

IN THE
UNITED STATES COURT OF APPEAL
FOR THE NINTH CIRCUIT

RUSSELL ALLEN NORDYKE; et al.,
Plaintiffs - Appellants,

vs.

MARY V. KING; et al.,
Defendants - Appellees.

APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

**REQUEST FOR JUDICIAL NOTICE:
ACADEMIC FRAUD COMMITTED BY AUTHORS
OF AUTHORITIES CITED IN
SILVEIRA v. LOCKYER**

Donald E. J. Kilmer, Jr.
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Counsel for Plaintiff - Appellants
REQUEST FOR JUDICIAL NOTICE

Plaintiff/Appellants, hereby make this formal Request for Judicial Notice under the Federal Rules of Evidence § 201. Plaintiff/Appellants respectfully request that this Court take Judicial Notice of an easily verified fact concerning various authorities cited in the recent Ninth Circuit opinion of Silveira v. Lockyer . This Request for Judicial Notice is based upon this written request, the Declaration of Counsel, and the attached Exhibits.

**DECLARATION OF DONALD KILMER IN SUPPORT
OF REQUEST FOR JUDICIAL NOTICE**

I, Donald E. J. Kilmer, Jr., declare as follows:

1. I am admitted to practice law in the State of California and this Court.
2. I am the attorney of record for the Plaintiff /Appellants.
3. Attached to this Request for Judicial Notice [designated as Exhibit A] is a true and correct copy a press release entitled: Columbia News:: Columbia's Board of Trustees Votes to Rescind the 2001 Bancroft Prize. The press release is from the Columbia University Public Affairs and Record Home Page.
4. The Internet address of the press release is:

http://www.columbia.edu/cu/news/02/12/bancroft_prize.html

I declare under penalty of perjury under the laws of the State of California and of the United States of America that the foregoing is true and correct and that this declaration was executed in San Jose, California on December 30, 2002.

Donald E. J. Kilmer, Jr.

POINTS AND AUTHORITIES

Judicially noticeable matters, not otherwise included in the record on appeal

(initially or through supplementation) may, nonetheless, be considered by the appellate court. Even though neither filed with – nor considered by – the district court, certain matters may be judicially noticed by the appellate court (matters of common knowledge, of public record, which are readily verifiable). Broadly, appellate courts have the same power as trial courts to take judicial notice of a matter properly subject to such notice.[See FRE Rule 201; Papai v. Harbor Tug & Barge Co., 67 F.3d 203, 207, fn. 5 (9th Cir. 1995); rev'd on other grounds, 520 U.S. 548, 117 S.Ct. 1535 (1997)]

As with evidence generally, the matter to be judicially noticed must be relevant to the issues in the case. [FRE Rule 402; Vallot v. Central Gulf Lines, Inc. (5th Cir. 1981) 641 F.2d 347, 350 (per curiam)]

Relevance

In his Silveira v. Lockyer, ___ F.3d ___, 2002 U.S. App. LEXIS 24612 (2002) opinion, Judge Reinhardt cites the academic works of Michael A. Bellesiles in Footnotes 1 and 37. Plaintiff/Appellants respectfully submit that the academic integrity of the authors of law review articles cited in appellate decisions are at least as important as the cite checking of cases and statutes.

The integrity of the academic work by Michael Bellesiles must be seriously questioned in light of the actions taken by the Columbia University Board of

Trustees. The rescission of the Bancroft Award was in part based upon a report issued by a panel of scholars from other universities. The panel was established at the request of Emory University. (Mr. Bellesiles also recently resigned from his tenured teaching post at Emory.) That report found “evidence of falsification” and “serious failures of and carelessness in the gathering and presentation of archival records and the use of quantitative analysis.”

Plaintiff/Appellants respectfully request that this Court take Judicial Notice, pursuant to FRE § 201, of Michael Bellesiles fraudulent work with respect to gun control and gun culture issues, and give that fact due weight in consideration of how the Silveira decision has any effect on issues pending before this court in this action.

Respectfully Submitted,

Date: December 30, 2002,

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Donald E. J. Kilmer, Jr.
Attorney for Plaintiff/Appellants

Re: Nordyke v. King

U.S. Ninth Circuit Case No. 99 – 17551
U.S. District Court, Case No. C 99 04389

PROOF OF SERVICE

I, Yeaser Ghalib, declare that I am employed in the City of San Jose, County of Santa Clara, State of California. I am over the age of 18 years and not a party to this action; my business address is: 1261 Lincoln Avenue, Suite 111; San Jose, California 95125-3030,

On December 30, 2002, I served the following documents:

1. Letter to Ms. Cathy Catterson, Clerk of the Court - Ninth Circuit.
2. REQUEST FOR JUDICIAL NOTICE - ACADEMIC FRAUD COMMITTED BY AUTHORS OF AUTHORITIES CITED IN SILVEIRA v. LOCKYER

on the following interested party(s) in this action:

Sayre Weaver, Esq.
RICHARDS WATSON & GERSHON
Number One Civic Center Circle
P.O. Box 1059
Brea California 92822-1059
VIA MAIL - CCP §§ 1031(a), 2015.5

Richard Winnie, Esq.
ALAMEDA COUNTY COUNSEL
1221 Oak Street, Suite 463
Oakland, California 94612-4296

[XX] By placing a true copy thereof enclosed in a sealed envelope(s), addressed as stated above, and placing each for collection and mailing on the dated following ordinary business practices. I am readily familiar with my firm's business practice of collection and processing of correspondence for mailing with the United States Postal Service and correspondence placed for collection and mailing would be deposited with the United States Postal Service at San Jose, California, with postage thereon fully prepaid, that same day in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on December 30, 2002, at San Jose, California.

—

Yeaser Ghalib