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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

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

JUDGE DOUGLAS DAILY 1951 - 2009

PAGE 8

By Eric R. Reed



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PRESIDENT'S MESSAGE

By Tony Strauss

I have always wanted to compare the Code of Hammurabi with Justinian's Code. However, if I do it just now I am sure that **No. 45 (Former President J. Roger Myers)** will completely disassociate himself from my presidency. So I will save that topic for a future edition of CITATIONS. Instead, I am going to give my Mid Year Report.

Your Association has been active. In addition to putting on 64 MCLE classes to keep you up to date and in compliance, assisting 139 less fortunate members of our community through VLSP, referring 1,328 cases to you through LRIS, maintaining and improving the website and keeping you informed through CITATIONS, your Association also sponsors 36 sections and affiliates and numerous ad hoc committees. In case you haven't reviewed the list of late, they include: ADR, Annual Dinner, Asian Bar, Bar Fund Raising, Barristers, Bench-Bar Committee, Black Attorneys, Business Litigation, CITATIONS, Client Relations/Fee Dispute, Court Tour, CPA-Law, Criminal Defense, East County, Employment, Family Law, Family Law Mediation and Arbitration, 5-K Run, Intellectual Property, InnS of Court, Judicial Evaluation, Law Library, Lawyer Referral, Paralegal Association, Legal Professionals Association, Mexican-American, Pro Bono Advisory, Probate & Estate Planning, Public Education, Real Property, Strategic Planning, Trial Lawyers, VLSP and Women Lawyers.

Until I joined the Board, I had no idea that many of these groups even existed. Some of the sections and affiliates are more active than others. However, the fact that they exist at all is made possible by the Association, which provides staffing, logistics, financial control (for most), advertising and promotion.

I asked each affiliate and section to give me an update on what they have been up to during the first half of the year. Not all responded but some gave me a wealth of information. Here is a sampling of what is going on. East County Bar elected a new President, Brett Anderson,

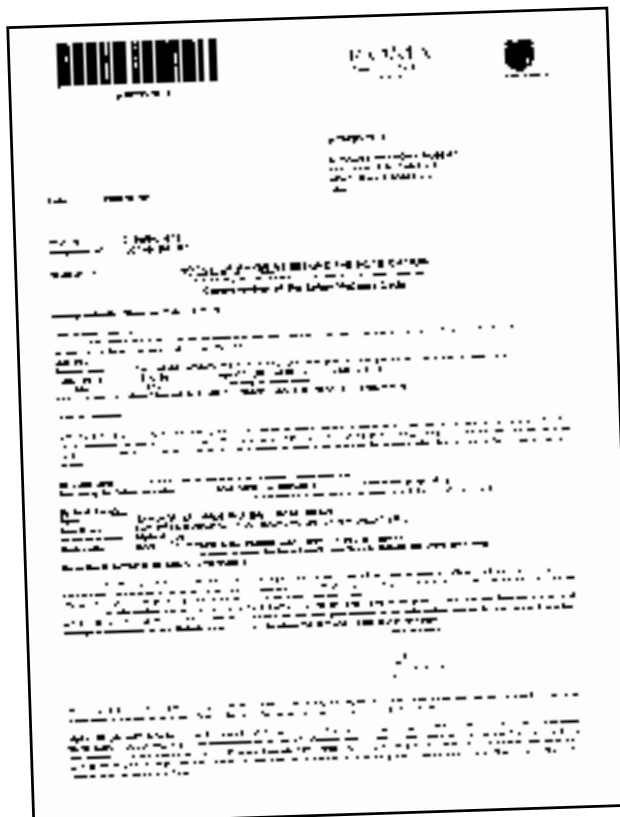
and together with VCBA sponsored an East-West mixer in Newbury Park and held a joint event with CPA-Law Society in Westlake. The Asian Bar installed its new Board with a dynamite keynote speech from Holly Fujie. The Strategic Planning Committee is having regular meetings to consider how the practice of law will be changing over the next 20 years.

The Court Tour Program has been conducting tours and showing its new educational DVD "Who's Who in the Courtroom" at both the Government Center and the East County Courthouse. Unfortunately, due to budget cuts, tours for students at public schools have declined. The Judicial Evaluation Committee adopted new rules after countless hours of meetings over a one and one-half year period. The Ventura County Bar Association's chapter of the American Inns of Court, named after former Judge Jerome H. Berenson, completed its 14th year with a full complement of 80 members. This year, the members included many notable members of our judiciary, (the **Honorable Walsh, Long, Cody and Hirsch**) as well as four local law students and there is a waiting list for next year. This year's

5-K run was the most successful to date with over 550 participants and 429 runners raising over \$9,000.

Most active however have been Barristers. Bowling Night (coming up July 9), Dart Night, Third Thirsty Thursday and the basketball tournament have become fixtures to go along with Judge's Pizza Night, the Wine and Cheese event at Lascher & Lascher and Bridging the Gap. The Barristers have worked with Habitat for Humanity in constructing a house in Santa Paula and plan on having a winter fundraiser to buy coats for needy children. The basketball tournament this year is set for October 3 and will be put on in conjunction with the Ventura YMCA as a fund raiser for both organizations. Barristers hopes that over 30 teams, lawyers and laypersons alike, will participate. (I hear from a reliable source that they are going to begin asking firms to sponsor the event.) The Barristers also have a Facebook page, only the second of its type in the United States.

The list goes on. In addition to the daily routine of practice, our colleagues are giving of their time, talent and treasure to make our profession and our community better. I am proud to practice among you all.



Tony Strauss is the principal of Strauss Law Group in Ventura. He practices employment law and employment, business and real estate litigation with his son Mike and colleague Bruce Crary.

Footnote: Subsequent to my May article expressing the rationalization for my fixation with all things Italian, I received the pictured Notice of Citation from the City of Roma for an alleged traffic offence on the Via Vittorio Veneto in 2007 and a similar one for another alleged incident on the Via Tomacelli minutes later, fining me 106.25 euros for each occurrence. I am rethinking the Italian connection. I have never been fined in Lichtenstein.

COURT CHANGES BUSINESS HOURS

Effective July 1, 2009, the clerks' offices will be closing at 4:00 pm with the exception of jury services and collections. Phone hours will be from 8:00-11:30 a.m. and 1:30-4:00 p.m.

Drop boxes will be provided outside of the clerks' offices at all court locations, and documents placed in the boxes by 5:00 p.m. will be deemed deposited for filing that same business day.

An exterior walk-up window on the north side of the building near lots A, B, and C at the Government Center will be open until 7:00 p.m. for handling criminal/traffic and collections matters.

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Letter to Ventura County Bar Association Responding to the State Budget Crisis: Impact on the Ventura Superior Court

By Presiding Judge Kevin McGee and Court Executive Officer Michael Planet

The budget crisis facing the state of California has been and will continue to be front page news for the foreseeable future. We have all read about the impact of budget reductions on nearly every state and local government service, from programs for the elderly and the disabled to education; from healthcare to parks and recreation. The judicial branch has not been shielded from budget reductions. The Ventura Superior Court is facing and responding to the challenge of how to meet the demand for court services in the face of major budget cuts.

The extent of the budget crisis and how long it will last is a moving target. As we write today, representatives of the Administrative Office of the Courts are testifying before legislative committees about the impact of the budget reductions on the judicial branch. The picture is very unclear, yet

we know that we must act now based on the current information. Taking action now gives us the best chance of dealing with an uncertain future.

What we do know is that the Ventura Superior Court currently has a \$2.1 million reduction for the 2008-09 fiscal year, and is facing an additional \$3.2 million reduction in the fiscal year that starts this month. When added together, these reductions amount to almost 10% of our total budget. About \$1.2 million of those reductions is in court security funding. We do not know whether these reductions are one-time or permanent, or whether the judicial branch will be handed additional budget cuts. Nor do we know whether, or when, there will be legislation to close the courts statewide. Finally, while our budget planning anticipates a down cycle through the 2011-12 fiscal year, no one really knows when California will emerge from it.

Through all of our budget planning, the Court has focused on five major principles: keep 33 courtrooms in daily operation; maintain access for the public to Court services and programs to the extent possible; preserve the jobs of existing Court staff; continue to prioritize the professional development and growth of staff; and, maintain our leadership in the California Case Management System program. In order to address known budget reductions while honoring these principles, the Court has initiated the following steps:

- Extend the current hiring freeze of approximately 22 positions.
- Reduce services by one (1) hour at the Clerk's Office counters and other selected locations effective July 1 to allow court staff time to work on backlogs caused by not filling vacant positions and the elimination of overtime.



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- Implement \$1.6 million in reductions of supplies, services, equipment and travel.
- Initiate negotiations with the unions representing court staff to discuss the impact of cost savings reductions, including furloughs.
- Open discussions with the Sheriff's Office to discuss the impact of security budget reductions.

The Court may need to take further actions to deal with the budget crisis before us. We hope not. The last thing that the judicial officers and staff of the Court want to do is reduce access to the Court. It is contrary to our commitment to the effective administration of justice, and everything this Court stands for when it comes to access.

The Ventura Superior Court has long benefitted from the support and commitment of the Ventura County Bar. This relationship becomes even more important as we steer through the next several years of tough budget times. Your suggestions are welcome. More importantly, making your support for a strong, independent judicial branch, and for access to justice known to the Governor and Legislature will send a strong message, one that needs to be heard loud and clear.

We thank you for your understanding and support.

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ONE FRIEND'S MEMORY

By Eric Reed

Vincent Mata hailed from South Central Los Angeles and by age 30 had been injecting heroin half of his life. He was a gang-banger. And he didn't want to go to jail. He had one option in the mid-1970's, the days before "rehab" joined the pop lexicon: check into Camarillo State Hospital and wean himself from the behavior that would otherwise soon kill him.

Mata did. "When the program was about to end, a red-haired attorney assigned to the program asked me whether I was *really* serious about staying clean. I said yes. I was sick of it all," Mata explained, with palpable disdain for his old lifestyle. "He then told me to join him at a 'funny meeting' which turned out to be a Narcotics Anonymous gathering in a Boy Scout den on C Street in Oxnard."

Mata cannot remember the name of the red-haired attorney. But he does remember another young man singling him out and introducing himself jovially at that meeting. Law student **Doug Daily**, five years his junior, thrust his hand into Mata's. "The next day he picked me up and took me to an NA meeting in Santa Barbara. Then an AA meeting back in Oxnard the day after that. Over and over. He even bought me meals. I hardly knew him and I still don't know why he did this."

Daily encouraged the recovering addict to indulge his creative impulses. Mata loved photography, and Daily asked him to snap portraits of Daily's young family next to Ventura's old courthouse. "That is the day I told myself that I could turn my life around if I took one step at a time. I became involved in the movie industry, joined the Cinematographers Guild, and eventually worked with Frankenheimer, Spielberg – everyone. Now I represent my fellow workers as a business representative at the Guild. Because of Doug."

Mata wept when he read of Daily's death from pancreatic cancer on May 2 at 58. "I don't think he ever knew what he did for me. I never got the chance to thank him. I was blown away and I just cried."

JUDGE DOUGLAS DAILY 1951-2009

By Eric Reed

CITATIONS originally asked me to write a judicial profile of **Judge Douglas Daily**. I looked forward to connecting with one of the newest members of Ventura County's bench, a man who evoked superlatives from colleagues and opposing counsel at the subtlest provocation. Sadly, my assignment changed from profile to retrospective.

Home-grown Talent

Daily never strayed far from home: He attended Oxnard High School and Moopark College, then USC and Loyola Law School. In 1980 he began a 23-year career with the Ventura County Public Defender's Office.

"I can count on one hand the number of people I know who are liked and respected by nearly everyone. I am proud to have known such a man."

– Anonymous post on an internet bulletin board, remembering the late Judge Douglas Daily.

This is how former Public Defender **Ken Clayman** remembers him: "I came to Ventura in 1984, and I find Doug already trying entire cases. And I'm not saying that public defenders have it harder than other lawyers, but these were the most difficult, draining cases. Dealing with people's lives *every day*. And he did it with the signature Doug Daily aplomb. He always managed to maintain the respect of his opponents and his office mates loved him."

"When we look back on the those who have passed away, let's admit it – we tend to exaggerate their best qualities," Clayman continues. "Not with Doug. Looking back, it is absolutely clear that Doug was a splendid, exceptional person."

A newly-minted Deputy Public Defender in 1986, **Assistant Public Defender Steve Lipson** remembers that he and Daily "hit it off immediately; we were both interested in good music, betting on horses, and criminal law – in that order."

The relationship deepened and it was Lipson

whom Daily asked to speak at his enrobement as a Superior Court judge in August 2007. Lipson delivered a much more somber message less than two years later, when he eulogized Daily at a Camarillo memorial service attended by hundreds of friends, family, colleagues and musicians.

Promoted from Within

Daily left fingerprints in every department of the Public Defender's office. Over the course of three decades he handled major felony trials, juvenile dependency, mental health, writs and appeals, and even child support matters. He rose to Senior Deputy Public Defender in 1990. The Ventura County Criminal Defense Bar honored him as "Attorney of the Year" in 1998.

Daily's next promotion was perhaps the most flattering. The judges of the Ventura Superior Court selected him to replace Commissioner William Liebmann only a day after Liebmann's elevation to a judgeship in March 2003. Daily's objectivity and knowledge impressed colleagues and counsel immediately.

"Doug was a merit appointment," Clayman asserts. "He was not a political mover and shaker. After all those years I never found out his party affiliation. But as a Public Defender, you're not on the pathway to the bench. Judges are generally a law and order group – and they appointed Doug as commissioner anyway. And he displayed enough competence to convince a Republican governor to elevate him to the bench [in 2007]. In my 30 years as a public defender I rarely saw that happen."

His short time on the bench did not lack publicity. He presided over the notorious Marmo murder trial, in which prosecutors accused a Seabee of killing her ex-husband with the help of another sailor. Daily also made the controversial decision to allow prosecutors to try 14 year-old Brandon McInerney as an adult for the execution-style shooting of classmate Lawrence King in February 2008. The case had by then become a locus for activists nationwide who identified the shooting as resulting from the victim's open homosexuality.

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The Honorable Troubadour

Daily's humility belied his musical talent. A veteran guitarist, he routinely shared the stage with the great Albert Lee and twice played the Hollywood Bowl. He recorded two CDs with his band, Dynamo Jump. Daily's son Travis confided to mourners at his memorial service that his father would want to be known as a musician first.

"For years the highlight of the PD Christmas party was hearing Doug jam with whatever band he could throw together," Lipson told me. "Once he strapped his Stratocaster over his shoulder, Doug was transformed from a mild-mannered Public Defender to a salty, soulful bluesman."

Travis's choices of vocation and hobby tellingly reflect his father's priorities. He too serves as a Deputy Public Defender and rivalled his father on guitar — even filling in with Dynamo Jump when the Judge grew ill. A more sincere tribute to one's parent does not exist.

The Legacy

Just weeks before his death the Oxnard Knights of Columbus selected Daily as the recipient of its 2009 Public Safety Award, given to a law enforcement officer, firefighter or judge dedicated to protecting their community. At that time, **Presiding Judge Kevin McGee** commented:

"Judge Daily is truly one of the most outstanding jurists on our court. He is widely known for his fairness and courtesy to all parties and counsel; his calm and reflective demeanor; his keen intellect; and his commitment to the cause of justice. We, his colleagues, are honored to serve with a person of such ability."

CITATIONS and the bar have lost a remarkable jurist; Ventura County a great musician; his friends and family a fine man.

Eric Reed is an associate at Lascher & Lascher and a member of the CITATIONS Editorial Board.

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SAVE THE DATE: TEMPORARY JUDGE TRAINING

Temporary judge training must be updated and completed every three years. A majority of the Ventura Superior Court's temporary judges completed trainings in September 2006.

New training for current temporary judges and any other attorney who is interested in becoming a temporary judge will be offered in the Fall 2009. A course in Bench Conduct and Demeanor will be offered on September 10, 2009 from 2-5 p.m. and will be repeated on November 19, 2009 from 2-5 p.m. The Court will also offer a course in Judicial Ethics on September 24, 2009 from 2-5 p.m. Each of these will take place in Courtroom 22. The Judicial Ethics course may instead be completed on-line at <http://www2.courtinfo.ca.gov/protem/>.

Additional information and registration will be available next month. General questions may be e-mailed to Brenda L. McCormick, Court Managing Attorney, at brenda.mccormick@ventura.courts.ca.gov.



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WHEN DISABILITY COVERAGE IS AT ISSUE, TIME IS OF THE ESSENCE

By Mark E. Hancock

Many people wait too long before hiring an attorney, either because they hope the matter will resolve itself, or because they hope to save money. Waiting too long to see an attorney may, ironically, increase the client's expenses and reduce the client's options. This is particularly true with regard to disability coverage under private plans and policies. The client should see an attorney as soon as issues arise, and attorneys who aren't experienced with such matters should refer the client to one who is. Following are some of the reasons why expedient, experienced help is essential.

First, how insurance companies and plans determine "disability" is often misunderstood. A doctor's opinion that a person is disabled is not determinative for insurance purposes. Establishing disability additionally involves vocational and other considerations. Insurance companies are not necessarily required to accept the opinion of a treating doctor, without more.

Vocationally, a disability determination may depend on what type of policy the client holds. If the client has an "own occupation" policy, an attorney needs to identify the material duties of the client's job. If the client has an "any occupation" policy, an attorney needs to identify the material duties of "any" jobs for which the client has transferable skills and for which he or she is reasonably suited by age, education, training and experience. It is important to be aware that some policies start out as "own occupation" policies, but change to "any occupation" policies over time, often two years. Moreover, "any occupation" does not mean "any" job.

Jobs are grossly classified into categories such as sedentary, very heavy, or points in between. There are physical requirements for each category. Employer job descriptions are relevant and useful in determining the client's duties and physical job requirements. The U.S. government-compiled Dictionary

of Occupational Titles ("DOT") lists general duties required of various occupations. The assistance of a vocational consultant may also prove invaluable.

Medically, a doctor's letter merely stating an opinion that the person "is disabled" is insufficient. To establish disability, medical professionals must address whether the person is capable of performing the material duties and requirements of the patient's occupation, corresponding to whether the policy designates "own occupation" or "any occupation." The medical professional should note all symptoms, physical and/or mental problems, diagnoses, restrictions and limitations. Next, the medical professional should compare the person's resultant physical or mental restrictions and limitations to either the job requirements of the patient's own occupation, or to the requirements of those occupations for which that person is suited by age, education, training and experience. As just a few examples, medical professionals might need to establish whether the person can lift the required number of pounds, sit the required number of hours, drive long distances, see well enough, and/or whether the person possesses the required manual dexterity.

The determination of whether or not a person is disabled may also involve consideration of the earnings of those other jobs, whether such jobs are actually available in the area, and/or whether anyone would actually hire the person for one of them. Policies and plans sometimes add twists as to how the term, "totally disabled" is defined, what it means and who qualifies. Such policies and plans must be read carefully by an attorney competent to analyze and best present a person's case for disability benefits.

Second, many insurance policies and plans provide for an administrative appeal of any denial or termination of benefits. Internal appeal or arbitration prior to filing a lawsuit may be required pursuant to contract, ERISA, or other law. If the client hasn't already hired an attorney, he or she should hire one immediately after the denial, in

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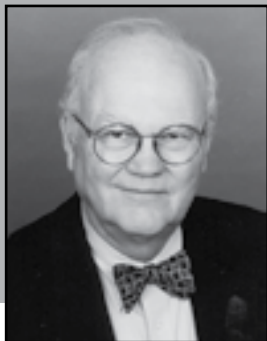
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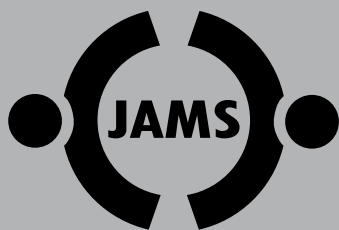
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WHEN DISABILITY COVERAGE IS AT ISSUE, TIME IS OF THE ESSENCE

Continued from page 11

order to prepare and present an appeal. A good appeal may result in a reversal of the denial and the payment of benefits, without a costly lawsuit.

Third, and most important, be aware that ERISA-governed claims contain many surprises. For example, the standard of judicial review in an ERISA-based challenge may be more deferential to the plan administrator. In other words, a lawsuit may not be decided based on whether the client deserves benefits under the plan or policy, but instead on whether the claims reviewer's denial was so clearly erroneous as to be an abuse of discretion.

In an ERISA-governed lawsuit, another unpleasant surprise is that admissible evidence may only consist of the "administrative record," i.e., those records in front of the claims reviewer at the time that the reviewer denied the appeal. If the client hires a lawyer after the appeal is denied, the lawyer may not even be able to introduce new and/or additional medical and/or vocational evidence into the administrative record. Ironically, the absence of a good record may make it harder to find an attorney and more costly to litigate.

Competent representation at the time of the internal appeal is crucial, as that may be the only chance to make a good record and obtain benefits without a lawsuit. There are time limits—often 180 days—on how long the client has to pursue an appeal after an initial denial. The time to see a lawyer in a disability coverage case is early and definitely no later than the initial denial, when the client still has time to appeal. If the client only seeks advice after having completed the appeal, it is critical to read the relevant policy or plan to determine how long the client has to sue without being time-barred.

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Mark E. Hancock is an attorney with offices in Ventura. He handles claims for long term disability benefits under private plans and policies, along with other insurance, personal injury and real estate matters.



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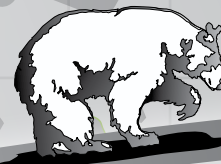
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JAMES PROCTER HONORED AS VCTLA'S TRIAL LAWYER OF THE YEAR

By Bill Grewe

Photos courtesy of Craig Bates and Telegenics



The Ventura County Trial Lawyers Association presented its Trial Lawyer of the year Award to **James Procter** at its May dinner meeting. The award, recognizing civil trial achievement coupled with a commitment to a high ethical standard, is given annually to a member of the organization. Jim Procter is the fourth recipient of the honor.

In 2008 Jim tried three cases to verdict representing the defendant in each. He attempted in each to resolve the case before trial through mediation, mandatory settlement conference or both, under terms which represented a compromise but protected his clients from significant exposure.

In one of the cases, Jim's client received a defense verdict after the plaintiff rejected a \$75,000 offer. In another, the verdict was nearly two-thirds below the final demand. In the third, his client received a defense verdict after a statutory offer was rejected.

Jim has practiced law in Ventura County for over 25 years. He has a reputation as a tough litigator who is fair, ethical, cordial and never tires. As a founder of what is now Procter, Slaughter & Reagan, he has, by example, set a tone and standard of top notch advocacy for the 20 attorneys in the firm.

Speaking in front of family, partners, associates, co-workers and colleagues, Jim said that he considered his opportunity to practice law an honor, more than he had ever expected. He credited his success to the attorneys and staff who work with him, and he thanked his family for their support. Taken aback by the award, Jim said he was honored to be included with his fellow nominees: **Matthew Haffner, Jim**



McDermott, Jon Light, Alan Templeman, and Dean Hazard.

VCTLA is the only chapter of Consumer Attorneys of California open to attorneys whether they represent predominantly plaintiffs or defendants. Jim is the first litigator to receive the annual award for work done from the defense chair. The President of Consumer Attorneys, Christine Spagnoli, also presented Jim with an award from

the statewide group during the May dinner.

The annual Trial Lawyer of the Year award will be presented again next spring for 2009 achievements. The Board of VCTLA relies upon attorneys throughout the county to nominate colleagues, well known or little known, who are deserving of recognition. Nominations open in April 2010.

Bill Grewe practices civil litigation in Oxnard.

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PRO-BONO HIGHLIGHTS

By Verna R. Kagan

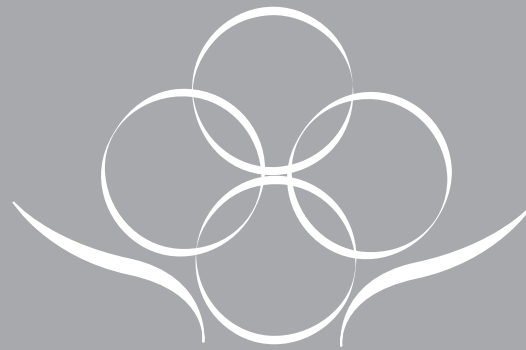
One only has to sit at my desk and listen to the stories from our applicants about their credit card debt to know the relief we felt that at least some movement has been made to assist credit card holders. I used to be astonished at stories about sudden dramatic increases in interest rates, added-on fees, accelerated payment schedules, etc. Finally, the card holder would fall so far behind and so deep in debt as to never be able to climb out. By the way, these were not people unwilling to pay their bills. Nor were they people who would spend wildly without thought about the indebtedness they were accumulating. These were people who were paying their bills on a regular monthly basis. Their only fault was that sometimes they made partial payments.

Under newly enacted rules, it will be easier to help them and maybe keep their financial heads above water, so you might be thinking that I should be ready to rejoice. Not so fast.

Attached to the bill that put some skids on credit card companies was an amendment. This amendment included a provision that will allow visitors to our national parks and wildlife refuges to carry LOADED guns. Those of you who have followed some of my columns know that I am a user of such facilities. It does not please me to know that people using the same trails, who are supposedly there for the same purposes as I am are carrying loaded weapons.

I often advise attorneys caught up in the tensions of an active practice to release that tension by visiting our natural areas. Parks are mandated to be pristine, to give sanctuary to wildlife and to point out interesting geological conditions. So forget laptops and cell phones and just enjoy the scenic beauty, the birds, the animals and most of all, removal from everyday life. As my husband says, on our visits we get a pass to nature's theaters and to be an appreciative audience.

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Are we instead to turn parks rangers into police officers instead of naturalist/teachers? Is mayhem now going to be the byword instead of the peaceful and quiet enjoyment of parks?

So now we have a scrambled contribution to a pro bono highlights article. However, don't blame me. This article is no more scrambled than the bill that inspired it.

Verna Kagan is VLSP Senior Emeritus Attorney

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DON'T BE THAT GUY

By Andrew Caple Shaw

*We've all heard graduation speeches. Everyone loved the apocryphal Kurt Vonnegut "Wear sunscreen" speech actually written (according to Snopes.com) by Chicago Tribune writer Mary Schmich. But interesting and different approaches in actual graduation speeches are hard to come by. CITATIONS thanks **Kate Neiswender** for providing this one, by Southwestern Law School 2009 graduate Andrew Caple Shaw.*

Members of the class of 2009, you are seconds away from having a doctorate; a doctorate of jurisprudence. Of course, no one will call you "doctor." PhD's in particular will get really touchy if you try and put it on your letterhead. Really the best you can do in terms of a title is the suffix "esquire," which for me always conjures up images of Bill and Ted's Excellent Adventure or Monty Python and the Quest for the Holy Grail. But the truth of the matter is it will be a doctorate. In achieving it, you will become custodians of a centuries-old tradition, a tradition of striving for and preserving justice. And as you set out on your journey into the legal profession, that tradition asks only one thing of you... that you not screw it up. That you not become a living, breathing lawyer joke. Crazy as it may seem, because of what this degree has given you, because of how it has shaped you, that's probably gonna be a lot harder than you think.

Allow me to be more specific...

During my time here at Southwestern, I had the pleasure of studying under an individual who I have to say was one of my favorite people ever to hold a California bar card. He wouldn't let people call him a lawyer. He insisted that he hated most lawyers. He was a prosecutor. When he was on campus he was known to wear a t-shirt with a quote from Shakespeare's Henry VI that I think all lawyers have come to know: "The first thing we do, lets kill all the lawyers." But despite this guy's t-shirt and his colorful critique of many of his colleagues in the legal profession, he still woke up every day, trekked down to courthouse, and went to work practicing law, prosecuting one gang crime and one gun crime at a time.

"The first thing we do, lets kill all the lawyers."

For those who may not be familiar with it, it is the original lawyer joke of the English language and some would say it's still the best. It is every lawyer joke – crooked lawyer jokes, bureaucrat lawyer jokes, idiot lawyer jokes – all rolled into nine simple words: "First thing we do, let's kill all the lawyers." When I went to go look up the exact passage from the play, I discovered something interesting. If you type the words "kill all" into a Google search, the computer does that little auto-complete thing where it tells you before you finish typing what it thinks you are going to look for based on what other people have looked for. For the words "kill all," "lawyers" produces the second highest number of results. In a world full of international terrorism and hunting enthusiasts, we're #2. For those of you who are wondering, the biggest hit for the term "kill all," and only slightly above lawyers... zombies.

So why is it that people hate us so much? I mean ZOMBIES? Really? Zombies? Where does the joke come from? Why is it funny?

It's funny for the same reason all jokes are funny, the same reason the Three Stooges are funny or that You Tube video of the guy getting whacked between the legs with a wiffle ball bat is absolutely hilarious. Laughter is how we deal with pain... and painful truths. My prosecutor friend wore that t-shirt and laughed about it because deep down he cared, and laughing was his way of dealing with a world where not all lawyers were even trying to live up to what he believed in when he signed up for the job. The joke is funny because there is a sense, and has been for at least 500 years, that lawyers have a manipulative power that they don't always use for good... that they often use that power short-sightedly, or for their own selfish gain.

Many of you soon-to-be graduates know exactly what I am talking about because you have felt yourself using it. It's the first step down that path to turning into the lawyer joke lawyer. Those that don't think you have, just ask your family, or especially a husband, wife, boyfriend or girlfriend. Ask them how

many times they have felt "lawyered" since you got here.

Suddenly you are winning arguments you have absolutely no business winning just because you've figured out how to twist the rules. I'll give you an example: "Honey, the milk's gone bad and I asked you to pick up more. Why didn't you?" Lay person just says "I'm sorry." Slightly craftier lay person or lay person who has been married a little longer says "must be something wrong with the cell phone, I didn't get your message. The voicemail is doing that thing again, you know that thing..." Lawyer says, "I think the real question is why haven't they come up with milk that lasts longer than two weeks. In Europe, they have preservatives that let them keep milk warm on a shelf for MONTHS!" Suddenly, your girlfriend is on your side cursing agribusiness and the FDA for the fact you have to make your Kraft macaroni and cheese with an absolutely disgusting mix of butter and water. Not that this is a personal story of course.

Another example: You get into a fender bender, the other guy says "How come you weren't looking where you were going!" Lay person just screams back, "How come you weren't looking where YOU were going!" Lawyer says calmly, "I think the real question is why are you lying to me already? How can you have been looking where you were going and still paid so close attention to where I was or wasn't looking?"

Like it or not, the legal education gives us this power to manipulate reason. That skill is good from the kitchen table to the used car lot all the way up to corporate boardrooms, legislatures, and supreme courts. As to how we use it in each of those situations, that's up to us. Each of us can be one of the good guys, or be the guy behind the lawyer joke. But make no mistake, it's a serious power.

Let me give you some perspective. 70% of our Presidents, Vice Presidents, and Cabinet Members in the last century have been lawyers and almost six in ten current Senators have law degrees. Lawyers, more than anyone, exercise an overwhelming degree of power in our society and in our world. Lawyers control the largest and most destructive

military force in the history of mankind. As administrators of infrastructure and land management, we quite literally have the power to move mountains. In a rapidly changing information age, the lawyer's ability to process information and use it to his or her advantage is the most raw and most limitless form of power. It is a power to lift people up and a power to tear people down. It is the power to build and the power to destroy. It is the power to make the world a better place. It is also the power to drive your Match.com profile hits through the roof, because as we all know it is the power to make yourself ridiculously, filthy stinking rich.

This power is rooted in a new way of looking at the world. We are now entrusted with a timeless and priceless gift. And it's an awesome, awesome gift. But it doesn't come with instructions. How we use it is up to us. This is where we as lawyers have a way of blowing it big time. We question and we analyze everything except our own reasons and methods for doing what we are doing. We don't IRAC what we see in the mirror.

So as each of us moves forward in our careers, we have to continue to ask "why?" Issue spot ourselves. Not just blindly go for the bar and the firm and paying off the loans and buying the Benz. If you want to be filthy stinking rich, that's OK. Ask anybody who has benefited from the Carnegie Endowment or the Gates Trust and they will tell you that people who set out to do nothing more than get filthy stinking rich have done some amazing things in this world. But if that is what you are going to do, identify that as the issue, make sure you set some rules for yourself, do some analysis on why you made that choice, then move forward based on sensible conclusions. If each of us does that for the big picture, we won't screw it up. That tradition will be safe in our hands. Enough of us do it, maybe after 500 years our generation can finally start to turn this profession's reputation around.

One last thought. That quote, "kill all the lawyers" from Henry VI, while totally intended as a cheap shot and a punch-line, becomes interesting when you look at it

Continued on page 20



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DON'T BE THAT GUY

Continued from page 20

in context. It is uttered by a thug to his henchmen. The thug is part way through a murderous overthrow of the government in an attempt to install himself as king and rule absolutely. His first step in achieving power in this bloody takeover... he knows he has to silence any reasonable and intelligent opposition. To stay on top, he has to eliminate all immediate threats to his power, all voices for truth that might empower those he seeks to subjugate. So what does he say to his throatcutters? "The first thing we do, we gotta kill the lawyers".

We have the power to inspire. We have the power to build and create. We have the power to empower others. We also have the power to be the kind of people that our fellow citizens want to shoot more than anything on this planet... except of course... you know... zombies.

As the great poet-jurist Oliver Wendell Holmes never said (because he was a great poet-jurist and had little in common with this guy I used to know from a warehouse job back in Texas who drank a lot early in the day and then gave out advice nobody really asked him for), "Don't be that guy. You know that guy? Don't be him. Seriously, don't be THAT guy." Be one of the good ones. Be one of the GREAT ones. Think back to whatever it was that made you decide to put yourself through these last few years in the first place... and GO DO THAT.

Congratulations.

Andrew Caple Shaw was National Champion Trial Advocate at Southwestern, where he earned his JD in 2009. He sits for the Bar in February. A professional performer for over 20 years, he holds numerous positions in entertainment labor, including a seat on the National Strategy Cabinet of AFTRA. He also works as a freelance speechwriter and public speaking consultant.



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- *Member of The American Immigration Lawyers Association
- *Member of The National Lawyers Guild
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License Plate of the Month: LAW BENZ on the rear of a Mercedes C230 and piloted by **George Benz**...From California Governor **Arnold Schwarzenegger** on California Assemblywoman Bonnie Garcia, the lone Latina Republican in the Legislature: "She's either Puerto Rican, or the same thing as Cuban, I mean they are all very hot. They have the, you know, part of the black blood in them and part of the Latino blood in them that together makes it."...NCHC's **Nancy Schreiner** has been appointed to the executive committee of the Public Law Section for the State Bar. Nancy's three-year term begins in September. **Joel Mark** is the current Presiding Arbitrator for State Bar Standing Committee on Mandatory Fee Arbitration...

Sam Gasowski became a first time daddy May 21 at 5:43 p.m. Otto Edward weighed 8 lbs. 5 oz. and was 21.25 inches long. Momma Susan doing well too...Quote of the Month from Mariah Carey: "Whenever I watch TV and see those poor starving children all over the world, I can't help but cry. I mean I love to be skinny like that, but not with all those flies and death and stuff."...**Ron Perry**, Oxnard CRLA attorney extraordinaire and executive director, was one of nine Outstanding Individuals honored by Legal Aid of Santa Barbara, recently celebrating 50 years of service to the community of Santa Barbara. To find out more about the Legal Aid Foundation go to www.lafsb.org...

Deirdre Frank just managed for the umpteenth time the Lawyers in the Classroom program celebrating Law Day 2009.

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

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

13 schools had lawyers do presentations and those lawyers including Frank were: **Jill Singer, Miles Lang, Joe O'Neill, Mark Pachowicz, Erik Feingold, Allen Ball, David Shain, Panda Kroll, Deborah Jurgensen, Barbara Macri-Ortiz, Matt Guasco, and Kevin McVerry**. Topics included the First Amendment, the Supreme Court, legal careers, criminal v. civil courts and the jury system...From Justice Clarence Thomas, at a lecture to Holy Cross College students in 2002: "I really don't want to be a judge. I don't want to be judged. I don't like judging other people."...Just 33.5 percent of the would-be lawyers who took the February bar examination passed, down from the 40% pass rate of a year ago...Mark your calendars – The Ventura County Mexican American Bar Association has scheduled their annual Scholarship dinner for October 30...

The 1st Annual Peer Mediation Jamboree organized by the Ventura Center for Dispute Settlement in conjunction with the bar was held in late May. Hats off to the following lawyers who mentored dozens of children: **Ron Harrington, David Karen, Mark Kirwin, Hal Kyle, Debbie Jurgensen, Ellen Hirvela Russell, and Jim Lingl**... Along with prosecuting terrorists, racketeers, and drug traffickers, the Department of Justice is seeking to combat another kind of pernicious criminality: felony elevator urinating. A Michigan man was named May 26 in a U.S. District Court complaint charging him with urinating in the freight elevator of an IRS building in Detroit. According to the document, Michael Hicks relieved himself in the lift on numerous occasions in late 2007 (to catch the urinator, a federal agent installed surveillance cameras in two freight elevators). When confronted by the investigator, Hicks, then an IRS contract employee, admitted to frequently urinating in one of the elevators. He stated he did this "because he felt he could get away with it." www.the-smokinggun.com/archive/years/2009...

The FBI is coming! The FBI is coming!! The Probate and Estate Planning Section is hosting a luncheon July 30 entitled "FBI:

Identity Theft." Agent Debra Deem is the speaker. www.vcba.org to register...In an opinion peppered with golf references and a quote from "Caddyshack" star Bill Murray, a federal magistrate has recommended the dismissal of a lawsuit brought by Rudolph Giuliani's son over his booting from Duke University's varsity golf team. Dismissing one Giuliani claim, Magistrate Judge Wallace Dixon wrote that the misplaced argument "brings to mind Carl Spackler's analysis" from "Caddyshack": "He's on his hole. He's about 455 yards away, he's gonna hit about a 2 iron, I think."...From Conan O'Brien on his new Los Angeles studio: "They've built us a beautiful studio here in Los Angeles. This studio holds 380 people. It's exactly like being at a Clippers game."...On July 9, the Barristers will be holding their annual Bowling Night at the Ventura Bowling Center – huge fun for the entire family and check out the enclosed flyer or email dgoldwater@fcoplav.com...

The 2009-2010 campaign of the Jerome H. Berenson Inn of Court is organizing with the first meeting September 11. This is your chance to join and heed the special calling located within the flyer contained herein (sometimes I sound so lawyerly). President **Alyse Lazar** stresses you get your application in early as only so few openings will occur... **Ron Hartman** has a letter to the editor in the June issue of the *California Bar Journal* regarding the employee at the State Bar embezzling \$675,000...**Mike Powers** has joined the board of directors of the Ventura County American Red Cross...

Steve Henderson has been the executive director and chief executive officer of the bar association and its affiliated organizations since November 1990. His Dodgers are right where he expected them to be at this point in the season. His oldest son, Sean, turns 17 on the 15th and is trekking with some pals to Armenia for nearly three weeks – oy. The young man also has to go to Paris in August. Henderson also had the Lakers in 5 securing some serious coin and beverage.

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