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# CITATIONS

MAY - TWO THOUSAND FIVE

## Judge of the Year Ken Riley and Portrait Honoree Bill Peck



DONALD O. HURLEY

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STEVE HENDERSON

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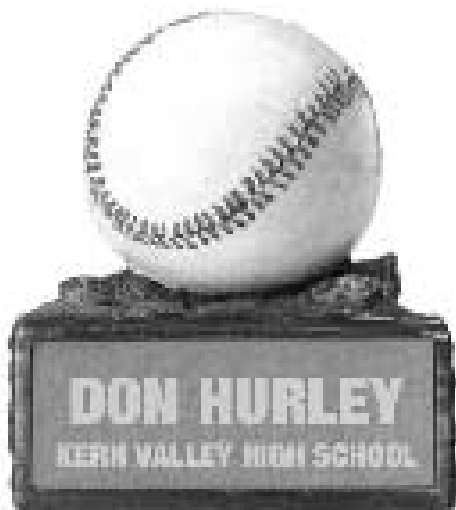
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## PRESIDENT'S MESSAGE: BASEBALL

By Don Hurley



I have never been considered a “gifted athlete,” being hindered by a natural lack of speed and coordination, combined with a propensity for bodily injury. Had I attended almost any high school other than Kern Valley High, with a total student body of only 120, my athletic accomplishments would have been limited to playground basketball and intramural softball.

Sports were a passion at Kern Valley High given the lack of almost any other activities and being isolated from the nearest drive-in or movie theatre by more than fifty miles of winding canyon road. This isolation produced at least two possibly related effects: (1) Everyone was expected to participate in sports; and (2) we had an extremely high teen pregnancy rate.

Baseball was my first experience with team sports at the high school level. While perusing *Popular Science* or *National Geographic* in my last period study hall, I was approached (physically dragged away would be more accurate) by my gym teacher, who also doubled as the football and baseball coach. Without any thought of the need for a tryout, I was given a baseball uniform and marched out to a position in right field. My only qualification, as it turned out, was that I was a male student who was still academically eligible. While I had doubts that Roberto Clemente started his career in this fashion, I viewed this as an opportunity to pose as a “jock” for four years, with all of the associated real and imagined social benefits.

Having successfully made it through my freshman season and a series of one-sided losses, I came to realize that my chances for individual athletic glory were extremely limited and my realistic goal became simply to avoid defeat coupled with humiliation. I eventually switched positions to second base because the coach noted I could actually throw the ball with some speed, albeit not with great accuracy. Secondary benefits of the move were that I could take part in the infield “chatter” and no longer had to make the long trek to and from my outfield position.

Opportunity arrived at the end of my junior year when I idly stepped up to the pitcher’s mound to try to throw a few balls past one of my friends, who was also one of our better hitters. Friendship aside, I performed my best imitation of Nolan Ryan, mixing speed with measured lack-of-control, instilling the necessary doubt in the batter whether the next pitch wouldn’t inadvertently target a vital part of his body. I kept pitching to a few of my braver teammates, managing to use my one and only pitch, the somewhat blazing and erratic fastball, effectively. What I didn’t realize was that the coach was watching and taking notes.

Our next game was at Mojave, home of “White’s Restaurant” and gateway to anyplace other than Mojave. As the visiting team, we suited up in the girls’ locker room, which was always cleaner and smelled better than the boys’ side. Having performed my usual pre-game ten minute ritual of trying to figure out how the leggings should really be worn, I walked out on the field, and started to trot out to my position at second base, only to be intercepted by my coach. He wanted me to pitch that day, apparently lacking any other healthy bodies and having some small degree of misplaced confidence after watching me at batting practice. I had mixed emotions, excited at the opportunity but dreading the distinct possibility of being embarrassed.

There was no cheering crowd that day. It was cold, with the wind blowing off the snow-capped mountains and across the high desert, and the players were either huddled around the bench or shivering in the outfield, hoping

for a quick inning and a quicker game. My first throws were fast and hard, untouchable either because of the speed or the fact that they were placed over the batter’s head. During the first four innings, there were very few solid hits. The opposing team either walked or struck out. But then, in the fifth inning, I felt a sharp pain in my right shoulder, which got dramatically worse with each pitch. The pitches got progressively slower, and I was forced to pitch sidearm.

Any sense of team support after the fifth inning was difficult to discern from my perspective, certainly within the scope of a more conventional baseball game. My centerfielder, sensing hypothermia, was squatting on the ground, attempting to avoid the chilling wind and trusting that the game would hopefully be over before he permanently lost all sensation in his extremities. Rather than yells of “burn it in,” I heard “just get it over the plate.” I sensed that my shortstop, a devout Mormon, was praying for a merciful end. The score mounted against us, with more and more batters being walked or connecting on solid shots to the outfield. After what seemed an eternity, the game eventually ended and we slowly walked off the field, suffering from both the cold and another loss.

I never pitched high school baseball again but did compete and survive in other sports. Lacking any notable success in any of these activities, I’ve never been able to brag about my high school sports career and there are no trophies lying about my house from that period. My fondest memories instead have always been in the friendships formed during that time, which have endured for more than forty years. We may have lost far more than we won at Kern Valley High, but we never considered ourselves losers at the end of the game.

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

## LETTERS TO THE EDITOR:

Dear Editors:

In the April edition of *Citations*, our Executive Director, Steve Henderson, made a plea for donations to a special fund at VCBA on behalf of local attorney Peter Lemmon, whose wife Jacki recently died, leaving him to raise their nine young children alone. Jacki had home-schooled the children; it is difficult to imagine having to deal with the death of a spouse, and at the same time, make emergency arrangements for the education of one's children.

Contributions have not been overwhelming. If there was ever a time to put oneself in the shoes of a colleague, this may be that time.

For those who would like to help, please make checks out to VCBA with "Lemmon Fund" on the memo line. I would ask that those who can, do.

*Terence Geoghegan*

Dear Editors:

I want to commend you on a well put-together CITATIONS.

I would also like to comment on the "Renewing the Supreme Court" article by Professor Carrington. While he raises an interesting question about life appointments to the highest court, the reasons he gives against such appointments seem to be based on unfair stereotypes regarding seniors. Age does not mandate arrogance, stubbornness or rudeness. Many younger folks have these traits, and many seniors do not. Disability should never be a reason to deny someone a job if, with reasonable accommodation, it can be performed.

We have a history of highly respected justices who decided cases with wisdom, clarity and most importantly, judicial independence, well into their senior years. In fact, some justices, notably Justice Blackmun, have evolved their thinking on a number of issues, including capital punishment, during their long tenure on the bench. This evolution was not the result of senility, but of experience.

Professor Carrington believes justices need to "apply sound political judgment to complex public issues." Politics should not play a role

in our judicial system, though sadly they often do. Experience and judicial independence help to ensure that politics not dictate court decisions. Term limits have not proved the case for a better quality legislature in California. There is no reason to believe that automatically removing the most experienced jurists from the Supreme Court simply because of their age and experience will improve the quality of justice.

*Tina Rasnow*

Dear Editors:

I recently attended the April Inns of Court presentation regarding the interesting intricacies of Native American law and the various conflicts that can arise in child custody, marital dissolutions, contract and tort law. As is the tradition of Inns of Court, the presentation was made with tongue placed firmly in cheek. It is a challenge to present such a technical subject in an amusing and engaging fashion. The presenters used Indian props, spoke a bogus Indian pidgen, and engaged in multiple plays on words to keep our attention and perhaps, keep us awake. The jokes were pretty silly. There was not a smidgen of mean-spiritedness or vindictive racism even hinted at in the presentation. It was goofy fun.

At the end of the presentation, a member rose and, quite eloquently and very gently, chastised the group for the insensitivity of the presentation, explaining that she has close relatives of Native American descent. She felt that she would have been embarrassed had they attended. The member observed that the Native Americans were here first, that they were stewards of the environment, that not all Native Americans were as well off as those with casinos. That is when I walked out.

I have learned that expressing strong opposing opinions is not well tolerated at the Inns of Court or anywhere else these days. Just when I start having fun, people get angry. It can breed resentment. I am not one who feels tolerance is a virtue, particularly when that tolerance allows the perpetuating despotism of political correctness. I actually don't believe you are entitled to an uninformed or baseless opinion. I have heard these opinions before and they are often expressed in vociferous indignation.

As I listened to the speaker I asked myself, what is the significance of her assertion that the Native Americans were here first? Why is that important? The more one thinks about it, the less meaningful it is. Just because I find a parking place first does not mean its mine forever. Bigger trucks come by; your car gets towed. You leave for a minute and someone takes it.

The history of the Native American people is fraught with abuse and injustice but hell, the whole world is. Displacement of native peoples has gone on for millennia. As a highland Scot, I am somewhat irritated that England engaged in ethnic cleansing. The English got tired of fighting, so they shipped the highland clans out to Canada, New Zealand and the Appalachian South during the infamous clearances. What's new? The Romans pushed the Celts across Europe; the Celts pushed the Picts out of Scotland; and Normans pushed out the Anglo-Saxons. The English then pushed out the Scots and Irish, who all contributed to the displacement of the Native Americans, as did every known race on the planet that joined the California Gold Rush. How does this make Native Americans special? Should I consider a lawsuit against England for taking my ancestral lands 200 years ago? Should I seek reparations for shipping my clan to the God-forsaken wilderness of Appalachia? Why not?

The other point raised by the speaker was the myth that Native Americans were keepers of the environment. Were they really? Where did that come from? By and large they were subsistence hunters/gatherers that were kept in check by the environment in which they lived. It could just as well be said that the Native Americans were kept in check by the environment as opposed to keeping the environment checked. Starving when the herds ran out was admirable but not the type of environmentalism I would recommend.

And finally, the myth of the noble savage is just that, a myth. Injustices in the far past do not justify preferences in the present.

Over the last several decades, we have let the political correctness imperative creep insidiously into our culture. The hypersensitive among us constantly decry their perception of some slight or perceived disrespect. The Native American is not mythical. The Native American people consist of a complex and



diverse culture but they are just like everyone else, no more special than any other. These generalized misrepresentations of some mythical specialness by people with a political agenda just should not be tolerated. These baseless assertions are just as bigoted as baseless prejudices. Neither should be put up with!! Like everything else in this world, when you scratch the surface of the righteously indignant, you find the true motivation is money and power. Political correctness cloaks the fight for preferences and redistribution of wealth and power with a veneer of moral victimhood.

The politically correct hall monitors of our society have hijacked the language, tell us what and how to think, destroyed humor (except on the internet), punished open discourse, hector us constantly and have pushed sex back to the Victorian age. As a result of this little lecture, the next Inns of Court presentation might be more somber, less humorous, devoid of sexual innuendo, less silly and boring. I guess we should be grateful.

*Michael McQueen*



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## PORTRAIT OF JUDGE BILL PECK



Each year, Ventura County Trial Lawyers honors a retired judge by hanging the judge's portrait in Courtroom 22. Judges Fred Bysshe and David Long introduced this year's honoree, Judge Bill Peck. Judge Bysshe said:

We are gathered here tonight to pay tribute to a quite unusual jurist, a judge known for his reluctance to express his thoughts or opinions – reticent to engage in controversy of any kind and extremely inhibited about exhibiting any quirks and idiosyncracies.

Anyone who thinks that this description accurately describes the judge we are honoring tonight is either at the wrong event, just had their feeding tube removed, or never appeared before Judge Bill Peck.

I don't see anyone getting up and leaving... Apparently, this big crowd is here to honor the real Bill Peck, as well as the real Ken Riley. The legendary Bill Peck: well known on the bench and in the community for never being reluctant to let you know what he is thinking; never being reticent to plunge into controversy and certainly never being inhibited about exposing his unique quirks and idiosyncrasies.

Why is the real Bill Peck such a legendary character?

Because, at least until recently, Bill did not have a clutch to disengage the direct transmission of his thinking to his vocal cords. Because, with passion and a "damn the torpedoes" attitude, Bill has long been engaged in the improvement of both our justice system and community life. And, yes, because Bill's reputation of being a legendary character is due in

no little part because he went directly from pimply puberty to crusty curmudgeon at age 13, and then spent a lifetime developing, enjoying and perfecting his curmudgeonly ways.

Unfortunately, we don't have time for all of you here to tell your favorite Bill Peck story to provide the full dimension to this handsome two-dimensional portrait being presented tonight. The stories – and there must be thousands – would provide us all with insights into this bigger-than-life local legend. Since we don't have time for the stories, Dave Long and I have been asked in the few minutes allotted to us to give you the executive summary of the reasons why Bill is being honored tonight and why he is loved by so many.

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**"The Bar and Bench can be proud to hang this portrait of Bill Peck among the great retired judges."**

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### BILL - THE PERSON

Bill's personal life since he came to Ventura County falls into two clearly defined chapters. *Before Laura* and *after Laura*. Laura, affectionately known as "The Duchess," is the San Andreas Fault in Bill's life.

For 50 years, Bachelor Bill harumphed along in curmudgeonly ways – wearing J.C. Penney suits, colored-drab, traveling on the cheap – and too involved in the affairs of the community to have "an affair," much less time for marriage. A busy caterpillar spinning his cocoon to oblivion...and then Laura Osterle took pity on this poor bristly caterpillar, married him and through tender loving care, brought out the butterfly from the cocoon, bringing color, gaiety and *joie de vivre* to his life.

Laura has brought many changes to Bill's life, including traveling to far away places in grand style and keeping him, with grace and humor, from taking himself too seriously. But because she is smart and knows – as

only a Duchess knows – how to control her empire, Laura didn't tinker with many of Bill's passions and interests.

He still is a voracious reader with a broad range of interests who reads with discrimination, assimilates and remembers broad concepts and minute details with equal ease. Despite the Mount Everest of information ranging from history, culture and the arts to Civil War and railroad trivia, he can instantaneously pull out some obscure fact buried deep in the mountain that he picked up 40 years ago. He's the guy you want on your side in a game of Trivial Pursuit. He still is a collector – he has a fascinating collection of not only the finest clocks and chronometers outside of a museum, but he also has collections ranging from guns and lead soldiers to art and sculpture.

And most importantly, Laura did not interfere with Bill's special ability to be a good friend – he has kept his friends, constantly developed new friends and even turned his old enemies into new friends.

### BILL – THE COMMUNITY LEADER

Maybe it was because Bill the Bachelor had the unmet need for children until he married Laura – and she gave him two beloved children he now considers his own – that he worked so hard for children in the early years serving on the Ventura Unified School District Board of Education from 1969-1979, serving as Board President in 1972, 1973 and 1977, and also serving on countless community boards, building the cultural infrastructure of our community and serving the unmet needs of children.

His contributions did not go unrecognized. He was awarded *Citizen of the Year* in 1983 and the *Petit Award for Community Service* by the Ventura Chamber of Commerce in 1980.

### BILL - THE TRIAL LAWYER

Being a trial lawyer is challenging, interesting, exciting, tedious, a lot of hard work, and always a bit scary — particularly when you get the call from the court that you are to report to the court and begin trial on that case that you were sure was going to settle – but scary most particularly when it is your very first

trial. Let me close by briefly telling you about Bill's first trial, because it involves others you know and teaches us why we are so blessed to serve the justice system in Ventura County.

Bill Peck, just out of Boalt, was hired by the District Attorney's office and his first trial was to prosecute a DUI in Fillmore. (This was in the days of Justice Courts). The defense attorney, a young Steve Stone, just out of Hastings and recently hired by famed Santa Paula attorney, Ed Beach, was the defense attorney. Ed came with Steve to the trial to see how his young protégé would do and to provide assistance when needed.

Ed Beach sat in the back of the courtroom helping his new hire, passing notes up to Steve. As Bill tells the story, it didn't take long for Ed to realize that Bill needed as much help as Steve – so Ed started passing notes up to Bill! Steve says there were two lessons which came out of that trial – neither of which Bill learned: 1) know when to keep your mouth shut and 2) never wear a bow tie in Fillmore.

### JUSTICE BEACH'S BIGGER LESSON

But, the bigger lesson for all of us is the one Justice Beach taught us over 40 years ago in his deciding to help Bill: that all of you here tonight are engaged in a truly honorable profession; that you must treat each other at all times with courtesy and respect – and that as professional colleagues (not just adversaries), you must not forget that – even in the heat of battle – the goal is not winning at any cost.

In this time when the legal profession – lawyers and judges – are under attack, the Bar and Bench can be proud to hang this portrait of Bill Peck among the great retired judges who have given so unselfishly to the community and the profession, who have provided an example to the community of the finest attributes of a lawyer and a judge, and whom they can be proud to call one of their own.

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## Ken Riley is Judge (and nice guy) of the Year



*Judge Brian Back, who was named Judge of the Year for 2004 by the Ventura County Trial Lawyers, introduced the winner of that honor for 2005, Judge Ken Riley. This was the first year the nominee was announced before the dinner. Judge Back said:*

Thank you, again, for awarding me the honor last year. I hope you know, I think you do, that the judges value and appreciate the award very sincerely. Certainly we all – attorneys, judges, and any working stiff – like to receive affirmation from people we respect regarding our job performance, and it is particularly satisfying to receive that affirmation from VCTLA. So on behalf of all of the judges, please know that this award is very special.

But I do have just one little bone to pick: OK, so big deal, last year I'm like the stealth-VCTLA judge of the year... in fact all of the prior recipients labored under a cloak of secrecy such that we don't still know if we are permitted to tell anybody that we even got the award!! My wife still doesn't know, and my kids cry every night just hoping to hear that one year I might have received the award. And then *this* year, wellllllll... you go out and tell the whole damn world that Ken RILEY is the Judge of the Year!

Ken Riley...I mean, who is this guy any way? Ken reported for his first day on the job at the D.A.'s office, and at that time the D.A. had offices in Ventura and Oxnard. Upon arriving in Ventura, he was told that he had been assigned to the Oxnard office and that he should report there forthwith. He did. He showed up in Oxnard, found the fellow in charge, and announced that he was showing up for his assignment. The fellow in charge inquired, "Who are you?", apparently having no idea that a new attorney was showing up and

having no idea who Ken Riley was. The fellow in charge was (now Judge) Barry Klopfer.

So who is this guy? It's difficult, but I'm going to try to describe Ken Riley for you. Is he a guy you can put your trust in? Hey... before he was an attorney he worked for the IRS. I ask you, can you put your trust in this guy? But I digress... let's get back to who he is. How about as a judge? Has he distinguished himself as a judge so that we can know who he is?

No!! For goodness' sake, do you know that there are *two* Judge Rileys in the county? Yes, it's true. It's hard to even figure out which one he is! So even as a judge he is extremely difficult to identify. OK, forget who he is, let's try another approach.

Are there any funny stories we can tell about him? Well, I did some digging. I dug this way, that way, I dug shallow, and I dug deep...I developed calluses on my hands...and then I went to a good buddy of Judge Riley's, Judge Toy White. I know that Toy would provide me enough material to go on here for half of the night!! So this is what I got...He and Becky enjoy camping, they are big time motorhomers...So much for stories.

And then there is man's best friend. This boy likes dogs. This boy has six quadzillion dogs (or maybe seven). This boy has rescued more than all of us in this room, combined, are ever going to own!!

But he is a judge. He is the presiding judge of the criminal court. So, is he wise? YES. Is he fair? YES. Is he compassionate and does he deeply care about the people who came before him? YES. Is he a hard worker? YES.

We in the courthouse like someone like Judge Riley to handle those pesky little matters that come along...you know, like *Luster*...like *Sanchez*. And to handle those matters, as non-controversial and non-newsworthy as they were, with an incredible amount of professionalism.

And then there is Department 14, the master criminal calendar courtroom, where everyday 60-70 cases show up "ready for trial." And every day some of those cases are "last day" cases...they've got to start that jury trial right now or somebody's speedy trial rights might require the defendant to be released...Now, if in the courthouse you've got two capital cases going on for weeks and months, and you've got

a couple of murder trials waiting in the wings... and you've got other judges doing their assigned courtrooms (oh, and by the way, when you are doing this in a county whose population keeps growing and which is always in need of additional judges which are theoretically allotted to us in the wider scheme of things). Well, you've got to be pretty cool under fire to make it all work. As the presiding judge of criminal, Ken makes it all work.

And cool? This guy is the coolest. Now I've talked about wise, fair, compassionate, hard-working...all those attributes that we all want a judge to have...and Ken possesses all of these attributes.

And then there is one other attribute important for a judge to have. I understood this when I was practicing as an attorney, and I know that many of you feel the same way. Since taking the bench I appreciate it even more. That is judicial temperament...appropriate judicial temperament. Ken exudes appropriate judicial temperament. This is who Ken Riley is as a judge: If we had one of those Jenny Commission assessments in front of us right now, Ken would score the highest in every category.

And as a person? Well, that's the best part. I heard it time after time from our colleagues: Ken is a really nice guy, truly a really nice guy.

And speaking of colleagues, I have one additional bone to pick...with the other Judge Riley. (Becky couldn't be here tonight because of a family issue out of state, but she is certainly here in spirit.) About nine or ten years ago an opening came up on the local bench and the Governor was going to make the appointment. And then Becky snatched it right out from under my nose. Well, a couple of weeks after the theft, I was in Simi Valley making an appearance before the more honorable Judge Riley, Ken Riley. My case was the last one on the calendar, and when it was done, Ken got off the bench, came down to me, and said something along these lines: "I know you must have been disappointed, but I hope you keep your name in and push hard for an appointment. I would be proud to have you as a colleague."

I've told Ken before that those words were very special to me...I mean holy cow, this is a nice guy!! And I am proud to have him as a colleague, and I am happy to introduce you to Ken Riley, JUDGE OF THE YEAR.



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# The Pro Per Attorney's Attorneys Fees

By Kathy Bower

Will the court award attorneys fees to a prevailing pro per attorney? Probably not where the fees are based on contractual or discovery code provisions. The pro per attorney may have a better chance when it comes to sanctions and SLAPP suits.

## Contractual Fees

Lawyers representing themselves in cases involving contractual fees cannot recover attorney's fees as the prevailing party. *Trope v. Katz* (1995) 11 Cal.4th 274. To "incur" legal fees means to become liable, i.e., to become obligated to pay *Id.* at 280. Thus, an attorney litigating in propria persona cannot be said to "incur" compensation for lost time and lost business opportunities. *Id.* at 280. The Supreme Court commented that to hold otherwise would result in disparate treatment between lawyer and non-lawyer litigants. *Id.* at 285.

Judicial gloss has been applied to *Trope*. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084 held that a corporation represented by in-house counsel could recover attorney fees under Civil Code section 1717. The court compared the duties of counsel working for a corporation in-house to those of private counsel engaged with respect to a specific matter, and concluded: "Both... provide equivalent legal services." Arguably, an attorney representing him or herself pro per is providing equivalent legal services to retained counsel, be it outside or in-house counsel. The obvious distinction would seem to be that the corporation pays its in-house counsel. Interestingly, however, the *Drexler* court did not limit compensation to the amount actually incurred but allowed the corporation to recover fees based on an hourly market rate for attorneys, rather than the actual costs to the corporation of counsel's salary. *Drexler* at 204.

Taking *Drexler* a step further, an attorney represented by other members of that attorney's firm can also recover attorney fees that were "incurred." *Gilbert v. Master Washer and Stamping Co., Inc.* (2001) 87 Cal.App.4th 212. The *Gilbert* court found that either the represented attorney will experience a reduced draw from the partnership or absorb a share of the reduction in other income the firm experiences because of the time spent on

the case. *Id.* at 221. Thus, the economic detriment is caused by others working on the attorney's behalf. Yet this analysis does not extend to a pro per attorney practicing as an LLC who will similarly experience a reduced income.

## Discovery Act

Under the Civil Discovery Act (CCP § 2016, *et seq.*), a prevailing party on a discovery motion "shall be" awarded monetary sanctions, which include attorney fees. Code of Civ. Proc. § 2023(b)(1). In *Argaman v. Ratan* (1999) 73 Cal.App.4th 1173, 1179, a case from the Second District, the court applied the rationale of *Trope* (that the pro per attorney does not "incur" attorney fees) to the language of section 2023(b)(1), and denied sanctions based on compensation for the time and effort spent by a self-represented attorney who successfully prevailed on a discovery dispute, on the theory that the pro per attorney does not "incur" fees. *Id.* at 1180. A subsequent Second District case reached a similar conclusion. *Kravitz v. Superior Court* (2001) 91 Cal.App.4th 1015, 1019.

## Sanctions

A separate line of cases, by contrast, allows pro per attorneys to recover attorney fees as sanctions. Both *LaBorde v. Aronson* (2001) 92 Cal.App.4th 459 (attorney's fees awarded as sanctions to pro per attorney under CCP § 128.7) and *Abandonato v. Coldren* (1995) 41 Cal.App.4th 264, 268-69 (nothing oppressive or one-sided in awarding attorney fees under CCP § 128.5 to an attorney who litigates in propria persona), which came out of the Fourth District, Division 3, distinguished *Trope* and declined to follow it. The *LaBorde* court observed: "If the point of these statutes is to deter bad faith tactics and frivolous litigation, it makes no sense to declare such tactics acceptable against attorneys or non-attorneys representing themselves in such matters." *LaBorde* at 469. Of course, this same observation could be made about sanctions for the misuse and/or abuse of discovery procedures.

## SLAPP Suits

Code of Civil Procedure section 425.16(c) provides in relevant part, "a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs." In *Dowling v. Zimmerman* (2001) 85 Cal.App.4th 1400, 1422-25, the plaintiff landlord sued his tenants' attorney, who appeared pro per. The pro per attorney, however, retained counsel, a SLAPP specialist, to handle her motion to strike. She prevailed. The court concluded that a defendant who appeared in a SLAPP action in propria persona and later retained specially appearing counsel to bring a motion to strike under section 425.16 was entitled to recover an award of reasonable attorney fees under the mandatory provisions of subdivision (c). The court reasoned that section 425.16 was enacted to deter and prevent SLAPP suits and, to prevail on a motion to strike under section 425.16, a SLAPP defendant ordinarily must have competent legal representation, regardless of whether the defendant is an attorney or whether the defendant initially appears in the action in propria persona. *Id.*

The *Dowling* court's reasoning could possibly apply to a pro per SLAPP "specialist" who prevails on a motion to strike without retaining additional counsel, since such an award fulfills the policy objective behind the statute. Although there is no still-published case directly on point, a recent SLAPP case pending before the California Supreme Court casts doubt on the viability of this argument. In *Soukup v. Stock*, No. S126864, the Court of Appeal held based on *Trope*, that "attorney fees" are fees charged the client by the attorney, and that the pro per attorney therefore cannot recover fees under CCP § 425.16(c)(1).

*Kathy Bower has been a research attorney for both state and federal courts.*

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## EAR TO THE WALL...

Prospective jurors can now access the Internet from their personal notebook computers while seated in the Jury Assembly Room at the Hall of Justice in Ventura. Wireless technology was recently installed allowing up to 20 users to be online at the same time. Written instructions on connecting to the network and the security key are available from Jury Services staff. The small office/home office (SOHO) router supports Wireless-B (802.11b) and Wireless-G (802.11g) standards. For security purposes, all wireless transmissions are encrypted. Signal range is limited to the Jury Assembly Room. Connections automatically expire after eight hours. Traditional Internet access and other conveniences are still available to prospective jurors in the court's Juror Business Center, which is equipped with individual workstations, telephones, computers with internet access, and photocopy and fax machines.

**June Hilton**, Director of Administration at Ferguson, Case, Orr, Paterson & Cunningham LLP, has been elected to the Board of Directors of the Greater Los Angeles Chapter of the Association of Legal Administrators. This is the third largest chapter in the nation, and a valuable source of information to law firms, managing partners, vendors and administrators. It has an outstanding record for its volunteer work in Community Outreach Programs.

In July of 2004, **Barbara Taaff** joined **Kenneth E. Devore & Associates** as an associate attorney. Barbara previously worked as a research attorney for the Los Angeles County Superior Court, in addition to practicing in the private sector. She has experience in the areas of estate planning, probate and trust administration, conservatorships, and elder law. The firm has moved to larger quarters at 31355 Oak Crest Drive, Suite 250, Westlake Village, telephone (818) 338-3252; fax (818) 338-3287, website [www.trustplanner.net](http://www.trustplanner.net). The firm continues to focus in the areas of estate planning, probate and trust administration, conservatorships, and elder law.

**Nordman, Cormany, Hair & Compton** was voted Top Favorite law firm in the East County by the Ventura County Star, and a favorite by West Ventura County readers. The Ventura County Star has been recognizing businesses with Reader's Choice Awards for the past 10 years.

Upon her retirement from the California Court of Appeal, **Justice Margaret M. Grignon** has joined ARC (Alternative Resolution Centers).

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# MOCK TRIAL

In February, over 500 kids from 21 high schools competed in the Ventura County Mock Trial Competition. 23 judges and 105 attorney scorers awarded La Reina High School top honors. Coordinators Judge Brian Back and Kaaren Valdez thank everyone involved with the program. (As usual, the volunteers thank Kaaren for her excellent home-made cookies).

## Students Learn Law Through Mock Trial

*By Hannah Pitts*

The studying, practices, and scrimmages of many months accumulated for Ventura Mock Trial students the week of February 28. For three nights, twenty-one teams from high schools across the county competed to be named to winner of the county, moving on to the state competition, which took place March 18 through 20 in Riverside. All teams competed the first two nights, while the four teams that made the finals, Agoura, Camarillo, La Reina, and Westlake, competed Wednesday, March 2.

This year's fictional case concerned drag racing. The defendant Darien Kendall was charged with vehicular manslaughter, participating in an illegal speed contest, and violating a city ordinance. Jeff Gurrola, a senior and defense attorney, commented, "Sometimes the cases are easier for the prosecution to prove, but this year it was pretty even for both sides. I thought the case was good because it was one of the more challenging cases I've seen."

The city ordinance prohibited residents from having a racing club sticker on their window and "knowingly and purposely" congregating with a member of a racing club. In the pre-trial motion part of the rounds, both prosecution

and defense counsel argued the ordinance's constitutionality. Pre-trial motions attorney Ashley Calhoun commented, "We had to argue whether it was too vague and whether the ordinance violated the First Amendment rights of freedom of speech and peaceful assembly." Occasionally, the judge would interrupt counsel for clarification or other questions.

Team members also participated as witnesses for both sides. The witnesses were a combination of eyewitnesses, law enforcement, and experts. The variety of roles offered students different opportunities to show their talent. Witness Mark Gonzales elaborated, "I got to be the defense expert. Some people play the experts really dry, but I tried to give the character more life—while still keeping the facts straight." Possibly one of the most difficult parts of being a witness is balancing the details of creating a character, with being able to answer questions accurately. If a witness has great energy and presence, but can't remember the facts, then that witness will score poorly.

La Reina competed in the State Finals, representing Ventura County for the tenth time in twelve years. Newcomer Stephanie Tardif commented, "This year was my first year, and even though my team didn't win the competition, I'm excited for next year's case. I hope it's a good one!" With students anticipating the competition a year in advance, next year's competition is guaranteed to be a good one.

*Hannah Pitts is a high school student.*

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## Pro Bono Corner

By Verna Kagan  
 VLSP Senior Emeritus Attorney

### Attorneys of the Month



Susan Ratzkin

Last year's pro-bono award winner, Susan continues to accept pro-bono matters on a regular basis. It appears that she has handled three matters recently involving jurisdiction in other states. All three have been demanding of her time both in research and court appearances. Thank you, Susan for all your hard work. Pro bono services would not be the same without you.



Harveen (Beena) Simpkins

Beena accepted a pro bono matter recently before we even had the opportunity to ask her. This was a child custody move away matter, an area of the law that is in a great deal of flux. Beena used her negotiating skills to come up with a result whereby the minor will have frequent and continuing contact with both parents. Thus the child is the real winner. Thank you, Beena, for the efforts you have contributed to pro-bono matters.

## Client Letter to VLSP

Dear Mrs. Kagan:

Recently I contacted the Ventura County Bar Association's Volunteer Lawyers Services. Your office located a private lawyer to assist me in my legal matter. Mr. Daniel Palay treated me with utmost respect, he was very personable, and we even shared a cup of flavored coffee as we discussed my case. I know that I was truly blessed by your office and the lawyers who volunteer their time to low-income individuals and families. I am deeply indebted to you and would not hesitate to refer the Ventura County Bar Association's Volunteer Lawyers Services to my family and friends. You are to be commended for your outstanding community services to low-income and underprivileged patrons. Thanks Much.

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## Fee Cap Initiative Withdrawn

By David L. Shain

A fee initiative which would have placed severe limitations on plaintiff attorney's fees has been withdrawn by its sponsor, PhRMA (Pharmaceutical Research and Manufacturers Association), following negotiations with the Consumer Attorneys of California (CAOC). The initiative would have limited attorney's fees in personal injury, wrongful death, or other tort claims, to 20% of net recovery. Referral fees would have been banned altogether. Had the appropriate signatures been collected, the matter would have appeared on either a fall special election ballot or the June 2006 ballot. It appears that PhRMA was under the mistaken impression that CAOC was behind pharmacy discount initiatives prepared by various unions and consumer groups.

However, the coast is not clear. It is a virtual certainty that another initiative is in the works for the June 2006 ballot, sponsored by other "tort reform" advocates. It may take the form of another fee cap or it could be a "PICRA" initiative, which would extend MICRA limitations to all personal injury and wrongful death actions. MICRA establishes

fee limitations and places a limit of \$250,000 for non-economic damages in medical malpractice cases.

The threat of these initiatives should be of great concern to all attorneys. The contingency fee provides access to the legal system for injured persons who could not otherwise afford to hire an attorney. Should a fee limitation initiative become law, the field of competent personal injury attorneys will be substantially narrowed and will effectively limit the ability of poor, or even middle class people to seek compensation for their injuries or for the loss of a loved one.

Certainly, placing artificial limits on non-economic recovery would be inherently unjust. Trial lawyers trust and honor our civil jury system. Wild claims of the prevalence of so-called "frivolous" lawsuits are unwarranted and often based on dubious "anecdotal" evidence. In truth, most tort lawyers avoid cases they perceive to be non-meritorious like the plague! Non-meritorious cases do not typically produce successful results; the

contingency attorney is not interested in donating his or her time. In the rare instances where a jury verdict may be excessive, the court is almost certain to exercise its powers to set aside that judgment.

The PhRMA initiative was a wake-up call. It may well prove to have been beneficial in the long run, if it serves to educate and mobilize members of our profession to oppose such attempts to limit or eliminate access to competent attorneys. We perform a service when we speak to our family, friends, and acquaintances about the significance of these proposed measures. If the public truly understands the ramifications of these initiatives, they will not succeed.

*David L. Shain is Vice President and President-Elect of the Ventura County Trial Lawyers Association.*

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### MEDICAL MALPRACTICE

Tuesdays (5 sessions) May 24-June 21 6:30-9:30 p.m.  
Fee: \$325 Up to 13.25 MCLE credits  
An overview of California medical malpractice law from the Medical Injury Compensation Reform Act of 1975 (MICRA) to the present. Topics include informed consent, agency liability, immunities, standards of care, expert witness, general and punitive damages, attorney fees, periodic payments, collateral source rule, and arbitration and mediation.  
Instructor: Marvin Bauer, Bauer, Harris, Clinkenbeard & Ramsey, Santa Barbara (Mr. Bauer specializes in Medical Malpractice cases)

### LEGAL MALPRACTICE

Tuesdays (5 sessions) June 25-July 26 6:30-9:30 p.m.  
Fee: \$325 Up to 13.25 MCLE credits  
An overview of California legal malpractice law. The course addresses general concepts of legal malpractice in civil and criminal cases including identification of high risk areas of practice, most frequent areas of errors or omissions, correlation between malpractice claims and ethical violations, calendaring and file management, client communications, legal malpractice insurance protection and claims reporting.  
Instructor: William Flahavan, Attorney at Law, Tarzana (Mr. Flahavan is the co-author of California Practice Guide, Personal Injury)

### IMMIGRATION

Wednesdays (5 sessions) June 1-June 29 6:30-9:30 p.m.  
Fee: \$325 Up to 13.25 MCLE credits  
This course provides an overview of immigration law and practice.  
Instructor: Abbe Kingston, Kingston, Martnez & Hogan, Santa Barbara (Mr. Kingston specializes in Immigration Law)

### MISDEMEANOR CRIMINAL PRACTICE

Wednesdays (10 sessions) May 25-July 27 6:30-9:30 p.m.  
Fee: \$650 Up to 26.5 MCLE credits  
This class will cover the practices and procedures necessary to prosecute or defend common misdemeanor charges including DUI, theft, drug, assault and domestic violence allegations. Topics include pre-filing procedures and negotiations, arraignments, common motions, investigation and discovery, diversion and treatment options, trial and sentencing.  
Instructors: Jeff Chambliss/Josh Webb, (Mr. Chambliss is a Deputy Public Defender, Mr. Webb is a Deputy District Attorney, Santa Barbara County)

### INTELLECTUAL PROPERTY

Thursdays (10 sessions) May 28-July 28 6:30-9:30 p.m.  
Fee: \$650 Up to 26.5 MCLE credits  
A general introduction to the law of copyright, trademarks, patents, and trade secrets. Areas covered include which law applies to particular types of property; the legal rights of authors, designers, inventors and owners of such property and the competing rights of others to use their ideas; and an overview of intellectual property litigation.  
Instructor: Karl Zani, Attorney at Law, Santa Barbara

### ESTATE PLANNING

Thursdays (10 sessions) May 26-July 28 6:30-9:30 p.m.  
Fee: \$650 Up to 26.5 MCLE credits  
This course covers the basic principles of estate planning, including an overview of applicable tax rules.  
Instructor: Lori Lewis, Miller & Henzell, Santa Barbara (Ms. Lewis is a certified specialist in Estate Planning)

### ALTERNATIVE DISPUTE RESOLUTION

Mondays (10 sessions) May 23-Aug 1 6:30-9:30 p.m.  
Fee: \$650 Up to 26.5 MCLE credits  
A survey course on alternative dispute resolution mechanisms. Topics include negotiation, mediation, arbitration and other trial substitutes.  
Instructor: Stanley Roden, Attorney at Law, Arbitrator & Mediator, Santa Barbara

### BANKRUPTCY

Mondays (10 sessions) May 23-Aug 1 6:30-9:30 p.m.  
Fee: \$650 Up to 26.5 MCLE credits  
This course explores state law governing debtor-creditor relations and federal bankruptcy law.  
Instructor: Daniel Higson, Crook, Higson & Kurta, Ventura (Mr. Higson specializes in Bankruptcy law)

### FAMILY LAW

Tuesdays (10 sessions) May 24-July 26 6:30-9:30 p.m.  
Fee: \$650 Up to 26.5 MCLE credits  
Family Law focuses on the dissolution process, including mediation, resolution of custody and visitation disputes, child and spousal support, property division, and attorney fees. Emphasis is on local court practices and forms.  
Instructor: Jo Ann Johnson, Attorney at Law (Ms. Johnson is a Family Law Facilitator with the Ventura County Superior Court)

### LAW PRACTICE MANAGEMENT

Wednesdays (5 sessions) May 25-June 22 5:30-9:30 p.m.  
Fee: \$325 Up to 13.25 MCLE credits  
This course surveys fundamental aspects of law practice management, including: basic principals of bookkeeping and accounting, fee agreements and client trust accounts, document control, legal technology, and support staff management.  
Instructor: Robert Wright, Attorney at Law, Ventura

### MUNICIPAL LAW

Thursdays (10 sessions) May 26-July 28 6:30-9:30 p.m.  
Fee: \$650 Up to 26.5 MCLE credits  
A survey course covering common issues in public entity law. Relevant constitutional principles are also considered. Issues covered include city and county organization, preemption and relationships with state and Federal Government, judicial review of local entity decisions, drafting of ordinances and legislation, public employment law, public tort and civil rights liability, open meeting laws (Brown Act), conflicts of interest and other public sector ethical issues.  
Instructor: David Hirsch, City Attorney, Simi Valley

### STREET LAW

Saturdays (5 sessions) July 2-July 30\* 9:00 am-12:00 p.m.  
Fee: \$325 Up to 13.25 MCLE credits  
Street Law is a nationally recognized and supported program designed to educate teenagers about their legal rights and responsibilities. Areas covered consist of contracts, housing law, and criminal law as it affects the youth in our community.  
Instructor: Jody Kaufman, Attorney at Law, Santa Barbara (Ms. Kaufman is a co-founder of the Santa Barbara Teen Legal Clinic)

**\*PLEASE NOTE CHANGE OF CLASS SCHEDULE**

For more information or to enroll, please call Ventura College of Law (805) 658-0511 or e-mail [vc@venturalaw.edu](mailto:vc@venturalaw.edu). Space is limited.  
State Bar members may earn participatory MCLE credit by completing a law school course as an enrolled auditor.  
(MCLE Rules and Regulations, section 4.1.4). Student and specialty credit is available for some courses.



## CLASSIFIEDS

### Services Offered

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Ventura native and new UC Hastings grad seeks full-time position beginning in August. Experience in election law (currently clerking for The Sutton Law Firm in San Francisco), bankruptcy (extern, U.S. Bankruptcy Court), and administrative matters (extern, California Office of Administrative Hearings). Journal editor (Articles Editor, HICLR). Education: J.D., UC Hastings (2005); B.A., Claremont McKenna College (2000, cum laude). Please email for résumé and writing samples: ereed27@hotmail.com.

Experienced Workers' Compensation attorney available for appearances, depositions, physician cross examinations and vacation coverage. Certified Specialist in Workers' Compensation Law, California State Bar. 15 years' experience. Reasonable Rates. Brian D. Watnick, Attorney at Law. 290 Maple Court, Suite 118, Ventura, CA 93003 (805)340-2282; fax (805) 677-0615. BrianWatnick@hotmail.com

First Year Law Student Seeking Summer Law Clerk/Internship Opportunity in VTA, SB or LA County. Available 6/1 through 8/1, F/T or P/T. Interested in any legal field, especially criminal law. Graduated from UCSB with a degree in sociology and currently attend Golden Gate University School of Law. My background is in Worker's Compensation, General Liability and Subrogation insurance claims. For a complete résumé, please contact Kristina Wenzel at (415) 567-5514 or email me at kmariewenzel-lawschool@yahoo.com

UC Berkeley undergraduate studying environmental economics & policy, with a goal of practicing environmental law, would like to intern for a local lawyer during my summer break. Enthusiastic, intelligent, and dedicated. Please contact: winonanash@gmail.com

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Attorney in Brazil -- Took the Feb. '05 California Bar exam, seeks a challenging position as a legal assistant. Portuguese is her first language, can read and communicate very well in Spanish. Worked for the Brazilian Court of Appeals, Third Circuit for ten years, seven of them as a legal assistant. Email sandrabel@yahoo.com or call (805) 278-1752.

### Employment Opportunities

General counsel, Ventura Unified School District; \$95,000-\$107,000 DOQ plus full benefits; full-time 12 month. Must have exp. with school law. Apply by 5-6-05. (805) 641-5000, ext. 1170; www.ventura.k12.ca.us/classhr

Seeking contract-typing assistance for appellate briefs. Contact Richard Gilman at (805) 981-7907.

Ventura County Criminal Defense Attorney seeks secretary/office assistant. Applicant should be proficient in Word and Word Perfect, and interested in working 10-20 hours per week. Position offers flexible hours, and salary is dependent on experience. Fax résumé to (805) 278-1072 and/or call (805) 482-1961.

Legal Secretary - Law firm in Financial Tower seeks civil litigation sec with solid 5+ yrs.

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The East County Bar Association held its first meeting since October 2003. Over 50 lawyers listened as **Judges Kent Kellegrew** and **Bill Leibmann** discussed the new assignments at the East County Courthouse. **Doug Ridley** and **Dien Le** have joined president **Marge Baxter's** fine ECBA board...From **President Theodore Roosevelt**: "Many of the most influential and most highly remunerated members of the bar in every center of wealth make it their special task to work out bold and ingenious schemes by which their very wealthy clients, individual or corporate, can evade the laws which are made to regulate in the interest of the public the use of great wealth."...Looney Laws: In Tennessee it is illegal for an atheist to hold public office...**Deirdre Frank** is leading the bar charge for Law Day 2005. She's coordinating efforts to place attorneys in the schools speaking to government classes about the constitution and the law. Call her at 650-1200...

The bar's Court Tour Program Director, **Peggy Purnell**, has been utilizing deceased Superior Court Judge **Kenneth Haymaker's** robe since 1977 for mock trials during the tours. It has become a bit unraveled, and so, the tired robe from '77 was replaced with **Robert Willard's** robe given to the Bar by Mrs. Willard...Los Angeles County **District Attorney Steve Cooley** said jurors who acquitted actor Robert Blake of the murder of his wife are "incredibly stupid."...Real World Rules by Bill Gates #5: "Flipping burgers is not beneath your dignity. Your grandparents had a different word for burger flipping—they called it opportunity."...From John Quincy Adams: "The mere title of lawyer is sufficient to deprive a man of the public confidence—The most innocent and irreproachable life cannot guard a lawyer against the hatred of his fellow citizens."...Kudos to new **Commissioner Mark Borrell** who takes the bench May 9<sup>th</sup>...Congrats also to Public Defender **Howard Asher**, who is now Chief Deputy, replacing Sue Olson. Howard's been with the office 23 years...

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

By Steve Henderson, Executive Director

**Taylor, McCord & Praver** have moved from their offices of 21 years on Main Street in Ventura to **Engle & Bride's** building on San Jon Road. The firm is mostly on the 2<sup>nd</sup> floor while the new firm name is **Taylor, McCord, Praver & Cherry**. Way to go Patrick!...From Robert Smith Surtees: "There are three sorts of lawyers—able, unable and lamentable."...From George Eliot's *The Mill on the Floss*: "Mr. Tulliver was a strictly honest man, and proud of being honest, but he considered that in law the ends of justice could only be achieved by employing a stronger knave to frustrate the weaker. Law was a sort of cock-fight, in which it was the business of injured honesty to get a game bird with the best pluck and the strongest spurs."...The Oxnard Chapter of the Knights of Columbus annually honors members of the judiciary at its Public Safety Awards Dinner. **Judge Manny Covarrubias** received the award April 11<sup>th</sup>...

There were 147 folks in attendance at the VCTLA Judges' Night Dinner including 27 justices, judges and commissioners honoring **Judge Ken Riley** and **Judge Bill Peck**. **Judges Fred Bysshe, Dave Long, and Brian Back** were superb with their comments...In an email from **Laura Peck** to **Justice Gilbert** afterwards: "Our Gold Coast Reporter field correspondent attended last night's Trial Lawyers Judges' Night Dinner and turned in her report to GQ Magazine at dawn breathlessly citing you as Best-Dressed Honorable Person at the event. She also submitted photos, which she took with a long-range lens. We, too, were impressed by your ensemble, a clever melange chosen from various sources and designers. We are, however, puzzled—Armani, Calvin Klein, 50-Cent or Salvation Army? Please let us know how you put your look together! We envision a feature essay in our May edition with you on the cover, perhaps in that black robe you and your associates wear on special occasions. With great admiration, GQ Editorial Board." Justice Gilbert responds: "Dear Duchess, My outfit was a melange, a distinct eclectic blend of high and low fashion representing a variety of social strata. The statement is simply, we are all one, and on a subliminal level pays homage to Rodney King's plea that we all "get along." The blazer, courtesy of **Justice Paul Coffee**. Slacks, and clip-on tie, courtesy of security guard Guido "Bob." Shirt, on loan from **Justice Steven Perren**. Armani is trying to buy us out, but we are holding firm."

**Ron Landers** won 1<sup>st</sup> Place in the National Masters Racquetball Association Tournament held in Canoga Park in March...There was

a display ad in the Honolulu Register dated April 6<sup>th</sup>: "Some lawyers advertise who they are...Others, what they **do**. \$2,375,000 settlement to driver suffering paralyzing injury when defective Big Island highway, without shoulder or guardrail, allows vehicle rounding curve to overturn."...

**Steve Millich** returns to KCLU on Friday evenings from 8-10p.m. starting May 13 with "Mostly Blues." His weekly two-hour program will feature blues and its offspring, i.e. Gospel, R&B, Doo-Wop, and an occasional surprise. When asked why he switched the format from Jazz to Blues, he paraphrased Blues great Willie Dixon. "Blues is the roots, the rest is the fruits."...Attorneys are bracing for the newest twist in employment law: Internet bloggers who write about their workplace, or use blogs while at work. As blogging grows in popularity, employers are realizing that the self-published materials could contain confidential company information or defame a corporate image. And as blog related firings increase, more companies are turning to employment law to write new policies and protect themselves...REMEMBER: **Law Day 5K is May 21<sup>st</sup>** at the County Government Center. This remains a terrific way to raise money for the Volunteer Lawyers Services Program, Inc. without actually having to take a pro bono matter...Don't forget the VALA Annual Winetasting/Silent Auction Benefit Fundraiser for the VLSP, Inc. May 12<sup>th</sup> at the Ventura Yacht Club. **Delaina Finch** is managing the efforts at 385-7489...

*Steve Henderson has been the executive director of the bar association since November 1990 and recently ingested a small toe within the chili at the cafeteria in the County Government Center. Henderson and an unidentified 70 year-old attorney at NDSW&B came in 60<sup>th</sup> Place in a March Madness Pool with 129 entries. Lastly, it has become apparent April 15 was not going to work as a retirement date.*

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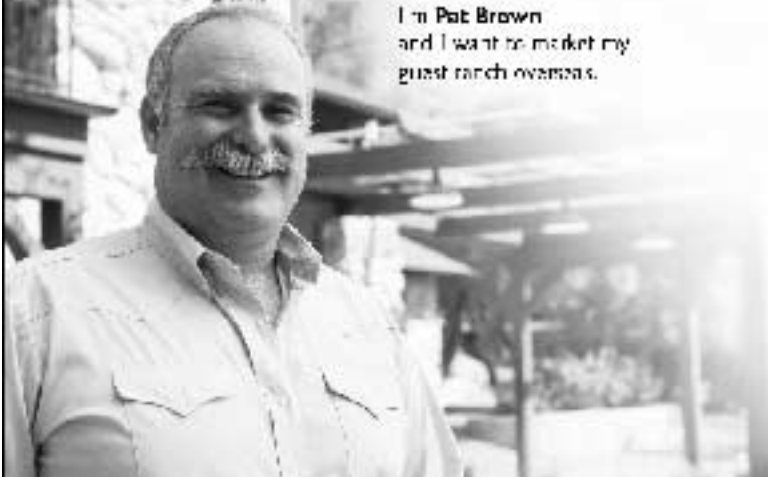
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