

Santa Barbara Lawyer

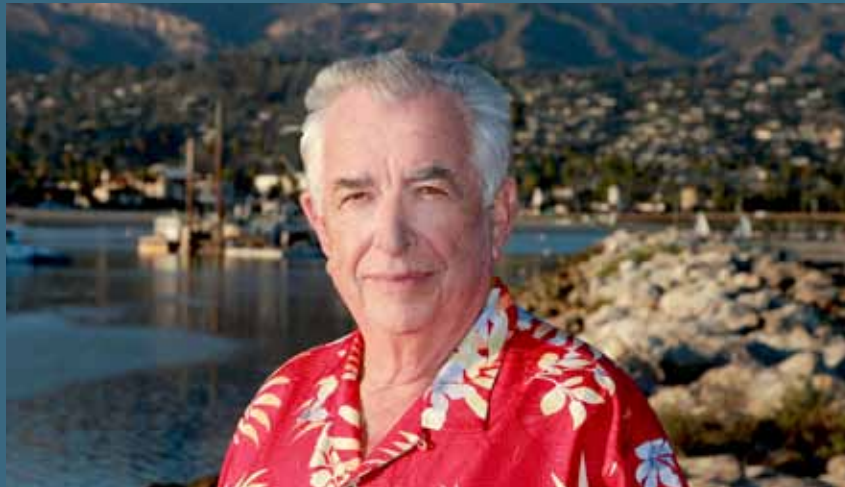
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Mission Statement

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



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About the Cover

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Judge Maxwell Takes the Bench

BY DANIELLE DE SMETH

On April 16, 2015, Pauline Maxwell was sworn-in as Superior Court Judge for the County of Santa Barbara at the Veterans' Memorial Hall in Solvang.

It was also her sixtieth birthday. The speakers celebrated Judge Maxwell's patience, intelligence, energy, collegiality, dedication and compassion. One source who wished to remain anonymous summed up the event as "the best enrobing I have attended. It was personal and didn't drag on forever." Judge Maxwell was openly pleased about the latter. Anecdotes shared by Judges Herman, Iwasko, de Bellefeuille, Geck, and her sister Anne Dever, illustrated how Judge Maxwell does not seek the spotlight, preferring to shine it on others.

After a career as a hospital-trained registered nurse and raising her two sons, Judge Maxwell studied Sociology at UC Santa Barbara, graduating with highest honors at age 40. Three years later she began working at Foley & Larder with a JD from UCLA. A senior litigation associate at Grokenberger and Smith from 2002 to 2006, Maxwell became a staff research attorney at the Santa Barbara County Superior Court from 2006 to 2010, where she has served as a Commissioner since 2010.

Presiding Judge Herman praised Judge Maxwell's efficiency as Commissioner in the face of an increasingly daunting caseload due to budget cuts. Judge Maxwell's responsibilities included a labor intensive caseload: the mental health treatment court, drug treatment court, dual diagnosis and restorative (homeless) court. As Commissioner, Maxwell spent Monday and Tuesday in North County, and Wednesday through Friday in Santa Barbara. Her Thursday calendar included an hour to dispose of 80-100 infractions before working with experts and attorneys to staff a treatment court, followed by another treatment court staffing roundtable, only to re-take the bench to address 80-100 more cases in two hours for Prop 36 (drug treatment) court.

Judge Geck shared that colleagues and staff roundly praise Judge Maxwell for treating everyone she encounters with



dignity and respect. "Her rulings are grounded in reason and the rule of law," said Judge Geck, who went on to praise the way Judge Maxwell treats court employees, demonstrating her judicial temperament, on and off the record.

Many who spoke referenced Maxwell's experience as an RN as a potential source or influence on her compassion and objectivity, but her sister explained that these characteristics have been present from the start. The oldest of the so-called Gillette 9, Maxwell has seven brothers, all of whom flew out from Boston for the event. As Maxwell put it, "nurses ... get trained on how to listen and how to ask the right questions." But her sister revealed, "Polly was born to take the bench," explaining that she administered "advice" assertively and often, in what her siblings called "Polly porch talks."

Judge Maxwell did not spend much time talking about herself, but rather thanked her colleagues, mentors, family and staff. She thanked her husband, Jack Maxwell, for being "a very brave man ... marrying a woman who had

Continued on page 24

Local Lawyer Lore

BY L. LAWYER

This is the first of what is intended as a regular interactive column about local lawyers, with what we hope will be regarded as an unusual twist (that twist relating to the column, not the lawyers).

Each column will feature a group of lawyers who share common ground beyond their practices. Our readers will then be challenged with identifying just what that common background is. The following month's issue will detail those shared experiences or accomplishments.

In the photo right are Doug Fell, Dennis Reilly, Frank Michaelson and Doug Hayes. What unique experience do these local attorneys have in common? (Note: Do not ask any of them for the answer; merely asking the question will disqualify you.)

Send your answer to LocalLawyerLore@gmail.com. The winner will theoretically be the first with the correct answer, but our panel of judges reserves the right to consider not only the date of the earliest correct response, but also the amount of additional information provided about the individuals in the context of their common experience, humor, and the overall "quality" of your response. Put differently, style points will be a consideration.

Note that there will be many common facts about any featured group (e.g., all four this month are local attorneys over the age of 40). Thus, the winning answer will be one



identifying the unique experience that *we* have in mind. (It is also possible that we will have missed other local lawyers with the same experience/accomplishment; if so, our apologies.)

In the following month's issue of *Santa Barbara Lawyer*, our "reveal" will have the answer and photographs, as well as the name of our winner, who will receive a modest prize and the pride of being called "winning lawyer" throughout the legal community for at least a month. We hope you will enjoy this opportunity for readers to demonstrate the depth and breadth of their knowledge of local lawyer lore. ■



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Insurance Traps: Limits, Sub-Limits and Exclusions

BY SEAN COONEY

Every year, you spend a lot of money to keep your homeowner's insurance current. You do it because there could be a fire, you could get burglarized, or because your mortgage requires it. Most of the time, you might glance over the renewal papers, notice a column of four numbers, and see a stack of changes to terminology. Exciting stuff.

You might file it away, or you might file it in the recycling bin. Or, maybe you thought you should know what your policy says, and you open the whole thing to read it. You then experience the sane and rational result of trying to read a homeowner's insurance policy -- sudden drowsiness, coupled with confusion. You might think there are some tricks hiding in the policy, but the horrible and confusing way in which the policy is written may keep you from really combing through it.

And, if you are like most people, you only learn about these issues once you've gotten a letter from your insurance company claiming it is "sorry" to deny your claim. Even then, you get a large block quote from the policy to provide you with next to no adequate explanation for their professed apology at deciding not to pay you money.

This article discusses some of those common tricks and traps buried in the boring pages of the typical homeowner's insurance policy. I also briefly discuss what a homeowner is entitled to during the claim, what your responsibilities are, and what to do if things just do not seem right.

Adequate Coverages

Three areas of coverage that are critical following any loss are Dwelling coverage, Personal Property coverage, and Loss of Use coverage. Dwelling coverage is for repairs to the home itself, such as the walls, studs, pipes, roof, etc. Personal Property coverage, sometimes called Contents coverage, is for personal effects, such as furniture, clothes, televisions, etc. Loss of Use coverage is pay for temporary housing and other expenditures if you need to be out of your house while repairs are completed. Sometimes you will see a fourth coverage for "other structures." This ap-

plies when you have a free standing garage, a guest house, or something else where there is not a continuous roofline with your main dwelling.

Each of these coverages has a "limit of liability" -- the maximum the insurer will pay. It is important to review these limits and ensure they are adequate. If the loss exceeds these limits, you will have to pay for the additional repairs yourself.

Simple, right? But, when was the last time you checked those limits? It is quite common for a homeowner to discover that they have inadequate insurance only after something happens to their home.

Where does this come up?

Purchasing a new home: If you purchase a home, you have to make sure you obtain sufficient coverage to rebuild it completely. This may require having a contractor inspect the house. Remember that even on a new construction home, the cost of rebuilding may be considerably higher than what you paid.

Long-time home ownership: As time passes, construction costs go up and the limits you set at purchase may have become inadequate. Don't rely on your agent either; as I discuss below an agent normally does not need to review or increase your limits. And neither does the insurance company. Your limits are your responsibility.

Renovations: My brother and sister-in-law recently renovated their original-construction, 1970s-era kitchen, installing beautiful cabinetry, an island for cooking, new counters, and a set of brand new high-end appliances. Needless to say, the increased cost warranted a review and possible increase of their insurance limits.

Acquisition of personal property: Like renovations, the acquisition of significant personal property can result in your limits being too low. If you make major purchases, it's always a good idea to take a look at your insurance. This is all the more true given how the typical amount for contents is evaluated. The personal property coverage is usually just a fraction of the dwelling coverage; it is not based at all on what you actually own.

Sub-limits

What Are Sub-Limits?

Sub-limits are limits on specific types of property or limits based on the type of loss (theft, fire, water, etc.) that are **lower** than the overall limit. Oftentimes, they are *drastically* lower. Yet, when you read through your policy, the phrasing is often confusing. As written, most people seem to think

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Cooney, continued from page 8

there is extra coverage for the items that are listed in the sub-limits. They don't realize that these are *restrictions* on coverage, not *enhancements*.

For example, in one policy I reviewed, the insured had \$300,000 in personal property coverage, but the policy had sub-limits of:

- \$1,000 for theft of tools, jewelry, watches, firearms, or business property.
- \$200 for money, including precious metals, or collector coins.
- \$3,000 for computers and "electronic data processing equipment."

Why does this matter to you?

Consider that theft is one of the most common forms of loss yet under the policy above, the limit for commonly stolen items is only \$1,000. This is hardly enough to replace even a modest collection of tools, jewelry, or guns. If you keep cash in the house, the limit is only \$200. Finally, the definitions of "computer" and/or "electronic data processing equipment" are often so broad that it includes anything with a computer chip: cell phone, tablets, Smart TVs, DVRs, game consoles, your kids' Nintendo DS, iPods, watches, etc. With how common these things are, it is easy for such a claim to exceed the \$3,000 sub-limit. And where does that leave you? Paying the difference.

You may ask, "I got my policy through an agent, aren't they responsible if I don't have enough coverage?" But you may be surprised to learn that under the law in California this is almost never the case. An agent is not liable where they (1) fail to recommend additional coverage, (2) fail to automatically increase coverage, or (3) fail to advise of additional coverage. (*Fitzpatrick v. Hayes* (1997) 57 Cal.App.4th 916, 926.) An agent is only liable if (1) they fail to get the coverage **you ask for**, (2) they make particular promises about coverage that are wrong, or (3) they specifically hold themselves out as experts in a particular area of insurance. (*Paper Savers, Inc. v. Nacsa* (1996) 51 Cal. App.4th 1090, 1096.)

The lesson is that vigilance will pay off in the event of a loss, especially for



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large-scale disasters like Santa Barbara's all too regular fires. If you want particular coverage, ask your agent *in writing* to get you a particular policy or endorsement and save their replies. You don't want to find yourself underinsured and facing either losing the family home or having to severely compromise rebuilding it!

Exclusions and Amendments to Coverage

The way most insurance policies are written is that, near the beginning of the policy, they claim to provide coverage for nearly everything. You will see this in "all risk" or "open peril" policies. These broad covering provisions are then followed by what are called "Exclusions" or "Amendments to Coverage" that cut away or "exclude" large areas. For example, in the same policy I discuss above, the policy broadly covers your personal property. But, there is no coverage if your property is damaged by rain that leaks into the house. In most policies, the only coverage for rain is if the wind opens a visible hole through which the rain enters. Overflow of a stream? Sewage backing up into the house? Again, usually you will get nothing. What looks like great coverage up front turns out to be very limited.

If you own income property, you might even run into far more limited types of coverage. "Named peril" policies will only cover certain things that happen to the house. Those things must be named in the policy or there is no coverage. Worse, even those events are limited further. For example, if your rental property is unoccupied for, say, more than 30 days, you might find that your theft or vandalism coverage no longer applies. This is a particularly unwelcome discovery when you learn that someone has been squatting in the property during a forty-five day vacancy, and they stripped out wiring, punched holes in the wall, or decided not to bother using the toilet when they went to the bathroom. Yes, this happens.

Even renters should be wary. The typical renters policy does not cover the dwelling itself as this is covered under the owner's policy. But renters policies have liability coverage for damage caused by the renter's negligence. In a different policy I reviewed, however, the policy had no coverage for water damage. In that case, my client installed his own refrigerator in a house he was renting. A part supplying water to the fridge failed, causing a slow leak that damaged the wood flooring. His insurer denied coverage for the water damage. Fortunately, I was able to successfully argue the damage was not his fault, but due to a defective part on the fridge.

During the Claim

As an insured, you are entitled to have your claim

promptly and fully investigated and to be offered a fair amount in settlement of that claim. In a homeowner claim it means that the insurer must advise you of the available coverages under your policy. Assuming your policy has Dwelling, Personal Property, and Loss of Use, it means the insurer must assess the damage your home and personal property and provide you with temporary housing if your home is not habitable.

The law also imposes duties on you, importantly the duty to cooperate during the claim. This means promptly reporting claims, giving access to the damaged property for inspection, providing documentation to support the claim, and possibly submitting to an examination under oath. But, "cooperation" does not mean bending over backwards to fulfill every whim your insurance adjuster may have. Any requests for cooperation must be reasonable and relevant to your claim.

In the end, my best advice is to consult a lawyer if you feel that your insurer is not fulfilling its duties or seems abusive in what it is asking of you. If it doesn't seem right, it probably isn't! ■

Sean Cooney is a California and Nevada licensed attorney specializing in property and casualty insurance issues. He handles a wide range of insurance issues including insurance coverage and litigation of insurance bad faith cases.



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Brownstein Hyatt Farber Schreck Hosts Leading Women Seminar

BY STEPHANIE BALL

What an incredible time to be a woman! The air was charged with electricity from the powerful women attending the reception preceding the Leading Women: 20 Influential Women Share Their Secrets to Leadership, Business, and Life MCLE seminar. Brownstein Hyatt Farber Schreck hosted the Elimination of Bias in the Legal Profession and Society reception and program benefiting the Santa Barbara Women Lawyers Foundation on April 21, 2015. Attended by Santa Barbara attorneys and community leaders, the event was a tremendous success.

Nancy D. O'Reilly, PsyD and Lois Phillips, PhD were the guest speakers that led the conversation with the message, "Now is the time... for women to claim power and respect, conquer internal barriers, and change the world by helping and mentoring other women do the same." The book *Leading Women* is a collaboration of 20 contributing authors, led by Dr. O'Reilly. Each contributing author is committed to supporting our sisterhood to make women stronger and more powerfully able to change the world for good.

Lois began the seminar with an engaging conversation about how the power of public speaking is an opportunity for women to be seen and heard. She explained that to advance into positions of power and influence, a woman's place must be at the podium. After all, Lois told the audience, dynamic speakers provide a vision of a better future and inspire and initiate change. Providing visibility and status, the podium is the place for emerging leaders to be seen, heard and remembered. Building credibility requires women speakers to flaunt their expertise and character, something that may be difficult for any woman who has been raised on a modesty ethos, and for whom modesty is an aspect of femininity. We can use our feminine traits as speaker strengths, such as respect for other people's opinions and a desire for connection. Lois encouraged us to learn from outspoken women who can take the heat.

Nancy asked us to raise our hands if we had power. By reframing the concept away from "power over" and toward the "power to," we inspire others to follow. While we have accomplished much in just a few decades as women,



Guest Speaker Lois Phillips Ph.D., and Marianne Caston

women still do not exercise power in ways that are equal to men. She challenged us to create a world in which every woman can claim her power, see her advice and expertise valued and respected, conquer her internal barriers, and work together with other women and men. If the hand that rocks the cradle is ever going to help rule the world, Nancy asked us to reach out to clasp another woman's hand.

The resounding message we learned from Lois and Nancy is that as women sharpen their skills, they will continue to advance in the former off-limit areas of corporate business and government. Look around, they asked us. Reach out to other like-minded women in our community so we can help each other. When a woman meets success using her feminine skills, she can and should help other women to do the same thing. Together, we can accomplish the powerful results we want to achieve. As women, we need to have each other's back. One thing is certain: without the support of our sisterhood, few of us would carry on. We were asked to do this important work, and remember to take the time to bring our women friends together to celebrate our successes. Together we can accomplish the powerful results we want to achieve.

Brownstein Hyatt Farber Schreck is proud to have an active, firm-wide Women's Leadership Initiative that seeks to develop women attorneys within the firm into leaders in their respective practice groups, the firm in general and their local communities. By sponsoring this Elimination of Bias in the Legal Profession and Society MCLE, Brownstein Hyatt Farber Schreck supports all women lawyers in the Santa Barbara legal community. ■

Stephanie Ball is manager of continuing legal education at Brownstein Hyatt Farber Schreck.



Stephanie Hastings and Susan Petrovich



Chris Jacobs and Stephanie Ball



Reception at Brownstein Hyatt Farber Schreck



Kisa Heyer and Laura Capps



Elva Garcia and Guest Speaker Nancy D. O'Reilly, Psy.D



Betty Jeppesen

Who Deserves Recognition?

A Call for Nominations

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Richard Abbe Humanitarian Award	Attorney or judge	Life, leadership and conduct that exemplify humanitarian principles
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Gerald Parent, Naomi Dewey, Hon. Frank Ochoa, left.

Tom Hinshaw, Angela Roach, Virginia Fuentes, below.

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Rapid DNA Testing

BY ROBERT SANGER

In 2010, the FBI began the process of encouraging the development of Rapid DNA testing. Rapid DNA testing involves a fully automated process of developing a “short tandem repeat” (STR) profile from a reference sample. The process consists of automated extraction, amplification, separation, detection and allele calling without human intervention. In other words, it is a quick, hands-free method of obtaining a DNA profile.

In this month’s *Criminal Justice* column we will look at this new and expanding area of scientific technology. We will also look at the efforts to regulate it and maintain appropriate scientific standards, as well as the issues regarding its admission into evidence.

DNA Testing – a Quick Review

Deoxyribonucleic Acid (DNA), as we all know by now, is represented by the double helix chain of sugars and amino acids that holds the library of blueprints for living organisms. In humans, the DNA is contained in the nuclei of every one of the trillions of living cells of the body. In addition, there is mitochondrial DNA (mtDNA) which is found in small bubbles outside the nuclei of those same cells. The mtDNA contains only the blueprints passed down from the mother whereas DNA contains the combined genetic material of both mother and father.

Since Watson and Crick first discovered the structure of DNA in the early 1950s, scientists have been attempting to map a genome (Fredrick Sanger being the first to do so) and, eventually, the human genome (through the Human Genome Project). The base pairings of the amino acids (the “rungs” on the familiar double helix “ladder”) are held in place by two sugar phosphate structures (the “sides” of the “ladder”) and are connected to each other by hydrogen bonds. These base pairings represent the “genes” that have something to do with the development of the organism. There are also long strands of DNA that are (or were) thought to be “non-coding.”

Basically, for forensic purposes, the base pairings of the amino acids can be compared from one DNA molecule to

another. Over 99% of human DNA is indistinguishable from one person to another. However, there are certain sequences that tend to vary. In fact, the “non-coding” portions have been found to be the most useful portions for doing comparisons. The current forensic standards involve comparing genetic markers at 13 locations on what is referred to as “short tandem repeats” (STRs), which are present in the human genome. These loci are amplified using polymerase chain reaction (PCR) technology. Testing also includes an analysis of Amelogenin which is determinative of the sex of the donor.

The FBI has compiled and coordinated databases of the results of DNA testing. The combined databases are accessed by a software program known as the Combined DNA Index System (CODIS). CODIS contains DNA profiles contributed by local, state and federal forensic laboratories. There are particular requirements that are supposed to be met for an agency to contribute to CODIS. However, other local, state, private or laboratory-specific databases are maintained outside of CODIS.

In summary, a sample of DNA is obtained from a crime scene, a rape kit, or some other evidentiary source. That sample can then be compared to a known sample. The known sample can be obtained by a buccal swab from a suspect. The sample can also be compared by a “matching” algorithm to the profiles contained in CODIS or some other database. Increasingly, law enforcement is taking advantage of the less regulated local databases to do comparisons. Whatever the source of the match, candidate matches are then compared manually by individual analysts.

DNA analysis, far from the popular conception, is not infallible. There are several factors affecting the validity of DNA analysis. For instance, cross-contamination of samples by the police or crime scene investigators can render the whole enterprise unreliable. In addition, there are stains that may be contributed to by multiple subjects. The process, itself, can contribute to false results, including partial digestion, star activity, contamination by biological or non-biological contaminants, or other processing problems. There can also be the phenomenon of allelic dropout through the denigration of the sample, low copy number



Robert Sanger

or variances in the process. Finally, there is the issue of mismatching by the DNA analyst.

Nevertheless, DNA matches can be persuasive if certain underlying factors are present. The paradigm of a good match or exclusion would be to have a sufficient sample, properly collected and well preserved, from a single source, evaluated by a competent laboratory using proper protocols and acting independently of law enforcement or other persuasive influences. Barring intentional evidence tampering or negligence, a result from such a process, properly evaluated, can have significant evidentiary value.

Rapid DNA Testing Technology and Standards

The concept of Rapid DNA Testing was developed to increase the efficiency of the testing process. The use of an automated device could cut down on the time involved in doing the testing of the sample and the comparison to existing databases. In addition, Rapid DNA Testing has the potential benefit of avoiding a significant portion of the handling of a sample by laboratory technicians or analysts. This potentially reduces the risk of contamination or intentional or negligent misprocessing of the samples.

There are currently a number of vendors who are marketing Rapid DNA Testing products. At the American Academy of Forensic Sciences (AAFS) Annual Meeting this year there were several booths with competing technology. Each vendor was asserting its superiority in the field. Integen, for instance, advertises its RapidHIT Human DNA Identification System (which looks like a small ATM). They claim that, with three minutes of a technician's time processing five buccal swab samples, it can produce standardized DNA profiles in about 90 minutes.

As reported in prior columns of *Criminal Justice*, there is a serious effort on the part of the federal government -- involving the FBI crime lab (notwithstanding, or because of, problems like those they had with hair samples), the National Institute for Standards and Technology (NIST) and the AAFS -- to create, promulgate and enforce standards in all areas of scientific evaluation. This is being done through the Organization of Scientific Area Committees (OSACs) under the direction of NIST. Previously, the FBI's Scientific Working Groups (SWGs) had been organized to do this work.

In the case of DNA, the existing SWG is called SWGDAM (Scientific Working Group DNA Analysis Methods). Although the OSACs were thought to supersede the SWGs, it appears that SWGDAM will co-exist with the OSAC Subcommittee on DNA Analysis and continue to work with the FBI Quality Assurance Standards for Forensic DNA Testing Laboratories. All of this is guided by the Federal

DNA Identification Act at 42 U.S.C. § 14132. Specifically, Rapid DNA Testing will have to comply with the all of the resulting standards. Lawyers proffering testimony based on Rapid DNA Testing and those opposing such testimony will have to be up to date on the latest standards from each of these sources.

Conclusion

Testimony based on DNA testing has the potential to be very persuasive to the trier of fact. It is subject to admissibility under *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999) and *Sargon v. University of Southern California*, 55 Cal.4th 747 (2012). Under *Daubert* and *Kumho Tire*, "[t]he objective of [Daubert's gatekeeping] requirement is to ensure the reliability and relevancy of expert testimony. It is to make certain that an expert, whether basing testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field." Under *Sargon*, ". . . the trial court has the duty to act as a gatekeeper to exclude speculative expert testimony." *People v. Lucas*, 60 Cal.4th 153 (2014) has held that the third prong of *People v. Kelly*, 17 Cal.3d 24 (1976) still applies (as it must under the more progressive articulation in *Daubert*, *Kumho* and *Sargon*) -- namely, that "the person performing the test in the particular case used correct scientific procedures."

Even with a largely automated testing device, such as the RapidHIT or similar device, the device must qualify under the standards and must be operated properly by a qualified expert. In addition, of course, all the issues with regard to proper collection and preservation of evidence, contamination, mixed samples and other foundational issues must be addressed. Ultimately, the judge is the gatekeeper with regard to Rapid DNA technology evidence as with all other scientific evidence. ■

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 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 a Member of the American Association for the Advancement of Science (AAAS). Mr. Sanger is also a member of the Jurisprudence Section of the American Academy of Forensic Sciences (AAFS).

U.S. Bankruptcy Court Hosts “Law Day Power Lunch” for Local Students

BY MEREDITH KLASSEN, UNITED STATES BANKRUPTCY COURT

To commemorate Law Day, the U.S. Bankruptcy Court hosted 20 Santa Barbara area students at a Power Lunch on Friday, May 8, 2015. President Dwight D. Eisenhower established the first Law Day in 1958 to mark the nation’s commitment to the rule of law. In 1961, Congress designated May 1 as the official date for celebrating Law Day. The Law Day Power Lunch was a community outreach event at which judges from state and federal courts, lawyers, law enforcement officers, and other professionals met with small groups of students over lunch to share experiences about the law, the legal system, and their careers.

The Law Day event, which was held at the U.S. Bankruptcy Court on State and Sola Streets, was attended by Bankruptcy Court judges Hon. Peter H. Carroll, Hon. Sandra R. Klein, and Hon. Judge Deborah J. Saltzman. The Santa Barbara County Superior Court judges in attendance were

the Hon. Thomas Anderle, Hon. Pauline Maxwell, Hon. James Herman, and the Hon. Donna Geck. Representatives from the Santa Barbara County District Attorney’s Office, the local bar association, the U.S. Marshals Service, the U.S. Trustee’s Office, the Federal Protective Service, and the U.S. Bankruptcy Court also attended the lunchtime event.

The students, representing San Marcos High School, Dos Pueblos High School, La Colina Junior High School, St. Raphael’s School, and Boy Scout Troop #4 watched a slide show highlighting the judges in attendance, and then listened to a keynote speech by the Honorable Peter H. Carroll highlighting two individuals who influenced his decision to become a federal judge. The students then participated in a game of “Legal Jeopardy”, which was played like the traditional “Jeopardy!” game but with legal categories, and took a tour of the U.S. Bankruptcy Court building. More information on Law Day can be found on the American Bar Association’s website www.americanbar.org.

About the Northern Division of the U.S. Bankruptcy Court

The Northern Division of the U. S. Bankruptcy Court is one of five divisions that comprise the Central District of California. The division serves the regions of San Luis Obispo County, Santa Barbara County, and most of Ventura County. The Northern Division of the U.S. Bankruptcy Court is served by two active bankruptcy judges and one recalled bankruptcy judge. The courthouse is also shared with a U.S. District Court Magistrate Judge. ■



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* Marano, Lou. "Access To Legal Aid Lowers Domestic Abuse." From the Life & Mind Desk. United Press International. Published 1/8/03.



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The Honorable Frank J. Ochoa Establishes New Scholarship for Local Students

The Judge Frank Ochoa Scholarship will support local students attending law school or planning to attend law school who have expressed an interest in addressing Latina/o civil rights and/or political issues in their legal careers. Judge Ochoa established the new scholarship fund to be administered by the Scholarship Foundation of Santa Barbara as a celebration of his retirement. The fund, supported by many who worked with and know Judge Ochoa, is a capstone to a distinguished 32-year career spent safeguarding civil rights and developing alternative solutions to help offenders break the cycle of repeat offenses.

"I am extremely gratified that my family, friends, and the Santa Barbara legal community found the funding of this scholarship to be worthy of their support. I can't think of a

better way to encourage more students to choose careers in the legal field and become engaged citizens than to support their education," said Judge Ochoa. "We all benefit greatly when we create opportunities for young people to obtain a higher education and launch successful careers."

Judge Ochoa was born and raised in Long Beach, California. He earned BA degrees in English and History from UCSB and studied law at U.C. Davis School of Law. In 1980, he became the Executive Director of the Legal Aid Foundation of Santa Barbara County. In 1983, at age 32, he was appointed to the Municipal Court by Governor Brown, making him the youngest judge in the state at the time. He also became the court's first Spanish surnamed judge in this century.

He was elected to the Superior Court in 1996. As Presiding Judge, he managed the court through the unification process, merging the Municipal Courts with the Superior Court. He launched two successful adult drug court programs in Santa Barbara, the Substance Abuse Treatment Court and the Clean and Sober Calendar. These calendars offer intensive, court supervised treatment to drug offenders. He also started a Juvenile Drug Court program and founded the Court Administered Appropriate Dispute Resolution program (CADRe) to provide early alternative dispute resolution opportunities for civil litigants. ■

Judge Ochoa is a former President of the Board of Directors of the Santa Barbara and Ventura Colleges of Law. He later served as a Professor at the Santa Barbara College of Law, teaching courses on Legal Process, Statutory Law, and Legal Ethics. He currently teaches in the Political Science Department at UCSB.



The Scholarship Foundation works to inspire, encourage, and support Santa Barbara County students in their pursuit of higher education through financial aid advising and scholarships. In 2015 the Scholarship Foundation will grant \$8.7M to 2,947 students and provided financial aid advising to more than 35,000 students and their parents. Since its founding in 1962, the Scholarship Foundation has awarded more than 39,600 scholarships totaling \$96.3 million. For more information visit our website: <http://www.sbscholarship.org/>.

Legal Community

De Smeth, *continued from page 6*

just spent three years learning how to argue."

Judge Maxwell has served on philanthropic and charitable boards including Families ACT!, the Central Coast Collaborative on Homelessness, the Downtown Boys and Girls Club of Santa Barbara, Girls, Inc., and Santa Barbara Women Lawyers. Yours truly was honored to describe how Judge Maxwell has mentored younger attorneys in our community one on one, through her leadership in the Inns of Court and through SB Women Lawyer's mentoring circles. As Judge Anderle put it, "Judge Maxwell is an excellent example of what all aspiring lawyers should strive to be and become."

Governor Brown appointed Judge Maxwell on December 12, 2014. She fills the vacancy created by the retirement of Judge Denise de Bellefeuille. Beginning June 1, 2015, Judge Maxwell will hear criminal arraignments in Department 8 of the Santa Barbara Superior Court. ■

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Get to Know...

Lauren Wideman is an associate at Price, Postel & Parma, and President of the Santa Barbara Barristers. The Barristers' mission is to advance education, collegiality and professionalism among members of the Bar by providing frequent educational and social opportunities for the Santa Barbara County legal community to participate in, as well as promote and participate in activities benefiting non-profit organizations and our local community as a whole.



Lauren Wideman

What do you consider [to be] your greatest achievement?

Passing the California Bar Exam while pregnant and working full-time as an associate at a large law firm.

Where would you most like to live?

Right here in Santa Barbara.

What is your most treasured possession?

My Contax 645 medium format camera.

What is your idea of perfect happiness?

Spending time at the beach on a warm day with loved ones.

What is your greatest fear?

Clutter.

Which living person do you most admire?

My mother.

What is your greatest extravagance?

Having my medium format film photographs developed. Dry cleaning is a close second.

What is your current state of mind?

Motivated and appreciative.

Which words or phrases do you most overuse?

"All's well that ends well."

What or who is the greatest love of your life?

My daughter, Annabelle.

When and where were you happiest?

When my daughter runs towards me with her arms open, a big smile on her face, and a jubilant "Mama!"

Which talent would you most like to have?

Eidetic memory.

What is your most marked characteristic?

Determination.

What do you most value in your friends?

Intellect and honesty.

Who are your favorite writers?

Antoine de Saint-Exupery and Aldous Huxley.

Who is your hero of fiction?

Obi-Wan Kenobi.

Which historical figure do you most identify with?

Mark Twain.

Who are your heroes in real life?

Those who innovate for the public good.

What is it that you most dislike?

Cruelty.

What is your motto?

"Courage doesn't always roar. Sometimes courage is the quiet voice at the end of the day saying, 'I will try again tomorrow.'" Mary Anne Radmacher. ■

Verdicts & Decisions

Horwitz v. LR Environmental Equipment Company, Incorporated, et al.

LOS ANGELES SUPERIOR COURT, CENTRAL JUDICIAL DISTRICT (STANLEY MOSK)

CASE NUMBER:	BS144006
TYPE OF CASE:	Petition for Writ of Mandate Enforcing Shareholder and Director Inspection Rights
TYPE OF PROCEEDING:	Court trial / Mandate proceeding
JUDGE:	Hon. Joanne O'Donnell
LENGTH OF TRIAL:	> 1 day
DATE OF DECISION:	Decision on Writ: May 16, 2014; Writ Issued: May 22, 2014; Fees Awarded: September 26, 2014
PETITIONER:	Simon Horwitz
PETITIONER'S COUNSEL:	Brett Locker, of Schley Look Guthrie & Locker LLP
RESPONDENTS:	LR Environmental Equipment Company, Incorporated, Alchemy Engineering Co., Inc., Gary Fleck and Richard Fleck
RESPONDENTS' COUNSEL:	Abraham Mathew and Mazyar Mazarei of Mathew & George

Overview of Case: LR Environmental Equipment Company, Incorporated and Alchemy Engineering Co., Inc. are two commonly-controlled corporations engaged in the sale of new and reconditioned industrial ovens and test chambers. Petitioner Simon Horwitz owns 32% of one of the corporations, and 25% of the other. Brothers Gary Fleck and Richard Fleck own the remaining shares of the first corporation and, along with their mother, own the remaining shares of the second corporation. Petitioner was (and remains) a director of each corporation.

In May 2011, the Fleck brothers terminated petitioner's employment with the corporations. Thereafter, Petitioner sought to inspect the corporations' accounting books and records, other documents and records, and physical properties. Respondents Gary and Richard Fleck refused some of Petitioner's inspection demands outright, while imposing restrictions on some of Petitioner's other inspection demands.

FACTS AND CONTENTIONS: Petitioner contended that he was entitled to review the corporations' QuickBooks files and inventory-specific electronic accounting records pursuant to Corporations Code §1601, which allows shareholders to inspect a corporation's "accounting books and records" for a purpose "reasonably related" to the shareholder's "interests as a shareholder." Petitioner contended that he also was entitled to inspect these records and all of the corporations' other records and all of the corporations' physical properties pursuant to Corporations Code §1602, which provides that directors "have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the corporation." Petitioner sought to exercise his rights "by agent or attorney" during the corporations' normal business hours.

Respondents contended that the corporations' QuickBooks files and inventory-specific electronic accounting records were not parts of the corporations' accounting books and records. Respondents also contended that Petitioner's demands

Continued on page 28



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related to his interests in suing the corporations for wrongful termination, and not to his legitimate interests as a shareholder. Accordingly, Respondents contended that Petitioner was not entitled to inspect records *as a shareholder*. Respondents claimed that Petitioner had abandoned his positions on the corporations' boards of directors and, on that basis, refused to allow Petitioner's inspections of the corporations' electronic records *as a director*. In reliance upon these contentions, Respondents provided only limited information in response to Petitioner's inspection demands.

Petitioner's mandate action ensued. After Petitioner initiated the mandate proceeding, but while the action was pending, the corporations held shareholders' meetings. Petitioner attended the meetings, cumulated his votes and thereby reestablished his positions on the corporations' boards of directors. However, Respondents Gary Fleck and Richard Fleck continued to impose limitations on Petitioner's inspection rights: they would not grant Petitioner direct electronic access to the corporations' QuickBooks files; they would not grant Petitioner any access to the corporations' inventory-specific electronic accounting records; they would not allow Petitioner to be accompanied by his lawyer during any inspections of the corporations' records and/or properties; they would not allow Petitioner's lawyer to conduct inspections on Petitioner's behalf; and they would not allow Petitioner to conduct inspections during normal business hours. Respondents contended that their concern that Petitioner might disrupt business operations justified their imposition of these limitations upon Petitioner's inspections.

RESULT: A writ issued instructing Respondents to grant Petitioner access to inspect and copy, directly and/ or by agent or attorney, all books, records and documents of every kind and to inspect the physical properties of the corporations during normal business hours. In addition, Petitioner was awarded attorneys' fees in the sum of \$71,419.05.

Motions

Congratulations to **Diana P. Lytel**, partner at **LYTEL & LYTEL, LLP**, who has been selected to the 2015 Super Lawyers® Southern California Rising Stars list. The honor is reserved for those lawyers who exhibit excellence in practice. Ms. Lytel has also been recognized as 2015 Top Women Attorneys for Southern California for Super Lawyers®.

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Food From The Bar Food & Funds Drive

Sponsorship Opportunity

Food from the Bar is a grass-root campaign started by lawyers to fight hunger among children in their communities all across the United States. This year marks the 5th annual drive benefiting the Foodbank of Santa Barbara County. Our goal this year is, again, to raise \$15,000. We cannot do it without your help!

- Email Misha Karbelnig at the Foodbank (mkarbelnig@foodbanksbc.org) and Catherine Swysen of SBWL (cswysen@sangerswysen.com) It is also helpful to send us an electronic version of your company logo to use on all promotional materials and the Drive website.
- Make your check out to: Foodbank of Santa Barbara County, with "FFTB" in the memo line.
- Mail to Foodbank of Santa Barbara County, Attn: Misha Karbelnig, 1525 State Street, Ste 100 Santa Barbara, CA 93101.

SAVE THE DATE

The SBCBA Family Law Section
presents:

**Spousal Support and Security
Therefor** *(please note: date may be
moved because of summer schedules)*

Libbie Vogt, Moderator

Date: Thursday, June 18, 2015

Time: Noon-1:30

MCLE: 1 unit (approval pending)

Presented by the SBCBA Family
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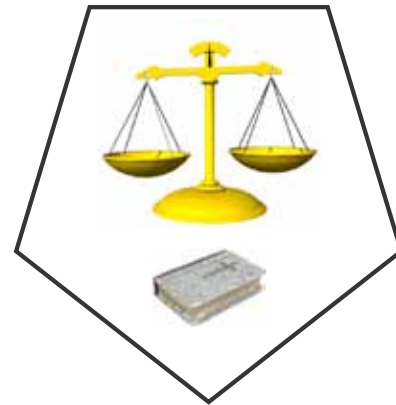
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