

SAN DIEGO COUNTY BAR ASSOCIATION

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ARE YOU
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TO FACE
THE
FAX?

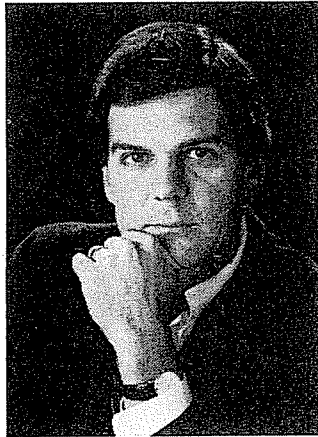
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LIBRARY FACING
FINANCIAL CRISIS

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JUST THE FAX MA'AM (OR FAXING PHILOSOPHICAL)



by Dan L. Stanford

The other day when I received my first FAX from another lawyer's car phone, I knew I had to take a stand. I've been thinking about it for some time, but getting a "nasty gram" from a barrister's Jaguar was just about the last straw. I decided I must go public before it's too late. I won't be known as the Nero who fiddled while the ABA burned. So, here goes: The FAX machine will destroy the practice of law.

There, I said it, and I feel better for having done so. At least, true to my profession, I've positioned myself to some day say "I told you so." And, I'll probably FAX the line to each of you!

It was easy coming to the conclusion the FAX machine will destroy the legal profession. Simply remember back to the good old days before the FAX influx when communication was slow and times were much friendlier.

Remember back to the good old days when lawyers would meet after work at the local watering hole and discuss their mutual cases, pleadings received or the day's mail. Now, that's too slow, and FAX machines are used for instant, faceless replies.

Remember back to when you knew it would take your opponent a day, maybe two, to receive your reply, so you didn't rush to dictate that nasty response. And, by the time you got around to it, you calmed down and sent a polite, yet firm, rebuttal. Or, better yet, the delay allowed you the opportunity to tear up the first draft—the one you wanted to send—and dictate a second draft—the one you knew you should send.

Remember back to the time when courtesies were extended, extensions were granted, "fast track" related only to your weekend jog and what

you said was more important than how fast you said it. Remember when lawyers could "respectfully disagree," "politely decline" or "humbly submit"?

Oh, how times have changed. And, it's all because of the FAX machine. After all, it certainly can't be the lawyers' fault. Clearly, the FAX manufacturers have had it out for lawyers and our profession. Have you noticed—it's working.

Now, there's no delay between receipt of one disagreeable FAX and the return of a nastier response. Now, a delay in responding is considered a weakness, rather than an opportunity for a deliberative reply. Now, with each speedy reply the war of words escalates until faxing frenzy predictably leads to the inevitable notice of an *ex parte* hearing. FAXed, of course. The FAX machine has become the latest weapon of preference by the Gerkas of the bar. After all, when was the last time you received a birthday greeting or a congratulatory letter from a happy, humming FAX machine?

No, a FAX machine in the hands of a lawyer is a deadly weapon. It is used to disagree, defame and debase the feelings of opposing counsel. It preys on our character weaknesses in ways not even the makers of dictaphones envisioned. In a generation raised on instant food, overnight success and immediate gratification, the FAX machine's ability to send faceless, voiceless, one-sided instant debate has proven irresistible to a profession of debaters. Lawyers don't kill cooperation, FAXes do.

Giving a lawyer a FAX machine is like giving drugs to an addict, drinks to an alcoholic or money to a gambler. We simply can't be trusted with these tools of instant legal warfare, but it's not our fault. Once again, we're victims of greed and the innocent prey of the kind of minds that gave us Lexis. The daily thrust and parry of FAX machines is the fault of those who knowingly put the weapons in our hands.

I hope it's not too late. I hope the practice of law can be saved. I hope we can return to a kinder, gentler profession. I think we can. After all, admitting we have a problem is the first step toward a cure.

But, it will take dedication and hard work. Most of all, it will take a renewed commitment to cooperation, and perhaps even adherence to a code of conduct or a "Fax Canons of Ethics." Working together we can solve the problem, return to the days of civil communications between attorneys and, in the process, save the practice of law.

For your consideration, I humbly submit the following list as a starting point for developing a comprehensive FAX Canons of Ethics for lawyers:

- (1) A lawyer should never hide behind a FAX. Never use a FAX when a letter, or better yet,

Continued on page 10

Dan L. Stanford, is a partner in the San Diego office of Lillick & McHose, where he is the Chairman of the Litigation Department and specializes in complex business litigation.

This article was FAXed to the editor, just under deadline.

JUST THE FAX

Continued from page 7

- a personal phone call would suffice.
- (2) A lawyer should never send a FAX in anger. Never send a FAX within three hours of receipt of any FAX.
 - (3) A lawyer should make FAXing (both sending and receiving) a positive experience. FAX unto others as you would have them FAX unto you. And, at least once a week, send a nice, positive FAX to someone who isn't expecting it.

- (4) Finally, a lawyer should never send a FAX from his or her car phone.

I'm dedicated to stopping the FAX wars and developing this comprehensive FAX Canons of Ethics, but I need your help. I'd like to hear from you. I've even volunteered to chair the ABA Section on "FAX Machines and the LAW," so send your suggestions to me. Send me your ideas—before it's too late.

My FAX number is (619) 236-1995.



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