Eastern District Chief Judge Levi Departs for Duke Law School


More than 350 distinguished members of the federal judiciary and the federal bar gathered at the Eastern District Courthouse in Sacramento on June 8 to express their deep admiration for Chief Judge David F. Levi, as he readied to depart and become the new Dean of Duke Law School.

Many KCBA Members recall the evening when Chief Judge Levi delighted a crowd in Bakersfield as the featured speaker at the first event co-sponsored by the San Joaquin Valley Chapter Federal Bar Association (SJVCBA) and the KCBA. On that evening, Magistrate Judge Theresa Goldner presented Judge Levi with a Bakersfield edition Stetson hat. (See November 2005 Res Ipsi Loquitur.) This time, the federal judges, led by Judge Frank C. Damrell, Jr., presented Judge Levi with a bronze statue of a cowboy on his horse. The gift underscored one of the event’s most powerful themes. Notwithstanding Judge Levi’s well-known brilliance and professional integrity, which were recognized by each of the luminary speakers at the event, the more potent emerging theme was that David F. Levi is much more than a brilliant federal judge – he is also a deep and genuine human being, a humble man whose sense of humor and human compassion have inspired friendship and love among the judges, clerks, attorneys and others in the Eastern District whose lives he has touched. There was a palpable feeling of grief at the courthouse on June 8.

Yet, most of the speakers granted that their own sense of loss was outweighed by their happiness for Judge Levi, in making a decision that was the right one for him. Judge Levi grew up in Chicago where his father, the late Edward H. Levi, was Dean of the University of Chicago Law School. Young David Levi attended Stanford Law School, became President of the Stanford Law Review as a 2L, and

Levi, continued on page 7
IDP Provides a Valuable Service… Not Only to Criminal Defendants

By Steve Katz
President
Kern County Bar Association

On June 21, our Bar Association celebrated the 10th anniversary of the inception of our Indigent Defense Program. As president of the Kern County Bar Association, I am proud of the services that our own Indigent Defense Panel has provided to criminal litigants since the beginning of the program ten years ago.

Surprisingly, you might think but, as a prosecutor I recognize the benefit of the IDP to the Kern County criminal justice system. Not only do the IDP panel members provide competent and effective representation of those accused but they also serve the Kern County Superior Court and our tax-payers.

Consistently over the past ten years the program has been assigned between four to five thousand cases each year. The program has been able to have available criminal defense attorneys for a variety of cases – from the most simple to the most complex. Our court has benefited by being able to efficiently appoint qualified and ready counsel from the IDP panel to represent individuals in those matters where the Kern County Public Defender cannot take, or continue with, a case due to a legal reason. This has the great practical effect of avoiding delay and ultimately reducing court congestion.

Although costs vary per case, consistently the IDP program has been able to save the taxpayer money – the taxpayer ultimately foots the bill for the indigent criminal defendant – by keeping annual fees for representation at or about three million dollars for most years.

The entire IDP panel, the attorneys who have managed the program over the years and those Bar Association members who have served on the Qualifications and the Oversight Committees ought to be commended for their service to our county, our court, and the IDP clients.

Carol Bracy Receives the Sharon Wallis Mettler Award

Our good friend Carol Bracy of Greater Bakersfield Legal Assistance recently received the Sharon Wallis Mettler Award from the Kern County Women Lawyers Association. The Sharon Wallis Mettler Award recognizes “women of high integrity and character who has demonstrated a genuine concern for issues relating particularly to women and a willingness to advance, protect and pursue those concerns, however unpopular, difficult, time-consuming or long-range they may be.” Certainly, those of us who know Carol know that she is truly a deserving recipient of this honor. All of us who have been involved in the Kern County Bar Association over the past few years know that Carol deserves recognition from our association as well. For the past several years, Carol has graciously served as our un-official Bar Association photographer. Our improved Res Ipsa Loquitur format really highlights the top notch (and free) service Carol provides our association. So Carol, thank you for all of your service and, more importantly congratulations on receiving the Sharon Wallis Mettler Award.
Last issue I mentioned Judge Bianchi’s example in a case that I tried before him taught me something valuable about not taking the easy way.

It was a child custody case, with grandparents, the parents of the deceased father, opposing the mother and her new husband. I was appointed to represent the child, a boy about 6. The grandparents alleged that the stepfather was abusing him.

This was in about 1988, when belief in, and charges of, sexual abuse were very common elements in custody cases. It ups the ante for the judge and the minor’s counsel. You never want to be wrong in custody cases, but it is a whole higher level of concern when sex abuse is an issue. You do not want to leave a child in a situation where the abuse will continue.

On the other hand, since the charges might be the result of hysteria or manipulation, you don’t want to move the child unless the threat is real. Balance is the key, and the problem. What if you are wrong? If you want the safe course, the minor’s counsel can always recommend and the judge can always order, removal of the child if there is any chance the charges are true. Safe for the judge, that is. You’ll never have to explain why you sent a child back to a home where he or she gets abused. The harm done to children by the loss of contact with the parents they’re removed from is much harder to measure or photograph.

The only thing that makes you hesitate from taking the easy way is your integrity.

In this particular case I am recalling, Judge Bianchi displayed his integrity in a way that affected me. The stepfather looked bad. We had a psych eval from UCLA that was confusing, but not good. There was a lot of public concern about abuse.

But Judge Bianchi wanted more than suspicion and he goaded me to cross-examine the UCLA people. As it happened, it weakened it considerably. The nurse who brought my client to court from UCLA thought the higher ups were exaggerating just how disturbed my client was, as it turned out. The evidence the grandparent had was mostly suspicion.

Still, a judge could have relied on the report for cover. Judge Bianchi didn’t do that. He kept the child in his home.

Some six years later, after Judge Bianchi had already retired, I was able to give him a follow-up. I ran into the family at a district wide school track meet where my former client and my triplets were running. Near me in the stands were the mother, the stepfather… and the grandparents, all happily cheering on the child. We talked, and things were going well for them. I sought out and told Judge Bianchi that the family seemed to have healed pretty well, the relief in his eyes was striking. “You do the best you can on these cases,” he said, “But you always wonder…” Yup.

Jay C. Smith is an attorney at the Kern County Department of Child Support Services. He was in private practice for 25 years before that.

Trust Scams Speakers Bureau
If you are an attorney with experience or interest in the law regarding senior citizen “trust scams”, then the Trusts and Estates Section of the State Bar of California would like you to participate in a new speakers bureau which will address senior citizens about how to protect themselves. Contact Susan Orloff at susan.orloff@calbar.ca.gov for more information.

Res Ipsa Loquitur, July 2007
Cooks of the Valley Cook Up Fun

by Jennifer Thurston

On May 11, Tom Anton’s “Cooks of the Valley” grilled up a steak feed for about 4,000 Marines stationed at Miramar Marine base near San Diego. The Cooks included real estate professionals, doctors, business professionals and actor Charles Napier of The Blues Brothers, The Silence of the Lambs & Philadelphia fame, as well as several local lawyers and a federal bankruptcy judge.

Each member of the volunteer group paid more than $1,000 toward the purchase of the thick steaks for the Marines and provided their own costs to travel to the event. The day before the BBQ, the volunteers gathered to slather seasoning and garlic on the steaks to allow them to marinate and be at their tastiest best when they started hitting the grill at around 10 a.m. on the day of the event.

Before firing up the grills, the group was addressed by Sgt. Major Howard who was a 32-year member of the Marines. Howard shared his own thoughts about the sacrifice of the troops and reported that some of those served at the BBQ had been in Iraq or Afghanistan five or more tours. Sgt. Major Howard thanked the group for the event but made one small, “Medium rare?” request.

The Cooks has served about 76,000 steaks since Anton created the group about 25 years ago and, although the volunteers change from BBQ to BBQ, many are repeat members of Cooks. The group has barbequed around the globe including Dubai, Pearl Harbor and many other locations and many Navy ships.

Every time a BBQ occurs, the troops express deep appreciation. Many of the first-time Cooks were embarrassed by the gratitude and felt, instead, that the meal was a tiny token of gratitude for the sacrifice of the Marines’ and their families.

The Kern County Bar Association and Greater Bakersfield Legal Assistance would like to thank the following attorneys for providing pro bono legal assistance to low-income residents of Kern County through the Volunteer Attorney Program during the month of May 2007: Suellen Anderson, Amy Johnson Barks, Clayton Campbell, Pete Carton, Kassandra Clingan, Terry Dennis, Diane Dodds, Terry Foley, Lisa Hammond, Carl Hart, Stacy Inman, David Leon, Gerald Oldfield, Gary O’Neil, Lori Pesante, Heather Stanley, Paul Swanson, Tim Swanson, Sheri Vining, Teryl Wakeman and Jim Yoro.
Three bright young women from Bakersfield have returned home to serve their community this summer. Beth Ewens, Andrea Hernandez and Natalya Popova are all entering into their second year at Whittier Law School. They have all volunteered to spend ten weeks serving economically disadvantaged Kern County residents with Greater Bakersfield Legal Assistance.

Beth Ewens was born and reared in Bakersfield, graduating from Garces High School in 2002. Beth graduated from UCSB as a History Major. She is an animal lover who enjoys spending time taking her two dogs to the dog park, going to the gym, and getting some sun (a good thing to like in Bakersfield!)

Andrea Hernandez was also born and reared in Bakersfield. She graduated from East High School in 1999 and spent two years studying at University of San Diego before graduating from CSUB with a double major in history and English. Andrea’s mother Bobbie worked for many years for Stan Simrin and now for John Tello. Perhaps that is where Andrea picked up a desire to do criminal defense law. Andrea plans to pick up some extra hours bartending at “Charly’s” while she’s back for the summer.

Natalya Popova came to Bakersfield from Russia when she was 14 years old. She is another Garces graduate, class of 1999. Natalya started off in Psychology and ended up majoring in Economics at UCLA, from which she graduated. Natalya worked a year for an immigration attorney in Los Angeles before attending law school. Her favorite first year courses were contracts and real property.

GBLA is making an effort to introduce the interns to the legal community in hopes that they will feel connected and supported during the rigors of law school—and so that they will want to return home again once they have graduated. If you happen to meet Natalya, Beth or Andrea at the courthouse or at an event in the legal community, please say “hello” and make them feel welcome!
This is the first in an occasional series about young lawyers and their mentors. The title of the column (courtesy of Susan Gill) comes from the old Girl Scout song: Make new friends but keep the old; one is silver and the other gold. So, I encourage you to celebrate the virtue of youth and the richness of age. The need to do so is not new, as Samuel Johnson said—in 1759—“Age looks with anger on the temerity of youth, and youth with contempt on the scrupulosity of age.”

My first subjects are KDG associate, Jacob Eaton, and KDG partner, Leonard Welsh, both of whom practice bankruptcy focusing on debtor representation. I selected Jake and Leonard as my first subjects because I’ve watched Leonard mentor Jake for nearly a year and the relationship is a fine example of mentoring.

Jake clerked at KDG in the summer of 2005, and joined the firm in 2006 after the July Bar Exam. Yes, he passed (!) and was admitted to the California Bar in 2006. Jake is a quiet young man, and at first meeting, a seemingly serious young man. But, once you spend some time with him, his good humor shines.

Jake received his undergraduate degree from Brigham Young University, and his law degree from the University of Kentucky. He has experience in legislative research and analysis, having served as an intern to the Legislative Research and General Counsel of the Utah State Legislature, and in a similar position as a Graduate Fellow for the Kentucky General Assembly.

Jake is married to Chalene, and they have three children—Seth, 4; Kalli, 2; and Luke, 6 months. And, another piece of trivia—Jake speaks Italian! Jake spent two years in Italy on his church mission.

Leonard also received his undergraduate degree from Brigham Young University. He received his law degree from Washington & Lee and was admitted to the California Bar in 1981. He joined KDG in 1998. Prior to joining KDG, he was a solo practitioner.

Leonard is married to Kathi and they have five children and seven grandchildren. In the summer of 2005, only two of the Welsh kids were still living at home. The young Eaton family moved to Bakersfield for Jake’s summer associate job at KDG, and Leonard and Kathi took them in. It was during that summer, spending time with Leonard both at the office and at home, that Jake realized he might want to practice bankruptcy.

Jake became a bankruptcy lawyer because Leonard called Jake after he accepted KDG’s offer and told him, “You’ll be working in my department.” Bankruptcy chose Jake—not the other way around. Luckily, Jake had taken bankruptcy! Jake wants to continue developing his skills, ultimately becoming an expert in the unique tax issues that arise in bankruptcy.

Similarly, bankruptcy chose Leonard. His senior partner at his first firm, Rudnick & Arrache, told him he had to practice bankruptcy. He did not want to, but he had a wife and two children to support and knew he had to do what his boss told him to do. He apparently lacked Jake’s foresight—he had dropped his bankruptcy course because it was boring. After his first trip to bankruptcy court, he was fascinated by the problem-solving nature of the practice. After a couple of years, he was a bankruptcy lawyer, through and through.

When the discussion turns to bankruptcy and debtors rights, Leonard’s passion for his work shows. Leonard is a deeply religious man who sees his work as a calling. He does what he does because God called him to this service and expects him to help people who have made mistakes. That passion for service struck Jake Eaton.

Like Leonard, Jake has a passion for service. And, also like Leonard, Jake is a deeply religious man. He sees himself as blessed, and to show his appreciation for his blessings, he wants to give to those who have not been so fortunate.

Jake admits he is a classic Gen-Xer. He works only specified hours every day. (Leonard says they’re pretty long hours.) He doesn’t want to work evenings or weekends—those hours are for his wife and his children. Jake wants to be known first as a good father and husband.

On the topic of the hours young lawyers work, Leonard wishes young lawyers understood how difficult law is and how much time it requires to be an outstanding lawyer. “Look at outstanding lawyers like Steve Clifford, Bill Kuhs, or Tony Klein, they don’t come to work at 8 and leave at 5.”
In 1787, Thomas Jefferson wrote to George Washington as follows: "Agriculture... is our wisest pursuit, because it will in the end contribute most to real wealth, good morals and happiness." The apostle of agrarian democracy did not change his sentiments when elected president.

In his first inaugural address, Jefferson announced, "Encouragement of agriculture and of commerce as its handmaid I deem [one of the] essential principles of our government, and consequently [one of] those which ought to shape its administration." Jefferson’s political view of agriculture stemmed from his strong opinion about cultivators as expressed in his 1785 letter to his cousin, John Jay: "Cultivators of the earth are the most valuable citizens. They are the most vigorous, the most independent, the most virtuous, and they are tied to their country and wedded to its liberty and interests by the most lasting bonds."

Thomas Jefferson would have been appalled by the October 1993 announcement of the Census Bureau that it would no longer track the number of Americans living on farms. The early decades of the twentieth century saw about one-third of our national population living on the land. By the last decade in that century, that number had shrunk to less than two percent of our population.

The drastic population shift is not due to less agriculture, but it is due to a different style of agriculture. Large corporations backed by huge government subsidies have replaced the farmer who lived on and by the land. Is it any wonder that almost 90 percent of farm laborers now live in our cities? The pesticides and chemicals used in agriculture reflect the industrial, not the agrarian, mentality.

A twentieth century apostle of agrarian democracy, Wendell Berry, has suggested a route back to the advantages and virtues of the agricultural society Jefferson valued. In his 1995 essay "Conserving Communities" he proposed focusing on community economies and abandonment of the so-called global economy, "To do this, we must somehow learn to reverse the flow of the siphon that has for so long been drawing resources, money, talent, and people out of our countryside with very little if any return, and often with a return only of pollution, impoverishment, and ruin."

We do not all need to move back to farms. We do, however, need to reconnect with the land, with nature, with the supply of our food and fiber, and with our community. Our ties to our nation would then cease to be based on a trail of government hand-outs traced to Washington. Those ties would, instead, be based on our love of the land and preservation of our freedom to enjoy it.

then clerked for Ninth Circuit Judge Ben C. Duniway before clerking for U.S. Supreme Court Justice Lewis F. Powell. He was appointed by President Reagan in 1986 as the U.S. Attorney for the Eastern District of California. In that role, he directed the investigation, brought to trial and won the first prosecution and conviction of a sitting State Senator. Four (4) U.S. Attorneys who have held that job after Levi appeared on June 8 to deliver heart-felt remarks about the positive impact Levi has had on them and on all Californians as a result of the passion for unbiased justice that he set as a model for the U.S. Attorneys in Sacramento. Levi accepted an appointment to the federal bench from George H. W. Bush in 1990, and became Chief Judge in 2003. Chief Justice William Rehnquist appointed Levi to the Advisory Committee on the Federal Rules of Civil Procedure in 1994, of which Levi became the Chair in 2000.

On June 8, Judge Damrell shared part of a letter from Stanford Law School Dean Larry Kramer, which observed that very few people excel in all three branches of the legal profession – the bar, the bench, and the academy (referring to academia). Having completed the first two in stellar fashion, Judge Levi now departs the bench to become Dean Levi. As Chief Justice John Roberts recently remarked (as quoted in the Spring 2007 edition of Duke Law Magazine), "The Federal Judiciary is sorry to lose one of its finest judges, but our loss is certainly Duke Law School’s gain.” The testimonials offered on June 8 clarified that Dean Levi’s greatest contributions to the legal profession will come from the way he will inspire generations of future attorneys to follow his example of combining great intellectual gifts with even greater human qualities, such as humility, integrity, passion for unbiased justice, a strong sense of humor and deep compassion for people. As Judge Levi put it more succinctly on June 8, this move to academia is "a return home.”
The idea of traveling through time has always fascinated me. However, having taken the lessons of Mark Twain’s The Mysterious Stranger to heart, I long to view historical places and times without causing any little ripple that would risk changing all that has happened since. Just think, if we could be transported to an earlier time and just watch for awhile, criminal matters would be disposed of quickly – the judge or the jury could simply watch the crime as it occurred, and see who did it and under what circumstances. Now and then there might be something requiring interpretation by the trier of fact – the why of the crime – but the whodunit would be easy.

If you could travel back through time and watch for awhile, where and when would you go? If you could go only once or twice, instead of unlimited times, the choices would be more difficult. The first place and time I would visit, even if I could only do this once, would be Fayetteville, North Carolina (Fort Bragg), on the night of February 16-17, 1970, so I could see who killed Collette, Kimberly, and Kristen MacDonald.

I developed an interest in the Jeffrey MacDonald case while I was in law school, when I was working for Brian O’Neill in Santa Monica. Brian specialized in defending white collar criminals, and I learned a lot during the year I worked for him. While I was working for Brian, he was working on a Motion for New Trial for Dr. Jeffrey MacDonald. Dr. MacDonald’s entire family had been brutally murdered in the wee hours of February 17, 1970. Dr. MacDonald told the Army CID Investigators that he had awakened to his wife’s screams, and he fought with the three hippies, a woman with a floppy hat and two men, who were in his home killing his wife and daughters. Jeff MacDonald was the only one who survived, although one of his lungs was punctured from a stab wound. On the way to the crime scene on the morning of February 17, one of the CID investigators had passed by a woman wearing a floppy hat.

The investigation of the crime scene was so faulty it has since been used for training military investigators on what not to do. Scott Belden, a partner at Klein, DeNatale, Goldner, et al., was a Special Agent in the Air Force Office of Special Investigations. He recalls being taught in the OSI Academy in 1988 the importance of securing and controlling a crime scene as part of a criminal investigation, with the MacDonald case serving as a prime example of what not to do.

The Article 32 proceeding against MacDonald resulted in the dismissal of criminal charges and a referral to civilian authorities to investigate the woman in the floppy hat, Helena Stoeckley. However, the investigation continued to focus on MacDonald, and in January, 1975 a grand jury indicted MacDonald on three counts of murder. MacDonald brought a pretrial motion asserting that his right to a speedy trial had been violated. The trial court denied the motion and MacDonald appealed. The Fourth Circuit Court of Appeals agreed with him, remanding the case with instructions to dismiss the indictment. However, the Government appealed, and the United States Supreme Court held that the appeal from a pretrial motion asserting violation of the defendant’s Sixth Amendment right to a speedy trial was premature. Thus, the Court reversed the decision of the Fourth Circuit Court of Appeals. United States v. MacDonald, 435 U.S. 850, 862 (1978). Nine and one-half years after the murders, Jeffrey MacDonald was tried and convicted of murdering his wife and two daughters.

Dr. McDonald was in prison serving three consecutive life sentences for murder when he hired Brian O’Neill. Jeff was still clinging to hope that a good lawyer could convince the right judges that he should at least be given a new, and fair trial. Brian hired a law clerk just to work on the McDonald case, but every now and then, I would get a McDonald-related assignment. Once I went to Brian’s house to retrieve crime scene photos out of the boxes that were being stored in his garage. Those were pretty gruesome photos for a rather sheltered young woman from Bakersfield. Sometimes I would answer the phone when Jeff McDonald called from his prison in Bastrop, Texas. He was trying so desperately not to lose hope that someday he would be able to have a life again.

The motion for new trial was filed and denied after I left my job with Brian O’Neill. Joe McGinnis wrote Fatal Vision, which became a TV movie, and most people seem to accept his perspective as the truth. A different perspective is provided by the MacDonald Defense Committee’s website, http://www.themacdonaldcase.org, which includes information that two of the “hippies,” Helena Stoeckley and Gregg Mitchell, confessed they were involved in the murders of the MacDonald family. Although Jeffrey MacDonald remains in prison (now in Maryland), he has remarried. He was denied parole in 2005, despite the fact that he had served 25 years as a model prisoner. By all accounts Jeffrey MacDonald had been a talented physician – he worked in the emergency room in Long Beach, CA, while his appeals were winding their ways through the courts. Although his medical license had long been rescinded, Jeff MacDonald saved the life of a fellow prisoner in Bastrop, Texas in 1984 by performing CPR. [U.S. v. Borchardt, 809 F.2d 1115, 1116 (1987).]

So, when that machine is invented, I’ll be going to Fayetteville, North Carolina, to settle once and for all what happened to the MacDonald family. Where and when will you go?
“You’ll travel far with San Joaquin Bank!”

Gary Jaussaud & Ron Biglin
Kern Travel – East Hills

Full-Service Business Banking
• Deposit Pick-Up Service
• Real Estate Loans
• Construction and Development Loans
• Cash Management Service
• Online Banking
• Locally Owned and Managed

San Joaquin Bank
www.sjbank.com
Member FDIC

Why are more attorneys banking with San Joaquin Bank?

Here are some of the reasons why attorneys are choosing San Joaquin Bank.

Deposit Pick-Up Service
With our daily or weekly deposit pick-up service, you and your staff can take care of running your business, instead of running to the bank. Deposit pick-up is free of charge with qualifying balances.

Online Banking
Experience the flexibility and convenience of online banking with Net Teller™ - our convenient online banking service. Check on accounts, pay bills, balance and stop checks any time, day or night. Unlike other online banking service, Net Teller™ also offers check imaging online — so you can actually “see” your check onscreen! Check it out with our easy demo at www.sjbank.com.

Legal Trust Accounts Earn Interest
Did you know that San Joaquin Bank offers interest on legal trust accounts with no service charges? Interest is payable to the state bar association.
For all of us who share the same high-pressure, endless battle, cannot live without a cell phone lifestyle, I highly recommend an adventure vacation to Thailand. If you really must, you can drag along your laptop as high-speed internet is available most anywhere. However, the real experience is in the disconnect from your former life and total immersion into another, simpler culture. The main attraction for me was the opportunity to get up close to tigers and elephants. The goal was met and exceeded.

We spent 2 nights and 3 days in a Buddhist Temple, living with the tigers, water buffalo, warthogs and other creatures and assisting the monks in feeding and caring for these animals, most of which were left outside the walls of the Temple after abuse, poor health or because they were orphaned by poachers. It was a fantastic and unique experience. We slept outside on a wooden floor with our own clothes as a pillow in 95% humidity. The three hours a day of absolute silence was a challenge for any attorney.

Then, we journeyed to the Elephant Camp where orphaned and rescued elephants are kept at a 20-acre compound on the River Kwai. Many of the elephants were rescued from horrific conditions at work camps where they had been beaten and drugged to increase their work hours and production. They now lead happy, work-free, lives at the Elephant Camp. We slept under nets in bamboo huts, with fans and power only until 10 p.m. and swarms of mosquitos. Each morning we woke to temperatures of 102 to 108, had a breakfast of sticky rice, chicken and soft boiled eggs, grabbed our machete to cut banana plants for the elephants, then rode them for a frolic in the leech-infested River Kwai. This was great fun for the elephants, who waited patiently for us to climb on their backs, only to begin to shake, submerge or kneel, trying, almost always success-fully, to toss us off. Then, they waited patiently again for us to climb back on for another round.

The Thai are amazingly kind, respectful, curious and happy people. They were helpful and amused by my severely limited language. Four weeks with the Rosetta Stone Course in Thai was about enough for me to ensure that I did not accidently venture into the men’s room and I managed to stay away from the spicy food (mai pet) and stay out of custody. In spite of the heat, the lack of understanding of the language and the elephant saddle-sore syndrome, I came back refreshed, rested and with a deep appreciation of the comforts and the easy life we enjoy and complain so much about here at home.

From the President, continued from page 2

“So You Want to Be Judge” Seminar a Success

As reported last month, the California Women Lawyers brought their “So You Want to Be Judge” program to Kern County. The event held at CSUB on June 2 was very well received. Last month I thanked David Torres, Cathy Bennett and Jean Pledger for their efforts to bring the program here. This month, I’d like to thank all of the members of California Women Lawyers who volunteered to set up and run the actual program. Thanks to Presiding Judge Jerold Turner for his support at the event. Most importantly, thanks are also due to our bench officers (the Honorable Judges William Palmer, Sharon Mettler, Craig Phillips, Cory Woodward, Catherine Purcell and Robert Tafoya) for taking time out of their busy schedules to serve as panelists at the event. All who attended agree that the program was fascinating.
Wanting to be a Judge is Only the First Step

by Jennifer Thurston

The Women Lawyer’s Association presented the “So You Want to be a Judge?” program to local attorneys and those who came from as far as Los Angeles, Fresno, Chico and Sacramento. After learning of the grueling nature of the application process, however, the event’s title should be read, probably, as an expression of ironic disbelief rather than one of true inquiry.

The group of about 85 attendees learned that, beginning with the written application, judicial hopefuls have to cull their memories and records in an effort to demonstrate on paper, well-roundedness in legal experience. Despite these efforts, the group was advised to remember that no one is completely round or even oval (so to speak).

Once the application is made and it meets the minimum requirements, a panel of area lawyers fact-check it and interview the references listed on it. This group, known as the Judicial Selection Advisory Committee (JSAC), does the initial legwork for the Governor’s Judicial Appointments Secretary. The JSAC divides its workload to make sure that each applicant is reviewed by a stranger. This assists in eliminating any bias either for or against the candidate.

Simultaneously, the Kern County Bar Association’s Judicial Appointments Evaluation Committee and the JNE Commission interview the candidate separately. The Bar’s interview allows the candidate to discuss her qualifications and to answer questions that will assist the committee in determining whether she is qualified to assume a judicial position.

In advance of the JNE Commission interview, the Commission surveys references listed on the application and mails surveys to hundreds of lawyers in the area asking about the candidate’s qualification. Then the JNE interview provides the candidate a forum to explain or acknowledge negative comments that have been made by surveyed attorneys. The group was assured that the only negative comments raised are those that are substantial, corroborated and credible and that the comments (although not their sources) are provided four days before the interview to allow the applicant to formulate a response.

By the end of the review by the JSAC and the interviews by the Bar and JNE, the candidate should hope to receive a rating of “qualified” at a minimum to ensure an interview with the Governor’s Judicial Appointments Secretary.

To provide insight into this process, the current Secretary, Sharon Majors-Lewis was on hand. This very down-to-earth and yet very accomplished legal practitioner warned that the interview is an opportunity for her to get an impression of you and, if necessary, to delve into problems areas. For example, those with credit problems, felony convictions and domestic violence restraining orders against them better be prepared to explain. Those with lesser problems, too, should be prepared to provide an honest assessment of their skills and to acknowledge and to demonstrate a judicial demeanor.

Ms. Majors-Lewis reminded the group that she has 20 years’ experience as a trial lawyer and knows how to spot a bluff. Her advice to the group was to be honest, admit mistakes and weaknesses and explain how you are suited, nevertheless, to take on the enormous responsibility placed on judges.

At the end of the day, the attendees were treated to small group, round-table discussions with current sitting judges who talked about their experience in the appointment process and answered questions about their jobs. Despite the difficulty of the process and the years that it takes to become comfortable in the role as a judge, each made clear the job of judge was the best and most rewarding job that they had ever had. So you want to be a judge, huh? Maybe it isn’t such a bad idea after all.

Leonard has gifted Jake with another of his passions—integrity. Leonard expects integrity from everyone with whom he is affiliated. He talks about it, but more importantly, he practices it. “I don’t sit the department down on Monday and say, here’s today’s lecture on honesty.” When I asked Jake what one thing he wanted others to know about him, he answered, “I’ll always be honest and do my best.” Leonard was proud when he heard Jake’s answer.

When I asked Leonard the one thing he wanted others to know about him, he laughed, “That they don’t already know?” He finally settled on something most of you probably don’t know. Leonard is a weight lifter. He weighs 185, and bench presses 255. And, he yells when he lifts as his now daughter-in-law discovered on her first visit to the Welsh’s. She woke up Saturday morning to Leonard yelling outside her bedroom window. Kasey, Leonard’s son and her fiancé, had not warned her. Leonard has never explained his early morning yelling to his neighbors, either. Apparently, the neighbors have it figured out by now.

There are many fine young lawyers in Kern County with great mentors. Please e-mail me (cbennett@kleinlaw.com) and tell me about young lawyers you know and their mentors—I’ll interview and profile them for the Res Ipsa Loquitur.

As you take your summer vacation, think of the Res Ipsa!
We are looking for great vacation stories with photos for our September issue. Email stories of 150 words or less and photos to ril@kernbar.org!

Eaton and Welsh, continued from page 6

Res Ipsa Loquitur, July 2007
For more than 50 years the law firm of Klein, DeNatale, Goldner, Cooper, Rosenlieb & Kimball, LLP has been serving clients in the San Joaquin Valley.

We’ve become the premier business and transactional law firm by focusing our energies on the success of our clients — every day.

From sophisticated business transactions and complex litigation to emerging issues in oil, land use and the environment; from regulatory and tax counsel to mergers, acquisitions and property rights, we provide comprehensive services to a broad range of clients.

If you encounter complex business issues in your practice, the KDG team is available to consult with you. We offer clear, competent and innovative answers that’s why referring attorneys rely on KDG time and again.

KLEIN•DENATALE•GOLDNER
COOPER•ROSENIEB & KIMBALL•LLP

Integrity. Ingenuity. Irreplaceable.

Barry Goldner, Business Strategies and Counseling • Jay Rosenlieb, Managing Partner

4550 California Avenue, 2nd Floor, Bakersfield, CA 93309 • (661) 395-1000 www.kleinlaw.com
Tom Sneath of National Toxicology Laboratories, Inc. spoke at the May 22, 2007 meeting of the Family Law Section of the Kern County Bar Association. The topic was “Developments in Drug Testing Techniques and Interpretation of Results.” National Toxicology tests parents in custody disputes, when they are alleged to be substance abusers.

National Toxicology conducts an average of 6,000 to 7,000 tests per day! Although testing in family law cases is only a small percent of their workload, family law parties provide the most drama and difficulty for lab employees, as the parties go directly from the court to the lab after being ordered to submit to a drug test.

The window of detection for most drugs, especially methamphetamines, is two to four days. Therefore, orders for testing should require that the test be taken shortly after the request, and ideally within two to four hours of the request. In addition, testing should be required on Mondays or Tuesdays if weekend drug use is suspected.

Drug testing can be conducted on samples of urine, blood, hair, saliva and sweat. Generally, urine tests are preferred for their reliable results, lower cost, and flexibility in testing different drugs, including alcohol and nicotine. A lab employee witnesses the sample taken, in order to prevent substitution. The sample can be tested for adulteration (drinking excessive amounts of water in an attempt to flush the drugs). Mr. Sneath advised that products which claim they will clean the body of drugs are substantially ineffective. Drug test takers have actually called and complain that the positive result pronounced by the lab must be a mistake because they paid good money for a detoxification kit! Hair sample tests may be performed only upon the stipulation of the parties. These tests are especially useful as a lifestyle test for chronic marijuana users and their household members.

National Toxicology Laboratory’s positive result threshold is lower than that used for federal employees. Mr. Sneath opined that the federal threshold would exclude the finding of many positive results. The family law attorneys expressed that a possible lingering question for themselves and family law judges is whether the lab’s lower threshold should continue to be used in family law cases instead of the higher federal threshold in light of Family Code § 3041.5, subdivision (a), which requires that substance abuse testing be performed in accordance with procedures and standards established by the United States Department of Health and Human Services for drug testing of federal employees.
Hakuna Matata = Res Judicata

by Susan Salvucci

The day after Martha died, her divorce was finalized by a Texas court, pursuant to a Mediated Settlement Agreement. The deceased’s ex-husband sought the assets he would have received as a beneficiary of her will, despite the court-ordered mediation and resulting agreement. Martha and Robert had agreed to a comprehensive settlement of the property, but she died before it was incorporated into a final divorce decree. In executing her will, Martha’s brother filed for declaratory judgment on a number of issues, including the effect of the mediation agreement on Robert’s status as a beneficiary.

The critical issue was the effective date of the mediated agreement – effective when executed and signed, or only at confirmation in an approved divorce decree? Texas has a statute on this. By the plain language, and the clear intentions of Martha and Robert, and for public policy reasons, the Court ruled the mediated settlement was immediately effective! Robert could not inherit…he was the ex-spouse. What he agreed was Martha’s property, would go to Martha’s heirs, and he was no longer an heir.

Note that the agreement itself stated that it was binding and not subject to revocation, was signed by both parties as well as their respective attorneys, and immediate enforcement upholds the Texas public policy of encouraging mediation which is also furthered by the finality of the agreements. The court noted that it favored a reading of the Texas law on language necessary to revoke a beneficiary designation as a reading that incorporates the presumption that people who are divorcing intend to revoke beneficiary designations.

I guess the lesson to be learned here is not just that there is no Hakuna Matata in dissolution proceedings, but also that timing really is everything! Thanks for reading. Next month I’ll answer one of the Questions of the Universe – “Where is That Missing Sock?”

Susan Salvucci is Attorney-Mediator with the Law Offices of Susan Salvucci and the Bakersfield Settlement Center for Dispute Resolution.

Teen Court Service Organization Competition Now Underway

Teen Court of Kern County launched its Community Service Partnership fundraising competition in May. There are separate categories in the competition for monetary donations and for non-monetary donations. Winning organizations will be publicly recognized in late 2007 and may become eligible to receive assistance for some of their own community service programs, through help from youths who benefit from the Teen Court program. Leaders of any local community service organizations such as Kiwanis, Rotary or others who are not yet aware of the competition, or who wish to obtain further information about it, can contact Dave Dixon at 716-3000.

Process Service
Lowest rates and fastest service in Kern County!
Call for rates!

Other Services
Skip Tracing
Notary
Court Filing
and more!

SERVICEn UNLIMITED

K.C.P.S. License #512

4450 California Avenue, #109
Bakersfield, CA 93309
Phone: 661-699-9958
Fax: 661-398-9650
Just ask Matt Clark of Chain Younger and Amber Chiang, the RIL Editor about What Members Also Do in the local community. Recently, the pair helped DiGiorgio School’s third and fourth grade classes get down and dirty as they transplanted seedlings into the school’s first-ever garden. As part of this year’s Leadership Bakersfield class, Clark and Chiang joined five other local professionals to build the garden at this small school northeast of Arvin.

Darlene Maddox was the team leader for the project and is the Business Development Manager for Kern Schools, explained the seeding, building and planting process. “Our team put hundreds of hours of time and sweat equity into these gardens,” she said. “Not only did we research and build the garden, but we found and expanded learning curriculum for the teachers to be able to bring what we are doing into the classrooms.”

Each of the six raised beds has a planting theme, which includes plants that will draw butterflies, salad greens, large gourds and pumpkins and lots of flowers. Students seeded the plants in early February, and the flats were cared for by area farmer and Leadership Bakersfield team member Steve Murray.

“We are very pleased to help out this small school,” said Clark. “As a member of the Leadership Bakersfield project team, I knew I could help these students understand where their food comes from by helping them grow food in their very own garden.”

Many Saturday work days and mid-week meetings made the gardens possible. Members of the project team dug trenches for irrigation, mixed and poured concrete, operated chain saws, built garden side-walls and set posts for the fencing. Accompanying the garden will be a bevy of learning resources for the school, which include books, computer software and nutritional information guidelines.

In addition to the garden beds, the Leadership Bakersfield team researched and developed age-appropriate curriculum for the third and fourth grade classes at DiGiorgio School. Planting of the seedlings was the culminating lesson of a classroom learning plan on plant biology, nutrition and science.

“DiGiorgio School is pleased that Leadership Bakersfield chose our school to benefit from one of the projects,” said Paul Boatsman, Principal/Superintendent. “Our teachers and students were excited to participate in the process and are pleased to see the small plants now in the gardens.”

Other members of the Leadership Bakersfield team include Randy Adams with the State of California Department of Conservation Division of Oil and Gas, Nelly Brierty with Chevron, Laura Catherman with CSUB and Steve Murray with Murray Family Farms.

Leadership Bakersfield is a year-long educational program for executives and professionals in the Bakersfield area. Offered through the Greater Bakersfield Chamber of Commerce, Leadership Bakersfield provides class members with insider’s views of Bakersfield industry. As part of their class work, members are divided into teams which develop, plan and implement projects to benefit the local community.

Chevron’s Nelly Brierty, Amber Chiang and Matt Clark work on the DiGiorgio garden.

When you need an analytical and investigative mind in the following areas...

- Valuation & Risk Analysis
- Litigation Support
- Estate & Gift Tax
- Mergers & Acquisition
- Family Law

Contact Dr. Ken Shakoori to assist your team.

Brown Armstrong
Certified Public Accountants
4200 Truxtun Ave. Suite 300
Bakersfield, CA 93309
T. 661.324.4971
kshakoori@bacpas.com
www.bacpas.com

Ken Shakoori, Ph.D., AVA
Member of NACVA
The RIL and the KCBA congratulate Carol Ratsamy Bracy, who was honored on June 13, 2007 by the Kern County Women Lawyers Association as the recipient of the 2007 Sharon Wallis Mettler Award. This award recognizes local women lawyers who are (i) in good standing with the California Bar and Kern County Women Lawyers; (ii) who have professional ties to Kern County; and, (iii) who are of high integrity and character who has demonstrated a genuine concern for issues relating particularly to women and a willingness to advance, protect and pursue those concerns, however unpopular, difficult, time-consuming or long-range they may be. Carol Bracy epitomizes the ideals of this award.

In second grade, Carol Bracy sat in a swing and planned her future as a lawyer. Years later she earned degrees in Political Science and American Studies at California State University, Fullerton, and then graduated from the University of Southern California Law School. After becoming a lawyer, Carol worked with refugees in Southeast Asia for four years. There she met her husband, Paanh, whom she married after they met again in the United States. Carol and Paanh have two children, Michael and Ariel. Carol worked with the Legal Aid Society of San Diego for eight years, and she has worked with Greater Bakersfield Legal Assistance for the past 14 years.

As Sheri Connelly Vining explained, Carol is not out to save the world, she is just trying to make it a more friendly and compassionate world. Carol goes the extra mile with her clients, driving around back alley ways in order to obtain a client’s signature on a pleading and to provide the client with a muffin and hot coffee. She commandeers trucks and family members to deliver supplies such as beds to families who are in need. And, Carol is active in both the Women Lawyers and Kern County Bar Associations. Carol’s photographs, many of which have graced the pages of the RIL, have contributed a pictorial history of Kern County’s legal community.

Since she sat on the swing in second grade, Carol’s view of injustice has become much more broad. She said we don’t all have to have the same picture of what is right in order to join in the fight against injustice. Carol said she is always excited when a lawyer answers yes to Carol’s request to take on pro bono work. Although pro bono work is good for clients, as they have legal representation (“it is hard to achieve a fair result when one side is not heard”), it also benefits lawyers, who give of themselves. Law schools place an emphasis on intellect, and although Carol has a fine intellect, like the Tin Woodsman in the Land of Oz, she would rather have a heart.
The Rebellion Begins with Advanced Screening of Harry Potter and the Order of the Phoenix Exclusive for KCBA Members!

The fifth film in the Harry Potter series, Harry Potter and the Order of the Phoenix, opens to the public on Friday, July 13, 2007. However, as a membership benefit exclusively available to KCBA Members, the KCBA is staging an advance screening of the new film on Tuesday, July 10, 2007. This event would not be possible without the generous sponsorship of Jean Keleher, Keleher’s Certified Shorthand Reporters and Vince Staley, Bakersfield Legal Process Service.

The show will take place at Edwards Cinemas at the Marketplace, 8000 Ming Ave. The film will start at 7 p.m., but there are no reserved seats, so attendees can show up as early as 6 p.m. to seek preferred seating. VIP event passes are $11 each, limited to a maximum of 4 per KCBA Member, and available only while supplies last. Call Wendy Ash at 334-4700 to purchase your VIP event passes today.
The heartbeat of every business is client satisfaction. Money may make an attorney’s heart beat a little faster but when dealing with clients meeting their needs is what makes the world go round.

Market economist Peter Drucker says that the purpose of a company is to create a customer. In his opinion too many professionals think the purpose of a firm is to practice the profession—in other words, reactive thinking rather than proactive thinking. The first step in creating a market is to ask, “What kind of client do I want to represent?” Client satisfaction is less esoteric once a firm determines its market and focuses on meeting the needs of that market.

Once a firm has a clear picture of the type of client it wants to take on, it should develop a clear understanding of that client’s problems and issues. Clients want and expect their legal professional to take an interest in their business and to understand the problems of that business. To understand your client better, visit each client’s place of business once or twice a year. Site visits will provide a better understanding of the client’s issues and concerns. Clients want their attorney to understand their problems, to educate them, and to help them anticipate and avoid problems.

Going that extra step indicates to your client the he or she is important to your firm. According to Consumer Reports, the client satisfaction level for divorce lawyers runs around 50 percent. In the business community, in-house counsel working with outside counsel state their level of satisfaction is considerably lower—less than 30 percent. Where does that leave you? You are left with either a tremendous headache or a huge opportunity for new business. I bet you want to go after new business opportunities. Assuming you are still with me you have your market and you understand that market’s problems and issues.

Now what can you do to keep that new or existing client feeling important and satisfied? Communication, communication, communication. Some points to ponder to keep the dialogue moving in a positive direction: (1) all staff members should treat the client well, (2) keep clients informed on the status of their case, (3) return telephone calls within 24 hours, (4) ensure clients understand and are a vital part of the process, (5) agree to meet during hours convenient for the client, (6) do not repeatedly reschedule appointments, (7) thank clients for their business, and (8) provide more value.

When was the last time you asked a client the following questions? What could the firm have done differently to better serve you? What should be changed about the office? What can or could be done to get you back? What should the firm change in the way it deals with you?

Client satisfaction can be achieved by keeping your focus on the pulse of client satisfaction.

JUST RESOLUTIONS, LLC
Alternative Dispute Neutral Services

“Our Mission is a Successful Resolution of Your Case”

Specializing in Resolving Disputes:
Labor & Employment
Real Estate / Construction
Professional Negligence
Personal Injury
Insurance Litigation
Business Litigation
Probate & Trust Litigation
Elder Abuse Litigation

Serving Central California
Bakersfield, Fresno, Monterey,
San Luis Obispo, Santa Barbara
& Ventura
960 Toro Street
San Luis Obispo, CA 93401

Phone: (805) 543-4648
Fax: (805) 542-0225
E-mail: justresolutions@aol.com

Craig R. McCullom
A Patients Bill of Rights exception to an arbitration clause was enforced in Fitzhugh v. Granada Healthcare and Rehabilitation Center, LLC (2007) 150 Cal.App.4th 469. Plaintiff was an 83-year old admitted to defendant’s facility following hip surgery. Less than three months later, she had a broken leg and died. Her husband and heirs sued for wrongful death. Her husband had signed two arbitration agreements when she was admitted to the facility. The lawsuit alleged elder abuse and violations of the Patients Bill of Rights. Defendant sought to enforce the arbitration agreements. The court found that the agreements were not enforceable because both agreements expressely excluded any claim related to the Bill of Rights. Defendant disagreed with defendant’s argument that the exclusion expired because they would need to be tried court. Thus, the trial court properly exercised its discretion in barring arbitration of those issues. Moreover, the arbitration agreements attempted to bind the heirs as well as the parties and their representatives, and the plaintiff’s two sons, while heirs, were not a party to the agreements to arbitrate. Therefore, the sons were free to bring wrongful death claims in court.

The Appellate Court noted that the PBR portions of the case could possibly result in conflicting rulings coming out of different forums because they would need to be tried court. Thus, the trial court properly exercised its discretion in barring arbitration of those issues. Moreover, the arbitration agreements attempted to bind the heirs as well as the parties and their representatives, and the plaintiff’s two sons, while heirs, were not a party to the agreements to arbitrate. Therefore, the sons were free to bring wrongful death claims in court.
**Classified Ads**

**Transactional and Litigation Associate**
Small but growing law firm with large and established client base is seeking a transactional and litigation associate for rapidly expanding practice. Salary and bonus structure negotiable based upon experience and work commitment. We are looking for associates who are committed to doing quality legal work, who appreciate the congenial atmosphere of a small office and want to grow with the practice. Send resume, in confidence by email to lhutton@dakebraunmonje.com or by mail to 1801 18th Street, Bakersfield, California 93301 322-0991.

**Office Space to Share**
Timothy Lemucchi has office space to share at 918 Truxtun; ideal for an attorney. Space also for attorney's secretary. Personal injury/criminal defense is best fit though certainly not required. Excellent opportunity to have your name on Truxtun Avenue, use of messenger service, law library + on-line law library, extensive office machines, computers, & case-management system. Please call Margaret at 872-2473 or 619-4635.

**Real Estate Attorneys**
Entry and senior attorney openings in statewide practice based in Santa Barbara. Emphasis on complex real estate transactions, subdivision map act issues, agricultural issues, and land use/entitlement matters. Tremendous long term opportunity. Email resume to kscott@hatchparent.com

---

**Important Dates**

**July**
- July 3 - Executive Committee
- July 10 - Board Meeting
- July 10 - *Harry Potter and the Order of the Phoenix* exclusive screening

**August**
- August 15 - MCLE

**October**
- October 18, 2007 Bench and Bar Social

**November**
- November 3, 2007 Fall MCLE Roundup