

# The Signpost

September–October, 2014



## From the Redwoods

Dear Park Professionals,

It's now late August, and I'm sure most of you are experiencing a love/hate relationship with your parks, your park visitors and summer in general. I hear you. I really, really do. Adding insult to injury are the reports that our long-promised El Niño is fizzling—I nearly wept at the news.

So what's a long-suffering parkie to do when the temperature is climbing, the 647(f)s are falling from the trees (or rocks, or boats, or...) and the reality of wildfire is clear and present? When things are at their most chaotic, you need to remember to take care of yourself. Unplug, take a long weekend if you can, or at the very least take a long hike (preferably NOT in your own park). You are of absolutely no use to anyone if you are an exhausted, stressed-out basket case. In fact, if you're not at your best, you risk injury to yourself or someone else. I know that we are all used to "sucking it up" and soldiering on when things get rough; that is often what keeps our parks running. But I'm asking you to remember to take a break. Practicing self-care isn't a petty indulgence, it is a necessity.

And on that note, I'm off to the airport to take my own advice.

Stay safe out there, everyone.

*Heather Reiter*

PRAC President,

Chief Ranger, City of Santa Cruz

# Legal Update

## Robert C. Phillips

### Deputy District Attorney (Retired)

*Billy Clubs, per Former P.C. 12020(a)*

#### People v. Davis (Mar. 28, 2013) 214 Cal.App.4<sup>th</sup> 1322

**Rule:** Possession of a baseball bat modified to be used as a weapon qualifies as an “instrument or weapon of the kind commonly known as a...billy,” and is illegal.

**Facts:** Defendant was stopped by Deputy Sheriff Osvaldo Hernandez for making an unsafe lane change. When asked for his registration, defendant told Deputy Hernandez that it was expired even though the registration sticker on his car was current. A call to dispatch confirmed this fact. When asked if he had any weapons with him, defendant said that he had a bat on the backseat. Recovering the bat, Deputy Hernandez found that the bat, which was 29 inches long, had holes drilled partially through the handle and had a leather wrist strap. The holes appeared to be for the purpose of making the bat lighter and easier to grip. It was also painted black with red lightning bolts drawn on it in two places. When asked why he had the bat, defendant responded that he repossessed vehicles late at night and needed the bat for protection. Defendant also had tools in his truck with lightning bolts painted on them. Defendant said that he was an electrician and that the lightning bolts were to mark his tools. Deputy Hernandez knew that double lightning bolt markings were used by neo-Nazi White supremacist groups. Defendant was charged in state court with possession of a billy club, per former P.C. 12020(a)(1) (now, P.C. 22210.), along with displaying false evidence of registration, per V.C. 4462.5. At trial, while admitted to falsifying his registration sticker. As for the baseball bat, defendant claimed that he “primarily” used the bat to play with dogs and that the lightning bolts were nothing more than his “trademark,” used to identify and prevent the theft of his tools. Witnesses testified that he was not a member of any neo-Nazi groups or a skinhead. Defendant testified that he supplemented his income by repossessing vehicles for a finance company and that the bat was used to protect himself in case of assault. He said he’d never hit anyone with the bat or pulled it out, but that it was a “security blanket” that he wanted to have available in case he was threatened during a repossession. When he drilled the holes in the bat and painted the lightning bolts on them he was just “screwing around.” He also said that he mentioned the bat to Deputy Hernandez when the deputy asked about weapons only as a “common courtesy.” He was convicted and appealed.

**Held:** The First District Court of Appeal (Div. 4) affirmed. Defendant’s argument on appeal was that a mod-

ified baseball bat does not qualify as a billy for purposes of P.C. 12020(a)(1) (now P.C. 22210). Defendant argued that because P.C. 12020 does not physically describe a billy, noting only that the section prohibits the possession of an “instrument or weapon of the kind commonly known as a...billy,” the Court is bound by earlier case law (pre-1923) that described such an instrument as a small metal bludgeon, defining “bludgeon” as “a short stick with one end loaded” and which could easily be concealed upon the person. The Court ruled, however, that the definition of a “billy” is not so restricted. Per more recent case law, a baseball bat may qualify as a “billy” whenever “the attendant circumstances, including the time, place, destination of the possessor, the alteration of the object from standard form, and other relevant facts indicated that the possessor would use the object for a dangerous, not harmless, purpose.” Thus an ordinarily harmless object, such as a baseball bat or even a table leg, may qualify as a “billy” under the right circumstances. In this case, the bat had been modified in such a way that the jury could reasonably conclude that the bat was more useful as a weapon. The length of the bat is but one factor to consider. Holes in its handle could reasonably be seen to make it easier to grip, and the strap could make it easier to carry and to swing. Moreover, defendant admitted to both Deputy Hernandez and in his own testimony that he needed the bat for protection; i.e., as a weapon. With this evidence, therefore, defendant was properly convicted.

**Note:** Defendant also made the interesting argument that he had a constitutional right to possess a billy under the Second Amendment’s “right to bear arms.” While we typically think of “arms” to be firearms only, the Court did not say anything here to indicate that a billy club couldn’t also be included within the broad category of what constitutes “arms.” But the Court did rule that the Second Amendment “does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes.” It has been determined that the Legislature’s purpose in enacting former section 12020 (now 22210) was to outlaw the possession of instruments which are “ordinarily used for criminal and unlawful purposes.” While a firearm has many recognized lawful purposes, a billy is typically intended to be used for one purpose; i.e., to do damage to another’s person. Per this Court, therefore, the Second Amendment does not give a person the right to possess those weapons described in section 12020.

# Legal Update

**Robert C. Phillips, Deputy District Attorney (Retired)**

## Miranda; Non-Custodial Questioning

*People v. Davidson (Nov. 26, 2013) 221 Cal.App.4<sup>th</sup> 966*

**Rule:** Initial on-the-scene questioning of a criminal suspect, so long as “brief and causal,” is not likely to require a Miranda admonishment and waiver. The fact that the suspect has been handcuffed is but one factor to consider when determining whether Miranda is implicated.

**Facts:** A brand new Suzuki motorcycle disappeared from the driveway of its owner in Simi Valley at some time during the early morning hours of April 22, 2012. At about 9:45 a.m., defendant was seen pushing the victim’s motorcycle down a nearby street by a witness who figured something was suspicious when he saw loose wires hanging from its ignition. The witness called police, providing a description of the defendant. Simi Valley Police Officer Patrick Coulter responded to the call. He observed defendant, matching the broadcast description, still pushing the motorcycle with “jumper wires” hanging from its ignition. When defendant saw Officer Coulter, he pushed the motorcycle behind a high profile vehicle in a vain attempt to hide. Officer Coulter ordered defendant to put the bike down, remove his backpack, and step towards him. Defendant was carrying a flat-blade screwdriver at the time, which he set on the seat of the motorcycle. Officer Coulter was concerned about the screwdriver being available as a weapon, the fact that defendant was acting “hanky,” and that he appeared as if he were thinking about fleeing. So he immediately handcuffed defendant and, while telling him that he was being detained for investigation, had him sit on the curb. Immediately upon applying the cuffs, Officer Coulter asked defendant, referring to the motorcycle, “Is this your vehicle?” Defendant responded that he’d found the motorcycle in some bushes in a nearby industrial-office area. Not finding this explanation to be plausible under the circumstances, Officer Coulter arrested defendant and searched him, finding a meth pipe in his pocket. At trial, defendant made a motion to suppress his statement, arguing that because he had not been admonished of his Miranda rights when asked about the motorcycle, his statement was inadmissible. The trial court found that defendant was not in custody for purposes Miranda, making any such admonishment legally unnecessary, and denied the motion. Defendant was convicted of auto theft and appealed.

**Held:** The Second District Court of Appeal (Div. 6) affirmed. In finding that no Miranda admonishment was necessary under the circumstances, the Court quoted an earlier case in setting out the guiding principle for this type of situation. “When circumstances demand immediate investigation by the police, the most useful,

most available tool for such investigation is general on-the-scene questioning, designed to bring out the person’s explanation or lack of explanation of the circumstance which aroused the suspicion of the police, and enable the police to quickly determine whether they should allow the suspect to go about his business or hold him to answer charges.” (People v. Manis (1969) 268 Cal. App.2<sup>nd</sup> 653, 665.) In considering all the surrounding circumstances of this case, including that the defendant had been handcuffed, the Court found that defendant’s situation fell squarely within the above principle. Handcuffing a suspect during an investigative detention is but one factor to consider, and does not automatically make subsequent questioning a “custodial interrogation” for purposes of Miranda. Defendant in this case was handcuffed only because he was acting “hanky,” he appeared that he might be ready to flee, and he had access to a possible weapon; i.e., the screwdriver. He was told he was only being detained immediately before being asked about the motorcycle. The detention was brief, with the challenged question being asked on a public sidewalk and not at a police station where interrogations are typically prolonged and intense. So what defendant perceived as a custodial interrogation was in fact no more than a single question asked to confirm or dispel the officer’s suspicions. Under these circumstances, there was no need for a Miranda admonishment and waiver before asking about the motorcycle.

**Note:** The bottom line is that defendant was not under arrest, but only being detained. Miranda is typically not required in the detention situation. And it was only a detention (as opposed to a “de facto arrest”) because the officer had some valid safety-related reasons for applying the handcuffs. But the Court also pointed out that there are limits to this rule. “Miranda warnings are not required ‘until such time as the point of arrest or accusation has been reached or the questioning has ceased to be brief and casual and became sustained and coercive’” (quoting People v. Manis, supra, at p. 669.). So don’t push this envelope too far. The whole purpose in finding such questioning to be a “noncustodial interrogation,” not requiring Miranda, is that such questions are necessary for a quick determination whether a crime has in fact been committed and whether the right suspect has been detained. Once this determination is made and the detainee is in fact arrested, then any further questioning can no longer be considered “brief and causal.” And by the same token, letting the questioning get more direct, intense, and accusatory may itself very well convert the detention into an arrest.

**From the Bedside Table  
of Patrick Boyle**

# **Cod**

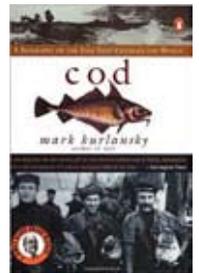
**by Mark Kurlansky**

I never realized that one fish was so intricately linked to human history. The cod is entrenched in our evolution and exploration of this world. In fact it was most likely Basque fishermen who discovered America long before Columbus but did not want to give up the location of their plentiful fishing grounds. Without cod explorers could not have made such long voyages as it dries and preserves exceptionally well. Many ship logs stated that men lowered baskets down into the waters off the coast of America and came up full of cod.

Salt cod was a staple diet of many nations as well as an economic staple. There is a direct link with cod to the slave trade in America. It led to nations extending their borders off shore to keep other nations from fishing. There were cod wars involving net cutting, and military escorts for fishing vessels. From the simple hand line to the development of the steamer and long line trawlers we became more efficient at harvesting cod. A fish that even in the 1960's they thought could not be

overfished. As with all resources, we exploited the cod and decimated the population. We switched to Hake, Pollack, and Dogfish (once considered trash fish), and did the same with other ground fisheries, decimating those populations as well. Man is great at selling the next best cod and overfishing, putting economics above resources.

Now we are waiting the return of the cod, attempting to recapture the past, but maybe Mother Nature will fill the void with something less desirable. We have fished cod for over 1000 years. We decimated the cod in 500 years, it may take another 500 years before they return to historic population levels. Mark Kurlansky follows the history of this fish and weaves a great story that you can not put down. He has written several books and all of them come highly recommended. I can't wait to get my hands on the next one.



*Man wants to see nature and evolution as separate from human activities. There is the natural world, and there is man. But man also belongs to the natural world. If he is a ferocious predator, that too is a part of evolution. If cod and Haddock and other species can not survive because man kills them, something more adaptable will take their place. Nature, the ultimate pragmatist, doggedly searches for something that works. But as the cockroach demonstrates, what works best in nature does not always appeal to us.*

*Cod*

*Mark Kurlansky*



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## Calendar of Upcoming Events

- Sept 20<sup>th</sup> Coastal Clean up Day
- October 8<sup>th</sup> Nominations Open for Directors Region 1,3,5
- October 9<sup>th</sup> PRAC Board Conference Call
- October 15<sup>th</sup> Submissions for *Signpost* November issue due
- November 15<sup>th</sup> Final date for Nomination for Directors Region 1,3,5

# Ramblings with Edward Abbey

About the middle of August I always go to Edward Abbey for some simple advice. About this time of year my patience level has peaked with all the “Hoopleheads” and their shenanigans. He always has a way of putting things in perspective. I have found myself on one or more occasions using some of these quips back at the general public.

*Patrick Boyle*

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Where’s the coke machine?

Goodness, I don’t know.

Sorry lady we have no Coke machine out here. Would you like a drink of water? (She’s not sure.)

The vacuum tube, madam. And do you know what happens if you stick your head in a vacuum tube?

If you stick your head....

Say ranger, that’s a god awful road you got in here, when the hell are they going to pave it? (They gather round to listen.)

I’ll tell you; you get your brains sucked out. (Laughter.)

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The day before I leave. (I say it with a smile; they laugh.)

Hey ole buddy, how far from here to Lubbock?

Where’s Lubbock, sir?

Well how the hell do we get out of here?

Texas, ole buddy. Lubbock Texas.

You just got here, sir.

Well sir I don’t know exactly how far that is but I’d guess it’s not nearly far enough.

I know but how do we get out?

Same way you came in. It’s a dead end road.

Any dangerous animals out here, ranger?

So we see the same scenery twice?

Just tourists. (Laughter; tell the truth, they never believe you.)

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It looks better going out.

Oh ranger, do you live in that little house trailer down there?

Where do you keep the Arches anyway?

Yes madam, part of the time. Mostly I live out of it.

What arches? All I see around here are fallen arches.

---

Are you married?

Does it ever rain in this country, ranger?

Not seriously.

I don’t know madam, I’ve only been here eleven years

You must get awfully lonesome way out here.

Well you said yesterday it wasn’t going to rain and it did rain.

No, I have good company.

Did I? Well that just goes to show you can never trust the weather

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Your wife?

No, myself! (They laugh; they all think I’m kidding.)

You work out here year round?

Well what do you do for amusement?

No sir just for the summer

Talk with the tourists. (General laughter.)

What do you do in the winter?

Don’t you even have a TV?

I rest.

TV? Listen lady....if I saw a TV out here I’d get out my cannon and shoot it like I would a mad dog, right in the eye.

How much do you get paid for this kind of work?

Goodness! Why would you do that?

Too much. But I give part of it back April 15<sup>th</sup>.

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What’s the principle of the TV, madam?

*It’s a great country: you can say whatever you like so long as it is strictly true, nobody will ever take you seriously.*

*Edward Abbey  
Desert Solitaire*

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