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# CITATIONS

A P R I L - T W O T H O U S A N D N I N E

**Everyone likes a story.  
Especially if the story  
involves lawyers, intrigue,  
murder and sex.**

*By Tony Strauss*

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## PRESIDENT'S MESSAGE

By Tony Strauss

I was talking with **Bob Krimmer** at **Kendall Van Conas'** birthday party. Bob, who works with Kendall at A to Z, was a successful actor before practicing law ("One Life to Live"). He started law school before leaving to embark on his acting career (Bob eventually earned his law degree at Ventura College of Law). To my great delight, I discovered that he was at Hastings not long after I was, and that we had at least three first-year professors in common. **Don Hurley** and I, who were in the same section at Hastings, stopped talking about law school 25 years ago. But Bob was talking about his great professors and we began comparing stories about Professors Crawford, who taught contracts, Smith, who taught us nothing about torts, and the great guy we had for civ pro whose name we couldn't recall. It was on my second glass of Pinot Noir that I remembered his name in a flashback to one particular day.

Professor Milton Green, who was a member of the famed "65 Club," was our instructor. The day I recalled was when he spent one entire class session telling the story of Chief Justice David S. Terry, Terry's romance with Sarah Althea Hill, and Terry's lifelong enmity with U.S. Supreme Court Justice Stephen J. Field that ended with Terry's violent death. To boot, the case that it spawned resulted in a Supreme Court decision of over 90 pages that established the bounds of state vs. federal jurisdiction. Until that conversation with Bob and the second glass of Pinot, I had forgotten how much fun law school really was! I had to hear the story again.

David Terry, a lawyer from Texas, came to California in 1849 stricken by gold fever. He found his gold, however, in the practice of law. He was a dashing and flamboyant advocate who was known to duel as readily as argue and to carry a bowie knife under his vest in court. His success was evident. Within eight years he was Chief Justice of California. At 34, his future was set – or at least one would have thought.

In 1857, the debate over states' rights and

slavery had made its way to California. Terry, a Southerner, had views consistent with his heritage and didn't hesitate to express his opinions. Holding a contrary position was David Broderick, a U.S. Senator from California. Broderick criticized Terry's stance on state's rights issues. Determined to settle the matter according to his code, Terry resigned his position as Chief Justice and challenged the Senator to a duel. At dawn on September 12, 1859, the affair was settled when Terry shot and killed Broderick on the dunes near Lake Merced, on the outskirts of San Francisco. The San Francisco Vigilante Committee responded by trying to lynch him. Wisely, Terry went back to Texas, where he became a brigadier general in the Confederate Army.

Stephen J. Field also came to California in 1849 allured by the glint of gold. He had been admitted to the Massachusetts bar in 1841 and when he settled in Marysville, he set up practice. Within a year he was elected Alcalde, a position equivalent to mayor, and was then elected to the California Legislature. He too was flamboyant, twice being disbarred and once sent to jail for contempt of court. Nonetheless, in spite of losing a bid for the state Senate in 1851, and after amassing a vast wealth from the noble practice, he was elected to the state Supreme Court in 1857 as a free soil, anti-slavery Democrat. David Terry administered his oath of office.

Field was close friends with Broderick. In fact, when Field was involved in a barroom dispute that resulted in the challenge of a duel, Broderick agreed to be Field's second. Fortunately, the duel was not consummated. Understandably, when Terry shot Broderick, Field was not sympathetic to the victor.

In 1863, when Congress authorized a tenth seat on the United States Supreme Court, Abraham Lincoln appointed Stephen Field to the High Court, where he was to serve longer than any other Justice until William O. Douglas. Of course, in the 19th century, an appointment to the Supreme Court did not necessarily mean the end of politics. Field was interested in the Democratic nomination for President in 1880 and 1884. However, an old nemesis got in the way. David Terry had returned to California, resumed the practice of law and established enough clout with

California Democrats to block this state's endorsement. The drama continued.

Sarah Althea Hill was a young, beautiful courtesan of San Francisco high society. Among her paramours was William Sharon, a former Senator from Nevada, multimillionaire from the Comstock Lode, and owner of the Palace and Grand Hotels. It was in the former that Sharon built a residence in a suite of rooms that connected by a bridge over an adjoining street to the residence of his mistress, Miss Hill. The laws of marriage being somewhat looser than today, Hill claimed that Sharon had entered into a marriage contract and, when the bliss was gone, she demanded half of his property. Sharon sued her in federal court to nullify the purported marriage and to have the "contract" returned to him. Hill hired Terry to represent her. The trial was carried by the press and its details were reported like a celebrity divorce today.

Hill apparently filed her own case in state court, as the Superior Court granted Hill a "divorce" on Christmas Eve 1884, awarding her half of Sharon's property, \$2,500 a month in alimony and \$55,000 in attorney's fees. Terry's wife died that same day.

Meanwhile, Sharon died in 1885. Terry married Hill and the Federal Court ruled in January 1886 that the Sharon-Hill marriage document was a forgery. Hill was ordered to surrender the document, but she refused.

In days of old, Supreme Court Justices had to "ride circuit." In other words, they had to return to their circuit and hear cases, typically once every two years. Even though he was the then senior member of the Court, Justice Field was subject to the same requirement. Because Hill had not surrendered the questionable document as demanded by the federal court, she was ordered to re-appear. The matter was heard in March 1888 before a three-judge panel presided over by, guess who ... Stephen Field. When Field ordered Hill to deliver up the document, she refused and proceeded to tongue-lash his Honor, claiming he was vindictive and politically corrupt.

Justice Field did not appreciate Hill's outburst and ordered her removed. This prompted

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# LETTER TO THE EDITOR

Dear Editor,

In this edition of CITATIONS you will find a very informative article about the E-Verify system, which is being advertised widely. We are encouraged to think that it is accurate and fail proof. The opposite is true. Human and computer errors do occur, which needlessly puts people at risk of losing employment.

The fact is that our country and particularly this agricultural region are dependent upon immigrant labor, much of it performed by undocumented workers who are our neighbors, whose children go to school with our children, who spend their hard-earned dollars at local businesses and pay taxes (yes, taxes of all kinds!); and who in fact have been keeping our Social Security system afloat with payments that they will never benefit from. (Search the NYTIMES for "How Immigrants Saved Social Security" from April 2008. The suspense file, which collects the tax from those without a valid number, has been growing and represents the difference between what is collected and what is currently being paid out in benefits.)

Immigrants, their families and many employers across the country are hoping that there will be comprehensive and fair immigration reform coming to our nation in the near future. I completely endorse the US Conference of Mayors' Resolution calling upon our Congress to get on with this important task in this nation of immigrants, to end the raids which have terrorized entire communities, and to permit immigrants to do what they have been invited to do here: work and live as human beings and not as second class citizens. (To see the actual resolution go to [http://www.usmayors.org/resolutions/76th\\_conference/csj\\_14.asp](http://www.usmayors.org/resolutions/76th_conference/csj_14.asp).)

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# DAVE AMMONS

By Bill Paterson



Left to Right: Bill Paterson, Donna Walters, Dave Ammons, Don Grant, Steve Perren

On January 31, 2009 death claimed my old friend, **Dave Ammons**. A long time member of our legal community, Dave began his career as a member of the Oxnard Police Department following his discharge from the Army. He left the Department in 1960 and later attended Loyola Law School. His first job out of law school was with the Ventura County District Attorney's Office. A few years later he joined the fledgling Ventura County Public Defender's office, where he served until his retirement in 1991, becoming Assistant Public Defender under Richard Irwin. Following his retirement Dave spent another ten years as a judge pro tem on the Mental Health Calendar, retiring from that position in 2005. That is a brief outline of Dave's long career of public service. However, that short recitation does not capture (to quote a Tom Wolfe title) the "Man in Full."

I met Dave not in the courtroom but in the Sierras back in the early 1970's, when a group of us were avid backpackers. Christened "The Trudgers" by Dave, the "core" group included long time prosecutor Don Grant, Justice Steven Perren (then but a mere attorney) and Don's fellow prosecutor Donna Walters (now Thonis). To this day I still have a picture in my office Dave took of Don, Donna, Steve and me striking a jaunty pose on a snow-crested pass. A man precise in all his habits, Dave would always bring his portable scale to insure that our pack loads were evenly distributed. My fondest memories of Dave will be years we spent on the trail together with friends and children.

The trips to the Sierra required that we all "stay in shape," and Dave soon became a member of our jogging group. Thus was born "R&G" ("Run and Gossip"). The running has long been a thing of the past, but the tradition of our weekend breakfasts goes back over 30 years. I can still see Dave now, pulling up on his beloved BMW motorcycle, doffing his helmet, putting enough milk into his mug to disqualify the final product as coffee, and ordering a pastry which should have come with a dietary warning label.

Dave was a quiet man and it was only when you drew him out that you realized his storehouse of knowledge. There was not a question you could ask him about any mechanical or electronic device that he could not answer. He also retained an abiding interest in the law and could periodically be expected to quiz Steve Perren on some new case or judicial oddity that caught his eye. Unlike Steve and me, however, Dave was not a fan of the big screen. To my knowledge the last film he saw in a theater was when Steve, Don and I dragged him down to Westwood years ago to see "The Road Warrior." Dave reserved his enthusiasms for other pursuits, including regular BMW rallies, off-roading in the desert with his brother Bob, and going on numerous cruises with his wife Vicki.

Dave was no stranger to hospitals. He beat both prostate and colon cancer, but lymphoma finally took him. The last time we had breakfast together he told us that he had been given 90 days to live. Even that sad news proved to be optimistic. Steve and I stopped by to see Dave the next Saturday. We left him sitting in his recliner. An hour later he was gone. Dave leaves wife Vicki, daughter Elizabeth, brother Bob and his friends of almost 40 years. We will miss you, Dave.

*Bill Paterson, who practices in Ventura's Ferguson, Case, Orr & Paterson, is CITATIONS' film critic.*

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## PRESIDENT'S MESSAGE

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Terry, his long-time nemesis, to declare that "no one would touch his wife." When Terry thrust his hand into his vest, presumably to withdraw his famed bowie knife, he was thrown to the ground by the marshalls in attendance, including one David Neagle. Terry was found to have a knife and Hill had a handgun concealed in her purse. As the result of their conduct, Field sentenced Hill to 90 days and Terry to a full six months behind bars. However, unlike co-defendants today, they served their sentences together in the same cell across the bay in Alameda.

While in jail and after release, the Terrys were not secretive of their feelings for Justice Field. It was reported they said that he should be "thrown into the Bay," "horse whipped," "killed," among other gruesome fates. The Supreme Court opinion written by Justice Miller noted that "the denunciations by Terry and his wife of Mr. Justice Field were open, frequent, and of the most vindictive and malevolent character." Terry also said that he would "slap his face or pull his nose," thereby challenging Field to a duel, it being known that Field would not decline such a challenge. The threats were such that it was recommended by the United States Marshall that Mr. Justice Field have a bodyguard the next time he rode circuit in California.

Field indeed returned to California in 1889. David Neagle, a former saloon operator and police chief in Tombstone, Arizona, and the subduer of David Terry in court the preceding year, was made a deputy marshal to serve as Field's protector. Field had been in Los Angeles and he and Neagle were traveling by train to San Francisco when the train stopped in Fresno for passengers. Among those boarding were David and Sarah Althea Hill Terry. Neagle saw them and alerted Field. When the train stopped in Lathrop, Neagle warned Field that they should stay on board. Field would have nothing to do with that as he was ready for breakfast.

In the restaurant, the Terrys were seated behind Field and Neagle. When Hill saw Field, she got up and returned to the train momentarily. It was later reported that it was to retrieve

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## PRESIDENT'S MESSAGE

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her revolver. In the meantime, Terry got up and, coming from behind Field, “violently” (or “lightly” depending on the witness) struck Field twice on the head. Neagle got up from his seat and yelled, “Stop, I am an officer,” and then shot Terry twice, killing him on the spot.

When Hill returned, she clutched Terry’s body. Soaked in his blood, hysterically shrieked that her husband had been murdered. She summoned the town constable and demanded that Field and Neagle be arrested. When the good constable found out who the alleged murderers were, he was more circumspect and agreed to wire ahead to San Joaquin County so that the Sheriff there could assert jurisdiction. Neagle was taken into custody in Tracy. When Field arrived in San Francisco, he surrendered to the local authorities but his bail had already been posted by another judge.

The attempt to prosecute Neagle by the San Joaquin County Sheriff, a friend of the deceased Terry, ultimately reached the United States Supreme Court. In a 99 page opinion that reads like a romance novel, the Court in *In Re Neagle* (1890) 135 U.S. 1 (Field, J. abstaining) held that a federal officer is immune from prosecution in state court for necessary and reasonable acts committed in the performance of his official duties. David Neagle was exonerated of murder. Stephen Field served on the Court until 1897, surpassing Justice John Marshall by serving 34 years and five months. Sarah Althea Hill Sharon Terry was committed to an insane asylum where she spent the remaining 45 years of her life.

Yes. Law school *was* fun!

*Tony Strauss is the principal of Strauss Law Group in Ventura. He practices employment law and handles employment, business and real estate litigation.*

*Sources: In Re Neagle 135 US 1 (1890); courthistory.tripod.com/field; supremecourthistory.org;law.jrank.org*



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# E-Verify Still (Mostly) Voluntary, No-Match Rule Still a No Go

*Ten FAQs on DHS' Ongoing Efforts to Facilitate and/or Mandate Employee Eligibility Screening*

By Panda Kroll, Esq.

Have you wrestled with advising business clients on how to respond to letters from the Social Security Administration putting employers on notice that SSA is unable to match data on an employee form W2 with SSA's database ("No Match" or "EDCOR" letters)? Were you surprised late last year to hear the Department of Homeland Security sponsoring NPR, touting its new employment eligibility screening software, "E-Verify"? If your answer to either of these questions is "yes," welcome to a brave new world in which DHS and SSA work together to curb unauthorized employment at the possible expense of the privacy and civil rights of all workers, including U.S. citizens.

DHS is promoting voluntary adoption of its "E-Verify" software to employers, notwithstanding ongoing legal challenges to the program by various business and labor groups. Meanwhile, DHS' attempt to put teeth into the SSA "No Match" letters has been stalled in spite of long-pending, but never quite implemented federal regulations outlining high-stakes eligibility verification procedures for employers. Federal law requires that all employers verify the identity and employment eligibility of all new employees (including U.S. citizens) within three days of hire. The pending DHS "No Match" procedures appear, however, to conflict with prior admonitions from the SSA precluding adverse actions by employers against employees whose documents do not match SSA records. If fully implemented, these two programs will redefine the extent to which public and private employers must answer to the two federal agencies. The following FAQs address how the programs may affect your business clients' hiring practices.

### 1. Q: What is E-Verify?

A: E-Verify is a free, Internet-based background check system operated jointly by DHS and SSA, allowing employers to compare an employee's Form I-9 information over the Internet with over 444 million records in the SSA database, and more than 60 million records in DHS immigration databases. DHS states that the number of enrolled employers is growing by over 1,000 per week.

### 2. Q: Is E-Verify voluntary?

A: Yes and no. New federal hires are required to be verified through the system. Arizona and

Mississippi mandate its use for all new hires by both private and public employers. Several other states mandate its use by state government contractors. Additionally, an Executive Order by the Bush administration requiring federal contractors and their sub-contractors to enroll in E-Verify is contingent on pending litigation (see below). The Hispanic Caucus urged Congress to strip an E-Verify enrollment mandate from the stimulus bill, asserting, "Foreign-born American citizens are 30 times more likely than native born workers to be incorrectly identified as ineligible for work," and that mistakes in the database could "result in 3.6 million workers a year being misidentified" as not authorized for employment. The final stimulus bill did not contain an E-Verify enrollment mandate.

### 3. Q: Is E-Verify legal?

A: So far, voluntary use has only been challenged by the State of Illinois, which passed a law aimed at prohibiting employers in the state from using E-Verify until its accuracy

can be improved. Illinois' Workplace Privacy Act will not go into effect, however, unless and until a DHS court challenge to the law is resolved in favor of the State. Critics of E-Verify – including both business leaders & human rights activists – have argued that the E-Verify program threatens employment and privacy rights, and only drives undocumented workers further underground.

### 4. Q: Why has the US Chamber of Commerce filed several lawsuits challenging the government's Executive Order requiring federal contractors and sub-contractors to enroll in e-Verify?

A: The Order would require federal contractors to verify existing employees as well as new hires, and would make general contractors vicariously liable should their subs fail to comply. The lawsuits allege that such a mandate must be legislated by Congress, not by executive order, and that E-Verify is an "error-riddled experimental program." The Chamber has

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successfully lobbied for studies of the program's accuracy as well as of its cost and compliance impact on small businesses. In response to the lawsuits, the Obama administration has agreed to review the program and is delaying implementation of the former administration's Executive Order until May 21, 2009

**5. Q: What is the DHS "No Match" Rule, and how does it relate to SSA's "No Match" letters?**

A: The DHS Rule, which was first published for notice and comment in the Federal Register in June 2006, is entitled "Safe-Harbor Procedures for Employers Who Receive a 'No-Match' Letter." It is intended to be included with SSA "No-Match" letters, and govern employers' responses. If implemented, the Rule would require employers to terminate workers who receive no-match letters if discrepancies cannot be resolved within 90 days. Employers who fail to do so can be imputed with constructive knowledge of unlawful employment and prosecuted with increased penalties. Moreover, noncompliance could subject an employer to possible RICO lawsuits from competitors.

**6. Q: What is the current status of the Rule?**

A: Since 2007, in response to a legal challenge by an unlikely coalition of the AFL-CIO, the U.S. Chamber of Commerce, the ACLU, and other labor groups, implementation of the Rule has been preliminarily enjoined by Judge Breyer of the Northern District of California, notwithstanding the DHS' "Supplemental Final Rule," released on October 28, 2008. The injunction applies to the entire U.S., and not just Northern California. *AFL-CIO, et al. v. Chertoff, et al.* (N.D. Cal. Case No. 07-CV-4472 CRB).

**7. Q: When will the dust settle on the DHS "No Match Rule" litigation?**

A: Unknown. Written arguments to the Northern District Court were submitted through February 24, 2009, and a decision on implementation of the Supplemental Final Rule could be issued as early as this month, although a long delay is more likely. If the injunction is lifted, many employers should expect to once again begin receiving "No Match" letters from SSA, along with a DHS insert outlining the new procedures required by the DHS Rule.

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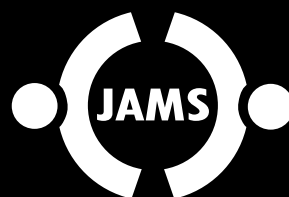
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## E-VERIFY STILL (MOSTLY) VOLUNTARY

*Continued from page 12*

### 8. Q: How many "No Match" letters does SSA send?

A: SSA sent over 35,000 letters to California employers for tax year 2005 alone. Due to the pending legal challenge to the new Rule, however, the SSA declined to send out no-match letters to any employers for tax years 2006 and 2007. While SSA has continued to send letters to **employees** at their W2 addresses, unlike past years, if the W2 address is invalid or missing, SSA has not sent the "No Match" ("DECOR") letters to employees at their employer's address. Note that the new DHS regulation is not directed to individual employees, but only to their employers.

### 9. Q: Where do "No Match" payroll deductions go?

A: In discussing unclaimed no-match funds in SSA coffers, Stephen C. Goss, Social Security's chief actuary, references "other-than-legal immigrants." SSA assumes that about three-quarters of these workers pay payroll taxes. Each year, taxpayers who use incorrect or false Social Security numbers contribute approximately \$7 billion to Social Security and \$1.5 billion to Medicare. California alone contributes 35% of the funds, most of which comes from agricultural, restaurant, and other service industries. The funds are held in SSA's "Earning Suspense Fund," which totaled about \$519 billion in 2006, nearly \$500 billion of which were received after the passage of the Immigration Reform and Control Act of 1986, a law that levied civil and criminal penalties on employers who hire undocumented workers. The New York Times has reported that without the flow of payroll taxes from wages in the suspense file, SSA's long-term funding hole over 75 years would be 10% deeper.

### 10. Q: What does the challenged DHS No Match insert look like?

A: The currently enjoined DHS "No Match" insert, originally intended to be sent with each SSA "No Match" letter, can be found at <http://www.socialsecurity.gov/employer/ICEinsert.pdf>.

*Panda Kroll is an associate at the Law Offices of David Karen in Oxnard. She teaches Business Law and Critical Thinking at California State University, Channel Islands. Panda is a member of the CITATIONS editorial board.*



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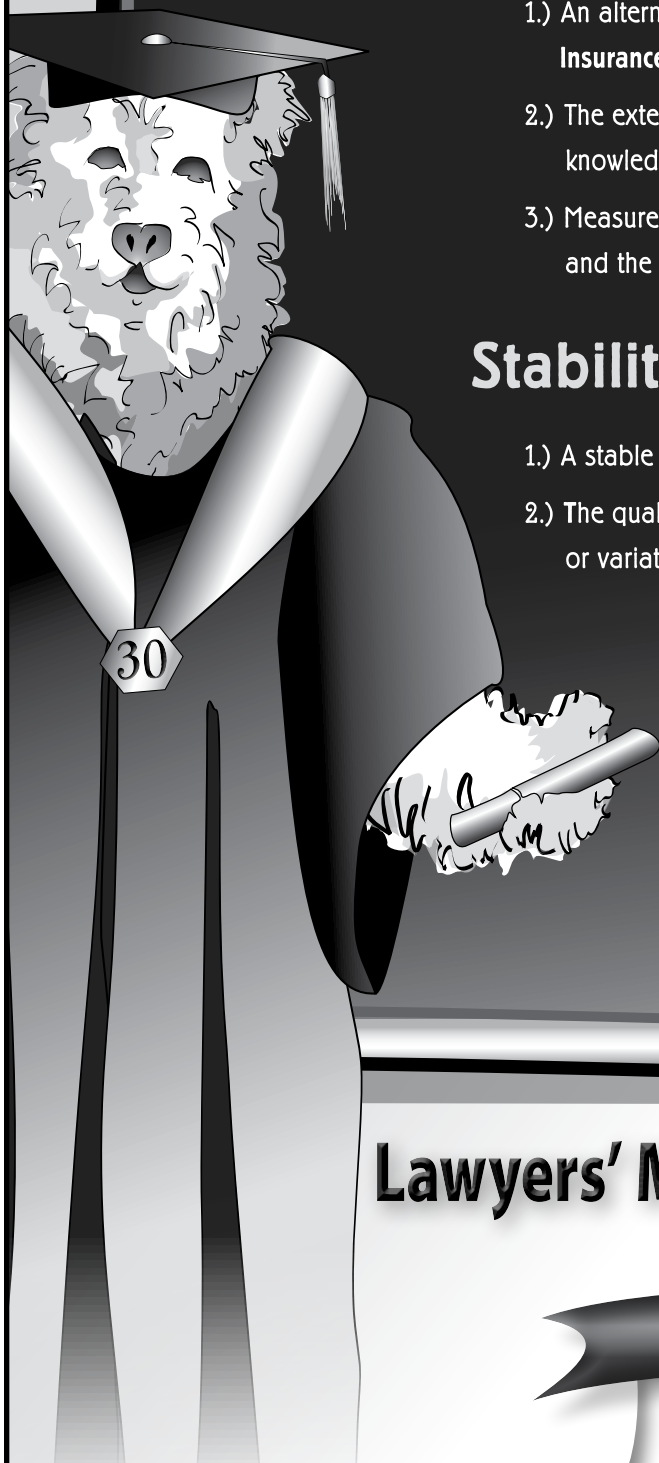
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# BANKRUPTCY FILINGS RISE NEARLY 100% IN VENTURA COUNTY, AND MORE EXPECTED IN 2009

By Michael R. Sment

As predicted, foreclosure notices and sales have been on an unprecedented rise in California, and in other states. In 2008, there were 523,624 foreclosure notices, filings and sales in California – an increase of nearly 110% over 2007 and an almost unbelievable 498% increase over 2006. California ranked as the U.S. state with the most foreclosures in 2008. In addition, the economic recession of 2007-2008 has forced many California and local businesses to downsize, to lay off people, and to file bankruptcy, or go out of business.

One popular way to gain some time, to try to save some property, to avoid foreclosure or seizure is by filing a bankruptcy case. An automatic federal injunction (stay) against all creditors and actions (11 U.S.C. §362(a)), for only a \$297-1,039 fee (plus attorney charges).

Not surprisingly, the number of bankruptcy filings by Ventura County residents and businesses grew significantly in 2008. The total number of bankruptcy filings, for our county alone, rose 98.9%, from 2007 (1,288 cases) to 2008 (2,562 cases). Of those filings, Chapter 11 (reorganization) cases increased the most, with a staggering 333.3% surge over 2007 filings. (Those figures are slightly deceiving. The total number of local 2008 Chapter 11 cases was only 13; when compared to the 3 cases filed in 2007, the deceptive high percentage increase is apparent.) The higher filings, however, reflect one serious aspect of the overall worsening economy – bad for most businesses. As a result, more Chapter 11 and business bankruptcies are expected in 2009 and beyond.

The surge in Chapter 11 cases for Ventura County, and even for the Central District of California, is also deceiving in an under-reported way. A number of California businesses and companies are actually corporations formed in Delaware and other states. When those California businesses commence a Chapter 11 bankruptcy it is in that other state. The local publicity is less, the case is harder for California creditors and interested parties to follow, and sometime the other courts (i.e., Delaware) use different Chapter 11 reorganization procedures and systems. One current example is the Newhall Land Company, a huge residential land development concern near Valencia in east Ventura County. Its 2008 Chapter 11 fil-

ing, under the name “In re Landsource Communities Development,” involving hundreds of millions of dollars in properties and claims, is taking place in Delaware.

Chapter 7 (straight liquidation) cases had a 92.2% increase over 2007, with 2,220 filings – the most for any bankruptcy chapter. Chapter 7 is used primarily by individuals with unsecured debts and no significant non-exempt assets (land, vacation homes, luxury cars, boats, etc.). Upon completion of several requirements, the debtor will receive a discharge of most unsecured debts. Although Congress intended to limit the number of Chapter 7 filings with the Bankruptcy Reform Act of 2005, case filings went down only for one year. Because of problems with Hurricanes Rita and Katrina, and forest fires in the West, filings began to climb in 2007 even before the recession. (Entities like corporations or LLCs, may file Chapter 7 bankruptcies, but they are not eligible to receive a discharge of debts. Such entities are generally taken over by a Chapter 7 Trustee who liquidates inventory and assets for extremely low prices. In addition, the Trustee has certain powers to go after entity insiders or even creditors who have received payments from the insolvent entity to try to recover more monies or assets. Individuals who did not run their entity perfectly as to technical and regulatory requirements may find themselves, and family members, facing significant claims and actions by the bankruptcy Trustee. That means more problems from that failing business, not less. And for those individuals who also file a personal Chapter 7, the only effective way to avoid normal or residual business debt, this can mean problems for their own personal discharge.

The second largest increase in local bankruptcy filings was for Chapter 13 (individual adjustment) cases. Those cases went from 130 in 2007 to 329 in 2008 – a 153.1% increase, and the second highest total chapter filings. The reason for the increase is the same as for the other two main bankruptcy chapters – the economy. The impact of bad real estate loan issues, combined with a decrease in home and stock values, has resulted in an overall dampening of the U.S. economy, and LOTS OF PEOPLE are feeling the impact.

Chapter 13 filings had the lowest increase because of the bankruptcy procedures involved in that Chapter – namely a 5-year payment plan where the debtor makes house and car payments, and payments towards creditors, and pays an extra 10% to the bankruptcy Trustee. In a depressed economy, most people cannot make their regular payments, much less pay something extra, so a Chapter 13 does not work for them. But for debtors who can pay, Chapter 13 can give them time, control and freedom from Trustee problems, which are not available in Chapters 11 or 7. Chapter 13 debtors receive a discharge, but only after completion of their 5-year plan. Like Chapter 7 debtors, Chapter 13 debtors are required to take financial management courses.

If Congress amends the United States Bankruptcy Code to allow bankruptcy judges to modify home loans in Chapter 13 [SB-3690; HB-7307], as it has tried to do since 2006 (the effort might be more successful now that the Citigroup lender consortium has given its support), Chapter 13 filings should very dramatically increase in 2009 and 2010. If bankruptcy judges have the power to modify home loans, then hundreds of thousands, if not millions, of ARM and other real estate loans would be adjusted downward to the present, depressed value of the real estate. Sadly, however, we will see a “good news/bad news” effect from such modification authority. Some homeowners would get their loan balances and monthly payments reduced saving millions of dollars, but they would be forced to pay significant attorneys and other fees, and live with Bankruptcy Court-imposed restrictions during the 5-year Chapter 13 case. Lenders would be forced to accept millions of dollars less than they had originally loaned, causing drastically lowered expectations and returns, and dramatically negative balance sheets, resulting in even more losses, business problems and layoffs. Billions of dollars in bank loans cannot just be changed, reduced and “erased” without seriously negative effects and impacts.

The Ventura County bankruptcy filing increase was actually less than other local counties. Overall, the filings in the Central District of California went up 190.4% in 2008 (from 34,040 total cases in 2007 to 64,807). National filing percentages, while on an increase in 2008, were less than Ventura and California.



And it doesn't look as if the trend of increased bankruptcy filings, in Ventura County, in California and in the United States, will stop any time soon. As long as the economy is bad, then bankruptcy filings can be expected to increase. If home loan modifications and other new relief is allowed, the filings will increase even more. People having loan problems, lost stock equity, and facing job losses need someplace to turn. And, at least for some, there is still a "safe harbor" and federally-mandated "relief from creditors" available with a bankruptcy filing. In tough times, safe harbors are not just popular; they are critically necessary.



*Michael Sment is a member of the Citations Editorial Board. He practices real estate law and bankruptcy law in Ventura, and teaches at Oxnard College.*

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### Brief Bio:

Dr Rotnofsky has 21 years experience as a practicing clinician with 18 years experience working in a hospital rehabilitation setting in New York and was actively involved in providing crisis services during 9/11. She was the former manager of Crisis Services for the County of Santa Barbara and was instrumental in designing the new Crisis & Recovery Emergency Services Program. She presently is a faculty member at three Doctoral Programs and is an expert in crisis, mental health, recovery, and psychological assessment. She is a member of the Santa Barbara Police Departments Crisis & Hostage Negotiation Team & Restorative Policing. She has a Consulting/Medical/Legal and Psychotherapy practice in Downtown Santa Barbara and Ventura. o

# RESOLUTION WAITING FOR COMMENT

The State Bar Board of Governors has released for public comment a proposed resolution on limited scope legal assistance (also known as unbundling). The Resolution can be found at: [http://calbar.ca.gov/state/calbar/calbar\\_generic.jsp?cid=10145&n=95211](http://calbar.ca.gov/state/calbar/calbar_generic.jsp?cid=10145&n=95211). All comments are due by April 23, 2009. Comments or a request for a hard copy of the resolution should be submitted to Rodney Low, (415) 538-2219, [rodney.low@calbar.ca.gov](mailto:rodney.low@calbar.ca.gov).

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## PRO-BONO HIGHLIGHTS

By *Verna R. Kagan*  
VLSP Senior Emeritus Attorney

In mid-February, as I came into the VCBA office, I was shocked to learn that our dear friend, colleague, and very worthy advocate, Mary Sullivan, had suffered a heart attack while at court the previous day. The attack was so devastating and severe that for the next couple of weeks it was really touch and go as to whether or not she would survive. I have been advised that few people suffering such an event survive. But Mary, is a fighter not only for herself, but the people she serves. At the time of this writing (early March) it is anticipated she will be leaving the hospital shortly to recuperate at home. All of us who intently prayed for her found our prayers answered and wish Mary the best and most complete recovery.

The day of her collapse was eventful. Mary had appeared that morning at the Appellate Court to argue a case that had been most compelling and received substantial local media attention. She went out to lunch and then to the juvenile court. She was working in the attorney room when the attack occurred.

There are some heroes to be acknowledged, especially **Janie Beach** who instantly took charge, directing someone to call 911 as she commenced CPR and got someone to join her in that effort. Deputy Sheriffs rushed in as soon as they heard what was happening and provided paramedical assistance. Within 12 minutes, the ambulance arrived and Mary was admitted directly to the C.C.U.

Mary is a very committed attorney who cares about her clients in a most personal way. She finds it extremely difficult to say no to those who need her. She will tease me, and justifiably so, about how I find the most intensive cases and then ask her to take them on. Mary is always on hand to give advice and direction to those of us at VLSP who call her.

We will have the opportunity to converse with her soon. We all look forward to that. God bless her.

*Verna Kagan is VLSP Senior Emeritus Attorney.*

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# FAMILY LAW DISPATCH: *ELKINS* REDUX

By Greg Herring

Many thoughtful folks have questioned the distribution of court resources, whereby mere “fender-bender” civil cases can be tried without delay, while acute child custody hearings might have to wait months before finding an available family law courtroom. In the mid-2000s the Contra Costa County Superior Court “solved” the problem by essentially holding all family law hearings and trials by declarations.

That could have paved the way for other counties to relegate family law cases to “administrative law” status had not the California Supreme Court repudiated the scheme in *Elkins v. Superior Court* (2007) 41 Cal.4th 1337. The Court held that family court trials should “proceed under the same general rules of procedure that govern other civil trials.”

In dicta, the Court made an extraordinary call for the Judicial Council to establish a task force, including members of the family law bench and bar and others, to study and propose measures to assist the family law courts in achieving efficiency and fairness and to ensure access to justice for all litigants. A statewide Task Force was thus born in mid-2008 with four working groups

## Research and Best Practices

- What are the best and most promising practices statewide, nationally and internationally?
- What has been done in functional areas (e.g. spousal support, child support, custody and visitation)?
- What research has been done on the general topics, such as how family law is handled in other states and countries?
- How can parts of the system be made less adversarial?

## Process Improvements

- How can Rules of Court be improved?
- Can differentiated case management plans determine, in the manner of “triage,” appropriate levels of service for different types of cases? (The Ventura Family Courts have recently begun doing this.)
- Can processes and forms be simplified?

## Representation

- In which cases, issues or phases are litigants most able to effectively self-represent and, conversely, where is attorney input most needed?
- What services can courts offer to simply processes or procedures?
- What are the barriers to securing and maintaining attorney assistance – particularly, why is “unbundled” representation, which was highly touted in the early 2000’s, not more common?
- What are the demographics and economics of family law practice that may impact the available attorney pool?

## Improving the Status of, and Respect for, Family Law Litigants and Family Law

- What are the needs for leadership, education, support and resources?

In October, 2009 the Task Force will begin holding regional meetings for public comments. After the public meetings and comment period, the Task Force is targeted to submit its recommendations to the Judicial Council in Spring 2010.

The Task Force promises openness and accessibility in its information gathering and analysis. Towards that end, it disseminated a survey for all family law attorneys, the results of which are currently being analyzed. It set up an interactive website ([elkinstaskforce@jud.ca.gov](mailto:elkinstaskforce@jud.ca.gov)). It has been conducting focus groups of represented and self-represented litigants, judicial officers, attorneys, court staff and other professionals (like family court services staff).

Garrett Dailey, the attorney who won *Elkins*, encourages all family law lawyers to participate and share insights. In a recent conversation, he explained, “This is our best chance in this generation to affect family law for the future.” Garrett described the members of the Task Force as highly talented evangelists who are taking their jobs most seriously. For instance, one Task Force member told me that he spent a full day scrutinizing the California Rules of Court plus the local rules of all the major Southern California counties for inconsistencies and inefficiencies.

The members with whom I have spoken are convinced that the Task Force is genuine and lacks prejudice towards any particular conclusion. Especially with 85% of all family law cases now involving one or more self-represented litigants (a trend likely to increase as the economy worsens), it is clear that the process would benefit from all our voices to accomplish practical solutions that still respect Due Process rights.



*Greg Herring is a State Bar certified specialist in family law and is a partner with Ferguson Case Orr Paterson LLP. He is a Board member of the Southern California Chapter of the American Academy of Matrimonial Lawyers and past Chair of the Executive Committee of the State Bar’s Family Law Section.*

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## FIDDLER ON THE ROOF

By Bill Paterson

I am not a great fan of musicals and was of the belief that I had seen "Fiddler on the Roof" one too many times. Thus, it was with no great enthusiasm that I accompanied Colleen to the Rubicon Theater's current production of "Fiddler." I will use the most measured tones possible - I was blown away. The Rubicon is one of Ventura's cultural treasures and their staging of "Fiddler" only burnishes that image. Imaginative staging, a cast as professional as one would expect in a big city venue, a performance pulsating with energy and not a bad seat in the house. Do yourself a favor and get tickets while they are still available. "Fiddler" runs through April 12, 2009. (Call 667-2900 for tickets)

See if you can spot Justice Perren behind the beard.

## BARRISTERS' DART NIGHT AT BENCH WARMER



This year's Barristers' Dart Night was held on Thursday March 19 at the Bench Warmer in Ventura. There was a large turn out and Joshua Burt took the First Place trophy. Featured in this photo (from left): Michael Strauss, Nadia Avila, Christina Stokholm, Joshua Burt, Doug Goldwater and Kate Cody.

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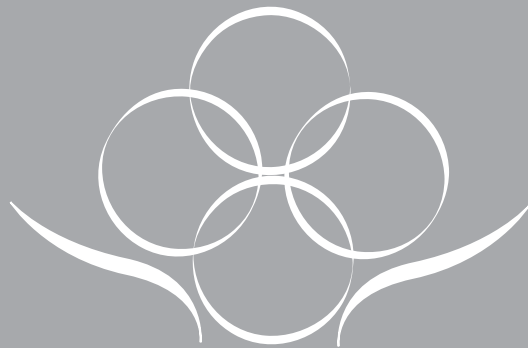
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**Joel Villaseñor of Sullivan Taketa** reached an \$8.5 million settlement in a lawsuit that alleges several California construction companies violated state wage and hour laws. Joel filed the class-action suit on behalf of 3000 workers in 2007. [www.forbes.com/feeds/ap/2009/03/11/ap6154345...](http://www.forbes.com/feeds/ap/2009/03/11/ap6154345...) The coaches for the winning Newbury Park High School Mock Trial team were **Martin Zaehring** and **Jon Light**. Jon's twin daughters, Elena and Kat, were on the team that Jon has been assisting the last two years. The real brains behind the team's success? Martin has been at it four years!...The value of making a Super Bowl winning catch cannot be overestimated, as Pittsburgh Steelers wide receiver Santonio Holmes discovered when he appeared in Pittsburgh Municipal Court to address charges of marijuana possession. Deputy DA Christopher Avetta shook Holmes' hand and told him, "That was a good catch." Before arraigning Holmes and releasing him on his own recognizance, District Judge Gene Ricciardi felt the need to instruct courtroom employees to refrain from asking Holmes for an autograph...Failed to mention in the March Edition that **Richard Taylor** was also selected to Southern California *Super Lawyers for 2009*. My apologies and thanks to **David Prayer**...

The correct email address for **Byron Lawler**, VLSP, Inc. Emeritus Attorney, and info on Antarctica is [byronlawler@gmail.com](mailto:byronlawler@gmail.com)...A British judge has sentenced a motorcyclist to six months in jail because he was caught speeding 122 mph with his 14-year-old son clinging to his back. A police video shows the man speeding down a road in southern

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

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

England. Police clocked the motorcycle going more than twice the legal limit. It also shows images of the man's son, who was not wearing a helmet, protective gloves, or pants. Attorney David Sapiecha said the man was going that speed for more than three miles and that he was sorry. Judge Phillip Wassall said the 47-year-old's actions were "unbelievable."...Nearly 90 folks gathered for the VCDS/VCBA/ADR Mediation Week celebration at the Sterling Hills Golf Club 3.20. **Richard Chess** was honored as ADR Practitioner of the Year, while the Santa Barbara and Ventura Colleges of Law received the ADR Advocate of the Year. **Commissioner Mark Borrell** and our Court's honcho, **Michael Planet**, were on hand to accept the VCDS Small Claims Mediation Program Award of Merit.

View the proposed changes to the Local Rules of the Superior Court County of Ventura for July 1, 2009 at [www.ventura.courts.ca.gov](http://www.ventura.courts.ca.gov). Go to "What's New" and you will find the proposed rules and forms. The file was simply too large to email the membership. Comments or recommendations by Friday, April 10...Mexican Cruise and Copper Canyon aboard Holland America and transatlantic cruise to Barcelona out of Rio de Janeiro aboard Oceana Insignia? **Howard Evans** at [hbevans@adelphia.net](mailto:hbevans@adelphia.net)...Vietnam? **Tina Rasnow** at [tina@rasnowpeak.com](mailto:tina@rasnowpeak.com)... Did you notice who's a top the NY Times Best Sellers List? *The Associate*, by John Grisham. (Doubleday, \$27.95)...From the ABA Journal: "An assistant district attorney in Georgia has resigned after his arrest on charges of public intoxication and theft of services from an alleged drunken tussle with a hot-dog vendor. Police responding to a report of a fight talked to the vendor, who complained that the prosecutor hadn't paid for his hot dog. When the officers caught up with the DA, the prosecutor said he did not know anything about a hot dog, though he had *ketchup and mustard on his shirt*. The officer told him he wouldn't arrest him if he paid for the hot dog, at which time the DA flashed his badge."...Just a reminder it is Administrative Professionals Day April 22...

**DDA Alvan Arzu** is a first time daddy! Little Meliya Alyssa was born 2.3 at 2:21 a.m.

weighing in at 6 pounds, 11 ounces... Alvan is a VCBA board member and president of the Black Attorneys Association... Two lawyers have recently joined the East County Bar Association as board members – **Michael Levenant** and **Roxanne Torabian-Bashardoust**. Interested in serving? **Bret Anderson** at [banderson@fcoplaw.com](mailto:banderson@fcoplaw.com)... The Asian American Bar Association Installation and Scholarship Awards is scheduled for April 27 at Sterling Hills CC. Featured speaker is Holly Fujie, president of the State Bar of California. Info? [johnfukasawa@yahoo.com](mailto:johnfukasawa@yahoo.com) or [wooleeboolee@earthlink.net](mailto:wooleeboolee@earthlink.net)...From the LA Times: "A *Jurist with an Unusual Story*," dated 3.2.09 at [www.latimes.com](http://www.latimes.com). Audrey B. Collins, 63, the granddaughter of a slave, is chief judge of L.A.'s federal court...F.Y.I.—The writer for the Wall Street Journal Law Blog is one of 14 people laid off in the news room... Two judges in Luzerne County, Pa. have reportedly agreed to plead guilty and resign from office in an ongoing federal investigation of \$2.6 million that authorities say the judges were paid between 2003 and 2007 concerning local juvenile detention facilities...Food For Thought: Former NFL running back Travis Henry has nine children, all from different mothers. His annual child support payments? \$170,000. Travis is currently under house arrest for a little drug matter...

Justice Antonin Scalia says there are only two originalists on the U.S. Supreme Court, and one of them would benefit from talking more at oral arguments. Speaking at Pepperdine University School of Law, originalist Scalia said Justice Clarence Thomas would benefit by asking questions. Thomas has previously said that written briefs are more important than oral argument. Read it all at En Banc, the LA County Bar Association blog...

*Steve Henderson has been the executive director and chief executive officer of the bar and its affiliated organizations since November 1990. He correctly identified all the winners in the March Madness bracket and therefore claims the Million Dollar prize by ESPN. However, he will continue working his day job because his cousin said so. Lastly, Bernie Madoff will no longer be managing the bar's endowment funds.*

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