

No. S232946

IN THE SUPREME COURT OF CALIFORNIA

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP,

Plaintiff and Respondent,

v.

J-M MANUFACTURING CO., INC.,

Defendant and Appellant.

**SUPREME COURT
FILED**

JUL 11 2016

Frank A. McGuire Clerk

Deputy

After a Decision of the Court of Appeal of the State of California,
Second Appellate District, Division Four, Case No. B256314

The Superior Court of Los Angeles County, Case No. YC067332
The Honorable Stuart M. Rice, Presiding

**JOINT MOTION FOR JUDICIAL NOTICE; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT THEREOF;
DECLARATION OF KEVIN S. ROSEN**

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Attorneys for Plaintiff and Respondent
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Richter & Hampton LLP

JOINT MOTION FOR JUDICIAL NOTICE

Sheppard Mullin filed a motion for judicial notice on June 27, 2016 in which it requested that this Court take judicial notice of certain documents of which the Court of Appeal had taken judicial notice pursuant to Sheppard Mullin's request. Because the parties agree that this Court should have before it all of the documents judicially noticed by the Court of Appeal, the parties file this joint motion, which requests that this Court also take judicial notice of those documents of which the Court of Appeal had taken judicial notice pursuant to J-M's request.

Accordingly, pursuant to Evidence Code section 452 and rule 8.520(g) of the California Rules of Court, Sheppard Mullin and J-M jointly move and respectfully request that this Court take judicial notice of the following documents attached as Exhibits 1 through 4 to the concurrently filed Declaration of Kevin S. Rosen (the "Joint MJN Declaration") in addition to the documents identified in Sheppard Mullin's motion for judicial notice filed on June 27, 2016:

1. The Declaration of K. Luan Tran in Support of Defendant's Petition to Vacate Arbitration Award (the "Tran Declaration"), filed in the trial court on February 24, 2014 (attached as Exhibit 1 to the Joint MJN Declaration);

2. Exhibit I to the Tran Declaration: Counter-Expert Report of Professor Geoffrey C. Hazard, Jr., submitted to the to the arbitration panel in *Sheppard, Mullin, Richter & Hampton, LLP v. J-M Manufacturing Company, Inc.*, No. 1220045609 (the "Arbitration Panel") on October 25, 2013 (attached as Exhibit 2 to the Joint MJN Declaration);

3. Exhibit J to the Tran Declaration: Supplemental Declaration of Camilla Eng in Support of J-M Manufacturing Company's Reply Arbitration

Brief submitted to the Arbitration Panel on October 25, 2013 (attached as Exhibit 3 to the Joint MJN Declaration);

4. Exhibit K to the Tran Declaration: Supplemental Declaration of K. Luan Tran In Support of J-M Manufacturing Company, Inc.'s Reply Arbitration Brief submitted to the Arbitration Panel on October 25, 2013 (attached as Exhibit 4 to the Joint MJN Declaration).

The parties agree that foregoing documents, in addition to the documents identified in Sheppard Mullin's June 27, 2016 motion for judicial notice, are appropriate subjects of judicial notice and comply with the criteria for judicial notice under the California Rules of Court:

1. These documents are relevant to the appeal for the purpose of giving this Court a complete accounting of the facts before the Arbitration Panel and the Court of Appeal. (See Cal. Rules of Court, rule 8.252 (a)(2)(A).)

2. Judicial notice of these documents is proper because each is a record filed in the trial court. (Evid. Code, § 452, subd. (d) [judicial notice may be taken of "[r]ecords of (1) any court of this state"].) These documents were also filed in the Court of Appeal, which took judicial notice of these documents. (See May 1, 2015 Order.)

3. These documents are an expert report and supplemental declarations that J-M filed with the Arbitration Panel that correspond to expert reports and supplement declarations that Sheppard Mullin filed with the Arbitration Panel (and which Sheppard Mullin asked this Court to take judicial notice of on June 27, 2016).

4. The parties agree that this Court should have before it all of the documents that the Court of Appeal judicially noticed. Accordingly, J-M does not oppose Sheppard Mullin's June 27, 2016 motion for judicial notice, and


Sheppard Mullin does not oppose this Court taking judicial notice of the documents submitted with this joint motion.

5. None of the documents submitted with this joint motion relates to proceedings occurring after the judgment that is the subject of this appeal. (Cal. Rules of Court, rule 8.252(a)(2)(D).)

DATED: June ~~28~~²⁹, 2016

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

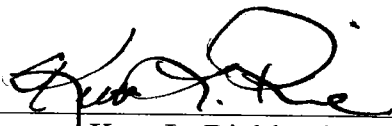
By: 
Kevin S. Rosen

Attorneys for Plaintiff and Respondent
Sheppard, Mullin, Richter & Hampton LLP

DATED: June ~~28~~²⁸, 2016

Respectfully submitted,

GREINES, MARTIN, STEIN &
RICHLAND LLP

By: 
Kent L. Richland

Attorneys for Defendant and Appellant
J-M Manufacturing Company, Inc.,
dba JM Eagle

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Court of Appeal took judicial notice of two sets of documents submitted to the Arbitration Panel, one submitted by Sheppard Mullin and the other by J-M. (See May 1, 2015 Order.) Sheppard Mullin filed a motion for judicial notice on June 27, 2016 in which it requested that this Court take judicial notice of the same documents it asked the Court of Appeal to judicially notice. Because the parties agree that this Court should have before it all of the documents judicially noticed by the Court of Appeal, so as to ensure that the record related to proceedings before the Arbitration Panel and the Court of Appeal is complete, the parties have agreed to file this joint motion, which requests that this Court take judicial notice of the remainder of the documents judicially noticed by the Court of Appeal. J-M does not oppose Sheppard Mullin's June 27, 2016 motion for judicial notice, and Sheppard Mullin does not oppose this Court taking judicial notice of the documents submitted with this joint motion.

This joint motion seeks judicial notice of documents that J-M filed in the trial court; specifically, the February 24, 2014 Declaration of K. Luan Tran in Support of Defendant's Petition to Vacate Arbitration Award, which was accompanied by an expert report and two supplemental declarations that J-M filed with the Arbitration Panel. These materials—which the Court of Appeal judicially noticed—satisfy the requirements for judicial notice under the California Rules of Court, rules 8.252(a) and 8.520(g), because they are relevant to this proceeding; they are proper subjects of judicial notice under Evidence Code section 452; and they do not relate to proceedings occurring after the judgment that is the subject matter of this proceeding.

The parties therefore jointly move and respectfully request that this

Court take judicial notice of Exhibits 1 through 4 to the Declaration of Kevin S. Rosen.

II. ARGUMENT

The materials of which the parties seek judicial notice meet all of the applicable requirements under the California Rules of Court:

First, they are relevant for the purpose of giving this Court a complete accounting of the facts before the Arbitration Panel and before the Court of Appeal. (See Cal. Rules of Court, rule 8.252(a)(2)(A).)

Because the attached materials were before the Court of Appeal when it issued its ruling, the parties request that this Court take judicial notice of the same material to ensure that this Court considers all material before the Court of Appeal. (See *Ste. Marie v. Riverside County Regional Park & Open-Space District* (2009) 46 Cal.4th 282, 291, fn. 6 [“The Court of Appeal granted the District’s first request for judicial notice Plaintiff recently filed a request for judicial notice of this same material in order to ensure this court considers it. We grant this request.”].)

Second, judicial notice of these documents is proper because each is a record filed in the trial court. (Evid. Code, § 452, subd. (d) [judicial notice may be taken of “[r]ecords of (1) any court of this state”].)

Finally, none of the materials to be noticed relates to proceedings that have occurred after the orders and judgments that are the subject of this appeal. (See Cal. Rules of Court, rule 8.252(a)(2)(C)). The earliest order at issue here is the Arbitration Panel’s January 30, 2014 award, but the materials to be noticed do not relate to any proceedings that took place after that date.

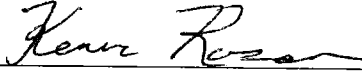
III. CONCLUSION

For these reasons, the parties respectfully request that the Court grant this Joint Motion for Judicial Notice.

DATED: June 29, 2016

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

By: 
Kevin S. Rosen

Attorneys for Plaintiff and Respondent
Sheppard, Mullin, Richter & Hampton LLP

DATED: June 28, 2016

Respectfully submitted,

GREINES, MARTIN, STEIN &
RICHLAND LLP

By: 
Kent L. Richland

Attorneys for Defendant and Appellant
J-M Manufacturing Company, Inc.,
dba JM Eagle

DECLARATION OF KEVIN S. ROSEN

I, Kevin S. Rosen declare as follows:

1. I am an attorney duly licensed to practice law in the State of California and am a partner at the law firm of Gibson, Dunn & Crutcher LLP, attorneys for Plaintiff-Respondent Sheppard, Mullin, Richter & Hampton LLP. I have personal knowledge of the facts stated herein, and if called as a witness, I could and would testify competently thereto. I make this declaration in support of the parties' Joint Motion for Judicial Notice.

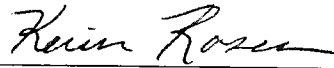
2. Attached hereto as Exhibit 1 is a true and correct copy of The Declaration of K. Luan Tran in Support of Defendant's Petition to Vacate Arbitration Award (the "Tran Declaration"), filed in the trial court on February 24, 2014.

3. Attached hereto as Exhibit 2 is a true and correct copy of Exhibit I to the Tran Declaration (Counter-Expert Report of Professor Geoffrey C. Hazard, Jr., submitted to the to the arbitration panel in *Sheppard, Mullin, Richter & Hampton, LLP v. J-M Manufacturing Company, Inc.*, No. 1220045609 (the "Arbitration Panel") on October 25, 2013).

4. Attached hereto as Exhibit 3 is a true and correct copy of Exhibit J to the Tran Declaration (Supplemental Declaration of Camilla Eng in Support of J-M Manufacturing Company's Reply Arbitration Brief submitted to the Arbitration Panel on October 25, 2013).

5. Attached hereto as Exhibit 4 is a true and correct copy of Exhibit K to the Tran Declaration (Supplemental Declaration of K. Luan Tran In Support of J-M Manufacturing Company, Inc.'s Reply Arbitration Brief submitted to the Arbitration Panel on October 25, 2013);

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on this 29th day of June, 2016.



Kevin S. Rosen

EXHIBIT 1

1 LEE TRAN & LIANG LLP
2 K. Luan Tran (Bar No. 193808)
3 601 S. Figueroa Street, Suite 3900
4 Los Angeles, CA 90017
5 Telephone: 213-612-3737
6 Facsimile: 213-612-3773

7 Attorneys for Defendant and Cross-Complainant
8 J-M MANUFACTURING COMPANY, INC.,
9 D/B/A/ JM EAGLE

COPY

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

FEB 24 2014

Sheri R. Carter, Executive Officer/Clerk
By M. Loretto-Pilarca, Deputy

8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES
10 SOUTHWEST DISTRICT - TORRANCE COURTHOUSE

12 SHEPPARD, MULLIN, RICHTER &
13 HAMPTON, LLP,
14 Plaintiff and Cross-Defendant,

15 v.

16 J-M MANUFACTURING COMPANY, INC.,
17 D/B/A/ JM EAGLE,
18 Defendant and
19 Cross-Complainant.

Case No. YC067332

Judge: Hon. Stuart M. Rice
Department: B

**DECLARATION OF K. LUAN TRAN IN
SUPPORT OF DEFENDANT'S PETITION
TO VACATE ARBITRATION AWARD**

Hearing:
Date: March 18, 2014
Time: 8:30 a.m.

DECLARATION OF K. LUAN TRAN

I, K. Luan Tran, declare as follows:

1. I am a member of the State Bar of California, and a partner of Lee Tran & Liang LLP, counsel for Respondent and Cross-Complainant J-M Manufacturing Company, Inc. ("JM").

I have been JM's lead counsel in previous proceedings in this matter before this Court and the Court of Appeal, and in the underlying arbitration before JAMS ("Arbitration"). I state the facts in this declaration based on the best of my own personal knowledge and/or documents I reviewed and, if called upon to do so, could and would testify competently as to the following matters.

2. Attached as Exhibit A is a true and correct copy of the Declaration of K. Luan Tran In Support of JM's Opening Arbitration Brief (and exhibits) filed in the Arbitration.

3. Attached as Exhibit B is a true and correct copy of the Declaration of Camilla Eng In Support of JM's Opening Arbitration Brief (and exhibits) filed in the Arbitration.

4. Attached as Exhibit C is a true and correct copy of Plaintiff and Cross-Defendant Sheppard, Mullin, Richter & Hampton, LLP's ("Sheppard") Demand for Arbitration (with exhibits) filed in the Arbitration.

5. Attached as Exhibit D is a true and correct copy of JM's Petition for Writ of Mandate filed with the Court of Appeal.

6. Attached as Exhibit E is a true and correct copy of the Court of Appeal's Order Denying JM's Petition for Writ of Mandate.

7. Attached as Exhibit F is a true and correct copy of JM's Response and Counterclaims filed in the Arbitration.

8. Attached as Exhibit G is a true and correct copy of JM's Opening Arbitration Brief filed in the Arbitration.

9. Attached as Exhibit H is a true and correct copy of JM's Reply Arbitration Brief filed in the Arbitration.

10. Attached as Exhibit I is a true and correct copy of the Counter Expert Report of Professor Geoffrey Hazard filed in the Arbitration.

1 11. Attached as Exhibit J is a true and correct copy of the Supplemental Declaration of
2 Camilla Eng In Support of JM's Reply Arbitration Brief filed in the Arbitration.

3 12. Attached as Exhibit K is a true and correct copy of the Supplemental Declaration of
4 K. Luan Tran In Support of JM's Reply Arbitration Brief filed in the Arbitration.

5 13. Attached as Exhibit L is a true and correct copy of the Further Supplemental
6 Declaration of Camilla Eng submitted in the Arbitration. The arbitrators denied the permission to
7 file this document.

8 14. The arbitrators held a final hearing on December 9, 2013. Pursuant to the parties'
9 agreement, there was no live witness examination or cross-examinations at the final hearing, and
10 the arbitrators only entertained oral arguments by the parties' counsel. Attached as Exhibit M is a
11 true and correct copy of JM's Power Point presentation at the final hearing.

12 15. Attached as Exhibit N is a true and correct copy of the Final Award issued in the
13 Arbitration.

14 16. Attached as Exhibit O is a true and correct copy of the Stipulation Regarding
15 Accounting filed in the Arbitration.

16 I declare the above to be true and correct under penalty of perjury under California laws.

17 Executed in Los Angeles, California on February 24, 2014.

18 

19 _____
K. Luan Tran

EXHIBIT 2

EXHIBIT I

IN THE MATTER OF AN ARBITRATION - JAMS

SHEPPARD, MULLIN, RICHTER &
HAMPTON, LLP, a limited liability
partnership,

Complainant.

v.

J-M MANUFACTURING COMPANY,
INC., a Delaware Corporation, d/b/a JM
Eagle; and

DOES 1 through 20, inclusive,

Respondent.

J-M MANUFACTURING COMPANY,
INC., a Delaware Corporation, d/b/a JM
Eagle,

Cross-Complainant,

v.

SHEPPARD, MULLIN, RICHTER &
HAMPTON, LLP, a limited liability
partnership, and DOES 21 through 40,
inclusive,

Cross-Respondent.

Reference No. 1220045609

Hon. Gary L. Taylor (ret.)
Hon. Charles S. Vogel (ret.)
James W. Colbert, III, Esq.

COUNTER-EXPERT REPORT OF
PROFESSOR GEOFFREY C.
HAZARD, JR.

COUNTER-EXPERT REPORT OF PROFESSOR GEOFFREY C. HAZARD, JR.

A. Background

I am Distinguished Professor of Law *Emeritus*, Hastings College of the Law, University of California; Sterling Professor of Law *Emeritus*, Yale University; and Director (executive director) *Emeritus* of the American Law Institute. I was Reporter for the American Bar Association Model Rules of Professional Conduct; a member of the ABA Ethics2000 Commission which did a comprehensive review of the Model Rules; and supervisor and direct participant in the formulation of the Restatement (Third) of the Law Governing Lawyers.

I have been a member of the California bar since 1960, and previously was a member of the bars of Connecticut, Oregon and Pennsylvania. For nearly 50 years I have studied, done research, taught, and practiced in the field of professional ethics. I maintain an active consulting practice in matters of professional ethics and civil litigation. I am special counsel to several law firms in matters of ethics and Senior Advisor to the ABA Section of Business Law in matters of legal ethics.

Among my publications in the field of professional ethics include the following books or treatises: *Ethics in the Practice of Law* (1978); *The Legal Profession: Responsibility and Regulation* (3d ed. 1994; editor, with Deborah Rhode); *The Law of Lawyering: A Handbook on the Model Rules of Professional Conduct* (3d ed. 2000, with annual supplements, with William Hodes and Peter Jarvis); *The Law and Ethics of Lawyering* (4th ed. 2005; with Susan Koniak, Roger Cramton and George Cohen); *Professional Responsibility and Regulation* (Foundation Press, 2002) (with Deborah Rhode); *Legal Ethics: A Comparative Study* (Stan. U. Press.2004) (with Angelo Dondi). A copy of my resume is attached.

B. Scope of Engagement

I have been engaged by Lee Tran Liang & Wang LLP ("LTLW"), counsel for J-M Manufacturing Company, Inc. ("J-M"), to provide an opinion in this matter in response to the Expert Report by Professor Lawrence Marshall. I am being compensated for my work. Prior to my engagement on or about October 1, 2013, I have never been engaged by LTLW or J-M.

As the basis of the opinion, I have relied on the matters set forth in Sheppard, Mullin's Opening Brief With Related Declarations and in J-M's Opening Arbitration Brief. In particular I have relied on the Declaration of Mr. Ronald Ryland, General Counsel of Sheppard, Mullin, Richter & Hampton LLP ("Sheppard Mullin") and the Professor Marshall's Report.

C. Summary of Opinion

In summary, in my opinion the conduct of Sheppard Mullin was an egregious violation of its duties of loyalty to and communication with J-M, and that there is no basis for the contention that it acted in "good faith."

(I) Sheppard Mullin, in discussion with J-M as a prospective client in February 2010, about engagement in the *Qui Tam* case and in connection with its engagement letter, failed to disclose critically important facts about its relationship with South Tahoe Public Utility District ("South Tahoe"):

- (i) That South Tahoe, which was a claimant on the opposing side of the litigation, was a long-time and current client of Sheppard Mullin;
- (ii) That South Tahoe, as was known to Sheppard Mullin's lawyer handling the South Tahoe matters, was not a "sophisticated client";
- (iii) That South Tahoe had provided only a general "advance waiver" some years earlier, without independent legal advice;

(iv) And hence that there was a real risk that, if Sheppard Mullin undertook representation of J-M, South Tahoe would seek disqualification on account of Sheppard Mullin's breach of the duty of loyalty under California Rule of Professional Conduct 3-310. Such a disqualification obviously would be seriously damaging to J-M.

(2) Sheppard Mullin failed to disclose the South Tahoe situation described above after J-M became a client in March 2010, when the engagement letter was signed.

(3) As part of the engagement letter Sheppard Mullin affirmatively deceived J-M by specifying an advance waiver of the conflict with South Tahoe, instead of a waiver of a present conflict. The advance waiver necessarily implied that there was no present conflict, which Sheppard Mullin knew to be false.

(4) Whether Sheppard Mullin believed that the advance waiver signed by South Tahoe was valid is irrelevant with respect to the firm's obligation to disclose South Tahoe to J-M. Sheppard Mullin had an independent duty to disclose all material information to J-M. The fact that Sheppard Mullin was concurrently representing an adverse party in the *Qui Tam* action was clearly material to the firm's representation of J-M.

(5) Sheppard Mullin kept the South Tahoe situation secret for over a year, until South Tahoe raised objection about the conflict. Even after South Tahoe raised the conflict issue, Sheppard Mullin kept this issue secret from J-M for about 50 days and only informed J-M about it when South Tahoe was about to file its Motion to Disqualify.

(6) In response to the Motion Sheppard Mullin gave J-M optimistic advice about the seriousness of the situation. In connection with Judge Wu's bifurcation proposal, Sheppard Mullin gave J-M contradictory advice about how to respond.

(7) All the foregoing maneuvers were conducted under the direction of direction of Sheppard Mullin's General Counsel, Mr. Ronald Ryland. Mr. Ryland's background and experience made him an expert in matters of legal ethics, according to which he necessarily knew or should have known about Sheppard Mullin's obligation to disclose South Tahoe to J-M prior to the engagement. He should have also realized the risks to J-M presented by the South Tahoe situation. Coupled with Sheppard Mullin's concealment of the conflict to its own partner in charge of the South Tahoe account, as well as the firm's subsequent concealment of the conflict when this issue was first brought up by South Tahoe, the Sheppard Mullin conduct must be considered deliberate as well as sustained deception.

(8) Accordingly, in my opinion forfeiture of fees is fully warranted, as provided in decisional law and the Restatement (Third) of the Law Governing Lawyers. Established case law, recently confirmed by the California and federal appellate courts (including the Ninth Circuit), made clear that a representation tainted by conflict of interest constitutes a serious breach of an attorney's duty of loyalty and thus, the attorney was not allowed to retain fees, even on a *quantum meruit* basis.

(9) The supposed remedy of allowing Sheppard Mullins to retain fees on a *quantum meruit* basis is further inappropriate, given the deliberate and sustained deception of J-M.

(10) Where the remedy sought is forfeiture of fees, as opposed to compensatory damages, the client is not required to show actual damages. Even so, J-M suffered actual damage in having the *Qui Tam* litigation derailed and having to find yet another successor law firm to handle its defense, and bring that counsel "up to speed."

(10) Sheppard Mullin's deception may also subject the firm's to punitive damages.

D. Discussion

Sheppard Mullin Breach Its Duty of Loyalty and Disclosure to J-M By Repeatedly Failing to Disclose the South Tahoe Representation

For some years prior to 2010 Sheppard Mullin represented South Tahoe Public Utility District ("South Tahoe") in matters of employment law. There had been no indication by either Sheppard Mullin or South Tahoe that the client-lawyer relationship had terminated. In fact, Sheppard Mullin continue to represent South Tahoe in general employment matters shortly after it was retained by J-M. In the matter involved in this Arbitration Sheppard Mullin proceeded on the basis that South Tahoe was a current client.

South Tahoe had signed an "advance conflict waiver" at the time Sheppard Mullin first represented that entity. South Tahoe was a small public corporation with modest legal needs; it had no internal legal department although it had access to other outside counsel. There was no indication that South Tahoe consulted outside counsel regarding the waiver; the waiver was part of an engagement letter signed by one of its non-lawyer officers.

J-M was sued in a *Qui Tam* action beginning in 2006. The lawsuit posed serious ("bet the ranch") financial risk for J-M. The defense had been handled by another firm until January 2010, when that firm was discharged after making a serious blunder concerning privileged documents. J-M interviewed several firms in seeking replacement counsel, focusing on Sheppard Mullin in February 2010. Intensive negotiations concerning the engagement were conducted between Sheppard Mullin and J-M's General Counsel, Camilla Eng.

Sheppard Mullin, aware that there were many claimants in the *Qui Tam* case, had done a conflicts check in connection with its prospective representation of J-M. The check showed that South Tahoe, one of the claimants, was a client, hence

presenting a conflict of interest problem. The conflicts problem was referred to Mr. Ryland, Sheppard Mullin's General Counsel. Mr. Ryland determined that the representation of J-M would be proper by reason of South Tahoe's advance waiver, assuming that a proper waiver was also obtained from J-M.

Sheppard Mullin never disclosed the South Tahoe representation to J-M, and also concealed the conflict check result to its own partner in charge of South Tahoe.

An advance waiver was included in the engagement letter between Sheppard Mullin and J-M. However, no waiver of present conflict was included in the engagement, even though a present conflict with South Tahoe would arise immediately upon Sheppard Mullin's entering the engagement with J-M. Presenting the problem to J-M as one of advance waiver was deceptive, implying that some unknown conflict problem might lie in the future, whereas in fact the conflict posed by South Tahoe was then and there.

In the engagement negotiations with Ms. Eng there was no disclosure about the South Tahoe situation. Any conflict waiver, present or future, requires "adequate disclosure" as the basis of a client's consent. The lack of disclosure compounded the deception that was involved in posing the South Tahoe situation as a potential future conflict rather than as a pending present conflict.

Here, even if the advance waiver is somehow considered to have covered the present conflict that was actually involved, in my opinion there was a serious breach of Sheppard Mullin's disclosure obligations concerning the conflict. The supposedly future conflict with South Tahoe was not hypothetical and conjectural: It was real and immediate. The fact that Sheppard Mullin was representing an adverse party to J-M, even an unrelated matter, is clearly a material fact that should have been disclosed to J-M because Sheppard Mullin's concurrent representation of adverse parties put it in a conflict of interest situation. *Freemont Indem. Co. v. Freemont General Corp.*, 143 Cal.App.4th 50, 64 (2006) ("An attorney's dual representation of parties in [the] circumstances [covered by Rule 3-310] presents a conflict of interest even if the two

matters are completely unrelated and there is no risk that confidences obtained in one matter could be used in the other”).

Whether Sheppard Mullin believed at the time that the advance waiver signed by South Tahoe was effective, the firm still had an independent and obvious obligation to inform its prospective client J-M that a conflict check had revealed that the firm was concurrently representing an adverse party in the *Qui Tam* action. As noted, this is clearly a material fact. Therefore, Sheppard Mullin’s failure, during the engagement negotiations in February 2010, to apprise J-M of the risks involved in the conflict was serious breach of Sheppard Mullins’ obligations of disclosure under California RPC 3-310 to J-M as a potential client and as a client thereafter. *See* California RPC 3-310 (A) (1) and (2) (defining “Informed Written Consent” as disclosing in writing “the relevant circumstances” and “reasonably foreseeable adverse consequences” to the client).

Moreover, the South Tahoe advance waiver was at risk of being ineffective, as explained above, and the J-M waiver was at risk of being technically ineffective (because framed as an advance waiver) and inoperative as a present waiver (because of inadequate disclosure).

In my opinion it was reasonably foreseeable that South Tahoe could move to disqualify Sheppard Mullins for conflict of interest, contending that its advance waiver was ineffective. South Tahoe threatened to do so in a year later, in March 2011, and filed such a motion a month later. In my opinion something like this chain of events was a risk reasonably foreseeable in February 2010 when Sheppard Mullin was negotiating its engagement with J-M. For that reason the firm had an obligation to disclose the South Tahoe situation to J-M. It had the same obligation when South Tahoe raised the issue of conflict in early 2011. Sheppard Mullins had not advised J-M about the conflict during the months following the engagement in March 2010, nor did it advise J-M when South Tahoe raised the conflict with Sheppard Mullin in March 2011. Disclosure was made only shortly

before South Tahoe's Motion to Disqualify was filed. In ensuing correspondence with J-M, Sheppard Mullin down-played the Motion as a litigation tactic and predicted that it would be defeated.

If the J-M waiver was ineffective, J-M directly suffered from a conflict of interest. In my opinion the J-M waiver could have been held ineffective because the conflict was a present one, not a future conflict, and because no disclosure had been made as a basis for J-M's informed consent.

I concur with Professor Marshall's opinion that a client could give a valid advance waiver if one had been properly solicited. But, as explained above, the situation was a present conflict. Even if the situation were considered as a prospective conflict, the prospect was immediately imminent and fully known to Sheppard Mullin. On either interpretation, disclosure to J-M of the South Tahoe situation was required for "informed consent." I also note that Sheppard Mullin did not even disclose this situation to its own partner in charge of the South Tahoe account.¹

One can ponder why Sheppard Mullin did not make these disclosures. An objective observer would note that J-M might well decline to engage Sheppard Mullin if it was apprised of the conflict situation. Ms. Eng, J-M's General Counsel, has said so, and that its general policy was against waivers. Also, J-M had just come off the

¹ Professor Marshall devotes a good portion of his report to challenge Judge Wu's finding that the advance waiver signed by South Tahoe was ineffective. Although I believe that Judge Wu was correct (see below), the effectiveness of the South Tahoe waiver is not relevant in determining whether Sheppard Mullin acted appropriately vis-à-vis J-M. Indeed, Sheppard Mullin still had an independent duty to disclose to J-M that the firm's conflict check had revealed that South Tahoe, an adverse party in the *qui tam* action, was a concurrent client of the firm.

Regardless, it is my opinion that the South Tahoe waiver is invalid. With respect, I do not believe, as Professor Marshall suggests, that California law has accepted that advance waivers are effective when open-ended in duration and scope, signed an unsophisticated client who is given no legal independent advice about its potential consequences. Rather, there were significant California authorities that South Tahoe could cite that would support its Motion for Disqualification. These include: *Fremont Indem. Co. v. Fremont Gene Corp.*, 143 Cal App.4th (2006), and *Sharp v. Next Entertainment, Inc.*, 163 Cal.App.4th 10 (2008), specifically on waivers, and *Flatt v. Superior Court*, 9 Cal.4th 275, 289 (1994), concerning the basic obligation of loyalty. These authorities all post-date 1989, the date on which Professor Marshall states that California had accepted the concept of advance waivers.

very unhappy experience of terminating the firm that previously had been handling the *Qui Tam* litigation.

Sheppard Mullin's conduct after South Tahoe raised the conflict issue and filed the Motion to Disqualify is equally problematic. In response to South Tahoe's raising the issue and then filing the Motion to Disqualify, Sheppard Mullin tried all kinds of maneuvers:

- Failing to disclose to J-M for nearly 50 days that South Tahoe had raised the conflict issue and threatened disqualification;
- Failing to disclose to J-M that Sheppard Mullin had voluntarily erected an ethical wall in response to South Tahoe's concerns;
- Suggesting that it drop South Tahoe as a client, as it had attempted in *American Airlines v. Sheppard Mullin*, 96 Cal.App.4th 1017 (2002) ("like a hot potato");
- Downplaying the Motion as a litigation tactic and predicting that it would be defeated;
- Proposing continued concurrent representation of South Tahoe (with 40 free hours of legal services) without disclosing the proposal to J-M;
- Engaging legal malpractice expert counsel to represent the firm without advising J-M to seek its own independent counsel; and
- After engaging malpractice counsel, Sheppard Mullin ignored its earlier advice and gave J-M contradictory advice about bifurcating the underlying litigation.

In sum, in my opinion it is a legitimate inference that the South Tahoe situation was not disclosed because it might have jeopardized the engagement with J-M. On that basis, the conduct of the firm was not simply in good faith reliance on the South Tahoe advance waiver. On the contrary, it was a studied and sustained effort to conceal from its client a conflict situation that obviously posed serious risk to the proper and loyal representation of J-M.

All this was done under the director of Mr. Ryland, an expert in legal ethics. It was not a situation sometimes encountered, where the lawyers misunderstand the ethics rules, or where there is a breakdown in internal communication in the firm. The conflicts problem posed by South Tahoe was referred to Mr. Ryland and the responsive Sheppard Mullin strategy performed under his direction.

Sheppard Mullin's Conduct Exposes The Firm To Fee Forfeiture and Punitive Damages

In my opinion, Sheppard Mullin engaged in a clear and serious breach of its duty of loyalty and disclosure to J-M mandating the complete forfeiture of fees under established jurisprudence and the Restatement (Third) of the Law Governing Lawyers §37.

One of the leading cases in this area is *Silbiger v. Prudence Bonds Corporation*, 180 F.2d 917, 920-921 (2nd Cir. 1950), in which Judge Learned Hand reaffirmed the following long-established rule:

Certainly by the beginning of the Seventeenth Century it had become a common-place that an attorney must not represent opposed interests; and the usual consequence has been that he is debarred from receiving any fee from either, no matter how successful his labors. Nor will the court hear him urge, or let him prove, that in fact the conflict of his loyalties has had no influence upon his conduct; the prohibition is absolute and the consequence is a forfeiture of all pay.

California courts have consistently confirmed that the representation of clients in violation of conflict of interest rules is in itself a "serious" or "egregious" ethical breach warranting complete fee forfeiture, and that the offending attorney is not entitled to *quantum meruit* payment. In *Huskinson & Brown, LLP v. Wolf*, 32 Cal.4th 453, 463 (2004), the California Supreme Court acknowledged "cases in which [California] courts have disallowed *quantum meruit* recovery to attorneys who violated one of the Rules of Professional Conduct. Those cases [...] involved violations of a rule that proscribed the very conduct for which compensation was

sought, i.e., the rule prohibiting attorneys from engaging in conflicting representation or accepting professional employment adverse to the interests of a client or former client without the written consent of both parties.” Recently, in *Fair v. Bakhtiari*, 195 Cal.App.4th 1135, 1161 (2011), the Court confirmed that under California decisional law, the “violation of a rule that constitutes a serious breach of fiduciary duty, such as a conflict of interest that goes to the heart of the attorney-client relationship, warrants denial of *quantum meruit* recovery.” See also *Rodriguez v. Disner*, 688 F.3d 645 (9th Cir. 2012) (“The representation of clients with conflicting interests and without informed consent is a particularly egregious ethical violation that may be a proper basis for complete denial of fees”).

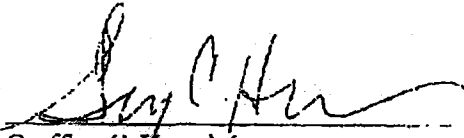
I respectfully disagree with Professor Marshall that fee forfeiture is not warranted here because J-M did not suffer actual damages from Sheppard Mullin’s ethical breaches. Where, as here, the requested relief is fee forfeiture (as opposed to compensatory damages), proof of actual damages is not required. In *Fair*, 195 Cal.App. 4th at 1153, the Court explained as follows:

“An attorney may violate the statute and breach his or her fiduciary duties to the client without causing the client damages. It makes sense to require proof of damages where the client seeks compensatory damages as a tort remedy for breach of fiduciary duty, but not if the client seeks only forfeiture of fees. The purpose of compensatory damages is to make plaintiffs whole for harm caused by defendants... Forfeiture of legal fees serves several different purposes. It deters attorney misconduct and recognizes that damage caused by attorney misconduct is often difficult to assess... It prevents fiduciaries from profiting from their fiduciary breach and disloyalty... Like compensatory damages, it compensates clients for harm they have suffered, but it reflects not the harms the clients suffer from the tainted representation, but the decreased value of the representation itself” (citations omitted).

Be that as it may, J-M was harmed by Sheppard Mullin’s ethical breaches. J-M was forced to disrupt its defense to find yet another law firm to defend the company in the underlying action, and incurred costs in the process so that the new firm could “get up to speed.”

Finally, the fact that Sheppard Mullin's failure to disclose South Tahoe was calculated and sustained in my opinion is a basis as well for punitive damages.

DATED October 15, 2013



Geoffrey C. Hazard, Jr.

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Columbia University, LL.B. 1954 (Columbia Law Review)

PROFESSIONAL APPOINTMENTS

Member, California State Bar
Admitted to practice: Oregon, 1954; California, 1960;
Connecticut, 1982; Pennsylvania, 1994
Practiced in Oregon, 1954-57; Deputy Legislative Counsel, State
of Oregon, 1956-57; Executive Secretary, Oregon Legislative
Interim Committee on Judicial Administration, 1957-58
Executive Director, American Bar Foundation, 1964-70
Consultant, American Bar Association Special Committee on Code
of Judicial Conduct, 1970-72
Reporter, American Bar Association Special Commission on
Standards of Judicial Administration, 1971-77
Reporter, American Law Institute, Restatement of Judgments,
Second, 1973-81
Reporter, American Bar Association Special Commission on
Evaluation of Professional Standards, 1978-83

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Reporter, Committee on Ethical Standards, National Association of Bond Counsel, 1983-84
Director, American Law Institute, 1984-1999
Reporter, American Law Institute and International Organization for Unification of Private Law, Principles of Transnational Civil Procedure, 1999-2005
Member and Consultant, Standing Committee on Rules of Practice and Procedure, Judicial Conference of the United States, 1994-
Member, Judicial Conference Ad Hoc Committee on Mass Torts, 1997-99
Member, American Bar Association Resource Team for High Profile Trials 1996-1998
Member, American Bar Association Commission on Ethics 2000, 1997-2002
Member, Associazione Italiana fra gli Studiosi del Processo Civile, 1998-
Member, American Bar Association Task Force on Federal Preemption 2008-2010
Senior Adviser, American Bar Association, Section of Business Law, 2007-09; Emeritus 2009-

ACADEMIC APPOINTMENTS

Miller Distinguished Professor of Law, University of California Hastings College of the Law, 2005-
Trustee Professor of Law, University of Pennsylvania, 1994-2009
Professor of Law, Yale University, 1971-94; Sterling Professor of Law Emeritus 1994-
Associate Professor of Law, University of California, Berkeley, 1958-61; Professor of Law, 1961-64
Visiting Professor, University of Michigan, 1963
Professor of Law, University of Chicago, 1964-71
Visiting Professor, Stanford University, 1974
Acting Dean, Yale School of Organization and Management, 1980-81; Associate Dean, 1979-80; Deputy Dean, 1981-82
Visiting Professor, Universite d'Aix-Marseille, 1982
Visiting Professor, Harvard University, 1983
Visiting Professor, University of Arizona, 1997-2001

TEACHING SUBJECTS

Civil Procedure, Legal Ethics, Federal Jurisdiction

BOARD MEMBERSHIPS

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Board of Trustees, Supreme Court Historical Society, 1989-2004
Board of Directors, Avatar Holdings, Inc., 1980-94
Board of Directors, Smyth, Sanford & Gerard Professional
Liability, L.L.C. 1995-97
Member, Board of Directors, Friends of the Library of the Supreme
Court of Israel 1998-
Board of Governors, International Insolvency Institute, 2004-2010

PROFESSIONAL ACTIVITIES

Member, Administrative Conference of United States, 1972-78
Adviser, American Bar Association, Standing Committee on Ethics and
Professional Responsibility, Subcommittee on Code of
Judicial Conduct, 1988-89
Member, Board of Overseers, Institute for Civil Justice, RAND
Corp., 1985-90
Advisory Council, Trinity Church (New York) Center for Ethics and
Corporate Policy, 1983-1990
Legal Advisory Committee, New York Stock Exchange, 1989-92
Member, American Bar Association Committee on Professional
Discipline, 1985-91
Member, American Bar Association, Committee on Lawyers'
Responsibility for Client Protection, 1991-1994
Member, National Association of Corporate Directors, Blue
Ribbon Commission, 2005
Member, California State Bar, American Bar Ass'n, American Law
Institute, National Legal Aid and Defender Ass'n, Fellows of
American Bar Foundation, American Academy of Arts and Sciences,
American Philosophical Society

PROFESSIONAL AWARDS

American Bar Foundation, Research Award, 1985
American Bar Foundation, William Keck Foundation Award, 1997
Columbia University School of Law Association, Medal for
Excellence, 1999
American Judicature Society, Outstanding Contributions to
Promoting Effective Administration of Justice. 1999
Ceremony of Salute, Superior Court of Pennsylvania, 1999
Gold Medal, International Insolvency Institute, 2004
American Bar Association Section of Legal Education, Kutak Award,
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American Bar Association, Michael Franck Award, 2008
American Law Institute, Distinguished Service Award, 2013

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HONORARY DEGREES

M.A., Yale University 1971
LL.D., Gonzaga University, 1985
LL.D., University of San Diego, 1985
LL.D., Swarthmore College, 1988
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LL.D., Republica Italiana (faculta di Urbino), 1998
Reconocimiento, Universidad Nacional Autónoma de
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BOOKS

RESEARCH IN CIVIL PROCEDURE (1963; Walter E. Meyer Research
Institute of Law).
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3d ed. 1994; editor, with Deborah Rhode).
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Professional Conduct (3d ed. 2004 with William Hodes).
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Arthur Fleisher, Jr. and Miriam Z. Klipper).
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LEGAL ETHICS: A COMPARATIVE STUDY (Stan. U. Press. 2004) (with Angelo Dondi)
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EXHIBIT 3

EXHIBIT J

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10 Inc.

11 **IN THE MATTER OF AN ARBITRATION**

12 **JAMS**

13 SHEPPARD, MULLIN, RICHTER &
14 HAMPTON, LLP, a limited liability
15 partnership,

16 Complainant,

17 v.

18 J-M MANUFACTURING COMPANY,
19 INC., a Delaware Corporation, d/b/a JM
20 Eagle; and
21 DOES 1 through 20, inclusive,

22 Respondent.

23 J-M MANUFACTURING COMPANY,
24 INC., a Delaware Corporation, d/b/a JM
25 Eagle,

26 Cross-Complainant,

27 v.

28 SHEPPARD, MULLIN, RICHTER &
HAMPTON, LLP, a limited liability
partnership, and DOES 21 through 40,
inclusive,

Cross-Respondent.

Reference No. 1220045609

Hon. Gary L. Taylor (ret.)
Hon. Charles S. Vogel (ret.)
James W. Colbert, III, Esq.

**SUPPLEMENTAL DECLARATION OF
CAMILLA M. ENG IN SUPPORT OF J-
M MANUFACTURING COMPANY,
INC.'S REPLY ARBITRATION BRIEF**

Hearing:

Date: December 9, 2013

Time: 10:00 a.m.

Place: JAMS Los Angeles

707 Wilshire Blvd, 46th Floor
Los Angeles, CA 90017

EXHIBIT 4

EXHIBIT K

1 LEE TRAN LIANG & WANG LLP
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9 Complainant J-M Manufacturing Company,
10 Inc.

11 **IN THE MATTER OF AN ARBITRATION**

12 **JAMS**

13 SHEPPARD, MULLIN, RICHTER &
14 HAMPTON, LLP, a limited liability
15 partnership,

16 Complainant,

17 v.

18 J-M MANUFACTURING COMPANY,
19 INC., a Delaware Corporation, d/b/a JM
20 Eagle; and
21 DOES 1 through 20, inclusive,

22 Respondent.

23 J-M MANUFACTURING COMPANY,
24 INC., a Delaware Corporation, d/b/a JM
25 Eagle,

26 Cross-Complainant,

27 v.

28 SHEPPARD, MULLIN, RICHTER &
HAMPTON, LLP, a limited liability
partnership, and DOES 21 through 40,
inclusive,

Cross-Respondent.

Reference No. 1220045609

Hon. Gary L. Taylor (ret.)
Hon. Charles S. Vogel (ret.)
James W. Colbert, III, Esq.

**SUPPLEMENTAL DECLARATION OF
K. LUAN TRAN IN SUPPORT OF J-M
MANUFACTURING COMPANY,
INC.'S REPLY ARBITRATION BRIEF**

Hearing:

Date: December 9, 2013

Time: 10:00 a.m.

Place: JAMS Los Angeles

707 Wilshire Blvd, 46th Floor
Los Angeles, CA 90017

Lawrence Marshall Leaving Northwestern For Stanford

Justice:Denied magazine, Issue 27, Winter 2005, page 13

Law Professor Lawrence Marshall co-founder, and director of Northwestern University's Center on Wrongful Convictions announced in January 2005 that he accepted a new position at Stanford University. On September 1, 2005, Marshall will become director of Stanford's Clinical Law Program.

According to Stanford Law School Dean Larry Kramer, Marshall has the administration's backing to develop a program that will enable law students to gain real-life experience by working on actual cases. Kramer said, "In terms of national reputation, Larry was at the top of the list. Our goal is to have him come in with his vision in building Stanford's clinic. Northwestern has a fantastic program, and Larry is one of the reasons for that." As one of the countries most well-endowed universities, Stanford's commitment can be interpreted as good news for people who have been wronged in California.

Marshall commented, "Clinical education creates a unique bridge between the world of theory and the world of actual practice. (Most law students) never get exposure to the kinds of clients who desperately need representation."

After co-founding Northwestern's Center on Wrongful Convictions in 1998, Marshall played a key role in the freeing of five wrongfully convicted men from Illinois' death row. The Center's efforts also influenced the decision of former Governor George Ryan to pardon four condemned men on January 10, 2003, and then commutation the next day of the sentence of all 167 people on Illinois' death row to life in prison without parole. 1

Marshall spent 21 years at Northwestern, first as a student, and then as a law professor. Journalism Professor David Protes, co-founder with Marshall of Northwestern's Center on Wrongful Convictions, said about his leaving, "Whoever replaces him as the center's legal director will have a tough act to follow."

On February 26th, Northwestern announced that Steven Drizin, an expert in false confessions, would be the NCWC's new legal director. (See page 17 for an article about a 2004 false confession study by Mr. Drizin and Richard Leo.) *Justice:Denied* will provide information about the Stanford program to be directed by Marshall when it becomes available.

1 See, *Illinois Governor George Ryan Pardoned Four Innocent Men Condemned to Death On January 10, 2003, and the Next Day He Cleared Illinois' Death Row*, Hans Sherrer, *Justice:Denied*, Vol. 2, Issue 9.

Source: *NU prof leaving post for Stanford: Criminal justice advocate known for work to overturn Ill. wrongful convictions*, by Helena Oh, *The Daily Northwestern*, January 21, 2005

Exhibit 28

Stanford Law School
Facebook

2009-2010



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Deans

Larry Kramer

Richard E. Lang Professor of Law and Dean



Larry Kramer joined Stanford Law School in 2001 as Richard E. Lang Professor and Dean. As the school's 12th dean, he has spearheaded significant educational reforms, including dramatically expanding joint degree programs as part of a multidisciplinary approach to legal studies, enlarging the clinical education program to promote reflective lawyering, revamping programs to foster a public service ethos, and building the international law program to support a growing emphasis on globalization in legal practice. Dean Kramer has written and taught in such varied fields as conflict of laws, civil procedure, federalism and its history, and most recently, the role of courts in society. His book, *The People Themselves: Popular Constitutionalism and Judicial Review*, sparked renewed interest in the ongoing debate about the relationship between the Supreme Court of the United States and politics. He is an elected fellow of the American Academy of Arts and Sciences and a member of the American Philosophical Society and the American Law Institute. In December 2008, Equal Justice Works named Dean Kramer to its Board of Directors. He has appointments (by courtesy) with the Stanford University Department of History and with the Graduate School of Business. Before joining the Stanford faculty, Dean Kramer served as Associate Dean for Research and Academics and Russell D. Niles Professor of Law at New York University School of Law; professor of law at the University of Chicago and University of Michigan law schools; and consultant for Mayer, Brown, Rowe & Maw LLP. Early in his career, Dean Kramer clerked for Justice William J. Brennan, Jr. of the U.S. Supreme Court and Judge Henry J. Friendly of the U.S. Court of Appeals for the Second Circuit.

Mark G. Kelman

James C. Gaither Professor of Law and Vice Dean



A prolific scholar whose jurisprudential interests range from law and economics to cognitive psychology, Mark G. Kelman has applied social science approaches to diverse legal fields including criminal law, taxation, administrative regulation, and disability law. His most recent research has focused on debates about the fundamental nature of heuristic reasoning associated, respectively, with the "heuristics and biases" school and the "fast and frugal heuristics" school. He is especially concerned with the implications of these debates for a wide variety of issues of both legal theory and policy (ranging from questions about whether values are commensurable or moral values "universal" to controversies over the efficacy of distinct forms of criminal sanctions). In addition to being a longtime teacher of both criminal law and property to first-year students, he has served as the academic coordinator, academic associate dean, and, currently, vice dean at the law school. Before joining the Stanford Law School faculty in 1977, Professor Kelman

was the director of criminal justice projects for the Fund for the City of New York.

Associate Deans

Frank F. Brucato

Senior Associate Dean of Administration and CFO



Frank F. Brucato, Stanford Law School's chief financial officer and senior associate dean, joined the Stanford staff in 1983 as an assistant financial manager. In his 26 years at the law school, Brucato is credited with masterminding numerous building projects, including the classroom, library, and clinic renovations, and has spearheaded the construction of the Mungen Graduate Residences which is now nearly complete, as well as the new academic building, now under construction. Prior to coming to the law school, Brucato served as an accountant at D. Bealburn & Co. in Monterey after graduating from California State University at San Jose.

Associate Deans

Diane T. Chin

Associate Dean for Public Service and Public Interest Law and Lecturer in Law



Diane T. Chin oversees the John and Terry Levin Center for Public Service and Public Interest Law's career development, pro bono, externship, and mentoring programs. She also teaches, plans and coordinates public interest curriculum, and engages in external relations and fundraising. In 2007, she co-edited and contributed to *Beyond the Big Firm: Profiles of Lawyers Who Want Something More*, and she previously served as the Levin Center's founding director in 2003. Prior to her return to Stanford, Diane was the director of Equal Justice Works/West, the first regional office of that national organization, outside of its Washington, D.C., headquarters. Diane also served as associate director of the Thelton E. Henderson Center for Social Justice at the U.C. Berkeley School of Law and as the executive director for Chinese for Affirmative Action. She began her law career as a staff attorney and Skadden Fellow for the Lawyers' Committee for Civil Rights Under Law of the Boston Bar Association when she graduated from Northeastern University School of Law, and then as a staff attorney for the Lawyers' Committee for Civil Rights of the San Francisco Bay Area. Later she worked as a litigating attorney for Protection & Advocacy, Inc. and as a senior trial attorney for the Office of Citizen Complaints for the San Francisco Police Commission. Diane was an adjunct member of the New College of Law faculty (*Race and the Law, Constitutional Law*). Her substantive areas of practice have been within the civil rights field: hate violence, police misconduct, affirmative action and housing discrimination. At Stanford, she serves as a lecturer in law, teaching *Lawyering for Social Change* and other courses.

Faye Deal

Associate Dean for Admissions and Financial Aid



Faye Deal, Stanford Law School's associate dean for admissions and financial aid, has spent more than 20 years serving in the law school's administration. Originally an assistant registrar when she joined the Stanford staff in 1985, Deal went on to become an associate registrar, the assistant director of admissions, the director of admissions, and finally assumed the position of associate dean in 1992. During her tenure, Deal has overseen the consistent increase of admission applications, combined with Stanford's sustained national ranking in the highest tier of law schools; she thus presides over one of the most competitive admissions processes in the country. Prior to coming to Stanford, Deal graduated from Occidental College.

Catherine Glaze

Associate Dean for Student Affairs



Catherine Glaze '85 (BA '80) joined the Stanford staff in 2000, bringing with her a wealth of experience not only as a Stanford student, but also as a practicing attorney and former law school administrator and instructor. Prior to returning to Stanford Law School as a staff member, Glaze served as an associate with the firms of Day, Berry & Howard and Casoley Goddard, was in private practice for another three years, and then served as a lecturer, clinical professor, and associate dean for student services at Golden Gate University School of Law.

Deborah R. Hensler

Judge John W. Ford Professor of Dispute Resolution and Associate Dean for Graduate Studies



Deborah R. Hensler's empirical research on dispute resolution, complex litigation, and mass tort liability has won national recognition. A political scientist and public policy analyst who was the director of the RAND Corporation's Institute for Civil Justice before joining the Stanford Law School faculty, she has testified before state and federal legislatures on issues ranging from alternative dispute resolution to asbestos litigation and mass torts and consulted with judges and lawyers outside of the United States on the design of class action regimes. She co-edited the recently published volume *The Globalization of Class Actions* and co-authored RAND's comprehensive 2002 report on the status of asbestos litigation in the United States. She is the lead author of *Class Action Dilemmas: Pursuing Public Goals For Private Gain*. At Stanford she teaches seminars on complex litigation, the legal profession, and the use of policy analysis in the law and serves as associate dean of graduate studies. Professor Hensler is a fellow of the American Academy of Arts and Sciences and the American Academy of Political and Social Science as well as a member of the board of overseers for the RAND Institute for Civil Justice. She was the director of the Stanford Center on Conflict and Negotiation from 1996 to 2003. Before joining the Stanford Law School faculty in 1998, she was a professor at the University of Southern California Gould School of Law and held a variety of high-level positions at RAND where she was employed from 1973 to 2001.

Sabrina Johnson

Associate Dean for Communications and Public Relations



With a rich background of corporate experience, Sabrina Johnson joined the Stanford Law School staff in 2005 as associate dean for communications and public relations. Prior to coming to Stanford, Johnson spent five years in the biotech sector, serving as the director of corporate public relations for Genentech and as the director of global external communications for Amgen. Johnson spent over a decade working in corporate communications for Levi Strauss & Co. There she served in a variety of roles, including director of European Communications at the company's Brussels, Belgium office. She received her BA from the College of Wooster.

Lawrence C. Marshall

Professor of Law, David and Stephanie Mills Director of Clinical Education, and Associate Dean for Public Interest and Clinical Education



A nationally renowned advocate for reform of the U.S. criminal justice system, Professor Larry Marshall has been widely recognized for both his activism and teaching. As director of the Mills Legal Clinic at Stanford Law School, he has committed himself to creating an integrated clinical experience that serves the needs of each and every student at Stanford Law School. Professor Marshall has also been instrumental in expanding the focus of public interest in the law school through the John and Terry Levin Center for Public Service and Public Interest Law. Much of his scholarly work has focused on issues surrounding the application of the death penalty. Before joining the Stanford faculty in 2005, he was a professor of law at Northwestern University School of Law and of counsel at Mayer, Brown & Platt. At Northwestern, he co-founded and served as legal director of the world-renowned Center on Wrongful Convictions, where he represented many wrongly convicted inmates, including many inmates who at one time had been sentenced to death. Early in his career, he clerked for Justice John Paul Stevens of the U.S. Supreme Court and for Judge Patricia M. Wald of the U.S. Court of Appeals for the District of Columbia Circuit.

Susan C. Robinson

Associate Dean for Career Services



Susan C. Robinson came to Stanford Law School from the private sector, where she worked as an associate in the San Francisco law firms of Farella Braun + Martel LLP and Heller Ehrman White & McAuliffe. She joined the Stanford staff in 1997, first as associate director and then as associate dean for career services. In this position, Robinson oversees and manages all aspects of the office, including counseling, programming, and recruiting. Prior to beginning her legal career, Robinson received her BA from Wellesley College and her JD from Columbia University School of Law.

Associate Deans

Jane Schacter

William Nelson Cromwell Professor of Law and Associate Dean for Curriculum



Focusing her research on the concepts of democratic theory that shape legal analysis and the constitutional dimensions of judicial and legislative legitimacy, Jane Schacter is a leading expert on statutory interpretation and legislative process, constitutional law, and sexual orientation and the law. Before joining the Stanford Law School faculty in 2006, Professor Schacter was professor of law at the University of Wisconsin Law School, as well as the University of Michigan Law School. Early in her career she was an assistant attorney general in Massachusetts, an associate at Hill & Barlow in Boston, and a law clerk to Judge Raymond J. Pettine of the U.S. District Court for the District of Rhode Island.

Scott Showalter

Associate Dean for External Relations



Scott Showalter has been part of the Stanford community for 18 years, first as a student (BA '91) and later as a staff member in the university's office of development, where he helped launch The Stanford Fund and established the Chas Giving Program, which now raises many millions of dollars each year. After a two-year hiatus to earn his MBA from UCLA, Scott returned to Stanford in 2001 as a major gifts officer. In 2004, he joined Stanford Law School as director of development, where he oversaw the school's fundraising operation and helped raise a record \$135 million leading up to the public launch of The Stanford Challenge.

F. Daniel Siciliano

Faculty Director for the Arthur and Toni Rembe Rock Center for Corporate Governance, Senior Lecturer in Law and Associate Dean for Executive Education and Special Programs



F. Daniel Siciliano '04 is a legal scholar and entrepreneur with expertise in corporate governance, corporate finance, and immigration law. He assumes a variety of leadership roles at the law school, including faculty director of the Arthur and Toni Rembe Rock Center for Corporate Governance, associate dean for executive education and special programs and co-director of Stanford's Directors' College. Previously, Siciliano was a teaching fellow for the law school's International LL.M. degree program in Corporate Governance and Practice and executive director of the Program in Law, Economics and Business. He is the senior research fellow with the Immigration Policy Center and a frequent commentator on the long-term economic impact of immigration policy and reform. His work has included expert testimony in front of both the U.S. Senate and House of Representatives. Prior to joining Stanford Law School, Siciliano co-founded and served as executive director of the Immigration Outreach Center in Phoenix, Arizona. He has launched and led several successful businesses, including LawLogix Group—named three times to the *Inc. 500/5000* list. Siciliano serves as a governance consultant and trainer to board directors of several Fortune 500 companies and is a member of the Academic Council of *Corporate Board Member magazine*.

Faculty

Janet Cooper Alexander

Frederick I. Richman Professor of Law



An expert in civil procedure, complex litigation, and federal courts, Janet Cooper Alexander (BA '75) has written landmark articles on procedural design and on the institutional dynamics of securities class actions. Her current research focuses on class actions, civil jury, procedural design, and terrorism and the courts. In addition to her role as a professor at Stanford Law School, Professor Alexander has been a principal investigator at the Stanford Center on International Conflict and Negotiation, where she spearheaded interdisciplinary research in dispute resolution and litigation from 1994-2002. Before joining the Stanford Law School faculty in 1987, she was a partner at Morrison & Foerster in San Francisco and an attorney at Cahill, Ross & Helmenst in Washington, D.C. Professor Alexander is a former law clerk to U.S. Supreme Court Justice Thurgood Marshall and Judge Shirley M. Hufstetler '49 of the U.S. Court of Appeals for the Ninth Circuit.

Joseph Bankman

Ralph M. Parsons Professor of Law and Business



A leading scholar in the field of tax law, Joseph Bankman is the author of two widely used casebooks on the subject. His writings on tax policy cover topics such as progressivity, consumption tax, and the role of tax in the structure of Silicon Valley start-ups. He has gained wide attention for his work on how government might control the use of tax shelters and has testified before Congress and other legislative bodies on tax compliance problems posed by the cash economy. He has written and spoken extensively on how we might use technology to simplify filing. He also worked with the State of California to co-author a bill creating ReadyReturn—a completed tax return prepared by the state. Before joining the Stanford Law School faculty in 1989, Professor Bankman was a professor at the University of Southern California Law Center and a tax practitioner with the Los Angeles firm of Tuttle & Taylor.

Ralph Richard Banks

Jackson EH Reynolds Professor of Law



An expert on topics related to race and inequality, Ralph Richard Banks joined Stanford Law School in 1998. His research addresses race and inequality issues across a variety of domains, from criminal justice to employment to the family. He has written and lectured widely in each of these areas. He is currently working on a book, tentatively titled *Race, Marriage and Inequality*. Professor Banks teaches equal protection law, family law, employment discrimination law, and race and the law. He has been a visiting professor at Harvard Law School and the University of Virginia Law School. Before joining the Stanford Law School faculty, Professor Banks was the Reginald F. Lewis Fellow at Harvard Law School and an attorney with the firm O'Melveny & Myers. He was a law clerk to Judge Barrington D. Parker, Jr. of the U.S. District Court for the Southern District of New York.

Juliet M. Brodie

Professor of Law and Director, Stanford Community Law Clinic



Juliet M. Brodie, who directs the Stanford Community Law Clinic, has dedicated her career to the legal rights and interests of low-income people and communities. She has written on the role of clinics in developing and testing new models of legal services delivery to America's low-wage workers in what she calls the "post-welfare" economy and on the role of community-based clinics in training lawyers to maintain the profession's commitment to access to justice. She is a frequent speaker on community lawyering, clinical education, and the ethical issues that arise practicing law in a low-income setting. Her research interests include poverty law and the role of law in advancing economic justice for the "have-nots" in American society. Professor Brodie is a member of the editorial board of the *Clinical Law Review* and of the executive committee of the Section on Poverty Law at the AALS. She is co-chair (2009-2010) of the AALS Clinical

Education Section Subcommittee on Lawyering in the Public Interest (Bellow Scholar Program). Before joining the Stanford Law School faculty in 2006, Professor Brodie was an associate clinical professor at the University of Wisconsin Law School. She was formerly a litigation associate at the Boston law firm Hill & Barlow and assistant attorney general for the state of Wisconsin, where she prosecuted health care providers accused of defrauding the Medicaid system.

Faculty

Margaret "Meg" Caldwell

Senior Lecturer in Law



Meg Caldwell '85 has dedicated her career to environmental law, having worked as an attorney, professor, and board member in the field. Her scholarship has focused on the environmental effects of local land use decisions, the use of science in environmental and marine resource policy development and implementation, and developing private and public incentives for natural resource conservation. In addition to her role as lecturer in law, Caldwell directs the Environmental and Natural Resources Law and Policy Program at the law school. Caldwell also has an appointment with the Woods Institute for the Environment where she serves as executive director of the Center for Ocean Solutions. The center is a collaboration between Stanford, the Monterey Bay Aquarium, and the Monterey Bay Aquarium Research Institute whose core mission is to increase the impact of the natural, physical and social sciences on ocean policy. A

well-respected figure in environmental law, she was selected as the chair of the California Coastal Commission and served on that body for nearly three years. While chair of the Commission, Caldwell also served on the board of the California Coastal Conservancy. She was appointed by the State Secretary of Resources to the California Marine Life Protection Act Blue Ribbon Task Force for the central and north central coasts and is currently serving on the Third Phase Blue Ribbon Task Force for the south coast. Before joining the Stanford Law School faculty in 1994, Caldwell was an instructor at San Jose State University and the University of California, Davis; counsel for MicroCLEAN, Inc.; a member of the City of Saratoga Planning Commission; and an associate in the environmental law group of McCutchen, Doyle, Brown & Eversen.

Gerhard Casper

Professor of Law, President Emeritus, Peter and Helen Bing Professor in Undergraduate Education, Senior Fellow, Freeman Spogli Institute for International Studies, and Professor (by courtesy) of Political Science, Stanford University



A lifelong leader in academia and an esteemed scholar of constitutional law, Gerhard Casper served as Stanford University's president from 1999-2000. During that time, his commitment to excellence in both undergraduate and graduate education resulted in a number of major initiatives. A decorated academic, Professor Casper holds honorary doctorates from Yale and Uppsala Universities. He has been elected to membership in the American Academy of Arts and Sciences, the American Law Institute, the International Academy of Comparative Law, the Order Pour le mérite for the Sciences and Arts, and the American Philosophical Society. He currently serves as a successor trustee of Yale University and a member of the board of trustees for both the Central European University in Budapest and the American Academy in Berlin. Before joining the Stanford Law School faculty in 1992, Professor Casper was a long-time

faculty member at the University of Chicago, where he served as the provost of the university, the dean of the law school, and a professor of law. He began his career as a professor of political science at the University of California at Berkeley.

Joshua Cohen

Professor of Political Science, Philosophy, and Law



Joshua Cohen is a political theorist, trained in philosophy, with a special interest in issues that lie at the intersection of democratic norms and institutions. He has written extensively on issues of democratic theory, particularly deliberative democracy and its implications for personal liberty, freedom of expression, and campaign finance. Currently, Professor Cohen is concentrating his scholarship on issues of global justice, including the foundations of human rights, distributive fairness, and supranational democratic governance. He is also a professor in Stanford's departments of political science and philosophy. He serves as co-editor of *Boston Review*, a bimonthly magazine of political, cultural, and literary ideas. A first volume of his selected papers, *Philosophy, Politics, Democracy*, will be published in fall 2009 by Harvard University Press; his book *Rousseau: A Free Community of Equals* will appear in spring 2010 from Oxford University Press.

G. Marcus Cole

Wm. Benjamin Scott and Luna M. Scott Professor of Law



A scholar of the law of bankruptcy, corporate reorganization, and venture capital, Marcus Cole takes an empirical law and economics approach to research questions such as why corporate bankruptcies increasingly are adjudicated in Delaware and what drives the financial structure of companies backed by venture capital. He has been a national fellow at the Hoover Institution and has scholarly interests that range from classical liberal political theory to natural law and the history of commercial law. He serves on the board of directors for the Central Pacific Region of the Anti-Defamation League of B'nai B'rith and on the editorial board of the *Calo Supreme Court Review*. Before joining the Stanford Law School faculty in 1997, Professor Cole was an associate in commercial litigation with the Chicago law firm of Mayer, Brown & Platt, and he clerked for Judge Morris Sheppard Arnold of the U.S. Court of Appeals for the Eighth Circuit.

Richard Craswell

William F. Baxter-Vista International Professor of Law



A leading scholar of the economics and jurisprudence of contract law, Richard Craswell works at the intersections of law and economics and law and philosophy. He is an expert in all aspects of commercial law, including commercial paper and secured credit, as well as in antitrust and consumer protection law. Professor Craswell was the academic associate dean at Stanford Law School from 1999 to 2001. Before joining the Stanford Law School faculty in 1968, he was a professor at the University of Chicago Law School, and the University of Southern California School of Law, where he was an associate dean. Upon completion of his law degree, he was an attorney with the U.S. Federal Trade Commission in the Office of Policy Planning and the Bureau of Competition and Economics.

Mariano-Florentino Cuéllar

Professor of Law and Deane F. Johnson Faculty Scholar



Trained as a lawyer and a political scientist, Mariano-Florentino Cuéllar (MA '96, PhD '00) focuses his scholarship on how organizations cope with the legal responsibility for managing complex criminal justice, regulatory, and international security problems. His scholarly articles have tackled issues such as the regulation of criminal financial activity, public participation in regulatory rulemaking proceedings, and executive branch oversight of public agencies. Current projects address the role of criminal enforcement in risk regulation, immigration and refugee policy in the United States and the developing world, the changing scope of the concept of national security in law and policy, and the impact of agency structure on how institutions implement legal mandates. Professor Cuéllar is on the Executive Committees of the Stanford Center for International Security and Cooperation as well as the Stanford International

Initiative. In recent years, he has testified before the U.S. Senate Judiciary Committee, served as a fellow of the U.S.-Japan Foundation, and worked on initiatives for the reform of health and safety regulatory analysis. He was also a member of the Silicon Valley Task Force on Aviation Security. Before joining the Stanford Law School faculty, he served for several years as senior advisor to the U.S. Treasury Department's Under Secretary for Enforcement, and clerked for Chief Judge May M. Sforzorder of the U.S. Court of Appeals for the Ninth Circuit. While at Treasury, he worked on countering domestic and international financial crime, improving border coordination, and enhancing anticorruption measures. He is an elected member of the American Law Institute. Professor Cuéllar is currently on leave working at the White House Domestic Policy Council, where he serves as special assistant to the president for justice and regulatory policy.

Faculty

Robert M. Daines

Pritzker Professor of Law and Business



An internationally recognized corporate law scholar, Robert M. Daines is widely known for his rigorous statistical analysis of empirical data on the relationship between economic theory and corporate governance and contracting in practice. His recent work has focused on issues in corporate governance, such as CEO pay, mandatory disclosure regulations, and the use of classified boards of directors. A respected academic, Professor Daines' work has appeared in such top publications as the *Journal of Financial Economics*, the *Journal of Law, Economics and Organization*, and *The Yale Law Journal*. Before joining the Stanford Law School faculty in 2004, he was a professor of law at New York University School of Law and an associate in the leveraged finance department of Goldman Sachs, where he advised firms on junk bonds, bank financing, and project finance in emerging markets. Early in his career he clerked for Judge Ralph K. Winter of the U.S. Court of Appeals for the Second Circuit. Professor Daines is a senior affiliated faculty member with the Arthur and Toni Rembe Rock Center for Corporate Governance and has an appointment (by courtesy) with the Stanford Graduate School of Business.

Michèle Landis Dauber

Professor of Law and Bernard D. Bergreen Faculty Scholar



A law professor and a sociologist, Michèle Landis Dauber has written highly original historical and sociological studies about the relationship between welfare programs and disaster relief programs in the formation of the modern American welfare state. She has focused her scholarship on aspects of the history of the New Deal and the fate of the legal doctrines and policies it created. She has also written about such varied topics as abortion clinic conflict, social security privatization, affirmative action, and the early history of administrative law during the War of 1812. In addition to her scholarly work, Professor Dauber is an officer and director of Building a Better Legal Profession, which was founded by Stanford Law students in 2007. The organization uses innovative data advocacy and Web-based social entrepreneurship strategies to mobilize market pressure for workplace reforms in large law firms, including better working conditions, work-life policies, and increased racial and gender diversity. Currently Professor Dauber teaches *Law and Wisconsin*, which studies this issue. Winner of the 2006 Walter J. Gores Award, Professor Dauber is only the second law professor to receive the highest teaching honor at Stanford University. Before joining the Stanford Law School faculty in 2001, she was a clerk to Judge Stephen Reinhardt of the U.S. Court of Appeals for the Ninth Circuit. Professor Dauber has an appointment (by courtesy) with the Stanford University Department of Sociology and is a faculty affiliate with the Stanford Center for Comparative Studies in Race and Ethnicity.

David Freeman Engstrom

Assistant Professor of Law



David Freeman Engstrom's scholarship focuses on the design of public institutions, particularly regarding civil rights, as well as topics in administrative law, employment law, complex litigation, constitutional federalism, and law and education. Current work includes a book exploring the pre-Title VII, state-level origins of American employment discrimination law; a quantitative analysis of disability discrimination laws; and a project examining the quantum provisions of the False Claims Act. Previously, Professor Engstrom '92 was a law clerk to Judge Diane P. Wood of the U.S. Court of Appeals for the Seventh Circuit and a John M. Olin Fellow in Law, Economics, and Public Policy at Yale Law School. He also practiced for four years, most of it at Kellogg, Huber, Hansen, Todd, Evans & Figel, where he represented clients before the U.S. Supreme Court, U.S. Courts of Appeals, and various trial courts and administrative agencies. Earlier in his career, he worked on education, early childhood, and civil rights issues at the Edward Zigler Center at Yale University and the Hewlett Foundation and taught high school and coached football in the Mississippi Delta.

Nora Freeman Engstrom

Assistant Professor of Law



Nora Freeman Engstrom's scholarship explores how legal services are provided in the United States and the implications for legal ethics, tort law, the legal profession, and the operation of the civil justice system. Her current work focuses on "settlement mills"—high-volume personal injury law practices that heavily advertise and mass-produce the resolution of claims. This research is supported by a grant from the American Bar Association's Litigation Research Fund. She also serves on the steering committee of the Stanford Center on the Legal Profession. Before joining Stanford Law's faculty in 2009, Professor Engstrom '02 was a research team's scholar at Georgetown University Law Center and an associate at Wilmer Cutler Pickering Hale and Dorr LLP, where she drafted several U.S. Supreme Court briefs and represented clients before various appellate and trial courts. She was also a law clerk to Judge Merrick B. Garland of the U.S. Court of Appeals for the District of Columbia Circuit and Judge Henry H. Kennedy Jr. of the U.S. District Court for the District of Columbia. Prior to law school, she worked at the U.S. Department of Justice, focusing on domestic terrorism and national security issues.

George Fisher

Judge John Crown Professor of Law and Director, Criminal Prosecution Clinic



A former Massachusetts assistant attorney general and assistant district attorney, George Fisher is one of the nation's top scholars of criminal law and evidence. In his scholarship he explores, through meticulous archival research, the history of criminal law and criminal institutions from prisons to juries, from plea bargaining to the regulation of alcohol and drugs. Professor Fisher's publications include an acclaimed casebook on evidence and a history of plea bargaining in America. Professor Fisher is the director of the Criminal Prosecution Clinic at the law school and a three-time winner of the John Bingham Hurst Award for Excellence in Teaching at Stanford Law School. Before joining the Stanford Law School faculty in 1995, he was a clinical professor at Boston College Law School, an assistant attorney general in the Civil Rights Division of the Massachusetts Attorney General's Office, and an assistant district attorney for Middlesex County, Massachusetts. Early in his career Professor Fisher clerked for Judge Stephen G. Breyer (BA '89) of the U.S. Court of Appeals for the First Circuit.

Jeffrey L. Fisher

Associate Professor of Law and Co-Director, Supreme Court Litigation Clinic



A leading Supreme Court litigator and nationally recognized expert on criminal procedure, Jeffrey Fisher has argued numerous cases before the U.S. Supreme Court. His successes include bringing and winning the landmark cases of *Blakely v. Washington*, in which the Court held the Sixth Amendment right to a jury trial applies to sentencing guidelines; *Crawford v. Washington*, in which he persuaded the Court to adopt a new approach to the Confrontation Clause; and *Kennedy v. Louisiana*, in which the Court held that the Eighth Amendment prohibits states from imposing capital punishment for crimes against individuals that do not result in death. In 2005, *The National Law Journal* named Professor Fisher one of the 100 most influential lawyers in America—the youngest person on the list.

In addition to his teaching and practice concerning the Supreme Court, Professor Fisher has published several articles on various criminal and constitutional issues. He also speaks regularly to judicial conferences and leading legal organizations. He joined the Stanford Law School faculty from the national law firm of Davis Wright Tremaine, where he co-chaired the firm's appellate practice group and received acclaim for his *pro bono* work. Professor Fisher clerked for Judge Stephen Reinhardt of the U.S. Court of Appeals for the Ninth Circuit and U.S. Supreme Court Justice John Paul Stevens.

Faculty

Richard Thompson Ford

George E. Osborne Professor of Law



An expert on civil rights and antidiscrimination law, Richard Thompson Ford (BA '88) has distinguished himself as an insightful voice and compelling writer on questions of race and multiculturalism. His scholarship combines social criticism and legal analysis and he writes for both popular readers and for academic and legal specialists. His work has focused on the social and legal conflicts surrounding claims of discrimination, on the causes and effects of racial segregation, and on the use of territorial boundaries as instruments of social regulation. Methodologically, his work is at the intersection of critical theory and the law. Before joining the Stanford Law School faculty in 1994, Professor Ford was a Reginald F. Lewis Fellow at Harvard Law School, a litigation associate with Morrison & Foerster, and a housing policy consultant for the City of Cambridge, Massachusetts. He has also been a Commissioner of the San Francisco Housing Authority. He has written for the *Washington Post*, *San Francisco Chronicle*, *Christian Science Monitor* and for *State*, where he is a regular contributor. His latest book is *The Race Card: How Bluffing About Bias Makes Race Relations Worse*.

Barbara H. Fried

William W. and Gertrude H. Saunders Professor of Law



Barbara Fried's scholarly interests lie at the intersection of law, economics, and philosophy. She has written extensively on questions of distributive justice, in the areas of tax policy, property theory and political theory. She is also the author of a path-breaking intellectual biography of Robert Hale, one of the leading legal realists. Professor Fried is a three-time winner of the John Bingham Harbus Award for Excellence in Teaching. She regularly teaches the *Legal Studies Workshop* at Stanford Law School, an interdisciplinary student-faculty workshop designed for law students interested in pursuing academic careers, as well as contracts, tax, and advanced seminars in law and moral/political theory. She has twice been a visiting professor at law at New York University Law School. Before joining the Stanford Law School faculty in 1987, Professor Fried practiced as an associate with the New York City law firm of Paul, Weiss, Rifkind, Wharton & Garrison, and served as a law clerk to Judge J. Edward Lumbard of the U.S. Court of Appeals for the Second Circuit.

Lawrence M. Friedman

Marion Rice Kirkwood Professor of Law



An internationally renowned, prize-winning legal historian, Lawrence M. Friedman has for a generation been the leading expositor of the history of American law to a global audience of lawyers and lay people alike—and a leading figure in the law and society movement. He is particularly well known for treating legal history as a branch of general social history. From his award-winning *History of American Law*, first published in 1973, to his *American Law in the 20th Century*, published in 2003, his canonical works have become classic textbooks in legal and undergraduate education. Professor Friedman is a prolific author on crime and punishment, and his numerous books have been translated into multiple languages. He is the recipient of six honorary law degrees and is a fellow in the American Academy of Arts and Sciences. Before joining the Stanford Law School faculty in 1968, he was a professor of law at the University of Wisconsin Law School and at Saint Louis University School of Law. Professor Friedman has an appointment (by courtesy) with the Stanford University Department of History and the Department of Political Science.

Ronald J. Gilson

Charles J. Meyers Professor of Law and Business



An experienced practitioner of corporate and securities law before entering academia, Ronald J. Gilson is the author of major casebooks on corporate finance and corporate acquisitions. He has written widely on U.S. and comparative corporate governance and on venture capital and was a reporter of the American Law Institute's Corporate Governance Project. Professor Gilson is a fellow of the American Academy of Arts and Sciences and the European Corporate Governance Institute and is the board chair for American Century Investments in Mountain View, managing over \$26 billion in assets. In addition to his role at Stanford Law School, he is the Marc and Eva Stern Professor of Law and Business at Columbia University School of Law. Before joining the Stanford Law School faculty in 1979, Professor Gilson was a partner at a San Francisco corporate law firm. He clerked for Chief Judge David L. Bazelon of the U.S.

Court of Appeals for the District of Columbia Circuit.

Paul Goldstein

Stella W. and Ira S. Lillick Professor of Law



A globally recognized expert on intellectual property law, Paul Goldstein is the author of an influential four-volume treatise on U.S. copyright law and a one-volume treatise on international copyright law, as well as leading casebooks on intellectual property and international intellectual property. He has authored seven other books including two novels devoted to intellectual property themes, *Eros and Omission* and *A Patent Law*. Some of his other works include *Copyright's Highway: From Gutenberg to the Celestial Jukebox*, a widely acclaimed book on the history and future of copyright, and *Intellectual Property: The Tough New Realities That Could Make or Break Your Business*. Professor Goldstein currently serves as

of counsel at Morrison & Foerster in their intellectual property group and has been regularly included in *Best Lawyers in America*. He has served as chairman of the U.S. Office of Technology Assessment Advisory Panel on Intellectual Property Rights in an Age of Electronics and Information, has been a visiting scholar at the Max Planck Institute for Foreign and International Patent, Copyright, and Competition Law in Munich, Germany, and was a founding faculty member of the Munich Intellectual Property Law Center. In addition, before joining the Stanford Law School faculty in 1975, he was a professor of law at the State University of New York at Buffalo Law School.

Hank Greely

Deane F. and Kate Edelman Johnson Professor of Law



A leading expert on the legal, ethical, and social issues surrounding health law and the biosciences, Hank Greely (BA '74) specializes in the implications of new biomedical technologies, especially those related to neuroscience, genetics, and stem cell research. He frequently serves as an advisor on California, national, and international policy issues. He is chair of California's Human Stem Cell Research Advisory Committee and a co-director of the Law and Neuroscience Project, funded by the MacArthur Foundation. Active in university leadership, Professor Greely chairs the steering committee for the Stanford Center for Biomedical Ethics and directs both the law school's Center for Law and the Biosciences and the Stanford Center for Biomedical Ethics' Program in Neuroethics. Professor Greely serves on the Scientific Leadership Council for the university's interdisciplinary Bio-X Program. Before joining the Stanford Law

School faculty in 1985, Greely was a partner at Tuttle & Taylor, served as a staff assistant to the secretary of the U.S. Department of Energy, and as special assistant to the general counsel of the U.S. Department of Defense. He served as a law clerk to Justice Potter Stewart of the U.S. Supreme Court and to Judge John Minor Wisdom of the Court of Appeals for the Fifth Circuit. Greely is also a professor (by courtesy) of genetics at Stanford School of Medicine.

Joseph A. Grundfest

W. A. Franke Professor of Law and Business



Joseph A. Grundfest '78 is a nationally prominent expert on capital markets, corporate governance, and securities litigation. His scholarship has been published in the Harvard, Yale, and Stanford law reviews, and he has been recognized as one of the most influential attorneys in the United States. Professor Grundfest founded the award-winning Stanford Securities Class Action Clearinghouse, which provides detailed, online information about the prosecution, defense, and settlement of federal class action securities fraud litigation. He also launched Stanford Law School's executive education programs and continues to co-direct Directors' College, the nation's leading venue for the continuing professional education of directors of publicly traded corporations. In addition, he is a senior affiliated faculty member with the Arthur and Toni Rembe Rock Center for Corporate Governance. Before joining the Stanford

Law School faculty in 1980, Professor Grundfest was a commissioner of the Securities and Exchange Commission, served on the staff of the President's Council of Economic Advisors as counsel and senior economist for legal and regulatory matters, and was an associate at Wilmer, Canter & Pickering. Early in his career he was a research associate at the Brookings Institution and an economist and consultant with the RAND Corporation.

Faculty

Deborah R. Hensler

Judge John W. Ford Professor of Dispute Resolution and Associate Dean for Graduate Studies



Deborah R. Hensler's empirical research on dispute resolution, complex litigation, and mass tort liability has won national recognition. A political scientist and public policy analyst who was the director of the RAND Corporation's Institute for Civil Justice before joining the Stanford Law School faculty, she has testified before state and federal legislatures on issues ranging from alternative dispute resolution to asbestos litigation and mass torts and consulted with judges and lawyers outside of the United States on the design of class action regimes. She co-edited the recently published volume *The Globalization of Class Action* and co-authored RAND's comprehensive 2002 report on the status of asbestos litigation in the United States. She is the lead author of *Class Action Dilemmas: Pursuing Public Goals For Private Gain*. At Stanford she teaches seminars on complex litigation, the legal profession, and the use of policy analysis in

the law and serves as associate dean of graduate studies. Professor Hensler is a fellow of the American Academy of Arts and Sciences and the American Academy of Political and Social Science as well as a member of the board of overseers for the RAND Institute for Civil Justice. She was the director of the Stanford Center on Conflict and Negotiation from 1998 to 2003. Before joining the Stanford Law School faculty in 1998, she was a professor at the University of Southern California Gould School of Law and held a variety of high-level positions at RAND where she was employed from 1978 to 2001.

Daniel E. Ho

Associate Professor of Law and Robert E. Paradise Faculty Fellow for Excellence in Teaching and Research



Daniel Ho's scholarship centers on quantitative empirical legal studies, with a substantive focus on administrative, anti-discrimination, and election law. He has written on media regulation and viewpoint diversity, the history of the standing doctrine and the New Deal, the impact of war on Supreme Court civil rights and liberties decisions, the effects of affirmative action, and the consequences of local electoral administration on voting behavior. Prior to joining Stanford Law School, he clerked for Judge Stephen F. Williams on the U.S. Court of Appeals for the District of Columbia Circuit, and he was a postdoctoral fellow at the Institute for Quantitative Social Science at Harvard University. His work has been supported by the National Science Foundation, and he was co-recipient of the Warren Miller Prize for the best paper published in *Political Analysis* (2008), the McGraw-Hill Award for the best paper published by political

scientists on law and courts (2006), and the Pi Sigma Alpha award for the best paper delivered at the Midwest Political Science Association (2004).

Pamela S. Karlan

Kenneth and Harle Montgomery Professor of Public Interest Law and Co-Director, Supreme Court Litigation Clinic



A productive scholar and award-winning teacher, Pamela S. Karlan is also the founding director of the school's extraordinarily successful Supreme Court Litigation Clinic, where students litigate live cases before the Court. One of the nation's leading experts on voting and the political process, she has served as a commissioner on the California Fair Political Practices Commission and an assistant counsel and cooperating attorney for the NAACP Legal Defense Fund. Professor Karlan is the co-author of three leading casebooks on constitutional law and related subjects, as well as more than four dozen scholarly articles. She is a widely recognized commentator on legal issues. Before joining the Stanford Law School faculty in 1998, she was a professor of law at the University of Virginia School of Law and served as a law clerk to Justice Harry A. Blackmun of the U.S. Supreme Court and Judge Abraham D. Sofaer of the U.S. District Court

for the Southern District of New York. Karlan is a member of the American Academy of Arts and Sciences and of the American Law Institute.

Mark G. Kelman

James C. Galther Professor of Law and Vice Dean



A prolific scholar whose jurisprudential interests range from law and economics to cognitive psychology, Mark G. Kelman has applied social science approaches to diverse legal fields including criminal law, taxation, administrative regulation, and disability law. His most recent research has focused on debates about the fundamental nature of heuristic reasoning associated, respectively, with the "heuristics and biases" school and the "fast and frugal heuristics" school. He is especially concerned with the implications of these debates for a wide variety of issues of both legal theory and policy (ranging from questions about whether values are commensurable or moral values "universal" to controversies over the efficacy of different forms of criminal sanctions). In addition to being a longtime teacher of both criminal law and property to first-year students, he has served as the academic coordinator, academic associate dean, and, currently, vice dean at the law school. Before joining the Stanford Law School faculty in 1977, Professor Kelman was the director of criminal justice projects for the Fund for the City of New York.

Amalia D. Kessler

Professor of Law and Helen L. Crocker Faculty Scholar



A scholar whose research focuses on the evolution of commercial law and civil procedure, Amalia Kessler (MA '96, PhD '01) seeks to explore the roots of modern market culture and present-day process norms. In 2007-08, she received a Charles A. Ryskaup Research Fellowship from the American Council of Learned Societies, supporting research on her current book project concerning the 18th-century origins of American adversarial legal culture—including the forgotten history of equity procedure and its implications for comparative legal scholarship. In 2008, her book, *A Revolution in Commerce: The Parisian Merchant Court and the Rise of Commercial Society in Eighteenth-Century France* (Yale University Press, 2007), was awarded the American Historical Association's J. Russell Major Prize for the best book in English on any aspect of French history. And in 2005, she received the Surrency Prize from the American Society for Legal History for the best article in the previous year's volume of the *Law and History Review*. Before joining the Stanford Law School faculty in 2009, she was a trial attorney in the civil division of the U.S. Department of Justice and clerked for Judge Pierre N. Leval of the U.S. Court of Appeals for the Second Circuit. Professor Kessler has an appointment (by courtesy) with the Stanford University Department of History.

Daniel P. Kessler

Professor of Law



An expert on health policy and health care finance, Kessler's scholarship is particularly timely. His recent book, *Healthy, Wealthy, and Wise: Five Steps to a Better Health Care System* (with John Cogan and R. Glenn Hubbard), outlines how market-based health care reform in the U.S. can help fix our system's current problems. His recent research examines how tax policy affects medical spending. His research interests also include empirical studies in antitrust law and law and economics. Currently he is investigating how vertical integration and other shared ownership structures in markets for health services affect the cost and quality of care. A senior fellow at the Hoover Institution and a professor of health research and policy (by courtesy) with the Stanford School of Medicine, Professor Kessler '03 has been on the Stanford Graduate School of Business faculty for 15 years—and now brings to the law school a uniquely interdisciplinary perspective to his teaching. He is also a Research Associate at the National Bureau of Economic Research. Professor Kessler has won awards for his advising and research from Stanford, the National Institute for Health Care Management Foundation, and the International Health Economics Association. He has received grants from the National Institutes of Health, the National Science Foundation, and the California HealthCare Foundation. He has served as a consultant to corporations, foundations, and the governments of the United States and Canada. He has taught courses in health economics, public policy, and antitrust law at Stanford, Harvard, and the Wharton School of the University of Pennsylvania. He has published numerous papers in economics journals and law reviews. He has also appeared on *The Need Now* with Jim Lehrer and written several articles on health reform for *The Wall Street Journal* and *Health Affairs*.

Faculty

Michael Klausner

Nancy and Charles Munger Professor of Business and Professor of Law



A scholar of corporate law and corporate governance, Michael Klausner has conducted in-depth empirical studies of outside director liability and takeover defenses in firms at their initial public offering. He also has done theoretical work on the overall structure and function of corporate law, and on various topics in nonprofit law. His recent scholarship has focused on securities litigation, directors' and officers' liability insurance, and the liability risk of outside directors. Before joining the Stanford Law School faculty in 1997, he was a professor of law at New York University School of Law, a White House Fellow and deputy associate director in the Office of Policy Development, and a corporate law practitioner with Gibson, Dunn & Crutcher in Washington, D.C. and Hong Kong. He clerked for Justice William Brennan of the U.S. Supreme Court and Judge David Bazelon of the U.S. Court of Appeals for the District of Columbia Circuit.

William Koski

Eric and Nancy Wright Professor of Clinical Education and Director, Youth and Education Law Project



An accomplished ethical teacher and litigator, Bill Koski (PhD '85) is the founder and director of the law school's Youth and Education Law Project. He and the students in the Law Project have represented hundreds of disadvantaged children and their families in educational equity, disability rights, and school reform matters. Reflecting his multifaceted background as a lawyer and social scientist, Professor Koski's scholarly work focuses on the related issues of educational accountability, equity, and adequacy; the politics of educational policy reform and judicial decision making in educational policy reform litigation. Professor Koski's current research concentrates on the normative case for and policy implications of ensuring equality of educational opportunity in the current context of educational standards, adequacy, and accountability. Before joining the Stanford Law School faculty in 2001, Professor Koski was a lecturer in law at Stanford and a supervising attorney at the law school's East Palo Alto Community Law Project. He was also an associate at Orrick, Herrington & Sutcliffe and then Alden, Aronowky & Sox. Professor Koski has an appointment (by courtesy) with the Stanford School of Education.

Larry Kramer

Richard E. Lang Professor of Law and Dean



Larry Kramer joined Stanford Law School in 2004 as Richard E. Lang Professor and Dean. As the school's 12th dean, he has spearheaded significant educational reforms, including dramatically expanding joint degree programs as part of a multidisciplinary approach to legal studies, enlarging the clinical education program to promote reflective lawyering, revamping programs to foster a public service ethos, and building the international law program to support a growing emphasis on globalization in legal practice. Dean Kramer has written and taught in such varied fields as conflict of laws, civil procedure, federalism and its history, and most recently, the role of courts in society. His book, *The People Themselves: Popular Constitutionalism and Judicial Review*, sparked renewed interest in the ongoing debate about the relationship between the Supreme Court of the United States and politics. He is an elected fellow of the American

Academy of Arts and Sciences and a member of the American Philosophical Society and the American Law Institute. In December 2008, Equal Justice Works named Dean Kramer to its Board of Directors. He has appointments (by courtesy) with the Stanford University Department of History and with the Graduate School of Business. Before joining the Stanford faculty, Dean Kramer served as Associate Dean for Research and Academics and Russell D. Niles Professor of Law at New York University School of Law; professor of law at the University of Chicago and University of Michigan law schools; and consultant to Mayer, Brown, Rowe & Maw LLP. Early in his career, Dean Kramer clerked for Justice William J. Brennan Jr. of the U.S. Supreme Court and Judge Henry J. Friendly of the U.S. Court of Appeals for the Second Circuit.

Mark A. Lemley

William H. Neuhorn Professor of Law



Widely recognized as a preeminent scholar of intellectual property law, Mark A. Lemley (BA '88) is an accomplished litigator—having litigated cases before the U.S. Supreme Court, the California Supreme Court, and federal circuit courts—as well as a prolific writer with more than 100 published articles and six books. He has testified numerous times before Congress, the California legislature, the Federal Trade Commission, and the Antitrust Modernization Commission on patent, trade secret, antitrust, and transitional law matters. He is also a partner and founder in the firm Dorie Tangri LLP. His contributions to legal scholarship focus on how the economics and technology of the Internet affect patent law, copyright law, and trademark law; and at Stanford he currently acts as the director of the Program in Law, Science & Technology, and the director of the LL.M. Program in Law, Science & Technology.

Before joining the Stanford Law School faculty in 2004, he was a professor of law at the UC Berkeley School of Law (Boalt Hall) and at the University of Texas School of Law. He also served as counsel at Fish & Richardson and Brown & Bain as well as clerked for Judge Dorothy W. Nelson of the U.S. Court of Appeals for the Ninth Circuit.

Lawrence C. Marshall

Professor of Law, David and Stephanie Mills Director of Clinical Education, and Associate Dean for Public Interest and Clinical Education



A nationally renowned advocate for reform of the U.S. criminal justice system, Professor Larry Marshall has been widely recognized for both his activism and teaching. As director of the Mills Legal Clinic of Stanford Law School, he has committed himself to creating an integrated clinical experience that serves the needs of each and every student at Stanford Law School. Professor Marshall has also been instrumental in expanding the focus of public interest at the law school through the John and Terry Levin Center for Public Service and Public Interest Law. Much of his scholarly work has focused on issues surrounding the application of the death penalty. Before joining the Stanford faculty in 2005, he was a professor of law at Northwestern University School of Law and of counsel at Mayer, Brown & Plat. At Northwestern, he co-founded and served as legal director of the world-renowned Center on Wrongful Convictions,

where he represented many wrongly convicted inmates, including many inmates who at one time had been sentenced to death. Early in his career, he clerked for Justice John Paul Stevens of the U.S. Supreme Court and for Judge Patricia M. Wald of the U.S. Court of Appeals for the District of Columbia Circuit.

Janet Martinez

Senior Lecturer in Law



Janet Martinez focuses her research and consulting on the lawyer's role in negotiation, domestically and internationally; conflict resolution system design; facilitation of public disputes, particularly in the fields of international trade and the environment; negotiation and consensus-building training; and negotiation curriculum development for clients in the public, private, and nonprofit sectors. In addition to her role as director of the law school's Gould Negotiation and Mediation Program, Professor Martinez is a senior consultant at the Consensus Building Institute in Cambridge, Mass., a nonprofit institution whose mission is to improve conflict resolution, and a consultant at Lax Sebenius, a negotiation consulting firm in Concord, Mass. Before joining the Stanford Law School faculty in 2002, she did research, writing, and teaching in various aspects of negotiation at Harvard University's graduate schools of business, law, and government and was senior counsel for the McKesson Corporation.

Faculty

Jenny S. Martinez

Professor of Law and Justin M. Roach, Jr. Faculty Scholar



Professor Jenny S. Martinez is a leading expert on international courts and tribunals, international human rights, and the laws of war. Her scholarship focuses on the role of courts and tribunals in advancing human rights, ranging from her work on the all-but-forgotten 19th-century international tribunals involved in the suppression of the trans-Atlantic slave trade through her work on contemporary institutions like the International Criminal Court and the role of courts in policing human rights abuses in the "war on terror." An experienced litigator, she argued the 2004 case of *Rumsfeld v. Padilla* before the U.S. Supreme Court, seeking to clarify the constitutional protections available to post-9/11 "enemy combatants" who are U.S. citizens. Professor Martinez was named to the *National Law Journal's* list of "Top 40 Lawyers Under 40" and the *American Lawyer's* "Young Litigators Top Fifty." She serves on the board of directors for the Open Society Justice Initiative and has served as a consultant on international human rights issues for both Human Rights First and the International Center for Transitional Justice. Before joining the Stanford faculty in 2003, Professor Martinez was a senior research fellow at Yale University and an attorney at Jenner & Block. She clerked for Justice Stephen Breyer (BA '99) of the U.S. Supreme Court and Judge Guido Calabresi of the U.S. Court of Appeals for the Second Circuit; she was an associate legal officer for Judge Patricia Wald of the United Nations International Criminal Tribunal for the former Yugoslavia.

Michael W. McConnell

Richard and Frances Mallory Professor of Law and Director, Stanford Constitutional Law Center



Widely regarded as one of the nation's top judges and most distinguished constitutional law scholars, the Honorable Michael W. McConnell is a leading authority on separation of powers, federalism, originalism, and various other aspects of constitutional law. He is particularly well known for his work on freedom of religion—a critical area of constitutional law that was a key focus of his scholarship before he ascended the bench. In addition to teaching, he is the director of the Stanford Constitutional Law Center, which was founded in 2006 to explore and improve public understanding of the most pressing constitutional issues. Before joining Stanford in 2009, McConnell served as a federal judge on the U.S. Court of Appeals for the Tenth Circuit. He was previously Presidential Professor of Law at the S.J. Quinney College of Law at the University of Utah, and prior to that the William B. Graham Professor of Law at the University of Chicago Law School. McConnell also practiced law as an appellate litigator, arguing 11 cases in the U.S. Supreme Court and numerous cases in other courts, and was Special Consultant to the appellate practice group of the Chicago-based law firm of Mayer Brown. He served as law clerk to then Chief Judge J. Skelly Wright of the U.S. Court of Appeals for the District of Columbia Circuit, and to Justice William J. Brennan Jr. of the U.S. Supreme Court. McConnell was an assistant general counsel at the Office of Management and Budget and an assistant to the Solicitor General in the Department of Justice under President Ronald Reagan. He is also a senior fellow at the Hoover Institution.

David W. Mills

Senior Lecturer in Law



As former senior tax partner and current managing partner for Harborson Enterprises, a private investment firm, David W. Mills has extensive experience in investment and finance, including the defense of those charged with business crimes. Though Professor Mills has taught several tax courses at Stanford Law School, he now focuses exclusively on teaching first-year *Criminal Law* and *White Collar Crime*. He is the author of numerous articles on white collar crime. An advocate of social justice, he founded and was the first director of clinical education at Stanford Law School. He serves on a number of not for profit boards and is co-chair of the Board of Directors of the NAACP Legal Defense Fund. Before joining the Stanford Law School faculty in 2000, he was a senior tax partner in the northeastern law firm of Lowenstein, Kohl, Fisher & Boyhan and a lecturer at Rutgers School of Law-Newark and the Santa Clara University School of Law.

Alison D. Morantz

Associate Professor of Law and John A. Wilson Distinguished Faculty Scholar



A scholar whose research has explored the impact of occupational safety and health laws, the law and economics of workplace regulation, the comparative effectiveness of state and federal enforcement, and legal history, Alison D. Morantz seeks to parse the real-world effects of legal and policy reform. Much of her current empirical research examines policy-relevant aspects of occupational safety and health, such as the effect of devolving the enforcement of regulations from federal to state officials, and how differences in state laws can affect the frequency of workers' compensation claims. Before joining the Stanford Law School faculty in 2004, Professor Morantz was an associate at Pyle, Rome, Lichten & Ehrenberg, working as a union-side labor lawyer and anti-discrimination advocate. She clerked for Judge Patti B. Saris of the U.S. District Court for the District of Massachusetts.

Joan Petersilia

Professor of Law



Dr. Joan Petersilia has spent more than 25 years studying the performance of U.S. criminal justice agencies and has been instrumental in affecting sentencing and corrections reform in California and throughout the United States. She is the author of 11 books about crime and public policy, and her research on parole reform, prisoner reintegration and sentencing policy has fueled changes in policies throughout the nation. A criminologist with a background in empirical research and social science, Dr. Petersilia is also faculty co-director for the Stanford Criminal Justice Center (SCJC), focusing on policies related to crime control, sentencing, and corrections, and developing nonpartisan analyses and recommendations intended to aid public officials, legal practitioners, and the public in understanding criminal justice policy at the state and national levels. Before joining the Stanford Law School faculty, Dr. Petersilia was a professor of criminology, law and society in the School of Social Ecology at the University of California, Irvine, and

director of UCI's Center for Evidence-Based Corrections. She also previously served as a special advisor to Governor Arnold Schwarzenegger, helping to reorganize juvenile and adult corrections and working with the California State Legislature to implement prison and parole reform. She recently chaired Governor Schwarzenegger's Rehabilitation Strike Team and was also co-chair of California's expert panel on offender programs. Dr. Petersilia is a former director of the Criminal Justice Program at the RAND Corporation; former president of the American Society of Criminology; former co-director of the National Research Council's study on Community Supervision and Desistance from Crime; and former director of the National Research Council's study on Crime Victims with Developmental Disabilities.

A. Mitchell Polinsky

Josephine Scott Crocker Professor of Law and Economics



A pioneering American figure in the applications of economic theory to law, A. Mitchell Polinsky is a prolific scholar, producing work on the economic analysis of a wide variety of legal issues, from property to contract law to liability and punitive damages. He has written major articles on the economic efficiency of various forms of legal sanctions in achieving deterrence across a range of problems, including criminal law, contract, and tort disputes. Professor Polinsky is the founder and director of the John M. Olin Program in Law and Economics at Stanford Law School. He has been a Guggenheim Fellow and a president of the American Law and Economics Association, and is currently a research associate in the Law and Economics Program of the National Bureau of Economic Research. Before joining the Stanford Law School faculty in 1979, he was a member of the faculty at Harvard University. Professor Polinsky has an appointment (by courtesy) with the Stanford University Department of Economics.

Robert L. Rabin

A. Calder Mackay Professor of Law



An expert on torts and legislative compensation schemes, Robert Rabin is highly regarded for his extensive knowledge of the history and institutional dynamics of accident law. He is a prolific author on issues relating to the functions of the tort system and alternative regulatory schemes and is the co-editor of a choice casebook on tort law. Professor Rabin is currently an advisor to the ongoing American Law Institute Restatement of Torts Third project and has been the program director for the Robert Wood Johnson Foundation Program on Tobacco Policy Research and Evaluation, as well as a reporter for the American Law Institute Project on Compensation and Liability for Product and Process Injuries and the American Bar Association Action Commission to Improve the Tort Liability System. He has been a member of the Stanford Law School faculty since 1970.

Faculty

Deborah L. Rhode

Ernest W. McFarland Professor of Law



Deborah L. Rhode is one of the country's leading scholars in the fields of legal ethics and gender, law, and public policy. An author of 20 books, including *Women and Leadership* and *Virtual Leadership*, she is the nation's most frequently cited scholar in legal ethics. She is the director of the Stanford Center on the Legal Profession. Professor Rhode is the former president of the Association of American Law Schools, the former chair of the American Bar Association's Commission on Women in the Profession, the founder and former director of Stanford's Center on Ethics, and the former director of the Michelle R. Clayman Institute for Gender Research at Stanford. She also served as senior counsel to the minority members of the U.S. House Committee on the Judiciary on presidential impeachment issues during the Clinton administration. She has received the American Bar Association's Michael Frank award for contributions

to the field of professional responsibility; the American Bar Foundation's W. M. Keck Foundation Award for distinguished scholarship on legal ethics; and the American Bar Association's Pro Bono Public Award for her work on expanding public service opportunities in law schools. She is a member of the American Academy of Arts and Sciences and vice chair of the board of Legal Momentum (formerly the NOW Legal Defense and Education Fund). She is currently a columnist for the *National Law Journal*. Before joining the Stanford Law faculty, Professor Rhode was a law clerk for Supreme Court Justice Thurgood Marshall.

Jane Schacter

William Nelson Cromwell Professor of Law and Associate Dean for Curriculum



Focusing her research on the concepts of democratic theory that shape legal analysis and the constitutional dimensions of judicial and legislative legitimacy, Jane Schacter is a leading expert on statutory interpretation and legislative process, constitutional law, and sexual orientation and the law. Before joining the Stanford Law School faculty in 2006, Professor Schacter was professor of law at the University of Wisconsin Law School, as well as the University of Michigan Law School. Early in her career she was an assistant attorney general in Massachusetts, an associate at Hill & Bartlow in Boston, and a law clerk to Judge Raymond J. Pettine of the U.S. District Court for the District of Rhode Island.

F. Daniel Siciliano

Faculty Director for the Arthur and Toni Rembe Rock Center for Corporate Governance, Senior Lecturer in Law and Associate Dean for Executive Education and Special Programs



F. Daniel Siciliano '04 is a legal scholar and entrepreneur with expertise in corporate governance, corporate finance, and immigration law. He assumes a variety of leadership roles at the law school, including faculty director of the Arthur and Toni Rembe Rock Center for Corporate Governance, associate dean for executive education and special programs and co-director of Stanford's Directors' College. Previously, Siciliano was a teaching fellow for the law school's international LL.M. degree program in Corporate Governance and Practice and executive director of the Program in Law, Economics and Business. He is the senior research fellow with the Immigration Policy Center and a frequent commentator on the long-term economic impact of immigration policy and reform. His work has included expert testimony in front of both the U.S. Senate and House of Representatives. Prior to joining Stanford Law School, Siciliano

co-founded and served as executive director of the Immigration Outreach Center in Phoenix, Arizona. He has launched and led several successful businesses, including LawLogix Group—named three times to the *Inc.* 500/5000 list. Siciliano serves as a governance consultant and trainer to board directors of several Fortune 500 companies and is a member of the Academic Council of *Corporate Board Member* magazine.

Deborah A. Sivas

Professor of Law and Director, Environmental Law Clinic



A leading environmental litigator, Deborah A. Sivas '87 is director of the highly respected Environmental Law Clinic, in which students provide legal counsel to clients of national, regional, and grassroots nonprofit organizations on a variety of environmental issues. Professor Sivas's litigation successes include challenging the Bush administration's gas mileage standards for SUVs and light trucks and holding the U.S. Environmental Protection Agency accountable for regulating the discharge of invasive species in ship ballast water. Her current research is focused on the intersection of law and science in the arena of climate change and coastal/marine policy and the ability of the public to hold policymakers accountable. She is a frequent speaker on these topics. Prior to assuming the clinic directorship in 1997, Professor Sivas was a partner at Gunther, Sivas & Walthall, an attorney with Earthjustice (formerly Sierra Club Legal Defense Fund),

an associate in the environmental practice group of Heller Elnnan, and a law clerk to Judge Judith N. Keep of the U.S. District Court for the Southern District of California. She currently serves as chair for the board of directors for the Turtle Island Restoration Network. In recognition of her work on behalf of the environment, *California Lawyer* magazine named Professor Sivas one of its 2008 Attorneys of the Year.

Norman W. Spaulding

Nelson Bowman Sweltzer and Marie B. Sweltzer Professor of Law



A nationally recognized scholar in the area of professional responsibility and the legal profession, Norman W. Spaulding's research focuses on the history of the American legal profession and professional identity. In 2004 the Association of American Law Schools presented him with its Outstanding Scholarly Paper Prize for "Constitution as Counter-Monument: Federalism, Reconstruction and the Problem of Collective Memory," which was published in the *Columbia Law Review*. Before joining the Stanford Law School faculty in 2005, he was a professor of law at the UC Berkeley School of Law and an associate at Skadden, Arps, Slate, Meagher & Flom LLP, where he did environmental litigation. Professor Spaulding '97 served as a law clerk to Judge Betty B. Fletcher (BA '43) of the U.S. Court of Appeals for the Ninth Circuit and Judge Thelton Henderson of the U.S. District Court for the Northern District of California.

Jayaashri Srikantiah

Associate Professor of Law and Director, Immigrants' Rights Clinic



A respected voice on immigration law and civil rights, Jayaashri Srikantiah is the founder and director of the law school's Immigrants' Rights Clinic, in which students represent individual immigrants and immigrants' rights organizations and also engage in impact litigation, community outreach, public education, and policy advocacy. Professor Srikantiah's research explores the role of administrative discretion in immigration decision making in various areas, including human trafficking and immigration detention. She has also presented on the benefits of teaching law school clinics that integrate direct services work with broader legal advocacy projects. Professor Srikantiah is a frequent speaker on various immigration topics, including comprehensive immigration reform, immigration and national security, and immigration detention. Before joining the Stanford Law School faculty in 2004, Professor Srikantiah was the associate legal director

of the ACLU of Northern California and a staff attorney at the ACLU's Immigrants' Rights Project. She litigated extensively on behalf of immigrants, and her experience includes challenging the use of government watchlists; litigating against mandatory and indefinite detention policies in the federal courts, including the U.S. Supreme Court; and representation of human trafficking survivors. Professor Srikantiah has also worked as an associate at the law firm of Howard Rice Nemerowold Canady Falk & Rabkin, and was a law clerk to Judge David R. Thompson of the U.S. Court of Appeals for the Ninth Circuit.

Faculty

Helen Stacy

Senior Lecturer in Law



As a scholar of international and comparative law, legal philosophy, and human rights, Helen Stacy has produced works analyzing the efficacy of regional courts in promoting human rights, differences in the legal systems of neighboring countries, and the impact of postmodernism on legal thinking. Her recent scholarship has focused on how international and regional human rights courts can improve human rights standards while also honoring social, cultural, and religious values. In addition to her role at the law school, Stacy is a senior fellow at the Center on Democracy, Development, and the Rule of Law at Stanford University's Freeman Spogli Institute for International Studies, where she coordinates the human rights program. She is also a researcher with the European Forum at the Freeman Spogli Institute, a member of the Committee in Charge of the Program in Modern Thought and Literature, and she is associated with the Center for African Studies. Before joining the Stanford Law School faculty in 2005, Stacy was a senior lecturer at Queensland University of Technology School of Law, a senior prosecutor for the Director of Public Prosecutions in London, and a legal officer for Shell Oil in Australia.

Jeff Strnad

Charles A. Beardslay Professor of Law



Jeff Strnad's research is spread across the fields of taxation, public finance, finance, and empirical analysis. He has published leading works on the taxation of financial instruments. Professor Strnad is an innovative teacher of quantitative methods, creating original courses in empirical analysis and game theory. Before joining the Stanford Law School faculty in 1997, he was a professor of law and economics at the California Institute of Technology and the John B. Milliken Professor of Taxation at the University of Southern California Gould School of Law. Professor Strnad holds a courtesy appointment as professor of economics with the Stanford University Economics Department.

Kathleen M. Sullivan

Stanley Morrison Professor of Law and Former Dean



Kathleen M. Sullivan is a nationally prominent scholar and teacher of constitutional law. Author of the nation's leading casebook in constitutional law, she has published articles on federalism, religion, speech, equality, and constitutional theory. A professor of law at Harvard Law School before joining the Stanford Law School faculty in 1993, she is a fellow of the American Academy of Arts and Sciences and the American Philosophical Society. Also an outstanding litigator who has argued before numerous appeals courts and the U.S. Supreme Court, she has been named by *The National Law Journal* as one of the 100 most influential lawyers in America. From 1999 to 2004, Professor Sullivan served as the eleventh dean of Stanford Law School and the first woman dean of any school at Stanford. As dean, she made fifteen faculty appointments, established the clinical faculty, renovated all 17 classrooms and the library reading room,

launched numerous academic centers, started the LLM program, and raised over \$100 million for the school.

Alan O. Sykes

James and Patricia Kowal Professor of Law



A leading expert on the application of economics to legal problems, Alan Sykes has focused his research on international economic relations. His writing and teaching have encompassed international trade, torts, contracts, insurance, antitrust, and economic analysis of law. He has been a member of the executive committee and the board of the American Law and Economics Association, and he currently serves as reporter for the American Law Institute Project on Principles of Trade Law: The World Trade Organization. Professor Sykes is associate editor of the *Journal of International Economic Law* and a member of the board of editors of the *World Trade Review*. He formerly served as editor of the *Journal of Legal Studies* and the *Journal of Law and Economics*. Before joining the Stanford Law School faculty in 2006, Professor Sykes was the Frank and Bernice J. Greenberg Professor of Law at the University of Chicago Law School, where he also served as faculty director of curriculum. He is a former National Science Foundation graduate fellow in the Department of Economics at Yale University. He has an appointment (by courtesy) with the Stanford Institute for Economic Policy Research.

Barton H. "Buzz" Thompson, Jr.

Robert E. Paradise Professor in Natural Resources Law and Perry L. McCarty Director, Woods Institute for the Environment



A leading expert in environmental and natural resources law and policy, Barton H. "Buzz" Thompson, Jr., JD, MBA '76 (BA '72), has contributed a large body of scholarship on environmental issues ranging from the future of endangered species and fisheries to the use of economic techniques for regulating the environment. He is the founding director of the law school's Environmental and Natural Resources Program, Perry L. McCarty Director of the Woods Institute for the Environment, and a senior fellow at the Freeman Spogli Institute for International Studies. In 2008, the Supreme Court appointed Professor Thompson to serve as a special master in *Shinnock v. Wyoming* (137 Original). Professor Thompson is chairman of the board of the Resources Legacy Fund and the Resources Legacy Fund Foundation, a California trustee for The Nature Conservancy, and a board member of both the American Farmland Trust and the National Heritage Institute. He also serves as a member of the Science Advisory Board for the U.S. Environmental Protection Agency. Before joining the Stanford Law School faculty in 1986, he was a partner at O'Melveny & Myers in Los Angeles and a lecturer at the UCLA School of Law. He was a law clerk to Chief Justice William H. Rehnquist '52 (BA '48, MA '48) of the U.S. Supreme Court and Judge Joseph T. Sneed of the U.S. Court of Appeals for the Ninth Circuit.

Barbara van Schewick

Assistant Professor of Law



Barbara van Schewick's research focuses on the economic, regulatory, and strategic implications of communication networks. In particular, she explores how changes in the architecture of computer networks affect the economic environment for innovation and competition on the Internet, and how the law should react to these changes. This work has made her a leading expert on the issue of network neutrality. Professor van Schewick is co-director of Stanford Law School's Center for Internet and Society and an assistant professor of electrical engineering (by courtesy) at Stanford's Department of Electrical Engineering. Prior to joining the Stanford Law faculty, van Schewick was a senior researcher at the Technical University Berlin, Germany, and a nonresidential fellow of the Center for Internet and Society. Van Schewick has advised the German Federal Ministry of Education and Research on innovation and technology policy and worked with the German Federal Network Agency on spectrum policy. From August 2009 to November 2011, she was the first residential fellow at the Center for Internet and Society.

Michael Wara

Assistant Professor of Law



An expert on environmental law and policy, Michael Wara's research focuses on climate policy and regulation, both domestically and internationally. Professor Wara's current scholarship addresses the performance of the emerging global market for greenhouse gases and mechanisms for reducing emissions, especially in developing countries after the Kyoto Protocol expires in 2012. Professor Wara '06 was formerly a geochemist and climate scientist and has published work on the history of the El Niño/La Niña system and its response to changing climates, especially those warmer than today. The results of his scientific research have been published in premier scientific journals, including *Science* and *Nature*. Professor Wara joined Stanford Law in 2007 as a research fellow in environmental law and as a lecturer in law. Previously, he was an associate in Holland & Knight's Government Practice Group, where his practice focused on climate change, land use, and environmental law. Professor Wara is a research fellow at the Program in Energy and Sustainable Development in Stanford's Freeman Spogli Institute for International Studies.

Faculty

Allen S. Weiser

Senior Lecturer in Law



Allen Weiser '89 is a seasoned international lawyer with expertise in such wide-ranging fields as international and national security law, the law of war, international conflict resolution, and international criminal law (including transitional justice). His scholarship focuses on international law and the response to the contemporary security threats of international terrorism and the proliferation of weapons of mass destruction. His work also explores the relationship between international law and the invocation of domestic "war powers" in connection with the U.S. response to terrorism, as well as the role of legal norms in the resolution of international conflict. He practiced international law in the U.S. Department of State for more than a decade advising government policymakers, negotiating international agreements, and representing the United States in litigation before the International Criminal Tribunal for the former

Yugoslavia, the International Court of Justice, and the Inter-American Claims Tribunal. Senior Lecturer Weiser is codirector of the Stanford Program in International Law and the Stanford Center on International Conflict and Negotiation. Before joining the Stanford Law School faculty in 2008, Weiser served as legal counsel to the U.S. Embassy in The Hague and attorney adviser in the Office of the Legal Adviser of the U.S. Department of State. He was a law clerk to Judge John Steadman of the District of Columbia Court of Appeals.

Robert Weisberg

Edwin E. Huddleson, Jr. Professor of Law



Robert Weisberg '79 works primarily in the field of criminal justice, writing and teaching in the areas of criminal law, criminal procedure, white collar crime, and sentencing policy. He also founded and now serves as faculty codirector of the Stanford Criminal Justice Center (SCJC), which promotes and coordinates research and public policy programs on criminal law and the criminal justice system, including institutional evaluation of the police and correctional systems. Professor Weisberg was a consulting attorney for the NAACP Legal Defense Fund and the California Appellate Project, where he worked on death penalty litigation in the state and federal courts. In addition, he served as a law clerk to Justice Potter Stewart of the U.S. Supreme Court and Judge J. Skelly Wright of the U.S. Court of Appeals for the District of Columbia Circuit. In 1979, Professor Weisberg received his J.D. from Stanford Law School, where he served as

President of the Stanford Law Review. Professor Weisberg is a two-time winner of the law school's John Bingham Hurlbut Award for Excellence in Teaching. Before joining the Stanford Law School faculty in 1981, Professor Weisberg received a PhD in English at Harvard and was a tenured English professor at Skidmore College. Drawing on this background, he is one of the nation's leading scholars on the intersection of law and literature and co-author of the highly praised book *Library Criticisms of Law*.

Emeriti

Barbara Babcock

Judge John Crown Professor of Law, Emerita



The first woman appointed to the regular faculty, as well as the first woman to hold an endowed chair and the first emerita, at Stanford Law School, Barbara Babcock is an expert in criminal and civil procedure. She is also known nationwide for her research into the history of women in the legal profession and, in particular, for her research into the life of California's pioneering female lawyer and inventor of the public defender, Clara Foltz, whose biography she is currently writing. A former assistant attorney general for the Civil Division in the U.S. Department of Justice, Professor Babcock is a distinguished teacher, being the only four-time winner of the John Bingham Hurlbut Award for Excellence in Teaching at Stanford Law School. Before joining the Stanford faculty in 1972, she served as a staff attorney and then as the first director of the Public Defender Service of the District of Columbia. Upon her graduation

from law school, she clerked for Judge Henry Edgerton of the U.S. Court of Appeals for the District of Columbia Circuit, and worked for the noted criminal defense attorney, Edward Bennett Williams.

Paul Brest

Professor of Law, Emeritus, and Former Dean



After a long and eminent career as a constitutional law scholar and dean of Stanford Law School, Paul Brest assumed the presidency of the William and Flora Hewlett Foundation in 2000, where he leads a philanthropic organization dedicated to solving social and environmental problems in the United States and abroad. He remains active as a teacher and legal scholar in the development of interdisciplinary approaches to problem solving and is a leading theorist on the role of nonprofits in society. Professor Brest is a fellow in the American Academy of Arts and Sciences, and holds honorary degrees from Northwestern University School of Law and Swarthmore College. Before joining the Stanford Law School faculty in 1969, he clerked for Judge Bailey Aldrich of the U.S. Court of Appeals for the First Circuit and Justice John M. Harlan of the U.S. Supreme Court, and did civil rights litigation with the NAACP Legal

Defense and Education Fund in Mississippi.

William Cohen

C. Wendell and Edith M. Carlsmith Professor of Law, Emeritus



Author of an influential series of articles on national rights to equal citizenship under the 14th Amendment and other aspects of federalism, William Cohen has devoted over 50 years to the study and teaching of constitutional law. In addition to his scholarship in the field of federal jurisdiction, Professor Cohen is the editor of a major constitutional law casebook, which is currently in its twelfth edition, and a longtime teacher of torts. He has been a visiting professor at Arizona State University College of Law, where he served as the Merriam Distinguished Visiting Professor. Before joining the Stanford Law School faculty in 1970, he was a professor of law at the University of California at Los Angeles School of Law and at the University of Minnesota Law School. Early in his career he clerked for Justice William O. Douglas of the U.S. Supreme Court.

Lance E. Dickson

Professor of Law, Emeritus, and Former Director of the Robert Crown Law Library



Lance E. Dickson served as director of the Robert Crown Law Library for 17 years. Before joining the Stanford Law School faculty in 1987, he was professor of law and law library director at Louisiana State University Law Center, following an earlier appointment at the University of Texas School of Law.

Emeriti

Marc A. Franklin

Frederick I. Ricowan Professor of Law, Emeritus



A renowned teacher and scholar, Marc A. Franklin is a pioneer in the field of mass media law and regulation and has written extensively on legal issues that affect the press, such as libel and privacy. He is the author of numerous treatises and is co-author, with Professor Robert L. Rubin, of a widely used casebook on tort law. Professor Franklin's body of work has provided an essential reference for lawyers and the press alike. He has been a Fulbright Scholar at Victoria University in New Zealand and a Fellow at the Center for Advanced Study in the Behavioral Sciences at Stanford University. Before joining the Stanford Law School faculty in 1962, he was a professor of law at Columbia University School of Law. Early in his career he clerked for Chief Justice Earl Warren of the U.S. Supreme Court and Judge Carroll C. Hinks of the U.S. Court of Appeals for the Second Circuit.

William B. Gould IV

Charles A. Beardsley Professor of Law, Emeritus



A prolific scholar of labor and discrimination law, William B. Gould IV has been an influential voice on worker-management relations for more than forty years and recently served as chairman of the National Labor Relations Board. Professor Gould has been a member of the National Academy of Arbitrators since 1970 and has arbitrated and mediated more than 200 labor disputes, including the 1992 and 1993 salary disputes between the Major League Baseball Players Association and the Major League Baseball Player Relations Committee. He currently serves as Independent Monitor for FirstGroup America, addressing freedom of association complaints. A critically acclaimed author of nine books and more than sixty law review articles, Professor Gould's work includes his historical record of the experiences of his great-grandfather in *Diary of a Contraband*, *The Civil War Passage of a Black Sailor*, and his own

Washington story, *Labor Relations: Law, Politics and the NLRB: A Memoir*. Professor Gould is the recipient of five honorary doctorates for his significant contributions in the fields of labor law and labor relations. Before joining the Stanford Law School faculty in 1972, he was a professor of law at Wayne State University Law School and was an attorney for the National Labor Relations Board, as well as for United Auto Workers.

Thomas C. Grey

Nelson Bowman Switzer and Marie B. Sweitzer Professor of Law, Emeritus



A leading legal theorist and historian of the development of modern American legal thought, Thomas C. Grey (BA '63) has written extensively on the development of such strands of legal thought as pragmatism, formalism, and realism with particular attention to the jurisprudence of Oliver Wendell Holmes Jr. Earlier in his career, he wrote significant articles on constitutional law, history, and theory, including a classic work on the unwritten constitution. In addition, he has taught torts to first-year students for more than 30 years. Professor Grey is a fellow in the American Academy of Arts and Sciences and is the recipient of an honorary law degree from Chicago-Kent College of Law. Before joining the Stanford Law School faculty in 1971, he served as a clerk to Justice Thurgood Marshall of the U.S. Supreme Court and Judge J. Skelly Wright of the U.S. Court of Appeals for the District of Columbia Circuit.

Thomas C. Heller

Lewis Talbot and Nadine Hearn Shelton Professor of International Legal Studies, Emeritus



An expert in international law and legal institutions, Thomas C. Heller has focused his research on the role of law, international climate control, global energy use, and the interaction of government and nongovernmental organizations in establishing legal structures in the developing world. He has created innovative courses on the role of law in transitional and developing economies, as well as the comparative study of law in developed economies. He codirects the law school's Rule of Law Program, as well as the Stanford Program in International Law. Professor Heller has been a visiting professor at the European University Institute, Catholic University of Louvain, and Hong Kong University, and has served as the deputy director of the Freeman Spogli Institute for International Studies at Stanford University, where he is now a senior fellow. Professor Heller is also a senior fellow (by courtesy) at the Woods Institute

for the Environment. Before joining the Stanford Law School faculty in 1979, he was a professor of law at the University of Wisconsin Law School and an attorney advisor to the governments of Chile and Colombia.

Miguel A. Méndez

Adelbert H. Sweet Professor of Law, Emeritus



After a litigation career in public interest law that included work for the Mexican American Legal Defense and Educational Fund and California Rural Legal Assistance, Miguel A. Méndez entered academia and has become a foremost expert, scholar, and teacher in the field of evidence law. An author of leading works on the laws of evidence in California, he writes about reforms in the federal and California evidence codes and on emerging issues in state substantive criminal law. He is a consultant to the California Law Revision Commission, a board member at Public Advocates, and an elected member of the American Law Institute. Before joining the Stanford Law School faculty in 1977, Professor Méndez was deputy public defender in the Monterey County Public Defender's Office, deputy director of California Rural Legal Assistance, and a staff attorney for the Mexican American Legal Defense and Educational

Fund. Early in his career he clerked for the U.S. Court of Claims and was a legislative assistant to U.S. Senator Alan Cranston (BA '86).

John Henry Merryman

Nelson Bowman Sweitzer and Marie B. Sweitzer Professor of Law, Emeritus, and Affiliated Professor in the Department of Art, Emeritus



An internationally renowned expert on art and cultural property law and comparative law, John Henry Merryman continues to teach and publish prolifically, while now in his ninth decade. He has received numerous international prizes and honors, including the Order of Merit of the Italian Republic and honorary doctorates from Aix-en-Provence, Rome (Tor Vergata), and Trieste, and has been celebrated in two Festschriften: *Cooperative and Private International Law: Essays in Honor of John Henry Merryman on His Seventieth Birthday* and *Legal Culture in the Age of Globalization: Latin America and Latin Europe*. In 2004 Professor Merryman received the American Society of Comparative Law's Lifetime Achievement Award "for his extraordinary scholarly contribution over a lifetime to comparative law in the United States." He also has been both a Guggenheim Fellow and a Fulbright Research Professor at the Max Planck Institute.

Before joining the Stanford Law School faculty in 1953, Professor Merryman was a member of the faculty at Santa Clara University.

David Rosenhan

Professor of Law and Psychology, Emeritus



A psychologist by training, David Rosenhan is a leading expert on psychology and the law. He is a pioneer in the application of psychological methods to the practice of trial law process, including jury selection and jury consultation. Professor Rosenhan is the author of one of the most widely read articles in the field of psychology, "On Being Sane in Insane Places." He is a fellow of the American Association for the Advancement of Science and has been a visiting fellow at Wolfson College at Oxford University. Before joining the Stanford Law School faculty in 1970, he was a member of the faculties of Swarthmore College, Princeton University, and Haverford College. He has also been a research psychologist at Educational Testing Service and a lecturer at the University of Pennsylvania. Professor Rosenhan holds a joint appointment with the Stanford University Department of Psychology.

Emeriti

Kenneth E. Scott

Ralph M. Parsons Professor of Law and Business, Emeritus



Kenneth E. Scott '56, law and business professor emeritus and Hoover Institution senior research fellow, is a leading scholar in the fields of corporate finance reform and corporate governance who has written extensively on federal deposit insurance issues and federal banking regulation. His current research concentrates on legislative and policy developments related to the current financial crisis, comparative corporate governance, and financial regulation. Professor Scott has extensive consulting experience, including work for the World Bank, Federal Deposit Insurance Corporation and Resolution Trust Corporation, and, most recently, the National Association of Securities Dealers. He is also a member of the Stanford Financial Regulatory Committee, Financial Economists Roundtable, and the State Bar of California's Financial Institutions Committee. Before joining the Stanford Law School faculty in 1968, he served

as general counsel to the Federal Home Loan Bank Board, chief deputy savings and loan commissioner of California and worked in private practice in New York with Sullivan & Cromwell.

Michael S. Wald

Jackson El Reynolds Professor of Law, Emeritus



Deeply devoted to the cause of children's rights and welfare and a frequent expert advisor on youth and children's legal issues nationwide, Michael Wald has had a distinguished career as an academic researcher and teacher. He is one of the leading national authorities on legal policy toward children, and he drafted the American Bar Association's Standards Related to Child Abuse and Neglect, as well as major federal and state legislation regarding child welfare. Professor Wald has served as deputy general counsel for the U.S. Department of Health and Human Services during the Clinton administration, executive director of the San Francisco Department of Human Services, and senior advisor to the president of the William and Flora Hewlett Foundation. He is currently chair of the San Francisco Youth Council and the Faculty Scholars Program of the William T. Grant Foundation, and previously served as a Guggenheim Fellow. He

has been a member of the Stanford Law School faculty since 1967.

Howard R. Williams

Robert E. Paradise Professor of Natural Resources Law, Emeritus



Howard R. Williams, with more than forty years of service on the Stanford Law School faculty, has had a long and distinguished career as one of the nation's leading experts in oil and gas law, and the licensing and regulation of the use of other natural resources. He is the author of a number of essential books on the subject, most notably the treatise *Oil and Gas Law* and the casebook *Cases on Oil and Gas Law*, written with law school dean Charles J. Meyers. Before joining the Stanford Law School faculty in 1958, he was a professor of law at Columbia University School of Law and the University of Texas School of Law, and served in the U.S. Army in Europe from 1940-45, where he began as a private and rose to the rank of major.

Exhibit 29

ORIGINAL

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
OCT 29 2009
John [Signature] Clerk
By [Signature] Deputy
GLORIFETTA ROBINSON

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12 Attorneys for Plaintiff
DAVID I. SAPERSTEIN

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF LOS ANGELES

17 DAVID I. SAPERSTEIN,

18 Plaintiff,

19 vs.

20 PAUL, HASTINGS, JANOFSKY &
WALKER LLP, a California limited liability
21 partnership; and Does 1 through 10,

22 Defendants.

) Case No. BC 393920
) [Hon. Mary Ann Murphy]
)
) **PLAINTIFF DAVID I. SAPERSTEIN'S**
) **EVIDENTIARY OBJECTIONS AND**
) **REQUEST TO STRIKE DECLARATION**
) **OF LAWRENCE C. MARSHALL FILED**
) **IN SUPPORT OF OPPOSITION OF**
) **DEFENDANT PAUL, HASTINGS,**
) **JANOFSKY & WALKER LLP TO**
) **PLAINTIFF'S MOTION FOR**
) **DISQUALIFICATION OF GIBSON DUNN**
) **& CRUTCHER LLP**

) Date: November 5, 2009
) Time: 8:30 a.m.
) Dep't: 25

) Action Filed: July 7, 2008
) Trial Date: September 22, 2010

23
24 Rep'd by
G.D. (Kevin)
25
26 T more to do re: G.D. + d/c
G.D. files copy to LCM
27
28 This is to be
strike
Marshall

HENNIGAN, BENNETT & DORMAN LLP
LAWYERS
LOS ANGELES, CALIFORNIA

HENNIGAN, BENNETT & DORMAN LLP
LAWYERS
LOS ANGELES, CALIFORNIA

1 Plaintiff David I. Saperstein hereby objects to and moves to strike the Declaration of
2 Lawrence C. Marshall (the "Marshall Declaration") Filed in Support of the Opposition of Defendant
3 Paul Hastings, Janofsky & Walker LLP to Plaintiff's Motion for Disqualification of Gibson Dunn
4 & Crutcher LLP. The Marshall Declaration is nothing more than a legal brief devoid of supporting
5 authority that occasionally uses the phrase "in my opinion" in order to pretend it is something else.
6 The Marshall Declaration should be stricken and not considered by the Court.

7 The Marshall Declaration is improper legal opinion. "An expert's testimony on an issue of
8 law is not admissible, including an application of the law to facts. The expert's testimony on these
9 matters usurps the judge's and jury's responsibilities." JEFFERSON'S CAL. EVID. BENCHMARK,
10 § 30.64; see also *Shelden Appel Co. v. Albert & Olike*, 47 Cal. 3d 863, 884 (1989); *Summers v.*
11 *Gilbert*, 69 Cal. App. 4th 1155, 1180 (1999) (prohibition against admission of an expert's opinion
12 on a question of law); *Ferreira v. Workmen's Comp. Appeals Bd.*, 38 Cal. App. 3d 120, 125-26
13 (1974). Interpreting California law and applying it to the facts is the province of this Court, not
14 someone paid by Paul Hastings for his "opinion." All of Professors Marshall's opinions concern
15 how the Court should rule on the Motion. California law bars such opinions. *Summers*, 69 Cal.
16 App. 4th at 1182-83 (citing MCCORMICK ON EVIDENCE). As *Summers* explained: "[W]hen an
17 expert's opinion amounts to nothing more than an expression of his or her belief on how a case
18 should be decided, it does not aid the jurors, it supplants them." *Id.* at 1183 (emphasis in original);
19 see also Cal. Evid. Code § 801(a) (only permitting expert testimony "[r]elated to a subject that is
20 sufficiently beyond common experience that the opinion of an expert would assist the trier of fact").

21 In addition, Professor Marshall is not sufficiently qualified to render an "opinion." "To
22 determine that a witness qualifies as an expert the judge must ascertain 'if he has special knowledge,
23 skill, experience, training, or education sufficient to qualify him as an expert on the subject to which
24 his testimony relates.'" *Miller v. Los Angeles County Flood Control Dist.*, 8 Cal. 3d 689, 701
25 (1973). An expert in a particular field must have appropriate knowledge as to that particular field.
26 *People v. King*, 266 Cal. App. 2d 437, 456 (1968). A review of Professor Marshall's Curriculum
27 Vitae makes clear that he is not qualified to render an "expert" opinion regarding California
28 disqualification law. His primary focus is the death penalty, he has spent much of his career seeking

1 to overturn wrongful criminal convictions (a noble pursuit, but one that has nothing to do with the
2 issues at hand), and he has never published on any topic related to legal ethics or professional
3 responsibility. (Marshall Decl., Ex. A; Suppl. Derby Decl., Ex. 15.) He did not start teaching in
4 California until 2005, and he is not even a member of the California Bar. For almost his entire
5 career, he has been an Illinois lawyer and has taught in Illinois. He does teach a single, 2-unit
6 course in "Lawyer's Ethics," but a review of the course's description makes clear that it is largely
7 clinical, concentrates on criminal law, does not focus on California law, and does not expressly
8 regard the issues of conflicts or attorney disqualification. Professor Marshall does not teach either
9 of the more substantive 3-unit courses in "Legal Ethics" or "Professional Responsibility" taught at
10 Stanford Law School. Instead, these courses are taught by his colleagues Norman W. Spaulding and
11 Deborah L. Rhode. Unlike Professor Marshall, whose "Biography" mentions nothing about
12 expertise in legal ethics or professional responsibility, the first line of Professor Spaulding's
13 "Biography" states that he is a "nationally recognized scholar in the area of professional
14 responsibility," and the first line of Professor Rhode's "Biography" states that she is "one of the
15 country's legal scholars" in the field of legal ethics. It appears that Professor Marshall is not even
16 the "expert" on legal ethics and professional responsibility at his own law school.

17 Incredibly, although Professor Marshall's "opinions" are improper and he has no apparent
18 expertise in California disqualification law, Paul Hastings repeatedly cites to Professor Marshall's
19 Declaration as the sole support for certain legal and factual assertions made in its Opposition. (See,
20 e.g., Oppo. at 1:15-17, 4:16-18, 5:23-24, 6:14-19, 9:13-18, 10:1-5, 10:23-26, 11:11-14, 15:13-16.)
21 Professor Marshall also opines on issues not even raised by Paul Hastings in its Opposition, such as
22 on the issues of imputation, despite the fact that Gibson Dunn did not oppose the issue or the issue
23 of its vicarious disqualification in its Opposition. (See Marshall Decl., ¶¶ 33-38.)

24 For each of the reasons stated above, Mr. Saperstein respectfully requests that the Court
25 strike the entire Marshall Declaration and not consider it in ruling on the Motion. In the alternative,
26 Mr. Saperstein sets forth the following objections to specific paragraphs of the Marshall Declaration
27 and respectfully requests that the Court sustain each of these well-founded objections.
28

SPECIFIC OBJECTIONS TO MARSHALL DECLARATION

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	[PROPOSED] RULING
<p>1. <u>Marshall Decl., ¶ 2</u>: "I am a Professor of Law at Stanford Law School ("Stanford"), where I also serve as the David & Stephanie Mills Director of Clinical Education and the Associate Dean for Clinical Education. I have studied, taught, done research, and practiced in the field of professional responsibility for more than 20 years. I taught courses in Professional Responsibility at Northwestern University School of Law in Chicago between 1987 and 2004. I have taught many courses in the Law of Lawyering and Professional Responsibility since arriving at Stanford Law School in 2004."</p>	<p>1. This paragraph is irrelevant. It does not qualify Professor Marshall to render any opinion on California law regarding the disqualification of lawyers, which topic is omitted from the paragraph. <i>Miller v. L.A. County Flood Control Dist.</i>, 8 Cal. 3d 689, 701 (1973).</p>	<p><input type="checkbox"/> Sustained</p> <p><input type="checkbox"/> Overruled</p>
<p>2. <u>Marshall Decl., ¶ 3</u>: "I served as the Reporter to the Illinois Supreme Court Committee on Professional Responsibility during the mid-1990s. In that capacity I worked on the Illinois Rules of Professional Conduct and also examined the rules and decisional law of many other states, including California."</p>	<p>2. This paragraph is irrelevant. It does not qualify Professor Marshall to render any opinion on California law regarding the disqualification of lawyers, which topic is omitted from the paragraph. <i>Miller v. L.A. County Flood Control Dist.</i>, 8 Cal. 3d 689, 701 (1973). In fact, the paragraph makes clear that Professor Marshall knows Illinois law, having only been sometimes exposed more than a decade ago to general law of California regarding professional conduct.</p>	<p><input type="checkbox"/> Sustained</p> <p><input type="checkbox"/> Overruled</p>
<p>3. <u>Marshall Decl., ¶ 4</u>: "I am familiar with matters relating to professional responsibility and, in particular, those pertaining to conflicts of interest relating to former clients. I have researched and studied these issues extensively. In addition, I have significant personal experience in this area because these issues often arise in the context of managing the clinical program at Stanford, given the many clients that the attorneys and the students in the clinic have represented both while at Stanford and during earlier employment."</p>	<p>3. This paragraph is irrelevant. It does not qualify Professor Marshall to render any opinion on California law regarding the disqualification of lawyers, which topic is omitted from the paragraph. <i>Miller v. L.A. County Flood Control Dist.</i>, 8 Cal. 3d 689, 701 (1973). Virtually any lawyer would an "expert" on California disqualification law if this was sufficient.</p>	<p><input type="checkbox"/> Sustained</p> <p><input type="checkbox"/> Overruled</p>

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MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	[PROPOSED] RULING
<p>4. <u>Marshall Decl. ¶ 5</u>: "I have served in the past on several occasions as an expert witness or consultant in professional ethics in various jurisdictions, including California."</p>	<p>4. This paragraph is irrelevant. It does not qualify Professor Marshall to render any opinion on California law regarding the disqualification of lawyers, which topic is omitted from the paragraph. <i>Miller v. L.A. County Flood Control Dist.</i>, 8 Cal. 3d 689, 701 (1973). In addition, Professor Marshall failed to provide a list of his past representations. As such, not only is there no evidence of his past representations, or the topics on which he has been engaged, but we have no way of testing these past engagements, including whether these past engagements evidence bias.</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
<p>5. <u>Marshall Decl. ¶ 7</u>: "It is my opinion, which I conveyed to Gibson Dunn, that the firm is not required as a matter of the governing ethical rules and law to withdraw from this matter."</p>	<p>5. This paragraph is an improper legal opinion and improperly opines on how the Court should rule on the Motion. <i>See, e.g., Summers v. Gilbert</i>, 69 Cal. App. 4th 1155, 1180 (1999); <i>see also</i> Cal. Evid. Code § 801. It also lacks foundation. Cal. Evid. Code § 403(a).</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
<p>6. <u>Marshall Decl. ¶ 8</u>: "I was then asked by Gibson Dunn to review the Motion for Disqualification that Mr. Saperstein has filed and to determine whether anything in that Motion or the accompanying declarations and documents affects my opinion that Gibson Dunn is not required as a matter of the governing ethical rules and law to withdraw from this matter. After reviewing those materials, it remains my opinion that Gibson Dunn is not required as a matter of the governing ethical rules and law to withdraw from this matter."</p>	<p>6. This paragraph is an improper legal opinion and improperly opines on how the Court should rule on the Motion. <i>See, e.g., Summers v. Gilbert</i>, 69 Cal. App. 4th 1155, 1180 (1999); <i>see also</i> Cal. Evid. Code § 801. This paragraph also lacks foundation. Cal. Evid. Code § 403(a). Professor Marshall never says what authorities he is relying upon to reach his legal conclusions.</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
<p>7. <u>Marshall Decl. ¶ 11</u>: "The alleged conflict of interest in this case is not a claim that Gibson Dunn is simultaneously representing clients with adverse interests. When Gibson Dunn undertook the representation off Paul Hastings in this in this civil professional liability action, no lawyer at Gibson</p>	<p>7. This paragraph is an improper legal opinion and improperly opines on how the Court should rule on the Motion. <i>See, e.g., Summers v. Gilbert</i>, 69 Cal. App. 4th 1155, 1180 (1999); <i>see also</i> Cal. Evid. Code § 801. This paragraph also lacks</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>

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MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	[PROPOSED] RULING
Dunn was representing Mr. Saperstein on any matter."	foundation. Cal. Evid. Code § 403(a). Moreover, Professor Marshall lacks personal knowledge of the statements made in this paragraph. Cal. Evid. Code § 702.	
8. <u>Marshall Decl., ¶ 12</u> : "Rather, the conflict of interest that Mr. Saperstein alleges is based on the fact that Orin Snyder, a lawyer who is now a partner at Gibson Dunn, once represented Mr. Saperstein in a criminal matter that concluded well before Gibson Dunn undertook the representation of Paul Hastings in the current litigation. The actual work that Mr. Snyder did on that matter took place when Mr. Snyder was a partner at the law firm of Manatt, Phelps & Phillips, L.L.P. [hereinafter Manatt Phelps] prior to Mr. Snyder's moving to Gibson Dunn in 2005. This is a claim, then, about a 'former-client conflict,' i.e., an allegation relating to Gibson Dunn's duties to a former client of any attorney who is now at Gibson Dunn."	8. Professor Marshall mischaracterizes the facts of this case and lacks personal knowledge of the statements made in this paragraph. Cal. Evid. Code § 702. In addition, this paragraph is an improper legal opinion and improperly opines on how the Court should rule on the Motion. <i>See, e.g., Summers v. Gilbert</i> , 69 Cal. App. 4th 1155, 1180 (1999); <i>see also</i> Cal. Evid. Code § 801. This paragraph also lacks foundation. Cal. Evid. Code § 403(a).	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
9. <u>Marshall Decl., ¶ 13</u> : "In assessing a claim of an alleged former-client conflict of interest, some basic principles emerge in California law and the widely accepted law of other jurisdictions, upon which my opinions are based. The law does not preclude a lawyer or law firm from undertaking representation against a party simply because that adverse party was once a client of the lawyer or law firm. Unlike a current client, a former client is not generally entitled to his previous lawyer's loyalty (subject to a very limited exception involving instances in which the lawyer is attacking the precise outcome the lawyer secured on behalf of the former client—a situation with no relevance in the matter now under consideration). Hence, although a lawyer may not (in the absence of client consent) undertake any representation adverse to the interests of a current client, no such <i>per se</i> rule applies to a lawyer undertaking representation	9. This paragraph is an improper legal opinion and improperly opines on how the Court should rule on the Motion. <i>See, e.g., Summers v. Gilbert</i> , 69 Cal. App. 4th 1155, 1180 (1999); <i>see also</i> Cal. Evid. Code § 801. Moreover, Professor Marshall relies upon "the widely accepted law of other jurisdictions" in reaching his conclusions, which foreign law is neither specified (but is presumably Illinois law, as that is the law Professor Marshall actually knows) nor relevant to a motion under California law. This paragraph also lacks foundation. Cal. Evid. Code § 403(a). The paragraph is also irrelevant. Mr. Saperstein has never argued for, and the Motion does not regard, a <i>per se</i> rule against successive representations.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

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MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	[PROPOSED] RULING
adverse to the interests of a former client."		
<p>10. <u>Marshall Decl., ¶ 14</u>: "Indeed, the law recognizes that barring a lawyer from undertaking representation on the sole ground that the adversary is a former client would have an extremely deleterious impact on the profession and on a subsequent client's choice of counsel. This is especially true given the trend toward the nationalization and consolidation of law firms and toward increased lawyer mobility. Large law firms represent thousands, and in some cases, tens of thousands, of clients each year. If each firm was forever barred from undertaking representations adverse to all those former clients (and all former clients of any other lawyers who have joined the firm), the number of law firms able to take on particular matters would be severely limited."</p>	<p>10. This paragraph is an improper legal opinion and improperly opines on how the Court should rule on the Motion. <i>See, e.g., Summers v. Gilbert</i>, 69 Cal. App. 4th 1155, 1180 (1999); <i>see also</i> Cal. Evid. Code § 801. Moreover, Professor Marshall relies upon the law of other jurisdictions in reaching his conclusions, which foreign law is neither specified (but is presumably Illinois law, as that is the law Professor Marshall actually knows) nor relevant to a motion under California law. He also misstates the law. Courts have regularly rejected the idea that a national law firm is any different from a regional or local law firm. This paragraph also lacks foundation. Cal. Evid. Code § 403(a).</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
<p>11. <u>Marshall Decl., ¶ 15</u>: "For these reasons, the ethical and legal rules in California and across other United States jurisdictions make clear that a lawyer is generally allowed to undertake representation adverse to a former client. A different rule applies, however, where the subject of the representation the lawyer is undertaking is 'substantially related' to the subject matter of the attorney's representation of a former client. In that instance, there is a presumption based on the 'substantial relationship' between the two matters that the lawyer necessarily learned confidences during the earlier representation of the former client that are materially relevant to the current representation. Under those circumstances, the former client's interest in preserving confidences the client shared with the attorney generally triggers a rule barring the lawyer from undertaking representation adverse to the former client on those substantially related matters."</p>	<p>11. This paragraph is an improper legal opinion and improperly opines on how the Court should rule on the Motion. <i>See, e.g., Summers v. Gilbert</i>, 69 Cal. App. 4th 1155, 1180 (1999); <i>see also</i> Cal. Evid. Code § 801. Moreover, Professor Marshall purports to rely upon the ethical and legal rules "across other United States jurisdictions," which rules are neither specified nor relevant to a motion being decided under California law. This paragraph also lacks foundation. Cal. Evid. Code § 403(a).</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	[PROPOSED] RULING
<p>12. <u>Marshall Decl., ¶ 16</u>: "By restricting the duty to withdraw to instances in which there is a 'substantial relationship' between the subjects of the former and current representation in order to protect client confidences, the governing rules and law strike a balance between the imperative of protecting former clients' legitimate interests and the imperative of ensuring that former-client conflicts are not construed so broadly that they become the equivalent of <i>per se</i> rules that threaten current clients' choice of counsel and significantly impair lawyer mobility. For this reason, whatever confidences a lawyer may have learned in the course of representing a former client do not bar the lawyer from taking on positions adverse to that client unless the two matters are 'substantially related.' The governing rules and law are careful not to construe the 'substantial relationship' too loosely for that would risk transforming the limited prohibition of undertaking certain representations adverse to former clients into a broad prohibition akin to the bar on undertaking representation adverse to current clients. The governing rules and law emphatically eschew that result."</p>	<p>12. This paragraph is an improper legal opinion and improperly opines on how the Court should rule on the Motion. <i>See, e.g., Summers v. Gilbert</i>, 69 Cal. App. 4th 1155, 1180 (1999); <i>see also</i> Cal. Evid. Code § 801. Moreover, Professor Marshall relies upon the law of other jurisdictions in reaching his conclusions, which foreign law is neither specified (but is presumably Illinois law, as that is the law Professor Marshall actually knows) nor relevant to a motion under California law. He also misstates the law, adopting a position adverse to attorney disqualification that is at odds with the requirement of automatic disqualification where a substantial relationship is proven. This paragraph also lacks foundation. Cal. Evid. Code § 403(a).</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
<p>13. <u>Marshall Decl., ¶ 17</u>: "Thus, the relevant inquiry is never whether is <i>some</i> relationship between the former and current matter. Rather, the inquiry looks to the <i>substantiality</i> of that relationship. So, too, the California rule does not bar a lawyer from undertaking representation adverse to a former client simply because the lawyer has former-client confidences that are somehow <i>relevant</i> to the current representation. Rather, it limits its restriction to instances in which any former-client confidences are material to the current representation. See California Rule of Professional Conduct 3-310(E). See also <i>Fremont Indemnity Co. v. Fremont General Corp.</i>, 143 Cal. App.4th 50, 69 (2006) disqualification is only in order where information acquired during the first representation [is] "material" to the</p>	<p>13. This paragraph is an improper legal opinion and improperly opines on how the Court should rule on the Motion. <i>See, e.g., Summers v. Gilbert</i>, 69 Cal. App. 4th 1155, 1180 (1999); <i>see also</i> Cal. Evid. Code § 801. Moreover, Professor Marshall relies upon the law of other jurisdictions in reaching his conclusions, which foreign law is neither specified (but is presumably Illinois law, as that is the law Professor Marshall actually knows) nor relevant to a motion under California law. He also misstates the law, drawing a distinction that has not been drawn by a California court. This paragraph also lacks foundation. Cal. Evid. Code</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>

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MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	[PROPOSED] RULING
second; that is, it must be found to be directly at issue in, or have some critical importance to, the second representation’).”	§ 403(a).	
<p>14. <u>Marshall Decl., ¶ 18</u>: “Relating these principles to the matter of Gibson Dunn’s continued representation of Paul Hastings in the above-captioned case, the former representation relevant here was Orin Snyder’s having once represented David Saperstein in relation to a criminal grand jury investigation into Mr. Saperstein’s investments in a Bond Linked Issue Premium Structure (‘BLIPS’). By contrast, the current representation involves Gibson Dunn’s representation of Paul Hastings in a suit by Mr. Saperstein alleging that Paul Hastings committed malpractice by failing to properly advise Mr. Saperstein about how to set up a trust and ensure that a particular piece of real estate would not be treated as community property in the event of dissolution of his marriage or otherwise be awarded to his wife. Nothing in Mr. Saperstein’s suit against Paul Hastings has anything to do with the criminal implications of the BLIPS investment. Nor does Mr. Saperstein’s suit against Paul Hastings relate to any substantially related issues such as Mr. Saperstein’s investments in other tax shelters. On their face, therefore, there is nothing about these two matters that render them ‘substantially related’ in a manner that forecloses Gibson Dunn from representing Paul Hastings in this matter. It is always possible to discuss a current and former matter at a high enough level of abstraction that they could be described as ‘substantially related.’ Here, for example, one could say that both cases generically involve Mr. Saperstein’s finances. The ‘substantial relationship’ test, however, demands a far more fact specific and concrete showing of substantive overlap.”</p>	<p>14. This paragraph is an improper legal opinion and improperly opines on how the Court should rule on the Motion. <i>See, e.g., Summers v. Gilbert</i>, 69 Cal. App. 4th 1155, 1180 (1999); <i>see also</i> Cal. Evid. Code § 801. Moreover, Professor Marshall relies upon the law of other jurisdictions in reaching his conclusions, which foreign law is neither specified (but is presumably Illinois law, as that is the law Professor Marshall actually knows) nor relevant to a motion under California law. This paragraph also lacks foundation. Cal. Evid. Code § 403(a). Moreover, Professor Marshall lacks personal knowledge of the statements made in this paragraph. Cal. Evid. Code § 702.</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
<p>15. <u>Marshall Decl., ¶ 19</u>: “Mr. Saperstein’s Motion to Disqualify Gibson Dunn alleges that Gibson Dunn</p>	<p>15. This paragraph is an improper legal opinion and improperly opines on how the</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>

1 MATERIAL OBJECTED TO	2 GROUNDS FOR OBJECTION	3 [PROPOSED] 4 RULING
<p>5 is barred from proceeding with its 6 representation of Paul Hastings in this 7 matter because, among other reasons, 8 Gibson Dunn asked several questions 9 about the BLIPS criminal investigation 10 during a deposition. In my opinion, the 11 fact that a few questions were asked in 12 discovery does not create a 'substantial 13 relationship' between the two matters. 14 Nor does it show that anything relating 15 to the BLIPS criminal matter is 16 'material' to Gibson Dunn's ongoing 17 representation of Paul Hastings. As the 18 declaration of Kevin S. Rosen 19 establishes, those questions were asked 20 (at a time that he was unaware of any 21 conceivable conflict) as part of a broad 22 series of questions about a large number 23 of topics that might have led to relevant 24 information and might have established 25 that other areas of inquiry are not 26 relevant in this litigation. Such questions 27 do not elevate a matter to the level of a 28 'substantially related' case or transform otherwise irrelevant information into 'materially relevant' information."</p>	<p>Court should rule on the Motion. <i>See, e.g., Summers v. Gilbert</i>, 69 Cal. App. 4th 1155, 1180 (1999); <i>see also</i> Cal. Evid. Code § 801. Moreover, Professor Marshall relies upon the law of other jurisdictions in reaching his conclusions, which foreign law is neither specified (but is presumably Illinois law, as that is the law Professor Marshall actually knows) nor relevant to a motion under California law. This paragraph also lacks foundation. Cal. Evid. Code § 403(a). Moreover, Professor Marshall lacks personal knowledge of the statements made in this paragraph. Cal. Evid. Code § 702.</p>	
<p>16. <u>Marshall Decl., ¶ 20</u>: "In any event, as Mr. Rosen's declaration explains, Gibson Dunn (on behalf of its client, Paul Hastings) has no interest in any further information about the BLIPS criminal matter, and nothing about the criminal investigation will be made an issue in this case. In light of this posture, it is evident that nothing about the BLIPS criminal matters is 'substantially related' to the current representation and that nothing Mr. Snyder learned about that subject is material to Gibson Dunn's ongoing representation of Paul Hastings. This is consistent with the repeatedly expressed views of Mr. Saperstein's counsel that nothing about the criminal investigation of BLIPS is in any way relevant to the current litigation. No ongoing conflict exists, then, based on any connection between this case and issues pertaining to the criminal BLIPS investigation Mr. Snyder handled. <i>See</i> <i>EMG Recordings, Inc. v. Myspace, Inc.</i>, 526 F. Supp.2d 1046, 1062 (C.D. Cal. 2007) (law firm's stipulation that it</p>	<p>16. This paragraph is an improper legal opinion and improperly opines on how the Court should rule on the Motion. <i>See, e.g., Summers v. Gilbert</i>, 69 Cal. App. 4th 1155, 1180 (1999); <i>see also</i> Cal. Evid. Code § 801. Moreover, Professor Marshall relies upon the law of other jurisdictions in reaching his conclusions, which foreign law is neither specified (but is presumably Illinois law, as that is the law Professor Marshall actually knows) nor relevant to a motion under California law. He also misstates the law and applies erroneous law. This paragraph also lacks foundation. Cal. Evid. Code § 403(a). Moreover, Professor Marshall lacks personal knowledge of the statements made in this paragraph. Cal. Evid. Code § 702.</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	[PROPOSED] RULING
<p>1 would not be pursuing the issue that was 2 substantially related to a prior 3 representation obviated any reason for 4 disqualification.)”</p>		
<p>5 17. <u>Marshall Decl. ¶ 21</u>: “In 6 addition to claiming that Gibson Dunn’s 7 questions about the criminal BLIPS 8 investigation render these two matters 9 substantially related, Mr. Saperstein’s 10 Motion to Disqualify makes a far more 11 attenuated—and in my opinion 12 unsustainable claim. It claims that 13 because Mr. Snyder dealt with a criminal 14 investigation that involved advice Mr. 15 Saperstein received from KPMG on the 16 specific issue of the legality of BLIPS, it 17 follows that Mr. Snyder (and as a result, 18 Gibson Dunn) is forever barred from 19 taking on any representation adverse to 20 Mr. Saperstein on any matter in which 21 his relationship with KPMG might be 22 relevant, no matter how unrelated to the 23 BLIPS issue or the criminal 24 investigation. The problem with this 25 argument is that it does not address the 26 core question of substantial or material 27 factual and legal relationship—which 28 focuses on the substantive factual and legal overlap of the former and current representations. Instead, Mr. Saperstein’s Motion to Disqualify looks only to the identity of the individuals and entities involved in the cases. As explained above, it is always the case that a lawyer learns a significant amount of information about a client—including the client’s interaction with family, friends and advisors. This does not mean that any case in which such relationships might be relevant is therefore ‘substantially related’ to an earlier case that touched on those relationships in other contexts and with regard to other issues.”</p>	<p>17. This paragraph is an improper legal opinion and improperly opines on how the Court should rule on the Motion. <i>See, e.g., Summers v. Gilbert</i>, 69 Cal. App. 4th 1155, 1180 (1999); <i>see also</i> Cal. Evid. Code § 801. Moreover, Professor Marshall relies upon the law of other jurisdictions in reaching his conclusions, which foreign law is neither specified (but is presumably Illinois law, as that is the law Professor Marshall actually knows) nor relevant to a motion under California law. He also misstates the law and wrongly applies erroneous law. This paragraph also lacks foundation. Cal. Evid. Code § 403(a). Moreover, Professor Marshall lacks personal knowledge of the statements made in this paragraph. Cal. Evid. Code § 702.</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
<p>25 18. <u>Marshall Decl. ¶ 22</u>: “To 26 conclude otherwise—<i>i.e.</i>, to conclude 27 that an overlap in the identity of 28 individuals involved is enough to constitute a ‘substantial relationship’—is inconsistent with the ways in which that test is applied by courts. Were overlap</p>	<p>18. This paragraph is an improper legal opinion and improperly opines on how the Court should rule on the Motion. <i>See, e.g., Summers v. Gilbert</i>, 69 Cal. App. 4th 1155, 1180 (1999); <i>see also</i> Cal. Evid. Code § 801.</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>

1 MATERIAL OBJECTED TO	2 GROUNDS FOR OBJECTION	3 [PROPOSED] 4 RULING
<p>5 in identity enough, any former client 6 could assert in any case that the client's 7 own involvement in both matters creates 8 an identity overlap that constitutes a 9 'substantial relationship.' That is most 10 certainly not the way in which the law 11 applies the test, for such a loose 12 approach to the 'substantial relationship' 13 test would turn the general rule allowing 14 representation on its head. The focus, 15 then, is not on whether some individuals 16 are involved in both matters, but is 17 instead on whether there is a 'substantial 18 relationship' between the factual and 19 legal substance of the two matters."</p>	<p>20 Moreover, Professor Marshall 21 relies upon the law of other 22 jurisdictions in reaching his 23 conclusions, which foreign law is 24 neither specified (but is 25 presumably Illinois law, as that is 26 the law Professor Marshall 27 actually knows) nor relevant to a 28 motion under California law. He 29 also misstates the law and applies 30 erroneous law. This paragraph 31 also lacks foundation. Cal. Evid. 32 Code § 403(a). Moreover, 33 Professor Marshall lacks personal 34 knowledge of the statements 35 made in this paragraph. Cal. 36 Evid. Code § 702.</p>	
<p>37 19. <u>Marshall Decl., ¶ 23</u>: "For these 38 reasons, the fact that Mr. Snyder 39 interviewed several of Mr. Saperstein's 40 advisors about specific issues relating to 41 the BLIPS criminal investigation and 42 reviewed documents relating to the 43 advisors' roles in advising Mr. 44 Saperstein about the legality of the 45 BLIPS investments, does not mean that 46 Gibson Dunn is conflicted from 47 undertaking any representations adverse 48 to Mr. Saperstein in which distinct issues 49 relating to those advisors may be at 50 issue. Were such interviews to create a 51 bar, a lawyer would be barred from ever 52 undertaking a representation adverse to a 53 former client given the inevitability of 54 the lawyer having interviewed and 55 received records from and relating to the 56 former client."</p>	<p>57 19. This paragraph is an 58 improper legal opinion and 59 improperly opines on how the 60 Court should rule on the Motion. 61 <i>See, e.g., Summers v. Gilbert</i>, 69 62 Cal. App. 4th 1155, 1180 (1999); 63 <i>see also</i> Cal. Evid. Code § 801. 64 Moreover, Professor Marshall 65 purports to rely upon the law of 66 other jurisdictions, which is 67 irrelevant here. He also misstates 68 the law and wrongly applies 69 erroneous law. This paragraph 70 also lacks foundation. Cal. Evid. 71 Code § 403(a). Moreover, 72 Professor Marshall lacks personal 73 knowledge of the statements 74 made in this paragraph. Cal. 75 Evid. Code § 702.</p>	<p>76 <input type="checkbox"/> Sustained 77 <input type="checkbox"/> Overruled</p>
<p>78 20. <u>Marshall Decl., ¶ 24</u>: "Mr. 79 Saperstein's Motion also appears to 80 allege that withdrawal or disqualification 81 are in order here because Mr. Snyder 82 learned some specific confidences that 83 are relevant to the instant litigation. It is 84 my opinion, which I have conveyed to 85 Gibson Dunn, that given its having 86 satisfied itself that Mr. Snyder never 87 learned confidential information 88 materially relevant to the ongoing 89 matter, and in the absence of any actual 90 proof to the contrary, Gibson Dunn has 91 no conflict and there is no reason for it to</p>	<p>92 20. This paragraph is an 93 improper legal opinion and 94 improperly opines on how the 95 Court should rule on the Motion. 96 <i>See, e.g., Summers v. Gilbert</i>, 69 97 Cal. App. 4th 1155, 1180 (1999); 98 <i>see also</i> Cal. Evid. Code § 801. 99 Moreover, Professor Marshall 100 relies upon the law of other 101 jurisdictions in reaching his 102 conclusions, which foreign law is 103 neither specified (but is 104 presumably Illinois law, as that is 105 the law Professor Marshall</p>	<p>106 <input type="checkbox"/> Sustained 107 <input type="checkbox"/> Overruled</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	[PROPOSED] RULING
<p>1 2 withdraw or be disqualified from its 3 ongoing representation of Paul Hastings. 4 See generally <i>Elliot v. McFarland</i> 5 <i>Unified School District</i>, 165 Cal. App. 6 3d 562, 572 (1985) (party seeking 7 disqualification must, in the absence of a 8 showing that the two matters are 9 themselves 'substantially related, make 10 an actual showing that relevant 11 confidences were disclosed'). Although 12 it is not my role as an expert to resolve 13 any disputed facts, my review of Mr. 14 Saperstein's Motion to Disqualify 15 Gibson Dunn, the accompanying 16 declarations, and the declaration 17 submitted by Mr. Snyder reveals that Mr. 18 Snyder is steadfast that he only inquired 19 about advice provided to Mr. Saperstein 20 regarding the legality under the tax laws 21 of the BLIPS investments and had no 22 interest in delving into any broader 23 questions about the role KPMG or others 24 were playing in any other facets of Mr. 25 Saperstein's financial dealings. I have 26 seen no evidence to the contrary that 27 would lead me to opine that Gibson 28 Dunn has a duty to withdraw."</p>	<p>actually knows) nor relevant to a motion under California law. He also misstates the law and applies erroneous law. This paragraph also lacks foundation. Cal. Evid. Code § 403(a). Moreover, Professor Marshall lacks personal knowledge of the statements made in this paragraph. Cal. Evid. Code § 702. Professor Marshall also purports to opine as to Orin Snyder's credibility, which falls squarely within the Court's purview.</p>	
<p>21. <u>Marshall Decl., ¶ 25</u>: "All of the foregoing analysis presupposes a situation in which the function and purpose of the limited prohibition on successive representation applies because the attorney learned confidences in the earlier representation that continue to be confidential. None of this reasoning would apply, though, in instances in which any materially relevant confidences the attorney learned from the former representation have ceased to be confidential—whether because they have become public knowledge or because the former client has waived (explicitly or constructively) any right to have the information remain confidential. In such a situation, there are no remaining confidences to be protected, and applying a rule designed to protect the former client's confidences would be senseless (and wasteful of the parties' and court's resources)."</p>	<p>21. This paragraph is an improper legal opinion and improperly opines on how the Court should rule on the Motion. <i>See, e.g., Summers v. Gilbert</i>, 69 Cal. App. 4th 1155, 1180 (1999); <i>see also</i> Cal. Evid. Code § 801. Moreover, Professor Marshall relies upon the law of other jurisdictions in reaching his conclusions, which foreign law is neither specified (but is presumably Illinois law, as that is the law Professor Marshall actually knows) nor relevant to a motion under California law. He also misstates the law, and cites no authority for the conclusions he reached. This paragraph also lacks foundation. Cal. Evid. Code § 403(a).</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
<p>22. <u>Marshall Decl., ¶ 26</u>: "For</p>	<p>22. This paragraph is an</p>	<p><input type="checkbox"/> Sustained</p>

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<p>1 example, assume that a former client 2 asserts a conflict on the ground that 3 during the earlier representation the 4 lawyer reviewed a memorandum from 5 the client describing the client's general 6 employment policies—a memorandum 7 that is materially relevant to a new 8 matter in which the lawyer is 9 undertaking representation adverse to the 10 former client. Ordinarily, that could 11 constitute reason to disqualify the 12 attorney from proceeding on behalf of 13 the new client, depending on the details 14 of the facts, circumstances and issues. 15 But if that very document was already in 16 the public domain, because it was 17 introduced into evidence in some other 18 proceeding, there would be no reason 19 whatsoever to pretend that disqualifying 20 the lawyer would preserve the 21 confidences of the client. See generally 22 <i>Restatement Third, The Law Governing Lawyers</i> § 59 ("Confidential client information consists of information relating to the representation of a client, other than information that is generally known."). Any lawyer representing the current party would have ready access to the document, so the former lawyer's withdrawal or disqualification from the representation would not serve any interest in preserving the confidentiality of the document in question. As one California court has explained, disqualification is not appropriate where replacement of counsel "would leave the adversary in the same position as before" with regard to the disclosure of the information. See <i>Neal v. Health Net Inc.</i>, 100 Cal. App. 4th 831, 844 (2002)."</p>	<p>improper legal opinion and improperly opines on how the Court should rule on the Motion. <i>See, e.g., Summers v. Gilbert</i>, 69 Cal. App. 4th 1155, 1180 (1999); <i>see also</i> Cal. Evid. Code § 801. Moreover, Professor Marshall relies upon the law of other jurisdictions in reaching his conclusions, which foreign law is neither specified (but is presumably Illinois law, as that is the law Professor Marshall actually knows) nor relevant to a motion under California law. He also misstates the law, quoting the <i>Neal</i> decision out of context to make a point never actually made or considered by the <i>Neal</i> court. This paragraph also lacks foundation. Cal. Evid. Code § 403(a).</p>	<p><input type="checkbox"/> Overruled</p>
<p>23 23. <u>Marshall Decl. ¶ 27</u>: "The same 24 principle would apply in an instance in 25 which the client has waived the 26 confidentiality of the information that 27 forms the basis of the motion to 28 disqualify. Again, in such a situation there are no confidences left to preserve, and any new lawyer would have full access to the information in question. There is no reason in such a case to disqualify the client's former lawyer because that disqualification would not</p>	<p>23. This paragraph is an improper legal opinion and improperly opines on how the Court should rule on the Motion. <i>See, e.g., Summers v. Gilbert</i>, 69 Cal. App. 4th 1155, 1180 (1999); <i>see also</i> Cal. Evid. Code § 801. Moreover, Professor Marshall relies upon the law of other jurisdictions in reaching his conclusions, which foreign law is neither specified (but is</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>

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<p>advance the former client's only legitimate interest—preserving the confidentiality of information that remains confidential.”</p>	<p>presumably Illinois law, as that is the law Professor Marshall actually knows) nor relevant to a motion under California law. He also misstates the law, citing absolutely no supporting case law, and ignoring the controlling California authorities, including the <i>Knight</i> decision, which holds the opposite: that an attorney must still be disqualified even if the privileged communications have all been disclosed. This paragraph also lacks foundation. Cal. Evid. Code § 403(a).</p>	
<p>24. <u>Marshall Decl., ¶ 28</u>: “For these reasons, even were this Court to conclude that the subject of Mr. Snyder’s former representation of Mr. Saperstein and the subject of the current litigation are substantially related, or that Mr. Snyder learned confidences that are material to the current matter, there would still be no basis for disqualification if the relevant information is no longer confidential.”</p>	<p>24. This paragraph is an improper legal opinion and improperly opines on how the Court should rule on the Motion. <i>See, e.g., Summers v. Gilbert</i>, 69 Cal. App. 4th 1155, 1180 (1999); <i>see also</i> Cal. Evid. Code § 801. Moreover, Professor Marshall relies upon the law of other jurisdictions in reaching his conclusions, which foreign law is neither specified (but is presumably Illinois law, as that is the law Professor Marshall actually knows) nor relevant to a motion under California law. He also misstates the law, citing absolutely no supporting case law, and ignoring the controlling California authorities, including the <i>Knight</i> decision, which holds the opposite: that an attorney must still be disqualified even if the privileged communications have all been disclosed. This paragraph also lacks foundation. Cal. Evid. Code § 403(a).</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
<p>25. <u>Marshall Decl., ¶ 29</u>: “That is precisely the situation that appears to apply here. In the case now before the Court, Mr. Saperstein has sued Paul Hastings for professional malpractice relating to the advice it provided in structuring a trust and the acquisition and development of what has been termed the ‘Carolwood Estate.’ As a matter of</p>	<p>25. This paragraph is an improper legal opinion and improperly opines on how the Court should rule on the Motion. <i>See, e.g., Summers v. Gilbert</i>, 69 Cal. App. 4th 1155, 1180 (1999); <i>see also</i> Cal. Evid. Code § 801. Moreover, Professor Marshall relies upon the law of other</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>

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<p>law, the filing of such a suit places at issue the professional advice the plaintiff received from others relating to this subject and any other aspect of his claim and thus constitutes a waiver of any privileges (and, <i>a fortiori</i>, any confidences) related to the advice that the plaintiff received on the matter from other lawyers and advisors. See generally <i>Wellpoint Health Networks, Inc. v. Superior Court</i>, 59 Cal. App. 4th 110, 128 (1997). Indeed, Mr. Saperstein and Paul Hastings entered into a stipulation on March 17, 2009 that reflects this legal principle. And this Court has entered an Order to that very effect. The Order provides that Mr. Saperstein is waiving 'his attorney-client privileges applicable to documents and communications relating to,' among other subjects, the 'acquisition and development of the property known as 350 Carolwood of "Fleur de Lys;" * * * the characterization of assets pursuant to applicable family law concerning the distinction between separate versus community property * * *; and Mr. Saperstein's estate planning * * *, as well as the impact of such estate planning on any actual or potential transactions.'"</p>	<p>jurisdictions in reaching his conclusions, which foreign law is neither specified (but is presumably Illinois law, as that is the law Professor Marshall actually knows) nor relevant to a motion under California law. He also misstates the facts and law applies erroneous law, including with respect to the March 17 Order, which Order he is not qualified to interpret or apply. This paragraph also lacks foundation. Cal. Evid. Code § 403(a). Moreover, Professor Marshall lacks personal knowledge of the statements made in this paragraph. Cal. Evid. Code § 702.</p>	
<p>26. <u>Marshall Decl. ¶ 30</u>: "As a result of this Order, as well as the underlying legal principles of waiver, none of the potentially relevant information that Mr. Snyder might possibly have learned about Mr. Saperstein's relationships with KPMG or other advisors (including lawyers) is confidential at this point. Any lawyer who represents Paul Hastings in this matter is entitled to seek discovery from and depose anyone—including Mr. Saperstein's former lawyers—about any information pertaining to these subjects. It is, therefore, nonsensical under these particular and somewhat peculiar circumstances to require Gibson Dunn to withdraw based on (what were once, but are no longer) confidences that Mr. Snyder might have learned."</p>	<p>26. This paragraph is an improper legal opinion and improperly opines on how the Court should rule on the Motion. <i>See, e.g., Summers v. Gilbert</i>, 69 Cal. App. 4th 1155, 1180 (1999); <i>see also</i> Cal. Evid. Code § 801. Moreover, Professor Marshall relies upon the law of other jurisdictions in reaching his conclusions, which foreign law is neither specified (but is presumably Illinois law, as that is the law Professor Marshall actually knows) nor relevant to a motion under California law. He also misstates the facts and law and applies erroneous law, including with respect to the March 17 Order, which Order he is not qualified to interpret or</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>

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	apply. This paragraph also lacks foundation. Cal. Evid. Code § 403(a). Moreover, Professor Marshall lacks personal knowledge of the statements made in this paragraph. Cal. Evid. Code § 702.	
<p>27. <u>Marshall Decl., ¶ 31</u>: "In sum, any information that Mr. Snyder learned during his representation of Mr. Saperstein falls into one of two categories. It is either not substantially related to the legal and factual matters at issue in this case, in which case it triggers no conflict. Or it is substantially related the legal and factual matters at issue here, in which case its confidentiality has been waived. Under either scenario, there is no reason for Gibson Dunn to withdraw or be disqualified."</p>	<p>27. This paragraph is an improper legal opinion and improperly opines on how the Court should rule on the Motion. <i>See, e.g., Summers v. Gilbert</i>, 69 Cal. App. 4th 1155, 1180 (1999); <i>see also</i> Cal. Evid. Code § 801. Moreover, Professor Marshall relies upon the law of other jurisdictions in reaching his conclusions, which foreign law is neither specified (but is presumably Illinois law, as that is the law Professor Marshall actually knows) nor relevant to a motion under California law. He also misstates the law, which requires disqualification if there is a substantial relationship between the successive representations regardless of whether there is proof that the lawyer acquired confidential information during the former representation. Professor Marshall appears to be making the law up as he goes, ignoring decades of controlling case law. This paragraph also lacks foundation. Cal. Evid. Code § 403(a).</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
<p>28. <u>Marshall Decl., ¶ 32</u>: "The force of the principle—that there are no confidences to protect and thus no reason to disqualify Gibson Dunn in order to protect non-existent confidences—is further confirmed by examining Mr. Saperstein's claim that Mr. Snyder learned information as a result of Mr. Saperstein's instructions to Paul Hastings to send Mr. Snyder 'all files relating to Paul Hastings representation of mc.' By definition anything in these files had already been disclosed to Paul</p>	<p>28. This paragraph is an improper legal opinion and improperly opines on how the Court should rule on the Motion. <i>See, e.g., Summers v. Gilbert</i>, 69 Cal. App. 4th 1155, 1180 (1999); <i>see also</i> Cal. Evid. Code § 801. Moreover, Professor Marshall relies upon the law of other jurisdictions in reaching his conclusions, which foreign law is neither specified (but is presumably Illinois law, as that is</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>

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<p>3 Hastings—the very defendant in this 4 suit. Paul Hastings is, of course, entitled 5 to use any and all information it knows 6 of whether it is defended by Gibson 7 Dunn. Under these particular and 8 peculiar circumstances, it would defy 9 reason, and be inconsistent with the 10 policies and rules articulated in the 11 applicable caselaw, to conclude that 12 Gibson Dunn must withdraw in order to 13 protect the confidentiality of any files 14 that Paul Hastings itself sent to Mr. 15 Snyder. In a situation such as this, 16 withdrawal or disqualification would 17 serve no purpose “because the client 18 continues to possess the information and 19 will disclose it to replacement counsel— 20 leaving the opposing party in the 21 identical position.” Paul Vapnek, et al., 22 CAL. PRACTICE GUIDE: 23 PROFESSIONAL RESPONSIBILITY ¶ 24 4:180 (2009).”</p>	<p>the law Professor Marshall actually knows) nor relevant to a motion under California law. He also misstates the law, which requires disqualification if there is a substantial relationship between the successive representations regardless of whether there is proof that the lawyer acquired confidential information during the former representation. Professor Marshall appears to be making the law up as he goes, ignoring decades of controlling case law. This paragraph also lacks foundation. Cal. Evid. Code § 403(a).</p>	
<p>29. <u>Marshall Decl. ¶ 33</u>: “There is no suggestion that any of the individual lawyers who are working on behalf of Paul Hastings ever represented Mr. Saperstein on any matter. Any argument for withdrawal or disqualification in this case is, therefore, the product of the absolute imputation principle—the presumption that every lawyer in a firm knows what any lawyer in the firm knows.”</p>	<p>29. This paragraph is an improper legal opinion and improperly opines on how the Court should rule on the Motion. <i>See, e.g., Summers v. Gilbert</i>, 69 Cal. App. 4th 1155, 1180 (1999); <i>see also</i> Cal. Evid. Code § 801. Moreover, Professor Marshall relies upon the law of other jurisdictions in reaching his conclusions, which foreign law is neither specified (but is presumably Illinois law, as that is the law Professor Marshall actually knows) nor relevant to a motion under California law. This paragraph also lacks foundation. Cal. Evid. Code § 403(a). Moreover, Professor Marshall lacks personal knowledge of the statements made in this paragraph. Cal. Evid. Code § 702. He further purports to offer opinion on “the role of imputation,” an issue which is not raised by Paul Hastings in its Opposition.</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
<p>30. <u>Marshall Decl. ¶ 34</u>: “The</p>	<p>30. This paragraph is an</p>	<p><input type="checkbox"/> Sustained</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	[PROPOSED] RULING
<p>1 principle of absolute imputation 2 historically has been based on the 3 premise that lawyers within a firm speak 4 freely about their cases with one another, 5 and it is unreasonable to assume that a 6 particular lawyer with materially 7 relevant confidential information would 8 necessarily keep that quiet from other 9 lawyers with whom she works and 10 routinely interacts. This principle of 11 imputation was once a blanket rule that 12 was mechanically applied. As the size of 13 law firms has grown so exponentially, 14 however, and as firms have become so 15 geographically diffuse, many courts in 16 many jurisdictions have recognized that 17 the balancing associated with deciding 18 disqualification motions should take into 19 account a pragmatic assessment of 20 whether disqualifying an entire global 21 firm is truly necessary or appropriate in 22 order to address the legitimate interests 23 of a former client in guarding against use 24 of confidences that a lawyer currently 25 with the firm learned while working at a 26 different firm years ago. These courts 27 have recognized that when 28 circumstances make the risk of disclosure of former client confidences so attenuated that they are virtually non- existent, there is no justification for withdrawal or disqualification. Indeed, in such cases, courts often have expressed fear that a former client who seeks to disqualify opposing counsel is acting for the strategic purpose of adding to its adversary's costs or removing an able opponent. Courts have warned about allowing disqualification to be used in this manner. As the California Supreme Court has explained: 'current clients have a right to retain their chosen counsel, and they will bear the financial burden when their chosen counsel is disqualified—a burden that an opponent may desire in order to gain a tactical advantage in the litigation.' <i>City and County of San Francisco v. Cobra Solutions</i>, 38 Cal. 4th 839, 851 (2006)."</p>	<p>improper legal opinion and improperly opines on how the Court should rule on the Motion. <i>See, e.g., Summers v. Gilbert</i>, 69 Cal. App. 4th 1155, 1180 (1999); <i>see also</i> Cal. Evid. Code § 801. Moreover, Professor Marshall relies upon the law of other jurisdictions in reaching his conclusions, which foreign law is neither specified (but is presumably Illinois law, as that is the law Professor Marshall actually knows) nor relevant to a motion under California law. He also misstates the law. This paragraph also lacks foundation. Cal. Evid. Code § 403(a). Professor Marshall further purports to offer opinion on "the role of imputation," an issue which is not raised by Paul Hastings in its Opposition.</p>	<p><input type="checkbox"/> Overruled</p>
<p>31. <u>Marshall Decl. ¶ 35</u>: "It is unclear whether the California Supreme Court still applies the principle of</p>	<p>31. This paragraph is an improper legal opinion and improperly opines on how the</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>

1 MATERIAL OBJECTED TO	2 GROUNDS FOR OBJECTION	[PROPOSED] RULING
<p>3 imputation as an absolute rule that is 4 subject to no exceptions. The California 5 Supreme Court at one time indicated, in 6 dicta, that the presumption of shared 7 confidences is irrebuttable. See <i>Flatt v.</i> 8 <i>Superior Court</i>, 9 Cal. 4th 275, 283 9 (1994). In more recent dictum, however, 10 the Court signaled that it might support a 11 different approach, suggesting that the 12 presumption that information known by 13 any one lawyer in a firm is known by all 14 lawyers in that firm can be rebutted in 15 some cases. See <i>People ex rel. Dep't of</i> 16 <i>Corporations v. Speedee Oil Change</i> 17 <i>Systems, Inc.</i>, 20 Cal. 4th 1135, 1151- 18 1152 (1999). The United States Court of 19 Appeals for the Ninth Circuit has 20 recognized this change in the approach 21 of the California Supreme Court. See <i>In</i> 22 <i>re County of Los Angeles</i>, 223 F.3d 990, 23 996 (9th Cir. 2000). This more 24 contextual and practical approach has 25 been recognized as well by at least one 26 California Appellate Court. See <i>Farris</i> 27 <i>v. Fireman's Fund Ins. Co.</i>, 119 Cal. 28 App. 4th 671, 689 n.17 (2004)."</p>	<p>Court should rule on the Motion. <i>See, e.g., Summers v. Gilbert</i>, 69 Cal. App. 4th 1155, 1180 (1999); <i>see also</i> Cal. Evid. Code § 801. Moreover, Professor Marshall relies upon the law of other jurisdictions in reaching his conclusions, which foreign law is neither specified (but is presumably Illinois law, as that is the law Professor Marshall actually knows) nor relevant to a motion under California law. He also misstates the law. This paragraph also lacks foundation. Cal. Evid. Code § 403(a). Professor Marshall further purports to offer opinion on "the role of imputation," an issue which is not raised by Paul Hastings in its Opposition.</p>	
<p>32. <u>Marshall Decl., ¶ 36</u>: "It is my opinion that the difference between situations in which a lawyer working on a current matter had direct knowledge of material former-client confidences, versus situations in which a lawyer working on a current matter is imputed with knowledge of former-client information, is an important consideration regarding the propriety of disqualification. When courts use their power to disqualify counsel they are acting through their inherent power to further justice. As the California Supreme Court has recognized, this process requires careful consideration of the compelling equities: 'When disqualification is sought because of an attorney's successive representation of clients with adverse interests, the trial court must balance the current client's right to the counsel of its choosing against the former client's right to ensure that its confidential information will not be divulged or used by its former counsel.' <i>City and County of San</i></p>	<p>32. This paragraph is an improper legal opinion and improperly opines on how the Court should rule on the Motion. <i>See, e.g., Summers v. Gilbert</i>, 69 Cal. App. 4th 1155, 1180 (1999); <i>see also</i> Cal. Evid. Code § 801. Moreover, Professor Marshall relies upon the law of other jurisdictions in reaching his conclusions, which foreign law is neither specified (but is presumably Illinois law, as that is the law Professor Marshall actually knows) nor relevant to a motion under California law. He also misstates the law. This paragraph also lacks foundation. Cal. Evid. Code § 403(a). Professor Marshall further purports to offer opinion on "the role of imputation," an issue which is not raised by Paul Hastings in its Opposition.</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	[PROPOSED] RULING
<p>1 2 <i>Francisco v. Cobra Solutions, Inc.</i>, 38 3 Cal. 4th 839, 846 (2006). This balancing 4 of competing values is informed by the 5 actual risk that client confidences that 6 one lawyer possesses will, in fact, 7 become known to the lawyers who are 8 actually working on the current matter.”</p>		
<p>6 33. <u>Marshall Decl.</u>, ¶ 37: “In this 7 case, Mr. Snyder works in the New York 8 office, while the Gibson Dunn lawyers 9 working on this matter are all in the 10 firm’s Los Angeles office. Within one 11 day of learning that Mr. Snyder had 12 represented Mr. Saperstein on an 13 unrelated matter and that Mr. 14 Saperstein’s current counsel was raising 15 concerns about a conflict this created, 16 Gibson Dunn erected an ethical screen 17 between Mr. Snyder and all lawyers 18 working on the Paul Hastings matter. 19 This screen was in keeping with the best 20 practices for such ethical screens, 21 including directions to all Gibson Dunn 22 lawyers, paralegals and secretaries that 23 Mr. Snyder do no work on the Paul 24 Hastings matter; that no discussions of 25 these matters take place in the presence 26 of Mr. Snyder; that no information about 27 the matter be disclosed to Mr. Snyder; 28 and that Mr. Snyder have no access to any documents, files or materials relating to the Paul Hastings matter.”</p>	<p>33. This paragraph is an improper legal opinion and improperly opines on how the Court should rule on the Motion. <i>See, e.g., Summers v. Gilbert</i>, 69 Cal. App. 4th 1155, 1180 (1999); <i>see also</i> Cal. Evid. Code § 801. Moreover, Professor Marshall relies upon the law of other jurisdictions in reaching his conclusions, which foreign law is neither specified (but is presumably Illinois law, as that is the law Professor Marshall actually knows) nor relevant to a motion under California law. He also misstates the law and wrongly applies erroneous law. This paragraph also lacks foundation. Cal. Evid. Code § 403(a). Moreover, Professor Marshall lacks personal knowledge of the statements made in this paragraph. Cal. Evid. Code § 702. He further purports to offer opinion on “the role of imputation,” an issue which is not raised by Paul Hastings in its Opposition.</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>
<p>21 34. <u>Marshall Decl.</u>, ¶ 38: 22 “Regardless of whether this type of 23 screen is enough to avoid imputation of a 24 plain and strong conflict, it is my opinion 25 that the presence of the screen impacts 26 the balance of equities in a case where 27 any conflict (even if the court were to 28 conclude that one exists) is very attenuated and remote to begin with. This case presents an instance where the relationship between the matters is quite remote and where the waiver of privilege as to any relevant confidences associated with the former representation renders the purpose of these rules weakened, if</p>	<p>34. This paragraph is an improper legal opinion and improperly opines on how the Court should rule on the Motion. <i>See, e.g., Summers v. Gilbert</i>, 69 Cal. App. 4th 1155, 1180 (1999); <i>see also</i> Cal. Evid. Code § 801. Moreover, Professor Marshall relies upon the law of other jurisdictions in reaching his conclusions, which foreign law is neither specified (but is presumably Illinois law, as that is the law Professor Marshall actually knows) nor relevant to a</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>

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MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	[PROPOSED] RULING
<p>not entirely moot. Adding yet another layer of artificiality by imputing Mr. Snyder's knowledge to all lawyers at Gibson Dunn, despite the safeguards in place, would stretch the former-client-conflict rule well beyond its natural contours."</p>	<p>motion under California law. He also misstates the law and wrongly applies erroneous law. This paragraph also lacks foundation. Cal. Evid. Code § 403(a). Moreover, Professor Marshall lacks personal knowledge of the statements made in this paragraph. Cal. Evid. Code § 702. He further purports to offer opinion on "the role of imputation," an issue which is not raised by Paul Hastings in its Opposition.</p>	
<p>35. <u>Marshall Decl., fn.1</u>: "Mr. Saperstein alludes to the possibility that he might wish to call Mr. Snyder as a witness. Motion to Disqualify at 11. Nothing about the fact that Mr. Snyder is now at Gibson Dunn would affect Mr. Saperstein's right to do that. California Rule of Professional Conduct 5-210 only bars an individual lawyer from 'acting as an advocate before a jury which will hear testimony from the member.' As the Official Comment explains, this Rule does not apply 'to circumstances in which a lawyer in an advocate's firm will be a witness.'"</p>	<p>35. This paragraph is an improper legal opinion and improperly opines on how the Court should rule on the Motion. <i>See, e.g., Summers v. Gilbert</i>, 69 Cal. App. 4th 1155, 1180 (1999); <i>see also</i> Cal. Evid. Code § 801. Professor Marshall also misstates the law and mischaracterizes California law, which clearly would recognize a conflict of interest were a former lawyer both adverse in the current lawsuit and a percipient witness on the matters in dispute. This paragraph also lacks foundation. Cal. Evid. Code § 403(a).</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Overruled</p>

DATED: October 29, 2009

HENNIGAN, BENNETT & DORMAN LLP

By: Paul B. Derby
Paul B. Derby

Attorneys for Plaintiff
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PROOF OF SERVICE

I declare as follows:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 865 South Figueroa Street, Suite 2900, Los Angeles, California 90017. On October 29, 2009, I served the foregoing document described as **PLAINTIFF DAVID I. SAPERSTEIN'S EVIDENTIARY OBJECTIONS AND REQUEST TO STRIKE DECLARATION OF LAWRENCE C. MARSHALL FILED IN SUPPORT OF OPPOSITION OF DEFENDANT PAUL. HASTINGS, JANOFSKY & WALKER LLP TO PLAINTIFF'S MOTION FOR DISQUALIFICATION OF GIBSON DUNN & CRUTCHER LLP** on the interested parties in this action follows:

- by transmitting via facsimile the documents listed above to the fax number set forth below on this date. This transmission was reported as complete without error by a transmission report issued by the facsimile machine upon which the said transmission was made immediately following the transmission. A true and correct copy of the said transmission is attached hereto and incorporated herein by this reference.
- by placing the document listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below
- by electronic transmission. I caused the document(s) listed above to be transmitted by electronic mail to the individuals on the service list as set forth below.
- by placing the document listed above in a sealed envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a _____ agent for Delivery.
- by placing the document listed above in a sealed envelope and causing the envelope to be delivered by messenger to the individuals on the service list as set forth below.

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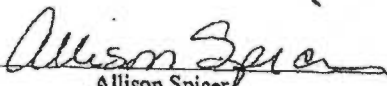
(Delivered by e-mail and U.S. mail)

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postal meter date is more than one day after date of deposit for mailing in affidavit.

Executed on October 29, 2009, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.


Allison Spicer

2009/10/29

Exhibit 30

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT
13

14 DAVID I. SAPERSTEIN,
15 Plaintiff,
16
17 v.
18 PAUL, HASTINGS, JANOFKY &
WALKER LLP, a California Limited
19 Liability Partnership; and Does 1 through 10,
20 Defendants.

CASE NO.: BC 393920
[The Honorable Mary Ann Murphy]
**RESPONSE OF DEFENDANT PAUL,
HASTINGS, JANOFKY & WALKER LLP TO
PLAINTIFF'S MOTION TO STRIKE THE
DECLARATION OF LAWRENCE C.
MARSHALL FILED IN SUPPORT OF THE
OPPOSITION OF DEFENDANT PAUL,
HASTINGS, JANOFKY & WALKER LLP TO
PLAINTIFF'S MOTION FOR
DISQUALIFICATION OF GIBSON, DUNN &
CRUTCHER, LLP; SUPPORTING
SUPPLEMENTAL DECLARATION OF
LAWRENCE C. MARSHALL**

[RESPONSES TO PLAINTIFF'S SPECIFIC
OBJECTIONS AND APPENDIX OF NON-
CALIFORNIA AUTHORITIES FILED UNDER
SEPARATE COVER]

Date: November 5, 2009
Time: 8:30 a.m.
Place: Dept. 25

Trial Date: September 22, 2010

Complaint Filed: July 7, 2009

FILED
LOS ANGELES SUPERIOR COURT
NOV 02 2009
JOHN J. CLARKE, CLERK
SARAH J. FINE, DEPUTY

Gibson, Dunn & Crutcher LLP

RESPONSE OF DEFENDANT PAUL, HASTINGS, JANOFKY & WALKER LLP TO PLAINTIFF'S MOTION TO STRIKE THE DECLARATION OF LAWRENCE C. MARSHALL

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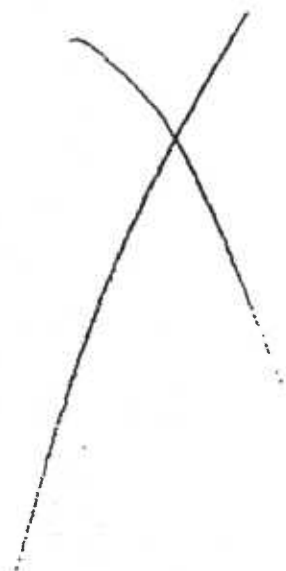
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11/14/09

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I. OVERVIEW

Unable to respond substantively to Professor Marshall's expert testimony, and having failed to find an expert who disagrees with such testimony, Plaintiff resorts to attempting to strike Professor Marshall's Declaration. Plaintiff complains he does nothing more than express his opinions about how the case should be decided. Plaintiff is wrong.

Professor Marshall does not purport to tell the Court how it should rule; rather, he offers his expert opinion based on applicable law, including its underlying policies and history, and relevant facts, regarding issues presented in the pending disqualification motion. Professor Marshall's opinions certainly are consistent with Section 805 of the California Evidence Code, which expressly provides that "[t]estimony in the form of expert opinion that is otherwise admissible is not objectionable because it embraces the ultimate issue to be decided by the trier of fact." Not only do courts *permit* expert testimony regarding issues of alleged conflicts, but they *demand* it. Indeed, even the cases relied upon by Plaintiff reinforce this point.

Similarly unavailing is Plaintiff's attack on Professor Marshall's credentials and his knowledge and experience regarding the California Rules of Professional Conduct. Initially, Plaintiff misapprehends the distinction between a standard of care expert, who is focused on the manner of practice based on standards of the local community, and an ethics expert, who is focused on the applicability of established, defined, and written ethics rules as applied to the facts of a particular case.

Equally important, as Professor Marshall's Declaration (§§ 2-5) makes clear, and as his Supplemental Declaration (§§ 2-7) explains further in response to Plaintiff's misguided arguments, Professor Marshall has taught California ethics and conflict rules and related decisional law at Stanford Law School in California for more than 5 years. During that time, he also has run a number of clinics where Stanford students who spent summers at law firms and other entities function as lawyers in California, thereby requiring him to be responsible for identifying and resolving precisely the same conflict issue presented here, which he has done in at least 700 instances pursuant to the California Rules of Professional Conduct.

1 Even during his previous work as a Professor at Northwestern University School of Law and a
2 Reporter to the Illinois Supreme Court Committee on Professional Responsibility, a significant portion of
3 his time and effort was spent analyzing the California Rules of Professional Conduct as a contrast to the
4 Model Rules of Professional Conduct of the American Bar Association and the Illinois ethics rules. And
5 Professor Marshall previously has served as an expert in California cases involving California lawyers.

6 Finally, it is well established under California law that even professors at law schools *outside of*
7 *California* are capable of providing expert opinions regarding California ethics rules and their
8 applicability to the facts of a particular case. *See Castro v. Los Angeles County Board of Supervisors*, 232
9 Cal. App. 3d 1432 (1991) (relying on expert opinion of Prof. Stephen Gillers of NYU School of Law); *In*
10 *re Lee G*, 1 Cal. App. 4th 17 (1991) (same). And, of course, here Professor Marshall teaches California
11 ethics rules at a California university to California law students and runs a California clinic for California
12 law students practicing in California, who must comply with California ethics rules related to their
13 summer employment.

14 Plaintiff's only argument in reality is that he does not like the fact that an esteemed Professor at
15 Stanford Law School disagrees with the purported substantive foundation of Plaintiff's tactical effort to
16 disqualify Paul Hastings' chosen counsel. However, that argument is not a legitimate basis to ignore
17 California law regarding how alleged conflicts of interest are to be determined. Therefore, the only
18 compelling aspect of Plaintiff's motion to strike, in view of Plaintiff's inability to respond substantively to
19 Professor Marshall's opinions other than by personal attacks on him, is that it confirms Plaintiff's failure
20 to obtain expert evidence that supports disqualification.

21 **II. PROFESSOR MARSHALL'S EXPERT DECLARATION IS ADMISSIBLE**
22 **UNDER CALIFORNIA LAW**

23 Contrary to Plaintiff's suggestion, Professor Marshall's testimony is not focused on a pure
24 question of law or on any matter outside of his competence as an expert witness. Instead, Professor
25 Marshall, after explaining his understanding of applicable law, including its underlying policies and
26 history, applies that law to the facts of this case in order to render his opinion. That is what experts do.
27 They routinely offer opinions regarding mixed questions of law and fact. There is nothing novel or
28 improper about it.

1 As set forth in his Declaration, Professor Marshall has been asked to testify concerning "whether
2 [Gibson, Dunn & Crutcher] has an ethical or legal obligation to withdraw from representing Paul,
3 Hastings, Janofsky & Walker, LLP." (See Declaration of Lawrence C. Marshall (Marshall Decl.), ¶ 5.).
4 More specifically, Professor Marshall's testimony focuses on whether, under applicable ethical and legal
5 rules, Orin Snyder's former representation of Plaintiff in 2004 and early 2005 while Mr. Snyder was at the
6 law firm of Manatt, Phelps & Phillips regarding a matter not "substantially related" to this case creates a
7 conflict of interest that precludes Gibson Dunn & Crutcher from representing Paul Hasting in this case in
8 2009. (See Marshall Decl., ¶¶ 11-24.)

9 California courts have deemed expert testimony regarding an alleged conflict of interest
10 admissible in cases involving attorney disqualification issues. For example, in *Castro v. Los Angeles*
11 *County Board of Supervisors*, 232 Cal. App. 3d 1432 (1991), a case involving an alleged conflict of
12 interest arising from a public agency's representation of multiple clients, counsel for the defense
13 submitted an expert ethics opinion authored by Professor Stephen Gillers of New York University School
14 of Law. The court not only agreed that the opinion was admissible, but it also heavily relied upon
15 Professor Gillers' opinion in concluding that there was no disqualifying conflict of interest. *Id.* at 1444.

16 In *In re Lee G*, 1 Cal. App. 4th 17, 28-29 (1991), another California court relied heavily upon
17 Professor Gillers' expert opinion to evaluate whether a conflict of interest existed requiring the recusal of
18 counsel (noting that in *Castro*, "the Court of Appeal quoted at length from an ethics opinion letter
19 submitted as a trial court exhibit on the issue of conflict of interest rules" and referring to the opinion as a
20 guideline in considering the effect of an alleged adverse representation).

21 In *Terrebonne, Ltd. of California v. Murray*, 1 F. Supp.2d 1050, 1058 (E.D. Cal. 1998), a case
22 involving an attorney's disqualification due to a conflict of interest, the court held that plaintiff's expert
23 testimony was "relevant and helpful in determining the conflict issues involved." The *Terrebonne* court
24 specifically considered and relied upon the testimony of plaintiff's professional responsibility expert on
25 the issue of whether defendants had obtained confidential information requiring disqualification. *Id.* In
26 fact, the court criticized the opposing party for failing to counter this evidence with their own experts. *Id.*

27 Likewise, California courts often have permitted expert testimony regarding alleged conflicts of
28 interest in other contexts. See e.g., *Stanley v. Richmond*, 35 Cal. App. 4th 1070, 1088 (1995) (considering

1 expert testimony regarding whether an attorney had a conflict of interest in a breach of fiduciary duty
2 case); *Mosier v. Southern California Physicians Ins. Exchange*, 63 Cal. App. 4th 1022, 1038 (1998)
3 (allowing expert testimony that “the situation presented a conflict of interest which would be well known
4 in the insurance industry” and that “under the facts presented [the insurance company’s conduct] violated
5 the duty owed by the carrier under [applicable law].”); *Georgine v. Amchem Products, Inc.*, 157 F.R.D.
6 246, 327 (E.D. Pa. 1994) (permitting expert testimony regarding the existence of a conflict of interest
7 between an attorney and his client, explaining that this is a mixed question of law and fact on which the
8 court may be guided by expert testimony).

9 Lacking any basis to respond to these well-established principles, Plaintiff creates a straw man by
10 positing that pure questions of law generally are not a proper subject of expert opinion. *See* Obj. at 1.
11 But the cases cited by Plaintiff are far a field from the issue *sub judice* because they nowhere discuss the
12 issues of disqualification or conflict of interest. For example, *Sheldon Appel Co. v. Albert & Oliker*, 47
13 Cal. 3d 863 (1989), involved a malicious prosecution case in which the court merely held that expert
14 testimony is not permitted on the question of probable cause. *See id.* at 884. Similarly unavailing is
15 Plaintiff’s reliance on *Ferreira v. Workmen’s Compensations Appeals Board*, 38 Cal. App. 3d 120 (1974),
16 a workers compensation case in which the court held that a medical expert’s testimony regarding an
17 insurer’s legal liability did not constitute “substantial evidence” because his opinions were “not medical
18 opinions.” *Id.* at 125-26. And in *Summers v. A.L. Gilbert Co.*, 69 Cal. App. 4th 1155 (1999), a wrongful
19 death case arising from an overturned shipment of corn, the court excluded expert testimony because it
20 amounted to “nothing more than an expression of [the expert’s] belief on how a case should be decided.”
21 *Id.* at 1183.

22 Ironically, the only relevant aspect of the cases cited by Plaintiff is that they confirm the propriety
23 of expert testimony akin to as Professor Marshall’s Declaration in matters such as this one. *See, e.g.*
24 *Miller v. Los Angeles County Flood Control Dist.*, 8 Cal. 3d 689, 702 (1973) (“It is settled that an expert
25 opinion is not inadmissible merely because it coincides with an ultimate issue of fact.”) (internal
26 quotations omitted); *Summers v. A.L. Gilbert Co.*, 69 Cal. App. 4th 1155, 1178 (1999) (“Testimony in the
27 form of expert opinion that is otherwise admissible is not objectionable because it embraces the ultimate
28 issue to be decided by the trier of fact.” (quoting Cal. Evid. Code § 805).)

1 In short, California courts routinely have admitted expert testimony regarding whether, under
2 applicable ethical and legal standards, the circumstances of a given case create a conflict of interest
3 requiring disqualification. Plaintiff identifies no legitimate reason why such testimony should be
4 excluded in this case.

5 **III. PROFESSOR MARSHALL IS MORE THAN QUALIFIED TO OFFER HIS**
6 **EXPERT OPINIONS**

7 Nor is there any merit to Plaintiff's conclusory assertion that Professor Marshall is not qualified to
8 render his expert opinions. (See Obj. at 1.) As Plaintiff acknowledges, to qualify as an expert, Professor
9 Marshall need only demonstrate that he has "special knowledge, skill, experience, training or education . .
10 . on the subject to which his testimony relates." (*Id.*) Here, as noted above, Professor Marshall's
11 testimony relates to whether Gibson Dunn has a disqualifying conflict of interest in light of applicable
12 ethical and legal standards.

13 As set forth in Professor Marshall's Declaration and attached biography, as well as his
14 Supplemental Declaration, he has years of extensive experience relating to the issues here and applicable
15 California law. (Supplemental Declaration of Lawrence C. Marshall ("Supp. Marshall Decl."), ¶¶ 2-7;
16 Marshall Decl., ¶¶ 2-5.) Professor Marshall has taught California ethics and conflict rules and related
17 decisional law at Stanford Law School in California for more than five years. (Supp. Marshall Decl., ¶ 3.)

18 At Stanford, he also oversees a number of clinics where Stanford students who spent summers at
19 law firms and other entities function as lawyers in California. This requires Professor Marshall to be
20 responsible for identifying and resolving precisely the same conflict issue presented here, which he has
21 done in at least 700 instances pursuant to the California Rules of Professional Conduct. (*Id.*, ¶¶ 4-6;
22 Marshall Decl., ¶ 4.)

23 Even during his previous work as a Professor at Northwestern University School of Law and a
24 Reporter to the Illinois Supreme Court Committee on Professional Responsibility, a significant portion of
25 his time and effort was spent analyzing the California Rules of Professional Conduct as a contrast to the
26 Model Rules of Professional Conduct of the American Bar Association and the Illinois ethics rules.
27 (Supp. Marshall Decl., ¶ 3; Marshall Decl., ¶¶ 2-4.) And Professor Marshall previously has served as an
28 expert in California cases involving California lawyers. (Supp. Marshall Decl., ¶ 7; Marshall Decl., ¶ 5.)

1 More generally, Professor Marshall graduated *summa cum laude* from Northwestern School of
2 Law and later served as a law clerk for Justice John Paul Stevens of the United States Supreme Court.
3 Professor Marshall has worked in private practice with the firm of Mayer, Brown & Platt, which has
4 offices in California. Since 1987, Professor Marshall has taught courses in Professional Responsibility
5 and the Law of Lawyering at Northwestern and Stanford law schools. (Marshall Decl., ¶ 2.) Indeed, as
6 he notes in his Declaration, Professor Marshall has "studied, taught, done research, and practiced in the
7 field of professional responsibility for more than 20 years." (*Id.*)

8 The simple fact is that Professor Marshall's stellar qualifications and years of experience, as
9 detailed in his Declaration and biography and Supplemental Declaration, more than qualify him to testify
10 on the legal and ethical issues addressed in his Declaration. Plaintiff offers nothing to suggest otherwise.¹

11 **IV. CONCLUSION**

12 For all of these reasons, the Court should deny Plaintiff's motion to strike Professor Marshall's
13 testimony.

14 DATED: November 2, 2009

GIBSON, DUNN & CRUTCHER LLP
and
PAUL, HASTINGS, JANOFSKY & WALKER LLP

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By: 
Kevin S. Rosen

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26 That Professor Marshall is not a member of the California Bar and that Stanford Law School has other
27 ethics experts has nothing to do with Professor Marshall's qualification to serve as an expert here. See
28 *Castro v. Los Angeles County Board of Supervisors*, 232 Cal. App. 3d 1432 (1991) (relying on expert
opinion of Prof. Stephen Gillers of NYU School of Law); *In re Lee G*, 1 Cal. App. 4th 17 (1991)
(same). Of course, Plaintiff has not cited any case imposing a per se rule that an ethics expert must be
a member of the California Bar in order to testify as such.

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT
13

14 DAVID I. SAPERSTEIN,

15 Plaintiff,

16 v.

17 PAUL, HASTINGS, JANOFSKY &
18 WALKER LLP, a California Limited
Liability Partnership, and Does 1 through 10,

19 Defendants.
20
21

CASE NO.: BC 393920

[The Honorable Mary Ann Murphy]

**SUPPLEMENTAL DECLARATION OF
LAWRENCE C. MARSHALL IN SUPPORT
OF DEFENDANT PAUL, HASTINGS,
JANOFSKY & WALKER LLP'S OPPOSITION
TO PLAINTIFF'S MOTION FOR
DISQUALIFICATION OF GIBSON DUNN &
CRUTCHER LLP AS COUNSEL TO
DEFENDANT PAUL, HASTINGS, JANOFSKY
& WALKER LLP**

Date: November 5, 2009
Time: 8:30 a.m.
Place: Dept. 25
Trial Date: September 22, 2010

Complaint Filed: July 7, 2009

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Gibson, Dunn &
Crutcher LLP

SUPPLEMENTAL DECLARATION OF LAWRENCE C. MARSHALL IN SUPPORT OF DEFENDANT PAUL, HASTINGS,
JANOFSKY & WALKER LLP'S OPPOSITION TO PLAINTIFF'S MOTION FOR DISQUALIFICATION

1 I, Lawrence C. Marshall, declare:

2 1. I am over the age of 18. If called as a witness, I could and would provide competent
3 testimony on the matters set forth in this declaration.

4 2. Over the past 22 years, I have taught consistently in the field of Professional
5 Responsibility, first at Northwestern University School of Law, and then for the past five-plus years as
6 Stanford Law School. During those years, I estimate that I have taught Professional Responsibility
7 (sometimes under the course names "Legal Ethics" or "Lawyers' Ethics") to over 1,500 law students.

8 3. During my more than five years at Stanford, the focus of my teaching in Professional
9 Responsibility has been almost exclusively the California Rules of Professional Conduct. During my
10 years teaching at Northwestern, I focused on the American Bar Association Model Rules of Professional
11 Conduct and the rules of a number of major states. In so doing, California was always one of the main
12 jurisdictions I studied and taught because of the contrast between the ABA rules and the California
13 rules, and because a great many of my students intended to practice in California.

14 4. Because so many of the students at both Stanford and Northwestern will find themselves in
15 private practice in large law firms or other entities, and because the single most recurring issue they will
16 face involves conflicts-of-interest, I have spent a great deal of time at Stanford (and before that, at
17 Northwestern) focusing on that subject in my teaching and research. In particular, because these
18 students will often shift jobs among various law firms and entities, the subject of "former client
19 conflicts" is one of the primary topics upon which I focus in my teaching and about which I constantly
20 study and research.

21 5. In the course of my directing the Stanford Law School Legal Clinic, I have been constantly
22 charged with the need to help the faculty and students in the clinic analyze and resolve ethical issues that
23 arise under the California Rules of Professional Conduct—frequently around the subject of "former
24 client conflicts." This is because each year approximately 140 new second-year or third-year law
25 students enroll in the clinical program—in which they act as attorneys and are subject to the California
26 Rules of Professional Conduct. Every one of these students has spent at least one summer working at a
27 law firm or other entity, during which the student has represented a client or, in most cases, a series of
28 clients. Thus, each of these 140 students arrives annually with a portfolio of "former clients," and the

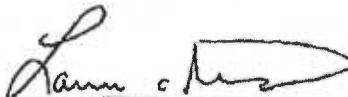
1 Clinic frequently has needed to deal with questions involving conflicts-of-interest between current clinic
2 clients and these students' former clients. For example, several of our clinics (such as the Supreme
3 Court Litigation Clinic and the Environmental Law Clinic) have been asked to work on cases or have
4 found themselves working on cases that are adverse to former clients that students represented in their
5 law firms.

6 6. In my course on "Lawyers' Ethics," I have led the students over the past several years at
7 Stanford through these issues under the California Rules of Professional Conduct. The course places the
8 students in the role of the Ethics Committee of the Legal Clinic and involves them in an array of actual
9 ethical issues—including many conflict-of-interest issues—that arise in the practice of law. My role in
10 this process has been to bring my expertise into the discussions—providing the students with the
11 background, insights and context that come from my decades of study, research, teaching and work in
12 this area.

13 7. During the past two decades, I have also been asked by dozens of law firms to help them
14 navigate conflict-of-interest issues that arise in their practice, including many involving former-client
15 conflicts. In addition, on several occasions, I have provided declarations or affidavits on conflict-of-
16 interest issues and other professional-responsibility issues. To the best of my knowledge, no court has
17 ever declined to recognize me as an expert on these matters.

18 FURTHER DECLARANT SA YETH NOT.

19 I declare under penalty of perjury under the laws of the State of California that the foregoing is
20 true and correct. Executed this 2nd day of November 2009 in New York, New York.

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22
23 
24 Lawrence C. Marshall

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Exhibit 31

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 LOS ANGELES SUPERIOR COURT
 DEC 11 2009

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JOHN A. CLARKE, CLERK

BY CECILIA GUERRERO, DEPUTY

NOV 24 2009
FILING WINDOW

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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 15 FOR THE COUNTY OF LOS ANGELES

17 DAVID I. SAPERSTEIN,
 18 Plaintiff,

19 vs.

20 PAUL, HASTINGS, JANOFSKY &
 WALKER LLP, a California limited liability
 21 partnership; and Does 1 through 10,

22 Defendants.

) Case No. BC 393920
) [Hon. Mary Ann Murphy]
)
) ~~PROPOSED~~ ORDER ON PLAINTIFF
) DAVID I. SAPERSTEIN'S EVIDENTIARY
) OBJECTIONS TO DECLARATION OF
) LAWRENCE C. MARSHALL FILED IN
) SUPPORT OF OPPOSITION OF
) DEFENDANT PAUL, HASTINGS,
) JANOFSKY & WALKER LLP TO
) PLAINTIFF'S MOTION FOR
) DISQUALIFICATION OF GIBSON DUNN
) & CRUTCHER LLP
)

) Action Filed: July 7, 2008
) Trial Date: September 22, 2010
)
)
)
)
)

[PROPOSED] ORDER ON EVIDENTIARY OBJECTIONS TO MARSHALL DECLARATION

HENNIGAN, BENNETT & DORMAN LLP
LOS ANGELES, CALIFORNIA

ORIGINAL

HENNINGAN, BENNETT & ... RMAN LLP
LAWFIRM
LOS ANGELES, CALIFORNIA

Objection Number 3

"The alleged conflict of interest in this case is not a claim that Gibson Dunn is simultaneously representing clients with adverse interests. When Gibson Dunn undertook the representation off Paul Hastings in this in this civil professional-liability action, no lawyer at Gibson Dunn was representing Mr. Saperstein on any matter." (Marshall declaration, page 3, lines 19-22.)

Grounds for Objection 3: Lack of personal knowledge (Evid. Code § 702(a)); improper legal opinion (Evid. Code § 801; *Summers v. Gilbert*, 69 Cal. App. 4th 1155, 1180 (1999)); opinion based on improper matter (Evid. Code § 803); opinion based on opinion or statement of another (Evid. Code § 804); lacks foundation (Evid. Code § 403(a)); expert witness not qualified to render opinion on California disqualification law (Evid. Code § 720).

Court's Ruling on Objection 3:	Sustained: <input checked="" type="checkbox"/>
	Overruled: <input type="checkbox"/>

Objection Number 4

"Rather, the conflict of interest that Mr. Saperstein alleges is based on the fact that Orin Snyder, a lawyer who is now a partner at Gibson Dunn, once represented Mr. Saperstein in a criminal matter that concluded well before Gibson Dunn undertook the representation of Paul Hastings in the current litigation. The actual work that Mr. Snyder did on that matter took place when Mr. Snyder was a partner at the law firm of Manatt, Phelps & Phillips, L.L.P. [hereinafter Manatt Phelps] prior to Mr. Snyder's moving to Gibson Dunn in 2005. This is a claim, then, about a 'former-client conflict,' i.e., an allegation relating to Gibson Dunn's duties to a former client of any attorney who is now at Gibson Dunn." (Marshall declaration, page 3, line 23—page 4, line 2.)

Grounds for Objection 4: Lack of personal knowledge (Evid. Code § 702(a)); improper legal opinion (Evid. Code § 801; *Summers v. Gilbert*, 69 Cal. App. 4th 1155, 1180 (1999)); opinion based on improper matter (Evid. Code § 803); opinion based on opinion or statement of another (Evid. Code § 804); lacks foundation (Evid. Code § 403(a)); expert witness not qualified to render opinion on California disqualification law (Evid. Code § 720).

Court's Ruling on Objection 4:	Sustained: <input checked="" type="checkbox"/> Overruled: <input type="checkbox"/>
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Objection Number 5

"In assessing a claim of an alleged former-client conflict of interest, some basic principles emerge in California law and the widely accepted law of other jurisdictions, upon which my opinions are based. The law does not preclude a lawyer or law firm from undertaking representation against a party simply because that adverse party was once a client of the lawyer or law firm. Unlike a current client, a former client is not generally entitled to his previous lawyer's loyalty (subject to a very limited exception involving instances in which the lawyer is attacking the precise outcome the lawyer secured on behalf of the former client—a situation with no relevance in the matter now under consideration). Hence, although a lawyer may not (in the absence of client consent) undertake any representation adverse to the interests of a *current* client, no such *per se* rule applies to a lawyer undertaking representation adverse to the interests of a *former* client." (Marshall declaration, page 4, lines 3-12.)

Grounds for Objection 5: Improper legal opinion (Evid. Code § 801; *Summers v. Gilbert*, 69 Cal. App. 4th 1155, 1180 (1999)); opinion based on improper matter (Evid. Code § 803); lacks foundation (Evid. Code § 403(a)); expert witness not qualified to render opinion on California disqualification law (Evid. Code § 720).

Court's Ruling on Objection 5:	Sustained: <input checked="" type="checkbox"/> Overruled: <input type="checkbox"/>
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Objection Number 6

"Indeed, the law recognizes that barring a lawyer from undertaking representation on the sole ground that the adversary is a former client would have an extremely deleterious impact on the profession and on a subsequent client's choice of counsel. This is especially true given the trend toward the nationalization and consolidation of law firms and toward increased lawyer mobility. Large law firms represent thousands, and in some cases, tens of thousands, of clients each year. If

1 each firm was forever barred from undertaking representations adverse to all those former clients
2 (and all former clients of any other lawyers who have joined the firm), the number of law firms able
3 to take on particular matters would be severely limited." (Marshall declaration, page 4, lines 13-20.)

4 **Grounds for Objection 6:** Improper legal opinion (Evid. Code § 801; *Summers v. Gilbert*, 69 Cal.
5 App. 4th 1155, 1180 (1999)); opinion based on improper matter (Evid. Code § 803); lacks
6 foundation (Evid. Code § 403(a)); expert witness not qualified to render opinion on California
7 disqualification law (Evid. Code § 720); irrelevant (Evid. Code §§ 210, 350-351).

8 9	Court's Ruling on Objection 6:	Sustained: <input checked="" type="checkbox"/>
		Overruled: <input type="checkbox"/>

11 **Objection Number 7**

12 "For these reasons, the ethical and legal rules in California and across other United States
13 jurisdictions make clear that a lawyer is generally allowed to undertake representation adverse to a
14 former client. A different rule applies, however, where the subject of the representation the lawyer
15 is undertaking is 'substantially related' to the subject matter of the attorney's representation of a
16 former client. In that instance, there is a presumption based on the 'substantial relationship'
17 between the two matters that the lawyer necessarily learned confidences during the earlier
18 representation of the former client that are materially relevant to the current representation. Under
19 those circumstances, the former client's interest in preserving confidences the client shared with the
20 attorney generally triggers a rule barring the lawyer from undertaking representation adverse to the
21 former client on those substantially related matters." (Marshall declaration, page 4, line 21—page 5,
22 line 2.)

23 **Grounds for Objection 7:** Improper legal opinion (Evid. Code § 801; *Summers v. Gilbert*, 69 Cal.
24 App. 4th 1155, 1180 (1999)); opinion based on improper matter (Evid. Code § 803); lacks
25 foundation (Evid. Code § 403(a)); expert witness not qualified to render opinion on California
26 disqualification law (Evid. Code § 720).

Court's Ruling on Objection 7:	Sustained: <input checked="" type="checkbox"/>
	Overruled: <input type="checkbox"/>

Objection Number 8

"By restricting the duty to withdraw to instances in which there is a 'substantial relationship' between the subjects of the former and current representation in order to protect client confidences, the governing rules and law strike a balance between the imperative of protecting former clients' legitimate interests and the imperative of ensuring that former-client conflicts are not construed so broadly that they become the equivalent of *per se* rules that threaten current clients' choice of counsel and significantly impair lawyer mobility. For this reason, whatever confidences a lawyer may have learned in the course of representing a former client do not bar the lawyer from taking on positions adverse to that client unless the two matters are 'substantially related.' The governing rules and law are careful not to construe the 'substantial relationship' too loosely for that would risk transforming the limited prohibition of undertaking certain representations adverse to former clients into a broad prohibition akin to the bar on undertaking representation adverse to current clients. The governing rules and law emphatically eschew that result." (Marshall declaration, page 5, lines 4-15.)

Grounds for Objection 8: Improper legal opinion (Evid. Code § 801; *Summers v. Gilbert*, 69 Cal. App. 4th 1155, 1180 (1999)); opinion based on improper matter (Evid. Code § 803); lacks foundation (Evid. Code § 403(a)); expert witness not qualified to render opinion on California disqualification law (Evid. Code § 720).

Court's Ruling on Objection 8:	Sustained: <input checked="" type="checkbox"/>
	Overruled: <input type="checkbox"/>

Objection Number 9

Thus, the relevant inquiry is never whether is *some* relationship between the former and current matter. Rather, the inquiry looks to the *substantiality* of that relationship. So, too, the California

1 rule does not bar a lawyer from undertaking representation adverse to a former client simply because
2 the lawyer has former-client confidences that are somehow *relevant* to the current representation.
3 Rather, it limits its restriction to instances in which any former-client confidences are material to the
4 current representation. See California Rule of Professional Conduct 3-310(E). See also *Fremont*
5 *Indemnity Co. v. Fremont General Corp.*, 143 Cal. App.4th 50, 69 (2006) (disqualification is only in
6 order where 'information acquired during the first representation [is] "material" to the second; that
7 is, it must be found to be directly at issue in, or have some critical importance to, the second
8 representation').” (Marshall declaration, page 5, lines 16-25.)

9 **Grounds for Objection 9:** Improper legal opinion (Evid. Code § 801; *Summers v. Gilbert*, 69 Cal.
10 App. 4th 1155, 1180 (1999)); opinion based on improper matter (Evid. Code § 803); lacks
11 foundation (Evid. Code § 403(a)); expert witness not qualified to render opinion on California
12 disqualification law (Evid. Code § 720).

Court's Ruling on Objection 9:	Sustained: <input checked="" type="checkbox"/>
	Overruled: <input type="checkbox"/>

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16 **Objection Number 10**

17 “Relating these principles to the matter of Gibson Dunn’s continued representation of Paul Hastings
18 in the above-captioned case, the former representation relevant here was Orin Snyder’s having once
19 represented David Saperstein in relation to a criminal grand jury investigation into Mr. Saperstein’s
20 investments in a Bond Linked Issue Premium Structure (‘BLIPS’). By contrast, the current
21 representation involves Gibson Dunn’s representation of Paul Hastings in a suit by Mr. Saperstein
22 alleging that Paul Hastings committed malpractice by failing to properly advise Mr. Saperstein about
23 how to set up a trust and ensure that a particular piece of real estate would not be treated as
24 community property in the event of dissolution of his marriage or otherwise be awarded to his wife.
25 Nothing in Mr. Saperstein’s suit against Paul Hastings has anything to do with the criminal
26 implications of the BLIPS investment. Nor does Mr. Saperstein’s suit against Paul Hastings relate
27 to any substantially related issues such as Mr. Saperstein’s investments in other tax shelters. On
28 *their face*, therefore, there is nothing about these two matters that render them ‘substantially related’

1 in a manner that forecloses Gibson Dunn from representing Paul Hastings in this matter. It is always
2 possible to discuss a current and former matter at a high enough level of abstraction that they could
3 be described as 'substantially related.' Here, for example, one could say that both cases generically
4 involve Mr. Saperstein's finances. The 'substantial relationship' test, however, demands a far more
5 fact specific and concrete showing of substantive overlap." (Marshall declaration, page 5, line 26—
6 page 6, line 14.)

7 **Grounds for Objection 10:** Improper legal opinion (Evid. Code § 801; *Summers v. Gilbert*, 69 Cal.
8 App. 4th 1155, 1180 (1999)); opinion based on improper matter (Evid. Code § 803); opinion based
9 on opinion or statement of another (Evid. Code § 804); lacks foundation (Evid. Code § 403(a)); lack
10 of personal knowledge (Evid. Code § 702(a)); expert witness not qualified to render opinion on
11 California disqualification law (Evid. Code § 720).

Court's Ruling on Objection	Sustained: <input checked="" type="checkbox"/>
10:	Overruled: <input type="checkbox"/>

12
13
14
15 **Objection Number 11**

16 "Mr. Saperstein's Motion to Disqualify Gibson Dunn alleges that Gibson Dunn is barred from
17 proceeding with its representation of Paul Hastings in this matter because, among other reasons,
18 Gibson Dunn asked several questions about the BLIPS criminal investigation during a deposition.
19 In my opinion, the fact that a few questions were asked in discovery does not create a 'substantial
20 relationship' between the two matters. Nor does it show that anything relating to the BLIPS
21 criminal matter is 'material' to Gibson Dunn's ongoing representation of Paul Hastings. As the
22 declaration of Kevin S. Rosen establishes, those questions were asked (at a time that he was unaware
23 of any conceivable conflict) as part of a broad series of questions about a large number of topics that
24 might have led to relevant information and might have established that other areas of inquiry are not
25 relevant in this litigation. Such questions do not elevate a matter to the level of a 'substantially
26 related' case or transform otherwise irrelevant information into 'materially relevant' information."
27 (Marshall declaration, page 6, lines 15-26.)
28

1 **Grounds for Objection 11:** Improper legal opinion (Evid. Code § 801; *Summers v. Gilbert*, 69 Cal.
2 App. 4th 1155, 1180 (1999)); opinion based on improper matter (Evid. Code § 803); opinion based
3 on opinion or statement of another (Evid. Code § 804); lacks foundation (Evid. Code § 403(a)); lack
4 of personal knowledge (Evid. Code § 702(a)); expert witness not qualified to render opinion on
5 California disqualification law (Evid. Code § 720).

Court's Ruling on Objection	Sustained: <input checked="" type="checkbox"/>
11:	Overruled: <input type="checkbox"/>

8
9 **Objection Number 12**

10 "In any event, as Mr. Rosen's declaration explains, Gibson Dunn (on behalf of its client, Paul
11 Hastings) has no interest in any further information about the BLIPS criminal matter, and nothing
12 about the criminal investigation will be made an issue in this case. In light of this posture, it is
13 evident that nothing about the BLIPS criminal matters is 'substantially related' to the current
14 representation and that nothing Mr. Snyder learned about that subject is material to Gibson Dunn's
15 ongoing representation of Paul Hastings. This is consistent with the repeatedly expressed views of
16 Mr. Saperstein's counsel that nothing about the criminal investigation of BLIPS is in any way
17 relevant to the current litigation. No ongoing conflict exists, then, based on any connection between
18 this case and issues pertaining to the criminal BLIPS investigation Mr. Snyder handled. See *UMG*
19 *Recordings, Inc. v. Myspace, Inc.*, 526 F. Supp.2d 1046, 1062 (C.D. Cal. 2007) (law firm's
20 stipulation that it would not be pursuing the issue that was substantially related to a prior
21 representation obviated any reason for disqualification)." (Marshall declaration, page 6, line 20—
22 page 7, line 10.)

23 **Grounds for Objection 12:** Improper legal opinion (Evid. Code § 801; *Summers v. Gilbert*, 69 Cal.
24 App. 4th 1155, 1180 (1999)); opinion based on improper matter (Evid. Code § 803); opinion based
25 on opinion or statement of another (Evid. Code § 804); lacks foundation (Evid. Code § 403(a)); lack
26 of personal knowledge (Evid. Code § 702(a)); expert witness not qualified to render opinion on
27 California disqualification law (Evid. Code § 720).

Court's Ruling on Objection	Sustained: <input checked="" type="checkbox"/>
12:	Overruled: <input type="checkbox"/>

Objection Number 13

"In addition to claiming that Gibson Dunn's questions about the criminal BLIPS investigation render these two matters substantially related, Mr. Saperstein's Motion to Disqualify makes a far more attenuated—and in my opinion unsustainable claim. It claims that because Mr. Snyder dealt with a criminal investigation that involved advice Mr. Saperstein received from KPMG on the specific issue of the legality of BLIPS, it follows that Mr. Snyder (and as a result, Gibson Dunn) is forever barred from taking on any representation adverse to Mr. Saperstein on any matter in which his relationship with KPMG might be relevant, no matter how unrelated to the BLIPS issue or the criminal investigation. The problem with this argument is that it does not address the core question of substantial or material factual and legal relationship—which focuses on the substantive factual and legal overlap of the former and current representations. Instead, Mr. Saperstein's Motion to Disqualify looks only to the identity of the individuals and entities involved in the cases. As explained above, it is always the case that a lawyer learns a significant amount of information about a client—including the client's interaction with family, friends and advisors. This does not mean that any case in which such relationships might be relevant is therefore 'substantially related' to an earlier case that touched on those relationships in other contexts and with regard to other issues."

(Marshall declaration, page 7, lines 11-25.)

Grounds for Objection 13: Improper legal opinion (Evid. Code § 801; *Summers v. Gilbert*, 69 Cal. App. 4th 1155, 1180 (1999)); opinion based on improper matter (Evid. Code § 803); opinion based on opinion or statement of another (Evid. Code § 804); lacks foundation (Evid. Code § 403(a)); lack of personal knowledge (Evid. Code § 702(a)); expert witness not qualified to render opinion on California disqualification law (Evid. Code § 720).

Court's Ruling on Objection	Sustained: <input checked="" type="checkbox"/>
13:	Overruled: <input type="checkbox"/>

HENNINGAN, BENNETT & JURMAN LLP
LAWYERS
LOS ANGELES, CALIFORNIA

1 **Objection Number 14**

2 "To conclude otherwise—*i.e.*, to conclude that an overlap in the identity of individuals involved is
3 enough to constitute a 'substantial relationship'—is inconsistent with the ways in which that test is
4 applied by courts. Were overlap in identity enough, any former client could assert in any case that
5 the client's own involvement in both matters creates an identity overlap that constitutes a
6 'substantial relationship.' That is most certainly not the way in which the law applies the test, for
7 such a loose approach to the 'substantial relationship' test would turn the general rule allowing
8 representation on its head. The focus, then, is not on whether some individuals are involved in both
9 matters, but is instead on whether there is a 'substantial relationship' between the factual and legal
10 substance of the two matters." (Marshall declaration, page 7, line 26—page 8, line 6.)

11 **Grounds for Objection 14:** Improper legal opinion (Evid. Code § 801; *Summers v. Gilbert*, 69 Cal.
12 App. 4th 1155, 1180 (1999)); opinion based on improper matter (Evid. Code § 803); lacks
13 foundation (Evid. Code § 403(a)); expert witness not qualified to render opinion on California
14 disqualification law (Evid. Code § 720).

Court's Ruling on Objection	Sustained: <input checked="" type="checkbox"/>
14:	Overruled: <input type="checkbox"/>

18 **Objection Number 15**

19 "For these reasons, the fact that Mr. Snyder interviewed several of Mr. Saperstein's advisors about
20 specific issues relating to the BLIPS criminal investigation and reviewed documents relating to the
21 advisors' roles in advising Mr. Saperstein about the legality of the BLIPS investments, does not
22 mean that Gibson Dunn is conflicted from undertaking any representations adverse to Mr. Saperstein
23 in which distinct issues relating to those advisors may be at issue. Were such interviews to create a
24 bar, a lawyer would be barred from ever undertaking a representation adverse to a former client
25 given the inevitability of the lawyer having interviewed and received records from and relating to
26 the former client." (Marshall declaration, page 8, lines 7-14.)

27 **Grounds for Objection 15:** Improper legal opinion (Evid. Code § 801; *Summers v. Gilbert*, 69 Cal.
28 App. 4th 1155, 1180 (1999)); opinion based on improper matter (Evid. Code § 803); opinion based

1 on opinion or statement of another (Evid. Code § 804); lacks foundation (Evid. Code § 403(a)); lack
2 of personal knowledge (Evid. Code § 702(a)); expert witness not qualified to render opinion on
3 California disqualification law (Evid. Code § 720).

Court's Ruling on Objection	Sustained: <input checked="" type="checkbox"/>
15:	Overruled: <input type="checkbox"/>

7 **Objection Number 16**

8 "Mr. Saperstein's Motion also appears to allege that withdrawal or disqualification are in order here
9 because Mr. Snyder learned some specific confidences that are relevant to the instant litigation. It is
10 my opinion, which I have conveyed to Gibson Dunn, that given its having satisfied itself that Mr.
11 Snyder never learned confidential information materially relevant to the ongoing matter, and in the
12 absence of any actual proof to the contrary, Gibson Dunn has no conflict and there is no reason for it
13 to withdraw or be disqualified from its ongoing representation of Paul Hastings. See generally
14 *Elliot v. McFarland Unified School District*, 165 Cal. App. 3d 562, 572 (1985) (party seeking
15 disqualification must, in the absence of a showing that the two matters are themselves 'substantially
16 related, make an actual showing that relevant confidences were disclosed'). Although it is not my
17 role as an expert to resolve any disputed facts, my review of Mr. Saperstein's Motion to Disqualify
18 Gibson Dunn, the accompanying declarations, and the declaration submitted by Mr. Snyder reveals
19 that Mr. Snyder is steadfast that he only inquired about advice provided to Mr. Saperstein regarding
20 the legality under the tax laws of the BLIPS investments and had no interest in delving into any
21 broader questions about the role KPMG or others were playing in any other facets of Mr.
22 Saperstein's financial dealings. I have seen no evidence to the contrary that would lead me to opine
23 that Gibson Dunn has a duty to withdraw." (Marshall declaration, page 8, line 15—page 9, line 2.)

24 **Grounds for Objection 16:** Improper legal opinion (Evid. Code § 801; *Summers v. Gilbert*, 69 Cal.
25 App. 4th 1155, 1180 (1999)); opinion based on improper matter (Evid. Code § 803); opinion based
26 on opinion or statement of another (Evid. Code § 804); lacks foundation (Evid. Code § 403(a)); lack
27 of personal knowledge (Evid. Code § 702(a)); expert witness not qualified to render opinion on
28 California disqualification law (Evid. Code § 720).

Court's Ruling on Objection 16:	Sustained: <input checked="" type="checkbox"/> Overruled: <input type="checkbox"/>
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Objection Number 17

"All of the foregoing analysis presupposes a situation in which the function and purpose of the limited prohibition on successive representation applies because the attorney learned confidences in the earlier representation that continue to be confidential. None of this reasoning would apply, though, in instances in which any materially relevant confidences the attorney learned from the former representation have ceased to be confidential—whether because they have become public knowledge or because the former client has waived (explicitly or constructively) any right to have the information remain confidential. In such a situation, there are no remaining confidences to be protected, and applying a rule designed to protect the former client's confidences would be senseless (and wasteful of the parties' and court's resources)." (Marshall declaration, page 9, lines 4-12.)

Grounds for Objection 17: Improper legal opinion (Evid. Code § 801; *Summers v. Gilbert*, 69 Cal. App. 4th 1155, 1180 (1999)); opinion based on improper matter (Evid. Code § 803); lacks foundation (Evid. Code § 403(a)); expert witness not qualified to render opinion on California disqualification law (Evid. Code § 720); irrelevant (Evid. Code §§ 210, 350-351).

Court's Ruling on Objection 17:	Sustained: <input checked="" type="checkbox"/> Overruled: <input type="checkbox"/>
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Objection Number 18

"For example, assume that a former client asserts a conflict on the ground that during the earlier representation the lawyer reviewed a memorandum from the client describing the client's general employment policies—a memorandum that is materially relevant to a new matter in which the lawyer is undertaking representation adverse to the former client. Ordinarily, that could constitute reason to disqualify the attorney from proceeding on behalf of the new client, depending on the details of the facts, circumstances and issues. But if that very document was already in the public domain, because it was introduced into evidence in some other proceeding, there would be no reason

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1 whatsoever to pretend that disqualifying the lawyer would preserve the confidences of the client.
2 See generally *Restatement Third, The Law Governing Lawyers* § 59 ("Confidential client
3 information consists of information relating to the representation of a client, other than information
4 that is generally known."). Any lawyer representing the current party would have ready access to
5 the document, so the former lawyer's withdrawal or disqualification from the representation would
6 not serve any interest in preserving the confidentiality of the document in question. As one
7 California court has explained, disqualification is not appropriate where replacement of counsel
8 'would leave the adversary in the same position as before' with regard to the disclosure of the
9 information. See *Neal v. Health Net Inc.*, 100 Cal. App. 4th 831, 844 (2002)." (Marshall
10 declaration, page 9, lines 13-28.)

11 **Grounds for Objection 18:** Improper legal opinion (Evid. Code § 801; *Summers v. Gilbert*, 69 Cal.
12 App. 4th 1155, 1180 (1999)); opinion based on improper matter (Evid. Code § 803); lacks
13 foundation (Evid. Code § 403(a)); expert witness not qualified to render opinion on California
14 disqualification law (Evid. Code § 720); irrelevant (Evid. Code §§ 210, 350-351).

Court's Ruling on Objection	Sustained: <input checked="" type="checkbox"/>
18:	Overruled: <input type="checkbox"/>

18 **Objection Number 19**

19 "The same principle would apply in an instance in which the client has waived the confidentiality of
20 the information that forms the basis of the motion to disqualify. Again, in such a situation there are
21 no confidences left to preserve, and any new lawyer would have full access to the information in
22 question. There is no reason in such a case to disqualify the client's former lawyer because that
23 disqualification would not advance the former client's only legitimate interest—preserving the
24 confidentiality of information that remains confidential." (Marshall declaration, page 10, lines 1-6.)

25 **Grounds for Objection 19:** Improper legal opinion (Evid. Code § 801; *Summers v. Gilbert*, 69 Cal.
26 App. 4th 1155, 1180 (1999)); opinion based on improper matter (Evid. Code § 803); lacks
27 foundation (Evid. Code § 403(a)); expert witness not qualified to render opinion on California
28 disqualification law (Evid. Code § 720); irrelevant (Evid. Code §§ 210, 350-351).

Court's Ruling on Objection	Sustained: <input checked="" type="checkbox"/>
19:	Overruled: <input type="checkbox"/>

Objection Number 20

"For these reasons, even were this Court to conclude that the subject of Mr. Snyder's former representation of Mr. Saperstein and the subject of the current litigation are substantially related, or that Mr. Snyder learned confidences that are material to the current matter, there would still be no basis for disqualification if the relevant information is no longer confidential." (Marshall declaration, page 10, lines 7-10.)

Grounds for Objection 20: Improper legal opinion (Evid. Code § 801; *Summers v. Gilbert*, 69 Cal. App. 4th 1155, 1180 (1999)); opinion based on improper matter (Evid. Code § 803); opinion based on opinion or statement of another (Evid. Code § 804); lacks foundation (Evid. Code § 403(a)); lack of personal knowledge (Evid. Code § 702(a)); expert witness not qualified to render opinion on California disqualification law (Evid. Code § 720).

Court's Ruling on Objection	Sustained: <input checked="" type="checkbox"/>
20:	Overruled: <input type="checkbox"/>

Objection Number 21

"That is precisely the situation that appears to apply here. In the case now before the Court, Mr. Saperstein has sued Paul Hastings for professional malpractice relating to the advice it provided in structuring a trust and the acquisition and development of what has been termed the 'Carolwood Estate.' As a matter of law, the filing of such a suit places at issue the professional advice the plaintiff received from others relating to this subject and any other aspect of his claim and thus constitutes a waiver of any privileges (and, *a fortiori*, any confidences) related to the advice that the plaintiff received on the matter from other lawyers and advisors. See generally *Wellpoint Health Networks, Inc. v. Superior Court*, 59 Cal. App. 4th 110, 128 (1997). Indeed, Mr. Saperstein and Paul Hastings entered into a stipulation on March 17, 2009 that reflects this legal principle. And this Court has entered an Order to that very effect. The Order provides that Mr. Saperstein is waiving

1 'his attorney-client privileges applicable to documents and communications relating to,' among
2 other subjects, the 'acquisition and development of the property known as 350 Carolwood of "Fleur
3 de Lys;" * * * the characterization of assets pursuant to applicable family law concerning the
4 distinction between separate versus community property * * *; and Mr. Saperstein's estate planning
5 * * *, as well as the impact of such estate planning on any actual or potential transactions.'"
6 (Marshall declaration, page 10, lines 11-25.)

7 **Grounds for Objection 21:** Improper legal opinion (Evid. Code § 801; *Summers v. Gilbert*, 69 Cal.
8 App. 4th 1155, 1180 (1999)); opinion based on improper matter (Evid. Code § 803); opinion based
9 on opinion or statement of another (Evid. Code § 804); lacks foundation (Evid. Code § 403(a)); lack
10 of personal knowledge (Evid. Code § 702(a)); expert witness not qualified to render opinion on
11 California law on in-issue privilege waivers (Evid. Code § 720).

21:	Court's Ruling on Objection	Sustained: <input checked="" type="checkbox"/>
		Overruled: <input type="checkbox"/>

12
13
14
15 **Objection Number 22**

16 "As a result of this Order, as well as the underlying legal principles of waiver, none of the
17 potentially relevant information that Mr. Snyder might possibly have learned about Mr. Saperstein's
18 relationships with KPMG or other advisors (including lawyers) is confidential at this point. Any
19 lawyer who represents Paul Hastings in this matter is entitled to seek discovery from and depose
20 anyone—including Mr. Saperstein's former lawyers—about any information pertaining to these
21 subjects. It is, therefore, nonsensical under these particular and somewhat peculiar circumstances to
22 require Gibson Dunn to withdraw based on (what were once, but are no longer) confidences that Mr.
23 Snyder might have learned." (Marshall declaration, page 10, line 26—page 11, line 5.)

24 **Grounds for Objection 22:** Improper legal opinion (Evid. Code § 801; *Summers v. Gilbert*, 69 Cal.
25 App. 4th 1155, 1180 (1999)); opinion based on improper matter (Evid. Code § 803); opinion based
26 on opinion or statement of another (Evid. Code § 804); lacks foundation (Evid. Code § 403(a)); lack
27 of personal knowledge (Evid. Code § 702(a)); expert witness not qualified to render opinion on
28 California law on in-issue privilege waivers (Evid. Code § 720).

Court's Ruling on Objection	Sustained: <input checked="" type="checkbox"/>
22:	Overruled: <input type="checkbox"/>

Objection Number 23

"In sum, any information that Mr. Snyder learned during his representation of Mr. Saperstein falls into one of two categories. It is either not substantially related to the legal and factual matters at issue in this case, in which case it triggers no conflict. Or it is substantially related the legal and factual matters at issue here, in which case its confidentiality has been waived. Under either scenario, there is no reason for Gibson Dunn to withdraw or be disqualified." (Marshall declaration, page 11, lines 6-10.)

Grounds for Objection 23: Improper legal opinion (Evid. Code § 801; *Summers v. Gilbert*, 69 Cal. App. 4th 1155, 1180 (1999)); opinion based on improper matter (Evid. Code § 803); opinion based on opinion or statement of another (Evid. Code § 804); lacks foundation (Evid. Code § 403(a)); lack of personal knowledge (Evid. Code § 702(a)); expert witness not qualified to render opinion on California disqualification law (Evid. Code § 720).

Court's Ruling on Objection	Sustained: <input checked="" type="checkbox"/>
23:	Overruled: <input type="checkbox"/>

Objection Number 24

"The force of the principle—that there are no confidences to protect and thus no reason to disqualify Gibson Dunn in order to protect non-existent confidences—is further confirmed by examining Mr. Saperstein's claim that Mr. Snyder learned information as a result of Mr. Saperstein's instructions to Paul Hastings to send Mr. Snyder 'all files relating to Paul Hastings representation of me.' By definition anything in these files had already been disclosed to Paul Hastings—the very defendant in this suit. Paul Hastings is, of course, entitled to use any and all information it knows to defend itself in this action, regardless of whether it is defended by Gibson Dunn. Under these particular and peculiar circumstances, it would defy reason, and be inconsistent with the policies and rules articulated in the applicable caselaw, to conclude that Gibson Dunn must withdraw in order to

1 protect the confidentiality of any files that Paul Hastings itself sent to Mr. Snyder. In a situation
2 such as this, withdrawal or disqualification would serve no purpose 'because the client continues to
3 possess the information and will disclose it to replacement counsel—leaving the opposing party in
4 the identical position.' Paul Vapnek, et al., CAL. PRACTICE GUIDE: PROFESSIONAL
5 RESPONSIBILITY ¶ 4:180 (2009).” (Marshall declaration, page 11, lines 11-24.)

6 **Grounds for Objection 24:** Improper legal opinion (Evid. Code § 801; *Summers v. Gilbert*, 69 Cal.
7 App. 4th 1155, 1180 (1999)); opinion based on improper matter (Evid. Code § 803); opinion based
8 on opinion or statement of another (Evid. Code § 804); lacks foundation (Evid. Code § 403(a)); lack
9 of personal knowledge (Evid. Code § 702(a)); expert witness not qualified to render opinion on
10 California disqualification law (Evid. Code § 720).

11 12 13 14 Court's Ruling on Objection 24:	Sustained: <input checked="" type="checkbox"/>
	Overruled: <input type="checkbox"/>

15 **Objection Number 25**

16 “There is no suggestion that any of the individual lawyers who are working on behalf of Paul
17 Hastings ever represented Mr. Saperstein on any matter. Any argument for withdrawal or
18 disqualification in this case is, therefore, the product of the absolute imputation principle—the
19 presumption that every lawyer in a firm knows what any lawyer in the firm knows.” (Marshall
20 declaration, page 12, lines 2-5.)

21 **Grounds for Objection 25:** Improper legal opinion (Evid. Code § 801; *Summers v. Gilbert*, 69 Cal.
22 App. 4th 1155, 1180 (1999)); opinion based on improper matter (Evid. Code § 803); lacks
23 foundation (Evid. Code § 403(a)); expert witness not qualified to render opinion on California
24 imputation law (Evid. Code § 720); irrelevant (Evid. Code §§ 210, 350-351).

25 26 27 28 Court's Ruling on Objection 25:	Sustained: <input checked="" type="checkbox"/>
	Overruled: <input type="checkbox"/>

1 **Objection Number 26**

2 "The principle of absolute imputation historically has been based on the premise that lawyers within
3 a firm speak freely about their cases with one another, and it is unreasonable to assume that a
4 particular lawyer with materially relevant confidential information would necessarily keep that quiet
5 from other lawyers with whom she works and routinely interacts. This principle of imputation was
6 once a blanket rule that was mechanically applied. As the size of law firms has grown so
7 exponentially, however, and as firms have become so geographically diffuse, many courts in many
8 jurisdictions have recognized that the balancing associated with deciding disqualification motions
9 should take into account a pragmatic assessment of whether disqualifying an entire global firm is
10 truly necessary or appropriate in order to address the legitimate interests of a former client in
11 guarding against use of confidences that a lawyer currently with the firm learned while working at a
12 different firm years ago. These courts have recognized that when circumstances make the risk of
13 disclosure of former client confidences so attenuated that they are virtually non-existent, there is no
14 justification for withdrawal or disqualification. Indeed, in such cases, courts often have expressed
15 fear that a former client who seeks to disqualify opposing counsel is acting for the strategic purpose
16 of adding to its adversary's costs or removing an able opponent. Courts have warned about allowing
17 disqualification to be used in this manner. As the California Supreme Court has explained: 'current
18 clients have a right to retain their chosen counsel, and they will bear the financial burden when their
19 chosen counsel is disqualified—a burden that an opponent may desire in order to gain a tactical
20 advantage in the litigation.' *City and County of San Francisco v. Cobra Solutions*, 38 Cal. 4th 839,
21 851 (2006)." (Marshall declaration, page 12, lines 6-25.)

22 **Grounds for Objection 26:** Improper legal opinion (Evid. Code § 801; *Summers v. Gilbert*, 69 Cal.
23 App. 4th 1155, 1180 (1999)); opinion based on improper matter (Evid. Code § 803); lacks
24 foundation (Evid. Code § 403(a)); expert witness not qualified to render opinion on California
25 imputation law (Evid. Code § 720); irrelevant (Evid. Code §§ 210, 350-351).

Court's Ruling on Objection	Sustained: <input checked="" type="checkbox"/>
26:	Overruled: <input type="checkbox"/>

1 **Objection Number 27**

2 "It is unclear whether the California Supreme Court still applies the principle of imputation as an
3 absolute rule that is subject to no exceptions. The California Supreme Court at one time indicated,
4 in dicta, that the presumption of shared confidences is irrebuttable. See *Flatt v. Superior Court*, 9
5 Cal. 4th 275, 283 (1994). In more recent dictum, however, the Court signaled that it might support a
6 different approach, suggesting that the presumption that information known by any one lawyer in a
7 firm is known by all lawyers in that firm can be rebutted in some cases. See *People ex rel. Dep't of*
8 *Corporations v. Speedee Oil Change Systems, Inc.*, 20 Cal. 4th 1135, 1151-1152 (1999)). The
9 United States Court of Appeals for the Ninth Circuit has recognized this change in the approach of
10 the California Supreme Court. See *In re County of Los Angeles*, 223 F.3d 990, 996 (9th Cir. 2000).
11 This more contextual and practical approach has been recognized as well by at least one California
12 Appellate Court. See *Farris v. Fireman's Fund Ins. Co.*, 119 Cal. App. 4th 671, 689 n.17 (2004)."
13 (Marshall declaration, page 12, line 26—page 13, line 9.)

14 **Grounds for Objection 27:** Improper legal opinion (Evid. Code § 801; *Summers v. Gilbert*, 69 Cal.
15 App. 4th 1155, 1180 (1999)); opinion based on improper matter (Evid. Code § 803); lacks
16 foundation (Evid. Code § 403(a)); expert witness not qualified to render opinion on California
17 imputation law (Evid. Code § 720); irrelevant (Evid. Code §§ 210, 350-351).

18 Court's Ruling on Objection	Sustained: <input checked="" type="checkbox"/>
19 27:	Overruled: <input type="checkbox"/>

20
21 **Objection Number 28**

22 "It is my opinion that the difference between situations in which a lawyer working on a current
23 matter had direct knowledge of material former-client confidences, versus situations in which a
24 lawyer working on a current matter is imputed with knowledge of former-client information, is an
25 important consideration regarding the propriety of disqualification. When courts use their power to
26 disqualify counsel they are acting through their inherent power to further justice. As the California
27 Supreme Court has recognized, this process requires careful consideration of the competing equities:
28 When disqualification is sought because of an attorney's successive representation of clients with

1 adverse interests, the trial court must balance the current client's right to the counsel of its choosing
2 against the former client's right to ensure that its confidential information will not be divulged or
3 used by its former counsel.' *City and County of San Francisco v. Cobra Solutions, Inc.*, 38 Cal. 4th
4 839, 846 (2006). This balancing of competing values is informed by the actual risk that client
5 confidences that one lawyer possesses will, in fact, become known to the lawyers who are actually
6 working on the current matter." (Marshall declaration, page 13, lines 10-22.)

7 **Grounds for Objection 28:** Improper legal opinion (Evid. Code § 801; *Summers v. Gilbert*, 69 Cal.
8 App. 4th 1155, 1180 (1999)); opinion based on improper matter (Evid. Code § 803); lacks
9 foundation (Evid. Code § 403(a)); expert witness not qualified to render opinion on California
10 imputation law (Evid. Code § 720); irrelevant (Evid. Code §§ 210, 350-351).

Court's Ruling on Objection	Sustained: <input checked="" type="checkbox"/>
28:	Overruled: <input type="checkbox"/>

14 **Objection Number 29**

15 "In this case, Mr. Snyder works in the New York office, while the Gibson Dunn lawyers working on
16 this matter are all in the firm's Los Angeles office. Within one day of learning that Mr. Snyder had
17 represented Mr. Saperstein on an unrelated matter and that Mr. Saperstein's current counsel was
18 raising concerns about a conflict this created, Gibson Dunn erected an ethical screen between Mr.
19 Snyder and all lawyers working on the Paul Hastings matter. This screen was in keeping with the
20 best practices for such ethical screens, including directions to all Gibson Dunn lawyers, paralegals
21 and secretaries that Mr. Snyder do no work on the Paul Hastings matter; that no discussions of these
22 matters take place in the presence of Mr. Snyder; that no information about the matter be disclosed
23 to Mr. Snyder; and that Mr. Snyder have no access to any documents, files or materials relating to
24 the Paul Hastings matter." (Marshall declaration, page 13, line 23—page 14, line 4.)

25 **Grounds for Objection 29:** Lack of personal knowledge (Evid. Code § 702(a)); improper legal
26 opinion (Evid. Code § 801; *Summers v. Gilbert*, 69 Cal. App. 4th 1155, 1180 (1999)); opinion based
27 on improper matter (Evid. Code § 803); opinion based on opinion or statement of another (Evid.
28

1 Code § 804); lacks foundation (Evid. Code § 403(a); expert witness not qualified to render opinion
2 on California imputation law (Evid. Code § 720).

Court's Ruling on Objection 29:	Sustained: <input checked="" type="checkbox"/> Overruled: <input type="checkbox"/>
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6 **Objection Number 30**

7 "Regardless of whether this type of screen is enough to avoid imputation of a plain and strong
8 conflict, it is my opinion that the presence of the screen impacts the balance of equities in a case
9 where any conflict (even if the court were to conclude that one exists) is very attenuated and remote
10 to begin with. This case presents an instance where the relationship between the matters is quite
11 remote and where the waiver of privilege as to any relevant confidences associated with the former
12 representation renders the purpose of these rules weakened, if not entirely moot. Adding yet another
13 layer of artificiality by imputing Mr. Snyder's knowledge to all lawyers at Gibson Dunn, despite the
14 safeguards in place, would stretch the former-client-conflict rule well beyond its natural contours"
15 (Marshall declaration, page 14, lines 5-13.)

16 **Grounds for Objection 30:** Improper legal opinion (Evid. Code § 801; *Summers v. Gilbert*, 69 Cal.
17 App. 4th 1155, 1180 (1999)); opinion based on improper matter (Evid. Code § 803); opinion based
18 on opinion or statement of another (Evid. Code § 804); lacks foundation (Evid. Code § 403(a)); lack
19 of personal knowledge (Evid. Code § 702(a)); expert witness not qualified to render opinion on
20 California imputation law (Evid. Code § 720).

Court's Ruling on Objection 30:	Sustained: <input checked="" type="checkbox"/> Overruled: <input type="checkbox"/>
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24 **Objection Number 31**

25 "Mr. Saperstein alludes to the possibility that he might wish to call Mr. Snyder as a witness. Motion
26 to Disqualify at 11. Nothing about the fact that Mr. Snyder is now at Gibson Dunn would affect Mr.
27 Saperstein's right to do that. California Rule of Professional Conduct 5-210 only bars an individual
28 lawyer from 'acting as an advocate before a jury which will hear testimony from the member.' As

1 the Official Comment explains, this Rule does not apply 'to circumstances in which a lawyer in an
 2 advocate's firm will be a witness.' (Marshall declaration, page 11, lines 25-28.)
 3 **Grounds for Objection 31:** Improper legal opinion (Evid. Code § 801; *Summers v. Gilbert*, 69 Cal.
 4 App. 4th 1155, 1180 (1999)); opinion based on improper matter (Evid. Code § 803); opinion based
 5 on opinion or statement of another (Evid. Code § 804); lacks foundation (Evid. Code § 403(a)); lack
 6 of personal knowledge (Evid. Code § 702(a)); expert witness not qualified to render opinion on
 7 California evidence law (Evid. Code § 720); irrelevant (Evid. Code §§ 210, 350-351).

Court's Ruling on Objection	Sustained: <input checked="" type="checkbox"/>
31:	Overruled: <input type="checkbox"/>

11 **IT IS SO ORDERED.**

13 DATED: December 11, 2009 *Mary Ann Murphy*
 14 HON. MARY ANN MURPHY
 15 Judge of the Superior Court

16 Respectfully submitted by:
 17 HENNIGAN, BENNETT & DORMAN LLP

19 By *P. B. Derby*
 20 Paul B. Derby
 21 Attorneys for Plaintiff David I. Saperstein

22 Dated: November 24, 2009

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PROOF OF SERVICE

I declare as follows:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 865 South Figueroa Street, Suite 2900, Los Angeles, California 90017. On November 24, 2009, I served the foregoing document described as **[PROPOSED] ORDER ON PLAINTIFF DAVID I. SAPERSTEIN'S EVIDENTIARY OBJECTIONS TO DECLARATION OF LAWRENCE C. MARSHALL FILED IN SUPPORT OF OPPOSITION OF DEFENDANT PAUL. HASTINGS, JANOFSKY & WALKER LLP TO PLAINTIFF'S MOTION FOR DISQUALIFICATION OF GIBSON DUNN & CRUTCHER LLP** on the interested parties in this action follows:

- by transmitting via facsimile the documents listed above to the fax number set forth below on this date. This transmission was reported as complete without error by a transmission report issued by the facsimile machine upon which the said transmission was made immediately following the transmission. A true and correct copy of the said transmission is attached hereto and incorporated herein by this reference.
- by placing the document listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below
- by electronic transmission. I caused the document(s) listed above to be transmitted by electronic mail to the individuals on the service list as set forth below.
- by placing the document listed above in a sealed envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a _____ agent for Delivery.
- by placing the document listed above in a sealed envelope and causing the envelope to be delivered by messenger to the individuals on the service list as set forth below.

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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postal meter date is more than one day after date of deposit for mailing in affidavit.

Executed on November 24, 2009, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.



Maria Luz Rangel

Exhibit 32



Geoffrey C. Hazard, Jr.

Emeritus Professor of Law



Telephone: 215.898.9497
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[CONTACT](#)

[Curriculum Vitae \(PDF\)](#)

Education

- LL.B. - Columbia - '54
- B.A. - Swarthmore - '53

Geoffrey Hazard is perhaps the primary figure in legal ethics in the country today. His treatise *Civil Procedure* (Foundation, 5th ed. 2001), with Fleming James Jr. and John Leubsdorf, is a mainstay of American legal education. He continues to write prodigiously including the *ALI/UNIDROIT Principles of Transnational Civil Procedure*, which has become a model of civil procedure for international commercial disputes; a treatise, and many articles, particularly on joinder, including class actions, and discovery. His book (with Angelo Dondi), *Legal Ethics: A Comparative Study* (Stanford, 2004) compares ethics in the legal professions of modern industrialized countries.

Hazard received the ABA Michael Franck Award in Professional Responsibility, American Bar Foundation Research Award and William Keck Foundation Award, Columbia University School of Law Association Medal for Excellence, American Judicature Society, Outstanding Contributions to Promoting Effective Administration of Justice, the ceremony of Salute, Superior Court of Pennsylvania, the International Insolvency Institute Gold Award, and the ABA Robert J. Kutak Award as well as seven honorary degrees. [Hide]

Expertise

Legal Ethics
Professional Responsibility

Civil Procedure
Federal Jurisdiction

Books

MORAL FOUNDATIONS OF AMERICAN LAW: FAITH, VIRTUE AND MORES, (Intersentia 2013) (with Douglas W. Pinto, Jr.).

THE LAW AND ETHICS OF LAWYERING (5th ed. Foundation Press 2010) (with Susan P. Koniak, Roger C. Cramton, George M. Cohen & W. Bradley Wendel).

ALI/UNIDROIT PRINCIPLES OF TRANSNATIONAL CIVIL PROCEDURE (2005).

LEGAL ETHICS: A COMPARATIVE STUDY (with ANGELO DONDI, Stanford Univ. Press 2004).
[Available Here]

THE LAW OF LAWYERING (with WILLIAM HODES; 4th ed. 2003).
[Available Here]

AMERICAN CIVIL PROCEDURE: AN INTRODUCTION (with MICHELE TARUFFO, Yale Univ. Press 1993).
[Available Here]

Articles and Book Chapters

Advocacy Revalued, 159 U. PA. L. REV. 751 (2011) (with Dana A. Remus).

The Cy Pres Remedy: Procedure or Substance?, 45 U.S.F. L. REV. 597 (2011).

Quasi-Preemption: Nervous Breakdown in Our Constitutional System, 84 TUL. L. REV. 1143 (2010).
Civil Procedure in Comparative Perspective, 49 SUP. CT. L. REV. 2d Ser. (Canada) 657 (2010).
Toward a Revisited 1.2 No-Contact Rule, 60 HASTINGS L.J. 797 (2009) (with Dana R. Irwin).
Has the Erie Doctrine Been Repealed by Congress? (symposium paper), 156 U. PA. L. REV. 1629 (2008).
Challenges in Law Making in Mass Societies (symposium paper), 67 LA. L. REV. 1103 (2007).
Jury Trial and the Principles of Transnational Civil Procedure, 25 PENN ST. INT'L L. REV. 499 (2006).
Responsibilities of Judges and Advocates in Civil and Common Law: Some Lingerin Misconceptions Concerning Civil Lawsuits, 39 CORNELL INT'L L.J. 59 (2006) (with Angelo Dondi).
The Rhetoric of Disputes in the Courts, the Media, and the Legislature, 40 GA. L. REV. 559 (2006).
Advertising and Intermediaries in Provision of Legal Services: Bates in Retrospect and Prospect, 37 ARIZ. ST. L.J. 307 (2005).
Imputed Conflicts of Interest in International Law Practice, 30 OKLA. CITY U. L. REV. 489 (2005).
Law, Ethics and Mystery, 82 U. DET. MERCY L. REV. 509 (2005).
Two Valuable Treatises on Civil Law (reviewing NEIL ANDREWS, ENGLISH CIVIL PROCEDURE: FUNDAMENTALS OF THE NEW CIVIL JUSTICE SYSTEM (2003) and PETER L. MURRAY AND ROLF STÖRNER, GERMAN CIVIL JUSTICE (2004)), 37 N.Y.U. J. INT'L L. & POL. 611 (2005).
"Lawyer for Lawyers": The Emerging Role of Law Firm Legal Counsel, 53 U. KAN. L. REV. 795 (2005).
A New Player in the Boardroom: The Emergence of the Independent Directors' Counsel, 59 BUS. LAW. 1389 (2004).
Humanity and the Law (discussing Daniel Markovits, *Legal Ethics From the Lawyer's Point of View*, 15 YALE J.L. & HUMAN. 209 (2004)), 16 YALE J.L. & HUMAN. 79 (2004).
Lawyer for the Situation, 39 VAL. U. L. REV. 377 (2004).
An Historical Analysis of the Binding Effect of Class Suits, 146 U. PA. L. REV. 1849 (with John Geded and Stephen Sawie, 1998).
More publications can be found here.

Research Areas

- Class Suits and Discovery in American Procedure
- Comparative Civil Procedure
- Professional Ethics
- Comparative Professional Ethics

Positions

Penn Law - Emeritus Professor of Law (2009-); Trustee Professor of Law (1994-2009)
Yale - Professor of Law (1971-94); Sterling Professor of Law Emeritus (1994-); Deputy Dean, Yale School of Organization and Management (1981-82); Acting Dean (1980-81); Associate Dean (1979-80)
University of Chicago - Professor of Law (1964-71)
University of California, Berkeley - Professor of Law (1961-64); Associate Professor (1958-61)
Visiting Professor - University of Michigan, Université d'Aix-Marseille, Harvard, University of Arizona, Stanford, University of Chicago
Associazione Italiana fra gli Studiosi del Processo Civile - Member (1998-)

Courses

- Civil Procedure
- Legal Ethics
- Federal Jurisdiction
- Western Moral Concepts

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3501 Sanson Street, Philadelphia, PA 19104 (map)
215.998.7463

Exhibit 33

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About the Michael Franck Award

About The Award



The Michael Franck Professional Responsibility Award is named in honor of Michael Franck, late director of the State Bar of Michigan and long-time champion of improvements in lawyer regulation in the public interest. From the time of his first major undertaking in the name of legal professionalism—serving as reporter to

the ABA Clark Commission investigating the state of lawyer discipline in America—to his final years speaking on the floor of the ABA House of Delegates to promote improvements in the Model Code of Judicial Conduct and the Model Rules of Professional Conduct, Michael Franck's work stood as a benchmark for turning intellectual honesty, compassion, and uncompromising ethics to every aspect of the practice of law.

In an era when lawyers' dedication to the public good is often questioned, the Michael Franck award brings deserved attention to individuals whose career commitments in areas such as legal ethics, disciplinary enforcement and lawyer professionalism demonstrate the best accomplishments of lawyers.

Although a nominee's significant contributions to the work of the organized bar merit strong consideration by the selection committee, noteworthy scholarly contributions made in academic settings, creative judicial or legislative initiatives undertaken to advance the professionalism of lawyers, and other related accomplishments will also be given consideration.

In 2003 the Center for Professional Responsibility Coordinating Council voted to change the venue of the Michael Franck Award ceremony to the annual National Conference on Professional Responsibility held each June instead of during the ABA Annual Meeting each August. Due to this venue change, the Council did not select a 2004 award recipient.

NOMINATIONS FOR THE 2014 AWARD ARE NOW BEING ACCEPTED.

**NOMINATION FORM AND INSTRUCTIONS.
SUBMISSION DEADLINE IS DECEMBER 31, 2013.**

THE 2014 AWARD WILL BE PRESENTED AT THE 40TH NATIONAL CONFERENCE ON PROFESSIONAL RESPONSIBILITY IN LONG BEACH, CALIFORNIA.

2013 Award Recipient



As Regulation Counsel for the Colorado Supreme Court for 14 years, John S. Gleason has been active in developing new and effective

methods of regulating the practice of law, assisting other jurisdictions to implement new approaches to attorney and judicial regulation, and addressing unauthorized practice of law issues. Following active duty in the U.S. military, Ohio Air National Guard, Toledo-Bowling Green Metro Bomb Squad, and Arapahoe County Colorado Sheriff's Department Major Crimes Unit, he graduated from Ohio Northern University Claude Pettit School of Law in 1985 and joined a Denver area law firm. More

"I marvel at his myriad of achievements and successes... But this listing of his work does little justice to Mr. Gleason's attitude and energetic devotion to improve and to educate all members of the legal profession. He embodies the traits to which all of us, who serve the public, aspire. I can think of no other judicial employee who has contributed more to the betterment of the profession than he. He exemplifies the dedication and character traits that Michael Franck embodied."

*Hon. Michael L. Bender, Chief Justice
Supreme Court of Colorado*

Mr. Gleason received the award during the 39th ABA National Conference on Professional Responsibility on May 30, 2013 in San Antonio, Tx. More

Past Award Recipient

Past Michael Franck Award Recipients
(1995-2013)

Fordham in 1983. Earlier in her career she practiced law with the New York law firm of Rogers & Wells and also served as an assistant United States Attorney in the Southern District of New York.

In the early 1990's, Ms. Daly was instrumental in helping to cultivate academic work in legal ethics by gathering together law professors attending the ABA's annual National Conference on Professional Responsibility to discuss teaching and scholarship projects. This tradition is still carried on today. Her scholarly writings and publications focused on corporate, comparative and cross-border practice, multidisciplinary partnerships and comparative approaches to professional responsibility. She was a frequent speaker at CLE programs and events both nationally and internationally.

Ms. Daly served as the Reporter for the ABA Commission on Multidisciplinary Practice from 1998-2000; a member of the ABA Standing Committee on Professional Discipline from 2001-2004; and on the Editorial Board of the ABA/BNA Lawyers' Manual on Professional Conduct. She was active in the ABA Section of Legal Education and Admissions to the Bar, the Association of Professional Responsibility Lawyers, the New York State Bar Association, the Association of the Bar of the City of New York and the Federal Bar Council Foundation.

Professor Laurel S. Terry wrote of Ms. Daly's lifetime of achievements, "When you put all of these together, what you have is a scholar who was a pioneer and a giant in the field and whose work will be relied upon long beyond her untimely death." Her dedication to family, community, and the legal profession will be deeply missed.

Geoffrey C. Hazard, Jr. - 2008 Award Recipient



"Geoffrey Hazard is a towering figure in American law and he has placed an indelible imprint on legal ethics and professional conduct."

*Phillip S. Anderson
1998-1999 President
American Bar Association*

A renowned teacher, author and advisor, Geoffrey C. Hazard Jr. is the Thomas E. Miller Distinguished Professor of Law at the

University of California Hastings College of the Law. He has taught civil procedure, legal ethics and federal jurisdiction at law schools since 1958, including Boalt Hall (University of California, Berkeley), the University of Chicago, Yale University, and the University of Pennsylvania. His service to the American Bar Association includes appointments to the Special Commission on Evaluation of Professional Standards (the "Kutak Commission"), Ethics 2000 Commission, Special Committee on the Code of Judicial Conduct; Special Commission on the Standards of Judicial Administration, and the Resource Team for High Profile Trials. He also serves as senior advisor to the ABA Section of Business Law. He has served as a member of the Standing Committee on Rules of Practice and Procedures for the Judicial Conference of the United States and on its Ad Hoc Committee on Mass Torts. He has been the executive director of both the American Bar Foundation (1964-1970) and the American Law Institute (1984-1999).

His publications include co-author of a treatise and a casebook in civil procedure and professional ethics and author or co-author of numerous books and articles. His professional awards in acknowledgment of his accomplishments include the Ceremony of Salute from the Superior Court of Pennsylvania, the Gold Medal from the International Insolvency Institute and the Kutak Award from the American Bar Association Section of Legal Education.

Lawrence J. Fox - 2007 Award Recipient



"[His]... passion for professionalism has uplifted the aspirations and conduct of the legal community."

"With insight, humor, enormous energy and unclouded vision, he is the constant conscience of the practicing bar..."

*Norma L. Shapiro, Senior Judge
United States District Court
Eastern District of Pennsylvania*

Among his many professional accomplishments, Lawrence J. Fox was instrumental in the creation and served as an active member of the ABA Commission on the Evaluation of the Rules of Professional Conduct (Ethics 2000). The work of the Commission has served to advance the role of professional responsibility law in the administration of justice, notes Jeanne P. Gray, director of the ABA Center for Professional Responsibility.

Mr. Fox has also served as chair of the ABA Standing Committee on Ethics and Professional Responsibility and the Planning

CERTIFICATE OF SERVICE

I, Alma Y. Banuelos, declare as follows:

I am employed in the County of Los Angeles, State of California, I am over the age of eighteen years and am not a party to this action; my business address is 333 South Grand Avenue, Los Angeles, CA 90071, in said County and State.

On June 29, 2016, I served the following document(s):

JOINT MOTION FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATION OF KEVIN S. ROSEN

on the parties stated below, by the following means of service:

SEE ATTACHED SERVICE LIST

Unless otherwise noted on the attached Service List, **BY MAIL:** I placed a true copy in a sealed envelope or package addressed as indicated above, on the above-mentioned date, and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited with the U.S. Postal Service in the ordinary course of business in a sealed envelope with postage fully prepaid. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing set forth in this declaration.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 29, 2016, at Los Angeles, California.


Alma Y. Banuelos

SERVICE LIST

<p>Kent L. Richland Barbara W. Ravitz Jeffrey E. Raskin Greines, Martin, Stein & Richland LLP 5900 Wilshire Boulevard, 12th Floor Los Angeles, California 90036</p>	<p><i>Attorneys for Defendant and Appellant J-M Manufacturing Co., Inc.</i></p>
<p>Office of the Clerk of Court Los Angeles Superior Court 111 North Hill Street Los Angeles, CA 90012</p>	
<p>Office of the Clerk of Court Court of Appeal Second Appellate District, Division Four 300 South Spring Street Los Angeles, CA 90013</p>	