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## THE INDEPENDENT CONTRACTOR FLUX

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## PRESIDENT'S MESSAGE

by Kathryn E. Clunen

We are now a month into 2020, and I hope everyone's year has started out smoothly. During the last Ventura County Bar Association Board of Director's meeting, I asked everyone to share their New Year's resolutions. While some members did not make a resolution, quite a few resolved to eat better and to exercise more. In this article, I would like to share my New Year's resolution with all of you and elaborate on some of the reasons why I have made volunteering more my resolution for 2020.

Before having my two beautiful children, Courtney and Connor, I had more time to dedicate to pro bono work and volunteering in the community. However, the past few years have been extremely busy, which has made finding time to volunteer difficult. Between juggling my kids' schedules, my husband's schedule, my work and board obligations, not to mention the challenges in securing childcare, there just doesn't seem to be enough time to add anything more to my plate.

I am certain that many lawyers in the community can relate to this dynamic, and some are faced with even more challenging circumstances than mine. I am grateful every day for my health and my family's health. It is in that same vein, however, that I have now come to appreciate my responsibility as a member of the legal community to stop making excuses for myself and challenge myself to give back to the community that has given so much to me.

So far in 2020, I have started to volunteer in my daughter's kindergarten class once a month. I have also made childcare arrangements to allow me to volunteer at the Ventura County Legal Aid (VCLA) clinic at least once a month. I was pleased to discover that my kids had a blast with their babysitter, while I had the pleasure of helping people who really needed assistance with their family law matters.

I attended VCLA on Jan. 7. VCLA is held at the Ventura County Law Library from 4:00 to 7:00 p.m. on the first and third Tuesdays of the month. Seventeen volunteers showed up on VCLA's first night of the new year! **Charmaine Buehner** stated that this turnout was above average and sometimes they only have eight attorneys. While Buehner is always grateful when anyone can volunteer their time, having a low turnout makes for a "rough day" for other volunteers and clinic staff. There were quite a few individuals needing Spanish interpreters that night. Fortunately, **Sandra Rubio** was there to help with translations, and she was one of the last volunteers to leave. Both individuals I met with were extremely grateful for the clinic to be open in the afternoon, so they didn't have to take time off from work. VCLA's busiest period is from 4:00 to 5:30, and no intakes are done after 6:15 to ensure the clinic is over by 7:00.

There are several other opportunities for lawyers to give back to the community in addition to VCLA:

### Conejo Free Clinic

The Conejo Free Clinic started providing free medical and legal services in 1976 and now also provides free dental services to the community. In fact, when VCLA was in its exploratory phase, they turned to the Conejo Free Clinic for guidance and expertise in providing free legal services. **Karen Oakman**, Legal Director and Secretary of the Board of Directors for the Conejo Free Clinic, is extremely proud of the amazing group of dedicated attorney volunteers the clinic has cultivated over the years, some of whom have remained for over fifteen years! The legal clinic is in Thousand Oaks off of Hilcrest Drive in the Community Conscience building and is held on the first four Tuesdays of the month from 7:00 to 9:00 p.m. The

specific areas of legal services provided each Tuesday are listed in advance on the Clinic's website so clients know there will be an attorney present to discuss their particular legal issues. Oakman left me with this, "As attorneys we have a unique skill of being able to change someone's life by just providing them advice. I believe clinics are where you see the most life changing work being done by attorneys."

### Santa Clara Valley Legal Aid

The Santa Clara Valley Legal Aid was founded in 1996. This clinic is held in Filmore every Thursday night at 6:00 p.m. following the school calendar. Santa Clara Valley Legal Aid provides guidance and advice on consumer issues, assistance with debt issues, landlord-tenant, employment and labor law, social security disability, small claims and expungement assistance. Currently, Santa Clara Valley Legal Aid does not offer family law help only because they do not have any family law attorneys that volunteer.

If you don't have a New Year's resolution yet, please consider joining me and volunteer your time at one of these legal clinics. Whether you can give 30 minutes or a few hours, the clients will appreciate your assistance. Buehner says, "You never know whose life you might change just by showing up."

***Kathryn E. Clunen** is of counsel at the Dion Law Group, APLC and practices family law. She can be reached at [KatieC@dionlawgroup.com](mailto:KatieC@dionlawgroup.com) or (805) 497-7474.*

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# FAMILY JUSTICE CENTER 2.0

by Alfred Vargas



The Family Justice Center Foundation held a ribbon cutting ceremony for the new Family Justice Center (FJC 2.0) on Jan. 11. The FJC 2.0, located at 3170 Loma Vista Road, replaces the startup FJC 1.0 at the Hall of Justice and provides “one-stop” victim services.

Ventura County District Attorney **Greg Totten** spoke and recounted the genesis of the idea at a small meeting at the DA’s office five years ago which culminated in the *FJC 2.0*:

With the opening of Ventura County’s first Family Justice Center, we have a new vision for the treatment of victims in our community. A vision that puts an end to expecting victims to navigate services in various locations spread across the entire county. A vision that instead demands a more humane and compassionate treatment of the victims of domestic violence, sexual assault, child abuse and human trafficking. Where all services are received and provided in a single location, here at Ventura County’s Family Justice Center. It is also a vision that touches the lives of children living in violent homes. And above all, it is a vision that we are committed to that will reduce domestic violence in our community and promise to brighten the future of victims and their children.

The FJC Foundation filmed the dignitary speeches and the ribbon cutting ceremony; the video may be found at [www.vcfjcfoundation.org](http://www.vcfjcfoundation.org). Afterwards, the audience toured the new facility and met the partner agency members.

Since the soft opening in March 2019, the FJC locations served nearly 2,000 victims, averaging over nine clients per day. The new 14,775 square foot FJC 2.0 facility will have over 44 partner agencies providing independent services to victims of crime. A complete listing and further information about services offered may be found at [www.vcfjc.org](http://www.vcfjc.org).



*Alfred Vargas is a long-time member of CITATIONS’ editorial board.*

**Editor’s Note:** *Mr. Vargas provided original music for the ceremony video above.*

## HAVE YOU HEARD?



Myers, Widders, Gibson, Jones & Feingold, LLP has elevated **James E. Perero** to partner. Perero divides his practice between litigation and providing general counsel services to numerous community associations in Ventura and Santa Barbara counties. He is a delegate to the Community Association Institute’s California Legislative Action Committee. He can be reached at 805-644-7188 or [jperero@mwgjlaw.com](mailto:jperero@mwgjlaw.com).

Criminal law attorney **Victor Herman** (SBN 55725) has passed away. Former clients may request their files in writing from:

### **Theresa Loss**

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### From **Zoya Shenker**

([zkslaw@lawyer.com](mailto:zkslaw@lawyer.com)):

Not all change is good. The County CEO’s office is spearheading an effort to relocate and downsize the Ventura County Law Library. The library has been at its current location next door to the Hall of Justice for upwards of 40 years, and has served the needs of our legal community well. It is an invaluable resource for so many, and it should remain where it is most useful to its patrons. If you are opposed to the proposal to relocate/downsize the library, **call** the office of your County Supervisor and voice your opposition. The time to speak up is now. The County has already rolled out the floor plans for the new location. I have seen them.

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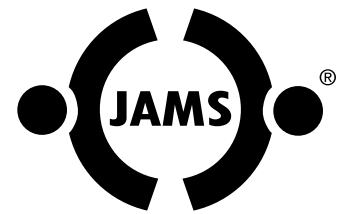
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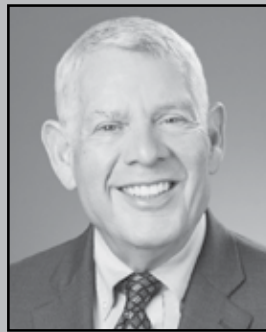


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# THE INDEPENDENT CONTRACTOR FLUX

by Jessica M. Wan



The law relating to independent contractors you once knew is dead. On Sept. 18, 2019, Governor Newsom signed California Assembly Bill 5 (AB 5) into law. Start to think of AB 5 as the nail in the coffin. AB 5 codifies and expands on *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903, the 2018 California Supreme Court decision that radically changed the test to determine whether a worker is an independent contractor or an employee. AB 5 became effective on Jan. 1.

Businesses and workers are drawn to the “independent contractors” categorization for many reasons. For businesses, independent contractors are not subject to the minimum wage, overtime pay, meal period, rest period, or other protections provided by state or federal wage and hour laws to “employees.” Businesses do not have the same level of exposure for the acts of independent contractors as they do for their employees. But if you misclassify your workers as independent contractors and treat them as such, you may be opening yourself up to trouble from the Internal Revenue Service, the U.S. Department of Labor, California state taxing and labor authorities and the misclassified worker.

In California, a person who provides services for another is presumed to be an employee. (*Curry v. Equilon Enters., LLC* (2018) 23 Cal.App.5th 289, 313; see also Labor Code, § 3357.) A business cannot unilaterally determine a worker’s status as

an independent contractor rather than an employee by labelling the worker as an “independent contractor.” (*Performance Team Freight Systems, Inc. v. Aleman* (2015) 241 Cal.App.4th 1233.) An employer has the burden to “prove, if it can, that the presumed employee was an independent contractor.” (*Kao v. Holiday* (2017) 12 Cal. App.5th 947, 957, quoting *Narayan v. EGL, Inc.* (9th Cir. 2010) 616 F.3d 895, 900.)

For years, California courts distinguished employees from independent contractors under the multifactor test established in *S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341. But in 2018, the Supreme Court announced a new standard in *Dynamex* – a new three-part independent contractor test. Under the “ABC” test, workers are presumed to be employees, unless the hiring entity proves all of the following:

(A) [T]hat the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; and

(B) that the worker performs work that is outside the usual course of the hiring entity’s business; and

(C) that the worker is customarily engaged in an independently established trade, occupation or business of the same nature as the work performed.

(4 Cal.5th at 916-17.) With the ABC test, the Supreme Court made it clear that “employment” is not limited to the common law definition.

The ABC test is **conjunctive**—the employer’s failure to establish any of the three factors precludes a finding that the worker is an independent contractor. And, the ABC test adopted in *Dynamex* is retroactively applicable to pending litigation on wage and hour claims. (*Gonzalez v. San Gabriel Transit, Inc.* (2019) 40 Cal.App.5th 1131, 1156.)

What about those categories of “workers” that had previously been identified (and affirmed by California courts) as “independent contractors” but may no longer fit under the *Dynamex* ABC test? Real estate agents, insurance brokers, cosmetologists and barbers may fall into this category.

AB 5 exempts specified occupations from *Dynamex*. Among these exemptions are:

- A person or organization licensed by the California Department of Insurance;
- A physician and surgeon, dentist, podiatrist, psychologist or veterinarian licensed by the State of California performing professional or medical services provided to or by a health care entity;
- Lawyers, architects, engineers, private investigators or accountants who hold an active license from the State of California;
- Licensed barbers or cosmetologists;
- Commercial fishermen working on an American vessel; and
- Persons providing work under a contract for professional services with another business entity or under a subcontract in the construction industry.

All exemptions should be closely analyzed on a case-by-case basis because each exemption has its own set of stringent and complex requirements. Some categories have “sunset” dates such as “the commercial fisherman working on an American vessel”



exemption, which becomes inoperative on Jan. 1, 2023, unless extended by the Legislature.

It is important to note that the “exemptions” are not true carve-outs. Someone who meets the exemption requirements is not automatically an independent contractor. Instead, though the ABC test does not apply, the hiring party must still be able to demonstrate that contractor status is appropriate under *Borello* and/or under other statutory provisions as specified in AB 5.

The independent contractor landscape in California is in a state of flux. Questions for those of us in the legal profession also need clarification. Under AB 5, licensed lawyers fall under an exemption, but what about paralegals or legal assistants? It is common for law firms and solo practitioners to hire paralegal or legal assistants on an occasional, as-needed basis.

Pending and future court cases should also be monitored closely for decisions on AB 5. For example, a Los Angeles County Superior Court judge ruled on Jan. 8 that the AB 5 law (i.e., *Dynamex*) does not apply to truck drivers because it is preempted by federal law. Uber drivers have a lawsuit pending against Uber in federal district court arguing that AB 5 is specifically designed to end the practice of classifying the drivers as independent contractors. Special attention should also be paid to legislative activity as legislators and labor advocacy groups will likely remain active in pushing legislation aimed at either expanding or limiting worker rights in California.



*Jessica M. Wan is an associate with Ferguson Case Orr Paterson LLP. Her focus is primarily on complex civil and commercial litigation, appeals and employment matters. [jwan@fcoplaw.com](mailto:jwan@fcoplaw.com).*

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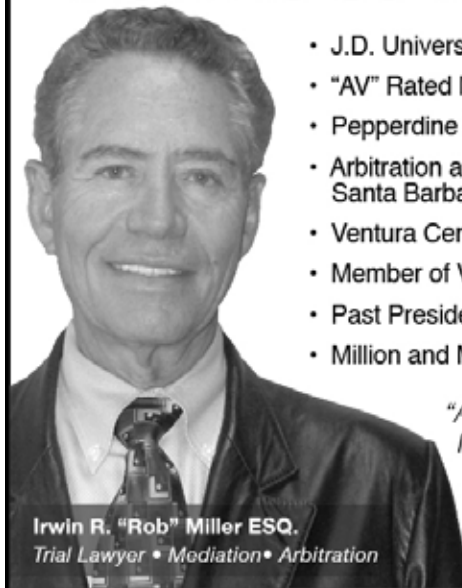
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# 2019 FAMILY LAW CASE LAW AND STATUTORY UPDATES

by Claudia Silverman

Judge **JoAnn Johnson** presented a comprehensive analysis of recent developments in family law at a well attended and well received presentation to the Ventura County Family Law Bar in Department 35 on Jan. 15. Some of the highlights of the presentation follow.

## Housekeeping.

Judge Johnson reminded the Bar that when engaging private mediators, Form VN 118 is mandatory. The mediator does not need to sign, but the attorneys do. Why mandatory? Likely because the clerks seeing this form will not send the case out to mandatory mediation.

Also, remember to file any request for continuance for a hearing on a request for order **two court days** before the hearing. (Judicial Secretary Tamika Schmidt emphasized that this is critical to help the Court to run smoothly. Failure to do so may result in you having to appear. Give the Court a heads-up as soon as you know you may be seeking a continuance.)

## RIP Non-CLETS Restraining Orders.

As many are aware, the Legislature, through Senate Bill 1089, has ended the practice of permitting non-CLETS restraining orders in family law matters. Domestic violence restraining orders can no longer be entered into by stipulation without being transmitted to the California Law Enforcement Telecommunications system, also known as CLETS. Judge Johnson made clear that other conduct orders (e.g. possession of home, child custody conduct orders) are not affected. Simply put, judges will no longer sign non-CLETS restraining orders.

## Professional Responsibility, Attorney's Fees/Sanctions and FLARPL.

Judge Johnson cited and thoroughly analyzed six cases in this area of the law. She urged the Bar to refer to State Bar Opinions and Ventura County Bar Association Guidelines on Civility and Professionalism. Judge Johnson noted that the year 2019 was a year in which **civility** was front and center in State Bar Opinions and in family law appellate rulings.

In *Lasalle v. Vogel* (2019) 36 Cal.App.5th 127, the Court of Appeal reversed the trial court's denial of a motion to set aside a default, where the attorney taking the default had provided **only one day's email notice** of the intent to take the default. The case cautioned against acting unreasonably in seeking a default. Judge Johnson recited from the case the following admonition from Supreme Court Justice Burger many years ago: "Lawyers who know how to think but have not learned how to behave are a menace and a liability ... to the administration of justice.... [T]he necessity for civility is relevant to lawyers because they are the living exemplars – and thus teachers – every day in every case and in every court and their worst conduct will be emulated perhaps more readily than their best." (Burger, *Address to the American Law Institute* (1971) 52 F.R.D. 211, 215.)

Judge Johnson's practice pointer: **Read this case.** (And, don't rely on email to make demands that certain things be done. As stated by the court in *Vogel*, "e-mails are a lousy medium with which to warn opposing counsel that a default is about to be taken.")

In *re Marriage of Anka and Yeager* (2019) 31 Cal.App.5th 1115. The Court of Appeal affirmed sanctions on an attorney (but not the party) for disclosing information in a confidential child custody report while asking questions at a deposition in another case.

In *re Marriage of Sahafzadeh-Taeb & Taeb* (2019) 39 Cal.App.5th 124, the Court of Appeal held that, when issuing sanctions under Code of Civil Procedure section 128.5, a **subjective standard** applies to determining whether a party's or an attorney's conduct is sanctionable.

Judge Johnson made note of the very interesting case of *Martinez v. O'Hara* (2019) 32 Cal.App.5th 853. The Court of Appeal affirmed the trial court's order denying attorney fees and reported plaintiff's attorney to the State Bar of California for misconduct. The Court of Appeal concluded that plaintiff's attorney committed misconduct on appeal, including **manifesting gender bias**. The

Court of Appeal noted that "the notice of appeal signed by Mr. Pavone on behalf of plaintiff referred to the ruling of the female judicial officer as 'succubistic.' A succubus is defined as a demon assuming female form which has sexual intercourse with men in their sleep. We publish this portion of the opinion to make the point that gender bias by an attorney appearing before us will not be tolerated, period." (*Martinez v. O'Hara, supra*, at p. 855.)

Judge Johnson noted that the entire reported opinion in this case centered around the attorney's statements in the notice of appeal, not the underlying merits (or lack thereof) of the appeal.

The not-so-new moral of the story in a case out of Ventura, *In re Marriage of Bittenson* (2019) 41 Cal.App.5th 333, is: "be careful of FLARPLs (family law attorney's real property liens)." In that case, a dispute over the date of separation ultimately invalidated a portion of the FLARPL, requiring the client to pay the attorney \$100,000 from other sources.

Judge Johnson's practice pointer: Do not resort to a FLARPL if your client wants to keep the property. By doing so, you put yourself in a potential conflict with your client.

## Procedure

In *re Marriage of Perow & Uzelac* (2019) 31 Cal.App.5th 984, the notable holding was that Family Code section 271 sanctions may be sought in an RFO responsive declaration. (The general rule is that new and different affirmative relief may not be sought in a responsive declaration, due to concerns for notice and due process.) The court held that a responding party's request for sanction-based fees under section 271 is not a request for "affirmative relief" within the meaning of Family Code section 213. The request for such fees "is an attack on the messenger, not the message." Because in that case the sanctions had been sought prior to the filing of the responsive declaration, the issue of notice and due process was not raised. Judge Johnson queried: because section 271(b) sanctions may only be imposed after notice and an opportunity to be heard, is the time

frame of a responsive declaration sufficient notice? Good question. Stay tuned.

*In re Marriage of George & Deamon* (2019) 35 Cal.App.5th 476. In this case, the family court awarded sanctions without considering oral testimony under Family Code section 217 and relying instead on documentary evidence. The Court of Appeal affirmed, holding that the family court was not required to receive live testimony because personal appearance of the party seeking sanctions was not essential, and a failure to serve the party with a notice to appear forfeited the right to live testimony. In the absence of live testimony, the court may decide the motions on declarations. (Code Civ. Proc., § 2009.)

*In re Marriage of Pasco* (2019) 42 Cal. App.5th 585 reversed and remanded the trial court's denial of ex-husband's request for an order terminating spousal support based on changed circumstances, holding that the trial court abused its discretion by denying the ex-husband's request for an order without considering the actual evidence and relying instead on the argument of counsel and the ex-wife's unsworn statements in response to the trial court's questions, neither of which were in evidence. Moreover, because a prima facie showing of changed circumstances already was made based on the offer of proof by husband, the trial court was precluded from relying on the declarations unless they were admitted into evidence, which they were not.

**Also Noted:**

*In re Marriage of Ciprari* (2019) 32 Cal. App.5th 83 (characterization, spousal support and attorney's fees). If a tracing method employs straightforward and readily understandable methods, it is substantial evidence even though it may not utilize solely the direct or exhaustion method of tracing.

*In re Marriage of C.T. and R.B.* (2019) 33 Cal.App.5th 87 (in a move-away or move-to case, **all** of the *LaMusga* factors must be considered).

*Molinaro v. Molinaro* (2019) 33 Cal. App.5th 824 (overbroad language in a Domestic Violence restraining order – in that case, prohibiting the husband from posting anything about the case on Facebook - violates free speech).

*In re Marriage of Martin* (2019) 32 Cal. App.5th 1195 (spousal support did not terminate by operation of law upon wife's remarriage because the parties agreed otherwise in writing on form SB-12035 and failed to check the box stating that wife's remarriage would terminate husband's obligation to pay support).

*Cook v. Commissioner*, Tax Court Memo 2019-48 (tax court finds that father cannot claim child as a dependent if the child is not his qualifying child; cannot claim the dependency exemption unless mother

(the custodial parent) executes IRS form 8332 or its equivalent; cannot claim head of household, child tax credit or earned income credit because child is not qualifying child.)

**Practice Tip:** Parties can agree to release dependency exemption with form 8332 or equivalent. Parties cannot agree to release head of household status.



**Claudia Silverman** of Law Offices of Claudia Silverman, APC, is a certified family law specialist and member of the editorial board of CITATIONS.

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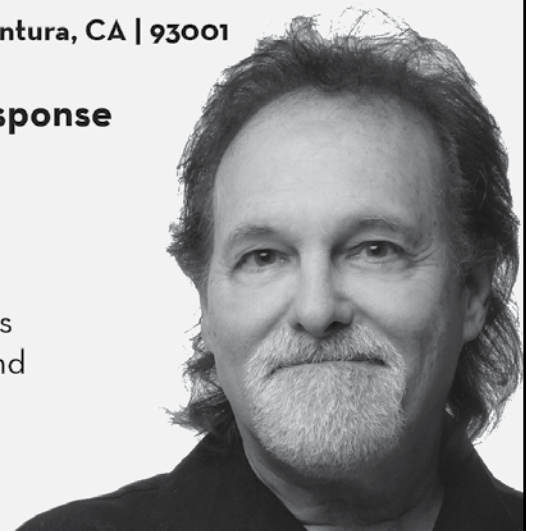
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## D.A. WOODY DEEM: Part 4

by Michael Bradbury

*This is the fourth and final instalment of former Ventura County District Attorney Michael Bradbury's recollection of the District Attorney who trained Bradbury and many other Ventura County trial lawyers.*

Those of us in the D.A.'s "Class of 1967" had the opportunity to observe former District Attorney **Woodruff Deem** try a death penalty case in 1968. William Anthony Clinger was accused of stabbing to death the bartender at the Admiral's Table, a watering hole in the Pierpont area of Ventura. One hundred sixty dollars was missing from the cash register. A bloody handprint covered the front door handle, and drops of blood trickled along the back alley. Clinger was arrested along with Dee Dee Casto, who had played a role in Clinger's arrest. The papers played them up as a modern-day Bonnie and Clyde.

Deem tried almost all the murder cases, especially those where the prosecution was seeking the death penalty. Historically, attorneys in the community would volunteer their time to represent indigent criminal defendants pro bono, but by 1965 private attorneys had begun demanding to be paid and the county realized it could save money by establishing an office of public defender. **Richard Erwin**, a well-known Los Angeles attorney (and grandfather of Ferguson Case Orr Paterson partner **David Shea**) was appointed to head the office. He brought with him several experienced Los Angeles lawyers, including future Monterey County Judge **Harkjoon Paik**, who ended up defending the high-publicity case. (I later tried my first felony case against Paik.)

**Judge Marvin Lewis** admonished the contentious lawyers to maintain decorum. But Judge Lewis himself was smarting from criticism for having closed his courtroom to the public and media at the defense's request, much to the displeasure of the *Ventura Star Free Press*, which the P.D.'s office called the "Red Star."

Jury selection was moving along. Paik questioned a young woman who had already acknowledged that she was a member of the Church of Latter Day Saints. In response to a convoluted question that had been the subject of an objection and back and forth argument between counsel, the prospective juror blurted, "Well, it was a stupid question!"

Paik struck a dramatic pose and shouted, "Perhaps not so stupid" – as he spun to point at Deem – "if asked by the Bishop!" Deem slapped the table so hard it sounded like a rifle shot. Judge Lewis leapt from his chair as though squirted from a squeeze bottle, furious. The prospective jury panel was excused. This was the first of many incidents reflecting the lawyers' intensity, including Deem's leap onto counsel table during argument to drive home a point.

The trial ended in a mistrial with the jury hopelessly deadlocked. According to the *Star*, it was the first time Deem had failed to obtain a guilty verdict in a capital case that he personally prosecuted. Clinger was later retried and convicted in Los Angeles County; that conviction was reversed on appeal; and after a third trial, Clinger was again convicted of first-degree murder and received a life sentence.

Deputy district attorneys, investigators, and support staff loved watching Deem in trial. The judges looked to him for answers to legal issues, and the news reporters hung on his every word and ignored the defense. The joke in the office was if you needed a deputy D.A. and Deem was in trial, everyone knew where you could find thirty deputies.

The late Court of Appeal Justice **Herb Ashby** said, "Woody Deem was the world's greatest recruiter. He went to all the top law schools to recruit. He was charismatic. When he finished talking everyone wanted to be a deputy D.A. in Ventura County. ... He chose people he believed in, backed them all the way, and then got out of their way."

As much as Deem was devoted to his faith and his leadership responsibilities in his church, he never compromised his professional responsibilities as a result. When County Supervisor Robbie Robinson was indicted for bribery, evidence had cast doubt on the testimony of a witness who also happened to be a newly appointed Municipal Court judge. His testimony was highlighted and criticized during the People's argument to the jury. The judge was furious. Deem asked me to come to his

office to discuss a personal matter that had arisen in the case. The judge/witness, who was also a former deputy district attorney, had asked to speak to Deem about his testimony and demanded that Deem make a statement to clear his name. He also asked Deem to discipline deputy district attorney **Pete Kossoris** for what the judge said was misconduct, and threatened that if Deem did not tell the newspapers that Deem had derailed a prosecution of his own nephew for marijuana possession – a claim that was patently untrue – the judge would go to the papers.

Deem told the judge to get out of his office. Robinson was convicted and sentenced to state prison. The judge continued as a member of the bench but rarely if ever heard criminal cases during Deem's tenure.

After Robinson was convicted, he asked if he could spend a few minutes alone with his wife before being taken into custody. The court agreed and everyone left the small courtroom. Shortly after, a gunshot was heard. Several of us ran back into the courtroom expecting to see a dead Robinson, but he and his wife were alive and well. When we looked into the bailiffs' private room across the hallway, we found an embarrassed deputy sheriff who had been practicing quick draws.

During my first year as a deputy D.A., my colleague **Curtis Rappé** had been assigned to prosecute a DUI case involving a bank secretary in the Simi Valley area. After her arrest the bank president picked her up at the police station. He was going to testify that she was not under the influence. There being no blood alcohol evidence, it was going to be the arresting officer's word against defendant and her star witness. But it turned out that the defendant lived in an apartment paid for by the bank president. In those days, before discovery was available to the defense in criminal trials, that evidence was first disclosed in the courtroom in the presence of the banker and his wife. Both ran out of the room crying, together. After consulting with her lawyer, the defendant pleaded no contest to DUI.

The following week, Deem called me into his office, where I saw the bank president and his attorney, who was a prominent member of the bar and former deputy district attorney. “Sit down, Mike, I want to go over one of your cases with you. The president of the bank that holds the mortgage on my home and his lawyer were just here to see me. Both are members of my church and longtime friends. They say you were pretty rough with the banker, but I wanted you to know that I think you weren’t tough enough on him.”

A third example of Deem’s commitment to duty is fascinating from several points of view. It involved a preliminary hearing that took place in one of the former bungalow courtrooms on Poli Street. The officers who were to testify were late. Then-Municipal Court Judge **John Hunter** was acting as magistrate. I learned that the officers would be late for the hearing due to a crime in progress. I explained what little I knew to the judge and asked that the matter be put over to the afternoon calendar. Instead, Judge Hunter called the case, ordered the officers held in contempt and issued a bench warrant for their arrest. When I returned for the afternoon calendar the two officers were in custody, in the jury box. I found Superior Court Judge **Robert Shaw** in his chambers. When I reported that the cops were about to be booked into jail, Judge Shaw, after some expletives directed at Judge Hunter, issued an order directing their immediate release.

The following day, Deem showed me a three-page letter from Judge Hunter demanding my firing for the private practice of law, i.e., representing two police officers charged with criminal contempt. Hunter had been Deem’s chief trial deputy and they were close, but I didn’t know that Hunter’s father was very influential in the LDS church and a long-time family friend of the Deems. “John says you should be fired for violation of county ordinances against outside employment.” I explained that I thought it was not the officers’ fault

they were ordered to respond to a crime in progress while they were on their way to court. Judge Hunter had left that out of his letter.

Deem said, “I’ll talk to John, you can get back to work.”

I remember one early morning I came in and saw tears in Deem’s eyes. He said, “I have decided to leave the office that I love for a position on the new BYU law school faculty.” They had also offered to educate each of his children at no cost, an offer Deem and his wife felt they could not refuse.

Deem’s passion and love of teaching was irrepressible. He was one of six charter faculty members of the university’s new

J. Reuben Clark Law School. Occasionally he would call me, saying, “I’m sending you a fine candidate who should make an excellent deputy and trial lawyer.” The law school established a Woodruff J. Deem Professorship, and the District Attorney’s Office the “Woodruff J. Deem Medal of Justice” to honor him.

*Michael Bradbury was Ventura County District Attorney for 27 years. His memories of his mentor, former District Attorney Woodruff J. Deem, offer a fascinating history of a slice of Ventura County legal history, including the different attitudes that prevailed half a century ago. In the process of profiling Deem, Bradbury also shares much of his own story.*

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## WE READ SO YOU DON'T HAVE TO

When the French company Meteor Brewing sent a cease and desist letter to St. Louis's Earthbound Brewery last July, Earthbound's response went viral. <https://twitter.com/EarthboundBeer/status/1166755636455051266>

ICMI, some excerpts (but the full letter makes for fun reading, including the part about refraining from further terrorizing the French company by responding in French).

- Brief research on Meteor Brewing (as well as my experience drinking several of your products while living in Lille 14 years ago) indicates you're a 500 year old brewery that produces 600,000 hL. of products.... First things first: 500 years! And 200 employees! That's so cool! We have existed for 5 years and only have 8 employees.

- There is little likelihood of confusion.... First off, "Meteor" in English is pronounced with a long "e", in fact, people often think our beer is called "meatier IPA" which is hella gross. The French pronunciation of your mark is with short "e"s....

- Our products remain several thousand miles apart, and since the Concorde flies no longer, one would be very hard-pressed to purchase both a Meteor IPA and a Bière du Meteor in the same day, let alone in the same store.

- You are a nation-spanning brewery with 500 years of history, we are a bunch of DIY goof-offs that like partying and we once spent \$300 on a print advertisement that said "lol we bought an ad" with our logo on it. Also we got Panic! At [T]he Disco to do shots of cheese-infused vodka. We actually got paid for that one. Long story. What I am getting at here is nobody's gonna see one of our ads and say "[W]ow! That must be that huge French brewing conglomerate! They should probably fire their advertising team!" Nor is anyone likely to see one of your ads and think "Wow! Earthbound Beer went French! And Corporate! Wonder if they still cut baguette sandwiches in half with that guillotine they built for Bastille Day?" Another long story.

- IDK if you have ever encountered our core market, the American Craft Beer Nerd, but

they are among the most careful consumers on the planet. Every liquor store shelf is basically a demilitarized zone full of traps and landmines for the unwary consumer.

- You could still attempt to bully us into changing the name of the beer anyhow, as litigation in the U.S. is second only to healthcare in terms of obscene expense. You presumably have lots of money and lawyers on retainer, and every time we have spare dollars laying around we give our employees raises or take them canoeing. However, I am a lawyer and married to a lawyer who does intellectual property law (and immigration law, in case anybody wants to move here)....

- We are happy to agree to not sell Meteor IPA in France, and should you decide to distribute in any US state in which our products are available, we will happily add NOT FROM FRANCE to the Meteor IPA label artwork... I think normally there's a buyout provision or exchange of value but we'd love to exchange some promotional merchandise with you as binding consideration for the agreement.

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