

RIVERSIDE LAWYER

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MAGAZINE

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PLUS JAMAIS
NEVER AGAIN
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RIVERSIDE LAWYER

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On the cover:

The inscription "Never Again" in five languages is on a wall at the Dachau Concentration Camp outside Munich, Germany.

photo: varandah/shutterstock.com

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 our members, our communities, and our legal system.

Membership Benefits

Involvement in a variety of legal entities: Lawyer Referral Service (LRS), Riverside Legal Aid, Fee Arbitration, Client Relations, Dispute Resolution Service (DRS), Barristers, Leo A. Deegan Inn of Court, Mock Trial, State Bar Conference of Delegates, Bridging the Gap, RCBA - Riverside Superior Court New Attorney Academy.

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, 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.

The 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 the Riverside Lawyer.

The material printed in the 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

NOVEMBER

- 9 Riverside County Barristers**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Diane Wemple Baxa
Topic: “Attorney Client Trust Accounts Rules, Risks & Pitfalls”
MCLE credit: 1.0 Hour Legal Ethics
- 15 Family Law Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Phillip Sidlow
Topic: “How to Attack, Bolster, Defend a Vocational Evaluator’s Report In the Context of Family Law”
MCLE
- 18 General Membership Meeting**
Noon – 1:30
RCBA Gabbert Gallery
Speakers: Judge Mac Fisher, Steven Geeting, Bruce Todd and Jay Korn
Topic: “Civility Matters”
MCLE credit: 1.0 Hour Legal Ethics

DECEMBER

- 1 New Admittee Swearing In**
10:00 a.m. – Riverside Superior Court, Dept. 1
Annual Joint RCBA & SBCBA General Membership Meeting
Noon – 1:30 p.m.
Doubletree by Hilton Hotel
285 E. Hospitality Lane, San Bernardino
Speaker: James P. Fox, President, State Bar of California
Topic: “State of the State Bar”
MCLE
- 2 Riverside Superior Court**
Temporary Judges Training
1:00 p.m. – 4:00 p.m.
City of Banning Council Chambers
99 East Ramsey Street, Banning
Registration – Amelia Butts at 951.777.3555
- 6 CLE Presentation**
CLE Series: Setting the Table for Resolving a Case, Part 3 of 3
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speakers: Greg Rizio & Bryan Reid
Topic: “Drafting Effective Settlement Agreements”
MCLE
- 12 RCBA Shopping Elves – Big Kmart**
375 E. Alessandro Blvd., Riverside
6:00 p.m.
(contact RCBA for more information)
- 14-15 RCBA Wrapping Elves**
RCBA Boardroom – 4:00 p.m.
(contact RCBA for more information)
- 14 Criminal Law Section**
Noon – 1:15 p.m.
Speaker: Souley Diallo, Esq.
Topic: “Character Evidence”
MCLE
- 20 Family Law Section**
Noon – 1:15 p.m.
Speaker: Ross Mecham, Esq.
Topic: “Ethics and Social Media”
MCLE credit: 1 Hour Legal Ethics





President's Message

by Jean-Simon Serrano

Though the topics of this month's magazine (Human Trafficking & Genocide) are less than cheery, they remind us that there are many out there much less fortunate than ourselves. This is the time of year, with the holidays looming, where we should reflect upon our successes and good fortune, and reach out to help those in need.

It often seems like there isn't enough time in the day to get everything done, much less finding time to volunteer to help those less fortunate. However, volunteering doesn't have to be time-consuming and, indeed, can be very rewarding. Last year, I participated in the Elves Program, by helping to wrap gifts for needy families. It felt great to see so many attorneys taking time out of their day to wrap gifts for local families. Seeing the gifts get wrapped and knowing the joy they would bring the many families helped by the program really made me glad I was able to help in some way.

The Elves Program always encourages volunteers whether it be for shopping, wrapping, or donating funds. If you are interested in volunteering, contact Veronica at Brian Percy's office at VReynoso@BPearcyLaw.com. If you would like to donate money, please send it to the RCBA.

This year, two of our members (RCBA Board Director-at-Large Nick Firetag and Marlene Allen) are spearheading an effort to get volunteers for the Bridge Program. This is a program of the Riverside County Probation Department which is looking for 15 attorney volunteers to mentor 15 probationers between the ages of 18-23. The primary goal of the program is to affect positive, pro-social behavioral change. Attorney mentors would

only be required to meet with the Bridge participants once per month (more times is permitted and encouraged) and all meetings would take place at the Probation Department. Attorney mentors are not to give legal advice to the participants but are instead encouraged to share life experiences, foster sympathy and compassion for others, and help the mentee discover their talents and self-worth. Mentors will also be encouraged to teach the mentees valuable skills such as how to apply for a job and prepare for job interviews.

The Bridge Program has the potential to make a huge impact on the lives of the participants (both the attorney mentors and the probationers). If you want more information regarding the program or are willing to volunteer, please contact Nick Firetag at (951) 204-5683.

These are just two of the programs the Riverside County Bar is involved with this year. I encourage all of our members to volunteer to do pro bono work. Let's help make our community a better place.

Jean-Simon Serrano is an associate attorney with the law firm of Heiting & Irwin.



Riverside County Mock Trial Competition Attorney Scorers and Attorney Coaches Needed

The Riverside County Mock Trial Competition, sponsored by the Riverside County Office of Education, Riverside County Bar Association, and the Riverside County Superior Court, provides an exciting opportunity for high school students to match wits in a real courtroom setting with a true-to-life legal context.

Legal volunteers are needed to act as scorers for the county competition. We invite you to consider the opportunity to be part of the program. The competition dates and times when scoring attorneys are needed include:

Wednesday, February 8, 2017 – 5:30 to 8:00 p.m. (all three regional courts)

Wednesday, February 15, 2017 – 5:30 to 8:00 p.m. (Riverside Hall of Justice)

Wednesday, February 22, 2017 – 5:30 to 8:00 p.m. (Riverside Hall of Justice)

Saturday, February 25, 2017 – 8:30 to 11 a.m. (Riverside Hall of Justice)

You may sign up to score the competition by registering through the following link:

<http://www.rcoe.us/student-events/mock-trial/mock-trial-competition-scoring-attorney-registration-form/>

Confirmation information will be sent to those who register to be a scorer.

In addition to serving as scorers, we are in need of attorneys who might be interested in coaching, in coordination with the teacher coach(es). If you would like to learn more about the coaching opportunities, please contact Tracey Case, tcase@rcoe.us.

Questions regarding the Mock Trial Competition can be directed to Tracey Case, tcase@rcoe.us, (951) 826-6570.



BARRISTERS PRESIDENT'S MESSAGE

by Erica M. Alfaro



Board Member Q&A Nesa Targhibi

Nesa Targhibi is the Barristers Board Treasurer. She was born and raised in Iran and came to the U.S. when she was 16 years old. After arriving she moved to Claremont and eventually settled with her family in Eastvale.

Nesa obtained her undergraduate education at California State University, Fullerton. She later went on to receive her law degree from Chapman University, School of Law, and her MBA at University of Phoenix.

She is founder and president of Holborn Law where her current focus is growing her law firm as a special appearance attorney. Nesa enjoys making appearances because she is able to experience different areas of law and all different types of cases. She is currently doing appearances in Civil, Family, and Probate courts in Riverside, San Bernardino, and parts of Orange County and LA County.

Nesa likes practicing law in the Inland Empire because she enjoys the close-knit family of law practitioners. She appreciates the friendly and congenial work environment. Nesa has been involved with the Riverside County

Bar Association by serving as a writer for the *Riverside Lawyer* magazine and participating in the New Attorney Academy. As a participant of the New Attorney Academy, she has met some amazing attorneys who have offered to mentor and guide new attorneys.

She enjoys being a Barristers Board member and is very excited about the friendships she has formed as a result of her involvement. Nesa is looking forward to the future events Barristers has planned and is enthusiastic about the organization's increased presence in the legal community.



Nesa Targhibi

Since starting her own law firm, Nesa has little down time, but during the few moments she finds, she enjoys traveling, painting ceramic tiles, and with the winter coming, snowboarding.

Upcoming Barristers Event, Proposed Amendments

Please join Barristers on Wednesday, November 9, 2016 from 12:00 p.m. to 1:30 p.m. at the RBCA Building, John Gabbert Gallery for the program, "Attorney Client Trust Accounts: Rules, Risks, and Pitfalls" by presenter Diane Wemple Baxa, Senior Vice President and Senior Counsel, City National Bank. One hour of MCLE credit will be provided. Please RSVP by November 7th to RCBAbarristers@gmail.com. Lunch sponsored by City National Bank will be provided to those that respond by the deadline. Cost is free for RCBA members, \$20 for non-members. Make checks payable to Riverside County Barristers.

Also at this meeting Barristers will be voting on proposed amendments to our bylaws. The proposed amendments include: the membership year commences in September; social events count toward the three meeting requirement for voting; changing Vice President position to President Elect; election votes may be cast via mail and email; officers elect assume positions at commencement of membership year; meetings will be held monthly; and the addition of standing and special committees including the appointment of a Law School Liaison.

Erica Alfaro is a graduate of UC Davis School of Law and practices Workers' Compensation at State Fund.



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A CRIME NAMED GENOCIDE

by Mohammad Tehrani

I. Introduction

In May of 2016, the United States Senate unanimously approved a bill that would allow victims and families of the September 11, 2001 attacks to sue Saudi Arabia for its alleged involvement in the terror attacks.¹ The White House vowed to veto the bill if passed by the House, warning that “[t]his legislation would change long standing international law regarding sovereign immunity[.]”² On September 9, 2016, the House passed the bill with little obstacle.³ The President’s subsequent veto was overridden 97-1 in the Senate and 348-77 in the House.⁴

Despite apparent overwhelming support for the legislation, within the day Congress expressed regret and began work on re-writing the bill, with Congressional leaders expressing concerns about the bill’s effect on sovereign immunity.⁵

Wherever the legislation lands, the discussion highlights the inviolability of sovereign immunity, and the international community’s exceptional agreement to interfere during genocide.

II. Sovereign Immunity Defined

In 1812, Justice Marshall defined the rights of a sovereign within its own borders as absolute:

The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction.

1 Ted Barrett, *Senate OKs bill to let 9/11 families sue Saudi Arabia*, CNN, May 17, 2016, available at <http://www.cnn.com/2016/05/17/politics/senate-9-11-saudi-arabia-bill/>.

2 *Id.*

3 Jennifer Steinhaur, *House Passes Bill Allowing 9/11 Lawsuits Against Saudi Arabia; White House Hints at Veto*, N.Y. Times, Sept. 9, 2016, available at http://www.nytimes.com/2016/09/10/us/politics/house-911-victims-saudi-arabia.html?_r=0.

4 Jennifer Steinhauer, Mark Mazzetti and Julie Hirschfeld Davis, *Congress Votes to Override Obama Veto on 9/11 Victims Bill*, N.Y. Times, Sept. 28, 2016, available at <http://www.nytimes.com/2016/09/28/us/politics/congress-votes-to-override-obama-veto-on-9-11-victims-bill.html>.

5 Steven T. Dennis and Billy House, *Congress May Rewrite Saudi 9/11 Law After Veto Override*, Bloomberg, Sept. 29, 2016, available at <http://www.bloomberg.com/politics/articles/2016-09-29/congress-signals-regret-after-overriding-veto-of-saudi-9-11-bill>.

All exceptions, therefore, to the full and complete power of a nation within its own territories, must be traced up to the consent of the nation itself. They can flow from no other legitimate source.⁶

The United States Congress codified a “restrictive” theory of sovereign immunity in the Foreign Sovereign Immunities Act in 1976.⁷ The restrictive theory of sovereign immunity carves out an exception to sovereign immunity for actions based on commercial activities either carried on in the United States or causing a direct effect on the United States.⁸

III. Genocide: A New Law Defined and Ratified

Between 1915 and 1918, Ahmed Izzet Pasha, Mehmed Talaat Pasha, and Ismail Enver Pasha (the Three Pashas) orchestrated the systemic massacre of hundreds of thousands of Armenians in the Ottoman Empire under the guise of putting down a rebellion during World War I.⁹ After the war, Pasha was sentenced to death by a Turkish court for crimes against “humanity and civilization.”¹⁰ Pasha fled Turkey and was living comfortably in Berlin.¹¹

On March 14, 1921, Soghomon Tehlirian, an Armenian who had been left for dead during a massacre and who lost 85 members of his family,¹² shot and killed Pasha in Berlin, proclaiming that “This is to avenge the death of my family!”¹³ Tehlirian was arrested promptly by a nearby crowd.¹⁴

Raphael Lemkin, a law student in Ukraine, asked his professor why Tehlirian had to assassinate his family’s murderer to obtain justice; why wasn’t he arrested by the Armenians? His professor introduced Lemkin to the concept of sovereign immunity with an example: “Consider the case of a farmer who owns a flock of chickens. He kills

6 *The Schooner Exch. v. McFaddon*, 11 U.S. 116, 136 (1812).

7 *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 488, (1983)

8 *Id.*

9 Samantha Power, *A Problem from Hell: America and the Age of Genocide* 10 (2013).

10 *Id.* at 14.

11 *Id.* at 15.

12 https://en.wikipedia.org/wiki/Soghomon_Tehlirian

13 *Id.* at 1.

14 *Id.*

them and this is his business. If you interfere, you are trespassing.”¹⁵

Lemkin determined that the only way a mass slaughter on the scale of the Armenian Genocide could be prevented is if there was a form of universal jurisdiction as an exception to sovereign immunity such that the instigators and perpetrators of the act may be punished wherever they were caught, regardless of nationality.¹⁶ In 1933, Lemkin prepared to present his proposal to an international conference in Madrid, where he also sought to draw similarities between the Turks and the Armenians and the Germans and the Jews.¹⁷ Lemkin, living in Poland, was denied a permit to travel to the conference by Joseph Beck, the Polish foreign minister, who sought to endear himself to Hitler.¹⁸

With the Armenian Genocide only two decades removed and the Holocaust’s early stages manifesting, Lemkin set to create an attention-catching name to propel his proposed international law to recognition before Hitler’s rise continued.¹⁹ Lemkin followed three concepts: (1) it must be short; (2) incapable of mispronunciation; and (3) novel.²⁰ Through this, he came up with “genocide”: *geno* from Greek term meaning race and *cide* from the Latin term for killing.²¹ The name caught on by the early 1940s, being admitted to Webster’s dictionary and endorsed by the *Washington Post* as the only apt description for the Germans’ slaughter of the Jews.²²

But while the world used the term, the world failed to act in time. It was not until three years after the war that the international community settled on a definition of genocide as: “acts committed with intent to destroy, in whole or in part, a national, ethical, racial, or religious group” and charged all signatories to the Convention on the

Prevention and Punishment of the Crime of Genocide to prevent and suppress genocide wherever it occurred.²³

IV. Conclusion

The law has since been used by the international community in convicting perpetrators of the Bosnian, Rwandan, and Cambodian genocides.²⁴ As hoped, the international community has stood up to leaders who massacre a minority inside their own borders. However, it seems unlikely that any genocide was actually prevented by the law, as Lemkin had hoped back in 1933. Still, it is exceptional to the long-standing principles of sovereign immunity that 60 years ago, a young Polish lawyer defined a crime previously unnamed and convinced the world to create a small universal exception to sovereign immunity.

Mohammad Tehrani is an employee of the United States Department of Justice as a trial attorney in the Riverside Office of the United States Trustee Program (USTP). The views expressed in the article belong solely to the author, and do not represent in any way the views of the United States Trustee, the USTP, or the United States Department of Justice.



²³ *Id.* at 62-63.

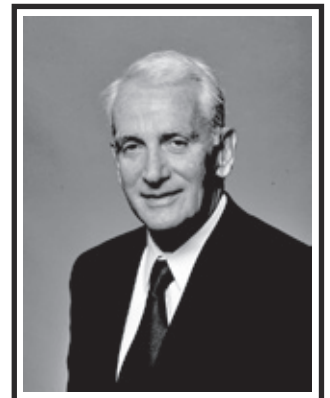
²⁴ https://en.wikipedia.org/wiki/Genocides_in_history.

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¹⁵ *Id.* at 17.

¹⁶ *Id.* at 19-20.

¹⁷ *Id.* at 21-22.

¹⁸ *Id.* at 22.

¹⁹ *Id.* at 42.

²⁰ *Id.* at 41-42.

²¹ *Id.* at 42.

²² *Id.* at 44.

HUMAN TRAFFICKING REQUIRES A MULTIDISCIPLINARY RESPONSE

by Jennifer O'Farrell

Over 20 years ago, human trafficking became “real” for Southern California and the United States when 72 Thai women were found after a raid of an apartment complex by state and federal law enforcement in El Monte, California.¹ Hidden in plain sight, this apartment complex had razor wire, boarded-up windows, and dozens of Thai women making garments under threat of force and deportation. Today, within law enforcement, legal, and social service departments the Trafficking Victims Protection Act (TVPA) of 2000 is referred to and remembered as the cornerstone of Federal human trafficking legislation, and provides the methods for *prosecuting* traffickers, *preventing* human trafficking, *protecting* victims and survivors of trafficking, and encouraging *partnership* amongst multi-jurisdictions and multidisciplinary approaches to create solutions. The TVPA set the tone for other legislation to establish human trafficking as federal crime, attach severe penalties to them, mandate restitution be paid to victims and establish the Office to Monitor and Combat Trafficking in Persons, which publishes an annual Trafficking In Persons (TIP) report.²

Modern day slavery is generating hundreds of billions of dollars and is being considered as one of the fastest growing crimes in the world alongside drugs and arms. The difference is that human beings are the “commodity” and thus are reusable and resalable, unlike drugs and firearms are sold as one time transactions. Thus, the crime on humans becomes abundantly profitable and more difficult for detection, prosecution and victim care. A victim is not a victim of commercial sex and/or labor trafficking without the use of force, fraud or coercion; or in other words violence, threats, deception, debt bondage, and other manipulative tactics to force people to engage in commercial sex or to provide labor or services against their will.

More research remains needed on the scope of human trafficking to better understand the volume of vulnerable lives being trafficked. What we do know is that we consume products made by trafficked children and the U.S.



Department of Labor has identified 139 goods from 75 countries made by forced and child labor.³ Unlike El Monte’s sweat shop, within Riverside County victims of labor trafficking are more likely to be forced to work within the hospitality industries. Hospitality industries can be, but not limited to: nail salons, restaurants, hotels, massage parlors, vendor selling (i.e. fruit, flowers, and food), domestic servitude, and agriculture.

In 2015, an estimated 1 out of 5 runaways reported to the National Center for Missing and Exploited Children (NCMEC) were likely child sex trafficking victims.⁴ Of those, 74% were in the care of social services or foster care when they ran. The National Runaway and Homeless Youth reported that 1.6 to 2.8 million youth runaway and live on the streets annually and a third of whom are lured into commercial sex within 48 hours from leaving home. Runaway and homeless children are vulnerable to commercial sexual exploitation of children both because of their young age and their circumstances. High numbers of youth who are homeless report having been solicited for commercial sex and pimps have been known to actively target locations like foster care group homes and at youth shelter programs.⁵ And alarmingly, the average age a youth lured into the sex trade in the United States is 13 years.⁶

Ultimately, there is no official estimate of the total number of human trafficking victims in the U.S. nor locally in Riverside County. What we do know on a local level is the environment of Riverside is ripe for trafficking due to geography, growing urban dynamics, poverty, logistics hub, and freeways. To combat and protect victims the Riverside County Sheriff’s Department formed the county’s first task force on human trafficking. The Riverside County Anti-Human Trafficking (RCAHT) Task Force’s goal is to coordinate services tailored to the characteristics and circumstances of these victims, train law

3 <https://www.dol.gov/ilab/reports/child-labor/list-of-goods/>

4 <http://www.missingkids.org/1in5>

5 <http://www.1800runaway.org/wp-content/uploads/2015/05/National-Alliance-to-End-Homelessness-issue-brief.pdf>

6 <https://aspe.hhs.gov/basic-report/human-trafficking-and-within-united-states-review-literature>

1 http://articles.latimes.com/1996-02-10/news/mn-34318_1_sweatshop-operators

2 <http://www.state.gov/j/tip/laws/>

enforcement on investigation and detection, educate the public and create awareness to protect people from abuse and exploitation. RCAHT consists of over a dozen agencies but specifically the Sheriff's Department (lead law enforcement agency), Operation SafeHouse (victim service provider) and Million Kids (training & outreach coordinator).

What happens when multi-disciplinary agencies and jurisdictions work together? A significant moment in history, and this time it is when one of the U.S.'s main online facilitators of sex trafficking is finally facing justice. Recently, the CEO of Backpage.com was arrested. CEO Carl Ferrer is charged with pimping a minor, pimping and conspiracy to commit pimping.⁷ This arrest marked a three-year investigation conducted by the offices of California Attorney General Kamala Harris and Texas Attorney General Ken Paxton not to mention the myriad of law enforcement and social service providers that have been restoring lives during the investigation. The Polaris Project noted that from 2007 through 2016, nearly 2,000 reports of sex trafficking cases involved Backpage, 40% of these cases referenced the possible involvement of at least one minor victim. Additionally, NCMEC told a recent Senate subcommittee that 71% of all suspected child sex trafficking reports that it receives have a link to Backpage.⁸

What can attorneys do? The nature of this crime is an all hands on deck to protect, prevent, prosecute, and partner and relies on the expertise of attorneys with criminal, family, and/or immigration law. The requirements of each case, each victim span a multitude of representational needs and the demand is great for qualified attorneys to support victims taking steps towards Visas, restoring their past, and re-building their future.

Jennifer O'Farrell is the Executive Director of Big Brothers Big Sisters of the Inland Empire, specializing in services for under-served and at-risk children and youth. Jennifer spear-headed efforts and services to combat human trafficking and currently aims to prevent vulnerable youth from poverty, abuse and victimization. She is a TEDX Riverside speaker and was an award recipient by the NAACP Community Service Freedom Award Recipient, Attorney General's Award of Citizen Appreciation, Woman of the Year from the Riverside County Commission on Women, and Soroptomist International Golden West Region Award Winner.



7 <http://www.npr.org/sections/thetwo-way/2016/10/07/497006100/ceo-of-backpage-com-arrested-charged-with-pimping>.
8 <https://polarisproject.org/blog/2016/10/07/what-arrest-backpagecom-ceo-means-fight-against-trafficking>.

Extra Notes

California Legislation

Recent legislative actions fall into four categories (1) penalty provisions; (2) asset forfeiture; (3) civil nuisance; and, (4) victim resources.

Penalty Provisions

- Abolition of Child Commerce, Exploitation and Sexual Slavery Act of 2011 (AB 12, Swanson)
- Assembly Bill 17 (Swanson, 2009) Amendments to the California Control of Profits of Organized Crime Act

Asset Forfeiture

- Senate Bill 1133 (Leno, 2012)
- Assembly Bill 90 (Swanson, 2011)
- Assembly Bill 17 (Swanson, 2009)

Civil Nuisance Abatement

- Assembly Bill 2212 (Block, 2012)
- Senate Bill 677 (Yee, 2010)

Victim Resources

- Assembly Bill 1956 (Portantino, 2012)
- Assembly Bill 2466 (Blumenfeld, 2012)
- Senate Bill 1193 (Steinberg, 2012)
- Assembly Bill 2040 (Swanson, 2012)
- Assembly Bill 764 (Swanson, 2011)

Other Selected California Human Trafficking Legislation

- Assembly Bill 1899 (Mitchell, of 2012)
- Senate Bill 1091 (Pavley, of 2012)
- Assembly Concurrent Resolution 6 (Donnelly, of 2011)
- Senate Bill 557 (Kehoe, of 2011)
- Senate Bill 861 (Corbett, of 2011)
- California Transparency in Supply Chains Act of 2010 (SB 657, Steinberg)
- Assembly Bill 1844 (Fletcher, of 2010)
- Senate Concurrent Resolution 76 (Corbett, of 2010)
- Assembly Bill 499 (Swanson, of 2008)
- Assembly Bill 1278 (Lieber, of 2008)
- Assembly Bill 2810 (Brownley, of 2008)
- Assembly Concurrent Resolution 28 (Ma, of 2007)
- The Access to Benefits for Human Trafficking and Other Serious Crime Victims Act (SB 1569, 2006)
- The Human Trafficking Collaboration and Training Act (SB 180, 2005, Kuehl)
- The California Trafficking Victims Protection Act (AB 22, 2005, Lieber)

Federal Legislation

- Trafficking Victims Protection Act of 2000 and reauthorization 2003, 2005, 2008, 2013
- The Tariff Act of 1930
- The Customs and Facilitations and Trade Enforcement Act (2009)
- The Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003
- The Racketeering Influenced Corrupt Organizations Act (RICO)
- The Mann Act of 1910

HONOR KILLINGS: THE MENTALITY OF HATE

by DW Duke

No doubt Fatima, Fauzia and Jannat laughed and joked with excitement as they rode in the taxi from their home in Babakot to the village of Usta Mohammad where they intended to meet their fiancés. It was to be their triple wedding day, but instead it became the day of their execution and burial. Little could they have known that July 14, 2008 would be the last day they would enjoy the fresh air and the warmth of the sun in the Balochistan Province of Pakistan. The oldest of the three, Fauzia Bibi was barely 18 years of age. The other two were believed to be 14 and 16.

Unbeknownst to the three girls, the taxi driver overheard them talk of their arrangements to meet their fiancés at a restaurant in Usta Mohammad and then travel to a civil court to be married. After dropping the girls at the restaurant, the taxi driver returned to Babakot and notified their fathers. A local politician, along with the fathers and brothers of the girls, abducted them at gun point and returned them in a government vehicle to Babakot. The girls were severely beaten, two of them suffering crushed skulls, and they were thrown into a freshly dug grave where they were buried alive. Janat Bibi, 38, Fauzia's aunt, and Fatima Bibi, 45, the mother of one of the other girls, were shot and also buried alive for trying to persuade the murderers to forego the execution of the three girls. The murderers fired guns into the air as a warning to anyone who would approach the murder scene and try to intervene.

The crimes for which the three girls were executed, in an ancient tradition known as honor killing, was that they did not want to accept prearranged marriage to men chosen by their fathers. Instead, they wanted to marry the men they really loved. Perhaps the shock of this tragic event is overshadowed by the greater shock that this tradition of honor killing is supported by local government authorities, who covered up the crime for nearly six weeks, until it was disclosed by a local journalist named Saarang Mastoi who could no longer remain silent despite the threat to himself and his family.

Notwithstanding the tragedy of this event, and the cover up by local government authorities, the greatest shock to the people of Pakistan came when Israr Ullah Zehri, a member of the Parliament of Pakistan who represents the Baluchistan Province, stated about the murder of the five women, "These are centuries-old traditions and I will continue to defend them. Only those who indulge in immoral acts should be afraid." What immoral act was he referring to? He was referring to the desire of a human

being to marry a person of one's own choosing rather than to marry someone chosen by one's parent. He was referring to the desire to marry for love rather than tradition. He was referring quite simply to the pursuit of happiness.

In the eyes of Israr Ullah Zehri that is a capital offense. Other members of the Parliament of Pakistan were appalled when Zehri urged them to not make an issue of the tradition of honor killings because in his mind it has the effect of curtailing obscenity.

One has to inquire how an individual of such a barbaric mentality as Israr Ullah Zehri could have earned a seat in the Parliament of Pakistan in the 21st century. How could such a despicable notion as the propriety of honor killings find a place in the leadership of a modern democratic nation? Sadly, his words represent the mentality of hate which appears under the guise of religious tradition not only in Pakistan but throughout many nations of the world. It is an evil that grows like an infestation in places where honorable people refuse to speak out. It is an evil that empowers the wicked to inflict their cruelty upon the innocent victims of the world and it is the most vulgar and despicable violation of womanhood the world has ever seen.

The only way to address this barbaric evil is to prosecute those who engage in such acts. The helpless girls who are victims of this deplorable practice are not able to protect themselves. They cannot withstand the brutal beatings and executions of the very men who should be protecting them and in whom they should be placing their trust. Only we can protect them from this mentality of hate. We can do this first by demanding that those guilty of these murderous acts are incarcerated and prosecuted to the fullest extent of the law. We can further protect them by demanding that despicable cowards such as Israr Ullah Zehri are voted out of office so that truly competent leaders can take their places. And, we can protect them by assuring that human rights do not become secondary to the religious fanaticism that rears its ugly head when the rest of the world turns a blind eye. Only then can we protect the Fatimas, Fauzias and Jannats of the world who are the innocent victims of honor killings, the mentality of hate.

DW Duke is the managing partner in the Inland Empire Office of Spile, Leff & Goor, LLP and the principal of The Duke Law Group. He is the author of five books and a frequent contributor to the Riverside Lawyer.



THE TOLERANCE EDUCATION CENTER

by Talia Lizemer-Hawley

The Tolerance Education Center in Rancho Mirage, California, opened its doors in May of 2009. It has been a lifelong dream of local resident and Holocaust survivor, Earl Greif, who funded and designed the place with the intention of telling the history of past atrocities so future generations will work to prevent acts of hatred, racism, and violence.



The Tolerance Education Center

In 1943, when the Holocaust gripped Earl Greif's Jewish family, he was 17. His mother and baby sister were murdered, the only reason being their religion. When the ghetto, where Earl and his family had been relocated to, was being liquidated, Earl and his younger brother Lou hid in a cooking oven and miraculously were overlooked. They made their escape to the dense forest, eluding capture by the Nazis and fending for themselves like animals, with starvation constantly haunting them. The boys evaded being seized and continued to be at large for the next two and a half years.

Following the war, Earl learned that all his family was massacred during Holocaust.

After World War II, Earl and Lou sailed for America and settled in the Los Angeles, California area. Earl's hard work, persistence, and determination were rewarded, and he became more and more successful in the real estate business.

Like many Holocaust survivors, Earl remained silent about his background, trying to quiet down the constant nightmares and fears of being persecuted. In an effort to maintain a normal life, he married Shirley in 1953 and together they had two sons, who were unaware of their father's past.

During the 1990's, Holocaust denial came closer to home, falling under the umbrella of a legitimate historical revisionism. Earl, wanting to combat that growing trend, realized that his, and other survivor stories, needed to be told.

So, together with Holocaust Survivor Joe Brandt, \$500,000 were raised and a Holocaust memorial was dedicated in Palm Desert in 1995.

But Earl's dream to have a place where telling the history of past atrocities so future generations will work to prevent acts of hatred and racism still remained. In 2009, the Tolerance Education Center (the Center) opened its doors becoming a place that preserves the memory of those who died and ensures that future generations will engage in learning from history's past mistakes and create a world that is more accepting and humane.

The Center's mission is to promote tolerance, civility, respect, and understanding by the elimination of atrocities, hatred and bigotry.

Programs, activities, and exhibits provide an educational opportunity for students and the community at large to reduce prejudice, teach critical thinking, and empower those who visit to take an active role in creating a more humane society. The hope is that visitors will leave with a mindset that rejects prejudice and hate, questions stereotypes, and promotes diversity.

One of the fundamental tenets of the Center is that a lesson for all is best taught by personal interaction, led by the people who experienced the horror of intolerance and who can relate that life-changing experience to others. Expanding student and public awareness of intolerance – past and present – may lead to a better future for all.

Although the Holocaust is the Center's biggest educational tool and the program most requested by educators, it is not, however, the only intolerance instructions provided to schools whether they be public, private, alternative, homeschooled, etc. Lessons about the Armenian Genocide, the Cambodian Killing Fields, the Japanese Internment Camps, Black Civil Rights, Hispanic Heritage, Native Americans, LGBTQ acceptance, and bullying are also provided.

Thanks to the generosity of the Jewish Federation of the Desert, the H.N. and Frances C. Berger Foundation, and private donors, the Center reimburses the cost of school bus transportation, if needed.

The Center also caters to the general public. Permanent and changing exhibits are displayed and programs, such as lectures, film screening, and book signing are also offered.

A key attraction at the Center is the recorded first person stories told by local Holocaust survivors and viewed on personal monitors. Speaking of their own experiences in their own voice has quite an impact on all who watch and listen.

Talia Lizemer-Hawley was raised and educated in South America and Israel while attending international-style schools. She earned a Bachelor's Degree in Archaeology and Egyptology, and a Master's Degree in Egyptology, from the Hebrew University in Jerusalem. Talia immigrated to the U.S. in 2000 where she acquired additional teaching credits and taught for 10 years at the Jewish Community School of the Desert, in Palm Desert, CA. She currently serves as the education coordinator of the Tolerance Education Center where she assists teachers and students in combating hatred, bigotry and antisemitism through educating about our past.



WHEN MASS MURDER AND THEFT OF ALL HUMAN RIGHTS WERE “LEGAL”: THE NAZI JUDICIARY AND JUDGES

by Hon. Richard D. Fybel

Because of my service as a judge and Chair of the California Supreme Court’s Advisory Committee on the California Code of Judicial Ethics and my family history, I became interested in the German legal system and the roles of the judiciary and judges in the years before and during World War II. My parents were refugees in the late 1930’s, my mother from Lithuania and my father from Germany. Both made it safely to America. Millions of others did not.

This article is an overview of the Nazi German legal system and its judiciary and judges. I will conclude with thoughts about American justice and judicial ethics.

How were millions of lives destroyed and freedoms stolen as an official policy and practice of a nation state in the civilized world in the twentieth century? The chilling, core message is that everything the Nazis did was “legal” under the German legal system at the time.

Anti-Jewish Laws

In January 1933, Germany had a civil code enacted in 1898 and an established and well organized legal system. Hitler was legally appointed Chancellor. The Nazis recognized and emphasized reliance on their written laws as a source of state authority. They acted to establish their rule “within the framework of traditional law.”¹

Anti-Jewish laws enabled the state—essentially the Nazi party and the police—to ignore individual liberties. These laws were enacted on an incremental and fundamental basis.

In February 1933, relying on the German constitution, President von Hindenburg and Chancellor Hitler issued an emergency decree “for the Protection of the People and the State.” The decree suspended sections of the constitution affecting freedom of the press and individual rights.²

Although many rights were in suspense, Germany still had a constitution. But the constitution permitted it to be changed by a two-thirds vote of a quorum of the national legislature, the Reichstag. The Enabling Law of March 1933 empowered Hitler to enact legislation deviating from the

constitution for four years. By this law, the Reichstag effectively voted itself out of existence and gave Hitler dictatorial powers.

When von Hindenburg died in August 1934, Hitler became Führer, the “Leader and Reich Chancellor.” This act was ratified by a nationwide plebiscite.³

German judges began taking an oath to follow Hitler. The new oath eliminated the former oath’s reference to their country’s constitution. Both oaths maintained a judge’s duty to observe (or be obedient to) the law. (As of August 20, 1934, the oath became: “I swear I will be true and obedient to the Führer of the German Reich and people, Adolf Hitler, observe the law, and conscientiously fulfill the duties of my office, so help me God.” Before this change, the oath had read: “I swear loyalty to the Constitution, obedience to the law, and conscientious fulfillment of the duties of my office, so help me God.”⁴ Note that both oaths ended with “so help me God.”

Next, by executive decree and emergency legislation, all public assemblies in Germany were subject to prior police approval. All public assemblies which could pose a potential threat to public order and security were prohibited. A ban was placed on publications, the content of which was likely to endanger public security and order. All rights under the German Constitution were suspended by law and replaced by a new law directed against “treacherous acts against the Government of the National Revolution.”

Cities proclaimed and enforced their own laws excluding Jews from public life and professions in Germany. A powerful picture shows lawyer Dr. Michael Siegel paraded through the streets of Munich in March 1933, with a sign around his neck, reading, “I am a Jew and I will never again complain to the police.”

Even more decrees were issued from the Reich ministries covering everything from forbidding Jews from attending theaters and movies, expelling all Jews from German schools, freezing all Jewish property and assets, to organizing Kristallnacht. The Nazis also persecuted Sina Romas (gypsies), Jehovah’s Witnesses, the mentally and physically disabled, and homosexual persons.

1 Diemut Majer, *“Non Germans” under the Third Reich: The Nazi Judicial and Administrative System in Germany and Occupied Eastern Europe, with Special Regard to Occupied Poland, 1939-1945*, trans. Peter Thomas Hill, Edward Vance, and Brian Levin (Baltimore, MD: John Hopkins University Press, 2003), p. 6.

2 William F. Meinecke Jr. and Alexandra Zapruder, *Law, Justice, and the Holocaust* (Washington, DC: United States Holocaust Memorial Museum, 2009), pp. 8-10.

3 Richard J. Evans, *The Third Reich in Power: 1933-1939* (New York: Penguin Books, 2005), p. 42.

4 Meinecke and Zapruder, *Law, Justice, and the Holocaust*, p. 20.

In November 1938, all Jewish newspapers and magazines were ordered to stop publication; all Jewish cultural activities were suspended indefinitely; and all Jewish children were ordered out of elementary schools. It became a crime for a Jew to possess a weapon.

The Special Court (the VGH) and the German Supreme Court's Interpretation of Anti-Jewish Laws

In April 1934, the Nazis created a special court, the National Socialist Peoples Court (VGH), in which the judge became the state's investigator and prosecutor. Judges were retained and appointed because of their "loyalty to the National Socialist state."⁵

The judiciary's own acknowledged purpose was not to dispense justice, but in the words of a state prosecutor "to annihilate the enemies of National Socialism."⁶ The VGH had jurisdiction over Germany and all occupied territories.⁷ Indeed, by 1939, the court had become "a direct tool of the state executive" and completely subservient to the Gestapo.⁸ The Gestapo itself "never bowed to the principle of control of police action by the courts."⁹

What was the reaction of the judiciary to the anti-Jewish laws and conduct of the police? According to Rabbi Leo Baeck, the leader of Berlin's Jewish community: "The universities were silent, the courts were silent..."¹⁰ Indeed, as historian and Pulitzer Prize winner Saul Friedländer has observed, "Not one social group, not one religious community, not one scholarly institution or professional association in Germany and throughout Europe declared its solidarity with the Jews..."¹¹

In 1935, the "Nuremberg Laws" were passed by the Nazi Party Congress. This "Reich Citizenship Law" deprived German Jews of citizenship, limiting German citizenship to persons of German or "kindred blood." The legal rights of Jews were cancelled and their voting rights were abolished. A decree ordered dismissal of all Jewish professors, teachers, physicians, lawyers, and notaries. These laws also prohibited intermarriage and "extramarital relations" between Jews and non-Jews. The penalty was death. All laws were enforced by the police.

The judiciary and judges fully cooperated in these actions against the Jews. Indeed, the Supreme Court of Germany broadly interpreted and enforced the Nuremberg

5 H. W. Koch, *In the Name of the Volk: Political Justice in Hitler's Germany* (New York: I.B. Tauris, 1997), p. 4.

6 Ingo Müller, *Hitler's Justice: The Courts of the Third Reich* (Cambridge, MA: Harvard University Press, 1994), p. 141.

7 Koch, *In the Name of the Volk*, p. 5.

8 *Id.* at p. 57.

9 Majer, "Non-Germans" under the Third Reich, p. 350.

10 Eva Fogelman, *Conscience & Courage: Rescuers of Jews during the Holocaust* (New York: Anchor Books, 1994), p. 24.

11 Saul Friedländer, *The Years of Extermination: Nazi Germany and the Jews, 1939-1945* (New York: Harper Perennial, 2008), p. xxi.

Race Laws. The written opinion of the Supreme Court regarding the Nuremberg Laws is a dramatic example of its aggressive interpretation of law. According to the court, the Nuremberg "Law for the Protection of German Blood and German Honor" forbids "extramarital relations between Jews and subjects of the state of German or related blood..." A government "ordinance" then defined extramarital relations as "sexual relations." The Supreme Court stated the meaning of that term "is left for the courts to decide." In its opinion issued in December 1936, the Supreme Court held, among other things, that "sexual relations" consisted of any act that satisfied the sex urge; a verbal proposition for sex violated the law; and the crime did not require bodily contact.¹²

By 1942, the German Ministry of Justice announced that the Führer had the right to intervene in all judicial rulings "over and above all existing formal arrangements."¹³ From late 1942, Jews were not subject to its jurisdiction because they were all deemed to be "inferior people," and "not worthy of the rule of law."¹⁴

The Rationale of the Judiciary

What was the underlying rationale that supported the judiciary's role as an instrument of Nazi state power?

According to one scholar, "[t]here were essentially three principles that were held to be axiomatic for the entire field of administration as well as the judiciary: the principle of absolute rule by a leader (the Führer principle), the prin-

12 Meinecke and Zapruder, *Law, Justice, and the Holocaust*, pp. 32-34.

13 Majer, "Non-Germans" under the Third Reich, p. 361.

14 Koch, *In the Name of the Volk*, p. 5; Majer, "Non-Germans" under the Third Reich, p. 365.

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principle of authority of the party over the state, and the influence of race as the fundamental principle guiding affairs of state ('racial inequality').¹⁵ Another historian agrees: "The purpose of the law, in the eyes of the Nazis, was not to apply long held principles of fairness and justice, but to root out the enemies of the state and to express the true racial feeling of the people."¹⁶

According to an historian, "the first and foremost task of the judiciary was to subordinate itself to the totalitarian will of National Socialism."¹⁷

Individual Judges

We have observed the coordination of the entire judiciary into the Nazi system. What was the role of individual judges? According to one author, the "German legal profession, above all judges, had fully succumbed to the power of corruption, not in the material but in the ethical sense."¹⁸ As he describes, the judges entered a "moral abyss."¹⁹

The most comprehensive study of this question concluded that "not a single judge appears to have resigned in protest."²⁰ Indeed, no author I have discovered has confirmed the resignation of any German judge in protest of the acts of the Nazis, or to protest the "coordination" of the judiciary into the Nazi state.²¹ One judge did complain to authorities about "injustice...masquerading in the form of law" concerning the treatment of the mentally ill; he was allowed to quietly retire in late 1940 with a pension.²² In addition, one source quotes a woman who claims that her father, a judge in Marburg, Germany, refused to join the Nazi Party in 1936, and, as a result, he "was summarily dismissed from the judiciary but managed to land a job as a court messenger."²³

Whether the number of judges who resigned or retired in protest was none, one, or two, the total is meager. The German judges who continued to perform their jobs without question did the work of the Nazis. The president of the court declared that "[t]he German judicial system can take pride in being the first branch of government in the Third Reich to carry out in its personnel policies, throughout the Reich and at all levels of civil service, the principle that the movement, the people, and the state are one."²⁴

Scholars agree that the "judiciary largely contributed to its own demise."²⁵ In particular, it "actually promoted [its

own] takeover by close cooperation with the police."²⁶ The judiciary complied with the Nazis with "zeal."²⁷

A question that naturally arises is: Why did the German judges so willingly coordinate themselves in the Nazi system and enforce its doctrines?

A key scholar argues: As Nazis, they "believed that a state was not only empowered but also obliged to override individual civil rights in the interest of creating an ethnically homogeneous nation."²⁸ Koonz states the Nazis "denounced the idea of universal human rights, saying: Not every being with a human face is human."²⁹ As she describes, "[t]his belief expressed the bedrock of Nazi morality."³⁰ This "morality" was a combination of "biological theories and racist passions."³¹ Koonz powerfully wrote, "ethnic Germans were exhorted to expunge citizens deemed alien and to ally themselves only with people sanctioned as racially valuable. The road to Auschwitz was paved with righteousness."³²

Koonz's explanation joins many other theories on why Nazi civil servants coordinated themselves with the Nazi system. Why would many of the same people who were judges before Hitler make decisions according to Nazi doctrine? Were their actions driven by nationalism or racial pride? Were they concerned their careers were threatened? Did they seek to advance their own careers? Were they afraid of the Nazis for the safety of themselves and their families? Were they just following orders?

German judges after the war claimed they were victims too and were only following the "law." Those judges argued they did not have the power of "judicial review" of executive and legislative acts and their only job was to follow and "interpret" the law.

Last year, I had the honor of engaging in an extensive conversation with Nobel Peace Prize Laureate Professor Elie Wiesel. He said the German judges ignored the impact of their decisions on individual people and demonstrated a total absence of "humanity."

Whatever the reason or combination of reasons, it is manifestly true that the German judges coordinated themselves into the Nazi system and were ethically corrupt. As succinctly stated by a leading scholar, the "principle of [the] rule of law [is] not compatible with that of authoritarian leadership."³³ As she observed, judges became "immediately answerable to the Führer" (italics omitted). This reality "represented the climax of the destruction of judicial independence." (Id. at p. 23.)

26 *Ibid.*

27 *Id.* at p. 361.

28 Claudia Koonz, *The Nazi Conscience* (Cambridge: Belknap Press of Harvard University Press, 2005), p. 168.

29 *Id.* at pp. 1-2.

30 *Id.* at p. 2.

31 *Ibid.*

32 *Id.* at p. 3.

33 Majer, "Non-Germans" under the Third Reich, p. 351.

15 Majer, "Non-Germans" under the Third Reich, p. 10.

16 Evans, *The Third Reich in Power*, p. 73.

17 Koch, *In the Name of the Volk*, p. 84.

18 Koch, *In the Name of the Volk*, p. 119.

19 *Id.* at p. 120.

20 Koch, *In the Name of the Volk*, p. 119.

21 *Id.* at p. 119.

22 Müller, *Hitler's Justice*, pp. 193-195.

23 Fogelman, *Conscience & Courage*, pp. 23-24.

24 Müller, *Hitler's Justice*, p. 192.

25 Majer, "Non-Germans" under the Third Reich, p. 352.

Important Contrasts with Jurisprudence in the United States

I wish to conclude this article with observations about jurisprudence in the United States during World War II and today. First, our judges take oaths to uphold the Constitutions of the state and the United States, not to a person or officeholder. Second, in the United States, judges have the power and responsibility of judicial review of legislative and executive actions.

The point of judicial review is best illustrated by the opinion of the United States Supreme Court in mid-1943 during the war, in *Board of Education v. Barnette* (1943) 319 U.S. 624. In *Barnette*, the Supreme Court ruled that students who were Jehovah's Witnesses could not be compelled to pledge allegiance to and salute the American flag. Justice Robert Jackson, writing for the Supreme Court, eloquently stated: "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections."³⁴

Justice Jackson continued: "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us."³⁵

In California, judges are required to decide cases regardless of partisan

interests and without bias or prejudice. Canon 3B(2) of California Code of Judicial Ethics mandates that "[a] judge shall be faithful to the law regardless of partisan interests, public clamor, or fear of criticism . . ." and Canon 3B(5) provides: "A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, engage in speech, gestures, or other conduct that would reasonably be perceived as (1) bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status..."

Lessons, Gratitude and Confidence

I have researched Nazi German legal history because we can learn important lessons from the catastrophic ethical corruption of its judiciary and judges.

When my mother and father were on board ships entering New York harbor, I imagine each of them thought, in Yiddish, they were arriving in der goldenach medinah, the golden land, America. As their son, I am grateful to our nation and the opportunities it has afforded to me and my family. As a judge, I am confident our judiciary and judges will continue to uphold their oaths, our Constitution and the values of impartiality, integrity, due process of law, liberty and equal justice.

Richard D. Fybel is an Associate Justice of the California Court of Appeal, Fourth District, Division Three (Santa Ana). This article is adapted from the chapter authored by Justice Fybel entitled, "The Absence of Judicial Ethics and Impartiality: The German Legal System, 1933-1945," in National Security, Civil Liberties, and the War on Terror, a book edited by M. Katherine B. Darmer and Richard D. Fybel (New York: Prometheus Books, 2011). This article was originally published in California Litigation, the Journal of the Litigation Section, State Bar of California, Vol. 25, No. 2. (2012).



34 *Id.* at p. 638.

35 *Board of Education v. Barnette, supra*, 319 U.S. at p. 642.



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THE INTERSECTION OF THE LEGAL SYSTEM AND EXPLODING TECHNOLOGY FOCUSED ON CHILD EXPLOITATION

by Opal Singleton

We are living at one of the most unique times in history. This generation of young people is the first generation that has never NOT known the Internet. Certainly their older siblings knew the Internet, but this is the first generation that is connected to the entire world through technology. Currently, there are over 3.5 billion Internet users. By 2020, the entire world will have devices that access the Internet in some form. Even today in remote villages of Cambodia, Thailand, and the Philippines, teens are using cheap “knock-off” cell phones to learn English and connect to the outside world.

Adults in this generation also play one of the most unique roles in history as they try to navigate and educate young people on Internet safety, digital morality, and the difference between fantasy and reality in online relationships. The National Center for Missing and Exploited Children states, that using Photo DNA technology, they have intercepted more than 35 million naked or illicit photos sent by a minor to a friend (selfies). Today’s teenager struggles to comprehend that the Internet is not private and a naked photo places them in a position to be exploited by a pedophile or predator.

Technology is not good or bad, it is how we chose to use it. The FBI states that there are nearly a million predators online at any given time. Recently, in a controversial legal case, the FBI took over the Playpen Child Pornography ring operating in the Dark Web. The case is taking many twists and turns as legal professionals are trying to define the legal and appropriate means for locating, and charging pedophiles who possess, manufacture and distribute extremely violent and vile images of minors being sexually exploited. Using Malware to penetrate the Playpen Child Pornography ring, the FBI determined that there were over 214,000 alleged pedophiles, who were collecting and exchanging horrific images of children being violated.

The challenges to successfully prosecuting the case are numerous. The search warrant originated in Virginia (FBI headquarters) but the alleged pedophiles, identified through FBI placed Malware, were located in Oklahoma, Australia, and other states and countries. Adding to the complexity of the issue, the FBI made the decision to take control of the website and operated it for several days. Reportedly, they enhanced the responsiveness of the site so that thousands of additional users could exchange photos of abused children. Currently, the case is making its way through appeals courts as the various legal issues are being explored.

About the same time as the Playpen case was gaining national attention as a test case for how law enforcement and prosecutors deal with global crime rings operating in the Dark Web, Sky News in the U.K. broke a story about a child pornography ring in Scotland that had 30 MILLION archived images of violated children. One cannot help but wonder how an individual can access, sort, store and distribute such a vast library. It is difficult to comprehend how many real live children around the globe were exploited to build a library with 30 MILLION pornographic images. Was it a personal collection or a cartel making millions of dollars violating innocent children?

One of the greatest challenges of this decade will be drafting and passage of effective laws to address the new technologies. Search and seizure laws will be especially difficult due to rapidly evolving technology and data storage and exchange capacities. Adding to this are barriers created when individual criminals and global cartels operate in the Dark Web, using ever changing encryption methodology, cyber currency and overlaid with disappearing technologies like live streaming which will make evidence collection and retention most challenging.

In the past year, Facebook has introduced legitimate services that when combined together could potentially be a pedophile or cartel playground. First, Facebook opened a legitimate site in the Dark Web. Then it added Facebook Money Manager (cyber currency that is anonymous and non-traceable). Facebook added live streaming to bring in thousands of users. Recently, it added Marketplace and immediately apologized because the site was flooded with sellers of guns, drugs and sex (i.e. prostitution). This week Facebook announced Message Encryption that will enable the message to disappear shortly after posting. Any one of these services are legitimate in their own right but combined together, it will be easy for escort services and child pornography rings to promote their wares to millions and it will be virtually impossible to prosecute as the live streaming event will disappear in a short period of time and it will be difficult to trace the money to use as evidence in court.

Let me suggest a possible scenario of how this might play out. A child pornography ring could host a pedophile (invitation only) live streamed event from the Dark Web. They would line up a young child from a foreign country, say the Philippines, India, Cambodia, or Africa to be violated on pay per view. Let’s say there are 20,000 pedophiles who pay \$200 each through Bitcoin or Facebook Money Transfer.

For ten minutes they can view the event together and chat with each other through text. Literally in TEN MINUTES a cartel can make \$4 million and it will all be over with no money traceability, and no video as it is live streamed. No one will know about it except the poor child in a third world country whose life is forever changed. Once cartels understand that they can make \$4 million dollars in untraceable money in ten minutes, I am predicting it will become the fastest growing crime in the world. No child will be safe.

I write this article to challenge the legal community around the globe to stop and understand the possibilities. We are at a crossroads as the legal system and global technology advancements collide. We must work together to address this issue and protect the most vulnerable children around the world.

Opal Singleton is the president and chief executive officer of Million Kids, is the training and outreach coordinator for the Riverside County Anti-Human Trafficking Task Force, is the author of Seduced: The Grooming of America's Teenagers, and Global Radio Host of "Exploited: Crimes Against Humanity."



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SUPREME FOLLY: REVISITING *BUCK V. BELL* AND THE HIGH COURT'S GREEN LIGHT TO FORCED STERILIZATION

by Abram S. Feuerstein

In one of the cruelest pronouncements ever handed down by the United States Supreme Court, Oliver Wendell Holmes, Jr., writing for an 8-1 majority, declared that “(t)hree generations of imbeciles are enough.”¹ And with those words, the Supreme Court in 1927 affirmed a Virginia law that allowed the State to sterilize Carrie Buck, a perfectly normal young woman, on the purported grounds that she was “feeble-minded” or “epileptic.” The decision paved the way for another 60,000-70,000 Americans in the decades that followed to undergo forced sterilization at the behest of government officials.

Adam Cohen’s *Imbeciles: The Supreme Court, American Eugenics, and the Sterilization of Carrie Buck*,² is a soup to nuts account of *Buck v. Bell*, a Supreme Court decision that takes its rightful place alongside the Court’s infamous decisions in *Dred Scott v. Sandford*,³ ruling that the enslaved Scott had no standing to sue in federal court; *Homer Plessy v. Ferguson*,⁴ upholding racial segregation laws, and the internment case of *Fred Korematsu v. United States*⁵ during World War II. According to Cohen, what these decisions have in common is that they were on the “wrong side of justice,” with the Court favoring those who wield power and “use it against those who do not.”⁶

Notes Cohen: “Carrie (Buck) was at the bottom of the nation’s economic and social hierarchies. In her plea to the court, she was asking for protection from powerful people and institutions that threatened to do her harm. Throughout the history of American law, that position has not been a good one to be in.”⁷

Every court case has a human story behind it. In Carrie Buck’s case, it is a tragic one — one resembling a Dickens novel. Raised in Charlottesville, Virginia by a single mother living at society’s fringes and possibly engaged in prostitution, Carrie eventually was removed as a young child from her mother’s care by social workers and placed in a foster

home setting.⁸ In that setting, Carrie’s role became less one of a daughter and more that of a full-time domestic houseworker. Her foster parents, John and Alice Dobbs, ended her formal education and removed her from grade school — where she seems to have been a good student — so that they could hire her out to do housework for other families.⁹ Several years passed. In her early teen years, she was raped by a visiting relative of the foster family.¹⁰ In her pregnant condition, and to avoid embarrassment and the criminal ramifications resulting from the rape, the foster family petitioned the local Commission of Feeble-mindedness¹¹ to rule that Carrie should be institutionalized at the Virginia Colony for Epileptics and Feeble-Minded (the “Colony”).¹² The foster family claimed that as Carrie aged, she began to develop symptoms of being feeble-minded or epileptic not apparent when she was younger, and as those symptoms worsened they could no longer care for Carrie.¹³

Based mainly on the information provided by the Dobbses, the Commission of Feeble-mindedness quickly ruled that the pregnant Carrie should be sent to the Colony. Before that occurred, however, Carrie gave birth to a daughter, Vivian. Given the difficulty of placing a child for adoption who had been born to a feeble-minded parent, the child was placed in a foster setting by the only family willing to take her — the Dobbses.¹⁴

Once at the Colony, Carrie fell under the custody of its superintendent, Dr. Albert Priddy. Dr. Priddy, an ardent adherent of the eugenics movement who had conducted dozens of unauthorized surgical sterilizations on Colony residents, believed that widespread sterilization was necessary to prevent the spread of feeble-mindedness and for the ultimate improvement of the gene pool. These ideas, which later would be embraced by German scientists to justify

1 *Buck v. Bell*, 274 U.S. 200, 207 (1927)

2 Adam Cohen, *Imbeciles: The Supreme Court, American Eugenics, and the Sterilization of Carrie Buck* (Penguin Press 2016, 402 pages) (“Cohen”). Cohen, a senior writer for *Time* magazine and a former member of the *New York Times* editorial board, is a graduate of Harvard Law School.

3 60 U.S. 393, 403 (1857).

4 163 U.S. 537 (1896).

5 323 U.S. 214 (1944).

6 Cohen, pp. 9, 12.

7 Cohen, p. 12.

8 Cohen, pp. 20-21.

9 Cohen, p. 21-22.

10 Cohen, p. 24.

11 Cohen writes that “(t)he nation was in the midst of a panic over feeble-mindedness,” a campaign that focused on young women who were “deemed both a moral and a demographic threat” and who needed to be locked away for the good of society so that they could not reproduce. Cohen, p. 25.

12 Cohen, p. 23.

13 *Id.*

14 Cohen, p. 28. Vivian continued to live with the Dobbses but died at age 8 from an infection following the measles. Cohen, p. 291.

Nazi sterilization programs,¹⁵ found widespread acceptance and approval by most Progressive elements in American society. Coming on the heels of the re-discovery of Gregor Mendel's pea experiments, most major universities offered courses in eugenics.¹⁶ Support for eugenic laws came from the top levels of the legal and medical profession. For instance, American Bar Association President James C. Carter praised a Connecticut marriage ban law as a method to "protect future generations from the evil operation of the laws of heredity."¹⁷ Similar sentiments came from leaders in the medical profession. Religious leaders, women's rights activists, and politicians all offered their support. Margaret Sanger advocated the need to reduce "the rapid multiplication of the unfit and undesirable."¹⁸ Theodore Roosevelt wrote in 1914 that he hoped "the wrong people could be prevented entirely from breeding" and "forbidden to leave offspring behind them."¹⁹

In 1924, Dr. Priddy, working with local legislators and national eugenics advocates, and aided by a distinguished Virginia attorney, Aubrey Strode, obtained the passage by a vote of 75-2 of a Virginia sterilization law entitled: "An Act to Provide for the Sexual Sterilization of Inmates of State Institutions in Certain Cases."²⁰ Of note, 1924 was the same year that the United States passed the Immigration Act of 1924, which effectively blocked immigration of "undesirable" and purported feeble-minded immigrants, including Jewish immigrants from Eastern Europe and Russia²¹ and Italians from Southern Europe, in favor of more desirable "Nordic" or Northern European immigration.

Testing the Test Case

Although the majority of states were enacting eugenic laws, the proponents of Virginia's law opted to proceed cautiously.²² They decided they needed a test case, and unfortunately for Carrie Buck, she arrived at the Colony just in time and appeared to present a good set of facts, ultimately, to take to the Supreme Court. Dr. Priddy began the process of assembling an evidentiary record and obtaining expert testimony for an initial administrative hearing,

15 375,000 sterilization orders had been issued by the Nazis in implementing Final Solution provisions for dealing with Germans of mixed Aryan and Jewish blood. At the Nuremberg trials, one of the defenses raised by the defendants' attorney was that sterilization programs had been endorsed by the U.S. Supreme Court. Cohen, p. 303.

16 Cohen, p. 112.

17 Cohen, p. 56.

18 Cohen, p. 57.

19 Cohen, p. 57.

20 Cohen, p. 90.

21 Cohen notes that for European Jews, the passage of the Immigration Act blocked almost all Jews from entering the country in the years prior to the Holocaust, including Anne Frank's family who wrote numerous futile letters to American officials requesting visas. Cohen, p. 135.

22 Cohen, p. 90-91.

at which Buck would be represented by a guardian, a local lawyer, to be paid \$5.00 per day not to exceed \$15. Cohen observes that Carrie Buck "had no idea what was going on."²³ Predictably, the petition seeking Carrie's sterilization was granted. Carrie's guardian filed an obligatory appeal on Carrie's behalf to the County Circuit Court, which scheduled a trial. The guardian also hired an attorney to handle the appeal, remarkably an individual who previously had served on the Colony's Board and approved of Dr. Priddy's unauthorized sterilization of inmates.²⁴ The trial result, too, was predictable. In November 1925, the Virginia Supreme Court of Appeals unanimously affirmed the trial court. The railroading continued as Carrie's lawyer one month later met with the Colony's Board to advise them that the case was in "admirable shape" to go to the Supreme Court.²⁵

A Magnificent Yankee?


The Supreme Court that decided *Buck v. Bell* had as its Chief Justice former president William Howard Taft, Louis Brandeis aka "the people's lawyer" and who helped develop the concept of the "right to privacy" in his pre-Court writings, and Oliver Wendell Holmes, Jr., deemed to have one of the greatest legal minds in American history. Cohen attempts to make sense of how these individuals were unable to view Carrie Buck as a real person, entitled to the protections recognized by emerging legal doctrines of individual liberty rights. His brief biographical portraits of the justices are only partially successful.

Cohen's Holmes is vastly different from a public perception of Holmes, in part derived from the 1950 bio-movie, *The Magnificent Yankee*, that Holmes was a champion of the underdog. Instead, to Cohen, Holmes

23 Cohen, p. 93.

24 Cohen, p. 98.

25 Cohen, p. 208.



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was a blue-blooded, Boston Brahmin, who never left his Olympian legal perch to come into contact with people like Carrie Buck.²⁶ In Holmes' five paragraph decision, Cohen notes that Holmes had no interest in the underlying facts and simply accepted the trial court's conclusion that Carrie, her mother, and her infant daughter were feeble-minded. As such, she fell into a category of individuals that did not need protection but, instead, a group from which society needed protection. "It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind," Holmes opined with disdain.²⁷

But Holmes was joined by seven other justices, who accepted the language of the decision, its flawed evidentiary record, and its uncritical deference to the Virginia legislature.²⁸ Only Pierce Butler, a Court conservative and its only Catholic justice, dissented.²⁹ Otherwise, eight members of

26 See Cohen, p. 213.

27 Cohen, p. 269.

28 Cohen presents some evidence that other justices took issue with the harsh language of the decision. Cohen, p. 271-271.

29 Butler did not write a dissenting opinion. The major organized opposition to the eugenics movement came from Catholic groups, who successfully blocked several states from enacting eugenics laws. Cohen speculates that Butler's dissent was animated by reservations that the Catholic Church had relating to interference

the Court – whether they were progressives or conservatives -- had little trouble taking away Carrie Buck's ability to have children. *Buck v. Bell* has never been overturned.³⁰

Although Cohen at the end is troubled by the worldview reflected by *Buck v. Bell* as an emblem of the use of the law to harm, rather than protect, the least fortunate, his book only partially recognizes one of the major lessons of the decision: the need to resist ideologies, typically embraced by elites, that profess, based on "settled science," to use the overwhelming power of the state to coerce individual behavior to achieve a purported public interest goal. Philosopher kings are seldom either, and bad ideas generally have bad consequences. Carrie Buck, who died in 1983, deserves that we guard against such supreme follies.

Abram S. Feuerstein is employed by the United States Department of Justice as an Assistant United States Trustee in the Riverside Office of the United States Trustee Program (USTP). The mission of the USTP is to protect the integrity of the nation's bankruptcy system and laws. The views expressed in the article belong solely to the author, and do not represent in any way the views of the United States Trustee, the USTP, or the United States Department of Justice.



with human procreation rights and a strong belief in what today would be referred to as the sanctity of life. See Cohen, p. 279.
30 Cohen, p. 12.

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THE RCBA ELVES PROGRAM - SEASON XV

Your RCBA Elves Program has been helping local families in need provide Christmas to their kids since Christmas 2002. This will be our 15th opportunity as local legal professionals to show that we care about and do give back to the community that supports us. We reached our goal last year in helping more than 50 families and we need your help to do it this year. Once again, your RCBA is providing four opportunities for you, your family, your staff, and colleagues to become an Elf and share your time, talents, and interests with these local families in need. Your task is to decide which Elf category(ies) you want to participate in this season!

Shopping Elves: Monday, December 12, 2016 at 6 p.m. is our designated shopping day and time. All RCBA "Shopping Elves" will meet at the Big Kmart at 375 East Alessandro Blvd. in Riverside's Mission Grove Shopping center. As a Shopping Elf, you will receive a Christmas "wish list" from your adopted families. Your job is simple—shop and fill your basket with as many gifts as possible within the dollar amount given to you at the start of the evening. This is a real opportunity to test or show off your "value" shopping skills. Many of our Shopping Elves have made this a family affair using its younger members to assist in selecting the "cool" gifts for the kids while learning about the value of charity and the joy of giving to the less fortunate. Some schools have recognized this event as a way for your student to earn public service credits. Some law offices come in mass with the attorney's staff and family working together to make this a night of bonding. Whatever the motivation, please put on an Elf's cap and come join us. A good time is had by all.

Wrapping Elves: After the Shopping Elves finish their job, Wrapping Elves swing into action. As Wrapping Elves you will have two opportunities (**Wednesday, December 14 & Thursday, December 15 starting at 4 p.m.**) to meet in the RCBA boardroom and wrap all the gifts purchased. Wrapping Elves must ensure that all the gifts are tagged and assembled by family for easy pick up and distribution by the Delivery Elves. Experience has shown that the holiday music, food and camaraderie of wrapping gifts together will help even the biggest Grinch shake off the "Bah Humbug" blues and get them into the holiday spirit. Excellent wrapping and organizational skills are welcomed, but not required. Santa sightings have occurred in the past. There are rumors that he may touch down and visit his wrapping Elves again this year.

Delivery Elves: If you need a way to kick-start the warm holiday glow inside and out or just want to feel like Santa on Christmas Eve, this is it! Depending on the total number of families adopted, teams of two to four Delivery

Elves are needed to personally deliver the wrapped gifts to each of our families. The deliveries will be made between the December 16 and 24. We have designed this part of the program to accommodate your personal schedules.

Over the years, many members have expressed that delivering gifts to the families was by far one of the most heart-warming Elf experiences. It is also a good opportunity to teach your young ones early the rewarding feeling of helping those less fortunate than themselves. When signing up, please inform us of the type of vehicle you have, so we can match the number and size of gifts to the storage area available in your vehicle.

Money Elves: The Money Elves provide the means necessary for the other Elves to shop, wrap, and deliver to the families we adopt. **You can really help us by sending in your donation early** since it allows us to determine our budget for the families we help. The majority of funds need to be donated no later than December 9 to allow for the gift purchases from K-Mart. Donations received by December 15 will fund the purchase of gift cards from Stater Brothers so the families can buy food for a nice holiday dinner. Clearly, the more money raised means a greater number of families we can assist. (Remember our goal is 50+ families this year.) Please note, even if you are a procrastinator, we will accept money after December 15. (Monies received this late will be applied to any last minute "add on" families, or will be saved to get us ahead on donations for next year.)

The RCBA now has a 501(c)(3) Foundation so all donations for this project are tax deductible. Please make your checks payable to the RCB Foundation and write "The Elves Program" in the memo section of the check. The RCB Foundation Tax ID# is 47-4971260. We thank you in advance for your holiday generosity.

To become a Shopping, Wrapping, Delivery or Money Elf, please phone your pledge to the RCBA at (951) 682-1015 or email your name and desired Elf designation(s) to one of the following: Charlene Nelson (charlene@riversidecountybar.com), Lisa Yang (lisa@riversidecountybar.com), Brian Percy (bpercy@bpearcyllaw.com) or Veronica Reynoso (vreynoso@bpearcyllaw.com). By contacting us via email you will assist us with the ability to update each of you via email in a timely manner.

To those who have participated in the past, "thank you" and to those who join us for the first time this year, we look forward to meeting you. Don't forget to tell a friend!



THE PRESERVING AND REPATRIATING OF NAZI-LOOTED ART

by Donald S. Burris

During World War II, Nazi Germany led a systematic campaign to loot and plunder art in the countries which it occupied, with a special emphasis on the plundering of Jewish-owned Art. Although, as described in the comparatively recent *Monuments Men* book and accompanying George Clooney movie, a significant amount of the stolen art was recovered by the Allies and returned to the respective countries of origin in the immediate aftermath of the War, thousands of valuable art pieces were never returned to their rightful owners or their heirs and much of the remaining looted works were never recovered. It has been estimated that the number of valuable works whose whereabouts is unknown numbers in excess of 50,000! When viewed as a whole Hitler's Third Reich amassed hundreds of thousands of pieces of artwork — worth billions of dollars — and stored them throughout Germany, France, and to some extent the other occupied countries. Other pieces deemed “degenerate” were legally banned from entering Germany and were sold overseas or in neutral countries such as Spain and Portugal, with the proceeds sent back to Germany to fund its massive war effort.

I have been working for almost 16 years as a member of a very small combined legal fraternity and sorority composed of mostly American lawyers who have dedicated at least a significant portion of our practices to the potential retrieval of Nazi-looted art. Put another way, we try to restore at least a semblance of culture and pride in that culture which was so brutally seized by the Nazi thugs. While some efforts were made just after the War to retrieve valuables, most survivors of the labor and concentration camps were understandably preoccupied with identifying any living family members and with doing what they could to build a new post-Nazi-era life, often without their murdered spouses, children, and parents. Furthermore, even those survivors who attempted to obtain some form of redress were met with at least apathy and at most outright intransigence in dealing with the representatives of the countries who were exercising “temporary caretaker custody” over the retrieved works.

Indeed, it was not until 1998 that any organized international assistance to the survivors was developed. In that year, the nations from 45 governments and 13 non-governmental organizations participated in the so-called “Washington Conference.” The Conference attendees produced a set of principles dealing with looted art including the encouraging of research into identifying

stolen art, calling for these findings to be publicized, urging the establishment of a central computerized registry linking all Holocaust-era art-loss databases and encouraging alternative dispute-resolution strategies. One of these most basic principles provided that “if the pre-War owners of art that is found to have been confiscated by the Nazis and not subsequently restituted, or their heirs, can be identified, steps should be taken expeditiously to achieve a just and fair solution, recognizing this may vary according to the facts and circumstances surrounding a specific case.” The Principles did not, however, provide any enforcement mechanism for the return of the art to the rightful owners that the art should be returned to the heirs. As a result, the rightful return of stolen art tended to be the exception, rather than the rule. For example, a report jointly issued in September 2014 by the Conference on Jewish Material Claims Against Germany and the World Jewish Restitution Organization determined that countries such as Italy, Hungary, Poland, Argentina, Spain, Germany, and Russia had, as of the writing of the Report, done little to live up to international agreements.

For the past 16 years, my partner and I have devoted a considerable amount of time to the pursuit of art works and other assets stolen by the Nazi authorities before and during World War II. These efforts successfully culminated in 2004 with the well-known decision of the Supreme Court in *Altmann v. Republic of Austria*, at the conclusion of which the Austrian government was ordered to, and did, return to Ms. Altmann's possession a number of priceless historic paintings by Gustav Klimt including the “Portrait of Adele Bloch-Bauer I” (popularly known, and now as the result of the recent movie imbedded in the public's consciousness as “The Woman in Gold.”)

Since the *Altmann* rulings and my partner and close friend's retirement from the active practice of law, I have been involved in a number of important looted art cases here and abroad and have given lectures and developed courses about this work. Among the cases that I have been involved with are the *Benningson* case, which resulted in the identification of a missing Picasso work and a substantial payment to the heir of the rightful owners who lived in occupied France, another matter involving a Canaletto masterpiece which was purchased from our clients without the need of formal litigation and the *Von Saher* case which is still being fought in the federal courts. I am particularly honored as a Jewish-American lawyer to be in a

position to enlighten people all over the world about our work. Indeed, I have come to sometimes entitle my presentation as working from the “tragedy” of the Holocaust to the “triumph” of being able to restore a sense of pride in our clients about their previously-lost culture.

Donald S. Burris is a very respected international lawyer and lecturer who has been specializing in the recovery of so-called “looted art” stolen by the Nazis, mostly from Jewish families, and in an extremely cruel manner, during the period between 1933 and 1945 when the Nazi boot was imposed all over Western Europe and parts of Russia. Starting with the fascinating and successful Altmann proceeding, which resulted in his firm’s twin victories, 6-3 in the United States Supreme Court and 3-0 in the subsequent Austrian arbitration proceeding, and extending through dozens of other national and international art disputes, Mr. Burris has devoted a great deal of his firm’s practice to the representation of Holocaust victims and their families in the quest to retrieve this art work. In the process Mr. Burris has written two law review articles and lectured at dozens of law schools, judicial conferences, and before community organizations here and abroad, in the process becoming one of the leading West Coast-based experts on the topics of art preservation and the repatriation of valuable art works seized by the Nazis and other conquerors.



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The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective November 30, 2016.

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OPPOSING COUNSEL: JERRY YANG

by *Melissa Cushman*

Assistant U.S. Attorney Jerry Yang always wanted to be a lawyer. While this was partially because of a long-time interest in history and politics, it was largely because of his parents. Not because they were lawyers themselves or because they demanded that he go into the law — instead, it was because his parents were immigrants to the United States who sometimes struggled when speaking English. As a child, Jerry grew up helping explain things his parents wanted to say to doctors, store clerks, and others. As he grew older, his role expanded from translating and explaining what his parents wanted to say to advocating for his parents and representing their concerns. This experience, particularly combined with his interests, made a career in law a natural fit.

Jerry grew up near the Inland Empire in Hacienda Heights with his accountant mother, contractor father, and a younger brother who later became a civil engineer. With his goal of going to law school in mind, Jerry attended Pomona College, majoring in political science, during which he was introduced by friends to his future wife Helen. He then went directly to law school at UCLA. He externed for federal district court Judge Virginia Phillips in Riverside after his first year in law school and was a summer associate at Best Best & Krieger LLP the next summer. After passing the bar in 2005, Jerry went to work practicing commercial business litigation, first at Best Best & Krieger LLP in Riverside, then at Buchalter Nemer in Los Angeles. Jerry then accepted an offer to join the U.S. Attorney's office in Riverside, which entailed learning a new area of law. He started out first in Los Angeles at the Spring Street courthouse office in the general crimes department. After a three-week training course, he was given his own cases.

While at the beginning the cases he handled were fairly small, including many gun cases, drug cases, and people stealing public benefits, the cases taught him to how best to deal with the types of problems that can arise and gave him the opportunity to learn trial practice and litigation techniques. For Jerry's first trial, he prosecuted a woman who got angry at an IRS office and pushed, spit at, and started fighting with an IRS employee. It was essentially a "he said-she said" situation, making it difficult to meet the applicable "reasonable doubt" standard. While she was found not guilty, the trial was a great learning experience for Jerry.



Jerry Yang

Early in his career at the U.S. Attorney's office, Jerry and Helen got married. On the first day of their honeymoon in South Africa, however, a semi going the other direction on the road crossed the center line and hit the car Jerry was driving with his wife. While Helen was luckily unhurt, Jerry ended up in intensive care for twelve days, and the local paper even published an article on the crash headlined "Honeymoon Turns into Near Disaster." Even after he was released from the hospital, he couldn't go on an airplane

for a while due to brain swelling, so he stayed in South Africa some weeks longer than planned.

After about a year in the Los Angeles branch of the U.S. Attorney's office, Jerry transferred to the Riverside branch. At first, he handled a little of everything there. This included a child exploitation case in which he prosecuted a middle school teacher. The teacher had contacted one of his female students via a fake online profile in which he pretended to be an 18-year-old boy in order to get explicit photographs of her. The teacher ultimately pled guilty and is serving ten years in prison. Last year, Jerry prosecuted a case with some coverage in the media involving an attorney in Santa Ana who was involved in a birth tourism scam. After a bench trial, the court found that the attorney conspired to obstruct justice by plotting to help a material witness in the case evade court supervision and escape back to China.

Today, Jerry is the Deputy Chief for the U.S. Attorney's Office in Riverside, and most of Jerry's practice consists of white collar cases, including investment fraud and other types of fraud. He still lives in Hacienda Heights, just a few miles from his parents, and his wife is now a partner at Squire Patton Boggs, also practicing litigation. Despite the potential problems that could arise from having two litigators in the same household, Jerry says that it works fine for them because neither have a stereotypical litigator personality. However, they have a 2 ½ year-old daughter who does have a litigator personality. Jerry has discovered that raising her sometimes takes the same skills he has developed as a prosecutor.

Melissa Cushman is a deputy county counsel with the County of Riverside specializing in land use and CEQA.



NOT WITHOUT A FIGHT

by DW Duke

On September 1, 1939, Germany invaded Poland. Casimir Bieberstein was eight years old. The son of a wealthy Jewish businessman, who owned a publishing company and several manufacturing firms, Cass had known opulence and luxury his entire life. Living in a thirty room mansion on Pulawska Street, that fateful day in September changed his world forever. Forcibly ejected from their mansion by Oskar Schindler, who needed a place to operate his business of selling stolen Jewish artifacts to German officers, the family moved from one apartment to the next, until they were eventually forced into the large Jewish ghetto in Warsaw.

When Zofia Wagner, Cass' childhood sweetheart and the eight-year-old daughter of the family chauffer, was raped and murdered by two German soldiers who mistook her for a Jew, Cass found her naked body in an abandoned warehouse and lapsed into deep sorrow. He locked himself into his room for weeks, coming out only once or twice per day and only by necessity. For days, he thought about Zofia, her beautiful long blonde hair and large blue eyes. He cried until he could no longer make tears. When he finally emerged from the room, he was not the same. Though not yet a teenager, he had become mentally conditioned to do one thing, that one thing was to kill Nazis.

Trained as a boy to use the rifle while deer hunting with his Grandfather Bieberstein, a Major in the Polish Army, Cass was an expert marksman and became a sniper for the Resistance, killing his first Nazi before the age of twelve. Also trained in close quarter combat, by Ari Levine, a student of Imi Litchenfeld, the founder of Krav Maga, by the time of the Jewish Uprising in the Warsaw ghetto in 1943, Cass though just a boy, was a force to be reckoned with, at the peril of Nazi soldiers who were foolish enough to take his age and small size for granted.

Cass fought in the Jewish Uprising in 1943 and survived. The ghetto was destroyed and he escaped through the sewers along with several other fighters. He lived on the Aryan side until the second Uprising in 1944 when he fought again. He survived that Uprising as well, and when the Soviets invaded from the east in January of 1945, he fought with the Soviet Army as a scout until a German 88mm round hit the base of the tree in which he was hid-



Casimir Bieberstein's headstone

ing, causing him to fall twenty feet onto his back fracturing his hip. His grandfather by this time had joined the Soviet Army and had become a Colonel. Cass was well cared for by Field Marshal Georgy Zhukov, who led the attack on Poland from the East. Marshal Zhukov allowed Cass to ride with him in his tank until the war ended when Germany surrendered to the allies.

During one of my meetings with Cass Biebers, who had changed his name from Bieberstein to Biebers, upon coming to America to conceal that he was a Jew in case any Nazis might seek revenge, Cass said:

"I hate the image the world has of Jews in WWII. All the movies always show them walking like sheep in lines to the slaughter. They are seen as cowards who never fought back. What the world doesn't know is that the reason many didn't fight back is that the first thing Hitler did after invading, was to confiscate all guns. The Jews had nothing to fight with. In addition, the Jews were told they were going to work camps where they would have plenty of food and would live in comfort. They believed what they were told. But some of us knew better. We knew we were going to extermination camps. When you corner an animal and give it only the option of death, it is the fiercest form of life on earth. That was what we had become.

"The Nazis were really stupid. They did everything like clockwork. The patrols would come through at exactly the same time every day. It made it easy for us to ambush them, throw their bodies in the sewers and keep their weapons. And the stupid Nazis always thought the soldiers had deserted because it never occurred to them that a Jew could kill a Nazi.

"I want you to tell the world the truth about the Resistance. Let the world know that we fought back and we fought well. Many of us died fighting, but we had nothing to lose. We were going to die on our terms; and not without a fight."

Based on a true story, *Not Without a Fight* is a book written by DW Duke, with Thomas Biebers (Bieberstein) the son of Cass Bieberstein. Combining information told by Cass, to his family, with information from his 1996 interview with the Spielberg USC Shoah Foundation, maintained at the University of Southern California, the

story of Casimir Bieberstein is brought to life in this historical fiction novel. With an anticipated release date in early 2017, the book is under consideration for a feature motion picture and possible miniseries.

We have chosen to dedicate this book to the victims of the Holocaust and to those who chose to die on their own terms and not without a fight. Thomas Biebers' task in writing the book was to research and provide data and my task was to put the story to pen. As the co-author of this book, *Not without a Fight* had special significance for me given that my maternal great-grandfather was also a Bieberstein.

DW Duke is the managing partner in the Inland Empire Office of Spile, Leff & Goor, LLP and the principal of The Duke Law Group. He is the author of five books and a frequent contributor to the Riverside Lawyer.



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LEGAL AID FUNDRAISER ON DECEMBER 1 IN DOWNTOWN RIVERSIDE

The Inland Empire Latino Lawyers Association, commonly known as "IELLA" has been providing free legal services for the Riverside and San Bernardino communities for over 35 years. IELLA has various clinics throughout the Inland Empire, where it assists clients by providing free attorney consultations and free document preparation. IELLA currently assists clients in the areas of family law, landlord-tenant law, limited civil cases, wage garnishments, collections, small claims, and expungements.

IELLA is able to provide these services free of charge because of the great panel of volunteer attorneys it has. IELLA depends on the volunteer attorneys to come and give back to the community by donating a few hours a month. These attorneys help IELLA carry on its mission, which is "to pursue equal access to justice by providing free and high quality legal services to low income individuals and underserved communities." Consistent with this mission IELLA has been able to assist over 30,000 clients to date.

IELLA has five established clinics in various locations: every Monday in Colton, 2nd Tuesday of the month in Corona, every Wednesday in Riverside, the 2nd Thursday of each month in Ontario, and the 4th Saturday of every month in Riverside. IELLA provides assistance to ALL clientele that are low-income and reside in the Inland Empire.

In addition to the donation of attorney hours, IELLA is able to provide free legal assistance by obtaining federal, state and local funding. Some of our partners include the Legal Services Corporation through Inland Counties Legal Services, the California State Bar, The Community Foundation, the San Manuel Band of Mission Indians, and the City of Riverside. However, funding is becoming scarce and IELLA also seeks financial assistance from local communities. Therefore, every year IELLA holds its Annual Silent Auction and Attorney Recognition Event. At this event, IELLA is able to raise money to continue with its mission.

We encourage attorneys and all legal service providers to join us at our Annual Event:

Date: December 1, 2016

Time: 6:00pm to 8:00pm

Location: Riverside County Law Library
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Donation: \$25 per person entry and there will be many great auction items.



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