



CITATIONS

DECEMBER - TWO THOUSAND TWENTY TWO



THE MAN, THE MYTH, THE LEGEND

By Stuart G. Nielson
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PRESIDENT'S MESSAGE

by Jacquelyn D. Ruffin

Upon completion of my term, I would like to thank the VCBA staff, *CITATIONS* editorial board and VCBA board members for their selfless contributions of time and effort to the community.

VCBA simply could not provide its numerous services without the diligence, work ethic and commitment of Sandra Rubio, Deborah Tovar and Nadia Gray. In the midst of their busy practices, **Wendy Lascher** and **Cari Ann Potts** somehow find the time to volunteer as co-editors of this publication. Thank you for the countless hours you give to the VCBA membership.

The VCBA Board's endeavors may not be as readily apparent. As noted in the February issue of *CITATIONS*, **Kristine Tijam** chaired the VCBA Board's Community Service Committee, which coordinated the new Attorneys Sharing Knowledge (ASK) Program. Since the inaugural "Legal Issues for Artists" presentation in January, Tijam and committee members **Vanessa Frank**, **Damon Jenkins**, **Bert Partida** and **Sara Peters** planned several ASK events. **Rabiah Rahman** and **Joaquin Nava** gave a "So You're Turning 18" (SYT18) talk at Pacifica High School in March. In May, **Xavier Villegas** educated Odyssey High School students about employee rights. In early December, **Gerardo Arias**, **Ayala Benefraim**, **Paul Nunez** and **Roslynn Wilfert** will dialogue with the community about the critical role of the Public Defender's Office and the District Attorney's Office. Later this month, **Sparky Abraham** will provide a debt collection know your rights presentation in Oxnard. In August, **Judge Gilbert Romero**, **Antonio Rodriguez**, Frank, Tijam and I were slated to be "Careers in Law" panelists for TRIO students at Cal Lutheran University. (This Upward Bound program aims to increase the secondary education enrollment and graduation rate for high school students from low-income backgrounds and high school students who would be the first in their family to go to college.) Due to a late summer COVID surge in the county, this event was postponed until 2023. Additional 2023 programs include a "Careers in Law" workshop by Tijam, Jenkins and Frank at

Juan Lagunas Soria School in Oxnard in January; SYT18 presentations organized by Partida at Rio Mesa High School, Hueneme High School, Oxnard Adult School and Santa Clara High School; and an expungement workshop to be held in collaboration with CRLA.

Monica O'Hearn (chair), **Lou Kreuzer** and **Mickye Coyle** served on the VCBA Board's Member Services and Support Committee. Their dedicated efforts brought the VCBA membership MCLE programs, social events such as the mixer at Rincon Brewery in June and articles for *CITATIONS*. O'Hearn, Kreuzer and Coyle also contributed to the VCBA website. Have you noticed that it is easier to navigate? Have you seen the updates to VCBA's video library? Have you read the various announcements on the homepage? For example, the website often includes administrative orders from the Court and critical reminders such as the new State Bar requirement that attorneys complete a minimum of four hours of legal ethics, two hours of elimination of bias (including at least one hour on implicit bias and the promotion of bias reduction strategies) and one hour regarding competence issues. These improvements to the website are due to the committee's quiet collaboration with Rubio and JP McWaters.

If you attended last month's annual installation and awards dinner, you likely had a chance to bid on items at the VCLA silent auction, which was organized by VCLA staff **Cesar Libanati** and **Maritza Garcia-Lopez** with contributions by VCBA Board Members **Rick Seigenfeld** and **Kala Sarvaiya**. You also had the opportunity to witness **Valarie Grossman** bestow scholarships upon Ventura College of Law students Jessica Cabral and Josefina Magana. That relatively brief moment was the culmination of numerous months of work. Prior to its dissolution last year, the CPA Law Society donated the scholarship funds to VCBA. Over the course of several meetings, VCBA Board Members **Rachel Coleman**, Grossman, Seigenfeld and Sarvaiya developed the scholarship criteria. Subsequently, Coleman and Grossman

created, distributed and advertised the application; evaluated and scored the submittals; made recommendations to the full board regarding the awardees; and planned the scholarship presentation at the dinner. Additionally, Coleman took the lead in organizing the **Roger Myers** scholarship, which was conceived by **Monte Widders** and officially announced at the dinner. (If you did not yet have an opportunity to see the video tribute to **Carmen Ramirez** and Myers that was played at the dinner, you can view it at <https://www.vcba.org/vccf-scholarships>.)

Finally, over the course of 2022, the entire Board – including executive committee members **Marc Anderson**, **Brian Israel** and **Joshua Hopstone** and members at large **Stephanie Johnson**, **Sam Mojabi** and **Carla Hartley** – contributed their thoughtful insight to the Board's discussions and decision-making process. It has truly been a privilege to be a part of the team that served the VCBA membership and Ventura County community this year.

Although Anderson will leave the Board at the end of December (and his practical perspective and sense of humor will be missed), Partida will join the Executive Committee as secretary-treasurer, Hopstone will serve as vice president and Israel will become your new president in January. Please join me in welcoming VCBA's new leadership!



Jacquelyn D. Ruffin is a partner at Myers, Widders, Gibson, Jones & Feingold LLP. Her practice focuses on corporate/business, real estate and land use matters. She can be

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SCHOLAR SPEAK: BURNING CALIFORNIA AT BOTH ENDS

by Michael Crawford

Since Jan. 1, most Californians have been charged an extra \$0.00652 per kilowatt-hour for electricity to help bail utilities out from the costs of deadly wildfires – and to help utilities pay for fires they have yet to ignite. The Public Utilities Commission (“CPUC,” the State agency charged with regulating utilities) will amass over a billion dollars in 2022 from this charge. The money is being dumped into the “Wildfire Fund” to help utilities avoid insolvency from fire-related claims. This is the state’s latest effort to combat what is becoming one of its biggest problems: utility-started wildfires.

California’s utility-started wildfire problem

The seven most destructive wildfires in California’s modern history happened in the last five years (six of them between 2020 and 2021). And researchers agree that the problem will get worse as California’s fire season continues to grow. Nearly 30 percent of California’s 20 most destructive wildfires were sparked by utilities. Utility-started wildfires are responsible for at least 95 deaths. The problem is so pervasive that Governor Newsom established the Wildfire Fund to help spread the utilities’ losses. Once a utility pays \$1 billion in wildfire-related claims, it can access the fund to avoid insolvency. Pacific Gas & Electric Company, one of California’s big three alongside Southern California Edison and San Diego Gas & Electric, is expected to meet the \$1 billion threshold as a result of the Dixie Fire.

The legal landscape

In California, the doctrine of inverse condemnation, which is grounded in the takings clause, provides the legal basis for recovery in utility-started wildfire claims. The doctrine provides, in essence, that government may not take private property for a public use without paying just compensation. (Cal. Const., art. 1, § 19.)

The doctrine has historically been subject to a strict liability framework. In 1944, Justice Robert Traynor explained that the proper question in inverse condemnation actions is whether the owner of property damaged by a public improvement would contribute more than their fair share.

(*House v. L.A. County Flood Control Dist.* (1944) 25 Cal.2d 384, 396.) If so, then the cost should be socialized to even the burden. In other words, liability in inverse condemnation cases is independent of reasonableness and instead looks to ensure that no person is overpaying for a public improvement. Courts only consider whether there was “actual physical injury to real property proximately caused by a public improvement as deliberately designed and constructed.” (*Aetna Life & Casualty Co. v. City of Los Angeles* (1985) 170 Cal.App.3d 865, 874.) This loss-shifting premise – that no person should bear more than their fair share of a public improvement – is thought to be a fundamental justification for applying strict liability in inverse condemnation cases.

As the strict liability framework developed, courts began applying it to privately owned utilities. In 1999, in *Barham v. Southern California Edison Company* (1999) 74 Cal. App.4th 744, homeowners sued SCE for the utility-started Mill Creek Fire which sparked when Santa Ana winds caused SCE’s overhead power equipment to fail. Finding for the homeowners, the court explained that the nature of the public use alleged is what controls, not the makeup of the company responsible. In other words, SCE, as a company transmitting electricity, was liable under inverse condemnation because it was transmitting electricity for the public – regardless of its private ownership.

As the law developed to hold privately-owned utilities strictly liable in inverse condemnation, the CPUC – the state agency responsible for approving utility rate hikes – did not recognize the loss-shifting premise. Instead, the CPUC required utilities to meet a “prudent manager standard” before utilities were allowed to spread wildfire losses onto ratepayers. According to the CPUC’s own body of case law, a prudent manager is one who uses best practices and exercises reasonable judgment in light of the facts known at the time. (*Re S. California Edison Co.* (1987) 24 Cal.P.U.C. 2d 476, 486), giving rise to a purported conflict: utilities were being held strictly liable in court, but had to meet the prudent manager standard before they could spread wildfire losses to ratepayers.

Response to the purported conflict

California courts have been unpersuaded by the utilities’ arguments that the difference between the court-applied strict liability framework and the CPUC-applied prudent manager standard presents a conflict of law. Instead, courts have vehemently adhered to strict liability and implied that the utilities are confusing the issue.

For example, in *Holtz v. Superior Court* (1970) 3 Cal.3d 296, although the court recognized the practical idea that utilities could employ protective measures to avoid causing inverse condemnation claims, the court reasoned that strict liability, and not reasonableness, was the appropriate standard. In *Albers v. Los Angeles County* (1965) 62 Cal.2d 250, 258, the court expressly rejected the idea of a reasonableness-based test. So did *Pacific Bell v. Southern California Edison Co.* (2012) 208 Cal.App.4th 1400, 1410. Trial courts have also consistently rejected the utilities’ conflict theory and held that the application of strict liability is not dependent on the standard applied by the CPUC. A Sacramento Superior Court judge explained, “The court...rejects PG&E’s argument the cost-sharing policy underlying inverse condemnation does not apply because [PG&E] lacks the power to spread the cost of condemnation across the benefitted public.” (*Butte Fire Cases*, 2017 WL 9832289, at *9.) A San Francisco Superior Court judge opined “[e]ven when [*Pacific Bell*] noted the ‘loss spreading’ rationale, the Court couched the rationale in terms that emphasized the policy against overburdening individual property owners rather than the policy of socializing the cost. The implication is that the *Pacific Bell* Court would have reached the same result even if there had been evidence that the [CPUC] would bar SCE from passing along its damages liability to its ratepayers.” (*Harrison v. PG&E Corp.*, 2018 WL 2447104, at *3.)

The political branches have responded differently. Governor Brown attempted to introduce a proposal mandating that courts consider “[a] lack of utility negligence” as a mitigating factor in inverse condemnation claims stemming from utility-started wildfires. But this proposal was controversial and ultimately failed.

Still, it laid the groundwork for Brown's successor, Governor Newsom, to introduce AB 1054, which became law in 2019.

AB 1054 shifted the prudent manager standard. Now, instead of the utility having to prove to the CPUC that it used best practices, the utility is entitled to a presumption that it acted reasonably as long as the utility owns a state-sanctioned safety certification. A utility that owns this certification will have its rate hike approved unless "a party to the proceeding creates a serious doubt as to the reasonableness of the [utility's] conduct." (Pub. Util. Code, § 451.1, subd. (c).) But there have been legitimate questions about the integrity of the State's new safety certification process. A March 2022 State Auditor's report found that plans had been approved "despite some utilities' failure to demonstrate that they are appropriately prioritizing their mitigation activities." And journalists have also sounded the alarm by suggesting that this certification process is more about paperwork than it is about safety.

The cost

The utilities have managed to leverage a purported conflict of law to create a \$21 billion cushion between their wildfire losses and insolvency. Now with their safety certificates in hand, the big three have access to the Wildfire Fund. Although this solution eases utility woes, it leaves ratepayers on the hook for the bailout. And in a system where PG&E pleaded guilty to 84 counts of involuntary manslaughter for the Camp Fire but still owns – alongside its corporate siblings – a monopoly over the transmission of electricity in the state, many ratepayers are shouldering the worst effects of utility-started wildfires. These ratepayers include people who have lost homes and family members to these wildfires. Despite the fact that the big three are publicly held corporations with colossal financial assets, it is the ratepayers who are left holding the bag. And they will continue to pay to rescue the corporations responsible for these wildfires. \$0.00652 per kilowatt-hour at a time.



Michael Crawford is a fourth-year student at Ventura College of Law. He can be reached at mcrawford@juris.collegesoflaw.edu.

HAVE YOU HEARD?



Lou Carpiac, former partner in Ferguson Case Orr Paterson, has been busy since retirement in 2010. Most recently Lou has been helping with his son Andy's humanitarian effort in Ukraine. Andy, who is also 100% Ukrainian, will travel in December to Ukraine to deliver the first load of generators, water filtration kits, and other critical winter supplies items sourced in Poland, partnering with a veterans/first-responders group who will escort him on the drive into Ukraine. A Gofundme page created for those who wish to support this effort with tax-deductible donations provides more information about this mission. <https://gofund.me/3e997f2f>. Lou can be reached at Loucarp@gmail.com.

Ventura County Office of Education will resume in person for the 2023 Mock Trial Competition. Competition Days 1 & 2 will be held on Feb. 6-7, 2023, and Competition Finals are on Feb. 8-9, 2023. For more information on how to volunteer, please visit www.vcba.org/mock-trial.

After twelve years of dedicated service, **Amber Rodriguez** has announced her resignation as the Chair of the Estate Planning and Probate Section of VCBA.



The section has elected **Katherine Becker** and **Sasha L. Collins** to succeed Rodriguez as co-Chairs, beginning Jan. 2023. Becker is a managing partner of Lester, Schuck, Becker, Dehesa & Hirschberg, LLP and is a State Bar certified specialist in estate planning, trust and probate law. Collins is a partner at Myers, Widders, Gibson, Jones & Feingold LLP and practices exclusively in the area of estate planning, trust and probate law. They look forward to further serving the local probate bench and bar. Questions? katie@venturaestatelegal.com or scollins@mwgjlw.com.

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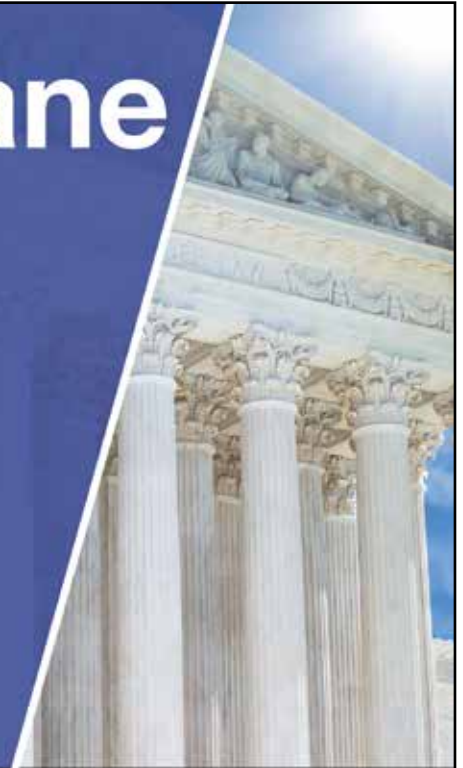
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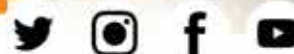
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NIELSON - THE MAN, THE MYTH, THE LEGEND

by *Stuart G. Nielson*

There are instances in human history when all energy, ability, focus, understanding, courage, desire and circumstance – all of the essential elements of success – come together at once, creating a perfect amalgamation of individual and moment, an unstoppable force. When, whether by pure chance or design, a person finds themselves at the precise point in the space-time continuum where and when they were meant to be.

And so it was, according to the legend passed down through the generations, that on that special night in Beaumont, California many years ago (many *many* years ago) a young **Lindsay Nielson** single-handedly pulled his Palm Springs High School team out of the deep pit of a seemingly endless losing streak and – it might be fair to say – perfected the game of basketball, if only for a fleeting moment. As told by the elders, he simply couldn't miss, everything he threw up went in! The final stat line showed a game-high six points scored by our hero (bearing in mind that math worked differently back then, six points translating to roughly 127 points today) and a glorious victory that brought light where there had been only darkness and that would echo through the ages.

The seemingly perfect merger of man and moment that occurred that night is something that my dad has carried forward throughout his life. Although I have an admittedly biased view, it is difficult to imagine Ventura, and the local legal community in particular, being what it is today if he hadn't played such a distinctive role in helping to shape it over the past 50 years.

Many are familiar with my dad's early personal history, which is quite remarkable and worthy of its own written account. He likes to say that many people end up in prison, he was just lucky enough to get it out of the way early in life. He was born in the Philippines in 1940 just prior to the Japanese invasion and occupation, during which he was held at the Santo Tomas internment camp near Manila. Following the liberation of the Philippines, he and his mother moved to the United States, first to the Bay Area (coming under the Golden Gate Bridge at the end of the boat journey still being a

strong memory) and then to Palm Springs for his high school years.

After vanquishing the arch enemy Beaumont and restoring hope to Palm Springs, my dad had a brief stopover at Redlands University before transferring to UCLA, which was a defining chapter of his life. It was there that he met my mom and also made connections that would ultimately lead him to Ventura. Shortly after graduating, he came to Ventura to interview for a job opportunity and the idyllic setting captured him immediately.

My parents moved to Ventura in 1965 and my dad started working for Hoffman, Vance and Worthington Land Management, where he was responsible for overseeing the management of major agricultural, commercial and residential properties. Like any new job, there was a bit of a learning curve. He recalls coming back from a visit to a ranch that he was tasked with managing and his boss asking him what crops he saw being cultivated there, with my dad's response being something along the lines of "green ones." But he learned quickly and soon developed a great understanding and passion for real estate, eventually heading up the real estate appraisal division at the company.

My dad started his own appraisal and real estate consulting firm in 1972. During that time, he was often hired to serve as an expert witness in real property cases and thereby experienced the intellectual challenges and excitement of legal practice and life in the courtroom. He decided he wanted to be a lawyer and started attending night classes at the Ventura College of Law. He earned his law degree in July 1975, which also happened to be the month that I was born. When I complained to him while taking the bar exam in July 2001 that one of the test days fell on my birthday, he reminded me that my **actual** birth occurred when he was taking the exam. Okay, that was perhaps a bit more stressful than a delayed birthday celebration.

It was in the early 1980s when my dad was first appointed as a receiver, which proved to be another defining moment in his life. He jokes that at the time he didn't even know how to spell "receiver," but like so

many other opportunities he seized when presented to him he figured, "why not?"

Judge **Allan Steele**, who at the time was still engaged in private practice, asked my dad to act as a receiver to complete the sale of a property that had been dragging out for almost two years. My dad completed the sale within 30 days, Judge Steele was soon thereafter appointed to the family law bench, and what could have been a one-off assignment turned into a lifetime of work.

Since that first appointment, my dad has acted as a court-appointed receiver in hundreds of cases. Along the way, he has been tasked with the management and sale of innumerable properties and assets and overseen the operation and management of businesses of nearly every variety, including a film distribution company, a market, a medical billing company, a motel, and a dog breeding operation (you may recall from a previous issue of *CITATIONS* the infamous line that he was so gleefully able to enter onto the record in that last case).

Although he has flirted with the idea of retirement, it appears that he will not be doing so any time soon. Given the proficiency and vigor with which he continues to pursue his work, who can blame him? It seems like almost every time he makes a court appearance on a case, he is asked to act as a receiver in another case, if not more than one.

My dad's love of the work is apparent, and he is particularly grateful for the dynamic nature of the role and the fact that, as he says, "The judges always have your back." Although being a lawyer is not a requirement for acting as a receiver, it is certainly a unique position to be in for someone who has spent so many years in the legal profession.

While discussing his experience, my dad noted the fact that no one is really taught anything about receiverships in law school, so he had to figure it out as he went along. He also stated that the only qualification is you have to be very good looking. That is perhaps a debatable point, but my own view is that his qualifications go much deeper than that. Much like that magical night in Beaumont so long ago, all of the varied

experiences, hard work and fortitude – not to mention a keen sense of humor, good nature, and clear judgment – created a perfect person to quickly understand and master the task.

When I began my legal practice, my dad shared a piece of advice with me that he himself had received as a young lawyer: decide what you want to do and don't settle for other work that does not interest you. I took that advice to heart because that is precisely what I have seen him do my whole life, always pursuing his work with passion, curiosity and appreciation, and that is inarguably something worth aiming for.

Stuart Nielson is a partner at Nelson Comis Kettle & Kinney LLP and is wandering through space and time in search of "Beaumont."



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