

IRWA

ORANGE COUNTY

CHAPTER 67

International Right of Way Association Chapter 67 Orange County, California



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BUNDLE of WRITES

January 2018

Dear Members,

Happy New Year! January is an exciting time of the year and brings a fresh start for new opportunities. As we usher in the New Year 2018 consider serving as an officer on the 2019 Chapter 67 Board. Please reach out to any Board Member if you would like to be considered as a candidate for the next slate of officers (elections to be held in May). There are many additional opportunities to increase participation. Chairs on the Nominations & Election and Spring Seminar Committee are currently available. Also, Chapter 67 will have the privilege of hosting the 2018 Tri-Chapter Luncheon in December. If you would like to dedicate your time and energy to planning the event, the Tri-Chapter Committee welcomes your participation. Additionally, members are welcome to speak at the monthly luncheons held the 2nd Tuesday of the month at the Holiday Inn- Santa Ana, Orange County Airport venue. Lastly, Chapter 67 Board would like feedback on the what topics members would like to hear at the monthly luncheon meetings. Looking forward to hearing from you!

May all your professional pursuits be met with success in 2018!!

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TBD

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Seminars Co-Chairs - TBD
 Tri-Chapter Luncheon - TBD
 Valuation - TBD

*International Director

Welcome back readers for the January edition of our newsletter. If you would like to contribute content to the newsletter, have questions or any ideas to improve the content please contact me at gbecerra@opcservices.com or (949) 872 3237

UPCOMING EVENTS:

Education

Course 504 - Computing Replacement Housing Payments: February 5-6, 2018

Sponsored by: Chapter 67. Details and Registration forms below.

JANUARY LUNCHEON





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City of Los Angeles v Decker 18 Cal 3d 860 (1977)

A Government Attorney (and Condemning Agency) has an Ethical Duty to Seek Impartial Justice in a Condemnation Case and it is Misconduct to Do Otherwise.

There is a famous passage in the Bible: “Justice, justice shall you pursue” (Deuteronomy 16:20). This was part and parcel of the Divine Authority’s plan to structure an ideal society; it follows lines that state “You shall not judge unfairly, you shall show no partiality ...” (Deuteronomy 16:19).

It turns out that our State’s supreme authority (the California Supreme Court) has commanded condemning agencies and their attorneys to do likewise when wielding the awesome power of eminent domain. This instruction was plainly set forth by our state Supreme Court in a landmark case back in 1977. In the words of the Court:

Occupying a position analogous to a public prosecutor, he is ‘possessed ... of important governmental powers that are pledged to the accomplishment of one objective only, that of impartial justice.’

The duty of a government attorney in an eminent domain action, which has been characterized as a ‘sober inquiry into values, designed to strike a just balance between the economic interests of the public and those of the landowner’ ... is of high order.

Noting that every lawyer has duties not to mislead the court by artifice or falsity, the Court went on to caution:

a government lawyer may even be under an even higher duty. ... ‘A government lawyer in a civil action ... has the responsibility to seek justice and to develop a full and fair record, and he should not use his position or the economic power of the government to harass parties or to bring about unjust settlements or results.

While the government in a condemnation action acts in court through its lawyer representatives, the Court made it clear that these duties stem from the condemning agency’s own special relationship to the condemnee property owner, stating:

The condemnor acts in a quasi-judicial capacity and should be encouraged to exercise his tremendous power fairly, equitably and with a deep understanding of theory and practice of just compensation.

What caused the California Supreme Court to lecture condemning agencies and their attorneys so didactically? The case arose out a condemnation by the City of Los Angeles to expand the LAX airport. The City condemned a property with a residence on it and appraised the property based upon

the residential use. The property owner's appraiser, not surprisingly, had a much higher value, basing the higher value upon the theory that the highest and best use of the property was for private parking to serve the LAX airport. The City's lawyer, in closing arguments, made two arguments why the property's highest and best use was the existing residential use. First, he argued that there was no reasonable probability that the owner could get the property rezoned for commercial or parking purposes because (1) it was a small parcel, (2) the City would not rezone property in the area for commercial purposes unless the entire block were to be put to such purposes, and (3) accomplishing this would require a very difficult assemblage of multiple properties that would make such an effort financially and practically infeasible. There was actually nothing wrong with so arguing, and if the attorney had left it at this, we probably would never talk about the *Decker* case.

The attorney, however, made a second argument. He asserted that there was no need for any additional parking for LAX, and there would not be such need for more than ten years. The attorney was persuasive and the jury ruled in favor of the City's valuation based upon the residential highest and best use.

Shortly after trial, the property owner's attorney learned that less than three weeks after judgment was entered, the Board of Airport Commissioners had approved a final EIR recommending a parking facility of 4,000 spaces in the area that included the condemned residential parcel. As indicated by the Court, "it was clear that the city knew, and for some time had known, that there was an acute need for airport parking and that the subject properties were suitable for that purpose." The need was not only a result of the proposed expansion of the airport (which was the public purpose for the condemnation) but was due to existing airport requirements.

When the property owner's attorney learned these facts, he made a motion to the trial court seeking a new trial based upon the alleged misconduct of the condemning agency and its attorney. The trial court denied the motion, based upon its view that the misleading arguments really didn't matter because there was no way that the property would have been rezoned for commercial use given its small size. The property owner appealed all the way to the State Supreme Court which reversed the trial court and issued its moral instructions to condemning agencies and their attorneys.

As an explanatory note, it should be understood that under existing law, a condemnee cannot value his/her property based upon the use to which it will be put by the condemning entity, but that rule only applies if a private property owner does not have the ability to independently put the property to such use absent the public project. In *Decker*, the private property owner didn't need the project to use his parcel for airport parking purposes, providing that the City rezoned the property. Arguing to the jury that there was no need for additional parking misled the jury and constituted misconduct, justifying the granting of a new trial.

TAKE AWAYS: While the State Supreme Court's ruling and stinging criticism was directed at a government attorney in the *Decker* case, the same guidelines would logically also apply to Right of Way professionals that work for condemning agencies. Playing fast & loose with the truth and other deceptive tactics may be simply a matter of "buyer beware" or "puffing" in run of the mill real estate transactions, but when property is acquired under threat of eminent domain, the rules are different, and representatives of the government must not engage in deceptive or oppressive tactics to get a deal.

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John C. Donahue, MAI

May 28, 1936 - December 10, 2017

John C. Donahue passed away peacefully on Sunday afternoon, December 10, 2017 at his home in Flagstaff, Arizona. His family and wife Carole were by his side. John and his high school sweetheart, Carole, had three sons together: Doug, Jeff and Kevin. They also have 13 grandchildren and 10 great-grandchildren.

John was born in Kennewick, Washington on May 28, 1936, although he always identified as an Oregonian. Like most of his generation, John's family was economically challenged at the time. From an early age he helped by working summers on his uncle's farm in central Oregon bucking hay bales. John and his mother later moved from Bend,

Oregon to Alhambra, California where John attended Alhambra High School. A powerful fullback, John excelled on the football field and earned a college scholarship.



John and Carole were married in 1955 and John graduated from Whittier College in 1958, having worked his way through school at night as a sheet metal worker. He started his career in the real estate industry as a right-of-way agent for the County of Orange, and later continued with Land Acquisition Services, Inc. until 1963. He then commenced his appraisal career with United Appraisal Company. John also concurrently attended Southwestern Law School. He was one of the founding members of IRWA Chapter 67 in Orange County.

John initially considered a career in law. However, working as an acquisition agent, real property appraiser and having attended law school, John's career path became clear. He was being groomed to become one of the premier and highly-sought appraisal experts in the eminent domain field.

He would focus on providing appraisal services in the more complex litigation-oriented arena. From 1965, John became self-employed as John C. Donahue, entering a partnership in 1970 as Donahue-LaMoureaux prior to forming Donahue & Company, Inc. in 1971. The company grew rapidly with as many as ten appraisers plus additional support staff. John had offices in Orange County, with the most recent located in Newport Beach.

As John transitioned into retirement, he formed Donahue, Hawran & Malm in 2008, providing opportunities for the next generation of professional appraisers.

As an expert witness, John's testimony was responsible for many successful outcomes. On May 29, 2012, his expertise in railroad corridor valuation earned a \$100,961,779.30 award on behalf of Union Pacific Railroad Company versus SFPP LP/ Kinder Morgan in a case involving fair market rent for the gas pipeline within UP's right of way. It was the largest verdict and what was to be the pinnacle of his distinguished career. He retired shortly thereafter.

In 2010, he and Carole moved to Flagstaff, Arizona. John was surrounded by all that he loved: his wife and the mountains and pine trees which reminded him of his beloved central Oregon. John did what many men do when they retire, he bought a tractor! Of course, it was a John Deere. He also bought a 1934 Ford Vicky slant-back to restore, a 1969 Mustang Mach I and then did the same with a 1939 Ford Deluxe. John was having fun.

He and Carole also loved travelling: visiting Hawaii, Canada, Europe and New Zealand. Throughout the states, they attended family events, visited national parks and never tired of riding old trains.

He was an avid sailor and mastered the sea with his Baltic 38, a high-performance Finnish-made yacht. He and his hand-picked crew enjoyed competing in many local races including the Trans Pac.

John was extraordinarily generous in every way. He provided so many opportunities for aspiring appraisers, always promoting the Institute, education, pursuit of the designation and professional excellence. He mentored many appraisers, many of whom started successful businesses because of John's encouragement and training. He was a polished and credible expert. He was routinely retained by prior opposing counsel, a clear statement of John's abilities as an expert. He was highly respected in the legal community, including many judges who frequently recommended John as a neutral expert.

Here are a few comments from people whose lives were influenced by John's generosity of love, time and care:

"I started with John in 1972 at the age of 23. I retired in 2011 at the age of 62. It was 39 years of learning, excitement and happiness. His mentorship, friendship and love were amazing gifts that I will forever cherish. John was extraordinarily generous to everyone and a positive influence in my life. His high energy was contagious. Even after my retirement, he kept careful watch, always concerned with my husband's and my well-being."

"I got hired at arguably the finest eminent domain appraisal firm in Southern California."

"John had the ability to just let me be. I can't imagine a better boss. There was never a day in 22 years that I was not thankful for how lucky I had been."

"John was incredibly generous. He paid for every single dime of my MAI education training."

"John was a true "expert" witness and, for me, a classic study in how to handle the stress and demeanor challenges of the job. He was a great mentor in this."

"I am honored to have worked with John for nearly 20 years during which time I enjoyed his humor and his professional support. John's generosity was surpassed only by his loyalty and kindness. All of us that were privileged to work with John carry a part of him in our minds and our hearts."

"My family arrived in the US as political refugees from Ethiopia in 1979. The only thing I knew about governments taking property wasn't too favorable, read "expropriation" not "just compensation". The government had taken all my family's property and had paid nothing. I completed graduate school in 1984. I had no work experience in the US. I interviewed with John in 1984 based upon a reference from one of his appraisers. Unbelievably, he hired me on the spot! On my first day, John handed me a very large set of engineering plans covering multiple partial acquisitions and left the room. Well thirty-three (33) years later, and thanks to John, I have had a wonderful career as a real estate appraiser working in the eminent domain field. I have a greater appreciation for the importance and privilege of just compensation. John was a great teacher and one of the best practitioners in the field. He believed that I was capable and generously invested in my happiness and well-being."

"He instilled honesty, manners, work ethic, and he helped recreate my passion for work."

"He is the biggest influence on my life, and I will have him in my life forever."

"No words can express my love for John! I look forward to sailing with him again."

"As a young know-it-all appraiser, I constantly begged John to convert to a subcontractor structure. One day, after begging again, I got my wish You're Fired! Congratulations, now you are my first subcontractor. Oh no! It was the beginning of great opportunities and a long-standing, mutually beneficial relationship and friendship that produced tremendous success, all because of John's willingness to support my independence. He gets the credit for providing the tools, training, encouragement and opportunity."

"Generous is an understatement. He gave me a raise on my first day of employment, simply because he understood my financial stress."

"One of the most empathetic people on the planet. He listened and was deeply engaged in all aspects of any conversation. I always felt valuable to him."

"John is the expert that I'd like to become."

"I met John racing sailboats. We struck up a friendship. I was in the title insurance business. John described his job appraising and expert witnessing. One morning on watch at probably 4 am John said, "Jeff, you could do this." A year later I moved from Washington State to Newport Beach. John gave me the best training imaginable; working on fascinating assignments in an office surrounded by the finest appraisers in southern California. I have a very good life today, three nearly grown kids, and still love this profession. I owe my career to John. More importantly, I owe my life to John. Through John's compassion and understanding, I was drawn from the brink of an existential threat. He is a great human being and his memory will be eternal."



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Course 504: Computing Replacement Housing Payments February 5-6, 2018 Irvine, CA



Course 504: Computing Replacement Housing Payments

Course Description:

This course is designed for participants with thorough knowledge and experience implementing the Uniform Act. Realistic and complex situations are used as if the participants have been assigned to a small project requiring the relocation of the occupants of twelve (12) residential properties. The household surveys have been conducted and a copy of each interview sheet is contained in the materials provided. The participants act as the individuals assigned to compute the replacement housing payments on behalf of the Agency. Participants should have the knowledge to calculate basic payments, as group discussions and exercises maximizing practical application of the cases studies will be the emphasis of this course.

Course Level:

Intermediate

Course Tuition Includes:

Participant Manual
Federal Register

Topics:

- The importance of collecting the pertinent information at the interview stage
- Replacement Housing Payments for 90-day occupants
- Aliens not lawfully present
- Replacement Housing Payments for less than 90-day occupants
- Replacement Housing Payments for 180-day owner occupants
- Legal reference - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646) as amended
- Regulatory Reference 49CFR part 24

Required Materials:

Financial Calculator

Who Should Take This Course:

This course is intended for experienced right of way practitioners who are in the field of relocation assistance.

Last Name First Name

Title

Company Name

Address

City, State, Zip/Postal Code

(____) _____ - _____ Yes No _____
Phone Member Member ID Number

Email Address

If payment includes the fees for registrants other than yourself, check here:
(Please submit names of other registrants on a separate paper along with this form)
Will you also be attending? Yes No

	Registration Deadlines	Member Tuition	Non-Member Tuition	Total Tuition Amount
On and Before:	Jan. 21, 2018	\$425.00	\$530.00	_____
On and After:	Jan. 22, 2018	\$450.00	\$555.00	_____

Total Member Registrants: _____
Total Non-Member Registrants: _____

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Course 504: Computing Replacement Housing Payments February 5-6, 2018 Irvine, CA

Sponsor: IRWA Chapter 67
Date: February 5-6, 2018
Time: 2 days - 8AM to 5 PM Daily
City: Irvine, CA

Class Location:
Rudy Romo
1 Civic Center Plaza
Irvine, CA 92608
Phone: (949) 724-6620
Participant Capacity: 25

Four Ways to Register:
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Phone: (310) 538-0233, x138
Contact Course Coordinator

Accommodations:
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Contact hotel directly for rates and reservations

Course Coordinator:
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Course Instructor:
Darryl Root, R/W-RAC has successfully led and trained acquisition/relocation consultants and sub-consulting firms while managing such services as real estate appraisal, F&E appraisal, title and escrow, environmental, and property management. These services have been performed throughout the United States and Canada including the states of Texas, Arizona, Nevada, Missouri, Florida, Hawaii, North Carolina, New Hampshire, West Virginia, Washington, North Dakota, Illinois, Oregon, Louisiana, Indiana, Georgia, Guam and the provinces of Alberta and Ontario. He also prepares and reviews various proposals for competitive bids. Mr. Root has more than 20 years of professional real estate experience involving acquisition of right of way, as well as residential and commercial relocation assistance. He is a frequent contributor to the IRWA Magazine and has spoken at every IRWA annual education seminar since 2006. He also assists with OPC's internal training.

Cancellation Policy: All classes scheduled by IRWA are subject to cancellation. All class registrants must contact the Course Coordinator prior to making travel arrangements, keeping in mind that the class may be cancelled at any time (for reasons including, but not limited to, insufficient registration, Instructor emergencies or other issues beyond the control of the chapter and/or IRWA). Fully liquidated damages for any losses incurred by a class registrant are limited solely to a refund of the registrant's prepaid class tuition. IRWA and its chapters assume no other registrant liability resulting from class cancellation.

Tuition Refund Policy: Written notification of intent to cancel registration must be received via email by both the Course Coordinator and IRWA Headquarters Education Staff (education@irwaonline.org) prior to the class start date in order to be eligible for a tuition refund. A full tuition refund will be issued if notice is received 15 days or more prior to the class start date; a 75% refund will be issued if notice is received less than 15 days prior to the class start date, and no refund will be issued for notice received on or after the class start date.