfalls.

Once your client has obtained exempt status with the state and federal governments, and has also registered with the Attorney General, it is ready to start implementing its programs, marketing its mission statement, and furthering its exempt purpose(s). However, it is important to remember that, even though your client has completed the initial legalities surrounding the establishment of their organization, the successful and legally compliant operation of a nonprofit organization is an ongoing task that involves corporate and tax law and the involvement of professionals well versed in nonprofit law such as attorneys and CPAs.

Courtney Waggoner, Esq, is an associate at Seton & Associates, a Beverly Hills –based law firm specializing in the service of nonprofit organizations.

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Annual Criminal Law Dinner

Our Criminal Law Section sponsors an annual event recognizing those lawyers and judges who shine amongst their peers, in the criminal law arena.

Networking Mixers & Functions

with other groups and organizations such as the Century City Chamber of Commerce and Century City Rotary Club. These social events have proven to be well attended and a useful resource to connect with others in the Century City law and business community.

Annual Swearing In Ceremony For New Lawyers

As a free service to the growing legal community we host a free swearing in ceremony for both the state and federal oaths.

The CCBA offers firm memberships for all attorneys in Century City/Westside law offices at a substantial savings. Firm membership rates apply to an individual office, a regional office of a larger firm or the corporate law department of a corporation. However, all attorneys in your Century City/Westside office must be included. Upon receipt of this application, we will forward a form for you to provide the necessary information on all attorneys in your office.

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