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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.

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November 2020 • Issue 578

Articles

Sections

On the Cover

Judge Raimundo Montes de Oca

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Spotlight on Judge Raimundo Montes de Oca

How long have you been on the Bench?

I was appointed to the Santa Barbara County Bench in November 2015 by Governor Brown. I am currently serving in the Lompoc Division of the Santa Barbara County Superior Court. I am Latino and a long-time Santa Barbara County resident, having come to Carpinteria with my parents from Cupertino California when I was two-years-old.

I attended local schools and graduated from the University of California at Santa Barbara and then attended the University Of Arizona College Of Law. After graduation, I worked with the Pima County Public Defender's Office and also as an Instructor at the Arizona State University College of Law before returning to Santa Barbara County in 1979. I worked at the Santa Barbara County Public Defender's Office until my appointment to the bench.

What is the biggest difference between practicing law and judging?

The first and most important difference between serving as an advocate and as a judge is that a judge has the responsibility to judge fairly. A judge's decision will affect the lives of the plaintiffs, defendants, and the community in untold ways. Using Harry Truman's aphorism, the buck stops with the judge. There are no "small" cases, and this awareness must always motivate a judge to do his or her best to fairly resolve the disputes coming before the court.

The second difference is that we adjudicate cases knowing very little about the case, unlike an advocate who knows and understands every detail of their case. A judge does not independently investigate a matter coming to the court and cannot independently investigate those facts. A judge understands the facts central to the resolution of the dispute guided by counsel's presentation of those facts as permitted by the laws of evidence and procedure. Once the facts of the dispute are understood, a judge resolves the dispute with the aid of counsel who present the substantive law applicable to the subject matter of the dispute. A judge is not an advocate for any side. A judge must, to the best of his or her ability, apply the legal principles bearing on the case in a fair and evenhanded manner.

Do you have any advice for new attorneys?

Reflecting on how the adjudicative process unfolds, if I were asked to give advice to less experienced attorneys I would ask them to realize how dependent our adversarial system of justice is on the integrity of the participants. We have the expectation that each side will vigorously represent their client's interest within the legal and ethical constraints of the profession. A judge depends upon the litigants to provide him or her with the facts needed to adjudicate a dispute, and while a lack of candor may provide some short-term advantage, that "gain" will always be outweighed by the reputation one earns by that misrepresentation.

In addition to earning a reputation for honesty, I would remind the attorney that he or she must learn how to work with everyone involved with the courts, the client, opposing counsel, the Court, and the other participants, be they witnesses, experts, probation officers, etc. The relationships one builds over time become very important. So, I would echo what other Bench Officers have said in these columns, be prepared; treat everyone fairly and respectfully; and keep your word because your word and your reputation will be what others remember after the case is over.

Finally, I would add two other observations. It is often better to listen to what your opponent (or the Court) has to say before responding. This gives you the advantage of knowing what to say and how to say it. And, as we do our work in the courts, we will meet persons who can do things better than we can, so we should learn from them and, to the extent possible, copy what seems to work for them if it will work for us within our own personal style and character. We must remember that we are most effective when we are genuine; this means we should always be ourselves and adapt what we take from others in a way that reflects our genuine selves.

Are there any changes in the legal community that you are excited about?

These last seven months (as well as the months to come) have made us all reflect on how we have practiced law. There are things we may need to change, either for efficiency or by necessity, and other things we need to find a way to preserve and enhance. Our judicial system has changed in almost every possible way. For those of us working in the criminal courts, what is most noticeable for us is a greater realization of the importance of the social interaction between the Court and the litigants. The pandemic has made the work we do less personal in many ways. We aren't able

to speak directly to a defendant, so we must more carefully rely upon what we glean from the observations of those persons who have interacted more closely with a defendant: those harmed by the defendant's actions, the attorneys, family members, friends, social workers, mental health professionals, probation officers, and others. Our legal system incorporates personal interaction in very important ways and the pandemic has focused our attention on this fact. For instance, we depend on personal interaction when listening to testimony and in cross examination, in having jurors see and hear the evidence presented during a trial, essential aspects of our justice system. To safeguard the health of our community and those using our courts, we have been forced to limit those times when courts are open, when persons can come to the courts, when and how hearings can be held; in many cases to the detriment of those persons needing to use the courts. Technology has helped us mitigate some of this impact, and going forward, some of the practices we've adopted (such as video conferences and video hearings, greater use of appearances by counsel, etc.) may be incorporated and expanded to provide better access to persons using the courts. Our challenge is to define those aspects of our adversarial system that are essential, refine them to meet the challenges the pandemic has brought us, and to make them work for us now.

Wisdom From The Bench

All of us who practice law, either by representing clients or by adjudicating disputes, have the opportunity, and perhaps even the obligation to learn something new every day. I represented clients for many years before being appointed to the Bench, and I have learned from colleagues I have worked with, from opposing counsel, and from each judge before whom I have appeared. As a bench officer, I continue to learn from my colleagues, from our court staff (who in many cases have more years of courtroom experience than I have), and from the attorneys and litigants who appear before me. I am grateful for the wisdom they share with me every day.

Mentors and Lessons Taught

If we are open to it, we have the opportunity to learn from everyone we work with. However, sometimes the dynamic between a judge and those persons the judge works with or who come to the courtroom does not easily allow constructive criticism. Without these types of conversations, it is difficult to learn and gain a broader perspective of the work we do. At least for myself, I welcome the opportunity to listen to the perspective of others and learn from them. These persons are my mentors.

style in the courtroomWhen in the courtroom, I try to listen to the information presented to me without pre-judging it, and I try to give the same attention to every lawyer, whether recent admittee or more experienced lawyer. I am very aware that I don't know very much about the case before me, so I depend on the parties to provide the information necessary to reach an appropriate decision. How well I reach these goals is for others to decide, and as I've said, to let me know.

What do you love about your job?

Serving as a judge has clarified for me how those of us who work in the courtroom as judges, jurors, or attorneys are direct participants in our representative democracy. Though legislators may "write" the law, the parties to a dispute, their attorneys, and the trier of fact are the ones who shape the law in our community. This "hands-on" participation in our democracy is what I love most about my job. But, none of us would be able to do our jobs without the dedication of many others who work beside us. I have worked in Lompoc for over two years; it is a small courthouse with a large and diverse caseload. I have come to appreciate how everyone working in the Courthouse does their best to insure the persons coming before the Court are treated fairly and respectfully. The defense bar, the prosecutors, and the probation office cooperate with each other when it is possible, and when the occasion requires them to act firmly, they do so while remaining respectful and cordial with each other. Our court staff also plays a vital role by working with everyone using the Court to make sure the community has access to the Court and understands as best they can, what needs to be done when they come to court. The people I work with allow me to do the best I can to meet the responsibilities I have to our community and the persons coming to our court. This is the best part of my job.

Spare Time

Like all of us during these seven months, my spare time is focused on staying healthy with my family.

Advice for Attorneys Appearing

Attorneys should understand that on a "typical" day, the cases coming before the Court often exceed the time allotted for the work. Consequently, it is important that counsel be prepared and focused when the case is called to make the best use of the time allotted.

What change would you like to see?

The changes I would like to see are not necessarily "legal" changes, but rather changes to the allocation of resources that can impact how the Lompoc Court is used. Traveling between my home in Carpinteria and the North County has helped me appreciate Santa Barbara County's size and diversity. Lompoc at times tends to be over-shadowed by Santa Barbara, Santa Ynez, Buellton, and Santa Maria. Yet, it is an important and diverse community. Our county government needs to provide Lompoc with greater resources to address the needs of persons living in this area who are homeless, or require mental health assistance and intervention, and to provide resources to the community to form effective gang intervention programs. The bulk of these resources now go to Santa Maria and Santa Barbara, but the Lompoc community also has these same needs, which have not been adequately addressed.

Legal Hero

When we think of legal heroes, we often rightfully think of outstanding jurists or scholars, such as Justice Ginsburg or Bernard E. Witkin. And, while I certainly share this view, I also consider lesser known persons to be as heroic as those we consider titans of law. For example, Dred Scott (*Dred Scott v. Sanford* [1857] Mr. Blair and G.F. Curtis, attorneys); Gonzalo Mendez, Thomas Estrada, William Guzman, Frank Palomino, Lorenzo Ramirez (*Mendez v. Westminster School District of Orange County* [1947] David Marcus, attorney); Leola and Oliver Brown (*Brown v. Board of Education* [1954] Thurgood Marshall, attorney), and Fred Korematsu (*Korematsu v. United States* [1944], Wayne M. Collins and Charles A. Horsky, attorneys) are heroic figures. These every-day persons had the valor to challenge injustices confronting them and, but for their courage, our legal system would not have confronted these injustices. Even when our legal system failed them (Dred Scott, Fred Korematsu), the act of bringing our attention to these injustices was itself a victory because the recognition of these injustices, over time, led us to ask ourselves how this could be and eventually reckon with them. ■

The Racial Justice Committee: Fighting for Racial Equality

By Amanda Paison and Maria Martino

Amanda Paison

Maria Martino

United States Supreme Court Justice Sonia Sotomayor observed: "The way to stop discrimination on the basis of race is to speak openly and candidly on the subject of race, and to apply the Constitution with eyes open to the unfortunate effects of centuries of racial discrimination."

This year, 826 people were killed by police. While African Americans make up about 13% of the United States population, they represent 28% of law enforcement victims. African Americans are three times more likely to be killed by police than white people, and 1.3 times more likely to be unarmed as compared to white people. (Source: Mapping Police Violence.org)

Compounding the unjustifiable killing of people of color by police is a lack of transparency and accountability for those killings. From 2013 to 2020, 98.3% of killings by police have not resulted in officers being charged with a crime. Only 1.7% of those officers accused of killing someone have faced charges for taking the life of a fellow human being. (Source: Mapping Police Violence.org)

The disparate treatment of people of color by law enforcement does not typically end in murder and is not confined to the street. Racial inequity is woven into the fabric of our criminal justice system: biased policing, unwarranted stops, demeaning treatment, prosecutorial overcharging, and explicit and implicit bias by judges who set bail and sentence persons convicted of crimes.

Black men comprise about 35% of those incarcerated. One in three black men born today can expect to be incarcerated in his lifetime, compared to one in six Latino men and one in 17 white men. Black women are similarly impacted: one in 18 black women born in 2001 is likely to be incarcerated sometime in her life, compared to one in 111 white women. (Source: The Sentencing Project)

It is undeniable that there is a race problem within the US criminal justice system.

As public defenders, we witness the impact of the systematic racism of our legal system every day. We work on the frontlines - fighting for the rights and dignity of our clients. We work with some of the most vulnerable persons in our community: the homeless, those with substance use disorders, individuals suffering from disabilities, and/or mental illness, and children. All of them poor. Many of them black or brown. Our role of battling for the fair treatment of people in the criminal justice system has traditionally been confined to the courtroom. However, recent events demonstrate that the fight to end systemic racism requires a comprehensive approach that draws on the strength and skills of those advocating for change outside of the courtroom walls.

The Racial Justice Committee (RJC) of the Santa Barbara County Public Defender's Office, established in July 2020, is committed to fighting against systemic inequality and the disproportionate harm imposed on communities of color by the criminal justice system through zealous legal advocacy, community education, and strategic collaborations.

As a crucial part of the RJC's mission, community outreach and engagement serve a multi-faceted purpose. The RJC aims to serve as a pillar of support for those organizations who continue to pave the way through activism and education. Where possible, the RJC will form strategic collaborations and partnerships with local organizations to provide education and support on important issues within the criminal justice system.

As one of the first collaborations, the RJC partnered with the Lompoc / Santa Maria NAACP Chapter to lobby in support of Assembly Bill 2542 and Assembly Bill 3070.

Assembly Bill 2542, also known as the California Racial Justice Act, prohibits the state from seeking or obtaining a criminal conviction, or from imposing a sentence, based upon race, ethnicity or national origin.

Assembly Bill 3070 limits the removal of prospective jurors without cause in order to deter discrimination based on race, color, ethnicity, national origin and ancestry, among

other discriminatory grounds.

Both these Assembly Bills were signed into law by Governor Gavin Newsom last month recognizing the historic racial bias in the criminal justice system and acknowledging the need to eliminate racially discriminatory practices in order to ensure fair and equitable outcomes for people within the criminal justice system.

The Public Defender's Office and RJC recognize the importance that public safety plays in our communities. However, we seek to reimagine public safety in a manner that encourages safe, transparent police practices and enforces the Constitutional rights and liberties of the public.

To this end, the RJC recently lobbied the State Bar of California to urge the adoption of a new rule of professional responsibility that would reduce the possibility of political influence from law enforcement unions over prosecutorial decision making by prohibiting prosecutors from accepting endorsements or campaign funds from police unions.

The RJC is a natural extension of the unique and integral role the Public Defender's Office plays in our local criminal justice system. In Santa Barbara, our office has embraced a holistic defense practice - taking an interdisciplinary, client-centered, community-oriented approach to the representation of our clients. We have already committed to advocating beyond the courtroom in order to address the systemic inequities related to poverty and illness experienced by our clients that increase their contact with the criminal justice system. However, we cannot effectively serve our clientele without speaking openly and candidly about the impact of race.

The RJC is open to ideas from the community and other organizations on how we can improve our criminal justice system for all individuals involved.

If you are an organization, or an individual with an idea and you would like to see how we can help, please reach out. If you have an issue that you would like the RJC to educate the community on, please reach out. If you have information that you would like to share that would improve the RJC's advocacy efforts, please reach out.

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Website: www.countyofsb.org/defender ■

Amanda Paison is an NLADA AmeriCorps VISTA member serving in the Santa Barbara County Public Defender's Office. She has been serving in the Santa Maria office since September of 2018 as the Community Partnerships VISTA. In her role she is working to build capacity within the communities of Santa Barbara County and the office in which she serves. Through forming lasting partnerships within the community, Amanda has been able to brainstorm and implement various projects that offer services to clients in Santa Barbara County. Some of these projects include partnering with a local sober living home to provide weekly showers for clients experiencing homelessness and obtaining grant funding for obtaining items for clients basic needs. Amanda is a law school graduate of Valparaiso University and is studying for the California Bar Exam in hopes of becoming a Public Defender in Santa Barbara County.

Maria Martino, Racial Justice Committee Co-Chair and Community Outreach and Veterans Services Coordinator, has worked for the Santa Barbara County Public Defender's Office for 29 years, first as an intern, then a law clerk and investigator, and for the last 18 years as a Deputy Public Defender. A pioneer in community-oriented (holistic) defense, Maria has been assigned to the Collaborative Courts in Santa Maria since 2006. Maria has been invited locally, statewide and nationally to speak about topics related to representing clients who are suffering from substance use disorders, mental health disorders, homelessness and trauma. Her experience includes being a seminar presenter at the National Legal Aid and Defender Association Conference, the California ADP Training Conference and at the National Association of Drug Court Professionals Conference, speaking about holistic defense, client-centered approaches to representation and developing collaborative approaches to criminal justice. Maria is a part-time faculty member at Allan Hancock College where she teaches Criminal Law, Criminal Procedure and Evidence. Maria graduated from Cal Poly in San Luis Obispo and graduated with her Juris Doctorate degree from Gonzaga University School of Law in 1999.

The Legislature Tightens DV/Custody Crossover Procedures in "Recommending" Jurisdictions (like our neighbor to the south)

By Gregory W. Herring

Domestic violence ("DV") is a potential game-changer in child custody contests. In 2014's Assembly Bill ("AB") 2089, the Legislature expressly declared, "There is a positive correlation between [DV] and child abuse, and children, even when they are not physically assaulted, suffer deep and lasting emotional, health, and behavioral effects from exposure to [DV]." (Uncodified section I of AB 2089.) When a parent in custody proceedings asserts the other committed DV within the past five years, Family Code section 3044 requires a court to make findings on the DV issues *prior* to making custody orders. If DV is established, the abuser faces a presumption against joint or sole custody.

Family Code section 3170 requires pre-hearing mediations in custody cases. Most counties treat them as truly confidential, consistent with Evidence Code sections 1119 and 1121. Mediations are typically time-pressed, usually lasting only a few hours. Parties and children (different counties assert different minimum age limits) attend.

A minority of counties, including Ventura County, require mediators to issue written custody "recommendations" to the court and even testify as experts immediately following unsuccessful mediations. These types of mediations are effectively mini custody evaluations outside of the strict standards of Family Code sections 3111 and 3117 and the California Rules of Court. Because the "recommending" process defeats the confidentiality integral to true mediations, the sessions are called "Child Custody Recommending Counseling" ("CCRC"). CCRC Mediators are called "Child Custody Recommending Counselors" ("Counselors").

Historically, the CCRC system would sometimes undercut section 3044's policies and protections. The following could too often occur:

- An abused parent would file a Request for Orders based on DV allegations, with attendant requests for custody orders.
- The court would automatically schedule the case for the usual pre-hearing CCRC.
- The Counselor's job would *not* include making legal determinations of DV, as that would be an improper delegation of judicial duties. (E.g., *Settlemire v. Super. Ct.* (2003) 105 Cal.Ap.4th 666, 672.) They might suspect it and report their suspicions, but the focus would typically be the amorphous "children's best interests" concept. (Fam Code §3020, subd. (a).) (This is *not* criticism of these hard-working and committed professionals; they have most difficult jobs, and their scope is constrained.)

Gregory W. Herring

- If the parties could not agree on a custody plan, the Counselor would make written custody and parenting recommendations to the court based on their usual boilerplate template. They would make some minor customizations for the particular family. With the parties living separately, the Counselor's concerns about past abuse might not be acute. "Now that you are living apart, the alleged abuse is much less likely to reoccur and we want the children having both parents significantly involved."
- The parties would proceed to a hearing, where the time-pressed court would – as intended – typically approve the recommendations, perhaps with a few adjustments, through interim orders. "After all, the Counselor evaluated the children's best interests." Almost always the court would lack time for a formal hearing or trial on the DV issues prior to making these orders. (This is *not* criticism of our judicial officers, either; they also have most difficult tasks, their caseloads are too high, and their resources are too limited.)
- The DV issues could be heard in a live hearing or trial some weeks, months, or years down the road. By then, though, the "interim" orders, possibly including joint custody, could have cemented a permanent *status quo.* It could be difficult to persuade a judicial officer to later reverse course, absent some dramatic

Continued on page 23

Navigating the COVID-19 Tenant Relief Act of 2020

By Michelle E. Roberson

Michelle E. Roberson

Background

In approximately March 2020, the reality of the global pandemic suddenly hit California. With it came a series of executive orders, ordinances, and moratoriums. As it relates to residential rental property, Governor Newsom immediately issued an executive order allowing local governments to halt evictions due to nonpayment of rent related to COVID-19 if the tenant had paid pursuant to the lease agreement prior to March 27, 2020. Shortly thereafter, local cities and counties passed their own local laws originally set to expire at the end of May 2020 or extended per Gov. Newsom's future orders, of which there were several.

Most of these local provisions provided a timeframe of twelve-months in which a tenant has to repay the deferred rental amount due.

Meanwhile, on April 6, 2020, the Judicial Council adopted an emergency court rule that prohibited the issuance of "…a summons on a complaint for unlawful detainer ("UD") unless the court [found], in its discretion and on the record, that the action [was] necessary to protect public health and safety." This rule was to remain in effect for an additional 90 days after the Governor declared the state of emergency related to the pandemic was lifted or as amended or repealed by the Judicial Council.

Claims ensued, arguing, among other things, that the Judicial Council lacked power to adopt the emergency rule under the California Constitution as the Council is only to "adopt rules for court administration, practice and procedure, and perform other functions prescribed by statute" under Cal. Const. art. VI, section 6(d). The claim was that the emergency rule went further by adopting a rule that was inconsistent with existing statutes, which is the legislature's duty to write, and the court's duty to uphold.

On August 13, 2020, the Judicial Council voted 19-1 to have the emergency rules stay in effect only through September 1, 2020, with Chief Justice Cantil-Sakauye stating that "[t]he judicial branch cannot usurp the responsibility of the other two branches on a long-term basis to deal with the myriad impacts of the pandemic."

Shortly thereafter, Assembly Bill 3088 received legislative approval was signed by the Governor on August 31, 2020. Confusion arose as the feds also implemented and amended their own protections; many legal scholars have concluded would not supercede California's laws as they are more protective. AB3088 had several acts that came into play, which includes the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020, offering protections to first lien mortgage or deed of trust secured by certain small properties if occupied by a tenant. The Small Landlord and Homeowner Relief Act of 2020 requires mortgage servicers to provide certain notices if they deny forbearance during an effective time period as it relates to the COVID-19 emergency. And it enacted the COVID-19 Tenant Relief Act of 2020 ("Tenant Act"), which changes the former three days' notice for payment of rent. AB3088 also has various statutory additions throughout, such as the small claims court's jurisdictional authority, sealing of certain court files, and amendments to the Tenant Protection Act of 2019, known as AB1482. This article will focus on the Tenant Act as it relates to residential units.

COVID-19 Tenant Relief Act of 2020

The Tenant Act covers a period from March 1, 2020 and January 31, 2020 (covered period) in which the payment of rents was impacted due to a COVID-19-related financial distress as defined. The Tenant Act comes with various new rules for the court, landlord, and tenant, including temporary court rules that end on October 5, 2020 and UD processes; various notices that differ depending on when unpaid rent was due, level of income, and finally; how to handle local rules that were in effect prior to the Tenant Act with regard to deferred rent repayment options.

Temporary UD Ban through October 5, 2020 and other Restrictions

The Tenant Act begins in Chapter 1179.01 of the civil code and starts by instructing the court to (1) not issue any summons on a UD if it seeks possession of a residential unit in whole or in part due to nonpayment of rent or other charges; (2) enter a default or default judgment based in

whole or in part on nonpayment of rent or other charges; (3) require a UD plaintiff to file a coversheet that indicates whether the action is seeking possession of real property and if it is based in whole or part on the default of payment of rent or other charges.

This new requirement was only in effect through October 5, 2020 to allow the courts adequate time to implement new procedures as it relates to the payment of rent, but allows the court to issue summons on a UD for other reasons.

Notwithstanding, a court may not find a tenant guilty of a UD prior to February 1, 2021 unless (1) the tenant was guilty of the UD prior to March 1, 2020; (2) the tenant failed to comply with the requirements of 1179.03 after receiving notice described below; (3) the tenancy was terminated for an at-fault reason, no fault just cause under 1946.2 (2) (b), other than intent to demolish or substantially remodel, unless necessary to maintain compliance with certain laws governing the habitability of residential units; the owner entered into a contract or sale with a buyer that intends to occupy the property and certain requirements are satisfied. The landlord is also precluded from recovering any COVID-19 rental debt in connection with any award of damages, unless the tenant failed to comply with the requirements under the Tenant Act.

Notices for Payment of Rent

All notices that demand payment of rents during the covered period require that the standard three-day notice would have covered, now must be no shorter than 15 days, excluding Saturdays, Sundays, and other judicial holidays. The Notice must still state the amount of rent demanded and the date each amount became due. Additionally, the notice must now also advise that the tenant, in very specific language and font size, that they cannot be evicted for failure to comply with the notice if the tenant delivers a signed declaration of COVID-19-related financial distress to the landlord on or before the notice expires. These notices differ depending on whether the payment came due during the protected time period or the transitionary time period.

Additionally, the statute requires that a landlord must provide any tenant, who as of September 1, 2020 has not paid one or more rental payments that came due during the protected time period, a special notice on or before September 30, 2020. This notice, again with specific language required to be provided in 12-point font, advises tenants of the Tenant Act and their rights thereto. A landlord may not serve any 15-day notice to pay rent during the covered period without first providing this special notice, which could be provided concurrently if the 15-day notice is served on or before September 30, 2020. There appears to be some ambiguity in this provision as it relates to rents due during the Transition Time Period as there is no requirement to mail notice if they did not owe rent prior to September 1, 2020, but does require a notice be sent in advance prior to serving any 15-day notice. It is silent on whether it could be sent concurrently for the Transition Time Period rents due notice.

Finally, a blank declaration of COVID-19-related financial distress ("Declaration") must be provided by the landlord to the tenant to allow them to sign and return it on or before the notice to pay rent or quit expires. Note that even if the tenant fails to comply with returning a Declaration, they may still be permitted to file one with the Court in response to a UD, in which case the court may dismiss the case if the failure to return the declaration was a result of mistake, inadvertence, surprise, or excusable neglect.

Protected Time Period: Rents due March 1, 2020 through August 31, 2020

A landlord must have provided a tenant that had rents due during the protected time period a copy of their rights by September 30, 2020. Should a 15-day notice be subsequently provided for the non-payment of rent during the protected period with the appropriate supporting notices, and the tenant returns a signed Declaration, tenant may not be found guilty of a UD. The landlord may collect the rent through small claims under new Code of Civil Procedure section 116.223, which gives the smalls claims court jurisdiction in any action for recovery of COVID-19 rental debt under the Tenant Act, regardless of the amount demanded. These claims may not be brought prior to March 1, 2021 and is in effect through February 1, 2025.

Transition Time Period: Rents due September 1, 2020 through January 31, 2021

Tenants that have received a notice to pay or quit for rents due during the transition time period must also pay an amount of rent that is equal to at least 25% of each rental payment that came due or will come due during this period by January 31, 2021. Should they have made a rental payment of this amount by January 31, 2021 for rents due during the transition period and provided the necessary Declaration, then the tenant may not be evicted for non-payment of rent during the covered period.

High-Income Tenants

There are special rules for high-income tenants that is defined to have "an annual household income of 130 percent of the median income," that includes all occupants of the residential unit to determine household size, but "shall not

Continued on page 16

Roberson, *continued from page 14*

include a tenant with a household income of less than one hundred thousand dollars ($100,000)." Should the landlord have proof of income, they may require the high-income tenant that is served notice to submit, in addition to the declaration, documentation supporting the claim of the COVID-19-related financial distress.

Should the tenant fail to comply by submitting their declaration and proof of loss of income upon receipt of a special high-income notice, they will not have the protections of 1179.03(g).

One must proceed with caution, however. While a landlord is authorized to proceed with a UD and allege that the tenant is high income, the tenant may still submit rebuttal evidence with regard to their income status. Should the court find that at the time notice was served, the landlord did not have proof of income establishing the tenant is a high-income tenant, the court shall award attorney's fees to the prevailing party.

Local Regulations

As previously discussed, many of the local ordinances enacted early during the emergency period required a twelve-month repayment period for deferred rents prior to AB3088. Section 1179.05 allows for any local ordinance, resolution, regulation, or administrative action adopted by a local jurisdiction in response to the pandemic to protect tenants from eviction could keep their local regulation, so long as it does not extend past March 31, 2022.

The effect of this is that many landlords may not bring action, as now allowed in small claims, to recoup the deferred rents until the expiration of the repayment period depending on whether the local law requires equal installments or a lump sum at the end of the period.

Conclusion

The various new laws are challenging to navigate for skilled attorneys, but a lay-person may have more trouble keeping track of the various notice requirements. Many tenants are finding it challenging to understand the various notices they are now receiving and have opted to pay the back rent upon receipt of a 15-day notice instead of signing the Declaration for lack of understanding.

While this was a good effort to stabilize housing for many impacted by the pandemic, the above is not the end, as discussion is now starting on the next round of laws being drafted to take effect after January 31, 2021 and local government is continuing to amend or otherwise add new laws to their books.

There has also been federal funding provided to tenants locally for payment of rents, which assisted both tenants and landlords alike, but funding was limited. Individual landlords that continue to have high carrying costs and are unaware of the notice requirements continue to be at risk. These new laws leave them exposed to only being able to collect 1.25 months of rent for the period of March 2020 through January 31, 2021 and uncertainty of being able to recover the rent debt owed during the covered period for a myriad of reasons, such as bankruptcy, tenant vanishing, or simply not knowing how to navigate the claims process properly.

We shall stay tuned. ■

Michelle is the President/CEO of Sierra Property Group, Inc. that manages well-over 1,000 units between Carpinteria and Goleta. She serves on the Board for the Santa Barbara County Bar Association, Santa Barbara Rental Property Association, and City of Santa Barbara Rental Housing Mediation Board, the latter of which has her volunteering her time mediating landlord/tenant disputes.

ENDNOTES

1 California Rules of Court, Emergency rule 1. Unlawful detainers
2 https://newsroom.courts.ca.gov/news/judicial-council-vote-eviction-and-foreclosure-temporary-emergency-rules-0
3 1179.03
4 1179.02.05(a)(1)(A)-(C)

Please join us for the 2020 (First Virtual) Santa Barbara County Bar Association Annual Meeting.

Theme: "Looking Forward"

Date: Thursday, November 12, 2020

Time: 12:00 pm to 1:00 pm

Where: Zoom (Zoom Credentials to be Provided).
$10 Members/$15 Non-members. Send checks to: SBCBA 15 W. Carrillo #106, SB 93101, Pay via Venmo or call with credit card – 805-569-5511.

Keynote Speaker: James Joyce, III – Founder of "Coffee with A Black Guy." For more information, please visit: www.cwabg.com

James Joyce III

James Joyce III is a civil rights activist and founder of Coffee with a Black Guy. Into its fourth year, CWABG serves as safe place for interactive, community conversations about a variety of topics.

Special Award: Jamie Forrest Raney, Mentorship Award

Santa Barbara County Bar Association

An Ethical Artificial Intelligence: Legal Tech in Southern California

By Nicole Clark

Many are wary of artificial intelligence (AI). Even Elon Musk, the business magnet behind the push for autonomous vehicles, has expressed concerns about a world in which machines outpace humans.

Musk is not alone. Legal practitioners are equally skeptical of the proliferation of artificial intelligence. Some point to their deployment in the criminal justice system. Courts and corrections departments across the United States now use algorithms to help determine a defendant's risk of committing another crime or failing to appear for a court hearing. These algorithmic outputs (purchased from private businesses) inform decisions about bail, sentencing, and parole, raising concerns about the black-boxed nature of proprietary softwares as well as the hidden biases programmed into these technologies.

....one study conducted by Duke University, the University of Southern California, and Stanford University demonstrated that artificial intelligence can outpace experienced lawyers when it comes to reviewing legal documents.

Why the Push for Legal Tech?

As the first step to artificial intelligence, machine learning involves "the recognition of patterns and the automation of processes based on human input." Legal tech innovators have started to apply this same procedure to document review, discovery, and day-to-day legal research activities. "It may even be considered legal malpractice not to use AI," says Tom Girardi , a civil litigator based in Los Angeles County. "It would be analogous to a lawyer in the late twentieth century still doing everything by hand when this person could use a computer."

Girardi's comments emerge within a context of extraordinarily high legal costs. According to Leah Wilson , Executive Director of the State Bar of California, "too many Californians needing legal services cannot afford an attorney." Many expect AI-powered legal technologies will be able to help bridge this gap in access. "It's a lawyer's job to solve a problem as quickly and inexpensively as possible," Girardi begins. "AI will be a godsend because it'll give lawyers the information they need to resolve conflicts faster."

Creating an Accessible and Transparent Legal System

Andrew Arruda is an attorney whose legal research platform, ROSS Intelligence, was developed to help ensure that "everyone across the state [of California] can gain access to high-quality, affordable legal services." ROSS changes the ways in which attorneys conduct legal research, providing features that enable attorneys to quickly identify any weaknesses in the arguments used by opposing counsel. Without a cohort of junior associates at which to throw legal research tasks, small law firms and sole practitioners (as well as their clients) are poised to benefit the most from AI-powered legal technologies.

In fact, one study conducted by Duke University, the University of Southern California, and Stanford University demonstrated that artificial intelligence can outpace experienced lawyers when it comes to reviewing legal documents. During this experiment, the AI software achieved a 95 percent accuracy rate when it reviewed a contract in 26 seconds. The human lawyers, on the other hand, took an average of 92 minutes to achieve an 85 percent accuracy rate.

Consider another example. Trellis Research has compiled an archive of state trial court rulings for California, Florida, New York, and Texas. Using this archive, Trellis has developed an analytics platform that brings together the unstructured data from counties across each state and restructures the information in ways that allow litigators to draw a plethora of strategic insights. Earlier this year, one firm based in Southern California utilized this platform to develop a custom analytics strategy report on settlement amounts in class action cases with PAGA claims. The report included detailed information about the settlement amounts and attorneys' fees that judges had previously approved. The report then compared these amounts with the number of weeks for each trial. With this kind of analysis, the firm developed a settlement strategy that catered to the specific needs of its client. The firm could perform a cost-benefit

analysis that would help it determine the number of weeks their client should continue with a trial before it would be more financially beneficial to settle. With these examples, we can begin to see how AI-powered legal technologies are democratizing access to the law. By making legal data more accessible, they even the playing field between large and small firms, all while reducing the costs of legal services for clients and lifting the veils that cloak case strategy from clients.

Opening the Doors to Justice

Legal practitioners should continue to remain skeptical of legal technologies and their unchecked deployment across the industry. That skepticism, however, should also be accompanied by efforts to reimagine how these new technologies might be used to bring greater accessibility and transparency to our legal system.

The work performed by ROSS Intelligence, Trellis Research, and other AI-powered legal tech providers suggest that artificial intelligence has the ability to not only expand who has access to legal protections, but it also has the ability to affect how we might harness that access in productive and equitable ways. ■

Nicole Clark is CEO and co-founder of Trellis Research, and is a business litigation and labor and employment attorney. Trellis is an AI-powered legal research and analytics platform that gives state court litigators a competitive advantage by making trial court rulings searchable, and providing insights into the patterns and tendencies of your opposing counsel, and your state court judges.

Trellis is providing Santa Barbara County Bar Association members with complimentary 14-day access to its platform.

Liability for Transmitting an Infectious Disease

By Robert Sanger

It turns out that an individual can be held liable both civilly and criminally for transmitting an infectious disease. This is not new legislation or case law developed for the COVID-19. In fact, in 1989, the Ventura District Attorney prosecuted the first person in California for a felony for allegedly transmitting HIV to a companion.[1] At that time, becoming HIV positive was a medical death sentence often with a matter of months to live. When the defendant's indictment was unsealed, the prosecutor held a press conference outside of the arraignment department and announced that a controversial legislator[2] was concurrently unveiling his new legislation to make transmitting HIV punishable by execution.[3]

In this *Criminal Justice* column, we will take a brief look at the history of contagious viruses and concerns for public health. We will then look at the kinds of conduct that can result in criminal and civil liability for transmitting infectious diseases under current law.

Virus

The concept of contagious diseases has been understood on one level or another since before the current era. References are found in ancient texts.[4] The concept that submicroscopic parasitic organisms cause an infection was actually developed by botanists in the late nineteenth century with regard to tobacco parasites. What was eventually called a virus was first associated with human disease in 1902.[5] Coincidentally, a pioneer in the study of viruses around this time was U.S. Army Surgeon Walter Reed who investigated yellow fever. By the time of the smallpox pandemic just after the turn of the twentieth century, followed by the 1918 flu pandemic, science had clearly established that deadly viruses could be transmitted through the air from one human to another.[6]

In the 1950's, with the discovery of the structure of DNA, the mechanism for the attachment of viruses to living organisms was uncovered. It turned out that viruses were, in fact, parasites. They were the only living organisms whose genomic structure was not based on the DNA double helix but, instead, was based on an RNA genome. Of course, living organisms, including humans, also generate RNA but the RNA interacts with DNA and assists in the replication of cells. In the case of viral RNA, it invades the DNA/RNA process of the host organism and replicates its own genomic structure parasitically.

Robert Sanger

Viruses abound in the human body and most are not detrimental or are only mildly so. But some viruses, like smallpox, poliomyelitis, types of influenza, yellow fever, HIV, West Nile, SARS, Zika, Ebola and 2019 SARS-CoV-2 (COVID-19), are potentially deadly. The molecular structure of the RNA proteins of these viruses tend to attach to the host readily and replicate rapidly. In addition, they are easily transmittable on surfaces and, most readily, through the air.

Viruses and Politics

The history of disease is beyond the scope here. Suffice it to say that diseases have prompted political reactions often when the epidemiology was not understood. Certainly, biblical as well as medieval accounts of plagues were intertwined with religion, superstition, suspicion, condemnation and the propagation of false cures and false shamans. Times have not changed.

It is also interesting that there are many examples of politicians and government officials who sought to place the economy above science. Tuberculosis is a disease caused by a bacterium, which also spreads through the air, particularly when a person talks, coughs or sneezes, and is also susceptible to spread on surfaces. A bacterium is larger than a virus and affects the body by way of a different mechanism, but the general form of transmission and its level of contagion are similar. As of 1908 in California, there was a significant outbreak of tuberculosis, at first it was thought to come from the East Coast but, eventually, it was realized that it was generating and regenerating in California itself. Death rates were mounting.

In 1908, the Committee on Tuberculosis of the Medical Society of the State of California was formed to "gather all available data in regard to the prevalence, distribution and causes" of the disease in the state.[7] The Commission recognized that "no great reduction in this death rate" could

occur without tracing (they called registration) and proper sanitary measures to prevent the spread. A bill to implement registration (SB 63) was killed in committee. Another bill (SB 59) passed the legislature that provided "that in the case of the vacation of any apartment or premises by the death or removal therefrom of a person having tuberculosis, the attending physician, or, in his absence, the owner, lessee, occupant or other person having charge of such apartments must notify the health officer, and such place shall not be occupied until disinfected, cleaned or renovated."[8]

The Governor vetoed the bill, saying, "While these provisions are designed for the protection of the public health, they are so drastic that they would have a most deplorable effect if carried out in their entirety. The loss of business, and the inconvenience and loss through disinfection, would cause the closing of all doors against consumptives."[9] Who could imagine putting the economy ahead of science? In 1908, the politicians were so uninformed and avaricious as to put the "*loss of business*, and *the inconvenience* and *loss through disinfection*" ahead of loss of life.

In 1913, the Health Commissioner of Norfolk, Virginia submitted a paper before the American Public Health Association in Colorado Springs. He quoted Louis Pasteur to say, "It is in the power of man to rid himself of every infectious disease."[10] However, his thesis was that the people who govern will not follow the science. They may not see vaccination as important, and public health is regarded as a "charity pure and simple, with absolutely on returns."[11] His plea, which betrays a great deal of frustration, is to argue to the powers that be, "that fighting disease, particularly communicable disease, is a paying investment, yielding large returns in dividends of health and human efficiency and progress upon the time and money spent; direct their minds away from the single humanitarian view, because you are dealing generally with hard, cold business men who are trained and educated to demand direct returns for labor and capital invested . . ."[12]

Meanwhile, in England, there was some impetus to deal with spread of contagious diseases. Just a few years earlier, there was an effort to use civil or even criminal sanctions to require people to report deadly diseases. An example from the contemporaneous literature relates to smallpox, which is a virus and a deadly one. It is the case of a Mr. Allinson who, in 1902, was apparently convicted for not notifying the existence of a case of smallpox. Evidently he was proceeded against under some controversial theory. Although the original account could not be readily located, it seemed reminiscent of the Ventura District Attorney using the ADW statute to prosecute the transmission of HIV ninety years later (but 30 years ago). In any event, the Chief Health Officer for New Zealand, at the time, deigned to instruct Mother England that it should pass a law similar to theirs that clearly imposed fines and statutory penalties on ordinary persons and health professionals if they fail to notify the Health Officer that a person is sick or suspected to be sick with any infectious disease. In turn, the Department of Public Health could take appropriate measures to avoid the spread of the disease.[13]

Viruses and Liability

Today, there is law to support both criminal and civil liability for transmitting a contagious disease, which would include transmitting COVID-19. In general, the unknowing transmission of the disease under ordinary circumstances will not cause liability. However, knowing transmission, coupled with a mental state, which will be discussed, may be sufficient. Certainly, knowing and intentional transmission will be sufficient for both criminal and civil liability and, depending on the statute or state of the law, a negligent or reckless transmission may be sufficient.

In California, it is a misdemeanor to intentionally transmit an infectious or communicable disease under Health and Safety Code Section §120290(a)(1). It is also a misdemeanor to willfully expose a person to an infectious or communicable disease if a person has been instructed by a health officer has instructed the person not to engage in particularized conduct that poses a substantial risk of transmission within 96 hours of said instruction. Section 120290(a)(2).

At the time of the Ventura prosecution, there was a precursor to section 120290, since repealed,[14] that made transmission of a misdemeanor under less specific conditions. There was a good argument that the rule of lenity required the prosecution to use the more specific misdemeanor statute rather than the general felony ADW for which the DA wanted five years prison. The matter was sadly rendered moot when, after litigating pretrial to the California Supreme Court on another issue in the case, we returned to the trial court in time for the client to be in hospice care. The fanfare had subsided and the DA agreed to a no-time probationary disposition.[15]

Were a current prosecutor to use a felony assault or a battery with serious bodily injury, for instance, in lieu of Health and Safety Code section 120290(a)(1) or (2), the argument from the rule of lenity could still be made. However, under the current statute, the ultimate question has never been decided. And, if the recipient of the transmission died, and the potential defendant acted with a base anti-social motive and with reckless disregard for human life, a case for second-degree murder could be alleged.[16]

In California, there may also be civil liability for trans-

mitting an infectious disease. The leading case for a long time was *Kathleen K. v. Robert B.,* 150 Cal.App.3d 992 (1984) regarding the transmission of genital herpes. It has been followed by other Courts of Appeal.[17] In 2006, the California Supreme Court in *John B. v. Superior Court*, 38 Cal.4th 1177 (2006) affirmed civil liability for the negligent transmission of, in that case, HIV, where the defendant had either actual knowledge or constructive knowledge of the infection.

Just out of curiosity, one might wonder if there was civil liability if, say, a person knew he or she was infected with COVID-19 and, say, travelled to New Jersey and infected people there. Interestingly, New Jersey seems to allow such a cause of action and actually cited to the California *Kathleen K.* case (supra).[18] Of course, if a person, under color of law, were to expose others to an infectious disease, say, after not disclosing or instructing others not to disclose that they were positive, that could be a violation of the Civil Rights Act of 1964 under 42 USC 1983. But, I digress.

Conclusion

There is nothing new under the sun. We may not have learned from the past. But, in fact, not only do we need to get through this current pandemic, but we have to prepare for the next one. Intelligent application of and adherence to the rule of law is important anytime and more so during a crisis. ■

Robert Sanger is a Certified Criminal Law Specialist (Ca. State Bar Bd. Of Legal Specialization) and has been practicing as a litigation partner at Sanger Swysen & Dunkle in Santa Barbara for over 46 years. Mr. Sanger is a Fellow of the American Academy of Forensic Sciences (AAFS). He is a Professor of Law and Forensic Science at the Santa Barbara and Ventura Colleges of Law and an Associate Member of the Council of Forensic Science Educators (COFSE). Mr. Sanger is Past President of California Attorneys for Criminal Justice (CACJ), the statewide criminal defense lawyers' orgaanization, and is currently the Chair of the Board of Death Penalty Focus. The opinions expressed here are those of the author and do not necessarily reflect those of the organizations with which he is associated. ©Robert M. Sanger.

Endnotes

1 The present author represented this client who gave his express permission for his story to be told.
2 Sen. Ed Davis, former Chief of Police of Los Angeles who had tried to buy a submarine so the LAPD could patrol the Long Beach Harbor.
3 The Bill was defeated in Committee.
4 See, Wang-Shick Ryu, Molecular Virology of Human Pathogenic Viruses, 3 (Academic Press, 2017), ("Smallpox was described in the literature of ancient China (700 BC)."); *Leviticus*, Third Book of the Torah or King James Version, 13:45-59 (Describing those who had the plague as unclean and that it may spread.)
5 Wang-Shick Ryu, supra, 4-5.
6 See, *forthcoming*, Rae-Ellen W. Kavey and Allison B. Kavey, Viral Pandemics: From Smallpox to COVID-19, (Routledge, 2021).
7 See the *Annual Report of the Committee on Tuberculosis*, 7 California State Journal of Medicine 162-164 (1909)
8 Id., at 163.
9 Id.
10 P. S. Schenck, "*Control of Communicable Diseases*," The American Journal of Public Health, 43-49 (1913).
11 Id., at 49.
12 Id.
13 Correspondence, The British Medical Journal, 1472 (1902).
14 Former Health and Safety Code section 3001.
15 Originally, when the defendant was diagnosed there were no protocols for counseling people who tested positive. In fact, the results were delivered anonymously due to privacy concerns. There was no follow-up or consultation with a doctor or counselor unless the person sought it out. Not only was the client dying but the medical community realized that the sensitivity to privacy had left people fend for themselves. From a mental health standpoint, it was devastating and disorienting for a person to be given what was then a terminal diagnosis without support. By the time we returned to the trial court, the medical community and the community at large had a more balanced view of what should be done to support people who were HIV positive.
16 It is the author's contention that *People v. Watson* 30 Cal.3d 290 (1981) has been over-extended to include conduct that is properly punished under existing statutory schemes. But, in an egregious enough case, it cannot be ruled out as a potential charge.
17 *Doe v. Roe*, 218 Cal.App.3d 1538 (1990).
18 *C.A.M. v. R.A.W.*, 237 N.J. Super. 532 (1990).

Herring, *continued from page 12*

interim occurrence. The abuser would learn to mask their behavior; they might even, through ongoing intimidation and abuse, "set up" the victim so that *the victim* appears uncooperative, out of control, or otherwise unsuited for custody.

The Legislature addressed the above issues in making the following additions to section 3044, effective January 1, 2020:

- When a court makes a finding that a party has perpetrated DV, it may *not* base its findings solely on conclusions reached in CCRC. (Fam. Code §3044, subd. (e).)
- If a court provides custodial rights to an abuser because it finds that they overcame section 3044's presumption, it must do all the following in writing or on the record:
  - Make certain findings, as specified in section 3044 subd. (b). (*Id*., at subd. (f)(1).)
  - State its reasoning in specific terms. (*Id*., at subd. (f)(2).)
  - State why its findings, on balance, support the legislative findings that, among other things, "… children have the right to be safe and free from abuse, and that the perpetration of … [DV] in a household where a child resides is detrimental to [the child's] health, safety, and welfare …." (*Ibid*.)
- In a custody or restraining order proceeding involving DV allegations, the court shall inform the parties of the existence of section 3044 and give them a copy of the statute *prior* to any CCRC or mediation. (*Id*., at subd. (h).)

Even where DV is alleged, courts may still issue temporary orders as before. (*Id*., at subd. (g).) Under the new additions, though, such orders may only be "for a reasonable amount of time" prior to an evidentiary hearing or trial. (*Ibid*.) There, the court shall make a determination as to whether section 3044 applies prior to issuing a custody order. (*Ibid*.)

Counsel now have more tools for gaining a court's early attention to the Legislature's DV/custody crossover concerns and ensuring that DV allegations are given full weight. Best practices include pressing for a prompt evidentiary hearing before interim orders might effectively become the "*status quo*" before DV determinations. Counsel might also request expedited bifurcated DV proceedings *prior* to any regarding custody. In cases where simultaneous criminal DV charges might cause a stay of those considerations in the family court, litigators can point to the Legislature's new unambiguous language in advocating against any custodial rights for the accused prior to DV findings.

These changes can also benefit wrongfully accused parents. DV allegations can too often be manufactured or exaggerated for custody advantages. A wrongfully accused parent can point to the right to a prompt DV determination. Expediting this critical issue can help families move forward and begin healing.

Greg Herring *is a CFLS, and a Fellow of the AAML and the IAFL. He is the principal of HLG, a family law firm serving "the 805" with offices in Santa Barbara, Ventura and San Luis Obispo Counties. His prior articles and blog entries are at www.theherringlawgroup.com*.

Verdicts & Decisions

Flitcroft v. Berry, et al.

SANTA BARBARA SUPERIOR COURT, ANACAPA DIVISION

CASE NUMBER:	19CV00804
TYPE OF CASE:	Premises Liability
TYPE OF PROCEEDING:	Settlement
JUDGE:	Anderle
LENGTH OF TRIAL:	N/A
LENGTH OF DELIBERATIONS:	N/A
DATE OF VERDICT OR DECISION:	Settled at CMADRESS on January 13, 2020
PLAINTIFF:	Daniel Flitcroft
PLAINTIFF'S COUNSEL:	Anthony Kastenek
DEFENDANT:	TAYLOR BERRY KRISTINA HLAVACEK TERESA ATTERBURY ATTERBURY TERESA M REVOCABLE TRUST ALEXANDRA BARBEAU TAYLOR TIDWELL GRANT RICKON SANTA BARBARA PROPERTY GROUP, INC.
DEFENDANT'S COUNSEL:	Sean E. Olk Esq. for TAYLOR BERRY Josephine Baurac, Esq for KRISTINA HLAVACEK Philip A. Kraft, Esq for TERESA ATTERBURY Philip A. Kraft, Esq for ATTERBURY TERESA M REVOCABLE TRUST David M. Grokenberger for ALEXANDRA BARBEAU James P. Hart, Jr., Esq for TAYLOR TIDWELL Michael E. Jenkins, Esq. for GRANT RICKON John C. Eck, Esq. for SANTA BARBARA PROPERTY GROUP, INC.
INSURANCE CARRIER, IF ANY:	Mercury Insurance for TAYLOR BERRY Allstate Insurance for KRISTINA HLAVACEK AAA for TERESA ATTERBURY AAA for ATTERBURY TERESA M REVOCABLE TRUST Uninsured: ALEXANDRA BARBEAU Nationwide Insurance for TAYLOR TIDWELL Travelers Insurance GRANT RICKON SANTA BARBARA PROPERTY GROUP, INC.
EXPERTS:	None

FACTS AND CONTENTIONS: While at a barbeque in Santa Barbara, Daniel Flitcroft volunteered to cook for guests.

When the grill charcoal coals went low, a Can of fluid was used to try to rekindle the coals. The Can exploded when Plaintiff's friend, Taylor Berry, was attempting to either (i) pour denatured alcohol/lighter fluid on the coals to reheat them or (ii) hand the Can to Flitcroft.

The flames covered Flitcroft and resulted in burn injuries. Flitcroft sued Berry, the property management company, the property's tenants, the property owner, and the alleged owner of the Can and grill for his injuries.

PLAINTIFF'S CONTENTIONS: Plaintiff contended that defendants were negligent in causing his injuries because defendants created the dangerous condition that caused plaintiff's injuries. Plaintiffs also contended that defendants were negligent in their maintenance of the property and the denatured alcohol can that caused plaintiff's injuries.

DEFENDANTS' CONTENTIONS: Defendants denied the contentions and contended they were not negligent in the handling/maintenance of the Can, and there was no dangerous condition on the premises at the time of the Incident.

Further, most of the Defendants contended that defendant Grant Rickon was the owner of the Can and therefore the only party responsible for plaintiff's injuries. Rickon contended he gifted the Can and grill to the tenant defendants and therefore was not liable to Flitcroft for any resulting injuries.

INJURIES: Daniel Flitcroft suffered third-degree burns to a majority of his body and endured six weeks of intensive care as a result.

RESULT: The case settled at mediation. The settlement consisted of primarily policy limit offers from the Tenant Defendants. Defendants Rickon and the property management company also contributed to the settlement. Except for the payment of medpay, the property owner did not contribute any funds to the settlement.

RESULT: Settlement for $1,637,786

Seeking Volunteers for the 2021 California Conference of Delegates

When: October, 2021

The SBCBA is seeking volunteers for the annual Conference of CA Bar Associations, held every fall. Delegates of Bar Associations create proposals that are assessed, debated, negotiated and voted as either "approved in principle" or "disapproved." The Conference provides Delegates an opportunity to learn, and enables the SBCBA to influence important legislation.

Per 2019 SBCBA Delegate Donna Lewis: the time commitment is a "work-up of the proposed resolutions (12-22 per delegate), a three hour meeting before the Conference, which is a weekend of two half days and a full Saturday."
The SBCBA defrays the cost of attendance.

Please consider joining.

Questions/Interest: Please contact Lida Sideris at sblawdirector@gmail.com or (805) 569-5511.

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.

Proposed Slate of Officers, Directors & Delegates - SBCBA 2021

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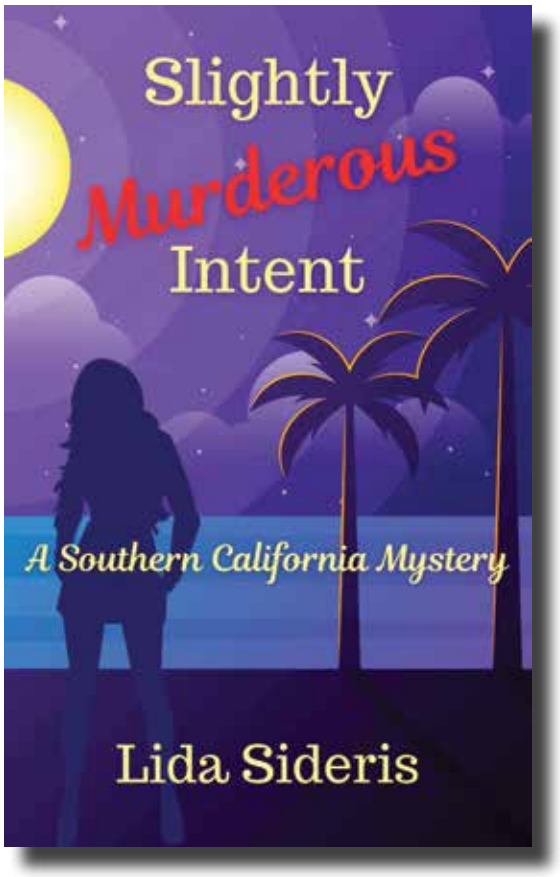
Jim Griffith, Teresa Martinez, Brad Brown

Motions

Fox Rothschild LLP is pleased to announce that **Cassandra T. Glanville** has joined their office as Counsel in the Litigation and Family Law Departments. Cassandra will work remotely from Santa Barbara, but will be part of the San Francisco team, handling family law matters in both the San Francisco Bay Area and the Central Coast. Fox Rothschild LLP is a nationwide law firm with over 950 attorneys in 27 offices who provide a comprehensive suite of legal services in more than 70 practice areas. Cassandra focuses her practice on complex, high-asset family law matters.

Cassandra T. Glanville



SBCBA Executive Director, **Lida Sideris**, just released #4 in her Southern California Mystery series, **SLIGHTLY MURDEROUS INTENT**, published by Level Best Books (October 20th). In this installment, a shooter's on the loose who keeps missing his target. It's up to rookie lawyer and spunky sleuth Corrie Locke to find the gunman before he hits his mark. She enlists a team with various strengths, weapons and cooking skills to form her very own A-Team. Can Team Corrie hunt down the shooter before he scores a bulls-eye?

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. 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.*

One of the Most Unexpected Sellers' Markets in Santa Barbara Real Estate History

By Kelly Knight

Normally at this time of year, the real estate market would be winding down for the upcoming holidays. Sellers typically withdraw their homes from the market in order to celebrate with family and friends, and only the most determined of buyers continue to house hunt. But this year's real estate market has been anything but normal. Not only has the Santa Barbara market been unexpectedly strong, it has broken several records despite a Presidential election and a global pandemic.

The First Quarter of 2020 started as expected. Normal market activity was occurring across all price points during Q1 until Americans were asked to shelter-in-place near the end of March. For the next 30-days real estate sales came to a standstill as sellers pulled their homes from the market and federal, state and local governments debated the "essential" nature of the real estate industry.

The Second Quarter of 2020 marked the beginning of a slow increase in market activity as residential real estate was deemed to be an essential service. Brokers and sales agents rushed to pivot their business models to a virtual, on-line approach. Open houses and broker caravans became events of the past as serious safety protocols were put in place for in-person, "by appointment only" showings of homes. Slowly, sellers started to list, or in some cases re-list, their homes, and homebuyers responded, driven in part by historically low interest rates and large investment returns from a strong stock market.

In June of Q2, Santa Barbara began to welcome visitors back to our community, and pending real estate sales began to soar. Inventory levels quickly became depleted as homebuyers from upscale urban areas sought larger, luxury homes in small cities like Santa Barbara and semi-rural neighborhoods like Montecito and Hope Ranch. No longer tethered to the office, these buyers placed a premium on the space, scenery and quiet surroundings offered by these wonderful areas. Large, sprawling estates started to make a comeback in the market.

In many instances, affluent buyers also brought with them aggressive bidding tactics. Suddenly all-cash, contingency free offers became the norm. Properties across all price ranges started receiving multiple offers, sometimes before hitting the market. The pressure on inventory combined with an increased demand from sophisticated homebuyers resulted in escalating home prices throughout Q2.

Kelly Knight

This trend continued into the Third Quarter of 2020 as strong pent-up demand, record-low interest rates and a renewed interest in the value of homeownership bolstered home sales throughout the county. According to the California Association of Realtors, Santa Barbara County had the highest year-over-year price gain - 41.7 percent – of any county in the state. This is primarily due to the large share of luxury homes and ranches being sold in Montecito, Hope Ranch and the Santa Ynez Valley.

Despite consistently low inventory during the third quarter, Q3 ended strong with September posting more sales than any other month over the past several years. In fact, 57 homes sold in Montecito in September 2020, compared to only 28 in 2019. And of those home, 19 closed escrow for over $5 million!

Low inventory and high buyer demand also continued to drive prices up in Q3. Total active listings for the first three quarters of 2020 are down almost 9% compared to the same time period in 2019 for South Santa Barbara County. In response, the year-to-date median sales price increased 15% over last year, landing at just under $1.5 million.

Adding to this unprecedented market activity, 2020 has seen a large number of significant off-market sales. According to the Wall Street Journal, actor Rob Lowe and his wife recently sold their 10,000sq.ft. Montecito estate for around $45.5 million to Jack McGinley, a retired health care private-equity executive.

Also of note, the former chief executive of Google, Eric Schmidt, and his wife purchased an 11-acre estate in Montecito for $30.8 million this summer. Known as *Solana*, the estate overlooks Santa Barbara and was once home to the Center for the Study of Democratic Institutions – a think tank that brought together dignitaries like President John F. Kennedy, Martin Luther King Jr. and Henry Kissinger to

Continued on page 31

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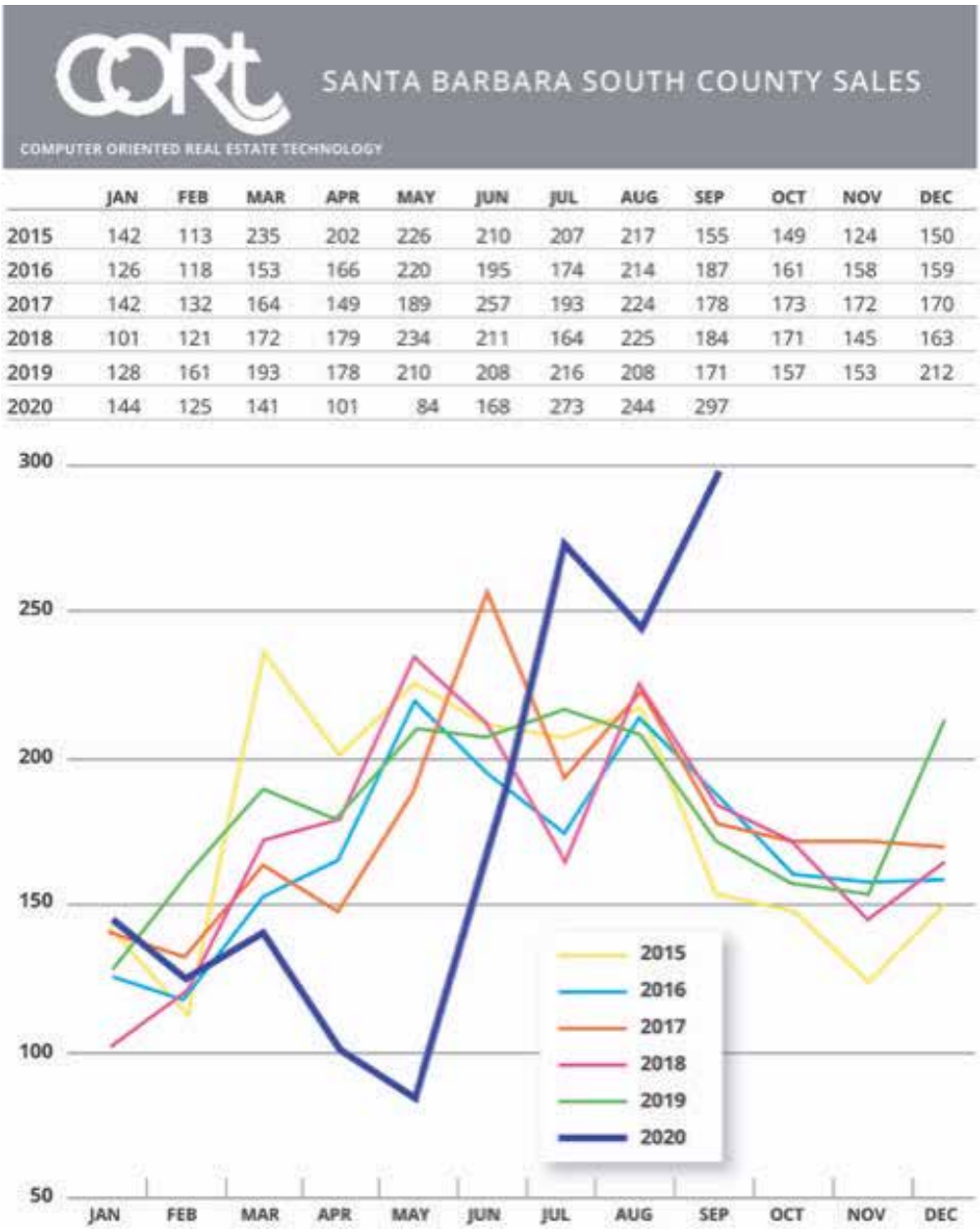
Santa Barbara County Bar Association

Knight, *continued from page 28*

discuss societal issues. And as most people know, Prince Harry and Meghan Markle purchased a 14,000+sq.ft. chateau in Montecito this spring for $14.7M, in order to raise their son away from the urban limelight.

In summary, 2020 will be a year to remember for many reasons. For those of us in the real estate industry, the year will be remembered as one of the most unexpected sellers' markets in recent history. The market soared because of – not in spite of – a global pandemic that reshaped how many people view their homes and their communities. Outdoor space, greater amenities and more room have become highly sought-after. Fortunately for us, our wonderful beachside community of Santa Barbara has it all. ■

Kelly Knight, J.D., is a residential real estate broker and former practicing attorney. She is the founder of Knight Real Estate Group of Village Properties Realtors, and brings over 30-years of combined legal practice and real estate experience to her present-day career. Kelly specializes in working with the clients of attorneys and other professionals in matters involving the sale of real estate related to the settlement of a claim, divorce, death or incapacity of an owner.



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Respond with resume, cover letter and references to kcallahan@hdlaw.com.

2020 Bench and Bar Meetings

As Presiding Judge, the Honorable Michael Carrozzo has set the schedule for the final Bench and Bar Meeting of 2020 which will take place:

November 19, 2020 (12:15–1:15PM)

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

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