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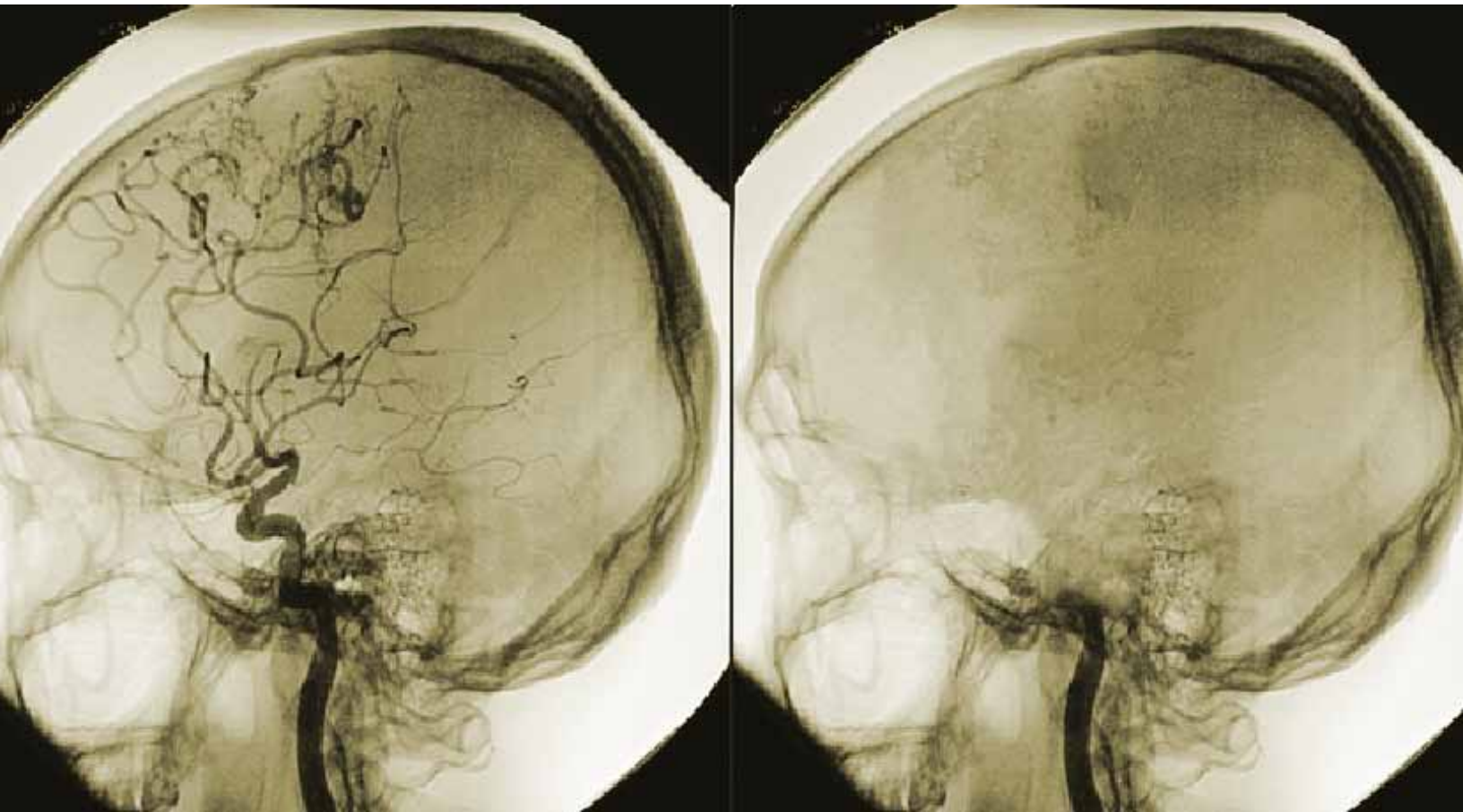
# CITATIONS

M A Y - T W O T H O U S A N D F I F T E E N

## LEGAL ISSUES SURROUNDING BRAIN DEATH

*by Carol H. Mack*

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*Brain death photo illustration showing blood flow at left and no blood flow at right.*

WILLIAM M. GREWE  
CHRIS GRAY  
KATHERINE HAUSE BECKER  
STEVE HENDERSON

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PRESIDENT'S COLUMN:

## “It’s A Little Bit Me, And It’s A Little Bit You”

*A Little Bit Me, A Little Bit You*- The Monkees/Neil Diamond, 1967

by Bill Grewe



**Judge Manuel J. Covarrubias.** The Family Law Bar Association invites all to a brown bag lunch in Courtroom 32 on May 6 at noon. Hear about procedures from the source. Questions welcome. MCLE.

Women Lawyers of Ventura County presents a panel discussion on issues particular to working mothers in the legal field. Panelists: **Judges Rebecca Riley** and **Tari Cody**, and lawyer **Wendy Lascher** (who will have edited this column, thereby improving it by the time it meets your eyes.) Friday, May 8, noon. Ottavio's in Camarillo.

**Think you know more than the judge?** Well, time to put up, and have fun in the process. **Barristers presents “Trivia Night”** May 21, 5:30 to 7:30, Garman's, Santa Paula. Time wise, probably just as close as any regular venue. All are welcome. \$10. Always

well-supported by the Bench. Why not make this the year you join in.

**May 29, 1953. 29,035 ft.** There is no photograph of Edmund Hillary atop Everest. There is one of Tenzing Norgay. Questioned, Hillary said Norgay did not know how to operate the camera. Norgay said he did, and earlier had. Approaching the crest, Hillary was still a humble New Zealand beekeeper. Stepping to the summit, he was transformed into an ambassador for Nepal. Tirelessly, until his death in his eighties, Hillary raised money for the Himalayan Trust which funded programs and projects guided and chosen only by the Nepalese.

**You gotta hear the story.** Ventura County Trial Lawyers Association presents its “Trial Lawyer of the Year” program, Tues., May 19, 6:00 p.m., Tower Club.

**Dodger Stadium, capacity 56,000.** There are approximately 58,000 children in foster care in California at any given time. From social workers to courts of review, as a society, our collective effort on behalf of these kids, whether it takes the form of funding, time, healthcare, education or love and concern, is our best work, and perhaps the least publicized. May is National Foster Care Month, and somewhere out there, a former foster child will take the ball and toe the rubber; prepare for law school exams; roll-up on an accident scene; or just cast a line from a lake shore. [www.ventura.org/human-services-agency/online-informational-session](http://www.ventura.org/human-services-agency/online-informational-session)

**Bias, Gender and Sexual Diversity. May 27. Noon.** Tower Club. VCBA, the Office of the Ventura County Public Defender, CSUCI, the Ventura County Diversity Bar Alliance, and Benton, Orr Duval & Buckingham join in hosting presenter **Amara Kirby, Esq.**, a VC Deputy Public Defender with more than a decade of experience addressing LGBTQ legal and social concerns. MCLE.

**Last Sunday in June.** Law Day 5k and One-Mile Fun Run. June 27. Kimball Park.

**19th Wine and Beer Tasting & Silent/Live Auction.** Sterling Hills Golf Club. Ventura County Paralegal Association. May 7. 6:00-8:00. The proceeds go to the VCPA Scholarship Program and the Volunteer Legal Services Program. Your support makes the effort worth the while. Others have done the heavy lifting in putting this together.

**He stays on script no better than Bill Walton...and that's a good thing!** “We’re going to drown in our own data. You can never forget anything...Think of a big sack of emails you are just packing around, and every year it gets bigger and bigger... How much of the past do we have to drag along with us?...I think the eraser is a very important technology.” Gov. Jerry Brown (sbn 37100). [Washingtonpost.com](http://Washingtonpost.com) 3/14/15.

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## MY SECRET LIFE

by Chris Gray



As I was happily explaining my newest endeavor at the law firm to the CEO of the bar association, **Steve Henderson**, the topic of what I do outside the firm came up. Steve asked me to write up my story for a piece he was doing on the secret lives of lawyers. I guess it's time to publicly admit that I have a secret side gig.

My latest endeavor was to bring on another lawyer at the firm who can offer estate planning and probate services to folks who are more comfortable speaking Spanish. Over the years, I had been frustrated when I could not speak Spanish well enough to help people who were bilingual. They could speak English well enough that I could determine what they needed, but I couldn't be certain we understood each other clearly enough on complex terms and concepts to work for them. I remember being on a trip to Brazil for my brother's wedding and seeing an attorney's office there and thinking, if I moved here and needed to use an attorney's services I would definitely have to work with someone who could discuss legal terms in English and Portuguese. We had learned enough Portuguese to get around, shop and dine out, but a legal matter would be another story. I wanted to have an office like that for Spanish speakers here and I am proud to say that now I do, thanks to the addition of **Claudia E. Barba**.

In my secret life, I curate positive media for a web channel. Say what? I curate positive

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## PRESIDENT'S COLUMN:

*Continued from page 3*

**Not exactly Kramer vs. Kramer**, but... *In re Marriage of (Jill) Friedman* (2002) 100 Cal. App. 4th 65. Jill Friedman, Esq. talks about her role as a litigant in a landmark family law case and its impact on how she practices law. Ventura County Family Law Bar Assoc., May 12. 6:00 p.m. [vcba.org](http://vcba.org). MCLE.

**Dewey's Running Mate. May 17, 1953. Nine-zip.** Imagine if Dewey had won. The outcome in *Brown v. Board of Education* was no sure thing. A politician who had made a huge mistake, Chief Justice Earl Warren, reared in Bakersfield, was at the right place at the right time as sure as few have ever been. Unanimous decision. No crack for critics to seize as a foothold. A succinct opinion to be printed on the front page of every daily.

**Dana Caudill, Esq.**, in-house and in-county for Farmers Insurance Group since 1997, moves this month to a supervisory position – with Farmers – in Los Angeles. She is a pro and always true to her word. Dana is deserving of the promotion and has much to share, but she will be missed.

**Memorial Day.** "Brothers in Exile," the recent ESPN30-for-30 documentary, tells of our freedom better than I can. Understated. Find it, and take it in, cover-to-cover, like a good book.

**Second Sunday in May. Proof that Mom knows best.** 1949. Joe DiMaggio Day. Nearly 70,000 in Yankee Stadium. As a special touch, the Yankees brought Joe's mom out by train from San Francisco for the festivities which were to take place between the games of the doubleheader against the team's top rival. With the help of a translator – English to Italian – Mrs. DiMaggio was told that she would be given a signal at which time she was to step out of hiding in the dugout and join the mid-field presentation. It worked. The signal was given and she popped out of the dugout as planned in her handmade dress. But instead of heading to join the dignitaries, she hurried straight to the opposing dugout and threw her arms around a Boston Red Sox player, Joe's younger brother, Dominic DiMaggio.

**As You Know.** CITATIONS, the VCBA website, etc., etc. A lot of Ventura County lawyers and a great bar staff are contributing some really good stuff and putting together strong local programs. As a part of our special legal community, your participation, ideas, help and support are always welcome. And from Port Hueneme to Piru, have a good month of May. All 31 days!



*Bill Grewe is a member of Rose, Klein & Marias LLP, and represents individuals in personal injury and workers' compensation claims. He is the 2014-2015 president of the Ventura County Bar Association.*



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## LEGAL ISSUES SURROUNDING BRAIN DEATH

by Carol Mack

My mother-in-law's advance health care directive has an interesting addendum. "Just be sure I'm really dead," it reads, "before you take anything out of my house!!" This statement, while possibly facetious, raises the question of how we know that someone is "really dead."

We are all familiar with death as determined by the cessation of heartbeat and respiration. With advances in medical science, however, this clinical death has become reversible in some instances. The brain survives for minutes after the heart stops, so the early application of CPR can resuscitate otherwise healthy individuals. Thus, we see changes in the way we define death.

Medical advances involving the transplantation of organs from deceased patients into living recipients have also affected the definition of death. To confirm death while preserving transplantable organs, the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research in 1981 proposed a new definition of death and recommended its adoption throughout the country. The revised definition of death is: "An individual who has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead." Subsequently, the concept of brain death, or death determined by neurologic criteria, was codified and adopted by all 56 U.S. jurisdictions. While brain death accounts for only 1-2% of all in-hospital deaths, use of this term has raised multiple issues, both legal and ethical.

Because of the way we talk about brain death, the public seems to think that it is different from actual death. This is not the case. A person declared dead by neurologic criteria is dead. The person is no longer alive and has no possibility of ever living again.

Part of the confusion may be that there are other conditions that include profound unconsciousness. In a coma, a patient cannot be awakened and has no voluntary actions but may regain consciousness at

some future time. A persistent vegetative state is also a deep state of unconsciousness, but the patient is alive and maintains some brain function.

In brain death, the person has no brain function. Brain death is determined by the lack of response to voice, pain, or other stimuli, lack of breathing, lack of reflexes, and lack of brain wave activity to stimuli. In California, a family does not need to consent to this determination, but it must be independently confirmed by another physician. The time of the second declaration is considered the legal time of death.

Once a person has been declared dead by either criteria, that person is no longer a patient, and the hospital has no responsibility for treatment. The appropriate action is to harvest the organs if indicated, remove all medical equipment, and release the body. Families may object, however. Recently, in *Avila v. ARMC*, the family of a young mother obtained a TRO to keep Anaheim Regional Medical Center from removing a ventilator after she was declared brain dead. When the diagnosis was confirmed by their own neurologist, however, the family consented to its removal.

Unfortunately, in covering such highly visible cases the media often speak of keeping brain dead patients "alive." In the noted case of Jahi McMath, the teenager who was declared brain dead after complications from a tonsillectomy, her family refused to accept the diagnosis of brain death and insisted that life support be continued so that God could heal her. They eventually succeeded in moving Jahi to a facility in New Jersey, where she remains on a ventilator. It is significant that New Jersey is the only state in which a physician is prohibited from declaring a patient brain dead if the family has religious objections to such a declaration. Much like Schrödinger's cat, then, Jahi McMath is currently both dead in California and alive in New Jersey.

Since some families need time to accept the diagnosis of brain death, California Health & Safety Code § 1254.41 mandates that hospitals adopt a policy to allow a "reasonably brief period" for the family of a person declared dead by neurological criteria to gather before removing previously ordered cardiopulmonary support. This "reasonably brief period" has not been defined, but it is generally understood to involve hours, not

*Continued on page 17*



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## Barristers' Corner

by Katie Becker

The Ventura County Barristers have launched a series of MCLE lunches, allowing our barristers and other attorneys and colleagues to hear some hot topic seminars by members of our bench. On April 15, **Judge Glen M. Reiser** spoke to the audience about "Technology and the Courts," giving us a history of technological advances in the court system throughout California. We also heard about efforts to improve our local court technology. If you are interested in hearing more, please contact me at [katie@venturaestatelegal.com](mailto:katie@venturaestatelegal.com) or VCBA **President Bill Grewe** at [W.Grewe@rkmlaw.net](mailto:W.Grewe@rkmlaw.net).

The next MCLE brown bag lunch will be June 24 at 12 p.m. in Dept. 36 of the Ventura Courthouse. **Presiding Judge Donald Coleman** will be presenting the "Dos and Don'ts for Attorneys" and "Civility in the Courtroom." This event is open to everyone – attorneys, paralegals, staff, friends, and family are invited. Barristers are \$15 and everyone else is \$25 – come join us and get an hour of MCLE! Look for more information in CITATIONS.

THIS MONTH – TRIVIA NIGHT!!! This event is a must; every trivia night brings smiles to our faces. We all learn something new, while cleaning out the cobwebs of our minds for long-lost random knowledge. The event will be at the lovely Garman's Restaurant & Pub in historic Santa Paula, only a short 12 mile drive from Ventura through some of the county's beautiful agricultural fields. Come join us for the educational fun – 5:30-7:00ish on Thursday, May 21. **Doug Goldwater** has thrown down the gauntlet, calling for more participants and more firms bringing teams. He just wants more competition, so please, bring it. Awesome prizes, good food, and fun trivia. Only \$10. Don't miss it!!

We also would like to welcome two new baby boys to the VC Barristers family – congrats to **Renee Dehesa** and **Andrew Ellison** on their new additions!!

*Katie Becker is a partner at Ben Schuck & Katherine Becker, LLP, practicing in the areas of estate planning, probate, trusts, business and animal law. She and her husband Rick are expecting their first child in July.*

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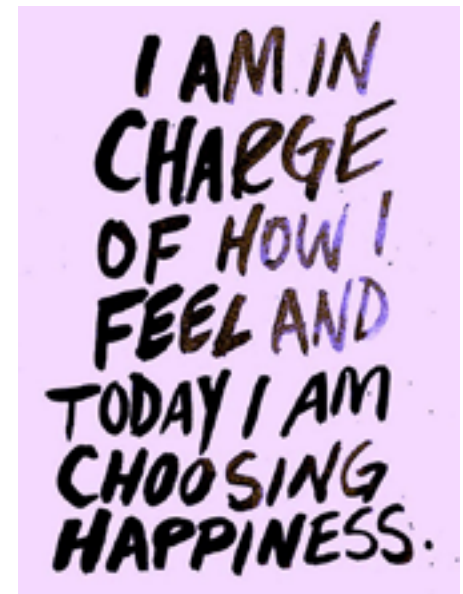
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MY SECRET LIFE

*Continued from page 5*



media for a web channel and I love it. I came to this through a series of events, none of which involved the precondition of making money. Sadly, none of these events have generated any yet. This road started amongst personal development books and films. I began to ask myself: What *is* my life purpose, and how do I follow my bliss? At that time, I followed my office calendar and scheduled myself very carefully, rarely taking a break and working overtime whenever the caseload required it. When a break appeared, I completely vegged out. Hobbies were for retirement, right?

The answer to my questions about purpose and bliss started to develop as video cameras became really user friendly. I discovered that I loved making little films. I learned how to shoot and edit at the Travel Channel Academy and started to actually submit travel films and enter film contests. I got connected with a cinematographer and learned how much was involved in shooting a professional film. I found my genre in stories that made people feel good or brought hope or inspiration. Then I got connected with a Hollywood movie producer who wanted to make more films to increase love in the world. Working with him taught me a lot about producing films professionally. I came to the conclusion that producing professional films was a very slow, arduous process, while my appetite for positive media

*Continued from page 15*

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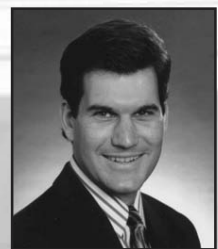
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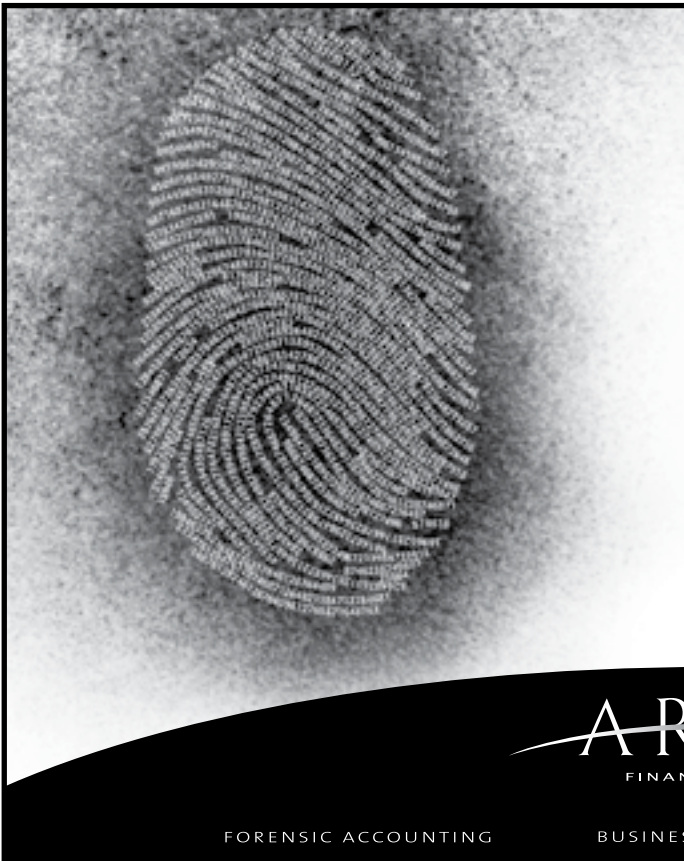


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## MY SECRET LIFE

*Continued from page 15*

I needed much more than one film every few years. Then I connected with a lady who was creating a web channel that features only positive media. I have been working with her for almost two years now.

Now I am getting quite an education in start up boot-strapped web business. I go to film festivals, talk to producers about licensing content, search the web for new content and publish the goodies we find to the website. Of course, I'm always on the lookout for angel investors.

I love to find and share positive media. I believe you are what you eat, and your mind is essentially what you feed it. Mainstream media offers a steady diet of ugliness. I want to set a table with healthy alternatives for people to watch. The films I choose make me feel good and bolster my optimism. I like sharing this with others. Ironically, I have actually come to a place where my legal experience is useful in the work I enjoy.

During the journey, God made room in my schedule for my “secret” life, and my law practice is still in good shape. It's never too early to start living your dream, and no, you don't have to jump off the proverbial cliff. Every long journey begins with a few small steps. They may seem silly at first, but take them anyway. You won't regret it.

You can check out the videos I like on [synergytvnetwork.com](http://synergytvnetwork.com)

*Chris Gray practices estate planning and probate in Thousand Oaks.*  
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*Continued from page 8*

## LEGAL ISSUES SURROUNDING BRAIN DEATH

days. The statute also reads, “in determining what is reasonable, a hospital shall consider the needs of other patients and prospective patients in urgent need of care.”

Thus, a person declared brain dead might continue on a ventilator for a period of time to allow the family to say their good-byes or to maintain the function of transplantable organs. Beyond these considerations, however, there is no legal mandate to continue so-called life support. That being the case, hospitals still struggle to balance professional standards and the care of other patients with respect for the family’s wishes.

The issues surrounding brain death are not all legal. This area of law has been settled for decades, but there are always human and ethical issues to consider. To continue treatment after a patient has been declared dead is to offer medically futile treatment, which is unethical, but to withdraw a ventilator against the family’s wishes is also problematic and seems cruel. The California “reasonable accommodations” statute is meant to address this dilemma. Using this guideline, some hospitals have opted to delay the withdrawal of cardiopulmonary support until the family can come to terms with the diagnosis or, as in the case of Lisa Avila, obtain independent verification of the diagnosis. In cases where the family continues to reject the reality that the patient has died, some hospitals may also choose to transfer the patient to another facility, as was the case with Jahi McMath.

There are few good options in such cases, and since they are always heart wrenching, it is unlikely that issues over brain death will be resolved in the foreseeable future.



*Carol Mack has been a registered nurse in the field of oncology for 35 years and has earned a Ph.D. in nursing. She currently teaches nursing and health science at CSU Channel Islands and practices law of counsel with Darnall Law.*



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**Michael McQueen:** An attorney and a geologist, with more than 30 years of natural resource experience, Michael has been deeply involved in enforcing California's Solar Rights Act. He drafted the form for standard offer for power sales used to purchase power (solar, geothermal, wind) from private parties. Michael has litigated enforcement of these agreements and has litigated power agreements between power providers and middlemen.

**Kate Neiswender:** With 25 years of experience with natural resources, including serving as Chief Consultant to the California State Senate's Natural Resources and Wildlife committee, Kate will provide background on the existing and anticipated role of private power.

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This activity has been approved for Minimum Continuing Legal Education credit by the State Bar of California in the amount of 1 hour of **GENERAL** credit. VCBA certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing Minimum Continuing Legal Education.

*Please return with check to VCBA, 4475 Market Street, Suite B, Ventura, CA 93003. ATTN: Natural Resources Section.*

**\*\*All reservations are considered "firm" on May 15, 2015, (at 5:00 p.m.); we will invoice late cancellations and no shows.\*\***

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*Jennifer Goddard Combs has over 20 years experience generating successful publicity campaigns for companies, products and nonprofits locally, regionally and nationally. She earned her Bachelor of Arts at USC School of Journalism. She was also faculty at UCSB. Goddard Combs is a member of the Rotary Club of Montecito.*

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# Exec's Dot...Dot...Dot...

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



Dapper and dandy **Don Hurley** was the first lawyer to register for our 32nd Annual Law Day 5K Race scheduled for Saturday, June 27, beginning at 8:30 a.m. at the Kimball Road Park. Race Director **Joe Strohmman** suggests you go to [www.runsignup.com](http://www.runsignup.com) for registration and [www.lawday5k.com](http://www.lawday5k.com) for info. There's \$2,000 in prize money, chip timing and an unbelievable number of terrific raffle prizes, including a stay at the Four Seasons Biltmore in Santa Barbara and Fess Parker Wine Country Inn & Spa in Santa Ynez. Proceeds benefit the VLSP, Inc., and we are capping the runners at 500 this year! ...The State Bar's Committee of Bar Examiners voted April 10 to shorten the bar exam from three days to two. The next step for the committee is to vote on a timetable as to when the first restructured exam would be administered. The proposal would then go to the Bar's Board of Trustees to consider at its July meeting. Changing from three days to two would save the bar approximately \$895,000, according to the organization...**Stuart Nielson** of A to Z Law



group has been appointed to the Ventura Botanical Gardens Board of Directors. They manage the 107-acre project in the foothills above Ventura City Hall...



**Russell Charvonia**, Grand Master of Masons in California, spoke at the dedication of a veteran's memorial at the Santa Maria Masonic Family Center on April 11. Charvonia led the ceremony, which featured the flags being raised for the first time with the help of Marines and members of the Veterans of Foreign Wars...Facebook may soon need to add "Just got served divorce papers" to its list of relationship statuses now that a New York judge has said that the social media site is an acceptable way for a Brooklyn woman to serve her husband with a summons for divorce. After exhausting other ways of serving the husband the papers, the wife filed an application asking for "service by alternate means," in this case, social media. In his decision, Justice Matthew Cooper said the "advent and ascendancy of social media" means that sites like Facebook and Twitter are the "next frontier" as "forums through which a summons can be delivered."...



Former **Superior Court Commissioner Pauline Maxwell** received her judge's robe April 16 at a ceremony at the Solvang Veterans Memorial Building. Oh yeah, Judge Maxwell also celebrated her birthday that evening, turning 60!

The ABA Journal reports that strong winds may have propelled a turkey through Kansas City attorney Jeffrey Tonkin's window this month. ... I have the resume of an undergrad, John Butzer, who is very interested in an internship in a law office over the summer. He is dynamic, intelligent and a self-motivated individual. If you know anyone who could enjoy this opportunity, contact me at [steve@vcba.org](mailto:steve@vcba.org)... License Plates of the Month: 4JSTCE on a Lexus piloted by **Laura Bartels** and NLHESQ driven by an unknown owner. Then there's



I Heart NZ, driven by the 1987 bar president, **Bob Noe**. Lastly, LEGAL ED, shuttered by **Ed Elrod** on a high-end VW... The Litigation Section of the State Bar just published its annual review of developments in litigation. CITATIONS editor **Wendy Lascher** authored the Appeals and Writs section on pages 13-19. [http://members.calbar.ca.gov/sections/litigation/california-litigation-review/2014/03\\_appeals-and-writs.html](http://members.calbar.ca.gov/sections/litigation/california-litigation-review/2014/03_appeals-and-writs.html) (link works only for Litigation Section members). Who attended the Dodgers opening game April 6? **David Shain**, **Patti Mann**, **Joshua Burt** and **Paul Zahn**. I guess they didn't have to work that day...



Let the competition begin! I'm betting **Bill Hair** has the lowest bar number of any active attorney in all of Ventura County. Graduated from Hastings and sworn-in on January 6, 1960. State Bar # 30134. You know of anyone lower, a sixer to you. AND no, **Jack Fay** is no longer active ... **Melissa Sayer** has been named among the Top 50 Women in Business on the Central Coast...Farley Cassy Schwartz & Powell is now Schwartz & Powell, A Law Partnership. With the passing of partner **James Farley**, the firm has re-organized and is now located at 1001 Partridge Drive, Suite 105, Ventura. 805.658.8955...

*Steve Henderson has been the Chief Executive Officer of the Ventura County Bar Association and its affiliated organizations since November 1990. Selecting a Cavs v Warriors final was a no-brainer. Henderson has gone door-to-door in the past for the Clintons. He may be reached at [steve@vcba.org](mailto:steve@vcba.org), Twitter at [stevehendo1](https://twitter.com/stevehendo1), FB, LinkedIn or better yet, 650.7599.*



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