

# *Santa Barbara* Lawyer

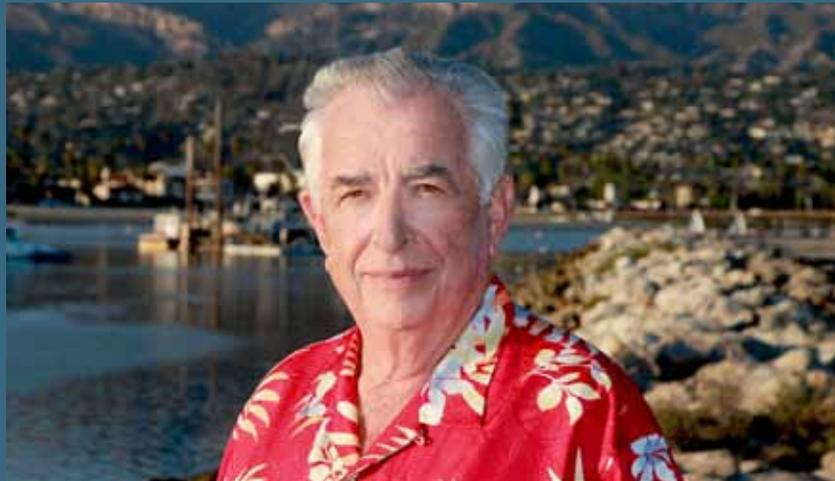
Official Publication of the Santa Barbara County Bar Association  
October 2015 • Issue 517





# KEITH C. BERRY

YEARS OF EXPERIENCE AND LOCAL EXPERTISE IN THE SOUTH COAST SANTA BARBARA REAL ESTATE MARKET



**WE KNOW MORE, TO GET YOU MORE!**

Up-to-the moment market knowledge  
Connecting sellers to the most qualified buyers  
Greater exposure to sell your home in the shortest practical time  
Personal attentive and tailored service to meet the specific needs of each customer

## KEITH C. BERRY

REALTOR®, CRB, CRS, GRI, ABR

PREVIEWS ESTATES DIRECTOR & ARCHITECTURAL PROPERTIES DIVISION SPECIALIST

MOBILE: 805.689.4240 | OFFICE: 805.563.7254 | MAIL: PO Box 5545, ZIP 93150

1482 EAST VALLEY ROAD, SUITE 17 SANTA BARBARA, CA 93108

KEITH@KEITHBERRYREALESTATE.COM

WWW.KEITHBERRYREALESTATE.COM



facebook.com/KeithBerryRealEstate



linkedin.com/in/keithcberry

©2015 Coldwell Banker Real Estate LLC. All Rights Reserved. Coldwell Banker Real Estate LLC fully supports the principles of the Fair Housing Act and the Equal Opportunity Act. Each Coldwell Banker Residential Brokerage office is owned by a subsidiary of NRT LLC. Coldwell Banker® and the Coldwell Banker Logo, Coldwell Banker Previews International® and the Coldwell Banker Previews International Logo, are registered service marks owned by Coldwell Banker Real Estate LLC.

# Get the Best Coverage at the Best Price

Selecting the right insurance broker is the first step in protecting your assets, clients, reputation and practice. You need a policy that serves your best interests at an affordable premium, and we offer you that choice.

Walter R. Anderson Insurance has specialized in lawyer malpractice insurance since 1981. We negotiate terms with 19 insurers throughout California, so we can offer you the best coverage options at the best prices.

## Get the Best Choice of Coverage and Price

If fifty percent of your practice is devoted to one category, and you've had no claims in the last five years, you should be eligible for a large discount in your insurance premiums.

**Call for an estimate:  
805.682.8885**

Or visit us online and complete  
the law firm information form:  
**Lawyers-Insurance.com**  
Click on Get Started Now

**WALTER R. ANDERSON  
Insurance Services, Inc.**

3757 State Street, Suite 2B  
Santa Barbara CA 93105  
TEL: 805.682.8885  
FAX: 805.563.1160

info@lawyers-insurance.com  
CA License: 0711805

# Santa Barbara County Bar Association

www.sblaw.org

## 2015 Officers and Directors

### NAOMI DEWEY

*President*

Buynak, Fauver, Archbald & Spray  
820 State Street, 4th Floor  
Santa Barbara, CA 93101  
T: 966-7422  
NDewey@BFASlaw.com

### ANGELA ROACH

*President Elect*

University of California Santa Barbara  
Employee and Labor Relations  
3101 SAASB  
Santa Barbara, CA 93106-3160  
Cell: (415) 309-3293  
Angela.roach@hr.ucsb.edu

### JAMES GRIFFITH

*Secretary*

Law Offices of James P. Griffith  
1129 State St Ste 3  
Santa Barbara, CA 93101  
T: 962-5821; F: 563-9141  
Jim@jamesgriffithlaw.com

### MICHAEL DENVER

*Chief Financial Officer*

Hollister & Brace  
P O Box 630  
Santa Barbara, CA 93102  
T: 963-6711; F: 965-0329  
mpdenver@hbsb.com

### SCOTT CAMPBELL

*Past President*

Rogers, Sheffield & Campbell, LLP  
427 East Carrillo Street  
Santa Barbara, CA 93101-2257  
T: 963-9721; F: 966-3715  
scott@rogerssheffield.com

### EMILY ALLEN

Legal Aid Foundation  
301 E. Canon Perdido Street  
Santa Barbara, CA 93101  
T: 403-5224  
eallen@lafsbcc.org

### LETICIA ANGUIANO

Union Bank  
1021 Anacapa St.  
Santa Barbara, CA 93101  
leticia.anguiano@unionbank.com

### JEFF CHAMBLISS

Santa Barbara County Public Defender's Office  
1100 Anacapa Street  
Santa Barbara, CA 93101  
T: 568-3497  
jchambl@co.santa-barbara.ca.us

### ELIZABETH DIAZ

Legal Aid Foundation  
301 E. Canon Perdido Street  
Santa Barbara, CA 93101  
T: 963-6754  
ediaz@lafsbcc.org

### STEVE DUNKLE

Sanger, Swysen & Dunkle  
125 E. De La Guerra, Suite 102  
Santa Barbara, CA 93101  
T: 962-4887  
sdunkle@sangerswysen.com

### ROBERT FOROUZANDEH

Reicker, Pfau, Pyle & McRoy LLP  
1421 State Street  
Santa Barbara, CA 93101  
T: 966-2440  
rforouzandeh@rppmh.com

### AMBER HOLDERNESS

Office of County Counsel  
105 E. Anapamu Street, #201  
Santa Barbara, CA 93101  
T: 568-2969  
aholderness@co.santa-barbara.ca.us

### ANDREW MITCHELL

Attorney at Law  
125 E. Victoria Street, Suite F  
Santa Barbara, CA 93101  
T: 500-6789  
Andrew@mitchell-esq.com

### NATHAN ROGERS

The Law Office of Nathan C. Rogers  
3 W. Carrillo Street #214  
Santa Barbara, CA 93101  
T: 591-8000; F: 591-8001  
rogers@nathanrogerslaw.com

### KELLY SCOTT

Chief Deputy District Attorney  
Santa Barbara County District Attorney  
1112 Santa Barbara Street  
Santa Barbara, CA 93101  
T: 568-2309  
kds cott@co.santa-barbara.ca.us

### JAMES SWEENEY

Allen & Kimbell, LLP  
317 E. Carrillo St  
Santa Barbara, CA 93101-1488  
T: 963-8611; F: 962-1940  
jsweeney@aklaw.net

### LIDA SIDERIS

Executive Director  
15 W. Carrillo Street, Suite 106  
Santa Barbara, CA 93101  
569-5511; Fax: 569-2888  
sblawdirector@gmail.com

# Santa Barbara Lawyer

A Publication of the Santa Barbara County Bar Association

©2015 Santa Barbara County Bar Association

## CONTRIBUTING WRITERS

Jeff Chambliss  
Robert Forouzandeh  
Randi R. Geffner  
Robert Sanger

## EDITOR

Nathan C. Rogers

## ASSISTANT EDITORS

Lida Sideris  
Emily Allen

## MOTIONS EDITOR

Michael Pasternak

## VERDICTS & DECISIONS

### EDITOR

Lindsay G. Shinn

## PROFILE EDITOR

James P. Griffith

## PHOTO EDITOR

Mike Lyons

## PRINT PRODUCTION

Wilson Printing

## DESIGN

Baushke Graphic Arts

Submit all **EDITORIAL** matter to  
sblawyer magazine@gmail.com  
with "SUBMISSION" in the email  
subject line.

Submit all **MOTIONS** matter to  
Michael Pasternak at  
pasterna@gmail.com.

Submit all **ADVERTISING** to  
**SBCBA**, 15 W. Carrillo Street,  
Suite 106, Santa Barbara, CA 93101  
phone 569-5511, fax 569-2888  
Classifieds can be emailed to:  
sblawdirector@gmail.com

# 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.*



# *Santa Barbara* Lawyer

Official Publication of the Santa Barbara County Bar Association  
October 2015 • Issue 517

## Articles

- 6 Lunch (and Cake) with Arthur Gilbert, *By Jeff Chambliss*
- 8 Get to Know...Susan Epstein
- 9 Examining a Tragedy at Sea, *By Randi R. Geffner*
- 12 Local Lawyer Lore, *By L. Lawyer*
- 14 SBCBA Golf and Tennis Tournaments
- 19 The New Paradigm for Corporate Prosecutions: Implications for Individual Liability, the Age of Big Brother and Corporate Internal Investigations, *By Robert Sanger*

- 26 Legislation Pending: Local Lawmaker's Spotlight, *By Robert Forouzandeh*

## Sections

- 24/29 Section Notices
- 27 Motions

## About the Cover

Happy Halloween from the SBCBA. Photo by Margaret Rogers.



L-R, Bruce Glesby, John Eck, Ron Perry, John Rydell, Paul Capritto, and Hon. George Eskin enjoy the SBCBA Golf and Tennis Tournaments. For more coverage, see page 14.

# Lunch (and Cake) with Arthur Gilbert

BY JEFF CHAMBLISS

On August 25, 2015, I had the honor and pleasure of lunching with the Honorable Arthur Gilbert, Presiding Justice of Division Six of the Second District Court of Appeal. We were joined by his research attorney and former Santa Barbara County Bar Association Board member, Katy Graham. That day was also the anniversary of Justice Gilbert's 40th year on the Bench!

For a thoroughly enjoyable hour, Justice Gilbert told stories and held forth on topics as wide ranging as statutory interpretation, judicial integrity, the history of Division Six, and reminiscences of Justices Richard Abbe and Steven Stone. Interestingly, I learned that when Division Six was created in 1982, it was based

in Santa Barbara and first heard cases in the Mural Room of the Santa Barbara Courthouse. It wasn't until 1994 that the legislature authorized the Court to move to Ventura.

The title of the Justices' Reception comes from a dissent authored by Justice Gilbert in *Unzueta v. Ocean View School District* (1992) 6 Cal.App.4th 1689, 1703 (dis. opn. of Gilbert, J.):

In most cases, it is appropriate for courts to literally interpret statutes. The result that necessarily flows from clear, unambiguous language is almost always the "correct result," irrespective of whether the judge thinks it is wise or unwise. We must not, however, be slaves to the **tyranny of literalness** so that we construe a statute in a way that yields "a grotesque caricature of the Legislature's purpose." (Frank, *Words and Music, Some Remarks on Statutory Interpretation* (1947) 47 Colum.L.Rev. 1262.) (emphasis added).

In *Unzueta*, a teacher sued for back pay accrued during his nearly two-year suspension from teaching due to his arrest for cocaine possession. (*Id.* at pp.1693-1694.) Dur-

ing the period of suspension, the teacher had successfully completed drug diversion (Pen. Code, § 1000, et seq.), had the charges dismissed, and had been reinstated as a teacher. (*Ibid.*) The issue was how to interpret the language of an Education Code Statute which provides "... if the employee is acquitted of the offense, or the charges against him ... are dismissed, the school district shall pay to the employee his ... full compensation for the period of the compulsory leave of absence upon his ... return to service in the school district." (Ed. Code § 44940.5).

The majority and dissenting opinions consist of a lively and frank debate about the roles and limits of judicial interpretation. Learned Hand, Lord Bramwell, and Chief Justice Marshall, among others, are all quoted extensively. While both sides recognize that "[t]he literal meaning of the words of a statute may be disregarded to avoid absurd results...", they differ sharply on whether the award of back pay is "absurd." (*Unzueta, supra*, 6 Cal.App.4th at p. 1698.) The

majority asserts that the "absurd result" rule must be used sparingly to avoid violating the separation of powers doctrine -- substituting subjective judicial interpretation for the plain language of the legislature. In turn, Justice Gilbert laments the "dictionary school of jurisprudence," wherein judges interpret the letter of

---

## The Tyranny of Literalism- Whose Intent Is It Anyway?

---

A Reception with the Justices of Division Six of the Second District Court of Appeal, Wednesday October 21, 2015, at the Santa Barbara Club, 1105 Chapala Street, 6pm-8pm.

---

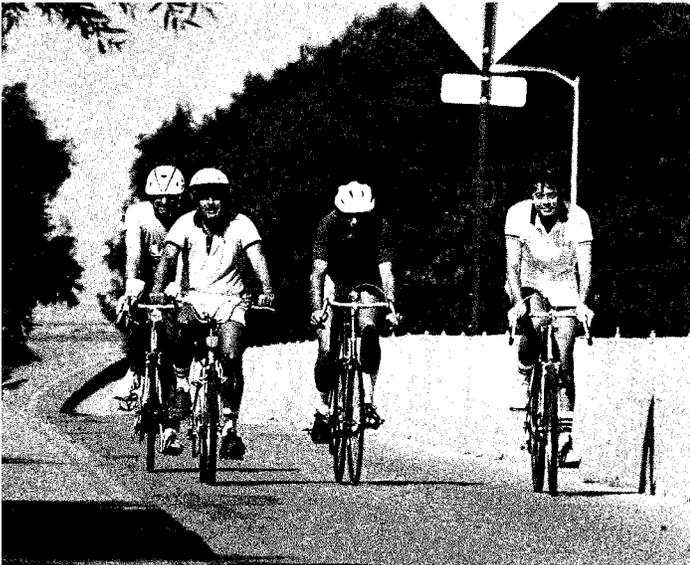
the law in "[a] mechanical, literal...vacuum creat[ing] a result contrary to public policy, contrary to legislative intent, contrary to common sense, and contrary to our shared notions of justice." (*Id.* at 1705 (dis. opn. of Gilbert, J.))

Interestingly, 22 years after Justice Gilbert's dissent in *Unzueta*, Justice Yegan quoted it in a dissent of his own: "Absurdity -- I know it when I see it." (*Unzueta v. Ocean View School Dist.* (1992) 6 Cal.App.4th 1689, 1702 (dis. opn. of Gilbert, J.)) Even though I was the author of the majority opinion 22 years ago in *Unzueta*, I am still haunted by the dissenting opinion. I am finally able to use it." (*People v. Harbison* (2014) 230 Cal.App.4th 975, 986 (dis. opn. of Yegan, J.))

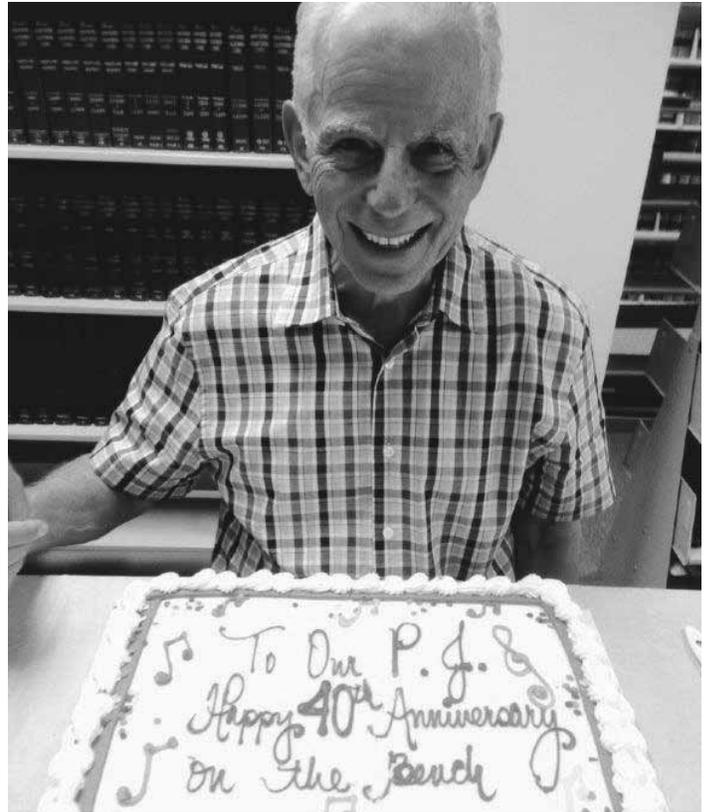
The tension between judicial interpretation and statutory fidelity is a constant and can be seen as recently as August in *People v. McCoy* (August 12, 2015, B60449) \_\_\_ Cal.App.4th \_\_\_[2015 Cal.App.Lexis 693]], involving Proposition 47 and the meaning of the word parole: "As we shall explain, this approach honors the literal use of the word 'parole' in Proposition 47. (See *People v. Clayburg* (2012) 211 Cal. App.4th 86, 91 [dictionary school of jurisprudence].) How-

ever, it defeats the letter and spirit thereof. . . ” (*People v. McCoy, supra*, 2015 Cal.App.Lexis at p.2.)

With new questions of statutory interpretation now pending in Division 6, one can expect that the discussion at this year’s Justices’ Reception will be as lively as the debate in *Unzueta*. ■



*The Justices of Division 6 take a bike ride, circa the early 1980s.*



*Justice Gilbert with his anniversary cake.*

## ANTICOUNI & ASSOCIATES

IS PLEASED TO ANNOUNCE THE FIRM’S WAGE AND HOUR SETTLEMENTS FOR CALIFORNIA EMPLOYEES HAVE REACHED \$150,000,000.00\*.

ANTICOUNI & ASSOCIATES REPRESENTS BOTH EMPLOYERS AND EMPLOYEES IN ALL AREAS OF WORKPLACE LAW AND RELATED LITIGATION.

THE FIRM AND THE ANTICOUNI FAMILY FOUNDATION OBTAINED AND CONTRIBUTED OVER \$3,000,000.00 TO SANTA BARBARA NON-PROFITS.

ANTICOUNI & ASSOCIATES WELCOMES JOINT VENTURES WITH LOCAL FIRMS AND PROVIDES REFERRAL FEES IN COMPLIANCE WITH STATE BAR GUIDELINES.

FOR MORE INFORMATION, PLEASE CALL (805) 845-0864 OR SEND EMAIL TO [INFO@ANTICOUNILAW.COM](mailto:INFO@ANTICOUNILAW.COM).

\*THIS DOES NOT GUARANTEE, WARRANTY, OR PREDICT THE OUTCOME OF ANY PARTICULAR CASE.

## Get to Know...

## Susan Epstein

Susan Epstein studied computer science as an undergraduate at Stanford University and earned her law degree from the University of Chicago. She served as President of the Chicago Law Foundation and participated in a 10-person seminar with Barack Obama. Her moot court judge was Elena Kagan. Susan has 20 years experience in managing people, process and operations in the public, private, and non-profit sectors as both a director and a strategic management consultant. Her past projects have guided agencies in the areas of finance, technology, marketing, diversity, and communications. Susan is an elected school board member in Goleta with responsibility for 3700 elementary school children, four preschools, a staff of more than 300 people, and a \$40M annual budget. She received the Cox Communications Environmental Hero Award in 2013. Susan is also a mock trial coach at Dos Pueblos High School.



**1. What is your idea of perfect happiness?**

Achieving world peace... and I always enjoy reading a great book.

**2. What is your greatest fear?**

A significant loss.

**3. Which living person do you most admire?**

Cory Booker.

**4. What is your greatest extravagance?**

Daily running, cycling, yoga, and dark chocolate.

**5. What is your current state of mind?**

Wishing I could clone myself so I could pursue all my interests.

**6. Which words or phrases do you most overuse?**

Wow.

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

The talented and brilliant Jon Zuber.

**8. When and where were you happiest?**

Each time I share something new with my kids, or they share something new with me.

**9. Which talent would you most like to have?**

Singing, and I'd also like to be able to fly.

**10. What do you consider your greatest achievement?**

Improving lives in dramatic ways: Four unfairly imprisoned women were granted clemency by the Illinois Governor due to a legal program I co-founded; teens in my classes left gangs upon being inspired by experiences with my non-profit organization in San Francisco; and my school board leadership with the district management team has greatly reduced the achievement gap in the Goleta public schools.

**11. Where would you most like to live?**

Here.

**12. What is your most treasured possession?**

Family photos going back to the 1800s – after four evacuations due to wildfires, the photos are now all scanned and backed up on servers in other cities.

**13. What is your most marked characteristic?**

Organization.

*Continued on page 30*

# Examining a Tragedy at Sea

By RANDI R. GEFFNER

*This article originally appeared in the July 2015 issue of Valley Lawyer Magazine by the San Fernando Valley Bar Association. It is republished here with permission.*

Many attorneys can relate to the experience of being asked at a social gathering to tell the story of their most interesting case and the immediate blank feeling of having to dig deep to come up with something in response that will sound exciting or noteworthy. Not that what we do isn't interesting; it just isn't often the stuff of drama or suspense, despite what Hollywood might lead non-attorneys to believe. Unfortunately, most of us will never experience a dramatic, "You can't handle the truth!" moment on cross-examination.

If asked to share war stories at a party, Northern California attorney Jay W. Jacobs will never be unsure about his most interesting case. In 1986, Jacobs was a young trial attorney assigned to defend the worst recreational fishing boat accident in San Francisco maritime history. Jacobs' experiences throughout the investigation and trial are related in his compelling book, *The Widow Wave: A True Courtroom Drama of Tragedy at Sea*.

Although the case is indisputably tragic, Jacobs' narrative draws the reader in as he is equally adept at relating the emotion, legal strategy and technical maritime details that were all so critical to the defense of this once-in-a-career litigation. This is a story that draws the reader in, and once told, can never be forgotten.

Five lives were lost on March 9, 1984, when the 34-foot fishing boat, *Aloha*, disappeared at sea off the coast of San Francisco—the captain, Francis Dowd, his 19-year-old son, Gerald, who was home from college for spring break, Dowd's brother-in-law, John Kennedy, a co-worker of Dowd's, Werner Buntmann, and a friend and business colleague, H. Tho Ang, who was visiting from Manila.

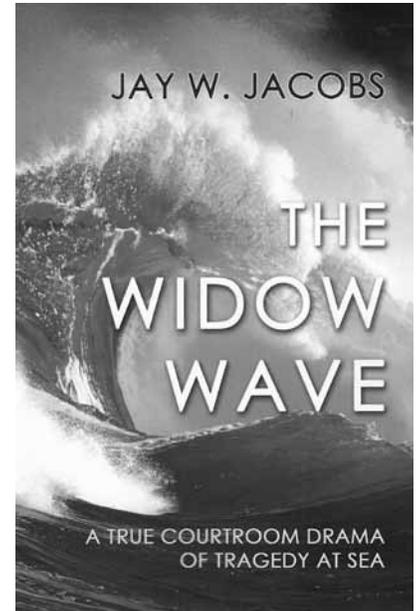
On the morning that went so horribly wrong, Dowd was taking his friends out on a salmon fishing trip to the Duxbury Reef area, a day trip he had taken successfully many times before, and, in fact, a fishing spot that Jacobs had

visited several times as well. There were no eyewitnesses to the disappearance of *Aloha*, nor were she or any of her passengers ever recovered, save the body of Dowd, which was recovered weeks after the loss. Fear and speculation ran rampant in the Bay Area fishing communities as answers were sought to explain the devastating and seemingly inexplicable loss of life.

Jacobs was tasked with explaining the inexplicable to a jury when the widow of Ang filed a negligence action against Dowd's estate just one day prior to the expiration of the statute of limitations. Ang sought substantial damages for the wrongful death of her husband and the father of her children. The emotional wreckage experienced by the Ang family was very familiar to the defendant, Janet Dowd, who lost her husband, her teenage son and her brother-in-law in the disappearance of *Aloha*.

As crushed as Janet Dowd was by the loss of her loved ones, she was adamant that her husband would never have acted recklessly or negligently, and would not even consider a settlement as to do so might leave the impression that her husband had somehow contributed to the tragic deaths at sea. Janet told Jacobs on their first meeting that her husband "...was not a perfect man, but he was never careless and never negligent, ever." Despite what his experience as a defense attorney was telling him about the risks of defending such an emotional case, Jacobs had no choice but to prepare to litigate the case through trial.

Jacobs' rendition of his investigation, preparation and trial of the *Aloha* case takes the reader on a fascinating, heartbreaking and enlightening journey. He uses skill, experience, humor and some luck in weaving his way through the contentious litigation, in which he was opposed by one of the most prominent firms in the Bay Area, leaving Jacobs outnumbered and facing an opponent with substantially more experience with litigation of this magnitude. The story told by Jacobs is accessible and fascinating, whether or not



*The Widow Wave: A True Courtroom Drama of Tragedy at Sea*, ©2014, is available online or locally by through Chaucer's Bookstore, (805) 682-6787.

the reader has a legal or maritime background.

From a legal standpoint, Jacobs is generous with his sharing of legal theories and strategy, and is not averse to admitting when mistakes were made or favorable results were as likely the result of luck as of exemplary legal performance. Particularly interesting were Jacobs' stories regarding the complex process of jury selection, which any trial attorney will attest is equal parts preparation, intuition and the luck of the draw.

Jacobs also weaves the captivating tales of uncooperative witnesses, many of whom were lifelong sailors and fishermen who were unwilling to break a code of silence, were inherently suspicious of attorneys and the legal process, or, in one instance, were illegally living aboard a fishing boat in the marina and were fearful of being evicted from their floating home based on the testimony that was critical to Jacobs' defense of the case.

From a maritime standpoint, Jacobs takes the reader through the intricacies of competing theories as to the demise of *Aloha*. As a onetime sailor and officer in the merchant marine, Jacobs is conversant in the language of the sea and shares his expertise with the reader. Theories as to the cause of the accident ranged from negligence by Dowd to the *Aloha* being struck by a large cargo ship, a rogue wave, or a large piece of debris, to Jacobs' theory as presented by his expert witnesses that a rare occurrence known as a coincident wave (which occurs when nearly

identical waves wrap around an islet or shallow bar and meet, creating a destructive wave which can be twice the height and quadruple the force of an ordinary wave) was the cause of the demise of the boat and the five lives aboard. Although the technical details abound, even the least seaworthy reader can follow along and is left with an understanding of how the environmental factors could have combined to contribute to the destruction of *Aloha*.

Jacobs, who had never tried a case of this magnitude, was concerned not only that his career might be destroyed by this high profile case, but worse, that a plaintiff's verdict would add to the immeasurable devastation experienced by Janet Dowd and her family. Jacobs has been quoted as reflecting that he had never had a case with greater legal or factual complexities, or a client who was more emotionally invested in the outcome of the trial. The pressure was astronomical, and Jacobs is expert at taking the reader along for the terrifying, mystifying and emotional ride.

*The Widow Wave* provides a gripping chronicle from beginning to end. No spoilers here, but suffice it to say that Jacobs without a doubt wins as a storyteller, regardless of the outcome of the trial. ■

*Randi R. Geffner is a senior associate attorney at Esensten Law in West Los Angeles, specializing in all types of civil and business litigation. Randi may be contacted at rgeffner@esenstenlaw.com.*

## Proposed Slate of Officers and Directors Santa Barbara County Bar Association 2016

### OFFICERS:

President: Angela Roach  
President-elect: Jim Griffith  
Secretary: Michael Denver  
Chief Financial Officer: Jeff Chambliss  
Past President: Naomi Dewey

### DIRECTORS:

Emily Allen	Nathan Rogers
Elizabeth Diaz	Travis Logue
Stephen Dunkle	Eric Berg
Amber Holderness	Michael Brelje
James Sweeney	Elizabeth Vogt
	Joe Billings

### SLATE OF DELEGATES TO THE CA CONFERENCE OF DELEGATES:

Tim Metzinger, Sue McCollum,  
Donna Lewis, Tom Hinshaw,  
Katy Graham, Naomi Dewey

# Is your malpractice renewal a cliffhanger?

Lawyers' Mutual Insurance Company has seen many carriers come and go.

Since 1978, we have stayed committed to only one feat: *protecting the lawyers of California.*

As carriers withdraw from the market once again . . . **LMIC is prepared and ready to assist you.**



# LMIC... *here to stay.*



**www.LMIC.com or call (800) 252-2045**

LAWYERS' MUTUAL INSURANCE COMPANY 3110 West Empire Avenue, Burbank, CA 91504

**Lawyers' Mutual**  
*LMIC...Exclusively  
providing California Lawyers  
with trusted service  
and innovation since 1978*  
**Insurance Company**

## Local Lawyer Lore

BY L. LAWYER

As previously noted, this is a monthly interactive column about local lawyers. Readers are challenged to determine what common ground is shared by those featured in each group photo.

In our July reveal, readers learned about our four Gaucho Gridiron Greats. Our September reveal disclosed that the “Gang of 12” shared the distinction of each having appeared as counsel at least once before the California Supreme Court. Note- there were NO correct guesses on what our dozen appellate advocates had in common, but they will be flattered to learn that the closest guess was ... “hand-some veterans?”

In the photo below is our biggest group yet- fourteen local attorneys, all sharing something unique. Once again we ask: what unique experience do these local attorneys have

in common? (Reminder: Do not ask any of them for the answer; merely asking the question will disqualify you from competition...and perhaps disqualify you from appearing in any featured group in a future issue!)

Send your answer to LocalLawyerLore@gmail.com. The winner may be the first with the correct answer, but our panel of judges reserves the right to consider, in the event of multiple correct answers, not only the date of the earliest correct response, but other factors as well (e.g. the amount of additional information provided about the individuals in the context of their common experience and the humor/overall quality of the correct response). Guess how many and who was “photoshopped” in the photo below for bonus points.

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/accomplishment. If so, our apologies and please let us know; we will try to make amends in a future column.)

In the November issue of *Santa Barbara Lawyer*, our reveal will have more information about our group below. Check out the photo below and email your answer to demonstrate the depth and breadth of your knowledge of local lawyer lore. ■



Left to right are:  
bottom row-Karen Peabody Boris, Rick Battles, Tony Davis and Paula Waldman;  
middle row- Katie Vining, John Nelson, Greg Faulkner and Jennifer Miller; top row: Lee Carter, Tim Hale, Michael Desmond, Arnie Brier, Brian O'Connor and Joe Howell.



I try cases . . .  
and **win.**

**Respect. Experience.  
Results.**

**Matthew Haffner**

**H**AFFNER **L**AW **G**ROUP

*“You really know how to put on a good case. I have repeatedly used you as an example when I have explained to lawyers how to [use] all their trial material and technology for a persuasive, on-point, concise and constructive closing argument.”*  
- Superior Court Judge.

*“It was the best [presentation] I’ve ever seen, and I’ve been attending continuing education classes on trial tactics for nearly 50 years.”*  
– retired Superior Court Judge regarding Matthew Haffner’s MCLE presentation, “How to Win at Trial.”

**associate me to try your case**

Matthew Haffner has tried 36 civil jury trials, with a record of 31 wins and 2 settlements during trial. Multi-million dollar cases tried include wrongful death, catastrophic injury, contract disputes, employment litigation, and construction defect. Three juries returned with winning verdicts in less than thirty minutes. We have been associated within two weeks of jury selection. Special skills include:

- jury selection
- multi-media presentation
- exhibit books
- pre-trial motions and briefs
- expert and witness examinations
- jury instructions
- opening and closing statements

My trial tactics have been honed over the last 25 years as a litigator, for a concise and controlled trial experience.

**86 S. Laurel Street, Ventura CA 93001**  
**(805) 641-9334; fax (805) 980-5014**

**[haffnerlawgroup.com](http://haffnerlawgroup.com)**

## SBCBA Golf and Tennis Tournaments

Thank you to all who participated in the Golf & Tennis tournaments and to those that joined us for dinner at the spectacular Alisal Ranch!

A million thanks also to our outstanding attorney volunteers: To the SBCBA Events Team Members, **Elizabeth Diaz** for her able assistance, and **Kelly Scott** for energetically and effectively running the tennis tournament; to **Catherine Swysen** for so capably organizing and overseeing the golf tournament. And, many thanks to **Emily Allen** for again lending us her considerable creative talents, to **Robert Forouzandeh** for readying the Airbus and to our ace photographer, **Michael Lyons**, for memorializing the event in pictures.

A huge thank you to this year's Golf Tournament Eagle Sponsor: **Bartlett Pringle & Wolf, LLP – Certified Public Accountants and Consultants**

And another big thank you to Tee Sponsor: **Donna Lewis, Attorney-at-Law**

Plus, special thanks to **Dragonette Cellars** and **Tri-County Court Reporters** for their donations toward the prizes.

*And the winners:*

### Golf

**1st Place Net:**

Mike Brelje, Robert Forouzandeh, Shereef Moharram, Jake Ralston

**2nd Place Net:**

David Fainer, Glenn Robertson, Bob Sanger, Jeff Sanger,

**Longest Drive:**

#1 Craig Kohler

**Closest to Pin:**

#9 Bill Clinkenbeard

### Tennis

**1st Place:**

Michael Gray

**2nd Place:**

Jason Saltoun-Ebin



*Nina Pisani, Jake Sheffield, Scott Hadley of Bartlett, Pringle & Wolf, LLP*



*Robert Forouzandeh and Mike Brelje*

# Make us your personal injury trial firm.

We welcome referrals and co-counsel relationships. Generous referral fees paid.

- Vehicular/Bicycle/Pedestrian Accidents, Product Liability, Premises Liability, Defective Products, Carbon Monoxide Poisoning.
- Trust your referral to us. We get results because we know how to maximize case value and have the experience and resources to win.
- Our office has a combined 75 years of trial practice and experience. We have tried over 150 personal injury cases to verdict resulting in many 6 and 7 figure verdicts and settlements.

LAW OFFICE OF  
*Renee J. Nordstrand*

(805) 962-2022  
www.nordstrandlaw.com

225 East Carrillo, Suite 202 • Santa Barbara, CA 93101



Renee Nordstrand  
2014 Attorney of the Year Award recipient



## LINDENAUER MEDIATION

Victoria Lindenauer, Esq.

STREAMLINED APPROACH  
RESULTS  
COST EFFECTIVE

*Over 25 years PI litigation on the Central Coast*

TRAINED MEDIATOR:  
Straus Institute  
Pepperdine University

MEDIATION PANELIST:  
Santa Barbara, Ventura, San Luis Obispo  
Resolute Systems, LLC

(805) 730-1959  
lindenauer\_mediation@cox.net

www.lindenauermediation.com



*Jeff Sanger, Robert Forouzandeh and Jeff Chambliss*

# SBCBA Golf and T



*David Fainer, Bob Sanger, Catherine Swysen, Glenn Robertson*



*Kevin Yacoub and Hon. Tom Anderle*



*Bill Clinkenbeard, Eric Burkhardt, Will Beall, Jim Cote*

# Tennis Tournament



*Paul Graziano, Brad Lundgren, James Sweeney, Tim Deakyne*



*John Porter (serving), Chris Haskell*

**Experienced.  
Trusted.  
Proven.**

Mediator and arbitrator for the resolution of cases including:

- Business/Commercial
- Contracts, Employment
- Environmental and Real Estate
- Construction
- Wills and Trusts
- Family Law
- Personal Injury



Retired Judge, Elinor Reiner

**Judge Elinor Reiner**  
MEDIATOR AND ARBITRATOR

To schedule a consultation, please call 805-879-7517  
211 E. Anapamu Street • Santa Barbara, CA 93101  
elinor@elinorreiner.com • WWW.ELINORREINER.COM

**HON. FRANK J. OCHOA (RET.)**

**MEDIATION, ARBITRATION & CONSULTING SERVICES**  
*The Patience to Listen, the Experience to Resolve*  
**OVER 32 YRS. JUDICIAL EXPERIENCE**



**"... A PATIENT,  
COMPASSIONATE, INTELLIGENT  
JUDGE ...  
A LEADER IN SANTA BARBARA'S  
LEGAL COMMUNITY"  
"OCHOA EXCELS IN SETTLEMENT  
NEGOTIATIONS..." (Italics added)  
L.A. DAILY JOURNAL  
"Judicial Profile" 7/17/2008**

**MEDIATION  
ARBITRATION  
Neutral Case Evaluation  
Special Master Services  
Discovery Management**

**MEDIATION BACKGROUND**

- ◆ Created: Santa Barbara Superior Court's CADRe (Court Administered Appropriate Dispute Resolution) Program
- ◆ Southern CA. Mediation Association's 'Judge of the Year Award'
- ◆ Pepperdine Univ. School of Law: Straus Institute for Dispute Resolution
- ◆ American Institute of Mediation: Mediating Commercial & Litigated Cases

**Consultation:  
Professional, Political,  
and Crisis Management**

**831 State St., Suite 279, Santa Barbara, CA 93101**  
Phone: (805) 965-8898 FAX: (805) 962-3889  
**WWW.FRANKOCHOA.COM**



Help your clients plan beyond the settlement

**You're invited to a complimentary settlement services review**

Preserve your clients' post-settlement assets

Ameriprise Financial provides different levels of service, including full financial planning services, to help guide your client through the settlement process, including structured settlement annuities offered through Millennium Settlements, Inc. - AVITAS division.

*Contact me today to schedule your complimentary settlement services review.*



**ALEJANDRO J. OCHOA, CRPC®**  
Financial Advisor  
Business Financial Advisor  
1625 State Street, Ste 5  
Santa Barbara, CA 93101  
**818.334.8246**  
alejandroj.ochoa@ampf.com  
ameripriseadvisors.com/alejandroj.ochoa  
CA Insurance #0E15343



The complimentary settlement services review provides an overview of structured settlement products and financial planning concepts and does not include a written analysis and/or recommendations. Financial planning services may be purchased separately.

Millennium Settlements, Inc. - AVITAS division is not affiliated with Ameriprise Financial.

Investment advisory products and services are made available through Ameriprise Financial Services, Inc., a registered investment adviser.

Ameriprise Financial Services, Inc. Member FINRA and SIPC.

© 2015 Ameriprise Financial, Inc. All rights reserved

# The New Paradigm for Corporate Prosecutions

## Implications for Individual Liability, the Age of Big Brother and Corporate Internal Investigations

BY ROBERT SANGER<sup>1</sup>

At the time of this writing, the September 9, 2015, Memorandum of Deputy Attorney General Sally Quillian Yates had just hit the press. The news media reported, for the most part accurately, that this Memorandum marked a shift in the focus of the Department of Justice toward prosecuting individuals in cases of alleged corporate wrongdoing. There are other aspects of the Memorandum that have serious consequences for the way both business lawyers and white collar criminal defense lawyers approach their tasks.

In this month's *Criminal Justice* column, we will look at some of the intended or unintended consequences of the new Memorandum. Like so many policy changes that are a result of a response to some highly publicized real or perceived problem, this policy change may have consequences that go to the core of what Americans thought were fundamental rights. It may require individuals to further turn against each other and inform on each other to the government. It will significantly affect "corporate internal investigations."

### *The Memorandum*

The September 9, 2015, Memorandum sets forth the official policy of the Attorney General of the United States and sets forth a basis for amendments to the United States Attorney's Manual which designates policy for the United States Attorney's Offices in every federal district. In other words, this is policy for all federal prosecutors, whether in "Main Justice" at the DOJ in Washington, D.C. or in the various federal prosecutors' offices throughout the country. It represents a major shift in corporate prosecutions as a result of complaints leveled against federal prosecutors for not indicting individuals (and sometimes not prosecuting anyone) in potential cases arising out of the banking and lending disasters leading to the recession in 2008. Sitting

federal Judge, Jed Rakoff, wrote a scathing article in *The New York Review of Books* taking then Attorney General, Eric Holder, to task for failing to prosecute individuals.<sup>2</sup>

The Memorandum is designed to take a strong stand to show that the new Attorney General, Loretta E. Lynch, is addressing those issues. The Memorandum is comprised of six parts summarized as follows:

"(1) in order to qualify for any cooperation credit, corporations must provide to the Department all relevant facts relating to the individuals responsible for the misconduct; (2) criminal and civil corporate investigations should focus on individuals from the inception of the investigation; (3) criminal and civil attorneys handling corporate investigations should be in routine communication with one another; (4) absent extraordinary circumstances or approved departmental policy, the Department will not release culpable individuals from civil or criminal liability when resolving a matter with a corporation; (5) Department attorneys should not resolve matters with a corporation without a clear plan to resolve related individual cases, and should memorialize any declinations as to individuals in such cases; and (6) civil attorneys should consistently focus on individuals as well as the company and evaluate whether to bring suit against an individual based on considerations beyond that individual's ability to pay."

At first blush, this may not be an unwelcome sounding message for people who are not in upper management. The disparity in wealth in the United States is widening every year and, in addition to taking incredible compensation,<sup>3</sup> upper management in major corporations seem to have a Teflon coating when ordinary people, their retirement funds and very homes are threatened.<sup>4</sup> To the extent the Memorandum was addressing, for instance, high management involved in irregularities in the sub-prime mortgage practices in the 2000s, it might sound acceptable.

The problem is that the Memorandum goes way too far. And this assessment is made where the baseline (as documented in several prior *Criminal Justice* columns) is subject to criticism for already going too far. The United States



Robert Sanger

Sentencing Guidelines on Organizations place a premium on cooperation, including turning in individuals, and Dodd-Frank, ACPERA and many other federal statutes provide benefits

to whistleblowers. As a result of this and other factors, corporate internal investigations are already an art form fraught with dangers, including issues regarding attorney client privilege,

duty to disclose, cooperation, and other factors.

***Duty of a "Corporation" to Disclose All Individual Misconduct***

The Memorandum's enhanced duty to report all relevant illegal conduct of all individuals in a corporation is most troubling. The memorandum explains in the prefatory comments that, "There are, however, many substantial challenges unique to pursuing individuals for corporate misdeeds. . . . [I]nvestigators often must reconstruct what happened based on a painstaking review of corporate documents, which can number in the millions, and which may be difficult to collect due to legal restrictions."

In other words, it is tough convicting people of crimes when the government cannot force them to help incriminate themselves. Individuals *do* have the right not to speak to the government and not to provide incriminating information under the Fifth Amendment. It *is* our legal tradition, embodied in our Constitution, that the government *is* limited and there is *no* duty on individuals to come forward and help the government prosecute them. In addition, there *are* other Constitutional provisions that place limits on prosecutors and agents invading an individual's privacy and seizing their papers and property.

So, what to do? The Attorney General in the Memorandum basically takes the Orwellian approach: The individual does not have a duty to confess, but the people she or he works with (be they friends, relatives, bosses or subordinates) have a duty to inform on the individual to government, turn over all of her or his documents, and give a full statement of whatever conduct, criminal, civil or otherwise, the government deems "relevant" to its investigation. And, if they do not,



**PERSONAL SERVICE FROM LOCAL ATTORNEYS**  
CONSIDER MAHO I PRENTICE FOR YOUR  
PERSONAL INJURY REFERRALS

Maho I Prentice LLP is a Santa Barbara firm which focuses its practice on handling plaintiff personal injury cases. We welcome your referrals on matters of personal injury and wrongful death and pay referral fees per State Bar rules. Maho I Prentice has successfully obtained settlements and verdicts in amounts exceeding \$17 million dollars in the past two years alone. We will speak with all potential clients free of charge and will handle all good cases anywhere in the State of California. Please consider establishing a rewarding relationship with us.



**MAHO I PRENTICE, LLP**  
ATTORNEYS AT LAW

Fifthian Building  
629 State St., Suite 217, Santa Barbara, CA 93111

[www.maho-prentice.com](http://www.maho-prentice.com)  
(805) 962-1930

the corporation that these people work for, or have an ownership interest in, will be subject to prosecution that can result in disgorgement, fines, penalties and other civil and criminal sanctions:

“In order for a company to receive any consideration for cooperation... the company must completely disclose to the Department all relevant facts about individual misconduct. Companies cannot pick and choose what facts to disclose. That is, to be eligible for any credit for cooperation, the company must identify all individuals involved in or responsible for the misconduct at issue, regardless of their position, status or seniority, and provide to the Department all facts relating to that misconduct. If a company seeking cooperation credit declines to learn of such facts or to provide the Department with complete factual information about individual wrongdoers, its cooperation will not be considered a mitigating factor....”

One logical fallacy in this approach is that corporations can do any of these things. Corporations are legal fictions. There is no “corporation” that informs on individuals, it is people who are being forced to inform. These are just people working together, sometimes in large structured settings and sometimes in small family owned settings. But they are people. This provision is designed to force people to inform on each other to the government and to do the work of the government in investigating activities, turning over papers and materials and volunteering to be witnesses against each other. It is designed to let the prosecutors and agents sit back and let frightened people put a prosecution case together for them without being limited by the Constitutional restraints on government agents.

### Corporate Internal Investigations

Corporate internal investigations already involve delicate issues of privilege, disclosure and cooperation. And,

indeed, under the Federal Sentencing Guidelines and various state and federal laws, there are already numerous “incentives” for people involved in business to accuse each other. In past

## NEMECEK·COLE Attorneys At Law

**SOUTHERN CALIFORNIA'S PREEMINENT  
PROFESSIONAL LIABILITY DEFENSE FIRM**



FRANK W. NEMECEK\*

JONATHAN B. COLE\*

MICHAEL MCCARTHY\*

\* Certified Specialist, Legal Malpractice Law, The State Bar of California Board of Legal Specialization

15260 VENTURA BOULEVARD, SUITE 920  
SHERMAN OAKS, CA 91403  
TEL: 818.788.9500 / 877.314.1177

WWW.NEMECEK-COLE.COM

columns, for instance, we have discussed ACPERA giving immunity to people who accuse their co-conspirators of anti-trust violations, as well as other “plea bargaining” factors that reward the first person “on the boat.” The Attorney General’s Memorandum puts even more pressure on businesspeople to inform on each other and, in turn, this intensifies the delicate issues already present in internal investigations.

This subject will be covered in much more detail in treatises, CLE courses, law review articles and, ultimately, court decisions. The immediate take-away for business lawyers and white collar criminal defense lawyers (including those who do corporate internal investigations) is that you have to stop and thoroughly consider the consequences, intended and otherwise, of this Memorandum. It was produced as a result of a working group comprised of prosecutors from Main Justice and from the U.S. Attorneys’ Offices. There was no input from the corporate bar, in-house counsel, or white collar defense lawyers. Actual amendments to the United States Attorney’s Manual will be forthcoming to implement these prosecution tactics.

Meanwhile, attorney-client privilege issues with corporate in-house or outside counsel have to be re-evaluated. Consideration will have to be given to whether the “control group” concept has any significant application. Should each employee having anything to do with a practice or project have separate counsel from the beginning and, if so, consistent with the duty to indemnify under the Corporations Code and the Labor Code, can anyone else associated with the corporation (including corporate counsel or the individual lawyers) engage in information sharing agreements (previously called “joint defense “ agreements)? From there come the issues of disclosure and, ultimately, cooperation.

## Conclusion

This is not the end of the world but it does represent a particularly hardline approach to investigating corporations and individuals who work in and around corporate businesses. Time will tell how this plays out. ■

*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) and an Adjunct Professor at the Santa Barbara College of Law.*

## ENDNOTES

- 1 ©Robert M. Sanger.
- 2 Jed Rakoff, “The Financial Crisis: Why Have No High-Level Executives Been Prosecuted?” *The New York Review of Books*, January 9, 2014.
- 3 “Maximum Wage! How much CEOs earn an hour,” *USA Today Money*, April 6, 2015: “The 13 CEOs of a group of well-known retailers and restaurants haul in an average \$5,859 an hour according to a USA TODAY analysis of data from S&P Capital IQ. Putting that another way: It would take an employee making \$10 an hour more than two months working each day to earn as much as the average CEO in these industries make in a single hour.”
- 4 See Rakoff, *supra*. But, despite the clamor for more prosecutions at the top in major corporations, there are plenty of prosecutions of individuals in medium, smaller and closely held corporations.

## Temporary Judge Training

All temporary judges are required to participate in continuing education and training. The training *Bench Conduct and Demeanor* has been scheduled for Thursday, Oct. 22nd at Superior Court in Solvang, 1745 Mission Dr. The course will be instructed by Judges James Rigali and Donna Geck. Registration begins at 1:00; the course starts promptly at 1:30 pm and will end at 4:30 pm. Attendees will earn MCLE credit (2 hours general, 1 hour elimination of bias). To register, contact Bobby Baksh at 882-4529 or Ellen Scott at 614-6407 by October 9, 2015. ■

## THE OTHER BAR:

Meets every Tuesday at noon at 330 E. Carrillo St. We are a state-wide network of recovering lawyers and judges dedicated to assisting others within the profession who have problems with alcohol or substance abuse. We protect anonymity. To contact a local member go to <http://www.otherbar.org/> Link: Santa Barbara in ‘Meetings’ menu.



Santa Barbara  
County Bar  
Association



*You are invited to*

# THE 2015 ANNUAL DINNER

**JOIN US IN PAYING TRIBUTE  
TO THE HONORABLE**

## THOMAS P. ANDERLE

for the inaugural presentation of  
the Thomas P. Anderle Award  
for Judicial Excellence

**FEATURING SPECIAL GUEST  
ASSOCIATE JUSTICE  
GOODWIN H. LIU**

**FRIDAY,  
NOVEMBER 13**

6pm Reception in the Mural Room;  
7pm Dinner downstairs

**HISTORIC SANTA BARBARA  
COURTHOUSE**

*Reserve early.  
Seating is limited  
to the first 150.*

PAYMENTS RECEIVED	ON OR BEFORE 10-19-2015	AFTER 10-19-2015
MEMBERS	\$95	\$110
NONMEMBERS	\$110	\$125
*LAW STUDENTS, NEW LAWYERS (2YRS OR LESS), GOVERNMENT & NON-PROFIT LAWYERS (LIMITED NUMBER AVAILABLE) \$65		

### RESERVATION FORM

Name \_\_\_\_\_  Member  Non-member Price \$ \_\_\_\_\_

\_\_\_\_\_  Member  Non-member \$ \_\_\_\_\_

*To reserve & pay via USPS, please complete this form and send with your check payable to SBCBA:  
15 W. Carrillo St., #106, Santa Barbara, CA 93101. To reserve and pay by credit cards, or if you have questions,  
call SBCBA at (805) 569-5511. Fees paid are nonrefundable.*

*The Santa Barbara County Bar Association Proudly  
Presents:*

*A Reception with the Appellate  
Justices of Division Six*

*Topic: The Tyranny of Literalism -  
Whose Intent Is It Anyway?*

*Please join us on  
Wednesday, October 21, 2015  
6:00 pm - 8:00pm  
The Santa Barbara Club - 1105 Chapala Street  
Santa Barbara*

*1 MCLE Credit*

*SBCBA Members: \$50 (After October 1<sup>st</sup>, \$60)*

*Non-Members: \$60 (After October 1<sup>st</sup>, \$70)*

*Students/Paralegals: \$20*

~~

*Please mail completed form along with your check payable to:*



Santa Barbara  
County Bar  
Association

*Santa Barbara County Bar Association  
15 West Carrillo Street, Santa Barbara, CA 93101*

*Name(s) \_\_\_\_\_*

*Phone Number \_\_\_\_\_*

*Amount Enclosed \_\_\_\_\_*

# Reicker, Pfau, Pyle & McRoy, LLP

congratulates Partner **Robert B. Forouzandeh** for being selected to Pacific Coast Business Times' Class of 2015 "*40 Under 40*" which recognizes the achievements of 40 up-and-coming business men and women under 40 years of age in Santa Barbara, Ventura and San Luis Obispo Counties.



Robert handles a variety of business/corporate, real estate and employment litigation matters and serves as outside general counsel for several local companies.

REICKER, PFAU,  
PYLE & MCROY LLP  
ATTORNEYS AT LAW

Santa Barbara's Business Law Firm

1421 State Street, Suite B | Santa Barbara | 805-966-2440 | [www.reickerpfau.com](http://www.reickerpfau.com)

# Legislation Pending: Local Lawmaker's Spotlight

By ROBERT FOROUZANDEH

*This month, the column will highlight the status of legislation introduced by our local lawmakers.*

**California Fair Pay Act** – Senate Bill 358 (Senator Hannah-Beth Jackson)

On September 1, 2015, Senate Bill 358, the California Fair Pay Act, cleared its final hurdle in the Legislature, passing off the Senate floor by an unusually bipartisan 39-0 vote. The bill now heads to Governor Brown, who has already stated that he will sign the bill.

The bill seeks to amend Section 1197.5 of the Labor Code and ensure equal pay for men and women for “substantially similar work,” not just the exact same job, unless the pay differences are based on productivity, merit and/or seniority.

The bill also imposes a ban on any retaliation against employees who discuss their pay or ask about the salaries of colleagues while on the job. More significantly, it allows employees to challenge wage gaps that exist at an employer’s different locations.

The bill also increases the duration of employer record-keeping requirements from two years to three years.

A full summary of the bill found in the Legislative Counsel’s Digest states:

Existing law regulates the payment of compensation to employees by employers and prohibits an employer from conditioning employment on requiring an employee to refrain from disclosing the amount of his or her wages, signing a waiver of the right to disclose the amount of those wages, or discriminating against an employee for making such a disclosure.

Existing law generally prohibits an employer from paying an employee at wage rates less than the rates paid to employees of the opposite sex in the same establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions. Existing law establishes exceptions to that prohibition where the payment

is made pursuant to a seniority system, a merit system, a system which measures earnings by quantity or quality of production, or a differential based on any bona fide factor other than sex. Existing law makes it a misdemeanor for an employer or other person acting either individually or as an officer, agent, or employee of another person to pay or cause to be paid to any employee a wage less than the rate paid to an employee of the opposite sex as required by these provisions, or who reduces the wages of any employee in order to comply with these provisions.

This bill would revise that prohibition to eliminate the requirement that the wage differential be within the same establishment, and instead would prohibit an employer from paying any of its employees at wage rates less than those paid to employees of the opposite sex for substantially similar work, when viewed as a composite of skill, effort, and responsibility, as specified. The bill would revise and recast the exceptions to require the employer to affirmatively demonstrate that a wage differential is based upon one or more specified factors, including a seniority system, a merit system, a system that measures earnings by quantity or quality of production, or a bona fide factor other than sex, as specified. The bill would also require the employer to demonstrate that each factor relied upon is applied reasonably, and that the one or more factors relied upon account for the entire differential. The bill would prohibit an employer from discharging, or in any manner discriminating or retaliating against, any employee by reason of any action taken by the employee to invoke or assist in any manner the enforcement of these provisions. The bill would authorize an employee who has been discharged or discriminated or retaliated against, in the terms and conditions of his or her employment because the employee engaged in any conduct delineated in these provisions, to recover in a civil action reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer, including interest thereon, as well as appropriate equitable relief. The bill would prohibit an employer from prohibiting an employee from disclosing the employee’s own wages, discussing the wages of others, inquiring about another employee’s wages, or aiding or encouraging any other employee to exercise his or her rights under these provisions. The bill would also increase the duration of employer recordkeeping requirements from 2 years to 3 years. By changing the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs

*Continued on next page*

# Motions

**Johnson Moore** is proud to announce that **Stephanie A. Johnson** has joined the firm as an associate. Johnson Moore specializes in elder abuse and neglect, wrongful death, medical malpractice, and catastrophic personal injury. Ms. Johnson earned her Bachelor's degree in Political Science with an emphasis in International Relations from the University of California, Santa Barbara. She earned her Juris Doctorate from Santa Barbara College of Law. During law school, Stephanie interned for Superior Court Judge Brian Hill and retired Appellate Court Judge Joe Hadden. Ms. Johnson works collaboratively with the firm's two partners at all phases of litigation and has primary responsibility for screening all potential new cases for merit. Ms. Johnson looks forward to bringing Johnson Moore's passion for safety through advocacy to the Tri-Counties.



The Los Angeles and San Francisco *Daily Journal* recognized civil rights champion **Janice M. Bellucci** as one of their prestigious "Top 100" most influential attorneys in California on September 9, 2015. The editors annually recognize elite lawyers whose work has the greatest impact on the

FOROUZANDEH, *continued*

mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason. ■

*Robert Forouzandeh is a partner at Reicker, Pfau, Pyle & McRoy, LLP and serves as the legislative liason for the SBCBA Board of Directors.*

legal industry and modern society.

The *Daily Journal* profile acknowledged Bellucci's extensive work to protect the U.S. Constitution by restoring the civil rights of sex offenders ("registrants"). Bellucci's accomplishments since opening **The Law Office of Janice M. Bellucci** in Santa Maria, California, in 2011 include filing more than 30 federal and state lawsuits which successfully challenged a City of Simi Valley ordinance that forced registrants to post warning signs on their doors on Halloween (inviting potential vigilantism), repealed presence restrictions in more than 50 cities, and repealed residence restrictions in additional cities and counties.

On a more personal level working with registrants, Bellucci has reunited families separated due to parole restrictions and obtained the first stay of enforcement from Jessica's Law in Santa Barbara County for a registrant suffering from terminal cancer. That registrant would have become homeless and ineligible for an organ transplant without Bellucci's help. ■

*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, Santa Barbara Lawyer invites you to "Make a Motion!" Send one to two paragraphs for consideration to our Motions editor, Mike Pasternak at pasterna@gmail.com. If you submit an accompanying photograph, please ensure that the JPEG or TIFF file has a minimum resolution of 300 dpi.*

The SBCBA would like to thank the following Mandatory Fee Arbitration attorneys and arbitrators for their service in 2015. The program, which operates under the auspices of the State Bar of California, provides services to resolve fee disputes between clients and attorneys.

- Stephen Anderson
- Eric Berg
- Marcus Bird
- Alan Blakeboro
- David Fainer
- Jon Erik Storm
- Alex Simas
- Maureen Duris
- Donna Lewis
- Laura Hoffman King
- Stewart Holden
- Penny Clemmons
- Sayre Macneil

# Chowda'!

It's on again!!

## The 6th Annual Santa Barbara Chowder Fest

**17 Top Chowders compete  
for best on the coast!**

**Plus:**  
**Craft Beers • Local Wines**  
**Live Band • Huge Raffle & More!**

**Sunday,**  
**October 18 1pm – 4pm**  
**At Fess Parker's Doubletree Resort**

### Participants & Vendors include:

Three Pickles	Breakwater Restaurant	Whole Foods Market
Boathouse	Fork & Finch	Shellfish House
Enterprise Fish Co.	Scarlett Begonia	Rodney's at the
S.B. Fish Market	Jalama Beach Grill	Double Tree Inn
Mac's Fish and Chips	Outpost at the	Ojai Jelly
Crocodile Restaurant	Goodland Hotel	Four Seasons Biltmore
Chase Restaurant	Deux Bakery	Max's – and more!

### And Generously Sponsored by:

**food&home**  
MAGAZINE

Santa Barbara County Bar Association	Alan and Carol Blakeboro Ghitlerman, Ghitlerman, and Feld, LLP	Amberger & Chamberlain Social Security Law
Myers Law Group	Reicker, Pfau, Pyle and McRoy, LLP	Janean Acevedo Daniels Foley, Bezek, Behle & Curtis, LLP
Cappello and Noel, LLP	Village Properties	The Egenolf Group, LLP
Bartlett, Pringle & Wolf	Joe Palucci	Griffith & Thornburgh, LLP
Ehlers and Fairbanks, PC	Andrade Law Office	CBIZ MHM, P.C.
Bill and Susan Wagner Deckers	Ambrecht & Associates	Law Office of Moises Vazquez
Community West Bank		
Montecito Bank and Trust		



A Benefit for



For tickets and additional info, go to:

[www.santabarbarachowderfest.com](http://www.santabarbarachowderfest.com)

Real Property Section of the Santa Barbara County Bar Association Presents:

Recent Issues in the Internal Revenue Code Section 1031 Exchanges

**Date:**

Wednesday, October 28, 2015

**Time:**

12:00 p.m. – 1:30 p.m.

**Topic:**

*Recent Issues in 1031 Exchanges.* This program will review the basics of 1031 Exchange. Reverse Exchange and Improvement Exchanges. Seller Financing and 1031 Exchange. Partnership Issues (drop and swap).

**Speaker:**

**KENNY HARRIS.** Ken Harris has been with the First American Family since August of 1994. He started at First American in the Escrow division as an Escrow Officer. In the year 2000 Ken transferred from the Escrow division to the 1031 Exchange division of First American. By 2002 Ken had worked his way from being an Exchange Assistant to an Exchange Officer. From 2002 until 2008 Ken handled the forward exchange transactions and also specialized in the more complicated Reverse and Build to Suit exchange transactions in the First American Exchange Southern California Region, which includes the Los Angeles, Orange County, San Diego and Hawaii offices. Since 2008 Ken has been building the exchange business as an Account Executive.

**Place:**

**Wells Fargo Private Bank**

118 East Carrillo Street, Second Floor Conference Room

**MCLE:**

One hour of credit, approval pending

**Menu:**

Lunch will be provided

**Price:**

\$30.00 (net proceeds going to the County Bar)

**Reservations:**

Must be received by October 15, 2015.

In ADVANCE please send your payment payable to:  
Fell, Marking, Abkin, Montgomery, et al. LLP:

Attn: Heather Norton

222 E. Carrillo Street, 4<sup>th</sup> Floor

Santa Barbara, California 93101

**Questions:**

Joshua P. Rabinowitz, 963-0755

The SBCBA presents:

The Family Law MCLE Workshops  
(MCLE optional – credit pending)

**Topic:**

Child Custody

**Date:**

October 14, 2015 (Note a Wednesday)

Moderator:

Rachel Wilson

**Topic:**

Child Custody

**Date:**

November 19, 2015

Moderator:

Libbie Vogt

Identify and discuss issues that arise in the preparation of Marital Settlement Agreements. A panel of three experienced practitioners will present on each topic, with the goal to identify what language is non-controversial, what language is optional, what language is controversial and why it is. We may find that we will have model paragraphs for optional use by all practitioners; paragraphs that we can say to our clients have been approved by the SB County Bar, Family Law section. These paragraphs could be extremely helpful in contentious cases where a client refuses to accept a paragraph proposed by opposing counsel and also in cases with self-represented litigants.

**Sessions to be held at noon at SB College of Law**

To keep costs down and to encourage all practitioners to attend, no lunch will be provided.

MCLE optional credit (pending) of one unit for each session. If you opt for credit, the cost will be \$10/session. Questions? Please contact Maureen Grattan: 805-965-2288x103/ [mgrattan@dorais.com](mailto:mgrattan@dorais.com)



Edward Jones ranked "Highest in Investor Satisfaction with Full Service Brokerage Firms, Two Years in a Row"

Visit [jdpower.com](http://jdpower.com)

**Daniel J De Meyer**  
Financial Advisor

125 E De La Guerra St Ste 101  
Santa Barbara, CA 93101  
805-564-0011

[www.edwardjones.com](http://www.edwardjones.com) Member SIPC

**Edward Jones**  
MAKING SENSE OF INVESTING

# 2015 SBCBA SECTION HEADS

## Alternative Dispute Resolution

David C. Peterson 441-5884  
davidcpeterson@charter.net

## Bench & Bar Relations

Jeff Chambliss 568-3497  
jchambl@co.santa-barbara.ca.us

## Civil Litigation

Mark Coffin 248-7118  
mtc@markcoffinlaw.com

## Mandatory Fee Arbitration

Thomas Hinshaw 729-2526  
tmhinshaw@cox.net  
Scott Campbell 963-9721  
scott@rogerssheffield.com  
Saji Gunawardane 845-4000  
saji@CALitigator.com

## Criminal Law

Catherine Swysen 962-4887  
cswysen@sangerswysen.com

## Debtor/Creditor

Carissa Horowitz 708-6653  
cnhorowitz@yahoo.com

## Elder Law

Denise Platt 682-8271  
deniseplatt@cox.net  
Russ Balisok (818) 550-7890  
russ@balisok.com

## Employment Law

Jonathan Miller 963-2345  
jonathan@nps-law.com

## Estate Planning/Probate

Timothy R. Deakne 963-8611  
tdeakne@aklaw.net

## Family Law

Maureen Grattan 965-2288  
mgrattan@dorais.com

## In-House Counsel & Corporate Law

Betty L. Jeppesen 450-1789  
jeppesenlaw@gmail.com

## Intellectual Property/Tech. Business

Christine L. Kopitzke 845-3434  
ckopitzke@socalip.com

## Real Property/Land Use

Joshua P. Rabinowitz 963-0755  
jrabinowitz@fmam.com  
Bret Stone 898-9700  
bstone@paladinlaw.com

## Taxation

Peter Muzinich 966-2440  
pmuzinich@rppmh.com  
Cindy Brittain 695-7315  
cdb11@ntrs.com

*The Litigation Section of the Santa Barbara County Bar Association presents:*

## NAKED DISCOVERY: How to Strip Down the Purpose & Essentials

Most discovery follows a familiar, predictable yet mindless path. What is the purpose? What should be accomplished? How is discovery used effectively at trial? How do you “set up” your opponent? What is the best method for expert discovery? This presentation will reveal key discovery tactics, how to both propound and respond most effectively, as well as the utilization of discovery during trial.

### **Speaker:**

Matthew Haffner of HAFFNER LAW GROUP

### **Date and Time:**

December 10, 2015, 12:00 pm to 1:00 pm

### **Location:**

Santa Barbara College of Law, Room 1, Santa Barbara

### **Reservations:**

Reserve via email to Mark Coffin, Chair of Litigation Section, by Friday, December 4, 2015,  
mtc@markcoffinlaw.com

Epstein, *continued from page 8*

### **14. What do you most value in your friends?**

Lively and deep conversation.

### **15. Who are your favorite writers?**

Gabriel Garcia Marquez, Abraham Verghese, and many thoughtful bloggers.

### **16. Who is your hero of fiction?**

John Keating in Dead Poets Society.

### **17. Which historical figure do you most identify with?**

I love reading people’s stories. One of my favorites is Jane Addams for her pioneering social entrepreneurship against great odds.

### **18. Who are your heroes in real life?**

Innovators, optimists, and activists.

### **19. What is it that you most dislike?**

Hatred.

### **20. What is your motto?**

Do what you love. Love what you do.

## Hebda Property & Title Solutions

John Hebda  
President



- ✓ Attorneys
- ✓ Title Companies
- ✓ Commercial, Industrial and Agricultural Real Estate Professionals
- ✓ Residential Real Estate Professionals
- ✓ Utility companies and contractors
- ✓ Government agencies
- ✓ Surveyors
- ✓ Developers

Hebda Property & Title Solutions is committed to sharing over 30 years of title insurance and real property problem solving expertise with Professionals seeking quality research and common sense solutions regarding a host of complex real property issues.

john@hebdasolutions.com  
805.636.2537  
www.hebdasolutions.com

## JOHN E. NORDSTRAND ECONOMIC CONSULTING

For 22 years serving the Central Coast as an expert economist for personal injury, wrongful death, wrongful termination, and business litigation matters.

### SERVICES:

- Valuations of Wage and Fringe Benefits Loss
- Household Services
- Business Valuations
- Loss of Profit Analyses
- Statistical Studies

### EXPERIENCE:

Over 150 appearances of courtroom testimony in Superior Courts of Santa Clara, Monterey, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, and Orange Counties, as well as U.S. Federal Court.

(805) 684-2750  
www.johnnordstrandconomics.com  
john.nordstrand747@gmail.com

## BONGIOVI MEDIATION

Mediating Solutions since 1998

Mediator • Arbitrator • Discovery Referee

*"There is no better  
ambassador for the  
value of mediation than  
Henry Bongiovi."*



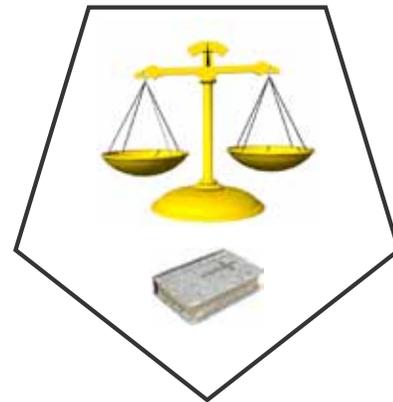
HENRY J. BONGIOVI

AV Preeminent Rating  
(5 out of 5)

AVO Rated 'Superb'  
(10 out of 10)

Conducting Mediations  
throughout California

805.564.2115  
www.henrybongiovi.com



## SANTA BARBARA CHRISTIAN LAWYERS ASSOCIATION

Meeting for lunch and fellowship  
on the last Friday of each month  
at 12 pm

The University Club  
1332 Santa Barbara Street

\$20 for attorneys, \$10 for students

For more information please call or email Brenda Cota  
at (805) 963-9721 or [bcota@rogerssheffield.com](mailto:bcota@rogerssheffield.com)

# Santa Barbara Lawyer

The Santa Barbara County Bar Association  
15 W. Carrillo St., Suite 106  
Santa Barbara, CA 93101

Change Service Requested

PRSRT STD  
U.S. Postage Paid  
Santa Barbara, CA  
Permit #734



## Gary Goldberg

Real Estate Broker • Licensed Attorney  
UC Hastings College of Law • Order of the Coif  
CalBRE License # 01172139

- Intensive Marketing Plan for each listing
- Member, Santa Barbara, Ventura, and Santa Ynez Real Estate Boards
- Expert witness in Real Estate and Divorce Matters, and Estate Planning
- Licensed Attorney, Professor Real Estate Laws Course at SBCC

## COASTAL PROPERTIES

EXCEEDING YOUR REAL ESTATE EXPECTATIONS

*For your Real Estate needs, choose carefully and choose experience!*

**“I’ve been a Lawyer for 23 years and a Real Estate Broker with my own company for over 20 years.”**

*“As a real estate company owner beginning my 20th year of serving Santa Barbara, I look forward to helping you buy or sell real estate property, and as always, personally dedicating myself to striving for excellence in every transaction.”*

**Over \$550,000,000 Sold Since 2000**

**Among the top 10 agents in Santa Barbara**

*(per MLS Statistics in Gross Sales Volume)*



1086 Coast Village Road, Santa Barbara, California 93108 • Office 805 969-1258 • Cell 805 455-8910

To view my listings visit [www.garygoldberg.net](http://www.garygoldberg.net) • Email [gary@coastalrealty.com](mailto:gary@coastalrealty.com)