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VCBA MISSION STATEMENT
To promote legal excellence, high ethical standards and professional conduct in the practice of law;
To improve access to legal services for all people in Ventura County; and
To work to improve the administration of justice.

CITATIONS

JULY – TWO THOUSAND SEVEN

VENTURA COUNTY JAG OFFICERS

By Nell Rumbaugh

Page 8

JONATHAN FRASER LIGHT
KATHI A. WHALEN
CRAIG BATES
LOUIS J. VIGORITA
PAUL BIELACZYC
VERNA R. KAGAN
GREGORY T. MAY
STEVE HENDERSON

PRESIDENT'S MESSAGE	**3**
TREAD LIGHTLY WHILE INTERVIEWING PROSPECTIVE CANDIDATES	**6**
PRESENTATION TECHNOLOGY – IT'S NOT SMOKE AND MIRRORS	**12**
AND WHO DO YOU THINK IS PAYING FOR THAT NOW?	**16**
GUIDELINES FOR ACHIEVING SUCCESS AT MEDIATION	**20**
***PRO BONO* HIGHLIGHTS**	**22**
WE READ SO YOU DON'T HAVE TO	**23**
BYE, LAURA	**24**
NEW ADMITTEES	**24**
CLASSIFIEDS	**25**
EXEC'S DOT... DOT... DOT	**26**

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PRESIDENT'S MESSAGE

Jonathan Fraser Light

Random thoughts for June…

Yes, that's ZZ Top and moll (my wife, Angela) at a New Year's Eve party.

If you don't like lawyer jokes, perhaps you shouldn't have joined the profession. One needs a sense of humor to get through life and work. Those people who take themselves too seriously, well, are no fun to be around. No, I don't believe that the jokes demean or diminish the profession. If your deeds don't honor and enhance the profession, then you've lost an opportunity. And if the jokes help humanize us, and make us try harder to dispel our often negative image, then that's a positive result. And you could have made a worse choice. My daughter, Elena, at age 4, remarked, "Daddy, why would anyone ever become a proctologist?" I had no answer.

Glad that cattle baroness **Loye Barton** is almost back on the bull, er, ATV, after a nasty spill that punctured a lung and gave her a whack on the side of the head.

Check off the $50 donation box on your next Bar renewal form. Better yet, donate a billable hour to the Volunteer Legal Services Program. If you all knew what **Verna Kagan**, **Earl Price** and the other great emeritus lawyers put into the VLSP, you'd be amazed, and maybe even a bit ashamed. 4475 Market Street, Suite B, Ventura 93003. There, I just made it easy for you. Send it to **Steve Henderson**, our ace executive director.

Maybe take a pro bono case, or two. The family law attorneys are especially in demand, but I'm sure Verna can find something for you.

Perhaps sit pro tem or mediate, and the required training isn't all that burdensome.

Use the VCBA website. It looks great and is easy to navigate.

Buy a Starbucks for the military personnel standing in front of you in line.

Give blood, or better yet, platelets (and you get to watch a movie). United Blood Services (654-1600). Easy.

I'll donate a copy of my book, *The Cultural Encyclopedia of Baseball*, to the charity of your choice for a fundraiser, to the first person who contacts me with the correct information about the tapestry behind the bench in Courtroom 22: The two weapons/tools; the respective number of stars, ships and mammals; and what is the gray building in the background on the left side of the hill behind the bay.

Mentor a new lawyer? Call the Barristers. I'm sure they can hook you up with someone.

Speaking of new lawyers, I attended the swearing in ceremony in Courtroom 22 on June 5, presided over by **Justice Paul Coffee** and **Judge Toy White**. Well done, Your Honors. Wonderful ceremony, and what a great idea to allow each of the admittees to stand and identify his or her school, loved ones, goals and new job. One woman endearingly called out a significant percentage of the filled room, including her hypnotist, whose calming influence got her past the test-taking jitters. I especially appreciated the woman who said that while she fought to get through law school and pass the bar, "she [pointing to her twin] was fighting to beat colon cancer." Both had won, apparently. Wonderful stuff.

Attend at least three of our Bar events this year, or get involved with a committee. Good things are happening in these groups. You might learn a few things, meet some new friends, and make some new professional connections.

Support your staff's CLE and overall education. It's extremely expensive to train a replacement, and studies show that if you support your employees' efforts to enhance their résumés, they may just stay longer with you.

Be a good supervisor. Studies also show that management by intimidation, and the "I don't care if they like me, as long as they respect me" approach, aren't the best strategies for a successful working environment. Say thank you at the end of a long day when your assistant is heading out the door (even more important, when you walk out first). Pass out compliments for jobs well done; send them by email to everyone in the office. You'll make someone's day.

Be that lawyer who is considered cordial and reasonable, and sees the big picture for what's best for the client, doesn't waste legal fees, and can be relied on to keep his or her word. No confirming letter necessary (even though we'll still write it). I recently mentioned in a phone conversation a lawyer in Century City to whom I have referred cases, Marvin Krakow, and the listener said, "What a gentleman, and what a great lawyer." We should all be so lucky, and I can think of several around our county who have earned that comment. All you have is your reputation, so don't screw it up.

Thanks to our retiring judges for long service to our county: **Judges Steven Hintz** and **Barry Klopfer**.

"We make a living by what we get, we make a life by what we give." [Winston Churchill]. Be that person.

And smile as much as possible. No one I know ever went wrong with that approach.

***Jon Light** is pleased to note that the trailing case referenced in last month's column settled, sparing the trees and some precious stomach lining.*

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Tread Lightly While Interviewing Prospective Candidates

By Kathi A. Whalen, *President Whalen Bryan Inc. Legal Placement*

At the time of an interview, an applicant is protected by both federal and state anti-discrimination laws. No problem – you are an equal opportunity employer and would never discriminate when hiring or recruiting. Or so you think. Sure, you know about the federal and state laws protecting certain kinds of personal information, so you steer clear of questions directly related to race, religious beliefs, marital status, age, or disabilities. However, race, ethnicity, religion, and gender-related issues all too often can subtly slip into an interview. In fact, you may have unwittingly committed legal blunders during hiring interviews by making seemingly innocent "small talk."

For example, "Is that Ms. or Mrs.?" or "Is that your maiden name?" may be interpreted as intent to discriminate based on marital status. Similarly, questions regarding number of children and childcare arrangements may be seen as being based upon the applicant's gender. "What an interesting name, what does it mean?" or "What country are your parents from?" may be interpreted by the applicant as an illegal question regarding his or her national origin. Likewise, if an English language skill is not a requirement of the work to be performed, it is inappropriate for an employer to use an English language proficiency test or to inquire about the applicant's native language. In fact, any pre-employment inquiry having a potential adverse effect upon a particular protected group may violate an applicant's civil rights. Such inquiries include questions relating to: an applicant's height or weight (unless essential to the safe performance of a job); an applicant's arrest record; whether an applicant owns or rents a home or car, whether wages have been previously garnished, or whether the applicant has ever declared bankruptcy (unless financial considerations exist for the job); and whether an applicant is a U.S. citizen. These are not appropriate pre-employment inquiries.

You know not to ask an applicant her age, but what about asking an applicant what year he graduated from high school? Such a question is age-related and may create an inference of age discrimination. "How do you feel about starting a new career all over again?" or "How do you feel about beginning at the bottom?" are also inappropriate age-related questions that may infer age discrimination. To be safe, refrain from asking your applicant any questions closely related to age, except whether he or she is at least 18 years old.

No-no disability-related questions are not limited to "Do you have a disability?" and similar direct questions. Inappropriate questions include asking an applicant how many sick days he or she took with a previous employer – this question may directly relate to possible disabilities. For the same reason, an employer may not ask an applicant about his or her workers compensation history or ask what medications he or she is currently taking. However, an employer *may* ask applicants about current and prior illegal use of drugs – such illegal drug use is *not* protected under the law. But be careful not to ask an applicant questions that are likely to elicit information about alcoholism, which is a legal disability. Also, as with physical disabilities, an employer is not permitted to ask applicants any questions that are likely to elicit information about a psychiatric disability.

Confused about the subtleties of the anti-discrimination laws? Simply apply one guiding principle to any question you ask a job applicant: Is there a job-related necessity for asking this question? Also, be consistent in your questioning; don't direct certain questions only to female applicants, for example. There are many permissible ways to question an applicant about his or her qualifications and availability to work without entirely eliminating the candor and conversational flow of the interview. Just remember: If it is not job related, don't ask.

Kathi Whalen *is President of Whalen Bryan Inc. Legal Placement.*

Federal discrimination laws apply to employers with 15 or more employees and the California Fair Employment and Housing Act (FEHA) applies to employers with more than five employees. Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, sex, or national origin. Similarly, California's FEHA prohibits discrimination in employment based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation of any person. The Age Discrimination in Employment Act of 1967 (ADEA) protects individuals who are 40 years of age or older and covers all private employers with 20 or more employees, state and local governments (including school districts), employment agencies and labor organizations. Title I and Title V of the Americans with Disabilities Act of 1990 (ADA) prohibit employment discrimination against qualified individuals with disabilities. Additionally, the anti-discrimination provision of the Immigration Reform and Control Act provides that an employer cannot discriminate against an applicant who is not a U.S. citizen.

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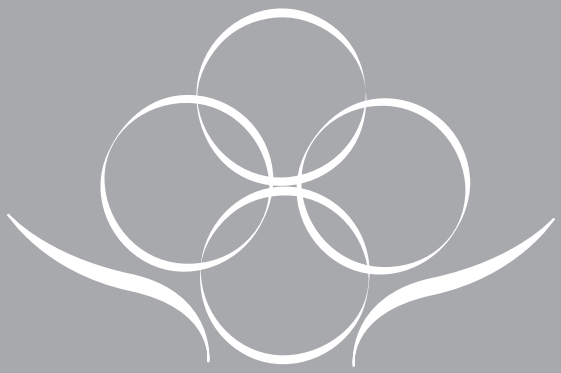

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Ventura County JAG Officers

By Nell Rumbaugh

JAG Corps officers are distinguished from other Navy personnel by the insignia on the pins adorning their lapels: a mill rinde enclosed by two identical oak leaves. In France, the mill rinde symbolizes equal justice since it was the mechanism that kept the stone wheels an equal distance apart. The oak leaves that flank the mill rinde represent the scales of justice. Oak symbolizes strength, and as such, was adopted in sixteenth-century England as an emblem for lawyers.

Navy JAG Corps Lieutenant (jg) Michael Maffei and Lieutenant Gregory Manz wear their pins with pride, as they should, having both graduated from top law schools. Mike graduated from the University of California Hastings and is currently a member of the California Bar. Greg graduated from Fordham University School of Law and is admitted to practice in New York.

Both Greg and Mike were assigned to the Port Hueneme duty station, which neither complained about. Aside from the obvious benefit of working in such a beautiful location, both officers point out numerous other benefits of the JAG program. According to Greg, "the workload and working hours are reasonable, which allows us to have a life outside of the office." In comparison to some of his law school colleagues who are presently overworked at fast-paced private law firms, Greg is not. "I worked in a high-paced private firm during the summer between my second and third year in law school, so I was exposed to the kind of life that would be," commented Greg, who applied for JAG during his third year in law school. Greg attests that "the morale in the JAG Corps is high." He adds, "everyone in JAG Corps wants to be here, which creates a great working environment."

While JAG Corps officers are generally not required to spend as many hours in the office as private attorneys, they more than make up for it in the hours they dedicate to physical fitness. Twice a year, Mike and Greg are required to pass a Physical Readiness Test (PRT) consisting of sit-ups, push-ups, and a mile and half run that needs to be completed in less than 13 minutes for their age group. Mike and Greg don't seem to mind, especially since they average roughly 6-minute miles. More importantly, they maintain that physical fitness helps with keeping a positive attitude at work.

JAG Corps offers the added benefit of immediate legal experience and exposure to many different areas of law. As Greg points out, the work is "never boring, because it's constantly changing." "I practice something different everyday," Mike says. "For example, in the morning, I could represent a sailor before an administration board as a result of drug use, and draft wills for members of a Navy squadron in the afternoon." JAG officers like Mike and Greg help sailors and their families in a broad array of legal areas, including filing taxes, drafting special powers of attorney, wills and demand letters. The transient nature of military personnel calls for significant legal support.

Greg and Mike are not exempt from the transient nature of the military lifestyle. Not only do they constantly change the type of law they are practicing, but where they are practicing. Over the course of their 4-year commitments to the Navy, they are frequently transferred.

JAG Corps training consists of five weeks of Officer Indoctrination School (OIS) followed by ten weeks of Naval Justice School (NJS), both conducted in Rhode Island. Reveille (wake-up) is at 0500 and Taps (lights-out) is at 2200. During their training JAG officers learn everything from the Navy's legal codes to marching in formation. They have only 15 minutes for lunch and face at least one personnel inspection and two room inspections per week.

The NJS trains lawyers in trial practice, advocacy, and moot court. The school's mission is to train officers in military justice, administrative law, procedures, and Naval disciplinary systems. Students are introduced to the Uniform Military Code, which covers topics such as entrapment, gambling with a subordinate, failure to encounter the enemy, and wearing unauthorized insignia, badge, ribbon, device or lapel pin.

One especially important regulation found in the UMC deals with the offense of fraternization. According to the UMC, unduly familiar personal relationships are prohibited between officers and enlisted personnel. The purpose behind this rule is to preserve the respect for authority that is so essential to the Navy's success. Under the UMC an officer is not allowed to date an enlisted co-worker. In fact, even going to dinner together as officer and enlisted constitutes a violation unless it was a command function and all in the command were invited to attend. In such cases, both the officer and enlisted member are held accountable, but the majority of responsibility rests on the senior officer.

However, not all association between officers and enlisted personnel is considered fraternization. It depends largely on the totality of the surrounding circumstances, including whether the conduct compromised the chain of command, whether it results in the appearance of partiality, and/or whether it undermined good order, discipline, authority, or morale. The standard applied in making such a determination is the "reasonable person experienced in military leadership" standard.

Today, fraternization is the furthest thing from Mike's and Greg's minds. Both have volunteered for a 7-month deployment to Baghdad to work in detainee operations. They will be working out of the U.S. Embassy in Baghdad, in the Green Zone.

The legal mission of detainee operations is to help ensure that detainees (aka security internees) are treated humanely in accordance with the Geneva Conventions and Iraqi law. Part of the process involves the periodic review of security internee cases by administrative boards comprised of Iraqi government officials and senior U.S. military officers. The detainee operations division also helps legitimate prosecutions of insurgents and terrorists under the Iraqi criminal justice system before the Central Criminal Court of Iraq.

Greg reports that the work as a JAG officer in Baghdad is intense. It poses tremendous logistical challenges, necessitating the coming together of interpreters, detainees, attorneys, security officers, Iraqi board members, evidence, intelligence, etc. When Mike was notified of his certain departure date for Baghdad, he and his father discussed the best way to break the news to his mother. She cried when they first told her, but Mike thinks she is handling it better now. "I'm going to look at it as an experience, like my first year in law school or sitting for the bar; it'll be tough, but in the end I'll be a better person for it."

*Maryland lawyer **Nell Rumbaugh** volunteers as a Navy Ombudsman at Port Hueneme. Her husband, father and brother are military physicians. Her brother recently returned from a 13-month deployment with the Marine Corps. Nell welcomes you to contact her to learn ways to support deployed military members and their families. nellbird@hotmail.com*

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PRESENTATION TECHNOLOGY – IT'S NOT SMOKE AND MIRRORS

By Craig Bates

As **Alex Gutierrez** of Hathaway, Perrett, Webster, Powers, Chrisman & Gutierrez notes, "**Presentation Technology** is a must these days. Through the use of trial technology, an attorney has the ability to control the flow of information as well as to direct the focus of the triers of fact, and can empower an attorney to change the entire complexion of a case."

Let's be honest. No one in the legal profession invests 3 years (some, many more) of mind-grinding, intimidating brain bashings, followed by endless nights, weekends and holidays of billable hours, frequently missed plays, baseball games, and even more frequent tongue lashings by frustrated spouses, or significant others to ***not*** be successful.

Success can be measured in many ways, but there's only one measure of success in a client's eye – WINNING! As the field continues to become more crowded, it is vitally important to keep up with the latest technologies that can give you an edge and let you stay focused on winning. While nothing can take the place of a sharp legal mind, certain technologies can prove invaluable when trying to settle a case or sway a jury.

SO WHAT EXACTLY IS "PRESENTATION TECHNOLOGY"?

Presentation technology can encompass several different areas, usually beginning with a videotaped deposition that can be later synchronized and encoded with the transcript for presentation at mediation, arbitration, and, most significantly, at trial. By synchronizing the video, a trial technician will work closely with the attorney to choose and create clips of videotaped testimony that can be easily retrieved in the courtroom with the use of a simple bar code. The testimony can then be displayed with the corresponding text scrolling along the witness.

Additionally, crucial documents can be imported to a database using unique bar codes, and via the appropriate presentation software the documents can be enhanced, magnified, and projected from a laptop computer onto a screen in front of the jurors. The images can be shown side by side (split screen) so as to connect a portion of taped testimony with a relevant exhibit used during the deposition.

SO WHY NOT STICK TO TRANSCRIPTS?

Like most instances in life, you have one shot at a first impression. The visual interpretation of a witness can be considerably more compelling than one dimensional transcripts.

William Slaughter, of Procter, McCarthy & Slaughter, agrees "The use of video depositions is now crucial. When presenting conflicting testimony replaying video is far more effective than simply reading a transcript back to a witness. In a case several years ago, I asked a plaintiff who was on the stand at an arbitration if he was familiar with a specific witness. The plaintiff emphatically stated that he knew the witness, believed him to be a person of poor credibility, and that he was not someone who could be trusted." Thirty days earlier his deposition had been videotaped during which time he had stated that he did not know the witness. "Simply reading the transcript would not have conveyed the confused look and vacant stare that was picked up on the deposition transcript. In my view, the plaintiff's credibility was totally destroyed at that point."

WHAT IF WE ARE NOT PLANNING TO GO TO TRIAL? WHY SPEND THE EXTRA MONEY TO VIDEOTAPE?

At the beginning of any case, no one knows for sure whether they will go to trial or not however, having videotaped testimony available in the event may save you money in the long run. Even if you do not go trial, the impact a videotaped deposition can have at mediation, arbitration or settlement talks can be significant.

As **David Tredway**, of Ferguson, Case, Orr, Patterson & Cunningham, notes, "The video depositions were key to settlement of this case. The ability to preserve the unrehearsed facial expressions of the witnesses to the critical

questions for use at trial was important to the ultimate resolution."

Once a decision is made to proceed to trial, attorneys spend countless hours and energy preparing their client to make a good impression on the judge or jury, but no one can erase the memory of a less than star performance during a deposition.

No amount of technology can compensate for poor counsel, but having strong presentation support to enhance your case and let you "focused on winning" can be key to a positive outcome. Much like first impressions, you only have one shot at getting a deposition videotaped right the first time. Hiring a firm that has the knowledge, experience and a solid track record, is key to success.

Craig Bates *is principal of Telegenics, Inc., a legal video services/litigation support company doing business in Ventura County and around the nation for over 26 years.*

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AND WHO DO YOU THINK IS PAYING FOR THAT NOW?

By Lou Vigorita

Most of you, if you're like me, look at your paychecks and wonder where all that Social Security withholding is going. Retired Uncle Bob. Disabled veterans. Orphans. Even your very own retirement! But how many of you realize that some of your hard-earned Social Security money is now being used to support a select group of people who should be working in full time jobs? How many of you realize that workers who are injured on the job are no longer assisted in returning to modified work, and have been placed on the disability rolls of the permanently disabled, through no fault of their own? Probably no one realizes this – unless you have been involved in the Governor's Workers Compensation reforms over the past few years.

Formerly, injured workers in the State of California were eligible for a benefit known as vocational rehabilitation under Labor Code §139. If injured and unable to return to their usual and customary occupation, they were then retrained at the expense of the workers compensation insurance company. Upon completion of their program they were to return to some form of modified work using their newfound skills. Earning wages. Paying taxes. The usual stuff that the rest of us have to do. The workers compensation insurance carrier paid for this as part of the return to work program under the workers compensation laws of California. The employer paid for the premiums for workers who were injured on the job while performing the job duties that made money for the employer. John Q. Public did not pay for this. None of this. It was a cost of doing business to help return the injured worker to the wage-earning and taxpaying world. This was the situation before April 19, 2004.

Now enter the reform Governor and his SB899 reform package at the request of the insurance lobby. Yes, *at the request of the powerful insurance lobby.* In this reform the injured workers' rights under Labor Code §139 were essentially eviscerated. There is no retraining following serious injuries that prevent workers from returning to their jobs. There is no financial support during a school program designed to get the worker back into the work force as soon as possible. There is no counseling to assist in preparing the worker for job interviews and guide them how to dress and conduct themselves through the new job search. No effort is made to assist the injured worker in getting back to work. So the injured worker, due to his or her debilitating injury, while able to work in some modified capacity with a little training, is unable to do so. There is no more training and assistance that in the past was a proven way of expeditiously returning workers to the work force. Instead, we have a myriad of cases with untrained, injured workers who have lost their jobs with no prospects nor useable skills. And most of these people we see in Ventura County are hardworking farm workers who have little if any English-speaking skills. Think of the group of workers recently displaced in the winter frost of 2007. What do they do now?

First of all, they become eligible for a federally mandated program known as Social Security Disability, which is an *early retirement program.* Social Security Disability benefits a worker who meets certain criteria. The worker needs to have paid taxes, worked a certain number of quarters and have been "...unable to perform substantial gainful activity..." in order to qualify. With no retraining under California law, these injured workers become unemployable and therefore easily eligible for Social Security Disability *at a time in their lives when they normally would be productive, taxpaying individuals.* Think of a non-English-speaking farm worker who cannot use his or her back to work, and is limited to sedentary work. What work in the national economy is this worker able to perform on a full-time basis following a devastating back injury? None. So the worker collects Social Security that you and I pay for with our federal tax dollars.

Why should we pay for this disability injury that was formerly covered under workers compensation insurance? Why shouldn't the Workers Compensation insurance pay for this worker's plight instead of us? Why do Californians have to bear this additional expense? Why was this vocational rehabilitation law repealed? These are valid questions that the Governor failed to address when he signed SB899 into law on April 19, 2004 and that have come to haunt us now.

***Lou Vigorita** is a workers compensation and Social Security Disability lawyer who practices in Ventura.*

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GETTING TO THE BOTTOM LINE-GUIDELINES FOR ACHIEVING SUCCESS AT MEDIATION

By Paul Bielaczyc

Getting to the bottom line at mediation often depends on the level of preparedness of all sides. The process is hindered in cases where no settlement discussions have occurred prior to the mediation. Lack of cooperation during discovery or failure to complete key discovery further complicates a successful result. Therefore, to get value out of the mediation process certain guidelines should be followed which will help promote dispute resolution.

Get Your Work Done Well in Advance

There is nothing worse then being unprepared at mediation. It is not only your opportunity to resolve your case but to show your competence and mastery of the legal and factual issues. Once you receive a mediation date, assess the discovery status of the case. Have all necessary discovery and fact finding completed well in advance of the mediation date. Factor in additional time for providing the verified information to clients, experts and carriers. The practice of scheduling a key deposition or independent medical examination within days of the mediation should be avoided. Transcripts and reports may not be completed, causing speculation about their content and conclusions. This will complicate settlement efforts and may affect a party's ability to obtain the appropriate settlement authority.

When discovery is not obtained in a timely manner, discretion should be used in filing motions to compel prior to the mediation. The sting of a motion to compel can carry over into the settlement negotiations and create obstacles for potential resolution. And don't play keep-away with your discovery forcing the motion to compel. This tactic may later bring a motion in limine to preclude the evidence based on the keep away strategy. If necessary and possible, work with the other side and the mediator to continue the mediation date so to complete your discovery work.

Make Sure You and Your Client are on the Same Page

The value of a properly prepared client should not be underestimated. Attorneys also fail to adequately get themselves familiar with the expectations of their client for purposes of case settlement. Be sure to meet with your clients well in advance of the mediation instead of hours before it commences. This way you can adequately prepare your client for what may happen from the settlement discussions. If bad news does arrive at the mediation, it won't be the first time that your client will have heard this information. You will not be surprising your client when you explain at mediation the reasons for the low settlement offer or the high demand.

A meeting with your client will give you the opportunity to be adequately prepared to explain the facts and theories of the case to the mediator and the other side. A meeting with your client, in preparation for the mediation, may be one of the most important factors toward case resolution. Conducting your pre-mediation meeting far enough in advance will allow you to create persuasive arguments for your settlement position. This will demonstrate that you have strong command of the facts regarding the case and avoid your client's need to provide details during the mediation that you should already know.

Get a Handle on Your Case

Having conducted your pre-mediation conference with your client, you are now able to create an outline for purposes of competently articulating your position with the mediator and the other side. This outline can be a condensed, single-page version of your settlement demand letter or your case evaluation report with the date of accident or date of breach of contract, subsequent treatments relating to an injury matter with costs for treatment or efforts to mitigate a breach of contract and associated damages. The documentation to support this does not need to be in any great volume. Bullet points setting out dates and dollars works precisely and effectively.

Also, be ready to explain applicable law as it relates to the case. This applies both for plaintiffs and defendants. Credits and offsets may be present for a damage value that can effect settlement negotiations. Don't find out for the first time at the mediation what your client's total medical expenses are as a result of an accident. Know why treatments are being discounted and the basis for the discount. The same applies for a breach of contract action. Don't look to your client to explain why they have a damage claim as a result of a breach of contract. Know the numbers inside and out and be ready to explain applicable law for any liens, credits, offsets or potential mitigation. That way, when asked by a mediator does the *Hanif* case apply you won't have to ask who Hanif is.

Develop a Strategy for Negotiation in Order to Dance

Before attending the mediation, the attorney and client should have an understanding of the strategy for negotiation to commence the negotiation dance. The attorney should be ready with the client's consent to set out a realistic and reasonable opening settlement demand/offer keeping in mind the bottom line number. The attorney and client should understand what increments they are going to attempt to move in corresponding negotiations so to continue the dance. At all times, you should stay within the original strategy plan and keep on negotiating while recognizing concessions may have to be considered that will result in adjustments of this original strategy plan.

With all the work that is done in preparation for a mediation, a party does not want to be forced to throw in the towel and walk out of a mediation because the so-called negotiation dance is not going according to plan. At that point, all efforts should be undertaken to engage additional discussions with the mediator to facilitate alternatives to overcome a potential negotiation impasse. This may result again in modification of the negotiation strategy plan. However, reaching the bottom line should never be out of focus as that is one of the purposes of the mediation. Being patient with the negotiation will allow the dance to continue if you are still within range of your settlement target.

Conclusion

Using guidelines in the common tort or contract action at mediation can help achieve

resolution for a potential settlement. They can be applied to any more complex case or for any upcoming Mandatory Settlement Conference. These guidelines include (1) being adequately prepared by getting your discovery done well in advance of the scheduled mediation; (2) meeting with your client long before the scheduled mediation in order to fully understand all facts of the case and to confirm settlement strategy; (3) creating a litigation outline that explains the facts regarding an accident or breach of contract with damage claims, including applicable law for any liens, credits, offsets, and mitigation; and (4) have a strategy for the negotiation so that the dance that occurs in the dialogue of the mediation results in achieving the magic number for a resolution of the dispute.

Paul Bielaczyc *is an attorney/mediator with offices in Santa Barbara.*

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PRO BONO HIGHLIGHTS

By Verna R. Kagan

At a recent event, someone asked me what I do for fun. It made me think it might be interesting to know what each of our Emeritus Attorney team members do for fun.

Ray Clayton and **Jerry Cline** attend interesting classes at Cal State Channel Islands. Ray is an active fly fisherman. He serves on the Board of Directors of the Conejo Players and attends concerts of the New West Symphony.

Retirement is a time for travel and our EAs are travelers par excellence. Around the world go **Jerry Cline, Howard Evans,** and **Fred Tschopp**. They have visited Europe, South America and the far East.

Don Greenberg admits to the travel bug but claims his purpose is to visit children and grandchildren.

Byron is his name and golf is his game. **Bryon Lawler**, that is. When not working at the office or managing a case for us, more likely than not you will find him on the golf course. I do not disclose scores.

"I like to bake," Marsha Price told me, " but the real cook around here is Earl." I inquired of **Earl Price** about a favorite dish and he told me about his cabbage soup which he said his grandson devours and then asks for more.

If you have ever been whale watching through the Channel Islands National Park, your docent may have been **Eugene Radding**. During his Monday morning sessions at the office, I will often be told about the numbers and the types of whales seen on the last excursion.

Lastly, I like to bird watch. Nature endows us with beautiful sights to explore and among those are birds of magnificent plumage.

Verna Kagan *is the VLSP Senior Emeritus Attorney.*

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WE READ SO YOU DON'T HAVE TO

What's love got to do with it? Nothing to do with juror bias ruled the Ninth Circuit, even after Juror #9 penned a love letter to the prosecution's star witness following her testimony in a criminal trial.

In the hopes of securing a date with a woman of "sofistication" and a "very 'kind' aura," Juror #9 wrote a lengthy letter of introduction after trial to Special Agent Bridget O'Keeffe. Agent O'Keeffe was a summary witness for the government and testified as to defendants' tax fraud and money laundering schemes in *United States v. Smith,* 2005 Daily Journal DAR 11276, September 14, 2005.

Apparently this impressed Juror #9, who suggested that he and O'Keeffe "get aquianted [sic]" about a month after the jury returned a guilty verdict. Juror #9 fondly remembered that he "purposly [sic] gave you a smile" and noted that it "appeared that you returned a smile back to me." He encouraged O'Keeffe to "send an email" if she didn't find his approach "odd, tastless [sic], or in anyway [sic] out of line."

Not surprisingly, O'Keeffe promptly reported the letter to prosecutors who, in turn, reported the letter to the court and opposing counsel. Two defendants moved for a new trial based on Juror #9's alleged bias.

The trial court denied the request for new trial and an evidentiary hearing on the issue. The Ninth Circuit affirmed. In so ruling, Judge Hawkins wrote that even if Juror #9 "had something of a crush on Agent O'Keeffe, his letter made it clear that he diligently performed his duty as a juror, never speaking to Agent O'Keeffe during the trial, and at most exchanging a smile with her." After all, noted the court, "[i]t is unlikely that any trial goes by without one juror finding one witness nice or attractive. The only unusual thing about this case is that Juror #9 put his feelings in writing."

And with that, CITATIONS leaves the reader with one parting thought: maybe "the office" isn't such a terrible place to meet prospective mates – court now seems like kind of a creepy alternative…

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BYE, LAURA

By Gregory T. May

Laura Bye, Level 3 Library Technician at the Ventura County Law Library, retired last month after 19 years of service. Given how much help she has been to so many lawyers over the years, I thought the occasion merited an interview.

Laura came to Ventura County in 1987 and started working at the law library in 1988. From another library job? Hardly. Though she did work in a children's library to help put herself through college, immediately prior to joining the law library she drove an "18-wheeler" truck on a nightly Los Angeles – Santa Barbara run, complete with a citizens band (CB) radio over which she transmitted under the "handle" of "Midnight Star." Before that, she was a truck stop waitress. A single mother, her nightly run included a stop in Oxnard, where she met a boyfriend who convinced her to move to Ventura County with her 11-year-old daughter.

I thought Laura would tell me about a lot of changes at the law library during her 19-year tenure, but there have been surprisingly few. The library has remained in the same location, in the exact same space. Access was reconfigured several years ago, but most other things have remained the same. The collection "database" remains the old-fashioned, wood-drawer card catalog of a type most of us remember from junior high school. The books are checked out through the use of physical check-out cards removed from a pocket inside the cover, and reservations, overdue notices, and similar notations are maintained by attaching small notes to the book cards with paper clips. All just like 19 years ago.

All of which is just fine by Laura, who's not a big fan of new technology. She eschews reading a computer screen in favor of holding a book in her hand. She lovingly cares for the card catalog, having typed virtually every card added in the last 15 years. (In this endeavor, she makes some small concessions to technology – the typewriter is electric and includes a small amount of memory.)

Laura has enjoyed her library work, and finds "there is always something to do," which suits her fetish for organization. But that love of organization doesn't seem to extend to "newfangled" organizing, and thus it seems particularly appropriate that Laura retires just as the march of technology finds the library implementing an electronic catalog and checkout system utilizing bar codes.

What's next? Laura is moving to live with a very close cousin in a part of Utah so remote there is no phone service, and she and her cousin's link to the outside world is a "bag phone" linked to a Yagi antenna (check Wikipedia for the definition). From that home base, she and her cousin plan to travel.

So Laura, on behalf of myself and the many lawyers you have assisted over the years, let me wish you good luck and wonderful travels.

***Gregory T. May** is a solo practitioner in Ventura, and a member of CITATIONS' editorial board.*

NEW ADMITTEES

Photo by Al Vargas

Justice Paul H. Coffee and Presiding Judge **Colleen Toy White** officiated the VCBA's new attorney swearing-in on June 5, 2007, in courtroom 22.

The new attorneys from this ceremony were: Mary Ankerbrand, Farhaad Azimi, Laura Cota, Jennifer Felten, Carla Hartley, Deborah Jurgensen, Hyung Kim, Jennifer Lee, Lennie Liston, Mandy Liston, Danielle Maestas, Khanh T. Nguyen, Grant Pederson and Josh Tenenbaum. Congratulations to all. You may view video of the administration of the oath at: http://tinyurl.com/2h48g3

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EXEC'S DOT…DOT…DOT…

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

Judge Steven Hintz announced his retirement via an email to the qualified masses with the subject line of: "*My work here is done*." His final day was June 25 and he thanks many, including his bailiff, Bob Quesada, who has labored with him for 25 years. Like enjoying "*Butch Cassidy and the Sundance Kid"* for the umpteenth time, Judge Hintz will be making regular appearances in Superior Court. **Judge Barry Klopfer** will spend his last day on the bench July 29+/-…From Actual Court Records*: Judge*: "Counsel, I am going to ask you that unless you have a throat lozenge, that you not eat candy in the courtroom." *Counsel*: "I have Rolaids." *Judge*: "Rolaids?" *Counsel*: "Consumes forty-seven times its weight in excess stomach acid, and I have stomach acid." *Judge*: "You create some stomach acid on the part of the Court." *Counsel*: "I have two left."…Recommended Web Site of the Month: adamsmithesq.com…5167 people took the February Bar Exam and 1900 passed. That's 36.8%, proving the test is still formidable. Passing rate for first-timers, 53%. Repeater, 30%…

Gabriele Mezger-Lashly is now a citizen of the United States. Sworn in at the LA Convention Center in March, Gabriele was among 4,500 during the afternoon session. Earlier in the day, 3,500 were sworn in. LA honors nearly 100,000 annually. Gabriele came to the U.S. in 1990, passed the bar on her first try, and applied for citizenship in November '06. She also will go by the name of Gabriele Lashly, dropping the hyphenated Mezger…From Roy M. Cohn: "I bring out the worst in my enemies and that's how I get them to defeat themselves."…License Plate of the Month: IAM4ADR on a white Infiniti G35 driven by **A. Marco Turk**, a visiting professor from Cal State Dominguez Hills…From Oliver Wendell Holmes, Jr.: "This is a court of law, young man, not a court of justice."…Fun Fact: The roots of the word *attorney* go back to the Indo-European *ter*, meaning, "to turn." The later Latin *attorn* meant to "turn over to another. The earliest attorneys, then, were not necessarily lawyers, but anyone designated to take the place of another in a transaction…The bar, thanks to **Al Vargas**, now has a presence on YouTube http://tinyurl.com/2h48g3. Check out the Swearing-In ceremonies held June 5th. Good stuff…

In 1974 Ventura College of Law student **Willard Wiksell** clerked for **Ron Harrington**. Now, Willard's son, **Kenneth Wiksell**, is clerking for Ron. That's 33 years, people…Law in the Movies: "My dad hated lawyers. You might think I became one just to piss him off, but you'd be wrong. Did piss him off so much though that when he heard he fell off a ladder and didn't know who to sue first." ***[That's just how he said it. ed.]*** -- Rudy Baylor (Matt Damon), *The Rainmaker*, 1997…**Deirdre Frank** once again, coordinated, managed and administered the Lawyers in the Classroom Program as part of our Law Day festivities. Attorneys from all over the county volunteered and gave presentations to students on such subjects as The Courts and Juveniles, The Constitution, The Supreme Court, Legal Careers, Civil Rights and the First and Fourth Amendments. The participants were **Kevin McVerry, Kevin McCormack, Arnold Gross**, **Joe O'Neill**, **Matt Guasco**, **Allen Ball**, **Ron Bamieh**, **David Karen**, **Tom Hutchinson**, **Rick Chaidez**, and **Monique Hill**…

Over 60 lawyers gathered to honor the three nominees for the VC Trial Lawyer of the Year held May 22. The nominees, **John Howard**, **Dan Palay,** and **Andy Viets**, were honored for their trial efforts during 2006. The VCTLA Board of Directors chose John as the recipient following **David Ellison** from the inaugural dinner held last year. See picture and story in The Daily Journal, May 29 – www.dailyjournal.com. Cruelly, and like Alex Rodriguez in October, our Superior Court judges were no-shows…TV Law: "See ya in court, Simpson. Oh, and bring that evidence with ya; otherwise, I got no case and you'll go scot-free."– Police Chief Wiggum, *The Simpsons*…According to the *NY Times* June 3rd edition: "In the last 100 Supreme Court arguments, **Clarence Thomas** has not uttered a word."…Recommended Reading of the Month: *"Supreme Discomfort: The Divided Soul of Clarence Thomas,"* by Kevin Merida and Michael Fletcher. Doubleday 2007, 432 pages. (www.ebay.com for $17.01 or www.barnes&noble.com for $21.56). Two Washington Post journalists ponder Justice Thomas's extraordinary silence and many other puzzles.

The VC Barristers, led by the capable **Jesse Cahill**, have started what may be the first message board, and we're happy to have you sound off. http://groups.google.com/group/vcba-barristers…From the Boston Globe: "Craig Watkins, a Democrat, made history last November by eking out a second try victory in a Democratic landslide to become Texas's first black district attorney." Watkins runs the Dallas County district attorney's office. Promises to "lock them up if they're guilty" and to change the way his deputies do business. (www.bostonglobe.com) From the *Los Angeles Times*: "I don't want to be like the lions in front of the New York Public Library. A lion's got to roar and I have been muzzled." Quoting Bruce Cutler during the Spector trial.– www.latimes.com–re: 6.12.07…

Susan McCarthy, of counsel with **Arnold, Bleuel, et al.** the last three years, has accepted the position of senior litigator with the firm… Law in the Movies: "It doesn't matter what I believe. It only matters what I can prove. So don't tell me what I know, or don't know! I know the Law!"–Daniel Kaffee (Tom Cruise), *A Few Good Men, 1992*…Noticed in the June Edition of the *California Bar Journal* that 4th grader Mataio Ford of Ventura received Honorable Mention in the State Bar's Kids and the Law essay competition. Mataio was one of 664 fourth and fifth graders to submit…

***Steve Henderson** has been the executive director and chief executive officer of the bar association and its affiliated organizations since November 1990. Henderson's been a fan of King James (not the English and Scottish Ruler, either) for years and had a mild TB case in the '60s. He insists staff will be working July 4th while he parties on the beach. Henderson picked the Spurs and reminds you all why the public loathes the legal system–Two words–Paris Hilton.*

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