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CITATIONS

M A Y - T W O T H O U S A N D F O U R T E E N

FROM RAILS TO TRAILS AND BACK AGAIN

By Joshua S. Hopstone
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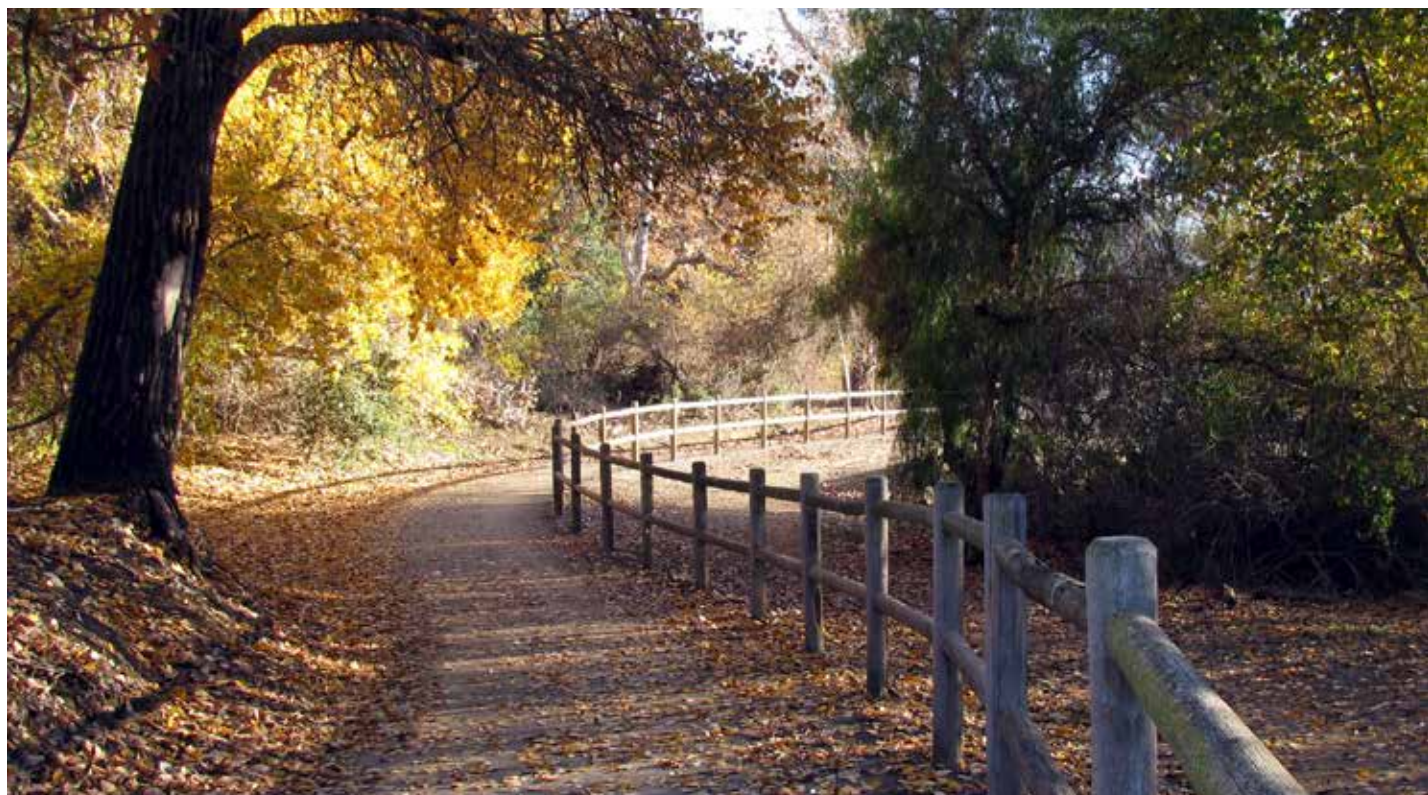


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PRESIDENT'S MESSAGE: LAWS GOING TO THE DOGS

by Laura Bartels



Twiggy is a stunning 13-year-old black purebred German Shepherd who comes to my office every day. Last week, as I was closing up Santa Clara Valley Legal Aid for the night and because it was getting dark and I was by myself, I retrieved the dog from the car and brought her in as I closed down and locked up. A small girl and boy had been playing in the nearby yard and were fascinated and mesmerized when they saw the large black dog. They ran over toward the fence. I opened it and encouraged them to meet and pet her. While petting, the small girl saw her tags and asked what they were for. I told her the silver tag was her license and the red tag listed her name and phone number. The little girl was incredulous and full of wonder: “She has a PHONE?” The concept of this is closer than we think as pets are being accepted into more places previously only used by people.

Twiggy sleeps so quietly on the navy blue rug next to my desk that clients are often surprised when I ask them if they are okay with dogs because there’s one by their feet. Twiggy is lovely and calming to clients. She patiently tolerates the child trying to sit on her or ride her as her mother is working

through her legal predicament. For those people who are not “dog people” she senses that and has a place she can be. It is amazing to watch the calming effect she has on the wife reeling from the grief of the death of her husband and sits patiently while the client strokes Twiggy’s head, solidly absorbing the sadness. Her calming presence creates a safe atmosphere for people to let down. Twiggy is not a service dog, she is our pet.

The ADA rule defines “service animal” as a dog (miniature horses count too) that has been individually trained to do work or perform tasks for the benefit of an individual with a disability. Dogs that are not trained to perform tasks that mitigate the effects of a disability, including dogs that are used purely for emotional support, are not service animals.

Individuals with mental disabilities who use service animals that are trained to perform a specific task are protected by the ADA (source: Highlights of the Final Rule to Amend the Department of Justice’s Regulation Implementing Title II of the ADA Fact Sheet, March, 2011).

Recently, on an airplane, the woman next to me took her snack-sized dog (that’s big dog language for little dogs) out of the carrier, “He lowers my anxiety,” she explained. As it walked amongst the seats I pondered if it is inconsiderate to the hundreds of other people cooped up in a metal tube 30,000 feet high for her dog to be loose.

I later turned to my computer to look up what makes a “service dog” and found numerous recent articles about the proliferation of “service dogs” and the fuzzy line people create when they turn a pet into a “service dog.” Old time service dog people call the newly surfacing service dogs “fakers.”

How can you tell if you’re dealing with the Real Rover or Fido Faker?

“Sometimes it’s difficult to distinguish a legitimate disability,” said Kelton Lee Gibson, whose daughters trained a Guide Dog of America and a K-9 for Independence, “There is tension in the various laws.” The ADA laws say business owners can ask only two questions: “Is it a service dog?” and “What task does it perform?” Any other questions are a violation of privacy.

Last month, while in line at the Ventura County Clerk’s office, a woman with a huge 140-pound Burmese Mountain dog wearing an ill-fitting “service dog in training” vest waited in line next to me. Admiring the animal, I was quietly surprised at the lack of control the owner had with the two-year-old canine who was jumping and wagging for attention and affection. The clerk politely asked about the dog and the woman gushed that the dog goes “EVERYWHERE” with her, and of course it was okay to pet the dog because she’s not “THAT” kind of service dog (the kind you’re not supposed to pet). Her service dog provides companionship as she completes her errands.

Upon answering a summons to jury duty, as I waited in the jury pool, another prospective juror waded through the throng of eager jurors, arms full of poodle, water bowl, treats, chew toy, stuffed pink Piglet and daisy-colored carrier. Both owner and dog wore laminated tags proclaiming “Service Dog.”

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When asked about the service qualifications of the playful poodle she answered that the poodle served to lower her anxiety, and also, as she was recently diagnosed a diabetic, the poodle was able to fetch medication if her blood sugar drops to a dangerous level. Watching as the dog rarely actually retrieved the regularly tossed Piglet stuffed toy, preferring instead to come to the beckoning, friendly hands of juror strangers, she was asked if the dog actually fetched the meds for her.

"No," she admitted, "but we are working on that." She has had the eight-year-old dog since she was a two-month-old puppy.

The California State Senate held hearings in February regarding the United Grocers complaints about the recent proliferation of service animal pets. Where is the line drawn?

Laura Bartels practices estate law at Taylor, Scoles & Bartels in Fillmore and the current president of the Ventura County Bar Association.

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FROM RAILS TO TRAILS AND BACK AGAIN

by Joshua S. Hopstone



The Ventura River Trail, an extension of the Ojai Valley Trail, is a path through our local history. Beginning in Downtown Ventura and meandering northward between the Avenue and State Route 33, the trail exhibits a dynamic array of agricultural, semi-urban, industrial, and natural scenery. The easy 6.3 mile path also encounters a series of unique

art installations commissioned by the city's public art program to encapsulate cultural and historical themes, and structural points of interest that are quintessentially Ventura. At Foster Park in Oak View, the River Trail connects with the Ojai Valley Trail, which provides a more rural experience. Departing at times from Route 33, the 9.5 mile trail travels quiet neighborhoods, shady oak groves, and citrus orchards, while providing breathtaking views of the Topatopa mountains.

Both the Ventura River Trail and the Ojai Valley Trail traverse the location of the former Ventura and Ojai Valley Railroad. Constructed by Captain John Cross in the 1890s for a total cost of approximately \$240,000, and purchased by the Southern Pacific Transportation Company soon after, the new line was uniformly heralded as an important contribution to the valley's development and prosperity. Before, more than 5,000 people a year would travel by wagon or horseback to enjoy the region's natural hot springs and bountiful fishing and hunting. When active, the railroad

extended from the Ventura Junction rail station (connected to Santa Barbara and Los Angeles), north to Mira Monte, then east, ending in the center of the village of Nordhoff, now Ojai. Actual use of the railway line was abandoned in 1975.

In 1995, the City of San Buenaventura filed with the Interstate Commerce Commission a notice of interim trail use under the National Trails System Act, 16 U.S.C. § 1247(d). This so-called "Rails-to-Trails" law allows railroad owners wishing to cease operations along a particular route to negotiate with a state, municipality, or private group prepared to assume financial and managerial responsibility for the right of way, subject to future reactivation of rail service along the route. With support from the Rails-to-Trails Conservancy (www.railstotrails.org), an agreement was reached with Southern Pacific for use of the abandoned Ventura and Ojai Railroad as a recreational right-of-way, and the Ventura River Trail formally opened in 1999.

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Letters to the Editor: Lawyers Behaving Badly

I share Kate Neiswender's frustrations with the seeming lack of accountability for lawyers lying to the court (*CITATIONS* Nov. 11, 2013). After 35 years of practice, I have borne witness to a numerous incidences where opposing counsel is either putting an outrageous spin on his client's case, blatantly misrepresenting the facts or law of his client's case or just bold face lying. I don't necessarily believe that this behavior has gotten worse over the years. I recollect conversations early in my career where older and wiser lawyers nursing their whiskies, sadly lamenting the lack of professional cordiality and veracity of opposing counsel. These short-comings unfortunately required costly CYA letters because you just couldn't trust opposing counsel. This has probably been complained of since the days of Cicero, with each successive generation of lawyers complaining about how matters have deteriorated. I do not agree. It has always been so. Because of the nature of our profession this situation is unlikely to improve, but that is not to say that we aren't trying.

In January 2014 the California Supreme Court denied Stephan Glass admission to the Bar. Stephen Glass was an infamous reporter for the *New Republic* who became confused between journalism and creative writing. He fabricated over 40 articles and provided contrived supporting materials designed to fool the magazine's fact checkers. He was also a law student at the time. After withdrawing his New York Bar application, Mr. Glass filed a California application of moral character in 2007, after passing the California Bar. After concluding that California's cupboard was already too full of Glasses, Mr. Glass's application was denied.

Over the last decade, I have seen a persistent endeavor to promote congeniality, and cooperation between counsel. The Inns of Court's guiding principles stress civility. The recent push for civility, consensus, and the relatively recent field of collaborative family law, seems to overlook the reality that the adversarial system actually works. The trier of fact, whether a jury or a judge, listens to both parties, considers the spin, exaggerations, or absolute lies, relative veracity and then they make a decision. Our system is, of course, adversarial. The best way to seek truth is

to engage the services of highly educated, zealous, and creative advocates to argue one's position. The problem is when advocacy devolves into duplicity. Is truth actually best obtained through lies? The judge calls them like he sees them and for the most part that's the adversarial game. Ms. Neiswender's complaint that lawyers lie in the Court room with impunity, is no surprise to most experienced trial lawyers. That is the system.

I am moderately confident that most judges have a good handle on evaluating the veracity of a witness or an attorney. They exercise this judgment on a daily basis. When it comes to chastising counsel for misrepresentations to the court, I do not doubt judges are well aware of the lies, but it does appear that the courts have a hands off approach; kind of like a referee of a rough and tumble basketball game letting the teams play.

I have brought at least half a dozen § 128.7 motions in situations that were quite egregious; not a single one resulted in sanctions. The judges just tie themselves in knots trying to avoid sanctioning counsel, except for very specific, mandatory requirements set forth in the discovery code. But when a lawyer lies to a judge it seems to me, and I share Kate Neiswender's experience and perception, that they do so with impunity.

In arguing for CCP § 128.7 sanctions in cases of clear misrepresentations to the Court, I've had one judge complain that I was essentially seeking a summary judgment; well, that's right. But she refused to grant sanctions even after the actual motion for summary judgment was granted. A Superior Court Judge in Van Nuys, in response to my §128.7 motion, made an observation that the whole scheme is a legislative joke designed to frustrate and punish attorneys. The judge observed that the procedural steps of a § 128.7 motion made it almost impossible to satisfy.

My last sanction motion (and I think I am going to give up using this particular tactic) involved a declaration under penalty of perjury by a local lawyer concerning a ruling by the court at a hearing he did not attend. His declaration stated unequivocally

that he was at that hearing. After reading the declaration and concerned that I was having a dreaded senior moment, I checked the transcript and confirmed that the lawyer had not attended the hearing, despite his declaration that he did. When confronted with the transcript and a request for sanctions for these blatant misrepresentations of the proceedings, the judge avoided the whole distasteful situation, ignored the transcript and claimed that she didn't remember it that way. The court also commented that the motion was "not very helpful." I beat a strategic retreat.

The premise for CCP § 128.7 sanctions is that attorneys are officers of the court and, as such, certify the reasonableness of the facts pled and law asserted. CCP § 128.7 requires a safe harbor warning to opposing counsel to correct his adversarial flaws as a condition for the imposition of sanctions. It is interesting to note that the professional duties set forth in CCP § 128.7 expressly do not apply in criminal representation. There is an interesting dichotomy between the duty of the lawyer as an officer of the Court and the litigation privilege embodied in CC 47(b). The allegations of the client are privileged but the lawyer's duty to advocate those allegations are not.

I embrace the adversarial contest and the system. As a trial lawyer, I just assume that the other side is not going to be particularly truthful and that as a lawyer I need to protect my client from unscrupulous attorneys and parties. Trial work, like politics, is the equivalent of war by other means. We should all remember that clients want a zealous, aggressive attorney representing their interests and in all cases they just want to win. The State Bar rules require zealous representation. Clients don't care if you're polite, professional, conciliatory or collaborative. That means you must assume the other side and their counsel will lie and your job, as an advocate, is not to be civil, collaborative, cooperative but aggressive and prepared. It makes the process unpleasant, expensive, inefficient and tiresome but it's the system we have. To a large extent, lawyers make a living based on human character

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FROM RAILS TO TRAILS AND BACK AGAIN

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The prominence of “rails-to-trails” conversion activity such as this has grown exponentially in recent decades, as our nation’s rail use has declined. The legal framework is, to a large extent, one of common property law. The General Railroad Right-of-Way Act of 1875, 43 U.S.C. §§ 934-939, was enacted to promote the appeal of what seemed at the time to be boundless westward expansion, by granting a right of way through public lands to any railroad company meeting certain requirements. Because the Act “clearly grants only an easement, and not a fee,” (*Great Northern R. Co. v. U.S.*, 315 U.S. 262, 271 (1942)), the logical conclusion is that when a railroad line is abandoned, the underlying land would simply become unburdened by the easement.

So thought the Brandt family, who in 1976 received, by a federal land patent, fee simple title to land in Fox Park, Wyoming, subject to an existing railroad easement granted pursuant to the 1875 Act. The railroad proved unprofitable, and, after

an equally unsuccessful attempt to turn the line into a tourist attraction, notified the Surface Transportation Board of its intent to abandon the right of way. It tore up the tracks and ties and in 2004 the abandonment was official. Soon after, the United States sued the Brandts and their neighbors to quiet title in the United States to the abandoned right-of-way, asserting the 1875 Act granted the railroads something “tantamount to a limited fee with an implied reversionary interest” to the government. *Marvin M. Brandt Revocable Trust v. U.S.*, 134 S.Ct. 1257, 1268 (2014).

On March 10, the U.S. Supreme Court summarily rejected the government’s argument in *Brandt, supra*. Relying on basic principles of property law, the high court held that “[w]hen the [railroad] abandoned the right of way in 2004, the easement referred to in the Brandt patent terminated. Brandt’s land became unburdened of the easement, conferring on him the same full rights over the right

of way as he enjoyed over the rest of the Fox Park parcel.” *Brandt, supra*, 134 S.Ct. at p. 1265 (citing, e.g., *Smith v. Townsend*, 148 U.S. 490, 499 (1893) (“...if ever the use of that right of way was abandoned by the railroad company the easement would cease, and the full title to that right of way would vest in the patentee of the land”)).

The Fifth Amendment provides that “private property [shall not] be taken for public use, without just compensation.” The Supreme Court confirmed decades ago that “rails-to-trails” conversion of an abandoned rail line to recreational use satisfies the Fifth Amendment and may create federal liability for just compensation to a private landowner. *Preseault v. I.C.C.*, 494 U.S. 1 (1990). With more than 20,000 miles of rail-trails across the country today, the number of cases brought in the U.S. Court of Federal Claims by landowners seeking just compensation is growing. Whether compensation is due in rails to trails cases will likely turn on the often archaic deeds or patents by which the land was first conveyed from the government to a private person. *Brandt* provides litigants guidance by confirming the nature of a property interest conveyed to a railroad pursuant to the 1875 Act as an easement, not a fee, which upon abandonment returns to the owner, not the public.

Here in Ventura, the Ventura River Trail and Ojai Valley Trail run across 17 miles of land, at least some of which may be private property. Hopefully, these landowners can appreciate the historical, cultural, and recreational value the trails continue to provide our community.



Joshua S. Hopstone is an attorney at Ferguson Case Orr Paterson LLP in Ventura and Westlake Village specializing in real estate and land use litigation and appeals. He can be reached at (805) 659-6800 and jhopstone@fcoplw.com.

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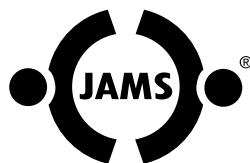
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Letters to the Editor: Lawyers Behaving Badly

Continued from page 9

flaws. The profession reflects human nature and values as well as its flaws. Our culture's irresistible mandate to prevail at all costs, be it in competitive sports, bicycle racing, baseball or commercial transactions the reward for lying and cheating often outweigh the consequences. Unfortunately, that is the reason for the profession. If people would wake up tomorrow embracing the Golden Rule, we would all have to sell hardware for a living.

In discussions about the relative obnoxiousness of attorneys, a Midwest attorney told me he found Los Angeles lawyers much more obstreperous and obnoxious. He observed that the New York legal market is highly stratified. You met the same lawyers concentrated in specific practice areas. The fact that you would undoubtedly encounter the same attorney, in multiple matters, had a self-regulating reciprocal effect on lawyer's behavior. He found Los Angeles to be like the Wild West with little concern with obnoxious behavior because there was little likelihood of dealing with that lawyer again and, of course, no consequences. As long as the Bar and the Bench tolerate that behavior, or fail to address it, it will continue. It is to be expected that judges will continue to focus on the issue at hand, and ignore the side drama of lawyers behaving badly.

Michael McQueen

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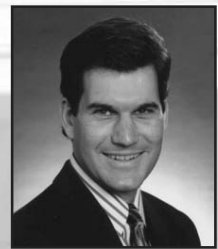
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Summer 2014 Mandatory Continuing Legal Education Courses May 27 – August 2

VENTURA CAMPUS

INTELLECTUAL PROPERTY FEE: \$590*
Mondays (10 sessions) 6:30-9:30 p.m.

This course provides a general introduction to the law of copyright, trademarks, patents, and trade secrets. The areas covered include how the law applies to different types of intellectual property; the legal rights of the creators and owners of such property; the competing rights of others to use such property; and an overview of intellectual property litigation.

Instructor: Erica Bristol, J.D. (Private Practice, Encino)

CRIMINAL DEFENSES FEE: \$590*
Tuesdays (10 sessions) 6:30-9:30 p.m.

This course will address a range of defenses, including immaturity, insanity, diminished responsibility, duress, cultural defenses, rotten social background, and battered person syndrome.

Instructor: Michael Hanley, J.D. (Senior Deputy Public Defender, Santa Barbara)/Mark Saatjian, J.D. (Deputy Public Defender, Santa Barbara)

BANKRUPTCY LAW FEE: \$590*
Tuesdays (10 sessions) 6:30-9:30 p.m.

The course provides the general concepts and principles of Bankruptcy Law including, but not limited to, property of the estate, the automatic stay, claims and claim priorities, administration of bankruptcy estates (Ch. 7 and 13), bankruptcy litigation, reorganization in bankruptcy (Ch. 11), liquidation and discharge.

Instructor: Christine Renshaw, J.D., L.L.M. (Private Practice, Ventura)

EMPLOYMENT LAW FEE: \$590*
Thursdays (10 sessions) 6:30-9:30 p.m.

A study of the legal rules surrounding the hiring, treatment, and termination of employees. The course includes Title VII of the 1964 Civil Rights act, the Americans with Disabilities Act, and other federal and state laws concerning employment discrimination and wrongful discharge.

Instructor: Gary Rattet, J.D. (Lewis, Brisbois, Bisgaard & Smith, LA)

EDUCATION LAW FEE: \$295*
Saturdays (5 sessions, 7/5-8/2) 9:00-12:00 p.m.

This course focuses on various aspects of education law, including church-state relations, tort liability, teacher employment, tenure, dismissal and retirement, student rights, and the rights of students with disabilities.

Instructor: Steve Blum, J.D. (Private Practice, Ventura)

10 sessions: up to 26.5 MCLE credits
5 sessions: up to 13.25 MCLE credits

For more information or to enroll, please contact Barbara Doyle at (805) 765-9302 or email bdoyle@collegesoflaw.edu. Space is limited.

* Each MCLE auditor is charged a non-refundable application fee of \$50 per Summer session, plus applicable fees for courses taken. **As a public service, no charge or fee is charged for RESTORATIVE JUSTICE.**

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SANTA BARBARA CAMPUS

FAMILY LAW FEE: \$590*
Mondays (10 sessions) 6:30-9:30 p.m.

Family Law focuses on the dissolution proceeding, including mediation, resolution of custody and visitation disputes, child and spousal support, property division, and attorney fees. Emphasis is on local court practices and forms.

Instructor: Penny Clemmons, Ph.D., J.D., Certified Family Law Specialist/Special Master (Private Practice, Santa Barbara)

SELECTED TOPICS – CONSTITUTIONAL CRIMINAL PROCEDURE FEE: \$590*
Tuesdays (10 sessions) 6:30-9:30 p.m.

Emphasizes the practical aspects of criminal procedures prior to trial. Included are topics relating to the lawyer's responsibility in a criminal case; arrest, booking, and bail procedures; an examination of the accusatory pleading; the grand jury; and pretrial procedures, including preliminary hearings, pretrial discovery, and tactical considerations. Also covered are the types and consequences of pleas, and sentencing considerations.

Instructor: Eric Hanson, J.D. (Chief Trial Deputy (ret'd), Santa Barbara District Attorney's Office)

ENVIRONMENTAL LAW FEE: \$590*
Tuesdays (10 sessions) 6:30-9:30 p.m.

An introduction to the public policy behind the setting of environmental standards, the course focuses on a major environmental law such as the Clean Air and Water Act, the National Environmental Protection Act, or the California Planning and Zoning Law.

Instructor: James Scafide, J.D., L.L.M. (Buynak, Fauver, Archbald & Spray, Santa Barbara)

ELDER LAW FEE: \$295*
Wednesdays (5 sessions, 7/2-7/30) 6:30-9:30 p.m.

This course surveys the law on issues facing the elderly, such as age discrimination, elder abuse, entitlement to government benefits, guardianship, alternatives to guardianship, and health care decisions, including end-of-life decisions.

Instructor: Denise Platt, J.D. (Private Practice, Santa Barbara)

UNIFORM COMMERCIAL CODE FEE: \$295*
Thursdays (5 sessions, 7/3-7/31) 6:30-9:30 p.m.

This course focuses on the law of sales through selected portions of Articles I and II of the Uniform Commercial Code.

Instructor: Craig Smith, J.D. (Professor, COL)

RESTORATIVE JUSTICE FEE: NO CHARGE*
Saturdays (3 sessions, 5/31-6/14) 9:30a.m.-3:00 p.m.

This class will offer an introduction into the field of restorative justice, which involves including all the stakeholders (victims, offenders, family and community members) in the legal process in order to collectively address the needs and determine how to make things as right as possible. The class covers the various historical and current restorative practices.

Instructor: Nancy Davis (Founder, City of Peace; Restorative Justice Advocate)/Hon. Denise deBellefeuille (Judge, Santa Barbara Superior Ct.)

BARRISTERS' CORNER: WHO DO YOU KNOW?

by Rennee R. Debesa

Barrister's Trivia Night Raises \$110.00 for the VLSP.

On April 17 the Barristers held their annual trivia night at Garman's Pub in Santa Paula. The team "Judicial Restraint" led by **Judges Bruce Young** and **James Cloninger** are this year's champs. Judicial Restraint beat out Mixed Bag, the Smith/Ostlers and the Vexacious Litigants on their path to victory. The Barristers raised \$110.00 for the Ventura County Bar Association, VLSP program.

People sometimes ask me "why do you network with other attorneys? Do you really get anything out of it?" Yes. I actually do, but not in the way that most people think of when they attend formal "networking" events expecting to get some business out of those efforts.

I have been a member of the Ventura County Bar Association and Barristers for more than six years. In that time, I have fostered great personal and professional relationships with attorneys, paralegals and other legal professionals in our county. It has been beneficial to me because I am able to count some of those relationships among my close friends. It has also been extremely helpful to get to know attorneys who practice in different areas and at different levels of experience. Barristers and the VCBA provide me with an array of legal referrals that provide me and, most importantly, my clients, with access to almost any type of attorney they could possibly need. Natural resource attorney? I know a guy. Estate planning attorney? Sure! Appellate attorney? Done. And the list goes on.

Like many attorneys, I often run into legal issues that are outside of my practice area. Instead of telling a client "I can't help you, I don't practice in that area," a quick email or call to one of the many experienced attorneys in our community results in a helpful and often very rewarding response: "Although I am not able to provide you with legal advice in the area, I have a colleague that is very knowledgeable in that area and is more than willing to discuss it with you, here's her information." I see it as an additional service that I can provide to my clients that other non-connected attorneys may not be able to

provide. Anyone can Google an attorney, but not everyone can make a personal referral of someone that they know will be able to provide excellent legal representation.

If you are an attorney under the age of 36 or one with 7 or less years in practice under your belt, contact **Rachel Coleman** at rachel@davidlehrlaw.com to sign up for Barristers. This is a great opportunity to start getting to know the legal community and make lasting professional relationships.

Barristers' Bowling Night

Our annual Barristers Bowling Night will take place July 17 at Harley's Bowl in Camarillo. This is a great opportunity for you to spend an evening of fun with co-workers, colleagues, judges and family. There is a minimum \$10 donation to Make-a-Wish, who will be present and we will have some Wish families bowling with us. This is a great opportunity to give back

Continued on page 20



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Judge Dino Inumerable's Enrobing



Photo credit: Debra Scantlin, Ventura County Sheriff's Dept. Photographer

TOP TEN REASONS VENTURA COUNTY JUDGES HAVE IT BETTER THAN OTHER COUNTY JUDGES

In light of David Letterman's recent announcement of retirement, I thought **Judge Dino Inumerable's** enrobing a fitting occasion for a top 10.

#10 You can see the ocean from the fourth floor.

#9 Free parking.

#8 This is the first step to have your picture on these hallowed walls of Courtroom 22.

#7 You get to add your personal touch to jury duty by greeting the jury pool.

#6 It's such a small community that you'll see your jurors at Vons and your kids' soccer coach sitting on the bench down the hall.

#5 You don't have to fight LA traffic.

#4 From your family: It's 2 in the afternoon and you're still in your robe?

#3 Our courthouse isn't a bomb shelter.

#2 Michael Planet.

And the #1 Reason Ventura County judges have it better than other county judges ...

#1 The Ventura County Bar Association, which is involved, supportive and cares.

Congratulations.'



*Ventura County Bar Association President **Laura Bartels** delivered this list as a speech at the April 19 enrobing ceremony of Judge Dino Inumerable in the Ventura Superior Court.*

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EH, WHAT'S APP, DOC?

by John Troxel

We get asked all the time about what apps are best for certain needs. We have some in our bag of tricks that we like, plus one or two others that we REALLY like. Below are just a few, and I think Fraulein Maria would agree.

For those who like to do-it-yourself, in cases where the data is not evidence and not to be used in court, then here are some really good ones.

On the Mobile

Taking notes: 7Notes HD does a great job of translating handwriting to text, but Notability's ability to work with existing documents, such as signing contracts, is invaluable. A must-have is Evernote, for its ability to save, share, archive and sync.

Scanner: DocScanHD is a wonderful app that uses your iOS device's camera to create PDFs out of photographed documents.

Collaboration: Some of that can be done in shared Evernote files, but Dropbox and Google Drive must be on your devices too.

On the Desktop

Data wiping: to securely erase all the data on a hard drive, use Eraser from eraser.heidi.ie, which also does a great job of wiping individual files from your computer. DBAN is a bit better, but it is geekier.

File recovery: Photorec from cgsecurity.org is great, easy, and free. There are a lot of other file recovery apps, but I am recommending this one.

Internet history: One of our clients recently said she wanted a medical bracelet that said, "In case of emergency, destroy my browser search history." BrowsingHistoryView from nirsoft.net reads browser histories and can be export results to your favorite spreadsheet program.


Search engine queries: Also from nirsoft.net is MyLastSearch, scans the cache and history files of your Web browser, and locates all search queries that you made with the most popular search engines (Google, Yahoo and MSN) and with popular social networking sites.

iPhones/Pads/Pods: A couple applications that you can use to acquire iOS data are iFunbox from i-funbox.com and DiskAid from digidna.net. These are not forensic tools, so data are not acquired or preserved for court, and you are missing some things like metadata; but you can get files downloaded to your computer this way.

Androids: Airdroid 2 from airdroid.com, Mobogenie from mobogenie.com, and Mobarobo from mobarobo.com are all terrific with free versions, but you really should pop the \$25 and get MOBILedit from mobileedit.com.

Computer monitoring: You can find eBlaster and SpectorPro at spectorsoft.com, which will log key strokes, report on web activity, copy emails, etc. Others that review well are WebWatcher and PC Pandora, but I recommend SpectorSoft's products.


Continued on page 18



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FORENSIC ACCOUNTING BUSINESS VALUATION FRAUD ANALYSIS

EH, WHAT'S APP, DOC?

Continued from page 17

Forensic applications

Now the industrial-strength stuff we use for analyzing electronically stored information (ESI). The two 800lb gorillas are Guidance Software's Encase and AccessData's Forensic Toolkit (FTK). We are fans of both, but we have used FTK since 2004. For Macs, Black Bag's Blacklight is the standard-bearer. FTK and Encase can tell you what is on a Mac, but real analyses should be done with a Jedi-Knight-level-Mac-using-investigator proficient with Macs and Blacklight. There are others, not quite as universally known, that are used as well, and then there are apps for those who reside in the Middle Earth of computer forensics: Linux users.

Many of the above programs can analyze cell phones too, and there are phone-only apps. Cell phone carriers use Cellebrite's retail product to copy data from one phone to another, and that is what the military uses to acquire data from suspected terrorists, so I am a Cellebrite proponent. No cell phone analyst worth their salt would use only one method, so several are usually employed when doing a phone exam.

For Internet-related evidence from a computer, Magnet Forensics' Internet Evidence Finder (IEF) is excellent. X1 Social Discovery is first-rate if there is a need to capture evidence from social networking sites. To forensically acquire websites, Webcase is the ticket.

There are many ways to work with ESI, but the point here is this: If these above apps are not being used by someone certified when analyzing evidence, then your spidey sense should be tingling. It might be cheaper to have your employee's kid do it, but amateurs can cost a lot more than an expert.

John Troxel is the principal of Camarillo-based private investigation firm Verdict Resources, Inc.



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A YOUNG ATTORNEY THANKS A WELCOMING COMMUNITY

by Adam W. Pollock

Last May, I uprooted my family, moved back to the town where I was raised, and opened up my law firm. I didn't have a single client, a single lead, or a clue on how to get either or both. Nearly a year later, I have made a career out of that uncertain beginning. While my practice is still growing, as am I as an attorney, I couldn't be more pleased with the choice I made to embark on my solo career in Ventura County.

As I reflect on the past year, I couldn't help but recognize the generosity of the legal community in Ventura County. I have met several fellow attorneys over the last year, most of which I had no relationship with beforehand. However, each attorney I met with has been more than willing to share his or her time, advice and friendship with me. For a young attorney, these meetings and relationships have become invaluable. I received advice on following procedure, drafting techniques, and navigating the county courthouse. I bounced legal arguments off of these attorneys. And, most importantly, I developed business relationships and friendships with those whom I have met.

I doubt that I would be where I am now if it weren't for the kindness of the legal community. I appreciate those who I have met with and I look forward to getting to know more of you.

One thing is for sure, when I have a few more gray hairs and a young attorney reaches out to me, I'll make sure to pay it forward and offer my time, advice and friendship like many have already done for me. Thanks!



Adam Pollock owns the Westlake Village-based Pollock Law Firm and chairs the Solo Section of the bar.

**BARRISTERS' CORNER:
WHO DO YOU KNOW?**

Continued from page 15

and have some fun. Slaughter & Reagan, LLP and Pacific Western Bank will be some of our sponsors for this event. If you are interested in sponsoring and/or attending please contact Nadia at bar@vcba.org.

Mentorship

Mentorship is a crucial component of a person's personal and professional life. Many of us are first-generation attorneys who need or have been helped by mentors.

Mark your calendars for our annual Wine and Cheese mixer to be held on August 21 at 5:30 p.m. in Ferguson Case Orr Paterson's fabulous courtyard. Picture locally-brewed craft beer courtesy of Anacapa Brewing, Co., a wonderful selection of wine and gourmet cheeses, pulled pork sandwiches and other delicacies. Did I mention wine and cheese? If you have ever been a mentor or been mentored and want to learn about how you can get involved with our mentorship program please let me know. We are looking for mentors. It is a great opportunity to give back and help contribute to the advancement of the legal professionals in our community.



Rennee R. Dehesa
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Exec's Dot...Dot...Dot... by Steve Henderson, Executive Director, M.A., CAE



Now, this is newsworthy! VCBA President-Elect, **DDA Alvan Arzu**, starts with the Los Angeles City Attorney's office May 5, meaning, we'll be discussing ways to replace the irreplaceable presence which Alvan brought to our organization. He's a friend and colleague and will be sorely missed. Our loss is LA's gain!...President Obama has commuted the sentence of a drug offender who was sentenced to an extra three and a half years in prison because of a typographical error in a sentencing document. The commutation trims Ceasar Cantu's sentence by 42 months, a correction of the mistake reports the *New York Times*. Cantu pleaded guilty in 2006 to money laundering and conspiracy to possess marijuana and cocaine with the intent to distribute. A pre-sentence report wrongly listed his base offense level at 36 instead of 34, numbers that are used to determine the sentence under federal sentencing guidelines. Cantu discovered the error when his family sent him a copy of the pre-sentence report, after he had been imprisoned for six years. He wrote a motion seeking reconsideration of his sentence, but the judge rejected it because it was filed after the one-year deadline...Kudos to **Kenneth Yaeger** for accepting a Lawyer Referral Service matter and generating \$15,000 for our bar association. Want to be part of the Service? Contact Nadia Avila at 650.7599 or bar@vcba.org...

Past Barristers and the Mexican American Bar Association President, **Rennee Dehesa**, has been selected as one of the Top 50 Women in Business by the Pacific Coast Business Times. She was honored April 17 at Bacara Resort and...Gold Coast Transit is developing a Request for Proposal for General and Legal Counsel Services to their agency. GCT is a joint powers authority providing local bus and paratransit service to member jurisdictions: Oxnard, Ventura, Port Hueneme, Ojai and the unincorporated areas of Western Ventura County. The position of General Counsel required approximately 5-10 hours per month. Contact Marlena Kohler atmkohler@goldcoasttransit.org or 483.3959...**Ron Bamieh** has penned



and published his first book. Entitled, "How to Hire a Lawyer," it's a paperback published by Word Association Publishers and can be had for \$13.58...

Bill Winfield sings with the Pacific Sound Men's Chorus, a chapter of the Barbershop Harmony Society. It's an elite chorus that rehearses on Monday evening in Ventura. Membership is by audition and the group recently won a Southern California competition. In October they will compete with top choruses from seven western states. www.rinconbeach.org or wwinfield@brmmt.com...The State Bar of California is seeking members for appointment to the Commission on Judicial Nominees Evaluation ("JNE"), a body within the State Bar whose statutorily responsible for investigating, assessing, and rating all of the Governor's candidates for potential appointment to the state trial and appellate courts. If you'd like to discuss JNE, Committee Chair, Jason Lee, is happy to speak with you at 415.366.0443 or jasonpflee@gmail.com...Bar member **Herb Detrick** is working a long-ways from Ventura these days residing with his family in Switzerland and leading the good life. You may text him at 01141788667424 or hdetrick@att.net... Want to go to a Dodger game with the Family Law Bar Association? Wednesday, June 4 vs the Chicago White Sox. Infield Loge Box seats for \$38 per. Call **Patti Mann** at 371.4066...

China? **Steven Lehat** at stevenlehat@msn.com or 949.786.6461...A partner's advice

to associates – "If taking an assignment or meeting a deadline means that you will have to cancel personal plans that are meaningful to you, or, more important, are meaningful to a meaningful person, whether spouse, child, or otherwise, under no circumstances are you to cancel those plans without first consulting with me. There may be alternatives. Why, I may even do the work myself." ...Bar



Intern, Michael Pamplona, completed his assignment with us April 22. He dealt primarily with the LRIS and pro bono walk-ins, but handled anything delegated his way with grace and a smile. He's finishing Law School at Loyola and taking the bar exam in February 2015.



...The bar association's Associate Executive Director, Sandra Rubio, has been with us for seven years and change and completing exhaustive responsibilities including our Pro Bono Program, chief bean-counter, public relations and soothing member anxieties with grace. Sandra just celebrated her 20th wedding anniversary too on April 17. She may be complimented at 650.7599 or Sandra@vcba.org ...Let's welcome too **Barbara Minkoff** our newest Emeritus Attorney working for **Verna Kagan** and the VCBA/VLSP, Inc. Barbara's License Plate of the Month? PHLYLWR on her late model Lexus...



Steve Henderson has been the executive director and chief executive officer of the bar association and their affiliated organizations since November 1990 (ouch!) His son Sean graduates from NYU May 20 and is considering post graduate degrees, so retiring from the bar is out of the question. Henderson's part-time gig is umpiring MLB games in the National League and a variety of cities. Henderson may be reached at steve@vcba.org, FB, Twitter at [stevehendo1](https://twitter.com/stevehendo1), LinkedIn, or better yet, 650.7599.

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