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Daily Journal
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CRIMINAL
Alexandra Natapoff of Loyola Law School says California should tighten law enforcement's use of snitches. | PG. 5

ENERGY
Michael D. Scott of Southwestern Law School says lawyers of all practice areas should learn more about clean tech. | PG. 6

COURTS
Judicial Counsel member Anthony P. Capozzi says the statewide court closures that began today were a necessary evil. | PG. 6

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General Counsel Leaves Chipmaker Beset With Legal Problems

Day After Abrupt Exit From Intel, Sewell Turns Up at Apple

By Craig Anderson
Daily Journal Staff Writer

SAN JOSE — Bruce Sewell, Intel Corp.'s now-former general counsel, spent two months of his summer on sabbatical, a perk earned because of his lengthy tenure at the semiconductor giant.

After returning a couple of weeks ago, Sewell surprised the company by saying he was resigning after a career at Intel that started in 1995 and included nearly five years as its general counsel. Intel announced Sewell's departure Monday, without saying what he was doing next.

The mystery of Sewell's future plans was answered Tuesday morning when Apple Inc., the Cupertino-based consumer technology company, announced it was hiring him to replace Daniel Cooperman, who is retiring at the end of the month.

> 'Bruce's departure was not something we wanted.'
>
> – CHUCK MULLOY, Intel spokesman

Legal observers said Sewell's move allows him to depart Intel — which has suffered several high-profile setbacks of late, including a record $1.45 billion fine by the European Union for antitrust violations that it is currently appealing — while joining one of the hottest companies in Silicon Valley that can use his expertise.

"Apple is simply the coolest consumer company in the world right now," said David Shannon, a former Intel in-house lawyer who now works as general counsel of NVIDIA Corp., which currently has a trial pending against Intel.

"It's a much more interesting and fun job than what he is leaving," Shannon said in an e-mail. "It's a good change with different challenges and rewards, both personally and financially for him."

See Page 8 — SEWELL

S. TODD ROGERS / Daily Journal

Bruce Sewell left Intel Corp. abruptly Tuesday to take the general counsel position at Apple Inc. He starts work Monday.

PERSPECTIVE

Big Law Could Learn Lessons from the Unsuccessful Corporate Conglomerates of the '60s and '70s, writes Edwin B. Reeser

Let's take a look at the fast move to the "bigger and in more places" growth of BigLaw over the past decade and a half.

It is not a new idea.

First. Going back to the days of Jim Ling of LTV and Charlie Bluhdorn of Gulf & Western, we saw the rise of the "conglomerate," the building of massive, far flung business empires of widely disparate business lines, pyramiding off the cash flows and leverage of recent acquisitions to fund further acquisitions. There is a very definite issue with respect to how long one may pursue a strategy to acquire, use the increased revenue of an acquisition to apply to another acquisition, and keep going through a repetition of the process. Eventually, the process comes to a resounding, and inglorious end. Not uncommonly, brilliant buys at the beginning become diluted and overwhelmed by terrible buys later in the process, because the strategy mandates that you buy something... and later that you buy almost anything, just to keep the momentum, because if you stop, the model collapses.

Those conglomerate building strategies ultimately turned out to be famously unsuccessful for a long list of reasons, but among the more resounding was the inability to assemble a workable management

See Page 7 — REESER

White Collar Cases Falter For U.S. In San Francisco

By Gabe Friedman
Daily Journal Staff Writer

SAN FRANCISCO — In April 2008, San Jose technology company VeriFone Holdings Inc. announced a $37 million financial restatement after questions emerged about its accounting practices. The Securities and Exchange Commission launched an investigation, and the U.S. Attorney's Office in San Francisco followed suit.

But while the SEC followed through with a complaint against VeriFone earlier this month, the U.S. Attorney's Office dropped its inquiry long ago. Federal prosecutors in New York have picked up the case, not persuaded their counterparts in San Francisco conducted due diligence.

The unusual cross-country grab by another jurisdiction set lawyers abuzz, and reinforced the perception that the San Francisco U.S. Attorney's Office is incapable of handling high-profile complex criminal cases. The San Francisco

See Page 8 — PROSECUTION

Some U.S. Judges to Share Courts

By Lawrence Hurley
Daily Journal Staff Writer

WASHINGTON — In an attempt to save money, the federal judiciary announced Tuesday that magistrate judges in large courthouses, such as a proposed facility in Los Angeles, will have to share courtrooms when new courthouses are constructed.

Just last year, the U.S. Judicial Conference, the policy-making body of the federal judiciary, said senior judges would also have to share courtrooms in new courthouses. Judges will still have their own chambers.

The judicial conference's policy changes on courtroom-sharing are partly aimed at reducing the projected $1.1 billion cost of the Los Angeles courthouse, which at one point was slated to have 41

See Page 3 — JUDGES

DAILY APPELLATE REPORT

CIVIL LAW

Bankruptcy: Debtor's selection of eliminated 'ride-through' option terminates automatic stay and entitles creditor to repossession upon default. *Dumont v. Ford Motor Credit Co. (In re Dumont)*, U.S.C.A. 9th, DAR p. 13708

Employment Law: Employee with permission to use company computer did not violate Computer Fraud and Abuse Act by e-mailing information to himself. *LVRC Holdings LLC v. Brekka*, U.S.C.A. 9th, DAR p. 13702

CRIMINAL LAW

Criminal Law and Procedure: District court properly declines to consider sentence that would have been imposed if reduced range for crack offenses had applied at sentencing. *U.S. v. Chaney*, U.S.C.A. 9th, DAR p. 13718

Criminal Law and Procedure: Imposition of separate term on defendant convicted of committing lewd act upon child is improper where crimes did not involve same victim. *People v. Goodliffe*, C.A. 3rd, DAR p. 13697

Summaries and full texts appear in insert

BRIEFLY

Rocky Delgadillo, the former Los Angeles city attorney, received more money from plaintiffs' lawyers during the first six months of the year than any of his opponents vying for attorney general, according to the Civil Justice Association of California. He took in $41,000.

An informant whose talks with the FBI led to the conviction of former Orange County Sheriff Mike Carona must himself spend 2¼ years in prison for his part in Carona's conspiracy. George H. Jaramillo, a former assistant sheriff, also must pay a $50,000 fine.

An attorney who resigned from the bar after accusations that he had stolen $500,000 from his clients was sentenced Tuesday to three years in state prison after pleading guilty to 10 counts of embezzlement.

Fearing that businesses run by women and minorities could lose contracting opportunities to the "good ol' boys" of the construction industry, two groups representing small business owners want to intervene in a lawsuit they say threatens CalTrans' disadvantaged business enterprise program.

A group of Democrats in the House introduced legislation Tuesday to repeal the Defense of Marriage Act, a federal law that defines marriage as being between a man and a woman. That federal law denies 1,100 federal protections and benefits from the same-sex spouses from the six states that allow gay marriage, according to gay-rights activists. It also denies them from the roughly 20,000 same-sex couples that were wed in California before Prop. 8, the 2008 voter initiative, stopped new same-sex marriages

MORE NEWS

Elections and appointments
Robert Vanderet is a self-described '60s liberal' who campaigned for Robert Kennedy and Barack Obama. Now he presides over a criminal courtroom in Los Angeles County, where he says he finds sentencing a particularly challenging part of the job. | PROFILE PAGE 2

For the love of language and law
The Los Angeles appellate firm Greines, Martin, Stein & Richland may be small but has big cases | PAGE 4

California policy on unpublished opinions challenged
The latest in a series of court challenges to a California Court policy allowing unpublished opinions appears doomed | PAGE 3

DIGITAL
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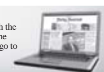

ON THE MOVE

To McDonough Holland
Sacramento's McDonough Holland & Allen hired Thomas Mouzes, a creditors' rights and bankruptcy attorney, as a shareholder in the firm's real estate practice.

To U.S. Attorney's Office
Paul Hemesath, formerly an associate at Nossaman practicing civil and criminal law, was sworn in as an assistant U.S. attorney in Sacramento.

To Best Best & Krieger
John Hershberger, senior vice president and chief claims counsel for Fidelity National Financial, has moved to Best Best & Krieger in San Diego.

Quinn Emanuel Spinoff
Colt Wallerstein, a litigation boutique started by two former Quinn Emanuel associates, opened in the Silicon Valley. The firm will focus on general commercial litigation, employment and intellectual property.

A complete list of the week's lateral moves appears every Monday in the Daily Journal and at www.dailyjournal.com.

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The 'Tip Pool' Just Got Larger

By Frances Rogers

Starbucks baristas will not be receiving an over $100 million dollar judgment from a California trial court now that the California Supreme Court has denied review of their case.

In *Chau v. Starbucks Corp.* (2009) 94 Cal.Rptr.3d 593, "baristas" brought a class action lawsuit against the coffee house chain alleging unfair business practices for violation of Labor Code Section 351 involving distribution of the communal tip jar. Starbucks had a practice whereby tips left in the communal tip container on the counter were divided among the baristas and the shift supervisors at each store, pro rata, based upon the number of hours worked by each of those employees in the week. At a bench trial, the trial court ruled in favor of the baristas on the premise that the shift supervisors were "agents" of the employer and as such, were prohibited under Labor Code Section 351 from sharing in the communal tip container. The trial court awarded the baristas over $100 million dollars in restitution and prejudgment interest. However, upon Starbucks' appeal, the 4th District Court of Appeal reversed the trial court's judgment and ordered judgment in favor of Starbucks.

The evidence established that customers were served by baristas and shift supervisors as a team. Shift supervisors and baristas collectively performed tasks such as making coffee drinks, operating the cash register, taking orders, serving pastries and cleaning tables and restrooms. Shift supervisors and baristas rotated these tasks throughout their daily shift. The only difference was that shift supervisors also spent a small amount of time supervising and coordinating baristas within the store, opening and closing the store and depositing money in the safe. Shift supervisors were distinguished from store managers and assistant store managers who do not normally perform the same tasks as baristas and who are charged with recruitment, hiring, promotion, making schedules, discipline and termination of employees.

The baristas focused on the language at the beginning of Labor Code Section 351, which states, "No employer *or agent* shall collect, take, or receive any gratuity or part thereof that is paid, given to or left for an employee by a patron." The baristas argued the shift supervisors were "agents" of the employer; therefore, they should not be entitled to share in the communal tip container. The Court of Appeal, however, did not address whether or not shift supervisors are considered "agents" of the employer. Instead, the Court of Appeal decided the matter based upon the second portion of Labor Code Section 351, which reads, "Every gratuity is hereby declared to be the sole property of the employee *or employees* to whom it was paid, given, or left for." Shift supervisors and baristas work side-by-side performing tasks as a team. The tip container is a communal container whereby customers do not intend to leave the tip for just one employee, but for all employees the customer believes to be taking his or her order, preparing the drink, and serving the food (i.e. "behind-the-counter" service employees).

The evidence established that customers were served by baristas and shift supervisors as a team.

Thus, the Court of Appeal found the customer intends to leave the tip for both baristas and shift supervisors and therefore, shift supervisors were permitted to retain the pro-rata portion of the tip intended for them by the customer. The Court noted that the statute seeks to prevent the public from being deceived when leaving tips for employees. "It would be inconsistent with the purpose of the statute to *require* an employer to disregard the customer's intent and to instead compel the employer to redirect the tips to only some of the service personnel." The baristas petitioned for review to the California Supreme Court. On Sept. 9, 2009, the Supreme Court denied the petition. The Supreme Court's decision to deny review means not only that the baristas are without the over $100 million dollar judgment from the trial court, but also the Court of Appeal's interpretation of Labor Code Section 351 remains good law. The Supreme Court's decision may be due, in part, to the fact that the Supreme Court is already reviewing other decisions involving the application of Labor Code section 351 in other contexts. The Supreme Court is reviewing *Lu v. Hawaiian Gardens Casino Inc.* (2009) 170 Cal.App.4th 466 to determine if Labor Code Section 351 provides a private right of action to employees. In addition, the Supreme Court's review of *Grodensky v. Artichoke Joe's Casino Inc.* (2009) 91 Cal.Rptr.3d 732, pending its determination in Lu, will address situations were tips *are* left directly to one employee, but the employer requires that the tipped employee pool and distribute portions of his or her tips to other employees.

Frances Rogers is an attorney in the Fresno office of Liebert Cassidy Whitmore, a labor and employment law firm representing management.

Big Law Could Learn Lessons from the Unsuccessful Corporate Conglomorates of the '60s and '70s

Continued from page 1

team to address their fundamental operations in a superior, coordinated fashion. Bad motives or character either had nothing to do with the ultimate failure, or were irrelevant in any event.

Consider the strong parallels from that business experience of the 1960s and 1970s to the last decade of expansion in BigLaw to the "global one stop shop."

The reality is that for most partners, if the firm has a headquarters in New York, that an office in Los Angeles is really not that important, and one in Prague even less so. Adding an entertainment law practice to your corporate finance group is unlikely to have much, if any, crossover benefit in marketing or service for either group. An intellectual property shop in Palo Alto, a rocket docket team in Delaware, an estate planning practice in Minneapolis, an alternative energy team in Bucharest, and a group of lawyers in Shanghai that we are not totally informed as to what they do. Tax returns in eight countries and nine states for every equity stakeholder. Conflicting accounting rules and employment regulations.

Externally, not all clients do all the things you provide, or have diversified specialty requirements efficiently addressed by a single firm. Internally, partners are reluctant to jeopardize hard won client loyalties by turning over a matter in a different practice group to lawyers they do not know, even if they are in the same firm. And in some cases, knowing the partner cements the decision not to refer it!

The overhead and administrative costs of supporting differing practices vary. Practice group to practice group, office to office, and country to country. Add to that the notorious lack of management skill of lawyers, and to increase the demand for both the acuity of the necessary management skill sets and the numbers of people to have them... and you have a very tough path ahead when it comes to the design, implementation and administration of an operating strategy that will bring "value added" to quality and service at a reasonable price, and good profits. In fact, it is at least as difficult as it was for the business conglomerates of a half century ago.

Second. We saw in the 1980s a different application of the LTV/GW strategy... but in reverse. This time the use of leverage (through junk bonds or "hot" high cost money) to buy big companies and then break them up, taking advantage of a strategy to exploit opportunities where "the sum of the parts is worth more than the whole."It was a way to make a lot of money in a very short time. Using high leverage, the gambit was that the cost of the monies, with very little equity in the game, delivered highly leveraged profits that were vastly greater, after the transactional costs and the bonds issuance and repayment process.

It was essentially "free money." and it gave an almost terrorist power to the vultures, who took advantage of the opportunity. There was a nifty "greenmail" action option in there as well, so a well structured attack could finesse a payout without leverage costs at all... just take a check and go away as existing management used shareholder assets to save their own jobs. There was occasionally some good that came of both strategies, but ultimately at a rather terrible price to many good and innocent people who just happened to be working for the wrong company at the wrong time and lost their jobs, pensions, etc.

Both strategies were couched in terms of more efficient application of resources, but with the benefit of hindsight it is pretty clear that was at best tangentially and occasionally correct. There were also some showcase examples of abuse and pushing the envelope of both the spirit and the letter of the law. Competition and greed pushed weaker characters to go too far. Some people went to jail, but far fewer than the number that played and profited from the game. Many made fortunes and just went as stealthily as they could into a self-enforced obscurity.

When executives have followed ruinous business strategies, taken bailout monies in the billions, and then, before a few breaths can be taken, authorize and pay out massive bonuses and salaries to their executives and themselves to the shock and disbelief of the employees, shareholders and public at large,it is clear there must be at least two sets of rules at work. There is the obvious "me first" of the executives, and the "company first" expectation of the shareholders and employees. It is a clear confrontation of values and expectations, and evidence that many companies have simply become hijacked by a leadership paradigm in which executives divert massive amounts of company earnings to themselves. Because they can. That is what climbing up the ladder of corporate success has become. There is no earthly reason that somebody deserves to make one or two or three hundred million dollars per year in a public company,other than fulfilling "more" as the mantra of success.

Lawyers built these approaches and structures for the business executives. They were asked to. They were paid to. And it was not illegal. But it was not "right" either. And then, they quite naturally applied some of the lessons of this "success" to themselves. After all, law was becoming a business, was it not?

A lot of BigLaw firms have ceded control to small inner groups, and have succumbed to an exploitation of themselves as the shareholders and employees of the enterprise. Stupid, almost incredible it would seem. But it is there and it is patently obvious. Do you want proof? Just look at the allocation of per capita costs for a firm, and the distributable profits received by a partner. If it is more than you were paid, then you are a net contributor to a distribution pool that you are not a part of. It probably is a pool that one does not ascend to until at least ten and in some cases 15 or 20 years of partnership labor. Do the math yourself.

There will be no tear shed for any of these partners. After all,they volunteered. It is their firm, their life, and they accepted it. Or they slept through the evolution.

Can it be fixed? Absolutely. If they want to. All the partners have to do is take control of their firms and set forth the compact of partnership as among them, as they collectively agree and reaffirm to each other. And what if they cannot? Then they are no longer a partnership of shared culture anymore, but just a construct in which they are exploited with their own consent, and there is nothing left to preserve.

Edwin B. Reeser is a business lawyer in Pasadena specializing in structuring, negotiating and documenting complex real estate and business transactions for international and domestic corporations and individuals. He has served on the executive committees and as a office managing partner of firms ranging from 25 to over 800 lawyers in size.