

NON-SEQUITUR

The Publication of
Stanislaus County Bar Association
<http://WWW.STANBAR.ORG>

October 2012

PRESIDENT'S MESSAGE

By Marlisa A. Ferreira

Where did our summer go? The fall season is now upon us. Before we know it, we will have little ones knocking at our doors on a balmy October evening, dressed in their scariest costumes, and shouting, "Trick or treat!" Everyone knows what follows Halloween.....yet another thanksgiving with a bountiful harvest to share with our families. Soon after, it will be time to celebrate the Christmas holiday and prepare for the new year.

Speaking of new years – if you are interested in joining our 2013-14 SCBA Board, we would like to hear from you! Simply contact any of the current Officers or Directors or call the Bar Office at (209) 571-5729 and give us your name and contact information. It is never too early to start anticipating a good 2013 with new possibilities on the horizon.

This past August, the Bar Association hosted a luncheon with the California Chief Justice, Tani G. Cantil-Sakauye. It was truly a special occasion and for those of you that took the opportunity to attend this event, you already know that it was a wonderful day. For those of you that were unable to attend, we made sure to include some photos of the luncheon to share with everyone on our website at stanbar.org and in this issue of the Non Sequitur. It was an exciting day to meet and mingle with the Chief Justice. She was gracious to allow our members to ask her both personal and business questions and addressed the strapping budget constraints affecting the California Justice system. She was an eloquent and dynamic speaker and we were honored to have her visit the legal community here in Modesto.

The SCBA has many MCLE programs and events lined up for the rest of the year. We hope you take advantage of these – to further your legal education and to meet other legal professionals in our community. We all work so hard and we need time to play too!

Our most popular event is our Bench-Bar Dinner and this year it will take place on Thursday evening October 18th, from 5:00 PM to 9:00 PM. The 2012 theme is *"The Bench, The Bar and the Groove of the 70's."* Jurists and Lawyers will discuss the impact of cases of the 70's within the halls of the Stanislaus County Superior Court. In addition to our panel discussion, H.G. Wells (the author best known for "War of the Worlds" and "Time Machine") has traveled from merry-old England and will be in Stanislaus County for one night only. He and Judge Hugh Rose (Ret.) will challenge the jurists and lawyers in discussion and debate surrounding "The Future Shape of the California Court and Legal System After the War of the Worlds." This evening promises to be a thought-provoking night!!! We hope everyone will join us, please contact Deana at the Bar Association to RSVP.



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CALENDAR OF EVENTS

OCTOBER

- 8 **"Traffic Court Judge Pro Tem & DCSS Training"** with Comm. Lynn Meredith on Monday (Columbus Day) 9 AM-4 PM at Floyd Ave; 6 Hrs total credit (*Requires: 10 yrs. Exp + 3hr online Ethics course*)*
- 12 **MCLE: 'The Use of Criminal Background Checks in Hiring Decisions'** by Katherine Boyd of Curtis Legal Group, Noon-1 pm in Jury Room.
- 18 **Bench-Bar Dinner** - Thurs. Eve, 5-9 PM, SOS Club – "The Bench, The Bar and The Groove of the 70's". Special guest: H.G. Wells and Judge Hugh Rose (Ret.)

NOVEMBER

- 2 **MCLE: "Enhancing Your Courtroom Presentation With Technology"** by Loura Erickson & Kristina Seward of McCormick Barstow with Judge Johnson, Noon-1 PM in Dept. 23, City Towers Bldg.
- 18 **Movie Sunday** – State Theatre, Sun-3 PM, "Anatomy of a Murder". Tickets \$8 each.
- 9 **Judicial Calendar/Nomination Luncheon** - Noon to 1:00 PM at The SOS Club.

DECEMBER

- 7 **Holiday Luncheon:** Noon to 1:00 PM at The SOS Club - Elections & Charity Donations.

"AROUND THE OFFICES"

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LUNCHEON WITH CHIEF JUSTICE TANI G. CANTIL-SAKAUYE
THE GALLO CENTER FOR THE ARTS
FRIDAY, AUGUST 24, 2012



**A SPECIAL THANK YOU TO ALL THOSE WHO
SPONSORED**

THE CHIEF JUSTICE OF CALIFORNIA LUNCHEON
FROM THE STANISLAUS COUNTY BAR ASSOCIATION



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THE STANISLAUS COUNTY SUPERIOR COURT AND
THE STANISLAUS COUNTY BAR ASSOCIATION
PROUDLY PRESENT:

"TRAFFIC COURT JUDGE PRO TEM & DCSS TRAINING"

By Commissioner Lynne Meredith
of the Stanislaus County Superior Court

Stanislaus Traffic Court Bldg.
Monday, October 8, 2012

2260 Floyd Avenue
Modesto CA 95355

**** 9:00 AM to Noon (Traffic) & 1:00 PM to 4:00 PM (DCSS) ****



MCLE CREDIT

The Stanislaus County Bar Association is a State of California MCLE approved provider and certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education.

6 Hours General MCLE Credit

Provided by the Stanislaus County Bar Association



LUNCH BREAK Noon to 1:00 PM

COST:

\$ 40 Per Person



"ETHICS COURSE"

The online Ethics Course below, is **REQUIRED** to qualify to sit as a Judge Pro Tem.

3 hour course online at:
www2.courtinfo.ca.gov/cjer/pro_tem.htm

◇ FOR MORE INFO, PLEASE CALL THE SCBA OFFICE AT (209) 571-5729 or Debbie Perry at (209) 525-6303 ◇

Return this portion with your payment by **October 1, 2012**, to the SCBA ◇ 804 14th St, Modesto CA 95354

"TRAFFIC COURT JUDGE PRO TEM & DCSS TRAINING"

Monday, October 8, 2012

NAME: _____ FIRM: _____ BAR#:

Stanislaus Traffic Court Bldg. ◇ 2260 Floyd Ave, Modesto CA
\$40.00 9:00 AM to Noon (Traffic) & 1:00 PM to 4:00 PM (DCSS)
6 Hours MCLE Credit

AMOUNT ENCLOSED: \$ _____

(No refunds after October 1, 2012)

THE STANISLAUS COUNTY BAR ASSOCIATION PROUDLY PRESENTS

"The Use of Criminal Background Checks in Hiring Decisions"



**Guest Speaker: Katherine Boyd
of Curtis Legal Group**



Friday, October 12, 2012 Noon-1:00 PM
Court House – Jury Assembly Room
800 11th Street, Modesto

MCLE CREDIT

The Stanislaus County Bar Association certifies that this activity has been approved for MCLE credit by the State Bar of California for:

1 HOUR MCLE CREDIT

The Stanislaus County Bar Association is a State of California MCLE approved provider.

COST:

SCBA & Bench Members:.....\$40*

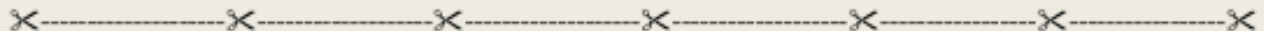
(No lunch ...\$35)

Non-Members:.....\$65*

(No lunch.....\$60)

***2012 DUES PAID = Member Rate**

For more info, please call the SCBA at 571-5729



Return this portion with payment by **October 5, 2012** to: SCBA • 804 14th St, Modesto CA 95354

"The Use of Criminal Background Checks in Hiring Decisions"

Friday – October 12, 2012

Name: _____ Firm: _____ ☐ NO LUNCH

Lunch choices:

SANDWICH

- ☐ Turkey
- ☐ Roast Beef
- ☐ Veggie

CHIPS

- ☐ Potato Chips
- ☐ Doritos

DRINK

- ☐ Diet Coke ☐ Coke
- ☐ Diet 7-Up ☐ 7-Up
- ☐ Bottle Water

AMOUNT ENCLOSED: \$ _____

(No refunds after **October 5, 2012**)



The Stanislaus County Bar Association Invites You To

The 2012 BENCH-BAR DINNER

"1970's Theme"

6 PM: No-Host Cocktail

7 PM: Buffet Dinner

8 PM: "Get Your Funky
Groove On"

RSVP by October 12, 2012



"The Bench, The Bar and the Groove of the '70s"

Jurists & Lawyers Discuss the
Impact of Cases of the 1970's
Within the Halls of the Stanislaus
County Superior Court.

Thurs - Oct. 18

The S.O.S. Club

819 Sunset Ave, Modesto CA 95351

\$45 each & guests are more than welcome!

For more info, please call the SCBA Office at (209) 571-5729

Return this portion with your payment, by October 12, 2012, to: SCBA • 804 - 14th St, Modesto CA 95354

"The Bench, The Bar and the Groove of the '70s"

Thursday - October 18" - 5:00 to 9:00 PM

Name(s): _____

_____ Firm: _____

6pm: No-Host Cocktails . 7pm: Buffet Dinner . 8pm: Revisit Stanislaus Court in 70's

BUFFET DINNER WILL INCLUDE:

Tri-Tip (Santa Maria Style with Wild Mushroom Demi)
and Chicken (Grilled with Asiago Sauce)

AMOUNT ENCLOSED: \$ _____ **(No Refunds after October 12, 2012)**

**\$45 each &
guests welcome**



BIG BROTHER IS ONLINE ...

By Sharon Lizardo

(I) THE STARTING POINT:

Whether you know it or not, someone is watching, listening and tracking your every word, every day and everywhere using technology from smart phones, drone cameras, internet consumer purchases, social networking postings, video surveillance, airport security scanners, or DNA databases to name a few. On any given day, an individual may receive 41 text messages, 110 e-mails, eight cell phone calls and visit 94 websites. There is even commercial about Siri, an intelligent personal assistant application for the iPhone 4s using director Martin Scorsese as the consumer. Based on voice recognition technology, Siri changed appointments and advised the Director of the precise GPS location of a friend. There is a cost to that free content consumers enjoy on the internet... a loss of privacy.

Think your social networking posts are private? Think again. The private sector, specifically Google and Apple are under attack because of alleged misuse of consumer data. This has the full attention of Senator Charles Schumer of New York who has launched an all out effort to curtail the industry and have the Federal Trade Commission investigate the mobile phone operating systems. His concerns are over the misuse of contact lists, photos and an individual's biographical information. Data privacy is not highly legislated, but perhaps it should be. Access to private data contained in third party credit reports may be sought when seeking medical care or employment opportunities or making purchases of homes or automobiles.

We live our lives online but does that mean we have given the government and private industry carte blanche to all that information? Are our privacy interests being eroded by new emerging technology? Consider this recent case involving GPS tracking devices.

(II) THE GPS CASE:

Vehicle tracking devices are typically secreted beneath the undercarriage of a car. The device transmits a radio signal directly or by GPS that reveals an automobile's route to law enforcement. However, you don't need a tracking device to monitor a car or individual's movement. Tracing someone's whereabouts is easy if the individual owns a smartphone equipped with a GPS tracker. This is true even if the cell phone is turned off.

In *United States v. Antoine Jones* (2012) 565 U.S. ____ (No. 10-1259), the Supreme Court unanimously restricted law enforcement's ability to attach GPS tracking devices on vehicles. This may be a novel test of how privacy rights will be protected in the digital age. All the Justices agreed with the outcome but not the reasoning.

(A) THE QUESTION:

Whether the attachment of a Global-Positioning-System (GPS) tracking device to an individual's vehicle, and the subsequent use of that device to monitor the vehicle's movements on public streets, constituted a search or seizure within the meaning of the Fourth Amendment?

The case involved Antoine Jones, a nightclub owner suspected of illegal drug trafficking in Washington, D.C. Pursuant to a search warrant, the police installed a GPS device on Jones's Jeep Cherokee. However, the monitor was attached on the 11th day - one day late. For the next 28 days, law enforcement used the device to monitor the vehicle's movements. The government obtained a multiple count indictment for conspiracy to distribute cocaine. The seizure included five kilograms of cocaine and cash proceeds. It was deemed an illegal search and seizure and the evidence fell victim to the exclusionary sanction.

The ruling is a narrow one, limited to the installation of GPS devices. The case does not stand for the proposition that law enforcement can never utilize a GPS tracker. With the development of sophisticated technology, it is easy to understand that privacy rights do not fit easily within Fourth Amendment traditional analysis. However, Scalia did just that in his opinion.

(B) THE TRESPASS TEST: SCALIA'S VIEW

In the majority opinion written by Justice Scalia, he employed 18th century tort law, specifically the physical trespass onto personal private property. In the holding, Scalia said, "The government's installation of a GPS device and its use to monitor the vehicle's movements constitutes a search. The Government physically occupied private property for the purpose of obtaining information." In effect, the attachment of the tracking monitor was illegal.

Scalia's rationale did not comport to Justices Samuel Alito and Sonia Sotomayor's viewpoints. It is noteworthy that the government did not pursue an alternate theory of: if the GPS attachment was a search, was it reasonable and therefore lawful? This argument for reasonable suspicion and probable cause was forfeited because it was not raised in the court below.

(C) THE REASONABLE EXPECTATION OF PRIVACY: ALITO'S VIEW

In his concurring opinion, Justice Alito agreed that GPS tracking was a search but ridiculed Scalia for considering conduct that might have provided grounds in 1791 for trespass to chattels. Alito preferred the test of reasonable expectations of privacy. That test developed in *Katz v. United States*, (1967) 389 U.S. 347, utilized two prongs to determine whether the suspect at the time of the search had a reasonable expectation of privacy:

(1) Did the person actually expect some degree of privacy?

(2) Is the person's expectation of privacy objectively reasonable- that is one society is willing to recognize?

The *Katz* decision involved FBI agents placing an electronic eavesdropping device on the exterior of a public phone booth to investigate the suspect's illegal gambling wagers. The United States Supreme Court made government wiretapping subject to the Fourth Amendment's warrant requirement and no longer was limited to physical intrusions.

In Alito's view, the court should have addressed new scientific technology using the *Katz* formula instead of deciding the case about 21st century surveillance by focusing on 18th century tort law. Alito would have framed the issue as whether the long term use of a GPS tracking device violated today's reasonable expectations of privacy. His point was that the long term use of GPS monitoring in investigations of most offenses impinges on expectations of privacy.

Specifically, he noted “that people’s use of technology is changing the expectation of privacy for the courts. In the next 10 years.... 90 per cent of the population will be using social networking sites and they will have an average of 500 friends to monitor their location 24/7 via use of cell phones. What will the expectation of privacy be then?”

(D) THIRD PARTY SHARING: SOTOMAYOR’S VIEW

Only Justice Sonia Sotomayor insisted that fundamental rights not be overlooked in the digital age. Six times during oral arguments, she referenced Big Brother, a character in the 1984 George Orwell novel. Her opinion discussed the awareness that the government may be watching which chills associational and expressive freedoms. She urged the reconsideration of the rule that law enforcement can obtain without a warrant unprecedented amounts of data that we give to third parties.

Her concurrence discussed that sharing of our personal informational data via e-mails or banks with a third party does not equate with governmental wide open access. She deemed the reasonable expectation of privacy tests ill suited for the digital age.

(E) HOLDING:

The unanimous holding was that installation of the GPS tracking device was a violation of the Fourth Amendment. Scalia’s opinion stated: “when that device is installed against the will of the owner that is unquestionably a trespass, rendering the owner of the car not secure in his effects.” It was what the majority did not say which is telling.

The majority declined to state whether the search was unreasonable and required a warrant. The decision was a narrow one and should be interpreted that the police always need a search warrant. The key was the attachment of the device which caused the approach to traditional common law property law.

Discussion of the case cannot be complete without the Fourth Amendment. James Madison, drafted The Bill of Rights, specifically, the Fourth Amendment protects the “right of the people to be secure in their persons, houses, papers and effects, against unreasonable search and seizures, shall not be violated.” To secure these rights, it provides that “no warrants shall issue, but upon probable cause, supported by oath of affirmation and particularly describing the place to be searched and the person or things to be seized.” Madison’s goal was to ensure that a search would be carefully tailored to its justifications and not become an exploratory search.

The United States Supreme court defined a seizure in *United States v Jacobsen* (1984) 466 U.S. 109 as: “when there is some meaningful interference with an individual’s interest in that property.” In effect, the focus of the Justices was on physical trespass. The flip side is that the Fourth Amendment does permit reasonable searches within certain justifications. Law enforcement may override one’s privacy concerns and conduct a search of one’s home, office, automobile, storage unit, financial records or computer records if:

- (1) Probable cause- law enforcement believes there is a “fair probability” based on articulable facts the sought-after evidence exists and a magistrate issues a search warrant or
- (2) The particular circumstances justify the search without a warrant.

The hefty price the government pays for this violation is the exclusion of the illegally obtained evidence. That was the price paid by the police in the *Jones* case. But privacy interests are not limited to the criminal procedure arena, they may be torts in certain cases.

(III) TORT LIABILITY - PRIVACY:

William Prosser, renowned tort expert, articulated four types of privacy torts in his article, *Privacy, California Law Review*, Vol. 48, No. 3 (August 1960):

- (A) Intrusion upon the individual’s solitude or into his private affairs;
- (B) Public disclosure of private facts;
- (C) False Light in the public eye;
- (D) Appropriation, for the defendant’s advantage, of Plaintiff’s name or likeness.

He noted that physical intrusions, listed as item 1 above, would be extended to wiretapping and microphones. No doubt the legal scholar would have revised the physical intrusions to include: GPS tracking devices, DNA databases, social networking, video surveillance and airport security systems. Prosser discussed Privacy as a tort that was primarily a mental one – to fill in the gaps left by trespass, nuisances and the intentional infliction of emotional distress.

Privacy advocates may forget that the right to privacy is not specifically mentioned in the Constitution or Bill of Rights. However, in the landmark case of *Griswold v Connecticut*, (1965) 381 U.S. 479, the United States Supreme Court established the right to privacy as a basic human right protected by the Ninth Amendment. The constitutional right to privacy was described by Justice William O. Douglas as “protecting a zone of privacy covering the social institution of marriage and the sexual relations of married people.”

(1) FEDERAL PRIVACY ACT:

The Electronic Communications Privacy Act of 1986, 18 U.S.C. Sections 2510-2522, was an amendment to the Omnibus Crime Control and Safe Streets Act of 1968, the Wiretap Act. The Privacy Act expanded the protection of information to include phone lines and electronically stored data. The criticism has been that the revised enactment failed to protect all the communications and consumer records.

(2) “WEBCAM GATE”:

A federal class action suit was filed for violation of the Federal Privacy Act in *Rollins v Lower Merion* (2010) U.S. District Court, Eastern District, Pennsylvania No. 10-0665. The plaintiffs charged that two Philadelphia high schools secretly spied on its students by surreptitiously and remotely activating webcams embedded in the school issued laptops that the students used at home. The schools admitted to capturing and intercepting over 66,000 images, some of minors in compromising or embarrassing situations. Termed “Webcam Gate”, the schools paid out \$610,000 in settlement for the infringement of its students’ privacy interests.

(3) CALIFORNIA PRIVACY ACT:

While privacy laws have undergone changes, the laws that govern our privacy rights are due for a major overhaul. Millions upon millions of people are online and it is doubtful that that will change. We cannot blame the government for all this intrusion, especially since we often are willing partners.

Law enforcement could have avoided the issue of privacy violations in *Jones* had the officers followed the instructions of the search warrant time limitations. The Big Brother style of monitoring for the collection of informational data without the individual's consent is controversial and complicated.

The California Online Privacy Protection Act of 2003 requires operators of commercial websites or on line services that collect personal information on California residents through a website to conspicuously post a privacy notice on its site to comply with its policy. The problem is that it is not applicable to requests from third parties or from ISPs, Internet Service Providers. Also, it has no teeth because there are implementation and enforcement issues.

(IV) IN THE END ...

It is not too late to reclaim our privacy rights. Traditionally, those rights meant the right to be left alone or to be free from unwarranted publicity. It meant a generic term encompassing intimate personal relationships or activities and freedoms to make fundamental choices involving the family or relationships with others. In the 21st century, those rights have been expanded to data privacy and consumer privacy.

It's time to redefine privacy and formulate new criteria. The Supreme Court sidestepped the privacy issue in *Jones* by focusing on a property based trespass approach. But what would have been the decision had the Court been saddled with a GPS tracking via Jones's cell phone via pings where no attachment was needed? Justice Sotomayor was on the right track when she called for a revamping of the antiquated *Katz* test. Unfortunately, no one else heard her. Like the Song of the Sirens that beckoned sailors in Homer's *Odyssey*, the Court should address Sotomayor's concerns and soon, otherwise our privacy rights will be left shipwrecked on the shores somewhere in cyberspace. Let's hope there is a new case on the horizon which will create the much needed guidance in this area.

Sharon Lizardo was a former prosecutor in Stanislaus County for over 20 years. In the 1980's she clerked for the Honorable Myron E. Leavitt, Eighth Judicial District Court, Las Vegas, Nevada. Presently, she teaches Evidence Law. She may be reached at carter8154@sbcglobal.net.



JOB OPENINGS

CIVIL LITIGATION AND/OR TRANSACTIONAL ATTORNEY –

Curtis Legal Group has an opening for an attorney with 1-3 years experience handling civil litigation and/or transactional business work.

Please provide a resume and writing sample to Tracy L. Thomas at TThomas@CurtisLegalGroup.com.



A recurring theme in legal publications is the need for us to find balance. Without balance, the line between the home and the office blurs. The lawyer in us begins to dominate all other aspects of our lives, and this isn't good. I'm not talking about the serious health issues that unbalanced lawyers face. I'm talking about how the rest of the world views us: Extremely boring. (By "us", naturally, I mean "you", because I am delightful.)

Imagine a dinner date with a DA whose line has blurred: Three hours of four words striking your forehead like a ball-ping hammer: "And then what happened?" Without balance, at best, the DA is boring. At worst, the DA comes off as a jerk because it's only a matter of time before the cross-examination begins: "Huh, you ordered the fish? Why not the steak? What's wrong with steak? Steak is how America won the war. So, you hate America, don't you? DON'T YOU! Why are you crying?" Declaring, "I have no further questions" at the end of the date is not the equivalent of a good night kiss. Bor-ring.

During interviews, we've all been asked, "What are your weaknesses?" According to my trusty Interviewing for Dummies © guidebook, this must be spun into a strength. (When I was little, I always hoped what I referred to as my trusty [blank] would be a horse or a six shooter, or perhaps even a sidekick named the [fill in name of town] Kid, but oh well.)

My patented (pending) response is that "I take my work home with me and can't turn off the job just because it's 5 o'clock." (Not for nothing, but if I were to describe myself in one word, it'd be, "Tenacious", pronounced with squinty eyes and about five s's.) Now that I've been a lawyer for awhile, however, this response is no longer spin; The line has blurred. I now find myself unconsciously taking people's depositions. When I meet somebody, I end up with their life story, and, if they're lucky, they learn my name and the party I represent. I am boring. For example, take a recent weekend when my wife was out of town:

The Deposition of IRVING JOHNSON (not Magic) was taken in the above-entitled matter pursuant to all of the provisions of law pertaining to the taking and use of depositions, at 12:00 PM at the 108 Sports Lounge, in the City of Riverbank, in the State of California. IRVING JOHNSON, having been duly sworn, testified as follows:

Q: Please state your full name for the record, spelling your last name.

A: Irving Johnson. (Deponent extends his hand in greeting. How do non-lawyers greet each other? Do they still shake hands, or, like after every play in a women's volleyball match, do I have to perform some elaborate ritual? "S-O-S-O [pause] S-O-S, my mother, your mother lives in the west. Every night they get in a fight and this is what they say..." scrolls through my head. Where was I? (off the record; back on the record): Do I extend a fist and bump knuckles? I stick with what I know: Firm handshake/Blue steel eye contact.)

Q: What is your present address?

A: I'm homeless, but I's gots to watch my game. (For the record, who am I to judge? I'm in a bar at noon with a pitcher of PBR in front of me and only have one glass.)

Q: You're referring to the basketball game on the TV in front of us?

A: Yeah.

Q: Is that a yes?

A: What?

Q: Have you had any drugs, medication, or alcohol in the last twenty-four hours that may affect your ability to testify here today?

A: I's got a couple of 40's in my bag to take a snort from. You want me to top you off?

Q: I'm fine with my pitcher. (At this point, I'm reminded that these proceedings are done under oath.) Well, maybe later. OK, I'm entitled to your best testimony today. You're allowed to estimate, but I don't want you to guess. Do you understand?

A: I guess.

Q: (Further admonitions omitted.) Where were you born?

A: I'm from southwest Louisiana.

Q: Do you have current driver's license?

A: Used to. Then one night, I was going the wrong way down a one way street with two flat tires. Well, that's what they tell me. I'd been doing a little drinkin' and really don't remember. I'm an alcoholic so I don't drive anymore."

Q: Commendable. Did you graduate from high school?

A: Yeah, and basketball was my game, man. One time, I was so hot the coach took me out. I would dribble the ball down the court and rain down three-pointers.

Q: Are you aware that during the time you would've been in high school there was no three point line?

A: I would rain down three pointer after three pointer. Dribble dribble-dribble swoosh!

Q: Objection, non-responsive, move to strike everything except the word swoosh. (Besides being fun to say, the swoosh symbol is owned by Nike, and I don't want to be sued for sticking their trademark.)

A: See, I was making so many points it was screwing up the coach's game plan so he took me out. Can you believe it?

Q: What I believe is irrelevant.

A: That team was loaded. It was me and BB Birmingham. You know, BB Birmingham? How could you have never heard of old BB?

Q: Let me ask the questions. Tell me about Mr. Birmingham? (Yes, the question is vague and calls for narrative, but no objection was made.)

A: He averaged thirty points a game, in high school. Thirty points in high school! And, this was in the days before the three point line.

Q: Huh?

A: What?

Q: Exactly. What happened to BB?

A: He lived down the street from me. I got a basketball scholarship to Southwest Louisiana State. I was going to get free room and board, but didn't take it.

Q: Why not?

A: Wanted to smoke weed and couldn't do that in the dorms. Man, that's all I did. I should've listened to my momma.

Q: Yes, you should've. (I know, objection, argumentative, but he really should've listened to his momma, mmhmm.) How did your basketball career go?

A: Never even stepped on the court. I had a job on an oil tanker in the Gulf. You know, so I could afford the apartment and the weed.

Q: (As a shout out to the DA's in my readership) And then what happened?

A: This big wave came over the deck and knocked me into some pilings.

Q: Starting from the top of your head and extending to your toes, please list all the injuries you attribute to the subject accident.

A: I screwed up my knee, man. Check this scar out. (Deponent begins slowly rolling up his pants.)

Q: Please don't show it to me. Please. Please. (Undaunted, Deponent exposes more of his leg.) Move to strike move to strike move to strike move to strike move to strike move to strike why aren't you striking. Bahhhhhhhhhh!

A: Yes! The Lakers are going to win.

Q: Objection, no question pending, speculation, lack of foundation, improper Marv Albert testimony.

A: BB Birmingham, man, old BB Birmingham. I'm going outside and have a toot, if you know what I mean.

Q: I have nothing further.

(Where upon , the deposition concluded at 12:15 PM.)

Guess who was the lawyer in the above conversation? See, I discovered this guy's entire life story, and all he knew was that he tried to talk to this really boring, albeit handsome, guy at the bar. I remember him because he had a story to tell. As for me, because I was boring, he won't remember me. We all have a story to tell, but stories about your winning argument involving obscure probate code sections should not be it. If you life is a book, would anybody read it? Find balance.

There's a whole world outside our offices. So, once you get your billing recorded of course, go enjoy it. There is an old saying that nobody wants their tombstone inscribed, "I wish I had spent more time at the office." If you find yourself responding, "Except for the guy who missed too much work, was fired, lost his health insurance, and then died alone because he couldn't get treatment for his illness," then your line has blurred. You are boring. It doesn't have to be that way. Find balance. You can still be an excellent attorney and many of your cases can be life changing, just strive to be more than that.

The very fact that I wrote this article and found it amusing enough to share is a sign that my lines have blurred. If you read the above deposition transcript and found yourself critiquing it or formulating follow up questions, you too are boring. Long story short, I guess what I'm saying is, who's up for golf this Friday?

NON SEQUITUR

Ads, Articles, Letters and/or Pictures can be submitted to Deana Skelton at the SCBA Office (209) 571-5729 or deana@stanbar.org
Feel free to contact us for more information.

Have you paid your 2012 SCBA Membership Dues?

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JUST FOR LAFFS!

Two little squirrels were walking along in the forest. The first one spied a nut and cried out, "Oh, look! A nut!" The second squirrel jumped on it and said, "It's my nut!"

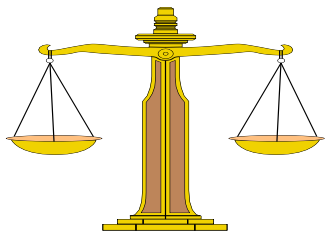
The first squirrel said, "That's not fair! I saw it first!"

"Well, you may have seen it, but I have it," argued the second.

At that point, a lawyer squirrel came up and said, "You shouldn't quarrel.

Let me resolve this dispute." The two squirrels nodded, and the lawyer squirrel said, "Now, give me the nut." He broke the nut in half, and handed half to each squirrel, saying, "See? It was foolish of you to fight. Now the dispute is resolved."

Then he reached over and said, "And for my fee, I'll take the meat."



STANISLAUS COUNTY BAR ASSOCIATION
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2012 MEMBERSHIP INFORMATION

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Law School _____ Year Graduated _____

I want to support the SCBA by serving on the indicated programs:

- | | |
|--|--|
| <input type="checkbox"/> Lawyers Referral Service Committee | <input type="checkbox"/> <i>Non Sequitur</i> Committee |
| <input type="checkbox"/> Lawyers Referral Service Panel Attorney | <input type="checkbox"/> Golf Committee |
| <input type="checkbox"/> MCLE Committee | <input type="checkbox"/> Law Week Events |

Regular Membership.....\$ 135.00

New SCBA Member*.....\$ 110.00

Retired Attorney.....\$ 50.00

Associate Member.....\$ 30.00**

1st Time Member**.....\$ 75.00 (intro offer, 1st year only)**

*****SCBA Scholarship Fund:** You can help to increase the Scholarship Fund by making a voluntary contribution at this time.

A new member is an individual that has **not been a member of the SCBA for the last consecutive 3 years.*

AMOUNT ENCLOSED:

Dues.....\$ _____

Scholarship Contribution*.....\$ _____**

Total.....\$ _____

***Individuals eligible to be "Associate Members" (if **not** admitted to practice law in Calif. or another jurisdiction, are: law clerks, law students, paralegals, legal assistants, legal secretaries, court personnel, & legal administrators. Other jurisdictions: same.*

TOP TEN REASONS TO JOIN THE SCBA

- 1) **Meet new people:** Don't just hang out with familiar faces. Use MCLE's and Events as an opportunity to build your network of contacts throughout the community and county. Then, when you're back at the office, the answer may be just a phone call or e-mail away!
- 2) **Gain inspired solutions:** Your best resource for solving your toughest challenges could be seated next to you. Participate in thought-provoking discussions on issues that affect your firm, department or your professional association.
- 3) **Increase your productivity and value to your employer/firm/dept:** Get cutting-edge information on how to increase your law office/department's profitability.
- 4) **Learn from subject matter experts:** Attend MCLE's to hear from law practice leaders who will share their expertise and practical experience. Be educated, enlightened, and even entertained by keynote speakers and other special guests from the legal community.
- 5) **Earn mandatory continuing legal education (MCLE) hours/credit:** All MCLE programs offered by the SCBA, meet the state requirements for continuing legal education for attorneys and paralegals.
- 6) **Make a difference:** Participate in elections, resolutions, and debates that directly impact the future of the SCBA, it's members and the evolving legal support profession – by volunteering on the Board of Directors.
- 7) **Renew yourself and relax:** Take time out from the routine and return to the office re-energized to manage the challenges ahead.
- 8) **Share what you learn:** Make sure to share at least one thing you learned or new thing you saw. Not just with the law office/department or co-workers/employees you work with, but with legal acquaintances in the community. This will demonstrate to them, the value of your membership and participating in the SCBA.
- 9) **Discover new products and services:** Learn about evolving technology and pass the knowledge along to the rest of your office staff. Stay connected!
- 10) **Power of advertising:** SCBA members have the opportunity to have their offices or themselves, appear on our Bar Association website. This type of advertising has been proven to be the most popular way for the public and future clients to contact legal services of many different kinds.

WHAT ARE YOU WAITING FOR? REGISTER ON-LINE TODAY!!

Renee Brush & Associates
invite you and your spouse or guest to our
12th Annual Harvest Party
for cocktails, hors d'oeuvres
and entertainment with our favorite DJ.

Date: Thursday, November 15th
Time: 6:00 pm - Midnight
Location: Renee Brush & Associates
1230 15th Street, Suite C
Modesto, CA 95354
R.S.V.P.
209-544-1551

Please join with us and help families in need this
Holiday Season. We will be collecting canned food
and delivering donations to the Interfaith Ministries
the following day.

13th Annual Family Domestic Violence Conference

Teen Dating Violence

Friday, October 5, 2012

Petersen Event Center - 720 12th Street, Modesto

Conference 8:30 am - 12 noon - Registration 8:00-8:30 am

The Conference is **FREE** (includes breakfast) - CEUs available for \$25.00

Limited parking is available at the 12th Street Parking Garage (6th & 7th floors)



Speakers

Suzanne Schultz - Family Crimes Coordinator, San Joaquin County District Attorney's Office
Miranda Stiers - Prevention Program Manager, Haven Women's Center

Conference Topics

- What is Teen Dating Violence? A Legal Definition
- Red Flags of Teen Dating Violence and Local Resources



Objectives

Participants will:

- be able to describe the components of teen dating violence.
- know how to educate clients on how to avoid being victims of teen dating violence.
- be able to identify the signs of teen dating violence.
- be able to list local resources for teen dating violence.

To attend the conference, please email or mail registration to:

Twila Paul @ tpaul@schsa.org or 830 Scenic Drive Bldg. 3, Modesto, CA 95350

No later than September 27, 2012

Teen Dating Violence Conference - October 5, 2012

Registration Form (Please Print Clearly)

Name: _____ Agency: _____

Address: _____ City: _____ Zip: _____

Checks for continuing education should be made payable to Stanislaus County and mailed to:
Attn: Twila Paul, DVCC Conference, 830 Scenic Drive, Bldg. 3, Modesto, CA 95350. **No refunds for non-attendance.**

Please indicate the CEU's you will be applying for:

MFT's/LCSW's - BBS#PCE784 (3 CEU hours) License # and Expiration Date _____
Provided by CSU Stanislaus, Provider Number PCE784. Course meets the qualifications for 3 hours of continuing education credit for MFT's and/or LCSW's as required by the California Board of Behavioral Sciences

Registered Nurses Continuing Education Credits- License # and Expiration Date _____

The Stanislaus County Health Services Agency- approved by the California Board of Registered Nursing. Provider number: CEP 102, for 3 contact hours.

State Bar Continuing Legal Education - State Bar # _____

The Stanislaus County Bar Association is a State of California MCLE approved provider, and certifies that the State Bar of California has approved this activity for 3 hours MCLE credits.

SCBA SCHOLARSHIP FUND

The SCBA office is now accepting contributions for the 2013 Scholarship Fund. Our goal for 2013 is to distribute at least two \$500 Scholarship Awards to Stanislaus County High School seniors at the Law Day Luncheon. Please send your contributions to the SCBA office at 804 14th St, Modesto CA 95354

The Stanislaus County Legal Professionals Assn (SCLPA) meets every second Wednesday of the month at Fuzio's at 6:00 PM. For more info, contact Deana Skelton at (209) 571-5729 or email at deana@stanbar.org. 'Like' our Facebook page at:

www.facebook.com/SCLPA

and follow us!



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Senior Associate/Junior Partner, 6-12 Years Experience Business & Corporate Transactions

Fitzgerald Abbott & Beardsley LLP is expanding its land use, natural resources, business transactions and real estate practice with the opening of a Fresno office.

This is an exciting opportunity for the right candidate to join a quality firm that offers interesting work, great prospects and a fun, collaborative working environment.

To apply, send cover letter, resume, deal sheet to:

Marsha van Broek, Executive Director
mvanbroek@fablaw.com

For more information visit:
www.fablaw.com/careers

No submissions by recruiters.



FITZGERALD ABBOTT & BEARDSLEY LLP
ATTORNEYS AT LAW



Legal Research Unleashed

By Jan Schmidt

The Stanislaus County Law Library is cutting its ties to its patrons – or at least its cables!

Until recently, patrons conducting electronic research were tied to the Library's public computers and were limited to 30 minute research sessions. Not anymore.

This week, Stanislaus became the first Law Library in the state to offer patron access to Westlaw Next Wireless. Using your own laptop, tablet, or smart phone, you can now access all of the Library's Westlaw content. Our diverse offerings including all State and Federal cases, the entire Rutter Group practice series, Miller and Starr, CJS, Witkin, CalJur, AmJur, Model Forms, Jury Verdicts, Court Rules, and hundreds of other practice guides, law journals and periodicals. Print your results to the Library printers from your laptop or save your information in PDF format on your own hard drive.

Today's law libraries face a number of challenges. Among them - the ability to deliver quality legal research tools in the face of declining revenues and the ability to keep up with ever changing technology. Wireless patron access is one of the innovative ways your Law Library is working to meet those challenges and WestlawNext is a huge step in that process.

WestlawNext is the next-generation legal research service from Thomson Reuters. It has an intuitive "Googlesque" look and feel to it, using plain-English search terms, a single global search box, customized help tools and drill-down menus to make research faster and more efficient. The search engine WestlawNext uses is different from any other research database tool. There are no more and/or/nor operators in your search queries. All cases are immediately "shepardized" by head note, telling you instantly if a case can be cited for your point of law. Also notably absent are the punctuation requirements for searches – enter "Civil 1008" and retrieve the correct code section. Only remember part of a case name? Type in the known part of a query and the search engine will try to complete the rest for you. Not only is searching easier, but West claims the results are more comprehensive.

Come by for a demonstration or help getting set up for patron access for your particular device.

Stanislaus County Estate Planning Council
Tel. no. (209) 576-1608 Fax no. (209) 576-1609

Fall Seminar
Topic: Estate Planning Issues & Updates

Date: October 17, 2012

Time: 8:30AM to 4:30PM (Lunch Provided)
Location: Community Hospice, 4368 Spyres Way, Modesto, CA

Registration Fee: Members - \$ 50 Member's Office Associate - \$ 75 Non-Members - \$ 150
CPE Credits: CPA - 8.0 hrs. MCLE - 6.5 hrs. Dept. of Insurance - Hrs. TBA

Speaker: JACQUELINE A. PATTERSON, J.D., M.B.T., CPA

Jacqueline Patterson is a founding partner in the law firm of Buchanan & Patterson, LLP and specializes in tax, estate and financial transactions. Her emphasis is positioning individuals, businesses, and fiduciary entities for orderly administration and succession planning. She advises grantors, fiduciaries and beneficiaries in matters involving the transfer, administration, investment and management of assets and is a consultant to attorneys and CPAs in fiduciary accounting, taxation and litigation. Ms. Patterson graduated from Santa Clara Law, continued her education with a Masters in Business Taxation (MBT) from the University of Southern California and is also a Certified Public Accountant.

Ms. Patterson is a nationally recognized speaker and has been a seminar discussion leader and author for many years, writing and facilitating seminars in corporate taxation, the income taxation of trusts and estates, fiduciary accounting, tax research and planning, trusts, real estate transactions and charitable trusts. She was honored by the California CPA Education Foundation with the 2000 Award for Meritorious Service, the 2002 Award for Outstanding Course Materials and the 2006 Award for Outstanding Conference Speaker. Ms. Patterson has held Adjunct Faculty positions in the graduate tax programs at both USC and Golden Gate University. As well as being a conference speaker for the AICPA, she also served on an AICPA special task force studying fiduciary accounting and on the AICPA Estate and Gift Technical Resource Panel. She taught for the National Tax Institute, has participated in panel discussions for Continuing Education of the Bar (CEB). She has authored and presented financial seminars to professional groups on a broad range of issues. She has practice experience in public accounting, the financial institution industry, business management, real estate and law.

If you plan on attending:

Please provide your name, name of your business, address, telephone & e-mail address:

Name: _____
Business: _____
Address: _____
Telephone: _____ E-mail: _____

Please make your check payable to: Stanislaus County Estate Planning Council
Attach your check to this statement and mail to: 1226 Eleventh Street, Modesto, CA 95354

1

Stanislaus County Estate Planning Council
Tel. no. (209) 576-1608 Fax no. (209) 576-1609

Fall Seminar
Topic: Estate Planning Issues & Updates

Speaker: JACQUELINE A. PATTERSON, J.D., M.B.T., CPA

Date: October 17, 2012

Course Description

1. The status of transfer tax laws as 2012 comes to an end: (75 Minutes)
 - a. Estate Tax
 - b. Gift Tax
 - c. GST
2. The crucial role of the advisor in the estate planning process: (35 Minutes)
 - a. The many phases of estate planning
 - b. The importance of an approach
 - c. Essential communication & teamwork among advisors
3. Trust administration issues, pitfalls and planning: (60 Minutes)
 - a. Problem spotting in estate plans
 - b. Blended family issues
 - c. The use of entities in the estate plan
 - d. Family law issues
 - e. Fiduciary duties and responsibilities
4. The impact of the recession on trust administration: (60 Minutes)
5. Fiduciary income tax and accounting issues and updates: (60 Minutes)
6. Tools and elections to assist clients in the creation or review of their estate plans: (60 Minutes)
 - a. Portability
 - b. Creative uses of existing elections
 - c. Information gathering and organization
7. Gifting strategies from simple to complex. (120 Minutes)
 - a. Loans
 - b. Gifts
 - c. Sales
 - d. Trusts and split-interest trusts
 - e. Charitable strategies

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**McCORMICK
BARSTOW LLP**
ATTORNEYS AT LAW

September 25, 2012

Lawyers Contact: Client Services – Cheryl Spangler
Fresno: (559) 433-1300
FOR IMMEDIATE RELEASE

McCormick Barstow LLP Announces Newest Modesto Partners

Fresno, CA (September 25, 2012) – McCormick, Barstow, Sheppard, Wayte & Carruth LLP is pleased to announce Betty Julian and Kelley Moran as Partners with the firm.

Both Ms. Julian and Ms. Moran were selected by their peers as being among the top up-and-coming lawyers in the Rising Star category from Super Lawyers for 2012. Each year no more than 2.5 percent of the lawyers in the state receive this honor. In addition, Ms. Julian and Ms. Moran have been recognized as The Top Women Attorneys in Northern California for 2012 by Super Lawyers.

Ms. Julian's practice concentrates in Family Law, Civil Litigation and Probate and Trust Litigation. Ms. Moran's practice concentrates in all aspects of Civil Litigation and Insurance Defense, with an emphasis on public entity defense work.

The law firm of McCormick, Barstow, Sheppard, Wayte & Carruth LLP was founded in 1951 in Fresno. McCormick Barstow has since grown to over 100 attorneys in five states and is the largest law firm in the San Joaquin Valley. McCormick Barstow is a Martindale-Hubbell AV® Preeminent™ Peer Review Rated law firm committed to providing the highest quality legal representation. The firm combines the individual talents of attorneys with diverse backgrounds and experiences into a multi-faceted civil law firm. McCormick Barstow has offices in Fresno, CA; Cincinnati, OH; Denver, CO; Las Vegas, NV; Modesto, CA; and Seattle, WA and expertise in over 20 practice areas.

For more information about McCormick Barstow, visit www.mccormickbarstow.com or contact (209) 524-1100.



THE STANISLAUS COUNTY BAR ASSOCIATION PROUDLY PRESENTS

Enhancing Your Courtroom Presentation With Technology

Implementing Effective Techniques & Evading Evidentiary Pitfalls

Presented By: **Loura Erickson &
Kristina Seward of McCormick Barstow LLP**
with **The Honorable Hurl W. Johnson**



Friday, November 2, 2012, Noon-1:00 PM

**City Towers Bldg, Dept. 23
801 10th St, Modesto**

MCLE CREDIT

The Stanislaus County Bar Association certifies that this activity has been approved for MCLE credit by the State Bar of California for:

1 HOUR MCLE CREDIT

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COST:

SCBA & Bench Members:.....\$40*

(No lunch ...\$35)

Non-Members:.....\$65*

(No lunch.....\$60)

***2012 DUES PAID = Member Rate**

For more info, please call the SCBA at 571-5729

Return this portion with payment by October 26, 2012 to: SCBA • 804 14th St, Modesto CA 95354

Enhancing Your Courtroom Presentation With Technology

Implementing Effective Techniques & Evading Evidentiary Pitfalls

Friday – November 2, 2012

Name: _____ **Firm:** _____ ☐ **NO LUNCH**

Lunch choices:

SANDWICH

- ☐ Turkey
- ☐ Roast Beef
- ☐ Veggie

CHIPS

- ☐ Potato Chips
- ☐ Doritos

DRINK

- ☐ Diet Coke ☐ Coke
- ☐ Diet 7-Up ☐ 7-Up
- ☐ Bottle Water

AMOUNT ENCLOSED: \$ _____

(No refunds after October 26, 2012)

JUST SO YOU KNOW...

By Keric J. Cushing

ADVANCE JURY FEES

As most in civil practice now know, an additional "fee" is being extracted from the parties in the form of "Advance Jury Fees." Effective June 27, 2012, pursuant to Senate Bill 1021 signed by the Governor, jury fees are to be "deposited" much earlier than previously required by C.C.P. Section 631. They must now be "deposited" on or before the date scheduled for the initial Case Management Conference. If no such CMC is scheduled, they are to be deposited no later than 365 calendar days after the filing of the initial complaint. Of course there are some minor exceptions, so I commend a reading of the statute. Most courts have been quick to point out such significant change to avoid what would otherwise be inadvertent waivers of a jury trial and the obvious motions pertaining to it.

What is most significant about the change is that all such fees "deposited" after June 27, 2012 are non-refundable and will not be credited to the actual jury fees and costs paid by a party on the second day of trial. Interestingly, such "fees" are expressly required to be transmitted by the court to the State Treasury for deposit in the Trial Court Trust Fund within 45 calendar days of the end of the month in which they were deposited with the court. Sure sounds like an additional fee to me.

What proved to be more onerous was that payment of such advance jury fee was \$150 per party. Thus, if there were four plaintiffs, and all four wished to retain the right to a jury, each was required to deposit \$150, for a total of \$600. As you can imagine, in large multi-party cases that would impose a disproportionate cost. That "problem" has now been resolved by the Governor having recently signed emergency legislation, in the form of AB 1481, which imposes a single fee of \$150 for each side in a case. For those of us that had the misfortune of having an initial CMC between June 27, 2012 and September 17, 2012, and paid the "required" jury fee on a per party basis, we have the satisfaction of knowing that we've made a "voluntary" contribution to the State's budget shortfall.

DEPOSITION LIMITS

The Governor also recently signed AB 1875, to be effective January 1, 2013, which places a limit of seven hours for depositions of individual parties. That change is intended to mirror the federal rules (F.R.C.P. 30(d)(1)) limiting depositions to a single day of seven hours duration. Such "limit" however, has many obvious exceptions that will be case dependent (and necessarily inapplicable to complex cases, among others) and will, like most others imposed by the C.C.P., be subject to stipulation of the parties and/or relief from the court.

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& BOARD OF DIRECTORS

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Business Card..... \$ 50

One-Quarter Page.....\$ 150

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Full Page.....\$ 600

SCBA Member...10% Discount!

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Happy
Harvest!

