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GUEST COLUMN

Silicon Valley is doing it again

By Martin Kenny and Timo Seppälä

The ability of the firms and entrepreneurs in Silicon Valley to find new technological opportunities is uncanny. After the dot-com bubble collapsed in 2000, many were concerned that the region had seen its final revolution. At that time, it was difficult to divine that social media, the mobile Internet/smartphones and applications would once again fuel entrepreneurial and investor success. The smartphone is causing problems for Internet and social media giants such as Google and Facebook as they try to monetize their mobile click streams. This creates new opportunities for entrepreneurs to figure out how to do it well. Someone will figure it out, and a new crop of entrepreneurs will become wealthy.

Only 10 years ago, everyone thought that even though Silicon Valley was the center of the computer industry, the telephone industry would continue to be controlled by overseas telecommunications network and hand set makers such as Ericsson, Nokia and the incumbent carriers, such as AT&T and Verizon. In 2012 that world is being swept away. Consider the size of the new smartphone market. In 2011 about 500 million smartphones were sold, but by 2015 there are likely to be about 4 billion mobile Internet access devices globally, as all mobile phones are converted to smartphones and pads continue to increase in number. The central players in today's smartphone industry are Apple with iOS, which recently became one of the most valuable firms in the history of the U.S. stock market, Google with Android

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DAILY APPELLATE REPORT

CIVIL LAW

Insurance: Following destruction of homes due to wildfires, insurer may not deny property loss claims solely because of insured's failure to submit proof of loss within 60 days. *Henderson v. Farmers Group Inc.,* C.A. 2nd/4, DAR p. 14801

Intellectual Property: Owners of historical mansion, a popular tourist attraction, cannot sue filmmakers for copyright infringement due to movie based on mansion. *Winchester Mystery House LLC v. Global Asylum Inc.,* C.A. 6th, DAR p. 14815

Juveniles: Minor is properly declared dependent of court where mother's inadequate supervision caused minor to run away, abuse drugs, and engage in unprotected sex. *Maricela H., a Minor,* C.A. 2nd/5, DAR p. 14822

CRIMINAL LAW

Criminal Law and Procedure: Crime Victims Rights Act requires causal connection between defendant's conduct and victim's losses for purposes of awarding restitution to child pornography victims. *Amy and Vicky v. District Court (Kennedy),* U.S.C.A. 9th, DAR p. 14839

Criminal Law and Procedure: No-gang-contact probation condition is invalid because there were no ties between defendant, his criminal history, or his family to any gangs. *People v. Brandao,* C.A. 6th, DAR p. 14811

Don DeBenedictis/ Daily Journal

Attorney Clifford R. Anderson Jr., who participates in the State Bar's Emeritus Attorney Pro Bono Program

State Bar emeritus pro bono program seeks younger lawyers

By Don J. DeBenedictis
Daily Journal Staff Writer

Clifford R. Anderson Jr. plunged into pro bono work when he retired from his law firm because he was concerned about atrophy of his gray cells. "Really, I didn't have that many to begin with," the 84-year-old family law specialist quipped. Anderson currently limits his practice to unpaid work for the Legal Aid Society of Orange County. As a result, a special State Bar program allows him to stay active without paying any annual dues. Since it began in 1987 as the Emeritus Attorney Pro Bono Program, the bar's dues-waiver program has enlisted hundreds of senior lawyers like Anderson. But this July, the bar changed the rules to encourage younger or mid-career lawyers to participate. That effort is just beginning to pay off.

At the moment, the youngest lawyer getting free dues as a member of what is now called the Pro Bono Practice Program appears to be 54-year-old Tina L. Rasnow. She puts in about 10 hours a month with the Ventura County Bar Association's Volunteer Lawyer Services Program, where she helps people with landlord-tenant, contract, real estate and consumer problems.

Rasnow also spends a day each month working for the local Superior Court's self-help center — which was one of the programs she ran for 11 years as a court official.

Leanna M. Sweha, who is only 47, said she will sign up with the bar program next year.

The former state government lawyer volunteers two to four days a month with the Tommy Clinkenbeard Legal Clinic in Sacramento. The clinic, sponsored by Legal Services of Northern California and an aid group called Loaves & Fishes, helps homeless people get out from under infraction and minor misdemeanor charges.

Rasnow and Sweha are examples of the type of lawyer the State Bar hopes its program will spur to take up pro bono. Both quit regular practice to take care of family, not retire.

Rasnow said her main job these days is looking after her aging parents and uncle and running their Newbury Park ranch. The State Bar program allows her "to switch priorities" and put her family ahead of her work.

Sweha quit her job with UC Davis three years ago to take care of her two children. She began with the homeless clinic in March.

"I really wanted to help people," Sweha said.

Other lawyers who could take advantage of the pro bono program are those who've gone into business or some other field yet still want to keep up practice skills, a bar official said.

About 80 to 90 lawyers a year participate in the State Bar program. Nationally, 36 jurisdictions have similar dues waivers, according to an American Bar Association official, and the number is growing.

The requirements to join in California are fairly simple. The lawyer must "agree to practice law on a pro bono basis only and not engage in other legal work that requires active State Bar status," a bar web page states. He or she also must register with and do the pro bono work for a qualified legal services provider, a bar-registered no-fee lawyer referral service or a court self-

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Philippines dictator estate loses appeal

9th Circuit: Ferdinand Marcos victims to split $353 million judgment

By John Roemer
Daily Journal Staff Writer

Human rights victims brutalized by the Ferdinand E. Marcos dictatorship in the Philippines have won a $353 million contempt judgment against the Marcos estate, a 9th U.S. Circuit Court of Appeals panel has affirmed.

The unpublished opinion held that U.S. District Judge Manuel L. Real of Los Angeles had the authority to impose a $100,000-per-day sanction in 1995 to penalize the estate for delay and obstruction to avoid paying a $2 billion judgment that a federal jury in Hawaii levied against Marcos in 1992. *In re: Estate of Ferdinand E. Marcos Human Rights Litigation*, 11-15487.

The sanction ran from 1995 to 2005. Real issued the contempt judgment last year, multiplying $100,000 by 3,536 days.

"It's the largest contempt award in history," said the longtime lawyer for the victims, Robert A. Swift of Philadelphia's Kohn Swift & Graf PC, who has been litigating the case for more than 26 years on behalf of the victims' heirs. The 9th Circuit ruling was filed Wednesday.

Marcos held power in the Philippines from 1965 to 1986. Public outrage over his alleged role in the assassination of a political opponent led to his removal from office and his exile in Hawaii, where he died in 1989.

Swift and Honolulu attorney Sherry P. Broder filed a class action against Marcos in federal court in Hawaii on behalf of 9,539 people tortured, "disappeared" or summarily executed by his regime.

Ever since, Swift and Broder have sought to collect the jury's award, which by now has swollen with interest — about $55,000 per day — to some $4.5 billion, Swift said Thursday. Their task has been complicated by the current Philippine government's efforts to itself tap the fortune Marcos hid in banks and elsewhere around the world, Swift said.

Indeed, when Real ruled for the victim class in another part of the case that sought to attach about $38 million Marcos had deposited in a Merrill Lynch brokerage account in New York, the Philippine government appealed to the U.S. Supreme Court. The high court ruled against the victims, citing the Philippines' sovereign immunity. *Republic of the Philippines v. Pimentel*, 128 S.Ct. 2180 (2008).

"The current government is trying to recover at the expense of the human rights victims," Swift said. "They have acted as a spoiler in our case."

The setback at the high court won't affect his other collection efforts, Swift said, because different rules apply to other sources of Marcos estate funds such as bank and real estate holdings.

The Philippines also questioned Real's fairness, leading to an unusual mention of Real by name in the high court's *Pimentel* opinion along with a suggestion that the case be transferred to another judge. The 9th Circuit did so, but that did not affect Real's continuing oversight of the case's contempt sanctions aspect.

"The Supreme Court bought the Philippines' line about Real, but he did everything by the book," Swift said. "Judge Real has always handled this case properly."

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Judges consider soundness of "child safety zone" statute

By Alexandra Schwappach
Daily Journal Staff Writer

SANTA ANA — Orange County prosecutors argued Thursday before the Superior Court's appellate division in defense of a county statute that creates "child safety zones" by prohibiting registered sex offenders from entering county parks.

The appeal, believed to be the first of its kind, questions whether local government should have the authority to further restrict residency requirements for sex offenders in California.

The appellant, Hugo Godinez , registered as a sex offender with the Costa Mesa Police Department after he was convicted of one misdemeanor count of sexual battery in June 2010. On May 5, 2011, Godinez allegedly entered Mile Square Regional Park in Fountain Valley, violating the Orange County Child Safety Zone Ordinance. Godinez was sentenced to 100 days in jail and five years probation.

Judges Craig L. Griffin, Clay M. Smith, and Charles Margines took the matter under submission and will have 90 days to make a ruling. *People v. Godinez,* 30-2011-00530069 (Orange Super. Ct., filed Dec. 15, 2011).

Godinez's attorney, Deputy Public Defender Scott M. VanCamp, argued that the ordinance should be declared unconstitutional because it is pre-empted by state law.

"It is obvious that the state intended to occupy this entire area of law and the statue should be declared unconstitutional," he said in Thursday's hearing. "The conflict of a law for our purposes is not just a conflict in language but a conflict in jurisdiction."

He said the number of different statues detailing residency restrictions for sex offenders makes it challenging to fully understand the requirements. In Fullerton, he said, the law states that sex offenders cannot go within 300 feet of a day care center, park or school. A similar law in Tustin bars sex offenders from going within 300 feet of a day care center, park or school for more than five minutes.

"When both forms of governments are left to their own devices, we have this amazing difference of views of laws that would be impossible for anyone to follow," he said.

Orange County prosecutor Brian F. Fitzpatrick told the court that just because there is a state law doesn't mean local jurisdictions are prohibited from passing their own laws.

"We're not contradicting or duplicating any state law," he said. He argued that more local jurisdictions should be required which tailor to the differences between regions.

"I think that indicates more of a need for local ordinances because it depends upon the local jurisdiction," he said. "One size doesn't fit all."

Santa Monica criminal defense attorney Roger Jon Diamond, who is not involved in the Godinez case, said the line between state law and local law isn't always clear. In the case of sexual offenders, it is often hard for them to find a place to live that isn't violating a local ordinance.

"State preemption is frequently a problem," he said. "People in these situations are nervous when they are looking for locations to live. They don't want to violate their parole and get in trouble. It varies from city to city and can get very tricky."

Diamond said cities with ordinances that are too restrictive run the risk of having it thrown out in court.

In August 2011, Richard Ernest Hibbard became the first defendant to be convicted under the County Child Safety Zone Ordinance, and in October 2011, Westminster became the first city in Orange County to convict a sex offender, Steve James Dietrich, for violating the ordinance.

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Silicon Valley's remarkable, uncanny ability to reinvent itself

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and Samsung, a key member of the Android ecosystem. Microsoft, Dell, Nokia and many other computing and telecommunications leaders are faced with difficult decisions. This is Schumpeterian creative destruction on a scale never before imagined.

The struggle that the smartphone competition has ignited is causing the greatest explosion of global patent litigation ever. Apple, the closed system new entrant incumbent, Microsoft, the PC world incumbent, and Nokia are attacking the Android operating system because it allows any gadget maker to introduce a mobile Internet access device. These incumbents are claiming the Google/Android business model is leading to the violation of their patents because the operating system and services for free model is so disruptive.

> Everyone thought that even though Silicon Valley was the center of the computer industry, the telephone industry would continue to be controlled by overseas telecommunications network and hand set makers.

Google comes from the new Internet world, where standards such as those for the World Wide Web and TCP/IP are open and free. For Google, the idea of providing a free smartphone operating system was quite natural, since its sole goal is to protect its advertising model, which is predicated upon users freely choosing to utilize its various services such as search, maps, Gmail, YouTube, etc. For Android competitors, it is exceedingly difficult to attack Google directly.

The Google model of using the Internet's openness allows users to violate other forms of intellectual property right protection, as anyone can post copyrighted material online. Google points searchers to that material. For producers of copyrighted material, in the age of digitization it is exceedingly difficult to protect work. This situation has led a wide variety of firms petitioning courts around the world to enforce their eroding intellectual property rights to slow down the Google juggernaut.

Google's strategy is a direct riposte to Apple's brilliant strategy that began with the iPod, which created an online store and gave content producers a way of monetizing their wares. With this, Apple was able to recruit content producers. With the introduction of the iPhone, the store evolved into the App Store. Google adopted the Microsoft strategy of providing an operating system as a platform to any PC, pad and mobile phone producer. Google's twist was to give the operating system away and try to make profits on advertising. Backed by the Google brand, Asian gadget makers now had the operating system they needed to penetrate the smartphone market. Samsung, with its superb manufacturing capabilities, ability to deliver top quality components, and increasingly strong design sense, has now matched and possibly exceeded Apple in terms of device specifications, but not coolness. With a symbiotic relationship with the device makers, Android rapidly succeeded, and captured over 50 percent of the global market share, creating a market that attracted application makers.

The struggle between Apple, Google and Microsoft is intensifying as Apple banishes Google applications from its iPhones and iPads. Apple's recent move to develop its own maps and remove the Google Maps application is particularly interesting because it is forcing Apple customers to choose what today is an inferior product. By ousting Google from the ecosystem, Apple is forcing users to decide between the gadget and the information they want — a powerful test of what is most important: device or content. This also poses an interesting possibility that may surface in the future — Google may decide to no longer support Apple smartphone users. In the past, firms have sued monopolists demanding equal treatment. Apple's decision to free itself from Google could be self-defeating, because the severing of the relationship is at Apple's behest, thereby freeing Google from any legal need to not discriminate.

Associated Press

Kevin Packingham, chief product officer for Samsung Mobile USA, demonstrates the new Samsung Galaxy Note II, which runs Google's latestAndroid operating system, Jelly Bean. Google has become a central player in today's smartphone industry.

Microsoft is another powerful combatant in the new mobile Internet ecosystem. Soon there will be more people using the Internet from a mobile device without a Windows operating system than those using a Windows-equipped personal computer. For Microsoft, the danger is that it will be relegated to the far more slowly growing PC market with the possibility that office productivity software will be displaced from the desktop to the cloud or from the PC to a pad-like machine. Their fear is so great that they are introducing Windows 8, which is primarily built upon a smartphone-like user interface. It is an interesting stratagem to force PC users to learn the Windows smartphone protocols in the hopes that they will then also buy Windows smartphones because they need to understand only one system. There is a possibility that it will be successful. On the other hand, it might be the final straw that motivates users to look for alternatives to the Office application suite, which is the true source of Microsoft's power.

> The iPhone was introduced only five years ago, and today the center of the world mobile communications industry is Silicon Valley.

The ability of Silicon Valley to reinvent itself and capture new technological trends is astounding. The iPhone was introduced only five years ago, and today the center of the world mobile communications industry is Silicon Valley. The wealth created in this technological shift is remarkable, but with it are commensurate dangers to various incumbents. For venture capitalists, this shift, like previous technological shifts, offers tremendous opportunities. For the state of California, this is another shift that reinforces our place at the center of the world digital economy. For lawyers, this titanic struggle to control the mobile computing ecosystem is likely to be a cornucopia of fees.

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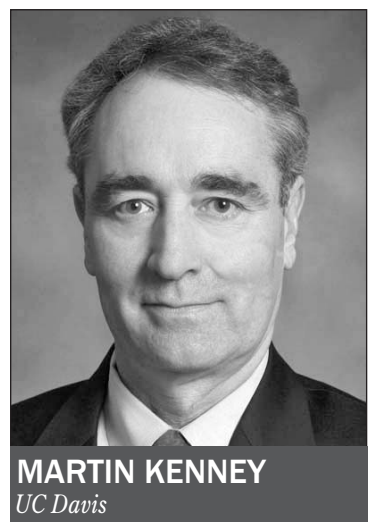

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