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PRESIDENT'S MESSAGE: INTRODUCING THE VENTURA COUNTY DIVERSITY BAR ALLIANCE (VCDDBA)

By Dien Le



In November 2008, **Greg Ramirez** brought all the minority bar leaders in Ventura County together for a meeting at the Tower Club to discuss his idea of working together on issues common to all of our respective communities. The top priority was increasing the diversity of our local bench. While some good suggestions were discussed at this first meeting, the idea only remained at the inception stage.

One of my initiatives this year as VCBA President has been to promote diversity and otherwise facilitate and make this idea a reality. Thus, in January, I called together the same minority bars to formally create and develop this coalition. The bar leaders are **Renee Dehesa, Jill Friedman, John Fukasawa, Alvan Arzu, Jessica Arciniega, Jodi Prior, Tina Rasnow, David McDonald, Kata Kim,** and **Carmen Ramírez**, representing the founding member organizations: Ventura County Mexican American Bar Association, Women Lawyers of Ventura County, Ventura County Asian American Bar Association, and Ventura County Black Attorneys Association. We all agreed on the name Ventura County Diversity Bar Alliance (VCDDBA). The VCDDBA is being modeled after the pioneering and hugely successful Multi-Cultural Bar Alliance (MCBA) of Southern California comprising 20 minority, women and LGBT bar associations.

According to the 2010 census, the population of Ventura County was 823,318, comprised of nearly 50 percent people of color (40.3 percent Hispanic or Latino origin, 6.7

percent Asian, and 1.8 percent Black). Females made up 50.3 percent of the population. As to diversity on the Ventura County bench, the 2006-2007 Ventura Superior Court Annual Report ("Ventura Report") indicated there were six female judges, two male Hispanic judges, and one African American judge out of a total of 31. Currently, only one Hispanic judge remains on the bench, and there are no African American or Asian American judges. Of the ten appointments made from 2007 through 2011, two judges were female and one said he was of more than one race. The Ventura Report cited to the Judicial Council's Strategic Plan and noted: "The makeup of California's judicial branch will reflect the diversity of the state's residents." The Judicial Council's Strategic Plan is intended to guide the local courts and assure that they implement the stated goals to achieve access, fairness, and diversity in the courts.

By contrast, neighboring Santa Barbara County, with a population of 423,895, which is 49.85 percent female, and is comprised of 42.9 percent Hispanic or Latino origin, 4.9 percent Asian, and 2 percent Black, has three Hispanic and one Asian judge on the bench: half the population, yet four times as many minorities on the bench.

In light of the statistics above, an important focus of the VCDDBA will be to address the issue of judicial diversity in Ventura County. VCDDBA has recently sent a letter to the Governor bringing to his attention the importance and need for diversity on the

Ventura County Superior Court. Why is diversity on the bench important? As stated by Presiding Judge Lee Smalley Edmon, the first woman to lead the Los Angeles County Superior Court, "The more inclusive and diverse the judiciary system, the greater the degree of trust and confidence that the public will have in the integrity in our judicial system." Retired California Supreme Court Justice Carlos Moreno has urged that "only by having a diverse bench can equal justice for all be obtained. Diversity serves as a structural safeguard against bias and prejudice. Diversity ensures a full and balanced deliberation and decision-making process." Governor Jerry Brown's Senior Advisor for Policy and Appointments, Joshua Groban, confirmed that "diversity is important to Governor Brown and that his view of diversity goes beyond racial and gender lines and extends to life experiences."

VCDDBA will also serve as a way for each of the member organizations to promote and support each other's events and to collaborate on future joint events. A number of activities are being planned for VCDDBA's kickoff year, including an inaugural Mixer on May 16 at Twenty 88 tapas bar in old town Camarillo to introduce VCDDBA to VCBA and the Ventura County community. This Mixer will also be a fundraiser to benefit VCBA's pro bono program, Volunteer Lawyer Services Program (VLSP). Please see the flyer in this month's CITATIONS.

On June 23, VCDDBA will be hosting its first speakers panel program and workshop called "Everything You Wanted to Know About Becoming a Judge, But Were Afraid to Ask," featuring **Judge Manuel Covarrubias, Judge Matthew Guasco, Judge George Eskin** from Santa Barbara County, and **Judge Holly Fujie** and Referee Cynthia Loo from Los Angeles County. Referee Loo, who will moderate this panel, is currently the Chair of the Judicial Committee of the State Bar's Council on Access and Fairness, and Chair of MCBA's Diversity on the Bench/Judicial Mentoring Program. The purpose of this half-day Saturday program will be to provide important information and tips

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SHEAN WINS COMMUNITY SERVICE AWARD

By *Laura Bartels*



*Director/Chief Probation Officer Mark Varela, Kim Shean, Laura Bartels
March 7, 2012 Ventura County Board of Supervisors Room*

On March 7, Ventura attorney **Kim Shean** was awarded the prestigious 2012 Community Service Award by the Ventura County Probation Agency. Speaking to a standing-room-only crowd at the Ventura County Board of Supervisors chambers, Shean stressed the importance of the collaborative needs of social justice and the juvenile justice system. “We must remember to value that when the juveniles enter our court systems the social factors influencing them are profound to their future.”

Shean was honored for her volunteer work at Santa Clara Valley Legal Aid’s space in the small Sheriff’s department storefront located in North Fillmore. There, she helps women, children, and families understand the complex legal system they encounter. Shean’s experience with youth sex offenders, addicts and the mentally ill population have enabled Santa Clara Valley Legal Aid to provide counsel to at-risk youth and their families, an area unfamiliar to many other civil attorneys in our area.

Shean is a leader in the Ventura County juvenile justice system by advocating alternatives to custody for non-violent youth who are seriously addicted to drugs and/or alcohol. In 2008, she launched “Sobriety Classroom” (recently renamed “Recovery Classroom”), allowing addicted teenagers to continue their education in the community,

remain with their families, and receive intensive drug and alcohol treatment at their school site.

The Recovery Classroom is a school-based treatment program for youth addicts in the justice system. The premise is to provide drug treatment to kids while keeping them in school and out of juvenile hall. The Recovery Classroom incorporates a drug counselor and an on-campus probation officer into the teen’s daily school schedule by blending treatment and accountability with their educational needs. The kids receive school credit for a portion of the treatment. It serves from 40 to 50 students at a time. One significant component of this program is the collaboration of three multi-disciplinary teams: treatment specialists; attorneys and educators; and probation officers who meet weekly to discuss the progress of each teenager. Additionally, the judge sees the kids every two or three weeks to acknowledge their success or intervene if they aren’t doing well. The high level of judicial involvement significantly affects the kids and parents and, in turn, contributes to much more positive outcomes when compared with those from youth on probation who don’t receive these intense services. There are presently two Ventura County on-campus school programs located at Gateway Community School in Camarillo and Pacific High School in Ventura.

The Recovery Classroom has helped treat many drug- and alcohol-addicted teens who were not receiving addiction treatment because families were unable to get them to treatment due to family issues or other barriers.

Shean has also served as the chair of the Juvenile Sex Offender Management Team. This team is a similar model to Recovery Classroom by bringing treatment providers and probation officers together to discuss different perspectives and approaches to these kids and families.

Shean currently oversees one of two Juvenile Investigation Units that prepare pre-sentence investigative reports for the delinquency judges. Shean’s staff is responsible for completing a social study on youth and family, identifying risk and protective factors and making a recommendation to the judge as to what options should be made available to these parties. Shean also oversees the probation officers who represent the agency in Juvenile Court everyday, who make verbal recommendations to the court and work with the attorneys procedurally to get kids processed correctly and referred to appropriate and available resources.

Shean was awarded the 2008 President’s Pro Bono Service Award by the State Bar of California. The Honorable Chief Justice Ronald George said in her nomination that “Ms. Shean embraces a systematic approach that encourages an investigation of the entire family system to look at ways of healthy and unhealthy behavior and to pose solutions. Approaching her advocacy with energy and optimism, she brings her collaborative skills and commitment to the Santa Clara Valley Legal Aid clinic and provides a natural partnership between government and legal access.”

A volunteer at Santa Clara Valley Legal Aid since 2005, Shean lives in Ventura with her wife, Erin, and their children Leo (2) and Cameryn (11).

Laura Bartels is the Secretary-Treasurer of the VCBA Board of Directors. She practices in Fillmore.

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THE RUTGERS SPYCAM CASE: CYBER-BULLYING OR STUPID COLLEGE PRANK?

By Mari K. Rockenstein

A former Rutgers University student convicted last month in the webcam spying episode that ended in his gay roommate's suicide could be headed off to prison in a case that stands as a lesson regarding unintended consequences in the Internet age.

Dharun Ravi was found guilty of all fifteen charges against him, including invasion of privacy and anti-gay intimidation. The jury decided that he not only spied on his roommate, Tyler Clementi, and another man as they were kissing but also singled out Clementi because he was gay.

Ravi, 20, could get up to ten years in prison and be deported to his native India even though he has lived legally in the U.S. since he was a little boy.

The case set off a debate about whether hate crime statutes are the best way to deal with bullying and the rising prominence of social media forums like Twitter in daily life. While Ravi was not charged with Clementi's death, some legal experts argued that he was being punished for it, and that this would result only in ruining another young life. They, along with Ravi's lawyers, had argued that the case was criminalizing simple boorish behavior.

It was a case with a digital paper trail: Twitter feeds, Facebook posts, text messages, emails and other online chatter that together added up to facts that were never in much dispute, only their interpretation.

On September 19, 2010, Ravi set up the webcam on his computer in their room, then went into a friend's room and watched Clementi kissing a man he met a few weeks earlier on a website for gay men. Ravi tweeted about it and sent text messages urging others to watch when Clementi invited the man again two nights later, then deleted messages after Clementi killed himself. A half-dozen students were believed to have seen the live video of the kissing; however, the webcam

did not work during the second encounter. Clementi jumped to his death from the George Washington Bridge three days after the webcam viewing. It was only the third week into their freshman year.

A jury convicted Ravi of every count he faced, including a charge of bias intimidation that required jurors to find he acted out of malice against gays – or that Clementi reasonably believed he did. And jurors said Clementi left ample evidence that he did: he complained to his resident assistant, he went online to request a room change, he saved screen shots of Ravi's more offensive online posts, and he viewed his roommate's Twitter feed 38 times in the two days before he killed himself.

Since Ravi refused to state he hated Tyler because he was gay, he rejected a plea deal that would have allowed him to serve no jail time, but require him to perform 600 hours of community service and receive counseling. Sentencing is scheduled for May 21. Ravi's attorneys have already promised to appeal.

Although it's possible Ravi could get parts of the verdict overturned on appeal, legal analysts say the verdict sends a powerful message about the importance of respecting privacy rights – and watching what one says online. There are real consequences, including jail time for invading someone's privacy by distributing videos or images online.

Mari Rockenstein is an attorney and law professor in Camarillo who can be reached at mrock@rockonthelaw.com



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JUDICIAL CANDIDATE STATEMENT FROM BRADLEY G. BJELKE

As the campaign winds down and we get closer to the vote on June 5, I am grateful to the VCBA for giving me the opportunity to submit this candidate profile. When I entered my name in this race, I received a few letters and emails from attorneys in the county trying to bully me out of the election. They said I had no chance of winning, that I was unknown to them, and that I should reconsider being a judicial candidate. I think they may have been a little jealous that I had the guts to do this. Directly in opposition to those few individuals, however, are thousands of my supporters. These are people who believe I am the best candidate for the position, that my experience and background will allow me to bring new life and new perspective to the bench, and who understand and see the value in my campaign message. It has been their support and encouragement which has made my campaign so successful at the grass roots level, leveraging the power of social media and the reliability of old fashioned precinct walking.

For those that do not know me, my background is diverse. I am an attorney just like most of you, and I have been practicing for more than ten years. I served

as an executive for a technology company. I worked for one of the largest law firms in the United States. I currently work for a law firm in Westlake Village, as well as serve as an adjunct lecturer at California Lutheran University in Thousand Oaks (where I have taught courses since 2004). I regularly teach classes to undergraduate and graduate students at CLU (right now I am teaching Law & Society and Environmental Law & Policy). I have also taught courses in Constitutional Law, as well as Law & Public Policy.

I pride myself in being a modern attorney, using my technology background to implement innovative solutions to matters involving document and case management. I am a proponent of going paperless in the courts. I understand how electronic document filing should work and be implemented in the court system, and I know how to utilize technology to handle an increasing caseload in a more efficient and cost effective manner.

Now is the time to elect a judge who can help move the courts into the future. To do this, the judge of the future needs to not only understand evidentiary issues, law and

motion, and litigation, but that judge also must be willing to embrace technology, to accomplish more with a tighter budget, and to be able to converse with the new generation of attorneys who expect their judges to understand the intricacies of electronic discovery and how businesses work in the technology age. We need judges that can help move cases through the court system in a more expeditious manner, without compromising the legal attention that must be given to each case. We need judges who can relate to where the practice of law is today and where it is going, and who have a clear vision on how a courtroom needs to be managed – not just today but also for the next six years.

I am the only candidate in this election who can accomplish this. I will help lead the courts into the future. And, I will bring my enthusiasm, my experience, and my passion for the law with me to serve this county and to usher new life into the court system. To learn more about me and my campaign, please visit www.bjelke4judge.com.

JUDICIAL CANDIDATE STATEMENT FROM HON. HARRY J. WALSH



I came to Ventura County in February of 1971. I was 27 years in private practice before being appointed to the Superior Court by Gov. Pete Wilson in June of 1998. My law practice was directed towards civil litigation. I probably had 50 jury trials to my credit and approximately the same number of court trials when I received my appointment. I had also served as an arbitrator and discovery referee. All of this gave me a good grounding on how a courtroom operates, and how a judge should conduct him/herself.

My first judicial assignment was civil litigation, and with the exception of a two-year assignment in family law, I have been there ever since. What I offer as a judge is wide experience in all facets of civil litigation. I have had negligence cases of all variety (motor vehicle, malpractice, premises liability, and product liability). I have also had cases involving business, commercial, real estate, condemnation and inverse condemnation, and just about everything else in the civil department. These cases have ranged from the mundane to the very complicated. I have also heard a wide variety of writ applications seeking review of decisions of administrative bodies such as city councils, retirement boards, and other public agencies. I have had election disputes presented to me as well as election

issues involving ballot propositions and ballot language. Through all of this, my affirmance rate at the Court of Appeal has remained high.

My family law assignment involved the usual issues of the division of property, support and custody of children. These can be very difficult decisions to make, and I made them as I thought was appropriate. My experience has also included periodic preliminary hearings and criminal trials when that has been necessary.

I have always made an effort to treat attorneys, witnesses and jurors with courtesy and respect, and will continue to do so.

In evaluating the candidates in this election, the voter focus should be on experience, and experience in the courtroom. There is no formal apprentice program for a judge once he or she gets to the court. The apprentice program is what you have done before you get to the court. I had broad trial experience before I got the court, and have had 14 years to improve my skills and become an experienced judicial officer. In evaluating the candidates in this election, a voter should be asking "Who do I want to be my judge? Someone who has been doing it for 14 years, or someone who has no demonstrated experience in the courtroom?"

Any suggestion that the Ventura Court is lagging behind in technology, or that cases are subject to unwarranted delays is just plain wrong. We are set to go with e-filing, but the current state government budget problems have required that those plans be put on hold. The court is in full compliance with Fast Track rules, and the primary reason that cases are continued is that the attorneys have requested those continuances to complete their discovery, and get their cases ready for trial.

Off the bench, I have served as chair of the jury/grand jury committee. I have been a volunteer judge in the Mock Trial program for the last 16 years. Being a judicial officer has been the absolute best job I have ever had. With the help of the voters in the County, I look forward to continue doing just that.

Running in a contested election is stressful and expensive. I am deeply appreciative of, and humbled by, the endorsements I have received from all of the judges and justices in Ventura County, many retired bench officers, our district attorney, our sheriff, 35 former Ventura County Bar Association Presidents, 26 former Ventura County Trial Lawyer Association Presidents and more than 360 lawyers, along with many public officials and private citizens.

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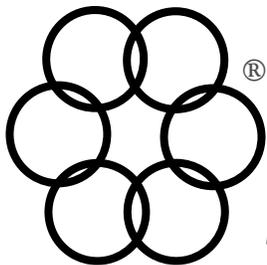
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to those who are interested in applying for judicial appointment to submit their applications to the Governor's Office. After the initial panel presentation, VCDBA plans to have breakout workshop sessions where attendees can get more one-on-one mentoring with other judges on our local bench or from outside Ventura County.

PUBLIC SERVICE ANNOUNCEMENT

Please don't forget that this month, there are two great events to benefit VLSP: (1) Ventura County Paralegal Association's 16th Annual Wine/Beer Tasting & Silent Auction on May 3 and (2) VCBA's Law Day 5K Run/Walk (now in its 29th year!) on May 19. Come join us for a lot of fun and to support a good cause.

Dien Le is a partner at Westlake Village-based Sullivan Taketa LLP, where he represents clients in business litigation, employment litigation, real property litigation and appellate matters in both federal and state courts.



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BARRISTERS' CORNER

In a Fire Station, Timing Is Everything

By Katie Pietrolungo and Amy Dilbeck



The Ventura County Barristers was the highest bidder at a recent *Make-A-Wish* Foundation charity event, securing dinner for eight at Ventura County Fire Station No. 52 in Camarillo. Shockingly, all eight of the Barristers who volunteered quickly to attend the April 4 dinner were females.

The ladies were welcomed by the three firefighters on duty, including the Captain, an engineer, an EMT/firefighter, and later, the Battalion Chief himself. The night started off with a tour of the fire station, sharing battle stories from both the fire and legal professions, and then a feast prepared by the firefighters. The lady Barristers ate like queens. (No taxpayer money was used to feed these hungry Barristers!)

Two lady Barristers even got to ride in the engine and accompany the firefighters on two emergency calls. Fearless ex-president **Christina Stockholm** was the first out the door on a call to Leisure Village. When the second call came in, **Rachel Coleman** was next in line, but thought she should, or could, pop in to the restroom before the engine left. She was decidedly wrong. Apparently, two minutes was just too long for these conscientious firefighters to wait, and Coleman came running into the engine bay just as **Melanie Murphy** was making herself comfortable in the back seat of the engine rolling out the door (No Barrister feelings were irreconcilably hurt in the making of this memory!), and we all learned a valuable lesson in timing.

Katie Pietrolungo and Amy Dilbeck both practice in Ventura.

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STOP CLUBBING, BABY SEALS!

ANIMAL RIGHTS, PART TWO

By Robert I. McMurry

“Men’s lives may depend on a comma.”
United States v. Palmer (1818) 16 U.S. 610, 636

Some time ago in this space **Michael McQueen, Kate Neiswender**, and I engaged in a good-natured debate over the legal rights of animals, ranging from dogs, cats, pink poodles, chinchillas, spiders, and homicidal hogs set for execution. Nothing much got accomplished save exchanging a little humor. Or so I thought. But apparently some unduly sensitive people, including reportedly at least one public official, took umbrage (that’s your legal word for the day, look it up) at my suggestion that animals have been criminally prosecuted over the years, apparently thinking that I was advocating a continuation of the practice. I do have some sympathy with this position, based largely on my current experiences with a barking dog owned by my neighbors. But I don’t seriously expect the law to move back in that direction, so I am hurt and disappointed by this calumny (there you are, two legal words for today) heaped on my head. It has gotten so bad that I have not been invited to the Inns of Court since publication of that article. (Of course I was never invited to the Inns of Court before that, either.)

I rise in my defense.

I start by charging that criticism from the animal-rights advocates must be taken with a crane of salt, as my four-year-old delightfully puts it. Animal rights folk, like environmentalists, have their hearts in the right place but sometimes can’t quite wrap their minds around the intellectual issues. We all remember the nice little old ladies from PETA who picketed the Chinese embassy because they heard millions of cats and dogs were being killed by “Youth in Asia.” And I still get a smile at Kate Neiswender’s campaign to get pictures of lost dogs and cats on the front of Wheaties boxes. (It’s *milk cartons*, Kate; Wheaties is Lance Armstrong.)

But I actually am one of you, folks. The title of this article notwithstanding, I don’t

object to baby seals going nightclubbing and in fact I would be willing to defend their First Amendment rights to do so, although presumably by definition they are all underaged. As proof thereof, I hereby relate my own tale of animal advocacy.

Shortly after law school I owned a pet python named Monty. Not a terribly creative name, I admit; his successor (see below) was named Brian, which at least is a two-step joke. (For those readers still scratching their heads over the math of the Three Dog Night puzzler, a two-step joke is one where you need a couple of steps for the punch line to creep up on you. Example: a Buddhist monk goes up to a hot dog vendor in New York City and says “Make me one with everything.” Uhm step uhm st - I GET IT !) Monty was an extremely affectionate companion who would often cuddle with me on the couch while I watched TV, despite his eight-foot length. (I know, I know, Monty’s attraction for me was based solely on a cold-blooded physical desire to be close to warm things, but I haven’t been treated with affection that often in my life – like B.B. King put it, “Nobody loves me but my momma, and she could be jivin’ me” – so leave me to my illusions.)

At the time I had asked out what we called a “Harvard lady” (i.e. she was well-endowed) for whom I had a cold-blooded physical desire to become close to. We were attempting to have a pleasant intellectual discussion – a considerable challenge in her case – in my apartment when I noticed that the furniture was beginning to change shapes. Now, I should mention that at this point in my life it was not unusual for me to see furniture changing shapes, but this particular altered state I recognized: the undulations caused by Monty sliding across the top of the couch in search of warmth. (I had forgotten to mention Monty.) My mind raced through various options: Warn and risk startling? Go for the snake and risk focusing her attention? Go for her? Scream “Snake?” Why the h*** didn’t I mention the snake earlier? As became typical of my legal career when faced with difficult decisions, I in fact did nothing. Monty

eventually made it across the couch while the oblivious young lady chatted away, until he reached a point where he could flick his inspecting tongue in her ear, which in turn caused her to turn her head to see what was going on and

The local police department reportedly logged 12 separate calls based on her screams, but as the dispatcher put it “We may have missed some because it was pretty crazy for a few minutes there.” Responding to what appeared to be a murder in progress, the gendarmes broke through the door with no warning (legal issue #1) to be confronted by a hysterically screaming young lady slashing at the air with a decorative Japanese sword I had next to my couch while I tried to cower protectively in a corner with eight feet of snake wrapped around me. It was, as one reporting officer put it, “almost too bizarre for words.” The cops planned initially to detain me on a charge of assault with a deadly weapon, but the police could find no law that Monty could be classed as a dangerous weapon and she was the one with the sword, so I was turned loose. Monty, alas, was confiscated.

Stung by my loss and newly educated by UCLA in the vast array of law available to me, I drafted a proposed complaint charging the local city with the taking of my property under the Fifth Amendment (legal issue #2) and a violation of 42 U.S.C. §1983 (legal issue #3), to wit “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....” Section 1983 applies to property rights, *Lynch v. Household Finance Corp.* (1972) 405 U.S. 538, including (though I admittedly had no cite for this) snakes. Right on the money, I thought, savoring the prospect of attorney fees (see 42 U.S.C. §1988), and descended upon city hall

looking to get my snake back. They called in the district attorney, who responded that he had a full and lurid statement from the young lady in question attesting that she had been “in the process of resisting unwanted sexual suggestions (no comment) when I caused her to be viciously attacked on the premises by a giant anaconda” (I believe I mentioned I was not dating her for her mind), and that he would happily charge me with something/anything just to be able to make the opening statement to the jury, after which he tartly suggested I might not want to make a federal case out of this one. I slunk home with my tail between my legs, although alas not Monty’s.

At any rate, the point of all this is that contrary to recent slanders, I have shown I am more than willing to take up the sword and shield in defense of the rights of animals. (Perhaps the reference to a sword might be ill-advised in this particular case.) Really. I mean that sincerely – or, at least, as sculpture artist Alan Barger put it, “I’m as honest as I can be in a medium that’s meant to deceive.” In the meantime, I’m still waiting for Mike and Kate to extend me that invitation to the Inns of Court. I’ll bring a snake.

Today’s trivia: On July 1, 1967, Canada celebrated its 100th birthday by honoring the first child in the country born in Canada’s second century. She turned out to be Pamela Anderson. Yes, that Pamela Anderson.

[Please excuse any errors or oddities since this message was dictated entirely on voice recognition software – which can turn Rancho Palos Verdes into “Ranch of palace birdies.”]



Robert I. McMurry is a partner at *Gilchrist & Rutter Professional Corporation* in Santa Monica.

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BRINKER DECISION RESOLVES MEAL AND REST BREAK QUESTIONS

By Michael A. Velthoen

On April 12, the California Supreme Court finally resolved some long-standing disputes concerning the scope of an employer's duty to provide meal and rest breaks to its employees. In *Brinker Restaurant Corporation v. Superior Court*, the Court held that an employer need not ensure that its employees actually take meal breaks, but only make meal breaks available to employees. The Court also ruled on the timing of meal breaks and on the provision of rest breaks. Businesses should review their meal and rest break policies to ensure that they are in compliance with California law.

Meal Breaks. Before *Brinker*, California courts struggled with articulating the duty an employer has to provide employee meal breaks. Some employee groups and attorneys have argued that an employer must ensure that its employees take a meal break. In other words, these groups have advocated a standard that requires employers to prohibit their employees from doing any work during their meal breaks. Employers, on the other hand, have advanced a rule that requires

employers only to provide meal breaks. Whether the employee actually takes the meal breaks, the employers have argued, is up to the employee.

The Supreme Court largely sided with the employers on this issue, holding that an employer must only "provide" a meal break. "The employer satisfies this obligation if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them from doing so." This will make it more difficult for an employee to prove a claim for missed meal breaks. The employee must show more than the fact that he or she did not take a meal break – usually demonstrated by the absence of a break on time sheets. Instead, the employee must establish that his or her employer failed to "provide" the meal break.

The Supreme Court also resolved a dispute over *when* meal breaks must be provided. The plaintiffs in *Brinker* argued that they

must not be required to work more than five hours between meal breaks. If, for example, an employee took his or meal break in the second hour of a shift, the employer must provide a second meal break in the seventh hour of the shift.

The Court rejected this argument. An employer satisfies its obligations to provide meal breaks so long as a first meal period is provided no later than the end of an employee's fifth hour of work (e.g., after no more than five hours of work) and a second meal period no later than the end of the employee's tenth hour of work, e.g., after no more than 10 hours of work. (An employee who works more than five hours but no more than six hours may waive the meal break). An employer, therefore, may schedule a first meal break for the employee after two hours of work and a second meal break after nine hours of work without violating the statute.

Although the Court generally sided with employers on these issues, do not read too much into this decision as the consequences



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for failure to provide meal breaks as required under the law can be substantial; if an employer fails to timely provide a meal break to an employee, the employee is entitled to one hour of additional pay at his or her regular wage. The Court also emphasized that an employer maintains an affirmative obligation to relieve the employee of all duties for 30 minutes and not to discourage or impede its employees from taking the required breaks. Employers should continue to take reasonable steps to ensure that employees are able to take the required meal breaks. Simply reciting a meal break policy in an employee handbook may not be enough.

Rest Breaks. The Court also resolved disputes concerning the provision and timing of employee rest breaks. Unlike the meal break issues, the Court sided with employees on one of the rest break issues. The employer in *Brinker* argued that a second, ten-minute rest break must be provided to an employee only after the employee worked seven hours. The Court

rejected this argument, holding an employee is entitled to a second rest break after six hours of work. The Court summarized an employer's rest break obligations as follows: "Employees are entitled to 10 minutes' rest for shifts from three and one-half hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on."

The Court, however, rejected the employees' contention that an employer must provide a rest break to its employees before any meal period. The Court held that employers must provide rest breaks to its employees in the middle of each four-hour work period insofar as practicable.:

"Employers are ... subject to a duty to make a good faith effort to authorize and permit rest breaks in the middle of each work period, but may deviate from that preferred course where practical considerations render it infeasible."

Please review your rest break policy to ensure that you are in compliance with *Brinker*. As with meal breaks, an employee is entitled to one additional hour of pay for each day in which his or her employer did not provide him or her with a required rest break. It is likewise important that you review not only your written policy, but also your practices and procedures to ensure that your employees are able to actually take the required rest breaks.



Michael A. Veltboen is the managing partner of Ventura-based Ferguson Case Orr Paterson LLP and a member of Citations Editorial Board..

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David Shain spent a few minutes inside the U.S. Supreme Court March 26 listening to oral arguments on the constitutionality of the health care law...My kind of story – When 13-year-old Kyle Smerer ran onto Safeco Field during the Seattle Mariners’ home opener against Oakland on April 6, he had no idea who was waiting there for him. After the fifth inning, as Kyle was participating in the Steal-A-Base contest, he was suddenly embraced by a man dressed as an umpire. His father, First Sgt. Steve Smerer, had come home from serving in Afghanistan and took the moment to surprise him... Turkey and the Greek Islands? **Michele Castillo** at 654.5047 or michele.castillo@ventura.org... Loire Valley, Venice, Florence, Roma, Sevilla, Cordoba, Madrid? **Renee Dehesa** at 988.8324 or rdehesa@nchc.con...

Fillmore HS students want to start up a Mock Trial Program this coming year with the approval and support of Principal John Wilbur. There is a parent committed to help in every way possible but they are unable to find an attorney coach. So here’s what you can do: volunteer yourself, or find someone you know willing to take this on. Great opportunity! Call Vickie Brown at the County Office of Education, 437.1502 or vbrown@vcoe.org... A woman who called a radio station to brag about a ploy to avoid jury duty by feigning mental instability is now facing felony charges. Susan Cole was accused of perjury and attempting to influence a public servant after a Denver judge who excused her from jury duty heard her on-air claim. Cole, who identified herself as “Char from Denver” in a call to KOA, said

Exec’s Dot...Dot...Dot...

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

she arrived for jury duty last June wearing mismatched shoes, reindeer socks, rollers in her hair and a shirt that said, “Ask me about my best seller.” According to the arrest affidavit, Cole responded when the judge asked if anyone had any mental disabilities. She said she “broke out of domestic violence in the military,” and she previously lived on the street...Maui? **Kendall VanConas** at 988.9886 or kvanconas@atozlaw.com... Costa Rica? **David Shain** at 659.6800 or dshain@fcop.com...

It comes as no surprise that Charles Manson skipped his 12th parole hearing at Corcoran State Prison. Manson, now a gray-bearded 77-year-old won’t be eligible again for another 15 years, meaning this could have been the last hearing. The surprise? His lawyer is **DeJon Lewis** from Ventura. Mr. Lewis stated that when he went to Corcoran for a pre-hearing interview, Manson declined to meet...A bill pending in Nebraska would make the state the second to give estate representatives the power to handle social media accounts after the death of state residents. The bill would treat Facebook, Twitter and email accounts as digital assets that would be managed by appointed representatives according to the *Omaha World Herald*. Under current policy, Facebook will remove the page of a deceased account holder if a family member requests it. Otherwise, when Facebook is notified of a death, it puts the account in a “special memorialized state,” removing certain information and ensuring that it no longer shows up in search results or receives friend requests. Draguignan, France? **Mike** and **Jenna Strauss** at 641.6600...

The 29th Annual Law Day 5K Race and 1-Mile Family Fun Run is scheduled for May 19 at the County Government Center. Stalwart and Race Director **Joe Strohmman** says breakfast by El Pescador is reason enough to participate. Prizes galore, dozens of volunteers and hundreds of runners make for a great morning. Proceeds benefit the bar association and the pro bono charitable arm, VLSP, Inc....The average education debt for law grads at private schools last year was nearly \$125,000, while the average for grads of public law schools was more than

\$75,000, according to new figures released by the ABA. The debt load increased 17.6 percent from the prior year for private law grads and 10 percent for public law grads, the *Daily Journal* reports. In 2001-02, the average debt was only about \$46,500 for public law school grads and about \$70,000 for private law school grads. *U.S. News & World Report* released its own figures on the “10 law schools that lead to the most debt.” #1: John Marshall at \$165, 178; #2: California Western School of Law at \$153,145; #3: Thomas Jefferson School of Law in California; #4 American University in D.C. at \$151,318; and #5 NYU at \$146,230...The Law offices of **Lindsay Nielson** and **The Huff Law Firm** have joined forces and are now Nielson/Huff LLP. www.nielsonhuff.com or 658.0977...

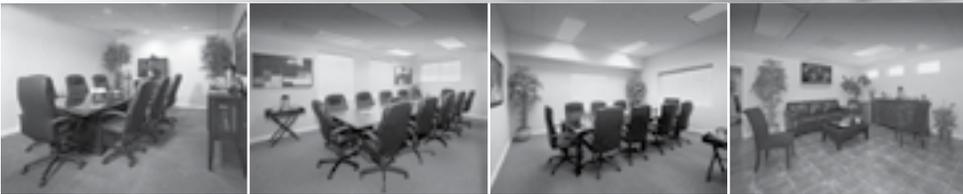
The LA Superior Court on April 17 announced plans for the most significant reduction of services in its history. By June 30, 2012, the court will reduce its staff by 350 workers, close 56 courtrooms, reduce the use of court reporters and eliminate the Informal Juvenile Traffic Courts. The courtrooms being impacted include 24 civil, 24 criminal, 3 family, 1 probate, and 4 juvenile delinquency courts... Belfast, Ireland? **Natalie Panossian** at napannossian@gmail.com... **Leslie McAdam** has been nominated for one of the 2012 President’s Pro Bono Service Awards. Leslie was nominated by **Laura Bartels** and we should hear some news in late July or early August...Eguilles, France? **Tina Rasnow** at 236.0266 or tina@rasnowpeak.com...Mark your calendar– Ventura County Diversity Bar Alliance is hosting a mixer May 16 at the Twenty 88 Restaurant and Bar. Proceeds to VLSP, Inc. and you may send your RSVP to bar@vcba.org or 650.7599...Lastly, VCTLA Trial Lawyer of the Year is scheduled for May 22. **Allen Ball** at 642.4622...

Steve Henderson has been the executive director and chief administrative officer of the bar association and its affiliated organizations since November 1990. Henderson was with the Secret Service in Cartagena, Columbia, during his college days inside the Hotel Caribe. Henderson may be reached at stevehendo1@vcba.org, FB, Twitter at [stevehendo1](https://twitter.com/stevehendo1) or [vcba1](https://twitter.com/vcba1), or better yet, 650.7599.

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