

UNDERDOG JUSTICE

By Philip Boesch

Petra Hernandez, the bread-winning mother of four, was on her way to work along Route 144. Ten minutes later, state troopers sifted the remains of Petra's head-on meet with a dozing truck driver. One minute Nga Li was minding her own business, turning left on Alvarado, heading home. Next thing she remembered there were bandages on her face and the loud moans of a charity ward, courtesy of the speeding cabdriver who hit her. At the hospital, Eliza Hurtault, who checked in two days earlier with a bleeding ulcer, stared blankly at the \$23,984 bill. Its payment would take all she had and then some.

The first underdogs were eastern shipbuilders who laid their logs over a pit on planks called dogs. On top, the overdog pulled the two-man saw. In the hole, the underdog held on, sucking in the sawdust. In the west,



prairie dogs were the underdogs, critters who hid in their holes, or who came out to be eaten, shot or stomped.

Underdogs have less everything: less money, less power, fewer advantages. As the insurance company saw it, Petra the cafeteria worker wasn't wearing her seatbelt, and she was married to an unemployed husband who couldn't read or write, and so, minimum wage, minimum offer. As for Nga Li, she might have contributed to the accident. No offer. Eliza Hurtault? She sold everything she could and worked harder than ever to keep up payments, even though she'd been charged four times what an HMO patient would have been charged for the same treatment.

Unfair? Life isn't fair. Every contest has an underdog. Insurance claim reps have to measure death in some way. Contributory negligence always meant no recovery. And our elected officials passed the laws that encourage HMO's to negotiate lower prices for health care.

It's always been this way. The deck has been stacked against the underdog since the day California became a state. Back then, Chief Justice David Terry assured followers that the Chinese and the Irish never would be allowed in his courts. Slavery would stay legal in California, Terry promised, even if the state had to be divided in half. When Senator



Chief Justice David Terry.

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David Broderick stood for abolition, our Chief Justice shot him dead in a rigged duel.

Judges are still people, with experiences and prejudices and points of view. They go to judging school, and some get high marks, while others deserve D's and F's. The duels are now verbal and the barriers, though not so obvious, remain impossibly high for the underdogs. It costs money, too much money for most,

to hire good lawyers to navigate a system of complaints, pleadings, discovery, depositions, hearings, mediations, all before you get to trial. Little wonder underdogs remain underground, coming up only when they must.

So when does "unfair" become so intolerable that you just have to come out? Do you wait until an unfair competitor puts you out of business? Or until collection agents come to take your house? Or until you are paralyzed? Or dead?

When Nga Li decided to stand up against an unfair system, her court opinion in *Li v. Yellow Cab* changed the law of the land. Contributory negligence no longer barred all recovery of damages. Liability would forever thereafter be apportioned and divided among those responsible, changing the lives of thousands, millions of injured victims. When Guadalupe Hernandez turned down the token settlement offer for the death of his beloved wife, the state record jury verdict changed the way the insurance companies evaluated a child's loss of a parent.

When Eliza Hurtault had to respond to agents collecting a bill for services four times the amount charged to an HMO patient, she and eleven others like her stood up as test cases against an unfair business practice. Her courage resulted in the "Compact with the Uninsureds," reducing charges and eliminating the unfairness for many of the most needy patients. Underdogs again changed the way business was done.

No one ever prosecuted Justice Terry for murdering a U.S. Senator. The Chief Justice followed his prejudice to become a Brigadier General in the Confederate Army and returned after the war to a life of politics and prosperity until 1888. Supporting his young second wife, who lost a case on appeal, Terry approached and bullied the appellate justice who decided his wife's case. The man's bodyguard intervened and shot Terry dead. On the theory of "good riddance," no one was prosecuted for that murder either.

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Mr. Boesch was appointed by the Los Angeles Superior Court as guardian ad litem of the 4 Hernandez children, lead trial counsel, and then after collection of the Judgment, Court-appointed guardian of the children's estates. The Boesch Law Group successfully represented Eliza Hurtault and 11 other test cases, achieving peace for them and the hospitals' Compact with the Uninsureds.