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Mission Statement

Santa Barbara County Bar Association

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

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About the Cover

Among the priorities of many of us who live in Santa Barbara County is the harmony we want to see between the beauty that surrounds us and our need to build things. This is one example of the blending of those interests and can be seen next to the Lobero office building on Anacapa St. in downtown Santa Barbara. Photo by Michael Lyons.

SBCBA Past Presidents' Luncheon. *SBCBA Esteemed Past Presidents in attendance: L-R, Catherine Swysen, Hon. William Gordon (ret.), Hon. Harry Loberg (ret.), Gerald Parent, William Brace, Bill Duval, Brian Gough, Hon. James Herman, Marilyn Anticouni, Marv Bauer, Melissa Fassett, Tom Hinshaw, Betty L. Jeppesen, Des O'Neill, Donna Lewis, Hon. Tom Anderle, Lynn Goebel, Sue McCollum*

From the President

By Scott Campbell
2014 SBCBA President

Scott Campbell

It is June!

The SBCBA is offering two great ways to kick off the summer—its Annual Bar Barbeque and an evening with preeminent constitutional law scholar, Laurence Tribe.

The events the SBCBA puts on continue to be an important way for us to remain relevant and useful to our members. Our big events include the Bench & Bar Conference each January, the Past Presidents' Luncheon in the spring, our Annual Bar Barbeque in June, the Golf & Tennis Tournament in August, the Justices' Reception in the fall, and our Annual Dinner.

On April 30th we put on this year's Past Presidents' Luncheon (PPL). The PPL is a nice gathering of those that have been president of the SBCBA, of judges, and of new admittees. This year's luncheon featured a presentation by Saji Gunarwardane and Elizabeth Diaz on behalf of the Santa Barbara Legal Aid Foundation. We were reminded of the important role Legal Aid has in this community providing our neediest neighbors access to justice and urged to do all we can to support the organization.

On June 20th, Rusty Brace, Mack Staton, and Will Beall will be back working their magic at this year's Bar Barbeque. Will has been manning the bar at the Barbeque for 30 years! Rusty has been bringing elk chili for who knows how long. We hope you will all attend this year and thank the three stalwarts for all the help they have given us over the years. Thanks also goes to Joe Liebman for his generous donation of fine wines this year and last.

Laurence Tribe will be at the new Victoria Theater on June 27th. He and co-author Joshua Matz have just written a new book, *Uncertain Justice – the Roberts Court and the Constitution*, copies of which will be available for purchase. Professor Tribe will be speaking on what to expect in the future from this Supreme Court. There will be a question and answer period following his talk. The SBCBA will be offering MCLE credits for this event as well. When was the last time you got Con Law credit?

It takes a huge amount of work to put on these kinds of events. This year the SBCBA events are being managed by Lauren Wideman and Emily Allen. Lauren and Emily put an incredible amount of effort into creating and organizing all the SBCBA events. The energy and creativity they bring to these events deserves our praise and thanks. ■

SBCBA BBQ TIME! JUNE 20, 2014
SEE PAGE 33 FOR MORE DETAILS

Civility as a Sword and a Shield

By Judge James Herman

Civility is not a sign of weakness –*John F. Kennedy*

You know who they are.

Rude and snarky. Scorched earth take-no-prisoners tactics. Will not stipulate to the time of day. Demand everything and give nothing. Litigate by motions to compel—both coming and going. Confirm, by letter or email, events that never occurred. Set depositions during your vacation and refuse to reset. Notice ex parte motions at 4:30 on the Friday before a three day weekend. Coach clients during depositions. Never respond on time. Give excuses but never follow through. Act the devil to you and the angel in court.

Do these folks have a personality disorder? Borderline?[1] Histrionic?[2] Narcissistic?[3] Anti-social?[4] Passive Aggressive? Or do they just believe driving up costs and blood pressures will rout the opposition?

Does the bench know who they are?

Yes, we do. Reputations spread. Luckily, Santa Barbara lawyers are, in the main, civil. And our bench is not sanction happy.[5] Ours being an adversary system, there is, after all, going to be some "rubbing paint," as they say in auto racing.

But when lines are crossed, it can be costly for the transgressing lawyer. Take for example, *In re Marriage of Davenport*.[6] In *Davenport,* appellant challenged the trial court's ruling awarding $100,000.00 in sanctions and $307,387.00 in attorney's fees pursuant to Family Law Code section 271. The court of appeals, characterizing the refusals to meet and confer, discovery gamesmanship, and disrespectful correspondence by appellant's s counsel as abusive, rude, and hostile, upheld the trial court's award, payable by the attorney:

> Andrew Watters's demeaning comments to opposing counsel were contrary to the California Attorney Guidelines of Civility and Professionalism promulgated by the State Bar in 2007 (Guidelines).... We close this discussion with a reminder to counsel—all counsel, regardless of practice, regardless of age—that zealous advocacy does not equate with "attack dog" or "scorched earth," nor does it mean lack of civility. Zeal and vigor in the representation of clients are commendable. So are civility, courtesy, and cooperation. They are not mutually exclusive.[7]

Judge James Herman

Now let us back up a bit.

It is 1971. Then Chief Justice Warren Burger, fed up with declining civility in the profession, triggers the modern civility movement, remarking "overzealous advocates seem to think the zeal and effectiveness of a lawyer depends on how thoroughly he can disrupt the proceedings or how loud he can shout or how close he can come to insulting all those he encounters."[8]

Five years later, Burger, after a two week ABA sponsored trip to legal London, concludes British barristers, through their Inns of Court collegiality, maintain levels of ethical practice and civility lost to us here in the colonies.

Shakespeare, no stranger to the Inns of Court,[9] held lawyers up, for a change, as positive civility role models: "And do as adversaries do in law, strive mightily but eat and drink as friends."[10] It is refreshing, by the way, to observe barristers in a British courtroom refer to one another as "my learned friend."

In Shakespeare's time and up to the modern era, membership in an English Inn of Court coupled with attendance at a certain number of formal meals incorporating presentations of legal "moots" were the only formal requirements for a call to the bar.

Burger, convinced the traditions of the English Inns fostered civility, promoted the American Inns of Court movement in the early 1980's. With the focus on taking meals incorporating pupillage presentations of legal education programs while promoting ethics and civility, the American Inns, except for a dearth of great halls and ancient vintage ports, do echo the British model.[11]

In 1998, the American Bar Association's Litigation Section adopted Guidelines for Litigation Conduct with civility pledges for lawyers, litigants, and judges. In 2007, then State Bar of California President Sheldon Sloan led the Board of Governors to adopt the California Attorney Guidelines of Civility and Professionalism, cited in *Davenport,* supra, with

this foreword:

> "As officers of the court with responsibilities to the administration of justice, attorneys have an obligation to be professional with clients, other parties and counsel, the courts[,] and the public. This obligation includes civility, professional integrity, personal dignity, candor, diligence, respect, courtesy, and cooperation, all of which are essential to the fair administration of justice and conflict resolution."[12]

At its September 3, 2013 meeting, the State Bar Board of Trustees approved a recommendation to the California Supreme Court to add the following language to the attorney oath of admittance to practice: "As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy[,] and integrity."

Locally, the Santa Barbara Superior Court, in conjunction with the Santa Barbara County Bar Association, adopted and then amended in 2007 Appendix 5 to the local Rules of Court, Guidelines for Attorneys Practicing before the Santa Barbara Superior Courts.[13] The Guidelines, by way of example, urge counsel to:

- refrain from personal attacks on opposing counsel or clients;
- avoid using the timing and manner of service of documents to disadvantage opposing counsel;
- consider opposing counsel's legitimate calendar conflicts when setting or postponing litigation events;
- agree to reasonable requests for extensions of time;
- refrain from using discovery to harass or delay efficient resolution of a dispute;
- avoid conduct in a deposition that would not be acceptable before a judge;
- refrain from being artificially restrictive in responding to discovery, and
- avoid improper ex parte communications with the court by any media.

On the latter point, all analog communications are filtered by judicial secretaries to avoid ex parte communications and electronic communications should be filtered as well.[14]

With this robust civility history, why do we still need to continue this dialogue? As the court of appeals recently observed in *Kim v. Westmoore Partners Inc.*:[15]

> "It is time to stop talking about the problem and act on it. For decades, our profession has given lip service to civility. All we have gotten from it is tired lips. We have reluctantly concluded lips cannot do the job; teeth are required. In this case, those teeth will take the form of sanctions."
>
> "We are loath to act in a way that would seem to encourage courts to impose sanctions for mistakes or missteps. But for serious and significant departures from the standard of practice, for departures such as dishonesty and bullying, such steps are necessary… It is time to make it clear that there is a price to pay for cynical practices."

The court has a number of options, sanctions wise, as we know, including: contempt, monetary sanctions, issues preclusion, terminating sanctions, and referral to the state bar.[16] Although counsel sometimes privately urge that sanctions be imposed more often, in balance, the punishment should fit the crime. Discovery sanctions, for example, usually result in the losing party paying a monetary sanction without a report to the state bar.[17]

That is all well and good. But what can you and your client do to protect yourselves from, sorry for the dated cultural reference, the Rambo lawyer or the passive aggressive lawyer?

1. Be familiar with the Santa Barbara Superior Court and the State Bar Guidelines and gently remind opposing counsel of the Guidelines when appropriate.
2. Do a little research on dealing with "high impact personalities"—e.g., The Bully, Mr. Negativo, Ms. Motion, Les Miserables, Mr. Two Hats, the Abused, the Sleeper, the Transient, and the Unprepared.[18] There are strategies out there that are useful.
3. Avoid becoming embroiled. I know, he or she is so infuriating! But it is too easy to get into an expensive and ultimately fruitless tit for tat that will confuse the court if the issue comes to a head over who is the unreasonable party. Your client may really enjoy the ten-page letter firmly reminding opposing counsel of his or her degenerate origins. But will the client be happy about paying for it? And will I be happy about reading it as Exhibit ZZ to a motion to compel?
4. Take deep breaths. Learn the art of the unsent letter. Document misbehavior in a non-inflammatory way. Respond, if you must, succinctly, accurately, and respectfully. Ask if your behavior is acting as a trigger. Try rock, paper, scissors. Pick your battles. Remember the Art of War. Study the Tao. Learn Jiu-jitsu. Get some exercise. Or, as former SBCBA president Rob Egenolf espoused, "Ask your opposing counsel out to lunch."
5. Do not copy the court on your letters or emails! I read for a living, not for fun.
6. Check on the reputation of troublesome counsel.

7. Use the telephone or meet in person instead of sending poison pen emails and letters.
8. Bring a motion for sanctions if you must. But assess the merits of the motion before you file. The courts of appeal continually remind us that motions for sanctions should be reserved for serious violations. And if you lose a discovery motion, encased is your foot in the other shoe (no matter how I tart it up, it is still a cliché).
9. Understand that the court has an "ad hominem filter." I just skip over the bickering to get to the point.

It is perhaps appropriate to end with the complete John F. Kennedy civility quote from his January 20, 1961 inaugural address:

> "So let us begin anew - remembering on both sides that civility is not a sign of weakness, and sincerity is always subject to proof. Let us never negotiate out of fear. But let us never fear to negotiate. Let both sides explore what problems unite us instead of belaboring those problems which divide us." ■

Endnotes

1 Extreme mood swings; anger; always a target; hero or zero.
2 It's all about me; preoccupation w/self; deserves superior treatment; disdains others.
3 Cry, cry, cry; manipulates others w/big feelings; lies.
4 Rules don't apply to me; will do anything to win; willing to hurt others for my own gain.
5 We do like you to appear at mandatory calendar events. With reduced staffing, unnecessary file shuffling is a burden on the court. Monetary sanctions are appropriate absent good cause.
6 (2011) 194 Cal. App. 4th 1507.
7 In re Marriage of Davenport, 194 Cal. App. 4th 1507, 1536-1537 (Cal. App. 1st Dist. 2011). See also, e.g., McGuire, Reflections of a Recovering Litigator: Adversarial Excess in Civil Proceedings (1996) 164 F.R.D. 283; Yablon, Stupid Lawyer Tricks: An Essay on Discovery Abuse (1996) 96 Colum. L.Rev. 1618, 1619 [describing the litigation climate as one "where over-aggressiveness is equated with zealous advocacy, and attorneys are expected to win at all costs"]; and Garth, From Civil Litigation to Private Justice: Legal Practice at War With the Profession and Its Values (1993) 59 Brook. L.Rev. 931.)
8 Chief Justice Warren E. Burger, The Necessity for Civility, 52 F.R.D. 211, 213 (1971) (remarks to the American Law Institute). See also, Marvin E. Aspen, A Response to Civility Naysayers
9 Two of his plays, 12th Night and Comedy of Errors were performed at Middle Temple Hall and Greys Inn, respectively.
10 The Taming of the Shrew, Act I, sc. 2.
11 Locally, David Hughes, after he and I returned from the State Bar Sponsored Week in Legal London in 1992, was the sparkplug behind the founding of our William L. Gordon Inn.

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Report of SBCBA Liaison Regarding Affiliate and Legal Community Organizations

By Paula Waldman

Courthouse Legacy Foundation: Current project is mural room restoration. http://www.courthouselegacyfoundation.org/.

SB Women Lawyers: September 20, 2014: SBWLF's Casino Night-please contact Betty L. Jeppesen at jeppesenlaw@gmail.com if you are interested in volunteering or have auction items.

William L. Gordon Chapter of the American Inns of Court: Meets on the first Wednesday of every month (Feb – Nov). http://home.innsofcourt.org/for-members/inns/the-william-l-gordon-american-inn-of-court.aspx.

Environmental Defense Center: The annual fundraiser is on June 8th. Contact is Betsy Weber: bweber@environmentaldefensecenter.org.

SB Paralegal Association: June 26, 2014 - Paralegal Day celebration at the Santa Barbara Zoo from 5pm-7:30pm. http://wp.sbparalegals.org/.

SB Legal Professionals Association: Board meetings are on the second Wednesday of every month from 12:15-1:15 at 1421 State Street, Suite B. info@sblegalnet.com.

SB North County Bar: Cynthia Valenzuela is the new president. Working on local ADR program presentation, and working on an e-filing presentation with Judge James Herman. http://www.nsbbar.org/.

Public Defender's Office: The public defender recently hired three new attorneys: Brad Cornelius, Cynthia Nguyen and Mary Huft. Contact: Jeff Chambliss - JChambl@co.santa-barbara.ca.us.

SB Trial Lawyers (Personal Injury Plaintiffs lawyers): Meetings are the second Tuesday of each month for lunch. All Plaintiff PI lawyers are welcome. Contact: Tyrone Maho – tmaho@sbcalaw.com.

Latina/Latino Lawyers Association: Will be hosting a summer get together for anyone interested in having a good time! Proceeds will benefit the "Most Improved Student" Award at San Marcos High School's Chicana/o Studies Program. Details to follow. Positive role models wanted to speak and mentor students. Contact Beatriz P. Flores - Beatrizpflores@hotmail.com. ■

Increasing Effectiveness in Mediation

What Works Best for the Parties and Attorneys?

By David C. Peterson

There are different perceptions among lawyers concerning mediation. These depend upon various factors such as the type of case mediated and personalities of the attorney, as well as level of experience, education, and training of the mediator. Perceptions lead to certain expectations concerning how the mediation will be conducted and the roles of the participants.

Mediators over time see the most and least effective approaches to the mediation process. This article is meant to review various concepts held by attorneys concerning mediation and recommend ways to navigate the process most effectively. Considering the various views about the purpose and goals in mediation, it is worth a brief review of some of the differing concepts and expectations. This allows a better analysis of what actually works best.

Those of us who have been attorneys for a long time remember the antiquated settlement conferences conducted by a judge just prior to trial. This was essentially an arm-twisting exercise with the attorneys. The parties sat outside and waited for their attorneys to report. There was no participation and the level of information passed on to the client varied significantly from lawyer to lawyer. If a case settled, it was frequently reported that the judge pushed the attorneys into it. This was a pretty safe message to give to a client who remained mostly in the dark.

Settlement conferences began to replicate mediation in some respects as mediation became more widely accepted and incorporated into the judicial system. Some judges took training and applied mediation strategies. Parties were permitted to actively participate, understand what was occurring, and make informed decisions. However, settlement conferences continued to incorporate more evaluative and directive styles in most instances.

During the earlier years of the Pepperdine, Straus Institute training courses, a great deal was made over what sort of a mediator you were going to be. Did you push people, evaluate their case, and tell them what they had to do? Or was your style more facilitative and interactive? These were key questions because it seemed you were doomed as a mediator to being one way or the other. There was even a "check the box" sort of test to be taken to reveal your personality in this respect and project how you were going to mediate.

However, it was later revealed by the author himself of the most infamous article on the subject, Professor Leonard Riskin – "The Riskin's Grid" - that you were not really locked into being one way or the other. In fact, by far the most effective mediators are those who are able to employ one or the other style, and everything in between, based upon the needs of the parties and attorneys. Do what will work best under the circumstances, is the answer to the dilemma of how one should mediate. It depends upon the parties and attorneys which course to pursue. And it can be different in each room as the mediation unfolds. More experienced mediators begin in a facilitative manner but may end with a more directive and evaluative approach, if this is best.

One way for a mediator to run into problems over time is to be consistently evaluative. No one really knows what the trial outcome will be. Strong opinions are held by each side, and the mediator may form one as well. Several years ago, I mediated a slip and fall case in Santa Barbara where the plaintiff walked over to the side of a parking lot, toward a downward swale in plain view, and inexplicitly fell into it. Knowing how juries typically react in such situations, I predicted plaintiff was bound to lose or be hit with significant comparative fault. The case went to trial with the plaintiff being awarded several hundreds of thousands of dollars. I received a letter with the verdict enclosed. I have been much more careful in predicting outcomes since.

It is better to note that we can only deal in percentages when it comes to trial outcomes. There are typically too many unknowns to make solid predictions even where the signs of a bad or good outcome appear patent. Discussing risk as opposed to being a soothsayer is usually the better approach. When cases have clearly gone south since initiated because of some bad breaks, such as a key witness turning against a party, discovery revealing devastating evidence, or some other disastrous event rendering it clear there is little hope of recovering, there certainly needs to be frank discussion concerning this. This is relatively rare, however.

What do the attorneys and parties expect? It depends. It is frequently said that some parties and attorneys come to the mediation looking for an evaluative approach. They want a mediator with long experience who can give them opinions about the expected trial outcome. If this is desired,

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2014 Central District Retreat

By William C. Beall

As a representative of all of the attorneys for the Central Coast, I attended the Central District Retreat on March 28th – 30th this year. I attended as one of the Lawyer Representatives appointed by the Central District of California as a delegate to the Ninth Circuit Judicial Conference. Invitees at the District Retreat included all District, Bankruptcy, and Magistrate Judges in the Central District, together with the Lawyer Representatives. This year, attendance was open to other attorneys.

The conference was hosted by the UCLA School of Law. Presentations were made across a range of topics. One panel included Jeffrey Clifford, President and Partner of Heyday Films which produced *Gravity* and the *Harry Potter* series of films; Jackie Hayes, Senior Vice President of Electronic Distribution for Warner Bros; and Mark Itkin, the Co-Head of Television and a member of the Board of Directors of William Morris Endeavor. This panel addressed the changing face of the entertainment industry, looking at television, movies, and related areas.

Next, a presentation was made by UCLA, and featuring some of its more unusual sub-subjects. Presenters included Rachel Moran, Dean and Michael J. Connell Distinguished Professor of Law at UCLA School of Law; Brad Sears, Assistant Dean and Executive Director of the Williams Institute on Sexual Orientation Law and Public Policy; Joel Feuer, Executive Director of the Lowell Milken Institute for Business Law and Policy; and Cara Horowitz, Executive Director of the Emmett Center on Climate Change and the Environment. It was fascinating to see the interplay between these three disparate Institutes, all co-existing under the UCLA School of Law.

The next presentation was near and dear to my heart, having grown up a Southern California sports fan. The panel was Eric Dickerson (Rams), Steve Garvey (Dodgers), and James Worthy (Lakers). They gave the lie to the stereotype of dumb jocks, as they discussed the Northwestern labor law decision and other sports related legal issues at quite a high level. Sports fans were then given the additional treat of an address by UCLA athletic director Dan Guerrero, and a personalized tour of Pauley Pavilion and the other UCLA athletic facilities.

Los Angeles film czar Ken Ziffren addressed the Retreat at a lovely dinner at the Hammer Museum in Westwood.

Participation in this conference permits attorneys meaningful interaction with judges in an informal setting. Some discussion is social, but other discussion touches on substantive and procedural issues in the federal courts in the District. If any readers are interested in the process of application for this position in the future, I encourage them to contact me, or access the lawyer representative websites: 9th Circuit website at http://www.ce9.uscourts.gov/lawyer_reps/ or the Central District website at http://www.cacd.uscourts.gov/attorneys/lawyer-representatives ■

William C. Beall is a partner in the Santa Barbara firm Beall & Burkhardt, APC.

Herman, *continued from page 9*

12 See Civility Tool Box, http://ethics.calbar.ca.gov/LinkClick.aspx?fileticket=mPBEL3nGaFs%3d&tabid=455.
13 See http://www.sbcourts.org/ff/local-rules.shtm#A5.
14 In Department 6, communications should be directed to the department email address for filtering and not directly to the court: SBDept6@sbcourts.org.
15 (2011) 201 Cal. App. 4th 267, 294
16 See, e.g., Code Civ. Pro. sections 128.7, 177.5, 1987.1, 1987.2, 2023.010 and Fam.Code section 271.
17 But see, Kim v. Westmoore Partners, Inc., *supra,* at 295.
18 See,e.g., http://apps.americanbar.org/litigation/litigationnews/trial_skills/tips-difficult-adversary.html. http://www.highconflictinstitute.com/about-hci/who-are-high-conflict-people

Classifieds

Is Franchising the Right Model for Your Client's Business?

By Barry Kurtz and Bryan H. Clements

Bryan H. Clements

Barry Kurtz

When you think of franchising, what businesses come to mind? McDonalds, Burger King, Taco Bell, or Dunkin' Donuts, maybe? Everyone knows that fast food restaurant concepts are well suited for franchising. If you think about it a bit more, you might think of some of your favorite casual dining chains—such as Denny's, Red Lobster, or Applebee's. Why not? Casual dining restaurant concepts are also well suited for franchising. What about fine dining restaurants? Many of us enjoy dining at Benihana and Ruth's Chris, but not everyone recognizes that these, too, are successful franchises.

Franchising is a flexible, tried and true method of distributing products and services, and offers business owners an alternative avenue upon which to expand their already successful businesses. While most people have a general sense of the structure of the franchise model, particularly because of their first-hand experience dining at a fast food restaurant, few realize the breadth of businesses that successfully employ the model, despite their interaction with these businesses on a daily basis. Some businesses that are commonly franchised include accounting businesses, insurance and tax preparation businesses, frozen yogurt businesses, children's clothing store businesses, flower shop chains, gasoline stations, and weight loss clinics. Some less common, yet innovative examples include custom closet design businesses, 1-800 plumbing related businesses, pool cleaning businesses, pet supply and pet grooming businesses, beer and wine distributorships, golf and tennis training programs, health care clinics and senior care facilities, art stores, pest control businesses, and janitorial businesses. The possibilities are endless!

Business lawyers must keep in mind, however, that franchising is not right for all businesses, nor is it right for all of their business-owner clients. Franchises are highly regulated, and starting a franchise requires the investment of a lot of heart and soul, as well as a lot of time and money. Keep in mind: selling franchises is a totally new and separate line of business. Thus, attorneys advising business owners must help their clients do their homework before deciding to franchise. This starts with helping them understand what by law constitutes a franchise and what steps must be taken before the business owner may offer the concept for sale. After that, the attorney and business owner should evaluate whether the business owner's particular business would be right for franchising.

Franchising is regulated at the federal level by the Federal Trade Commission (FTC). In addition, many states have enacted franchise specific laws, and 13 states require franchisors to register before offering franchises within their states to provide additional protections to potential franchisees. These "registration states" have taken the position that franchise arrangements provide a greater potential for fraud, noting that franchise agreements are typically drafted by the franchisor's attorneys and usually favor the franchisor substantially. It is true that franchisees have little power to negotiate when signing franchise agreements.

Franchises are broadly defined. Many unsuspecting businesses that have licensed their trademarks and marketing plans to others without providing the required disclosures, or registering as a franchise in one of the "registration states," have been found to be franchisors in violation of federal and state law.

Under California law, a business relationship is a franchise if:

- The business will be substantially associated with the franchisor's trademark;
- The franchisee will pay a fee, directly or indirectly, to the franchisor for the right to engage in the business and use the franchisor's trademark; and
- The franchisee will operate the business under a marketing plan or system prescribed in substantial part by the franchisor.[1]

Before offering franchises, the franchisor will have to work with his or her attorney to prepare a franchise dis-

closure document (FDD) that complies with the FTC's Franchise Rule[2]. An FDD is an offering prospectus, written in plain English, that provides prospective franchisees with information pertaining to 23 specific items about the franchisor and the proposed franchise. The FDD must include, among other things, background information about the franchisor and its executives, fee and cost information, samples of the contracts franchisees will sign, and information about the franchisor's trademarks and patents. Franchisors will also need audited financial statements to include in its FDD. The FDD will have to comply with the laws of any of the "registration states" in which the franchisor intends to sell, as well, and the franchisor must register in those states before selling.

In addition to preparing an FDD, the franchisor will have to prepare operations manuals and establish an initial training program before it can sell. The operations manual is a detailed reference tool designed to guide franchisees in implementing the franchisor's "system" on a day-to-day basis. The manuals typically provide the franchisor's trade secrets, such as recipes and marketing information. The franchisor will then need to set up an initial training program—which requires that it have a facility at which it can train new franchisees before they open their doors. The franchisor's system, as laid out in its manuals, the initial training, and the right to use the franchisor's trademark are the "meat and potatoes" of what the franchisee is paying for.

Preparing an FDD and registering to sell franchises in the various "registration states" can be a costly and time-consuming process. Because of this, attorneys advising business clients interested in licensing and selling their business concepts should be aware that a few alternatives exist. For example, some businesses may qualify for one of a few franchise exemptions, but the availability of any particular exemption varies widely among jurisdictions. Keep in mind, though, that some exemptions relieve the franchisor of both registration and presale disclosure requirements. Others merely relieve the franchisor of registration. Further, many require the franchisor make a notice filing with the state before the franchisor makes an offer or sale. Therefore, exemptions are only useful occasionally.

Once your client is familiar with the legal requirements of, and alternatives to, starting a franchise, she should take a good, hard look at her business to decide whether it is right for franchising. Franchisors must be able to sell franchises, so their franchises must be attractive to prospective franchisees. A franchise is attractive if it is based on a concept that is sustainable in the marketplace. Franchises based on fad products or services rarely survive. To be sustainable, the concept must be unique enough to withstand competition and must be one potential franchisees are willing to pay to learn. Explore with your client whether her concept can easily be taught to others. Ask whether the concept is adaptable to varying markets. A chain of exotic dance clubs may struggle due to fierce resistance in many communities and trouble with local zoning laws, whereas a restaurant concept like Hooters may experience greater acceptability from more communities. Other factors you should discuss include laws and regulations that are applicable to your client's particular type of business; whether it is clear the concept will be profitable for both the franchisor and its franchisees; the initial cost of creating the franchise; the length of time it will take to achieve success; the rate at which your client can reasonably expect to expand as a franchisor; and your client's ongoing ability to ensure its franchisees will be supplied with the inventory, supplies, and equipment they require to operate.

Consider presenting your client with an example of success, such as Gold's Gym, which started as a local gym catering to bodybuilders in Venice, California and grew to be a fitness-franchise giant with over 700 locations worldwide.[3] The Gold's Gym founder saw that bodybuilders in Los Angeles needed a place to work out with advanced, specialized equipment and opened a no-frills gymnasium for these serious athletes. He filled his gym with heavy weights and specialized machines that he designed and built himself. Many movie stars, rock stars, and other famous Angelinos, including Mr. Universe, Arnold Schwarzenegger, joined the gym, and the company adopted a memorable logo—an image of a baldheaded bodybuilder grasping a heavy looking barbell—which became its registered trademark. After several years, and several lucky breaks, including having Gold's Gym featured in a famous movie about bodybuilding, Gold's Gym successfully began expanding as a franchise. The Gold's Gym business model works for franchising because it caters to a wealthier clientele and its name and trademark are universally recognized and associated with fitness. The concept has been able to grow and change—capturing the latest in fitness trends for over 45 years without impairing its original model. Moreover, its franchise startup costs, operational overhead, and inventory costs are likely reasonable so that franchisees, as well as the franchisor, can make money.

Franchising is a proven means for successful businesses to expand, but choosing to franchise one's business is a decision that must be well considered. When your business client seeks your advice regarding franchising, take the time to explain what constitutes a franchise in the various

Continued on page 21

The SBCBA's Melissa Hordynski and Lida Sideris

2014 SBCBA Past Presidents' Luncheon

SBCBA President Scott Campbell

New attorneys Nicolette Paullin and Mark Cardona

Judge Thomas Anderle and SBCBA President Scott Campbell

Melissa Fassett

Desmond O'Neill

Tom Hinshaw

Kurtz and Clements, *continued from page 16*

jurisdictions in which she may be interested in offering franchises. Review the costs involved and the steps she must take before offering franchises. Help your client consider whether her business model will be attractive to potential franchisees and sustainable in the face of competition. As a friendly reminder, though, weekend carpenters should not attempt to build skyscrapers. Just the same, business lawyers unfamiliar with the ins and outs of franchising should not try to go it alone when drafting FDDs and franchise agreements. Consider checking with an experienced franchise attorney to help you through the process. ■

ENDNOTES

1 Cal. Corp. Code §31005(a).
2 16 C.F.R. §436
3 http://www.goldsgym.com/golds/

Barry Kurtz, a Certified Specialist in Franchise and Distribution Law by the California State Bar Board of Specialization, is the Chair of the Franchise & Distribution Law Practice Group at Lewitt Hackman in Encino, California.

Peterson, *continued from page 10*

the mediator should accommodate, being very careful in doing so. The majority of the time it is the skillful combination of a facilitative approach, carefully mixed with an evaluation of the various potential outcomes. It is when the potential trial outcomes are scored on a probability scale during mediator discussions that care needs to be taken to provide the caveat that attorneys have experienced much better and much worse outcomes than expected. Ultimately, it is a "roll of the dice."

What parties in mediation appear to appreciate most are the following:

- Personal involvement and ability to speak and ask questions;
- The mediation process is made clear to them so they are not in the dark as it proceeds;
- They are the decision-makers - no one is forcing or coercing them;
- Private conversations can take place – it is a safe place for them;
- Time is taken to go over all aspects of their case and personal experience, if they wish;
- Their options and potential impacts of their decisions are carefully weighed;
- They are led to understand the expense and potential upside and downside of trial;
- Creative solutions are able to be explored;
- They feel they have had their "day in court" but never lost control;
- Settlement occurs with which they are on board.

The mediation should be conducted to provide this experience to the parties in addition to achieving a settlement. The settlement conferences did not do this. Mediations conducted effectively will assure such an experience for the parties, leading to more settlements and greater satisfaction of the parties and their attorneys.

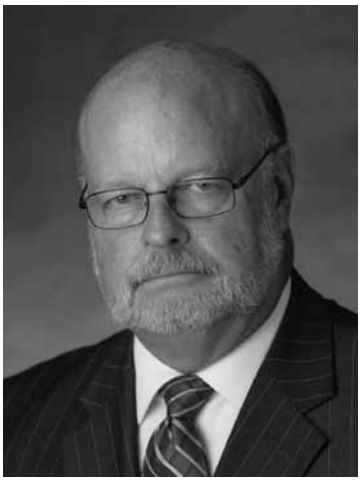
There are some attorneys in some types of cases who do not perceive there is value in promoting an experience for their client at variance with a simple evaluative approach and determining quickly whether there is or is not going to be a settlement. If it has to be this way, then a mediator needs to do their best to facilitate the settlement irrespective of limitations imposed by counsel.

In sum, mediators work under all sorts of conditions and circumstances. They must be prepared for malleability as the circumstances require. ■

David C. Peterson is a full-time mediator on the Central Coast (Santa Barbara, Ventura, San Luis Obispo and Santa Maria offices), beginning in 1995 and mediating over 2,000 cases since. After a 20+ year litigation career, he obtained a Master's degree (MDR) and then LLM degree in Mediation from Pepperdine University School of Law, Straus Institute for Dispute resolution (rated #1 by U.S. News & World Report) where he has been an adjunct professor, teaching "Mediation Theory and Practice."

Shredded Fish

By Robert Sanger



Robert Sanger

In past *Criminal Justice* columns, we have explored the over-criminalization of business activities. There are just too many criminal laws and their proliferation has expanded exponentially over the last few decades. In addition, the jurisdiction of federal authorities under general or vague laws has vastly expanded federal criminal prosecution of people and organizations for what otherwise would not be a crime.

In this month's column, we will look at the current litigation before the United States Supreme Court that had directly taken on this controversy. The case of Yates v. United States involves briefing by the parties and by *amici curae* directly invoking and defending the expansion of federal criminal prosecutions.

Introduction

The question presented to the Court in *Yates* is whether fish are intended to be covered under the "anti-shredding" criminal provision of the Sarbanes-Oxley Act of 2002, 18 U.S.C.§1519. The question rises from an interaction with a state (and federally cross-deputized) Fish and Game agent who boarded John L. Yates' fishing boat at sea. The agent measured the fish that had been taken on board and determined that some of them did not appear to meet the requirement that they be of a certain length. The Fish and Game agent instructed Mr. Yates to preserve the underage fish so that federal authorities could evaluate them as a part of a civil investigation upon docking. While there are disputed facts, the jury apparently found that Mr. Yates, as the boat captain, had directed another member of the boat's crew to dispose of the undersized fish.

Yates is not charged with a federal fishing violation. His conduct in not bringing suspect fish to shore would normally have been dealt with by a civil fine of $500 or more and possible sanctions regarding his fishing permits. His administrative case would not have involved the Criminal Division of the United States Attorney's Office (USAO) nor would there have been any criminal prosecution in federal court.

But here, Mr. Yates was in fact charged by the USAO in federal district court with a felony carrying a maximum punishment of 20 years in prison. Congress had enacted this felony as a part of legislation entitled "Criminal Penalties for Altering Documents." The particular section, a part of the Sarbanes-Oxley Act was specifically entitled "Destruction, alteration, or falsification of records in Federal investigations and bankruptcy." 18 U.S.C. 1519 states: "Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any *record, document, or tangible object* with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both." (Emphasis added.)

The federal government in this case was asserting criminal jurisdiction over Mr. Yates, a person who captains a fishing boat who dumped some fish, based on this – a statute intended to keep big business, like banks and savings and loans, from shredding their documents. It can be argued, and has been in this case, that the activity giving rise to federal prosecution is no more than an administrative action or, at worst, a state criminal matter. It can also be argued that there is no adequate notice to the public that activities like those alleged are subject to the expansion of federal criminal sanctions from document destruction to dumping fish. In fact, these activities are not crimes until a clever prosecutor convinces a judge to make them so. In fact, it is only after federal prosecutors had indicted this matter that Mr. Yates, or any other member of the public, would have any idea that federal law prohibited his alleged acts.

In other words, the federal government has a federal law that seeks to prevent shredding of documents in white collar cases and the USAO is now going to use that law to prosecute a fisherman who dumped some suspect fish in the ocean. The government lawyers say this is okay to expand the strict language of the statute to encompass behavior that was clearly not anticipated. Mr. Yates and the amici lawyers say that it is not okay to prosecute where there is no

criminal statute specifically describing the behavior sought to be punished. This controversy leads to a broader debate.

Over-criminalization and Over-federalization

Two organizations have filed amicus briefs: The National Association of Criminal Defense Lawyers (NACDL) and Cause of Action (COA). These groups represent opposite ends of the political spectrum. NACDL is the leading national organization concerned about matters pertaining to the practice of criminal defense and to the rights of people accused of crimes. COA, on the other hand, is a conservative business organization. Both organizations have taken the position that there are too many criminal laws and too many federal criminal laws purporting to pertain to business activities in particular. They both also claim that the existing laws are often vague and invest discretion in prosecutors to invoke them in an unpredictable and unfair manner. The parties, Yates and the United States government, have also discussed these same issues in their briefs.

The lawyers in this case are not causing this discussion to take place for the first time within the conference room of the Supreme Court. Justice Scalia has been openly concerned about these issues. Dissenting in a case decided a couple of years ago, Scalia said:

> "We face a Congress that puts forth an ever-increasing volume of laws in general, and of criminal laws in particular. It should be no surprise that as the volume increases, so do the number of imprecise laws. And no surprise that our indulgence of imprecisions that violate the Constitution encourages imprecisions that violate the Constitution. Fuzzy, leave-the-details-to-be-sorted-out-by-the-courts legislation is attractive to the Congressman who wants credit for addressing a national problem but does not have the time (or perhaps the votes) to grapple with the nitty-gritty. In the field of criminal law, at least, it is time to call a halt." *Sykes v. United States*, 131 S. Ct. 2267, 2288 (2011) (Scalia, J., *dissenting*).

Of course, Justice Scalia did not have a majority of the court behind him in the *Sykes* case. But that does not mean that there has not been discussion between chambers on this issue. There have been many instances where a dissent in one term gives rise to the grant of certiorari in another and, sometimes allows the dissenter to find voice in a majority opinion. We might recall Scalia's dissent to the denial of certiorari in *United States v. Sorich* 555 U.S. 1204 (2009) that gave rise to grant of certiorari and a fractured set of opinions in *Skilling v. United States*, 561 U.S. ___ (2010) on "honest services" fraud. Something like that may be in the works here and the members of the court may be inviting an opportunity to have a similar knock-down-drag-out discussion of the issue.

Conclusion

Politically, we as a country give in, or perhaps encourage, the politicians who continue to add new and vague criminal laws to the books. Part of it is based on the politics of fear and hatred. Those politics are, regrettably, effective in securing re-election for an incumbent. As Attorney General Holder has said, we need to stop thinking "tough on crime" and start thinking "smart on crime." He was addressing the conduct of the executive and legislative and judicial branches and the attitude of the public that drives them.

Here we have the executive branch, the USAO, indicting a person and prosecuting him in federal court. Yes, Attorney General Holder is the Attorney General of the United States but prosecutions like this do not require the approval of Main Justice and they are within the substantial discretion of the United States Attorneys in each federal district

Continued on page 29

Verdicts & Decisions

Taylor vs. Sierra Vista Regional Medical Center et al.

SAN LUIS OBISPO SUPERIOR COURT, DEPT. 2

CASE NUMBER:	CV 100552
TYPE OF CASE:	Negligence (Medical Malpractice), Fraud, Civil Conspiracy
TYPE OF PROCEEDING:	Jury Trial
JUDGE:	Hon. Barry T. LaBarbera
LENGTH OF TRIAL:	21 days
LENGTH OF DELIBERATIONS:	3 days
DATE OF VERDICT OR DECISION:	March 5, 2014
PLAINTIFFS:	Sara Taylor, individually and as Guardian ad Litem for Lucas Taylor, a minor
PLAINTIFFS' COUNSEL:	Steven R. Vartazarian of The Vartazarian Law Firm; Tyrone J. Maho of Maho Prentice, LLP
DEFENDANT:	Sierra Vista Regional Medical Center and Donald A. Ramberg, M.D.
DEFENDANT'S COUNSEL:	For Sierra Vista Regional Medical Center: Jay A. Hieatt and Stephanie A. Bowen of Hall, Hieatt & Connely, LLP; for Donald A. Ramberg, M.D.: William Clinkenbeard of Clinkenbeard, Ramsey, Spackman & Clark, LLP

OVERVIEW OF CASE: This was a wrongful death and medical malpractice case arising out of the failure to diagnose and properly treat a postoperative hematoma following elective cervical fusion surgery. Following the patient's death, Plaintiffs alleged that Sierra Vista Hospital and Dr. Donald Ramberg conspired to hide the true cause of death from the family, and lied and attempted to mislead the family with a bogus autopsy attributing the patient's death to natural causes.

FACTS AND CONTENTIONS: Plaintiffs contended that Defendants failed adequately to assess the patient's condition of a post-operative hematoma that developed over time during the early morning hours following the prior day's cervical fusion surgery. Plaintiffs alleged that the constellation of symptoms of a slowly expanding hematoma were obvious to the staff at the hospital, charted, and voiced by the patient. Plaintiffs further alleged that the hospital did not adequately address these symptoms and allowed the decision regarding care of the patient to be made by Dr. Donald Ramberg, the surgeon, from his home at 2:00 a.m., without further question. Dr. Donald Ramberg, who was advised (according to the hospital chart notes) of the seriousness of the complaints, called in an order for treating a sore throat, rather than proffering a differential diagnosis of a trachea that was slowly being sealed shut by the internal bleeding that was taking place. Intubation at this time would have saved the patient's life. A video recreation of the incident was shown to the jury with expert pathology testimony regarding how the patient ultimately suffocated to death.

Defendants maintained that the patient was fine until the time he coded, and then it was too late to resuscitate him. Defendants further maintained that while the medical records indicated all of the symptoms indicating a hematoma (inspiratory strider, change in voice, difficulty breathing), the nurses testified that some chart entries were made in error as they were very distraught over the loss of the patient at the time they charted.

Regarding the fraud and cover-up allegations, Plaintiffs contended that following the death of the patient the Defendants advised the surviving family members (Plaintiffs) that they did not know what caused the patient's death and that they would need to obtain an autopsy to determine the cause of death. Plaintiffs contended that the cause of death was obvious and that Dr. Ramberg was actually present during the attempted resuscitation efforts, when an emergency tracheotomy had to be performed to bypass the massive hematoma that was obstructing the airway and not allowing intubation to be performed. Thereafter, the hospital's risk manager, Nicki Edwards, took charge and secured a consent to autopsy from Sara Taylor, claiming she needed to find out why her husband died. After that, Ms. Edwards secured the services of 1-800-Autopsy, who provided a pathologist named Dr. George Vandermark, who determined that the patient died of natural causes: a fatty liver and an enlarged heart. This information was then passed on to the widow through

Ms. Edwards and Dr. Ramberg, in an attempt to mislead the widow and avoid responsibility for the patient's death. Plaintiffs further showed at trial that Dr. Vandermark has a checkered past (having been banned from practicing pathology in several California counties prior to this retention, and having changed his name). Plaintiffs claimed that they showed that Dr. Ramberg prepared a false death certificate with the State of California, which attributed the patient's death to natural causes involving his heart.

Defendants claimed they did not conspire to cover up the death of the patient. The undisputed evidence showed that the entire hospital chart, including the ER doctor's typed report of the code blue, the hematoma, and the deviated trachea, were given to Mrs. Taylor less than one week after Mr. Taylor's death. The Plaintiffs' offered testimony from a risk management expert regarding how this information should have been communicated to Mrs. Taylor laid the foundation for the jury's finding of misrepresentation and concealment. Defendants further contended that they did not know of Dr. Vandermark's past and that they were merely passing on his findings. Dr. Ramberg noted that the jury never made a finding that he filed a false death certificate.

The trial involved 40 witnesses, including 21 experts.

Summary of Claimed Damages: Plaintiffs sought expenses associated with having a toxicology added to the initial autopsy performed by Dr. Vandermark, expenses associated with having to retain a pathologist to perform a second autopsy, funeral expenses, lost income, past and future economic damages, and past and future non-economic damages.

Result: On the negligent malpractice, wrongful death, fraud, oppression, and malice claims, the jury voted 9-3 for the Defendants. On the intentional misrepresentation claim, the jury voted 11-1 for Plaintiff Sara Taylor against Sierra Vista Regional Medical Center. On the concealment claim, the jury voted 10-2 for Plaintiff Sara Taylor against Sierra Vista Regional Medical Center. On the conspiracy claim, the jury voted 9-3 for Plaintiff Sara Taylor against Dr. Ramberg.

The jury awarded Plaintiff Sara Taylor a total of $4,010,000 ($10,000 in past economic damages, $2 million for past non-economic damages, and $2 million for future non-economic damages). Lucas Taylor was not awarded any damages.

Plaintiffs will be seeking prejudgment interest and costs over $1,000,000. Defendants also will be filing post-trial motions that will be heard on June 26, 2014. ■

The SBCBA Elder Law Section presents:

Medical Malpractice or a Financially Incentivized Denial of Care – The Elder Abuse Act Comes of Age

When

Monday, June 9, 2014: 12:15-1:15 p.m.

Where

Santa Barbara College of Law

MCLE

One Hour, General

Speaker

Russell Balisok, Esq.

Enjoy sage advice from our own expert and co-chair of the Elder Law section, Russ Balisok, Esq. Don't miss this informative and up to the minute discussion of the elements of elder abuse, managed care issues, fraudulent denials of care, the fiduciary duty of health care providers, recent cases and any other questions you may have. A lively question and answer discussion session will follow. Russ Balisok, our leading elder abuse litigator was admitted to practice in 1975 and took his first elder abuse case in 1983. When California established civil remedies for elder abuse in 1991, Russ focused his practice on representing elders and their families in actions for abuse and neglect against skilled nursing aka nursing home facilities. Over the past several years, Russ has become interested in actions against Medicare-financed HMO's and the managed care entities with which they contract, and has applied the Elder Abuse Act to those cases. Since 1989 he has regularly presented programs to lawyers seeking to learn about litigation against nursing homes. These programs were presented on behalf of California Advocates for Nursing Home Reform, Inc. In addition, he has organized and presented programs for CEB and Consumer Attorneys of California, Consumer Attorneys of Los Angeles members, and The Rutter Group.

Price

$35.00 members, $40.00 non-members. Lunch catered by South Coast Deli

RSVP

Denise Platt Maginn, Esq. & Co-Chair of the Elder Law Section: @ deniseplatt@cox.net by May 30, 2014, and mail checks (payable to SBCBA) to: Denise Platt Maginn, 120 E. De La Guerra, Suite B, Santa Barbara 93101 or pay at the door.

The SBCBA Family Law Section presents:

All you might want to know about Social Security: What it is and What it Isn't; Programs and Eligibility Requirements; How to Deal with the Social Security Administration

Speaker

Neil Ohlenkamp, Former District Manager, Social Security Administration

When

Thursday, Sept. 18, 2014, 12:00-1:15 p.m.

Where

Santa Barbara College of Law

Cost

Free - The course and the luncheon are sponsored by Wellworth Financial

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Speaker Bio

Mr. Ohlenkamp graduated with a Bachelor's Degree from California State University, Northridge in 1976. He was responsible for administering Social Security benefits in Santa Barbara and San Luis Obispo Counties through a staff of up to 80 professionals in three local offices. He retired as District Manager in 2013 after 37 years of service. During 2006 and 2007 he served in Washington D.C. as a Legislative Fellow for the U.S. Senate Finance Committee. From 2010 through 2012 he served in a variety of high profile executive positions such as Director for Negotiation and Dispute Resolution in the Office of Labor, Management, and Employee Relations; head of the national team developing internet applications; and Director for staffing, budget, and facilities in the western region.

Mr. Ohlenkamp received many awards throughout his career, including the prestigious Commissioner's Citation. He graduated from the Federal Executive Institute, and participated in extensive training in public relations, leadership, alternative dispute resolution, and other topics. He is an accomplished public speaker and trainer who has been very active in the Santa Barbara community.

The SBCBA Litigation Section presents:

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Discover how to identify individual learning styles of witnesses and react with an appropriate communication model.
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Learn how to maximize your own performance by maximizing that of your witness.
Learn how to work with novice experts as well as those who have been in court more often than you!

Speakers

Alan Blumenfeld & Katherine James
ACT of COMMUNICATION® has trained thousands of attorneys in workshop settings, CLE classes, and private trial consultation with precise theatrical techniques to optimize results in trial, mediation, arbitration, and other professional appearances. They are committed to teaching exactly what is needed to create and enhance the authenticity and impact of attorney communications.

Date and Time

Wednesday, June 25th, 12:00 to 1:30 pm

Location

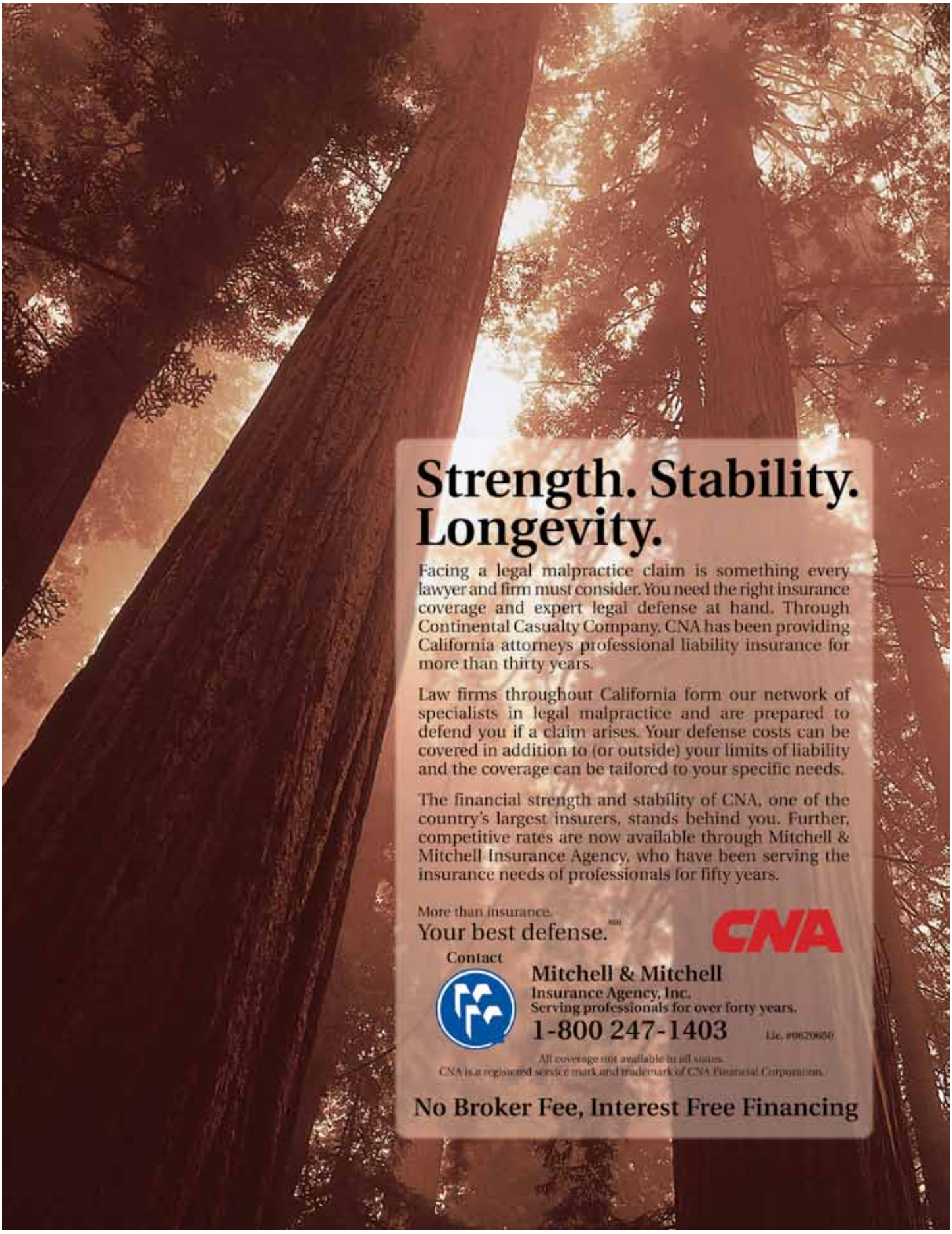
Santa Barbara College of Law, Room 1, 20 East Victoria Street, Santa Barbara

Reservations

Reserve via email to Matt Clarke,
Chair of Litigation Section, by Wednesday, June 18th, matt@christmankelley.com

Cost and Payment

$40.00 – includes lunch
Mail checks by Wednesday, June 18th, payable to:
Santa Barbara County Bar Association, c/o Matt Clarke
CHRISTMAN, KELLEY & CLARKE, PC
1334 Anacapa Street, Santa Barbara, CA 93101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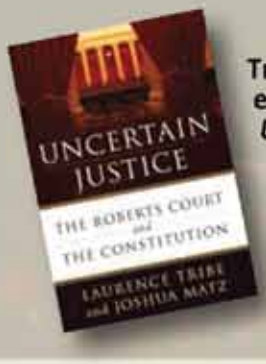

Tribe will sign copies of his eye-opening new book, *Uncertain Justice: The Roberts Court and the Constitution*, co-authored with Joshua Matz, which will be available for purchase.

To learn more and RSVP, visit:
antiochsb.edu/aic-tribe
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Sanger, *continued from page 23*

in the country. In that sense, the idea of thinking "smart on crime" is not dictated by the Attorney General but is dictated by the political or professional aspirations of the prosecutors in each USAO.

However, any expansion of the criminal sanction has to be approved by the judicial branch. A conviction cannot be obtained unless a judge allows it to go to the jury and then instructs the jury that it is possible. In the *Yates* case, not only did the federal district judge allow this prosecution but the Eleventh Circuit Court of Appeal allowed the conviction to stand based on this expansion of criminal jurisdiction by the USAO. The case is now before the United States Supreme Court and that Court has an opportunity to say enough is enough.

Once again, we will see what happens. ■

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). Mr. Sanger was also accepted into the Jurisprudence Section of the American Academy of Forensic Sciences (AAFS) earlier this year.

Motions

Santa Barbara appellate specialist **John Derrick** will be leading a panel discussion titled "Ethical Issues in Appellate Practice" at the State Bar Annual Meeting in San Diego in September. In November, he will be speaking on a panel at the Appellate Judges Education Institute Summit in Dallas on the subject of cost-effective appeals.

Attorney **Jennifer Kimberly Kruse Hanrahan** and her husband Brian excitedly welcomed their second son Hawken August Rigel Hanrahan, born at dawn (7:15 a.m.) on February 1, 2014. Hawken (10.0 lbs., 22.5 in.) is a serious, mellow, some say seemingly ancient soul who joins his loving sisters Cielle (5) and Seren (3), and whom we believe has a special connection with his brother Maddox, born 15 months before, who left this life so soon and unexpectedly at nearly three months old. Hawken's first name is a Norwegian-American name that means "chosen, exalted son," and is the name of seven kings of Norway. His name is also rooted in the Hawaiian "Ha," meaning "breath of life," which he has been for us. His birth brought new life to our family, and with gratitude, we enjoy every moment with him and together.

Brandi Redman and **Ellen Goodstein** are pleased to announce the formation of **Redman Goodstein and Associates, Conflict Resolution, Coaching and Consulting**. Both attorneys, recently of the **Legal Aid Foundation of Santa Barbara County**, will provide conflict resolution specializing in divorce, civil, and probate matters. In addition, the firm will offer nonprofit consulting services. To contact the firm, call 805-570-2321 or email Ellen Goodstein at egoodsteinsb@gmail.com and Brandi Redman at b.redman@cox.net.

Brandi Redman sings timeless, bluesy-style jazz and rock at **Soho on Sunday, June 22nd at 6:30pm!** $15 at the door. Please make your reservations early as the tables go quickly.

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.

Legislation Pending

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

Below are some bills pending before the California Legislature relating to the practice of law and other interesting legal issues.[1]

Senate Bill 1038 (Leno)

This bill would amend Welfare and Institutions Code Section 782 and add Section 786 to allow juveniles convicted of nonviolent crimes to have records in the custody of juvenile courts sealed after they complete probation. The bill passed the Senate on May 5, 2014, and was sent to the Assembly.

Assembly Bill 1515 (Gonzalez)

This bill would amend Business & Professions Code Section 6068 to require that attorneys deposit fees and expenses that have been paid in advance for legal services into a client trust account, which are to be withdrawn by the attorney only as fees are earned or expenses incurred. The bill would require the State Bar to adopt for approval by the Supreme Court any necessary amendments to its rules of professional conduct to conform with this provision. An Assembly Judiciary Committee hearing was set for May 6, 2014.

Assembly Bill 852 (Dickinson)

Assembly Bill 852, revived previously vetoed legislation that would allow the California State Bar to impose fines for the unauthorized practice of law. AB 852 is sponsored by the State Bar and is similar to AB 888, which was defeated last summer. This bill seeks to impose civil penalties for the unauthorized practice of law (in addition to the criminal penalties and injunctive relief already existing in the law) of $2,500 to $6,000 per incident, payable to the State Bar, plus attorneys' fees and costs. On April 24, 2014, this bill was Re-referred to the Committee on Rules pursuant to Senate Rule 29.10(c).

Assembly Bill 2053 (Gonzalez)

Existing law requires every employer to act to ensure a workplace free of sexual harassment by implementing certain minimum requirements, including posting sexual harassment information posters at the workplace and obtaining and making available an information sheet on sexual harassment. Existing law also requires employers, as defined, with 50 or more employees to provide at least 2 hours of training and education regarding sexual harassment to all supervisory employees, as specified. Existing law requires each employer to provide that training and education to each supervisory employee once every 2 years. This bill would additionally require that training include prevention of "abusive conduct" which is defined as "conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests. Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious." This was re-referred to the Committee on Appropriations for a May 7, 2014, hearing. ■

Endnotes

1 The source of the information in this column is the California Legislation Information website which can be found at: http://www.leginfo.ca.gov.

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Elings Park Party

Celebrate the beginning of summer! With its gorgeous landscaping and terrific views, Godric Grove is the perfect location for our Annual Bar BBQ. Delicious BBQ will be prepared by master chef-attorneys Rusty Brace and Mack Staton, and beverages served by expert bartender Will Beall will include outstanding red, white and rose wines donated by Joe Liebman! Mingle with fellow attorneys and judiciary!

$55 per SBCBA Member/$65 per Non-SBCBA Member
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Food From The Bar Kick Off Event!

intermezzo
BAR + CAFÉ

Tuesday, July 1 from **5:30-7pm** at **Intermezzo** (819 Anacapa St).
Join us for drinks, appetizers, and fun! 25% of all proceeds from the event will be donated to the Foodbank as part of the drive. We look forward to seeing you then.

This year will mark the 4th annual Food from the Bar Drive! Once again, the funds raised through Food from the Bar will benefit the **Foodbank's Picnic in the Park program** to feed children in our County. A staggering 84% of children in our County who receive free or reduced lunches during the school year get nothing in the summer.

We are looking for "Community Partner" sponsors to partner with us to feed ever more children this summer. Our goal this year is to **raise over $15,000 to benefit the Foodbank** and to **increase participation in the legal community**.
We hope we can count on your sponsorship of 2014 Drive to ensure it is a success!

Food from the Bar Sponsorship Levels 2014

❍ **Platinum - $1,000 or above** ❍ **Gold - $500 or above** ❍ **Silver - $250 or above**

All contributions go directly to the Foodbank!

Sponsorship are still available. Please contact Jennifer Smith for more information.
Email: jsmith@lafsbc.org Phone: 805-628-2183.

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