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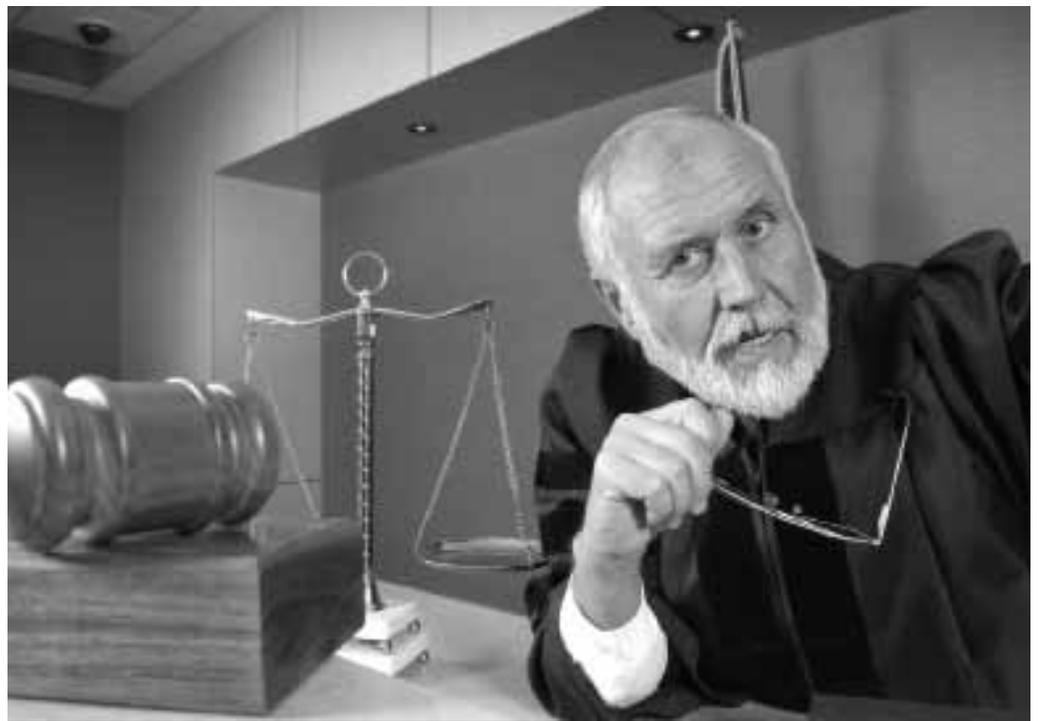
CITATIONS

J U N E - T W O T H O U S A N D E L E V E N

**“YOU CAN’T ALWAYS GET WHAT YOU WANT.
 BUT IF YOU TRY SOMETIMES, YOU JUST MIGHT
 FIND, YOU GET WHAT YOU NEED.”**

- A TRUE STORY ABOUT A TRIAL

By Michael J. Smith
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October 12, 2009

Jack Trimarco & Associates
Polygraph/Investigations Inc.
9454 Wilshire Boulevard, 6th Floor
Beverly Hills, CA 90212

Dear Jack:

It was good to have a chance to talk with you today. I write to emphasize my appreciation for your good work on the cases on which you consulted with us.

I have found that your professionalism in conducting and scoring polygraph examinations is outstanding. Your reputation for integrity as a polygrapher was known while you were with the FBI and has continued into your years of private practice. Both your professional work product and your excellent reputation are particularly important to me as a criminal defense lawyer.

We do not routinely use polygraph exams but, when we do, we expect an honest confidential examination and report. Whether or not we choose to disclose the report, the examination and report are often very important to the client and often influence choices we make in strategizing with that client.

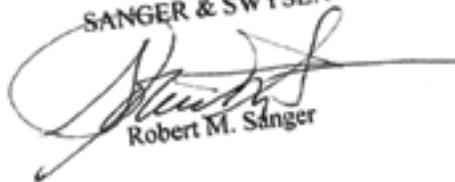
When we do decide to disclose the report in an attempt to convince a reluctant prosecutor of a client's innocence, a favorable polygraph report alone is not sufficient. The professionalism of the examination and the reputation of the polygrapher are critical.

In the recent case you worked on with us, we submitted your report along with witness interviews and other materials to the prosecutor. As you know, it was dismissed in its entirety on the day of trial. It was a felony case being vigorously prosecuted and the consequences of any conviction would have been devastating to my client's life and career. Being able to disclose your solid report backed by your substantial credentials was an important aspect of asserting our client's innocence.

Thank you again, Jack, and I will look forward to working with you in the future.

Best regards,

SANGER & SWYSEN


Robert M. Sanger

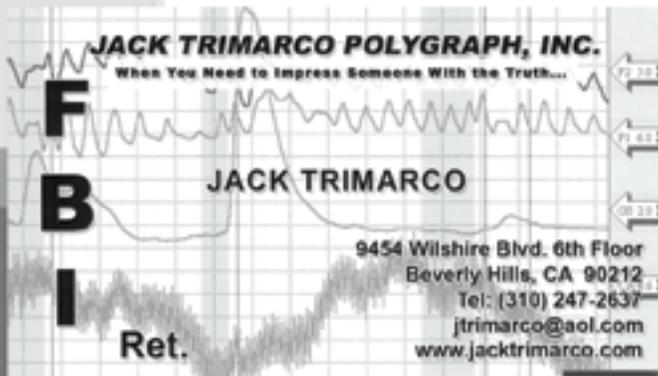
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CALIFORNIA'S FIRST LOTTERY WINNER

By Joe Strohman



I love all things history. I'm likely to pull over to read any plaque posted on a building or rock (or tree, e.g. Old Sycamore Tree on Highway 126 and its reference to General Fremont). This generates a collective groan from my wife and kids and the question of how long this adventure will take.

A lot of history was on display earlier this year when we visited my daughter Olivia at U.C. Davis. We decided to see the Gold Country and the state capitol building. This led us to Placerville, Coloma (Sutter's Mill) and Auburn. The story of John Sutter and John Marshall provides a nice example of unexpected consequences and the fate of history.

Swiss immigrant John Sutter had big plans for a new colony called New Helvetia on the American River in California. For this he needed a fort. So Sutter hired carpenter James Marshall (a Jersey boy) in August of 1847 to build a sawmill in the foothills near present day Coloma. Marshall made good progress on the sawmill until one day, while inspecting the mill tailrace, he reached down and pulled up some gold nuggets from the American River (kind of like Uncle Jed finding some bubbling crude). Despite attempts at secrecy by Sutter and Marshall, this discovery lasted about four months. The world then descended on Sutter's Mill. Sutter tried to charge an entry fee for those newcomers but that lasted a few minutes. With miners trampling over the land, Sutter and Marshall lost the sawmill, and Sutter's dreams of a quiet west coast empire ended. The whole world showed up.



James Marshall started the gold rush but benefited very little from it. Miners followed him around like paparazzi hoping that he had mystic powers and could locate the next big gold find. Marshall found nothing. Eventually, the State of California awarded Sutter and Marshall monthly pensions as compensation. Marshall was awarded \$200 a month in 1872. In 1874 Marshall's pension was cut to \$100 a month and then eliminated in 1876.

In Placerville, I walked into the local history museum and met the man who plays James Marshall as a docent at Sutter's Mill. This allowed me to pump him for inside information on Sutter, Marshall, gold mining rights and the present location of any remaining gold. One of my first questions was what happened to Marshall's pension. Well, as the story goes, Marshall was at the statehouse complaining to the legislature about the measly amount of his pension. When he stood up to leave a bottle of whiskey fell out of his pocket and smashed on the floor. This was not well received by the legislators, who did not want their taxpayer money wasted on whiskey. So Marshall's pension was reduced and then eliminated. Marshall ended up penniless and forced to live off of handouts, handyman jobs and the pennies he received for his signature. So the man that discovered gold in California lost the first real lottery.

Sutter fared little better. His high living and lifestyle did not help him. After selling much of his land and losing legal battles over mining rights and lost lands, he escaped to Pennsylvania, where he died in 1880.

For those interested, the odds of winning the California SuperLotto Plus Jackpot are 1 in 41 million. According to *Frontline*, even at 1 to 18 million odds, if one person purchases 50 Lotto tickets each week, they will win the jackpot about once every 5,000 years. Better odds can be found being dealt a royal flush on the opening hand in a poker game (1 in 649,739) or being hit by lightning (1 in 30,000). Good luck.

Around the bar

I have been making the rounds of the bar's 35 sections, committees and affiliates as the year progresses. Last month, among others, I attended the *CITATIONS* editorial board, the Barristers' board and the Mexican American Bar Association (MABA). *CITATIONS* is always looking for timely and interesting articles (contact **Wendy Lascher** wlascher@fcoplaw.com). The Barristers have plenty of events scheduled this year including the Bowling Night at Harley's in Camarillo on July 19 (contact Barristers President **Christina Stokholm** Christina@pachowicz.com). Also, if you are interested in being involved in the new Barristers mentoring program please contact **Rennee Dehesa** (rdehesa@nchc.com). MABA has some interesting programs and upcoming events and just completed a successful police chiefs' reception (contact MABA President **Rebeca Mendoza** rmendoza@ci.ventura.ca.us).

Finally, as required by VCBA bylaws, my short-form, medium-form and long-form birth certificates are available to VCBA members in exchange for a sizeable contribution to the Volunteer Lawyer Services Program.

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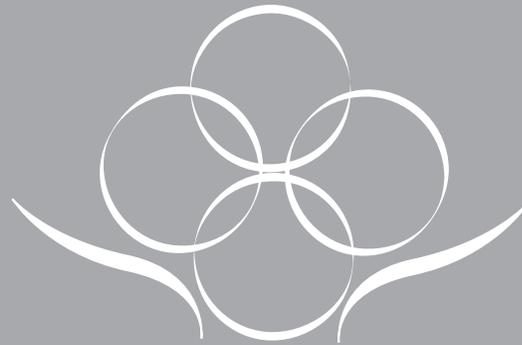
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“YOU CAN’T ALWAYS GET WHAT YOU WANT. BUT IF YOU TRY SOMETIMES, YOU JUST MIGHT FIND, YOU GET WHAT YOU NEED.” - A TRUE STORY ABOUT A TRIAL

By Michael J. Smith

I’ve read a number of stories about trials in *CITATIONS*. Try this one.

The case was in Santa Barbara. My client was charged with drunk driving and hit and run. She was a 40-year-old single mother with a 14-year-old daughter. The daughter looked and acted like an angel. The mother looked quite different. She told me she’d had a cyst removed from her pituitary gland. She said it caused her to sweat profusely, and that it had caused her chin and nose to become elongated. She looked like a witch.

Her blood alcohol level was 0.28, three and a half times the legal limit. She had also sideswiped a van trying to leave the McDonald’s on Casitas Pass Road, where five witnesses were present. The van was trying to pull out as my client tried to pull in. The victim had come back around into the parking lot and confronted her with the damage. He told her if she didn’t give him her license and insurance information she was going to “go to prison.”

She’d told him, and I quote from the police report, “___ Off! (It starts with an F) What is this, some kind of insurance scam? Beat it, you hippie.” She tried to drive away, but the victim grabbed on to a partially-open window and was dragged into the gutter, where he finally fell off. She saw him fall off but kept going home.

One of the witnesses saw my client and the victim arguing and called 911. Eight minutes later an officer arrived at the scene and started an accident report. Fourteen minutes later another officer arrived. He was sent to her home a few blocks away after dispatch ran her license. He arrived at her residence and took her to the Carpinteria Police Department. Another 44 minutes later she blew the 0.28. The arresting officer said that upon his arrival at my client’s home my client’s daughter opened the door. She told him her mother was in “that room.” The daughter went to get my client, who staggered and puked on the officer when she appeared. She vomited again in the back of the patrol car on the way to the station. The officer didn’t bother with field sobriety

tests because she could barely stand and her intoxication was so obvious. They didn’t get a statement from her either, because she ultimately passed out.

The D.A. was astonished when we pled not guilty and set the case for trial before Judge Gowan. They had offered a plea to the DUI and 30 days. They would dismiss the hit-and-run if we agreed to restitution. When Judge Gowan asked us what it would take to settle the case, we said she should only do two days, but would plead to both counts. Both he and the D.A. smiled. I’ll always remember that, because it gave me an eerie feeling.

I soon found out why.

We picked the jury, who for some reason I recall were mostly engineers from the same firm. After their selection, the prosecutor called her first witness the “victim.”

“Sir, what do you do for a living?”

“I’m a municipal court judge in Orange County.”

Many of you who have tried cases before juries will understand how I felt about then. Here I was with a judge who was furious I’d taken this piece of crap to trial, and incredibly anxious to get on to sentencing. The witness assumed I was an idiot, and of course the jury assumed the same thing when they found out who the victim was. The D.A. was laughing inside like a cartoon, and my client was blown away I didn’t know the victim was a judge. His contact information, which I had overlooked for some reason, was in the police reports.

I’m not sure about most of what “the victim” testified to because I was too busy trying to find my jaw on the floor. I do recall he filled in a lot of blanks for the prosecution on the issue of intoxication. He had only said to the officer at the scene that he thought she was “5150.” They needed a little more than that. After his testimony, it was clear that she was DUI as well. I do remember he thought it was funny my client had called him a hippie.

But, you know, sometimes things just go your way. And sometimes you do brilliant things even though you don’t know you’re doing it.

My cross examination went something like this:

“Sir, in your direct testimony you indicated the defendant had ‘red watery eyes’, ‘slow, slurred speech,’ ‘an unsteady gait’ and the ‘strong odor of an alcoholic beverage emanating from her breath,’ is that correct?”

“Yes.”

“Do you handle DUI cases in your courtroom?”

“Yes.”

“How many police reports have you read during your tenure?”

“Must be at least 5,000 by now.”

“The verbiage you used is very similar to what you read in a police report, isn’t it. In fact, most reports have those phrases typed in and the officer just checks them off don’t they?”

“Why, yes that’s true.”

“In fact it’s safe to say these are, for lack of a better term, ‘terms of art’ in a DUI prosecution aren’t they?”

“Yes, I would agree.”

“Then why, sir, didn’t you say these things to the officer at the scene? I don’t see anything like that in his report. You said she was ‘5150.’ (The prosecutor was asleep by now and didn’t bother to object).

“I don’t know why.”

“Well sir, do you know if you actually remember her exhibiting these symptoms, or are you just assuming that’s how she appeared?”

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ARE APPEARANCES EVERYTHING?

By Rachel Coleman



It turns out appearances *are* everything for one local attorney.

For the past decade, **Lori Dobrin** has worked full time as an appearance attorney. That's why anyone who has spent time at Department 22 of the Ventura Superior Court might recognize Dobrin. She's in the department there frequently, making appearances for counsels of record. Ms. Dobrin built her practice here in Ventura County mainly by making appearances for counsel of record as an appearance attorney.

Dobrin earned her law degree in 1985 from Emory University School of Law in Atlanta. For the first four years of her career she practiced at a Florida firm. In 1990, after moving to California and passing this state's bar exam, Dobrin picked up a new job in Century City. She worked full time as an attorney there until 1994, when she became a mother.

Dobrin still wanted to work as a practicing attorney practice law after giving birth. She also wanted to remain a hands-on parent, so in pursuit of a flexible schedule Dobrin first started making appearances for other attorneys. To begin, she took assignments through firms that specialized in brokering appearances. Now, Dobrin mainly obtains work from other attorneys through word of mouth, and since 2001 she has worked nearly full time as an appearance attorney.

Sometimes, Dobrin is lucky enough to receive more than one day's notice to prepare for an appearance. However, there are occasions when another attorney will request Dobrin to make an appearance that same day and time, while Dobrin is already at the courthouse. However, Dobrin takes each appearance very seriously and prepares for each appearance as though she was the attorney of record.

Attorneys who are "generally appearing" on behalf of another attorney are bound to the client by the same duties as the attorney of record and will be liable for any malpractice that may arise out of the substitute appearance, Dobrin said.

When an attorney makes a general appearance on behalf of the attorney of record, "both attorneys have an attorney-client relationship with the litigant they represent until that association is terminated." *Streit v. Covington & Crowe* (2000) 82 Cal. App 4th 441, 446. Based upon the implied attorney-client relationship, both attorneys owe the client the same duty of care.

Dobrin also distinguished between "special appearance" and "general appearance." For the most part, it is incorrect to state that one is "specially appearing" on behalf of another attorney. An attorney may designate him or herself as "specially appearing" when a defendant is appearing in the case for the purposes of a motion to quash service of summons on the ground of lack of jurisdiction, or to stay or dismiss the action on the ground of inconvenience. Code Civ. Proc., §418.10. It is not uncommon for an attorney to state they are "specially appearing" when the attorney is actually making a "general appearance."

When making appearances on behalf of another attorney, whether as a courtesy for co-counsel, as a member of the same firm or through a paid appearance attorney, the proper introduction to the Court is simply "Joe Smith appearing for counsel of record." "Generally appearing" on behalf of counsel of record is not the same as limited scope representation. An attorney may represent a client on a limited basis to complete specific tasks. The attorney must file a Notice of Limited Scope Representation with the

court. That notice details who the attorney represents, the nature and the duration of the representation. Cal. R. Ct., rule 3.36. Limited scope representation is most common in family law, but is also an option in civil and criminal matters.

The client must also agree to sign a Substitution of Attorney form at the completion of the limited representation. Without a substitution, the attorney must file an Application to Be Relieved as Attorney On Completion of Limited Scope Representation. Rule 3.36.

The majority of Dobrin's appearances are typically case management conferences and order to show cause hearings. However, a substantial amount of her court time is spent handling collection and unlawful detainer court trials. Additionally, she makes appearances on the law and motion calendars, and at depositions, arbitrations and mediations.

In Dobrin's experience, judges do not prefer an appearance attorney handling a mandatory settlement conference. The attorney of record should appear because that attorney has an intimate knowledge of the case and the client, and has authorization to settle the case upon client approval.

Dobrin does not handle criminal felony appearances, including preliminary hearings and pre-trial conferences, and will only seldom appear on a criminal trial continuance if she knows and trusts the reputation of the counsel of record. This is not her area of expertise and the client's life and liberty are on the line.

In Dobrin's observation, some courts are of the opinion that appearance attorneys cannot handle criminal matters where an attorney can be present on behalf of a defendant charged with a misdemeanor.

A criminal defendant charged with a misdemeanor may sign a waiver which gives authorization to the defendant's attorney of

Continued on page 13.

“YOU CAN’T ALWAYS GET WHAT YOU WANT. BUT IF YOU TRY SOMETIMES...”

Continued from page 5

“You know, now that I think about it, I don’t really know what she was like.”

The prosecutor finally woke up and rehabilitated him a bit, but the damage had been done.

Since it was late in the day, the judge recessed until the following morning. Before he did, though, I managed to get him to talk briefly about a plea. He told us he thought that in light of what my client had said to the judge, 100 days was more appropriate than 30, if she would plead to both counts. That ended the discussion.

The following day the prosecution put on their expert, who referred to herself as “Mrs. Silvia.” She began by explaining a chart she put on the wall showing how much alcohol caused someone to be “under the influence.” It’s a commonly used chart created by Dr. Dubowski of Oklahoma State University, a nationally renowned forensic toxicologist.

I hadn’t slept all night, and her testimony about Dr. Dubowski’s chart is about as boring as it gets in a DUI case. If you’ve done DUIs, you’ve heard it a thousand times. It goes something like, “At .00 to .04, some people feel the effects of alcohol. At .03 to .05, most people feel the effects of alcohol. At .04 to .06 everybody is affected, blah, blah, blah.” Coupled with what I thought I’d done to my client, the lack of sleep, and this testimony, I felt certain I was about to die.

It didn’t help that Judge Gowan had held me in contempt and fined me \$500 before the jury came in for saying his ruling that I couldn’t introduce evidence about the “partition ratio” was “ridiculous.” Oh, by the way, I think the case law upon which he was relying was later overturned.

But then Mrs. Silvia said something that still causes me to leap for joy. She said alcohol could be “fully absorbed in the system after drinking within five minutes.” And for the first time in two days, I was able to sit up straight.

My cross went something like this:

“Ma’am, you’ve indicated alcohol could be fully absorbed in the system within five minutes. Is that correct?”

“Yes.”

“And if the alcohol is mixed with water it is absorbed even quicker isn’t it?”

“Why...ah... no.” (Her hesitation was a huge point in the trial, as I will explained).

“What do you mean, no?”

“Well if it’s mixed with water it irritates a valve in the small intestine.”

“Which valve is that?”

“I can’t recall the name right now.”

“Well, I’m reading from Dr. Dubowski’s book at page 357, and he says diluting alcohol with water would increase the absorption rate. Do you disagree with Dr. Dubowski?”

“Dr. Dubowski has been thoroughly discredited.”

“Whose chart were you referring to in your direct testimony?”

“Well, it’s Dr. Dubowski’s chart, but he’s been thoroughly discredited.”

I remember some of the jurors chuckled right then and Judge Gowan asked for order.

By a twist of fate I had waived opening statement, because at that time in my career I was leery of the prosecutors knowing where I was going. This now created a huge problem for the prosecutor, which Mrs. Silvia’s testimony caused her to realize for the first time. Remember, the prosecutor had no idea what my client might say about her drinking because she passed out before they got a statement from her.

In a DUI case with a breath test a common defense is the “riser.” The argument goes like this. Alcohol mixes with your breath sooner than it mixes with your blood. Since you’re testing the breath, it might contain substantially more alcohol than the blood if it hasn’t been “fully absorbed” yet. Unless they can prove you had the time to fully absorb the alcohol, they don’t really know if the breath test accurately reflects the blood alcohol level. So if your breath is only a .08, they don’t really know if you were exactly

a .08. You may have been less. And if the driving pattern is ok, they have no proof you were “unable to operate a motor vehicle as would a sober person under the same or similar circumstances” either.

For some reason, this forensic expert assumed I was going to argue that my client drank before she left her home for McDonald’s, and didn’t have time to absorb everything until she was back at her house. Her testimony was designed to cut down the absorption rate, which most experts will say is somewhere between 25 to 40 minutes. They wanted to eliminate a possible “riser” defense.

But now it dawned on everyone we didn’t have to argue, and probably wouldn’t argue, a riser. My client went home after the accident and wasn’t arrested at the scene. She would have had at least five minutes to drink before the officer arrived. He didn’t even arrive at the crime scene until 14 minutes after my client was gone. He wasn’t dispatched to her home until a few minutes after that. (Of course, remember, my client was a .28. At about a .02 per drink, she would have had to drink an awful lot before she got to a .28. So I wasn’t exactly on very solid footing no matter which way I went.)

We recessed until the following day. And the next day it was clear the prosecutor was a little desperate. She asked for a chambers conference and told the Judge she wanted to introduce a prior misdemeanor conviction. Apparently my client had been convicted five years before of being drunk in public. At the time she was spotted by the officer, she was orally copulating a gentleman in the back of an open convertible. The prosecutor wanted to introduce the conviction and address the circumstances surrounding the arrest.

I objected that the conviction was remote in time, and that the circumstances were not similar to the current charges. Judge Gowan overruled my objection. His logic went something like this:

“Mr. Smith. Although you didn’t give us the courtesy of an opening statement, it’s clear that you intend to argue your client went home to drink after this incident (This kind of bugged me because the prosecutor wasn’t

exactly an ace, and I wasn't sure she knew what was going on yet. I thought he was giving it away). I suppose to calm her nerves. I think this conviction is clear evidence the your client is not calm after she drinks, and I find that what she said and did to the judge here is very similar behavior (Oral copulation and calling someone a hippie, similar?). I'm going to allow the conviction to come in under 1101 and the related case law." (Judges can get pretty creative).

Luckily, the prosecutor, who will remain nameless, was incredibly inept. Later in the trial, as I presented my case, the prosecutor overplayed her hand when she tried to impeach my client with the conviction. She was so forceful that my client collapsed in tears. It took about ten minutes to calm her down and get her a Kleenex. By the way, I thought I played up my client's emotional state pretty well to the jury. When the prosecutor got done, the jurors were a little mad about how mean she had been to her.

It also helped that during the latter stages of the prosecution's case one police officer testified to something he could only have learned from another officer's testimony. Since the Judge had admonished the

witnesses not to confer with each other about what they had said, it was obvious they had violated the Judge's order. My objection was over the top and improper, but the Judge didn't get mad because he knew what they had done.

My part of the case went like a dream. My client (yes I put her on, but I always do in a DUI case) was apprehensive yet very believable. Her tears were real. I also put her daughter on the stand, that angel from heaven. Her testimony went something like this:

"When your mom came home what did she do?"

"She went into that room."

She started bawling uncontrollably. When she was composed, we resumed:

"What does she do in that room?"

"She drinks."

More uncontrollable bawling ensued.

During closing I argued what Judge Gowan knew I would, that my client had drunk after the accident and after she got home (I

swear under penalty of perjury that's what my client told me). Since she was drinking bourbon mixed with water, it was absorbed incredibly quickly.

The argument worked like a charm. There was no credible evidence she was drunk at the scene. The judge "victim" told the investigating officer she was "5150." My client's facial distortions helped too, because they partially explained her demeanor in public.

"How would any of you like it if in middle age your face became distorted?" I assume most of them felt like I did, that she used to look like her daughter.

One final problem came up when I addressed my client's comments to the victim. I asked the jury, "Why do you think she talked like that to the victim, the judge? Why was she so angry? Why did she call him names?"

"I'll tell you why. These judges are used to sitting up there (I was pointing at Judge Gowan), and telling you to jump and expecting you to say, 'how high?' Well, she wasn't going to do that for him! That's why he expanded on his statements so

Continued on page 23

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McCarthy Has A New Film Victory With “Win Win”

By Bill Paterson

Thomas McCarthy wrote and directed two of my favorite films – “The Station Agent” and “The Visitor.” His winning streak continues with “Win Win.” McCarthy specializes in small scale human dramas which do not rake in box office bonanzas but are real treasures. In “The Station Agent,” McCarthy’s subject was the unlikely friendship between an anti-social dwarf (Peter Dinklage), who has found peace in an abandoned railroad depot, and two other lonely souls who come into his orbit. In “The Visitor,” McCarthy’s subject was the unlikely friendship between a solitary widowed professor (Richard Jenkins) and a young Syrian musician and his Senegalese girlfriend, who together give him a new lease on life. These are films which take us into the lives of characters for whom we care deeply.

In “Win Win,” McCarthy has created another involving tale, but this time with a harder edge. Mike Flaherty (Paul Giamatti) is a small town lawyer with a fading practice and a gift for cynical put downs. One of his clients is Leo Poplar (Burt Young), an elderly man afflicted with Alzheimer’s disease. At Leo’s conservatorship hearing Mike makes a decision which violates his ethical duties to both Leo and the court. It will return to haunt him when Leo’s out of state grandson Kyle (Alex Shaffer) turns up at Leo’s door.

Kyle is fifteen and has sought refuge with Leo while his mother is in another round of rehab. For reasons I will not disclose (as it would give away a plot line), Mike brings Kyle home. Kyle is a young man whose coping mechanism is to operate on emotional autopilot. He is almost robotic, never smiles and what little he says is blunt and to the point. For Mike’s wife Jackie (Amy Ryan) he is the last house guest she needs. But Jackie is as insightful as Mike is myopic. As time goes by she slowly brings Kyle out of his shell. What interests Mike about Kyle, however, is not his emotional health but his discovery that Kyle is a champion wrestler. Mike coaches an inept high school wrestling team and sees Kyle as the vehicle to turn around the team’s fortunes. While Kyle has the potential to lift the team out of the cellar, his effect on Mike turns out to be far more profound than what happens in the school gym.

In less skilled hands “Win Win” could have ended up either as a pallid copy of “Hoosiers” or as a heavy-handed drama. However, McCarthy has the rare ability to create unique stories in which genuine humor and real life drama are deftly balanced. He is also a master of ensemble casting. As Mike, Paul Giamatti continues his run as an actor with a gift for playing complicated men whose character defects cause them to frequently fall short of the mark but with whom we never lose some form of sympathy. With Mike, his true test of character will come when he is finally ensnared by his ill-advised decision in Leo’s case and has to come face to face with an existential moral dilemma. As Mike’s wife Jackie, Amy Ryan is the polar opposite of her spectacular role as the junkie mom in “Gone Baby Gone.” Here she is the calm and moral center of the family. It is a beautifully nuanced and memorable performance. Young Alex Schaffer, who plays Kyle, is a newcomer but you wouldn’t know it from his accomplished take on a young man who has been let down so many times

that trust is an alien concept to him. Expect to see more of this young actor.

“Win Win” is my favorite film of the year to date and one I expect to see again. Along with its myriad virtues is the astringent ending. Some films do not know when to end or else hit you over the head with “the message.” In films as different as “The Big Night” and “The Visitor” the endings are so artfully done that they stay with you for years. While the conclusion of “Win Win” does not pack the same emotional impact as those two films, it ends on a perfect note as the screen goes black. “Win Win” is quality film making at its best.

Another Plug:

If you have never seen “The Station Agent,” “The Visitor” or “The Big Night” do yourself a favor and rent them.

Bill Paterson is Of Counsel for Ferguson Case Orr Paterson LLP

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Continued from page 9

record to appear on the defendant's behalf under *Penal Code* § 977. Because the client has not signed a waiver giving express authority to Dobrin to appear on the client's behalf, there are some instances where her 977 authority is not accepted by the courts.

Dobrin created a unique niche for herself in the local legal community. She has achieved a healthy balance in her work and personal life, since the appearance work enables her to keep her litigation skills freshly honed while still being able to devote one hundred percent of her energies to her family. Most importantly, her professional reputation and work ethic provide a strong role model to her daughters.



Rachel Coleman is an associate in the Law Offices of David Karen. She is a member of CITATIONS' editorial board.

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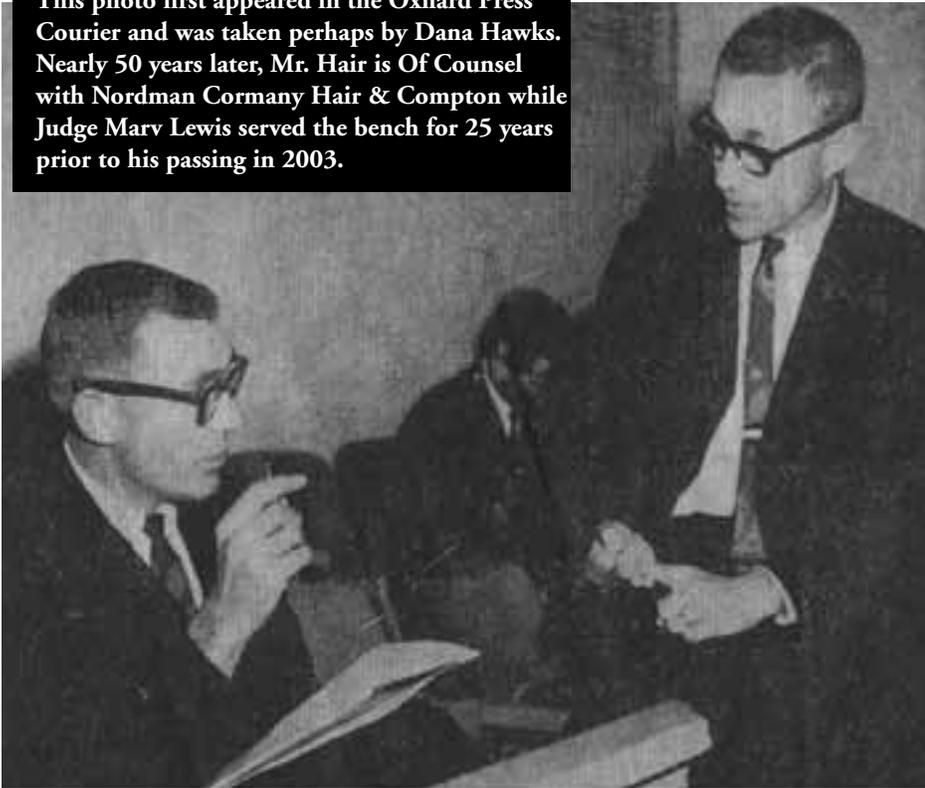
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Photos Courtesy of Craig Bates and Telegenics 218-0041





This photo first appeared in the Oxnard Press Courier and was taken perhaps by Dana Hawks. Nearly 50 years later, Mr. Hair is Of Counsel with Nordman Cormany Hair & Compton while Judge Marv Lewis served the bench for 25 years prior to his passing in 2003.



NEW CITY ATTORNEY GETS ADVICE

On Oct. 24, 1963 this picture appeared on The Pilot Page, showing Bill Hair, who was soon to be the city attorney, receiving some important information on the harbor re-development project from City Attorney Marvin Lewis, now Superior Court judge.

BARRISTERS' CORNER

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Throw strikes, not gutterballs, with the Barristers at their 5th Annual Bowling Night on July 19 at 5:30 p.m. at Harley's Bowling Center in Camarillo. This year Barristers are asking for a \$5 donation to the Make-A-Wish Foundation of the Tri-Counties. See flyer for more details. And while you have your calendar out, mark it for the Barristers' Wine and Cheese Mentor/Mentee Social on Aug. 18 at Ferguson Case Orr Paterson in Ventura.

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Letter to the Editor

Dear Editor,

I am a candidate for the State Bar Board of Governors (BOG) seeking to represent District 8, and I appreciate this opportunity to make your members aware of my goals and qualifications.

The legislature mandated in the 2011 fee bill that the BOG form a governance task force to enhance and ensure that public protection is the top priority in the licensing, regulation and discipline of attorneys. After reading the proposals being considered by the task force, I decided to run for this position because they failed to address critical substantive issues.

The governance task force merely suggested changing the number of members and the method of selecting the BOG, ensuring that in the future most or all will be appointed rather than elected. Thus, our profession will be controlled by those with political connections. This will not assuage the legislature's concerns or misconceptions about the BOG's role and priorities but will have the opposite effect.

California has one of the toughest bar exams, rigorous rules of professional conduct, mandatory continuing education and the only independent disciplinary court in the country. Of course, there is always room for improvement, and reforms are needed to determine how our legal system can provide meaningful access to justice for all citizens and how we can more quickly discipline the small minority of practitioners who perform inadequate legal services or take advantage of their clients. The BOG needs to make a greater effort in educating the legislature and the public about what it actually does and can do.

I believe that I have the qualifications and experience to make a difference if I am elected. Having served 8 years on two State Bar committees and as president of California Women Lawyers, a statewide bar association, I have traveled all over California to address the needs of constituents. I am active in my local bar, teach and mentor law students and lawyers, volunteer as a temporary judge, and represent litigants who cannot afford a lawyer.

I would appreciate your support. If I am fortunate and win the election, I look forward to visiting the Ventura County Bar Association in the near future.

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ALLEN BALL HONORED AS 2010 TRIAL LAWYER OF THE YEAR

By Bill Grewe and Dennis Neil Jones

Ventura County Trial Lawyers Association, at its May 24 meeting, honored **Allen Ball** as recipient of its 2010 Trial Lawyer of the Year award.

The award is presented to the honoree on the basis of noteworthy civil trial results occurring in the year of the award, and contributions to the legal community and to the betterment of the civil justice system while demonstrating high ethical standards, civility, courage and advocacy.

Allen, a founder of his firm, Ball & Yorke in Ventura, represented the plaintiff in the case of *Padilla v. Balliard* which was tried to a jury in Ventura. On behalf of his client, Allen filed a statutory offer to settle the matter for \$150,000. The offer was rejected. Defendant's statutory offer was \$66,000. At trial, the jury awarded Allen's client compensation above \$850,000.



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HOW DO YOU DO IT?

By Leslie McAdam



Photo: KSSP Photographic Studios

I am a full time litigator in a well-established firm in Ventura. I recently recovered a \$2.5 million arbitration award on behalf of an employee in his lawsuit against WellPoint. At the same time, I am also the mother of two little children and I live in a 1913 Craftsman house (with deferred maintenance) on a small orange tree farm. In other words, I have plenty to do – and that's an understatement. People come up to me at parties and ask me how do I do it?

When people ask me this question, there is usually a mixture of awe, envy, and disbelief in the way they ask the question. The implication in the question is: How can I, a regular person, accomplish so much when they can barely make it out of the house?

The answer is, very simply, that I take it one day at a time.

I am not a Buddhist (or any other “-ist”) but I do believe in being present for your life in this moment, and not getting too wrapped up in the possibilities of the future. This is very difficult to do. Some days I only see my children for brief moments in the evening because they were asleep when I left in the morning. And in the evening, they are cranky and I am tired and I really just want to lie down on the floor of my living room and look at the dust as the light comes through the dirty windows.

But on other days, my two-year-old wants to be cuddled and be read the same *Thomas the Tank Engine* story for the third time. And while I read the story, I enjoy the smell of her hair, the softness of her pajamas, and the weight of her body.

Taking it one day at a time allows me to have the mental space to escape when I need to but also the recognition that to be a person — a lawyer, a mother, is to be present in the moment that I am in and not wrapped up in possibilities that may not happen.

In the office, some days, I am responding to (or propounding) discovery by the pound. And it's repetitive and boring. And I really just want a bar of chocolate instead of repeating the same attorney-client privilege objection 75 times. Other times I am writing a brief (my favorite) and I think: I love this. I could do this all day.

One day at a time means that I can't get hung up on the cranky kids, the *Thomas* story, the discovery, or the brief-writing. It also means that the boredom, the tiredness, and, true, the comfort and pleasure, come and go. If I have something difficult to do, I know that it will only last one day because I only have to make it through one day. If I have something enjoyable, I think I had better enjoy it now, because the time now is all we really have.

Lest I wax too philosophical, I must admit, however, that I have a lot of help. I am blessed with my parents and my husband's parents available to baby-sit my children. They live locally and I get the benefits of free day-care and strong family relationships

in raising my children. I know that this is a benefit that lots of people do not have and I am grateful for it. This means, however, at the same time that I have had to let go of being in control of my children's upbringing. They wear bizarre clothes of their choosing and have way too many toys. But I was never in control of that anyway.

My husband, as well, has chosen to become a teacher, with the accompanying time off and pay cut so that he can work on our farm and spend time with the children. He shops for food, cooks dinner, and gives the children baths. (As a former perfectionist, I have had to cede control in this regard too. I used to refold the towels so that they looked prettier. I am now grateful for clean laundry.) But none of us are here alone and if we feel alone, there are resources to make connections so that we don't feel that way.

I must also admit that I don't watch a lot of television or exercise or write as much as I did before I had kids. But I do sneak in time for activities that give me personal pleasure. The key is that I don't go looking for big blocks of time. Pleasures come in the moment and sneaking in a half hour swimming is better than none.

So, how do I do it? One day at a time. One day at a time.

Leslie McAdam is an associate of Ferguson Case Orr Paterson LLP. She practices in the areas of business, employment, and real estate litigation, with particular experience in commercial unlawful detainers.

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WHERE LAWYERS EARN THE MOST

ABA Journal, March 2011

	Metro market (more than 400 lawyers)	Mean wage	Lawyers	Public companies
1	San Jose-Sunnyvale-Santa Clara CA	\$192,020.00	4,130	189
2	San Francisco-San Mateo-Redwood City CA	\$167,130.00	9,790	149
3	New York-White Plains-Wayne NY-NJ	\$166,130.00	51,580	580
4	Santa Ana-Anaheim-Irvine CA	\$157,950.00	6,380	206
5	Los Angeles-Long Beach-Glendale CA	\$155,120.00	25,350	359
6	Modesto CA	\$153,540.00	530	1
7	Wilmington DE-MD-NJ	\$153,520.00	2,120	25
8	Washington DC-MD-VA	\$152,230.00	37,970	146
9	Oxnard-Thousand Oaks-Ventura CA	\$150,850.00	1,000	31
10	Chattanooga TN-GA	\$148,350.00	710	10
11	Dallas-Plano-Irving TX	\$148,000.00	8,800	205
12	Atlanta-Sandy Springs-Marietta GA	\$146,800.00	11,630	142
13	Oakland-Fremont-Hayward CA	\$145,620.00	3,960	92
14	Philadelphia PA	\$145,160.00	12,000	161
15	Chicago-Naperville-Joliet IL	\$143,450.00	24,620	198
16	Houston-Sugar Land-Baytown TX	\$143,440.00	9,550	312
17	San Diego-Carlsbad-San Marcos CA	\$143,300.00	5,670	172
18	Reno-Sparks NV	\$136,930.00	740	36
19	Greensboro-High Point NC	\$136,070.00	680	15
20	Minneapolis-St. Paul-Bloomington MN-WI	\$135,390.00	8,230	135

Continued from page 11

significantly here in court. He was mad. He didn't say anything like what he said to you to the police."

That didn't go over too well with Judge Gowan, who immediately called a recess. He called us into chambers and I was found in contempt again for "accusing a Judicial Officer of misleading a jury and displaying contemptuous behavior," and fined another \$500.

The verdict was not guilty. And, since the prosecutor was so sure she would get the conviction on the DUI, she hadn't put any evidence on showing what the damages were to the judge's van. So we got a not guilty on that too. I'll always remember that after he had excused the jury, Judge Gowan looked at me and said, "Well, I guess miracles do happen."

As an aside, I guess Judge Gowan felt like he would look bad if he collected the \$1,000 from me for the two contempts since we had won the trial, so he scolded me for my bad behavior and dismissed both charges. This was really a relief because I didn't have the \$1,000 and assumed I'd have to spend time in jail.

Of course my client never paid me the extra \$2,500 or so she owed me after the trial. She said I'd done a horrible job. She said the only thing that saved me was her testimony. She did concede her daughter had done a pretty good job. I never did go after her for the money though, because I knew after that trial I had a story to last a lifetime.

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The Ventura County Asian American Bar Association honored Superior Court Commissioner Ferdinand “Dino” Inumerable at its 4th Annual Installation and Scholarship Awards Banquet held on May 13 at the Topa Tower Club. Commissioner Inumerable is Ventura County’s first Asian American judicial officer. He is also a founding member of VCAABA. Kudos to event organizer **Kata Kim** and association president, **John Fukasawa**... An unidentified law student who sued his parents for a \$588-a-month stipend after they cut off his allowance has been ordered by a family court judge in Malaga, Spain, to move out and get a job. However, the parents, who work in a restaurant and as a garbage collector in Andalusia, in the southern part of the country, will continue to pay their son \$292 per month for two years to cover the cost of his food. They are also making monthly payments on his car...Italy? **Kate Neiswender** at kmn-law@sbcglobal.net or 654-1557...

Brian Philpott has become a principal with **Koppel Patrick Heybl & Philpott**... The state attorney general is calling for a California attorney known as the “Tax Lady” to be jailed for contempt of court, contending that Roni Deutch shredded as many as 2.7 million documents and failed to pay clients refunds totaling \$435,000 in violation of a court order in a civil suit. In a filing, AG Kamala Harris asked a Sacramento County Superior Court judge to jail Deutch and fine her for contempt. She also called Deutch, whose law firm reportedly grossed over \$25 million last year, a “predator for profit” in a written statement...About a quarter of lawyer moms

Exec’s Dot...Dot...Dot...

By Steve Henderson, Executive Director, M.A., CAE

leave the workplace, compared to about 6 percent of women with medical degrees. University of Chicago economist Jane Leber Herr noted the difference when analyzing a national survey of college graduates and a sample of Harvard alumnae, the *Washington Post* reports...Recognizing contributions to further water conservation, the United Water Conservation District recently honored **Bill Hair** with the 15th Annual Richard V. Laubacher Water Conservation Award for demonstrated innovation and leadership in water conservation. Bill has been involved in Ventura County water issues throughout his 50-plus years of law practice...

Egypt and The Pyramids? **Nabil Sakla** at nsakla@aol.com or 701.8275...Supreme Court litigators don’t speak much more than the justices during oral arguments, according to a first-hand participant, Justice Samuel A. Alito Jr. Justices are “pushing 50 percent” in the number of words spoken at oral argument, Alito told lawyers at a Law Day gathering in St. Louis on May 16. As a result, he said, oral arguments aren’t all that important, despite a popular belief to the contrary. The *St. Louis Post-Dispatch* covered Alito’s speech, in which he covered the top 10 misconceptions about the Supreme Court...With a combined total of 80 years of public service, the Brodies are retiring from the Ventura County Superior Court. Celebrate with them on Friday evening, July 15 at the Ventura Beach Marriott with cocktails and dinner beginning at 6:00 p.m. Questions and reservations may be made with Victoria.Borjesson@ventura.courts.ca.gov or 654.2965...Celebrity Eclipse London/Royal Wedding? **Howard Evans** hbevans@roadrunner.com or 988.1551...

Erik Feingold completed the Breathless Agony Century in allegedly decent time May 7th. The cycling race is billed as “Toughest Century in Southern California” since the course is 114 miles and includes 12,000 feet of climbing. He didn’t finish first, nor did he come in last...A law graduate at North Carolina Central University delivered a commencement speech May 13 that touted the virtues of living an average life over the quest for fame and fortune. But the speech by Preston Mitchum, 25, was below average

in one respect: He admits that he copied the speech, some of it word-for-word, from a YouTube video made by a student at Binghamton University in New York. Mitchum told the newspaper that he meant to credit Anthony Corvino, but he omitted it “out of nervousness and anxiousness and excitement.”...VC Superior Court is training Pro Tems June 2 with a 3 CLE course from 2-5 p.m. **Brenda.McCormick**@ventura.courts.ca.gov or 654.3620...

New admittee swearing-in ceremony is scheduled for June 7, beginning at 4:00 p.m. inside Courtroom #22...Long law articles wore lawyer Keith Jaasma out, so he tried haiku. Jaasma, an IP lawyer at Houston’s Patterson & Sheridan, started the website at supremecourthaiku.com in February 2010 with a plan to write a haiku for every U.S. Court opinion. Jaasma says he didn’t even tell his wife about the website because “I thought it was potentially such a dumb idea.” A self-taught poet who co-founded the UCLA Entertainment Law Review while a student there in the early 1990s, Jaasma gets his poetic inspiration from the abstract section of Supreme Court opinions. For instance, a recent post about *Snyder v. Phelps* reads: “Church so full of hate–Pickets soldiers’ funerals–Protected Discourse.” The site currently gets about 20 hits daily. And marketing, it seems, is an intended outcome. Or, as he writes: “Some ask: Why haiku?–Why seventeen syllables?–No time for real blog...”

Women Lawyers of Ventura County in conjunction with Santa Barbara County Women Lawyers are sponsoring a “Women and Wine Mixer” on the evening of June 21 at the Corktree Cellars in Carpinteria. More info? **Jennifer Yates** at j.yateslaw@gmail.com...

Steve Henderson has been the executive director and chief executive officers of the bar association and its affiliated organizations since November 1990. He has been consulting with former Gov. Schwarzenegger and he also called a championship for the Heat in July 2010. Lastly, Henderson may be reached at steve@vcb.org, FB, Twitter at [stevehendo1](https://twitter.com/stevehendo1), LinkedIn, or preferably 650.7599.



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