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# CITATIONS

N O V E M B E R - T W O T H O U S A N D N I N E

## COMMUNITY LEADER BOB HUBER WINS NORDMAN AWARD

*By Russ Takasugi*

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February 13, 2009

Jack Trimarco  
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Re: Weber Case'

Dear Jack,

I would like to inform you that your services in the Weber case proved to be very helpful. The case was very troubling for our client as I guess anyone wrongfully charged with such serious conduct would be, but Mr. Weber was exceptionally so.

You should know that your efforts in finding him and his fiancé "truthful" when denying the offense was central in convincing the District Attorney to dismiss the case. It not only saved the expense and risk of a trial, but the mental well-being of my client. It is a convincing argument to the prosecutor when I can say that the polygraph expert they use has found my client to be innocent. They know that you only seek the truth, and do not show bias in any way in your testing methods.

On behalf of Mr. Weber and my staff, I thank you for your efforts.

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It is already November and another year has flown by. For me, this means only two months left in my presidency and most of my goals that seemed so attainable at the beginning of the year are just as far away as they were then. It also means that I have only two president's messages left to write.

There is a topic that I have avoided, not because of its controversy, but rather because I wasn't sure how to make it comport with the criteria established by Number 45 (Past President **J. Roger Myers**). It must be relevant to the practice of law. I will admit that perhaps some of my prior expositions were not immediately identifiable for their legal relevancy. However, I have endeavored to tie the significance of our profession into each piece. But until a recent dinner time conversation with my spouse, I had not found the nexus between my favorite sport and the law. Michelle reminded me of the legal work I once did (or didn't do!) that was directly related. Hence, I am free to talk about Formula 1 Racing.

I have always loved F1. The romance, the exotic places, the lines of the cars, the sounds of engines screaming at 18,000 rpm's, are all magic for me. I am transformed when I hear the names Monaco, Monza, Senna, Fangio, Schumacher, or when the Italian national anthem or the theme to the movie Grand Prix are played. I am not 58 when I watch or go to a race. I'm like a 10 year old at Disneyland, too excited to sit still. Before Tivo, I would get up at 4:30 to watch the European races. I wear "Tifosi" (Ferrari fan) red and fly the Cavallino Rampante (Ferrari horse) flag on race days. Admittedly, I'm nuts.

I've owned lots of great sports cars and have driven some of them on the track, but my only real racing has been in go karts. When

## PRESIDENT'S MESSAGE

By *Tony Strauss*

we moved to Ventura County in 1977, we lived at Oxnard Shores and I drove up Harbor Blvd. past the go kart track every day. Almost immediately upon making the transition to private practice (and finding that I had a few discretionary dollars to spend) I bought a kart from Jim Hall II. Jim, who is the son of racing driver and race car designer legend Jim Hall, took over the track in the early 80s and has operated Jim Hall Kart Racing School (first at that location, now on Rice Road) ever since. Jim invited me out for club racing. What a kick going 60 miles an hour one-half inch off the ground in wheel to wheel racing. Soon I had a second kart and I converted the first into a racer for Mike, who was then about 8. Both karts were red, covered with Ferrari stickers. We were "Team Strauss" and, while we didn't take home too many trophies, we had lots of fun.

I also developed a close and lasting friendship with Jim. I started helping him with his contracts and minor legal issues in exchange for tires and parts. Even after I stopped racing (because Mike was playing baseball and soccer), I continued to provide services to Jim as needed. It was an opportunity through Jim that allowed me to experience professional racing.

In the late 80s, Jim Hall Sr. decided to re-enter professional racing and field a car to compete in the Indianapolis 500 and the CART Championship Series. Jim Sr. tapped his son to be team manager. The team was based in Midland, Texas, and Jim had to hire a manger to run the kart operation when he

moved to Midland. He also needed a lawyer to represent the team. Jim Sr. and his engineer/partner acquired the racing chassis and engines. All of that was then done by handshake.

Not so with a driver. Jim II handled that and, when he was in negotiations with John Andretti, he tasked me with writing the driver's contract. I was familiar with all types of employment contracts, but I had never seen a driver's agreement. I asked Jim if he could ask around for some samples. He came up with the contracts used by John's uncle Mario, racer Rick Mears and a host of others. Driver agreements are more about what drivers can't do when they aren't on the track, like skiing or riding a motorcycle or scuba diving. They are not supposed to do anything dangerous because they might hurt themselves! They are also about where sponsors' logos go on their drivers' suits and how many interviews they have to give. I had fun with that contract.

But that was not as much fun as being the guest of the team at a race at Laguna Seca. I stayed in the hotel with the team, had a VIP pass at the track, was on the grid just before the race with the grid girls, mechanics and celebrities and watched the race from behind the pit wall. I may not have been driving but this was racing. I don't think that John Andretti did well that race. I seem to recall that Danny Sullivan may have won it. However, I was the real winner.

*Continued on page 7*

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# COMMUNITY LEADER BOB HUBER WINS NORDMAN AWARD

By Russ Takasugi



It is my pleasure to share with the readers of CITATIONS the background of a man who has long served his community, the legal profession, his church and family. Bob Huber was born to serve a life of service to others and epitomizes service above self. Bob Huber has been selected as this year's recipient of the Ben E. Nordman Public Service Award. The award was endowed by the later Ben Nordman, 1957 VCBA president and founding partner at Oxnard's Nordman, Cormany, Hair and Compton, to recognize outstanding charitable and public service activities by a Ventura County lawyer.

Bob was born in Los Angeles and raised in Bakersfield, California. His father owned the local roller skating rink where Bob began working at the age of eight. The problem is that he never stopped working. He graduated from South Bakersfield High School, where he was student body president and managing editor of the school newspaper. He earned his B.A. in Business Administration at University of the Pacific, Stockton, where he was student body senator and yell leader. He then attended San Francisco College of Mortuary Science, receiving his Associate Degree in Mortuary Science and serving as student body president.

Bob was in the mortuary business for 13 years before changing careers. In 1969, he

founded the Huber Chapel Mortuary in Simi Valley and operated it until 1978.

During the last four years of his mortuary ownership Bob attended San Fernando Valley College of Law (now University of LaVerne), where he was a member of the law review. He received his Doctor of Jurisprudence in December of 1976 and became a Deputy District Attorney for Kings County. He purposely chose a small district attorney's office because he wanted to get quick experience. He was with the Kings County District Attorney's Office from 1977 to 1978, and while there averaged a jury trial a month, handled more than 200 preliminary hearings and had more than 200 court trials. During the time he was at the District Attorney's Office he commuted back and forth Friday to Sunday to his home in Simi Valley.

## COMMUNITY CONTRIBUTIONS

### Judge Pro Tem

Bob Huber has served as a Ventura County Judge Pro Tem from 1981 to the present, handling both general court trials, small claims trials and serving the Homeless Court and the Teen Court. From 1988 to 1998 he was Judge Pro Tem handling mental health certification review hearings under Welfare and Institutions Code §5250.

### Public Leadership

Bob served as a member of the City Council of the City of Simi Valley from 1980 to 1984. During his term as a council member, he initiated the City's Fiscal Projection Advisory Committee, Affordable Housing Committee (the first affordable housing program in the State), Tree Preservation Ordinance, and the official City Historian position.

In 1989 he was the Community Chair of the successful \$35,000,000 Simi Valley Unified School District school bond passed by the voters.

Bob has served as an elected Trustee of

the Ventura County Community College District since 2004, and currently serves as Chair of the Board of Trustees. After the Virginia Tech tragedy in 2007, Bob prompted the Board to launch an emergency response system to protect students in all three of the District's community colleges. The Board of Trustees accepted his suggestion and implemented the "District Wide Emergency Response" system. The VCCCD was the first of all colleges in the state (including the UC system, Cal State system and the Community College system) to start such an emergency program. For taking the lead on creating this innovative system, the VCCCD received a special commendation from the State Chancellor's office.

Bob has also served on the Ventura County Human Relations Commission, the City of Simi Valley Industrial Commercial Development Commission, the Ventura County Regional Sanitation District Board of Directors, Ventura County Criminal Justice Planning Board, Waterworks District No. 8 Board, and the Simi Valley Sanitation District Board.

### Organization Leadership

As if those public activities weren't enough, Bob has also served as president of the Simi Valley Chamber of Commerce; he was 27 years old the first year he held office. At various times during his career, Bob has also headed: his Rotary Club; the Simi Valley Boy Scout District (1972 & 1973); the Southeast Ventura County YMCA (during his term as president, the YMCA secured an additional 35 acres donated by actor Joel McCrea); and the administrative board of the United Methodist Church of Simi Valley. He was a founding steering committee member for Leadership Simi Valley, the Simi Valley Education Foundation, and the Simi Valley Community Foundation, where he is still a board member. Bob also founded and is still co-chair of the Mayor's Charity Dinner as well as the annual auction held by the Boys and Girls Club of Simi Valley.

**Pro Bono Work**

Bob has also had plenty of energy to provide pro bono legal work over the years for the Simi Valley Chamber of Commerce, both the United Methodist Church and the Presbyterian Church, the Rotary Club, the Boys and Girls Club, the Free Clinic of Simi Valley, the Simi Valley Community Foundation, and the Simi Valley Cultural Arts Foundation.

**Recognition for Community Service**

Not surprisingly, given this outpouring of service, Bob has been honored by many organizations, including being named as one of the "Five Outstanding Young Men" in California by the California State Jaycees in 1973; and repeat honors as the Simi Valley Chamber of Commerce's "Simi Valley Man of the Year."

**Personal and Professional Life**

Bob has a life outside the public service arena. He is married to Deb Holler, the

Vice President/Manager of Citibank in Simi Valley, and has two sons: Todd owns an indoor skating park in Simi Valley; Chris is a drum tech for many famous musicians.

In July 1978, Bob resigned from the District Attorney's office and went into partnership with **Jim Cunningham** and **Joe Lansden**. The firm was known as Cunningham, Lansden & Huber from 1978 to 1982.

In 1982, Bob opened his own law office in Simi Valley and in 1983 I joined him. We have been working together since. In 1990, the firm of Huber & Takasugi was formed. For the last seven years Bob has brought his Pekingese dog "Elvis" into the office every day.

For more than four decades Bob Huber has given tirelessly of his time and talents to make Ventura County a better place to live.

*Russ Takasugi handles business transactions and litigation, estate planning, and probate as part of Huber & Takasugi in Simi Valley.*

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# THE WILLIAMS RANCH FIRE

By Loye Barton

*VCBA past president Loye Barton wrote this the day after the Guiberson fire threatened Moorpark this fall.*

We had fire on the ranch on yesterday, 9/23. We had spent a couple of days getting ready for the fire. It was an emotional roller coaster yesterday, and John had so prepared the ranch for the possibility of fire that the fire crews took a hard line approach and did not let the fire get past the ranch.

The fire started on Tuesday. We both got home in the afternoon. I packed up a few things. Ray and John and Antonio, with a very minor assist from me, got the cows corralled. (There was one very bad cow that almost got to be bar b que – but in the end joined the herd in the safe spot.) John brought in a water trailer and hooked it up right next to the house with a big hose. He also brought in a water truck and filled it with many thousand gallons of water. It stayed at the barn area Tuesday night.

Tuesday night John and I chatted with the fire department personnel who were stationed about 7/10 of a mile from the house. They were fairly optimistic unless there was a wind change. During the night, the air around us filled with smoke, and John left about 3 a.m. to investigate. It was not looking good. John went to Ventura to get some work and come back (he had a bid on Wednesday but the bid had to go by the wayside). I loaded the car up. The firefighters thought my choice of items was funny – rifles, safe with money, passports, dogs and dog food. By 5 a.m. the fire had crossed Bixby and was headed our way.

By this time the roads were all closed and evacuations in progress. John got home and had me leave with the dogs. He and Ray stayed behind. Our next door neighbor also stayed at his home. I took Sheb, Betty and Molly (all in my little back seat) and headed to Ventura – pretty emotional for me. We went to the office. Jami came to meet me and help with the dogs. Lindee came and got Betty and Molly for me. I tried to do some work with Sheb's help.

Back at the ranch, the fire department met with John, saw how prepared he and the ranch were, let him and the guys stay, and moved in so many firefighters and equipment it was amazing. (On my drive back later, I stopped counting trucks at 15). During the morning, the small parcel on the other side of Balcom burned completely. But it was only brush and some fence building material. Then the fire crossed over to the big ranch. John had by this time moved the water truck to the house. The fire department put a truck and men in the corral area with the animals, and another in the driveway next to the house. Then the helicopters came in to support the ground crew. John thinks there were at least 20 loads of retardant dropped on the ranch. He has some great pictures.

We were in touch all morning, and John was always sure that the structures were going to be okay. The cows earned their pay and removing the trees last year really made a difference. In early afternoon I met John and Ray in Camarillo. They bought lots of water and soda for the crews – there were still 60 or 70 firefighters putting out hot spots on the property. I got back up to the property with them. The firefighters were really thankful for the help. Apparently the firefighters told the Channel 2 television crew how John's preparedness helped contain the fire at the ranch. Channel 2 begged John for an interview, but he declined. He was really exhausted.

The fire is still burning but should be contained in the next couple of days. It is very smoky and the road is still closed at Bradley and Balcom. (I went to pick up Betty and Molly last night. There was a new highway patrolman on the job who did not want me to go home – we had a discussion.) We slept at home last night – a mix of miracle and man. The morning radio talk shows talked about John and how he helped turn back the fire being so prepared. He should have done that interview!

The name of the Williams Ranch seems most fitting – “One More Last Chance Ranch.” We have the signs in the garage, and I think we will now get them out and posted.

We are both working today. The pups are home, in the house. I suspect we could have more to clean up than from the fire. John will assess the damage later this week. We know there is fencing down that will have to be repaired before the cows are set loose. The cows get hay for the rest of the year. They will be happy. We are going to sleep in this weekend. Except for some smoke in lungs, we are well.

*Loye M. Barton is a partner with Norman Dowler, LLP*

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## PRESIDENT'S MESSAGE

*Continued from page 3*

I have never quite been that close to the heart of Formula 1. I try to go to a race every year; but it has been tough since there hasn't been a North American race in two years. Over the course of the last 30 I have been able to make it into the pits at Monza, Montreal, Indianapolis, Mexico City and a couple of others. Mike and I crashed an after-the-race awards dinner in Mexico City, pretending that we were members of the Ferrari team. I have ridden in elevators with Ayrton Senna, Alain Prost and Nigel Mansell. But the closet I ever came to the "real" experience was an opportunity lost.

In the fall of 1987, I got to know Barry Simpson, who had just founded Grand Prix Tours based in Orange County. I went on a couple of his trips and, as with Jim, I started doing some contract review and other legal work for his business. A couple of years later, as his business was expanding, Barry told me that Grand Prix Tours was going to be renting a yacht in the harbor at Monte Carlo for the Monaco Grand Prix the following year, and he asked me if I would like to help. He said that I could have a room on the yacht in exchange for legal services. This was a dream come true! The race in Monaco is the epitome of the Formula 1 experience. Beautiful people, beautiful location, beautiful cars, I was going to be part of that. "Barry, of course I will help. Just tell me what you need me to do." But then I didn't hear from him. A few months later I called to see if the project was going forward. He told me that because he had not heard from me, he made the same offer to another lawyer who apparently was more proactive. I am still waiting to be one of the beautiful people.

Ok, so I have done some race car law. Are there broader lessons to be learned to make this a "teaching moment" relevant for my fellow practitioners? There are. First, follow your passions. You'll meet people who recognize your enthusiasm and may think that you will be as passionate about their cause should they ever have need of legal services. Second, don't expect opportunities to chase you. If an opportunity presents itself, don't let it get away. Don't let the yacht sail without you!

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## MORE "SECRET" TREASURES OF VENTURA COUNTY.

By Antonio Verdiny

In my last article I wrote of the "secret" wine treasures of Ventura County. In my haste to put the word out on the streets I failed to mention that there is a wine giant in Oak View. Under their OJAI VINEYARDS label, Adam and Helen Tolmach have been working with a dozen different vineyards throughout the Central Coast to produce some top quality wines from such Rhone Valley varietals as syrah, grenache, mourvedre and viognier; epic Burgundy varietals pinot noir and chardonnay; a white representative from Bordeaux, sauvignon blanc; and even a dry riesling. No small players, each year they produce around 6,000 cases divided between 15 bottlings, most which are vineyard designated wines (including the famous Bien Nacido vineyard of Santa Valley, Fe Ciega of Santa Rita Hills, and Solomon Hills).

As there is an inverse relationship between quantity and quality when it comes to grapes, instead of purchasing grapes by the ton, they have good long standing relationships with the growers to buy the fruit by the acre, permitting them to culture the vines and thin the crop to their strict specifications and yet allowing the grower to receive a fair return on the investment.

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Get ready to be dazzled by their pinot noir (various vineyards like Bien Nacido and Fe Ciega), chardonnay (ditto), syrah (ditto) rose and dry (not sweet) riesling. They also have non-vintage bottlings of red and white blends that are in no way to be underestimated. See their website at [www.ojainvineyard.com](http://www.ojainvineyard.com).

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*Antonio Verdiny is a state certified court interpreter who teaches wine classes, conducts tours and writes a column for advice.com.*



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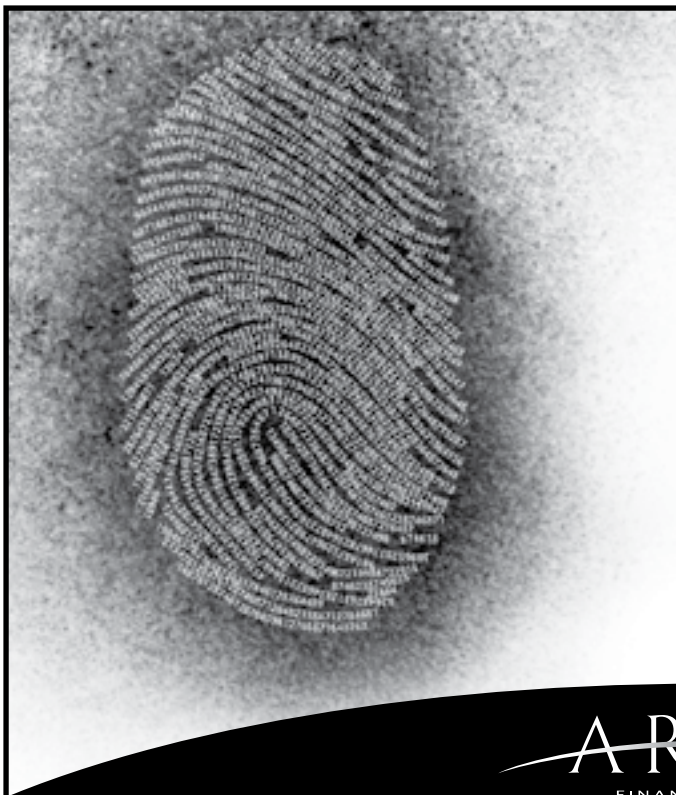
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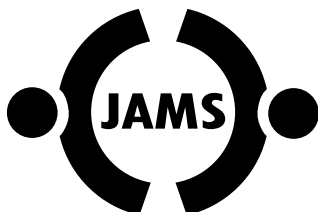
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## NOVEMBER COLLABORATIVE CORNER

*By Edward Buckle*

Life is played out on a maxi stage, while personal dramas are played out on a mini stage. If this statement is true, why do so many people insist on playing out their divorce on the maxi stage of the courtroom, when it is for the most part a mini drama? How often are we faced with this question, and the corollary question; “are all divorce cases suitable for collaborative family law?” Examining the second question first, the answer is NO! Why? It is because some people seek out the maxi stage on which to play out their mini drama.

It is left to the collaborative professional to recognize some of the indications of maxi stage performers:

### REVENGE

Does one party seek to punish the other for real or imagined injuries? Probably nothing is more likely to cause a collaborative session or mediation to fail than one party seeking revenge. Plotting revenge can cause people to become immobilized in their ability to move forward because they are dwelling on issues in the past, such that they are unable to move forward with their respective lives.

### HIDDEN ISSUE

An equally immobilizing factor is a hidden issue, one that may be too painful to express. The typical response is, “I just can’t get past this.” Like the obsessive issue of revenge, there can never be movement forward until this issue has been resolved. While these issues are not necessarily indicative of an obsessive-compulsive personality, clearly it has become an obsession with the actor.

The trained collaborative lawyer will recognize these signs and refer the actor to a mental health professional to assist the actor in the process of putting this part of their life into perspective. Alternatively, the collaborative lawyer may bring mental health professionals into the process as coaches working together with the lawyers in an effort to resolve their mini drama without recourse to the maxi stage.

“Before you embark on a journey of revenge, dig two graves.” ...Confucius...

*Ed Buckle practices collaborative family law in Ventura.*



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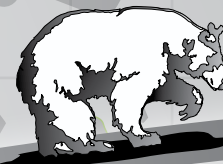
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# PATERSON'S FILMS - "The Informant!"

By Bill Paterson

In Oliver Stone's "Wall Street," Gordon Gekko utters the immortal phrase, "greed is good." Given our recent economic melt-down, even Gordon might feel some pangs of conscience at his glib description of the engine that drives Wall Street. But who are we kidding? From Enron's cooked books, Bernie Madoff and his ilk, AIG's infamous credit default swaps, pliant rating agencies, obscenely over-leveraged investment banks and compensation packages that would make a Saudi prince blush, one is left with the inescapable conclusion that, for too many titans of industry, business ethics ride very far in the back of the corporate bus. Which brings us to "The Informant!"

Developed by the Mezoamerican civilizations of Central Mexico, corn is the gift that keeps on giving. Corn products are in virtually in everything we use from baby powder to charcoal. While Archer Daniels Midland (ADM) may not be a household word, it is to corn what ExxonMobil is to oil. Back in the early 1990's ADM was riding high. Judged by its slick public service announcements, ADM was a shining corporate citizen. But (surprise, surprise) behind the scenes something else was afoot. With the same spirit that drove the robber barons of old, ADM decided that while "free enterprise" was a great catch phrase, the real road to riches lay in price fixing. Based on a true story by New York Times correspondent Kurt Eichenwald, "The Informant!" is the tale of Mark Whitaker (Matt Damon), the whistle blower who brought ADM down.

Whitaker is a rising executive at ADM. To all outward appearances he is a picture postcard version of a solid, midwestern family man. In fact, he is knee deep in ADM's price fixing scheme and his garage full of exotic cars is a testament to the Gordon Gekko credo. All is going well until the FBI is called in by ADM because they believe one of their new research programs is being sabotaged by a competitor. For reasons which best remain undisclosed in this review, the investigation puts Whitaker in a bind. He decides his best way out is to become a whistle blower. For the next three years he wears a wire, helps set up price fixing sessions in rooms which the FBI has set up with hidden cameras and de-


livers up reams of incriminating documents. It is an unnerving high wire act.

Given the subject matter, one would expect "The Informant!" to be a saga of a white knight who unmasks corporate evildoers. Well, guess again, because there are other forces at play. Mark Whitaker is the human equivalent of those Russian dolls that nest together. Take the top off one and another appears inside. So it is with Whitaker. Just when you think you have a handle on him a new persona appears. Because his oddball (bizarre is perhaps a better word) personality is the core of the film, "The Informant!" is part character study, part comedy and part "60 Minutes" investigative reporting. It is a unique cinematic combination.

Now a confession. Had I been watching this on a DVD, 30 minutes or so into the film I might have put the DVD back into the Netflix envelope. Happily I was in a theater and

didn't want Colleen to think I was a cinematic philistine. So I stayed. Within a short time director Steven Soderbergh had hooked me as he charted Mark Whitaker's journey down strange and unexpected paths.

Whitaker is a one-of-a-kind character and Matt Damon makes the most of this choice role. Playing an overweight chamber of commerce James Bond wannabe, at one moment he is a cunning operative and at the next he does something so boneheaded that he would be a shoo-in for the Doofus Hall of Fame. Sometimes wallowing in grandiosity and at other times seized by bouts of depression, Mark Whitaker is an unstable chemical compound who plays havoc with his FBI handlers. It is a great serio/comic role and Damon gives it his all in what may be the best role of his career. "The Informant!" belongs on your short list.



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“The Insider” - Directed by Michael Mann with a stellar performance by Russell Crowe as Jeffery Wigand, the Brown & Williamson research biologist who blew the whistle on Big Tobacco, “The Insider” is a justifiably acclaimed film. (Also featuring Al Pacino as “60 Minutes” producer Lowell Bergman). It did not pull in the audience it deserved in its theatrical release. A real shame as it is a tremendous film.

“The Smartest Guys in the Room” - The definitive documentary on Enron, a company the Mafia would be proud to call its own. Based on another Eichenwald book (“A Conspiracy of Fools”), this is a film which makes you want to grab a pitchfork and hunt these bottom feeders down. Some of the conversations and emails generated at Enron give cynicism a bad name.

*Bill Paterson is a partner at Ferguson, Case, Orr & Paterson in Ventura.*



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## THE GREAT ECONOMIC COLLAPSE CONTINUES... PROBLEMS WITH HOME LOAN MODIFICATIONS

By Michael Sment

One aspect of the economic recovery, and a focal point and promise of several stimulus programs, was home loan modifications promised to millions of residential homeowners. Indeed, under President Obama's "Making Home Affordable" stimulus plan, banks and financial institutions were offered \$75 billion in incentives to agree to home loan modifications with their existing borrowers. Sadly, those modifications have not occurred.

The U.S. Department of the Treasury reported in August (in its first report on home loan modifications) that only 9% of eligible home loans have, in fact, been modified. That overall low average was not even met by the nation's two largest home mortgage lenders. Wells Fargo Bank modified loans for only 6% of its eligible borrowers, while Bank of America modified only 4% of its loans. Those figures are terrible harbingers for local Ventura County borrowers: Wells Fargo is one of the largest home loan lenders in the County; and BofA, which has many local loans, also owns most of the failed local loans made by Countrywide Home Loans, among other smaller failed institutions, which it purchased.

Indeed, many, many borrowers have sought professional legal advice within the past 6-12 months, complaining vehemently about the delays, unkept promises, unreturned phone calls or letters, and repeated bank demands for more tax returns and financial information, all without the needed result – an approved home loan modification with lower monthly payments. (See 8/20/09 *Ventura County Star* editorial: "Meager Help For The Little Guy": the performance of lenders has been "underwhelming") The Obama Administration's plan had been intended to help as many as 4 million U.S. borrowers. But only a fraction of those borrowers have in fact been helped.

The need for the plan, and for real loan modifications, is only becoming greater. Almost two million foreclosure notices were filed during the first half of 2009, a huge increase and an indication, in part, of the need for loan corrections. For 2007, there were only 2.2 million foreclosure notices for the whole year. (Note: "More filed foreclosure notices" does not, necessarily, mean that more foreclosure sales are actually being held. The *Star* noted that there were 970 notices in 7/09

but only 281 sales.) The lenders association MBA says that loan defaults are at their highest rate, over 13%, since tracking began in 1972. California is at 15.2%. Disturbingly, an increasing number of defaults are for good "prime" home loans not bad ones.

Modeled on a program the FDIC used for mortgages at failed IndyMac Bank, the Obama plan used incentives to get agreements to lower interest rates and extending loans to longer terms, some up to 40 years. The goal was to reduce first-lien loan payments, taxes and insurance to 31% of the borrower's gross income. Borrowers had to fully document earnings and assets, and agree to a 3-month trial period. After those payments, and further demonstration of ability, the modification becomes permanent. But only a few borrowers have been approved.

While the reasons for the lack of modification approvals are often as different as the diversity of circumstances facing each of today's individuals, they basically boil down to a bank business manager's prognosis that the economy is getting better and there is no reason to reduce loans when property values are increasing.

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fication companies were recently sued by California Attorney General Jerry Brown as part of “Operation Loan Lies”, a nationwide sweep of sham loan modification consultants. The California State Bar has also taken actions to lift the licenses of three other attorneys, while “investigating nearly 140 more”. (Aug. 2009 *California Bar Journal*)

Unfortunately, while property values and sales are increasing on the one hand, so are mortgage defaults and foreclosure notices, even for prime borrowers and particularly for commercial real estate borrowers. The trend of the economy for more foreclosures and more foreclosure sales will only continue, especially as real estate values and housing sales continue to rise. Lenders see an opportunity now to recover some of their losses from the past several years. But for borrowers, that will likely mean even more delays and more requests for more information, with fewer approved home loan modifications and short sales.

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

In fact, a review of industry trends reveals that most U.S. banks and lending underwriters are classifying borrowers into one of three tiers. The first Tier are those borrowers who have had no mortgage loan problems or issues, and whom lenders predict will always or mostly make their home loan payments. The second Tier are those borrowers who may have been in the first Tier or who, generally, try to make their home loan payments, but may have a true economic need to modify. If allowed to modify, they are viewed as then able to make home loan payments. The third Tier are those borrowers who have had loan and payment problems, previously and currently, and with other loans. They are viewed as “always-going-to-have” loan and credit issues and problems.

Lenders have thus concluded that first and third tier borrowers should not, generally, been given a home loan modification, the first tier having no real need and providing no real benefit to the lender, and the third tier always having problems. Beyond this underwriting guideline, the real ulterior motive for refusing to approve home loan modifications is maximizing profits. U.S. real estate values in general, and California home values in particular, have been on the rise. Home sales have been on the rise in California during most of 2009. Those economic increases are reasons for lenders not to: agree to short sales; record trustee’s notices (almost a 70% drop in recent sale notices); sell foreclosed-on properties (REOs) at bargain-basement prices; and, sadly, not to rove home loan modifications. The formula is simple: delay = more profits.

If a property goes to foreclosure sale later in 2009 or 2010, the value received by the lender at sale or as an REO will be more than the reduced payments under a modified loan or if the property were sold earlier. Although 2009 foreclosure notice figures are up, the number of foreclosures with recorded sale notices,

or actually going to sale, was actually down. Lenders had been holding off on the final step, until recently. Many borrowers have complained recently that their attempts for modifying their home loan were stalled and stalled, only to end with a “sorry, you don’t qualify” letter followed quickly by a foreclosure sale. Why? Because the values are rising high enough now to justify the lender taking on the expenses of a completed foreclosure sale and an eviction.

Also sadly, many attorneys have now found themselves caught up in the home loan modification mess. Several lawyers and loan modi-



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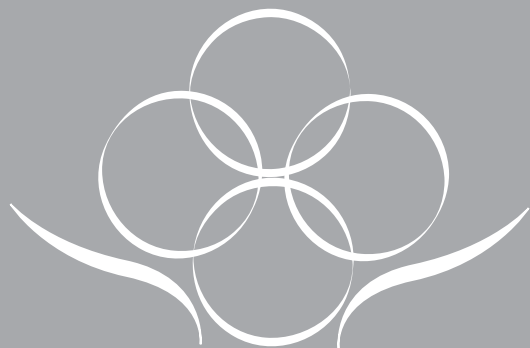
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Steve Debbas	Barton Pokras
Douglas Goldwater	David Praver
Thomas Hutchinson	Richard Rabbin
Patricia Lamas	Richard Ross
Jan Loomis	Donna Santo
Patti Mann	Keri Sepulveda
Julianna Marciel	Hillary Shankin
David Masci	Sylvia Soto
Edward Matisoff	Randall Sundeen
Jeanne McNair	Richard Taylor
Paul Miller	Marguerite Wilson

## Allied Professionals

### Mental Health Professionals

Robert Beilin, Ph.D.  
James Cole, Ph.D.  
Deborah Huang, LCSW  
Nancy Lopez, MFT  
Diana Nolin, Ph.D.

### Accountants

Susan Carlisle, CPA  
Wayne Lorch, CPA

### Vocational Consultant

Gabrielle David

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## PRO BONO HIGHLIGHTS

By Verna R. Kagan

I have just returned from vacation somewhat tired, somewhat disorganized but glad to return.

The Bar's Annual Dinner has been on my mind. Those in charge have made a strong commitment to less talk and more fun. Sounds good to me. This is our one opportunity a year to exchange joyous camaraderie with our colleagues. Even more important, we can make a toast to, slap on the back, share a gracious handshake with award winners.



The first of our pro bono award winners is **Michael Christiano**. Though I have written about him before, I cannot help but reiterate about how valuable he has been to the pro bono program. He has

such a tremendous concern for people that it is difficult to impossible for him to turn anyone away who needs his help. Just as an example, not so long ago he responded on what was a matter that was supposed to be short term, but when he realized the complexity of the case, he took on the entire case. Not knowing that, the next day, I called him on another matter. Again, when he realized what it entailed, he couldn't turn it away, so there he was with two pro bono matters.



Our other honoree is **Barton Pokras**. He landed on our shores about two and a half years ago. That statement is made literally. He moved his family and boat into the Ventura Harbor and decided to stay.

In that brief period, he has accepted nine matters for us pro bono. His generosity of spirit is unmatched.

For both of our award winners, my gratitude is unbounded.

*Verna R. Kagan is the VLSP Senior Emeritus Attorney.*

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Charmaine Hilton Buehner has joined Myers, Widders, Gibson, Jones & Schneider, LLP, coming from one of the world's largest law firms. Buehner handles business, employment and class action litigation. Find her at 5425 Everglades St., Ventura 93003. Phone 805-644-7188; fax 805-644-7390; email cbuehner@mwgjs.com.



Past issues of CITATIONS may be found under "membership resources" on the bar's website at [www.vcba.org](http://www.vcba.org).

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# COAT DRIVE

By *Laura Bartels*

It is a few days before Christmas. The sounds of footsteps, clatter and laughter scatter in the single-file line. The kids are waiting with anticipation to see Santa at the North Fillmore Community Storefront. Every year the Fillmore Volunteer Fire Department and other civic organizations collect donated toys to give to the kids who would otherwise not be getting toys this Christmas.

There are more children in this line than in years past. My seven-year-old looks on with awe and curiosity. I tell him that many children are not getting presents this year because their parents have lost their jobs, lost their homes or there just isn't anything extra to buy presents; that in this line where they stand exposed to the late afternoon chill for their one toy it will be their only Christmas present. He goes quiet. With saucer eyes he indignantly asks: "Mom, why won't Santa give presents to these kids?"

I look at the line with a different kind of awe. None of the kids have on coats. My mind judges immediately: "Did the children forget their coats? They knew it was cold and that the wait was long." The line snaked as the little boy tucked into his mother and the realization hit me like the cold wind - he didn't forget his coat. He doesn't have a coat.

Please join Santa Clara Valley Legal Aid's third annual Winter Coat Drive. On December 21st we will be giving away brand-new warm winter coats to needy children of the Santa Clara Valley who are standing outside in line in Fillmore to receive their toy from Santa. Please donate either checks or brand new coats with hoods and with tags. There are no "administrative" costs. You send the checks and my teams go and buy the coats. We all feel the effects of this economy and know that there are very financially challenged families who cannot provide warmth for their kids this winter.

If you would like to join this community of generosity, you can send checks to:

Winter Coat Fund, c/o Laura Bartels, 540 Sespe Avenue, Suite #2, Fillmore, CA 93015, or to Winter Coat Fund at the Santa Clara Valley Bank, 527 Sespe Avenue, Fillmore, CA 93015 Account #002-112027 or go to [www.wintercoatdrive.com](http://www.wintercoatdrive.com) and make a donation using Paypal. Your donation is tax-deductible.

As Marion Wright Edelman, the founder of the Children's Defense Fund says:

"We must not, in trying to think about how we can make a big difference, ignore the small daily differences we can make which, over time, add up to big differences that we often cannot foresee."

A warm coat makes a big difference.

*Laura Bartels practices with Taylor, Scoles and Bartels in Fillmore.*

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Congrats to FCOP's own **David Tredway** for bringing home the gold as Boss of the Year during the Ventura County Legal Professionals Association 49th Annual Bosses' Night held October 14. David was nominated by Mae Brooks, who has worked for him the last 28 years. Legal Secretary of the Year was Angela Cooper, nominated by **Brian Hefelfinger** . . . A former Florida appeals judge has lost his law license after pleading guilty to bank fraud for lying about a stripper's contribution to a down payment on a home. The Florida Supreme Court disbarred the former judge, Thomas Stringer, for five years. Stringer had listed himself as the sole owner of a home in Hawaii, even though exotic dancer Christy Yamanaka had also contributed funds. . . **Ron Bamieh** attended the USC v Notre Dame game in South Bend 10.17. **Mike Case** and **Steve Brown** were also in attendance. . .

You need a terrific way to spend a miserly \$10? It's called a Winter Coat Drive coordinated by **Laura Bartels** – lvkbartels@aol.com or 524.1934. She is being assisted by those crazy, terribly enthusiastic Barristers. You can donate online at [www.wintercoatdrive.com](http://www.wintercoatdrive.com). Bring your receipt to Judges' Pizza Night to receive your free libation November 3 beginning at 5:30 inside The Anacapa Brewery. . . A former environmental lawyer with a law degree from Harvard is reading a book a day and posting the reviews on her blog. Nina Sankovitch is near her goal of reading and reviewing 365 books, the *New York Times* reports. The *Times* says Sankovitch, who lives in Westport, Conn., has "piercing blues eyes" and wears a locket with an image of a man on a toilet reading a book. Her blog is called Read All Day. "A non-reading indulgence, she says is watching NCIS while

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

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

folding laundry. Still, to make this work she's cut out the garden, *The New Yorker*, wasting time online, ambitious cooking, clothes shopping, and coffee with friends. Yes, she has a 27-year-old stepdaughter and four boys ranging in age from 8 to 16. Her hubby is also a lawyer . . .

Mea Culpa to **Jodi Prior**, President of the Ventura County Women Lawyers. She authored the October CITATIONS cover story, not **Carmen Ramirez** . . . I love this – Just how vocal was Justice Sotomayor on October 5? She asked more questions in an hour than the extremely taciturn Justice Clarence Thomas has asked over the course of several years. According to the Associated Press, Thomas has gone 2 years and 144 cases without speaking up during oral arguments. Sotomayor displayed no reticence on the first day of her term. In the first two cases on the docket, she asked as many questions as Chief Justice John Roberts. The only sign of her newness was that she at times forgot to turn on her microphone before posing a question . . . License Plates of the Month: TRYLAW on a 2001 Tahoe, piloted by **Glenn Campbell** . . . TIGHTWD, on a very old Honda station wagon driven by **Paul Kurzeka** . . .

Commissioner **Mark Borrell**, **Rick Loy** and **Erik Feingold** all participated with 3500 riders in the Levi Leipheimer Gran Fondo up in Santa Rosa. 65 miles! And you can sneak peak for yourself at [www.levigranfondo.com](http://www.levigranfondo.com) . . . When former Navy Seal Walter B. Scott entered private practice in San Diego, he started looking around for a legal bar designed for military veterans. When he couldn't find any, he decided to start one of his own: the Veterans Bar Association. You can locate Scott, a Harvard Law School grad, at LinkedIn or [www.vbar.org](http://www.vbar.org) . . . Who in excess of 50 was not at the Loggins and Messina concert in the Santa Barbara Bowl October 3? Spotted were **Joe O'Neill**, **Glenn Campbell**, **David Shain**, **Richard Francis**, and **Judge Bruce Young** . . .

Hiking the Swiss Alps? **Gerald Cline** at [gcline@sprynet.com](mailto:gcline@sprynet.com) . . . Switzerland/Italy? **Greg Herring** at [gherring@fcoplw.com](mailto:gherring@fcoplw.com) . . . Quote of the Month: From Paris Hilton – "I'm planning to be celibate, I just haven't started yet." . . . **Richard Taylor** and **David Prayer** have both been named to "Super lawyers" by

Super Lawyers Magazine. . . After earlier fining a Michigan lawyer \$500 for naming a police dog as a defendant in a lawsuit over a bite, a state court judge has now dismissed the claim. Attorney Lawrence Radden admittedly named Liberty, a German Shepard, as a defendant in the Macomb County Circuit Court case as an "attention grabber." However, he says his client was bitten in a 2007 police incident and he has video of the dog lunging at her, albeit not biting her. . . Congratulations to the Ventura County Asian American Bar Association for raising nearly \$4,000 during their annual golf tournament 9.18. President **Leeton Lee** led the charge raising monies for scholarships. Kudos too for **Mark Fang** and **Dien Le**. There were 30 golfers and 38 for dinner helping to raise the record amount of dough. . .

**Susan McCarthy** and **Dennis LaRochelle** completed the tough Carpinteria Triathlon held 9.27 – [www.active.com](http://www.active.com) for complete race results. . . SANCTIONS: *Clement v. Alegre* (2009) 177 Cal. App. 4th 1277 (First District, Div. 2): Justice Kline found that the lower court properly imposed sanctions against plaintiffs for interposing objections to special interrogatories, objections that the discovery referee found to be unreasonable, evasive, lacking in legal merit and without justification. This case "highlights the lengths to which some counsel and clients will go to avoid providing discovery (by responding to straightforward interrogatories with nitpicking and meritless objections), resulting in delaying proceedings, impeding the self-executing operation of discovery, and wasting the time of the court, the discovery referee, the opposing party, and his counsel." . . .

*Steve Henderson has been the executive director and chief executive officer of the bar association and affiliated organizations since November 1990. Yes, you have indeed read that correctly. Henderson begins his 20th year with the bar and you have only Wendy Lascher, Bart Bleuel and Roger Myers to blame! Lastly, Henderson won the Pulitzer Prize for Peace in 1985. He may be reached at [steve@vcb.org](mailto:steve@vcb.org) or 650.7599.*

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*Mr. Nielsen grew up in Thousand Oaks, and graduated from Westlake High School. He received his Bachelor of Arts from the University of California at Santa Barbara, and his Juris Doctorate from the Santa Barbara College of Law. He received the Witkin Award for Academic Excellence and the CALI Excellence for the Future Award in Remedies, and Academic Achievement Awards for the Highest Grade in Contracts, Legal Writing, Torts and Remedies. As an attorney, Mr. Nielsen worked in Construction Litigation and as a Ventura County Deputy District Attorney, where he received 24 hours of P.O.S.T. Certified Standardized Field Sobriety Test Instruction. Mr. Nielsen is now using his experience to help clients facing DUI charges.*

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