Santa Barbara Lawyer

Official Publication of the Santa Barbara County Bar Association
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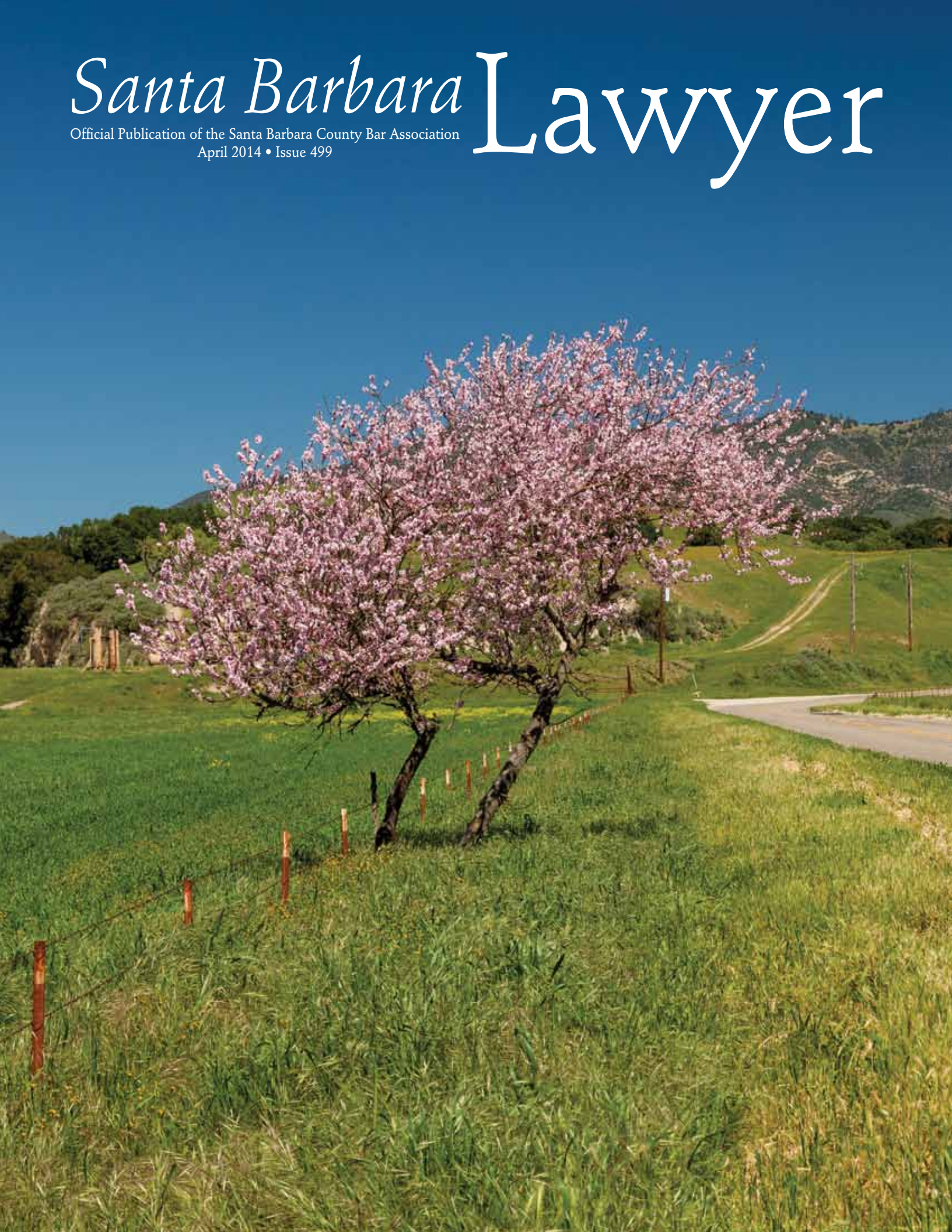

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Santa Barbara County Bar Association

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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A Publication of the Santa Barbara County Bar Association

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Articles

Sections

About the Cover

Cover photo by Fritz Olenberger. Santa Ynez Valley, near Figueroa Mountain.

Calling All Runners to

SAVE THE DATE
June 14, 2014!

The Law Day Foot Races are coming back in a new form, known as Race for Justice! Look for updates to come from Santa Barbara County Bar Foundation.

From the President

By Scott Campbell
2014 SBCBA President

There was a lot going on in February.

On February 5th I attended the Legal Aid Foundation's luncheon, celebrating its 55th anniversary and the recent retirement of its Executive Director, Ellen Goodstein. I was staggered to learn the numbers of people served by Legal Aid, and the breadth of the services provided. It is easy to forget that almost 20% of our local citizens are living at or below the poverty line and that they, just as the rest of us, face the whole spectrum of legal issues. Legal Aid is doing a great job for that population, but the work is endless and as attorneys, we should do what we can to help the Legal Aid Foundation continue its mission.

On February 21st State Bar President Luis Rodriguez stopped in Santa Barbara for a luncheon organized by Judge Herman. President Rodriguez' remarks covered a wide range of topics of interest to all California attorneys, not the least of which was court funding. In the months to come the SBCBA will again be doing all it can to encourage the governor and the legislature to restore and preserve sufficient court funding so that the citizens of our state can continue to have access to the judicial system.

Scott Campbell

As a mock trial coach and addict, I am compelled to write a few words about this year's Santa Barbara County High School Mock Trial Championship competition. The teams in this year's competition, particularly the teams that reached the semifinals, Santa Barbara, Santa Ynez, San Marcos, and Dos Pueblos, would have been competitive anywhere in the state. The finals once again featured an absolutely epic battle between two superb teams, arch rivals Dos Pueblos and San Marcos.

Of the tens of thousands of total points awarded to the teams by the scorers of the county competition in the final rounds between Dos Pueblos and San Marcos over the past six years, I would guess that less than 100 points separates them. This year, for example, out of 2813 total points awarded in the finals, Dos Pueblos (DP) topped San Marcos by only 20. In two recent years, the teams tied in total points awarded.

All the Mock Trial coaches in the county deserve praise. I will not abuse this space by lauding coaches I have worked with (and in any case the DP coaches have listened to quite enough of my emotional end-of-season speeches). Rather, I want to praise San Marcos' coaches, Eric Burrows and Luke Ohrn. For many years, Eric and Luke have been working with the kids at San Marcos to create a very popular and successful program. Each year, no matter what students they have to start with, they come to the county tournament with a team that could win State. Eric and Luke never let down, and the students they coach will forever be better off for having had the experience of competing in mock trial with them as coaches. San Marcos raises the bar for all the teams in the county. Their consistent hard work and devotion to making the San Marcos team the best a team can be, means that the rest of the high schools in the county have to work as hard or harder to have a chance against their team. That is great for the county because it means more students become poised, polished, and articulate as they prepare for college and careers. Congratulations to Eric and Luke for maintaining such an incredible and beneficial program at San Marcos for so many years. ■

Cyclists Wanted!

Bicycling lawyers: Do you commute on a bicycle or know a lawyer who does? If so, we want to contact you for the cycling month (that's May) issue of the *Santa Barbara Lawyer.* We want to show lawyers doing their part for the environment, traffic decongestion, cardiovascular health, peace of mind, and good-looking legs. (Not necessarily in that order and not necessarily all those things.) Please contact Tom Hinshaw at thinsb@gmail.com.

From the Editor

By Claude J. Dorais

Claude J. Dorais

The goal of *Santa Barbara Lawyer* is to share content which is valuable to our members. Every time you read the publication, you are investing time you will not get back. We know that and we want your investment to be worthwhile.

Often, the worth of an item is clear on its face. Sometimes, not so much. There is an article this month that may fall into that latter category for some of us – John Nelson's article about retirement planning. I suggest it is worth very careful reading. Allow me to punctuate that statement with my own story.

About 25 years ago, I had been practicing for 15 years and was making an excellent living. Our small firm had good lawyers and wonderful clients. We seemed to have all the bases covered. One of my partners pointed out, however, that we did not have a retirement plan. He was right. Fortunately, he was a specialist in the area and we soon had a 401(k) plan. Ever since then, like clockwork, our small firm has invested in that plan. The value of our personal accounts, by now, is significant, but that is not the lesson here, since it is obvious that if you set aside a decent sum every year for 20+ years, it eventually adds up.

The lesson here is this: While my 401(k) account has become large enough to be an important financial component of the retirement years I will someday enjoy, funding it has literally been effortless. There is not a single thing I can think of over the years that my family had to delay or do without because of the contributions I made to my 401(k). It very much feels like it was funded with "free" money – money that otherwise I doubt I or my family would have anything for which to show

I am age 64 and the average reader is younger than I am, to be sure. My generation can likely count on Social Security for the rest of our lives, but how about the people who are 45, or 35, or 25? As people live longer and as the post-WWII "baby boomers" mature into retirement age and skew the ratio of retirees to those still paying into Social Security, the strain on the system will grow. I am not trying to scare you – I hope and expect that good minds are involved, that solutions will be found, and ultimately that everyone will receive their due from the system. But is there a better way to assure your financial future than to take advantage of tools you yourself can create and control? The plan fees are a business expense and the contributions are pre-tax. It does not get much easier – you just have to get started. ■

SEE PAGE 33 FOR MORE DETAILS

Saving for Retirement

By John R. Nelson, Esq.

John R. Nelson

Professional service groups, such as law firms, have unique objectives in designing tax-qualified retirement plans. Typically, these plans are "owner-dominated," which means these programs are designed to tilt contributions and benefits in favor of the owner-employees. The key in designing these plans is to balance the owner-employee's goal of achieving maximum tax-deductible benefits for him- or herself against the "non-discrimination requirements" set forth in the laws and regulations that govern tax-qualified plans, which require that meaningful retirement benefits be provided for staff employees.

Before reviewing key plan design components, let us review why it is important for professional employees to set aside tax-deductible dollars today for retirement. One of the key rewards of studying for and obtaining a law degree is the ability to earn a good income during your working years. But, unlike other businesses, a lawyer does not typically build up business value that he can later sell to help finance his retirement. A law firm's business value and goodwill typically attaches to the individual lawyer. So, the primary way to build up retirement income is to save during your working career.

If you are going to save for retirement, the absolute best way to do so is on a tax-deductible basis. A tax-qualified plan provides two important tax-favored advantages. First, the contribution is tax-deductible for federal and state income taxes. And, second, the earnings on your contributions accumulate tax-free. You do not pay income tax until you later withdraw benefits.

Take a look at the following example, which compares saving "before-tax" $40,000 per year versus saving the "after-tax" equivalent (assuming a 45% federal and state marginal income tax bracket) of $23,200. This example assumes that you earn a 7% annualized rate of return and that you withdraw your accumulated value in equal installments over 20 years. You pay federal and state income tax on your "before tax" savings at the time of withdrawal.

(See Figure 1.)

The benefits of saving "before tax" versus "after tax" can be dramatic.

So, what plan design makes the most sense in designing retirement plans for law firms? The starting point is a "safe harbor" 401(k) plan. Section 401(k) plans are unique in that employees are permitted to make tax-deductible contributions to the plan, similar to an IRA, but with much larger annual limits. For 2014, an employee who has attained age 50 can contribute up to $23,000 to a 401(k) plan.

401(k) plans must pass a special non-discrimination test each year that compares the level of 401(k) contributions made by the firm's "highly compensated employees" (HCEs) to the rate of 401(k) contributions made by the firm's "non-highly compensated employees" (NHCEs). If the gap between the two groups is too large, then the HCEs have to reduce or take back some or all of their 401(k) contributions. This nondiscrimination test is often difficult for professional service firms to pass. The solution is to be a "safe harbor" plan. The "safe harbor" rules allow the owner to, in effect,

Figure 1

	Qualified Plan	After-Tax Savings
Annual Contribution[i]	$40,000	$23,200
Value @ 20 years	$1,639,820	$746,581
Annual withdrawal	$140,714	$51,613
Less: Tax	-$63,321	$0
Annual Income	$77,393	$51,613

"buy your way out" of this annual test if you agree to make a nominal annual contribution for eligible NHCEs.

There are three safe harbor formulas, but the one that usually makes the most sense for professional service firms is the "3% contribution" formula. The Employer agrees to contribute to the plan for the benefit of each eligible NHCE 3% of the employee's compensation. In return, the owner is permitted to contribute on her behalf up to the 401(k) annual dollar maximum (e.g., $23,000 for an age 50 or older owner), and the Employer can generally make an additional contribution for the owner of up to 9% of her compensation. Here is what this might look like, *(See Figure 2).*

The result is that the Owner is able to save $45,500 toward her retirement and the "cost" in terms of providing benefits to her eligible employees is less than $5,000. Or, to look at this another way, if the Owner did not have the plan and did not contribute the total of $50,100, she would presumably take that amount as additional compensation. If she is in a 40 percent combined federal and state marginal tax bracket, the results would be as follows, *(See Figure 3).*

In this example, the Net Gain to the Owner of having the plan, i.e., the difference between what the Owner would put in his pocket after paying income taxes on the sum of $50,150 and what the Owner has in his account under the plan, is over $15,000. One could say that the IRS is, in effect, covering the cost for the Owner of providing non-discriminatory benefits for staff employees under the plan.

Now, once you have decided to set up the plan and make your contributions, you have to decide how to invest your retirement savings. In this regard, there are three key investment principals to keep in mind:

First is "asset allocation," or simply how you decide to divvy up your investments among stocks, bonds, and cash. How you choose to allocate your portfolio has a much greater impact on your investment return than does trying to time the market or pick the best stock. The general idea here is that the younger you are, i.e., the more years you have to invest, the greater percentage of your portfolio

Continued on page 11

Figure 2

Employee	Compensation	401(k) Contribution	Employer Safe Harbor Contribution	Additional Employer Contribution	Total	Percentage to Owner
Owner	$250,000	$23,000	$7,500	$15,000	$45,500	90.73%
Staff 1	$65,000	$0 - $17,500	$1,950	$0	$1,950	
Staff 2	$50,000	$0 - $17,500	$1,500	$0	$1,500	
Staff 3	$40,000	$0 - $17,500	$1,200	$0	$1,200	
					$50,150	

Figure 3

	Without Plan		With Plan
Total Contribution	$50,150		$50,150
Less Income Taxes	-$20,060	Cost to cover employees	-$4,650
Net to Owner	$30,090	Net to Owner	$45,500
Net Gain to Owner			$15,410

View from the Well

By The Honorable Thomas Anderle

Judge Thomas Anderle

Most lawyers try their case thinking about how it looks from the jurors' perspective or from the judge's perspective; sometimes from the lawyers' perspective. These comments are from the perspective of someone standing in the "Well."

1. Should the lawyer file "Evidentiary Objections?"

Judges will tell you that in *all motions*, lawyers often submit a large number of declarations with very significant hearsay and other inadmissible statements. They always generate a large number of evidentiary objections for the Judge to rule on. Here is what the Judge is thinking about those objections:

The Judge is familiar with *Sambrano v City of San Diego*[1] and its admonition in *Summary Judgment* cases. The Judge has read *Tarle v Kaiser,*[2] telling lawyers that a party must oppose evidentiary objections made in connection with *Summary Judgment* or forfeit any appellate challenge to rulings on these objections. The Judge has read California Rules of Court,[3] regarding format for objections; each written objection must be numbered, and (1) identify the name of the document, (2) state the exhibit, title, page, and line number, (3) quote or set forth the objectionable statement or material, and (4) state the ground for each objection. The Judge is familiar with cases such as *In re Marriage of Heggie,*[4] telling lawyers that it is very common for practitioners to include argument in their declarations, *but it is a sloppy practice.*

The Court has said the following with rhythmic regularity but no one seems to listen. Lawyers must use some reasonable restraint in their submission of declarations that contain inadmissible statements, and opposing counsel must use some reasonable restraint in making their objections. The Judge will urge again, as the Court has in the past, to (1) ask counsel who are submitting the declarations to read them before filing them and eliminate the inadmissible testimony, and (2) ask counsel who are objecting to the inadmissible testimony to resist exercising every conceivable objection, on the theory that many times there is no harm done by the inadmissible statement, and in every case the Judge must inevitably read and rule on each objection.

Further, be certain *the objections you make are appropriate for the circumstances*; a surprising number of objections to declaration testimony are made on grounds of "asked and answered," "best evidence," and even "more prejudicial than probative." Use of inappropriate objections not only annoys the Court, but also undermines your credibility.

TIP – Read every declaration you submit as if you were the Judge who had to both read it and rule on objections to it. Do not put in obviously inadmissible statements. Only object when the sustaining of the objection will advance your position in some material respect.

2. Should the lawyer call the opposing party as a witness under CCP § 776?

Rarely will the Judge tell you this, BUT it is a *grossly overused procedure*; the witness gets to tell the story at least twice; once on 776 (i.e. "cross") and then cleans it all up on "direct." Why do you put the other side's case on before you put on your case? The problem is exacerbated by examining the witness "free-style" rather than via a "script." The Court knows you think you know the case at least as well as the witness and you are going to get "key admissions," but frankly, that rarely ever happens. Consider not calling a "776 witness." Ask yourself, "Why am I doing this on my case in chief? Can it not wait until the other side calls the party?" If you decide to do it anyway, consider a closely controlled examination using a script based upon a deposition. The point here is that the Judge is thinking that after years of listening to thousands of 776 witnesses, they *rarely help* the case.

TIP – Have more confidence in the evidence that you will solicit from *your* witnesses.

3. Should a lawyer make "Trial Objections?"

The Judge will *usually not tell* you that there are grossly *too many trial objections with no meaningful point*; for example, "leading," "lack of foundation," or "compound," etc. Before you object, ask yourself: "What is the point? Will they get

this evidence in anyway simply by rewording it? Am I just annoying the judge or the jury? Will my objection have any impact other than providing additional emphasis for my opposing party's evidence?" If the Judge or Jurors were not listening before, "Will they really listen now because they think that I think this evidence will hurt my side?"

TIP – Object only when it is really important to your case and you think you will keep the evidence out; remember, if your objection is successful and the lawyer has to ask the question again, the consequence is that if the Jury or the Judge did not get it the first time, they surely will get it the second time. ■

Judge Thomas Anderle is a Superior Court Judge. He served in the U.S. Navy aboard destroyers in the Pacific from 1957 to 1960. He graduated from Law School in 1964; he clerked for Justice John Ford on the 2nd Appellate District for one year; he came to Santa Barbara in 1965 where he practiced until he was appointed to the Bench in December 1997.

ENDNOTES

1 (2001) 94 Cal.App.4th 225
2 (2012) 206 Cal.App.4th 219
3 Rule 3.1354(b)
4 (2002) 99 Cal.App.4th 28

Nelson, *continued from page 9*

you should invest in stocks. Why? Because stocks have historically outperformed other asset classes over time. But, stocks are also more volatile. But, when you are younger, you have more time to ride out the short-term volatility of the stock market.

The second principle is "rebalancing." Once you have determined how much of your account you want to allocate to stocks – and within that asset class how much to large-cap, mid-cap, small-cap, how much to foreign, how much to domestic, etc. – and how much to bonds and cash, you should periodically rebalance your portfolio back to your target percentages. For example, let's say you want to allocate 50 percent to stocks and 50 percent to bonds. Over time, stocks might go up and bonds might go down, so that after some period of time your portfolio allocation might be 65 percent stocks and 35 percent bonds. At that point, you are taking on more market risk in your portfolio than you intended. So, rebalance your account, i.e., sell some of the stocks – to drop your stock allocation back down to your 50% target, and buy some more bonds – to get your bond allocation back up to 50%. A benefit of rebalancing is that regardless of how the markets move, you will always be "selling high, and buying low," which is what we all want to do in a long-term retirement savings account.

The third principle is that as you get older, and closer to your target retirement date, you should be gradually moving your portfolio to a more conservative asset allocation. In your early years, for example, you might have 80 or 90 percent of your account invested in stocks and only 10 to 20 percent invested in more conservative fixed income and cash-equivalent investments. But, later in life, as you approach your target retirement date, you might instead have 35 to 45 percent of your account invested in stocks and 55 to 65 percent invested in fixed income and cash-equivalent investments. This gradual roll-down of your portfolio is sometimes referred to as the "glide path."

There are many qualified investment advisors who can help you manage your investment. Or, you can keep things simple and use a Target Date Fund. A Target Date Fund is a professionally managed asset allocation mutual fund that incorporates asset allocation, rebalancing, and glide path into one mutual fund. Many mutual fund companies have target date fund series that provide professional management at a very reasonable cost – from as low as 20 basis points for Vanguard.

Summary

You have to save for your retirement. A tax-qualified plan is the most cost-effective way to do this. And, for long-term investing, consider a professionally managed Target Date Fund. ■

John R. Nelson is a nationally recognized ERISA attorney and investment advisor. Mr. Nelson is President of Meridian Retirement Plan Advisors, an employee pension benefit plan consulting and investment advisory business in Santa Barbara, CA. In addition, he is in private practice in Santa Barbara, California. The Law Offices of John R. Nelson is an "AV" rated law firm.

ENDNOTES

1 Assumptions: 45% combined federal and state marginal income tax rate; 7% per annum rate of return - 25% ordinary income, 75% capital gain.

Work/Life Balance: Theater and the Silver Screen

Theater: Lawyer Acting Up

By Tom Hinshaw

The current editor of the *Santa Barbara Lawyer* has been seeking submissions from lawyers about "balance" in their life. That term gives me pause. The premise seems to be that life as a lawyer is so oppressive that we need some counterweight to make life bearable.

I grew up in a family where no one was just one thing. My mother was a teacher by day and an actor and theater director on nights and weekends. My father was a radio and television broadcaster and a poet. So, when I look at my life, I do not feel I am any more or less a lawyer than I am a swimmer, bicyclist, husband, hiker, backpacker or, yes, actor. So, for the "balance" series, I offer one of my many parts – actor.

Folks often react to the news that I am appearing in a play by saying that acting seems to be a good exercise for a lawyer. You would think, if that were true, more lawyers would be actors. I do not really think it is that natural of a fit. The acclaimed acting teacher Sanford Meisner defined acting as "being truthful in an imaginary setting." That is not really true of lawyers, even trial lawyers. First, in court, the setting is quite real with real impacts on the real lives of the real "players." Now, one hopes that lawyers are truthful – that is the ideal. But the actor is not really *telling* the truth. A different kind of truth is at stake – an emotional truth.

There is something deeply rewarding about reading a script, analyzing a character, finding that character's emotional life, and finding my own connection to that life. People often ask me how I can "learn all those lines." For me, that is really the easy part. I am often "off book" in the first week of rehearsal. I find I need to get the words out of the way before I can find the essence of my character and his place in the story. This can be maddening to actors who do not work that way. Others need to find the emotional center of their character before the words become natural. They are struggling with their words while I am struggling with my character. There is no right or wrong way. I learn a lot from my fellow actors.

Frankly, I enjoy rehearsals more than I do performances.

Tom Hinshaw in his role in The Curse of the Starving Class. David Bazemore Photo.

In rehearsal, we play with different approaches to each moment, many of which necessarily do not work. But there is no failure in playing with many choices. Playwright Samuel Beckett wrote: "Ever tried. Ever failed. No matter. Try again. Fail again. Fail better." Beckett is one playwright whose language I found deeply challenging. Hamm's words in Endgame did not become natural for me until deep in the rehearsal process. I failed a lot – hopefully better as rehearsals progressed.

An actor finds different aspects and depths of his/her character's relationships with the other actors' characters. This is very much a team effort. Many different team members – the director, actors, designers – come to a production with their own, often strong ideas about the play. We actors work on our relationships in and outside of rehearsals, sometimes improvising a scene to explore our connections. Even one's relationship with the set can present challenges. "Hey, can we get a two-way hinge on this door?" You would be surprised how important little details like that can be.

When the play opens, the real playing stops. There is no more tinkering with character, with relationships. Now there is a new challenge and there is no safety net. Things still change from night to night, not as radically as we changed them in rehearsals. But, inevitably, moments feel different on different nights. It might be a slightly different movement or inflection of another actor or just something I ate that day. And there is a new character in each performance – you, the audience. We on stage are very much aware of how attentive you are. We hear your laughter, your gasps, your sighs, your shuffling, your breathing, and your dang cellphone. Even your silence influences

Tom Hinshaw onstage in Endgame. David Bazemore Photo.

our timing, our feeling for a moment. As novelist Dinan Mengetsu wrote: "Silence isn't the same when it's shared."

Much of the time when I am not sitting at my computer at the courthouse turning out research memos for judges, I can be found rehearsing, performing, or just riffing in an acting workshop. It is very much a part of who I am. ■

Tom Hinshaw is a Superior Court research attorney and the 2005 president of the Santa Barbara County Bar Association. He is a member of the Genesis West ensemble and has acted with Santa Barbara City College Theatre Group, Shakespeare Santa Barbara and other companies and regularly reads for Speaking of Stories. In addition to Endgame, he has appeared in dozens of plays, including The Curse of the Starving Class, The Lieutenant of Inishmore, The Pillowman, The Goat, or Who is Sylvia?, Becky's New Car, The Beard of Avon, A Number, Blue Heart, The Designated Mourner, As You Like It, and The Comedy of Errors.

The Silver Screen: SBIFF

By Lynn Goebel

I was asked to send a few words about some "snuffleupagus" known as "Work-Life Balance." For anyone that recalls the early days of "Sesame Street," no one (or perhaps only very few) ever had a Mr. Snuffleuapagus sighting. I feel the same way when asked to write about my work-life balance.

Truthfully, I volunteer a lot. It is not simply because the practice of family law can be very trying at times. It is more that I think the particular clientele that comes to a family law attorney is not, perhaps, representative of the Santa Barbara population at large. Friends and fellow family law practitioners often describe our prospective clientele as "good people on their worst behavior." Without weighing in on the veracity or ETERNAL TRUTH of that, I must say that, among my other volunteer endeavors, I truly enjoy

Continued on page 19

A Tribute: Josefina

By Claude J. Dorais

Even in a community filled with wonderful people, Josefina Martinez stands out. After more than thirty years in public service, she is about to retire.

Josefina started out in the Sheriff's Office as a Clerk-Typist, where she worked for seven years. She then moved over to the Public Defender's Office for another seven years, serving as a Legal Secretary and earning her Paralegal Certification along the way. In 1997, she made the transition to the Courts, where she has served in various capacities. For many years, she has assisted either the Presiding Judge or the Assistant Presiding Judge. She currently works with Judges Ochoa and Hill.

In addition to her regular work duties, Josefina became involved with the local Mock Trial program about seventeen years ago. Ten years ago she agreed to become the Mock Trial Coordinator, serving as the Court's administrative liaison with the Mock Trial program in which most of the high schools in the county participate. In taking on this role, Josefina undertook what rapidly became a labor of love, involving a large amount of her own time.

While her Mock Trial role is most visible during the annual County Championships in March of each year, the reality is that she has served the program on a year-round basis. Students start preparing months in advance and our Courts graciously permit them to occasionally use courtrooms to hold their practice trials. In addition, volunteers need to be recruited and trained to serve as Judges and scorers. The logistics of the two days of the County Championships involved coordinating the efforts of the local Judges who kindly volunteer their time, many local attorneys, the high school Mock Trial teams and coaches from all over the county, and all of the others needed for the smooth functioning of the event. Josefina has overseen it all.

In the words of Susan Salcido, Deputy Superintendent of the Santa Barbara County Education Office: "As the Coordinator of the Mock Trial Program, Josefina has contributed to the lives of hundreds of high school students so they could acquire a working knowledge of the judicial system, develop analytical abilities and communication skills, and gain an understanding of their rights and responsibilities as participating members of our society. We appreciate her many years of dedication to the Mock Trial program and its students."

Josefina Martinez with her friend and colleague, Deputy Coordinator Stephanie Robbins

Bill Woodard, the teacher coach of the Dos Pueblos High School team, puts it this way: "We thank Josefina from the bottom of our hearts for all she has done for the Mock Trial community in Santa Barbara County. Everyone involved has appreciated how she went out of her way to make sure teams could use the courtrooms for practice and her endless patience with us in all of our crazy meetings! Her contributions have made Santa Barbara's program one of the strongest in the State. She will always be part of our Mock Trial family." In the words of Eric Burrows, teacher at San Marcos High School: "Unparalled in its quality, the Santa Barbara Mock Trial program owes so much to Josefina and her incredible dedication, ability and commitment to the students."

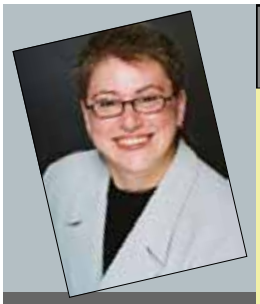
Josefina's commitment to the youth in our county extends beyond our own County Championships. In recent years, she has travelled to the State Championships, typically held in San Jose or Riverside. She has reveled in seeing the teams representing Santa Barbara County excel, achieving high scores and many individual and team awards.

Josefina's service to the program is just one element of her commitment to public service and to making everyone and everything around her better for her presence.

There is one calling that is even more important to Josefina than public service – being a grandmother. She has one grandchild already and another is due soon. Time with her family is high on Josefina's agenda and she will have the time with them she has well earned.

Everyone who has the pleasure of knowing Josefina wishes her well. ■

Claude Dorais is a member of the Board of Directors of the Santa Barbara County Bar Association, Editor of Santa Barbara Lawyer, a member of Dorais, McFarland, Grattan & Polinsky, Law Corp., and a volunteer Mock Trial scorer.



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Judge James Voysey Swearing-In

The swearing-in of Judge James Voysey by the Hon. Arthur Garcia, Presiding Judge of the Santa Barbara Superior Court

Members of the Santa Barbara Bench gather for Judge Voysey's enrobing

Newly sworn-in Judge James Voysey addresses the standing room only audience at the Veterans' Hall in Solvang.

Work/Life Balance, *continued from page 14*

volunteering my time at the Santa Barbara International Film Festival (SBIFF).

Bonuses:

It is a finite period of time. Eleven (11) or so days of time and no further commitment unless you re-up for subsequent years.

Free t-shirt. I am certain that the seven hundred (700) or so volunteers assist with that t-shirt distributor that mistakenly ordered the wrong color. I have sported an obnoxious neon yellow shirt previously that could have

Proof that Lynn Goebel volunteered at SBIFF.

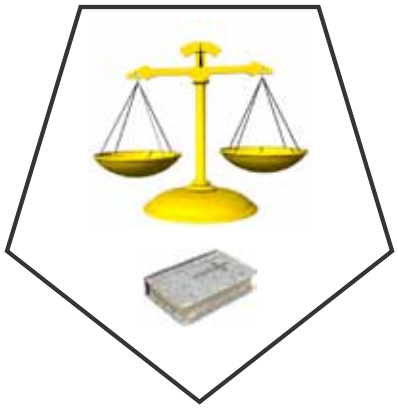
stopped the most ornery of traffic (typically seen when it begins to "rain" here on the Central Coast and everyone loses sight of their senses).

Getting REALLY close to the stars. Just this past year, the wonderful actress Cate Blanchett almost stepped on my toes with her stiletto heels as she walked up to the stage for the Q&A that is a part of the Tributes of the Film Fest every year. Screaming for joy at our proximity on the inside I, of course, as a volunteer and ambassador for the Festival, maintained my stoic face on the outside.

Downsides:

When I was this close to Julia Louis-Dreyfus at a past Festival, I could not show her my time-tested rendition of the "Elaine dance" from her days on "Seinfeld." Instead I merely said, "Um, you're kinda totally amazing!" She replied, "Ohhhh, thank you." I know: epic moment wasted.

But, as I say with most things, if that is the worst thing that happened to me that day, I think I am doing pretty well. Thanks for reading along. ■



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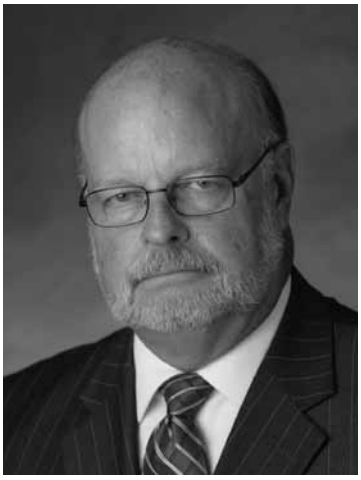
Death Penalty in America

By Robert Sanger



Robert Sanger

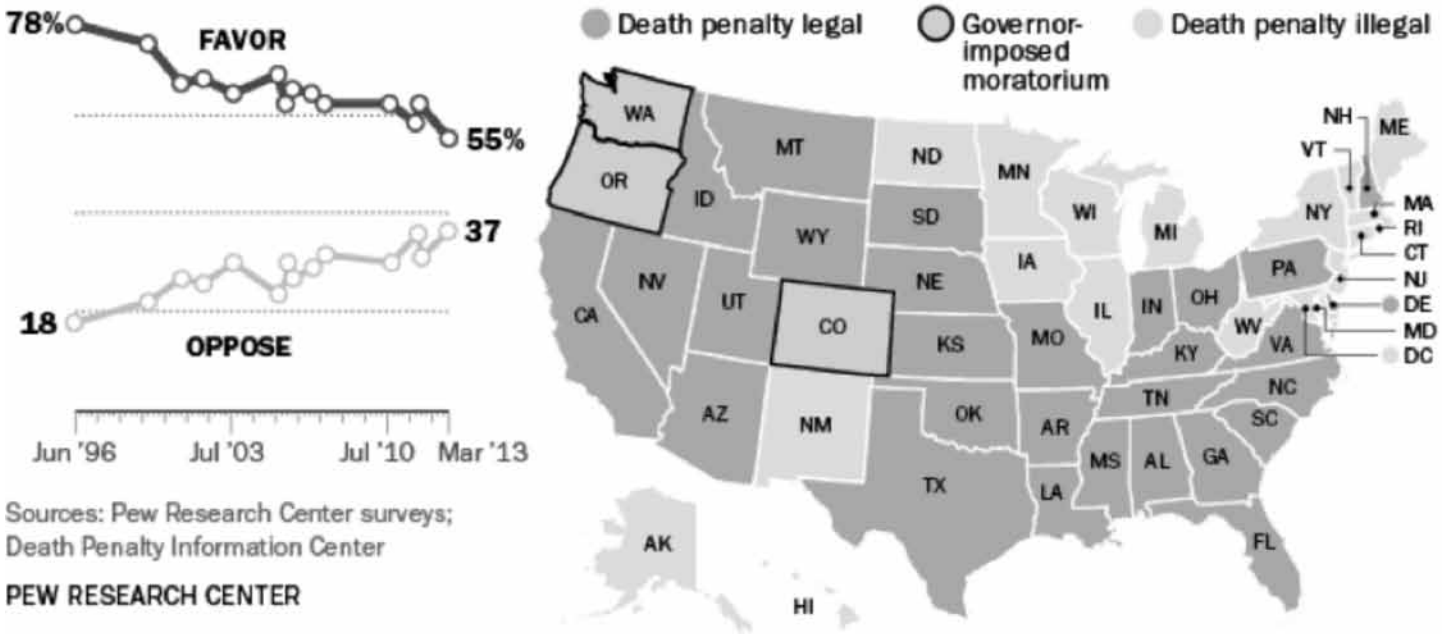
In the January *Criminal Justice* column of the *Santa Barbara Lawyer* magazine, we discussed the concept of including moral issues in the discourse regarding important political issues, like the death penalty. The contention was that "game theory" consultants were driving a policy of targeting the "persuadable middle." That strategy, generally, was designed to avoid the basic moral issues and to try to persuade the "middle" based on practical arguments aimed at self-interest, such as economic effect.

After publication of that *Criminal Justice* column, the Pew Research Center published the results of its 2013 survey in a release dated February 12, 2014. That study has implications for the continuation of the death penalty in America and California, in particular. It also contains some striking results with regard to the position taken by the game theory strategists who argue against discussing the moral issues.

The Pew Research Center and the Survey

The Pew Research Center is a non-profit think tank located in Washington, D.C. It is sponsored by the Pew Charitable Trusts which were originally established in 1948 and developed through the subsequent years. The original founders were the family members of the founder of Sun Oil Company. The original concept was based on a religious commitment to do philanthropic works which it continues to do. However, in recent years, the Trust became involved in researching issues of public concern. They took a particular interest in environmental issues and, a few years ago, they became interested in mass incarceration issues and corrections in the United States in general.

The Pew Research Center, itself, has been heavily involved in public opinion research for decades. The Center



has been led by people well respected in the area of public opinion polling, including those associated with *Times Mirror* and the *Wall Street Journal*. The particular survey conducted regarding the death penalty that gave rise to the February 2014 report was conducted at Princeton Data Resource under the direction of Princeton Survey Research Associates International. The survey was based on a sampling of adult opinion throughout the nation in 2013.

The Pew survey concluded that there is still a small majority favoring the death penalty for persons convicted of murder. The percentage in favor is now only 55% as opposed to 78% recorded in a similar poll in 1996. Those who oppose the death penalty are now 37%, as opposed to only 18% in 1996. The report noted that three governors have imposed moratoria on executions in recent years. Governor Jay Inslee, Governor of the State of Washington, joined Governor John Kitzhaber of Oregon and Governor John Hinckenlooper of Colorado in issuing executive orders halting executions.

As is well known, in 2012, California voters came very close to ending the death penalty by ballot initiative, 52% to 48%, and California, as well as many other states, have a de facto moratorium due to litigation over lethal injection or the form of execution. This leaves the country with fewer states in which the death penalty is possible and even fewer in which there are actual executions being carried out. See the accompanying chart showing the change in public opinion and the states in which the death penalty is legal, illegal, or blocked by a governor's moratorium.[1]

> "[O]nly 18% of those polled 'strongly favored' the death penalty."

The Moral Issues

One of the most significant findings of the Pew Research report was that the two most common answers as to why the subjects of the survey opposed the death penalty were that 1) the death penalty is wrong, immoral, or not right; and 2) that the justice system is imperfect. Each of these reasons were offered by 27% of the people who were opposed, and these two out-distanced other, more self-centered reasons, like cost.

Of course, statistics are statistics. There is still room for an argument that certain swing voters will be swayed by selfish economics. That actually seems likely. Still, the fact is that the moral argument resonates in polling. In actual public campaigns involving actual elections, the factor of appeal to moral principle and leadership based on that principle cannot be discounted. In other words, social justice is usually achieved by strong moral leadership, not by appeal to the self-interest of the persuadable middle.

However, the survey results released by the Pew Research Center in February also debunk another myth promulgated by those who adopt a strategy of appealing to self-interest. The results showed that only 18% of those polled "strongly favored" the death penalty. That 18% are the people who may react strongly to the moral argument being advanced by those who attempt to lead toward abolition by claiming capital punishment is wrong. Therefore, based on this research, it seems that making the moral argument has little political cost while having a decent chance of being persuasive. Even without invoking the scholarship regarding the importance of including moral discourse in politics (and the inherent cost in not doing so), it seems that the research polls make the case that it is time for opponents of the death penalty to simply say that the death penalty is wrong – and that it is wrong in addition to being flawed; likely to condemn the innocent; unfairly to over-represent those of color, the poor, and the mentally impaired; and, yes, costs a lot of money.

Conclusion

Again, it is a matter of individual judgment as to whether or not to support or oppose the death penalty. Research points to its flaws and it appears that the public is beginning to see it as wrong in addition to being flawed. Whatever the view, this recent survey makes it "safe" to discuss the morality of the issue. ■

Robert Sanger is a Certified Criminal Law Specialist and has been practicing as a criminal defense lawyer in Santa Barbara for over 40 years. He is a partner in the firm of Sanger Swysen & Dunkle. Mr. Sanger is Immediate Past President of California Attorneys for Criminal Justice (CACJ), the statewide criminal defense lawyers' organization. He is a Director of Death Penalty Focus. Mr. Sanger is a Member of the ABA Criminal Justice Sentencing Committee and the NACDL Death Penalty Committee. He is also a Member of the American Association for the Advancement of Science (AAAS).

ENDNOTES

1 Copyright 2014, Pew Research Center, used by permission, http://www.pewresearch.org/about/use-policy/terms-and-conditions.

Persuasion in Final Argument

By David K. Hughes, Esq.

The experienced trial attorney writes the outline of his final argument before the trial begins well knowing the theme of the case, the expected jury instructions, and what evidence will be introduced on both sides of the case. That final argument will be fleshed out as the trial unfolds. It will be organized in a way that will emphasize the facts and law favorable to his side. But how can the trial advocate make sure his or her presentation is interesting to a jury which is tired after sitting through a lengthy trial and is ready to go home? How can he or she persuade the jury to vote in her or his client's favor?

There are, of course, a number of basic rules to help achieve a persuasive final argument. They are:

- Never read your argument.
- Begin and end your argument on a strong point, briefly summarizing your theme of the case.
- Clearly frame the issue(s) that the jury will have to decide.
- Anticipate opposing counsel's strongest points and address them.
- Use language in your argument from the applicable jury instructions.
- Scrupulously adhere to the ethical rules governing final argument.
- Use key trial exhibits.
- Marshall the facts in a way that demonstrates the truth of the proposition(s) you wish the jury to adopt.
- And if you are the plaintiff's counsel, always save something for your closing argument.

But, in my opinion the most powerful tool of persuasion in final argument is the use of the analogy. As many trial commentators have stated, "the greatest weapon in the arsenal of persuasion is the analogy."

Webster defines an analogy as "the explaining of something by comparing it point by point with something else." In simple terms, it is a story that compares the circumstances and facts of your case to a subject or matter that is familiar to the jury. For example, in his teachings Jesus repeatedly used parables, a type of analogy, to educate and to persuade.

Why is the use of an analogy so effective in persuading a jury? It is because analogies allow juries to draw their own conclusions, which they will believe in and hold more strongly than if they are expressly told what conclusion to accept. It is a fascinating human trait that people are protective of their own ideas and beliefs. Understanding this key to effective advocacy, the experienced trial lawyer will attempt to guide the jury to reach a conclusion that the advocate wants but which the jury thinks it did for itself. The use of an analogy accomplishes that goal in two ways. First, the use of a story commands the attention of the jury. Second, the story forces the jury to test the appropriateness of the comparison to the case. The jury uses the analogy to reason the issue through and reach its own conclusion.

Analogies can be used in final arguments to explain legal concepts to juries as well as to support the advocate's argument. For example, juries often become confused by the legal principles concerning the different proof burdens and what evidence they can consider in reaching a verdict. Thus, the dry language of an approved jury instruction may not clearly explain to a jury what is "circumstantial evidence." My favorite analogy to explain circumstantial evidence to a jury is one well-known by many trial attorneys. It is a story pulled from Daniel Defoe's classic novel, *Robinson Crusoe.* You first remind the jury of the novel, the shipwreck, and that Robinson Crusoe was on the island for a long time, seemingly alone. One morning as he walked on the beach he saw a footprint in the sand. It was not his. Had he seen a man on the island before that day? No. Had he seen a man on the beach that morning? No. But, he saw a footprint in the sand-the kind of mark that could only have been made by another human being. It was compelling evidence that someone else was also on the island. The footprint that he saw was circumstantial evidence that he was not alone.

There are many more examples of how analogies can be used in final argument. With time, you will find stories that you are comfortable with and which prove to be successful in conveying your arguments to a jury. Do not hesitate to continue to use successful analogies in trial after trial or to borrow good stories from other lawyers. Imitation is the highest form of flattery and there is no patent on good lawyering. But, a word of caution: Before you use an analogy in a particular case, test it and make sure that it cannot be turned around and used against you and your client. ■

Legislation Pending

By Angela D. Roach
2014 Santa Barbara County Bar Association
Legislative Liaison

In this month's column I will depart somewhat from prior issues. This month, instead of looking at pending legislation, I will sample bills vetoed by Governor Jerry Brown.

Governor Jerry Brown is known for authoring specific veto messages giving the reasons why he vetoed a bill. These veto messages are impactful because they not only explain to the public why Governor Brown acted the way he did, but provide information and guidance to the Legislature about whether that type of bill would be vetoed again or how it could be amended to avoid veto. For example, on October 7, 2013, Governor Brown vetoed Assembly Bill 1401, and included the following veto message[1]:

To the Members of the California State Assembly:

I am returning Assembly Bill 1401 without my signature.

Jury service, like voting, is quintessentially a prerogative and responsibility of citizenship. This bill would permit lawful permanent residents who are not citizens to serve on a jury. I don't think that's right.

Sincerely,
Edmund G. Brown Jr.

Another interesting veto by Governor Brown involved Assembly Bill 888, an Act relating to the State Bar. Governor Brown vetoed this bill on October 9, 2013, with the following message[2]:

To the Members of the California State Assembly:

I am returning Assembly Bill 888 without my signature.

This bill allows the State Bar to bring a civil action for the unlawful practice of law.

We already have adequate enforcement mechanisms and remedies to stop the unlicensed practice of law through the existing powers of the State Bar or through the authority of the Attorney General and local prosecutors to bring civil and criminal actions.

Sincerely,
Edmund G. Brown Jr.

Governor Brown also vetoed Assembly Bill 477, relating to elder and dependent abuse. Governor Brown's October 9, 2014, veto message read[3]:

To the Members of the California State Assembly:

I am returning Assembly Bill 477 without my signature.

This bill would add notaries public to the list of professionals mandated to report suspected financial abuse of elder and dependent adults.

I am not convinced that notaries, with their very limited interactions, should be placed in the position of being a mandated reporter. Others who are expressly mandated by law to report abuse typically have some level of relationship or more regular contact with the elder or dependent adult, or have some level of training in identifying abuse. For mandated reporting of financial abuse, officers and employees of financial institutions are required to report because of their access to financial information.

Notaries generally have no more than fleeting contact with individuals who request their services. If some transaction or situation should arise that gives them pause or appears suspect, notaries may already make a report without this law.

I believe that voluntary education and outreach efforts to notaries about financial abuse would better suit this class of professionals.

Sincerely,
Edmund G. Brown Jr.

Finally, another interesting veto message involved Assembly Bill 375, relating to school employees. Governor Brown's October 10, 2013, veto message read[4]:

To the Members of the California State Assembly:

I am returning Assembly Bill 375 without my signature. The goal of this bill is to simplify the process for hearing and deciding teacher dismissal cases. I have listened at great

Continued on page 31

Verdicts

By Lindsay Shinn

Anderson v. Santa Barbara County

SANTA BARBARA SUPERIOR COURT, ANACAPA DIVISION

CASE NUMBER:	1414370
TYPE OF CASE:	Dangerous condition of public property
TYPE OF PROCEEDING:	Jury trial
JUDGE:	Hon. Thomas P. Anderle
LENGTH OF TRIAL:	10 days
LENGTH OF DELIBERATIONS:	4 ½ hours
DATE OF VERDICT OR DECISION:	December 20, 2013
PLAINTIFF:	Lawrence Anderson
PLAINTIFF'S COUNSEL:	Joshua Lynn and Angelina Borrello of Lynn & O'Brien
DEFENDANT:	County of Santa Barbara
DEFENDANT'S COUNSEL:	Michael Youngdahl and Mary Pat Barry of the Office of County Counsel

OVERVIEW OF CASE: Mr. Anderson broke his hip in a solo bicycle accident that occurred within a road construction project on Padaro Lane.

FACTS AND CONTENTIONS: During the afternoon of July 18, 2012, Mr. Anderson was riding his bicycle on Padaro Lane between Summerland and Carpinteria. Mr. Anderson alleged that as he approached a road construction project (it appeared the County was repaving certain portions of the road), a County road worker who was standing on the paved portion of the road directed him to pass the site and prevented him from remaining on the paved roadway. When Mr. Anderson rode his bicycle onto the adjacent gravel shoulder, it gave way causing him to fall. Mr. Anderson claimed the County created a dangerous condition of public property by failing to set up a lane that allowed traffic to pass safely, forcing him onto gravel, and that it was reasonably foreseeable bicyclists would fall, creating a substantial risk of injury. The County denied Mr. Anderson's allegations, contending there was no dangerous condition at the site. The County argued the accident happened because Mr. Anderson chose to ride his bicycle through an active road maintenance work zone, ignoring signs closing the road and directions to stop, that the work zone was set up in a reasonably safe manner, and that Mr. Anderson's own negligence caused the accident.

SUMMARY OF CLAIMED DAMAGES: Mr. Anderson requested $385,872 during closing argument for the economic and noneconomic loss caused by the broken hip.

RESULT: Verdict for the County on the first question of special verdict form. The jury found no dangerous condition.

Rizkalla v. City of Santa Barbara

SANTA BARBARA SUPERIOR COURT, ANACAPA DIVISION

CASE NUMBER:	1383789
TYPE OF CASE:	Personal Injury
TYPE OF PROCEEDING:	Jury trial
JUDGE:	Hon. Thomas P. Anderle
LENGTH OF TRIAL:	7 days
LENGTH OF DELIBERATIONS:	½ day
DATE OF VERDICT OR DECISION:	January 24, 2014
PLAINTIFF:	Jeannetta P. Rizkalla
PLAINTIFF'S COUNSEL:	Steven McElroy of Alder Law, P.C. and Robert Mandell of The Mandell Law Firm
DEFENDANT:	City of Santa Barbara
DEFENDANT'S COUNSEL:	Assistant City Attorney Tom R. Shapiro and Deputy City Attorney Tava Ostrenger

OVERVIEW OF CASE: On May 30, 2011, Plaintiff was riding her bike on East Los Olivos Street between Anacapa and State Streets when she crashed as a result of a large rupture of the asphalt on the street. Plaintiff suffered severe injuries to her right elbow, necessitating three surgeries. She was out of work as a surgical nurse for over a year.

FACTS AND CONTENTIONS: Plaintiff and her husband are Simi Valley residents who were visiting Santa Barbara over the Memorial Day holiday in May of 2011. The Rizkallas visited Santa Barbara frequently, and liked to stay at the Motel 6 because it is a dog friendly motel. They said that they would take regular and long bike rides with their dogs, with Mr. Rizkalla carrying the dogs in a small child's trailer that was attached to his bicycle. They described an uneventful and relaxing vacation in Santa Barbara before the day of the accident.

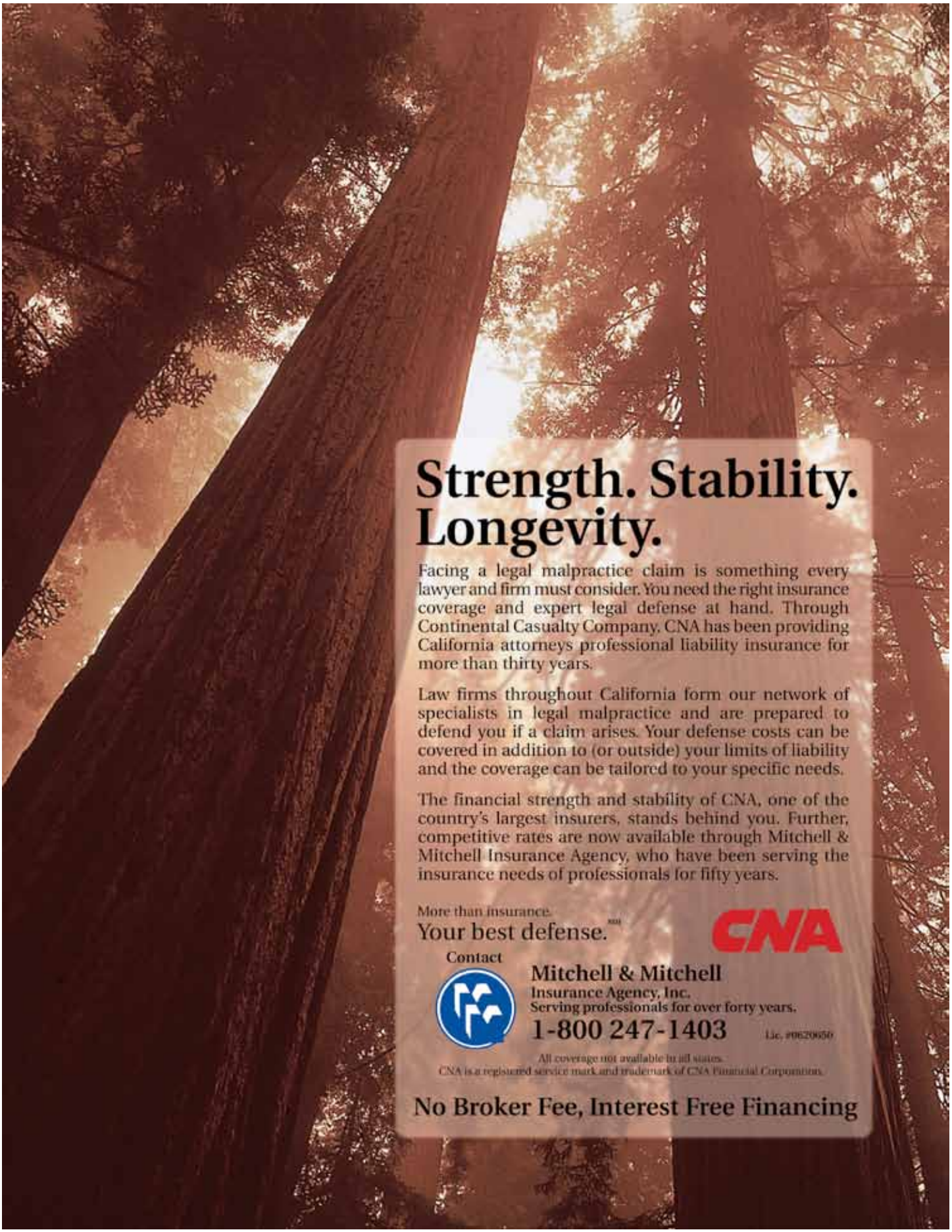
Immediately before the accident, the Rizkallas were riding their bicycles westbound on East Los Olivos Street after visiting the chalk drawings at the old Mission. Approximately 100 feet west of Anacapa Street, Mrs. Rizkalla struck an area of uneven asphalt within the roadway of Los Olivos Street, a road defect caused by the roots of a City tree. Mrs. Rizkalla went over the side of the handlebars of her bicycle and landed on the roadway. Mrs. Rizkalla testified that she was not riding fast and that she had both hands on her handlebars at the time she hit the bump. She stated that she did not see the uplifted section of asphalt before she hit it. The uplifted section of the roadway was subsequently measured by the Santa Barbara Police Department and Plaintiff's expert at about 3-4 inches higher than the immediately adjacent surface of the asphalt roadbed.

Mrs. Rizkalla claimed the uplifted section of roadway constituted a "dangerous condition of public property" within the meaning of Government Code section 835 of the Tort Claims Act. She alleged that the City had constructive "notice" of this dangerous condition because the City had performed a number of street and sidewalk repairs along Los Olivos Street, including in the vicinity of the defect, which should have alerted the City to the street defect**.**

The City claimed the uplifted section of roadway was not a dangerous condition to a due care user of the roadway. This contention was supported by the fact that the defect was located near the curb where cars parked, and by testimony of a nearby resident, Milton Hess, who had noticed the condition on prior occasions but had never reported it to the City. The City claimed that even if the jury found that the condition of the roadway was dangerous, that the jury should assess comparative fault to Plaintiff for the negligent operation of her bicycle.

SUMMARY OF CLAIMED DAMAGES: Plaintiff suffered a complex Monteggia fracture to her right elbow. She underwent three surgeries and was unable to work as a surgical nurse for over a year. She claimed $86,000 in past medical bills, and $134,000 in past lost earnings. She also asserted a claim of over $740,000 in future lost earnings. Plaintiff's lawyer asked the jury to award $2,001,000 in total damages.

RESULT: On January 24, 2014, the jury rendered a special verdict 9-3 in favor of the City finding that no dangerous condition existed.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Legal Aspects of Opening a Winery and Tasting Room in Santa Barbara

By John Haan, Jr.

With the growth of the wine industry in Santa Barbara County, tasting rooms are the perfect vehicle for wineries to reach potential consumers. The popularity of wine can be seen in the plethora of tasting rooms in Santa Barbara's Funk Zone. What was once an industrial section of Santa Barbara is now arguably one of the City's most popular attractions. So what exactly goes into laying the legal groundwork for opening a winery and tasting room? More than you may think.

At the state level, a winery must comply with the requirements of the California Department of Alcohol Beverage Control ("ABC"), California Department of Food and Agriculture ("CDFA"), and California State Board of Equalization ("BOE"). At the federal level, compliance with the Alcohol and Tobacco Tax and Trade Bureau ("TTB") and U.S. Food and Drug Administration ("FDA") is required. And let us not forget that a winery must also comply with local county ordinances. Below is an overview of the various permitting and licensing hoops you will have to jump through to get a traditional bricks-and-mortar winery and tasting room off the ground.

ABC

Any person who desires to produce or sell wine must apply for a Type 02 winegrower's license from the ABC.[1] The ABC requires a license at each location where the winery accepts orders. So if a winery plans on having a separate or additional office location for accepting and processing orders, or if it has an off-site retail room, a separate application for a duplicate winegrower license is required for each location.

CDFA

In addition to the ABC licensing requirements, wineries that purchase and crush wine grapes, even if they are from related entities, for the purpose of making wine must register as a processor with the CDFA and annually renew their processor's license.[2] Because processor license fees are based on the volume of grapes purchased, a winery that crushes grapes must provide a report to the CDFA by January 10 of each year describing the total tons of grapes purchased during the preceding harvest, broken down by reporting district, tons harvested, variety, and price paid per ton.[3]

John Haan, Jr.

BOE

A winery, like any other California business that sells tangible personal property, must register for a seller's permit and pay sales tax to the BOE on a quarterly basis.[4] Wineries also must pay an excise tax on wine that varies depending on the wine's percentage of alcohol.[5] However, as a result of a surtax that was imposed in California, the state excise tax rate for all still wines is $0.20 per gallon.[6]

TTB

The TTB is charged with regulating the production and sale of alcoholic beverages under the Internal Revenue Code ("IRC"),[7] the Webb-Kenyon Act,[8] the Federal Alcohol Administration ("FAA") Act,[9] and the Alcoholic Beverage Labeling Act.[10] The TTB's stated mission is to qualify and issue operating permits, known as basic permits, to wineries, importers, and wholesalers of wine; secure and collect revenue from winery operations; protect consumers by ensuring that alcohol products are labeled, advertised, and marketed in accordance with applicable laws; and ensure fair trade practices in the wine industry.[11]

A bricks-and-mortar winery that plans on producing or blending wine is required to apply for and hold a federal basic permit under the FAA Act to produce and blend wine[12] and also to register as a Bonded Wine Cellar ("BWC") under the IRC to operate the winery premises.[13] To obtain the BWC approval, a vintner must have a secure winery premise to protect the wine (and thereby preserve the government's revenue source) and obtain a wine bond from either an insurance company or some other surety, which acts as collateral to secure payment of the winery's estimated tax liability.[14] This is how the term "bonded wine premise" was derived. The winery's excise tax liability is calculated based on the estimated number of gallons of wine produced and the particular types of wine produced.[15]

After a winery begins operating, it must pay federal excise

taxes on wine in accordance with, and at the times prescribed by, federal regulations.[16] A winery's federal excise tax is calculated based on wine type and alcohol content.[17]

FDA

A new winery must register with the FDA as a "food facility" pursuant to the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 ("Bioterrorism Act")[18] before commencing wine production activities.[19] Following September 11, 2001, Congress passed the Bioterrorism Act to enhance the security of the nation's food supply. The Bioterrorism Act imposes an ongoing recordkeeping obligation on food producers, which includes wineries. Wineries must establish and maintain, for two years, records that allow the FDA to identify the sources and recipients of their products to allow it to address credible threats to public health.[20]

Santa Barbara County Wine Ordinance

In Santa Barbara, wineries are governed by the County's Land Use and Development Code ("the Code"). Section 35.42.280 of the Code sets a three-tier permit track for the development and operation of wineries. For example, one permit tier allows for the development and operation of wineries that comply with all of the following criteria (subject to a Development Plan approved by the Zoning Administrator):

- For every 1,000 cases of wine produced there shall be a minimum one-acre of vineyard planted on the winery premises.
- The production capacity of the winery shall not exceed 50,000 cases per year.
- The winery may include a tasting room. However, the floor area of the tasting room shall not exceed 400 square feet or 10 percent of the winery structural development area located on the winery premises, whichever is greater.
- Winery structural development located within the winery premises shall not exceed 20,000 square feet.
- Winery special events occurring on the winery premises shall not exceed eight per year and the attendance at each event shall not exceed 150 attendees.[21]

Existing and future wineries should be aware that Santa Barbara County's Planning and Development Department is currently engaged in a special project to update the County's winery ordinance. This will include a review and potential amendments to permit requirements and development standards for wineries and associated activities. The County states that the purpose of the project is to "more clearly define standards for (1) allowed tasting room and event activities, (2) food service, including the permitting of kitchen facilities in wineries, and (3) sale of wine related items."[22] There is also a possibility that ordinance revisions could establish standards for reporting and monitoring, minimum premise size and planted vineyard acreage for wine tasting rooms and/or events, and parameters for assessing cumulative effects of proposed wineries.[23] The changes to the wine ordinance will undoubtedly have an impact on existing and future wineries.

In conclusion, starting a winery can be a complex, confusing, and time consuming process. Complying with the requirements of the various public agencies listed in this article is only one piece of the puzzle. Issues related to business entity formation, financing, tax, grape contracts, insurance, and land use should also be evaluated. ■

John H. Haan, Jr. is an attorney at Rogers, Sheffield & Campbell, LLP. Mr. Haan concentrates his practice in the areas of business, real estate, and wine law.

ENDNOTES

1 Cal. Bus. & Prof. Code § 23356; Mendelson, Richard P. "Chapter 4: Business Models for Making Wine and Growing Grapes." Wine in America: Law & Policy, Wolters Kluwer Law & Business/Aspen Publishers, 2011. Print.

2 Cal. Food & Agric. Code §§ 55521, 55861-55862; Mendelson, Richard P. "Chapter 4: Business Models for Making Wine and Growing Grapes." Wine in America: Law & Policy, Wolters Kluwer Law & Business/Aspen Publishers, 2011. Print.

3 Cal. Food & Agric. Code § 55601.5; Mendelson, Richard P. "Chapter 4: Business Models for Making Wine and Growing Grapes." Wine in America: Law & Policy, Wolters Kluwer Law & Business/Aspen Publishers, 2011. Print.

4 Cal. Rev. & Tax. Code §§ 6051, 6066, 6452; Mendelson, Richard P. "Chapter 4: Business Models for Making Wine and Growing Grapes." Wine in America: Law & Policy, Wolters Kluwer Law & Business/Aspen Publishers, 2011. Print.

5 Cal. Rev. & Tax. Code § 32151; Mendelson, Richard P. "Chapter 4: Business Models for Making Wine and Growing Grapes." Wine in America: Law & Policy, Wolters Kluwer Law & Business/Aspen Publishers, 2011. Print.

6 See Cal. Rev. & Tax. Code § 32220; Mendelson, Richard P. "Chapter 4: Business Models for Making Wine and Growing Grapes." Wine in America: Law & Policy, Wolters Kluwer Law & Business/Aspen Publishers, 2011. Print.

7 26 U.S.C. §§ 5001-5008, 5010-5011, 5041-5045, 5051-5056, 5061-5062, 5064-5067; Mendelson, Richard P. "Chapter 4: Business Models for Making Wine and Growing Grapes." Wine in America:

Continued on page 31

Motions

Alex Craigie, a Santa Barbara resident and trial lawyer practicing employment law, has left **Dykema Gossett, PLLC** to start his own local practice — **The Law Offices of Alex W. Craigie**.

Mr. Craigie graduated with bachelor's degrees in Philosophy and Literature Writing from UC San Diego. He then earned his law degree from Loyola Law School, where he was a member of the Loyola of Los Angeles Law Review. Mr. Craigie has also earned several distinctions throughout his impressive career.

In the two most recent editions of *Santa Barbara Lawyer* and the Motions column, it was announced that several new attorneys were administered the attorney oath and welcomed to the legal community this past December at a swearing-in ceremony hosted by the **Santa Barbara Barristers** and presided over by the **Hon. James Herman** and several other distinguished members of the Bench. It has come to our attention that one of the new attorneys sworn in at that ceremony, **Kuldeep Kaur**, was inadvertently not mentioned in our past announcements.

As such, the Motions column would like to take this opportunity to extend our congratulations to Kuldeep on her accomplishment and a special welcome to the legal community. Some more information on Kuldeep is below.

Kuldeep earned her B.S. from U.C. Santa Barbara in 2008 and her J.D. from the Santa Barbara Colleges of Law, graduating in 2012. Kuldeep has worked as an intern over the years at the Santa Barbara Public Defender's Office and the California Rural Legal Center. Kuldeep is currently working at the **Law Offices of Woosley & Porter** and looking for a full-time opportunity. Welcome, Kuldeep!

Eric Berg is pleased to announce the opening of his new law firm, **Berg Law Group**. Eric will continue to specialize in real estate litigation, business litigation, and trust and estates litigation. He also serves as a local Arbitrator, and is on the American Arbitration Association's Panels of Construction and Commercial Arbitrators. He can be reached at www.berglawgroup.com and eric@berglawgroup.com.

Braden Leck, formerly of **Seed Mackall, LLP**, has joined **Rogers, Sheffield & Campbell, LLP** as Of Counsel. Leck, a graduate of U.C. Santa Barbara and UCLA Law School, will continue to focus on business and real estate transactions work.

Calling All Runners to SAVE THE DATE for **Saturday June 14, 2014** – the Law Day Foot Races are coming back in a new form, known as **Race for Justice!** Look for updates to come from **Santa Barbara County Bar Foundation**.

If you have news to report - e.g. 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. If you submit an accompanying photograph, please ensure that the JPEG or TIFF file has a minimum resolution of 300 dpi. Please note that the Santa Barbara Lawyer editorial board retains discretion to publish or not publish any submission as well as to edit submissions for content, length, and/or clarity.

Roach, *continued from page 24*

length to arguments both for and against this measure. While I agree that it makes worthwhile adjustments to the dismissal process, such as lifting the summer moratorium on the filing of charges and eliminating some opportunities for delay, other changes make the process too rigid and could create new problems. I am particularly concerned that limiting the number of depositions to five per side, regardless of the circumstances, and restricting a district's ability to amend charges even if new evidence comes to light, may do more harm than good. I share the authors' desire to streamline the teacher discipline process, but this bill is an imperfect solution. I encourage the Legislature to continue working with stakeholders to identify changes that are balanced and reduce procedural complexities.

Sincerely,
Edmund G. Brown Jr.

These veto messages were sent to the Legislature for review and consideration. The Legislature had until March 6, 2014, to consider the Governor's veto messages. In the next Legislation Pending column, I will report on whether the Legislature took action following these veto messages, and I will return to reporting on Legislation pending before the California Legislature. ■

ENDNOTES

1 http://assembly.ca.gov/dailyfile
2 *Id.*
3 *Id.*
4 *Id.*

Haan, *continued from page 29*

Law & Policy, Wolters Kluwer Law & Business/Aspen Publishers, 2011. Print.

8 27 U.S.C. § 122; Mendelson, Richard P. "Chapter 4: Business Models for Making Wine and Growing Grapes." Wine in America: Law & Policy, Wolters Kluwer Law & Business/Aspen Publishers, 2011. Print.
9 27 U.S.C. §§ 201-208, 211; Mendelson, Richard P. "Chapter 4: Business Models for Making Wine and Growing Grapes." Wine in America: Law & Policy, Wolters Kluwer Law & Business/Aspen Publishers, 2011. Print.
10 27 U.S.C. §§ 213-219(a); Mendelson, Richard P. "Chapter 4: Business Models for Making Wine and Growing Grapes." Wine in America: Law & Policy, Wolters Kluwer Law & Business/Aspen Publishers, 2011. Print.
11 Mendelson, Richard P. "Chapter 4: Business Models for Making Wine and Growing Grapes." Wine in America: Law & Policy, Wolters Kluwer Law & Business/Aspen Publishers, 2011. Print.
12 27 U.S.C. §§ 203, 204; Mendelson, Richard P. "Chapter 4: Business Models for Making Wine and Growing Grapes." Wine in America: Law & Policy, Wolters Kluwer Law & Business/Aspen Publishers, 2011. Print.
13 26 U.S.C. §5351; Mendelson, Richard P. "Chapter 4: Business Models for Making Wine and Growing Grapes." Wine in America: Law & Policy, Wolters Kluwer Law & Business/Aspen Publishers, 2011. Print.
14 26 U.S.C. § 5551; Mendelson, Richard P. "Chapter 4: Business Models for Making Wine and Growing Grapes." Wine in America: Law & Policy, Wolters Kluwer Law & Business/Aspen Publishers, 2011. Print.
15 Mendelson, Richard P. "Chapter 4: Business Models for Making Wine and Growing Grapes." Wine in America: Law & Policy, Wolters Kluwer Law & Business/Aspen Publishers, 2011. Print.
16 26 U.S.C. §§ 5041-5045; Mendelson, Richard P. "Chapter 4: Business Models for Making Wine and Growing Grapes." Wine in America: Law & Policy, Wolters Kluwer Law & Business/Aspen Publishers, 2011. Print.
17 26 U.S.C. § 5041. The tax rate is calculated as follows: from 0.5 percent but not more than 14 percent alcohol, $1.07 per gallon; from 14 percent but not more than 21 percent, $1.57 per gallon; from 21 percent but not more than 24 percent, $3.15 per gallon; artificially carbonated, $3.30 per gallon; and sparkling, $3.40 per gallon. Id.
18 Pub. L. No. 107-188, 116 Stat. 594; Mendelson, Richard P. "Chapter 4: Business Models for Making Wine and Growing Grapes." Wine in America: Law & Policy, Wolters Kluwer Law & Business/Aspen Publishers, 2011. Print.
19 21 U.S.C. §350d; Mendelson, Richard P. "Chapter 4: Business Models for Making Wine and Growing Grapes." Wine in America: Law & Policy, Wolters Kluwer Law & Business/Aspen Publishers, 2011. Print.
20 21 U.S.C. §350c; Mendelson, Richard P. "Chapter 4: Business Models for Making Wine and Growing Grapes." Wine in America: Law & Policy, Wolters Kluwer Law & Business/Aspen Publishers, 2011. Print.
21 Santa Barbara County Land Use and Development Code § 35.42.280.
22 See http://longrange.sbcountyplanning.org/programs/winery_ord/wineryordinance.php.
23 See *Id.*

The In-House Counsel & Corporate Law Section and Intellectual Property/Technology Business Section of the Santa Barbara County Bar Association present:

"Work Made for Hire" Clauses: Independent Contractor or Statutory Employee Under California Law?

Attorneys often include "work made for hire" clauses in independent contractor agreements to ensure that copyright-protected materials belong to the contracting party. Under California law, however, these clauses can turn an independent contractor into a "Statutory Employee" for workers' compensation and unemployment insurance purposes. How can you avoid this unintended employee relationship; what must you consider before including the clause or removing it altogether; and how should you advise your client?

Speaker: Erica Bristol, J.D., EB Resource Group

Erica Bristol is an attorney and commercial mediator specializing in intellectual property disputes. She received her J.D. from the UCLA School of Law in 1999 and practiced as in-house counsel for more than 11 years, concentrating primarily on intellectual property and technology transactions. Erica is a Principal with EB Resource Group in Encino. EB Resource Group offers legal risk management consulting, corporate education and training, and alternative dispute resolution services in areas such as intellectual property, employment, aviation, construction, and real estate.

Date and Time
Tuesday, May 20, 12 noon

Location
Santa Barbara College of Law, Room 1, 20 East Victoria Street, Santa Barbara

Reservations
Reserve via email to Chris Kopitzke,
Chair of Intellectual Property/Technology Business Section, *by Thursday, May 15*,
ckopitzke@socalip.com

Cost and Payment
$35.00 – includes lunch
Mail checks by Thursday, May 15,
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