

THE BULLETIN

P A L O A L T O A R E A B A R A S S O C I A T I O N

President's Address Nancy Clark

The end of our fiscal year and my tenure as PAABA President is coming to an end. In the coming weeks we will be sending out nominations and conducting an election for new officers and board members. Fortunately, the majority of PAABA board members are returning next year. And, we will have a couple of new board members and officers. Watch your mail for nominations and ballots.

Even though the fiscal year is winding down, our activities are not. PAABA's softball team is on the field, luncheons are planned, and of course, the lawyers on our LRS continue to provide their time to folks needing advice. As this issue of the Bulletin shows, there is a lot going on.

Two things that we need to address before the year ends. First, dues: In order to keep our office running smoothly, I

think we should seriously consider increasing the annual dues amount by \$10.00. This will bring the annual amount to \$100.00 which is not an onerous amount by any stretch. An increase in the dues will of course, help us to create a budget that will allow us to run the office, increase our reserves, and create new and better benefits.

The second item that needs some attention is the need to show appreciation for the lawyers who serve on our Lawyer Referral Service Panels. One idea we have been kicking around is holding a luncheon this fall to honor those attorneys who serve PAABA and the community by providing essentially free legal advice to anyone who needs it. We will of course, need to find sponsors and planners for such event and I hope it is something folks are willing to do.

INSIDE THIS ISSUE:

President's Address	1
Register:	
Breaking the Glass Ceiling	2
Real Property Issues In Palo Alto	3
Report on Privacy Luncheon	1
Report on Inventor Stephen Keys	1
Survey Results	6
Announcements	8

Women Lawyers Committee Privacy Luncheon Julia Wei



Dennedy, Pierce & Scher field questions

Privacy in the workplace is such a big topic that the Women Lawyers Committee presented *two* notable speakers to educate our membership on the implications for employers and employees.

On March 25, 2004, members and guests gathered at Carr & Ferrell's offices in Palo Alto for a highly animated discus-

Cont. p. 3

Inventor Stephen Key George S. Cole



Businessman and Inventor Stephen Key kept an audience of twenty six people riveted as he talked about how he had, and by implication, we too could make creative knowledge and interests profitable. Key, who has successfully licensed over twenty products and holds ten (and at least 3 upcoming) U.S. patents, added to his credibility by admitting that the start, with a sense of humor,

Cont. p. 4

20 % OFF

**ALL
items at
General
Nutrition
Center**

with this copy of
the Bulletin

Good only for
376 University Ave.
location

650-322-8004

PAABA

PALO ALTO AREA BAR ASSOCIATION

Office 650-326-8322
Fax 650-326-2218
E-mail info@paaba.org
Website paaba.org

PAABA OFFICERS

President
 Nancy Clark 408-299-5900

Vice President
 Soyeun Choi 650-556-9510

Secretary
 Serena Patitucci Torvik
 650-327-4200

Treasurer
 Mike Armstrong 650-326-2980

BOARD OF DIRECTORS

Liana Boyarsky 650-833-5500
 Angela Castro 650-833-2352
 Glynn Falcon 650-323-0333
 Sara Marinelli 650-326-7447
 Susan Edwards 650-565-3739
 Mark Shepherd 650-321-5000
 Tina Singh 650-766-3575

COMMITTEE LIASONS

Client Relations
 Brian Newcomb 650-322-7780

Web Site
 Glynn Falcon 650-323-0333

Lawyer Referral
 Doug Abbott 650-967-1001

Women Lawyers
 Angela Castro 650-833-2352
 Julia M. Wei 650-327-2900

LRS COORDINATOR

Nozipo Wobogo 650-326-8322

BULLETIN EDITOR IN CHIEF

Soyeun Choi 650-556-9510
SoyeunDChoi@yahoo.com

*All hardcopies graciously produced by
 CopyDox, www.copydox.com.*

The Palo Alto Area Bar Association Women Lawyers' Committee
 and The Santa Clara Bar Association Women Lawyers' Committee
 Present

Breaking the Glass Ceiling

A roundtable discussion addressing challenges that women face in the
 legal profession and opportunities for firms to retain women.

PANELISTS:

Janet Craycroft Intel Corporation
Lisa Herrick County Counsel, County of Santa Clara
Robin B. Kennedy Miller Starr & Regalia
Catherine S. Kirkman Wilson Sonsini Goodrich & Rosati

MODERATOR:

Angela M. Bradstreet Carroll Burdick & McDonough

May 6, 2004

6:00 p.m. - 8:00 p.m.

HOSTED BY:

Wilson Sonsini Goodrich & Rosati
 950 Page Mill Road, Palo Alto

MCLE: 2 hours "Elimination of Bias" credit

New Admittees: \$100.00 (members 0-3 years in practice), Cost: \$120 members, \$160 non-members. RSVP by May 1 to PAABA, 405 Sherman Avenue, Palo Alto, 94306 or call (650) 326-8322

NAME/FIRM _____

ADDRESS: _____

PHONE NUMBER: _____

EMAIL ADDRESS: _____

TOTAL ENCLOSED: \$ _____

*The Palo Alto Area Bar Association certifies that this activity has been approved for MCLE credit by the State Bar of California in the amount of one hour. The Palo Alto Area Bar Association is a State Bar of California MCLE approved provider.

Houses, Hills and Creeks Real Property Issues in Palo Alto, Bay Area

**May 28, 2004
12:15-1:00 p.m.**

**Host Firm:
Bingham McCutcheon
1900 University Ave, East Palo Alto**

**Carol Dillon — Bingham McCutcheon
Robin Kennedy — Miller Starr & Regalia
David Van Atta — Hanna & Van Atta**

Call PAABA Office for further details.

Privacy cont from p. 1



ChoicePoint reported [based on inaccurate records] that Ms. Pierce was wanted for criminal activities in Texas.

sion between privacy activist Deborah Pierce and Sun Microsystems Chief Privacy Officer Michelle Finneran Dennedy.

Deborah Pierce is the founder and Executive Director of PrivacyActivism.org, a non-profit organization. PrivacyActivism focuses on consumer education campaigns, advocacy, and analysis of privacy issues, with particular emphasis on data flow, data matching, privacy risks associated with data collection, and biometrics.

While attendees munched on the lovely lunch provided by host Carr & Ferrell, Ms. Pierce enumerated privacy implications raised by employer background checks, the providers of information and the accuracy of the information provided. In an illuminating example of what these background checks yield, Ms. Pierce brought her own background report generated by data aggregator, ChoicePoint. In her report, Ms. Pierce discovered that ChoicePoint reported that she had more relatives than she actually had, that her brother and father’s social security numbers were incorrect and that she was wanted for criminal activities in Texas. Ms. Pierce is *not* on any Texas watchlist and had been in the state once for a seminar but certainly not long enough to cause any trouble.

These employee monitoring trends prompted the moderator, Jefferson Scher, and audience members to ask questions such as: “Who is entitled to view my background check?” , “How long does the company keep it?” and “How can I challenge inaccurate information reflected in the report?” Unfortunately, few standardized guidelines address these questions, but Ms. Pierce advocates that employers make existing guidelines available to employees.

Michelle Finneran Dennedy followed up on the benefits of educating employees on the privacy guidelines of the company. Ms. Dennedy spoke on the importance of employees to feel secure about how their information is being used and protected. Sun’s

Concludes. p. 4

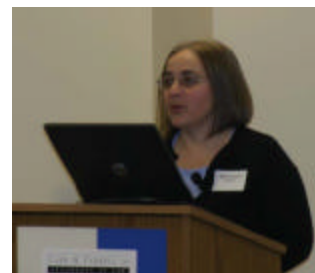
Privacy cont. from p.3

company privacy policy goes far beyond background checks, as employers today outsource to a number of vendors.

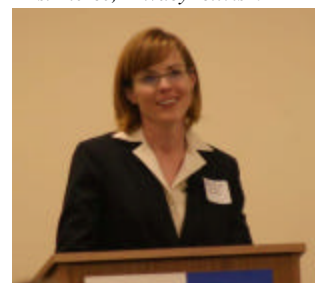
As CPO, Dennedy works on all aspects of privacy within Sun: from being the driving force behind Sun's privacy practices that safeguard customer and employee personal data, to helping product teams develop products and services that enable the company's customers to meet their own privacy obligations. She is also a key technical liaison with the Liberty Alliance, promoting Sun's vision for secure federated identity management.

Ms. Dennedy spoke on Sun's efforts to ensure that its vendors too maintained a like policy that would protect and secure the private information of Sun's employees. From healthcare to payroll vendors, many companies today outsource these functions and create a flow of private information outside of the company. In addition to outsourcing, Ms. Dennedy addressed the issues presented by offshoring to vendors or subsidiaries. Before the speakers ran out of time, Ms. Dennedy was also able to briefly sketch out the complexities involved with having multinational branches, and compliance with the EU privacy directive.

The PAABA Women Lawyers Committee thanks Ms. Pierce, Ms. Finneran Dennedy and moderator Jefferson Scher for an engaging and interesting discussion and Carr & Ferrell, LLP for graciously hosting this discussion. The audience members probably left with more questions than when they arrived, given the breadth of the topics covered!



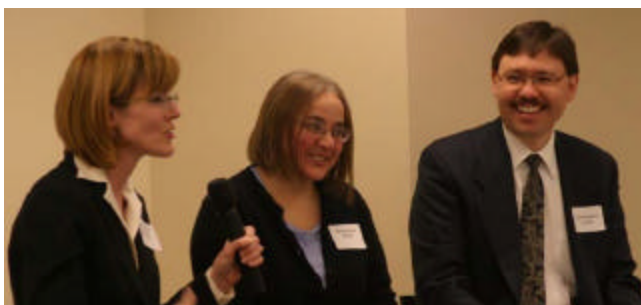
Ms. Pierce, PrivacyActivism



Ms. Dennedy, SunMicrosystems



Mr. Scher, Carr & Ferrell



*Far left:
Speakers enjoy
Q&A session.*

*Left:
Ms. Dennedy
fields questions
about offshore
privacy issues.*

Stephen Key, cont. from p. 1

that he comes from “the creative capitol of the world—Modesto.”

Understanding how Stephen Key became successful is easiest done after learning from where and what he came. Though he entered college, he did not finish because what he wanted to learn (to make money by being creative) wasn't taught. Instead, Key graduated to the school of hard knocks where for ten years he sold goods at summer street fairs. He learned the value of marketing and the virtues (and vices) of selling – lessons which apply to ideas no less than to products. Knowing the customer, the market, the competition, presentation and having confidence based in reality all make a difference, but only if sales keep the cash positive.

From there, Key worked with a new company with an apparently stupid, definitely different, and in reality a white-hot new product idea—a talking stuffed animal. At age 27 Key became the Manager of Design for Worlds of Wonder, just as they introduced Teddy Ruxpin to the world. This experience taught Key the second great, pragmatic truth: great ideas are unworthy unless made for the right price—which means a need to really, truly understand manufacturing. Not just ‘how things are done’, or ‘who is really doing what I need to be done’, but also ‘what drives and limits the manufacturer

I work with’. It is critical to know the marketplace but Key pointed out that meant knowing suppliers and potential suppliers as well as the reasons why people want to buy specific products. With that knowledge, and the confidence of the terminally optimistic, Key went independent and formed his own design firm.

Stephen Key made his solution approach obvious: find a gap in the market and design to bridge it. Then he detailed his first great success: a bottom-of-the-market basketball game. His expertise chopped out most of the production cost while preserving the maximum of presentation and Intellectual Property. He did this by licensing Michael Jordan's name and image to the lowest-cost-of-production toy. It promptly swept through the competition (as any basketball fan would have expected). The reason was simple: supply side reps were sold on the potential (and, as it turned out, real) royalties for the next ten years.

This was when Stephen admitted that he'd had a stroke of that sort of fortune that favors the well-prepared: he hired the law firm Carr & Ferrell. On the very first day, a senior partner gave Key the best advice ever got: to remember “it's all about selling” and this also taught him the importance of finding lawyers who think about more than just the law. He would come back to them repeatedly, and not just to solve problems. Key made it clear that client and lawyer are a team where success comes when both work together to

support the joint effort.

Key's most adventurous, and most I.P.intense, design effort was in his "spenvelope". Again he designed to bridge a gap. He'd identified a big need for more information on labels than space provided on containers. Key's solution was to provide both more and less (a very legalistic response). By adding a second, movable label, with a square hole through which the first level could be read, Key added 75% more data. Now he needed to make them at a minimum of cost—in dollars, complication and investment strain on manufacturers. To protect his idea, Key asked Carr & Ferrell to start the patent process. Then he set to studying the new market, particularly to whom he would need to get to sell his idea. Key admitted he came to the brink of failure when he ignored his lawyer. Filled with his own ingenuity, he ignored the assessment that, even though no prior art had been found, the idea was too simple to be new.

Persistence and active risk-taking were Key's salvation, when coupled to a bit more ingenuity. Key 'paid' for Procter & Gamble's lunch when, during a meeting, he found out that they knew of this exact invention many years before. An expensive lunch, but it could have been worse had Key stopped there. Instead, he asked why the invention was not used and studied intensely how label manufacturing worked. Very quickly, Key realized that what he should patent was not the concept, but the process.

This mean legwork, legwork, legwork and talking with the business people. By asking 'how', he learned 'who': who was in manufacturing, in marketing, and in sales. And, by learning 'who', he gained insights into 'why' they would make decisions and 'what' their firm would do. But the two foremost questions always remained: "How do you do that?" and "How much does doing that cost?" Key reminded his audience of the importance of keeping notes because every bit of information may be useful later; particularly, those indirectly relevant to the initial inquiry.

A bonus benefit, and a very crucial one, Key also got a cash-producing offer after showing his spenvelope to a prospective customer. Key got a purchase order for 5 million labels at 10 cents/label, which funded his work and broke the initial barrier. He also realized that he probably could (and as it turned out, did) get his biggest licensee to pay for patent applications, since that outlay protected both their interests. One patent is rarely enough; protection on multiple fronts requires a 'wall'.

The technique which worked in negotiating licenses, Key maintained, was not focusing on 'exclusive/non-exclusive', 'worldwide/local', or 'all categories/one line' divergences, but on

why particular choices of each were important to particular customers. Anticipating customers' needs forecast what they would be willing to pay for. Key was also willing to trade royalty amounts for minimum guarantees, with a three-year hook. Cheap at first, and covering all areas the customer might want to get into, they became much harder to meet in the third year—and the first one missed, returned the exclusivity right to Key's firm. As Key put it: "I love 'test the waters' approaches; if they get a bite, I can use that to hook them."

All did not stay pacific, sun-lit uplands. The barbarians of Legos assailed Key's patents in a three-year fight which was expensive in both dollars and diversion. Ultimately, justice prevailed as the parties settled two weeks before trial—the 'wall' paid off.

With that as a sensible end-to-the-tale, Key opened the floor to questions and answers. For the next half-hour both non-attorney and attorney audience members flung questions at him, many for pragmatic and immediate advantage or needs. Key stressed the importance of clients doing their homework thoroughly, and in patent applications, of never omitting details or making patent attorneys guess. He personally enjoyed deal-making, yet also recommended finding the best attorney you could for the contracting process – noting that you would "pay now or pay later" in any case. Best, in Key's mind, were attorneys who understood the industry, technology, businesses (including constraints, which should be made clear), and also had a long-term focus. His last warning was simple: if you don't understand the language, ask for the explanation and if they can't or won't clear the matter up—leave. If the initial impression (say, an overly restrictive, aggressive, or incomprehensible Non-Disclosure Agreement or Letter of Intent) is bad, don't just leave—run!

Responding to another question, Key noted that the idea has to be capable of selling itself, warning that, "If you want the deal really badly, there's always somebody who'll make you a really bad deal." He preferred the stress and care required in multiple, simultaneous offers to more drawn-out serial efforts. When it came to deal-making, Key pointed out the inherent conservatism of most businesses, particularly the larger ones: your solution should offer opportunity today, while reducing any risk, preferably taking all risks away.

Key's response on how to search and find prior art was less enlightening: "go with your gut." Knowing the technology and market is important, but common sense and past efforts are more valuable than either an outside search firm or the best computerized search.

Key noted that his firm works in an area that is consumer-driven not science-driven so his advice was not universal for timing and balance for research/protect/exploit efforts. If he got an idea Monday, he would file the Provisional by Friday, wait for the reply from the PTO to go into the market (doing the homework meanwhile) and if there were "no bites" soon after, went on to the next idea. Only commercial interest justified the full-court press of patent prosecution.

The applause at the luncheon's end was appreciative and many, if not most, attendees continued information-gathering efforts afterwards. PAABA was fortunate to get such a realistic, encouraging, enjoyable, and personable speaker.



A packed room listened to Stephen Key speak on his experiences with creating and licensing inventions.

PAABA 2004 SURVEY RESULTS

SARA MARINELLI

Many thanks to the PAABA members who responded to our first survey, an effort to obtain feedback from and improve services to members. The survey was disseminated to the membership via email, featured in "The Bulletin" and was available for download from our new website (www.paaba.org). We received 26 responses out of a membership of approximately 300 members. As busy as we all are it was encouraging to have so many members take the time to submit their answers.

In the following report, you will find responses to the multiple choice questions. Some of the most salient results reveal that many respondents benefit from PAABA's intimate geographical area: the majority practice in the Palo Alto Area and so take advantage of luncheons at local venues and keeping in touch with local colleagues and events. For other members it was not as easy to actively participate, remarking that they would be more involved in PAABA if they had "more free time" or "if their offices were not so far from Palo Alto".

Perhaps one member described PAABA best by saying it is "pretty open to criticism and very open to participation."

The speaker program was a highly rated bar offering, with many reporting that topics were key. Ability to network was also highly valued. One common theme surfaced: luncheons would be more appealing if they covered specific areas of law which most related to members' area of practice. One member stated there would be more participation if "programs added value to my particular practice." Another suggested luncheons be offered where members could network "with allied professionals such as accountants and investment advisors". Still another remarked that luncheons could be improved if they were "more social" and provided more "attorney interaction". One respondent requested "either more esprit de corps or a reason for Palo Alto lawyers to interact—loss of superior court department removed reason for affinity." Perhaps one of our other members was on the same track when suggesting a "regular no-structure get together session to meet and network—perhaps the first Friday of each month at a local watering hole."

Another member reported a desire to see PAABA "get more involved with local organizations", and another reported

they found the golf tournament most valuable. One suggested the Bulletin "could provide more diverse perspective – i.e. more writers." Perhaps one member described PAABA best by saying it is "pretty open to criticism and very open to participation."

Having received valuable feedback and suggestions, our task now will be to implement these ideas where feasible. While we cannot provide luncheons which specifically target every member's practice area, we can strive to make our luncheons as interesting and unique as possible. Networking is another avenue that was stressed by many and deserves continuing attention. Let's realize this "participation", and make our organization even better. Calling all members who would like to: work on speaker programs, write an article for the Bulletin, spearhead a networking or social event or discuss an activity to make PAABA more valuable. Get involved!

2004 PAABA SURVEY RESULTS

We received 26 responses to our survey. The **bold** number before each answer represents the number of members who selected this answer. For instance, if the number **20** appears, 20 members out of 26 checked that item. Since members were asked to check all answers that applied, the total number for each question may exceed the total number of respondents. Segments of the "fill in" sections of the survey have been summarized in the body of the main discussion above.

- 1) I ...
- 20** Practice law in the Palo Alto Area
- 12** Reside in the Palo Alto Area
- 12** Have clients in the Palo Alto Area
- 1** None of the above
- 2** Other
- 2) I joined PAABA
- 23** To support my local bar association
- 19** Become involved in local bar and community
- 15** Keep abreast of local legal events & news
- 17** Networking
- 10** Community service
- 3** To join LRS
- 1** Other

3)	I would like to see PAABA	8)	I find contacting Board members
21	Continue to provide local luncheons	4	An informative and helpful experience
18	Continue to provide local luncheons with MCLE	1	Satisfactory
5	Provide more opportunities for after hours programs	2	Sometimes helpful
5	Provide more opportunities for before hours programs	2	Other
0	Provide more community related events		
1	Make changes to LRS	9)	I find "The Bulletin"
2	Provide different opportunities for networking		
5	Other	9	Informative and helpful
		5	Satisfactory
4)	I attend PAABA's local luncheons	4	Sometimes helpful
		5	Improved now that it is online
14	To network with local colleagues	1	Other
8	To earn MCLE credit		
15	To learn about interesting topics regardless of MCLE offered	10)	I find PAABA's new website
12	Because local venues allow me to attend during lunch	5	Informative and helpful
5	Primarily because the speakers are local colleagues	5	Satisfactory
4	Primarily because speakers are persons I'd not normally meet	1	Sometimes helpful
5	Other	1	A good resource and would like to place a link on my website
		3	Would be more helpful if it included ...
5)	I would attend PAABA's luncheons more frequently if		
3	Programs were presenting different topics		
0	Schedule were different		
3	They were offered at other than lunch times		
4	Other		
6)	I find the following offerings most valuable		
17	Speaker programs		
12	Networking		
2	Events		
5	Community service		
13	PAABA directory		
1	Other		
7)	I find contacting PAABA		
7	An informative and helpful experience		
4	Satisfactory		
1	Sometimes helpful		
1	Other		

DATA PROFILE

26 Total Responses

Survey Source:

4 From Bulletin


20 From PAABA email or PAABA website

Response Method:

11 Fax

13 "Snail" mail

2 Other



One member suggested that the Bulletin "could provide more diverse perspective – i.e. more writers."

**Even PAABA members agree:
THE BULLETIN NEEDS YOU!
Write for the Bulletin today!**

ANNOUNCEMENTS

Submit announcements to the Bulletin by the **15th day** of the **preceding month** in which you wish your listing to be posted. Send to the PAABA office or to Soyeun Choi at SoyeunD.Choi@yahoo.com or call 650-566-9510. Ads run for three months and may be extended. This service is FREE to all PAABA members!

Women Lawyers Committee Meeting—May 4, 2004
Printer's Inc on California from 8:00am to 9:00am.

PAABA ON TOUR! Visit PAABA VP
Sorry, no May times: Potentially on Jury Duty!

Interested in becoming a volunteer mediator for the City of Palo Alto? Recruitment packets now available. Contact Shauna Wilson, Palo Alto Mediation Program, 650-856-4062

Palo Alto law firm has two offices for sublease near California Avenue w/high speed internet, copier, conference room, kitchen, furnished or unfurnished. Please call 650-556-2290.

Palo Alto Office & work area for lawyer in suite shared by 7 lawyers. Located across from courthouse. Many amenities (library, on-site parking, skylights, balcony, kitchenette, conf. rm, reception area, etc.). 2501 Park Blvd. Contact Peter Giamalis at 650-324-0222 or "giamalis@aol.com."

Alvaro Ponce

UC Davis School of Law, J.D. 2003

Stanford University, B.A. 2000

Sat for February 2004 CA Bar Exam

Available for work anywhere within the Palo Alto Area Bar Association covered region.

Available for contract, part-time or full time work in immigration law, real estate, family law, trusts and estates, or in any general civil law practice.

Contact: (530) 848-3414 (cell phone)

e-mail at alponce@stanfordalumni.org.

Resume and references are available upon request.

We're on the web!
www.paaba.org

P A L O A L T O A R E A B A R A S S O C I A T I O N

Palo Alto Area Bar Association
405 Sherman Ave.
Palo Alto, CA 94306

For more information:
650-326-8322
(f) 650-326-2218
E-mail: info@paaba.org

The Palo Alto Area Bar Association is unique in that its geographical and professional area straddles two counties and two county bar associations. It was formed to provide a more personal and more responsive professional association for attorneys in the mid-peninsula, ranging from Menlo Park, Atherton, Woodside, East Palo Alto, and Portola Valley through Palo Alto, Los Altos and Mountain View.