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M A R C H - T W O T H O U S A N D T W E L V E

JUDGE MATTHEW P. GUASCO

By Louis Vigorita

Page 6



DIEN LE

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VCTLA – AT THE FOREFRONT OF CIVILITY	3
LETTERS TO THE EDITOR	5
FROM ADR TO VCSC – FIVE QUESTIONS FOR JUDGE GUASCO	9
LAWYER'S NOVEL DOES JUSTICE	12
VENTURA COUNTY WOMEN LAWYERS: A PICTORIAL	13
BAR TALENT SHOW	13
THE MODERN ROLE OF THE MAXIMS OF JURISPRUDENCE	16
VCTLA	18
WATCH OUT FOR INTERNET SCAMS	20
"A SEPARATION"	23
CLASSIFIEDS	25
EXEC'S DOT... DOT... DOT...	26



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PRESIDENT'S MESSAGE: VENTURA COUNTY TRIAL LAWYERS ASSOCIATION – AT THE FOREFRONT OF CIVILITY, AND SETTING AN EXAMPLE FOR THE NEXT GENERATION

By Dien Le



VCTLA 2012 Board of Directors

At the Opening Assembly of the American Bar Association's annual meeting on August 6, 2011, in Toronto, Canada, ABA President Stephen N. Zack made an impassioned plea for civility in our profession: "Let us rededicate ourselves to the proposition that words matter, how we treat others matters and how others see us matters." Zack elaborated, "We learn a lot from our Canadian brothers and sisters. They have a word in their lawyers' oath that is sometimes oddly missing from American lawyers' oaths, and that word is civility. In part it reads, 'In all things I shall conduct myself with honesty, with integrity, with civility.'"

Civility may be missing from the attorney's oath in California, but it has not been completely ignored at the local level. Many people may not be aware that in 1999, the VCBA adopted Guidelines on Professional Conduct and Civility. Past VCBA President **Mike Case** chaired the committee that developed these guidelines, which can be found in VCBA's legal services directory or on our website. The guidelines address issues such as scheduling, continuances and extensions of time, service of papers, communications, discovery, motion practice, candor to the court and opposing counsel, settlement and ADR, trials and hearings.

Unfortunately when we first think of trial attorneys, the immediate image that comes to mind is the belligerent, cutthroat, and

unethical lawyer portrayed in so many movies, on TV and in legal fiction. I have certainly noticed a trend in the past few years with the level of civility deteriorating among attorneys (whether at big or small firms, plaintiffs' or defense counsel), exhibiting a lack of professional courtesy, respect and cooperation, and an overall disparaging tone and litigation tactics. Why are some attorneys compelled to be uncivil when it really does nothing to further the merits of their case? Perhaps they think it is a sign of weakness or that they are not being a zealous advocate unless they act that way. Of course, such behavior makes them less credible in the eyes of the other side and the court.

Apparently those attorneys have never practiced in Ventura County, where the atmosphere is more collegial thanks to organizations like the Ventura County Trial Lawyers Association (VCTLA). VCTLA is committed to bettering the civil justice system, the lawyers who serve it, and the community it serves by, among other things, promoting professionalism. When I recently asked 2012 VCTLA President **Allen Ball** (a past Trial Lawyer of the Year recipient) about this issue, he stated that civility more or less swings like a pendulum depending on where you practice geographically and the times we are in. One interesting observation Allen made is that we are experiencing a societal change in terms of how we communicate with opposing counsel. Attorneys are willing

to say things in text messages and e-mails that they wouldn't say to your face or on the phone. As noted by VCTLA Board Member **Brook Carroll**, attorneys lately seem to be more contentious and unreasonable toward each other on what seems to be unimportant issues. This sense of unnecessary posturing is more self-defeating than helpful.

Although VCTLA is affiliated with the Consumer Attorneys of California (CAOC), what makes VCTLA unique among local chapters is the fact that VCTLA is inclusive of the defense attorneys and is *not* strictly limited to the plaintiffs' bar. All the events and activities of VCTLA really set the tone for advancing this guiding principle of civility and professionalism. VCTLA's signature and most popular event is Judges' Night in March, where the recipients of the Judge of the Year Award (since 1978) and Judicial Portrait are honored. In selecting the honorees, VCTLA looks for attributes of wisdom, wit, patience, understanding, and compassion. A few months later, VCTLA honors one of its own with the Trial Lawyer of the Year Award. It is this sense of bringing together the legal community to recognize those who exemplify the best of our profession, and the consistent contact with the bench that sets this organization apart. VCTLA's strong ties and lines of communication with the bench will be even more critical in dealing with the court's ongoing budget crisis.

VCTLA has expanded its focus to the community at large by actively supporting the annual Ventura County Mock Trial Competition (with over 30 high schools participating this year) and encouraging VCTLA members to volunteer as scorers in February (by *not* having a regular monthly meeting). Through the influential leadership of Immediate Past President **Bill Grewe**, VCTLA also generously donated \$1,000 to VCBA's Volunteer Lawyer Services Program, setting a great example for other VCBA sections, committees and affiliates. All of these efforts have not gone unnoticed. In 2007, past president **Joel Mark** was

Continued on page 5

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LETTERS TO THE EDITOR

More Thoughts on Coffee

Dear Editor,

Paul Coffee [see Feb. 2012 cover story] is still a very active member of the American Board of Trial Advocates and attends most every meeting. Despite the fact that he's an appellate justice, he is still a very down-to-earth guy and is always willing to share some of his war stories about his various trials, some of which he won, some of which he did not. Members of the Ventura County Trial Lawyers Association also appreciate his attendance at their meetings.

I have a lot of respect for Justice Coffee even though he was a brown shoe in the Navy and I was a black shoe.

Alan R. Templeman, Lowthrop, Richards, McMillan, Miller & Templeman

Presidents in Passing

At the joint meeting of the outgoing and incoming board members for the Ventura County Bar Association in December, Joe Strohmman and I were discussing the fact that we were both past-Presidents of Barristers. He said he had recently looked at the plaque of the past-Presidents. He asked me if I knew where "**Jill Ostern**" was. I told him, "Yes. She's standing right in front of you." We both had a good laugh.

Jill L. Friedman, Myers, Widders, Gibson, Jones & Schneider, Ventura

PRESIDENT'S MESSAGE:VCTLA

Continued from page 3

recognized by the CAOC as Local Chapter President of the Year.

By offering monthly MCLE programs with the same high-quality speakers as those offered in Los Angeles, but at a fraction of the cost, VCTLA is doing a great service for the next generation of trial lawyers who benefit from the passing on of knowledge and a wealth of experience. VCTLA also hopes to bring back its mentorship program, something that I remember benefiting from previously with mentors such as past presidents **Judge Mark Borrell** and **Greg Ramirez**. One of the new ideas that VCTLA would like to develop in the future is a mediator/arbitrator database or listserv where members can find analyses of arbitrators' experience, their decisions, and procedures.

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

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JUDGE MATTHEW GUASCO

By Louis Vigorita



Two weeks ago, I witnessed the usual oppressive scene in Department 10: A couple hundred defendants sat in all sorts of poses waiting for directions to approach the bench; some bailiffs carried on, shuffled paper and pattered about the well. A clerk, head down, concentrated on ... something. But the eyes of the entire audience were glued toward the front of the court, where an elevated figure spoke in a calm, clear and resonant voice. Everyone paid attention in their own way, particularly the audience. The bailiffs glanced over the man's shoulder a few times as they went about their ho-hum business, but distantly, so as not to admit anything was special.

Though it was his first day on the bench, **Judge Matt Guasco** gave no indication by his voice or his body language that he was anything but comfortable there. He was in full control, without an overbearing uneasiness. He was comfortable in his new role. I dare say he was enjoying this moment that turned into an hour, and then into a full day. The audience knew. The bailiffs knew. The clerk knew. Here was a man confident doing the job that he was entrusted with ... and happy.

Matthew P. Guasco, our most recent judicial appointee, was one of four sons raised by Mourine Guasco Bruen, a single parent in San Anselmo, California. He graduated from UC Davis in 1980 and then Golden Gate University School of Law in 1984. An adjunct professor at the Pepperdine University

School of Law, Straus Institute for Dispute Resolution, Guasco enjoys a Martindale-Hubbell Rating of "AV- Preeminent." He has worked as a mediator and arbitrator in private practice affiliated with Judicate West, and as a privately-retained dispute resolution educator and trainer in association with the Straus Institute. For more than 20 years, he was an appellate attorney with prominent local firms, including Arnold, Bleuel, laRochelle, Mathews & Zirbel, LLP, Norman, Dowler, LLP, and Engle and Bride. In 1989, he joined Lascher & Lascher as an associate attorney, where he learned the craft of appellate lawyering from **Ed and Wendy Lascher**. from 1989 to 1993. Post 9/11, in October, 2001, he travelled to China to teach negotiation and mediation theory and practice at the prestigious City University of Hong Kong, School of Law. Several years later, he taught a similar course at Shantou University in the Guangdong Province, China. Over time, teaching became as much a part of Guasco's professional life as lawyering, mediating and arbitrating.

"When appointed, after the initial shock wore off, I genuinely wondered what it would feel like to take the bench and actually be a judge (as opposed to wanting to be one)," Guasco says about what it felt like to be appointed. "I think I've taken to it like a duck to water. Something about the role seems to fit for me, and I greatly enjoy my assignment. My present assignment (Courtroom 10, Traffic) can be hectic at times, and I am always looking for ways to strike the right balance between giving each litigant his or her due consideration while at the same time completing the work efficiently each day."

If you really want to know what makes Guasco tick, you need to dig deep into his résumé, to his start at the Marin County Public Defender's Office in San Rafael, where he worked from 1985-1989.

"I have a compelling desire to do this right," Guasco says. "I think my early years as a deputy public defender taught me how to handle the stress of a large criminal calendar. I had to learn effective time management skills in a hurry when they dumped 100 cases on my desk. Eventually, I learned how



to lawyer effectively in that environment, and I grew comfortable with the rhythm of managing that tremendous volume of cases.”

That experience prepared the new judge to deal with the chaos that he met on his first day on the bench in Department 10. At the PD’s office he felt that he enjoyed a reputation of being a passionate representative for his clients, detached yet professional and always objective.

“I learned early on never to take things personally, that what happened in court was never about me,” Guasco says. That perspective helped him be the calm one. In fact, his calm in the midst of chaos was also often mentioned by the lawyers and clients who hired him as a mediator. “Often clients would say to me after an especially stressful time in court, ‘I could never do what you do. Thank you.’”

Guasco speaks openly about his journey to judging and his first experiences on the bench because he believes that judging should be a transparent discipline, accessible and understandable to the lawyers and their clients.

“The experience of lawyering as well as mediating leads me to believe that transparency is important to the credibility of justice, to the public’s trust and confidence in the judicial process,” Guasco says.

I wondered whether it was transparency that I observed on his first day in Department 10.

“I have found it surprisingly easy to make the transition from a litigation and mediation/arbitration background to a judicial career,” he explains in response to that question. “I find that I enjoy conducting a fair and impartial process, trying to make people feel as comfortable as they can on a busy calendar, explaining my reasoning, and making the call. I enjoy the people contact of the job. Each case and person is unique. Courtroom 10 deals with regular people having an important and, in most cases, expensive interaction with the court system. I view my role as conducting a court process that deals with their cases impartially, fairly, professionally and efficiently, but with the human touch of a smile and a kind word when needed, a stern warning when needed, and at all times a respectful approach to the lawyers and parties. I am enjoying my assignment.”

On the way into court on that first day, January 30, 2012, I ran into **Mike O’Brien**, who told me that Guasco’s “demeanor makes him a good fit for this position.” The Judicial Nominees Evaluation Commission commented that where Guasco was concerned there was an uncommonly large volume of highly positive responses from the legal community in support of his nomination. Others echo this view. **Bill Grewe**, who has

known Guasco for many years, immediately and without hesitation adds the following: “When he was merely Matt, the center fielder on our adult softball team made up of lawyers who were more vocal than talented, he who was the one calming influence in the outfield, settling down his team as if to say ‘we got it, we got it, Don’t worry’.”

Brent Rosenbaum, a local mediator, related that when he first came up to the Ventura area to start his mediation practice, he called on Guasco the mediator, who at that time was associated with the Norman Dowler firm.

“I was a little unsettled at first not knowing what to expect, but was amazed at how much time Matt spent that first visit,” Rosenbaum said. “I was so enthralled about how he shaped and validated mediation for me in the highest of ideals. Time flew and when I noticed that he had just spent two precious hours of billable time just to share his thoughts and observations I knew right then and there that here was a ‘mensch’.” (For the uninitiated, that Yiddish term is associated with being a “good guy.”)

Guasco says he has been warmly welcomed by his new colleagues and staff.

“To a person, every judge, commissioner, judicial assistant and bailiff has gone out of his or her way to be supportive and welcoming,” he says. “I am truly fortunate to have the help of experienced and skilled judicial assistants and a bailiff without whom managing the work of Courtroom 10 would be impossible.”

When Guasco was appointed, it was really no surprise to the local legal community, but it was certainly exciting for him.

“I was stunned to get the call on the Friday afternoon before Christmas, as I was driving home from Trader Joe’s,” Guasco says. “I was called by the Governor’s Senior Appointments Advisor, Joshua Groban, who had interviewed me in Los Angeles over a month before. He told me to pull over to the side of the road. I did, and he told me I had been appointed. The elation came later.

Continued on page 21



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FROM ADR TO VCSC – FIVE QUESTIONS FOR JUDGE GUASCO

By David Karen

Ventura County's newest judge, **Matthew Guasco**, has had an exceptionally diverse legal career. Besides trying cases and handling numerous appellate cases that have resulted in published decisions, Judge Guasco has taught in law schools throughout the world, and at Pepperdine University. He hosted a legal show on cable television for two years. He is a past president of the Ventura County Bar Association. Many of us in the county, however, knew him best as one of Ventura County's go-to mediators.

For this reason, in addition to *CITATIONS'* traditional judicial profile, we asked Oxnard trial attorney/mediator **David Karen**, principal of the DK Law Group and 11th Hour Mediation, to ask Judge Guasco to reflect on how his past experiences as a mediator, appellate attorney and ADR educator may come into play in his new profession.

David Karen: Congratulations on your appointment, Judge! As you are a former professor and appellate advocate, I want

to start off by asking you to comment on a quote by Roscoe Pound that seems to address ADR and justice, although it was written over a century ago:

"Justice, which is the end of law, is the ideal compromise between the activities of each and the activities of all in a crowded world. The law seeks to harmonize these activities and to adjust the relations of every man with his fellows so as to accord with the moral sense of the community. When the community is at one in its ideas of justice, this is possible. When the community is divided and diversified, and groups and classes and interests, understanding each other none too well, have conflicting ideas of justice, the task is extremely difficult."

Judge Guasco: I have great respect for Professor Pound's ideas and writings about law, conflict and alternatives to litigation as a means of resolving conflict. I think Pound identified a real tension between the ability of the courts to effectively and satisfactorily

resolve conflict in an era of dwindling resources, on the one hand, with the ability of the parties themselves to resolve conflict more effectively and creatively through mediation or other ADR processes. I became a judge because I believe the administration of justice is essential to ordered liberty and the community. The fact that I am trained in mediation and appreciate the limitations of the judicial system makes me a better judge. I do, however, think that justice is not always served in mediation or arbitration. Often, justice occurs when an impartial and objective judge applies the law to litigated facts and renders a decision which brings finality to a conflict. Mediation cannot do that for people. I think Pound understood and accepted this.

David Karen: Lofty theories aside, do you hope to put into practice as a judge any of the skills that you developed as a mediator? If so, what and how?

Continued on page 10



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FROM ADR TO VCSC – FIVE QUESTIONS FOR JUDGE GUASCO

Continued from page 9

Judge Guasco: I find I'm already doing that. For example, my current judicial assignment is to preside over Courtroom 10, the misdemeanor and infraction traffic calendar. We deal with a high volume of cases every day. The litigants are often stressed and anxious, and things are moving pretty quickly. I use skills I learned as a mediator to bring some calmness and reassurance to people during the hectic calendars. Eye contact, a smile, clear and concise statements, diplomacy, encouraging people to make decisions based on their options – all of these are things I did as a mediator. I've simply adapted these techniques to judging.

David Karen: Can you offer any suggestions to mediators that would enable us to maximize our value to the public and the courts?

Judge Guasco: Mediators can maximize their value to the public and the courts in several ways. They can obtain as much quality training and experience as possible. They can understand and accept that not every case can or should be resolved in mediation; there are times when the courts are the most appropriate forum of dispute resolution. They can inspire confidence and trust by adhering to the highest ethical standards, including scrupulous avoidance of conflicts of interest and making full disclosures. They can learn the nuances of patience, judgment, timing and wisdom in encouraging people to make the best decisions possible for themselves, as opposed to ramming settlements down their throats for the sake of expediency or finality. I'm convinced that mediators do these things every day to their own credit and for the greater good. The courts are very fortunate that so many talented mediators do this work, effectively empowering people to resolve disputes far more creatively and satisfactorily than is possible in court.

David Karen: What are some "traps for the unwary" mediator, whether court-related or not?

Judge Guasco: Thinking you know what's going on based on the briefs. Not giving people the time they need to process information, work through strong emotions, and make informed decisions. Valuing a quick settlement which may fall apart with the slightest breeze, as opposed to durable agreements that stand the test of time. Preventing people from expressing emotions as a means of helping them progress through conflict to resolution. Preventing joint sessions because of conflict aversion, even though the disputants are in an ongoing business or personal relationship requiring that they continue to communicate with one another. Being too quick to reach a deal, thus short-circuiting the negotiation dance and causing an impasse. Offering a mediator's proposal too soon, thus causing at least one of the parties to say 'no' to a proposal he or she would say 'yes' to later if the mediator had been more patient.

David Karen: Looking back on a 26-year career as a trial attorney and mediator with 25 jury trials to verdict, I remain frustrated by the financial investment necessary to proceed to trial, only to deliver the result to 12 "peers" not necessarily capable of understanding/being interested in my clients' plight. As a result, I continuously try to foster on-going settlement dialogue, even while "litigating madly" in preparation for trial. In that regard, I've always appreciated the trial judge that commands the efficiency of a courtroom at trial, yet still allows/fosters room for "11th hour" settlement dialogue to continue between the parties – even up to verdict.

As a newly appointed judge with a significant mediating background, presuming the parties consented, do you have any strong feelings as to whether a trial judge with skills like yours should "share the stage" at all with any continued mediating efforts, during trial? Or do you believe that trial judges need

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to remain free to rule, without the input of “settlement posturing” influence?

Judge Guasco: I made the transition from mediator to judge because I like presiding over an impartial, fair, professional, dignified and respectful adjudication process. I can incorporate mediation techniques in how I do that, but I’m committed to the judicial role. I am reluctant to blend the roles of mediator and judge; I think it creates too much confusion, frustrates the parties and their attorneys, and can produce due process problems. For example, a judge who engages in settlement efforts as the neutral during trial may impair his or her neutrality and impartiality for purposes of the right to a fair trial and due process of law. I would welcome and encourage the parties’ efforts at resolution, even up to the time that the jury begins deliberations, but I would be constantly vigilant to respect and adhere to my judicial role. I’m not a mediator anymore; I’m a judge. That being said, I think that my ADR experience makes me receptive to alternative means by which the parties might achieve greater satisfaction than through litigation and trial. I would not hesitate to suggest such alternatives where appropriate, and I am open to encouraging the court to explore new and innovative ways of incorporating ADR processes into the courthouse. Ultimately, however, I am committed to the orderly and efficient management of cases before the court. I think that respects the parties’ time and investment the best.



David M. Karen is principal of DK Law Group and 11th Hour Mediation, in Oxnard.



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LAWYER'S NOVEL DOES JUSTICE

By Wendy C. Lascher

"I hate Jenna." I wrote that to my friend, Santa Monica attorney Charles Rosenberg, by the time I got to page 21 of his lawyer-thriller *Death on a High Floor*. I still didn't like Jenna much by the end of the book, but by then the facts, and my feelings, had become more complicated.

Because I have not read many mystery novels since my Nancy Drew phase in the early 1960s, I cannot tell you how Rosenberg's book stacks up against the competition. But I have read more than a few books by and about lawyers, both fiction and nonfiction. This one stands out because it made me laugh, made me cringe, and did not (with one exception) embarrass me in its portrayal of how lawyering really works.

Might as well get the exception out of the way. Intolerable conflict of interest. A lawyer as experienced and wealthy as the defendant should have known better. A lawyer as street smart as the older defense

lawyer should have put a foot down. A lawyer as clever as the junior defense lawyer should have had the guts to back out. (Note to self: In reviewing a mystery, use neutral pronouns so as not to give away any secrets.)

Caricature is the exaggeration of some characteristics and oversimplification of others. Lawyers willing to suspend a little disbelief will like *Death on a High Floor* because it combines exaggeration and oversimplification of BigLaw, office politics, cocky lawyers, predatory news media, corrupt law enforcement and spot-on depictions of clients who don't follow their lawyers' advice. And while some plot twists seemed far-fetched to me, maybe things like them have happened to others. I do know that the book's information about ancient Roman coins is accurate.

Maybe the judge is a little too saintly and the cross examination too lucky, but the lawyer lore sprinkled through the book rings true.

Even if you are an experienced trial lawyer, and certainly if you are a novice, there is much to absorb from Rosenberg's exposition of lawyering technique. If, like the novel's protagonist, you haven't thought about criminal procedure since law school, you will relearn some of it here—enjoyably. That is not surprising, because Rosenberg is a Harvard Law graduate, an adjunct professor at Loyola Law School in L.A., and was a full-time on-air legal analyst for E! Television's life coverage of the O.J. Simpson trial. (He is also the script consultant to a number of popular TV lawyer shows, but don't hold that against him; this book does not suffer from the pressures of producers, advertisers, and having to squeeze the whole story into 42 minutes.)

Even nonlawyers will find this mystery story educational as well as entertaining. It distinguishes TV law from real life. ("In most courtrooms, you can't just waltz up to a witness like they do in TV shows.") It explains the hearsay rule and how to lay a foundation. It offers sardonic comment about grammar ("Well, enjoy.' I thanked her – after deciding not to remind her that 'enjoy' is a transitive verb requiring an object – and went back out into the parking lot.") It explains why lawyers do not always return phone calls immediately. And, it is funny. ("A guy in a baggy suit stepped up and flashed his badge at me. I had only seen it in the movies. Never been personally flashed before.")

One good thing about getting older is that you have more friends who have done impressive things, such as writing a novel that's for sale for on amazon.com (including for Kindle) as well as at my favorite bookstore, Powells and <http://www.powells.com/s?kw=death+on+a+high+floor&class=>. I am looking forward to the next story about Jenna.



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Wendy Lascher is an appellate lawyer and partner in Ventura's Ferguson Case Orr Paterson LLP. She is the editor of CITATIONS.

VC Women Lawyers

The VC Women Lawyers hosted 75 attorneys at a reception February 22 atop the Tower Club, honoring the Justices, of the Court of Appeal. Seated from left to right-to-left are: Justices Kenneth Yegan, Arthur Gilbert and Steven Perren. Top row from left to right are: Rebeca Mendoza, Charmaine Buehner, Jodi Prior, Jill Friedman and Katherine Hause. Proceeds benefited the Mary Sullivan Scholarship Award.

Photo by Roberto Vargas



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The planning has just begun. Rubicon Theatre Company member Joseph Fuqua is the "Show of Justice" director and is "Calling all Talent"! If you are interested in being a part of this production contact Joseph c/o marketing@rubicontheatre.org.

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The Modern Role of the Maxims of Jurisprudence

By Joshua S. Hopstone

When did you last give a thought to the Maxims of Jurisprudence? *Civ. Code*, §§3509 – 3548. Codified in 1872, those quaint proverbial sayings exemplify some of our most fundamental legal canons. “The greater contains the less.” §3536. “Time does not confirm a void act.” §3539. “No one should suffer by the act of another.” §3520. You can read them all in two minutes, and I suggest you do; they may bring you a smile.

What is puzzling, though, is why the Legislature found it necessary to formally codify them. Sir James Mackintosh said “Maxims are the condensed Good Sense of Nations.” (This phrase became the motto of Herbert Broom’s *Legal Maxims* (1839)). Condensed, certainly. And by their own terms, they are “intended not to qualify any of the foregoing provisions of this [Civil Code], but to aid in their just application.” §3509. But if they are so universal, why did they need to be permanently branded in the Civil Code? Do the Maxims today satisfy their stated purpose of aiding us in the just application of the law? What is their role in modern jurisprudence?

Maxims “are phrases, solemn and imposing in form, which seldom or never render any real assistance in the solution of a legal puzzle; but on the contrary actually retard that solution. They are mere truisms; or mere identical propositions; or moral precepts; or principles of legislation; but not working rules of law.” Jeremiah Smith, *The Use of Maxims in Jurisprudence*, 9 Harv. L. Rev. 13, 14 (1895). In other words, while the Maxims undoubtedly provide us a unique glimpse into the historical foundation of our common sense of equity, justice, and individual freedom – the very fabric of our society – conceptually, they are not “law” because they are not enforceable.

Consider section 3514: “One must so use his own rights as not to infringe upon the rights of another.” Sounds great, right? (Besides the fact that if such was the reality many of us litigators would be out of a job...). It seems, though, more a statement of universal morality than a concrete law – something that should “go without saying” instead of requiring a code section to be applicable.

Smith wrote that this maxim, “*Sic utere tuo ut alienum non laedas*,” is mere verbiage. A party may damage the property of another where the law permits; and he may not where the law prohibits; so that the maxim can never be applied till the law is ascertained; and, when it is, the maxim is superfluous.” “This affords no aid...in determining whether the act complained of is actionable, that is, unlawful. It amounts to no more than a truism: An unlawful act is unlawful.” *Smith, supra*, 9 Harv. L. Rev. at 14-16.

Nevertheless (and keeping in mind that “Superfluity does not vitiate” (§3537)), historically California courts have cited the Maxims of Jurisprudence as a matter of routine, applying them to virtually every area of the law. For example, section 3531 encapsulates the basic principle of contract law that performance is excused where compliance has been rendered objectively impossible: “The law never requires impossibilities.” (And in case you are curious, “Everything is deemed possible except that which is impossible in the nature of things.” §1597; *see also*, §1441).

The textual originalists among you may find resolve in section 3535: “Contemporaneous exposition is in general the best.” Our state Supreme Court did, in interpreting an ambiguous constitutional section to determine whether Justice Stanley Mosk could be compelled by subpoena to appear and testify as a witness at a public hearing. *Mosk v. Superior Court* (1979) 25 Cal.3d 474. (The offensive subsection (*fnr.* Article VI, sec. 18, subd. (f)) was subsequently amended by the electorate. *See, Adams v. Commission on Judicial Performance* (1994) 8 Cal.4th 630, 651).

Section 3523 (“For every wrong there is a remedy.”) embodies the fundamental tenet of American jurisprudence that, unless contrary to public policy, an injured party should be compensated for all damage proximately caused by the wrongdoer. “*Ubi jus, ibi remedium*.” Coupled with the general power of courts to use all the means necessary to the exercise of their jurisdiction, (*Code Civ. Proc.* §187), it has led to the creation of new torts and a general reluctance to create or

continue to recognize exceptions that deny compensation to an injured party. *See, e.g., Moore v. Concliffe* (1994) 7 Cal.4th 634.

Courts have turned to section 3542 (“Interpretation must be reasonable.”) in deciphering ambiguous contracts, statutes, estate plans, and etcetera. But how useful is this statute, practically speaking? Any direct application would be naturally and inherently subjective and could not possibly be enforced, but for a reviewing court replacing its own opinion about what is “reasonable” and what is not. “It is sometimes difficult to discover whether such authors [of maxims] are discussing law or morality; whether they lay down that which is, or that which, in their opinion, ought to be...” “[A] proposition can properly be called “law” only when, and so far as, it is enforceable by the courts.” *Smith, supra*, 9 Harv. L. Rev. at 22 (citations omitted).

Four Maxims (§§3545 – 3548) were re-codified in the *Civil Code* in 1967 upon the repeal of former *Code of Civil Procedure*, section 1963. All have to do with burdens of presumption. For instance, “A thing continues to exist as long as is usual with things of that nature.” §3547. Thus, where a criminal defendant has been previously proven insane, his insanity is presumed to continue and thereafter it is the People’s burden to prove otherwise. *People v. Mixon* (1990) 225 Cal. App.3d 1471, 1492. And one of my personal favorites: “The law has been obeyed.” §3548. One is presumed to have acted lawfully until proven otherwise.

So as practitioners how are we to perceive and employ the Maxims of Jurisprudence today? What role do they play in our modern and advanced legal landscape? There may be no quantifiable answer. In the 140 years since their enactment, they shaped the development and judicial application of the common law. But they are also becoming less enforceable as the law as we know it continues to become exponentially more statutory and complex. When read today, the Maxims seem to represent the embodiment of our collective legal morality, not to act as a set of binding rules.

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Perhaps that is all they ever were supposed to be. The legal and moral principles the Maxims embody are the DNA of America, underlying our very comprehension of equity. The importance of those principles cannot be understated. Perhaps, then, the Maxims themselves were never designed to be "enforced."

"Above all, it should be remembered that these maxims (even the best of them) are only maxims; that they are not meant to take the place of a digest; that they are neither definitions nor treatises; that while they are a convenient currency, they require the test from time to time of a careful analysis; and that, in many instances, they are merely guideposts pointing to the right road, but not the road itself." *Smith, supra*, 9 Harv. L. Rev. at 26 (citations omitted). The very first Maxim indeed says they are intended not to qualify the law but to aid in its just application. §3509. But the second Maxim says: "When the reason of a rule ceases, so should the rule itself." §3510. By this writing I certainly am not calling for their abolition, but rather, a thoughtful consideration of the purpose of their statutory construction.

Joshua S. Hopstone is an associate at Ferguson Case Orr Paterson LLP in Ventura whose practice spans family law, business litigation, and appeals.

Endnote

By Wendy Lascher

My mother Peggy Cole was one of two women in the Stanford Law School class of 1949 (State Bar no. 21205). She reports this use of a maxim by her fellow first-year law students:

There was a law student named Rex,
Who had a small organ of sex.
Arraigned for exposure,
He said with composure,
De minimis non curat lex.

See, §3533 ("The law disregards trifles.").

Wendy C. Lascher is an appellate lawyer and partner at Ferguson Case Orr Paterson LLP in Ventura. She is the editor of CITATIONS.



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Members of the Bench and Bar will gather on March 27th for VCTLA's annual Judges' Night. VCTLA invites all to join its members as it honors retired **Judge Charles W. Campbell** for his service as trial judge in *People v. McNerney*, at the dinner event held at the Courtyard by Marriott in Oxnard.

The evening will also include the presentation of a portrait of retired **Judge Ken W. Riley**. The portrait will be placed in Courtroom 22.

A related flyer can be found in this issue of Citations.

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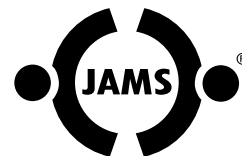
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WATCH OUT FOR INTERNET SCAMS

By Daniel A. Higson

On Nov. 15, 2011, I received an email from Bruce Shattock, president of S & J Boring, Inc., a company located in Livonia, Mich., requesting my legal assistance on a possible litigation matter involving Turnkey Tool Company of Camarillo.

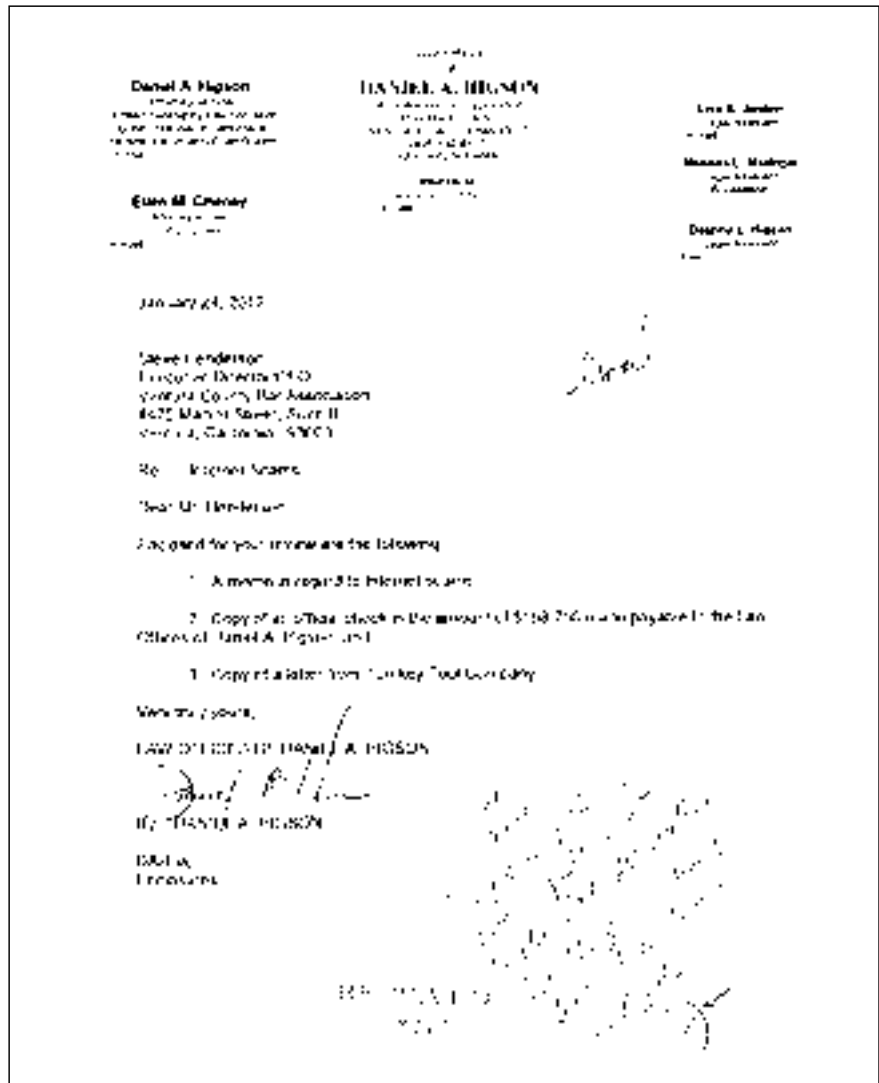
On Nov. 20, 2011 I responded to the email asking for the particulars regarding the representation. On Nov. 21, 2011, Mr. Shattock emailed back indicating his company had sold products to Turnkey Tool Company and was owed \$385,750. The email went on to say that S & J Boring, Inc. had maintained a good relationship with Turnkey Tool Company over the past few years and would like to maintain that relationship after collection of outstanding sums owed. Mr. Shattock asked me to do a conflicts check to see if I could represent S & J Boring, Inc. in a collection matter against Turnkey Tool Company.

On Nov. 22, 2011, I emailed Mr. Shattock, advising him that my firm did not have a conflict regarding handling the matter against Turnkey Tool Company. Mr. Shattock emailed back and asked me to then run a conflicts check on the principal owner of Turnkey Tool, a Mr. Tim Pyle. I did so and had no conflict. Mr. Shattock then requested I send him a retainer agreement, which I did on Nov. 28, 2011. In this agreement, I requested a \$1000 retainer.

Mr. Shattock, as president of S & J Boring Inc. signed the agreement on Dec. 2, 2011 and mailed it back to me with a note to say that his company's \$1000 retainer check would soon follow.

On Dec. 5, 2011, I received the email from Mr. Shattock indicating he had been in communication with Mr. Pyle and anticipated Turnkey Tool Company making a partial payment in the future.

On or about Dec. 27, 2011, I received a letter dated Dec. 2, 2011, from Tim Pyle, president of Turnkey Tool Company enclosing a certified check in the sum of \$198,750 drawn on Citibank of New York, New York. The official check was made payable to the Law Offices of Daniel A. Higson.



I contacted Tim Pyle of Turnkey Tool Company and he knew nothing about Bruce Shattock, S & J Boring, Inc., or sending me a certified check for \$198,750.

I took the official check to my banker at First Bank of Ventura who contacted a local Citibank branch office. It was determined that the official check was a counterfeit. The Citibank representative indicated that, in normal banking practices, it would take 45-60 days for Citibank to verify that the check was counterfeit. First Bank indicated that had I deposited the check in my attorney trust account, First Bank would have put a hold on the check for nine days. Thereafter I could write a check out of my trust account to S & J Boring, Inc. for \$198,750, which sum First Bank would have cleared.

Thereafter, when First Bank learned the \$198,750 check which I deposited was counterfeit, then I would be responsible to cover this check, as I impliedly warranted that it was valid by depositing it into my trust account.

I read **David Edsell's** article in *CITATIONS* describing an Internet scam wherein the attorney was the intended victim. It was this article that made me suspicious when I received the \$198,750 check. I hope this helps other attorneys avoid being victims of scams currently being perpetrated over the Internet.

Daniel A. Higson has an office in Ventura and is a Certified Specialist in Bankruptcy Law and may be contacted at higsonatty@aol.com

JUDGE MATTHEW GUASCO

Continued from page 5

My most immediate reaction, which lasted for several hours, was of being overwhelmed, speechless and very nearly breathless. I came home and gave my family the news. We had a very happy Christmas.”

Indeed, the most important thing to Judge Guasco is his family. His wife, **Susan B. Lascher**, is the daughter of Ed Lascher.

“Ed was one of the most gifted and talented and well-regarded appellate attorneys of his age, and he was a wonderful and kind mentor and gentleman,” Guasco says. Susan is a writer and a well-regarded appellate attorney as well. Married in 1988, the couple have two daughters, about whom the proud father speaks with pride, obvious love and unbounding affection.

In his leisure time, he likes to cook and garden. Judge Guasco also has a musical side, involving guitar. But family has always come first. As the children grew up, they all tried to have family time each day and eat breakfast and dinner together. They also spent weekends together.

“That has always been important to Susan and me,” Guasco says.

“I don’t look forward to the empty nest syndrome when our second daughter goes to college.”

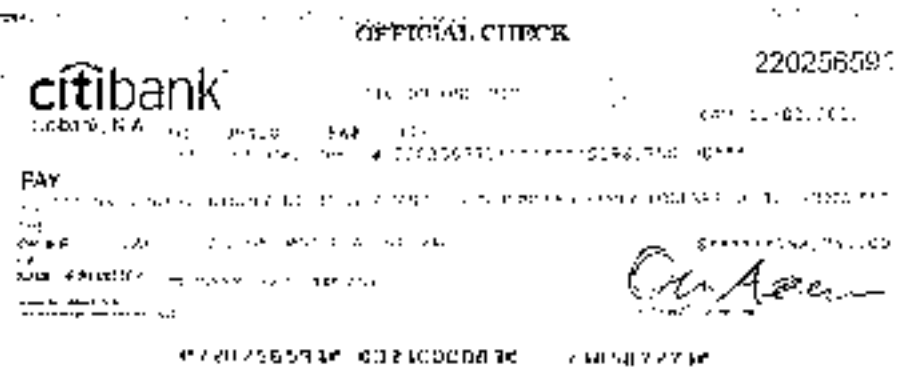
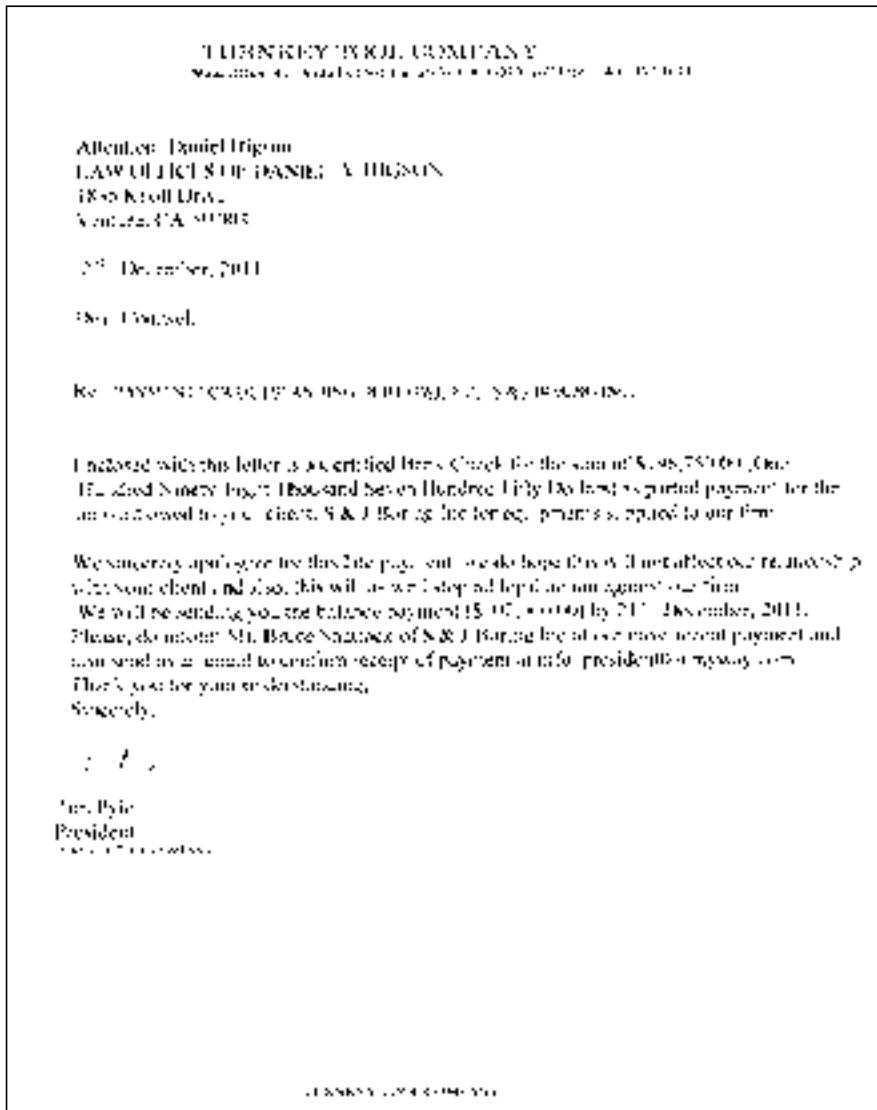
And then in his inimitable way, he includes the interviewer in the conversation.

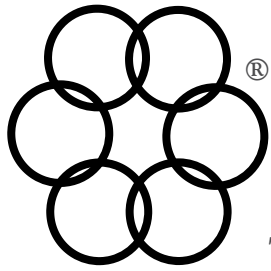
“You went through this, Lou didn’t you?” he asks.

It is so like Matt Guasco to show empathy for another. He just cannot help himself.



Louis Vigorita practices workers compensation and Social Security disability law in Ventura. He is a member of CITATIONS’ editorial board.





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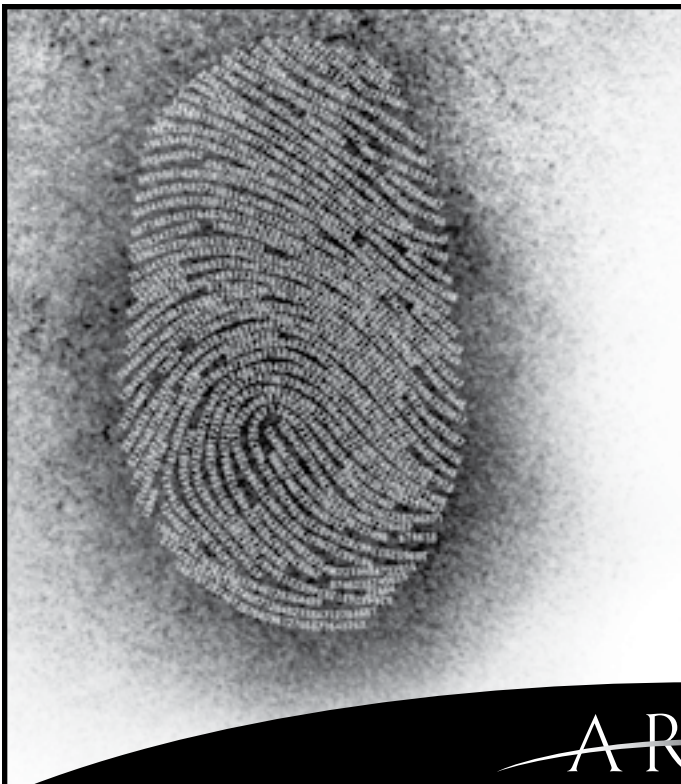
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“A Separation”

By Bill Paterson

“A Separation”, Iran’s Oscar entry for best foreign language film, is one of the most acclaimed films of the year. It is a brilliantly executed and morally complex tale chronicling what happens when otherwise decent people are led astray by ingrained cultural norms and a stubborn refusal to consider any point of view but their own.

As the film opens, a couple are sitting side by side speaking to an unseen man in what passes for divorce court in present day Iran. Simin (Lelia Hatami) has obtained a visa to leave Iran, a country in which she sees no future for herself or her family. Her husband Nader (Peyman Moadi) refuses to either leave or to consent to a divorce, insisting he cannot abandon his father who has Alzheimer’s. They each have valid claims on the other. Life will be better for the family outside the reign of the Mullahs, but how does one leave a terminally ill parent, and what effect will either of their choices have on their 12-year-old-daughter, Termeh (Sarina Farhadi)?

As the emotional temperature ratchets up, Simin and Nader set the stage for virtually every human interaction in the film. Compromise is spurned and shrill argument is the default discussion mode. The upshot is that Simin is refused a divorce and moves in with her parents, leaving Nader with his gravely incapacitated father and Termah.

With Simin gone, Nader hires a home health care worker. Razieh (Sareh Bayat) knows little or nothing of taking care of a nearly helpless man but desperately needs money to stave off her husband’s creditors. On her first day on the job the old man soils himself. Rather than quickly attending to his plight, she calls a religious advisor to see if cleaning him would violate Islamic law, as she would have to see him naked. She then makes a mistake which could have proven fatal to her charge. When Nader gets home he finds out and also thinks money is missing. The two get into a rapidly escalating confrontation. Razieh vainly tries to tell him that she never took any money but refuses to leave until she is paid for her day’s work. He won’t listen, she won’t back down and he bodily ejects her from the apartment.

What happens next unleashes a cascade of events in which Nader finds himself charged with murder and Razieh with theft. They are soon enmeshed in the Iranian court system. The cramped room they find themselves in is neither an oasis of reasoned discourse or due

process. Noisy accusations take the place of evidence, the “judge” rarely looks up from his paper strewn desk and, when the spirit strikes him, he has the power to have a litigant summarily carted off to jail. Nader and Razieh are each irrevocably wedded to the belief they have a monopoly on the truth and the other is out to victimize them. They don’t listen to each other, bend the truth to advance their positions and begin to lose themselves in a moral wilderness. In their single-minded devotion to their own cause they cannot see the harm they are inflicting on themselves, each other and their families. Only young Termeh is not caught up in the downward spiral, but her views carry no weight.

“A Separation” is not only a cautionary tale of the havoc wrought when people are so caught up in “winning” that they become blind to where their true self-interest lies, but is also a stinging (but necessarily veiled) critique of the shortcomings of current Iranian society. At its heart, however, “A Separation” is about the universal theme of people’s infinite capacity for creating self-inflicted wounds. Nowhere is this more apparent than the note on which the film ends. It is unexpected, dramatic in a remarkably subtle way, and is in perfect keeping

with the film’s title - “A Separation.” Superbly crafted and impeccably acted, “A Separation” is one of the most worthwhile films you are likely to see this year.

DVD Pick

“House of Sand and Fog,” with Ben Kingsley and Jennifer Connelly, is a searing example of the perils of self-righteousness in which a foreclosed homeowner (Connelly) is pitted against an implacable former Iranian Army colonel (Kingsley) who bought her home from the bank. The moral lesson to be drawn is contained in a flashback at the very beginning of the film when Connelly says: “It’s not my house.” By the end of the film the import of that statement will become all too clear. Caveat - Not a film for folks who require a happy ending.



Bill Paterson is Of Counsel at Ferguson Case Orr Paterson LLP in Ventura. He is an avid filmgoer.

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For those of you who continue to reside in a cave, the formal enrobing ceremony for **Judge Matthew Guasco** will be Friday, March 16, beginning at 4:00 p.m. inside Courtroom #22. Contact Victoria.borjesson@ventura.courts.ca.gov or 654.2965...Berkeley law professor William Falik has obtained naming rights to a restroom at Harvard Law School with a \$100,000 donation. Falik told *Above the Law* and the *Daily Californian* blog that he obtained naming rights after discussions with the school's dean at the time, Elena Kagan. Outside the restroom in Harvard's new Wasserstein Hall is a plaque identifying the "Falik Men's Room" as a result of a gift by Falik, a 1971 alum. "I have a name that doesn't go many places," Falik told the *Daily Californian*. "I think it's somewhat humorous to have my name outside of a men's room." Falik already has a history of restroom naming rights. He made a large donation to the Berkeley Repertory Theatre, which named the "Falik Gentleman's Lounge" in his honor...Southern Spain? **Jon Light** at 248.7214 or jlight@lightgablerlaw.com...

FCOP's **John Hribar** became a father for the first time Feb. 5 (Super Bowl Sunday) at 1:30 p.m. Ethan James entered the world at 7 lbs and 7 oz just before kick-off, while momma Betsy is doing just fine. Father John is reported to have said, "I suddenly feel responsible." And yes, he did miss the game...Beijing-based King & Wood has almost 1,000 lawyers in 15 offices – but it never had lawyers with the surnames King or Wood as founding partners. Mark Schaub, who according to King & Wood's website came to the firm in 2000 and was the first foreign lawyer to join, told Reuters that "there was no Mr. King and no Mr. Wood" when the firm was founded in 1993. Reuters notes that in the U.S., state ethics

Exec's Dot...Dot...Dot...

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

rules generally require that any surnames in law firm names reflect a lawyer who worked at that firm in the past or the present. But law firms in China can name themselves whatever they think will inspire confidence in the local or global marketplace...**Natalie Panossian** informs me The Federalist Society will hold a reception March 13, beginning at 6:30 p.m. at Cal Lutheran. "A Conversation with Ward Connerly, former UC Regent & Founder and President of the American Civil Rights Institute" will be the topic. CLE approved too! Call Natalie at 805.217.2465 or goldcoastfs@gmail.com...

Carol Woo, Alan Templeman and Dennis LaRochelle have been named *Super Lawyers* by a Thomson Reuters business, Southern California 2012 Super Lawyers, a rating service of outstanding lawyers. Those were the Ventura County attorneys I spotted, but I am quite sure I missed some. Let me know...Attorney William A. Rutter passed Feb. 2 at the age of 84. You'll recognize him as the founder of The Rutter Group in 1979. Additionally, he founded the BAR/BRI Bar Review, which became the largest Bar Review course in the country...The new officers of the Tri-Counties Government Attorneys Association are **Julie Doi** (City of Oxnard), President; **Felicia Liberman** (City of Simi Valley), Vice-President; and **Andy Viets** (City of Ventura), Secretary-Treasurer...

Forty-seven lawyers attended the 22nd Annual Strategic Planning Session of Bar Leaders February 11, hosted by the Bar board of directors and the officers led by President **Dien Le**. That may indeed be a single season record and included 7 vcba/vlsp, inc. EAs...Ouch! A Massachusetts dentist who allegedly used paper clips in place of standard steel posts, in order to save money while performing root canals, was sentenced in February to one year in state prison after pleading guilty in a medical fraud case brought by the State Attorney General...A California lawyer has been criminally charged after allegedly appearing at court to represent clients at hearing in a drunken state. Michelle Winspur is accused of blowing twice the legal limit on Oct. 7,

when she was given a breath-alcohol test as she entered Kings County Superior Court in Hanford, reports the *Visalia Times-Delta*. She was tested because a court clerk said she sounded drunk when she called to say she was going to be late for trial. Already facing an attorney discipline case for allegedly being drunk during a 2010 trial in Monterey County, Winspur has her license suspended earlier this month...

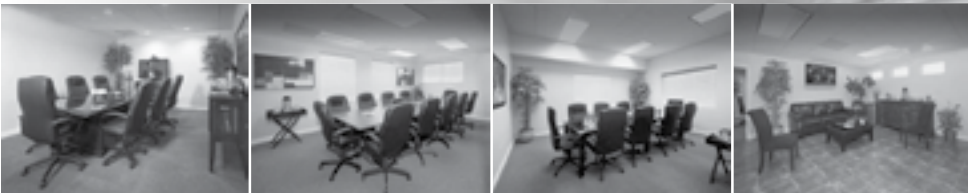
Barristers' Annual Darts Night is Friday, March 2, beginning at 5:30 p.m. inside Garman's Restaurant and Irish Pub in Santa Paula. A \$10 donation at the door ALL goes to the vcba/vlsp, inc. **Amy Dilbeck** at 641.6600 or amy@palaylaw.com... Additionally, the Barristers are assisting Habitat For Humanity Saturday, March 24. Call **Robert Krimmer** at 988.9886 or rkrimmer@atozlaw.com...Did you know the State Bar of California is considering increasing the number of hours/units/credits for attorney continuing legal education from the current 25 to somewhere north of 30? Not very much is known now, but the State Bar Board of Governors will be discussing in the coming few months...The 2012 National Fiction Writing Competition for Physicians and Lawyers is yours to win. A short story or novel in the fiction genre and not to exceed 2,500 words may be submitted by August 1 to www.seak.com...Finally, the VC Family Law Bar is hosting a dinner March 13 featuring the **Hon. Etta Gillivan** (Ret.). Call **Matt Purcell** at 987.8809 or vcflb@gmail.com... Help Wanted: Local firm looking for business litigator with 7-10 years litigation experience. May be "Of Counsel" or full-time employee with benefits. Call me.

Steve Henderson has been the executive director and chief executive officer of the bar association and its affiliated organizations since November 1990. His roommate at Harvard was Jeremy Lin and Henderson has been a lifelong Knicks fan. Additionally, his Final Four picks include Duke, Ohio State, Kentucky, Kansas and Syracuse. Henderson may be reached at steve@vcba.org, FB, Twitter at stevehendo1 or vcba1, or better yet, 650.7599.

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