

## MEDIATE THIS !

## THE MARAUDING BAMBOO AND THE THREATENING NEIGHBOR

BY STEVEN P. DINKIN

## Dear Mediator:

Your recent column about the storage shed blocking a nice view is similar to our problem with a row of bamboo that our downhill neighbor planted along the fence line. The bamboo is an invasive plant that grows 15 feet tall, and it will soon block our magnificent view of Mission Bay. This neighbor is a hothead and can be threatening, so trying to reason with him seems fruitless. We think the "spite fence" law (Section 841.4 Civil Code) would apply here. How do we remedy this?

Menaced in Morena

## Dear Menaced:

Is there any legal concept more intriguing than the 140-year-old California-born "spite fence"?

Conjuring up an image of wood planks gone demonic, the spite fence has generated laws in a handful of states addressing the malign intent of a seemingly benign object. People have lots of good reasons to install property barriers. But if their primary goal is inflicting stress on a neighbor, and IF the neighbor can prove that in court, the spite fence may have to come down.

The original spite fence was

built in San Francisco in the 1870s by railroad magnate Charles Crocker, who wanted his neighbor's property to build a mansion. When the neighbor refused to sell, the enraged tycoon hired a crew to put up a three-sided solid fence, 40 feet high, to surround the man's house and block all his light and views.

Crocker was the prototype for what mediators call "the high-conflict individual," a person who thrives on fury and retaliation, even if, as happened to Crocker, he becomes vilified by his own community.

Your downhill neighbor may not be a modern-day Crocker. Let's start with the premise that he is equally capable of being reasonable and unreasonable and that your approach can determine which attitude will surface.

You need to reach out to him in a friendly manner to express understandable concerns about your own property. Rapacious bamboos will grow out as well as up, and their root systems actually *are* demonic. If his bamboo is on your property line, a professional landscaper can give you an underground growth prognosis and assess its potential for encroachment and harm.

Armed with that evidence, you



GETTY IMAGES

This week's question provides advice to a neighbor whose view of Mission Bay is being blocked by bamboo growing next door.

can initiate a conversation with your neighbor about what will soon be a shared problem. Does he have plans to keep the bamboo under control? If not, is he willing to explore options for that?

If he refuses to talk, thank him for his consideration, and ask him to keep the lines of communication open. Then you can pull out the conflict resolution playbook for high-conflict individuals, which is half-carrot, half-stick.

Remain empathetic and willing to negotiate. And prepare to take action to seek appropriate remedy.

The California appellate case of Wilson v. Handley (2002) established that a row of trees along a property line functions as a fence and could be subject to the spite fence statute. But you still have to demonstrate that malice was the motive. That will be a lengthy and expensive task.

In a dispute over a looming hazard with someone who is deeply hostile, a third-party mediator is probably your best hope of finding resolution and peace. San Diego County has an array of mediation services, some community-based and pro bono, some fee-based.

You prepare for mediation in the same way you prepare for a lawsuit. Organize your documentation and other materials, and construct a timeline narrative of how the problem surfaced and your good-faith efforts to solve it.

But in mediation, you're not entering an arena prepared for combat. You're trying to broker a reconciliation that will help you and your opponent move forward. We don't get to choose our neighbors. But we can choose how we interact with them.

Steven P. Dinkin is a professional mediator who has served as president of the San-Diego based National Conflict Resolution Center since 2003. Do you have a conflict that needs a resolution? Share your story with The Mediator via email at [mediate@ncrconline.com](mailto:mediate@ncrconline.com) or as an online submission by visiting [www.ncrconline.com/MediateThis](http://www.ncrconline.com/MediateThis). All submissions will be kept anonymous. If you have questions, email me at [lora.cicalo@sduniontribune.com](mailto:lora.cicalo@sduniontribune.com)

## NOTEBOOKS

From Union-Tribune reporting staff

## OUTDOORS: ERNIE COWAN

## Tree landmark connects to the past

Few things in life provide the permanence offered by nature and wild places.

A lifetime in the outdoors and a photo taken more than 100 years ago brought that home clearly to me last week.

As a bright-eyed teenager, I attended school camp on Palomar Mountain just like thousands of other San Diego students. It was a ritual for sixth- and eighth-graders and for many it was their first exposure to the wonders of nature and the outdoor world.

Some kids were not comfortable with being away from home for the first time or being away from their usual habitat of concrete and classrooms.

Fortunately, my parents introduced me to nature very early in life so for me it was heaven. I was in my element.

I can credit my mother with a love of nature, but this was a whole week away from school and living and learning about the outdoors.

It was also a time when a seemingly endless supply of bacon was served at breakfast in large bowls along with delicious pancakes.

We had sandwiches for lunch that we made ourselves, and copious amounts of food for dinner, along with several desserts if we behaved. We sang hiking songs about spiritual things, "The Red Men," and Zulu Warriors, but they were with respect for those connected to the land.

Of course, no memory of school camp would be complete without a crush. This was a time when Richie Valens was singing "Oh Donna," and one of the camp counselors, coincidentally named Donna, happened to be what I thought was the love of my life. Sadly, she didn't know I existed.

There are many memories from those two carefree weeks of learning in the outdoors and to this day I can still find the can opener tree on the road leading to the camp. Look for it on your left as you drive down the winding park road into Doane Valley.

But there is another life landmark visible on Thunder Ridge above Doane Pond in the broad valley where the school camp stands. This is part of Palomar Mountain State Park and thankfully preserved for generations to come.

It's called the Cross Tree and it was a landmark pointed out to young campers in the late 1950s when we spent our time in its shadow. Over the years I have always smiled



ERNIE COWAN

The Cross Tree is visible on Thunder Ridge above Doane Pond.

when I see the tree, because it brings back such wonderful memories of my young life, learning about nature, discovery of myself and the friendships, some that still exist today.

When I think about it, I am amazed that this landmark is still visible after 60 years. Even more amazing was my discovery recently of a photograph taken around 1904 that also showed the tree.

I was doing some online research when I came across a history of George Edwin Doane of Palomar Mountain, written by Peter Brueggeman. There was the 1904 image showing a sweeping view of Doane Valley and the Cross Tree, high on the ridge, in the distance.

It was standing more prominently than it does today, but clearly the same tree.

For me, the Cross Tree means continuity. Despite a life filled with change, I can return to a place that is seemingly unchanged. It connects me to my past and my roots and despite countless visits, to a place where I have enjoyed constant discovery both inwardly and outwardly.

I've shared Doane Valley with my kids and their kids, and I hope that will continue for endless generations.

If anyone ever questions the value of California's state parks, just spend a little time in the shadow of the Cross Tree.

Parks, and the people who are dedicated to running them, preserve more than just the habitat.

Memories are also preserved here.

Email [ernie@packtrain.com](mailto:ernie@packtrain.com) or visit [erniesoutdoors.blogspot.com](http://erniesoutdoors.blogspot.com).

## THE READERS' REPRESENTATIVE: ADRIAN VORE

## Deadlines and weather story collide

Here's a chance for readers to take the editor's chair. How would you handle a breaking weather story?

Wednesday, Dec. 5, and Thursday, Dec. 6, storms drenched the county. On that Thursday morning, I was assembling the Local section that would appear the next day. I wanted B1 to have news on the rain, including a rain chart of selected cities' precipitation totals.

U-T weather guy and copy editor Rob Krier wrote a short story and gathered the rain totals for a 48-hour period ending at 4:30 p.m. Thursday.

Fairly simple so far. But here's where things get a little messy. The deadline for the Local B section is 5:30 p.m. Krier looked at a satellite image and said more rain was going to hit later. He said it might look odd to have in Friday morning's paper rain totals and a story from late Thursday afternoon. After all, more rain was forecast.

I decided to keep the story and chart on B1. I felt the news of the rain so far needed to run. The chart would say as of 4:30 p.m. Thursday, and who really knew how much rain was going to fall later. Of course, the storm delivered a wallop after 5:30.

Parts of the county, including downtown San Diego where the U-T offices are, were hammered with rain, lightning and thunder, the likes of which are rarely experienced in these parts.

Because I kept the story on B1 with its 5:30 deadline, Friday morning's paper had no news of the violent weather.

John Keoni Bryant of Carlsbad, a retired newspaper reporter and editor, posted a comment on the U-T's subscriber Facebook page. He said it looked like the U-T section had a 5 p.m. deadline (the newspaperman was pretty close). So what about the deadline, where was the storm coverage? he asked. It was a blown call, he added.

"It was obvious to me from looking at the radar and hourly forecast that there was going to be a big evening rush-hour rain event," he said in a follow-up email. "So, given your early local section deadline restraints, I would have preferred a front-page story with a photo, and no weather on the local front."

OK readers, a couple of more things to consider before you make your decision.

The A-section deadline is 10 p.m. Local news can run in the A section if something breaks after the B section's 5:30 deadline.

You see those stories appear under "Late Local News," usually on A2.

Here are your options:

1. The precipitation you see on the radar hasn't arrived yet, and you don't know for sure what it will bring. You keep the story on B1.

2. You see the radar and you decide to pull the story off B1 with its early deadline and ask the A-section editors if they can take it as a Late Local item inside the A section.

3. You keep the story on B1, but when the storm goes crazy, you ask the A-section folks to take a separate late update on the weather. Now, however, you would have a local weather story in two places. That seems weird. Do you do it anyway?

4. You contact the photo editor and ask if a photographer can try to get a shot of the lightning. If the photographer gets lucky, you weigh the picture against the current main A1 photo. (The main photo that day, Dec. 7, was a portrait accompanying a local feature on Pearl Harbor.) The lightning caption would refer to the weather story on B1.

What's your decision? By the way, this situation will probably happen again.

Send your thoughts to the readers.rep@sduniontribune

## Readers not resting on 'at attention'

At least we can agree the soldier was not "standing at attention."

A few weeks ago I brought up a photo caption that ran in the A section Nov. 13. The picture showed a man dressed in a World War I uniform standing at a Veterans Day commemoration at Mt. Soledad. He held his hands behind his back at the belt line. He legs were slightly apart. The caption read that he was "standing at attention."

Wrong, several readers pointed out. He was "at rest." I wrote that in the column, while noting the caption was incorrect. Nope, a reader emailed. He was not "at rest"; he stood at "parade rest."

That wasn't it either, according to another reader, who like the others said he had a military background. He was "at ease."

When I told one of the readers of the different interpretations, he responded that one command would end the debate: "Attention!"

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## FROM THE ARCHIVES | LOOKING BACK OVER 150 YEARS

## C. ARNHOLT SMITH ARRESTED

The San Diego Union-Tribune will mark its 150th anniversary in 2018 by presenting a significant front page from the archives each day throughout the year.

## Tuesday, December 16, 1975

In 1975 prominent local businessmen C. Arnholt Smith and Philip Toft were arrested and hauled in handcuffs to the county jail on suspicion of grand theft and related charges stemming from the collapse of U.S. National Bank.

Smith was accused of manipulating \$170 million in bank funds and channeling \$27.5 million to himself and associates.

As one Union writer put it, "he was charged, in effect, with robbing his own bank."

Smith, a former "Mr. San Diego" had built an empire that included Yellow Cab companies, National Steel and Shipbuilding Co., the downtown Westgate Hotel and the San Diego Padres, as well as U.S. National Bank.

All charges against Toft and most against Smith were dismissed during a two-year pre-trial hearings. Smith was later convicted of grand theft and state tax fraud and served eight months of a one-year sentence. He died at age 97 in 1996.

Here are the first few paragraphs of the story:

## County Grand Jury Indicts C.A. Smith In Theft, Fraud

## Associate Toft Also Charged; Both Arrested

By Bill Ott

San Diego businessman C. Arnholt Smith, 76, was indicted again yesterday — this time by the county grand jury on charges generally the same as federal charges filed against him in 1974.

Smith's longtime associate, Phillip Toft,

53, was also named in the 58-count indictment which included charges of grand theft, conspiracy to commit grand theft and misapplication of bank funds.

Both men were arrested at the noon hour at the Crocker National Bank Building downtown — the former headquarters of



Smith's United States National Bank, now defunct — and brought in handcuffs to the County Jail, where they were booked. Later they were released without bail to appear at 9 a.m. today for arraignment.

In two of the indictment counts, Smith is accused of evading California income taxes for the year 1971. He is also charged with one county of forgery.

The indictments followed an investigation of nearly four months by the grand jury and Deputy Dist. Attys. Steven B. Davis and Robert Robinson.

## COUNTS TOTALED

Smith, former president of U.S. National Bank, is named in 31 of the counts alleging grand theft and 15 counts alleging misapplication of bank funds.

Toft is named in 21 of the counts alleging grand theft and in 23 counts alleging misapplication of bank funds. Many of the charges

in the indictment cite both defendants.

When the indictments were returned by the grand jury about 11:30 a.m., Franklin B. Orfield, acting presiding judge of the Superior Court, set bail for Smith's release at \$50,000 and for Toft at \$25,000. These amounts were recommended by the district attorney's office.

At a bail hearing later in the afternoon, however, Judge Douglas R. Woodworth approved releasing Smith and Toft on their own recognizance.

## AILMENTS KNEW

Woodworth said he knew neither Smith nor Toft, but said he had no reason to "surmise that either Mr. Toft or Mr. Smith have a propensity to flee from this jurisdiction."

Attorney Michael Walsh, who represented Smith and Toft at the hearing, said both men knew the grand jury had been meeting and had no intention of fleeing. Walsh said Toft has a severe heart problem and Smith also has a heart problem, although less severe than Toft's.

Davis argued that "bail ought to be commensurate with the crimes involved and with the economic situation of the defendants."

On June 12 of this year, Smith entered a no-contest plea in U.S. District Court here to four charges of felony bank fraud and was sentenced to \$30,000 in fines. Toft, as a codefendant in the federal case, entered pleas of no contest to three felony counts and was given a one-year suspended prison sentence, \$25,000 in fines and five years probation.

ONLINE: View this and other anniversary front pages online at [sandiegouniontribune.com/150-years](http://sandiegouniontribune.com/150-years).