CITATIONS

JUNE – TWO THOUSAND SIX

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PRESIDENT'S MESSAGE:
HOW A WILL SURVIVES MORE THAN A CENTURY– COULD IT BE THE LEGALESE?

By Loye M. Barton

"Legalese is a term, usually used pejoratively, for legal writing that is difficult for lay people to understand. Legal writing tends to have very long sentences with many carefully phrased clauses, and the features of legal writing that make it resistant to misinterpretation when read by legal professionals also often make documents difficult to read or even deceptive for those without legal training."

"Legalese (n.) Dense, pedantic verbiage in a language description, product specification, or interface standard; text that seems designed to obfuscate and requires a language lawyer to parse it. Though hackers are not afraid of high information density and complexity in language (indeed, they rather enjoy both), they share a deep and abiding loathing for legalese; they associate it with deception, suits, and situations in which hackers generally get the short end of the stick."

I found the above definitions on the internet. There were about a million other choices. These two seemed to sum up the lay person's opinion of legalese.

I started to read an article about California's test in eliminating legalese. I did not finish the article. Instead my mind wandered to a Will that has lasted over a century and created a dynasty for the heirs. Now, I like plain English as much as the next lawyer, but is there a place for legalese?

The Will to which I refer was written in the late 1880's and probated in 1900. The Will created a trust that will terminate by the terms of the Will in January 2007. A Will probated over 106 years ago is the foundation for a legacy that is beyond most imaginations. Since I became involved in the Will and the ultimate termination of the trust created under the Will, I have read it over and over to try to unlock the secrets of its success.

The Will has a simple beginning. It states "THIS IS THE LAST WILL AND TESTAMENT of me, JOHN DOE, of Ventura in the State of California (not the real names, city or state). Knowing the uncertainty of life, and wishing to make provisions for the disposition of my estate, in the event of my death, I do will and direct as follows:"

That is a pretty direct opening. In fact, it may be more to the point than wills of newer vintage.

But then it gets a little more legalesey. (That is a new word. I do not think you will find it in any dictionary.) The first paragraph sets the tone: "My Executrix and Executors, hereinafter named, are directed to reduce to possession all and singular my estate, real, personal, and mixed, wheresoever situated; and to manage, control, care for and collect the income and revenue thereof, pending the distribution thereof as hereinafter provided; to catalogue, inventory and appraise the same and to secure an adjudication, by the Court of Ventura County of the State of California having jurisdiction of such matters, of the value thereof. As the interests of my wife, and of my children, concerning such valuation, may conflict, it is my will that each of said interests be fully represented in the proceedings for the determination of the value of my Estate."

Now that is some good legalese. I guess Mr. Doe could have said it simpler, but his direction is clear.

The Will is 22 paragraphs long with an opening and an attestation paragraph. I like the thirteenth paragraph. It directs that the authority of the trustees continue during the natural life and lives of "my said wife, and of my children of my said wife, who shall be in esse at the date of my decease, and the survivor of them . . . and the authority of said Trustees thereunder, shall further continue for the definite term of Twenty years after the decease of such survivor, provided any such lawful issue as aforesaid shall live so long, and if not, then for such lesser term and period as he, she or they shall live."

Again there are other ways to write this paragraph. It could be written so that anyone could get it. But where is the fun in that?

So here is my pitch. Lawyers spend three or more years in law school learning how to understand and eventually write legalese. Sometimes you can write something in 100 words that might have been written in 10 words. But would those 10 words endure more than a century and withstand generations of heirs and their attorneys? Maybe not–it could be the legalese.

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

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ANIMAL RIGHTS OR ANIMAL CRACKERS?

By Michael McQueen

In response to Loye Barton's April '06 *Message From the President* I want to make a public confession. I like to hunt. I also like to fish, though I do more bird watching than shooting and release more fish than I keep. I understand the compulsion to hunt and fish. Admittedly, it is a recreational pursuit dominated by men. The activity promotes companionship, a deep and abiding appreciation of nature, and the excitement of the hunt. Undoubtedly, this proclivity has its basis in millions of years of evolutionary biology and probably had a lot to do with the survival of the species. This trait does not, however, make me unfit for public office.

I do not denigrate the sensitivities of "animal lovers." I don't insist that they spend time fishing or go pheasant hunting. I leave them alone and ask the same from them. But over the years I have observed the burgeoning animal rights movement evolve from a quaint quirkiness to wholesale quackiness, from ditsy aunts with 52 cats to wild-eyed zealots advocating rights for animals.

Admittedly, I do not "love" animals. I am fond of them. (Though my neurotic chocolate lab does try one's patience; which causes me to wonder if there is an animal rights group that protests against bird dogs?) I love my wife, my children, my parents. I do not equate that love with an attachment to an animal. I perceive a difference between humans and animals. I also understand that loving humans can be difficult. They are demanding, unappreciative and sometimes don't love you back, (and these aren't just my children). So loving animals is easy. You feed them and you receive, in return, what some perceive as undying devotion. It's cheap comfort and an easy, undemanding faux relationship.

This intuitive, emotional response to animals, when not leavened with a pinch of rationality, leads to bizarre consequences. We have protesters demanding that pigs, cows, chickens and even lobsters raised for food be given pleasant circumstances, the opportunity for self-fulfillment and the joy of the "free range," whatever that means. I have a good friend who refuses to eat lobster because they mate for life. They're food, for goodness sake!

The talented self-promotional group known as PETA, which I just learned does not stand for People Eating Tasty Animals, has gone from the absurd to the asinine. They have equated the raising of chickens to the horrors of Auschwitz. They have sued California for false advertising about cheese from happy cows, claiming the cows just aren't happy. *Peta v. California Milk Advisory Bd.* (2003) 124 Cal.App.4th 871. I once joked that PETA wanted animals to have the vote. I thought it was a humorous quip until I read their official magazine that equated the animal rights movement as the logical successor to the civil rights movement. These people have absolutely lost their senses. But that may just be me.

Part of the explanation for this irrational confusion of priorities may be that we have become a predominantly urban society with no inkling where food comes from. But the real underlying culprit is Walt Disney. It started with *Bambi,* followed with *Old Yeller, Benji, Lassie, Free Willy, Dr. Doolittle,* and progressed to *Finding Nemo*. This deep-seated anthropomorphism is entrenched in our culture. For many people there is no functional difference between humans and animals. Once you emotionally buy into that perception, it is not a huge step to conclude that animals should have rights. Once that idea gets bounced around the loony tunes really come out of the woodwork. Hawaii recently amended its laws to allow testamentary trusts for animals as beneficiaries, as does California. Maine just passed a law to allow judges to issue protective orders for animals in domestic dispute cases. There are protests concerning the killing of introduced wild pigs on Santa Rosa Island. There are protests about the culling of the wild horse herds that are decimating Nevada. People lament the fate of racing greyhounds and protest rodeos. But for the activity for which these animals are bred, they would have no existence. The logical result of these protests is that the very existence of the animals themselves would be eliminated. The consequence of these protests is that the animal will become extinct.

The reason I am taking the time to address this issue is that we need to recognize the unintended consequences of emotional, knee-jerk animal evangelism. Pets are "cute" and sympathetic. Many people want a sense of empowerment, and pets do that for them. It all boils down to a proportional sense of relative priorities. America is so rich and has so much discretionary income that we can spend a reported 42 billion dollars a year on pets -- pets that, in many cultures, are considered food. Every time I see a starlet on TV pandering for some cute animal's rights, I think about the myriad of social injustices that should be attended to. I am not for a moment suggesting that people should not be allowed to spend their money in any fashion they wish, just as I should be allowed to buy ammo and hunt on occasion.

The problem is that any logical dialogue with an animal zealot is a complete waste of breath. They have full hearts but empty brains. We are heading in a direction where self-appointed animalistas will have established animal kangaroo courts, perhaps even animal voting trusts. Mandated standards that custodial animal caregivers must not violate or suffer the consequences of the animal zealots. We won't own our pets but will be entrusted with them subject to review and enforcement by those who will insist that every dog and cat have Hi-Def TV. The existing laws against animal cruelty are necessary and adequate, but the extremism being pursued by those emotionally dependent on animals must be curtailed.

Ok, perhaps I am being somewhat of an alarmist. But when the President of the County Bar questions the suitability of a political office holder (who shall remain nameless) because he has the primordial predilection, if not the skill, to hunt, are we not but a step away from empowering these well intended but irrational good-hearted souls who have lost all sense of priorities?

Michael McQueen *practices law in Camarillo and is a member of CITATIONS' editorial board.*

CITATIONS is published monthly by the Ventura County Bar Association. Editorial content and policy are solely the responsibility of the Ventura County Bar Association.

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Mortgages and Divorce

By David Jaffe

When your client is going through divorce, qualifying for a mortgage is more complicated. It's very important to advise the client on steps they should take before, during and after a divorce to keep their borrowing ability intact.

BEFORE

Obtain a joint credit report that shows all three reporting agencies (Experian, Equifax, Transunion). A report can be purchased from www.creditreport.com or usually obtained for free from a local mortgage lender. Have the client list all the creditor information and account numbers showing on the report. If possible, get a new credit card in only the client's name so they will have access to credit. After they have assured themselves of a new credit card, close all the accounts that are joint to prevent any further charges from accruing.

DURING

Be sure to be very specific in the divorce decree on the division of debt. Vague language such as one spouse's responsibility for the Visa, MasterCard or the Ford auto loan creates havoc when there are multiple Visa, MasterCard, or Ford accounts. It is essential that all joint debts have the corresponding account number attached to the obligation so that an underwriter will know who is responsible for what debt.

Because joint debt shows up on the credit report until that debt is completely paid off, the spouse not responsible for that debt can still have their credit report negatively impacted if the responsible party was late. With most lenders basing their qualifying criteria on credit scores, this can be a make or break situation for many clients. If possible, advise eliminating joint debt.

It is also important to include birth dates when listing children. If this information is in the divorce decree, it will be much easier for the lender to verify the children's ages and the number of years left on child support payments.

AFTER

Once the divorce is final, suggest that your client do the following. Make a copy of the divorce decree so that when they apply for a mortgage they will have this document handy (and they won't have to call you for a copy). Create a paper trail of any alimony or child support that is paid so that the lender can verify they are actually receiving this money. As we all know, just because it is court mandated doesn't mean it is being paid, and the lender needs to verify this. It is very important to deposit each check or cash amount on a consistent schedule and not mingle it with other deposits or withdrawals. If the divorce decree states they get $1,000 a month, then the lender wants to see exactly $1,000 a month going into an account.

If the client is paying alimony or child support, document any agreement to decrease these payments. A verbal agreement will not stand up in loan underwriting and the underwriter will need official paperwork to verify any changes.

Until a few years ago it was more difficult for divorcing/divorced people to qualify for a mortgage. In many cases, one spouse wants to buy out the other spouse, or they may want to sell the house and use the proceeds to buy their own homes. The problem experienced by many of the clients I've dealt with is a family income that is now cut in half, coupled with having a larger mortgage due to the cash requirement for a buyout. In addition, if their only income is alimony or child support, most lenders want at least a six month history of receiving these payments.

Due to the mortgage market maturing, there are now as many loan programs out there as there are needs for people. A very popular loan for those in a divorce situation is a No Doc loan. This means that the loan application has only the customer's name, social security number, and residence history. The income and assets are left completely blank and the lender approves the loan based strictly on the equity and credit score. It's a great solution for those wanting to keep a home or buy another one.

David Jaffe *is a branch manager for Chase Home Finance in Westlake Village, CA. He may be reached at (805)449-2000.*

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WE READ SO YOU DON'T HAVE TO

SO ORDERED.

SIGNED this 21 day of February, 2006.

LEIF M. CLARK
UNITED STATES BANKRUPTCY JUDGE

United States Bankruptcy Court

Western District of Texas
San Antonio Division

IN RE	BANKR. CASE NO.
RICHARD WILLIS KING	05-56485-C
DEBTOR	CHAPTER 7
FACTAC, INC.,	
PLAINTIFF	
V.	ADV. NO. 05-5171-C
RICHARD WILLIS KING	
DEFENDANT	

ORDER DENYING MOTION FOR INCOMPREHENSIBILITY

Before the court is a motion entitled "Defendant's Motion to Discharge Response to Plaintiff's Response to Defendant's Response Opposing Objection to Discharge." Doc. #7. As background, this adversary was commenced on December 14, 2005 with the filing of the plaintiff's complaint objecting to the debtor's discharge. (Doc. #1). Defendant answered the complaint on January 12, 2006. Doc. #3. Plaintiff responded to the Defendant's answer on January 26, 2006. Doc. #6. On February 3, 2006, Defendant filed the above entitled motion. The court cannot determine the substance, if any, of the Defendant's legal argument, nor can the court even ascertain the relief that the Defendant is requesting. The Defendant's motion is accordingly denied for being incomprehensible.[1]

###

[1] Or, in the words of the competition judge to Adam Sandler's title character in the movie, "Billy Madison," after Billy Madison had responded to a question with an answer that sounded superficially reasonable but lacked any substance,

> Mr. Madison, what you've just said is one of the most insanely idiotic things I've ever heard. At no point in your rambling, incoherent response was there anything that could even be considered a rational thought. Everyone in this room is now dumber for having listened to it. I award you no points, and may God have mercy on your soul.

Deciphering motions like the one presented here wastes valuable chamber staff time, and invites this sort of footnote.

Judge Pro Tem Rule Change

By Brenda McCormick

The eligibility requirements to sit as a judge pro tem have changed statewide. They apply to all new and current judges pro tem. Beginning 2007, to serve as a temporary judge, you must be a member in good standing with the California State Bar, for a minimum of 10 years and have completed 9 hours of court approved training: 3 hours in bench conduct and demeanor, 3 hours in ethics and 3 hours in each area of substantive law. (California Rules of Court, rule 243.13, operative Jan.1, 2007.)

These new requirements apply to all temporary judges, including those hearing matters in small claims, civil, family law, probate, mental health, unlawful detainers and mandatory settlement conferences.

The Ventura County Superior Court is developing a protocol to meet these training requirements. The court will offer programs beginning in the fall and expects to offer MCLE Credit. Please stay tuned for information on when the programs will be offered.

The Ventura County Superior Court is fortunate to have many volunteers serve as temporary judges. The Court looks forward to continuing its volunteer program and hopes that its current and new volunteers will take avail themselves of the educational opportunities to promote their own growth and experience.

If you have any questions, please contact Brenda McCormick, Court Managing Attorney, 654-3630 or email her at Brenda.McCormick@ventura.courts.ca.gov.

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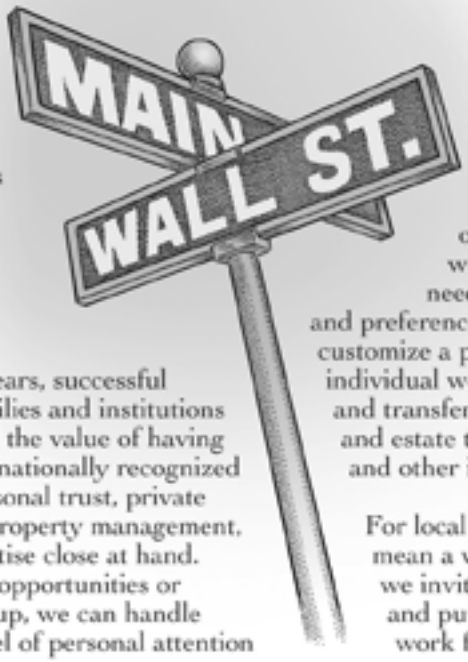

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The Federal Probate Exception - what is it and how is it applied in the wake of Marshall v. Marshall?

By David B. Shea

Why was the United States Supreme Court so interested in a case that involved a 23 year old stripper, an 86 year old Texas oilman, and a $1.6 billion dollar estate? One can only speculate what piqued the Justices' interest, but clearly the Supreme Court knows the probate exception when it sees it.

Federal courts lack the power to probate a will or administer an estate. Such matters are a function of the state probate courts. (*Markham v. Allen* (1946) 326 U.S. 490.) Further, challenges to the validity of a will, akin to a federal will contest, constitute an impermissible interference with the state probate and are not within the jurisdiction of the federal courts. (*Sutton v. English* (1918) 246 U.S. 199.) With this said, federal courts have the power to entertain in personam diversity actions, firmly grounded in recognized legal theories, if their resolution will not undercut the past probate of a will or result in the federal court "assum[ing] general jurisdiction of the probate or control of the property in the custody of the state court." (*Markham*, at 494.)

Justice Ginsberg stated in *Marshall v. Marshall* (U.S. May 1, 2006) - - - S.Ct. - - -, 2006 WL 1131904, that "[t]he probate exception reserves to the state courts probate or annulment of a will, and the administration of a decedent's estate; it also precludes federal courts from disposing of property that is within the custody of a state probate court. . . . But it does not bar federal court from adjudicating matters outside those confines and otherwise within federal jurisdiction." (*Id.*, at p. 13.)

Although the issue is less than exciting and a tad esoteric, the parties are anything but. Anna Nicole Smith (a.k.a. Vickie Lynn Marshall) and E. Pierce Marshall, the youngest son of J. Howard Marshall, a Texas oilman and Anna Nicole's late husband, have been embroiled in legal battles for more than 11 years over J. Howard Marshall's $1.6 billion estate.

Anna Nicole met J. Howard Marshall in 1991, when she was 23 and he was 86. She was an exotic dancer working the day shift at "Gigi's," a Houston gentleman's club that J. Howard patronized. J. Howard was drawn to the voluptuous attributes of Anna Nicole and proposed marriage a week later. Anna Nicole, the ever-serious career woman, kept putting off his proposals in order to focus on her career as a model and an actress. In 1993, Anna Nicole was chosen Playmate of the Year and was a spokesmodel for GUESS jeans.

Not content with Anna Nicole's rejection, J. Howard lavished her with expensive gifts, and in 1994 renewed his proposal, this time reportedly offering her one-half of his assets. Well . . . as any young stripper who met an attractive 86-year-old billionaire might do, she finally accepted. Three years after their initial meeting, the couple wed. She was 26 and he was 89. Unfortunately, wedded bliss lasted only 14 months when J. Howard died in 1995 at the age of 90. Not long after his death, Anna Nicole learned that J. Howard's estate plan did not provide for her.

Not surprisingly, litigation ensued. The first stop was a Texas state probate court where Pierce offered his father's will to probate. While the estate was the subject of ongoing Texas probate court proceedings, Anna Nicole, the grieving widow, was off to California and months later filed a Chapter 7 Bankruptcy. Not content to leave well enough alone, Pierce filed a creditor's claim in the bankruptcy action alleging that Anna Nicole and her attorneys had defamed him. Taking issue with such meritless claims, Anna Nicole filed a counterclaim alleging that Pierce had tortiously interfered with her inheritance rights (a tort cause of action not recognized in California).

In 2000, the Bankruptcy Court in California denied Pierce's claim, held that Pierce and his lawyers engaged in a conspiracy to defraud Anna Nicole of her share of J. Marshall's estate, and awarded Anna Nicole $474 million.

Challenging the Bankruptcy Court's jurisdiction to issue such an award, Pierce filed a post-trial motion to dismiss based on lack of subject-matter jurisdiction, asserting that Anna Nicole's tortious interference claim could only be tried in the Texas probate proceedings. The motion was denied.

Pierce proceeded to appeal the bankruptcy decision to the District Court, which held that the probate exception did not reach Anna Nicole's counterclaim. The District Court treated the bankruptcy decision as advisory and reduced Anna Nicole's award to $88.5 million. Pierce then appealed to the 9th Circuit, which overturned the District Court's decision, holding that federal courts are precluded from getting involved in ***any*** probate related matters, including claims involving tax liability, debt, gift, and tort, citing the probate exception to federal court jurisdiction.

The United States Supreme Court examined the origin of the federal probate exception and determined that the 9th Circuit's application of the rule was too broad and that the rule did not necessarily preclude federal courts from determining all probate-related matters.

In light of the Supreme Court's opinion in *Marshall*, state probate courts will pretty much continue with business as usual. The state probate court will administer wills, determine heirship, dispose of creditors' claims, adjudicate issues surrounding the internal affairs of trusts, and pass on accountings and other acts of executors and trustees. These are all state court functions and will continue to be post *Marshall*.

The *Marshall* ruling does, however, confirm that the federal courts have the ability to decide estate related matters in very limited circumstances. These matters are more or less *in personam* in nature and can be heard by the federal court so long as the federal decision will not disturb or affect possession of property in the custody of the state probate court. As the court observed, Anna Nicole's "claim does not involve the administration of the estate, the probate of a will, or any purely probate matter." Anna Nicole sought and obtained an "*in personam* judgment against Pierce, not the probate or annulment of a will. Nor did she seek to reach a res in the custody of a state court." (*Id.*, at 14.)

With regard to the tort established against Pierce for tortious interference with right to inherit, such claim was advanced based on Texas law which governed the substantive elements of Anna Nicole's claim in federal court. California does not recognize such a cause of action. (See, *Hagen v. Hickenbottom* (1995) 41 Cal.App.4th 168, 173). Accordingly, pleading such a tort in a federal court in California will not provide entry into the federal system. But in jurisdictions like Texas that recognize such a tort, courts have made it clear that to state a cause of action, a plaintiff must allege facts

showing that he has exhausted all his probate remedies or has none to exhaust. (*See, All Children's Hospital, Inc. v. Owens* (tex 2000) 754 So. 2d 802.)

Anna Nicole should not be in a hurry to pick up her check based on the Supreme Court's ruling. The matter was remanded to the 9th Circuit and commentators agreed that one of the next battles will involve claim and issue preclusion. And you thought the subject matter couldn't get any drier.

By the Supreme Court's ruling in *Marshall*, litigants are not going to get another bite at the apple on matters that have once been litigated in the state probate court. Clearly a litigant who has pursued his or her claims in the state court cannot start anew in the federal court. Such a tactic would be contrary to the rule that federal district courts have no subject matter jurisdiction to reverse or modify a judicial determination by a state court. This rule, known as the *Rooker-Feldman* doctrine, "precludes lower federal court jurisdiction over claims seeking review of state court judgments . . . [because] no matter how erroneous . . . the state court judgment may be, the Supreme Court of the United States is the only federal court that could have jurisdiction to review a state court judgment." *Taylor v. Federal National Mortgage Assn.*, 374 F.3d 529, 532-533 (9th Cir.2005)

As it stands, Anna Nicole was awarded $474 million by the Bankruptcy Court, reduced to $88.5 million by the District Court. At the same time the Texas Probate Court sided with Pierce, holding that J. Marshall's estate plan was valid and that Anna Nicole was only entitled to the $6 million she had received during the decedent's lifetime.

Where this case goes will continue to be intriguing, not for the subject matter, but for the tabloid entertainment surrounding the tale of a one-time stripper-married-billionaire saga.

***David B. Shea**, a Partner at Ferguson, Case, Orr, Paterson & Cunningham, LLP in Ventura, is a Certified Specialist in Estate Planning, Trust and Probate Law focusing on litigation.*

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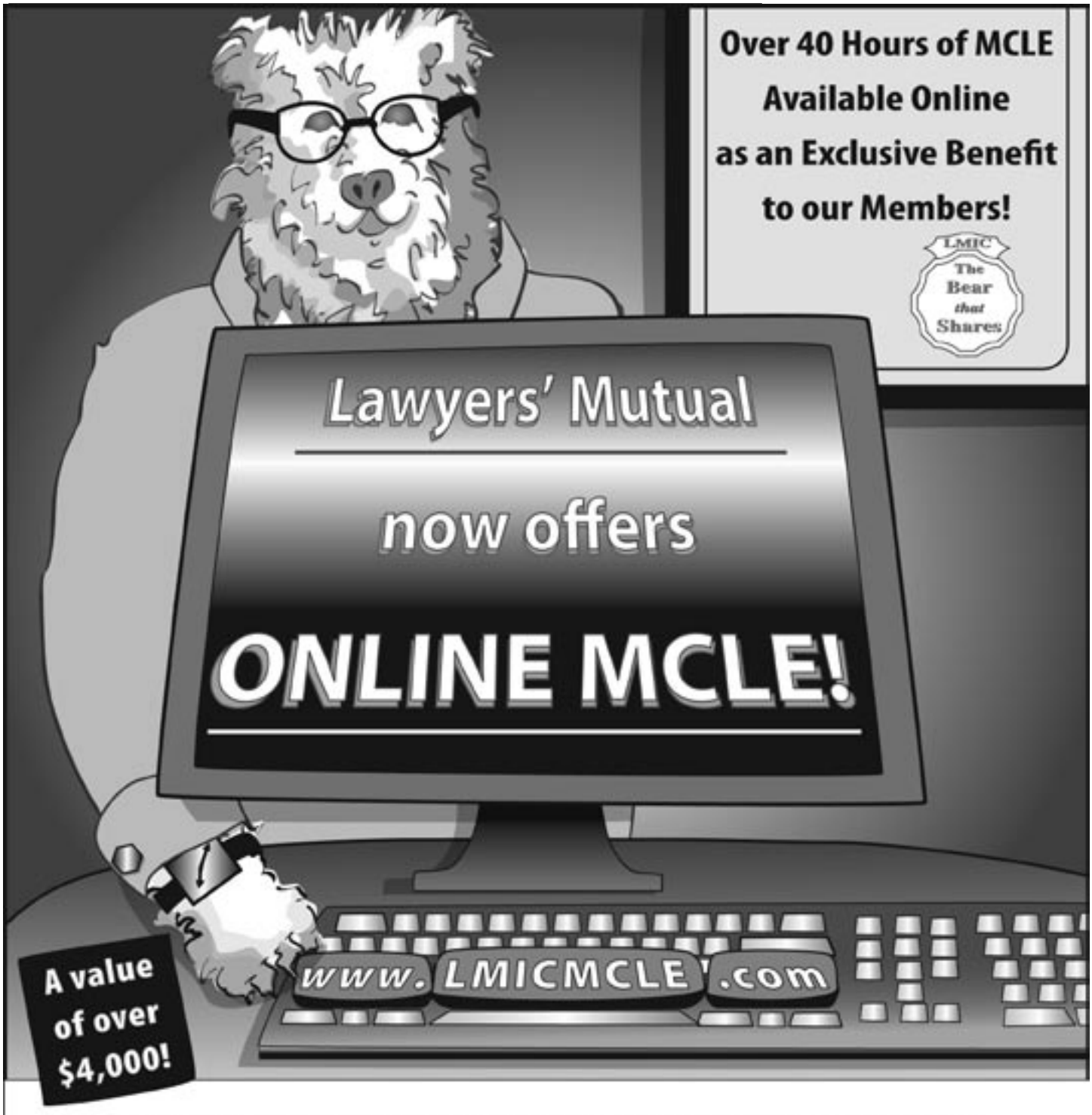

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The Bankruptcy Perspective on Anna Nicole Smith: Hardcore vs. Softcore?

By William E. Winfield

Is this Hardcore or Soft? This is the real question for bankruptcy practitioners after the U.S. Supreme Court decision in *Marshall vs. Marshall*, 547 U.S. ___ (2006).

We all know the facts of the case. A young stripper and playmate, Vickie Lee Marshall aka Anna Nicole Smith, married an elderly multi-billionaire, J. Howard Marshall II. Fourteen months later, her husband died. Upon his death, it turned out that he had not completed an estate plan providing for Anna Nicole as he had promised. Anna Nicole contended that her husband's son, Pierce Marshall, tortiously interfered with her expectancy by forging documents and other actions to prevent his father from executing an estate plan favorable to Anna Nicole Smith.

When Anna Nicole Smith filed for bankruptcy relief under Chapter 7, Pierce Marshall filed a claim in the bankruptcy case for, among other things, his damages arising out of defamation. Pierce also filed an adversary proceeding objecting to the discharge. Anna Nicole objected to the claim and the adversary proceeding asserting truth as a defense and stating her own tort claims against Pierce Marshall. Los Angeles Bankruptcy Judge Samuel L. Bufford agreed to try Anna Nicole Smith's tort claims as an adversary proceeding in the bankruptcy court. When Judge Bufford took jurisdiction over the case, some eyebrows were raised.

Judge Bufford was undaunted. After enduring weeks of intense publicity and sometimes lurid testimony, he ultimately ruled in favor of Anna Nicole Smith, awarding her $449 million plus $25 million in punitive damages based on actions taken by Pierce Marshall to deprive her of her expectancy. *Marshall v. Marshall* (In re *Marshall*), 253 B.R. 550 (Bankr. C.D. Cal. 2000). Pierce Marshall appealed to the U.S. District Court, which reduced the judgment to $88.5 million, but affirmed the basic ruling. (The District Court wrote an interesting 43 page opinion with life histories of J. Howard Marshall, II, Anna Nicole and some of Mr. Marshall's prior mistresses). *Marshall v. Marshall* (In *re Marshall*), 275 B.R. 5 (C.D. Cal. 2002).

Pierce Marshall then appealed to the 9th Circuit Court of Appeals arguing that the bankruptcy court never had jurisdiction over the matter because: (1) the common law "probate exception" required that the case be tried by a probate court in Texas; and (2) the case was not really a core bankruptcy proceeding. The 9th Circuit decided in favor of Pierce Marshall on the probate exception claim and never reached the jurisdictional issue. *Marshall v. Marshall* (*In re Marshall*) 392 F.3d 1118 (9th Cir. 2005).

Anna Nicole Smith appealed to the U.S. Supreme Court, which ruled in a unanimous opinion that the probate exception did not apply. The opinion by Justice Ginsburg adopted Judge Bufford's reasoning that the probate exception did not apply, because the bankruptcy court was not "exercising control over the probate case or its assets," but was merely determining a tort claim. (Justice Stevens rendered a concurring opinion in which he agreed with the result, but questioned whether the "probate exception" even existed). The U.S. Supreme Court remanded the case to the 9th Circuit Court of Appeals to determine the second issue, whether Anna Nicole Smith's tort action is a "core" proceeding or a "non-core" matter.

Core vs. Non-Core

This leads us to what the case is really about – bankruptcy jurisdiction. It is not really hardcore versus softcore, but close. There are two primary types of jurisdiction over lawsuits in bankruptcy cases:

1. One type of bankruptcy jurisdiction is for disputes which are "core proceedings." 28 U.S.C. § 157(b)(2). There are issues that "arise under" or are integral to the bankruptcy case. The code provides a non-exclusive list of items which are core proceedings. A number of these obviously would be bankruptcy issues. However, as one commentator observed, "The splash of the center is obvious. How far the ripples will extend depends on the size of the rock and surface of the water. The more subtle effects may not be visible." Richard Aaron, Bankruptcy Law Fundamentals at § 3:7, page 3 – 14. The Anna Nicole Smith case is obviously an extended ripple.

2. The other type of jurisdiction is "related matter" jurisdiction or "non-core." Matters which are not core proceedings are "related" proceedings. 28 U.S.C. §157(c)(1). The bankruptcy court has discretionary authority to determine most related proceedings. However, its authority is not plenary. This means that determinations by the bankruptcy court are not final and are subject to review by the U.S. District Court. Most bankruptcy judges are reluctant to consider related matters and usually exercise their discretion to decline jurisdiction over related matters because all they can do is propose findings for approval by the District Court.

Whether the 9th Circuit decides the *Marshall* case is a core matter or a related matter, the substantive ruling is likely to stand since the District Court has already adopted the bankruptcy court's findings.

There are three ways the *Marshall* case may impact local bankruptcy practitioners:

1. The scope of legal issues that can be decided by bankruptcy courts is growing. The trend over several years has been to expand the scope of cases that are considered core proceedings, so more cases can be tried in bankruptcy court.

2. In situations where there is a conflict of law between the federal and state law, it is becoming more likely that bankruptcy law will prevail. The *Marshall* decision is also consistent with this trend. (See e.g. *Sherwood Partners, Inc. v. Lycos, Inc.* 394 F.3d 1198 (9th Cir. 2005) Cert. denied 162 L.Ed.275 (2005)), which held bankruptcy law preempts state common law on general assignments for the benefit of creditors in so far as preference avoidance litigation is concerned.

3. This is a resounding victory for Judge Bufford. Judge Bufford, who was criticized in some circles for taking jurisdiction in the Smith case with its lurid facts and tangential connection to bankruptcy, has been vindicated by a unanimous Supreme Court, and is likely to be emboldened. The trial involved many weeks of testimony that would be scintillating by bankruptcy standards. Skeptics who suggested the high profile plaintiff and the sexy facts of her case were more interesting than the jurisdictional issues presented must concede that, whatever his motivation, Judge Bufford got the jurisdictional issue right.

William E. Winfield *is a Senior Partner at Nordman Cormany Hair & Compton LLP. He is board certified in business bankruptcy by the American Board of Certification.*

Punitive Damages Initiative Withdrawn

By Deirdre Frank

Frank M. Pitre, president of Consumer Attorneys of California, announced that the Punitive Damages Immunity initiative was withdrawn from the Secretary of State's Office and will not appear on the November ballot. He thanked the efforts of Senator Joe Dunn and the legislative leadership for their efforts and their encouragement of debate of the issues.

Mr. Pitre says the fight is not over. The June primaries will shape the Legislature for the next decade and another initiative may surface. He advocates building reserves to counter the efforts of those who would take away consumer rights and those who try to legislate through the ballot box.

Deirdre Frank *practices Personal Injury, Workers' Compensation and Social Security Disability law in Ventura.*

2006 LAW

DAY 5K

This year you can view over 400 photos from the Law Day 5-K on Shutterfly.com. Just send an e-mail to kwhite@fcopc.com and request access to the Shutterfly.com race site. Once you are in the site you can review all photos and order any photos you wish. The photos were taken again this year by Kevin White of Ferguson, Case, Orr, Paterson & Cunningham.

New Filing Requirement Reminder

The Ventura Superior Court Clerk's Office would like to remind all attorneys that effective January 1, 2006, fax numbers and email addresses, if available, must go on all papers filed with the court under California Rules of Court, rule 201(f)(1):

(f) [Format of first page] The first page of each paper must be in the following form:

(1) In the space commencing 1 inch from the top of the page with line 1, to the left of the center of the page, the name, office address or, if none, residence address, telephone number, fax number and e-mail address (if available), and State Bar membership number of the attorney for the party in whose behalf the paper is presented, or of the party if he or she is appearing in person. The inclusion of a fax number or e-mail address on any document does not constitute consent to service by fax or e-mail unless otherwise provided by law.

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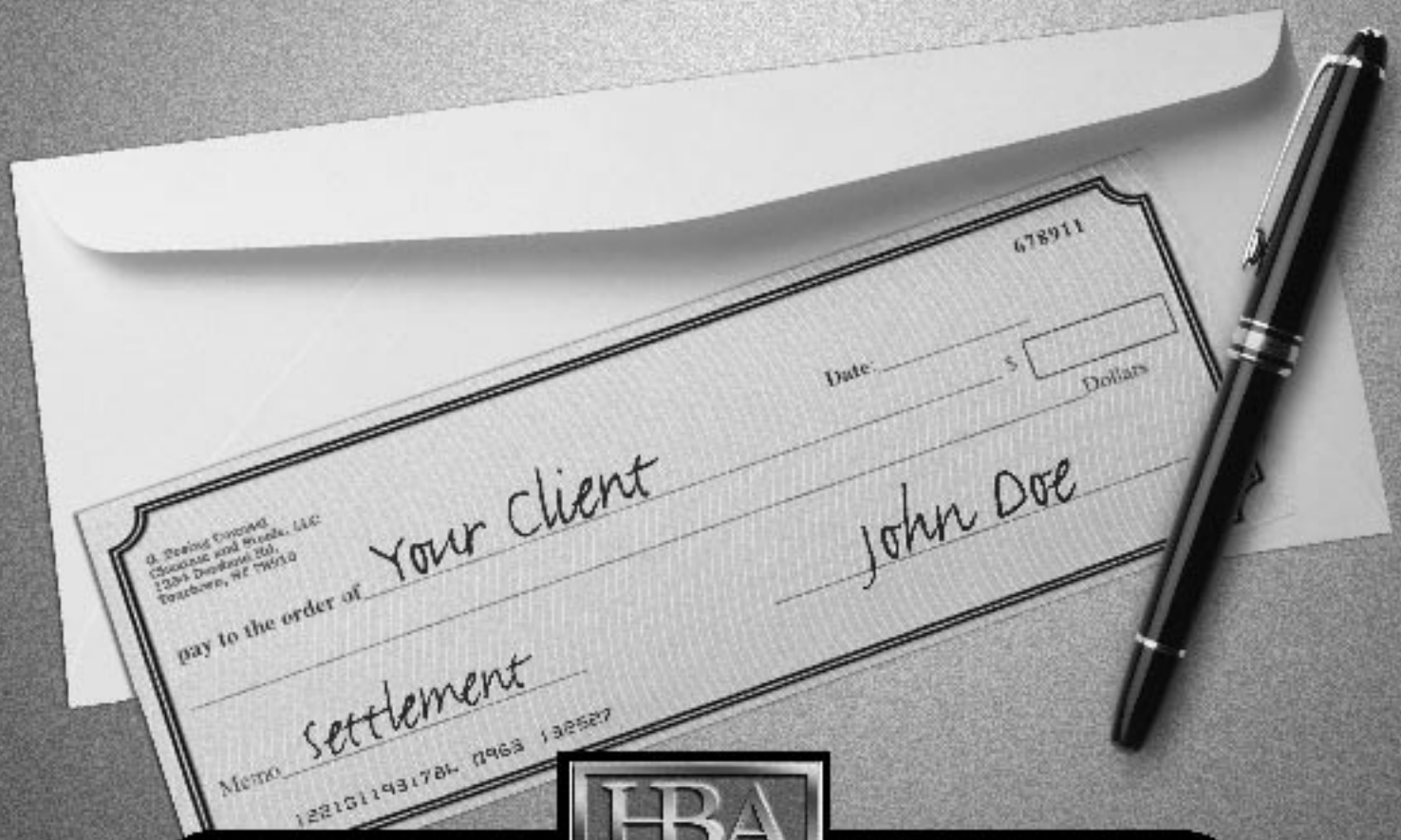

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EAR TO THE WALL

Matt Bromund is pleased to announce the opening of his private practice serving immigration, family law, and criminal defense clients. His experience as a Special Assistant US Attorney, Navy JAG, and Assistant County Counsel is now available as needed. He can be reached at (805) 650-2590 or at Lincoln's Inn, 950 County Square Dr., Ste. 110 or at bromund@hotmail.com.

Paul E. Drevenstedt joined the Office of the Ventura County Public Defender this month. Paul was lured away from the Lassen County Public Defender's Office and will put his talents to work in the Misdemeanor Crimes Unit.

FREE TRAINING

Come to the Ventura County Law Library at the Government Center and check out our Westlaw subscription. Gregg Kravitz will present a free Westlaw training session worth 1 MCLE unit on Tuesday, June 13, 2006 from 12-1 p.m. For more information call (805) 642-8982.

PRO BONO HIGHLIGHTS

By Verna R. Kagan

Recently, I was listening to my favorite program on National Public Radio. Danny Wallace, author of "The Yes Man," was being interviewed. In his book, Wallace describes how a promise he made to himself to say "yes" more often than not, changed his life. Despite its lack of a profound message, the book nevertheless caters to a spectrum of emotions. Sometimes funny, sometimes scary, the author narrates wonderful stories that stem from his decision to always say "yes."

In today's world, Joseph Beltran plays "The Yes Man" role perfectly. Beltran is always saying yes, even when he should be saying no. Unlike the story in Danny Wallace's book, Joe's story has a profound message–always do the right thing. Despite his ability to say no, Joe never turns down a Spanish-speaking applicant with a pro bono family law dilemma. Joe is one of two attorneys who always say "yes" to pro bono work. By always saying "yes," Joe never disappoints.

During my short tenure as program manager, Joe has handled five pro bono matters for us, two of which overlap. I imagine Joe has taken on numerous other pro-bono projects for us prior to my stint as program manager.

Whether Joe is having as thrilling a time as Danny Wallace did can only be answered by Joe himself. For certain, Joe's bravery and willingness to always say "yes" has made the lives of those around him that much better.

Dear Joe, thank you for your major contribution to the pro bono program, particularly to our Spanish-speaking applicants.

Earl Price, a highly esteemed member of the Emeritus Attorney team, suffered an unfortunate bout of illness recently. As a result, in March he underwent major surgery. After recovering nicely, he experienced an unexpected relapse, requiring further surgery. All of Earl's family, friends, and Emeritus Attorney colleagues crossed their fingers for him, sent him get-well cards and anticipated hearing good news. Thankfully, Earl is now home from the hospital and doing well. Slowly but surely Earl is recovering. We all know that Earl's fighting spirit will prevail, bringing him back to work in good health and high spirits.

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

ARANDA JUDICIAL AWARD

The California Access to Justice Commission is seeking nominations of a California judge for the Benjamin Aranda III Access to Justice Award. The award honors one California trial judge, appellate court justice, or commissioner who deserves recognition for his or her demonstrated long-term commitment to equal access to our courts, and who has personally done significant work in improving access to our courts for low and moderate income Californians.

The award will be made by the Judicial Council, the State Bar of California and the California Judges Association and will be presented by the Chief Justice at this year's California judicial leadership conference in November 2006.

The award is named in honor of the late Judge Aranda, who was known for his tireless efforts to promote fairness and access in the courts. The California Commission on Access to Justice will select the award recipient in consultation with the Judicial Council, the State Bar and CJA.

To nominate a judicial officer, go to the following link and download the official nomination forms: http://tinyurl.com/gxzox

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IMMIGRATION ATTORNEY - Oxnard non-profit seeks attorney specializing in immigration law. $35,000 - $45,000 plus generous benefits. Will provide services to victims of domestic violence and direct court based and local clinics. Must be bi-lingual and have 3 – 5 yrs experience and a member of the Bar Assoc. Fax resume to HR (805) 983-6240.

ATTORNEY - Oxnard non-profit seeking VP of Legal Services to provide legal services to survivors of domestic violence and sexual assault. Will supervise family law and immigration attorneys and legal dept staff. Will serve as liaison to legal community and outside agencies. Must have J.D. and be a member of CA State Bar; a minimum of 6 yrs non-profit and/or legal experience. $55,000. - $65,000. w/generous benefits. Fax resume to HR (805) 983-6240

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OTHER

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YELLOW PAGE AD TO SHARE - Currently have large double page ad in Oxnard SBC Yellow Page directory. Excellent up front placement. Looking for another attorney to split cost and share the ad (one page each). If interested, please call (805) 981-3902.

EXEC'S DOT…DOT…DOT…

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

The Collaborative Family Law Professionals, under the keen direction of **Ed Buckle**, managed to gather 39 legal types into a six-hour training on a Saturday morning. Keynote was **Judge Jack Smiley** and one of the program's exceptional speakers was the Deputy Opinion Page Editor of the Star, Richard Larson. Ju**dge Chuck Campbell** and **Commissioner Bruce Young** were in attendance too…A German Proverb: A lawyer and a wagon wheel must be well greased…From John Updike: "Looking foolish does the spirit good."…**Gordon Lindeen** (#26774) has been practicing law 50 years, four months and change. Gordon was admitted January 1956 while in the Naval Reserves. His first job was in Monterey for about a year and then worked at Rockedyne for three years while practicing law part-time. He opened his own shop in Simi Valley in 1961 and has been a sole practitioner ever since. He recalls accepting court appointed cases for $10 an hour (no travel cost allowed) and by the late '60s and early '70s he was billing $35 an hour. The Yale ('52) and Stanford grad ('55) was the first lawyer in Simi followed by **James R. Basile** (26448/deceased) and **Al Keep** (32192/very much practicing). Gordon still has a fee schedule from 1968 which stated an hourly rate was $10; a divorce, $300; and an OSC, $100…From Billy Shakespeare: "In law, what plea so tainted and corrupt but being seasoned with gracious voice, obscures the show of evil."…

Lots going on at **Strauss Uritz**. The firm has added **Aletheia Gooden** to their roster. Aletheia is a UC Davis law grad who has been in practice in San Luis Obispo since 2003. **Tony Strauss** attended son Michael Strauss's graduation from Wake Forest Law School mid-May. Mike and fiancée Jenna Holston, who is also graduating, will be travelling back to Ventura where they will study for the California Bar. Jenna, from Rochester, New York, has accepted a position at **NCHC**. Mike will be joining **SU**. Tony has been appointed to the Cultural Arts Commission by the Ventura City Council. Lastly, Tony and his wife, Michelle, were feted at a dinner with the designation "Founders of the Year" by the Ventura Music Festival. In attendance were **Mike Case**, **Steve Lipson**, and **Dennis LaRochelle**…From Montesquieu: "Sometimes a man who deserves to be looked down upon because he is a fool is despised only because he is a lawyer."…

Sylvia Soto, formally of V**an Sickle & Rowley**, started her new job as an associate at **NCHC** May 25…License Plate of the Month: FITT4ME, driven by **Joan Allen**, president of the Ventura County Financial Abuse Specialist Team. Some other funnies spotted in San Diego recently: I (heart)MY ESQ, SIOUX U and BS ATTY… From Tommy Jefferson: "Our ancestors who migrated hither were laborers, not lawyers."…A Danish proverb: "Virtue in the middle," said the Devil, as he sat down between two lawyers…Lawyer Ron enjoyed 4-1 pre-race odds at the Kentucky Derby. Named after attorney Ron Bamberger, the horse finished 17th out of 20…According to the LA Times: Ron Branson failed several times to gather enough signatures to place on California's ballot a constitutional amendment that would make it much easier to investigate, sue and oust judges. So, he got it on the ballot in South Dakota (go figure) and so-called Judicial Accountability Initiative Law, which shortens to the catchy slogan "JAIL for Judges."…

Dan Palay is a proud new poppa for the second time. He has a new son, a future Green Bay Packer Hall of Famer, Supreme Court Justice and President of the United States; Jacob Sylvan Palay was born April 4. Weighing-in at 8 pounds, 10 ounces and 21 ½ inches long, baby "Jake," mom, Dan, and sister Emma, are doing very well, although quite sleep-deprived…This I learned at an ASAE Conference in LA last month: There are no PI suits in New Zealand… After five months with the Ventura County Counsel, **Lorraine H. Clark** has returned to **Lowthorp, Richards, et al.**, to concentrate on tax law. She enjoyed working with the talented attorneys and staff at the County Counsel, and also **Don Hurley**…. Outrageous Laws: No children may attend school with their breath smelling of wild onions in West Virginia…From Ambrose Bierce: "*Quiver,* n. A portable sheath in which the ancient statesman and the aboriginal lawyer carried their lighter arguments."…

For several years now, **Deirdre Frank** has chaired the Law Day celebration by coordinating the Lawyers in the Classrooms event. Attorneys from all over the county volunteered their time to give presentations at schools requesting speakers, including **J. Grant Kennedy, Christian Menard, Kevin McVerry, Earnest Bell, Monique Hill, David Karen, Jill Singer, Rob Miller, Carmen Ramirez, David Shain, Rick Chaidez, Allen Ball, Tina Rasnow, Wendy Lascher, Joe O'Neill**, and **Deirdre** too...Of the top 15 Best Sellers in the New York Times Book Review dated April 30, five were about religion, including *The Jesus Papers, Misquoting Jesus*, and *The Lost Gospel*…

Tony Trembley, Managing Partner at **NCHC**, received the prestigious Fritz Huntsinger, Sr. Outstanding Eagle Award from the Ventura County Boy Scout Council in May. The award recognizes an Eagle Scout who exemplifies the best in business, community service and Scouting. Tony received his Eagle award in Marin County in 1972…Out of the ABA State Legislative Clearinghouse: "The number and percentage of lawyer-legislators in each state ranges from a high of 30% in Texas to a low of 4% in New Hampshire and North Dakota." (www.abanet.org/poladv/research.html.) Obviously, this makes legislative advocacy efforts undertaken that much more difficult…From Conan O'Brien: "In France, a man sued over the country's ban on 'dwarf tossing,' claiming that it has kept him from earning a living. Not surprisingly, the judge threw the case and the dwarf out of court."…

General Westmoreland called down to the base motor pool one day and asked what vehicles were on the base and available. The private who answered the call said: "Two jeeps, one truck and one sedan for the stupid General." Not believing what he just heard, the General asked the Private: "Do you know whom you are talking to?" The Private said: "No." "Well, this is General Westmoreland." The Private thought for a moment, highly aware of his incredible blunder, and asked: "Well, do you know whom you're talking to?" The General responded, "No, I don't", to which the Private said: "Well, so long, stupid" and hung up the phone…

Steve Henderson *has been the executive director and chief executive officer of the bar association and their affiliated organizations since November 1990. Henderson's undergraduate degree is from an unaccredited institution while his Master's was obtained through matchbook correspondence. His entrée into the legal profession stems from a long running feud with his own lawyer. He may be reached at steve@vcba.org or at www.vcba.org.*

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