

Western San Bernardino County Bar Association

BAR BULLETIN

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March 2017

REMARKS FROM THE PRESIDENT'S DESK -

By: Daren Lipinsky



Honorable
John
Pacheco
Judicial Officer



John M. Pacheco - Judge of the People

This month, Western San Bernardino County Bar Association recognizes Honorable John Pacheco as our Judicial Officer of the Year. Many of us have had the pleasure of appearing in front of Judge Pacheco on criminal matters, family law matters and civil matters. In doing so, we have come to know a diligent and courteous member of the bench who is passionate about litigants having the opportunity to resolve their grievances fairly and expeditiously through the courts.

As a child, Judge Pacheco grew up in the Central Valley with his two parents and his five siblings. As a young child, Judge Pacheco saw firsthand the struggle of the working class and it inspired him to become a legal advocate for those less fortunate. In an article written by the San Bernardino County Bar Association in June of 2007, Judge Pacheco reflected on a traffic accident in which his father was forced to bear an unfair financial burden, which sparked his desire to help the underrepresented achieve justice.

After receiving his Bachelor's degree from Azusa Pacific University, Judge Pacheco enrolled into Western State University School of Law. While pursuing his degree, Judge Pacheco clerked in the Inland Empire for the late Judge David Hennigen, City Attorney of Chino, Jimmy Gutierrez, Mike Bidart, Gassner and Gassner, and Rose, Klein and Marias. When he received his license to practice law, Judge Pacheco worked as a personal injury attorney for Rose, Klein and Marias for over 14 years. During that time, Judge Pacheco had numerous litigation successes, including achieving a record court verdict against the City of Upland.

Following his success at Rose, Klein and Marias, Judge Pacheco worked as a partner for the legendary Inland Empire litigation firm of Florentino Garza and Son from 1995 to 2001. It was during this time that local Judge John Kennedy witnessed Judge Pacheco's closing argument in the case of *McKown v. Walmart* and encouraged him to apply for a judicial appointment.

Judge Pacheco heeded Judge Kennedy's words. In 2001, Judge Pacheco was appointed to the bench by Governor Gray Davis. During the past 16 years, Judge Pacheco has presided over family law matters, criminal matters, and various civil litigation matters. Currently, he sits in Department S31 at the San Bernardino Justice Center. In his opinion, a judge is "someone that's energetic, intelligent, willing to learn the law and who has come from a good background of achievement." According to several members of our local bar, Judge Pacheco epitomizes all of these traits.

Ricardo Echeverria of the renowned Claremont firm Shernoff, Bidart & Echeverria, says "Judge Pacheco is a trial lawyer's trial judge. It's because of this that it is no wonder why he is so respected by both the plaintiff and defense bars."

Greg Rizio, veteran trial attorney and 2014 Jennifer Brooks Lawyer of the Year award winner adds "It is always such a pleasure to appear in front of Judge Pacheco. Like most great judges, he handles his calendar by being well prepared, inquisitive, fair and his decisions are always well reasoned. However, what is most memorable about appearing before him is his judicial demeanor from the bench. He is a judge that emits a positive energy from the bench every morning that is upbeat, friendly and you know he truly cares about every case before him. It is obvious to everyone who appears before him that he loves his job and it shows."

Judge Pacheco has recently had the joy of seeing his legacy extended to further generations with the admission of his daughter, Marina R. Pacheco to the California Bar. Ms. Pacheco is currently an Associate at the prestigious firm of Girardi & Keese.

We look forward to honoring Judge Pacheco with all of you on March 9, 2017.

Welcome WSBBCBA New Members

Samantha Larsen - Law Offices of Eric K. Chen
Brian Mayer, Esq. - Law Offices of Brian Mayer
Beverly Ozowara, Esq. - Law Offices of Belgum & Fry
Francisco Suarez, Esq. - Law Offices of Francisco A. Suarez



All times prior to 2:00 a.m. 12 March Pacific Standard Time (PST), which is minus eight hours from UTC (Universal Time Coordinated). All times after 2:00 a.m. 12 March are Pacific Daylight Time (PDT) which is minus seven hours from UTC. Location: 34.1 N, 117.7 W. All astronomical data courtesy of the United States Naval Observatory website: www.usno.navy.mil.

March Sky. The March Full Moon, known as the “Full Worm Moon” occurs on March 12, at 7:54 a.m. PDT and rises at 7:17 p.m. later that day. The March New Moon occurs on Monday, March 27 at 7:57 p.m. So if you are going to be trying the *Messier Marathon* (an all night star gazing challenge), Saturday March 25 into Sunday March 26 is the ideal time. Even if you aren’t going to the Anza-Borrego State Desert Park for the all-nighter, you should check out the sky that weekend. By the way, the wild flowers should be in epic bloom by then. Venus and Mars are still prominent in the western sky at Sunset.

Creature of the Month: Botta’s Pocket Gopher, *Thomomys bottae*, aka the Valley Pocket Gopher. This furry little menace is our local version. It is named after Paul Emile Botta, a naturalist who collected animal specimens in California during the 1820s and 1830s.

The males can get up to 10 inches long with tail. The females are smaller. These gophers are highly territorial and aggressively defend their turf. The only time the males and females interact is during mating season. A gopher has to be concerned with hawks, owls, bobcats, coyotes, snakes, skunks, and long tailed weasels. No wonder they spend 90% of their lives under ground. Gophers are usually considered a pest, but they do provide a benefit of soil aeration in favorable depth.

Just like in the cartoons, the gopher is a gardener’s enemy. I have actually seen carrots and beets get pulled into the tunnel. I have not seen a gopher ruin a golf course. The Valley Pocket Gopher digs using its teeth as opposed to claws to dig a network of tunnels with separate chambers for food storage, hibernation and defecation.

There are numerous ways, some tried and true, some not to deal with gophers. Smoke bombs are not cheap and not that effective. Its no longer 1947, so poison laced grain is out of the question. The ultrasonic deterrents do not work. Plastic explosives are unavailable. Carbon Monoxide generators are too cumbersome and expensive. You can’t

really sit out in the garden and pick off gophers with a .22, as the local constabulary gets ticked when gunshots are reported. I even heard about an old time orange grove farmer that would place a piece of Juicy Fruit gum in the tunnel. Supposedly, the gopher would eat the gum and since a gopher cannot really digest gum.....

I have found that the best way to deal with a gopher is using Maccabe traps. The real deal ones made in America. The cheaper Chinese Maccabe knock-offs and other designs are not as effective. The traps are simple to set and highly effective. After a bit of observation, you can find out were a gopher is being active. The key is find the hole that the gopher is actively using to push out dirt. You carefully excavate and you’ll find the junction of the dirt removal hole from the main tunnel. You dig that out and place a trap in each side of the tunnel. Gophers are sensitive to changes in air pressure, so when the tunnel is exposed, they come to investigate and seal the breach. The gopher does so by pushing dirt ahead it. The dirt is pushed into the trip plate on the trap, thus springing the trap. Very quick and humane.

March Recipe: Meatloaf, baked potatoes, and fresh green beans. This dinner takes about an hour and twenty minutes to complete. Less than 10 minutes of prep time. The meatloaf and potatoes cook in the same oven, same time, same temperature. The green beans are steamed in the final 20 minutes. This serves 4-6. Makes an awesome meat loaf sandwich for lunch. No meat, no problem. A fully loaded spud and fresh green beans also hits the spot. This recipe is perfect for beginning cooks.

Meat Loaf *ala* Antoine

½ lb. ground Pork
 ½ lb. ground Turkey
 1 lb. ground Sirloin
 1 minced Shallot
 1 Egg
 1 cup of seasoned bread crumbs
 1 cup of bbq sauce, plus additional for top dressing
 You can also use Ketchup, but not Catsup



Heat the oven up to 350f. You’ll need a loaf pan. A glass loaf pan works the best. First, prepare your meat loaf pan by forming about 4 to 6 small pieces of foil into cylinders and placing across the length of the pan and spraying with cooking spray. This will form a rack to keep the meatloaf high and dry out of the cooking liquid. You can also simply place a piece of bread on each end of the loaf to absorb the cooking liquid.

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Takata Airbag Injuries and Deaths Could Continue in 2017

*By Fernando D. Vargas
WSBCBA President Elect*

The first known death attributed to a defective Takata airbag occurred in May of 2009. Yet here we are nearly eight years, 11 deaths, and more than 180 injuries later, and the danger has still not been fully extinguished.

Why not? Because of the 42 million vehicles in the US that are equipped with faulty Takata airbags, only 29 million have been recalled. Of those recalled vehicles, only about a quarter of them have actually been repaired. Completing the necessary repairs presents a significant challenge to dealers, given the difficulty of getting consumers to actually bring their cars in for repairs and the limited availability of the necessary parts.

It is imperative for auto accident injury attorneys to remain alert to this situation and poised to assist the victims of future accidents and their families in their struggle to secure the compensation they need and deserve.

Dangerous Propellant Blamed for Airbag Injuries

Airbags are designed to protect vehicle occupants from injuries in an accident by inflating upon impact. This requires some kind of propellant that can quickly fill the airbag with air. In Takata airbags, this propellant is ammonium nitrate.

Unfortunately, ammonium nitrate can degrade and become unstable when exposed to high humidity and moisture. If the airbag deploys using degraded propellant, the airbag will fill with too much force, potentially causing the airbag canister to explode and the airbag to rupture.

Some journalists have pointed to the September 2016 crash of a truck carrying Takata airbag parts as a particularly instructive example of just how volatile and dangerous ammonium nitrate can be. After the driver failed to negotiate a turn and crashed the truck, the vehicle suddenly exploded. The resulting fire spread to a nearby home and killed a 64-year-old resident. Though no official explanation for the explosion has been given, a cargo of ammonium nitrate-containing airbag parts does appear to be the likely culprit.

Faulty Takata Airbags Can Cause a Range of Injuries

The majority of Takata airbag lawsuits have involved lacerations and puncture wounds caused by flying shrapnel from exploding airbag canisters. For example, the very first known Takata airbag death was caused by debris from a ruptured driver-side airbag that sliced open an artery in 18-year-old Ashley Parham's neck.

Another example comes from a tragic accident that occurred in December of 2015. After a relatively minor collision with a cow on the highway, the Takata airbag in Joel Knight's Ford Ranger exploded. He bled to death from his wounds. Investigators on the scene reported such severe wounds that they initially believed he had been shot.

However, lacerations are not the only way in which the faulty airbags can cause injury, as one recent auto accident injury settlement shows.

The case involved an accident suffered by Patricia Mincey in June of 2014. After being involved in a collision in her 2001 Honda Civic, Mincey's Takata airbag deployed with excessive force due to unstable propellant. Though the force was not sufficient to actually rupture the airbag canister or the airbag itself, it was enough to severely injure Ms. Mincey. Her spine was crushed as the airbag slammed her against her seat, and she was left a quadriplegic. She passed away in April of 2016. Just a few months later, Takata settled her case for an unknown amount.

The attorney representing Mincey's family reported being totally surprised by Takata's sudden decision to settle, as the company had previously been pushing hard against the claim given the fact that Mincey's airbag did not actually explode. Takata's seeming reversal on the issue sets an important precedent and paves the way for additional lawsuits involving Takata airbags that deployed with excessive force, but did not rupture.

Takata Executives Knew of the Danger

Interestingly, a Takata competitor called Autoliv investigated the possibility of using ammonium nitrate in airbags in the 1990s. After testing, they determined it was too dangerous. Yet the material is cheaper than alternative airbag propellants. This may have been a factor in Takata's decision to switch to the material in the early 2000s, despite being well aware of the risks and dangers of ammonium nitrate as an airbag propellant.

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Combine all ingredients and mix in a bowl by hand until thoroughly blended. Form into a loaf and place in the pan. Finish the top with a generous layer of bbq sauce. Place in the oven for an hour and 15 minutes. Remember to wash your hands thoroughly with soap and warm water after handling the meatloaf mixture. Put the meatloaf on the lower rack and the potatoes on the upper rack. Avoid the temptation to open the oven, as this really does interrupt the cooking process. Set timer for an hour and 15 minutes, then move on to your other evening activities.

Baked Potatoes. Wash your spuds. Russet potatoes are the best choice for baking. If you get really large spuds, bake whole and cut in half after cooking. Wrap in foil and bake along with the meat loaf. There numerous condiments for a baked potato. Butter, sour cream, cheddar cheese, chives, minced scallions, bacon bits, steamed broccoli, sauteed mushrooms, grilled onions, salsa, salt and pepper, just to name a few.

Green Beans. Buy fresh, about one (1) pound. It takes about two minutes to trim the ends off the green beans and cut in half. I prefer to steam the green beans. I use a 4 qt. sauce pan and steamer insert. Put the burner on high, place the beans in the steamer insert and cover. The beans will be *al dente* in 20 minutes. Immediately drain the water from the sauce pan. Toss beans with 2 tbsp. of butter and a generous amount of fresh cracked pepper. The residual heat from the pan will keep the beans warm.

Buon Appetito! Tony Sears



Takata Airbag Injuries and Deaths Could Continue in 2017 Continued from page 4

Just two months after the death of that first Takata airbag victim, Ashley Parham, executives from Honda and Takata participated in a meeting on the topic. The minutes from this meeting were unsealed as part of a lawsuit.

“I am constantly worrying how far it spreads out,” a Honda manufacturing executive informed Takata’s president and other executives. “I want you to study the reason quickly. Another Honda engineer at the meeting was even more pointed in his remarks: “Why does the propellant deteriorate with age? Why does it explode? I want to know the truth.”

The fact that Takata executives clearly had knowledge of a problem with their airbags, and yet dissembled about it—at first presenting the problem as a limited manufacturing defect rather than an issue affecting all Takata airbags—has made the company’s liability easier to prove. Takata has been quick to settle many lawsuits, perhaps in part in an effort to avoid having their CEO testify on evidence produced during discovery in any cases.

The Future Could Be Grim for Takata

With a \$1 billion penalty from the US Department of Justice impending at the time of this writing and significant other costs facing the company, some experts are now wondering about the future health of Takata. If the company does slide into bankruptcy, it will only complicate matters for accident victims. Legal action on any new accidents will need to take place swiftly. The Takata airbag saga will likely continue to be a hot topic in automobile accident injury law in 2017.



Primary Assumption of the Risk and Coach/Instructor Liability in Sporting Activities

*By: Justin King
WSBCBA Board of Director*



In *Knigh t v. Jewett* (1992) 3 Cal.4th 296., the California Supreme Court held that a participant in a sport owes no duty to protect a coparticipant from “ordinary careless conduct committed during the sport.” (*Knigh t v. Jewett* (1992) 3 Cal.4th 296, pp. 318). However, the *Knigh t* court also held that “[a]lthough defendants generally have no legal duty to eliminate (or protect a plaintiff against) risks inherent in the sport itself, it is well established that defendants generally do have a duty to use due care not to increase the risks to a participant over and above those inherent in the sport. Thus, although a ski resort has no duty to remove moguls from a ski run, it clearly does have a duty to use due care to maintain its towropes in a safe, working condition so as not to expose skiers to an increased risk of harm.” (*Knigh t, supra*, at 315-316).

Since *Knigh t*, numerous courts have concluded that a coach, trainer and/or instructor has a legal duty not to increase the risks to their players, students, and/or trainees beyond the risks that are inherent in the sport and/or physical activity in which the participant is engaged. In *Tan v. Goddard* (1993) 12 Cal.App.4th 1528, the plaintiff, Tan, was a student at the defendant’s school for training horse jockeys. (*Tan, supra*, at 1530). One of the school’s horse trainers, Bill Davis, told the plaintiff that one of the horses, Faraway Falcon, had injured its left foot and that plaintiff “should ride the horse easily ‘to see how it was.’” (*Ibid.* at 1531). The plaintiff found that the horse did not walk properly and he reported this to the trainer and asked whether the horse was fit to ride. (*Ibid.*). The trainer assured plaintiff that the horse was fit to ride and gave plaintiff instructions on where and how to ride the horse. (*Ibid.*). Plaintiff followed these instructions and the horse ended up going down on the track, injuring plaintiff. (*Ibid.*). The *Tan* court held the following:

“Here, we do not deal with the relationship between coparticipants in a sport, or with the duty that an operator may or may not owe to a spectator. Instead, we deal with the duty of a coach or trainer to a student who has entrusted himself to the former’s tutelage. There are precedents reaching back for most of this century that find an absence of duty to

coparticipants and, often, to spectators, but the law is otherwise as applied to coaches and instructors. For them, the general rule is that coaches and instructors owe a duty of due care to persons in their charge.

...
[H]ere we are dealing not with a sports participant, but with an instructor who is training a student how to become a participant. According to his testimony and declaration, Tan placed himself in the hands of the jockey school’s riding trainer. He did what the instructor, Davis, told him to do. Davis was not a coparticipant in sport with Tan, but was charged with instructing him how to ride a horse. It was Davis who assigned Faraway Falcon to Tan to ride, knowing that the horse was ‘off’ due to an injury; it was Davis who told Tan to jog the horse on the outer track on the school’s premises; and it was he who knew, or should have known, of the rocky condition of that track.”

Tan v. Goddard (1993) 12 Cal.App.4th 1528, 1534-1535.

The *Tan* court concluded:

“Davis’s role as riding instructor to Tan was such that he owed Tan a duty of ordinary care to see to it that the horse he assigned Tan to ride was safe to ride under the conditions he prescribed for that activity. His failure to do so is analogous to the example, cited in *Knigh t*, of the duty of the ski resort operator to use due care to maintain its tow ropes in a safe condition.”

Tan v. Goddard (1993) 12 Cal.App.4th 1528, 1535-1536.

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Primary Assumption of the Risk and Coach/Instructor Liability in Sporting Activities
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In *Galardi v. Seahorse Riding Club* (1993) 16 Cal.App.4th 817, another instructor/student case involving horseback riding, the plaintiff was preparing for an upcoming horse riding show at the defendant's riding club. (*Galardi, supra*, at 820). With plaintiff's knowledge, an instructor at the club twice raised the height of two jumps without lengthening the distance between them. (*Ibid.*). The instructor then asked plaintiff to ride through the course backward, the horse faltered, and plaintiff fell to the ground suffering injury. (*Ibid.*) The *Galardi* court held the following:

“[T]he occasion of plaintiff's fall and injury was not during competition with other riders. Instead, she had placed her training in the hands of defendants, who were employed to instruct and coach her. Their responsibilities were directly to plaintiff. While other riders, as coparticipants, would not have any special duty of care to plaintiff during competition to ensure she did not fall, defendants certainly had a duty to avoid an unreasonable risk of injury to plaintiff and to take care that the jumping array was not beyond the capability of horse and rider. Of course, the risk of injury, inherent in plaintiff's activity, cannot be eliminated and in fact creates the challenge which defines the sport. The complaint and evidence presented in the rning whether defendants, who, we may infer, had knowledge and experience concerning the sport of horse jumping superior to that of plaintiff, negligently deployed the jumps at unsafe heights or intervals and thereby breached the duty owed to plaintiff.”

Galardi v. Seahorse Riding Club (1993) 16 Cal.App.4th 817, 822-823.

In *Wattenbarger v. Cincinnati Reds, Inc.* (1994) 28 Cal.App.4th 746, the plaintiff was a pitcher who responded to a newspaper ad advertising a tryout for the Cincinnati Reds. (*Ibid.* at 749). After his arrival at the tryout, plaintiff went through an orientation and engaged in several activities, including timed sprints and fielding ground balls. (*Ibid.*) All of this was observed by the Reds'

representatives in attendance who would, on occasion, provide advice to individual players on proper technique. (*Ibid.*). The last part of the tryout was conducted under conditions simulating an actual game. (*Ibid.*). The pitchers, including plaintiff, each took a turn throwing to several batters. (*Ibid.*). Before his turn, plaintiff threw a number of warmup pitches to get his arm ready. (*Ibid.*). On his third pitch to a batter, plaintiff felt his arm “pop” but experienced no particular pain. (*Ibid.*). He stepped off the pitcher's mound and informed the Reds' personnel that his arm had popped. (*Ibid.*). Receiving no response, plaintiff returned to the mound and threw another pitch, immediately experiencing severe pain in his arm. (*Ibid.*). A subsequent medical examination revealed a portion of the bone and tendons in plaintiff's arm had been pulled away due to the force of contraction of his tricep muscle during pitching. (*Ibid.*).

The *Wattenbarger* court held that “[t]here can be little question an arm injury such as that suffered by plaintiff is a risk inherent in the sport of baseball.” (*Ibid.* At 753). “Had plaintiff stopped after his third pitch of the simulated game, we would have no difficulty finding primary assumption of the risk a bar to recovery. Up to that point, defendants did nothing more than provide an opportunity for plaintiff to do what he had been doing for the last two years, i.e. to pitch.” (*Ibid.*). “However, the incident did not end with the third pitch. Viewed in the light most favorable to plaintiffs, the evidence establishes defendants initially directed plaintiff to pitch and then permitted him to continue after he informed them his arm had ‘popped’.” (*Ibid.*). “It is reasonable to infer that when plaintiff ... informed the Reds' personnel his arm had ‘popped’ he was seeking guidance as to how to proceed. Hearing nothing to countermand the original instruction to pitch ... plaintiff threw another pitch, thereby causing further injury. (*Ibid* at 753-754).

The *Wattenbarger* court went on to hold the following:

“Although defendants generally have no legal duty to eliminate (or protect a plaintiff against) risks inherent in the sport itself, it is well established that defendants generally do have a duty to use due care not to increase the risks to a participant over above those inherent in the sport.

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Hon. Joseph B. Campbell Inn of Court February 2017

By President, Comm. Donna Connally

In February, the Joseph B. Campbell Inn continued the year with another outstanding program – *The Hacked Verdict*, a re-boot of another classic lawyer movie: *The Verdict*, starring Paul Newman.

To those committed readers of this column, you may recall that much of last month's (January's) program dealt with attracting and keeping clients (SEO's, blogging, Twitter) and some of the ethical and other hazards in those areas.

In February we got what I have personally subtitled "Hacking and Passwords and Pirates and Ransoms." I admit to always having been a bit taken with the notion of pirates and never thought they would be part of a presentation at Inn of Court.

Our member panel was led by attorney Tom Dominick. He had enlisted the assistance of two expert guests for this program. David M. Snyder, Angent Group Law Firm IT Services, speaking about reasonable data security measures attorneys/firms need to take; and Gary Egloff of Lawyers Liability Protection Insurance Agency, who covered the topic of cyber insurance coverage as part of legal malpractice insurance policies.

Some of the education and tips we heard were as simple as lock your PC, lock your office and avoid portable hard drives unless they are in a secure location. Chances are that is NOT sitting on your table at Starbucks while you pick up your latte.

A December 2016 article in the *New York Times* was one of our MCLE handouts. It detailed a major hack of merger-advising law firms in what one United States Attorney called a "...case of cyber meets securities fraud [that] should serve as a wake-up call for law firms around the world." The article laid out how hackers got into the firm's data, gathered information on mergers and other transactions and went to town buying/selling/trading to make millions of dollars.

The fallout here was an investigation around client confidentiality and securities fraud. Clearly, this could be a firm's biggest nightmare.

There is insurance for some of the breaches we discussed. But, it most likely does not cover cyber-pirates who get into your system and simply debilitate it; i.e., make it unusable to your organization. Pirates like to ask for a ransom – paid in bitcoin – to release the system from their clutches and back to you.

We were told a story about a school district whose system was held for ransom. The district was weeks without being able to access their computerized information. There was debate about which stance one

takes in that situation: "Don't negotiate with pirates" or "Pay up and let's get on with business." What would you do??

Mr. Egloff let us all know that a great argument has been made for paying. Thinking like a pirate (I mean that in the kindest way), he noted that his experience is that the pirates keep their word once paid – they release control back to the "owner" of the information. The pirates know that if they renege on their end, no one will ever pay. After all, they are in it for the money. On the horizon: Florida is now requiring "tech" MCLE units for its attorneys. Many of our Inn's members can see California following close behind in that vein.

WE ARE STILL WELCOMING new and returning members to the Campbell Inn. In March, we celebrate with three other Inland Empire Inns of Court at our annual Joint Inns Dinner. It is sponsored this year by the Slaughter-Roemer Inn (Palm Springs/Indian Wells).

Our next general membership meeting at the Castaway Restaurant in San Bernardino will be on April 12 (Wednesday): Social- 5:30 p.m.; Dinner- 6:00 p.m.; Program- approximately 6:20-7:20p.m.

For more information about membership contact Lisa DeLorme (Membership Chair): 626-302-6889, or lisa.delorme@sce.com.

WSBCBA MEMBERS:

If you have a suggestion for an MCLE topic, speaker, or know somebody who is interested in speaking at one of our luncheons, please contact Deva Mora at the WSBCBA office.

Phone: (909) 483-0548

Fax: (909) 483-0553

E-mail:

mail@wsbcb.org

ATTENTION NEWLY ADMITTED ATTORNEYS

If you would like mentoring, please contact the Western San Bernardino County Bar Association at (909) 483-0548 or email at

mail@wsbcb.org

and request an attorney mentor.

We are here to help you succeed!

**Primary Assumption of the Risk and Coach/
Instructor Liability in Sporting Activities**
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... [The Reds] controlled the simulated game in the sense of determining who would play what positions, including pitcher, and for how long. They supplied necessary equipment, such as bats and batting helmets, and took it upon themselves to restrict the participation of players with injuries. They also gave a limited amount of instruction on techniques. Under these circumstances, defendants owed a duty to plaintiff and other participants not to increase the risks inherent in the game of baseball.

... For the foregoing reasons, we conclude defendants owed a duty of care to protect participants from aggravating injuries during the tryout. This would include preexisting injuries known to defendants as well as those occurring during the tryout. Thus, primary assumption of risk is inapplicable. Because issues of fact exist as to whether defendants were aware of plaintiff's injury, whether they encouraged or permitted him to throw a fourth pitch, and whether this final pitch caused injury, summary judgment was improperly granted."

Wattenbarger v. Cincinnati Reds, Inc.
(1994) 28 Cal.App.4th 746, 754-756.

The current state of the law with regard to the application of primary assumption of the risk in the student/instructor context was nicely summed up in the case of *Erikson v. Nunnink* (2011) 191 Cal.App.4th 826, 845, a case where the court held that there were triable issues of fact as to whether the coach had increased the risk to its student beyond those risks inherent in the sport:

"To the extent a duty is alleged against a coach for 'pushing' and/or 'challenging' a student to improve and advance, the plaintiff must show that the coach intended to cause the student's injury or engaged in reckless conduct – that is, conduct totally outside the range of the

ordinary activity involved in teaching or coaching the sport. Furthermore, a coach has a duty of ordinary care not to increase the risk of injury to a student by encouraging or allowing the student to participate in the sport when he or she is physically unfit to participate or by allowing the student to use unsafe equipment or instruments."

Erikson v. Nunnink (2011) 191 Cal.App.4th 826, 845.

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Conference Room Regular Rates for 21-40 people:
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Western San Bernardino County Bar Association

cordially invites you to its
8th Annual Judicial Officer of the Year Awards Ceremony

HONORING

San Bernardino County Superior Court
Judge John M. Pacheco

AND

Lifetime Recognition Award To
Jim Cochran

15 Year Employee and Security Officer for
San Bernardino County Superior Court

Thursday Evening
March 9, 2017

5:00 p.m. - Social Gathering

6:00 - 8:00 p.m. - Dinner & Program

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2016 - 2017
Judicial Officer of the Year Awards Ceremony

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Judicial Officer of the Year Dinner Registration

- \$75.00 Individual \$750.00 Table of 10
 \$85.00 if reservation is received after February 24, 2017

Name: _____
(Please provide additional names and/or names of table guests below)

Firm Name: _____

Payment Method: Check Credit Card Visa MC
 Other _____ Card No: _____
 Expiration Date: _____ Security Code: _____

Please Mark Your Meal Selection(s)

- _____ Seared Atlantic Salmon _____ Chicken with Apple and Almonds
 _____ Grilled Vegetable Brochettes (Gluten Free/Vegetarian)

Attendee Names and Food Choice:

Please return this RSVP no later than February 24, 2017, to
 Western San Bernardino County Bar Association and mail or fax to:
 WSBCBA • 8409 Utica Avenue • P.O. Box 624 Rancho Cucamonga, California 91729
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E-Mail: mail@wsbcba.org
 A \$50/\$75/\$85 fee will be charged for failure to show or cancellation
 of reservation within 24 hours of event.

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Robert Cullen is president of Retirement Planning & Management Group, a registered investment advisor, that offers specialized Medi-Cal consulting services. Saving Mom & Dad is available through Amazon or contacting Robert's office in Upland at 800-RCULLEN. Securities offered through LPL Financial, Member FINRA/SIPC

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NEWS BULLETIN

Daylight Savings Time

Judicial Officer of the Year
March 9, 2017 @ 5:00 p.m.
DoubleTree by Hilton

East Meets West
May 18, 2017

5:30 p.m. - Social Gathering
6:00 p.m. - Canyon City BBQ
6:30 p.m.—7:30 p.m. MCLE
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