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To promote legal excellence, high ethical standards and professional conduct in the practice of law; to improve access to legal services for all people in Ventura County; and to work to improve the administration of justice.

Jamie McCourt, Meet Jill Friedman: Post-Marital Agreements and the Dodgers

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February 13, 2009

Jack Trimarco
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Dear Jack,

I would like to inform you that your services in the "W" case proved to be very helpful. The case was very troubling for our client as I guess anyone wrongfully charged with such serious conduct would be, but Mr. "W" was exceptionally so.

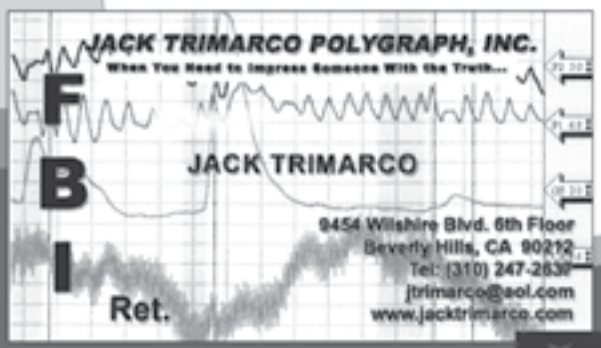
You should know that your efforts in finding him and his fiancé "truthful" when denying the offense was central in convincing the District Attorney to dismiss the case. It not only saved the expense and risk of a trial, but the mental well-being of my client. It is a convincing argument to the prosecutor when I can say that the polygraph expert they use has found my client to be innocent. They know that you only seek the truth, and do not show bias in any way in your testing methods.

On behalf of my client and staff, I thank you for your efforts.

Sincerely yours,

Louis Samonsky

LOUIS SAMONSKY JR.



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PRESIDENT'S MESSAGE "For Miles"

By Anthony Strauss

This is my last article as President and this being the final month of my term, I have turned to reflection. Traditionally, the last article is a recap of the prior year summarizing accomplishments and thanking all of those who have helped along the way. While I can (and will) do the thanking before the end of this piece, I am going to exercise presidential prerogative to deviate from the norm because this year has marked more profound transitions for me upon which to reflect. In 2009 I became a grandfather and I completed a third of a century as a lawyer. Hence, this article is directed to my grandson Miles – born July 17 – with reflections on my practice of the law.

I was predestined to become a lawyer. Unlike you, Miles, I didn't have parents, a grandfather and even a great grandfather who were lawyers. Neither my mother nor father graduated from high school prior to my arrival. Your great-grandmother went back to school once I started kindergarten and ultimately became an elementary school teacher. Apparently I was loquacious as a young child and my mother and older brother called me the "Philadelphia Lawyer" because I talked nonstop. Probably as a result of this, I started identifying with lawyers early on and read a biography about Clarence Darrow in grade school, watched the television series Perry Mason religiously and paid special attention to things involving lawyers. I decided that I would be a lawyer in junior high school (middle school today) when my home room teacher, Mr. Aguilera, pronounced that most important, life empowering statement that all children should hear, "You can be anything that you want to be." I believed him and made the choice.

In high school, I took speech and debate along with the regular curriculum because I knew it was part of the preparation for being an attorney. I started dating your grandmother as a freshman, drawn in part (I have to be careful here) because her father was a lawyer and I loved talking with him. By then my father was a bail bondsman and my brother was a policeman, so I was surrounded by people in the law. However, I recall one evening in particular during high school when the decision to become a lawyer was cemented. Two of my closest friends, John and Dennis, and I met with John's dad, who wanted to talk to us about careers and higher education. We talked about various career paths but I distinctly remember Mr. Minteer saying, "Once you are a lawyer, you carry that around with you like a back pack. Wherever you go or whatever you do, you will always have your law degree to fall back on." At the end of college, I toyed with going on in ancient history or archaeology. But that wasn't part of the original plan. I was supposed to be a lawyer.

I do have to tell you that the universe of career choices available today has vastly expanded since the '60s and '70s. If you wanted a "better life" than your parents, you became a "professional." That meant doctor, lawyer, dentist, accountant, engineer or teacher. In my community, no one talked about becoming an entrepreneur or businessman unless you were like a friend who was going to go into the family mortuary business. That option was neither available nor inviting. Education was the ticket to success. It was also a possible ticket to avoid the draft and being sent to fight in Vietnam in what had become a very unpopular war. It is impossible to even imagine today what choices will be available to you when it's your time to choose a career. I do know that many young people who have come of age after me have been overwhelmed by the plethora of options and have found it hard to find or remain in any suitable niche.

Was it the right decision for me? I think that I can state with reasonable certainty that you would not be here (or at least in Ventura) had I chosen a different field. Your father might not have gone to law school and met your mother and, even if he had, he would not have returned to Ventura to work with me. So from that vantage alone, it was the right choice. But even that aside, I have always felt that I made the right decision. Let me tell you why.

Becoming a lawyer allowed me to move to Ventura and raise my family here. Mr. Minteer was right. You bring your profession with you. One positive aspect of lawyers being ubiquitous is that they are indeed in every community. There are only so many ancient history professorships and, when a position opens up, wherever it is, you go there if you want the job. While law jobs may now be scarce (and they were when I graduated in 1976), government law offices still have turnover, some firms are still hiring and you can hang out your shingle as a last resort. This job has also remained intellectually challenging. I make no bones about the fact that I am still "practicing." I learn something new on an almost daily basis. My principal practice area of employment law is in continual flux with a new hot topic every year, from disability to sexual harassment to wage and hour to who knows what next. I also enjoy my colleagues. In my opinion, little has changed in 33 years when it comes to the civility and collegiality among Ventura County practitioners. Of course we all know of the exceptions. However, one has but to deal with "out of towners" for a short time to see the difference. Practicing law has provided a good life for our family and introduced us to our closest friends. It has also afforded me the opportunity to work with your father and be a part of your life growing up.

What have I learned that I can pass on that might be of benefit to you? I am assuming that there will be plenty of opportunities in the years to come for me to tell you my view of things. But this is about being a lawyer and the "secrets" that I learned (which just might carry over into other endeavors) are these: First, be comfortable in who you are; be yourself. Everyone has a different image of The Lawyer. For the lay community, a lawyer is the "shark," the "ambulance chaser," the "hired gun," the list goes on. While there are some kernels of truth in these stereotypes of lawyers, it is not you unless you become that way. Among lawyers there are different styles and approaches; there is the "hard ass," the nice guy, the consensus builder, the jerk. Clients may want you to act one of these parts. Again, your style and approach should be reflective of who you

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PRESIDENT'S MESSAGE "For Miles" *Continued*

are. There have been times in my career when I have tried to take on a personality trait that was not my own. Rarely was I successful in doing so. I have learned that I am who I am and, when I practice law that way, I am the most successful.

Second, do not be overly judgmental. Give people the benefit of the doubt. There is usually a reason why people do the things that they do. Instead of reacting to it, try to figure out why they did what they did. It is not only the more humanistic approach; it also serves your clients better when you remain rational and objective.

Third, be honest. Don't make promises that you can't keep, claim that you can do something that you don't know how to do or say something you know isn't true. There is a saying that a lawyer's reputation is his most valuable asset; that it is the hardest thing to acquire and the easiest thing to lose.

So Miles, when you read this, you may or may not be thinking about your future and whether you want to be a fourth generation lawyer. We may all be doing vastly different things when that time comes around. But when you do, you will see that you caused your grandfather to view his condition with perspective and perhaps it will impart some of that perspective into your own decision making process.
Your Grandfather, Tony Strauss

P.S. Thanks go to **Alice Duran**, **Alejandra Varela** and **Celene Valenzuela, Verna Kagan,** and **Peggy Purnall** for the outstanding work they do for the Bar, my Executive Committee **Kendall VanConas**, **Joe Strohman** and **Matt Guasco** for their collective wisdom, our great Board of Directors, No. 45 (**J. Roger Myers**) for his tolerance and his insistence that all the articles be law-related. **Don Hurley** for his support and for getting me involved, David Jackson (the first lawyer in the family), Joseph Aguilera, Bruce Minteer, Michelle for her patience, all of you who have helped me (or read my articles), **Wendy Lascher** for letting me write what I want and special thanks to **Steve Henderson**, who makes it all happen.

LETTER TO THE EDITOR

Dear CITATIONS:

I enjoyed the topic of President Strauss' November message. Formula One and go-kart racing occupied more of my time and attention than any academic subject during middle school and high school. Coincidentally, I funded my burgeoning racing career by working part-time at Jim Hall II Kart Racing Schools, a local business highlighted in Tony's article.

Nearly twenty years have passed since my first race at Jim's now-defunct Oxnard Shores kart track. Sand and iceplant are all that remain among the dunes adjacent to Edison's Mandalay Generating Station. Only pictures remain, like the one at left. Mike Strauss of "Team Strauss" fame, complete with custom baseball cap, showing the ropes (or more accurately, the nylon ties) to a nervous rookie—me.

Eighteen years on, Mike and I have slowed a bit. We spend our money on diapers, not racing tires, but still find time to gearhead a bit at Barristers meetings.

Eric R. Reed
Lascher & Lascher, APC

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Jamie McCourt, Meet Jill Friedman: Post-marital Agreements and the Dodgers

By Gregory W. Herring

As baseball fans, family law lawyers and pretty much everyone else knows by now, the ownership of the Los Angeles Dodgers is hotly contested in the marital dissolution proceedings recently filed by Jamie McCourt against Frank McCourt. The Dodgers were acquired by the McCourts during their marriage, which created a presumption that the asset was and is community property. But Frank alleges that the couple entered into a post-marital agreement that gave him sole ownership. He claims that that decision was made by Jamie to insulate herself from any debts or creditor's claims that might result from purchasing the team, which was then reportedly losing more than $75 million a year.

Having seen Joe Torre and Manny Ramirez help turn the franchise around, Jamie now argues that the post-marital agreement is invalid and that the Dodgers are community property.

The issue of the agreement's enforceability will be determined at the intersection of policies that allow spouses to freely enter into contracts, but also provide for fiduciary duties between them.

Standing there over seven years ago were Santa Barbara attorney **Jill Friedman** and her then-estranged husband, Keith. Before discussing the Friedmans, however, a brief review of the foundational law might be helpful:

California has a strong public policy interest in fostering and protecting marriages, and properly negotiated and drafted post-marital agreements can facilitate this. Spouses are thus authorized to freely contract with one another to alter their property rights (Fam. Code, §1500). A post-marital agreement may transmute (1) community property to the separate property of either spouse, (2) separate property of either spouse to community property and (3) separate property of one spouse to separate property of the other spouse (§850). Post-marital agreements that transmute property other than clothing, jewelry and other tangible personal items of nominal value and that were made after 1984 must be made in writing "by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected" (§852, subd. (a); *Estate of MacDonald* (1990) 51 Cal.3d 262).

The laws concerning post-marital agreements are significantly different from those relating to pre-marital agreements:

- Post-marital agreements are not governed by California's version of the Uniform Premarital Agreement Act (Fam. Code, §§1600-1617).
- A party negotiating a post-marital agreement need not be represented by counsel or sign a written waiver of same.
- Parties negotiating a post-marital agreement are presumed to be in a confidential relationship. As such, spouses have fiduciary duties to each other under Family Code section 721.
- A spouse gaining an advantage from a post-marital agreement is subject to a presumption that he exerted undue influence over the other (baseball's own Barry Bonds was happy to learn earlier this decade that parties negotiating a pre-marital agreement are not subject to that presumption (See *Marriage of Bonds* (2000) 24 Cal.4th 1, 27-30).

Returning to the Friedmans, their prior case illuminates the difficulties Jamie might encounter in trying to claw back a piece of the Dodgers:

In December 1990 Jill worked as an attorney for a "prestigious" law firm. She met Keith Friedman, who wanted to start a forensic consulting business. According to the Court of Appeal's recitation of the facts, Jill said that she wanted to keep her law practice as separate property if she married. Keith agreed.

Weeks later, Keith was diagnosed with leukemia. Jill urged him to undergo a bone marrow transplant so that he could be placed on her medical insurance. Shortly thereafter, they married.

Jill, who became the author's client following her below appeal and whom the author contacted in researching this article, says discussions about dividing property did not occur until after marriage and the discovery of Keith's illness. Likewise, though the Court of Appeal opinion recited that Jill proposed marriage, Jill says it was Keith who proposed to her.

Within days Keith called his attorney, stating that he wanted to protect Jill from creditors if he did not survive the medical treatment, which was a distinct possibility. The attorney suggested a post-marital agreement, providing that their individual income, business property and debts would be each spouse's respective separate property. The agreement was rapidly negotiated and completed.

Keith underwent the treatment and fully recovered. Moreover, his business flourished beyond anyone's dreams. Jill then desired to terminate the agreement, but Keith was not convinced. She eventually filed for divorce.

The agreement's enforceability was a major preliminary issue that was heard on an interlocutory appeal which resulted in a published opinion from our local division of the Court of Appeal (*In re Marriage of Friedman* (2002) 100 Cal.App.4th 65). In at least two aspects, it would appear to contravene some of Jamie's anticipated arguments.

First, the Court's "observations" emphasized the right of spouses to enter into transmutation contracts with each other:

> Where, as here, the agreement is lawful, either party may insist upon adhering to its letter. This protects the reasonable expectations of the parties at the time the bargain was struck. Subsequent events, whether unforeseen or fortuitous, and whether they favor one side or the other, should not dictate how we decide the legal issue here presented (*Marriage of Friedman, supra,* at 73).

Second, the Court countered Jill's assertion of the presumption of undue influence by emphasizing that the trial court had expressly found that, as "a bright woman" and "a trained attorney," Jill understood the agreement's scope and purpose and "no one held a gun to her head . . . ." (*Id.*, at 69).

As someone who has projected confidence in her professional competence, lawyer Jamie might find it hard to "play dumb." Contrarily, Jamie's biography reportedly cites her law degree from the University of Maryland, her master's in business administration from MIT and her experience practicing family law, of all things.

Beyond the above, Jamie has reportedly asserted, as a defense, that she was not represented by her own lawyer in negotiating the agreement. In signing the document, however, she reportedly acknowledged in writing that she had "been advised to seek separate and independent counsel."

Bad for Jamie is the fact that Jill was similarly unrepresented in negotiating the Friedman agreement. Moreover, *that* agreement lacked *any* attorney waiver and the Court still found against Jill.

Ultimately, if it was Jamie's idea to transmute the Dodgers from community property to Frank's separate property by the post-marital agreement (especially if to selfishly protect her own interests), she is likely wishing that the Friedmans had remained in matrimonial bliss and that the Court had thus lacked the occasion to write its opinion.

In the meantime, the Dodgers are reportedly in at least some disarray as a result of the discord. As a result, Giants fans are experiencing *schadenfreude* and enjoying more reason than ever to hope for the pennant in 2010.

Greg Herring *is a State Bar certified specialist in family law and is a partner with Ferguson Case Orr Paterson LLP. He is a Board member of the Southern California Chapter of the American Academy of Matrimonial Lawyers and past Chair of the Executive Committee of the State Bar's Family Law Section.*

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Barristers Basketball Tournament Recap

By Michael Strauss

For the second straight year, the VCBA Barristers hosted a three-on-three basketball tournament in Ventura. This year, the Barristers enlisted the help of the Ventura Family YMCA, which was looking for an opportunity to host its own sporting event to raise money for its children's programs.

On paper, the October tournament was fantastic. The number of teams participating nearly doubled, while the profit increased exponentially. Lots of local children will benefit from the increase in funding for their activities at the YMCA.

On the hardwood, the event was even better. The games were very competitive, though not overly so (the lawyer players were fairly tame, or so I heard). The victor in the "Barristers bracket" was last year's champion, Capital Punishment, a team made up of attorneys from the Ventura County District Attorney's Office.

To my knowledge, there were no broken bones or other serious injuries. Some egos may have suffered temporary bruising, but, by and large, the smiles on the participants' and spectators' faces supported the conclusion that, yes, basketball is just a game. Moreover, everyone I talked to looked forward to returning to play in next year's tournament.

To that end, the Barristers and the YMCA are already planning next year's event. Our goals are likely to include a greater expansion of the tournament, with a larger venue like Ventura College and the capacity for doubling the number of teams once again. Your suggestions will be considered, so send them my way if you have any.

I want to thank all of our sponsors and participants and, of course, the YMCA members and Barristers who helped plan the tournament. If you are interested in helping plan next year's event, or if you would like to be a sponsor, let me know. If the improvements from last year are any indication, next year's tournament is going to be very special.

***Michael Strauss** is Barristers President. He practices labor and employment law, inter alia, at Ventura's Strauss Law Group.*

SUCCESSION OR FAILURE? USING BUY-SELL AGREEMENTS TO ASSURE BUSINESS CONTINUATION

By Brian K. Dennis

Many privately held businesses, dependent for their success upon the skill, labor and continued presence of an owner, fail to survive that owner's unexpected death or disability. Rarely is a guaranteed market available to acquire the business or a co-owner's interest. Heirs, often forced to sell at fire sale prices, frequently lose what may have previously been significant value.

A Buy-Sell Agreement can eliminate this nightmarish possibility. Because death or disability is not anticipated, though both events are recognized as possibilities, all parties face the same level of uncertainty and agree in advance on a method to handle business succession. Other voluntary and involuntary circumstances can arise which could also qualify as Buy-Sell Agreement triggers. A properly drafted Buy-Sell Agreement should consider all of them, guaranteeing a market for the business interest in the event of multiple contingencies.

Because a Buy-Sell Agreement will transfer a business interest outside of a will or trust and is designed to deal with the effect that unanticipated death may have on a business and/or co-owners, parties should create estate planning documents or amend current ones so that they are coordinated with the Buy-Sell Agreement.

The effect of disability on a co-owner and business can be as difficult to deal with as death. A disabled owner can present continuing financial demands on the business while not contributing to it. Defining disability and addressing this issue can be critical.

Since a Buy-Sell Agreement creates an obligation to buy, there must be an assurance that funds will be available. Assets may be used or funds borrowed, but many people acquire life and/or disability insurance to provide the needed liquidity. Particular care must be paid to ownership and beneficiary designations. For example, death benefits from corporate-owned policies may subject the corporation to the Alternative Minimum Tax (AMT) upon receipt.

Life insurance premiums could be tax-deductible if a profit sharing pension plan is in place. Cash value policies could be accessible sources of future liquidity available for the funding of future non-death-triggered buy-outs. Due to differences in age and health histories, premiums may vary for each co-owner, presenting inequities which must be considered.

There are three types of Buy-Sell Agreements: (1) Stock Redemption, (2) Cross Purchase, and (3) Wait and See/Hybrid. The form of business entity may determine the type of Buy-Sell Agreement that is adopted, as may the number of owners. Corporate stock transactions are the most involved due to federal and state tax and corporation laws. Partnerships and LLCs (which are taxed as partnerships) have different concerns.

Corporations may use the Stock Redemption method. In this approach the corporation purchases the stock of an individual upon the occurrence of a triggering event. Capital gain treatment for the sale may be available under Internal Revenue Code section 302. IRC section 303 may similarly provide for capital gain treatment in certain circumstances for the redemption of stock after death.

The Stock Redemption method may affect corporate status. To avoid corporate income tax many firms operate as S Corporations. Federal law imposes qualifications in order to be taxed as an S Corporation, including limiting the numbers of shareholders to 100 and having only one class of stock. Care must be taken to see that a stock redemption does not contribute to running afoul of S Corporation rules or create a second class of stock, which would disqualify the corporation from being treated as an S Corporation.

The Cross Purchase method may be adopted by owners of any entity. In a Cross Purchase plan co-owners may enter into a Buy-Sell Agreement without concerning themselves with issues at the entity level. A contract between owners is executed; a purchase and sale arises upon the happening of a triggering event. It offers more favorable income tax treatment than a Stock Redemption because the cost basis of the shares purchased is increased to reflect the purchase price even if income tax-free life insurance proceeds are used to make the purchase. On the other hand, if life insurance is used to fund the buy-out the number of policies based on the number of owners required under a Cross Purchase method can quickly grow and make this method infeasible.

The Wait-and-See approach is a hybrid, providing for the optional use of either the Stock Redemption or Cross Purchase method. It postpones the final decision of which method to use until after the triggering event, offering significant flexibility if future circumstances are uncertain.

Concerns for partnerships affect how the Buy-Sell Agreement will impact the partnership under income tax laws. Care must be paid to the partnership's tax status so that liquidation and dissolution issues do not affect the partnership's status as an ongoing entity, and to ensure that liquidating payments can be made tax deductible to remaining partners.

A single owner of a business may find it impracticable to have a Buy-Sell Agreement. In such situations adequate life insurance coverage could serve as a substitute for the business' value.

Professional corporations, such as law and accounting firms, have particular interests in establishing Buy-Sell Agreements. California Corporations Code section 13407 requires the mandatory repurchase of the stock of a professional shareholder who dies or is disqualified from the practice of his profession. Normally, corporations cannot redeem stock unless certain solvency tests are met, but Corporations Code sections 500 *et seq.* allow such tests to be disregarded if the redemption is made upon the death of a professional corporation's shareholder or his disqualification from holding the professional license.

Other triggering events may include personal bankruptcy, divorce, retirement (which

could raise age discrimination issues), termination of employment, conviction of a crime, a desire to reduce workload and expulsion of a co-owner based on the vote of the other co-owners. Future ownership changes could be addressed, should a firm wish to bring in more co-owners.

Perhaps the most critical aspect of the Buy-Sell Agreement is the subjective issue of valuation: Just how will the business interest be priced? No one approach is entirely satisfactory, yet a Buy-Sell Agreement must fix the price to be paid. Different methods can be used, from a formal appraisal to book value. Should there be a formula, and if so, should it be based on prior years' or future earnings? Provision must also be made for regular, periodic revaluation, and state specifically whether goodwill will be included in the value. The present value and how it was arrived at should be stated in the Agreement. While not binding on the IRS, a bona fide valuation serves as a method for determining estate tax valuation.

In professional corporations future value may also be affected by client relationships, work in progress, who will assume responsibility for future liabilities and who will pay to carry errors and omissions insurance until the statute of limitations on those liabilities runs out.

Since the Buy-Sell Agreement is an agreement for the purchase and sale of a business, it should contain the major provisions that one would find in any purchase/sale contract. This could range from a covenant not to compete to how and whether employment agreements are affected by the purchase/sale. Since it is possible that a promissory note could be used as part of the transaction, the Buy-Sell Agreement should specify the terms the note must have, if not draw one up and include it as an exhibit. When stock or LLC interests are sold and/or a note issued, federal and state securities laws and qualification for exemptions from them may come into play. Stock certificates should have legends and restrictions placed on them.

Every agreement should consider whether spouses have community property interests in the business. A post-nuptial transmutation of the community property interest could be desirable. Spouses should then be made signatories to the Buy-Sell Agreement, providing their consent. Most parties prefer the convenience and economy of dealing with a single attorney, but if so drafting attorneys must be aware of the Rules of Professional Responsibility as they pertain to the representation of multiple parties, making appropriate disclosures and obtaining consent to such representation from the co-owners and their spouses.

Buy-Sell Agreements can be complex, involving tax, estate planning, business, securities and insurance issues. But they are absolutely essential documents, allowing for succession in businesses, frequently the largest asset people own. Should an unexpected event occur and an Agreement not be in place, the failure to have executed one could result in the quick loss of a lifetime's worth of work.

Brian Dennis *is a Beverly Hills-based estate planning and business attorney.*

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JUDGES' PIZZA NIGHT

(from left) Melissa Waters, Justice Steve Perren, Taylor Waters

(from left) John Negley, Christina Stokholm, Judge Fred Bysshe

MEXICAN AMERICAN BAR DINNER

Al Vargas with the scholarship recipients

Justice Moreno

Alice McGrath and Justice Stone

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SPOTLIGHT ON ATTORNEY JOHN F. "JACK" FAY

By Ellen Hirvela Russell

It's been a "helluva ride," says Attorney **Jack Fay**, now 84, reflecting on his life from his downtown Ventura office suite. He has seen many changes since he started his law practice 58 years ago. One of the first tenants in the 675 E. Main building, Jack of Loughman & Fay has been at the same location for more than 40 years.

From LA to Ventura

World War II broke out when Jack was a high school junior in Los Angeles. He mused that initially, "No one seemed to think the war was going to last very long." In his senior year, the family relocated to Ventura. Jack's father had been appointed the Superintendent of the Port of Hueneme, which Jack recalled as "a vast area of tanks, trucks and war materiel."

In February 1943, Jack was a senior at Ventura High School when he enlisted in the Army Air Corps as an Aviation Cadet. In March he turned 18; he went into active duty when he graduated in June. He spent a year in training as a heavy bomber navigator and was commissioned a second lieutenant in June 1944. In November 1944, he was sent to an 8th Air Force B-24 group in England and then flew 20 missions bombing Germany, including three during the Battle of the Bulge that December.

On his 14th mission in January 1944 Jack's B-24, fully loaded with bombs and fuel, caught fire over the North Sea shortly after takeoff. As they headed back to England, three gunners jumped into the sea prior to a bailout signal. They perished in the frigid water. As the plane crossed the shoreline and the bailout signal was given, Jack and the nose gunner bailed out at under 1000 feet. The remaining four crew members did not jump and died in the crash.

After flying six more lead missions with another crew, the war ended and Jack was discharged as a first lieutenant. He returned to Ventura, applied for a driver's license and was told he would need his mother's permission because he was still a minor at age 20!

Law Practice in Ventura County in the '50s, '60s, and '70s

In 1951, when Jack was sworn into the Bar, there were only 69 attorneys in all of Ventura County and, he said, "that included the district attorneys. There were no public defenders, and only about six D.A.'s. They would have to appoint us to represent indigent clients in criminal matters and also for the mentally ill calendar." Jack said there was not the specialization in law that we have today.

Over the years, Jack predominantly worked cases in the areas of corporate law, construction law, and probate law, but he handled criminal and other kinds of cases as well. There was a local Class B Justice Court for small cases, presided over by Glenn Corey, a retired oil field worker who was not a lawyer. It was commonly joked that if your client wore a hard hat to the hearing you would get better results. There was a municipal court in Oxnard presided over by **Clarence Pecht**, but most of Jack's cases were heard by **Judge Perry Churchill** up on Poli Street.

One "fortuitous" case Jack mentioned was the result of a court appointment where he represented an elderly client who was no longer mentally competent. Afterwards, the daughter thanked Jack for his work on behalf of her father. She then retained Jack to help her undo her father's sale of his 640 acres between Moorpark and Fillmore. He had "sold" the land for a mere $20 an acre – too much of a bargain even in the fifties. Jack filed a rescission action based on his client's incompetence at the time of sale, and also based on inadequate consideration. Jack's client prevailed after a lengthy trial before Judge Churchill. He introduced evidence that the plaintiff told his daughter that the female defendant wore a negligee to try to induce the elderly plaintiff into selling his land. The defendant vehemently denied that allegation, but the episode was used as further proof that the old man was delusional. The defendant appealed up to the California Supreme Court where her petition for hearing was denied.

Another civil case, Jack recalled with a smile, was in front of Judge Churchill. His client did not prevail. Jack appealed and won on the appeal. When he later saw Judge Churchill at a bar meeting, they got to talking about the appellate result. The Judge told him "If you had briefed it half as good for me as you had on appeal, you wouldn't have had to appeal it." To that, Jack replied, "I thought the case was so simple that you wouldn't have needed a detailed brief." Jack rates Judge Churchill as one of the finest judges ever to sit on the Ventura County Superior Court bench.

Jack was active in Ventura County Bar matters for a long time and served as president in 1973-74. He also was a founding director and is the current president of the Ventura County Public Facilities Corporation, which was the financing vehicle for the County Courthouse, Hall of Justice, and almost all other major county facilities since 1974.

Incorporating AARP

I wonder if you realized that AARP, today a 35 million member organization, began right here in Ventura County. Jack considers the work he did for his client, AARP founder Dr. Ethel Percy Andrus, to be the "highlight" of his entire career.

"Dr. Andrus was a visionary," Jack concluded.

Shortly after he met her in 1955, he was retained to represent Dr. Andrus in all of her business dealings, an arrangement that continued until her death in 1967. Dr. Andrus, M.A. and Ph.D. from USC, was a retired educator. She taught at Santa Paula High School for five years until she was appointed in 1916 as principal of Lincoln High School in Los Angeles, where she became the first female high school principal in California. She retired in 1944 at the age of 60.

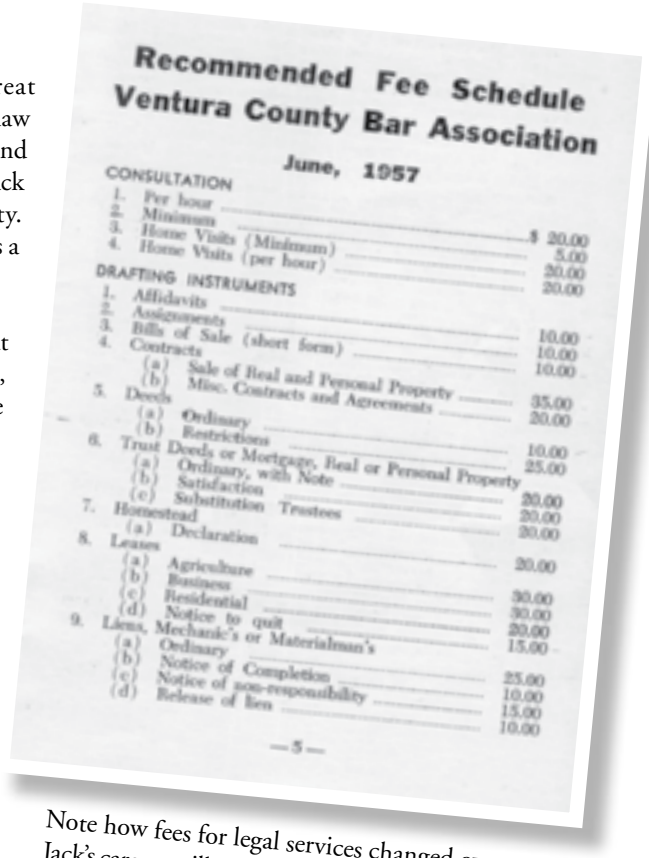
Dr. Andrus then "criss-crossed" the country fighting for the rights of the retired. She founded the NRTA, National Retired Teacher's Association, but she wanted to expand the organization. She was troubled that the retired could not get health insurance. Seniors were considered poor risks for health insurance coverage at the time. Addressing this problem became her purpose. In June 1958, Dr. Andrus invited six people, including Jack, to her original planning meeting for AARP. On the way out after the meeting, insurance broker Leonard Davis, who was instrumental in obtaining the coverage, turned to Jack and said,"You'll never get anywhere in life unless you think big." Davis was right. He became one of the wealthiest men in the U.S. by selling health insurance nationwide through the auspices of both NRTA and AARP. Jack was instructed to incorporate AARP in Washington, D.C., which was done in 1958. Andrus later lobbied U.S. Congress for Medicare, which was enacted in 1965. Jack said of his client, "Dr. Andrus was an inspiration to so many, particularly because her second career, in retirement, turned out to be even more significant than her first career."

Personal

Jack spoke of his beautiful wife of 60 years, Marge Fay, who passed away about a year and a half ago. "What a woman! Marge was the best partner I could have had." Marge supported him during his service with the Ojai City Council for 12 years, including serving as Mayor of Ojai from 1975 to 1980. Jack and Marge have four grown children, Kathie, Kevin, Nancy, and Tia. They have eight grandchildren, and four great grandchildren. Two of their sons-in-law are attorneys in San Diego County and the third one is a football coach. Jack has always enjoyed physical activity. Currently he walks about 6-10 blocks a day, sometimes uphill and down.

When asked if there was anything about his life that he would have changed, Jack replied, "Good question." He gave it some thought and replied, "No, there is nothing I would change."

Ellen Hirvela Russell *is a mediator and collaborative lawyer. She practices in Camarillo.*



Recommended Fee Schedule
Ventura County Bar Association

June, 1957

CONSULTATION

1. Per hour	$ 20.00
2. Minimum	5.00
3. Home Visits (Minimum)	20.00
4. Home Visits (per hour)	20.00

DRAFTING INSTRUMENTS

1. Affidavits	10.00
2. Assignments	10.00
3. Bills of Sale (short form)	10.00
4. Contracts	
(a) Sale of Real and Personal Property	35.00
(b) Misc. Contracts and Agreements	20.00
5. Deeds	
(a) Ordinary	10.00
(b) Restrictions	25.00
6. Trust Deeds or Mortgage, Real or Personal Property	
(a) Ordinary, with Note	20.00
(b) Satisfaction	20.00
(c) Substitution Trustees	20.00
7. Homestead	
(a) Declaration	20.00
8. Leases	
(a) Agriculture	30.00
(b) Business	30.00
(c) Residential	20.00
(d) Notice to quit	15.00
9. Liens, Mechanic's or Materialman's	
(a) Ordinary	25.00
(b) Notice of Completion	10.00
(c) Notice of non-responsibility	15.00
(d) Release of lien	10.00

—5—

Note how fees for legal services changed over Jack's career, as illustrated by the *Recommended Fee Schedule* published in 1957 by the Ventura County Bar Association.

The only survivors were Jack (top middle) and Tommy Toms (bottom center) and Robbie Robinson (second from right).

The Financial Abuse Specialist Team:

A Resource for Attorneys

As an attorney, what can you do to help an elderly or dependent adult client who may be a victim of financial abuse? Suppose they have a caregiver who is taking their money. You advise them with their legal matters, but what if the situation extends beyond your legal expertise?

Financial abuse is defined by Welfare & Institutions Code section 15610.30 (a) as a situation in which a person or entity takes, or assists in taking, the assets of an elder or a dependent adult for a wrongful purpose, with intent to defraud, or both. Penal Code section 368 makes elder or dependent adult financial abuse a crime punishable by imprisonment, fine, or both. An elder is defined as anyone age 65 or older. A dependent adult is defined as anyone between 18 and 64 who, due to mental or physical incapacity, is unable to protect themselves.

The FAST is a multidisciplinary team whose mission is to provide assistance and expertise on cases of elder and dependent adult financial abuse. The team is comprised of public, private, and non-profit agencies. Each member either investigates cases of abuse, offers medical, financial, or legal expertise, or offers free services to victims.

Under the attorney-client privilege, you may not be able to report the suspected abuse. However, the FAST is a free resource for you in these situations. Attorneys are invited to attend a FAST meeting to bring a hypothetical case for consultation in a confidential setting. Through case discussions you can collect expert advice on options and services that may be available, allowing you to better serve your elder and dependent adult clients. For more information contact Julia Wysong, Coordinator of the FAST of Ventura County, at (805) 657-7960 or julia@seniorconcerns.org.

IN DEFENSE OF YOGA

By Kate Brolan

What, yoga breaking the law?

Up from their mats, and uncharacteristically posed for a fight, hundreds of yogis in New York State raised their "Oms" in protest of the New York State Department of Education accusing yoga studios of unlawful activity. The ominous charge: training yoga instructors without a license. Abrupt and sweeping enforcement ensued, with orders to cease and desist. The action was taken despite the fact that licenses had never been required before. The orders demanded the suspension of yoga teacher training operations until each center had completed a lengthy state curriculum approval process. Failure to comply with these orders carried penalties of up to $50,000.

As a mat-toting yogi, and lawyer advocate for small businesses, the news was enough to prop me into a headstand. The current economic state has not been easy on the small business community. Local retail and professional services of all kinds are swimming upstream. One of the pernicious challenges of owning and operating a small business is the onslaught of government decrees and edicts. Regulation is ostensibly designed to stop harmful behavior, sometimes stupid behavior, and keep the public from being ripped off. For the small time operator, complying with regulation can be inordinately time consuming, and costly. While I am all for accountability, some transparency, and consumer protection, there is always the question of necessity. Must the government have its mitts on everything, including my yoga mat?

With its origins rooted in Eastern religious meditation practice, yoga of today has given way to Western capitalism. *Yoga Journal* estimates that some 16 million Americans practice yoga, generating approximately $6 billion dollars in yearly revenue for classes and select yoga accoutrement: blocks, belts, mats, not to mention clothing. From the spiritual realm to the material world, a surge in popularity has its price. Although not commanding every street corner like Starbucks, yoga is a hit on Main Street, U.S.A. The revenue figures demonstrate that yoga has become an American industry.

Opponents of regulation assert that these swelling statistics are the impetus for cash-starved governments' sudden interest in yoga.

Beginning in 2004, several states began regulating yoga teacher training schools. The laws that govern vocational and secondary education schools that train people in such fields as massage, hairdressing and barbering, culinary arts, truck driving, HVAC, dental assisting, and medical records shape the licensing rules. Such laws are meant to protect the public from unstable schools that take tuition money and close. They also protect the public from unqualified educators.

14 states regulate yoga, though it does not appear to be an attempt to control yoga. Licensed schools typically have followed standards that were voluntarily instituted by the Yoga Alliance, a nonprofit organization that provides curriculum guidelines to foster standard practices in yoga instructor training.

Here in California, the Department of Consumer Affairs (DCA) assumed regulatory responsibility for the private post-secondary and vocational education sector on January 1, 1998. However, the Private Post Secondary and Vocational Education Reform Act was

Continued on Page 27

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IN DEFENSE OF YOGA

Continued From Page 25

repealed on January 1, 2008. Still, it is not inconceivable that this state too will extend regulation into the yoga sanctuary sometime in the future.

Considering that most yoga studios may be no more then a single room storefront run by a sole proprietor, adding a teacher training program is likely to impose exorbitant costs, cumbersome paperwork, and lead to unannounced inspections, interfering with the tranquil yoga atmosphere, and leading to higher class fees for the yoga student. As an upside, complying with regulatory requirements to obtain certification can bring significant credibility to a yoga studio's program, making it more reputable to the consuming trainee.

New York yogis have returned to their mats breathing a deep sigh of relief. The State Department of Education decided to suspend licensing, and have allowed yoga teacher training classes to continue. Not long after the agency announced it would back off, lobbying efforts from both sides were stepped up.

Regulation of yoga had been uncharted territory; a once anti-establishment fringe activity is now wholly mainstream. Other exercise and self improvement activities that include master trainings, such as the martial arts, are not government regulated. Yoga studio and school owners, like other small businesses, want to follow the law. Within the yoga community there is some disagreement about the need for industry regulation, or whether yoga is at its best with self-regulation. If California is to enforce any regulation of yoga it should do so only after a record of evidence that harmful activity and consumer complaints have reached a pertinent threshold.

If you must, license my dog, but please, hands off my downward dog. *Namaste.*

Kate Brolan *is a solo practitioner providing contract draft and review, counsel, and advocacy for small business, entrepreneurs, and artists. She has been an avid yoga student for over 10 years.*

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Exec's Dot…Dot…Dot…

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

The Mexican American Bar Association hosted a record 225 for their scholarship dinner 10.30. **Commissioner Borrell** and **Judges Bysshe**, **Campbell, Covarrubias**, **Worley**, **Back** and **Lund,** plus Santa Barbara Superior court Judge **Eskin** (the former boss of Supreme Court Justice Carlos Moreno) were spotted, as well as the judicial honorees (Moreno and retired Presiding Justice **Steve Stone)**… Yosemite? **Jennifer Zide** at jennzide@aol.com… Georgetown? **Kay Duffy** at kduffy5721@aol.com...Anini Beach, Kauai? **Joe Strohman** at jstrohman@fcoplaw.com…Grand Wailea, Maui? **John Negley** at jnegley@negleylaw.com...Need 5 CLEs (5 general/1ethics) in one fell-swoop during December? The Ventura Center for Dispute Settlement has a day-long class 12.9. Ask Sandra at sandra@vcds.bz or 384.1313…The U.S. Supreme Court has refused to hear an appeal that claims the trademark for the Washington Redskins name should have been denied because it is racially disparaging. The challenge was filed in 1992, even though the trademark was registered in 1967. The lower courts had ruled the claim was barred by the doctrine of laches, the *Washington Post* reports. The case is *Suzan Harjo v. Pro-Football Inc*…

Jon Light will be performing again in *The Nutcracker* with the Footworks Youth Ballet on December 12-13 at the Oxnard Performing Arts Center. Alas, no tights for Jon, just a tuxedo…**Jon** joins **Randy George** as new members of the **NCHC's** executive committee, while **Scott Samsky** is the new managing partner following a solid, steady run of six years by **Tony Trembly**…If you flip someone off in traffic, you might get angry stares or a nasty honk of the car horn. But if you do it in court, expect more severe consequences. A McHenry County, Illinois man found that out the hard way. Kane Kellett, 24, raised his middle finger while he was being sworn in to face home invasion charges at a rights hearing before Judge G. Martin Zopp. Zopp promptly gave Kellett six months in jail for contempt of court. Kellett was on the McHenry County Sheriff's Top 10 Most Wanted List and was described as "armed and dangerous" before he was arrested…A former legal secretary and law office manager who holds a doctorate in music has recently completed her law degree from the University of Arizona. Oh yea, she's 59 and her name is Dana Muller.

He must have given it to me incorrectly in the first place! **Glenn Campbell's** personal license plate is TRYLLAW, *not* TRYLAW for cryin' out loud. Hope I get this one correct. License Plate of the Month: ALBRTY on a late model Porsche driven by **Art Liberty**. In case I butchered that one – LIBESQ on a Lexus 350 piloted by **Libby Barrabee**. Aww, what the heck, one more – OMYATTA on a bright red Mazda MX5 guided by **Guy Urata**…From Judge Judy: "Are you boarding at your college?" Plaintiff: "No, I play a little baseball."…From actor Dustin Hoffman: "When a lot of dogs are on the beach, the first thing they do is smell each other's asses. The information that's gotten somehow makes pacifists out of all of them. I've thought, 'if only we smelled each other's asses, there wouldn't be any war.'"… *Playboy* has sued a Chicago divorce lawyer who posed nude for the magazine and once wrote its "Lawyer of Love" advice column, claiming she has no right to the column's name. *Playboy* claims lawyer Corri Fetman waived any rights to the "Lawyer of Love" phrase in her freelance agreement with the magazine, according to the *Chicago Tribune's* Chicago Law blog. Fetman sought to register "Lawyer of Love" as her trademark in August, nearly a year after her column was pulled. Fetman claims in her own lawsuit against *Playboy* that she lost her column because she turned down sexual advances by digital executive Thomas Hagopian…**Chris Balzan** has agreed to lead the Intellectual Property Section again as president. His officers include: **James Dawson**, vice president; **Glenn Dickinson**, secretary; and **Doug English,** treasurer.

The Women Lawyers hosted nearly 110 folks for their Third Annual Legacy Dinner. Judges **Gay Conroy**, **Tari Cody**, **Brian Back**, and **George Eskin** were in attendance too…This is what can happen if you don't read your mail. A Wisconsin judge has ordered PepsiCo to pay $1.26 billion to two men who said the company stole their idea to sell purified water after a secretary mislaid a document alerting the world's No. 2 soft-drink maker of the lawsuit. The case was reported by the *National Law Journal* 10.29. The complaint was served April 28, when secretary Kathy Henry received the letter for her supervisor. However, she put it aside and told no one about it because she "she was so busy preparing for a board meeting." PepsiCo got the motion for default judgment October 5…

Welcome aboard to the new board members representing our bar association – **Joseph O'Neill**, **Cheri Kurman, Deborah Jurgensen, Lee Hess**, and **Maria Capritto**. **Laura Bartels** and **Joel Mark** return, having been elected to re-up for a second term. **Kendall Van Conas** will serve as our new president. **Joe Strohman** will be the vice-president and president-elect, while **Dien Le** will begin his term as secretary-treasurer 1.1.10…Reversing the drunken-driving conviction of a woman who wasn't allowed to argue at trial that she had to flee a dangerous bar fight, the Montana Supreme Court has ruled Lisa Leprowse will get a new trial. A Missoula District Court judge had agreed with the prosecution that Leprowse could have simply called 911 for help and waited in her car, instead of driving 14 miles. But "the affirmative defense of compulsion is a well-recognized basis for finding a person not guilty of a charged offense, even though her conduct appears to fall within the definition of that offense," writes Supreme Court Justice Patricia Cotter in the unanimous opinion…

***Steve Henderson** has been the executive director and chief executive officer of the bar association and its affiliated organizations since November 1990. He will be vacationing December 17-23. There shall be no electronic communication, so don't even try. Enjoy the holidays and Happy New Year. Henderson may be reached at steve@vcba.org, LinkedIn FB, Twitter (twitter.com/stevehendo1), or 650.7599.*

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