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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

O C T O B E R - T W O T H O U S A N D E L E V E N



By *William H. Hair*

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Jack Trimarco & Associates  
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Dear Jack:

As you know, Bryan Stow, a San Francisco Giants fan, was brutally attacked by two men in the Dodger Stadium parking lot on opening day, March 31, 2011.

On May 22, 2011, Los Angeles Police Department (LAPD) SWAT officers arrested my client, Giovanni Ramirez at an East Hollywood apartment complex. LAPD Chief Charlie Beck said at a news conference that day, "I believe we have the right guy. I wouldn't be standing here in front of you. I certainly wouldn't be booking him later on tonight. You know this is a case that needs much more work, but we have some significant, significant pieces to it that leads me to believe that we do indeed have the right individual."

Mr. Ramirez agreed to take a LAPD polygraph examination, to be conducted on June 1, 2011.

I retained your services as a nationally known and respected polygraph examiner. You agreed to polygraph my client at Los Angeles County Men's Central Jail, on that day prior to the LAPD examination. Further, you agreed to monitor the LAPD polygraph examination in an observation room within Parker Center (LAPD Headquarters).

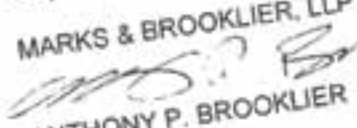
After you polygraphed Giovanni Ramirez, as you departed the jail, you telephoned me. You said, "LAPD arrested the wrong guy. Giovanni Ramirez was not on Dodger stadium property on March 31, 2011."

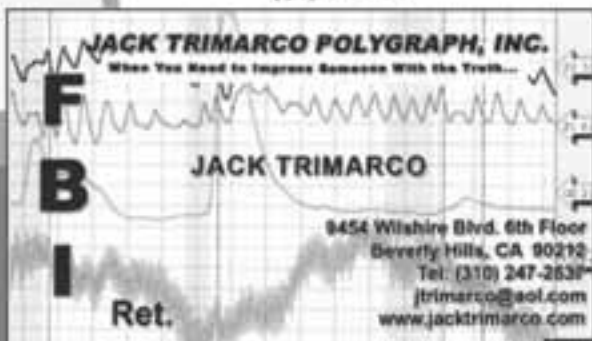
On June 1, 2011, you accompanied me to Parker Center to monitor the LAPD polygraph examination. The respect shown to you by the LAPD polygraph personnel comforted me. You advised them that Mr. Ramirez passed your exam as you handed them your report.

Although this case had many interesting facets, central to Giovanni Ramirez being eliminated as a suspect, were your "non deceptive" polygraph results.

It is a tribute to your reputation that polygraph testing conducted by you is so well received and respected by the prosecution, as well as the defense. You saved my client's life...thank you.

Very truly yours,

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## SBN 001

By Joseph L. Strohman

James Bond was assigned number 007 by Her Majesty's Secret Service. This licensed him to kill, drink martinis and drive Aston Martins. For the rest of us, we are assigned a State Bar number which gives us a license to practice law, drink Maalox and take Tylenol. For me, after I was sworn in by Judge John Merrick, Municipal Court Judge, in Malibu in December, 1982, the California State Bar assigned me SBN 106925. I clerked for Judge Merrick while at Pepperdine Law School.

Bar numbers used to be buried in your wallet or desk. But now your bar number appears everywhere, including on every pleading filed. So in a world of privacy protection, this particular number is floating out there for the world to see.

Bar numbers were started in 1927 when the State Bar of California was created. Before then, California had a voluntary bar association.

The honor of State Bar Number "1" went to William H. Waste, Chief Justice of the California Supreme Court (C.J. 21). By Oct. 1, 1927, there were 872 attorneys registered with the State Bar.

Justice Waste served as Chief Justice from 1926-1940 and seems to be deserving of the number 1 selection. He believed courts should be close to the people. A Supreme Court clerk once said that Justice Waste was "easier to talk to than half of the lawyers who came in the office." Justice Waste could often be seen watering the lawn of his Spruce Street home at the end of the day and saying hello to those who walked by. Any justice who waters his own lawn and is easier to talk to than a lawyer is tops in my book.

**Your Number:** I was wondering how these bar numbers got assigned in any particular year. So I called the bar number expert, Dina DiLoreto, the Director of Administration in the State Bar's Member Services Department. In England she would be called the "Keeper of the Numbers." Ms. DiLoreto turned out to be very knowledgeable and very helpful. Here's how the magic works: Bar numbers are assigned as the registration cards come floating through the door each day. Most numbers in a given year get issued in large batches after the February and July bar results. Others come in any given day of the year due to other reasons (a pushy out-of-state lawyer moving in on our territory, an applicant who foolishly delayed taking the professional responsibility exam, or general lack of interest). Ms. DiLoreto said you are "stuck" with your assigned bar number, even if its sequence makes you superstitious. No SBN mulligans.

**Milestones:** Some attorneys get easier-to-remember numbers. State Bar number 100,000 was issued in 1981. That lucky number went to Jann Nakashima of Saratoga, California. I talked to Jann about this little milestone. Jann said when she first received her bar packet she thought the number was just some code reference. Then she started talking to her friends and found their numbers all falling around 100,000. Jann gets the most comments about her SBN when she registers for bar events and is asked if the number is "real." With the public's love of attorneys, you would think Jann would be honored or recognized for this great moment in history. Apparently such honors are reserved for the 100,000th person to walk through the front door of a Walmart store. Jann says there have been no plaques, gift baskets or statewide proclamations.

Running along with the numbers, I note that bar number 200,000 was reached in 1998 and went to Joanna Grisinger of Clemson, South Carolina. We went from 1 to 100,000 in 54 years and from 100,000 to 200,000 in 17 years. As of August 31, Ms. DiLoreto said the bar number count had reached 277,546. California has been adding about 6,900 attorneys on average per year for the last

ten years. We'll probably go from 200,000 to 300,000 in a span of about 15-16 years. So, somewhere in a dimly lit cubicle now sits a college student filling out multiple law school applications, or a first year law student reading torts. To that student goes SBN 300,000, with all the rights, honors, privileges and gift baskets that go with it.

The average age of the admitted attorney over the past few years is 30 years old. Are you starting to feel old?

**Famous SBNs:** Some other interesting bar numbers: California Governor Edmund G. Brown, Jr. (SBN 37100 – admitted 1965); former Governor C. George Deukmejian, Jr. (SBN 26966 – admitted 1956); former Ventura attorney and Perry Mason author Erle Stanley Gardner (2892 – original practice admit date in 1911). Of interest, H. Frank Orr (long time law partner of Gardner and grandfather of Ventura attorney **John Orr**) had SBN 2891, one number lower than Gardner.

**Oldies but Goodies:** Local honors for lowest state bar number goes to **Eugene Radding**, the oldest active attorney practicing in Ventura County. Eugene cruises in with SBN 21593. Eugene volunteers each week with the Ventura County Bar Association's Pro Bono Program. Admitted in 1950, Eugene is still making a difference after 61 years in practice.

The double honor of "oldest attorney" and the "oldest active attorney" in California goes to 97 year old Victor Emil Kaplan of Los Angeles. Victor was admitted in 1938 with bar number 16424 and graduated from USC Law School. You can now stop complaining that you have been practicing too long.

So cherish your state bar number and get back to work. You only have half a century or multiple decades to go until you catch up with Eugene Radding or Victor Kaplan.

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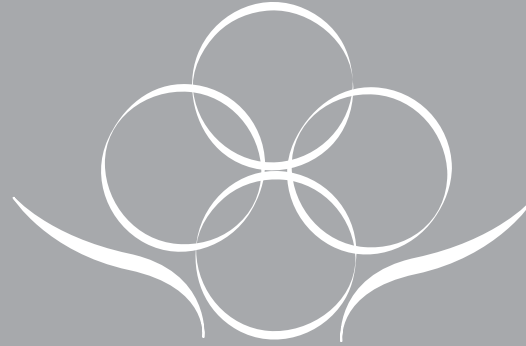
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*MWGJS is honored to congratulate partner Erik B. Feingold on being selected as a finalist for the Consumer Attorneys of California 2010-2011 Consumer Attorney of the Year Award*

*Pedferri v. White & Bert's Mega Mall (\$31,019,298 final judgment)*

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*Mr. Feingold is also a current 2011 VCBA Board Member and Chair of the VCBA Business Litigation Section Committee*

### Other Presidential Proclamations

**Annual Dinner.** The Annual Bar Dinner is coming up on Saturday, November 19, at the Crowne Plaza Hotel in Ventura. Please mark your calendars and come support the VCBA and its Volunteer Legal Services Program. Formal invitations are mailed in October.

**Barristers' Mentor Program: Mentors Needed.** The Barristers' new Mentor Program kicked off with a Wine and Cheese Party on August 18 at Ferguson Case Orr Paterson. Barrister Mentor Chair **Rennee Dehesa** is stilling looking for more mentors. The time commitment is minimal and the rewards are great. Contact Rennee at [rdehesa@nchc.com](mailto:rdehesa@nchc.com) or (805)988-8324.

**Mock Trial Attorney Coaches Needed.** VCBA board member **Joe O'Neill** has been making great strides in getting Mock Trial coaches and teams lined up. More attorney coaches are still needed. Contact Joe at [oxatty@earthlink.net](mailto:oxatty@earthlink.net) or (805)988-6700.

**Attorney 106925** continues his "active" bar status at Ferguson Case Orr Paterson in Ventura. Miraculously he somehow managed to pass the California bar in July 1982.

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# AN OVERDUE AWARD FOR CHARNEY

By William H. Hair



**Marc Louis Charney** was born in Chicago, Illinois on June 3, 1941. His dad's employment during World War II required a move about every six months until the end of the war, when the family moved near the intersection of 147th Street and Crenshaw Blvd in Gardena. At night, according to Marc, you could see the glow of the lights from the distant big city to the north, Los Angeles.

Marc attended Chapman Avenue Elementary School where, as an omen of things to come, he was named master of ceremonies for his elementary school graduation. He went on to graduate from the new Gardena High School in 1959. While in high school he held various jobs, but the best and longest (again an omen?) was at the Big Donut Drive-In, two doors from the Western Club Poker Casino. His four-hour early morning shift began at 3:30 a.m., so he would go directly to school with a donut aroma about him. By lunch, his classmates were salivating. To this day, Marc has never met a donut that he didn't like.

Times were much more innocent then, and it was not unusual for Marc to drive to school with his car full of a weekend's worth of hunting supplies (guns and ammo) and leave at the end of the day to spend a weekend in the woods with friends. Some of the tales from these excursions would curl your hair today.

Once, on the way to the San Joaquin Valley, the car broke down in Gorman. The group hitchhiked to Porterville, then back to Gorman, where they met a friend

with an operational car. That car was used to push the disabled car to the top of the grade on Old Highway 99, where it then coasted down to the bottom of the hill and was towed home. Imagine such activities today—guns in cars at school, pushing disabled vehicles up hills and coasting down! It's a wonder that any of these young men survived for productive lives.

After high school, Marc started out as a "Sputnik"-influenced engineering student, then physics major, a math major and eventually a graduate in economics from UCLA. His interest in the law was piqued by a popular TV show, "The Law and Mr. Jones." He applied to law school in addition to the UCLA graduate program in economics. He was accepted at UCLA Law. After over 44 years of practicing law, Marc has concluded that Mr. Jones' portrayal of the law was not "entirely realistic."

In law school, he was introduced to Ventura County, where he met **Phil Drescher**, a former Deputy District Attorney who was then practicing in Santa Paula. Drescher showed Marc around the area. Marc recalls meeting future Justice **Steve Stone**, who was in practice with Phil. When Marc asked Steve what the practice of law was like, Steve offered to show Marc his checkbook.

I first met Marc in 1966 when he applied for a summer job and was interviewed by **Ralph Cormany** and myself. Marc was not hired, but during his third year, he heard that Nordman, Cormany, Hair & Compton was hiring, and he was invited for an interview. The last person he saw during that trip was Ralph Cormany (an imposing figure at 6'6" and 250 lbs), who asked him if he would take a job if offered. Marc said he would, and the rest is history.

I was Port Hueneme City Attorney at the time, as well as counsel to several public agencies - redevelopment, water, and sewer - and Marc showed an interest in practicing municipal law, so he was a natural choice as my assistant city attorney. Topless bars were in vogue during our tenure in Port Hueneme. As a Navy town, Port Hueneme was a natural spot for such enterprises. I still vividly recall a local newspaper story about

the city attorney and his assistant personally investigating one such establishment accompanied by the local police. Marc, if nothing else, was a dedicated city attorney.

Over the ensuing years, Marc's legal practice evolved into representing clients in real estate matters. He became an expert in development issues. But more importantly, he became involved in local issues that were a natural evolution from his training in economics. Most of all, he developed an abiding love for his community, particularly Oxnard. He has served as senior director and past president of the Oxnard Chamber of Commerce; he is a lifetime director, member of the executive committee and past president of the Ventura County Economic Development Association; he served as a director of the Greater Oxnard Economic Development Corporation from 1994 to 1999, was elected as director again in 2009 and is now the Chair; he was a director and former chair of the UCSB Ventura County Economic Forecast Project; and is now a board member of Cal Lutheran's Center for Economic Research and Forecasting.

Marc was selected as the Outstanding Young Man of the year in 1978 by the Oxnard Junior Chamber of Commerce. In 1993, he was honored as the Business Person of the Year by the Oxnard Chamber of Commerce. In 1994, 2004, and again in 2009 he received the Carl Lowthorp Golden Eagle award for outstanding public service from the Ventura County Economic Development Association.

In addition to his business-related activities, Marc has been very active in charitable endeavors. He is the former vice president and director of United Way of Ventura County (1979-1986), he served as vice president and director of El Concilio del Condado de Ventura (1986 -1993), and is a former president (1993-1994) and director of the Ventura County Division of the American Heart Association. He is a former vice president and director of the American Cancer Society and was also a founding director and is currently on the advisory committee to the Ventura County

*continued on page 9*



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## AN OVERDUE AWARD FOR CHARNEY

*continued from page 7*

Leadership Academy (VCLA). Earlier this year he was honored with the first annual Founders Award from VCLA.

You ask: With all of that community service, why has Marc not been nominated for the Ben E. Nordman Public Service Award already? The answer is simple. Marc was very close to our partner in the practice of law, **Ben Nordman**. At Ben's request Marc served as the first secretary of the Trust that administers the award and was thus ineligible for the award. When Marc turned 70 this year he finally resigned as secretary, making him eligible, albeit long overdue for this honor!

I must confess that I consider Marc to be my best friend so I am probably biased in participating in his nomination!



*Bill Hair is of counsel at Oxnard-based Nordman Cormany Hair & Compton.*

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Verna Kagan

## WOMEN LAWYERS OF VENTURA COUNTY TO HONOR TWO ROLE MODELS FOR WOMEN ATTORNEYS

By Jodi Prior

Courage, commitment, and demonstrated ability to effect change mark **Hannah-Beth Jackson** and **Verna Kagan** as outstanding role models for women attorneys. On Nov. 3, 2011, at the Fifth Annual Legacy Awards Dinner, Women Lawyers of Ventura County (WLVC) will honor former Assembly Member and Santa Barbara/Ventura attorney, Hannah-Beth Jackson, with the Legacy Award at Herzog Wine Cellars in Oxnard. In addition, WLVC will present the Holly Spevak Memorial Award to our local unsung hero, Verna Kagan.

### Speak Out with Hannah-Beth

The Legacy Award is given to 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. Through her leadership in the state legislature and community organizing, as well as her work as prosecutor protecting victims of domestic violence and stalking, Hannah-Beth Jackson has demonstrated that she meets the criteria for this award and reminds us that being a lawyer is truly a noble profession.

As a member of the California Assembly and chairwoman of the Legislative Women’s Caucus, Hannah Beth-Jackson authored 64 bills that were enacted into law under Governors Grey Davis and Arnold Schwarzenegger. In the Assembly, Jackson was committed to supporting families, children and women’s health. She authored the Violence Against Women Act, which provided for a civil remedy for victims of gender-motivated violence. Moreover, Jackson’s legislation improved the delivery of child support services, provided grants through community colleges for nurse training programs, enhanced protections to children who were domestic violence

victims and improved protections for victims of stalking.

As a prosecutor with the Santa Barbara County District Attorney’s Office, Jackson helped found Shelter Services for Women, the predecessor of Domestic Violence Solutions. Currently, she is the executive director of the Institute of the Renewal of the California Dream and president of *Speak Out California*, a blog helping to define a new progressive agenda for the State of California. On Saturday mornings, she hosts a radio program called Speak Out with Hannah-Beth.

### Verna Kagan – You can set your watch by her!

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 her pro bono work. This year, WLVC will honor the legacy of community service and pro bono work performed by the director of the Volunteer Lawyers Services Program (VLSP), Verna Kagan. Traditionally, this award is presented to a new or “newish” attorney. Although Kagan is not a new attorney, her dedication to helping others has kept her “young at heart,” and she very much exemplifies the principles for which Spevak worked so hard to make a better way for others less fortunate.

Kagan was the first Emeritus Attorney with the Ventura County Bar Association’s VLSP, a program that was started in 1996 by **David Shain** and **Roger Myers** and first staffed by Alice McGrath. In 2005 Kagan took over as the director and has been leading the charge ever since. The VLSP provides pro bono legal services to hundreds of low-income individuals and families each year. Kagan is responsible for supervising and coordinating

the all-volunteer staff of attorneys and representatives of the legal community who have handled over 10,500 calls from low-income people requesting advice, referral, consultation and representation. In the face of diminishing funds and an ever-increasing need for legal help, Kagan manages to keep 14 Emeritus Attorneys motivated and engaged in this endeavor.

When asked what his favorite thing about Verna Kagan is, VCBA Executive Director, Steve Henderson said, “I can set my watch by her! 9:00 a.m. every Monday through Friday, 50 weeks a year, and yes I let her off to go birding during the summer.” Kagan loves her work at the VLSP. She is genuinely grateful to all of the attorneys who donate their time to assist with pro bono cases. Kagan finds great satisfaction in telling a distraught person with no financial resources and no hope that there is an attorney available who is willing and available to help them.

Please join us on November 3 to celebrate 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 5:30 p.m. and dinner will be served at 6:30 p.m. The cost of the dinner is \$60 for WLVC Members and \$75 for non-members. If you would like to join WLVC for 2012 now, you can get the discounted cost for the dinner. Please R.S.V.P. to **Nancy Goldstein** at (805) 496-6565 or nancy@gr8calilawyer.com by October 27. 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 Supervising Attorney for the Ventura County Superior Court’s Self-Help Legal Access Center.*





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# MOCK TRIAL COACHES NEEDED

By Joseph O'Neill

Hi everyone,

On behalf of the VCBA Executive Board, may we please ask for your help by communicating the need for Mock Trial coaches for area high schools. We have been asked to find attorneys experienced in criminal law for the Ventura County competition scheduled for February 2012.

Although the February Mock Trial competition involves a time commitment for team practice, the rewards are numerous when students perform in a spectacular, professional manner. The Mock Trial competition benefits every involved school and each individual student, and also makes our chosen legal profession a desired goal for many young adults.

We invite local attorneys to please accept our invitation to become involved in 2011-12. Ideally, each Mock Trial team should have several attorney coaches to fully prepare for the February competition. At present, several Ventura County high schools have asked the VCBA for help: Moorpark, Ventura, Frontier, Hueneme, Westlake and Villanova. A special effort is now underway to help these interested students, and your assistance is requested to help recruit attorney coaches.

Please distribute our request to interested attorneys in your office. Anyone can contact me at (805) 988-6700 for further information. Thank you for your help.

*Joseph O'Neill is a long time Mock Trial coach and member of the VCBA Board of Directors.*



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# BUSINESSES AVOID PAYING MORE FOR OVERTIME DURING TOUGH ECONOMIC TIMES

By Audra Ibarra

At a fundraiser at the St. Regis Hotel in San Francisco on April 21, 2011 President Barack Obama acknowledged that we are in “the worst recession since the Great Depression.” In 2010, over 600,000 businesses closed in the United States. Although it was relatively low, there was nevertheless 1.6 percent inflation in 2010, as opposed to -.4 percent in 2009. For many businesses, income decreased while expenses increased. One of the expenses that businesses grappled with was the cost of hourly labor.

Throughout the country, the Fair Labor Standards Act (FLSA) controls the cost of hourly labor. Although state and local governments may set higher requirements, FLSA sets the floor for minimum wage and overtime pay. Under FLSA, irrespective of hourly wage, generally any work done beyond an eight-hour workday and a 40-hour workweek is overtime, which must be compensated at an hourly rate of at least one-and-a-half times the regular rate. It would seem as if paying more for overtime is another potential expense increase for a business. However, recent Ninth Circuit and California Court of Appeal cases have shown that, under FLSA, there are certain situations in which a business can avoid increasing overall compensation for overtime.

Editor’s Note: Be sure to check California law before relying solely on these federal decisions.

## The Overtime Schedule Is More Desirable

In *Parth v. Pomona Valley Hospital Medical Center*, a case of first impression, the Ninth Circuit held that, under FLSA, a business can avoid increasing overall compensation for overtime if the overtime schedule is more desirable. 630 F.3d 794, 797-805 (2010); 29 U.S.C.A. § 201 et seq. This is true even if the regular rate of pay, as opposed to overtime pay, under the overtime schedule is less than it would be under a normal work schedule.

In *Parth*, a nurse filed a putative class action against a hospital, alleging that it violated FLSA by creating a pay plan that paid a nurse working a twelve-hour shift a lower regular hourly rate than a nurse working an eight-hour shift. The District Court (C.D. Cal.) granted summary judgment in favor of the hospital, finding that the law did not support Parth’s claims.

The Ninth Circuit affirmed. It held that if an employee prefers an overtime schedule, an employer may lower the regular hourly rate under that schedule, so that after adding in overtime pay of one-and-a-half times the regular rate, the employee receives the same overall compensation that she would receive under a regular schedule:

“When an employer changes its shifts schedule to accommodate its employees’ scheduling desires, *the employer may reduce the employee pay rate to pay its employees the same wages they received under the former schedule*, so long as the rate reduction was not designed to circumvent the provisions (including overtime) of the Fair Labor Standards Act.”

*Parth*, 630 F.3d at 797 (emphasis added). Quoting the Supreme Court, the Ninth Circuit reiterated that “nothing in the [FLSA] bars an employer from contracting with his employees to pay them the same [total] wages that they received previously, so long as the new [hourly] rate equals or exceeds the minimum rate required by the FLSA.” *Id.* at 801 (*Walling v. A.H. Belo Corp.*, 316 U.S. 624, 630 (1942)). The Ninth Circuit explained, “employers and employees are generally free to set the pay rates if minimum wages and overtime payments are paid when due.” *Id.* at 804 (citing *Walling v. Youngerman-Reynolds Hardwood Co., Inc.*, 325 US 419, 424 (1945)).

## The Job Is Similar to a Traveling Sales Position

In *Christopher v. SmithKline Beecham Corp.*, a case of first impression, the Ninth Circuit recently held that, under FLSA, a business can avoid increasing overall compensation for overtime if the job is similar to a traveling sales position. 635 F.3d 383, 395-401 (2011). It further held that this is true even if the law prohibits “the *actual physical* exchange of the goods offered for sale” and sales “commitments are non-binding.” *Id.* at 396. (emphasis in original).

In *Christopher*, two former pharmaceutical sales representatives (PSRs) filed a class action against a drug company, alleging that it violated FLSA by failing to pay the PSRs for overtime. The District Court (D. Ariz.) granted summary judgment in favor of the company, finding that

a PSR is exempt from overtime pay “under the ‘outside salesman’ provision of FLSA.” *Id.* at 398. Under FLSA, minimum wage and overtime pay requirements do “not apply with respect to . . . any employee employed . . . in the capacity of outside salesman.” 29 U.S.C. § 213(a)(1).

The Ninth Circuit affirmed. It held that if an employee’s job is more similar than dissimilar to a traveling sales position, an employer does not have to provide overtime pay:

“[W]e consider the rationale for applying the outside sales exemption to PSRs to be . . . ‘apparent.’ . . . Of course, this case does not involve door-to-door consumer-product sales. But, the FLSA is not an industry-specific statute. . . . [N]ot all FLSA claims will involve the ‘archetypal businesses envisaged by the FLSA.’ . . . *Even though PSRs lack some hallmarks of the classic salesman, the great bulk of their activities are the same*, as is the overarching purpose of obtaining a commitment to purchase (prescribe) something...[¶] [PSRs] receive commissions in lieu of overtime and enjoy a largely autonomous work-life outside of an office. *The pharmaceutical industry’s representatives – detail men and women – share many more similarities than differences with their colleagues in other sales fields*, and we hold that they are exempt from the FLSA overtime-pay requirement.”

*Christopher*, 635 F.3d at 398-401 (emphasis added) (quoting *Reiseck v. Universal Commc’ns of Miami, Inc.*, 591 F.3d 101, 106 (2nd Cir. 2010)). The Ninth Circuit concluded that whether a job is similar to a traveling sales position “has been recognized as a multi-factor review.” *Id.* at 400. But it explained “that ‘obtaining a commitment to buy’ is the *sine qua non* [or hallmark] of the exemption” under FLSA. *Id.*

## The Business Is a Payroll Service

In *Futrell v. Payday California, Inc.*, a case of first impression, the California Court of Appeal held that, under FLSA, a business



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## BUSINESSES AVOID PAYING MORE FOR OVERTIME DURING TOUGH ECONOMIC TIMES

*Continued from page 16*

can avoid increasing overall compensation for overtime if it is a payroll service. 190 Cal. App.4th 1419, 1429-35 (2010). The Court further held that this is true even if the business pays the employee and has a contract with the employee explicitly stating that it is the employer's employer.

In *Futrell*, a crewmember for television commercials filed a class action against his production company and payroll service, alleging that they violated FLSA by not paying an overtime rate for work exceeding 8-hours. The Los Angeles Superior Court granted the payroll service's motion for summary adjudication, finding that the payroll service (as opposed to the production company) was not the crewmembers' employer.

The Court of Appeal affirmed. It held that if the only relationship between a business and a worker is that the business prepares the worker's paychecks, then the business is not liable for the worker's overtime pay. A business is only liable for a worker's overtime pay if the business is the actual employer of the worker. The court explained that whether a business is an employer is determined by an economic reality test:

"An *"economic reality test"* applies in determining whether a person or entity is an 'employer' for purposes of the FLSA. Under this test *a court must consider the totality of the circumstances of the relationship*, including such factors as whether the alleged employer had the authority to hire and fire the employee, whether the alleged employer supervised and controlled the employee's work schedules and the conditions of his or her employment, and whether the alleged employer determined the rate and method of payment and maintained employment records."

190 Cal.App.4th. at 1430 (emphasis added), citing *Bonnette v. California Health and Welfare Agency*, 704 F.2d 1465, 1469-70 (9th Cir. 1983).

### Significance

Of course, the Ninth Circuit and California Court of Appeal did not decide these cases to help businesses avoid paying more for overtime during tough economic times. Nevertheless, a business can take solace from the fact that

the cases identify exceptions to the general rule that, under FLSA, overtime must increase overall compensation. The cases suggest that the rule does not apply if the overtime schedule is more desirable, the job is similar to a traveling sales position, or the business is a payroll service. More importantly, given the fact that FLSA was enacted in 1938 and most of these exceptions have only come to light since December, 2010, the cases indicate that there are more exceptions yet to be identified.

*Audra Ibarra practices in Palo Alto, where she handles civil and criminal appeals, writs and habeas petitions in federal and state courts. For more information, please go to [www.aiappeals.com](http://www.aiappeals.com).*

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## BARRISTERS' CORNER

By Kathryn Pietrolungo

The Ventura County Barristers will team up with the local YMCA for a 3-on-3 basketball tournament on Sat., Oct. 8. Proceeds from this event will provide scholarships for area youth and families in need. Please sign up today! Lawyers and public service officers have their own brackets.

## EAR TO THE WALL

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## ATTORNEYS, OTHERS INVITED THROUGH THE LOOKING GLASS

By Joanna Orr

The eighth annual Through the Looking Glass Symposium will be held November 4 from 8 a.m. to 3:30 p.m. at a new location – the Museum of Ventura County. As always, the symposium will provide attorneys, accountants and financial planners insight into the latest trends in estate planning and charitable giving. The new host organizations, California Lutheran University, the Museum of Ventura County and Ventura County Community Foundation, have been hard at work with the planning committee to bring you a diverse group of dynamic speakers.

This year's schedule includes presentations about property taxation, wealth transfers and a special lunch presentation on estate planning at the movies. As in years past, the duo of Edward McCaffery and Alan Yoshitake will discuss recent developments in estate taxation and estate planning. The generous donations of event sponsors Wells Fargo Bank, Montecito Bank and Trust, Ferguson Case Orr Paterson and Roadrunner Shuttle and Limousine Service have allowed the ticket price of this year's event to be lower than in years past.

The \$150 admission includes breakfast, lunch, course materials and six hours of continuing education credit. Register now, as the day-of price rises to \$200. Registration is available online at: [www.vccf.org/lookingglass.shtml](http://www.vccf.org/lookingglass.shtml). The Museum of Ventura County is located at 100 East Main Street in Ventura.

Joanna Orr is an associate at Ferguson Case Orr Paterson where she handles taxation, business transactions and real estate matters. She can be reached at [jlorr@fcoplaw.com](mailto:jlorr@fcoplaw.com)

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Our very own **Verna Kagan** will be the recipient of the **Holly Spevak** Award during a ceremony hosted by the Women Lawyers of Ventura County scheduled for November 3 at the Herzog Winery. Verna has been involved with the vcba/vlsp, inc. since 1996 and the manager of the pro bono program since 2004. She was nominated by WLVC President **Jill Friedman**, who became aware of Verna's efforts during the bar association's annual Strategic Planning meeting in February. Dinner coordinator **Jodi Prior** also announced the Legacy Award will be presented to **Hannah-Beth Jackson** the same evening. There is a flyer in this edition to register. Jodi may be reached at 654.3879 or [jodi.prior@ventura.courts.ca.gov](mailto:jodi.prior@ventura.courts.ca.gov)...When Carla graduated 10 years ago, she thought her law degree would be a permanent high paying job. But instead of selling her brain, Carla is selling her bod. After several layoffs and unemployment shattered her finances, she now finds herself in another position – dancing at a topless bar. “Did I ever think I would be taking my top off for money? No. Did all I ever want to do in life is climb in the lap of a sweaty stranger? No. Sometimes it sucks, it's degrading and I hate it, but it is necessary right now.” Carla is her stage name...Punta deMinta, Mexico? **Greg Johnson** at [greg@gregoryjohnsonlaw.com](mailto:greg@gregoryjohnsonlaw.com) or 988.3661...

Courtesy of the Rubicon Theatre's program for *Steel Magnolias*, I learned **Roy Schneider** serves on the board of Directors and **Ron Harrington** serves at the theatre's Legal Advisor...A Georgia judge who pointed a gun at himself while at the courthouse, berated his boss in a bizarre televised rant and admitted to regularly smoking the doob and ousted from the bench for life by the state's top court. The Georgia Supreme Court's unanimous opinion barred Catoosa County Magistrate Anthony Peters from ever holding another judicial office in Georgia (great, he'll probably come here)... **Dennis LaRochelle** was elected Treasurer of CAL-ABOTA 9.9, making him a shoo-in for

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

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

President in 2015. CAL-ABOTA is a regional branch of the national organization. In the 23 years since the local chapter was formed, there has been one other local chapter member who became CAL-ABOTA President and she was from San Luis Obispo, so Dennis will be the first from VC! He'll be installed as Treasurer during the annual Hawaii meeting in November. Go figure...

**David Prayer** and **Richard Taylor**, along with several other county lawyers, have been selected as 2012 Southern California Super Lawyers. That's 4 years in a row for Richard and three for David...Last week, on an email discussion list, a reader answered a thread about “delightful client malapropisms.” One example, which the poster says was from a client intake interview: “I asked a client about a previous case on his record. I mentioned the charge (drug trafficking) and asked him what happened with the case. He said, ‘oh, they gave me treatment in luau.’” Santa Barbara Women Lawyers Foundation Annual Donor Appreciation & Awards Dinner was held 9.28. They honored the Founding Mothers including **Jill Friedman**...The Loire Valley, France? **Tony Strauss** at 641.9992 or [ars@strausslawgroup.com](mailto:ars@strausslawgroup.com)...

150 well wishers attended **Judge David Long's** retirement party and raised \$3,500 for our charitable arm. Special thanks to presenters **David Shain, Wendy Lascher, Lindsay Nielson, Susan Witting, Judge Jack Smiley, and Judge Vince O'Neill**...A \$10 million donation to UCLA's law school from alum Lowell Milken is causing enormous debate about the decision to name a business law institute for the former financier, who was linked to Wall Street's junk bond scandal 20 years ago. Law school faculty and administrators welcomed the money citing that Milken was never convicted of wrongdoing. He was only barred from working in the securities industry...The Fort Worth Star-Telegram printed some curious news last month: A Tarrant County juror was sentenced to two days of community service after he pleaded guilty to four counts of contempt of court. Jonathan Hudson's wrongdoing? The 22-year-old friended and messaged the defendants on a civil case about a 2008 car wreck. Texas law prohibits jurors from discussing cases on social media sites... Barristers are hosting their annual 3-on-3 Basketball Tourney October 8. Gather a couple

pals and get a hold of **Robert Krimmer** at 988.9886 or [rkrimmer@atozlaw.com](mailto:rkrimmer@atozlaw.com)...

The World Bodysurfing Championships were held August 20-21 in Oceanside, California for the 30th consecutive year. A few of our boyz did well. **Brett Templeman** placed 4th in the 35-44 age group, and **Bob Owens** made the quarter finals in the 55-64 age category. **Al Templeman** placed 3rd in the 65-plus age group. Recall **Bill Lucking**? His grandson won the 35-44 age group...A Chicago federal judge declared a mistrial last week in a sex-trafficking prosecution after a masseuse who worked for the defendant and testified for the prosecution recognized the defense lawyer as a client...Law Quote of the Month “Miles: Marylin, think of me for a moment not as your attorney, but as your friend. Marylin: Does that mean you won't be charging us for the hour?” Divorce attorney Miles Massey (George Clooney) warns Marylin Rexroth (Catherine Zeta-Jones) not to sign a prenuptial agreement in *Intolerable Cruelty* (2003)...If you go to the University of Honolulu School of Law you'll find it located on Tully Road in Modesto. [www.universityofhonoluluschooloflaw.net](http://www.universityofhonoluluschooloflaw.net)...

**Eileen Walker** had a letter to the editor published in the August edition of California Lawyer. Something about Bruce Springsteen... At least three states have considered banning the fake plastic bull testicles some drivers hang on the back of their pickups, but haven't done so. So that puts a South Carolina town that issued Virginia Tice, 65, a \$445 obscenity ticket earlier in September on the front lines of a cutting-edge constitutional issue. Represented on a pro bono basis by Savage and Savage (really?), she was going to ask for a jury trial but discovered that Bonneau's police chief has already done so...**Kyle Marks'** correct email address is [KBMarks@rdmpc.com](mailto:KBMarks@rdmpc.com)...One CLE of note: October 18 at noontime, Jack Trimarco offers “Polygraph 2011 – If It's Not Admissible as Evidence, Why Bother?” It's a measly \$25 for easy parking, lunch and a one hour credit. Celene at 650.7599 or [bar@vcba.org](mailto:bar@vcba.org)...

*Steve Henderson has been the executive director and chief executive officer of the bar association and its affiliated organizations since November 1990. Like Michael Vick, Henderson feels he just doesn't get the calls. Henderson may be reached at [steve@vcba.org](mailto:steve@vcba.org), FB, Twitter at [stevehendo1](https://twitter.com/stevehendo1), LinkedIn, or preferably 650.7599.*



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