

SAN BERNARDINO BULLETIN

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NEWS OVERVIEW

Judge Grants Debbie Rowe \$27,000 Judgement In Defamation Case

■ A judge has granted Michael Jackson's ex-wife, Debbie Rowe, a \$27,000 judgment against a woman who she says gave false information to reporters about her after the singer's death.

The amount includes \$10,000 in damages for Rowe's emotional distress that she says she suffered after the interview aired on the television show "Extra."

Rowe sued Rebecca White of Key West, Fla., in July. The suit said the woman falsely claimed in interviews that Rowe was only interested in getting money from the singer's family and wasn't interested in gaining custody of her two children with Jackson.

White never answered the complaint. A Los Angeles Superior Court judge entered a default judgment against her Wednesday.

At one point, Rowe sought a nearly \$500,000 judgment, but later lowered the figure.

Kern County Deputy Accused Of Having Sex With Inmates Pleads Not Guilty

■ A Kern County sheriff's deputy accused of having sexual contact with female inmates has pleaded not guilty.

Fifty-five-year-old Anthony Lavis entered the plea Tuesday to multiple charges, including sexual penetration with force and assault by a public officer.

Authorities say Lavis had inmates at Lerdo Jail expose themselves in exchange for food and money and used the sheriff's database to look up contact information for an inmate who had been released.

Investigators say Lavis has admitted to touching one of the alleged victims on the outside of her clothes but said it was consensual.

Lavis's arrest on Feb. 11 came a month after another Kern County deputy, Margarita Young, was charged with having sex with an inmate at Lerdo Jail. Young has pleaded not guilty.

Santa Clara Prosecutors Will Not Charge Officers In Beating of Student

■ Prosecutors say they won't file criminal charges against four Northern California police officers in the beating of an unarmed college student that was caught on video.

Santa Clara County District Attorney Dolores Carr said Wednesday there's insufficient evidence to prosecute the officers.

The probe stemmed from the Sept. 3 arrest of Phuong Ho, a Vietnamese student at California State University, San Jose, during a disturbance call.

A video recorded by Ho's roommate shows officers striking Ho with a baton and shocking him with a Taser. An attorney for one of the officers has said Ho was being combative and noncompliant.

Last month, Carr's office dismissed resisting arrest and other allegations against Ho.

Supreme Court Declines to Hear Case on Religious Displays at Shop Offering Postal Services

■ The U.S. Supreme Court has decided against hearing the case of a church-run store in Connecticut that was ordered to remove religious displays from an area of the shop that offers postal services.

The high court's decision on Monday let stand a ruling made last August by the Second U.S. Circuit Court of Appeals in the case of Sincerely Yours Inc., a Manchester store with a U.S. Postal Service contract operated by the Full Gospel Interdenominational Church.

The Circuit Court ruled that Sincerely Yours must remove religious materials from the postal service area.

The legal case began in 2003 when Manchester resident Bertram Cooper filed a lawsuit saying the church's displays of religious materials violated a constitutional ban against government endorsement of religion.

Court Rejects Appeal of Man's Life Sentence For Drug Dealing

■ A 31-year-old man sentenced to life for killing another Omaha, Neb., man has lost an appeal of his federal sentence of life in prison for drug dealing.

A panel of the Eighth U.S. Circuit Court of Appeals, in a ruling issued Wednesday, rejected the appeal brought by Bobby McCarther.

Among other arguments, McCarther said a U.S. district judge had erred in enhancing McCarther's sentence to life because of two prior drug convictions.

The appellate panel disagreed. In May 2008, McCarther pleaded guilty and was given life in prison for killing 26-year-old Gailyn Wright Jr. in April 2007.

Ex-Atheros Executive Becomes Tenth Person to Plead Guilty In Insider Trading Case

■ A former vice president of California chipmaker Atheros Communications has pleaded guilty to insider trading charges. Ali Hariri becomes the 10th person to plead out of the largest hedge fund insider trading case in U.S. history.

Hariri entered the plea Wednesday in Manhattan federal court. He faces up to 25 years in prison for securities fraud, and conspiracy to commit securities fraud. Sentencing is June 10.

Hariri was among 22 people arrested last fall. The case centered on alleged insider trading at the Galleon Group, a hedge fund run by Raj Rajaratnam, one of America's richest men. Prosecutors say it produced tens of millions of dollars in illegal profits.

The San Francisco resident admitted feeding inside information about the wireless communications company where he worked to a friend who worked at a hedge fund.

Judge Dismisses Suit by Condemned Arkansas Inmate Challenging Execution Law

■ A federal judge has dismissed a death-row inmate's lawsuit challenging Arkansas' new law detailing execution procedures.

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C.A. Upholds Lawyer's Right to Oppose Former Client's Project

By Sherri M. Okamoto
Staff Writer

The Second District Court of Appeal on Wednesday threw out a former client's lawsuit against Reed Smith LLP and one of its partners based on the attorney's actions opposing the client's proposed development project after the representation ended.

Div. Five explained that a lawyer does not forfeit his constitutional right to speak on matters of public interest involving a former client so long as he does not misuse

confidential information garnered from the attorney-client relationship.

Reversing the decision of Los Angeles Superior Court Judge Norman P. Tarle, the panel concluded that Oasis West Realty Inc.'s claim against attorney Kenneth Goldman and his firm was a strategic lawsuit against public participation and therefore subject to a special motion to strike.

Oasis owned the property where the Beverly Hilton stands on Wilshire Boulevard in Beverly Hills. It retained Reed Smith in 2004 to help it redevelop the property with a new hotel, luxury condominiums, and other improvements.

This project required the approval of the Beverly Hills City Council, and Oasis alleged that it specifically sought Goldman's assistance because he was an expert in civic matters and "a well-respected, influential leader who was extremely active in Beverly Hills politics."

Reed Smith represented Oasis in connection with the Hilton project until April 2006, and during that time Oasis claimed that Goldman "was intimately involved" in the formulation of the development plan and Oasis' "overall strategy to secure all necessary approvals and entitlements from the City and its efforts to obtain public support for the Project."

Oasis averred that "Goldman was a key Oasis representative in dealing with Beverly Hills City Officials," and that it had "revealed confidences to Mr. Goldman, which it reasonably believed would remain forever inviolate."

The development proposal was put before the council in June 2006, and the council passed an ordinance approving a development agreement in April 2008.

Shortly thereafter, a political action committee called Citizens' Right to Decide Committee was formed, with the stated goal of putting a referendum on the ballot which would leave approval of the project up to the voters.

Oasis contended that Goldman "switched sides" and "engaged in acts of treachery and disloyalty" by lending his support to the committee's efforts.

Goldman said that he addressed the council to oppose a rule which

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Use of Line-Item Veto to Cut Care Funds Upheld

By Kenneth Ofgang
Staff Writer

Gov. Arnold Schwarzenegger acted within his constitutional authority when he exercised a line-item veto last year that cut funding for health care programs, the First District Court of Appeal ruled Tuesday.

In denying a writ of mandate sought by health care providers and clients of state-provided services, Div. Two ruled that the line-item veto provision of Art. IV, Sec. 10 of the state Constitution allows the governor to further reduce mid-year reductions to appropriations earlier made in the annual budget act.

At issue were some of the \$448 million in cuts made by the governor to 27 line items within AB 4X 1. That bill was enacted in July of last year in response to the fiscal emergency declared by the governor based on the worsening economic conditions that were preventing the state from realizing the revenue assumptions on which the 2009 Budget Act were based.

The cuts made by the governor were criticized by legislators, led by Senate President Pro Tem Daryl Steinberg, D-Sacramento, and then-Assembly Speaker Karen Bass, D-Los Angeles. The critics

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Person of the Week



—Staff Photograph

Marcie Gardner, president of Inland Empire Legal Association of Women

- Pre-law career: At age 15, worked in a donut shop. From age 16 through high school, worked in a bank
- Earned undergraduate degree from the University of Redlands, majoring in political science
- Earned law degree from University of California, Davis; admitted to practice in 1997
- Partnered with Donna Connolly since 2003; handles adult and juvenile criminal defense
- Favorite part of the job: "I love working with the kids — helping them out. It's an extremely vulnerable population."
- Founding president of Inland Empire Legal Association of Women
- Biggest challenge as IE Law president: "How large this county is. When you're trying to start something that is county-wide, it's really difficult to do so in a way that includes everybody. I think that's finally starting to happen."



At The Sidebar

Commentary by J. Amy Pacheco

An Easier Way to Get Answers

I read recently that the Inland Empire is getting a new telephone number. Motorists who dial 5-1-1, I read, can access up-to-date traffic information, allowing them to bypass road obstructions like accidents and stalled vehicles.

Personally, I think the best way to get motorists in the Inland Empire moving is to stop reconstructing all of the roads and freeways at the same time – but that's another story for another day.

I think having real-time traffic updates is a great idea. I've been driving down the freeway listening to the radio and hearing the announcer warning of heavy traffic and an accident as I'm breezing through that very section of roadway at full speed with not a busted headlight in sight. I've also been trapped in gridlocked traffic while listening to a deejay tell the world that my particular freeway is moving along swimmingly. Radio traffic reports are, in my opinion, useless.

While looking up information about the 5-1-1 system, I discovered that there is also a 2-1-1 system available that allows callers to access "essential community information."

I assume the 2-1-1 system grew

out of all the calls received by 9-1-1 emergency operators who were asked things like where to get a late-night burger on a Sunday, or how to operate a cell phone. I understand 9-1-1 lines sometimes get clogged by unbelievable calls like these.

There's already a 4-1-1 system that gives directory assistance, often for a hefty fee. Over the years, 4-1-1 has become the slang term for information, which is technically available by dialing 2-1-1. I think the whole numbering system needs to be revamped.

An information line is a good idea, though. I'd like to see one that people could call just to get answers to questions that haunt them – sort of like Google for the telephone.

For example, there are times when I'd like to ask somebody why so many of my fellow motorists refuse to use their turn signals. It's not like it's hard, or requires any real effort. What's with the need for surprise? Why can't people flick that little finger and let the rest of us know what they're planning to do? I'd sure like to get an answer to that.

I'd also like to ask somebody why freeway entrance signs that

tell you which side of the road the ramp is going to be on are almost always placed where, once you've spotted them, it's too late to change lanes.

Oh, sure, I could dig up the phone number for CalTrans and ask somebody there, but it would be so much easier if I could just dial 1-1-1 or 7-1-1 and get the 4-1-1 from whoever picked up the telephone.

This could be a really useful tool when you need to know something like, say, the proper pronunciation of a word. Voir Dire is a hard word that many people can use help with. About half the lawyers I know pronounce it as, "vwa deer," while the other half says, "vore dyer." Who am I to quibble with lawyers?

People truly need help with pronunciation. My name is pronounced Jay-mee. For some reason, people insist on calling me, Jay-Amy. A few days ago, a woman called me Jay-Amy, and I corrected her. She said, and I quote, "Thank you, Jay-Amy." If only I could have suggested she call the information line.

There are so many questions I'd like to have answered – how do they decide which contestant to "auf" on

Project Runway every week? How do they get those glass balls inside the bottles of Japanese Ramune soda? Why are garbanzo beans called chickpeas? Wouldn't it be great if we could just dial three little numbers and know the answers to all of these questions?

Of course, what I'd really like to have is a number that I could call to get snappy answers to stupid questions. There are so many stupid questions out there. (A friend who works at theme park ranks one of the dumbest as, "What time does the 2 o'clock parade start?" My guess is the people who ask those kinds of questions are the ones clogging up the 9-1-1 lines with non-emergency calls.)

I'd like to have more snappy answers at the ready. Unfortunately, they don't usually come to me until I'm gridlocked on some supposedly moving freeway – far too late for any satisfaction. It would be great if there was a smart-alek I could call for immediate assistance.

Now that would be a useful service. Even 9-1-1 operators could use it. When callers want burgers or instructions, they'd be ready with an appropriate response.

Horoscope

IF YOUR BIRTHDAY IS TODAY: Make it a point of principle to steer clear of issues that do not concern you, especially when they touch on other people's private affairs. The more others confide in you the more you must suspend your natural tendency to be judgmental. People are what they are.

ARIES (March 21—April 20): The Sun in Pisces is not the easiest of influences to deal with, especially as it makes you believe there is something strange going on behind the scenes. Maybe there is but why should that bother you? You'll handle it. You always do.

TAURUS (April 21—May 21): Your prospects will improve dramatically early next week. Before then you must make it your number one aim to rid your life of anything that no longer fits your long-term plan. Be ruthless with others, but more so with yourself.

GEMINI (May 22—June 21): You seem to believe that something of vital importance is about to be taken away from you. There may be no logical reason for why you should feel this way but be on your guard anyway. Your subconscious may be sending you a warning.

CANCER (June 22—July 23): Make the most of cosmic activity in your fellow Water sign of Pisces to get things done. It does not matter what you do over the next 24 hours, so long as you do something. This is no time for just watching the world go by.

LEO (July 24—Aug. 23): You may be in need of a rest but you are unlikely to get it - there is far too much going on in your immediate environment. Fortunately, Mars in your birth sign gives you extra reserves of energy. You're going to need them.

VIRGO (Aug. 24—Sept. 23): Everything happens for a reason, so don't waste time wondering why a certain situation worked out the way it did, just make the best of it and keep moving forwards. One day you'll look back and understand what it was all about.

LIBRA (Sept. 24—Oct. 23): As a cardinal sign you no doubt have high expectations of yourself, but sometimes it is better to sit back and let fate take its course rather than try too hard. This is one of those times. Life will come to you. You don't have to chase it.

SCORPIO (Oct. 24—Nov. 22): You may be amused by a friend's antics but don't let it show. Others may not see the funny side and you don't want to give the impression that you are not being serious about important issues. Some people have no sense of humor.

SAGITTARIUS (Nov. 23—Dec. 21): You know something good is going to happen but you want it to happen now, not later. Try to be patient. A more dynamic phase will arrive towards the end of the month but in the meantime you will just have to bide your time.

CAPRICORN (Dec. 22—Jan. 20): There is no need to disguise your feelings or pretend to be something you are not. Express yourself openly over the next 24 hours. Too often in the past you have kept it all bottled up inside you, but that is not an option today.

AQUARIUS (Jan. 21—Feb. 19): If you keep your eyes and ears open today you will discover something that benefits you in ways you can hardly imagine. Also, try not to take everything that happens too literally. Life is not about black and white, it's about shades of gray.

PISCES (Feb. 20—Mar. 20): If your daily routine is in a rut, if things that used to inspire you now bore you, it may be time for a change. Start something new today, something that gets your heart beating faster. And if it's a little bit naughty, so much the better!

CALENDAR OF EVENTS

Foreclosure Workshop Scheduled

Inland Counties Legal Services will present a one-day workshop titled, "Litigating Foreclosures" March 6 from 8:30 a.m. to 5 p.m. at the University of La Verne College of Law, 320 E. D Street, Ontario. Nationally recognized foreclosure defense attorney April Charney is the scheduled presenter. Workshop fee is \$175 with a requirement that attending attorneys agree to commit 20 hours pro bono work to a legal aid/service program in the attorney's community. Fee includes materials, continental breakfast, lunch and afternoon snack. Reservations are required; space is limited. For information, call (951) 774-4402.

Landlord Tenant Program Scheduled

The joint San Bernardino-Riverside County Bar Associations' joint Landlord-Tenant Section will meet March 9 at 6 p.m. at Nena's Restaurant, 642 N. D St., San Bernardino. San Bernardino Judge John Pacheco is scheduled to discuss "Procedures and Policies in Dept. 31." For information or reservations, contact Bill Garrett by telephone at (909) 889-0631 or by e-mail at billgarrett@dslxtreme.com.

Family Law Section to Meet

"Divorce & the House: The Rules Have Changed" is the topic to be addressed March 10 during a meeting of the San Bernardino County Bar Association's Family Law Section beginning at noon in Dept. 10 of the Central Courthouse in San Bernardino. Topics to be addressed include properly advising clients in foreclosure, assumable loans and media fiction. Scheduled presenters include John Mansour, real estate attorney, and Laurel Starks, divorce real estate ana-

lyst. For information, call the SBCBA at (909) 885-1986, or consult the organization's Web site at www.sbcba.org.

Tax Program Scheduled

"Retirement Planning Opportunities With the Tax Law Changes" is the topic to be addressed March 10 during a meeting of the Estate Planning Council of San Bernardino beginning at 5:30 p.m. at the University Club, University of Redlands, 1200 Colton Ave., Redlands. Keith Baumgart, director of advanced sales for the Pacific Region of Penn Mutual, is the scheduled presenter. Cost is \$40. For reservations, contact Susan Kean at (909) 389-0740 by March 5, or consult the section's Web site at www.epcsan_bernardino.org.

Inns of Court to Meet

The Joseph B. Campbell chapter of American Inns of Court will meet March 10 at 5:30 p.m. at the Arrowhead Country Club, 3433 Parkside Drive, San Bernardino. The group normally meets the second Wednesday of each month, October through June, at the country club. For information, contact Jack Osborn at josborn@hlmlawyers.com.

Riverside Barristers to Meet

The Riverside County Barristers organization will meet March 10 at 6 p.m. at Citrus City Grille, 3555 Riverside Plaza, Riverside. Gregory Dorst, certified addiction specialist and Southern California consultant for The Other Bar, will discuss "Substance Abuse and the Legal Profession." The program is approved for one hour MCLE credit in substance abuse. For information, contact David Cantrell, president, at (951) 788-9410 or by e-mail at dcantrell@lcl-law.com.

Municipal Lawyers to Meet

"To Represent or Not to

Represent, That is the Question" is the topic to be addressed March 11 during a luncheon meeting of the Greater Inland Empire Municipal Law Association beginning at noon at Jean's French Restaurant, 592 La Cadena Drive, Colton. Irma Rodriguez Moisa is the scheduled presenter. Cost is \$18, payable to the restaurant. For reservations, contact Susan Cary by e-mail at scary@cc.sbcounty.gov, or by telephone at (909) 387-5465.

San Bernardino Barristers Mixer Slated

The Barristers Group for San Bernardino will meet March 11 at 5:30 p.m. at the Claim Jumper Restaurant, 12499 Foothill Blvd., Rancho Cucamonga. Prospective members and significant others are welcome. For information, contact Victor J. Herrera at (909) 204-5209 or consult the SBCBA Web site at www.sbcba.org.

Mediation Program Scheduled

"Court-Connected Mediation: Perspectives from the Court, Bar and Civil Mediation Panel" is the topic to be addressed March 12 during a luncheon meeting of the Riverside County Bar Association beginning at noon at the RCBA building, 4129 Main St., Riverside. Riverside Judge Gloria Connor Trask, General Counsel Michael J. Cappelli and ADR Director Barrie J. Roberts are the scheduled presenters. Cost is \$20 for members of the RCBA; \$30 for non-members, including lunch. For information or reservations, contact the RCBA office at (951) 682-1015 by March 9.

Pension Program Slated

"Pension Related Issues and New Retirement Laws" is the topic to be addressed March 18 during a luncheon meeting of the Western San Bernardino County Bar Association beginning at noon at the Old Spaghetti Factory,

11896 Foothill Blvd., Rancho Cucamonga. Attorney Richard Muir is the scheduled presenter. Cost is \$25 for members; \$30 for non-members. For information or reservations, contact the WSBCBA by telephone at (909) 483-0548, or by e-mail at WesternBarAssoc@aol.com.

Gilbert to be Honored

San Bernardino Judge Ronald Gilbert will receive the 'Judge of the Year' Award from the Western San Bernardino County Bar Association March 25 at 5:30 p.m. at the Sierra Lakes Country Club, 16600 Clubhouse Dr., Fontana. Cost is \$50 for members; \$55 for non-members. For information or reservations, call the WSBCBA at (909) 483-0548 or send an e-mail to WesternBarAssoc@aol.com.

Civil Symposium Rescheduled

The civil practice symposium originally scheduled for March 25 has been rescheduled to April 8. For information, call the San Bernardino County Bar Association at (909) 885-1986 or consult the organization's Web site at www.sbcba.org.

Trial Demonstration Slated

"Mock Trial With the Masters" is the title of a program to be presented March 26 from 9 a.m. until 5 p.m. at the University of La Verne College of Law, 320 E. D Street, Ontario. Michael J. Bidart of Shernoff Bidart Echeverria, LLP; Thomas V. Girardi of Girardi & Keese, Brian J. Panish of Panish Shea & Boyle LLP and other nationally recognized trial lawyers are the scheduled presenters. Consumer Attorney Rick Friedman will deliver a lunchtime keynote address. Cost is \$250; \$10 for students. To make a reservation, contact Cindy Gaytan by e-mail at cgaytan@laverne.edu or by telephone at (909) 460-2018 no later than March 22.

Court Allows Medical Student to Retake Licensing Exam

BY A BULLETIN STAFF WRITER

The Third District Court of Appeal has ruled that the Medical Board of California's failure to pass a resolution establishing the passing score for its licensure examination entitled an unsuccessful candidate to retake the exam.

In a decision Monday, Justice George Nicholson explained that the board's acquiescence to the scoring recommendation of the administrator of the United States Medical Licensing Examination did not meet the board's statutorily-mandated obligation to establish a passing score by resolution.

The examination is a three-part test, administered by the Federation of State Medical Boards. In order to practice medicine in California, Business and Professions Code Sec. 2184 requires that examinees obtain "a passing score, established...pursuant to Section 2177."

Sec. 2177 states that a passing score, "as established by resolution of the Division of Licensing," is required for each part of the examination and that an applicant must pass the third section of the exam

in no more than four attempts in order to be eligible for a license.

Yvette Marquez, a graduate of Stanford University and the University of Rochester School of Medicine and Dentistry, registered to take the third segment of the exam for the fourth time in March 2008. At that time, the passing score recommended by the FSMB and utilized by the California board for the third segment of the exam was 184, which was disclosed on the USMLE website.

About one month later, a notice appeared on the website stating that the minimum passing score for the third segment had been raised from 184 to 187. It also said the new passing score would be applied to all examinations administered on or after May 1, 2008.

Marquez took the third segment of the examination on May 13, 2008 and received a score of 184. The board subsequently informed her that she had not received a passing score and therefore was not eligible for a license.

She then sought a writ compelling the board to comply with Sec. 2177, to deem her to have passed the exam and to issue her a

license, but Sacramento Superior Court Judge Patrick Marlette denied her petition.

Marlette found that the board had never formally adopted a resolution establishing a passing score, but that it had implicitly adopted the FSMB's recommended score, satisfying Sec. 2177's requirements.

But on appeal, Nicholson, joined by Presiding Justice Arthur G. Scotland and Justice Ronald B. Robie, disagreed.

"If a statute requires an agency to dot its 'i's' and cross its 't's,' the Legislature's will must be done..." he wrote.

"The Legislature used the term 'resolution' in section 2177 to require the Board to adopt a passing score by means of a formal, memorialized public vote. This single, unambiguous statutory burden obviously serves to keep the Board accountable to the Legislature, the medical profession, medical license applicants, and the public, and it prevents the Board from delegating this responsibility to anyone else."

Nicholson said that allowing the board to impliedly establish a passing score by consistently acquiesc-

ing to the recommended score "would negate the statute and render it meaningless," adding:

"Requiring the Board to adopt the passing score by means of a resolution is the only interpretation that fulfills the Legislature's express intent."

The justice explained that the court could not compel the board to find Marquez's score was sufficient to pass the exam without a valid resolution establishing a passing score, but posited that the absence of such a standard at the time

Marquez took the third segment of the exam rendered her effort a "futile act."

He wrote that "[i]t would be unjust to treat such an examination as a legitimate and, in plaintiff's case, last attempt to become licensed to practice medicine," and said Marquez should be offered another opportunity to take the exam once the board establishes a passing score by resolution.

The case is *Marquez v. Medical Board of California*.

OPPOSE

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required individuals seeking signatures on the referendum petition to carry the 15 pounds of documents related to the project and spent about 90 minutes soliciting signatures for the referendum petition over two years after Reed Smith's relationship with Oasis was terminated.

He denied ever disclosing confidential information to anyone and said he did not believe he ever disclosed that he had worked for Oasis in connection with the Hilton project.

The committee was successful in forcing a referendum, but the project, designated as Measure H on the November 2008 ballot, was approved with 50.41 percent of the vote.

Oasis sued Goldman and Reed Smith for breach of fiduciary duty, professional negligence, and breach of contract in January 2009.

Goldman and his firm filed a special motion to strike, but Tarle found the anti-SLAPP law inapplicable because the gravamen of Oasis' action was breach of an attorney's duties of loyalty and confidentiality.

Writing for the appellate court, Justice Orville A. Armstrong noted "a substantial line of cases" which hold that the anti-SLAPP provisions do not apply to litigation about an attorney's breach of the duty of loyalty, but differentiated them from the current situation.

"In each case, the holding is that the case arose from the lawyer's act in accepting the second representation, rather than the litigation activities the attorney undertook on behalf of the second client," he said, rejecting the proposition that Rule 3-310 of the Rules of Professional Conduct could be violated "if there is no second attorney-client relationship or second employment of any kind."

Armstrong reasoned that Goldman would have violated

Business and Professions Code Sec. 6068—which imposes a duty on lawyers to preserve the secrets of his clients—if the attorney had "even hinted, or had by his conduct implied, that his opposition to the project was based on information obtained while he represented Oasis," but concluded that Goldman had not done so.

"[A] lawyer may take positions adverse to a client, as long as current representation is not compromised...and as long as confidentiality is not compromised," he explained.

Presiding Justice Paul Turner and Justice Sandy R. Krieger joined Armstrong in his decision.

Dirk L. Vincent and Michael B. Norman of Fairbank & Vincent represented Goldman and his firm while H. Steven Schiffres and Robert M. Barta of Rosoff, Schiffres & Barta represented Oasis.

Goldman said he was "very pleased with such a sweeping opinion that vindicates everything that I knew I did right," and that it "feels pretty good to have the court completely and unanimously concur."

Vincent added that he was "always confident" his client's activities related to the Hilton project amounted to protected activity and did not breach any fiduciary duty owed to Oasis.

Schiffres said Oasis was planning to appeal. He predicted that the Supreme Court would not adopt the position that "a party's former lawyer can publicly and openly criticize and seek to undermine the position of his former client that he was previously hired to advance, all with impunity, and even though the case is still pending."

He insisted that once a lawyer is hired, he should owe "an absolute duty of loyalty to his client as long as that case is pending" and should not be able to oppose the interests of that client "regardless of if that opposition is on behalf of another client or on his own behalf."

The case is *Oasis West Realty, LLC v. Goldman*.

VETO

CONTINUED FROM PAGE 1

said the governor was invading the Legislature's authority after a hard-fought compromise that had led to \$15.6 billion in cuts and \$8.6 billion in taxes, borrowing, deferrals, and other adjustments that lawmakers included in the bill.

The petitioners—and the legislators, labor and political groups, and others who intervened or filed amicus briefs supporting them—had argued that a reduction of a previous appropriation is not itself an "item of appropriation" to which the line-item veto applies. But Presiding Justice J. Anthony Kline, writing for the Court of Appeal, said the governor's action represents the type of budget-cutting that the constitutional provision envisions.

"By increasing the Legislature's reduction, the Governor decreases the size of the appropriation," Kline wrote. "What matters is not whether the Governor's act is seen as affirmative or negative, but its purpose and practical effect."

Citing the ballot argument in favor of Proposition 12, the November 1922 measure that created the line-item veto, the presiding justice wrote:

"The difference of opinion between the Legislature and the Governor was not whether the amount of particular items of appropriation enacted in the 2009

Budget Act needed to be reduced, but the magnitude of the reductions. What mattered in the end were the amounts set aside for particular purposes; the Legislature wanted higher amounts than did the Governor. While the Governor's line-item vetoes may be said to have 'increased' the reductions made by the Legislature as to the items at issue, the most significant effect of the vetoes, and their purpose, was to further reduce the amounts set aside by the Legislature. The Governor's wielding of the line-item veto was therefore quintessentially negative, as it lowered the cap on the spending authority for specified purposes, providing precisely the type of check on the Legislature intended by the constitutional initiative that adopted the line-item veto, empowering the Governor 'to reduce an appropriation to meet the financial condition of the treasury.'"

The showdown over the separation of powers saw three of the state's four living ex-governors—Republicans George Deukmejian and Pete Wilson and Democrat Gray Davis—join with business groups in an amicus brief supporting Schwarzenegger. The remaining ex-governor, Jerry Brown, defended Schwarzenegger in Brown's current capacity as attorney general.

Kline, who served six years as legal affairs secretary in Brown's administration before the then-governor appointed him to the bench,

distinguished *Harbor v. Deukmejian* (1987) 43 Cal.3d 1078, in which the Supreme Court struck down the governor's purported veto of a section of a "trailer" bill.

The Legislature normally passes such bills in order to conform substantive law to the budget. The Harbor case involved amending the law governing the Aid to Families with Dependent Children program, changing the date on which benefit payments were to begin.

Deukmejian, who used a line-item veto to reduce AFDC funding, attempted to use the same authority to veto that section of the trailer bill, while signing the bill itself into law. But the high court said there was no authority for a line-item veto of a change in substantive law.

Here, Kline contrasted, the line items in question related to spending, not substantive law, and were thus subject to Art. IV, Sec. 10.

"Whether spending authority is increased or decreased, it is still spending authority," the presiding justice wrote, citing Harbor and other cases. "Although described as reductions in specified items and sections, the amounts set aside in Assembly Bill 4X 1, nevertheless direct the 'specific setting aside of an amount, not exceeding a definite fixed sum, for the payment of certain particular claims or demands....'"

The case is *St. John's Well Child and Family Center v. Schwarzenegger*, A125750.

OVERVIEW

CONTINUED FROM PAGE 1

Marcel Wayne Williams filed a lawsuit claiming that the law prohibits him from learning how his execution will be carried out because some details aren't subject to the Freedom of Information Act. He argued he would have no way to know whether he would be subject to cruel and unusual punishment.

But U.S. District Judge Leon Holmes rejected the argument, noting that the law allows the release of what types of chemicals will be used for an execution, along with the quantity, method and order in which they'd be used.

Michigan Judge Orders Woman Jailed for 24 Hours for Arriving Late for Jury Selection

■ A Michigan judge has ordered a stay-at-home mom to attend a murder trial and serve 24 hours in jail

because she arrived late for jury selection.

Carmela Khury was released Monday after a day and a half as a spectator in Oakland County Circuit court.

The State Court Administrative Office told Judge Leo Bowman he had no authority to punish Khury and to drop the order or face sanctions.

Khury appeared in court an hour late with her 8-month-old and 3-year-old children last Thursday, saying she could not find a babysitter.

Bowman dismissed her from the jury pool and ordered her to return Thursday to watch the trial. He said she would have to spend 24 hours in jail after the case.

Woman Accused of Drugging Husband's Milkshake Faces New Charges in Hong Kong

■ Hong Kong prosecutors Wednesday issued a new murder

indictment against Nancy Kissel, an American who successfully appealed an earlier conviction on charges of drugging and then bashing her husband to death in a luxury apartment complex.

Hong Kong's Department of Justice submitted the fresh murder charges against Kissel to the territory's High Court, which scheduled a 50-day trial starting Nov. 1, said one of her lawyers, Alexander King. Her attorneys had hoped the charges would be reduced to manslaughter.

Kissel was sentenced to life in prison after being convicted of murder in September 2005. However, last month Hong Kong's Court of Final Appeal ordered a retrial, saying she was improperly cross-examined and that the trial judge wrongly allowed hearsay evidence. It told prosecutors to file a fresh indictment.

Her first trial grabbed headlines around the world with its revelations about the breakdown of a wealthy expatriate couple's marriage in this southern Chinese financial hub.

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 OPINION


Sacramento Report

Commentary by Dan Walters

Jerry Brown Is Back, Baggage and All

A few hours after California voters decisively rejected Jerry Brown's bid for the U.S. Senate in 1982, the two-term governor delivered a characteristically enigmatic response.

One widely quoted reaction was, "I believe the people of California would like a respite from me, and in some ways I would like a respite from them."

Another passage, widely ignored, was, "I believe there is room for my ideas and my voice. I shall return....After a period of time, my services will be available in some interesting capacity."

More than a quarter-century later—

having served as state Democratic chairman, run for president (for the third time), hosted a radio talk show, survived two terms as Oakland's mayor and persuaded voters to elect him attorney general—Brown is back in the spotlight as the only Democratic candidate for governor.

Brown was the state's youngest-ever governor when elected in 1974, just 36, but is no longer a wunderkind. He will turn 72 next month and, if elected in November, will be the state's oldest-ever chief executive.

He would have us believe that he's now a battle-hardened political veteran who can make state government func-

tional, "someone with insider's knowledge but an outsider's mind."

But as he defines himself, his Republican foe, most likely former eBay boss Meg Whitman but possibly Insurance Commissioner Steve Poizner, will be mining his vast record for ammunition to redefine him.

Which of Brown's many public personas, one must wonder, will be engraved in the consciousness of voters, many of whom have no personal recollections of Brown's chaotic—albeit highly entertaining—reign as governor three decades ago?

Will it be the environmental visionary

who championed alternative energy and mass transportation and slowed highway construction? The liberal who opposed the death penalty but signed so many tough-on-crime bills that prisons became overcrowded? Or the re-election-seeking politician who opposed Proposition 13 but then embraced it, calling himself a "born-again tax cutter" and slashing state taxes?

These are only a few of the nuggets from his governorship. His post-gubernatorial career, especially as a left-wing presidential candidate and iconoclastic radio talker, is an equally rich environment for opposition researchers. And then there's the Brown family's semi-secret financial ties to the military dic-

tatorship of Indonesia, a book-length saga unto itself.

Either Whitman or Poizner has the vast financial resources to create and peddle a negative image of Brown—and Whitman fired two such blasts Tuesday as his announcement webcast hit the ether.

Whether Brown's world-class verbal skills can overcome a big-bucks opponent and create the lasting image of a practical and effective political manager is the pivotal question of the forthcoming campaign.

(From the Sacramento Bee; distributed by Scripps Howard News Service)



View From the Rockies

Commentary by Jay Ambrose

Different Ideas About Threats to America

The left has a great pretense to intellectual heft, and you don't have to go any further to find it than Frank Rich, a New York Times columnist who was recently pontificating on the possibly disastrous and significant meaning to the American republic of a man crashing his plane into a Texas building housing IRS workers.

I bumped into the piece on a website, Real Clear Politics, that happened to be offering up a link to another piece that day on another possibility of something significant in America's future.

This one was by Niall Ferguson, a British historian now teaching at Harvard and a conservative. He is the real thing, someone with true intellectual heft, and was making a point that coincides interestingly with Tea Party fear of debt.

The Tea Party—that's currently an obsession of the left—was the backdrop for the Rich piece. His argument starts with the assertion that the "frothing anti-government, anti-tax rage" of the crazy pilot, Andrew Joseph Stack III, "overlaps with some of those

marching under the Tea Party banner." When you put that together with a variety of other signals—the reemergence of the John Birch Society and some genuinely nutty remarks by some politicians, for instance—you have to worry about the possibility of right-wing Timothy McVeigh-style terrorism in the days to come, Rich says.

To me, the John Birch Society is a bad joke, and I agree that no public figure should even hint that we might have to have a second revolution to save ourselves from overweening gov-

ernment. But the rest of this is buncombe, starting with Rich's odd reading of a Stack "manifesto" on which he rests much of his case.

There is anti-tax stuff there, to be sure, but it is more a leftist document than a right-wing one. When Stack blasts GM executives, the medical system and drug and insurance companies, there is at least as much overlap with Barack Obama as with anyone in the Tea Party. When he attacks Catholics and organized religion, who does he remind you of? The

leftist comedian Bill Maher, maybe? Here is how he sums up the "capitalist creed"—"From each according to his gullibility, to each according to his greed." Who uses that word "greed" all the time to describe some corporate executives? Why, left-wing columnists and Democratic politicians.

Political violence is always a possibility in America—we've had it before from both left and right—but there is nothing in what's now going on to suggest that some Tea Party version of it is knocking on the door.

Next up, Ferguson. He talks about complex systems, such as the society and government of the United States, and how difficult it is to predict what might bring them to a collapse. Historical analysis often looks for long-term trends, he says, when in fact the cause could be something that comes on a society in a rush, almost as if from out of the blue.

Suppose, for instance, there is some report casting serious doubt on our fiscal policies and an ensuing public concern that those policies just won't work. Enough fear can itself make it tough to sustain those policies, and we could be in for a fall perhaps equivalent to the sudden demise of the Soviet Union.

My own sense is that the administration's response to the recession has entailed serious overreach and my conviction is that our debt threat will be significantly worsened by enactment of an unaffordable health care program. What is needed is a lot more than the currently proposed baby steps that don't do anything to reduce runaway spending by anything important for years and years. We've got to do something significant soon. If we don't, our peril is great. I think the Tea Party understands as much and that it is therefore more a force for rescue than for danger.

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Editorial Excerpts

Indifference to Outrage/Latest CalPERS' Revelations Barely Seem to Register With State Leaders

San Diego Union-Tribune:

Have state leaders become completely inured to state government dysfunction? Apparently. Recent revelations in an ugly California Public Employees' Retirement System scandal appear to have barely raised an eyebrow.

The scandal involves politically connected former CalPERS insiders who secured at least \$125 million in fees for arranging deals between investors and CalPERS, the nation's largest pension fund. These insiders included former CalPERS President William Crist, former state Treasurer Matt Fong and former CalPERS board member Alfred

Villalobos. The latest estimate of the fees paid to Villalobos alone is a staggering \$70 million.

These fees are not illegal. Nevertheless, they stink to the high heavens.

Now this stench has intensified. It's been revealed that Fred Buenrostro, who was chief executive officer of CalPERS from 2002-2008, has gone to work for Villalobos, and that the men's long-term friendship is so deep that Villalobos hosted Buenrostro's wedding.

The Sacramento Bee also reported that a long-running U.S. Securities and Exchange Commission probe of kickbacks, placement agents and New

York's largest pension agency is now examining the relationship between Buenrostro, Villalobos and financier Elliott Broidy, who pleaded guilty in December to felony charges related to nearly \$1 million in bribes to New York state officials. In 2004, CalPERS invested \$50 million with Markstone Capital Group, Broidy's firm.

Where there is smoke, of course, there is not always fire. But the surface similarities between the California and New York scandals are obvious.

Yet to a dismaying degree, the Sacramento political establishment seems detached from and disinterested in this unfolding drama. Cleanup legislation regulating "placement

agents" has been adopted. But despite vast evidence of sleaziness in CalPERS' investment decisions, Gov. Arnold Schwarzenegger and Attorney General Jerry Brown haven't used their bully pulpits to demand a culture change in the pension giant. Brown reportedly is investigating CalPERS over the placement agents. But there is no evidence in the public record that suggests the state's probe is being pursued with anywhere near the vigor of New York state's parallel investigation.

Perhaps another eyebrow-raising decision by CalPERS will jolt Schwarzenegger and Brown into action. Last week, the pension giant announced that it had extended its management contract with State Street Corp., a prominent financial services firm even though Brown sued State Street in October.

California's top law enforcement official alleges that State Street defrauded CalPERS and the California State Teachers' Retirement System of \$56.6 million through dishonest accounting involving foreign currency trades.

Rx for Pot/UC Researchers Offer a Path to Medicinal Marijuana Rules

Santa Rosa Press Democrat:

Anecdotal evidence of marijuana's medicinal value is nothing new.

People with debilitating diseases including AIDS, cancer, glaucoma have long said that marijuana relieves pain and eases other symptoms in ways that conventional drugs don't. Their stories moved voters in 1996 when California became the first state to legalize marijuana as medicine.

What's largely been missing is scientific evidence to back them up. Until now.

University of California researchers conducted the first clinical trials in more than 20 years and reported that marijuana relieves neuropathic pain caused by diabetes, infections, injuries,

strokes and other conditions that affect the nervous system. Researchers also found that pot offers at least short-term relief for symptoms of multiple sclerosis.

These findings are important, not only because they confirm what many people already believe, but because they can help tailor California's notoriously hazy medical marijuana law. If marijuana is going to be treated as medicine — and we think it should be — there should be science-based guidelines for when it's used and what is an appropriate dose.

When a marijuana dispensary in Sebastopol has more members than Sebastopol has residents, and San Francisco and Los Angeles have more

dispensaries than Starbucks outlets, it's obvious that there's little or no real medical scrutiny of users. Clinic Web sites prominently display lists of possible ailments. Newspaper ads and freeway billboards promise physician recommendations with a wink and a nod.

Mendocino County residents have suffered the side effects of Proposition 215 as large-scale growers moved in to take advantage of California permissive marijuana laws.

The county and state both tried to set limits on marijuana farming, but courts ruled that any changes to Proposition 215 must be approved by the voters. The same ruling eventually could doom efforts to regulate dispensaries.

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