VENTURA COUNTY BAR ASSOCIATION Est. 1928

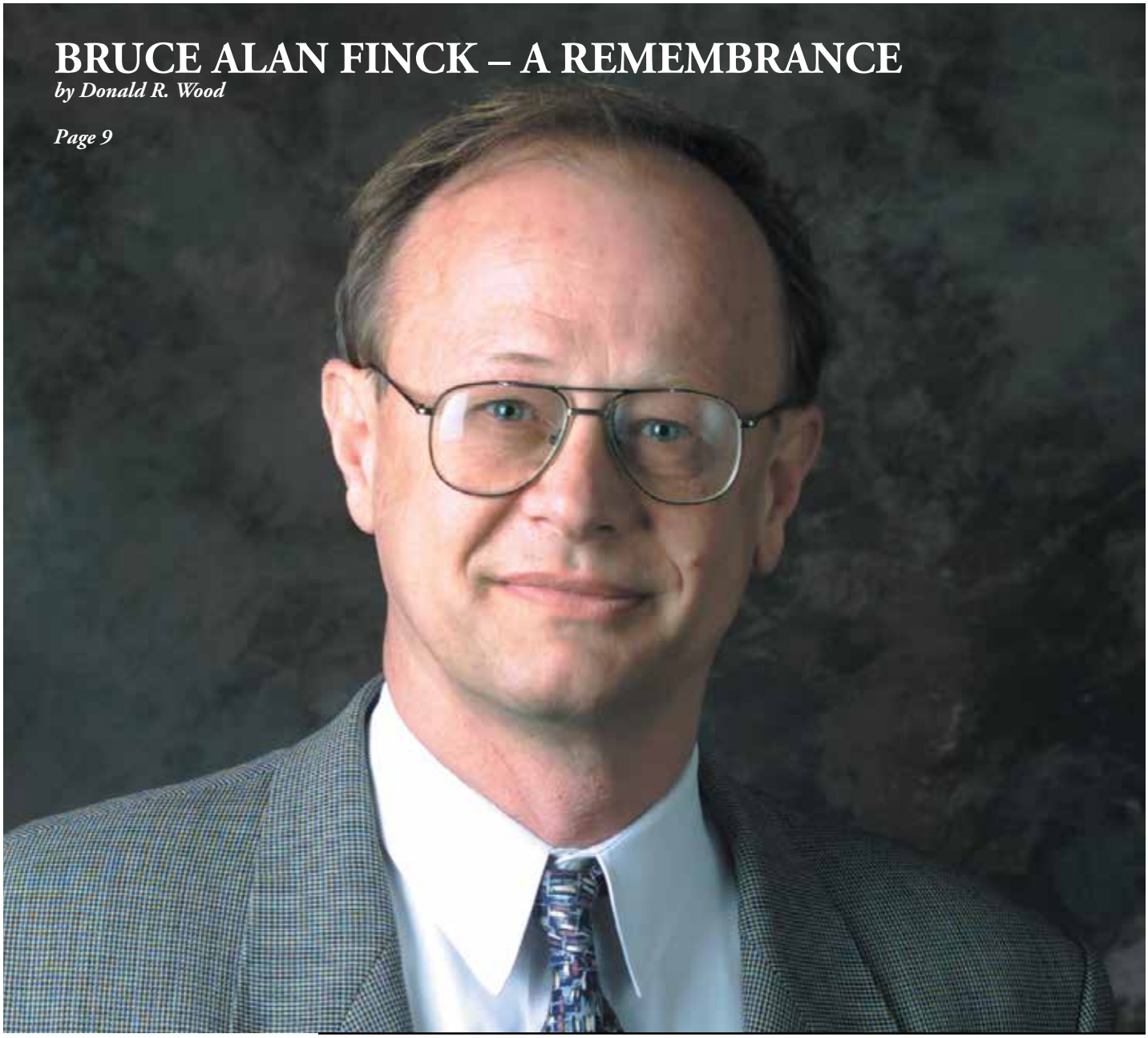
CITATIONS

JULY – TWO THOUSAND TWENTY TWO

BRUCE ALAN FINCK – A REMEMBRANCE

by Donald R. Wood

Page 9



PRESIDENT'S MESSAGE	3
HAVE YOU HEARD?	5
LETTER TO THE EDITOR	7
LETTER TO THE EDITOR: JOHN R. SMILEY	8
FIVE MISTAKES MANY ATTORNEYS MAKE IN JURY SELECTION	13
COURT REPORTER AVAILABILITY FOR COURTROOM PROCEEDINGS	16
CLASSIFIEDS	19

E-Filing & E-Recording

Easy Breezy.

Ready to save time, trees, and money by using e-filing and e-recording services? The CPS e-filing portal is user friendly, cost efficient, and accepted at California mandated e-filing courts. As a family-owned company, our local team of experts are here to help you every step of the way. Now that's easy.

COMMERCIAL PROCESS SERVING, INC.

Your Complete Legal Service Solution Since 1993

Process Serving | E-Recording | E-Filing | Court Filing | Skip Tracing
On-Site/Off-Site Scanning | Subpoena Preparation | Depo Officer | Messenger Services

comproserve.net | 805.650.9291

PRESIDENT'S MESSAGE

by Jacquelyn D. Ruffin

The Supreme Court experienced and caused historical change throughout the month of June. On June 30, after 28 years on the Court, Justice Breyer retired and swore in his former clerk Judge Ketanji Brown Jackson as the newest Justice and the Court's first black female Justice. Prior to Justice Breyer's retirement, the Court issued numerous rulings that have significantly altered the legal landscape regarding women's rights, gun control, climate change, immigration law, criminal law and other critical matters. A synopsis of the Court's June 2022 decisions follows.

West Virginia v. EPA

Vote: 6-3 opinion by Chief Justice Roberts; concurrence by Justice Gorsuch which was joined by Justice Alito; dissent by Justice Kagan, joined by Justices Breyer and Sotomayor

Summary: The Court held that Congress did not grant the Environmental Protection Agency the authority under the Clean Air Act to devise emission caps, thereby curtailing the agency's ability to regulate carbon emissions from power plants.

Biden v. Texas

Vote: 5-4 opinion by Chief Justice Roberts; concurrence by Justice Kavanaugh; dissent by Justice Alito, joined by Justices Thomas and Gorsuch

Summary: The government's recission of Migrant Protection Protocols (the "remain in Mexico" policy developed by Trump) did not violate Section 1225 of the Immigration and Nationality Act.

Oklahoma v. Castro-Huerta

Vote: 5-4 opinion by Justice Kavanaugh; concurrence by Justice Gorsuch; dissent by Justice Gorsuch, joined by Justices Breyer, Sotomayor and Kagan

Summary: The Court decided that the Federal Government and the States have concurrent jurisdiction to prosecute crimes committed by non-Indigenous-Americans against Indigenous Americans on sovereign Indigenous lands (in this case, the Creek Reservation in Oklahoma), thereby reversing the presumption against State jurisdiction.

Ruan v. United States

Vote: 9-0 opinion by Justice Breyer which was joined by Chief Justice Roberts and Justices Gorsuch, Kagan, Kavanaugh and Sotomayor; and concurrence by Justice Alito, joined by Justice Thomas and in part by Justice Barrett

Summary: 21 U.S.C. Section 841 makes it federal crime "[e]xcept as authorized[,] . . . for any person knowingly or intentionally . . . to manufacture, distribute, or dispense . . . a controlled substance." The Court held that "Section 841's 'knowingly or intentionally' *mens rea* applies to the statute's 'except as authorized' clause and determined that after defendants meet their burden of producing evidence that their conduct was 'authorized,'" the Government must prove beyond a reasonable doubt that the defendants knowingly or intentionally acted in an unauthorized manner.

Concepcion v. United States

Vote: 5-4 opinion by Justice Sotomayor; dissent by Justice Kavanaugh, joined by Chief Justice Roberts and Justices Alito and Barrett

Summary: In 2010, Congress enacted the Fair Sentencing Act, which redressed disparate sentencing for crack and powder cocaine. That law did not apply retroactively. In 2018, Congress passed the First Step Act, which allowed district courts to reduce sentences for various crack and cocaine offenses as if the Fair Sentencing Act was in effect when the offenses were committed. The Court held that the First Step Act allows district courts to consider intervening changes of law or fact when exercising their discretion to reduce a sentence.

Dobbs v Jackson Women's Health Organization

Vote: 6-3 opinion by Justice Alito; concurrence by Justices Thomas and Kavanaugh; concurrence by Chief Justice Roberts; dissent by Justices Breyer, Sotomayor and Kagan

Summary: The Court held that the U.S. Constitution does not confer a right to abortion; overruled *Roe v. Wade* and *Casey v. Planned Parenthood*; and decided that the authority to regulate abortion rests with the states.

Nance v. Ward

Vote: 5-4 opinion by Justice Kagan; dissent by Justice Barrett joined by Justices Thomas, Alito and Gorsuch

Summary: A prisoner who challenges a state's proposed method of execution under the Eighth Amendment must identify an available alternative that would significantly reduce the risk of severe pain. The Court held that 42 U.S.C. Section 1983 (as opposed to *habeas*) remains an appropriate mechanism for a prisoner's method-of-execution claim when the prisoner proposes an alternative method not authorized by the State's death-penalty statute.

New York State Rifle and Pistol Association v. Bruen

Vote: 6-3 opinion by Justice Thomas; concurrence by Justice Alito; concurrence by Justice Kavanaugh which was joined by Chief Justice Roberts; concurrence by Justice Barrett; dissent by Justice Breyer joined by Justices Sotomayor and Kagan

Summary: The Court held that New York's proper-cause requirement violates the Fourteenth Amendment by preventing law-abiding citizens with ordinary self-defense needs from exercising their Second Amendment right to keep and bear arms in public for self-defense, thereby striking down New York's concealed carry law.

Vega v. Tekoh

Vote: 6-3 opinion by Justice Alito; dissent by Justice Kagan joined by Justices Breyer and Sotomayor

Summary: Reversing the Ninth Circuit Court of Appeals, the Court held that a violation of the Miranda rules does not provide a basis for a Section 1983 claim because, although Section 1983 provides a cause of action against anyone acting under State law who "subjects" a person "to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws," a violation of Miranda is not a violation of the Fifth Amendment right against compelled self-incrimination.

Shoop v. Twyford

Vote: 5-4 opinion by Chief Justice Roberts; dissent by Justice Breyer, joined by Justices Sotomayor and Kagan; dissent by Justice Gorsuch

Continued on page 4

Continued from page 3

Summary: Twyford was convicted of murder and sentenced to death. He sought post-conviction relief, arguing that his attorney failed to present evidence of a head trauma he suffered as a teen. He later sought an order requiring the State to transport him to a medical facility for neurological testing, which was granted and appealed. The Court held that a transportation order that allows a prisoner to search for new evidence is not "necessary or appropriate in aid of" a federal court's adjudication of a *habeas corpus* action when the prisoner has not shown that the desired evidence would be admissible in connection with a particular claim for relief.

United States v. Taylor

Vote: 7-2 opinion by Justice Gorsuch; dissent by Justices Thomas and Alito

Summary: Taylor was convicted of violating the Hobbs Act (which makes it federal crime to commit, attempt to commit or conspire to commit a robbery with an interstate aspect) and 18 U.S.C. section 924 (which permits enhanced punishments for people who use firearms in connection with a "crime of violence" as defined in the statute). Taylor filed a *habeas* petition, arguing that his Hobbs Act conviction was not a Section 924 violation. The Court held that a conviction for attempted Hobbs Act robbery does not qualify as a "crime of violence" under Section 924 because no element of the offense requires proof that the defendant used, attempted to use or threatened to use force.

Kemp v. United States

Vote: 8-1 opinion by Justice Thomas; concurrence by Justice Sotomayor; dissent by Justice Gorsuch

Summary: The Court held that the term "mistake" in Rule 60(b)(1) of the Federal Rules of Civil Procedure includes a judge's errors of law, and because Kemp's motion to reopen his 28 U.S.C. section 2255 proceedings alleged such a legal error, it was cognizable under Rule 60(b)(1).

Garland v. Aleman Gonzalez

Vote: 6-3 opinion by Justice Alito; concurrence in part and dissent in part by Justice Sotomayor, joined in part by Justices Kagan and Breyer

Summary: Reversing the Ninth Circuit Court of Appeals, the Court held that Section 1252(f)(1) of the Immigration and Nationality Act deprived the district courts of jurisdiction to consider respondents' requests for class-wide injunctive relief.

Johnson v. Arteaga-Martinez

Vote: 9-0 opinion by Justice Sotomayor; concurrence by Justice Thomas joined in part by Justice Gorsuch; concurrence in part and dissent in part by Justice Breyer

Summary: The Court held that Section 1231(a)(6) of the Immigration and Nationality Act does not require the Government to provide noncitizens detained for six months with bond hearings in which the Government bears the burden of proving, by clear and convincing evidence, that a noncitizen poses a flight risk or a danger to the community.

Denezpi v United States

Vote: 6-3 opinion by Justice Barrett; dissent by Justice Gorsuch, joined in part by Justices Sotomayor and Kagan

Summary: The Court held that the Double Jeopardy Clause of the Fifth Amendment does not bar successive prosecutions of distinct offenses arising from a single act, even if a single sovereign prosecutes them.

Egbert v. Boule

Vote: 6-3 opinion by Justice Thomas; concurrence by Justice Gorsuch; concurrence in part and dissent in part by Justice Sotomayor, joined by Justices Breyer and Kagan

Summary: Reversing the Ninth Circuit Court of Appeals, the Court held that two constitutional damages actions to proceed against a U. S. Border Patrol agent on a Fourth Amendment excessive-force claim and a First Amendment retaliation claim were not allowable under *Bivens v. Six Unknown Fed. Narcotics Agents* (1971) 403 U. S. 388 (which held that the Court could create a damages action against federal agents for violating a plaintiff's Fourth Amendment rights).

Jacquelyn D. Ruffin *is a partner at Myers, Widders, Gibson, Jones & Feingold LLP. Her practice focuses on corporate/business, real estate and land use matters. She can be reached at jruffin@mwgjlaw.com or 805-644-7188.*

HAVE YOU HEARD?

Deputy District Attorney **Paul Feldman** becomes the Ventura County Superior Court's newest commissioner on July 5. Feldman currently works in major crimes/gang, general felonies, mental health, sexual assault family protection and misdemeanors. Before moving to Ventura County, Feldman was a deputy district attorney in the Victorville office of the San Bernardino County District Attorney's office.

A new face will appear soon on Division Six of the Second District Court of Appeal. Governor Newsom has nominated San Luis Obispo County Superior Court **Judge Hernaldo J. Baltodano** to replace retiring **Justice Martin Tangeman**. Welcome!

Congratulations to VCBA President **Jacquelyn Ruffin**, honored by the Ventura County Diversity Bar Alliance for her many contributions to the legal community. Ruffin is a partner at Myers Widders Gibson Jones & Feingold LLP. The firm sponsored the June 15 Celebration of Diversity mixer. Ruffin thanked many for their contributions to justice, then reminded that while it is important to celebrate benchmarks in the mission to increase diversity in the legal profession and in Ventura County specifically, there is still much work to be done.

It's not news that law enforcement is sometimes weaponized against the poor. That's a major focus of *The Golden Fortress*, to be released Aug. 9 by Chicago Review Press. The book chronicles the Depression-era deployment of the Los Angeles Police Department's "Foreign Legion" to California's state lines to block Dust Bowl refugees from entering the state. Nepotism alert: The author, Bill Lascher, is one of CITATIONS co-editor **Wendy Lascher**'s sons. Bill will be discussing *The Golden Fortress* and signing copies at Ventura's Timbre Books on Sunday, Aug. 28.

Looking for a few good writers: the CITATIONS Editorial Board seeks lawyers, law students, and other legal professionals to share your skills as reporters, writers and editors. The board meets online each month, and are always eager to hear new ideas. Contact Sandra Rubio, *sandra@vcba.org*, for an announcement of the next meeting.

Career change? The Santa Barbara Superior Court invites applications for a legal research attorney position. Must have either one year of law clerking experience for a California trial or appellate court, or five years of full-time practice in California. Application must be filed online at *www.sbcourts.org* by July 8.

BAR LEADERSHIP

ADR SECTION
David Karen 498-1212
Lori Dobrin 698-8602
ANIMAL LAW
Emily Robinson 497-7474
ASIAN AMERICAN BAR ASSOCIATION
Jessica Wan 659-6800
BANKRUPTCY
Michael Sment 654-0311
BARRISTERS
Kevin J. Heimberg 658-7800
BENCH-BAR RELATIONS COMMITTEE
Hon. Matt Guasco 256-4972
BLACK LAWYERS ASSOCIATION
Damon Jenkins 644-7188
BUSINESS LITIGATION SECTION
Erik Feingold 644-7188
CITATIONS
Cari Potts 644-7188
Wendy Lascher 659-6800
CLIENT RELATIONS
Michael Christiano *attorneymichaelchristiano@gmail.com*
COURT TOUR PROGRAM
Thomas Hinkle 656-4223
CRIMINAL DEFENSE BAR ASSOCIATION
Doug Ridley 208-1866
EAST COUNTY BAR
Doug Bordner 644-7188
EMPLOYMENT LAW
Rabiah A. Rahman 626-8337
FAMILY LAW BAR
Amy Van Sickle 642-7070
IMMIGRATION LAW
Vanessa Frank *info@vanessafranklaw.com*
INTELLECTUAL PROPERTY
Peter Veregge & Rebecca Makitalo 496-1164
J.H.B. INN OF COURT
Panda Kroll 551-0773
JUDICIAL EVALUATION COMMITTEE
Jodi Prior *Jodi.Prior@ventura.courts.ca.gov*
LAW LIBRARY COMMITTEE
Eileen Walker 444-6308
SOGI ALLIANCE
Mickye Coyle 662-1716
NATURAL RESOURCES SECTION
Kate Neiswender 649-5575
PROBATE & ESTATE PLANNING SECTION
Amber Rodriguez 643-4200
VCLA, INC.
Cesar A. Libanati *support@vclegalaid.org*
Managing Attorney
VC DIVERSITY BAR ALLIANCE
Jessica M. Wan 659-6800
Dien Le 823-4200
VC TRIAL LAWYERS ASSOCIATION
Danielle R. Everson 322-4949
VC WOMEN LAWYERS
Karen Oakman 273-4200

VCBA STAFF 650-7599
Sandra Rubio - Executive Director
Nadia Avila - Associate Executive Director
Deborah Tovar - Member Relations Assistant
Brenda Bodie - CTP Coordinator

LETTER TO THE EDITOR

by Mark E. Hancock

The final editor/proofer of [the June issue of] Citations made a whoopsie in the third-to- the-last paragraph of my article: *"Planning for the Possibility of Disability."*

This was how it had been edited to read:

While getting the coverage through work is good, there can be challenges. One is the very real possibility that ERISA (which is federal law) may apply, even though all the employer did was buy into a group disability insurance policy. If ERISA law applies, you generally have to appeal any denial or termination of benefits before you can sue, and you are generally precluded from recovering emotional distress and punitive damages. If your employer pays the premiums and/or your payments or contributions are made with pre-tax dollars, your benefits may be taxable. Consult with your tax professional. (Underlining added to show verbiage that was omitted.)

Somehow, in the final process, it was whittled down to this:

While getting the coverage through work is good, there can be challenges. One is the very real possibility that ERISA (which is federal law) may apply, even though all the employer did was buy into a group disability insurance policy. If ERISA law applies, you generally have to appeal any denial or termination of benefits * and punitive damages. If your employer pays the premiums and/or your payments or contributions are made with pre-tax dollars, your benefits may be taxable. Consult with your tax professional.

* The final edit omitted *"before you can sue, and you are generally precluded from recovering emotional distress"* before *"and punitive damages."*

This mistake is significant for three reasons:

First, Plans and insurance companies can't impose, or obtain punitive damages against a plan member and/or beneficiary, so appealing punitive damages isn't something one does [or has to do] under ERISA.

Second, you do have the right to sue - assuming you do appeal, but lose the appeal. ERISA doesn't just give you the right to appeal, but you do have to appeal before you can sue.

Third, ERISA preempts/precludes punitive damages and emotional distress damages.

The final editor/proofer cut off the bit about being able to sue after an [unsuccessful] appeal and not being able to recover either emotional distress or punitive damages.

LETTER TO THE EDITOR: JOHN R. SMILEY

by Gregory W. Herring

Ventura County Superior Court Judge **John R. Smiley** elegantly retired a couple weeks ago on his 75th birthday. He was a great judge, and we will miss him.

Famously a graduate of Princeton University (his chambers were adorned with Princeton tigers and his orange and black Repp tie was in high rotation), Judge Smiley began his legal career at the Ventura firm, *Lucking, Bertelsen, Bysshe, Kuttler & Smiley.* There, he specialized in family and business law for thirteen years. As he later joked, he found himself to be a better lawyer than a businessperson. So, he sought appointment to the bench and succeeded in 1986.

California then separated "municipal" courts, where Judge Smiley initially served, from the Superior Court. In 1998 California voters passed a constitutional amendment that provided for voluntary unification of the superior and municipal courts in each county into a single, countywide trial court system. He was then elevated to the Superior Court. As soon as 2004, he was elected Presiding Judge of the Ventura County Superior Court, managing the court, assigning cases to other judges and specialized courts, overseeing the court calendar and deciding cases.

I first met him in about 1999, when I was building a family law specialty on my ten years of experience as a business litigator. I found him not "smiley," but intimidating. He projected a no-nonsense control of his courtroom. A law professor, too, he knew his stuff through and through – when I might not have!

But that changed. The more cases we had together, the more I appreciated his intelligence, even demeanor and dry wit. He came to trust me as a straight-up advocate, offering minimal "BS" while still arguing my clients' positions 100 percent. I learned to modulate in that realm, maintaining credibility while still pushing envelopes when warranted.

Judge Smiley tolerated that. I listened and learned the steps to that dance. I did not always agree with him, but he made no secret that he was doing his best as an imperfect human in a tough job. He did not always agree with *me*, but he respected that I always did *my* best, representing clients in complex, expensive and emotional situations.

An early case "together" involved a client who settled by "buying" the beloved family dog, Pheobe, through assumption of $11,000 of community credit card debt. The next day, she reconsidered, harshly asking me how I could ever have "let" her *do* that – spending so much for a *dog*?! This led me to a motion to set-aside the settlement, where Judge Smiley heard me emphasize in open court that it concerned a "*shit* – zu named Phoebe." Not quite hiding his amusement, he called counsel into chambers where he helped us work it out absent further drama and fees.

In one of my early multi-day family law trials, opposing counsel's examination over the family's assets become interminable. Barely hiding his frustration, Judge Smiley dryly asked counsel if he might stipulate to avoiding any item not worth … "*say, at least $75*." Blessedly, counsel got the drift and likely cut the trial time by half! One way or another, Judge Smiley got results.

An annual treat for the Ventura County Bar Association's Family Law Bar was his "State of the Family Law Courts" address. There, he put his wit on full display, amusing all while still reporting the not-always-good news (Governor Brown and his perennial cuts to the courts' budget…!) When he later took over the annual address, Judge **Liebmann** openly complained about what a hard act he had to follow. He was right.

A highlight for both of us was when I was chosen to present Judge Smiley with the Southern California Chapter of the American Academy of Matrimonial Lawyers' annual "Judicial Officer of the Year" award in 2007. I was then a newly minted Fellow of the AAML, *nervous* as could be but also *proud!*

The stories abound. Ultimately, Judge Smiley was every family law lawyer's dream – a judge who listened, considered, and cared about his decisions and the families they affected. He did the same for the attorneys, witnesses and other advocates regularly giving their all in this uniquely complex and challenging area of practice. Herring Law Group fondly wishes Jack a well-deserved, happy and healthy retirement on his beloved golf courses — and anywhere else he might find himself!

Gregory W. Herring *is a CFLS, and a Fellow of the American Academy of Matrimonial Lawyers and the International Academy of Family Lawyers. He is the principal of Herring Law Group, a family law firm primarily serving "the 805" with offices in Santa Barbara, Ventura and San Luis Obispo Counties. His prior articles and blog entries are at www.theherringlawgroup.com.*

BRUCE ALAN FINCK – A REMEMBRANCE

by Donald R. Wood

Bruce Alan Finck, the tenacious attorney admired by so many in our legal community, as well as his family and friends, recently passed away on June 7.

To some, Bruce was relentless in his defense of the various public entities that he so well represented oaver the years. He took his mission to represent the taxpayers seriously. In that way, we were all his clients at some point. He represented his clients in some of the most complex cases in our County including flood cases, road design issues, landslide cases, environmental matters, oil field cases, agricultural disputes and construction defect matters. Bruce tried many cases over the years and won more than his fair share.

Bruce was brilliant in so many ways that he approached cases differently than most. To those that had the occasion to be opposite of him, he was challenging. To others that knew him well, he was also kind, caring and generous. To me, he was an incredible mentor, with whom I worked for 35 years and whose shoes will be difficult to fill.

He loved his children dearly and was proud of both of them, but he was careful to not mix work with family life. When his son, Erik, came to work with us after graduating from UCLA, he was like his 6'4" father: tall, thin and very bright. Bruce's beautiful daughter, Sondra, is also intelligent like her dad and has had many achievements, including graduating from Arizona State University.

Bruce was born in Santa Barbara. He attended the University of California Santa Barbara, and graduated Phi Beta Kappa in 1971. He recalled that the only "C" he got at UCSB was in psychology. At the time he resented it, but later joked that it was a sign of his good mental health. Bruce worked his way through UCSB doing construction as a drywaller. He was saddened when his fellow students burned down the BofA bank in Isla Vista while protesting during the infamous riots in 1970, as he had performed some construction in that building. He also worked as a medical assistant at a pediatrician's office during college, while contemplating whether to go to medical school or law school. He went on to graduate from UC Davis Law School in 1974 and was a member of the Law Review.

Throughout his life, Bruce was in the constant pursuit of knowledge. When many of us were young, playing sports and socializing, he was busy reading books on neuroanatomy, engineering and geology. He had a vocabulary and knowledge of topics beyond most. He also had a sense of humor that was sometimes so dry or highbrow that many people simply did not get his humor, or if they did, were not sure if he was joking.

Bruce began his legal career with the venerated attorney **Don Dewberry** on Poli Street in Ventura. It was there that he learned to try cases. When Dewberry died in a plane crash in 1978, the Los Angeles law firm of Spray, Gould & Bowers bought the practice and Bruce became one of the youngest partners at that firm at age 29. During those early years, Bruce defended the County of Ventura in many serious road design and flood control cases. After over 20 years with SG&B, Bruce joined the firm of Benton, Orr, Duval & Buckingham for the next 20 years, when the City of Oxnard became one of his main clients. When BODB closed, he and I started WOOD & FINCK. He was never happier as a lawyer than he was in his last few years of practicing with his own firm. He used to joke when you asked him how he was doing or when he left for the day that "he couldn't take it anymore." But every morning, he was back at his desk ready to take on the next legal challenge.

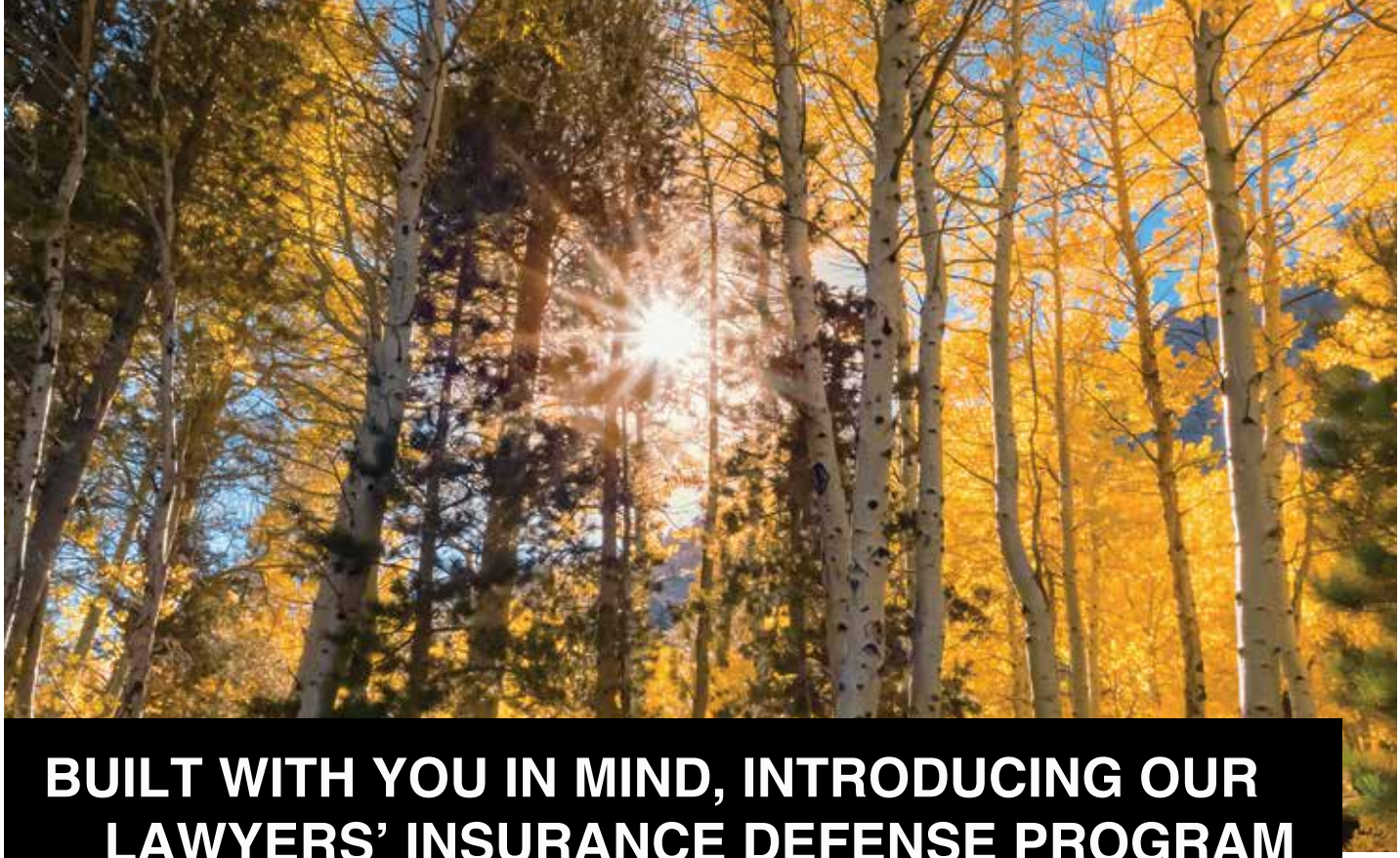
Bruce was a challenge for most attorneys and some judges, as well. He had the ability and intellect to think about cases and legal issues in a very creative and unique way. He always forced those around him to think differently. Bruce was well respected in our legal community, including by those who opposed him. He relished the idea of having to go up against many attorneys at the same time. One of his favorite sayings was: "I have them surrounded from the inside." There were many doctors with whom he worked who swore Bruce went to medical school, including those who had the displeasure of being cross-examined by him.

One of my favorite memories of him was a case wherein Bruce was defending a trial on behalf of the County of Ventura involving a motorcycle accident. Only Bruce could have convinced the judge to allow him to bring an exemplar motorcycle into the courtroom during the trial. During his closing argument, he walked over to the motorcycle and began to straddle it while it sat in the well of the courtroom. Even though he had over 30 years of experience in riding motorcycles, we all held our collective breath that the bike would not tip over in front of the jury. As it turned out, he did not fall nor did the bike tip over, and the jury came back with a favorable verdict for the County.

It is unfortunate that so many never knew him in the way that his family, close acquaintances and friends did. However, he wanted it that way. Bruce liked to compartmentalize people and friends, and he rarely mixed the two. He touched so many people's lives that he had an endearing group of followers, admirers and friends. For all his brilliance and success, he was also down to earth and was kind to others who worked with their hands and never spoke down to those who were less gifted. He built his own house by himself with his own hands in Carpinteria, while practicing law and raising a young family. In fact, he prided himself on being the only journeyman drywaller in the California State Bar. He left behind a legal legacy when he passed. It is the end of an era for our legal community. Bruce will be sorely missed by many, but always remembered.

Please join us for a celebration of his life and career at the offices of WOOD & FINCK, located at 3295 Telegraph Road, First Floor, Ventura, CA on July 21, 2022, from 5:00 p.m. to 7:00 p.m.

Donald R. Wood *is one of the founding members of WOOD & FINCK and works in defense of public entities, as well as representing various regional centers in working with the developmentally disabled population. He can be reached at 805-642-0060 or dwood@woodfinck.com.*



BUILT WITH YOU IN MIND, INTRODUCING OUR LAWYERS' INSURANCE DEFENSE PROGRAM

Lawyers' Mutual is excited to share our values, services and member benefits with an ever expanding pool of California attorneys.

Built with you in mind, Lawyers' Mutual has redesigned our Lawyers' Insurance Defense Program for firms of six attorneys or more who practice 90% insurance defense work or greater.

Key program features:

- Limits from $1,000,000 per claim / $3,000,000 in the aggregate to $10,000,000 per claim / $12,000,000 in the aggregate.
- $50,000 Claims Expense Allowance outside limits included.
- Expert in-house California claims examiners.
- Multi-attorney discount factor.

Our Lawyers' Insurance Defense Program delivers on our commitment to enhance, revolutionize and challenge the status quo of how the traditional insurance industry operates.

LAWYERS' MUTUAL
INSURANCE COMPANY
Our strength is your insurance

www.lawyersmutual.com

LIV | Sotheby's
INTERNATIONAL REALTY

"Life is what happens to you while you are busy making other plans."

– JOHN LENNON

When life happens, we are here to help your clients navigate through the complexities of real estate. We have over 40 years combined experience handling trusts, probate, divorce, and each situation that life may present. Regardless of the economy, life happens, and we are here for you and your clients when it does.

LIVSOTHEBYSREALTYCA.COM

LARRY KROGH
Broker, ABR, GRI, Green
805.312.0512
lkrogh@livsothebysrealty.com
Cal DRE 01305510

DEBORAH DOWNEY
Bachelors Degree in Business
805.320.2832
ddowney@livsothebysrealty.com
Cal DRE 01436738

VENTURA COUNTY | CALIFRONIA

FIVE MISTAKES MANY ATTORNEYS MAKE IN JURY SELECTION (YEP, MAYBE YOU, TOO)

by Rich Matthews

Here is a partial list of mistakes that nearly all trial attorneys make. Not you, surely, but a really high percentage of everyone else.

1. Not Knowing the Actual LAW of Jury Selection.

I get blank stares from attorneys when I talk about the actual statutes that govern jury selection — which could well give us good things our party is entitled to under the law. In California, that's the Code of Civil Procedure sections 222.5 (which applies to both civil and criminal trials) and 223 (for criminal trials). Raise your cause challenges using language from the statutes, and cite them. California's language on bias is actually different from what many trial judges seem to think:

Actual bias *– the existence of a state of mind …which will* ***prevent the juror from acting with entire impartiality, and without prejudice*** *to the substantial rights of any party.*

(Code Civ. Proc., §225, subd. (b)(1)(C), emphasis added.)

A challenge for ***implied bias may be taken for…the existence of the state of mind in the juror evincing enmity against, or bias towards, either party.***

(Code Civ. Proc., §229, subd. (f), emphasis added.)

Notice that the first statute says the opposite of the usual default understanding. The statute says that bias exists in the absence of entire impartiality and without prejudice. It is often espoused, however, that a prospective juror is OK unless completely biased. Notice the second statute says enmity against or bias toward either party constitutes implied bias and says not one single word about "rehabilitation" or "putting that aside" or other extra-legal (read: lawless) psychobabble that is impossible for the human brain to do once it thinks something.

I constantly see attorneys trying to argue for a cause challenge without ever using the statutory language, possibly because they haven't read the language and don't realize how helpful it can be. Use the statutory phrases on the record, and alert the judge what the actual statute says. Keep in mind a little-appreciated reality: many practitioners have not read the actual statute, but rely instead on books and training given by the state's judicial administration arm. For instance, in California, the Benchbook and Handbook are often *wrong* on the law of jury selection, misstate local rules and are wrong on the value of juror questionnaires.

And because many cause challenges are heard and ruled upon at sidebar or the hallway behind the courtroom outside the presence of the reporter, make sure to put them on the record later and ask the judge to state their reasons for denying your challenge. Civil litigators usually forget or choose not to do this. Let's contribute to the jury selection ecology by putting this stuff on the record.

Winning on your well-founded, well-developed cause challenges is now more important than ever given California's new stringent statutory scrutiny of peremptory challenges that went into effect on Jan. 1. (Code Civ. Proc., § 231.7.) One hopes that as the pressure builds to do away with peremptories altogether, judges will rule on cause challenges closer to what the bias statutes call for.

A bonus statute that trial counsel should know: the statute that governs the "mini-opening" before oral questioning of prospective jurors. (Code Civ. Proc., § 222.5, subd. (d).) California's law says that "Upon the request of aparty, the trial judge **shall** allow a brief opening statement by counsel for each party prior to the commencement of the oral questioning phase of the voir dire process." Only one

Continued on page 14

FIVE MISTAKES MANY ATTORNEYS MAKE IN JURY SELECTION (YEP, MAYBE YOU, TOO)

Continued from Page 13

party has to ask for the judge to be required to allow it because, in jury selection, judges often require that both sides agree (such as, incorrectly, with whether to grant a juror questionnaire).

The mini-opening is a valuable chance to create context for the questions to follow. Imagine just walking up to someone and asking, "What is it fair to expect of doctors?" If they don't have any context for such a big, philosophical question, expect crickets to chirp. However, if the person has some context for what you mean and why you would want to know, it will lead to a great discussion.

2. Arguing the Case In Voir Dire: Trying to Get *Agreement* Instead of *Information*.

Advocates can't help themselves. I get it. But still, you wouldn't use a wrench to do the work of a screwdriver, so put that tool back in your box and use the right one for the right job.

That correct job during jury selection is to UNCOVER INFORMATION (sometimes deducing it) SO THAT WE CAN MAKE SUCCESSFUL CAUSE CHALLENGES AND INTELLIGENT PEREMPTORY ONES.

Yes, there are other ends that can be achieved during oral questioning, but when secondary and lower ends are served at the expense of the primary one, you're doing it wrong. If you're one of the 90 percent of lawyers who ask voir dire questions that begin, "But wouldn't you agree that…," please stop. Stop now. That's arguing, not learning.

3. Talking Like A Lawyer in Front of Laypeople.

I can appeal to your rational brain by telling you that opinion polls show that people widely dislike and distrust lawyers, so it would be to your obvious benefit not to sound like one.

Or I can appeal to your own experience: when someone is speaking in vocabulary and sentence structures that you don't quite understand or just plain seem foreign or odd to you, have you felt closer to that person or further away? Did your trust for that person rise or fall?

Moral: talk like a regular person, and never use obnoxious lawyer words like "indicate" or anything in Latin, or tell an uninterested crowd the unriveting story of the unnecessary phrase "voir dire."

4. Arguing With the Data Instead of Listening To It.

I see lawyers dismiss bad but telling data about prospective jurors all the time, mostly because they like the person for other reasons. If you are picking a jury for a criminal defendant and someone has previously served on a criminal jury that reached a verdict (meaning a 95 percent likelihood of a guilty verdict), accept that data and realize that this person is not great for you; don't fight the data. By all means, put that lone data point in context with everything else you know about this person, definitely; compare to the pool you're left with after cause challenges, absolutely. But don't tell yourself, "But they smiled when I talked" or otherwise dismiss "bad" data.

5. The Trap of the Similarly Situated Juror (or, Not Understanding Your Juror Profile).

Picture it: you're picking a jury and a potential juror gets called into the box who has so many similar characteristics to your client — had been arrested for DUI, or in a civil case had lost a leg in a workplace incident, just like your client. Lawyers often think, "Yay, there's a friend! That person will see things our way."

Wrong. They will be first ones to judge your client harshly. If you've ever had recovering

alcoholics on your DUI jury or previously injured people on a civil trial, you know that they do not generally vote in favor of the party to whom they're most supposedly similar. And why? Because the psychological phenomenon called defensive attribution makes us attribute what happened to ourselves to bad circumstances, but what happens to others is bad character. "Hey, what happened to me was a pure accident; you, in contrast, are a reckless dumbass."

And really, falling into this trap is just one example of a bigger problem: **not understanding your juror profile.** It's not demographic; that's a lazy and wrong way to pick a jury. It is **attitudes and life experiences that bear on decision-making in your specific case**. In criminal cases, you want to rate everyone on their authoritarianism; where are they on the scale from Total Fascist to Complete Anarchist? In civil cases, you want to plot everyone on the scale of "Captain of My Fate, Master of My Destiny/Everything In My Life Is Because of Me" (pro-defendant, think Donald Trump) to "My Life Is The Way It Is Because of Forces Outside My Control" (pro-plaintiff). These examples are based on tons of research. There are lots of other attitudes and experiences that bear on your case. FIGURE THEM OUT. Get a trial consultant. Do research. Don't just wing it — "Oh, my client is Latino, so I'll just look for Latino jurors." It's illegal, and what's more, it's ineffective.

Rich Matthews *is a trial consultant and member of the California bar. He works nationwide, based in San Francisco. He is the author of the Juryology blog (Juryology.com), and sometimes tweets @Juryology. His email is Rich@Juryology.com.*

COURT REPORTER AVAILABILITY FOR COURTROOM PROCEEDINGS

by Brenda McCormick

In May, the Ventura Superior Court announced that it could no longer provide a court reporter for civil mandatory settlement conferences, family law hearings or probate hearings, unless requested by a party with a fee waiver. Thus, litigants must bring a reporter to the proceedings if they want a verbatim record. Settlements reached at MSCs can be memorialized in writing using an online form developed by the court, making them enforceable under Code of Civil Procedure section 664.6.

The court recognizes the thoughts of appellate specialist **Wendy Lascher** in the June 2022 CITATIONS, and agrees with the importance of making and preserving an accurate record as well as the challenges for the litigants and the court when a reporter is not present. The absence of a verbatim record of a superior court's proceeding can be fatal to a litigant's ability to have an appeal resolved on the merits.

This change in procedure is only because the court does not have enough court reporters to staff all courtrooms. Unlike in 2012, when the court was no longer able to provide court reporters for some matters, **the current change is** not due to budget cuts but **because of a severe court reporter shortage**.

The labor deficit in the court reporting industry is a nationwide problem, with the number of court reporters in the United States decreasing more than 20 percent since 2012. Experts predict that by 2028 the number will have decreased by half. Every year approximately 1,120 court reporters retire while at most 200 enter the market.

Court reporting schools in California have reduced by 44 percent in the last decade, with only nine such schools operating in 2021. In fiscal year 2019-2020 the Court Reporters Board of California licensed only 66 new reporters, and the number went down to 39 in 2020-2021.

California mandates that a student pass three separate tests to be licensed as a court reporter. The pass rates are generally low, especially for the dictation test. In Nov. 2021, only ten of 53 California applicants passed the dictation examination.

When fully staffed, our court has 28 court reporter positions. Due to multiple retirements and resignations over only the past few months, as of June 20 the court has seventeen court reporters with four on leaves of absence. The remaining thirteen reporters are not enough to staff the proceedings that by law must be reported: felonies, juvenile matters, mental health and requests by parties with fee waivers.

The court has been recruiting for new reporters for over a year. However, despite persistent and vigorous recruiting efforts, the court has been unable to replace the reporters who have left the court.

The California judicial branch is working diligently on the state and local level with labor and government leaders to find solutions to this crisis but there are few short-term fixes.

Brenda L. McCormick *is the Court Executive Officer for the Ventura Superior Court.*

DOES YOUR CLIENT NEED HELP WITH CHILD SUPPORT?

Call us today (866) 901-3212

Our Personalized Services Include:

- Establishment of child support orders
- Establishment of parentage
- In-office settlements/stipulations
- Payroll deductions/assistance with collecting child support
- Partnering with other states to enforce support orders
- Case management/direct access to a case manager
- Modifications
- Arrears determinations
- In-person appointments in a family-friendly, relaxed and private enviroment

Additional Services

- Multilingual staff
- 24/7 access to case information on-line
- Convenient payment options
- Direct deposit
- Walk-ins welcome

Our Attorneys

Dee Dinnie
Managing Attorney
dee.dinnie@ventura.org

Jim Allen
Senior Child Support Attorney
jim.allen@ventura.org

Elina Avagimova
Child Support Attorney
elina.avagimova@ventura.org

Michael Marcelo
Senior Child Support Attorney
michael.marcelo@ventura.org

Michael Ocampo
Child Support Attorney
michael.ocampo@ventura.org

About Us

Ventura County Child Support Services helps thousands of families every year through every step of the process. We offer unique, efficient and effective solutions tailored to your client's individual needs and handle each case professionally. To learn more, please visit us at ventura.org/child-support-services.

TRANSFORMING LIVES THROUGH THE TRUE POWER OF CHILD SUPPORT

22 years of experience.

BLUE SKY REALTY

805-551-6743 • blueskyrealtyca.com

We offer Spanish, French, and Sign Language services.

At Blue Sky Realty we have highly trained professional agents serving the area of Oxnard and the surrounding areas.

Our expertise ranges from **Probate, Trust, and Divorce.**

SCAN FOR MORE INFORMATION

Julio Gomez
Broker/Owner

343 S 5th St Oxnard, CA 93030

Lic # 01260575

CLASSIFIEDS

PARALEGAL – Ferguson Case Orr Paterson LLP, one of Ventura County's premier law firms, seeks a full time, top notch paralegal to join our Trusts and Estates practice group. An ideal candidate has at least five years of experience in trust and estate administration, including drafting probate and trust pleadings, deeds and other legal documents and notices required in trust or estate administration cases. Bonus experience includes preparation of trust or estate accountings and/or preparation of federal estate and gift tax returns. The successful candidate must be highly skilled in management of client and matter logistics, including schedule management, matter and client tracking, follow up, progress analysis and client/team reporting from inception through close of matter and must be able to work independently to manage and execute competing priorities and projects on tight deadlines in an efficient and timely manner. Please send your résumé with a cover letter introducing yourself and describing your experience to *sbarron@fcoplaw.com*. Applicants without relevant experience will not be considered.

PARALEGAL – Top-rated boutique family law firm in Westlake Village seeks a seasoned, five year+ family law paralegal with litigation experience. Emphasis on team morale and excellent legal services to our clients. Must have experience drafting motions, forms, disclosures, discovery and subpoenas. Will consider 1-2 remote workdays/week once the training period is completed. Excellent salary and benefits. Please contact Jennifer Leighton at *jennifer@zonderfamilylaw.com.*

ATTORNEY. Established, successful boutique law firm in Woodland Hills, CA area seeks a Trust and Estate Attorney with solid 3+ yrs. experience, corporate formation and probate knowledge a plus. High energy team, great culture and support in fast moving office. Salary commensurate with experience w/long term opportunity. HYBRID position with remote/in-office options. Send resume: *ramona@rosenthallawcorp.com.*

LEGAL RESEARCH ATTORNEY. Superior Court of CA, County of Santa Barbara seeking to fill a Research Attorney position located in Santa Barbara. Admission to, and active current status in good standing as a member of, the CA State Bar, is a mandatory requirement. For additional requirements and to submit an application, apply online at *sbcourts.org* by July 8, 2022.

CONTRACT ATTORNEY AVAILABLE FOR LEGAL RESEARCH/WRITING. Freelance attorney in Oxnard available to provide legal research and writing services to other attorneys on a project-by-project basis. Former judicial law clerk to federal judge in San Diego for three years. Licensed in California. For more information, please visit *www.meghandohoney.com.*

OFFICE SPACE - Three lovingly restored Victorian houses, designated as Buenaventura Historical Landmarks, across the street from the Court of Appeal in Old Town Ventura. Walk to Surfers Point or fine restaurants on Main Street. Convenient access to the 101 freeway. Off street parking in our lot behind the Victorians. Lease one office or an entire Victorian house. Rents start at $550/month. Common reception area. Landlord pays for utilities, janitorial service and gardening. No CAM charges. Contact Don Parrish, Esq. at 805-340-1204.

CITATIONS
Ventura County Bar Association
4475 Market Street, Suite B
Ventura, CA 93003

PRSRT STD
US POSTAGE
PAID
PERMIT NO. 507
OXNARD, CA 93030