



# CITATIONS

A P R I L - T W O T H O U S A N D F I V E

## VCBA MISSION STATEMENT

To promote legal excellence, high ethical standards and professional conduct in the practice of law;  
To improve access to legal services for all people in Ventura County; and  
To work to improve the administration of justice.

## JUSTICE KENNETH R. YEGAN SCHOLAR ON THE ROOF

By Joel R. Villaseñor

Page 4



DONALD O. HURLEY

MICHAEL C. McMAHON

KAREN DARNALL

PAUL CARRINGTON

SHEILA R. LOWE

STEVE HENDERSON

<b>PRESIDENT'S MESSEGE: COMPANY 102</b>	<b>3</b>
<b>A WORD FROM THE EDITORS</b>	<b>8</b>
<b>ASIAN-AMERICAN BAR INAUGURAL</b>	<b>9</b>
<b>WHAT I DO IS CRIMINAL</b>	<b>10</b>
<b>EAR TO THE WALL</b>	<b>11</b>
<b>MUSIC - A HARMLESS ADDICTION</b>	<b>14</b>
<b>RENEWING THE SUPREME COURT</b>	<b>16</b>
<b>FORGERY AND THE HANDWRITING EXPERT</b>	<b>18</b>
<b>EXEC'S DOT...DOT...DOT</b>	<b>22</b>

# **EULUA ACCOUNTING**



## PRESIDENT'S MESSAGE: COMPANY 102

*By Don Hurley*

In early 1964, I became convinced that I had to make one of those life-altering decisions: Would I join the military service or await the military service requesting that I join its ranks? My somewhat lackadaisical approach to college made the choice more urgent and precipitated rapid research on the available options, putting greater emphasis on finding any position in the military not involving either getting shot at or shooting at anyone else. This almost immediately limited the available options to either the Coast Guard or the Navy. Upon discovering that Coast Guard personnel were being used for River Boat Patrol work, my choice was made.

I arrived in San Diego at about 2:00 a.m., together with an assortment of other young men destined for training either at the Marine Corps or the Navy Base, located within viewing distance of one another. All of the Navy personnel were slowly gathered together and assigned to buses. As each was filled, it departed for the Naval Training Facility. Once inside the gates, the buses emptied rapidly at the loud and obnoxious urging of a senior Navy person. Life, as we had known it, was over.

Company 102 was formed within 10 minutes from the outpouring of two buses, one from the deep South (think Alabama back country with limited knowledge of indoor plumbing) and the rest from Southern California (think of all those high school students passing only Auto Shop). While history will undoubtedly continue to recognize the Civil War as the ultimate battle between the North and the South, credit should be given to Company 102 as where the conflict between the West and the South would eventually reach epic proportions.

Having been issued the basic essentials of military life in the form of uniforms and toiletries, Company 102 straggled into its new home, a barracks building, with over 40 bunks, bare but gleaming from the constant polishing of countless previous training companies. There were few arguments over the accommodations and there was only a hint of what were to become endless semantic battles over obscene meanings of common words, such as parts of barnyard animals. We settled down for the night, a company in name only, still a group of individuals whose only goal was survival.

---

### *About four weeks into basic training, I volunteered to become the Educational Petty Officer*

---

Dawn's early light didn't even get a chance as our company commander, a First Class Petty Officer, made it a practice to awaken us at 5:00 a.m. by banging on the always shiny 40 gallon metal trash can. This enthusiasm would wane over the next few weeks as our commander discovered what should have been obvious, not only was this company not destined for glory, we were dysfunctional, a victim of geographic and demographic differences. I seldom saw my company commander sober after the third week of training, by which time we were already two weeks behind schedule with the unenviable reputation of being almost untrainable, unable to march in formation, grasp the basics of Navy nomenclature (deck, hatch, overhead, etc.) or even hang our newly scrubbed blue dungarees on a clothesline correctly. My ongoing nightmare was that our company was destined never to leave San Diego, that we were doomed to march in ragged formation for eternity, accompanied by our drunken PO. Rod Stirling was humming somewhere in the background.

About four weeks into basic training, I volunteered to become the Educational Petty Officer, not for any advancement, but as a mechanism to allow me to attempt to help the company out of this training quagmire. While I still didn't understand some of the vocabulary of the Southern members, they were part of my company and they

should not be denied the right to serve their country merely because they were having problems remembering port from starboard. My objectives were simple and my methods very straightforward; I would do whatever was necessary to have the educationally disadvantaged members of my company pass the weekly examinations. I would therefore cheat.

During the course of our daily instruction periods without Petty Officer presence, I broached the idea of using a code during the next exam. There was no disapproval, in part because I would probably be taking

the fall and in part because it seemed like the only way of getting at least four or five members of our company on the graduation parade ground. The plan itself was almost

foolproof; I would signal the number of the question first then the answer, both with hand signals. In practice, even this didn't work, and I was forced to turn around and mouth the answers. No one in authority ever caught on, or if they did, it wasn't an issue. We all passed the examinations, although our company still remained at the bottom of the training groups.

Unlike the reoccurring nightmare, Company 102 did eventually leave basic training, many to ultimately serve in Vietnam or in combat or support ships off its coast. I don't remember any conversations of military glory during basic training, only the hopes and ambitions of young men with their entire lives before them. While some of us went on to advanced training together, we would never sit over a cold beer reminiscing over our experiences in basic training. But I do hope that if there is a retired Chief Bosun's Mate who still can't remember port from starboard, perhaps he remembers our West/South company with just a little fondness.

*Don Hurley is an Assistant County Counsel for the County of Ventura and is President of the Ventura County Bar Association.*



## JUSTICE KENNETH R. YEGAN SCHOLAR ON THE ROOF

By Joel R. Villaseñor

### ON WALDEN POND

On Independence Day in 1845, Henry David Thoreau left his home and took up residence in the forest around Walden Pond. He explained, "I went to the woods because I wished to live deliberately, to front only the essential facts of life, and see if I could not learn what it had to teach, and not, when I came to die, discover that I had not lived."

It is a sentiment with which Court of Appeal Justice Kenneth R. Yegan would no doubt agree. He, too, lives deliberately and loves the woods and wilderness. Among the walls of law books in his chambers, a few items will tell you a great deal: a pair of skis propped in a corner; a black and white photograph of a man skiing down a mountain in a nimbus of powdered snow; another black and white photograph, this one of Theodore Roosevelt meeting with naturalist and environmentalist John Muir (who, not coincidentally, was influenced by Thoreau's *Walden*) at Yosemite during Roosevelt's great tour of the American West in 1903; and, finally, cheerful sombreros set atop a globe. Disconnected as they are, these items reveal the essence of the man whom his colleague, Presiding Justice Arthur Gilbert, describes as a man of "fierce integrity" who brings "something very special to...[D]ivision [6]," a court Justice Gilbert was dubbed the "think tank with tank tops."

### FRESNO CONFIDENTIAL

Although now long settled in California's Central Valley, Justice Yegan's family hails from Armenia. His maternal great-grandfather was the first Armenian minister in Fresno, while his paternal grandfather was the sole member of a family of eight to survive the 1915 Armenian genocide perpetrated by Turkey. Justice Yegan himself was born in 1947, in pre-*Shelley v. Kraemer* Fresno, where, as he recalls, Armenians were a minority accorded last-class status that included restrictive covenants

It is therefore with relish and a certain confraternal pride that Justice Yegan notes that it was the father of California Supreme Court Justice Marvin R. Baxter who ushered in the end of deed restrictions in Fresno. As a result, Justice Yegan's parents were finally able, in 1950, to purchase their first house, which cost \$4,200.

Justice Yegan's father owned a dry-cleaning concern, and his mother was a homemaker, and an excellent baker whose blueberry pie Justice Yegan remembers to this day. In order to support her son's schooling, she went to work as a secretary for the Fresno County Mental Health Department. Thanks to his parents' sacrifices, Justice Yegan became the first member of his family to attend college.

### THE MOVIEGOER

Childhood consciousness of the specter of the Armenian genocide and of the plight of the Armenian population in Fresno taught Justice Yegan empathy for those who suffer. Not that he was a brooding child. Quite the contrary, in fact. He played cowboys and Indians with his friends, and was treated to a steady diet of Roy Rogers movies and Saturday serials detailing the cliffhanger adventures of Hopalong Cassidy. He developed a love of movies, especially Westerns. He loves spaghetti Westerns, in particular Sergio Leone's *A Fistful of Dynamite*, a story about the Mexican Revolution and the Irish Republican Army that, he says, was unreleased in America for a very long time. He is also partial to Don Siegel's *The Shootist*, starring John Wayne as dying gunfighter.

### THE SEARCHER

It is tempting to speculate that Justice Yegan got his love of nature and landscape from those very Westerns, with their CinemaScope vistas of the American West. Of course, Westerns are also about lawgivers, lawmakers, and lawbreakers, and it is just as tempting to wonder whether this theme might not have planted the seed of a future career in Justice Yegan's mind. Nevertheless, Justice Yegan says he had no plans to become a lawyer. Insofar as he remembers having any career plans at all, he was going to be doctor, but these vague plans were foiled by his inability to look at blood.

Though no one who knows his determination, focus, and drive will believe it, Justice Yegan delights in portraying himself as so much thistledown blown by the wind, hinting that his path was haphazard. Take the example of college. The brother of a good friend from Fresno was attending UCSB, and Justice Yegan and his friend visited. Justice Yegan loved the place so much that, after a year at Fresno City College, he transferred to UCSB, where he majored in political science, and minored in history, with an emphasis on Latin American history. He graduated with honors.

Justice Yegan says he also attended law school by accident. He told the *Daily Journal* in 1996, "There was no special reason for going to law school; I simply went along with some friends who enrolled there."

After graduating from the University of the Pacific's McGeorge School of Law in Sacramento, Justice Yegan returned to Southern California and interviewed with both the District Attorney's and Public Defender's Offices in Ventura. He became a deputy public defender, trying over 30 cases.

After three years in the Public Defender's Office, Justice Yegan went to work as a research attorney for the Second District Court of Appeal in Los Angeles, an experience that was, as he told the *Daily Journal* in 1996, "the best legal education imaginable."

### VENTURA JUDGE

After leaving his position as Senior Attorney at the Court of Appeal in Los Angeles, Justice Yegan went into private practice, doing appellate law. He had just settled in and bought an entire law library when Governor Jerry Brown appointed him to the Ventura Municipal Court in December of 1982. The brand-new library went to a very lucky friend.

During his four-year stint on the Municipal Court, Justice Yegan spent two months as a *pro tem* on the Court of Appeal. Although he says he "didn't make any monumental rulings," it did give him a taste of what it would be like to serve on the Court.

*Continued on Page 6*

# PAUL FRITZ

## 2005 VCBA BOARD OF DIRECTORS

### OFFICERS

*President*

Donald O. Hurley

*President-Elect*

Loye M. Barton

*Secretary-Treasurer*

Jonathan Fraser Light

*Past-President*

Philip G. Panitz

*Executive Director*

Steve Henderson

### BOARD OF DIRECTORS

Nancy D. Aronson	Michael A. Rodriguez
Steven S. Feder	Gilbert A. Romero
Matthew P. Guasco	Mary C. Shea
Melissa J. Hill	Kevin G. Staker
Kenneth W. Kossoff	Anthony R. Strauss
Cheri L. Kurman	Russell H. Takasugi
Michael C. McMahon	Gregory D. Totten
Jody C. Moore	Kendall A. VanConas
Susan H. Ratzkin	Michael A. Velthoen
Joel R. Villaseñor, Barristers	

### CITATIONS Editorial Board

**Wendy C. Lascher**, Managing Editor  
**Al Vargas**, Co-Editor  
**Steve Henderson**, Publisher/CEO  
**JP McWaters**, Graphics/Production

Kristine Anderson	Gregory T. May
Denise A. Brogna	Michael L. McQueen
Karen B. Darnall	Michael R. Sment
Terence Geoghegan	Michael A. Velthoen
Mark E. Hancock	Louis J. Vigorita
Scott M. Johnson	Joel R. Villaseñor
Robert I. Long	

*CITATIONS* is published monthly by the Ventura County Bar Association. Editorial content and policy are solely the responsibility of the Ventura County Bar Association.

Submit all <i>advertising, classified and calendar</i> matters to:	Submit all <i>editorial</i> matter to:
<b>VCBA</b> 4475 Market St., Suite B Ventura, CA 93003 Attn: Executive Director t: 805.650.7599 f: 805.650.8059 e: bar@vcba.org w: www.vcba.org	<b>Al Vargas</b> Co-Editor <i>CITATIONS</i> P.O. Box 25540 Ventura, CA 93002 t: 805.648.3228 f: 805.643.7692 e: Alfred@lascher.com

## Computer Forensic Services

We offer a suite of professional computer forensic services to assist civil attorneys in wrongful termination, discrimination, sexual harassment, business disputes and worker's comp claims.

- |                         |  |
|-------------------------|--|
| • Data Recovery         | • Certified Forensic Examiner          |
| • Investigation Support | • Expert Witness                       |
| • Litigation Strategy   | • 25 Years Experience                  |
| • Due Diligence         | • 300+ Forensic Computer Examinations  |
| • Mitigation Strategies | • Federal & State Law Enforcement Exp. |

# CFTG INC.

**COMPUTER FORENSICS TECHNOLOGY GROUP, INC.**

1866 Regent Street, Camarillo, CA 93010  
 (805) 405-6336  
 Michael C. Thomas, CFCE  
 computerexam@cftg.net • www.cftg.net



member since 1999

CFTG uses the latest forensic software and processes to ensure that should litigation become necessary the discovered evidence and relevant facts will meet the admissibility standards of all court and regulatory proceedings.

## JUSTICE KENNETH R. YEGAN – SCHOLAR ON THE ROOF *continued*

### THE GRAPES OF WRATH

In 1986, Governor George Deukmejian elevated Justice Yegan to the Ventura Superior Court, where he was the last full-time law and motion judge. He spent a year in the family-law rotation, which he found “distressing.” It took his dentist to make him confront it when he observed, “Your gums are bleeding; what is going on in your life?” The stress of watching families disintegrate was overwhelming, but this was due in part to Justice Yegan’s own nature. As he says, “If you care, it’s stressful.”

The pressure was also taking a toll on his family, and he was determined to keep his own family intact. Justice Yegan is married to Christine “Chris” Moore, and they have two daughters, Ashley, 25, and Lindsay, 22. Chris was educated as a lawyer, but no longer practices. She is very religious, and does charitable work with Calvary Church. Chris has visited an orphanage in Russia, and she and Justice Yegan sponsor two Russian orphans and two kids in the Sudan. The experience makes Justice Yegan even more conscious of, and grateful for, the opportunities available in America. “People in America are blessed,” he says. “If you work hard, people can make their own opportunities.”

### THE ROLE OF A LIFETIME

In 1990, Governor George Deukmejian appointed Justice Yegan to the Court of Appeal, where he joined Justice Gilbert and now-retired Justice Steven J. Stone. Given his background and long history with the Court, his appointment was something of a homecoming. As Justice Gilbert notes, Justice Yegan is “imbued with a sense of tradition” when it comes to the role of the Court of Appeal. He shies away from aggrandizement of the justices as individuals separate from the Court. “The work we do is important; we’re not important,” he says. Justice Yegan also credits what he calls “one of the finest groups of research attorneys and support staff of any appellate division.”

Justice Yegan views the role of the Court of Appeal as being twofold, to correct miscarriages of justice, and to shape California law. He says the case load at the Court of Appeal is indeed down, which he finds to be a good thing, but feels there are still too many appeals being filed. As he puts it, “a good appellate lawyer should be able to talk his client out of an appeal.” If he had his druthers, he would require some type of screening procedure before filing an appeal, perhaps a certified specialist to issue a certificate of probable merit. When asked to put on the reformer’s hat, he submits that the Legislature ought to think about a comprehensive revision of California’s complex sentencing laws.

According to Justice Gilbert, Justice Yegan conducts himself formally on the bench, asking fewer questions than other justices during oral argument. Like his colleagues, he will sometimes write 10 to 15 drafts of an opinion.

Justice Yegan is known as an excellent writer, but he has consciously chosen to limit the stylistic pyrotechnics in his opinions. In part this is due to his own fondness for clarity and simplicity—Justice Gilbert calls him “a master of brevity and concision”—but also springs from a mortifying experience on an opinion he authored during his first year on the Court. The case is *In re Marriage of Martin* (1991) 229 Cal.App.3d 1196, 1998 [280 Cal.Rptr. 565], dealing with the issue of spousal support. In describing the parties’ marriage, Justice Yegan wrote, “In 1978 husband was a winemaker and wife was the general manager of their winery in Paso Robles. The grapes were sweet but the marriage turned sour.” The Court ruled in favor of the former Mrs. Martin, and although the *bon mot* seems irresistible, the aggrieved Mr. Martin complained to Justice Yegan that he had been made fun of over something as difficult as the dissolution of his marriage. Justice Yegan was chagrined. Now, he reads his opinions before issuing them and asks himself, “Have I offended anybody unintentionally?” He believes that good judicial writing and cleverness should not be at someone’s expense.

Mindful of the grapes of wrath, Justice Yegan is still waiting for an opportunity to quote John Steinbeck, his favorite writer, in a published opinion. He talks passionately and knowledgeably about Steinbeck, who is something of a touchstone for him. His favorite Steinbeck works are *East of Eden*, and *Cannery Row* and *Sweet Thursday*, which he has read at least 100 times. In addition to the style, what Justice Yegan admires about Steinbeck is his empathy for people, especially the downtrodden, and Steinbeck’s ability to describe people and places so vividly that the reader is pulled into the story and feels the presence of the characters almost as if they were real people.

### THE CONSUMMATE JOCK

As devoted as he is to the court and to his job, Justice Yegan is not one to linger at the courthouse for the sake of lingering. He leaves when his work is done and goes home to his family, or else heads for the gym or some other form of physical activity. A trim man of 57, Justice Yegan is the consummate jock. He was a swimmer at Roosevelt High School in

Fresno, and continued as a competitive swimmer at UCSB, where he participated in the college-division NCAA championships, was part of the winning relay team, and won three All America honors. He also spent four years as an ocean lifeguard while in college and law school.

Justice Yegan takes the precept of *mens sana in corpore sano* very seriously. He goes to the gym every morning. He does ten-mile hikes in the Santa Monica Mountains. He climbs mountains, including a successful ascent of Mt. Whitney with Rocky Baio. He body-surfs. He cycles (although he will tell you that, following a serious accident three years ago, he has developed what he calls “a healthy respect for the front brake”). And, of course, he skis.

And how. By his own account, Justice Yegan skis most of the winter storms, most weekends, and most of his vacation time. As he puts it, “everything seems so much clearer in the East Sierras.” At Mammoth, he is a devotee of Hangman’s Hollow, a classic cornice drop into a steep chute that is not for the faint of heart. The skis propped against the wall of his chambers are most definitely not those of a once-a-year, gentleman skier.

### REAL PERSON ON THE ROOF

Thoreau wrote that “[o]ur village life would stagnate if it were not for the unexplored forests and meadows which surround it. We need the tonic of wildness.” And it is this tonic that Justice Yegan seeks in the Sierras. Echoing Thoreau, he says, “People need to have a place to gather their thoughts, to ponder who they are, why they are here, and what good they can do.” He confesses that if he were not a judge, he would have loved to be a ski instructor in the Eastern Sierras.

He is a different man in the Sierras, and not just because he gets to ski there. At Mammoth, his best friend is a taxi driver, and this should tell you something. Despite being a fiercely intelligent and well-read man, Justice Yegan shuns these labels and the people who would apply them. By his own admission, he finds that “educated people” are “stifling.” He has an abiding and instinctive aversion to frippery and cant, a profound mistrust of the pretentious and the self-important. For him, real people are carpenters and plumbers and others involved in manual labor. Justice Yegan is proud and amused as he recounts how bewildered the roofer at his house was to find Justice Yegan beside him on the roof, asking questions and getting his hands dirty.

## THE SECRET GARDEN

Justice Gilbert points out that Justice Yegan “likes to work without fanfare. He is very loyal. There is not a scintilla of artifice about him. He can sometimes be blunt. When he asks a question, you had damned well better be prepared. But the true person is there.”

And yet, though he is serious and thoughtful, Justice Yegan is by no means dour. Just look at those Mexican hats in his chambers, adorned with parrot green and fuchsia. There is rumored to be a photograph of Justices Yegan, Gilbert, and Stone sporting those very sombreros on the bench, posed as the Three Amigos. Justice Gilbert confides that, although no one would suspect it, Justice Yegan “quips in conferences with the other justices. He does good dialects and impersonations. And he’s a good mimic, but he’s not a show-off.” Whether attorneys who appear before him should quake at the thought of his powers of mimicry remains an open question.

Justice Yegan loves musicals and Broadway shows. He has seen productions in New York and London, and even managed to catch Yul Brynner in one of his final performances onstage in Rodgers & Hammerstein’s *The King and I*.

One of his favorite musicals is *The Secret Garden*. Based on Frances Hodgson Burnett’s 1909 children’s novel, it tells the story of Mary Lennox, who, newly orphaned, is sent to live with her uncle in an isolated English manor house, where she discovers a walled garden, neglected and in ruins. Her uncle is an embittered widower, her cousin a tyrannical hypochondriac craving his father’s love and attention. Mary dedicates herself to bringing the garden back to life, and in the process discovers that salvation, peace, and healing come from nature. As a result, Mary, her uncle, and her cousin are restored to physical and spiritual health.

It is not difficult to see how these themes would resonate with Justice Yegan. In both his judicial and personal lives, Justice Yegan is a humanist, informed and influenced by a tremendous respect and love for the natural world. It is safe to say that he would agree with little Mary Lennox, who says at the end of the 1993 film version of *The Secret Garden*, “If you look the right way, you can see that the whole world is a garden.”



*“Joel R. Villaseñor is an associate at Sullivan Taketa LLP in Westlake Village, and works on employment, business, telecommunications, and real estate litigation.”*

# GONE CATCHING!

They say the worse day fishing is better than the best day working. We’d agree, but we spend our days **catching**, not fishing!

No one wants to hire an investigator who does more casting than hooking. Since 1996, we’ve helped clients win numerous cases as well as millions of dollars in favorable settlements and judgments.

We put fish in the boat!



Larry Troxel



John Troxel

### Investigative Services

- Recover & analyze computer evidence
- Investigate environmental contamination
- Locate and interview witnesses
- Sub-rosa investigations, surveillance
- Due diligence- backgrounds, assets, etc.

## VERDICT RESOURCES

Investigations And Professional Research

1000 Paseo Camarillo, Suite 206, Camarillo CA 93010

www.verdict.net | 805.445.1997

# RICHARD NORMAN

## A WORD FROM THE EDITORS

All publications have an editorial policy, whether they admit it or not. It is shaped by the publication's sponsor, by its contributors, by its editorial board if there is one, and by the person who makes the final decision about what goes in and what doesn't at the last minute before productions starts.

What about CITATIONS? First of all, it is a Bar Association publication. Its readers are lawyers and those who work with lawyers. We try not to defame or even gratuitously insult anyone. We'd love to be more gossipy, but this isn't the place to do it.

Second, the longest article we can accept is approximately 2,000 words (if something longer warrants it, we can break an article in two or three pieces and run a series). We don't have the budget for longer pieces; given the amount of advertising the Bar can sell, most months we can afford to print and mail only 20 pages. Half of that is for ads, and another two or three pages devoted to regular features: We ask our Bar president to contribute 750-1000 words each month and our executive director to do the same; we provide classified ad space for our members; we print announcements from the

courts; we try to feature legal personalities; we report on Bar-related activities; sometimes we get letters to the editor.

This means that marvelous articles about developments in the law and interesting extracurricular activities don't always fit in the next month's edition. We might have room for 750 words, but not 2,000 – even if the longer article is more relevant to the practice of law or the lives of lawyers. Putting the magazine together is a jigsaw puzzle; we can't do it till we have all the pieces, and only certain pieces fit certain places.

Third, timing matters. We need a week from the time we receive finished articles to edit them. Then we need to get the author to approve the edits, proof drafts, and decide what to run. All this needs to be finished by the 12th or 13th to get text to J.P. McWaters, our graphics wizard, in enough time for him to do the layout, let us proof it, and get the magazine printed and mailed. That means we need to receive text by the 5th or 6th of the month. Nevertheless, please wait to submit till you're satisfied with what you've written. If you keep tweaking and retweaking, we are never sure that you, JP (our

graphic designer) and we are working with the same version of the article.

Fourth, some subjects are boring. There's no point in telling what happened at a fundraiser six weeks ago.

Fifth, we try to avoid running advertising disguised as articles. There's nothing wrong with explaining how an expert handles an esoteric problem, but if the article is a thinly-veiled sales pitch, buy an ad instead.

Finally, join us. Someone needs to decide what to include and what to keep out of CITATIONS. That task falls to the editor and the editorial board. If you want to influence the process, we welcome new members, and there's free pizza as a job benefit.

*CITATIONS' co-editors, Wendy Lascher and Alfred Vargas, are appellate lawyers in Ventura.*

**VENTURA**  
1363 Donlon Street  
Suite 8  
Ventura CA 93003  
(805) 644-1986  
Fax (805) 644-6582

**PACIFIC COAST**

**WOODLAND HILLS**  
20750 Ventura Boulevard  
Suite 440  
Woodland Hills, CA 91364  
(818) 715-9122  
Fax (818) 715-9183

**COURT REPORTERS**

*A Full-Service Reporting Firm*

**Video Conferencing - Ventura**

**(800) 438-2226**

***One call Satisfies All your Court Reporting Needs NATIONWIDE***

◆ *Certified Realtime Reporters*  
◆ *Condensed Transcript*

◆ *Document Depository Centers*  
◆ *ASCII, e-Transcript*

◆ *Complimentary Conference Rooms with Speakerphone Capability At Both Locations*

**Member of the National Network Reporting**

## ASIAN-AMERICAN BAR INAUGURAL

The Ventura County Asian American Bar Association (VCAABA) raised \$905 for UNICEF's Tsunami Relief Fund at a February 11 inaugural meeting (and five-course feast) at the Peking Restaurant in Camarillo.

The group was introduced to VCAABA's Steering Committee: **Dien Le (Co-Chair), Monty Gill (Co-Chair), Connie Chang, Dino Innumerable, Lilian Jiang, Robert Kwong, Brian Nomi, Tina Rasnow, Kevin Suh, Donn Taketa, Carol Woo,** and **Steve Henderson.**

Dien & Monty explained VCAABA's purpose and told of future activities, including a scholarship program for local law students. They gave a history lesson on customs and explained the traditions surrounding the Lunar New Year, including the color red symbolizing good luck and the red envelopes with money inside given to children (but in this case, used for door prizes).

Thanks to: **Judge David Long** (who could not attend, but helped spread the word about VCAABA); **Judges Brian Back** and **Judge Harry Walsh**, as well as the other VIPs who braved the rain to attend; and to the many generous lawyers and friends whose contributions bolstered the Tsunami Relief Fund.

Almost everyone in attendance walked away with a door prize! We are grateful for the generosity and support of: Tina Rasnow; Sullivan Taketa LLP; Nordman, Cormany, Hair & Compton; Asian Pacific American Bar Association of Los Angeles County; Asian Pacific American Legal Center of Southern California; Southern California Chinese Lawyers Association; Philippine Asian Bar Association; South Asian Bar Association of Southern California; Rosanne MacDonald, C.Ht.; Mark Gurich, People's Mortgage Group; Alice Madrid, Union Bank of California; Deanna Eagle, California Carefinders, Inc.; Debbie Morris, Deb's Hair; Alan Munson, Munson Shirts; Ron Yamashiro, Brewer & Tominaga, CPA's; Chau Le, Northwestern Mutual; Dien Le.

**LEGAL MALPRACTICE  
EXPERT WITNESS  
and LAWYERS ADVOCATE  
STATE BAR DEFENSE**

**PHILLIP FELDMAN**

**B.S., M.B.A., J.D.**

**Fellow American Board of  
Professional Liability Attorneys**

**Certified Specialist  
Legal & Medical Malpractice  
(California & American Bar Associations)**

**Former Judge Pro Tem  
Former State Bar Prosecutor**

**Fee Arbitrator 28 years  
Litigator/Expert 36 years**

**Malp/Ethics Author**

*[www.LegalMalpracticeExperts.com](http://www.LegalMalpracticeExperts.com)*

*Email: [LegMalpExpert@aol.com](mailto:LegMalpExpert@aol.com)*

*[StateBarDefense@aol.com](mailto:StateBarDefense@aol.com)*

**(310) LEG-MALP 534-6257)**

**ALSO FEE DISPUTES,  
PREVENTATIVE LAW & RISK  
MANAGEMENT CONSULTATIONS**

**DEVINE HALL & ASSOC.**

# What I Do Is Criminal

By Michael C. McMahon

I hope this to be the first in a series of Citation articles about criminal practice in Ventura County in which I can express some personal thoughts about the current state of affairs.

Recently, I attended the county bar association "strategic planning session." One topic discussed was the management of our Ventura courthouse. Several of the issues call for bold action by our presiding judges.

For several years, the courthouse has been the venue for a "Crime Victims' Rights Week" rally. Its sponsors state that the victims' activist movement grew out of "the rise of crime that was accompanied by a parallel dissatisfaction with the criminal justice system." Event sponsors caution victims not to rely "on a criminal justice system where they were too often maltreated." In recent years, leaflets and flyers have festooned the elevators and walkways of the Hall of Justice before and during the demonstration. Jurors could not avoid being confronted by these political activists.

The legal rights of crime victims are a legitimate and important topic for public discussion. It is not, however, good courthouse management to schedule the rally to take place in the same courtyard used by our trial jurors on days that trials will be in session.

The County should protect our trial jurors from the pressures which such demonstrations or rallies might create. Under California law, persons who picket or parade in or near a building which houses a court, with the intent to influence any judge, juror, witness, or officer of the court in the discharge of his duty, are committing a misdemeanor (Pen. Code, §169). The sponsors avowedly hope to influence trial participants to be more attentive to the rights of victims; that's why they hold the rally at the courthouse rather than the fairgrounds.

Demonstrations and rallies adjoining the Hall of Justice could just as easily be held at a time and location that minimize the risk that participants in court proceedings will be influenced. "The government's power to regulate speech and its related activity extends to a courthouse. A courthouse is a public place, which in general entitles a person to speak freely therein. On the other hand, a courthouse is operated for the limited purpose of conducting trials and other forms of judicial exercise. Society must strike a balance between a person's right to speak freely and the right of a defendant to receive a fair trial free from the 'influence or domination by either a hostile or friendly mob.' \*\*\* [The] State may adopt safeguards necessary and appropriate

to assure that the administration of justice at all stages is free from outside control and influence" (*Cox v. Louisiana* (1965) 379 U.S. 559, 562).

There are several days during the year when the Government Center (including the Offices of the District Attorney and Public Defender) is open for business, but the courts are closed. Such days are well suited for rallies regarding criminal justice issues. If a rally must be held on a court-day (I do not know why that would be true), it should be scheduled at a time when jury duty is generally concluded, about 4:00 p.m., or at a location on the grounds where jurors and witnesses are unlikely to be near. The lunch hour is a very bad time. Jurors are halfway through their day, will be drawn to the courtyard, and are likely to be influenced by the Victims' Rights demonstration.

For similar reasons, a demonstration about police corruption or efforts to frame criminal suspects would not be appropriate while jurors are present. Perhaps, the rally should be scheduled for a non-court day. If not, it could better be scheduled after jurors are excused, or in an area on the grounds away from the Hall of Justice.

Another issue which deserves the court's attention is the inability of defense attorneys to speak confidentially with their custody clients when they appear in court. Confidential interview rooms specifically designed for this purpose sit vacant and unused. The sheriff, it seems, lacks the budget or staffing to oversee the use of these rooms.

This result is unacceptable and embarrassing. Defense attorneys are expected to discuss defenses and settlement offers within earshot of other prisoners. The attorney-client privilege

is eliminated and clients must fear the risk that a favorable settlement offer might be construed by other inmates as evidence that the settling defendant is working with the prosecution.

This past November, the voters amended our state constitution to add the requirement that meetings of public bodies and writings of public officials and agencies be open to public scrutiny (Prop 59). The amendment also requires that statutes or other types of governmental decisions, including those already in effect, be broadly interpreted to further the people's right to access government information.

I am hoping that our local judges will embrace these new policies. I specifically hope that judges' meetings to discuss court administration will be open to the interested public. I might not need to attend every such meeting, but it's good to know that I have a constitutional right to attend if the agenda shows something of interest. Public scrutiny is a positive thing, and the courts are no exception to the new law.

The weeks ahead will reveal exactly who is running the courthouse. The court, and not the DA or sheriff, must make these important court management decisions. I am hoping the presiding judges will step up and do what needs to be done.

Victims' Rights Week will be celebrated from April 10th through 16th this year. I meant what I said: It is an important event. If a more suitable time and place can be found for the rally, I will be there and I hope you too will support this worthy cause.

*Michael McMahon is Chief Deputy Public Defender and a member of the VCBA Board of Directors.*

## TRACY COLLINS

*Attorney At Law*

**ERISA**

*Representing claimants  
in the denial of group  
disability and life  
insurance claims.*

**Referral fees paid.**



5699 Kanan Road, Suite 415  
Agoura Hills, CA 91301

(818) 889-2441

Fax (818) 889-1210

[erisadisability@aol.com](mailto:erisadisability@aol.com)

## EAR TO THE WALL

**Holly G. Spevak** has relocated her solo practice to the Ventura Center for Dispute Settlement in Camarillo. The focus of her practice is mediation, education, and collaborative law. She also provides "unbundled" services, including limited scope representation in family law matters, document review, and as a consulting attorney to parties in mediation. Spevak Law & Mediation 484-9987.

## JUDGE OF THE YEAR

Check May's CITATIONS for coverage of the March 22 Judge of the Year award to Judge Ken Riley, and the judicial portrait featuring retired Judge William Peck.

## NEW FEE MEDIATION PROGRAM

VCBA is offering a new Fee Mediation Program for fee disputes for attorney services involving less than \$5,000. VCBA provides this option through the services of the Ventura Center for Dispute Settlement (VCDS). The Fee Mediation Program is available if all parties agree to participate to resolve their disputes. Matters not resolved by the Fee Mediation Program are returned to the Fee Arbitration Program for resolution. For additional information, please contact Alice Duran, Client Relations Manager at 650-7599 for the VCBA office.

## BAR LEADERSHIP

<b>ADR SECTION</b>	
Matthew Guasco	654-0911
<b>ASIAN BAR</b>	
Dien Le	818-889-1177
<b>BARRISTERS</b>	
Joel Villaseñor	818-889-1177
<b>BENCH/BAR/MEDIA COMMITTEE</b>	
Judge Glenn Reiser	654-2961
<b>BENCH/BAR/RELATIONS COMMITTEE</b>	
R. Norman/M. Planet	654-0911/654-2965
<b>BLACK ATTORNEYS ASSOCIATION</b>	
Liana Johnsson	654-3514
<b>BUSINESS LITIGATION SECTION</b>	
Dennis LaRochelle	988-9886
<b>CITATIONS</b>	
Wendy Lascher	648-3228
<b>CLIENT RELATIONS</b>	
Dean Hazard	981-8555
<b>CONFERENCE OF DELEGATES</b>	
Melissa Hill	477-1954
<b>COURT TOUR PROGRAM</b>	
Thomas Hinkle	656-4223
<b>CPA LAW SOCIETY</b>	
Douglas Kulper	659-6800
<b>EAST COUNTY BAR</b>	
Marge Baxter	583-6714
<b>FAMILY LAW BAR</b>	
Robert Ostrove	381-0977
<b>INTELLECTUAL PROPERTY</b>	
Chris Balzan	658-1945
<b>J.H.B. INN OF COURT</b>	
Judge Henry Walsh	654-2997
<b>JUDICIAL EVALUATION COMMITTEE</b>	
Wendy Lascher	648-3228
<b>LABOR LAW &amp; EMPLOYMENT</b>	
D. Palay/R. Burnette	641-6600/497-1011
<b>LEGAL SERVICES FUND COMMITTEE</b>	
Donald Hurley	654-2585
<b>LRIS ADVISORY BOARD</b>	
Steve Henderson	650-7599
<b>MEXICAN AMERICAN BAR ASSOCIATION</b>	
Susan Ratzkin	390-3115
<b>PRO BONO COMMITTEE</b>	
David Shain	659-6800
<b>PROBATE &amp; ESTATE PLANNING SECTION</b>	
Mary Shea	654-3015
<b>PUBLIC EDUCATION COMMITTEE</b>	
Daniel Palay	641-6600
<b>REAL PROPERTY</b>	
Ramon Guizar	659-6800
<b>VCBA/VLSP, INC.</b>	
Donald Hurley	654-2585
<b>VLSP, INC. EMERITUS ATTORNEYS</b>	
Verna Kagan	650-7599
<b>VC TRIAL LAWYERS ASSOCIATION</b>	
Kurt Kananen	213-217-5000
<b>VC WOMEN LAWYERS</b>	
Susana Miller	485-2700
<b>VCBA STAFF</b>	<b>650-7599</b>
Steve Henderson - <i>Executive Director</i>	
Sonia Hernandez - <i>Business &amp; Systems Manager</i>	
Sandra Rubio - <i>Administrative Assistant</i>	
Alice Duran - <i>Client Relations Manager</i>	
Elizabeth Davis - <i>LRIS Counselor</i>	
Peggy Purnell - <i>CTP Coordinator</i>	
Verna Kagan, Esq. - <i>VLSP Program Manager</i>	
Naydean Dankert - <i>VLSP Assistant</i>	
Linda Friedman - <i>VLSP Development Director</i>	



**DAVID M. KAREN, ESQ.**

**(805)988-4848**

**TRIAL • LITIGATION • MEDIATION**

**WWW.DK4LAW.COM**

**Got Case?**

**500,000 Briefs and Growing!**

**Discover the Advantages of Briefs on Westlaw**

The California Briefs & U.S. Supreme Court & Courts of Appeal Brief Library on Westlaw provides access to briefs and petitions filed in California state Court, U.S. Supreme Court, U.S. Court of Appeals and the U.S. Tax Court.

- Save time developing your arguments
- Discover new approaches
- Review winning/losing arguments
- View format for an unfamiliar court



For a more information contact:

**Gregg Kravitz**

gregg.kravitz@thomson.com • 805.652.0906

Westlaw

**Barry Cane**

**INSURANCE SPREAD**

**G. W. Kenny**

# LAWYERS MUTUAL

# Music – A Harmless Addiction

By Karen Darnall

Scientists have proved that music stimulates the brain like food, sex and addictive drugs. I've always thought so. But now, we have irrefutable evidence of this fact. Dr. Zatorre, et al, made PET scans of musicians' brains. These colorful pictures show patterns of cerebral-blood-flow in brains of human subjects—as they experience “chills” of euphoria from doses of music. A recent issue of *Scientific American* describes further research, where scientists are trying to harness the power of music to make people feel better.

Did we really need this evidence? I thought my brain was designed to be manipulated by music. Wedding, funeral and movie music can induce feelings above and beyond pure euphoria. And live performances can inspire cooperative spirit amongst members of the audience. Anyone who needs proof that music stimulates the brain (more quickly than any psychotropic medication) should consider evidence of the following movie soundtracks.

## Fanfares for Excitement

Like the sound of a judge's gavel, the fanfare draws attention from a multitude of people. My favorite fanfare is the opening of *2001: A Space Odyssey* (1969). Richard Strauss composed the original music “Thus Spake Zarathustra” as a poem to symbolize the status of mankind. It depicted Zarathustra arising with the rosy dawn. After years of spiritual retreat, this character (mankind) resolved to return to the world. Similarly, *Space Odyssey's* opening scene begins with a solitary trumpet; the brass choir joins forces, then the timpani come in forcefully as the brass reaches a triumphant crescendo. In effect, Strauss's fanfare captures the audience, and people are riveted to their seats.

In more contemporary style, Billy Conti, composer of *Rocky I* (1976), wrote dazzling fanfare music to signify that Rocky was a winner. Conti's popular rock-n-roll tune “Gonna fly now” used traditional trumpets and horns for the fanfare, while it enlisted singers, guitars, cymbals—even bongo drums, to add further drama. Powerful bursts of trumpets played a heavy syncopated beat. All of these musical effects caused the audience to feel energized and ready to join Rocky's exercise campaign. Eventually this tune rose to #1 on the pop charts. Today, when I hear Conti's soundtrack, I feel like it's time for me to exercise.

## Music for Dealing with Grief

At the other end of the emotional spectrum, elegies and funeral hymns convey feelings of grief. Like a compassionate friend, sad music can

resonate with the listener's feelings, to ease the pain of devastating loss or humiliation. Like a soothing ointment, music can heal heartaches by distributing and sharing feelings of grief. Who could ever forget the melody from Samuel Barber's “Adagio for Strings” that was played as background music during the movie *Platoon* (1985)? Hearing that melody today, I still recall grisly scenes portraying the loss of humanity in Viet Nam.

A much different use of elegy was Puccini's “Crisantemi” in the movie *Prizzi's Honor* (1985). This exquisitely tender background music was used in a humorous way to heighten the satire during the love story of Charley (a mafia killer played by Jack Nicholson) and Irene (a female hitter played by Kathleen Turner). Violinists, playing with heavy vibrato, gave this comedy a distinct Italian flavor. Toward the end of the movie, Charley's love for Irene was in bitter conflict with his duty to “honor” family ties. The audience knew that one lover was destined to kill the other. The disparity between Charley and Irene's situation and music reminiscent of Puccini's *Madam Butterfly* was, in my view, quite hilarious. (Some reviewers of this movie didn't think the show was funny.)

## Music Used for Causing Anxiety

There was no sweetness in John Williams' soundtrack during the movie *Jaws* (1975). Thirty years ago, young Steven Spielberg reacted with dismay when veteran-composer Williams told him the title theme would have only two notes: F and F sharp. Yet when the score was fully orchestrated, Williams' music was primitive and raw, like the shark itself. The two-note pulse was similar to the sound of humans breathing, fearfully, anticipating the next scene. Williams used variations in timing and crescendos, which transformed musical sounds into visual references of distance, space and movement. Using this clever rhythmic ploy, Williams' music gave the audience a real dose of fear.

A somewhat different strategy was used during the Hitchcock film *Psycho* (1960). Composer Bernard Herrmann decided to use an orchestra consisting only of strings. He explained, “In doing this I was able to complement the black and white photography with a black and white sound.” During the shower scene, Hitchcock purposely did not show Norman Bates plunging the knife into Marion's body. Instead of the visual image, Herrmann portrayed these gory details with musical sound effects: a series of shrieks from violins and violas playing dissonant chords in the extreme upper register. No red bloodstains, yet superb drama.

## Music for Memories

Some movie and television themes have become part of our cultural heritage. Remember the ominous coyote's howl in *The Good, the Bad & the Ugly* (1966). It became a musical signature, which now represents a whole genre of Spaghetti-Western movies by Sergio Leone and Ennio Morricone.

Equally recognizable is the *Godfather* (1972) theme by Nino Rota. Just five or six notes of the introduction—and you might see Marlon Brando's face or, taking a broader view, you may see visions of people in the Mafia driving fancy cars and going about their business of racketeering.

## Concert Music for Entertainment

In this day and age, most people's experience with music is from watching movies. Concert halls will never fade away, but acoustical music has to compete with many different kinds of entertainment. Live performances are expensive to produce, especially when the music requires several musicians at high skill level. Writing concert music is also a luxury that few modern film composers can (or want to) afford.

Finally, Ennio Morricone is composing more concert music. Today, at age 76, he is credited with 522 film scores. Morricone explains, “With a film score, it is really for the film-makers and the audience. This other music is what the composer feels and its' more personal.” Other classical movie composers who have written concert material include: Nino Rota (1911-79), Henry Mancini (1924-94), Lalo Schiffrin (1932-), Andre Previn (1929-), David Raksin (1912-2004), Jerry Goldsmith (1929-2004), John Williams (1932-), Elmer Bernstein (1922-2004), John Barry (1933-), and Leonard Rosenman (1924-). Another favorite of mine is Danny Elfman (1953-), aka “Oingo Boingo.”

## A Dose of Music is Coming Near You

On April 15, WLVC is offering a rare opportunity for Ventura County residents to see musicians in action, at an affordable price (see flyer insert). This concert will feature John Biggs (of Ojai) who composed *Songs of Laughter, Love & Tears*, as well as other contemporary music by Nino Rota (the “musical Godfather”), Puccini (known for *Madame Butterfly*), and Respighi (famous for *Pines of Rome*). (This program is not being offered for Substance Abuse Prevention MCLE credit.)

*Karen Darnall, a member of Citations editorial board, is a violinist. She practices health care law.*

**VENTURA  
COLLEGE OF LAW**

# RENEWING THE SUPREME COURT

By Paul D. Carrington

Article III of our Constitution provides that Justices of the Supreme Court and judges of other federal courts created by Congress shall serve during "good behavior," a term that has been taken to mean that they may hold office until they are impeached, tried, and removed for serious misfeasance. The term "good behavior" was suggested by English legislation of 1700 that has long since replaced by legislation imposing age limits on judges. For at least 150 years, no one writing a constitution has used that term or otherwise conferred life tenure on public officials. Modern constitution makers have imposed term limits or age limits, or created a system for removing judges that is easier and less punitive than impeachment and conviction. The closest analogue to the Court is the College of Cardinals.

For religious leadership, that may be acceptable, but life tenure for men or women exercising great power over others is a bad idea. Persons in high office over time become disabled, disturbed, declining in energy or acuity, antiquated, arrogant, stubborn and/or rude. Indeed, the prospects of such an evolution are not merely possible but certain unless prevented by death.

Federal judges are not immune from these realities. With respect to judges sitting in lower federal courts, Congress has long since solved the problem with a generous retirement program for judges so generous that most judges accept "senior status" as soon as they are eligible. Senior Judges continue to perform some judicial duties upon request of those having administrative responsibility. Congress has also authorized the federal judiciary to deal with problems arising when a judge is no longer able to give useful service for reasons of mental or physical health.

But the Supreme Court of the United States is the exception. Justices eligible to take senior status do not often do so. Most in recent decades have subsided only if they were too disabled to show up for work and/or were confident that the President at the moment would appoint a replacement whom they would approve.

There are several reasons for the tenacity of Justices. The first is that they exercise much power. Their job is gratifying, not tiresome, and if they remain in office they improve their chances at immortality. And their work is

not onerous. They decide only as many cases as they collectively choose to decide. That number has been declining since 1925 when Congress first empowered them to control their docket. Justices assured Congress that they would continue to decide the 350 cases a year that was then their workload. They now decide less than a hundred. And each Justice has an extremely able and energetic personal staff capable of doing much of their work for them.

The tenacity of Justices defeats an important aim of constitutional government, which is the orderly rotation of those in power. Rotation is an indispensable means of keeping government in touch with those it governs.

No one in the eighteenth century envisioned longevity as we know it in the twenty-first. At the beginning of the twentieth century, the average life span of Americans was about 40 years. A reasonable prediction is that those in their twenties today have an even chance of becoming centenarians. Those odds improve if they exercise great power and enjoy high status while doing undemanding work. A Justice appointed today at the age of 50 is therefore likely to sit on the Court for forty or fifty years. Yet there is no evidence that this superannuation prolongs the intellectual and emotional health of senior citizens sufficiently to enable them to apply sound political judgment to complex public issues. And it common experience teaches that centenarians cannot be in touch with the social order they presume to govern for decades.

The text of the Constitution leaves the number of Justices and their duties to the command of Congress. In the 19th century, Justices were

required by law to "ride circuit", performing judicial services in lower federal courts as needed. When President Lincoln was given reason for concern about the fidelity of some Justices to the war effort of the Union, he appointed a tenth Justice to prevent the Court from causing mischief. When Congress mistrusted the Court to decide cases arising under Reconstruction legislation, it withdrew the Court's jurisdiction in those cases. When the Court appeared to threaten legislation enacted to ease the Great Depression, President Roosevelt proposed to add six new Justices. That extreme proposal was soon demonstrated to be unnecessary.

These examples demonstrate that the Constitution does not preclude legislation addressing the problem of excessive longevity. Congress needs now to address the issue in a way that will not advance any partisan interest or threaten the career of any sitting Justice.

A timely solution is to establish the practice of appointing one new Justice during each term of Congress, with the nine Justices who are junior in commission serving as the regular members of the Court. Senior Justices, like Senior Judges, would retain their status and compensation, and would be assigned judicial duties in the circuits, much as Justices did in the early nineteenth century. When needed to fill the Court, the Senior Justices junior in commission would be recalled to duty. Some accommodation should be made to protect the expectations of Justices presently sitting on the Court.

*Paul Carrington is a professor at Duke Law School.*



Board Certified in Security Management

## Security Negligence Issues Forensic Consultant • Expert Witness

- Security Standards/Practices
- Crime Prevention Theory
- Crime Foreseeability
- Workplace Violence
- Security Adequacy
- Building & Site Design
- Security Officer Conduct
- Negligent Failure to Plan

Fully licensed in

California,

Nevada & Arizona

CA Lic. PI 6477

PPO 10770;

NV Lic. PI 852/PP 852A;

AZ Lic. PI 0310015

**Robert A. Gardner, CPP**

805.659.4294 • [cpp@crimewise.com](mailto:cpp@crimewise.com) • [www.crimewise.com](http://www.crimewise.com)

Offices in Ventura, CA & Las Vegas, NV

# The Resolution Experts



Hon. John G.  
Davies (Ret.)



Hon. Melinda A.  
Johnson (Ret.)



Hon. William  
L. Peck (Ret.)



Hon. Steven J.  
Stone (Ret.)



Nancy  
Warren, Esq.



THE RESOLUTION EXPERTS®

**JAMS  
RESOLUTION  
CENTER**

300 Esplanade Dr.  
Suite 1110  
Oxnard, CA 93030  
Tel 805.648.1190  
[www.jamsadr.com](http://www.jamsadr.com)

The highly respected mediators and arbitrators at JAMS are dedicated to finding flexible solutions to complex disputes. Our extended panel of Resolution Experts available in Ventura includes:

Hon. William C. Beverly, Jr. (Ret.)  
Anne Gifford, Esq.  
Gerald A. Kurland, Esq.  
Hon. David D. Perez (Ret.)  
Hon. Diane Wayne (Ret.)

Richard Chernick, Esq.  
Hon. Stephen E. Haberfeld (Ret.)  
Hon. Richard C. Neal (Ret.)  
Hon. Charles S. Vogel (Ret.)  
Hon. John C. Woolley (Ret.)

## BusinessAppraisalExperts.com



Dr. John K. Paglia  
Finance Professor  
Pepperdine University

**John K. Paglia, Ph.D., CMA, CFM, PRM, FRM**

- Ph.D. in Finance, MBA, BS in Finance
- Certified Management Accountant (CMA)
- Certified Financial Manager (CFM)
- Professional Risk Manager (PRM)
- Financial Risk Manager (FRM)
- Teaches Business Valuations at Pepperdine
- Member, Institute of Business Appraisers

**PAGLIA**  
CONSULTING GROUP, LLC

2950 S. Harbor Blvd.  
Channel Islands Harbor  
Oxnard, CA 93035

**805.382.3533**

[jkp@pagliaconsultinggroup.com](mailto:jkp@pagliaconsultinggroup.com)  
[www.pagliaconsultinggroup.com](http://www.pagliaconsultinggroup.com)

Available for the following *business valuation and expert assignments*:

- *Gifts and Estates*
- *Buy/Sell Agreements*
- *S-Corp Elections*
- *Shareholder Disputes*
- *ESOPs*
- *Marital Dissolutions*
- *Corporate Dissolutions*
- *Business Purchase or Sale*
- *Eminent Domain*
- *Charitable Donations*
- *Litigation Support*
- *Expert Testimony*
- *Mediations*

# Forgery and the Handwriting Expert – What Attorneys Need to Know

By Sheila R. Lowe

The professional forger is an extremely rare breed and is more likely to target major companies than individuals or small businesses. However, non-skilled attempts at forgery are increasing in frequency and are often made by the opportunist who sees his chance at some “easy money”. Maybe he’s found a lost credit card or checkbook, and decides to try his luck. Or he thinks dear old dad should have left the family fortune to him, rather than his beautiful young stepmother, so he forges the signature on a grant deed to the family home, or a new will, taking everything for himself. In addition, the sharp rise in identity theft presents many opportunities for the forger.

## Types of Forgeries

When it comes to forgery, one size does not fit all. There are several different types, the most common of which is the simulation. In this case, the forger has access to a model of the genuine signature from which to practice making copies. He attempts to copy the pictorial characteristics – the way the writing looks – in order to make it as close to the genuine signature as possible.

This is a much more arduous task than it might sound. Attempting to copy another’s signature is akin to mimicking the way someone walks or speaks (anyone who thinks this is easy should try it!). The forger pays close attention to the way the capital letters appear, drawing, rather than writing the signature as if it were a paint-by-number. What he fails to attend to, but what the document examiner looks at, is the amount of space left between words and letters, the proportions of the upper and lower lengths, the alignment, and other unconsciously rendered characteristics.

Another type of forgery is the tracing. Once again, the forger has a model of the genuine signature, which he may hold against a window, or use carbon paper or a light box, and place another sheet of paper over the top, and literally trace the line. Under magnification, the many starts and stops the forger makes as he checks his progress – called resting dots – are readily seen. Also, the writing is slower, and sometimes there is an indentation in the paper, which can be seen alongside the ink line.

The cut-and-paste forgery is exactly as it sounds. A genuine signature is cut from one document and placed on the spurious document, then photocopied. If the lighting and resolution is properly adjusted, the document will appear genuine. Since one of the premises on which handwriting examination rests is that it is impos-

sible to write a signature 100% the same way twice, the easiest way to prove a cut and paste forgery is to locate the document from which the name was traced. They will be identical, or extremely close if the forger is clever enough to change some minor details, such as the final strokes.

Closely related to the cut-and-paste is the electronic forgery. In the computer age, the scan-and-drop method has evolved. The forger simply digitizes a genuine signature by scanning at a high resolution, then inserts it into the spurious document and prints it. Voila! He has what appears to be a genuine signature. Under the microscope, however, the pixelation reveals that it has been digitized.

A fifth type of forgery is the freehand signature. The forger simply writes the victim’s name without making any attempt to copy. The Fraud and Forgery Division of the LAPD is said to have hundreds of examples where the forger has written some made-up phrase, disguised as a signature. One says, “you’ve been had, sucker.”

## Selecting a Handwriting Expert

When the assistance of a handwriting expert is required to help uncover the truth about the authenticity a signature (or other handwriting), the attorney is well-advised to select the expert with care, as there is no licensing in the field of handwriting analysis. In this field, as in others, there are those who have earned themselves the reputation of a hired gun.

To avoid potential problems, the expert should be a current member in good standing of a reputable handwriting examination organization (not just a fraud examiners organization), such as National Association of Document Examiners or Association of Forensic Document Examiners, for example.

Some who testify as experts have been shown to egregiously inflate their background and experience on their curriculum vitae and on the witness stand. A phone call to the organizations listed on the CV can verify the expert’s claims and help avoid a situation in court that could be embarrassing to the attorney and his or her client.

Fortunately for victims of forgery, handwriting is as individual as one’s fingerprints and in most cases, a signature is extremely difficult to copy. The many thousands of possible combinations of strokes make it impossible for two people to

have identical handwritings. Dr. Sagur Srihari of the University of Buffalo, discovered this while working on software to identify handwriting for the U.S. Postal Service, and he has published research proving that each person’s handwriting is unique (<http://www.cedar.buffalo.edu/news.html>).

A skillful forgery requires better than average hand-eye coordination and a great deal of practice. Artistic talent helps, too. Handwriting is a highly complex neuromuscular activity that requires coordination between the hand, arm, and fingers, as well as the eyes. Once graphic maturity has been reached – in other words, once a child has learned how to write – writing becomes a natural act, acquired over time. It is no longer necessary to stop and think about each stroke and how to get it right.

Unless there is a physiological or psychological problem, genuine handwriting is usually smooth, spontaneous, and free-flowing, with less focus on the movement and more on the content.

The forger, on the other hand, is forced to maintain constant control over the pen, concentrating intently on each minute detail. Under the microscope, the writing line will show frequent stops and hesitations, and the tighter grip the forger must maintain on the pen, in turn, produces heavier pressure on the paper. By the time he reaches the end of the signature, the forger has usually forgotten to stick to the victim’s style and his own natural style creeps in. Thus, the handwriting examiner pays the greatest attention to the ends of letters, words, and lines, rather than the beginnings.

A signature that’s simplified to a squiggly line can be problematic, as there is just not sufficient complexity on which to base an identification; thus, a signature written as a squiggle is the easiest to forge due to the lack of clear forms. The clearer a signature is, the harder it is to create a successful forgery.

Something the forger usually forgets to change is the way numbers are written. In his effort to copy the victim’s signature, he attempts to mimic the pictorial aspects of capital letters, the writing size and the slant. Numbers and other writing (such as the name of the payee on a check), however, are usually ignored, and that can be a dead giveaway.

*Sheila Lowe is a court-qualified handwriting expert since 1984 and the author of two published books and a software package on handwriting analysis. [www.sheilalowe.com](http://www.sheilalowe.com)*

## SPRINGTIME MCLE

Beat the January rush and earn up to five continuing education credits. Attorneys, paralegals, and other legal professionals are invited to a spring MCLE conference at the Four Points Sheraton in Ventura on April 16.

Superior Court **Presiding Judge Jack Smiley** keynotes the event, speaking about *Inside the Courthouse, Managing the Process*. **Judge David Long** follows; his topic is *Attorney and Paralegal Ethical Issues*. The morning session also includes *Researching Legal Ethics and Corporate Compliance*. In the afternoon attendees can choose among four educational sessions: *Family Law – Income and Expense Declarations*; *Random Allocation Topics in Trust Administration*; and *Five Simple Contract Clauses*.

Along with the courses, the conference will offer vendor exhibits, a prize drawing, pastries, and lunch. The event is brought to you by the Ventura County Association of Legal Assistants and the Santa Barbara Paralegal Association. Thomson West is a major sponsor of the event, and the Ventura County Bar sponsors the continuing education aspects.

For registration information, contact Delaina Finch at 385-7489.

### DAVID MERRIHUGH POINTS & AUTHORITIES”



*Whalen Bryan, INC.*

Confidential Placement of Legal Personnel  
for Law Firms and Corporations

[www.whalenbryan.com](http://www.whalenbryan.com)



**Kathi Whalen, C.A.C.  
President**

**Ventura County  
Call (805) 389-3663**

**Santa Barbara County  
Call (805) 965-2020**

California Association of  
Paralegals  
*CalAP*

## ANTICOUNI & ASSOCIATES

## CLASSIFIEDS

### Employment Opportunities

P/T or contract work – experienced in personal injury/civil litigation, review and organize P.I. files, prep demand letters, etc. Call Kary 585-1831.

Camarillo firm seeking a legal secretary w/min. 5 yrs exp., proficient in Word, MS Outlook, Timeslips & Abacus, salary DOE, send resume by fax 805-389-5288 or e-mail [operator@cmsapc.com](mailto:operator@cmsapc.com)

Oxnard firm seeks legal assistant/paralegal with experience working with discovery, coordinating depositions, ordering medical records and working with plaintiffs in the areas of catastrophic injuries, medical malpractice and insurance denials. Benefits and profit sharing. Fax or email résumé to Jo Bichner 988-5828, [claudiajot@cs.com](mailto:claudiajot@cs.com).

Ventura County AV-rated law firm seeking to expand its practice areas by adding experienced attorneys. Will consider senior associates, of counsel and lateral partners with a book of business. Looking for expertise in intellectual property, employment, bankruptcy and elder abuse. Send resume and interest to Roy Schneider, Esq., Myers, Widders, Gibson, Jones & Schneider, L.L.P., PMB 7209, Ventura, California 93003.

Seeking contract-typing assistance for appellate briefs. Contract Richard Gilman at 981-7907.

### Seeking Employment

Ventura native and UC Hastings grad seeks full-time position in Ventura County beginning in August 2005. Experience in election law (currently clerking for The Sutton Law Firm in San Francisco), bankruptcy (extern, U.S. Bankruptcy Court), and administrative matters (extern, California Office of Administrative Hearings). Journal Editor. J.D., UC Hastings (2005); B.A., Please email for resume and writing samples: [ereed27@hotmail.com](mailto:ereed27@hotmail.com).

Law school graduate (Feb. 2005 Bar Exam), USC undergraduate seeks law clerk or legal assistant position. Extremely reliable, mature, highly motivated, excellent communication skills. Fluently bilingual in English and Spanish. Call Alta Manzo at (805) 240-3118.

### Seeking Office Space

Wanted in Camarillo. One attorney office to include the use of a receptionist and common areas (conference room, reception area, etc.). Please call Paul Tyler at 805-889-9000.

### Office Space

Ventura Law Office has office for rent. Includes receptionist, use of conference room, phones and office equipment. Ask for Michele. 805-650-6640

Westlake Village - Terrific, individual window office for sublease with access to beautiful conference room, full kitchen, plentiful, free parking, first-class quality bldg, freeway access. Please contact Mitch @ 818-991-2282 or [mitch@swag-inc.com](mailto:mitch@swag-inc.com)

Ventura law office. County Square Professional Office Bldg. Underpass to Court House. First floor, large window, phone, intercom, DSL, postage, credit card equipment. 642-2025. \$495/mo.

### For Sale

The law library has a list of books up for bid in April. Come in and pick up a copy or call and ask to be put on our mailing list.



## Hoefflin & Associates, A Law Corporation

*Personalized representation to  
attain client goals*

Hoefflin & Associates delivers results by putting client interests first and using a team-based approach to creatively, intelligently, and effectively resolve legal matters.

### Specializing in

- Real Estate
- Civil Litigation
- Business and Corporate
- Executive Employment
- Estate Planning
- Intellectual Property
- Alternate Dispute Resolution

### Refer with confidence

- Richard M. Hoefflin, Esq.
- Cynthia R. Hodes, Esq.
- Newton E. Brightwell, Esq.
- Steve Meadville, Esq., Of Counsel

**“ADVICE IS JUDGED BY  
RESULTS, NOT INTENTIONS”**

*Cicero*

2659 Townsgate Road, Suite 232  
Westlake Village, CA 91362  
805.497.8605 or 818.991.0040  
[www.hoefflinlaw.com](http://www.hoefflinlaw.com)

## TRUST DEED FORECLOSURES

*Industry Specialists For Over 20 Years*

At First National T.D. Service we specialize in the Non-Judicial Foreclosures of obligations secured by real property. When your client needs a foreclosure done professionally and at the lowest possible cost, please call us at:

**(805) 339-0892**

**Fax (805) 339-9674**

**First National T.D. Service**  
A Real Estate Foreclosure Company

950 County Square Drive, Suite 106, Ventura  
KENNETH P. RICHARDSON, REAL ESTATE BROKER

## FROM THE PRO BONO CORNER

By Verna R. Kagan, Esq.

This past month we had a most pleasant surprise. While we were interviewing an applicant for pro bono services, Harveen (Beena) Simpkins called to say she was aware of the matter and was prepared to accept the case. This was a family law “moveaway” case—an issue which has been in a state of flux the past few years. Our applicant, the mother of a young child, faced the prospect of losing all contact with the minor. The father, who had custody, was moving to another state.

In another matter, the parties obtained a divorce in Ventura County, which gave the mother custody of the children. Since 1999, mother and the twin sons had been living in Indiana. In 2004, father requested a modification of custody by filing an Order to Show Cause in California. Following mediation, the court made a temporary order pending further hearing that the children be in their father’s custody in California. Through the services of the VSLP program, Susan Ratzkin agreed to represent mother.

If you would like to participate in the Volunteer Lawyer Services Program, Inc. call Verna at 650-7599 and find out how you too can make a difference.

### DIVERSIFIED SERVICES



## JUDITH E. RUBENSTEIN, JD, MA MEDIATOR

**“Where the stakes are high and emotions run deep”**



90% Consistent settlement rates

Most experienced mediator in Tri-Counties

2,000 cases successfully mediated

21 years Full-time Mediator

10 years Settlement Master, Santa Barbara Superior Court

20 years Trainer in Mediation and Negotiation Skills

**Real Property, Business, Employment, Malpractice,  
Family, Trust & Estates, Probate, and Conservatorship**

Law Review, Columbia Law School; Admitted to California and Massachusetts Bars  
Masters in Psychology

References from judges and attorneys upon request.  
Convenient locations: Pacific Coast Reporters, Ventura

805-569-2747  
[www.sbcadre.org/rubenstein.htm](http://www.sbcadre.org/rubenstein.htm)



Deputy District Attorney **David Lehr** announced a fund established to assist the **Peter Lemmon** Family after the death of Peter's 39 year-old wife, Jacki. David asked the lawyers assembled during the JHB Inn of Court meeting March 10 to send checks payable to the VCBA/Peter Lemmon Fund to the Bar office. Monies collected will be used to assist in the support of the couple's nine children. Peter, who has resigned from **Myers, Widders, Gibson, et al.** to accept a position as Assistant City Attorney for the City of Ventura, replacing **Amy Albano, who has taken over as Thousand Oaks City Attorney ...**

**Don Greenberg** "retired" from the County Counsel's office January 28<sup>th</sup> after 13 years of service. Preceding his run there, Don was the City Attorney for the City of Ventura from 1975 through 1989. Don is "grateful to have been a lawyer for 37 years so far" and feels very fortunate to have been part of the legal community. "I'm not going away," Don says, as he'll continue to teach, volunteer and spend additional time with the children and grandchildren. Don will do some further travel and weigh his pro bono options... Employment lawyers are warning love-struck co-workers to take precautions in the office before locking lips outside. Aside from prohibiting office affairs altogether, some companies are considering "love contracts," which help to protect them from sexual harassment suits if employees' romantic relationships end badly. The use of love contracts is "not a majority rule yet, but it's increasing," said one employment lawyer. "Some employers are going beyond traditional.

**Holly Spevak** has relocated her solo practice from **Ron Harrington's** suite and now shares space with the Ventura Center for Dispute Resolution in Camarillo. The focus of her practice will remain mediation and collaborative law. An active member of the ADR Section and the Family Law Bar Board, Holly will do limited scope representation in family law matters too... Real World Rules by Bill Gates: "If you think your teacher is tough, wait till you get a boss. He doesn't have tenure..." We are more casual about qualifying the people we allow to act as advocates in the courtroom than we are about

## exec's dot...dot...dot...

*Steve Henderson, Executive Director*

licensing electricians."—**Chief Justice Warren Burger**...Separated at birth? **Ralph D. Chabot** (page 54) and **Robert P. Roy** (page 134)—Consult your Legal Services Directory...

**Meghan Clark** and **Melissa Sayer** were advanced to junior partner at **Nordman Cormany Hair & Compton**. **Diane Becker** and **Glenn Fuller** have become senior partners...Prodigious biker **Mark Borrell** completed the grueling Solvang Century. The road race was closer to 103 miles and about a 3,500' vertical gain. Mark finished in 6:20... After two years, **Greg Ramirez** has left **McTague & Palay** and has been tabbed to open a sixth branch of the Reseda-based **Wasserman, Comden, Casselman & Pearson** on the 19<sup>th</sup> floor of the Tower Building. Greg's new e-address is [gramirez@wccplaw.com](mailto:gramirez@wccplaw.com)... According to Conan O'Brien, "A Florida court ruled that exotic dancers must cover one-third of their buttocks. Now, if only they could pass the same laws for the cable guy, we'd be in great shape." From *Lawyers and Other Reptiles*: When a New York City man tried to commit suicide by throwing himself off a subway platform into the path of an oncoming train, the train stopped and he was only injured. So the guy's lawyer sued the transit authority, claiming that "the motorman was negligent in not stopping the train quickly enough." The lawyer settled out of court for \$650,000, even though in the midst of negotiations his client threw himself off another subway platform, once more failing...

The Law Offices of **Philip G. Panitz** is now **Panitz Schaap**. Phil and Ryan's federal tax litigation efforts are going nationwide...License Plate of the Month: PRA4BBS on a Lincoln Towncar driven by **Janie Beach** of Simi. She calls it her "Birth mom limo"...From Bill Maher---"My mother is Jewish, my father is Catholic. I was brought up Catholic, but with a Jewish mind. When I went to confession, I always brought a lawyer with me...A Michigan company's decision to stop hiring smokers has angered employment lawyers who allege that the policy reeks of discrimination. Some attorneys say the policy, which also requires that all employees undergo testing for tobacco use, goes too far in that it aims to regulate legal activity. Moreover, they argue, it monitors what people do outside the workplace and discriminates against their lifestyles, a practice that is banned in 29 states with smokers' rights statutes...The Ventura Music Festival held it 8<sup>th</sup> Annual Founders' Dinner February 27. MC for the event was Festival President

**Tony Strauss**. The Honorable **Fred Bysse** was recognized for being one of the original Founders and **Dick Chess, Mark Charney, Al Contarino, Donna DePaola, Deirdre Frank, Ron Harrington, Don Hurley, Michael Kelly** and **Lawrence Matheny** were present... Two rappers' dispute over ownership rights to a song using the phrase "back that ass up" recently plunged the conservative Fifth Circuit into the world of booming bass lines and popular street slang. Music copyright decisions are rare for the Fifth Circuit, according to Jones Day partner **David Schenck**.

Here is a sampling of the public's questions from the San Diego County Law Library: 1.) Hello. I'd like to enforce my Chinese rights. Can you tell me which part of the Constitution allows me to do that? 2.) I have a relative who came for the holidays and now won't leave. If I call the sheriff, will they come remove them for me? 3.) I think my spouse is spending too much on holiday gifts. Is that a good cause for divorce? ...47 local bar leaders attended the annual strategic planning session held the last Saturday in February.

*Steve Henderson has been the executive director of the bar association since November 1990 and has been steroid free for quite some time. Those executive director records shall not contain asterisks as previously reported in other media. Additionally, Henderson is pulling for Roger Clemens and Randy Johnson and you should steer clear of his office on the 1<sup>st</sup>*

### Tri-County Sentry Newspaper

#### LEGAL/PUBLIC NOTICES

We can publish your Trustee's Sales,  
Probate Notices and Change of Names.  
Court Order No.125431

#### Rates:

Trustee's Sales...\$225 approx  
Petition to Admin \$180  
Change of Name...\$110  
Legal Notices...\$850

For the best  
service call  
**486-8430**

*We file your Affidavit of Publication with the court*

# **ARTIME GROUP**

# SBBT

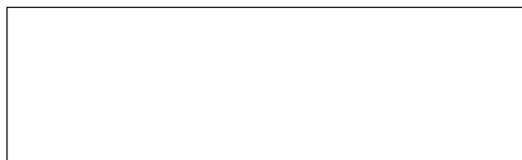
---

## CITATIONS

### Ventura County Bar Association

4475 Market Street, Suite B

Ventura, California 93003



PRSR STD  
US POSTAGE

**PAID**

PERMIT NO. 507  
OXNARD, CA 93030