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

CITATIONS

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October 12, 2009

Jack Trimarco & Associates
Polygraph/Investigations Inc.
9454 Wilshire Boulevard, 6th 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.

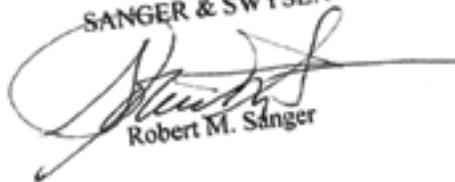
When we do decide to disclose the report in an attempt to convince a reluctant prosecutor of a client's innocence, a favorable polygraph report alone is not sufficient. The professionalism of the examination and the reputation of the polygrapher are critical.

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,

SANGER & SWYSEN

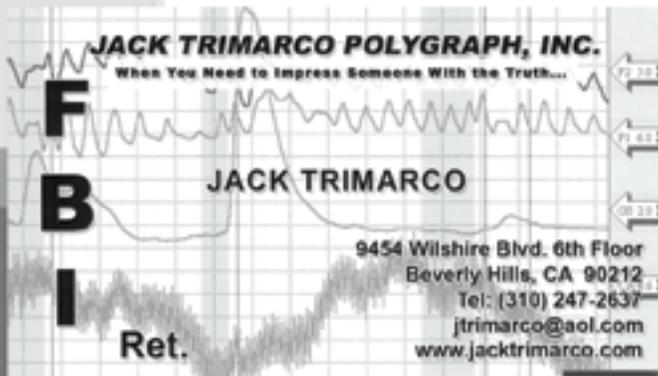

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THE CASE OF THE FLYING BRICK

By Joe Strohman



Photo credit: Victoria Borjesson

One look and you could tell Jesse Woodson was a troublemaker. Hot headed, a local gang member and a bully. Jesse had set his sights on Pikesville's newest resident, Angel Sterling, a new student from the cornfields of Nebraska. What followed was today's modern day version of bullying – online networking intimidation. Plus the old style kind – physical threats. Angel tried to stay away from school and avoid Jesse. But one day after a return to school someone caught up with Angel in an alleyway with a brick to the back of the head. Or as the defense claimed, a flying brick fell from the building and hit Angel. But was Jesse responsible? No one saw who hit Angel and after a hospital recovery Angel's memory may have been clouded. As to the cyber-bullying, many people had access to Jesse's online account at the school. So was Jesse guilty or not?

These facts set the stage for the 2011 Ventura County Mock Trial Competition Feb. 28, March 1 and March 3, 2011 at the Ventura Superior Court. With 27 teams from 23 schools and over 450 high school students, the courthouse was a busy place from 5 to 11 p.m. each night. Courtrooms overflowed with students, teachers and parents as teams

took turns representing the prosecution and the defense. This case included a complete but fast paced trial with pretrial motions, opening, direct and cross examination of four witnesses and closing. A complete trial in 90 minutes.

I found myself in Courtroom 45 as an attorney "scorer" along with fellow attorneys **Adrienne Miller** and **Earl Schurmer**. **Commissioner Dino Inumberable** presided over the courtroom as these high school students showed their stuff. Prepared, poised, direct – all the stuff that would make a trial judge happy – and only 17 years old. For those downbeat about America's youth the Mock Trial presentation would reaffirm your faith. These students prepare for months (usually after school) for their roles as attorneys and witnesses. By the time they reach the courtroom they are finely tuned and know the facts and the case inside out.

The Mock Trial program is not so much a competition but a life changer for a high school student. Imagine being 17, cross-examining a witness in a courtroom, objecting, addressing a judge and then doing a closing argument. This process gives

students confidence, improves their public speaking abilities and gives them a good understanding of our judicial system. Hey, if you can stand up and present an argument clearly to a judge in the courtroom while in high school, why can't you accomplish anything else in college or later life?

The Constitutional Rights Foundation sponsors and provides the case material each year for this competition. Locally, **Judge Kent Kellegrew** organizes the program in Ventura County (he follows **Judge Brian Back** and **Justice Steve Perren** in this commitment). With letters to local attorneys Judge Kellegrew recruits a long list of attorney scorers and judges for each round of competition. This is a time commitment. The trials begin around 6 p.m. and the second round ends around 10:30 p.m. A long day for judges after sitting on the bench and for attorneys after a day at the office or in court. But how rewarding.

Congratulations go out to La Reina for its first place finish and to its faculty advisor Liz Harlacher and attorney coaches **Jean Wentz**, **Rick Wentz** and **Ron Bamieh**. La Reina moved on to the California State Championship held on March 25-25, 2011 in Riverside.

The VCBA website this month will provide a link with the names of all the attorneys and judges who participated this year. The list is long and impressive. Take a look. We also thank the Ventura County Trial Lawyers Association, which annually supports the Mock Trial Program. Each year, the VCTLA goes dark for February so members can be scorers at the event.

Having coached the Ventura High School Mock Trial team for a number of years in the 1980s, I know what a commitment it is to be a team "attorney coach." But, like a teacher, you will form a bond with these students for the rest of their lives. Although we have a lot of "attorney coach" volunteers, there are still five or more high schools that are actively looking for volunteer "attorney coaches." VCBA Board Member **Joe O'Neill** has helped spearhead efforts to fill these ranks with attorney coaches. Contact Joe at

Continued on page 5

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EAR TO THE WALL

Correction: In the March issue of Citations, the **Amber Rodriguez** announcement listed an incorrect office number. You can reach the Law Office of Amber Rodriguez at (805)643-4200.

The Oxnard Financial Plaza law firm of Arnold Bleuel LaRochelle Mathews & Zirbel LLP is pleased to announce **Dean W. Hazard** as Of Counsel to the firm.



Mr. Hazard received his bachelor's degree, cum laude, from U.C.L.A. in 1978 and his J.D. from U.C.L.A. Law School in 1982. For nearly 30 years, Mr. Hazard has specialized in the practice areas of personal injury, real estate and business litigation.

Mr. Hazard is a past president of the Ventura County Trial Lawyers Association and a past board member of the Ventura County Bar Association. He is the current chair of the Bar Association's Client Relations Fee Dispute Committee.

Mr. Hazard will continue to focus his practice on civil trials and litigation with an emphasis in business, real estate and personal injury matters.



Ferguson Case Orr & Paterson in Ventura is excited about adding its newest partner, **Meghan B. Clark**, to the firm as of April 1, 2011.

A Ventura County native, Ms. Clark graduated from U.C.S.B., earning her bachelor's degree in only three years. She was accepted to law school at age 20 and earned her law degree from Gonzaga University School of Law in Spokane, Washington, where she was associate editor of the Gonzaga Law Review and graduated with honors in 1998.

Meghan is a past Barristers' president, past representative to the California Young Lawyers Association, past member of the Ventura County Bar Association Board of Directors, member of the Board of Counselors for California Lutheran University and the Vice Chair of the East Ventura County Employers' Advisory Council.

Meghan will continue to practice primarily in the areas of writs and appeals, employment law, and general counsel.

As of April 1, 2011, Meghan's e-mail address will be: mclark@fcoplaw.com

Hathaway Perrett Webster Powers Chrisman & Gutierrez is also adding another attorney on April 1, 2011, **Brook J. Carroll**.



After earning a B.A. in political science with honors from the University of Arizona, Mr. Carroll earned his law degree from Loyola Law School in 2000.

Brook is a board member of the Ventura County Trial Lawyers Association and the East Ventura County Employers Advisory Council.

Mr. Carroll will continue his civil litigation practice with an emphasis on employment law and business litigation cases.

THE CASE OF THE FLYING BRICK *Continued from page 3*

Photo credit: Victoria Borjesson



Judge Kent Kellegrew



Judge Melinda Johnson (Ret.)

oxatty@earthlink.net or 988-6700 for more information or to volunteer as an “attorney coach” for 2012. Your help is needed.

I would also like to recognize all the “attorney coaches” for 2011. So here they are with our thanks: Adolfo Camarillo: **George Hultman, Richard Diamond, Mike Morrow**; Agoura: **Kyle Marks, Steve Sutton**; Buena: **Denise Trerotola**; Calabasas: **Carol Chase, Hon. John Doyle**; Channel Islands: **Michelle Castillo, Gay Zide, Andres Garcia, Jessica**

Arciniega; Hueneme: **Jack Schuler, Mike Warns**; La Reina: **Jean Wentz, Rick Wentz, Ron Bamieh**; Newbury Park-Gold: **Martin Zaehringer, Jonathan Light, Howard Wise**; Newbury Park-Panthers: **Chris Correa, Ann Kahng, Derryl Halpern, Ken Henjum**; Oak Park: **Ron Camhi**; Oaks Christian: **Marshall Waller, Tom Beach**; Oxnard: **Victor Salas, Jr., Gilbert Romero, Tom Dunlevy, Jaclyn Sheehan**; Pacifica: **Joseph O’Neill, Clifton Reed**; Rio Mesa: **Don Adams**; Royal: **Denise Houghton, Lisa**

Sale, Rose DeMattia; Santa Paula: **Jennie Ruth, Diana Ponce-Gomez, Catherine Voelker**; Santa Susana: **Jeff Harkavy, Cindy Pandolfi, Jeff Wohlner, Andy Steiker**; Simi Valley: **Kathryn Pietrolungo, Jeff Halfen, F. Stephen Jones**; St. Bonaventure: **Guy Parvex**; Thousand Oaks: **Christina S. Stockholm**; Trinity Pacific-Silver: **Sarah Winkle**; Trinity Pacific-Blue: **Shannon Hirtensteiner**; Villanova: **Dave Shaneyfelt, Coleen Gillespie, Colleen McCall, Debby Jurgensen**; Westlake: **Julia Snyder**.

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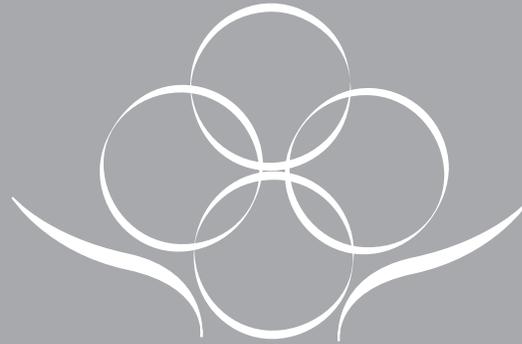
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VCTLA TO HOST SIXTH ANNUAL TRIAL LAWYER OF THE YEAR AWARD DINNER

By Dennis Neil Jones

The Ventura County Trial Lawyers will present its 2010 Trial Lawyer of the Year Award on May 24. The annual award recognizes noteworthy civil trial results, contributions to the legal community and to the betterment of the civil justice system and high standards of ethics, civility, courage and advocacy.

Nominations for the award are now open. A nomination form is on the flyer for VCTLA's April meeting, which is one of the handouts tucked into this magazine. Submit nominations to **Dennis Neil Jones** by fax (805) 644-7390 or email, djones@mwgjs.com.

Nominees will be announced in next month's Citations. Past award winners include **David Ellison, John Howard, Dan Palay, Jim Procter** and **Greg Johnson**.

Oxnard Armory Legal Clinic



Thanks to attorneys (R to L) **Bill Lenehan** (Public Defender), **Laurie Nintcheff**, **Andre Nintcheff** (Public Defender), **Robert Guerra**, **Caron Smith**, **Matt Purcell**, **Eileen McCarthy** (CRLA) for their volunteer efforts at the Oxnard Armory Legal Clinic and the Barristers' Legal Clinic. Also thanks to VCBA's Volunteer Legal Services Program for the Clinic's existence, to the Society of St. Vincent de Paul for their enthusiasm in having the Clinic take place at the Oxnard Winter Warming Shelter, to California Rural Legal Assistance, to the Public Law Center in Orange County for help with the forms and finally to **Tina Rasnow** and **Al Vargas**, who helped CRLA attorney **Eileen McCarthy** connect with VCBA to launch this project.

A Happy Bunch at Lunch



WLVC's first brown bag lunch speaker series featured Tawnee Pena, Marketing Director of Myers, Widders, Gibson, Jones & Schneider, LLP speaking about marketing tips for small and mid-sized law firms. WLVC meets at 12:15 the second Friday of every month at the VCBA office. No RSVP's are necessary and everyone is encouraged to attend.

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ARLBERG SKI REPORT

By Tony Strauss



Former VCBA President Strauss takes excellent vacations and writes thoughtful reviews. This one is excerpted from a longer report on skiing in Lech that you can read on VCBA's website at www.vcba.org/vcbacitations/.

After two days of snow showers and low clouds, the sunshine has returned to this ski village high in the Arlberg Alps. The locals had been worried as abnormally high temperatures risked shortening a typically long ski season, but the latest storm dropped up to 20 centimeters in some locations, making the locals and the visiting skiers ecstatic.

Lech is named for the Lech River and was first settled around 1300. But it wasn't until 1897 that it was connected by a road to the outside world. The first ski lifts were built in Zurs, the adjacent village on the road to St. Anton, in 1937. Events in Austria's neighbor to the north stymied the industry until 1949 when the area became known internationally for skiing. The area became known internationally for skiing in 1949. However, it has remained but a village with a permanent population of 1500 and 3-4000 visiting staff each ski season and has the capacity to hold only 10,000 visitors at a time. The result is that the slopes do not seem to get crowded, except when it has been snowing and there is only one groomed run to the village.

Skiing in Europe brings a panoply of experiences that differ from North American ski trips. Each Alpine country has its own personality. One attribute that the Austrian Arlberg shares with other German-speaking ski areas is the ubiquitous smell of bacon emanating from every *gasthaus* or *stube* within olfactory proximity of the pist.

In Alberg, a 210 euro six-day lift pass buys you rides on almost exclusively high-speed chairs with heated seats! Loading is a bit unusual for those accustomed to North American skiing as you stand behind a small gate – like the ones used for ski racing – that automatically opens at the right time to allow you to slide onto a conveyor belt that then places you at the exact point where the chair will come from behind to carry you away. The system operates so efficiently that while there may seem to be many on the slopes, there is never more than a minute's wait to board the lift.

The grooming and pist layout are also most civilized. Virtually all of the runs are what those used to skiing in California or the Rockies would consider intermediate. The most impressive skiing experience is the trip around the Weis (White) Ring that allows one to ski from village to village around the Lech Valley. The round trip can take two to three hours if pushing or all day if you want to ski each area and enjoy its attributes. The runs on the Ring are long, well groomed and offer the most incredible sights imaginable. In fact I know of no North American ski experience that matches the cross-mountain skiing in the Alps.

Most hotels are full board and the Hotel Lech where we are staying has had fabulous meals. Why would we go anywhere else, especially since the dinner is already paid for? After dinner is time for emails, reading and sleep. Michelle and I have been exhausted each day and going out just hasn't seemed the thing to do. Anyway, this is our vacation.



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UPDATE ON CALIFORNIA'S HEALTH BENEFIT EXCHANGE

By Karen Darnall

One year ago, President Obama signed health reform legislation, the Patient Protection and Affordable Care ACT (PPACA). California has embraced the plan but sister states are still dragging their collective feet. Twenty-six states have filed court actions and 21 governors signed an opinion letter to Health and Human Services Secretary Kathleen Sebelius expressing “grave concerns.”

Why is California upbeat while other states lack confidence? Will the Golden State be ready to meet the January, 2014 deadline?

The Exchange Board

In five short months California established the Health Benefit Exchange (CHBE). It will be run by an independent government entity directed by a five-member board including two as-yet-unnamed legislative appointees, two gubernatorial appointees (former California HHS Secretary Kim Belshé and Susan Kennedy, former governor Schwarzenegger's chief of staff) and the state's current HHS Secretary (Diana Dooley).

Selection of Carriers

CHBE is authorized to selectively contract with multiple insurance carriers. As an active purchaser, CHBE's role is analogous to the HR department of a large corporation, where the employer offers a wide selection of plans and assists employees in making benefit choices over a long period of time.

It will be a challenge for CHBE to sustain a robust market that includes a large pool of enrollees, so insurers must compete on the basis of price and quality. Preventing insurers from cherry-picking enrollees from the healthiest populations is the key to success.

Safety in Numbers

In spite of its lumbering bureaucracy, California is better equipped than most states to confront the challenge of running an exchange. It has the eighth largest economy in the world. Roughly six to seven million of 38 million residents were uninsured in 2009. CHBE and expanded Medi-Cal (up to 133 percent of the federal poverty level) will be available to this population in 2014.

Subsidies

Premium credits (available only through CHBE) are designed to cap a family's premium costs between two percent and 9.5 percent of household income. Refundable federal tax credits will be calculated through IRS tax returns.

CHBE purchasers must demonstrate they cannot obtain other “minimum essential coverage” according to the PPACA statute. People enrolled in Medi-Cal, Medicare and most ERISA plans, cannot purchase policies sold through the exchange. However, the CHBE system is designed to guide consumers toward suitable entitlement programs.

Lessons from Past Mistakes

Massachusetts was a model for drafting CHBE legislation. But California also learned from bad experience. In the 1990s, California operated a small-business exchange that, at its peak, covered 150,000 enrollees. Insurance brokers then used the exchange as a dumping ground for the riskiest groups. Enrollment shrank, insurers bailed, premiums climbed, and the program finally died. The cause was *adverse selection*.

PPACA was specifically designed to avoid California's failure. States are protected against *adverse selection* through PPACA's individual mandate, premium subsidies and tax incentives. After 2014, federal law will impose insurance rate restrictions *both* within and outside exchanges to level the playing field.

Rating Reforms

In 2014, small and non-group insurers must abide by *adjusted community rating* rules, where insurers will be allowed to vary premiums by using only four factors: (1) self-only versus family coverage, (2) geographic rating area, (3) age and (4) tobacco use.

For example: the maximum allowed variation for non-smoking adults is 3:1. This means that a 64-year-old individual's premium could be three times higher than a 21-year-old individual's premium in the same geographic area (both non-smokers).

No Wrong Door Policies

PPACA requires all states to create “no wrong door” policies. HHS has published guidelines urging states to enable “real time” methods (web portals) to determine eligibility for all of the state's public health programs at once. In other words, the consumer should not be confronted with multiple application forms. This will be a formidable challenge in California.

“In Massachusetts, we were lucky,” legislative consultant Jon Kingsdale (from Massachusetts) said. “Our non-group market was only about 36,000 people. Here [in California] it's several million.”

California already has a web portal (Health-e-App) that has been used for ten years for processing Healthy Families and Medi-Cal applications for pregnant women and children. Most eligibility workers and Certified Application Assistants (CAAs) were trained to use this web portal. But last December, the system was made available to the public. In a few months, the system – available at www.healthapp.net – will also handle applications for the Access for Infants and Mothers (AIM) program.

CHBE's “No Wrong Door” policy has not been written yet. However, California has already begun to implement this goal by helping consumers apply for health benefit programs on-line.

Navigators

PPACA requires states to set up a system of nonprofit “Navigators” to help people buy subsidized health coverage through the exchange. HHS has not published rules for this program yet.

A major challenge for California will be helping “flex” (part time, seasonal, temporary, contract) workers maintain continuous coverage. During part of the year, a family may qualify for Medi-Cal but, through seasonal employment, the household income suddenly exceeds 133 percent FPL and the family qualifies for a subsidized policy through CHBE.

Coordinating transitions between CHBE, Medi-Cal and other public programs needs to be supported. The new CHBE board must address this operational issue.

California’s Small Business Health Options Program (SHOP) will have a separate administrative structure that does not serve individual purchasers. Therefore, there is no mechanism for employers to incorporate *pro rata* contributions to help flex workers buy through the individual exchange.

PPACA changes the landscape for virtually every person who deals with health insurance coverage. Professional brokers, agents and lawyers could help “navigate” coverage issues but PPACA has not defined roles for this workforce. During the first two years, the CHBE board has authority to issue *emergency* regulations.

No matter what happens after political rumblings calm down, California is moving toward health care reform by preparing for CHBE’s debut.



Karen Darnall practices health and hospital, and insurance law, in Camarillo. She is a member of CITATIONS’ editorial board.

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VENTURA COUNTY TRIAL LAWYERS ANNUAL JUDGES' NIGHT

Judge Vincent J. O'Neill, Jr. was honored as Judge of the Year, and retired Judge Roland N. Purnell was honored as the selectee to have his portrait placed in Courtroom 22, on March 22 at the Ventura County Trial Lawyers Association's annual Judges' Night. Before more than 125 members of the bench and bar, Judge O'Neill, the county's presiding judge, was introduced by last year's recipient, the Honorable Frederick H. Bysshe, Jr., and VCTLA Vice President Allen Ball, Esq. Retired Judge Purnell was introduced by his long time friend Tom Hinkle, Esq. Peggy Purnell, who is married to Judge Purnell and is one of the Court's busiest volunteer school tour leaders, shared the evening.



2011 JUDGE OF THE YEAR HON. VINCENT J. O'NEILL

By Allen R. Ball



Judge Vincent J. O'Neill, a Los Angeles native, moved to Ventura in his youth where he attended St. Bonaventure High School. Then, it was back to L.A. to attend Loyola Marymount University thanks to a partial scholarship which required only that he patrol the outfield for the school's baseball team. His next stop was UCLA Law School.

Upon graduation, Judge O'Neill joined the California Attorney General's office, where he was assigned to the Criminal Appeals Division and also did trial work.

In 1979, Judge O'Neill joined Ventura County District Attorney **Michael Bradbury**, who was beginning only his second year at the helm. As a Deputy Dist. Attorney, Judge O'Neill was soon serving in the newly-created felony sexual assault prosecution unit followed by an appointment as chief trial deputy, where his supervisory duties included homicides and most major felonies.

Gov. Pete Wilson appointed Judge O'Neill to the Municipal Court bench in 1992 and elevated him to the Superior Court in 1995. A veteran of both criminal and civil benches, in 2008 Judge O'Neill was elected Assistant Presiding Judge. In 2010,

his fellow judges elected him Presiding Judge. Judge O'Neill, with trial work his passion, in addition to his supervisory duties, continues to occasionally preside over civil trials and criminal hearings, sit as a Temporary Appellate Court Judge, as well as handle the MSC calendar.

Judge O'Neill, the author of California Confession Law is the father of three adult children. Even tempered, quick witted, knowledgeable and articulate Judge Vincent O'Neill is an asset to Ventura County and its Court. VCTLA is proud to honor Judge O'Neill as Judge of the Year for 2011.

***Editor's note:** Judge O'Neill was the Little League coach for one of my sons. His even temper, quick wit, knowledge, and sense of fairness was as evident on the baseball field as it is in the courtroom.*

2011 PORTRAIT HONOREE JUDGE ROLAND N. PURNELL (RETIRED)

By William M. Grewe



Retired **Judge Roland N. Purnell** was born and raised in Marin County, California. He attended San Francisco State Univ., graduating in 1960. Upon graduation, his goal was to work for the FBI as an agent. At the time, the FBI required a law degree of new hires. He continued to clerk for the FBI as he attended the University of California, Hastings College of Law.

In 1963, law degree in hand, Judge Purnell was off to the FBI Academy. During his tenure as a Special Agent, 1963-1967, he was based in Baltimore and Pittsburgh where he conducted criminal investigations. The cold winters caused him to look west but no transfers were available.

In 1967, Judge Purnell was hired by Ventura County District Attorney **Woody Deem**. He prosecuted a wide variety of matters including four murder cases.

In 1977, Judge Purnell was appointed commissioner, family law calendar, by the judges of the superior court. When commissioner positions were eliminated in 1983, Judge Purnell stayed with the court as a research attorney where he became knowledgeable about the nuts and bolts of the full spectrum of civil litigation.

In 1992, Governor Pete Wilson appointed Judge Purnell to the Municipal Court Bench. He was elevated to the superior court in 1998 when the courts were unified.

His mentors included Judges Marvin Lewis and **Jerome Berenson**. **Judge Purnell** had a reputation on the bench as unassuming and consistent. Matters in his courtroom were about the law, not him, and that is the way he wanted it.

Roland and Peggy Purnell have been married for 46 years. Roland's golf games are interrupted only by Peggy, their three adult children and seven grandchildren.



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GIVING BACK TO THE COMMUNITY



On March 12, 2011, twelve Barristers participated in a Build Day for Habitat for Humanity. The build site was located in Piru, where the volunteers assisted in the construction of two homes that will soon be occupied by local low-income families. The future homeowners were there as well, helping to build their homes. Pictured here are Barristers **Tom Adams, Melissa Waters, Aris Karakalos, Matt Purcell, Taylor Waters, Stu Gardner, Brier Miron, Christina Stokholm, Jaclyn Smith, Kate Brolan, and Mike Stoner.** (Not shown: **Renee Dehesa.**) The Barristers wish to thank Habitat for Humanity for their efforts in giving back to our community in such a meaningful way. The Habitat crew leaders were wonderful and everyone had a great time.

BARRISTERS CORNER

Turkeys, dunks, balls and competitions! Now that March Madness is over, start practicing bowling strikes for the Barristers Bowling Night on July 19 and shooting hoops for the Barristers/YMCA basketball tournament in October. Stay up to date on the activities of the Barristers by joining the facebook page or email list at Christina@pachowicz.com



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HOW I LOST A PRO PER JURY TRIAL

By William H. Hair



After reading **Phil Drescher's** recent article in Citations about one of his trials as a Deputy District Attorney, it brought back a traumatic memory of one of my trials as a young prosecutor. I was a Deputy D.A. from 1960 to 1962 at a time when there were very few attorneys in the office (when I was admitted to the bar in January 1960, I was the tenth attorney on staff, including the D.A. and there were, perhaps, 150 attorneys in the entire county). At that time the District Attorney also functioned as County Counsel, so in addition to our prosecution duties, we each had our civil law duties.

Some time during my tenure, and, as I now recall, it was during my last year in the office, a file landed on my desk calling for a jury trial. One of Oxnard's "regular drunk tank customers" had entered a plea of not guilty and demanded a jury trial on a charge of drunk in public (Pen. Code §647, subd. (f)). There was no Public Defender and misdemeanor defendants were not then entitled to appointed counsel, so if the defendant could not hire an attorney, he defended himself pro per. In this case, this defendant did not have an attorney.

The defendant, according to the police report had been arrested in the Oxnard Plaza Park, allegedly, passed out on a bench. The defendant's rap sheet showed that this had happened on numerous other occasions. My

thoughts were that if this case went to trial, it would be a slam dunk which would add to my prosecutorial "record" of wins.

As the D.A.'s staff was small, misdemeanor cases such as this were handled on the "fly" – the file hit your desk, you reviewed the police report, called the arresting officer – and in the case of a jury demand, you pulled up the appropriate jury instructions and headed to court at the appointed time.

This case was in the old Oxnard Municipal Court at 242 W. Second St, a three-story building housing the Oxnard Police Department on the first floor, the Municipal Court and a Superior Court department on the second floor and the D.A.'s branch office on the third floor. The building has long since, thankfully, left the downtown Oxnard skyline.

I remember getting the file the afternoon before the scheduled trial date. I interviewed the arresting officer by phone – the defendant was one of the officer's regular customers, having been arrested for the same offense on at least seven prior occasions in approximately the same location and position. The officer "recalled" the defendant "having the odor of alcoholic beverages about his body, having slurred speech when awakened and was unsteady on his feet when standing." It was the arresting officer's professional

opinion "that the defendant was under the influence of intoxicating beverages in a public place, unable to care for himself." It was the usual "script" that I had heard a lot of times from arresting officers. At the time, I could not believe that this case would actually be tried – and certainly not to a jury. But, just in case, I had my secretary pull the pertinent jury instructions and appeared in the Municipal Court at the appointed time. I don't remember who was on the bench (we had a lot of visiting judges from the various justice courts around the county), but the case was called and the defendant was there, dressed in his Sunday best, sober and bright eyed. He announced that he was ready to proceed and, yes indeed, he wanted a jury trial – much to the apparent displeasure of the judge.

A jury venire was called and shortly, a panel of 12 honest citizens was empanelled and sworn in. The defendant had no questions for the prospective jurors, and I kept my *voir dire* short – basically will you follow the law as instructed and base your verdict on the evidence that is presented in court? My strategy was to follow the KISS principle (keep it simple stupid).

I made a short opening statement, staying away from the defendant's prior arrests, and outlining what the arresting officer would testify to. The defendant waived an opening, and I called my officer who testified to the facts as I expected. The defendant then asked several questions on cross examination.

Whether a sobriety or chemical test had been administered – they had not – the defendant himself pointing out that this same policeman had arrested him on a number of previous occasions for the offense that was charged here – and that on each of those times, he, in fact, had been drunk – to which the officer readily agreed. At that point, smelling blood in the water, I rested my case and sat back and waited for justice to be imposed for this colossal waste of the court's time, and of course, my very valuable time as well!

The defendant then asked to be sworn and

took the witness chair. He testified in a narrative that, yes, he was a “town drunk” and had been arrested numerous times for being drunk in public – and on each previous time – when he was arraigned he entered a guilty plea and served the sentence that was imposed. But on this occasion, he had not been drunk – or in fact drinking – and was merely taking a nap on the park bench when he was roused, arrested and taken to the Oxnard jail without so much as a question being asked by the officer about his sobriety. There was very little I could do on cross, so after a few perfunctory questions I sat down. (I knew in my heart that I had just been beaten by a master – a lesson I have never forgotten – you can never underestimate your opponent.)

Final arguments were brief, I pointed out my policeman’s experience and expertise in matters of this kind. The defendant merely reiterated his testimony and said that if in fact he had been drunk, he would have pleaded guilty and taken his lumps.

The jury was instructed and repaired to deliberate – and – as I recall, they were back in record time with a verdict of not guilty.

Needless to say, my performance earned me a lot of ribbing from my fellow deputies, who knew in their hearts that the result would have been the same for any of them when faced with such a masterful defense.



Bill Hair is Of Counsel to Nordman, Cormany, Hair & Compton in Oxnard.



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Appointed to the Municipal Court in 1995 by Pete Wilson and elevated to the Superior Court again by Mr. Wilson in 1997, the **Honorable David Long** is retiring on May 16th to focus on golf, travel and collecting even more jokes... One of my favorite lawyers, **Ed Buckle**, is also retiring soon after 40 years in practice. He is trying with all his might to donate his library to anyone interested after being turned away by a number of institutions. It just doesn't feel right to trash 385 volumes, so anyone interested can just pick them up at etb93001@yahoo.com or 653.2505...A prosecutor for a central California county has resigned after his superiors discovered he had been working despite a nearly-year-old warrant for his arrest. The *Merced Sun-Star* reports that a bench warrant for the arrest of Merced County Deputy District Attorney Matthew Shelton was issued last April for failing to appear in court for speeding and driving on a suspended license. Yet Mr. Shelton continued working, handling misdemeanors and felony cases, including a homicide. The newspaper says the 43-year-old may have broken laws prosecuting cases while suspended by the State Bar in 2008. He had been with the office since 2007...Looking for **Matt LaVere**? Now at Goldenring & Prosser at 642.6702...

Carribbean Cruise on Azamara? **Don Hurley** at donald_hurley2008@yahoo.com...Carribbean Cruise on Celebrity? **Rick Rabbin** at rst0109@sbcglobal.net...Lech, Austria? **Tony Strauss** at ars@strausslawgroup.com or 641.9992. Tony has penned a trip story and an excerpt from his adventure appears in this month's edition of *CITATIONS* while the full story appears online at vcba.org...Martin Marootian died Feb. 25 at the age of 95. He was a retired pharmacist who stood up for Armenian genocide victims as the lead plaintiff in a lawsuit that resulted in a \$20-million settlement from the New York Life Insurance Company for failing to honor claims

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

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

on policies sold to thousands of Armenians slain during the last years of the Ottoman Empire. In 1999 Marootian joined a legal battle to force New York Life to honor policies purchased by more than 2,000 Armenians, most of whom perished in what historians have described as the first genocide of the 20th century... Compelling local and international story involving lawyer **Jim McDermott** and his legal matter in an article by Ken Silverstein inside *Foreign Policy Magazine* at foreignpolicy.com/articles/2011/02/22/teodorins_world?page=0,0. He calls himself a Prince from the country of Equatorial Guinea and his name is Teodoro Nguema Obiang Mangue...

License Plate of the Month: **Ron Harrington** spotted this plate on a Mercedes – MED184U, navigated by Jack Draper...A unique anniversary occurred Feb. 22. It had been five years to the day since Justice Clarence Thomas last spoke at oral argument. "One thing I've demonstrated often in 16 years is you can do this job without asking a single question," he recalled in a speech three years ago...Back in 2002, Linda Lowney drafted a will for her client, Thor Tollefson, that provided for his estate to go to his sister and two nieces in Norway. But by 2005 the 54-year-old California attorney had become involved with Tollefson, 85. He gave her \$339,000, with his nieces' consent, and the two got married in 2006, using a confidential license, reports the *SF Chronicle*. Later that year, Tollefson asked for a divorce, as the couple continued to live separately, and in 2007 he moved into a nursing home and died. Now a State Bar judge is calling the marriage a sham and has ordered Lowney suspended from practice...**Susan Simmons Seemiller** is now working as a senior attorney for the Court of Appeal, Division 6. She may be reached susan.seemiller@jud.ca.gov...

Quote of the Week from **George Galbraith**: You can see it also in *Daley v. County of Butte* (1964) 227 Cal.App.2d 380,392 – "Clients should not be forced to act as hawk like inquisitors of their own counsel, suspicious of every step and quick to switch lawyers. The legal profession knows no worse headache than the client who mistrusts his attorney. The lay litigant enters a temple of mysteries whose ceremonies are dark, complex and unfathomable. Pretrial procedures are the cabalistic rituals of the lawyers and judges who serve as priest and high priests. The layman knows nothing of their tactical significance. He knows only that his case remains in limbo

while the priests and high priests chant their lengthy and arcane pretrial rites. He does know this much: That several years frequently elapse between the commencement and trial of lawsuits. Since the law imposes this state of puzzled patience on the litigant, it should permit him to sit back in peace and confidence without suspicious inquiries and without incessant checking on counsel."...A Kansas City Royals fan has lost his lawsuit that claims he suffered a detached retina when he was hit by a flying, foil-wrapped hot dog tossed by the team's lion mascot, Sluggerrr. Jurors deliberated for slightly more than an hour before finding the team not liable for injuries suffered in September 2009 by John Coomer, who had three surgeries to repair his eye. Coomer was a long-time fan who had attended 175 games. A lawyer for the team had argued Coomer should have taken more responsibility for his own safety. The *Chicago Tribune* called the tossed hotdog a "wayward weener" and a "fateful frank," while the *Kansas City Star* called it a "flung frank"...Barrister board member and secretary, **Matt Purcell**, is organizing a legal clinic at the Ventura Salvation Army. You want to assist once a month? He may be reached at mattmpurcell@hotmail.com...

John Negley and the Barristers are hosting a CLE event April 4. Chris Hamilton will discuss the broader range of financial reporting. Call Celene at 650.7599 to register or simply email her at bar@vcba.org...Lawyers accused of stealing more than \$25,000 from their clients would have a consumer alert placed prominently at the top of their State Bar profile page under a proposal being circulated for public comment. The State Bar has identified 160 cases involving 60 lawyers of alleged misappropriation of more than \$25,000. Total alleged misappropriations amount to \$11.5 million...It's official. **Katie Pietrolungo** will assume her new role as Vice Chair of the California Young Lawyers Association effective 9.26...

Steve Henderson has been the executive director and chief executive officer of the bar association and its their affiliated organizations since November 2011. Henderson will be vacationing the first 10 days of April in Death Valley at the Furness Creek Inn. He will be celebrating Administrative Professionals Day April 27 by hosting a party at the Watermark in Ventura. Henderson may be reached at steve@vcba.org, FB, Twitter at [stevehendo1](https://twitter.com/stevehendo1), LinkedIn, or preferably 650.7599.



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