CITATIONS

JULY – TWO THOUSAND TWENTY ONE

THINKING THINGS OVER–RECEIVERSHIPS

by Lindsay Nielson

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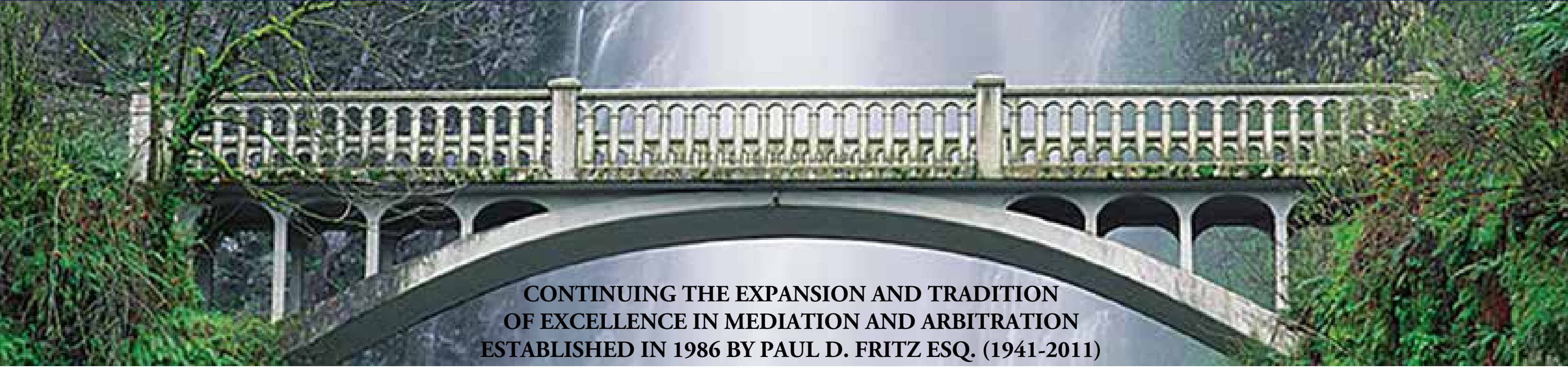

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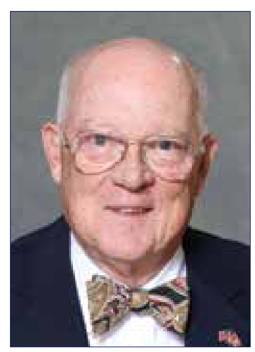

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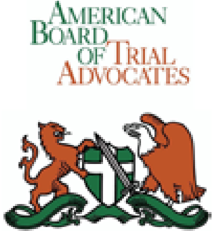

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PRESIDENT'S MESSAGE

by Marc D. Anderson

If you haven't already heard, I'm thrilled to announce VCBA's Annual Dinner is back! Dust off your tuxedo, gown or favorite evening wear and join us at Spanish Hills Country Club in Camarillo on Nov. 13.

The Annual Dinner is our opportunity to share a meal and conversation and renew acquaintances with our fellow lawyers and their significant others or plus ones. We take time to honor the recipients of the Ben E. Nordman Public Service Award, the James D. Loebl Pro Bono Award, and the Verna R. Kagan Pro Bono Award. The Annual Dinner committee is excited for this year's dinner and is working hard planning its logistics and entertainment. I'm excited to co-host this year's dinner with **Kathryn Clunen**. We look forward to seeing you there.

A hallmark of the Annual Dinner is the silent and live auction. This year's auction will benefit Ventura County Legal Aid. VCLA was founded by VCBA in 1996 and incorporated in 2002 as charitable non-profit. Its mission is to provide equal access to justice for income-qualified residents of Ventura County. It does so under the direction of its Board of Directors, its Managing Attorney, **Cesar Libanati**, and its Staff Attorney, **Alfred Vargas**. VCLA relies on donations and grants to fund its mission. VCBA is proud to support VCLA and its important mission.

The Auction Committee secures donated items, prepares and packages them, runs the auction, and ensures the highest bidders get their items. The Auction Committee's work begins in June and continues through the dinner. This year's Auction Committee has members from both VCBA and VCLA: **Sara Peters** (VCBA), **Kristine Tijam** (VCBA), me (VCBA), **Rabiah Rahman** (VCLA), Libanati (VCLA) and **Louis Vigorita** (VCLA).

My wife will confirm that I'm obsessed with silent auctions – sizing up the items and making my bids then circling the tables like a shark and checking on my bids until the auction is closed. We've gotten great art, a cool box of handmade cards, whale watching tickets, a kite, tickets to the Los Angeles Times Book Fair, and our dog, Cowboy (**Kathleen Smith** put together a great basket that included an adoption from the Humane Society in Ojai - thank you Kathi!). One year **Judge David Long** and I got into a bidding war over a box of cigars. We finally met at the auction table, increased the bid, and agreed to split the cost and the cigars. It was a box of 25 – Judge Long got thirteen and I got twelve!

Please consider donating an auction item. Concert tickets, sports tickets, gift certificates, experiences, food, wine, jewelry and weekend getaways are all great items. You can express your creativity and make a basket that reflects your personality. Maybe a bass guitar lesson from **Dennis Neil Jones**, dinner with **Dien Le** (who has a knack for picking great restaurants!), aerobatics over Santa Paula with **Wendy Lascher** (although I'm certain the FAA prohibits this!), or a drive down PCH with **Eric Reed** in his beautiful Austin Healy. Be on the lookout for an accordion themed item from me.

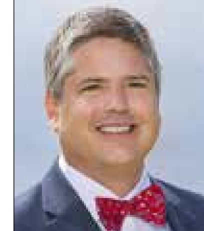
VCBA relies on sponsorships to support the Annual Dinner and VCBA's annual budget. The Sponsorship Committee solicits firms, businesses, and individuals to sponsor the Annual Dinner and ensures our sponsors are properly recognized. **Jacquelyn Ruffin**, **Carla Hartley**, **Trevor Quirk**, **Rick Seigenfeld**, **Stephanie Johnson** and **Brian Israel** serve on the Sponsorship Committee. Please consider sponsoring the Annual Dinner.

Again, we look forward to seeing you in November.

I can't believe it's June. And, I can't believe I'm half-way through my VCBA presidency. On June 15, California's lockdown restrictions were lifted. Life is returning to "normal." Here are two of my snapshots from the COVID pandemic and lockdown.

I walked in the mornings during the pandemic, and I listened to quite a few podcasts during those walks. I mostly kept to my favorites – *Hidden Brain*, *This American Life*, *Amicus*, and, of course, *Accordion Noir Radio*. As the months went on though, I began to prefer *The Moth*. If you haven't heard it, *The Moth* is "dedicated to the art and craft of storytelling." Each episode has three or four people (some you know, most you don't) telling a true, personal story centered on a theme ("Facing the Dark," for example). I love a well-told story and I admire a good storyteller. I must've been a strange sight to passersby with my headphones on, some days laughing out loud and some days wiping a tear away.

My Netflix etcetera list is long and probably familiar to you. We all enjoyed a lot of the same shows: *The Morning Show*, *The Mandalorian*, *Wandavision*, *Mare of Easttown*, *The Queen's Gambit*. There were a few standouts on my list. The documentary *Crip Camp: A Disability Revolution* was excellent and introduced me to the amazing Judith Heumann. My son, Bodie, and I watched all seven seasons of *Star Trek: The Next Generation* and then all four Next Generation movies. *Snowpiercer* combined the post-apocalypse with a train that circles the earth so it couldn't miss with me. And *Ted Lasso* was just what I needed just when I needed it. A masterclass on kindness and leadership. The darts scene in episode eight is probably my favorite three-and-a-half minutes of television of 2020. Be curious, not judgmental.



***Marc D. Anderson** is a lawyer with Hiepler & Hiepler, APC, in Oxnard. He represents plaintiffs in personal injury and wrongful death cases.*

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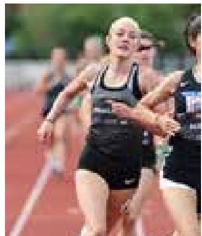
LEGAL AID UPDATE

Ventura County Legal Aid, Inc. (VCLA) thanks VCBA and *CITATIONS* for updating the legal community on its programs and directors. As of 2021, VCLA has a full fifteen-member Board of Directors featuring: President-CEO **Christopher Beck**, Vice-President **Kevin G. Staker**, Secretary-CFO **Louis Vigorita**, and Past President **Mark Kirwin**. Four past presidents — **Joseph L. Strohman**, **Dien Le**, **Laura Bartels** and **William M. Grewe** — and seven additional attorneys — **Erik Feingold**, **Bradley Marcus**, **Janet Mertes**, **Jodi L. Prior**, **Rabiah Rahman**, **Anthony Strauss** and **Vanessa Valdez** – comprise the rest of the board.

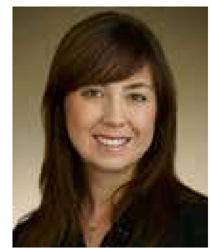
VCLA has three fully running programs with the Legal Assistance Clinic set to return to in-person sessions at the County Law Library in late August, by appointment only. The Pro Bono Program (PBP) accepts applicant requests for attorney assistance on a variety of legal issues with family law matters the most common. The Legal Assistance Program (LAP) works out of the Ventura County Family Justice Center and assists victimized individuals with issues relating to domestic violence, child abuse, elder abuse, sexual assault and human trafficking. The newest program for Legal Eviction Prevention Assistance (LEPA) aids individuals with advice, information, analysis and referrals related to potential evictions.

For information on program assistance requests, please visit the VCLA website at *vclegalaid.org*. The website also has a sign-up section where volunteers may enroll in our volunteer newsletter list. VCLA periodically makes community assistance requests on specific issues and generally informs the community on volunteer opportunities. VCLA presently has three employees and always welcomes local support to strengthen the entity. If you know of any firm or company that would like to support VCLA, they may do so through the website, or by reaching out to *support@vclegalaid.org*.

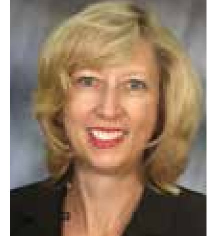
HAVE YOU HEARD?



Fourteen-year-old Sadie Engelhardt, daughter of Ferguson Case Orr Paterson associate **Max Engelhardt**, has broken the world record for her age group. The record had been set in 1973. Sadie shaved four seconds from her time in a race a week earlier, finishing the Girls 1 Miler Run Championship in 4:40.16.



Natalie N. Mutz has joined Bamieh & De Smeth's civil litigation department. For over ten years, Mutz has counseled businesses, individuals, and homeowners associations through planning and dispute resolution. She has worked with plaintiffs and defendants, at the trial court level and on appeal. She is proficient in both elementary Japanese and Spanish. Natalie lives in Goleta with her husband, two sons and their cat Lindy. Learn more about Mutz at *www.bamiehdesmeth.com*.



The judges of the Ventura Superior Court have selected **Brenda L. McCormick** as the court's new Executive Officer. She replaces **Michael D. Planet**, retired May 31. The court executive officer is responsible for overseeing the management and administration of the court's nonjudicial operations, including budget, contracts, human resources, jury management, technology, records management, facilities, and liaison with other government agencies. The court executive officer is also the Clerk of the Court and Jury Commissioner. Most recently, McCormick was the Ventura Superior Court's General Counsel, providing legal counsel to the court in administrative matters and the Deputy Executive Officer responsible for the personnel and daily operations in the Civil, Small Claims & Appeals Clerk's Office; Family Law Clerk's Office; Family Court Services; Legal Research; Family Law Facilitator and Civil Self-Help units.

Jacqueline Martinez has joined The Green Law Group, LLP as an associate. Martinez earned her law degree in 2020 from Pepperdine Caruso School of Law, where she was a Dean's Excellence Scholarship Recipient and member of the National Association of Administrative Law Judiciary Journal. Martinez's practice will focus on complex construction and business law matters.

Claudia Silverman, family law practitioner and a member of the *CITATIONS* editorial board, has just announced her retirement. Her fun and intelligent contributions to our meetings and the legal community will be missed, but we're sure she'll enjoy her time away from the office.

Welcome Susana Cruz!

Quirk Law Firm is pleased to announce Susana Cruz joined the firm as an associate attorney.
Susana was born and raised in Santa Barbara. She is fluent in Spanish. She has a 12 year old daughter who loves to dance flamenco. She loves to hike, spend time with her family and travel outside the U.S.A. She has experience in worker's compensation law, family law, criminal defense and personal injury law.
Susana will focus on personal injury litigation.

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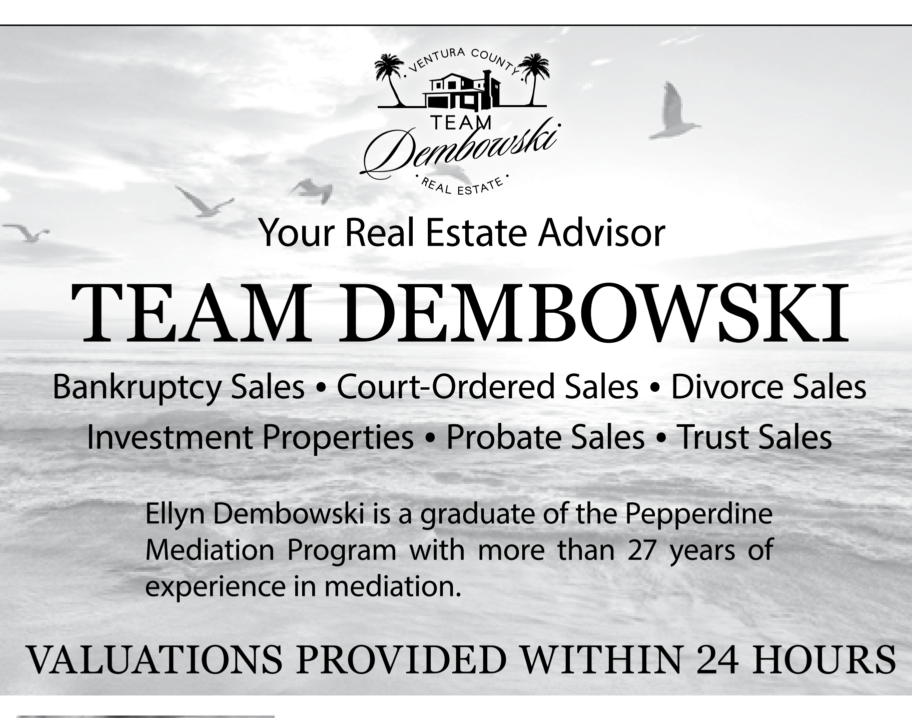

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THINKING THINGS OVER–RECEIVERSHIPS

by Lindsay Nielson

What do you know about being a receiver? Most of us know there are two kinds of receivers: a "wide receiver" (anyone who watches Sunday football knows that. They usually have tight ends…) and a "court appointed receiver." Although the first kind may be more fun, this article deals with the court-appointed kind of receiver.

Does anyone remember the law school course called "Remedies"? That seemingly-esoteric course discussed some of the tools courts have at their disposal. Usually it took maybe an hour of the professor's time to gloss over this major tool in a judge's bag of tricks. When the court runs into an obstreperous litigant who simply refuses to comply with its orders, the judge can call upon a receiver to make certain that the orders will be carried out. Often it means the receiver must sell a property. This is frequently true in divorces. One spouse likes living in the house that the court has determined needs to be sold. The court can always divide money, but a tangible house is a bit more difficult to cut in half.

Receivers are given immense responsibility and authority under Code of Civil Procedure section 564. Essentially, the court can appoint a neutral who acts for the benefit of all parties. The receiver is the **agent of the court**, not of the plaintiff or the defendant. The receiver may take control of, manage and liquidate the assets which are the subject of litigation. Despite broad authority, though, the receiver may not enter into contracts without the court's specific authority. The initial court order must be as specific as possible to set forth the anticipated duties the court wants to occur. If the initiating order is not specific enough, the receiver needs to seek clarity.

Receiverships are an extraordinary remedy. They are only used when the parties (or their lawyers) are willfully disobeying the court's orders, or if it is apparent that nothing will happen to move the case forward without a neutral being involved, such as where there is an impasse on a board of directors, or the management of a company is harming a company, or a creditor needs to take control in order to collect a judgment. The governmental agency such as the City or County can also have the court appoint a receiver to enforce building codes and remedy Health and Safety Code violations.

The court may appoint a receiver *sua sponte* or either party may seek to have a receiver appointed by a noticed motion. The receiver must post a bond.

Litigants generally lose their veto powers when a receiver steps in. Another awesome power is that where it is necessary to raise money to preserve, protect, or administer the receivership estate, the court may permit the receiver to issue a Receiver's Certificate of Indebtedness. **This security instrument has priority over any other secured loan against the subject property.** Forget about the fact that California is a race-notice state that allows priority of recorded security instruments to prevail. First in time, first in priority...except for a receiver's lien, which jumps to the head of the line.

A receiver's job never gets boring. You are slandered, yelled at, sued and all kinds of anger is bestowed on you. But your client is the judge who has your back (assuming you do your job properly). In my long history as a receiver I have run and/or sold a movie distribution business (my wife nixed my idea of getting a casting couch in my office), a grocery store, a motel, a dog breeding facility, a medical billing company, a manufacturing company and a fertilizer company. I have sold a pharma company for $38 million in a divorce. I even had to divide a valuable wine collection between the unhappy couple. That was easy when there were even numbers of a vintage wine, but when there was an odd number of bottles, I offered to drink the odd bottle to keep everything on the equal. (That was rejected by the court). When that phone rings, you never know what will be asked of you. I have done over 500 receiverships in my 45 years of practicing law. It simply is terrific job, but it can also be maddening at times.

There are little to no statutory requirements for being a receiver. Just good business judgment, the ability to make decisions and, in my particular case, it helps to be more than just a pretty face.

Lindsay Nielson is a Ventura attorney who is frequently appointed as a receiver.

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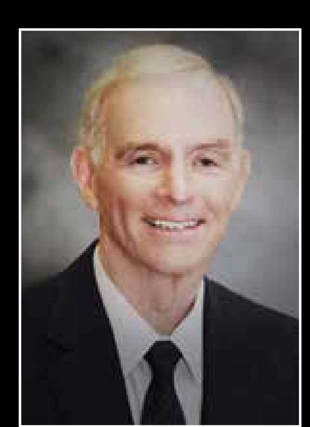

- Served for 28 years on the bench, including 17 years in the court's civil division; served as civil supervising judge for over seven years and as a full-time settlement judge for six years; also has significant appellate experience. Presided over all types of civil trials and law and motion matters, as well as family law and probate cases.
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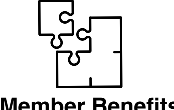

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HOW TO REACH A SETTLEMENT OF HISTORIC PROPORTIONS, PART 2

by Hon. Vincent O'Neill (Ret.)

The first installment of this article discussed how James Madison's preparations for the "great mediation" of 1787 suggests lessons for contemporary settlement conferences. It covered the first three principles drawn from the actions of Madison and his allies: Show up, Prepare and Formulate a Strategy.

As previously noted, Madison and his Virginia and Pennsylvania colleagues formulated the "Virginia Plan," which they intended to present at the outset of the convention in order to steer the debates toward a much-strengthened federal government and away from simply amending the Articles of Confederation. In this second and final installment, I will outline the Madison/Virginia Plan, focusing, as did Madison, on the creation of the United States Congress. What follows is a discussion of the modifications worked out by the delegates, and how that process embodied three additional lessons applicable to mediating a legal dispute.

Lesson 4: Be Willing to Compromise

A quorum of seven states totaling 29 delegates, just over half of the 55 who would eventually participate, allowed the Convention to open on Friday, May 25, 1787. Rhode Island did not participate in the Convention, while New Hampshire, New Jersey, Maryland and Georgia arrived late. Because no more than eleven states were present at any one time, a number of close issues were decided by a majority of only five or six of the state delegations present, and the slave-holding states tended to be overrepresented.

Thomas Jefferson and John Adams were not among the delegates, since they were serving their fledgling country in Europe. Alexander Hamilton was a delegate but absented himself for much of the summer, in part because his own New York delegation had no quorum for a substantial period. George Washington, as chair, remained virtually silent during the formal proceedings. The aging Ben Franklin was a delegate, but contributed relatively modestly beyond his substantial prestige and calming influence, as well as a few memorable short speeches. Historian William Miller has noted: "Of the six greatest founders only one [Madison] was a full-time, articulate, continually influential participant in the convention…."

As the first order of business on May 25, Washington was nominated to preside by Pennsylvania delegate Robert Morris and was unanimously elected. Madison joined Washington at the front of the room facing the delegates, a vantage point which allowed him to keep the most complete notes of the proceedings. Those notes would not be published for half a century, after the death of the last surviving delegate, Madison himself.

In short order the Convention adopted a set of rules, including complete secrecy, unlimited reconsideration of any issue, and one vote per state. There were also provisions designed to foster decorum and collegiality. (Beeman, *Plain, Honest Men,* pp. 80-82.) Historian Beeman notes a prevailing view among the delegates that unanimity or something close to it would be needed for the Convention to produce an acceptable finished product.

The Virginia Plan, introduced in a May 29 speech by Virginia Governor Edmund Randolph, was made up of fifteen resolutions, the first of which simply provided that the Articles of Confederation be "corrected and enlarged." What followed however, was a set of radical departures from the status quo, such as a bicameral legislature, a chief executive and a court system, none of which existed at the national level under the Articles of Confederation. The Plan repeatedly used the word "national" in place of "federal."

The Virginia Plan proposed popular election of the lower house of Congress, which would then choose the members of the upper house from nominations submitted by state legislatures. Unlike the existing "one-state, one-vote" rule in the Confederation Congress and the Convention itself, representation and voting in both houses of the new Congress would be proportional based either on each state's financial contributions to the national government or the number of "free inhabitants" in each state. The national Congress would have the power to legislate and to nullify state laws that were inconsistent with the new federal constitution.

The Plan further provided that both the new "national executive" (consisting of one or more persons) and the judges of a new national court system would be chosen by the two houses of Congress acting in concert. With the concurrence of judges selected to sit on a "council of revision," the chief executive would have the power to veto enactments of both the new federal Congress and the state legislatures. Special assemblies to consider ratifying the Constitution would be chosen directly by the voters in each state.

It is readily apparent that Madison's Virginia Plan, much like the views of some clients at the start of a lawsuit, was long on extreme (nationalist) positions and short on detail. Because it proposed that all power flow from Congress, it lacked the checks and balances eventually enacted. Yet the plan had the virtue of addressing the weaknesses of the existing system and grounding the new structure on the democratic principle of popular election, at least as to the lower house of Congress. For the first time a national government and its Constitution would be supreme. Madison and his allies would soon be forced to compromise on many issues.

The delegates designated themselves a "committee of the whole" to consider the Virginia Plan, beginning on May 30 with 41 delegates present. (Stewart, *The Summer of 1787*, pp. 53-54.) The tone was set early when Pennsylvania delegate Gouverneur Morris's motion to establish a "national government…consisting of a supreme Legislative, Executive, and Judiciary" was passed by a vote of six of the eight states present. From there, however, the serious debates began as the Philadelphia weather heated up. Many issues were referred to a variety of committees before the Convention completed its work on Sept. 17.

Representation in Congress, including the proposed departure from the one

vote per state status quo, how enslaved persons would be counted, and even the size of congressional districts, would pit the larger states (Virginia, Pennsylvania and Massachusetts) against the smaller and would occupy many weeks of the debates.

The first tentative compromise which deviated from the Virginia Plan was reached in the committee of the whole on June 7 and 8, when popular election of the future House of Representatives was coupled with selection of Senators by the state legislatures. This led to an explosive dispute about each state's voting strength within Congress, which came to a head as the convention work-week ended on Saturday, June 9.

Over the shortened weekend Pennsylvania delegate James Wilson succeeded in obtaining three small-state votes for proportional representation. He did so by making counterintuitive use of a 1783 proposal, never ratified, to count enslaved persons as three-fifths of a person for purposes of the states' financial contributions to the Confederation Congress. For the purpose of financial contributions, the states with large enslaved populations favored undercounting enslaved persons. Four years later at the Constitutional Convention those states were willing to settle for the three-fifths provision, knowing it would give the pro-slavery states a long-term advantage in Congress, not to mention the yet to be formulated electoral college system for presidential elections.

The notorious three-fifths compromise allowed the "committee of the whole" to move on to other issues, but it and other provisions dealing with slavery would be extensively debated later in the Convention. They will be discussed in more detail below.

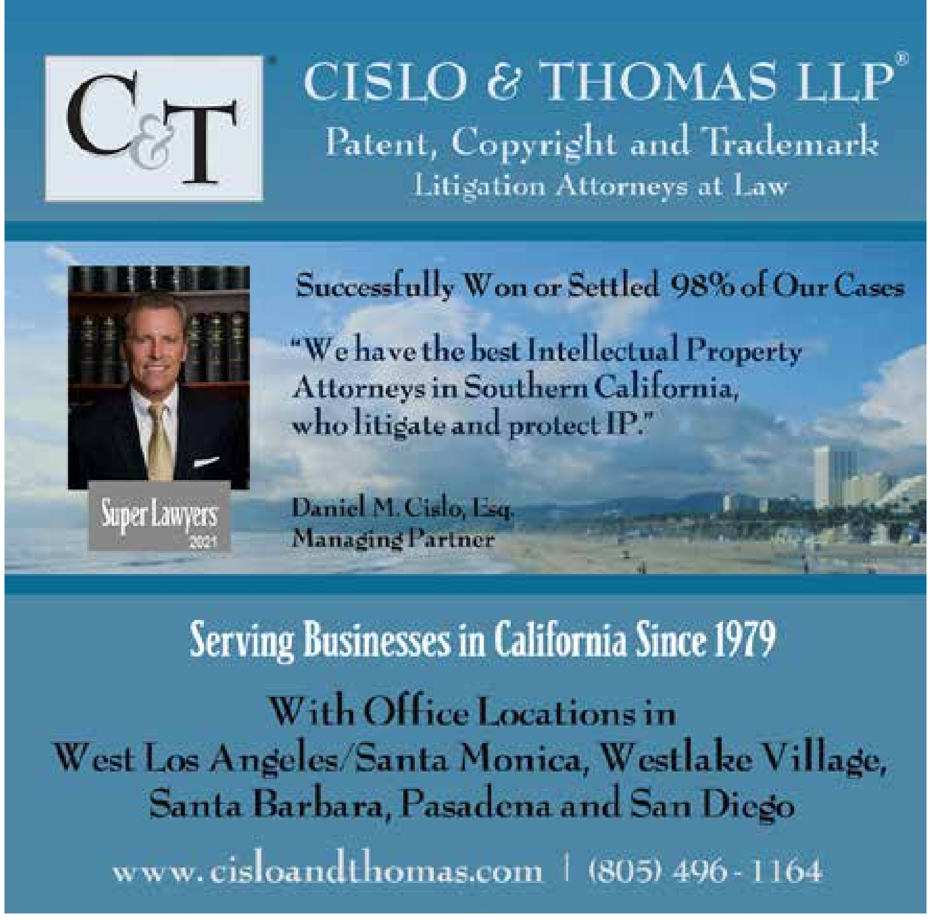
As we know, the Convention would reject the Virginia Plan's proposal that the chief executive be selected by the Congress, in favor of a more independent President chosen indirectly by the People through the electoral college. The President, in turn, would select judges for life terms, but only upon approval by the Senate. The Convention would do away with the President's power to veto state legislation, while preserving the power to veto congressional acts, subject to Congress's power to override.

Madison's Virginia Plan is still considered the primary Constitutional blueprint, however, given the supremacy of the new national government and the adoption of a bicameral legislature, the lower house of which embodies the Plan's proposal for proportional representation. The so-called "Great Compromise" (aka Connecticut or Federal Compromise) established equal state representation in the upper house with Senators selected by state legislatures (until the ratification of the Seventeenth Amendment in 1913 provided for popular election of Senators). This provision was, of course, quite contrary to Madison's view that both houses of Congress should be proportional. Madison was also disappointed when his proposals for federal vetoes of state legislation were rejected.

In fact, historian Stewart quotes a scholarly study that concluded Madison was on the "losing" side as to 40 of the 71 specific proposals which he favored at the Convention. Yet he later became a leading figure in support of the compromises that became the Constitution, by authoring many of the Federalist Papers and debating Patrick Henry and others in the hotly contested (and very public) Virginia ratifying convention. Joseph Ellis explains that Madison overcame his disappointments, in part, when he realized that the strength of antifederalist sentiment might have prevented ratification had the Virginia Plan been enacted without compromise. On June 25, 1788, the Virginia convention voted in favor of the Constitution by a vote of 89-79. The delegates were unaware that New Hampshire had become the decisive ninth state to ratify four days earlier.

As happened with Madison, the perspective of counsel or a client may change during and after the course of negotiations. What seemed important before those negotiations may well be less so once the value of a global resolution becomes clear.

continued on page 12



Lesson 5: Do Not Infect a Settlement with the Seeds of a Future Disagreement

An effective settlement resolves all pending and foreseeable disputes between the parties, thereby minimizing the chance for further litigation or acrimony. The Constitutional framers not only failed to address slavery effectively, they also agreed on compromises that would exacerbate the problem.

Ellis has said the greatest failure of the founding generation was not ending slavery or at least putting it on the road to extinction. In historian Stewart's words, "Slavery was the original sin in which the nation was conceived."

Stewart further notes:

> At its core, the disagreement turned on whether black slaves were human beings or property. In all its perversity, the three-fifths ratio captured their identity as both, though they had no voting rights and played no role in the nation's political life.

The white founders obviously understood the contradiction between the new nation's ideals and the existence of slavery. Several said exactly that during the Convention debates. A few delegates, including Franklin, belonged to abolition societies. A few more had freed their own slaves, as Washington would do in his will. As a delegate to the Confederation Congress in 1784, Jefferson's proposal that slavery should end in the western territories no later than 1800 was defeated by a single vote. Several northern states had enacted statutes banning or limiting the existence of slavery.

On Aug. 7, as the delegates debated the draft language of the Constitution as proposed by their "Committee of Detail," Morris of Pennsylvania made the first pro-abolition political address in the nation's history, calling slavery "the curse of heaven on the states where it prevailed." He correctly noted the three-fifths compromise would result in the slave states being over-represented in Congress, and would provide incentive for continuing to bring kidnapped Africans overseas. At the outbreak of the Civil War, a grandson of John Adams wrote in his diary, "We the children of the third and fourth generation are doomed to pay the penalties of the compromises made by the first."

Despite many challenges to the three-fifths provision over the course of the Convention summer, it remained in the Constitution as adopted. The immorality of slavery was simply not on the agenda. However, the framers studiously avoided using the word "slave" and its derivatives in the Constitutional text. This at least allowed later generations to argue the framers had not intended to endorse perpetual slavery, and had intended to limit it to the states where it already existed. Historian Don Fehrenbacher has suggested the Convention delegates "were half-consciously trying to frame two Constitutions, one for their own time and one for the ages…."

In the face of southern state threats to refuse to ratify a document containing significant limits on slavery itself, the delegates wrangled over whether importation of enslaved persons should continue. The Committee of Detail, chaired by the forceful John Rutledge of South Carolina, proposed a complete ban on limiting the slave trade, which Madison and many others opposed. Thereafter, a bargain was struck between the southernmost slave states and some northern states with interests in shipping and exportation of goods. That bargain deleted a requirement that navigation acts require a two-thirds vote in Congress. In return, the importation of enslaved persons could not be banned before 1808, newly enslaved persons could be only modestly taxed at $10 each, and a provision, odious to future generations, requiring the return of fugitive enslaved persons was retained.

In part due to later compromises between north and south, it would take several generations for the 1787 compromises to end tragically in the Civil War, but the lesson remains. A good settlement should not only resolve the dispute at hand, but, as far as humanly possible, foreclose related, foreseeable disputes between the parties.

Lesson 6: What is Done is Done

There is an additional similarity between the events of 1787 and a legal settlement. Although the proposed Constitution was carefully phrased by Morris's final draft as an agreement between the states, it was signed by all but three of the individual delegates. Many, if not most, shared the view Franklin expressed in his final remarks, that there were "several parts of this Constitution which I do not at present approve." Franklin added, "I agree to this Constitution with all its faults, if they are such, because I think a general government necessary for us…. I doubt too whether any other Convention we can obtain may be able to make a better Constitution." He urged the delegates to sign the document and support ratification in their home states.

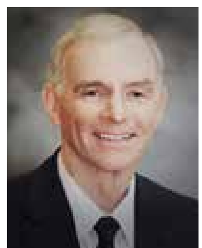
All but three of the delegates did sign, and the delegations voted unanimously against a last-minute call for a provision requiring a second general convention to consider amendments to be proposed by the states during the ratification process. Of course, the Convention had already included a framework by which the Constitution could be amended, which has occurred 27 times in the last two centuries.

Similarly, although a legal settlement can theoretically be renegotiated if the parties wish, it is crucial that clients and counsel understand the finality of a perfected settlement agreement. Once reduced to writing or accepted in open court, a settlement becomes a new contract, enforceable by motion in the existing case or by a new lawsuit. Its provisions should be carefully considered and meticulously documented, as if historic consequences were at stake.

Bibliography

The author relied on the following works:

Beeman, *Plain, Honest Men*
Cheney, *James Madison: A Life Reconsidered*
Ellis, *American Creation*
Ellis, *The Quartet*
Holton, *Unruly Americans and the Origins of the Constitution*
Miller, *The Business of May Next*
Morris, *Witnesses at the Creation*
Stewart, *The Summer of 1787*



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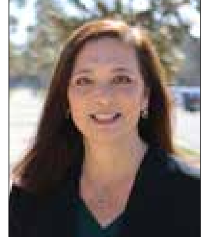
WLVC SPONSORS A MEET AND GREET WITH THE DA AND CHIEF ASSISTANT DA

by Edward A. Andrews

On June 17, Women Lawyers of Ventura County hosted a lunchtime meet and greet with District Attorney **Erik Nasarenko** and Chief Assistant District Attorney **Lisa Lyytikainen**, moderated by WLVC Board Member **Kristi Peariso**. Commissioner **Julia Snyder** introduced the guests, highlighting Nasarenko's team approach, tremendous compassion for victims, and tireless trial practice, and Lyytikainen's exceptional career as both a trial attorney and legal advocate, including experience arguing before the California Supreme Court and other appellate courts. During the conversation, Nasarenko explained his broad priority to focus on building and maintaining partnerships with the community, including a problem-solving approach on emerging issues such as mental health. The guests discussed their goals in fostering a more diverse DA's Office, for example, ensuring retention of experienced female prosecutors, including opportunities in upper management, and initiatives focused on motherhood, such as a resource center for new and expecting mothers. Lyytikainen shared her own experience combining a hard-hitting trial practice with raising children, and how that has informed her approach in management. She noted that she grew up with strong female role models and hoped to provide the same kind of guidance. When asked about priorities to ensure the safety of women, Nasarenko noted the expansion of the Office's Family Justice Center and the formation of a dedicated Domestic Violence Unit. The event was immediately fruitful: when Lyytikainen explained their work to publicize upcoming employment opportunities through legal groups, WLVC offered to include job opportunities announced at the DA and Public Defender's Offices as part of WLVC's correspondence. This well-attended event promises to foster a continued conversation and exchange in Ventura County's legal community.



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