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**WARRANTLESS WIRETAPS
AND THE PATRIOT ACT**



Michael C. McMahon
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PRESIDENT'S MESSAGE: EXTRAORDINARY PEOPLE AMONG US

I believe that attorneys as a group are at the top of the list when it comes to being philanthropic, dedicated to community service and responsive to the needs of others. Sometimes an extraordinary event results in the emergence of an extraordinary person.

On December 26, 2004, attorney P. Mark Kirwin, his wife Angela and their two children, Kai and Makani, were in Thailand. They were scheduled to stay at the Andaman Sea Resort on the coast, but changed their plans and stayed inland nearer the mountains. The Andaman Sea Resort was washed away by the tsunami. The Kirwin family survived when they surely would have perished but for a change of plans.

There are many paths that Mark and his family could have followed that day. Imagine being in the midst of the devastation that for most of us was images on the news. The devastation of the tsunami led the Kirwins to a remarkable new venture.

During the week that the Kirwins were stranded in Thailand, Mark first used all his cash resources to buy food and water to distribute to the hungry and thirsty. Mark and Angela worked in shifts helping the victims by delivering aid or helping in the hospital while also caring for their own children and trying to protect Kai and Makani from the despair that followed the disaster.

When the Kirwins came home to Ventura County, they began a grass roots effort to raise money for the tsunami victims. The grass root campaign morphed into the Kirwin International Relief Foundation, called KIRF. After raising enough money to make a difference, Mark and Angela returned to Thailand to talk to the victims and purchase the supplies to meet their greatest needs. Whether it be food, shelter, water, fishing nets or construction materials, Mark and Angela spent all the funds raised directly on those needs.

KIRF could have been a waning star, but the Kirwins were forever changed by their ability to make a difference. Mark commented that he never more appreciated his lawyer skills than when negotiating for the benefit of the

victims. KIRF, fueled by the energy and the resources of the Kirwins, again met the challenge when Hurricanes Katrina and Rita hit the gulf coast.

KIRF again organized successful fundraisers that were well supported by members of the community. This time Angela went to deliver aid to hurricane evacuees in the cities of Hattiesburg, Picayune and Gulfport Mississippi. KIRF again talked to the victims and determined what was needed most, and then delivered precious supplies directly to those in need. For instance, in Picayune they delivered care packages of household supplies like bedding, cooking and kitchen items, appliances, cleaning supplies, blankets, towels, toiletries and so on. For the children, they purchased new backpacks and sports equipment.

I first met Mark Kirwin close to the one year anniversary of the tsunami. He was planning another trip to Asia in early 2006. Angela had made another trip to the gulf coast. His bank account was empty and he impressed me as a man who is at peace with himself.

I did not know of the Kirwin family's courageous and generous work. Mark was reluctant to tell me much. Meeting Mark made me proud to be a lawyer and proud to have colleagues like Mark. You can find out more about the relief work by visiting their website at www.KIRFaid.org.

Loye Barton is an attorney specializing in estate planning and probate with Norman, Dowler, Sawyer, Israel, Walker & Barton in Ventura.

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LETTERS TO THE EDITOR

Re: Let's Cut Bennett Some Slack,
December 2005 Citations

Dear Editor:

Ms. Patricia Kochel wrote a letter to Citations in December 2005, about her enthusiasm for the recent Mexican American Bar Association function. Though I did not attend, I gather from Ms. Kochel's letter that there were certain comments made about supposed racist statements attributed to Bill Bennett. As widely reported in the liberal press, Bill Bennett has been vilified for reportedly proposing on his talk show that if you gave abortions to all pregnant black women the crime rate would drop. This has elicited howls of indignation and Ms. Kochel certainly has a right to be dismayed by such a reported statement. A prominent post government official making such a proposal should be a cause of concern. But let's cut Bill Bennett some slack. He never made such a proposal. He never even remotely suggested that anyone even entertain such a proposal. The comment has been taken out of context and accepted like a religious revelation.

What Bill Bennett actually said in context was that such a proposition, though it might be objectively logical, was inconceivable and morally reprehensible. (See www.realclearpolitics.com/Commentary/com-10_12_05_WB.html and www.foxnews.com/story/0,2933,170880,00.html). There are enough injustices and improprieties in our modern world that we really do not need to be imagining violations of personally liberties when none have occurred. Bennett is a white, middle-aged conservative male who stands for religious values and is anti-abortion. Obviously, he is considered by liberals to be evil incarnate and fair game. Merely because you need a cause, however, does not justify fabricating one.

Unfortunately, there is a segment of our society so hypersensitive to any perceived racial slight that the substance, accuracy and logic of an observation is ignored in favor of the subjective belief that an atrocity has been proposed. Edward R. Murrow made the observation "Everyone is a prisoner of his own experiences. No one can eliminate prejudices-just recognize them." I recognize that we seem to be in a culture war, but truth and accuracy should not be it's first victim.

Very truly yours,
MICHAEL L. McQUEEN

Dear [Editor]:

Enclosed is a copy of a letter the Court has received regarding Susan Siple. Ms. Siple assisted me by covering my calendar while I was teaching at the Judge's College. While I am very appreciative of her contribution to our community, those who appeared before her also greatly valued her service. Perhaps it would be appropriate to share the compliment in the next issue of Citations.

Sincerely,
KENT M. KELLEGREW
Judge of the Superior Court

Dear Judge Clark:

Several weeks ago I appeared in Department 44, Judge Kellegrew's probate department. Judge Kellegrew was out that day and Susan Siple was serving as Judge Pro Tem.

I was appearing on several matters that morning and one of the matters had been inadvertently set by the clerk's department to have been heard in Department 42. That morning, the error was discovered and the file was delivered from Department 42 to Department 44.

When the matter was called that morning, Ms. Siple had indicated that, because of the initial assignment of matter to Department 42, she had not had the opportunity to review the file in order to properly consider Petitioners' moving papers and suggested that the matter be continued.

Because the Petition before the Court was for approval of distribution of a decedent's probate estate to the beneficiaries, all of the beneficiaries in the matter were hoping for an approval of distribution prior to the Christmas holidays and before the year's end. On that basis, I had made a request of the Court to not continue the matter, but to take the necessary time that morning off the bench to read and review the file and Petitioners' application to avoid a continuance of the hearing. Ms. Siple graciously took the time that morning to read the file and familiarize herself with the petition, and ultimately granted the petition without the necessity of a continuance. I cannot tell you how much joy and closure this helped bring to Decedent's family.

All too often you may simply hear of complaints or criticisms of the judges or counsel. Although I am sure you are aware, I wanted to write and inform you of the caliber of services provided by our Pro Tems. I also serve as a Pro Tem and am aware that the Court system very much appreciates our contributions. I simply wanted you to know of the extra commitment by Ms. Siple to the efficient running of our Court system. Her unselfish giving of time served as the lubricant to keep the wheels of our Court system rolling smoothly, spared Judge Kellegrew of another file, and made my clients happy.

Very truly yours,
RUSSELL TAKASUGI

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EAR TO THE WALL

The Law Offices of Karen B. Darnall have moved to 450 Rosewood Ave., Suite 217, Camarillo, CA 93010. Her phone number remains (805) 987-3602.

The Ventura County District Attorney's Office recently added four new attorneys to the General Felony / Misdemeanor Unit: **Alvan Arzu**, **Thomas Dunlevy**, **David Russell** and **John Weller**. **William Haney**, Senior Deputy DA was promoted to Felony Unit supervisor.

The Ventura County Public Defender's Office hired **Dale Armitage** to the Misdemeanor Unit, while **Senior Deputy PD Maria Diaz** retired in January after 32 years of county service.

The Ventura County Counsel's Office grew by one in December with the hiring of **Mitchel Davis**.

Nick M. Campbell joined the Law Offices of **Scott Green** in Moorpark. His practice primarily focuses on general business, real estate, community association and construction litigation. He may be reached at (805) 517-1899.

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BARRISTERS

There's a sad sort of clanging from the clock in the hall, and the bells in the steeple, too. Regretfully they tell me, but firmly they compel me, to say goodbye to you.

Yes, my term as Your Barristers President is now up, and truly, even if I hadn't been term-limited out, it would still be a good time to go. After all, the times are full of signs and portents, and the Apocalypse is coming to pass. If you ask me, the Apocalypse first began when PBS broadcast "Mrs. Doubtfire," as if it were a legitimate cultural offering, and has now culminated, I am told by non-Bruins, in the defeat of USC, and the worshipping of the golden calf, er, longhorn.

But how could it have been otherwise? Didn't Homer tell of the fall of Troy, and didn't the Brad-Pitt-in-a-leather-miniskirt version of "Troy" bomb, and isn't there something in the Book of Revelations about horned beasts and the Antichrist? (Let us not forget that last year, as seen below, presidential librarian Laura Bush was photographed making a hand gesture that led some to speculate on a Satanic allegiance but that turned out to be nothing more than the "gangsta" Longhorns hand-sign, more "Hook 'em, 'Horns" than "Hail the Prince of Darkness," although...)



At any rate, thank you all for attending our events this past year and making them a success. And thank you also to the

rest of the Barristers board members, who made my job so dizzyingly easy that I had extra time to wax verbose in e-mails. Finally, a special thanks to Uncle Steve Henderson and the staff at the Ventura County Bar Association, without whom nothing would get done. I'd also thank my agent, my mother, and my colonoscopist, but the music cue is playing, and they're hustling me off the stage before I can wallow in more maudlin gratitude.



I leave you now in the hands of your capable new Barristers President, none other than Alfred "Al" Vargas, master of the Rumsfeldian koan.

Don't let the twinkling

eyes deceive you. In addition to his many other talents, Al is endowed with a Cheneyesque grasp of the intricacies of the filing-window Realpolitik (the Ventura clerks make "Bring Me the Head of Alfredo Vargas" jokes and reject filings at their peril).

After removing the "J" and "V" from the key-boards at the Barristers office, Al will eschew the traditional inaugural ball in the racquetball courts at the Pierpont Inn and will instead kick off his presidency in cowboy boots.

Well, it's time for me to flit, float, fleetly flee, and fly. Henceforth, you can catch me on the speaking circuit, charging top dollar in order to pay my legal fees and the bar tab from Judges' Pizza Night, or at any of our upcoming Barristers events. So long, farewell, auf Wiedersehen, and goodbye, fellow Barristers.



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Sometime in February or March, the Supreme Court will request public comment on a proposed new Rule of Court and a Rule of Professional Conduct that will require that lawyers without malpractice insurance inform their new and current clients of that fact. (Lawyers with malpractice insurance will not be required to inform their clients, in order not to encourage claims.) Other states require this and California will probably join their ranks. If you would like to comment, please stay tuned.

Pro Bono Service Awards

Do you know of attorneys in our area who are doing pro bono work that you feel should be recognized?

The State Bar in 1983 established these awards and Ventura County lawyers have been regularly recognized for their outstanding efforts. Only last year Robert Guerra and Susan Ratzkin were among the recipients of the President's Pro Bono Service Awards, which are given in nine categories. Nominations must be postmarked by March 15, 2006. For more information or forms, check out the State Bar's website at www.calbar.ca.gov.

For more information about these or any other issues, please get in touch with me at (805) 483-1464. Thanks.

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**TRIAL LAWYER GROUP
ANNOUNCES NOMINATIONS
FOR VENTURA COUNTY
“TRIAL LAWYER
OF THE YEAR” AWARD**

By Dennis Neil Jones

Who was the best trial lawyer in Ventura County in 2005? The Ventura County Trial Lawyers Association plans to answer that question, by announcing open nominations for its First Annual “Trial Lawyer of the Year” award.

Nominees will be selected by the VCTLA. Criteria for the award include:

- Noteworthy civil trial results (court or jury trial(s) in 2005)
- Contributes to the legal community
- Nominee demonstrates high standards of ethics, civility, courage, advocacy & dedication
- Nominee contributes to the betterment of the civil justice system
- VCTLA Member (may join after nomination)

The award will be given at the First Annual Award gala on May 23, 2006, at the Residence Inn by Marriott River Ridge in Oxnard.

VCTLA researched trial lawyer awards around the state before settling upon the current award and criteria.

Nominations may be forwarded prior to March 31, 2006 to VCTLA c/o Steve Henderson via facsimile (805) 650-8059 or by email to steve@vcba.org. Include the name of the nominee and at least one case tried by the nominee last year.

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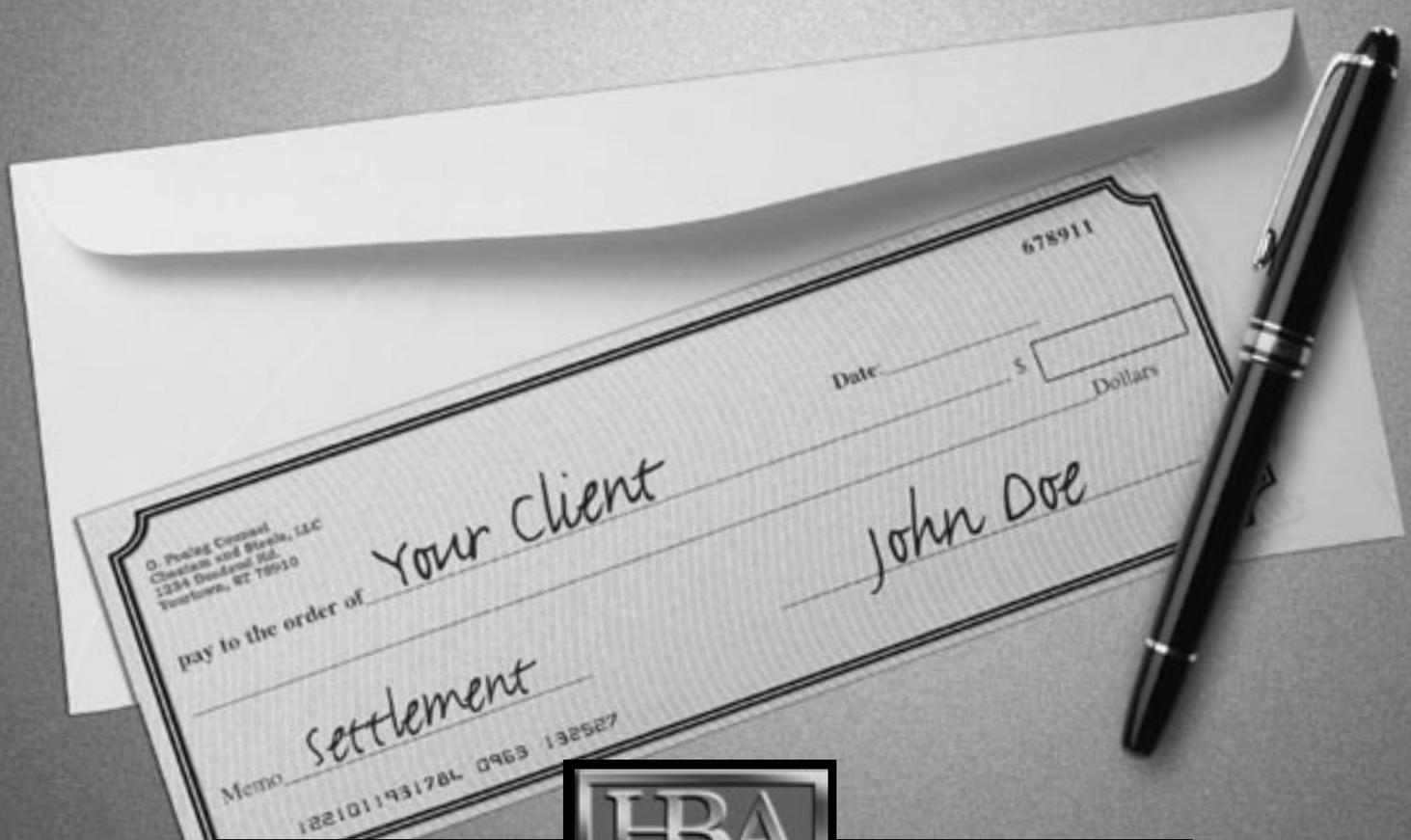
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WARRANTLESS WIRETAPS AND THE PATRIOT ACT

By Michael C. McMahon

President Bush now admits he has authorized wiretaps by the National Security Agency without judicial approval. This clearly violates the Foreign Intelligence Surveillance Act (FISA), but has the FISA been effectively superseded by the Patriot Act? One of the FISA court judges, disturbed by this claim from the White House, has resigned from the court in protest.

Normally, wiretaps are approved by a magistrate on the basis of facts submitted in the government's application which establish there is probable cause for belief that the wiretap is likely to reveal evidence of criminal activity. The target of the wiretap need not be the criminal, and in an emergency, judicial approval may be sought days after the wiretap is installed.

In 1978, Congress enacted the Foreign Intelligence Surveillance Act (FISA), at least partly in response to illegal wiretaps during Nixon's administration. The FISA authorizes judicially-approved wiretaps to obtain foreign intelligence information without a showing of probable cause of criminal activity. As originally enacted, FISA covered only electronic surveillance. It was amended in 1994 to cover physical searches.

The FISA was passed to deal specifically with the subject of foreign intelligence surveillance. It created a special FISA court which, among other duties, has a mandate to review the government's purpose in seeking the wiretap. Proceedings before the FISA court are *ex parte* – not adversarial. Reportedly, the FISA court has rejected requests for wiretaps on only a few occasions. If the FISA court concludes the government's sole objective is to gain evidence of past criminal conduct, rather than to halt ongoing espionage or terrorist activity, the wiretap application will be denied. But, presumably, prosecution is rarely the president's sole objective.

The constitutionality of FISA wiretaps is debatable. But, if the FISA wiretaps do not meet the minimum Fourth Amendment warrant standards, they "come close." (In re: Sealed Case No. 02-001 (2002) UNITED STATES FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW [the only decision ever issued by this court].)

The bottom line is that the FISA makes it pretty easy to get approval of a wiretap which targets an agent of a foreign power. If the target of the wiretap is acting for or on behalf of a foreign power which poses a threat to national security, the government need not show probable cause of a specific crime. The government need only designate the type of foreign intelligence information being sought by the wiretap and attest that the information sought is foreign intelligence information. The FISA judge may not second guess the Executive Branch official's certification that the surveillance objective is foreign intelligence information.

Nevertheless, President Bush has authorized wiretaps without seeking the judicial approval required by the FISA. He claims that the more recently enacted Patriot Act allows him the authority to ignore the FISA. When enacting the Patriot Act, Congress relaxed a requirement that the government show that the primary purpose for a FISA wiretap was to deter a foreign-based threat, rather than to collect evidence for a criminal prosecution. But, nothing in the Patriot Act removed the requirement of judicial approval.

The Bush administration's programmatic purpose for starting a regime of warrantless wiretaps is to protect the nation against terrorists and espionage threats directed by foreign powers. Because this purpose is legitimate and distinguishable from ordinary crime control, these wiretaps may be reasonable under the Fourth Amendment.

Under limited circumstances, the Constitution allows warrantless and even suspicionless searches, designed to serve the government's "special needs," beyond the normal need for law enforcement. This "special needs" exception does not apply if the program's "primary purpose" is to uncover evidence of ordinary criminal wrongdoing.

But, even assuming the president's wiretaps don't violate the Constitution, they still violate the FISA.

This on-going violation of federal law may be an impeachable offense. But much of the blame must be borne by Congress. The Patriot Act authorizes the President to use all "necessary force" to fight terrorism. President Bush claims that "necessary force," includes

the use of wiretaps. The President stated, "legal authority is derived from the Constitution, as well as the authorization of force by the United States Congress."

Much of the Patriot Act is bad law. Many now assert that Congress intended to authorize acts of war and the use of military force, not warrantless, domestic wiretaps. Apparently, they were not clear enough in their wording to be understood by this president. Presidential power must be more clearly restrained.



Michael C. McMahon
Adjunct Faculty,
Ventura College of Law

Our readers get enough citations, so I have written this piece without them. But, the temptation to cite the only case ever released from a court was overwhelming. Full case citations are available upon request.

LEGAL MALPRACTICE EXPERT WITNESS and LAWYERS ADVOCATE STATE BAR DEFENSE

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Richard Armand Richards 1934 to 2005

By Glenn J. Campbell

State Bar Number 33000
Senior Partner
State Bar Court Referee
President Ventura County Legal Aid
Professor of Real Estate Law Ventura College
Ventura County Bar Association Director



When he became an attorney in 1962, Richard "Dick" Richards did not know that he would serve in the legal positions listed above. Fresh from UCLA law school, he was married with two young children and he wasn't at all sure what he would be doing to earn a living as an attorney. He then signed on with the legal unit of the Department of Highways for the State of California, engaging in condemnation work to build roads.

Dick had grown up in the State of Washington. As an adolescent, he helped harvest the potato crop. He knew how to work. In fact, he excelled at most things he tried. After all, he was a competitor's competitor – student body president in high school, president of the associated students at University of Washington and, as an Air Force officer, he was proud to be in the first solo group of his class. He became a Captain and multi-engine command pilot, flying the B-25 medium tactical bomber for the duration of his service.

Married with children when he entered UCLA law school, he engaged in an accelerated law study program to finish in the shortest amount of time. Dick car-pooled to UCLA with fellow Ventura County law students George Dyer and Michael Perrett. He did well. He was inducted into Phi Delta Phi, graduated early, passed the bar the first try and then joined the Department of Highways. He loved his State Bar number.

In 1965, Dick joined what has become known in our receptionist's greeting as "Good morning, Lowthorp/Richards." Back then the firm was called Durley, Cearnal, Marshall & Callender.

Mark Durley began his practice in the county in 1918 and Dick took pride in the continuity of the firm. In 1970, when John Marshall was killed in an aircraft accident, Carl Lowthorp, Dick and Bob McMillan took the reins and held the firm together, instilling in the firm a strong ethic of community service in addition to unfailing loyalty and honesty.

To say that Dick loved golf would be a moderate understatement. Golf was much more than an avocation – it bordered upon a vice. He loved Las Posas Country Club where he was a Director and President. He was on a team of club champions, competing as far away as Florida. He was President of the Ventura County Golf Association. He also took a lot of cash from his partners over the years playing golf during the annual firm retreat at Alisal Ranch.

On his 30th anniversary with the firm, we held a dinner in Dick's honor at Las Posas Country Club. John Friedrich, his longtime ranching client and friend, told the attendees while choking back tears: "God sent Richard to my family. I don't know what we would have done without him." Many clients have communicated the same sentiment. Dick cared for his clients in both the human and the practical senses – and they knew it. He could anticipate the need, he would exhaust the options and shape the result to best meet the need. He was a deal-maker. He cared. He was loyal. You always knew where he stood because he was sure to tell you. He was honest.

Dick possessed a razor sharp mind and a wide breadth of knowledge. He had a love

for history. He loved our country. He was an unabashed patriot.

With his college sweetheart, Pat Richards (an accomplished local artist, community leader and banking executive), they raised three successful sons – Rick, a dentist; Scott, a pastor; and Erik, a professional musician. As golf was his vice, his family was his passion. His grandchildren Kaya, Alexis, Sara and Sean were the lights in his sky.

He also loved music, especially the Blues. During college, Dick and Pat would slip into predominantly black nightclubs in the wee hours to listen to the best blues in Seattle – and he danced.

Dick never displayed his competitor's spirit more strongly than when he was faced with the diagnosis of lymphoma in 1991. He beat back the disease with bravery and humor. His courage in confronting the harsh, drawn out treatment regimens and his refusal to allow the disease to change his routine were manifested by a short-lived toupee, then a fedora and later a cane. He joked about his temporary "skin-head," his "Bogart" hat and his "third leg." He continued to play golf. He maintained his practice until his retirement in 2005. The treatments and his unwillingness to compromise with the disease affected his heart and circulation. His last illness was heart failure on December 2, 2005. He was 71. California State Bar number 33000.

We greatly miss him.

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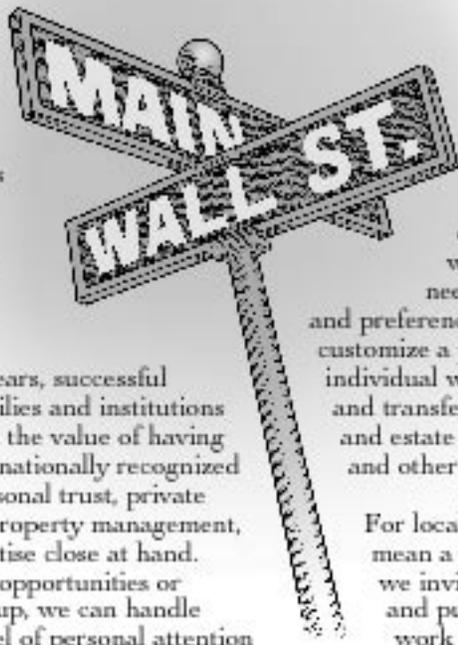
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COURT ROOM DEMEANOR IN A CASUAL FRIDAY WORLD

By Michael McQueen

THE SANTA ANA FASHIONISTAS

I was arguing a motion in Santa Ana Superior Court. It was one of those mornings when the argument was going well, the facts and case law were in our favor and the words were tripping effortlessly off the tongue. The court was following, and apparently receptive to, my arguments. Becoming more confident I placed my hands in my pockets. What a transgression! I glanced up at the judge. He was peering over his glasses at me in a grave fashion, both hands pointed at what I thought was my crotch. He was jerking his hands up in a very peculiar fashion, much as a gunslinger would. I leaped to the panicked conclusion that my fly was undone. For some reason this is a very unsettling experience for men. Why the exposure of a certain part of the male anatomy justifies criminal sanctions while some women make great livings showing theirs is one of life's puzzling dichotomies. Nevertheless, indecent exposure in a court of law is not a good career development. I quickly grasped my zipper only to find that it was raised. The judge, in a gravely voice, admonished me not to have my hands in my pockets. This pretty much disrupted my train of thought for that morning. On the way back to the more relaxed attitudes of Ventura County, I pondered how I could possibly have known about the "hands in your pocket" rule. I had heard that old joke about lawyers never having their hands in their own pockets, but I had not known this was a court rule.

Several months later, while making a telephone appearance before a different Santa Ana Superior Court judge, the judge's voice boomed through the speakerphone admonishing me to take my hands out of my pockets. This was astounding. The omniscience of the Santa Ana judges was mind-boggling. I quickly realized, however, that my hands were not in my pockets. Before I could express my indignation, I heard the mumbled apology over the phone of another unfortunate attorney giving assurances to the court that he would never put his hands in his pockets again. I relaxed. The omniscience of the Santa Ana judges being placed in proper perspective.

Justice Paul Coffee knows of no specific rule regarding keeping your hands out of your pockets, but for those who may find themselves arguing an appeal before him, be advised that he does not condone the practice. Justice Coffee considers the matter one of etiquette and presentation style. It is bad form and should be avoided. Justice Coffee also shared a story of one of his contemporaries who was arguing a case while chewing gum. The judge hearing the argument

apparently was offended and told the attorney to swallow the gum. Just like back in third grade. Justice Coffee then wondered whether the judge would require you to put the gum on your nose. I suppose everything we needed to learn we did learn in third grade.

After the hands-in-pocket experience, it did not surprise me overly much to read that another Santa Ana Superior Court judge obtained national attention for criticizing an attorney for her court attire. Judge Thrasher has your typical stern judicial demeanor, and a good reputation as a settlement judge. He is currently a JAMS arbitrator. He apparently did not appreciate the sartorial trappings of a female attorney appearing before him. He chastised the attorney for being shoddily clad. It turns out that the woman was pregnant, had a dearth of appropriate clothing opportunities, and burst out in tears. She had to call her husband to pick her up from the court because she was emotionally traumatized. The press got hold of the story and Judge Thrasher was subjected to national chastisement and forced to apologize. Whether or not an attorney who is easily traumatized by comments about her clothing should or should not be a litigator, is not necessarily the question. Why is the Santa Ana Superior Court fighting this last ditch effort against fashion barbarism?

YOU ARE WHAT YOU WEAR

For men, the solution to the attire challenge is usually fairly simple. You put on a suit, slap on an in offensive tie and you are ready to roll. Women appear to have no such easily applied standards; some wear short skirts (during the 70's quite short skirts), suits, pants, sweat suits, muumuus, sweatshirts and every combination in between except for a tie. Though that tie business does strike me as somewhat gender biased.

Early in my career I worked for renowned Los Angeles defense attorney John Costanzo. He never appeared in front of a jury overly dressed. He wore the defense bar's uniform du jour: wrinkled, understated gray or brown suits. The plaintiff's bar gets a little bit more extravagant. They feel compelled to dress as flashily as possible, a walking billboard for their apparent success. The members of the Women's Bar, however, are a mixed bag. In Ventura I have seen lawyers of both sexual persuasions wearing leather jackets, no jackets and string ties. The Assistant District Attorneys have a fairly

conservative style, while the criminal defense bar is, well, never mind.

Is there a bright line fashion test? Am I going to be subjected to my own judicial "My Cousin Vinny" experience because I am so fashion challenged? You may remember the movie, "My Cousin Vinny." An out-of-town, newly-minted lawyer has lost his luggage. He keeps showing up to court in a series of inappropriate pawnshop purchased suits causing the judge, played by Fred Gwynne, to exclaim to counsel, "are you mocking this Court?" Is my inability to grasp that plaids do not go well with stripes an affront to the dignity of the court?

This is not a trivial matter. Losing control of the traditional requirements of respectful decorum, conduct and dress is merely the first step to clothing chaos. Perhaps we should have the equivalent of a Mr. Blackwell's annual list of inappropriately attired counsel, though attorneys have enough image problems as it is. And don't snicker that this is an issue of so little concern that a T.V. program such as *Queer Eye for the Legal Guy* will solve it. It does not take much to have the equivalent of a dress riot where lawyers show up in court wearing clothes that just shock the sensibilities. The NBA is just one example of what happens when individuals worth millions dress the way they want to, requiring the imposition of the dreaded, draconian dress code that is so loathed by civil libertarians.

DOES THE COURT CARE OR IS THAT A SMIRK ON THE JUDGE'S FACE?

An associate of mine recently moved; her clothes were in a jumble. Rushing off to court one morning she put on her red suit only to realize, later while at court, that the skirt was a different shade of red than the jacket. She had on a two-tone red suit. I did not think much of it. She, however, was mortified. She was incredulous that she showed up in court in a two-tone, unmatched much less, red suit. Does the court even care? Does the clerk notice? Does the bailiff keep an eye out for sartorial scaliwags? Are they keeping score? Have I unconsciously been an affront to the dignity of the court because of my lack of a tailor, taste or colorful ties? Probably. When does that colorful tie become an affront to the dignity of the court? Are we subject to the subjective and arbitrary sensibilities of the individual judge we appear before? Has a judge ever been tempted to rule against an attorney or the client because of his atrocious taste? To get answers to these pressing concerns; I spoke with some judges.

Judge Harry Walsh, of bow-tie fame and newly assigned to the Family Law Court, advised that when he believes an attorney is dressed inappropriately he has taken them aside to have a private little chat, but never in open court. One wonders how Judge Walsh will handle the probers that will be appearing before him in various states of disarray? Judge Kevin McGee, who is quite a nattily attired judge when sans robes, believes that appearances are quite important. He remarked that no matter how you feel about such superficialities a jury does take note how an attorney is dressed and it does matter, though he has not chastised lawyers for their attire. It seems that the Ventura bench is a kinder and gentler group of jurists when compared to the critical judicial eye of the Santa Ana bench.

THERE OUGHT TO BE A RULE

Searching for more guidance I did a quick Internet search and discovered that the Mono County Court rules do address decorum and attire. An attorney is supposed to dress and conduct themselves in a manner “consistent with the traditional dignity of the Superior Court.” Ok. What does that mean? My most traditional formal attire is a Scottish kilt with the garish McQueen tartan. With respect to attorneys, the Mono County Court Rules require that they should be “neatly and appropriately dressed in business attire for all Court Appearances.” Which business? Dot.com executives are rarely seen in a tie despite being worth billions. For years IBM executives wore only white shirts and regimental ties. I could also find no court rules addressing the issue of transgender cross-dressing. Does the new traditional casual Friday extend to the courtroom? I don’t think so. I do not have the temerity to show up on Friday appearances sporting my collection of colorful Hawaiian shirts. The Mono County Court rules require that counsel instruct their clients and witnesses to “dress in a manner that is not offensive or distracting to others of usual sensibilities.” And watch out for that “bare midriff.” Not acceptable, particularly for male attorneys.

I could find no further guidance in the California Rules of Court. So I dug into the local Ventura County Court rules and buried in Appendix I, under Standards of Professional Conduct, I discovered that persons during court sessions should dress in a manner that is not “offensive or distracting” to others in attendance; there goes my kilt. However, this is a great new weapon for the litigation arsenal. I do not know why it

isn’t in the Evidence Code. “Objection on the grounds that counsel’s attire is offensive and personally distracting.”

Some people get it. My wife knows what is appropriate - what to wear at a funeral compared to a frat party. I make my clothing decisions based on my mood. I have shown up at informal gatherings in a suit, and wear Hawaiian shirts to business meetings. I pick my favorite tie, my favorite shirt and my favorite jacket. This usually does not work out at all well.

For the sartorially-challenged among us I resent the built in bias for guys who look great in a suit. As they say, clothes make the man! Though I did once overhear two female attorneys describe a male attorney as an “empty suit.” Man, that is cruel! But this form of bias should not be tolerated. Like all the other forced MCLE courses designed to address the various shortcomings of lawyers, a sartorial bias class would seem to be long overdue. We should teach the members of the bar that one should not think less of a lawyer because his socks don’t match, his coat

does not match his pants or his tie is the fashion equivalent of a toxic dump. In order to stop this unfair advantage of well-dressed lawyers, we should require that all attorneys do what the British system requires. Barrister robes and silly little white wigs. This would have helped save Judge Thrasher from considerable embarrassment.



Michael McQueen is a lawyer in Camarillo, and a member of CITATION's editorial board.

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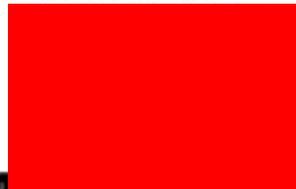


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Al Yablon

Emeritus Attorney Extraordinaire

By Verna R. Kagan, VLSP Senior Emeritus Attorney

On January 1, at 8:30 P.M. Al Yablon passed away. In his passing we lost a valued member of the Emeritus Attorney/Pro Bono team.

Until the time that his disease sapped his energy, he was a youthful 86 year old who could take the grassy hill in front of the Bar office in two leaps and a single bound. When admonished for that given his age, he would proclaim that age was a matter of the mind and not of numbers.

As a member of the team he worked energetically and enthusiastically. His determination, borne of his compassion for those less fortunate, drove him to find help for everyone who needed it. Frequently, he made brief court appearances himself just to help sustain a matter.

Al had the capacity to imbue all of us with his cockeyed optimism. Indeed, we all believed that Al would live forever, even as we knew realistically that his last fight for life was one he might lose.

Our hearts also go out to his wife Marion, who through his last ordeal endured, sustained, nourished and encouraged Al. We wish her Godspeed and a quick recovery from her grief.

Al's spirit lives in our hearts and memory.

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

By *Steve Henderson, Executive Director*

Judge Roland Purnell is retiring February 24 after 14 years on our bench. Some folks forget Roland was a legal research attorney with the courts for nine years too. Appointed to the Municipal Court by Gov. Wilson, Judge Purnell has been a fixture at a variety of bar events including Trial Lawyers' dinners (winning Judge of the Year in 1993), the bar's annual banquet and Judges' Pizza Night. His wife, Peggy, has been the VCBA's Court Tour Program coordinator since 2003. Law Day 5K Race director, **Joe Strohmman**, felt it would be a magnificent idea to have Judge Purnell be the Official Starter of the 23rd annual running May 6th at the Government Center. Although Roland and Peggy are regular participants on race day, he's agreed... **Commissioner Gary Barrett** is retiring March 24 after 10 years as one of our four commissioners. Few people remember he was a police officer in Santa Paula for 12 years... From Ambrose Bierce: "Death is not the end. There remains the litigation over the estate."...

From Jean De La Bruyere: "Avoid lawsuits beyond all things; they pervert your conscience, impair your health, and dissipate your property."... **Mike Case** and son Robbie attended the BIG SC v. Texas game Jan. 4. Got there at 10 a.m. to tailgate. Both returned home heads-a-hangin' low. Mike stated, "It was a great trial, but I did not like Vince Young's closing argument." ... License Plate of the Month: CCP 904.1, a silver Infiniti G35 driven by **Alfred Vargas**... Al is the new President of Barristers and the rest of the board for 2006 include: **Joel Villaseñor**, past-president; **Sam Gasowski**, vice-president; **Leslie McAdam**, secretary and past-president; **Jesse Cahill**, treasurer; **Rebecca Bradley**, member at large; **Tina Schoneman**, member at large; and **Ed Elrod**, student rep from the Ventura College of Law... Movie Law: "The justice system works swiftly in the future now that they've abolished all lawyers" —Doc, Back to the Future II...

New bar association leadership Part Two: The

Ventura County Family Law Bar Association will be led in '06 by president **Tom Hutchinson**. Officers are: **Sandra Bolker**, president-elect; **Donna DePaola**, treasurer; **Holly Spevak**, secretary; and members at large include **Ellen Hirvela**, **Susan Ratzkin**, and **JoAnn Johnson**. Past-president **Marcia Neidens** will remain on the board too... From George Bernard Shaw: "Only lawyers and mental defects are automatically exempt for jury duty."... **Bill Hair** turned a youthful 73 on Jan 5th. Bill has a son age 49 and we were wondering if any lawyers out there have older children? It's a contest with the winner receiving two Dodger tickets this year. He also tells me Hastings School of Law, when he graduated, bestowed a Ph.T (Put Hubby Through) to his wife, signed by the dean after graduating in '59... TV Law: "And as for your case, don't you worry. I've argued in front of every judge in the state. Often as a lawyer."—Attorney Lionel Hutz, The Simpsons...

New bar association leadership Part Three: The Women Lawyers Bar Association will keep **Susana Goytia-Miller** as president again this year. Others serving include **Mindy McQueen**, vice-president; **Nancy Goldstein**, treasurer; and **Mary Sullivan**, secretary. The VC Women Lawyers will continue to meet the second Friday of the month for lunch at the Olive Garden in Camarillo... **Denise Trotola**, a paralegal with Norman, Dowler, et al. and **Bob Krimmer**, of the A-Z outfit, won \$1,000 scholarships during the CPA-Law Society's Third Annual Scholarship luncheon. Attending from Norman were **Rob Sawyer**, **Tom Hutchinson** and **Panda Kroll**. From **Arnold, Bleuel**, et al. were **John Mathews**, **Dennis McNulty** and **Kendall VanConas**... An old English proverb: "The Devil makes his Christmas pie of lawyers' tongues."...

David Shain is the new president of the Ventura County Trial Lawyers. The trial lawyers meet February 28 and the topic is: Complex Case Mediation in the New Millennium. The speakers include a couple heavyweights in **Ross R. Hart** and **Joseph Liebman**. Of course, the VCTLA Judge of the Year is ceremony is scheduled for March 28... Warning Signs That You Might Need A Different Lawyer—Your lawyer tells you that his last good case was of Budweiser. When the prosecutors see your lawyer, they high-five each other. Your lawyer picks the jury by playing "duck-duck-goose." Your lawyer tells you that

he has never told a lie. A prison guard is shaving your head... From Alexander King: "There is a general prejudice to the effect that lawyers are more honorable than politicians but less honorable than prostitutes. That is an exaggeration." ... Actual Jury Selection Transcript: The Court: "Is there any reason you could not serve as a juror in this case?" Candidate: "I don't want to be away from my job that long." The Court: "Can't they do without you at work?" Candidate: "Yes, but I don't want them to know it."...

The leadership of the Business Litigation Section has decided not to meet the usual second Tuesday of the month in February because it fell on Valentine's Day. They'll gather again March 14th with a Law and Motion program presented by **Kathy Bower**, a research attorney with our Superior Court... Poetic Legal Advice: You can say it with flowers, "You can say it with candy, You can say it with jewelry or drink. You can say it with candles and dinner with brandy, But be sure you don't say it with ink."... **Cheri Kurman** has joined the board of directors of the Asian American Bar Association and has agreed to co-chair with **Mary Shea**, the Estate Planning & Probate Section. The VCAABA 1st Annual Installation & Scholarship Dinner is set for Friday the 24th. The keynote speaker is **U.S. District Judge Robert M. Takasugi** and the entertainment will be provided by **Lilian Jiang's** musical group (traditional Chinese instruments). Details and registration? Call **Dien Le** at (818) 889-2299... **Thomas S. Cohen** has been named a partner in the Weston, Benshoof, Rochefort, Rubalcava & MacCuish Westlake Village office... Ok—another License Plate of the Month: PHRRED, on a late model Toyota SLS and driven by **Patricia Lamas**...

Steve Henderson has been the executive director of the bar association since November 1990 and correctly identified the Super Bowl winner. A distant relative of the Alito family, Henderson muses quietly why Bruce Sutter was good enough this year, but not the previous 13. Additionally, and like Kobe, he scored 45 in four consecutive games too. Bowling is his madness.

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