



FBA Sacramento News & Notes

A periodic publication of the Sacramento Chapter of the Federal Bar Association

Summer 2014

Sacramento FBA Judicial and Member Mixer Honoring Past Presidents in Judge Callahan's Chambers



Ninth Circuit Judge Connie Callahan displaying her new chocolate high heel from FBA Sacramento. Enjoy more photographs from this event on page 14 of this issue.

Comments from the President

By Bre Moebius



I am honored to serve as your 2014 President of the Sacramento Chapter of the Federal Bar Association ("FBA") and am excited for the year ahead. As your President, I am committed to ensuring that your FBA membership provides value to you. Whether it is the opportunity to talk with judges and federal practitioners in an informal setting at mixers or the ability to attend meaningful educational programs at a nominal cost, our Board continues to examine how to transform your dues into a tangible benefit for you.

We kicked off the year with our annual Election Mixer at Il Fornaio and were thankful to be joined by Chief Judge England, Senior Judge Shubb, Magistrate Judge Drozd, and Magistrate Judge Brennan. We also had the opportunity at the mixer to recognize Meghan Baker for her dedication and contributions in leading our Chapter last year.

This past month, Ninth Circuit Judge Connie Callahan hosted our Judicial and Member Mixer Recognizing Past FBA Presidents. We also celebrated the birthdays of Judge Shubb and Judge Karlton, with a memorable "name-removal" from the birthday cake by Chief Judge England of another judge (who will remain unnamed).

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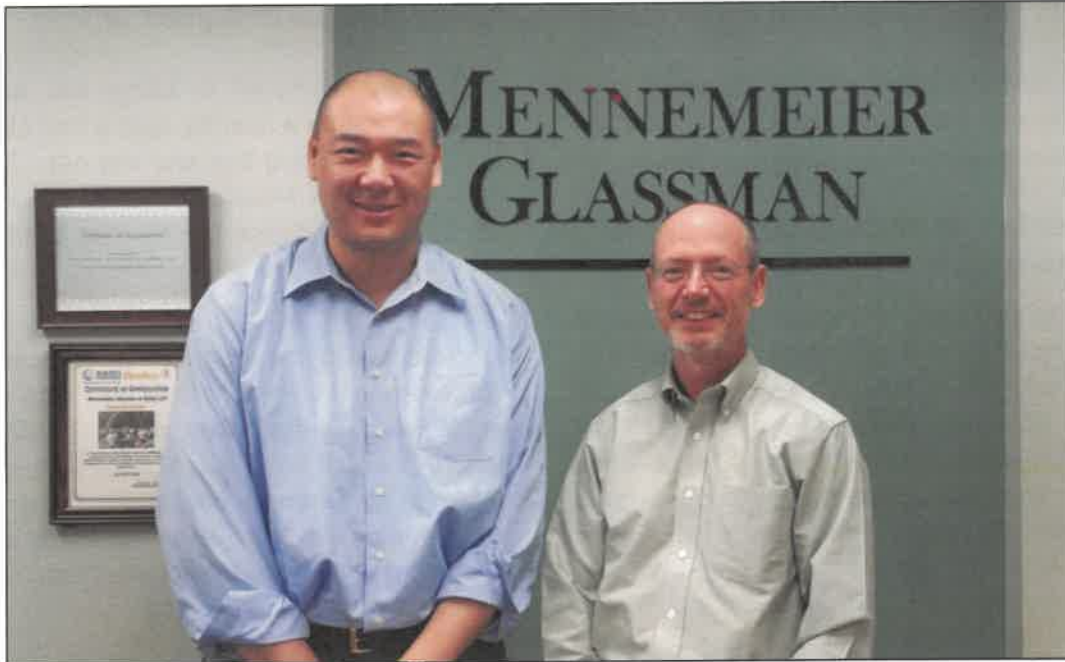
Night to Honor Service

Last Fall, members of the Federal Bar Association gathered to honor the outstanding public service contributions made by their colleagues and friends. The event recognized attorneys who donated their services to the Eastern District's Pro Bono Panel (top left picture) and Voluntary Dispute Resolution Program (bottom right picture).



FBA Past President Profiles: Ken Mennemeier and Steve Lau

By Landon D. Bailey, Hanson Bridgett LLP



Ken Mennemeier and Steve Lau, two well-known and highly respected litigators in Sacramento, share a common link beyond their partnership at litigation boutique firm Mennemeier Glassman LLP. Ken and Steve have both served in the past as Presidents of the Federal Bar Association in Sacramento.

Ken's stint with the FBA is separated from Steve's by twenty years. Ken served as FBA President in 1990, while Steve fulfilled the same role in 2010. Their respective tenures as FBA President are both marked with successes, but were fundamentally different in many respects. While Ken presided over a small, developing organization in search of its purpose and function in the legal community, Steve was tasked with managing a well-established FBA chapter with numerous traditions and long-standing responsibilities to the Court.

According to Ken, his involvement with the FBA originated at the Eastern District Conference in 1986, when former FBA President Bob Miller addressed attendees and urged them to "reactivate a local chapter of the Federal Bar Association." Miller's message piqued the interest of a few local Sacramento attorneys, including Ken and his then-

colleague at Orrick, Herrington & Sutcliffe, Norm Hile. This small but enthusiastic group reinvigorated the FBA Board for the Eastern District of California Chapter, with Miller serving as President, Hile serving as Vice President, and Ken filling in as Secretary. Many years later, Ken still recalls his excitement to be involved with an organization that "seemed to be in its relative infancy in Sacramento" and took this opportunity to help establish the FBA's role in the Sacramento legal community for decades to come.

Much has changed in the FBA between Ken's term as FBA President and Steve's with respect to the scope and membership of the group, as well as numerous logistical considerations. Ken's participation in the FBA predated the establishment of the FBA's Fresno Chapter, so his chapter of the FBA covered the entire Eastern District of California. (Later, as sufficient interest in the FBA developed amongst Fresno area practitioners, the FBA's Eastern District Chapter split into Sacramento and Fresno chapters, to better accommodate the two regions.) Additionally, the local chapter of the FBA had a significant role in planning the annual Eastern District Conference. Those duties have now expanded to the point that the Eastern District Conference has its own

10 THINGS YOU MAY NOT KNOW ABOUT Clerk of Court Marianne Matherly

By Avalon Johnson, Law Clerk to Chief Judge Morrison C. England, Jr.

1. Marianne Matherly became the Eastern District of California Clerk of Court on May 6, 2013, after 34 years of experience with the Court. Prior to her appointment, Ms. Matherly was the Chief Deputy of the Clerk's Office. Ms. Matherly chose to remain in Fresno, but comes to Sacramento frequently.

2. As Clerk of the Court, Ms. Matherly is responsible for overseeing all administrative aspects of the Court, from personnel, the budget, finances, and human resources. She must make daily decisions about how the Court is run. Her favorite part of the job is the people. Says Ms. Matherly, "we have a great group of dedicated people who want to do a good job." Her least favorite part is the budget, and understandably so—since becoming Clerk of Court, Ms. Matherly has weathered both sequestration cuts and the government shutdown which occurred from October 1 through 16, 2013.

3. Ms. Matherly began working with the Court in 1979 for the United States Probation Office. She has worked as a courtroom clerk and a docketing clerk, among other positions. Because the Eastern District was created out of portions of the Northern District and the Southern District in 1966, the original district judges of the Eastern District—Halbert, Crocker, and MacBride—were all still sitting on the bench when Ms. Matherly began her career. As a result, she has worked with every district judge in the Eastern District in some capacity and with every magistrate judge except Judge Christiansen.

4. In her late 30s, Ms. Matherly received a Bachelor's Degree in Political Science from Fresno State. Several years later, she received a Master's Degree in Public Administration. She received both degrees from California State University at Fresno. Ms. Matherly attended school at night, after working during the day and while her son was very young. Although it was difficult, she says, "I knew I needed it to be able to go farther in my career."

5. Her time at the Court has given Ms. Matherly plenty of memorable experiences. For example, while working as a courtroom clerk for Judge Moulds,

an attorney attempted to blame Ms. Matherly for something during a hearing, saying that Ms. Matherly had done something that she had not. Recalls Ms. Matherly, "Judge Moulds looked at me, and I gave him a look, and Judge Moulds said to the attorney, 'the number one rule of this court is, never burn the clerk.'"

6. While working as a clerk for Judge MacBride, Ms. Matherly was required to assist the judge with putting on his robe. Unfortunately, doing so with a cast on her arm was not easy, and Ms. Matherly accidentally hit Judge MacBride in the head with her cast. He said, "You hit me in the head!" to which she replied, "Damn right I did, and I'm not even mad at you!" and they laughed about it.

7. You might think that after spending all day at a courthouse, Ms. Matherly would want to take a break from anything legal-related, but she relaxes at home by watching shows such as CSI and Law and Order. But, she says, she often feels the need to tell her husband, "that's not how it really works."

8. Ms. Matherly's sense of humor is well known at the Court. In her early 20s, she wanted to be a stand-up comedian. Around the same time, while working in the Probation Office, Ms. Matherly traveled to the Caribbean and fell in love with the island of St. Thomas. She wanted to move back and live on the beach—but a job in the Clerk's Office opened, and she applied.

9. Her travels have recently taken her to England and Ireland for two weeks. Her son, who attends UCLA, was studying abroad in Brighton, England, and Ms. Matherly traveled to visit him.

10. Halloween is Ms. Matherly's favorite holiday. Many at the Court dress up for the day, and Ms. Matherly and several of her co-workers in Fresno are no exception. Her favorite costumes include going as the Kardashians (Ms. Matherly was Khloe); the Wicked Witch of the West and her monkeys; and the Addams family. Although she doesn't have much of a sweet tooth, her favorite candy to get on Halloween (or any other time of year) is red licorice. ■

Do You Want to Get Involved in FBA Sacramento?

One of the best things about practicing law in Sacramento is the sense of collegiality among practitioners and between bench and bar. Local bar associations like FBA Sacramento help promote that collegiality. Each year, FBA Sacramento puts together social mixers and educational programs that bring judges and practitioners together. In addition, *FBA Sacramento News & Notes* strives to keep members apprised of Sacramento's legal past, present, and future.

Would you like to join our team? By becoming an FBA Sacramento Board member, you can help put together programs that strengthen Sacramento's legal community. If you are interested in joining FBA Sacramento's Board in 2015, please send a résumé to Bre Moebius at bre.moebius@gmail.com. ■

SAVE THE DATE: Annual Eastern District Conference October 3-5, 2014

The 2014 Eastern District Conference will take place on October 3-5 at Tenaya Lodge just outside of Yosemite Valley. The Conference will feature several exciting speakers honoring the 50th anniversary of the passage of the Civil Rights Act, including presentations from Dr. Martin Luther's speech writer, Dr. Clarence Jones; Hank Thomas Jr., an original freedom rider; and Civil Rights Professor John Powell of University of California Berkeley, Boalt Hall. Legal writing expert Ross Guberman will present both a serious and humorous look at legal writing and the Bench/Bar Program will focus on the experience and wisdom of the law clerks, who are instrumental to the success of the Eastern District Bench. Plan to attend!

Invitation Forthcoming for all FBA Members

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Recipient of the First Annual Joe Ramsey Award: Mr. Donald Lancaster

By Landon D. Bailey, Hanson Bridgett LLP

On November 12, 2013, during the Night to Honor Service, the Federal Bar Association, Sacramento Chapter and the United States District Court for the Eastern District of California presented the first annual Joe Ramsey Award to Donald Lancaster. The award honors Mr. Lancaster's outstanding service as a Section 1983 Pro Bono Panel attorney in the Eastern District of California. Mr. Lancaster's exemplary and enthusiastic service as a member of the pro bono panel made him the clear choice to receive the inaugural Joe Ramsey Award.

Mr. Lancaster joined the pro bono panel in 2011. Since joining the panel, he has accepted a total of five pro bono appointments. Of the five appointments, three cases went to trial, with the fourth being settled before trial commenced. The fifth and most complex of these cases is scheduled to be heard in October 2014 in Sacramento, California. Sujean Park, the Court's Pro Bono Program Director, had difficulty finding an attorney on the pro bono panel willing to take the case Mr. Lancaster is currently working on. Sujean presented the case to multiple other members of the panel who were reluctant to accept the matter due to its complexity. However, according to Ms. Park, Mr. Lancaster was "eager to jump right in."

Mr. Lancaster's enthusiasm for helping indigent pro bono clients in need of representation extends beyond the invaluable service he provides in the context of cases assigned to him by the pro bono panel. Mr. Lancaster has also taken an active role in



promoting the pro bono panel and recruiting others to contribute their legal knowledge and skills as litigators to those in need. In October 2012, the Court invited Mr. Lancaster to speak to a group of prospective panel members at a luncheon in Bakersfield with Judge Thurston and Sujean Park. Mr. Lancaster eagerly provided insight to his invaluable experience as a panel member and helped recruit several new members.

A graduate of California Western School of Law, Mr. Lancaster began his professional career in politics, working for state and local elected officials. After over 14 years of service in the political realm, Mr. Lancaster began practicing law as managing partner of The Lancaster Law Group, APC. His practice areas include commercial litigation, bankruptcy, corporate counseling, and employment law.

Mr. Lancaster's contributions to his community are far from limited to his service on the Eastern District's pro bono panel. Mr. Lancaster also serves on the Board of Directors of First Tee of South Los Angeles, an organization dedicated to making golf accessible to economically disadvantaged youth. He is also an active board member of the Los Angeles Southwest College Foundation, where he works to provide resources for programs and scholarships directly benefiting students.

The Federal Bar Association, Sacramento Chapter wishes to again congratulate Mr. Lancaster on this well-deserved award. ■



Rails, Trails, and Rights-of-Way

By Alex Smith, Law Clerk to Judge William B. Shubb



With its warm weather, beautiful scenery, and many miles of trails, Sacramento is a prime destination for bicyclists. Now that summer is here, many Sacramento residents will soon dust off their bikes and soak up the sun along one of Sacramento's rail-trails – former railways that have since been transformed into bike trails. While history buffs and cycling enthusiasts alike will take pleasure in a ride along the old tracks of the Sacramento Southern Railroad or the Sacramento Northern Interurban Railway, the story of how those trails came to exist is almost as fascinating as the trails themselves.

From the end of World War II until the 1970s, the development of the Interstate Highway System, the ascendance of airplane travel, and the growth of the trucking industry rendered railroads increasingly obsolete. Many major railroads declared bankruptcy, pulled up the train tracks, and either abandoned the land or sold it to satisfy creditors. Observers worried that the nation's rail corridors, which had been "painstakingly created over several generations," would splinter into thousands of parcels of land that could not be reassembled.¹

Rail-trails offered a solution to this problem. By keeping railway corridors intact as bike trails, they prevented the fragmentation of established railway lines at the same time that they satisfied the public's need for outdoor recreation. The National Rails-to-Trails Conservancy estimates that there are currently over twenty thousand miles of rail-trails nationwide, with another nine thousand waiting to be developed.² There are over a half-dozen rail-trails in Sacramento itself,³ and many more located in Davis, Roseville, Folsom, and other surrounding cities. But despite their growing popularity, a recent Supreme Court decision, *Marvin M. Brandt Revocable Trust v. United States*,⁴ may jeopardize the future of rail-trails.

The case conjures up flashbacks of first-year Property. A landowner in Wyoming owned a parcel of land over which the Laramie, Hahn's Peak & Pacific Railway Company ("LHP&P") had acquired a right-of-way pursuant to the General Railroad Right-of-Way Act of 1875 ("1875 Act").⁵

Continued on page 12 – Rail Trails

¹ *Reed v. Meserve*, 487 F.2d 646, 649 (1st Cir. 1973).

² *About Rails-to-Trails Conservancy*, RAILS TO TRAILS CONSERVANCY (Mar. 28, 2014, 12:45 PM), <http://www.railstotrails.org/aboutUs/index.html>.

³ *See TrailLink*, RAILS TO TRAILS CONSERVANCY (Mar. 28, 2014, 12:45 PM), <http://www.trailink.com/trailsearch.aspx?zipcode=95814>.

⁴ — U.S. —, 134 S.Ct 1257 (2014).

⁵ 43 U.S.C. §§ 934-939.

January FBA Election Mixer at Il Fornaio

In January, FBA members gathered at Il Fornaio's heated patio for cocktails, hors d'ouvres, and great company.



Meghan Baker, Bill Wame, and Chief Judge England



June Coleman, Judge Shubb, Judge Drozd, and Judge Brennan



Dan Croxall, Steve Duvemay, and Megan Sammut



Bre Moebius, Candice Fields, Judge Shubb, Meghan Baker, and Bill Wame



Jake Rios, Jon Miles, and Tom Woods

What Programs Would Benefit Your Practice?

FA Sacramento intends to continue its tradition of offering quality educational programs for its members. What types of programs and events would benefit your practice? Please submit your ideas to our Programs Co-Chairs, Avalon Johnson at ajohnson@caed.uscourts.gov or Megan Sammut at megan.cosgrove@dlapiper.com. You can also submit suggestions for locations of upcoming mixers. ■

Past President Profiles – continued from page 3

planning committee, so the FBA's Sacramento Chapter's role in planning and organizing the Eastern District Conference is now diminished.

Most of the major FBA events, such as the Supreme Court Year in Review and the Night to Honor Service, had not yet been created during Ken's Presidency. However, the FBA kept busy with event planning nonetheless. In addition to carrying the laboring oar with regard to Eastern District Conference planning, Ken recalls that the FBA was called upon to create an event to celebrate Judge Karlton's completion of his term as Chief Judge of the Eastern District. Several of the attorneys who spoke at this event went on to become judges themselves, including present Senior District Judge William B. Shubb and former District Judge and current Dean of Duke Law School David F. Levi. Ken also recalls that he was enamored with the wall clocks given to honorees at various FBA events, and, as a result, the FBA presented him with a clock as a gift upon completion of his Presidential term.

Ken observes that the FBA's function has changed over time due in large part to the increase in opportunity for the Court to interact and communicate with local practitioners. Ken noted, "Part of the issue for an organization like the Federal Bar is, what is it that you can be, and what can you do in your community? What is the vacuum you can fill? [At the time of my Presidency], there were limited vehicles for communication between the Court and different bar organizations, and one of the profound changes that I have seen over the years has been the development of multiple channels by which the Court interacts and communicates with the legal community about matters of interest to the Court and to the bar."

Generating publicity for FBA events was a larger logistical challenge in Ken's day compared to Steve's tenure. When asked about the FBA's preferred method of getting the word out for events in 1990, Ken jokingly indicated that "Pony Express" was relied upon heavily. In fact, the FBA kept a conventional mailing list, but all communication with members was, as a matter of necessity, conducted either by telephone or by mail. Conversely, Steve's

FBA Board in 2010 found it "pretty convenient to get the word out." Steve related that even in situations where an event was to occur in the next week, using the FBA's email list to publicize events was typically effective for generating strong attendance.

Steve's year as FBA President also marked the inaugural year for Night to Honor Service, an event that gives Eastern District judges the opportunity to recognize and thank members of the Eastern District's Section 1983 Pro Bono Panel. (The event has since expanded to acknowledge mediators who volunteered their time for the Court's Voluntary Dispute Resolution Program as well.) Steve recalls that Judge Mueller was instrumental in establishing this program, which has grown considerably in the short time it has existed and has become one of the FBA's most important annual events.

Steve also presided over a larger FBA Board in 2010 than Ken did in 1990. The reconstituted FBA board in the late 1980's consisted of just four officers. By the time Steve took office, the FBA had added two Programs Chair positions, a Programs Committee, a Bankruptcy Liaison, a Criminal Section Liaison, a Membership Chair, and a Newsletter Editor.

Steve's success as an FBA President is rooted in his days clerking with Judge Shubb. Steve tells us that he "was always very comfortable in the FBA. I consider a federal clerkship something like a finishing school for young lawyers. And the FBA Board, with its large number of past and present law clerks, is something of an alumni association. Whenever I go back to the federal courthouse to organize an investiture or Night to Honor Service or other bench-bar events, it feels like coming home."

Thanks to the hard work put in by Ken and Steve in establishing and carrying on the FBA's tradition of service to the Eastern District of California bench and the Sacramento legal community, the FBA's Sacramento Chapter continues to provide a vital line of communication between the bench and bar and gives Sacramento's federal judges and practitioners opportunities to come together as colleagues. ■

Comments from the President – continued from page 1

In April, our first educational program of the year focused on the role of media in the legal profession and sparked some interesting discussions. We also joined with Operation Protect and Defend for the annual Law Day Dinner on May 1, 2014.

In August, we will host our twenty-fourth annual Supreme Court Year in Review. We will also partner with UC Davis law school again to host a day-long training program that will focus on litigating cases under 42 U.S.C. § 1983. The § 1983 training program will focus on trial skills and be especially helpful for attorneys on or interested in joining the court's pro bono panel.

After great success partnering with the Eastern District Historical Society to host a panel discussion on the trial of Lynette "Squeaky" Fromme last year, we will partner with that organization again to examine another interesting case in our district's history: the trial of "Unabomber" Ted Kaczynski. In November, we will hold our annual Night to Honor Service, which recognizes members of the Eastern District's pro bono panel. In addition to these events, we have several others in the works, including a CLE bankruptcy program on July 9 and an intellectual property patent program with the IP Section of the Sacramento County Bar Association.

This year, we will also begin the groundwork to create a Law Student Division of our Chapter at Pacific McGeorge and UC Davis law schools. Not only will this Division become a resource for local students, it will introduce future lawyers to the benefits of long-term FBA membership. If you have any interest in working with the Student Division or speaking at an event for students, please let me know.

As we continue to grow as an organization, we will also take time this year to reflect on our past and the individuals who have shaped our Chapter. Beginning with this issue, we will have a "Past-President's Profile" that will feature one or more of our former presidents and explore how our Chapter and their careers have changed since their tenure as president.

Our Chapter's continued success depends on

our members, and we encourage you to reach out to your colleagues and talk to them about the benefits of FBA membership. As you may know, one of the benefits of your FBA membership is an invitation to the Eastern District Conference, which will be October 3-5 this year at Tenaya Lodge in Yosemite.

If you have ideas for programs you would like to see our Chapter host or other ideas about how the FBA can serve you, I would be grateful to hear from you. Until then, I hope to see you at our upcoming events. ■

Plan to Attend:

Upcoming FBA CLE Lunch Program

**When Bankruptcy Law
Intersects with Non-Bankruptcy
Federal Practice**

Material covered by the panel will include the impact of the June 9, 2014 United States Supreme Court opinion in *Executive Benefits Insurance Agency v. Arkinson* (In Re Bellingham Insurance Agency)

Panel Speakers:

**Judge Sargis, U.S. Bankruptcy Judge
Antonia Darling, Assistant U.S. Trustee
Donald Fitzgerald, Felderstein Fitzgerald
Willoughby & Pascuzzi LLP**

July 9, 2014, 12:00 p.m.

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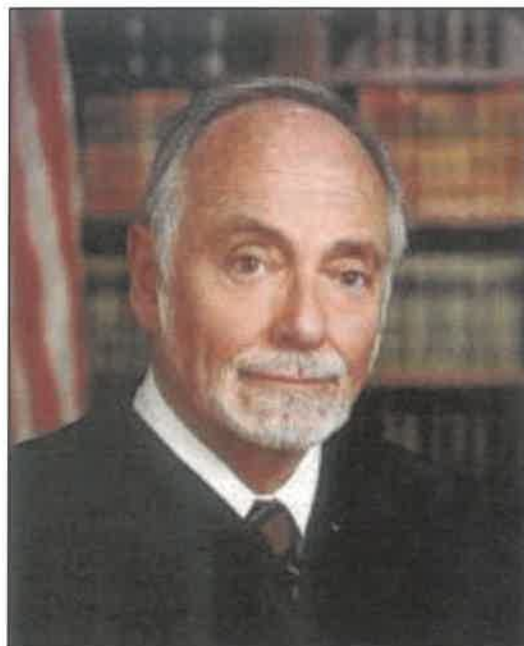
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A Message from Chief Judge Morrison England on the Retirement of Senior District Judge Lawrence K. Karlton

As I am sure many of you are aware, Senior District Judge Lawrence K. Karlton has announced that he will change his status to inactive Senior Judge as of October 1, 2014, after thirty-five years of service to the Eastern District. I would like to take this opportunity to thank him for his service to this district and provide a brief overview of Judge Karlton's career, from both a professional as well as a personal standpoint.

Judge Karlton has dedicated the majority of his career to public service. After graduating from Columbia Law School in 1958, Judge Karlton served in the United States Army from 1958 to 1960. He was a Civilian legal officer at the Sacramento Army Depot from 1960 to 1962. From 1962 to 1976, Judge Karlton was in private practice in Sacramento. During that time, Judge Karlton also litigated civil liberties cases as a volunteer for the American Civil Liberties Union. In 1976, California Governor Jerry Brown appointed Judge Karlton as a judge of the Superior Court of California in Sacramento County.



On June 5, 1979, President Jimmy Carter nominated Judge Karlton to a seat vacated by Judge MacBride in the United States District Court for the Eastern District of California. Judge Karlton was confirmed by the United States Senate on July 23, 1979, and received his commission on July 24, 1979. Judge Karlton served as Chief Judge from 1983 to 1990 and assumed senior status on May 28, 2000. Until just recently, Judge Karlton kept a full caseload as a Senior Judge.

I know I speak not only for myself, but also my colleagues on the bench, when I say that we have each benefitted from, and deeply appreciate, Judge Karlton's legal knowledge and expertise. We wish Judge Karlton the best in his life off the bench. We lose not only an outstanding jurist and public servant, but also a kind, humble, and generous colleague. On behalf of the entire Eastern District family, I would like to say thank you, Judge Karlton, for your many years of service and your unwavering commitment to justice. ■

Interested in Expanding Your Criminal Practice? Join the CJA Panel



The Criminal Justice Act (CJA) provides for legal services for any person charged with a federal offense who is financially unable to obtain adequate representation. If the court determines that a person is eligible for appointment of counsel, either the Federal Public Defender or an attorney in private practice compensated under the CJA Plan is appointed. The Federal Public Defender is appointed to represent approximately 75% of the financially eligible federal defendants in the Eastern District of California. The remaining eligible defendants are represented by private attorneys who have qualified for appointment under the CJA panel. Attorneys selected for the federal panel must have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, Federal Rules of Evidence, Sentencing Guidelines, and the Eastern District's Local Rules. The application form and further information can be located on the Federal Defender's website (www.fpd.org) or by calling the Federal Defender's Sacramento panel administrator, Kurt Heiser, at (916) 498-5700 or the Fresno panel administrator, Connie Garcia, at (559) 487-5561. ■

LHP&P was acquired by Union Pacific Railroad, which sold its interest in that right-of-way to the Wyoming and Colorado Railroad in 1987. After plans to transform the railroad into a tourist attraction fell through, the Wyoming and Colorado Railroad notified the federal government of its intent to abandon the right-of-way. The United States planned to create the Medicine Bow Rail Trail where the railroad tracks formerly ran and brought a quiet title action against several landowners asserting its interest in the right-of-way.

While most of those landowners settled or defaulted, one landowner, Marvin Brandt, contested the government's claim and sought a declaration that the right-of-way was an easement that had been extinguished when the Wyoming and Colorado Railroad abandoned it. Both the district court and the Tenth Circuit disagreed. Relying on a number of federal statutes governing the disposition of the United States' interests in railroad rights-of-way, as well as Tenth Circuit case law, those courts held that the United States had retained an "implied reversionary interest" in the right-of-way that it had granted to LHP&P.⁶

The Supreme Court reversed. Relying heavily on its holding in *Great Northern Railway Co. v. United States*,⁷ the Court held that the right-of-way granted by the 1875 Act took the form of an easement over Brandt's property, rather than a fee interest in it. Because that right-of-way was an easement, the Court concluded, it was extinguished once it was abandoned and no longer burdened Brandt's property. And while the government cited several federal statutes that governed the United States' disposition of its property rights in abandoned rights-of-way, the Court held that these statutes applied only when the United States had retained a property interest in the right-of-way. Because it had not, the Court concluded, those statutes could not resuscitate the United States' interest in the right-of-way granted under the 1875 Act once it had been extinguished.

Whether or not one agrees with the Court's decision, it will undoubtedly affect efforts to transform abandoned rail corridors into bike trails and

greenways. Like railroads, trails must be built on a continuous stretch of land; a single holdout in the middle of the trail will place the entire trail in jeopardy. Because the United States granted thousands of miles in railroad rights-of-way, it operated under the longstanding assumption that it would be able to convert those rights-of-way into bike trails once the railroads abandoned them, which conveniently avoided the holdout problem that plagues public construction projects.

But now that *Brandt* has clarified that the United States retains no property interest in those rights-of-way, plans for rail trails are now at the mercy of individual landholders – some of whom, like Brandt, have no desire for a bike trail running through their property. Nor is the effect of the Court's holding limited to the trail that was planned through Brandt's property; in fact, USA Today estimates that the decision could affect eighty pending cases involving over eight thousand claimants.⁸

But while *Brandt* is a loss for proponents of rail-trails, it may not be an insurmountable one. Although many rail-trails were built on former rail corridors that were simply abandoned when the railroad was no longer economically viable, others have been built on rights-of-way that have been "railbanked" – that is, conveyed to trail managers for interim use as trails on the condition that the trail managers bear the cost of maintaining the trail themselves. Section 8(d) of the National Trails System Act specifically permits a railroad to transfer a right-of-way to a qualified public or private agency for interim use until the railroad company wishes to re-establish railroad service.⁹ Once such a transfer is effected, the statute pre-empts any state law that would classify the right-of-way as having been abandoned. And while the Supreme Court has held that the establishment of a rail-trail may effect a taking requiring just compensation, it unanimously affirmed the

Continued on page 13 – Rail Trails

⁶ *United States v. Brandt*, 496 Fed. App'x 822, 824 (10th Cir. 2012).

⁷ 315 U.S. 262 (1942).

⁸ Richard Wolf, *Court ruling in land dispute could threaten bike trails*, USA TODAY, Mar. 10, 2014, <http://www.usatoday.com/story/news/nation/2014/03/10/supreme-court-railroad-land-dispute/6252835/>.

⁹ 16 U.S.C. § 1247(d).

constitutionality of the railbanking framework established by section 8(d).¹⁰

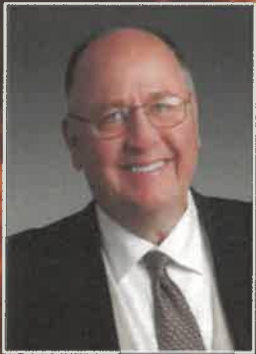
As a result of the railbanking program, Sacramento residents can rest assured that the El Dorado Trail, as well as several other trails in the region, will not be affected by the Court's decision in *Brandt*; as the Rails-to-Trails Conservancy notes, these trails are not established on abandoned railway easements and the rights-of-way were therefore not extinguished.¹¹ And it is entirely possible that *Brandt* will mobilize cyclists and other outdoor enthusiasts in support of railbanking or other ways of working around the Supreme Court's decision. But these efforts may be cold comfort to those who sought to take a leisurely ride down the Medicine Bow trail, as well as the thousands of others whose access to rail-trails may be threatened by recalcitrant landowners like *Brandt*. ■

¹⁰ *Preseault v. Interstate Commerce Comm'n*, 494 U.S. 1 (1990).

¹¹ Amy Kapp, *What the Marvin M. Brandt Case Means for America's Rail-Trails*, RAILS TO TRAILS CONSERVANCY (Mar. 17, 2014), <http://community.railstotrails.org/blogs/trailblog/archive/2014/03/17/what-the-marvin-m-brandt-case-means-for-america-s-rail-trails.aspx>.

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The Justice Anthony M. Kennedy Library and Learning Center First Annual Summer Institute

By Laura Bariel, Summer Institute Director

The Justice Anthony M. Kennedy Library and Learning Center, located at the Robert T. Matsui U.S. Courthouse will present the first annual Summer Institute for secondary U.S. History, Government, and Civics teachers. The mission of the Sacramento Federal Judicial Library and Learning Center Foundation ("Foundation") is to promote the public's understanding of an independent judiciary, the rule of law in American society, and the rich history of the Sacramento area federal court. This spring, Operation Protect and Defend joined forces in an effort to connect with more teachers. The main force behind Summer Institute has been Judge Kimberly Mueller, Francis M. ("Mac") Goldsberry II, of counsel at Somach, Simmons & Dunn, and Gary K. Hart, California State Senator (ret.). The Summer Institute is an opportunity for secondary social science teachers to work with court representatives (judges, attorneys, and court staff) to learn about important local cases and create Common Core aligned units. Teachers will have access to the wide array of resources at the Judicial Learning Center. In addition, they will earn \$500 for participating and adding their units to the curriculum library, which will be available to local teachers. The Sacramento legal community, including Federal Bar Association board members, has come together to help with writing case briefs, researching resources, and speaking at the Institute. The Institute will focus on the *Elk Grove v. Michael Newdow* case as a sample to teach the expected format and use of resources to teachers. Ultimately, the Foundation plans to engage schools in visiting the Learning Center and Federal Courthouse as a supplement to the Common Core curriculum and to raise student awareness of the various careers in the court system. For more information, please visit www.sacjlc.org. ■

Judicial & Member Mixer Recognizing Past FBA Presidents In the Chambers of Judge Connie Callahan

On May 28, over fifty FBA members gathered in Judge Callahan's beautiful chambers for wine, hors d'oeuvres, and the opportunity to recognize our past presidents. FBA Sacramento is extremely grateful to Judge Callahan for opening her chambers to our chapter for such a memorable evening.



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Dan Carroll, Judge Callahan, Bre Moebius, and Ric Schickele



Judge Nunley and Judge Shubb

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