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Inside This Issue

The ART of the Closing Argument:
Mark Antony's Speech in Shakespeare's *Julius Caesar*

By Steve Davids

Steve Davids with one of CCTLA's 2014 Honorees, Debbie Keller.

In *Julius Caesar*, the title character dies early in the play, a victim of a political conspiracy. His best friend, Brutus, is one of the conspiracy's leaders. Brutus's complaint is that Caesar was too ambitious, and was attempting to consolidate power in the form of a king. Mark Antony, one of Caesar's advisors and friends, comes upon the scene of the murder. He asks to speak at Caesar's funeral, and promises he will not speak ill of the conspirators. They (unwisely) agree. When they leave, Antony apologizes to the dead Caesar: "Oh, pardon me, thou bleeding piece of earth, that I am meek and gentle with these butchers…" Shakespeare, as always, combines dramatic imagery and poetry with real emotion and understanding of human nature.

Brutus's speech to the people of Rome is logical, reasoned, and dull. But the crowd agrees with his participation in Caesar's death, and accepts his explanation for the murder that Caesar's ambition had to be curbed. They also know that Brutus has a dogged sense of integrity.

Antony then steps up with words that everyone knows, and delivers a closing argument that skilfully (and demagogically) reduces the conspirators to common criminals:

Friends, Romans, countrymen, lend me your ears; / I come to bury Caesar, not to praise him.

Experts in communication tell us that establishing credibility with the audience is critical. They tell us to develop a "contract" with the audience/jury. Antony knows he's good, and therefore he takes the normally very risks step of lying to the audience: He has every intention of praising Caesar. But more important to him is that he knows Brutus's speech was well-received. So therefore he knows that he will lose credibility if he immediately launches into a defense of Caesar. Instead, he claims he will not "praise" Caesar.

The evil that men do lives after them; / The good is oft interred with their bones / So let it be with Caesar.

This is a remarkable statement. On the surface, he appears to again be measured in his assessment of Caesar. But when it says that the evil we do lives after us, he's making a veiled reference to the conspirators, and therefore a veiled warning. The Roman audience may not realize that consciously, but he is planting a seed about evil.

In saying that the good is buried with us, he is telling the audience that Caesar was

Continued on page 14

Mike's CITES

By: Michael Jansen

July 30, 2014 Advance Sheet Summaries

1. **Children's Hospital Central California v. Blue Cross of California et al., filed** June 10, 2014, 2014 DJDAR 7381

Howell Citing:

F: Seventy-five percent of the patients at Children's Hospital Central California (Madera County) are in various Medi-Cal programs administered by Blue Cross of California. Children's Hospital refused to accept Medi-Cal reimbursement rates, and there was no contract between Blue Cross and Children's Hospital for 10 months in 2007 to 2008.

During that 10-month period with no contract, Blue Cross paid Children's Hospital $4.2 million based on Medi-Cal rates. Federal and state law requires a hospital to provide emergency services to people whether they can pay for it or not. Children's Hospital demanded their full billed charges of $10.8 million worth of services provided during the 10-month period of no contract.

Children's Hospital claimed it was entitled to the reasonable and customary value for the medical services rendered based on Health & Safety Code §1300.71(a)(3)(B). The hospital claimed it was entitled to the amounts provided in the "charge master."

Blue Cross demanded in discovery that Hospital disclose the contracts Hospital had with other insurance companies (payors). Hospital objected that the actual payments by other insurance companies were not relevant to the §1300.71(a)(3)(B) determination. Trial court denied Blue Cross' motion to compel the disclosure of the other contracts between insurance companies and Hospital. Blue Cross wanted to put on evidence of the payments accepted by Hospital by other payors, including Medicare. Appellate Court stated: "In 2007 and 2008, less than five percent of the payors paid Hospital the full billed charges."

The trial court ruled that the exclusive standard for calculating the reasonable and customary rate that Blue Cross had to pay Hospital was the charge master pursuant to H & S 1300.71(a)(3)(B). The trial court excluded argument that rates paid by the government (Medicare and Medi-Cal), or any other payor, are reasonable and customary. The jury came back with a $6,615,502 verdict plus $4,138,815.30 in interest for Hospital against Blue Cross.

H: Health & Safety Code

§1300.71(a)(3)(B) is a statute outlining minimum criteria for reimbursement of a claim, not the exclusive criteria. The trial court's ruling that no other evidence could be offered was wrong, case reversed. Case remanded for new trial on damages, including additional discovery.

The market value of the services is the same as the reasonable value, and that value cannot be determined from the provider's billed price. "[A] medical care provider's billed price for particular services is not necessarily representative of either the cost of providing those services or their market value." Howell. (2011) 52 Cal.4th 541, 564.

"…[R]elevant evidence would include the full range of fees that Hospital both charges and accepts as payment for similar services. The scope of the rates accepted by or paid to Hospital by other payors indicates the value of the services in the marketplace. From that evidence, along with evidence of any other factors that are relevant to the situation, the trier of fact can determine the reasonable value of the particular services that were provided, ie., the price that a willing buyer will pay and a willing seller will accept in an arm's length transaction."

2. Digital Music News LLC v. Superior Court of Los Angeles County (Escape Media Group LLC) decided May 14, 2014, 2014 DJDAR 6071.

DISCOVERY DISPUTES:

Trial attorneys, with regard to discovery, keep in mind:

[This case provides some good standard points and authorities.]

A trial court's discovery order is reviewed by the appellate court under the deferential abuse-of-discretion standard. Kerensky v. Doe 6 (2008) 159 Cal App 4th 1154, 1161. An appellate court may

Continued on page 22

The LAW of Closing Argument

By: Steve Davids

While argument may be fertile ground for misconduct, any such misconduct must be objected to at the time; if this is not done, then reversal will only occur on appeal if the misconduct was so egregious that no cautionary instruction could have ameliorated it. (Whitfield v. Roth (1974) 10 Cal.3d 874, 892.)

It is not attorney misconduct, during argument, to incorrectly state a proposition of law, if done in good faith. Further, any such inaccurate statement of law can be either waiver by failure to object and/or move for mistrial, and further by judge's admonition. (See Gotcher v. Metcalf (1970) 6 Cal.App.3d 96, 100.)

I. THE RIGHT TO ARGUE

There is no right to argue in a bench trial, but the court can allow it in its discretion. (7 Witkin, California Procedure, "Trial," 5th Ed. (2008), at Section 163.)

The right to argue the case to the jury is secured by CCP section 607(7), with the plaintiff both commencing and concluding the argument.

It may be reversible error to deny or seriously impinge on the right to argue. (See Hodges v. Severns (1962) 201 Cal.App.2d 99, 114: it is undue interference with the progress of the case for the court to restrict counsel from discussing the law applicable to the facts.)

On the other hand, the trial court still retains discretion to place reasonable limits on the length of argument, scope of argument, division of time between the sides, and the number of attorneys allowed to argue per side. (Guardianship of Baby Boy M. (1977) 66 Cal.App.3d 254, 278: trial court was within its discretion in limiting closing argument to 10 minutes each in non-jury trial.)

II. MISCONDUCT DURING ARGUMENT

While argument may be fertile ground for misconduct, any such misconduct must be objected to at the time; if this is not done, then reversal will only occur on appeal if the misconduct was so egregious that no cautionary instruction could have ameliorated it. (Whitfield v. Roth (1974) 10 Cal.3d 874, 892.)

Additionally, Frederics v. Paige (1994) 29 Cal.App.4th 1642, 1649 held that *the aggrieved party is required to both object and request a curing admonition. (Ibid.)* It is impermissible to wait to see if an adverse verdict is received before claiming misconduct. *(Ibid.)* It is generally held that if an objection is timely made and the court instructs the jury to disregard the improper remark, then any error is deemed cured. (Wank v. Richman & Garrett (1985) 165 Cal.App.3d 1103, 1114-1115.)

A. Mis-statements of the Law

It is not attorney misconduct, during argument, to incorrectly state a proposition of law, if done in good faith. Further, any such inaccurate statement of law can be either waiver by failure to object and/or move for mistrial, and further by judge's admonition. (See Gotcher v. Metcalf (1970) 6 Cal.App.3d 96, 100.)

1. Argument Outside the Record

Arguing facts not established by the evidentiary record is impermissible. (Garden Grove School District v. Hendler (1965) 63 Cal.2d 141.) Even if the subject referred to would have been admissible, it is still misconduct to refer to it if it is not in the record. (Shaff v. Baldwin (1951) 107 Cal. App.2d 81, 86: argument using original portion of deposition that was later corrected.)

In Garden Grove, counsel argued outside the record and alluded to his own personal knowledge, as well as

indulging in insulting and derogatory characterizations of the opposing side. Personal attacks on the character and motive of the opponent are always misconduct. (*Id*., at 143.)

However, if a statement is technically improper but considered minor in nature, there is no misconduct. (Walling v. Kimball (1941) 17 Cal.2d 364, 367: accusation that opposing counsel is trying to confuse the issues.)

An argument—based on evidence of coaching—that the opponent's witnesses were "brainwashed" was NOT misconduct. (Marcus v. Palm Harbor Hospital (1967) 253 Cal.App.2d 1008, 1012.)

However, look at Taylor v. Aetna Life Insurance Co. (1933) 132 Cal.App. 434, 439: Plaintiff argued that the defendant cared only about collecting premiums and not paying claims, and that counsel trembled to think about his own family's future, since insurance policies might end up being no protection. This kind of argument clearly asks the jury choose sides between the parties, instead of acting as impartial judges of the facts.

Several years ago, in a case tried by my office, the defense attorney argued something along the lines of "My role as defense attorney is akin to that of a law enforcement officer, and involves ferreting out improper or unworthy claims." This is a difficult one. Counsel is aligning himself with law enforcement and using innuendo about criminal conduct. It may also be an impermissible attempt to ask the jury to take sides and not be fair and impartial judges of the facts.

It's an old technique, but sometimes the defense in a criminal or civil case will argue: "My argument is almost done. My opponent, as the judge has told you, gets the chance to present final argument. That is his / her right. But all I ask is that when you're listening to my opponent's arguments, think in your mind: what would I would be saying in response?" This definitely asks the jury to assume the role of one of the attorneys, which is completely inappropriate and should be objected to.

Argument on damages sometimes runs a risk of straying outside of the record. However, argument for *per diem* recovery in a personal injury case is proper, even if there is nothing in the record to support the baseline figure of $X per given interval of time (day / week / month, *etc*.) (Beagle v. Vasold (1966) 65 Cal.2d 166.)

My advice is to always do a motion *in limine* regarding the McDonald's "hot coffee" verdict, so that the defense doesn't get an opportunity to discuss it in *voir dire* or closing argument. It is completely outside the record.

2. Abusive Argument

Love v. Wolf (1964) 226 Cal.App.3d 378 is a textbook in abusive argument and tactics, and how they lead to reversal. In a pharmaceutical product liability case, the plaintiff's attorney referred to the product as a "death-dealing drug," and the defendant as a "con outfit." Defendant attorney was, at various times, called "an idiot" and "a laughing hyena." Reversal would have been unnecessary if the trial court had controlled the conduct, instead of demonstrating a "puzzling" and "inexplicable" lack of control.

Abusive argument extends to invocation of societal prejudice. (Stone v. Foster (1980) 106 Cal.App.3d 334, 355: Plaintiff improperly characterized Defendant as "disgraceful" because he was trying to appear impecunious even though he had substantial assets.)

Appeals to racial/cultural prejudice are obviously out-of-bounds, but can be injected in arguably indirect ways. It is

improper then for a defendant to argue that plaintiffs were greedy, and that there was no evidence that they were citizens, and that in return for the privileges offered by our society they had made a mockery of our medical and legal systems, all of which were not-so-veiled references to the fact that plaintiffs were Jewish. (Kolaric v. Kaufman (1968) 261 Cal.App.2d 20, 25-27; see also Spear v. Leuenberger (1941) 44 Cal.App.2d 236, 244: improper reference to a witness as an alien.)

3. Aggressive Argument

There is sometimes a fine line between abusive and aggressive argument. "Counsel is granted wide latitude to discuss the merits of the case, as to both the law and the facts, and is entitled to argue his or her case vigorously and to argue all reasonable inferences from the evidence." (Nishihama v. City and County of San Francisco (2001) 93 Cal.App.4th 298, 305-306.) In that case, the plaintiffs' counsel (1) exhorted the jury to "send a message" to the city, (2) compared the plaintiff's pain to being tortured, (3) told the jury to decide how "we as citizens deserve to be treated" by the government, and (4) argued that "the city apparently believed it was better to allow someone to be hurt than to require city employees to do their jobs…" (*Id*., at 304.) This was considered borderline improper because punitive damages are not recoverable against a government entity. However, the First Appellate District, looking at the entire record, felt that the argument could be understood as a request to vote for Plaintiff, and therefore was not necessarily improper.

Counsel is also allowed leeway when engaging in "permissible commentary about the testimony of defendants or the credibility of defendants' witnesses." (Finch v. Brenda Raceway Corp. (1994) 22 Cal.App.4th 547, 556: in a wrongful termination case, argument included comments about the defendant's wealth and alleged bad character.) The key is often how closely the allegedly improper argument tracks with the facts and evidence. When counsel is arguing that the facts compel a certain conclusion, that conclusion could well be permissible argument even if it is stated in harsh or dramatic language.

The job of the appellate court in this regard is to examine "the nature and seriousness of the remarks and misconduct, the general atmosphere, including the judge's control, of the trial, the likelihood of prejudicing the jury, and the efficacy of objection or admonition under all the circumstances." (Sabella v. So. Pacific Co. (1969) 70 Cal.2d 311, 321.)

4. References to Wealth and Resources

It is improper to appeal to jurors' self-interest and to get them to choose sides against one party. In Brokopp v. Ford Motor Co. (1977) 71 Cal.App.3d 841, 861, the plaintiff improperly argued that because Plaintiff was in a Veterans Administration hospital, "we, the taxpayers" were paying for his care while the defendant should have been. *While this was misconduct, it was not prejudicial because defendant failed to secure a definitive ruling or a curing admonition.*

DuJardin v. City of Oxnard (1995) 38 Cal.App.4th 174, 179 held it was improper for the city's attorney to argue that an adverse verdict on liability would lead to a reduction in public services. This is a favorite tactic of government defense counsel, and this case should be the basis of a motion *in limine* to preclude all such services-based arguments.

It was reversible error for a defendant to argue that he was a 69-year-old retired

machinist and that Plaintiff's request for $19,000 would place him in an indigent home, especially in that the defendant was insured. (Hoffman v. Brandt (1966) 65 Cal.2d 549, 552.) Further, the trial judge's equivocal admonition that these statements were not evidence was *insufficient* to cure the deliberate and very prejudicial error. (*Id*., at 554.)

This principle of no reference to impecuniousness is applied even-handedly. In Self v. General Motors (1974) 42 Cal.App.3d 1, 13-14, it was misconduct for the plaintiff to argue that the defendant motorist (who had settled pre-trial) had limited insurance. This not-so-veiled attempt to get the jury to apportion more fault to GM was improper.

Obviously, references to major corporations' size, wealth, or power are inappropriate. (Simmons v. So. Pacific Transportation Co. (1976) 62 Cal.App.3d 341, 351.) References to an injured plaintiff as "the little guy" or a financial underdog battling a wealthy corporation can be so prejudicial that they are not cured by an admonition or instruction. (Seimon v. So. Pacific Transportation Co. (1977) 67 Cal. App.3d 600, 605.)

When punitive damages are involved, however, the courts may allow more latitude to argue the defendant's wealth, and to argue for the need to punish the defendant. (Las Palmas Associates v. Las Palmas Center Associates (1991) 235 Cal. App.3d 1220, 1242.) But the defendant's argument (in a punitive damages case) intimated that the plaintiff could influence judges through political contributions, and suggested that defendant would donate to charity any punitive damages it received on its cross-complaint, were both instances of blatant misconduct. *Any prejudice, however, was cured by an appropriate admonition.*

5. Soliciting Jury Empathy

It is erroneous to ask the jury to place itself in the plaintiff's position, as it suggests a measure of damages that is unauthorized by law. This is called the "Golden Rule" argument, and is improper. (Neuman v. Bishop (1976) 59 Cal.App.3d 451, 483.)

In Horn v. Atchison, Topeka & Santa Fe Railway Co. (1964) 61 Cal.2d 602, there was no reversible error due to lack of objection, but the Supreme Court cautioned that it was improper for the plaintiff's counsel to ask in closing, "How much do we want to give somebody we love, somebody who is near and dear to us. How much would we want to get ourselves if we were in that kind of a situation?" (*Id*., at 608.) Asking jurors to place themselves in the position of the plaintiff's family members is asking them to place themselves in a position that would have disqualified them from acting as jurors. (*Id*., at 609.)

5. Referring to Inadmissible Evidence

It is improper to refer to settlements with third persons, although no prejudice may be found if the remark is incidental and cured by an admonition. (Tobler v. Chapman (1973) 31 Cal.App.3d 568, 575.)

Misconduct can occur if improper emphasis is placed on a pre-trial settlement, even though the mere fact of settlement maybe admissible as to a witness's bias. (Granville v. Parsons (1968) 259 Cal. App.2d 298, 302: "They know who was the guilty party in this accident…")

Reference to collateral source payments is misconduct. (Garfield v. Russell (1967) 251 Cal.App.2d 275, 279.) But this was decided long before Howell, *et al.*

Reference to the result of other civil or criminal litigation is misconduct. (Menchaca v. Helms Bakeries (1968) 68

Cal.2d 535, 544: defense counsel argued that he had never heard of a similar case with recovery even a fraction of what the plaintiff was requesting.)

Some counsel go to bizarre extremes to effect an "end-run" around a court ruling. In Cote v. Rogers (1962) 201 Cal. App.2d 138, defense counsel was unsuccessful in getting a magazine article admitted, but then succeeded in getting the article printed in a local newspaper and discussed on local radio as a way of trying to influence the jury.

It is improper to utilize inadmissible exhibits to illustrate a closing argument. (Weisbart v. Flohr (1968) 260 Cal.App.2d 281.)

It is also considered particularly objectionable to suggest the existence of facts pertinent to the case without making any effort to actually prove them. This is trial by innuendo. (Kenworthy v. California (1965) 236 Cal.App.2d 378.)

6. Miscellaneous Misconduct

Commenting on a witness's exercise of a privilege is forbidden. (Evidence Code section 913.)

However, with regard to self-incrimination, see A&M Records, Inc. v. Heilman (1977) 75 Cal.App.3d 554, 566: when a defendant invokes self-incrimination privilege at deposition, a proper balancing of the Fifth Amendment and the Discovery Act "compels the court to prevent a litigant claiming his constitutional privilege against self-incrimination in discovery and then waiving the privilege and testifying at trial.

Such a strategy subjects the opposing party to unwarranted surprise. A litigant cannot be permitted to blow hot and cold in this manner."

Nothing in Evidence Code section 913 forbids a plaintiff from asking a defendant questions at trial as to which the defendant asserted the Fifth Amendment privilege at deposition. That section specifically contemplates that an assertion of privilege is made at trial. When Plaintiff asks the question, the defendant can then claim the privilege.

Consistent with Evidence Code section 913(b), the court then "shall instruct the jury that no presumption arises because of the exercise of the privilege and that the jury may not draw any inference therefrom as to the credibility of the witness or as to any matter at issue in the proceeding." In this fashion, the defendant's rights are fully protected.

And it is misconduct, in closing argument, to address a particular juror individually or by name. (Neumann v. Bishop (1976) 59 Cal.App.3d 451, 474-475.)

III. CONCLUSION

And, while it might seem obvious, walking out of the courtroom during the trial is considered misconduct. (Bennett v. Unger (1969) 272 Cal.App.2d 202, 211.)

Join CCTLA at the 10th Annual Mustard Seed Spin September 28, 2014

CCTLA again is a sponsor for this event, with a recent donation of $1,500

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"Pillah" Talk©

with Judge Brian R. Van Camp (Ret.)

An ongoing series of interviews with pillars in the legal community
By: Joe Marman

Judge Brian Van Camp, previously recognized as a CCTLA Judge of the Year, regularly contributes to the CCTLA Spring Fling.

Q. I know that you originally started your career after graduating from Boalt Hall Law School in Berkley in 1965. Where did you work first?

A. I first served as a deputy state attorney general, then moved over to the Sacramento Redevelopment Agency as its attorney. Between 1970 and 1974, I served in Governor Reagan's administration, first as assistant secretary, and then as acting secretary of the Business & Transportation Agency, serving in Governor Reagan's Cabinet. After he appointed the permanent secretary, I was appointed state commissioner of corporations, regulating the securities industry and securities offerings. Following state service, I joined Diepenbrock, Wulff, Plant & Hannegan, then formed my own firm, Van Camp & Johnson. After 13 years, we merged with Downey Brand. I was appointed to the Superior Court by Governor Pete Wilson in 1997. In 2012, I stepped down from the bench and am now engaged in mediation, arbitration and judicial reference, affiliated with the statewide firm of ADR Services, Inc.

Q. How did your 16 years on the bench make you feel about a jury's wisdom? Sometimes, when I am in on the losing end of a trial, I start to think that I cannot trust a jury to come to the right conclusion.

A. I'd like to answer that on both the courtroom level and as the jury's role in our democracy. First, I highly respect the opinions of the jury. Scientific studies show that the more people involved in making a decision, the better the decision. A 12-person jury is better than a six-person jury, and jury's decision is almost always better than a judge's. Juries infuse pragmatism and the common sense of the community into the decision. Although I've sometimes been a little surprised by their verdicts, I've rarely granted a JNOV.

On an institutional basis, I am reminded of Thomas Jefferson's comment that the jury "is the only thing yet imagined that is capable of anchoring a nation to its constitutional principles." And Ben Franklin answered a young inquirer as to the type of government chosen by the Convention, "A republic, if you can keep it." The role of the courts should be to guarantee that our republic remains the instrument of the people, not a fiefdom of the powerful.

Our country has survived for 238 years, while so many other young democracies around the world have died aborning, some of them as we are speaking today. I believe that we have remained a strong democratic republic because of the independence of our courts and the ability of the juries to rein in power when needed.

JUDGE BRIAN VAN CAMP (RET.)

Q. Do you have any opinion on whether the roles of the federal and state courts should change in any way?

A. The 10th Amendment provides that those rights not specifically delegated to the federal government, or prohibited to the states, are reserved to the state or the people. Historically, this has meant that the states exercise authority and carry out programs involving criminal law, health, welfare, education and the like. Yet Congress and the Executive are daily expanding the reach and activities of the federal government into so many of these areas, which means the federal courts are now having to deal with what were historically state and local issues. In the area of criminal law alone, we've now got thousands of federal criminal statutes, many of them duplicating state criminal statutes already on the books. The enormity of the agencies, laws and programs in fields like health, welfare and education, ignoring for the minute unending duplication, almost defies description. With a 17 trillion dollar debt, a dysfunctional immigration system and continuing aggressions by jihadists and Vladimir Putin, one would think our federal officials would have enough on their plates already.

Q. Do you believe that our state courts should change in any way?

A. Litigation for the average American is just too expensive. A recent ABA study found that middle and lower income persons in our country have un-met legal

needs running to about $10 billion per year. It's said that taking an uncontested divorce to trial costs the average wage-earner about 50% of his or her yearly income. And for many attorneys, clients just don't have enough money to adequately fund their cases.

It's often a high-wire act to be able to fund enough discovery, hire experts and present a credible case. Then, for the legislature to limit court funding, resulting in increased fees, like the new $60-per-motion in limine fee, only adds to the problems. The legislature should support the courts adequately to avoid these kinds of measures.

I also think we should make room for a legal professional who has less than a full three-year legal education. The first and second-year law clerks in so many of our firms demonstrate every day that many legal functions can be performed without either three years of school or a bar passage.

With a system like the old "baby bar" that assures some minimum level of competence, paralegals and persons with a two-year legal education can handle many of the more routine matters now handled by first- and second-year lawyers.

The big firms, with the "bet-the-company" cases, will still want the full, three-year graduate with bar passage, but if you reduce the time of schooling by one-third (at $50,000+/yr.), you should be able to reduce the costs of legal services, thereby helping to close the gap of the legally under-served public.

Q. What do you think of the Citizens United decision giving corporations the same rights as an individual to contribute to election campaigns?

A. Citizens United affirmed two, long-standing principals: a) that the ability to contribute funds to a political campaign is a protected means of speech guaranteed by the First Amendment, and b) that associations, whether Planned Parenthood, the Sierra Club, the local rod & gun club, the SEIU/UAW or a business organization have the same rights of speech as you and I do. Following previous case law, the court struck down the law that prohibited this right to trade unions and corporations. Nothing in the case prohibits Congress from otherwise regulating this political activity, such as requiring full disclosure or limiting the amount of contributions, nor should it.

Q. Do you recall any brilliant moves by any attorneys or great decisions by local judges?

A. Chris Whelan tried a constructive termination and harassment in my court for his client, a young woman who worked at a construction material wholesaler. He was presented with a jury panel full of professional women—CPAs, professors, corporate executives—just the kind you'd think would be very women-empowerment-oriented. Whelen excused all of them, winding up with largely blue-collar working men in their 50s and 60s. I thought he was crazy, until he got a verdict of over $2 million. He explained later that he thought the professional women may have felt his client should have "manned-up," but the older, blue collar fellows would take a more paternal, protective attitude toward her. He was obviously right.

Sam Grader was defending a trucking company whose truck driver had swerved on the freeway and hit the plaintiff. The president of the trucking company arrogantly denied almost everything. By contrast, the plaintiff was a very decent, humble fellow who came across well. Grader remained down to earth, soft-spoken and did not overstate his case, and won. My post-trial evaluations from the jurors showed that they all thought that, notwithstanding the off-putting nature of Grader's client, his respectful, direct and honest representation of him carried the day. My advice to lawyers is to show respect to the jurors, don't over-state your case and stand up straight.

Q. I understand that you are going to England to study British law at Cambridge. Do you follow world politics also? What do you think of what is going on the Middle East?

A. Although I understand that 50% of Americans believe that the US should be more isolationist, I think it was wrong not to have left some kind of monitoring force in Iraq, much as we did in Germany, Japan and Korea. Our men and women accomplished over 90% of the job in Iraq, and staying just a bit longer before pulling out would have paid immense dividends. Seeing all the chaos there now, after purchasing peace in that country with so much of our blood and treasure is a great disappointment.

Even though Thomas L. Friedman of *The NY Times* commented about George W. Bush entering the war with military force in Iraq (as many world leaders did willingly, and the U.S. Senate—by a vote of 77-23, with Clinton & Kerry both voting to enter it), he said two years into the war that, if we can establish a foothold for democracy in the Mid-east, it would be worth it.

Establishing a beach-head for a democratically-run government could give ideas and encouragement to other freedom-loving people in the region who might make similar efforts. It turns out he was right, in that just a few short years later, we saw the so-called "color revolutions" in Iran, Libya, Egypt, Syria and the rest. The shame of it was that we turned a deaf ear to those "Jeffersonian democrats" and "Hamiltonian republicans," so many of whom went to prison or worse, and we're still facing tyranny and jihadists in the region.

Q. How do you like being a mediator and arbitrator with ADR Services, compared to being a Superior Court judge?

A. I'm enjoying the relative flexibility of mediation. Although I defend the adversarial system, I find I have more flexibility to fashion remedies as a mediator and sometimes even in arbitration. Although I'll admit that at times, I miss having the jury there to decide the facts. As I said, often, more eyes and ears can produce a better result.

Q. What other plans or projects do you have now that you have left the bench?

A. I have been appointed by Chief Justice Tani Cantil-Sakayue to serve on her Informed Voter Project, encouraging voters to put aside their political biases when voting on judicial candidates and look for persons who are committed to following the law, as opposed to pursuing a narrow political cause.

I've spoken to civic clubs and on KVIE about such. I'm also teaching at two Pincus Seminars for lawyers in San Francisco this fall, and I'm volunteering at in the mock trial programs at McGeorge and Boalt Hall.

Q. Wow, you are so busy, what do you do to relax?

A. Lake Tahoe is one of my wife's and my favorite places to go.

TIPS from TOM

By: Tom Lytle

Going the Extra Steps Can Be Difference In Winning, Losing

Often on a police report of traffic collision, there will be no witnesses noted. However, sometimes a witness will hand a business card or name, phone number and address scribbled on a slip of paper to your client or his spouse at the scene, and the witness may well confirm your client to have had a green light. Don't forget to ask.

Another fact not always shown on the report of an intersection collision is the presence of a parked truck, shrub or business sign which obscured the sight lines between the involved vehicles. On a vehicle collision case, I often drove to the intersection on lunch hour or time of day of the collision, to see the lay of the land.

When the potential client was injured while near or using a product, I often, with clearance and help from the compensation insurer, would go to scene to see the product myself. A fellow tried to describe through my interpreter how he had lost the distal phalanges of his index, middle and ring fingers, left hand. A pilot friend flew me to Crescent City, and the ranch foreman took me by his auto to the scene.

Once there with my camera, I learned the machinery was a silage blower, powered by the power take off of a wheel tractor that blew corn, hay and alfalfa up a cylinder and into a silo. With wear and tear of gravel and dirt, a section of the blower housing near where the line of travel of the silage changed from horizontal to vertical was worn, and holes developed there. Alongside a barn there were five of those parts, all with holes worn in them. I took lots of pictures and told the foreman that those worn parts were essential to the case: do not lose them. Later on inspection by all parties, experts and counsel, the five parts had disappeared.

Another such incident was the claimant's loss of index, middle and ring finger, as well as much of the palm of his gloved right hand, on a Brussel sprout processing machine near Watsonville. Neither my interpreter nor I could understand the working or construction of the machinery involved. Only with assistance of the Industrial Indemnity compensation carrier claims person was I able to visit the building where the accident had occurred and note the arrangement of the work site and the fact that there was no "dead man" switch for the injured worker to have saved his entangled right hand.

Moral of the story: When a potential client appears in your office, often the

Continued on next page

Tips from Tom

Continued from page 11

only way to determine whether or not to take on the case is to visit the scene to determine the operative facts of the accident.

A closing random thought. Even today with certified interpreters, I have found that a skilled interpreter accustomed to dealing with criminal and automobile accident cases will be unable to serve on an architectural, railroad FELA or a Jones Act Seaman's case because the phraseology of the specific industry may "stump" the interpreter. Also, an Argentine-born Spanish interpreter may not be fully conversant with the usages of Mexican-born injured parties from the various Mexican states of Jalisco, Zacatecas, Michoacán, Guanajuato or Colima, typically found in the Sacramento area work place.

The Art of the Closing Argument

Continued from page one

good in ways they don't realize. Which is a way of contradicting what he just said about the good being buried with Caesar. But this allows him to set up the main theme of his closing argument: Caesar was all about the people of Rome. The clear lesson is to develop your theme early, and continue to emphasize it for the duration.

The noble Brutus / Hath told you Caesar was ambitious: / If it were so, it was a grievous fault, / And grievously hath Caesar answer'd it.

Like any lawyer worth his salt, Antony knows never to acknowledge the other side's argument unless he is speaking hypothetically: "if it were so…" But the main point here is that he is landing his first blow, and it's a good one: proportionality. Okay, Caesar was ambitious. But how does that equate with being murdered??

In lines that cannot be delivered with any trace of sarcasm, Antony starts to marshal his evidence in support of Caesar.

Here, under leave of Brutus and the rest-- / For Brutus is an honourable man; / So are they all, all honourable men— / Come I to speak in Caesar's funeral.

It is very interesting that Antony opts to go straight for subjective emotion, perhaps to contrast the earnest but boring address of Brutus:

[1.] He was my friend, faithful and just to me: / But Brutus says he was ambitious; / And Brutus is an honourable man.

Like any advocate, Antony is good to his word that he will not speak ill of the conspirators, but he now asks the crowd to embrace a binary view of this political dilemma created by Caesar's murder. He puts his credibility on the line to reveal his personal, subjective feelings for Caesar. This is much more likely to incite sympathy with the audience than Brutus's strictly logical "I slew him because he was ambitious" trope.

Antony knows that reason must also be mixed with emption in order to persuade. But he now has put his own credibility on the line by expressing his feelings for Caesar. This begins to win the crowd over, because it likes the fact that Antony is investing himself in what he is doing. When we like what someone is saying, we accept their subjective judgments. Antony knows that.

[2.] He hath brought many captives home to Rome / Whose ransoms did the general coffers fill: / Did this in Caesar seem ambitious?

It is interesting that Antony's second point now takes a quick turn toward practicalities, and money. His rhetorical question shows some guts: many folks could have responded, "Yes, it was ambitious! All leaders want money in their exchequers to keep their populace happy."

[3.] When that the poor have cried, Caesar hath wept: / Ambition should be made of sterner stuff: / Yet Brutus says he was ambitious; / And Brutus is an honourable man.

It is a testament to Antony's persuasiveness that people in the crowd didn't mumble, "Well, it were very nice of Caesar to have cried, but what did he DO to help the poor?!" But more important is that these first three points all emphasize the central theme that Caesar was not ambitious. Far from it, all he cared about was the people of Rome. Plus, the image of the great Caesar weeping at the plight of the destitute personalizes him to the crowd. This was Brutus's own grievous fault: in his speech, all he could do was talk about Caesar's ambition. It was effective at the time, but very one-dimensional. Antony has many more sides to his argument.

Antony knows he has an ace in the hole, and it's time to play it. What is fascinating is that he did not decide to use it first. He led up to it. We, as lawyers, tend to make our best point first so that people will remember it. But Antony is canny enough to know that turning a crowd takes finesse, and incremental steps.

Earlier in the play, while the conspirators were doing their conspiring, offstage we heard loud shouts of approval from the crowd. In a public demonstration (and probably carefully orchestrated), Antony three times offered Caesar the crown of a king, and all three times Caesar brushed it aside. This all happened sometime before. So Antony reminds the crowd:

[4.] You all did see that on the Lupercal / I thrice presented him a kingly crown, Which he did thrice refuse: was this ambition? / Yet Brutus says he was ambitious; / And, sure, he is an honourable man. / I speak not to disprove what Brutus spoke, But here I am to speak what I do know.

The contrast betwixt Antony and Brutus cannot now be more glaring. Antony knows he has a devastating piece of evidence, and he masterfully follows it up with a poetically beautiful and emotional dose of plain old guilt:

You all did love him once, not without cause: / What cause withholds you then, to mourn for him? / O judgment! thou art fled to brutish beasts, And men have lost their reason.

The final line about judgment is particularly amazing. He is attacking the crowd for being brutish beasts that have lost their reason, but he de-personalizes it. He speaks in general tones so that the crowd doesn't even realize he is taking a shot at them. He makes these lines the equivalent of talking to himself. And in the very next lines, we gather his purpose:

Bear with me; / My heart is in the coffin there with Caesar, And I must pause till it come back to me.

Antony is now "taking a moment." He is showing the crowd how overwrought with emotion he is for the death of his mentor and friend. But, is his combination of guilt and anguish also partly playacting? It seems to me he is taking a break to gauge the crowd's reaction, and in fact he scores:

[FIRST CITIZEN: Methinks there is much reason in his sayings.]

The tide is quickly turning, and now Antony knows it. Shakespeare is also commenting on the fickle nature of the crowd, which cheered and agreed with Brutus's defense of why he killed Caesar. This is, in many ways, a lesson for the ages in demagoguery.

Antony knows not to let the crowd off the hook, and he plays on the heartstrings:

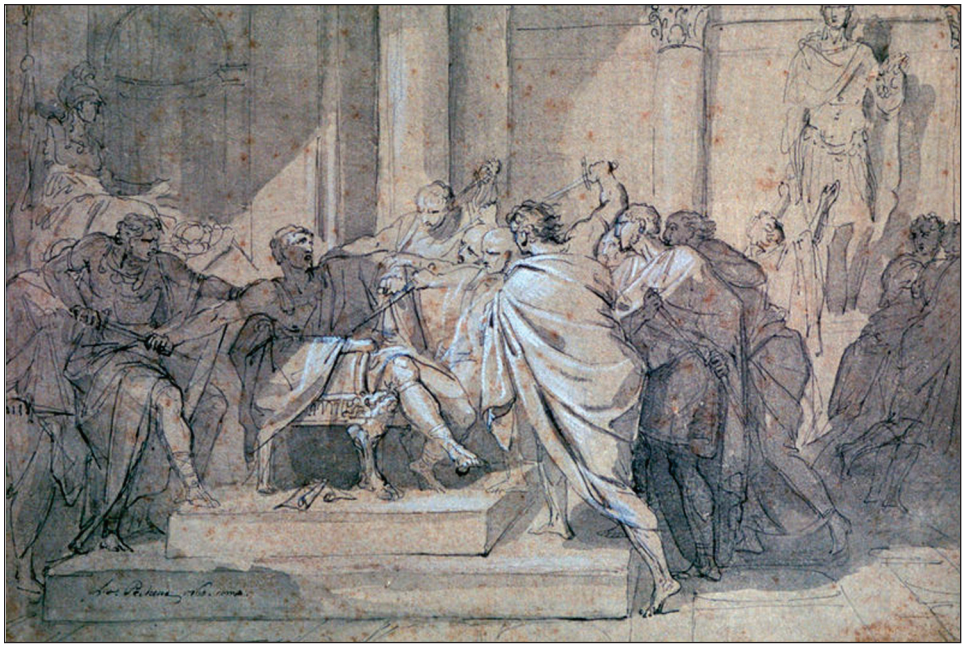
But yesterday the word of Caesar might / Have stood against the world; now lies he there. / And none so poor to do him reverence.

But he remembers himself quickly, and uses his verbal dagger against the conspirators:

O masters, if I were disposed to stir / Your hearts and minds to mutiny and rage, I should do Brutus wrong, and Cassius wrong, Who, you all know, are honourable men: I will not do them wrong; I rather choose / To wrong the dead, to wrong myself and you, Than I will wrong

such honourable men.

Antony continues to praise the conspirators after having just rebutted their ambition arguments. He is showing the crowd how reasonable he is. And, fascinatingly, he continues to do the opposite of what he says he is doing. As we will see, he will continue this strategy to the end. Shakespeare's history plays, particularly, show the playwright's his keen political acumen. I believe Shakespeare was showing us that emotional deception is a key part of persuasion. This is a part of his genius.



THE DEATH OF JULIUS CAESAR

Antony has more arrows in his quiver, and the next one is a knockout:

But here's a parchment with the seal of Caesar; / I found it in his closet, 'tis his will…

Caesar left a will?! The crowd will want to hear that! Antony knows he has a clincher. (For all we know, Antony is making up the will out of whole cloth.) But he also knows he has to build the anticipation to get his desired result.

Let but the commons hear this testament-- / Which, pardon me, I do not mean to read-- / And they would go and kiss dead Caesar's wounds / And dip their napkins in his sacred blood, / Yea, beg a hair of him for memory, / And, dying, mention it within their wills, / Bequeathing it as a rich legacy / Unto their issue.

This kind of political playacting has, unfortunately a rich history. In our own time, we had Senator Joseph McCarthy waving a list of "card-carrying Communists in the State Department," or Richard Nixon's 1968 "secret plan" to end the war in Vietnam.

[FOURTH CITIZEN: We'll hear the will: read it, Mark Antony.]

[ANTONY]: Have patience, gentle friends, I must not read it; / It is not meet you know how Caesar loved you. / You are not wood, you are not stones, but men; / And, being men, bearing the will of Caesar, / It will inflame you, it will make you mad: / 'Tis good you know not that you are his heirs; / For, if you should, O, what would come of it!"

Is he laying it on thick, or what? But, it is always good for any speaker to manipulate the audience into an anticipatory mood. As one of the characters in Death of a Salesman said of Willy Loman, he was always happiest when looking forward to something. Also, this kind of foreshadowing is a common technique in closing argument. There can be no surprises, of course, since argument has to be based on things in the record. But planting the seeds early in the argument makes for more effective discussion. Some people call it giving the audience/jury the "roadmap."

Will you be patient? will you stay awhile? / I have o'ershot myself to tell you of it: / I fear I wrong the honourable men / Whose daggers have stabb'd / Caesar; I do fear it.

The audience is now in his hands, and Antony knows he can get away with straight-up mockery. And he's right:

[FOURTH CITIZEN: They were traitors: honourable men!]

[ANTONY]: You will compel me, then, to read the will? / Then make a ring about the corpse of Caesar, / And let me show you him that made the will. / …. If you have tears, prepare to shed them now. / You all do know this mantle: I / remember / The first time ever Caesar put it on; / 'Twas on a summer's evening, in his tent, / That day he overcame the Nervii: / Look, in this place ran Cassius' dagger through:

A couple of very important things are happening now. First, the fact that Antony has already turned the audience isn't enough. He has to seal the deal. Second, continuing with his strategy of anticipation, he again delays the reading of the will (because it wants to save it for the coup de grace). Third, he makes sure that he gains additional sympathy for Caesar be reminding the crowd of one of Caesar's great victories. Fourth, what he is doing now is (as I understand it) straight out of the Gerry Spence Trial College. Instead of just describing Caesar's bloody corpse, he shows it. He makes it come to life (ironically) as a murder weapon. He even ascribes a specific stab wound as coming from chief co-conspirator Cassius. Antony is not only a Gerry Spence graduate, but now a forensic pathologist as well! But the great accomplishment is that Antony conveys all of this in seven quick lines.

See what a rent the envious Casca made: / Through this the well-beloved Brutus stabb'd; / And as he pluck'd his cursed steel away, / Mark how the blood of Caesar follow'd it, …. This was the most unkindest cut of all; / For when the noble Caesar saw him stab, / Ingratitude, more strong than traitors' arms, / Quite vanquish'd him: then burst his mighty heart; / And, in his mantle muffling up his face, / Even at the base of Pompey's statua, / Which all the while ran blood, great Caesar fell.

Think about the dramatic imagery: Brutus stabbing, and Caesar giving in to death, knowing that his best friend and confidante was part of the conspiracy. It's enough to move us to tears. Antony's rhetorical gifts make this horrible death almost literally come to life for his audience. And now he brings out his own dagger:

O, what a fall was there, my countrymen! / Then I, and you, and all of us fell down, / Whilst bloody treason flourish'd

over us.

Well, so much for "honorable men." Finally, the gloves are off. But once again notice how he de-personalizes the conspirators. Because of his promise not to criticize them, he creates treason as an entity that has "flourished" over Rome, because he cannot (according to his bond) call the conspirators treasonous. He lets the crowd do it for him. He doesn't mention any of the conspirators by name.

Brilliantly, Antony acknowledges the conspirators' arguments, whilst still managing to destroy them. Their supposedly noble purpose of thwarting tyranny becomes, in Antony's words, a "private grief" that is somehow unknown. He is able to belittle his enemies while still seeming to be reasonable. In the last line, he subtly asks the crowd to expect a better explanation from Brutus. But he will make sure that the crowd will have no patience for more words after Antony is done. . .

. . . Antony had done his homework. He planted the seeds that Ceasar was a great and generous man, and when he realized that the tide was going his way, he uncorked his indirect yet very direct criticisms of the conspirators. And for all we know, he made up the will out of whole cloth.

Think about how de-personalization works in what we do. Defense lawyers often avoid "Mr. Smith" in favor of "the plaintiff." Even the judge is de-personalized. He or she is called "the Court," or "the Bench." There are reasons for these examples. The defense attorney wants to make our client less than human, and therefore unworthy of compensation. The court de-personalizes the Judge in a reverential way, by assuming the mantle not of an individual judge but of an entire institution. It is the edifice that is mighty, not the people within it.

Good friends, sweet friends, let me not stir you up / To such a sudden flood of mutiny. They that have done this deed are honourable: / What private griefs they have, alas, I know not, / That made them do it: they are wise and honourable, / And will, no doubt, with reasons answer you.

Brilliantly, Antony acknowledges the conspirators' arguments, whilst still managing to destroy them. Their supposedly noble purpose of thwarting tyranny becomes, in Antony's words, a "private grief" that is somehow unknown. He is able to belittle his enemies while still seeming to be reasonable. In the last line, he subtly asks the crowd to expect a better explanation from Brutus. But he will make sure that the crowd will have no patience for more words after Antony is done.

I come not, friends, to steal away your hearts: / I am no orator, as Brutus is; But, as you know me all, a plain blunt man, / That love my friend; and that they know full well / That gave me public leave to speak of him: / For I have neither wit, nor words, nor worth, / Action, nor utterance, nor the power of speech, / To stir men's blood: I only speak right on.

All I can say is, "Oh, please!" This is a well-worn tactic, however, and for all we know, Antony (and Shakespeare) invented it. In the 1973 Senate Watergate hearings, Sen. Sam Ervin was grilling an administration witness when one of Sen. Ervin's colleagues interrupted to complain that he was harassing the witness. Sen. Ervin, with a tip of the hat to Antony, retorted: "I'm just a country lawyer. I don't know how to do it fancy."

I tell you that which you yourselves do know; / Show you sweet Caesar's wounds, poor poor dumb mouths, / And bid them speak for me: but were I Brutus, / And Brutus Antony, there were an Antony / Would ruffle up your spirits and put a tongue / In every wound of Caesar that should move / The stones of Rome to rise and mutiny.

A remarkable passage, where he first transmogrifies Ceasar's wounds into living, breathing things in order to make it clear this was an assassination. This alchemy of making the inanimate animate, is a common Shakespearean trope, and dramatically serves its purpose here. Once again, Antony never specifically asks the crowd to "rise and mutiny" against Brutus and the rest, but the point is made very forcefully. Antony's superior use of language – passionate, persuasive, and tricky in his not-so-subtle outright criticisms of Brutus that he promised he would not make – triumphs over Brutus's cold logic.

And now, the coup de grace:

"Here is the will, and under Caesar's seal. / To every Roman citizen he gives, To every several man, seventy-five drachmas. / Moreover, he hath left you all his walks, / His private arbours and new-planted orchards, / On this side Tiber; he hath left them you, / And to your heirs for ever, common pleasures, / To walk abroad, and recreate yourselves. / Here was a Caesar! when comes such another?

What an amazing lead-in to his final sentence. It takes an orator of great skill to end on a question. But Antony had done his homework. He planted the seeds that Ceasar was a great and generous man, and when he realized that the tide was going his way, he uncorked his indirect yet very direct criticisms of the conspirators. And for all we know, he made up the will out of whole cloth.

There is a reason why Shakespeare is read and performed almost half a millennia from his own time. His command of the language knows no peer, and his emotional insights were so far ahead of their time as to be astounding. He always leads us in one direction when it comes to a character, only to step back and show an aspect of that character we never understood or appreciated.

At the conclusion of Antony's speech, the Romans take up arms against Brutus and the conspirators. The forces of Octavian (Caesar's successor) and Antony easily defeat the conspirators. As was customary then for the vanquished, Brutus committs suicide by running onto his sword. When Antony receives the news of Brutus's death, however, he completely changes character and gives a Brutus a eulogy of such wisdom, beauty, and compassion that it seems completely inconsistent with his "Friends, Romans…" speech. Or is it?

This was the noblest Roman of them all: / All the conspirators save only he, Did that they did in envy of great Caesar; / He only, in a general honest thought And common good to all, made one of them. / His life was gentle, and the elements / So mix'd in him that Nature might stand up / And say to all the world "This was a man!"

(According to a commonly accepted belief of Shakespeare's time, person-kind was composed of the four "elements": earth, air, fire, and water. Human perfection depended upon a well-balanced mixture of these four elements or "humours.")

ProtectConsumerJustice.org

Doctors, health care officials, medical ethicist call for doctor drug testing to protect patients

By J.G. Preston

"To improve patient safety, hospitals should randomly test physicians for drug and alcohol use in much the same way other major industries in the United States do to protect their customers."

The foregoing statement does not come from proponents of California's Proposition 46, the Troy and Alana Pack Patient Safety Act. It comes from a press release issued by Johns Hopkins Medicine, the prestigious healthcare system affiliated with Baltimore's Johns Hopkins University. And it shows that, even though doctors and hospital executives in California have been adamantly opposed to Proposition 46, some of the smartest and most ethical minds in the medical profession understand that doctor drug testing plays a crucial role in making health care safer.

The press release followed a commentary published in the *Journal of the American Medical Association* written by, among others, Dr. Peter Pronovost, a physician who is director of the Johns Hopkins Armstrong Institute for Patient Safety and Quality and one of the leading physician proponents of improving patient safety. "Patients and their family members have a right to be protected from impaired physicians," Pronovost and his colleagues wrote. "In other high-risk industries, this right is supported by regulations and surveillance. Shouldn't medicine be the same?"

Proposition 46 would make California the first state in the nation to require random drug and alcohol testing of doctors who have hospital admitting privileges, as well as automatic testing of all doctors involved in treatment of a patient who suffered an adverse medical event, such as an unexpected death or a wrong-site surgery.

The drug testing provision addresses a significant problem with patient safety. A California Medical Board publication estimated the lifetime risk of healthcare professionals developing a problem of drug and alcohol abuse may be as high as 18 percent, with one to two percent needing treatment for substance-abuse disorders at any given time (see pages 5 and 6 of the document) — meaning that as many as 2,000 physicians in California right now may be abusing drugs or alcohol.

Calls for mandatory testing have come from health care officials in government as well.

The inspector general of the U.S. Department of Health and Human Services, Daniel Levinson, called for requiring random drug tests on all health care workers with access to drugs in a March op-ed in *The New York Times*, titled simply, "Why Aren't Doctors Drug Tested?"

"This is hardly a radical suggestion," Levinson wrote. "By federal law, many workers in transportation or other safety-sensitive areas are already subject to random drug tests. These include pilots, school bus drivers, truck drivers, flight attendants, train engineers, subway opera-

tors, ship captains and pipeline emergency response crews."

A leading researcher in the field, Lisa Merlo of the Center for Addiction Research & Education at the University of Florida College of Medicine, says physicians are about as likely as members of the general public to abuse alcohol or illegal drugs but are five times as likely to abuse prescription drugs.

"Because they have access — and because there's this false thought that because they're medicines, they're somehow safer — they are more likely to become addicted to prescription drugs," said Dr. Ethan Bryson. "And when they do, the consequences are severe."

Bryson is an anesthesiologist whose book, Addicted Healers, addresses prescription drug abuse by medical professionals. He supports mandatory drug testing for doctors.

"I think it's mind-boggling that I can walk into the Home Depot with my 12-year-old son and feel confident that the person who operates the forklift in this working warehouse is not on drugs," he told Canada's *Maclean's* magazine. "But we walk into the hospitals and they don't have policies which require random testing."

USA Today reporter Peter Eisler quantified the problem with prescription drugs in an April story. "Across the country, more than 100,000 doctors, nurses, technicians and other health professionals struggle with abuse or addiction, mostly involving narcotics such as oxycodone and fentanyl," Eisler wrote. "Their knowledge and access make their problems especially hard to detect. Yet the risks they pose — to the public and to themselves — are enormous."

Eisler noted that, without testing, impaired physicians are extremely unlikely to be caught. "Safeguards to detect and prevent drug abuse in other high-risk industries rarely are employed in health care," he wrote. "Disciplinary action for drug abuse by health care providers, such as suspension of a license to practice, is rare and often doesn't occur until a practitioner has committed multiple transgressions. Only a sliver of the health care practitioners who use drugs get caught."

Arthur Caplan, director of the Division of Medical Ethics at New York University's Langone Medical Center and one of the nation's most prominent medical ethicists, supports both random drug and alcohol testing for doctors and mandatory testing after an adverse event.

"When something serious happens, shouldn't the people involved be subjected to mandatory drug testing?" Caplan asked. "Because we know that impairment is a problem in a small but significant percentage of physicians, we need to establish whether drugs, alcohol, or some other type of abuse played a role in a medical mistake."

While there's no way to know exactly how many California doctors are practicing while impaired, a number of reports have emerged:

• A Medical Board of California investigation found that Rocklin physician Yessennia Candelaria was administering anesthesia intravenously to a patient in the operating room while simultaneously administering the drug to herself via an additional intravenous line. A medical assistant assisting in the procedure said Dr. Candelaria lost consciousness in the operating room.

• Dr. Daryl Westerback, a Thousand Oaks psychiatrist, is being investigated for treating patients while impaired. Westerback was arrested twice in a three-month period on suspicion of driving while under the influence of an opiate. Authorities are investigating at least one death related to his practice.

• Yuba City gastroenterologist Ifeanyi Igwegbe had a blood alcohol level of 0.13, nearly twice the legal limit, when he was involved in a crash that caused an injury while on his way to his office, where he had five procedures scheduled.

• Dr. Brian West, a plastic surgeon, was arrested on suspicion of DUI when he caused a crash on his way to see a patient at a Sacramento hospital. His blood alcohol level was 0.19, nearly two-and-a-half times the legal limit. After a second DUI West was put in a confidential diversion program that allowed him to continue practicing while seeking treatment. While he was in the program he performed a disastrous tummy tuck that left his patient infected, disfigured and scarred for life.

• A drug and alcohol counselor told the *Associated Press* he once worked at a Pomona hospital where an alcoholic obstetrician came to work "dead drunk" and severed the spine of a baby he delivered.

Doctor drug and alcohol testing is essential to achieving the patient safety improvements Prop 46 looks to achieve.

"If we are going to push safety forward and make it a priority," said NYU medical ethicist Art Caplan, "then we have to get on board with the notion that drug testing has a role in our healthcare facilities."

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J.G. Preston is press secretary for Consumer Attorneys of California, an organization whose members include some attorneys who represent victims of medical malpractice. CAOC supports Proposition 46. Some members of CAOC are on the board of directors of the group that funds ProtectConsumerJustice.org.

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Mike's Cites

Continued from page 2

reverse a trial court decision for abuse of discretion when the trial court "applies the wrong legal standards applicable to the issue at hand." (Doe 2 v. Superior Court (2005) 132 Cal App 4th 1504, 1517) Furthermore, an appellate court may reverse a trial court's grant of discovery if it concludes the information sought "cannot as a reasonable possibility lead to the discovery of admissible evidence or be helpful in preparation for trial" (Forthmann v. Boyer (2002) 97 Cal App 4th 977, 988-989)."

Of course, only relevant evidence is admissible. Evidence Code §350, relevant evidence is that which has a "tendency and reason to prove or disprove any disputed fact that is of consequence to the determination of the action." Evidence Code §210. "Discovery devices must be used as tools to facilitate litigation rather as weapons to wage litigation." Caldor Space Facility, Inc., v. Superior Court (1997) 53 Cal App 4th 216, 221.

"When the constitutional right of privacy is involved, the party seeking discovery of private matter must do more than satisfy the Section 2017.010 standard [tending to lead to discovery of admissible evidence]. The party seeking discovery must demonstrate a compelling need for discovery, and that compelling need must be so strong as to outweigh the privacy right when these two competing interests are carefully balanced." Lantz v. Superior Court (1994) 28 Cal App 4th 1839, 1853-1854. See, also, Planned Parenthood Golden Gate v. Superior Court (2000) 83 Cal App 4th 347.

3. Joshua David v. David Hernandez, 2014 DJDAR 6439 (May 22, 2014)

Rules for Motions for New Trial: Baker v. American Horticulture Supply, Inc., (2010) 186 Cal App 4th 1059, 1067-1068. Generally, the rules on appeal are designed to affirm the trial court's ruling. Not every legal mistake or unsound course of reasoning will inexorably result in reversal of an order denying a motion for new trial. However, when legal error strikes at the heart of the motion for new trial, the appellate court is compelled to reverse.

This case involves a vehicular crash where a young driver did not see the rear end of a trailer being pulled by a semi truck and trailer going the opposite direction. The end of the trailer was still in the young driver's lane. Experts stated that he drove into the rear of the trailer without slowing or attempting to evade the crash.

The jury found the truck driver negligent for not getting the trailer out of the opposing lane of travel, but found that the truck driver's negligence was not a substantial factor leading to the crash.

The trial court stated that the truck driver was negligent per se violating Vehicle Code §22502 by parking his truck on the left side of the highway facing oncoming traffic. The trial court also mused that if the truck driver had not done that, the trailer would not have been in the plaintiff's oncoming lane. To then conclude that the truck driver was not a substantial factor in causing the collision was a clear error of law justifying reversal.

4. Gregory Worsham v. O'Connor Hospital, et al., 2014 DJDAR 6265 (April 23, 2014)

ELDER ABUSE

FACTS: Elderly Juanita Worsham fell in her home. She was taken to O'Connor Hospital where she had surgery and then to O'Connor's transitional care unit for rehabilitative care. In the transitional care unit, Juanita fell again, breaking her arm and rebreaking her hip. Plaintiff, Worsham's family, filed a complaint against O'Connor, alleging understaffing and undertrained personnel caused Mrs. Worsham's fall. O'Connor demurred. In a second amended complaint, Worsham alleged reckless and deliberate understaffing and undertraining without particular facts.

HOLDING: Demurrer sustained, case dismissed, judgment affirmed.

THE LAW: On appeal, a demurrer is reviewed de novo to determine whether the complaint alleges facts sufficient to state a cause of action. Elder abuse claims arise under *Welfare and Institutions Code* §15600, et seq. That law makes certain enhanced remedies available to a plaintiff who proves abuse of an elder, a person 65 years of age or older. A plaintiff who proves "by clear and convincing evidence" both that a defendant is liable for physical abuse, neglect or financial abuse and that the defendant is guilty of "recklessness, oppression, fraud, or malice" of such abuse may recover attorney's fees and costs. *Welfare and Institutions Code* §15657. The personal representative or successor in interest of a deceased elder may recover damages for the decedent's pre-death pain and suffering. *Welfare and Institutions Code* §15657(b).

"Abuse" is physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering. *Welfare and Institutions Code* §15610.07. This includes "deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering." *Welfare and Institutions Code* §15610.07. "Neglect" is defined by the reasonable person standard. *Welfare and Institutions Code* §15610.57.

"Neglect" includes, but is not limited to: failure to assist in personal hygiene, or in the provision of food, clothing or shelter, failure to provide medical care for physical and mental health needs, failure to protect from health and safety hazards, failure to prevent malnutrition or dehydration. *Welfare and Institutions Code* §15610.57. See, also, Delaney v. Baker, (1999) 20 Cal.4th 23.

The statutory definition of "neglect" is not of the undertaking of medical services but of the failure to provide medical care. Covenant Care, Inc., v Superior Court, (2004) 32 Cal 4th 771, 783. The Elder Abuse Act does **not** apply to simple or gross negligence by health care providers. To obtain the enhanced remedies of §15657, a plaintiff must demonstrate by clear and convincing evidence that defendant is guilty of something more than negligence; he or she must show reckless, oppressive, fraudulent or malicious conduct.

In this case, the allegations in the second amended complaint that the hospital was chronically understaffed and undertrained states a cause of action for negli-

gence, not recklessness. Absent specific facts indicating at least recklessness, any failure to provide adequate supervision would constitute professional negligence but not elder abuse. The demurrer was sustained and the trial court's order affirmed.

5. Maureen Desaulles v. Community Hospital of the Monterey Peninsula, 2014 DJDAR 5571 (May 2, 2014)

COSTS: Employee sued employer for failure to accommodate, retaliation, breach of implicit conditions of an employment contract, breach of the implied covenant of good faith and fair dealing, negligence, and intentional infliction of emotional distress, and wrongful termination.

Defendant knocked out some of the plaintiff's causes of action with a motion for summary judgment. Prior to trial, several in limine motions knocked out other causes of action. Finally, the parties agreed to dismiss with prejudice the two claims of breach of contract and breach of the covenant in return for the defendant's payment to plaintiff of $23,500.00. The parties agreed to appeal the previous rulings of the trial court.

When the appellate court affirmed the dismissal of the employee's causes of action, employer filed a memorandum of costs in the trial court seeking $11,918.87. Employee filed a memo seeking costs of $14,839.71.

Both parties filed motions to strike the others' costs. The trial court exercised its discretion in determining which party prevailed and ruled that employer prevailed on significant causes of action and was the prevailing party. Thus, the trial court awarded employer costs and employee appealed.

LAW: Unless otherwise provided by statute, a prevailing party is entitled to recover costs in any action or proceeding as a matter of right. CCP §1032(b), §1033.5. Prevailing party for purposes of §1032(a)(4) is defined as including: 1. The party with a net monetary recovery, 2. A defendant in whose favor a dismissal is entered, 3. A defendant where neither plaintiff nor defendant obtains any relief, and 4. A defendant as against those plaintiffs who do not recover any relief against the defendant.

A trial court shall determine the prevailing party and use its discretion to determine the amount and allocation of costs, if any. Goodman v. Lozano, (2010) 47 Cal 4th 1327. A trial court has no discretion to deny costs completely when an award is mandatory, but may exercise discretion over the amount awarded. Acosta v. SI Corp, (2005) 129 Cal App 4th 1370, 1375-1376. When a costs award or the amount of costs is not mandatory but discretionary, the award is reviewed by the appellate court under an abuse of discretion standard. However, whether the undisputed facts mandate a costs award is a question of law for de novo review.

Under CCP §1032, costs may be applied for by a party even if the case was settled. Under Civil Code §1717, settlement precludes costs.

In this case, since employer paid employee $23,500, employee was deemed the prevailing party. Employer does not qualify under the statute to be a prevailing party. When only one party fits a "prevailing party" definition, §1032 operates mechanically to mandate costs and does not afford the trial court discretion to decide the issue in light of the circumstances, such as by discounting a nuisance settlement. Of course, parties can avoid this mechanical approach by taking care to provide for costs in their settlements.

The trial court's orders awarding costs to employer and denying costs to employee were reversed.

6. Pielstick v. Midfirst Bank, et al., 2014 DJDAR 3824 (March 26, 2014)

A hearing on demurrer is a trial. Goldtree v. Spreckels, (1902) 135 Cal 666, 672. In Wells v. Marina City Properties, Inc., (1981) 29 Cal 3d 781, the California Supreme Court held that a plaintiff could not voluntarily dismiss his complaint under CCP §581 after failing to amend the complaint subsequent to the sustaining of a demurrer with leave to amend.

This case stands for the proposition that "commencement of trial" under §581 is not restricted to only jury or court trials on pretrial procedures that effectively dispose of a case. Gogri v. Jack In the Box, Inc., (2008) 166 Cal App 4th 255, 262.

This Case Says: If a trial court has allowed a brief continuance of a dispositive hearing for a limited purpose, a plaintiff is not entitled to utilize that time to file a voluntary dismissal of the action with the intention of reasserting the same allegations at a later date.

VERDICTS

FRAUD AND WAGE-&-HOUR VIOLATIONS

CCTLA member Robert Carichoff prevailed in a $2,192,000 Butte County bench verdict in the wage-and-hour violation case of Silvestrov v NLP International Corp. The judge was the Hon. Robert Glusman.

Kyle Silvestrov was employed by NLP as its vice president of business development beginning October 26, 2009. NLP agreed to pay Plaintiff a $6,000 monthly salary as well as a 15% commission on all contracts he secured. NLP's business was comprised of services it offered in connection with proprietary software licensed to it by Columbia University.

During the course of his employment, Plaintiff generated contracts with a minimum value of $3,321,300. He was paid a mere $7,500 commission during his employment with NLP and was not paid his $6,000 salary in five of the last six months of his employment.

During that time, NLP repeatedly promised Plaintiff that he would be paid everything to which he was due. By April 22, 2011, those promises remained unkept, and Plaintiff resigned his employment with NLP. Within two months of his resignation, Columbia University pulled NLP's license to the software upon which its business was based. NLP sought to recover the value of the sales Plaintiff secured against Columbia University. The effort ultimately resulted in a settlement agreement upon which the university agreed to pay NLP $3,000,000.

Defendants subsequently argued that Plaintiff was not entitled to anything more than he had previously been paid by NLP. Its position was that his $6,000 salary was actually an advance on commissions and that the advances paid to him exceeded the commissions to which he was due at the time of his termination. To support its position, NLP submitted financial documentation demonstrating that as of that date, it had been paid less than 10% of the total contract value secured by Plaintiff: $303,316.35.

Defendant NLP filed for Chapter 13 bankruptcy protection the business day before trial began. Trial was permitted to proceed against its majority shareholder, Bernhard Keppler, on an alter-ego liability theory. The court allowed NLP's corporate veil to be pierced upon a finding of lack of corporate formality—although the court did not require additional evidence to find NLP was Keppler's alto ego, there was also ample evidence of commingling of funds among NLP, Keppler, and several of his other companies.

The trial court disagreed with all of Defendants' contentions regarding what was owed to Plaintiff Silvestro. It found that NLP's settlement agreement with Columbia University was derived directly as a result of Plaintiff's sales efforts and that Defendants accordingly owed him a commission on those sales totaling $487,000.

It further found that Plaintiff was owed $30,000 in unpaid salary wages for five of the last six months he was employed. The court determined that the failure to pay Plaintiff was willful and thus awarded an additional $31,000 in waiting time penalties.

Finally, the court found that Defendants had acted fraudulently in entering the sales agreement with Plaintiff and in further promising him repeatedly that he would be paid everything he was owed. In accord, Plaintiff also was awarded punitive damages totaling $1,644,000, plus attorneys fees and costs, to be determined. He also beat an early CCP 998 settlement offer in the case, the interest on which has not yet been awarded.

SLIP AND FALL-PERSONAL INJURY

CCTLA board member David Rosenthal and past president Chris Kreeger of Rosenthal & Kreeger won a $72,000 jury verdict in Sacramento Superior Court for a 48-year-old appliance repairman who was injured while being shown tires at Greenback Tires & Wheels on July 18, 2012. The judge was the Hon. Geoffey Goodman.

Plaintiff was told by the shop owner that he might be interested in tires that were kept in a back storage area of the store, and Plaintiff followed the owner into the storage area to look at the tires. As he was walking back to the showroom, his leg went into a gap in a plywood cover to a mechanics pit. He described the fall as "doing the splits," with one leg down through the hole and the other straight out above ground. The owner and Plaintiff were the only ones in the storage area at the time, and the owner claimed that the entire event never happened.

Plaintiff went to the emergency room where the reported complaints were leg pain and thigh contusion. He started treatment with a chiropractor for neck and back complaints. During treatment, it was discovered that he had a hernia, and he underwent surgical repair of the hernia approximately six months after the fall. Plaintiff had medical expenses of $24,000 and lost income of $2,300.

PLAINTIFF'S EXPERT: Daniel Dunlevy, M.D., and surgeon Jack Friedlander, M.D. Plaintiff also called automotive expert John Martin in support of liability and Plaintiff's description of events.

DEFENSE CONTENTIONS: Defendants, represented by Patrea Bullock of the Law Offices of David Wallis, contended throughout trial that the claimed fall never took place, that Plaintiff was making a fraudulent claim. She refused to stipulate to any medical expenses, so virtually all of the medical providers had to be called.

Defendant's attorney hired trip-and-fall expert Dean Ahlberg, who testified that it was unlikely the fall could occur as Plaintiff described. She also hired Joseph McCoy, M.D., as a defense orthopedic, and Robert White, M.D., who testified that the hernia was not caused by the alleged incident. The defense was that the fall never took place (or took place somewhere else), but even if it, did Plaintiff was not hurt.

After a five-day trial, the jury deliberated five days, and by 12-2 decision, awarded past medical expenses of

$16,500, past lost income of $1,500, and past non-economic damages of $54,000. They also placed 40% comparative on Plaintiff. In discussions with jurors afterwards, it was learned that two of the 12 jurors originally sided with the defense, but ultimately a compromise was reached in which the jurors in favor of Plaintiff had to concede some of the medical bills and increase their comparative percentage.

The net verdict of $42,300 exceeded Plaintiff's 998 Offer of $37,500. Plaintiff claimed in excess of $30,000 in costs and interest, which is currently under submission.

SETTLEMENTS

FAILURE TO DIAGNOSE AND TREAT RECURRENT RENAL CELL CARCINOMA

CCTLA past president David Smith and partner Elisa Zitano, achieved a $500,000 medical malpractice settlement against a physician and his medical group. Craig Needham of Needham, Kepner & Fish, San Jose, was the mediator in the case.

Plaintiff, age 66, retired after working as a repairman and troubleshooter for many years for a large retailer. In 2006, a small malignant right kidney tumor was identified and surgically treated with removal of a portion of the kidney (heminephrectomy). There was no evidence of metastasis at this time.

In 2007, Plaintiff came under the care of the defendant urologist and his group, specifically for close monitoring of his condition for recurrent disease. This follow-up included regular examinations, CT scans, blood work, and X-rays.

In November 2011, Defendant doctor obtained a CT scan that unequivocally identified a 1-cm right renal mass suspicious for recurrent cancer. However, the defendant doctor failed to read or review this CT scan, and the medical group did nothing to re-examine or otherwise contact Plaintiff until April 2013—almost 1-1/2 years after the recurrent mass was first noted on the CT scan.

After finally becoming aware of the positive CT scan, Defendant doctor obtained a new CT scan that revealed growth of the kidney mass to 4.5 cm. Biopsy and further studies confirmed that the 4.5-cm renal mass was late Stage IV renal cell carcinoma.

Plaintiff underwent extensive surgery, including removal of the balance of the right kidney (radical nephrectomy) and regional lymph nodes. Follow-up treatment included both radiation and chemotherapy, accompanied by side-effects of nausea, vomiting, weight loss, hair loss, and debilitating weakness. A few months later, Plaintiff began to have severe, unremitting hip pain that proved to be bony metastasis.

Ultimately, the malignant lesion of the left femoral neck caused Plaintiff to sustain a pathologic fracture, requiring radical resection of the tumor and partial hip replacement (hemiarthroplasty).

Throughout the long course of treatment, Plaintiff's wife of 32 years provided nursing care and support and assumed virtually all of the household duties, even as she continued to maintain her own fulltime employment. A claim for loss of consortium was filed on her behalf.

PLAINTIFFS' MEDICAL EXPERT: Plaintiff retained a university-based medical consultant who is board certified in internal medicine and medical oncology and specializes in the treatment of genitourinary cancers such as renal cell carcinoma. This medical expert opined that it is a significant medical probability that appropriate follow-up medical evaluation by Defendant in November 2011 would have confirmed recurrent disease at that time, when the tumor was only 1 cm in size and had not yet metastasized. This smaller tumor could have been surgically treated and arrested at Stage I, giving the patient greater than 80% chance of survival for more than five years. The Defendant doctor's own personal negligence, as well as the "institutional" or "systemic" failures of the medical group, resulted in critical delays in the diagnosis and treatment of recurrent cancer.

DEFENSE CONTENTIONS: Plaintiff was responsible for the delay in diagnosis and treatment because he should have contacted Defendant doctor about the results of the November 2011 CT scan, and he should have called for a follow-up appointment and additional tests.

DAMAGES EXPERTS: Plaintiff retained Life Care Planner Donna M. Post, RN, CLNC, LNCP-C, and Forensic Economist Craig Enos, CPA

MEDICARE SET ASIDE: Because Plaintiff is a Medicare recipient with foreseeable injury-related future medical treatment needs, a Medicare Set Aside analysis was obtained from Garretson Resolution Group, and an MSA account was arranged.

MEDICARE LIEN: Medicare was timely advised of the case and of the settlement, resulting in no delays in obtaining the Medicare Conditional Payment amount, which was significantly reduced per the Medicare formula.

FAILURE TO DIAGNOSE AND TREAT SPINAL CANAL TUMOR

CCTLA past president David Smith and partner Elisa Zitano, obtained a $1,000,000 policy limits medical malpractice settlement against a radiologist and his medical group.

In 2011, Plaintiff began experiencing symptoms including left-sided numbness and weakness and left shoulder pain. At that time, she was still fully functional, and was very actively caring for her elderly mother, her adult daughter, and her grandchild. She was able to drive, walk without external support, and manage all activities of daily living.

In August 2011, she sought medical examination of her condition, and was sent to the defendant radiologist who obtained an MRI study of the head and neck. The defendant negligently read or interpreted the MRI as an essentially normal study. In fact, Defendant failed to observe, diagnose, and report a large cervical spinal

Continued on next page

Save This Date!
December 4 . . . 5:30-7:30pm
CCTLA Annual Meeting & Holiday Party at The Citizen Hotel

MEMBER SETTLEMENTS

Continued from page 25

cord lesion at the C2–C4 levels. This tumor, viewable on multiple MRI frames, was compressing Plaintiff's spinal cord and was responsible for her many symptoms. If the tumor had been properly identified at this point, less extensive surgical treatment would likely have relieved most symptoms and would have prevented the progressive deterioration of her condition. Instead, Plaintiff was sent on her way without any diagnosis or explanation for the symptoms she was experiencing.

For the next 14 months, Plaintiff's symptoms continued to progress, but each of the doctors who were consulted for treatment relied on Defendant's negligent "normal" misreading of the August 2011 MRI scan. As Plaintiff reported progressive muscle weakness and loss of the ability to walk and drive, every examining physician simply branded her "a nut case."

Finally, in October 2012, another MRI scan was obtained showing that the tumor had grown to massive proportions. Extensive and complex surgeries, including C2–C5 laminectomies and C3-C4 tumor excisions were performed, but because of the extended pressure upon the cervical spinal cord, Plaintiff will never resume normal walking, will continue to experience intermittent bowel and bladder incontinence, will have limited use of her upper extremities, and will always require assistance in the activities of daily living.

PLAINTIFF'S MEDICAL EXPERT: Plaintiff retained neurologist Eric Van Ostrand, M.D. of MRK Medical Consultants. Van Ostrand performed a full neurological evaluation of the plaintiff and reviewed the extensive medical record.

Van Ostrand determined that the defendant both misread the severity of the MRI findings, and failed to consider the patient's symptoms which unequivocally suggested a central nervous system problem–all of which were more consistent with spinal cord compression.

LIFE CARE PLAN: Plaintiff retained Life Care Planner Karen Preston, nurse consultant and rehabilitation specialist of RHN Health Care Consultants, Inc., Sacramento.

CCP § 998 DEMAND–$1 MILLION POLICY LIMIT: Shortly after service of the complaint, form interrogatories were sent to the defendant radiologist and his medical group. Immediately upon learning of Defendant's $1 million policy limit, a CCP 998 for the full policy limit was served with an "expiration" date five months from the date of service. A cover letter with the CCP 998 noted that it would expire in five months and that there would be no extensions beyond this five month period.

Along with the CCP 998, a complete set of all of the plaintiff's medical records, including MRI studies, were sent to defense counsel. As the expiration of the CCP 998 approached, defense counsel finally noticed and completed the deposition of the plaintiff. No other formal discovery was undertaken. Defense counsel accepted the $1,000,000 CCP 998 on the last day.

MEDICARE SET ASIDE: Plaintiff has recently been awarded Social Security Disability benefits and expects to begin Medicare insurance coverage in the near future. Accordingly, a Medicare Set Aside analysis was obtained from Medivest Benefit Advisors, and an MSA account has been set up.

ANNUTITIES AND INVESTMENTS: Given the substantial monetary recovery, Plaintiff has engaged Stephen Halterbeck of Robert W. Baird & Co., to assist in maximizing her recovery in safe and secure investments and annuities.

MEDI-CAL LIEN: Medi-Cal was notified at the beginning of the case and was provided timely information regarding settlement. Medi-Cal's final reduced lien amount has been obtained and will not delay distribution.

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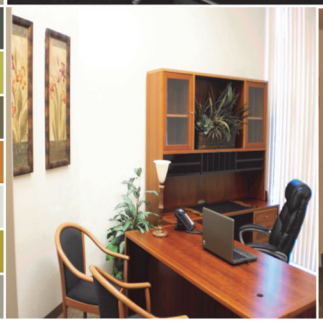

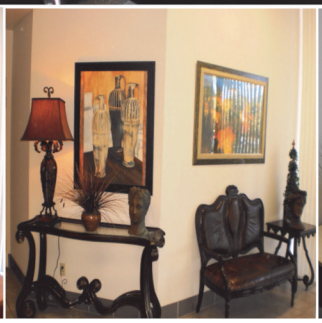

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Page 1:
The *ART* of closing argument

Page 3:
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AUGUST

CCTLA Luncheon
Topic: "TAKING ON THE MEDICAL DEFENSE EXPERT"
Speaker: Dan Wilcoxen Esq.,
Firehouse Restaurant, Noon
CCTLA Members - $30

SEPTEMBER

Tuesday, September 9
Q&A Luncheon
Shanghai Garden, Noon
800 Alhambra Blvd
(across H St from McKinley Park)
CCTLA Members Only

Thursday, September 11
CCTLA Problem Solving Clinic
Topic: "EXPEDITED TRIALS"
Speaker: Christopher Dolan, Esq.
Arnold Law Firm, 5:30-7 p.m.
865 Howe Avenue, 2nd Floor
CCTLA Members Only - $25

Friday, September 19
CCTLA Luncheon
Topic: "TECHNO ETHICS"
Speaker: Danielle Gsoell, Veritext Technology Client Solutions Specialist
Firehouse Restaurant, Noon
CCTLA Members - $30

OCTOBER

Thursday, October 9
CCTLA Problem Solving Clinic
Topic: TBA, Speaker: TBA
Arnold Law Firm, 5:30-7 p.m.
865 Howe Avenue, 2nd Floor
CCTLA Members Only - $25

Tuesday, October 14
Q&A Luncheon
Shanghai Garden, Noon
800 Alhambra Blvd
(across H St from McKinley Park)
CCTLA Members Only

Friday, October 24
CCTLA Luncheon
Topic: "UTILIZING NEW TECHNOLOGIES"
Speakers: Morgan C. Smith, Esq., Cogent Legal president and partner; and Derek Ryan, Cogent Legal director of business development
Firehouse Restaurant, Noon
CCTLA Members - $30

NOVEMBER

Tuesday, November 4
Q&A Luncheon
Shanghai Garden, Noon
800 Alhambra Blvd
(across H St from McKinley Park)
CCTLA Members Only

Thursday, November 13
CCTLA Problem Solving Clinic
Topic: TBA, Speaker: TBA
Arnold Law Firm, 5:30-7 p.m.
865 Howe Avenue, 2nd Floor
CCTLA Members Only - $25

Friday, November 21
CCTLA Luncheon
Topic: TBA, Speaker: TBA
Firehouse Restaurant, Noon
CCTLA Members - $30

DECEMBER

Thursday, December 4
CCTLA Annual Meeting & Holiday Reception
The Citizen Hotel
5:30 to 7:30 p.m.

Contact Debbie Keller at CCTLA , 916/451-2366 or debbie@cctla.com for reservations or additional information about any of the above activities.

CCTLA COMPREHENSIVE MENTORING PROGRAM

The CCTLA board has a program to assist new attorneys with their cases. If you would like to learn more about this program or if you have a question with regard to one of your cases, please contact Jack Vetter at jvetter@vetterlawoffice.com / Linda Dankman at dankmanlaw@yahoo.com / Glenn Guenard at gguenard@gblegal.com / Chris Whelan at Chris@WhelanLawOffices.com

CCTLA Calendar of Events