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The Ventura Bench and Bar History Project

FIRES ROAR ON

By Justice Steve Z. Perren

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PRESIDENT'S MESSAGE

by Mark Kirwin

It is with sadness and joy that I write this president's message: Sadness that we will be losing a tremendous advocate of philanthropy for those living on marginal incomes, and happiness that she has found a new and exciting job. Yes, over my light-hearted objections, Dolly Knight really is leaving her position as the Director of the Ventura County Law Library to take a position at the Santa Barbara Public Library. So, I thought it would be appropriate to dedicate this message to Dolly by inviting her to write the following story about her tenure with the Law Library:

By the time you read this, I will have finished my tenure as the Director of the Ventura County Law Library. Things have changed quite a bit since the day I had to ask a security guard to give me directions to the Law Library in the sprawling Ventura County Government Center, since I'd never been there before.

When I began at the Law Library, I had a library background but very little legal knowledge outside of pop culture (my favorite Law & Order spinoff is Criminal Intent) and what I learned in high school mock trial. As you can imagine, learning to speak legalese was a challenge, and there still are things that surprise me, daily.

Our users, mostly members of the public, have so much at stake: their homes, their children, their livelihoods. One of the things we have to explain fairly often is that we don't provide legal advice, **not just** because it's illegal for non-attorneys to do so, but also because if we are wrong about something, they could face the consequences. Even with this explanation, their frustration with the legal system is palpable. They just want guidance.

We live in a world of instant answers. Google can tell you what time it is in London, how long to roast a turkey, who played that guy in that one show. Users of the Law Library want the same speedy

answers. They don't want to be handed a book or a resource list; they want their documents filled out and their questions answered, directly. For those who don't get the quick help they're expecting, the legal system then seems like an unfeeling place where they are passed from department to department hearing, "It depends" and "I can't answer that" over and over again. We know why the clerk can't tell the self-represented litigant specifically what is wrong with their filing, but to the pro per, this is evidence of how unreasonable and difficult the courts are.

In libraries, we talk a lot about literacy. Most people picture basic literacy as the ability to read and write. But there are other types of literacy, too, ones that don't get taught in school, ones that leave people behind. We see the need for basic media literacy training, as people struggle to figure out the difference between a true story and "fake news." We see the need for financial literacy, as people are at a loss for how to plan for retirement and get out of debt. And, most relevant to the readers of this magazine, we see a huge gap in legal literacy. Many people don't know how to handle any type of legal issue, and, as I said, the quick answers they're used to aren't easy to find. Websites promise legal help, then demand payment. Wikipedia can't walk you through filling out a Request for Order.

At the Legal Clinic held at the Law Library twice a month, you can see how much people are helped simply by letting them sit down with a knowledgeable attorney and receive direction. The attorney volunteers answer questions, give advice, help fill in forms, and explain procedures. People come in the Law Library obviously distressed; they leave, usually, with a sense of relief. Even if they don't get the answer they want, they are happy to get an answer. I have no doubt that having the clinic available has made a huge difference in the lives of the over 1,000 people who have used it in its two-year history.

I always saw the Law Library as a key component to access to justice. The radical idea behind all public libraries is the notion that everyone will be treated equally when they come through the doors. At the Law Library I've handled questions from everyone: judges, attorneys, probation officers, local business owners, single parents, members of the armed forces ... the list goes on. As we look towards a future where legal services are changing as a response to technology, my hope is the Law Library can continue to stay relevant by always being accessible to those who need it most.

I am extremely grateful to to my Board of Trustees for always humoring my crazy ideas: **Judge William Liebmann, Robert L. Coit, Stuart Comis, Amber Rodriguez, Leroy Smith**, and current president **Vincente Woodward**; to **Charmaine Buehner, Mark Kirwin, Steve Henderson, Cesar Libanati**; to all of our volunteer attorneys, paralegals, students and translators; and to the legal community of Ventura County for always welcoming me. I have accepted a new position as a Senior Librarian at the Santa Barbara Public Library, but I can always be reached at dollymknight@gmail.com with comments, questions and dad jokes.

Dolly Knight is the former director of the Ventura County Law Library. She is now a Senior Librarian at the Santa Barbara Public Library. Her two cats, Henry and Leo, enjoy minor internet fame. She has a BA in Creative Writing and a Master's in Library and Information Science from San Jose State. She lives in Ventura and will see you at the Law Day 5k.

Thank you, Dolly, for all you have done over the years to assist our community through your tireless work and endless patience. You will be missed!

Mark Kirwin, VCBA 2018 President

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JOB DESCRIPTION

by Jay Leiderman

If I feel it's come to the point I should clarify my job duties:

If you are charged with a crime, I will work with you in all aspects of the case, including ancillaries, to see that things go as well for you as they possibly can. So, in other words, I can help.

If the government has placed listening devices in your teeth, I cannot help.

If you are being surveilled by an old neighbor whose friend was a sheriff in the 70s, so he has inside connections, I cannot help.

If the government is blocking you from getting a job because you made a complaint on the internet in 2002 about the public bus system in Wichita, I cannot help.

If you DM me on Facebook telling me that ancient religious texts are calling for the slaughter of all Jews because their embassy is in Jerusalem, see Donald Trump. I cannot help. Asshole.

In fact, I don't really check my DMs on FB anyway. FB does give them to the government, so if the government is your issue, don't use Facebook.

If billions of dollars due your family have been stolen by (insert rich person's name here) I cannot help.

If the FBI has played cover two defense on you for seventeen years because you sold a bad movie projector on the internet, I cannot help.

If you were at a protest and haven't been able to get a job for three years because you don't know why, I can't help.

If the Illuminati..., I can't help.

If the US Government put your name in trust in 1927, I can help but I won't.

If your dog has a foul mouth because the CIA taught it to talk but taught it only bad words, I cannot help. Plus, it was probably the Office of Naval Research. I still can't help.

If you need a place to keep a small arsenal, I cannot help.

If you need me to sue Google for _____, I cannot help.

If you need me to sue Trump for _____, I cannot help.

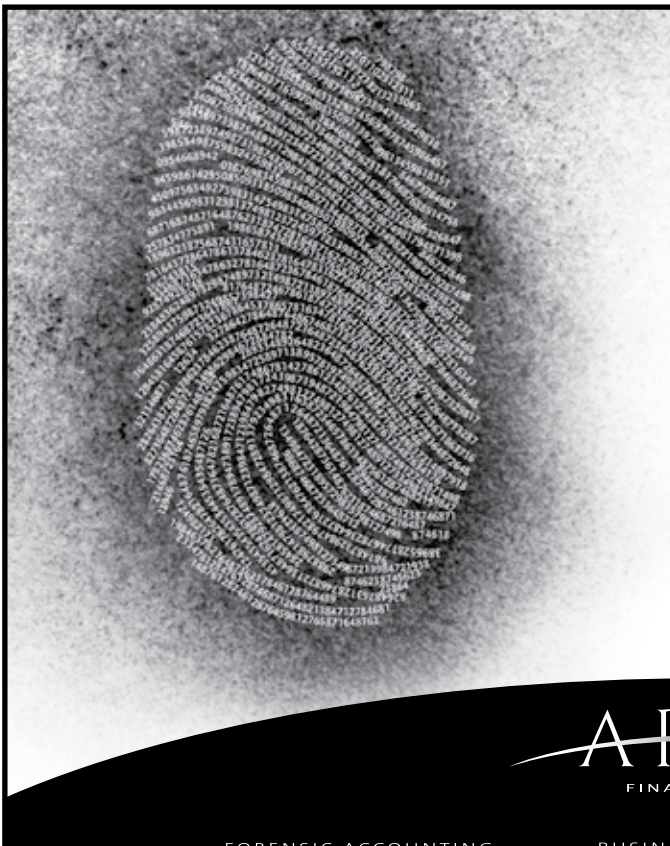
If you need me to sue Putin for _____, I cannot help.

If you need me to sue the (Insert law enforcement agency name here) for (insert perceived slight but not actual constitutional wrong here), I cannot help.

There is more, but I ask you to please first consult these guidelines before thinking "I should contact Jay Leiderman about this." Thank you ever so much.




Jay Leiderman cannot help with everything that worries you, but he handles criminal defense, concentrating on marijuana and computer crimes. His office is in Ventura.



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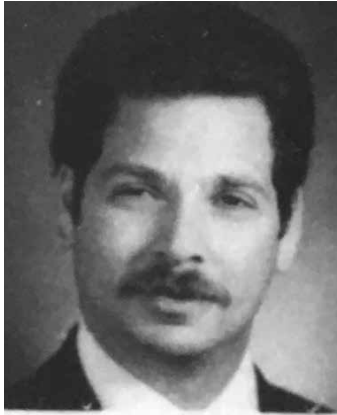
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FIRES ROAR ON *By Justice Steve Z. Perren*



S.Z. Perren



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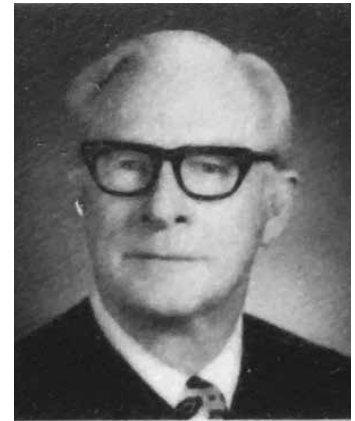
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Worst Blazes in History Char Vast Area, Devour Dwellings

“The most widespread brush fires in the history of Ventura County burned nearly 50,000 acres, destroyed numerous homes and equipment and were still burning out of control today.”

“A 60 mph east wind with gusts up to 80 miles an hour accelerated the pace of the flames.”
Oxnard Press Courier, Oct. 16, 1967.

The Lawsuit

In October 1969, **Neil Heily** of Heily and Blase filed a complaint for damages from fire on behalf of 70 farmers and ranchers in the Somis area. His partner, **DeWitt F. “Red” Blase**, took over the case upon Heily’s untimely death. Trial began May 30, 1972 in *Bianchi v Humble Oil Company*.

The Fire

The fire ignited in Somis on the plain beneath South Mountain. The precise location of the fire’s origin and its cause were the pivotal issues: Was it on the Sence Ranch or the ranch of Jack Ostrow, its immediate neighbor ... or in the trench that lay on the property line between the two? Did it start in oil-soaked straw at the well head of a Union Oil lease on the Sence property or was it the spontaneous ignition of trash dumped in the trench? Perhaps it resulted from the heat of a negligently fired tracer bullet igniting the brush?

The Players

Although “only” a property damage case, the trial brought together four accomplished, experienced, and combative litigators. The plaintiffs were represented by Blase, Ventura County’s most noted PI lawyer. Defendant Sence Ranch was represented by **Tom Halde**, a tempestuous, goateed lawyer

from Santa Barbara with whom Red had a long and contentious history. **Fred Kosmo**, an experienced Ventura insurance defense lawyer, represented Ostrow. Kosmo was a former Marine, a fact he reluctantly kept from the jury for about 30 seconds into his voir dire. Any question of his martial lineage vanished in the blinding glint of “Semper Fi” shining from his tie pin. Sigurd “Sig” Murphy, a founding partner at Hagenbaugh and Murphy, represented Union Oil of California (Union 76). He was a throwback to more mannered times; an old war horse from LA who enjoyed a well earned reputation.

I was the fly on the wall - a lawyer fresh out of the DA’s office representing the Sence estate and riding second chair to Halde. On the wall with me was **Ted Muegenburg**, an associate at Heily and Blase, and also a former deputy DA. After the trial, Ted reinvented himself and became a leading

continued on page 8

The Ventura Bench and Bar History Project: FIRES ROAR ON

probate attorney. Ted and I were so inconsequential that when I spoke with him preparing this piece neither he nor I recalled the other was involved in the trial. It lasted for five weeks!

The case was tried before the **Hon. Robert Shaw**, a World War II and Korean War Army veteran, Stanford Law School alum, former railroad lawyer and Ventura deputy DA. He and **Robert Soares**, soon to be appointed to the Municipal Court, were founding partners in Hathaway, Soares, Shaw and Claybaugh. Shaw had been appointed to the Municipal Court bench in 1965 and elected to the Superior Court in 1970. Judge Shaw ran for his seat against the recently appointed **Phillip West**. After the filing period closed, Judge West was lost at sea off Anacapa Island. Judge Shaw won the election despite the appointment of **Judge Donald Pollack** to fill the empty seat. Our Supreme Court determined that Shaw was properly elected. (See *Pollack v. Hamm* (1970) 3 Cal.3d 264). Judge Shaw was smart, always well prepared and did not suffer fools gladly. As the case unfolded both the skill of the lawyers and the patience of the court would be tested.

Jury Trial

It was held in a trailer, one of three or four that, for a decade, served as “temporary” courtrooms of the Superior Court. Voir dire proceeded with alacrity and without incident. Later in the trial, as evidence was being taken, Halde moved for mistrial, alleging the jurors had been drinking at lunch. There was a brief (and uncomfortable) examination of a few of the jurors. The allegation was determined to be without merit. Even the jurors were not above the fray.

Before opening statement, Halde sought to introduce a 300 - pound, 3' x 3' plaster of Paris relief map mounted on a rolling base. It showed the dirt road that encircled the properties and the locations of the “walking beam” or “donkey” oil pumps one of which, he theorized, was the fire’s point of origin. It also showed property lines and the location of the very large natural trench that was used for a trash dump that contained everything from paper, paint cans and garbage to the body of a rusting Cadillac.

Evidence

I came from a criminal law background. Lawyers were dramatic, dynamic and often entertaining. Think Atticus Finch or any “law” movie with Al Pacino. Red took me to school and taught me otherwise. He presented his case in a low-key and pleasant manner. At first I wondered why he enjoyed such a great reputation; then the answer became evident. You don’t yell at a puzzle to fit the pieces together. You know your pieces, and meticulously interlock them to present a coherent and understandable theory.

For Red the case was all about the trench. Where was it located? What was thrown into it? Did the fire start there? Liability imposed by statute. (See Health and Saf. Code, §13007.)

County arson investigators testified that the fire started in the trench. Their opinions were based on burn patterns, the directions animals fled to escape (their sad remains pointing away from the fire), and the likelihood that the trench contained a variety of combustibles.

As the evidence mounted against my client I wondered how Halde would pull this out. It became clear on cross: Don’t attack the professionals, just get concessions of other possible ignition points. Halde’s theory was that the fire began in the straw surrounding a Union 76 well located at roughly ten o’clock on the map. Halde knew it was never enough simply to attack the plaintiffs’ theory. He had to have his own theory and sell it.

The trial was a study in style. Red’s was a methodical, careful placement of the puzzle pieces. Halde’s was to tear out this piece or that and substitute his own using the glue of his contentious cross-examination to hold his pieces in place. What about the spent tracer round found in the grass near the supposed point of origin? Yes, it might have caused a fire but, as an expert testified, not this fire. “What value were eye witnesses?” Halde asked. The experts opined that at night visual perceptions were not reliable.

Halde called his own fire expert and then attempted to use him as a ballistics expert. How far such a bullet could travel? His response: “300 yards.” Judge Shaw, Army veteran that he was, knew the distance to be many times greater than that. So much for that theory; so much for that expert’s opinion.

The Games

Halde sat at counsel table with a foolscap pad before him and concentrated on the notes that he was taking. As Red questioned a witness, he slowly moved behind Halde as if to peer over Halde’s shoulder at his notes. It was subtle, but Halde knew what Red was up to. I watched this dance. I saw that the pad upon which these precious notes were being taken bore not a word. It was blank. The closer Red got, the more Tom would lean over his notes to obstruct Red’s view.

A bit of a problem arose with one of the eye witnesses. Ted Barr, Judge Shaw’s bailiff, had been a first responder to the scene and pegged the fire at the precise spot urged by Halde. Could you call the bailiff? Should you? In pre-trial motions it was resolved that Barr would be permitted to testify. The jury was instructed, however, not to give undue weight to his testimony.

What about Kosmo? His point was simple: None of the evidence showed that the fire originated on any portion of his client’s property. Testimony was elicited that the trench laid astride the boundary between Sence Ranch and his client’s property. If Red was low key, Kosmo was an octave lower. Almost laconic in his examination, Kosmo focused on proving that the trench was entirely on the Sence Ranch property. This angered Halde. Things grew a bit heated as the trial seemed to be going against Halde. He and Kosmo exchanged words. As tempers rose Halde and Kosmo became irate, culminating in each challenging the other to “step outside and we’ll settle this.” The bailiff interceded and no blood was spilt.

What about Murphy? Well, he was still at counsel table.

Wisdom from Halde

One day as we entered a courtroom, Halde said to me: "Didn't go too well yesterday did it?" I agreed. He counseled me that you just have to deal with it. His intensity belied his complete understanding of the dynamics of a trial. He was a real trial lawyer.

And then there was the map, the beautiful map with all of its detail. Halde called a witness to testify as to the exact location of the fire's origin. As the witness took the stand, the bailiff rolled the map into the well of the court. Halde and the witness chatted a bit, laying a foundation for his observations and endearing the witness to the jury. Tension mounted. This was surely the moment of truth.

With a great flourish, Halde pulled what appeared to be a pen from his pocket and walked to the map. As he approached, Halde extended the telescoping pen, revealing it to be a chrome pointer. He went to the six o'clock position at the base of the map. Halde inquired if the witness recognized what it depicted. The witness haltingly acknowledged that he did.

Every trial has a "moment." This was it. Halde pointed to the road and asked the witness to tell him to stop when he came to the oil pump where witness saw the fire start. The witness nodded. Halde began tracking clockwise slowly moving along the road. A snicker came from the Jury Box. The pointer slowly moved towards nine o'clock. The snicker had become a rumble.

Everyone in the courtroom knew where Halde was heading except the witness. As Halde approached ten o'clock, the location all knew was his destination, he slowed the pointer's progress. Counsel were fidgeting, Judge Shaw sat stoically yet with a knowing smile, and the jurors were enraptured.

Halde slowly passed ten o'clock continuing around the full circumference of the road as he returned to six o'clock. Halde gazed at the witness; the jurors were on the edge of their seats and not a sound was heard. Halde paused, pointer still extended, looked at the witness and speaking softly muttered, "I've run out of road."

The courtroom exploded. Having sat for over four weeks listening to often deadly dull recitative, they heard the aria. I was uncontrollable as the tears rolled down my cheeks, staining my note pad. Judge Shaw brought decorum and dignity back to the courtroom. My eyes were cast down at counsel table. I knew that if I looked up I was easy prey. Slowly my gaze rose above the table, past the court reporter, past Halde and the witness, and locked with Judge Shaw's. He winked. Game, set, match. Mercifully, and with a smile creasing his lips, Judge Shaw declared a recess.

The Verdict

There was none. As argument commenced settlement negotiations continued. Murphy paid the sum Red demanded at the trial's outset. Union 76 was out of the case but Red continued his desultory closing while awaiting others to settle. Before Red finished, considerably more than the sum originally demanded had been raised. It was over.

Epilogue

Red invited the jury, the judge and the lawyers to a local bistro for a snack and some cocktails. Most happily agreed. It was suggested that the jury go into an adjacent room and vote. Halde did not think it a good idea. He was right.



Justice Steven Perren
is an associate justice
of the Court of Appeal,
Second District,
Division Six.

Thanks to the E.P. Foster/Ventura County Library, and especially Research Librarian Laurie Dunning, who found and furnished copies of the Oxnard Press Courier and The Ventura County Star for the relevant dates.

THE FUTURE OF HISTORY

The VCBA History Project

by *Wendy Lascher*

According to Tolstoy, the meaning of history depends on the historian as much as the events and people the historian describes. There are biographical historians, universal historians, and the historians of culture.

The Ventura County Bar Association, guided by past president **Charmaine Buehner** and **Justice Steven Perren**, launched an effort at last fall's Annual Dinner to share the biographies, universal truths, and cultural history of Ventura County law practice. Justice Perren follows up this month with his story about a trial that happened almost fifty years ago. On March 22 the VCBA History Project offers a panel on "Important Criminal Trials in Ventura County," to be followed May 8 with another panel on important civil trials.

CITATIONS hopes you will submit a comment or remembrance prompted by his article. (If you'd rather just tell the story, and have someone else write it, we'll help with that.) Do you have tidbits about **Jack Berkowitz, Judge Marvin Lewis, Ben Nordman, Woody Deem, Don Benton, Jerry Berenson, Ed Duval, Grace and Phil Cohen, Don Holt** or another lawyer, legal secretary, court reporter, judge or client of the past? In the words of Justice Perren "[a]s I write, I see every one of them. They were my friends, my adversaries, my colleagues and my mentors. I want them to be remembered with warmth and affection - even the jerks. They offer a history and a guidebook. As each era says of itself, 'Wasn't That a Time?' It was."



Wendy Lascher is co-editor of *CITATIONS*. She's been around long enough to remember all the people Justice Perren wrote about, and a few other characters, too.

BARRISTERS' CORNER

by Brian Israel

What makes a Barrister?

A "Barrister" is a good standing member of the Ventura County Bar Association who, on Jan. 1, meets at least one of these requirements: (i) 36 years of age or younger or (ii) in practice or admitted for seven years or fewer. If you fit that description, why haven't you joined? After all, every swearing in I see new faces. Some are going to work for the Public Defender, others in private practice, and still more looking for a job. Yet, only a few join Barristers.

Barristers has allowed me to meet and develop relationships with a diverse network of lawyers, judges and other legal professionals. It has provided invaluable career development resources, leadership opportunities and the chance to give back to Ventura County through public service projects and by creating learning opportunities for myself and the greater bar association.

I have made new friends, though I insisted I already had enough, and I

have had the opportunity to get to know previous members dotted around the legal community. I have received referrals and new clients. I have not added any stress to my life, even though I have taken on some responsibilities.

I guess the real question is, if you qualify, what are you waiting for? Come check us out.

On March 15, Barristers will host our annual Game Night at the Victoria Pub. Tip-off begins at 5:30 p.m. with appetizers provided and a no-host bar in full swing. "March Madness," the NCAA men's basketball tournament, will be on all the TVs, and games of darts or pool are available to let your competitive side come out. This event is open to all – barristers, non-barristers, attorneys, judges and law students.

Save the date for our annual Wine and Cheese gathering, Aug. 16 at Ferguson,

Case, Orr, Patterson, LLP. If you have student loans (as I do), you will not want to miss this opportunity for some expensive tastes while not having to reach into your own pocket. And plan for Meet the Bench on Oct. 18, an opportunity for new attorneys to meet our local judicial officers. Please also keep your eyes peeled for announcements of other Barristers events.

To get more involved with the Barristers, email us at vcba.barristers@gmail.com, reach out to any member of the board, or simply make it out to an event or board meeting. The next Barristers board meeting is March 6 at 12:00 p.m. at Ferguson, Case, Orr, Patterson, LLP.



Brian C. Israel is an associate attorney at Norman Dowler, LLP in Ventura. He serves on the Barristers Board as its Secretary.

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BE GLAD YOU’RE FROM VENTURA COUNTY

by *Leslie McAdam*

When you have to appear in the Van Nuys Courthouse (I did), don’t park in two-hour parking (I didn’t) and take your bar card (I did). Here are the reasons why.

1. The 405. (Maybe not an issue if you’re not coming from Fillmore)
2. They have closed the West Courthouse. This means that the lines to get through security are the length of a football field.
3. You can bypass the line with your bar card.
4. You cannot bypass the elevator line with your bar card.
5. If you take the escalator (the stairs were locked) it only goes to the third floor. This is not helpful if your hearing is on the sixth floor.
6. If they only have two elevators open, you will never get on the elevator at the third floor. When they finally open the stairs and you make it to the sixth floor, you learn that they are handling FOUR courtrooms in each department.
7. One of the judges holds court in the hallway in his robes.
8. There are three court reporters in the courtroom, so there is no room for the JA or the clerk. They stand and prop up their papers on the side of the judge.
9. Half of the waiting seats are covered in plastic and you’re in a criminal courtroom, so it’s all glassed in.
10. The judge you have is the one who solved a Rubik’s cube in front of you at the previous hearing.

My 8:30 matter was called at 10:40. Most everything in the courthouse was out of order.



Leslie McAdam is a partner at Ferguson Case Orr Paterson, LLP, where she handles business litigation, employment counseling and litigation, and real estate matters. She does

live in Fillmore.



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WORKERS' COMPENSATION: EXPENSIVE CONSEQUENCES OF OVER-REGULATION

By Jill Singer, Esq.



Imagine every employer in the state of California is required by law to carry health insurance coverage for all of their employees. However, the only way to receive actual coverage under the plan is for the employee to prove to a reasonable medical probability (more probable than not) the injury or illness happened at work or as a result of an ongoing injury or illness caused or exacerbated as a result of continuous work.

Imagine the insurance plan's claims adjuster has 90 days to investigate the claim and decide whether to admit or deny the claim. For the first 30 days after notice to the employer of the claim, the employee may only treat with a physician and/or occupational health clinic that the adjuster chooses for what essentially amounts to a cursory evaluation. The only way to avert this is if, before injury happens or is known to the employee, the employee "pre-designated" their own physician on a specific state-supplied form and the designated physician signs the form indicating he or she is willing to treat the injured worker.

The physicians and clinics that the adjuster chooses have all been thoroughly vetted, and the providers have contracted with

the insurance provider to accept treatment rates at less than Medicare rates in some instances. They have agreed to provide reports every 45 days and provide written requests for treatment backed by thorough explanations using specific evidence-based medical treatment guidelines. Further, they have agreed to all other conditions the insurance provider requires to stay in their network of physicians called a "medical provider network" (MPN).

These physicians have agreed to treat only injured body parts or illnesses that the adjuster will authorize, regardless of the physician's own medical opinion. A reasonable physician concerned about potential medical malpractice claims who provides a progress report on a body part or illness not pre-authorized by the claims adjuster will not be paid for the treatment and the reporting.

This is not imaginary, friends; this is the benefits delivery system called workers' compensation in California in 2018.

The concept of the MPN is not new or unusual. Networks of medical providers contracting with insurance companies, known as health maintenance organizations (HMOs), have been around since 1973

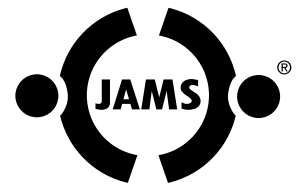
when President Nixon signed the HMO Act after concerns about the rising cost of healthcare. Supposedly the Act created cheaper healthcare coverage with millions of dollars to HMOs, which until then constituted a small portion of the insurance market.

The insurance industry and groups of large, self-insured employers – claiming a rising healthcare cost crisis in California in 2004 – created a call to action for Governor Schwarzenegger to overhaul the Labor Code and Regulations under Title 8 of the California Code of Regulations. Senate Bill 899 dramatically changed the workers' compensation system, and uprooted an enormous body of law providing benefits to injured workers since 1913.

The change was, and continues to be, devastating to injured workers who are limited to the worker's compensation system as an exclusive remedy, except in rare situations. Benefits to injured workers were cut by 70%.

Nevertheless, since Senate Bill 899's implementation in 2005, California employers are paying premiums to insurance carriers who continue to have

Continued on page 17



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WORKERS' COMPENSATION: EXPENSIVE CONSEQUENCES OF OVER-REGULATION

the highest insurance claim costs in the country. This is due to: high frequency of permanent disability claims, high medical costs per claim, a more prolonged pattern of medical treatment, and a much higher than average cost of handling claims and delivering benefits. (Workers' Compensation Insurance Rating Bureau of California Report on Workers' Compensation System, 2017).

So how is it that while benefits to injured workers have been reduced the costs of claims is still so high? I submit that the cost of insurance claims did not decrease due to the direct results of the dramatic changes to the law. Instead of a "reform" it became a "deform": the consequences created the opposite of the cost reduction the Legislature intended.

For example, the prolonged pattern of medical treatment results from physicians' inability to treat injured workers effectively in a timely manner. Delayed or denied treatment increases permanent disability costs.

Labor Code section 4600 allows employees freedom to choose any physician unless the employer/insurer has a properly certified MPN. The MPN must be certified as compliant with regulations of the Division of Workers' Compensation. Even when there is a properly certified MPN, it may not have at least three available physicians of each specialty to treat common injuries experienced by injured employees, as required by 8 CCR 9767.5. The physicians must have offices within 30 miles or 60 minutes of the injured worker's home or place of employment.

The Regulations provide for someone called a "medical access assistant" (MAA). This person is sort of "concierge" for injured workers to obtain medical appointments. The MAA must be available on the telephone between 7 a.m. to 8 p.m. Monday through Saturday and must be located in the United States. Regulation 9767.5 requires the MAA to do all things necessary to obtain a medical appointment for non-emergency treatment within three days of a request. If the employee requires a specialist, the timeline for the MAA is ten days to obtain an appointment.

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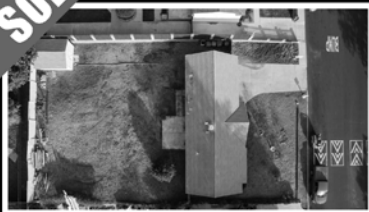
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However, these timelines are nearly impossible to meet. Most physicians require prior medical records and written letters of authorization before they will consider setting an appointment. Often the physician will refuse to set an appointment after reviewing medical records for weeks after the employee's request for treatment.

Further, when the injured worker attempts to treat with a personal physician under a private health plan while waiting for an appointment under the Workers' Compensation system, as soon as the question arises that the injury or illness is work-related, the personal physician refuses to treat. Meanwhile the injured worker risks suffering greater damage, which is yet another claims cost driver.

The solution does not lie with requiring physicians to act as indentured servants to insurance carriers under their negotiated contracts. The solution lies in reworking the regulations so that more physicians in varied specialties are attracted to the system. Physicians need to be provided with more competitive rates and guaranteed payments, the ability to run less cumbersome practices, and the freedom to treat injured workers according to their own medical knowledge and expertise in accordance with the best medical practices.



Jill A. Singer is a certified specialist in Workers' Compensation law. A version of this article previously ran in the Los Angeles Daily Journal



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Just when you imagine you have all things figured out with all 1262 members of our bar association, 'ya foul up names innocently, and that is what I accomplished last



month. In identifying the members of the Ventura County Family Law Bar Association I wrote that **Marcia Kraft** was elected secretary of the board. However, it is not Marcia Kraft,

but most certainly **Marcie Beth Kraft**. A very clear distinction and our apologies to Marcie, who has ascended to this lofty post. She may be reached at parentingplanpeace@gmail.com or (888)446.4478...



A storied and legendary lawyer passed away Jan. 29. **Allan Ghitterman** (#26989) was admitted in 1956 and practiced Workers' Compensation. He

put himself through UCLA Law School while driving a taxi, and for 60 years was a seriously generous supporter through dozens of non-profits. Eloquently, he started a political discussion group entitled, TANSTAAFL – There Ain't No Such Thing As A Free Lunch. Over 400 folks attended his celebration of life Feb. 18.



Each year I miss naming attorneys who have managed to become Super Lawyers according to Super Lawyers Magazine. I really loathe doing this because I always leave someone out, so feel free to correct me. **Kendall VanConas**, **Mark Hiepler** and **Timothy Sottile** made the list, so congrats! ...

EXEC'S DOT...DOT...DOT...

by Steve Henderson, M.A., CAE



Ferguson Case Orr & Paterson has moved their Westlake offices to 4550 E. Thousand Oaks Blvd., Suite 250, Westlake Village, 91362. **Bret Anderson**,

Josh Hopstone, **David Shain** and **Doug Goldwater** will be holding down the fort, along with **Art Zittel**, who has joined the firm as Of Counsel

Effective March 15, e-Delivery, a service that will allow for the electronic submission of filing documents in **Civil, Small Claims, Family Law and Probate cases, is available on the court's website at www.ventura.courts.ca.gov**. Upon the implementation of e-Delivery, the **Ventura Superior Court will no longer accept fax filings and will discontinue use of Official Payments as a fax filing vendor**. Documents may still be filed in person at the filing window. The court will hold brown bag lunch meetings for attorney/bar association members during which specific information, including a demonstration of the e-Delivery service, will be provided. Legal secretaries and attorney services are welcome to attend. The first meeting is scheduled for March 7, beginning at 12:15 p.m., Courtroom 21. The second gathering is set for March 7, inside the Simi Valley Courthouse, beginning at 4:00 p.m. CLE available. **Brenda McCormick** at brenda.mccormick@ventura.courts.ca.gov...



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The Impact of the #MeToo Movement. Scheduled for March 9, beginning at noon time. The accomplished Amber Phillips is the keynote. slc@staker.com.

On Saturday, March 17, the VC Family Law Bar presents “The ABCs of Dependency, Part 2”. Three CLEs and held inside the Courtyard by Marriott. vcfamilylawbar@gmail.com. The **Hon. Tari Cody** headlines...

AND A FIRST – The Ventura County Bench and Bar History project proudly presents, “Important Criminal Trials in Ventura County”, in its debut March 22 as part one in a series for 2018. Speakers include **Judge Brian Back**, **Judge George Eskin**, **Judge Toy White**, **Chuck Samonsky** and **Richard Hanawalt**. Brown bag and FREE. CLE is \$25. Courtroom #22 Charmaine.buehner@ventura.org ...



Cristian Arrieta has been named managing partner at Lowthorp, Richards, McMillian, Miller & Templeman. Cristian takes the reins from **Patrick Loughman**, who served as managing partner for nearly a decade...

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Steve Henderson has been the executive director and chief executive officer of the Ventura County Bar Association and its affiliated organizations since Nov. 1990. Once again, a sure-fire bet during March Madness, folks line up to witness round ball wisdom at its finest. Returning from South Korea, he collected medals in mixed curling, half-pipe and the one man luge. He may be reached at steve@vcba.org, FB, LinkedIn, Twitter at [steve_hendo1](https://twitter.com/steve_hendo1), Instagram at [steve_hendo](https://www.instagram.com/steve_hendo), or better yet, 650.7599.

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