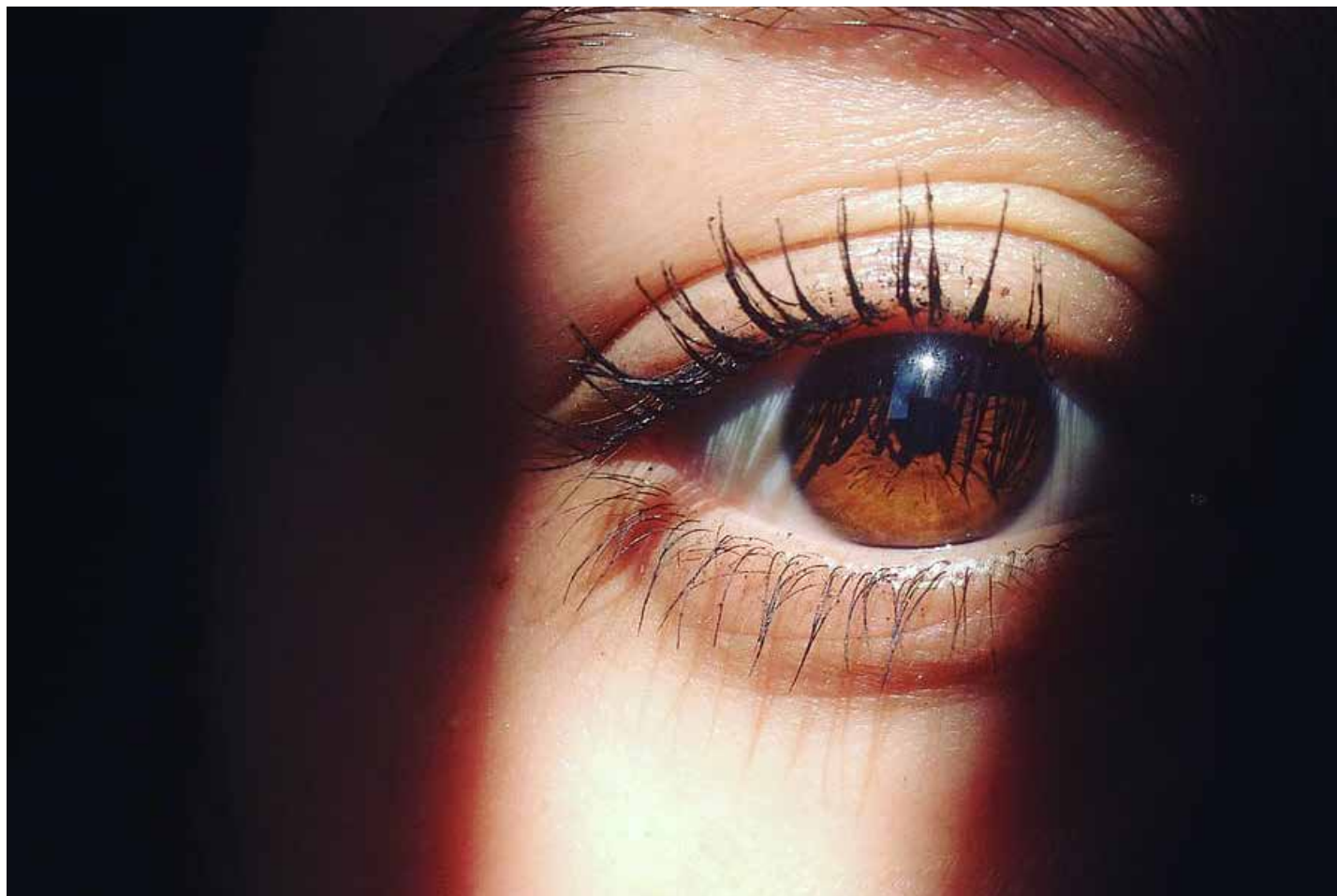




CITATIONS

AUGUST - TWO THOUSAND TWENTY THREE



ATTORNEYS AS MANDATED REPORTERS... OF EACH OTHER

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PRESIDENT'S MESSAGE

by Brian C. Israel

"Skateboarding is not a crime."

This motto was created in the late 1980's by the skateboard brand known as Powell Peralta, the biggest skateboard company at the time and one that has had a large influence in the skateboard community since its inception. Interestingly enough, George Powell of the Powell Peralta namesake studied engineering at Stanford University. His help in innovating skateboard technology, first for his son, and then on a broader scale led to changes in the board, and the parts attached to the board (without getting too complex). Those innovations eventually led to the above motto. Why, you may ask?

Innovation eventually led to progression in the sport. As skateboarding progressed, so did the need to find a place to skate to apply those new skills and tricks. As riders started to find spots on public and private property, cities, counties, states, and municipalities started drafting laws banning skateboarding. Thus, there were few public or private places to skate. Confrontations with police became more frequent and skateboarding often became associated with degenerates.

In the late 1995, skateboarding began to become more mainstream as the first X-Games were held in Rhode Island and broadcast on ESPN. Powell Peralta began to ingratiate itself locally, moving to Santa Barbara and then Ventura under the SkateOne umbrella. If you have been to Topa Topa Brewery on Colt Street in Ventura, you have driven right past it, as it shares a parking lot with the brewery.

This leads us to today. As you are now reading this, the X-Games have come and gone from Ventura. BMX, motocross, and skateboarding events were held. It is incredible that this world class event was held in this small(ish) town. I was lucky enough to have attended the event on Saturday, July 22.

Growing up, skateboarding was one of my favorite activities and one that I put a lot of time into. To have the X-Games come to Ventura was momentous for not only Ventura, but for myself. Years of pushing, grinding, and maneuvering, and now some of the best skateboarders in the world

were competing right in front of my eyes without having to travel far.

By most measures, the X Games in Ventura succeeded. The three-day event at the Ventura County Fairgrounds, which included the return of skateboarding legend Tony Hawk, sold out on Saturday. It is believed that this was the first time an X-Games sold out. Ventura County truly supported this event.

Leading up to the X-Games, social media was abuzz that there would be major traffic problems. These fears did not come true. The push for public transportation and for traffic regulation were enormous, leading to major success. It did not have the negative traffic impacts of the recent Strawberry Festival or even that of the Fair.

However, there were some issues with the event itself. Those who had general admission tickets, like myself, could not see several of the events. The "park" events were held in a bowl-like structure so that only "superfan" and "xip" ticketholders could view from the bleachers. This was quite frustrating. Alas, most of the events could not be viewed with simple general admission tickets. I surely would have liked to watch the skateboard park finals.

Of course, there was expensive merchandise, beer, and food, with good size lines to order, but that was to be expected. With that said, the X-Games were solid partners, with athletes taking part in cleanups of the Ventura River Preserve and having appearances at local businesses. Local businesses also ran X-Games specials enticing locals and tourists alike.

For me, this was a special time for our County. I sure hope the X-Games will return. But, before that happens Ventura is building a new and improved skatepark at Westpark. Elsewhere, like in St. Thomas, the sport continues to grow. My brother is almost through fundraising to build a skatepark on the island. "Google" it if you want to find out more. Slowly, but surely, skateboarding is becoming less of a crime.

Brian C. Israel is an associate attorney at Norman Dowler, LLP in Ventura. His practice focuses on estate planning, probate, and trust administration. He can be reached at bisrael@normandowler.com or at 805-654-0911.



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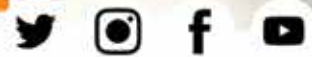
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Attorney **David R. Kurtz** passed away July 5th, at the age of 86.

David graduated law school in 1976. He became an accomplished attorney through the years. He loved meeting new people and helping families with their legal concerns. He was an avid golfer at Satisco Country Club.

The Colleges of Law is among an inaugural group of legal employers and the only law school to be awarded a DEI Leadership Seal by the State Bar of California. The DEI Leadership Seal Program recognizes legal employers who implement research-driven actions that further workplace diversity, equity, and inclusion (DEI). This prestigious recognition highlights The Colleges of Law's commitment to improving access and promoting inclusion within the legal profession.

"At The Colleges of Law, we believe that diversity is not just an aspiration but a fundamental element of the justice system," says Matthew Nehmer, Ph.D., The Colleges of Law president. *"We are honored to receive this recognition as a testament to our mission of increasing access and opportunity within the legal profession."*

Since its founding in 1969, The Colleges of Law has championed accessibility and affordability in legal education. With the creation of the first Hybrid J.D. program in California, the college made significant inroads in diversifying its student body. Within California, the African American population is 6%, but within the Hybrid J.D. program, it's 12%.

Last year, the college established the Access, Belonging, and Community (ABC) Task Force. Focused on creating meaningful experiences around DEI initiatives, the task force established a supportive environment that encourages collaboration and dialogue among individuals from all backgrounds through constituent research, educational events, and community gatherings.

IN MEMORIAM: JOHN MATHEWS

by Kendall VanConas



The Ventura County legal community suffered a great loss with the passing of **John Mathews** on June 28, 2023.

John began his career at Nordman, Cormany, Hair & Compton in 1974, where he practiced law with many of his future partners and attorneys. He later became one of the founding partners of the A to Z Law firm in September 1990.

John was one of the foremost water law attorneys in the county. He helped build coalitions among competing water agencies to tackle the difficult challenges inherent in developing and managing the scarce water resources available in the county. In that role, he was acknowledged as one of the leading advocates for sensible water management.

John brought a uniquely thoughtful, ethical, and collaborative approach to the complex issues he worked on. He sincerely listened to and sought to understand the concerns expressed by all participants in the decision-making process. And when he was ready to speak, his simple and direct language carried weight.

John and his clients developed long-term, strong working relationships as stewards of the region's water resources while looking to the future for solutions, such as recycled water and conjunctive uses of surface and groundwater waters. In recognition of

his ongoing dedication to protecting the region's water supply, John received the John K. Flynn Groundwater Steward Award in 2009 and the United Water Conservation District Richard V. Laubacher Water Conservation Award in 2010.

Shortly after the formation of A to Z Law, John became its managing partner and maintained that position for over two decades. His management style was casual and unassuming, demonstrated by partnership meeting agendas on small sticky notes, and colorful stories at A to Z's Friday lunches. He always had a commonsense approach to the most complicated issues and was never short on time to lend a listening ear. John dealt with his professional and personal relationships from the heart. His sense of morality and ethics were legendary. He cared.

John was an avid sports fan, particularly cheering on his beloved UCLA Bruins. He rabidly attended football, basketball, and other sporting events, both locally and across the country.

Outside of the law, John's passion was travel. He would plan extended vacations and brag that he and his wife never checked a bag on any airline. John was able to visit every continent and some of the most remote and inaccessible places on earth. On most trips, John and his wife, Sue, would take time to visit local schools, hospitals and care centers for the unfortunate and underprivileged.

John had a ready smile and infectious laugh. His unique sense of humor was always quick to be on display. He was cheerful and made friends easily. He was trustworthy and sincere. John was a member of the Church of Jesus Christ of Latter-Day Saints in Newbury Park and served five years as a bishop.

John leaves behind an adoring wife, three children and many grandchildren. As part of the A to Z Law family, John leaves behind a legacy of excellence, kindness, compassion and humor. He will be greatly missed by everyone at A to Z Law.

MOVIE REVIEW: DOLL WARS AND THE PERILS OF PERFECTION

by Panda Kroll, Esq.



"Barbie," which opened July 21 in theatres everywhere, is equal parts existential meta-comedy, musical theater, feature-length Mattel commercial/documentary and homage to classic cinema memes, including a parody of the monolith scene from Stanley Kubrick's "2001: A Space Odyssey." Breathless headlines about the

film include *Rolling Stone's* "Barbie May Be the Most Subversive Blockbuster of the 21st Century;" *The New Yorker's* "Barbie Is Brilliant, Beautiful, and Fun as Hell;" and *Variety's* "Greta Gerwig Makes Box Office History as Barbie Scores Biggest Opening Weekend Ever for Female Director." Award for most erudite reference goes to *MSNBC*, "Ken is a bell hooks critique come to life in Barbie." Rotten Tomatoes gives the film a 90% rating. The film even scored a "Google Takeover:" Anyone who googles the names of cast members or Barbie herself gets a surprise: The whole page turns pink and animated pink fireworks spark across the screen.

Atlantic Records released the soundtrack – "Barbie: The Album" – on the same day as the film, featuring familiar voices such as Lizzo and Billie Eilish. Several music videos were produced in association with the album. Dua Lipa performs "Dance the Night," and Columbian sensation Karol G introduces Barbie fans to reggaeton in "Watati." Most notable: Nicki Minaj and Ice Spice ride flying motorcycles in their breakout hit, "Barbie World (with Aqua)."

"Barbie World" generously samples Aqua's 1997 hit Europop single "Barbie Girl." That's evidence of Mattel's new openness to the deconstruction of its valuable intellectual property as a means of recapturing the franchise's eclipsing relevance, lost somewhere between Barbie's debut in 1959 and the wildly successful launch in 2001 of a competing franchise, edgy, multi-ethnic Bratz "friend group." The two doll makers' federal and state IP lawsuits – both sides seeking billion-dollar damages – kept attorneys busy from 2004 through 2018, encompassing two jury verdicts and multiple reversals. In the end, only the verdict awarding Bratz its lawyers' fees survived (\$140 million).

As for Aqua, shortly after "Barbie Girl" was released, describing Barbie as a "Blond Bimbo Girl in a Fantasy World," Mattel sued Aqua's label, MCA, for trademark infringement, claiming both disparagement and dilution; MCA counter-claimed for defamation. Then-9th Circuit Chief Judge Alex Kozinski issued a pithy opinion affirming summary judgment in favor of



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In his long career as an employment litigator, Michael (Mike) Strauss developed a creative approach to resolving employment disputes. The employer-employee relationship can operate much like a family, where strong emotions rule and hurt feelings abound. To account for this dynamic, Mike has a soft touch. He deescalates animosity by projecting calmness, reason, clarity, and understanding. Nevertheless, Mike has never been afraid to stand up for what is right and fair. Having litigated hundreds of cases for employers and employees through trial or arbitration and argued appeals at every level, including the US Supreme Court, Mike draws on his vast experience and calm demeanor to guide cases to settlement. Since

2022, Mike has used his creative approach to resolving employment disputes as a mediator for the very types of cases he litigated as an attorney: wage-and-hour class/PAGA actions and individual disputes involving harassment, discrimination, retaliation, and breaches of contract.



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the band on the basis that the song was privileged under the First Amendment as a parody. See, e.g., “If this were a sci-fi melodrama, it might be called Speech-Zilla meets Trademark Kong,” *Mattel v. MCA Records*, 296 F.3d 894, 898 (9th Cir. 2002). Kozinski dismissed the counter-claim as nonactionable “rhetorical hyperbole” and concluded the opinion, “The parties are advised to chill.”

Margot Robbie purchased the film rights to Barbie in 2018 and as producer, brought in actress-turned-screenwriter Greta Gerwig to direct. Robbie stars as Stereotypical Barbie, but multiple Barbies and Kens embody the film’s feminist-Pinocchio theme. There’s Issa Rae (President Barbie), Kate McKinnon (Played-With-Too-Hard Barbie), Dua Lipa (Mermaid Barbie) and Hari Nef (Trans Barbie). These female personas play opposite multiple Kens, led by Ryan Gosling, and including Sima Liu, Kingsley Ben-Adir, and John Cena. America Ferrera, however, brings home the film’s core message, as a mother from the Real World who, with her angst-y teen daughter brings the counter-argument, i.e., Barbie’s role in engendering misogyny. In Ferrera’s epic monologue, she calls out the “impossible assignment” women face “being all things to all people.” Ken, too, has an existential challenge: “Barbie has a great day every day, but Ken only has a great day if Barbie looks at him,” Helen Mirren explains in a voice-over. After discovering patriarchy in the Real World and embittered from being overlooked as Barbie’s eternal “plus one,” Ken leads a “Ken-bellion” and converts Barbieland from a plastic paradise into a dystopian “Kendom” and Barbie’s playhouse into a Mojo Dojo Casa House.

Ultimately, Barbie comes to terms with the contradictory demands of womanhood and Ken, wearing a tie-dye hoodie that proclaims “I am Kenough” realizes that his existence is independent from Barbie’s.



Panda Kroll practices complex timeshare litigation in federal court and is the founder of the **Timeshare Law Library**. She is a member of **CITATIONS’** editorial board.



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ATTORNEYS AS MANDATED REPORTERS ... OF EACH OTHER

By Panda Kroll

It's easy to be of two minds regarding California Rules of Professional Conduct, Rule 8.3, recently approved by the Supreme Court of California. Under this Rule, members of the California State Bar are now obligated to report "without undue delay" to the presiding tribunal or the Bar not only other lawyers' criminal acts and reckless or intentional misappropriation of client funds, but also other conduct that "raises a substantial question as to the lawyer's honesty, trustworthiness, or fitness as a lawyer." The Rule went into effect August 1; it does not expressly limit itself to misconduct occurring after adoption and may therefore be interpreted to have retroactive application. There are important limitations on the duty to report, discussed *infra*.

On the one hand, California is the last state to adopt a version of the corollary American Bar Association Model Rule 8.3, which has been derisively referred to as the "Snitch" Rule. Moreover, the California State Bar is still reeling from the scandal surrounding Thomas Girardi, once reputed as one of the country's finest "toxic tort" attorneys, and part of the legal team lionized in the 2000 film, "Erin Brockovich," along with former Thousand Oaks City Councilmember **Ed Masry**, who died in 2005. For those who haven't followed the more recent scandal (or the travails of Girardi's ex-wife, Real Housewife of Beverly Hills star Erica Jayne), before being indicted on multiple charges of embezzlement of client funds in February and disbarred in June of last year Girardi funneled more than \$1 million in cash and gifts to the Bar; this, while numerous misconduct complaints had been made to that same body, none of which had resulted in any public discipline and the vast majority of which had been closed without discipline of any kind. In 2021, the Bar initiated a probe and retained a prominent Ventura County attorney to review 115 complaints filed against Girardi from 1982 to 2021. Bar Trustee Chair Ruben Duran explains, "To ensure that what happened in the Girardi matter never happens again, we commissioned unflinching investigations by outside experts, are making the results public to the extent we can legally do so, and are addressing the findings comprehensively... [T]he magnitude and

duration of the transgressions reveal persistent institutional failure and a shocking past culture of unethical and unacceptable behavior. In recent years we have put in place many safeguards that serve both to prevent unethical or corrupt behavior and—if it does occur—to catch and address it quickly."

On the other hand, to the extent that new Rule 8.3 might be a reaction to these recent events, the Girardi scandal was not caused by a reluctance to report. Rather, the "systemic organizational dysfunction" described in the Bar's self-audit resulted from decades of relative passivity in investigating complaints against Girardi and the likely influence of the now-disgraced attorney's efforts to buy relationships with those who were responsible for safeguarding the public from his misconduct. And the rule raises the specter of Soviet Big Brother tactics, where neighbors are coerced to denounce neighbors in order to themselves avoid state persecution, a "spookocracy" similar to that described in George Orwell's dystopian novel, "1984."

Superficially, the new reporting mandate might appear to conflict with Rule 3.10, precluding California lawyers from "threaten[ing] to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute." The new Rule cites Rule 3.10 and thus does not abrogate the prohibition against threats. Comment 10 to the Rule cites Business & Professions Code section 6094(a), pursuant to which "[c]ommunications to the State Bar relating to lawyer misconduct or disability or competence, or any communication related to an investigation or proceeding and testimony given in the proceeding are privileged, and no lawsuit predicated thereon may be instituted against any person. But the Rule also cites Business & Professions Code section 6043.5(a), which provides, "Every person who reports to the State Bar or causes a complaint to be filed with the State Bar that an attorney has engaged in professional misconduct, knowing the report or complaint to be false and malicious, is guilty of a misdemeanor." Thus, reporters arguably enjoy immunity from criminal or civil prosecution, but only assuming an absence of falsity or malice.

The Rule contains several important limitations, as follows.

First, lawyers need only report when they are aware of "credible evidence" of misconduct. Rule 8.3(a). The "substantial question" criterion refers to the seriousness of the possible offense and not the "quantum of evidence" of which the lawyer is aware. Rule 8.3, Comment 4. "Knows" means actual knowledge of the fact in question, although such knowledge may be inferred from the circumstances. Rule 1.01(f).

Second, the Rule incorporates several broad exceptions, in that the reporting obligation does not extend where the relevant information is obtained while participating in a substance use or mental health program, or is privileged by other rules or laws, including the duty of confidentiality, mediation privilege, and the lawyer-client privilege. Pursuant to these other rules and laws, in many cases a lawyer who knows otherwise reportable information will not only be relieved from the duty of reporting under Rule 8.3 but will be precluded from reporting such information.

Finally, the duty to report does not extend to conduct that is not a crime in California but would be a criminal act in another state (e.g., cannabis use or abortion). Rule 8.3(c).

The American Bar Association echoes our pain: "The Committee is mindful of the awkwardness and potential discomfort of reporting the misconduct of a colleague. The difficulty confronting the lawyer in that situation may be even more acute if the lawyer to be reported is a superior of the lawyer making the report. Whether employed in a law firm, a corporate law department, on a law school faculty, or elsewhere, the lawyer may be facing the same dilemma: jeopardize her career by making the report, or jeopardize it by remaining silent in violation of the rules of ethics." ABA Formal Opn. 04-433.

As always, good judgment is key: The Rule is intended to require lawyers to report only "those offenses that a self-regulating profession must vigorously endeavor to prevent," and thus a "measure of judgment" is required. Rule 8.3, Comment 4.

¹⁷The Bar is not the only California authority advancing reform: Senate Bill 40, passed with unanimous support and currently under consideration by the Assembly Judiciary Committee, proposes adding section 6090.8 to the Business and Professions Code that would similarly trigger a mandate that attorneys report other attorneys' misconduct, with an additional express duty to report attorneys who have "conspired or engaged in "treason, sedition, or insurrection against the State of California or the United States."



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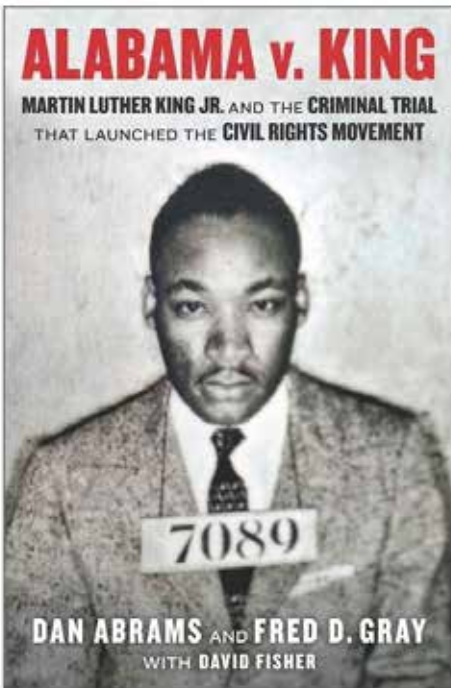
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Book Review: *The State of Alabama v. Martin Luther King, Jr., March 19, 1956.*

By William Grewe, Esq.



Imagine a play where the theater audience knows the outcome, but the cast does not.

Alabama v. King, written in 2022, nearly 70 years after the events it recounts, is such a story. The telling is anchored by the trial court transcript which gives it a real-time feeling and a *you-are-there* pulse. Those present, and the public at large, had no idea who the humble defendant, seated quietly at counsel table, was or would become. But you, the reader, know before you read page one.

It is a quick read or listen which brings to life the emergence of Martin Luther King, Jr. upon the national stage.

King, the 27-year-old pastor of a small conservative Baptist congregation, selected one year earlier to replace his too-liberal predecessor, was on trial for leading a bus boycott by the Black residents of Montgomery, Alabama. Unknown beyond his modest congregation, the young pastor was not involved in civil rights causes before the events which are the subject of the book.

The story of the trial is told by authors Dan Abrams and Fred Gray. Gray, himself only 26 at the time, was counsel for King, and

also Rosa Parks. It is a gift that he is still alive today. His personal recall and insight add much to the storytelling. He should be in the Smithsonian.

The story begins with Parks refusal, on Thursday, December 1, 1955, to give up her seat. Trial was scheduled for the following Monday. A boycott of the public bus system would begin on that day to coincide with the trial. With such a short window of time to prepare and get the word out, Gray, and community leader Jo Ann Robinson, knew it could only be done from the pulpit on Sunday, December 4. A religious leader had to be tapped to do some heavy lifting. King was suggested. He was not known in civil rights circles, and had no experience in such activism. Robinson could only offer that, "He can move people with words." That would prove to be enough.

The presence of the trial transcript keeps the telling of the story pointed true north. *Brown v. Board of Education*, decided not two years earlier, created a base camp for summit tries. It is clear that the defense is focused on something more than the racist bus policy at hand.

The boycott is successful. The cause holds. Bus revenue plummets. Government leaders had to act. Come February 1956, King and 88 others are indicted under an archaic law which, the prosecution asserted, barred boycotts. The 1921 state statute had been enacted to prevent coal miners from organizing and striking. It had not been applied for more than 30 years.

The defense stipulated to individual bench trials. King would be tried first.

A parade of defense witnesses testified about ceaseless brutal and unjust treatment they received from bus drivers in tandem with Montgomery police. Testifying in court was, for many, the only way for their voice to be heard in the public sphere, with their graphic testimony being reported nationally.

At one point in the trial, there were six Black defense attorneys at counsel table, at a time when no law school in the state would admit Black students.

The story is so rich and true that the reader wants to learn more.

As the trial approaches its conclusion, it is clear that Montgomery, Alabama has been turned on its head. No one on the prosecution side seems to be able to say what the racist bus-seating policy is, exactly, or who authored it.

Someone has to make sense of it all. While the reader knows the outcome, the feeling persists that from his elevated seat above the fray, Judge Eugene Carter will be touched by the gentle breeze of justice and peace will be restored in his city. Nope.

At the outset, I wrote that King was little known. While true, he did introduce himself one evening during the boycott. In January 1956, a stick of dynamite exploded on the porch of his home. King was away speaking but Coretta Scott King and their daughter were home. Quickly, a crowd gathered in front of the home. It was prepared to take action. King raced home and spoke, asking the crowd not to respond with violence as "We want to love our enemies." The crowd obliged.

There is much more. If you are in the car, consider pressing "Play" to hear the audiobook version. *Alabama v. King* is available through Audible, Libby, the Cloud Library, and numerous other retailers in print or digital format.



William Grewe handles wrongful death, personal injury, employment law and workplace injury cases at Rose, Klein & Marias, LLP in Ventura and can be reached at w.grewe@rkmlaw.net



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BARRISTERS' CORNER

By Leonidas Nicol

Recently, I led a training for my office regarding how to review discovery and craft a meet and confer letter. Since many new attorneys are relegated to drafting and reviewing discovery responses, I thought some of the information could be beneficial to other new attorneys.

When learning anything new, it is important to understand why we are doing it. So why are we meeting and conferring? The short answer is that we need to know all the facts before we can resolve or try a case. Our best tool for obtaining all the facts is through the discovery process. It is our responsibility to ensure that important information isn't mistakenly or intentionally left out of the responses.

Most discovery disputes can be resolved through the meet and confer process. However, if the meet and confer process doesn't work, your last option is a Motion to Compel. *Code of Civil Procedure* ("CCP") sections 2030.300 (interrogatories) 2031.310 (demands for production), 2033.290 (requests for admission), provide that you only have 45 days (more if served by mail or electronically) from the date the verification is served to file a Motion to Compel. Before you can file your Motion to Compel, CCP § 2016.040 requires that parties meet and confer in a "reasonable and good faith attempt at an informal resolution of each issue presented by the [discovery] motion."

When drafting a meet and confer, keep in mind that it may be attached to a motion and seen by the court. As such, it should be well written and professional as with all your writings. The meet and confer must also be reasonable and made in good faith, so don't wait until the last minute to send the meet and confer.

Now that we know why we are meeting and conferring, where do we begin? Personally, I like to start at the end. The first thing I look for are verifications. Unverified or unsworn responses are tantamount to no response at all. *Appleton v. Superior Court*, 206 Cal.App.3d 632 (1988). If the responses are unverified, the responses are useless. You do not want to find yourself in a deposition, or worse, trial, attempting to

impeach the opposing party only to find out that the discovery responses were never verified. Check the verification first. If you make a mistake, it's ok. The time limit for bringing a Motion to Compel doesn't start until you receive verified responses, you can still request verifications even if you didn't notice they were missing initially, unless the responses are objections only, in which case the best practice is to file the motion on or before the 45 day deadline.

The next step is to start reviewing the Interrogatories. Two common issues that arise with Interrogatories are partial answers and evasive answers. A partial answer is easy to identify. This occurs when the opposing party responds generally to the request but does not fully answer it. Generally, this arises because the opposing party didn't respond to all of a Form Interrogatory's sub parts. The response that is not always as easy to identify is an evasive response. This is a response that appears to answer the question but leaves enough open-endedness that the opposing party will not be tied down to their answer. When you identify these responses, remind opposing counsel that CCP § 2030.220 requires responses to be as **complete and straightforward** as the information reasonably available.

Another common issue that arises with Interrogatories is a response that simply says I don't know. Remember, unless the information is equally available to you, CCP § 2030.220 requires the party to say that they made a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations. Simply saying I don't know is not enough.

Once you've reviewed the Interrogatories, the next and often most important form of written discovery is the Demand for Production of Documents. Your goal here is to ensure that all the documents that can help your case are produced. The California Code of Civil Procedure makes this very easy for you. It lays out specific instructions on how the opposing party is allowed to respond to these requests. The problem is that these instructions are rarely followed. Prior to meeting and conferring regarding

document requests, make sure you review the following code sections: CCP sections 2031.210, 2031.220, 2031.230, 2031.240, and 2032.280. I've summarized the pertinent sections below:

- CCP § 2031.210 generally lays out how the responding party must respond to each request. For each request they must state that they will comply with the request, that they can't comply, or object.
- CCP § 2031.220 outlines how the responding party must respond if they are complying with the demand. This section requires them to say they are complying in whole or in part. They must also say that all documents or things that are in their possession, custody, or control to which no objection is being made will be included in the production. This is important because it confirms that you are getting everything.
- CCP § 2031.230 outlines what the opposing party must say if they cannot comply. They have to tell you that they tried to comply and give you the reason why they were not able to comply.
- CCP § 2032.280 requires the opposing party to identify which documents are being produced in response to a specific request. This prevents opposing counsel from simply sending a bunch of documents without telling you why they are being produced.

Finally, when meeting and conferring the most tedious issue you are going to deal with are objections. The most common objections you will be faced with are relevancy and privileges. When it comes to relevancy, remember that's not the standard. You are entitled to "[o]btain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in pending action **or to the determination of any motion made in that action**, if the matter either is itself admissible in evidence or **appears reasonably calculated to lead to the discovery of admissible evidence.**" (Emphasis added) (CCP § 2017.010). When it comes to claims of privilege, think logically about what you are requesting and

make sure the privilege makes sense. Also, remember that CCP § 2031.240 requires the defendant to state the specific grounds for the privilege and provide a privilege log if documents are being withheld.

While there are many more issues that will arise when responding to discovery, I hope this helps some of the newer attorneys as they begin their career. Another great way for new attorneys to learn is to network. If you are interested, the VCBA Barristers meets at noon on the first Thursday of each month via zoom. If you are interested, please send me an e-mail at LN@qlflaw.com and I can provide you with the link. I encourage all new attorneys to join and participate.



Leonidas Nicol is an attorney at Quirk Law Firm, LLP focusing on plaintiff personal injury litigation. He can be reached at LGN@QLFLaw.com.



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