Santa Barbara Lawyer

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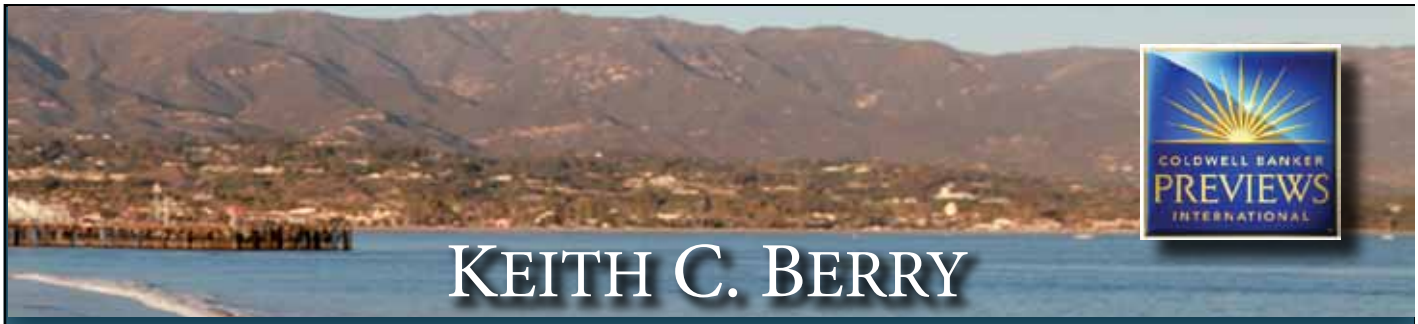

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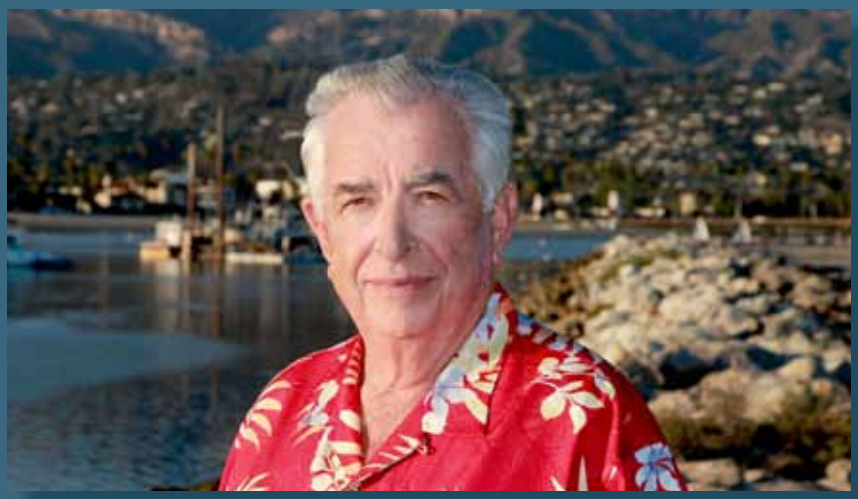

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Mission Statement

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

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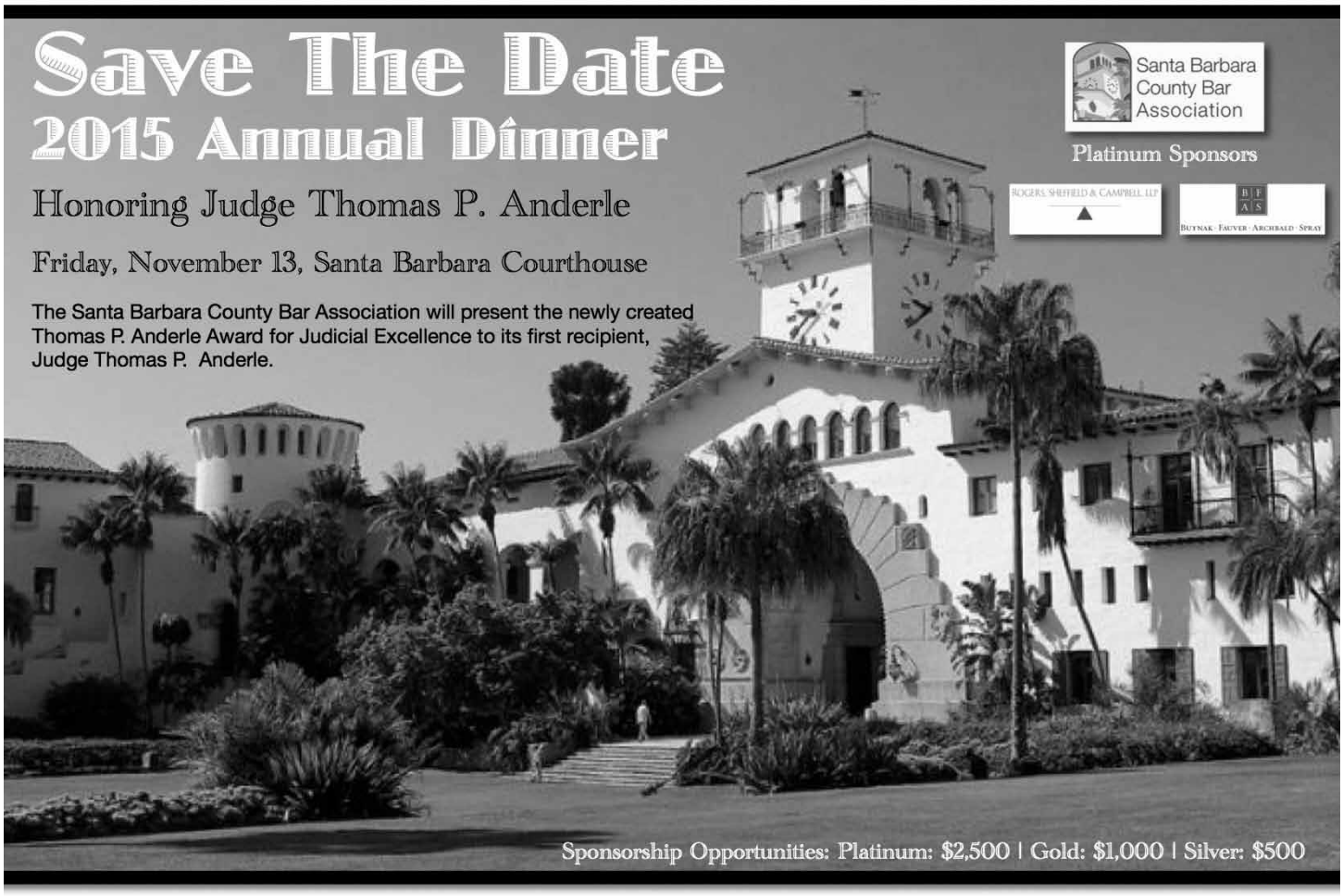
About the Cover

Santa Barbara's famed palm trees along Cabrillo Boulevard are silhouetted at sunset. Photo copyright David M. Schrader.



E-verything is E!

By Hon. James Herman
Presiding Judge
Santa Barbara Superior Court

E-filing is here. And it is a great time and resource saver for the courts and e-filers alike.

From a judge's perspective, the ability to manage a calendar organized in digital form without the logistics of bulky paper files is an amazing new world of efficiency and possibility. No more carts full of files careening the hallways. No more files misplaced in the file room, being worked up in research or forgotten in a judicial car trunk. Add to that, search-ability both within the case database as well as within a digital case file, the ability to cut and paste from the digital file and the ease of organizing a calendar—it's judicial nirvana.

As for you e-filers and e-servers, you are now able to file and serve documents in electronic PDF format, with certain exceptions, from any computer or mobile device, 24/7. Note, however, by the court's proposed mandatory e-filing rule, documents filed after 5 p.m. on a court day will be deemed filed the next court day. You will receive electronic notification from the court that the documents have been received and either confirmation that the documents have been accepted for filing or a notice of rejection of the document, for example, for failure to pay a filing fee. You can maintain a paperless office with the exception of the duty to maintain documents signed under penalty of perjury and certain other original documents or documents required to be served in paper form by local rule or the California Rules of Court. All other filed documents are, by the way, deemed signed simply by filing. You can now also access civil, family law and probate case records on line through the court's public portal.[1] Check it out.

Tyler Technologies' Odyssey System is both user friendly and well supported through live classes, webinars and online support directly from the Tyler website.[2] In order to e-file, simply set up an account with an e-filing service provider -- at this point Tyler Technologies -- enter your case information as prompted, pay the fees and file. You should also be familiar with both the applicable e-filing California Rules of Court, CRC 2.250 et. seq., Filing and Service by Electronic Means, and the proposed local e-filing rule of court which will mandate e-filing for represented parties except in case of hardship as of January 1, 2016.[3]

Good luck on an e-asy transition to the digital world. ■

Judge Herman, Santa Barbara County Presiding Judge, was appointed to the Santa Barbara Superior Court in 2005. He currently presides over a civil and family law calendar. He is also a member of the court executive committee and chairs the technology committee.

Endnotes

1 https://California.tylerhost.net/ofsweb.
2 http://eg2113prss.egain.net/system/templates/selfservice/national/#!portal/1052/article/4716/When-are-the-Online-Training-Sessions-for-California-CA4716
3 http://www.sbcourts.org/ff/rules/proposed/Proposed1012_0715.pdf.

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MAKING SENSE OF INVESTING

Local Lawyer Lore

By L. Lawyer

As explained each month since our inaugural column in June, this is a monthly interactive column about local lawyers. We challenge you, our readers, to determine what common ground is shared by those featured in the group photo.

In August, we featured twelve members of our legal community, pictured once again below, and asked what they have in common. The answer is an impressive one, as each shares the professional distinction of having argued one (or more) cases before the California Supreme Court during their respective careers.

As pictured from left to right, the individuals (eleven attorneys and one judge) and the case(s) each argued are:

Jeff Nelson - In re Marriage of Milhan (1980)

Fred Clough -Yost v. Thomas (1983)

Richard Monk - Morehart v. County of Santa Barbara (1994); Citizens of Goleta Valley v. Superior Court (2006)

Tony Fischer - City of Santa Barbara v. Adamson (1980)

Steve Wiley -City of Santa Barbara v. Superior Court (Janeway) (2007)

Lol Sorensen - Estate of Griswold (2001); Rice v. Clark (2002)

Ben Bycel - City of Santa Barbara v. Adamson (1980)

David Hughes -Rice v. Clark (2002)

Herb Fox - Estate of Griswold (2001); Rice v. Clark (2002)

Philip Seymour - Citizens of Goleta Valley v. Board of Supervisors (1990); City of San Diego v. Trustees of the California State University (2015)

Judge Michael Carrozzo-Robey v. Superior Court (2013)

Brian Gough-Oren Royal Oaks Venture v. Greenberg, Bernhard, Weiss & Karma, Inc (1986)

Note that there will be many common facts about any group we feature. Thus, the winning answer will be one identifying 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. Since one goal of this column is to add a surprise element, our highly-skilled research staff must do its investigation without advance public disclosure of the purpose. If you or another local attorney has had the same experience or accomplishment and we failed to include you/him/her, please let us know and we will add that information in a future issue.)

Next month we will feature fourteen local attorneys. Due to some scheduling issues, we resorted to Photoshop to include all fourteen in a single photograph. In the very unlikely event of two equally deserving correct answers, we will use as a tie-breaker one's guess on which two attorneys used a "body double" for the photograph. ■

PHOTOS WANTED

Santa Barbara Lawyer is seeking photos for two features to run in future issues. The first feature will be "What I Did on my Summer Vacation." Whether you stayed in a castle at Lake Como or a tent at Lake Cachuma, send in your photos as well as any interesting tales from your travels. The second feature will be "Attorneys and Their Hobbies." If you have photos of yourself playing the trumpet, acting in local theater, surfing, fly fishing, painting, or anything else, let us know. Photos can be sent directly to the Editor at rogers@nathanrogerslaw.com. Thanks! ■

A Former Judge's Perspective

By Hon. Frank J. Ochoa (Ret.)

[Editor's Note: Versions of this article originally appeared on *Noozhawk* and in the *Santa Barbara Independent*.]

A defendant was recently granted probation in a case before the Santa Barbara Superior Court which involved four felony counts and one misdemeanor charge. The defendant "pled straight up"—that is, admitted his guilt before trial with no promise of a certain sentence in return. His plea subjected him to the possibility of up to seven and one-half years in state prison. The sentencing judge had the discretion to impose such a sentence, or to grant probation. A grant of probation would subject the defendant to the imposition of that seven and one-half year sentence if he were to violate any of his probationary terms or conditions.

The case has received considerable public attention because it involved heinous acts of cruelty against what many consider "man's best friend," his dog. That scrutiny was elevated because the case also involved a charge of felonious assault involving domestic violence. The facts and circumstances of the case caused many among us to experience fear, anger, frustration, and systemic rejection based upon our perspectives regarding this case.

The "best friend" appellation bestowed upon a person's dog is said to stem from a trial's closing argument in 1870, given in a small town Missouri courtroom. A person had shot and killed his neighbor's dog, named Old Drum. George Graham Vest, a local lawyer, who later became a United States Senator, gave a brief but compelling closing argument at the civil damages trial regarding the death of Old Drum. He said, in part, "The one absolutely unselfish friend that man can have in this selfish world, the one that never deserts him, the one that never proves ungrateful or treacherous is his dog". *Tribute to the Dog*, by George Graham Vest. That oft-quoted argument to the jury cannot be read without experiencing heartfelt emotion.

The acts constituting the crimes in this matter were, beyond any reasonable doubt, unspeakably cruel and depraved. The horrific acts committed against this dog resulted in the medical decision to euthanize the dog to end its suffering. The fact that persons have re-named the dog "Davey," the appellation given the dog by the treating veterinarian team, pays homage to that medical staff.

Hon. Frank J. Ochoa

It was argued by the prosecution at sentencing, and many feel appropriately so, that a state prison commitment was warranted. But the known circumstances also include that the defendant had never been arrested before these events, and had just reached the age of majority at the time of the crimes.

He was also pursuing a college education, had solid family support, and was considered a low risk of continued violence of a domestic nature based on legally approved standardized testing procedures. These are all factors which California law requires any judge to consider during a felony sentencing proceeding. The legal requirements governing any judge's consideration of a felony sentencing proceeding are vast and complex. But they include the following:

"At the time (of sentencing) the probation officer of the county of the jurisdiction of said criminal shall……inquire into *the antecedents, character, history, family environment,* and *offense* of such person, and must report the same to the court." *California Penal Code Section 1203.10.* That report must include: "Any relevant facts concerning the defendant's *social history*, including those categories enumerated in section 1203.10, organized under appropriate subheadings, including, whenever applicable, "*Family*," "*Education*," "Employment and income," "Military," "Medical/psychological," "Record of substance abuse or lack thereof," and any other relevant subheadings. *California Rule of Court 4.111.5(a).*

In terms of whether or not to grant probation, a judge is required to consider, among many other things, the defendant's prior record, whether he is remorseful, as well as the defendant's "Ability to comply with reasonable terms of probation as indicated by the defendant's *age, education*, health, mental faculties, history of alcohol or other substance abuse, *family background and ties*, employment and military service history, and other relevant factors." *California Rule of Court 4.414(b)(4).* (Emphases added.)

In short, our state law, based upon constitutional considerations, requires every judge in every case which occurs in his or her courtroom, to consider, weigh, and balance a wide array of factors related to the *offenses* at issue. But the judge is also required to consider the *defendant's personal*

circumstances, including the defendant's social background, education, community ties, collateral impacts of the felony conviction on his life, and many other delineated considerations at each and every sentencing hearing where probation is an option. Others are free to focus solely on the nature of the offense, and to ignore or minimalize other considerations. The sentencing judge was not free to do so.

Two highly experienced and qualified probation officers had reviewed the case thoroughly and evaluated the considerations required by law, and each had, in separate reports to the court, recommended a withholding of any state prison commitment. They recommended efforts to rehabilitate and redirect the defendant through strict supervision and therapeutic requirements utilizing a probationary disposition. The judge followed their recommendation.

In addition to other strict terms and conditions of probation, including that the defendant have no "contact with any animal unless in the presence of a responsible adult," and have no contact with his former girlfriend, the judge ordered that the defendant engage in therapies and treatment, including a year-long Batterer's Treatment Program. The judge also imposed the maximum county jail sentence of one year which can attend a grant of probation, and ensured that the sentence would be served behind bars. He did so by immediately remanding the defendant into county jail after sentencing. By not allowing the defendant to appear for the sentence at a later time, the judge eliminated the opportunity for the defendant to apply for "alternatives" to confinement in jail. Defendants are routinely granted sufficient time to make such applications given our persistently overcrowded jail conditions.

At the time of sentencing, the judge also denied a request that the defendant be allowed to delay commencement of the jail sentence for two days. The defense had made that request because the defendant's mother's birthday was being celebrated the day after sentencing.

The judge had evidence which could have led him to conclude that the defendant was remorseful, a required sentencing consideration. The defendant said at sentencing, "I feel terrible for the harm I caused to my ex-girlfriend and my dog Jason….As part of my effort to get better, I am receiving continuous treatment from a psychiatrist. I regret my actions very much. And I am ashamed of what I have done….I understand what I have done is unforgiveable, and I am extremely regretful and sorry about it."

The defendant made statements which appear to be evidence of his acceptance of personal responsibility for his actions. He acknowledged that his actions have interrupted his lifelong college plans and dishonored his family. He stated further, "I am very sorry for what I have done. I can only beg you for mercy."

One can view that expression of contrition skeptically, or as a heartfelt acknowledgement of the wrongfulness of one's conduct. If one was not in the position of the decision maker, an element of speculation enters into the process. That judge was there to see the defendant make the statement. Given the configuration of our courtrooms, the defendant could have only been facing that sentencing judge, and no one else. The call on the defendant's credibility and level of sincerity rested with the court.

The number of times a friend or acquaintance has asked me, or some other judge, for his or her thoughts about a difficult criminal proceeding, which became the subject of headlines, are innumerable. For many, the response is invariably the same. "I wasn't in that judge's courtroom. I don't know all the facts. I didn't see the witnesses testify, or observe the defendant as he entered the plea." It can, and has been argued that this judge's decision was too lenient. It could conceivably be argued that aspects of it were too harsh.

We have the most complex and highly developed legal system in the world. Our civil case courtrooms are where societal disputes are resolved; and our criminal case courtrooms are where those who transgress our agreed upon rules of conduct have their actions adjudged, and where punishment is meted out. As a society, we empower our judges to make those difficult decisions. Those decisions are always reviewable by a higher court.

In this country, we have the freedom to disagree with each of those decisions, whether made at the trial or appellate court levels. But we must, in deference to our compact of citizenship, give some measure of respect to the decisions made by those to whom we grant the authority to impose such life changing decisions. They have one of the most complex and challenging roles in our constitutional system of governance. ■

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Fish Story

BY RICHARD W. MILLAR, JR.

I know very little about fish. When I was a tyke, my parents used to rent a house in China Cove for the summer, and I would fish off the Marine Lab pier with a dropline. Using mussels that I pried from the pilings as bait, I would catch all manner of relatively short and unknown species. I would then gut and clean them and my mother would make a big production of cooking them for dinner. (Looking back, I suspect she may have switched "my" fish for those from the local market, but at the time that didn't occur to me.)

Later, when I was old enough for summer camp, I learned to fly fish. Since my flies rarely hit the water as they were first snagged by my hat, shirt, pants, or a nearby tree, actual catches were, in a word, rare. I "retired" from the sport early to the relief of all those who were in snagging distance of me.

We do have goldfish in a pond at home, but those don't really count as fish except to nocturnal raccoons or visiting egrets. Other than that, fish have not been a big part of my life.

Nor do I know much about manicuring except that nail salons are cropping up everywhere. There are two small shopping centers within a few blocks of our house, and both have nail salons. When a salon in one of the centers went out of business, it was quickly replaced by still another, probably with the same employees. Whenever I would walk or drive by, they seemed packed and busy with rows of chairs filled with patrons with outstretched arms whose feet were sitting in something that looked uncomfortably like detached toilet bowls. I am not sure what goes on in those bowls, but I am told they have something to do with pedicures.

So imagine my surprise when the United States Supreme Court announced it rejected hearing an appeal from the Arizona Court of Appeals in a case that involved both fish and pedicures, a combination I would not have thought possible.

It turns out that the Arizona State Board of Cosmetology has, among its other duties, adopted "necessary and proper" rules "including sanitary and safety standards for the practice of nail technology." (In my mind, fingernails and technology don't even belong in the same sentence, but what do I know?)

One Cindy Vong, and what I assume is her company, La Vie, LLC, came to the attention of those sharp-eyed cosmetology people because she was filling those bowls with fish. Not just any fish but a species called *Garra rufa*, which apparently is Turkish for "we suck toes."

I am going to quote from the court of appeals' opinion, not because it is unusually eloquent, but to prove I am not making this up:

The customer's feet were then placed in a tank containing water and garra rufa or chin chin fish that removed skin from the feet.

According to my Internet research, the chin chin fish is an imposter, which is a shame as I was thinking that if the garra rufa work on the toes, the chin chin fish would be a natural for barbershops.

In any event, the cosmetology police are in charge of all equipment or tools used in pedicures and have rules and procedures for disinfecting those tools or pieces of equipment. It was a short intellectual leap for them to say that the fish were tools, and it was impossible to disinfect the fish without killing them. It is a little bit of a stretch for me to call fish equipment, but if I could get to that point, I would have to agree that the disinfection process would be terminal.

Ms. Vong responded by stating that the rules were adopted "at a time when the use of fish in the manner I have proposed, was not known or contemplated." Hard to argue with that!

Ms. Vong challenged the Board's jurisdiction, as, in her view, fish pedicures did not constitute the practice of cosmetology, aesthetics, or nail technology. (I can't figure out what they do constitute, but I digress.)

The court of appeals found that cleaning feet with fish was "a particular type of nail technology" and therefore the Board's classification of them as tools was "rational." I think that was the court's way of saying, "we have no idea what to call toe sucking by fish, but we think it is a really icky idea."

Well, I don't know about you, but as soon as I finish writing this, I am going up in my attic to find my old dropline, get some bait, then head over to Happy Nails for a day of fishing. ■

Richard W. Millar, Jr. is a member of the firm of Millar, Hodges & Bemis in Newport Beach. He can be reached at millar@mhblaw.net.

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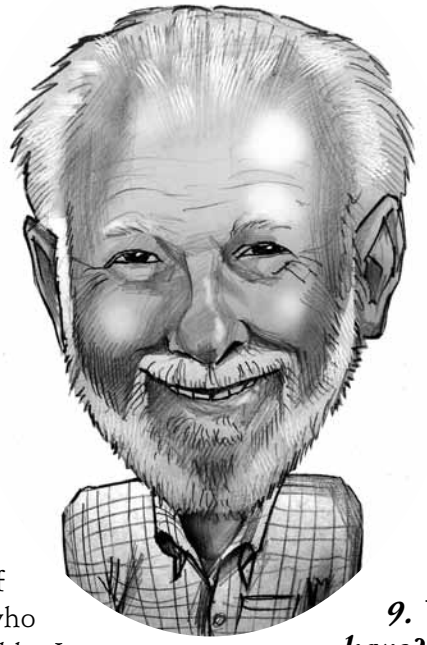

Allan S. Ghitterman

Allan S. Ghitterman has been practicing worker's compensation law since 1959. Helping people recover worker's compensation benefits has been one of the most rewarding experiences of his life. For more than 57 years, he has been working towards improving the working person's life, and the sense of accomplishment in helping people who need assistance has been immeasurable. In his time, he has seen good things and bad about the worker's compensation system, but through it all was his hope that each injured worker would be treated with dignity and respect.

1. What is your idea of perfect happiness?

Healthy old age.

2. What is your greatest fear?

Incurable illness.

3. Which living person do you most admire?

My wife and family; they tolerate my foibles and receding memory.

4. What is your greatest extravagance?

My wife.

5. What is your current state of mind?

Peace at any price. Defense is necessary, but stop wasting money on armaments, use those workers to upgrade our superstructure.

6. Which words or phrases do you most overuse?

Oops, yes and no.

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

My wife, my children, my grandchildren and my great grandchildren.

8. When and where were you happiest?

The birth of my children, to have passed the bar, every morning I am awake – beside me is my wife.

9. Which talent would you most like to have?

Play a musical instrument.

10. What do you consider your greatest achievement?

Raising my children to be self-sufficient.

11. Where would you most like to live?

Right where I live, in Santa Barbara. I have been to a few other states and most governmental leaders are provincial legislatures and are too narrow minded and have no real understanding of their responsibility.

12. What is your most treasured possession?

My reputation.

13. What is your most marked characteristic?

The willingness to admit that others may have a better answer than I.

14. What do you most value in your friends?

Intelligence and wisdom, and their willingness to educate me.

15. Who are your favorite writers?

I admire and respect those with creative minds, especially sci-fi, who dreamed up wristwatch radios (remember Dick

Continued on page 30

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Restorative Justice and the Conferencing Process—Part III[1]

By Robert Sanger

This is a continuation of the last two months' *Criminal Justice* columns pertaining to Restorative Justice. We talked about the basic principles of restorative justice and some of the attempts to implement restorative justice programs in other states. We also discussed the California statute on Restorative Justice which does little more than announce the concept by name. Penal Code Section 17.5, enacted as a part of the 2011 Realignment Act lists "community-based punishment" programs designed to reduce the state prison population. One of the programs is: "(e) Restorative justice programs such as mandatory victim restitution or victim-offender reconciliation."

In this month's column, we will look at the kinds of programs that can be implemented within the general scope of restorative justice, including sentencing circles. We will consider whether California's statute is broad enough to allow implementation of such programs. We will look at an interesting analysis by the Minnesota Court of Appeals and the Minnesota Supreme Court and see if that analysis provides any insight into what California can do to implement restorative justice programs.

The Restorative Justice Continuum

As discussed previously, Restorative Justice is a broad concept and the name is used, and occasionally misused, to cover a broad range of activities. Professor Howard Zehr has made the point that we should see practices along a continuum as more or less restorative. We should not reject or be judgmental about a practice that is not fully restorative, but we should also be careful to avoid the co-optation of the term to simply make retributive processes sound appealing.

The most restorative practices bring the victim, the offender, and the community together to deal with a harm. The goal is to make things right. Other practices that may be, in Zehr's view, "partially restorative" may still be desirable. For instance, standing by themselves, victim impact circles, community service or offender rehabilitation programs may each have some restorative value but none are fully restorative justice.

Robert Sanger

Interestingly, California's terse statute, while proclaiming that restorative justice is an available "community-based punishment" alternative, nevertheless gives two less than restorative justice examples. It says, "such as mandatory victim restitution and victim-offender reconciliation." Mandatory victim restitution, standing alone, focuses on the victim, which is a worthy goal and partially restorative, but it does not concern itself with society or with the offender. Victim-offender reconciliation, is also a worthy project and some instances have provided great insight and relief to either the victims or the offenders. However, standing alone, it does not bring the community into the process and is partially restorative.

Roughly constructing a continuum of restorative programs, we can start from the less restorative and move toward the fully restorative. All of these programs are in practice elsewhere in the United States and are being used as a part of, or in lieu of, the traditional retributive justice system. Some, perhaps because of their comfortable fit with the retributive system, are easier to implement, while others present more of a challenge.

First, on the less restorative side, there are several aspects of the existing retributive justice system that can be emphasized in an effort to derive some restorative benefits. For instance, restitution to victims can help make things right, at least for the victim. Sentencing practices including community service and offender rehabilitation again can have restorative consequences. In most jurisdictions, these are features of the existing retributive system and fit well within existing statutes and procedures.

Second, after the retributive system has done its work and a person has been sentenced, victim-offender reconciliation can be implemented. These programs can be run through a probation department or through the prison or post-incarceration supervision systems. They do not have any direct effect on the retributive system and co-exist well with it.

Third, and more of a challenge to implement, are diversion programs and sentencing circles. These take the case

Continued on page 19

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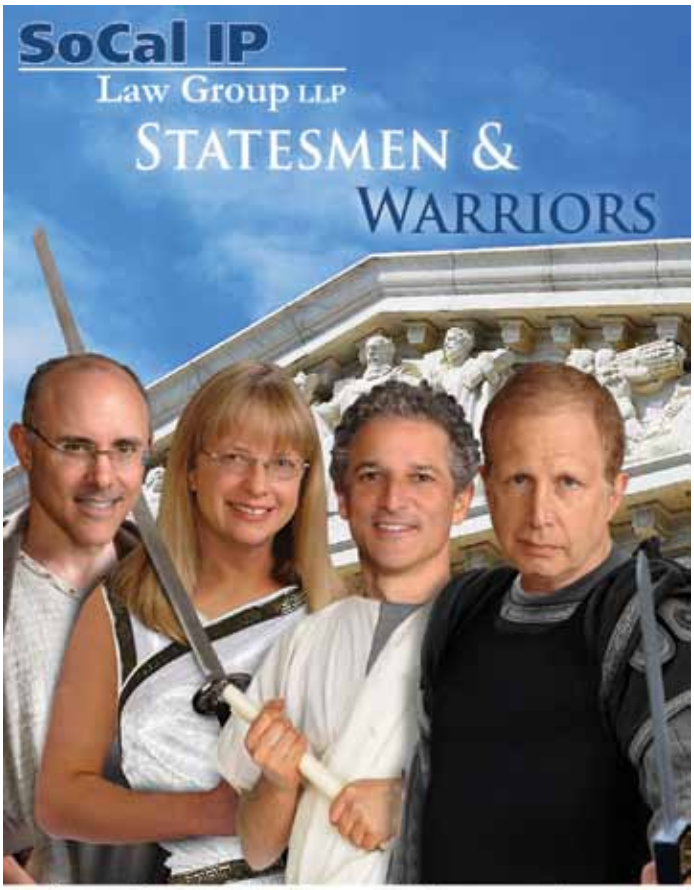

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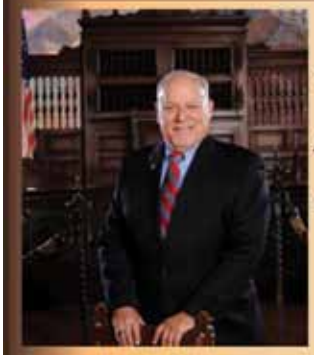

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Sanger, *continued from page 14*

away from the retributive justice system either before it starts or, at least, before sentencing. In these programs, the retributive system gives up direct control over the outcome and allows a restorative justice program to pursue its goals. To work, there must be a willing victim and a willing offender as well as some available facilitation process that assures the involvement of the community or community representatives.

California and Minnesota

In California, the approach has been to use restorative justice somewhat gingerly. It has been applied in the school systems, including famously in Oakland, but also now in Santa Barbara. Here, a pilot program began at Santa Barbara Junior High three years ago and was remarkably successful. As a result, it has now been implemented in all public high schools and junior high schools. It is being expanded to the grade schools on a school-by-school basis. Suspensions are down by 70% and that rate has been maintained consistently each year over the last three years.

In addition, there are some programs implemented in the juvenile system itself. This is a natural, but not overwhelmingly bold, move. In Santa Barbara, there has been a halting implementation of restorative justice in the North County. Originally, only minor property crimes were accepted but the list of offenses is expanding. However, gang cases are excluded. In the South County, negotiations are underway for the implementation of a broader program. These programs operate with the consent of the Probation Department and the District Attorney's Office.

Assuming restorative justice is a desirable project, the challenge is to make it available for adult cases and for the full range of cases for which it might be amenable. There has to be a willing victim and a willing offender so not all cases are amenable. But there still are a lot of potential cases where restorative justice could be implemented. For it to work, there must be a program to provide proper guidance, including the provision of trained facilitators. It must also have the support of the entire system, including the courts and defense lawyers, as well as prosecutors and probation officers.

There also must be a legal framework. California has the one statute that simply defines a community based punishment to include, "Restorative justice programs such as mandatory victim restitution and victim-offender reconciliation." Can restorative justice proceed in California to include adult cases and sentencing circles without further implementing legislation?

The program in Minnesota might be instructive. For instance, in Washington County, Minnesota, sentencing councils are private, community-based organizations that make themselves available to do anything from mediating neighborhood disputes to offering sentencing alternatives for juveniles and adult offenders. They can take over the entire matter or they can provide sentencing recommendations. Over the years, these sentencing councils have been used by the courts with more or less participation of the prosecution to apply classic restorative justice techniques in adult criminal cases including felonies.

Section 611A.775 of the Minnesota Statutes says:

"A community-based organization, in collaboration with a local governmental unit, may establish a restorative justice program. A restorative justice program is a program that provides forums where certain individuals charged with or petitioned for having committed an offense meet with the victim, if appropriate; the victim's family members or other supportive persons, if appropriate; the offender's family members or other supportive persons, if appropriate; a law enforcement official or prosecutor when appropriate; other criminal justice system professionals when appropriate; and members of the community, in order to: (1) discuss the impact of the offense on the victim and the community; (2) provide support to the victim and methods for reintegrating the victim into community life; (3) assign an appropriate sanction to the offender; and (4) provide methods for reintegrating the offender into community life."

This is verbose compared to the California statute but it really does not provide any more authority. Hence, after the Minnesota statute was passed and sentencing circles were recognized by the trial courts, there were questions raised in the appellate courts as to whether the statute really allowed such significant involvement in adult felony cases. In one case in 2000, *State v. Blais* (not certified for publication, 2000 WL 1778385), the Minnesota Court of Appeals dealt with a complaint by the prosecution that a trial judge had consulted with the sentencing council and, later, referred the case for a sentencing recommendation to the council resulting in a stay of the otherwise mandatory 122 month prison sentence on the condition the defendant serve one year in custody followed by probation with continued involvement in a restorative justice program.

The majority found that the purported procedural bars of the retributive system did not bar a "downward dispositional departure" that would accommodate the restorative justice program. The concurrence, raised what it claimed to be procedural irregularities in the sentencing process and, although concurring, said,

"The statute is general rather than specific. It identifies

areas of public concern upon which program participants may make recommendations. Nowhere does the statute indicate that its purpose is to displace the traditional criminal justice system, and construing it to mean that the traditional sentencing authority of the district court is subordinate to a restorative justice forum would not be reasonable." (2000 WL 1778385 at 3)

Two years later, the Minnesota Supreme Court took up the challenge in *State v. Pearson*, 637 N.W.2d 845 (2002). There, a defendant was referred to the Restorative Justice Council as a sentencing circle. They spent fourteen hours over several sessions applying restorative justice principles to the harm caused by the defendant's felony violations of welfare fraud statutes. The Chief Justice for the majority said:

"On this record, the court did not abuse its discretion in staying adjudication of the offense. Questions remain regarding the scope of the authority of restorative justice programs, and the respective roles of the program and the court in sentencing. However, the legislature has an opportunity, perhaps in light of the ruling in this case, to clarify those roles." *Id*. at 849.

The concurring Justices took a more direct doctrinal approach. They contended that restorative justice programs were an adjunct to the sentencing authority of the trial court. They stated overtly that the purpose of the statute was to promote the community's best interest and, to the extent that a case was referred to a circle, the circle could make recommendations that were not restricted by the retributive system of sentencing. The court could adopt those recommendations even if the court could not have deviated from an otherwise mandatory sentence absent the circle's recommendation.

Interestingly, although the majority invited the legislature to clarify the statute in light of the ruling in this 2002 case, the statute has not been amended. It appears that the appellate challenges have abated and there have been no further cases decided by the Court of Appeals or the Minnesota Supreme Court. Yet, restorative justice sentencing circles continue in Washington County and throughout Minnesota.

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Conclusion

The lesson for California is that the mere authorization of restorative justice as an alternative in sentencing may be enough to allow the process to be instituted creatively. The statute pertains to adult felony cases. As in Minnesota, progress is made by instituting programs and using them. There will be resistance from stakeholders in the established retributive justice system but they can be persuaded over time. Ultimately, it is hard to argue with a concept that looks at harm and tries to work with the victims, the offenders and the community to make things right. ■

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).

ENDNOTES

1 ©Robert M. Sanger. A portion of this series of articles on restorative justice will be incorporated into an upcoming book on the subject.

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Verdicts & Decisions

Cabrera v. Central Coast Urgent Care et al.

SANTA BARBARA COUNTY SUPERIOR COURT, COOK DIVISION

CASE NUMBER:	1393845
TYPE OF CASE:	Personal injury; medical malpractice
TYPE OF PROCEEDING:	Jury trial
JUDGE:	Hon. Timothy J. Staffel
LENGTH OF TRIAL:	10 days
LENGTH OF DELIBERATIONS:	90 minutes
DATE OF VERDICT OR DECISION:	June 12, 2015
PLAINTIFF:	Sergio Cabrera, by and through his guardian ad litem, Juan Cabrera
PLAINTIFF'S COUNSEL:	Ralph Boroff, Law Offices of Ralph Boroff and Lesley Harris, Law Offices of Lesley Harris
DEFENDANTS:	Central Coast Urgent Care and Thomas Caruso, M.D.
DEFENDANTS' COUNSEL:	Bradley C. Clark and Deborah Taggart of Schmid & Voiles

FACTS AND CONTENTIONS: Sergio Cabrera, age 32, presented to Central Coast Urgent Care on July 26, 2011. Plaintiff alleged that his initial complaints to the staff on presentation were of a sore throat, difficulty breathing, difficulty speaking and difficulty swallowing. Defendants contended Plaintiff initially complained only of a sore throat, then subsequently complained of difficulty breathing and shortness of breath.

Mr. Cabrera was evaluated by the medical assistant. He had a fever and slightly elevated pulse consistent with the increased temperature. His respiratory rate was normal and his oxygen saturation level was normal. Plaintiff was seen and examined by Dr. Caruso who noted no obvious airway obstruction but possible retropharyngeal abscess. Dr. Caruso advised the plaintiff to go directly to the Emergency Department for further evaluation consisting of further examination, radiographic studies and IV antibiotics if deemed necessary.

Mr. Cabrera was taken directly to the Emergency Department by his significant other, arriving 10 minutes after being seen by Dr. Caruso. He was triaged by Emergency Department nurses and was stable, but a bed/room was not available. Approximately 12 minutes later, while walking to a room in the Emergency Department, Plaintiff became cyanotic and could not breathe. Resuscitation measures were immediately started by the emergency department physician and the hospital respiratory therapists. However, despite the attempts at resuscitation, Mr. Cabrera suffered severe anoxic brain damage due to airway collapse from acute epiglottitis. Mr. Cabrera is in a permanent persistent vegetative state and requires attendant care 24 hours per day in a skilled nursing facility.

Plaintiff contended that Central Coast Urgent Care did not provide triage training, policy or procedures to its front office, non-medical staff, the staff at Central Coast Urgent Care should have advised Dr. Caruso of the Plaintiff's complaints earlier than they did, and had Dr. Caruso seen the patient earlier, he would have been sent to the Emergency Department earlier and the anoxic brain damage would have been avoided. Plaintiff also contended that Dr. Caruso should have sent the patient to the ER by ambulance as opposed to private vehicle and that he should have called the Emergency Department to tell them that he was sending the patient over. Plaintiff contended that if the ER had prior notice, a room and appropriate personnel would have been ready to treat him, he would have been seen earlier by the ER doctor and the anoxic brain damage would have been avoided.

Defendants contended that Plaintiff was not in respiratory distress at the time he was seen by Dr. Caruso and there was no reason to send him to the ER via ambulance or to call ahead. Defendants contended that the outcome would have been the same regardless of whether the ER had been warned of Plaintiff's arrival or if he had been sent by ambulance.

SUMMARY OF CLAIMED DAMAGES: Plaintiff claimed $12.5 million in economic damages comprised of loss of earnings and earning capacity, past and future medical expenses, loss of household services and family care services.

RESULT: Defense verdict 12-0 ■

The SBCBA Estate Planning / Probate Law Section Presents:

Use It or Lose It: Appealable Orders and Writs in Probate Litigation

When

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Speaker

Herb Fox, Certified Appellate Law Specialist

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The Santa Barbara County Bar Association Proudly Presents:

A Reception with the Appellate Justices of Division Six

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 1st, $60)
Non-Members: $60 (After October 1st, $70)
Students/Paralegals: $20

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15 West Carrillo Street, Santa Barbara, CA 93101

Name(s) _____

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SBWL
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Professional Portrait Event!

Update Your Professional Online Image

Preliminary Sign-ups are now open for you to have your professional picture taken. Price includes one high resolution electronic image professionally staged and processed by world-renowned photographer, Jesse Kaplan (www.JesseKaplanPhoto.com). You will also have the opportunity to purchase additional images and/or poses from the photographer directly.Take this opportunity to update your professional online image and Santa Barbara Lawyer Directory portrait. Purchase a portrait sitting as a gift to friends, colleagues, and family.

Price: $35 - Members* | $50 - Non-Members

Date: September 22, 2015 between 9:00 a.m. - 1:00 p.m.
Please state your preferred time and you will be assigned a specific window prior to the event.

Location: Sanger & Swysen, 125 E. De La Guerra Street, Suite 102, Santa Barbara, CA 93101

Please email Michelle E. Roberson at mer@therobersonfirm.com to get on the preliminary sign-up list. Appointments will go fast! Checks to be made payable to the Santa Barbara Women Lawyers and sent to Michelle E. Roberson at 1035 Santa Barbara Street, Suite 7, Santa Barbara, CA 93101. Formal order form will follow.

*Membership: Take advantage of member pricing by joining Santa Barbara Women Lawyers for only $35!!!

About the Photographer: Jesse Kaplan grew up on movie sets as a third generation professional in the film business. He has traveled to over 40 countries and photographed some of the world's most fascinating individuals. He has advanced certificates in both photography and Adobe Photoshop from UCLA. Based out of Santa Barbara and Los Angeles, he specializes in aerial, travel, architecture, and live events. He is very excited to provide his skills as a community service to the Santa Barbara Women Lawyers, a non-profit organization.

Motions

Fell, Marking, Abkin, Montgomery, Granet & Raney, LLP is pleased to announce that **Clark A. Lammers** has joined the firm as a Senior Associate, specializing in Family Law and complex litigation matters. Prior to joining the firm, Mr. Lammers worked for several years with a local firm that specialized in handling complex family law matters. Mr. Lammers began his career in San Francisco, where he practiced litigation for small and large firms in areas ranging from personal injury to insurance coverage. He earned his Bachelor of Arts degree in History and Political Science from the University of Michigan and his Juris Doctor degree from the University of San Francisco School of Law.

Fell, Marking, Abkin, Montgomery, Granet & Raney, LLP is also pleased to announce that **Jennifer Gillon Duffy** has been designated as a Certified Family Law Specialist by the State Bar of California, Board of Legal Specialization. Ms. Duffy, who has been a Partner in the firm since 2008, received her Bachelor of Arts degree from UCLA and her Juris Doctor degree from the University of San Francisco School of Law, where she was Editor-in-Chief of the Law Review and a Judicial Extern to the Supreme Court of California. She specializes in both Family Law and Employment Law matters.

Kristine Mollenkopf has joined the **City of Santa Maria's City Attorney's Office** as an Assistant City Attorney. Mollenkopf has been in private, civil practice since 1996, most recently with Mollenkopf Law Group in Santa Maria from 2011 to 2015.

The Law Offices of John J. Thyne III are happy to announce that **Lacy L. Taylor** has joined the firm as an associate attorney. Lacy is the valedictorian of the Santa Barbara College of Law Class of 2015. While in law school, Lacy earned certificates of concentration in both Criminal Law and Family Law. Prior to law school, Lacy was the owner and operator of Anacapa Dive Center in Santa Barbara. She has a degree in Marine Diving Technology from Santa Barbara City College and has been a resident of the Santa Barbara area for over 20 years. She is happily married and the mother of three beautiful children.

Andrade Law Offices is pleased to announce that **Adrienne Harbottle** has joined the firm as Associate Attorney. Adrienne grew up in the Central Valley of California and has recently relocated to the Central Coast. She double majored at Notre Dame de Namur University in Political Science and Psychology. Ms. Harbottle earned her Juris Doctorate degree from Seattle University School of Law and graduated cum laude in 2000. While in law school she was a member of the Washington Women's Lawyer Association and interned for a private criminal defense firm. After obtaining her license to practice law in Washington state, she moved back to her hometown, became licensed to practice in California and began working for the Fresno County Public Defender. Ms. Harbottle spent almost a decade there, eventually earning the distinction of Senior Public Defender. Ms. Harbottle will focus on Criminal Defense, Personal Injury and Employment Law.

If you have news to report - e.g. a new practice, a new hire or promotion, an appointment, upcoming projects/initiatives by local associations, an upcoming event, engagement, marriage, a birth in the family, etc., the Santa Barbara Lawyer *editorial board invites you to "Make a Motion!". Send one to two paragraphs for consideration by the editorial deadline to our Motions editor, Mike Pasternak at pasterna@gmail.com. If you submit an accompanying photograph, please ensure that the JPEG or TIFF file has a minimum resolution of 300 dpi.*

The Santa Barbara Courthouse Legacy Foundation

presents the

2nd Annual Miniature Golf Tournament

September 18, 2015

Sponsored by:

Don't miss this "roaring" event on Friday, September 18th at the Santa Barbara County Courthouse. Our fun and challenging minigolf tournament will be played on the courthouse lawn along Anacapa Street. In honor of the Courthouse's 1925 reconstruction, we'll feature a "Roaring 20's" theme — 1920's golf attire is encouraged! Tournament check-in begins at 3:00pm with a shotgun start at 4:00pm. After the tournament, join us for awards, cocktails and refreshments in the Courthouse's Sunken Gardens.

On Saturday, September 19th from 10:00am-2:00pm we'll open the course to the public for our Community Day, a unique opportunity for family-friendly fun at the Santa Barbara County Courthouse!

All proceeds benefit the Santa Barbara Courthouse Legacy Foundation, a 501(c)3 organization established to fund conservation and restoration of the Santa Barbara County Courthouse. Federal Tax ID #20-1174366. Event will take place weather permitting.

"Clock Tower" Main Sponsor $2,500

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To register, visit www.sbclf.org or contact Isabella Madarang at: info@sbclf.org or (805) 770-7222.

FIFTH ANNUAL FOOD FROM THE BAR DRIVE
- JULY 1 through July 31, 2015 -

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Thank You To Our Sponsors

And to the entire legal community for your ongoing support of this annual event!

This year marks the 5th annual **Food from the Bar Drive**! Once again, the funds raised will benefit the **Foodbank's Picnic in the Park program** to feed children in our County. A staggering 84% of children in our County who receive free or reduced lunches during the school year get nothing in the summer. With your help we **raised over $16,000 to benefit the Foodbank**. Thank you for making the 2015 Drive a success!

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2015 SBCBA SECTION HEADS

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Ghitterman, *continued from page 12*

Tracy, Flash Gordon etc.) and computers long before they were common. Asimov, Bradbury, Heinlein, Zenna Henderson, Alfred Van Vogt, Frank Herbert to name old stand-bys. Currently Kollin brothers.

16. Who is your hero of fiction?
The good Samaritan.

17. Which historical figure do you most identify with?
Some refer to me as Don Quixote.

18. Who are your heroes in real life?
Earl Warren, Abe Lincoln.

19. What is it that you most dislike?
Ignorance, and more, public figures who avoid their responsibility.

20. What is your motto?
Use your head and listen (you might learn something). ■

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