



## August 2004

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## E-Business in the Federal Courts

By Patrick Guevara

"Twenty years ago, the PC was introduced as a tool that would virtually eliminate the paper then choking the average office. But that hasn't happened. In fact, market analysts report that paper use continues to boom—by an incredible 6 to 7 percent annually. It's no small issue. Hard-copy costs typically eat up 1 to 3 percent of a company's revenue. Meanwhile, worker productivity sinks, as knowledge workers spend 10 or more hours per week just sifting through paperwork." This statement is certainly true with a typical law office. The good news is that, by facilitating direct digital interface with courts and government agencies, Internet technology has made the paperless law office a reality. The bad news is that it will be difficult to remove the lawyers' security blanket – paper.

The federal government has taken the lead in using web technology to make the paperless

office a reality. Digital document creation, storage, reference material, and communication have been with us for a long time. The problem has been in interfacing with public adjudication forums, which have, until recently, been entirely paper-driven.

In 1988, the federal Judiciary sought funding from Congress to provide electronic public access services. This funding led to the establishment of the Public Access to Court Electronic Records system ("PACER"). PACER "is an electronic public access service that allows users to obtain case and docket information from Federal Appellate, District and Bankruptcy courts, and from the U.S. Party/Case Index. Currently most courts are available on the Internet. ... Each court maintains its own databases with case information." PACER offers an inexpensive, fast, and comprehensive case information service to anyone with a personal

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## The Story of Maxcy Filer, his son and the California bar exam.

By Shelley Jarvis

The California bar exam is known for being one of the hardest bar exams in the nation. The exam serves as more than a test of a person's ability to practice law. The three day exam is an endurance test and a person's reaction to the stress that the exam summons provides a snapshot of how one approaches life.

I recently heard the story of Maxcy Filer who took the California bar exam 48 times. For each exam session, Filer approached the exam as if it were the first time he had taken it. He worked hard, focused and refused to give up on his dream. On his 48<sup>th</sup> time sitting for the exam, Filer finally passed with the help of his son. Here is a recap of Maxcy Filer's story.

"A father of seven, Filer held down two jobs while studying and taking the bar exam over a quarter of a century.

"Life never stopped during those years studying for the bar, taking the bar exam every February and July and waiting to hear the results in May and November. Filer often held two jobs as he and his wife, a teacher for many years, worked to raise their large

family. After Filer got his law degree from now-defunct Van Norman University in Los Angeles, he worked in a variety of jobs related to law, such as law clerk for the City Attorney of Los Angeles and field worker for the National Labor Relations Board. It wasn't all about the law, though. He also did heavy lifting at a dairy and took other jobs.

Over the years, all his children went to college, and two of his sons, who were in elementary school when their father started taking the bar exam, became lawyers. Filer worked for his son Kelvin as a law clerk. Kelvin (who went to Boalt Hall School of Law and passed the bar on his first try) is now a Superior Court judge in Los Angeles.

It is estimated that Filer spent approximately \$50,000 between 1966 and 1991 on fees, bar review courses and transportation and lodging related to taking the bar exam. [W]hatever the reason for passing, [Filer is] living proof that persistence pays off. 'When

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## Book Review, Vol. I – Freedom at Midnight

Reviewed by Brian O'Dea

Freedom at Midnight is the powerful, beautifully written story of India's transition from the British Raj to freedom. The book, by Dominique Lapierre and Larry Collins, was first published in 1975 and republished in 1996.

It is a detailed history that reads like a novel. It combines the elements of an epic saga and a page turning thriller. The authors detail the political environment, social mores, religious differences and individual prejudices and goals that collided during the formation of modern India and Pakistan.

The individuals who were instrumental in forming the new nations were simply bigger than life. The authors bring to life the complex personalities and interactions of Mahatma Gandhi, Jawaharlal Nehru, Mohammed Jinnah and Lord Mountbatten, four of the most powerful men of the twentieth century. The study of their characters alone makes the book worthwhile.

While detailing events of more than a half-century ago, the book is very relevant to today's politics. It explains the religious, philosophical and social differences between the mainly Hindu India and Islamic Pakistan. It recounts the brutality and horrors of the civil war that followed independence and the lasting scars inflicted on the people.

Freedom at Midnight is not only fascinating history but also a great read.

## In the Law

By Leslie Baxter & Phillip Vermont

Can a real estate professional be legally obligated to pay money to a buyer who sues to rescind a property purchase? Don't count on the answer being "no."

In a published California case, real estate agents representing the seller of residential property were sued by a buyer, who claimed the agents fraudulently represented that the improvements were built on cut land, when in fact they were built on unstable fill. The buyer obtained a judgment for rescission of the sale, against the agents. The agents appealed, arguing that, as mere agents of the seller, they were not proper defendants in a lawsuit where the buyer sought to rescind the purchase. The court disagreed, and upheld the judgment, against both the seller and the agents, for rescission. The court noted that regardless of the equities between the agents and their client, the seller (who was also a defendant), the innocent plaintiffs should be made whole. (In other words, the agents might have a legal claim against their principals, if the principals lied to them about the condition of the property. But that's another newsletter article.)

The court found that it was fair to hold all of the guilty defendants, who would be liable for damages, jointly and severally liable on plaintiffs' damages incurred for improvements, down payment, monthly payments, and escrow closing costs. So, while the dissatisfied buyer who

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## Surf's Up

By Randy Sullivan

The first thing I decided to do after finishing the bar exam last July 23<sup>rd</sup> was purchase a surfboard. In fact, it was the first time I had ever tried to surf. I filled the following weeks with as much time in the water as I could, learning how to surf as well as learning the rules of the ocean.

For example, when you are in the ocean and you see another surfer being attacked by a shark what do you do? The answer is quite simple. You turn your board towards shore and start paddling for safety as fast and as hard as humanly possible.

This fear of sharks is shared by many surfers. I generally maintain the façade that I do not believe I'll be the victim of a shark attack. However, one day I thought it might be worth researching shark repellants. After all, if there is a safeguard, it would be foolish not to utilize it.

My concern motivated me to do a little research on the internet. I learned of an interesting product: Shark Shield. This product protects divers and surfers by emitting an electrical field which unnerves sharks when they are within four to five meters to the device. Upon further review of this product I discovered that a diver was found dead, missing a limb, but still wearing the shark shield. Understandably, my

confidence was a bit shaken although it was not entirely clear that the shark shield had failed the diver. The shark shield may have simply not been turned on and/or the batteries might have died.

My buried fear resurfaced again this past Memorial Day weekend. While visiting friends and discussing our weekend plans, a friend said that every year a surfer is attacked by a shark on Memorial Day weekend. Saturday, I learned that a shark had knocked off a surfer from his board (the surfer escaped unharmed).

Then Sunday I checked the surf report and it looked great. With the shark attack in the back of my mind, I figured the coast was clear. Once I arrived to the beach I realized that the surf report was dead on, and the waves were great and there weren't too many surfers.

I had been surfing for about an hour and was paddling back out to the surf break. All of a sudden a large creature pops up, less than a foot away from me. In an instant I spin my board towards shore, yell an expletive, and frantically paddle for shore, trying to catch a wave. Well, I don't catch the wave, and all of a sudden as some surfers, including a couple much younger surfers, pass by me laughing, it dawns on me that I had been nearly attacked by a sea lion.

## Book Review, Vol. 2 “The Lesser Evil: Political Ethics in an Age of Terror”

Reviewed by Steve McNichols

If Americans were asked to list the most basic values which underlie our government and our constitution, the values most often cited would no doubt be liberty, equality, and due process.

First, liberty requires respect for justice and human dignity. Liberty places certain conduct (such as torture, and secret detention) outside the limits of acceptable government action. It sets limits on the government’s use of force. Liberty is also the right to be left alone. Liberty prevents government from meddling in the lives of its citizens unless intervention is necessary to protect the collective security or the order of society as a whole. Equality is the concept that all people should be treated in the same way by the government and the law; regardless of their wealth, race, gender, national origin or religion. Due process imposes an obligation on government to publicly justify measures that restrict individual rights and liberties. In a democracy, this justification should take place first in the political arena. A democratic government should also submit significant limitations of liberty to judicial review in a true adversarial process.

For most of us, the terrorist attack of 9/11 is the first time in our lives that we have felt threatened inside our country by an outside force. The last time this feeling of vulnerability swept this country was after the Japanese attack on Pearl Harbor. The hysteria created by that event resulted in the shameful, indiscriminate internment of all people of Japanese descent, including many American citizens. The American public did not find out until 1983 that this internment was, in part, the result of the intentional suppression of evidence by the executive branch of government. The executive branch failed to disclose an Army investigation to the Supreme Court. The investigation concluded that the internment was not justified or necessary. Peter Irons. *Justice at War: The Story of Japanese-American Internment Cases* (1983). Oxford University Press, 1983.

Since World War II, the potential for infringement of our liberty and privacy has grown exponentially due to the growth of technology. The vision of Bentham and Orwell of an all-intrusive, all-controlling government has become a practical reality from which we must vigilantly protect ourselves. Every time we use a cell phone, strike a computer key, do business with a bank, insurance company, or credit card company, we leave a retrievable digital mark. Any one who has sought technical assistance for their computer has probably watched in amazement as a technician in another country commandeers our computer, pushes our cursor around and opens and closes programs on our screen. This experience certainly heightens the anxiety for those who are concerned about personal privacy and liberty. Allowing companies or the government to capture data from our personal lives has the potential of opening American citizens to corporate and government intrusion into our liberty in a very invasive,

comprehensive and dangerous way.

The Patriot Act, which was designed by the Bush Administration and hastily passed by Congress shortly after 9/11 in the name of stopping the next terrorist attack, has engendered a large number of books discussing the invasion of individual privacy and liberty that the Patriot Act allows. These books include *The War on the Bill of Rights*, Mat Hentoff; *The War on our Freedoms*, Richard C. Leoni, and Gregg Anrig, Jr.

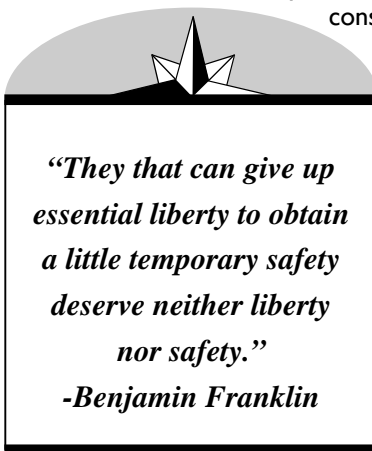
Michael Ignatieff’s book – *The Lesser Evil, Political Ethics in an Age of Terror* - is a different kind of publication. It is a calm, reasoned analysis of the age old question of how to balance the interest of security and liberty. The book is not a criticism or a defense of the Bush Administration, the Patriot Act, or what has been done to civil liberties since September 11, 2001. Michael Ignatieff brings together history, philosophy, the law, the Constitution, and 9/11, and he tried to give the reader a framework in which to evaluate the balance of liberty and security. He gives equal consideration to the need for security and the need to avoid the sacrifice of our constitutional identity.

Ignatieff believes that history has proven that undue restrictions of liberty in a democratic society generally result from over reaction of people with good intentions. Extreme abridgments of liberty can become the law in a democratic society because they are easy to justify politically. The trade off is generally perceived by the electorate not as one between *our* liberty and *our* security, but between *our* security and *their* liberty.

Fear also facilitates public acceptance of infringement of liberty. As Hitler Reichsmarshal, Herman Goering, said “Voice or no voice, the people can always be brought to the bidding of the leaders. That is easy. All you have to do is tell them they are being attacked, and denounce the pacifists for lack of patriotism, and exposing the country to greater danger.” It is in times of fear that our commitment to democratic principles are directly challenged and tested.

Ignatieff concludes that certain freedoms are “beyond the pale.” As a result, even extreme necessity cannot override these basic principles of human rights. Government restriction of liberty that does not violate fundamental commitments to justice and dignity is permitted in emergency situations as long as: (1) We recognize that we are involved in undesirable conduct; (2) That the government acts under a demonstrable state of necessity, not indefinitely but only as long as such means are required; (3) That we choose these means only as a last resort, having tried everything else, and finally, (4) That the government justifies its actions publicly and honestly to its citizens and submits to their judgment. The people must be given the opportunity and means to reject emergencies justified on the grounds of bad faith, manipulation of evidence, exaggeration of risk or for political advantage.

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## E-Business in the Federal Courts cont....

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computer and Internet access. PACER provides information about a particular individual or case.

The federal courts took an even bigger leap into the Information Age by releasing the Case Management and Electronic Case Files system (CM/ECF) in 2001. In a press release last month, the Federal Judiciary heralded its new CM/ECF initiative:

"CM/ECF not only replaces the courts' aging electronic docketing and case management systems, but also provides courts the option to have case file documents in electronic format, and to accept filings over the Internet.

CM/ECF systems are now in use in forty-five district courts, seventy-three bankruptcy courts, the Court of International Trade and the Court of Federal Claims. Most of these courts are accepting electronic filings. Over 14 million cases are on CM/ECF systems, and almost 75,000 attorneys and others have filed documents over the Internet. Under current plans, the number of CM/ECF courts will increase steadily each month into 2005. Each court goes through an implementation process that takes about 10 months.

Attorneys practicing in courts offering the electronic filing capability are able to file documents directly with the court over the Internet. The CM/ECF system uses standard computer hardware, an Internet connection and a browser, and accepts documents in Portable Document Format (PDF). The system is easy to use – filers prepare a document using conventional word processing software, then save it as a PDF file. After logging onto the court's web site with a court-issued password, the filer enters basic information relating to the case and document being filed, attaches the document, and submits it to the court. A notice verifying court receipt of the filing is generated automatically. Other parties in the case then automatically receive e-mail notification of the filing.

CM/ECF also provides courts the ability to make their documents available to the public over the Internet.

Litigants receive one free copy of documents filed electronically in their cases, which they can save or print for their files. Additional copies are available to attorneys and the general public

for viewing or downloading at seven cents per page, with a maximum cost per document of \$2.10.

CM/ECF system for district courts began to roll out nationally in May 2002. Implementation of the CM/ECF system for appellate courts is currently scheduled to begin in late 2004.

With PACER and CM/ECF in federal courts, attorneys are now able to file or access court documents nearly anywhere and at anytime with a PC, access to the WWW, and a little knowledge of PDF and XML.

E-filing systems also have the following benefits:

- Immediate acknowledgment of filing when an electronic receipt is transmitted either by email or on the web after the e-filing session is completed. E-filers do not have to worry whether filings are determined by the date and time the document is mailed or is received by the court or agency.
- Immediate creation of a docket or matter number.
- 24 hour access to file documents. E-filers are no longer captive to time zones, or to unpredictable court business hours for accepting paper applications.
- Federal court filings are automatically emailed to all parties to the litigation, thus, eliminating the need to copy and deliver the filed document to all parties.
- The potential elimination of paper files that can be misfiled or lost.

This last benefit is a controversial one among attorney, again because of the paper security blanket.

Robyn Aber, "Pining for a Paperless Office? Some tips for minimizing your paper glut" October 13, 2003, <http://www.Entrepreneur.com/article/0,4621,311323,00.html> (last visited June 1, 2004).

Administrative Office of U.S. Courts, "PACER Overview", <http://pacer.psc.uscourts.gov/pacerdesc.html> (last visited June 1, 2004).

Office of Public Affairs, Administrative Office of the U.S. Courts, "Case Management/Electronic Case Files (CM/ECF) Fact Sheet", May 2004, <http://pacer.psc.uscourts.gov/documents/press.pdf> (last visited June 1, 2004).

## GOING PLACES – Peruvian Ruins

By Kevin Martin

It is said that the best way to view the ancient Inca ruins of Macchu Picchu is looking down from the famous sun gate, which sets atop the mountain ridge facing the village. I cannot disagree. Hiking up the final “50 Steps” (which felt more like 500 following our three day hike to get there) and reaching the mountain peak, then stepping through the stone sun gate provides a perspective on this jewel in the jungle unlike any thing I have ever seen before. There it sits, almost otherworldly in nature, between these two massive mountain peaks 8000 feet in the air, and you are left to ponder how did they do it? With massive boulders, perfectly smoothed to fit together without any adhesive material, expansive terraces for food, temples of worship, and stone canals for irrigation running throughout, Macchu Picchu is indeed a wonder of the world.

The adventure for my wife and I had started earlier in the week in the town of Cuzco, the former capital of the Inca Empire, about 50 miles southeast of Macchu Picchu. We spent the first days of our vacation getting acclimated to the altitude (Cuzco is actually higher in elevation than Macchu Picchu) and taking in the sites of this interesting and diverse little city. European in feel, Cuzco- which means “navel of the earth” - was once considered the cultural capital of South America, and today still offers a bounty of good food, color, and ancient culture. Almost every street has remains of Incan walls, arches and doorways. We toured the local stops including the churches and museums, but of course the main attraction throughout the area is the ruins.

Our trek to Macchu Picchu began at the base of the Urabamba River. My wife had arranged for our three day hike along the Inca Trail some months back and originally, we were supposed to be hiking with a group of seven other tourists. We soon discovered, however, that it would be just the two of us and our guide... and of course our five porters! That’s right, five porters for the two of us. We had a lead guide, secondary guide, a cook and two assistants. Apparently leading tours to Macchu Picchu is a principal

source of employment for the locals and once booked the tour agency is reluctant to cancel. All the better for us, I suppose, as we were treated to a splendid three days and nights of pampering. Don’t get me wrong, though; the hike was not easy. At times we were traversing along very narrow stone paths and up steep stairways cut into the mountain. Water breaks were frequent and mandatory and luckily we would come across an occasional waterfall deep in the jungle where we could cool off. The whole thing struck me as right out of Indiana Jones. Our guide was a delightful Incan woman named Margarita. Along the trail, Margarita instructed us in the ways of the ancient Incans, the ruins, their history and the story of the Spanish conquest. We even offered up a token sacrifice to the Inca gods to keep us safe during our trip.

When we finally did summit at the sun gate, I could truly appreciate the splendor of the moment. They say that Macchu Picchu is a mystical palace in the sky. I cannot disagree.

### Quips & Quotes By John Nielsen

"Being a low-level celebrity has its perks--and almost no responsibilities." -**Ben Stein**, speechwriter, actor, lawyer, professor, columnist, and game show host.

I love a dog. He does nothing for political reasons.  
-**Will Rogers**

We demand guaranteed rigidly defined areas of doubt and uncertainty. -**Douglas Adams**

You can't have everything... Where would you put it?  
-**Steven Wright**

Progress might have been all right once, but it has gone on too long. -**Ogden Nash**

## Epicurean Delight - Tamale Pie Recipe

By Lori Striker

- 1 pound hamburger
- 1 package taco seasoning
- 1 small can of corn
- 1 small can of sliced black olives
- 1 can diced tomatoes
- 1/2 onion - chopped
- 2 cups shredded cheddar cheese
- 1 package Jiffy corn bread mix

Brown hamburger; add prepared taco seasoning, corn, olives, onion and tomatoes.

Cook together for five minutes. Prepare corn bread mix and set aside. Pour hamburger mixture into 9" pie pan.

Sprinkle shredded cheese over mixture. Spread corn bread batter over top; you can also sprinkle some cheese over the top of corn bread.

Put in 400 degree oven for twenty minutes or until corn bread is golden brown.





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## Achieving Results Through Innovation®

### Maxcy Filer...cont.

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I was sworn in, the young man who was an appellate court judge said, 'Three words about Maxcy Filer: perseverance, perseverance, perseverance.'"<sup>1</sup>

During my bar preparation course Maxcy Filer was touted as an example of perseverance and determination – both important qualities for an attorney in the practice of law. What struck me about his story, however, was that it was his son who eventually helped him study and pass the exam on his 48<sup>th</sup> time. It was his son who worked with his father to help Filer achieve his dream. Poetic justice, since Filer never stopped working hard on behalf of his family while trying to pass the exam. What could be more rewarding as a parent and a child than helping each other reach an important goal?

Maxcy Filer's bar exam story is inspirational on a professional level, but more important, it reminds us what is most valuable in life – our families. And in this case the love, support and respect between a father and son.

<sup>1</sup> *Advice from one who failed bar exam 47 times: Try again, again and again.* Diane Curtis, California Bar Journal, February 2004.

### In the Law...cont.

*(Continued from page 2)*

succeeds in a lawsuit for rescission will surrender the grant deed back to the seller, the seller's real estate broker and agent may be jointly and severally obligated, along with the seller, to pay the buyer's consequential damages (down payments, loan payments, closing costs, repair and maintenance costs, etc.) If the seller has spent, wasted, or hidden the sales proceeds, the buyer may find it easier to collect a money judgment for rescission from the real estate professional.

If you have any questions regarding rescission claims, or any other legal questions regarding real estate, please give us a call.

### Book Report, Vol 2...cont.

*(Continued from page 3)*

This is a book that will make you think about the big picture. Regardless of your political perspective, you will come away from this book with a better understanding of your own views of political ethics in the age of terror.

In this time of conflict between liberty and security, we all have an obligation to participate in the political process intelligently, while keeping in mind Dante's admonition that **"The hottest places in hell are reserved for those who, in times of great moral crisis, maintain their neutrality."** Dante Alighieri, *"The Divine Comedy"*