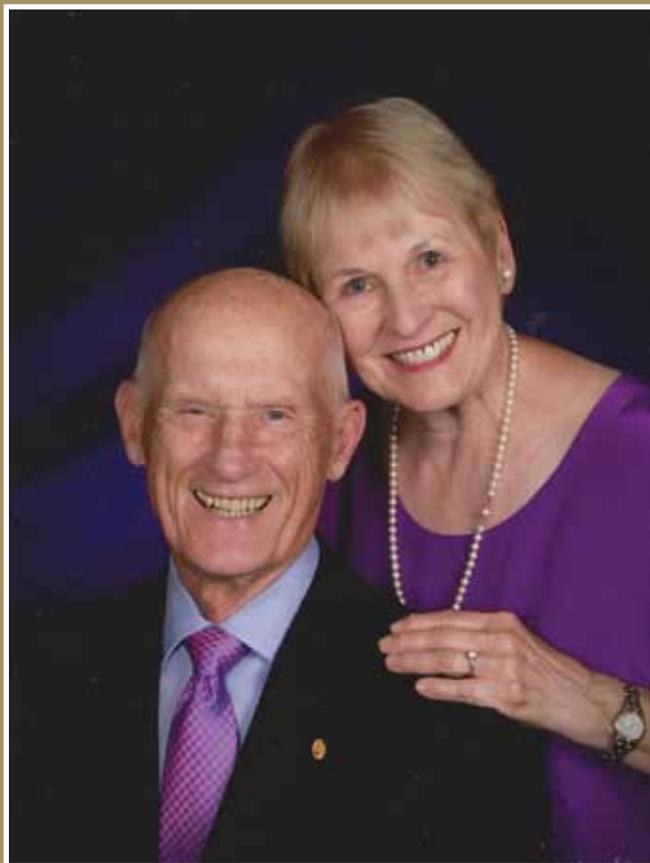
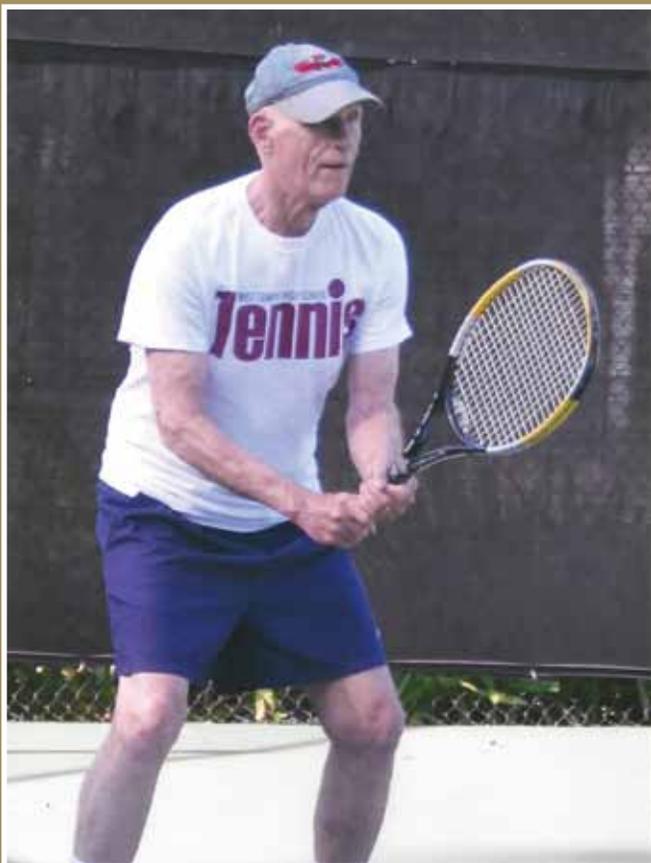


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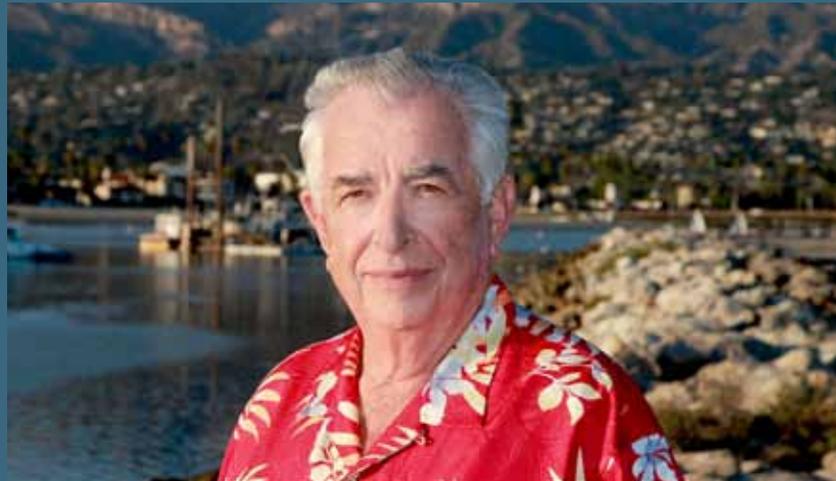
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Mission Statement

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

This month's cover honors Hon. Thomas P. Anderle, who will receive his eponymous Award for Judicial Excellence at the SBCBA Annual Dinner on November 13, 2015. Well deserved, Judge Anderle!



The Santa Barbara and Ventura Colleges of Law (COL) reached another milestone this month by becoming an approved Federal Title IV institution through the U.S. Department of Education.

The news arrives on the heels of realizing initial regional accreditation this past spring by WASC Senior College and University Commission (WSCUC). Title IV designation means that all current and future COL students can access direct loans from the federal government through the Title IV program. The next enrollment start for the J.D. program at COL is spring 2016. Applications are currently being accepted.

For more information, please visit www.collegesoflaw.edu.

Judge Thomas P. Anderle to Receive SBCBA's "Thomas P. Anderle Award for Judicial Excellence"

BY JAMES P. GRIFFITH, SBCBA PROFILE EDITOR

At its Annual Dinner on November 13, 2015, at the historic Santa Barbara County Courthouse, the Santa Barbara County Bar Association will proudly award to Superior Court Judge Thomas P. Anderle, its inaugural "Thomas P. Anderle Award for Judicial Excellence." The award is a long-overdue recognition of not only Judge Anderle's excellence as a jurist, but also his decades of contributions to both the local legal community and the Santa Barbara community as a whole.

Thomas Pearce Anderle was born on May 24, 1935. He and his twin brother John grew up in Port Huron, Michigan, an "average town" of some 30,000 residents, located in the eastern part of the state, at the southernmost end of Lake Huron. His father, Harry, and mother, Jean, both taught in the public schools. His father was additionally a well-known and popular football, basketball and track coach. Anderle* credits a great deal of his success to the support and positive influence of both of his parents. His father, he recalls, was tough and intensely competitive, but always fair and sportsmanlike.

Judge Anderle himself could be regarded as one of his father's more successful teaching and coaching products. In addition to graduating in the top 3% of his high school class and being voted president of the Student Council, as a junior and senior he started at offensive and defensive end for his father's football teams, both of which went undefeated and won the Michigan state championship. In his senior year he was a first-team all-state offensive end and was co-captain. He also lettered in basketball and track. His high school athletic exploits eventually earned Anderle induction into the Port Huron Sports Hall of Fame, where he

*The honorific "Judge" is sometimes omitted below solely for the purposes of brevity and readability, and in accordance with journalistic convention. No disrespect is intended.

is joined by his father and brother. (Displaying characteristic Midwestern modesty, Judge Anderle neglected to mention these notable biographical details when he met with *Santa Barbara Lawyer* for this profile.)

He attended the University of Michigan on the Holloway Plan, a Navy program that offered a full college scholarship in return for a three-year service commitment. Following his graduation in 1956, Anderle entered the Navy as an ensign (a commissioned officer), and at his request, he served mainly on destroyers, which allowed him to be given the most responsibility in the shortest amount of time. While in the Navy, Anderle served as, among other things, communicator, CIC (Combat Information Center) officer, operations officer and navigator. He eventually rose to the rank of lieutenant junior grade, the Navy equivalent of first lieutenant.

The Santa Barbara legal community almost didn't have a Judge Anderle upon whom to bestow this award; he says he enjoyed the Navy, and was very tempted to stay in it when his three years were up, but instead, "I met a girl"—June, his now-wife of 55 years. The life of an active Navy officer was notoriously hard on married officers and their spouses, and Anderle was reluctant to subject his soon-to-be bride to the stresses and long absences of a military career. He resigned his commission in 1960, married June, and with the encouragement of his father and a couple of fraternity brothers who had become lawyers, he attended Loyola Law School at night while working full-time, eventually graduating in 1964. Following graduation, Anderle clerked with Justice John J. Ford of the California Second District Court of Appeal. When Anderle's clerkship ended in 1965, Justice Ford's father, Joe Ford, a prosecutor who once prosecuted Clarence Darrow for alleged juror tampering, wisely suggested that then-fledgling attorney Tom Anderle consider launching his legal career in Santa Barbara rather than in Los Angeles due to the superior quality of life. When Anderle followed this sage advice and applied for a position at the Santa Barbara County Counsel's office, the job was his as soon as he informed his interviewer that he had previously served on destroyers as a commissioned Navy officer.

After serving as deputy county counsel for approximately three years, Judge Anderle joined the firm of Goux and Romasanta in 1968 as an associate, and his hard work and legal skills quickly resulted in his elevation to named partner. For most of the next decade, Anderle practiced water law, family law, and education law at Goux, Romasanta & Anderle.

That changed in 1978, when Barry Cappello left the Santa Barbara city attorney's office and partnered with Messrs.

Continued on page 10

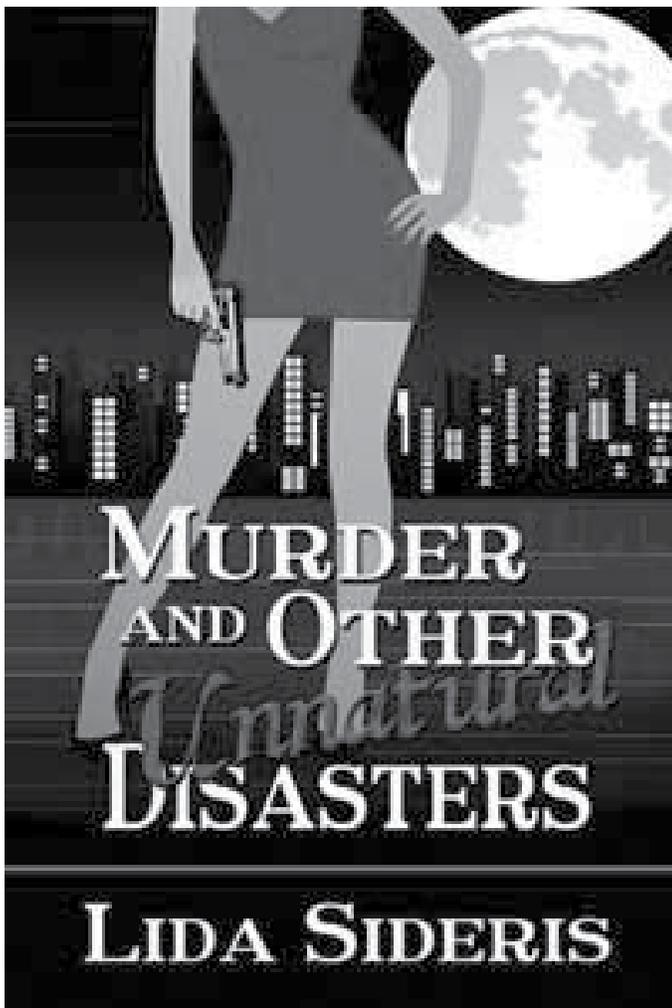
“Murder and Other Unnatural Disasters” by Lida Sideris

REVIEWED BY NAOMI R. DEWEY

Paperback: 332 pages

Publisher: The Wild Rose Press, Inc (September 30, 2015)

I'm willing to bet that almost every lawyer, at some point, aspires to be the next John Grisham, swapping late night law-and-motion efforts for a chance to pen a great American novel. Realistically, however, few of us have the skill and imagination to do so—except, that is, lo-



cal author (and Executive Director of the County Bar) Lida Sideris. And Ms. Sideris hasn't just written a book, she has written a great book: a page-turning, skillfully-authored mystery that places her in the company of Sue Grafton and Janet Evanovich as a champion of feisty female crime-solvers.



Naomi Dewey

Corrie Locke, the heroine of *Murder and Other Unnatural Disasters* is a young associate at an entertainment company, as was, it should be noted, Ms. Sideris.

One wonders how much of this book is autobiographical, but at the same time, readers will hope that it isn't. As Corrie navigates her new job, agilely juggling a slew of handsome admirers and treacherous colleagues, we are quick to learn that her penchant for high heels and borrowed designer duds is matched with a concealed carry license and a terrifyingly accurate ability to throw knifelike weapons. The rest of the time, in case you are wondering, said weapon nestles in the buckle of a favorite belt.

Inheriting her ability to investigate crime from a famous father, Corrie is immediately recognized by those around her as a force to be reckoned with. That doesn't mean she gets an easy ride at her day job. New attorneys reading the book will recognize the hoops jealous co-workers put her through as she drafts contracts and tries to focus on making a good impression as a young lawyer. Deadlines shift, deal points change, but at the same time, there is a killer (or killers) on the loose and dead bodies that need to be examined.

With the diligence of Nancy Drew, Corrie draws together a team of crime fighters, including an especially well thought-out character in the form of an assistant/security guard who quickly tells Corrie she is in her first weeks of online study at a correspondence law school. Two old friends, one a DA and one a college professor, add a touch of *Great Expectations* romance to the mix.

Especially enjoyable were some of the author's descriptions of the women that float in and out of "The Complex" where Corrie works. One woman, adjusting her plunging neckline down and hiking up her skirt to win the affections of Corrie's boss, is described as wearing a "psychedelic print... enough to induce vertigo in a catatonic dog." An-

Continued on page 9

Local Lawyer Lore

BY L. LAWYER

This is a monthly interactive column about local lawyers in which readers are challenged to determine what common ground is shared by those featured in each group photo.

Last month featured fourteen local attorneys and asked what they have in common. Multiple guesses were received; Renee Fairbanks was our winner. (We note that no one came even *close* to correctly guessing the answer to the bonus question- Paula Waldman and Rick Battles each used “body doubles” in both photos.)

The reveal? All have qualified for and completed in the oldest and oft described “Mother of All Marathons”- the Boston Marathon. As a group, they have thirty-seven Boston Marathon (BM) finishes. Michael Desmond is the leader with ten, and half of the group have two or more finishes...so far.

For the uninitiated, the BM was first run in 1897, following the inaugural Olympic marathon in 1896. The BM is considered the oldest, most famous marathon in the world (but don't tell Pheidippides, who had a really bad result in his first/only marathon in Greece.) With its challenging qualification standards (too complicated to describe; if interested, look it up!) and lottery for qualifiers each year, completing the BM is on the bucket list of most serious distance runners.

Each of the lawyer runners in the photo below is wearing all of his or her BM finisher medals. From left to right, below are the names of the runners, the years of their BM finishes and when available, their BM personal best time (which typically is much slower than their career best marathon time, given the size of each year's field-now over 30,000 from all over the world- and the difficulty of the course).

Rick Battles-2011; 3:47

Karen Peabody Boris-2013; 3:44

Katie Vining-2000,2012,2013,2014

John Nelson-2008

Lee Carter-2000; 3:17

Tim Hale-2013,2014-3:18

Michael Desmond-2000 to 2004,2008,2010,2013-2015; 2:57

Arnie Brier-2005,2011,2012; 3:47

Brian O'Connor-2008

Joe Howell-1994,1996,2004,2011; 3:19

Greg Faulkner-2008;3:45

Jennifer Miller-2008,2013,2015;3:46

Tony Davis- 2011; 3:23

Paula Waldman-2010,2011

Have an idea for a future column (i.e. the names and not so obvious shared experience of four or more local attorneys)? Send your suggestion to LocalLawyerLore@gmail.com (and remember to keep it a secret!) Note that those featured in any group photo in this column may have many things in common; the winning answer will be one which identifies the unique experience that *we* have in mind. It is also quite possible that we will have missed other local lawyers with the same experience or accomplishment. If so, our apologies and please let us know; we will try to make amends in a future column. ■



Dewey, *continued from page 7*

other is described as "...a living, breathing, plastic surgery redo with an unnatural love of cross-body bags, but that doesn't make her a killer." The descriptions of male characters are just as colorful, with one security guard being described as having "a bushy unibrow that could house a family of quail."

The great characters don't get in the way of the action, and Corrie gets to solve a couple of humorous side issues along the way (at least one of which had elements of a Scooby-Doo scene for adults). I read a lot of mystery and crime books, and yes, I even watch cartoons if there are kids around, and one of the greatest pleasures of this book, for me, was Ms. Sideris' ability to check all the needed boxes for a good read but never appear derivative. I wholly recommend this book to anyone who enjoys Sue Grafton but is ready for something a little more contemporary, and I'm looking forward to the next one.

Lida Sideris will be signing *Murder and Other Unnatural Disasters* at Chaucer's Bookstore in Santa Barbara on Tuesday, November 24th at 6 pm. Please stop by, have your book signed, enjoy mini sugar jellies, and enter a drawing to have a character in her next book named after you. For more information, visit www.lidasideris.com. ■

Naomi Dewey is President of the Santa Barbara County Bar Association, and a partner at Buynak, Fauver, Archbald and Spray, where she practices Business and Employment law. Naomi always buys books written by friends, but can truthfully say she would still have rated it five out of five, and has already been recommending it to friends and family.

Murder and Other Unnatural Disasters

Excerpt:

I veered out of the parking lot and bounced onto the cavity-ridden dirt road. The mystery car appeared out of nowhere from beneath the tall pines, eclipsed by the darkness. Now it raced away somewhere ahead.

"Why didn't we hear it start?" I asked James.

"It's a hybrid."

"We're in a car chase with a Prius?" A car chase with a Porsche or Ferrari was respectable, but with a battery operated car? All bragging rights vanished.

I shifted into warp speed and surged downhill. Seconds later, we faced the hybrid's rear bumper. The spot for the license plate sat empty.

"He's not getting away," I said.

The hybrid turned and launched up a hill, kicking up pebbles and a dusty haze. It fish-tailed and I nearly nipped it in the rear. I executed a sharp left and ran over something large. And lumpy.

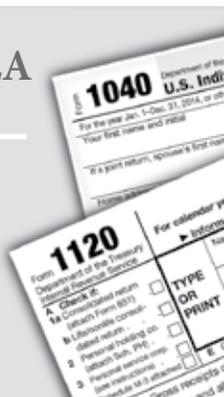
"Stop," James said.

I skidded to a halt, a cloud of dirt trapped in my headlights. The Prius escaped through an open gate and onto La Paz. My eyes cut to the rearview mirror. My tail-lights illuminated the road behind us in an eerie red glow. As I surveyed the scene, not a trace of saliva remained in my mouth.

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Griffith, *continued from page 6*

Goux and Romasanta to form the firm of Goux, Romasanta & Cappello. Judge Anderle opted to strike out on his own at that point, as the new firm was expected to grow to some 20-25 lawyers, and he preferred a smaller practice. Anderle's decision to fly solo proved to be a sound one, as his practice carried on successfully for the next twenty years, until he was appointed to the Santa Barbara County Superior Court in 1997, at the age of 62, to replace the retiring Judge Ronald C. Stevens. For the last 18 years Judge Anderle has been anchoring the Santa Barbara court, handling a large and varied caseload that includes civil, probate and family law cases, as well as the occasional criminal matter. He has presided over some of Santa Barbara's most challenging and significant cases, including the Yoni Gottesman wrongful death action and the environmental lawsuit against the La Entrada development project. He currently serves as the Presiding Judge of the Superior Court Appellate Department, which hears appeals from non-felony criminal cases, small claims, and limited civil cases, and has been the court's designated CEQA (California Environmental Quality Act) judge since 1998.

On the bench, Judge Anderle is widely known for his work ethic, his attention to detail, his scrupulous fairness and his exemplary judicial demeanor, which includes more than occasional flashes of wit. Even losing lawyers and litigants in Judge Anderle's courtroom never doubt that their arguments and evidence were carefully considered, and they know that they have been treated with the utmost courtesy and respect. One lawyer who contributed an unsolicited review of Judge Anderle to an anonymous judge-rating website earlier this year was highly impressed:

Easily THE MOST thorough Judge in all of Santa Barbara County. He is a RARE gem [sic], old school Judge who actually has the courage to look everyone who comes before him in his courtroom in the eyes and actually rules from the bench. He doesn't take the "easy" way out by taking things under submission and send his ruling out at a later date so as to not upset anyone. He is strong in his rulings and stands firmly behind each and every one of them....

Anderle attributes his obvious enthusiasm for being a judge in part to (1) the intellectual challenge posed by the endless stream of new cases that involve difficult and constantly changing facts, and (2) the opportunity to try to achieve justice for both parties, rather than being locked into the role of an advocate who is expected to demand only what is advantageous for his client.

In addition to the respect and affection he commands as a jurist, Judge Anderle is legendary within Santa Barbara

legal circles for his tireless efforts to give back to both the legal community and the community at large, as well as to promote access to justice for under-represented populations, in part through his support for the Santa Barbara County Legal Aid Foundation. He first became involved with Legal Aid around 1980, was a member of its Board of Directors from 1992-1994, and served as President from 1994 to 1998. His dedication to Legal Aid and its mission has been fierce and unwavering. During his years on the Board, he sometimes visited the partners in the larger local firms to implore them to devote some of their substantial financial and legal resources to Legal Aid. In 1998, Legal Aid expressed its appreciation for Judge Anderle's long and invaluable support by naming their building at Garden and Canon Perdido Streets the "Thomas P. Anderle Justice Center." In 2007, Judge Anderle received Legal Aid's inaugural "Richard Goldman Hero of Justice" award. Judge Anderle's singular contributions to Legal Aid were again recognized on the occasion of Legal Aid's 50th anniversary in 2009, with fondness and some awe.

While his ascension to the bench marked the end of his formal association with Legal Aid, Judge Anderle remains a strong supporter, and continues to contribute to the Santa Barbara legal community in many other ways, including as a long-time Master of the Bench with the Inns of Court. He regularly participates in MCLE presentations, conferences, judges' panels and similar events sponsored by SBCBA and other organizations. Judge Anderle has also served as President of the SBCBA Board of Directors and the Santa Barbara County Board of Education. To no one's surprise, he received SBCBA's "Pro Bono Award" in 1995.

Judge and June Anderle are the proud parents of two sons, Scott and John, and are grandparents to Nolan, Celeste, Trenton and Amanda. At 80 years young, Judge Anderle still plays tennis several times a week, regularly walks to work from his home in Mission Canyon, and reads voraciously. As if that weren't enough, he and June are skilled and enthusiastic dancers, and recently traveled to Argentina to take tango lessons!

While it is impossible to capture all of a person's life or career in a few short pages, particularly a life lived as fully and as well as Judge Anderle's, it should now be abundantly clear why the Santa Barbara County Bar Association is excited to have the opportunity to present its inaugural "Thomas P. Anderle Award for Judicial Excellence" to its namesake, Superior Court Judge Thomas P. Anderle, at the SBCBA Annual Dinner at the Santa Barbara County Courthouse on Friday, November 13, 2015. Tickets are expected to sell out, so get yours now! ■



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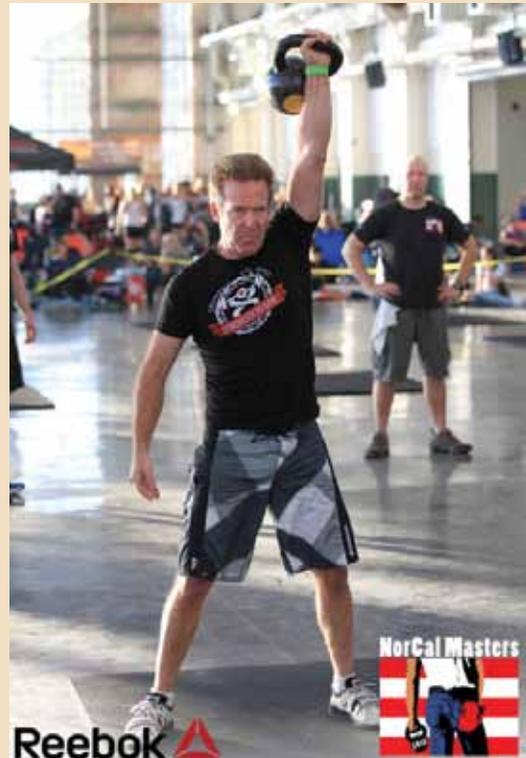
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Attorneys and Their Hobbies



Thank you to James Cordes and Marlea Jarrette, who responded to our call for photographs of attorneys pursuing their hobbies. James is a devoted Crossfit competitor and sent in a picture of himself at the NorCal Masters, an annual two-day competition for Masters Athletes, with age divisions of 40-44, 45-49, 50-54, 55-59, and 60+ in both genders. Marlea is an avid and talented artist and submitted a photo of herself painting. ■



Get to Know... Betty L. Jeppesen

Betty L. Jeppesen of the Law Offices of John J. Thyne III is the 2015 President of Santa Barbara Women Lawyers, a Past President of the Santa Barbara County Bar Association, Santa Barbara County Bar Foundation and Santa Barbara Women Lawyers Foundation. She has been Chair of SBCBA's Delegation to the Conference of California Bar Associations for most of the past 30 years for which she received an award of excellence in 2012. In 2006, she received the SBWL Deborah Talmage Attorney of the Year Award. Betty has practiced in Santa Barbara for 31 years.



8. When and where were you happiest?

1995 in Spoettrup Castle in Denmark

9. Which talent would you most like to have?

The ability to remember 1,000 names of people, their spouses, their children, their pets

10. What do you consider your greatest achievement?

President of Santa Barbara County Bar Association 2003 and having Chief Justice Ronald George as the guest speaker at my Bar dinner

1. What is your idea of perfect happiness?

Childhood Christmases in Denmark at my Uncle's house

2. What is your greatest fear?

Something bad happening to those I love and powerlessness to do anything about it

3. Which living person do you most admire?

Archbishop Desmond Tutu

4. What is your greatest extravagance?

Shoes

5. What is your current state of mind?

Decline to state

6. Which words or phrases do you most overuse?

Cannot think of any

7. What or who is the greatest love of your life?

My parrots Giuseppe and Luigi

11. Where would you most like to live?

Santa Barbara

12. What is your most treasured possession?

An etching and watercolor of the Santa Barbara Courthouse that my father drew and painted for me

13. What is your most marked characteristic?

Thoroughness, attention to detail

14. What do you most value in your friends?

Love and understanding, caring

15. Who are your favorite writers?

Agatha Christie and Sigrid Undset

16. Who is your hero of fiction?

Kristin Lavransdatter

17. Which historical figure do you most identify with?

Continued on page 28

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Rethinking the Basis for the Fourth Amendment

BY ROBERT SANGER¹

During a recent academic discussion, a question came up about the doctrine of *Georgia v. Randolph*², a 2006 United States Supreme Court case where the court held that a warrantless search was unreasonable as to a defendant who was physically present and refused to consent to a search of a residence, despite the fact that his estranged ex-wife had consented. This case is distinguished from *United States v. Matlock*³, where the Court held that consent of an absent, non-consenting occupant can be overridden by the consent of an occupant with apparent common authority over the premises.

More recently, the Court decided *Fernandez v. California* and, in the majority opinion, acknowledged that it was basing the doctrine on “widely shared social expectations” and “customary social usage” rather than a “formalistic rule.”⁴ This seems to be code for a concession to convenience for law enforcement as opposed to the inconvenience of a principled rule. If so, maybe this convenience versus inconvenience rationale needs to be re-examined conceptually.

Justice Stevens, in a concurrence in *Randolph*, and Justice Ginsburg, in a dissent in *Fernandez*, sought to go back to more fundamental questions relating to the significance of the Fourth Amendment right to be secure in one’s residence. Even so, it seemed that something may have been missing from the analysis. In this month’s *Criminal Justice* column we will further the analysis by analogy to a safe deposit box.

The Fourth Amendment, Privacy and the Exclusionary Rule

First, the Fourth Amendment right against search and seizure of a person’s house without a warrant based on probable cause is a right treasured by most Americans and certainly has support throughout the political spectrum. It is generally agreed that, although the word “privacy” is not used in the Constitution or the Bill of Rights,⁵ that privacy is in the penumbra of the Bill of Rights per *Griswold v. Connecticut*⁶ and that privacy is at the core of the Fourth Amendment as it applies to search and seizure per *Katz v. United States*.⁷

The Court in *Mapp v. Ohio*--extending the exclusionary rule to the states through the Fourteenth Amendment, and excluding evidence seized as a result of a violation of a person’s Fourth Amendment rights--specifically recognized the significance of the right of privacy embodied in the Fourth Amendment.⁸ The Court based its extension of the exclusionary rule on two philosophical premises.

First, it is to preserve the integrity of the courts and, second, it is to deter illegal police activity.

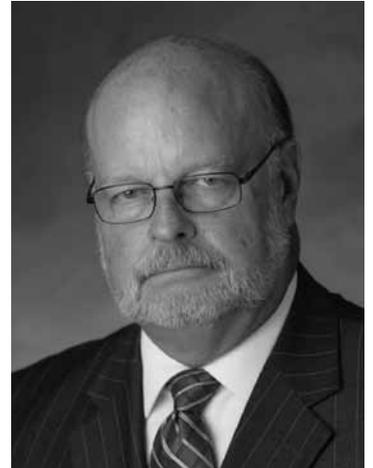
As applied to the search of a residence or other property that is protected, a person has standing to object to the search if she or he has a legitimate expectation of privacy in the area searched, often referred to as LEPAS. If, under a conceptual analysis of the Constitution, privacy (expressed in LEPAS) is the primary concern of the rule, the implementation of that rule by suppression of evidence (whether for integrity of the courts or deterrence of illegal police activity) is simply an enforcement mechanism.

In other words, logically, the enforcement mechanism--suppression of evidence--cannot drive the inquiry as to what is an illegal search. The inquiry as to what is a violation of privacy has to be made independently of what is to be suppressed and the consequences of suppression. Put another way, to argue that something should or should not be suppressed can only follow a determination of whether a person’s privacy rights are violated.

The United States v. Matlock and Georgia v. Randolph Issue

Does a co-occupant’s (or someone with privacy rights to the premises) consent to search, without the consent of an absent party with LEPAS, justify a warrantless search and defeat a motion to suppress evidence by the absent party? The United States Supreme Court answered this in the affirmative with some caveats but made clear that the rule does not apply where the second party is present and objects. In that case, the evidence could be suppressed if it were offered against the second person.

While this may be a practical sounding conclusion, it may not withstand conceptual analysis. In order to make the situation clearer, let us take an example of a safe deposit box



Robert Sanger

that requires two customer key holders to simultaneously use their keys to open the box. We can assume that each key holder has LEPAS in the contents of the box. Under the Supreme Court's rulings regarding residences, if only one key holder turns over the key, the police would be permitted to drill out the second lock and, if they did, they could use the contents of the box as evidence against both the first and the second key holder.

If the primary concern of the Fourth Amendment is LEPAS, then it is arguable that the police should not be allowed to drill the second lock without consent. If we acknowledge the privacy rights of the second individual under the Fourth Amendment, drilling the second lock would require a warrant supported by probable cause.

To reach a different result, some other rationale has to be used. One thought is that suppression under the exclusionary rule is intended to deter unlawful police activity. The argument goes that, if one person consents, it does not deter unlawful police behavior to suppress the evidence as to the second key holder. The courts have taken the approach of arbitrarily deeming one sequence of events to be legal and another illegal, from which it follows whether or not evidence will be suppressed. Applying the analysis of the Supreme Court in the residence cases, *U.S. v. Matlock* would allow one key holder to consent and the police could search without locating and obtaining consent from other parties. *Georgia v. Randolph* (confirmed in *Fernandez v. California*) clarifies the rule to say that, if the other key holder is present and objects, the search is illegal. So, if the analogy holds for safe deposit boxes, it is legal to search on the basis of one key holder's provision of the key, the second key holder's lock can be drilled, and there is no suppression of evidence. Of course, that really involves the tautological reasoning that having deemed that one party's consent is legal, the rights of the second person are irrelevant and suppression does not follow.

If LEPAS really is the primary philosophical concern of the right against warrantless search and seizure, it is more consistent to require all key holders to consensually turn over their keys or require the police to get a warrant before drilling the lock. Certainly, there could be implied consent and agency arguments but, while they could be debated, the weight would be on LEPAS and, it would seem, the better argument is that the privacy right would survive just about everything but a power of attorney or some other tangible evidence that the absent key holder gave the other her or his proxy.

While the safe deposit box analogy may make a clearer example, the rights against a warrantless search of a person's home would seem to involve even more important privacy

rights than a safe deposit box. In other words, the historic commitment to the principle of forbidding warrantless intrusion into the home is at least as strong, if not stronger, than the protection of a safe deposit box. Hence, the majority analysis in accepting less protection for an individual's rights seems hard to justify based on this philosophical understanding of the Fourth Amendment.

The Court's interpretation in the three cases under consideration is less based on a philosophical justification than on a practical excuse. Admittedly, there are practical problems when applying the safe deposit box analogy to a residence. It may be difficult to determine how many people, and who, actually has LEPAS in residential premises. Even a check of the title or lease agreement may not turn up all those permanent guests who might have LEPAS. Therefore, police officers could not be sure who really had LEPAS and whether or not they have consent from all necessary parties.

On the other hand, if LEPAS really drives the issue, maybe the inconvenient conclusion is that a search cannot take place without full consent of all of the people with LEPAS. If the police use diligence to find out who has LEPAS, they probably will figure it out in most cases. However, under this theory, if they get it wrong, the evidence would be suppressed as to all people who turn out to have LEPAS. This sounds radical but really it is a consistent application of the Fourth Amendment – and the rights of privacy as interpreted by *Katz* and *Mapp*.

There is a presumption that a person's residence cannot be searched unless with a warrant based on probable cause. On a practical level, there is not as much of a downside as there used to be. Officers can secure the premises from the outside and obtain a telephonic warrant within minutes or hours. If they really have probable cause, they will still be able to search.

There may be a need to rethink the *Matlock* rule. If we value the right not to have our houses searched without a warrant based on probable cause and this is an important right of privacy, there should be a very heavy showing to override this right. That heavy showing has to be made to a neutral magistrate upon a showing of probable cause unless there are true exigent circumstances like the hot pursuit of a fleeing felon, or full consent of the occupants who have LEPAS.

Conclusion

The Supreme Court, in *Matlock*, allowed a girlfriend who may or may not have occupied the defendant's room, to consent. In *Rudolph*, the police originally used the consent

Continued on page 20

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Motions



Herb Fox has been appointed to the Appellate Courts Committee of the California State Bar. The Appellate Courts Committee reviews proposed changes to the rules of court affecting appellate courts; reviews, comments and initiates proposed legislation affecting appellate court operation and appellate practice; and is an Approved Legal Specialization Provider in the area of appellate law and plans and participates in the presentation of MCLE programs at the State Bar's Annual Meeting.

Herb, a former research attorney for the Court of Appeal, has been certified as an appellate law specialist since 1996. He handles civil appeals and writes throughout the state from his offices in Century City and Santa Barbara.

Herb, a former research attorney for the Court of Appeal, has been certified as an appellate law specialist since 1996. He handles civil appeals and writes throughout the state from his offices in Century City and Santa Barbara.

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., Santa Barbara Lawyer 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.

Keller Rohrback's Santa Barbara office welcomes **Alison Chase**, a member of the firm's Complex Litigation Group. Alison's litigation experience includes white collar criminal defense, complex commercial litigation, and international arbitration.



"I'm delighted to be a member of this great community and a part of Keller Rohrback's growing office here in Santa Barbara," Chase said.

Prior to joining the firm, Alison practiced with Irell & Manella in Los Angeles and O'Melveny & Myers in San Francisco. She also served as a clerk to the Honorable J. Clifford Wallace of the U.S. Court of Appeals, Ninth Circuit and the Honorable Valerie Baker Fairbank, U.S. District Judge for the Central District of California. She graduated from Yale Law School.

Keller Rohrback has offices in Seattle, Santa Barbara, Phoenix, and New York. Attorneys in the firm's Santa Barbara office play central roles in high-profile cases in California, such as litigation against Sony Pictures Entertainment on behalf of employees whose personal information was exposed in last year's data breach, and the ongoing case against Plains All American Pipeline, LP related to the oil spill at Refugio State Beach.

Alison can be reached directly at achase@kellerrohrback.com or (805) 456-1966.

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Sanger, continued from page 17

of an estranged ex-wife (although the Court reversed on the fact that the defendant was there and objected). Those facts should raise a concern or

two. But so should the basic claim that someone who is not there and does not consent somehow can have their LEPAS rights waived by a third party. Justice Stevens, dissenting in *Randolph*, and a three Justice dissent in

Fernandez, raised the fundamental importance of the warrant requirement of the Fourth Amendment. Perhaps there needs to be a deeper appeal to the underlying concept of privacy and analogies, like that of the two key safe deposit box, may be instructive. If a person has a right to LEPAS, especially in his or her home, there is a good argument that it should be enforced unless personally waived. ■

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).



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ENDNOTES

- 1 ©Robert M. Sanger.
- 2 *Georgia v. Randolph*, 547 U.S. 103, 126 S.Ct. 1515, 164 L.Ed.2d 208 (2005).
- 3 *United States v. Matlock*, 415 U.S. 164, 170, 94 S.Ct. 988, 39 L.Ed.2d 242 (1973)
- 4 *Fernandez v. California*, __U.S. __, 134 S.Ct. 1126, 188 L.Ed.2d 25 (2014)
- 5 A right of privacy is expressly provided for in Article I, Section 1 of the California Constitution. Due to Proposition 8, passed in 1982, that right does not affect the admissibility of evidence in criminal cases so the federal Constitution, as interpreted by the United States Supreme Court, controls. *In re Lance W.*, 37 Cal.3d 873 (1985) However, California does have independent state grounds for privacy rights enforced civilly. See, *Hill v. National Collegiate Athletic Assn*, 7 Cal4th 1 (1994).
- 6 381 US 479, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965).
- 7 389 US 347, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967).
- 8 *Mapp v. Ohio*, 367 US 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (1961).

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Verdicts & Decisions

Introduction to Related Cases

The two cases reported below are related cases that were tried together in April and May of 2015. The following is a brief overview of the parties, properties and cases; additional details for each case are reported below.

Glen Nelson, Trustee, is the owner of 810 acres of rural real property located in Santa Maria, California. Prior to August of 2009, Nelson's predecessor trustee was contemplating a joint venture with Arthur Ober and Olaf Lange with regard to the potential development and sale of Nelson's property. This anticipated joint venture, however, never came to fruition. In August of 2009, Nelson became trustee. Nelson and Lange attempted to continue the efforts to develop and sell Nelson's property, but those efforts were ultimately abandoned.

Eric Bjorklund and Kelsey O'Reilly are joint-tenant owners of a 100-acre landlocked parcel of rural real property directly to the south of Nelson's property. A public road lies to the north of Nelson's property. A private access road branches off of the public road and runs in a southern direction through Nelson's property and into the Bjorklund/O'Reilly property (the "Access Road"). The Access Road is the sole means for vehicular access to the Bjorklund/O'Reilly property.

In early 2009, Lange was looking for potential buyers for Nelson's property. Bjorklund was interested in purchasing a 220-acre parcel of Nelson's property that adjoins his and O'Reilly's 100-acre parcel. Lange and Bjorklund entered an agreement in which Bjorklund agreed to purchase, and Lange agreed to sell, the 220-acre parcel. Bjorklund, believing that he would own the 220-acre parcel, cut a new road, and removed oak trees, to provide access to a remote area of that parcel (the "New Road"). Whether Nelson knew of and consented to the sales agreement and the New Road was hotly disputed at Trial.

In mid-2009, the County tagged the New Road as unpermitted. Nelson, as the property owner, was served with Notice of Violation from the County. Shortly thereafter Nelson sued Bjorklund, Lange, Ober and O'Reilly for negligence, trespass and conspiracy to commit trespass.

While the above trespass action was pending, Nelson leased the affected areas to Bjorklund. In early 2011, Bjorklund declined to renew the lease. Soon after, Nelson put up two roadblocks. One blocked the New Road. The second blocked the Access Road, thus preventing access to the landlocked Bjorklund/O'Reilly property to the south. O'Reilly sent repeated requests to Nelson to remove the roadblock on the Access Road, explaining his easement rights, but Nelson did not remove the roadblock and claimed the easement rights did not exist. O'Reilly sued Nelson to establish his easement, and on other grounds.

Glen Nelson, Trustee, etc. v. Arthur Ober et al.

SANTA BARBARA SUPERIOR COURT, COOK DIVISION

CASE NUMBER:	1319393 (related to case no. 1393857)
TYPE OF CASE:	Negligence, Trespass, Trespass to Timber and Conspiracy to Commit Trespass
TYPE OF PROCEEDING:	Court Trial (Phase 1); Jury Trial (Phase 2)
JUDGE:	Hon. Jed Beebe
LENGTH OF TRIAL:	April 6, 2015 to April 15, 2015 (Court Trial); April 16, 2015 to May 14, 2015 (Jury Trial)

LENGTH OF DELIBERATIONS: 5 days between May 14, 2015 and May 27, 2015
 DATE OF VERDICT OR DECISION: May 27, 2015
 PLAINTIFF: Glen Nelson, Trustee of the JET Investment Trust, dated 11/1/1984
 PLAINTIFF'S COUNSEL: Roy E. Ogden of Ogden & Fricks LLP
 DEFENDANTS: Arthur Ober, Olaf Lange, Eric Bjorklund and Kelsey O'Reilly
 DEFENDANT'S COUNSEL: *For Arthur Ober:* Eric Woosley of the Law Offices of Woosley & Porter; *For Kelsey O'Reilly:* Patrick McCarthy and Briana E. McCarthy of McCarthy & Kroes; Olaf Lange and Eric Bjorklund each appeared in *propia persona*

FACTS AND CONTENTIONS: In this action, Nelson alleged that Bjorklund, Lange and Ober conspired to allow Bjorklund to enter Plaintiff's land, grade a road, and destroy 138 Oak Trees.

Prior to 2010, Nelson's predecessor trustee, together with Arthur Ober and Olaf Lange, were pursuing the potential development or sale of a portion of Nelson's property. After spending substantial funds on surveys and processing of Certificates of Compliance, and around the time the trustee changed, Ober exited the venture. Lange alleged that he and Nelson continued the venture, and that his services for the venture included finding buyers for the property. Lange approached Bjorklund, who was interested in acquiring additional property. They entered into a handwritten agreement for Bjorklund to buy the property once the Certificates of Compliance were complete and the property was saleable; in the meantime Lange authorized Bjorklund to use the property.

Bjorklund contended that at the time he constructed the New Road he believed he owned the property or, at a minimum, had a right to use it in the ways he did as a result of the agreement with Lange. He also disputed the number of oak trees that were cut down. Lange alleged he was authorized to enter into the agreement with Bjorklund and that Nelson was aware of and consented to the deal. Nelson denied any knowledge of the deal, and maintained that Bjorklund did not have a right to cut the road or trees. Nelson also alleged that Ober remained a joint venture partner of Lange. Ober argued he previously had exited the venture, and was not aware of the road being built or the trees being cut. Nelson alleged O'Reilly left some debris on Nelson's property.

SUMMARY OF CLAIMED DAMAGES: Nelson sought compensatory damages for the remediation of the road and replacement of the 138 cut-down Oak Trees as well as treble damages and attorneys' fees. Nelson's prayer was \$1,200,000.00.

RESULT: This case was tried in two phases: court trial followed by a jury trial. Various issues were decided, various causes of action were dismissed or dropped, and various cross-complaints were dismissed or dropped as a result of the court trial. The case went to jury trial on Plaintiff's claims of Negligence and Trespass for the damage caused by the road and destruction of the oak trees. Defendant Bjorklund was held liable to Nelson in the amount of \$250,000. Defendants Ober, Lange and O'Reilly were found to have no liability to Nelson.

Kelsey O'Reilly v. Glen Nelson, Trustee of the JET Investment Trust, dated 11/1/1984

SANTA BARBARA SUPERIOR COURT, COOK DIVISION

CASE NUMBER: 1393857 (related to case no. 1319393)
 TYPE OF CASE: Real Property: Quiet Title, Easement; Nuisance; Interference with Prospective Economic Advantage
 TYPE OF PROCEEDING: Court Trial (Phase 1), Jury Trial (Phases 2 and 3)
 JUDGE: Hon. Jed Beebe
 LENGTH OF TRIAL: April 6, 2015 to April 15, 2015 (Court Trial); April 16, 2015 to May 14, 2015 (Jury Trial); May 28, 2015 (Punitive Damages)
 LENGTH OF DELIBERATIONS: 6 days between May 14, 2015 and May 28, 2015

Continued on page 26

2016 Bench and Bar Conference
January 2016 at the Garden Street Academy

Schedule (See January 2016 SBL issue for final timing and program information.)

7:45 AM – 8:30 AM	Registration and Breakfast.		
8:30 AM to 9:15 AM	State of the Bar Address David J. Pasternak, President, the State Bar of California		
Breakout Session A 9:20 AM to 10:15 AM 1 hour MCLE	[1 hr. Substance Abuse] Dr. Leslie Lundt, County of Santa Barbara Alcohol, Drug, & Mental Health Services	“When the Referee Dies” Estate Planning Robert W. Olson, Jr., APC	Immigration and Employment: An Overview Naomi Dewey, Buynak, Fauver, Archbald & Spray LLP
10:15 AM to 10:25 AM	Legal Services & Technology Exhibits		
10:25 AM to 11:20 AM 1 hour MCLE	Forum of Judges: Panel TBD		
Breakout Session B 11:25 AM to 12:20 PM 1 hour MCLE	[1 hr. Legal Ethics] Ethics in Mediation Hon. Frank J. Ochoa (Ret.) and Hon. George Eskin (Ret.)	Bringing Clients in the Door Jennifer Goddard Combs, The Goddard Company and R.W. Ziegler, Jr., Esq., Mesa Consulting LLC	Voir Dire David Cannon, Ph.D., Trial Consultant, Trial Innovations
12:20 PM to 12:30 PM	Pre-Forum Luncheon Buffet		
12:30 PM to 2:00 PM 1.5 hours MCLE	Luncheon Debate: The State of Immigration Law and Attempts to Reform and Enforce It Jennifer Lee Koh, Professor of Law and Director of Immigration Clinic, Western State College of Law and Ric Oberlink, Former Executive Director of Californians for Population Stabilization		
2:00 PM to 2:10 PM	Legal Services & Technology Exhibits		
Breakout Session C 2:10 PM to 3:05 PM 1 hour MCLE	[1 hr. Elimination of Bias] Elimination of Bias Edwina Barvosa, Ph.D., Associate Professor of Applied Social and Political Theory, University of CA, Santa Barbara	Update on Copyright and Trademark Law Michael D. Harris, SoCal IP Law Group LLP	E-Filing Hon. James Herman, Santa Barbara County Superior Court Presiding Judge
3:15 PM to 4:15 PM 1 hour MCLE	Keynote: Sergio Garcia, The Law Offices of Sergio C. Garcia, First Undocumented Lawyer in the United States		

BENCH & BAR CONFERENCE



FEATURING

THE STATE OF IMMIGRATION LAW AND EFFORTS TO
REFORM AND ENFORCE IT

A DEBATE BETWEEN
JENNIFER KOH, WESTERN STATE COLLEGE OF LAW
PROFESSOR AND
RIC OBERLINK, FORMER EXECUTIVE DIRECTOR OF
CALIFORNIANS FOR POPULATION STABILIZATION

6.5 HOURS OF MCLE, INCLUDING MANDATORY SUBJECT
UNITS

WHEN: SATURDAY, 1/23/2016

WHERE: THE GARDEN STREET ACADEMY

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KEYNOTE ADDRESS BY
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Verdicts & Decisions, *continued from page 23*

DATE OF VERDICT OR DECISION: May 27, 2015 for compensatory damages, and May 28, 2015 for the punitive damages award
PLAINTIFF: Kelsey O'Reilly
PLAINTIFF'S COUNSEL: Patrick McCarthy and Briana E. McCarthy of McCarthy & Kroes
DEFENDANT: Glen Nelson, Trustee of the JET Investment Trust, dated 11/1/1984
DEFENDANT'S COUNSEL: Roy E. Ogden of Ogden & Fricks LLP
COMPLAINANT-IN-INTERVENTION: Eric Bjorklund, in *propria persona*

FACTS AND CONTENTIONS: In this case, O'Reilly sought to establish an easement appurtenant to his 100-acre landlocked dominant tenement for ingress and egress over the existing Access Road across Nelson's servient tenement, and also sought damages for nuisance and interference with prospective economic advantage.

O'Reilly's Facts and Contentions:

O'Reilly pursued a cause of action against Nelson to quiet title to the easement based on five independent grounds. First, O'Reilly alleged that the Official Records of the Santa Barbara County Recorder's Office established an express, deeded easement. O'Reilly, with his Land Title Expert, John Hebda, presented in detail that the deeds comprising the chain of title to O'Reilly's land established a 1974 express grant of an appurtenant easement for ingress and egress over the existing Access Road across Nelson's property in favor of Plaintiff's dominant tenement. Second, O'Reilly contended he and his predecessors-in-interest had exclusively used the Access Road across Nelson's property to access their landlocked parcel since at least 1976. O'Reilly presented evidence of a prescriptive easement based on the 30-plus years of open, notorious, continuous, and hostile use of the easement by O'Reilly and his predecessors-in-interest. Third, O'Reilly presented evidence to support his contention that he had an implied easement resulting from severance of his parcel from Nelson's land by a common owner, and the reasonable necessity of use of the easement road to access O'Reilly's severed parcel. Fourth, O'Reilly argued he had an equitable easement based on the doctrine of relative hardships. And fifth, O'Reilly argued his landlocked parcel has an easement by necessity.

O'Reilly alleged that Nelson blockaded the easement road to deny him access to, and use and enjoyment of, his property, and to sabotage the sale of O'Reilly's land to prospective purchasers. O'Reilly initially brought this action against all property owners over whose land the existing Access Road to his landlocked parcel ran. None of the other property owners contested his easement rights, so Nelson, as Trustee, was the only defendant at trial.

O'Reilly's claim against Nelson for Interference with Prospective Economic Advantage was based upon Nelson's unreasonable interference with O'Reilly attempts to sell his 100-acre parcel in early 2011 at a reasonable profit. O'Reilly presented evidence that established: Nelson knew of O'Reilly's intention to sell O'Reilly's land; Nelson met the prospective purchasers; Nelson purposefully interrupted a viewing of O'Reilly's property to pitch the lease of a portion of Nelson's 810-acres to the prospective purchaser; and Nelson made open and overt threats to the prospective purchaser that Nelson would not permit them to access the O'Reilly property over the easement road unless they paid him for access and, if they did not, he would "claw back" the O'Reilly property to satisfy the judgment against him in the related lawsuit described above.

O'Reilly also presented evidence that Nelson acted with malice, oppression or fraud when he blockaded the easement and sabotaged the sale of O'Reilly's land. Nelson's own statements established that he felt he had the right to take the law into his own hands by obstructing the easement to deny O'Reilly access to his land. O'Reilly demonstrated that Nelson had erected the barricade across the easement road twice, both times after he had threatened to do so if O'Reilly and his joint-tenant Bjorklund refused to pay Nelson. Additionally, O'Reilly's evidence established that Nelson knew that O'Reilly's family member was living on the property at the time that Nelson erected the roadblock and, as a result of Nelson's refusal to remove the blockade, the family member was unable to get groceries and necessities of life and forced to vacate the property.

Nelson's Facts and Contentions:

Nelson asserted that he was within his right to blockade the easement based on the opinion of a local land surveyor that Nelson's land was not burdened by an easement appurtenant in favor of O'Reilly's land. Additionally, Nelson contended

that a quitclaim deed terminated the authority of the grantor of the deeded easement to O'Reilly's predecessor.

With respect to the anticipated sale of O'Reilly's property, Nelson alleged that he did not interfere with O'Reilly's plan to sell his land because he was unaware that O'Reilly was attempting to sell his land and, even if he was, there had been no sales agreements, escrow, or exchange of money between the prospective purchaser and O'Reilly.

Bjorklund's Contentions:

Bjorklund was added as a nominal defendant and, as a self-represented litigant, pursued his Complaint-In-Intervention against Nelson for causes of action in Trespass, Nuisance, Emotional Distress and Tortious Interference with Contract. Bjorklund's claims for Emotional Distress and Tortious Interference with Contract were dismissed by the Court prior to closing arguments. Bjorklund contended that Nelson trespassed on his easement by erecting the roadblock, and that the roadblock constituted a nuisance for the same reasons it was to O'Reilly.

SUMMARY OF CLAIMED DAMAGES: O'Reilly sought \$100,000 in damages, based on the expert opinion of appraiser Michael N. Arnold as to the value of O'Reilly's land and the monetary value of loss of use and enjoyment resulting from Nelson's nuisance (barricading the easement road). Mr. Arnold's testimony established that O'Reilly's loss of use and enjoyment of his land for the four-years that Nelson had maintained the roadblock amounted to roughly one-third of the property value.

O'Reilly also alleged damages of loss of profit resulting from Nelson's interference with the sale of the property. The sale of the land would have resulted in approximately a \$100,000 profit to O'Reilly and Bjorklund.

O'Reilly sought punitive damages against Nelson in an amount sufficient to punish Nelson for taking the law into his own hands for the express purpose of intentionally denying his neighboring landowners the use and enjoyment of their real property continuously for four years; and in conscious disregard of O'Reilly and Bjorklund's right to access, use, and enjoy their land.

RESULT: This case was tried in three phases: Court Trial, Jury Trial, and Defendant's financial condition for Punitive Damages.

Phase 1: The court found, as a matter of law, that O'Reilly's land had an easement appurtenant for ingress and egress over and across the existing roads on Nelson's property by way of the 1972 Declaration of Easements and the 1974 Grant of Easement to O'Reilly's predecessor-in-interest. The compelling expert testimony of Plaintiff's Land Title Expert, John Hebda, was imperative in providing the Court with a comprehensive understanding of the chain-of-title and the history of the title documents, the circumstances surrounding recordation of the documents, the corroborating facts that support and confirm the most accurate interpretation of the documents, the grounds upon which to infer the intentions of the parties to the deeds at the time they were recorded, and the force and effect of the title documents.

Phase 2: The Jury reached the following Special Verdicts:

- The Jury found that Defendant Glen Nelson, Trustee, is liable to Kelsey O'Reilly for private nuisance. The jury awarded Plaintiff Kelsey O'Reilly \$65,000 for past economic damages and \$18,000 for past non-economic damages.
- The Jury found that Defendant Glen Nelson, Trustee, is liable to Kelsey O'Reilly for negligent interference with prospective economic advantage. The jury awarded Mr. O'Reilly \$60,000 in lost profits.
- The Jury found that Defendant Glen Nelson, Trustee, is liable to Complainant-In-Intervention, Eric Bjorklund, for private nuisance. The jury awarded Mr. Bjorklund \$60,000 in past economic damages and \$18,000 for past non-economic damages.
- The Jury found that Defendant Glen Nelson, Trustee, is liable to Eric Bjorklund for trespass, and awarded Mr. Bjorklund compensatory damages in the amount of \$10,000.
- The Jury found that Defendant Glen Nelson, Trustee, acted with malice, oppression or fraud in blockading the road to Plaintiff Kelsey O'Reilly's and Complainant-In-Intervention Eric Bjorklund's jointly-owned 100 acre parcel of land.

Phase 3: The Jury awarded \$96,000.00 in punitive damages against Glen Nelson, Trustee (\$48,000 each to O'Reilly and Bjorklund).

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Place:

Santa Barbara College of Law

MCLE:

MCLE optional credit (pending) of one unit for each session.

Price:

To keep costs down and to encourage all practitioners to attend, no lunch will be provided. If you opt for credit, the cost will be \$10/session.

Questions?

Please contact Maureen Grattan: 805965-2288x103/
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Legal Community

Jeppesen, continued from page 14

Clara Shortridge Foltz

18. Who are your heroes in real life?

Successful people who achieved their success without stepping on others

19. What is it that you most dislike?

Mean or cruel people

20. What is your motto?

There is always a solution ■



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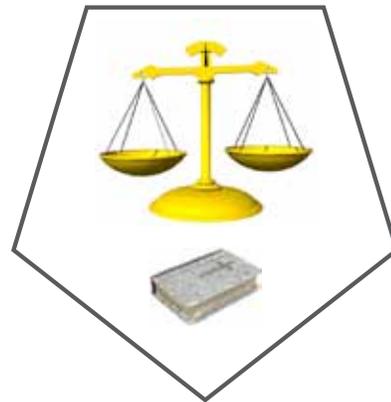
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