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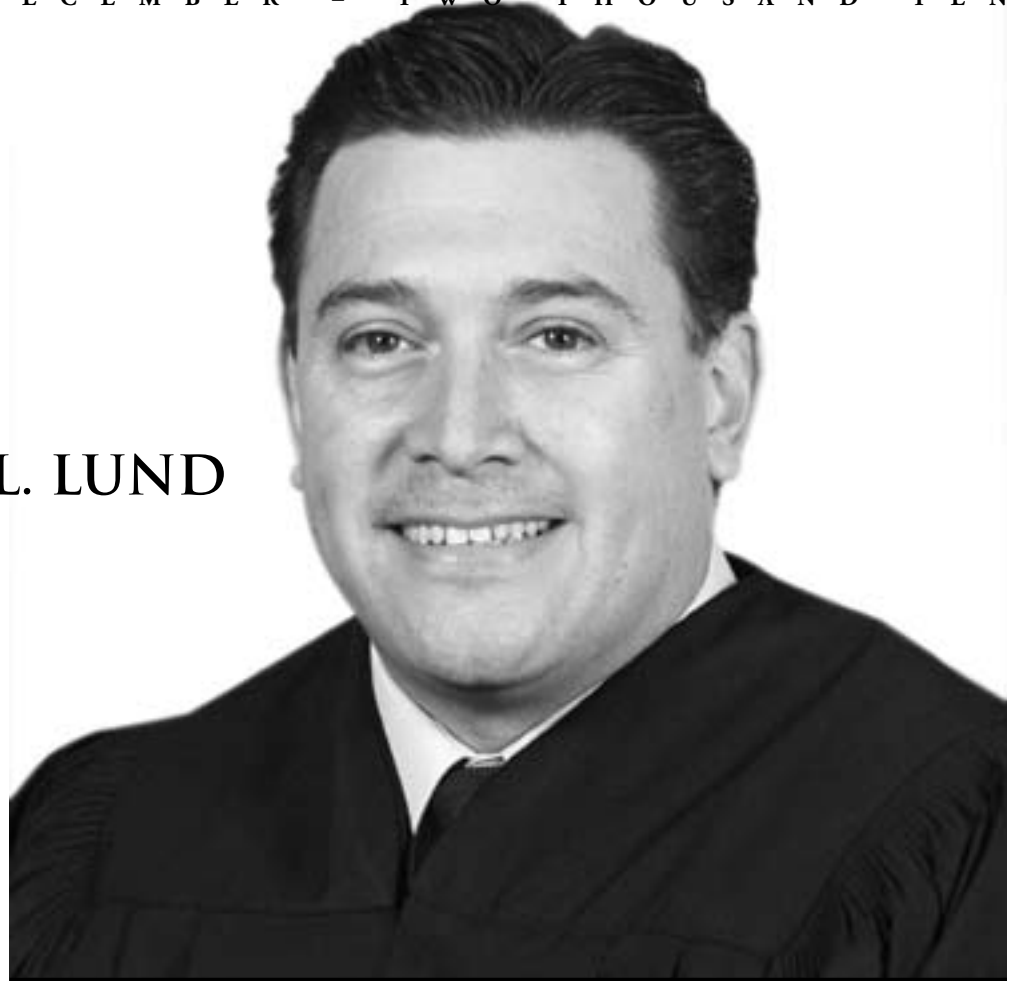
# CITATIONS

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

## Q AND A HON. ROGER L. LUND

*By Valerie Gregson*

Page 11



KENDALL A. VANCONAS

ALEJANDRA VARELA-GUERRA  
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MARK E. HANCOCK

PANDA KROLL

STEVE HENDERSON

**PRESIDENT'S POEM 3**

**TWO MEMORIES OF DAVID ABRAMSON 7**

**ANOTHER SOLUTION? 8**

**FRIDAY AFTERNOONS WITH MARV [JACOBS] 12**

**WELLNESS AND CAREGIVER CENTER NEEDS ATTORNEY VOLUNTEERS 13**

**CALIFORNIA FORECLOSURE PROBLEMS STILL ON THE RISE 16**

**2011 VCBA INSTALLATION AND AWARDS DINNER PHOTOS 18**

**EMPLOYERS ELIGIBLE FOR JOB TRAINING PROGRAM FUNDING 20**

**FOR RICHER AND FOR POORER, IN SICKNESS AND IN HEALTH, AND... 21**

**KROLL PUBLISHES RESEARCH ON FREE SPEECH LITIGATION**

**CLASSIFIEDS**

**EXEC'S DOT... DOT... DOT... 26**

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October 12, 2009

Jack Trimarco & Associates  
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Beverly Hills, CA 90212

Dear Jack:

It was good to have a chance to talk with you today. I write to emphasize my appreciation for your good work on the cases on which you consulted with us.

I have found that your professionalism in conducting and scoring polygraph examinations is outstanding. Your reputation for integrity as a polygrapher was known while you were with the FBI and has continued into your years of private practice. Both your professional work product and your excellent reputation are particularly important to me as a criminal defense lawyer.

We do not routinely use polygraph exams but, when we do, we expect an honest confidential examination and report. Whether or not we choose to disclose the report, the examination and report are often very important to the client and often influence choices we make in strategizing with that client.

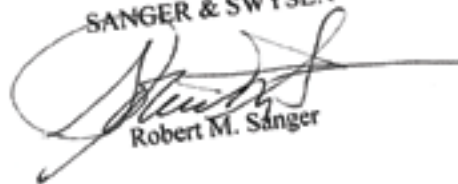
When we do decide to disclose the report in an attempt to convince a reluctant prosecutor of a client's innocence, a favorable polygraph report alone is not sufficient. The professionalism of the examination and the reputation of the polygrapher are critical.

In the recent case you worked on with us, we submitted your report along with witness interviews and other materials to the prosecutor. As you know, it was dismissed in its entirety on the day of trial. It was a felony case being vigorously prosecuted and the consequences of any conviction would have been devastating to my client's life and career. Being able to disclose your solid report backed by your substantial credentials was an important aspect of asserting our client's innocence.

Thank you again, Jack, and I will look forward to working with you in the future.

Best regards,

SANGER & SWYSEN

  
Robert M. Sanger

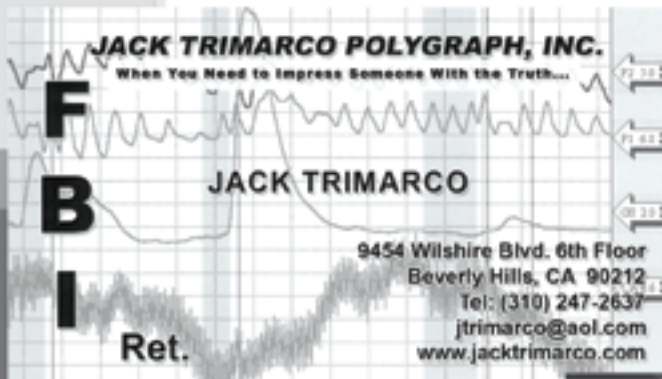
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# PRESIDENT'S COLUMN

By Kendall VanConas



'Twas mid-2007  
Around half-past eleven,  
On a regular weekday for me.

I sat at my desk—  
Which looked like a mess—  
About three years I'd been at A-Z.

A trust I was drafting,  
Clever language I was crafting,  
And **Bleuel** came in with a grin.

"The Bar had a meeting,  
And your name, it was repeating,  
If you want to be prez, you're in!"

Of course I was flattered,  
And getting involved --sure it mattered,  
But did I have the talent and time?

There were many before me,  
Who all made it seem easy,  
So I told Bleuel, "Sure, that would be fine!"

My first year--Sec/Treasurer--  
Came with a healthy and full measure,  
Of all that I did not know.

Lots of people to meet  
And faces to greet,  
I sure had a long way to go!

There was a whole lot to learn,  
Yet there at each turn,  
Was **Henderson** and his trusty team.

I learned numbers confuse him,  
So instead I took wisdom,  
From **Alice, Alex, Celene & Verna**

Then it was 2009,  
**Strauss** says, "Next year at this time,  
Will be your turn to take over for me!"

The decade's end drew near,  
And with a small sense of fear,  
I knew my year was upon me.

I had some goals in mind,  
Like technology--the information kind,  
So the website I planned to re-do.

What's wrong with nepotism?  
My husband, I'll get him,  
He said, "Sure honey, I will help you!"

The site now is done,  
And with pics and blogs it is fun,  
To see all we have done this year!

VCBA.org,  
That URL you can't ignore,  
So blog, and have good cheer!

With my board, we got crackin',  
'Cuz there was no lacking,  
Of meetings and agendas to map.

The months would fly by,  
And I just couldn't deny,  
This year would be a snap!

My year, I was adoring,  
And though I wouldn't call it boring,  
Excitement? Maybe I needed a nudge,

Then came an election,  
And with it, the selection,  
Of those who sought to be judge.

We have this committee,  
Some call it "Jenny,"  
But it's really the JEC,

They rate all the names,  
And never play games,  
They have too much integrity.

Most times their views  
Just do not make the news,  
They work in relative quiet,

But this year was different,  
This news--it was current,  
And we stirred a bit of a riot!

"The *Star's* on the phone,"  
My secretary, she groaned.  
"Put him through to voicemail!"

How does one talk to the press?  
This could be a mess.  
My first challenge--I could not fail!

So I called **Linda Ash**,  
Who said, "We must dash,  
To get all our points in order."

So we worked many days,  
And I'm no longer afraid,  
To talk to any reporter!

Whew! Glad that is all done,  
Now I'll just have fun,  
With all the regular stuff.

"My year's back on track,  
And I'll never look back,"  
I said, with a little huff.

Next thing I knew,  
Another CITATIONS is due!  
My gosh, where does the time go?

Every day I run late,  
I have such a full plate!  
I never have time to slow.

"Are you up again early?"  
My spouse--he isn't surly--  
But Ex Comm, it starts at 7:30.

*Continued on page 5*

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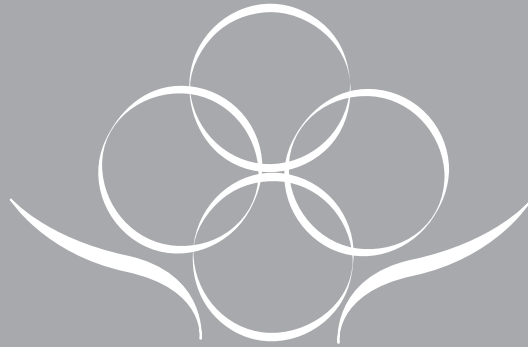
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## PRESIDENT'S COLUMN

*Continued from page 3.*

“Yes, but coming home I will stop  
And do a big grocery shop,  
And then do laundry, 'cuz it's dirty.”

You see, life goes on daily,  
And still I mainly,  
Believe I'm a mother and wife.

I have daughters—Julia and Natalie—  
And a big dog and a little kitty,  
It's truly a wonderful life!

But at times, hard to handle,  
Only one end has my candle,  
Such is a woman's strife.

But I digress,  
No more will I confess,  
And just get back to my story.

This part isn't funny,  
It's all about money,  
And it gets a little gory.

2010 marked the time  
We rubbed nickels and dimes,  
And hoped they would turn into dollars.

Pro bono was hit hard.  
“The program, we may discard!”  
That's what Henderson hollered.

So we all worked the phone,  
And our fingers to the bone,  
And I must give **Light** a hand.

VLSP is not gone,  
It will carry on,  
'Cuz we raised about 50 grand!

So here I am in December,  
And look back to remember  
This year and all its revelations.

There's a lot I've not said,  
And it will stay in my head—  
Not everything is for publication!

I now turn it over to **Joe**,  
And I know he will show  
You all what a good prez looks like.

My year, it was fun,  
But now it is done,  
So to you all, I bid Good Night!

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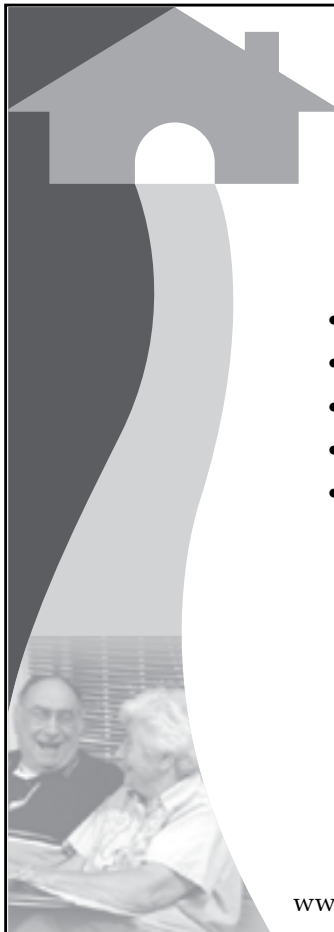
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## TWO MEMORIES OF DAVID ABRAMSON

### Passing Hits Lawyer Referral Service Hard

By *Alejandra Varela-Guerra*

The LRIS has many bright and talented attorneys, so when one of them passes on, it is a great loss to the service. Sadly such is the case with past LRIS attorney **David Abramson**. Mr. Abramson was a workers compensation and torts plaintiff attorney participating in the LRIS for more than twelve years.

Always wanting to be called David rather than Mr. Abramson, he would call like clockwork every Easter and Christmas time to take bar staff out to lunch. Not only would he treat us to lunch and interesting conversation, but would generously bring everyone in attendance a gift as well. Bar staff would later return the favor and give Mr. Abramson a sugar-free apple pie from Marie Callender's, his favorite.

### Decades of Memories

By *Ken Yaeger*

I met David 45 years ago at Ohrbach's department store in Los Angeles. I was the new stock boy and he was selling men's ties. Although it was a fairly large store, everyone knew each other, but did not always get along. When I started working there, David was the first to greet and welcome me to the store. I was immediately struck by the fact that he was one of the nicest and most genuine persons that I had ever met. Most of us who worked in the store were in our late teens and could be quite cruel to each other. If any of us were mean and inconsiderate to the other employees, David would always come to their defense and scold us for our behavior. Even then he was the protector of the defenseless.

After years at Ohrbach's, we all went our separate ways to seek our fortunes; we were

He would always take the time to personally speak to his clients, and would regularly answer his own business calls to his law firm, always answering any question, no matter how big or small. I experienced this first hand when he became my workers compensation attorney for a case I had pending with my previous employer. Whenever I had a question, I was able to reach him right away and get a precise and clear answer to whatever my question might be. He would always tell me to call him with any concern I had at any time, even on Saturdays, when he was known to work on a regular basis, or as he would say, "to catch up."

He was just as graceful with other possible clients as well. When I referred him to a

friend for a workers compensation issue, my friend reported that Mr. Abramson was courteous and wise and was able to put his mind at ease regarding his workers compensation situation.

That was just the type of person Mr. David Abramson was, always considerate and clever and always a pleasure to be around.

He will be deeply missed by all who knew him.

*Alejandra Varela-Guerra is the Client Relations Manager at the Ventura County Bar Association.*

earning \$1.34 an hour when we left the store. Thirty years ago our paths crossed again and we were both lawyers, but we hadn't made our fortunes yet. I just assumed that he had changed his ways. I was wrong. David was still the caring and helpful person that I had known years ago when we were just teenagers. He was practicing in the field of workers compensation. I knew that it must have been on the side of the applicant, and it was. He was still the guardian.

David and I shared office space in Thousand Oaks for the last 20 years. When I would refer a client to him, the client would thank me for finding the most caring and helpful attorney they had ever met. One woman just called me a few weeks ago after learning of David's passing and asked how she will

ever be able to work with another attorney – David had spoiled her.

David left an incredible and loving wife and a wonderful son. David always spoke of both of them with love and pride. We are all better people for knowing this caring and giving man and exceptional lawyer. He will rest in peace.

*Kenneth Yaeger practices medical malpractice law in Ventura County and the San Fernando Valley. He has been a LRIS panel member for more than 12 years.*

# ANOTHER SOLUTION?

By Lou Vigorita

No reasonable person denies that the baby boomer generation is having a tremendous effect on the Social Security system. As the “boomers” leave the work force and start collecting their Social Security entitlement, there is more pressure to “fix” the system and balance the books. After all, where is the money supposed to come from to pay this generation of retirees? Certainly not the current diminishing work force. They are fewer than what is necessary to keep the system afloat. What are we to do? What is Washington to do?

Some advocate for extreme measures that would eviscerate the whole system and do away with most, if not all, of the entitlements: the “less government in our lives” position. Others argue that we need to raise taxes to meet our obligations: the “bite the bullet” position. Fortunately, there is a position that remarkably appeared in a column by someone who is not a fan of Social Security, nor enamored with President Obama either.

On Aug. 9, 2010, Andrew G. Biggs wrote

a *Los Angeles Times* opinion piece that supports the Obama fiscal responsibility commission’s recommendation to fix long-term federal budget shortfalls by way of changes to Social Security. It is no small thing for Biggs to come out in favor of this administration’s recommendations. He was the Social Security Administration’s Principal Deputy Commissioner during the George W. Bush administration in 2007, the Deputy Commissioner for Policy, 2006-2007 and the Associate Commissioner for Retirement Policy, 2003-2006. In 2001 Biggs was on the President’s Commission to Strengthen Social Security. With a Ph. D. in government from the London School of Economics he has the credentials that give him credibility.

But it is Biggs’s stance against the interests of those of us who represent disabled claimants before the administration that raises eyebrows here. His articles on the rapid growth of disability insurance (see “The Disability Insurance Monster,” *New York Times*, Nov. 14, 2010) would leave us to feel that the policies that increased the subjectivity of the disability process were

to blame. Claimant attorneys’ neck hair always rises up when these arguments are advanced: “Disability benefits now make up 18 percent of all Social Security costs, up from only 10 percent in 1990...,” or “The main reason is looser eligibility standards passed by Congress in the 1980s that expanded the criteria for disability and put greater emphasis on evidence presented by applicants’ own doctors rather than the Social Security Administration’s experts.” (*New York Times*, Nov. 14, 2010).

No, Biggs is not a friend of those who try these cases and gather as much evidence as possible to prove up disability in a formal hearing – and whose livelihoods depend on winning these cases on a contingency basis. No way. But when he put forth a solution to keep Social Security solvent, we listened.

“[R]aising the early retirement age would prevent lower benefits due to early retirement, raising average monthly checks significantly.” (*Los Angeles Times* Nov. 9, 2010). “Annual incomes for future retirees,” he continues, “would rise by about \$7,500 if the retirement



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age was returned to 65.” He further argues that an added benefit would be that “the nation’s annual GDP would increase by hundreds of billions of dollars.” Yes, you heard me correctly, *hundreds of billions of dollars.*

So what’s the big deal about raising the age to 65? Apparently there is none. Many who retire at the present retirement age of 62 are neither less healthy nor less wealthy than later retirees. Biggs states that the Congressional Budget Office found that only about 15 percent of early retirees cite losing a job or health reasons for leaving the workforce. The remainder report being in good to excellent health. Approximately 80 percent of the early retirees at age 62 are in good to excellent health at ages 55 through 64, according to the National Center for Health Statistics. Further, Biggs cites a Government Accountability Office study which concluded that “The majority of workers aged 62-67 do not appear to have health limitations that would prevent them from extending their careers.”

So, the answer is that future Americans can work longer. In the 1950s the typical individual did not claim Social Security until age 68 1/2. Why not raise the early retirement age to 65 and save billions? So what’s the big deal? I guess no one wants to work longer without any good reason. But Biggs gives us plenty of good reasons: “... if future Americans simply work as long as past generations did, they could boost their

retirement incomes, help the federal budget and benefit future generations.”

Where is the downside to this?



*Lou Vigorita practices workers compensation and social security law at his private Ventura-based practice.*

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# Q AND A WITH THE HON. ROGER L. LUND

By Valerie Gregson

I recently had the opportunity to sit down with Superior Court Judge **Roger L. Lund** and ask him a few questions. Here is a portion of that interview:

**Valerie Gregson: Did you have any problem transitioning from probate and estate planning, your primary areas of expertise in private practice, to your present assignment in the Family Law Department of the Simi Valley branch of the court?**

**Roger L. Lund:** I actually find a great deal of similarity between the two areas of law. In both probate and family law, we deal with locating, identifying, characterizing and distributing property. The only major difference is that in family court we deal with couples and in probate court we deal with heirs. I might add that we are not faced with the problems of child custody and domestic violence in probate court.

**VG: Has that posed a difficulty for you?**

**RLL:** Actually, no. My first assignment as a commissioner was in Courtroom 34, where I presided over restraining orders and child support issues with a smattering of custody and visitation thrown in. In my present assignment I deal with all aspects of divorce including restraining orders. To me, restraining orders are the spice of family law because I feel that I can really make a difference in people's lives in their time of crisis. When I inquire about the effectiveness of the restraining order, in nine out of ten cases I am told that it effectively solved the problem. In a case where the problem is constant harassment through text messaging or phone calls, the restraining order provides a significant sense of relief for the victim.

**VG: You are the only judge in East County handling family law matters. Does that pose any problems with calendar management?**

**RLL:** Over the last four to five years, the volume of work assigned to Department S-2 could easily have kept two judges busy, and, as a result there was an ever-growing backlog. About a year ago, Judge **[John R.] Smiley** started coming over here once a week, which

gave us much needed support, but wasn't enough to resolve the problem. The Family Law Department judges decided to make some changes in the ZIP code assignments so that my courtroom now covers Simi and Moorpark and the rest of the East County caseload is assigned back to the Ventura Courthouse. That change brought our volume down significantly. Also, we have been able to add a part-time commissioner to hear restraining order cases. Finally, I have instituted my own case management techniques, trying to make sure that cases are ready to go on the date set for trial. Toward that goal I personally make sure that any reports or other material needed for trial are completed before I assign a trial date. Because of the latitude I have been granted in handling my calendar, we have reduced the time from the original OSC to trial from eight or nine months to six to eight weeks. I feel that we have accomplished a great deal and people are receiving justice in a much more timely manner. My interest is in making sure that we stick to the facts, that cases are well-pled and actually ready to go on the date set for trial.

**VG: Judicial profiles traditionally provide information on a judge's background. What pathway led you to the bench?**

**RLL:** I received a B.A. in philosophy at Brigham Young University and went on to get my law degree at Pepperdine. After my first year at Brigham Young, I took two years off to serve a mission for the LDS Church in Osaka, Japan. During my high school years **Kevin Staker**, a Camarillo attorney who was a bishop in my congregation, gave me the opportunity to work in his office after school and during summer vacations. After I graduated from Pepperdine, I did an internship at the District Attorney's office but soon found that as much as I would have liked to work there I could not have made enough money to pay off my student loans. I was always interested in estate planning as a career, so after law school **Gregory Gose** offered me a job, and I became a partner after working for him for five years. During the 13 years I was in practice prior to taking the bench I worked primarily in estate planning and probate. As a result of my regular appearance in his court, Judge **[Glen]**

**Reiser** offered me the opportunity to serve as a judge pro-tem, and I discovered that I enjoyed the work. Prior to that experience I never even considered going into the judiciary. Thereafter, I was lucky enough to be selected as a commissioner and then the Governor appointed me as a judge in December 2009.

**VG: Are you enjoying your stint in family court?**

**RLL:** Actually, I am. I didn't think I would've had the temperament to be a family law attorney but I love being able to make a difference in people's lives as a judge. I am looking forward to some day returning to my roots as a judge in probate court for a time, but I would also welcome a criminal court assignment because, again, I feel it would be an opportunity to have a positive effect on people's lives

**VG: How do you want to be perceived as a judge?**

**RLL:** As with all judges, fair and just, and, to the greatest extent possible, to be available at all times to give those who appear in my court a fair shake. That is the highest compliment I could receive.

**VG: Would you care to share any information about your family or personal interests?**

**RLL:** I enjoy spending time with my wife and four children. I also enjoy gardening and raising chickens with my kids. As my children get older and more independent, I find I have more time to get back to reading novels to relax.

*Valerie Gregson is employed at the Westlake Village-based Law Office of Arthur Wilkof and is a member of the Citations Editorial Board.*



## FRIDAY AFTERNOONS WITH MARV [JACOBS]

By Kathleen J. Smith

With a bar number of 40208, patent lawyer **Marv Jacobs** certainly qualified as an éminence grise – a respected authority. I worked with Marv while he was retiring and closing his law practice and we met every Friday for a few months. Since I'm not a patent lawyer, nor an engineer, I gained immense respect for Marv in about the first five minutes of our first meeting. As soon as I told him I went to Georgetown Law School, he began to tell me his own life story, which had a Washington, D.C. connection.

Marv Jacobs started at the patent office in 1962 in Washington after finishing his chemical engineering degree Phi Beta Kappa at Drexel University in Philadelphia. While working full time at the USPTO, he attended night school at George Washington University Law School. There he earned Order of the Coif honors and a J.D. with a specialty in patent law.

Whenever Marv and I met, we talked about all kinds of things – raising kids (we both have three), current events (we solved the BP oil spill problem with a proposal to torpedo the Gulf Coast leak), and history (he's from a family of Holocaust survivors). I could so easily picture Marv with a green eyeshade at the D.C. patent office, deciding whether claims of chemical inventions were new, obvious, or just plain wrong. When our meetings were over, I left him behind with his emptying law files, while Marv's stories filled that office with people as numerous as his memories, and places as big as the whole world.

Marv practiced law in Ventura County for 30 years. He died Sept. 29, 2010, after a stroke. He was a gentle, wise, intelligent man who was so easy to get to know because he had a mind that could focus on the person in front of him and tell them a story they didn't know they wanted to hear. He will be greatly missed.

*Kathleen J. Smith handles trust and probation litigation and intellectual property and other business-related matters for Ventura-based Norman Dowler, LLP.*

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# WELLNESS AND CAREGIVER CENTER NEEDS ATTORNEY VOLUNTEERS

By Cheri Kurman

The Wellness and Caregiver Center of Ventura County is a sanctuary for compassionate support and learning for people with on-going health conditions and the burden of caregiving. Trained professionals from a wide variety of services will assist in navigating chronic health conditions or life as caregivers. A multitude of community partners hold office hours at the Center, providing legal services, advocacy, health insurance counseling, health screenings, topical educational sessions, and a variety of additional services. This innovative program uses a tranquil environment to quiet the mind, promote learning and empower people.

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Please contact **Cheri Kurman** at [ckurman@normandowler.com](mailto:ckurman@normandowler.com) for more information.



*Cheri Kurman is a certified specialist in estate planning, probate and trust law with the Ventura-based Norman Dowler, LLP.*



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# CALIFORNIA FORECLOSURE PROBLEMS STILL ON THE RISE

By Michael Sment

As predicted, foreclosure proceedings and sales have been on an unprecedented, shocking rise in California and the United States since 2007 (during the Great Recession). Total numbers of foreclosures have grown each year (2007-2008 = 110 percent; 2006-2008= 498 percent). Ventura County foreclosures grew about 100 percent from 2007-2008 and 130 percent from 2008-2009, but dropped about 28 percent from 2009-2010 (although recent drops may be due to lender tactics, and attempts to maximize profits).

## The AGs

The enormous increase in foreclosures and foreclosure sales came after new federal and state foreclosure requirements had been added, and after corporate resources and employee staffing had been cut or outsourced, resulting in less oversight. One attorney in Florida, representing over 3,000 borrowers, alleges that major lenders were “hiring hairstylists, Wal-Mart workers and assembly-line mechanics as ‘foreclosure experts.’” Another stated that one foreclosure trustee had signed over 1,000 foreclosure notices a day, in less than eight hours. Locally, Bank of America (“BoFA”) took over hundreds of thousands of Countrywide Home Loan loans in 2008, and promptly announced that it would slash 7,500 jobs.

Those circumstances have, predictably, resulted in many problems. Borrowers complained about increased and high charges, delays, unkept promises, and fraud. Lenders complained about lack of payments, increased regulations and costs, lost profits, and the expense of doing business. Third party “loan/foreclosure” outfits made matters worse by taking borrowers’ limited funds and payments, not passing them on to lenders, and not arranging for any modifications or adjustments, thus causing more defaults and foreclosures.

Consumer groups, the NAACP, the Center for Responsible Lending, and members of Congress began this year to ask for investigation or a national moratorium on all foreclosures and foreclosure sales. In October, a few days after BoFA announced its voluntary suspension of “all foreclosures”

(see below), Attorney General Jerry Brown announced that he had joined a coalition of attorneys general from all 50 states and “dozens of banking regulators” in a multi-state effort to have lenders find solutions. Earlier this year, he had ordered BoFA, Chase, GMAC and other lenders to suspend all California foreclosures until they could verify each was in compliance with state laws. California borrowers may file a foreclosure complaint online with the AG at: [www.ag.ca.gov/consumers/general.php](http://www.ag.ca.gov/consumers/general.php).

Most legal scholars do not view it likely that a judge somewhere will be so upset with foreclosure practices as to throw out or set aside a completed foreclosure or foreclosure sale. That would be more unlikely if a third party purchases the property at foreclosure, which happens often. Foreclosed-on borrowers would also face many procedural problems: inability to afford old loan/ payments; in default of their payment; tax or loan obligations; and general lack of funds necessary to cure a defaulted loan.

President Obama and his administration have said they are not in favor of an across-the-board foreclosure moratorium because that “could produce unintended consequences that could hurt the economy.” At the same time, however, the President supports the investigations by the AGs, and has refused to sign the Interstate Recognition of Notarizations Act of 2010, which many consumers said would make it harder for borrowers to challenge multi-state foreclosure documents and notices.

## BoFA, et al.

In June, several large banks, including Bank of America, JP Morgan Chase, and Ally Financial (GMAC), agreed to an overall “freeze” on foreclosures in the 23 states where a judicial (court ordered) foreclosure was required (not California). The alleged reason was “largely procedural and technical in nature.” Some commentators questioned the ‘voluntary’ move on several levels, not the least of which was that judicial foreclosures requiring the filing of court complaints and cases were much more expensive, and time consuming, to process. Were lenders

doing this just to save money? Or, more altruistically, were the lenders hoping to delay the foreclosure sales until a later date, so that property values, and thus returns, would be higher? Were the problems of non-review and “robo-signing” genuine and pervasive?

In early October, BoFA (arguably America’s largest lender, and the purchaser/parent of local prior #1 U.S. lender Countrywide), said that it was “temporarily halting all foreclosures nationwide.” The stated purpose was to “review paperwork on tens of thousands of loans and foreclosures” to determine their compliance.

Less than three weeks later, however, BoFA announced that it planned to resume judicial foreclosures in the 23 states. It said it will resubmit documents with new signatures to restart more than 100,000 foreclosures. BoFA foreclosures in 27 other states, including California, were still suspended “pending further review of those cases.”

It remains to be seen if other major lenders will follow BoFA’s lead, or if the coalition of the attorneys general will end up with any moratorium, changes or results.

## Self-Help

Some borrowers, advocates and even attorneys are, apparently, not satisfied to wait for attorney general, judicial or legislative help. Many borrowers are resorting to self-help. Recent stories about local borrowers who lost homes to foreclosure, report their taking out their revenge, dissatisfaction or economic need, by removing fixtures (heating ducts, AC units, appliances, plumbing, wires, etc.) from the lost homes. One multi-million dollar home in Simi Valley had trash and feces in the pool, cement poured into drains, missing appliances and controls and walls smashed with sledge hammers.

Evicted and foreclosed-on borrowers have even attempted to move back into property already sold at foreclosure sale to others, or from which courts have evicted them. A recent local case, also in Simi Valley, involved a family which had lost its home to foreclosure sale in January, had a judgment



against them in an unlawful detainer action in June, were evicted, and then, several months later, moved back to the house and had the locks changed. (*Ventura County Star* 10/13/10: "Family Reclaims Foreclosed Home"). The third-party investor purchaser then had to seek a second Writ of Possession for the property. In an interesting political quandary, the Ventura County Sheriff's Department said it will do the eviction only, but that any trespass charge would be made by the Simi Valley Police. Because the court did not issue a permanent injunction, the borrowers and their attorney say the borrowers will move back in yet again. The attorney, Michael Pines of Encinitas, says the strategy is "not vigilante, but unusual," and that borrowers need to "push back" against foreclosures. The attorney has also allegedly advised clients to use force to regain properties. In October he apparently was arrested in Newport Beach with a client for trespassing in a house (*Ventura County Star*, 10/16/10 "Judge Orders Family Out").

Simi Valley officials decided that any attempt by evicted owners to re-enter their former property will be met with trespass arrests. In late October, the Simi Valley family was evicted by the Ventura County Sheriff's Department for a second time, when locks were changed. After that second eviction "No trespassing" signs were posted. The former owners' belongings were placed into a locked storage container, blocking the property's driveway. (*Ventura County Star* 10/27/10: "Family Evicted From Home 2nd Time"). In court, the investor-purchasers have asked for contempt sanctions against the family, while the family has requested a set aside of the judgment and a stay of the eviction. Hearings were scheduled for late November. Self-help is contrary to California law and would seem to increase risks of more injuries. When will "some force" be deemed too much? When will it be met by a purchaser/investor with a greater force? Some real estate professionals now travel around with hired security guards. Will those guards soon be required to carry firearms or be off-duty police officers? Where does the use of self-help, force, or aggressive tactics, end up? Nowhere good, it would seem.

#### Title Issues & Insurance

With all the borrower, consumer advocate and AG complaints and investigations, some third-party investors who purchased real estate

at the various foreclosure sales are now worried about their title to purchased properties (*Ventura County Star*, 10/16/10, "Buyers of Foreclosed Homes Are Concerned"). With so many banks having changed hands, and with loans having been securitized and bundled-up into mortgage-backed securities, title to loans is not always clear or easily determinable.

Several experts and attorneys have noted that anyone who purchased a foreclosure property in the last three years should be "really concerned." The number could be fairly significant. During 2010, 43 percent of California home sales were foreclosures. Prior years had even higher percentages. For purchasers who bought with a loan or loan proceeds, there should be little problem; those borrowers were, generally, required by their lender to purchase title insurance.

However, a number of third-party purchaser paid cash. Many were retirees or individual investors who pulled monies out of their retirement accounts or pension funds. Those

purchasers, who generally had no insurance ("to save money"), now have title worries.

Lawsuits, investigations, moratoriums. Title, insurance, securitization. Self-help, using force, vigilantism. With all of that, it does not look like there will be any quick or comprehensive action, solution or lessening of foreclosures or lost properties, any time soon. Real estate markets and practices and national, state and local economies will continue to be shaken up and distressed. Foreclosures and families' loss of homes will be continuing, sadly, for years into the future.



**Michael Sment** practices real estate law in Ventura and specializes in bankruptcy, foreclosure and business matters. He is a member of the CITATIONS editorial board and a founding editor of the CA State Bar Real Property Newsletter. He also worked at the Federal Reserve Bank (L.A.).

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# EMPLOYERS ELIGIBLE FOR JOB TRAINING PROGRAM FUNDING

By Shirley Raun

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The amount of the training reimbursement and the length of training are individualized, depending on the complexity of the work and how much the individual needs to learn on the job. The Department client is hired as an employee of the business during the OJT. It is expected that if the individual does well, s/he will be retained as a regular employee upon completion of the OJT.

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# FOR RICHER AND FOR POORER, IN SICKNESS AND IN HEALTH, AND OTHER LIES WE TELL

By Mark E. Hancock

Marriage, many believe, is a holy institution, separate and apart from mere civil law. Many people are familiar with the biblical injunction, often incorporated into the marriage ceremony, that what God has joined together should not be separated by man.

California law allows for legal separation as an alternative to marital dissolution. Legal separation leaves the marriage bond intact. The separated spouses are not free to remarry.

Separation is often chosen for religious reasons. Historically, it has also been chosen for a more immediate and pragmatic reason, to preserve the dependent spouses's right to coverage under the other spouses's health coverage. (Hogoboom & King, CAL.PRAC.GUIDE: FAMILY LAW (The Rutter Group 2010) § 2:25.1, p. 2-8.)

While some might see use of legal separation in the latter situation as "gaming" of the system, others might argue that trying to look out for one's mate is being loving and conscientious. Especially if it comes at the price of not

being free to remarry, and the covered spouse continues to pay the premiums, why is that a bad thing? Is it a good thing to leave the dependent spouse out in the cold, especially when he or she is sick and might not be able to get their own insurance?

Where is the hue and cry, however, against a health plan or health insurer trying to terminate spousal coverage not just on marital dissolution, but on legal separation as well? If the law allows for legal separation as a process different and distinct from marital dissolution, and people and politicians really believe that marriage is unique and "holy," where is the clamor against insurers and health plans treating the two exactly the same and seeking to terminate dependent spouse coverage upon either event? Can you yell and scream about giving gays the right to marry and overlook the fact that insurers are already seeking to (practically) "terminate" marriages that haven't been terminated?

Why an insurer or health plan would want to do this isn't hard to figure out. Some of the

benefits of group health coverage (the form likely involved here) are premiums that are less expensive than individual coverage and the ability to include dependents at a cheaper price. If you can terminate that group health coverage for the dependent and either eliminate them as a risk outright, or force them to pay more for COBRA (continuation coverage which is federally mandated in certain situations for a limited time period; 29 U.S.C. §§ 1161 et. seq.), you can collect more premiums and cover the person for less time. Given that a reason people use legal separation is to try to preserve coverage for the spouse that has become sick, the insurer or plan may figure that terminating coverage of dependent spouses on separation serves to eliminate bad risks sooner (outright if they can't afford COBRA; 36 months if they can) and allows them to charge more in the meantime.

Local family law attorney **Steve Debbas** tells me that he has not seen this practice (of trying to terminate coverage on legal separation,

*Continued on page 22*



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## FOR RICHER AND FOR POORER, IN SICKNESS AND IN HEALTH, AND OTHER LIES WE TELL

*Continued from page 21*

claiming reimbursement and/or denying COBRA) locally until now, but, if you think this isn't happening, think again. Of course, the fact of a bad economy may be a reason for this squeeze play. In *Simpson v. T.D. Williamson, Inc.* (10th Cir. 2005) 414 F.3d 1203, the plan case was aggressive enough to not only claim that *interim* stay away orders constituted "legal separation" and terminated coverage, but that the request for COBRA coverage of the dependent spouse was too late as a result.

This puts parties to a legal separation and their attorneys into a Catch-22 situation. If you notify the plan, you may face the claim that regular coverage for the dependent spouse terminates and you may be given notice of the right to elect COBRA. On the other hand, if you don't, you might face a claim for reimbursement, the argument that the plan required notice and/or a claim that the dependent spouse has lost the right to COBRA by failing to notify of the separation and by requesting COBRA too late after the event. There is always the possibility of a claim that the attorney should have seen this coming.

If you are hit with such a claim from an employee welfare benefit plan, such a plan might have a problem with ERISA preemption and jurisdiction (ERISA provides for concurrent jurisdiction only as to certain claims) and in suing for money damages "to enforce the Plan." The basic argument is that ERISA preempts state law relating to such plans and that ERISA does not provide for money damages in actions to enforce the plan. (See, for example, *FMC Medical Plan v. Owens* (9th Cir. 1997) 122 F.3d 1258 and *Jefferson-Pilot Life Ins. Co. v. Krafka* (1996) 50 Cal.App.4th 190). While turnabout, especially in the area of ERISA, seems fair play to me, you should also be aware that Plans have had some success in suing for money damages in certain situations (See, for example, *Providence Health Plan v. McDowell* (9th Cir. 2004) 385 F.3d 1168 and *Carpenters Health & Welfare Trust for California, et. al. v. McCracken* (2000) 83 Cal.App.4th 1365). A reading of these cases will explain why Plans are often so anxious to get you to sign agreements to reimburse them: there are definite issues, they are trying to enhance their position and they hope to "resolve things" without a fight and before the plan members and beneficiaries

hire a lawyer that knows anything about this, by getting you to "agree" that you owe them money under the Plan.

A big question, of course, is whether insurers and health plans should be allowed to terminate dependent spouse coverage on legal separation in the first place. Clients and attorneys might be unified on this. After all, parties cannot make a binding contract in violation of law or public policy (*Sternaman v. Metropolitan Life Ins. Co.* (1902) 170 N.Y. 13, 62 N.E. 763) and insurance and health coverage are businesses vested with public interest. Is it in the public interest to allow an insurer or health plan to foist someone onto MediCal, MediCare and/or the public emergency room, which costs all of us more money? Morality aside, if state law provides for legal separation, as something distinct from marital dissolution, why should insurers and health plans be allowed to treat the two (i.e., dissolution and separation) as

the same? After all, the argument is that the insurer and/or plan took on the employee and his or her spouse as part of their group health coverage. The risk that the employee and his or her spouse might get sick is a risk they assumed in return for the premium they took. Especially if the spouse got sick before the separation and/or if the parties choose not to dissolve their marriage, why should an insurer be allowed to dissolve their insurance? They are still married. Sure there is COBRA, but COBRA is only for a limited time and is very expensive. Where is the outrage?



**Mark E. Hancock** is a Ventura attorney who handles insurance and plan coverage disputes and litigation, and personal injury and real estate cases. He is also a member of the Citations Editorial Board

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## KROLL PUBLISHES RESEARCH ON FREE SPEECH LITIGATION

*CITATIONS'* editorial board member **Panda Kroll** recently had her research on the litigation arising from the mockumentary film *Borat* published in an international journal.

"I am interested in how 'mischief' can serve a public interest in exposing ignorance and racism, and how First Amendment protection can lead to unexpected and perhaps unintended results," Kroll said. "If for no other reason, the film is interesting for how it portrays the clash of Western and post-Soviet cultures."

Kroll also attributes her interest in the *Borat* litigation to a mix between the two sides of her family. Her brother produces prank and reality TV shows, her father-in-law serves as a foreign consultant to the State Department, and her husband's family are of Central Asian ethnicity, "like the fictional Borat character." (For the full article, see *Teaching through a Study of the Borat Litigation*, 3(4) *Journal of the World Universities Forum* 127-146).

Kroll shares her interest in First Amendment controversies with husband Dr. Kevin Volkan,

chair of the psychology program at California State University, Channel Islands'spp. Kroll has helped Volkan research controversial animal "crush" legislation for his university course, "Bizarre Behaviors and Culture Bound Syndromes." The research is published in his blog, <http://www.bizarrebehaviors.com/>. The blog posts cite testimony by Susan Creede, an investigator for the Ventura County District Attorney's office. Creede had been involved in an undercover operation to bust a Thousand Oaks crush video ring. Local Congressman Elton Gallegly authored the original anti-crush law, which was struck down as overbroad by the U.S. Supreme Court earlier this year. The blog posts were seen by the Humane Society of the U.S., who arranged for Dr. Volkan to fly to Washington D.C., to testify in support of replacement legislation that would be more narrowly tailored. Dr. Volkan addressed the nature of this unusual fetish, and supported the Humane Society's position that videos depicting it should be considered "obscene," and thus outside the zone of constitutionally protected expression (<http://www.bu.edu/law/communications/kroll.boratlaw.html>).

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## Judges' Pizza Night



Judges' Pizza Night was held in conjunction with the Winter Coat Drive November 9 at Café Fiore in Ventura. Pictured (l-r) are Barrister board member **Eric Reed**, **Judge Jack Smiley**, **Justice Steven Perren**, and Barrister **Bert Partida**. Barristers raised \$575; donations to the Winter Coat Drive may still be made to Laura Bartels at [lvkbartels@aol.com](mailto:lvkbartels@aol.com) or (805)524-1934.

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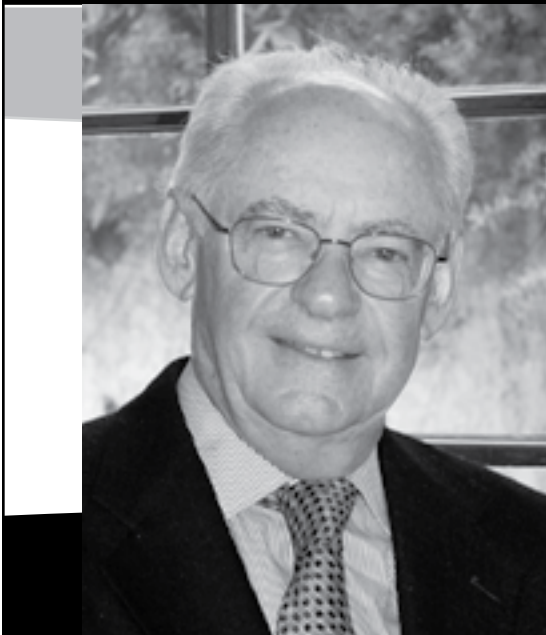
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The Barristers Annual Judges' Pizza Night and Winter Coat Drive was chock full of success at a new venue, Café Fiore in Ventura. Justices, judges and commissioners in attendance were **Gilbert, Perren, Coffee, Walsh, Bysshe, Young, Borrell, Kellegrew, Ayers, O'Neill, Bennett, Cody, McGee, Smiley, White, Hirsch, Back, Baio, Johnson, Riley, and Wright**. That be 21 in all, a record! A generous \$575 was raised for the Coat Drive, too. Want to donate? **Laura Bartels** at [lvkbartels@aol.com](mailto:lvkbartels@aol.com). Hats off to **John Negley** for managing the event and a SO for President **Doug Goldwater** and president-elect **Christina Stokholm** for marketing and ensuring a fun time for all...

Emeritus Attorney **Gerald Cline** celebrated his 70th birthday along with the other EAs at a training 11.15. His birthday cake? Compliments of EA **Tina Rasnow**...A San Diego Superior Court judge has agreed to resign after being censured by the Commission on Judicial Performance for a pattern of intemperate behavior towards lawyers and defendants. Judge DeAnn M. Salcido agreed to resign immediately to avoid formal proceedings against her. The resignation became effective 11.18. Salcido was charged by the commission with making mocking, rude and slightly off-color comments from the bench. For example, Salcido told a defendant that he would be "screwed" if he violated probation and "we don't offer Vaseline for that."...**David Tredway** attended Game One of the World Series in The City...

Chiapas, Mexico? **Gilbert Romero** at [gilbert.romero@ventura.org](mailto:gilbert.romero@ventura.org). Quemado, New Mexico? **Karen Darnall** at [k-darnall@earthlink.net](mailto:k-darnall@earthlink.net). Helena, Montana? **Brian Nomi** at [briannomi@yahoo.com](mailto:briannomi@yahoo.com)...Recommended

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

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

Reading of the Month: *The Santa Suit*, by Christopher Brian Halvorson. Spurned by Santa Claus as a little boy, Henry Milton grows up to be a street-hustling lawyer. When a client arrives at Henry's office wanting to sue Kris Kringle, Henry accepts the case as a cheap publicity stunt. But when Santa shockingly appears in court with a team of elf lawyers, he must fight the trial of the century. 106 pages. \$10. [www.blackrhinopress.com](http://www.blackrhinopress.com)... **Jon Light** had a letter to the editor appear in *The Star* 11.7. About a homeless man he befriended many years ago in the Camarillo Starbucks...

President-Elect of the bar association, **Joe Strohmman**, completed the SB International Half Marathon in 2:08:04...Your bills for the 2011 State Bar dues will be mailed 12.1 and the deadline for payment is 2.1.11. The fee for active lawyers is \$410 and includes \$315 as the annual fee, \$40 for the Client Security Fund, \$25 for disciplinary activities, \$10 for the Lawyers Assistance Program, \$10 for technology upgrades. Failure to pay dues by the deadline will trigger a \$100 late payment penalty. BTW, those lawyers whose last names end with N-to-Z (Group 3) also have until 2.1 to report completion of their 25 hours of MCLE...**Judge Mark Borrell, Erik Feingold, Rick Loy, and Tom Beach** all completed the annual Levi Leipheimer's Gran Fondo 10.2. The gnarly 103 mile ride with 8500 feet of vertical gain is a tuffy and characterized as California's most challenging century. On 8.18 Tom won his age group in the So Cal Cycling Association Time Trial Championships...

**Carmen Ramirez** will be sworn-in on the Oxnard City Council December 7 beginning at 7:00 p.m...The Ventura County Superior Court held its first session of the Veterans Court on 11.1 in Courtroom #37. The specialized court will hear criminal cases involving veterans who suffer from the effects of combat-related psychological injuries or substance abuse. Robert Sherman at 654.2964...Threats are rising against administrative law judges who hear Social Security disability cases. There were at least 80 threats against the judges in the past year, an increase of 18 percent. Many of the judges hear cases in leased office buildings, where just one security guard is assigned for

protection. Randall Frye, a Charlotte, N.C., administrative judge who is president of the judges union, told the AP the kind of threats being made are more significant than the numbers. "There seem to be more threats of serious bodily harm, not only to the judge but to the judge's family," he said...

NOTES: The new admittee swearing-in ceremony is scheduled for December 7 beginning at 4:00 p.m. inside CR#22. It's compelling and entertaining...The VCTLA Holiday Party is also set for the 7th beginning at 5:30 p.m. up top the Tower Club. Contact Celene at [Celene@vcba.org](mailto:Celene@vcba.org) or calling **Jim Prosser** at 642.6702...The VCBA board of directors Holiday Celebration is happening 12.8 starting at 5 p.m. at Brophy Bros-Kendall at [kvanconas@atozlaw.com](mailto:kvanconas@atozlaw.com)... Need a general CLE this month? Intellectual Property has one December 9th at noon at the bar offices-celene@vcba.org...

From a Ninth Circuit decision 11.16: "It behooves litigants, particularly in a case with a record of this magnitude, to resist the temptation to treat judges as if they were pigs sniffing for truffles." *In Re: Oracle Corp. Sec. Litig.*...Local lawyers **Mike O'Brien** and **Mark Hancock**, whose combined bar number is still a fraction of today's barely legal lawyers, joined forces on the tennis courts recently to go 4-1 and win the 4.0 consolation final at the Pierpont RC. In the one match they did lose, the duo went down 4-6 in the third set of an 8 a.m. match after winning a 3-setter the night before. Asked to comment on their wins, O'Brien and Hancock wanted to highlight the fact that they also beat the 4.0 champions in their pre-tournament warm-up match. Fans at the PRC are still shaking their heads at the spectacle of a Hancock/O'Brien belly bump, a true multi-sensory experience.

**Steve Henderson** has been the executive director and chief executive officer of the bar association and their affiliated organizations since November 1990. Tutored in ethics by Democratic Rep. Charlie Rangel, Henderson will be spending the holidays on St. Maarten and New Year's Eve in Peru. Henderson may be reached at [steve@vcba.org](mailto:steve@vcba.org), FB, Twitter at [stevehendo1](https://twitter.com/stevehendo1), LinkedIn, or preferably by calling 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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