



# City Attorney Briefs

Volume I, Issue II  
Bi-Monthly

## Newsletter of the San Diego City Attorney's Office

March 2009

### How Many Legs Does a Horse Have? By Jan Goldsmith

"How many legs does a horse have?" the lawyer asked during cross-examination of a witness known to be a slippery character.

"Four," the witness replied. "And if one were to call the horse's tail a "leg," then how many legs does a horse have?" the lawyer pressed. The witness paused and thought, then answered, "Why, I suppose the horse would have five legs."

"No," shot back the lawyer, a fellow named Abraham Lincoln. Turning to the jury, the future president said, "A horse always has only four legs, no matter what you call the tail."

Contrary to popular notions, lawyers cannot change the laws of science or even leap tall buildings in a single bound. During my nine years as a judge, I often heard arguments equivalent to "the tail is a leg because I call it a leg." And, it always led to the same result- a disappointed litigant.

The City Attorney's Office is regularly called upon to issue legal opinions on controversial and politically charged issues. Under the San Diego City Charter, we advise the City and all of its departments, the Mayor and City Council. The office has had a practice of releasing to the public many legal opinions and they are posted on our web site. <http://www.sandiego.gov/cityattorney/>

How do we go about preparing an opinion?

When a request comes in from our client, it is assigned to our Advisory Division under the leadership of Mary Jo Lanzafame. She assigns the research to the unit most knowledgeable about the subject. So, for example, an issue related to labor would go to our Labor Unit. The head of that unit would assign the research to an attorney in that unit. Sometimes, the question comes from the department directly to the unit because it is already working with lawyers in that unit. Either way, it gets to the most knowledgeable lawyer on the subject.

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### Save The Date!

The Community Justice Division will hold an Open House at its offices on March 27, 2009, from 2:00 p.m. to 4:00 p.m. This division consists of three units: Consumer & Environmental Protection, Code Enforcement and Neighborhood Prosecution. We invite our partners in the community and in government agencies to visit our offices, meet our staff, and view displays highlighting our past work and our mission.

Date: March 27, 2009

Time: 2:00 p.m. – 4:00 p.m.

San Diego City Attorney

1200 Third Avenue

5th Floor

San Diego, CA 92101

RSVP to Susanne Sherry at [ssherry@sandiego.gov](mailto:ssherry@sandiego.gov)

### City Attorney's Office Forms Crisis Response Team

The San Diego City Attorney's Office has formed a Crisis Response Team. The CRT will be available to provide legal advice and help cut through red tape during emergencies. Deputy City Attorney John Hemmerling is head of the crisis team and has been with the City Attorney's Office over seven years, spending the last several years as an advisory lawyer on police issues. Prior to serving in the City Attorney's

Office, John was a Colonel in the Marine Corps Reserves assigned to provide military expertise to the Federal Emergency Management Agency (FEMA) in the Region IX area, Southwestern United States. He has extensive training and has actively worked critical incidents with FEMA and the National Interagency Fire Center. Sharing the team duties are Deputy

City Attorneys John Riley and Rachel Lipsky. John Riley has a breadth of knowledge in contracting and public works as well as being assigned early in his career to an emergency response team for the state of New York. Rachel is currently advising the Fire/Rescue Department and works extensively with the City's Office of Homeland Security.

**Helping Our Communities!**



Congratulations to Deputy City Attorney Dani Stroud! Recently, the City Attorney’s Office received a petition from a group of small business owners in the East Village expressing their appreciation for her work as their Neighborhood Prosecutor. The petition concluded: “We wanted to let you know that you have made a marked difference in our lives and we thank you for your efforts. We realize this will be an ongoing effort for some time and you have our full cooperation. Please keep up the good work.”



Accolades to Kristin Beattie and Janet Long, members of our Neighborhood Prosecution Unit, who partnered with SDPD, E-TAG (Eliminate Talmadge Area Graffiti) and the Mid-City Community Court program. Three Community Court offenders spent a Sunday afternoon wiping out graffiti and cleaned up alleys in the areas of Talmadge and El Cajon Boulevard. As stated in part by the Talmadge Watch Patrol, “we are anxious to see the lasting effects of our targeted areas, and in working with the City Attorney’s Office and the SDPD, we believe we can continue to make a difference.” Deputy City Attorney Kristin Beattie was presented with a plaque in recognition of her sincere commitment and faithful dedication to the safety and well being of the San Diego community.



Cheers to Deputy City Attorney Paige Hazard! She was presented the *Home Again Award* plaque at the San Diego Service Provider Toolkit event for recognition of her outstanding service and dedication as the lead prosecutor for Homeless Court.



**San Diego City Attorney Settles Petroleum Spill Case with NASSCO**

In a case brought by the City Attorney’s Consumer & Environmental Protection Unit, a judge ordered National Steel and Shipbuilding Company (NASSCO) to pay more than \$20,000 in costs and penalties stemming from a petroleum spill at the NASSCO shipyard in San Diego. The spill occurred during a test run of operating systems on the newly built ship the USNS Alan Shepard, a ship built by NASSCO for the Navy. During the incident, petroleum overflowed from a containment bin into the San Diego harbor. Most of the spilled petroleum was captured and recovered by NASSCO. However, such pollution contributes to depletion of San Diego marine life. The court ordered NASSCO to pay \$6,500 to the San Diego County Fish and Wildlife Preservation Fund and \$6,500 to the California Department of Fish and Game Preservation Fund. In addition, the company paid costs, including \$5,000 to the City of San Diego. The judge also enjoined NASSCO from depositing petroleum into the waters of the state of California.



## Meet Deputy City Attorney Fritz Ortlieb, Advisory Division



Fritz has been a San Diego Deputy City Attorney for 22 years. He was hired in the Criminal Division, where he gained jury trial experience. In 1990, he transferred to the Civil Division to work on water, wastewater, and water reclamation issues and was the legal advisor for the Metropolitan Clean Water Program and more than \$2.3 billion in engineering, construction, and environmental compliance contracts. This included legal work on the design, development, and operation of major improvements at Point Loma; a lease with the U.S. Navy to move City wastewater operations to Miramar Air Station and secure landfill rights; and the development and operation of the North City and South Bay Water Reclamation Plants. It also included building reclaimed water infrastructure, two large ocean outfalls, reconstruction of major pump stations, industrial waste control, repair and construction of pipelines of various sizes and shapes, and planning, technology, permits, and compliance issues.

Since 1996, Fritz has advised, negotiated, and drafted every City-owned and privately financed project contract for the development of renewable generation and energy efficiency. These projects include landfill gas, digester gas, cogeneration, solar, hydroelectric, and fuel cell technologies. Today they exceed 20 megawatts of generating capacity, about 25 % of the City of San Diego's entire municipal load, as adjusted by deployed efficiencies. These projects save millions of dollars in energy and methane control costs, and have cut the City's utility bill by 20%. The energy not used by the City is sold to SDG&E. By 2006 U.S. EPA ratings, the City of San Diego ranked number two in the nation for major cities with renewable generating capacity.

Fritz also continues to advise on storm water drainage and compliance. As Clean Water Act and State requirements on cities become increasingly stringent, Fritz advises on defense and compliance with Regional Water Quality Control Board orders for the drainage of the City's entire watershed. This includes the City's Municipal Permit, technical Total Maximum Daily Load orders for the control of pollutants to impaired waters, and sediment Cleanup and Abatement Orders protecting bays and estuaries.

Fritz is a third-generation native San Diegan. His paternal grandfather played for the Logan High School (Logan Heights) baseball team in 1911. His fondest memories are of his mom taking him to the Shores with the other kids. His dad, now deceased, had been a well-known lawyer in San Diego since 1952. Fritz received his Juris Doctor from Santa Clara University Law School in 1987. He is married to Britta, and has two children, Lindsey (19, UC Irvine), and Erik (6). Family life includes music, Scouts (helping other people!), and lots of baseball. Fritz enjoys swimming, surfing, and backpacking.



## Meet Deputy City Attorney Diane Silva-Martinez, Chief, Code Enforcement Unit

Diane started her career in the City Attorney's Office in 1984 as a legal intern fresh out of law school and has been with the office ever since. After a year in the trial pool, she joined the Code Enforcement Unit (CEU), which she helped establish. CEU proactively works with the community, law enforcement, Council offices, and City Departments to address blight, public nuisance, and land use violations throughout San Diego. In 1993, Diane became Head of CEU. CEU has a nationwide reputation for its proactive approach to code enforcement and is looked to as a model by other cities seeking to establish an effective enforcement system.



Prior to attending law school, Diane worked for two years as a legal assistant with Pomona Legal Aid. She obtained her license as a State Certified Court and Administrative Hearing Interpreter (Spanish) in 1981, working as a court interpreter through law school.

Diane's work in code enforcement allows her to work closely with residents to help improve their neighborhoods and quality of life prosecuting a variety of cases ranging from vacant properties to substandard housing to environmental destruction. She has litigated a number of land use cases resulting in six-figure judgments against wrong-doers. Diane also chaired the City Attorney's Diversity Committee for many years, and received the City's Diversity Commitment Award in 1997.

Diane regularly makes presentations on code enforcement to organizations. Please contact our office if you would like to invite her to give a presentation.

Diane was born in East L.A. and often jokes that her life has followed the original Camino Real traveled by the California missionaries. She also lived in Santa Barbara, San Francisco, and Mexico City before finally settling in San Diego. She graduated from UCLA (Go Bruins!) undergrad and received her Juris Doctorate from Boalt Hall at UC Berkeley (Go Cal!). Diane will celebrate 20 years of marriage this year to her husband Raul. She is an avid sports fan (Padres, Chargers, Lakers) but her favorite athletes are her sons Robbie (pitcher) and Raul (catcher). Having just finished basketball season, they both play varsity baseball at Mater Dei Catholic High School **To report code enforcement issues, please contact <http://www.sandiego.gov/nccd/report/>**



City Attorney Jan Goldsmith

Newsletter of the San Diego City Attorney's Office

1200 Third Avenue, Suite 1620 San Diego, CA 92101

Phone: (619) 236-6220 Fax: (619) 236-7215 E-mail: cityattorney@sandiego.gov www.sandiegocityattorney.org

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All 135 attorneys in our office are bound to conduct their work based upon the law and not on politics or policy preferences. We do not select an outcome in advance of the research. And, most importantly, we read the law and follow principles of statutory interpretation.

Lawyers do not make the law. Lawyers research and communicate what they believe the law to be. The first thing we do is read the statute. If it is clear, we apply the statute's plain meaning. In other words, the tail is a tail and the leg is a leg. This "plain meaning rule" is the key rule in statutory construction.

However, sometimes there is a higher authority that "preempts" an otherwise clear law. Federal law trumps state law and state law trumps local ordinances. Sometimes, appellate case decisions will affect the interpretation of a statute or local ordinance.

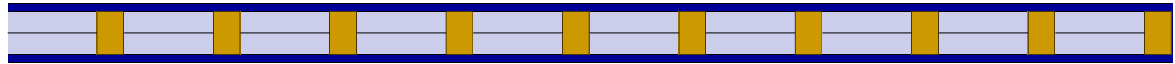
When dealing with a vague or ambiguous statute, we search for the legislative intent to give clearer meaning to the words. There are principles of statutory construction that courts use to help interpret vague or ambiguous laws. We apply those same principles because our job in advising the City is the same as a judge's job in ap-

plying the law. These principles are often referred to as "canons of construction."

A good non-legalese discussion of statutory interpretation can be found at [http://en.wikipedia.org/wiki/Statutory\\_interpretation](http://en.wikipedia.org/wiki/Statutory_interpretation).

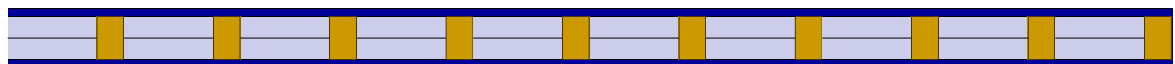
As you review our legal opinions, you can begin by looking at the statute we are interpreting. If it is clear, you will find that we apply its clear and plain meaning unless there is a contrary higher authority. If the statute is not clear, you will find that we apply case decisions interpreting the statute and use canons of construction as tools in determining legislative intent. Often, you will read an analysis of how a particular statute can be harmonized with other similar statutes or how each word in a statute must be given meaning. As lawyers, we carefully read and dissect each phrase just as a court might later do.

Our search is for the law and we want to get it right. Our City does best when we follow what the law says and not what we want it to say. No matter how much we want a tail to be a leg, it remains a tail.



### NO MORE BUDGET DEFICIT

**When the new City Attorney took office on December 8th, the office was faced with a projected \$1.6 million budget deficit for this fiscal year. We are now pleased to report that our projected budget deficit has been eliminated and our budget is balanced.**



Please welcome Tim Fitzpatrick to the City Attorney's Office Securities team. Tim has been a securities lawyer for nearly three decades and has an LLM in Taxation. He has served as counsel with the California Department of Corporations, Securities Regulation and Enforcement Division. He has also served of counsel to Procopio, Cory, Hargreaves & Savitch LLP and Fisher, Thurber LLP (which merged into Bell, Boyd & Lloyd LLP.)

Tim's role is critical in helping the City re-enter the municipal bond market and save millions of dollars in interest.