CITATIONS

MARCH – TWO THOUSAND FIVE

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To promote legal excellence, high ethical standards and professional conduct in the practice of law;

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To work to improve the administration of justice.

SQUEEZING ON BOTH ENDS

by Mark E. Hancock

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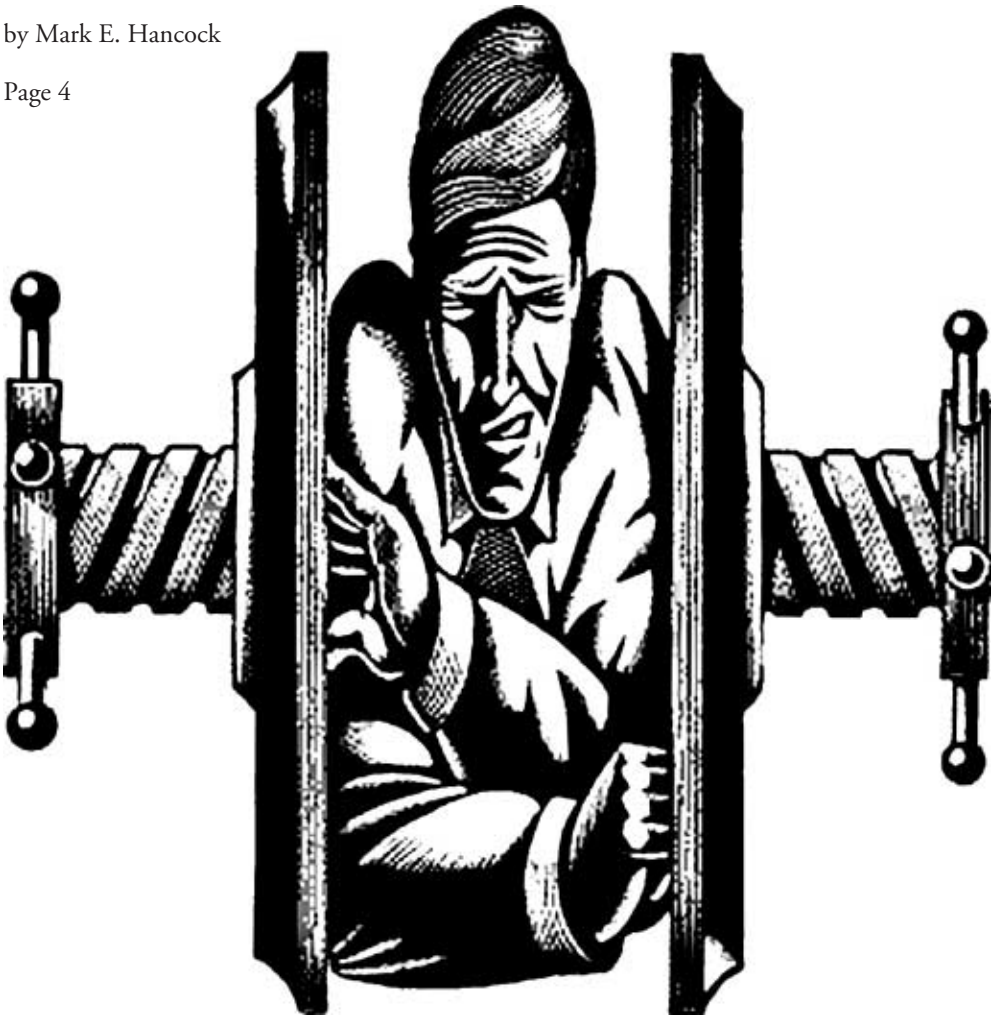

DONALD O. HURLEY

PAUL D. CARRINGTON

GREG MAY

STEVE HENDERSON

EULUA ACCOUNTING

PRESIDENTS MESSAGE:
WHAT STAYS IN VEGAS IS GENERALLY THE MONEY

By Don Hurley

My vision on the subject of gambling became clouded in 1990 when my wife, Carol, and I attended my sister's wedding in Las Vegas. While not considering myself a prude, I had never gambled, believing that if the odds were always in favor of the house, why play? I extended this personal prohibition to all card games, bingo and even raffles. My previous travels had included "Sin City" only as a waypoint and not as an ultimate destination.

We stayed at the Dunes Hotel, three years before it was to be destroyed, seemingly by a well-aimed cannon shot from a Pirate ship located in front of the Treasure Island Hotel (don't question the foregoing statement – I was to discover that Las Vegas has its own reality). The Dunes was located at the corner of Flamingo Road and Las Vegas Boulevard, across from Caesar's Palace, the MGM Grand (since renamed Bally's) and the Flamingo. The faint sounds of coins hitting against the metal trays of the machines were barely discernable as we checked into a standard room with a view of the air conditioning system on a lower roof structure.

The wedding itself was uneventful, in large part because this was my sister's fourth marriage (twice to the same person), and partially because the guests rapidly disappeared as soon as it was over, heading to the gaming machines and tables. Our remaining foursome, my sister and her new husband and my wife and me, returned to the Dunes with almost half an hour to kill before our dinner reservations. I was temporarily abandoned by the others. Finding myself alone in the casino area, I decided to be a sport and put a few quarters in any available machine. I handed a $20 bill to the change person expecting quarters, but received a roll of dollars instead. Being a typical guy, I was reluctant to exchange anything, even change, so I found a convenient dollar machine and plunked two coins in the slot.

On the first spin, as expected, I received nothing other than a request to try again, which I did. Surprisingly, on the second attempt the same type of symbols aligned themselves in a row. I had won without knowing exactly why. Coins started coming out into the tray, making a loud racket heard round the area, alerting others that I was a "winner." I continued playing for the few minutes before my wife and the newly-married couple located me at the machine, putting dollar coins in as quickly as possible and watching as the tray below gradually collected more and more of the winnings, reluctantly leaving, but with more than $70 for my efforts.

Are we to allow Ventura County to become another Las Vegas? Is our County's vision for the future to be that of an elderly woman alone at a slot machine inserting her meager savings, a quarter at a time, in the vain hope of reward?

(from a pleading written by Don Hurley in the early 1980s)

Arriving back in our room, I enthusiastically explained to my wife, another non-gambler, that this type of machine seemed to be one that paid off regularly. While she was understanding, the resulting discussion revolved around the seemingly obvious fact that they wouldn't be able to build these huge hotel/casinos if people won regularly. In spite of this undeniable logic with a sound foundation in statistics, I went to bed that night knowing that I would try again the following morning, stopping when I had won enough to pay for breakfast. A plan was born.

Four o'clock in the morning arrived as it usually does, quietly and in total darkness. I nudged Carol carefully to a level of consciousness which allowed her only to vaguely hear my comments about my intentions, and my promise that I would be back in an hour or so. I departed the room, unshaven and unshowered, walking quickly down the empty hallways, anxious to vindicate my theory on the casino floor below.

Prior to dawn's early light, the gaming area was sparsely populated by two types of individuals, bleary eyed hangers-on from the previous night and those few, such as myself, who had awakened at an obscenely early hour to try their luck. Walking down the rows and rows of machines in search of the one from the night before, I discovered a disquieting sight. All of the machines were being systematically emptied ("looted") by the casino staff and, almost without exception, each slot was fully loaded with hundreds and hundreds of coins. Avoiding these "loser" machines I focused upon my search.

I was in luck. There, amidst literally thousands of other slots, was the one I had played the night before. I sat down, glancing around to make certain no one else was looking at me, but certain in the knowledge that this was the right machine and I was at one with it ("Machine Karma"). Twenty-dollar bill in hand, I again sought the assistance of the change person, and remembered to advise her of my new preference for dollars instead of quarters. My first tug of the wheel produced nothing, it simply stopped with only one of the symbols on the line. I tried quickly again and again with the same results. Sweat began to form on my hands as I put the last two coins in and pulled the handle. Three symbols lined up followed by the incredibly exciting sound of coins pounding against the bottom of the metal tray. Life was indeed good!

We returned to Las Vegas again and again over the years, and the city changed dramatically, transforming more times and more ways than Madonna. Gambling is now more of a diversion for us from the time spent enjoying the spectacular entertainment and world class restaurants. The awesome Bellagio has replaced the Dunes, with a large lake where we had once stayed. But even after all these years, I still look around from time to time for the "winning" machine, hoping that it's there, hiding around the corner, waiting patiently for me among the maze of electronic slots and gaming tables. And maybe if I only get up at 4 a.m. and...

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

SQUEEZING ON BOTH ENDS

by Mark E. Hancock

Many liability insurance companies and their lawyers are now claiming that they (and their insureds) are only liable for the amount **paid** by a plaintiff's medical insurance in compensation for the plaintiff's medical expenses and not the amount **billed** (reasonable or not). A goal is to reduce specials, but the effect goes way beyond that because, as any personal injury lawyer can attest, general damages are often a function of those medical specials. As goes the specials, so goes the whole case, hence the importance of the matter.

Where did this case-killer attack come from? Ironically, after all of the hard work the plaintiffs' bar has done in recent years to preserve the civil justice system from initiative-based attacks, this attack is based upon what some mid-level appellate court jurists have said.

In the opinion of this author and others, however, this attack violates the law, unnecessarily complicates matters and is wrong and unjust (see Stuart, "Despite Hanif, the Collateral Source Rule Is Alive and Well, CAOC Forum (July/August 2002), p. 31). This attack violates the collateral source rule and Supreme Court precedent.

PUBLIC POLICY AND THE COLLATERAL SOURCE RULE

California Civil Jury Instruction No. 3903A provides:

> "To recover damages for past medical expenses,[the plaintiff] must prove the **reasonable cost of reasonably necessary medical care** that she has received."

This has been the law for years (See, for example, BAJI 14.10), and supposedly applies to everybody.

M people do have medical coverage which does pay some, many, or all of the bills.

Traditionally, the **collateral source rule** has kept out evidence of such coverage.

The collateral source rule reflects pervasive public policy in (*Hrnjak* v. *Graymar* (1971) 4 Cal.3d 725). Under this rule, personal injury plaintiffs can still recover their full legal damages, even though they have already received compensation from collateral sources such as medical insurance (*Arambula* v. *Wells* (1999) 72 Cal.App.4th 1006, 1009).

In *Helfend* v. *Southern California Rapid Transit District* (1970) 2 Cal.3d 1, 9-10, the California Supreme Court stated:

> "The collateral source rule…embodies the venerable concept that a person who has invested years of insurance premiums to assure his medical care should receive the benefit of his thrift. The tortfeasor should not garner the benefits of his victim's providence."

In other words, it is policy in the State of California that a defendant is not entitled to the benefits of a plaintiff's medical insurance. [Note the use of the word "benefits," which I contend means more than just "payments."]

THE RATIONALES BEHIND THE COLLATERAL SOURCE RULE

One rationale is that the collateral source rule encourages citizens to purchase medical insurance. The California Supreme Court has stated:

> "If we were to permit a tortfeasor to mitigate damages with payments from plaintiff's insurance, plaintiff would be in a position inferior to that of having no insurance..." (*Helfend,supra,*at p. 10)

Another rationale is that a defendant should not have to pay less than **full** compensation for an injury because of the fortuity that the victim had insurance, (especially given the fact that the defendant paid ***nothing*** toward that insurance)Medical insurance is something one gets either by working hard to pay the hefty premium every month or working hard to keep the job that provides health insurance as a benefit. It would be unjust to give a tort defendant the benefit of that (*Helfand,supra,* 2 Cal.3d at 10)**.** It is irrelevant**.**

Yet a third rationale is that to allow the introduction of a plaintiff's insurance upsets the proper and traditional computation of damages and "the complex, delicate, and somewhat indefinable calculations which result in the normal jury verdict" (*Id.* at p. 11

The cost of medical care provides attorneys (in settlement discussions) and juries (at trial) an important measure for assessing general (i.e., pain and suffering) damages. (*Id.* at p. 11) To lower specials, based on insurance, is to lower generals and the overall recovery unfairly for those with insurance.

The Court also noted that jurors are generally not told of the fact that the plaintiff's attorney usually receives a portion of the plaintiff's recovery in the form of a contingent fee (and, so, likely do not add to a recovery for that fact). It pointed out that the collateral source rule "partially serves to compensate for the attorney's share." (*Helfend, supra*, at p. 12)

A fourth rationale is that premiums are an investment. The return on the investment is not unfair, unjust, or double recovery. We honor investment in stock and real estate as capitalism and free enterprise. What should be different about insurance?

A fifth rationale is that to mention or introduce a plaintiff's medical insurance into the case would be as prejudicial and unfair as defendants contend that mention of their liability insurance is.

NOT DOUBLE RECOVERY

The Supreme Court has explicitly defended the collateral source rule against charges of double recovery.

First, "[medical] insurance policies increasingly provide for either subrogation or refund of benefits upon a tort recovery" (*Helfand, supra,* at p. 10). This is a fact.

Second, allowing full recovery serves to help compensate the tort plaintiff for having had to hire an attorney (*Id.* At 12).

The plaintiff generally does not receive a double recovery on account of the collateral source rule, "[e]ven in cases in which the contract or law precludes subrogation or refund…the rule performs entirely necessary functions." (*Helfend, supra*, at p. 11).

THERE ARE EXCEPTIONS, BUT THEY ARE BASED ON STATUTE

There are statutory exceptions, where collateral source payments can be used to mitigate damages, such as Government Code section 985 (collateral source rule does not apply in actions against public entities) and Civil Code § 3333.1 (collateral source rule does not apply in actions against health care providers. But this article involves an attempt to create an exception applicable to all defendants, in the absence of any statute. Is this judicial activism in favor of liability insurers?

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SQUEEZING ON BOTH ENDS *Continued from page 4*

HANIF and NISHIHAMA ARE DISTINGUISHABLE

Liability insurers and their attorneys base their argument that they are only responsible for amounts actually **paid** by any medical insurer *Hanif* v. *Housing Authority of Yolo County* (3rd District, 1988) 200 Cal.App.3d 635 and *Nishihama* v. *City and County of San Francisco* (1st District, 2001) 93 Cal.App.4th 298.

Both *Hanif* and *Nishihama* involved public entity defendants, however. One could argue that any statements purporting to extend to private, non-health-care-related, defendants are dicta.

Further, *Hanif* involved Medi-Cal. Medi-Cal is not private insurance. Since a beneficiary does not pay for it, we all do, at least two rationales for the collateral source rule do not apply, i.e., the policy that people should be encouraged to buy insurance, not penalized, and the fact it is not unjust to give the defendant a break in such a case, since he or she did – as a taxpayer- contribute to the benefit.

HANIF AND NISHIHAMA FAIL TO ADDRESS ALL OF THE RATIONALES BEHIND THE COLLATERAL SOURCE RULE

Hanif and *Nishihama* fail to address some of the principle rationales for the collateral source rule. In fact, following those cases would be to violate them. Let's revisit them.

To cap expenses at what a private insurer paid would be to penalize someone precisely because of their medical insurance.

It is common for health insurers to negotiate for provider services at low rates. (Many doctors, in fact, complain they're ***unreasonable***.)

To limit a plaintiff to recovery of the low payments, while allowing a person without insurance, or a someone provided care through a lien, to recover the full reasonable value of the services would be to discourage the buying of insurance and treat someone **with insurance** worse than one without. This violates equal protection of the laws. Query: is it just (and good policy) to allow someone with no insurance, on a lien perhaps, to recover more for the same injury than one with medical insurance?

Second, lower provider rates negotiated by their insurer are as much a benefit of their insurance as the payments themselves. In fact, especially in cases where the deductible is large, the basic benefit of buying the insurance (besides protection in cases of large losses) is the reduction in the medical expenses thereby achieved, i.e., the doctor has agreed to give the insured a break in the normal price because they have the insurance. To give a defendan defendant a break because of this is unjust and a windfall, especially since the defendant did not contribute at all to that reduction. The defendant did not pay the premiums.

INSURERS ARE ATTEMPTING TO SQUEEZE ON BOTH ENDS.

Some courts have erred, in this author's opinion, in unpublished decisions holding that because the liability carrier is made to pay the amount **paid** by the medical insurer, there is no violation of the collateral source rule. To say nothing is wrong because the defendant still has to pay the "paid" amount disregards the ***other benefits*** of medical insurance and the other rationales of the collateral source rule**.** The defendant did nothing to secure or earn the benefit of the lower bill**.** The letter, spirit and policy of the collateral source rule **is** violated**.**

Third, to apply *Hanif* and *Nishihama* to cases involving private party, non-health-care defendants and private (non-Medi-Cal) medical insurance would be to disregard the fact that medical specials are an important yardstick in computing general damages. California Supreme Court specificallyrecognized and approved the use of the collateral source rule to allow for the recovery of the full (reasonable) value of the medical costs (read: in excess of the amount the medical insurer may have paid), because the reality is that much of it has to be paid back to the medical insurers anyway and any extra helps compensate the plaintiff for the attorney's fee. Per *Helfend* itself, the collateral source rule prevails over the doctrine of mitigation of damages.

Further, some policies and plans have provisions stating that in cases where a third party has harmed their insured/plan member, the medical insurer/plan is entitled to recover, **not just the amount they paid**, but the reasonable value of those services. (See also *Swanson* v. *St.John's Regional Medical Center*(2nd Dist.2002)97 Cal.App.4th 245, with regard to the ability of some hospitals to do this based on the Hospital Lien Act, and *McMeans* v. *ScrippsHealth* (2002) 100 Cal.App.4th 507, making the right dependent on what the provider's contract with the medical insurer says.)

In this author's opinion, not only is the liability insurers' argument wrong, but to adopt it would require tedious, invasive and unfair case by case analysis of: the terms of the plaintiff's medical insurance/plan, the kind of hospital providing the treatment, and the terms of the provider's contract with the medical insurer. Accepting *Hanif*, *Nishihama*, *Swanson* and *McMeans* together could put a plaintiff in the unjust position of being able to recover less than she owes to her insurer or provider -- and for what? For the benefit of defendants who paid nothing toward the expensive premiums?

The better, simpler and fairer method would be to simply say that the collateral source rule precludes this argument to begin with, since the defendant did nothing to deserve the break, and to keep the law where it has been, i.e. successful plaintiffs are, regardless of insurance, allowed to recover the reasonable value of reasonably necessary medical services.

Mark E. Hancock *is an attorney with offices in Ventura. He handles personal injury and real estate cases and insurance disputes.*

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STATE OF THE COURTS

At January's annual State of the Courts dinner, the Ventura County Trial Lawyers Association heard from newly elected Superior Court Presiding Judge Jack Smiley, Assistant Presiding Judge Colleen Toy White, Court of Appeal Presiding Justice Arthur Gilbert, Superior Court Executive Officer Michael Planet, and Supervising Civil Judge David Long.

Judge Smiley, who began his term as presiding judge just as the rains began this winter, plans to form a new court executive committed consisting of the supervising civil, criminal, family and juvenile judges. Judge Smiley also reported that the opening of new courtrooms at the Perren Juvenile Justice Center in El Rio makes room for a reorganization of the Ventura courthouse, with civil courtrooms moving to the fourth floor and all family law courtrooms to the third floor. Simi Valley courtrooms are not affected.

Judge Colleen Toy White is this year's Assistant Presiding Judge. She announced that as of January 31, Ventura County will have a full-time domestic violence court hearing felonies as well as misdemeanors. The court's goal is not only to make perpetrators accountable, but to prevent injuries, and prevent recurrence. Before sentencing, the court will review family law and probate court orders in the hope of imposing consistent sentences and crafting appropriate stayaway orders. The domestic violence court intends to consolidate services for offenders such as drug rehabilitation programs mental health services. The court will take special care to provide services for children whose families have domestic violence issues. A public health nurse will visit affected families, too.

Justice Gilbert reminded the audience that the Court of Appeal does not assign cases according to the personalities, interests, or experience of a particular justice. Instead, cases are parceled out by a blind draw system. Justice Gilbert also noted that appellate filings are down to 185 cases per judge per year. The average time for Division Six from notice of appeal to decision is less than a year; from filing of the reply brief to oral argument is 30-60 days.

With a drop in caseload, the justices have time to offer appellate settlement conferences, if both sides are willing to participate. Attorneys may call the court to arrange a settlement conference, before or after briefing. The justice who handles the conference is automatically disqualified from sitting on the appellate panel for the case.

Executive office Mike Planet talked about Ventura County's leadership role in the California court system. In addition to our new courthouse, we have a new case management system, and Ventura judges sit on several important statewide committees. Ventura is one of four counties setting standards for the state; the challenge will be to maintain our local identity as uniform state standards take effect.

Judge Dave Long talked about a new voluntary early mediation program in which the plaintiff and defendant meet and confer by phone. If they agree, the court will limit discovery for 120 days and allow the parties their choice of mediators. In this connection, the court is seeking funding for mediator training

At the time of the VCTLA dinner, the court had 3,388 active civil cases. Although filings are down, the number of motions is up, so judges are just as busy as ever.

Barry Cane

INSURANC

G. W. Kenny

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RENEWING THE SUPREME COURT

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.*

EAR TO THE WALL

Beena Simpkins has launched her own law practice in Oxnard. Her areas of practice include personal injury and family law. Tel: 479-3346.

Law Offices of Pamela A. Garvin is pleased to announce the relocation of their office to 2535 Townsgate Road, Suite 320, Westlake Village, CA 91361. Tel: 374-6757, Fax: 379-1144. Areas of practice will continue to be pension benefits, business, corporate and partnership law, and estate planning.

LETTERS TO THE EDITOR

To Citations Editor:

Several weeks ago, Peter Goldenring and I engaged in a warm and friendly discussion about the effective date of the amendment to CCP Section 1005 (time requirements for service of motions, order to show cause hearings, etc. and the filing and service of opposition papers). Peter insisted that the effective date was January 1, 2005. I maintained that the effective date was July 1, 2005. We bet $50.00 on it.

Convinced that I was correct and that Peter was wrong, I asked my partner, Patrick Cherry, to conduct the research and to resolve the dispute. Patrick agreed with Peter. I was wrong. The effective date of the amendment is January 1, 2005.

CCP 1005 states, "Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least 16 court days before the hearing. However, if served by mail, CCP 1013 applies and five calendar days are added if mailed and received within the State of California or two calendar days are added if served by facsimile transmission, express mail or overnight mail. All papers opposing a motion shall be filed with the court and a copy served on each party at least nine court days and all reply papers at least five court days before the hearing."

Patrick explained that the initial confusion was the result of differences between the West and Deerings code books. The Deerings volume has a notation 'Chapter 171 prevails; Chapter 182 not effective' which does not appear in the West codes, nor is it a part of the statute; it is provided by the editors at Deerings. Although the notation is correct in the outcome, it incorrectly suggests the first enacted statute (which became Ch. 171) prevails over a law passed later. The West product notes "Amended by…Stats. 2004, c.182 (AB3081), ß13, operative July 1, 2005; Stats. 2004, c. 171 (AB3078), ß3." Since a later enacted statute prevails over one enacted earlier (Gov't. Code ß9605), this suggests the effective date is controlled by Ch. 182 and is July 1, 2005. However, this too is wrong.

[The original letter to the editor explains the misperception in four detailed paragraphs. If you'd like to read the analysis, please contact Patrick Cherry at 805-648-4700, pcherry@taylormccord.com - Ed.].

There is no explanation why the Judicial Council chose to draft such a convoluted and circular set of statutes. The changes were made because the Judicial Council felt people were choosing their hearing dates to reduce the time available for the other side to respond. Although the change to 'court days' establishes a certain minimum response time, the extension of five calendar days for mailing means that manipulation is still possible. Be sure to count the days carefully, and remember that the five day extension affects only to the initial notice period; it does not apply to opposition or reply papers.

I sent Peter my check for $50.00 - he graciously returned it and asked that the funds be donated to the Ventura County Bar Association, which I have done on his behalf.

Very truly yours,

DAVID L. PRAVER

To Citations Editor:

I thoroughly enjoyed Don Hurley's comments on Max in last month's Citations. I feel sorry for cat lovers. They're missing one of life's greatest joys. It brings to mind some famous words about dogs;

There is no psychiatrist in the world like a puppy licking your face. We give dogs time we can spare, space we can spare and love we can spare. And in return, dogs give us their all. It's the best deal man has ever made.

If you think that dogs don't know how to count. Try putting three bisquits in your pocket and giving Fido two of them.

Thanks, Don, I appreciated your sharing this tribute to your dog.

LINDSAY NIELSON

EQUITABLE MACS-IMS

By Greg May

I bought my first Apple Macintosh computer, or "Mac," during law school in 1989. Some thought that illogical. After all, I would still depend to some degree on my school's computer lab for laser printing, and only about one-tenth of the computers in the lab were Macs. I was assured no law firms used Macs. My Mac was expensive (I spent the last two and a half years of law school paying it off). Ignoring the skeptics, I bought it, I loved it, and my home computers have been exclusively Macs (or clones) ever since.

Is the Mac practical for the law office? This series will try to address that question. This month's column is a brief look at Apple's efforts to expand the Mac's status beyond counter-cultural icon to mainstream business computer.

Apple has always seemed a little "different" and its "Think Different" ad campaign even tried to capitalize on this perception. While a Mac is very much a personal computer, it is never called a "PC." The Mac's native operating system, or "OS" – the software that runs the computer – is incapable of running software applications designed for the Windows OS installed on most PCs (at least not without some help, which we'll discuss in a later column).

Lately, Apple has taken at least three steps toward positioning the Mac as a serious business alternative to the PC. They are not giant steps, but they are steps.

First, the Mac has no doubt gained increased visibility from the proliferation of Apple-owned "Apple Stores," which now number nearly 100 in the U.S. Many of these stores sponsor weekly "Pro Day" seminars designed to teach business people ways to be more productive or manage their business better with a Mac.

Second, Apple appears to be wooing PC users directly, in what many would consider a departure from a history of product development and advertising designed primarily to entice existing Mac users to upgrade. This includes the "switch" television ads of a year or two ago, in which people, including business people, gave whimsical 30-second accounts of their own switch from PC to Mac. Resources devoted to recruiting switchers seem to have dwindled, however, and the effort now seems limited mainly to Apple's website, which links to a page devoted to switching.

Third, Apple's website includes a "small business" section, which boasts that "Business Booms on a Mac." The page includes a "Legal" link, which takes the web surfer to a page highlighting time & billing and law practice management software designed for the Mac. You can also find profiles of two Mac-using law firms and a page all about cross-platform compatibility between Macs and PCs.

Ironically, the seeds of Apple's recent financial success may somewhat sabotage these efforts. Apple's stock price increase has been attributed largely to the wild success of its iPod digital music player. The advertisements for the iPod tend to be aimed at the trendy, "hip" culture. The extent to which the public associates the Mac with the iPod's image may make it difficult for the Mac to attain the serious reputation it needs to make inroads into the business world.

Future Equitable Macs-ims columns will try to get specific about the advantages and disadvantages of using a Mac in a law firm, as well as direct the reader to resources available to the Mac-using lawyer, and to what the press and public have to say about Macs in law firms or in business generally.

Ultimately, how this column accomplishes its goals will depend in large part on input from CITATIONS readers. So look for the insert titled Equitable Macs-ims Input Form, and use it to submit your comments for. Instructions for submission are on the form. You may also download the form as a Word or PDF file from http://homepage.mac/gtmay (download the file "Equitable Macs-ims." The Word file should open in Microsoft Word whether on a Mac or a PC.

One last word: I'm a Mac partisan, but I'll try to be objective. And because litigation has dominated my legal experience, I have a bias in favor of discussing litigation-related issues. Accordingly, input from Windows partisans and non-litigators is especially encouraged.

Greg May *is General Counsel for Market Scan Information Systems, Inc. in Westlake Village and a member of the CITATIONS editorial board.*

The curious few who missed the deluge of "switch" ads on television can view them at http://plex.us/videos/switch.html. Once you've watched a few, try watching some of the ad parodies by following the "Switch Ad Parodies" link at the top of the page.

Can Macs and PCs cohabitate? Check http://www.apple.com/business/mac_pc/

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Steve Henderson, Executive Director

Westlake lawyer **Phil Panitz** is far more than happy to be back at work again. The immediate past president of the bar had a serious gallstone attack in an East County mall on the way to see the movie "Closer" Dec. 4. The paramedics were called and it was later determined surgery was necessary. Phil checked into Kaiser Dec. 11 anticipating a short laparoscopic procedure. It turned into a 3½ hour carve job and "cleaning-out-the-ducts." He was discharged a week later (missing, as host, the Bar's Board of Directors' holiday party) and back in the office FT January 24, with a 10 inch scar. He quietly muses, "no more bikini bathing suits"...The first gathering of the Ventura County Asian American Bar Association drew 30 lawyers and Judges Walsh and Back to Camarillo. President Dien Le reports over $900 was raised for the tsunami relief efforts. Le was assisted by Carol Woo, Connie Chang, Brian Nomi, Monty Gil, and Lilian Jiang. Dien had nearly 20 door prizes ranging from a meal at Ruth Chris to a hypnotherapy session worth $95...Looney Laws: In North Carolina, it is against the law for children on a train to drink milk…

Barbara Macri-Ortiz reports her one and only employee, **Jessica Arciniega**, sat for the first year law students' exam (a.k.a. the Baby Bar) in October. After completing her first year of law studies under Barbara's supervision, Jessica passed the exam on her first attempt. She will continue to study with Barbara for three more years and be eligible to sit for the bar exam. The apprenticeship program is alive and well... Real World Rules, by Bill Gates: "You will not make $40,000 a year right out of high school. You won't be a vice-president with a car phone until you earn both."... From Vasco Nunez de Balboa, to King Ferdinand V of Spain, 1513: "One thing I supplicate, your Majesty: that you will give orders, under a great penalty, that no bachelors of law should be allowed to come here (to the new world); for not only are they bad themselves, but they also make and contrive a thousand iniquities"...

Recommended Reading: "The Death of Innocents. An Eyewitness Account of Wrongful Executions," by Helen Prejean. 310 pp. Random House. $25.95. Sister Prejean, of "Dead Man Walking" fame, approaches the death penalty differently this time. "People who are well represented at trial do not get the death penalty." – Justice Ruth Bader Ginsburg...The **East County Bar Association** is revving its engines again. They'll conduct their first CLE since October 2003, March 24th, down in Simi (see promotional brochure). The new 2005 ECBA Board is: **Marge Baxter**, President; **Al Keep**, Treasurer; **Gordon Lindeen**, Member at Large; **Russ Takasugi**, Member at Large; **Patti Mann**, Member at Large; and **Vicki Walluck**, Secretary. Marge, Gordon, Al and Russ were founding members way back when..."Of course I've got lawyers. They are like nuclear weapons. I've got 'em 'cause everyone else has." From Danny de Vito in *Other People's Money*…

From the American Tort Reform Association – A New York appeals court rejected a woman's lawsuit against the company that makes the device called "The Clapper," which activates selected appliances on the sound of a clap. She claimed she hurt her hands because she had to clap too hard in order to turn her appliances on. "I couldn't peel potatoes [when my hands hurt]. I never ate so many baked potatoes in my life. I was in pain." However, the judge concluded she had merely failed to adjust the sensitivity controls... An ordinance in Dallas, Texas, forbids "walking around aimlessly, without apparent purpose, lingering, hanging around, lagging behind, idly, spending time, delaying, sauntering, and moving slowly about...**Harveen Simpkins**, member of JHB Inn of Court for several years, has gone solo with a practice in Oxnard. **Kurt Kananen** is the new president of the Ventura County Trial Lawyers Association, replacing **Michael Walker**. **David Shain** agreed to be the vice-president and president elect. VCTLA's wildly successful "Judge of the Year" dinner will be March 22nd (see the flyer stuffed in the middle of this CITATIONS)…

Jodi Prior, Managing Attorney at the Coalition to End Family Violence, gave birth Valentine's Day to little Cooper Conrad. Coop weighed-in at 9 pounds...Jennifer Calderwood Rose also had a baby Feb 2nd (with a little help from father Kevin Rose) to a little boy named Jack. He weighed 6lbs./6 oz. and was 19 inches in length...

A New Hampshire judge who was suspended for groping five women at a conference on sexual assault and domestic violence resigned February 4, the same day a judicial conduct committee recommended that he not get his job back. The committee concluded that Judge Franklin Jones' actions towards victim's advocates of his court "demeaned his judicial office and cast reasonable doubt in the eyes of the public on his continuing capacity to act in an impartial manner."...An even more damaging judge's story? Judge Donald Thompson retired in August last year from the Oklahoma City bench after being threatened with removal. He still faces indecent exposure charges including a "habit of masturbating with a penis pump under his robe during trials... Speaking at the University of Michigan, U.S. Supreme Court Justice Antonin Scalia criticized judges Tuesday for using what he called "abstractions" to interpret religious issues when they should be looking to the text of the Constitution itself. "The Constitution says what it says and does not say what it does not say," Scalia said…Lawyers who'll be devoting time to their laptops or case files this evening should take solace in this: They are not alone. A national survey shows that 87% of attorneys take work home with them. Lawyers blame their homework woes on the double whammy of technology and heavy caseloads...

***Steve Henderson** has been the executive director of the bar association since November 1990 and correctly predicted a three point Patriot victory. Henderson's work ethic closely resembles T.O. and is compensated much like Roger Clemens. His favorite new show is HBO's HUFF and here comes March Madness with MLB on deck.*

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