

# ATTORNEY NOTES . . .

THE NEWSLETTER OF THE ASSOCIATION OF DEPUTY

DISTRICT ATTORNEYS OF LOS ANGELES COUNTY



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## PRESIDENT'S MESSAGE: STOP STALLING DEPUTY DA CERTIFICATION!

On November 28, 2006, the LA County Board of Supervisors passed increases to all non-represented employee salaries. To review these changes go to <http://search.co.la.ca.us/bossop>. At the search page type in "11/28/2006" in both the beginning and ending "date" boxes. In the search box, type in "17." Click "search." At the results page, click the link to "Board of Supervisors Statement of Proceedings for November 28, 2006." Go to agenda item "17." Under agenda item "17" click the link for "See Supporting Document." On the supporting document PDF, go to page 136. The explanation of the codes used by the CAO can be found on pages 47-59 of the same PDF.

These increases were crafted by Board in an atmosphere that has forbidden input from the DDAs who will be affected.

The following letter was written by ADDA President Steve Ipsen to document the unfairness of this situation.

Dear [Representatives of the Board],

I am writing to request timely attention to the matter of the Association of Deputy District Attorneys (ADDA) submission of cards for certification of Deputy DAs as a certified employee organization. Following submission of ADDA certification cards early in 2006, ERCOM set the matter on the 1-23-06 calendar. The

county opposed our certification and has since stalled proceedings for nearly a year.

The County requested a "hearing" to dispute the propriety of a DDA only unit. The County then insisted it was too busy to participate in such a hearing. There is currently no date set . . .

A hearing before Hearing Officer Steinberg was scheduled for 5-2-06 but postponed because John Garrison of the CAOs office claimed that the County was too busy doing collective bargaining until November 2006. I am told that following the close of collective bargaining, when Louise Perry

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## THE TWO REALLY IMPORTANT NUMBERS FOR A DDA.

By DDA Gary Nielsen. Intro by ADDA V.P. Frank Tavelman.

While the recent raises for DDAs of 4%, 3% and 3% (and a step increase if you are top step) is helpful, it will not ultimately protect us as retirees. Given we spend our days protecting others, we as a group should bargain with the County to protect ourselves. The following letter was sent to the ADDA Board by DDA Gary Nielsen. In a succinct analysis, Gary targets the retirement issues that we cannot ignore, nor let the county forget!

**To: Steven Ipsen (and the ADDA Board)**

I am a DDA in the Public Integrity Division. I joined the office in 1988 and am a grade IV. I look forward to the day when DA's can again bargain with the county over our benefits, and I actually have a plea for what should be our priorities. I think there are two financial numbers that matter to career DA's far above all other numbers, although few DA's realize it. I think they are also numbers that the county might negotiate on because they would not perceive much immediate impact. Here they are:

1. **Pay for top-step grade IVs.** Most career DAs hit this financial dead-end before the halfway point of their careers, then it affects them for every remaining day of their lives. If you join the office at 25, reach top-step IV at 45, retire at 65, and live (on your pension) to 85, you will spend the last 40 years of that 60-year span pinned to your top-step grade IV salary. It means a heck of a lot more than your grade I, II, or III salary. So let's ask for an extra step—or two—or three!—any way we can negotiate it.

2. **The 2% cap on annual COLA raises for pensions.** If inflation turns up again, as it did in the 70's and early 80's, it will destroy the finances of retirees living on pensions like this. And there is no good reason for the limit. My understanding is that "best practices" in the management of pension fund assets requires matching assets (pension fund investments) with liabilities (what the pension will owe retirees) as

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## CHALLENGING BACK TO BACK TRIALS NETS HILLERI MERRITT JUNE 2006 DDA of the MONTH

The ADDA is proud to present Hilleri Merritt with the award of DDA of the Month for her outstanding work on two challenging back to back trials.

People v. Arreygue and Payan was a dual jury attempted murder case. In November 2000, Joel Gomez and Charlene Nunez were in their car with their 2 month old daughter. A car pulled up and Michael Arreygue got out, shouted "Fuck Haskell" and shot a semi-auto handgun into the victim's car 2-3 times. Gomez and Nunez escaped injury but their infant daughter was hit with a 9mm bullet. As he rushed her to the hospital, Gomez said he could feel her intestines coming out. The infant spent 3 weeks in the hospital, the first 9 days in ICU. Doctors were not optimistic about her prospects but she ultimately survived.

Initially, Gomez lied and claimed a gang member named "Brain" did the shooting and Nunez would not cooperate. When shown pictures of defendant Arreygue neither identified him. After Gomez was arrested for VCI0851 in 2003, he offered to tell police who "really" shot his baby in 2000 if he could get a deal on his own case. Finally, Gomez identified Payan

as the driver and Arreygue as the shooter. However, he would not sign or initial the 6-pack. Nunez picked Arreygue as the shooter but could not I.D. Payan. At prelim Gomez would not identify anyone or admit his previous statements. Nunez did identify Arreygue.

At trial, Gomez returned to identifying the defendants. Gomez and Nunez were painted as liars who had made statements that were constantly changing depending upon their own personal motivations at the time. No physical evidence to corroborated their testimony. Hilleri worked to bolster the identifications. She brought in a vice-principal at Birmingham High School who testified that the defendants and victims had classes together, supporting the fact that Gomez knew the defendants. Next, she found and presented evidence that Gomez, who was in custody on his 10851 case at the time of prelim and trial, had only recently been given "keep away" status. This helped support his claim that he was untruthful at prelim because he was afraid of retaliation in the jail. Finally, Hilleri presented an outstanding argument. Arreygue was convicted of all charges and was sentenced to 73 years to life. Payan was convicted of PC 32 and the gang allegation.

Within days of the verdict, Hilleri began the trial of People v. Gutierrez, a gang shooting at a party in Vineland Boys territory. There were over 40 witnesses who provided statements to police; all lies. Two witnesses, who had initially lied, finally reported the defendant was the shooter. Hilleri was presented with thousands of pages of transcripts of taped witness interviews. She scrutinized these interviews and was able to pull together small details from many that helped to corroborate the true facts. The defendant was convicted of the murder. Her work on this case was so impressive that she received a letter of commendation from Lt. Andrew Neiman at North Hollywood station.

As a final note, Hilleri completed nine additional jury trials so far this year including a baby murder and a 4 defendant special circ case. She is greatly deserving of recognition as DDA of the Month.

*The editor wishes to thank DDA of the Month Committee Member Ed Greene for the text and content of this article.*

## COMPLICATED CONSPIRACY CASE EARNS RON GOUDY MAY 2006 DDA of the MONTH

Ron Goudy is receiving the Deputy District Attorney of the Month for the successful prosecution of the case of People v. Timothy Mack (BA 286391).

Shortly after Ron was transferred to the Organized Crime Division he began investigating a criminal enterprise, run by Timothy Mack, which engaged in auto insurance fraud, real estate fraud, embezzlement and murder. The trial was for three murders that were orchestrated by Mack.

In the first murder the Mack blamed the victim Norman Fields for the 1996 murder of his (Mack's) brother, Michael. Victim Fields, whose son had been murdered, was in L.A. with his girlfriend searching for the killer. While in L.A., Fields arranged to meet with his old friend Mack. On the way to the meeting, Fields got lost. Fields called Mack, who told him to park in a Vons parking lot and cross the street to an apartment complex. Fields eventually found the location, parked and walked toward the complex. A male dressed in a long hooded jacket stepped from behind a tree and shot Fields in the head. Although his girlfriend witnessed the murder she was unable to ID the shooter.

In the second and third murders, defendant Mack was an associate of suspended attorney Angela Wallace. Wallace had offered to assist victims Howard and Jontrae Byrdsong obtain the \$320,000 life insurance proceeds owed to them when their mother, a former LAPD officer, died from a brain tumor. Howard was 18 years old, Jontrae was 17. Wallace, with Mack's assistance, embezzled all but \$1,200 of the proceeds. When Howard found out about the theft he reported it to a DA Investigator. Mack went to the Byrdsong residence posing as a bank representative requesting that Howard a release. Howard refused. Approximately one month after the DAI report, a man

dressed as a postal worker arrived at the Byrdsong residence and asked for Howard to sign for a package. When Howard went to the door, the man dressed as a postal worker shot and killed him, then darted to the back of the house and shot and killed Jontrae.

Mack was charged with 3 counts of murder and special circumstances of multiple murder, financial gain and lying in wait. It was only by virtue of Ron's diligence during a very lengthy investigation, keeping track of minute details and finding connections in those details, that would lead to the filing of the case and ultimately to defeat the defense evidence at trial. The jury returned quickly with guilty verdicts on all counts. They found all of the special circumstances to be true.

Early in the investigation Mack became a prime suspect but proving his involvement was very difficult. A wiretap produced only scant indirect evidence. In order to establish Mack's guilt, Ron used Mack's former brother in law, a third striker, in whom Mack had confided his involvement in the murders. But the third striker's daughter testified that her father was lying about Mack just to help himself. Then a defense witness testified that the people, with whom the victims lived at the time they were murdered, were the actual killers. Even more disturbing was Mack's allegation of wrongdoing against Ron in an attempt to contrive Ron's recusal from the case. He claimed that Ron had attempted to coerce an inmate in the County Jail to testify against Mack and directed the inmate to fabricate a statement. Despite all of the obstacles Ron prevailed at trial. For his outstanding effort he deserves recognition as the DDA of the Month.

*The editor wishes to thank Head DDA Sally Thomas of the Organized Crime Division for the text and content of this article.*

## ADDA PRESIDENT'S MESSAGE

(Continued from page 1)

of ERCOM attempted to set a hearing, Mr. Garrison said he was again unavailable through December 2006, and was uncertain about January 2007. That has

officially stalled any action on our filed petition for one year.

As President of the ADDA, I continue to ask that this matter be conducted in a timely manner. . . . Our members have been severely prejudiced, as we have been denied the right to bargain in the

last round of bargaining. Each day that passes adds to the harm we have already been subjected to. We are ready to proceed, and have significantly fewer resources than the County. I ask that this matter be addressed promptly.

Thank you, Steve Ipsen ADDA President

## TWO IMPORTANT NUMBERS FOR A DDA

(Continued from page 1)

closely as possible to reduce risk. This means that as employees retire and their pensions become fixed, the pension fund managers should transfer fund assets sufficient to pay those retirees until death (as estimated by the actuaries) into highest-grade fixed-income securities (typically US treasury bonds). The US treasury now issues inflation-protected bonds. If the pension fund invests in these bonds for its retirees (and I think that is standard advice among pension managers in their professional journals), then the pension fund is completely protected against any extra liabilities due to COLA increases.

Inflation-protected bonds only came into existence in 1996. The 2% cap on COLA was probably instituted before then, when it was more justifiable. But it is unjustifiable now. In fact, you might say it's immoral: the pension fund holds the assets that retirees depend on. Therefore only the pension fund can manage them so as to protect retirees from inflation. I would call that a moral obligation.

How much could the 2% cap hurt us? Well, inflation averaged 4.81% from 1968 to 2004. If that is the inflation rate when we retire, it will be like taking a pay cut of almost 3% ( $4.81 - 2 = 2.81\%$ ) every year of retirement. But it could be worse. From 1973 to 1982, inflation

averaged 9%, which would equate to a 7% pay cut every year of retirement. That cuts your pay in half rather quickly.

Or it could be even worse. Most economists agree that as baby boomers retire, the obligation to pay for Medicare and social security obligations while financing the budget deficit will necessarily lead to higher inflation and taxes. Relevant research papers have been sponsored by the US Treasury, the National Bureau of Economic Research, and the Federal Reserve Bank (see, e.g., "Is the United States Bankrupt?" by Professor Laurence Kotlikoff, published in 2006 by the Federal Reserve Bank: "the United States has experienced high rates of inflation in the past and appears to be running the same type of fiscal policies that engendered hyperinflations in 20 countries over the past century.").

Whatever we can do to improve the 2% COLA cap is worth doing. Even raising it to 3% would help, but I think we need to get a change that would protect retirees from really dire inflation—like what we had in the 1970s, which would make 2% or 3% COLA raises seem practically irrelevant.

The above two issues potentially mean hundreds of thousands of dollars to each of us. I hope we can move on them soon.  
Yours, Gary Nielsen

## AFSCME DOCTORS GET BIG PAYOUT FROM COUNTY OVER 401(K) ISSUE AND SEIU PROTECTS MEGAFLEX AND 401(K)

By: Frank Tavelman, Sr. Vice President, ADDA

Our cautious approach to unionizing has paid off! In previous meetings with union officials, ADDA representatives expressed concerns that our members' benefits would be taken from them should we agree to collective bargaining. We sought assurances from the union that our members would be protected; however, no financial assurances were forthcoming. We are in a stronger position for having waited.

According to representatives from the union representing L.A. County's doctors and dentists the County has settled their lawsuit over their denial of 401(k) benefits. When L.A. County's doctors unionized, the County punished them by taking away their MegaFlex benefits and their ability to contribute to the 401(k) salary deferral plan (including the

County match). As a result, AFSCME (American Federation of State, County, Municipal Employees) the union in which the doctors' union affiliated fought for them. AFSCME took the battle to Sacramento and secured legislation protecting the MegaFlex benefits. Then they filed suit against the County and won in a published appellate court opinion (See *Union of American Physicians & Dentists v. Los Angeles County* (2005) 131 Cal. App. 4th 386). As a result, the County has agreed to a settlement of over \$10 million with the union.

Likewise, SEIU (Service Employees International Union) obtained contract language that protect us. The SEIU contract now includes a grandfather provision that allows employees in classifications formally eligible for Flex and MegaFlex to retain those benefits. This includes participation in the 401(k)

plan and most likely obtaining the County match.

The ADDA has continued our efforts to obtain the long overdue hearing with the ERCOM concerning our bargaining unit eligibility; however the County has delayed the hearing for many months. It's important to note that unless you are a top step in your grade (II, III or IV), the salary increases will only be 4%, 3% and 3%, and currently we have not obtained any clarification that the additional step increase of 5.5% will apply to those not already top step. We have been told by union representatives that this nominal 10% increase over three years, is less than that given to professional units of who participated in the bargaining process. We will continue to keep you informed of developments; however two of the concerns that affected our members' decision to unionize appear to have been resolved by our patience.

The Newsletter of the  
**Association  
of Deputy  
District  
Attorneys**  
of Los Angeles County



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## ATTORNEY NOTES . . .

## SAVE THE DATE

### 2006

#### December

**December 19-ADDA Board of Directors Meeting. 5pm, Younger Conference Room, 18th floor, CSFCJC**

### 2007

#### January

**January 16-ADDA Board of Directors Meeting. 5pm, Younger Conference Room, 18th floor, CSFCJC**

#### February

**February 20-ADDA Board of Directors Meeting. 5pm, Younger Conference Room, 18th floor, CSFCJC**

#### March

**March 20-ADDA Board of Directors Meeting. 5pm, Younger Conference Room, 18th floor, CSFCJC**

**Date To Be Announced: Practice Runs for Baker to Vegas Challenge Cup Relay! Volunteers needed to serve as Runners For further information please contact Baker to Vegas Team Captain Head Deputy Michael Yglesias at (213) 974-3707 or myglecia@lacountyda.org.**

#### April

**April 17-ADDA Board of Directors Meeting. 5pm, Younger Conference Room, 18th floor, CSFCJC**

**April 21- Baker to Vegas Challenge Cup Relay! Las Vegas, Nevada. Volunteers needed to serve as Runners and Support Team Members! For further information please contact Baker to Vegas Team Captain Michael Yglesias at (213) 974-3707 or myglecia@lacountyda.org.**

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