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BY MICHAEL VELTHOEN

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SOFTBALL, PIZZA AND THE EMERGENCY ROOM

By Don Hurley



THUD!!! The sound of a rapidly swinging baseball bat connecting with a ripe melon. Out of nowhere, a short, but quick and determined shortstop had briefly appeared in my field of vision as a blur on my left side. The top of the fielder's head collided with my face, breaking, in a moment of time, my eyeball socket and my jaw and repositioning my nose somewhere below my right eye. I was knocked down but not unconscious by the blow, my thoughts of serious injury being temporarily overshadowed by my need to know whether I was "safe" or "out."

But, I get ahead of myself. . .

It began in my third year as an attorney for the County Counsel's Office. I should have resisted, but I didn't. First as an unexpressed thought, then as a conversation and, a short time later, as an idea fully conceived. We would participate in both men's and coed softball. We would be sponsored and have uniforms and would compete against other teams and, unspoken but understood, we would surely be stars.

Serious recruitment meant going outside of our office for players. The Nordman firm and the District Attorney's office became a resource for quality players willing to risk physical injury for comradery. An automobile parts store was found as a sponsor, wives and significant others were encouraged to participate as players or fans, uniforms were purchased and we signed up for the "C" division of the Ventura City League, searching desperately for, but failing to find, a lower category.

The first practice revealed the need for a far more diverse first aid kit. It was obvious that somewhere along the line fathers had not

spent sufficient time with their daughters, and sometimes their sons, to instruct them in the finer points of fielding and throwing a ball. Errant throws were the rule at first and not the exception. Players discovered that the abrupt run from homeplate to first on a cold night could easily rip deskbound muscles. Hope remained, however, that even if we didn't win a league title, we would at least be competitive.

The coed team presented special challenges. Each team pitched to its own players and only three pitches were allowed per batter. Failure on the part of the pitcher to throw the ball into a hittable area (unfairly defined by the batter) brought with it not only an out but also bitter and off-color comments from your teammates. It was quickly discovered that to be competitive, a team had to have at least one or two female "ringers," i.e., quality players who could play as well as, and in many cases, better than the men. We found one of ours in Tari Cody, then with the Nordman firm (now Judge Cody), who was a Second Team All-CIF softball player.

Both teams improved over the seasons, even with a regular turnover of players who found it difficult to play and/or practice at least twice week. Delicate egos were seldom in evidence, players were moved around the field as the situation and available bodies demanded. We played in weather that at various times included dense fog, blinding sunlight, and intermittent monsoonal downpours. After each game, we adjourned to Santino's Pizza to enjoy discussing the highlights of the game and pizza and beer. Life was good.

But then. . .

I was able to push myself up from the dirt, and, with the help of Randy and Jill George, made it to their car, dripping blood through a white towel which came from some unknown source. Carol, my wife, had departed after the first game of the doubleheader, to attend a meeting of the Legal Guild, and was notified of my injury so that she could meet us at the Emergency Room. During the trip I took inventory of the damage, noting the broken nose and jaw but stopping when I discovered that my left eyeball was loose in the damaged socket.

I remember vaguely my arrival at the hospital, looking as though I had been a victim of a serious motorcycle accident rather than a friendly softball game. Shock came first to numb the pain, followed by drugs for the same purpose. I was advised that surgery to repair the damage would take place the next afternoon, with an additional caution that they might have to do a tracheotomy to ensure that I could adequately breathe with my jaw wired shut and my nose packed in gauze. I was to spend six days in the hospital, never getting used to the tube protruding from my neck, which had to be painfully cleared every few hours. The surgeons had used two three-inch metal screws to hold my jaw together, leaving me no alternative, other than the use of a straw, to receive food.

My return to work was two weeks after the accident. I figured I could focus my efforts on responding to any requests for written opinions, rather than even attempt court appearances with my jaw screwed completely shut. However, within one hour of my walking through the door, I was appearing in court, arguing in a manner reminiscent of the Dick Tracy cartoon character "Mumbles." This time period has been referred to as the "golden weeks of silence" by my office for reasons I won't dwell upon.

After six weeks, my jaw was unscrewed and I could resume both my normal diet and tone of voice. I also briefly resumed playing softball but I retired after a twilight game during which the sun was positioned directly and blindingly in back of the plate, leaving me to guess at the trajectory of any hard hit balls approaching the pitcher's mound. I was content to re-live the few moments of glory and pain with friends over pizza and beer. My thanks also go to the following individuals, who sacrificed their bodies and their time for the good of the team: Jim and Donna Thonis, Liz Sandoval and her family, Tony and Michelle Strauss, Byron and Pam Roach, Judge Glen Reiser, Lee Green, Judge Tari Cody, Randy and Jill George, Paul Ruffin, Tony Trembley, Jon Light, Mark Zirbel, Richard Simon, Larry and Lindy Matheny, Mark Zirbel, and numerous others.



Don Hurley is an Assistant County Counsel for the County of Ventura and is President of the VCBA.

LETTERS TO THE EDITOR

Editor:

Re, "A Funny Thing Happened at the Clerk's Office," my office has taken the position that it is a great disservice to our clients for us to allow the family law filing desk clerk to reject documents which we know are proper for filing. In our practice delay can be fatal to a client or a client's position.

After years of trying to work this out with the filing staff we've formatted a Request for File on Demand. We attach this letter of instruction to our pleadings and the result is that our documents are filed.

Carol Haffner

Editor:

The Ventura County Black Attorneys Association (VCBAA) reiterates its support for the First Amendment, including Mr. McQueen's right to share his opinion. In answer to his question regarding the statute of limitations for historical injustice, the answer is that there is no statute of limitations so long as the social injustice continues. What took place at the Inns of Court was not historical, but a current affair.

Sincerely,

Liana Johnsson, President
Ventura County Black Attorneys Association

Supervisor of Family Law Filings
800 So. Victoria Avenue
Ventura, California 93009

Re:
VCSC No:
Request for File On Demand

Dear Deputy Clerk:

Attached please find a (name of document)

This document is being sent for filing but has already been rejected by the clerk. The reason stated by the clerk was _____. This is inaccurate because_____.

I am asking that this document be filed as is and a conformed copy be provided and am providing the following authorities in support of my request. You will note, they have nothing to do with the legal reasons given by the clerk :

"State law is clear that a paper is deemed filed when it is presented to the clerk for filing in a form that complies with Rule of Court 201. If the paper is thus presented the clerk has a ministerial duty to file it..." (*Carlson v. Dept. of Fish and Game et al.* (1998) 68 Cal. App. 4th 1268).

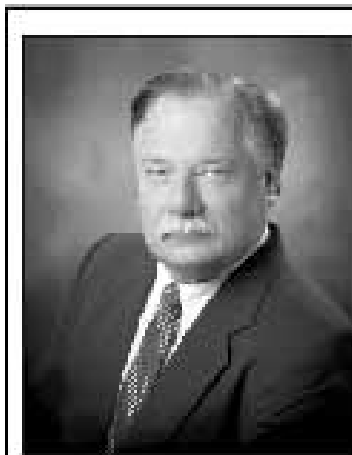
The clerk has no authority "to refuse to file a pleading which complies with rule 201" (*Id.* at 1280).

"Since the clerk has neither an express nor an implied power, the clerk must comply with the mandatory duty imposed by State law. So long as a paper complies with rule 201, it is, in legal contemplation 'filed' when presented to the clerk for filing" (*Id.* at 1281).

Rule 201 relates solely to the form of the papers presented for filing, the type and size of the paper, the content of recyclable material, the line and spacing, etc. There is no authority in this Rule or anywhere else for the clerk to reject a document on any other basis.

Thank You,

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VENTURA COUNTY BLACK ATTORNEYS ASSOCIATION: WHO WE ARE

By Tina Rasnow

The Ventura County Black Attorneys Association (VCBAA) was formed in 1999 (originally it was called the Ventura County Black Lawyers Association), under the leadership of Gary Windom, a local senior deputy public defender who went on to become the Public Defender of Riverside County. Our membership has always included a mix of government attorneys and those in private practice, as well as law students and those who work in, or are closely affiliated with, the legal profession or judicial system. Membership is not restricted on the basis of race, age, gender, or any other classification. All those who are committed to the concept of equal opportunity and equal justice are welcome to join. Our current president is Liana Johnsson, deputy public defender in Ventura County. Alice McGrath, renowned legal activist, has graciously served as our VCBAA secretary, carrying on a decades-old tradition from when she served as Executive Secretary to the legal defense team in the 1940's Sleepy Lagoon case. Alice was a close personal friend of W.E.B. DeBois,

and those fortunate enough to attend the VCBAA meeting where she shared with us their personal correspondence saw living history before our eyes.

VCBAA was founded for the primary purpose of connecting African American attorneys with each other. Since there were few attorneys of color practicing in Ventura County, it could take months, or even years, before someone moving to the area, or becoming a new attorney, would be able to identify others. Over time the organization has expanded to address issues of equal access and fairness in the court system and community, worked with the local chapter of the NAACP on issues involving racial profiling, co-sponsored MCLE classes on the elimination of bias in the legal profession, and co-sponsored with the Ventura County Superior Court's Self-Help Legal Access Center a legal informational booth at the annual Juneteenth Celebration in Oxnard. Contrary to a published misconception, the majority of VCBAA members identify themselves as African-American,

but racial membership does not define our organization; rather it is a commitment to racial equality.

VCBAA generally meets the third Thursday of each month at noon. Its meetings are listed in the CITATIONS calendar along with those of other bar sections and affiliates. For further information, please contact Liana Johnsson at (805) 654-3514; email her at liana.johnsson@ventura.org.

Tina Rasnow is Coordinator of the Self-Help Legal Access Center, and a former VCBA president.

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TOM HINKLE – 2005 NORDMAN AWARD WINNER

By Michael Velthoen



By the early 1990s, Tom Hinkle was a busy attorney with a successful personal injury practice in Ventura. He was involved in a number of professional activities, including the local bar association and the Ventura County Trial Lawyers Association. He was devoted to his wife, Genny, and his two children, Mark and Karen. His life was pretty full.

One evening, Hinkle attended a dinner party at a neighbor's house. A friend, Jim Word, encouraged him to become more involved in the community. Hinkle said that he would like to, but that he did not have any time. "Nobody has any time," Word responded. Word also mentioned that the Boys & Girls Club of Ventura was looking for volunteers. As Hinkle had always liked working with kids, he decided to give it a try.

Since then, Hinkle has become one of the most devoted volunteers at the Boys & Girls Club of Ventura. A longtime board member, he has served as its President on two occasions. Hinkle has also spent countless hours working with children, promoting Club programs, and raising funds. In recognition of his service, Hinkle received the Medallion award from the Boys & Girls Club of America, the highest honor given by the national organization to a local volunteer. In the 67-year history of the Boys & Girls Club of Ventura, only nine board members have received the award.

In recognition of his commitment to the community, Hinkle has been selected as this year's recipient of the Ben Nordman Award for Outstanding Public Service by the Ventura County Bar Association. While Hinkle characteristically downplays the honor, his friends and colleagues remark that it is well-deserved. "Tom is an excellent example for young attorneys on how to practice law and contribute to the community at large," notes Judge Dave Long.

From The Army To Ventura

Hinkle was born in Fresno to a third-generation California family. His family moved around the Bay Area and the Central Valley during his youth. After graduating from Tulare High School in 1957, Hinkle attended the University of San Francisco where he obtained a degree in English Literature.

After college, Hinkle served as an intelligence officer in the United States Army. His primary duties involved inspecting anti-aircraft Nike missile sites that were installed in most major metropolitan areas around the country. He also had the unique opportunity to visit American bases in Greenland on several occasions. After several years, Hinkle extended his commission with the understanding that he was to be assigned to Bavaria. While taking German classes at the Defense Language Institute, Hinkle received word that his orders

had changed. Instead of Germany, Hinkle was sent to Vietnam, where he served for one year.

During a stateside stint, Hinkle received instructions from a superior to attend a meeting. The superior also told him that he was setting Hinkle up on a blind date with his wife's friend from Walla Walla, Washington. Hinkle protested, but ultimately relented. Hinkle and his blind date, Genevieve, recently celebrated thirty-five years of marriage.

After six and one-half years in the Army, Hinkle returned to California and enrolled in law school at Hastings. At Hastings, Hinkle was inspired by a torts class he took from William Prosser. Hinkle decided to try his hand as a trial attorney. After graduating in 1971, Hinkle moved to Ventura County to work for the District Attorney's office.

In those days, assistant District Attorneys were expected to move on after two or three years in the office. Hinkle had tried a case against John Wellcome while he was an assistant District Attorney. When Hinkle began to look for opportunities outside the DA's office, Wellcome asked Hinkle to join his firm, Heily, Blase, Ellison & Wellcome, in Ventura.

Hinkle quickly took to plaintiff's work. After successfully trying a few cases with Red Blase, Hinkle began to get his own clients. In 1983, Hinkle and his partner, David Ellison, started their own firm, Ellison & Hinkle. Over the years, Hinkle developed a reputation for thoroughness. "If he had only one case in his entire career, he would never be entirely prepared in his mind," Ellison noted.

Hinkle is also known for his honesty and integrity. Judge Harry Walsh, who tried several cases against Hinkle, describes him as "squeaky clean." "If Tom told you something, you did not need to get it in writing in order to sleep well at night," Judge Walsh remarked. His partner, David Ellison, agrees: "Tom's word is his bond. He is a true gentleman." Tom is always willing to lend his time to his colleagues. "I often call Tom to ask him his opinion on a case. He's the kind of person I would hire as my attorney," said David Shain.

Commitment To Public Service

From the beginning of his career, Hinkle was been an active participant in professional organizations. He served on the board of the Ventura County Trial Lawyers Association, acting as its President in 1982. During his tenure, the VCTLA opened up its membership to the local defense bar, creating a unified organization for trial attorneys. Hinkle also served on the Board of the California Trial Lawyers Association.

Hinkle has also served the Ventura County Bar Association in various capacities over the years, including acting as its President in 1995. In that year, the VCBA Board founded the Ventura County Legal Services Fund. Hinkle's firm contributed the first \$5000 to the Fund. Hinkle has also served on the board of the Channel Counties Legal Services Association from 1991 to 1995 and received an award from that organization for "Championing Equal Justice for the Poor" in 1995.

Tom is not the only member of the Hinkle family to be involved in the local community. His wife, Genny, was one of the co-founders of the Court Tours program. This program, which started over twenty-five years ago, offers tours of the Ventura County Superior Court to 6th graders, 8th graders, and 12th graders. In addition to the tour, the students participate in a mock trial designed to educate them about the justice system. Genny can still be seen at the courthouse shepherding kids in and out of courtrooms. Tom has also lent his time to the program and currently serves as the Chair of the VCBA Court Tour Committee.

While Tom has enjoyed his service to the local bar, he takes particular pleasure in working with local kids. In addition to his service to the Boys & Girls Club and the Court Tour program, Hinkle has also acted on numerous occasions as a judge in the Teen Court program. Teen Court, which is part of the Juvenile Court, provides teens an opportunity to play a greater role in the juvenile justice system. In Teen Court, teens charged with certain offenses and who admit to the offense are tried by their peers, who

decide on an appropriate sentence. "It is a great program," Hinkle said.

Hinkle's relationship with the Ventura Boys & Girls Club has been particularly gratifying to him. Last year, the Club served over 9,000 people at its three locations in Ventura. "The focus of the Boys & Girls Club is to provide a place for disadvantaged kids to come to after school and during the summer," Hinkle remarked. "The staff really knows how to relate to the kids. The club provides mentors to kids who may not have a lot of role models. It's particularly satisfying to visit and see all of these kids working on their homework after school." Hinkle believes that lawyers can bring special skills to public service. "Lawyers are trained problem solvers. We don't always think like the rest of the population," said Hinkle.

Diane Korunda, Chief Executive Office of the Boys & Girls Club of Ventura, says that Hinkle has been an invaluable asset to the club. "Tom is really dedicated to the community and to the kids," she noted. "He always comes through on things. When he says he will do something, he does it." In addition to his stints on the Board of Directors, Hinkle has served on numerous committees and he rewrote the Club by-laws. He currently acts as Vice-President of Human Resources for the Club.

Hinkle knows that it is often difficult for a practicing attorney to find time to commit to public service. "You have to take care of your business and your family first. For people raising small children, it is even more difficult to have enough time to get involved," Hinkle remarked. "When the voice of conscience tells you it is time to give something back to the community, get out and explore the opportunities. You may find something that suits your time schedule and interests. It means you will have less time for other activities, but it is worth it."

Michael Velthoen is a members of the CITATIONS' editorial board and a partner with Ferguson, Case, Orr, Paterson and Cunningham, LLP.

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PARTICIPATE IN MOCK TRIAL!

By Michael Velthoen

Each year, the Constitutional Rights Foundation sponsors the California Mock Trial Competition for high school students. At the beginning of the school year, the students are presented with a hypothetical criminal case, including witness statements, fact patterns, and legal issues. With the help of teachers and lawyers, the students spend several months preparing their cases. The students learn the basic rules of evidence, how to examine and cross-examine witnesses, and how to present their case in the most persuasive manner.

Mock Trial presents a wonderful opportunity for attorneys who are interested in working with kids. The students who participate in Mock Trial are enthusiastic and eager to learn. It is a real pleasure to see all of their hard work come to fruition at the competition in February.

The Ventura County Bar Association has created an ad hoc committee to match attorneys who are interested in participating in Mock Trial with schools who need volunteers. Attorneys may participate in a number of different ways, from coaches to one-time judges for practice competitions. If you are interested in participating, please contact Jody Moore at jody@jodymoorelaw.com or Michael Velthoen at mvelthoen@fcopc.com

Michael Velthoen is an attorney in Ventura, and a member of CITATIONS' editorial board.

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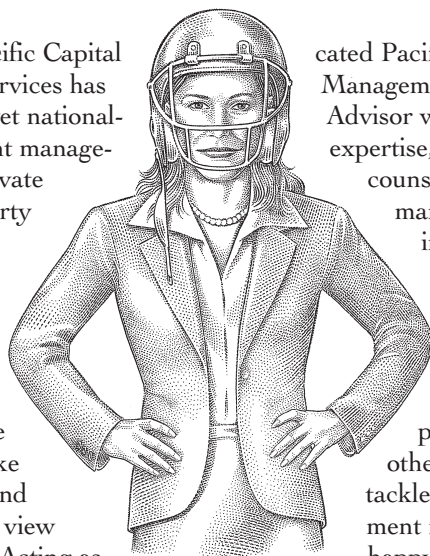
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STREET LAW

By Debi Jurgensen

"Street Law" is a practical law curriculum developed in 1972 at Georgetown University Law School in Washington, D.C. Under the supervision of a mentoring attorney, the program places law students in high school classrooms. Here, the high school students will be taught about the law, our legal system, and how the law affects their everyday lives. Units in the Street Law text include: an introduction to law and lawmaking, criminal law, civil law, consumer and housing law, family law issues, and issues concerning the individual's rights in the community. The text units are designed to promote basic educational skills, critical thinking, analytic reasoning, communications, and problem-solving techniques through the study of law. More importantly, Street Law encourages citizen participation in our legal system by informing students of their rights and responsibilities under the law.

Currently, the Street Law program is being taught throughout the United States as well as in other countries. Locally, the program has been successfully sponsored by the Santa Barbara and Ventura Colleges of Law. Street Law is offered as an elective course at the colleges whereby law students are taught the

Street Law curriculum and effective teaching techniques. In fact, to prepare law students to become teachers, the law school classroom becomes a mock high school. In doing so, the law student instructor develops and teaches an assigned lesson plan while his or her law school classmates revert back to their high school personalities. And, although this provides for a lot of fun and shenanigans, it also prepares the law student for the realities of teaching high school. (Actually, our instructors report back that the high school students are much nicer than their fellow law students acting out their high school fantasies!)

Of course, such a program would not be a success without community involvement from both local attorneys and school administrators. For years, Santa Barbara County has incorporated the Street Law program into many school settings as a component of the Santa Barbara Teen Legal Clinic. Ventura County has made great strides toward establishing the Street Law program since its founding in the county two years ago. The course has been taught or will be taught at high schools in Ojai, Thousand Oaks, and Moorpark. Presently, additional

placements are being sought throughout the county.

The Street Law text, Street Law, A Course in Practical Law, is now in its seventh edition. To learn more about the program, please visit the following websites: www.streetlaw.org and www.streetlaw.glencoe.com. Both of these sites have information about the program, teaching aids and activities, and how the standards based curriculum can be utilized by the schools. With these resources and community participation, the Street Law program will feed our high school students with the legal knowledge to become active and responsible citizens.

Debi Jurgensen is the Ventura County Street Law Committee Coordinator and a 4th year student at the Ventura College of Law. Randy Sutter, also a 4th year law student, is actively involved in the Street Law program and currently teaching Street Law in Ojai. In addition, Debi and Randy are working on establishing a Ventura Teen Legal Clinic. Debi and Randy will graduate from law school in December and plan to sit for the February, 2006 bar exam. Debi can be reached at venturamoodogs@adelphia.net; Randy at suirfam@earthlink.net.

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DRAFTING ELECTRONIC EVIDENCE PROTOCOLS: STAYING OUT OF THE BRIAR PATCH

By Sharon D. Nelson, Esq. and John W. Simek

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Discovery holds many briar patches and one of the thorniest is how to handle electronic evidence. In the event of a stalemate, a judge will always be happy to dictate a protocol, but that is rarely in anyone's best interests, not only because of cost but because many judges lack the technical skills to draft an appropriate electronic evidence protocol.

In a world where 95% of all documents are electronic, it is important for the legal profession to come up to speed on the methodology of computer forensics. While most attorneys will never become technologists, it is important that they at least grasp the fundamentals of electronic evidence in order to serve their clients well.

What issues does an electronic evidence protocol address? Here are some of the basics.

DESIGNATION OF FORENSIC EXPERT FOR ACQUISITION

Generally, there is no need for separate acquisitions by each side. As long as you have a true computer forensic expert, the acquisition can be done once. Once a forensic image is made, the same image can be produced to both sides who can then have their own expert do analysis, if needed. So how do you know if you have a real expert? Generally, the two best indicators are certifications (currently the EnCE – Encase Certified Forensic Examiner - is the most prestigious of the private certifications) and the expert's CV, which should indicate a host of other technical certifications, years of computer forensics experience, and the number of courts in which the expert has qualified. Generally, the designation will call for the expert to sign a confidentiality agreement so that privileged information revealed during the evidence analysis will be protected.

ACQUISITION SCHEDULE

The acquisitions will result in a complete bit-by-bit image of the media. Making a bit-by-bit image is not the same as copying or "Ghosting" a hard drive. The process is much slower. The best alternative, where feasible, is to have the computer delivered to the expert's lab. In a lab setting, the expert can set up the case, kick off the acquisition, and go do other billable

work while the acquisition proceeds. In the event there is some sort of complication, the expert has all his/her hardware, software, and reference materials close at hand to solve the problem.

Sometimes, the acquisition will have to be done on site. This can be economically painful because the expert must "babysit" the acquisition irrespective of time consumed. As an example, it may take 12-36 hours to acquire a single server. Clients tend to be very impatient with the costs of onsite acquisition, but it simply takes as long as it takes – there is no acceleration process. Be sure to specify if the work is to be done after hours or on weekends, extending the time period for acquisition as needed to accommodate the slower pace.

PREVIEWS OF THE EVIDENCE

If the parties do not agree to a full-scale acquisition, they can sometimes agree to a preview of the evidence. In fact, courts seem increasingly amenable to previews in cases where one side adamantly insists there is no relevant evidence on their computers. What is a forensic preview? A preview allows you to look at the evidence in a "read-only" mode without the need to acquire it. The expert can generate a report of this examination, but it is not repeatable because it represents a "point in time" and there is no frozen image of the data.

Previews can be useful depending on the facts of the case. In one recent case, plaintiff had charged defendant with appropriating its proprietary database. Defendant insisted that it had not. Plaintiff's expert made a set of hash values (mathematical algorithms which digitally "fingerprint" a file) representing the files that made up the database. A preview of defendant's computers showed over 900 files matching the database files. Given that report, defendant had no further interest in discussing a full-scale forensic examination and promptly settled the case.

ANALYSIS SCHEDULE

Frequently, there is only one expert working to analyze the evidence, with the results to be turned over the party charged with

producing the evidence. That party then screens for privileged documents or proprietary information that it will seek to protect before turning the resulting evidence over to the other side.

In order to narrowly target relevant evidence, both sides may agree upon a period of time that is in issue, a list of names or e-mail addresses to search for, or other keywords designed to produce the relevant evidence. Make sure the protocol also has a deadline for when the expert is required to turn over the evidence for screening and another for when the screening party must produce the evidence to other side.

COSTS

The normal rule of thumb is that the producing party must bear the costs of evidence production. However, it is sometimes smarter for the other side to pick up the costs where it is fairly certain that damning evidence exists. If the proposed discovery is designed to unearth relevant evidence with a minimum of business impact, a judge is not likely to look with favor upon the other side's claims of hardship where the party requesting discovery agrees to pick up the expenses.

If money is a major issue, it may not be feasible to offer to pick up expenses. However, in accordance with *Zubulake v. UBS Warburg*, (SDNY 2003) 217 F.R.D. 309, line of cases, it may be possible to achieve cost shifting depending upon certain factors.

SCOPE OF ACQUISITION

It is imperative to define the scope of the acquisition. Each workstation, server, backup media, digital cameras, digital printers, PDA, or loose media (CD-ROMS, DVDs, floppy disks, zip disks, etc.) should be specified.

Sometimes, the parties can agree to acquire certain obvious workstations and/or servers and then determine whether any further forensic acquisition and analysis are required after evaluating the results from the initial acquisition and analysis.

FORENSIC ACQUISITION

The parties can agree on the type of hardware/software to be used. Commonly, private experts will use FastBloc and EnCase. EnCase has been successfully admitted into evidence in thousands of criminal and civil court cases. EnCase acquires the data and saves it into a proprietary evidence format which is constantly hashed and verified for errors. At the conclusion, it is compared against the original to ensure a bit-by-bit image has been obtained.

Once the evidence is acquired, the protocol should state that the evidence will be kept under lock and key in a secure environment, specifying those who will have access to the evidence. Chain of custody should be maintained throughout the course of the acquisition and analysis. The protocol may also provide that, at the conclusion of the case, the expert will destroy the evidence files upon receipt of written instructions from the parties. Alternatively, the protocol may decree that the evidence is to be returned to the originating party.

ANALYSIS AND PRODUCTION

Once the expert has completed the analysis, the protocol will generally provide that documents and data will be extracted and forwarded to the originating party's counsel, who will review them for privileged information prior to producing all non-privileged documents to opposing counsel. Any data or documents that are claimed to be privileged will be available to the judge for an in camera inspection upon the appropriate motion by the moving party. The protocol should provide that all data and documents the judge deems non-privileged are to be released to opposing counsel.

FINAL THOUGHTS

Careful drafting of an electronic evidence protocol and working with the other side to achieve a balanced document can avoid many of the preliminary skirmishes that so often are the hallmark of discovery wars. If the other side can't or won't work with you, drafting a responsible and reasonable protocol to be presented to the court will often result in

that protocol being adopted wholesale by the court. Remember Brer Rabbit? "Oh please, anything but the briar patch, please don't throw me in the briar patch." The best way to avoid briar patches of electronic discovery is to formulate a well-crafted electronic evidence protocol. With luck, it will be your opponent who is thrown into the briar patch.

Sharon D. Nelson, Esq. and John W. Simek are the President and Vice President of Sensei Enterprises, Inc., a computer forensics and legal technology firm based in Fairfax, Va. (703) 359-0700 (phone); (703) 357-8434 (fax); sensei@senseient.com; www.senseient.com.

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NEW ADDRESS

DO YOU KNOW A LAWYER IN TROUBLE? PERHAPS IT'S YOU?

By *Carmen Ramírez*

In 1982, John Burton, lawyer and Congressman representing the City of San Francisco, ended his political career, and checked himself into a rehabilitation program for cocaine and alcohol addiction. From an interview with the California Connected news program, Burton said "he finally realized he needed to get help when he ran out of money. 'I owed the dealer. I owed the loan shark. My credit card was maxed. I was tapioca.'" He later went on to regain his political career and served as Assembly member and then state senator in the California Legislature, ending his term as President of the California State Senate, and as one of the most influential people in California, just last year when he was "termed out."

To help his fellow attorneys, John Burton helped create the Lawyers' Assistance Program through legislation expanding the State Bar's services to attorneys with substance abuse or mental health problems.

The mission of the program is "to enhance public protection, maintain the integrity of the legal profession and support recovering attorneys in their rehabilitation and competent practice of law." The services offer help for stress, burnout and "other personal issues." The program offers individual counseling, referral assistance, consultations for rehabilitation and private peer support groups.

The program also works with others who want to get help for a colleague or family member. Everything about the program is STRICTLY CONFIDENTIAL. Participation can take the place of disciplinary action if attorneys ask for help or are referred after an investigation or disciplinary proceeding.

Jim Heiting, the current president of the State Bar, is a beneficiary of this kind of program, following a hellish descent into the world of alcoholism. In 1986, he was charged with felony drunk driving, following a head-on collision that seriously injured the other driver. His road back to health and sobriety started with a stay at the Betty Ford Clinic, and he

managed to retain his license to practice law after being on probation with the State Bar. He has been sober for the past 19 years and has become an example to all of us, especially those struggling with problems.

All manner of difficulties afflict attorneys, in perhaps greater numbers than other professions. After all, we deal with the serious, life-altering problems and crises of our clients, and it all falls upon us (or it seems) to rescue our clients lives and property. Here's a place where we or our friends can ask for help for us when we need rescuing. Let's take advantage of the services offered by the State Bar and avoid more suffering for ourselves, our families, friends, and our clients.

For more information call the toll free number of the LAP at 877-527-4435 or see www.calbar.ca.gov.

M. Carmen Ramírez coordinates the Superior Court's Self Help Legal Access Clinic in La Colonia. She is District 6's representative to the State Bar Board of Governors.

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FAMILY LAW AND EGG DONATION

By Susan Katzman

Revisiting Nontraditional Families

In CITATIONS' October issue, Commissioner Young reported on dissolutions filed pursuant to California's Domestic Partnership Act.

In this issue, we continue to review issues affecting nontraditional families. Susan Katzman's article, "Family Law and Egg Donation" addresses legal concerns of families that use certain forms of assisted reproduction technology.

In December, Maria Capritto provides an overview of property transfers between Domestic Partners.

Using an egg donor or surrogate may increase your clients' chances of building a family. But what are the legal aspects of using such assisted reproductive technologies? Can your clients be sure that they will always and forever be conclusively presumed to be the legal parents, and that they will have physical and legal custody of the children they intend to parent?

The legal stage surrounding egg donation and surrogacy is active and evolving. Unlike sperm donation, egg donation in California has not been codified, but is instead based on case law. Courts have looked to the written agreements between the intended parents and the egg donor (and the egg donor's husband, if she is married) in determining the intent of the parties as to parentage.

In *Johnson v. Calvert* (1993) 5 Cal.4th 84, the intended parents and a surrogate signed a contract providing that the surrogate would be implanted with an embryo created by the sperm of the intended father and the egg of the intended mother. The surrogate would relinquish to the intended parents any parental claim to a child born. After relations between the parties deteriorated, the intended parents filed a lawsuit, seeking a declaration they were the legal parents of the unborn child. The surrogate also filed an action seeking a declaration that she was the mother of the child. The court concluded, "although the [Uniform Parentage] Act recognizes both genetic consanguinity and giving birth as means of establishing a mother and child

relationship, when the two means do not coincide in one woman, she who intended to procreate the child—that is, she who intended to bring about the birth of a child that she intended to raise as her own—is the natural mother under California law." Footnote 10 to this case states, "in a true 'egg donation' situation, where a woman gestates and gives birth to a child formed from the egg of another woman with the intent to raise the child as her own, the birth mother is the natural mother under California law."

With a properly drafted agreement, your clients can be reasonably assured that their intention to be parents of a child conceived with donor eggs will be upheld. The agreement should clearly and with certainty detail the intentions, rights, responsibilities, and obligations of the parties.

Besides a statement of the parties' intention that any child born from the donated eggs shall be the child of the intended parents, there are other issues that should be covered in the agreement. Although this is not an exhaustive list, the agreement should include the financial responsibility of the intended parents; the egg donor's fee and what the fee covers; contact with the donor for the purpose of obtaining medical information from her, if necessary, after a child is born from the donated eggs; the disposition of any embryos that will not be transferred to the intended mother or a surrogate; the extent of medical and psychological screening; medical insurance; informed consent; and whose name will be on the birth certificate. A court proceeding is not necessary to establish maternity. When the assisted reproduction involves a gestational surrogate, either using an egg donor or the intended mother's egg, a court order is necessary to establish that the intended parents' are the legal parents; that neither the surrogate nor her husband has any legal rights or responsibilities; and that the intended parents' names will be on the birth certificate.

Same sex partners "who have chosen to share one another's lives in an intimate and committed relationship of mutual caring" (Fam. Code, § 297) and have a common residence (*id.*) can file with the Secretary of State a "Declaration of Domestic Partnership" (Fam. Code, § 298). "The rights and

obligations of registered domestic partners with respect to a child of either of them shall be the same as those of spouses." (Fam. Code, § 297.5(d).)

In August 2005, the California Supreme Court decided three cases involving former same-sex couples with disputed parental rights or obligations. It said "We perceive no reason why both parents of a child cannot be women. That result now is possible under the current version of the domestic partnership statutes, which took effect this year." (*Elisa B. v. Superior Court* (2005) 37 Cal.4th 108, 119. See also, *K.M. v. E.G.* (2005) 37 Cal.4th 130; and *Kristine H. v. Lisa R.* (2005) 37 Cal.4th 156.) Based on these rulings and the California Domestic Partnership Act, full parental status may be accorded to each of two mothers for the same child without an adoption procedure.

Susan Katzman is an attorney in the Ventura County area. Her practice is focused on assisted reproductive law in the areas of egg donation and surrogacy. www.susankatzmanlaw.com. While this article is intended to provide helpful information, you should consult professionals (medical, psychological, and legal) to address your particular situation and concerns.

Sperm donation is addressed in the Family Code. The requirements for the intended father to perfect his rights are in Section 7613. Subsection (a) states, "If, under the supervision of a licensed physician and surgeon and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of a child thereby conceived...." Subsection (b) states, "The donor of semen provided to a licensed physician and surgeon for use in artificial insemination of a woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived."

EAR TO THE WALL

Scott Hunter opened a new office. He can be reached at: shunter@hunterlaw.net. 1000 Paseo Camarillo, Suite 114 Camarillo, CA 93010, Phone (805) 322-0410, Fax (805) 293-8669.

Rogers, Sheffield & Campbell, LLP is pleased to announce that **Fred Furst** and **Fernando Velez, Jr.** have joined the firm as Of Counsel. Mr. Furst has 22 years of private practice experience prosecuting and defending complex civil cases for business and for individual clients in both the state and the federal court systems; Mr. Velez divides his practice between business law and estate planning.



Ken and **Rebecca Bradley** welcomed their son, Morgan James Bradley, on August 31, 2005. 8 lbs., 5 oz.; and 21 inches. All are doing well.



Penny and **Greg Herring** are the proud new parents to Benjamin Charles Herring, born August 15, 2005. 6 lbs., 8 oz.; and 21 inches. He's grown to 25 inches and 24 pounds.



Stephanie and **Jesse Cahill's** first child, Dominique Ann Cahill, was born May 11, 2005. 8 lbs.; and 20.5 inches. It's hard for her parents to believe she is already 5 months old and teething.



Sean and **Sharon Yoon's** third child, Alyssa Nicole Yoon, arrived on May 11, 2005. 6 lbs., 3 oz.; and 19.75 inches. The family is enthralled and captivated by her charm.

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VCDS REACHES OUT TO HISPANIC COMMUNITY

By Sandra D. Rubio

As a former staff member of the VCBA, and a frequent guest member of the Mexican American Bar Association, I have been painfully aware of the lack of legal resources available for the Hispanic community. Ventura County is very fortunate to have a Mexican Consulate located in the city of Oxnard. There are only ten such consulates in California.

On behalf of the Ventura Center for Dispute Settlement ("VCDS"), I recently met with Consul Fernando Gamboa and Vice-Consul Eduardo Giles to discuss how VCDS could better support the Hispanic Community. We agreed that I would represent VCDS at the Consulate once a week on Mondays, from 11 a.m. to 1 p.m. to inform visitors of the Consulate and, where appropriate, the option of alternative dispute resolution.

If we determine that mediation is not appropriate for a particular client, I refer the client to other legal aid centers throughout Ventura County, such as the Self-Help Legal Access Centers or California Rural Legal Assistance. I'm pleased to write that Peter Lopez & Associates, along with Lourdes Campbell-Geoghegan, owner of All Languages Interpreting and Translating Services, offer free services for VCDS mediations.

If you aren't in a position to handle a dispute requiring Spanish translation, or require assistance in setting up a mediation or arbitration, please contact VCDS at (805) 384-1313. We will either assist or refer your client elsewhere. *"As one door closes, another should always open."*

Sandra Rubio is Executive Director of the Ventura Center for Dispute Settlement.

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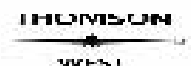
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EXEC'S DOT...DOT...DOT...

By *Steve Henderson, Executive Director*

Judges' Pizza Night at Corizzi's Cucina in Ventura attracted 15 judges, justices and commissioners including **Back, Bysshe, Cody, Klopfer, McGee, PJ Smiley, Young, Lane, Walsh, Long, O'Neill, Coffee, Borrell, Covarrubias, and Daily**. 47 Barristers and law students enjoyed mingling and cajoling while door prizes provided by patrons FCOP&C, NDSIW&B, Wood and Bender, NCH&C, and Sullivan Taketa, were gifts from Starbucks and Barnes & Noble. Funny of the night? **Judge O'Neill** winning (and returning) a \$20 bill within an envelope. Barristers' President **Joel Villaseñor** and president-elect **Al Vargas**, performed most of the labor and responsibilities ensuring another successful pizza night...Recommended Reading: *The Lincoln Lawyer*, by Michael Connelly. (Little, Brown, \$26.95). Criminal defense lawyer works for the scum of the earth and makes no apologies...Real World Rules by Bill Gates #11: "Be nice to nerds. Chances are you'll end up working for one."...From Actual Court Records: The Court: Do you know what Carl Sandburg said? Counsel: "The fog comes in under the cat's feet?" The Court: But he said more cogently, "In the Hangman's house we stay off some subjects." Counsel: I see. The Court: Yes...

Ron Harrington and **David Shain** hosted a reception for new State Bar Board of Governor **M. Carmen Ramírez** at Ron's home in Ventura. 60+ folks swarmed the food and spirits (a nice vintage from Australia purchased at Trader Joe's) as a perfect array of colleagues, friends and family mixed. **Judges Bysshe, Back, and Commish Borrell** hung with PD's, DA's and an assortment of civil types. The festivities competed with the other Ramirez lawyer in town. **Greg Ramirez** hosted a well-attended open house for his new firm launching into the county, Wasserman, Comden, Casselman & Pearson. Located on the 19th floor of the tower, it was indeed a fancy affair...From Benjamin Franklin: "That it is better one hundred guilty persons should escape than that one innocent person should suffer is a maxim that has been long and generally approved."...From

W.S. Gilbert, *Iolanthe*: The Law is the true embodiment/Of everything that's excellent./It has no kind of fault or flaw,/And I, my Lords, embody the Law...

And another party--The Mexican American Bar Association held their Annual Scholarship Dinner Dance that appealed to about 125 legal types. Bar executive officers **Don Hurley** and **Loye Barton** were there as were DA's **Milessa Suttner** and **Gilbert Romero**; PD's **Ken Clayman, Maria Diaz, and Claudia Bautista**; **Judges Bysshe, Covarrubias** and **Commissioner Daily**. Consul of Mexico in Oxnard, **Fernando Gamboa** was present along with the **Mrs. and Vice Consul Eduardo Giles**. The silent auction raised about \$8000 and proceeds (last year nearly \$6,000) benefit law school students. **Herman Mora** and **Susan Ratzkin** (with arm in sling) led the charge. Other bar leaders in attendance were **Joe Beltran, Ricarda Bennett, Barbara Macri-Ortiz, Greg Ramirez, Tina Rasnow, and Panda Kroll**...From Actual Court Records: Counsel: "your honor..." The Court: "Don't interrupt." Counsel: "but, Your Honor..." The Court: "Don't speak until after I arraign your client. Sir, you are charged in a four-count indictment with the offenses of assault with a deadly weapon, robbery, mayhem, and receiving stolen property. How do you plead?" Counsel: "My client does not understand English."...

A unique MCLE opportunity during lunch time November 15th. Grizzled veterans **Dick Norman, Dick Hanawalt** and **Marsha Niedens** will present, "What Color is Your Elephant? --Can You Afford This Client?" The Barristers are sponsoring and check out CITATIONS or online at vcba.org for registration information...From Daniel Webster: "The Law: It has honoured us, may we honour it."...You heard it here first. **Tina Rasnow** will retire from the courts November 30, 2008...**Judge Joe Hadden** (Ret.) spent two weeks in October in New Orleans with the Red Cross and the Katrina efforts...License Plate of the Month: MWCASE on a 500 Series BMW driven by **Mike Case**...From Floyd Abrams: "The difficult task, after one learns how to think like a lawyer, is relearning how to write like a human being."...Bizarre Case Names: Easter Seals Society for Crippled Children v. Playboy...

Small is relative. I was in San Luis Obispo recently and noticed in the local rag a listing of the largest firms in the county. Andre, Morris & Buttery leads the way with 14, while Sinsheimer, Schiebelhut & Bagget follows with 10...There is one firm at 8, one at six and three at five...While listening to the Harriet Ellan Miers rhetoric, I was reminded of the longest-serving chief justice of the United States, John Marshall, who served from 1801 to 1835. He took office without judicial experience (in fact 11 of the 16 chief justices have been appointed to the court without previously serving on it as an associate). I also forgot that Rehnquist's predecessor, Warren Burger, had a book written about his reign by Bob Woodward entitled, "The Brethren", exposing Warren and the court to public ridicule...At VCLSA's 45th Annual Bosses' Night, **Ben Engle** was presented the "Boss of the Year" honors while **Leslie Lamkin-Haynes** captured "Secretary of the Year" distinction. Ben was nominated by **Jody Ashcraft** and Leslie, by **Brian Pierik**. The panel of judges included **Michael Planet** and **Loye Barton**...

Don't forget the bar's annual dinner November 19th. We are honoring some tremendous individuals for extraordinary efforts including **Thomas Hinkle, Robert Guerra, Kate Neiswender, Gary Norris, and Susan Ratzkin**. There will be a very intriguing and affordable silent auction and proceeds benefit our award winning pro bono program, the VCBA/VLSP, Inc. Additionally, it will be out-with-the-old and in-with-the-new board members of our association. Check out the promotional flyer in CITATIONS as you've already gotten your invitation in the mail...Q: What do you get if you put one hundred lawyers in your basement? A: A wine cellar...

Steve Henderson has been the executive director of the bar association since November 1990 and will be celebrating 15 years on the job the 16th of this month. The hiring committee included Bleuel, Lascher, and Myers, so complainants should really talk to them about it. As supreme nominee Miers would say, "Steve's the best director we've ever had."

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