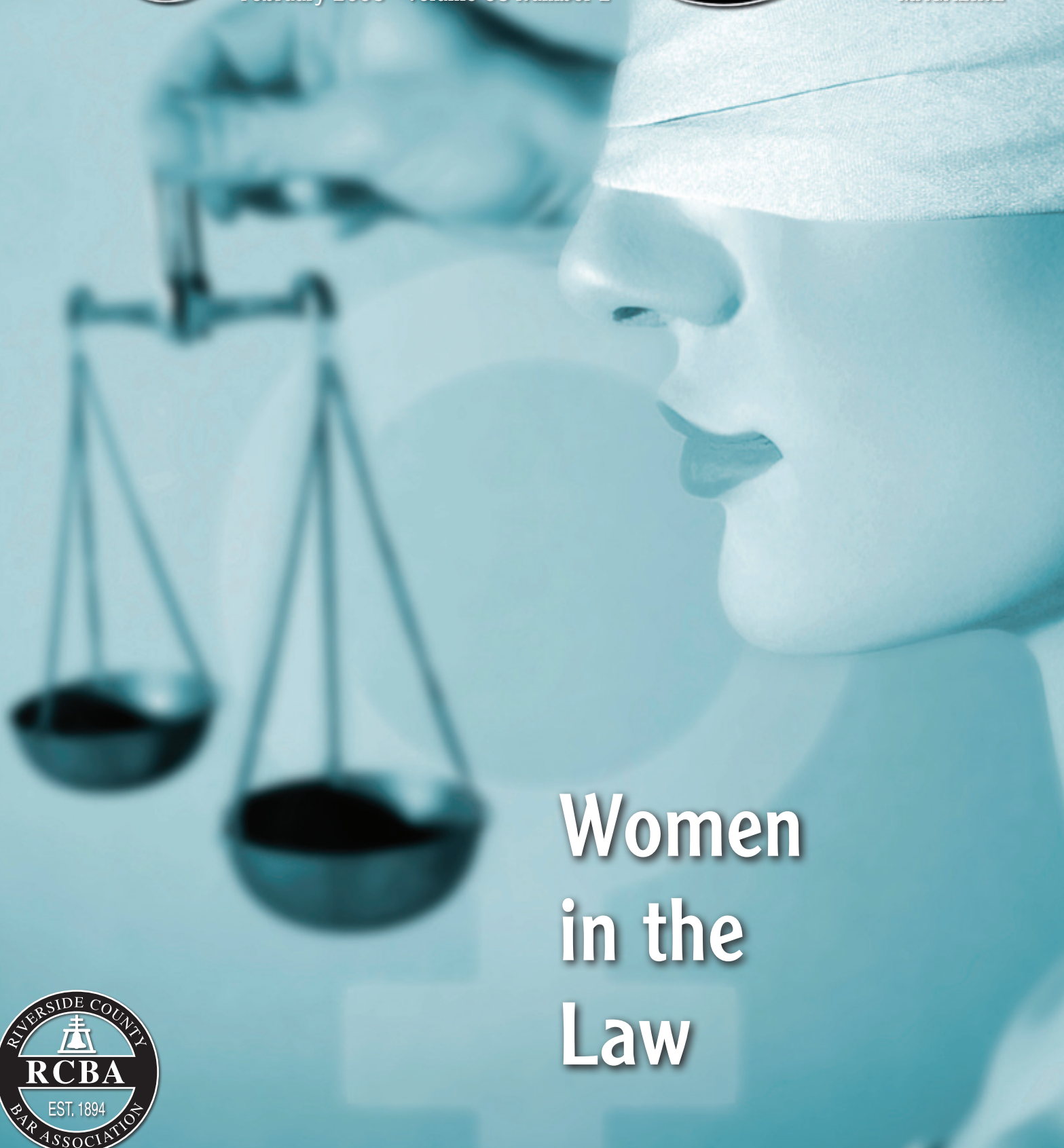


RIVERSIDE LAWYER

February 2008 • Volume 58 Number 2

MAGAZINE



Women in the Law



The official publication of the Riverside County Bar Association



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RIVERSIDE LAWYER

MAGAZINE

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MISSION STATEMENT

Established in 1894

The Riverside County Bar Association, established in 1894 to foster social interaction between the bench and bar, is a professional organization that provides continuing education and offers an arena to resolve various problems that face the justice system and attorneys practicing in Riverside County.

RCBA Mission Statement

The mission of the Riverside County Bar Association is to:

Serve its members, and indirectly their clients, by implementing programs that will enhance the professional capabilities and satisfaction of each of its members.

Serve its community by implementing programs that will provide opportunities for its members to contribute their unique talents to enhance the quality of life in the community.

Serve the legal system by implementing programs that will improve access to legal services and the judicial system, and will promote the fair and efficient administration of justice.

Membership Benefits

Involvement in a variety of legal entities: Lawyer Referral Service (LRS), Public Service Law Corporation (PSLC), Tel-Law, Fee Arbitration, Client Relations, Dispute Resolution Service (DRS), Barristers, Leo A. Deegan Inn of Court, Inland Empire Chapter of the Federal Bar Association, Mock Trial, State Bar Conference of Delegates, and Bridging the Gap.

Membership meetings monthly (except July and August) with keynote speakers, and participation in the many committees and sections.

Eleven issues of Riverside Lawyer published each year to update you on State Bar matters, ABA issues, local court rules, open forum for communication and timely business matters.

Social gatherings throughout the year: Installation of RCBA and Barristers Officers dinner, Annual Joint Barristers and Riverside Legal Secretaries dinner, Law Day activities, Good Citizenship Award ceremony for Riverside County high schools, and other special activities.

Continuing Legal Education brown bag lunches and section workshops. RCBA is a certified provider for MCLE programs.

MBNA Platinum Plus MasterCard, and optional insurance programs.

Discounted personal disability income and business overhead protection for the attorney and long-term care coverage for the attorney and his or her family.

Riverside Lawyer is published 11 times per year by the Riverside County Bar Association (RCBA) and is distributed to RCBA members, Riverside County judges and administrative officers of the court, community leaders and others interested in the advancement of law and justice. Advertising and announcements are due by the 6th day of the month preceding publications (e.g., October 6 for the November issue). Articles are due no later than 45 days preceding publication. All articles are subject to editing. RCBA members receive a subscription automatically. Annual subscriptions are \$25.00 and single copies are \$3.50.

Submission of articles and photographs to Riverside Lawyer will be deemed to be authorization and license by the author to publish the material in Riverside Lawyer.

The material printed in Riverside Lawyer does not necessarily reflect the opinions of the RCBA, the editorial staff, the Publication Committee, or other columnists. Legal issues are not discussed for the purpose of answering specific questions. Independent research of all issues is strongly encouraged.

CALENDAR

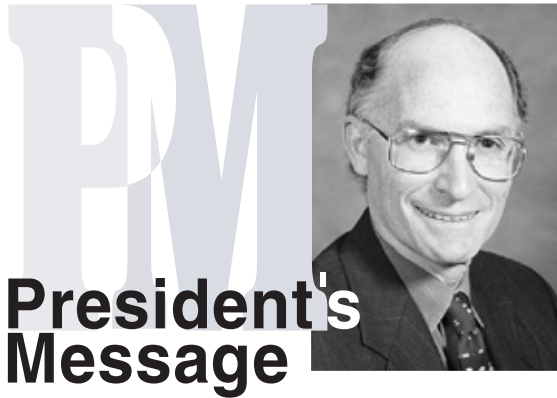
FEBRUARY

- 20 Mock Trial – Round 3**
Hall of Justice – 6:00 p.m.
- 23 Mock Trial**
Round 4 – HOJ – 8:30 a.m.-11:00 a.m.
Round 4 – HOJ – 1:00 p.m.-3:30 p.m.
Awards Ceremony – Moreno Valley
Convention & Rec. Center,
14075 Frederick St. – 1:30 p.m.
- 27 Mock Trial – Elite 8**
Hall of Justice – 6:00 p.m.
- Inn of Court**
Victoria Club – 5:30 p.m.

MARCH

- 1 Mock Trial Semi-Finals**
Historic Courthouse – 9:00 a.m.
- Mock Trial Finals, Championship Round**
Historic Courthouse, Dept. 1 – 1:00 p.m.
Award Ceremony – 3:30 p.m.
- 3 Continuing Legal Ed Committee**
RCBA – Noon
- 5 Bar Publications Committee**
RCBA – Noon
- 12 Barristers Poker Tournament**
Cask 'n Cleaver, Riverside – 6:00 p.m.
- 14 General Membership Meeting**
RCBA Bldg., 3rd Floor – Noon
MCLE
- 18 Family Law Section**
RCBA Bldg., 3rd Floor, John Gabbert
Gallery – Noon
MCLE





by Daniel Hantman

Women in the Law

The theme of this month's *Riverside Lawyer* is "Women in the Law." It is reported that the first woman attorney in California was Clara Shortridge Foltz (1849-1934). She was born in Lafayette, Indiana, and was a descendant of Daniel Boone. Her younger brother was Samuel M. Shortridge, U.S. Senator for California from 1920-32. At the age of 15, she eloped with Z.D. Foltz, and she moved to California in 1872.

Shortly after coming to California, her husband left her, and she began studying law in the office of a local judge. She applied for admission to Hastings College of the Law and was denied because of being a woman. She sued, argued her own case, and won admission to study there. She passed the California bar exam in 1878 at the age of 29. Unfortunately, at this time California law allowed only white males to become members of the bar, but Clara Foltz did not stop her efforts there. She helped author a bill which replaced "white male" with "person," and in September 1878, she became the first woman admitted to the California bar. She was also one of the first women to be licensed to practice law in New York.

Clara Foltz led a full life. She raised five children, mostly as a single parent. Her legal career spanned 56 years. She was at the forefront of much of the progressive legislation for women's rights in the voting and legal fields. In 1893, at the Chicago World's Fair, she gave a speech entitled "Rights of Persons Accused of Crime – Abuses Now Existing." She introduced her concept of what was to become public defenders to represent indi-

gent criminal defendants. She is credited with creating a similar model for the California parole system. In 1910, she became the first female deputy district attorney in the United States, when she was appointed to the Los Angeles District Attorney's Office.

Riverside is blessed with a multitude of women attorneys and judicial officers. I have personally been privileged to receive assistance from Jane Carney, Mary Swanson, Sandra Leer, Mary Daniels and Virginia Blumenthal because of the proximity of my office to theirs. Space allows me to highlight only one of these wonderful women.

Many of you have had the privilege of contact with Virginia Blumenthal. She is a graduate of Riverside Poly High School and received her law degree from retired Judge Woody Rich's California Southern Law School here in Riverside in 1976.

Virginia has been listed in the "Best Lawyers in America" for the past 20 years. Last year, she was recognized as one of the "Top 100 Most Influential Attorneys in the State of California." The January 2008 Inland Empire magazine wrote that she "has been recognized not only for her outstanding trial and legal skills, but also for her Herculean volunteer contributions to the community, ranging from coaching high school Mock Trial for over 20 years to being President of the Riverside County Philharmonic to being elected as a Trustee on the Riverside Community College District Board of Trustees."

This past year, Governor Arnold Schwarzenegger appointed Irma Poole Asberry and Carol Codrington as Superior Court judges. Also, last year, the Superior Court judges hired Kathleen Jacobs and Tamara Wagner as Riverside Court Commissioners.

Janet Stachowski of the Riverside Superior Court has provided the following list of female Riverside judicial officers, past and present.

- Janice McIntyre, 4-13-81 Municipal Judge (elevated to Superior Court 7-29-98 during unification)
- Becky Dugan, 6-4-87 Superior Court Commissioner, 1-4-99 Superior Court Judge
- Joyce Manulis Reikes, 7-14-88 Superior Court Commissioner
- Cornelia Shuford (Hartman), 1-2-90 Superior Court Commissioner

- Vilia G Sherman, 8-11-94 Municipal Judge (elevated to Superior Court 7-29-98 during unification)
- Gloria Connor Trask, 4-24-95 Superior Court Commissioner, 11-21-97 Superior Court Judge
- Sherrill Ellsworth, 4-29-96 Commissioner, 3-24-05 Superior Court Judge
- Bambi Moyer, 4-96 Commissioner
- Elisabeth Sichel, 9-22-97 Commissioner, 5-9-02 Superior Court Judge
- Gretchen Taylor, 9-97 Commissioner
- Jean Pfeiffer Leonard, 7-14-97 Municipal Judge (elevated to Superior Court 7-29-98 during unification)
- Sharon Waters, 8-1-97 Municipal Judge (elevated to Superior Court 7-29-98 during unification)
- Joan Ettinger Burgess, 5-8-98 Commissioner
- Lori Hunt Kennedy, 8-30-02 Commissioner
- Paulette Barkley, 9-18-03 Commissioner
- Sarah Christian, 1-3-05 Superior Court Judge
- Judith C. Clark, 5-16-05 Superior Court Judge

In addition, Betty A. Richi, previously a Superior Court Judge in San Bernardino, was sworn in as an Associate Justice of the Court of Appeal in December 1994.

I am sure many of you who read this column have your own special stories to tell us about Riverside "Women in the Law." Please write to us and we will try to publish your remembrances in future editions of the *Riverside Lawyer*.

Dan Hantman, president of the Riverside County Bar Association, is a sole practitioner in Riverside.



BRIDGING THE GAP

by Robyn Lewis

Photos courtesy of Robyn Lewis

On Friday, January 11, 2008, the Riverside County Bar Association and the San Bernardino County Bar Association held the “Bridging the Gap” program for new bar admittees.

The program, which was coordinated by the Continuing Legal Education Committee of the RCBA, was a change from years prior. It was the committee’s intent to host a comprehensive program, not only to introduce new bar admittees to the general practice of law, but also to welcome them to the close-knit legal community that the Inland Empire enjoys and to encourage them to participate in all that our legal community has to offer. This was also the first year that the program was held on a Friday, as traditionally the Bridging the Gap program has been held on a Saturday.

Participants in the program were welcomed by Dan Hantman, RCBA president, Bill Shapiro, SBCBA president, and Chad Boylston, Riverside Barristers president. They then spent the morning getting practical information and pointers from attorneys Barry O’Connor on unlawful detainer actions, Federal Bar Association president John Holcomb on federal law practice, Brian Percy on starting your own law practice, Aurora Hughes on depositions, and Jonathan Lewis on the nuts and bolts of civil litigation. Douglas Phillips and Kira Klatchko of Best Best & Krieger discussed appellate law practice, while Richard Ackerman discussed the importance of balancing one’s priorities to stay sane while practicing law. Judge David Naugle of the



Dan Hantman, RCBA President



Richard Pershing, Chair, RCBA CLE Committee



John Holcomb, FBA-IEC President



William Shapiro, SBCBA President

U.S. Bankruptcy Court addressed the new admittees on bankruptcy law issues.

After lunch, the new admittees headed to family law court, where they met with Mary Ellen Daniels and Commissioner Pamela Thatcher. From there, they were addressed at the Hall of Justice by Judge Helios "Joe" Hernandez, attorneys Darryl Exum and Jeff Van Wagenen, and Supervising Deputy District Attorney Vicki Hightower on the practice of criminal law.

Judge Gloria Conner Trask and long-time practitioner Michael Fortino spoke to the new bar admittees on civil law practice, while Paul Grech, past president of the Leo A. Deegan Inn of Court, encouraged new bar admittees to join that organization.

The program concluded with a reception in the Rotunda of the Historic Courthouse, with remarks by Presiding Judge Richard Fields and a moving welcome to the practice of law by local legend Terry Bridges. At the reception, new bar admittees were able to introduce themselves and mingle with members of the bench, the bar association and Barristers.

Overall, Bridging the Gap was a huge success. A special thank you is extended to all those who volunteered their time to participate.



Judge David Naugle, U.S. Bankruptcy Court



Commissioner Pamela Thatcher, Riverside Superior Court



Presiding Judge Richard Fields, Riverside Superior Court



Judge Joe Hernandez, Riverside Superior Court



Terry Bridges, RCBA Past President



Judge Gloria Trask, Riverside Superior Court

RCBA ELVES PROGRAM 2007

by Brian C. Percy

Photos courtesy of Brian Percy

On December 24, 2007, the RCBA's Elves Program concluded its sixth and most successful year thus far. Your Elves purchased, wrapped, donated and delivered gifts to families throughout Riverside County. Since the program's inception, it has grown from assisting 6 families and 24 individuals in 2002 to assisting 28 families and 124 individuals (80 children and 44 adults) this year.

2007 marked the fourth year that your Elves Program has worked with the Child Abuse Prevention Center of Riverside County (CAP Center). As in previous years, the CAP Center staff was very helpful and supportive of the program.

The success of this program is due to the great support and generosity we have received from our membership. In many instances, as in past years, some members wore two and three Elves' hats! Participation has also grown beyond the immediate membership, since some Elves have their staff, their families and their clients join them in our activities. This is truly a great way to share the joy of the holiday season.

And now for some recognition:

Money Elves:

The Money Elves really stepped up to the plate this year. We received money from direct donations, along with the money raised throughout this past year at the Annual RCBA Golf Tournament and the RCBA Holiday Party at the Historic Courthouse. The money raised provided gifts for every family member, plus a \$50 Stater Brothers gift card to buy each family the holiday dinner fixings of their choice.

I'd like to thank the following Money Elves for their support: Judith Runyon, Kaiya Avery, Karen Wesche, Chuck Gorian, John L. Michels, Virginia M. Blumenthal, Estancia Growers of Fallbrook, Erick Bradford, Donald Bartell, David Bristow, Vicki Broach, Bernard Donahue, Charles Gorian, Daniel Greenberg, Dan Hantman, Christopher Harmon, Harry Histen, William Kenison, Horspool & Parker, Mary Jean Pedneau, Joe Rank, the Riverside County Law Alliance, Rosetta Runnels, Kelly Sheridan, Julianna Strong, John Vineyard, Pamela Walls, the Lawyer Referral Service, Justice John Gabbert, the Honorable Woody Rich, the Honorable Becky Dugan, and the Honorable Thomas Cahraman, as well as the anonymous donors who made an extremely generous donation.

Shopping Elves:

The Shopping Elves spent over three hours one evening hand-picking special gifts at the Kmart in Mission Grove. The store manager was incredibly supportive and dedicated four members from his staff to ring up, bag, tag and load the Shopping Elves' purchases. Kmart once again helped stretch our dollars by providing us with an additional 10% discount on all items purchased.

This year's Shopping Elves were: Judith Murakami and Andy Graumann of Attorneys to Go, Kimberly Alexander, Anika Montalbano, Rachelle Berkebile, Christina Sovine and her daughter Justice, Jesse Male, Meg Hogenson, Karen Wesche and her family, Shannon Jonker of the Law Offices of Robert Deller, Arnold Wuhrman and his children, Deyanira Bakke of the Riverside County Law Alliance, Cristi Frevert of the Law Offices of Marie Meyers, and Brian C. Percy, Tera Harden, Josann Reynolds, Deepak Budwani, Lluvia Rodriguez, Alex Armendariz, and Veronica Reynoso and her family, all from the Law Offices of Brian C. Percy.





Wrapping Elves:

This year, the Wrapping Elves were a model of efficiency. This group has evolved into a well-oiled machine that wrapped over 300 packages in four hours! Amazing. Their wrapping skills would make them the envy of any fine department store.

This year's Wrapping Elves were: Deya and Brianna Bakke, Ellen Thobold and Kathy Zimmer, all of the Riverside County Law Alliance, the Honorable Dallas Homes and his wife Pat Holmes, the Honorable Pamela Thatcher, Dan Hantman, Karen Griffith of the Law Offices of Dennis M. Sandoval, Christina Sovine, the Rosales family from Estancia Growers in Fallbrook, Lisa Traczyk, Rina Gonzales, Jeff Smith, Marie Myers and her daughter Marika Myers, Cristi Frevert of the Law Offices of Marie Myers, Veronica Reynoso of the Law Offices of Brian C. Percy, and all the great women of Sage College: Marissa Kautzer, Crystal Garcia, Alex Avalos, Araceli Licon, Ruth Mendez, Alicia Raphael, Linda Goodson, Cynthia Garcia, Daniella Apodaca and Luana Benya.

Delivery Elves:

This year, our program touched the following Riverside County communities: Mira Loma, Corona, Hemet, Riverside, Perris, Lake Elsinore, Moreno Valley and unincorporated areas scattered throughout western Riverside County.

The Delivery Elves who donated their time and gas were: Karen Wesche and her family, Rosetta Runnels, Mary, Jose and Montserrat Salinas, Ana Foster and

Jennifer Alvarez of the Law Offices of Erik Bradford, Jenna Acuff of Reid & Hellyer, Kenneth Minesinger, Jim Husen, Raymond Prospero, the Honorable Mark A. Cope, the Honorable Pamela Thatcher, the Rosales family from Estancia Growers of Fallbrook, Deyanira Bakke, Christine Cahraman, the Riverside County Law Alliance, Yogenee Braslaw, Lou Griskey, Marisa Blackshire of Gresham Savage Nolan & Tilden, Julianna Strong of Redwine & Sherrill, Laila Kepler, Shannon Jonker of the Law Office of Robert Deller, and Josann Reynolds and Veronica Reynoso of the Law Offices of Brian C. Percy.

Special Thanks:

To my assistant Veronica, whose dedication and organizational skills made this one of the most streamlined shopping and delivery experiences we've ever had. To Veronica's husband Marcos and their two children Krystal and Marcos, Jr., not only for their participation, but also for being extremely patient with Veronica's absences on those extra-long days when she kept everybody moving in the right direction. To the Riverside County Bar Association staff, especially Lisa Yang and Charlotte Butt, for all their energies and skills. To the management and social workers from the CAP Center, for making certain we help the neediest families in the county. And once again, a very big "thank you" to the wonderful manager and the staff at the Big Kmart at Mission Grove in Riverside, CA.

Finally, a "thank you" to the Elves themselves. Your wonderful spirit and camaraderie (which are evident in the photos accompanying this article) could be seen throughout all the events.

To sum up, this year, we were able to purchase, wrap and distribute over 300 gifts to 28 families in one week! An impressive feat. Next Christmas, let's see if we can raise the bar to make it 30 families assisted! Thank you again for your support, and a happy and successful New Year to you all!

Brian Percy, a past president of the RCBA, is chair of the Elves program..



THE FUNDAMENTALS OF PREGNANCY LEAVE

by Jamie E. Wrage

Pregnancy and childrearing issues are coming up more and more in the practice of law as women make up a larger and more influential part of the workforce. Pregnancy discrimination lawsuits are on the rise. Law firms and attorneys need to be aware of and comply with the rules, not only to protect themselves, but also to create a more family-friendly environment so as to recruit and maintain their female workforce. In that connection, California law provides numerous protections to pregnant employees, including a guaranteed leave-of-absence period, after which the employee must, in almost every instance, be reinstated to her former or to a comparable position. Cal. Code Regs. tit. 2 § 7291.7(a).

Under the California Fair Employment and Housing Act (FEHA), all female employees, regardless of length of service, are eligible for pregnancy disability leave from an employer that has five or more employees. Cal. Code Regs. tit. 2 §§ 7291.2(h), 7291.7. Under the Pregnancy Disability Leave (PDL) law, generally, an employee is entitled to leave of a “reasonable period of time not to exceed four months” or 88 working days, for pregnancy, childbirth or any related condition. Cal. Gov’t Code § 12945(a).¹ In addition, an employer with 50 or more employees must also provide up to 12 weeks of leave under the California Family Rights Act (CFRA) after the child’s birth for bonding time.² In California, PDL and CFRA leave cannot be made to run concurrently. This means an eligible employee can take up to four months of PDL leave and up to three additional months of leave under CFRA.

Under the PDL law, if the employee is disabled by a pregnancy-related condition and a health-care professional gives the opinion that she is unable to work without risk to herself or the baby, all or some of the leave can be taken prior to the birth. Cal. Code Regs. tit. 2 § 7291.2(g).³ The four-month period of leave does not have to be taken all at once. Intermittent leave periods may be added up in computing the four-month total. *Id.*, §§ 7291.7(a)(2)(B), (a)(3). For example, if an expectant mother has to take two days off due to severe morning sickness and then returns to work, that two days can count toward the 88 days. If the employee’s PDL takes longer than four months total, the employee loses the right to automatic reinstatement. *Id.*, § 7291.9(d).⁴

It is important to note that this does not mean that every pregnant employee is automatically entitled to 88 days of leave. A licensed health-care provider determines the existence and duration of the disability. If the health-care provider releases the employee for work prior to the end of the 88 days, her leave rights cease.

Leave taken for pregnancy does not have to be paid under the PDL law. However, if an employer provides compensation for employees temporarily disabled for other reasons, then an employee temporarily disabled due to pregnancy must be paid the same benefits. *Id.*, § 7291.9(d). If any portion is unpaid, an employer can require a pregnant employee to use accrued paid sick leave, although the possible discriminatory impact of such a requirement has not yet been tested in any published opinion. *Id.*, § 7291.11(b)(1). And if an employee wishes, she can use her accrued paid vacation or personal time to make up any lost income. *Id.*, § 7291.11(b)(2); Cal. Gov’t Code 12945(a). A similar rule applies to fringe benefits. The same benefits provided to temporarily disabled employees must be provided to employees disabled by pregnancy.

CFRA leave kicks in after the baby is born for the purpose of baby bonding (for both mothers and fathers), but applies only to employees who have worked for the employer at least 1,250 hours in the 12 months prior to the commencement of the leave. Cal. Gov’t Code § 12945.2(a); Cal. Code Regs. tit. 2 § 7297.9(e).⁵ CFRA leave begins after the mother is released by her medical provider to return to work, whether or not that is before or after the expiration of the four-month maximum leave period for pregnancy disability leave. Eligible employees receive up to 12 workweeks of CFRA leave in a 12-month period.

All CFRA leave must be taken within the 12-month period following the child’s birth. Cal. Code Regs. tit. 2 § 7297.3(d). And while there is no right to paid leave under the CFRA, under certain circumstances employees may be required to or may elect to use accrued sick leave or vacation time during this period.

In almost every situation, an employee returning from pregnancy leave must be returned to her former position. An employer may be excused from reinstatement (1) if the employee would not have been in the same position

even if she had not taken leave (for instance, if there was a layoff under which she would have been terminated in any case) or (2) if preserving the employee's position would substantially undermine the business's ability to operate. *Id.*, § 7291.9(c)(1). The burden of proving these exceptions falls on the employer. Even if reinstatement is not an option, the employer is obligated, if possible, to move the employee to a comparable job if one is available and to do so would not substantially undermine its ability to operate. *Id.*, § 7291.9(c)(1).

Obviously, an employee's rights and an employer's obligations under the PDL law and CFRA are complicated and vary based upon facts such as the mother's health, the length of her employment and the size of the employer. But knowing that these issues exist is the first step in determining how to properly handle the situation to avoid everything from hurt feelings to large discrimination judgments.

Ms. Jamie Wrage is Senior Counsel in the Employment and Litigation Departments of Gresham Savage Nolan & Tilden in Riverside.



¹ An employee who works only part-time is entitled to a proportional amount of time off, so that an employee who works 30 hours a week, or three-quarters time, would be entitled to 66 full-time days

of leave (88 days at three-quarters time).

- ² All laws that apply to pregnancy-related leave are interrelated. While this article focuses on California's PDL law and CFRA, all employers should also investigate fully the ramifications of the Family and Medical Leave Act (FMLA) and Americans with Disabilities Act (ADA).
 - ³ The employer also has obligations to accommodate a pregnant employee's need for a less strenuous or hazardous position if she is able to work, but that aspect of the law is not covered by this article.
 - ⁴ Even if an employee loses the right to automatic reinstatement, the employer must still treat her in the same manner that it treats any other employee returning from a temporary disability with regard to reinstatement, or face possible claims of discrimination.
 - ⁵ CFRA leave is also available for bonding time for newly adopted children or newly placed foster children.
-

MATERNAL PROFILING

by Diane J. Klein

So there it is, on the *New York Times* list of “Buzzwords of 2007,” just after “mom job,” a/k/a “mommy makeover” (“a package of cosmetic surgery procedures that will reduce the visible effects of childbirth, like stretch marks or sagging”): “maternal profiling.” According to the *Times*, “maternal profiling” is the new name for “employment discrimination against a woman who has, or will have, children. The term has been popularized by members of MomsRising, an advocacy group promoting the rights of mothers in the workplace.” The MomsRising website, www.momsrising.org, contains page after page of postings by women who were turned down for jobs or promotions when it was “discovered” that they were mothers, or who have seen their careers stall upon becoming parents.

Of course, since more than 80% of all women in the U.S. will be mothers by their mid-40s, one might say that discrimination against women who “have or will have” children is pretty much the same as discrimination against, well, *women*. And as such, it should be covered by Title VII and California’s Fair Employment and Housing Act. Quite simply, if mothers in the workplace are treated differently than fathers, based on stereotyped assumptions about how parenthood “interferes” with a woman’s job performance but not with a man’s, those mothers are being discriminated against on the basis of sex, and it’s illegal.

The term “maternal profiling” naturally and intentionally reminds us of another controversial practice – so-called “racial profiling.” “Racial profiling” is a term most frequently used in the context of allegations of racially biased policing, in which law enforcement officers disproportionately stop, arrest, investigate, and even harass persons of color. Defenders of the practice argue that using characteristics of typical offenders to “profile” those warranting greater scrutiny is a necessary part of effective law enforcement; critics maintain that it is the more intense attention given to members of racial minorities that actually leads to the higher arrest rate, contributing to a vicious cycle in which membership in a racial minority group becomes associated with criminality.

By analogy, then, those who describe certain employment practices as “maternal profiling” mean to suggest that women who are or will become mothers are singled out by employers for a different sort of treatment than male employees (even if they are fathers), or than women

who fall outside this category (perhaps because of age). The anecdotes in support of such experiences have begun to fill the “blogosphere” at www.momsrising.org, and most working mothers can probably think of numerous instances in which they believe they may have been treated differently because of their parental status and their employer’s assumptions about how that might impact job performance.

For some women, these stereotypes interact perniciously with racial biases, as well. For example, an excellent law student of mine from several years ago, a young, divorced, African-American woman with a toddler-age son, went on a number of interviews as a 2L. Without any set plan, in some of her interviews, she mentioned her son, while in others, she did not. She got call-backs from every firm at which she had *not* mentioned her child – and not one from those that knew she was a mother. As a white divorced single mother when I applied for summer positions during law school, I had not encountered this bias, and it never occurred to me to warn her. For those firms, apparently, the stereotyped assumptions about this young Black woman – that she was an “unwed” or “teen-age” mother, that she was sexually or personally irresponsible, and so on – none of which was actually true, in her case – together with whatever biases the firms had about a mother’s ability to balance the demands of being a law firm associate with caring for young children in general, devastated her employment prospects. It would be very unfortunate if, after being hired, the “disclosure” of her parental status were to subject her to further discrimination and interfere with her career.

However, just as law enforcement officials maintain that focusing attention on individuals who fit an offender’s profile is the only rational, sensible thing to do (whether they are looking for a particular suspect, or a class of persons in general), employers similarly maintain that good business judgment gives them both the right and the obligation to choose employees in a way that takes account of past experiences with similar employees. If, historically, graduates of State U have performed better than graduates of College Y, surely the employer may look more favorably on applicants from one than from the other, and if the employer misses out on a great prospect from College Y, that’s his loss. If fathers and childless

men and women are “better” employees than mothers, what else is an employer to do?

Interestingly, “maternal profiling” is not so different from a closely related practice that got a lot of attention in the 1990s – the “mommy track.” The “mommy track,” in contrast to the “fast track” that male and apparently childless female professionals might be on, consisted of career opportunities deemed compatible with child-bearing and child-raising: shorter hours, greater “flexibility,” generous benefits, perhaps less “pressure” or travel. Some law firms referred to these arrangements as “lifestyle jobs” – in other words, jobs that allowed you to *have* a lifestyle! Initially, many feminists and others welcomed the idea – the “mommy track” at least made it possible for many women with family or other personal obligations outside work to participate in a high-powered professional environment. It seemed to represent a step away from the “all or nothing” idea of commitment to one’s job. But it proved to be a double-edged sword, as mothers found themselves increasingly relegated to the mommy track whether they desired it or not; thus, women who happened to be mothers continued to be excluded from the most elite precincts of their professions.

Those who oppose maternal profiling need a way to answer the employer, especially in a small business environment, whose experience with working mothers consists of late arrivals, early departures, mid-day disappearances, unexplained absences, short leaves that become permanent, and so on. In the private law firm context, how do we respond to those who would rather avoid hiring young mothers, after having invested years of training in associates who don’t come back from maternity leaves, or who can’t or won’t take larger assignments involving short-notice travel or unpredictable late nights? Is there a way to answer hiring partners who simply feel that the “reality” is that women with the primary responsibility for young children are just not as “committed” to their jobs as other professionals?

Progress on this problem will require coordinated solutions. First, employers need to reconsider whether some of the challenges involved in hiring and promoting “non-traditional” employees, such as mothers of young children, are outweighed by the extra skills and value such employees can bring. Just as employers traditionally preferred married men, with families to support, on the theory that they would be ambitious and committed, the same is frequently true of working mothers. Moreover, the actual skills of mothering – patience, perseverance, multi-tasking, pressing on even when one is “sick and tired” – are traits employers should value. Companies and firms that have become accustomed to finding creative ways to accommodate the needs of any valued employee need to extend that creativity to the working mother in their employ. Employers also must avoid stereotypes, and must not rely on incorrect or perhaps outdated assumptions about the job performance of mothers (or future mothers). Avoidance of gender-based stereotypes in hiring and promotion – including but not limited to “maternal profiling” – is not just good business. It’s the law.

Diane J. Klein is an Associate Professor of Law at the University of La Verne College of Law in Ontario, California.



(MINORITY) WOMEN IN THE LAW, OR WHAT I WANT TO BE WHEN I GROW UP

by Maxine Morisaki

While I was preparing this article, the question in my mind was: “What would be interesting and relevant to this discrete group of readers?” I have spoken to college student groups, and their inquiries are: what do I need to do to become a lawyer; how difficult is law school/practice; why did you choose this profession; is it a good field for minorities/for women; and so forth. Obviously, this readership is different, since it is composed of lawyers. This was my challenge and I mulled it a bit.

Alas, experiencing no epiphanies or divine inspiration from the muse of legal publication articles, I decided I needed to discuss something with which I am familiar – my own, more specific, experiences and views on this topic. To paraphrase a media mantra, you are getting “one minority woman’s opinion.” I read some past articles in this publication on this topic, and do not disagree with the views expressed therein. Those articles tended to discuss “the law” in a more global sense. They discussed what was happening in various segments of the practice, with the theme that things are getting better for women. They are, by the way, correct, in my opinion.

My conclusion after mulling was that I would direct my discussion to:

- 1) What is it like practicing as a woman lawyer?
- 2) What is it like practicing as a minority woman lawyer?
- 3) What do you want to do when you grow up [or, is it worth it]?

Two-ferism. After hearing enough about it since affirmative action (yes, remember 1968?), I qualify as a “two-fer.” Not only am I a woman, but I am a minority (Asian). By far the biggest distinction in practicing law comes from being a woman first, and an Asian minority secondly. This is true for Southern California (where there are lots of Asians, and a fair number of Asian lawyers); it may not stand true for regions in the South, Midwest, etc., where there are fewer of my type of minority, or any minorities at all. Being a two-fer, however, is not all good. In admissions and hiring practices, it is certainly an advantage. All entities, companies, etc., espouse the value of multiculturalism. I think it is good to have diverse people in a mix because it brings different perspectives to the work. I like



Maxine Morisaki

that. As a two-fer, doors definitely get opened, although getting through them permanently is not guaranteed. A door opened still means you have to be capable, appropriate, and hard-working to get and keep the job.

A woman lawyer. I worked in the business world as a non-lawyer. In that world, and in my years of early practice as a lawyer, being female was an obstacle to advancement in some ways. For example, there were fewer women overall. (We had roundtable discussions in those days about women wearing pants to court! The “yuppie” handbooks were all the rage, and some new women lawyers wore white shirts with ties shaped like flowers.) The clients were used to dealing with men, and they tended to want to deal with men (as they were accustomed to doing). The work assignments, client assignments and, therefore, increased pay and advancement opportunities were more difficult to obtain for women. A word of caution, though. In the early years, the men and women were more equal. (The clients knew that, male or female, you were all “newbies” at that point.) In the early days, I worked six and one-half days a week to learn how to practice law. Dedication and discipline were the rule by which I approached the profession. Who (employer or client) does not like that kind of hard and thorough work? That is one way that the early years of practice are more equal between the men and the women in terms of quality of work, billable hours, and client interaction. It is only to a lawyer who starts to distinguish oneself that the disparities become more apparent.

Yes, is the answer to the question: “Is practicing as a woman lawyer more difficult than practicing as male lawyer?” My observation is that the current system (developed initially by men, after all) weighs in favor of men. There are more male lawyers in positions of power. This is societal. Yes, the profession is changing. No, in general, female lawyers (for any number of reasons) do not advance as high in the same numbers as male lawyers. The women also do not make as much money as the men (since they do not have access to the highest levels of management, for any number of reasons).

Being a minority female lawyer. To the experiences of being a female lawyer, now add the overlay of being

a minority female lawyer. I can sincerely say that in my practice in Southern California (Los Angeles County, the Inland Empire and Orange County, primarily), being a minority lawyer has not resulted in what I perceived to be a hardship or basis for discrimination. Did a ruling not go my way, or was there a sharp practice by opposing counsel (or codefendants)? Sure, it's called "litigation," in a system designed on an adversary basis. I did not perceive that to be a reflection on my ethnicity, just the business I was in. Interestingly, having worked with CPAs, I believe they are more professionally competitive; there is rivalry (for example, a tax lawyer or a CPA can be selected to prepare a 706 estate tax return).

The answer to the question, "What is it like practicing as a minority female lawyer?," is more complex (and less succinct). My experience is that my ethnicity has actually been beneficial to my career. Again, I believe this is really just a function of the era in which I came of age. I also suspect this is related to living and practicing in Southern California.

What about growing up? This is always an intriguing personal question, for everyone. I use it to raise the point, is it worth being a lawyer? Yes, is my answer. Being born female and a minority is immutable. It is all about what you do with those traits and any other talents and abilities. The law is an excellent profession for having an influence in our society, for having a voice, for making changes, for protecting rights and engaging in discussions about ideas that need to be looked at. The law is the only profession that I know of where you do not get "timed out" for being too old; you can take it up at any point in life. Engineers and physicians, generally, have to take their education and training early. In my night law school class, our oldest student was a Ph.D. who was getting ready to retire from teaching at Cal State Northridge and wanted to do something else in her career. She was 62 years old.

Be you the steely-eyed kid from the mean streets with grit, or a suburban kid with a trust fund, the law is a career in which the playing field can be leveled. You are judged on what you do (results) and your character. I endorse it as a profession for the college students I talk to. I also tell them there are pitfalls (not everyone makes tons of money, or vanquishes opponents in crushing cross-examination while being in trial all of the time). Signing off, for now, "One Minority Female Lawyer."

Maxine Morisaki is a Deputy County Counsel for San Bernardino County. She recently joined the county counsel's office after practicing civil litigation in Southern California for a number of years, including as a shareholder in her last firm.



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WOMEN AND THE LEGAL PROFESSION

by Theresa Han Savage

You can't be shining lights at the Bar because you are too kind. You can never be corporation lawyers because you are not cold-blooded. You have not a high grade of intellect. I doubt you could ever make a living.

– Clarence Darrow, a prominent 19th century lawyer, in a speech to a group of women lawyers

In 1869, Myra Bradwell became the first woman to pass a bar examination in the United States. However, Ms. Bradwell's application to the Illinois Supreme Court for admission to the bar was refused because she was a woman. This decision was upheld by the United States Supreme Court in *Bradwell v. Illinois* (1873) 83 U.S. 130. Justice Bradley, concurring in the judgment, stated: "The paramount destiny and mission of woman are to fulfil [sic] the noble and benign offices of wife and mother. This is the law of the Creator. And the rules of civil society must be adapted to the general constitution of things, and cannot be based upon exceptional cases." (*Id.* at pp. 141-142.) Illinois later changed its rules, and in 1890, Ms. Bradwell was admitted to the Illinois bar.

In 1878, after Ms. Bradwell passed the Illinois bar exam but before she was admitted to the bar, Clara Foltz became the first woman to pass the California bar exam. Like Ms. Bradwell, Ms. Foltz was unable to become a member of the bar because California law allowed only white males to be admitted. In response, Ms. Foltz authored a state bill which replaced "white male" with "person," and in September of that year, she became the first woman admitted to the California bar.

A little more than 100 years later, in 1981, Sandra Day O'Connor became the first woman to be appointed to the United States Supreme Court. This was a monumental accomplishment after the struggles her predecessors and she encountered upon graduating from law school. Although Justice O'Connor graduated Order of the Coif from Stanford Law School in 1952, no law firm in California was willing to hire her as a lawyer because she was female. One firm, however, offered her a position as a legal secretary. Therefore, she turned to the public sector and started her law career as a deputy county counsel.

Thanks to the efforts of women lawyers such as Ms. Bradwell, Ms. Foltz and Justice O'Connor, women have made gains in the legal profession. Now, women account for approximately 50% of enrolled law students and 44% of associates in private law firms. Nevertheless, statistics show that women account for only 17% of partners in

private practice, 15% of general counsels in Fortune 500 companies, and 25% of the judiciary. The reasons behind the low representation of women in the upper echelons of the legal profession are complex and multifaceted.

For years, many private firms have attributed the low percentage of women partners to a "pipeline" issue. The firms reasoned that the number of women partners would increase as more females entered the profession. This, however, has not occurred. Since the mid-1980's, approximately 40% of law school graduates have been women. Thus, under the "pipeline" theory, from the mid-1990's, women should make up approximately 40% of lawyers making partner. However, statistics show that only 15% of women remain at private firms when they are eligible to be considered for partnership. The "pipeline" explanation can no longer be argued.

Firms also attribute the low percentage of women partners to the following: (1) Many female associates leave before they are eligible to become a partner; or (2) female associates do not have a book of business to gain partnership status. Those are valid reasons. However, as attorneys – who have been taught to think critically – we must ask: (1) *Why* do women leave private practice at a higher rate? (2) *Why* do women fail to generate business at the rate their male counterparts do?

One of the reasons that women leave private firms is to become more actively involved in raising their children. Justice O'Connor observed that "women professionals still have primary responsibility for the children and the housekeeping, spending roughly twice as much time on these cares as do their professional husbands." The second woman lawyer appointed to the Supreme Court, Ruth Bader Ginsburg, stated, "Women will only have true equality when men share with them the responsibility of bringing up the next generation." Notwithstanding these demands, a recent study indicates that female lawyers often felt pressured to make that choice. These lawyers would have preferred to maintain their jobs while raising their families *if* a structure had existed that allowed the women to do so. However, without a structure in place, female associates are reluctant to call attention to their struggles with juggling various commitments because they fear that they will be viewed as not committed to the practice of law. Rather than swim against the tide, many decide to leave.

According to a New York Times article, another reason that women leave private firms is because female associates discover that male associates enjoy distinct advantages sim-

ply from the fact that there are more men in most firms. As a result, female associates enjoy less access to the networking and business development opportunities that occur “in largely male playgrounds – think golf courses or football games – or through an invitation for a casual after-work drink with a male boss.” This may result, not from gender bias, but for practical reasons. A male boss may feel uncomfortable asking a female associate to accompany him in a social setting, or the female associate may have little in common with her male boss. Nonetheless, the fact remains that many female associates are not afforded the same opportunities for business development as male associates. As a result, women lawyers have a more difficult time building a book of business.

Women lawyers face numerous other struggles. For example, women are judged more critically on their “personality” than their male counterparts. If a female lawyer is aggressive in representing her client, people often perceive her as being too harsh and cold. If a male lawyer conducted himself in the same manner, his “aggressive” personality would not even be an issue. Instead, he would probably be lauded for being a good advocate for his client. Case in point: Hillary Clinton – a female lawyer and a candidate for president – is often described as being cold and calculating because she is always in control of her feelings. However, seldom do you hear the terms “cold and calculating” used to describe any male candidate running for president. On the other side, when Hillary showed emotion before the primaries in New Hampshire, many deemed this display of emotion to be a sign of weakness.

Moreover, studies have found both explicit and implicit unacceptable treatment of female lawyers by male judges. For example, a federal district court judge refused to address a female attorney as “Ms.” and threatened to hold her in contempt if she persisted in using her birth name, rather than her married name.

Furthermore, many studies show that women lawyers, on the average, earn much less money than their male counterparts. On the average, women equity partners

earn \$90,000 less than the men. The pay difference is greater at firms with higher billable-hour requirements, where women earn \$140,000 less than men. Female of-counsels earn \$20,000 less than males, and female nonequity partners earn \$27,000 less.

Notwithstanding the statistics that demonstrate that women lawyers still lag far behind their male counterparts, many of us want to believe that we are judged simply on our merits and accomplishments, and not by our gender or race (another complex issue). We want to find reasons other than gender bias – such as the reasons described above – to account for the gap between the genders. Admittedly, some of those reasons are valid. However, do *only* women struggle with balancing family with work? Do *only* women struggle with generating business? I do not believe that to be the case.

We cannot ignore the fact that women face barriers that men do not face to progress in their careers. Law firms have started to recognize these issues. Some law firms have assessed what they can do to retain their talented women attorneys by offering flexible schedules and providing stronger mentoring programs. Such programs benefit both the lawyers and the firm. In order to succeed in the highly competitive world of business, I believe that more firms will adopt such policies, if not out of concern, then out of necessity. A quote from one woman lawyer is apt: “If law firms want to get the best and brightest young women to join them and *stay*, they will likely need to change radically and adopt different definitions of sacrifice and partnership.”

Theresa Han Savage is a research attorney at the Court of Appeal in Riverside and past president of the RCBA.



JUDICIAL PROFILE: COMMISSIONER KATHLEEN MARIE JACOBS

by Evelyn Cordner

Commissioner Kathleen Marie Jacobs, a native of Riverside, is old enough to remember the black haze of a smudge-pot morning, before a pesky little thing called air quality became the bane of orange grove owners but a boon to all those who hated the stinky and unhealthy smoke that blocked the winter view of our snowcapped mountains. Her father was mechanical, and in addition to owning the Ed Martin Garage in town, which did automotive repair, he worked as a mechanic repairing wind machines and smudge pots in the orange groves. She has two brothers, one older and one younger. Family ties are important to her, and the garage remains in family hands. She attended local schools, graduating from Ramona High School, my alma mater, and going on to complete college at Cal State San Bernardino. It was fun talking with her about what the old town was like in our youth and sharing tales of what we remember of Riverside as an agricultural community, home to thousands of acres of orange groves. She is also an avid rose grower and loves dogs.

Reminiscing about her road to recently becoming a commissioner for the Riverside County Superior Court system, she gave full credit to the men in her life, who cared about what she thought, even at a young age. She recalls lively discussions with her father and grandfather in which facts were made up as “we went along.” The point is that they valued her point of view and encouraged her to hold her own. From a variety of past jobs as well as a legal career, she developed the foundational skills with which to tackle her current job. She worked in her youth for Butcher Boy, a food-processing company owned by Duane Roberts (of Mission Inn fame, for those of you who must live under a rock, though you call yourselves Riversiders). After college, she went to work for the Department of Social Services for Riverside County, first as an eligibility worker for the Aid to Families with Dependent Children program, and then moving on up to supervision. (What? Another coincidence? That is where I started my own illustrious career!) This ended when, with the support of her husband, she quit and enrolled at Western State Law School, attending full-time and being admitted to the California Bar in 1985. From there, she



Commissioner
Kathleen Jacobs

worked for a civil firm and later joined in partnership with her law school friend, David E. Gregory, focusing on real estate and business law.

Commissioner Jacobs enjoyed a successful civil practice, with more litigation than she really wanted, and discovered she was good at it. Her legal highlight (we all have one) was being part of a consortium that challenged and succeeded in stopping the Trevor Law Group from shaking down businesses under the auspices of Business and Professions Code section 17200. As she was explaining the significance of what was going on, memory stirred that I had read about the abuses stemming from a section that ostensibly gave increased protections to consumers of products and services but turned into easy money for less-than-scrupulous lawyers. To pass on to you my own education from the Commish, this is the code section that allowed third parties with no real standing to sue small businesses for alleged transgressions to consumers. As no small business could afford to go to trial, the suits against small businesses threatened apparent extortion-like settlements. As an advocate, and representing about 100 small businesses, mostly car repair shops, like her father's, she joined others, including counsel for B.F. Goodrich. They took the matter up to the state Attorney General's Office, and after they received significant public attention and support, Business and Professions Code section 17200 was amended. Her advocacy was time-consuming but successful and still gives her a feeling of great accomplishment in having righted a civil injustice.

When asked what she brings to the bench, she adds without a beat: Reasonableness. This is a good thing for any bench officer, but is especially helpful when dealing with her current calendar of probate, traffic, unlawful detainer and civil harassment cases. Commissioner Jacobs loves her job. Must have been that early smudge she inhaled ...

Evelyn Cordner is blissfully retired from the Riverside County Office of the Public Defender.



OPPOSING COUNSEL: SUSAN BRENNECKE

by Kelly M. Henry

The Accidental Lawyer

If you ask attorney Susan Brennecke what her favorite word is, she will tell you it's "mom," and her least favorite word is "hate." "Hate," she says, "poisons the one who hates and the one who receives the hate." Susan's choice of most and least favorite words is all the more remarkable, given that she grew up with an angry, alcoholic father. Susan could have allowed herself to slide into the resentment and recriminations that can damage or destroy the life of a child of an alcoholic; however, she made the choice that that cycle would stop with her. She also made the commitment that her children would not have her childhood. Susan is truly a remarkable woman who has had to overcome enormous challenges to get to where she is today. She is now a valued attorney at the Riverside law firm of Thompson & Colegate and, most importantly, a successful mom.

As Susan sat in her office at Thompson & Colegate, she thought back to when she was growing up, and she admitted that she had no thoughts or aspirations about becoming a lawyer. Most of her preadolescent life was spent in North Dakota as the eldest daughter of a former police officer turned Lutheran minister, who also happened to be an alcoholic. Her only aspiration was to get through the day while working with other family members to hide the fact that all was not perfect in the preacher's family.

One day, Susan's mother found the strength to separate herself and her children from the alcoholism that had taken hold of Susan's father. Susan confessed she was relieved, because living as a preacher's daughter was like living in a fishbowl. She joked that she could not play "Crazy 8's" without parishioners turning her in. Therefore, Susan entered high school with a welcomed anonymity that had been missing from her life as preacher's daughter.

Although Susan was savoring her newfound anonymity in high school, she did not realize she was already suffering from the effects that come with being a child of an alcoholic, such as low self-esteem and the desire to please those around her at the expense of her own well-being.

Shortly after Susan's father was separated from the family, he disappeared from her life completely. Years later, when she was 19 years old, he reentered her life and turned to sobriety. Susan was already married and giving all of herself to her marriage and her husband. This kind of



Susan Brennecke

behavior was characterized by Susan as "very ACA," or typical of adult children of alcoholics. Susan's father encouraged her to join Al-Anon, a 12-step organization designed to treat the adult family and friends of alcoholics.

Susan took her father's advice and began to attend Al-Anon meetings, where she began to learn about breaking the devastating cycle that alcoholism brings to bear on families. She learned the meaning of a "functional" family and how to raise happy and healthy children.

Times were not always easy, and Susan ended up struggling as the single mom of a son and two daughters. However, she continued to persevere and to apply the lessons she learned in life and at Al-Anon while raising her children. When times were tough, she would say to her daughters, "We're pioneer women. We can do it." She made sure that every day she told her three children that she loved them and consistently stressed the importance of getting a good education by going to college.

While raising her three children, Susan was able to graduate from Riverside Community College with honors in 1984. She then became a paralegal in 1985 and joined the well-respected Riverside law firm of Thompson & Colegate in 1996. When she joined Thompson & Colegate, she was in the process of pursuing her Bachelor's Degree in social work from La Sierra University. Throughout her career as a paralegal, Susan demonstrated genuine talent with legal research, drafting demurrers, drafting motions, and preparing discovery. Although Susan seemed oblivious to these natural talents as a problem-solver and analyst and to how those talents could be applied to make her a very effective attorney, Dulce Pena, an attorney who worked closely with Susan at Thompson & Colegate, was not so oblivious.

One day in 1999, while Susan was sitting in Dulce's office, Dulce tossed an application to the University of La Verne Law School in her direction, and stated in Dulce's no-nonsense way, "Apply. You need to be a lawyer." Susan mulled over the possibility, considering a host of reasons why she shouldn't apply. On top of the list was the fact that she would be 44 years old upon entering law school and 49 by the time she became an attorney. A friend of Susan's responded to her concerns by pointing out, "You're going to be 49 anyway, you may as well be a lawyer." Gaining

much-needed perspective from this rather good point, Susan promptly applied and was accepted to law school.

Not one to rest on her laurels, Susan continued to strive and learn during her law school tenure. Not only did she work full time at Thompson & Colegate while attending law school, she competed on the Moot Court team at her law school and has been a member of the school's Advisory Committee for the Legal Studies Program since 1999. She is also a member, and has served as President, of the Friends of Riverside Community College Forensics, which is an organization that sponsors local students by providing incentive and support for speech education programs and competitive activities like Moot Court.

Susan graduated from law school in 2003 and was admitted to the Bar in 2004, at which time she became a lawyer with Thompson & Colegate. After she was sworn in, Susan confessed that she would giggle when the thought occurred to her that she was now a lawyer – an accidental lawyer, if you will.

Susan continues to practice law as a valued and vital associate attorney with Thompson & Colegate. She is happily married, with two step-children along with her own three children. Susan's children have gone on to obtain their college educations, and are now living healthy, positive, adventurous and productive lives of their own. Happily, Susan has also recently welcomed her first grandchild, Charlize Lynda Rodriguez (a/k/a Charli), into the family.

Susan's success as a person and as a lawyer comes from the philosophy of not sitting in judgment of others, and for this she credits her mom. According to Susan, maintaining a nonjudgmental manner keeps the lines of communication open, which is vital to being an effective parent, attorney, and human being. The key, according to Susan, is the acceptance of people as they are. "We are all connected like grapes on a vine," she says. To that end, Susan believes that regardless of anyone's station in life, we are all human beings who deserve to be treated with respect. As John F. Kennedy so eloquently stated in his famous speech at American University in 1963, "our most basic common link is that we all inhabit this small planet. We all breathe the same air. We all cherish our children's future. And we are all mortal." This principle best encapsulates the philosophy Susan lives by. Susan is an inspiration not only to women, but to all people who face all manner of struggles every day and have to make tough choices. She is a shining example of what can be accomplished if you just get up in the morning, put one foot in front of the other, and believe.

Kelly M. Henry is a member of the Bar Publications Committee and an associate attorney at Thompson & Colegate LLP in Riverside. To learn more about the Friends of Riverside Community College Forensics, please visit their website at www.forccf.org. To learn more about Al-Anon and meetings in your area, please visit www.al-anon.org.





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JEFFREY L. BLEICH

PRESIDENT

Open Letter To Members of the Legal Community on the Justice Gap Fund

December 6, 2007

"Today, 1.5 million families in California do not have access to lawyers when confronted with legal disputes. This condition exacerbates the anguish of victims of domestic violence, elderly persons swindled out of their retirement nest eggs, and immigrants cheated of their rights. As a community, we need to mobilize the recourse of the legal community to ensure access to justice for all."

[Chief Justice Ronald M. George, *quoted in the State Bar's Pro Bono Toolkit.*]

Dear Colleague:

The Governor signed AB 2301 establishing the new Justice Gap Fund to help increase legal services for Californians who cannot afford an attorney. On behalf of the State Bar, I'm grateful that the new Justice Gap Fund is being set up this year to help those in desperate need of legal help. I hope you will join me in helping to make it a success.

The new law authorizes the State Bar to ask each attorney to contribute \$100 through their annual fee statement to support critical legal services programs across the state. Every attorney can contribute simply by logging onto our new webpage at <http://calbar.org/justicegapfund>. It includes a brochure that explains the new program, as well as a list of the programs that will receive these funds. For more information, contact: justicegapfund@calbar.ca.gov

I hope that you will step forward and support this new effort. For many Californians, legal services mean the difference between losing their jobs, their homes, their family, and ultimately their hope. Already this year, we have begun to address this need by ensuring that financial institutions pay comparable interest on IOLTA accounts, that are dedicated to legal services. But the legal profession needs to do its part now, and take a leadership role. The most vulnerable of our fellow Californians are depending on you.

Please don't hesitate to contact us if you have any questions. And thank you for your generous contribution to the Justice Gap Fund.

Sincerely,

Jeffrey L. Bleich, State Bar President

STOP, DROP AND CALL: WHAT TO DO WHEN YOU RECEIVE A PRIVILEGED DOCUMENT INADVERTENTLY PRODUCED BY YOUR OPPONENT

by Aileen Banellis

If it seems too good to be true, it probably is. The California Supreme Court reaffirmed this maxim in its recent decision, *Rico v. Mitsubishi*, 42 Cal.4th 807 (2007), which announces the standard governing an attorney's conduct upon receiving privileged or confidential documents inadvertently produced by the other side.

Justice Carol Corrigan, writing for a unanimous court, summarized the interesting factual background. Various plaintiffs sued Mitsubishi after a Montero rolled over on the freeway. Before trial, Mitsubishi's attorneys and experts held a strategy meeting to discuss the vulnerabilities of their case and to prepare for trial. Mitsubishi's paralegal was present and took notes at the direction of one of the attorneys.

The paralegal later printed these notes, and Mitsubishi's attorney edited and annotated them. Two weeks later, that same attorney arrived to depose one of plaintiffs' experts. When he left the conference room to use the restroom, his briefcase and file were still inside with plaintiffs' legal team. The notes from Mitsubishi's strategy meeting were inside the file.

Unbeknownst to Mitsubishi's counsel, plaintiffs' attorney somehow came into possession of the notes, made copies of them and distributed them to cocounsel and their experts. Two weeks later, over vigorous objections to an "unknown document," plaintiffs' counsel used the notes while deposing defendants' expert. It was only after the deposition that Mitsubishi's attorney received a copy of the questionable document and discovered it was his own privileged set of notes from the strategy meeting.

And so the battle began. Mitsubishi demanded the return of all copies of the document and moved to have plaintiffs' legal team and experts disqualified. The trial court found that the notes were absolutely privileged under the work-product doctrine because they contained the legal team's impressions of the case.

Although Mitsubishi argued that plaintiffs' counsel took the notes from its counsel's file during his restroom break, plaintiffs countered that the court reporter handed them over accidentally. Finding insufficient proof that the notes had been taken from the file, the trial court ultimately determined the notes were inadvertently produced.

The next step was to determine what plaintiffs' ethical duty was upon receipt of the notes. Surprisingly, California's Rules of Professional Conduct are silent on the issue, which left both sides in *Rico* free to argue their positions.

California case law provided some guidance. When this issue was litigated in 1999 in *State Compensation Insurance Fund v. WPS, Inc.*, 70 Cal.App.4th 644 (State Fund), the Second District Court of Appeal found itself unable to uphold sanctions against an attorney for using privileged documents inadvertently produced, even though the attorney used the documents in bad faith. The trial court's ruling sanctioning the receiving party based on the American Bar Association ("ABA") Formal Ethics Opinion No. 92-368 (Nov. 10, 1992) was overruled.¹ The Court of Appeal held that it could not uphold sanctions for conduct that had not yet been condemned by any decision or ethical rule in California. However, the State Fund court did announce a proscription for future cases, and on December 13, 2007, the California Supreme Court announced in *Rico* that this rule will govern all attorneys in California.

Now, once an attorney realizes a document is privileged and was inadvertently produced, the attorney must stop reading the document, drop what he or she is doing, and call opposing counsel, or risk sanctions. If the issue cannot be resolved informally between the parties, then the parties must contact the court for a resolution.

Under the rule, the attorney may read only as far as is necessary to conclude the document is privileged. The line is drawn by an objective standard: The attorney may read only so far as when reasonably competent counsel would have determined the document was privileged. This critical point was obvious in *State Fund*, because the documents were marked "confidential" and "attorney work product." However, the document in *Rico* was not labeled in any manner. Nonetheless, the Supreme Court found the document was not any less privileged, and by plaintiffs' counsel's own admission, he knew within a minute or two of reading the document that it was not something Mitsubishi intended to reveal.

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IN MEMORIAM: DONALD J. DUNN

by Susan Nauss Exon

November 9, 1945 – January 5, 2008

Donald J. Dunn, Dean and Professor of Law of the University of La Verne College of Law, passed away on January 5, 2008, at his home in Orange County, of complications related to cancer. He is survived by his childhood sweetheart, and wife of almost 40 years, Cheryl, son Kevin, daughter-in-law Wendy, and two grandsons.



Donald J. Dunn

“Donald Dunn was an experienced administrator, dedicated educator and recognized scholar who had a profound and lasting effect on the University of La Verne College of Law. As dean, he provided keen leadership that helped carry our College of Law over the initial threshold of American Bar Association accreditation,” said University of La Verne President Stephen Morgan. “Having served on a number of ABA accreditation teams, including one that had previously visited our College of Law, Don brought with him a depth of knowledge and familiarity with the process that proved integral to attaining provisional accreditation.”

Don came to the University of La Verne in 2003 and had an instant connection to ULV. He was highly respected by students, faculty, administration, and staff. His integrity for quality legal education was surpassed only by his dedication to students. Current and former students have fond memories of their dean, that he “was a warm and kindhearted individual whose hello was always accompanied by a smile,” who “was a very inspiring mentor who loved to communicate with students and always kept an open-door policy.” Students remember their dean’s smiling face, his genuine interest in their well-being, and the casual conversations they used to have with him. Dean Dunn “will remain in our hearts forever,” said Kiran Kavipurapu. “While other administrators emphasized the importance of studying hard, Dunn spoke about the importance of greeting others, looking them in the eye, and of being a decent human being,” remarked Ann Hull. Perhaps the College of Law’s Interim Dean, H. Randall Rubin, sums it up best: “Don’s passion for law librarianship and his dedication to the advancement of legal education was inspiring. He had a vitality that was contagious. He was a mentor, a colleague and a close family friend to many of us. This is a great loss to both our law school and the national legal community.”

Don was a humble and gracious individual, yet many people probably do not realize his national prominence within legal education. He was born in a rural area in Texas and began his 38-year career at the University of Texas at Austin’s Tarlton Law Library in 1969. In 1972, Don earned his Master’s in Library Science from the University of Texas at Austin and became supervising librarian in its Criminal Justice Reference Library.

In 1973, he joined Western New England College (WNEC) School of Law in Springfield, Massachusetts as law librarian and assistant professor of law. By 1996, Don had been promoted within the faculty three times and was named the law school’s Interim Dean. Two years later, he became Dean of WNEC School of Law, making him one of two law librarians in history to also serve as a law school dean. In 2001, Don retired as dean and in 2002 became WNEC School of Law’s Associate Dean for Library and Information Resources while continuing as a professor of law.

While at WNEC, Don was an active member in the American Bar Association (ABA), and, in 1977, he began serving as an ABA site evaluator for law schools seeking national accreditation. He served on over 40 site-evaluation teams, chairing five of them.

In 2003, Don and his wife, Cheryl, moved to Southern California, where he joined the University of La Verne as dean and professor of law at the College of Law. He also became a member of the Riverside County Bar Association. While at ULV, Don worked with university administrators and the law school’s faculty to guide the California bar-accredited law school through the national accreditation process to obtain provisional ABA approval on February 13, 2006. Don continued to work tirelessly toward full ABA approval. Even during his year-long illness, what kept him going was his love for the ULV College of Law, his integrity for the profession, and his determination to return to work.

A prolific writer with more than 60 books, articles, papers and citations to his credit, Don was inducted into the University of La Verne’s “ULV Academy” in May 2007, which honors individuals who have demonstrated quality research and a clear commitment to the advancement of the University of La Verne.

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Additionally, the rule applies regardless of the nature of the privilege. State Fund involved documents protected by the attorney-client privilege. Rico involved documents privileged under the attorney work-product doctrine. The rule does not discriminate between privileged and confidential documents.

Failing to comply with the rule can have drastic effects. In Rico, the entire legal team and their experts were disqualified because of their use and dissemination of the document. To ensure that a party will not tactically slip a privileged document to the opposition in order to disqualify them, the party requesting disqualification bears the burden of establishing the documents were inadvertently produced.

As the Rico court observed, the rule is manageable and ensures that the discovery process will go on efficiently. A party responding to discovery requests will not be forced to spend hours screening a massive production of documents to ensure that a privileged document will not end up in the opponent's hands. And the party receiving the document must simply remember, if it seems too good to be true, it probably is.

Aileen Banellis is an associate in the Litigation Department at Gresham Savage Nolan & Tilden's Riverside office.



¹ The rule expressed in ABA Formal Ethics Opinion No. 92-368 was added to Rule 4.4 of the ABA Model Rules of Professional Conduct in 2002, and provides that when an attorney receives a document which he or she knows or reasonably should know was inadvertently sent, he or she must notify the sender. The California Legislature and California State Bar have yet to adopt a similar rule.

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One of the crowning moments in Don's career occurred in 2006, when he and co-author Roy Mersky of the University of Texas were honored by the American Association of Law Libraries (AALL) for their Fundamentals of Legal Research, voted one of the most influential texts in legal research over the last 50 years (1957-2006) by the AALL's Academic Law Librarians Special Interest Section.

Don touched the lives of many in a meaningful way. From his grandson who wanted to be a doctor for Halloween so he could help his grandfather, to his son who cherishes the role model that his dad set for him, to his colleagues who are so honored to have worked with such a fine scholar and human being, one commonality exists. We are all thankful to have known Don.

The University of La Verne College of Law will hold a memorial service to honor Donald J. Dunn on Saturday,

March 8, 2008 at 2 p.m. at the College of Law. A scholarship fund has been established in Don's memory. Donations to the "Dean Donald J. Dunn Memorial Scholarship Fund" can be sent to the attention of Doug Frost, University of La Verne College of Law, 320 East D Street, Ontario, California, 91764. Doug Frost may be reached at (909) 460-2024 or by e-mail at dfrost@ulv.edu.

If you would like to read the many special messages from legal professionals and friends from across the country or post your own message, a special memory book is set up at <http://donaldjdunn.legacy.com>.

Susan Nauss Exon is a Professor of Law at the University of La Verne College of Law.



MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective February 28, 2008.

Eric S. Barr – Sole Practitioner, Corona

Debbie Bowersock (A) – Hahn & Bowersock Court Reporters, Costa Mesa

Evelyn Cordner (R) – Retired Attorney

Wanda J. Greene – Law Offices of Wanda J. Greene, Redlands

Mirna El Hazin – El Hazin & Associates, Riverside

Kimberly Lessing – Law Offices of Kimberly Lessing, Corona

Sharon Nelson – Nelson Law Firm, Los Angeles

Albert Perez, Jr. – Law Offices of Albert Perez Jr, West Covina

Anthony T. Perez – Thompson & Colegate, Riverside

Robert L. Rancourt, Jr. – Office of the Public Defender, Riverside

Delilah Knox Rios – Sole Practitioner, Diamond Bar

James R. Robertson – McCoy Turnage & Robertson APLC, San Diego

Brent F. Romney – Blumenthal Law Offices, Riverside

Daniel Tripathi – Law Offices of Daniel Tripathi, Riverside

Paul M. Vargas – Fiore Racobs & Powers APLC, Riverside

Mario L. Valenzuela – Law Office of Mario L. Valenzuela, Riverside

Roger Walker – Sole Practitioner, Riverside

Nicole T. Williams – Office of the Public Defender, Riverside

Ying Xu – Law Offices of Eric K. Chen, City of Industry

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