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Official Publication of the Santa Barbara County Bar Association  
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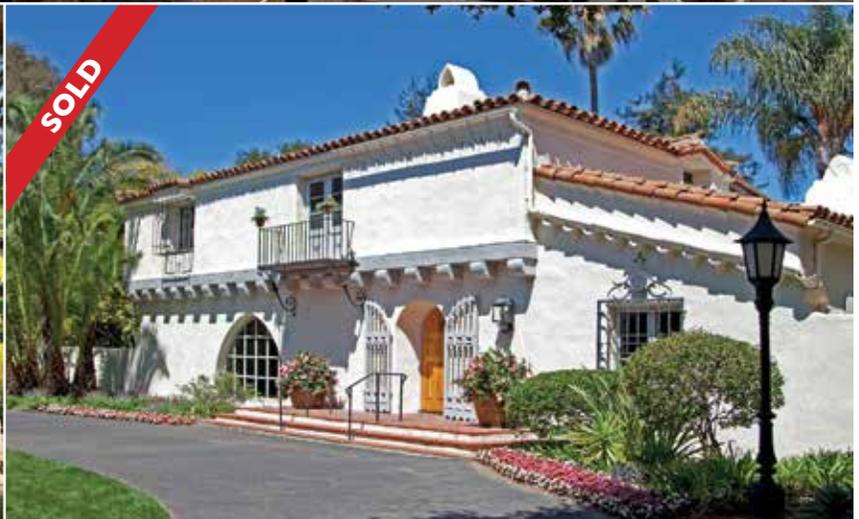
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# Mission Statement

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*The mission of the Santa Barbara County Bar Association is to preserve the integrity of the legal profession and respect for the law, to advance the professional growth and education of its members, to encourage civility and collegiality among its members, to promote equal access to justice and protect the independence of the legal profession and the judiciary.*



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## On the Cover

Santa Barbara Superior Courthouse photo by Tom Hinshaw

## Two Views of Summer



Celebrate summer with *Santa Barbara Lawyer* and read two different articles on summertime traditions in this month's issue of the magazine. See who participated in the festivities at the SBCBA Annual Barbecue, beginning on page 14. And, find out who woke to view an early morning sea of fog from Camp Sheep (pictured to the left) in James Sweeney's recount of a journey "In The Chumash Wilderness," starting on page 10. *Enjoy!*

## The Annual Judge J. William McLafferty Pro Bono Volunteer of the Year Award

Through a program developed by the late Judge J. William McLafferty, the responsibility for conducting Mandatory Settlement Conferences has been delegated to senior attorneys experienced in their substantive areas of law as well as Alternative Dispute Resolution. Each week, at the Mandatory Settlement Conference Calendar, Judge Colleen Sterne reminds attorneys and informs litigants of the benefits of the settlement process and the success of the program. She also gives a shout out to the volunteer Settlement Masters highlighting their training, experience and dedication.

In further appreciation of the Settlement Masters' efforts, the Santa Barbara Superior Court instituted the J. William McLafferty Pro Bono Volunteer of the Year Award in 2010. Each year there is a luncheon, and this year's event was co-ordinated by Vance Saukko, *CADRe Coordinator*. He arranged a spectacular Hawaiian themed buffet complete with Hawaiian candies served by Judge Thomas Anderle. Also in attendance were Judge Michael Carozzo, Judge Clifford Anderson, Judge Donna Geck, Judge Pauline Maxwell, Judge Colleen Sterne and Darryl Parker, the Superior Court Executive Officer. In addition, over 50 attorneys who volunteer their time to the program were present.

This year two recipients were selected by the Civil Judges of the Anacapa Division. Judge Sterne made the presentations to:

**Victoria Lindenauer** received the Award for her work on tort cases in the CMADRESS program and the MSC calendar; and

**Penny Clemmons** received the Award for her MSC work in Family Law, and the Unlawful Detainer Calendar, and her efforts for CMADRESS.

Congratulations to Victoria, Penny, and all of our volunteer Settlement Masters. ■



*Penny Clemmons*



*Victoria Lindenauer*

## Serving Development During Drought: Creative & Sustainable Solutions

BY AMY STEINFELD AND JESSICA DIAZ, BROWNSTEIN  
HYATT FARBER SCHRECK



Amy Steinfeld

Jessica Diaz

For much of the past five years, drought and development were on a collision course. Just as the weather began to dry up in 2011, the housing industry began to recover from the 2008 financial crisis. California faced a massive housing shortage just as drought limited the water supply available for new development. And as those on the Central Coast well know, even the specter of water scarcity is used to slow or block new growth.

This year, California's five-year drought came to a dramatic conclusion, with the recent Sierra snowpack survey at 200 percent above average—the wettest on record. In April, the governor lifted California's declaration of drought emergency across most of the state.

Yet this immediate-term relief should not obscure the stark reality: California suffers a long-term deficit in water supply. The state's population is projected to increase from 39 million in 2016 to 52.6 million by 2060. The U.S. Bureau of Reclamation expects that by 2030, California will face 5 million acre-feet of unmet water demand in an average year, and even more in a dry year. This is equivalent to the average annual use by 10 million households.

Locally, Lake Cachuma is only half full and some groundwater basins are depleted. Goleta Water District remains in a Stage III Water Shortage Emergency, which reflects a projected 26–35 percent supply deficiency. The City of Santa Barbara is also in Stage III with a 30 percent conservation target, and the City of Santa Maria is in Stage I with a 16 percent conservation target. Clearly, the drought is not over for Santa Barbara County.

So what does this mean for the future of Central Coast development?

First, California's "new normal" of drought-to-deluge shows that conservation and diversification of supplies remain imperative. This cycle will only worsen with climate change. As a result, it is increasingly important for water providers to account for these new conditions in every aspect of water planning. In Santa Barbara County, water providers are responding by developing new local supplies, such as recent efforts by the City of Santa Barbara to refurbish its desalination plant, which will soon meet one-third of the city's water needs. Carpenteria is looking to develop recycled water supplies to serve non-potable demands. And most of Santa Barbara County's water providers are considering advanced treatment of wastewater to prepare for the future legalization of direct potable reuse (toilet to tap).

Next, the resistance to new development during California's drought shows that most people do not realize that cities and counties plan for development in long-term planning documents, and that the old housing stock is responsible for the lion's share of residential water use. In fact, the majority of homes in Santa Barbara County were constructed long before there were any water-conserving plumbing standards on the books. This is why all residents are required to reduce water during drought.

In contrast, water-efficient fixtures (toilets, showerheads, faucets) must be installed in new developments pursuant to the California Green Building Standards Code. Because state policies have succeeded in substantially reducing indoor water use, the new frontier in water conservation innovations focuses on outdoor use. Residential, commercial, industrial and institutional projects that require a permit, plan check or design review are subject to the state's 2015 Model Water Efficient Landscape Ordinance, which restricts the amount of turf. New homes must be equipped with irrigation controls that adjust automatically to weather conditions and soil moisture. Some projects are making design modifications to collect rainwater and stormwater on-site, and installing graywater systems.

Because new construction is water efficient and only accounts for one percent of the current California housing stock, most water providers smartly have not blocked new development. Instead, they recognize that water use in old homes must be addressed if California is to achieve con-

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# Anatomy of a Tax Resolution Practice

BY KEMBLE WHITE

We are barraged by advertisements from tax resolution firms offering to settle tax accounts for pennies on the dollar. I have on my website a blog entitled “The Problem with Tax Resolution Firms” in which the most advertised tax resolution firms at the time the article was written are described. Each of those firms was out of business within three years. Why the high failure rate? I think there are two reasons. First, the tax resolution firms spend their money on expensive TV advertising and sales people; they have nothing left to staff themselves with competent people. Second, competent people are hard to find. Most of the TV advertisers have, at best, a superficial understanding of the complex problems that need to be solved. When they take the money and do not do the work, they get sued by state attorneys general, and are soon out of business.

A tax resolution practice deals with non-filers, collection problems, and audits.

**Non-Filers.** Why do people not file tax returns? Often it is because there has been some trauma: a spouse died or spouse left, there is addiction to cocaine or alcohol, or there are other major medical issues. There are a lot of cases where people are financially and emotionally exhausted by the care of elderly parents. It is important to understand the underlying problems and try to resolve them because if the underlying problems are left unresolved, the tax problems are likely to recur.

**Substitutes for Returns.** If significant income is reported to the tax agencies by payors, the tax agencies prepare returns (called substitutes for returns) for the taxpayers under the authority of IRC 6020(b) or comparable state statutes. These returns generally overstate net income as they do not give credit for available dependency exemptions, the cost basis of sold assets, or for business deductions available to any operating business. They may also understate gross income because most customers don't issue Forms 1099. Think about a law practice that grosses \$1M. The 1099 total may be \$100,000. These returns need to be reworked

to understand what the correct numbers are.

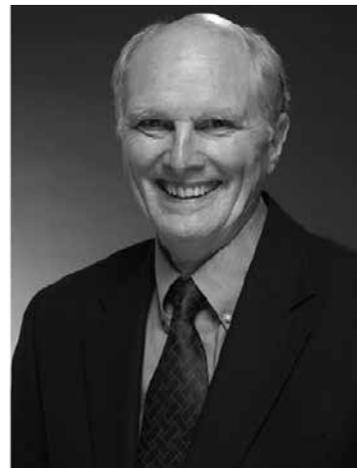
**Penalties.** There will be late filing penalties totaling 25%, which can be abated for “reasonable cause.” Reasonable cause is subjective. If there is a good story, it needs to be told and documented. Reasonable cause arguments are better received if the taxpayer is in current compliance and if substantial payments on the underlying accounts have been made.

The remedy in non-filer cases are to prepare and file the tax returns and then to work on the collection problems. The amount of work in preparing delinquent returns depends on the adequacy of the client records. Underlying corporate or partnership returns may be needed.

**Collections.** Collection cases start with the preparation of a detailed financial statement, a review of the most recent income tax returns, and an assessment of future income to understand the assets and cash flow available to deal with the problem. Remedies to consider are payment agreements, compromises, waiting out the statute of limitations and bankruptcy.

**Payment Agreements.** In cases where there are limited assets, and where monthly necessary living expenses exceed income, the IRS is asked to place the account in currently uncollectible status. Where the financial statement shows available cash flow, there is an attempt to negotiate an agreement that fits the cash flow. In cases where there are California and federal deficiencies, it is generally best to start dealing with the California deficiency because it is more aggressive, its balances are smaller, it has a longer statute of limitations, and payments to the state can be used as a deduction on the IRS financial statement. As cash flow decreases, the payment may need to be renegotiated.

**Compromises.** IRS can compromise a tax liability if there is doubt as to liability, doubt as to collectability, or if collection would cause undue financial hardship on the taxpayer. Liability issues are addressed through amended tax returns. In collectability cases, IRS wants to see, as a minimum offer, the equity in assets plus what can be collected under an



Kembler White

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# In The Chumash Wilderness

BY JAMES M. SWEENEY, ESQ.

The highest peaks near the confluence of Santa Barbara, Ventura, and Kern Counties form the ridge of Mount Abel, Grouse Mountain, Sawmill Mountain, and Mount Piños. From June 8<sup>th</sup> through 11<sup>th</sup> this year, a group of Allen & Kimbell attorneys, along with friends and family, explored those peaks.

John Parke organized the adventure, and was joined by Charles “Kim” Kimbell, James Sweeney and Joseph Billings. John’s son Will Parke accompanied these lawyers, along with friends Michael Benedict, Peter Schuyler, and Peter’s wife, Lisa Stratton. Joe’s brother Sam Billings rounded out the humans. The expedition would not have been complete without John’s Great Pyrenees Porthos, a 22-month-old male with boundless energy. Porthos carried a pack like everyone else.

After Joe finished a deposition on the morning of Thursday the 8<sup>th</sup>, he, Will, Sam and James headed for the first night’s rendezvous – car camping at the top of Mount Abel, elevation 8,300’. The route was past Ojai, up highway 33, over Pine Mountain summit, and down into the Cuyama Valley to Quatal Canyon Road. This group first met Peter and Lisa in Quatal Canyon, although without realizing it. A few miles along the dirt road, they passed a couple who were stopped to inspect some unique plant life. This should have been no surprise, as Peter and Lisa are both expert botanists. In fact, Peter is currently serving as President of the Board of Trustees of the Santa Barbara Botanic Gardens. With botanic specialist Michael Benedict – of the Sanford & Benedict Vineyard – also joining the party, the flora of the Chumash Wilderness held few mysteries. Much genus and species type latin was thrown around over the course of the weekend.

Continuing to the top of Abel, the first group met John and Porthos. Lisa and Peter arrived presently, followed by Kim and Michael. Everyone feasted that Thursday night, knowing that for the next few days the meals would be freeze dried.

After breaking camp the next morning, we drove a mile or so to park at the trail head. The first part of the trail not only headed straight south, it also seemed to head straight down, losing about 600’ of elevation in just over a half mile. Two

days later, of course, the final hike up and out would end on this steep pitch. Friday morning, though, heading back up to the ridge at Grouse Mountain, the 600’ was regained over a more leisurely mile and a half. The goal was Sheep Camp, which has one of the few springs in the area, and is just a mile or so from where the trail, bearing south and east, regains the ridge. Like the first night’s camp on Abel, Sheep Camp is also located at around 8,300’. Even though it was June, the weather report for these elevations called for cold. But as it turned out, the temperature the first two nights stayed in the balmy mid-40s.

After setting up at Sheep Camp, six of us headed east for a day hike to the highest peaks, Sawmill and Mt. Piños, both of which top out at just over 8,800’. Kim and James were satisfied with reaching the top of Sawmill, since dropping down into the saddle between Sawmill and Piños, and then summiting Piños, and then coming back, would effectively double the total vertical climb for that first day on the trail. But Lisa, Sam, Joe and Will were undeterred, and pushed on to the top. Those four climbed all four peaks in the range. Lisa, especially, is an amazingly strong hiker.

Friday brought a descent. The first segment took us from Sheep Camp back up north and west to the ridge, and then dropped back down the north side of the ridge to a fork in the trail. Continue heading north and uphill from that junction, and we would return to the cars. Head west and down, and the trail would take us to our destination at Mesa Springs camp, another one of the few local water sources.

On the way down from the ridge to the junction we had passed two large troops of Boy Scouts headed to Sheep Camp, so it’s good that we had camped there Friday night. Saturday would have been crowded. Still, on the way down from the junction to Mesa Springs we started passing bear signs, including many sizable tracks. Maybe we would have company after all.

Sometimes, downhill is more challenging (*i.e.*, painful) than uphill. It’s especially hard on the feet, but eventually everyone made it down to Mesa Springs at an elevation of 6,000’. Mesa Springs lies near the northeast edge of San Emigdio Mesa, which in turn starts around the northeast end of Apache Canyon. The Mesa is covered partially with pinyon pine and juniper woodland, and partially with one of the largest high-elevation meadows in this part of the state.

The views to the south and west, back toward Pine Mountain (not to be confused with Mt. Piños) and Big Pine, were stunning. This was especially true in the very early morning (taking John’s word for it), when a layer of clouds covered the Mesa, illuminated by both the rising sun and the setting full moon.

Saturday night finally lived up to the weather reports, and

we woke to patches of frost. Apparently, lower elevations aren't always warmer. At least the low temperatures got everyone up early and near the campfire, where we planned the final day. There were two possibilities: back up the way we had come about 2,300 vertical feet to the vehicles, or out on the trail to the Toad Springs camp at the top of Quatal Canyon Road. Anyone who walked out that way could be picked up by the others on the drive back. We knew a portion of the trail to Toad Springs had been washed out, and overall the route contained many rises and falls, but the allure of seeing a new stretch of country won out for five of us. The other four chose the steep climb back up to Mount Abel – rather bearing those ills we had, than flying to others that we knew not of.

Several hours later, miraculously, we actually reunited at Toad Springs. The only one who missed the celebration of cold beer and watermelon prior to the final drive home was John Parke, who had arranged the entire trip. John couldn't wait around after hiking back up to his car at Abel. He had to be in LA Superior Court first thing Monday morning to deliver closing arguments in an ongoing trial. Fortunately, there's nothing like a few days away from it all to organize your thoughts. ■

*James M. Sweeney is a civil litigation partner in Allen & Kimbell, LLP, and a past Editor of Santa Barbara Lawyer Magazine. His interests outside the office include hiking and backpacking.*



*James on Sawmill summit*



*Chumash pictographs that we found near San Emidio Mesa*



*The whole [sic] crew*

White, continued from page 8

installment agreement during the time left on the statute of limitations. The dream compromise case is one with little equity in assets, little income, sympathetic facts, and a relative who is willing to fund the agreement. The person filing may often get turned down at the first level, but get what was requested on appeal. Compromise cases take years.

*Statute of Limitations.* IRS has a 10-year statute of limitations on the collection of an income tax account that starts with the date of assessment. The statute is often an appealing remedy if there is not too much time left on the statute, and if collection activities can be controlled by a payment agreement or uncollectible status. California has a 20-year statute.

*Bankruptcy.* Income taxes should be dischargeable in a Chapter 7 bankruptcy if all of the following conditions can be met:

1. The bankruptcy petition must be filed after the accounts are three-years-old.
2. If the returns are filed late, two years must pass between the filing date of the returns and the filing date of the bankruptcy petition.
3. In respect to audit deficiencies, 240 days must pass from the date of the audit deficiency assessment and the date of the filing of a bankruptcy petition.
4. Substitute for return liability is not dischargeable on the theory that the taxpayer has not filed a return and that non filing excludes the accounts from discharge.
5. There must be no fraud associated with the return.

*Means Testing.* In cases where more than one-half of the liabilities consist of consumer debt and there is enough cash flow to support a payment plan, the bankruptcy system tries to force Chapter 7 filers into Chapter 13. Taxes are not consumer debt.

The bankruptcy planning process involves evaluation of all debt, figuring out how to work through the means testing rules, and properly timing the filing of a petition to maximize discharge. Bankruptcy offers the appeal of being able to deal with all creditor issues in one forum. As a financial planning matter, obtaining a discharge and a fresh start without a long-term payout is very compelling. My closing argument for a Chapter 7 is that cash flow required to retire debt under a six year payout plan almost doubles the amount of principal when interest, penalties and the state and federal income taxes that must be paid on income used to pay the debt are taken into consideration. Most

payout arrangements don't work: the Chapter 13 discharge rate is only 10%–15%.

**Audits.** The percentage of tax returns audited is extremely low. Audits are increasingly done by correspondence. The IRS computer looks at a return and generates a letter asking about specific items. More intense audits occur, especially in respect to business returns.

How does one handle an audit? One approach is to start with the conduct of an internal audit to try to understand what all the correct answers are. That may be necessary for clients who have inadequate books and records. In those cases it is often necessary to redo the tax return by going through all the records, preparing an income statement and creating an audit trail that proves up income and expense. The auditor's approach to inadequate records is to disallow all expenses reflected on a business return. That may force a rework of the returns with adequate accounting.

The client should be protected from direct questioning by the agent. The return preparer may have conflicts or know too much. A representative who has not prepared the return may say "I do not know" to every question and then get back to the agent with accurate answers. After the agent responds, the representative and client may either agree with it or work further as needed with the agent, the manager, Appeals, or the Tax Court. This approach does not overwork or overbill the case and it keeps representative and client from getting into issues that IRS may not raise.

*Foreign Assets.* Taxpayers who have foreign bank accounts with more than \$10,000 deposited any time during the tax year are required to file FBARs (Foreign Bank Account Reports) with Treasury in addition to reporting the income on the US income tax return. US taxpayers who own interest in other foreign assets may be required to report these separately. Penalties for noncompliance can be staggering.

*Working with the Tax Man.* The best approach dealing with audit or collection personnel is to make their life easy. A supervisor at IRS once said to me, "Kemble, we do brilliant work here, but we are not judged on the brilliance of our work. We are judged on our ability to be handed a file, to properly document it, and get it closed." We can often best serve our clients by doing the work needed to document the government file and get it closed. ■

*Kemble White is a tax attorney based in Santa Barbara. He is a former trial lawyer for the IRS Office of Chief Counsel, and he has more than 25 years in private practice resolving problems with the IRS and state tax agencies. He can be reached at [KembleWhite@cox.net](mailto:KembleWhite@cox.net), and his website is [www.kemblewhite.com](http://www.kemblewhite.com)*



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# SBCBA Annual Barbecue

A million thanks from the Santa Barbara County Bar Association to all who joined us for our Annual BBQ at Manning Park. Special thanks to our talented and enthusiastic volunteers (some of whom have generously contributed their considerable skills for decades!):

- Chefs Rusty Brace and Mack Staton (HUGE thanks to Mack for his much needed assistance in unloading and in clean-up) for the delicious dinner entrees, along with their highly capable crew members: Tom Foley, Mike Denver, Marisa Beuoy, and Dave Tedesco;
- Expert Bartender Will Beall & his indispensable team of one: Eric Burkhardt;
- Sommelier Joe Liebman who yet again donated the fine wine (as always, the compliments flowed as well!); and
- Beer brewer Greg Herring who shared his excellent home brew with us.

More gratitude goes to SBCBA Board Member Elizabeth Diaz for helping to organize, to SBCBA Events Chairs Joe Billings and Steve Dunkle, and Team Members, Jeff Soderborg and to Deborah Boswell for help in carting the ice, and to our ace photographer, Michael Lyons.

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Above: Lorraine Pereverziev, Virginia Fuentes, JJ Haller, Judge Michael Carrozzo. Far left: Dave Tedesco manning the BBQ



Will Beall, Eric Burkhardt



Jana Young and Ruben Escobedo



Allegra Geller-Kudrow, Cassandra Glanville, Cyndi Hitsman, Erin Schaden, Deanna Cedra



Dave Tedesco, Zoltan Puskas, Victoria Lindenauer, Chef Mack Staton



Judge George Eskin (ret.), Greg Herring, Danielle De Smeth



SBCBA Pres. Mike Denver and Past Pres. Mack Staton serving up the feast



Sean Barnwell, Morgan Davis, Connor Cote, Brian Daly and Mack Staton in back



Bartending team Eric Burkhardt and Will Beall serving Deanna Cedra and Erin Schaden



Bill Poulis, Senator Hannah-Beth Jackson, BBQ Team Member Tom Foley

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# The United States Commission on Civil Rights

BY ROBERT SANGER<sup>1</sup>

The current Administration has made substantial inroads into dismantling the enforcement of civil rights in this country. This has occurred through Executive Orders, the fiat of appointed officials and budget cuts. Of course, most of the enforcement of civil rights is through regulation, administrative action and oversight by federal agencies. A small, but important portion is by way of criminal law enforcement investigation and prosecution. In addition, the criminal justice system itself has been subject to civil rights scrutiny. All of this has already been impacted adversely by the Administration with the promise of more.

Historically, the culture of respect for civil rights, although far from robust at times and in places over the last sixty years, largely has been maintained and promoted through federal enforcement. The focus in this month's *Criminal Justice* column will be on the United States Commission on Civil Rights and its concern that the enforcement of such rights has been subject to a serious threat since January of this year. The Commission is speaking out and is seeking to bring this threat to the attention of the legislature and the American people.

## **The U.S. Commission on Civil Rights**

The United States Commission on Civil Rights was created by the Civil Rights Act of 1957 most recently amended by the Civil Rights Commission Amendments Act of 1994.<sup>2</sup> For sixty years it has been the "independent, bipartisan, fact-finding federal agency" whose "mission is to inform the development of national civil rights policy and enhance enforcement of federal civil rights laws."<sup>3</sup> Their Mission statement goes on to say:

"We pursue this mission by studying alleged deprivations of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, or national origin, or in the administration of justice. We play a vital role in advancing civil rights through objective and comprehensive investigation, research, and analysis on issues of fundamental concern to the federal government and the public."

Most of us remember, or at least remember reading about,

the civil rights struggles that became prominent in the 1950's and 1960's.<sup>4</sup> It goes without much discussion that the history of civil rights struggles and civil rights violations go back much farther in our history as a nation. The First Nations of this continent have been victimized through slaughter, inhumane treatment and violation of their rights. People of Mexico have been discriminated against through bracero camps, denial of education and living wage. Slavery and Jim Crow laws have been and remain now part of a legacy that degrades and oppresses people of African descent in this country. The period of the 1950's and 1960's -- with sit-ins, voter registration, efforts to enter universities and schools of all sorts, integration of transportation -- was a period where civil rights came to the fore and formed the basis for federal action. And, this is when the United States Commission on Civil Rights was created.

There is so much more to do on all levels. Discrimination against other groups -- also with a long and appalling history -- has been recognized for what it is. The U.S. Commission has been focused on discrimination not only against communities of color but other groups and communities including LGBT, older people, people with disabilities and other marginalized groups. Clearly, the effort to have some semblance of equal protection and due process is the job of the government under the Constitution and the laws, such as the Civil Rights Act of 1886 and 1964.<sup>5</sup> The U.S. Commission on Civil Rights is charged by statute:

- "The Commission--
- (1) shall investigate allegations in writing under oath or affirmation relating to deprivations--
    - (A) because of color, race, religion, sex, age, disability, or national origin; or
    - (B) as a result of any pattern or practice of fraud; of the right of citizens of the United States to vote and have votes counted; and
  - (2) shall--
    - (A) study and collect information relating to;
    - (B) make appraisals of the laws and policies of the Federal Government with respect to;
    - (C) serve as a national clearinghouse for information



Robert Sanger

relating to; and

- (D) prepare public service announcements and advertising campaigns to discourage discrimination or denials of equal protection of the laws under the Constitution of the United States because of color, race, religion, sex, age, disability, or national origin, or in the administration of justice.”<sup>6</sup>

### ***Discrimination in the Criminal Justice System***

The job of the government to combat discrimination is far from done, though it is being thwarted from the top of the current Administration on down. Racism, gender, age and sex discrimination, “sanism,”<sup>7</sup> persist. Much of it affects the criminal justice system. One area where discrimination remains pervasive and is regrettably easy to document is in the application of the death penalty.

Bryan Stevenson, in his latest article for the *New York Review of Books*, “A Presumption of Guilt,”<sup>8</sup> reminds us that the patterns created long before the mid-twentieth century in this country have left indelible impressions that affect the criminal justice system. The death penalty, one would argue is an anachronism in this modern age. But, in this country, it is also a vestige of racism. It is not a coincidence that,

“African-Americans make up less than 13 percent of the national population, but nearly 42 percent of those currently on death row and 34 percent of those executed since 1976. In 96 percent of states where researchers have examined the relationship between race and the death penalty, results reveal a pattern of discrimination based on the race of the victim, the race of the defendant, or both.”<sup>9</sup>

To further appreciate the impact of a culture of slavery, racism, Jim Crow laws and lynchings, it is just a fact that the map of the United States showing where lynchings occurred historically from the Jim Crow days through the early part of the twentieth century can be overlaid with an almost identical map of the states which actually execute people on death row.

“More than eight in ten American lynchings between 1889 and 1918 occurred in the South, and more than eight in ten of the more than 1,400 legal executions carried out in this country since 1976 have been in the South, where the legacy of the nation’s embrace of slavery lingers. Today death sentences are disproportionately meted out to African-Americans accused of crimes against white victims; efforts to combat racial bias and create federal protection against it in death penalty cases remain thwarted by the familiar rhetoric of states’ rights. Regional data demonstrate that the modern American

death penalty has its origins in racial terror and is, in the words of Bright, the legal scholar, ‘a direct descendant of lynching.’”<sup>10</sup>

Of course, before Californians are too self-congratulatory, it should be noted that 75% of all death *sentences* imposed in 2016 were imposed in California. Executions are temporarily suspended while resolving the means of execution. However, California has the largest death row in the western world with 747 people awaiting execution. When executions start again, there will a parade of people being led to death who are all poor, disproportionately of color, and disproportionately suffer from mental illness and have histories of abuse and neglect. They are the marginalized of society.

### ***The Job of the Commission***

Of course, the Commission on Civil Rights cannot remedy these problems or the many others that persist in the United States. But they can, and apparently will, continue to advise the President and Congress on civil rights and will issue an annual federal civil rights enforcement report.<sup>11</sup> Although the President has been able to place people in charge of agencies who have carried out his agenda to dismantle civil rights enforcement,<sup>12</sup> the President has limited influence on the Commission.<sup>13</sup> Chair Catherine E. Lhamon states: “For 60 years, Congress has charged the Commission to monitor Federal civil rights enforcement and recommend necessary change. We take this charge seriously, and we look forward to reporting our findings to Congress, the President, and the American people.”<sup>14</sup>

Meanwhile, whether the Commission gets around to an issue as difficult as the death penalty, they are commencing a two-year assessment of federal civil rights enforcement. The review is looking at budgets and staffing levels for the civil rights enforcement agencies. The Commission is specifically “concerned” about the actions of the Department of Justice including the cutting of 121 positions in the Civil Rights Division and de-emphasis on combating discrimination. They are also concerned about the Departments of Education, of Labor, of Housing and Urban Development, of Health and Human Services, the Environmental Protection Agency and the Legal Service Corporation and the budget cuts and shifts of emphasis away from civil rights enforcement.<sup>15</sup>

The progress that has been made over the last 60 years in federal civil rights enforcement has been halting and far too little. Civil rights are not secure in this country, but compared to the 50’s and 60’s the progress has been demonstrable. Yet, this Administration is systematically dismantling a good portion of what has been accomplished.

This will be a setback that will take decades to recover from if a subsequent administration or a Congress with courage steps up and recommits the federal government to civil rights. There was nothing great about the status of civil rights enforcement in this country when the U.S. Commission was formed in 1957 and reaffirmed in 1964. It was a bloody and deadly struggle. One can only hope that the Commission helps preserve the sense of history and urges that we move forward. It will then be up to citizens and legislators with a conscience to fight to regain federal civil rights enforcement. ■

*Robert Sanger is a Certified Criminal Law Specialist and has been practicing as a criminal defense lawyer in Santa Barbara for over 40 years. He is a partner in the firm of Sanger Swysen & Dunkle and Professor of Law and Forensic Science at the Santa Barbara and Ventura Colleges of Law.*

ENDNOTES

- 1 ©Robert M. Sanger.
- 2 42 §§ 1975, 1975 note, 1975a to 1975f
- 3 U.S. Commission on Civil Rights webpage: <http://www.usccr.gov/about/index.php>.
- 4 The author was born in Virginia in 1949 and attended school before the decision in *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954). Of course, Brown made little difference in Virginia

since the state resisted integration and, for that matter, had to be told by the Supreme Court in 1967 that laws prohibiting marriage between people of different races were unconstitutional. (*Loving v. Virginia*, 388 U.S. 1 (1967)). While the overt racism of the South was remarkable to observe, it cannot compare with the experiences of those who were and are subjected to discrimination there or elsewhere.

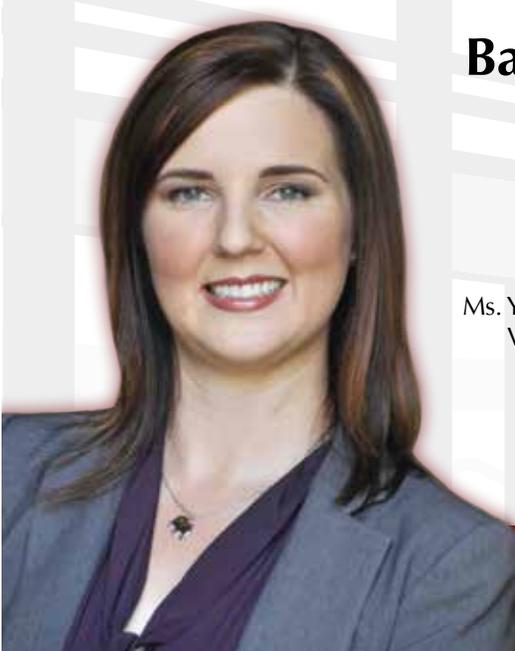
- 5 42 U.S.C.A. §§ 2000e et seq.
- 6 42 U.S.C.A. § 1975a.
- 7 Michael Perlin, Deborah Dorfman, *Sanism, Social Science, and the Development of Mental Disability Jurisprudence*, 11 Behav. Sci. & L. 47 (1993).
- 8 Bryan Stevenson, *A Presumption of Guilt*, New York Review of Books, July 13, 2017.
- 9 Id.
- 10 Id.
- 11 42 U.S.C.A. § 1975a(c).
- 12 See the Memo, “The U.S. Commission on Civil Rights Expresses Concern Regarding Federal Civil Rights Enforcement Efficacy and Priorities,” (June 16, 2017) <http://www.usccr.gov/press/2017/06-16-Efficacy-of-Federal-Civil-Rights-Enforcement.pdf>.
- 13 As vacancies occur, the President can appoint up to four of the eight members of the Commission but no more than four of the total number can be of the same political party. 42 U.S.C.A. § 1975.
- 14 Memo, “The U.S. Commission on Civil Rights Expresses Concern Regarding Federal Civil Rights Enforcement Efficacy and Priorities,” (June 16, 2017) <http://www.usccr.gov/press/2017/06-16-Efficacy-of-Federal-Civil-Rights-Enforcement.pdf>.
- 15 Id.



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# Motions

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To learn more about Brownstein's community engagement program, visit [www.bhfs.com/community](http://www.bhfs.com/community). ■

## Brownstein Assists Santa Barbara Wildlife Care Network with Cleaning, Repairs

Brownstein Hyatt Farber Schreck's Santa Barbara office volunteered their time to assist the Santa Barbara Wildlife Care Network with maintenance projects on June 17<sup>th</sup>.

As part of the firm's Karma Program, Brownstein attorneys, staff and family dedicated their time to cleaning up the facility and animals' enclosures, and moving old cages and wood piles. Brownstein Associate Hillary Steenberge serves on the Network's board of directors.

Santa Barbara Wildlife Care Network is a nonprofit, volunteer organization that rescues and rehabilitates injured



## THE OTHER BAR NOTICE

Meets at noon on the first and third Tuesdays of the month at 330 E. Carrillo St. We are a state-wide network of recovering lawyers and judges dedicated to assisting others within the profession who have problems with alcohol or substance abuse. We protect anonymity. To contact a local member go to <http://www.otherbar.org> and choose Santa Barbara in "Meetings" menu.

## ***Santa Barbara Lawyer* magazine welcomes the following new attorneys recently sworn-in at the Courthouse.**

### ***Jessica Anticouni***

Jessica Anticouni recently graduated with high honors from Santa Barbara College of Law. She took and passed the February 2017 California Bar Exam. Jessica plans to work with her father, Bruce Anticouni, and practice employment law.

### ***Chandra Carr***

Chandra Carr is mother of 13-year-old Julian and is a small business owner. She worked her way through law school at Santa Barbara College of Law.

She comes from a varied background of the arts and business. Prior to starting a medical home health service, she worked at the Louvre in Paris and various art organizations.

While studying law she worked at McCarthy and Kroes law firm where she gained experience in civil litigation. Chandra plans on continuing a career in litigation here in Santa Barbara.

### ***Shelby Hall***

Shelby Hall is from Hobe Sound, Florida and completed her undergraduate degree at the University of Florida. She attended law school at the University of Denver in Denver, Colorado, graduating with the class of 2016. During the summer of her 2L year, family ties led her to Santa Bar-

bara where she interned with local technology company, Sonos. Upon graduation, she was thrilled to return to Santa Barbara after accepting a full-time position with Sonos as Legal Counsel.

### ***Wendy Nwosu***

Combining a background in environmental and public law, Wendy Nwosu brings diverse legal experience to her natural resources work at Brownstein Hyatt Farber Schreck.

At Brownstein, Wendy works with various partners across the natural resources practice area on a variety of topics, including water law and water rights, land use, environmental law, and public law.

Prior to Brownstein, she worked as a faculty research assistant in the Georgetown University Law Center Library. She also interned with Public Employees for Environmental Responsibility (PEER), assisted with legal research pertaining to family law at law offices in Ontario, California and worked in Georgetown's Institute for Public Representation (IPR) Clinic – Environmental Law Section.

Wendy received her J.D. from Georgetown University Law Center and her B.S. from the University of California, Riverside.

### ***Mark Stephen***

Mark Stephen attended UCSB and the Santa Barbara College of Law. For the last three years he has worked for Attorney Mark Aijian doing trust and estate work. Mark lives in Carpinteria with his wife, Heather, and their two children, Audrey and Jon. ■

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# Simple Summer Tech Tips

By MICHELLE P. BACA, PhD – BUSINESS DEVELOPMENT & MARKETING MANAGER, CIO SOLUTIONS

The concept of IT that “just works” is at best a myth and at worst a marketing device. Whether your IT is outsourced or in-house there is actually a great deal of care and consideration that goes into making sure your technology, and by extension you, are able to “just work.” In fact, the phrase “just work” elides much of the work that goes into keeping everything and everyone working. You don’t, however, have to be an IT expert to make sure that the tech you rely on is working. Here are some tips for simple summer tech maintenance that will help you make sure everything just keeps working.

*Keeping Things Clean* - Summer is a good time to physically clean any workstations in your office with a can of compressed air. Blow out any holes in your computer with the can. If you’re comfortable, unplug the computer and take the side panel off first for a more thorough cleaning. This will help your computer run better (and cooler) all summer and all year.

Use the rest of the can on things like your DVD player or other electronics around the house.

Always keep the compressed air held up; tilting 90 degrees to the side can spit out frozen liquid that can damage electronics. Don’t have a compressed air can? Office supply stores and pharmacies carry them for around \$5. Still, if you set your hair dryer on the high-cool setting, you can achieve the same result if you’re willing to wait a little longer.

Take some time to inventory your equipment. Is

everything working? Is everything up to date? Is everything backed up?

*Planned and Unplanned Power Outages* - Depending on where your office is located and how hot it gets, your place of business might be subjected to power outages, planned or unplanned. A sudden loss of power can be rough on your equipment, and it may be difficult to get everything back up and running again.

*Planned Power Outages* - You should receive a notice from SCE or your building manager. A planned outage means that you’ll be able to gracefully shut down your equipment. If you have in-house or outsourced IT let them know so they can come in and shut everything down and be onsite the next day to bring everything up. If you’re on your own, make sure you save all your work, and shut everything down before you leave the office. Don’t just put things to sleep, shut everything down and arrive early the next morning so you can bring everything back up and make sure it works before you have to start working.

*Unplanned Power Outages* - The best way to prepare for an unplanned outage is by making sure you have the right equipment. Having a good UPS and testing/replacing the batteries to ensure it will hold up the systems long enough to shut them down during a prolonged outage.

*Onboarding and Off-boarding Interns and Summer Employees* - Do you have interns or summer employees? Does your employee onboarding and off-boarding include a plan for keeping your technology secure?

Develop a standard for passwords so that your interns and seasonal employees are adhering to a minimum security standard.

Document all passwords and logins for these employees so that you can remove their access once they are gone.

Make sure you have admin access to any workstations or laptops that your interns might use so you can limit their access to sensitive information. ■



Michelle P. Baca, PhD

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*Michelle P. Baca, PhD, works at CIO Solutions, a Managed Services IT Provider that has been in business on the Central Coast for over 30 years. She has explored all aspects of the business from Operations and Project Management to Business Development. She can be reached at mbaca@ciosolutions.com.*

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So as to provide opportunity for the victors to boast of their athletic conquests, a post golf and tennis reception will begin at 5:00 at the Sandpiper Grill, to be followed by dinner starting at 5:30  
Dinner is \$50 per SBCBA Member/\$55 per non-SBCBA Member (*after September 8th: \$60/\$65*)

**GOLF**

Meet at the Sandpiper Golf Course at 11:30 a.m. Shotgun starts at 12:00 pm. Team prizes for 1<sup>st</sup> & 2<sup>nd</sup> places. Individual prizes for Longest Drive and Closest to Pin! Players must give some estimate of his/her handicap. You will be contacted regarding team assignments.

**\$105 to Play per SBCBA Members/\$110 per Non-SBCBA Members** – Includes green fees & cart.  
(*Fee after September 8th: \$110/\$115*)

**\$150 for BOTH Golf & Dinner** per SBCBA Members/ Non-SBCBA Members \$155  
(*\$160/\$165 after September 8th*)

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Men and women will participate in the tournament in all levels.

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(*Fee after August 12: \$35/\$40*)

**\$75 for BOTH Tennis & Dinner** per SBCBA Members/Non-SBCBA Members \$80  
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Steinfeld and Diaz, *continued from page 7*

siderable water savings. Some jurisdictions are adopting incentives to retrofit old houses, and establishing “cash for grass” programs that pay homeowners to replace lawn with native landscaping. Locally, we’ve seen a dramatic shift away from large green lawns to gravel, native grasses, and succulents.

Goleta Water District and Montecito Water District are anomalies—in 2014, both enacted a moratorium on new water service connections. Given the local housing crisis and the possibilities associated with conservation and water neutral development (where developers retrofit old homes in exchange for water), moratoriums are unnecessary, stifle innovative solutions, and adversely impact the region’s economy.

Overall, drought has not slowed development in California, but is changing the way projects are designed and how they obtain water. Developers moving forward in this new environment (and the attorneys who advise them) may no longer rely exclusively on local water providers for service. Developers are advised to determine if a property has water rights, and, if needed, to purchase water from a third party. After determining the quantity of water available for a new project, the next step is to incorporate water conservation features into initial design plans. Many developers are going well beyond what is required under current laws by developing uber-efficient projects. Not only does this increase a property’s value, but it improves the likelihood that a project will be approved, and may also decrease local opposition. Smart development *and* the application of water savings technologies to old housing can achieve a seemingly improbable result: flat or even reduced water use while allowing for planned growth. These strategies prove it is possible

to develop the housing needed to support the county’s growing population and workforce while living within our water supply means. ■

*Amy Seinfeld’s unique practice focuses on the intersection of land use and water law. Amy has more than a decade of experi-*

*ence in the permitting and development of controversial projects throughout the state. Jessica Diaz’s practice encompasses water rights litigation and transactions, regulatory compliance related to surface and groundwater, and counsel on a range of public law and land use issues. They can be reached at [www.bhfs.com](http://www.bhfs.com)*

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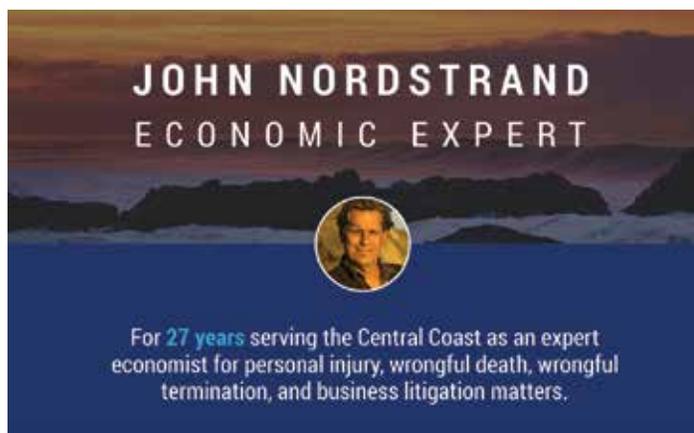
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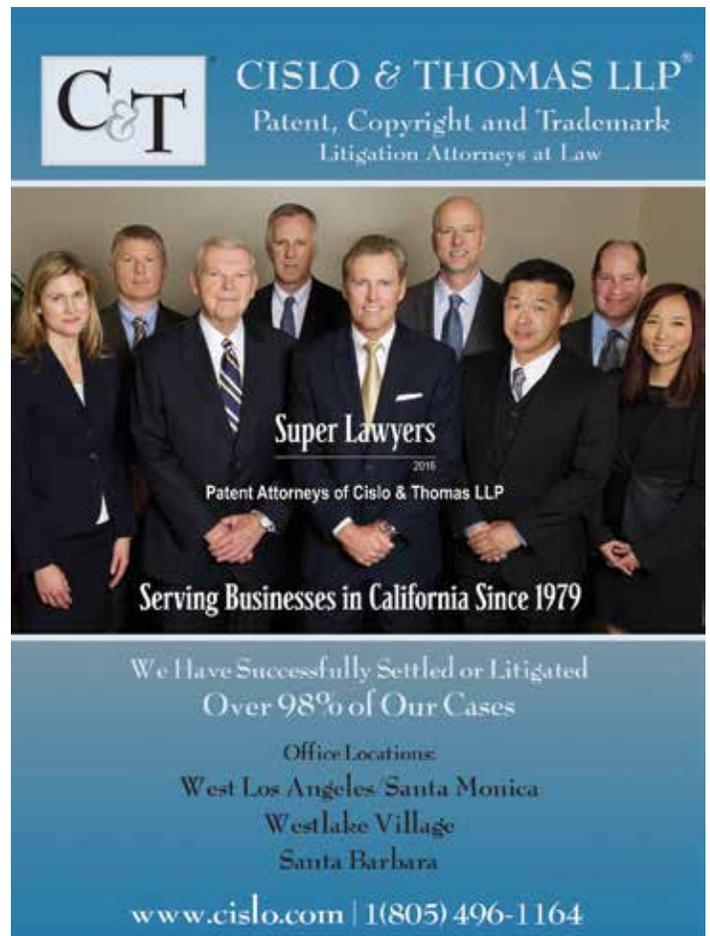
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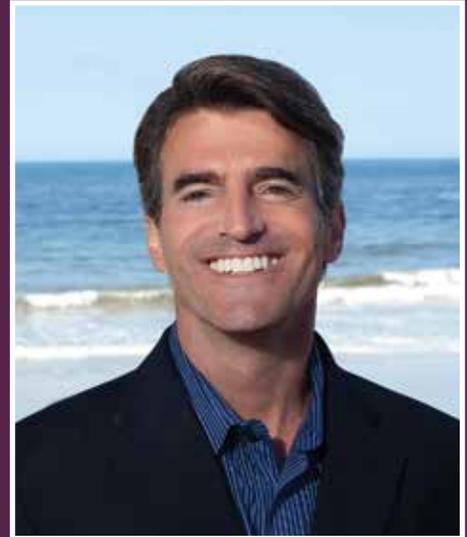
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