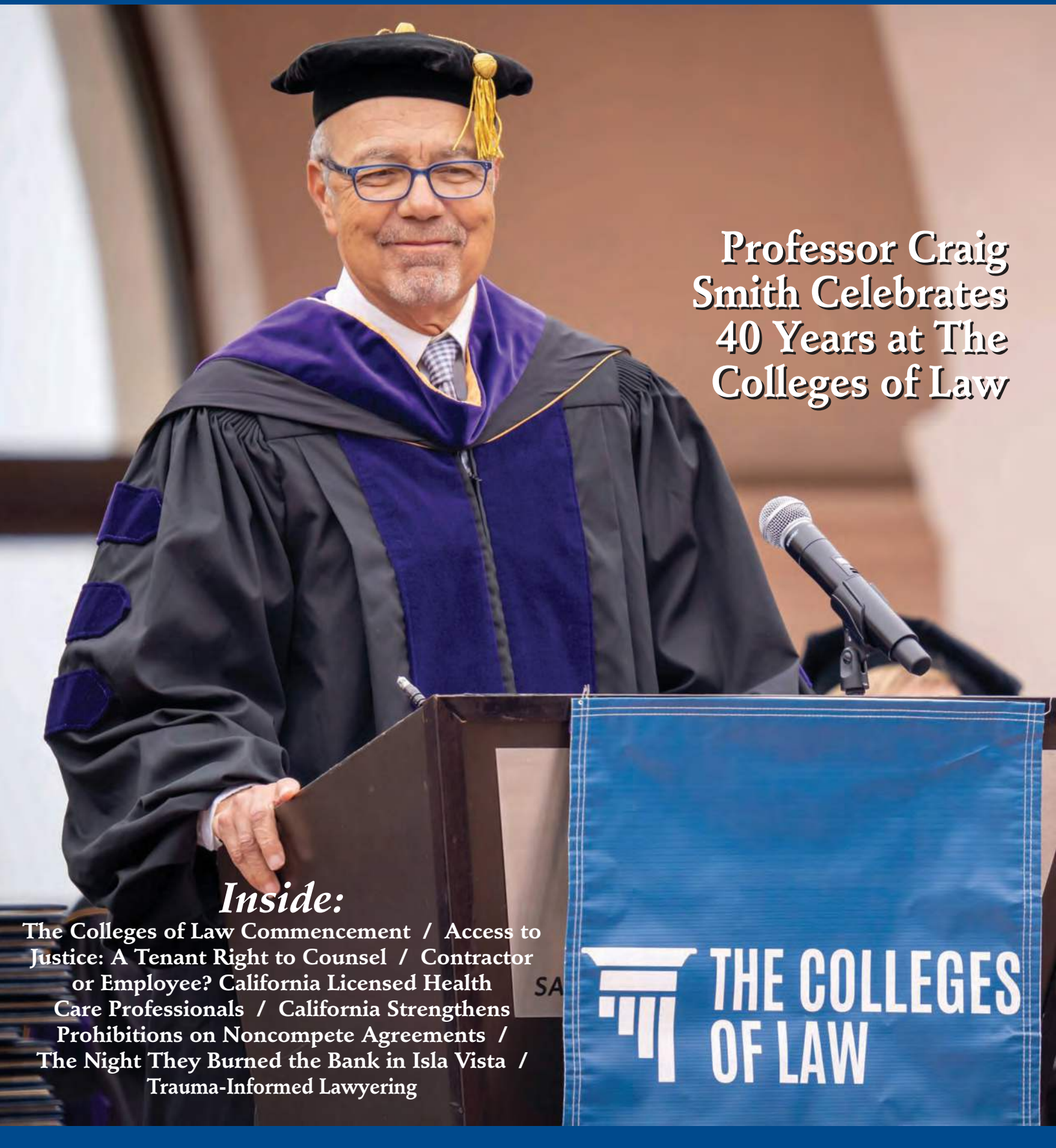
Santa Barbara Lawyer

Official Publication of the Santa Barbara County Bar Association
June 2024 • Issue 621



Professor Craig Smith Celebrates 40 Years at The Colleges of Law

Inside:

Santa Barbara County Bar Association
www.sblaw.org

Officers and Directors

Staff

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

A Publication of the Santa Barbara County Bar Association

CONTRIBUTING WRITERS
Isabelle Brady
Paige Kory
Robin Oaks
Robert W. Olson, Jr.
Robert M. Sanger
Tom Thornton

EDITOR
Richard Lloyd

ASSISTANT EDITORS
Camryn Gulbranson
Marietta Jablonka

MOTIONS EDITOR
Michael Pasternak

PHOTO EDITOR
Mike Lyons

GRAPHIC DESIGN
Baushke Graphic Arts

* * *

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

Submit all **MOTIONS** 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

Santa Barbara Lawyer
Official Publication of the Santa Barbara County Bar Association
June 2024 • Issue 621

Articles

Sections

On the Cover

Professor Craig Smith was honored at The Colleges of Law 2024 Commencement for 40 years of teaching.

Editor's Note: In last month's issue, Board Director and contributing writer Cassandra Glanville's listed business address was incorrect. The correct address is Cassandra Glanville, Apex Family Law, P.C., 7 W. Figueroa Street, Suite 300, Santa Barbara, CA 93101. We apologize for the error.

LET OUR DEDICATED TEAM OF EXPERTS
HELP YOU EVERY STEP OF THE WAY!

Start saving time & money by using our eServices today!

- Cost Efficient Self-Service eFiling Portal
- Nationwide eRecording Services
- Expert Review Concierge eFiling & eRecording Service

Commercial Process Serving's Nationwide Services

- Process Serving
- E-Recording
- E-Filing
- Court Filing
- Skip Tracing
- On-Site/ Off-Site Scanning
- Subpoena Preparation
- Deposition Officer Assignment
- Messenger Services

COMMERCIAL
PROCESS SERVING, INC.

comproserve.net | 855.973.0833

The Colleges of Law Commencement 2024

By Paige Kory
The Colleges of Law Graduate, Ventura Campus

Walking into the robing room, holding our black with purple velvet regalia, was validation of the 4 years of sleep deprived, sanity questioning, life we lived. We got to this day by living the rise and grind mentality. We didn't make excuses. We pushed through the pain. We made it.

The 2024 Colleges of Law commencement ceremony began behind the scenes. And here in this room, there was an unsolicited euphoria that permeated the air. I hugged people I had barely talked to with pure and genuine connected elation.

As we walked the line to our seats we passed by the proud and tearful and faces of hundreds of friends, family and loved ones. The magic of this moment will never be recreated, and never be forgotten.

The ceremony kicked off with a memorable and inspiring audio message from the Attorney General of the State of California, Rob Bonta. His words set the tone for this once in a lifetime day, and the pride of the incredible accomplishments of the graduates could be felt throughout the entire venue. Onlookers watched from the top balcony with unwavering attention and intrigue.

The majestic grandeur of the Santa Barbara venue transported those in attendance to an alternate universe. Hundreds of eyes glued to the podium that sat center stage filled to the left and right with the faculty of prestigious deans, professors, trustees, and judges, dressed in the traditional regalia of black with purple velvet.

First to speak was the beloved president of the Colleges of Law, the glue that holds it together, the humble, articulate, and inspiring leader, Dr. Matthew Nehmer. He spoke of the hard work, dedication, and sacrifices we all made to get here. His words made the crowd soak in what all those robed sitting in the chairs had to go through, to earn their spot to be seated there.

The ceremony moved swiftly along with Dean Jackie Gardina speaking next. Dean Gardina spoke of the unique beginning that we graduates had in starting our law school journey over Zoom. She spoke of hope, honor, inspiration and the duties the graduates now hold as new lawyers in a world where changes in the justice system are needed now more than ever. There wasn't a single dry cheek in the crowd.

The rollercoaster of emotions continued with a hilarious and charming speech by the Alumni Speaker, Jana Johnston, who spoke about her colorful undergrad college experience and her untraditional path to The Colleges of Law that so many of the graduates could relate to.

The graduates whooped and hollered for the next speaker, faculty member Craig Smith, an objectively loved and favored professor, as he was honored for his 40 years of teaching.

The last speaker before the Hooding of the Graduates, was class speaker, Marisa Nilchavee. She spoke about her family's struggles as immigrants, and her father's pursuit of the American Dream. Marisa, a first-generation Taiwanese, spoke of courage and hard work, and left the crowd with the lasting reminder that anything truly is possible.

The ceremony concluded with the graduates taking the stage, one by one, in the presentation of diplomas. Each student beamed with pride as they crouched down for the law school tradition of the Ceremonial Hooding.

The overwhelming emotions of what this day signified consumed all those in attendance. The pride that was felt in the air was as thick as the gowns that the graduates proudly wore. It was an experience that will be forever reminisced.

Congratulations to my fellow 2024 Graduating Class of Colleges of Law. In the words of Elle Woods, "We did it!" ■

Scenes from The Colleges of Law Commencement 2024

Access to Justice: A Tenant Right to Counsel

By Isabelle Brady

If someone had no access to any doctors—if they could not afford their copay, or lacked insurance, or for whatever reason couldn't even get past the waiting room in any doctor's office—we would say that person lacked meaningful access to healthcare. Similarly, someone who faces a legal issue and cannot afford a lawyer lacks meaningful access to justice.

In 1963, the Supreme Court took issue with poor criminal defendants' lack of meaningful access to justice and established a right to counsel in all criminal matters in *Gideon v. Wainwright*. Since then, there has been a concerted effort made to establish another right to counsel—a right to civil counsel for people unable to afford one who are dealing with consequential civil issues like shelter, sustenance, safety, health, and child custody, issues that can have more calamitous effects on a person's life than some criminal issues.

The American Bar Association unanimously endorsed a civil right to counsel in 2006, which prompted several (though by no means all) states to adopt measures for the full or partial implementation of such a right. In 2009, California passed the Sargent Shriver Civil Counsel Act, which established provisions for implementing Right to Counsel pilot programs in the areas of housing, child custody, domestic violence and guardianship/conservatorship issues. These pilot programs became operational in 2012, with ten projects operating in seven counties: Kern, Los Angeles, Sacramento, San Francisco, Yolo, and our very own Santa Barbara County.[1]

All but two of the pilot projects included a housing and eviction defense program. That housing projects were the most common reflected (and continues to reflect) California's significant housing issues, from an ongoing housing shortage to ever-increasing rents, and the pressing need of those facing a 30 day notice to vacate to have an advocate to help them navigate their eviction.

In 2016, recognizing the results that the Sargent Shriver Counsel projects were producing—recognizing the difference that they were making in the lives of people who tend to be the most vulnerable—the state legislature enacted legislation making the Shriver program permanent.[2]

Isabelle Brady

What were the results of the Sargent Shriver Eviction Defense Projects

The Shriver housing and eviction defense programs made an enormous difference in outcomes for their clients in housing cases. Of tenants who received full or partial representation, the vast majority received a positive financial outcome relative to their unrepresented counterparts. Per the 2020 Sargent Shriver Report to the California State Legislature, 91% of represented tenants had their eviction records sealed, 81% had their eviction not reported to credit agencies and 71% received a neutral reference from their former landlord.[3]

A controlled NPC Research study of Shriver represented tenants versus unrepresented tenants found that represented tenants settled their cases about twice as often as unrepresented tenants (at a rate of 67% to 34%), and the aforementioned positive financial outcomes were largely a result of these settlements. Having access to a lawyer also helped Shriver clients negotiate for other favorable settlement terms, like extra time for moving out—an incredibly important element of minimizing the disruption of being evicted.

And favorable settlements are by no means the only ways in which Shriver attorneys had a positive impact on their clients. According to that same study, tenants were subject to defaults in 26% of cases where they lacked an attorney and only 8% of cases where they had Shriver representation. Of the 8%, not one defaulted while they were receiving representation; all of them already had default judgment entered against them before they retained the services of a Shriver attorney.[4]

All of these factors make it much easier for displaced tenants to find alternate housing, improving their long-term stability and decreasing their risk of becoming homeless, especially in a market as tight as Santa Barbara's.[5]

But Housing Isn't Impossible *to Find in Santa Barbara…*

As of 2018, Santa Barbara County had the eleventh highest percentage of rent burdened households nationwide, where rent burden is defined as households spending more than 30% of their income on rent.[6] Fifty-six percent of Santa Barbara County renters were rent burdened by that metric. Santa Barbara County also has some of the lowest rates of homeownership in the 150 largest metro areas in the country (ranked 147 out of 150)[7]—hardly surprising considering that Santa Barbara's median home price increased to $1.5 million between 2020 and 2021 and continues to go up.[8]

Contrast these prices with the average wages of those renters in Santa Barbara: from 2014-2019, rents increased by an average of 27% while wages only increased 8%.[9] This is not much of an outlier among the Shriver counties.

As of 2020, the median monthly income of a Shriver client was $1,069 and their median rent was $850 per month, whereas the average fair market rent for a two bedroom apartment in counties with Shriver projects was $1,513. Sixty-one percent of Shriver clients were severely rent burdened, making them one emergency from being unable to pay rent.[10]

The result: lower-income people in Santa Barbara are trapped as renters, priced out of the housing market and thus subject to rents that increase at rates they cannot afford. A tenant right to counsel mitigates the worst abuses that arise when demand for housing so far exceeds the supply, like unaddressed habitability issues and evicting people as quickly as possible when it takes much longer to find new housing.

Thinking Nationally

Currently, 17 cities, 5 states and 1 county have enacted a tenant right to counsel in their jurisdictions.[11] Data from these places shows that having a right to counsel consistently improves outcomes for tenants by a significant margin.

According to studies published by the Legal Services Corporation in 2023, tenants with full legal representation win or favorably settle an impressive 96% of their disputes. Like the tenants represented by Shriver attorneys in California, represented tenants nationwide were able to lessen the disruption of eviction on their lives. Nationally, represented tenants are over twice as likely to remain in their homes or secure additional time to find new accommodations, less likely to have an eviction on their record, and four times less likely to use shelters.

Even tenants with limited representation achieve better outcomes at a much higher rate than those with no representation: partially represented tenants settle their cases 83% of the time whereas unrepresented tenants settle their cases only 62% of the time.[12] (Bear in mind that these figures only capture the fact that the case was settled, not how favorable the terms of settlement were.)

Moreover, the material benefits of a tenant right to counsel are by no means limited to tenants. Having a lawyer dramatically increases the quality of paperwork filed, saving countless hours for court staff who can accept first attempts at filing something (rather than second, or third, or fourth).[13] And time is not the only resource saved. A study of New York City found that providing counsel in eviction cases would result in net savings of $320 million to the city (after the program paid for itself). In Cleveland, another study discovered that providing counsel in eviction proceedings saved $4.3-4.7 million between housing social safety net responses, children's education services, healthcare savings, avoided juvenile justice and child welfare costs and other services. Connecticut's Right to Counsel Program saved it an estimated $5.8-6.3 million in housing and healthcare spending, as well as the economic value of maintaining residency in the state.[14]

In a state that spends as much addressing homelessness, poverty and lack of access to other resources as California does, the potential savings of expanding tenant right to counsel programs would be enormous.

A Final Thought

A right to counsel in housing cases substantially benefits the most vulnerable residents of Santa Barbara County and certainly the United States at large. Having a system in which some people are forced to respond to an unlawful detainer having consulted only the legal equivalent of WebMD, especially when many of those people have to navigate a rapid, highly technical legal process in a second language, is simply unjust. The data suggests that most unrepresented tenants' cases do not end favorably–instead of minimizing the disruption of eviction, which can have significant social and financial consequences, going through the process alone tends to maximize it. Furthermore, unlawful detainer cases in California have become more complicated since the passage of state and local tenant protection ordinances. A right to counsel helps ensure that these ordinances, which strive to provide more stability for area renters, are enforced.

A right to counsel in housing cases is not simply an abstract legal notion, something to write about in a law review journal. As a practical matter, it is one of the most important things that we can provide to protect people in our community. ■

Continued on page 12

Kelly Knight, JD, SRES | Broker Associate
Gabe Grandcolas | Sales Associate

Knight Real Estate Group is the #1 producer in Village Properties' Santa Barbara Office, with over $200M in sales since its formation in 2020.

Knight Real Estate Group provides exceptional real estate representation with a lawyer's insight and training. We specialize in customized real estate services for families and estates during periods of transition, such as **trust administration and distribution, probate proceedings, marriage dissolution or rightsizing for senior living.** To learn more, visit KnightRealEstateGroup.com.

VILLAGE PROPERTIES | LUXURY PORTFOLIO INTERNATIONAL | MAYFAIR International Realty | Leading REAL ESTATE COMPANIES OF THE WORLD | Forbes GLOBAL PROPERTIES

KNIGHT REAL ESTATE GROUP

KnightRealEstateGroup.com | 805-895-4406

DRE # 01463617 | DRE # 02136492

Brady, *continued from page 10*

Isabelle Brady is a third year Philosophy and English major at UCSB and the current Walter H. Capps Center Intern for the Legal Aid Foundation of Santa Barbara County. She has run UCSB's Ethics Bowl team for two years, guiding them to the final round of the recent Ethics Bowl Nationals in Cincinnati, and won an award for Distinguished Leadership and Service in the course of that guidance. Isabelle has also worked for the Davis Vanguard of California as a Court Watch Intern, which in tandem with her experience working with Ethics Bowl and for the Legal Aid Foundation reflect a deeply rooted concern for practicing the law justly. She aspires to eventually attend law school.

ENDNOTES

1 "Report to the Legislature on the Sargent Shriver Civil Counsel Act, 2016," p. 9
2 NCCRC, "All About California's Sargent Shriver Civil Counsel Projects," http://civilrighttocounsel.org/major_developments/1111
3 "Report to the Legislature on the Sargent Shriver Civil Counsel Act, 2020," p. 16
4 "Report to the Legislature on the Sargent Shriver Civil Counsel Act, 2020," p. 21
5 "Report to the Legislature on the Sargent Shriver Civil Counsel Act, 2016," p. 21
6 The Fund for Santa Barbara, "Towards a Just and Equitable Central Coast," p. 71
7 The Fund for Santa Barbara, "Towards a Just and Equitable Central Coast," p. 15
8 The Fund for Santa Barbara, "Towards a Just and Equitable Central Coast," p. 72
9 CAUSE, "Housing Crisis 805," p. 4
10 "Report to the Legislature on the Sargent Shriver Civil Counsel Act, 2020," p. 14
11 NCCRC, "Tenant Right to Counsel," http://civilrighttocounsel.org/highlighted_work/organizing_around_right_to_counsel
12 LSC, "Cost to Provide Representation to Low-Income Tenants Facing Eviction, 2023" p. 2
13 "Report to the Legislature on the Sargent Shriver Civil Counsel Act, 2016," p. 27-28
14 LSC, "Cost to Provide Representation to Low-Income Tenants Facing Eviction," 3

Contractor or Employee? California Licensed Health Care Professionals

By Robert W. Olson, Jr.

This article addresses the changes over the past five years in both California and Federal law concerning employee vs. independent contractor classification, focusing on the proper classification of top-tier health care professionals (e.g., physicians, dentists, veterinarians and chiropractors).

Assembly Bill 5 & Assembly Bill 2257

In the beginning … 2019 to be precise … Governor Gavin Newsom signed into law California Assembly Bill 5 ("AB5").[1] AB5 was thereafter "revised and recast" by Assembly Bill 2257, effective September 4, 2020.[2] Both AB5 and AB2257 codified the general thrust of *Dynamex v. Superior Court (2018)* 4 Cal.5th 903 ("*Dynamex*") in Labor Code §§2775-2787.[3] Both versions generally require the hiring entity to demonstrate that the worker is correctly classified as an independent contractor, and not an employee, under the *Dynamex* "ABC" test.

Stated Legislative Intent: Enshrine Dynamex

The Legislature made a specific point of declaring that AB5 was enshrining *Dynamex* in California law to protect workers from the predations of hiring entities. In part, AB5 stated:

"[T]he Court [in Dynamex] cited the harm to misclassified workers who lose significant workplace protections, the unfairness to employers who must compete with companies that misclassify, and the loss to the state of needed revenue from companies that use misclassification to avoid [financial and legal] obligations …."

"The misclassification of workers as independent contractors has been a significant factor in the erosion of the middle class and the rise in income inequality."

"It is also the intent of the Legislature in enacting this act to ensure workers who are currently exploited by being misclassified as independent contractors instead of recognized as employees have the basic rights and protections they deserve under the law …"

Actual Result: Reverse Dynamex

Robert W. Olson, Jr.

However, neither AB5 nor AB2257 did anything to protect exploited workers or restore workplace rights, because the *Dynamex* ABC test had already done so. In fact, AB5 actually reversed *Dynamex* for a broad class of entrepreneurial and professional workers (including top-tier health care professionals), and AB2257 expanded that reversal to vast new classes of workers, primarily for those who provide services in favored industries: print and digital publishers and aggregators, the music industry, and the entertainment industry.

Why is Contractor Status Important to the Worker?

High-income professionals have immense financial incentive to maintain their own independent contractor status, particularly in light of the huge tax savings available ($12,500 and up annually) under the S corporation business structure.[4] Employee status requires the health care profes-

sional to work as an individual, rather than as a contracting S corporation, eliminating ALL of those tax benefits.

Hiring entities (the businesses hiring the health care professional) also face substantial financial harm if their health care professionals are reclassified as employees. Labor Code §226.8 imposes serious penalties ($5,000 to $25,000 per violation) for hiring entities that willfully misclassify workers as independent contractors, and hiring entities are personally liable for misclassified workers' unpaid (and unwithheld) taxes.[5] Similarly, the Internal Revenue Service (IRS) can force any person with authority to sign checks for the hiring entity to pay personally the required (but unwithheld and unpaid) tax.[6]

Also, both top-tier health care professionals and hiring entities actively want to avoid the workers compensation system. Hiring entities in health care are subject to very high workers compensation insurance rates (higher risk and higher pay for top-tier health care professionals).[7] Top-tier health care workers, on the other hand, aren't going to risk their high compensation to accept the low level worker compensation disability rates, and they certainly don't want to be prevented from suing the hiring entity for negligent injury as is required for worker compensation claims. Going on disability without the right to pursue someone who caused their injury is the last thing a top-tier health care professional can afford.

Top-Tier Health Care Professional Exemption

As noted earlier, top-tier health care professionals are exempted from the *Dynamex* "ABC" test by both AB5 and AB2257. This exemption requires meeting two tests. The first test is that the worker must be "physician and surgeon, dentist, podiatrist, psychologist, or veterinarian licensed by the State of California … performing professional or medical services provided to or by a health care entity, including an entity organized as a sole proprietorship, partnership, or professional corporation…."[8] The second test is that the working relationship must pass the six-part test set forth in *Borello v. Department of Industrial Relations* (1989) 48 Cal.3d 341 ("*Borello*").[9]

Why the Borello Case?

Borello was decided 35 years ago, and is (was) one of many California cases taking different approaches for discerning the difference between independent contractors and employees. So why did AB5 and AB2257 choose *that* case? My opinion is that the Legislature was fully aware of the delicate balance it needed to achieve. It needed to reverse *Dynamex* for a broad range of workers to avoid upending large portions of the California economy, but it also needed to keep that reversal quiet to avoid offending certain political constituencies. Therefore, some watered-down test had to be substituted for *Dynamex* for these favored worker classes, without actually providing the details of that watered-down test. Citing a distant Supreme Court case that few voters would actually read fit the (Assembly) bill. Let's look at *Borello's* six-part test verbatim:

> "Each service arrangement must be evaluated on its facts, and the dispositive circumstances may vary from case to case. We also note the six-factor test developed by other jurisdictions which determine independent contractorship in light of the remedial purposes of the legislation. Besides the 'right to control the work,' the factors include (1) the alleged employee's opportunity for profit or loss depending on his managerial skill; (2) the alleged employee's investment in equipment or materials required for his task, or his employment of helpers; (3) whether the service rendered requires a special skill; (4) the degree of permanence of the working relationship; and (5) whether the service rendered is an integral part of the alleged employer's business. (citation.) As can be seen, there are many points of individual similarity between these guidelines and our own traditional Restatement tests. (citations.) We find that all are logically pertinent to the inherently difficult determination whether a provider of service is an employee or an excluded independent contractor…."[10]

Legislative Intent Matters

The *Borello* requirement, that "the six-factor test … [shall] determine independent contractorship in light of the remedial purposes of the legislation," matches up nicely with AB5's statement of legislative intent that makes "exploited workers" the intended beneficiaries of AB5 (and now by extension AB2257 via its reliance on *Borello*). For top-tier care professionals that desire independent contractor status of their own volition, and therefore neither consider themselves exploited by the hiring entity nor in need of legislative protection, those professionals no longer qualify as an intended beneficiary of AB2257! That, in turn, makes it easier for these health care professionals to be classified as independent contractors.

Different Federal Rules

Please remember that the federal government is not bound by California law, and still could reclassify health care professionals as employees for federal tax purposes.

Continued on page 16

LAWYERS' MUTUAL
INSURANCE COMPANY

LEVEL UP YOUR PRACTICE.

While providing the most dependable professional liability insurance in California, Lawyers' Mutual strives to assist our members and make the ease of doing business as a lawyer their sole focus.

We listen to our members and have collaborated with industry-leading vendors to source valuable benefits to level up their practices.

Complimentary with every policy:

- Fastcase legal research system
- Cyber Coverage Endorsement
- Dedicated lawyer-to-lawyer hotline
- Unlimited access to Lawyers' Mutual CLE
- On Demand access to CLE with Beverly Hills Bar Association

Add value to your practice through these partnerships:

- Daily Journal exclusive member subscription offer
- MyCase case management software
- Veritext court reporting agency
- e-Legal subpoena preparation
- Online payment options

Shielding your practice is our priority
www.lawyersmutual.com

Our strength is your insurance

Olson, *continued from page 14*

The United States Department of Labor just established a new "Final Rule: Employee or Independent Contractor Classification Under the Fair Labor Standards Act," went into effect on March 11, 2024.[11] This "Final Rule" follows a "six factor economic reality test" that is very similar to the *Borello* requirements. These factors are (1) opportunity for profit or loss depending on managerial skill, (2) investments by the worker and the potential employer, (3) degree of permanence of the work relationship, (4) nature and degree of control, (5) extent to which the work performed is an integral part of the potential employer's business, and (6) skill and initiative. The Final Rule also notes that "additional factors may be relevant in determining whether the worker is an employee or independent contractor for purposes of the FLSA, if the factors in some way indicate whether the worker is in business for themself, as opposed to being economically dependent on the potential employer for work."

Also, the "economic substance doctrine" requires that a transaction's structure (in this case, as an independent contractor agreement) cannot be strictly tax-based; there must be another substantial business purpose *and* a meaningful change or difference in the parties' economic position to support that choice.[12] If economic substance cannot be established, the IRS can impose a 40% underpayment penalty on the taxpayer, even if the taxpayer was not negligent in making that misclassification.[13]

How to Demonstrate Independent Contractor Status?

By reviving *Borello,* AB2257 requires that "each service arrangement must be evaluated on its facts, and the dispositive circumstances may vary from case to case." Also, recall that AB2257 (unlike *Borello*) shifts the burden of proof to the hiring entity to demonstrate the health care professional is correctly classified as an independent contractor. This tells me that each independent contractor agreement must be tailored to the specific facts of the health care professional's situation.

I have been informed recently that the California Employment Development Department (EDD) is now targeting health care professionals, dental and chiropractic offices in particular, disallowing independent contractor status for

professional staff. The EDD has even declared to one of my clients that it believes staff dentists cannot be considered independent contractors under any circumstances. Therefore, health care offices that do not take immense care in both properly classifying professional staff, and documenting that proper classification, are highly vulnerable to EDD audit, resulting in payment of back payroll taxes, $5,000 and up fines per misclassified worker, and remaining on the EDD's radar for the foreseeable future.

It is my opinion that many top-tier health care professionals can be treated as independent contractors. For example, an oral surgeon's professional corporation working part-time in many different general dental practices certainly qualifies as an independent contractor, whereas a long-term full time general dentist (whether or not incorporated) in a general dental practice could only qualify as an employee. If the hiring entity (or contracting professional) believes that the working relationship can qualify for independent contractor treatment, then a minimum that working relationship must be documented with a comprehensive written contract that (A) describes the health care professional's particular circumstances in detail; (B) applies those circumstances to the Final Rule and the *Borello* test; and (C) explains how treating the health care professional as an independent contractor under those circumstances are consistent with the underlying legislative intent of AB2257 (via AB5 and *Borello*) and the Final Rule.

I believe the EDD is fishing for fines and payroll taxes from easy targets. However, the EDD will be far less likely to pursue any hiring entity that already has a written contract tracking in detail the reasons why the contractor's corporation should be classified as an independent contractor. If the hiring entity fights back in those circumstances, the EDD knows it could lose that difficult case in court, and therefore risk a published court opinion affirming independent contractor status for a broad swath of professionals under the right sort of contract. Also, why would the EDD waste department resources on a difficult and disputed case, when there are so many hiring entities that don't even have a written contract in place? Every predator passes over a hardened defense in favor of a soft and unprepared target. ■

Robert W. Olson, Jr., has been a California licensed attorney since 1984. His practice includes professional practice transitions (purchases, sales, partnerships, and associations); corporate, business and commercial real estate law; estate planning; and related tax considerations.

ENDNOTES

1 Chapter 296, Statutes of 2019.
2 Chapter 38, Statutes of 2020.
3 AB5 was "revised and recast" by Assembly Bill 2257. AB2257 repealed Labor Code §2750.3 but restates it with expanded exemptions in new code sections. All references in this article now will refer to the new code sections now in effect.
4 Please see my May 2018 article in Santa Barbara Lawyer, Huge Tax $avings for S Corporations, for details.
5 Unemployment Insurance Code §1735
6 26 United States Code §6672(a)
7 The State Compensation Insurance Fund currently charges $2.27 for physicians and $1.04 for dentists per $100 of compensation. For a physician earning $200,000 annually, the annual premium is $4,540, and for a dentist $1,040. By comparison, the annual premium for a clerical worker making $60,000 annually would be $360.
8 Labor Code §2783(b)(2)
9 Labor Code §2783
10 48 Cal. 3d 341, 354-355
11 89 FR 1638 and 29 CFR 795
12 26 United States Code §7701(o)
13 26 United States Code §6662(i)

California Strengthens Prohibitions on Noncompete Agreements for 2024

By Tom Thornton

Tom Thornton

Attorneys and employers should be aware of significant new restrictions governing employment-related noncompete agreements and clauses that went into effect in January 2024.

Assembly Bill 1076

As background, it has long been the law in California that noncompete clauses in the employment context are void and unenforceable in California, except in specified and limited circumstances.[1] The recent enactment of Assembly Bill 1076, which added Section 16600.1 to the Business and Professions Code, further bolsters restrictions on noncompetes. From January 1, 2024, it is now unlawful to "include a noncompete clause in an employment contract or to require an employee to enter a noncompete agreement" with limited statutory exceptions.[2]

The exceptions to the prohibitions on noncompetes apply to restrictions on persons with equity stakes in a business where the entity in question is undergoing any of the following: (1) a sale of equity or assets of a corporation, partnership, or LLC; (2) dissolution of a partnership (or disassociation of a partner); or, (3) termination of an LLC or membership interest therein.[3]

The new law includes a notice obligation that requires employers to notify employees "whose contracts include a noncompete clause, or who were required to enter a noncompete agreement, that does not satisfy an exception to this chapter" by February 14, 2024, that the noncompete is void.[4] The notice requirement applies to both current employees and former employees who were employed after January 1, 2022.[5] The notifications to current or former employees must be in writing.[6] While the statutory deadline has passed, employers who have not already done so should promptly issue notices where required, because violations of Section 16600.1 (including the notice requirement) will per se constitute an act of unfair competition under Business and Professions Code section 17200 et seq.[7]

It is therefore advisable for employers and counsel to review employment contracts and clauses in other employment-related agreements that may be rendered unlawful by the new restrictions and to issue written notifications to current or former employees where necessary.

While the new law does not define what constitutes a noncompete clause or agreement, Section 16600 of the Business and Professions Code, as amended by Assembly Bill 1076, states the statute "shall be read broadly" to void any noncompete agreement "no matter how narrowly tailored" unless the agreement satisfies an exception.[8] Since Section 16600 now expressly references and is intended to codify the California Supreme Court's holding in *Edwards v. Arthur Andersen LLP* (2008) 44 Cal.4th 937 (where the state's high court invalidated a customer nonsolicitation clause in a noncompetition agreement), the new enactments will also implicate the legality of certain nonsolicitation provisions in the employment context.[9]

Senate Bill 699

A second recent enactment further strengthens prohibitions on employment-related noncompetes. Senate Bill 699 added Section 16600.5 to the Business and Professions Code. As a result, from January 1, 2024, an employer "that enters into a contract that is void under this chapter [i.e., under Business and Professions Code sections 16600-16607] or attempts to enforce a contract that is void under this chapter commits a civil violation."[10]

Section 16600.5 confers a private right of action to employees, former employees, and prospective employees to enforce its provisions and also provides for the award of attorney's fees to prevailing employees.[11]

Importantly, the statute has out-of-state reach, making any noncompete clause or contract that is otherwise void under Business and Professions Code sections 16600-16607 unenforceable "regardless of where and when the contract was signed."[12] In addition, employers are prohibited from attempting to enforce a void noncompete "regardless of whether the contract was signed and the employment was maintained outside of California."[13] Thus, the impacts of SB 699 will extend beyond California.

Conclusion

In light of the stringent new restrictions on employment-related noncompetes, employers and counsel would be well advised to review both existing and prospective employment-related agreements to identify potentially unlawful noncompete and nonsolicitation provisions. ■

Tom Thornton is an associate attorney with Hollister & Brace in Santa Barbara. His practice is focused in the areas of Employment and Wage & Hour Law, Real Property, and Water Law. Mr. Thornton can be reached at tgthornton@hbsb.com or at 805-963-6711.

ENDNOTES

1 Bus. & Prof. Code, §§ 16000-16007; *Edwards v. Arthur Andersen LLP* (2008) 44 Cal.4th 937, 948 ("*Edwards*").
2 Bus. & Prof. Code, § 16600.1, subd. (a).
3 See, Bus. & Prof. Code., §§ 16601, 16602, 16602.5.
4 Bus. & Prof. Code, § 16600.1, subd. (b)(1).
5 *Ibid.*
6 Bus. & Prof. Code, § 16600.1, subd. (b)(2).
7 Bus. & Prof. Code, § 16600.1, subd. (c).
8 Bus. & Prof. Code, § 16600, subd. (b)(1).
9 See, *Edwards, supra*, 44 Cal.4th at p. 948.
10 Bus. & Prof. Code, § 16600.5, subd. (d).
11 Bus. & Prof. Code, § 16600.5, subd. (e)(1)-(2).
12 Bus. & Prof. Code, § 16600.5, subd. (a).
13 Bus. & Prof. Code, § 16600.5, subd. (b).

The Night They Burned the Bank in Isla Vista

By Robert M. Sanger

Robert M. Sanger

It is a time of protest and unrest—not now necessarily, I am thinking of local history at the University of California at Santa Barbara in the late 1960's epitomized by the night they burned the bank in Isla Vista in February of 1970. It made the cover of Time Magazine and was the subject of an iconic "B of A scenic check" poster which was produced by no less than the brother of one of our current Judges. The disturbances also resulted in the arrest of a young deputy district attorney whose record was expunged and who later became one of the most respected Assistant District Attorneys to serve Santa Barbara.[14]

Reflecting on the legal issues relating to protest, conflict with authorities and destruction of property currently recall for some of us that period fifty to sixty years ago when these same issues were playing out throughout the country. Certainly, disturbances at other major universities were as significant and sometimes more deadly, such as the shootings at Kent State. The preceding riots in the streets of major cities, such as Newark and Los Angeles set the stage and the riots at the Chicago Democratic Convention in 1968 and were well in mind in the late 60 and early 1970 on the UCSB Campus.

Protests and Damage

The question of liability for harm to property or people caused by violence is a matter of current concern. The January 6, 2021, attack on the Capitol has resulted in over a thousand arrests and the government claims that there is $2,923,080.05 in damage to the United States Capitol, as well as additional losses to the Metropolitan Police Department and other third parties. Of course, that was not simply a protest since there was evidence of the intention, on the part of some participants, to forcibly interfere with the orderly government process of relinquishing the office of President and legally bestowing it on the new choice of the electorate.

Non-violent protests over the years have led to arrests, convictions and time in custody. The Civil Rights movement of the early 1960's was characterized by non-violent public stands where participants acceded to arrest and served time in jail or prison. Of course, there were also contested trials, such as the Chicago Seven who were charged with conspiracy and crossing state lines to incite the 1968 Chicago demonstrations. However, often, around the world, accepting punishment was a part of the protest. The Isla Vista riots around at the time of the bank burning resulted in numerous arrests and some convictions -- many, primarily for violations of curfew, were eventually dismissed at pretrial motions in the Municipal Court.

When other social protests have gone beyond passive resistance to violence, property damage, injury or death, there has been accountability based on an ability to identify the actual participants—made much easier now with ubiquitous images and videos transferred worldwide by social media. There have been many successful prosecutions that resulted from violent acts during riots and protests.

Most recently there have been campus protests that have resulted in property takeovers, some property damage and police actions. Apparently, some college and university graduation programs will not go on as planned. The disruptions have caused some students to believe that their academic progress will be impaired. Some protesters have been arrested and charges are being pursued by prosecuting agencies.

The Night they burned the Bank in Isla Vista

All of this brings us back to the night they burned the bank in Isla Vista. I was there, as were many others -- perhaps some readers were there as well. I feel that it might be a good time to share some of the experiences from back then even though they do not provide answers for—or, perhaps, even meaningful parallels to—current events. Nevertheless, here is an autobiographical account for what it is worth.[15]

I attended UCSB from 1966 to 1970. On February 25, 1970, I was completing my senior year studying political science with an emphasis in philosophy. I was the father of a little boy who was not yet one year old. I went to a rally at the new football stadium to see a speech to be given by William Kunstler, one of the lawyers for the Chicago Seven.

Campus protests had been going on around the country for some time and, in the past couple of years, political activity had been more apparent at UCSB. Students had occupied the University Center and, other than covering the bronze bust of Thomas Storke with white paint, had not been terribly destructive. Classes had been interrupted to an extent and there had been a brief occupation of the Administrative Building.

I was working two jobs. I was fortunate to get a job as a go-fer—turned "junior investigator"—for a local law firm during the afternoon. I then worked at the U.S. Post Office as a mail handler at night. The former provided a great practical education for the career I ultimately chose and the latter provided an 11 cent per hour nighttime differential to keep food on the table. I drove a 1959 white four-door Rambler with three-on-the-tree. On the occasion of the rally, I took my son with me in the Rambler and said that I would bring milk, bread and eggs home from the store afterwards.

Those of us concerned about things like the death penalty, civil rights, economic disparity, the Nixon presidency, the deaths of the Kennedys, Medger Evers, and Marin Luther King, Jr., and the American war in Vietnam—as well as local matters such as divestment of interest in companies producing Agent Orange, the firing of a controversial sociology professor and the administration of the campus by the Chancellor—anticipated that Kunstler's speech would be informative and possibly inspiring. He was a defense lawyer involved in one of the biggest and most contentious trials of recent times which had just resulted in a not guilty verdict on the major conspiracy charges, with some defendants being convicted of crossing state lines to incite a riot and the lawyers, including Kunstler, receiving substantial contempt sanctions. His speech was something to witness as a piece of history and, perhaps, as something inspirational or instructive with regard to the legal aspect of the progressive movements.

I parked my Rambler in the dirt near the stadium and near the kiosk entrance to the UCSB Campus on El Colegio, took my son in my arms and went to the newly constructed football stadium. The speech was disappointing. Kunstler was reluctant to say anything too radical for fear that he would be arrested and prosecuted for crossing state lines to incite a riot. There was the odor of marijuana smoke

wafting up from the crowd through the stands. I was holding my little boy during the entire event. No one was getting worked up by the presentation. It was a nice day. As the crowd left, I made my way toward my car with others headed on foot toward Isla Vista. No one that I saw was agitated other than to say that they expected a more radical speech from Kunstler. I recall people saying that they intended to go to the beach.

As I got close to my car and the kiosk, I noticed a line of Plymouth police cars that had apparently staged at the Storke Road end of El Colegio and were now barreling toward the crowd exiting the campus. The cars were from the Los Angeles Sheriff's Department on mutual aid to the Santa Barbara Sheriff. When they got to the edge of the crowd, the first cars slammed on their brakes causing the clashing of some of those sturdy metal bumpers. Evidently, in the anticipated excitement, the officers had mistaken a fairly lethargic exodus of students to be some sort of riot. The Sheriff cars immediately dispersed into the interior streets of Isla Vista. The people around me were shocked but amused by the overreaction and kept walking towards their homes.

I got in my car and drove a few blocks to the Isla Vista Market on Embarcadero del Sur where I parked on the street. I crossed the street carrying my son to enter the Market and get the milk, bread and eggs. After I came out a few minutes later, the streets were filled with Los Angeles and Santa Barbara Sheriff police cars—literally cruising every street you could see. The officers were stopping everyone they saw on foot. I later learned that they had deemed that two or more people on the street constituted an unlawful assembly. I started to walk across the street, now carrying my son in one arm and a bag of groceries in the other. A Sheriff's car abruptly pulled out from around the corner and dramatically slammed on its brakes. There were four occupants with helmets and the three passenger officers were holding batons vertically in a ready position on their knees. The driver aggressively gestured to me to get across the street.

I did so and went home to Student Housing on the West side of Storke Road. From there we began to hear sirens and eventually helicopters. Tear gas started to be noticeable in the air as it drifted in our direction. I went back out to see what I could without getting in trouble. I was very close to graduating, had applications in to graduate and law schools. From my selfish, or at least pragmatic, perspective I could not afford to postpone obtaining my bachelor's degree. I believed that even delaying an additional quarter would have been devastating.

What I saw a few hours after the beginning of the police presence following the Kunstler rally was something that looked like an occupation in another country. Police were now, for the most part, staying in their cars. The police were driving up and down every street and were regularly making the loop at the end of the Embarcadero streets where Isla Vista residents had created "Perfect Park" in imitation of Berkely's People's Park—though it was more dirt than grass. As the cars circled, people started throwing dirt clods. Ultimately, stones were included in the barrage. Fires were started in dumpsters and a police car was overturned and burned. The police retreated only to return with more force.

Crowds formed in many places, including the porch of the Bank of America. I left to go home. We watched the local news and got what information we could but I, as did many students, had to study, finish papers, go to classes and get grades—and I had to go to my two jobs the next day. The tear gas and helicopters continued into the night. I was later informed by reliable sources (let us say) that the bonfire on the porch of the bank was not intended to burn the bank. It was part of the overall pent-up frustration with the Bank of America, politics of the day and reaction to what was perceived as unnecessary police tactics. The fact was that no one thought the bank would burn. It looked like a fortress made of brick and stone but, of course, was ultimately a wood structure covered in a thin layer of bricks with a porch overhang replete with exposed wood beams. The bank burned to the ground leaving standing only a Salvadore Dali-esq melted vault.

The riots continued. I went out the next day. The four-story House of Lords, home to the football team with windows facing El Colegio, had been raided and the doors on the other side of the building were hanging off shattered door jambs. Apparently someone had throw objects from the residence at the police cars on the road and, after re-grouping, officers did a full siege of the building ripping people out of their rooms, including the captain of the team who, rumor had it, was in the bathroom. This experience apparently turned a good part of the team against the police, the school and the Coach and resulted in the end of American football for UCSB—although the Gaucho's soccer team has made excellent use of the stadium in the years since.

After the bank burned to the ground, matters did not resolve. The Bank of America brought in a temporary bungalow and defiantly—though perhaps, conveniently for student customers—opened for business. Police continued to swarm the area under the command of the Sheriff's Captain, who was famously photographed with a medieval sword and spiked mace swinging from his belt. The Captain was fired but later got his job back through a Civil Service appeal. I got to know him later when I returned as a lawyer

since he was begrudgingly placed in charge of records. It turns out that he had a wry sense of humor—misplaced as it may have been in the particular context.

As police were unable to establish order, Governor Ronald Regan called in the National Guard. This was not well received by the students who were already upset with President Nixon's politics. The guard started patrolling Isla Vista, particularly the Embarcadero del Norte and del Sur loop in large dump trucks—the kind used to haul large stones and boulders. You could only see the barrels of their rifles with fixed bayonets protruding above the sides of the load beds. Dumpster fires persisted.

On April 18, 1970, Kevin Moran, a 22-year-old UCSB student, was in front of the new temporary Bank of America, possibly trying to keep people from burning it. He was hit and killed by a rifle bullet which police originally claimed to be from a left-wing sniper or from the National Guard. No inspection of police or guard weapons was made. Ultimately, based on a Santa Barbara Police Officer's own confession, the bullet turned out to be from his rifle. The officer claimed it was an accidental discharge and informed his boss and Sheriff Webster the next day. He surrendered the expended cartridge shell which he had extracted and had kept in his pocket. The Sheriff nevertheless put out a BOL for a radical rioter on a motorcycle and law enforcement denied that they knew who fired the fatal shot until much later. Moran's death had a sobering effect but protests continued into June.

For my part, I continued to try to go to class. I did a little advocacy at the Married Students' Housing complex where the surly residents and their children were confined inside and threatened with arrest and not allowed on the playground or balconies. While on my downtown gig at the law firm I obtained the text of the Emergency Ordinance that defined the emergency curfew zone as bounded by Storke Road. The housing was on the other side of Storke. A peaceful but strident standoff at the playground lasted one night. The Sheriffs backed off and the next day the Board extended the emergency zone to include us. Oh well. But, for the most part, I needed to get my degree. I even concluded a graduate seminar, to which I had been specially admitted, where the professor agreed to rotate classes at students' homes to finish the quarter.

I did receive my degree on time, although neither I nor my family went to the truncated commencement ceremonies that I understand were held. The experience did not interfere with my education so much as it enhanced my understanding of people, law, authority, power and politics. I opted for law school over a PhD program in philosophy to which I had been accepted. I always wanted to be a lawyer anyway. A number of students I knew at UCSB went on to law school and some came to practice in Santa Barbara. Others remained here or returned in other professions. They can tell their stories.

The world in 1970 did not come to a standstill let alone an end. Polarization continued and conflicts persisted. There has been progress on some social issues, too little on many and on some, none at all. Protests that violate the law have ebbed and flowed in our country, going back to Shay's Rebellion in 1787. Still, destruction of property, injury and death are not accepted as an inevitable consequence of protest and, if such occurs, legal remedies and sanctions will generally follow. The object of a fair government, though, is not to repress dissent but to restore some respect for the law. Respect for the law is based on the fair and responsible administration of justice, as well as an acknowledgment of needed changes to public policy. Today the place where Kevin Moran was killed is part of the University. There is a plaque there in his name that says, "For Social Change,

Continued on page 37

Trauma-Informed Lawyering

By Robin Oaks

June is Post-Traumatic Stress Disorder (PTSD)[1] Awareness Month, and June 27 is designated PTSD Awareness Day. These observances raise awareness about PTSD and trauma—and aim to reduce the stigma surrounding both. In the ABA Law Practice Division book, *Trauma Informed Law, A Primer for Lawyer Resilience and Healing*, the authors explain that trauma (or traumatic stress) is "a person's response to a situation, whether acute or chronic, that overwhelms or limits a person's capacity to freely [and effectively] respond at the physical, mental, emotional, and… spiritual level."

Sarah Katz and Deeya Haldar, both attorneys, have written about trauma-informed lawyering, defining it as when the practitioner puts the realities of the client's trauma experiences at the forefront in engaging with the client, and adjusts the practice approach informed by the individual client's trauma experience. Also, it involves "employing modes of self-care to counterbalance the effect the client's trauma experience may have on the practitioner."

Through my legal work conducting investigations of sexual harassment, abuse, bullying, and discrimination complaints, I've recognized how trauma-informed care applies to all aspects of successful legal practice. There is so much more to explore on this topic that cannot be covered in a brief article, but raising awareness helps us all to further a do-no-harm approach when serving clients and building communities of mutual-support, sustainability, and self-care.

PRACTICE

Provide resources about PTSD and discuss with your team what trauma-informed care means. If you are a supervisor, ask associates, paralegals, and staff if the nature of their work (or caseload) needs to be adjusted or managed to prevent vicarious trauma.

Think of a client's situation through a trauma-informed lens. Try practicing one new mind-body technique for your own emotional self-regulation and ability to co-regulate others.

Share contact numbers of therapists and support professionals (trauma-informed) and emergency care numbers, such as 1-800-273-TALK, 988 – Suicide Prevention Hotline. Empower those you serve and yourself by building communities of mutual care, compassion, and trauma-informed competence.

Our Nervous Systems

Robin Oaks

Trauma is not a flawed or fixed state; at its core it is our nervous system (fight, flight, freeze, or fawn) responding to perceptions of threat. Feelings of overwhelm relating to one's ability to cope might outwardly look like overtalking ("flooding"), explosive, agitated behaviors ("frenetic/furious") or emotionless expressions ("flat" affect). The Substance Abuse and Mental Health Services Administration (SAMHSA) identifies the following key principles of a trauma-informed approach: safety, trustworthiness, transparency, collaboration, care, empowerment, voice, and understanding an individual's unique body-mind-life experiences, and impacts of cultural, and systemic racial and gender issues.

Dr. Gabor Maté, who has written several books on trauma, addiction, and adverse child experience (ACE) explains how trauma reflects the body-mind connection. "It is not what happens to you; it is what happens *inside you* as a result of what happens to you." "Trauma is a psychic wound… that leaves an imprint in your *nervous system, in your body*, in your psyche, and then shows up in multiple ways that are not helpful to you later on."

Signs of nervous system dysregulation include dissociation, numbing, panic, people-pleasing appeasement, gastro-intestinal distress, low or rapid heart rate, breathing difficulties, sleeping disturbances, and communication and memory issues. As legal practitioners we often lead with our heads, thinking and analyzing, but by recognizing the relationship of our nervous system, feelings, and physiology, which is

how emotions express themselves—and creating cues of safety for others, we can help both our clients' and our own nervous systems co-regulate and self-regulate for optimal functioning.

Client-Centered Approach

Although legal professionals are not medical experts or therapists, becoming trauma-informed can support clients mentally, emotionally, and physically—and reduce re-traumatization. As part of my well-being witness preparation services, I coached a plaintiff petrified of being deposed for a personal injury lawsuit. This party's nervous system was overwhelmed and dysregulated by the car accident, and there was a history of traumatizing events in childhood. Not only was the uncertainty about the deposition process itself triggering a stress response, but also the strident and agitated behaviors of both the opposing—and their own counsel—contributing to the client's nervous system "freezing" and immobilizing speech and thinking capacities.

The following trauma-informed interventions helped the client move from frazzled to functional: learning (and modeling) simple nervous system and mindfulness self-regulation grounding techniques, using voice intonations and communications (slow, simple, and soothing), mindfully listening, validating emotions, addressing and normalizing behaviors (heart racing, feeling distracted and disorientated) as nervous system responses instead of character flaws, visualizations and role playing about the legal proceeding to maximize predictability and feeling empowered.

Vicarious Trauma

Vicarious trauma is when harmful changes occur in a professional's view of themselves, others, and the world as a result of empathetically or repeatedly being exposed to graphic or traumatic experiences of clients. As legal professionals, we are particularly susceptible because of the nature of the conflicts we handle, heavy workloads, disconnection from what our bodies need, and the emotions we navigate daily—but often fail to process well.

Symptoms of vicarious trauma might appear as work overcommitment and social withdrawal, despair, hopelessness, sensitivity to violence, angry outbursts, cynicism, and changes in identity. Important preventive measures include managing the amount and nature of one's workload, building psychologically safe workspaces and supportive relationships, therapy, mind-body practices, and work cultures that recognize and address the potential for vicarious trauma. ■

Robin Oaks has been an attorney for nearly forty years, and for twenty-five years has provided legal services focused on independent workplace investigations and mediation. She is certified in and has studied a wide range of healing, emotional intelligence, cognitive fitness, and mind-body practices. She is a well-being consultant and offers confidential professional life coaching sessions for legal professionals seeking to optimize potential, restore balance, and thrive during stressful life changes and challenges. Contact: Robin@RobinOaks.com or 805-685-6773.

ENDNOTE

1 https://www.ptsd.va.gov/

Verdicts & Decisions

John Doe V Santa Barbara Unified School District

Santa Barbara Superior Court, Anacapa Division, Dept 3

CASE NUMBER:	22CV01542
TYPE OF CASE:	Sexual Abuse
TYPE OF PROCEEDING:	Jury Trial
JUDGE:	Thomas Anderle
LENGTH OF TRIAL:	7 days
LENGTH OF DELIBERATIONS:	1 day
DATE OF VERDICT OR DECISION:	December 8, 2023
PLAINTIFF:	John Doe #2
PLAINTIFF'S COUNSEL:	David Ring, Taylor & Ring
DEFENDANT:	Santa Barbara Unified School District
DEFENDANT'S COUNSEL:	Harry Harrison, Adrian Gragas, Tyson & Mendes
EXPERTS:	Kimber Lakes for defendant

FACTS AND CONTENTIONS: The case involves alleged sexual abuse by Justin Sell while plaintiff was a student at Dos Pueblos High School from 2007 through 2011. Plaintiff claimed that Sell, a former assistant football coach and security guard sexually abused or harassed him during his high school years. Plaintiff also claimed that Sell abused two other students. Plaintiff claimed that defendant failed to promptly terminate Sell and ignored the open and obvious signs of sexual abuse.

Sell plead no contest two 3 felonies and is now a registered sex offender.

Defendant claimed that it first became aware of Sell's lack of professionalism in December, 2010 when another student complained.

SUMMARY OF CLAIMED DAMAGES AND MEDICAL TREATMENT: Plaintiff suffered and continues to suffer psychological and emotional harm.

RESULT: By a vote of 12 to 0 the jury determined that defendant was negligent, its negligence was a substantial factor in causing plaintiff harm, and that plaintiff was entitled to $15,000,000 in past noneconomic damages and $10,000,000 in future noneconomic damages. Defendant school district was found 80% at fault.

Motions

Local appellate specialist **Herb Fox** is the presenter of a CEB webinar on probate and trust litigation appeals entitled Appeals from Probate Court Orders: Use 'Em or Lose 'Em. Viewers can earn 1.25 MCLE hours, including appellate and estate planning, trust and probate specialization credit. The program is available at: https://learning.ceb.com/course/appeals-from-probate-court-orders-use-em-or-lose-em

* * *

Agassi Bagramyan joins **Sanger Law Firm, P.C.** as an associate handling criminal defense matters. Mr. Bagramyan graduated from the University of San Diego with a degree in Business Administration. He went on to obtain a Master of Science degree in Finance. Mr. Bagramyan then attended University of San Diego's School of Law to obtain his law degree.

Prior to joining Sanger Law Firm, Mr. Bagramyan was a Deputy Public Defender with the Santa Barbara Public Defender's Office and also practiced with a civil law firm.

Mr. Bagramyan is fluent in Spanish and Armenian.

* * *

If you have news to report such as 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.*

Annual BBQ

The Santa Barbara County Bar Association Invites Members, Guests & Families to Our Annual BBQ!

June 21st at 5:00PM

Member $50 Non-Member $60
Public Interest/Student $30 Kids $5

Make checks payable to SBCBA, 15 W. Carrillo, Ste.106
Please call 805-569-5511 for credit card payment

Tucker's Grove Park
4800 Cathedral Oaks Road

Sponsorship Opportunities available
Contact: sblawdirector@gmail.com

Santa Barbara County Bar Association Probate Section Presents:

THE HON. COLLEEN STERNE
PRESENTATION BY DALLAS LEIGH ATKINS
What Every Attorney Must Know Now About 2024 Long Term Care Medi-Cal
TWO HOURS OF MCLE CREDIT AVAILABLE

Date:

Friday, June 14, 2024

Time:

2:30 p.m. until 4:30 p.m.—Note earlier start time, so more material can be covered, and more questions answered!

Place:

Santa Barbara County Superior Court, Department Five

Speakers and Topic:

The Hon. Colleen Sterne will briefly discuss the court's role and process in evaluating petitions for creation/modification of irrevocable trusts related to preservation of eligibility for public benefits.

Ms. Atkins will review the recent change in law effective January 1, 2024, as follows:

Starting 1/1/2024, California eliminated all property limits for eligibility for Long Term Care (LTC) Medi-Cal in skilled nursing facilities. There are no denials of LTC Medi-Cal based on the values of any real property(ies) and the value of any financial accounts. For the first time, clients do not have to spend down any of their assets to qualify for benefits. Nor must they set up irrevocable trusts to hold their assets.

With your client's assets off the table entirely, there remain only three issues:

• History of Gifting in the 30 months prior to the application for Long Term Care Medi-Cal: Did the Medi-Cal applicant already give gifts that could potentially penalize the applicant with a delay in benefits? If so, what would the penalties be, have those penalties expired, and when would eligibility start? And, are there certain categories of gifts that do not create any penalties? Learn how to advise your clients on the impact, if any, of gifts in the prior 30 months.

• Estate Recovery: Ever since 2017, if there is a surviving spouse and/or no probate estate at the death of the client, there is no estate recovery by the California Department of Health Care Services. Any trust and any account with a designated beneficiary or a joint owner is not subject to estate recovery (pay-back of benefits to the State).

• Income and Share of Cost (Co-Pay to Skilled Nursing Facility): This monthly co-pay is easy to estimate for individuals in skilled nursing facilities with no living spouse, or when both spouses are in a skilled nursing facility. For married couples with only one spouse in skilled nursing facility, there are federal and state protections to prevent the impoverishment of the spouse who does not live in a skilled nursing facility. It will benefit all attorneys to know the basics on this so that they do not convey misinformation to the client(s). Some spouses in skilled nursing facilities may even qualify for Zero Share of Cost.

Lori A. Lewis, Chair of Probate Section, and Lawrence T. Sorensen, Mediator, will act as moderators.

Questions are welcome for submission and review prior to meeting; please submit to Lori A. Lewis at llewis@mullenlaw.com.

If MCLE credit is requested, and RSVP is required to afrasher@mullenlaw.com. Upon receipt of RSVP, MCLE payment instructions will be provided.

MCLE: Ethical Issues in Mediation

A panel of mediators will review a series of hypos bringing up tricky ethical issues that can arise in mediations — ones that can confront both mediators and litigators. Audience members will be encouraged to join in the discussion, bringing their own perspectives and experiences.

Whether you are a litigator or a mediator, or whether you do both, you won't want to miss this stimulating and — hopefully — enlightening event!

Plus we encourage people to raise their own ethical hypos. You can either bring one up during the session or — better still — email it in advance to johnderrick@icloud.com.

Panelists:

Judge Frank Ochoa (Ret.): Judge Ochoa served on the bench for over 32 years. During that time, he designed and implemented the Santa Barbara Superior Court's ADR programs, and twice served as the court's Presiding Judge. Today, Judge Ochoa is a sought-after mediator and arbitrator.

Lol Sorensen: Lol Sorensen is a skilled mediator and arbitrator experienced in resolving complex and emotionally charged disputes. He brings to this field a rare combination of skills having previously been both an accomplished litigator and a social worker.

Moderator: John Derrick.

Date: Tuesday June 25, 2024.

Time: 12 noon. (Lunch not provided, but feel free to bring your own!)

Place: Santa Barbara College of Law, 20 E. Victoria Street.

MCLE credit: 1 hour general, with 1 hour ethics credit.

Cost: $20.

To register: Contact Marietta Jablonka at sblawdirector@gmail.com or (805) 569-5511.

SBWL
SANTA BARBARA WOMEN LAWYERS
proudly presents

2024 Online MCLE Series
"Empower Her"

Join Santa Barbara Women Lawyers for our groundbreaking legal education series focused on acquiring all specialty credits recognized by the California State Bar. While designed to cater to the unique challenges and opportunities faced by women lawyers in the legal profession, this series aims to empower all lawyers to excel in their careers, expand their expertise, and fulfill our professional development requirements. Register now to secure your spot.

2024 MCLE Series Schedule
12:15-1:15 p.m.

Date	Topic(s)	Credit Hours
May 22	*David Mann of the Other Bar* – A Conversation on Attorneys and Substance Abuse (Competence Credit)	1.0*
June 26	*Jennifer Lee* – Technology in the Practice of Law (Technology Credit)	1.0*
July 24	*Dr. Keisha Clark* - Recognition and Elimination of Bias (Elimination of Bias Credit)	1.0*
August 28	*Doug Ridley* – The Complete Attorney (Ethics Credit)	1.0*
September 25	*Civility in the Legal Profession – It's Importance & Why We Need It* (Civility Credit)	1.0*
October 23	*Robin Oaks* - Professional Burnout Among Lawyers & How to Address It	1.0*

* Indicates California State Bar Specialty Credit

Purchase the 6-Series Package

https://www.paypal.com/ncp/payment/G7LA39ZEVAJUN

- SBWL Member Package: $75.00*
- Non-Member Package: $100.00
- Govt. Group Rate Package (5 or More): $75.00
- Non-Govt. Group Rate Package (5 or More): $85.00
- Individual MCLE: $45.00

***Membership may be purchased at** https://sbwl.org/join-sbwl/

Bench & Bar Relations

Presiding Judge, the Honorable Pauline Maxwell has scheduled a Bench & Bar Relations meeting to take place June 20, 2024 at 12:15 PM. The meeting will be held via Zoom video conference.

These Bench & Bar Relations meetings provide a forum for local members of the Bar to engage in an informal dialogue with the Presiding Judge as a means of raising issues and concerns that may not be otherwise addressed. All attorneys and paralegals are welcome to attend.

Judge Maxwell will be discussing impending state budget cuts that will impact the Santa Barbara Superior Court. If you would like to submit any questions for the meeting, please send them to Tom Foley at tfoley@foleybezek.com.

2024 AWARDS
SANTA BARBARA COUNTY BAR ASSOCIATION

The Santa Barbara County Bar Association calls for nominations for 2024 awards for recognition of outstanding attorneys, law firms, and judges in our community.

Richard Abbe Humanitarian Award

This special award, which is not given every year, honors a judge or attorney who evinces exceptional qualifications reflecting the highest humanitarian principles as exemplified by the late Justice Richard Abbe.

John T. Rickard Judicial Service Award

This award honors one of our judges for excellence on the bench and outstanding contributions to the judiciary and/or the local court system.

Pro Bono Award

This award recognizes an individual attorney who has donated at least 50 hours of direct legal services to low income persons during the previous calendar year.

Frank Crandall Community Service Award

This award honors a local law firm's best efforts in providing pro bono services to community non-profit organizations. Factors considered in bestowing the award include:

- Existence of a firm policy encouraging pro bono services;
- Percentage of firm attorneys performing pro bono work;
- Nature and quality of pro bono work and hours per attorney;
- Leadership of community projects; and
- Services benefiting low income persons.

Please submit your nominations to Cassandra Glanville at cassandra@apexfamilylaw.com by August 31, 2024. Include specific facts to support the award's criteria for each nomination.

Santa Barbara County Bar Association

Santa Barbara County Bar Foundation
a 501(c)(3) non-profit

Seek Donations to the DEI Scholarship Fund

Help support a student pursue a legal career in Santa Barbara County

Costs to prepare for the LSAT & apply to law school ~ $2,621

LSAT Prep Course $1,699
LSAT Fee $222
Credential Assembly Service (CAS) Fee $200
CAS Report $45.00 / school (min. 10 schools recommended) $450
LSAT Score Report $50.00

Costs to prepare and sit for the California Bar Exam ~ $ 5,421

Bar Prep Course $2,999
Registration with the California Bar $119
Moral Character Determination $551
Fingerprinting $79
Exam Fee $850
Laptop Fee $153
Hotel stay near testing center $670 for two nights

These costs are not covered by traditional financial aid packages and can be a barrier for students to pursue careers in law.

Donations can be made by **check** payable to SBCBF, send to P.O. Box 21523, Santa Barbara, CA 93121. Please write "DEI Scholarship" on the memo line
PayPal at https://paypal.me/SBBarFoundation?country.x=US&locale.x=en_US

Donations to SBCBF are tax-deductible

JUDICATE WEST CELEBRATING 30
Alternative Dispute Resolution

Apply for Judicate West's
D&I Scholarship Program

Judicate West's Diversity and Inclusion Committee is excited to share an initiative we believe will make a significant impact on fostering diversity and inclusion within the legal profession broadly and the ADR sector specifically. We are offering a full scholarship for two individuals from underrepresented communities to attend the internationally top-ranked Mediation Training Program at **Straus Institute at Pepperdine University** in Malibu.

Application deadline:	September 1, 2024
Selection notification:	October 30, 2024
Program participation:	Scholarship recipients can attend either of the biannual training dates, within three years of being selected.

Scan to learn more about the scholarship criteria, award specifics, and application deadline

JudicateWest.com | (800) 488-8805

ASSOCIATE CORPORATE COUNSEL SOUGHT

AppFolio, Inc. is a technology company, founded in 2006 and headquartered in Goleta, California, that offers software-as-a-service applications and services to the real estate industry. We're a community of dreamers, big thinkers, problem solvers, active listeners, and multipliers. At every opportunity, we set the pace while delivering innovation built to carry real estate into the future.

We are looking for an exceptional Associate Corporate Counsel, Product to join our dynamic legal team. Please review the Job Description and apply online via LinkedIn or AppFolio Careers.

Position: Full-Time, Entry-Level, Onsite
Salary Range: $132K/yr - $185K/yr

* * *

ATTORNEY SOUGHT

Established law firm seeks an attorney committed to the highest standards of practice to join its Santa Barbara office. Civil or criminal litigation experience preferred; lateral transfers encouraged. Salary depending on experience; good benefits. Sanger Law Firm, P.C. — contact jswanson@sangerlawfirm.com or call 805-962-4887.

* * *

LITIGATION ASSOCIATE SOUGHT

Price, Postel & Parma, a long-standing law firm in Santa Barbara, is seeking a litigation associate with superior credentials, at least 2 years of significant litigation experience and a current license to practice in the State of California. Compensation is commensurate with skills, education and experience. A current license to practice in California is required. Salary range for qualified candidates is $115,000 to $200,000. Please submit a cover letter and resume detailing your experience to Craig Parton at cparton@ppplaw.com.

* * *

For more information on classified advertising rates, or to submit a classified ad, contact Marietta Jablonka, SBCBA Executive Director, at (805) 569-5511 or sblawdirector@gmail.com.

OFFICE AVAILABLE

Professional, furnished office for rent (11'8" x 8'8" for $1,200.00). Includes two conference rooms, kitchen and workroom with copier. Located in downtown Santa Barbara across from the Courthouse. Respond to hsimon@jhslawsb.com.

SAVE THE DATE

for These Fun SBCBA Events!

June 21st - Summer BBQ

September 27th - Golf, Tennis and Pickleball Tournament

November 7 - SBCBA Annual Dinner & Awards

Lawyer Referral Service

805.569.9400

Santa Barbara County's ONLY
State Bar Certified
Lawyer Referral Service

A Public Service of the Santa Barbara County Bar Association

Sanger, *continued from page 23*

Fair Play and Peace." That is all we can hope for today or any other time in a free society. ■

Robert Sanger is a Certified Criminal Law Specialist (Ca. State Bar Bd. of Legal Specialization) and has been practicing as a litigation partner, now principal shareholder at Sanger Law Firm, P.C., in Santa Barbara for over 50 years. Mr. Sanger is a Fellow of the American Academy of Forensic Sciences (AAFS). He is an Adjunct Professor of Law and Forensic Science at the Santa Barbara College of Law. Mr. Sanger is an Associate Member of the Council of Forensic Science Educators (COFSE). He is Past President of California Attorneys for Criminal Justice (CACJ), the statewide criminal defense lawyers' organization.

The opinions expressed here are those of the author and do not necessarily reflect those of the organizations with which he is associated. ©Robert M. Sanger.

Endnotes

1 Names of individuals, for the most part, are omitted from this article.

2 This is a personal account based on my personal point of view. To verify some of the facts—and to my surprise, my memory was pretty good—I have consulted some contemporary news articles and a monograph by Professors Robert Potter and James Sullivan, "The Campus by the Sea Where the Bank Burned Down," (November 1, 1970, submitted to the President's commission on Campus Unrest) which contains an Appendix including original contemporaneous reports.

THE OTHER BAR NOTICE

Meets at noon on the first and third Tuesdays of the month 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 and choose Santa Barbara in "Meetings" menu.

SBCBA SECTION CHAIRS

Alternative Dispute Resolution
Judge Frank Ochoa (805) 451-1240
frankochoa@destinationadr.com

John Derrick (805) 284-1660
jderrick@icloud.com

Bench & Bar Relations:
Tom Foley (805) 962-9495
tfoley@foleybezek.com

Civil Litigation
Cory Baker (805) 966-2440
cbaker@stradlinglaw.com

Criminal
Doug Ridley (805) 208-1866
doug@ridleydefense.com

Diversity & Inclusion
Teresa Martinez (805) 568-2950
tmartinez@co.santa-barbara.ca.us

Employment Law
Alex Craigie (805) 845-1752
alex@craigielawfirm.com

Estate Planning/Probate
Lori Lewis (805) 966-1501 x267
Llewis@mullenlaw.com

Family Law
Renee Fairbanks (805) 845-1604
renee@reneemfairbanks.com

Marisa Beuoy (805) 965-5131
beuoy@g-tlaw.com

Mandatory Fee Arbitration:
Eric Berg (805) 708-0748
eric@berglawgroup.com

In House Counsel/Corporate Law
Betty L. Jeppesen (805) 450-1789
jeppesenlaw@gmail.com

Intellectual Property
Christine Kopitzke (805) 845-3434
ckopitzke@socalip.com

Real Property/Land Use
Joe Billings (805) 963-8611
jbillings@aklaw.net

Taxation
Peter Muzinich (805) 966-2440
pmuzinich@gmail.com

Cindy Brittain (323) 648-4657
cbrittain@karlinpeebles.com

Well-Being
Robin Oaks (805) 685-6773
robin@robinoaks.com

June

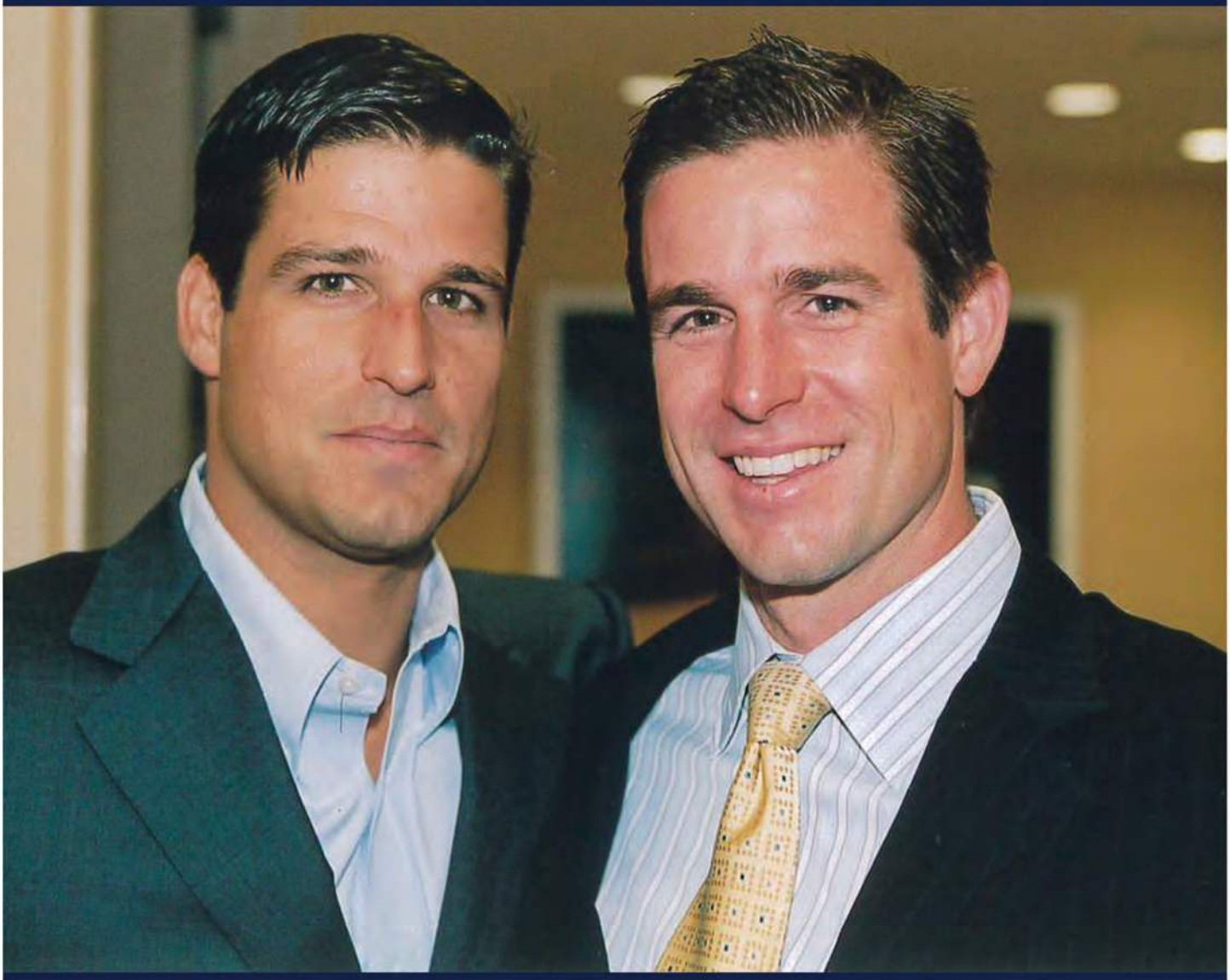
2024

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3	4	5	6 D-Day	7	8
9	10	11	12	13	14 MCLE Probate Section Meeting with Hon. Colleen Sterne	15
16 Father's Day	17	18	19 Juneteenth	20 Bench & Bar Relations Meeting with Hon. Pauline Maxwell	21 SBCBA Annual BBQ	22
23	24	25 SBCBA MCLE: "Ethical Issues in Mediation"	26	27	28	29
30						

The Santa Barbara Bar Association is a State Bar of California MCLE approved provider. Please visit www.sblaw.org to view SBCBA event details. Pricing discounted for current SBCBA members.

THE STOLL LAW FIRM

PROUDLY SERVING THE CENTRAL COAST FOR OVER 50 YEARS



NOW HIRING

ASSOCIATE ATTORNEY - PARALEGAL - LEGAL ASSISTANT

805-963-0006 - www.stolllawfirm.com - careers@stolllawfirm.com

Santa Barbara
308 E. Carrillo St.
Santa Barbara, CA 93101

Los Angeles
11620 Wilshire Blvd., Suite 500
Los Angeles, CA 90025

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