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# CITATIONS

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*By Ellen Hirvela Russell*

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KENDALL A. VANCONAS

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October 12, 2009

Jack Trimarco & Associates  
Polygraph/Investigations Inc.  
9454 Wilshire Boulevard, 6<sup>th</sup> Floor  
Beverly Hills, CA 90212

Dear Jack:

It was good to have a chance to talk with you today. I write to emphasize my appreciation for your good work on the cases on which you consulted with us.

I have found that your professionalism in conducting and scoring polygraph examinations is outstanding. Your reputation for integrity as a polygrapher was known while you were with the FBI and has continued into your years of private practice. Both your professional work product and your excellent reputation are particularly important to me as a criminal defense lawyer.

We do not routinely use polygraph exams but, when we do, we expect an honest confidential examination and report. Whether or not we choose to disclose the report, the examination and report are often very important to the client and often influence choices we make in strategizing with that client.

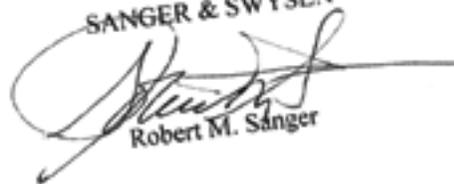
When we do decide to disclose the report in an attempt to convince a reluctant prosecutor of a client's innocence, a favorable polygraph report alone is not sufficient. The professionalism of the examination and the reputation of the polygrapher are critical.

In the recent case you worked on with us, we submitted your report along with witness interviews and other materials to the prosecutor. As you know, it was dismissed in its entirety on the day of trial. It was a felony case being vigorously prosecuted and the consequences of any conviction would have been devastating to my client's life and career. Being able to disclose your solid report backed by your substantial credentials was an important aspect of asserting our client's innocence.

Thank you again, Jack, and I will look forward to working with you in the future.

Best regards,

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Robert M. Sanger

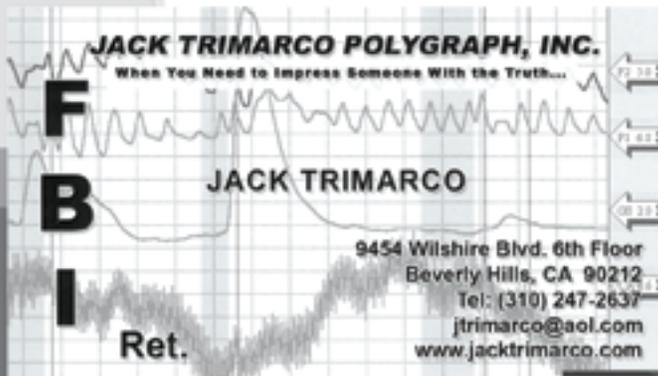
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## PRESIDENT'S COLUMN

By Kendall VanConas



11:58 p.m.

This is a perfectly respectable time to go to sleep, especially after the busy week I've had.

I know it's a Saturday night, and my 24-year-old self would have called the 44-year-old me an old lady for going to bed this early. But it's basically midnight. We've had a great day and a fabulous night: a very early morning (given a high school cross country meet), a fun evening with dear friends, great food, and lots of laughs – always lots of laughs. And a lot of wine this particular night. We have managed to convince our friends to stay the night, so I have no worries about anybody driving home. After the food, the wine, and the lack of sleep, I should be sound asleep. And yet, here I am, the only one awake.

12:23 a.m. I now have a cup of decaffeinated tea and the cat to keep me company.

I have to call my client first thing on Monday morning. I've owed him a call since Thursday, but haven't had a moment in the office free to check in with him. Hope he doesn't think that I have forgotten about him.

He was appointed as temporary conservator for an elderly grandmother whose family couldn't take care of her, and he chose me to be his attorney.

She is severely demented. She has lost touch with all that was real to her: the day she was married; the moments that she gave birth to her children; days that the Tooth Fairy and Santa visited her when she was a little girl, and when they came back to visit her children; birthdays, anniversaries and decades of New Year's Eves – to my thinking, everything that makes her the person she is – that she was.

She has a daughter who loves her, but cannot care for her. She has a son who cares for her, but does not seem to love her. She had a husband who loved her and cared for her, but he is now gone. She has grandchildren who love the idea of her, but are too busy to make time for her.

Right now, she is in a nursing home, and has had more people come into her life in the last 90 days than she has had in the last two years. The doctors who have diagnosed, treated, poked and prodded her, the nurses who help her to eat, bathe and keep her clean, and the social workers who alerted the county to the problem with her family. She has a judge who appointed a conservator for her, her conservator, and me. My client and I have done our best in a few short weeks to try to figure out the life of this 83-year-old, and how we can start to manage it for her: background; family; medical conditions; general likes and dislikes.

A million questions flood my mind. Did she lose her wedding ring years ago as her daughter claimed? Or did her eldest daughter take it from her and sell it, as her son claimed? If her children love her and care about her the way they each pronounce, why did they allow her to live in near squalor, with uneaten meals sitting in the fridge for weeks, medications not properly supervised, and the utilities almost turned off, especially when she has plenty of money?

Ah yes, the money. How much money does she have exactly, and how much has it been depleted over the last year or so when her daughter started to "help take care of mom?" Was she competent when she signed that power of attorney a few years ago, and did she know how much actual power she was giving away? She only has about \$1100 in social security coming in every month . . .

if the house is in really bad shape and we can't sell it right away, how is my client going to handle her cash-flow needs? We need to talk about Medi-Cal planning for her, but does it make sense to spend legal fees on planning for a person to go on welfare? And estate planning – that will she signed earlier this year certainly can't be valid, but how are we going to prove that? And does it even matter, if we think she's going to be impoverished anyway within the year? The judge is never going to approve all this time I'm spending if she ends up not having any money. But what can we do now? We're too deep into it to stop.

Of course there's the other money that her family says she has. . . and the estate of her sister in Minnesota who just died, and our conservatee is the only heir. That will help. But that probate just opened, and what's going on with it anyway? How long does it take to probate an estate in Minnesota? I need to call that attorney in Minneapolis. Another call I'll have to make on Monday.

12:43 a.m. Seriously, Kendall. It's almost 1:00 in the morning, go to sleep. I'm not going to be able to figure any of this stuff out now. At least it's Saturday night and Sunday, maybe I can sleep in late tomorrow. Unless my stupid cat Jack wakes up early again.

Oh her cat. Shoot, I forgot all about the cat. Misty was in the house with her when Adult Protective Services went out to investigate initially. In addition to getting the ball rolling to take care of the conservatee, APS also called Animal Control to take care of Misty. That's another message on my desk from last week – the animal control officer calling to remind me that Misty is off quarantine next week, and should they put her out for adoption, or what? Yes, or what? In cat years, Misty has got to be as old as our conservatee, and not in much better shape. Adoption? Not likely. But the family doesn't want her, and no neighbors were able to keep her either. My client and I talked about it, and his wife is allergic. This is NOT a conversation I want to have with my husband, but what am I supposed to do? Send Misty off to a certain death?

*Continued on page 7*



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## PRESIDENT'S COLUMN

*Continued from page 3*

Do I have to make that decision now, too? Not enough that I might have to some day help my client decide about the conservatee's end-of-life, now I have to do it for the cat, too? They didn't tell you any of this stuff in law school.

It's officially now 1:00 in the morning. I'm going to go back to bed now and lie in the dark. It's pathetic being the only one up at this time of the morning. And a little creepy, too. I didn't know my house made all these noises in the middle of the night. Jack doesn't seem bothered, so I guess I'm not either.

OK, so first thing Monday morning: call and check in with my client to let him know I've gotten all his e-mails and I'm on top of it; call the animal shelter; call the Minnesota probate attorney; and . . . darn it, there's one more thing on that case that I need to do . . .

what was it? Oh, that's right, call the court investigator to see where the report is. Our final hearing is the end of the week and we need that report. I hope the investigator is on board with our plans.

But before I make those calls, I've got to finish the draft of that trust amendment for my clients that I promised them a week ago. They knew for four months when they were leaving on vacation, why did they wait until two weeks beforehand to call me? And why did I promise I'd get it done for them before they left? I need to stop doing that.

All right, I have my to-do list in place, at least that makes me feel better. And I have a day at home tomorrow to catch up on my laundry, grocery shopping and chores, and maybe take a little family time before throwing myself into work again on Monday morning. I'll do all that tomorrow when I wake up. But first, I have to go to sleep.

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# WOMEN LAWYERS OF VENTURA COUNTY TO HONOR TWO FIGHTERS FOR JUSTICE

By Jodi Prior



**Barbara Macri-Ortiz**

The Women Lawyers of Ventura County (WLVC) will honor attorney **Barbara Macri-Ortiz** with its Fourth Annual Legacy Award, and attorney **Jessica Arciniega** as the recipient of the Holly Spevak Memorial Award at an Oct. 21, 2010 dinner at Herzog Wine Cellars in Oxnard.

## **Barbara Macri-Ortiz**

The Legacy Award honors a pioneer woman attorney, one of our “founding mothers” who was an early leader among women lawyers, a strong supporter of women’s rights, and an advocate for the underrepresented.

Barbara Macri-Ortiz is a solo practitioner working on behalf of affordable housing and most recently justice for juvenile offenders and their families. She specializes in housing, education, civil litigation and labor and employment issues. Macri-Ortiz started her career working for the United Farm Workers Union as a contract negotiator, then became an attorney working as an apprentice in their office. Her law degree is actually signed by Cesar Chavez!

After Macri-Ortiz spent 20 years with the UFW, **Carmen Ramirez** hired her as a staff attorney at Channel Counties Legal Services Association. During that time one of her most spectacular victories was acquiring the land for farm-worker housing from a slum lord. With the assistance of Cabrillo



**Jessica Arciniega**

Economic Development Corporation, she fought that owner over the wretched conditions that his tenants, mostly farm workers, lived in. The result was that the property was offered up as a settlement for the case and now is called Villa Cesar Chavez, where 52 farm-worker families live and thrive in South Oxnard. Throughout her 23-year legal career, Macri-Ortiz’ litigation efforts have resulted in the development of over 1,500 new homes for low-income families in Ventura County.

Recently, Macri-Ortiz has fought for the rights of mobile home residents of the Wagon Wheel Mobile Home Park to relocation assistance from both the City of Oxnard and the developer of the project. After years and hundreds of hours, she has established that they have the rights to such benefits. Meanwhile, she has also fought for fair treatment for young people in Oxnard who have been accused of tagging. Macri-Ortiz has worked to make the city accountable and reasonable in assessing penalties and fines. In November 2009, Macri-Ortiz was appointed by Gov. Arnold Schwarzenegger to a six-year term on the Board of Directors of the California Housing Finance Agency.

Barbara Macri-Ortiz deserves this recognition because she has courageously and successfully represented so many people who are disrespected by our society,

including farm workers and young Latino men and women.

## **Jessica Arciniega**

The **Holly Spevak** Memorial Award honors the memory of a woman whose short time as an attorney brought lasting contributions to the community and access to justice through pro bono work. This award is presented to a new or “newish” attorney who exemplifies the commitment to serve others.

Jessica Arciniega is a new attorney with Wasserman, Comden, Casselman & Esensten, LLP. She is the current President of the Ventura County Mexican American Bar Association, a member of Women Lawyers of Ventura County and a member of the Ventura County Inns of Court. Her practice has been focused on wage and hour class action cases, employment issues, and personal injury cases. Some examples of Arciniega’s pro bono work include: representing tenants facing uninhabitable living conditions, advising employees suffering sexual harassment on the job and leading workshops for parents about their rights and their children’s rights in the education system.

Prior to becoming an attorney, Arciniega was a lead organizer with the United Farm Workers of America. She has been recognized by the National Women’s Political Caucus of Ventura County and in 2007 she was awarded the Emerging Leader award by the Ventura County Leadership Academy. Arciniega is a member of the City of Oxnard’s Mobile Home Rent Review Board, a Board Member of the Mixteco Indigenous Community Organizing Project and sits on the Advisory Board of the Ventura County Clergy and Laity United for Economic Justice. In preparation to become an attorney, Arciniega studied under this year’s Legacy Award Recipient Barbara Macri-Ortiz as an apprentice and participant in the Law Office Study Program.

Arciniega exemplifies the principles that Holly worked for, to make a better way for

**IRWIN R. "ROB" MILLER ESQ.****MEDIATION • ARBITRATION**

others and to dedicate her law practice to the greater social good.

Please join us on Oct. 21, 2010 to honor these remarkable and inspirational women. The Tierra Sur Restaurant is located inside Herzog Wine Cellars at 3201 Camino Del Sol in Oxnard. Wine tasting and hors d'oeuvres will start at 5:00 PM and dinner will be served at 6:15 PM. The cost of the dinner is \$60.00. Please R.S.V.P. to Nancy Goldstein at (805) 496-6565 or [nancy@gr8calilawyer.com](mailto:nancy@gr8calilawyer.com). Checks can be made payable to "WLVC" and sent to **Nancy Goldstein** at 3625 E. Thousand Oaks Blvd., Suite 209, Westlake Village, CA 91362.

*Jodi Prior is a court attorney at the Ventura Superior Court.*



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## SPOTLIGHT ON VERNA KAGAN

By Ellen Hirvela Russell



"I'm crazy for dogs," admitted **Verna Kagan**, as we shared lunch recently. Verna is the Manager of the Pro Bono Section of the Ventura County Bar, and it is my privilege and joy to turn the spotlight on Verna for this month's attorney profile. Verna went on to tell me how she and Herman, her husband of 52 years, have had many dogs over the years and currently have two, a border collie they adopted and a jack russell-beagle mix who actually "adopted us."

Verna and her husband also love birdwatching. It began when Herman, an award-winning photographer, would spend a lot of time during their camping trips to set up and shoot nature photography. Verna said it was while waiting for Herman that she began to watch and appreciate birds. This led to the couple taking a birdwatching class at Ventura College. To this day, they continue to pursue interesting birds; they even plan their camping trips to follow unusual birds. Recently, however, Herman won an award for his photograph of a very rare Mexican hummingbird that lighted in the couple's own backyard.

### Background

Verna's parents were born of Russian and Polish immigrants who had settled on New York's lower east side, which Verna said was "a poverty stricken area, referred to as the 'Jewish ghetto' in those days.

"Although [the neighborhood's residents] recognized education as a tool to exit poverty, traditionally, they would leave school at the 8th grade to take jobs, especially girls, who took secretarial training," she said.

Fortunately, Verna's father had three sisters

who assisted financially to put him through college and medical school to become a doctor. Verna's father had vowed that if he had a daughter, she would be educated at Stephens College next door to the University of Missouri, which he attended. Verna did attend Stephens. There, she met Herman, who was attending University of Missouri. Verna's family relocated to Beverly Hills in 1948. She went on to attend U.C.L.A. She was assigned to a brand new counselor there who encouraged her into what she calls, "the wrong major," physical education, based on the fact that Verna was a student of ballet and modern dance at that time and wanted to become an instructor.

"Like my predecessors, I ended up in business college and then became employed in the accounting department at Almaden Winery in San Francisco," Verna said.

"Part of my parents' thrust to rise out of poverty in addition to schooling was their firm belief in assimilation," Verna said. "Thus, as a child, I had no religious training, and really didn't know where I belonged in the scheme of things. Then WWII happened and the holocaust."

Verna found her religious roots while she was in college. She became involved in the celebration of the creation of Israel in 1948. She also became active in her local synagogue. Eventually she received the "Woman of the Year" award for service to Jewish causes.

After Verna and Herman married, he finished graduate school and became a Ph.D. in clinical psychology at the University of Arizona at Tucson. The couple decided that

Verna would be a full-time homemaker when their children came along.

"At that time it was the custom," Verna said. "Women's liberation had not yet come into its own."

### Legal Career

Unlike other homemakers in those days, who may have been watching the soaps, Verna was avidly reading Supreme Court decisions for her "recreation and entertainment."

"I was fascinated by the brilliant thinking and analytical approach to problems," Verna said.

Verna and Herman realized her interest in the law, and Herman encouraged her to go to law school.

"He told me, if I went to law school and found that I couldn't hack it or didn't like it, I would be in the same place as I am now," she said. "Would that be so bad? The rest is history."

Verna attended Ventura College of Law when the school was in its former location on Poli Street. One of her classmates and study partners was **Judge Colleen Toy White**. Verna graduated and passed the California Bar Exam in 1977.

"I opened my law practice in 1978," Verna said, "What I found was that many women were looking for women lawyers to represent them in dissolution matters. However, at that time, there were many men who resented women coming into the practice of law. As a result, they were often rude and vituperative. But, when I demonstrated that

I could hold my own, things got better.”

Verna told me about an unusual tort case she brought in which she won a money judgment for her client. The case was a spin-off from a dissolution. On the facts of the case, Wife had admitted and blood tests confirmed that all three children were fathered by another man. Wife always knew, but had misrepresented to Husband (Verna’s client) that he was in fact the father. The harm to her client was that, based on Wife’s misrepresentations that he already fathered three children he went through with having a vasectomy.

“I did my job, and if I said to you, ‘I promise you,’ then you did not have to put it in writing,” Verna said of her guiding principle in practice. “My word was gold. You could rely on me for honesty.”

Verna was the first Emeritus Attorney, “EA,” to assist in the Pro Bono Section of the Bar, a program that was first staffed by Alice McGrath about 15 years ago. About five years ago, Verna was asked to take the reins. A very energetic person, Verna is well suited for the position. She loves her work there. Verna is grateful for each of the attorneys that assist with pro bono cases. And, she finds it extremely gratifying to be able to tell a distraught person with no resources that there is an attorney who will agree to help.

**Etc.**

Verna and Herman enjoyed a lovely 50th wedding anniversary party with their family in 2008 at the Crowne Plaza in Ventura. They have two adult children and two grandchildren. Their daughter is an environmental scientist in Santa Cruz and their son is a CPA with his practice in Ventura.

And here is a little known fact that Verna shared with us: Actress Fay Wray, of King Kong fame, was married to Verna’s uncle, Robert Riskin, a screenplay writer who won an Oscar for “It Happened One Night” with Claudette Colbert and Clark Gable.

*Ellen Hirvela Russell practices collaborative family law in Camarillo.*

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## VENTURA COLLEGE OF LAW TO AFFILIATE



An agreement between the Santa Barbara and Ventura Colleges of Law and a not-for-profit network of educational institutions gives the law school a chance to seek regional accreditation and access to federal student financial aid programs.

The school announced Sept. 21 that it entered an affiliation agreement with TCS Education Systems (TCS ES), which serves 4,000 students at schools in Southern California, D.C. and Illinois. The agreement, which takes effect Oct. 1, allows the law school to broaden its offerings.

“This affiliation will strengthen the law school and its long-term growth potential by adding new resources, generating economies of scale and creating new opportunities for law-related education,” said Colleges of Law Dean Heather Georgakis. “TCS Education System shares our deep commitment to the preparation of engaged, community-minded professionals, and has the resources, expertise and experience to help us achieve our vision as a leading regional law school.”

In a joint press release issued by the Colleges of Law and TCS ES, Georgakis said the arrangement will help make scheduling more flexible for students, access new educational technology and study law in context with other disciplines.

The Chicago System’s approach comes from a premise that business success and social impact need not be mutually exclusive. Its educational model aims to prepare “socially conscious professionals.” The Colleges of Law says these goals align with its mission to prepare students through coursework and *pro bono* requirements to meet the high standard of civic responsibility expected of practicing attorneys.

The agreement puts TCS ES in charge of administrative support services which are expected to allow the Colleges to update operations in areas such as student services, academic support, marketing, accounting and human services. The changes will provide students with technology that lets them mix on-site and online courses, engage with course support software and take advantage of “smart” classrooms. The school will retain its name, nonprofit

status, and mission of providing affordable legal education to individuals of all backgrounds.

“We will not change the law school’s essential curricular focus or its emphasis on excellent teaching by practicing lawyers and judges,” Georgakis said. “We will also consider new law programs, including multi-disciplinary and joint degrees, to the extent permitted by our accrediting agency.”

The affiliation was approved in July by the Committee of Bar Examiners of the State Bar of California. That committee has fully accredited the Colleges since the 1970s. As the Colleges seek regional accreditation, the new arrangement will capitalize on TCS ES’s expertise in regulatory affairs.

The Colleges of Law join three other specialized higher education institutions within TCS ES: The Chicago School of Professional Psychology, Pacific Oaks College, and Santa Barbara Graduate Institute.

“We are pleased to welcome such an outstanding specialized graduate institution to our academic community,” TCS ES President and CEO Michael Horowitz said. “We see wonderful possibilities ahead for supporting the school’s mission and connecting its students, faculty, and alumni with others who embrace a commitment to being agents of change and innovators in their field.”

TCS ES was founded in 2009. In addition to its colleges and graduate schools, the not-for-profit organization is also affiliated with preparatory academies, K-8 schools and a specialized experiential early childhood learning and daycare center. Its other affiliates include TCS Online, an online education delivery and services affiliate and the TCS Foundation, which develops grants and charitable support for community-based student learning.

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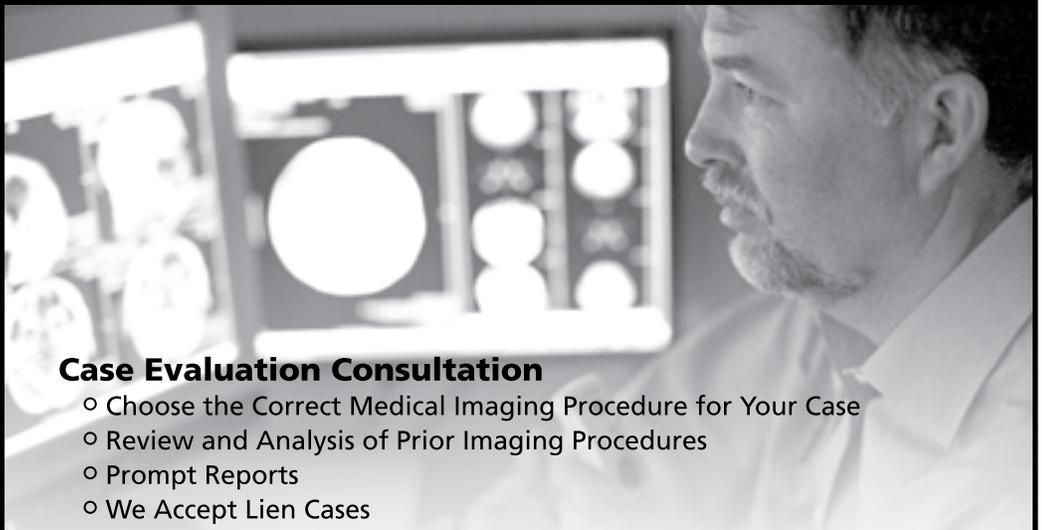
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## JUROR NULLIFICATION IN THE CIVIL TRIAL:

### Power Without Right

By Judge Judy Holzer Hersher

Jury (or juror) nullification is a jury's (or juror's) defiance of the law in reaching a verdict in a criminal or civil case. (*People v. Estrada* (2006) 141 Cal.App.4th 408, 414, citing *U.S. v. Thomas* (2nd Cir. 1997) 116 F.3d 606, 614.) It can be based on a party's identity, dislike of a particular prosecution at issue, or a personal or general opposition to a particular law or laws. (*People v. Estrada, supra*, 141 Cal.App.4th at 414.)

Experienced trial attorneys have all come across jurors who state they cannot or will not follow the law based on the jurors' perception of how the jury and court system should be run, or based on personal philosophy or experience. It is often expressed as the right to vote one's conscience, even if it violates established law. Most attorneys worry, however, about the juror who does not openly express antipathy to a particular law, but who will nonetheless ignore the law.

In our legal system, criminal and civil jurors have always had the *power* to engage in jury nullification, however, they have no *right* to do so. The difference between the power and the right has confused attorneys and jurors and led to disputes over what judges can tell jurors during *voir dire* and instruction, as well as what questions attorneys can ask of potential jurors during *voir dire*. It also affects what a court may ask and do after a juror reports a failure to follow the law in the jury room.

In the last decade, California's highest court has addressed the difference between "power" and "right" to engage in jury nullification in several published criminal opinions. The three most often cited are *People v. Cleveland* (2001) 25 Cal.4th 466; *People v. Williams* (2001) 25 Cal.4th 441; and *People v. Engelman* (2002) 28 Cal.4th 36. A thorough discussion of the distinction also is contained in *People v. Estrada, supra*.

The concept of being able to ignore the law and follow one's conscience is in many ways part of the American psyche. After all, we are the descendants of those who dumped tea in

the Boston harbor and declared publicly that we would not follow the law on principle. Appellate courts aptly have noted that while jury nullification has, on some occasions, achieved just results, "it also has led to verdicts based upon bigotry and racism... [and] violates one of the nation's most basic precepts: that we are a government of laws and not men." (*People v. Williams, supra*, 25 Cal. 4th at 459, fn. omitted.) It also ignores the fact that the laws have been passed by individuals elected by the public to make those decisions.

#### "Power" Versus "Right"

The distinction between a power to do something and a right to do something can be simply illustrated. Each person has, for example, the "power" to punch someone in the nose for no reason whatsoever. However, he or she does not have the "right" to do so. Engaging in physical assault without justification has consequences. So too for the civil juror who exercises the "power" to engage in nullification by not following the law. He or she has no right to do so, and the consequence is removal from the jury either before or during deliberations. A further consequence may be a new trial or a judgment set by the trial judge.

While it is the duty of court and counsel to guard against juror nullification, it is equally important to safeguard and preserve the sanctity of vigorous discourse during jury deliberations. Jurors must be free to stand by their beliefs in a difficult case without fear that fellow jurors will seek their removal in order to reach a particular result.

While trial judges do not discuss the power jurors have to engage in nullification, courts can tell civil (and criminal) jurors during *voir dire* and pre-instruction that *they have no authority* to disregard the law and obtain their assurance that they will follow the law if chosen to serve on a jury. Consistent with the admonition by the appellate courts not to encourage or glorify the power of the jury to disregard the law, trial courts emphasize the duty to follow the law as provided to

them and get assurance that each juror will without reservation follow the court's instructions and rulings on the law. (*People v. Estrada, supra*, 141 Cal.App.4th 408, 415; see also the California Standards of Judicial Administration, sections 3.25(c) (19) [Examination of prospective jurors in civil cases] and 4.30(b) (21) [Examination of prospective jurors in criminal cases].) A potential juror should be excused if he or she will not give such an assurance.

In 2002, the California Supreme Court held that trial judges in *criminal cases* should *not* give an instruction that told jurors it was their "obligation" to immediately advise the court if a juror refuses to deliberate, expresses an intention to disregard the law, decides the case based on penalty or punishment, or any other improper basis. According to the Supreme Court, jurors have no right to refuse to deliberate or to disregard the law, but such an instruction at the beginning of the case or before jury deliberations intrudes on the deliberative process and may stifle vigorous and vehement juror viewpoints during deliberations. (*People v. Engelman* (2002) 28 Cal.4th 436, 439.)

The high courts have recognized that jurors "may not often deliberate well or even skillfully... [and] jurors can and do use faulty logic or analysis." None of these things, however, rises to the level of juror misconduct or even jury nullification. (*People v. Keenan* (1988) 46 Cal.3d 487, 533.) Rather, jurors need to believe they can talk, argue and vigorously debate their positions and, if appropriate, change their minds without fear of exposure to the parties, their attorneys and the public.

"Juror privacy is a prerequisite of free debate, without which the decision making process would be crippled... [P]articipants must feel completely free to dissect the credibility, motivations and just desserts of other people. Sensitive jurors will not engage in such a dialogue without some assurance that it will never reach a larger audience"... [T]he mere suggestion that the views of jurors may be conveyed to the parties and the

public...understandably may cause anxiety and fear in jurors and distort the process by which a verdict is reached..." (*People v. Cleveland, supra*, 25 Cal.4th at 475-476 and 481-482.)

The same logic holds true for civil jurors. (See *People v. Williams, supra*, 25 Cal.4th at 450, fn. 6.) If a juror refuses to apply the law as instructed by the court, or refuses to deliberate, a court can make "reasonable inquiry" and the offending juror can be discharged if it appears "as a demonstrable reality" that a juror is unable or unwilling to deliberate as advised. (*People v. Cleveland, supra*, 25 Cal.4th at p. 474-484; *People v. Williams, supra*, 25 Cal.4th at 463-464; *People v. Engelman, supra*, 28 Cal.4th at 36.)

#### Greater Checks and Balances in the Civil Trial

While the public policies are the same, a civil jury's power to engage in nullification or any misconduct is further limited by the trial judge's power to grant a new trial and/or overturn, modify, or otherwise correct a civil jury's verdict even after a jury has rendered its verdict. (See e.g., Code Civ. Proc. sections 656, *et seq.* for discussions of motions for a new trial, vacating a jury decision or judgment, directing the entry of a particular verdict notwithstanding the judgment, modifying a judgment, or ordering a new trial; *People v. Williams, supra*, 25 Cal.4th at 450, fn. 6.)

*Judy Hersher is a judge of the Sacramento Superior Court.*



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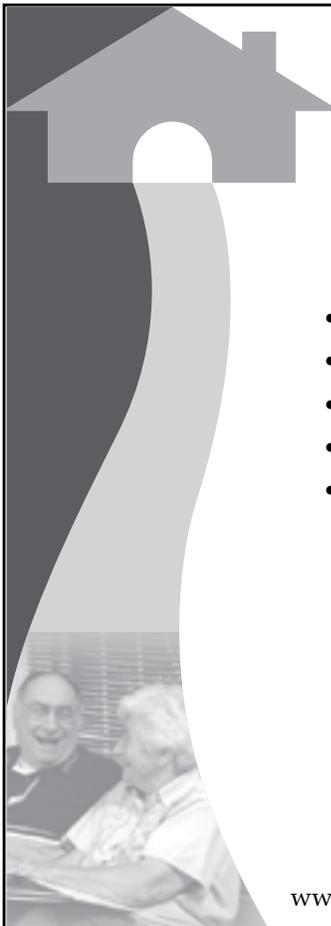
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## GET LOW REVIEWED

By Bill Paterson

*Get Low* opens with a long shot of a house engulfed in flame. A figure on fire leaps from the second story and runs into the surrounding woods. Fast forward to many years later. In his isolated mountain cabin in 1930s Tennessee, Felix Bush (Robert Duvall) has lived as a virtual hermit for some 40 years. He is a man out of the 19th Century and the subject of a host of legends. Why has he chosen to spend the last four decades in solitude? Both we and his curious and sometimes fearful neighbors will find out when a trip to a funeral home sets in motion the events that will unravel the mystery of Felix Bush.

Business is slow at Frank Quinn's (Bill Murray) funeral home when Felix walks through the door. Felix has something more in mind than a prepaid funeral. He wants his funeral to take place while he is still alive and wants to invite everyone in town "who has a story to tell about him." When Quinn sees the roll of bills in Felix's hand he is only too eager to please and, thanks to his gift for public relations, the upcoming "funeral" promises to rival the county fair.

All is going according to plan when Felix has Quinn's young assistant Buddy (Lucas Black) drive him to Reverend Jackson's (Bill Cobb) rural black church. To Buddy's surprise Felix and Jackson are old acquaintances. Felix asks Jackson to officiate at the funeral but is met with a stony refusal. Buddy has no idea what is going on but before long we will learn the secret that drove Felix into his long self-imposed exile.

There are a host of reasons I could give you as to why you should not miss *Get Low* but the most important is Robert Duvall. One of his generation's finest actors, Duvall has created a string of memorable characters going back to his first screen appearance as Boo Radley in *To Kill A Mockingbird*, through the domineering

and unbending Lt. Colonel Bull Meechem in *The Great Santini* and Mac Sledge, the broken down country and western singer in *Tender Mercies*. Add Felix Bush to that long list. Duvall has the gift of completely inhabiting a character and nowhere is this more on display than at the end of the film when Felix painfully discloses the secret that has haunted him for 40 years. It is a spellbinding piece of acting.

While Duvall has center stage, Bill Murray puts his unique brand of deadpan humor into the service of a dramatic role. As a woman from Felix's past, Sissy Spacek proves once more why she is one of our most accomplished actors. And then there is Bill Cobb. With his silver hair and sonorous voice, Cobb has imbued Reverend Jackson with a bone deep authenticity. And that is another key to this film – authenticity. The production values are impeccable in the way they capture this 1930s mountain community.

A closing note. If you have seen the trailer to *Get Low* you may expect to see a backwoods comedy. Whether that was an accident or a marketing ploy I cannot say. What I can say is that the trailer is misleading. While the film has some light moments, the core of the story is an exploration of one man's battle with guilt and the possibility of redemption. By contrast I feel no guilt whatsoever in trying to infect you with my enthusiasm for *Get Low*.

### Notable Robert Duvall Films

*To Kill a Mockingbird* – What else can one say in praise of this American classic?

*Tender Mercies* – Duvall won an Oscar for his portrayal of a country and western singer who has hit bottom and finds a new life with a young Vietnam War widow and her young son. A film to cherish.

*Lonesome Dove* – The TV mini-series with Tommy Lee Jones and Robert Duvall as long time ranching partners. A western that ranks with the classics.

*The Apostle* – Both written and directed by Duvall, *The Apostle* is the story of evangelical preacher Euliss "Sonny" Dewey (Duvall). *The Apostle* is both a showcase for Duvall's acting talents (he spent months at revival meetings developing his preaching style) and a fascinating character study of a unique and conflicted man whose deep and sincere faith did not always lead him down the path of righteousness.

*Bill Paterson is of counsel at Ventura's Ferguson Case Orr Paterson.*

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# FAULT? WHOSE FAULT?

By Art Wilkof

Scene: Santa Monica Courthouse, Family Law Department. The judge calls the next case, an uncontested divorce prove-up. The attorney calls his client to the stand, she is sworn and direct examination begins.

*Attorney: You are the plaintiff in this action?*

*Witness: Yes.*

*Attorney: During the past year, have you been subjected to any physical or verbal abuse from your husband?*

*Witness: Yes.*

*Attorney: Please describe the most recent incident.*

*Witness: About a month ago, my husband came home from work and was unhappy because dinner wasn't ready; he was in a hurry to go to his bowling league. He became very violent – he shouted at me and threw his car keys at me; fortunately, he missed.*

*Attorney: Were you frightened?*

*Witness: Yes.*

*Attorney: Did anybody else witness this incident?*

*Witness: Yes, my friend Caroline was there at the time.*

*Attorney: Nothing further of this witness.*

*Attorney: Call Caroline to the stand.*

Caroline takes the stand, is sworn and testifies.

*Attorney: You heard Mrs. Jones testify about the incident at her house did you not?*

*Witness: Yes.*

*Attorney: Did you witness that confrontation?*

*Witness: Yes.*

*Attorney: Did Mrs. Jones appear to be frightened?*

*Witness: Yes. She started to cry.*

*Attorney: Nothing further.*

*Judge: I've heard enough. I'm ready to rule.*

*Attorney: Submitted.*

While the ruling under California law might seem obvious given the facts presented, the truth is the ruling would be different if it were handed down today as opposed to 1968.

Today, the judge would probably issue a Domestic Violence Restraining Order. However, had this situation been presented to the court in 1968, the ruling would have been as follows:

*"Divorce is granted. Husband is awarded the community property business [or practice]; wife is awarded the community property residence. Custody of the children is given to wife and husband is ordered to pay \$75 per month per child for support. A spousal support order will also be entered."*

The support amount would ordinarily be inadequate to meet the wife's needs and she would immediately have to seek full-time employment, regardless of her age, health, work experience or age of the children.

This is not a fairy tale. In fact, in California before 1970 (when no-fault divorce laws went into effect), a divorce would not be granted unless the party seeking the divorce could prove fault on the part of the other spouse. Fault was most often violence or infidelity, and had to be proved with the testimony of a corroborating witness. A trial was mandatory; determination of matters by declaration was not allowed.

I can remember many times standing in the hall of the courthouse waiting to go into the courtroom, discussing the matter with my client and the corroborating witness. I would inform the client that unless an act of violence or infidelity could be established by testimony of the client and corroboration of the witness, a divorce would not be granted. Often my client would say "but my husband never threatened me; I just don't want to be married." My response: "If you want a divorce you'll have to think of an incident of violence or infidelity and have your witness

corroborate that incident." There is no doubt about it – the court and the attorneys demanded perjury in many cases in exchange for granting divorce. Bear in mind this was not a third-world rural proceeding; this was California.

Before the institution of no-fault divorce in California, it was common for a person who wished to be divorced to go to Reno, Nevada, or Tijuana, Mexico to seek the divorce. Not only did they not have to prove fault, but they could avoid the one-year waiting period that California required before terminating marital status. Marital status could be terminated in six weeks or less in Nevada or Mexico and it was quite trendy for parties to seek divorces in those venues. As a matter of fact, Reno's economy flourished because of the quickie divorces it offered. One or the other of the parties would go there, file for divorce and party for six weeks, then return home a divorced person.

Those out-of-state divorces create problems. In many cases, the party failed to follow the procedure of the state issuing the divorce and came home thinking they were divorced; they then remarried without giving it a second thought. In other cases, even if the divorce was valid in the jurisdiction which granted it, the party would not register it as a sister state judgment in California if and when that would have been necessary. In my practice, when I did a "legal checkup" to do a client's estate plan or for other purposes, it was not unusual for me to find that the client's divorce was not legal for one reason or another. There were many unwitting polygamists residing in California prior to 1970. This dysfunctional system led to the welcomed no-fault divorce reform in California.

Custody fights were rare. As a matter of fact, the wife (mother) would often complain to me that the father would not exercise his visitation rights, thereby thwarting the mother's plans for weekends or vacations when she was not to have the children. It was not uncommon for me to get a call on a Friday evening from a client complaining that she was packed and ready to go to Las

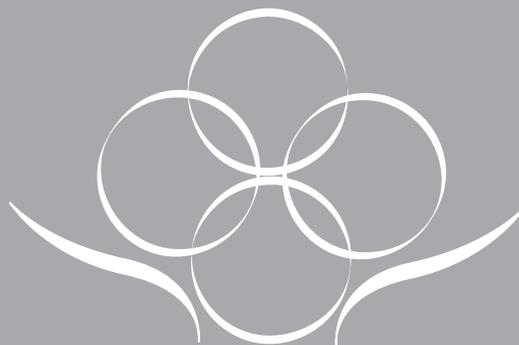
Vegas for the weekend, only to learn that her husband was not going to pick up the children or, usually, she would learn that by the virtue of the fact that he did not appear, rather than by a courtesy phone call canceling the visitation.

*DissoMaster?* Unheard of. There was no consistency among the courts with regard to support awards; we often did our research by asking fellow lawyers about their experience with a particular judge. My first experience with a support calculation program was in the early 1970s, when a judge in Torrance shared with me a “cheat sheet” that was being circulated among judges to give the court some guidance to calculate support. It was actually a grid that we would today call a spreadsheet, with the numbers entered into each cell manually, the husband’s income on the X axis and the number of children on the Y axis. The intersection would then produce the suggested support. This was the precursor of *DissoMaster*. In fact, it was created by Steve Adams, who dubbed it *DissoMaster* (we chuckled and opined that, with a name like that, it would never make it). There was no computer program at the time, because there were no computers.

In retrospect, while I am not proud of the fact that I was forced to encourage perjury on behalf of my client in order to obtain a divorce, I wonder whether or not there is something to be said for fault as grounds for a divorce. With all of the debate going on about freedom to marry, I am thinking that making it harder to get a divorce would cause couples to think long and hard before getting married and might even call for marital counseling to give a couple a basis for making an informed decision to marry. That kind of a commitment could possibly result in fewer broken homes and fewer children subjected to torment and pressures which they do not deserve.

*Arthur Wilkof practices business, real estate and family law from his Westlake Village offices.*

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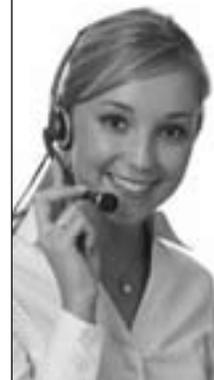
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## JOHN PAUL BROWN, Esq. sbn 24228

July 29, 1926 - August 21, 2010

By Bill Grewe

One of Ventura County's best and brightest attorneys, and perhaps the County's last World War II veteran to answer ready, has rested. **John Brown** began practicing in 1953, before three of the current U.S. Supreme Court justices were born and before there was a McDonalds or a Disneyland. He never stopped practicing.

John was a determined litigator who knew the law and loved what he did. It was a pleasure to see John in our courthouses. His smile and manner told you he was excited to be alive and happy to be a lawyer. Earlier in the year, this writer was on the same calendar as John. I stuck around after my matter just to hear him speak, as he always brought a smile to my face. There was nothing fancy about his manner of speaking. There was just something about John's style that made his reckoning ring true and your head begin to nod in agreement.

The law was not the course and career he envisioned for himself as World War II wound down. Sitting with fellow Navy men, John was asked what his plans were. He said he'd return to Los Angeles and train as a boxer. Lem Morris, also at the table, said he was going home to Utah to study law and John should join him. John explained that he barely got through high school, and no college would want him taking up space. Lem, who would become a lifelong friend, said that he'd take care of that.

The letter Lem wrote to the dean of the University of Utah was probably a better example of Lem's fiction-writing skills than a record of John's attributes. Whatever the case, the dean responded to the Navy man's letter in the affirmative. John was admitted to the University of Utah on his pal's word, and he could not turn it down. Thereafter, it was on to Southwestern Law School. While not a boxer, John became a fighter

first in Los Angeles and from the 1970s on in Ventura County.

Along the way, John became a family man; he was a father of four. Before there was "Take your daughter to work day," John took his 8-year-old Melanie to the courthouse. Or maybe it was just an early version of that old show "Scared Straight" where convicts talk to school kids about life in prison.

Melanie recalls that it was the criminal calendar. In the old courthouse, the jail was under the same roof. Those being held were a raucous bunch. Her dad made sure she got a good look at the group and their housing and made it clear that if she went bad, she'd be joining them.

John taught his children that underdogs deserved a fighting chance. John could not stop giving them that chance. How could he retire to a life of sailing – *he had sailed to Hawaii as part of two-man crew* – when people continued to need help, and a stream of them kept knocking on his door?

Slowly though, the years wore his body down. He was using an oxygen bottle in his last year, but at the courthouse he

would leave it in his car, and appear in the courtroom invigorated by something within his core.

He began going to his office later in the morning. He was last on his sailboat in 2009. His health was leaving him but not his spirit or his smile.

As a young man in the U.S. Navy, John no doubt had time to reflect as he bobbed in the waters of the South Pacific while his plane disappeared beneath the waves. He lived each day, and welcomed each challenge, as a gift. It showed.

John Paul Brown, Attorney and Counselor at Law, made his last point, and put his pen down, on August 21, 2010. The boxer left the ring on his terms: On-calendar. Fees posted. A true gentleman. An exceptional barrister.

*A formal obituary may be found at [www.legacy.com/Venturacounty/star/obituaries](http://www.legacy.com/Venturacounty/star/obituaries)*

**Bill Grewe** handles civil litigation, including personal injury and wrongful death cases, in Ventura.



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- \*Professional Trained Mediator Pepperdine University
- \*Bilingual (English & Spanish)
- \*President of Woman Lawyers of Ventura County (2005- Present)
- \*President of The Mexican American Bar Association (2007)
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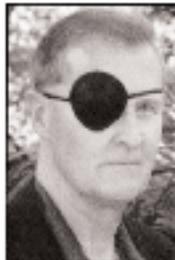
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Ventura Family Law lawyer **Deborah Jurgensen** received the State Bar of California's President's Pro Bono Service Award from Chief Justice Ronald George Friday evening, September 24, at the plush DeAnza Ballroom of the Portola Hotel in Monterey. On hand were a couple hundred people including a number of Deborah's family and colleagues. She accepted the accolades in the Individual/Solo category. Congrats to Deb at [jurgensenlaw@hotmail.com](mailto:jurgensenlaw@hotmail.com) or 850.6100...A quote from the U.S. Supreme Court's newest justice generated so many lookups on Merriam-Webster.com that the dictionary has proclaimed it one of its "Top Words of Summer 2010." The word is "vapid," used by Elena Kagan in a 1995 law review article. The article calls the confirmation process "a vapid and hollow charade." At the top of the list? Refudiate uttered by Sarah Palin...The judges of the Ventura Superior Court on September 8 unanimously elected **Judge Vince O'Neill** as Presiding Judge and **Judge Brian Back** as Assistant Presiding Judge for 2011 and 2012. The new terms for both begins 1.1.2011...

**Greg Herring** has been accepted as a Fellow in the International Academy of Matrimonial Lawyers. I believe he's the only one in our tri-counties area...Attorney Meryl Chambers, Editor of *Verdicts and Settlements* at The Daily Journal, tells me their "Verdicts & Settlements" database (with nearly 30,000 reports) could be a valuable tool for litigators in assessing their own case. Additionally, submitting cases to the Daily Journal does present an opportunity to spotlight the achievements of our lawyers. One does not need to be a subscriber to submit a verdict or settlement for publication. There's an online form that allows attorneys to submit results and it's free -[www.dailyjournal.com/verdictsubmit.cfm](http://www.dailyjournal.com/verdictsubmit.cfm)...Proposed changes to the *Local Rules of the Superior Court of California County of Ventura* for January 1, 2011. The judges would appreciate any comments or

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

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

recommendations regarding these rules by October 25. To view, go to the court's website, [www.venturacourts.ca.gov](http://www.venturacourts.ca.gov), and go to "What's New" and you'll find 'em. A hardcopy is available upon request to [victoria.borjesson@ventura.courts.ca.gov](mailto:victoria.borjesson@ventura.courts.ca.gov)...

The 4th Annual Women Lawyers of Ventura County Legacy Dinner is set for October 21 inside the fine Tierra Sur Restaurant at the Herzog Wine Cellars. That near-perfect location will honor **Barbara Macri-Ortiz**, previous winner of a *vcba/vlsp, inc.* Pro Bono Award, with the Legacy Award. **Jessica Arciniega**, current president of the Mexican American Bar Association, will be the recipient of the **Holly Spevak Award**. Wine tasting, hors d'oeuvres and silent auction begins at 5:00 p.m. for the reasonable price of \$60. All proceeds from the silent auction will benefit the **Mary Sullivan Scholarship Fund**. **Jodi Prior**, president of the WLVC, may be reached at [jodi.prior@venturacourts.ca.gov](mailto:jodi.prior@venturacourts.ca.gov) or 582.7537... This dude lives among us! A man in NYC infamous for being arrested for stealing subway trains - who has been arrested 26 times for impersonating a transit worker - was collared August 31 when he stole a bus and took it for a joyride. Darius McCollum's mother said he has Asperger Syndrome...Kona? **Leslie McAdam** at [lmcadam@fcoplaw.com](mailto:lmcadam@fcoplaw.com) or **Andy Viets** at [aviets@ci.ventura.ca.us](mailto:aviets@ci.ventura.ca.us)...**Michael McQueen** celebrated his who-knows-what birthday August 31 by taking his entire Inn of Court Team #1 after a rehearsal to Safire for dinner...

**Todd Wolfe** became a first-time daddy July 29! Sophia Lilly was born 6:16 p.m. and weighed-in at seven pounds and one ounce. Momma Emma doing just great too...Here's some comical case names I bet you have not heard of: *United States ex rel. Mayo v. Satan and His Staff* (W.D. Pa. 1971); *United States v. Approximately 65,695 Pounds of Shark Fins*, No. 05-56274 (9th Cir. Mar 17, 2008); *United States v. Article Consisting of 50,000 Cardboard Boxes More or Less, Each Containing One Pair of Clacker Balls*, 413 F.Supp. 1281 (D.Wisc. 1976); *Death v. Graves*, CGC-06-451316 (San Francisco Super. Ct. filed April 27, 2006), alleging that the defendant's vehicle crashed into plaintiff Alan Death's motorcycle; *Death* (lived); *United States v. 11 ¼ Dozen Packages of Articles Labeled in Part Mrs. Moffat's Shoo-Fly Powders for Drunkenness*, 40 F.Supp. 208 (W.D.N.Y. 1941) (holding product misbranded because it was not in fact a cure

or treatment for drunkenness)...After 28 years together, Rosenmund, Baio & Morrow ended effective June 1. Partner **Rocky Baio** has become a Ventura County Superior Court Commissioner and partner **Fred Rosenmund** is partially retired. **Michael Morrow** has opened his own practice at the same location and keeping all the phone and fax numbers. He does have a new email: [morrow@morrow-lawoffice.com](mailto:morrow@morrow-lawoffice.com). Michael remains a Patron of our Annual Law Day 5K...

VCBA Board member and Chair of the Probate and Estate Planning Section, **Cheri Kurman**, has announced her successful campaign to bring Certified Specialist CLE to the section was formalized by the State Bar August 27. This means that lawyers who have Certified Specialist designation (there's about 19 of you) in Estate Planning, Trust and Probate Law may now receive Specialized CLE effective at the next meeting scheduled for September 30 beginning at noontime at the Wedgewood. Any other section interested can call this author... He broke up the room in his opening speech with a joke about his wife and cracked them up again in his closing speech with a joke about his fellow candidates. But in between San Francisco lawyer William Hebert provided enough substance on pertinent issues to win the State Bar presidency on July 24. Hebert, 49, is a partner with Calvo & Clark and his wife, Lori Schechter, is a partner at Morrison & Foerster. Our District 6 rep, **Mike Tenenbaum**, was in France and absent to vote...**Robert Ostrove** had a Letter to the Editor appear in the LA Times Sports Section August 31. Somethin' about the Dodgers...

And lastly, you'll want to check this out - the bar's website has a new and valuable feature. It's entitled Career Center. Go to [www.vcba.org](http://www.vcba.org). Go to the menu bar at the top of the page and click Membership. Then click the first one up, *New -Jobs and Job Postings*. You'll find an array of opportunities and vacancies. You may also post your résumé. This is good stuff, people! Take advantage.

*Steve Henderson has been the executive director and chief executive officer of the bar association and its affiliated organizations since November 1990. He will be vacationing with Lady GaGa the first week of October on the island of St. Martin (the French side) with no cell or laptop. After that, he may be reached at [steve@vcba.org](mailto:steve@vcba.org), Twitter @stevehendo1, FB, LinkedIn, or better yet, 650.7599.*



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*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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