

# Bar *Bulletin*

Serving San Luis Obispo  
County's Legal Community

July–August 2019



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*Negotiating with Mother Nature  
The Uber Effect re Contractors*

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# President's MESSAGE

by Michael R. Pick Jr.



## Thank You's to Volunteers and the Central Coast

First, thank you to the members of the San Luis Obispo Bar Association that supported, helped to plan, volunteered and attended Law Day. My understanding is that attendance doubled from last year. Thank you again! Without your assistance, Law Day would not have been such a great success!

Next, thank you to Honorable Judge Tana Coates, Honorable Judge Hernaldo Baltodano, Honorable Judge Matthew Guerrero and Honorable Commissioner Erin Childs for their great presentation on May 16, 2019. It was a wonderful opportunity for our community to hear details and insight on how the duties of a judicial officer

are discharged. Thank you for giving us a look into how you all approach your jobs.

Finally, something else to be thankful for is where we live and what is in our backyards. As we head into our summer months, I would encourage everyone to get out there and enjoy the natural amenities that our community has to offer. There are few places where an individual can enjoy such easy access to nature and outdoor activities. It is far too easy to take for granted what we have at our doorsteps. If you are looking at some things to do, here are a few of my favorites:

- Oso Flaco Lake. An amazing walk with diverse terrain.
- Sinsheimer Park. Great place for the entire family to go play.

- Big Falls Trail. Amazing hike with water crossings, features and lots of newts.
- Johnson Ranch Open Space. Great trail for walking and biking.
- Poly Canyon. Very fun hike with creative student buildings.
- See Canyon. Multiple beautiful locations to enjoy locally grown agriculture.
- Morro Bay Estuary. Walk, kayak and check out the rookery.
- Harmony Headlands. Only public access to coastline in area.
- Islay Hill. The not-as-popular, smaller sister that still is a great little walk.

Try not to wait for company to come to town to enjoy. See you out there and at the Summer Social! ■

**San Luis Obispo County Bar Association**

**Have You RSVP'd for the 2019 Summer Social?**  
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# Negotiating with Mother Nature

When in doubt, paddle out.  
—Gerry Lopez

by Raymond Allen

Photos by Christine Joo

## A RIDICULOUSLY BRIEF HISTORY OF SURFING

In the late 18th century, missionaries reached Hawai'i. They were appalled by the near-naked men and women frolicking about on land and water. They felt compelled, as believers sometimes do, to impose upon the ignorant their beliefs. Unfortunately, the rules required a complete ban on surfing, which had been an integral part of the Hawai'ian culture.

More than a century later, Duke Kahanamoku caught the imagination of tourists with his surfing demonstrations at the break of Waikiki Beach.

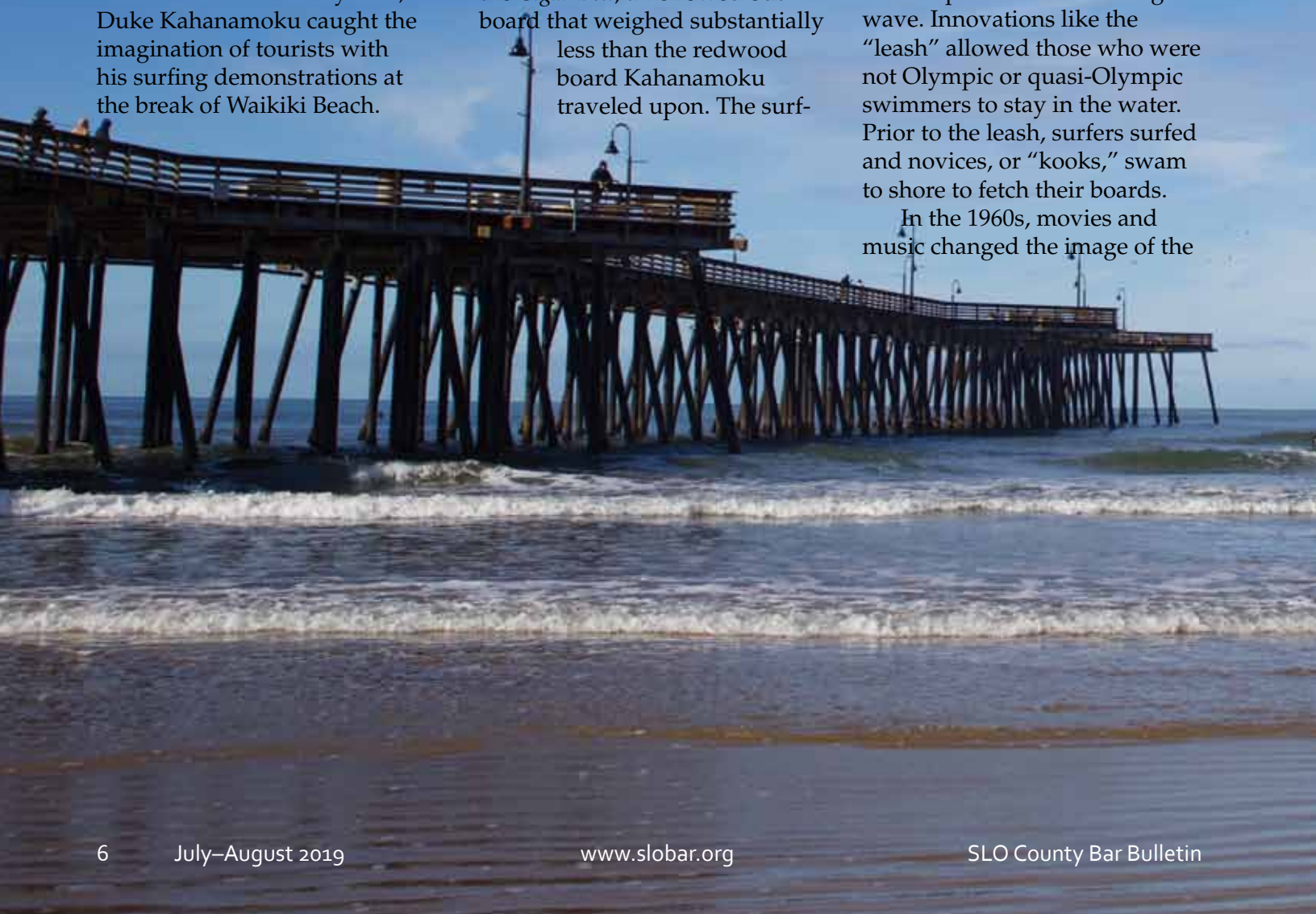
Kahanamoku rode waves with grace and practiced cool. He was an Olympic swimmer in the 1912, 1916 and 1920 Olympics. His swimming prowess and surfing demonstrations inspired young men throughout the United States, including Tom Blake.

Blake, who randomly met Kahanamoku in a Milwaukee movie theatre, would move to California and then to Hawai'i. He would pioneer changes in surfboard design. Blake designed the *Cigar Box*, a hollowed out board that weighed substantially less than the redwood board Kahanamoku traveled upon. The surf-

board would go from weighing more than 100 pounds to something more manageable. In addition to inspired board design, Blake evangelized the surfing lifestyle, or what he referred to as "the church of the open sky."

Initially, surfing style suggested long, smooth and statuesque rides. Surfers, however, are a creative lot. By the 1940s, board design was radically changing so that surfers could ride larger waves and get deeper and deeper into the breaking wave. Innovations like the "leash" allowed those who were not Olympic or quasi-Olympic swimmers to stay in the water. Prior to the leash, surfers surfed and novices, or "kooks," swam to shore to fetch their boards.

In the 1960s, movies and music changed the image of the



surfer. Surfers were no longer beach bums. All things surfing became a marketable commodity.

Beach Boy Brian Wilson did not surf, but he had the clever idea of putting the names of California surf spots into a song. Wilson's buddy, Jimmy Bowles, wrote a list of surf breaks down on paper. Wilson turned that list into a pop music classic. The lyrics were purposefully set to the music of a Chuck Berry song, which is why Chuck Berry gets the songwriting credit for *Surfin' USA*:

*If ev'rybody had an ocean  
across the U.S.A.,  
Then ev'rybody'd be surfin'  
like Californ-I-A.  
You'd see 'em wearin' their baggies.  
Huarachi sandals, too.  
A bushy bushy blonde hairdo.  
Surfin' U.S.A.*

*You'll catch 'em surfin' at Del Mar.  
Ventura County Line.  
Santa Cruz and Trestles.  
Australia's Narrabeen.  
All over Manhattan,  
and down Doheny way.  
Ev'rybody's gone surfin'.  
Surfin' U.S.A.*

By the 1980s, versions of Al Merrick's Thruster were ubiquitous on the waves. The

thruster is a three-finned, lightweight, 6-footish, foamed-based, fiberglass-covered platform. It remains the board of choice for skilled surfers. The other choice is the longboard. The longboard is an 8- to 12-foot platform that is stable. It is fun and practical. It allows *almost everybody* to paddle out and enjoy the waves.

#### OUR BAR IN THE LINE-UP

At the intersection of artistic surfing and weekend warrior is where you will find most attorneys who surf. For many of us mammals, we are confused by the amphibious nature of the surfer. Why would anyone want to expose himself to the uncontrollable vicissitudes of the cold and violent ocean? Indeed, from the warmth of a trendy coffee shop, it is hard to explain. You can only really understand the surfer by paddling out onto the undulating waves and sitting in the line-up.

#### WHY DO ATTORNEYS SURF?

Surfing requires the cooperation of Mother Nature. The swell, the wind, the location and force of off-shore storms, the tide, the current, the temperature—these are all factors that surfers consider before they even walk out the door. Surfers endlessly check National Oceanic and

Atmospheric Administration (NOAA) buoys for information on the surf conditions. When a surfer gets to the break, the waves can be different from the statistical information.

Most surfers spend some time, up to an hour, just watching the surf before they decide if they are paddling out. They are looking for where the wave is breaking, the location of the take-off, the direction of the tide, the best location to paddle out, and an endless list of other details. When they decide to go, it's on.

Everyone who has ever paddled out into the water has a reason or reasons. The reasons are not uniform from surfer to surfer. Sometimes the reasons are obvious, but sometimes the reasons are counterintuitive.

#### One: "The Stoke"

Brad Cornelius is a tremendous criminal defense attorney, but his surf buddies probably just think of him as a "goofy foot." He surfs with his right foot forward and his left foot back. He is part of the "Dawn Patrol" at Pismo Beach Pier. He gets up at 4 a.m., drives to Pismo Beach and surfs as the sun rises above the verdant hills. He is joined by fellow attorney, Steve Rice.

*Continued on page 8*



# Negotiating *continued*

Cornelius likes to talk about the natural high he gets from surfing, or what surfers call being “stoked.”

The excitement and adrenaline of just paddling out into the ocean often makes the session worthwhile. Catching *one* unbroken wave and riding down its face is usually enough stoke to capture the soul of a surfer. If you can make the bottom turn and ride the face of the wave for 100 feet or more, then you are skilled and stoke-infected. If you can make the bottom turn, harness the energy of the wave, go back up the face of the wave and make a beautiful top turn back down into the wave, then to surf—with all due respect to your family—is at the top of your loves. To be a good surfer requires time in the water. That’s time away from your job, time away from your significant other, and time away from every other distraction.

Shea Somma, an investigator with SLO Defenders, Inc., says he just enjoys being in the water. Regardless of the surfing conditions, there is nowhere else he would rather be.

“I have just always liked being in the ocean. I was attracted to the water. I didn’t care for ball sports, but I felt a natural affinity with the water.”

## **Two: It’s Fun and Social**

In March 2019, a group of local attorneys met at Pismo Pier to surf and have fun. Deputy District Attorneys Eric Dobroth, Mike Frye and Delaney Henretty met criminal defense attorney Steve Rice at his home break. Although these men battle over serious legal issues inside the criminal courtrooms of our county, on the water they battled over who was going to catch the next wave. They joked and laughed. They rode longboards

over waist- to chest-high waves. When the session was done, they shared time and a meal. They got to know each other better. The social aspect of surfing is an essential element of the sport.

Camaraderie is the key. There is camaraderie in paddling out to the line-up with buddies. As they sit on their boards, facing the ocean, they scan the horizon for bumps and tell stories.

Josh George, an attorney at Adamski Moroski Madden Cumberland & Green, LLP, often sits in the lineup with his friends who are all professionals: a lawyer, a doctor, a financial broker, and a Cal Poly IT manager. With coarse language they tease.

“Last December the waves were so good,” says a surfer, “I almost lost my job.”

“People will often say,” quips George, “I’d love to surf, but I’m not that good. I’ll reply, ‘Well definitely wait until you’re good, then start.’”

Surfers congratulate each other about good rides. They tease each other about wipeouts. They shout profanities when they get caught inside on a set wave.

Surfers have jobs, families and other activities, but surfing holds a special place in their hearts. George, for example, also enjoys other outdoor sports, like cycling and running, but surfing remains number one. “There is nothing comparable.”

## **Three: The Undefinable Spiritual Connection**

Beyond the pedestrian are the deeper philosophical questions. Why a person surfs can be simple: it is fun, it is exciting, it is “fill in the blank.” But adult surfers



do not want to surf, they have to surf. Surfers in the line-up, sitting on boards and staring at the horizon, appear as an “odd religious cult awaiting a messiah,” wrote Jaimal Yogis in *Saltwater Buddha*.

Moreover, Yogis wrote, “Surfers often sound like Buddhists in describing their art.” The total immersion of surfer into water is rife with religious and spiritual symbolism.

“In the ocean, you are in a position of weakness. The ocean always wins. By definition, it is humbling,” said Somma. “I like how it forces you to get small.”

Attorney Hallie Ambriz has been surfing for only a few years, but she echoes that sentiment. She learned to surf while on vacation on Kauai. The experience literally changed the direction of her life. She immediately converted to the “Church of the Open Sky.” She moved from Fresno to the Central Coast. She bought a vehicle large enough to carry her surfboards. She started a firm and configured her schedule that is in harmony with her morning surf sessions.

When she talks about surfing, she lights up. “Being in the water is the closest to nature you are ever going to get,” she said. “In the water, you can’t control anything. It makes me feel insignificant. I like that.”

On the other hand, “It is life affirming,” said Somma. “The ocean is always changing, so you have to stay actively engaged. I think it breeds youthfulness.”

“For me,” Somma continued, “*spiritual* is too strong a word, but it is definitely an obsession.”

Like most of the attorneys I interviewed, criminal defense attorney Jason Dufurena has surfed since he was a child. At 14, he scraped together the money to



Attorney Hallie Ambriz (above and lower left) says learning to surf changed the direction of her life. Photos of Ambriz by Peter Klein.

buy his first board, a 5’7” pintail. “Surfing has been the impetus behind many of the big decisions of my life—from where I went to college, to where I take vacations, to where I choose to live.”

There are a “million reasons” for surfing, said Dufurena. In the end, he thinks it might be as simple and profound as the 1990s surf wear ad campaign from Billabong: “Only a surfer knows the feeling.”

The spiritual connection “is hard to answer,” said Rice. “Surfing is such a part of my life that I don’t think of it in those terms.” Admittedly, he added, “When you’re at a remote spot and see the beauty that you are in, the spiritual aspects come to you.”

Rice is part of the “Dawn Patrol” at Pismo Pier. They surf as the sun rises. “When you are out there, sitting on your board and watching the sun rise, you find peace.”

“It is salt water therapy,” said George, who started surfing as an undergraduate at Cal Poly. He has continued because he finds it therapeutic. “When you are out there, you have no thoughts other than the wave. It clears the clutter from the mind.”

Ryan Harris, of Harris Personal Injury Lawyers, Inc., concurred. “There is a feeling of being connected to God when you’re watching a sunset from the water. Surfing takes you to beautiful places. When you are there you respect that life is precious.”

“I have to surf,” said Ambriz, “because I am my best self out there, whether I catch a wave or if I’m sitting and waiting. I feel the most joy and peace being immersed in nature. I feel peace because nothing else matters except enjoying the experience.”

*Continued on page 10*

# Negotiating *continued*

The emphasis surfers place on the enjoyment of surfing might make it seem that they confuse the means with the end. It may appear that surfing style and surfing technique replaced the search for transcendence. In truth, however, complete focus on the wave is transcendent.

## ENDLESS SUMMER

In 1964, the movie *Endless Summer* introduced the youth of America to the idea of traveling to surf. The documentary traced two young men as they traveled from California to Africa, Australia and New Zealand to find the perfect waves.

This idea, traveling to surf at remote and exotic locations, remains part of the allure of the surfing culture.

Some surfers are loath to share information about the exact locations of good surf breaks. It is their desire to keep the locations discrete and uncrowded. When you ask local surfers about their favorite breaks, they often say, "If I tell you, I have to kill you." Sometimes they will be opaque.

"I like to surf from Santa Barbara up to Big Sur," says Somma. "My favorite spot is in Mexico."

"The best surf spot is the Tola region in Nicaragua," said Craig Ainsworth, an estate-planning attorney. "It's an amazing experience and the people are beautiful." Tola lies between the Pacific Ocean and Lake Nicaragua. "Lake Nicaragua creates its own weather pattern, so the wind blows offshore. Nicaragua is the best spot by far."

Cornelius, however, is more forthcoming. "I have been to

Peru," said Cornelius. "I lived in Mexico for almost a year. That was great. One of my favorite surf spots is La Ticla in Colima, Michoacan. It has a long left. The ride is so long my legs burned at the end of the sessions."

A "left" is a wave that peels toward the left as you are riding it. From the shore, the surfer is going to the viewer's right. For a goofy-foot like Cornelius, a left is easier to navigate because he is looking at the face of the wave. The opposite is also true. A "right" is a wave that peels toward the surfer's right. From the shore, the surfer is going to the viewer's left. Cornelius would have his back to a right breaking wave.

Over the years, Cornelius has made trips to Baja, California and surfed Scorpion's Bay.

"And of course, Indo."

"Indo" is Indonesia, an incredible archipelago that is a destination spot for many surfers because it has hundreds, maybe thousands, of remote and uncrowded surf breaks. You fly into Bali or Jakarta. Then you take the ferry to your island. Once on the island of choice, you drive on dirt roads for hours to your surf break.

Surfing these days, said Assistant District Attorney Eric Dobroth, falls into two main categories: the family picnic in the ocean and the "hunt." The hunt is a more individualized part of surfing where you are literally hunting to "surf waves of consequence." I have been fortunate, said Dobroth, to have had the opportunity to surf in San Diego, Australia, Hawai'i, and Mexico."

"For me," said Rice, "my favorite surf spot is Lakey Peak." Lakey Peak, Sumbawa, Indonesia, is beautiful green-blue water that breaks over a coral reef. The air and water temperature push 80 degrees Fahrenheit. The wave is a perfect A-frame that the surfer can take right or left. When pumping, Lakey Peak is home for professional surf contests. At other times, it is an ultimate destination for advanced surfers.

"I've surfed all over the world," says Harris. He then rattled off a list of surf trips that included Indonesia, Iceland, Maine, New Hampshire, North Carolina, Hawaii, Australia, New Zealand, El Salvador, Mexico, Nicaragua, and Costa Rica.

The best quality waves he surfed were in the Mentawai Islands of Indonesia. The Mentawai Islands are a chain of

*Continued on page 12*





## Negotiating *continued*



about 70 islands and islets off the western coast of Sumatra. "I have been there four times," said Harris. He and friends lived on a boat, and the boat captain guided the surfers through the archipelago to the best surf breaks. "It was an incredible experience."

### **THE RISKS ARE REAL... THE FEAR IS CONTROLLED**

Surfing is dangerous. Whether a surfer is at a beach break like Pismo or a coral reef like Lakey Peak, the potential for serious injury or death is ever present.

#### **One: The Waves**

The massive height and thickness of a wave can scare even seasoned surfers. "I remember," said Dobroth, "in college around '97, there was an incredible swell that hit Oregon. I was driving around just to see if anyone was out. My plan was to just watch because the face was triple over-head. When I got to Whale Cove I saw the cars of the surfers I knew, so I stopped. When I got out of my car I saw a surfer in the ocean who had lost his board. The board had washed ashore. I could see him circling in a rip (current). I tied up his board and paddled into the cove. As I was paddling out I was thinking why am I bringing this guy's board? He is not going to be in any condition to paddle back out of this. But when I got

*Attorney Steve Rice*

to him, I see its John Force. He had probably been circling for 45 minutes, but he says, 'Let's go.' He paddles back out into triple over-head. I was scared to death, but thinking I can't just paddle back in. So I stayed and caught two or three waves."

"Post-script: John Force later asked me to surf a break called Nelscott Reef with him."

Nelscott Reef is Oregon's premiere big wave and hosts surf competitions for professional big wave surfers.

"You have to Zodiac out to the break. Anyway, I was so scared of the wave, I just kept finding excuses not to join him."

### **Two: The Natives**

"I had a shark swim underneath me once," said Ambriz. Reflecting, she said, "They are always there. We are in their world."

Shea Somma, who grew up on the beaches of Southern California and has been in or near the ocean most of his life, concedes that scary situations always exist in surfing.

Sharks, crocodiles, sea snakes, stingrays, jellyfish and microscopic parasites are all part of the experience.

### **Three: The Injuries**

The risks are also part of the equation. "I've had staples in my head from when my board hit me in the head," said Somma.

Drowning from being knocked out or held down is a legitimate concern. "Hold downs" occur when a surfer has

"wiped out" and fallen into the water and the force of the wave pushes the surfer down toward the ocean bottom. The hold down can be complicated by a second and third wave that follows the initial wave. Being held down over multiple waves forces the surfer to gasp for air in between the set waves. Staying calm is the secret. Eventually, usually, the ocean releases you back to the needed air.

On Saturday, December 8, 2018, Ainsworth was surfing at Morro Bay near the rock. He was with friends. The break was crowded and some of the surfers were not experienced enough for the conditions.

As Ainsworth duck dove under the water, another surfer lost control of his longboard. The unknown surfer kicked out his longboard, and the nose of the board hit Ainsworth's spine at C3-5. Ainsworth lost consciousness. After the wave washed through, a fellow surfer saw him floating face down in the water.

According to *The Tribune*, "Eight bystanders rescued the surfer from heavy waves. The surfer did not have a pulse, and the bystanders started performing CPR on him, according to the Morro Bay Fire Department. First responders from the Morro Bay harbor patrol, police department and fire department continued providing life support, and the surfer's pulse returned on the beach. Responders then transported the surfer to the hospital."

After a medically induced coma, months in the hospital and endless rehabilitation, he was released from the hospital at the beginning of the year. He is now quadriplegic.

Ainsworth recalls nothing about the incident. "I remember being at a Christmas Parade on December 7th and then I remember waking up at the hospital. I have been told what happened, but I do not remember any of it."

It will take a year or more for Ainsworth to know how much movement will return. The swelling must go down first. Every day he does physical and occupational therapy. "This part of my life is a bonus round," he said. "I should have been fish food."

Surfing is not a Disneyland ride.

Ainsworth has no regrets about surfing. He yearns to get back into the water. In October he plans on joining Operation Surf, the local group that helps wounded veterans. He is hoping to have use of his hands by then. "I won't be able to do anything but lay on the board, but it will be great to be back in the water."

### **SURFING AND THE MEANING OF LIFE**

Attorneys that are also surfers radiate a vibe. They possess nonchalance that comes from years immersed in nature. They challenge themselves against an immutable foe. They never win, but if they persevere, if they keep paddling out, if they keep pushing their limits, they gain an indefinable insight into being.

Perhaps, too, they teach us something about living. Although there is no need for us all to grab a longboard and jump into the frigid Pacific, there is value to a more balanced and transcended life. ■

# Bench Officers Visit Bar Association Meeting



*Bar Association President Michael Pick (left), Judge Tana Coates, Judge Hernaldo Baltodano, Commissioner Erin Childs, Judge Matthew Guerrero*

On May 16, 2019, some of the newer bench officers spoke to the San Luis Obispo County Bar Association at the Madonna Inn. Bench officers, Judge Tana Coates, Judge Hernaldo Baltodano, Commissioner Erin Childs and Judge Matthew Guerrero, answered questions from Bar Association President Michael Pick and the assembled attorneys.

Judge Coates, who was appointed to the San Luis Obispo County Superior Court on May 22, 2017, talked about her desire to make sure every litigant, whether represented or not, feels heard. Judge Coates hears the civil assignment in Department 9. Her calendar consists of myriad civil cases, including unlawful detainer matters, civil restraining orders, probate cases, adoptions and parental termination cases. She has presided over the Appellate Department of the Superior Court since fall 2018.

At the luncheon, Judge Coates recalled an early incident on the bench when she objected to the testimony of a witness. Like her colleagues on the panel, however, neutrality has become her default.

Judge Baltodano was appointed to the bench on November 2, 2017. He was almost immediately challenged for that elected position

by Deputy District Attorney Andy Cadena. Judge Baltodano handily defeated the long-time prosecutor, and now is among the few judges to have been appointed by the governor and elected by his community. Judge Baltodano has been assigned to the criminal department since December 11, 2017, and currently presides over felony cases, misdemeanor cases, and two collaborative courts: The Behavioral Health Treatment Court/ Adult Treatment Court Collaborative, and Mental Health Diversion Court.

At the luncheon, Judge Baltodano made it clear that he loved his job, but acknowledged that it can be an isolating position. To avoid appearing biased, "There are people, some of whom are in this room, that I can no longer have lunch with."

Commissioner Childs has been the Family Law Commissioner for the Superior Court of San Luis Obispo County since January 2017, and was an AB 1058 Commissioner for the Fresno County Superior Court in 2016. Although she has no difficulty remaining neutral and unbiased, she admitted that presiding over a Family Law calendar can be physically exhausting. She also said that balancing the demands of her calendar with the desire to make sure every litigant feels heard can be a challenge.

Commissioner Childs also

understood there are times when an attorney, for any number of personal or professional reasons, simply cannot come to court fully prepared. In those situations, she said, she would prefer that the attorney let her know in advance of the hearing to avoid frustration.

Judge Guerrero was appointed to the bench in December 2017. He currently presides over criminal misdemeanor and felony cases in Department 8 of the San Luis Obispo County Courthouse. Judge Guerrero came to the bench after years as a criminal defense attorney. Among his more successful and celebrated cases were the murder trials of Andrew Downs and James Lypps. Judge Guerrero told the attendees that in his new role he tries to determine the facts and then apply the law to those facts. Borrowing a line he heard from Judge Jesse Marino, Judge Guerrero explained, "Where justice goes, the law will follow."

Most local attorneys understand that in San Luis Obispo County we are fortunate. There are many jurisdictions where judges are incompetent, dishonest and/or rude. Luckily, at this juncture, we have a full complement of bench officers who attempt to provide every litigant with complete and fair access to justice. ■



# Summer 2019—Your Time to Run for Judge

by Stew Jenkins

*Musk ox drawing courtesy of Wikimedia Commons*

An engaged, effective and resilient County Bar Association should make a version of this announcement for its membership early in every odd numbered year. Superior Court Judges are elected at the Primary or in a November run-off if no one candidate receives a majority. California moved up its Primary next year to March 3, 2020. So, spring or summer *this year*, 2019, is the time a lawyer should start to run for judge.

In the wisdom of California's Constitutional founders, Superior Court Judgeships are temporary six-year jobs—close to the people, elected by voters in each county. The Governor has no Constitutional role, other than to make temporary appointments on death or resignation.

But, when I think about the slightly undemocratic reaction that our colleagues on the bench have to the idea of lawyers running for judge at election time, it brings to mind the musk ox in a rump-to-rump defensive circle.



Lawyers do file, campaign and often enough win election to a Superior Court seat. One who ran and prevailed against an incumbent swore me into the practice of law. And there are good reasons to run. Sometimes political connections induce a Governor to mistakenly appoint someone to a vacancy without the qualities that make a

good judge. And every experienced lawyer has appeared over time in front of one or another jurist and quietly concluded that she or he would do a better job than that particular judge weighing equities, ruling on evidence, assessing witnesses and administering justice.

Candidates who win judgeships by campaigning among the people that they will serve lose biases and gain insights that serve them administering justice. Lawyers who run for judge, but don't get elected, typically find the number and quality of their clients will skyrocket after the election.

Three San Luis Obispo County Superior Court seats are coming up for election in 2020: in alphabetical order these are the seats occupied by Rita C. Federman, Ginger E. Garrett, and Matthew Guerrero (an appointed incumbent).

Legislative manipulation of the timing to file nomination papers for judge can catch the unwary off-guard. This cycle, lawyers running for Superior Court must file their Judicial Candidate Statements of Intent *early*: between Monday, **October 28, 2019**, and Wednesday, **November 6, 2019**. This is an eight-business-day window that will not be extended unless one of the two incumbents or the one appointed-incumbent fail to file. It is different than for any other elective office.

There is a filing fee of a little over \$2,000. But this can be reduced by pulling "Petition in Lieu" papers on or after **September 12, 2019**, to circulate and turn in with your Judicial Candidates Statement of Intent form on or before **November 6, 2019**. Every signature will reduce that filing fee, and the very act of collecting those signatures will help

cement your relationship with voters and your campaign volunteers.

The Canons of Judicial Ethics give a clue to when you should start your campaign. There is a required course on the ethics of running for Judicial Office that you must take (and frankly every lawyer should take) online. Lawyers and judges get continuing education credit. Canon 5(b)(3) of the Code of Judicial Ethics mandates this course be finished (**and this is the clue on when to start your campaign**): "[n]o earlier than one year before or no later than 60 days after either the *filing of a declaration of intention* by the candidate, the *formation of a campaign committee*, or the *receipt of any campaign contribution*, whichever is earliest. This requirement does not apply to judges who are unopposed for election and will not appear on the ballot."

It is an enlightening course. The State Bar rules of professional conduct require lawyers who run for judge to comply with the Canons of Judicial Ethics that apply to campaigns. You can log on to take the course at: <http://www2.courtinfo.ca.gov/protem/courses/judcampeth/>. You can also find more information at <https://www.caljudges.org/docs/PDF/Ethics-in-Judicial-Elections.pdf>.

Any lawyer with 10 years *continuous active* State Bar membership should consider offering the community his or her knowledge, integrity and professionalism by running for Superior Court Judge. ■

*Stew Jenkins has practiced law in San Luis Obispo County for more than 40 years. Contact him at Law Office of Stewart D. Jenkins, 1336 Morro Street, San Luis Obispo, California 93401; (805) 541-5763; [info@stewjenkins.com](mailto:info@stewjenkins.com).*



**WALTER MURRAY**

# FRONTIER LAW BORN OUT OF IN EARLY SAN LUIS OBISPO

by Robert B

**W**ho are those imposing-looking jurists at the far end of the double row of photographs of our presiding judges, around the corner from Department 1? **Romualdo Pacheco** and **Walter Murray** both emerged from the Wild West here on the Central Coast—creating law and order out of the lawlessness and chaos that existed here in the 1850s. This is a story of their times: a rough history arising in El Barrio del Tigre, the Place of the Wildcat.

The upper photo (ca 1875) to the right is Governor Romualdo Pacheco, a native Californio who, in 1853 (at age 22), became one of our county's first judges (and future governor).

The lower portrait (ca. 1851) is Walter Murray, an English immigrant who, in the late 1850s, fought bandits as a leader of self-described vigilantes before becoming circuit judge in 1873 (at age 47).

Born in what became California (while it was still Mexican territory), Romualdo Pacheco was the privileged son of a prominent landowner on the Pacific frontier. An avid outdoorsman and expert hunter, in the early 1850s he made his way to the mines during the Gold Rush—where he met and befriended Walter Murray.

After both friends gave up the Gold Country in the early 1850s in favor of a return to the Central Coast, Pacheco attended to his family's estates in San Luis Obispo while starting a political career. A member of the Santa Barbara elite, Pacheco was elected judge of the Second Judicial District, which included two of the state's original counties—San Luis Obispo and Santa Barbara. He rode the circuit between these counties from 1853 to 1857.

Pacheco was later elected a state senator. Initially a Democrat, Pacheco ran for re-election as a Union Party candidate in 1861 because of his disdain for slavery and his disapproval of the secessionists. He was among the first prominent Hispanic Americans railing against African-American slavery, at a time when even those opposed to that odious institution rarely dared to speak out against it.

Having been elected lieutenant governor under Governor Newton Booth, at age 44 Pacheco became the first and only Latino governor of the State of California, serving for six months in 1875 after Booth left office for the U.S. Senate.

Pacheco's anti-slavery and pro-Union views resonated with his friend, Walter Murray who, in 1843 (as a 16-year-old printer's apprentice) left Dickensian England alone for Boston. Slavery had already been abolished in his native England before he sailed, and in a letter to his sister back home he expressed his disgust at the bigotry of the white sailors on the ship that carried him to the New World.

"With the greatest surprise they asked me whether I really held the absurd doctrine that a black man was as good as a white man. They thought me a sensible young man in other things but that I was mad on that subject."

In 1846, Murray (age 20) volunteered for Stevenson's Regiment, then



*Governor Romualdo Pacheco (top) and Walter Murray are immortalized near Department 1. Photo by Christine Joo.*

forming in Boston, to fight for the United States in the Mexican-American War. With the regiment, he traveled by ship around the tip of South America (at least one man

# R JUSTICE: F LAWLESSNESS PO COUNTY (1850-1875)

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having been tossed overboard and lost in heavy seas). He saw action in several skirmishes around Santa Barbara before the war abruptly ended in early 1848. He then went to the gold fields that were discovered just after the war's end.

When by 1853 neither he (age 27) nor Pacheco (age 22) had made their fortune in the Gold Country, each returned to the Central Coast. They bonded over their brotherhood in Freemasonry. Membership was common for intellectuals in the century after the Age of Enlightenment. Freemasonry was and is a non-denominational fraternal organization focused on community and charity. Early American Freemasons include George Washington and Benjamin Franklin.

In the mid-1850s, the Central Coast was mostly devoted to Mission gardens and to grazing lands for beef cattle on Spanish ranchos. There were barely 300 souls represented in the 1850 census for San Luis Obispo County, and no dairy industry had yet started. Creameries would not develop until piers were constructed. Over the next 20 years, piers, like the one James Cass of Cayucos built in the 1870s, would allow local dairy products to be placed on board refrigerated steamships and transported to markets in San Francisco.

The problem with making money on beef cattle in the 1850s (before refrigerated transport) was that one had to drive cattle overland to Northern California for slaughter and, thereafter, to run a veritable gauntlet (carrying the resulting gold) south along El Camino Real—

frequently encountering murderous bandits on the way, hence the expression, “highway robbery.”

Incidents of horrific violence, with murdered bodies often found in the county, caused the decade to be described as the Bloody 1850s. In fact, the first sheriff quit in 1851 (his first year in office) because the job was, as he described it, too dangerous.

And so began, in 1858, the Committee of Vigilance. Among the first names on the roster of those willing to ride in pursuit of desperados, when law enforcement would not, was Walter Murray. He had been a defense attorney whose life had been threatened and his house fired into, with no one else being willing to protect his wife and young children. He and his vigilantes on one notable occasion chased down bandits on the road to Los Osos, shooting some and hanging others.

Murray, as an educated pro-Union federalist, was elected District Attorney in 1867 (receiving 216 votes, as opposed to 199 for his competitor). He established his home across from the Mission, which at that time served not only as a Catholic Church but also as the courthouse. A portion of Murray's adobe is still to be seen today in Mission Plaza, a few yards from the Mission itself.

In the 1830s, the Mexican government had secularized Mission San Luis Obispo de Tolosa and, by 1850—given its central position and formidable infrastructure—the Mission became the county's first courthouse, jail and gallows.

Like Romualdo Pacheco, Walter Murray was fervently anti-slavery

ROMUALDO PACHECO



and pro-Union. The people of San Luis Obispo were deeply divided on both issues, like the state as a whole. In this regard, as part of the Compromise of 1850, California was admitted as a free state without a slave-state pair but, to avoid creating a free-state majority in the U.S. Senate, the state agreed to send one pro-slavery and one anti-slavery Senator to Washington.

Murray was determined to establish himself as a leader of the anti-slavery, pro-Union movement in our conflicted county and, given his expertise as a printer, he created the *Tribune* newspaper in 1869 as a Republican voice to counter the pro-secessionist *Pioneer* newspaper. (*The Tribune* remains the newspaper of general circulation in San Luis Obispo to this day.)

Using the *Tribune* to publicize his liberal politics, Murray eventually succeeded in securing his long-sought election as circuit judge. This finally occurred in 1873 but, after living such an extraordinary life, in October 1875 he was stricken and died of appendicitis across from the Mission, at the age of 49.

Romualdo Pacheco and Walter Murray were intrepid jurists during a time of danger and political upheaval, forging an environment of order from chaos. They should always be remembered. May they continue to inspire us. May they help us to celebrate the role of law in our society. And may their dedication to the rights of others lead us to a deeper understanding and appreciation of the legal profession. ■

# Successful Community Law Day Held May 1

by Joseph Kalet and Raymond Allen

Photos by Henry Esquivel and Joseph Kalet

On May 1, 2019, San Luis Obispo County Courthouses in Paso Robles and San Luis Obispo held open house events for the local community. Community Law Day events are conducted across the country to help youth and adults understand how the law keeps us free and how our legal system strives to achieve justice.

The 2019 Law Day theme was “Free Speech, Free Press, Free Society.” These ideals are cornerstones of our representative government. Democracy requires that each of us understands and protects our fundamental rights to ensure “the blessings of liberty for ourselves and our posterity.”

Every year, since 1958, the President has issued a Law Day proclamation recognizing the importance of this day. This year, President Donald J. Trump signed a proclamation that said, in part:

“On this Law Day, I encourage all Americans to take time to express appreciation for how the rule of law helps protect our rights, including the freedoms of religion, speech and the press. Today, we reflect on the many sacrifices our American forebearers made to secure and defend these rights for their posterity, and we aspire to be equally as dedicated to preserving them for future Americans.

“NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, in accordance with Public Law 87–20, as amended, do hereby proclaim May 1, 2019, as Law Day, U.S.A. I urge all Americans, including government officials, to observe this day by reflecting upon the importance of the rule of law in our Nation and displaying the flag of the United States in

support of this national observance; and I especially urge the legal profession, the press, and the radio, television and media industries to promote and to participate in the observance of this day.”

In San Luis Obispo County, local judges, attorneys, court staff and the community celebrated the rule of law and its impact on our lives. The Honorable Judges Ginger Garrett, Linda Hurst and Rita Federman provided participants with insight into their judicial functions. Local law assistance programs, like Lawyer Referral and Information Service (LRIS), San Luis Obispo Legal Assistance Foundation (SLOLAF), and California Rural Legal Assistance (CRLA) provided information to the public about their services. And *many* attorneys, such as Martha Spalding, provided consults to those in need.

Law Day was a tremendous success. Going forward, all attorneys are encouraged to participate in this important, mandated event. If you are interested in participating next year, please contact any of the officers or directors of the County Bar Association or Nicole Johnson at [slobar@slobar.org](mailto:slobar@slobar.org). ■



SLOLAF (left) and LRIS provided information to the public.



SLO County Bar Association offered impromptu consults to those in need.



RISE (left) and CRLA also handed out information to the public.

# Have you met...?



**Khoulood Pearson**

Khoulood Pearson, a San Luis Obispo native and graduate of San Luis Obispo High School, earned her B.A. in Political Science and English at San Diego State University.

In 2013, she graduated from Thomas Jefferson School of Law and began her legal career as a prosecutor in New Mexico. She also has experience in civil litigation focusing in areas of business law, contract negotiations, personal injury and employment law.

Pearson returned home to San Luis Obispo to raise her family. She has spent several years specializing in workers compensation and social security as an associate attorney at Wheeler and Beaton, PLC.

**Note**—If you are a new member of the San Luis Obispo County Bar Association and would like to be introduced to others in the organization, please contact the *Bar Bulletin* editor for inclusion in an upcoming issue.

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# The Uber Effect:

## How Tech Companies Jumped on the Independent Contractor Track But Now Find It Going In Another Direction

by Lisa Sperow and Kathy Eppright

### Laws Governing Independent Contractors Pre-Uber

For decades, there was little change to the laws governing how to determine an independent contractor classification. The primary test in California, known as the “Borello Test,” was born in 1989 following the California Supreme Court’s decision in *S. G. Borello & Sons, Inc. v. Dept of Industrial Relations*.

In that case, the CA Supreme Court adopted a test that applied five disjunctive factors: (1) whether the worker had an opportunity for profit or loss; (2) whether the worker had invested in equipment used to perform the services; (3) whether the services the worker rendered required special skills; (4) whether the relationship between the worker and the hiring entity was temporary or permanent; and (5) whether the worker was performing services integral to the hiring entity’s business or ancillary to it.

Thus, for about 20 years, the courts would generally apply that test and try to decide whether the evidence reflected that the hiring entity essentially controlled the contractor or showed that the contractor generally worked in an independent manner. The IRS applied (and still does) a similar multi-factored test focused on this concept of control versus independence of the contractor.

### Post-Uber Changes

The emergence of Uber and similar companies making up what has become known as “gig economy” companies corresponded with the start of the Financial Crisis. The gig economy, also known as the on-demand or sharing economy, allows individuals to use technology to generate revenue from the assets they own, such as cars and homes or services they provide, including

childcare and consulting. As these companies came onto the scene, the housing bubble was bursting and many Americans found themselves out of a job or needing a second job to supplement their income.

For many, Uber, and companies like them, arrived like a taxi pulling up to the curb just before a downpour. Many Americans could now take something they already owned, and use an app-based matching platform, like Uber or Airbnb, and earn money from that asset. The model was premised on users providing the service working as a contractor instead of an employee. It was easy to sign up because there were few barriers to prevent someone from becoming a contractor with one of these companies. And with few other alternatives, those people who signed up as contractors with Uber and like companies were happy for the extra income they could earn using these apps.

Also, in the beginning, the laws governing independent contractors seemed to match the business model. If you applied the *Borello* test or the IRS test, the Uber-type of business seemed to meet these tests: the drivers owned their own cars, decided when they wanted to work or not work, and were performing a driving service for a tech company. While there were other factors that potentially supported the contrary argument, such as the fact the drivers did not set the rates and were prohibited from taking tips, the tech companies using this model had at least a credible argument that workers who used their apps qualified as independent contractors under the applicable tests.

### The Curve in the Road

In a press release issued by Uber on October 24, 2010, the company responded

to questions about its compliance with existing regulations by explaining that it was a “first to market, cutting edge transportation technology” that involved “innovations” that regulators did not have in mind when they adopted the existing regulations. At that time, Uber optimistically (or foolishly) offered to help the regulators catch up, saying in that early press release, “We are happy to help educate the regulatory bodies on this new generation of technology.”

But the laws governing independent contractors went in a different direction as the Great Recession worsened. Both state and federal governments began losing tax revenue and noticed the growing trend of companies using independent contractors instead of employees.

In 2005, the Bureau of Labor Statistics estimated that there were 10.3 million independent contractors, accounting for 6.9 percent of the total employment in this country. In 2010, the Government Accountability Office estimated that independent contractors had increased to 7.9 percent of the nation’s total employment. And in 2015, a survey done by the Freelancers Union and Upwork estimated that the number of Americans working as independent contractors ballooned to an estimated 19.3 million people. Thus, state and federal agencies began focusing enforcement action on misclassification of independent contractors.

In September 2011, the United States Department of Labor (DOL) and the IRS signed a memorandum of understanding (MOU) creating a joint DOL and IRS team focused on the reduction of misclassifications of independent contractors. Three months later, the DOL joined forces with the California Workforce Development Agency Standards Enforcement and entered into an MOU to share resources with the State of California to investigate and prosecute employers misclassifying workers as independent contractors.

Around this same time, California’s Supreme Court started to show signs that it might be looking to narrow the application of the *Borello* test. In May 2010, the California Supreme Court issued its decision in *Martinez v. Combs* and focused on the question of who is considered an

employee in California. Noting that “to employ” is defined very broadly in California, the California Supreme Court rejected the defendants’ argument that the *Borello* test is the only standard the courts should apply in determining whether a worker is an employee or an independent contractor. In *Martinez*, the court held that the definitions in the wage orders for “employer” and “to employ” were also relevant to deciding whether a worker was an employee or independent contractor.

As state and federal agencies, as well as the courts, were casting a new light on what it means to be an independent contractor, legislators also started to pass laws that raised the stakes for companies that were continuing to rely upon the *Borello* test. California lawmakers led the trend, passing laws designed to protect against “wage theft” associated with the failure to pay wages due in a traditional employer-employee relationship.

In 2012, California Labor Code section 226.8 went into effect imposing new penalties on employers who willfully misclassify their employees as independent contractors. The threat of these penalties became even greater with the passage of the California Private Attorney General Act in 2004, providing a basis for private enforcement of Section 226.8, in addition to other violations of California’s Labor Code, and the recovery of additional penalties and attorney’s fees.

In summary, the agencies, courts and legislators not only did not accept Uber’s offer in 2010 to help educate them on the “new generation of technology,” but instead caused the law governing independent contractors to hit an unexpected curve in the road.

### The Dynamex Detour

The legal detour in California came with the California Supreme Court’s decision on April 30, 2018, in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*. Rather than apply the *Borello* test, the California Supreme Court held that the “ABC Test” applies in determining independent contractor status under California’s wage orders. For purposes of evaluating wage and benefits claims under California’s wage orders, the California Supreme Court

held that a worker will be presumed to be an employee unless the hiring entity can establish all three of the following factors: (1) That the worker is free from control and direction of the hirer—both per contract and in fact; (2) That the worker performs work that is outside the usual course of the hiring entity’s business; and (3) That the worker is customarily engaged in an independently established trade, occupation or business of the same nature as the work performed for the hiring entity.

To illustrate the practical application of the ABC test, the California Supreme Court gave examples of the types of workers who would be able to meet this test, such as an outside plumber hired to fix a leak in the bathroom of a retail store. The court also gave examples of the types of workers who would *not* meet the ABC test, such as a cake decorator hired by a bakery to work on a regular basis to make or assist with the making of cakes sold by the baker.

The *Dynamex* decision meant many businesses that had relied upon the *Borello* test, focusing on factors reflecting a lack of control by the hirer and the independence of the contractor were suddenly potentially out of compliance. Physician groups that hired doctors on a contract basis, beauty salons that rented space to independent hair stylists, trucking companies who hired professional truck operators who own their own 18 wheelers were all suddenly in legal limbo.

And they remain so as of the date of this article. The California state legislature is currently considering a bill (Assembly Bill 5 introduced by Assembly Member Lorena Gonzalez, D-San Diego) that would codify the *Dynamex* decision, but allow for certain exemptions for some, still unknown, universe of categories. Various industries are lobbying hard in Sacramento hoping for a carve out. A competing bill, Assembly Bill 71, introduced by Assembly Member Melissa Melendez, would add a new section of the Labor Code codifying the *Borello* factors.

In the meantime, the reach of the *Dynamex* decision has been extended even further by the courts. On March 29, 2019, Judge Morrison C. England, Jr., issued a decision in a case filed in the U.

S. District Court for the Eastern District of California (*Western States Trucking Association v. Schoorl*) rejecting a constitutional challenge brought by interstate trucking companies and ruling that the *Dynamex* decision did not create an excessive burden on interstate commerce and therefore was not preempted by federal law.

Finally, most recently, the Ninth Circuit ruled on May 2, 2019, in *Vazquez v. Jan-Pro Franchising International Inc.*, that the ABC test adopted by the California Supreme Court in the *Dynamex* case applies *retroactively*. Thus, companies like Uber are now not only having to navigate the detour the law took regarding independent contractors, but have to look in the rearview mirror for potential claims.

In the next issue of the *Bar Bulletin*, we will explore how Congress’ tax reform ironically incentivizes workers to seek independent contractor classification, and highlight the potential hazards both workers and employers face as they try to navigate the seemingly ever-changing legal landscape. ■



Lisa Sperow is the Executive Director of the Cal Poly Low Income Taxpayer Clinic.



Kathy Eppright is a partner with Andre, Morris and Buttery.

# SB10: The End of California's Ca\$h Bail System

by Raymond Allen

**O**n August 28, 2018, Governor Jerry Brown signed into law Senate Bill 10. In October 2019, this bill will end the bail bond system in California. Instead of the bail bond system, all criminal defendants will be assessed for release or pre-trial detention.

Most misdemeanants, except those that were arrested for enumerated violent or aggravating crimes, are to be booked and released. A charge of driving under the influence or being drunk in public, for instance, would fall into this category. The remaining citizens arrested on misdemeanor charges or felony charges will be assessed by the yet-to-be-created Pretrial Assessment Services (PTAS).

The purpose of the new law is to establish fairness in the criminal justice system. Currently, a wealthy criminal defendant could be released on bail while a poor criminal defendant languished in jail pending trial.

In October 2019, the California bail bond business will be obsolete. Once bail is abolished, "Who's going to bring people back to court when they don't show up?" asked Harmeet Dhillon, lawyer for the California Bail Agents Association. Greg Sullivan, of ABC Bail Bonds in San Luis Obispo, is "very disappointed" that the governor signed the legislation. Sullivan points out that many individuals and groups, from a wide political spectrum, oppose this legislation.

SB10 is opposed by the Alliance of California Judges, the California Peace Officers Association, the National Association for the Advancement of Colored People (NAACP), the American Civil Liberties Union (ACLU), the San Francisco Public Defender's Office, and various human and civil rights advocacy groups. One side is concerned that the legislation does not adequately protect the public; the other side is concerned that the legislation does not protect civil liberties and constitutional rights.

The legislation attempts to address public safety by requiring the PTAS to

assess citizens who were arrested but not immediately released. The assessment will use a validated risk assessment tool (VRAT) and the individual's history of crime and failures to appear (FTAs) in court. The PTAS will also solicit information from the district attorney's office. The individual will be classified as "low risk," "medium risk," or "high risk."

Low-risk defendants are those individuals who pose a minimal level of risk for failing to appear in court and to public safety. All low-risk defendants "shall be released on their own recognizance, prior to arraignment, without review by the court, and with the least restrictive nonmonetary condition or combination of conditions that will reasonably assure public safety and the persons return to court."

Medium-risk defendants are those that pose a moderate level of risk for failing to appear and to public safety. All medium-risk defendants will be released pursuant to release standards set forth in yet-to-be-drafted Rules of Court. Those standards are required to focus on protecting public safety and respecting the due process rights of the defendant.

High-risk defendants will not be released.

Release of the criminally accused is the fault-line. Historically, high bail has been used to detain the poor or indigent from being released, and the consequence of pre-trial incarceration of these individuals is enormous. Jill Steinberg of the Bronx Freedom Fund, a nonprofit organization that funds bail loans for the indigent, says pre-trial incarceration increases the likelihood of unnecessary guilty pleas, of jailor on jailee crime, of inmate suicides, the cost of incarceration per diem and, ironically, increases the rate of recidivism.

Incarceration, even for just a few days, will likely cause a poor person to lose their employment, lose their residence, and lose custody of their children. This makes the likelihood of future crime greater.

The California Judges Association (CJA), a group of active and retired judges, opposes the legislation. "Those arrested for selling drugs, committing identity theft, vandalizing homes and businesses, stealing huge sums of money, or burglarizing dozens of businesses would all presumptively be granted pre-trial release... [The bill] also inexplicably exclude[s] residential burglary from the list of crimes for which arrestees are not to be considered for release without judicial authorization...."

Others oppose the bill because it lacks uniformity. According to San Luis Obispo County Sheriff Ian Parkinson, the state is simply replacing one inconsistent system with another. "We need to get rid of inconsistencies in the system." By creating new risk assessment tools, a new pre-assessment service, with new legislation, we are simply creating more ambiguity and confusion. "So many unanswered questions."

For instance, notes Parkinson, what happens when a police officer gets a call that a person is disturbing the peace? "Obviously, disturbing the peace would require a citation and release. But let's say the person has significant mental health issues. If the officer decides to arrest the person for safety and brings the person to the jail, I have to release him. The officer could take him to mental health, but mental health does not have sufficient resources for such a delivery. The officer, against all training and experience and logic, will have to leave that volatile person on the street."

On the other hand, it is possible that the new system will mean more, not less, pre-trial incarceration. The jailor with federal capacity limits on population will be in a difficult quandary. The county sheriffs will face practical questions regarding whom to release.

"I have faith in the system," says Parkinson. "Judges will properly assess it. Judges and the system will be fair."

CJA fears judges will lose their bail-setting discretion. "The bills would

require in some cases that the prosecuting agency be prepared for a contested hearing with live witness testimony in less than 24 hours, at risk of a dangerous felon being set free...."

The legislation, however, does prevent many arrested individuals from being eligible for release. The Pretrial Assessment Services may not release a long laundry list of criminal defendants charged with felonies. For example, if the individual was arrested and charged with a violent or serious strike offense, physical violence, threat of violence, causing a likelihood for great bodily injury, personally inflicting great bodily injury, using or possessing a firearm, driving for the third time under the influence of alcohol or drugs, violating a restraining order of any type, having three or more prior warrants for failure to appear, or intimidating a witness or victim, that individual is ineligible for release. If the criminal defendant was out of custody pending a trial or sentencing, was on parole or community supervision, or had previously violated a condition of pretrial release, he shall not be released. Also, if the criminal defendant has previous convictions for violent or serious strike felonies, he shall not be released.

In addition, if the district attorney's office believes that no nonmonetary condition will insure the protection of the community or the return of the individual, they can request a hearing on the issue of pre-trial detention. The district attorney would have the burden to show by clear and convincing evidence a substantial reason to believe the release conditions are not adequate.

As a result of the detention requirements for many crimes, and because of the ability of the district attorney to use a "catch-all" provision to demand a detention hearing, groups like the San Francisco Public Defender's Office and the ACLU are in opposition. "[This] provides judges with really unbridled discretion to be able to detain anyone, even people charged with misdemeanor crimes," said San Francisco Public Defender Jeff Adachi. Furthermore, the ACLU has raised concerns about inherent racial bias in the risk assessment algorithm used by PSAT. Patricia Ashbaugh of SLO Defenders Inc., is taking a diplomatic

approach. She wants to see how the law gets applied before making any judgments.

The legislation specifically states that "the court may order preventive detention of defendant...only if the detention is permitted under the United States Constitution and under the California Constitution, and the court determines by clear and convincing evidence that no nonmonetary condition[s]...of pretrial supervision will reasonably assure public safety or the appearance of defendant in court...."

Nonetheless, many groups oppose the legislation because they fear it violates an individual's rights under the Eighth Amendment to the U.S. Constitution and the California Constitution. Federal case law seems to suggest that there is no requirement to set bail. If bail is set, it must not be "excessive." Under the CA Constitution, Article I, section 12, bail must be set, except under certain circumstances related to risk of harm. Perhaps a no-bail system violates our Constitution.

Many believe a complete overhaul of the system was not necessary. Greg Sullivan, ABC Bail Bonding, said, "I think a far greater solution to some of the prob-

lems would be to enact a statewide uniform bail schedule with bails set at a much lower amount. Whether a defendant fails to appear on a \$50k bail or a \$5k bail, I would pursue each with the same veracity. I just think bails are set too high in most counties in the state."

At this juncture many different and often opposing groups are racing to challenge SB10. The bail bond industry, for instance, is supporting a referendum entitled "Californian's Against the Reckless Bail Scheme." Within a few weeks of the signing of the bill they had already gathered 400,000 signatures. They hope to have the measure on the November 2020 ballot for public consideration.

The goal of SB10 is good and lofty: allow the poor the same freedom and effective assumption of innocence as enjoyed by the wealthy. The fix, however, remains in flux. What is known right now is that individuals with strong positions disagree on what is necessary to improve the current bail system. Disagreement is the life-blood of democracy. Argument, however, must remain honest and fair. Fear-mongering, race-baiting and demonization will not be of help. ■

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# San Luis Obispo College of Law Experiences **Success**

by Jan Howell Marx, Campus Dean and Professor

Photos courtesy of SLOCL

**J**ust over three years ago, our community welcomed the founding of the San Luis Obispo College of Law (SLOCL) as a branch of the well-established Monterey College of Law (MCL). The presence of our nonprofit, accredited, community-based, evening law school has appreciably improved our region's educational opportunities. For the first time, it is possible for local residents to attend law school without leaving home or enduring punishing commutes.

Our students, often juggling full-time work and family responsibilities, are highly motivated to improve their careers and strengthen their minds by taking on the challenges of studying the law. SLOCL is now the only institution in our county accredited to confer a doctorate level degree, a Doctor of Jurisprudence.

So, how are we doing?

I am happy to report that SLOCL has enjoyed a productive and promising first three years. We are grateful for the SLO legal community's vigorous support, volunteerism and expertise as externship or clinical supervisors, without which none of the achievements listed below would have been possible.

## Graduation

June 9th marked the inaugural graduation of local students who began and completed their studies at SLOCL. Held at the

historic Dallidet adobe, the ceremony gave faculty, administrators, family and fellow students the opportunity to recognize the academic success of the graduating class of 2019. At the event, the Honorable Charles S. Crandall delivered an inspiring graduation address, and students who had been active in the Student Bar Association announced the formation of the SLOCL Alumni Association.

## Accreditation

MCL and SLOCL passed the rigorous accreditation process with flying colors, which is good for the next five years. The State Bar of Examiners' team was impressed with our high academic standards, the enthusiasm and especially the quality of our adjunct faculty of practicing and retired attorneys and judges.

We are grateful to our faculty that include Craig Ainsworth, Raymond Allen, Jennifer Alton, Patricia Andreen, Erica Baltodano, Commissioner Erin Childs, Judge Charles Crandall, Shauna Cunningham, Jacqueline Frederick, David Gillette, Kirby Gordon, James Graff-Radford, Claire Hartley, Collette Hillier, Daniel Knight, Christopher Lewi, Desi Lance, SLOCL Academic Dean Sharon Lizardo, Matt Loker, SLOCL Campus Dean Jan Howell Marx, Jean Matulis, Tim McNulty, Judge Gayle Peron, Bill Powell, Steven Rice, Martha Spalding,

Neil Tardiff, Christopher Toews, Cynthia Valenzuela, Stephen Wagner, David Weilbacher, MCL Dean Mitchel Winick, Ann Wilson, Carrie Winters, MCL Academic Dean Elizabeth Xyr, and Administrative Law Judge James Zerboni, among others.

## Bar Pass Rate

Of the 10 SLOCL graduates who have taken the California bar exam, four have been first-time passers, giving the campus a 40 percent cumulative first-time pass rate. According to the State Bar's published results for the most recent bar exam, the statewide first-time pass rate for all takers was 41 percent and for all California Accredited Law Schools (accredited part-time evening law schools) was 21 percent. Although we anticipate additional success from our SLOCL graduates once they have had the chance to repeat the exam, we are pleased that our initial graduates have been competitive when compared to the state standards.

## New Student Recruitment and Tuition Grants

MCL and SLOCL Admissions Dean Wendy LaRiviere and I conduct frequent potential new student information sessions. The dates are advertised on our website [slolaw.org](http://slolaw.org), on Facebook, Instagram and in *New Times*. To encourage attorney support in recruitment, we have established



*SLOCL Campus Dean Jan Howell Marx and SLOCL students (November 2018).*

tuition grants of \$1,000 for employees and relatives of SLO Bar, Women Lawyers Association and Northern Santa Barbara County Bar Association members.

### **Master of Legal Studies Degree**

Besides the JD, we offer a generalized two-year Master of Legal Studies (MLS) degree for students who desire an in-depth legal education, but do not plan to practice law. In response to local demand, we are also in the process of developing an alternate MLS degree, tailored to allow specialization in the area of most interest to the individual student, for instance an MLS in Employment Law or Business Law. This program promises to be of special interest to people

who may wish to upgrade existing careers, or to Cuesta College and Alan Hancock graduates seeking employment in areas requiring a Master's degree.

### **Advisory Board**

The Advisory Board, chaired by the campus dean, receives reports on the law school's activities, gives community feedback and offers advice to SLOCL administration. Thanks to members Raymond Allen (attorney and professor), Ron Den Otter, Ph.D. (Cal Poly professor), Michael Devitt (attorney), Dan Dow (district attorney), Jacqueline Frederick (civil litigator and professor), Crystal Forsher (Santa Maria CAAA), Barbara George (Cuesta College trustee), Amy Kardel (business attorney

and recent graduate), Angie King (SLOLAF Board member), Honorable Douglas Hilton (ret.), Abby Lassen (public interest attorney), Ray Mattison (mediator), Bill Powell (family law attorney), Ellen Sheffer (paralegal) and Jeff Stein (criminal defense attorney). If you are interested in serving on our Advisory Board, please let us know.

### **Hybrid Courses**

MCL is one of only two accredited law schools in the state to receive State Bar approval to offer a hybrid JD program. Students meet in person with faculty for 30 percent of the class time, and the remaining 70 percent is available to them online. These interactive courses

*Continued on page 26*

## SLOCL continued

allow flexibility to students at all four branches—Monterey, Santa Cruz, San Luis Obispo and Bakersfield. The first such course SLOCL offered was taught by MCL Dean Mitchel Winick and entitled *Fake News/ Real Laws*. This summer's online courses include *Immigration Law*, taught by professor Desi Lance, *Fundamentals of Law*, taught by Dean Winick, and *Constitutional Law for Everyday Use*, taught by professor Michael Caves. The fall 2019 semester will add the second-year courses, *Evidence*, *Civil Procedure*, and *Real Property* currently being developed by MCL Academic Dean Elizabeth Xyr's hybrid team and SLOCL Academic Dean Sharon Lizzardo.

### Andreen Moot Court

SLOCL named its annual Moot Court in honor of the late Appellate Court Justice Kenneth Andreen. Coached by law professor and deputy DA Stephen Wagner and public defender Stephen Rice, our first Moot Court centered on First Amendment issues, including a whistleblower in the White House, claims of fake news, and desire of a partisan Congress to protect the secrets of the Executive branch. The four



*Judging the first SLOCL Andreen Moot Court were Appellate Justices Martin Tangeman (left) and Arthur Gilbert, Patricia Andreen and SLO Superior Court Judge Gayle Peron.*

finalist students prepared for a semester and were judged by Appellate Justices Arthur Gilbert and Martin Tangeman and SLO Superior Court Judge Gayle Peron. Free and open to the public, approximately 100 people attended. Third-year students are now preparing for the 2019 Andreen Moot Court, scheduled for September 7.

### Clinical Programs

We are grateful to the legal community for offering clinical and internship opportunities for

our law students. This academic requirement not only provides them hands-on experience and mentorship, but also benefits attorneys who may be on the lookout for future "home-grown" associates.

The Lawyer Referral Information Service (LRIS), which is housed on campus, is assisted by two student interns each semester. The SLO Law Line, a telephone counseling service started by Neil Tardiff when he was SLO Bar President, has been transferred to SLOCL. Student

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interns give general legal advice by returning calls from the public, scheduled through an administrative assistant at MCL. The students are supervised by attorney Desi Lance. The Family Law Clinic, administered by Stephanie Barclay of SLOLAF, is supervised by professor and family law attorney Bill Powell and staffed with volunteer family law attorneys. Clients with complex situations are often referred to the clinic by Superior Court family law facilitator Alicia Wright.

### Exploring Careers in the Law

In response to student requests for information on areas of career specialization, I organize and moderate a series of Wednesday evening panel discussions on campus; open to students and the public. Participants describe how they came to study law and decided on their specialties. They also share their perspectives on what it is like to practice in their area. Winter semester panels included "Exploring the Practice of Family Law" with professor and Commissioner Erin Childs and attorney Stephen Hamilton; "Exploring the Practice of Civil Litigation" with plaintiffs' attorney and professor Jacqueline Frederick and attorney Jay Hieatt; and "Exploring the Practice of Criminal Law" with District Attorney Dan Dow and professor and public defender Stephen Rice. Upcoming discussions include "Exploring Business and Hi-Tech Law" with patent attorney Tom Lebens and Mind Body in-house counsel Joe Benson, and "Exploring Employment Law" with attorneys Lisa Lazzara and Susan Waag. Please let me know if you would be interested in

participating in one of these panel discussions.

Our students deeply appreciate their local law school. To quote Dorothy Grant, a third-year student and mother of toddlers, "Getting a legal education after having a family, and while working, is only possible with a program like the one offered at SLO College of Law. I'm very grateful for the opportunity." Andrew Dibbern, a veterinarian who just graduated, said, "The location is great and the faculty and staff are awesome. I've been very impressed and grateful

for the SLO legal community contribution and support of the college."

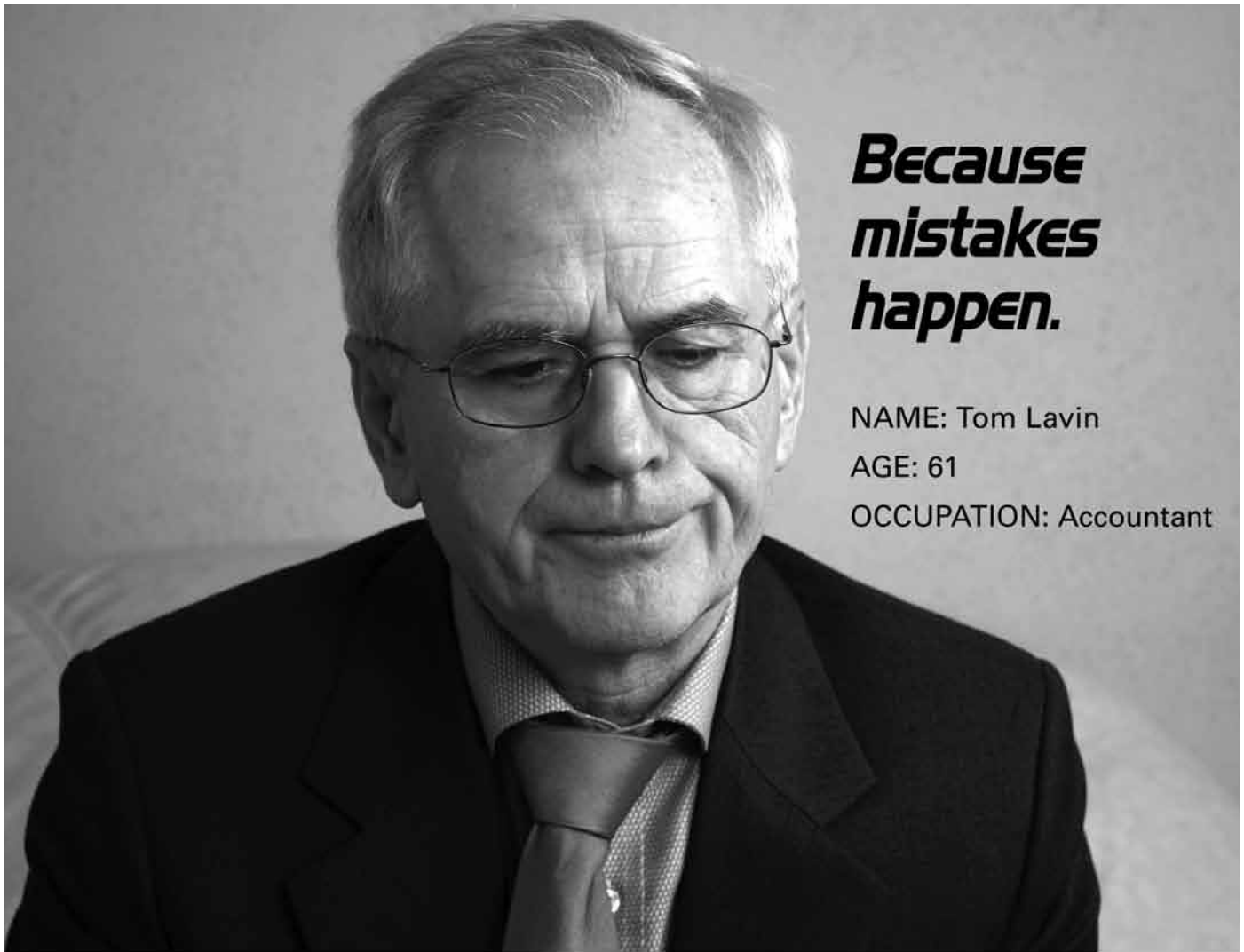
We hope SLO Bar Association members will help identify potential new students—people you believe have the intelligence, integrity and drive to take on the challenge of law study—and encourage them to explore applying to SLOCL. Sufficient new student enrollment is necessary in order for our local branch of MCL to remain financially viable and, frankly, to keep our doors open. Thank you for your support. ■

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# Free Mobile App Connects You With SLO County Sheriff's Office

by San Luis Obispo County Sheriff Ian Parkinson

First came our website. Now here comes the Sheriff's App. The Sheriff's Office recently debuted its new mobile phone app. We understand people are on the go a lot these days. Now you'll be able to take the Sheriff's Office along with you to stay connected to us and the rest of your community.

We began work on the app several months ago when we realized it was important to get information to the public in a timely manner, even when they weren't in front of a computer. The mobile app has a number of the same features you can find on our website, [slosheriff.org](http://slosheriff.org). Features like inmate information tell you who's in custody and visitation hours. And to stay up to the minute with information from the Sheriff's Office, we've included our press releases on incidents happening around the county. You can even set up a notification system to alert you when there's a new press release that's been posted. We also have a feature regarding all the different Sheriff's Office programs like Project Lifesaver, Neighborhood Watch and Crime Stoppers and how you can get involved.

But there are a number of features which are new on the app. Our Most Wanted Wednesday feature is one of our more popular segments on our social media platforms. Every Wednesday, we name a person who is wanted by the Sheriff's Office and a list of their crimes. We find the public likes to help us nab the bad guys and gals. And we couldn't do it without you. In fact, we have about a 73 percent rate when it comes to capturing these criminals. Now you'll be able to find that feature on the app.

A couple of the exciting features that you will only find on the app are notifications and alerts. You will be able to receive updates on breaking news notifications directly to your phone. For example, if there's a wildland fire in the area, and you've downloaded our app, you'll be able receive alerts regarding evacuations that affect you and your family. The notification feature will also let you know about severe weather in the area and what you need to do to ride out the storm.

The app is powered by [thesheriffapp.com](http://thesheriffapp.com) which specializes in developing mobile apps for law enforcement agencies around the country. We had specific needs and they were able to integrate them into our app to make it convenient and easy to use with the features we knew the public would want. It gives everyone who downloads the app full control of the information in the palm of their hand because it's highly customizable.

You can get our free mobile app on Google Play for Android phones or download it from the App Store for Apple products. ■

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Contributions to the *Bar Bulletin* must be submitted electronically in Microsoft Word format directly to the Editor at:

raymondinsf@yahoo.com

Footnotes will not be published; any essential notes or citations should be incorporated into the body of the article. Contributors are encouraged to limit the length of their submitted articles to 2,500 words or less, unless the article can be published in two parts in successive issues.

The *Bar Bulletin* is published six times per year:

- January–February
- March–April
- May–June
- July–August
- September–October
- November–December

To ensure consideration for inclusion in the next scheduled edition, articles, advertisements and payments must be received by the 25th of the month, as stated at right.

The *Bar Bulletin* reserves the right to reject or edit any contributions. By submitting contributions for publication, contributors consent under this policy to the editing of their work, the publication of their work and the posting of their work online. Contributors must include an e-mail address and/or telephone number, as they may be contacted during the editorial process.

Your submission of photographs to the *Bar Bulletin* authorizes their publication and posting online. All photographs must be submitted in .jpg or .pdf format with a resolution of not less than 300 dpi via e-mail or, for large files, WeTransfer. Please include the photographer’s name and that you have permission to use the photograph.

The San Luis Obispo County Bar Association does not pay contributors for their submissions.

Opinions expressed in the *Bar Bulletin* do not necessarily reflect those of the San Luis Obispo County Bar Association or its editorial staff. The *Bar Bulletin* does not constitute legal advice or a legal resource and must not be used or relied upon as a substitute for legal counsel that may be required from an attorney.

Bar Bulletin Advertisement Policy

All advertisements in the *Bar Bulletin* must be submitted in .jpg, tif or .pdf format with a resolution of not less than 300 dpi. Flyers or announcements for the opening, closing or moving of law practices, upcoming MCLE programs or other events put on or sponsored by organizations other than the San Luis Obispo County Bar Association are considered advertisements, and therefore subject to this policy and to all applicable advertising rates.

The cutoff dates for accepting advertisements, payments and articles are as follows:

January–February issue deadline	11/24
March–April issue deadline	1/24
May–June issue deadline	3/24
July–August issue deadline	5/23
September–October issue deadline	7/25
November–December issue deadline	9/23

Information on advertisement sizes and rates can be found online at [www.slobar.org](http://www.slobar.org). All advertisements must be prepared prior to publication. Contact Nicole Johnson at (805) 541-5930 regarding methods of payment accepted.

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