



# NOCALL *News*

Northern California Association of Law Libraries  
A Chapter of the American Association of Law Libraries

November-December 2013

Volume 34, Issue 2

## President's Message

The days grow longer, the nights grow crisper, time to turn back the clock, and here we are getting ready for the holiday season. Season's Greetings, everyone! As usual, NOCALL members and Committees have been off to a productive start this year with programs, workshops, fun events and more.

NOCALL members and others turned out in force for the September business meeting held at Ten22 Restaurant in Sacramento. Thanks to Vice President, Michele Finerty, for inviting Michael Vitiello, Distinguished Professor of Law & Director, Center for Advocacy & Dispute Resolution, Pacific McGeorge School of Law to provide the program "Are We on the Road to Legalizing Marijuana?" Professor Vitiello presented an engaging discussion about Marijuana legislation, including some ideas about why CA Proposition 19 (2010) likely failed, as well as ideas for how a stronger Proposition might be drafted in the future. NOCALL members asked Professor Vitiello quite a few interesting questions. Heartfelt thanks go out NOCALL member and supporter, Carolina Rose, [Legislative Research & Intent LLC](#), who partially sponsored the luncheon.

Kudos to NOCALL's [Education Committee](#) Chair, Jodi Collova, and the members of that Committee, who organized a well-attended Fall Workshop at Golden Gate University on October 30th. David Greene, Senior Staff Attorney at the Electronic Frontier Foundation addressed the controversial issue of telecom digital surveillance programs. After his presentation, attendees broke into small group facilitated discussions about the topics covered. I understand this event was well-attended, and I'm just sorry that a personal situation prevented me from attending. Many thanks go out to long-time NOCALL supporter and friend, Bobby Clements, from [CEB](#), who sponsored a delicious lunch for attendees.

Our ever-imaginative [Networking Committee](#) members have come up with a fun way to network among and with NOCALL members, as well as sharing yummy recipes. Get cooking with your inner Emeril or Rachel and share your favorite recipe and a little about yourself in our forthcoming NOCALL e-book cookbook: "Noshing with NOCALL."

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Rachel and Julie have decided to whet everyone's appetite by doing the big cookbook reveal at the Spring Institute in March. There's now plenty of time to submit your recipes, photos, stories, videos, and more! Submission is incredibly easy. Just fill out the little form here: <http://www.bakespace.com/recipes/groupsubmit/474822379335592#sthash.1bW6nesD.dpuf> That's it! So, tell us a little about yourself, what you do, and what you like to make and eat. And prepare to devour the eBook at the Spring Institute!

Speaking of the Spring Institute... I hear lots of good things being cooked up for the programs and networking event, which will be offered on Friday/Saturday, March 21/22, 2014, at the ever-popular [Sir Francis Drake Hotel](#) in fabulous San Francisco. Save the date! From what I know already, this is going to be the must-attend event of 2014!

The Holiday Season is off to a good start with fun-filled 4 Corners NOCALL Holiday Socials last week. Thanks to NOCALL's Community Outreach Committee, who organized Toy Drives in Sacramento and San Francisco. NOCALL members are encouraged to donate toys locally with the [Sleep Train Foster Kids Toy Drive](#).

Kudos to NOCALL members who continue to write timely articles for the [Beyond the Shelves](#) column in the *San Francisco Recorder*.

- "Seven Free Research Sites You're Not Using," by Emily Bergfeld 10/2013
- "Fastcase — Legal Research Without Bling," by Nancy McEnroe 09/2013
- "Searching with New Lexis Advance," by Elisabeth McKechnie 08/2013
- "Dublin Public Library Provides Legal Resources" by Emily Bergfeld 07/2013
- "Is Your Law Firm Ready for E-Books?" by Sharon McNally Lahey 06/2013
- "Patent Litigation Made Easy" [about Patent Navigator] by Judy Heier 05/2013

I know that the Chair of the [Public Relations Committee](#), Emily Bergfeld, welcomes publication ideas and submissions from any NOCALL member. Please consider writing an article on a topic of interest to you. Maybe it's something that you'd like to learn more about, yourself, or a new service that you are learning to use. Share the wealth and spread your knowledge! Feel free to [contact Emily](#) with your ideas or interest.

As we ring in the New Year soon, don't forget the annual January Business meeting, which will be held somewhere in the South Bay/Silicon Valley area. Currently, I am working with Jodi Collova, [Education Committee](#) Chair, who is investigating a possible program highlighting changes and updates to Bloomberg, including a potential panel discussion about using Bloomberg, Lexis and Westlaw. Thanks to one of the Networking Committee members, Ellen Platt, who has been investigating a possible location for the meeting. I am also talking to some other Silicon Valley law librarians about possible locations. If anyone has suggestions for a venue, please contact me ASAP. Our projected date for the January Business meeting is Tuesday, January 28, 2014, but stay tuned for final dates, times and locations.

Past President, Chuck Marcus, has been working with Tina Dumas, and [Constitution & Bylaws Committee](#) Chair, Mary Hood, on some proposed Bylaws Changes. We anticipate sharing these suggested changes with the membership this Spring; voting on them will most likely happen at the May Business meeting. I encourage all members to consider these proposed changes seriously and comment, if needed.

Finally, a shout out to Jaye Lapachet, [Chair of the Nominations Committee](#), and the Committee members, who have developed an excellent Slate of Candidates for NOCALL Board elections coming up in the Spring. NOCALL Secretary, Jen Richter, will announce the Slate, along with Bios, in January. Stay tuned.

Keep up the good work of keeping NOCALL active, interesting, engaging, impressive and fun. If you are new to NOCALL, please [contact me](#) if you are interested in how to become more involved in our organization. I'd love to hear from you and hope to see everyone soon at an upcoming event or business meeting. Happy Holidays to you and your families, and may we all enjoy a peaceful and successful New Year!

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## NOCALL News

The NOCALL News is published five times a year by the Northern California Association of Law Libraries, a chapter of the American Association of Law Libraries, and is a benefit of membership.

The Northern California Association of Law Libraries assumes no responsibility for the statements and opinions advanced by the contributors to the association's publications.

Editorial views do not necessarily represent the official position of the Northern California Association of Law Libraries.

**MUSINGS FROM MARK**

**Mark Mackler**  
**California Department of Justice**  
**San Francisco**

**A TALE OF TWO LIBRARIES...** It was one of those days when we had two requests for hard-to-find materials. The first request was for an article related to molecular biology. I did some online research and determined that the only possibility was the National Agricultural Library in Beltsville, Maryland. I called their reference librarian who confirmed that NAL had the article, and that it was only three pages in length. That was the good news. The bad news was that if I needed it, the charge would be \$25. For those of you who are unfamiliar with State bureaucracy, she might just as well have asked me for a Porsche. I explained that it was impossible for me to pay \$25, and could she make an exception? She “stood her ground.” “It’s our policy, but if I could change the policy I would do so.” So, as I write this Musings, I hope to obtain the three pages through ILL at SFPL.

Our second request that day was for a transcript of testimony that a psychiatrist had given before a committee of the Maine Legislature in 2010. I called the Maine State Law and Legislative Reference Library and spoke with a reference librarian. I told her who I was and what I was looking for. Within an hour, she had e-mailed me not only the transcript of the psychiatrist’s testimony but the testimony of all the witnesses—which turned out to be very useful.

The moral of the story? There should be good reasons behind all our policies. And policies should be re-evaluated (or bent) depending on exigent circumstances.

**FROM SALARY.COM...** “12 Jobs on the Brink: Will They Evolve or Go Extinct? Librarian: Shelved or Renewed? Glamor Girl Google and her friends Bing, Yahoo and Cha Cha dethroned the trusty silencer of the stacks, our public librarian. Now, the local library is online, shoes and shirts are no longer required and we can use our “outdoor voice” indoors if we are so inspired. Will the decibel diva’s future be shelved? Verdict: Evolved. Although virtual media and the Internet search deleted the Dewey Decimal System, people still enjoy reading books the old-fashioned way and appreciate research help. The new librarian is a digital archivist, savvy with searches, keywords and helpful websites.”

**WELCOME BACK...** Those of you who know me know that I hail from Western Massachusetts, and that Timothy Leary, Dr. Seuss, Gwen Ifill and I attended the same high school. Whenever I return to Western Mass., I have my choice of flying to BDL (Hartford-Springfield) or to BOS,

depending on the airfare. For Columbus Day weekend, I flew to Boston on Friday and then lined up for the 90-mile bus ride. I had forgotten that Columbus Day weekend is a big travel weekend for the college kids. There were only three or four grownups on the bus, along with 50 college students. Wow, I thought, this will surely be the “party bus.” Beer, pot, carousing and raucous jokes. As it turned out, there was almost total silence for the entire 90-mile ride. Why? (Look for the answer in the next Musings.)

**PROFESSIONAL READING IN REVIEW**

**Elisabeth McKechnie and Susan Llano**  
**U.C. Davis Law Library**

**“Parallel print citations in today’s digital environment,”**

Peter W. Martin, *Citing Legally Blog*, Nov. 12, 2013

<http://citeblog.access-to-law.com/>

In this new blog, Cornell Law School professor Peter W. Martin foresees the death of the parallel citation. Since most students and legal writers cite to electronic sources, the use of neutral citation formats has become much more popular and useful, especially to create pin cites. As large collections of law books are fading from usage, so too will the parallel cite.

**“DNA Evidence: Brave New World, Same Old Problems,”**

by Ken Strutin, *LLRX*, Oct. 13, 2013,

<http://www.llrx.com/node/2425/>

The science of DNA collection and use is changing constantly. For those librarians who research for criminal law practitioners or who purchase forensic/criminal law books for their libraries, this author has created an annotated bibliography of materials that discuss the use and science of DNA in criminal law, pre-conviction. He focuses on the pre-conviction use of DNA, specifically the “identification, investigation and prosecution of crime, social and privacy issues, and to some degree exculpation or evidence of third party culpability.” This includes book chapters and law review articles as well as books.

**Symposium, “Justice, Lawyering and Legal Education in the Digital Age,”** *Chicago-Kent Law Review*, v.88, no.3 (2013).

Articles in this symposium issue of Chicago-Kent Law Review all deal with the theme of law and technology particularly in regards to education and teaching. It includes articles on building legal expert systems, developing an e-curriculum, and a new type of clinical course that teaches law students how to use technology.

*Continued on page 4*



“Curious? Experience a Day in the Life of a Case at Thomson Reuters,” *Legal Current*, Nov. 4, 2013, <http://www.legalcurrent.com/curious-experience-a-day-in-the-life-of-a-case-at-thomson-reuters/>

Have ever wondered how West’s editorial process works when a decision is handed down? Thomson Reuters has posted a video following one case (Arizona v. Intertribal Council of Arizona) from the decision at the U.S. Supreme Court through the editorial process at Thomson Reuters.

“Should Librarians Friend their Patrons?” by Nedda Ahmed and Adriana Edwards-Johnson, *Reference and User Services Quarterly*, v. 53, no.1, pp.9-12, Fall 2013. Guest columnists Ahmed and Edwards-Johnson argue the pros and cons of friending patrons. They are not talking about the library using social media to communicate with patrons, but rather individual librarians friending patrons via their personal social media accounts. Ahmed is in the “pro” camp and believes that librarians should consider the following issues when deciding whether to friend a patron: institutional culture, outreach, content, and work-life balance. Edwards-Johnson believes that individual social media relationships between librarians and their patrons can place both the library and the librarian in difficult positions. Ultimately, she feels that librarians should use their customer service skills to create dynamic social networking presences for their organizations, not just for individuals.

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## SPRING INSTITUTE ROUNDTABLE TOPIC

**Julie Horst**  
**Ninth Circuit Library**

Many of us have sick or disabled or elderly parents (partners, friends, neighbors) and some of us, whether we chose it or not, are responsible for them: for their doctor/hospital visits, for their housing, for their bank accounts, for their lives. How do we, as law librarians, COPE?

- Many NOCALL members work as solo librarians so when they are away from work who is available to keep the library running?
- What do we do when our employer can’t (or won’t) support needed time off to deal with the seemingly endless list of paperwork, phone calls, personal research into health matters, nursing homes, etc.?
- Who can we turn to when the strong emotions surface as we deal with all this?
- What services are available?

Join NOCALL members at the Spring Institute’s Roundtable session and let’s brainstorm.

## TECH TALK: SOLUTIONS TO THE PROBLEM OF LINK ROT IN JUDICIAL OPINIONS

**Ramona Martinez**  
**Berkeley Law Library University of California**

Page one of the *Bluebook*, 19th ed., says, “The central function of a legal citation is to allow the reader to efficiently locate the cited source.” Citations are especially important in judicial opinions because they provide support for the reasoning behind the decision in a case. But what if a Court relies on a website and cites to its URL? URLs are notoriously short-lived. Websites are frequently redesigned and reorganized resulting in broken URLs preventing future access to the cited material. Court librarians across the country have been concerned about this phenomenon for a number of years. In 2009, the Judicial Conference of the United States adopted a policy that all courts should endeavor to capture images of the web pages cited in opinions. The Ninth Circuit Library has developed an excellent system for doing just that. Our own Julie Horst explained her process for finding and capturing citations to web pages. Using the WestClip service, Julie gets a weekly email with a list of opinions from the CTA9 library containing “http” or “www”. She then pulls up the cited web page, saves it as a PDF and watermarks it with the name of the opinion in which it was cited, the docket number and the date the image was captured. The images are available here: <http://www.ca9.uscourts.gov/library/webcites/> and they are searchable by case name or citation, date of opinion or docket number.

The problem of link rot in U.S. Supreme Court opinions was highlighted in a September 24, 2013 New York Times article by Adam Liptak entitled, “In Supreme Court Opinions, Web Links to Nowhere.” A study found that as many as “49% of the hyperlinks in Supreme Court decisions no longer work.” The court has begun to keep a paper copy of cited material in the case file. But to provide “efficient” access to cited material a better solution is needed. To that end, an impressive number of law libraries have partnered with the Internet Archive and the DPLA to create a service called Perma.cc which creates a permanent link to a cited web page. According to its website (<http://www.perma.cc/about>) Perma.cc “archives a copy of the referenced content, and generates a link to an unalterable hosted instance of the site.” The service is in beta and is focusing on scholarly legal publishing at the outset. It remains to be seen whether Perma.cc will solve the problem of link rot in Supreme Court opinions. Certainly a solution that enables a reader to click directly on a permanent link in a decision is ideal. In the meantime, we can be thankful that the Internet Archive’s Wayback Machine (<https://archive.org/web/>) is available even if copying and pasting a URL is a more onerous process.

## WHAT ARE YOU READING?

Nora Levine

### **THE AMERICAN HEIRESS** by Daisy Goodwin

This is a great book to read alongside *The Age of Innocence*. It is about the wave of American heiresses that went to Europe in the 1890s looking for titled men to marry. I really liked the writing and the story. I thought the character Ivo wasn't fleshed out as well as he could have been and I didn't care for the ending, as I wanted just a bit more from the characters. It is still worth a read/listen. I listened to it on audio and really enjoyed the narrator.

### **NAKED HEAT** by Richard Castle.

This is a completely fascinating concept. For any of you who have heard of the television show *Castle*, this is the second in a series of books that the character on the show writes after following a New York City detective around. The story is good, the editing is good; the writing could have been just a bit tighter. The fascinating thing is that this book is written, supposedly, by a fictional character. We know that is impossible, but I really am interested in this concept of extending media properties: TV to books. I think it started with websites and publications going to online only. Now it is going backwards, in a way. There are several titles in the series and I was able to get them as eBooks from SF Public.

### **VANISHING POINT** by Michaela Roessner

This is a sort of a post apocalyptic novel about surviving after 75% of the Earth's population simply vanishes. The setting in the South Bay adds to the interest. There is a lot of detail in this book and a lot to "chew on" brain wise, so it is worth a second read. The technology wears well in this book, too. I would recommend it.

*Jaye A. H. Lapachet*

*Coblentz, Patch, Duffy & Bass*

My recommendation: **THE OATH** by Jeffrey Toobin. Gossipy but really gives readers a good idea of what the heck is going on in the secret world of the U.S. Supreme Court.

*Joel Tochterman*

*Department of Justice*

### **THE ANGLE OF REPOSE** by Wallace Stegner

It won the Pulitzer Prize for fiction in 1972, yet I'd never read it. It is mesmerizing. The book is largely based on the letters of a real historical figure, but is the story of a fictional, wheelchair bound historian chronicling the life of his grandmother. She was born into an up-and-coming New York family in the late 1800s, married and spent her life in the Western United States. Her

struggle to survive, raise a family, and impart "proper" education, comportment, and social know-how to her children while living in mining towns and on desert mesas is fascinating. Her joys, disappointments, tragedies, and accomplishments are made vivid by Stegner's incisive writing. I love all of his books, but this one is perhaps my favorite.

### **WHISTLING VIVALDI: AND OTHER CLUES TO HOW STEREOTYPES AFFECTS US** by Claude Steele

Mr. Steele is a social psychologist. The book describes his work studying the phenomenon called "stereotype threat", i.e., the tendency to expect, perceive, and be influenced by negative stereotypes about one's social category -- one's age, sex, sexual orientation, ethnicity, profession, nationality, political affiliation, mental health status, and so on. The book describes in detail how negative stereotypes and the negative pressure they may exert can cause people to under-perform both academically and professionally. It also explores ways to overcome the stereotype threat and allow individuals to perform to the best of their abilities despite negative stereotypes. I may not be describing it well, but it is very interesting and potentially useful to anyone belonging to a group or groups subject to negative stereotypes, and for supervisors and employers who seek to understand human variables which can affect job performance.

*Ron Wheeler*

*University of San Francisco*

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## NOCALL FALL WORKSHOP

Jodi Collova

Golden Gate University School of Law

The NOCALL Fall Workshop was a huge success this year. Golden Gate University School of Law generously donated space for the event, which allowed NOCALL members to attend for free. David Greene, Senior Staff Attorney at the Electronic Frontier Foundation, spoke to a group of nearly 50 attendees about the U.S. government's digital surveillance programs and relevant laws. David's talk was informative, interesting, and provoked lively discussion. David inserted ways in which current law and programs impact libraries, as well as US citizens generally. For those interested in learning more about this topic, the November Issue of the *AALL Spectrum* features a Washington Brief on Reforming Surveillance Programs to Protect Libraries. NOCALL would like to send a huge thank you to Bobby Clements, Sahar Ezzat, and CEB for providing lunch at the Fall Workshop. We really appreciate CEB's continuing support of NOCALL every year.



**ATTORNEY'S FEES RED ALERT:  
PLAINTIFF'S APPELLATE & ENFORCEMENT  
ATTORNEY FEE AWARDS ARE AT RISK  
IN A CASE PENDING BEFORE THE  
CALIFORNIA SUPREME COURT**

**Carolina C. Rose  
Legislative Research & Intent LLC**

The California Legislature has adopted a number of attorney fee shifting statutes to protect individuals or groups who would not otherwise have access to justice. (E.g. Welf. & Inst. C. §§ 15675 & 15657.5 (elder abuse), CCP §1021.5 (private attorney general doctrine), CCP § 426.16 (anti-SLAPP). Gov. C. § 31536 (denial of county public retirement application), and Civil Code § 2983.4 (Rees Levering automobile retail contracts).)

However now all such plaintiffs' appellate and enforcement related attorney's fees are threatened in a case currently before the California Supreme Court. The case could even adversely affect contractually based awards. If the defendant prevails, the Enforcement of Judgments Law will cut off the plaintiff's ability to move for all reasonable, post-judgment appellate and enforcement attorney's fees because the defendant rushed to pay the original judgment early, before all such fees could be awarded as mandated under the Financial Elder Abuse law.

The plaintiff's Supreme Court Brief was filed October 30, 2013. Following is the opening statement from that filing:

This is a case about access to justice for ... [plaintiff] ... (a mentally and physically disabled 78-year old, who cannot read or write), other victims of elder abuse and civil litigants whose goal is to right a wrong under a statute that authorizes attorney fees. Public policy requires an attorney fee shifting statute when without one, an individual or group would not have access to justice. In other words, they could not otherwise afford to right a wrong. In essence, attorney fee shifting statutes are society's safety net to protect those who need it most.

After a jury trial, ... [plaintiff] ... prevailed in an action for financial elder abuse ... Essentially, defendant, an attorney, intentionally defrauded an old woman with the competency of a child. Plaintiff also prevailed in defending the judgment on defendant's first appeal, and successfully brought a separate lawsuit against defendant to prevent her from transferring real property to third parties in an attempt to avoid satisfaction of the judgment. **As a result, defendant paid the judgment.** [Emphasis added.]

Notably only the *original* judgment was paid. This is relevant because the Enforcement of Judgment statutes relied upon by the defendant require *full satisfaction* of the judgment (CCP Code §§ 658.070 and 685.080) in order to bar payment of attorney's fees as specified. Thus, at best, the defendant only made a *partial* payment because the judgment had not yet been amended to incorporate all the mandatory attorney's fees and costs required under the financial elder abuse statute, Welf. & Inst. C. §15657.5 (a) which states in relevant part:

15657.5. (a) Where it is proven by a preponderance of the evidence that a defendant is liable for financial abuse, as defined in Section 15610.30, in addition to compensatory damages and all other remedies otherwise provided by law, **the court shall award to the plaintiff reasonable attorney's fees and costs.** [Emphasis added.]

After the defendant paid the original judgment, the plaintiff moved for reasonable attorney fees and costs incurred in the appeal and separate lawsuit. The Alameda County Superior Court granted the victim plaintiff's motion for fees (not costs). But on de novo review, the First District Court of Appeal, 4th Division, reversed in an unpublished opinion (Feb. 2, 2013, Case No. A34337.)

By agreeing with the defendant, the 1st DCA in effect found that the Enforcement of Judgment's Law barred the elder abuse victim from seeking *all* reasonable post-judgment appellate and enforcement related attorney's fees and costs under Welf. & Inst. C. § 15657.5, because the frail victim's abuser had rushed to pay the original trial court judgment before all such fees could even be determined and applied for in a timely manner. According to the 1st DCA, the plaintiff's motion for such fees was untimely because it followed defendant's full satisfaction of the original judgment.

The official issue before the California Supreme Court is as follows: Is a trial court award of statutorily-mandated fees and costs incurred on appeal subject to the Enforcement of Judgments Statutes (Code Civ. Proc., § 685.040 et seq.) if the statutory authority underlying the award is the Elder Abuse Act (Welf. & Inst. Code, § 15600 et seq.)?

Even though the issue is narrowly framed to only address the Elder Abuse Act, if the Supreme Court upholds the 1st DCA's ruling, it will encourage all defendants such as the elder abuser defendant in the McQueen case whose evasive actions forced the plaintiff victim to undertake appellate and enforcement related actions in order to protect herself. Such defendants would be handed a template for violating the underlying protective statutory schemes with impunity:

*Continued on page 7*



- As long as plaintiffs could not be assured of their ability to recover all necessary and reasonable post-judgment appellate and enforcement related attorney’s fees, defendants would have an incentive to take any and all steps to avoid satisfying the original judgment knowing that their victims would never be able to pay the related appellate and enforcement fees out of their own pockets.
- Such defendants would not even have to rush to satisfy the original judgment early to avoid a potential downstream award of post-judgment appellate and enforcement attorney’s fees. As long as such defendants had the *right* to pay the original judgment early and thus avoid responsibility for all post-judgment attorney’s fees, plaintiffs would be strongly discouraged from incurring them in the first place.

The legislative history of the elder abuse attorney fee shifting statute reveals that it was adopted, in major part, to provide an incentive for attorneys to take such cases in order to protect a vulnerable and needy class of persons.

Subdivisions (a), (h) and (j) of Welf. & Inst. Code § 15600 read as follows:

(a) The Legislature recognizes that elders and dependent adults may be subjected to abuse, neglect, or abandonment and that ***this state has a responsibility to protect these persons.*** ... (Emphasis added.)

(h) The Legislature further finds and declares that ***infirm elderly persons and dependent adults are a disadvantaged class***, that cases of abuse of these persons are seldom prosecuted as criminal matters, and ***few civil cases are brought in connection with this abuse*** due to problems of proof, court delays, and ***the lack of incentives to prosecute these suits.*** ... (Emphasis added.)

(j) It is further the intent of the Legislature ... to enable interested ***persons to engage attorneys*** to take up the cause of abused elderly persons and dependent adults. (Emphasis added.)

The 1991 California Legislature adopted the state’s first mandatory elder abuse attorney’s fees and costs law applicable to physical abuse, neglect and “fiduciary” abuse in Welfare & Institutions Code Section 15657 (a) in Stats. 1991, c. 774 (SB 679), Sec. 3. Thirteen years later in 2004, § 15657 was amended to strike the fiduciary abuse terms in 15657 and a new § 15657.5 was added to require the same “reasonable attorney’s fees and costs” for elder “financial abuse” cases. (Stats. 2004, c. 886 (AB 2611) Sec. 3. Sec. 4.).

The 1991 legislative history reveals that the primary problem addressed by the Legislature in SB 679 was that the award of attorney’s fees and costs in all elder abuse cases was only discretionary, not mandatory. Furthermore, such attorney’s fees could only be awarded out of the victims’ award which was often small to begin with. Also, elder abuse cases were often hard to prove. The 1991 Legislature believed that these problems impeded victims’ ability to sue successfully because there was *insufficient incentive* for plaintiffs’ attorneys to take such cases on contingency. The remedy chosen by the 1991 Legislature to address these problems was to eliminate the malfunctioning discretionary method of awarding attorney’s fees and costs in such cases and to require the abusers to pay them. (E.g., see the Senate Judiciary Committee on SB 679 (Mello), reflecting “author’s amendments to be offered in committee”, published May 8, 1991, Hearing date: April 30, 1991, 1991-92 Regular Session.) (My company, Legislative Research & Intent LLC provided the plaintiff with legislative history research and consulting services.)

This incentive so carefully wrought by the 1991 Legislature to encourage attorneys to take elder abuse cases would at least be partially extinguished if the 1st DCA’s ruling is upheld by the California Supreme Court. Will that Court hand these types of defendants a sword, allowing them to argue that the Enforcement of Judgments Law cuts off their victims’ ability to move for all reasonable, post-judgment appellate or enforcement attorney’s fees whenever a defendant rushes to satisfy the original judgment first, before a court has the opportunity to award such fees? If so, the Legislature would probably be urged to clarify and reaffirm its original intent by repudiating the decision.

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ABOUT THE AUTHOR. Carolina Rose (J.D., Stanford, 1976) is owner and President of Legislative Research & Intent LLC (LRI) which has researched the history and intent of more than 10,000 enactments for over 1,500 clients since 1983 (formerly Legislative Research, Inc.). Previously she worked for approximately 7 years in the California Legislature where she was responsible for over 200 bills. Ms. Rose is a recognized expert in the reconstruction of California legislative, regulatory and constitutional history and has written expert witness opinions or provided testimony or consulting in over 100 cases at the administrative, trial and appellate levels. Her website offers complimentary online research and advocacy resources at [www.lrihistory.com](http://www.lrihistory.com). She can be reached at 800.530.7613 or [carolina.rose@lrihistory.com](mailto:carolina.rose@lrihistory.com).

## NOCALL OFFICERS 2013 - 2014

- President • Jean Willis, Sacramento County Public Law Library • 916-874-8917 • [president@nocall.org](mailto:president@nocall.org)  
Vice President/President Elect • Michele Finerty, University of the Pacific, McGeorge School of Law Library • 916-739-7010 • [vicepresident@nocall.org](mailto:vicepresident@nocall.org)  
Secretary • Jen Richter, Sacramento County Public Law Library • 916-871-6011 • [secretary@nocall.org](mailto:secretary@nocall.org)  
Treasurer • Sean Kaneshiro, Robert Crown Law Library, Stanford University • 650-725-4830 • [treasurer@nocall.org](mailto:treasurer@nocall.org)  
Past President • Chuck Marcus, Hastings College of the Law Library • 415-565-4750 • [pastpresident@nocall.org](mailto:pastpresident@nocall.org)  
Member at Large • Judy Heier, Farella Braun + Martell • 415-954-4400 • [memberatlarge@nocall.org](mailto:memberatlarge@nocall.org)  
Member at Large • David Holt, Heafey Law Library, Santa Clara University • 408-554-5195 • [memberatlarge@nocall.org](mailto:memberatlarge@nocall.org)

## NOCALL COMMITTEES AND CHAIRS

### ADMINISTRATION (Coordinator: Sean Kaneshiro)

- AALL Liaison • Donna Williams, University of San Francisco, School of Law • 415-422-6679 • [aallliaison@nocall.org](mailto:aallliaison@nocall.org)  
Archives • Rachael Samberg, Stanford University Law Library • 650-725-0806 • [archives@nocall.org](mailto:archives@nocall.org)  
Audit & Budget • Denise Pagh, Kronick, Moscovic, et al. • 916-321-4500 • [auditandbudget@nocall.org](mailto:auditandbudget@nocall.org)  
Constitution & Bylaws • Mary Hood, Santa Clara University Law Library • 408-554-2732 • [constitutionbylaws@nocall.org](mailto:constitutionbylaws@nocall.org)  
Nominations • Jaye Lapachet, Coblenz Patch Duffy • 415-391-4800 • [nominations@nocall.org](mailto:nominations@nocall.org)

### COMMUNICATION (Coordinator: David Holt)

- Newsletter • Mary Pinard Johnson, Sacramento County Public Law Library • 916-874-5178 • [newsletter@nocall.org](mailto:newsletter@nocall.org)  
Technology • Jocelyn Stilwell-Tong, California Court of Appeals, Sixth District • 510-229-0962 • [website@nocall.org](mailto:website@nocall.org)

### EDUCATION (Coordinator: Judy Heier)

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Spring Institute • Michele Finerty, University of the Pacific, McGeorge School of Law Library • 916-739-7010 • [springinstitute@nocall.org](mailto:springinstitute@nocall.org)

### MEMBERSHIP (Coordinator: Jen Richter)

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Community Service • Tricia Lee, Kirkland & Ellis LLP • 415-439-1495 • [community@nocall.org](mailto:community@nocall.org)  
Community Service • Judy Chalmers, Sacramento County Public Law Library • 916-874-5745 • [community@nocall.org](mailto:community@nocall.org)

### RECOGNITION (Coordinator: Michele Finerty)

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Grants • Cathy Hardy, Hanson Bridgett LLP • 415-995-5187 • [grants@nocall.org](mailto:grants@nocall.org)  
Memorials • Mark Mackler, California Office of the Attorney General • 415-703-5786 • [memorials@nocall.org](mailto:memorials@nocall.org)

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