



# CITATIONS

J U L Y - T W O T H O U S A N D F O U R

## VCBA MISSION STATEMENT

To promote legal excellence, high ethical standards and professional conduct in the practice of law;

To improve access to legal services for all people in Ventura County; and

To work to improve the administration of justice.

## Judge Frederick H. Bysshe, Jr. Working Hard to Improve the Community

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# THE XYZ AFFAIR

*Philip Garrett Panitz*



Every administration dating back to George Washington has had a crisis to deal with. Sometimes, due to the lack of anything else particularly tumultuous, the crisis is blown out of proportion. My administration is no different. Recently, as we reach the half way point of my presidency, a crisis arose. To put this crisis in true historical perspective and gravity, I must first time-tunnel you back to the John Adams administration.

John Adams was a fairly nondescript president, serving only one term. Adams followed the presidency of George Washington, and was in turn followed by Thomas Jefferson. Certainly Washington and Jefferson were historical giants, even in their own time. To make matters worse for Adams, his more famous cousin Samuel Adams was in the forefront of the American Revolution as a patriot, and brewed one mean beer. So during the Adams administration, the harbinger of the American press had to come up with some type of crisis to liven things up. This was the genesis of the XYZ Affair.

In 1798, the French were being a bit pesky. The French Revolution nine years earlier had led to a fledgling government still feeling its way in the world, and the French Navy was interfering with our shipping lanes to Europe. Despite our having just won the war with Britain, the French were not convinced we supported them. They suspected we would align with the British and interfere with France's internal affairs. Viewing us as a possible enemy, they would stop our ships and sometimes confiscate cargo. To diffuse this situation, President Adams sent a secret group of emissaries to meet with the French Foreign Minister to broker an easing of tensions between the two nations. The French Foreign Minister refused to meet directly, but sent three individuals to a clandestine rendezvous with the Americans. The three individuals were secretly classified as Mr. X, Mr. Y and Mr. Z. The Americans reported back to President Adams that X, Y and Z had informed them the French would stop the harassment of American

ships if the Americans committed to financial aid to assist the French government. Adams secretly went to Congress to ask for this aid, and Congress immediately leaked this information to the press, who reported that Adams was willing to pay a bribe to stop the interference. Needless to say, this did not play well in Peoria.

With the XYZ affair as a backdrop, I now disclose the crisis currently playing out in my administration. Each year, the Ventura County Bar Association "sponsors" a group of delegates to attend the Conference of Delegates held at the annual California Bar convention. The COD is a chance for attorneys to draft prospective legislation, discuss it, vote on it, and if passed take it to the Legislature with the stamp of approval of the COD. Sometimes, the California Legislature actually enacts a piece of legislation in this manner. It is a chance to make a difference.

It has recently come to the attention of our current Board of Directors that Ventura County's delegation proposed legislation directly to the COD without first running it by the Board of Directors. In the past, no formal procedure had been in place to run proposed legislation by the Board, or to even seek Board approval. Since Tina Rasnow previously ran the delegation and also sat on the Board, she would bring the proposed legislation to the Board's attention. Nothing was ever really discussed or voted on, however. This year, since Melissa Hill is the conference chair, and does not sit on the Board, nothing was put before the Board. Thus we are "sponsoring" legislation we have never seen.

All of this would have most likely flown under the radar had not one of the proposed legislative items been to allow state-wide topless sunbathing. Whether or not you favor such a proposal, the issue has been framed as to whether it is appropriate for the Ventura County Bar Association to be "sponsoring" such an agenda, particularly without being informed it was doing so. This has caused quite a furor, and heated argument and debate. In one corner, the argument (paraphrased) is one of freedom of speech, and the COD is the place for the debate to occur, rather than the Board of Directors of this Bar. To allow the Board of Directors to "nix" someone's

passionate drafting of some legislation is to stifle the discourse of free speech and discourage future participation in the COD. The other side's position is if we are sponsoring something as a Bar Association, we should be the ones approving it prior to submission to the COD.

I propose a compromise. I think the underlying purpose behind drafting legislation should be a fundamental threshold question: Does the legislation in some manner benefit or better the lives of Californians? If the answer is yes, then to achieve its most likely passage, availing oneself of the best and brightest minds of the Ventura County Bar Association and its committees, with the intent to review proposed legislation and to craft it better, is a good thing. It might lead to a better bill, and more likely chance of passage by both the COD and the California Legislature, which should after all be the ultimate objective.

If the answer to the threshold question is "no," then I'm not sure advancing someone's individual personal agenda is something that should be done in the name of the Bar Association. Besides, an individual has an alternate means of putting a resolution before the COD: Simply get ten attorneys to sponsor it. Surely in a county of 1,800 attorneys, ten can be found who would agree to almost anything. If the proposed sponsor cannot find ten attorneys to agree their proposed legislation would make good law, then it probably wouldn't. This isn't a freedom of speech issue in my opinion, it is about drafting good laws. We have plenty of bad ones. We have until October when the COD convenes to decide how to deal with this "crisis." Your opinions are welcome; write to me in care of Citations.

I call this the Great XYZ Compromise of 2004. Hopefully now I can return to my more mundane tasks of the presidency such as shaking hands, kissing babies, and signing treaties with the French.

**Philip Garrett Panitz**, 2004 President of the Ventura County Bar Association, specializes in corporation and tax law.

## Judge Frederick H. Bysshe, Jr. - Working Hard to Improve the Community



Few judges on the Ventura County Bench have as much experience in civil law or private practice as Judge Frederick H. Bysshe, Jr., who presides over Courtroom 47. His handsome visage belies his age (66). This judge had 38 years of law practice, including 7 years with the Riverside District Attorney's Office, under his belt before he took the bench in 2001.

Judge Bysshe loves being on the bench, for it allows him to apply that wealth of experience for the public good. He says: "Every day is interesting - every day a challenge. I get to apply my experience to real-life situations, helping resolve and bring closure to problems so that the parties can go on with their lives." His love of the law and his job is evident in the time he puts in, bringing work home most nights and spending a full day on his cases most weekends.

Working hard and helping people, however, are not new for Judge Bysshe. They are traits that have distinguished him throughout his life and career.

### Childhood

Frederick (Fred) H. Bysshe, Jr. was born in 1937 in Long Beach, California. In 1948, his family moved to El Centro, California, a lower middle class agricultural community near the Mexican border. His father was a parts clerk for John Deere.

Young Bysshe grew up hearing stories of his grandparents, sparking a life-long passion for assisting the less fortunate. His paternal grandfather had been the executive director of the Methodist Missions in Europe and Africa during the First World War, and his grandmother had turned the family home into an orphanage, housing more than 100 children

who had lost their parents during that war. His maternal grandfather, a physician, had been superintendent of the county hospital in El Paso, Texas, which provided care for the indigent.

Bysshe will tell you that he has always worked, starting as a paperboy at age 12, working every day after school. During the summers, he variously worked as a picker in the tomato fields, as a laborer in a flax seed/cotton mill, as a shoe salesman in a department store, and as a production controller in the aeronautical industry. He says: "I have never seen myself as smarter than the next guy in the legal business; but I have always been willing to work harder to produce the best work."

### College and The Call of the Law

Bysshe attended the University of Redlands, graduating in 1959 with a degree in government and a minor in business. While in college, he and a friend organized a laundry business. They would pick up and store dirty clothes in their room overnight before taking them to a commercial laundry the next day. Out of school, he considered making a career in either business, high school administration, or law.

Bysshe knew a judge in El Centro through the DeMolay organization, who arranged for Bysshe to meet a local lawyer. The lawyer, Louis Plourd, pulled out his old books, and after teaching Bysshe the rudiments of briefing, had him brief a series of cases. Impressed with what he saw, Attorney Plourd told Bysshe that he was a natural lawyer. Bysshe subsequently applied to and was accepted at Hastings.

At Hastings, Bysshe was an associate editor of the Law Review and President of the Student Body. He graduated in 1962.

After he took the Bar Exam, Bysshe joined the Army Reserve's military police unit. While he was waiting to be called up for six months' active duty, he found work selling door-to-door for the Fuller Brush Company. He would get himself in the door, head for the oven (which was usually dirty), and clean a spot. Customers who saw how well Full-Sol cleaner worked also appreciated the free combs and potholders Bysshe gave them, and could never resist buying Fuller Brush products from him.

*Mark E. Hancock*

### Riverside District Attorney's Office

Following active duty in the army reserve, Bysshe interviewed with the Riverside District Attorney's Office. He was hired in 1963.

His work ethic helped him quickly rise to the position of Chief Trial Deputy in 1966, at age 29, and Chief Assistant in 1968, at 31. Bysshe also served as President of the Riverside County Peace Officers Association in 1968. During his time in the D.A.'s office, Bysshe tried a variety of cases, including three death-penalty trials.

He remembers those as very interesting times. The Warren Court was causing tumultuous changes in criminal investigations, requiring law enforcement to professionalize in response. Further, it was also the time of many "Movements," from Free Speech and Anti-War to the Black Panthers. Balancing the needs and goal of community safety and law enforcement with the rights of citizens and groups, in contexts such as stops, searches, seizures, interrogations, confessions and demonstrations, etc., made for busy and exciting times for prosecutors.

### The Move to Ventura

In 1968, Bysshe and several friends bought a working cattle ranch in Morro Bay. Bysshe wound up spending a lot of time on the weekends doing work at the ranch, including remodeling work on the cabin. Though previously unfamiliar with the central coast, he became enchanted and decided to relocate to either Ventura or Santa Barbara, where the air was cleaner. He and his family moved to Ventura in 1970.

### Joins Johnston, Lucking and Bertelsen

Bysshe joined Bill Lucking, Bruce Johnston and Karl Bertelsen, who had a general practice together in Ventura, in 1970. Bill Lucking, whose grandfather had been Henry Ford's attorney, was a preeminent water law lawyer and counsel for American Hawaiian Steamship Co., which was developing Westlake.

Shortly after Bysshe started working for the firm, Bill Lucking purchased the building, now owned by the partners, that still stands at 60 California Street. At the time, the building was only two blocks from the courthouse (which is now Ventura City Hall). The California Street building had been a pharmacy and now, after more renovation, is the home to be of Café Bariloche.

At this firm, Bysshe initially handled all kinds of matters, from criminal law to family law cases. In a bit of coincidence, Dennis Kuttler, then a law student/legal intern at UCLA, ran into Bysshe on a murder case involving Indians in Riverside County in 1969. Then, when Kuttler graduated and went knocking on doors in Ventura in 1972, looking for employment, it was Fred who answered and wound up hiring him. Now-newly-elected Presiding Judge Jack Smiley joined the firm in 1974.

Kuttler recalls that Bysshe was fearless, at different times taking on cases against Chrysler, Ford and UCLA Medical School.

### Hard-Working Personal Injury Lawyer

Though he never set out to be a “personal injury lawyer,” Bysshe’s success in these kinds of cases brought more of them, until over 75% of his work time was devoted to personal injury and medical malpractice cases.

Prior to becoming a judge, Fred Bysshe was a respected member of the Bar. He came to be rated AV by Martindale Hubbell, and received certificates of recognition from CTLA (now CAOC) in trial law, products liability and professional negligence. He was selected for listing in the Bar Register of Preeminent Lawyers. Just before his appointment to the bench, Bysshe achieved a seven-figure verdict against a county doctor in a medical malpractice case.

Along the way, Bysshe has worked with a number of other attorneys in town, including Diane Rowley, Dennis LaRochelle and Terence Geoghegan. Dennis LaRochelle recalls the amazing physical stamina that Bysshe exhibited in working on his cases, stating: “Fred didn’t seem to need to sleep.”

### Active Citizen

Bysshe was very active, from the beginning, in civic organizations and causes, including the Ventura Downtown Rotary Club, the Ventura County Archaeological Society, the Ventura Boys and Girls Club, the Ventura County YMCA, the Ventura County Cancer Society, the Ventura County Diabetes Association, the Medical Resource Foundation, the Ventura Chamber Music Festival, the Ojai Land Conservancy and the Smoking Action Coalition, and he assumed board of director and leadership roles in most of these organizations. He may, however, be best known as the person who spurred the County’s restrictions on smoking some six years before the State of California passed such laws.

Bysshe has enjoyed assisting community enterprises in reviewing their missions and in making changes in how they operate, so as to better serve those missions. He says there are three types of people who seek to run organizations: resume builders, caretakers and innovators. He says: “I don’t sit on boards for the resume line. If I can’t do something worthwhile for an organization, then I need to put my time elsewhere.” Judge Bysshe views himself as an innovator and relishes the challenge of figuring out how things can best be run. He also says that: “If you do undertake an office or a job, you give it the best that is in you and you try to leave that organization or entity better for you having been a part.”

Bysshe has been honored for his community work. In 1990, he received the Ben E. Nordman Award (which recognizes community work by local lawyers) and, in 1991, he was named Ventura Citizen of the Year.

### Bar Leader

Bysshe has also been very active with the local bar. He is a past president of the local Criminal Defense Bar, the Ventura County Trial Lawyers Association and the Ventura County Bar Association.

He was also involved, as the County’s representative to, and as a member of the Board of Governors of, the California Trial Lawyers’ Association (now known as the Consumer Attorneys of California). Many of us remember the big role he played in the campaign in the 1990s to defeat initiatives seeking to limit the right and remedies of injured people in civil cases.

Bysshe was also one of the founders of the Barristers organization and came up with the idea of the “Brown Bag” lunch meetings, to help give young lawyers access to experienced practitioners in different areas of law, which meetings continue.

Today, as a judge, he is still involved with the local bar, speaking at local trial lawyer meetings on legal subjects.

### Judge Bysshe

Judge Bysshe, a Republican, was appointed to the Superior Court Bench by Governor Gray Davis in 2001. One of the most touching parts of that proud ceremony for him was that his 93 year old mother, Virginia Bysshe, was there to enrobe him.

Judge Bysshe has already presided over a number of notable cases, such as one of the



civil cases against convicted rapist Andrew Luster and the “Big Stink” case involving allegations of noxious odors from a wood recycling plant along the Santa Clara River. Currently, Judge Bysshe is presiding over the civil injunction case involving the La Colonia Chiques Street Gang in Oxnard.

True to form, Judge Bysshe has innovated in his courtroom, requiring attorneys to give brief opening statements before jury selection and allowing and encouraging jurors to ask questions during trial, in an effort to help stimulate and involve jurors to the end of producing the mission of justice. “Better they should express their questions or confusion during the trial than they should take that state of mind back to the jury room where their issues may not be as effectively addressed,” he says.

When asked about when he envisions retirement, Judge Bysshe responds: “Oh. Not for a long time. I’m having too much fun. When the job stops being rewarding, or I feel that I am not capable of doing the job I believe I need to do for the public, then I’ll retire.”

### Family Man

Judge Bysshe’s chambers is full of photographs of his wife, Judy, their children and three grandchildren. He says: “I loved my children as youngsters, but this grandchild thing is great.”

Hard worker. Community Activist. Innovator. Problem Solver. Someone with a history of helping his community and the people in it. That’s what you get when you enter Courtroom 47.

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**Mark E. Hancock**, an attorney with offices in Ventura, who handles personal injury cases, insurance disputes and CUMIS counsel matters for insureds, and real estate litigation, has had the pleasure of being co-counsel with Fred Bysshe on several cases.

# Judge Brian Back Honored

*Michael McQueen*



Judge Brian Back was recently honored as Ventura County Judge of the Year for 2003. This notable honor is well deserved. But knowing Judge Back, he is somewhat uncomfortable with being singled out in such a fashion. This individual distinction would run counter to Judge Back's strong dedication to and his recognition of the importance of teamwork in any endeavor.

The Judge of the Year is an annual award sponsored by the Ventura County Trial Lawyers Association. Why would the VCTLA single out a judge sitting on the juvenile bench? Michael Walker, President of VCTLA, explained that though VCTLA sponsors the event and hosts the awards banquet, the broad-based selection process receives input from lawyers in almost every discipline. The selection committee is made up of representatives of the District Attorney's office, Public Defender's Office, criminal defense bar, civil defense bar and the Ventura County Bar Association. Mr. Walker admitted that there are no hard and fast criteria used in the selection process. The committee is looking for judges who go beyond the call of duty.

Judge Back clearly exceeds the norm, reports Mr. Walker. He works well with

the Bar and has exhibited a strong commitment to the Juvenile Drug Court and the juvenile justice system. Before his appointment to the bench, Judge Back practiced civil law with Nordman, Cormany, Hair and Compton and with Arnold, Back Mathews, Wojkowski & Zirbel. He is a 1977 graduate of the Law School at the University of Santa Clara. He earned his Masters in Government from Claremont Graduate School in 1974 and he received his Bachelors Degree in Political Science from Claremont Men's College in 1972.

Judge Back was appointed to the Municipal Court in 1997 and was elevated to the Superior Court in 1998. He was assigned to the Juvenile Court in 2000. Since taking the Juvenile Court assignment, Judge Back has developed a team approach to the Juvenile Court system. In addition to

the intense demands of his daily judicial responsibilities, Judge Back has been the County's Mock Trial Judicial Coordinator from 2000 to 2004. He has helped forge a team of professionals to assist the County's high schools in this very worthwhile program for the County's youth.

This strong appreciation for teamwork has undoubtedly been enhanced by years of dedicated involvement coaching soccer. The youth sport "prima donna" is unfortunately almost axiomatic in today's world, and as any coach in a youth sporting league is painfully aware, the parents of that prima donna can be obnoxiously overbearing. As a youth basketball coach some years ago, I had the opportunity of coaching then-attorney Back's son, a very skillful player with abilities exceeding those of his teammates. Towards the end of the season, Judge Back and his wife, attorney Kathleen Back, approached me after a game. This is an often dreaded and delicate moment for any coach handling a gifted

A large blue rectangular box with a black border. Inside the box, the text "Sintra Group" is written in a white, sans-serif font, centered horizontally and vertically.

athlete in a team sport. But instead of being admonished about their son's playing time, opportunities, position, etc., I was quietly complimented. Judge Back expressed appreciation for watching his son play as a member of a team, instead of dominating the team, an experience he felt was important for his son.

This dedication to the team concept has carried through to Judge Back's efforts on the bench as presiding Judge of the Juvenile Court. Judge Back is quick to credit the team approach to the difficult and often heart-rending issues that must be grappled with in Juvenile Court on a daily basis. In addition to this deeply engrained dedication to the team approach, Judge Back's strong sense of family undoubtedly inspires him to exert that extra effort and empathy needed to address the often sad domestic tragedies he and the team face everyday.

Judge Back and Kathleen have five children, and have been singularly dedicated to providing the support, guidance and opportunities a child must have to live a balanced and loving life. Many of the young people who appear before the Judge have not had that guidance or support or those opportunities. In recognition of Judge Back's extraordinary effort to make a difference in the system, and for these kids, he has received this well-deserved recognition.

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**Michael McQueen** is a Camarillo litigator, and a CITATIONS editorial committee member.

VON HANEL

Matt Guasco

## EAR TO THE WALL

Jackson, DeMarco & Peckenpaugh announces that **Mark G. Sellers**, formerly the Thousand Oaks City Attorney, has joined the firm's Westlake Village Office, at 2815 Townsgate Road, Suite 200, Westlake Village 91361, tel: (805) 230-0023, fax (805) 230-0087. **Craig K. Beam** has joined the firm, practicing out of both the Irvine and Westlake Village offices. Both attorneys will handle land use and real estate matters.

**Adam Pearlman** has opened a criminal defense practice at 1000 Hill Road, Ventura, phone (805) 644-1331.

There have been changes at Nordman, Cormany, Hair & Compton recently: **Diane Becker, Maria Capritto, Karen L. S. Fine, Glenn Fuller, and Carla Ryhal**, became junior partners. **Jeff Craft** joined as of counsel. **Brook Carroll, Samuel E. Gasowski** and **Meena P. Cotak** joined as associates.



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## GANG INJUNCTION

Michael Velthoen



On June 1, 2004, the Ventura County Superior Court issued a preliminary injunction against the Colonia Chiques street gang prohibiting members of the gang from engaging in certain activity within a 6.6 square mile “safety zone.” Among other things, the injunction prohibits gang members who have been served with it from wearing certain clothing, carrying weapons, flashing gang signs, and associating with other gang members in public. The injunction also imposes a curfew of 10:00 p.m. on all gang members within the safety zone.

The injunction has sparked heated debate within the community. Proponents of the injunction argue that the plague of gang-related crime in certain Oxnard neighborhoods requires new law enforcement tools. Indeed, the detailed declarations submitted by the District Attorney in support of the injunction paint a grim picture of a community beset by gang violence and intimidation. Supporters also point to statistics suggesting that gang injunctions have substantially reduced gang-related crime in other communities. The Los Angeles City Attorney, for example, recently claimed that gang-related crime in Hollywood had dropped fifty percent in the first four months of 2004 after a gang injunction was implemented in that area.

On the other hand, critics of the injunction argue that the injunction criminalizes non-criminal conduct – such as wearing Dallas Cowboy gear – and may lead to police harassment of residents who live inside the “safety zone.” Indeed, there is something troubling about a court order prohibiting an adult from staying out after 10:00 p.m. or associating in public with another individual. While the injunction applies only to gang members, determining whether a person is an active member of Colonia Chiques may be easier in theory than practice.

Although the primary purpose of the injunction is to serve as a prophylactic measure against gang-related crime, its legal basis is found in the Civil Code. In issuing the preliminary injunction, the court found that the District Attorney had met

its burden of proving that the activities of the Colonia Chiques gang constituted a “public nuisance” under Civil Code § 3479 and § 3480. Those statutes have been traditionally applied to massage parlors, polluters, slaughterhouses, and other activities that are injurious to the health of the public. But in the mid 1990s, the Los Angeles District Attorney’s office formed a special unit to use the public nuisance laws to obtain civil injunctions against street gangs. This tactic has been adopted by numerous other cities throughout California and the United States.

In *People v. Acuna*, 14 Cal. 4<sup>th</sup> 1090 (1995), the California Supreme Court upheld the application of the public nuisance laws to street gangs and rejected the argument that an injunction prohibiting gang members from associating with each other in public violated their First Amendment rights. The Court concluded that the First Amendment’s right of association did not extend to the congregation of gang members for purposes of engaging in criminal or otherwise destructive behavior. The Court noted that any burden placed on the rights of the individual gang members was minimal, as the injunction at issue applied only to a four-square block neighborhood.

One of the more controversial aspects of the Oxnard injunction – and one that may distinguish it from the *Acuna* injunction – is its size. The “safety zone” extends over one-fourth of the City of Oxnard, from Gonzales Avenue in the North to Hueneme Road in the South. Critics argue that the safety zone includes neighborhoods that – while affected by gang activities – are on the periphery of gang influence. As a result, critics say, the impact of the injunction on Oxnard residents will be more substantial than the impact of gang injunctions issued in other cities.

The local debate over the gang injunction reflects the perpetual tension between the rights and needs of the individual and the rights and needs of the community. That tension is currently evident in the national controversy over the Patriot Act and the detention of Jose Padilla and other terrorists at Guantanamo Bay. No society is truly

free unless individuals are endowed with certain inalienable rights of life, liberty and property. At the same time, the value of such rights is limited if individuals are not adequately protected from crime, violence, and other harm. The appropriate balance of these interests is open to debate. In that debate, however, each side must recognize that there are no easy answers.

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**Michael Velthoen** is a business and intellectual property litigator at Ferguson, Case, Orr, Paterson & Cunningham in Ventura, and a member of the CITATIONS Editorial Board.

Phillip Feldman



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# In Memory of E.E. Clabaugh, Jr.

*Robert Lamont Coit*

Long time Ventura County attorney E.E. Clabaugh, Jr. died on March 18, 2004. "Clay" was 76 years old. Before graduating Stanford Law School in 1961 and beginning practice in the Ventura County District Attorney's office and with the cities of Thousand Oaks and Simi Valley (where he had a hand in drafting their city charters), and before moving on to the rough and tumble world of the private practice of law, Clay had lived another life. At age 17, he graduated high school in Orange County, and with WWII coming on, he first joined the Coast Guard and then the Marine Corps. Before the end of the war Clay was in combat as a United States Marine in the South Pacific. Many years later he had a business client in Japan who had fought as a soldier in the same theater on the other side in that war.

Also early in his life, Clay served in the Foreign Service in Ethiopia. There he met a teenage Ethiopian boy whom he helped come to the United States and acquire an education. Tesfeye later served as Ethiopia's ambassador to the United States. Clay kept under the glass at the corner of his desk a small ink on paper symbol which Tesfeye had given him; he said it kept off the evil spirits. While living in Ojai, Clay and his family sponsored a high school foreign exchange student from Belgium, Marc Gwellig, who was about the same age as Clay's sons, Chris and Matt. Marc became a permanent member of the family, and is now a world-renowned university lecturer and cardiologist.

In September, 1961, Robert Soares, Robert Shaw and Julian Hathaway formed the Ventura law firm which still carries the Hathaway name. Clay joined the firm as a partner within a few years of its formation. He took his law practice solo in 1979. Except for a brief and happy partnership with Jean Perloff in the early 1980s, he continued in this mode for the remainder of his career.

Clay's practice included land use, real property, business, estates, corporations, and family law. He often represented clients in litigation – where he is remembered as taking few prisoners. Perhaps he most enjoyed representing the client whose case had promise, but who for whatever reason had not had effective legal representation. He liked to win for the client who had been down on his luck before coming through his door. And most often he did. His advice

to business clients was "get it in writing". Clay also understood the importance of getting away; which he often did. He hunted sheep in Siberia north of the Arctic circle; he hunted grizzly bear and caribou in Alaska; he hunted the cape buffalo and other large game in Africa. And he hunted the Moreno sheep on our own Santa Cruz Island when you could still hunt there. Clay also drove the desert races in Baja for many years in progressively larger and more powerful vehicles. Clay also loved to sail and he gave generously of his time in the formation of the Ventura County Maritime Museum.

Over the many years of his private practice in Ventura County, Clay twice declined offers of judicial appointment. He said he thought being on the bench would interfere with the way he wanted to live his life. Clay helped and did much good for many people. He was a good and true friend.

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**Robert L. Coit** is a business law, estate planning, and tax attorney in Ventura.

## SORRY FOR THE CONFUSION

Two items in June's CITATIONS prompted questions. We have answers:

**Judge McLafferty's** notice about calendar changes is for the Santa Barbara Superior Court, of course, not for Ventura.

Ventura County is lucky enough to have two lawyers named Jeanne Flaherty. **Jeanne R. Flaherty**, who wrote about Labor Code issues, is a University of Texas Law School grad practicing employment law. **Jeanne A. Flaherty** presides in Courtroom 22B as the Ventura Superior Court's Case Management Attorney; she's a graduate of UCLA Law School.

David Karen

WHALEN BRYANT



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A-rated mid-sized law firm in the Oxnard Financial Tower seeks probate/trust paralegal certificated or CLA with in-field experience to work integrated case loads. WordPerfect, Legal Solutions and Excel preferred. Fax or email resumes to (805) 988-1937, saki@atozlaw.com (www.atozlaw.com)

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Established Santa Barbara law firm offers an excellent opportunity in a successful Estate Planning and Trust Administration practice. Candidates must be a member of the California Bar and must have 3-7+ years experience in Estate Planning, Taxation, Probate, and Trust Administration. L.L.M. in Taxation or Estate Planning preferred. Ability to Handle Post Death Trust Administration, Estate Tax Returns, and Asset Allocation Agreements. Exceptional writing ability, superior academic credentials and good work ethic required. We offer a competitive compensation package based on experience and expertise, including a 401(k) and profit sharing plan. Will consider part-time and flexible scheduling. Qualified applicants should submit their resume to: Allen & Kimbell, LLP, P. O. Box 36, Santa Barbara, CA 93102, Attn: Jackie Walsh, or by email to jwalsh@aklaw.net.

Downtown Ventura law firm seeks associate attorney. Must have 3 to 4 yrs. Experience in real property, business & civil litigation. Salary DOE. Fax résumé (805) 648-5200.

### Services Offered

Personal Injury, Medical Malpractice, & Product Liability Cases – Referral Fees Paid. Thiele & McGovern – (805) 963-7226.

### Office Space

Across from the Ventura Government Center on the corner of Telephone Road and Victoria, 5800 square feet of office space, divisible to 2000 sq feet. Signage potential. Priced well below market rates for the area. Contact Steve Doll or Max Gonzales with NAI Capital Commercial Real Estate, (805) 278-1400.

Simi Valley Offices: 1-13 x 15w/window & 1-12 x 12 no window. Furnished or unfurnished. Conference room, kitchen, space for secretary, etc. call (805)584-8000 for more details.

Window office, other amenities, near courthouse. Call (805) 642-0237.

### Vacation

Mammoth Lakes Condo – Awesome FUN. Remodeled Horizons 4 Condo – 2 bed 2 bath. Ask for unit 163, call (760) 934-6779.



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## VCBA Ceremony

The Ventura County Bar Association sponsored a swearing-in ceremony on June 1, 2004, in courtroom 22. Ten successful bar candidates took the oath to practice law.

Court of Appeal Presiding Justice Arthur Gilbert and Superior Court Presiding Judge Bruce Clark officiated.

Ventura County attorneys representing four organizations welcomed the new admittees. Phil Panitz addressed them as the President of the Ventura County Bar Association. David Cunningham represented the American Bar Association. James Heiting, Dist. 6 Representative, appeared for the State Bar of California and Leslie McAdam, Ventura Barristers President, spoke on behalf of California Young Lawyers.

The new attorneys, representing seven schools from across the U.S., are: Tamalani M. Barnett, Deana Champagne, Russ Charvonia, Amanda M. Erwin, Jonathan Fattarsi, Matthew Ladin, Yousef Monadjemi, Carol Moody, Daniel C. Morgan and Richard Quin.

Congratulations! Your bar numbers will be higher than 231000.



Verdict Resources



**What's Reagan's legacy?** Look at the bench, say many legal observers, noting that that's where the Reagan revolution became institutionalized. Today, nearly two decades after he left office, 306 of the president's 358 appointments to the federal courts are still interpreting the law as active jurists...**Denise Houghton** attended the Family Law dinner meeting May 25 with six-month old Cole Brook in her arms. Denise was capably assisted by at least nine lawyers holding the little tike while she socialized, ate dinner and listened to **DA John Cardoza**...**Judge Harry Walsh** was elected president of the **Jerome H. Berenson Inn of Court** for '04-'05. IOC Masters have an organizational meeting July 19 in the Judges' conference room to determine programs and team assignments. Officers include **Carol Woo, Matt Guasco, Judge David Long, Anne Pierce, Alyse Lazar, Lindsay Nielson, Rick Loy and Dick Regnier**... Download a member application at [vcba.org](http://vcba.org). Postscript--- There's a waiting list so make the effort soon!...

**Get it done before age 18!** Plaintiff claimed he was not promoted to Eagle Scout because he was given erroneous requirement information. He said he met their minimum requirements and the denial was unreasonable and arbitrary so he sued. The court held there is no common law right to fair procedure in a private organization's conferment of rank, and he did not allege he would suffer substantial economic loss or that the decision interfered with his pursuit of a lawful trade or profession. Months before the denial, the Boy Scouts turned down his request for a six-month extension to finish his camping badge...**Panda Kroll** is the new associate at **NDSIW&B** and **Chick Bernacchi** is allegedly readying to retire at the end of '04 after 20 in the business---16 with Norman, Dowler, et al...After serving as a Senior Deputy DA from 1994 through 2002 and a brief stint in SB doing workers' compensation, **Adam Pearlman** has opened a sole practice specializing in criminal

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*Steve Henderson, Executive Director*

defense in Ventura. Adam will have an office located in SB on Figueroa Street too. ...

E-mail of the Month belongs to **David Kurtz**: [golfplus@msn.com](mailto:golfplus@msn.com)... License Plate of the Month: WEBBLAW, driven by **Larry Webb**...**A Mississippi judge was jailed** on a \$1 million bond after being charged with possession of meth with intent to distribute. Lawrence County Justice Court Judge Bobby Fortenberry of New Hebron, 46, is a 16 year veteran of the bench who won re-election to another term in November...Recommended Reading: *The Law Is a Immoral Ass*. Why Our Legal System Fails to Do What's Right. By Thane Rosenbaum. 354 pp. New York: HarperCollins, \$24.95...**Dozens of judges have credited Google** in their opinions, claims a report from News.com That sets some folks on edge. Last month, for example, a New York judge proudly boasted that he'd reached his conclusion without searching online. The type of case that attracts the most bench-Googleers? Trademark disputes...

The "**Friends of the Bar Emergency Appeal**" was launched in January 2004 to respond to "*unexpected and urgent financial crisis*" created by the embezzlement of nearly \$1 million dollars by the executive director of the Beverly Hills Bar Association. The ED of the Long Beach Bar was terminated after looting more than \$28,000 from his bar. Ouch!...**Mark Hancock** snuck out of the office a few times in April and May. First, he took offlong enough to make it to the tennis singles finals at the Pierpont Racquet Club. Later, he saw a black bear while hiking in the Ventura backcountry. Finally, he and his family got to see pronghorn antelope and a fox while exploring the Carrizo Plain National Monument...

**There's no crying (to the courts) in baseball.** The Red Sox had no duty to warn fans about the possibility of getting struck by a foul ball, concluded a Massachusetts appeals court in the case of a woman who sued over serious injuries received when she was hit during a 1988 game. The danger is obvious, said the court---batters "forcefully hit

balls that may go astray from their intended direction"...**Want a judicial appointment in the Schwarzenegger administration?** **Patricia Clarey**, Chief of Staff, told me to locate the application at: [www.governor.ca.gov](http://www.governor.ca.gov); click on Appointments; then click on Applications for Judicial Appointments. Other questions? Call Satomi Zimmerman at 916.324.7039...

The bar's **Court Tour Program**, managed and coordinated by the talented **Peggy Purnell**, held its annual recognition luncheon where **Dennis La Rochelle** was feted for his 10 years plus as chair. In his address, **Judge David Long** stated that 60,000 children have toured the courthouse facilities led by hundreds of docents. Award of Merit was presented to Ann Holcomb while **Bailiff Al Longobardi** and the VCBA's own **Sandra Rubio** received special accolades. Flowers and certificates were presented to the 30 docents in attendance as nine judges witnessed...Only 10 new admittees were sworn-in during ceremonies in early June and facilitated by **Justice Art Gilbert**. Sharing the dais was **Judge Bruce Clark**. The February pass rate was 35% and there are now 197,000 of you in California...

Business Law and Litigation Section is now the **Business Litigation Section**. They have agreed to hold lunch meetings beginning in September and are currently looking for a locale. The newly formed committee meets the first Tuesday of each month at the **A-Z** offices... Rumor has it that **Judge Jack Smiley** will be Presiding Judge of Superior Court and **Judge Manny Covarrubias** will be the Presiding Judge in the family law courts effective February 2004...**Richard Weinstock** had a retirement party June 25 at Acapulcos in Ventura while celebrating 65 years young. Proceeds benefitted the Advocates for Civil Justice program he founded...Make sure sure you attend the **Judge Melinda Johnson** "portrait unveiling" July 15. See the promotional flyer contained in CITATIONS...

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**Steve Henderson** has been the executive director of the Bar Association since November 1990 and correctly called the Pistons in 5.

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# Pacific Coast Reporters

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## CITATIONS

### **Ventura County Bar Association**

4475 Market Street, Suite B  
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