

THE RECORDER

134RD YEAR NO. 33

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MONDAY, FEBRUARY 22, 2010

ATTORNEYS OF THE YEAR

Elliot Peters *Keker & Van Nest*



JASON DOIY

Keker & Van Nest partner Elliot Peters made a veritable tour of the litigation practice in 2009.

There was a big-ticket commercial dispute, in which his firm's client, Univision, took on Grupo Televisa in Southern California. That case settled during trial. On the criminal side, Peters guided Silicon Valley scion William "Boots" Del Biaggio through his plea negotiations with the government, and his sentencing, for defrauding investors.

In the appellate sphere, Peters represented the Major League Baseball Players Association in a privacy battle over steroid test results. He persuaded the Ninth Circuit U.S. Court of Appeals to deem federal seizure of those records unconstitutional, leading to broad new Fourth Amendment principles for the digital age.

And Peters did well on the civil rights front. He secured a

\$4.6 million settlement for John Tension, a man wrongly imprisoned 13 years for murder by San Francisco authorities. That case had gone up to the Ninth Circuit as well, where the appellate court denied the city's attempts to kill it. With trial looming, Peters said he and Joanne Hoeper, the city attorney's chief trial deputy, decided to get together.

"Jo and I sat down and had a cup of coffee at Starbucks, and talked honestly about the case," Peters said. "Every now and then lawyers should try to settle a case without paying some mediator."

The steroids case, *U.S. v. Comprehensive Drug Testing Inc.*, 579 F.3d 989, involved the seizure of a computer containing drug-testing records of hundreds of professional baseball players. The government's search warrant had been limited to 10 players, but it argued that the other players' records were in "plain view" in the computer database. In August the *en banc* court, led by Ninth Circuit Chief Judge Alex Kozinski, invalidated the search and enunciated new standards for the government when it searches electronic evidence. The U.S. solicitor general's office has asked that the Ninth Circuit take the extraordinary step of reconsidering in a never-before-used super *en banc* panel.

Peters says he's confident the skirmishing over privacy standards won't impact his client's victory, as the underlying result won broad consensus in the court.

Colleagues say part of what makes the 51-year-old former federal prosecutor effective lies in his ability to tailor his style to a given situation. For instance, Peters represented Orrick, Herrington & Sutcliffe when the firm was sued by a former client — an elderly, female Holocaust survivor.

With experts, criminal snitches or government agents, getting heated with a witness may be helpful. But not in the Orrick case.

"You want to make sure you're being respectful and polite with a lady like that," Peters said, especially because he is a large man. "It means not being heavy, not raising your voice, not acting like you don't believe the person, but probing in a friendly, conversational way about the parts of the story that don't make sense."

Peters won that one in December 2008, right before plunging into the Univision trial.

"The jury said they really liked her, they just didn't believe her," he said.

— Dan Levine