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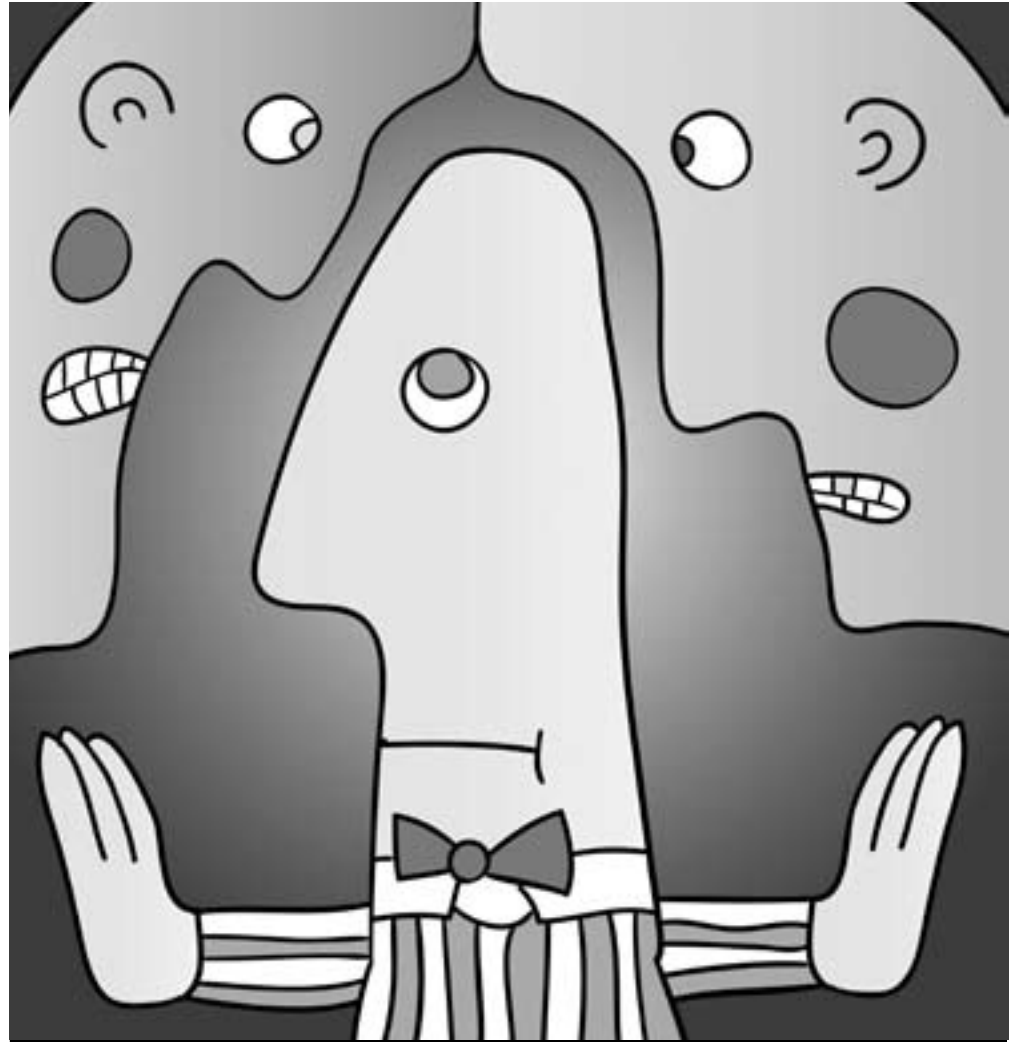
# CITATIONS

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

## DEPARTMENT 41's PILOT PROGRAM

*By Judge Frederick Byssbe*

*page 9*



- KENDALL VANCONAS
- DEIRDRE FRANK
- CRAIG BATES
- BILL GREWE
- WILLIAM PATERSON
- MARK HANCOCK
- ELLEN HIRVELA RUSSELL
- STEVE HENDERSON

<b>PRESIDENT'S MESSAGE</b>	<b>3</b>
<b>CAOC AND VCTLA SEMINAR</b>	<b>10</b>
<b>LESS TALK MORE FUN ANNUAL DINNER PICTURES</b>	<b>12</b>
<b>THE HONORABLE DANIEL BOONE AND THE RULE OF LAW</b>	<b>16</b>
<b>THE BLIND SIDE</b>	<b>18</b>
<b>HOWELL DECISION CHEERS PLAINTIFFS' BAR</b>	<b>21</b>
<b>SPOTLIGHT ON LAURIE PETERS</b>	<b>22</b>
<b>CLASSIFIEDS</b>	<b>24</b>
<b>EXEC'S DOT... DOT... DOT...</b>	<b>26</b>

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February 13, 2009

Jack Trimarco  
9454 Wilshire Blvd.  
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Beverly Hills, CA 90212

Dear Jack,

I would like to inform you that your services in the "W" 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. "W" 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 my client and staff, I thank you for your efforts.

Sincerely yours,

*Louis Samonsky*  
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## PRESIDENT'S MESSAGE

By Kendall VanConas

“Oh my gosh, what are you going to write about every month?!” Those were the words my sister chose to congratulate me when I announced to her that I had accepted the nomination to serve as Secretary/Treasurer of the Ventura County Bar Association and would, a couple of years after that, serve as President. I must admit, that wasn't the first thing that occurred to me when I was approached about being President, but as I thought about, I discovered that the prospect didn't panic me near as much as the tone of my sister's voice suggested.

The way I see it, when it comes to this monthly column, there are some automatics. The first (nice to meet you, how are you doing, here's all about me), the last (thanks to everyone for making my job as President so effortless, couldn't have done it without you), the milestone events that should be properly recognized (Law Day 5K, the Annual Dinner, my birthday), and the occasional month, bound to happen over the summer, where I will ask someone who, much like me, can't easily say no (“Hey, I've had this great idea for my column next month, and thought you might like to be the guest columnist!!”)

Not to mention the wealth of examples I have to follow – a plethora of columns from former Bar presidents. The topics of monthly columns are as diverse as the people who have held this office over the years. Over my memory, our past presidents have delighted and informed us with stories

of their travels, their love for cars and wine, their well-deserved and hard-fought legal victories, news and topics of the day, and a varied assortment of tidbits, cheerleading and musings, along with an occasional soapbox moment or two. This column is also one of the best venues to highlight the many volunteer opportunities available to us to serve our community, and those who have selflessly donated their time and talents to countless non-profit organizations.

Your immediate past president has set the bar very high, and has produced columns that have been among some of the most varied, entertaining and well-written I have seen over the years. Readers, I feel an obligation to tell you right up front, in my very first column, that if you expect my columns to read like those of **Tony Strauss**, you will be sorely disappointed. On the upside, you shouldn't need to keep a thesaurus next to you when you read mine.

So, my first column—one of the automatics.

I am virtually a Ventura County native, having moved to Camarillo when I was 7 years old. Many of you who have practiced law in the county for a long time will remember my parents, **Phil** and **Grace Cohen**, who practiced law together in Camarillo. Law wasn't the immediate career choice for either of my parents. My father, born in England, was a musician. After serving in the Royal Air Force in World War II, he played clarinet and saxophone for big bands, and traveled the country. My mother met him in post-war London, where she was working for the American embassy. When they met, my father was the owner of a nightclub, playing host to a variety of friends, family and musicians. Playing host was a talent both my parents had in spades, and which they enjoyed throughout their lives – those among you of a particular age will remember their annual Christmas parties at our house, at which they welcomed a large variety of friends – lawyers, judges and other professionals, along with loads of

friends, not only of theirs, but also of my sister and me. Those parties are no doubt remembered fondly by many.

After my parents married and moved to Southern California, my father worked during the day and attended law school in the evening. My mother worked as a legal secretary, and by the mid-1960s they had two children, my older sister, **Melissa**, and me. My father began practicing law in Ventura County in the early 1960s as part of the County Counsel's office which, at the time, was newly formed, having been spun-off from the District Attorney's office. Shortly after we moved to the county, my dad opened his own practice in Camarillo, and my mom was his secreta – er, well, OK, she ran the office. After many years of working next to attorneys in what was a hugely male-dominated profession, my mother decided to go to law school herself. She would tell us that she decided to become a lawyer because she thought she “could do as good a job as any of the men.” She was right. She worked with my dad during the day, attended Ventura College of Law at night, and after she got admitted to practice, “Cohen and Cohen, A Law Corporation” was born.

My parents built up a successful law practice together in Camarillo. My mother specialized in family law, but also did a fair amount of estate planning and probate; my father had a general civil practice, and in later years did work in the federal courts. As kids, my sister and I would hang out in the office, and my first job was emptying the trash cans after school and before whatever activity I was on my way to. In addition to their busy law practice, my parents were always involved in any number of civic organizations – the Rotary Club, the Boys & Girls Club, Casa Pacifica – as well as bar activities.

My mother served as one of the first (if not the very first) Presidents of the Family

*Continued on page 4*

## PRESIDENT'S MESSAGE

*Continued from page 3*

Law Bar Association, and my father made at least one well-intentioned, although ultimately unsuccessful, effort to launch a Camarillo Bar Association in the 1980s. The fulfillment they got out of practicing law, and out of their many community and bar activities, no doubt has inspired me to also get involved, though I did not realize it as I was growing up. I suspect that you will hear more about Grace and Phil from me during this year.

My parents practiced together until my father's death in 1989, but Cohen and Cohen carried on in the family tradition. Shortly after my father's death, my sister and brother-in-law decided to re-locate back to Ventura County, and my brother-in-law, **Tom Milhaupt**, joined my mom in her practice. After I graduated from law school, I became the third attorney with the firm. We all worked together for a few years until Tom decided to open his own practice, and my mother began to ease into retirement and grandma duties. Tom and Melissa each practiced with different firms in the county until 2004, when they formed Milhaupt & Cohen in Camarillo. (You can call it childish, but I can't ever resist an opportunity to remind my sister that, in practicing law with her husband, she has now fulfilled one of life's most terrifying yet apparently unavoidable realities – she has become her mother!) My sister will likely enter my column from time to time over the year, as well.

When Grace completely retired in 1998, I took over the practice, and was a sole practitioner for about 5 years, until **Bart Bleuel** approached me and asked if I would be interested in joining up with Arnold Bleuel LaRoche Mathews & Zirbel, or A-Z. I was wary at first, since my only experience in practicing law had been as a sole practitioner, and I had no real idea what joining "the firm" would be like. Needless to say, none of my fears were realized, and I have the great joy of being partners and practicing

law with some of the finest people, and most skilled lawyers, that I have ever known. It's a safe bet that you might hear a bit about my firm and my partners during my year as president, too.

In my early years of practice, I did what was given to me – estate planning, probate and some family law. I soon realized I didn't have the constitution for a domestic practice, and over the years have become solidly specialized in all disciplines of estate planning and elder law: estate planning, probate and trust administration, Medi-Cal planning and, my 'super' specialty, conservatorships. If you've never been in the probate department before, there's a good chance you don't know me, since it's just about the only courtroom I have entered over the last 12 years or so.

I thoroughly enjoy the practice of law, and working with my colleagues in the probate bar, as well as those I have had the pleasure to meet in various bar activities. We are so fortunate to be able to practice in Ventura County, and to have so many dedicated people who devote their spare time to make our Bar vibrant and productive. You will absolutely hear more about some of those people during the year.

So, that's who I am. Why am I here and what do I hope to accomplish? Hey, I have 11 more of these things to write, you'll have to just wait and see.

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# DEPARTMENT 41's PILOT PROGRAM

*By Judge Frederick Bysshe*

In an effort to determine if there are more effective ways for our courts to assist litigants in reducing costly pretrial disputes, encourage early resolution of cases, and streamline the trial of those cases that need to be tried, I have been authorized to conduct an 18-month pilot program for selected cases which will have the following components:

1. Meaningful case management conferences and early mediations designed to explore early case resolution and/or narrow legal and factual issues and/or produce detailed case management orders with enforceable deadlines and pretrial structure.
2. Inexpensive ADR and discovery referee services (\$50 per hour).
3. Informal judicial resolution of pre-trial disputes, without the expense and time consumption of formal law and motion appearances.
4. A productive final status conference held two-weeks before trial for final exploration of settlement and the comprehensive exchange of all "papers".

**Note:** Because I only have a half-day a month to conduct CMCs, I will be able to enroll only four to five cases per month into the program.

## CASE MANAGEMENT CONFERENCE

The Court's current case management system was developed approximately seventeen years ago. This system was implemented to comply with the Trial Court Civil Delay Reduction Act requiring that most civil cases be concluded within one year from the filing date, a goal our court has had a remarkable record in achieving over the years. Our system was designed so that parties in "unlimited cases" would not be required to appear before a judge for a CMC, as is mandated in "complex cases." Further, unless there is a law and motion hearing, the parties do not appear before a judge until the MSC. As a result, there is little active management of the case by the judge, and therefore, little to no opportunity to resolve issues informally or to explore settlement before the mandatory settlement conference at the final stages of the case.

I have concluded that many cases could benefit from having the judge involved with the parties in developing and tailoring a more specific case management plan. The proposed plan will require attorneys to call an early "time out" and come to court for a CMC with a proposed case management plan that will contain enforceable, functional deadlines tailored to the case. This initial CMC will be held approximately 60 days after the complaint is filed.

Besides preparing a preliminary case management order, another purpose of the initial CMC will be to set a date for a meeting with a mediator and for the Court to find out exactly what discovery will be needed to have a productive meeting with a mediator, which will be set approximately 60 days after the initial CMC. The court will then order such discovery in accordance with a timeline agreed to at the CMC and set a date for a conference with a mediator.

Finally, the CMC will give me an opportunity to start the process of early settlement and/or narrowing of issues.

## MEETING WITH MEDIATOR

The mediator's job will be to continue my efforts to get the parties to realistically evaluate their respective cases and to force the parties to seriously talk about how the case plan will be structured and then to finalize the CMO. In addition, the mediator will explore early settlement of the case and/or develop ways to focus on the real issues of the case (eliminating peripheral issues by stipulation or admissions). If the mediator determines that there is a reasonable likelihood of early resolution of all or part of the case, the mediator will have the authority to order further conferences to accomplish these goals.

## CASE MANAGEMENT ORDER

A proposed and jointly signed case management order will be submitted, through my secretary, to me for signature within 10 days after the mediation session (no appearance required).

In the event of disagreement as to the contents and/or deadlines of the proposed case management order, within 15 days after

the mediation session, the parties will submit their respective proposed case management order for an ex parte hearing in Department 41 to resolve the dispute.

## INEXPENSIVE DISCOVERY REFEREES AND ADR

From time to time, parties become embroiled in discovery disputes, which are best resolved by sitting down with the parties for several hours and going over a number of interrogatories, production demands, etc., to determine what the requesting party really wants to obtain and what objections are legitimate and reasonable.

Since these types of "give and take" discussions leading to appropriate compromises obviously can't be effectively accomplished in a law and motion setting, the appropriate order is sending the dispute to a discovery referee. Unfortunately, traditional discovery referees are expensive and many times one or more of the parties just doesn't have the money to pay the piper.

In an effort to resolve this financial problem, I have included as part of the pilot program, the requirement that all of the attorneys whose cases are enrolled in the program must agree to serve as discovery referees in discovery disputes arising from other cases in the program for at least 8 hours per case at the rate of \$50.00 per unrelated party (husband and wife would be considered one party, as would an individual d.b.a. and a fictitiously named party).

**Note:** Attorneys will also serve as settlement pro tems at the same rate of compensation.

## INFORMAL DISPUTE RESOLUTION (IDR)

As part of this pilot program, I will make myself available from 4:30 p.m. to 5:00 p.m. several days each week throughout 2010 to meet, confer and resolve disputes on an informal basis by way of a conference call and/or chambers conference. These conferences, which first must be calendared by my secretary, will last no more than 10 minutes and will be preceded by a submission by fax or email of a one-page jointly prepared summary of a narrowly defined dispute or question to be submitted by counsel at least

*Continued on page 11*

# CAOC AND VCTLA SEMINAR REPORT

By Deirdre Frank

OMG Oxnard! Yes, Ventura County Trial Lawyers and the powers that be at CAOC joined in presenting the third annual Masters Seminar on Sept. 22 at the Courtyard by Marriott in Oxnard. Over 70 people attended to enjoy an Italian buffet dinner and hear the “masters” – Scott Summer, Jason Wolf, M. Lawrence Lallande, Will Shapiro and Ron Dean – explain everything you need to know about liens. The “taskmaster” was Stephen B. Stevens, who did a fantastic job coordinating the comprehensive syllabus materials and moderating the evening’s presentation. Doc Central stepped up as the printing sponsor and Millennium Settlements generously hosted the bar. A big thank you to all who contributed to this very successful event and VCTLA is looking forward to the next Master’s Seminar in September, 2010.

*Deirdre Frank is a Ventura personal injury lawyer. She is a board member of Ventura County Trial Lawyers Association.*



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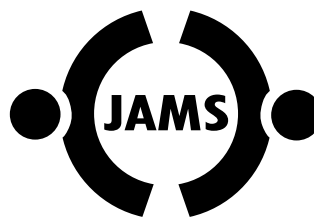
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## DEPARTMENT 41's PILOT PROGRAM *Continued from page 10*

24 hours in advance of the conference. At the conclusion of the IDR conference, I will require counsel to submit a jointly prepared one-page memorandum within 48 hours, summarizing my resolution of the subject dispute and/or directions regarding the dispute at issue. The document will be lodged in the file and, while not a judicial order, will be given great weight by me if an order is required in subsequent properly noticed proceedings involving the controversy, which was the subject of the IDR conference.

### FINAL STATUS CONFERENCE

A productive final status conference will be held two weeks before trial for final exploration of settlement and comprehensive exchange of "papers", i.e., trial briefs, motions in limine and other pre-trial motions, witness and evidence lists, special voir dire questions to be added to the Court's standard voir dire question sheet. A written list of all such papers will be filed with the Court and no other "papers" will be permitted to be used in the case without the written permission of the Court, which will be difficult to obtain. It is hoped that this looming deadline for a comprehensive exchange of "papers" will encourage the parties, approximately six weeks before trial, to request the court to send the case out for a final attempt to settle before one of the program's mediators.

### CASE QUALIFICATION FOR PARTICIPATION

1. Case assigned to Department 41.
2. Those unlimited civil cases where it is anticipated there will be significant discovery and pretrial disputes because of novel legal issues and/or an unusual number of percipient/expert witnesses and/or multiple parties and/or substantial electronic discovery.
3. As discussed above, all attorneys in case (except those representing parties peripherally involved) will be required to agree to serve as settlement/mediation judges pro tem and/or discovery referees for up to eight hours at the rate of \$50.00 per hour, per unrelated party in the case.

**Note:** Attorneys who have been in

practice 13 years or more will not have to undergo the training sessions required by our court before they can sit as judges pro tems.

### OPT IN

From January to March 31, 2010, all cases currently assigned to Dept. 41 in which no more than six months have expired since initial filing will have the option to opt into the program by filing a signed stipulation along with a letter as to why it would be beneficial for the case to be in the program.

### CASES FILED AFTER JANUARY 1, 2010

If plaintiff's counsel wants the case admitted into the pilot program, plaintiff's counsel will contact defendant's counsel within 10 days of defendant's first appearance and invite such counsel to enroll in the program and send counsel a signed stipulation (with attached rules). If the defense counsel also wants the case enrolled into the program, the parties will send the jointly signed stipulation directly to Department 41 at 800 S. Victoria Avenue, Ventura, California 93006, along with a brief letter regarding why the subject case is suitable for the pilot program.

The Court will notify counsel within 5 days of receipt of such request, whether or not the case has been accepted in to the program.

### NO OPT OUT

Once a case has been accepted into the program, there will be no opt out of the program.

### STIPULATION

Since this is a voluntary program, one of the prerequisites for case acceptance into the program will be a signed stipulation by all of the major players in the case.

The stipulation will contain not only an agreement to comply with all of the terms of the program, but also an agreement to be bound by the provisions contained in the Ventura County Bar Association's GUIDELINES OF PROFESSIONAL CONDUCT AND CIVILITY.

### REQUEST

To date, I have been assisted in developing this pilot program by an outstanding group of experienced litigators. It is still a work in process. I would very much appreciate hearing from you, the reader, regarding any additions or changes to this pilot program that you believe will help achieve its stated aims. Your thoughts and comments should be sent to frederick.bysse@ventura.courts.ca.gov.

Thank you.

*Frederick Bysshe is a Superior Court Judge. He is currently assigned to hear civil trials.*

# N

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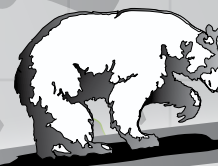
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# THE HONORABLE DANIEL BOONE AND THE RULE OF LAW

By Bill Grewe

It was a look that could kill from a man who had. The stare of the Honorable Daniel Boone, appointed to the bench by Meriwether Lewis, was locked upon the plaintiff, a debt collector.

The judge did little to hide his sentiment. Nor was he expected to. Appointed not for experience, education or training, what qualified Boone for the bench was that he arrived in the West ahead of the law, and before those appearing in his court. He could simply pull rank at any time.

Boone had served with Washington, walked the streets of Philadelphia and St. Augustine in self-made buckskin clothes, visited Detroit as a Shawnee prisoner, was rumored to have made it to Yellowstone and—though the significance was not known at the time—led the relatives of Abraham Lincoln west. He was legendary. Whether he could read and write is uncertain. What was unquestioned was that, on this day, at this place, the law was what he said it was. The court of appeal was but a nearby patch affording 10 unobstructed paces.

Boone was not above challenge. A criminal defendant once said in a low voice that if Boone were not so old he'd take his fists to him. Boone's hunter's ears caught the discontent and he barked, "Let not my grey hairs stand in the way." The young man backed off.

On this day, though, the man of action paused in the shade of the large elm tree under which his court sat. At the defendant's table was an elderly widow whose husband had left her only two things: A cow and a sizable debt. The plaintiff collector, holding the debt, wanted the cow. If he got it, the widow would no longer have means to barter and eat.

The audience was silent as it waited for the judge to rule. He was one of them. Certainly, he would make quick work of the debt collector.

The scales of justice might be blind at times to consequences but not Boone. He knew hunger and destitution. The crowd

was quiet. Boone just stared. Why was he hesitating?

In 1769, Boone crossed the Blue Ridge Mountains, traversed the Cumberland Gap, and rested in *Kentucke*. It would change North America. In that same year, Father Junipero Serra headed north to found his missions and Captain James Cook was circumnavigating the globe. Serra had the church and its resources. Cook had the Navy. Boone had but a handful of friends in tow. His travels and actions were not within a military or religious framework but he might have had a consciousness of the rule of law.

When the first community of permanent settlers gathered in Kentucky, they collectively set about to adopt laws. Boone, unexpectedly, suggested restrictions on hunting. It was such a statement against interest that one would assume he was asked to repeat it.

Boone was a poor businessman. Repeatedly sued, he accepted the rulings of the court and, by all accounts, paid the judgments.

So, maybe Boone had accepted the rule of law as a principle to live by. But, looking at the litigants before him, he must have thought of the words of his mother.

Sometimes truth must defer to myth. Such was the case with Boone. In actuality, this man of the wild was his mother's son. In his youthful years, Boone would annually accompany his mother to a plot of land some distance from the homestead. There, in spring and summer, Boone and his mother would farm the land so that the family could survive the winter. No doubt, his mother thought out loud about what needed to be done so that the family would make it through; what the needs of the various family members were; and what her greater concerns were about the future and the family. Her concerns would have become the boy's.

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Indeed, throughout his life, Boone was supplying a small community; defending families; rescuing those in need; and, simply, preparing for winter. Unlike Serra and Cook, he had no one to order, or rely upon. Boone was as much salt of the earth as the people in his court. The answer he sought must have been clear: Help the widow and be done with it.

Boone, eyes unwavering, continued his pause. The plaintiff debtor remained silent. He would force Judge Boone to rule. Finally, the Honorable Daniel Boone spoke. Looking directly at the debt collector he said, "Take it and go, but never look an honest man in the face again." Judge Boone then turned to the widow and promised her an even better cow. True to his word, he made good.

*Bill Grewe handles civil litigation, personal injury and wrongful death cases in Ventura*

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# THE BLIND SIDE

By Bill Paterson

Michael Lewis's 2006 book *The Blind Side: The Evolution of a Game* begins in 1985 with the last four seconds of quarterback Joe Thiesmann's career. Linebacker Lawrence Taylor was a fearsome competitor to whom quarterbacks were prey. "I intend to hurt them" was his mantra.

He was true to his word.

Second by second, Lewis freeze frames the time from the snap of the ball until Taylor blindsides Thiesmann. Carried off the field with a shattered leg, Thiesmann's playing days were over. A lesson learned. A quarterback's blind side had to be protected. His new protector would be the modern offensive left tackle, a human mountain with the speed of a sprinter and the reflexes of a fighter pilot. Because speed and bulk are rare combinations, and because they protect expensive quarterbacks, offensive left tackles are among the most highly compensated players in the NFL.

Lewis's book contains two parallel narratives. The first is the evolution of the position of the left tackle, the economics of professional football and the cynicism with which colleges

recruit promising athletes who come to campus with virtually non-existent academic skills. The second features Michael Oher. An abandoned black teenager living on the streets of Memphis, Oher later became a star collegiate player, honor student and now plays for the Baltimore Ravens.

As is no surprise, the film adaptation of Lewis's book focuses on Michael Oher's up-from-the-bottom story rather than Lewis's examination of the economics and sociology of modern football. While purists may criticize that choice, it is hard to see a commercial filmmaker doing otherwise.

The Touhys are evangelical Christians who live in an expensive leafy suburb of Memphis. Sean Touhy (Tim McGraw) is a former Ole Miss basketball star who has made a fortune with a chain of Taco Bells. Leigh Ann Touhy (Sandra Bullock) is a former Ole Miss cheerleader. Michael Oher (Quinton Aaron), the offspring of a drug-ravaged mother, lives on the street and forages for food. One night this 15-year-old 6' 5", 250-pound homeless youth is spotted by the Touhys as he forlornly walks in the rain. Leigh Ann Touhy tells her

husband to stop their car. Within minutes she has hustled Michael into the back seat of their BMW and takes him home for the night. One night turns into another and before long Leigh Ann has Michael enrolled in her children's Christian academy. Virtually non-verbal, with an educational deficit which left him testing with an IQ of 80, he is hopelessly adrift. Yet, bit-by-bit, he slowly gains a foothold in school and, when he finally makes acceptable grades, he qualifies for the football team. He is slow out of the blocks and is no overnight star, but before long college football coaches are beating a path to his door.

Some critics have dismissed "The Blind Side" as a conventional Hollywood exercise in contrived sentimentality. Others have faulted it for giving us another film in which the black protagonist is used as a backdrop for the saga of virtuous whites uplifting the downtrodden. While both criticisms are not without some merit, I think they miss the point. This is a stand up and cheer movie, and, given the underlying truth of the story, I was willing to forgive its occasional Hallmark moments.

As to the second point, it takes nothing



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away from Michael Oher's grit and tenacity in both football and his studies to highlight the huge role Leigh Ann Touhy played in his life. She was the catalyst that opened the doors of opportunity for him and was every bit as protective of him as he would someday be of his team's quarterback. That said, the film makes a major misstep in portraying the Touhy's elementary school age son (a stock movie wisecracking tyke) as Michael's "advisor" in his interviews with various coaches seeking to recruit him. It is a sequence which should have been left on the cutting room floor.

In the days when I was more devoted to television, I gloried in the snappy dialogue of *Cheers*, *Taxi* and *Frasier*. While I concede that *The Blind Side* sometimes veers too close to sitcom mode, savoring Leigh Ann Touhy's acerbic wit and take-no-prisoners personality is an irresistible pleasure. She may be coiffed and clothed as a southern belle, but she has a spine of steel and the soul of a Marine drill instructor. Bullock gives a wildly entertaining performance. Quintin Aaron's quiet portrayal of Micheal Oher is in complete contrast to Bullock's outsized performance. He is a gentle giant. While some critics have faulted the performance as making Oher nothing more than a one-dimensional noble soul, I thought Aaron's take on this genuinely lovable young man hit all the marks. While it is not a film for the ages, *The Blind Side* is an authentic crowd-pleaser and few who see it will be disappointed.

**DVD PICK** - If you want the real deal in a sports film you cannot do better than *Hoop Dreams*, a compelling documentary tracing five years in the lives of two inner city high school basketball players. I have said it before and will say it again, *Hoop Dreams* is one of the most memorable films it has been my pleasure to view.

**FOOTBALL READING** - No one to whom I have ever recommended *Rammer, Jammer, Yellow Hammer*, Warren St. John's chronicle of a group of die-hard football fans who attended every University of Alabama game in their motor homes, has come away unhappy. It is a unique and hilarious tale of football mania.

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

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**HOWELL DECISION CHEERS PLAINTIFFS' BAR**

*By Mark E. Hancock*

Veteran plaintiff lawyers often look forward to the holiday season because it seems more than coincidence that cases often settle during this time of year. Whether it is the holiday spirit, thinking of the reason for the season, thinking of others, or for more mundane and utilitarian reasons, like out with the old and in with the new, or closing out the books, that is behind this phenomenon, I'll leave for you to decide.

In 2009, in addition to a settled case or two, plaintiffs and their lawyers got a real bonus, in the form of *Howell v. Hamilton Meats & Provisions, Inc.* (2009) 179 Cal.App.4th 686, just decided by the 4th District Court of Appeal. This published decision should warm the cockles of your heart.

*Howell* held that "in a personal injury case in which the plaintiff has private health care insurance, the negotiated rate differential [i.e., the difference between the full usual and customary amount of the providers' bills, for which the plaintiff would have been liable but for her insurance, and the lesser amount paid by the insurers in cash] is a benefit within the meaning of the collateral source rule, and thus the plaintiff may recover the amount of that differential as part of her recovery of economic damages for the past medical expenses she incurred for care and treatment of her injuries." Stated another way, the court held that when a plaintiff with private health insurance sues private (i.e., non-governmental) and non-health-care-professional defendants, the plaintiff is not limited to the amount paid in cash by the plaintiff's own insurer. There is no basis for a "Hanif" postverdict motion to reduce the medical expenses, and it is error (specifically, a violation of the collateral source rule) to reduce those expenses on the basis of the *Hanif* and *Nishihama* cases.

I do not mean to suggest that this holding is a "gift" or something that is not called for under the law. But I do mean to suggest that plaintiffs and their lawyers should be thankful, especially so when there is reason to be thankful. Yes Virginia, last year there was a Santa Claus!

*Mark E. Hancock is a Ventura-based attorney who handles insurance law, personal injury and real estate cases.*

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# SPOTLIGHT ON LAURIE PETERS

By Ellen Hirvela Russell



This month we gaze at one of our bright rising stars – **Laurie Peters**, practicing family law, and handling guardianships and domestic violence cases, in Camarillo since 2006.

## FROM THE EAST COAST

Laurie attributes her New England accent to growing up in Somerville, Massachusetts. “Somerville runs parallel with Cambridge, and Boston is right across the bridge. There were 129,000 people per square mile! We lived in a two family house. The buildings were so close together that I could converse with my friend next door from our adjacent second story windows.”

Laurie is one of five siblings: an 18-month-old sister, a 13-month-younger brother, and two twins seven years younger.

“I shared a bedroom with my sister; the boys all shared one bedroom; and all of us shared one bathroom!” She said. “We actually did not realize we were broke, because everyone in our neighborhood was in the same boat, and you simply don’t know what you don’t know.” Laurie went on, “I think we were

all better for it, though. We learned to help each other. Each one knew he or she was not the center of the universe.”

A “self-starter,” Laurie was delivering papers at the age of 10. While she was in junior high she was selling costume jewelry as part of an organization that inspires young entrepreneurs called Junior Achievement. “I hated the door-to-door thing.”

According to Laurie, her father’s unwavering love and encouragement allowed her to become the person she is today. Fondly remembering her father, Laurie said, “He would have a ‘date night’ once a month with each of his children, and tell you that you were his ‘favorite.’” Her father was the youngest of eight children and was never able to finish high school, but he became a talented carpenter. His words of wisdom were a guidepost for Laurie: “Never grow wary of doing what is right and good at all times, keeping your integrity. God is always watching and he will bless us for our good work.”

Laurie’s focus and determination serve her well. She became a mother at the young age of 17, marrying her high school sweetheart, but this did not take her off course. Finishing high school, she went on to attend Lee Institute of Real Estate and became a licensed real estate agent in the State of Massachusetts. Laurie then went to college, earning a degree in accounting. “I put myself through college doing several odd jobs, including selling real estate and driving a taxi cab in and around Boston.”

After leaving her job as a controller for a property management company in Needham, Massachusetts, Laurie started her own accounting practice in Boston called “Accounts, Incorporated.” Laurie prepared taxes and provided accounting services for her clients, including advocating for them with the IRS as needed. In late August of 1993, tired of the bitter cold winters of Massachusetts, Laurie sold her accounting firm and the family packed up and moved to Ventura County, California.

## TO THE WEST COAST

Shortly after arriving, her California dream was a bit shaken by the terrible fires, landslides from flooding, and the Northridge earthquake of 1994. If that wasn’t enough, Laurie soon faced a more personal catastrophe, her own unexpected and unwanted divorce. But Laurie’s resiliency and determination coupled with her strong faith allowed her to once again turn a difficult and trying situation into an opportunity. She was unable to hire an attorney, so she did as much as she could on her own. She received some pro bono help from attorney **Michael Van Sickle**, now deceased. Laurie recalled, “I really appreciated all that he did and thought that some day I would be able to repay him.”

While researching her case, she would begin looking into other areas of the law. Realizing her interest in studying law, she enrolled at Ventura College of Law. Laurie finished her first year of law school with the second highest GPA in her class and with the highest GPA in torts. Laurie also received a number of AmJur awards during her law school years. Graduating from law school with honors in May, 2005, Laurie passed the California Bar Exam in February, 2006. She set up her office space and had her business cards ready even before her swearing in ceremony. Literally two hours after she was sworn in to the practice of law, Laurie was representing her first client.

The Law Offices of Laurie Peters in Camarillo now includes **Donna Rhodes**, Attorney at Law, “Of Counsel,” and employs two legal assistants. Laurie approaches each of her cases with compassion and understanding, never forgetting how difficult it is for those going through divorce. Laurie definitely has “paid it forward” many times in providing assistance to clients in need. In one such case, not referred from the Pro Bono Section of the bar, Laurie requested fees as sanctions against the other party to be payable to the Pro Bono Section; and the court granted Laurie’s request.

Laurie and her husband, David Peters,

have been married for the last 12 years. "We're still on our honeymoon." Between the two of them, they have four grown children: Laurie's children Lisa, 30; René, 27; Christopher, 19; and Dave's son, Chandler 19. You may not believe this, but she also has seven grandchildren! Family law attorneys have very little spare time, but when there is time, Laurie spends it with family, which often includes traveling to Texas and Boston.

*Ellen Hirvela Russell is a mediator and collaborative lawyer practicing in Camarillo.*



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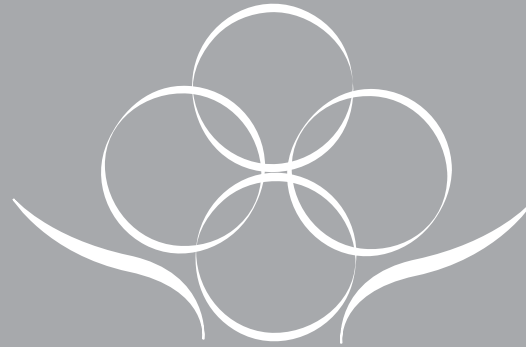
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Am I the only one who noticed this? The Cal Lutheran men's basketball team defeated Afghanistan 83-78 in a game on the CLU campus in November ... 226 folks attended the bar's annual installation and awards banquet at the Crowne Plaza. The "Less Talk, More Fun" theme had the martini bar squirting lemon drops at 6:00 p.m., filet and salmon served at 7:15 p.m., Mr. Huber accepting his award at 8:10 p.m., and the hip hop beginning at 8:30 p.m. Thanks to judges **McGee, White, Kellegrew, Back, Beach, and Borrell** for their attendance. Hats off to **Don Hurley** who once again coordinated the Silent Auction for the 5th consecutive year. Hurley has single-handedly raised \$50,000 for the VCBA/VLSP, inc., our association's (c)(3) charitable arm. Lastly, I think it's for real this time. ACC Hurley's last day at the office is January 8. Don started in the office in 1980 and may be reached at don.hurley@ventura.org ... Quote of the Month: "I don't lie. I don't cheat. I won 40 Academy Awards. I have five children. I've got a temper. I get angry. I punch people. But I don't lie," from Hollywood producer Jon Peters, denying any wrongdoing during his recent trial, in which he was ordered to pay \$1.5 million to a Santa Barbara landscaper for unpaid bills ... Studs! These three completed the Santa Barbara Marathon 12.6: **Judge Tari Cody** (with flu-like symptoms), **Matt Haffner**, and **Al Vargas** ...

**Gabriella Navarro-Busch's** daughter, Monika, produced and directed a documentary regarding two of her mom's brothers, both U.S. vets who were deported in 1999. Her film was the opening night screening on 12.11 during the Boyle Heights Latina Independent Film Festival ... Need some continuing education hours to fulfill your State Bar requirements by February? Yes, YOU, Group 1. Last names beginning with A through G. Bridging The Gap® will be held Saturday, Jan. 30 inside the County Government Center. You can score 6.5 hours, including

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

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

Ethics and Substance Abuse. BTW, plenty of CLEs this month, so save your calendar flyer contained herein ... A University of California law student paralyzed from the neck down has passed the bar exam after a legal battle to take the test. Sara Granda, a 29-year-old UC Davis School of Law graduate, says she received notice Nov. 20 she had passed. Granda was initially denied the opportunity to take the exam because her \$600 test fee was paid by a check from the State Department of Rehabilitation instead of using a credit card online. She petitioned the California Supreme Court to take the test and the court granted her request ... The Magazine for Women Lawyers? Entitled "Sue," can be found at the Los Angeles County Bar website [www.lacba.com](http://www.lacba.com). Want to communicate with the Editor? [editor@suemagazine.com](mailto:editor@suemagazine.com)...

Thanks to **Justice Art Gilbert** for MCing the New Admittees Swearing-In Ceremony 12.1 in CR#22. He was assisted by **Judges McGee** and **O'Neill** while he administered the oath to 13 plebes. Gilbert summoned Shakespeare's *Measure for Measure*, written in 1603-1604, to keep the seven men and six women on their toes. Note: Of the 13, only three will be practicing in Ventura County ... The debate for a uniform bar exam heats up as more jurisdictions consider the adoption of a single exam and scoring system that would be accepted from state to state. Missouri bar officials say they could offer the first national exam as early as 2010, *USA Today* reports. Jurisdictions also considering the idea include Arizona, Colorado, Minnesota, New Hampshire, North Dakota and Washington, D.C. ... Here's a memorable Movie Quote: "In our courts, all men are created equal – Now I am confident that you gentleman will review, without passion, the evidence that you have heard and restore this man to his family. In the name of God, believe Tom Robinson," from Attorney Atticus Finch (Gregory Peck) defending his client in *To Kill a Mockingbird* (1962) ... **Doug Goldwater** began serving his one-year term as president of Barristers this month. His officers include **Christina Stokholm**, vice-president; **Aris Karakalos**, secretary; **John Negley**, treasurer; and **Mike Strauss**, immediate past-president. Members at Large will be: **Eric Reed, Jenna Strauss, Taylor Waters, Matt LaVere, and Melissa Waters**. Past presidents agreeing to serve are **Katie Pietrolungo**, and **Jesse Cahill** ...

"Oh My!" As Dick Enberg would shout. The guys just completed their 50th year of practicing law: **Herb Ashby, Bob Curiel, Harold Hertzberg, Art Karma, Ron Landers, Bernard Lemlech,**

**Irving Rosenfeld, and Al Swanger**. Their bar numbers? 29,000 and change ... It may not be a good time for Georgia practitioners to try the patience of Matthew Simmons, the chief judge of Clayton County Superior Court. Within two business days he has jailed two lawyers for contempt in unrelated cases, according to a *Daily Report* article reprinted in the *New York Lawyer*. Tax attorney Francis Moore got the stiffer sentence when Simmons sent him to jail for 20 days for failing to return to a May court hearing after a recess. The judge, who denied bond on that count, also sentenced the Atlanta lawyer to serve up to 20 days, concurrently, for failing to post \$80,000 bond concerning an attorney fee award ... Then when another court-appointed lawyer showed up intentionally unprepared for her client's murder trial because she hadn't been paid in full, Simmons lowered the boom again. He sentenced Loletha Hale to up to 10 days and removed her as counsel in the case ... From Chief Justice Ronald George: "If California's fiscal situation continues to decline and the courts do not receive adequate resources, our courthouses may end up being open only one day each month instead of closed one day a month." ...

*CSMonitor.com* reports on a bizarre, golf-related ruling in Canada recently. Justice Arthur J. LeBlanc recently ruled that running up to the ball to whack it, like Adam Sandler in the movie *Happy Gilmore*, should be considered a legal breach of "the standard of care owed to other players on the course." "I am convinced that the "Happy Gilmore" shot, wrote Judge LeBlanc in his decision, "would have been less controllable than a normal tee shot, both because it involved a run-up to the ball (rather than an aimed shot from a stationary position) and because the defendant had been drinking throughout the day." So why was this in Canadian Court? A Canadian man sued his golfing buddy for \$227,500 after he was struck by a tee shot in which his friend employed a Happy Gilmore-style run-up to the ball. ...

*Steve Henderson has been the executive director and chief executive officer of the bar association and its affiliated organizations since November 1990. He may be reached at (805) 650-7599 or [steve@vcba.org](mailto:steve@vcba.org). Additionally, he may be followed on FB and [twitter.com/stevehendo1](https://twitter.com/stevehendo1). Quite a YouTube moment—Henderson accepted the Heisman Trophy in the mid-70s. Lastly, he laid a month's salary back in August on the *Crimson Tide*—[rolltide.com](http://rolltide.com). (Notice I did not crack on *Tiger Woods*?)*

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