

## Mudslinging Starts in Inland Empire D.A. Races

By Jason W. Armstrong  
Daily Journal Staff Writer

Inland Empire district attorney races are heating up, with incumbent prosecutors in San Bernardino and Riverside counties each facing two challengers for the June 8 election as of press time on Friday.

In San Bernardino, Barstow general practitioner Robert D. "Bob" Conaway and Riverside criminal defense lawyer Frank Guzman are trying to unseat District Attorney Michael Ramos, each lambasting Ramos' record combating government corruption and pointing to the highly publicized harassment allegations that have been lobbed against the prosecutor.

In Riverside, District Attorney Rod Pacheco is being challenged by Paul Zellerbach, a former county prosecutor and sitting Superior Court judge, and Michael Flory, an Orange County deputy district attorney. Both opponents slammed Pacheco's conviction rates.

Conaway, a 25-year sole practitioner who previously waged unsuccessful bids for congressional, county Board of Supervisors and judicial seats, accused Ramos of dragging his feet in bringing charges against former figures in the county's Assessor's Office for lying and mishandling funds on the job. He also contends Ramos turned a blind eye to officials who tacked erroneous values on properties and has kept highly paid staff on the payroll who "serve absolutely no function in the office."

Conaway also said Ramos has been under a "cloud of impropriety" because of an investigation into the prosecutor's alleged sexual harassment of a female investigator in his office. A law firm that conducted a probe for the county cleared Ramos in January of claims that he retaliated against the employee after she came forward with her allegations.

Guzman said he's running against Ramos because he's "very concerned" with "corruption running rampant in our county."

He took aim at what he called Ramos' "sexual



Courtesy of San Bernardino County  
San Bernardino County District Attorney Michael Ramos.

scandals" and "window-dressed prosecutions," saying they have "greatly eroded the confidence of the legal system."

A Grand Terrace resident, Guzman has spent most of his 25-year legal career as a private criminal defense attorney. He was a prosecutor with the Riverside County District Attorney's office from 1989-91.

Guzman ran against Ramos' predecessor, Dennis Stout, in 2002 and was credited with forcing Ramos and Stout into a runoff. Guzman garnered 22 percent of the vote in that year's primary election, while Ramos amassed 43 percent and 35 percent of voters chose Stout. Stout ended up bowing out of the race, laying the groundwork for a Ramos victory.

Stout, who had been considering challenging Ramos this year, said Friday he had decided not to run. Friday was the filing deadline for candidates. In a statement last week, Ramos, who has denied

committing any sexual improprieties, said only that he is "very proud of the accomplishments of this office." He was elected as the county's top prosecutor in 2002.

"I intend to run on my record and look forward to another four years as the district attorney of San Bernardino County," Ramos said.

David Ellis, Ramos' campaign consultant, said last week that Ramos has effectively tackled corruption in the county. He referred to pending charges against several officials, including the former county assessor, Bill Postmus, who faces charges of grand theft, bribery, drug use, and other crimes.

"Multiple individuals have been charged," Ellis said.

In the Riverside race, Zellerbach, a former prosecutor who has been a judge for a decade, blames Pacheco for fueling the county's backlogged caseload problems with overaggressive filings. The district attorney, who took office in 2007, has a "low" conviction rate of under 45 percent, Zellerbach has said, pointing to statistics compiled by a bench colleague who has tracked case results.

"Pacheco is failing as our district attorney," Zellerbach, who hears criminal cases, said in announcing his candidacy last month. "The public is simply losing confidence in our DA's office."

Zellerbach is on temporary leave from his judicial duties to focus on his campaign.

Flory, the Orange County deputy district attorney also in the running for the Riverside post, could not be reached Friday. In published reports, the 13-year veteran with the office has also taken issue with Pacheco's conviction rate. Flory ran unsuccessfully for an Orange County judgeship in 2006.

Pacheco's campaign manager has dismissed his opponents' contentions, and said the district attorney has a proven record as a tough crime fighter. He also said state data shows that Pacheco's conviction rate is over 90 percent, not 45 percent as asserted by his challengers.

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## Richard H. Millen 1920-2010

### 'Great, Great Grandfather' Of Mediation Movement

By Susan McRae  
Daily Journal Staff Writer

LOS ANGELES — Richard H. Millen, a longtime mediator whose transformative approach to the alternative dispute resolution process inspired generations of mediators, has died.

Millen died on Wednesday at an assisted living facility in Sherman Oaks after a brief battle with pancreatic cancer. He was 89.

"So many people today would not be mediators without him," said mediator Jeff Kichaven, who met Millen in 1979, while clerking for the firm then known as Schwartz, Alschuler & Grossman. "He influenced a whole generation."

"Everyone of us has had conversations with Richard, in coffee shops, delis, Starbucks. He tells you this is a career you can be successful in and be true to yourself and do good for somebody in conflict."

Described by many as the "Yoda" of mediation, after the "Star Wars" character known for his wisdom and Zen-like insight, Millen wasn't always that way. In a 2007 interview with the Daily Journal, he described how he had been a stressed-out transactional lawyer who felt unfulfilled and unhappy. At age 65, he took a self-improvement seminar that changed his life.

Through a series of courses with a motivational lifestyle group, he gained a new philosophical outlook. He became one of the first members of the Santa Monica Neighborhood Justice Center, one of several community mediation centers that started up to help people communicate with one another in a constructive and positive way.

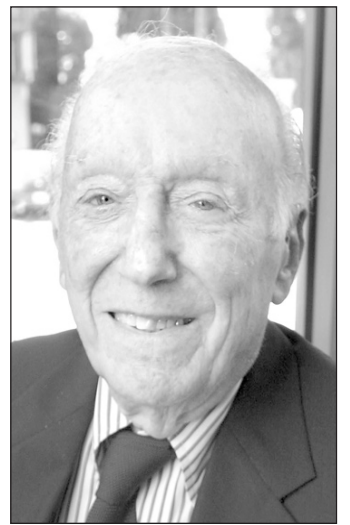
Julie Bronson, who administers the Alternative Dispute Resolution program for the Los Angeles County Superior Court, remembers meeting Millen at that time. It was in the late 1980s, before the court program was formed. Bronson worked with Millen and a group of community mediators to help longtime care patients in nursing homes. When the court created its program, Millen became one of its first volunteers.

Millen continued to volunteer his services to the courts throughout his career as a mediator.

"Mediation was a major factor in his life," Bronson said. "I think an important piece of mediation has been lost with his death. He was like the great, great grandfather of the whole mediation movement."

Miller was always eager to speak on the subject close to his heart. Until recently, a group of mediators and longtime friends used to gather for monthly informal "My Dinner with Richard" meetings at neighborhood restaurants. The conversations were lively and ranged from discussions of recent films and books to the teachings of the Kabbala, the works of Austrian-Jewish philosopher Martin Buber and the theories of quantum physicist David Bohm.

"Among us in the mediation community, he was one of the



RICHARD H. MILLEN

most gifted and talented and should have been more successful than all of us," mediator Lee Jay Berman said. "But he challenged us not to let litigators in mediation play their game. As a result ... it was always a struggle for him to make a living professionally."

As a lawyer and businessman, Miller said he always believed in negotiating. If he could discover what the other party wanted and help the party achieve that goal, he could get what he wanted. But, as a mediator, he acquired skills to negotiate beyond the deal.

"I'm not saying we should do away with the legal system," Millen said in the 2007 interview. "I'm saying that rather than it being a first resort, it should be the last."

Harcourt "Harc" Hervey, a trusts and estates lawyer and mediator and the Millen family lawyer said he was persuaded by Millen's philosophy to become a mediator himself.

"He helped people find ways to meet their needs, interests and feelings in the settlement process, rather than hiding behind their rights, duties and obligations," Hervey said. "He approached mediation as human beings coming together and figuring out what's possible to meet the needs of everyone in the room."

Born in Knoxville, Tenn., the youngest of four children of Lithuanian immigrants, Millen grew up during the Depression. In his senior year at the University of Tennessee, he was drafted into the Army, serving in the North African and Italian campaigns. After earning a degree from Harvard Law School in 1949, he and his wife, Mary Alice Millen, drove cross country in an old DeSoto. He opened a general practice in Los Angeles. After working as a litigation associate, government lawyer and in-house corporate counsel, he became a transactional lawyer and operating officer for a group of Wall Street investment bankers. He also became of counsel at Schwartz, Alschuler & Grossman.

Besides his wife, Millen is survived by four adult children: Catherine Weinress, Jeffrey and David Millen and Melissa Gardner.

Services and a memorial are pending.

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## Panel Allows Marin Juvenile Plan to Advance

By Sandra Hernandez  
Daily Journal Staff Writer

California appeals court has dismissed a motion that sought to bar Marin County court officials from holding video conference hearings in cases involving detained juveniles.

In a two-sentence decision, issued Thursday, the 1st District Court of Appeal in San Francisco ruled that the issues "raised by the petition are more appropriately raised by an objection by a party in a juvenile proceeding."

The taxpayer lawsuit was filed by the Youth Law Center, a San Francisco-based youth advocacy group, with the court of appeal because it involved Marin County Superior Court and county officials. *Kleppe v Superior Court*, A127825, 1st District Court of Appeal. The advocates said they will appeal the decision to the California Supreme Court.

It came in response to a change to court procedure approved by Marin's Presiding Judge Terrence Boren in February that seeks to save a little money by having detained youth participate

in hearings via video conferencing. They currently are brought to court for hearings. The court has yet to implement the policy because the equipment is still being installed and tested, according to Marin County Court Administrative Officer Kim Turner.

Currently, the annual cost for a bailiff and security screener assigned part-time to the juvenile hall courtroom is about \$52,000, said Turner. The new equipment will cost about \$42,000 to purchase and install.

"For a one time investment we would see savings into future years," Turner said.

She added the new system would also address safety concerns at the juvenile hall facility.

"The bigger concern is court security at the facility," she said. "The court was designed in a day where court security isn't what it is today. The waiting area is such that juveniles, gang members, and families are all sitting in the same area. If there was an incident there, it would take law enforcement some time to reach the facility."

Corene Kendrick, a staff attorney with the Youth Law Center, said the proposed change

violates state and federal laws. Under the new system, the judge, witnesses, alleged victim, probation staff and prosecutor would be present in superior court. The minor and his or her lawyer would appear via video conference from a room at the juvenile hall facility.

"The state law says minors have the right to be present at all of their juvenile hearings," Kendrick said.

She said it is unclear how many detained minors would be affected by the new policy but said some 600 cases were filed in juvenile court in fiscal years 2007 and 2008.

Kendrick said Marin is the first county in California to adopt such a plan.

Los Angeles Commissioner Robert Leventer, who handles juvenile cases, said the law clearly backs the advocates.

"This isn't even a close call," he said. "I believe the U.S. Supreme Court said you have an absolute right to be present and confront your accuser."

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## Privilege Rulings Disappoint Some Attorneys

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attorney-client privilege can easily be remedied on appeal after final judgment because the appeals court can simply vacate the decision and remand for a new trial. Defendants could also withhold information, although that would leave them open to contempt proceedings, she said.

The ABA had claimed that waivers of privilege should be included in the small group of orders that can immediately be appealed in part because of the "profound differences of opinion" that exist as to the scope of the privilege. Even the chance of getting a retrial on appeal wouldn't cure the damage of the earlier disclosure, the ABA maintained in its brief.

In her statement Friday, ABA president Lamm said the ruling "could make it more difficult to protect the attorney-client privilege ... when a federal district court rules that the privilege has been waived by a party and orders the privileged materials to be produced to the opposing party."

For the ABA and several business-affiliated groups, including the U.S. Chamber of Commerce and the Association of Corporate Counsel, *Mohawk* touched upon a wider concern about the erosion of the attorney-client privilege. The business and legal community

fought in recent years to protect the privilege from efforts by the Bush administration to put pressure on companies to waive it during corporate investigations. That battle was largely won in 2008, when the Justice Department backed down.

Amar Sarwal, general litigation counsel at the National Chamber Litigation Center, the Chamber of Commerce's legal arm, said *Mohawk* should be seen in the context of that wider battle.

"I don't think this is a sign that the Supreme Court disrespects the privilege," he said. Ultimately, the privilege has "not been undermined" as a result of the ruling, Sarwal said.

Stephen I. Vladeck, a professor at American University Washington College of Law, who filed a brief in *Mohawk* on behalf of former judges and law professors opposing the ABA's position, said the impact on the attorney-client privilege "will not be that pronounced at all."

That's largely due to a recent change to the Federal Rules of Evidence that clarify when federal judges should make a finding of waiver, he said. In part, new Rule 502 explains under what circumstance a company might waive its attorney-client privilege in one case based on the position it has taken in another.

In the second case, Sotomayor

again wrote the majority opinion in which the court rejected the legal establishment's concerns for a second time. *Milavetz v. United States*, 2010 DJDAR 3399. Bankruptcy lawyers had challenged the scope of the Bankruptcy Abuse Prevention and Consumer Protection Act, a 2005 law that prevents attorneys from advising clients to take on additional debt if they are about to file for bankruptcy protection.

The ABA had maintained in its amicus brief that applying the bankruptcy law to attorneys would "significantly and unnecessarily undermine the attorney-client privilege" by restricting frank communications between lawyers and their clients.

The Supreme Court held that bankruptcy attorneys are debt relief agencies but limited the statute's application to when lawyers specifically advise clients to load up on debt before filing for bankruptcy. Now, lawyers will only violate the law when "the impetus for the advice to incur more debt is the expectation of filing for bankruptcy and obtaining the attendant relief," Sotomayor wrote.

The ABA downplayed the impact of the ruling in a statement, saying that the court "went to great pains to point out several times that the decision allows lawyers to speak candidly with their clients."

As such, the limits on attorney conduct only affect advice that is already barred by the ABA's rules of professional conduct, the statement said.

American University's Vladeck said that *Milavetz* was actually "more troubling" for the legal profession than *Mohawk*, but not because of the attorney-client privilege concerns.

As part of the ruling, the Supreme Court also upheld part of the statute that requires law firm to disclose on advertising that they are "debt collection agencies." Vladeck said that could deter larger law firms from practicing bankruptcy altogether because they don't want to have to include the "debt collection agency" language on all their marketing materials. It could also encourage Congress to pass other laws requiring attorneys to make certain disclosures.

As the dust settles on the two rulings, what isn't clear is whether they constitute a new trend in the Supreme Court's jurisprudence, Skadden's Sloan said. The court "was not minimizing the importance" of attorney-client privilege in either decision, he added, and could leap to its defense "if there was a direct assault on the privilege" in a future case.

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## Japan Arrests Whaling Activist for Boarding Ship

By Shino Yuasa  
Associated Press

TOKYO — Japan's coast guard arrested an anti-whaling activist from New Zealand on Friday for illegally boarding a whaling ship last month in the latest incident in the ongoing battle over Japanese whaling.

Peter Bethune, a member of the U.S.-based Sea Shepherd activist group, is accused of jumping aboard

the whaling vessel from a Jet Ski on Feb. 15 in Antarctic seas, where Japan was conducting its annual whale hunt.

Boarding a Japanese vessel without legitimate reasons can bring a prison term of up to three years or a fine up to 100,000 yen (\$1,100).

Japan's annual whale hunt is allowed by the International Whaling Commission as a scientific program, but opponents call it a cover for commercial whaling, which has

been banned since 1986.

Sea Shepherd, among its critics, aims each year to stop Japanese whaling activities. The activists trail whaling boats and try to disrupt the hunt by dangling ropes in the water to snarl the ships' propellers and hurling packets of stinking rancid butter on the whaling ships' decks.

The whalers have responded by firing water cannons and sonar devices meant to disorient the

activists.

Sea Shepherd said Bethune jumped aboard the Shonan Maru 2 to make a citizen's arrest of its captain and hand over a \$3 million bill for the destruction of a high-tech protest ship Bethune captained, the *Ady Gil*, that sank in January after colliding with the whaling ship. Since his boarding, Bethune has been in custody aboard the ship while it made its three-week voyage back to Japan.

## Judge Rules on Open-Primary Ballot Measure

By Robin Hindery  
Associated Press

SACRAMENTO — A judge has altered the language of California's open-primary ballot measure after a last-minute push by its opponents.

Sacramento County Superior Court Judge Allen Sumner made the changes to Proposition 14's title and summary on Friday, four days before June ballot measures go to the printer.

Opponents of the measure filed a lawsuit last week challenging the measure's language, which it called biased and misleading.

If approved by voters, Proposition 14 would change primaries so the top two vote-getters, regardless of party affiliation, would advance to the general election.

In his ruling, Sumner tossed out the Legislative Analyst's claim that the measure won't significantly affect the cost of administering state and local elections. Instead, he

inserted text into the ballot arguments stating that "the data are insufficient" to identify any increase or decrease in costs.

His revised text also explains to voters that candidates may choose to omit their political party preference on the primary ballot.

"The judge ruled in our favor in a very open and transparent way," said Republican Sen. Abel Maldonado, Proposition 14's champion in the Legislature. "The sneaky attempt to derail the open primary has failed."

Though lawmakers approved the original ballot language a year ago, they did so only to secure Maldonado's vote for a midyear budget fix that raised taxes.

Proposition 14 has long been unpopular with lawmakers of both parties, who believe it would help moderates and hurt strongly liberal or conservative candidates by opening the door for two candidates from the same party to face off in the general election.