



military experience and law practice to improve courthouse operations. JUDICIAL SPOTLIGHT PAGE 5



women who have served as defense counsel and prosecutors in the war on terror have provided shining examples for all lawyers, writes Gary Williams. FORUM PAGE 6



distribution ever generate as much gross and net revenue as traditional distribution? asks Jonathan Handel. FOCUS PAGE 7

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## Fight Brews Over Impact of L.A. Port Expansion

Railroad Says It's Just a Parking Lot, But Judge Orders Environmental Report

By Gabe Friedman  
Daily Journal Staff Writer

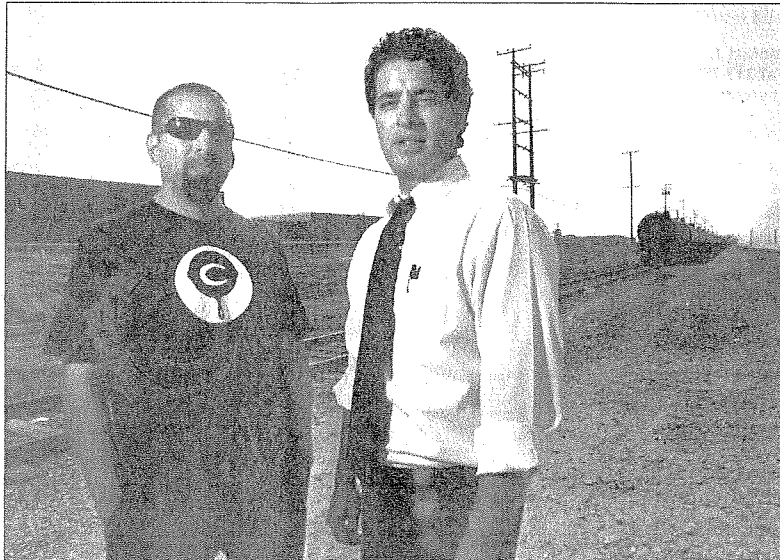
Angelo Logan was standing on one side of a fence looking at a recently demolished army barracks in his old neighborhood, not far from downtown Los Angeles.

BNSF railway was adding 15 acres to a parking lot where it diverts trucks on their journey from the Ports of Los Angeles and Long Beach to rail facilities in southeast Los Angeles 20 miles away.

But unlike its other expansion projects, BNSF had not met with residents to discuss how to soften the impact of sending hundreds of new trucks into their neighborhood. In fact, the rail company and the city of Bell had sought to avoid an environmental analysis by referring to the construction as an extension rather than a project.

Though a new parking lot might appear to be only a minor addition to the massive rail operations that already exist in the area, Logan took a stand. With his lawyer Gideon Kracov, a sole practitioner downtown, he petitioned the city of Bell to conduct an environmental analysis. They blocked the project in court and persuaded a judge to order the city to comply with environmental laws before any work could resume.

The legal battle finally reached a tentative conclusion last week when the deadline to appeal passed. The episode underscores the shifting political atmosphere



JULIANE BACKMANN/ for the Daily Journal

"The era where we do whatever the railroad says is over," said Gideon Kracov, right, who petitioned the city of Bell to complete an environmental analysis before allowing a railway construction project. Kracov was joined in his effort by Angelo Logan, left, director of East Yard Communities for Environmental Justice.

in Southeast Los Angeles, where the company maintains key facilities.

For more than a decade, BNSF and Union Pacific railways have maintained major intermodal facilities where cargo shipped into the port is transferred onto railcars and trucks. But as a boom at the ports provides new opportunities for expansion, a growing discontent has evolved in these cities.

Logan, director of East Yard Communities for Environmental Justice, has opened the fight for clean air and economic renewal on a number of fronts. His campaign extends beyond city halls

to the state Air Resources Board.

"Hopefully, this is a moment in time where it's not business as usual," said Logan, a slim, goateed activist, "where the railroads go forward without taking into consideration the impact to local communities."

Growing up across the street from one of the four intermodal yards in Commerce, a small city separated from downtown by the Los Angeles River, he got to know the facilities. Before he entered his 30s, Logan started to see the diesel from all the trucks and trains as the reason people in the neighborhood were becoming sick. It is surrounded by rail lines

on two sides and freeways on two sides.

According to a state Air Resources Board study in 2007, diesel pollution in Commerce makes residents as much as 140 percent more likely to contract cancer than other Angelenos. In 2002, Logan started East Yard Communities for Environmental Justice to advocate for cleaner air in the city of Commerce, and nearby cities Montebello and Bell Gardens.

Lena Kent, a BNSF spokeswoman in San Bernardino denied that the company has run into any problems with the local community.

See Page 8 — FIGHT

## Systemwide Flaws Plagued Heparin Recall

Notice Lagged From Drug Makers And Suppliers

State-Level Action Urged

By Evan George  
Daily Journal Staff Writer

LOS ANGELES — After recall alerts about heparin began pouring in from across the country, pharmacists at the University of California San Francisco Medical Center did what hundreds of other facilities in California did in March: They scoured medicine cabinets, whisked tainted heparin away from patients and sailed it back to their distributor for disposal.

Officials at UCSF say they acted fast and caught every last drop.

But a national drug supplier had not yet received the warning notices. So days later, when the hospital received a new batch of the popular anti-clotting drug from its Ohio-based distributor, it put the same tainted heparin back on the shelf in error.

That flaw in the nationwide drug recall system could explain why weeks later, state inspectors found hundreds of vials of recalled heparin at the San Francisco hospital's neo-natal intensive care unit, where at least 14 newborns mistakenly received the potentially fatal drug.

In all, 94 hospitals have been fined by state regulators for failing to remove recalled heparin after warnings went out. A review of those state citations by the Daily Journal earlier this month showed that contaminated heparin, which

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## Fight Brews Over Impact of Port Expansion

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nity. She asserted Logan is not a representative for the community, since he moved away to the South Bay last year.

"He's just an organized environmentalist," she said.

The rail company's lawyer, John Nolan of Gresham, Savage Nolan & Tilden in Riverside, referred questions to Kent. But it's still not clear how the rail company will proceed with plans to expand in the area.

Bell's attorney Ed Lee, of Best, Best & Krieger in Los Angeles, said BNSF has not decided whether to walk away from the project or conduct an environmental analysis.

If it drops the project, the city stands to lose: In 2007, it purchased the old barrack property from the federal government for \$26 million. Under a lease with BNSF,

it expected to receive \$142,000 a month. In the meantime, it has been financing a three-year note with its own money.

"We're not sure how it's all going to pan out now with the economy," said Lee.

The city has agreed to pay \$106,000 for Kracov's attorney fees. Its lawyers are negotiating to recover some of that money from BNSF, Lee said.

But Logan and Kracov see a pattern of disregard for environmental analysis: In 2005, they sued the city of Commerce because it planned to remove 990 ficus trees whose roots were pulling up the sidewalk. That case landed in front of Los Angeles County Superior Court Judge James C. Chalfant, who also presided over the most recent case against BNSF.

Chalfant ruled that Commerce would need to comply with state environmental laws before under-

taking the tree removal. But rather than conduct an environmental analysis, the city dropped the project. It did pay about \$80,000 to Kracov, though.

In a federal suit in Los Angeles that could have broader consequences, Kracov is representing East Yard Communities against the California Air Resources Board. In 2007, the state determined it lacks the authority to regulate railroad emissions in its plan to comply with the Clean Air Act. The suit asserts the same agency already had recognized it would need to regulate railroads to comply.

The outcome could hinge on another case currently on appeal to the 9th U.S. Circuit Court of Appeals. In 2006, BNSF and Union Pacific railways sued the South Coast Air Quality Management District, arguing that federal laws pre-empt it from regulating their emissions.

In a narrow ruling, U.S. District Judge John F. Walter agreed writing that the AQMD did not have authority to regulate the emissions.

Logan is driven by more than a desire to improve air quality. His former neighborhood has also suffered financially from the massive boom to manufacturing economies in Asia that feeds port traffic. Factory jobs have been replaced by jobs in warehouses, he said.

John Husing, an economist in Riverside, explained the connection. He pointed to a 2006 study by the Southern California Association of Governments that shows the seven-county region has lost nearly one-third of its manufacturing jobs since 1990.

"Largely, they're gone to Asia," he explained.

The area has been hit twice: As the ports expand, his neighborhood has seen manufacturing jobs vanish. He said his first job after graduating high school in 1986 paid \$9.50 per hour, working at a metal fabrication plant across the street from Hobart Yard, BNSF's massive 530-acre intermodal yard. As traffic at the rail yard increased, more factories closed, he said.

By the time his nephew graduated from high school in 2005, he was earning \$8.50 an hour working at a warehouse in Commerce. The growth of the port has increased traffic in Commerce at the rail yards, but it's also corresponded with a deterioration in quality of life for neighborhood residents.

So it was with some bitterness that Logan discussed BNSF's latest project, a proposed 300-acre intermodal yard near the port. To promote the project, BNSF built a Web site titled Communities Matter.

"In response to meetings with more than 125 political, business and community leaders in Los Angeles and Long Beach, BNSF recently announced enhancements for" the project, the Web site reports.

The improvements include an urban forest, a sound wall, electric cranes and job and workforce training.

"My attitude is improve the existing facilities before you build a new one," Logan said, explaining why he opposes the expansion by the port.

Kracov argues local leaders need to scrutinize the railroads' impacts. He said existing environmental laws obligate them to conduct some scrutiny.

"The era where we do whatever the railroad says is over," said Kracov. "The question is whether the railroad realizes this and decides to work cooperatively with communities or whether they pay lip service to environmental concerns."

## Director May Get to Withdraw Guilty Plea

Continued from page 1

It was Neal who suggested McTiernan should have moved to suppress the recording. Neal said Tuesday that while he's pleased at the appellate outcome, "This is a case that should never have been prosecuted."

McTiernan's appellate lawyer, sole practitioner Charles M. Sevilla of San Diego, said he looks forward to litigating the issues suggested by the appellate panel.

McTiernan asserted Carlton never told him about the potential basis for asking the judge to suppress the recording. Federal statutes codified at 18 U.S.C. Section 2511 (2)(d) and

Section 2515 forbid the use in trials of wire communications intercepted for criminal or wrongful purposes. Pellicano's secret recording fit that definition, McTiernan's new lawyer contended.

Fischer refused to allow a plea withdrawal, immediately sentenced McTiernan to prison and blasted him for blaming Carlton.

"McTiernan is clearly willing to lie whenever it suits his purpose," Fischer wrote to explain why she denied the plea withdrawal. "He has several times admitted that he lied to the FBI agent, and he is either lying to this court now or he lied when signing the plea agree-

ment and entering his plea in open court [concerning what he had and had not been told by his former counsel]."

But Fischer erred in accepting Carlton's word that he informed McTiernan correctly, the panel held. "Although Carlton may have advised McTiernan generally that there was no basis for a suppression motion, his declaration lacks the clarity and precision that would enable us to conclude that McTiernan was properly and adequately advised," wrote Senior Circuit Judge Roger J. Miner of New York's 2nd Circuit, who sat on the panel by designation alongside 9th Circuit colleagues Stephen Reinhardt and Marsha S. Berzon.

All McTiernan must do to obtain a plea withdrawal, the panel said, is to establish that proper advice about the possibility of suppressing the recording might have motivated him not to have pled guilty.

"As long as a criminal or tortious purpose is a realistic possibility under the circumstances — which it assuredly is here — there is nothing inherently implausible about the proposition that a reasonable person would not have pled guilty and would instead have sought through discovery to establish an illicit motive for the taping," Miner wrote.

A spokesman for U.S. Attorney Thomas P. O'Brien of Los Angeles, who prosecuted McTiernan, Pellicano, Christensen and others in the case, declined to comment because the case is coming back to district court.

## Penalty Flags Fly at Opening Of Retired NFL Players' Trial

Continued from page 1

licensees like EA made "ad-hoc" or individual agreements with smaller numbers of players. In those cases, Kessler said, those retired players were paid.

Group licensing agreements like the one with EA, and others with Upper Deck and Topps, did not include retired player rights, Kessler said. If they had, the companies would not have paid a separate amount to license individual retired players.

"These are not stupid companies," he said.

After opening statements, the plaintiffs called former San Francisco 49er Clifton McNeil to the stand.

McNeil was a wide receiver for the 49ers in 1968 and 1969. He also played for the Cleveland Browns and the New York Giants.

Testimony in the case continues today. Doug Allen, former assistant executive director of the NFL Players Association and former president of Players Inc., is scheduled to take the stand. Allen once played linebacker for the Buffalo Bills. Kessler said Allen never received any money from licensing agreements. Allen is now the executive director and chief negotiator for the Screen Actors Guild in Los Angeles.

rebecca\_beyer@dailyjournal.com

john\_roemer@dailyjournal.com

gabe\_friedman@dailyjournal.com