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**TOM NOLAN** — “Take me to a sporting event and tell me who’s behind and that’s who I’ll root for.”

**S. TODD ROGERS**/Daily Journal

## COURTROOM FIGHTER

**By Craig Anderson**  
Daily Journal Staff Writer

**P**ALO ALTO — It was, according to attorneys who know him well, a classic Tom Nolan moment: passionate, confrontational and, perhaps, imprudent.

**PROFILE** The recent pretrial hearing in the Avant criminal trade-secrets theft case was getting heated. Retired state Court of Appeal Justice Marc

A Self-Described Late Bloomer Who Favors the Underdog, Tom Nolan Brings Passion to His Defense of Clients

Poché was frustrated with several defense attorneys for alleged stalling tactics and seemed to be itching for a fight.

When he snapped at Palo Alto defense attorney Nolan, Poché guaranteed that he would get one.

Poché had, he announced, resolved a scheduling conflict Nolan faced due to an coming homicide trial by calling the judge in that case.

The burly defense attorney bristled at that ex parte communication. The two men, friends outside of court, were soon yelling at one another.

“With all due respect, I was about to say that what I have just heard now is so beyond the scope of anything I have ever heard in my 30

# NOLAN: A Committed Courtroom Fighter

years of practice,” Nolan fumed at the judge. The fight escalated.

“Would you like to disqualify me?” Poché demanded twice. Yes, Nolan responded, whereupon Poché granted the motion and immediately left both the courtroom and the case.

Nolan is a larger-than-life figure, a big Irish-American with an aggressive style who approaches trials, in the words of Santa Clara County prosecutor Randy Hey, “like an old-fashioned street fight.”

The 56-year-old criminal defense attorney professes a strong anti-establishment streak. He loves the underdog.

“Take me to a sporting event and tell me who’s behind and that’s who I’ll root for,” Nolan said.

Over the past three decades, Nolan has built an impressive practice representing defendants in crimes ranging from murder to trade-secret misappropriation.

He recently defended Kenneth Fitzhugh, a Palo Alto man convicted in a headline-grabbing trial earlier this month of the second-degree murder of his wife. And he spent nearly seven years as the attorney of Mitch Igusa, a former engineer at Cadence Design Systems who pleaded no contest in May to stealing computer source code from his former employer as part of the Avant criminal trade secrets case.

Igusa, who faced a possible term of six years in state prison, was sentenced in June to a year in county jail on work furlough. Nolan is praised by several participants in the multiple-defendant case for offering to let his client plead guilty by himself.

Attorneys involved in the case say Nolan guessed correctly that Santa Clara County Superior Court Judge Conrad Rushing would not sentence Igusa to state prison even though he had been one of three defendants who stole software code.

Nolan’s ability to craft settlements is the flip side of his reputation as a fearsome and intimidating litigator. “Problem-solving is what I enjoy the most,” he said.

While many of his clients are well-to-do, Nolan takes pride in his seven-attorney office’s work to help “ordinary folk” who need legal help, and of assisting clients with psychiatrists and therapists “to get through the stress.”

But it is his reputation as a litigator who will take on anyone, including judges, in high-volume courtroom showdowns, that other lawyers talk about.

“He’s got a stereotypical Irish temper,” said Stanford University Law School professor Barbara Babcock, a longtime friend. “I don’t know if he tries to control it or not. He usually gets everyone intimidated and afraid.”

His critics say Nolan is a bully who tries to win at any cost; they dislike his relentless aggressiveness. They say Nolan often wins key legal points simply by wearing down judges with

**BIOGRAPHIC**


**Thomas J. Nolan**  
Defense Attorney

**Career highlights:** Partner, Nolan, Armstrong & Barton, 1998-present; Nolan & Armstrong, 1990-98; Nolan Constantinides & Parnes, then Nolan & Parnes, 1977-90; Flickinger Elliott & Nolan, 1971-77

**Professional activities:** Consulting professor Stanford Law School, 1994-present; president, California Attorneys for Criminal Justice, 1987-88

**Law school:** University of California, Davis, 1970

**Age:** 56



what one described as his “histrionics.”

Hey, the Santa Clara County prosecutor, does not count himself among those harsher critics and calls Nolan a friend. Nonetheless, he recommends that his courtroom adversaries should be ready for anything.

“You’ve got to be on your toes, literally every second,” Hey said. “He’ll scream objection after objection with no merit, and he’ll do it just to throw you off. ... Some of it is absolutely tactical. Some of it is genuine.”

But Nolan will temper his aggressiveness if it’s turning off the judge or alienating a jury. “He’s smart,” Hey said.

And for all of his theatrics inside the courtroom, Nolan is regarded by most prosecutors as a trusted negotiating partner outside of it. Hey said his word is “as good as gold.” Assistant District Attorney Karyn Sinunu said Nolan is “a great settlement guy” who works extremely hard for his clients.

Nolan’s strengths are his meticulous preparation and his passion, attorneys said. “He’s played out all the moves, and has a game plan,” said prosecutor Lane Liroff.

Liroff, who helped to prosecute the Fitzhugh case, said Nolan’s steadfast belief in his own case often can make a difference in his client’s favor. “Sometimes, Nolan’s passion and conviction is so persuasive, and it appeals to some jurors,” the prosecutor said.

Nolan said he is not simply putting on a performance. “The passion is real,” he said. “That is picked up by the clients.”

Sometimes the jury agrees, too. “He has a different outlook on things that is often shared by jurors,” said Santa Cruz defense attorney Paul Meltzer.

Nolan can get openly frustrated when things are not going well. During the 1998 trial of an elderly Palo Alto man accused to deliberately killing his wife with a shotgun 13 years before, Nolan didn’t hide his unhappiness when a judge refused to dismiss the charges based on the defendant’s failing memory and then also refused to let him testify outside the jury’s presence so

his ability to remember could be evaluated. His client, James Niebauer, was convicted of murder.

At such moments, Nolan’s seething anger is almost palpable. A black cloud seems to hover over his head.

At other times, when Nolan believes the defense is being treated fairly — which he says it often is not — the defense lawyer can be just as openly cheerful. He clearly relishes a good courtroom argument; by the end of the Avant case he was enjoying his occasionally comic role as the case raced to its conclusion.

“That’s part of Tom,” said San Jose defense attorney John Williams, a partner at Manchester & Williams who has worked with Nolan on several cases. “He does wear his heart on his sleeve, more than most.”

“He takes things so hard,” Babcock said.

“I have a fairly fine-tuned sense of injustice,” said Nolan. “I have a very hard time with trials that I don’t believe are fair.”

Nolan said he knew he wanted to be a criminal defense lawyer since he was 13. He grew up in Sacramento, the son of parents who both worked for the state. His father, who attended McGeorge Law School but never practiced law, worked for the Department of Real Estate. His mother was the head of preschools for the Department of Education, and was once one of the highest-ranking women in California government.

A self-described “late bloomer” who believes he probably had what is now known as attention-deficit disorder, Nolan said he was an average student who attended local high schools and Sacramento City College before graduating from Sacramento State University in 1967.

He graduated in the middle of his class from UC Davis Law School in 1970, then moved with his wife Susan to the Peninsula to practice criminal law. He has two adult children, a son who was a member of the U.S. water polo team in the 2000 Olympics and a daughter who works as a lawyer at Brobeck Phleger & Harrison.

“I had no idea how many quality lawyers there were, but none of them wanted to do criminal work,” said Nolan, who began getting court-

appointed assignments in San Mateo County.

Nolan began making a name for himself representing defendants in cases that drew local media attention — everything from a man who picked up a hitchhiker and castrated him to a security guard accused of attacking his girlfriend and killing her baby. He won an acquittal in the latter case after portraying the police investigation as shoddy and the victim's testimony as having been cajoled by police and her family.

"I was always aggressive, wanting better cases," Nolan said.

He represented demonstrators at Stanford University, and got involved in a major case in which members of a leftist group that included the daughter of a Stanford University professor were accused of killing a law officer while helping a prison inmate escape. He worked with famed defense attorney Charles Garry on the case, saying he "watched a real master. I learned so much."

(The client, the professor's daughter, was convicted of second-degree murder.)

One of his biggest cases started out as nothing special. He represented Harold Tanner, a man who brandished an unloaded gun to rob a Palo Alto convenience store of \$41.05 in 1976 as part of a deluded scheme to convince the store owner to use the services of the security firm he worked for. Nolan said Tanner, who had no prior criminal record, was only posing as a robber to make his point.

Tanner, however, fell under the provisions of a new law that required mandatory prison terms of five to 10 years for anyone who used a gun to commit a crime. A San Mateo County judge refused to sentence him to the prison term, instead giving him five years' probation.

The case went all the way to the California Supreme Court, where Nolan ended up arguing against state Attorney General George

Deukmejian, the future governor. The court first ruled in Nolan's favor in a controversial decision in 1978, then reversed itself a year later and affirmed the constitutionality of the state law.

But the court granted an exception for Nolan's client, agreeing that it would be "unjust" to send Tanner to prison years later. He lost his argument, but his client went free. "It's a constant reminder to me of never losing sight of who you're representing," Nolan said.

Nolan increasingly began to handle high-profile cases. He represented the Synanon church, members of which were accused in the early 1980s of being a cult involved in everything from kidnapping to securities and tax law violations. Most of the charges were dismissed after several years, he said. The attorney also represented Billionaire Boys Club defendant Arben Dosti during his first murder trial, which ended in a conviction that was overturned more than a decade later.

The defense lawyer began handling intellectual property cases in the 1980s, and has won some notable victories. In 1993, a Santa Clara County jury acquitted Nolan's client — and another defendant represented by Williams — in a trade-secrets theft case in which semiconductor giant Intel Corp. was the alleged victim.

Nolan argued that most of the allegedly secret information was available to the public and was not valuable to Intel's competitors. It was not, the jury concluded, a trade secret at all.

Three years later, Nolan and co-counsel Allen Ruby won a smashing victory when Santa Cruz County prosecutors dropped trade-secret theft charges against two defendants after it was revealed that the prosecution had accepted \$13,000 from the corporate victim to clear an investigation debt, in *People v. Eubanks*, 14 Cal.4th 580. The state Supreme Court affirmed a

lower court's decision disqualifying the district attorney's office.

By that time, Nolan was representing Igusa in what would become the Avant case, and became a leading spokesman for the idea that prosecutors should not accept financial assistance from corporate crime victims. He and the other lawyers representing the Avant defendants tried for years to disqualify the Santa Clara County district attorney's office for accepting expensive investigative help from victim Cadence Design Systems, but they could not repeat their *Eubanks* success.

"It's important to keep a separation between the criminal justice system and the capitalist system of big business," Nolan still argues.

Since 1994, Nolan has been a consulting professor at Stanford Law School, where he has taught advanced courses on criminal procedure, trial advocacy and white collar crime. Nolan said he enjoys teaching, and Babcock said he does an excellent job.

"He doesn't have any of the law professor's ego," Babcock said. "He has practical insights, and is interested in [the students'] theoretical insights."

Charles Constantinides, a Santa Clara County prosecutor and former law partner, describes Nolan as a charming man who is comfortable speaking with everyone from hardened criminals to world leaders. In fact, one of his best friends is the former president of Ireland, Mary Robinson, whom he met years ago through an Irish barrister who worked with him.

In the courtroom, though, Constantinides said, Nolan is "extraordinarily persistent. He will not back down."

Nolan agrees. "If I feel [prosecutors and judges] are wrong, I will challenge them," he said. "I always have."