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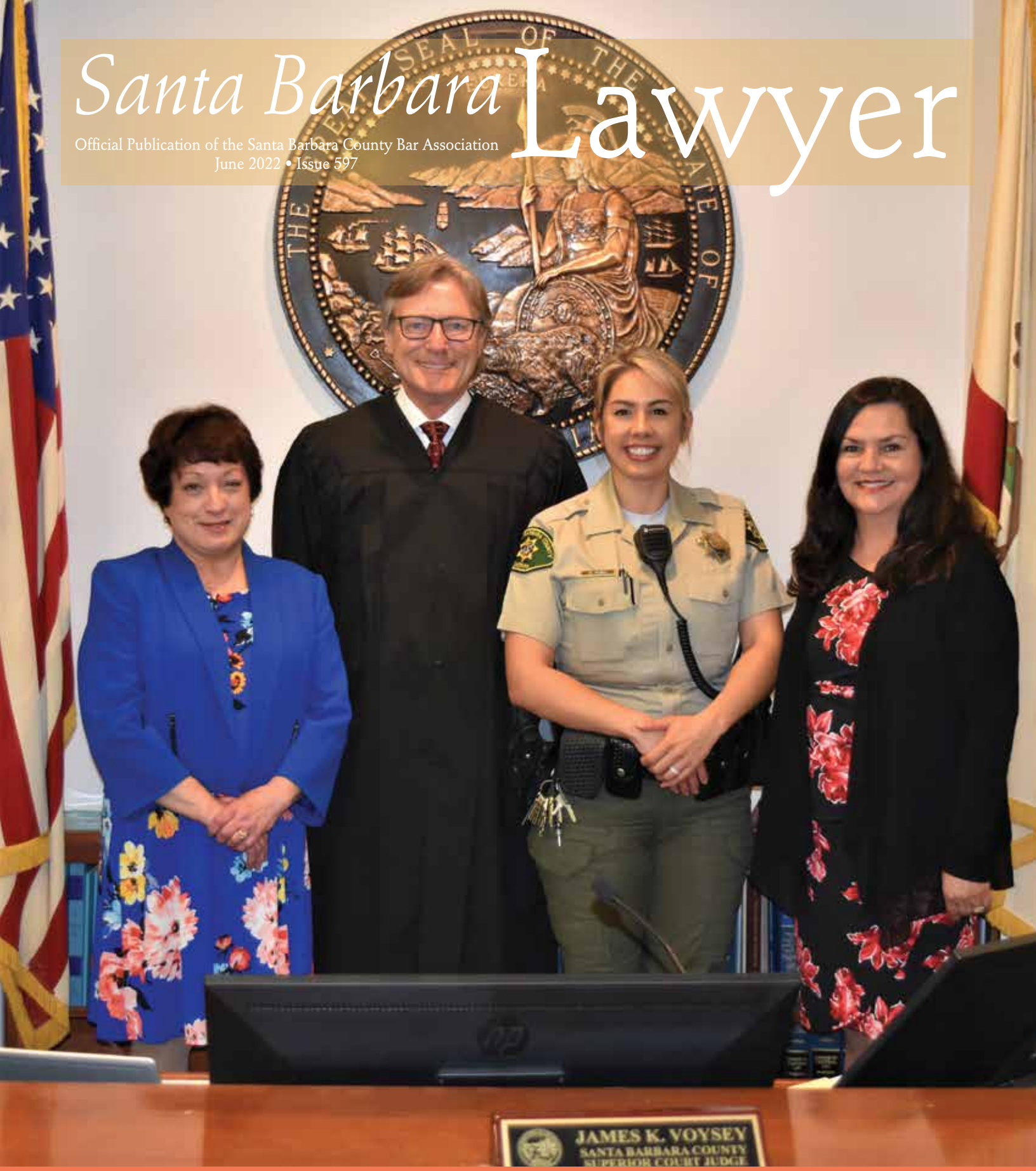

Spotlight on Judge Voysey

Fair Housing: Fixing a Mess of Our Own Making / Connecting With UCSB Pre-Law Students / California Insurance Reform / New SBCBA Executive Director / California Judges Association's Judicial Fairness Coalition Launches Public Education and Engagement Campaign / A Troubling Concurrence

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

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On the Cover

Olivia McNutt, Judge Voysey, Margaret Rubio and Susan Davison. Photo by Mike Lyons.

The Honorable James K. Voysey: Four Decades of Wisdom

A Judge Looks Back at Over 45 Years

By Michelle E. Roberson

As he prepares for another change in the court, Judge Voysey recalls the many people who have both influenced his career and impacted the community. At the forefront, he speaks fondly of his team on the cover of this issue, compassion being the running theme in his thoughts.

His Bailiff, Margaret Rubio, started what one could think of as a short two-and-a-half years ago. But, when we realize that those 2.5 years began at the start of the pandemic, Deputy Sheriff Rubio "worked miracles" physically bringing people into the courtroom in Santa Barbara and Santa Maria. Defined as well-grounded and good with the clients, she was one of the four that made the incredible work in Judge Voysey's courtroom keep going.

His Judicial Assistant, Olivia McNutt, is no stranger to the courtroom, as she and Judge Voysey have known each other since 1986 when he met her as a court clerk. One cannot imagine the pivot she must have had to navigate the day the court administrator announced the new contract with Zoom. The paper system was converted to a full digital system, all the while she was tasked with managing twenty plus people on each Zoom call, like lawyers working from home, defendants in custody, and family members eager to know what may come next.

Then, of course, there is Susan Davison, Court Reporter, who has known Judge Voysey for 37 years. She was tasked with taking it all in and creating a record through Zoom, sometimes while multiple people talk, many with a mask on, and the oft-quipped, "your mic is off." Ms. Davison, an utmost professional in an occupation where demand is exceeding the numbers, will be reassigned to a new courtroom.

Wait. What?

As of April 18, 2022, there was a new misdemeanor trial court where the Susans are no longer statutorily required to transcribe the live hearings. As our courts reopen, they shake out, yet again, in a new way. Now they are paperless and transcription-less for misdemeanor cases, unless you would like to appeal. In which case, you could order the electronic recording and get it transcribed.

As for Judge Voysey, this is where he takes a breather after over forty-five years in the legal profession. His last 8.5 years as a judge are not behind him, however. After a month, he will return to a job he loves and describes as the "biggest honor and thrill" in an assignment judge in the new misdemeanor trial court, while keeping up on new cases, legislative changes, and even new approaches to jury selections—never a dull moment.

Many laypersons look to judges as arbiters that are larger than life and unapproachable. Judge Voysey understands this too well as he goes out of his way to make his courtroom as welcoming as possible, having sat by defendants and felt the angst in their loved ones as a public defender. But, it's hard not to feel a bit nervous approaching somebody with such an incredible career.

In speaking with Judge Voysey—who has a measured and understated way of saying things that at times blew my mind— it is hard to imagine him as a young Canuck moving to the Bay Area at twelve, eventually to San Diego to start a career as a private civil litigator, and playing the guitar in a band.

In 1985, he decided that he wanted to become a public defender and the Santa Barbara County Public Defender's Office had a good reputation. His buddies, Peter Dullea and James Herman were up in the area, so it seemed like a good fit (just ordinary folks, here, no big deal). He served twenty years doing rotations of misdemeanors up to death penalty cases and the last 10 years as an administrator at the public defender's office before he casually thought that

Words of Wisdom:

Ethics. Absolutely, number one.

Be prepared. It is clear whether you are prepared or not. It shines through like sun in the morning.

Respect. Have civil respect for everybody involved, whether adversaries or not. It goes a long way with the Court, and you could still get your point across effectively. People shut down with overly aggressive attorneys.

maybe he could be a judge; the wheels were set in motion.

With three decades as a public defender, one would think that he has seen it all, and maybe he has. In defending people and working to keep them out of jail, he saw first-hand how addiction and mental illness impacted individuals he represented. During this period, they built a coalition with various agencies, including Cottage Hospital and the Santa Barbara Sheriff, to encourage people that were in the criminal system to get supportive services and not return; the so-called drug court.

It is from this lens, however, that he is seeing a collateral consequence of Proposition 47 with the rise of fentanyl and people not getting the help they need anymore. The incentive structure is lost as addiction rates skyrocket. While decriminalization gives second chances, the Court no longer has a therapeutic system with the same tools it had just started to utilize during his tenure. As for things he would want to fix, this is on the top of his list.

There are no easy answers, but many well-meaning people and unintended consequences.

Despite his many years of experience, he thought his transition from a criminal defender to neutral party might be more difficult. But, he says, it was quite easy. He likened being a judge to being an umpire and it not being hard: Follow the law, analyze, and rule based on the law. Easy, right?

The Honorable James K. Voysey

As for Judge Voysey being this all-knowing, larger than life, over 45-years of legal wisdom, how do I casually say hello to him? Maybe when you see him playing with his band, Class Action at The Stand Down, comprised of three other people you may have heard of: Rogelio Flores, John McGregor, and Dino Inumerable. Just a few other judges that may have also seemed unapproachable in the past. ■

Fair Housing: Fixing a Mess of Our Own Making - Part Two

By Janet M. Eastman, CPM®

Part One of this article appeared in the May 2022 issue of Santa Barbara Lawyer. *You can find a copy at www.sblaw.org.*

Federal Fair Housing Amendments Act (known as the Fair Housing Act "FHA") of 1968

Intended as a follow-up to the Civil Rights Act of 1964, Title VIII of the Civil Rights Act expanded the original goal of federal protection to address racial discrimination in all housing. Title VIII was known as the Fair Housing Act ("FHA"), (which was later used as a shorthand description for the entire bill), and it prohibited discrimination concerning the sale, rental and financing of housing based on race, color, religion, national origin and sex.

Before its passage, Senator Edward Brooke of Massachusetts—the first African American ever to be elected to the Senate by popular vote—spoke personally of his return from World War II and inability to provide a home of his choice for his family because of his race. In early April 1968, the bill passed the Senate by a slim margin, thanks to the support of the Senate Republican leader, Everett Dirksen, who defeated a southern filibuster. It then went to the House of Representatives, from which it was expected to emerge significantly weakened.

On April 4–the day of the Senate vote–the civil rights leader Martin Luther King, Jr. was assassinated in Memphis, Tennessee. Amid a wave of emotion—including riots, burning and looting in more than 100 cities around the country—President Johnson increased pressure on Congress to pass the new civil rights legislation. King had participated in marches in Chicago in 1966 calling for open housing in that city and was associated with the fight for fair housing. Johnson argued that the bill would be a fitting testament to the man and his legacy, and he wanted it passed prior to King's funeral in Atlanta. After a limited debate, the House passed the Fair Housing Act on April 10, 1968, and President Johnson signed it into law the following day.

The last section of the Fair Housing Act prohibits the willful or attempted injury, intimidation of, or interference with any person who is selling, purchasing, renting, financing, occupying, contracting, or negotiating for the sale, purchase, rental, financing or occupation of any housing because of that person's race, color, religion, national origin, sex, disability, or familial status. This law also protects individuals who apply for or participate in any activity, service, organization, or facility that is in the business of selling or renting housing, as well as individuals who encourage others to participate in such activities and services. Those who break this law can be fined, imprisoned for up to one year, or both. If bodily injury results from such unlawful acts, or if the acts involve the use or attempted use of a dangerous weapon, the prison sentence may be as long as ten years.

Janet M. Eastman, CPM®

The Fair Housing Act covers almost every kind of housing, public and private. There are, however, several instances in which certain housing is exempt from the Fair Housing Act:

Owner occupied housing with 4 or fewer units

- Single family houses sold or rented by an owner, as long as the owner doesn't own at least a part of more than three homes, has not sold a house in the last 24 months, does not use an agent or broker, and does not use discriminatory advertising.
- Religious organizations and private clubs, which are allowed to limit the sale, rental, or occupancy of their housing to individuals of the same religion or members or to give preference to such individuals, as long as membership is not limited to persons of a certain race, color, or national origin.

Affirmative Furthering

With the passage of the Fair Housing Act, the newly created department of Housing & Urban Development (HUD) was tasked with "affirmatively furthering" the cause of fair housing—a somewhat vague mandate. With the FHA now a part of HUD, the very institution that had created much of the mess in housing practices was now tasked with reversing the damage it had done, essentially fixing a mess of its own making.

In 1969, the newly elected president Richard Nixon

appointed George Romney, the governor of Michigan and former mayor of Detroit, as the U. S. Secretary of HUD. Romney had studied the rioting and violence in his own and other cities to try to find the cause of the unrest. He concluded that it was in large part due to housing issues, and that "the white man had created the ghetto and therefore must disassemble it." Romney used the mandate to "affirmatively further" fair housing to pressure predominantly white communities to build more affordable housing and end discriminatory zoning practices. He created an initiative he called "Open Communities" whereby he proposed withholding federal funding for water, sewer and highway projects from cities whose local policies fostered segregated housing.

The program began to take hold and see results, but constituents who had supported Richard Nixon complained, and when Nixon got wind of the Open Communities initiative, he shut it down and subsequently forced Romney out. While Nixon acknowledged the need to end racial segregation, he did not believe in forced integration.

For a brief time, at its inception, then, HUD did actively promote fair housing, but with Nixon's retreat, the cause lost momentum; and so the struggle for meaningful change in housing practices continued on in the decades after Fair Housing was born.

Fair Housing Amendments Act of 1988

In 1988, under President Ronald Reagan, Congress passed the Fair Housing Amendments Act, which expanded the law to prohibit discrimination in housing based on disability or on family status (pregnant women or the presence of children under 18). These amendments brought the enforcement of the Fair Housing Act even more squarely under the control of the U.S. Department of Housing and Urban Development (HUD), which sends complaints regarding housing discrimination to be investigated by its Office of Fair Housing and Equal Opportunity (FHEO).

Fair Housing Today

Since the turbulent civil rights battles and victories of the 1960s, the cause of fair housing has been furthered through the requirements for all in real estate-related businesses to know and follow fair housing laws. The original intent to stop discrimination based on race has been and continues to be expanded to cover other classes of protected individuals. Over fifty years after its passage in 1968, the Fair Housing Act remains a meaningful piece of legislation that brought into focus the need to fix the mistakes of the past. Despite the pitfalls they may regretfully present to rental property owners today, who must navigate ever narrower interpretations of them for greater numbers of protected classes, they were created for good reasons that must be remembered.

When faced with having to accommodate marijuana smokers and seemingly able individuals with "emotional support" animals, let us pause and think of how far we have come. Perhaps the pendulum has swung too far, but it is already beginning to swing back a bit, as Fair Housing Councils concede that many individuals have taken advantage of Fair Housing laws to pass off their pets as support animals. May the pendulum continue to swing toward the point of reason in all areas; but may it never swing back to the terrible and unfair housing practices of the past.

Fair Housing advocates continue to seek out dark corners where subtle or not so subtle racial and other discrimination still exist here and there and ever clarify the solid foundation now established to further Fair Housing practices. They will continue to evolve as people respond to practices and treatment that may yet perpetuate now debunked and illegal stereotypes and practices that hint of or seek to revive racial and other discrimination.

Fair Housing began as a desperate effort to undo centuries of racial discrimination, segregation, and the immoral practice of slavery. It has grown to encompass all areas where human beings are treated unequally for non-legitimate reasons. It is an upward trend with much success and momentum, and the country and world are better because of it. We must remember the very valid reasons that Fair Housing laws were created and the long and valiant struggle for civil rights for everyone. April marked the anniversary of the passage of the Fair Housing Act of 1968. Today, whatever day or month it may be, let us acknowledge the progress and success we have all made in moving away from inexplicable practices that oppressed and denied some humans of their basic rights. Let us celebrate the success that Fair Housing laws have had in ending arbitrary and bad business practices that denied many from fully enjoying their rights as human beings, particularly with respect to housing. ■

Janet M. Eastman, CPM® is a graduate of Wellesley College and holds a master's degree from UCSB. She has worked in residential property management in the Santa Barbara area for the past 24 years as a regional property supervisor and a vice president. She is a Certified Property Manager through IREM and is currently the Senior Operations Specialist for the Towbes Group, which manages over 2500 multifamily units throughout Santa Barbara and Ventura Counties.

Connecting With UCSB Pre-Law Students

By Miguel Moran-Lanier

At any given point, approximately 15% of UCSB students are interested in going to law school or exploring law as a career path. UCSB pre-law advisors provide individualized support and advising for students exploring law and assist them throughout their academic program and the law school application process. In addition to this, pre-law students can benefit in particular by connecting directly with lawyers, judges, and others in the legal profession.

Students benefit from connecting with those in the legal profession by getting an insider's perspective on what it's like to practice in a given field of law or learning about different career paths. There is no substitute for making a personal connection, as books, articles and web resources can only provide general overviews. In addition to the valuable information and insight on a given field, students benefit from one-on-one conversations by developing a comfort level and experience with networking, which is an essential skill to have during and after law school.

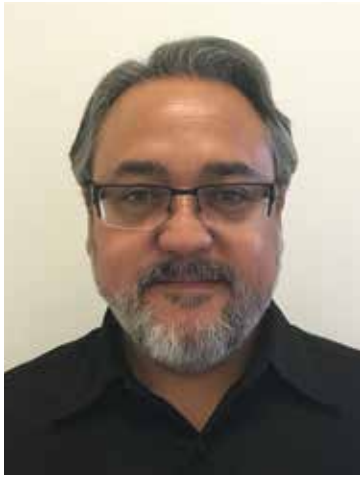
While UCSB hosts a number of open events through a variety of units, student organizations, and campus partnerships, there is no substitute for pre-law students engaging one-on-one with lawyers, judges, and others in the legal profession. However, not all students have rich connections in law through their social and family networks. For this reason, we invite legal professionals to connect with UCSB pre-law students in a number of ways.

For lawyers, judges, and others in the legal profession wanting to connect with pre-law students, there are a number of forms of engagement at different levels based on their time and availability.

Forms of one-on-one engagement with pre-law students

Informational interviewing. Informational interviewing is essentially a guided conversation with a student to talk to them about the nuances of the field of law in which you practice. This could be a meeting over coffee, phone, or zoom, depending on your availability and proximity.

Time commitment: This is perhaps the most insightful, efficient, and least time-intensive way to engage one-on-one with pre-law students.



Miguel Moran-Lanier

Shadowing. This is a great follow-up to an informational interview. Shadowing could involve giving a student a tour of your workplace, having them observe you or others in some activity, debriefing with students to provide context or background on a particular event or process, or any other short-term activity through which you can engage with a student and provide greater context into the practice of your field of law.

Time commitment: This could involve one to a few hours, depending on the activity and your availability.

Internships. While we recommend that UCSB pre-law students explore their interest broadly across a variety of fields of law, internships can provide a deeper understanding into a specific field of law. This activity can also be a great follow-up to informational interviews or a shadowing experience.

Time commitment: Of all the forms of engaging with pre-law students included here, internships require the most amount of time and energy on behalf of both parties and could take place over the course of several weeks. Nevertheless, it can be a wonderful experience for pre-law students.

Connecting with students one-on-one

If you are interested in connecting with pre-law students one-on-one, UCSB has an accessible and easy to use platform that facilitates this process. The UCSB Gaucho Network (http://www.gauchonetwork.com) is a platform for UCSB alumni to connect with each other and with current students. Anyone who is not an alumni, but wants to participate and support pre-law students in the same way, can join the UCSB Gaucho Network as a guest and friend of UCSB and would have the same access noted below. This site is particularly helpful for students that have very little exposure with professionals in a given field and would otherwise have few resources and opportunities to make valuable connections for exploring their future career paths. The Gaucho Network includes a variety of affinity and professional groups, among them, the Gauchos in Law Group

specifically for connecting alumni in law with each other and for any legal professional–alumni or not–to connect with pre-law students.

To connect with UCSB students, here are the general steps you would follow on the UCSB Gaucho Network (http://www.gauchonetwork.com).

- Go to the link above
- Create a brief profile
- Select to join the Gauchos in Law group
- And, in your profile under the 'Offer Help' and 'Offer Mentoring' categories, select any of the following engagement options, among others, based on your availability:
- Answer to industry specific questions (i.e. informational interviewing)
- Introduction to professional connections (i.e. networking)
- Career Advice (i.e. informational interviewing)
- Job shadowing opportunities

Other ways to connect with UCSB pre-law students

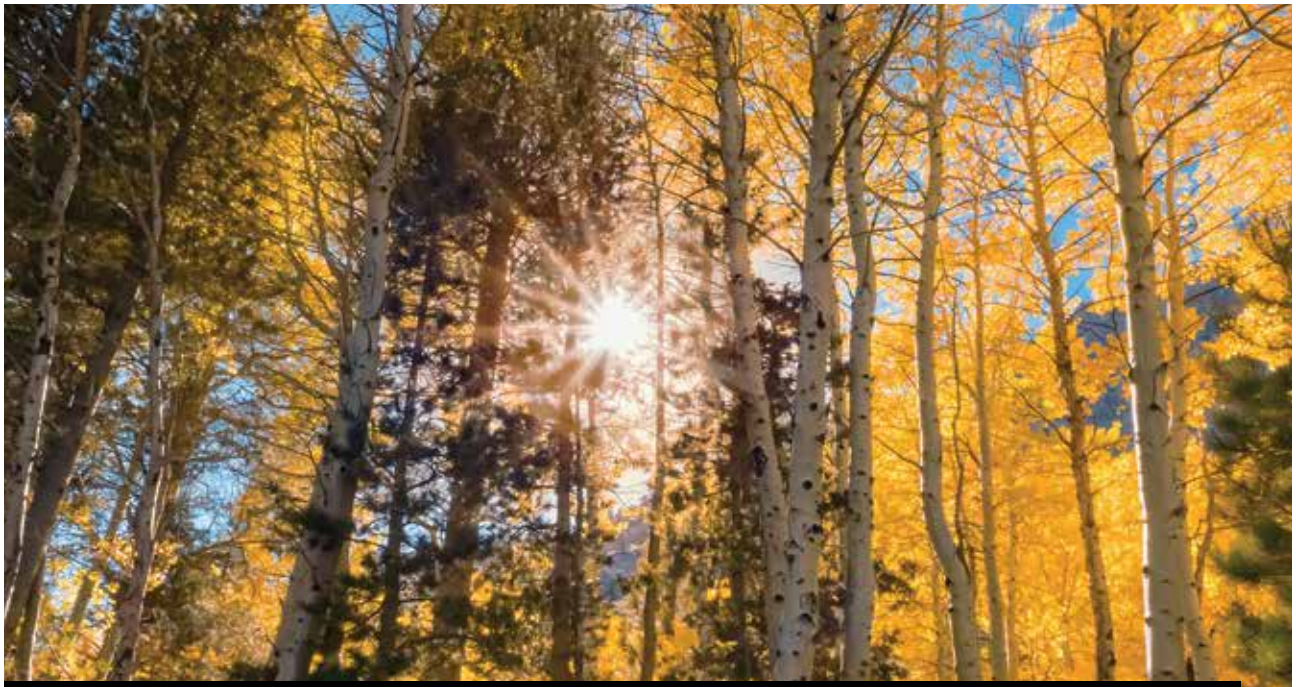
Mentorship. As you have likely experienced, mentorship can come in many forms. Engaging with pre-law students through any of the experiences noted above can serve as platforms for mentorship. Additionally, this spring 2022 quarter UCSB is piloting a formal mentorship program, structured to connect pre-law students with six mentors during the course of the quarter. We are considering continuing and expanding this program in the future and are exploring steps toward its development.

Time commitment: If you are interested in participating as a mentor in our formal UCSB Pre-Law Mentorship Program in a future term, the anticipated commitment is approximately 1 hour per week over a 9-week period during a given quarter, which would include an orientation, a kick off and closing event with all participants, and several meetings with individual mentees in between.

Panels, individual presentations/workshops, and social/networking - one-time events. In addition to the opportunities noted above to connect one-on-one with UCSB pre-law students, we have a team of professionals at UCSB working both independently and together, along with alumni and our student organizations, to provide a variety of events to UCSB pre-law students.

Time commitment: These types of events are a great opportunity to engage with many students at once, within the span of a one- to two-hour event.

If you would like to participate in a future mentorship program or would like to sign up for a one-time event on a panel, for an individual presentation, or a networking event, please email Miguel Moran-Lanier, pre-law advisor, at moran-m@ucsb.edu and indicate your specific interest in participating in our formal mentorship program, a one-time event or both. ■



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California Insurance Reform

By Renee J. Nordstrand-Black

Renee J. Nordstrand-Black

Medical Malpractice, History related to limit on monetary damage awards

In 1975 Jerry Brown signed the Medical Injury Compensation Reform Act (MICRA), which capped non-economic damages in medical malpractice cases at $250,000. The damages cap has not been changed since 1975, despite the passage of almost 50 years. This means that people injured as a result of medical negligence cannot collect more than $250,000 for their pain and suffering, mental anguish, emotional trauma, scarring, disfigurement, and diminished quality of life.

Consumer Attorneys of California (CAOC), an organization of Plaintiff's lawyers involved in consumer protection law, has been fighting for justice on behalf of victims of medical malpractice since MICRA was enacted. CAOC has reached an historic agreement to revise MICRA and is working to ensure the swift passage of this agreement through the legislature, so that the new framework will take effect beginning January 1, 2023.

This result was achieved over the years due to CAOC's and Consumer Watchdog's intensive efforts in legislative elections and the significant pressure of an initiative that qualified for the November 2022 ballot. That initiative proposed increasing the $250,000 cap for "non-economic" damages retroactively from 1975 based on inflation to $1.2 million, which would adjust annually. The initiative also proposed to allow judges and juries the authority to award damages for catastrophic injuries above the amount of the cap.

The agreement is a successful compromise that will prevent a ballot fight in November. The bill will amend MICRA as follows:

- For a non-death case, the cap increases from $250,000 to $350,000 on January 1, 2023, and continues to increase to $750,000 over ten years.
- For a wrongful death case, the cap increases from $250,000 to $500,000 on January 1, 2023, and continues to increase to $1,000,000 over ten years.
- After the caps increase to $750,000/$1,000,000 in 2033, a 2% COLA attaches starting January 1, 2034, thereby adjusting the caps annually.
- Current law limits a plaintiff's recovery to $250,000, regardless of the number of defendants. This proposal creates three separate categories of defendants for a

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.

total of three possible caps:

1. One cap for health care providers (regardless of the number of providers or causes of action).
2. One cap for health care institutions (regardless of the number of institutions or causes of action).
3. One cap for an unaffiliated health care provider or health care institution that commits a separate negligent act.

- At the request of either party, periodic payments can be utilized for future economic damages starting at $250,000 (presently at $50,000).
- Modifies the contingency fee caps to 25% if the action is settled prior to the filing of an action and 33% if the recovery occurs thereafter. If an action goes to trial, the court has discretion to alter the fee based on good cause evidence.
- Protections for providers who make statements about fault prior to litigation.

Updating MICRA is a big step for California consumers in the fight against big insurance companies, but there is still work to be done. Another area of concern is the minimum financial responsibility limits required for drivers. Often people come into my office after an accident thinking that they will be fine financially because they are insured and have "full coverage," when in fact they don't have enough coverage to pay for their medical and other expenses.

Financial responsibility limits

California law requires motorists to carry insurance policy limits of at least $15,000 per person, $30,000 per accident and $5,000 for property damage. These limits were established in 1967 and have never been adjusted. In the last 55 years the cost of medical care and vehicle repairs have increased considerably. As a result, if you cause an accident and have minimum policy limits, your personal assets may be at risk. So, be sure to check your policy limits to assure they are sufficient (I'm happy to talk to you about this).

Underinsured Motorist Law

If you are the victim of a vehicle crash and the at-fault driver is uninsured or underinsured, your own insurance company will step in if you purchased UM/UIM (Uninsured/underinsured motorist) coverage at levels sufficient to cover your losses. Application of this coverage is often confusing to the consumer who might reasonably believe that UM/UIM coverage stacks or is in addition to the at-fault party's coverage. Many believe the policy holder would receive the underlying policy limit of the responsible party as well as the UM/UIM coverage limit that was purchased. Unfortunately, this is not the law. The current laws provide that the UM/UIM policy limit is available only if that coverage exceeds the liability coverage of the at-fault driver.

Consumer Attorneys of California has made insurance reform a legislative priority for 2022. Senator Bill Dodd (D-Napa) has agreed to carry CAOC-sponsored legislation to address both of these important issues. ■

Renee J. Nordstrand-Black is a partner at NordstrandBlack P.C., AV rated by Martindale Hubbell, Renee exclusively represents Plaintiffs throughout California in personal injury matters and is a long-time member of CAOC

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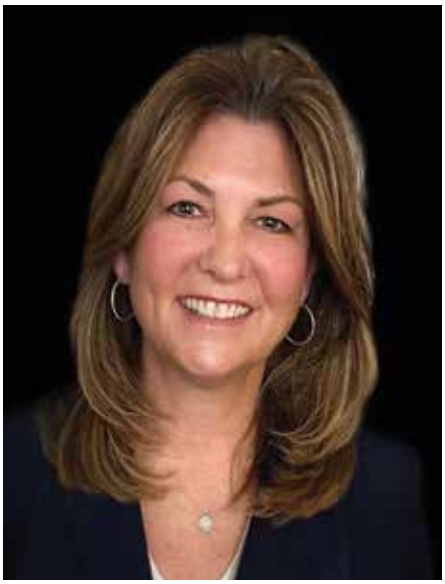
SEEKS SETTLEMENTS, VERDICTS & DECISIONS

SBL encourages all SBCBA members to share notable non-confidential settlements, verdicts or decisions. The data is valuable to our membership.

Please submit information to Victoria Lindenauer (Lindenauer_mediation@cox.net) or R.A. Carrington (ratc@cox.net).

Meet Santa Barbara County Bar Association's New Executive Director: Marietta Jablonka

By Michelle E. Roberson



Marietta Jablonka

Actually, you may already know Marietta Jablonka, or at least recognize her glowing smile. Perhaps you crossed paths while she earned her juris doctorate at the Santa Barbara College of Law, or maybe when she was the campaign administrator for the Greater Santa Barbara Ice Skating Association in the late 2000s. Likely, your paralegal took her Case Management or Ethics for the Paralegal class at UCSB's Paralegal Certification Program, where Marietta is a Part-Time Adjunct Professor.

Definitely, if you interacted with Thyne Taylor Fox Howard LLP (formerly The Law Office of John J. Thyne, III) in the last six years, you might at least recognize her name, as that's where she now says her bittersweet goodbye to start her new career as Santa Barbara County Bar Association's new Executive Director. She recalls her journey with Mr. Thyne starting as the only paralegal managing the office from drafting pleadings to purchasing paperclips with both appreciation and sadness. She leaves behind what she describes as a team of brilliant lawyers with a great sense of humor. Despite the tug at her heart, she is indeed excited to serve the Santa Barbara legal community as our new ED, a position she read about in this very publication that she dutifully reads cover-to-cover, and felt was written just for her.

As a new adventure begins for Marietta, she is optimistic knowing she has very big shoes to fill, but also feeling she is the right fit for the job at an opportune time as the bleak period of complete COVID shut downs start becoming a thing of the past. Aside from the daunting task of the day-to-day workload, she is eager to learn and wants to engage with our members to find out what they want to get out of our association. She would like to see our community excited to be more involved, which may mean more fun social events. We encourage you to give Marietta a warm welcome as she joins us as our Executive Director. She has impressed us and I hope she will impress you, too. ■

California Judges Association's Judicial Fairness Coalition Launches Public Education and Engagement Campaign

Statewide Association for Judges Provides Resource on Judicial Appointments and Elections

The California Judges Association's (CJA) Judicial Fairness Coalition (JFC) has launched a public education and engagement campaign, aimed to demystify the third branch of government, abate unfair criticism of judges, and reinforce the importance of an impartial judiciary. As part of the launch, JFC has created a one-page resource on how judges are appointed and elected in the state of California ahead of the June primary election.

The Coalition's campaign will involve producing, distributing, and curating resources, and will be anchored by an ongoing social media campaign focused on education and engagement. The one-page resource released today on judicial appointments and elections is intended to provide basic information on how judges are selected and to emphasize the importance of voting in judicial elections.

"There is very little information publicly available for voters about the judiciary, the profound importance of the third branch of government, and its independence," said Judge Paul Bacigalupo, JFC Co-Chair. "Civic engagement is perhaps more important now than ever before, and we have the ability to serve the public by making information more accessible."

Founded in 2018, the JFC was created to respond to unfair criticism and false and misleading information about judges and the judiciary and affirm the independence of the courts. The JFC is a statewide coalition of active and retired judges, bar association members, and law school deans and professors.

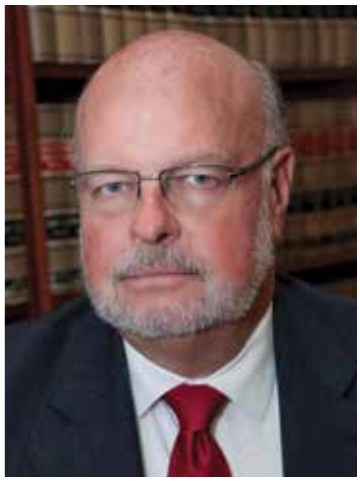
"Through the campaign, we hope to demystify the judicial branch, how judges reach their decisions, and their roles in our legal system," said Judge Barbara Kronlund, JFC Co-Chair. "In addition to objective judicial campaign resources, we would gladly respond to inquiries to help foster further understanding of the judiciary."

The campaign has been made possible through a generous grant from the California Lawyers Foundation (CLF), the charitable arm and partner of the California Lawyers Association (CLA), California's voluntary statewide bar association. CLF is a statewide foundation "actively developing and supporting projects that improve access to justice for people in need and make the legal system more fair and efficient for everyone; increase diversity in the profession and help educate Californians about the 3rd branch, the role of lawyers and the rule of law."

All of the resources developed as a part of this campaign, including the document on judicial appointments and elections, will be housed on the CJA's website at www.caljudges.org/judicialfairness. The ongoing campaign will focus primarily on social media content development and engagement over the next several months, and further resources will be shared with the public via media outreach and outreach to law-related organizations throughout the state. ■

A Troubling Concurrence

By Robert M. Sanger[1]



Robert M. Sanger

The case of *United States v. Vaello Madero* (595 U.S. __, 2022 WL 1177499, decided April 21, 2022) is quite remarkable on several levels. By the time this *Criminal Justice* column is published, there will have been many commentaries on the decision. At the time of this writing, there have been philosophical criticisms of the majority opinion, intrigue over the concurrence of Justice Gorsuch and praise for the dissent of Justice Sotomayor. The concurrence of Justice Thomas received attention but not as much on philosophical grounds as on the belief that it was rambling and largely irrelevant to the issue at hand.

However, there may be more to the Thomas concurrence than meets the eye at first reading. Justice Thomas has seldom written a significant opinion for the majority but he has written many separate opinions that he often cites in his own subsequent opinions. Thus far, little of the contents of his separate opinions have later been adopted by the majority. Nevertheless, with the current composition of the Court, there is something in Thomas' concurrence in *Vaello Madero* that is especially troubling and may have serious consequences for civil and criminal law.

The Case

The case of *United States v. Vaello Madero* held that a disabled American citizen, born in New York, and receiving Supplemental Security Income (SSI) benefits while living in New York, forfeited those benefits by going to live in Puerto Rico. The opinion for the Court, written by Justice Kavanaugh, reversed the district court and the First Circuit Court of Appeals, holding that citizens living in Puerto Rico are not entitled to equal protection under the Fifth Amendment Due Process Clause and that Congress can make laws that discriminate against citizens living in territories of the United States. In so ruling, the Court held that Mr. Vaello Madero is required to pay back all benefits he received while residing in Puerto Rico.

Of course, this has come under considerable criticism on the basic humanitarian grounds that the "ownership" of territories by a nation should not relegate people—most of whom are, in fact, citizens of the United States—to have less rights than other Americans. Justice Kavanaugh's explanation is that Congress has not required residents of Puerto Rico to pay certain federal income, gift, estate and excise taxes and that Congress did not extend certain benefit programs to such residents either.

In the case of legislating SSI benefits, Congress extended them to the 50 states and the District of Columbia but not to the territories—although Congress later included the Mariana Islands. The symmetry of Kavanaugh's reduced taxation/benefits argument breaks down since Puerto Rico residents do pay Social Security, Medicare and unemployment taxes and that residents of one territory, the Mariana Islands, are treated preferentially. In addition, the equities of the situation—involving a person who was born in the 50 states, worked there, contributed to Social Security, became disabled while still residing in New York and, only then, moved to Puerto Rico and who under this ruling owes the government more money than he will ever have – seems to militate against the highest court of the land intervening to reverse the district and circuit courts. However, that was the majority's decision and much more will be written about it.

Justice Gorsuch wrote a concurrence, in which he said he would have voted to uphold the circuit and district courts in this case had the parties argued that the infamous Insular Cases should be overruled. The Insular Cases included *Downes v. Bidwell* (182 U.S. 244, (1901)), *Dorr v. United States* (195 U.S. 138 (1904)), *Hawaii v. Mankichi* (190 U.S. 197 (1903)) and *Balzac v. Porto Rico* (258 U.S. 298 (1922)). What is particularly remarkable is that Gorsuch wrote an opinion about the outrage of treating citizens differently based on "the sordid business of segregating Territories and the people who live in them on the basis of race, ethnicity, or religion." He goes on to say that the Insular Cases have no "home" in the Constitution and are supported by "ugly racial stereotypes, and the theories of social Darwinists." This seems just as profoundly true as it also seems contrary to the extreme right's insistence that neither government nor schools should admit to this country's institutional racism.

However, the sad fact is that currently the interpretation

of the Constitution under the Insular Cases stands since no one brought it up and Justice Gorsuch says that the Court should not consider it. Nevertheless, Citizens of the United States who reside in the territories are not accorded full Constitutional rights. Justice Gorsuch's concurrence may pave the way for other cases which will take on directly this colonial and admittedly racist policy. In fact, a case involving the rights of residents of American Samoa, *Fitisemanu v. United States* (1, F.4th 862 (2021), *den. en banc*, 20 F.4th 1325 (10th Cir., Dec 27, 2021)) is pending on a Petition for Writ of Certiorari before the Supreme Court (docketed April 29, 2022 (No. 21-1394)). If certiorari is granted, the constitutionality of the Insular Cases will be squarely at issue.

Meanwhile, Justice Sotomayor got attention for her dissent based on an analysis of equal protection and the failure of equal protection. She also pointed out the illogic of Kavanaugh's theory that the territories are undertaxed and, therefore, there is a rational basis to not permit their residents to have equal benefits. The Mariana Islands do not pay full taxes and some of the 50 states which could be argued not to contribute their share to federal taxes. All in all, Sotomayor's dissent is forceful, meeting Kavanaugh on his own ground by debating "rational basis" rather than taking on the Insular Cases directly.

Thomas Concurrence

Justice Thomas, however, wrote a concurrence that draws on "authority" from his own dissents, some dubious characterizations of history and arch-conservative law review articles. He calls for overruling *Bolling v. Sharpe* (347 U.S. 497 (1954)) which was the first of dozens of Supreme Court decisions that directly held that the Fifth Amendment Due Process Clause includes a requirement of equal protection. This is important because, without that holding, there is no general requirement that the federal government accord all persons equal protection—the Fourteenth Amendment Equal Protection Clause applies to all persons but restricts the states, not the federal government.

Recall that *Bolling* was decided the same day as *Brown v. Board of Education* (347 U.S. 483 (1954)) and dealt with racial segregation in the District of Columbia school system. Were it not for holding that the Due Process Clause of the Fifth

Amendment included equal protection, the D.C. schools would have been exempt from the holding of *Brown* which was based on the Fourteenth Amendment. Now, Justice Thomas thinks that *Bolling* was wrongly decided and cites a law review article questioning the reasoning of *Brown* itself. In addition, Thomas goes through a questionable account of history from pre-Civil War, through Black Codes, the Court's refusal to enforce equal protection laws, to Jim Crow legislation and cases like *Dred Scott* and *Plessy*. This would seem to be totally unrelated to the case at hand.

Essentially, the *Vaello Madero* case involves a citizen who is asserting his rights to equal protection. Had he been born in Puerto Rico rather than New York, he would still be a citizen and, or course, he did not lose his citizenship by residing in Puerto Rico. And that is what is potentially dangerous about this concurring opinion. Although it does not have the force of law and is truly said *obiter dicta*, one can assume that Thomas will cite himself in future cases and encourage others to do so as well. This would potentially reverse *Bolling v. Sharpe* but it also would have pernicious consequences for other cases involving allegations of discrimination by the federal government.

If Thomas' revisionist interpretation were adopted, it would mean that only *citizens* are entitled to equal protection from discrimination by the federal government. If *Bolling* is overruled and the Fifth Amendment has no equal protection component, then Thomas suggests that the only equal protection limitation on federal conduct is found in the "Citizenship Clause" of the Fourteenth Amendment. That clause says, "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." (Amdt. 14, § 1, cl. 1.)

To assert that this provision meant that citizens had equal rights under the law, he cited Justice Taney in *Dred Scott v. Sandford* (19 How. 393 (1857)) and Justice Harlan in dissent in *Plessy v. Ferguson* (163 U.S. 537 (1896)) as well as legislation and legislative history regarding acts that were stricken by the Court. Justice Thomas contends that the Fifth Amendment does not grant equal protection against the federal government but that the Fourteenth Amendment may. As a result of this less than solid logic, Thomas contends that, if *Bolling* is overruled, at most only citizens, not "persons," have this protection – and he is not sure of that.

Consequences for Criminal Law

First, before we claim that the sky is falling, Thomas' separate opinions do not generally become embraced by the majority of the Court. Earlier this year he was the sole dissenter in the case of *Trump v. Thompson* (595 U. S. __, 142 S.Ct. 680 (Mem. cert. den. January 19, 2022) and stood as the only Justice who would have blocked the "United States House Select Committee To Investigate the January 6th Attack on the United States Capitol" from obtaining documents from former President Trump even though the lower court found that Trump has no basis to assert privilege whether as a sitting president or not. In *Trump v. Thompson* eight other Justices, including the three Trump appointees, ignored Thomas. Whether Thomas' dissent in *Thompson* was purely political or, perhaps, influenced by political activism of his family members, it was not the sort of principled decision that is likely to live in the annals of Supreme Court history as a "great dissent."

Thomas' concurrence in *United States v. Vaello Madero* could have more of an impact. It is cobbled together from a number of ultra-conservative law review articles. It has the air of an historical interpretation using originalism, pseudo scholarship and "clever" debating tactics. It also had the benefit of flying under the radar as concurring in the result – denying Mr. *Vaello Madero* relief – while rambling about an issue that was not germane to the case at hand. However, if not taken seriously in subsequent cases, it could take on a life of its own.

In particular, in federal criminal cases it has long been held that criminal defendants, regardless of immigration status, are entitled to due process under the Fifth Amendment. In *Wong Wing v. United States* (163 U.S. 228 (1896)) the Court held that "[E]ven aliens shall not be held to answer for a capital or other infamous crime, unless on a presentment or indictment of a grand jury, nor be deprived of life, liberty, or property without due process of law." In immigration law itself, prosecution in federal court for re-entry and provisions relating to deportation and exclusion for resident aliens are subject to Fifth Amendment challenge. However, they would not be if the individual challenging the denial of equal protection was not a citizen. Therefore, if Thomas' argument were adopted by the majority of the Court, the federal government could deny equal protection to non-citizens with impunity.

Conclusion

It is hard to understand Thomas' concurrence as other than intentional. It is unlikely that he, his staff and his law clerks were just randomly ruminating about citizenship and the Due Process Clause in a case where the ruminations had no particular significance. It is more likely that this is an effort to covertly import an argument designed to overrule 70 years of law so that dire consequences can be visited upon "persons" who are not citizens without equal

protection review. Even worse, were Thomas to get his colleagues to overrule *Bolling*, he offers no assurance that he would find that equal protection applied to the federal government at all. ■

Endnotes

1 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 48 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 College of Law. Mr. Sanger is an Associate Member of the Council of Forensic Science Educators (COFSE). He is Past President of California Attorneys for Criminal Justice (CACJ), the statewide criminal defense lawyers' organization. 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.

California's Density Bonus Law: What Is It and Why Does It Matter?

By Ian Elsenheimer

California's housing shortage and affordability crises are nothing new. In 1979, the California legislature adopted the State Density Bonus Law (Gov. Code § 65915 et seq.) (the "SDBL") in an attempt to address these very issues. (*Friends of Lagoon Valley v. Vacaville* (2007) 65 Cal.App.4th 823, 826.)

In a nutshell, the SDBL requires local government agencies to grant developers a density bonus and other benefits if the proposed project includes a certain percentage of units for very low income, low-income, or moderate-income households (or other qualifying residents such as seniors, homeless, college students, and others). (Gov. Code, §65915, et seq.)

This article will briefly summarize select portions of the SDBL and highlight why it continues to be an important part of California's land use law.

What is the SDBL?

A density bonus allows a developer to build more dwelling units on a project site than would normally be allowed under the applicable zoning code. (Gov. Code, § 65915, subd. (f).) The SDBL uses a sliding scale based upon the percentage of affordable units included in the project to determine the amount of the bonus granted. (*Ibid*.)

Projects that qualify for the density bonus are also entitled to a certain number of incentives and concessions. (Gov. Code, § 65915, subd. (d)(2); see also *id*., at subd. (p) [providing favorable parking ratios for SDBL-compliant projects].) Incentives and concessions include reductions in development standards, modifications of zoning or architectural design requirements, approval of mixed-use zoning, and more. (Gov. Code, § 65915, subd. (k).)

Importantly, developers can also request a waiver or reduction of *any* development standard that would physically preclude the construction of the SDBL project. (Gov. Code, § 65915, subd. (e).) Development standards that can be waived or reduced include height, number of stories, setbacks, and others. (See *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329.)

Ian Elsenheimer

> . . . .in the clash between the need for affordable housing on the one hand, and a community's desire to protect the existing scale and character of a neighborhood on the other hand, the State's mandate for more affordable housing wins.

Why Does it Matter?

An agency can only decline to grant an incentive, concession, waiver, etc., in the following limited circumstances: (1) the incentive or concession would not result in identifiable and actual cost reductions to provide for affordable housing costs (Gov. Code, § 65915, subd. (d)(1)(A)); (2) there would be a specific, adverse impact upon public health and safety (Gov. Code, § 65915, subd. (d)(1)(B)); (3) there would be an adverse impact on a historic resource (*ibid*); or (4) the request would be contrary to a state or federal law. (Gov. Code, § 65915, subd. (d)(1)(C).)

On Feb. 2, in the unpublished case of *Bankers Hill 150 v. City of San Diego* (Case No. D077963), the Fourth District Court of Appeal upheld the trial court's decision that the City of San Diego did not abuse its discretion when it voted to approve the development of a 20-story mixed-use building with 204 dwelling units (17 of which were affordable) over objections that the "building's design improperly obstructs views, fails to complement neighboring Balboa Park, and towers over adjacent smaller-scale buildings."

The appellate court reasoned that even if the proposed project was inconsistent with the City of San Diego's design standards, the City lacked discretion to deny the project because there were no facts that supported a finding that the project fell within the limited circumstances for denial set forth above.

Continued on page 25

Ethically Speaking:
The Fiduciary Duty to Communicate With Your Client About Acts of Malpractice

By Robert K. Sall

Lawyers are human. Mistakes will happen from time to time. Some errors or omissions are more material than others and may lead to severe consequences for a client. Errors that are not uncommon include failing to properly calendar an important date, missing the deadline to file papers to make or oppose a motion, missing a court appearance, failing to timely designate expert witnesses or meet trial deadlines, or failing to timely file a complaint until after an applicable statute of limitations has arguably expired.

The lawyer's fiduciary duty to communicate with his or her client is a broad one and failure to properly keep a client informed may result in discipline or civil liability. A provision of the State Bar Act, Business & Professions Code section 6068(m), describes a series of statutory general duties of an attorney, which includes the duty: "To respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services."

Proper communication under the Rules of Professional Conduct includes the obligation to promptly inform the client of any circumstance that is required to be disclosed by the rules or the State Bar Act. Cal. Rules of Prof'l Conduct ("CRPC") R. 1.4 (Communication with Clients) (2018). The lawyer must communicate with the client about any significant development relating to the representation. CRPC R. 1.4(a)(3). Such communication must address any matter for which the client's informed consent would be required. CRPC R. 1.4(a)(1). This includes providing an explanation to the client to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. CRPC R.1.4(b). If a conflict of interest has developed that would require disclosure and informed written consent under Rule of Professional Conduct 1.7 (Conflict of Interest: Current Clients), Rule 1.4(a)(l) also mandates that such conflict be disclosed in the manner required by the rules. Rule of Professional Conduct 1.0.1 (Terminology) defines informed consent. To obtain informed consent, the client must be apprised in writing of the relevant facts, the reasonably foreseeable adverse consequences, and the material risks of a proposed course of action in order to make an informed decision. *See* CRPC R. 1.0.1(e).

While Rule 1.4 does not explicitly state that a lawyer must disclose his or her mistakes, the obligation to make such disclosure is well established. "[A]ttorneys have a fiduciary duty to disclose material facts to their clients, an obligation that includes disclosure of acts of malpractice." *Beal Bank SSB v. Arter & Hadden LLP*, 42 Cal. 4th 503, 514 (2007) (citing *Neel v. Magana, Olney, Levy, Cathcart & Gelfand*, 6 Cal. 3d 176, 188-89 (1971)). This disclosure obligation was recognized by the California Supreme Court in *Neel* over fifty years ago. Fiduciary duty includes the obligation to render a full and fair disclosure to the client of all facts that materially affect the client's rights and interests. *See id.* The Restatement (Third) of the Law Governing Lawyers, section 20, subsection c, provides: "If the lawyer's conduct of the matter gives the client a substantial malpractice claim against the lawyer, the lawyer must disclose that to the client." The Restatement also provides that the lawyer "must explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." *Id.* The State Bar of California's Standing Committee on Professional Responsibility and Conduct ("COPRAC") in Formal Opinion 2019-197 addresses the subject of the lawyer's duty of communication and the obligation to disclose malpractice. The opinion concludes that an error potentially giving rise to a legal malpractice claim is a significant development relating to the representation. There is no debate that the occurrence of an act or omission which may have a material adverse impact on the client must be disclosed.

When the lawyer recognizes that a material error or omission has occurred, what is it that must be disclosed? Must the potential consequences for the client be fully explained? Must the client be told of potential remedial steps? One commentator has noted that there is a dearth of direct authority as to the extent of the lawyer's obligation to self-report an act of malpractice. Benjamin P. Cooper, *The Lawyer's Duty to Inform His Client of His Own Malpractice*, 61:1 Baylor L. Rev. 174, 176-77 (2009). There are no easy answers to the above questions other than that the client is entitled to a candid, full, and fair disclosure. A lawyer may, for reasons of professional embarrassment, impact on insurance coverage, self-protection, or otherwise, understandably be reluctant to admit a mistake or describe his or her conduct as malpractice. If there is a reasonable prospect that the lawyer's error or omission might lead to a claim against the lawyer or the lawyer's firm, the

situation implicates the lawyer's personal or professional interests in avoiding or defending against a future claim. That the lawyer may be tempted to limit such a disclosure reveals the tension that exists in this situation between the interests of the client and the interests of the lawyer and law firm. The lawyer should be mindful of the duty of fidelity—*uberrima fides*—which has been defined as "[t]he most abundant good faith; absolute and perfect candor or openness and honesty; the absence of any concealment or deception, however slight." *David Welch Co. v. Erskine & Tulley*, 203 Cal. App. 3d 884, 890 n.2 (1988) (citing Black's Law Dict. (Rev. 4th ed. 1968) at 1690).

In some instances, there may be an opportunity to rectify an error, or seek judicial relief from its consequences, and sometimes this effort requires a declaration of fault. In *Smith v. Lewis*, 13 Cal. 3d 349 (1975), an attorney had submitted a declaration of fault in support of the client's application under Code of Civil Procedure section 473 for relief from judgment. That declaration was later used in evidence by the client in a malpractice action against the lawyer. In reviewing the trial court's admission of that evidence, the Supreme Court held that the declaration should have been excluded under Evidence Code section 352 because it had "insubstantial probative value" and was of marginal relevance to the issues in that lawsuit:

> *On its face, the declaration, under oath, is manifestly a confession of error on the part of defendant. The jury possibly could have misunderstood its context or its purpose, or confused the quantum of asserted negligence necessary to permit the amendment of the judgment with that required to support a finding of malpractice.*
>
> *Id. at 364.*
>
> *Were we to sanction the admissibility of such evidence, tension might develop between an attorney's duty to zealously represent his client (citation omitted) and his instinct of self-protection. As a result, the attorney could become reluctant to seek an amended judgment under Code of Civil Procedure section 473, and the quality of legal representation in the state might suffer accordingly. In short, an attorney should be able to admit a mistake without subjecting himself to a malpractice suit. Therefore, we conclude, the trial court erred in admitting the declaration into evidence.*
>
> *Id. at 365.*

Despite the result under the particular facts in *Smith*, the exclusion of such evidence in a future malpractice claim is not certain, as decisions on admissibility will vary with the circumstances.

When considering what must be disclosed, a lawyer may naturally be concerned about the future use to which the written disclosure or declaration will be put. If the lawyer's interest in self-protection tempts him or her to consider means of limiting the disclosure, the lawyer's independent judgment has likely been affected. This demonstrates that a conflict of interest will often exist in communicating with the client about an error, its potential consequences, and the means that may exist to mitigate any resulting harm. Rule of Professional Conduct 1.7, in relevant part, provides that a lawyer shall not, without informed written consent from each affected client and compliance with other provisions of the rule, represent a client if there is "a significant risk that the lawyer's representation of the client will be materially limited . . . *by the lawyer's own interests*." CRPC R. 1.7(b) (emphasis added).

The opinion concludes that an error potentially giving rise to a legal malpractice claim is a significant development relating to the representation. There is no debate that the occurrence of an act or omission which may have a material adverse impact on the client must be disclosed.

The fact that there is a potential conflict of interest will necessitate additional disclosures. Rule 1.4 (a) requires the lawyer to promptly inform the client of any decision or circumstance requiring informed consent. COPRAC, in Formal Opinion 2019-197, opines that this includes an informed consent to the lawyer's continued representation. Cal. Bar Formal Opn. 2019-192, at 5. The lawyer who continues to represent a client in the effort to mitigate harm resulting from the lawyer's error must also reasonably believe that he or she will be able to provide competent and diligent representation to the client. CRPC R. 1.7(d). Where the lawyer's own personal interests are affected, careful consideration must be given to the impact that it is likely to have on the lawyer's independent judgment. Loyalty and independent judgment are essential elements of the lawyer-client relationship. See CRPC R. 1.7, Cmt. 1.

Whether or not a serious conflict exists is likely to depend upon the severity of the error, the potential harm to the client, and whether the error may still be corrected. With many errors or omissions, it may be possible to mitigate adverse consequences by the lawyer's continued representation and proper efforts to minimize or avoid harm to the client. If the relationship has not terminated, fiduciary duty will still require the lawyer to reasonably consult with the client about the means by which to accomplish the client's objectives. CRPC R. 1.4(a)(2). This blends the fiduciary obligation to disclose and obtain informed consent with the duty to advise the client, to ascertain the goals and objectives, and to take steps reasonably necessary to advance the client's interests. Lawyers have the duty to volunteer opinions, even those that may be outside the scope of representation, where such advice is necessary to further the client's objectives, or to avoid the possibility of adverse consequences if not considered. *Nichols v. Keller*, 15 Cal. App. 4th 1672, 1683-84 (1993). Not only should candid and full disclosure be made, but the potential impairment on the lawyer's independent judgment in all likelihood warrants the recommendation that the client consult with independent counsel for further guidance.

In advising the client with respect to reasonable means to mitigate the harm resulting from his or her error, the lawyer should refrain from advising the client regarding the merits of a potential malpractice claim. Cal. Bar Formal Opn. 2019-197 cautions that "to do so would be to provide advice to the client on an issue on which the attorney's interests squarely conflict with the client's." Instead, as Formal Opinion 2019-197 notes, "the attorney has a duty to disclose the conflict and the resulting limitations on [his or] her ability to advise the client."

While the situation may be both awkward and difficult, where the lawyer has made an error that materially impacts the client, the lawyer's duty to the client is to make a full and fair disclosure. To comply with ethical obligations, the lawyer must provide sufficient information so the client will be fully informed in making a decision as to how such a development will affect the representation, and the steps that may be taken if it is possible to mitigate any resulting harm.

Robert K. Sall *is a shareholder with Sall Spencer Callas & Krueger in Laguna Beach. A Certified Specialist in Legal Malpractice Law by the State Bar of California's Board of Legal Specialization, he lectures frequently for the OCBA on lawyer conduct, fee disputes, and legal ethics. He can be reached at rsall@sallspencer.com.*

Ethically Speaking - The Fiduciary Duty to Communicate With Your Client About Acts of Malpractice by Robert Sall, appeared in the Orange County Lawyer Magazine*, April 2022, Volume 64, No.4, pg 48.*

Elsenheimer, *continued from page 22*

The *Bankers Hill* case serves as an example that, in the clash between the need for affordable housing on the one hand, and a community's desire to protect the existing scale and character of a neighborhood on the other hand, the State's mandate for more affordable housing wins.

Conclusion

California Assembly Bill 2345, which took effect on Jan. 1, 2021, increased the maximum density bonus award from 35 percent to 50 percent and lowered certain thresholds for obtaining incentives and concessions. As a result, there could be a rise in SDBL-compliant projects.

The furthered use of the SDBL will likely lead to an increase in the number of affordable housing units, but will also restrict local ability to protect the existing scale, character and/or architectural designs of neighborhoods and cities.

Regardless of any cons associated with the SBDL, it looks like it will continue to be an important part of California's land use law for the foreseeable future.

Ian Elsenheimer is a real estate, land use and business attorney at Ferguson Case Orr Paterson LLP.

Motions

Diana P. Lytel, a prominent civil litigator and criminal defense lawyer with the law firm **Lytel & Lytel, LLP**, has been selected to the Super Lawyers list for Southern California for 2022, placing her among the top five percent of the region's attorneys.

Diana P. Lytel

The selection marks Lytel's eighth consecutive Super Lawyers recognition. She was also named a Super Lawyer for Southern California in 2020 and 2021, and was a Super Lawyers Rising Star from 2015 to 2019.

Lytel's practice focus is general litigation for businesses and individuals, professional liability, premises liability and commercial litigation. She has defended a wide variety of high-profile clients, including Fortune 500 companies, financial institutions, mutual funds and insurance entities. Lytel also has an active criminal defense practice and is recognized as a "Premier DUI Attorney" with advanced level training by the American Association of Premier DUI Attorneys.

A leader in her industry, Lytel holds executive officer and board of director positions with several prominent legal organizations. She is currently president of the Association of Southern California Defense Counsel, the nation's largest regional civil defense organization. She is also president of the Santa Barbara Women Lawyers Foundation, vice-president of Santa Barbara Women Lawyers, and a California Defense Counsel board member. Additionally, Lytel serves pro bono as a courtroom judge on Santa Barbara's Teen Court, a juvenile justice diversion program for early teen offenders.

Lytel received her B.A. in Political Science from the University of California, Los Angeles (UCLA), and obtained her Juris Doctor degree in 2006 from Loyola Law School. She previously worked in Morgan Stanley's litigation department, served at several top regulatory agencies, and held prominent roles with prestigious law firms recognized by Super Lawyers®, Best Lawyers in America and AV Rating. Admitted to practice in the State of California, Lytel has experience in both federal and state courts.

* * *

DT Law Partners is pleased to welcome **Leticia Martinez** to the firm's team of experienced estate planning and business litigation attorneys.

Leticia Martinez

Martinez has worked as an estate planning attorney for almost two decades. Her practice focuses on providing clients with a holistic approach to family and business planning, while simultaneously protecting client assets and creating lasting legacies. Her areas of expertise include estate planning, trust administration, conservatorships, probate litigation and civil litigation matters. She joins DT Law Partners as a senior associate attorney.

A graduate of the University of California, Davis, Martinez obtained her bachelor's degree in political science and sociology in 1998, with high honors. She then studied at the University of California, Hastings College of Law in San Francisco, graduating with her Juris Doctor in 2002 with academic distinction in oral advocacy. After working at various private law firms, Martinez opened her own solo law practice in January 2008.

The Pacific Coast Business Times has recognized Martinez as one of the top 50 women in business in Santa Barbara, Ventura and San Luis Obispo counties, as well as one of the top 40 up-and-coming business leaders. When not practicing law, Martinez volunteers with the Children's Ministry at Calvary Chapel in Santa Barbara, and as a Board Member for the Good News Clubs of Santa Barbara County. She has also served on numerous boards and committees, including as event chair for the Walk to End Alzheimer's Santa Barbara, and as a committee member for the Planned Giving Committee of VNA Health of Santa Barbara and the

Continued on page 28

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Price, Postel & Parma, a long-standing law firm in Santa Barbara, is seeking a litigation associate with superior credentials, 3-4 years of significant litigation experience and a current license to practice in the State of California. Compensation is commensurate with skills, education and experience. Please submit a cover letter and resume via email to Craig Parton at cparton@ppplaw.com.

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SBCBA

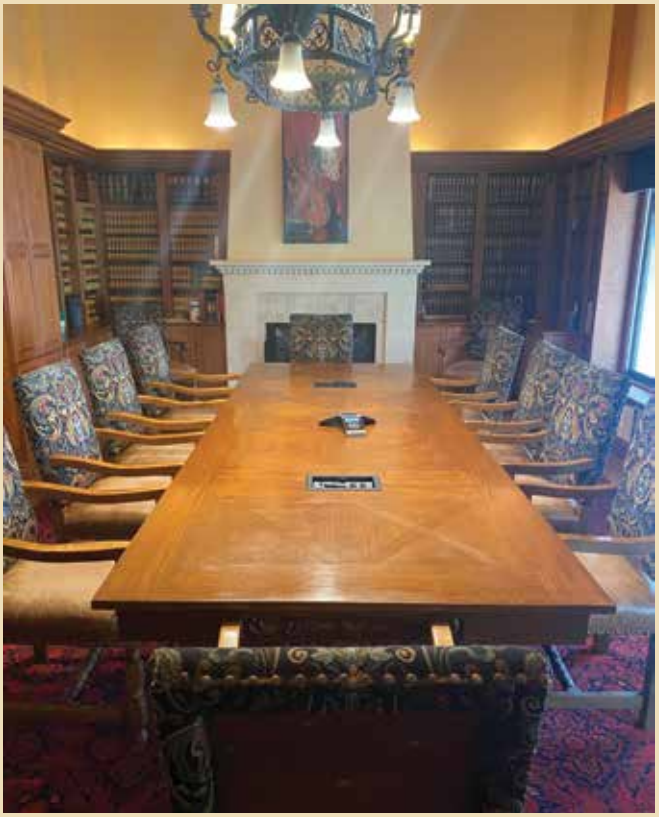
Motions, *continued from page 26*

Friends of the Santa Barbara Public Library.

Martinez lives in Santa Barbara with her husband Edward and their two young children, Christian and Isabella, and their family goldendoodle Cody. She is fluent in Spanish.

Located in downtown Santa Barbara, DT Law Partners provides legal services pertaining to business litigation, trust and estate litigation and various corporate transactions. With over 100 years of combined experience, the law firm is committed to offering personalized attention and providing guidance regarding informed decisions and effective solutions for clients' legal needs. ■

If you have news to report, the Santa Barbara Lawyer *editorial board invites you to "Make a Motion!" Send one to two paragraphs to our Motions editor, Mike Pasternak at pasterna@gmail.com.*



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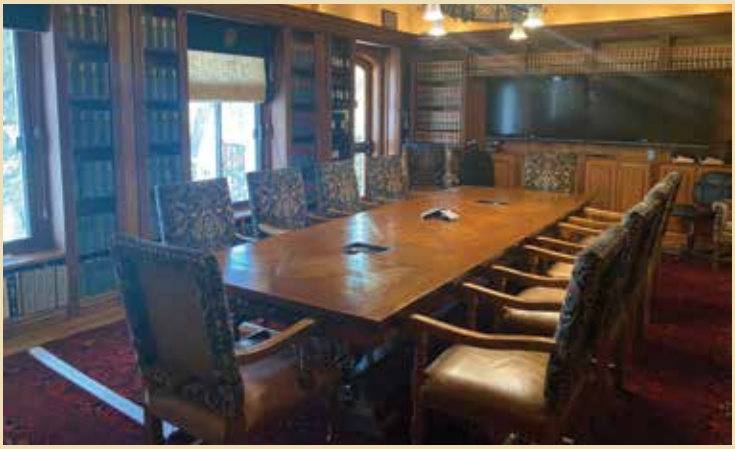

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June

2022

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2 National Leave the Office Early Day	3	4
5	6 D-Day	7	8	9	10	11
12	13	14 National Flag Day	15	16	17	18
19 Father's Day Juneteenth	20 World Refugee Day	21 Summer Solstice	22	23	24 2022 SBCBA BBQ Take Your Dog to Work Day	25
26	27	28	29	30		

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