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# Travels with Tom, Part 2

*Philip Garrett Panitz*



Last month I wrote about how my travels with my good buddy Tom helped shape my life and led to some of my later success. I conclude the adventures with this

final story.

To make some money during college and to obtain transportation to go home during vacations, Tom and I would scour newspaper ads from around the country to locate someone who wanted their car driven from here to there. We would get paid to drive a car, and hopefully the destination would be closer to where we ultimately wanted to be.

On one such occasion, we responded to an ad from a Mrs. Jones (a made up name, not to protect the innocent but simply because I can't remember her name), who wanted her car driven from Muncie, Indiana to somewhere in New Hampshire. Mrs. Jones was moving to be closer to her daughter, after her husband's recent death. The trip coincided with our spring break at Arizona State, so we were happy to be paid for the privilege of making our way across the country toward our homes in New Jersey. We caught a ride to Chicago, then hitchhiked to Muncie (times were different in the '70s).

**T**he Widow Jones was an elderly, and very meticulous, woman. She was going to pay us \$200 to drive her car, and she wanted it delivered to her address in New Hampshire in exactly one week. To do so, she instructed us, we must drive approximately 150 miles per day and she had plotted on a map what cities along the route we should stop and sleep. We met Mrs. Jones on a Wednesday, so we were due to arrive (per her calculations) in New Hampshire the following Tuesday. She even researched what motels were in these "stop" towns, so we would know exactly where to stay. She then fed us milk and cookies and sent us on our journey, wishing us luck and looking forward to seeing us in a week.

Tom and I had criss-crossed the country many times, sometimes taking as little as two days to make the trip from New Jersey to Arizona. We normally would drive twelve or fourteen hours straight, which the body can handle just fine when you are nineteen or twenty years old. Giving us a week to go from Muncie to New Hampshire was giving us five days of carte blanche with her car. By the way, her car was a 1968 Plymouth Fury Grand Sedan, the automotive equivalent of a Sherman Tank. My grandfather bought my grandmother the very same model, on the theory that it was inevitable she would get into an accident and at least she wouldn't be the one getting killed.

Tom and I put the Widow Jones's trip planner into the glove compartment, and turned the car toward Miami Beach, Florida.

**W**e figured we could get to Miami in a day and a half, and then hang out on the beach for at least two or three days before driving up I-95 in one good solid day. It was a great plan. Plans changed, however, when we reached Daytona Beach. We had never been there before, and we were awestruck by what we saw. The beaches were covered with hot rod cars (cars were actually allowed on the beach) and women with teeny weeny bikinis. All our requirements were met, so the need to go any further was unnecessary. Plus we saved drivetime and would be able to hang out in Daytona longer by not going to Miami. We drove the car onto the beach and commenced the ritual that was spring break. We made friends with a group of women who were camping on the beach in a tent, and they graciously offered us a place to stay for the night after hearing that we intended to sleep in the tank. Life was good.

I remember waking up during the middle of the night upon nature's beckoning, looking out over the dark ocean illuminated by the moon, the waves glistening. I thought how lucky I was to be alive. The beach looked so pristine, clean sand for miles. Then a horrible thought entered my mind, hit me like a lightning bolt, and made me tremble with fear. The beach was clear.

Pristine. Where were the cars?

I ran back to the tent, and asked the girls what happened to all the cars parked on the beach. They laughed and said everyone moved them to avoid high tide; they were moved to parking lots for the night. I looked at Tom, and he looked at me. Did you move the car? Of course we hadn't, nor had we known that we should. We both bolted out of the tent at breakneck speed down to the beach, with the girls following. No cars. No tank. Then, I saw it. Bobbing and weaving like Muhammed Ali, up and down. If that tank had a mind it had definitely decided to head toward Cuba. The tide had lifted it up, and it was moving like an amphibious vehicle, reminding me of pictures of the D-Day landings.

**W**hat could I possibly tell the Widow Jones? That despite her best laid plans and our best intentions, her car had been seized inexplicably by the Bermuda Triangle? I dreaded the call. Luckily, the girls were far more entrepreneurial than Tom or I. They quickly ran tent to tent recruiting the most able bodied men and swimmers, and before long an entire army of people was wading into the shallow and warm Florida waters to retrieve Widow Jones's car. Even more people watched the unfolding spectacle from the safety of the beach. Alas, much to the crowd's pleasure and Tom and my relief, the car was rescued from the murky depths. The girls then took up a collection to have the car cleaned and detailed, to which people gladly contributed in appreciation of the entertainment they had just witnessed.

The next day, after the car was cleaned, Tom and I left for New Hampshire. We had had enough adventure, and we delivered the car to the Widow Jones a day earlier than anticipated. She was extremely appreciative, even giving us a tip.

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# My Quiet Demonstration —

## Or, What's a Nice Republican Girl Doing in a March Like This?

Melissa Hill



I was in Washington, D.C. on April 25<sup>th</sup> for the March for Women's Lives. I wore a Planned Parenthood button and marched, next to Tina Rasnow and her long-time friend Danetta, in

a mile-long route seasoned on the sidelines with a sprinkling of fervent and often angry right-to-lifers.

What was I doing there? It was a question I'd been asking from the moment I accepted Tina's invitation to go. It was, really, a question deferred more than twenty years as I repeatedly dodged taking any solid position on abortion, mentally crossing myself and thanking God I never had to make a personal decision for or against, knowing that if I had been faced with the choice after my divorce in 1981, I would have opted to have one. My financial existence at that time, and the support of my two small children, was precarious. I struggled to earn my B.A. at UCSB and then my J.D. at Davis, holding down outside jobs while I did it. An unexpected pregnancy would have sunk the ship for sure.

**I** continued to question my participation in the March as I traveled from Los Angeles to D.C. It was a difficult trip, starting with a rush to LAX only to have my flight cancelled after we had already boarded. This caused me to miss my connection in Atlanta, and made me the unhappy overnight guest of Delta Airlines. I arrived so late in D.C. I could not accomplish much of what I had planned



to do my first day there. Twice I almost turned back to the quiet embrace of my new home, once when the flight was cancelled in Los Angeles, and once in Atlanta. But I kept on, still ambivalent, yet still needing, somehow, to go.

My trip started, really, on a cool and sunny morning some weeks before, in front of the Ventura County Hall of Justice. Tina and I had just finished the walk we try to take three times a week. I had been telling her about something I saw the night before on the Discovery Channel, a chilling documentary about the treatment of Pakistani women under the Muttahida Majlis-e-Amal (MMA). The MMA, an alliance of six Islamic parties, is a reincarnation of the Taliban, and adheres to similar extreme Islamic teachings. The MMA has caught on strongly in the North-West Frontier Province of Pakistan, and is gaining favor in the cities.

The MMA requires women to wear the burqa, to stay inside their homes (with windows painted to block any view from the outdoors) unless accompanied by a male relative. Like the Taliban, the MMA forbids females to be examined by male doctors, and makes it extremely difficult or impossible for females to obtain any education, let alone a medical degree. No medical degree means no female doctors. No female doctors means no medical care for females.

The MMA favors appointing special officials who rove the streets imposing instant punishment on those found to break medieval Sharia law. This can

include capital punishment on the spot. According to the BBC New World Edition, 20,000 women are held in Pakistani jails for adultery. Please note that Sharia law does not differentiate between adultery and rape. A woman cannot be released unless she finds four Muslim men who will testify on her behalf. (For more on this matter, see 1 November 11, 2003, Pakistani Women's Rights Take Center Stage, by Adnan Adil. On the internet at [http://news.bbc.co.uk/2/hi/south\\_asia/3244725.stm](http://news.bbc.co.uk/2/hi/south_asia/3244725.stm))

I look at my life, and where I've come since those 1981 days of poverty and divorce. I have a good life, a pretty house with pretty furniture and new wood floors, and two grown sons I am proud of. I visit one of these sons at least once a year at his home in Italy. I travel there alone, and I never wear a veil.

When I told Tina about the Discovery



Channel program, I said to her: "Now, Tina, *that's* something I would get out and march for." And Tina said to me: "Come to Washington with us." My inner questioning began.

**O**n the day of the March, I found myself beside a woman, thin and elderly, in a wheel chair. I saw another elderly woman not far ahead, bent over her cane. Earlier we had sat by an old woman on a bench. She was breathing deeply from her inhalers, obviously afflicted with emphysema. All three of these ladies marched, and I admired them for it. I saw hundreds of young women in their teens, twenties, and thirties, and



learned the meaning of the term “third wavers.” I saw as many or more women in their middle age.

There were scores of men, accompanying their wives or girlfriends, or there on their own. (Their motives were irreproachable, with the sole exception of the guy who carried a sign advertising how sensitive and therefore what a good catch he was.)

The mood was generally light, though, interlaced with the occasional tense moment. We marched elbow to elbow, and the sheer numbers of marchers, coupled with the sudden appearance of riot-gear police and the jeering and hollering of the right-to-lifers on the sidewalks, caused some anxiety among the crowd. One man in a maroon shirt walked alongside my section of the March, jabbing his finger at various marchers and shouting something I couldn’t make out. He would turn away, make the Sign of the Cross on himself, then turn back to the column of marchers and start in again.



Most chilling to me was the lineup of men on one street corner, holding huge pictures of aborted fetuses and carrying signs that said “Women need love, not abortion.” One of these guys was in fatigues and military boots. Their women stood in the background.

What does a good Catholic-raised Republican girl do when the right-to-lifers start screaming as she walks by? This girl joined her fellow marchers in the chant that drowned them out: “Choice. Now. Choice. Now. ...” This girl marched into the Mall at the end of the March, sat down on a bench with her friends, and watched for two and a half hours as the column of marchers continued its steady packed flow into the Mall. When

she at last left to go back to her hotel room, the flow of marchers was still coming strong.

It’s also true that this Republican girl could not chant every chant. For example, I could not cry “George Bush has got to go” and would have rather chanted “George Bush’s policy on abortion has got to go,” as ungainly as it would have been. I have an ingrained sense that I must be loyal to my leaders, must salute the chair even when I cannot salute the one sitting in it.

But this ambivalent traveler is changed. Subtly changed, quietly changed. This traveler has come to terms with a question she avoided answering for far too long.

**W**hy did I go to Washington to march elbow-to-elbow with crowds of those normally more liberal than I? I went to Washington because of the woman in the veil who now lives in my head. She peeks out from behind a window painted over by the Taliban and by the MMA.

She reminds me that, though I believe adultery is wrong, I do not believe a woman should be imprisoned for it, and I certainly do not believe she should be imprisoned for being raped.

She reminded me that although I strongly oppose the use of abortion as birth control or as a substitute for sexual accountability and due care, I also believe the government should not be making this

most personal of choices for me, should not be taking away medical decisions that should only be mine.

She whispers to me that every time something or someone takes a whack against women’s freedoms or rights, it bruises me. She reminds me that though my climb up the educational and professional mountain to financial stability



was tough, it still was possible, and that I moreover had an unfettered right to climb that mountain.

The turning point for me was this: though I wobbled for twenty years over the abortion issue, I had the right to have one, and I know I would have exercised that right had I found myself with an unplanned pregnancy.

I had that right all along. And now I have the right to protest any threatened diminution of my right to decide what’s best for me.

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**Melissa Hill** is a writer, and research attorney. Though she often writes a column giving insights to the court, she writes this article in her own voice only. The opinions stated are hers alone. Ms. Hill writes fiction and poetry under the pen name Harley Hill, and has been published in several quality print and electronic literary publications. She is currently completing her first novel. You can read more about her work at [www.harleyhill.org](http://www.harleyhill.org). This article, © 2004 Melissa Hill. All photos for this article, including cover photo, © 2004 M.J.Hill, Harley Hill, and Harley Hill Productions.

# Farm Workers Celebrate Labor Contract with Pictsweet Mushroom Farm

Barbara Macri-Ortiz



On March 26, 2004, an ecstatic group of farm workers, union representatives, and community members gathered together with Arturo Rodriguez, President of the United Farm Workers of America, AFL-CIO (UFW) at the Elks Club in Oxnard to celebrate a monumental victory for the workers at Pictsweet Mushroom Farms in Ventura. Their seventeen-year struggle to secure the protections of a UFW Collective Bargaining Agreement finally paid off after passage of an historic amendment to the Agricultural Labor Relations Act (ALRA) that provided for “mandatory mediation” (i.e. interest arbitration) of certain farm labor disputes.

**T**he Pictsweet workers were instrumental in passage of the legislation. They confronted politicians and campaigned for the law around the state, telling anyone who would listen the story of their struggle, a struggle that made a compelling case for a procedure that would guarantee farm workers a labor agreement, something that for the Pictsweet workers had heretofore only been a hollow and illusory promise of the ALRA. It is fitting and poetic that the Pictsweet workers are the first farm workers in California to benefit under the new law.

I was fortunate to have the honor and privilege to work directly with these workers, serving as UFW local counsel during the last three years of the contract campaign. I represented the Union and the workers at contract negotiations, in hearings before CAL-OSHA, the California Regional Water Quality Control Board, and the Agricultural Labor Relations Board (ALRB), and provided counsel and advice regarding organizing and boycott activities.

As lady luck would have it, I happened to be in the right place at the right time, and was rewarded with an opportunity to map out an organizing, negotiating and legal strategy that would ultimately produce a decent contract for the mushroom workers. The plan was multifaceted and sustained

by a strong consumer boycott and widespread community support. We were up against a giant, United Foods, Inc., a privately held corporation based in Bells, Tennessee, that is not only notorious for its union busting exploits, but has a history of buying union companies, and then reopening them without granting union recognition and without honoring preexisting collective bargaining agreements. This pattern unfolded at the Ventura plant in 1987, as United Foods, aka Pictsweet, purchased the mushroom farm in a bankruptcy sale, refused to honor the existing UFW contract, and tried to erase the memory of twelve years of union representation at the plant.

**A**s Pictsweet would eventually come to appreciate, the farm workers and their Union would not be run out of town. The usual union busting campaign did not take hold. The decertification attempts, the firing of union leader Fidel Andrade, the verbal attacks and abuses heaped on the workers backfired, and left the workers stronger, more united, and resolved to win. The Union, in the nonviolent tradition of Cesar Chavez, fought back at the bargaining table and on multiple fronts, enforcing worker safety and labor laws, advocating enforcement of environmental laws, and promoting the boycott.

The effects of a successful consumer boycott and a string of legal victories were powerful blows - the giant wavered, but it did not fall. The workers hung on and put their hearts and souls into the campaign to convince Governor Davis to sign the bills that Senator John Burton ushered through the legislature. Once the law was secured, we patiently and methodically planned for the new year, and the new law.

Ours would be the first UFW test of the new mediation law that the Pictsweet workers helped to enact. We were in uncharted waters, preparing for a mediation even before the ALRB finalized the regulations that would govern the hearing procedures.

True to form, shortly after the law went into effect, Pictsweet plead poverty. Eight months and several confidentiality agree-

ments later, the Union’s CFO and I spent several days in the Santa Monica offices of Pictsweet’s labor lawyers, pouring over thousands of pages of financial records. The data was eventually fed into a computer and manipulated by our expert CPAs, who armed themselves with evidence to expose the flaws in the company’s self-serving analysis of its financial condition.

**T**he mediation process began with a California Mediation and Conciliation Service panel of nine arbitrators. The parties in turn quickly eliminated the best and the worst candidates, leaving a very experienced, elderly gentleman to conduct the mediation.

The mediation proceeded in two phases. The first phase, informal or “true” mediation, presented an opportunity to educate the mediator and narrow the issues, but both sides knew that resolution at this stage was not in the cards. The mediator’s frustrations surfaced as he realized what the parties already knew. Pondering the deep divide between the parties, he glared across the table and shook his head, sadly declaring the first phase over. The calendars came out and dates were set for the formal hearing.

It was finally time to put on our evidence, after which the mediator, acting as an interest arbitrator, would formulate the terms and conditions that would constitute the parties’ contract. The workers were at the same time excited and scared, optimistic and cynical, overjoyed and skeptical. The struggle was coming to an end. Their fate was now in the mediator’s hands, and he had an ALRB deadline to meet — for better or worse, the parties would have a contract by December 18, 2003 ..... or so we thought.

I would wear two hats at the hearing. As chief negotiator, I would be the Union’s first witness, with the task of costing out the contract and demonstrating to the mediator the reasonableness of each contract clause that remained in dispute. Then I would join UFW Attorney, Thomas Patrick Lynch, on the other side of the table and help present the rest of the Union’s case, which included worker

witnesses as well as experts who were ready to educate the mediator on such things as the high cost of living in Ventura County, the benefits and cost effectiveness of the Farm Workers RFK Medical Plan and the intricacies of the Union's Pension Plan.

I took the witness stand on the morning of November 19, 2003. Practically every question and answer was hotly contested by the company's three attorneys, and as the day wore on, the fireworks between counsel got hotter, so hot that at one point the mediator took the lawyers outside and laid down the law. As a witness, I of course was excluded from this pow wow, and instructed to keep my mouth shut unless and until a question managed to survive the barrage of objections and arguments coming from both sides of the room. That was not an easy order to follow as I had an answer for every tortured objection or misrepresentation.

**B**y late afternoon I was ready to jump out of my chair so I was delighted to surrender it temporarily to a worker so we could utilize the services of the court interpreter. It was refreshing to finally get to act like a lawyer, interrogating a friendly witness and beating down baseless objections. We got the evidence in, the mediator adjourned the hearing for the day, and we were off to prepare our two CPA experts for round two.

The next morning I was back in the witness chair ready to dive into the costing analysis. The company's lawyers were late. The mediator appeared tired and troubled. Finally, Pictsweet's counsel burst into the room, announcing that he had something to tell us. The mediator sat straight up, looked him square in the eye, and firmly stated, "No! I have something to say." Surprised, we all sat at attention on the edge of our chairs, wondering what would happen next, but having no clue as to how unprepared we were for the announcement that followed, or the chain of events that it set in motion:

"I am hereby announcing to the parties that I am resigning as mediator, hearing officer, or whatever is the appropriate title. And I am resigning for personal reasons related to stress. And I am apologetic to the

## Santa Barbara Bank & Trustad

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parties for the inconvenience I have provided them by doing this.”

His words hit us like a ton of bricks. We went off the record, politely thanked the gentleman for his service and reassured him that we all agreed that his health must come first. Exhibits were returned, housekeeping matters addressed, and then the gentleman who we thought had total control and held the workers’ fate in the palm of his hand, politely excused himself and departed.

The atmosphere in the room completely changed from the previous day. Even the company’s lawyer was uncommonly quiet, civil, almost respectful. A passerby could have mistaken us for a grieving family. The plant manager sought refuge in the men’s restroom, and was heard wailing. When the workers heard the news, they looked like they just received word that their closest relative died.

**T**he next three months were pretty bumpy, but somehow everything worked out. A newly appointed mediator brought the parties together and expedited the process. His report established the terms and conditions of the contract. Key provisions include RFK Medical coverage for the entire family paid for by the Company, three modest wage increases during the life of the three year contract, and additional benefit contributions. The workers also won seniority and safety protections on the job, a grievance procedure, paid holidays and vacations, and other benefits and protections. The mediator’s report became a final ALRB Order on February 13, 2004. The workers finally had a contract, retroactive to January 1, 2004, and a new chapter in labor history was complete.

My experience with the Pictsweet workers was challenging, exciting, rewarding, and every bit as satisfying as my most memorable episodes in the farm worker movement, working side-by-side with Cesar Chavez and Dolores Huerta. When people ask me how we pulled off this coup, I pull out a message from a fortune cookie that I’ve been carrying around for a couple of years... “When you gather all

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# Matt Guasco

## Creative Dispute Resolution



# Women's Rights — Necessary Condition of National Development

Stan Hodson



Nowadays when Third-World nations ask what is the single, most important thing they can do to develop themselves for a place in the global markets of the industrialized world, the answer the experts give is: "Educate girls."

We can easily imagine the protest of the business delegation or the government minister, "No, no, no — you misunderstand our question. Of course, educating girls is a fine humanitarian goal but we are asking you how to sustain the changes that will bring us electrical power grids, highway systems, and major facilities for air and sea transport."

"Yes," the answer comes back, "if you want those things, educate your girls along with your boys." [*Engendering Development: Through gender equality in rights, resources, and voice*, World Bank and Oxford Univ. Press, 2001]

For centuries, societies have made sure that young males are trained for engagement in the wider world, and that they are attached through their labor to the welfare of their children and the children of their sisters. That basic channeling of male energy is still at the foundation of group survival, but by itself it cannot initiate — let alone sustain — the peculiar social dynamism that is the essential trait of the developed nations.

## Five-Year Plans Don't Work

From the 1950s well into the 1980s, in hundreds of efforts aimed at helping Third-World nations, the capitalist world promoted massive, centrally-planned projects that would have made Stalin and Mao blush with envy.

A neutral observer could have been forgiven for concluding that the International Monetary Fund and the World Bank were staffed by closet totalitarians. In countries with almost no automobiles, four-lane freeways were put in place — to service airports with no regular flights. Build it and they will come? Yes, perhaps, if one counts ox carts and bicycles as traffic worthy of such infrastructure.

Those projects did not emerge from the social capital of the beneficiary nations. As a consequence the grand projects were not sustainable.

By now the failure of those huge, capital-intensive projects has been established in numerous studies. [*The Elusive Quest for Growth*, MIT Press, 2001] However, where does the emphasis on women's rights come from? It can seem a long stretch from pointing out the inadvisability of building the Aswan Dam, say, to an urgent endorsement of education of girls and women, and the concomitant promotion of their rights.

## A Multiplier & Leading Indicator

It is indeed a stretch of the most fruitful kind to shift focus from building huge civil engineering projects to building widespread civic or social capital in the form of girls' education and women's rights.

This is the stretch that reaches to a leading indicator. Knowing and tracking a leading indicator is pure gold for political economists and scientists alike. And the discovery that girls' education is a leading indicator, and even a multiplier, of economic growth and national development has that conceptual "obviousness" that we associate with scientific breakthroughs.

Consider: girls with education become women who use family planning to keep the size of their families aligned with family resources. That in turn means that the women are healthier and their children are healthier. Furthermore, it means that their children (both boys and girls) are much more likely to go to school themselves. [*The State of the World's Children 2004*, UNICEF, [www.unicef.org](http://www.unicef.org)]

Some observers feel that it is wrong to promote women's education and rights because of their contribution to economic development. Social activists would rather that education for girls was framed solely as a human rights issue; and religious fundamentalists of many persuasions oppose the introduction of an economic perspective into a subject they would rather remained all about Eve, so to speak.

However, human rights include economic rights. Religious fundamentalists (both here in the homeland and abroad) mistake what is peculiar about the secular humanist social order of the developed world when they think it is only about making money. The business of America is business, for example, for reasons that go back to the 17th Century. For Europe the turning point away from religious fundamentalism dates from the Thirty Years War (1618 – 1648).

By the end of that conflict the joint-rule of clerics and generals had been utterly discredited among all sectors of society, the church and the military included. Since that excruciating lesson paid for in hundreds of thousands of deaths, Europe and its colonies have not only practiced separation of church and state; we also practice civilian control of the military.

In the European worldview that emerged by 1648, and within which we still live and make our livings, "secular" doesn't mean "flash and trash." It means "here and now."

## We're All 'feminists' Here

There remain many very good reasons for women and men here in the developed world to continue to press for equal treatment for women, perhaps especially in the workplace.

At the same time, it is heartening that these days when developing countries ask us what we did to become who we are, we point to the importance of being societies where men and women are committed to the central presence of women in public places and in civic space. Compared to many parts of the world, the industrialized nations are all small-f feminists, just as we're all small-d democrats in our parliamentary democracies.

We're living proof that promoting women's rights is a necessary condition of national development.

— : —

**Stan Hodson** works at Garrison Law Corporation, a firm specializing in environmental law and civil litigation.

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your resources together, Goals are accomplished.”

In the Union the key resources have always been the people. I was truly privileged to work with the Pictsweet workers’ bargaining committee, their shop stewards, and the UFW staff, an exceptionally committed group of articulate leaders. All the credit for the ultimate resolution of this labor dispute must be given to this extraordinary team that prevailed because of their boundless energy, nerves of steel, unwavering faith in their cause, and their steadfast commitment to justice for themselves and their families. Once again, the workers have mastered the lessons so skillfully taught by their hero, Cesar Chavez..... ¡SI SE PUEDE Y VIVA LA GENTE!

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# Are You Violating the Labor Code?

## Employers' Legal Advisory

Jeanne Flaherty



Recently a lawsuit was filed in Ventura County alleging that the employer was in violation of certain sections of the Labor Code. This suit appears to have been filed as a result of the California Private Attorneys General Act (otherwise known as the "Bounty Hunter" law). That law (effective in January 2004) allows employees to file lawsuits against their employers based on violations of the Labor Code.

Previously, the employee had to make a claim with the Labor Commissioner and that agency would determine whether to take action against the employer. Importantly, the law provides that the employee who brings the action is entitled to 25% of any penalties assessed against the employer. Additionally, the employer can be liable for the attorneys' fees of the employee.

There are numerous requirements for employers found in the Labor Code. Allegations made in the Ventura County case and other common violations that may be raised by employees include the following:

### **Failure to file the employment application with the Labor Commissioner's office.**

A California employer that has a written application to be completed by applicants must file a copy of that application with the Labor Commissioner's office. While this requirement has been a part of the Labor Code for many years, the Labor Commissioner has not regularly enforced this provision.

### **Failure to pay wages at the appropriate time.**

California law has very stringent requirements on when and how employees are to be paid, including payment to an employee immediately at the time of termination if the employer discharges the employee or an employee quits with 72 hours' notice. Terminated employees must be given all wages due, including accrued vacation pay.

### **Failure to post required notices.**

The current lawsuit claims that the poster required by the Whistleblower Protection Act, which was to be posted as of January 2004 was not posted until February 2004. The plaintiff-employee also claims that the appropriate IWC Order was not posted as required. The Labor Code specifically requires that the IWC Order is to be posted in the building in which the employees are employed. Thus, many employers may need to post multiple copies. The complaint alleges a failure to post the required workers' compensation notice as well. Numerous other posters are required by other federal and state statutes.

### **Failure to meet requirements for meal and rest periods.**

The language regarding the appropriate number, length of time and scheduling of meal breaks and rest periods for employees is virtually identical in all of the IWC Orders, with a few exceptions. Generally, an employee must be given a meal period of at least 30 minutes, after

not more than five hours worked. (In certain instances the meal period can be waived by mutual consent.) Employees must be authorized and permitted to take a rest break every four hours, or major fraction thereof (defined as more than two hours). A failure to provide appropriate meal and rest breaks is a violation of the Labor Code and the employer must pay each employee an additional hour of pay for any day in which the appropriate meal or rest period is not provided.

### **Failure to pay overtime as a result of misclassification of employees as exempt.**

Even though the Department of Labor has recently announced changes in the definition of who qualifies as an exempt employee under *federal* law, California employers must comply with the generally stricter standards of California law. This includes a requirement that the employee is "primarily engaged in" such duties (or closely-related duties) – defined as more than 50% of the time.

**WestGroup  
Gregg Kravitz**

**Requiring an employee or applicant to agree, in writing, to any term or condition known to be prohibited by law.**

The Ventura County complaint alleges that the employer required employees to sign an arbitration agreement in which the employee is responsible for 50% of the arbitration costs, which the plaintiff alleges is illegal under California law. However, the general language of this Labor Code provision could result in numerous other allegations against employers.

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**Jeanne Flaherty** is an attorney and President of Employer's Legal Advisor, Inc., which represents and advises employers on all employment matters. The firm specializes in conducting employment practices compliance reviews and advising employers on day-to-day legal issues in the workplace. (805) 499-2918.

**Sintra Group**

**LawyerReferral**

## Addressing Elder Abuse

*Continued from back cover*

civil fraud prosecution. These types of cases are thoroughly investigated and coordinated by a specially trained consumer fraud investigator.

Elder abuse is not just a criminal justice, healthcare, or legal issue; it is a community problem that demands community action. As professionals serving our clients and community, the bar can make a difference by actively encouraging awareness of the problem in our churches, financial institutions, medical facilities, public agencies and neighborhoods. Only by recognizing and reporting elder abuse can we protect seniors from the spirit-crushing affects of this crime.

For more information or materials about elder abuse, please contact the District Attorney's Office at (805) 654-3622.

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**Greg Totten** is the District Attorney of Ventura County.

# UCSB Extension

## Judicate West



# Notice to All Civil Attorneys

*Hon. William McLafferty, Supervising Civil Department Judge, Santa Barbara County*



Effective March 1, 2004, the following calendar changes will take place in the Civil Division of the Ventura County Superior Court.

**1** All probate, conservatorship and guardianship matters will be set for Thursday morning at 8:30 a.m. in Department 5. Tentatives will be issued for the Thursday calendars on Wednesdays by 3:00 p.m. and posted on the Court's web site. In addition, there will be a call-in service at (805) 568-3942 available on Wednesday afternoon to learn of the tentative decisions. Please note that the web site will have more specifics than the call-in service.

**2** Hearings in probate, conservatorship and guardianship matters will be set for Department 5 by calendar availability.

**3** Department 4 will move its calendar day from Fridays to Wednesdays.

**4** All Departments will follow the following schedule for their respective calendar days:

8:30 a.m.: Case Management

Conferences

9:30 a.m.: Civil Law & Motion

10:30 a.m.: Family Law & Motion

11:30 a.m.: Trial Assignments (Master Calendar Calls)

**5** All civil readiness and settlement conferences (mandatory settlement conferences) for all departments will be set for Fridays at 8:30 a.m. and 1:30 p.m. in Department 5. Settlement Masters will be available to assist in these settlement conferences.

**6** Cases will be reassigned by the departments during the calendar hearings. Limited Jurisdiction cases will be assigned to Department 5 and unlimited civil cases will be assigned to Departments 3, 4 and 6.

**7** Tentative decisions on Law & Motion matters, if any, will be found on the court's web site on the day preceding the calendar call. They will be posted by 3:00 PM and will also be available by telephone at the following numbers:

Department 3: (805) 568-3940

Department 4: (805) 568-3941

Department 5: (805) 568-3942

Department 6: (805) 568-3943

The web site will have more specific information on the tentatives than the call-in service. [www.sbcourts.org](http://www.sbcourts.org)

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M W G J & S Firm

**“Women of Juarez” Ten Years of Abductions and Murders**

Since 1993, more than 500 women have been abducted and murdered in and around Juarez, Mexico. The victims were young women who worked in the *maquillas*, which are assembly plants for export products set up by multinational companies. As of this date, the murders continue and no one has been brought to justice.

Teatro de las Americas, Ventura County’s bilingual theater company, has invited Teatro Sinergia to present “Mujeres de Juárez”, presenting the tragic story of one family and the official indifference they encounter. The play will be presented, one time only, in Spanish with English supertitles, **free of charge**. The play will be performed at Oxnard Performing Arts and Convention Center, 800 Hobson Way, Oxnard, on Sunday, JUNE 6, 2004 at 2:00 p.m. Call for Reservations or information at (805)485-5445, ext. 3. TDLA invites your donations, for the cost of the production. Kindly mail your donations to TDLA, P.O. Box 5184, Oxnard, CA 93031-5184.

**New: Central Coast Chapter of the Federal Bar Association**

The Central Coast Chapter of the Federal Bar Association has formed a committee to establish a federal district court in Santa Barbara. The chapter will participate in selecting lawyer members of the Ninth Circuit Judicial Conference, inform and update chapter members about federal practice through educational events and a column in the Santa Barbara Lawyer, and have a bankruptcy practice committee.

Ventura County attorneys are welcome to join the Central Coast Chapter. Members must belong to the American Bar Association and must pay dues.

Interested attorneys are invited to Chapter board meetings every third Thursday at noon at the offices of Price, Postel & Parma, 200 East Carrillo St., Santa Barbara. Official board elections and a dedication ceremony are scheduled for September 2004.

The Central Coast Chapter will be a “paperless organization”, communicating only through e-mail. For more information about the organization or to sign up to be notified of future events, please contact Gabriele Mezger-Lashly at [gabriele@lascher.com](mailto:gabriele@lascher.com) or board president James E. Herman at [jherman@rppmh.com](mailto:jherman@rppmh.com).

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masthead

**BRATTON MCMORROW**

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# Convincing Clients to Protect Themselves —

## “Loose Lips Sink Ships”

Chuck Sevilla

“If I hadn’t opened my mouth, I wouldn’t be here today.” A friend of mine has a big mouthed bass on his office wall. Under it is a brass plate with the above inscription. Martha Stewart might have profited from these words.

Many clients facing informal interrogations by police, prosecutors, or formal questioning before a grand jury or in trial, believe that if they “take the Fifth” they are tacitly admitting their guilt of a crime. High-profile people especially believe that this assertion will ruin their reputations, business fortunes, or political interests because of the implications of criminal conduct in asserting their constitutional rights. I am sure Martha Stewart would love to reconsider those notions that convinced her to talk, if time only permitted.

We know that innocent people are protected by the Fifth Amendment and we often advise our clients to take the Fifth, not necessarily because they have committed a crime, but because the circumstances they are in (being examined as targets by prosecution agents) are so dangerous to their legal health that the Fifth Amendment must be taken to insure their own words don’t aggravate their condition.

This is sometimes a difficult sell to clients who feel they are innocent of wrongdoing. They may feel telling the truth cannot hurt them. These people should be advised of Martha Stewart’s example. She stands convicted of voluntarily talking to the government to give her side of the case.

Result: indictment, trial and conviction

for giving false statements. But she believed her words were accurate. The government and twelve jurors disagreed. She now faces prison.

Such clients must be informed of the U.S. Supreme Court decision in *Ohio v. Reiner*, 532 U.S. 17 (2001), that made clear that the protection of the Fifth Amendment applies to innocent people. In a unanimous opinion, the Court said, at p. 21: “we have never held, as the Supreme Court of Ohio did, that the privilege is unavailable to those who claim innocence. To the contrary, we have emphasized that one of the Fifth Amendment’s “basic functions . . . is to protect innocent men . . . ‘who otherwise might be ensnared by ambiguous circumstances.’” *Grunewald v. United States*, 353 U.S. 391, 421 (1957) [citation omitted]. In *Grunewald*, we recognized that truthful responses of an innocent witness, as well as those of a wrongdoer, may provide the government with incriminating evidence from the speaker’s own mouth. 353 U.S. at 421-422.”

In *Reiner*, the defendant was charged with the death of his child via “Shaken Baby Syndrome.” He was in the presence of the child just before the child became symptomatic, and under the highly questionable doctrine of SBS, the last person with the child must have done the damage through shaking.

Reiner’s defense was that the babysitter (Ms. Batt) did it. She took the Fifth, was granted transactional immunity, and then testified that she did not shake or

harm the child. She also testified that she had previously asserted the Fifth on advice of counsel even though she was innocent. Reiner was convicted.

On appeal, the Ohio Supreme Court held that Batt had no Fifth Amendment right because she claimed innocence. Therefore, the grant of immunity to her was illegal and prejudicial because the immunity effectively told the jury that she was not the cause of the child’s injury. Reiner’s conviction was reversed. The U.S. Supreme Court then took the case. It held that “the privilege protects the innocent as well as the guilty,” and “[b]ecause the Supreme Court of Ohio mistakenly held that the witness’ assertion of innocence deprived her of her Fifth Amendment privilege against self-incrimination,” its ruling was reversed. (*Id.* at 22.) The Stewart case shows why clients must be informed and persuaded of the dangers in talking when they should not. *Reiner* is a good tool to aid in that effort.

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*Chuck Sevilla* is criminal defense and appellate lawyer in San Diego. This article was prepared for CACJ Nuggets and is reprinted with permission of California Attorneys for Criminal Justice, [CACJMail@cacj.org](mailto:CACJMail@cacj.org) or call CACJ at (916) 448-8868.

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WHALEN BRYANT

## Classified Ads

The Law Library has a list of books up for bid during June. Come in and pick up a copy or call and ask to be put on our mailing list.

### Condo Available

Mammoth Lakes Condo – Awesome FUN. Remodeled Horizons 4 Condo – 2 bed 2 bath. Ask for unit 163, call 760-934-6779.

### Services Offered

Personal Injury, Medical Malpractice, & Product Liability Cases – Referral Fees Paid. Thiele & McGovern – 963-7226.

Two years experience in Immigration Law, certified Notary Public, enthusiastic, hardworking, bilingual (Spanish/English) graduate from the University of Southern California Los Angeles seeks full time/part-time position within all areas of the legal field. Background in various computer programs, basic bookkeeping and knowledge of tax preparation. Ability to work both evenings and weekends if necessary. Please contact Laura Virto at 795-0734 or vl\_lilith@yahoo.com.

Hardworking Boston University School of Law senior looking for a summer clerk/internship position at small to medium firm in Ventura or Los Angeles County. Experience: law journal, civil litigation clinic, and two years in internet industry. Available ASAP. Ken Martin, (617) 417-4900, ken@bu.edu

### Office Space

2 Offices available in professional suite. Receptionist, telephone answering, two conference rooms, copy room, and many other amenities available. Call Sally Tierney at Ron Harrington's office at 658-0998.

Mediation Offices Forming! Ventura County Premier Space Available – Oxnard – Suite 1180 Corner Office Ocean View available in most elegant, high-end professional setting in Morgan Stanley Tower – Suite 1180. Great location for multiple conference room mediations. Full amenities available in full attorney suite. Free rent possible with term lease. Call 988-4848.

### Employment Opportunity

DEFENSE ATTYS - AV-rated firm, located in beautiful Ventura & servicing the greater So. Ca. area needs 2 litigators. Ideal candidates will have about 6 yrs. exp. in either construction defect, land movement, toxic & environmental torts, or in healthcare & medical mal. We need enthusiastic attys who want to earn partnership, while looking for the pleasant life style available in Ventura. We offer salaries competitive with L.A. firms with similar practice areas, bonuses, a full range of benefits, incl. paid gym membership, & a stimulating & congenial work environment. Fax your résumé to COO @ Procter, McCarthy & Slaughter, LLP: 644-2131.

**Legal Secretary** - Law firm in Oxnard Financial Tower seeks civil litigation sec. with solid 5+ yrs. exp. Proficient in WP 10. Organizational skills and attention to detail a must. Cordial work environment and good benefits. Fax résumé to: 988-1937, Attn: Chris or email: [saki@atozlaw.com](mailto:saki@atozlaw.com)

Small Westlake Village law office seeks estate planning associate attorney. Must have two+ years experience in estate planning and trust administration. Benefits. Please fax your résumé with salary requirements to 557-0399.

Busy Thousand Oaks law firm seeks associate attorney for family law, general civil litigation and business practice. Competitive benefits and bonus program. Salary DOE. Van Sickle and Rowley. Fax confidential résumé and/or inquiries to "Hiring Partner" at 495-3605 or e-mail [Diane@vsrlaw.com](mailto:Diane@vsrlaw.com)

PARALEGAL — Busy Thousand Oaks sole practitioner seeking paralegal with experience in probate, trust administration, and estate planning on a full-time or part-time basis. Excellent organizational and people skills a must. Please fax resume to (805) 494-0710.

## T.C. Attorney at Law

## Robert Gardner



## exec's dot...dot...dot...

Steve Henderson, Executive Director

attorney **Barbara Mason** retired May 28. Her catalyst? Her legal secretary of 16 years, **Kathy Weeks**, retired. Barbara plans on spending more time with the grandkids and seeing the world...Ventura County Legal Secretaries Association awarded a \$1,000 scholarship to Yau Lee, a senior at Rio Mesa

High. Lee plans on attending Cal to become a civil rights attorney...

**A** 16-year-old, walking with friends on a summer's day, stopped twice and mooned oncoming traffic on a public street. He was charged with **misdemeanor indecent exposure** under Penal Code section 314. Because the trial court had found he exposed his buttocks only to annoy and affront people, and not to arouse himself or third persons sexually, the court of appeal reversed. *In re Dallas* (2000) 85 Cal.App.4<sup>th</sup> 937. **"I made a serious mistake,"** said Nina Hickson, as she announced her intention to resign from her post as chief juvenile court judge for Georgia's Fulton County. Hickson has been apologizing since Nov. 29, when police discovered her 4-year-old daughter wandering the night streets barefoot. Hickson says she had left the child sleeping at home while she went to reclaim a bag from the airport...

**Judge Tari Cody** was selected as one of the recipients of the Oxnard Knights of Columbus 2004 Public Safety Award...**Judge John Dobroth** was presented with the Wilmont Sweeney Award by the Juvenile Court Judges of California...The **Business Law and Litigation Section** is up-and-running and led by **Dennis LaRochelle**. His core committee includes **Eric Feingold, Joel Mark, Michael Velthoen, Dean Hazard, and Kevin Dorhout**... **The first black justice** appointed to Nevada's Supreme Court was sworn in May 3. Described as a person of integrity who comes to the court "without an

agenda," former district judge Michael Douglas fills the vacancy created by the death of Justice Myron Leavitt...

**V** CBA 1999 president **JoAnn Wedding** says her last day on the job is July 31. After 25 years of lawyering, 14 with **Lindsay Nielson**, and the last several years with **Jeanne McNair**, she will be doing an excessive amount of traveling. JoAnn arranged our on-going partnership with the Ventura County Community Foundation by establishing a Legal Services Fund which has accumulated \$70,000...Speaking of Lindsay, I just learned he was a World War II POW in the Philippines for two years when he was 3 years of age...Email-Of-The-Month belongs to **James Coalwell**: shyster\_me@msn.com...License Plate of the Month: 9.13.69 and driven by **Judge Melinda Johnson**. You'll have to ask her...Recommended Reading: *Eats, Shoots & Leaves*, by Lynne Truss. 209 pp. New York: Gotham Books. \$17.50. A British journalist's clever look at the use and misuse of punctuation marks. #.2 on the NY Times list...

**P**laced on Involuntary Inactive Enrolment by the State Bar on March 19, **Robert Cleary Bradley** (State Bar #41818)...Our ELMO guru and an associate at **Hathaway, Perrett, Webster, et al.**, **Jeanne Kvale**, is an omnipresent mommy for the first time. Nicholas Magnus Kvale weighed nine pounds and 11 ounces and was 20 ° inches in length. Besides being a great Norwegian name, "Magnus" is named after the winner of the four-time world's strongest man competition...

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**Steve Henderson** has been the executive director of the bar association since November 1990 and toughens his journalistic hands by — well, think of Moises Alou. He marvels at the lunacy of our language in which your home can burn up as it burns down, in which you fill in a form by filling it out and in which an alarm goes off by going on.

**"I am not a nut"** stated **Justice Antonin Scalia** in a speech to the Philadelphia Bar Association April 29. He also attacked a series of Supreme Court decisions in the last 40 years. "The court was wrong to say the Constitution requires that lawyers be provided to poor people accused of crimes." Nino, as he is called by friends, is a "textualist and an originalist." Scalia makes more speeches than any of the other justices combined and yet the Supreme Court's website contains 27 speeches by Rehnquist, 11 by Bryer, 5 by Bader and one each by O'Connor and Kennedy. There are none by Scalia. You might recall the recording device incident in April...**The winning oral sex defense.** A Connecticut jury took less than an hour to clear Heather Specyalski of vehicular manslaughter charges. The key to her defense? Attorney Jeremiah Donovan's closing argument, in which he explained that his client could not have been driving at the time of a fatal accident because she had her head bent over her task. A relieved Specyalski observed, "I just want to get back to being a mom"...Deputy Executive Officer of the Superior Court, **Margie Borjon-Miller**, has accepted a position with the Judicial Council Administrative Office working for her old boss **Sheila Gonzalez**. Margie served the court 12 1/2 years...

**A**ttorneys, **Kevin Dorhout and Cheri Kurman** have left their jobs at **NDISW&B**. After nearly four years at the firm, Dorhout is now with **A-Z**. Kurman, past-president of Barristers and with the firm since March '01, has joined **Cunningham & Associates**...Family law

# **ARTIME GROUP**

# Addressing Elder Abuse

Greg Totten, D.A. Ventura County



Jody C. Moore's article, "Elder Abuse in Our County" (March 2004) could not be more timely. According to the 2000 Census, California has the largest senior population

— as much as one million more seniors than Florida, the state with the next largest population.

In Ventura County, our senior population has been steadily increasing and is expected to double over the next decade. From 1990 to 2000, Ventura County's overall population increased 13 percent, but the number of seniors over age 85 increased a staggering 61 percent. With that type of growth, it is reasonable to expect that many of our seniors will spend time in a nursing home or long term care facility.

Sadly, not all senior care facilities provide the quality of care that we expect for our aging parents and grandparents. But little can be done to hold facilities and individuals accountable if instances of elder abuse go unreported. National statistics indicate that as many as 8 out of 10 cases of elder abuse remain hidden. Underreporting is something that all of us in the legal profession can help prevent.

Awareness is the first step in combating these horrendous crimes. Elder abuse takes many forms, some of which may not be obvious. For example, elder neglect may masquerade as a stubborn senior who

**Elder abuse is not just a criminal justice, healthcare, or legal issue; it is a community problem that demands community action. As professionals serving our clients and community, the bar can make a difference by actively encouraging awareness of the problem in our churches, financial institutions, medical facilities, public agencies and neighborhoods.**

refuses care. A family member may report that "mom has always been difficult" and is emaciated and disheveled because she refuses to eat, refuses to bathe, and is adamant about not seeing a doctor.

However, adult children who take on the responsibility of caring for an aging parent have a responsibility to ensure the parent's well-being and safety. Failure to do so can result in criminal liability. What if a grandfather spends his life savings on the nice young lady he recently met? It's his money. Surely he's entitled to spend it as he chooses. True, if he is spending the money of his own free will and not as a result of undue influence. What about the daughter who uses her elderly father's credit cards and writes checks on his account without his consent? It's going to be hers someday anyway, right? Wrong. A child has no right to spend a parent's money without consent. These are just a

few examples of elder abuse that might easily be missed and therefore unreported.

## What We're Doing About It

As District Attorney, I am firmly committed to protecting the rights of our senior citizens. The District Attorney's Office works in partnership with local law enforcement, Adult Protective Services, the Long Term Care Ombudsman, and the Ventura County Financial Abuse Specialist Team ("FAST") to combat elder crime. The District Attorney's Elder Abuse Unit is staffed by a team of dedicated professionals, including a full-time prosecutor, two investigators, two investigative assistants and two victim advocates. This team works seamlessly together to handle elder abuse cases from initial investigation through trial and sentencing.

The prosecutor and investigators vigorously pursue perpetrators of physical and financial crimes against the elderly, seeking significant criminal penalties. Our victim advocate team members actively engage in outreach to the community, providing training and resources aimed at prevention, as well as providing constant reassurance and access to resources throughout an investigation and prosecution.

Finally, in cases involving financial loss that cannot be prosecuted as a criminal offense, the District Attorney's Consumer Protection Unit reviews the facts to determine if there is a basis for

*Continued on page 16*

## CITATIONS

**Ventura County Bar Association**  
 4475 Market Street, Suite B  
 Ventura, California 93003

