

# *Santa Barbara* Lawyer

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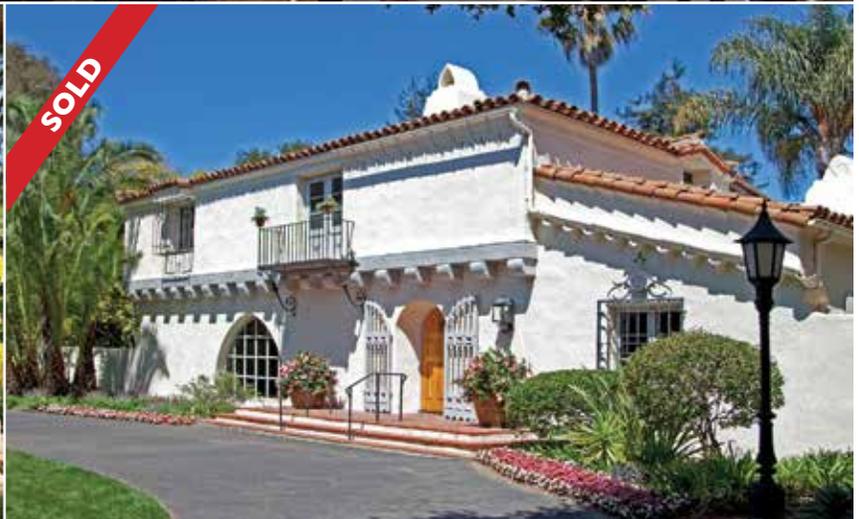
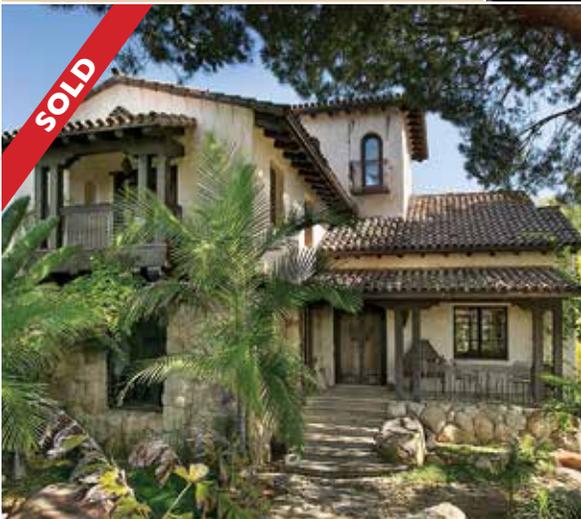
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# Mission Statement

Santa Barbara County Bar Association

*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.*



# Santa Barbara Lawyer

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Judge Hill with his Clerk, Gina Garrett, and Court Reporter, Sharon Reinhold.

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## Judge William L. Gordon

### 4/18/1930 – 4/29/2020

BY BETTY L. JEPPESEN

On April 29<sup>th</sup>, 11 days after his 90<sup>th</sup> birthday, the Santa Barbara legal community lost one of its best. William Loveland Gordon, “Bill” Gordon, was appointed Superior Court Judge in 1983 and served on the Bench for almost 20 years. As a retired Judge, he heard cases on assignment all over California.

Born in Cherokee, Iowa, he moved to Salinas, California at the age of 14 with his family. In college, he took advantage of a program combining college with military service. He received his degree in political science in 1953 from UC Berkeley. After spending additional time in the military, including service in Korea, he entered law school at Boalt Hall, UC Berkeley and was admitted to the California Bar in 1957.

He met and married Betty Bennet in 1956 while in law school and they welcomed three children into the world: Jennifer in 1957, Andy in 1960 and Kelly in 1964. The family moved into a home on the Mesa in 1960 where he continued to live for the next 60 years. Betty passed away in 1990 after 33 years of marriage. Bill Gordon married Carol Severson Lux in 1994 and spent the next 26 years with Carol until his death. He often remarked that was so lucky to have had the love and support of two wonderful women.

After law school, he worked for the State of California for a short time before joining the Santa Barbara law firm of Cavaletto, Webster, Mullen & McCaughey. His law partner, Tom Mullen, who was also an Army man, had recruited him from the Bay Area. He joined Rogers & Wilcox (later Wilcox & Gordon) until he rejoined his old firm, now known as Mullen & Henzell, LLP, until his appointment to the Bench.

Judge Gordon was an excellent Judge who presided over cases with courtesy and a quest for justice. He treated all attorneys with equal courtesy and appreciation. As one of the few women lawyers in Santa Barbara in the 1980’s, I sincerely appreciated his equal treatment of men and women lawyers. What mattered to him was professionalism and preparedness.

He was a good fit for the Army service and joined the Army Reserve 425<sup>th</sup> Civil Affairs Company in Santa Barbara from which he retired in 1990 as a Colonel and commanding officer of his unit. We all remember his military haircut

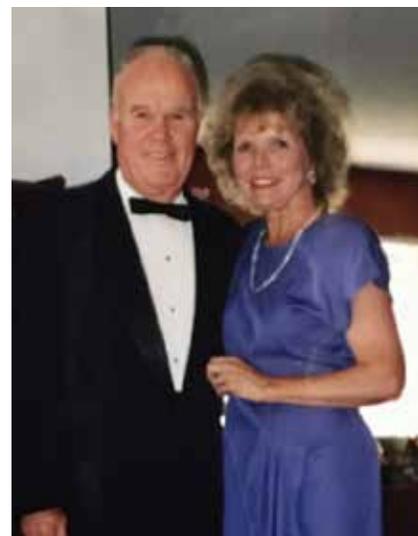


that he retained throughout his life.

Many members of our legal community have fond memories of Judge Gordon. Here’s a small sampling:

*Our careers ran pretty much along the same timelines. He often displayed a gruff and sometimes even intimidating demeanor. I think he did that intentionally. He certainly did not tolerate a lawyer who was unprepared or not civil. He cut those lawyers off at the ankles; very quickly and painfully, even for those who were fortunate enough to be just observers. On the other hand he was very responsive to anyone who was prepared and civil. In those circumstances he was invariably courteous and always fair. He had an inherent sense of humor and even a mischievous style that he often displayed to anyone watching for it. He had excellent “table feel” for knowing the right thing to do and he did it. He was certainly extremely kind to those who had a close relationship to him. Indeed, he was a romantic. He had a meticulous and organized style. He was a military man and proud of it. You would always see that his shoes were highly polished. ~ Judge Thomas P. Anderle*

*With the exception of Phil Wilcox, I have known Bill Gordon longer than anyone else in the legal community. He came to Rogers & Wilcox on April 1, 1964. He was gruff, talked loud, definite. Later went with Phil to Cavaletto Webster Mullen & McCaughey. Then he became a Judge and*



Continued on page 31

Bill and Carol Gordon

# Spotlight on Judge Brian Hill

## ***How long have you have been on the Bench?***

I was elected in November 2002 and was sworn into office by Judge Thomas Adams on January 3, 2003. I was a prosecutor in the Santa Barbara County District Attorney's Office from 1985-2003 and a research attorney for the Court of Appeal in Sacramento from 1981-84.

## ***Tell us about your education.***

I have an A.A. degree from Allan Hancock Junior College in Santa Maria (my hometown) and a B.A. in History from U.C.S.B. I received my law degree in 1981 from University of San Francisco. I also attended the University of Hawaii-Hilo for a year (as a basketball player...), and I spent a year at the University of Edinburgh in Scotland on a Rotary Scholarship in 1984-85.

## ***What advice would you offer to a new attorney?***

My advice is to develop a work ethic that is recognizable to all who interact with you. Also, make "your word your bond." Be mindful that a single instance of unethical or questionable conduct as a lawyer may haunt you forever—and can derail further professional ambitions.

## ***If you could change one thing about the judicial system what would it be?***

Most judicial officers and lawyers would love a system that is more efficient and expeditious. That is an aspirational goal that, in practice, is sometimes difficult to achieve. It is simply the case that due process and the orderly administration of justice take time and effort.

## ***Wisdom gleaned from the Bench***

It is absolutely necessary to treat every person who comes to court with fairness, dignity and respect. In our adversarial system one of the roles of the Judge is to bring some perspective and judgment to discussions of whether there is a wrong; how serious it is; and what is an appropriate response and remedy. A judicial voice should be more dispassionate and objective (at least hopefully) than the

advocates on each side of the case.

## ***Describe your style in the courtroom;***

I think others might be better at describing it, but I try to be formal when appropriate and informal when circumstances dictate. Having spent sixteen years in courtrooms prior to becoming a judge, I attempt to be sensitive to the issues associated with courtroom practice.



*Judge Brian Hill*

## ***Who were/are your mentors? What were important lessons they taught you?***

I admired greatly Court of Appeal Justice Robert Puglia, who I had an opportunity to observe and interact with from 1981-84. I learned a lot from former District Attorney Tom Sneddon and I am a great fan of Supreme Court Justices John Marshall Harlan (of *Plessy v. Ferguson* fame) and Robert Jackson.

## ***What do you love about your job?***

I can do what I think is right and just on a daily basis. I also love interacting and working with my staff—Court Reporter Sharon Reinhold, Clerk Gina Garrett, and Bailiff Harry Hudley.

## ***What do you do in your spare time? Hobbies?***

I enjoy sports, exercise, reading, gardening, making (and eating) "pandemic" sourdough bread. I am very involved in the lives of my children—even now when they are no longer home.

## ***Do you have advice for attorneys trying a case before your Bench?***

Do your best to be prepared and on time. Be candid in all your representations to the Court and counsel. Do not hesitate to politely correct a judicial officer if he/she mis-speaks or needs clarification. Judges should be committed above all else to reaching a decision result based on an accurate and correct understanding of the law and facts.

## ***Are there any changes in the legal community***

***you're excited about?***

I think that Zoom technology has great potential to avoid unnecessary personal appearances for routine matters.

***What do you believe is the biggest difference between practicing law and presiding as a judge?***

As a Judge you are required to weigh and balance the arguments on both sides of an issue and to remember that every decision has real life consequences for lots of people, many of whom are not in court.

***Who is your legal heroine (if any)?***

I think we live in a time where obeisance to legal and social orthodoxy obscures much of our reality. I admire those in our community with the courage to challenge the status quo. In legal history this would include giants on all sides of the legal spectrum—such as Thurgood Marshall and Antonin Scalia—whose voices were ultimately accepted by the majority. We should strive for the humility to understand that we might possibly be wrong about something we now accept as true. ■

# 2020 Bench and Bar Meetings

As Presiding Judge, the Honorable Michael Carrozzo has set the schedule for the Bench and Bar Meetings that will take place as follows:

August 27, 2020 • November 19, 2020

These Bench and Bar Meetings provide a forum for local members of the Bar to engage in an informal dialogue with the presiding judge as a means of raising issues and concerns that may not otherwise be addressed. All attorneys and paralegals are welcome to attend.

For any practitioners wishing to submit agenda items for consideration before any of the scheduled meetings, please email those items to Ian Elsenheimer: [Ielsenheimer@aklaw.net](mailto:Ielsenheimer@aklaw.net)

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*The Santa Barbara County Bar Association (SBCBA) stands in **solidarity** with the Black community and People of Color **against** all forms of **violence** against anyone based **on race**.*

The SBCBA's Mission Statement 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 to protect the independence of the legal profession and the judiciary." In alignment with our mission, SBCBA believes that all people of color should be treated with equal justice and dignity.

The abuse of power and racial bias exhibited by law enforcement recently highlighted in the media did not only occur nationwide, but locally as well. The SBCBA fully supports the Santa Barbara Police Department, Santa Barbara County Sheriff, Santa Barbara County District Attorney's office, and law enforcement agencies and their important role in enforcing laws, maintaining public order, and public safety. Yet we acknowledge that we, the Santa Barbara County community, are not exempt from this abusive behavior by law enforcement. The SBCBA does not support or tolerate abusive behavior or abusive conduct that exists in law enforcement, locally, statewide and in our Country.

The death of George Floyd, and other Black people before and after him, at the hands of racist law enforcement officers has caused our Country to reassess where we are in terms of race relations. Change needs to happen and it can start with the acknowledgement that racial injustices exist. The people of the United States need to find a remedy. We need to look at our own actions and see how we can support the equality movement.

SBCBA would like to do its part to support this movement of racial justice and have decided to feature articles focusing on racial injustices occurring locally and statewide in the *Santa Barbara Lawyer* magazine. SBCBA is soliciting articles for the magazine that focus on racial and social injustice issues in our region or discussion of broader legal frameworks that have recently come to the forefront in the fight for racial equality. We want your voices to be heard and encourage you to submit articles to Editor Rosaleen Wynne at [rosaleen@jfcotelaw.com](mailto:rosaleen@jfcotelaw.com).

Additionally, SBCBA's President Elizabeth Diaz's goal for 2020 is to have the SBCBA become more inclusive and seek out attorneys with diverse backgrounds to be involved and included in the organization. It is important and beneficial to SBCBA to have practicing lawyers from diverse sectors of the legal community participate and bring valuable perspectives to the organization. With that, SBCBA announces the creation of a **Diversity and Inclusion Task Force** of the Santa Barbara County Bar intended to eliminate bias and enhance diversity. The mission of this task force is to work towards having all persons of different backgrounds within the legal field participate in our Association, our profession, and the justice system. This is a call to members of the SBCBA and legal community that would like to be part of this task force to contact Elizabeth Diaz at [ediaz@lafsb.org](mailto:ediaz@lafsb.org) and join us in its efforts to eliminate bias and enhance diversity.

In Solidarity,  
The Santa Barbara County Bar Association

# Drilling Down on Aquifer Exemptions

BY TARA MESSING, STAFF ATTORNEY FOR THE ENVIRONMENTAL DEFENSE CENTER

The California Geologic Energy Management Division (CalGEM) and the State Water Resources Control Board (SWRCB) are considering a proposal to exempt oil and gas operations from federal protections under the Safe Drinking Water Act (SDWA) in the Cat Canyon Oil Field, Santa Barbara County (County). Requested by the oil industry, this exemption would allow operators in the Field to inject steam and oil-field wastewater through critical groundwater basins into deeper underground aquifers. Local communities, like Sisquoc and Los Alamos, as well as agricultural operations in the area depend on the clean groundwater provided by these basins, which are directly threatened by this proposal.

Located about 10 miles southeast of Santa Maria, Cat Canyon is a hotbed for new oil development. Many operators in the Field use extremely risky and carbon intensive oil extraction methods known as steam injection to loosen the heavy crude oil for extraction. A new oil and gas project proposed by TerraCore Operating Company, LLC (“TerraCore”) in Cat Canyon would double the County’s onshore oil production and drill hundreds of new steam injection wells through the Santa Maria Groundwater Basin. TerraCore needs to be granted this aquifer exemption to significantly expand its operations and generate more fossil fuels. Since 2017, the Environmental Defense Center (EDC), on behalf of our clients, Sierra Club Los Padres Chapter and Santa Barbara County Action Network, has opposed TerraCore’s project and the aquifer exemption proposal in administrative proceedings before local, state, and federal agencies.

## ***Illegal Injections into Non-Exempt Aquifers Has Occurred for Decades in Santa Barbara County***

Enacted in 1974, the SDWA establishes a cooperative federal-state program to protect underground sources of drinking water from underground injections.<sup>1</sup> Injection is a process by which fluids are introduced underground, such as for enhanced oil production or wastewater disposal from oil and gas operations. Congress passed the SDWA

to prevent injection which endangers drinking water in response to growing concerns that existing laws were not adequately protecting these resources.<sup>2</sup> “Congress concluded that the most effective way to ensure clean drinking water was to prevent pollution of underground aquifers in the first place, rather than to clean up polluted aquifers after the fact.”<sup>3</sup> The provisions under the SDWA are therefore preventive in nature.

Since 1983, California has enjoyed primary enforcement authority, often referred to as “primacy,” over its Underground Injection Control (UIC) program under the SDWA. To obtain primacy, a state must demonstrate that its standards are effective in preventing endangerment to underground sources of drinking water.<sup>4</sup> Upon granting California primacy, the U.S. Environmental Protection Agency (EPA) approved an aquifer exemption for areas within Cat Canyon. However, this exemption only covers a portion of the Field, hence TerraCore’s request now to exempt nearly the entire Field from SDWA protections.

Between 2011 and 2014, CalGEM discovered that 5,625 injection wells in 75 oil fields throughout California were illegally injecting contaminated fluids and wastewater into non-exempt aquifers, including aquifers underlying Cat Canyon.

To remedy these violations, EPA and CalGEM developed a corrective action plan, finalized in March of 2015. Unfortunately, the plan did not require all wells to immediately cease injecting into these critical aquifers. In fact, most of these illicit injections continue to date. Instead of addressing the serious lack of oversight of the UIC program, CalGEM is working with operators to catalyze a massive expansion of aquifer exemptions throughout California, particularly in coastal areas.

CalGEM offered a few rationales for not ordering the immediate cessation of all injections, claiming that it “would be ‘logistically difficult, as well as an inefficient use of agency resources’ and, because due process entitles affected companies the right to appeal cessation orders, [cessation] ‘would undoubtedly invite widespread, vigorous opposition, thereby thwarting the intended immediacy and needlessly jeopardizing the entire objective.’”<sup>5</sup> In reality,



Tara Messing

CalGEM manipulated the discovery of thousands of illegal injection wells into an opportunity for oil operators to increase operations.

Oil and gas operators in Cat Canyon took advantage of this opportunity by requesting an expansion of the existing exemption to cover nearly the entire Field, expanding well beyond the area of unpermitted injections. The application for this exemption expansion was completed by CalGEM in October of 2017. At that time, three of the operators had active applications with the County for new steam injection projects in Cat Canyon. Collectively, the projects would drill 760 new wells and more than triple the County's onshore oil production. After years of strong community opposition, two applicants have now withdrawn their applications, citing to uncertainties in the permitting process and plummeting oil prices. The only remaining project is proposed by TerraCore, which has been stalled before the Planning Commission for nearly a year.

### ***The Federal Criteria for Exempting an Aquifer Favor the Oil and Gas Industry***

Despite the broad protections for drinking water under the SDWA, EPA regulations—not the SDWA—created the aquifer exemption process.<sup>6</sup> Promulgated in 1980, and revised in 1982 in response to a lawsuit by the American Petroleum Institute, the EPA regulations allow for aquifers that do not now or in the future serve as a source of drinking water, based on certain criteria, to be exempted from SDWA safeguards.<sup>7</sup> No environmental review is conducted by EPA pursuant to the National Environmental Policy Act (NEPA) (or by CalGEM under the California Environmental Quality Act (CEQA)) prior to a decision on an aquifer exemption.

The federal criteria are severely insufficient to safeguard drinking water from underground injection, as confirmed by a 2014 Government Accountability Office report that identified numerous deficiencies in EPA's oversight of the UIC program.<sup>8</sup> The report documented twenty-one instances of contamination from underground injection into drinking water sources in California from 2009 to 2010. In 2015, the state legislature responded to this environmental and public health crisis by enacting more stringent criteria for exempting an aquifer under Public Resources Code Section 3131.

### ***The Aquifer Exemption Proposed in Cat Canyon Does Not Satisfy the State's Criteria***

As compared to the Federal criteria, the criteria promulgated by the state is facially stronger and imposes stricter standards, requiring that “the injection of fluids will not affect the quality of water that is, or may reasonably be,

used for any beneficial use,” and that “[t]he injected fluid will remain in the aquifer or portion of the aquifer that would be exempted.”<sup>9</sup> As applied here, the Cat Canyon exemption fails to satisfy either criteria.

First, the injection of fluids may impact groundwater quality in Cat Canyon. According to the California Office of Environmental Health Hazard Assessment, parts of Cat Canyon Oil Field are already ranked among the top 1% for groundwater threats and in the 90th percentile for drinking water contaminants, heightening concerns about degradation of groundwater quality if the exemption is approved.

The U.S. Geological Survey (USGS) is currently studying the impacts from oil and gas operations on groundwater quality in Cat Canyon, as authorized by California Senate Bill 4 of 2013. Cat Canyon was identified as a high priority study area based on the high volume of injection.

It is very likely that oil-field fluids and/or thermogenic gases will be detected in at least some groundwater wells throughout Cat Canyon given the preliminary findings in the Oxnard and Orcutt Oil Fields. In the neighboring Orcutt Oil Field, USGS preliminary results found mixing between oil-field fluids and groundwater in four of the sixteen wells sampled in the field.

In the Oxnard Oil Field in Ventura County, thermogenic methane was detected in at least two wells and possibly a third well. Notably, USGS found that the groundwater wells with the highest thermogenic signals were located near steam injection activities.

These initial findings by USGS in the Orcutt and Oxnard Oil Fields demonstrate the need for the state agencies to take extra care in making decisions that may impact the County's vital freshwater supply. To inform whether injected fluids will impact groundwater quality, EDC, our partner groups, and elected officials are advocating for the SWRCB to not issue a decision on this exemption until the USGS groundwater quality results for Cat Canyon are published and can be included as an additional layer in the analysis. Whether SWRCB will agree to this request is yet to be determined.

Second, the criteria mandates that injected fluids will not travel into waters of beneficial uses via underground pathways. The state, however, cannot make this finding. Detailed in two expert reports submitted by EDC, natural fractures, faults, and existing wells form underground pathways that may allow for fluid migration vertically or horizontally into drinking water sources. The reports explain that the geologic and tectonic configuration in the vicinity of the Cat Canyon exemption area is likely susceptible to the upward migration of fluids from exempted aquifers to shallower levels with drinking water. If injected

fluids reach drinking water aquifers, the chemicals in these fluids could degrade groundwater, potentially resulting in irreparable damage to water quality in the County’s critical groundwater basins.

Moreover, Cat Canyon is located in a seismically active region, increasing the risks from seismically induced fluid migration. Earthquakes can increase fracturing within formations, such as those underlying Cat Canyon, creating new pathways for contamination to flow upward into freshwater aquifers. Seismic activity can also unseal faults to convey polluted fluids into aquifers used for drinking water and by agricultural operations. A breach in a well casing after an earthquake could form a conduit for contamination to travel into drinking water aquifers and/or surface waters, particularly given the solubility of the contaminants found in produced wastewater.

Despite this technical evidence demonstrating inconsistency with the state’s criteria, the SWRCB has reached a preliminary conclusion—not yet finalized—that the proposed aquifer exemption meets state and federal standards to protect groundwater.

**Conclusion**

The SWRCB and CalGEM have a duty to protect the state’s water from risky operations and toxic injections under the SDWA. Approval of the aquifer exemption in Cat Canyon would not only be contrary to the preventive intent of the SDWA, but also in contravention of the state’s own criteria intended to preserve the quality of California’s water resources for all. Such a decision will also catalyze a significant increase in oil and gas production in the County using dangerous extraction techniques that threaten the drinking water relied upon by local communities. EDC is urging the SWRCB to take a hard look at this exemption, especially the precedent it may set, and deny the exemption. The health and welfare of local communities depends upon it.

*Tara Messing is a Staff Attorney at the Environmental Defense Center. Her work includes litigation and advocacy related to clean water, climate and energy, and open space and wildlife. Tara received her J.D. from the University of Maryland Francis King Carey School of Law with a certificate in Environmental Law.*

*Continued on page 15*



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## A Commercial Landlord's Dilemma: Is it Worthwhile to Pursue a Defaulting Tenant for Unpaid Rent? Six Questions to Ask Before Filing Suit

BY JARED M. KATZ

When a commercial tenant defaults in rent, the landlord must evaluate the cost efficiency of filing suit and likelihood of collecting damages. The particular lease terms can be critical to the outcome of the landlord's evaluation. The complexity of any particular lease dispute can vary based on the nature of the circumstances. In the simplest sense, here are six fundamental questions any commercial landlord should consider before filing suit against the non-paying tenant.

### ***Is The Defendant Solvent?***

As a starting point, there's no point to filing suit if the landlord ultimately cannot collect. A corporation or other legal entity experiencing a cash flow crisis may not have other assets that can be attached to satisfy a judgment. Before filing suit, it is important for the landlord to evaluate whether there is gold at the end of the rainbow. There are vendors that sell licenses to online databases that can be helpful in evaluating the availability of publicly-known assets, e.g., real estate. Alternatively, it may make sense to hire a private investigator to do an asset search.

### ***Is There a Guaranty?***

The existence of a guaranty can make a night-and-day difference to the landlord evaluating its options. For instance, a landlord may require the individual principal operating the corporate tenant to personally guaranty the lease obligations. Or if there is a lease assignment, the prior tenant and its principal may be required to remain liable as a condition to the landlord's consent to assign the lease. If there is one or more solvent entities standing behind the lease, the landlord's chances of recovering for unpaid rent increase exponentially.

### ***Is the Guaranty Continuing or Limited?***

The language used in the guaranty is important. Generally, a guaranty agreement may be limited or continuing.

A limited guaranty may be confined to the lease obligations under the terms in place at the time of execution and may expire as of a certain time period. In contrast, a continuing guaranty may remain in place indefinitely (subject to the right of revocation, which can be waived), and give rise to future liability of the principal under successive transactions. In a longer term lease, a continuing guaranty can be particularly critical where the lease has been assigned more than once, the lease term expanded or the rent obligation increased over time. In such cases, the continuing guarantor will remain liable, even if the guarantor did not know about the expanded scope of its obligations.



Jared M. Katz

### ***What is Reasonable and Necessary to Mitigate?***

Mitigation can be a hotly disputed issue in lease litigation. The landlord must take reasonable steps to re-let the premises and curtail the tenant's liability for defaulting. Therefore, it is important the landlord act prudently and pursuant to reasonable commercial practices. Among other things, the landlord should evaluate the need to engage a commercial broker (who may be a trial witness on the releasing efforts), the types of potential tenants making inquiries, the reasons for pursuing or rejecting any particular tenant and the reasonableness of doing so, the need for tenant improvements and city permits, etc. Because mitigation is almost always a fact issue, the landlord should expect the tenant to push back on the mitigation defense to attempt to lessen its liability.

### ***What Types of Damages are Available under the Lease?***

Commercial leases commonly enumerate the types of damages that the landlord can recover. For example, the lease may provide that in case of default, the landlord can recover late fees and interest. If the lease is a net lease, it may provide for the landlord to recover such things as property taxes, insurance, utilities, maintenance and repairs. The lease may grant the landlord the right to recover the costs of reletting the premises, including things such as real estate commissions, and costs of renovation and alteration. All of these things may add up and enhance the landlord's

damages claim beyond recovery of rent.

**Does the Lease have an Attorney’s Fee Clause?**

The presence of an attorney’s fee clause will change the dynamic of the litigation. The landlord’s ability to recover its attorney’s fees and costs will make it worthwhile to litigate a default under the lease. The tenant exposed to paying the landlord’s legal expenses in addition to its own, on top of paying damages, will be more motivated to settle early versus attempting to litigate and win by a war of attrition. ■

*Jared M. Katz is a litigation partner with Mullen & Henzell L.L.P. in Santa Barbara, California*

Messing, *continued from page 13*

*EDC is the only non-profit public interest environmental law firm between Los Angeles and San Francisco and serves community organizations dedicated to environmental protection.*

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ENDNOTES

- 1 42 U.S.C. § 300h.
- 2 H.R.Rep. No. 93—1185 (1974), reprinted in 1974 U.S.C.C.A.N. 6454-6506.
- 3 United States v. King, 660 F.3d 1071, 1079 (9th Cir. 2011).
- 4 42 U.S.C. §§ 300h(b)(1)(A)-(B), 300h-4(a).
- 5 Ctr. for Biological Diversity v. Dep’t of Conservation, 26 Cal. App. 5th 161, 174 (2018), review denied (Oct. 24, 2018)(internal citations omitted).
- 6 40 C.F.R. § 146.1, et seq.
- 7 40 C.F.R. § 146.4(a)-(c).
- 8 U.S. Government Accountability Office, Drinking Water: EPA Program to Protect Underground Sources From Injection of Fluids Associated with Oil and Gas Needs Improvement, at 1 (June 2014).
- 9 Pub. Res. Code § 3131(a)(2)-(3).



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# Private Contractors and Surveillance of Jail Communications

BY ROBERT SANGER

The *Criminal Justice* Column has recently addressed protections and concerns regarding electronic privacy<sup>10</sup> and biometric analysis.<sup>11</sup> In this issue, we will look at jail communications. The system in place in Santa Barbara is run by one of the two major jail telephone system operators, Telmate which merged with Global Tel\*Link. The Telmate/GTL system is an extremely profitable government contract issued by the County with little public input and with no real competition.

We will briefly discuss the costs of this system to the inmates and their families and loved ones as well as to the lawyers who practice criminal law. The actual monetary cost is not easy to calculate but, suffice it to say, it is substantial and is a regressive tax on those least able to pay for it. We will then go on to discuss the intrusions into privacy and the ability of inmates and others to communicate and maintain relationships. Most of the people in the Santa Barbara County system are presumed innocent as pretrial detainees but innocent, guilty or otherwise, the impact of these contracts for audio, video and financial payments will be explored.

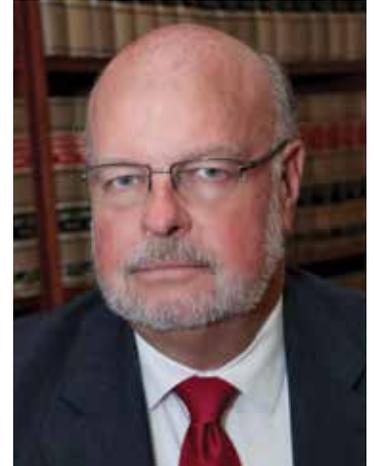
## ***The Duopoly on Jail Communications and Inmate Funds***

Telmate/GTL holds the majority of jail and prison telephone contracts in the United States with the second major company, Securus Technologies, having acquired Platinum Equity, somewhere around a 25% market share. While Securus has filed a public letter with the FCC, albeit devoid of meaningful data,<sup>12</sup> Global Tel\*Link Corporation and its subsidiaries (GTL) filed a letter with the FCC declining to provide public information on the grounds that it is “commercial or financial, or contains a trade secret or is privileged’ or when ‘disclosure of the information could result in substantial competitive harm.’”<sup>13</sup> In essence, they decline to publicly state whom they serve and what they charge for the services. Going to their website is not informative as to the cost of phone services or even the cost for people in jail whose relatives are putting money on the books.

They state that, “There is a small convenience fee per transaction depending on the type of service you choose” but they do not tell people how much that small convenience fee is.<sup>14</sup>

The last contract between Telmate/GTL and the County of Santa Barbara was apparently executed in August of 2018.<sup>15</sup> It provides that the County receives 72% of the fees charged for Inmate Telephone Services (ITS), 15% for Video Visitation System (VVS) and 25% of their gross revenue from their propose sue of tablets for education, entertainment and possibly communication. This 2018 contract adopted the rates listed by the 2016 vendor which had agreed to telephone calls at sixteen cents per minute<sup>16</sup> with a pre-paid funding fee of \$3.00 to \$5.95 for putting money on the books through their system. The contract is a model of protection for the company, with minimal liquidated damages clauses and other provisions, however, tellingly, it provides that Telmate/GTL will guarantee \$500,000 a year as a minimum (first payment within five days of signing) to the County under the agreement and that they will pay a supplemental \$100,000 up front for the privilege of installing their equipment.

The bottom line, whether or not the foregoing captures all of the financial nuances, is that the system imposes hardships on the families of people being held in the jail, most of whom are pre-trial detainees. It imposes hardship on the people in jail themselves as well, cutting them off from contact with family or requiring that family sacrifice, often on limited income. However, to find out what it will cost, a person has to sign up for the service and then, only after using it, they can approximate, sometimes to their horror, how charges were applied. There have been many anecdotal complaints online and from our clients and those of the Public Defender that relate to calls not going through or being dropped and the pre-paid fund is depleted. It also appears that lawyers are being charged more than the per-minute rate provided in the contract. The system is impenetrable and, even a well-funded academic researcher, Lauren-Brooke Eisen, had to sign up and actually put money on the books of an inmate through JPay to find out what it would cost her to do that.<sup>17</sup> As of this writing, a California Public Records Request is pending for the full financial



Robert Sanger

details. In addition, the FCC has renewed its interest in this issue.<sup>18</sup> Whatever the details, the detainees at the jail and people trying to communicate with them are not only providing a lucrative income stream for the companies, but are providing funds to the county for the privilege of being there.<sup>19</sup>

### ***Telmate/GTL and Intelligence Gathering***

The current contract provides for intelligence gathering which, in one form or another, has always been an aspect of jail telephone communications since they started to be recorded by outside vendors. All inmate telephone calls and visitation booth communications are currently recorded unless they are expressly excluded as attorney client calls or subject to other limited privilege. The calls are accessible to police, district attorneys and probation officers without probable cause or a warrant. They can be played back, for instance, by a district attorney sitting by the pool and listening on his or her laptop. The calls can be monitored in real time or call that were recorded over the years can be selected and replayed at will.<sup>20</sup>

Criminal defense lawyers, private or public, can register their numbers so that calls are not monitored. Similarly, when a lawyer visit clients in the jail, they are told that the calls are not monitored even though a recording comes on when they pick up the receiver. The system is not foolproof, and, in the past, calls have been monitored and recorded between lawyers and their clients. During a time when a different vendor provided the same type of service, it was determined that phone calls from clients to this author's office as well as to the Public Defender were being recorded. It only came to light when the then Assistant DA, Pat McKinley, found out and immediately informed this author which led to an investigation disclosing that Public Defender calls were also being tape recorded. Recently, there have been concerns that some of the professional visiting booths were being recorded and lawyers were told to simply state on the line that they were attorneys or to terminate the interview, and to leave and complain to the Records staff.

However, for the inmates, their families and loved ones, all calls are not only monitored but recorded and stored digitally so that they can be retrieved at will by the sheriff, police officers, probation officers and deputy district attorneys. They are logged in a way that they are retrievable based on who is making the call, based on an inmate personal identification number (PIN) and by the phone numbers called. The use of this information is not generally retrieved for jail security purposes; it is retrieved in order to find evidence that can be used against the inmate in the proceedings for which they are being held or in investigat-

ing other criminal allegations. Many of the calls are from frightened young arrestees who are calling their families in distress. I have heard countless recordings obtained by the district attorney of my clients who are calling their mothers, sometimes in tears, and whose statements were then construed as some sort of admission.

In addition, information from monitored calls between inmates and family members or loved ones are used to establish relationships with people in the community. This can be used to create a dossier on those community members and, for instance, to bolster a claim that those people are associated with a gang. A person in custody may call a cousin and either the inmate or the cousin may then be placed in the gang computer file.<sup>21</sup> Information on witnesses can be compiled for impeachment or sometimes just used to dissuade the witness from testifying for the defense. Family members and loved ones may be reluctant to call simply because they may be tagged by law enforcement rightly or wrongly based on their association with the inmate. In addition, families that may include undocumented members may be afraid to sign-up for the service or use it for fear that law enforcement may call the Immigration and Customs Enforcement (ICE) or ICE may otherwise use the information.<sup>22</sup>

Telmate/GTL hold hundreds of patents, many of which relate to voice recognition, social behavior recognition, speech and speech pattern detection and caller database software. This allows the company to collect, organize, synthesize and correlate caller information, voice patterns, and registration information. The database can be used by law enforcement to associate people who talk to inmates on the phone with behavioral patterns or otherwise create a suspect database. It is well established that such databases, based on inmate populations, are racially biased and create the problems associated with other forms of profiling.<sup>23</sup>

### ***The North Branch Jail***

The North Branch Jail is being built at considerable expense to the taxpayers on Black Road, near the intersection with Betteravia, in Santa Maria. It was originally envisioned as a jail facility to be located adjacent to the Santa Maria Courthouse and connected by tunnels so that inmates would not have to be transported by bus, as they are now from Santa Barbara. The site for the project existed along the Miller side of the court complex. However, the neighborhood rejected the idea and, instead, a new transit center was built on a portion of the property. In addition, the project was originally to be shared with the California Department of Corrections and Rehabilitation (CDCR, the State prison system) as a re-entry program which would

have defrayed over half the cost of construction and more than half of the cost of maintaining and running the operation. The state backed out with their money.

Ultimately, the facility is being constructed some six miles away from the courthouse which will necessitate a bus ride of approximately 12 to 15 minutes. Worse, of course, is the requirement of all the shackling and unshackling and other preparations that will make transportation just as cumbersome as putting people on the bus in Santa Barbara. It will be closer for the purposes of North county law enforcement booking people into the jail, but little else is changed regarding physical movement of inmates.

One of the big selling points for the creation of a North Branch Jail was the proximity of the jail to the people who needed to see the inmates. Family members and loved ones had to travel to Santa Barbara, if they could, to visit. Lawyers did as well, and the tradition was for North County lawyers to request an Order to Produce (OTP) to have their clients transported to the courthouse holding facility in Santa Maria if they wanted to see them other than just before court. This was certainly a hardship on the families, loved ones, lawyers and the inmates. Being able to go over to Black Road, rather than go down to Santa Barbara was a potential benefit for all involved.

However, a video visiting system is being installed in the North Branch Jail which will be used instead of in person visits with families, loved ones and lawyers.<sup>24</sup> The Sheriff now touts the savings that it will realize if it does not have to allow any person visits. Inmates will be allowed to use a kiosk where they can make video calls to families and loved ones and to their lawyers. There will not be an option. Only video visitation will be allowed. And, yes, Telmate/GTL has been awarded the contract for both the hardware and the operation of this program. And, yes, the inmates and whoever corresponds with them will be charged for this process.<sup>25</sup>

This video system was contracted for long before the COVID-19 pandemic. The use of video communication with clients in the current crisis is better than not being able to see them at all. Of course, currently, only the Public Defender, Probation, the District Attorney and some mental health professionals have access to limited video conferences with inmates in the Main Jail in the South County. Private lawyers have been denied such access and have to rely on telephone calls or have to go into the Probation Department, if permitted, to use their connection. Arraignments, motions and status conferences have been held in court using Zoom but the system is struggling with evidentiary hearings either by Zoom or in person. The recent increase in positive results for COVID-19, among inmates and staff, place the return

to live courtroom appearances in jeopardy. Nevertheless, defense lawyers and certainly family members and loved ones are looking forward to the time when restrictions can be safely lifted to allow personal visitation.<sup>26</sup>

Nevertheless, the plans for a Telmate/GTL video system to supplant personal visitation permanently are well underway. Answers to several questions have not as yet been disclosed. It is not clear how, or even if, there will be any privacy for video calls with lawyers. If they are made at a kiosk or with wall mounted units, will correctional officers be able to see or hear what is being discussed? If lawyers want to show their clients reports or documents, will they be visible to others? Will clients be able to speak in private or will they be overheard by other inmates? Will the so-called visits with spouses or other loved ones be on display for other inmates to see?<sup>27</sup> The lack of personal contact, even through a glass partition, will be devastating to some inmates and their families?<sup>28</sup> Does it violate international law requiring that, "Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence *and by receiving visits.*"<sup>29</sup> Will it impair the ability of lawyers to represent their clients. This is an issue that will be litigated on constitutional; and non-constitutional grounds.<sup>30</sup>

### **Video and the Big Data Issues**

Even more significant questions arise from the technology used for monitoring, recording and analyzing the data from video contacts. Some of this data has already been mined in tracking telephone calls; however, the technology available to analyze video is stunning. Telmate/GTL hold dozens of patents on video technology, data processing and collection which are downright scary.<sup>31</sup> The results are yet to be determined.<sup>32</sup> They are able to use voice recognition as well as facial recognition to identify and catalogue individuals who are in custody and also individuals who are on the other end—the family members, loved ones and attorneys. They are able to create relational databases related to who visits whom as well as gang affiliation or other demographics. In addition, they are able to use technology to determine behavioral cues that they can react to or place in a data base for analysis. This includes categorization based on words or phrases used, gestures, subject matter, facial movements, reactions and voice modulation. In other words, if a person communicates with an inmate, they will be identified and tied to their personal information that might be found in DMV, military, court or other records and their visual and auditory information will be collected in their dossier.

Telmate/GTL does not end its function by simply reporting suspicious matters to the jail staff. They keep it

and continue to amass it from all of their sources around the country. Then they offer to contract on a case-by-case basis with law enforcement and to be available for hire as expert witnesses to access and interpret the data.<sup>33</sup> Thus, this data collected on government contracts with jails and prisons, paid for by the inmates, their families and loved ones, is then sold back to the government. Yet, there is no government oversight over the collection, the analysis or the dissemination of the data.

**Conclusion**

Remember, most of the people in the Santa Barbara County Jail are pre-trial detainees. They are awaiting an adjudication of their cases. Some will be released and their cases dismissed and some may be found not-guilty. We are using a system that exploits the poor and disadvantaged as well as the county and law enforcement itself. We will return to a world where we can safely have in person jail visits but until we can—and after that if Telmate/GTL is allowed to contract as the exclusive provider of communications services—we should not be mindlessly giving up our rights to not be placed into a database that is manipulated and monetized for private industry at the expense of human rights and dignity. ■

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**ENDNOTES**

1 Sanger, *The Changing Landscape of Electronic*

*Privacy*, 570 Santa Barbara Lawyer Magazine (March, 2020) pp. 14-17, 21.

2 Sanger, *Biometric Analysis*, 574 Santa Barbara Lawyer Magazine (July, 2020) pp. 18-23.

3 It appears that Securus is also very profitable. It claimed in an open letter to the FCC that its rates have dropped from \$11.62 for a ten minute call to about \$2.10. However, it is not clear how the temporary free calls due to COVID-19 mandated by many correctional institutions figure into this average. Nor does this address whether there are any sign-up charges or minimum charges for the service even if calls are dropped. Details were

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- not provided. See, CISION, reprinting June 5, 2020, letter of CEO Tom Gores without attachments, <https://www.prnewswire.com/news-releases/platinum-equity-ceo-tom-gores-responds-to-former-fcc-commissioners-on-transformation-of-securus-technologies-301071448.html>.
- 4 The “redacted” letter from GTL lawyers, dated April 1, 2020, is at: [https://ecfsapi.fcc.gov/file/1040158098099/REDACTED%20cover%20letter%20to%20GTL%20annual%20report%20\(4-1-2020\).pdf](https://ecfsapi.fcc.gov/file/1040158098099/REDACTED%20cover%20letter%20to%20GTL%20annual%20report%20(4-1-2020).pdf).
  - 5 See the re-direct through a number of web pages to this statement: <https://web.connectnetwork.com/frequently-asked-questions-cash-deposits/>.
  - 6 Contract information and, at least, part of the documentation, was submitted in a public filing with the Board of Supervisors in 2018, see, <https://santabarbara.legistar.com/LegislationDetail.aspx?ID=3625608&GUID=35493D0A-2192-4DFA-9789-99226E90B4F7&Options=&Search=>.
  - 7 Although review of the last phone bill for Sanger Swysen & Dunkle shows that the office is actually being billed at the rate of thirty-five cents per minute for inmate calls.
  - 8 Lauren-Brooke Eisen, *INSIDE PRIVATE PRISONS: AN AMERICAN DILEMMA IN THE AGE OF MASS INCARCERATION*, 75 (Columbia University Press, 2017). JPay is actually owned by Securus but is used by or in conjunction with GTL in the California State Prison system to accept money for inmates.
  - 9 See Federal Register, “Proposed Rule by the Federal Communications Commission on 02/19/2020,” 85 FR 9444 (2020). The FCC had attempted to regulate jail calls in 2013, leading to litigation with GTL in the D.C. Circuit.
  - 10 The contract provides that the money goes to the Inmate Welfare Fund which, in turn, provides a part of the Sheriff’s budget for services otherwise required to be provided to inmates. However, see, Stephen Raheer, “*The Company Store and the Literally Captive Market: Consumer Law in Prisons and Jails*,” 17 HASTINGS RACE & POVERTY L.J. 3 (2020).
  - 11 One senior Deputy District Attorney once bragged to me that he was sitting at the beach, “Listening to Little \*\*\*\*ie talk to his girlfriend.” I demanded discovery and he said that he was not required to provide the calls because there was nothing relevant to the case but he then went on to derisively mimic the conversation between them.
  - 12 This computer file is maintained by the company but may also be the basis for inclusion in a law enforcement “gang file.”
  - 13 The sale of this information by private big data companies, including Westlaw, is a concern. Sarah Lamden, “*When Westlaw Fuels ICE Surveillance: Legal Ethics in the Era of Big Data Policing*,” 43 N.Y.U. REVIEW OF LAW & SOCIAL CHANGE 255 (2019).
  - 14 For a review of the literature and anecdotal material on the biased nature of big data and collection of information relating to criminal issues, see, Sarah Esther Lageson, *DIGITAL PUNISHMENT*, (Oxford University Press, 2000).
  - 15 The Sheriff’s Jail Command has made this point in open court in our pending case of *Inmates of the County v. the Sheriff* and the same finding was made by the 2019-2020 Santa Barbara Grand Jury. See, Detention Facilities, <http://www.sbcgj.org/2020/DetentionFacilities.pdf>.
  - 16 As of this writing, email or other communications that may be available through use of tablets is not readily available. However, JPay has been charging forty cents per email with an addition fee of \$2.00 for five emails which increase in increments to \$10.00 for up to 50 emails. Jeanie Austin, “*Mechanisms of communicative control (and resistance): Carceral incorporations of ICT and communication policies for physical mail*,” First Monday, (University of Illinois, Chicago) at: <https://journals.uic.edu/ojs/index.php/fm/article/download/9657/7740>.
  - 17 It may be possible for lawyers to visit in person and, since the COVID-19 shut down has occurred, some Public Defenders and a couple of people from our office have attempted to visit. However, as of this writing, there have been at least 22 cases involving the senior staff and the clerks with whom visitors would interact. While criminal defense lawyers are known to go the extra mile for their clients, it is of questionable utility for lawyers to become ill or die in order to have a personal conversation with their clients.
  - 18 Other facilities using this technology have other inmates within view of the screens and hearing during the use of kiosks. See text and pictures, Kaun, A., Stiernstedt, E., “*Doing time / Time Done: Exploring the temporalities of datafication in the Smart Prison*,” in: Maren Hartmann; Elizabeth Prommer, Karin Deckner, Stephan Görland (ed.), *MEDIATED TIME: PERSPECTIVES ON TIME IN A DIGITAL AGE*, 129-147 (Basingstoke: Palgrave Macmillan, 2019).
  - 19 Alexandre Bou-Rhodes, “*Straight to Video: America’s Inmates Deprived of a Lifeline Through Video-Only Visits*,” 60 B.C.L. REV. 1243 (2019)
  - 20 Emphasis added. “Standard Minimum Rules for the Treatment of Prisoners Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977,” at: <https://www.ohchr.org/Documents/ProfessionalInterest/treatmentprisoners.pdf>.
  - 21 For an excellent student note considering these issues in light of the use of video in the Knox County Jail, see, J. Tanner Lusk, “*Isolation for Profit: How Privately Provided Video Visitation Services Incentivize Bans on In-Person Visitation Within American Correctional Facilities*,” 26 WASH. & LEE J. CIV. RTS. & SOC. JUST. 339 (2019).
  - 22 For instance, SYSTEM AND METHOD FOR ASSESSING SECURITY THREATS AND CRIMINAL PROCLIVITIES, Continuation of application No. 15 / 420,921, filed on Jan . 31, 2017 , now Pat . No. 10 ,074 ,362;
  - 23 See, e.g., J Wells, “*Video Visitation as a Form of Surveillance Technology and Its Effect on Incarcerated Motherhood*,” 4 Screen Bodies 76-92 (Winter 2019).
  - 24 See, GTL’s web page, “*Intelligence as a Service*,” at: <https://www.gtl.net/digital-forensics/>.

## 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.

# Quick Hits: Federal, State and Local Cannabis Updates

BY AMY STEINFELD AND JACK UCCIFERRI

## FEDERAL

**Cannabis Companies Are Ineligible to Obtain Federal Assistance.** Because cannabis remains a federally illegal controlled substance, plant-touching businesses were ineligible to receive federal assistance through the CARES Act to weather the COVID-19 pandemic. During the drafting of a subsequent coronavirus relief package, the HEROES Act, the House of Representatives included language from the SAFE Banking Act, which would create a safe harbor for financial institutions and providers of traditional banking services to cannabis businesses in states that have legalized the plant. This did not pass the Senate but may appear in future bills. Despite the lack of banking opportunities and federal aid, legal cannabis remains in high demand among all demographics and is rapidly replacing pharmaceutical drugs and alcohol.

**Presidential Election May Influence Federal Cannabis Legalization.** Many of Joe Biden's candidates for running mate have progressive cannabis policy views, including Mayor Keisha Lance Bottoms (ATL), Govs. Gretchen Whitmer (D-MI) and Michelle Lujan Grisham (D-NM), Reps. Karen Bass (D-CA) Val Demings (D-FL), and Sens. Kamala Harris (D-CA), Elizabeth Warren (D-MA) and Tammy Duckworth (D-IL). Throughout their political careers, these women have voted to advance cannabis legislation and almost all of them supported the inclusion of SAFE Banking Act language in the HEROES Act.

**Black Lives Matters Activists Call for Federal Decriminalization.** The nationwide protests over the death of George Floyd have also brought the discussion of racial disparities in cannabis and other drug-related arrests to the forefront of national conversations. The American Civil Liberties Union (ACLU)<sup>1</sup> found that Black people are 3.6 times more likely than white people to be arrested for cannabis possession and the imprisonment rate for drug charges is estimated to be six times higher for Black Americans.<sup>2</sup> Activist demands have increasingly called for defunding law enforcement agencies. Decriminalization of cannabis presents an opportunity to cut police budgets<sup>3,4</sup> and reduce



Amy Steinfeld



Jack Ucciferri

the number of prisoners in the United States, which has the highest rate of incarceration in the world. States that are contemplating cannabis legalization are also considering record expungement for those convicted of possessing small amounts of the plant.

## STATE

**California Lawyers May Ethically Advise Cannabis Clients.** On May 15 the California State Bar adopted opinion number 2020-202<sup>3</sup>, clarifying that attorneys may represent clients with respect to conduct permitted by California's cannabis laws despite the plant remaining federally illegal. Attorneys must inform clients of the potential for federal prosecution and "may not advise a client to violate federal law or provide advice or assistance in violating state or federal law in a way that avoids detection or prosecution."

**Cannabis is Essential.** (Seriously!) In response to the COVID crisis, the California Department of Public Health (CDPH) issued an order<sup>4</sup> deeming cannabis retail workers and workers supporting cannabis retail as "essential critical infrastructure workers" during the statewide coronavirus "stay at home" order. The Bureau of Cannabis Control also clarified: "Because cannabis is an essential medicine for many residents, licensees may continue to operate at this time so long as their operations comply with local rules and regulations. Any licensee that continues to operate must adopt social distancing and anti-congregating measures and must follow the CDC's Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease<sup>5</sup> at all times." The California Department of Food and Agriculture<sup>6</sup> (CDFA), which regulates cannabis farms, released the same statement.

**Product Differentiation Opportunities: Cannabis Appellations and Organic Standards.** California will soon establish standards for creating appellations of origin and certifying cannabis products as “organic.” Both are labels that cannabis companies can use to communicate product information to capture a higher value. An appellation of origin is a legally protected designation that identifies the geographical origin of a product and is commonly used in the wine industry.<sup>7</sup> CDEA is finalizing the regulations, which will allow cannabis cultivation regions, such as areas within Santa Barbara County to establish an appellation that can be used to market and label qualifying products.

CDEA is also in the process of finalizing proposed regulations for establishing and enforcing comparable-to-organic (OCal) standards.<sup>8</sup> Public comments were submitted on July 7, 2020 and the regulations must be finalized by Jan. 1, 2021. Qualifying cannabis products will then be able to use the OCal label.

## LOCAL

**Cannabis Revenue is Essential too, Given the Economic Ramifications of COVID.** At the state level, as of May 15 cannabis excise tax generated \$68.3 million, cultivation tax generated \$16.4 million, and sales tax on cannabis products generated an additional \$50.2 million during the first quarter of 2020.<sup>9</sup> These numbers do not reflect all Q1 taxes to be collected because filing deadlines were impacted by the COVID-19 pandemic.

County cannabis tax receipts for the third quarter increased 43% over the same quarter last year. As of Q3, total County cannabis taxes have exceeded all four quarters of the previous fiscal year. Meanwhile, the City of Santa Barbara witnessed a 28% drop in sales tax revenues this past quarter and transient occupancy taxes for March and April were 62 and 93 percent below 2019 revenues.<sup>10</sup> Supervisor Lavagnino said “(cannabis tax revenues have) become one of the legs of our three-legged stool,” in addition to sales taxes and transient occupancy taxes. Further, cannabis businesses are keeping thousands of residents employed during this economic crisis.

**Santa Barbara County Growers Continue to Wind their Way through the Permitting Process:** As of Q3, 189 cultivation applications have been submitted for land use entitlements and 20 land use entitlements have been issued. This process is slow-going due to the myriad state and local regulations imposed on this new crop. For the Carpinteria Agricultural Overlay, 213 acres have been proposed, 22 acres are permitted and the cap for the area is 186 acres. In inland areas, cultivation is capped at 1,575 acres – 2,452 acres are proposed while 221 acres have been permitted.

**Santa Barbara County Continues to Amend its Cannabis Regulations.** In July, the Board of Supervisors re-visited the cannabis ordinance for the inland portion of the County. The board voted to require cannabis drying to occur indoors, to ban cannabis inside existing developed rural neighborhoods, to require a Conditional Use Permit if over 51% of a parcel is cultivated for cannabis, and to require that plants be setback 50 feet from property lines. To date, two cannabis projects have been challenged in court.

**Santa Barbara County Will Allow Six Cannabis Dispensaries.** Up to six dispensaries will be permitted in the unincorporated area of Santa Barbara County – one in each of the following community plan area: Summerland/Toro Canyon, Isla Vista and unincorporated Goleta, eastern Goleta Valley, Santa Ynez Valley, Los Alamos and Orcutt. The County is hosting virtual community meetings to discuss amendments made to the cannabis retail storefront licensing regulations.<sup>11</sup> The merit-based application process considers neighborhood compatibility. The County also allows non-storefront retail or delivery businesses and one such operation has been permitted and recently opened.<sup>12</sup> While many cities in this County do not currently allow cannabis storefronts, there are dispensaries in the cities of Goleta, Lompoc and Santa Barbara. Goleta has a medical and a recreational dispensary, Lompoc has four dispensaries that serve medical and recreational clients, and Santa Barbara has two medical and two recreational dispensaries that sell clean, regulated product. ■

*Amy Steinfeld is an attorney at Brownstein Hyatt Farber Schreck and serves as office managing partner for the Santa Barbara office as well as co-chair of the firm’s Cannabis & Industrial Hemp industry group. Jack Ucciferri is a law clerk with Brownstein and member of the firm’s Cannabis & Industrial Hemp industry group.*

## ENDNOTES

- 1 A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform, ACLU, April 17, 2020, <https://www.aclu.org/news/criminal-law-reform/a-tale-of-two-countries-racially-targeted-arrests-in-the-era-of-marijuana-reform/>
- 2 Criminal Justice Fact Sheet, NAACP, <https://www.naacp.org/criminal-justice-fact-sheet/>
- 3 Cannabis Now, Calls to defund the police lead to cannabis decriminalization measures, June 26, 2020, <https://cannabisnow.com/calls-to-defund-the-police-lead-to-cannabis-decriminalization-measures/>
- 4 The State Bar of California Standing Committee on Professional Responsibility and Conduct, Formal Opinion No. 2020-202, <http://www.calbar.ca.gov/Portals/0/documents/ethics/Opinions/Formal-Opinion-2020-202-17-0001.pdf>
- 5 California Department of Public Health, Essential Workforce

*Continued on page 27*

# IRAs to Fund Long Term Care May Be a Tax Time-bomb you Haven't Considered

BY MATTHEW FISH

**A**re you, your spouse, your client, or someone you know planning on using their retirement account as a funding source should they need Long Term Care (LTC)?

If so, you may want to reconsider that strategy, as it is potentially going to become much more expensive to do so in the next several years.

Why, you may ask?

The simple answer is, a likely income tax increase.

The Tax Cut and Jobs Act that went into effect in 2018, came with a sunset provision that restores the previous income tax brackets at the end of 2025. Rates will revert back to the 2017 table below.

2017 Tax Tables		2019 Tax Tables	
10%	\$0-\$18,650	10%	\$0 - \$19,400
15%	\$18,651-\$75,900	12%	\$19,401 - \$78,950
<b>25%</b>	<b>\$75,901-\$153,100</b>	<b>22%</b>	<b>\$78,951 - \$168,400</b>
28%	\$153,101-\$233,350	24%	\$168,401 - \$321,450
33%	\$233,351-\$416,700	32%	\$321,451 - \$408,200
35%	\$416,701-\$470,700	35%	\$408,201 - \$612,350
39.6%	\$470,701 or more	37%	\$612,351+

As you can see, those earning in the red boxes above, will experience a “nominal” increase of 3% as it reverts back. But what that actually represents is a “real” 13.6% tax hike as the rate goes from 22% to 25%. And remember, ALL distributions from IRAs are fully taxable (not applicable to Roth IRAs).

Pulling money from your IRA to cover LTC costs just got that much more expensive when rates revert back.

The largest jump in taxes is expected to be 37.5% as rates will skyrocket from 24% to 33% if you earn in the \$200,000-\$400,000 range. This income level is not uncommon for the wealthy and especially not uncommon here in the greater Southern California area. Every dollar you'll need for LTC expenses, you just received a 40% surcharge if

taken from the retirement account. An IRA portfolio that was comfortably earning 5% now has to earn approximately 7% to account for that increased tax cost. This potentially puts more stress on the portfolio as it must take on more investment risk to compensate for additional taxes on withdrawals to pay the same LTC expenses. Typically, at retirement or nearing retirement is not the time to take on MORE investment risk.



Matthew Fish

The more you earn in retirement, the more a potential tax increase will cost you.

It is possible however, that Congress can vote to keep the current tax rates, but I, personally, find that unlikely.

Reasons being ... income tax rates are at historic lows. The federal deficit is growing faster than ever. And lastly, with trillions of dollars in recent economic stimulus money also going on the country's credit card, the U.S. Treasury will have to raise revenue from somewhere. Leaving current politics aside, cutting major entitlements like Social Security and Medicare doesn't seem like a viable option nor a platform for politicians to run on in future elections.

So then who pays this bill? The U.S. tax payer. Taxes are going up sooner or later. More likely to be sooner.

Assuming you agree that taxes will be going up, making those IRA dollars more expensive to fund LTC, where can you find a more tax favorable solution that still is in line with your objectives of either spending your IRA on LTC or leaving it to your beneficiaries?

“Life Insurance with a LTC Rider” could be the appropriate solution given the need paired with the assumption with future tax hikes.

A recent evolution in the life insurance world has created a policy to do exactly what you want, but in a much more tax efficient manner.

But if life insurance pays its benefit after the insured dies, how does that help if you have LTC expenses while living?

These recently developed life insurance policies with LTC riders, allow the insured to access the death benefit while they are still living for the sole reason to pay LTC expenses.

For example, if you buy one of these policies with a

Continued on page 27

## Verdicts & Decisions

### *Flick v. Reyes*

SANTA BARBARA SUPERIOR COURT, COOK DIVISION

CASE NUMBER:	17CV03850
TYPE OF CASE:	AUTO
TYPE OF PROCEEDING:	Jury
JUDGE:	JED BEEBE
LENGTH OF TRIAL:	17 days
LENGTH OF DELIBERATIONS:	2 days
DATE OF VERDICT OR DECISION:	March 18, 2020
PLAINTIFF:	Kara Flick
PLAINTIFF'S COUNSEL:	Taylor Ernst and Don Ernst of the Ernst Law Group
DEFENDANT:	Francisco Reyes Jr.
DEFENDANT'S COUNSEL:	Erin O. Hallissy, Daniels, Fine, Israel, Schonbuch & Lebovits
INSURANCE CARRIER, IF ANY:	USAA
EXPERTS:	Fernando G. Miranda, M.D., neurology, Vero Beach, FL (Don A. Ernst, Taylor Ernst). Edgar O. Angelone, Ph.D., neuropsychology, San Rafael, CA (Don A. Ernst, Taylor Ernst). Marna Scarry-Larkin, M.A., C.C.C./S.L.P., speech pathology, San Luis Obispo, CA (Don A. Ernst, Taylor Ernst) Elaine R. Serina, Ph.D., biomechanics, Hayward, CA (Don A. Ernst, Taylor Ernst). Karen L. Aznavoorian, M.A., life care planning, Fresno, CA (Don A. Ernst, Taylor Ernst). Stephen Hamilton, Ph.D., economics, San Luis Obispo, CA (Don A. Ernst, Taylor Ernst). Rick A. Sarkisian, Ph.D., vocational rehabilitation, Bakersfield, CA (Don A. Ernst, Taylor Ernst)
DEFENSE EXPERT(S):	Gail P. Ishiyama, M.D., neurology, Los Angeles, CA (Jonathan R. Gerber, Erin O. Hallissy). Ari Kalechstein, Ph.D., neuropsychology, Los Angeles, CA (Jonathan R. Gerber, Erin O. Hallissy). Michael N. Brant-Zawadzki, M.D., neuroradiology, Newport Beach, CA (Jonathan R. Gerber, Erin O. Hallissy). Jeff Bruno, M.A., P.V.E., life care planning, San Luis Obispo, CA (Jonathan R. Gerber, Erin O. Hallissy). Heather H. Xitco, M.B.A., C.P.A., C.F.F., economics, San Diego, CA (Jonathan R. Gerber, Erin O. Hallissy)

**OVERVIEW OF CASE:** The case was a rear-end traffic collision on US 101 with a claimed TBI, although there were no head complaints or observable injuries in the ER the day of the collision, no head complaints the day after, nothing on the CT scan and no positive findings on the MRI taken weeks after the collision.

The main damage issue in the case was a stutter that developed four weeks after the incident. There were neurological opinions of a TBI and a post-concussion syndrome causing the stutter. However, no published literature on this issue supported a stutter developing in that time frame. The published information states this type of stutter is always “psy-

chogenic” which means it is “psychological in nature and not real” and will resolve.

Plaintiff also took eight months off work, and then returned to work as a nurse with good work reviews. The wage loss claim was that she would be unable to continue to work as a nurse in the future due to cognitive impairment.

FACTS AND CONTENTIONS: The main contention was regarding the stutter that developed a number of weeks after the incident. The plaintiff claimed the stutter was neurogenic, and the defense claimed the stutter was psychogenic and would resolve completely.

Notably: the trial was approved to get to verdict by the California Supreme Court. Closing arguments were given to a socially distanced jury and the jury deliberated six feet apart in an auditorium before reaching a verdict.

SUMMARY OF CLAIMED DAMAGES: stutter resulting from traumatic brain injury, left leg weakness, cognitive impairment.

SUMMARY OF SETTLEMENT DISCUSSIONS: Offer was 100k. No significant offer was ever made over this, as defense claimed the policy limits were not open.

RESULT: \$1,687,500.00

### *Mission Linen Supply v. City of Visalia*

Appeal No. 19-15392, 2020 U.S. App. LEXIS 17441 (9th Cir. June 3, 2020) \*Unpublished; D.C. No. 1:15-CV-0672 AWI EPG, 2019 WL 446358, 2019 U.S. Dist. LEXIS 18567 (E.D. Cal. Feb. 5, 2019).

*June 26, 2020* – The Ninth U.S. Circuit Court of Appeals recently upheld a ruling by U.S. District Judge Anthony W. Ishii under the Comprehensive Environmental Response, Compensation, Liability Act (CERCLA) finding the City of Visalia and current owner/operator equally liable for solvent contamination from historical dry cleaner operations that were caused in part by releases from the City’s municipal sewer system.

The District Court decided that a “significant amount of fault and culpability” should be borne by the City because its sewers were “rife with defects” as a result of decades of deficient maintenance that caused extensive leakage of solvent-containing wastewater. The Court also found that the City could not rely on CERCLA’s third-party defense because it could not show that other parties were the sole cause of the contamination.

On appeal, the Ninth Circuit followed its prior legal framework that district courts are afforded “broad discretion” in deciding what CERCLA allocation factors to consider. In its majority opinion, the Circuit Court commended Judge Ishii’s application of a “nuanced methodology” based on the geographic considerations (i.e. divisibility) of the contamination plume which he confirmed by applying a simpler alternative methodology.

The District Court considered many factors in making the allocation, including the commonly known “Gore Factors.” Judge Ishii’s decision focused on the cooperation of the current owner and operator, Mission Linen Supply, with regulators in addressing the contamination, as well as the City’s lack of due care based on the absence of maintenance or other reasonable precautions against foreseeable risks to its municipal sewers. The District Court also split the prior dry cleaner’s orphan share equally to Mission and the City.

The affirmed District Court decision awarding a 50% allocation to a public agency sewer district. It is one in only a list of CERCLA cases that have reached a formal decision, and provides guidance on the complex and broad scope of CERCLA allocation.

*Greben & Associates is an environmental litigation firm providing services throughout California in federal and state court. Leading the field, Greben handles many other areas including RCRA, the Clean Water Act, and HSAA, as well as regulatory compliance matters. For more information, please visit the website at [www.grebenlaw.com](http://www.grebenlaw.com).*

# **SAVE THE DATE**

**FOR THE  
SANTA BARBARA COUNTY BAR ASSOCIATION'S**

## **2021 Bench & Bar Conference**

**Friday, January 22, 2021**

**8:30am to 4:30pm**

**University Club of Santa Barbara**

**Cocktail reception to follow**

**Join us as we explore emerging  
legal and social issues from  
2020, including immigration,  
housing, employment, and  
environmental law**

**6 hours of MCLE, including mandatory subject units**



## Anticouni & Associates

is pleased to announce that **Heather Quest** has rejoined our statewide employment law practice.

Heather graduated *cum laude* from Creighton University School of Law in 1996. She earned her B.A. at Colby College in Maine.

Heather previously worked for our firm for over eight years and was responsible for managing over \$150,000,000.00 of our wage and hour class action judgments and settlements.

Anticouni & Associates has been devoted to workplace law and related litigation on behalf of both employers and employees for over 40 years. Our litigation has had success in establishing statewide wage and hour standards including the first successful California wage and class action over 35 years ago. We have obtained over \$185,000,000 in overtime class actions for employees throughout California and over \$15,000,000 in individual wage and hour cases.

We pay substantial referral fees on individual and class action wage & hour cases.



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*Fish, continued from page 23*

\$500,000 death benefit, you now have a pool of (tax free) dollars to pay your LTC expenses should you need them. If you never need LTC, the policy would act like a traditional life insurance policy and pay a \$500,000 tax-free benefit to your beneficiaries/estate.

What if you only use a portion of your policy for LTC and then pass away? For instance, if you only use \$300,000 of your benefit on LTC, your beneficiaries/estate will receive the balance of the unused \$200,000 ... again, tax-free!

Most folks do not intend to use their retirement assets for long-term care when they are saving during their working years. They are only faced with this potential reality later in life and have created other sources of income. So their needs and planning changes. The looming tax hikes are making self-insuring your LTC via your retirement much less attractive and should be addressed within your financial plan if you haven't already.

Life insurance and Long Term Care policies are financial instruments with many moving parts. With life expectancy increasing each year, Long Term Care planning is an essential part of any financial plan as it comes with a very high price tag. Make sure it's addressed in yours! ■

*Matthew Fish is a licensed Financial Advisor and Insurance Specialist for the last 19 years. He specializes in all areas of Life, Disability, and Long Term Care Insurance planning for both individuals and business. Please contact him at matt@andersonfs.com.*

*Steinfeld and Ucciferri, continued from page 21*

Order, <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>

- 6 CDC, Interim Guidance for Businesses and Employers Responding to Coronavirus Disease 2019 (COVID-19), <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>
- 7 California Department of Food and Agriculture, Notice Regarding COVID-19 and Commercial Cannabis Businesses, <https://calcannabis.cdfa.ca.gov/news/65>
- 8 The CalCannabis Appellations Project Is About to Spark a New Chapter in Place-Based Branding, Cannabis Industry Journal, Dec. 11, 2019, [https://cannabisindustryjournal.com/feature\\_article/the-calcannabis-appellations-project-is-about-to-spark-a-new-chapter-in-place-based-branding/](https://cannabisindustryjournal.com/feature_article/the-calcannabis-appellations-project-is-about-to-spark-a-new-chapter-in-place-based-branding/)
- 9 OCal Progra, CDFA, <https://www.cdfa.ca.gov/calcannabis/ocal.html>
- 10 California Department of Tax and Fee Administration Reports Cannabis Tax Revenues for 1<sup>st</sup> Quarter of 2020, May 26, 2020, <https://www.cdfta.ca.gov/news/20-08.htm>
- 11 Community Engagement for the Cannabis Business License Ordinance (Chapter 50), Retail Storefront Selection Process, <http://cannabis.countyofsb.org/retail.sbc>
- 12 Santa Barbara News Press, 'Some people are closing their doors and others are opening': Cannabis delivery service InDaCut launches, April 27, 2020, <https://newspress.com/some-people-are-closing-their-doors-and-others-are-opening-cannabis-delivery-service-indacut-launches/>

# Motions

## Lowthorp Richards Welcomes New Partner Diana P. Lytel

The law office of **Lowthorp, Richards, McMillan, Miller & Templeman** is delighted to welcome new partner **Diana P. Lytel**, Santa Barbara resident, to its team of veteran trial attorneys.

A prominent civil litigator and criminal defense lawyer, Ms. Lytel comes to Lowthorp Richards from the Santa Barbara area where she worked at Lytel & Lytel, LLP. Her practice specialties are general litigation for businesses and individuals, professional liability with an emphasis on CFA Institute and CFP Board matters, premises liability and criminal defense. She boasts an impressive record of courtroom successes and positive outcomes in trial, mediation, arbitration and professional liability matters.

Highly regarded for her legal excellence, Ms. Lytel is a 2020 Southern California Super Lawyer, AV Rated by Martindale Hubbell and has been on the Super Lawyers Rising Stars list since 2015. She has also been recognized by Super Lawyers as Up-and-Coming 100: 2019 Southern California Rising Stars and Up-and-Coming 50: 2019 Women Southern California Rising Stars. She has defended a wide variety of high-profile clients, including Fortune 500 companies, financial institutions, mutual funds and insurance entities.

"The addition of Diana Lytel to our firm reflects our growth strategy for 2020 and our intention to add services that will most benefit our clients," said Managing Partner Cristian Arrieta. "Diana not only brings her exceptional skill and impressive professional credentials but expands our practice areas to enhance our delivery of comprehensive legal services."

Based in Oxnard for more than a century, Lowthorp Richards specializes in business, estate, family, agricultural, real estate and injury law. The firm maintains the highest possible legal rating in the national attorney directory of Martindale-Hubbell.

Ms. Lytel received her B.A. in Political Science from the

University of California, Los Angeles (UCLA), and her J.D. in 2006 from Loyola Law School, Los Angeles. She previously worked in Morgan Stanley's litigation department, served at regulatory agencies (NASD now FINRA & DBO) and has held prominent roles with prestigious law firms recognized by Super Lawyers®, Best Lawyers in America and AV Rating.

Actively involved in the Central California community and in national legal organizations, Diana currently serves as President-Elect of the nation's largest regional civil defense organization, the Association of Southern California Defense Counsel (ASCDC). She is also an active board member of California Defense Counsel (CDC), Santa Barbara Women Lawyers and Santa Barbara Women Lawyers Foundation.

To contact Ms. Lytel or for more information on Lowthorp Richards, call (805) 984-8555 or visit <http://www.lrmmt.com>.

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## Herring Law Group Receives Santa Barbara's "Female-friendly Law Firm" Award

**Herring Law Group** is pleased to have been honored by Santa Barbara Women Lawyers with their first annual "Female Friendly Law Firm" award. The recognition took into account a wide variety of HLG's policies and practices, as well as its general treatment and respect for our female professionals and staff. The vetting process -- including reviews of HLG's hiring history, compensation and benefits packages and employee handbook, and discussions with its attorneys -- was most thorough! With **Greg Herring** in trial, HLG's Executive Director, **Erin Schaden**, gratefully accepted for the firm.

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*If you have news to report such as a new practice, a new hire or promotion, an appointment, upcoming projects/initiatives by local associations, an upcoming event, engagement, marriage, a birth in the family, etc., the Santa Barbara Lawyer editorial board invites you to "Make a Motion!" Send one to two paragraphs for consideration by the editorial deadline to our Motions editor, Mike Pasternak at [pasterna@gmail.com](mailto:pasterna@gmail.com). Any accompanying photograph must have a minimum resolution of 300 dpi. Santa Barbara Lawyer retains discretion to publish or not publish any submission as well as to edit submissions for content, length, and/or clarity.*

## Professional Responsibility and Technology: What Are Your Obligations?

Attorneys have ethical duties of competence, confidentiality, supervision, and communication in relation to the technology we all use to serve our clients. The speakers will address this potential minefield with a review of key ABA and state rules, and will provide practical strategies and best practices for compliance. Join us to ensure that you are up to speed with your obligations in this important aspect of legal practice, and earn a CLE ethics credit for only \$12.00 without leaving your desk!

### **Speakers:**

Michael Swarz and Nicole Clark, Trellis Research

Michael Swarz is a graduate of Brandeis University and the New England School of Law in Boston. He has developed a deep understanding of the legal technology world and has published extensively in that area and on the topics of electronic discovery, information governance, and digital evidence. He has presented programs on legaltech and e-discovery before numerous legal, IT, records, and compliance audiences. Michael is Director of Marketing with Trellis Research, a legal analytics platform that uses AI and machine learning to provide litigators with strategic legal intelligence and judicial analytics.

Nicole Clark, CEO and founder of Trellis Research, is a business litigation and labor and employment attorney who has handled litigation in both state and federal courts. She is licensed to practice law in three states, and has defended corporations and employers in complex class action and wage and hour disputes, as well as individual employment matters ranging from sexual harassment to wrongful termination. Nicole is committed to helping lawyers leverage technology ethically to gain a competitive advantage and achieve a more favorable outcome for their clients.

### **CLE:**

**1.0 hour ethics**

### **Date and Time:**

Tuesday, September 22  
12 noon – 1:15 PM

### **Location:**

Virtual Presentation Via Zoom

### **Reservations:**

To receive the meeting link via email, please respond by Friday, September 18, to Chris Kopitzke, Chair of IP/Technology Business Section, [ckopitzke@socalip.com](mailto:ckopitzke@socalip.com)

### **Cost and Payment:**

\$12.00: Mail checks by Friday, September 18,  
payable to Santa Barbara County Bar Association,  
15 W. Carrillo St., Suite 106, Santa Barbara, CA 93101

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## *In Memoriam*

Judge Gordon, *continued from page 7*

*we were often in his Courtroom. I came to simply think the world of Judge William Gordon. He was a many-faceted personality, and I saw and appreciated that in him. ~ Marilyn Metzner, Secretary to Judges Anderle and Sterne*

And from Mrs. Carol Gordon:

*Family members and friends who spent any time with Bill in his leisure time, especially around our house, were blessed to witness this element of him, and I enjoyed it often. He could recite classic quotations and poetry—triggered at any moment by a word or reminder—and burst forth with the entire recitation, most of them quite lengthy, and learned at a young age. Also, he loved to sing.*

*Bill didn't join the Chorale or barber shoppers, but he would be inspired by any reference to lyrics of a beloved song, and belt out the entire song. And he knew who wrote them. It might be while we were both standing in the kitchen or sitting together and he would finish the song, in my face, and with much proper dramatic and facial expressions. So very charming.*

*Maybe to the surprise of parties and attorneys who remember the tension of being in Judge Gordon's courtroom, I tell you he was sweet and entertaining at home. Also, he could make me laugh, and we did often. That's another story.*

Judge Gordon gave his time and talents to the Santa Barbara County Bar Association. One of his most remembered contributions was bringing the Inns of Court to Santa Barbara. The genesis of the Santa Barbara Inn came from the experience of David Hughes, Judge Denise de Bellefeuille and Judge Jim Herman in 1992 in London during the California State Bar's "Legal Week in London" and through the efforts of Mr. Hughes, Judges Ruggerio Aldisert, Frank Ochoa, Denise de Bellefeuille and Jim Herman, and the assistance of Ken Moes, Desmond O'Neill, Nancy Sieh, Dean Donald Bright and Judge George Eskin, on October 27, 1995, the American Inns of Court Foundation awarded organizational charter number 275 to the Santa Barbara Inn of Court. As has been stated: its future was assured when Judge William L. Gordon came into the Inn and Yvonne French became the administrator. In 2000, the Santa Barbara Chapter was officially named the William L. Gordon Inn of Court.

Some little known facts about Judge Gordon are that he was a hurdler in high school and went on to the State Championship. He loved to grow vegetables and share his harvest with his friends. One of his favorite activities was presiding over weddings.

Judge Gordon will be remembered for his easy smile, his interest in all people whom he encountered and his many contributions to the Santa Barbara legal community.

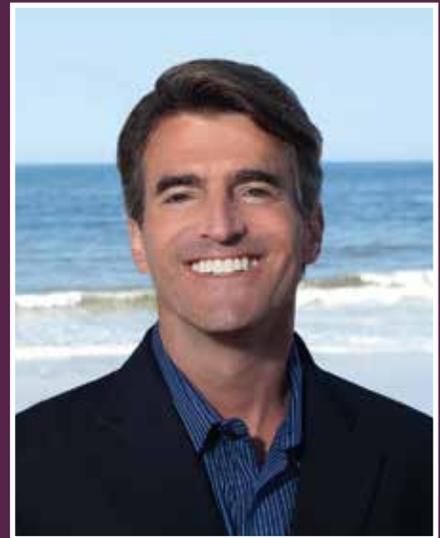
A celebration of his life will be held later in the year. ■

# Santa Barbara Lawyer

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