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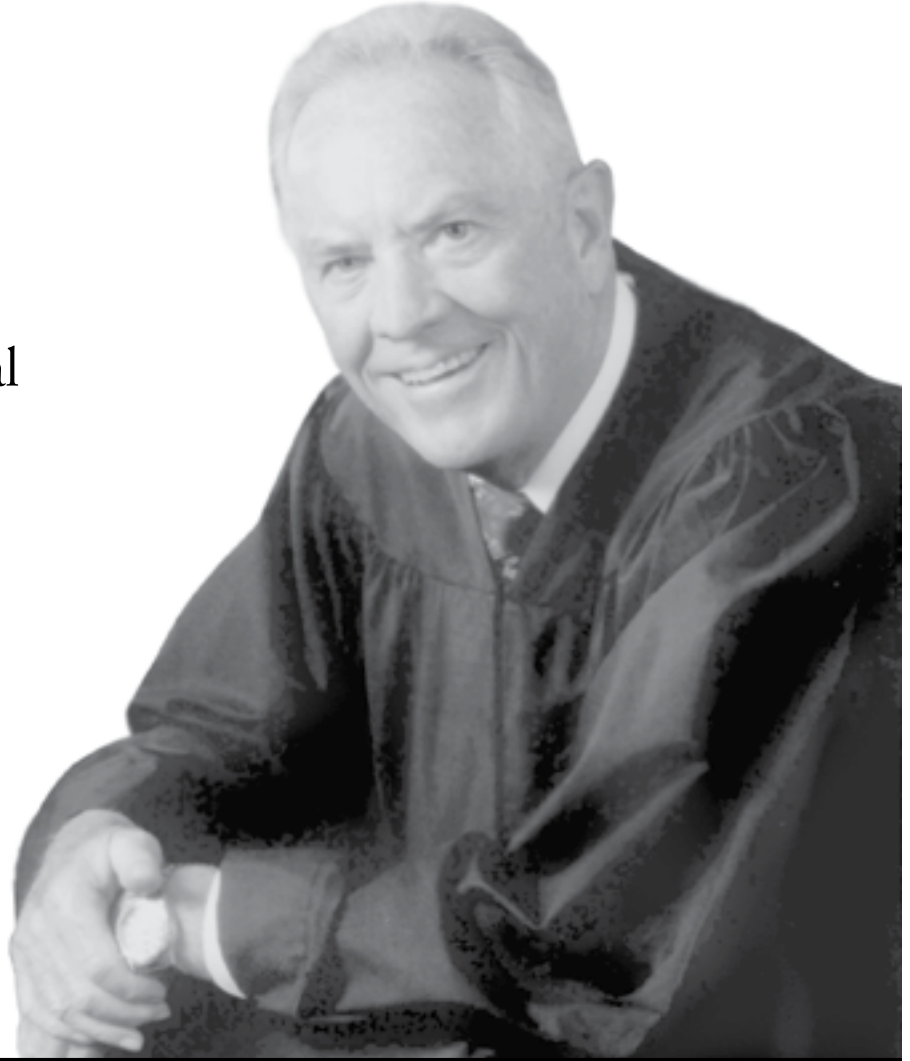
# CITATIONS

F E B R U A R Y - T W O T H O U S A N D T W E L V E

## Retiring Court of Appeal Justice Paul Coffee sets retirement sails

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*By Wendy Cole Lascher*



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LOUIS J. VIGORITA  
WILLIAM E. PATERSON  
LOUISE A. LAMOTHE  
  
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*This will be your last issue of CITATIONS unless you have paid your bar dues!!!*

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Jack Trimarco & Associates  
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Dear Jack:

As you know, Bryan Stow, a San Francisco Giants fan, was brutally attacked by two men in the Dodger Stadium parking lot on opening day, March 31, 2011.

On May 22, 2011, Los Angeles Police Department (LAPD) SWAT officers arrested my client, Giovanni Ramirez at an East Hollywood apartment complex. LAPD Chief Charlie Beck said at a news conference that day, "I believe we have the right guy. I wouldn't be standing here in front of you. I certainly wouldn't be booking him later on tonight. You know this is a case that needs much more work, but we have some significant, significant pieces to it that leads me to believe that we do indeed have the right individual."

Mr. Ramirez agreed to take a LAPD polygraph examination, to be conducted on June 1, 2011.

I retained your services as a nationally known and respected polygraph examiner. You agreed to polygraph my client at Los Angeles County Men's Central Jail, on that day prior to the LAPD examination. Further, you agreed to monitor the LAPD polygraph examination in an observation room within Parker Center (LAPD Headquarters).

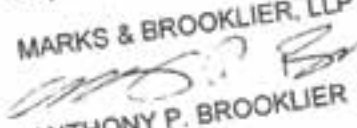
After you polygraphed Giovanni Ramirez, as you departed the jail, you telephoned me. You said, "LAPD arrested the wrong guy. Giovanni Ramirez was not on Dodger stadium property on March 31, 2011."

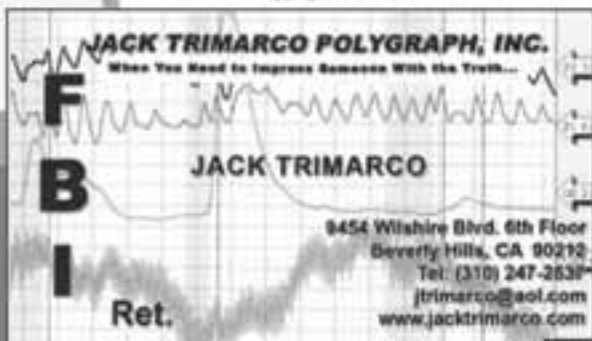
On June 1, 2011, you accompanied me to Parker Center to monitor the LAPD polygraph examination. The respect shown to you by the LAPD polygraph personnel comforted me. You advised them that Mr. Ramirez passed your exam as you handed them your report.

Although this case had many interesting facets, central to Giovanni Ramirez being eliminated as a suspect, were your "non deceptive" polygraph results.

It is a tribute to your reputation that polygraph testing conducted by you is so well received and respected by the prosecution, as well as the defense. You saved my client's life...thank you.

Very truly yours,

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## President's Message: Ventura County Barristers – A Glimpse into the Past and Looking to the Future

By Dien Le



Apart from the first message, which is traditionally supposed to be about the president, I want to focus the rest of the year on the diverse faces and things that make VCBA a great organization. With that in mind, each month I will be showcasing one or more of VCBA's 35 sections, committees or affiliates.

One of the most active sections with a long distinguished history is the Ventura County Barristers. What better way to start than by looking at the Barristers President's Award plaques hanging in the hallway of the VCBA office. There you will find the names of all the past presidents of Barristers beginning with **Joe Strohman** (1986) and ending with **Christina Stokholm** (2011). Also included among that list are **Greg Totten** (1987) and **Paul Tyler**, who has the distinction of serving two terms (1997 and 1998). While I assumed that Joe was the first president, upon further investigation, I learned that Barristers was founded in 1982 by **Richard Loy**. However, Rick is quick to give credit to **Judge Fred Bysshe**, who was VCBA president that year and was a strong proponent of establishing a "young" attorneys group. Judge Bysshe has been an unstinting supporter ever since.

Barristers, which started as a modest group of 10-15 members, has now grown to over 100+ members. To be a Barrister, you have to be either less than 36 years old, or in practice for seven years or less. The Barristers Board

currently consists of over 15 board members. The original focus was on having brown bag lunch meetings at the courthouse by inviting judges and attorneys to speak about different areas of law, practice tips and providing continuing education. One of Barristers' signature events has to be Judges' Pizza Night, which gives members the exclusive opportunity to meet all of the local justices, judges and commissioners in an informal setting. The event has become so popular over the years that during the administration of **Meghan Clark** (2001), the location of the event had to be kept a secret (attendees had to call the VCBA office) so as to prevent LA attorneys and other non-Barristers from crashing. Under the leadership of **Jesse Cahill** (2007), the focus then shifted to more fun and social events with the first Bowling Night. **Katie Pietrolungo** (2008) continued the momentum of more sports-related and competitive events with the first Barristers' Cup Three-on-Three Basketball Tournament. This inaugural tournament was recognized with an Award for Achievement from the ABA Young Lawyers Division. Another fun event that soon followed was the annual darts tournament.

Barristers then eventually combined the fun, social and competitive activities with supporting local charitable causes such as Food Share, YMCA, Make-A-Wish Foundation, and Habitat for Humanity. Last year, through the efforts of *current* Vice President **Matt Purcell**, the Self-Help

Nights were started at the Salvation Army's Transitional Living Center in Ventura, where Barristers assist indigent residents who need access to our courts in such areas as family law, criminal law, and housing. Barristers hope to build on this idea and expand outreach to other community organizations. This year, VCBA's pro bono program, Volunteer Lawyer Services Program (VLSP), will be a fortunate beneficiary of Barristers' fundraising efforts.

Those who think that Barristers is no longer about training and professional development of new attorneys, should remember that Barristers still presents its Bridging the Gap conference every other year, featuring distinguished panelists and provides up to 6 MCLE credits (free for new admittees). Another Barristers' activity that has made a big comeback in the past year (thanks to *current* Treasurer **Renee Dehesa**) is the Mentorship Program. This program is an invaluable way for newer attorneys to receive career advice and guidance from more seasoned attorneys.

It's worth noting that Meghan pioneered the development of an e-mail distribution list of members, while during my year (2002), I infamously became dubbed the "king of spam" for my prolific use of e-mails to notify members. However, **Joel Villaseñor** (2005) was known for the most creative and eloquently written e-mail blasts. With the advent of social media, **Mike Strauss** (2009) was the first to create Barristers' Facebook page.

What is clear from all of my interviews of past and current members is that all felt that getting involved with Barristers offers them the chance to "meet people you would not otherwise get to," get to know colleagues outside of the office and develop lasting friendships, and give back to the community, which they find the most rewarding. Given the current challenges facing new attorneys entering one of the most difficult job markets, compounded by the fact that most Barristers are still paying back significant loans from law school, fostering such

*Continued on page 5*

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## LETTERS TO THE EDITOR: MORE BAR SHOW MEMORIES

I do remember the first bar show. I had no idea what they were up to or why. I was a newly hired Deputy. I was in the chorus of marching scouts **George Eskin** mentioned. It was at the Elk's Lodge Hall in Oxnard. As the years passed the shows became funnier and more intricate. The era lasted a decade or so. We had performances at the Holiday Inn, the Elk's Lodge, Mandalay Bay and (I believe) The Lobster Trap. I recall one was so successful that the audience exceeded the numbers of dinners that had been ordered. Ever resourceful, someone, I know not whom, went out for McDonald's Burgers which, as I recall, may have been a step up. Also dear to my heart was the number performed in drag by the male ensemble that, by design, was a lampoon of the feminist movement. As it progressed one could sense the audience discomfort until **Nancy Sieh** boldly stood up and rebuked us. She stormed to the stage with her escalating rebuke equaled only by the audience's equally rising cheers and despite Frank's seemingly sincere and futile efforts to calm her. On stage she gracefully moved from scold to

member of the cast, finishing the scene with a rousing chorus of "I Am Woman." She was joined by her co-conspirators on the stage as the audience's wrath turned to laugh. Theater, after all, is the great educator. The number of lawyers in the county was relatively small and the "inside" jokes were understood by all. We knew and liked one another... or, perhaps, time has made it so. George was the driving force.



*Steven Z. Perren is an associate justice of Division Six of the 2nd District Court of Appeal.*

Re: Hon. George Eskin's Jan 2012 article entitled "Standing Ovation."

Enjoyed your article in CITATIONS. Some great memories there. I recall at the discussion in Thousand Oaks about topless dancing that there was a suggestion that the practice should be governed by local zoning ordinances. I believe that it was Marv Lewis who spoke up and said that topless dancing should take place in the "erogenous zone."

Happy New Year



*Roland Purnell is a retired judge of the Ventura Superior Court.*

### President's Message:

*Continued from page 3*

networking opportunities may prove more beneficial than ever in terms of assisting with the job search.

2012 president **Bob Krimmer's** goal is to keep the energy going by maintaining the current initiatives, while being sensitive to the time constraints of newer attorneys and the legal community as a whole during these tough economic times. Initially, Bob had reservations about taking on this position because he was older than everyone else (having had a previous career in the entertainment industry), but soon felt very welcomed. He believes Barristers is *not* so much a function of age, but common shared experiences as a new attorney starting out in the profession. I wholeheartedly share Bob's vision of enhancing the communication, coordination and collaboration with VCBA because when all is said and done we are all part of *one* bar.

*Dien Le is a partner at Westlake Village-based Sullivan Taketa LLP, where he represents clients in business litigation, employment litigation, real estate litigation and appellate matters in both federal and state courts.*

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## Retiring Court of Appeal Justice Paul Coffee sets retirement sails

By Wendy Cole Lascher



“No matter where I was, I tried to remember what it was like being a trial lawyer. I wanted our court to be a hospitable place.”

Retiring Court of Appeal **Justice Paul Coffee** obviously achieved that goal. The first words from every staff member, lawyer and judge I interview about Coffee on the eve of his retirement focus on how nice, how human he is.

**Kathy Pendergest**, Coffee’s judicial assistant throughout his Court of Appeal career, describes him as a “very kind man, very dedicated. He has a great deal of integrity. His door was always open to everyone and he is a great listener, an all-around really good guy.” Research attorney **Audrey Austin**, who started working at the Court of Appeal at the same time as Pendergest and Coffee, says Coffee is an “amazing attorney with an amazing sense of humor...He’s a naturally talented writer” with “amazing compassion for human struggles and failings” and an ability to look at a case “beyond the words on paper.” And Division Six Clerk Paul McGill notes how Coffee always treats the court’s staff with respect, is always thoughtful and considerate of their workload and how he could help the staff.

A native of Madera County, Coffee joined the Navy in 1954, after graduating from U.C. Berkeley. He spent six years as a naval aviator and then returned to Berkeley to attend Boalt Hall School of Law.

Coffee learned what it was like to be a trial lawyer during 12 years of insurance defense practice in San Jose, followed by another 17 years in San Luis Obispo. He was elected to the American Board of Trial Advocates in 1982 and became president of the tri-counties chapter in 1989. Coffee also served as president of the Association of Defense Counsel of Northern California in 1989.

Fellow **Justice Steven Perren** first met Coffee in 1978 when Perren handled plaintiffs’ personal injury cases and Coffee was the managing partner for Hoge, Fenton, Jones and Appel in San Luis Obispo. Perren says Coffee “was a wonderful opponent: fair, tough and courteous. He gave nothing away but respected what you did and expected the same in return. He set a standard for civility amongst the litigation bar that should be the model for all trial lawyers.”

Appointed to the Superior Court of San Luis Obispo County in 1992, Coffee rotated through a variety of assignments. That diverse experience served him well when Governor Deukmejian elevated Coffee to the Court of Appeal in 1997. His colleague **Justice Kenneth Yegan** noted that Coffee “came to us with the practical wisdom that one can obtain only from long service in the trenches of the trial court. [The late] Presiding Justice [Lester] Roth would call this, ‘toiling in the vineyard of the law.’ We were indeed fortunate to have had a colleague who had toiled so long and so well.” Coffee says that in handling appeals he always “remembers what it was like being a trial judge.” Among other things, this has led him to remind his fellow justices “to give precise instructions in [our] opinions

about what should happen in the trial court.”

When Coffee left the Navy and the thrill of carrier landings, he took up car racing. He also became an avid pleasure sailor. After joining Division Six and moving to Ventura, Coffee took up residence aboard his sailboat in the Ventura Harbor. He only recently moved ashore, to a “land yacht.”

Coffee converted to Catholicism several years ago. He is active in his faith, attends Mass daily and participates weekly in a Bible study group. He has also been a regular at his gym, at the Ventura Farmers Market, and at local breakfast hangouts. Remembering his law practice roots, Coffee is frequently seen at meetings of Ventura County Trial Lawyers and ABOTA.

Katy Graham, another of Coffee’s research attorneys, says she learned from Coffee’s example how to get along with other people in ways she had never imagined before she went to work in Coffee’s chambers. “He puts no energy into defending his own point of view; he never embarrasses other people or even makes unnecessary remarks about people. He puts all his energy into understanding the other person’s point of view,” Graham said.

Coffee’s colleagues are among his many friends. Perren emphasized that Coffee has the “insight of an experienced and common sense lawyer who had a gift for assessing what a case [is] really about; and a sense of compassion that transcended our professional relationship...He has often been a source of wisdom and counsel for me.” **Presiding Justice Arthur Gilbert** wrote for the San Luis Obispo Bar publication that as the court and the world have changed over the years, “what remained constant was Paul’s presence, his wisdom, his humanity, his devotion to

the law, his integrity, and his friendship. Paul has been around the block, the wharf, and the mountains. He is a pilot, a navigator, a litigator, a jurist, and, forever, a gentleman.”

McGill recognized Coffee as “the best of the best. We are all very blessed to have such wonderful people to work for.” And Yegan summed up for all of us: “I already miss Paul Coffee and he hasn’t really left yet. He is a fine gentleman and a fine

appellate court justice. I wish him a well-deserved, happy and fruitful retirement.”



**Wendy Cole Lascher** is a State Bar certified specialist in appellate law with the firm Ferguson Case Orr Paterson LLC in Ventura.

## CONTEMPLATING COFFEE

*By Lou Vigorita*

As a workers’ compensation attorney I would not have the opportunity to try cases with Paul Coffee the defense attorney for the simple reason that I did not practice civil law. Nor would I be appearing before Paul Coffee the civil judge for the same reason. I would not even appear before Paul Coffee the appellate justice. My workers’ compensation appeals rarely went that far. Nonetheless, I did get to meet Paul Coffee the “contemplative.”

Paul Coffee the retreatant introduced me to the annual silent retreat for the legal profession that takes place in Los Altos, California. A few years ago **Jim Farley** asked me to give a ride to a friend who had recently had back surgery. Little did I know that would be Paul Coffee. The six-hour drive there and back was almost as rewarding as the retreat itself. Paul treated me to stories of growing up in the Central Valley, “holier than thou” classmates at Cal, defense attorney litigation wars, partner stories, the Central Coast commutes to Bay Area partnership meetings and anecdotes about the appellate bench. Through Paul I got an insider’s view of the justices, from Justice Gilbert’s “Can’t we all get along” entreaties to Justice Perren

singing in chambers.

Most impressive to me was Paul’s spirituality. He traveled up north to the retreat center because that is where his heart was. The other retreatants were an amalgam of Paul’s old friends, including trial judges, appellate justices, former opposing counsel, and former government officials from his pre-Ventura days. Their mutual admiration was evident.

All the while Paul shared with me his thoughts and encouragement. Looking back, I think he was showing by example that there is more to life than the practice of law or appointment to the bench. He painted the big picture for me that weekend, and I am very grateful that I had that one-on-one time with one of the most spiritual men I have met.



**Lou Vigorita** handles workers’ compensation and Social Security disability law. He is a member of CITATIONS’ editorial board.



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## FILM REVIEWS: HUGO, A BETTER LIFE, THE DESCENDANTS, POINT BLANK, THE ARTIST AND NAMES OF LOVE

By Bill Paterson

### Hugo

Who would have thought that the man who brought us “Taxi Driver”, “Raging Bull” and “Goodfellas” would favor us with a “family film?” But hats off to Martin Scorsese for “Hugo,” a warm hearted tale perfectly suited for the holiday season.

It is the late 1920s and young Hugo (Asa Butterfield) lives alone in the upper reaches of a Paris train station (the present day Musee d’ Orsay). In his lonely aerie he tends the intricate workings of the stations’ massive clockworks. Forced to live by his wits, Hugo has two imperatives in life. The first is to avoid being captured and sent off to an orphanage by the ever watchful station inspector (Sasha Baron Cohen). The second is to reconstruct an “automaton,” a broken mechanical man which his father rescued years ago from a museum. Contained within its hundreds of cogs and gears is the key to Hugo’s future if only he can get it working again.

Another denizen of the station is Mr. Meliese (Ben Kingsley), the humorless owner of a small store that sells old toys and magic kits. When he catches Hugo trying to purloin some of his inventory, Mr. Meliese grabs him and takes away Hugo’s most precious possession, a notebook with all the drawings and calculations Hugo needs in his quest to re-build the automaton. Hugo begs to have it back, but to no avail. Hugo’s luck changes, however, when he meets Meliese’s granddaughter, Isabelle (Chloe Moretz). Isabelle craves adventure. Together she and Hugo develop a plan to get his book back and unlock the secret of the automaton. What neither of them know is that the automaton is the bearer

of a cryptic message which will change many lives. Watching the automaton as it slowly comes back to mechanical life is but one of the myriad of captivating scenes Scorsese has conjured up for us.

A brief confession: for the first half-hour or so of the film I had the uneasy feeling that all “Hugo” had to offer was special effects. However, my patience was rewarded and once the story began to unfold I was hooked. I would love to say more about how the tale plays out, but why spoil surprises? Scorsese is one of our most renowned directors and the striking images he captures at the end of the film are a testament to both his love of film history and his cinematic artistry. Take the time to see “Hugo” on the big screen.

### Unfairly overlooked (Now on DVD) A Better Life

Carlos Galindo (Demian Bichir) is a Mexican “illegal” who has lived in Los Angeles for years, working his way up from day laborer to his own landscaping route. He lives with his rebellious teenage son, whom he fears will not take advantage of the educational opportunities he never had. The lawyer Galindo paid to secure a green card never came through, so he lives a precarious existence – always one traffic stop away from deportation. His life gets even harder when his truck and all his tools are stolen. Desperate, he and his son scour the city to find the thief and the truck that is their lifeline.

“A Better Life” is an inspirational portrait of an honorable man who broke only one law in his life – crossing the border into the U.S. to escape a life of poverty. In his impeccable performance, Bichir perfectly captures the stoic dignity and

decency of this hard-working man. The film is also a vivid portrait of life in East L.A., a place far removed from the manicured yards of the West Side where Carlos spends his workdays. In its theatrical release, “A Better Life” earned a paltry \$1.8 million. A shame, because it is one of the most memorable films of the year.

### The Descendants

Starring the ever-dependable George Clooney, “The Descendants” has garnered a host of critical acclaim and awards. I am in a distinct minority on this one and cannot echo the praise that has been lavished on the film. In fact let me go out even further on a limb – I actively disliked it.

Matt King (George Clooney) is a Honolulu attorney undergoing three simultaneous crises. His thrill-seeking wife, (with whom he has less than an ideal relationship) has been in a boating accident and is in a coma. This leads to his second problem, trying to control his pre-teen and teenage daughters. He gets as much respect from them as a substitute teacher would get on a bad day. Lastly, he has to make a decision as to what to do with his multi-generational family’s extensive parcel of virgin land in Kauai, for which a resort developer has offered hundreds of millions of dollars. What, you ask, will happen to his wife? Will he and his rebellious teenage daughter come to terms? What will win out in the end, the horde of cash being dangled in front of him, or preserving his family’s Hawaiian heritage? Let me just say that suspense is not one of the film’s virtues. In my (contrarian) view, “The Descendants” is an unconvincing soap opera masquerading as highbrow film fare. I didn’t find the central characters

*Continued on page 11*

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## FILM REVIEWS:

*Continued from page 9*

in the film at all believable. Too many scenes depend on contrivance rather than emotional truth, and the characters are given lines which exist only in movies. As the beleaguered father seeking to establish a better relationship with his oldest daughter, Matt is a throwback to the hapless fathers who populated 50's sitcoms. The only difference is that Ricky Nelson didn't repeatedly tell Ozzie to go "F—k" himself (and profane variants on that theme) while Ozzie assumed the pose of a deer in the headlights. But even Matt's capacity for humiliation at the hands of his oldest daughter pales in comparison to what he puts up with from the boy she brings home. I know we are supposed to laugh at this miscreant's behavior and Matt's masochistic tolerance for verbal abuse. However, what works in "The Simpsons" doesn't work here.

Now, of course, the answer to the above acerbic comments is that "The Descendants" is meant to be a bittersweet comedy and we are supposed to buy into the conceit that for all its exaggerated characters and "edgy" dialogue, the characters represent the universal themes of troubled family relationships. I couldn't buy into any of it. This is a family straight out of Hollywood, as is the requisite Kumbaya note on which the film ends. A major disappointment from a good director and a talented cast.

**A Better Use of Your Film Going Time (Now on DVD)** "Point Blank" is an adrenalin-fueled crime thriller from France that grips you from the first scene to the last. It opens with a wounded man being chased through a darkened building. Just when you think you know what is going on you get a sudden jolt. The scene then shifts to a Paris hospital where a male nurse unknowingly foils an assassination plot. Like the Robert Redford character in "Three Days of the Condor," he is now a marked man for

reasons he cannot comprehend. Before long, he is swept up into a violent world in which nothing is quite as it seems and he doesn't know whom to trust.

"Point Blank" continually keeps you off balance with a gritty story full of twists and turns. In an era of big budget action clones, "Point Blank" is a refreshing reminder that there is no substitute for creative direction and an original script. Case in point. There is a foot chase in which Samuel is forced to flee for his life through an endless labyrinth of building corridors and Parisian streets. It is more exciting than anything the special effects wizards of Hollywood have come up with in many a year. Pure visceral excitement. Not to be missed.

### The Artist

I hope I am wrong, but I suspect that "The Artist" may remain confined to the art house circuit. If so, many will miss a film which I expect will grace nearly every 2011 Top Ten list. While audiences in the 1920s flocked to see silent films, it took a rare act of faith to make such a film today. Yes you heard me correctly – a silent film in black and white in the era of 3D and Dolby Surround Sound. Thankfully there are still those hardy souls who are willing to back a film based on quality rather than audience demographics. If you love film, you cannot afford to miss "The Artist."

The story set-up is pure melodrama. What better venue for such a story than a silent film? George Valentin (Jean Dujardin) is one of the kings of silent film. A Douglas Fairbanks look alike, he is the toast of Hollywood and the mainstay of Al Zimmer's (John Goodman as a crass cigar chewing Hollywood mogul) Kinascope Studios. One day, as George is being fawned over by the press and eager fans, a young woman in the crowd (Berenice Bejo) ends up having her

picture taken with him. It hits the front page. The momentary notoriety, and her fearless attitude, get the woman a part as a dancer in one of George's films. (Their meeting on the set is but one of the myriad of truly inspired scenes in the film.) George later gives her a piece of advice that launches her to stardom as "Peppy Miller." Little does George know that talking pictures are just over the horizon and that his star is destined to sink while Peppy will become one of Hollywood's biggest stars.

What is so enthralling about the "The Artist" is how it takes this slender "plot" and turns it into cinema magic. The lack of dialogue (there are occasional subtitles in the manner of old silent films) provides both a challenge and an opportunity. To convey emotions that would otherwise require dialogue, visuals have to play a much larger role and the actors have to rely on gestures rather than words. Everything has to be either larger than life or remarkably subtle. Two scenes in the film perfectly capture this concept. In one, Peppy, while still a Hollywood nobody, goes into George's dressing room and wistfully wanders about trying to imagine what it would be like if he would ever notice her. She spies his coat hanging on a rack and what she does next tells us everything we need to know about longing. A bookend to that scene is later in the film when George, who has now lost everything, finds himself staring at a tuxedo in a shop window. I do not know who came up with these scenes but standing by themselves they are worth the price of admission.



*Bill Paterson is Of Counsel for Ferguson Case Orr Paterson LLP.*



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# MED-ARB? MAYBE

By Louise A. LaMothe

For many years, I would have answered this question “no.” Now I’m a fence sitter. In the course of many years of practice as a full-time neutral, I have run across conflicts in which the parties want a solution using a single neutral who agrees both to mediate and to arbitrate. Accordingly, I have developed the ground rules for using it that I discuss here.

## Mediator, then Arbitrator?

From the parties’ viewpoint, having a single neutral sometimes makes sense. Initially at least, lawyers and their clients are most interested in getting the dispute resolved using all of the tools at their disposal. Having a mediator who can also decide any issues that arise later is, of course, more cost effective for them, since the neutral who understands the case already does not need to be brought up to speed on the issues for decision after mediation.

On the other hand, most ADR neutrals are understandably wary, because we see the pitfalls. In mediation, we are acting as facilitators of the parties’ settlement discussions. While our style may be evaluative – in that we discuss the likely outcomes if one or more of the issues in the case were presented to a decision maker – we and the parties know that we are not serving in that altogether different, adjudicatory role. Moreover, an indispensable tool in our mediation work is the series of private caucuses we hold with each side alone; indeed, we may not ever meet in joint session. We tell the parties that we will keep in confidence the information they divulge in those private caucus sessions. Some of this information is admissible evidence, but much more is not and its reliability is untested. It is not entirely possible for me to forget the private information received in a caucus when deciding an issue that remains after the mediation’s conclusion.

In my experience, it is rare before the mediation session for the parties even to raise the possibility that they might

wish to have me act as arbitrator after the mediation. Usually, at some point during the session, many or most of the issues either have been solved or I see that they could be if a remaining issue or issues could be dealt with by a decision maker. The parties then express the conviction that it would be best for me to be that decision maker. Frequently, neither lawyer has had an earlier case using this procedure and neither has thought about the implications.

How to give the parties and counsel what they want while still preserving a separation between the role of mediator and that of arbitrator? There is little guidance in this area, for the most part. If the case is administered by the American Arbitration Association, when the parties to a mediation request the neutral to rule on issues that remain to be decided after the bulk of the case has settled, the Association requires the neutral to prepare new written disclosures and allow the statutory period (two weeks in California) to elapse before acting in the new capacity.

My first ground rule for neutrals is: don’t initiate this suggestion. Let it come from the parties instead. If they believe that you will bring value to the process, they will ask you.

Second, design the process with care. Be sure to work through in your own mind the implications for you of wearing two hats. Gather all of the tools you will need to accomplish each of your tasks. Have the parties agree to your roles, have the lawyers agree on a timetable for presentation of any facts and legal authorities, and decide how you will conduct both the settlement meetings and any possibly necessary later arbitration. The more precision you bring to all of this at the outset, the smoother your service will be.

For example, in one recent international case involving claims submitted to escrow for reimbursement after the sale of a business, the parties chose me as their

mediator. After a full day mediation session, the parties’ representatives were close to settlement on the majority of the claims against the escrow in the case, but three categories of claims were holding up complete agreement. When I suggested settling the issues that could be agreed to, while leaving for a later arbitration the remaining issues, the parties were interested. Then, one of the lawyers suggested that I serve as their arbitrator to decide those three categories of claims. When the other side agreed, the parties’ representatives set to work negotiating and documenting an arbitration procedure. The parties agreed on the content of the evidence to be presented (without oral testimony) to me. They also specified the award should be enforceable under the New York Convention. That stipulated dispute resolution process became part of the parties’ settlement agreement, drafted by the lawyers and signed by the parties’ representatives. Later, I received the evidence, deliberated, and then rendered a final award. My award referenced the earlier settlement and decided the three categories of claims the parties had submitted to me. The final award thus gave a comprehensive and enforceable framework to the entire dispute.

## Arbitrator, then Mediator?

No doubt many of us serving as arbitrators have arrived at the evidentiary hearings only to discover that the parties want to attempt settlement beforehand. Sometimes they wish to do so alone, and I have sat in an empty hearing room, often with the court reporter, waiting to learn if they have been successful. If they are, they put the agreement on the record and my service as their arbitrator is over.

But what about the instance in which the parties want me to shift roles from arbitrator to mediator? Rule R-8 of the American Arbitration Association Commercial Arbitration Rules and Mediation Procedures states: “The mediator shall not be an arbitrator appointed to the case.” Is there ever

an appropriate instance in which the arbitrator does so anyway?

In an employment arbitration some years ago, when I appeared at the evidentiary hearing, the parties' counsel asked if I would first attempt to settle the case. Since we had a court reporter present to transcribe the hearing, I made a record, first describing the request, confirming that the parties themselves understood and agreed to my serving as a mediator before the hearing started. When all had agreed, I heard opening statements from each party and then mediated the case for several hours in private caucuses. The case settled.

That experience leads me to my third pointer: explain to the parties what you are proposing to do, get agreement to your new service in writing, drafted by the lawyers and reviewed by you, then signed by the parties themselves. If you are fortunate to have a court

reporter handy, all the better. Put the agreement on the record and get the explicit consent of the parties themselves, not just their counsel. (Rule 4.5.6 of the CPR-Georgetown Model Rule for the Lawyer as Third Party Neutral specifically provides for the parties' (not just their lawyers') informed agreement to the process.) To the extent you can eliminate surprises in the process, you will find greater satisfaction with your service, and the parties and their lawyers will, too.



*Louise A. LaMothe is a full-time neutral, based in Santa Barbara practicing throughout California. More information about her practice is available at her website, www.*

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The Law Office of Kevin L. Dorhout can be reached at (805)206-8977, kevin@dorhoutlaw.com or via www.dorhoutlaw.com.

### MUSEUM BUSINESS CONTACTS SOUGHT

CITATIONS editorial board member **Panda Kroll** will teach "The Museum: Culture, Business & Education," an upper-division class for Business, Art and Education students at California State University, Channel Islands this Spring. Students will visit and study museums throughout Los Angeles and Ventura Counties. Kroll is looking forward to collaborating with attorney **Miles Lang**, who is the CEO of the Chumash Indian Museum in Westlake Village. She asks that other VCBA members who are willing to share their museum contacts contact her at panda.kroll@csuci.edu.

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“Sanctions are serious business. They deserve more thought than the choice of a salad dressing. ‘I’ll have the sanctions, please. No, on second thought, bring me the balsamic; I’m trying to lose a few pounds.’ A request for sanctions can *never* be so lightly considered as to be copied word for word from another brief – much less copied in reliance on facts from another case that do not obtain in the present one. A request for sanctions should be reserved for serious violations of the standard of practice, not used as a bullying tactic.

“Our profession is rife with cynicism, awash in incivility. Lawyers and judges of our generation spend a great deal of time lamenting the loss of a golden age when lawyers treated each other with respect and courtesy. It’s time to stop talking about the problem and act on it. For decades, our profession has given lip service to civility. All we have gotten from it is tired lips. We have reluctantly concluded lips cannot do the job;

teeth are required. In this case, those teeth will take the form of sanctions.

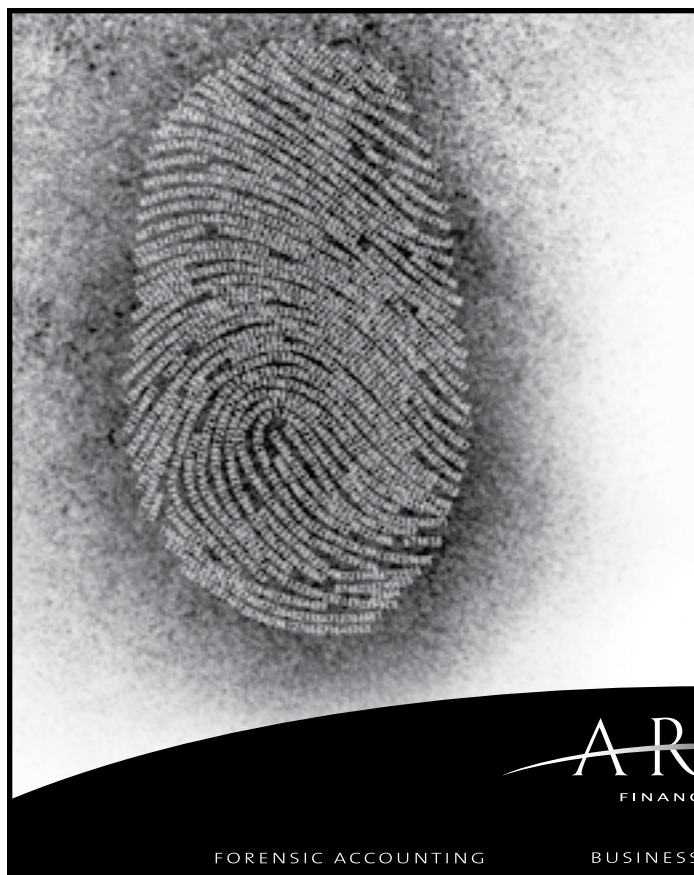
“We do not come to this conclusion lightly. Judges are lawyers, too. And while we have taken on a different role in the system, we have not lost sight of how difficult it is to practice law. Indeed, at the appellate level, we are reminded daily how complex and recondite the issues that confront practitioners daily can be.

“So we are loath to act in any way that would seem to encourage courts to impose sanctions for mistakes or missteps. But for serious and significant departures from the standard of practice, for departures such as dishonesty and bullying, such steps are necessary. We will step onto the slippery slope and trust our colleagues on the trial court bench to tread carefully along with us. It is time to make it clear that there is a price to pay for cynical practices.

“If this be quixotic, so be it. Rocinante is saddled up and we are prepared to tilt at this windmill for as long as it takes.

“We sanction Mr. Donahue in the amount of \$10,000. In arriving at that amount, we have struggled with the absence of precedent. How much do you sanction an attorney who lies to the court, seeks unwarranted sanctions, bullies opposing counsel, shows no remorse, and effectively vows to continue such tactics by endorsing his conduct when challenged on it? – does not seem to have been a question yet addressed by other courts.”

*Kim v. Westmoore Partners, Inc.* (2011) 201 Cal.App.4th 267 (petition for review pending as of January 23, 2012). See the full text of this case at <http://www.courtinfo.ca.gov/opinions/documents/G044216.PDF>.



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**Katie Pietrolungo** has been elected and installed as president of the California Young Lawyers Association of the State Bar of California. Past president of Ventura County Barristers (2008), she may be congratulated at [kpietrolungo@andersonkill.com](mailto:kpietrolungo@andersonkill.com) or better yet, 288.1300...As of Jan. 3, those trying to use the Grover Beach (SLO County) courthouse will be sent north. Citing unprecedented reductions in judicial funding, the courthouse at 214 S. 16th Street in Grover Beach will move its hearings to the San Luis Obispo courthouse at 1035 Palm Street. Court leaders said in a statement they hope the “suspension of operations is temporary and promise to aggressively seek restoration of the recent funding cuts to ensure continuing access to justice for everyone.”...Jamaica? **Erik Feingold** at [efeingold@mwgjs.com](mailto:efeingold@mwgjs.com) or 644.7188...

**Don Greenberg**, VLSP, Inc. Emeritus Attorney extraordinaire, was elected to a two-year term on the board of directors of the Retired Employees Association of Ventura County (REAVC)...A long-serving and well respected Orange County Superior Court judge was ordered removed from the bench Jan. 11 for fixing tickets of family and friends. The Commission on Judicial Performance found that Richard W. Stanford Jr. intervened on nine separate occasions between 2005 and 2010 to allow acquaintances to pay greatly reduced traffic fines without having to appear in court. The San Francisco-based commission, which disciplines state judges for ethical lapses, said Stanford’s removal is necessary to “restore public confidence in the integrity

## Exec’s Dot...Dot...Dot...

By Steve Henderson, Executive Director, M.A., CAE

and impartiality of the judiciary.” Stanford ordered his son-in-law’s \$500 ticket for running a red light in 2010 be reduced to \$40. A clerk uncomfortable with Stanford’s handling of the case started the rumble... **James Perero** of Wasserman, Comden, et al. received the Oxnard Chamber of Commerce Chairman’s Award of Excellence on Jan. 28...

The incredible run by one **Dorothy Prairie**, law office administrator at Hathaway, Perrett, Webster, Powers, Chrisman & Gutierrez in Ventura, came to an end Dec. 31, 2011, when Prairie retired from the firm. That sounds pretty routine until you peel back the layers of this modest onion. She retired after 45 years! Hired as the office manager in 1966 by **Julian Hathaway**, **Bob Soares**, and **Mike Perrett**; Prairie was a fixture in the legal community teaching classes and being president of the Legal Secretaries Association. At 86, she still hikes with the Sierra Club, and her husband, Ken (84), is still working...The blog that chronicles U.S. Supreme Court action is noticing a recent surge in solo dissents. The U.S. Supreme Court issued four opinions on Jan. 10, all of them decided by an 8-1 vote. Justice Antonin Scalia dissented in one opinion, Justice Clarence Thomas dissented in another, and Justice Ruth Bader Ginsburg dissented in two cases. SCOTUSblog noted the solo dissents and said they are relatively rare. “Justice Stevens used to say that it was sometimes important to have a dissent to keep the majority honest,” the blog says. “I wonder if maybe Justice Ginsberg might be taking that role up a bit, now that Justice Stevens has retired.” On Jan. 11, the Supreme Court issued another 8-1 ruling, and this time, Justice Sonia Sotomayor was the only dissenter. Two other decisions issued 1.11.12 were unanimous... **Mike Case** celebrated his 40th year of practicing law on Jan. 5 and ten years to the day his son, Rob, has been a lawyer too.

The Mexican American Bar Association have elected their new officers for 2012. President, **Renee Dehesa**; **Lou Kreuzer**, Vice President; **Andres Garcia**, Treasurer; and **Claudia Calderon**, Secretary. MABA continues to meet the first Friday of each

month at a variety of locations. Contact Renee to get into the loop at [rdehesa@nchc.com](mailto:rdehesa@nchc.com)...A survey of 45 large law firms showed the number of lawyers they employed in 2011 didn’t change, but that doesn’t mean the firms weren’t hiring. The survey concluded the number of lawyers at the firms was static last year, but lateral hiring has been robust... **Steven Lee** ran a 3:03 at the California International Marathon in Sacramento on Dec. 4, a personal record for Steven. He plans on giving a sub-3 shot at either the Ojai 2 Ocean Marathon in June, or the Chicago Marathon in October... Harlem, Montana? **Ed Elrod** at [edward.elrod.law@gmail.com](mailto:edward.elrod.law@gmail.com)... Southern Spain? Jon Light at [jligh@lightgablerlaw.com](mailto:jligh@lightgablerlaw.com). The Law Day 5K Committee started meeting in January in preparation for the 29th annual running. Mark your calendars for May 19 at the County Government Center...

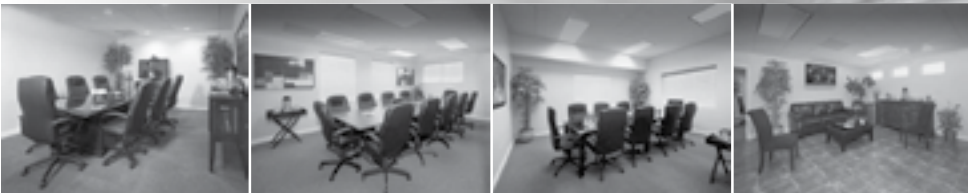
**Kendall VanConas** became a name partner at A to Z on January 1st...The Jerome H. Berenson Inn of Court is in full swing and has been so since the first meeting back in October. If you’d like to check out the action and be a guest at either the February-March-April-May meetings, contact President **David Lehr** at [david@davislehrlaw.com](mailto:david@davislehrlaw.com) or 477.0070...Women Lawyers of Ventura County elected new officers 1.13.12. **Jill Friedman** will remain as president; **Charmaine Buehner**, president-elect; **Rebeca Mendoza**, vice-president; **Robert Guerra**, secretary; **Katie Hause**, treasurer; and **Jodi Prior**, past-president. They continue to meet the second Friday of each month beginning at noontime inside the bar offices...**Stuart Nielson** has joined the board of directors of the Boys & Girls Club of Greater Oxnard and Port Hueneme...

*Steve Henderson has been the executive director and chief executive officer at the bar association since November 1990. He will be Tebowing during the Bar Leaders Conference scheduled for February 11 beginning at 8:30 a.m. inside the Courtyard by Marriott. Henderson may be reached at [steve@vcba.org](mailto:steve@vcba.org), Twitter at [stevehendo1](https://twitter.com/stevehendo1) or [vcba1](https://twitter.com/vcba1), FB, or better yet, 650.7599.*

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