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# CITATIONS

AUGUST - TWO THOUSAND SIX

## MR. HENDERSON PRESENTED: A BIOGRAPHICAL DICTIONARY OF STEVE HENDERSON

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LOYE M. BARTON

PANDA KROLL

LAWRENCE LIEVENSE

VERNA R. KAGAN

STEVE HENDERSON

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## PRESIDENT'S MESSAGE: TEN YEARS OLD (ALMOST) AND ALREADY IN A LEAGUE OF HER OWN: VERNA KAGAN AND THE RENOWNED TEAM OF TEN (OR ELEVEN)

By Loye M. Barton

In 1996, Alice McGrath, Steve Henderson, Carmen Ramírez, David Shain and J. Roger Myers, put their collective wisdom and energy together and birthed a program that would become an example for legal communities throughout the nation. Happy birthday, Ventura County Volunteer Legal Services Program (VLSP). You really have come a long way, baby!

### The Emeritus Troops

VLSP is successful largely because of the ten–eleven really, but one is anonymous by request–Emeritus Attorneys who each devote two hours and sometimes more per week to decide which cases merit the daunting task of finding a lawyer who will take on a case without pay. Ben Schuck handled the first pro bono case for VLSP in December 1996. Since then many hundreds, maybe thousands, of people without the financial ability to hire an attorney have been represented in their myriad legal issues by big-hearted attorneys who practice in Ventura County.

Verna Kagan first answered the call to become an Emeritus Attorney in 1996 when Ms. McGrath sent a letter to attorneys retired five years or less. Pauline Zebker took up the mantel in the first class of Emeritus Attorneys as well. Both Verna and Pauline stayed with the program, and today Verna serves as the VLSP Program Manager. Verna looks at her time with VLSP as “a way to keep a finger on the pulse of the law without the headache of operating an office.” The other Emeritus Attorneys include Dolores Anderson, Raymond Clayton, Gerald Cline, Howard Evans, Byron Lawler, Earl Price, Eugene Radding, and Carolyn Tulberg. They came to VLSP from many sources, and they all have in common the passion to provide legal services to everyone regardless of financial resources.

### Nothing Like It Anywhere

Ventura County's VLSP is unique. You will not find another like it in the country. In fact, Tina Rasnow recently shared a statistic with me. There are only 90-something Emeritus Attorneys in the state of California and Ventura County is home to 10–er 11. The Emeritus Attorneys do an initial screen of applicants who meet the financial need criteria set by the program. (The gross number of applicants is about 12,000 a year—that gets whittled way down based on pre-set criteria.) Verna then selects an Emeritus Attorney to interview the applicant, and if the Emeritus Attorney decides the case is meritorious, he or she then starts the task of locating an attorney who is willing to take the case pro bono. The last part is the most difficult. Many lawyers volunteer time to VLSP, but many more are needed. Sometimes it takes many phone calls and many hours to find an attorney ready, willing, and able to take on a new pro bono case.

Throughout the case the Emeritus Attorneys stay connected with the applicant and the pro bono attorney. There are periodic status reports. And if the attorney needs help, the Emeritus Attorneys are there to find aid if they can. From time to time, in an emergency, you may even see an Emeritus Attorney step into the courtroom to save a case from default while a pro bono attorney is found.

The bar association provides space, supplies and support staff to VLSP, for which the bar association is reimbursed for a portion of the expenses. VLSP does not yet raise enough money to fully reimburse the bar association for the expenses of the program. Outside of the bar association, the program is fueled by volunteers. Verna says that the joy of the program is the number of hugs received from the applicants. They are thrilled and moved when accepted into the program, and more so when an attorney

agrees to review the case. Verna also gives high marks to the attorneys who take cases or help guide the Emeritus Attorneys in the right direction. She never fails to remark the about the great appreciation for Ventura County's pro bono attorneys, nor about the need for more attorney volunteers.

VLSP is another reason to be proud to practice in Ventura County.

*Loye Barton is VCBA President and is a partner at Norman, Dowler, Sawyer, Israel, Walker & Barton in Ventura.*

Be sure to save September 30, 2006 for a fundraiser to benefit VLSP. Bring the kids and join your friends and colleagues for a fun time at Michael Bradbury's ranch. Michael is generously providing the locale and the music. There are cooking competitions, if you want to enter, barbecue, swimming, horseshoes, and an all-around good time.

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## LETTERS TO THE EDITOR

The June 2006 issue of Citations included two articles, by David Shea and William Winfield, on the U.S. Supreme Court's *Marshall v. Marshall* decision. Although Mr. Shea's piece is largely accurate, Mr. Winfield's article is not. It misstates critical facts, and its interpretation of the Supreme Court's decision on jurisdictional grounds as a "resounding victory" for Judge Bufford misrepresents the legal issues as well, giving a distorted picture of the case, which is especially unfortunate in a Bar publication. Mr. Winfield's piece tries to lend an air of credibility to a creative plaintiff, her enterprising lawyers, and the bankruptcy judge who allowed her to manipulate the law.

Having followed the many legal twists and turns of this case, commented and written publicly about it, and also filed an amicus brief with the Supreme Court on behalf of a large group of charitable foundations, I appreciate the opportunity to set the record straight.

The case, of course, gets attention in significant part because one party is better known by her stage name of Anna Nicole Smith, the former stripper, Playmate, model, and sometime reality TV star, whose brief 14-month marriage to elderly wealthy Texas oilman, J. Howard Marshall provided her the means to transform her life. No one would mistake her commitment to have been one of love, as many commentators and judges, including a few Supreme Court justices, have observed. Ms. Smith asked for and received help from J. Howard in promoting her career, and also asked for and received gifts of more than \$6 million as part of a written agreement setting out the consideration for her marriage. She says he then promised to give her an additional \$500 million or so during his life or as an inheritance.

Although J. Howard was a Yale educated lawyer who taught trusts and estates law at Yale and also practiced this branch of the law – and over his lifetime executed 6 wills and 7 trusts dictating how his assets would be distributed – he did not put this promise in writing, much less in a formal, executed form. He was a generous man, not least to women he found attractive in his later years, but not as generous as Ms. Smith wished.

Contrary to Mr. Winfield's assumption, the voluminous record in the Texas probate case established that J. Howard, far from promising to give Ms. Smith half his estate, had explored and rejected the idea of giving her more than the \$6 million negotiated in exchange for their

wedded non-bliss. Through 95 days of trial and more than 40 witnesses, the Texas proceeding painstakingly reviewed what did and did not happen. Ms. Smith contended that J. Howard had promised her a fortune, despite (as the Ninth Circuit observed) the absence of any witness to a promise, the absence of any paper containing such a promise, and the contrary testimony of every person who would have been in a position to verify a commitment by J. Howard to give her the inheritance she sought. She simply asserted that J. Howard's son and principal heir, Pierce Marshall, must have destroyed the papers giving her an inheritance or an equivalent inter vivos gift. She asked the courts in Texas and California to draw inferences from billing records and other ambiguous materials, ignoring the direct testimony of those who knew what the records reflected and what directions they had received. The unanimous jury verdict in Texas reveals how much these assertions persuaded neutral decision-makers who reviewed all of the evidence in the case.

Of course, not all discussions of the case – even by decision-makers who should be both impartial and attentive to the evidence – are based on the full evidentiary record. There have been overlapping proceedings in federal and state courts and dramatic differences between the federal and state proceedings in the way the facts were found. The state probate court proceeding was what trial lawyers would hope for: a detailed factual inquiry, with evidence from eyewitnesses and extensive cross examination. The federal proceedings were based largely on inference, not on testimony, initially drawing conclusions solely from Ms. Smith's testimony and witnesses, having excluded Mr. Marshall's as a sanction for asserted discovery problems. By basing his statements about the case on those findings, Mr. Winfield (and in far smaller measure Mr. Shea) does a disservice to Mr. Marshall and to readers who glean their information from articles such as these rather than from the court records.

Mr. Winfield does an even greater disservice to lawyers by making Judge Bufford of the bankruptcy court the hero of his piece. Judge Bufford reached issues that were unrelated (or only tangentially related) to the bankruptcy case, decided the issues after it was clear that Ms. Smith's asserted tort claim was unnecessary to resolve in order to dispose of her bankruptcy proceedings, and set up a needless conflict between federal and state courts.

The central legal problem in *Marshall v. Marshall*

– dating back to Ms. Smith's filings in both Texas probate court and, shortly after, federal bankruptcy court in California – has been the conflict between federal and state jurisdiction, which has produced duplicative proceedings, opposing findings, and competing directives. One aspect of the legal conflict was resolved by the Supreme Court, when it held that the "probate exception" to federal jurisdiction should be given a far more restricted scope than the Ninth Circuit (or any other circuit) had found. Other aspects of the federal-state conflict – such as issue preclusion and claim preclusion arguments – remain to be decided.

Most if not all of the conflict between federal and state courts could have been avoided had Judge Bufford recognized that the claims being heard and decided in state probate court were essential to probate determinations, while the claims based on the identical facts and circumstances that Judge Bufford asserted jurisdiction over were not essential in any way to resolution of the bankruptcy proceedings. Indeed, all of the essential aspects of the bankruptcy proceeding were concluded, and all of the claims that assertedly gave rise to the bankruptcy filing were resolved, long before Judge Bufford issued his decision.

As someone who has been teaching and practicing law for more than 30 years, I have been especially concerned with complaints that our legal processes diverge from dictates of the rule of law. That is especially likely where the legal system is unduly complex, where it pulls away from accurate fact-finding, and where it permits forum-shopping in an effort to gain strategic advantage, rather than to support a resolution of legal disputes in the way most likely to conform to precedent and to the reasonable expectations of those whose conduct must be regulated by the law. I am deeply disappointed to see Mr. Winfield give such cavalier treatment of the difficulties of the case and cheerlead for a judge whose conduct seems to have strayed from both the norm for judges and the path most apt to provide an accurate factual record for decision-making.

**Ronald A. Cass**, *Chairman, Center for the Rule of Law Dean Emeritus, Boston University School of Law.*

## MR. WINFIELD REPLIES:

Thank you to Professor Cass for taking the time to read my article in Citations. I had no idea the readership of Citations extended to the distinguished reader in Virginia.

Dean Cass suggests that my approach to the subject was "cavalier" because I did not consider a number of important points. I did accept the findings of fact of the courts which ruled on this case, including the Supreme Court, and I did not look much further. I even failed to consider the Dean's well written thirty-eight page amicus brief. I have since read that brief and agree that Dean Cass made some excellent and persuasive arguments. Unfortunately, the Supreme Court did not accept those arguments. As a practitioner of the law – and not an academic – I feel constrained to accept findings of the Supreme Court as well as findings of lower courts that have been upheld. To do otherwise

would not allow me to give reliable advice to my clients on the current law – as opposed to what the law should be. If that means my approach is "cavalier," I plead guilty.

My piece was not intended as an endorsement or criticism of the Supreme Court's ruling or to advocate what the law should be. My more modest objective was to report on the effect – as I see it – of the ruling for practitioners. Dean Cass operates in a different more theoretical world – which I respect. I encourage Dean Cass to continue his advocacy and academic writing in an effort to shape the law.

*William E. Winfield*

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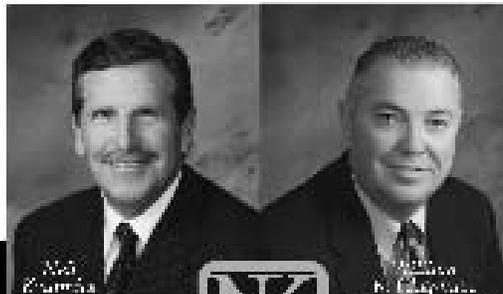
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# JUDGE REISER REPORTS: THE COURTROOM OF TOMORROW DEPENDS ON THE PEOPLE OF TODAY

By Panda Kroll

Judge Glen Reiser recalls that a recent flood destroyed several boxes of court documents. While floods are thankfully an unusual event in the courthouse, not a day goes by that the judge doesn't see a virtual flow of staff wheeling carts of files throughout the courthouse. Transition to a paper-optional, if not a paper-less, courtroom seems inevitable. Moreover, members of the Ventura County legal community, as well as court staff, are increasingly accustomed to receiving case information online. While e-filing in the Ventura County Superior Court is still being optimized, parties may now file documents electronically for most civil, family law and small claims matters. Judge Reiser seems to echo popular sentiment when he reports that he would like to see the technology and implementation of such online access to the courts improve in Ventura County, and become standard procedure throughout the state.

According to the judge, however, switching from manual to electronic systems—not to mention standardization—requires a cultural shift, particularly because the respective use of technology in California's 58-plus superior courts reflects each county's unique demographics, staffing, and traditions. For example, while Mariposa County Superior Court provides no docket information on its website, Alameda County Superior Court permits users to view and print images of virtually all case documents filed, along with a registry of actions and minutes.

Leadership and good will are essential in overcoming the natural resistance to change. Fortunately, these characteristics are abundant in our local court. Technology-savvy VCSC staff have caught the attention of, and have been recruited by, California's Administrative Office of the Courts ("AOC") for senior level administrative positions, where they are influencing court technology policy at the highest levels. As examples, Judge Reiser identified Margie Borjon-Miller, who now serves as the California Case Management System Product Director; Robert J. Steiner and Keri Collins who serve as project managers for the California Case Management System; and Jeanne Caughell,

who now serves as Assistant Director, Human Resources Division of the AOC.

What makes Ventura County court staff so well-adapted to initiating and influencing technology change in California's courts? According to Judge Reiser, these individuals are not only innovative and competent: Ventura County fosters "nice people who play well with others," characteristics that set them apart from the stereotypical computer geek.

Judge Reiser explains that, at a local level, those involved in introducing technology change to the courts are not "geeks," but instead, Subject Matter Experts ("SMEs")—stakeholders including accounting clerks, archivists, and as in Judge Reiser's case, jurists. As part of a statewide initiative, designated SMEs in various courts meet at a local level with the AOC regularly to assist in the design of a new and improved computer system called the California Court Case Management System ("CCMS") that will be implemented across the state by the year 2010. When complete, CCMS will accept fees, upload documents, and download documents. The software will be web-based, click and play, with drill-down menus that are user-friendly.

San Diego County Superior Court, which handles fifteen times as many documents as VCSC, has hired 60 new employees to design and implement CCMS. VCSC is making do with existing staff. Nonetheless, despite our county's relatively small size, Judge Reiser's appointment to the California Judicial Council's Court Technology Advisory Committee (CTAC) allows him to participate in CCMS design in particular and court technology initiatives in general at a state level as well. CTAC is recognized by California Rule of Court 6.53 and assists the Judicial Council and the AOC in "improving the administration of justice through the use of technology and for fostering cooperative endeavors to resolve common technological issues with other stakeholders in the justice system." Other than Judge Reiser, the committee consists of about twenty members, most of whom are urban judges and former legislators.

Judge Reiser credits Sheila Calabro for his appointment to CTAC. Ms. Calabro (formerly Gonzalez) is yet another innovative and competent individual who hailed from VCSC administration and who has since risen to the prominent position of AOC Regional Administrative Director, Southern Region of California. She left a legacy in Ventura by overseeing the automation of criminal case management while she served as CEO of VCSC.

CTAC has been working for the past two years in planning CCMS with a goal of standardizing and improving the technology that runs case management systems for California's 58 superior courts. CTAC is also debating weighty issues such as access costs, privacy, and protection from hackers and "data miners" who might use the publicly-available information to find targets for unwanted marketing materials. Most recently, CTAC has discussed the extent to which court internet "portals" can offer users a launch point to a broad range of desirable features.

Despite the will to innovate, California litigants surprisingly do not enjoy certain technologies that have been warmly embraced by their counterparts elsewhere. For example, in other states, electronic courtroom appearances through video-conferencing have reduced not only civil parties' travel and reporting expenses, but have also reduced security risks involved with transporting criminal defendants to and from courts and jails. Similarly, in other states, the court facilitates digital recordings of non-confidential proceedings, which are then made available to the public on compact disc (CD/DVD) media. Such electronic recordings, however, fall afoul of California law. Ours is the only state in the union that prohibits by statute electronic recording of all court proceedings other than limited civil and misdemeanor cases. "Until the Legislature amends [Code of Civil Procedure,] section 269 to permit electronic recording to create an official record, the normal practice in California superior courts is for an official shorthand reporter

to create the official record.” *California Court Reporters Assn. v. Judicial Council of California* (1995) 39 Cal.App.4th 15, 33. The prohibition against electronic recording may extend to video appearances.

While California courts are not permitted to employ electronic recording or appearances, our courts and attorneys are not strangers to multi-media. For example, Judge Reiser and other jurists use Power Point displays to assist in voir dire. Many Ventura County attorneys use a document camera such as the ELMO connected to a video projector and personal computer to present evidence at trial. Judge Reiser expects VCSC to expand the availability of cutting-edge technology such as annotation pens and “smartboards,” “e-boards” or other interactive whiteboard systems.

It is easy to be alternately enamored with and overwhelmed by new technologies. It is the people, however, and not the machines or code, that provide the leadership and good will to design and implement these new tools. As Judge Reiser concludes, “our primary charge is to serve the people, using the technology that allows us to do this best.”

*Panda Kroll is an associate at Nordman, Cormany, Hair & Compton in Oxnard.*

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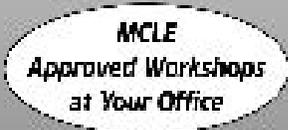
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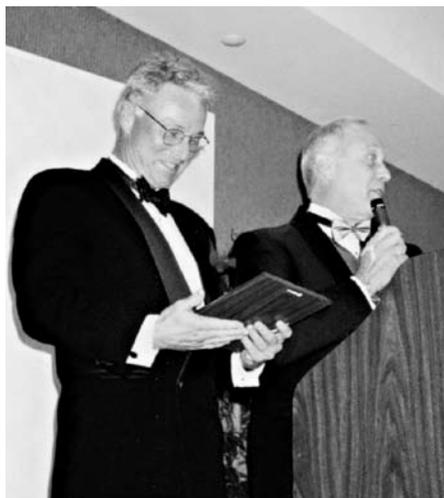
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### Bleuel, Bart

The fall guy, the man who takes the blame for bringing Steve Henderson to Ventura County. “It’s all my fault,” says Bleuel sheepishly. It was 1991, and the Ventura County Bar Association was looking for a new Executive Director. Newspaper ads and word of mouth resulted in 100 applicants, including the gentleman from San Luis Obispo, Mr. Henderson himself, who ended up as one of six finalists. But, as in an Agatha Christie mystery or a reality show, in the end there was only one man standing (three didn’t have the requisite qualifications, one dropped out, and the last one was “too rough and controlling”). In addition to his silken diplomatic skills, Henderson had an administrative background, had worked for the City of San Luis Obispo, and “looked like he knew how to hire and fire, and run an office, and how to organize the thousands of details.” As he tells it, though, Bleuel had no idea “that the guy doesn’t have any sense for numbers at all. He was confronted and admitted he had to use a calculator.” Despite this, Bleuel lets him figure out the tip at their long-standing Monday lunches. *See also under Eating, OCD, VCBA.*

### Booze

Loves to pound the beers when in Vegas, but provides cheap beer when he loses bets. He also has an appreciation of Red Stripe and of good wine, and has some nice wines in his own cellar. However, for the annual VCBA dinner, he buys cheap wine from Trader Joe’s which he then tries to pass off as his cellar wines.

## MR. HENDERSON PRESENTED: A BIOGRAPHICAL DICTIONARY OF STEVE HENDERSON

By Joel R. Villaseñor



### CAE

Stands for “Certified Association Executive,” a coveted title Steve he earned from the American Society of Association Executives & the Center for Association Leadership based on his experience, professional development activities, and passing a four-hour exam covering strategic planning, marketing/branding, leadership, ethics, negotiating, human resources, technology, fundraising, public policy, and a host of other topics.

### Cardinal Virtues

He is extremely discreet, and has the rare art of keeping secrets. People trust him, and tell him things. He knows where all the bodies are buried. He knows how to laugh and has a good sense of humor. He knows how to put people at their ease. He wields authority delicately and with great skill. He knows how to needle, and wheedle. He is highly competent and intuitive about people. He keeps a number of balls in the air without letting them drop. He knows everyone, and knows all. He would have made an ideal Cardinal in the time of the Borgias. *See also under CAE.*

### Color

You’d never know it, but the man is color blind. Blue is the only color he recognizes (feast on the choice irony of his rooting for the Red Sox and hating Dodger blue). Former VCBA President David Shain still remembers walking with him through the National Gallery in Washington, D.C., rhapsodizing about the glories of the Impressionist paintings on display, only to be told by eternal good sport Henderson that he was color blind. In the beginning, his wife Julie used to lay out his

clothes for him, but he seems to have figured out how to avoid going out in mismatched socks. *See also under Sartorial Splendor.*

### Eating

Because of the nature of his job, he attends more luncheons per month than even the staunchest and hardiest of ladies-who-lunch, and yet his napkin remains ever unsullied, the signature poulet en caoutchouc (rubber chicken to the non-Food Network watchers among us) never allowed to cross his lips. As a result, the rumors persist. Is it manorexia? Is he human? Is his a liquid diet that owes more to Eberhard Anheuser & Adolphus Busch than to Wolfgang Puck? Despite the rumors, Henderson does, in fact, eat. There are sworn eyewitnesses to the event (full disclosure: I have seen him actually break from his supermodel diet and consume tamales and sopa de arroz). Indeed, there are even people who break bread with him on a weekly basis. Just like Claude Rains and Humphrey Bogart, he and Bart Bleuel would meet every Monday at Ventura’s own version of Rick’s Café Américain, the late and lamented One Potato, Two Potato, and Henderson would always, always order the three-cheese potato. The demise of One Potato, Two Potato drove them to Charley’s, where Henderson now always, always orders the veggie salad. When Johnny Rockets was open in Santa Barbara, he would always, always take his kids there once a week. *See also under OCD.*

### Education

Pacheco School, San Luis Obispo High School, California State University at Northridge, master’s in public policy from the University of San Francisco.

### Exec’s . . .

One of Steve’s many creative outlets, often accurate.

### Family

He and Julie have three children—Sean, who is 13, and the twins, Max and Meggy, who are eight. Indeed, you have watched them grow up via the photos that appear every month, without fail, in his column in this very

magazine. He spends a lot of time with his kids; in fact, his world is built around them. The most important thing in his life. He's an A-plus father.

## Gambling

Likes to bet on sports with friends; even bets on the Law Day 5K run. Participates in a pool with the local bar community for the NCAA Tournament. The last time he did this, his eight-year-old daughter got more picks right than he did. When the stakes involve beer, and he loses, he is known for providing bilge of the Miller persuasion. Loves to go to Vegas. *See also under Sports, Travel, Booze.*

## Obsessive Compulsive Disorder (OCD):

Self-evident. E.g., runs every day, always goes to the same restaurant, always orders the same thing.

## Phobias

Hates boats, hates to be on the water but is vacationing on Martha's Vineyard as CITATIONS goes to press, hates enclosed spaces, hates carrying keys (rumor is, it disrupts the line of his suits). Only a healthy respect for tort law prevents disclosure of where he keeps his keys.



## Running

Not for nothing do they call him Henderson the Run King. It's not surprising that he's whippet-thin, as he runs several miles every day. In fact, he has run every day for the past 17 years, always in Santa Barbara (with a few exceptions) and always in the afternoon. One of the exceptions took place in 1995, when former VCBA President Phil Panitz went to Washington, D.C., to argue before the U.S. Supreme Court. Then-VCBA President David Shain and Henderson flew to D.C. to watch the argument and offer

their support. As Mr. Panitz tells, it, after the argument, when about twenty people "retired to a Georgetown restaurant for a celebratory dinner, Mr. Henderson was the only no-show. Why? It turns out that he decided to go for a jog around Washington, jogging around every monument, in the evening, in the middle of a frozen D.C. winter (the argument was in February). In his shorts!" *See also under Color, Eating, Sartorial Splendor, OCD.*



## San Luis Obispo

The old stomping grounds. Where the magic began. Where he picked up that unplaceable accent (go ahead; ask him to pronounce the name of the place for you). He grew up in SLO, and went to school there, graduating from San Luis Obispo High School. It's also where he worked as Assistant City Manager, before making his way south to us. His brother and his hale and hearty 88-year-old father still live there. He goes back regularly, and is often seen at McClintock's Saloon, his favorite joint. *See also under Eating, OCD.*

## Sartorial Splendor

Despite being color blind, he's something of a clotheshorse, even a bit of a dandy. He's known for his dress sense. One friend says Henderson is "vain about his appearance." Shops on his own, goes to Nordstrom. Can discuss a Brioni tie as knowledgeably as he can a triple-header. Ties a mean knot with a good dimple, no small feat. Favors cufflinks and monograms. That being said, every Friday invariably finds him in a polo shirt and tiny shorts just this side of indecent. *See also under Color, OCD.*

## Sports

He's a sports nut through and through. Hates the Dodgers. Uses precisely calculated mixture of simmering contempt, enlightened pity and good-natured ribbing to torment Dodgers fans. Despite hatred of the team, shares in season tickets to the Dodgers games. Gives

away his Dodgers tickets. Adores the Boston Red Sox, despite being unable to tell their socks are red. Will be traveling to Boston and has taken out a second mortgage on his home to pay Carmine the Scalper for bleacher seats in Fenway Park. Works out at the Knollwood Tennis Club in Montecito and at the Pierpont in Ventura, where he has seen judges without their robes. Gambles on sports. *See also under Booze, Gambling, Travel.*

## Swimming

No, he doesn't just run. He also swims. But only the breast stroke. Go figure.

## Travel

Loves to travel to Vegas, to Hawaii (goes there often and is a devotee of Roy's Restaurant), but not on cruises. Nevertheless went on a Disney cruise in Florida with his family, and the combination of being in an enclosed space on the water turned him into a wreck. *See also under Booze, Gambling, Eating, OCD, Phobias.*

## Ventura County Bar Association (VCBA)

His (other) baby. He has made it what it is, overseen and stewarded its growth in terms of sections, membership and interests. As former VCBA President David Shain says, "He was the right person for the job. He professionalized the organization in a big way, largely through his people skills, his ability to bring people together, through the sheer force of his personality. He has brought disparate parts of the bar together in a way that few others could have accomplished. He has done it with good graces, and good humor. We were very lucky to get him, and lucky to have kept him all these years."

*Joel R. Villaseñor is an attorney at Sullivan Taketa LLP in Westlake Village. His message to Henderson, "This is what you get for squashing my photo in the Bar Directory."*

**Editor's note: This article was written and published without Henderson's knowledge, so he's entitled to strike back next month.**

# The Value of Medical Claims – Locating & Validating Current Charges, Payments & Contractual Amounts.

By *Lawrence Lievens*

Establishing the value of medical services is the crux of many cases. However, locating, obtaining and validating current hospital charges, payments and contractual amounts can be a challenge. An understanding of patient account management helps to obtain timely, complete information for accurate valuation.

## CHARGES

Charges to a hospital account are often managed in varying locations, frequently change after the initial "discharge" bill due to late charge postings, and contain charging errors which may increase or decrease the total bill.

Locating where to send a request for an itemized hospital bill may be as simple as sending a request to the treating facility or as complex as tracking down a remote patient accounting office. Hospitals increasingly outsource patient accounts to central business offices (CBO's), management firms, collection agencies and law firms. Receipt of the information will be delayed if the hospital staff must research the location of the records and forward your request. Worse, the itemization may be sent from a location which does not have access to a current itemization which makes the total charges wrong.

Current itemizations are the most accurate but most hospitals answer requests for itemizations with an incomplete bill from the discharge date. Itemized charges and the total bill often change substantially as late charges are posted and errors are deleted. Requesting a current itemization will produce a bill with charges and a total different from the discharge bill. Hospitals usually rebill payors when late charges exceed a threshold amount. Requests for itemizations which specify the most recent itemized billing sent to a third party payor will usually generate the more up-to-date, current itemizations.

Validating the charges on a patient account requires both review and audit procedures. During a review, expect to find charges posted weeks, even months after the discharge date. A lack of late charge postings suggests that the itemization is from the discharge date and additional charges probably exist.

Auditing is the most accurate method of validating a hospital bill by comparing the medical chart against the most current, itemized charges. Audits track each individual service ordered by physicians through documentation which proves that the patient received the service. Audits also determine if each charge was posted

correctly. Common errors can change the bill substantially. Frequent errors include double postings of the same charge, posting charges for services cancelled, posting charges for services not ordered or received and postings for the wrong service. A charge audit completed in 2005 by the author at St. John's Hospitals in Ventura County identified consistent overcharge errors of 27%.

## PAYMENTS & CONTRACTUAL

### DISCOUNTS

Payments on a patient's account will be as frequent as the billing and rebilling activities. Posting large, late charges usually necessitate a rebilling to the payor. Rebills will generate a second payment. There may be two or more re-billings depending on how effectively the hospital manages its charging system. Patients with multiple insurances further complicate the billing and payment issues.

Locating payments made on a patient account can be challenging. Identifying where to request or subpoena payment information may require research of the patient management system. Payment information may be managed in multiple locations, including central business offices and specialty management companies. When an account is assigned to a collection agency, the current balance is usually closed on the hospital system and payments are tracked only on the agency system. Realizing that payments may post to different systems, and not just to the hospital system, will help identify locations to be searched.

Current payment information on a patient account may be difficult to obtain due to the complexity of the posting location(s), the existence of multiple payments/credits and the

expectation that some hospitals regard payments as proprietary. It's important to ask if there are any outstanding billings pending payment from third party payors. Payments are current when all billings have been paid (or denied) and no further billing or collection action is planned.

Validating payments and credits on a patient's account requires comparison of the payments against billings, rebillings (if any) and third party payors' explanations of benefits (EOBs). Note that some EOBs do not show the payment or discount amounts and simply state that full benefits have been paid to the provider. The best validation of payments is from a copy of the EOB which the payor sent to the hospital showing the actual payment and the contractual discount amounts. The actual payment(s) and contractual(s) should also show on a printout of the patient's account. It is common for the patient's bill to not show the payor payment or contractual amount.

The most accurate validation of payor payments and contractals is an audit of the current bill against the contracted insurance benefits. A copy of the insurance contract should be available from the patient's employer.

Locating, obtaining and validating itemized charges, payments and contractual discounts is assisted with an understanding of the patient account management. The increasing complexity of healthcare finance will mandate greater lead time and research to determine the value of medical claims.

*Lawrence "Lan" Lievens, FHFMA, CMPE is a healthcare financial consultant and expert witness for cases with medical claims. He can be reached at 805-389-1750.*




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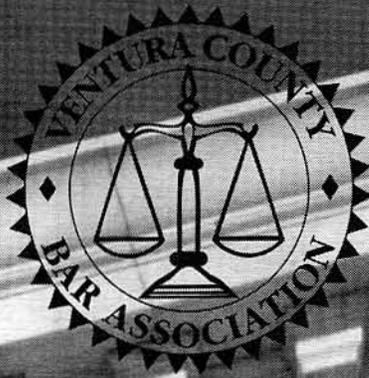
as Principal Trial Attorney

Jay received his undergraduate degree from the University of Michigan and his Juris Doctor degree from the University of San Francisco. Jay is admitted to practice in California State Court and the 9th Circuit Federal Court

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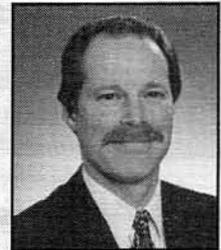


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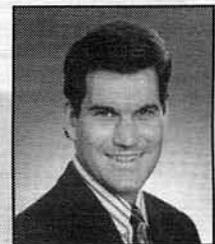
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## MABA SCHOLARSHIPS

This year, the Mexican American Bar Association awarded seven \$1,000 scholarships to deserving students, including Nadia Avila (many of us know her from her hard work as a staff member of VCBA), Denise Trerotola (who worked for VCSC for years as court staff super), James Casey, Jessica Arciniega, Veronica Franco, Roberto Salazar, and Noemia Gallardo.

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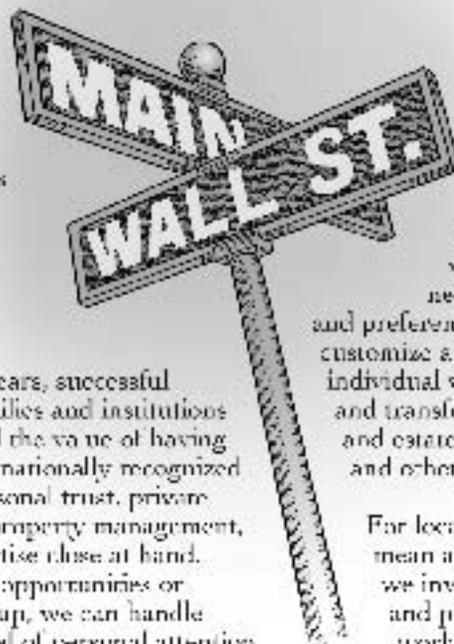
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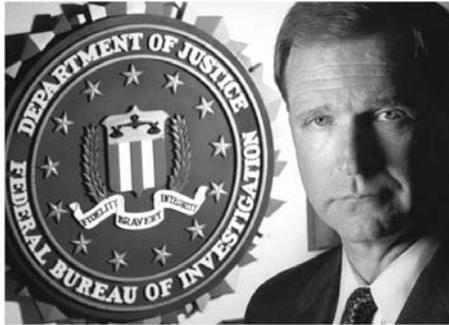


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## PRO-BONO HIGHLIGHTS

By Verna R. Kagan

On rare occasions, our Emeritus Attorneys will call upon a member of the attorney community not named on any volunteer lists. We were fortunate enough to obtain the services of Patrick Cherry in just that manner.

It was not long before we referred Mr. Cherry another matter, this time even more closely aligned with his field of practice. Once again, he accepted the assignment despite the fact that the client, located in a small town just outside New Orleans, was directly affected by hurricane Katrina. Communication was not always easy; the matter itself was quite complex. There were also orders that had to be vacated since they were not under the court's jurisdiction. Nevertheless, Mr. Cherry was a most worthy and successful advocate. Tragically, soon after completing the initial phases of the case, the opposing party passed away and the case was thereby dismissed.

Thank you, Mr. Cherry, for making yourself available to us when we needed you most.

*Verna R. Kagan is the VLSP Senior Emeritus Attorney.*

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## EAR TO THE WALL

**Hoefflin & Associates**, a Law Corporation, is pleased to announce that **Jason M. Burrows** has joined the firm as an associate attorney. Mr. Burrows has nearly ten years of experience as a litigator in the areas of business disputes, employment, professional liability, wills and trusts, and insurance coverage. He has represented individuals and a variety of well-respected businesses. In addition to litigation, Mr. Burrows advises clients on matters such as risk reduction strategies for businesses, employment practices and estate planning. Mr. Burrows is also admitted to practice law in Nevada. Contact information: Phone (805) 497-8605; E-mail: jburrows@hoefflinlaw.com.

**Linda Boyd**, who formerly ran a special education legal clinic at the Los Angeles/USC Children's Hospital, recently opened her own solo practice in Ventura. Ms. Boyd graduated cum laude from

Pepperdine School of Law in 2001 and received a certificate in dispute resolution from the Strauss Institute for Dispute Resolution. Ms. Boyd will continue working with parents of disabled children in the area of disability law. She is expanding her practice to include conservatorships, conservatorship and trust accountings, probate, and some mediation work. Her office is located at 1655 Mesa Verde Avenue, Suite 110, Ventura 93003. She can be reached at (805) 201-2879; Fax: (805) 642-9723.

**The Law Offices of Mark Pachowicz** are pleased to announce that **Christina Stokholm**, a graduate of Ventura College of Law, has joined their firm as an associate. Ms. Stokholm recently interned at the Santa Barbara Public Defender's office and also worked as a law clerk for

Schley Look & Guthrie LLP, in Santa Barbara. Prior to that she was employed as Vice President and Chief Technology Officer for Business First National Bank. She may be reached at 2301 Daily Dr. Suite 201, Camarillo, CA 93010, (805) 987-4975.

**Alta Manzo**, a new lawyer as of December, 2005, has accepted a position with the **Law Offices of Adam Pearlman**, 6401 Telephone Rd., Suite 140, Ventura 93003, (805)644-1331. The firm specializes in criminal and juvenile law, including parole and probation and record expungements.

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**IMMIGRATION ATTORNEY** - Oxnard non-profit seeks attorney specializing in immigration law. Salary range is \$50,000 - \$60,000 plus generous benefits. Will provide services to victims of domestic violence and direct court-based and local clinics. Must have 3-5 years of experience and be a member of the Bar Association. Must be bi-lingual in English and Spanish. Fax résumé to HR department at (805) 983-6240.

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**LITIGATION SECRETARY** - Full-time position sought. Ph.D., 16 years with New York City firm in support of litigation, corporate, finance, securities, global energy and IP. Very strong computer skills. Paralegal experience. Moving to Ventura. William Keeler, (212) 721-9497; willie-works@att.net.

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The Jerome H. Berenson Inn of Court will begin its 12th year September 14 at the Saticoy Country Club in Somis. The Inn was incorporated in 1994 by then president **Judge Richard Aldrich**, who's now a Court of Appeal justice in L.A. 80 lawyers gather the second Thursday of the month, May through September, socialize for a half-hour and then view a ten-member team's CLE presentation. Typically, the program centers on ethics, civility, or methods to improve your practice skills. There remain a few openings and the more quickly you get your application in (see flyer within CITATIONS), the better your chances of success as the Inn is first come, first served...**Keith Carter** (43268) retired June 30 after 36 years in the practice. He'll be handling all pending matters from his home and most folks know he has been battling lupus for many years. We wish him well...From Samuel Johnson: "I would be loath to speak ill of any person I do not know deserves it, but I am afraid he is an attorney." **Brian Weilbacher** joined **Ferguson, Case, et al.** July 26. He grew up in Oxnard, graduated from Cal and SC Law and has been with Irell & Manella in LA since 2000. Brian is a very good surfer and his brother, John, has his own practice in Ventura...

**Gabriella Navarro Busch** and **Carmen Ramirez** were invited by the Mexican government to be official observers in the July 1 presidential elections in Mexico City. They witnessed an historic event from several polling places in the city...**Jay Leiderman's** last day in the Public Defender's office was July 18 after 6 and a half years of service. He's joining Crime Attorneys ([www.CrimeAttorneys.com](http://www.CrimeAttorneys.com)) in the valley. **John Voigtsberger** retired from the office July 14 after 23 years. He'll be joining his wife in Riverside. The new guys at the office? **Paul Drenstedt** and **Paul Baelly**...From John Stewart: "Some scholars

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

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

have argued that the Constitution clearly states only Congress can declare war, and they are not allowed to simply delegate that authority to the president. However, you can get around that with a legal technique of taking the word *constitution* and adding the word *shmonstitution* to the end of it"...

License Plate of the Month: BOECK B, on a Toyota Camry driven by **Jody Prior**. It's her grandma's old car...From Actual Court Records: Counsel: "I ask you once again, as I close, merely to do what is correct in this case, which is to find my client innocent because he is in fact innocent. At the same time, you must punish the police because you are the watchers of the watchman and the way to punish the police is to throw out both of these charges. Thank you." The Court: "All right. Mr. Prosecutor, you may close." DA: "I suppose you ought to give him the dope and the machine gun back and an apology, and send him out the door. I suppose that's what we ought to do. We just hand it back to him and say, 'I'm sorry sir, take it all back. The cops fabricated this entire thing.' This is so ludicrous, I want to puke..."

From Abraham Lincoln: "The best way to get a bad law repealed is to enforce it strictly"... **Michael Blaise** recently completed the mediation workshop at Harvard's Law School's Program on Negotiation in Cambridge and the UC Santa Barbara's negotiation and mediation certificate program...The law firm of **Wasserman, Comden & Casselman** was awarded the Business Leader Award for law by the San Fernando Valley Business Journal for its commitment to the business community...From Actual Court Records: A DA's entire closing argument in a drunk driving case: "Roses are red, Violets are blue, Point one five, means drunk to you." The verdict was guilty...

State Bar Number 1? William H. Waste, who was Chief Justice of the California Supreme Court, graduated from Hastings in 1894, but was not the first lawyer to practice law in California. When the State Bar was formed in 1927, in a nod to the top judge in the state at the time, Waste got it. State Bar Number 2? Went to Hiram Warren Johnson who was admitted to practice in 1888, six years before Waste. He was a Senator from 1917 until the time of his death in 1945. State Bar Number 3? Samuel M. Shortridge, who was admitted

to the bar in 1885, nine years before Waste, but was also an U.S. Senator. Bar #4 went to Lucien Shaw and #5 was Frank Graham. **Stephen Blum?** A new admittee and VCBA member, his number is 242816...From Samuel Butler: "Justice is being allowed to do whatever I like. Injustice is whatever prevents my doing so..."

Speaking of the State Bar, the Public Comment portion of the proposed New Insurance Disclosure Rules is open through September 15. The new rules proposed by a task force calls for a requirement in California that "attorneys disclose whether they maintain professional liability insurance to their client." Part of the new rules would also require disclosure to the State Bar too. Written comments only to Saul Bercovitch, staff attorney, [saul.bercovitch@calbar.ca.gov](mailto:saul.bercovitch@calbar.ca.gov). From Clarence Darrow: "There is no such thing as justice – in or out of court."

From Actual Court Records: Lawyer: "What device do you have in your laboratory to test alcohol content?" Witness: "I have a dual-column gas chromatograph, Hewlett-Packard 5710A with flame ionization detectors." Judge: "Can you get that on mag wheels?" Witness: "Only on the floor models"...An anonymous source: "Trial courts seek the truth and appellate courts seek error"...Some changes in personnel at the bar – After nearly 7 years as our Business and Systems Manager, Sonia Hernandez has taken an accounting job in the private sector. **Alice Duran** has been promoted to the role of Associate Executive Director, assuming many of Sonia's responsibilities, and we've hired **Alejandra Varela** as the bar's new Client Relations Manager. She hails from the Coalition to End Family Violence and brings lots of association experience to us. Give "Alex" a welcoming call...

*Steve Henderson has been the executive director of the bar association and its affiliated organizations since November 1990. He will be attending his 35-year high school reunion in San Luis Obispo the 18-20th. Additionally, he will be toting his senior awards including Best Looking, Most Likely to Succeed, and Best Personality. Lastly, he is guilty of head butting on several occasions.*

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