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An interview with soon-to-be-retired Chief Probation Officer Karen Staples about the Ventura County Probation Office

By Lisa M.J. Spillman

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Photo: Atticus, Karen, Ella and Levi.

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February 13, 2009

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PRESIDENT'S MESSAGE

WELL, WHAT DOES THE BAR REALLY DO?

By Kendall A. VanConas



“Well, what does the bar really do, anyway?” If you took a poll of past presidents of the bar, I’m quite certain this question would rank near the top on the list of questions people most often ask. And surprisingly, that question is posed even by people who you would think should know better – not only long-time attorneys in the county, but sometimes even judges and name partners in certain law firms that shall remain nameless. But you know who you are.

I must admit, in the years before I became involved in activities of the bar, I was among those asking that same question. Today, even though I like to think that I know a lot about the bar and all of its affiliated organizations, there are still occasions when I find the activity in the bar to be truly remarkable. When I think about our local association, I consider the mission to be fairly simple: education, fellowship and community service, a so-called “three-legged stool” which would fail to serve its purpose with one leg missing.

So, are those three legs solid? Early on a recent Saturday morning, 41 men and women – board members, sections leaders and others – gathered for the 20th Annual Ventura County Bar Association Bar Leaders Conference, and answered that question very clearly. Here is just a bit of what is going on in your bar association, and how you can get involved.

History: To give you some perspective, the 1st Annual Bar Leaders Conference in 1990 included just five people, only one of whom was a woman: **Wendy Lascher, Tom Hinkle, Bart Bleuel, Dennis LaRochelle** and **Steve Henderson**. This year, more than 40 people attended and half were women. In 1990, the VCBA Board of Directors topped out at 11, and we had 15 subsections. Today, we have 23 board members, and 35 distinct affiliated organizations. Both our membership and our annual budget have more than doubled in the last 20 years, but we have managed to not yet double the annual dues from the \$75 members paid in 1990.

Sections: Whenever someone asks me what they can do to get involved with bar activities, my answer always includes a suggestion that they take a look at some of the almost three dozen different bar sections, committees and affiliates. Of course, they include sections devoted to continuing education in particular practice areas, such as bankruptcy, dispute resolution, business litigation, probate and estate planning, family law, employment law and intellectual property, to name a few. In 2009 the bar, through its affiliated organizations, offered 122 individual programs, providing 260 hours of continuing legal education. There are also a number of sections that foster support, mentoring and networking for their members, such as the Women Lawyers Association, the Mexican-American Bar

Association, and the East County Bar Association. Membership in any of these sections or their steering committees is welcome, and I encourage you to look into the ones that interest you.

I am grateful for the sections and committees that devote their activities to raising money for the bar. For over 25 years, **Joe Strohman** has organized the Law Day 5K, and raised thousands of dollars for the bar. Thanks to **Don Hurley**, the silent auction at the annual dinner routinely raises thousands of dollars for the Volunteer Lawyer Services Program (VLSP) each year. We also have Don to thank for volunteering to chair the newly-formed Bar Fundraising committee of VLSP, Inc., which is planning new fundraising opportunities this year, including a raffle for the Annual Dinner, and family barbecue in the spring or summer. I’m sure Joe would welcome another runner or two this year, and Don will always welcome an offer to help securing auction items.

Of course, we’re not all work and no play. Our Annual Dinner Committee, chaired this year by **Eric Reed**, organizes our annual November gathering to honor the recipient of the Ben E. Nordman Public Service Award, complete with dinner, dancing and a martini luge (you just have to see it to appreciate it). Barristers – open to attorneys 36 years of age or under, or who have been in practice seven years or less – aims to provide an outlet for social and community service activities for new attorneys, which they accomplish in large part with their monthly “Thirsty Third Thursday.” The Jerome H. Berenson Inns of Court offers mentoring, ethics education and improved trial skills by gathering monthly and presenting their “teachable moment” through fun skits and presentations. The Inns of Court has 80 members, and a waiting list each year.

Legal Support Sections: We are particularly fortunate in Ventura County to have a very close affiliation with both the Ventura County Paralegal Association (VCPA) and the Ventura County Legal Professionals

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PRESIDENT'S MESSAGE

Continued from page 3

Association (VCLPA). Both organizations provide their members continuing education, host different social events during the year and generously donate the proceeds to VLSP. Be sure to watch for announcements about these events during the year.

Community Service: Ventura County lawyers should take particular pride in how much our members give back to the community. Several of our sections, including MABA and the Ventura County Asian-American Bar Association, award annual scholarships to law students, or those interested in the legal profession. For more than 30 years, the Court Tour Program has provided tours of the courthouse for more than 1,000 students annually. Run entirely by volunteers, the program provides an opportunity for the students to watch proceedings while court is in session, and exposes children to our system of justice. Contact the bar to find out information about becoming a docent for the Court Tour Program.

But no discussion of public service within the VCBA would be complete without mention of our highly regarded and honored VLSP, Inc. Over a span of almost 15 years, hundreds of lawyers have provided pro bono legal services to the low income and underserved population in the county. The backbone of the program is the panel of 13 emeritus attorneys, who screen prospective clients and then refer appropriate matters to counsel in the community. In 2002, our emeritus team of attorneys was awarded the California State Bar President's Distinguished Pro Bono Service Award, in recognition of their commitment to provide or enable the direct provision of legal services to the poor in our county. As the needs of the community grow, so does the work of VLSP, which is always looking for willing volunteers.

Still not interested? There's more! Call Wendy Lascher to contribute an article to this publication, or to serve on the editorial

board. Volunteer to arbitrate an attorney-client fee dispute through the Client Relations Committee. Call **Tony Strauss** to participate in the long-range planning for the bar, or call me to find out information about serving on next year's VCBA Board of Directors.

"Well, what does the bar really do, anyway?" At least next time somebody asks me that question, I'll have it in writing.

Oh! I almost forgot. I promised you in my first article that my birthday month would have to be duly recognized. Consider it recognized. It's the 6th and I don't mind telling you that I'll be 44. I'd happily accept gifts of cash and jewelry, but will instead ask you to forego the shopping and wrapping, and make a donation to VLSP in honor of the occasion.



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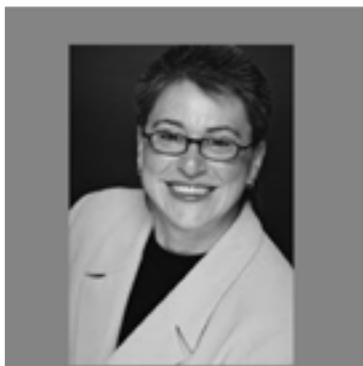
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Family Law Dispatch: Top Family Law Legislation and Cases of 2009

By Gregory W. Herring

A good starting point for this year is to review some of the major new family law statutes and cases of 2009. The following is not comprehensive, but it does provide an eclectic list of favorites, especially those with “cross-over” implications regarding other areas of law:

STATUTES

- **Debt Collection – Pro-debtor:** Especially with so many families filing for bankruptcy, AB 1046 was important in increasing the homestead exemption under Code of Civil Procedure section 704.730 to \$75,000 at the minimum, \$100,000 for married couples living in the home and \$150,000 for certain disabled or older debtors.
- **Debt Collection – Pro-creditor:** On the other hand, AB 121 amends Code of Civil Procedure section 697.510 to provide a procedure for continuing judgment liens against personal property (including accounts receivable and equipment) without having to file a new one. A creditor now only needs to file a continuation statement within six months of the usual five-year expiration period.
- **Estate Planning Crossover – Community Property Transactions where One Spouse Lacks Capacity:** SB 556 amends Probate Code section 3140 to limit a court’s discretion to appoint an investigator regarding community property transactions involving a spouse who lacks legal capacity. Rather, the court now may make such an appointment only in cases where the investigation is actually “necessary.” New section 3140(f) allows the investigator’s costs to be paid from the proceeds of the transaction, where it would not create a hardship.
- **“Family Law Headache Relief Act” (Waiver of Declarations of Disclosure):** Earlier this decade, the Legislature significantly tightened the requirements of each spouse to disclose his/her respective income and expenses, as well as assets and debts, to the other. This well-intentioned thrust, however, created headaches where

one of the parties stuck his head in the sand (which is not uncommon in the family law world). The problem was that Family Code section 2106 prevents a court from entering any judgment concerning the parties’ property rights without the mutual disclosures. As such, the “ostrich” party could obstruct the case’s completion (although section 2107 does allow the cooperative party to a motion to compel or a motion for pertinent evidentiary sanctions). AB 459 eases this in amending section 2107 to also allow the complying party to file a motion for the court to proceed to judgment on all issues through a “waiver” of the “ostrich” party’s disclosures.

- **Motions to Set Aside Judgments:** Family law judgments are nowhere as solid as other civil judgments. Rather, family law litigants have an array of tools, well beyond those set forth in Code of Civil Procedure section 473 (see, e.g., Fam. Code § 2122), for potentially setting aside judgments. AB 459 also provides that, if a court grants a motion to waive the “ostrich” party’s disclosures, as set forth above, then it may only potentially set-aside the judgment at the request of the *cooperative* party. Thus, the ostrich party may not take advantage of his failure to cooperate (except in cases where he might establish actual fraud or perjury).
- **Same Gender Marriages from Out of State:** Family Code section 308 makes valid in California marriages from out of state, as long as they were legal in the jurisdiction where they were conducted. Thus, even Mick Jagger’s 1990 “marriage” to Jeri Hall in Bali, which would not have met this state’s requirements, would still have been upheld here had it been Koshier in Indonesia, so to speak. SB 54 “clarifies” (because, based on the above, it purports to make no new law) that out-of-state same-gender marriages that were valid in other states prior to November 5, 2008 (when Proposition 8 was passed) are also valid. Not everyone realizes that same-gender marriages performed in this state during the short window of May

2008 (following the California Supreme Court’s holding in *In re Marriage Cases*) until November 5, 2008 also remain valid.

- **Custody/Confidentiality of Custody Evaluation Reports:** The confidentiality of custody evaluation reports, issued under Family Code section 3111, is an ongoing practical issue for family law attorneys. Although the current law requires such reports to be kept confidential, parties, having proceeded through difficult (they all are) custody evaluations, often have trouble refraining from vindicating themselves (and trashing the other parent) by disseminating the reports (or portions thereof). AB 1877 amends this section by allowing a court to impose a monetary sanction against a party who makes a reckless or malicious disclosure. The sanction may be high enough to deter further disclosures without imposing an unreasonable financial burden.

CASES

- **Recurring Financial Gifts May Equal “Income” for Support:** A parent’s recurring gifts to pay her son’s expenses could be included as income to the son towards calculating (and enhancing) his child support obligation. (*In re Marriage of Alter*, 171 Cal.App.4th 718.) If you represent the *supported* party and the supporting party claims, without *bona fide* documentation, that such payments are “loans,” then argue that, under Evidence Code section 412 (“[i]f weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust”), the argument lacks credibility and should be disregarded. If you are providing recurring financial gifts to a *supporting* party, say your son, recognize that you may end up with a result where you might as well just write the former daughter-in-law a check, too!

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An interview with soon-to-be-retired Chief Probation Officer Karen Staples about the Ventura County Probation Office

By Lisa M.J. Spillman

Karen Staples, Chief Probation Officer for the Ventura County Probation Agency, told me a woman she used to supervise on probation strode up to her in a restaurant and hugged her. Frankly, I'm not surprised. After spending time talking with Ms. Staples, who retires March 26, I wanted to give her a hug, too (and in fact, I did). During my interview I learned key facts about the probation agency, Ms. Staples, and her tireless efforts there. Thank you, Ms. Staples, for your dedicated work for this county. Here's a portion of the interview.

Lisa M.J. Spillman: Why probation? How did you get into this field?

Karen Staples: My mom told me to go into computers. That didn't hold much interest for me. So after growing up in Lodi and Santa Barbara and graduating from Long Beach State in Sociology, I started working at VCPA back in 1971. I started as a group supervisor in the Girls' Unit of Juvenile Hall. Later, I supervised juvenile girls as a probation officer. At that time, women were not allowed to supervise boys. Later I supervised female heroin-addicted probationers.

LMS: What goes on at the Ventura County Probation Agency?

KS: It has 475 employees divided into four departments, adult services, juvenile services, institutions, and support services. Within juvenile and adult services are court services and field services divisions. Court services officers conduct intakes, investigations,

supervise programs, and prepare reports. Field services probation officers supervise adult or juvenile probationers. Institutions contains juvenile facilities and the adult work furlough/work release programs.

LMS: So, the question on everyone's mind, or maybe just mine: Are Ventura County probation officers armed?

KS: Yes. Some are. Higher risk offenders have more intensive supervision. Not all officers carry guns, though. The approval process is quite involved.

LMS: Is this like "24"? Can you watch a probationer's movements on GPS equipment from your office?

KS: We have GPS units on some high-risk offenders. We seldom use it in real-time, though. Generally GPS is best used to see where a probationer has been. Electronic monitoring is different. There, the system will tell us if a probationer goes where he is not supposed to go.

LMS: Okay, so again I'm influenced by "24." Are the GPS units ever embedded under the skin, or how are they attached and are they easy to remove?

KS: The GPS units are ankle bracelets. I remember one probationer who cut it off and threw it away. The GPS system tells us if it's been cut. He changed his mind and brought it in to us shortly thereafter.

LMS: As a probation officer were you ever scared?

KS: Yes. Usually it was not the probationer who was frightening, though. It was a parent or someone unknown to me living in the home. More commonly, however, I saw a lack of involvement of parents in their child's life.

LMS: Is it harder to work with adults or juveniles on probation?

KS: I felt I was making more of a difference with juveniles. With adults, it is very hard to help them get their lives together. Juveniles seem more receptive.

LMS: You set up the Juvenile Home Supervision program. What is that?

KS: It is like pretrial release for juveniles. Once a juvenile is booked, a hearing is held on whether the juvenile can stay at home or must stay in juvenile hall before the adjudication and disposition hearing. Having the minor stay at home is often in the best interests of all the interested parties.

LMS: Do you have any input as to whether a minor is charged as an adult?

KS: Not anymore. We used to be able to make recommendations but Proposition 22 gave all the power to the prosecutors.

LMS: How is the probation agency funded?

KS: It is locally funded, in large part receiving county funds. It receives money from the county general fund, sales taxes, state and federal grants, and from the vehicle licensing fee.

LMS: The Legislative Analyst's Office May 29, 2009 report (available at http://www.lao.ca.gov/2009/crim/Probation/probation_052909.aspx) (LAO report) says it costs us \$49,000 per year, per offender in state prison in California, but only \$1,250 per year per adult on probation and \$6,300 per year per juvenile on probation. What do you make of these numbers? Is this in line with what is spent by Ventura County on probationers? If so, why is so much more spent on juvenile probationers than adults?

KS: I think those numbers are pretty accurate. In the 1990s, juvenile crime was increasing. Probation departments got

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An interview with soon-to-be-retired Chief Probation Officer Karen Staples about the Ventura County Probation Office

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more money for juvenile probation and the numbers went down. We would like to see more money put into adult probation so we can bring those numbers down too. In 2007 the governor put \$100 million into the budget for probation agencies, but he took it out. This fiscal year probation agencies across the state split \$40 million in one-time stimulus money. Ventura County received \$986,000 in one-time monies to create a Reporting Center.

LMS: What's a Reporting Center and do you have results of its effectiveness yet?

KS: The biggest age group in prisons and jails (60 percent) are 18-24 year olds. If we can affect this group, that's a huge impact on the overall population in prisons. The Reporting Center screens probationers, and then offers services or linkage to community resources for: education (GED, ESL classes); drug and alcohol issues (with the Behavioral Health Department); trade education so probationers can support themselves (trade or adult ed classes); and a stable living environment (with the Housing Authority). We are still setting up the center so we have not compiled any statistics. Other counties that have such centers find them to be successful in dealing with adult probationers in the community.

LMS: The Three State Recidivism Study in 2001 of the Correctional Education Association for the Office of Correctional Education of the U.S. Department of Education (<http://www.ceanational.org/PDFs/3StateFinal.pdf>) shows that inmates who participate in education while in prison have lower rates of recidivism after three years. Define recidivism, and do you agree that prisoners and probationers should be educated?

KS: Recidivism is the rate at which offenders return to prison after being released. I think education is key in keeping people out of prison. In California, prisoners rarely receive education anymore.

LMS: The LAO report says that 40 percent of California adult probationers' terms

were revoked, meaning the probationer was unsuccessful on probation and usually sent to jail or prison. Fewer than 50 percent of California adult probationers successfully completed their term on probation. This number is 10 percentage points lower than the national average. What's going on? The LAO report says that probation agencies have an incentive to revoke because it costs the county less to send repeat violators to state prison. Is this true?

KS: We do not revoke and recommend someone go to prison because it is cheaper, but because they have not been successful on probation. Unfortunately, probation agencies lack the resources necessary to supervise and treat repeat offenders. For repeat probation violators, we do not have many choices. When someone violates probation, we can either recommend he or she be held in abeyance, meaning being kept on probation, or recommend jail time, or recommend revocation and incarceration in state prison.

LMS: Let's talk about these repeat offenders. Are they actually violating probation by committing serious, new crimes?

KS: Usually not. Usually they violate probation by violating terms of probation, for example, by using drugs.

LMS: The LAO report says that probation agencies should impose graduated sanctions with scaled punishments, which have been found to be key strategies in stopping the cycle of reoffending. What do you think?

KS: I agree with graduated sanctions and would like to see this probation agency have the choice to recommend the probationer go to a reporting center, set up as we've discussed, rather than into custody.

LMS: The Attorney General's website has graphs showing criminal justice expenditures and criminal justice full-time personnel from the late 1960s through the present (available at <http://ag.ca.gov/cjsc/glance/cht9.php> and [cht9.php](http://ag.ca.gov/cjsc/glance/cht9.php)). The spending on law enforcement and corrections, and the

number of law enforcement and corrections staff, has increased dramatically whereas the spending by the courts, prosecution, and public defender in comparison has seen very little growth and very little increased staffing. How is this affecting you?

KS: When you have that level of increase in law enforcement, you need corollary increases in prosecution, defense, probation, and the courts. You cannot just change one part of the system and not the rest. Our adult probation officers have active case loads of approximately 160 probationers per probation officer. Our officers with intensive cases, our armed units, have 60 probationers per probation officer. These numbers are high and somewhat unmanageable. Armed officers should have no more than 50 probationers to supervise, and regular supervision officers should have no more than 120 probationers to supervise. With high numbers, the probation officers cannot be as effective. They can have fewer contacts with a probationer, can seldom meet that person at his or her house, and can spend very little time per probationer.

LMS: You were a Chief Deputy Probation Officer from 1998 through 2007. In 2007 you became the Chief Probation Officer. What does a Chief Probation Officer do?

KS: I have numerous administrative, fiscal, and personnel functions and oversee a \$61 million budget. I set policy and procedures. I have a state-wide focus, working with the state collaboratively, as well as with the Chief Probation Officers of California group. That group is influential with the governor and legislators to increase spending for probation agencies and to have needed legislation authored.

LMS: To whom does the Chief report?

KS: I report to many. The Chief is answerable for juvenile services to the courts and to the County Board of Supervisors for adult services.

LMS: What's your proudest moment in the probation agency?

KS: In 2003 we dedicated the \$61 million juvenile facility on Vineyard Avenue. I was involved in writing the grant in 1998. After we were awarded the grant, I was involved in selecting the project management, reviewing the plans, designing the building and overseeing the construction. In addition to beds for the youth, on site are the Regional Occupational Program, which teaches silk screening, computer repair, and landscaping; the Boys and Girls Club; and Girls Inc, for gender-specific services including self-assertiveness training, sexual assault victim services, and photography training; Young Men As Fathers programs; Behavioral Health services including mental health and drug and alcohol services; cultural diversity programs; and over 100 volunteers who do everything from play chess, dance, and teach financial planning to holding religious meetings with the children.

LMS: What about anti-gang programming?

KS: Anti-gang programming is difficult. That should happen in second or third grade. The focus now should be on how to get along with people more effectively and on preparing for future endeavors such as by education and job training.

LMS: What are your plans after retirement?

KS: I plan to relax, travel, and head to my cabin in the mountains. Down the road, I may do some consulting. But for six months, I want to do nothing. After that, I'll figure out what I want to do when I grow up.



Lisa M.J. Spillman has an appellate practice in Ventura.

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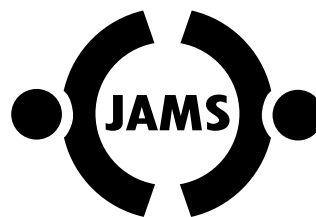
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SPOTLIGHT ON EUGENE RADDING

By Ellen Hirvela Russell



Eugene “Gene” Radding, Attorney Emeritus, is our Attorney of the Month. Steve Henderson says Gene holds the title of the longest-practicing attorney in Ventura County and the oldest still licensed, with a bar number of 21593. Gene practiced general law in Burbank for 27 years, before moving to Ventura in 1980 with his wife, Shirley. In 1980 they purchased a building on Ventura’s historic “Mitchell Block,” still the location of Gene’s office today.

Gene has been heavily involved in volunteer work since settling in Ventura. He volunteers one day a week for the bar’s pro bono section, working with Program Manager Verna Kagan and eleven other emeritus attorneys to help people who have legal needs but little or no resources. Gene has spent 18 years as a volunteer reader for the blind and dyslexic in Santa Barbara. Over the last eight years Gene has volunteered on whale watching boats for the Island Packers and the Condor Express in Santa Barbara as a member of the Whale Watching Naturalist Corps of the National Oceanic Atmospheric Administration. He is also trained as a Certified Hike Leader for the National Park Service and he is a part-time Park Ranger at the Channel Islands National Park. He is also involved in other community charitable activities. For example, once a month he feeds the hungry and homeless as a member of Temple Beth Torah Brotherhood at Catholic Social Services. In other words, Gene stays very busy and active.

Early Influences

Gene was born in 1924 to Jewish immigrant parents Joseph and Esther Radding, who came to America in 1906 from Eastern Europe. Gene’s mother, Esther Radding, was an early advocate for women’s rights. “She wore pants when no one else did,” he said. His parents actually named Eugene for activist Eugene Victor Debs, whom they admired during those years.

Growing up in the Detroit area in the 20s and 30s, Gene has childhood memories of attending political meetings and rallies. Lecturers and writers were invited to his family home. He also recalls going to the Detroit Institute of Arts with his family to watch travelogues, and going to see matinee movies and vaudeville performances. Gene and his father also followed the games of their baseball hero, Hank Greenberg of the Detroit Tigers.

Gene vividly remembers his father explaining to the family that the banks were closed and “all my money is gone!” In spite of the Great Depression, Gene describes his family as being relatively well-off, even having one of the first washing machines, a refrigerator, and oil heating in their home. Also, his parents purchased a new car every two years. (Gene recalls a brand new Ford cost \$850.00.)

In 1941, Eugene enrolled at Wayne State University in Detroit, planning to become a chemical engineer. But his parents and his

teachers thought he should study law based on his impressive participation in debate club throughout high school. One Sunday afternoon, Gene was listening to a concert and an announcement was made that Japan had bombed Pearl Harbor. At age 19, with just one year of college under his belt, Gene “volunteered to be drafted” into the U.S. Army, despite his parents’ pacifist influence. He was inducted in Michigan, and trained in Colorado. Then his unit was sent to Kansas, and later to Seattle to ship out overseas. But, the news came that two atomic bombs had been dropped and WWII was over. All the same, the orders could not be changed in time, so his unit was still shipped out to Tinian Island in the South Pacific. They waited there until another assignment came. During the four months on Tinian Gene got a firsthand look at the Enola Gay, the plane that had dropped the first atomic bomb.

Coming home from the service in 1946, Gene returned to school under the G.I. Bill. Since he had served in the military as a classified personnel specialist, Gene decided he liked working with people. He changed his major from chemical engineering to business. Then he went into law, enrolling at Wayne State University School of Law.

Gene’s parents decided to sell everything and move from Detroit to California in 1948. They bought a home in Pacific Palisades. Gene researched the law schools in California and found that the University

of San Francisco, a Jesuit Catholic school, would accept him as a second-year transfer student. So, Gene drove from Detroit to San Francisco in a convertible in five days. Just for fun, Gene decided to sample his favorite dessert, cherry pie, each day along his way to find out which state had the best cherry pie. (See if you can guess which state he chose as winner of the Best Cherry Pie Award for 1948.)

Practice of Law

After his admission to the bar in 1950, Gene set up his first practice in the Garfield Building in Los Angeles and bought a little one-bedroom house off Cahuenga Pass in Los Angeles for \$7,000.00. Later he practiced with partners Richard Rogan (who became Chief Deputy Attorney General of California) and Mary Goode Rogan (who later became a Municipal Court Judge and then a Superior Court Judge in Burbank). In 1954 and again in 1956, Gene ran for the U.S. Congressional seat from the Burbank area, but was not elected. (In 1954, Gene was the youngest congressional candidate at 30 years of age.)

When asked about the highlights of his career, Gene said on Nov. 9, 1964, he was presented by Archibald Cox, U.S. Solicitor General, as part of a group of about 30 lawyers from all around the country, to be admitted to practice before the U.S. Supreme Court. Gene said, "I will never forget when Chief Justice Earl Warren looked down at me and said, 'Good morning, Mr. Radding.'" Puzzled, because no one else was personally addressed during the ceremony, Gene later asked the court staff about it. He was told that Justice Warren always specially acknowledged the attorneys from California.

In 1964, Gene was the principal organizer of a state bank in Burbank, known as Providencia Bank. About three years later, Providencia Bank merged with Glendale National Bank. He said it was an interesting process to set up a bank, and it was eventually lucrative when Glendale National Bank later merged with Wells Fargo.

Gene was the managing partner with a firm of four lawyers in Burbank. They handled all types of legal matters, including criminal defense. Gene said that the location of the firm's office right across the street from the courthouse in Burbank attracted very interesting clients. The location also provided an opportunity to represent celebrities, movie stars, and entertainment figures, though they will remain unnamed by Gene, who continues to protect their privacy. For a time, after moving his practice to Ventura in 1978, Gene continued to practice in Los Angeles County and Ventura County. Then, gradually he moved his major legal activity to Ventura.

Family

It was a mutual friend who introduced Gene and Shirley Shapiro. Shirley was a

Pasadena school teacher at the time. On their first date, they attended a concert of the L.A. Philharmonic. Soon they decided to wed, and Gene and Shirley have now been happily married for 57 years. Over the years the Raddings enjoyed many activities, including hiking, camping and river rafting with their family, often going to one of their favorite spots, Mineral King in the Sierras. After moving to Ventura, Shirley Radding founded the Long-Term Care Ombudsmen Program in Ventura, and she served as Director for 12 years, until her retirement. Gene and Shirley have four children and nine grandchildren. Gene's family has always been an important part of his life.



Ellen Hirvela practices collaborative family law in Camarillo.

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ARBITRATION AFTER *BURLAGE*

By Wendy Lascher

“We look to legal precedent in deciding cases. We believe the law is predictable and provides litigants and counsel a reasonable degree of certainty. True, but not always.” *Burlage v. Superior Court* (2009) 178 Cal. App.4th 524 (review denied). The *Burlage* decision will make every case that goes to arbitration less predictable – and more costly.

Most California lawyers and judges, and even the two justices in the *Burlage* majority, had previously believed that a court may not review the merits of an arbitrator’s reasoning, even when an error of law is apparent on the face of the award and causes substantial injustice. This is the teaching of *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1.

In *Burlage*, however, **Presiding Justice Arthur Gilbert** and **Associate Justice Kenneth Yegan** upheld a trial court’s order setting aside an arbitration award because the arbitrator had concluded that some defense evidence about damages was irrelevant, and granted a motion in limine to exclude it. They held that Code of Civil Procedure section 1286.2 (a)(5) requires reversal “if the court determines [that] . . . The rights of the party were substantially prejudiced by the refusal of the arbitrators . . . to hear evidence material to the controversy . . .”

Dissenting **Associate Justice Steven Perren** wrote “that great mischief can and will result from” his colleagues’ decision. Will it?

The Hard Facts That Made Bad Law

In 2003, the Burlages bought a house from Martha Spencer for \$1.75 million. The standard California Association of Realtors’ contract required arbitration of any ensuing disputes.

The house had undisclosed defects. Its iron fence and swimming pool encroached on the neighboring property, the pool encroached on a storm drain and related easement belonging to the homeowners’ association, and the roof leaked badly. To address the encroachment problem, the Burlages’ attorney negotiated

to obtain a lot line adjustment, for which the Burlages’ title company paid \$10,000 and the Burlages paid \$950. It took well over two years to complete the lot line adjustment process, increasing remodeling costs, and the Burlages were required to pay their own lawyer, not to mention other expenses and investment of personal time. The Burlages’ expert identified \$557,700 to \$662,700 of damages, including \$112,500 for loss of property value due to the encroachment.

The parties agreed to arbitrate the Burlages’ claim for breach of contract and fraud. During arbitration, a dispute arose about the correct method of valuing damages for the encroachment. The Burlages relied on a case holding that damages are to be assessed as of the date of the fraudulent transaction while Spencer relied on a different case holding that in setting fraud damages a factfinder could consider subsequent events. The arbitrator agreed with the Burlages, and granted their motion in limine to exclude evidence of how much the title company paid for the lot line adjustment.

The arbitrator found fraud by Spencer and awarded \$552,750 in compensatory damages, plus \$225,000 in punitive damages and \$740,447.02 in attorney fees and costs.

Without reviewing the arbitration transcript, Ventura Superior Court **Judge William Liebmann** granted Spencer’s motion to vacate the award. He concluded that the arbitrator’s evidentiary ruling “directly affected the issue of damages, thereby substantially prejudicing [Spencer]’s ability to dispute the amount of damages suffered by” the Burlages. He ordered rehearing of the entire matter before a new arbitrator. The Court of Appeal affirmed Judge Liebmann, the majority taking the position that because Spencer was not permitted to introduce evidence of what the title company paid to resolve the encroachment issue “the Burlages were awarded \$ 1.5 million in compensatory and punitive damages they may not have suffered.”

Moncharsh Contemplated Finality

Moncharsh says that “[t]he arbitrator’s decision should be the end, not the beginning, of the dispute.” Both the state and national legislatures have endorsed consensual arbitration as a matter of policy. Does the Court of Appeal’s decision, in the service of an illusory equitable ideal, conflict with this policy and the legal principles developed to implement it? Or does it merely, as Spencer’s attorneys argued, take advantage of a “safety valve” the Legislature built into the arbitration statutes for cases such as this?

Parties agree to arbitrate disputes in order to make dispute resolution simpler, quicker, less expensive and more final. They bargain for an expectation of finality once the arbitrator has ruled despite “knowing that arbitrators, like judges, are fallible.” *That Way Production Co. v. Directors Guild of America, Inc.* (1979) 96 Cal.App.3d 960, 965. That is why the Supreme Court recently reiterated that “arbitrators do not ordinarily exceed their contractually created powers simply by reaching an erroneous conclusion on a contested issue of law or fact . . .” *Gueyffier v. Ann Summers, Ltd.* (2008) 43 Cal.4th 1179, 1184.

The Court of Appeal majority, however, believed that “tolerance for fallibility has its limits.” and that section 1286.2(a) (5) “permits a court to intercede when an arbitrator has prevented a party from fairly presenting its case. . . .” It thought Spencer was treated unfairly because her damages expert was not allowed to testify that the title company solved the encroachment issue by paying \$10,000 two years after the sale.

Safety Valve for What?

This rationale makes sense only if the Code of Civil Procedure allows a court to vacate awards based on substantive outcome. But section 1286.2(a)(5) focuses on procedural fairness, not the substance of arbitrators’ decisions. It addresses: the procurement of an award by fraud (paragraph (a)(1));

LRIS Today

By Alejandra Varela-Guerra

corruption (subd. (a)(2)); misconduct ((a) (3)); arbitrators exceeding their powers ((a) (4)); refusal to postpone the hearing for cause ((a)(5)); and failure to disclose conflict of interest ((a)(6)). The statute requires fair opportunity, not the right to persuade the arbitrator of any party's position on the merits.

Even if the statute did contemplate judicial reexamination of substantive legal rulings by arbitrators in cases of "substantial prejudice," the *Burlage* decision does not suggest any guidelines for distinguishing a "mere erroneous evidentiary ruling" from one significant enough to justify setting aside an award. Is it the discrepancy between the amount the title company paid and the amount of the award? If so, at what dollar level does section 1286.2(a)(5) kick in?

Is a court permitted to set aside an arbitration award without reading a transcript of the arbitration? A Court of Appeal could not reverse a trial court judgment for prejudicial error in excluding evidence without evaluating prejudice in light of the whole record, yet the Superior Court judge in *Burlage* did not read the arbitration transcript. If judicial review of arbitration awards is to be conducted differently than judicial review of trial court judgments, a subsequent decision must establish how that review is to be conducted.

If parties wish to superimpose judicial review on arbitration – to contract for an appellate process – they certainly may do so. *Cable Connection, Inc. v. DIRECTV, Inc.* (2008) 44 Cal.4th 1334, 1340. But allowing them to obtain review under section 1286.5(a)(2) creates myriad problems. As Justice Perren noted, virtually every ruling excluding parol evidence, excluding privileged evidence or excluding hearsay – to name a few categories of evidentiary rulings – results in limiting the admissibility of evidence.

Arbitration Will Cost More and Mean Less.

Burlage eliminates the economy that arbitration is supposed to foster by exposing parties and arbitrators to significantly longer arbitration hearings. This is because attorneys will become much more reluctant to object to (and arbitrators more reluctant to exclude) evidence for fear a court will subsequently overturn the award based on evidence exclusion. If parties do not object, they run the risk of having the arbitrator consider evidence that the Legislature and/or the courts have previously determined should not be considered. But if they do object, they run the perhaps greater risk of wasting all the work and expense that went into preparing for and presenting a case at arbitration.

Further, *Burlage* leaves no disincentive for a losing party to bring a motion to vacate in any case in which the arbitrator has excluded evidence.

There can be little doubt that the majority opinion will encourage a storm of hyperanalytical challenges to arbitration awards that, until this decision, were final.

Wendy Lascher is a State Bar certified specialist in appellate law. She practices in Ventura, www.lascher.com. She represented the Burlages in the Court of Appeal and their petition for review, which the Supreme Court denied by a 5-2 vote.

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The Lawyer Referral and Information Service would like to thank all of the new attorneys who have signed up to be on the LRIS panel these past few months. Since LRIS Today was first published in *Citations*, fourteen new attorneys have enrolled, **Donald W. Flaig, Gary B. Roach, Chirnese L. Liverpool, Matthew T. Ward, Thomas Greenberg, Diedre Wachbrit Braverman, Joshua A. Burt, Robert D. Peterson, Lee A. Hess, Jennie A. Hendrickson, Steven B. Lehat, Alejandro P. Gutierrez, Brian S. Dewey, Perry R. Fredgant.** The LRIS would also like to thank all of the attorneys who have served on the LRIS in the past and those who continue to serve.

Although there have been many new and valuable additions to the LRIS, we are in need of real property attorneys with loan modification experience. Due to the recent mortgage crisis and bad economy, there has been a huge demand from potential clients for attorneys who have experience in home loan modifications. If you are an attorney with this type of expertise, and are interested in participating in the LRIS, you may call the Ventura County Bar Association and inquire about how to participate.

Alejandra Varela-Guerra is the Client Relations Manager at the Ventura County Bar Association. If you are interested in joining the LRIS, please give Alex a call at (805) 650-7599, or e-mail her at alex@vcba.org.

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JOHN PATTIE REMEMBERED

By *Andy Wolf*

On Oct. 18, 2009, former attorney, Ventura County Bar member and past president and court commissioner **John Pattie** passed away. It is with mixed emotions that I write this. On the one hand, it is an honor to write about my friend and former partner. On the other hand, it would have been my preference to report that John was still on his boat sailing happily into either the sunrise or the sunset. I'm sure he, too, would have preferred the latter. And to the extent that there is still one other hand available, it strikes me that there is an entirely new generation of lawyers who have no idea who I am writing about.

When I first met John, he had just moved here from Imperial County, where he served as the public defender. Criminal activity there, as here, was an everyday concern. John, however, had his own approach to protecting his home and family from criminal elements. He posted a sign in his front yard identifying himself as the public defender and suggesting that if someone was considering burglarizing his home, or perhaps worse, he or she should rethink this because he or one of his deputies would eventually be defending that person in court. It was a very effective deterrent.

John's approach to the practice of law was to work cooperatively, and it was abundantly clear that he knew the value of his word. He believed that lawyers could and should be fierce advocates for their clients while remaining civil to one another. He also possessed an appropriately warped sense of humor.

John was an exceedingly eloquent speaker who possessed the vocal resonance that exists for most attorneys only in their dreams. John would often make beautifully crafted arguments into which he wove Latin phrases and esoteric legal theory punctuated by an occasional drift into street language.

John's eloquence and resonance stood in dark contrast to me. Once, in a family law matter before then-Judge [**Steve**] **Perren** in which John and I acted as co-counsel, a tentative ruling was announced to which I took exception. I know that my argument

was probably a bit more aggressive than it should have been. From the very first words out of my mouth, John started to take small sideways steps away from me. By the time I was half finished with my argument, no one would have realized that he and I were co-counsel.

In late 1988, the Court decided that the representation of minor children in the dependency system would be provided by private contract attorneys. For a variety of reasons, I had decided that I was not interested in bidding for the contract. John, however, had other ideas. Perhaps it was his eloquence. Perhaps it was the resonance of his voice. Whatever the explanation, I was on board. John, **Lucia Tebbe** and I then successfully bid for the contract. The partnership known as Dependent Children's Advocates was formed and began its representation of children in April 1989.

In the early 1990s, John became a commissioner initially presiding over the Simi Valley family law department. While John insisted on high standards of practice, he also used common sense and was compassionate when necessary.

Once, and only once, did I learn of his issuance of an ex parte restraining order based upon an entirely incompetent declaration. The declaration stated, "I am afraid. See Exhibit." Period. That's all. The Exhibit was a photocopy of the front page headline and story from the Thousand Oaks edition of the *Star*. The headline basically said "SWAT Removes Armed and Barricaded Man from Home". Yes. It was hearsay. But it was great hearsay. And legally sufficient hearsay.

In the mid 1980s, John went onto the faculty of the Ventura College of Law. He created the clinical program which provided real world experience for law students in family law matters. Many local attorneys got their initial practical experience through the clinic.

During the summer of 1990, he taught – or perhaps moderated is a better word – a course in advanced family law. While he

possessed sufficient expertise to teach the class, he thought it would be more effective to bring in guest lecturers each week to address the advanced topics which he wanted to cover. While I was to be one of the guest lecturers, scheduling was difficult because I was recuperating from another retina surgery and was restricted, in part, because I was still patched over both eyes. The weekend before I was scheduled to appear, John fell on his boat and fractured his ankle. On the night of class, John showed up on crutches and I had to be led into the classroom. John announced that while I was there to talk about interstate child custody disputes, the class was really about the blind leading the lame. Years later, at the beginning of an appearance in his court, he asked, on the record, whether I planned to make the blind argument or the lame one.

In or about 1987 or 1988, there was a significant end-of-the-year glut of criminal cases which could not be handled within constitutional and statutory time limits. The court assembled a list of every private attorney with criminal law experience in Ventura County and circulated it to the District Attorney's and the Public Defender's offices to see if any attorneys would be acceptable to both offices to sit as temporary judges on misdemeanor jury trials to assist in clearing the cases. Nine lawyers were ultimately agreed upon. John was one of the nine.

What he was most proud of, professionally, was the representation and protection of children. Judge [**Colleen Toy**] **White** had, and perhaps still has, a sign in her chambers which states, in essence, that a hundred years from now, no one will care who won the Super Bowl or other things of similar value. But a hundred years from now, the impact from protecting just one child could be profound.

So on behalf of the hundreds of children who John protected and for the positive impact which he had on their lives, thank you. And for me and on behalf of a lot of others, rest in peace my friend.

Andy Wolf practices family and dependency law in Ventura.

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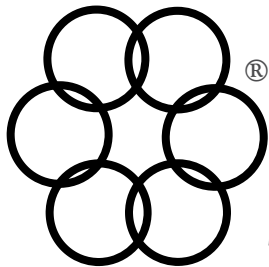
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Family Law Dispatch:

Continued from page 6

- **No Post-Separation Oral Community Property Agreements:** Greasing the wheels for the resolution of many cases is the fact that Family Code section 2550 allows parties to “horse-trade” and otherwise agree on unequal divisions of community property. But, such agreements must be *in writing* or *stipulated in open court* to be enforceable. (*In re Marriage of Dellaria and Blickman-Dellaria*, 172 Cal.App.4th 196.)
- **Enough with the Attempts of “Estate Planning Only” Transmutations:** A written property transmutation that otherwise meets the *MacDonald* requirements will be enforced even if it is expressly supposedly “for estate planning purposes only.” (*In re Marriage of Holtmann*, 166 Cal.App.4th 1166.) Either there is a non-revocable gift (“transmutation”) for tax purposes or there is not—you can’t have it both ways.
- **Kids Must be Considered when Imputing Income to Spousal Support Recipients:** (*In re Marriage of Mosley*, 165 Cal.App.4th 1375.)
- **The Probate Code Can Still Matter in Enforcing Premarital Agreements:** An inheritance waiver in a Premarital Agreement (“PMA”) can still be upheld under the Probate Code, even if the PMA may fail to meet the requirements of Family Code section 1615. (*Estate of Will*, 170 Cal.App.4th 902.)

As the scope of the above illustrates, developments in family law can affect other disciplines. In light of that, future columns this year will discuss estate planning, the dangers of the mediation privilege and other cross-over issues.



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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BERMAN AWARD NOMINATIONS SOUGHT

By Doug Goldwater

As some of you know, past Barristers president **Katie Pietrolungo** is on the statewide Board of Directors of the California Young Lawyers Association (CYLA). Every year the CYLA presents the Jack Berman Award to an outstanding young lawyer. I am pleased to announce that CYLA is now accepting nominations for this award.

In 1994, CYLA renamed its "Award of Achievement for Distinguished Service to the Profession and the Public" to call it the "Jack Berman Award" in honor of Mr. Berman.

The Jack Berman Award is presented every year to a young lawyer who has demonstrated outstanding service to the profession and the public, dedication to issues of concern to the profession, service to the community, access to justice and legal services and/or a commitment to pro bono work.

This award will be presented at the 2010 State Bar Annual Meeting in Monterey on Sept. 25, 2010.

If you know of a young lawyer who would be worthy of this award, I encourage you to submit a nomination. Please also forward this information to your colleagues who may be interested in nominating a young lawyer.

The nominating petition and information about the award is accessible through the link below. All nominations are due by **March 15, 2010**.

If you have any questions, please feel free to contact Katie directly at Kpietrolungo@andersonkill.com, or send an email to cyla@calbar.ca.gov or pick-up a form at <http://calbar.ca.gov/calbar/pdfs/awards/Jack-Berman-Nomination.pdf>



Doug Goldwater practices family law with Ferguson Case Orr Paterson LLP in Ventura.

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NEW IRA RULES MEAN CHANGES FOR TAXPAYERS

By Joanna Orr

In simple terms, a traditional IRA or a Roth IRA are ways to save money for retirement with certain tax benefits. Beginning Jan. 1, 2010, the rules regarding converting a traditional Individual Retirement Account (IRA) into a Roth IRA became more favorable to taxpayers. First, the income limitation was removed. Second, the tax on the converted amount may be deferred under certain circumstances. These changes date back to May of 2006, when President Bush signed the Tax Increase Prevention and Reconciliation Act of 2005 (H.R. 4297) ("TIPRA") into law.

Traditional IRA. Contributions to a traditional IRA are pre-tax, meaning that they are excluded from gross income for tax purposes. The contributions and earnings grow, and are taxed only when distributed. Once a taxpayer reaches age 70 and a half, he or she may no longer contribute to a traditional IRA and must begin taking required minimum distributions.

Roth IRA. A Roth IRA is the opposite: the

contributions are after tax, meaning that the taxpayer has received no exclusion from gross income. Since the tax was paid prior to contribution, the account grows tax-free and distributions are tax-free. Roth IRAs have no age limits for contributions and no required minimum distributions.

Income Limits for Contributions. Taxpayers who are eligible for an employer's 401(k) plan may contribute up to \$5,000 (or up to \$6,000 for taxpayers 50 or older in 2010) to a traditional IRA or Roth IRA, so long as they meet income limits. If your modified adjusted gross income (MAGI) in 2010 is above \$66,000 for single filers (phase out begins at \$56,000), or above \$109,000 for those who are married filing jointly (phase out begins at \$89,000), you cannot make contributions to a traditional IRA. If your MAGI in 2010 is above \$120,000 for single filers (phase out begins at \$105,000) or \$177,000 for those who are married filing jointly (phase out begins at \$167,000), you cannot make contributions to a Roth IRA.

Removal of Income Limitation on Conversion. Until Dec. 31, 2009, individuals could only convert traditional IRAs into Roth IRAs if their income was less than \$100,000 per year. However, section 512(a) of TIPRA changes the language of 26 U.S.C. 408A(c) (3) to repeal the income limitations, making conversion available to taxpayers in all tax brackets in 2010. Contributions directly to traditional IRAs and Roth IRAs continue to be subject to income limitations for taxpayers covered by employer retirement plans.

Tax Due. To effectuate a conversion, the taxpayer must include the amount of the traditional IRA account being converted in gross income and pay ordinary income taxes on that amount. For example, a taxpayer who converted a traditional IRA valued at \$20,000 would need to pay taxes on an extra \$20,000 of ordinary income in the year of conversion. Section 512(b) of TIPRA contains a special deferral provision – unless a taxpayer elects otherwise, the tax due on a conversion made in 2010 will be split between tax years 2011 and 2012. Using the same example of converting a traditional IRA with \$20,000, the taxpayer would include \$10,000 of ordinary income in 2011 and \$10,000 in 2012. California tax law conforms to the new federal rules, allowing the same income deferral. (Rev. & Tax Code, § 17501.) Regardless of when you pay the tax, the additional income could trigger state and/or federal underpayment penalties. So, if you decide to convert, make sure your withholding is appropriate and make estimated tax payments if necessary.

To Convert or Not to Convert. Deciding whether to convert a traditional IRA to a Roth IRA requires a bit of speculation and gambling. The general consensus in tax-land is that deferring payment of taxes is best. Moreover, it has long been assumed that individuals will earn less money and therefore be in a lower tax bracket once they retire. These assumptions ignore the fact that it is especially valuable for a younger person to pay tax on his or her retirement account now and let it grow tax free. Assuming even modest investment performance, the overall amount of tax to be paid is much lower. Twenty-first century tax rates for the highest brackets are low in comparison to the rates that have existed since the Sixteenth Amendment was enacted in 1913. Between 1932 and 1981, the highest tax bracket was at least 50 percent, climbing to 94



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percent in 1944 and 1945. Most people expect taxes to increase in the coming years and may prefer to pay tax on retirement accounts now.

Required Minimum Distributions. Because taxpayers under 59 and a half who pay the taxes due out of the converted account are subject to a ten percent early withdrawal penalty, generally it is only prudent to convert to a Roth IRA if the taxes due can be paid from a source outside of the converted account. However, there is a particular situation where a taxpayer may still come out ahead financially by paying the taxes from the converted account. For taxpayers in their 60s who are facing required minimum distributions in the near future, avoiding required minimum distributions prevents their gross income from rising to a higher tax bracket. If those taxpayers need additional income, withdrawals from their Roth IRA are not taxed.

Who Should Convert? Those who substantially benefit from converting a traditional IRA to a Roth IRA are taxpayers (a) in all tax brackets who have many years until retirement and (b) who wish to avoid required minimum distributions.

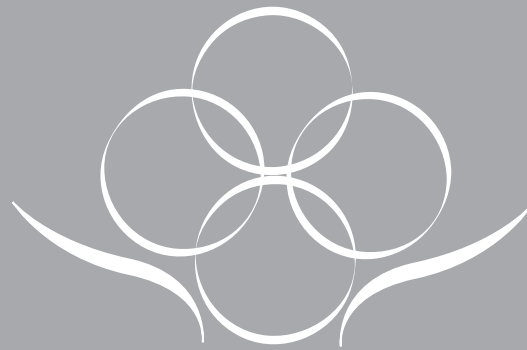
Partial Conversion. Even if it would provide a substantial tax benefit to convert to a Roth IRA, taxpayers may not have enough money to pay the required taxes. In that case, a taxpayer may convert only a portion of the traditional IRA.

Recharacterization. As a bonus for taxpayers who convert, if the account decreases in value after conversion (contrary to the goal of the Roth IRA growing tax-free) or even if you simply change your mind regarding tax planning, you can undo the conversion. Instead of paying taxes on the amount converted which has substantially declined in value from the date of conversion, you can re-characterize the Roth IRA as a traditional IRA. Re-characterization of a 2010 conversion must take place on or before Oct. 15, 2011. The taxpayer can try again at conversion in the next tax year, so long as it has been 30 days since the re-characterization.

Obviously, you should discuss your particular circumstances with a tax professional.

Joanna Orr practices tax law at Ferguson Case Orr Paterson in Ventura.

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NOMINATIONS INVITED FOR 2009 TRIAL LAWYER OF THE YEAR

The Ventura County Trial Lawyers Association is accepting nominations for its annual Trial Lawyer of the Year award to be presented at its May 25, 2010 evening meeting at the Courtyard by Marriott-Oxnard.

The award is bestowed annually upon an individual litigator rather than a team. Past honorees are: **Dave Ellison, John Howard, Dan Palay** and **Jim Procter**.

The VCTLA Board considers the following when making its selection:

Noteworthy civil trial results in 2009 (bench or jury trials);

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The honoree must be a member of VCTLA (may join after being nominated).

Please use the nomination form inserted in this issue of CITATIONS or visit VCTLA.org. Please submit your nomination to VCTLA c/o Steve Henderson at steve@vcba.org or (fax) 650-8054.

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THE BUSY TELEPHONE

By Art Gilbert

Those of you who think email, instant messaging and Twitter are a waste of time may find solace in Presiding Justice Arthur Gilbert's first opinion, published when he was a high school freshman in January, 1956 in The Junior Journal. One of his classmates, Andrea Sheridan Ordin (who was recently named L.A. County Counsel) provided it to CITATIONS.

Justice Gilbert tells CITATIONS that the Supreme Court ordered this piece depublished even though the court lacked jurisdiction. He still does not care all that much for the telephone; see his recent column discussing telephone numbers. When CITATIONS asked if we could republish the piece, Justice Gilbert threatened to bring a lawsuit, but then backed off when reminded that his work is now in the public domain.

The Telephone being unfortunate enough to be the medium of conversation at various homes, is constantly on the go. It serves us well by sending our idiotic messages across town where our moronic friends receive them and send back a quick idiotic reply. This process continues until the 'phone almost has crosswire trouble, comparable to our heartburn. We discuss various topics ranging from the sex life of the female salamander, to the cyclotron, and how various solutions of sodium thiosulfate are prepared. People talk for hours and say absolutely nothing. As soon as they have hung up, their fleshy little index fingers dial more digits, and the 'phone relays the code across masses of wires whether another 'phone picks them up, and after the usual "hello," the horrible process involving the vibrations of your vocal cords begins again. Surely Alexander Graham Bell didn't think his clever invention would lead to this.



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Judge Roger Lund will be formally installed via an enrobing ceremony Friday, March 19, beginning at 4:00 p.m. in Courtroom 22. RSVP to Dawn or Victoria at 654.2965 ... Forty-four souls braved the rainy, windy, cold environs to participate in the 20th Annual Bar Leaders Conference held February 6th at the Residence Inn by Marriott in Oxnard. Board trustees, sections, committees, and affiliates were all represented in the three hour confab. Lowest State Bar #? **Earl Price**-39813. Highest Bar #? **Jessica Arciniega**-261169. 21 women and 23 men. Representatives from the Ventura County Paralegal Association (VCPA – www.vcpalegal.org) presented the VLSP, Inc. a check in the amount of \$1,000. My highlight? **Gabriella Navarro-Busch** with mobile phone close-by waiting for that call letting her know she was about to be a grandma. Ok, I have another funny moment. Mr. Price's confession that when he was in law school at Loyola in 1966, their facility was a convent. Minutes were scribed by **Dien Le** and copies can be had at dien.le@calawcounsel.com. Introduced also was a progress report about our new website and its soon-to-be unveiling. A PowerPoint presentation by **President VanConas** may be received from kvanconas@atozlaw.com...

What I told you last month about **Sam Gasowski's** new employer, DTS, Inc., was accurate. What I didn't tell you is that Sam was an All-American swimmer at Indiana University and Team Captain in 1996. Swam the 50- and 100-meter races in addition to the relay. Sam also earned a shot at the Olympic Trials in 1996. Sam's an accomplished biker too, participating in the "Little 500" on an oval track on the IU campus. Want a good Lance

Exec's Dot...Dot...Dot...

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

Armstrong story? Sam.gasowski@dts.com... Justice Clarence Thomas won't see himself in the news for reacting to the president's State of the Union speech for one simple reason: He doesn't attend because of all the partisanship, catcalls and muttering. Thomas told students at an appearance at Stetson University College of Law why he skipped the president's speech – "I don't go because it's become so partisan," said Thomas. "And it's very uncomfortable for a judge to sit there. And there's a lot you don't hear on TV – the catcalls, and the hooping and hollering and under-the-breath comments." ... Vietnam? **Judge Brian Back** at brian.back@ventura.courts.ca.gov...

Bob Huber, recipient of the 2009 Ben E. Nordman Public Service Award, has announced he's running for Simi Valley mayor in the November 2010 election. Huber said he won't campaign for office unless current Mayor Paul Miller decides to retire. Huber is chairman of the Ventura County Community College District Board of Trustees...What? Sex workers not tax deductible? You gotta admire his chutzpah. Attorney William G. Halby, who practiced law for 20 years and specialized in taxation, went all the way to Tax Court. When the members stopped snickering, the court said no. Halby's attempted medical deductions for visits to New York prostitutes and the costs of videos and other pornographic materials were not allowable under the Tax Code. Halby kept journals of the visits, including the date, the name of the "service provider" and the amounts paid over two years ... Yes, I wrote last month that the Los Angeles Lawyers Philharmonic is LA's only legal orchestra. What I failed to note was that **Roberta Burnette** plays the viola in the orchestra. Cello swingin' **Karen Darnall** has been invited to play, but the logistics are overwhelming...

Very kool moment at the February 11th meeting of the Jerome H. Berenson Inn of Court. **Judge David Long** swore-in **Gina Herkel** as a new attorney. Gina waited even though she was eligible the last couple months because she was a member of the Inn and wanted to recognize the group that supported her so much during her last year of school and studying for the bar. Standing O for Gina ensued... Then, after the presentation, **Miles Lang** proposed to **Jill Singer** in front of everyone. Luckily, she accepted... A man

servin' life in prison for first-degree intentional homicide lost his legal battle to play *Dungeons & Dragons* behind bars. Kevin T. Singer filed a federal lawsuit against officials at Wisconsin's Waupun prison, arguing that a policy banning all *Dungeons & Dragons* material violated his free speech and due process rights. Prison officials instigated the ban among concerns that playing the game promoted gang related activity and was a threat to security. The 7th U.S. Circuit Court of Appeals upheld it as a reasonable policy...Egypt/Israel? **Dick Regnier** at simba1955@verizon.net. There's a terrific story about his Sermon on the Mount, if you are so inclined... Curacao? **Al Vargas** at avargas@crla.org...

Mark Your Calendars – In addition to the start of March Madness 3.18, our Barristers will be holding their annual Dart Night beginning at 5:30 p.m. inside The Bench Warmer. Prizes galore! Details – taylor.waters@ventura.org... March 19th will see VCDS hosting their annual dinner and honoring the bar association for efforts as Advocate of the Year. Sterling Hills GC. Get a hold of Sandra Rubio at srubio@vcds.bz or 384.1313...Quote of the Month: "The word genius isn't applicable in football. A genius is a guy like Norman Einstein." – Joe Theisman, NFL football analyst...

Don't know why this bothers me so, but it does. According to the *LA Times*, the Top 10 donors to political causes were individuals who gave the most money to California political candidates and ballot-measure campaigns from Jan. 1, 2000, to December 31, 2009. Of the 10, three are currently running for Governor (Poizner, Westly and Whitman); one is the current Governor; and Bill Simon, who ran for California's top spot in 2002. BTW, Steve Bing gave a whopping \$58 mil in said period to lead the list...

Steve Henderson has been the executive director and chief executive officer of the bar association and its affiliated organizations since November 1990. Henderson correctly predicted a Drew Brees slam dunk SB Sunday and spent much of February glued to the Winter Olympics. Henderson was a member of the U.S. Hockey Team in 1990. He may be reached at steve@vcba.org, FB or twitter.com/stevehendo1. Even better, 650.7599.

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*The Law Offices of David Lehr, Inc. are pleased to announce
the hiring of **Jasen B. Nielsen, Esq.***



Mr. Nielsen grew up in Thousand Oaks, and graduated from Westlake High School. He received his Bachelor of Arts from the University of California at Santa Barbara, and his Juris Doctorate from the Santa Barbara College of Law. He received the Witkin Award for Academic Excellence and the CALI Excellence for the Future Award in Remedies, and Academic Achievement Awards for the Highest Grade in Contracts, Legal Writing, Torts and Remedies. As an attorney, Mr. Nielsen worked in Construction Litigation and as a Ventura County Deputy District Attorney, where he received 24 hours of P.O.S.T. Certified Standardized Field Sobriety Test Instruction. Mr. Nielsen is now using his experience to help clients facing DUI charges.

We would appreciate your criminal law referrals.

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