

S214058
Court of Appeal Case No.B242054
Super.Ct No. BC452239

IN THE CALIFORNIA SUPREME COURT

PATRICIA J. BARRY,
Plaintiff/Appellant/Respondent,

vs.

STATE BAR OF CALIFORNIA,
Defendant/Respondent/Petitioner.

SUPREME COURT
FILED

FEB 05 2014

Frank A. McGuire Clerk

Deputy

Appellant
~~RESPONDENT~~ PATRICIA BARRY'S APPLICATION TO STRIKE
THE BAR'S PETITION FOR REVIEW AND OPENING BRIEF
BASED ON WASTE AND EXCESSIVE EXPENDITURE OF MEMBER
DUES IN PURSUING A \$2500.00 FEE AWARD
FOR MALICIOUS MOTIVE, TO DISQUALIFY
KERR & WAGSTAFFE AS ATTORNEY FOR THE BAR
IN THIS PROCEEDING AND TO ORDER THE FIRM TO REPAY THE
MEMBERS THE ATTORNEY FEES PAID TO IT;
AND TO ORDER AN INVESTIGATION
OF JAYNE KIM, JAMES FOX, AND STARR BABCOCK FOR THEIR
UNETHICAL APPOINTMENT OF JAMES WAGSTAFFE AS
ATTORNEY FOR THIS PROCEEDING;
OR ALTERNATIVELY, FOR RELIEF FROM DEFAULT AND FOR
LEAVE TO EXTEND TIME TO FILE ANSWERING BRIEF
DECLARATION OF PATRICIA J. BARRY (AUTHORITIES IN
DECLARATION)

PATRICIA J. BARRY (State Bar No.59116)
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Plaintiff/Appellant/Respondent in propria persona

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TO: HONORABLE CHIEF SUPREME COURT JUSTICE TANI
G. CANTIL-SAKAUYE:

Respondent PATRICIA J. BARRY ("Barry") requests the following

relief:

1. Strike the Bar's Petition for Review and Opening Brief based on misappropriation and excessive expenditure of member dues in pursuing a \$2500.00 fee award for malicious motive,
2. Disqualify Kerr & Wagstaffe as attorney for the bar in this proceeding and order the firm to repay the members attorney fees paid to the firm;
3. Order an investigation of Jayne Kim, James Fox, and Starr Babcock for excessive expenditure and waste of members'

dues in this lawsuit and for their unethical appointment of James Wagstaffe's law firm as attorney for the Bar in accordance with Busi & Prof C § 6044.

Or alternatively,

Grant relief from default and for leave to extend time to file Answering brief to February 17, 2014 (Mr. Von Loewenfeldt whose name is on the brief representing the Bar indicated he had no objection to this request. Barry declar., para).

“JAMES AND JAYNE AND STARR AND STEVE AND JAMES”¹

The facts on which Barry relies are as follows:

1. Starr Babcock (“Starr”) is the General Counsel for the Bar.

The client in this lawsuit is Jayne Kim (“Kim”) as Chief Trial Counsel. Her confidante and “consultant” is James Fox, (“Fox”), the former San Mateo District Attorney who was succeeded by Steve Wagstaffe.. **James Wagstaffe (“James”)** who is on the Supreme Court brief is the brother of San Mateo District Attorney Steve Wagstaffe (“Steve”). The cronies are Fox, Kim, Steve, and James, all working together against Barry with James being paid by the Members to litigate for the “Bar” in this Court

¹

Barry's mashup of “Sonia and Vanya and Masha and Spike” a mashup of primarily Chekov's “Uncle Vanya”.

against Barry. Starr Babcock, (“Starr”) General Counsel for Kim and Fox, is carrying out their orders to “get” Barry, no matter how much money of the members they waste and squander. Barry spoke with a Financial Manager for the Bar, possibly his name is Ray Farrish, who confirmed **there is no competitive bidding for outsourcing legal services and no oversight over Starr when he outsources and to whom.**

2. In June 2012 Barry and Michele Fotinos (“Michele”) named D. A. Steve Wagstaffe in a flier, (along with the San Mateo judges, a panel of three justices of the First Appellate District, and the justices of this Court), because Steve did not arrest John Fotinos for possession of guns despite being a felon with 10 guns registered to his name and with a proven history of instability, assaults, rages, and felony child abuse. Barry has also complained about Fox’s and Wagstaffe’s poor performances as District Attorneys (Barry is hardly the only one) in the San Mateo notorious William Ayres serial child sex molester case in pleadings filed mostly in *Fotinos v. Fotinos*, Case No. CV-12-0953 CW, Northern District of California.

3. This is not the first time that Steve went after an attorney (in this case through Fox and Kim) for criticizing him about the botched Ayres child sex abuse case. Victoria Balfour, the activist who worked with the

Ayres victims and their families to bring about the second prosecution of Ayres in 2013, discussed the case with guests Robin Sax, an attorney for Fox News, Channel 11 in Los Angeles, and former prosecutor in L. A. District Attorney Steve Cooley's office .

On September 2, 2013, Award winning journalist and victims' advocate/activist Victoria Balfour was a guest on the Larry Elder radio show out of KABC in Los Angeles, California. The guest hosts for the Labor Day show were Leo Terrell and Robin Sax.

Robin Sax actually has some prior experience with the Ayres case, as she wrote an article in the Huffington Post about Balfour being barred from access to the courtroom in the first criminal trial. For her efforts, DA Wagstaffe contacted Prosecutor Sax's boss [Los Angeles District Attorney Steve Cooley] to try to get her disciplined for speaking out about the matter.

<http://williamayreswatch.blogspot.com/2013/09/victoria-balfour-radio-interview-sept-2.html>

4. Here are some comments found at the above website:

Anonymous September 5, 2013 at 6:50 AM

So let me get this straight: Robin Sax, a prosecutor and legal commentator on the Today Show, writes an OPINION piece about the prosecutor, Melissa Mckowan in the Ayres case in 2009.

San Mateo DA Steve Wagstaffe - who once let one of his own prosecutors write an opinion piece for a paper that was critical of Leland Yee's bill that would outlaw forcing women in domestic violence cases to testify- actually CALLS up then Los Angeles District Attorney Steve Cooley about Sax's opinion piece and tries to get Sax into trouble for writing it.

DA Cooley must have thought Wagstaffe was nuts.

Wagstaffe's small-town, smalltime bullying tactics don't work in the big leagues.

Vote Wagstaffe out in the next election.

Anonymous September 5, 2013 at 7:23 AM

The question is: will Wagstaffe call up Robin Sax's boss at KABC in Los Angeles and try to get her into trouble for talking about how he tried to retaliate against her?

What a petty, vindictive, small-town idiot he is.

It's clear he's never heard of the First Amendment.

Anonymous September 6, 2013 at 1:56 PM

In June 2009, a San Mateo resident sent DA Steve Wagstaffe a copy of Robin Sax's Huffington Post story about Mckowan barring Balfour from the courtroom and then told him she wouldn't be voting for him in the next election.

Here's a small portion of Wagstaffe's very lengthy and VERY defensive response to the San Mateo citizen about Robin Sax from June 27, 2009:

"Finally, I have read the words written by Los Angeles prosecutor Robin Sax. I do not know and have not heard of this attorney before, but it is my view she has a very basic misunderstanding of the legal and ethical boundaries of the role of a prosecutor in court. I have been a prosecutor for 32 years and a member of the Board of Directors of the California District Attorney's Association; District Attorney James Fox has been a prosecutor for 39 years and the President of both the California District Attorney's Association and the National District Attorney's Association. We are both amazed at the statements of Ms. Sax. Beyond that, I will not speak ill of her."

Wagstaffe says he won't speak ill of Sax and then proceeds to trash her. What a misogynist. And for the record, while he says he's never heard of Sax, a lot more people have heard of Sax around the country than they've heard of Wagstaffe. Sax is a legal analyst on the Today Show. Is Wagstaffe?

5. By serendipity, Robin Sax appeared in the juvenile court case, *In in re Luke Cuesta in re Joseph Cuesta* Case No. CK 81043, Los Angeles Superior Court to persuade Commissioner Debra Losnick to allow Fox News to attend the hearing concerning the placement of Luke. Barry represented the mother who was being attacked as an alienator (repugnant, misogynistic PAS) when all evidence pointed to the father, Michael Cuesta, having sexually molested Luke. Although Presiding Judge Nash promised open courts he left it to the discretion of each judge. So far, each judge, in Barry's experience, has denied the press attendance during the hearings concerning children. However, Fox News, including Ms. Sax, Gina Silva, and Martin Burns, producer now deceased, pursued Luke's case. Yolanda the Mother and Luke prevailed only to be attacked once more by father and minor's counsel in the Court of Appeals. The appeal has not yet been decided. Attorney Sax is genuinely concerned about justice for children.

6. Just as Barry and Michele had to picket and hand out fliers to get violent felon John Fotinos arrested for weapons possession so Victoria Balfour, the victims, and their family members had to do the work such as

surveiling Ayres to get Steve to prosecute Ayres again.

7. Brother James is in this case for Kim, Fox, and his brother, Steve also because Barry sued Kim for an injunction besides complaining about Fox and Steve in federal pleadings. .

8. Barry sued Kim for a simple injunction to order her to investigate Bonnie Miller, a former minor's counsel for the two Fotinos children, and Ansel Kinney, the attorney for John Fotinos in the family law matter.

9. Barry sued Kim for the injunction because the Bar will not prosecute minors' counsel even if they put their young clients in harm's way through their mendacity, negligence, or malice towards the other parent, typically the mother, in particular if she alleges the father is abusing the child and even worse, if she alleges sexual abuse by the father against the child.

10. Barry also sued Kim to order her to investigate Kinney's unethical memorandum and declaration in which Kinney falsified charges against Judge Franchi or made the charges with a reckless disregard for the truth. Judge Franchi acknowledged that the legal system had done a lot of wrong things to Michele Fotinos and her two children, had removed Miller as minors' counsel, and taken other steps to correct the harm, such as

making sure that Michele got her visits without John Fotinos hovering within earshot and eyesight of the children. Judge Franchi ruled that J. Fotinos had committed perjury and referred him for perjury prosecution. He awarded \$16,240 in sanctions to Michele for J. Fotinos' perjury.

11. Recently, we learned J. Fotinos has pled guilty to felony perjury. **Wagstaffe and Judge Mallich or Karesh are also allowing J. Fotinos to plead guilty to possession of only one weapon although J. Fotinos had 14 guns, 2 assault rifles, and 10,000 rounds when arrested.** To keep the San Mateo judges happy, Steve will probably not insist on prison time, despite the fact that without prison time for J. Fotinos, Bay area residents remain at great risk.

12. Michele and Barry contend that this collusive bargain is being struck because if the Fotinos children, A.F. and R.F., testify as the two key witnesses to J. Fotinos hiding the guns in the storage unit of Dawn Grover, J. Fotinos' live-in partner and now, his wife, too much might come out which will badly reflect on the San Mateo legal system which has already taken a beating in the press because of the disastrous Ayres child sex abuse prosecution overseen by Fox and Steve.

13. The jury would most likely learn about J. Fotinos' felony child abuse, Grover's crime of aiding and abetting a felon in hiding his

guns, and the failure of the judges and law enforcement to do anything for five years about J. Fotinos having guns. It took a teenager, R.F. who is the Fotinos daughter, to blow the whistle on J. Fotinos. R. F. reported that her father had guns and she was afraid he might kill her and her mother in her December 2011 declaration for a domestic violence restraining order against J. Fotinos. The jury might well have learned that in June 2012 Michele and Barry had to picket and pass out fliers to get J. Fotinos arrested and his **14 guns, 2 assault rifles, and 10,000 rounds of ammunition confiscated**. Maybe the jury might have learned that Barry, Michele, and R.F. have been suffering intensified judicial retaliation ever since.

14. Former Presiding Judge San Mateo Judge Beth Labson-Freeman and current Presiding Judge Robert Foiles do not want the child abuse, Grover's involvement in the crime, and their failure and that of law enforcement's to arrest J. Fotinos exposed to the public and to the jury.

15. Because J. Fotinos has a long history of lying -- he just pled guilty to perjury -- and was able to obtain guns on the black market even as a convicted felon, as long as J. Fotinos remains free, all Bay Area residents are at risk. J. Fotinos knows that the San Mateo judges and Steve Wagstaffe have his back which he probably sees as a green light to purchase more guns. – Thanks to Judge Foiles and Judge Freeman who

set the tone for the other judges and Steve Wagstaffe.

16. Thus, because Judge Franchi aimed to remedy what had happened to Michele and the children, he clearly ran afoul of Presiding Judge Labson-Freeman and her assistant, Judge Robert Foiles. How does this writer know this? – Because of the subsequent conduct of Judge Foiles who overturned what Judge Franchi had accomplished, going so far as to insult his colleague by refusing to take judicial notice of Judge Franchi's rulings and findings although Barry had fully complied with Evid. C. Sec. 453. See also Evid. C. Sec. 450, 452(d)(1). Judge Foiles prohibited Michele and Barry from enforcing the order on the sanctions now at \$22,000.00 or so because of the ten percent interest on the order. Judge Cretan made sure not to award sufficient support and Michele cannot garnish John Fotinos' tax-free, but taxpayer-paid, pension and so, she goes to a food bank for her and her daughter's groceries..

17. Kim would never investigate a minor's counsel, especially olike Miller whose father-in-law was a San Mateo judge and continues to be supported by Judges Freeman and Foiles. Miller and her husband Cameron Miller serve on numerous San Mateo panels, juvenile delinquency, family law, etc. Miller continues to receive appointments as minor's counsel in San Mateo court despite being sued by Michele and her

children for serious misconduct.

18. Kim would never investigate an attorney like Kinney who had insulted and lied about a judge who had fallen from grace and viewed no longer as a player by those judges, Freeman and Foiles, unfortunately still in control without a nudge from a federal judge. The nudge did not occur, and Kim refused to investigate Kinney. Michele and her children were denied their due process rights and have paid the price ever since.

19. Barry also named the justices of this Court in the flier because they failed to refer John Fotinos for arrest and prosecution or issue a restraining order against him. Kim, Fox, Babcock, and Brothers Wagstaffe are confident the justices will NOT set aside whatever resentment they may harbor towards Barry, the Bar will prevail, and the Court will punish Barry by charging her thousands of dollars when the Bar wins in this Court.

20. It is the perfect storm for Barry: Unlimited Bar dues at Kim's, Fox's, and Babcock's disposal, no accountability, and everyone in control wanting to retaliate against Barry. So much for free speech protected by the First Amendment – whistleblowing about the threat to public safety and potential gun violence. Barry's speech was not so free after all.

21. Kim, Fox, Babcock, and the Wagstaffe brothers have turned this proceeding into an ideological, political vendetta and personal crusade

against Barry which is prohibited by the U. S. Supreme Court's ruling in

Keller v. State Bar of California, 496 U.S. 1, 14 (1990):

We think these principles are useful guidelines for determining permissible expenditures in the present context as well. Thus, the guiding standard must be whether the challenged expenditures are necessarily or reasonably incurred for the purpose of regulating the legal profession or "improving the quality of the legal service available to the people of the State." *Lathrop*, 367 U.S. at 367 U. S. 843 (plurality opinion).

22. This proceeding has nothing to do with regulating the legal profession or "improving the quality of the legal service available to the people of the State" and everything to do with regulating Barry's not-so-free speech and punishing her for it. It has everything to do with **lowering** "...the quality of the legal service available to the people of the State" because it has a chilling effect on any attorney who wants to take up the causes Barry has taken up, challenging the legal system for what it does to parents and children in family and juvenile courts.

23. Another reason to strike the Bar's pleadings in this Court is because outsourcing legal services in this instance is an excessive and wasteful expenditure of Members' dues without good cause besides being based on nepotism.

A. There is nothing complicated or esoteric about the issue before this Court. Likewise, with the legal arguments of the Bar.

They obviously did not resonate with the Court of Appeals; their brief in this Court remains lackluster with the repeated conflating of “subject matter jurisdiction” with “merits” blurring the distinction between the two concepts until there is none. And there was subject matter jurisdiction – in this Court. Attorney von Loewenfeldt informed Barry that his “commercial hourly rate is \$650/hr”. Lee’s hourly rate is approximately \$50 an hour, maybe she has received a raise since she sought attorney fees at the trial level. Yet, Attorney Loewenfeldt lifted Lee’s arguments from her appellate brief into his. How does plagiarism increase the hourly rate of \$50 to \$650?

B. There are five attorneys whose names appear on the Opening Brief of the Bar: Starr Babcock, Lawrence C. Yee, and Danielle Lee from the office of the General Counsel of the State Bar of California; and James M. Wagstaffe and Michael Von Loewenfeldt of Kerr and Wagstaffe, LLP. Five attorneys are not required. No outside counsel was necessary because the issue is not complex, and nothing is at stake for James and Jayne and Steve and James except their retaliation against Barry’s free speech. While it may be flattering to Barry that the Bar thinks it needs five attorneys to defeat her, Kim, Fox, and Babcock cannot use our members’ dues to vent their spleen on Barry because a Court of Appeals published a case against it. Just as Judge Foiles, Judge Freeman, Judge

Cretan, Judge Karesh, Judge Bergeron, etc. should not be able to vent their spleen on Michele, R.F., and Barry because San Mateo Judge Franchi told the truth, that the legal system had done a lot of wrong things to Michele and her kids, although they continue to do so.

24. All attorneys must exercise billing judgment and what cases are worth pursuing, including Kim, Fox, and Babcock. No reasonable attorney would chase a \$2500.00 fee award all the way to this Court. For such a small award, Babcock should have negotiated a settlement with Barry whereby she dismisses the appeal and he dismisses the order for the attorney fees. Babcock won for the Bar, and Barry's complaint went away. Only Bar officials who are used to bullying and terrorizing attorneys, running the Bar like a fiefdom, and not accounting to anyone for bad economic decisions would embark on such an ideological crusade as this case has become. Now having had a decision published against them, they cannot admit they blundered and keep on spending more good money after bad – only it is not their money; it is our members' money. They are enraged that Barry won even the small victory Division Two of the Second Appellate District Court of Appeal handed her. James and Kim (and Starr) and Steven and James are not thinking straight. They are guilty of hubris and the arrogance which comes from unfettered and runaway power to do

anything they want. After all, it is not their money and what attorney would have the courage to challenge them with their power to make up a rule violation to take away the attorney's bar card and thus the attorney's ability to earn a living? Further, Barry spoke on the phone with a Financial Manager for the Bar, she believes his name is Ray Farrish, but not sure, who confirmed **there is no competitive bidding for outsourcing legal services and no oversight over Starr when he outsources and to whom.**

25. Kim, Fox, Babcock, and Lee have squandered the members' dues as follows:

A. Lee argued in the Bar's demurrer the Court had no (subject matter) jurisdiction over the complaint and all the causes of action. The Court agreed that it did not have jurisdiction over the entire lawsuit in the order granting the anti-SLAPP motion. **But everyone is agreed there is a court which did have jurisdiction, namely, this Court.** So, the complaint should have been transferred there by stipulation or dismiss the complaint without prejudice so Barry could refile in this Court.

B. Therefore, the demurrer should have been sustained (without prejudice, so Barry could refile in this Court) for lack of jurisdiction over all causes of action, and the anti-SLAPP motion deemed moot. This is how the Court proceeded and ruled (except demurrer

sustained with prejudice) in San Francisco Superior Court when Danielle Lee filed an Anti-SLAPP motion in *Kay v. State Bar of California*, No. CGC 10-496869.

C. This is the issue in this review. However, because of the *Kay* precedent, the small attorney fee award, and the fact that the Bar had obtained a dismissal, once Barry filed the appeal Babcock, Kim, and Fox should have negotiated a settlement *because from a costs benefit analysis, it was not worth pursuing the appeal for the reasons stated when maybe Barry could win, and she did.* Kim, Fox, and Babcock did not, choosing to squander more of the members' dues.

D. The Bar was entitled to costs per the law. Lee filed a memorandum of costs but it was late, and the time period is jurisdictional. The Court denied costs. So, the members were billed for Lee's time and received no benefit.

E. At the trial level Lee charged the Members \$143 for messenger service of Motion to Strike on Barry which was not necessary. Priority mail would have sufficed. Babcock, Kim, and Fox charged the members \$14.00, \$111.75, and a \$381.40 for Lee's costs to argue the demurrer and Anti-SLAPP rather than to set up a branch of the General Counsel's Office in Los Angeles County, the most populous county in the state. Lee billed the members for her travel and wait time (in airports) 10

hours at \$50/hr.

F. At the appellate level, Babcock and Lee engaged in needless and frivolous litigation.

....[A]ttorneys seeking court-awarded fees are expected to exercise voluntary “billing judgment,” excluding from a fee request “hours that are excessive, redundant, or otherwise unnecessary” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (citations omitted).

G. Babcock, et al served Barry **again by messenger** with a frivolous exparte application to shorten time within which to hear Motion to force Barry to post a bond. First, Barry was not going anywhere and so, there were no exigent circumstances. Second, one cannot force a losing party to pay a bond to stay a money judgment if the losing party has not sought the stay. Barry had not sought a stay. Lee charged us members to fly to Los Angeles to argue the exparte (the shortening of time ended up being nominal). The members were charged for airfare, taxis, hotel, food, and Lee’s time to make the appearance on the exparte besides the time she spent on preparing the ex parte. Then, when Barry pointed out in her opposition that she had not sought a stay of the \$2500 fee award – the Bar backed out and dropped the motion, but only after drafting and filing the exparte, the motion, and a reply.

H. That was not to deter Babcock, Fox, and Kim – they

had Lee prepare and file a request for debtor's exam and have a **messenger** once more serve the order for the exam on Barry, fly Lee to Los Angeles where Lee took the debtor's exam of Barry, only to learn that she was judgment proof, costing the members Lee's time, airfare, taxis, food, hotel – for a \$2500.00 attorney fee. It is not known whether Lee appeared in court to obtain the order for the debtor's exam. If she did, it would have cost the members roughly another \$1,000.00 for her travel and work time, airfare, hotel, and food. – The members once more picked up the tab for a useless legal proceeding.

I. To make matters worse, they made Lee prepare a Request to Produce documents at the debtors' exam. The members' dues paid for a **messenger** (fourth messenger) to serve the request on Barry. They were late, and Barry filed a timely objection to production of any documents. Babcock did not challenge the objection. Barry did not produce documents at the debtor's exam. More of our dues wasted.

J. **Five attorneys** – Babcock, Yee, Lee, James, and Michael -- were late filing the Petition for Review. So, besides filing the Petition, they had to spend extra time preparing a request for relief from default – again charging the members for this extra pleading. So far, what does the reader think the members have spent on a \$2500 fee award?

K. It gets much worse. Babcock, Fox, Kim, and James Wagstaffe had Bar employees work many hours to locate all the cases they could find where the Bar was sued and then spent thousand of dollars more to put those lawsuits into four appendices consisting of maybe 800 to 1,000 pages. They were not properly batestamped *seriatim*. Besides who is going to read all those cases? From an evidentiary viewpoint, how does the fact that the Bar gets sued a lot going to assist the Court on the limited issue of whether lack of subject matter jurisdiction in the superior court (but this Court has jurisdiction) means that a court can still go through the allegations of the complaint in an anti-SLAPP motion, decide the plaintiff cannot prevail, and award attorney fees in a case where the Court agreed that only this Court had jurisdiction? Also, the appendices of hundreds of lawsuits in which the Bar is sued can cut both ways: either the Bar is being repeatedly victimized with frivolous litigation or the Bar has victimized numerous individuals who are suing the Bar for that victimization. It is probably the latter (Bar picking on people, rather than the reverse).

26. There is nothing dignified about this proceeding. It brings this Court into disrepute, a Court which has a national reputation as a trendsetter in civil rights, much like the Ninth Circuit, a Court that as a California resident Barry was very proud of. Yet when Barry, as a female

civil rights attorney, challenges the legal system itself, civil rights and the constitution fade into obscurity and nimbyism takes a front seat.

The Petition for Review should be dismissed for this foolish incursion into this Court which subjects “Starr and James and Jayne and Steve and James” to ridicule and derision. Attached is Declaration of Patricia J. Barry (Barry provides some legal authorities in her declaration).

DATED: January 26, 2014

PATRICIA J. BARRY

DECLARATION OF PATRICIA J. BARRY

I, PATRICIA J. BARRY, declare the following:

1. I am the attorney/respondent in this proceeding. I testify to the following based on my own direct knowledge. To the extent the information is based on my understanding or belief, I believe the matters to be true.

2. I was astonished that this Court accepted review of a reversal of a \$2500.00 attorney fee award.

3. In my 95-page complaint, I provided an abundance of evidence showing that the Bar has repeatedly engaged in corrupt prosecutions, cronyism, and favoritism among members when it comes to discipline.

4. Irony of all ironies, the Bar is engaging in the same corruption of which I complained in this very lawsuit wasting and squandering the dues of us members including hiring James Wagstaffe, the brother of San Mateo D. A. Steve Wagstaffe, about whom I have complained in federal litigation and who I “outed” in the flier my client, Michele Fotinos and I passed out in San Francisco because Steve and judges refused to arrest violent felon John Fotinos for possession of weapons registered to him. s.

5. When I initially saw the names “James Wagstaffe” and “Kerr

& Wagstaffe” on the Petition for Review and then, Opening Brief of the Bar, I thought no, they could not be related, the same last name was a mere coincidence, that the Bar would not be so foolish as to hire someone related to D. A. Steve Wagstaffe with James Fox sitting second in command at the Bar. However, as I was working on this brief, on January 28, 2014, I became suspicious.

6. In the afternoon of January 29, I called James Wagstaffe’s office and asked to speak to him. He would not take the call. I left a voice mail asking if he objected to my seeking relief from default and whether he was related to D. A. Steve Wagstaffe.

7. On January 29, 2014, I heard Mr. Von Loewenfeldt’s voice mail of January 28. In his voice mail he confirmed that yes, James is indeed the brother of Steve, although not sure of why that was relevant (!) And that he had no objection to my request for relief from default and to extend the time to file my Answering Brief.

8. On January 28, 2014, I started searching the web about James and Steve Wagstaffe since I did not listen to Mr. Von Loewenfeldt’s voice mail until January 29, 2014. Here is what I came up with searching under under James Wagstaffe’s name:

9.
http://www.mercurynews.com/ci_23017170/san-mateo-county-leaders-desc

end-monterey-this-weekend

SAN MATEO COUNTY LEADERS DESCEND ON
MONTEREY THIS WEEKEND FOR ANNUAL
CONFERENCE

By Bonnie Eslinger, Daily News Staff Writer

POSTED: 04/13/2013 01:00:00 AM PDT

A group of San Mateo County politicians are joining other government officials, local business representatives and community leaders in Monterey this weekend for the annual Progress Seminar.

Keynote speakers include ...attorney James Wagstaffe, the brother of San Mateo County District Attorney Steve Wagstaffe. emphasis added.

10. Here is what I learned about James Fox – he is deeply entrenched with this Court and the Judicial Council.

11. According to the September 2011 edition of the Cal Bar Journal,

James Fox, retired San Mateo County District Attorney and the longest sitting district attorney in California prior to his retirement in January, has been retained as a consultant to help Kim bring change to the Office of Chief Trial Counsel.

12. Then, per the website of the law firm Chow & Losinki found at

<http://www.chow-losinski.com/news/item/9-state-bar-names-attorney-member-to-judicial-council-of-california>, Wednesday, 20 June 2012 22:14:

State Bar Names Attorney Member to Judicial Council of California SAN FRANCISCO—Chief Justice Tani G.

Cantil-Sakauye has announced that the State Bar Board of Trustees has appointed a new attorney member to the Judicial Council of California, the policy-making body of state courts.

The new member is James P. Fox of San Carlos.

He was appointed to a three-year term, from September 15, 2012 to September 15, 2015. He joins three other attorney members on the Judicial Council: Angela Joy Davis, of Los Angeles, Mark P. Robinson, Jr., of Newport Beach, and Edith R. Matthai of Los Angeles.

James P. Fox is a consultant to the State Bar, assisting Chief Trial Counsel Jayne Kim in reducing a backlog of complaints against California attorneys. Before his retirement on December 31, 2010, Fox was the district attorney of San Mateo County for 28 years. emphasis added.

In 2009, the Judicial Council presented Fox with the Bernard E. Witkin Amicus Curiae Award for his many contributions to the administration of justice through his leadership [like, the Ayres prosecution?] and service at national, state, and local levels. Fox has also served on the Judicial Council's Criminal Law Advisory Committee and Court Profiles Advisory Committee, as well as the State Bar's Commission on Judicial Nominees Evaluation.

13. First, where is the authorization to use OUR bar dues to pay the salary for a "consultant" to Ms. Kim who has no experience in state bar discipline; whereas, the person he is "consulting" with, does? According to the Cal Bar Journal cited above, Ms. Kim is as a former Bar prosecutor. So, why does she need a retired D. A. to serve as her "consultant"? (I thought with her experience as both a Bar prosecutor and a U. S. Attorney [removed from state political imbroglios], Ms. Kim might clean up the Bar. Perhaps

with this Court cuing Ms. Kim it is time for change, she will follow your lead). Wouldn't Ms. Kim be advising Mr. Fox and having to spend her time training him? Their roles look like the reverse of what they should be.

14. As the web article indicates, Mr. Fox was the San Mateo District Attorney for 28 years. So, he was around when the sexual abuse complaints first surfaced in the late 80's against William Ayres, a "child psychiatrist" who sexually abused children **referred by San Mateo judges and the County to him. Yet he, like San Mateo Judge Freeman who aspires to be a federal judge and who was a County Counsel at the time, did nothing.**

15. Your Honors, Out with the Old Guard. In with the New made up of public servants who refuse to cover up crimes against children even if it means stepping on the toes of judges and county officials. Why? Because of the **moral imperative** to act for children when it comes to human rights crimes committed against them.

16. To say Ayres abused his position and authority as a child psychiatrist as he sexually abused the children forced to see him by court order is an understatement, and putting it mildly. Abuse of authority and position does not begin to describe adequately the suffering he inflicted on children – whom he threatened with jail or work camp if they reported him