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MAGAZINE

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First One to Bite the Dust



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RIVERSIDE LAWYER

MAGAZINE

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MISSION STATEMENT

Established in 1894

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

RCBA Mission Statement

The mission of the Riverside County Bar Association is:
To serve 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, and the 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

SEPTEMBER

- 12 Civil Litigation Section Meeting**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Ambassador David Huebner (Ret.)
Topic: Best Practices Tips from the Arbitrators
About Arbitration
MCLE
- 13 Criminal Law Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Paul Grech
Topic: Cross Examination
MCLE
- 19 Family Law Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Matt Havrevold
Topic: “Implications of Technology and Social Media for Domestic Violence and Family Court Cases”
MCLE
- 26 Appellate Law Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Topic: Juvenile Dependency Appeals
Speakers: Alice Shotten, Carole Nunes Fong & Julie Jarvi
MCLE
- 28 RCBA Annual Installation of Officers Dinner**
Mission Inn – Grand Parisian Ballroom
Social Hour – 5:30 p.m.
Dinner – 6:30 p.m.

OCTOBER

- 3 Red Mass**
6:00 p.m.
Our Lady of the Rosary Cathedral
2525 N. Arrowhead Ave., San Bernardino

EVENTS SUBJECT TO CHANGE.

For the latest calendar information please visit the RCBA's website at riversidecountybar.com.



Cover photo by Jacqueline Carey-Wilson

Joseph Widman, Assistant U.S. Attorney & Chief, Riverside Office, reads to a class at Magnolia Elementary School in Riverside during the RCBA Reading Day on June 6, 2017.



President's Message

by *L. Alexandra Fong*

It is a great privilege serving as Riverside County Bar Association president this year. I am a deputy county counsel with the Riverside County Counsel's Office and currently practice in the field of juvenile dependency law. I am honored to follow a long line of attorneys from the Riverside County Counsel's office to serve as president of this organization, including Ray Sullivan, James Angell, Earl Redwine and William Mackey.

For those of you who don't know me, I graduated from California Southern Law School in January 2000. I passed the February 2000 bar exam and started my legal career at Lewis Brisbois Bisgaard & Smith LLP (then known as Lewis D'Amato Brisbois & Bisgaard) in San Bernardino, California, shortly after becoming licensed. After five years in private practice, I joined the Riverside County Counsel's Office and handled administrative, litigation, and transactional matters before transitioning into the field of juvenile dependency law, where I regularly appear before Judge Jacqueline Jackson, the presiding judge of the juvenile court.

This year, I will be working with an excellent board: Jeff Van Wagenen, Jack Clarke Jr., Sophia Choi, Nick Firetag, Lori Myers, Matthew Strickroth, Stefanie Field, Jennifer Lynch, Jean-Simon Serrano, and Shumika T.R. Sookdeo, Barristers' President. We also have a remarkable executive director, Charlene Nelson, to help us run things smoothly. Together, we will work hard so that the RCBA remains in outstanding fiscal health.

The installation dinner will be held at the Mission Inn on September 28, 2017. District Attorney Michael Hestrin will be the master of ceremonies for the event. Judge Jacqueline Jackson will swear in the 2017-2018 Board of

Directors for the Bar Association and Justice Richard T. Fields will swear in the 2017-2018 Barristers Board. During the dinner, Jane Carney will present Senator Richard D. Roth with the James H. Krieger Meritorious Service Award for his outstanding record of community service and Justice Fields will present Judge Gloria C. Trask with the E. Aurora Hughes Award for her dedicated service to the RCBA. Please join us for this very special evening.

This month's magazine is dedicated to "Education and the Law," with the subtopic of "Back to School." As I mentioned earlier, I attended California Southern Law School in Riverside, California. Many students who attend their part-time program at night do so in order to embark on second careers as attorneys. The majority of the students in my graduating class worked full-time during the day and attended night school three nights per week. My graduating class consisted of individuals at stages in various careers – a pharmacist, a sheriff's deputy, two legal secretaries, school teachers, insurance claims adjusters, and those in the field of information technology. Although I was also working full time and going to law school part-time at night, I knew my first and only career would be as an attorney.

On a final note, RCBA board meetings are open to members, except for executive sessions. I invite you to attend our board meetings, which are generally scheduled on the third Wednesday of the month. Please call the RCBA at 951-682-1015 and let us know if you plan to attend. I look forward to seeing you at the installation, at one of our upcoming board meetings, or one of the many other events hosted by the RCBA!

L. Alexandra Fong is a deputy county counsel for the County of Riverside, handling juvenile dependency cases.



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BARRISTERS PRESIDENT'S MESSAGE

by Shumika T. R. Sookdeo



Erica Alfaro is the immediate past president of the Riverside Barristers. The following are some of her reflections on the accomplishments of the organization throughout the past year.

Her favorite event was the First Annual Barristers Judicial Reception. Not only was this event a culmination of a very successful year

for the Barristers, but it was an opportunity for the entire legal community to come together and interact. The event had a great turn out and the Barristers were honored to be supported by local bench officers, elected officials and local attorneys. The support of our Riverside community made our event a success.

Erica's favorite part of being Barristers' president was actually seeing the completion of our board goals. About a year ago, when the board first met, we unanimously agreed that being involved with and giving back to the Riverside community were our top priorities. Erica is humbled by the fact that the Barristers were able to achieve this goal.

The Barristers' success did not come without its challenges. Erica has shared that her biggest challenge was reestablishing Barristers in the Riverside legal community and engaging new members. She believes we did a great job of coordinating activities, volunteering, and recruiting new members. Erica is proud of the accomplishments this year, nonetheless. There is nothing about the year that she would change. She is thankful for the support of what she exclaims was a "fantastic Board that was involved and engaged!"

She hopes that for the years to come, the Barristers start working more with local legal aid organizations such as IELLA and Riverside Legal Aid. It would provide further opportunities for Barristers to become active in our local community and assist those in need. Erica hopes that we can begin implementing this during the upcoming year.

Erica would also like to see Barristers become involved in mentoring and supporting local students. This would include encouraging students to pursue higher education and providing opportunities to explore careers in the law.

Giving back to the local community is important to Erica because she is a native of the Inland Empire. She has a large extended family, which predominantly lives in



(L-R) Erica Alfaro, Lydia Alfaro & Robert Alfaro



(L-R) Shumika Sookdeo, Erica Alfaro & Megan Demshki

Riverside County. Her mother is one of twelve children and her father is one of eight children. She enjoys spending time with her family, dancing, and going to the movies. It is no understatement that Erica leaves behind very large shoes to fill.

As I prepare for the 2017-2018 term as the President of the Riverside Barristers, I find myself contemplating education and growth. I think of all that I will learn as I accept the challenges that may come as I lead and serve this organization. I am excited to see the members grow as individuals from what they learn at the various networking and educational opportunities that the organization provides. With our collective efforts, the organization will continue to grow and thrive.

We have several upcoming activities including an MCLE that we are hosting jointly with JAMS in October. More information will follow.

Finally, please stay informed about Barristers events by joining our mailing list at <http://www.riversidebarristers.org> or follow Riverside Barristers on Facebook and LinkedIn.

Shumika T. R. Sookdeo, managing attorney of Robinson Sookdeo Law, is a former president of Richard T. Fields Bar Association. She is a commissioner on the California Commission on Access to Justice. She is also a board member of John M. Langston Bar Association and California Association of Black Lawyers.





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23 YEARS OF DEDICATED SERVICE

VERGARA V. CALIFORNIA: THE IMPACT OF TEACHER TENURE ON EDUCATIONAL OPPORTUNITY

by Jamie Traxler

In 2012, nine public school students sued the State of California alleging that an entrenched teacher tenure, hiring, and layoff system violated their constitutional right to an equal education. The premise of their lawsuit was that the State's employment practices fostered the retention of "grossly ineffective" teachers, with the resulting placement of those teachers in predominately low income, high minority schools. After a two-month trial in 2014, the trial court judge agreed, and ruled that all five statutes challenged by the students were unconstitutional.¹

The Second District for the California Court of Appeal ultimately reversed the decision in April 2016. However, the lawsuit, brought nearly 60 years after the Supreme Court's 9-0 decision in *Brown v. Board of Education*,² received national attention for its exposure of the impact of teacher tenure on the quality of public school education, and raised questions as to whether that system deprives minority students of equal opportunities.

The Story Behind the Suit

The *Vergara* lawsuit was funded by Students Matter, a nonprofit organization founded by Silicon Valley venture capitalist David Welch. Some have criticized Welch and Students Matter claiming they brought a meritless suit as a PR stunt, and that neither Welch nor Students Matter has the support of parents in the community.³ Further, some have accused Welch and his foundation as using this suit as a way to push Welch's own political agenda of privatizing California's schools, specifically by accepting donations from the controversial Broad Foundation,⁴ and the Walton Family Foundation.⁵

1 *Vergara v. State of California* 2014 WL6478415 (Cal. Super.) (Trial Order), June 10, 2014.

2 *Brown v. Bd. Of Ed. Of Topeka, Shawnee Cty., Kan*, 347 U.S. 483 (1954).

3 California Teachers Association, <http://www.cta.org/Vergara> (last visited Aug. 9, 2017).

4 The Broad Foundation, founded by billionaire philanthropist Eli and his wife, Edyth Broad, has a goal of training top administrators to serve at the highest levels in school districts across the country. The foundation, openly opposed by the California Teachers Association and the California Federation of Teachers, has been accused of trying to privatize California schools by circumventing the public education system and donating millions of dollars to unregulated charter schools.

5 Heather Somerville, *Dave Welch, Silicon Valley entrepreneur, leads court fight against teacher tenure laws*, (Aug. 9, 2017, 11:57 AM), <http://www.mercurynews.com/2014/06/11/dave-welch->

The Plaintiffs' Contentions

The lawsuit asserted that the five challenged statutes⁶ resulted in "grossly ineffective teachers obtaining and retaining permanent employment, and that these teachers are disproportionately situated in schools serving predominately low income and minority students."⁷

More specifically, the students claimed that the statutes create three sets of problems: (1) the "Permanent Employment Statute" allows a district administrator to grant or deny permanent employment to new, probationary teachers after less than two years. This enables them potentially to grant tenure to un-credentialed teachers and dismiss those who have not had an adequate opportunity to establish their competence; (2) the "Last In, First Out" statute allows administrators to layoff teachers based on seniority alone, meaning the last hired teacher is the statutorily mandated first-fired without regard to their effectiveness; and (3) the "Dismissal Statutes" make the process for dismissing an ineffective teacher so tenuous and costly, that it is nearly impossible to implement.

The parties introduced compelling evidence for their positions. All sides agreed that grossly ineffective teachers severely undermine the ability of California's public school children to succeed. Notably, an expert witness for the plaintiffs testified that just one year in a classroom with a grossly ineffective teacher will cost the class \$1.4 million in lifetime earnings. Another expert testified that students who are taught by a less than competent teacher lose 9 to 11 months of learning in a single year compared to students with teachers of average competence. Further, out of roughly 275,000 active teachers in the state, 1-3% of them are "grossly ineffective," amounting to 2,750-8,250 teachers. Numerous witnesses testified that highly ineffective teachers impede a student's access to a quality education significantly and, due to the placement of ineffective teachers at mostly low income and minority schools, the students of these schools are disproportionately burdened.

silicon-valley-entrepreneur-leads-court-fight-against-teacher-tenure-laws.

6 California Education Code Sections 44929.21 (b), 44934, 44938(b) (1) and (2), 44944, and 44955.

7 *Vergara v. State of California* 2014 WL6478415 (Cal. Super.) (Trial Order), June 10, 2014.

The State's Position

By contrast, the State contended that its employment practices enhance the quality of teaching. It asserted that changing the statutes would leave teachers with less job security and make teaching positions less appealing. According to the State and two of the largest California teacher unions,⁸ the challenged statutes protect teachers from being disciplined arbitrarily and provide job security in a profession where high attrition is common. They noted that societal challenges make it increasingly hard to retain teachers: new teachers who work in high poverty schools during their first years are 50% more likely to leave the profession. While the statutes are alleged to hinder academic success, the State argued that school districts have tried to find ways to implement them in a fair and concise way.

With respect to the specific statutes, the State defended the relatively short determination period for permanent tenure, asserting it enables administrators to make reelection decisions quickly, rather than leave a potentially highly ineffective teacher in the classroom longer. Further, the "Last-In, First-Out" rule is perceived fair by administrators and staff, and protects teachers from being fired due to arbitrary standards implemented by their superiors. Lastly, because a teacher's profession is deemed a property interest, teachers are entitled to due process under the law when a district attempts a formal dismissal.⁹ As to the placement of a majority of the lower performing teachers at high poverty schools, the State observed that some districts have attempted to address the discrepancy by assigning higher quality administrators to low income schools as a means of encouraging highly effective teachers to migrate to those schools because of the better leadership.

Notwithstanding the acknowledged inequity of educational opportunities in California school districts, a three judge panel on the Court of Appeals did not believe that the challenged statutes were the cause of the inequities. The Court decided that the current education system protected both students and teachers, and reversed the trial court's decision that the statutes violated the California Constitution. Most critical to the court's decision was the fact that "plaintiffs failed to show that the statutes themselves make any certain group of students more likely to

⁸ The two unions were the California Teachers Association, and the California Federation of Teachers.

⁹ Since the formal dismissal process is so cumbersome, districts have used informal methods to resolve dismissals including: letting poorly performing teachers resign, paying a small sum in return for resignation, or enticing teachers into retirement. (*Vergara v. State of California* (2016) 246 Cal. App. 4th 619, 638.

be taught by ineffective teachers than any other group of students."¹⁰

The Supreme Court in *Brown* understood the importance of the role of education for a young child's development, and the importance of ensuring that education was available to all citizens on equal terms. It noted: "[E]ducation is perhaps the most important function of state and local governments. . . . Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment."

Although in *Vergara* the plaintiffs failed to demonstrate a facial constitutional violation, the lawsuit highlighted key drawbacks in the current tenure, dismissal, and layoff system. And, most importantly, it shed light on the unfortunate reality that we are failing to educate our children equally.¹¹

Jamie Traxler is currently is a second-year law student at Chapman University Fowler School of Law in Orange, California.



¹⁰ *Vergara v. State of California*, *supra*, 246 Cal.App.4th at page 627, as modified (May 3, 2016), reh'g denied (May 3, 2016), review denied (Aug. 22, 2016).

¹¹ Review was denied by the Supreme Court of California in August, 2016. In a noteworthy dissenting opinion, Justice Cuéllar stated: "Public institutions must often reconcile their protection of a fundamental right with the realities of governing, the resolution of competing priorities, and the imperfections of any system forged and adapted by human hands. . . . There is a difference between the usual blemishes in governance left as institutions implement statutes or engage in routine trade-offs and those staggering failures that threaten to turn the right to education for California schoolchildren into an empty promise. Knowing the difference is as fundamental as education itself." (*Vergara v. State of California* (2016) 209 Cal.Rptr.3d 532, 569-570, as modified (May 3, 2016), reh'g denied (May 3, 2016), review denied (Aug. 22, 2016).

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TOWN VERSUS GOWN: HOW LAND USE AND ENVIRONMENTAL LAWS MEDIATE DISPUTES BETWEEN UNIVERSITIES, COLLEGES, AND THE NEIGHBORHOODS THEY CALL HOME

by Jennifer Lynch

There are more than 150 four-year colleges and universities currently operating in the State of California. From the University of California's nine campuses, to the California State University's 23 campuses, and the more than 120 private universities that serve California's college students, collegiate institutions act as major land owners, employers and developers within their respective home cities. And, as California's population burgeons, so does the need for California's college campuses to grow along with it.

Successful colleges and universities are juggernaut drivers of the local economy. They bring with them hospitals, libraries, sports teams, and cultural event centers. They employ (and generate) a highly skilled workforce and they incubate and attract new ideas and new industries.

Sometimes, however, these benefits come at a price for college towns, especially in the form of spillover effects. As institutions admit more students, they build more dormitories, they construct more classrooms, and they generate more traffic. As the number of students living off campus rises, pressures mount on local housing markets, driving up the price of both rental and for sale units. First time homebuyers may find themselves in unwinnable bidding wars with investors, whose goals are to buy up single family homes and rent them out to as many students as can (sometimes uncomfortably) fit. As campuses grow, non-student households may become fearful that their quiet tree lined neighborhood streets will soon become littered with red Solo cups.

Luckily for local agencies, California planning, zoning, and environmental laws provide myriad tools to ease the tension between educational institutions and their surrounding neighborhoods, whether the disputes arise over concretely measurable concerns like traffic congestion, housing prices, and disturbances caused by late night revelry, or the tensions are based on more nebulous concerns like changing community character or gentrification. The following explores just some of the ways in which local agencies can control, mitigate, and address spillover effects.

Tool 1: The California Environmental Quality Act

The California Environmental Quality Act¹ ("CEQA") applies to most public agency decisions to carry out or approve activities and projects that may impact the physical environment. CEQA requires that public agencies consider, analyze and disclose in publicly-released environmental review documentation an activity or project's potential impacts to the environment. CEQA requires that an agency consider impacts not only on the "natural environment" (i.e. impacts on habitats, sensitive species, hydrology, wetlands) but on the "human environment" as well (i.e. impacts on historical resources, aesthetics, traffic, noise levels).

CEQA plays a substantial role in addressing, mediating, and ideally, avoiding, town and gown conflicts. Because CEQA applies to state agencies, like the University of California and the California State University systems, when a public university campus needs to expand, it must identify the potential impacts of that expansion on the surrounding community, often through the undertaking of traffic and air quality modeling reports, noise studies, and other technical and science-based analysis. In the case of private colleges and universities, while they themselves are not subject to CEQA, any local agency from which they seek a permit or plan approval would be required to comply with CEQA's environmental review requirements. If expansion of a private educational institution requires a conditional use permit, a master plan approval, or any amendments to the same, the local agency with jurisdiction over those permits would be required to analyze, and disclose, the impacts of granting such an approval.

CEQA requires that where there is a potentially significant impact, an agency identify "mitigation measures" or changes in the proposed project that will reduce those impacts. Because CEQA is a disclosure statute, it requires that these analyses, and mitigation measures be available to the public for review and comment – providing an opportunity for local agencies, neighbors, and other community stakeholders to participate in the process.

¹ Cal. Public Resources Code, § 21000 et seq.

They can do so by identifying gaps in analysis, submitting information and comments on potential impacts, and identifying and submitting effective mitigation measures that, in their view, will reduce potential impacts. Ideally, the CEQA process provides an opportunity for community stakeholders to influence the project in ways that will reduce tensions and conflicts down the road.

Tool 2: Party Ordinances

Cities have broad authority under the police power to enact regulations protecting the public health, safety and welfare of residents.² Where off-campus college students conflict with non-student populations over noise, parties, and other disturbances, the police power can be invoked to adopt municipal code provisions aimed at quelling loud or disorderly gatherings. One such method may be through the adoption of a “party ordinance” levying heavier penalties than would otherwise be available under a city’s noise ordinance or general nuisance regulations. Party ordinances may make it a violation to host an unruly gathering, or may go even further and levy penalties against individuals just for *attending* an unruly party. Such ordinances could also identify a private right of abatement, in order to notify and empower residents of their ability to pursue their *own* legal actions against nuisance neighbors. Finally, party ordinances can set fines for property owners of homes that are frequently cited for unruly parties, in addition to the penalties established against party hosts or attendees themselves.

Tool 3: Residential Use Restrictions

As students move off-campus, and share rooms and homes in surrounding neighborhoods, non-student residents may feel there are spillover effects related to higher occupancy levels. Property owners may go so far as to permanently alter the floor plans of single family homes, effectively creating multi-family units in their stead,

and changing the character of existing single-family neighborhoods. To combat these issues, cities can once again invoke their police power and adopt municipal code regulations controlling the conversion of common areas to bedrooms, or requiring additional review and discretionary approval (i.e. a conditional use permit) before allowing a fifth or sixth bedroom to be added to a single family home.

Tool 4: Code Enforcement

Neighborhoods experiencing an influx of off-campus student housing may also become concerned about property maintenance issues. Student residents may come and go, sometimes in quick succession, and they (and/or their landlords) may be less interested in spending the time and money required to maintain lawns and homes. Most cities have restrictions in place controlling debris and refuse in public rights of way, maintenance of landscaping and yards, and safe living conditions. However, to enforce such restrictions, cities must maintain a robust code enforcement department, and often rely on the reporting by neighbors of conditions that are inconsistent with city regulations. For such neighborhood self-policing and report to work, residents must be aware of the City’s codes, and have an easy way to report violations. Some cities offer phone apps that provide residents with a fast, easy and effective way to report code violations, and may even offer the opportunity to upload photos and GPS locations of alleged violations.

CEQA, party ordinances, residential restrictions, and code enforcement efforts are just some of the ways that local agencies can address conflicts and tensions between education institutions and their hosting neighborhoods. There is little debate that California’s colleges and universities are necessary and revered institutions, often bestowing their local host communities with myriad benefits. However, when local agencies use the tools at their disposal to anticipate, control far, and address potential tensions—ideally before they come to a head—everyone wins.

Jennifer Lynch is an attorney at Best Best & Krieger LLP. She practices in the areas of land use and environmental law.



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² Cal. Const. Art. XI, § 7; see also *Associated Home Builders, Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 600-601.

THE NON-DISCHARGEABLE STUDENT LOAN

by Cathy Ta

Obtaining a bankruptcy discharge of debts is the primary tool in providing the “honest but unfortunate debtor” a fresh start. Yet, a student loan made or guaranteed by a governmental unit or non-profit is excepted from the bankruptcy discharge unless the debtor can show the debt would impose an “undue hardship” on the debtor or their dependents. When Americans owe more than \$1.4 trillion in student loan debt, spread among 44 million borrowers, with the average Class of 2016 graduate holding \$37,172 in student loan debt¹ while facing an unemployment rate of 5.6% and an underemployment rate of 12.6%, combined with the fact that the cost of higher education is growing more rapidly than median family income,² the question bears asking:

Why are student loans singled out as non-dischargeable, unless “undue hardship” is determined, while other unsecured debts are automatically dischargeable, unless an exception to discharge applies?

Historical Background

It should be noted that student loans were presumptively discharged as part of the bankruptcy discharge until 1976. In 1976, Congress passed the Education Amendments of 1976 which then required a debtor to affirmatively show “undue hardship” to discharge a student loan; otherwise, the student loan would be non-dischargeable as an exception to the bankruptcy discharge.

This student loan exception, codified at 11 U.S.C. § 523(a)(8), was created to achieve two purposes: (a) to prevent abuses against the educational loan system by restricting the ability to discharge a student loan particularly after a student’s graduation; and (b) to safeguard the financial integrity of governmental units and non-profits that fund these loans.³ As the Second Circuit noted:⁴

because student loans are generally unsecured and recent graduates often have few or no assets, these debtors have an incentive to try to discharge their educational loans in bankruptcy. If successful, they can then enjoy the higher earning power the loans have made possible without the financial burden that repayment entails. Congress enacted § 523(a)(8) because there was evidence of an increasing abuse of the bankruptcy process that threatened the viability of educational loan programs and harm

to future students as well as taxpayers. Congress recognized that this is an instance where a creditor’s interest in receiving full payment of the debt outweighs the debtor’s interest in a fresh start.

The “Self-Executing” Student Loan Exception

The Supreme Court has found that the student loan exception is “self-executing,” in that a debtor must affirmatively secure an “undue hardship” determination; otherwise, a bankruptcy discharge order would not include the student loan.⁵ In order to obtain such a determination, the debtor must file a lawsuit, otherwise known as an adversary proceeding, in the bankruptcy case.

In the Ninth Circuit,⁶ a debtor can show “undue hardship” if they meet the three-part *Brunner*⁷ test: (1) they cannot maintain, based on current income and expenses, a “minimal” standard of living for themselves and their dependents if required to repay the loan; (2) additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period; and (3) they have made good faith efforts to repay the loan.

Enforcement of the “Self-Executing” Student Loan Exception

Despite the “undue hardship” requirement, the Supreme Court still held valid an order confirming a plan that discharged a student loan when the debtor never obtained the required “undue hardship” determination. In *Espinosa*,⁸ the Supreme Court (in a unanimous decision) stated that confirmation of the plan should have been prevented in light of the debtor’s failure in meeting the “self-executing” student loan exception. Still, despite this “legal error,” the Supreme Court narrowly construed that the confirmation order was not void given that United, the creditor, received actual notice of the proposed plan and failed to object, hence, forfeiting its rights.

The Continuing “Self-Executing” Student Loan Exception

Much has been written about the student loan exception since the Supreme Court’s *Espinosa* opinion, including whether it has opened the floodgates to aggressive litigation tactics by debtors who will “sneak in” a discharge of a student loan through a proposed plan, without going through

1 See <https://studentloanhero.com/student-loan-debt-statistics/>.

2 See <http://www.epi.org/publication/class-of-2016/>.

3 4-523 Collier on Bankruptcy P 523.14 (16th ed. 2017).

4 *Cazenovia Coll. v. Renshaw (In re Renshaw)* (2nd Cir. 2000) 222 F.3d 82, 86-87.

5 *Tem. Student Assistance Corp. v. Hood* (2004) 541 U.S. 440, 450.

6 *Educ. Credit Mgmt. Corp. v. Mason (In re Mason)* (9th Cir. 2006) 464 F.3d 878, 882.

7 *Brunner v. New York State Higher Educ. Servs. Corp.* (2nd Cir. 1987) 831 F.2d 395, 396.

8 *United Student Aid Funds, Inc. v. Espinosa* (2010) 559 U.S. 260.

the task of filing a lawsuit to obtain an “undue hardship” determination. But, as the Supreme Court noted in *Espinosa* itself, the potential for any bad faith litigation tactics has always been curbed by the severe penalties for improper or bad faith debtor conduct under bankruptcy law, including the risk of losing the bankruptcy discharge itself.

Moreover, while a debtor and a creditor could stipulate that a student loan causes “undue hardship” (and thereby no longer requiring an affirmative “undue hardship” determination) or a creditor could waive service of a summons or complaint, the Supreme Court did reinforce the “self-executing”

nature of the student loan exception in *Espinosa* – by clearly advising bankruptcy courts that they must comply with § 523(a)(8)’s directive, meaning, bankruptcy courts must make an independent determination of “undue hardship” before a student loan may be discharged, whether or not through confirmation of a plan and whether or not the involved creditor fails to object or otherwise appear.

Cathy Ta is an attorney at Best Best & Krieger LLP. She practices in the areas of insolvency, bankruptcy and business litigation.



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THE 2017 RCBA READING DAY WAS A HUGE SUCCESS

by Jacqueline Carey-Wilson



On June 6, attorneys with the RCBA participated in reading to students from kindergarten to sixth grade at Magnolia Elementary School in Riverside. The attorneys were assigned classrooms and could either read their favorite children's book or a book chosen by the students. After the books were read, the attorneys took questions from the students about the legal profession. Soon after the reading session concluded, the students were dismissed for an end of the year assembly. At the assembly, the RCBA presented a \$500 check for the school's library to the school's principal, Annette Raspudic. The students, faculty, and staff at Magnolia Elementary were excited for the visit and grateful to all who volunteered their time to read and/or who donated books/funds for the school's library. The RCBA wishes to thank the following who participated:

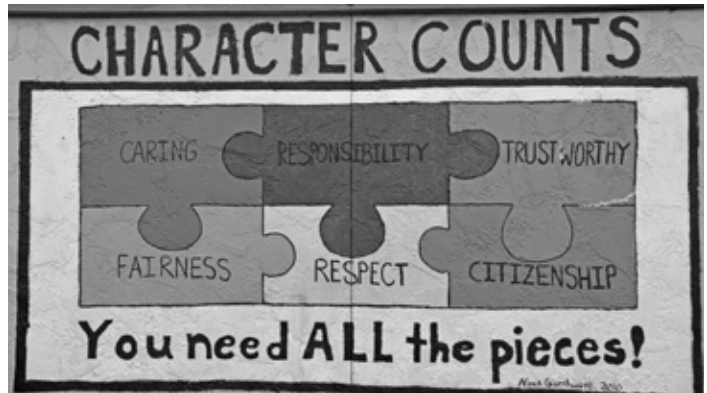
Erica Alfaro	Rina Gonzales
Randall Baker	Mark Singerton
Byron Berry	Nesa Targhibi
Jacqueline Carey-Wilson	Jeff Van Wagenen
Sophia Choi	Kristin Aoun Weight
Matthew Forsee	Joseph Widman

Photos courtesy of Jacqueline Carey-Wilson and Karin Runyan.



Jacqueline Carey-Wilson presents a check from the RCBA to the principal, Annette Raspudic.

A special thank you to Cripe & Graham, P.C., Gary E. Cripe, Ai Woodward, and Martha Trejo for donating seven boxes of new books to Magnolia Elementary.



In 2010, Noah Garthwaite, a student at Magnolia Elementary, painted this mural depicting various elements of the word "character" on a wall at the school and the various puzzle pieces were creatively placed as street names around the campus.



(l-r) Jacqueline Carey-Wilson, Rina Gonzales, Mark Singerton, Joseph Widman, Sophia Choi, Kristin Aoun Weight, Erica Alfaro, Jeff Van Wagenen, Matthew Forsee, and Nesa Targhibi



Jeff Van Wagenen, Managing Director of the Riverside County Economic Development Agency, reads to a class at Magnolia Elementary School.

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BACK TO SCHOOL IN THE ANDES

by Abram S. Feuerstein

In early April 2017, shortly after the start of the Peruvian school year, I visited a rural primary school located just outside of Cusco, Peru, with a tour group made up mostly of North Americans. Cusco (frequently, Cuzco), at an elevation of about 11,000 feet, is located near the Urubamba Valley in the Andes mountains. The “imperial” city of Cusco embodies the intersection of Incan and Spanish colonial culture in South America, and is a major destination for tourists making their way to or from Machu Picchu. Although near Cusco, in many ways the school was a world away; modernity had not yet visited.

The tour company, one of the largest, touted the side trip as a cultural exchange opportunity. In advance of the trip, it encouraged the group to shop for school supplies in their home countries for distribution to the teachers and students. Most did, ungrudgingly, although some complained about packing their dollar store supplies in luggage that threatened to exceed airline weight limitations. One or two simply seemed annoyed about delaying their “bucket-list” adventures to Machu Picchu to visit a school.

Peru is about three times the size of California in land mass. Its population of 31 million increasingly is an urban one, with one third of the country residing in Lima. Poverty in the cities is visible to be sure, particularly outside the tourist zones. But in rural Peru, notwithstanding the bucolic aspects of life – a llama or alpaca here, a planting of corn, potatoes or quinoa there, the most amazing hand-woven textiles everywhere -- poverty is richly abundant. Indeed, the majority of Peru’s rural population lives in poverty; a significant number of these individuals live in extreme poverty.

The tour guide described many of the poverty-related problems plaguing rural schools throughout Peru to prepare us for the visit. Students travel to the school on foot, frequently walking over an hour each way on shoes made from old tires. They dress in hand-me-down garments. Unheated buildings are in disrepair. Toilet facilities do not function (although our group luckily visited a school where they had been re-built albeit we were advised to bring tissue paper). The rural schools utilize multi-grade classrooms, with children of different ages housed in a single, small classroom and taught by the same teacher. Teachers lack resources. Frequently, teachers are charged with numerous non-teacher, administrative functions resulting in less teaching time available for the students. Recruiting quality teachers for rural schools is difficult. Teachers typically make approximately \$200 per month. By contrast, one Starbucks part-time worker in Lima’s well-to-do Miraflores District told me that with tips he made about the same.

We stepped into the classroom; the teacher had been expecting us. The children sat largely at desks and chairs not too far removed from the types that furnished one-room schools in the United States – you know, the kind we were told Abraham Lincoln attended. A large map was taped to a portable chalkboard at the front of the room. Really, with its street grid it resembled a maze more than a map. The children had single-page paper versions of it on their desks, and with their pencils were trying to figure out how to get from one side of the grid to the other. Warmly greeted by everyone, we asked questions of the teacher and the children. But conversation faltered as the teacher and children knew as little English as we did





Spanish.¹ Other than the tour guide, only one member of our group was fluent in Spanish. We deposited our school supplies with the teacher, made some cash donations, and boarded the bus.

The lack of English proficiency was disturbing. Sure, our group’s lack of Spanish language skills equally was sad; but for now English is the *lingua franca*, and for at least some of these children English might be a passport to the future.

More disturbing, there wasn’t a computer anywhere in sight. Or a printer. Or even a video screen. The educational foundation operated by the tour company states that its donations have enabled the school to purchase computer equipment. I have no reason to doubt the claim; I just did not see it. As the age of computer literacy continues to decline in developed countries, and as the cost of gaining access to knowledge has collapsed and is near free, the lack of information technology threatens to leave the children at this rural school behind even further.

Visiting Peru is a tremendous experience. The country has 1500 miles of coastline, majestic mountains, and lush jungles. It was one of the world’s “cradles” of history, and Peru’s archeological ruins are wondrous. The Nazca lines – geoglyphs etched into the surface of

¹ The official language of Peru is Spanish. However, approximately 4 million Peruvians (mostly in the Andes) speak Quechua and another 500,000 speak Aymara. See https://en.wikipedia.org/wiki/Quechuan_languages; https://en.wikipedia.org/wiki/Aymara_language.

southern Peru’s coastal desert -- defy explanation. People continue to live on the sponge-like, man-made floating islands of Lake Titicaca, the world’s highest navigable lake at 12,500 feet above sea level. If that is not enough, the potato was invented in Peru, and farmers continue to grow thousands of potato varieties.

Yet the greatest resource of a country, of course, is its people. The contact with Spanish colonial powers starting in the 1530s arguably robbed Peru of some of its future. Today, isolation – whether caused by geography or other barriers to knowledge or information – is the most powerful cause of income inequality among people and nations. While on vacation, the brief encounter with school children in the Peruvian Andes reinforced ideas about life’s unfairness even as, with children everywhere, their innocence and beauty engendered hope for the future.

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.

The photographs accompanying the essay were taken with the permission of the school by another member of the tour group, Michael O’Hanlon of Breezy Point, New York.



AN EXCEPTION TO EDUCATION CODE SECTION 44808: WHEN INJURIES OFF SCHOOL GROUNDS CAN RESULT IN SCHOOL DISTRICT LIABILITY

by Megan Demshki

Injuries to students at school occur every year, and California law imposes a duty on the school district to supervise students while on school grounds. However, what happens when students are off campus while going or coming to school?

School districts can be found liable for injuries occurring off school grounds in a number of different situations, one such situation occurs when the school district creates a dangerous condition of public property under Government Code sections 835 and 830.

Education Code section 44808 is often cited for the proposition that a school district is not liable for any injuries caused off campus and after school hours unless the injuries were the result of the district's negligence occurring on school grounds or were the result of some specific undertaking by the District, which was then performed in a negligent manner.¹

Case law interpreting Education Code section 44808, however, has firmly held that a school district can be liable for injuries occurring on another public entity's property.²

In *Joyce*, a student was struck by a vehicle while in the crosswalk adjacent to her junior high school.³ The crosswalk had no signals, crossed a busy four-lane street, and allowed children access to the school through an open gate.⁴ This side gate was more convenient for many students, but was more dangerous and home to many near accidents.⁵ Though this was a known danger, the school did not take measures to lock the gate.⁶ The student plaintiff sued the school district alleging that the open school yard gate, constructed next to a busy, uncontrolled intersection, constituted a dangerous condition of public property.⁷ The school district argued that it had immunity under Education Code section 44808 as a matter of law since the injury occurred off school property.⁸

The *Joyce* court upheld the verdict that the open school yard gate was a dangerous condition of public property. The court reasoned that the evidence supported a finding that

the school district failed to take reasonable action to protect students, and that Education Code section 44808 does not provide immunity to school districts for its failure to exercise reasonable care under the circumstances.

The court cited *Quelvog v. City of Long Beach*⁹ which stated that, "It is not only structural defects that can create a dangerous condition; it may consist of a condition of property, the use of which in a manner reasonably foreseeable creates a danger of injury." The court further reasoned that "although District did not control the crosswalk, it did control whether an opening in the fence should be made. The open gate was built next to the crosswalk to encourage students to cross at an uncontrolled section."¹⁰

Further, in *Joyce*, the school district argued that it had no duty to supervise students going to and from school. However, the Court of Appeal found that "liability is not based on lack of school supervision, but an open gate that enticed children to cross an adjacent dangerous condition."¹¹

The court further cited *Hoyem v. Manhattan Beach City Sch. Dist.*¹² which provides, "Although the initial portion of the statute provides that no school district shall be responsible...for the conduct or safety of any pupil... at any time when such pupil is not on school property, the section goes on explicitly to withdraw this grant of immunity whenever the school district, inter alia, has failed to exercise reasonable care under the circumstances."¹³

As is evidenced above, a school district's responsibility does not evaporate the moment a student steps off campus at the end of the school day. Establishing a dangerous condition of public property is just one potential exception to Education Code section 44808 to hold school districts accountable for injuries occurring off school grounds.

Megan G. Demshki is an associate at Aitken Aitken Cohn where she specializes in traumatic personal injury and wrongful death matters, many of which involve government entities. Megan can be reached at megan@aitkenlaw.com.



1 See *Basset v. Lakeside Inn, Inc.*, (2006) 140 Cal.App.4th 863, 870 citing *Mosley v. San Bernardino City Unified School Dist.* (2005) 134 Cal.App.4th 1260, 1264.

2 See *Joyce v. Simi Valley Unified School District* (2003) 110 Cal. App.4th 292.

3 *Id.* at 295.

4 *Id.*

5 *Id.*

6 *Id.*

7 *Id.*

8 *Id.* at 292.

9 *Quelvog v. City of Long Beach* (1970) 6 Cal.App.3d 584, 590

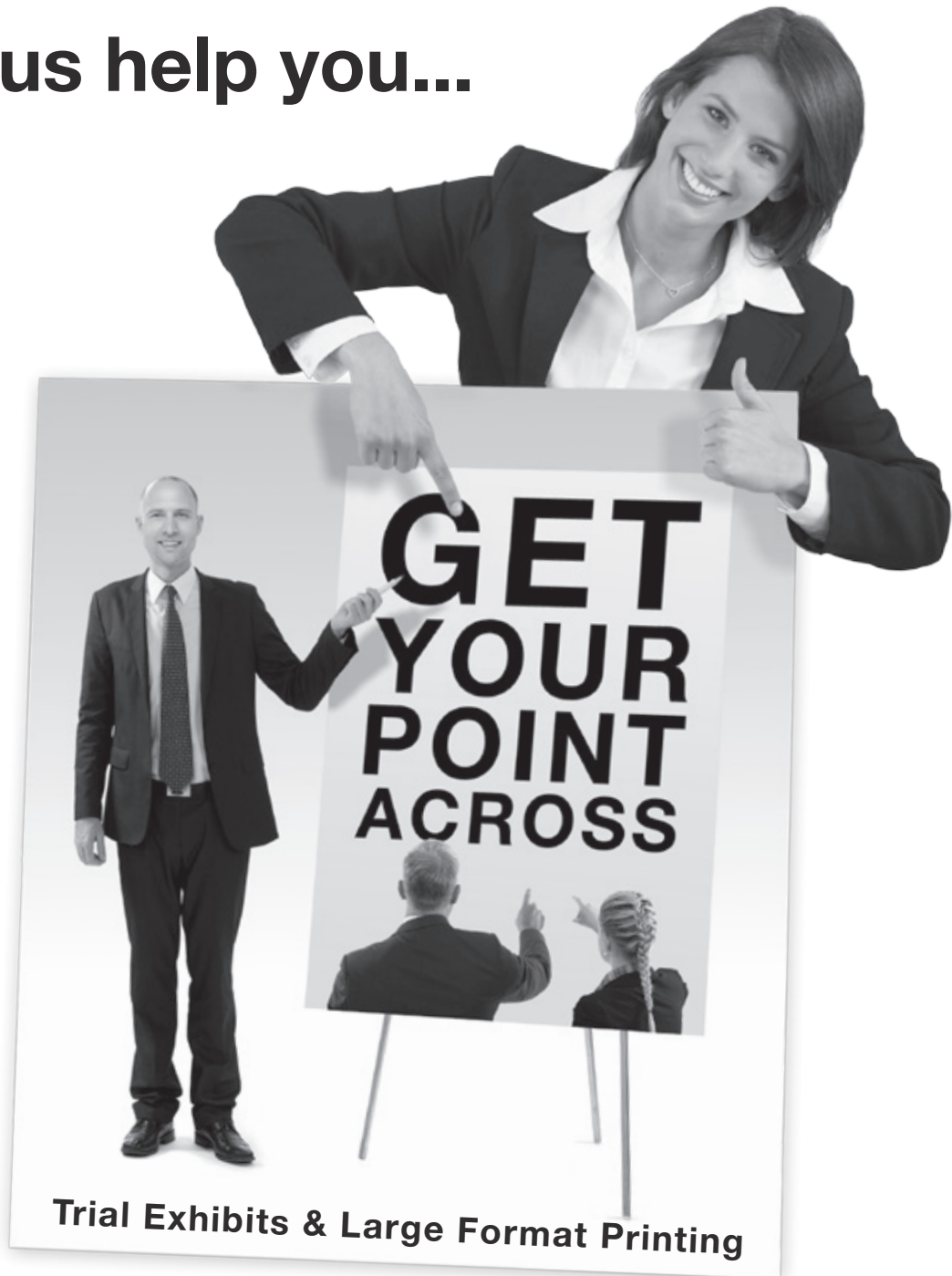
10 *Id.* at 299.

11 *Id.* at 301.

12 *Hoyem v. Manhattan Beach City Sch. Dist.* (1978) 22 Cal.3d. 508, 517

13 *Id.* (Emphasis added). See generally, *Perna v. Perna* (1983) 143 Ca.App.3d 292 (stating a school district cannot automatically escape liability simply because the injury occurred off the school property).

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CONFRONTING THE UNCOMFORTABLE TRUTH: CALIFORNIA SCHOOLS REQUIRED TO ADDRESS SUICIDE PREVENTION

by Dorothy McLaughlin and Heraclio Pimentel

Suicide is among the top ten leading causes of death in the United States. For those in high stress industries, such as attorneys, the topic of suicide is an evolving, uncomfortable conversation that has led to a more open discussion about depression and mental health within our professional community. In addition to occupation, there is a strong correlation between age and suicide rates. The uncomfortable truth is that suicide affects youth at a drastically higher rate than older age groups. Unfortunately, statistics show that the most at risk group for attempting suicide is our students.

Recently, the Center for Disease Control reported that suicide was the second leading cause of death in 2014 for those between 10 and 24 years old. For ages 25 to 45, it was the fourth leading cause of death. In 2014, suicide claimed the lives of over 2,200 hundred young people between the ages of 10 and 19. These ages correspond with the ages of students in the late elementary and high school grades. Despite this, reports indicate that only half of the states in the nation require educators to receive suicide prevention training. However, a new California law requires schools to confront the uncomfortable truth.

Signed into law last fall, Assembly Bill 2246 (O'Donnell) requires local education agencies ("LEAs") to adopt a pupil suicide prevention policy for grades 7th to 12th beginning this school year. The law takes an all-hands-on-deck approach by requiring the policy to be developed in conjunction with school and community stakeholders, school mental-health professionals, and suicide prevention experts. The law also makes available a model policy through the Trevor Project for adoption or adaptation.

The law requires that LEAs address, at a minimum, procedures for suicide prevention, intervention, and postvention. This holistic approach to suicide is important because suicide encompasses much more than the act of self-harm. For instance, many who are contemplating suicide talk about it before attempting to end their life. According to a national survey, students would turn to a teacher first to help a friend suffering from suicidal ideation. As such, teachers are in an important position to identify students exhibiting the warning signs of suicide and find them appropriate help. A.B. 2246 requires that a LEA's suicide prevention policy address teacher training on how to identify appropriate mental health

services on and off campus and when to refer students and their families to those services. Similarly, the law's focus on postvention is important because the ratio of suicide attempts to deaths for youth is about 25 to 1. About one-third of those who attempt suicide will make another attempt within a year. Furthermore, postvention is important as evidence suggests that suicide clusters are a real phenomenon.

In addition to mandating a holistic approach, the new law is the first in the nation to specifically address the needs of high-risk groups. A.B. 2246 list as high-risk groups: youth bereaved by suicide, youth with disabilities or those suffering from mental illness or substance abuse, homeless youth and those in the foster care system, and LGBTQ youth; though the law makes clear that this list is not all inclusive. This is particularly important for at risk groups such as LGBTQ youth, whose reported attempted suicide rate is four times higher than their non-LGBTQ classmates.

In this increasingly social and interconnected world, A.B. 2246 goes a long way toward confronting the uncomfortable truth and forcing society to have a serious conversation about youth suicide. The law brings knowledgeable mental health professionals, educators, and interested stakeholders to the table to find ways to address and prevent youth suicide and provides a model guide for LEAs to follow. It prepares teachers to identify at risk students and help them and their families find the resources they need. The law also recognizes that there is much that schools can do to prevent suicide both before and after an attempt. Further, A.B. 2246 focuses on addressing the needs of high-risk groups such as LGBTQ youth.

Though youth suicide is an uncomfortable conversation to have, California is bringing these issues to the forefront. Hopefully, this will start a nationwide discussion on the factors that lead America's youth to attempt suicide and how we as a community can address these issues.

Dorothy McLaughlin is Of Counsel with Best Best & Krieger and advises clients on state and federal laws governing students with disabilities. Heraclio Pimentel is a rising third year law student at U.C. Davis and worked as a 2017 summer associate at Best Best & Krieger.



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TOP 7 “EDUCATION” MOVIES

by Juanita E. Mantz

The theme for the September issue of the *Riverside Lawyer* is education. With that theme in mind, I had to write an article about the top 7, or should I say my top 7, education related movies of all time. This list is made with the caveat that I am a lawyer who is obsessed with the music and movies of the 1980s. However, I have tried to be broader than my obsession in my picks.

7. *Dead Poets Society* (1989)

Boarding school can be a lonely, but also an uplifting place where you just might find yourself learning how to live life to the fullest with the help of Walt Whitman, a wise professor played by Robin Williams. The cast also includes a list of stunning young actors, including Ethan Hawke. Heartfelt sentimentality combined with an artful handle of tragedy makes this a top pick. Carpe Diem my friends.

(Another great movie in the same vein is *School Ties* from 1992, which deserves an honorable mention.)

6. *Ferris Bueller's Day Off* (1986)

Ferris Bueller is the ultimate rebellious teenager who ditches school after asking himself, “How could I possibly be expected to handle school on a day like this?” Ferris goes to great lengths to avoid the principal and his angry sister played by Jennifer Grey. What is essentially a buddy movie, morphs into something for the ages with a star making role by Matthew Broderick, under the amazing direction of John Hughes. And who could ever forget the line, “Bueller, Bueller?”

(*War Games* (1983) is another treat from the 1980s starring Matthew Broderick, which focuses on a high school student who hacks into the wrong database and almost causes WW III.)

5. *The Paper Chase* (1973)

How could a lawyer magazine ignore what is perhaps the greatest law school movie of all time? *The Paper Chase* starring Timothy Bottoms as the 1L law student, the epic academy award winning, John Houseman, as a stern law professor and Lindsey Wagner (later the Bionic Woman) as his daughter. The movie is part romance, part law

school quest, and ultimately a treatise on how to abuse the law school Socratic method.

(The movie is based on the 1971 novel by the same name written by John Jay Osborn, Jr. and for a double treat see the book *IL* by Scott Turrow.)

4. *Grease* (1978)

Grease is the definitive 1950s movie starring the unforgettable John Travolta as Danny Zuko and Olivia Newton John as Sandy (and who can forget Stockard Channing as Rizzo). This is the ultimate stage to screen version of a high school romance complete with a fabulous soundtrack. As a kid, I had the 8 track soundtrack of this movie which I would play in my dad's pickup truck over and over. The Pink Ladies and the Thunderbirds were forever captured on the silver screen in this gem and no one will ever forget the tunes or the story of Sandy's metamorphosis from goody two shoes to pink lady in leather. A wap bam boom!

(For fun, watch *Grease* and then *Grease II*. Sometimes, depending on my mood, I prefer the cheesiness of the sequel, which stars a young Michelle Pfeiffer.)

3. *Rudy* (1993)

Rudy is one of the most uplifting movies ever made and tells the story of a steel worker's son who dreams of attending college and playing football at the University of Notre Dame. The movie is all about achieving one's aspirations, despite the odds, and stars Sean Astin, as a young man who will attain his goals no matter how poor or how small he is. The movie is a textbook quest movie, but its heart lies in the portrait of Rudy's family, friends and teammates. Based on a true story, my favorite part of the movie is not the triumphant ending, but where, after years of junior college, Rudy finds out that he did indeed get into Notre Dame.

(The movie also stars a young Jon Favreau as Rudy's tutor and best friend in college.)

2. *Fast Times at Ridgemont High* (1982)

A young and burgeoning writer named Cameron Crowe wrote the screenplay for *Fast Times at Ridgemont High* after going undercover at a

high school in San Diego. This 1980s classic stars Sean Penn, as the ultimate surfer stereotype Jeff Spicoli, Judge Reinhold as Brad, a hardworking high school student, and his sister Stacey, played by Jennifer Jason Leigh, who is looking for love in all the wrong places (along with her best friend Linda played by Phoebe Cates). The classic sex, drugs, and rock and roll storyline with a strong ensemble cast showed just what it was like to be a high school student in Southern California in the 1980s. And don't forget Ray Walston as Mr. Hand.

(Another honorable mention must go to another Southern California classic high school movie, *Valley Girl*, from 1983 starring a young and punk Nicolas Cage.)

And the Number One Education-Based Move in This Writer's Non-Scientific Opinion:

Breakfast Club (1985)

The Breakfast Club is the ultimate high school movie starring Brat Packers: Ally Sheedy as the misfit, Molly Ringwald as the beautiful popular girl, Emilio Estevez as the jock, Michael Anthony

Hall as the nerd, and Judd Nelson as the delinquent. The group comes together for a Saturday school detention and what results is a coming of age story times five. It puts the common high school stereotypes up to the light and shows that everyone has their own trials and tribulations, no matter where they fit within the social hierarchy of high school.

(Personally, I would also put *Pretty in Pink* and *16 Candles* in my top 7, but they were not included here due to the fact that they are all from director John Hughes and two John Hughes movies are enough in a set of 7. That said, for me, *16 Candles*, *Breakfast Club*, and *Pretty in Pink* comprise the holy trinity of high school movies from the 1980s.)

Juanita E. Mantz is a deputy public defender here in Riverside and is currently assigned to Mental Health Court handling incompetency proceedings under PC 1368. She is also a writer and a member of the Publications Committee. You can read her stories on her blog at <http://www.lifeofjemcom-jemmantz.blogspot.com/>.



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FIRST ONE TO BITE THE DUST

by Julianna Crawford

At this point, most of the legal community in Southern California, or possibly the country, is fully aware that Whittier Law School is shutting its doors. Whittier Law School is the nation's first fully accredited law school to shut down.

According to the school website, Whittier Law School started out as Beverly Law School in 1966 and joined with Whittier College in 1975, becoming Whittier Law School. The law school was awarded accreditation in 1978 by the American Bar Association.

And yet, despite its long and established history, on April 15, 2017 the Whittier College Board of Trustees decided to not enroll any new students in the upcoming fall semester.

In a letter to the Whittier Law School Community, the Whittier College Board of Trustees Chairman, Alan Lund writes "We believe we have looked at every realistic option to continue a successful law program. Unfortunately, these efforts did not lead to a desired outcome. Accordingly, on April 15, 2017 the Board voted not to enroll new 1L classes at the Law School beginning this fall. We are committed to ensuring that students currently enrolled will have an opportunity to complete their degree in a timely fashion."

When it comes to reasons for the shut down, the Board of Trustees blames its decision on poor performance by students and employment statistics. In fact, the Board of Trustees specifically stated "The bar pass and employment record are among the factors that have prompted the decision."

The Board's reasoning is partially correct. According to Law School Transparency, a nonprofit online watchdog for United States law schools, Whittier Law School's 2016 graduates have only a 28.9% employment score and a 53.1% under-employment score.

Whittier Law School's bar passage trends are even more disturbing and have been drastically declining over the past five years. In 2013 over 65% of Whittier grads passed the California Bar Exam. That already low number was reduced to only 47% of graduates passing the 2014 Bar Exam. The bar passage rate was further diminished to 38.1% in 2015. Alarmingly, only 22% of Whittier Law School grads passed the July 2016 California Bar Exam. One does not need to be a statistician to realize that by graduating from Whittier Law, a student has 4 out of 5 chances of failing and only 1 out of 5 chances of passing the bar exam.

But are Whittier Law graduates the only ones to blame for the poor performance on the bar exam and employment scores, as implied by the Board of Trustees? Is the curriculum used by the school during the three years of law school blameless? What about the faculty or administration? What about the Whittier College Board of Trustees' action of selling the land upon which the school is built for \$13 million in profits? The Board of Trustees led the law school to believe that the profit would be invested back into the Law School and instead failed to do so.

Let's face the facts. We all know the main and unspoken reason for the dismal statistics of Whittier Law School. It is a well-known fact that Whittier Law School accepts applicants with low GPA and/or LSAT scores, who have been rejected by schools with higher standards. Assuming that undergraduate GPA and LSAT scores are a good indicator for bar exam passage (and personally I do not necessarily agree that they are), then the entering class at Whittier Law School is starting its law school education and career already less likely to succeed.

In fact, for the last few years, Whittier Law School has been dropping out roughly 20% of the bottom 1L class at the end of the first year. One can only conclude that 1 out of 5 applicants admitted by Whittier Law School is being accepted despite the fact that it is aware that these candidates will be pushed out at the end of the first year of law school.

Should Whittier Law School never admitted the 20% of its entering class that it intends to push out after only one year of law school, so that it can profit from its tuition? Personally, I am torn when it comes to this question.

On the one hand, Whittier Law School, under the direction of a clearly greedy Whittier College Board of Trustees, acts like it is only in the business of making profits and not in the business of education and improving the legal profession. As law school applications have decreased in the past few years, Whittier Law School, and many other law schools for that matter, continue to decrease the qualifying criteria for the entering class. These law schools clearly accept students that they know are not likely to succeed in the competitive law industry, for the only purpose of collecting their tuition. So it would appear that its shut down was coming for a long time and the shut down will help thousands of future students from

wasting hundreds of thousands of dollars in useless legal education.

On the other hand, Whittier Law School is known for accepting students of diverse backgrounds and capabilities — students who might not otherwise have been able to receive a legal education elsewhere and who are now successful attorneys around the world. Are GPA and LSAT scores truly a predictor for bar exam success? I am sure many students that have entered Whittier Law School (or other law schools) with low credentials, have thrived in law school and have successful and well respected legal careers. Will these “unlikely to succeed” students who have overcome the odds not be given the opportunity to join the legal profession once Whittier Law School and other low performing law schools shut down? Will we miss out on hundreds or thousands of future lawyers or does the legal education industry need to “cap” the number of lawyers it produces in an already overcrowded profession?

The bottom line is that despite the indirect benefit to many diverse students, Whittier Law School did not accept these “unwanted” students out of the goodness of its heart. It did so to collect one more tuition check. In the grand scheme of things, this practice of turning education into a money making machine has to stop. Hopefully, another and better predictor for bar exam success than GPA and/or LSAT is used to admit students into law school so that this shut down, and possibly others, will not affect future attorneys potential careers. Nevertheless, for the time being, the only ones suffering from the shut down of Whittier Law School, are its current students and its alumni who will now hold a degree from an institution that will cease to exist.

Julianna Crawford is a workers' compensation attorney, a member of the Bar Publications Committee, and past vice president of the RCBA Barristers. She can be reached at Juliannacrawford@outlook.com.



27th ANNUAL RED MASS

Tuesday, October 3, 2017, at 6:00 p.m.

Our Lady of the Rosary Cathedral

2525 North Arrowhead Avenue, San Bernardino

The entire legal community and persons of all faiths are invited to attend the 27th Annual Red Mass on Tuesday, October 3, 2017, at 6:00 p.m. The mass will be held at Our Lady of the Rosary Cathedral, which is located at 2525 North Arrowhead Avenue in San Bernardino. The chief celebrant will be the Most Reverend Gerald R. Barnes, Bishop of the Diocese of San Bernardino. A dinner reception in the parish hall hosted by the Red Mass Steering Committee will follow the mass.

The Red Mass is a religious celebration in which members of the legal community of all faiths invoke God's blessing and guidance in the administration of justice. All who are involved in the judicial system, including lawyers, judges, legal assistants, court personnel, court reporters, court security officers, and peace officers, are encouraged to attend the Red Mass.

Presentations of the Saint Thomas More Award and The Saint Mother Teresa of Calcutta Award

For the first time, the Red Mass Steering Committee will be presenting two awards: the Saint Thomas More Award and the Saint Mother Teresa of Calcutta Award. The Saint Thomas More Award will be given to a lawyer or judge who gives hope to those in need, is kind and generous in spirit, and is an overall exemplary human being. The new Saint Mother Teresa of Calcutta Award will be given to anyone with those attributes who is a member of the legal community or who has made contributions to the legal community. The awards will be presented at the reception following the Red Mass. For further information about this event, please contact Jacqueline Carey-Wilson at (909) 387 4334 or Mitchell Norton at (909) 387-5444.



OPPOSING COUNSEL: BREANNE WESCHE

by Betty Fracisco

From Classroom to Courtroom: Breanne Wesche

When I was given the assignment to interview a Riverside lawyer who had transitioned from Education to The Law, I expected to find a former teacher who had gotten so tired of the demands of teaching, the ever changing curriculum and requirements imposed for the best test scores, and the challenges of today's kids, that she jumped ship to attend law school and hopefully make a lot of money. That was not at all what I encountered when I met Breanne Wesche, whom I would have to describe as "Hometown Girl Makes Good." Let me tell you about this inspirational young lawyer who is already making inroads in the Riverside County legal community. And it all comes back to her personal mantra, "Helping People."

Breanne spent her youth in Riverside. She attended Notre Dame High School, where she competed in swimming and volleyball for four years and was active in ASB. During high school she worked in catering and for attorneys Virginia Blumenthal and Brian Percy. Which brings me to Breanne's role model, her mother Karen, who attended California Southern Law School at night for four years (with three kids at home) and graduated first in her class, which led to her job with Virginia Blumenthal, Breanne's other role model. Virginia Blumenthal gave Breanne a bird's-eye view of a successful female trial attorney and provided many learning opportunities after school and during the summers. Brian Percy had an office nearby, so Breanne would also do work for him. Eventually Virginia let Breanne do some client intake work, which she loved. These people, needing legal assistance for a variety of problems, were in need, and Breanne enjoyed doing what she could to "help them."

Breanne moved on to UC San Diego, where she majored in Human Development, thinking this would be good for a future in psychology or education. She did some student teaching in La Jolla, where they were bus-ing in kids from less affluent areas. She did some home visits to some of the less fortunate families and saw the challenges the students faced outside school. She wanted to understand the problems and challenges faced by these students and their teachers.



Breanne Wesche

One would think Breanne, the child of a criminal defense attorney and a firefighter, would possibly be heading to law school after college, but Breanne wanted to give back to the community and help the less fortunate, so she signed up for Teach For America. Teach For America is a program in which college grads volunteer to teach in impoverished schools throughout the country for two years. Breanne was assigned to a school in a poor section of Houston, Texas. During the summer following college she attended the Teach For America Summer Institute

and earned her Special Education credential. Then she was off to Houston, where she was solely responsible for thirteen to fifteen students with a multitude of significant disabilities (usual ratio is six to seven students per special education teacher). The students were ages three through six. Breanne now says this was harder than law school or studying for the bar, because she worked 100 hour weeks and had no resources, money or manpower. She became a champion for special education.

After the two year commitment, Breanne wanted to come back to the community and "give back," so she taught at a charter school in the Houston area, where she had a special education resource room and also taught a general education class weekly. Here the students were 6th to 12th grade with moderate to mild disabilities like ADHD or behavioral emotional disabilities. The toughest were those with emotional disturbances.

At this point, Breanne had to make some decisions. She had wanted the experience of helping people and felt it was important to work doing this before law school. But she always knew she wanted to go to law school, and her experiences had shown her that as an attorney she would have the power to affect change. She decided to stay in Houston, because she wasn't ready to leave, so she decided to attend the Thurgood Marshall School of Law at Texas Southern University, a historically black college. As an attorney, Thurgood Marshall had argued the landmark case, *Sweatt v. Painter* (separate but equal law schools in Texas), which prompted the creation of the Thurgood Marshall Law School. Breanne found law school much less stressful than the three years she had spent in both Teach For America and the charter school.



In 2009 Breanne Wesche was the lead teacher for the Preschool Program for Children with Disabilities (PPCD) at Lucile Gregg Elementary in the Houston Independent School District. Pictured in the photo with Breanne are some of the PPCD students, along with two teacher's aides.

During law school, Breanne got hooked on Mock Trial after her 1L competition, in which she surprised herself, and after that she participated in every competition she could. She also did Law Review and was a real property tutor. She also earned a Mediator's Certificate for Small Claims Court.

After graduation, she headed back to California to study for the California bar. After the bar, she clerked at an immigration firm in Irvine, but after results, she decided to focus on Riverside. At the RCBA's New Attorney Academy she met Greg Rizio and ended up talking to him at length about a PI case she was working on. He told her to send him her resume, and after a trial period she became a member of the six attorney Rizio firm. Breanne now loves what she does, "helping people." She handles a variety of cases, from wrongful death and traumatic brain injuries, to child molestation and auto accidents, always working on that mantra of hers. And in her spare time, she helps the Riverside legal community, where she is now President-Elect of the Barristers. In fact, this year she co-coached the Notre Dame High School Mock Trial team, which in its first-ever competition, made the Elite 8, a fact of which she is extremely proud, considering the countless hours she and the students spent in preparation.

So, as you can see, my subject was not the war-weary teacher-turned-attorney, but a breath of fresh air with the best attitude and giving spirit I've seen in a long time.

Betty Fracisco is an attorney at Garrett & Jensen in Riverside and a member of the RCBA Publications Committee.



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SOHEILA S. AZIZI

JUDICIAL PROFILE: JUDGE BURKE STRUNSKY

by Mary Gilstrap

Former career prosecutor, passionate advocate for abused children, author, and voracious reader are just a few ways to describe Judge Burke E. Strunsky, a new addition this year to Riverside County Superior Court's roster of judges. Judge Strunsky, who was sworn into office in January of 2017, ran for the vacant position left open in Blythe when Judge Sara Christian retired in 2016. He ran against two other contenders for the position in the June 2016 primary, garnering over 50% of the votes and handily beating both of the other candidates.

Born and raised in the Bay Area, Judge Strunsky was a deputy district attorney in San Francisco from 2000 to 2004. From March 2006 until his appointment on the bench, Judge Strunsky was with the office of the Riverside County District Attorney where he prosecuted child abuse, sex crimes, and homicides in addition to other felony charges. In 2008 and 2011, Judge Strunsky was named Prosecutor of the Year. Several of his homicide trials received media attention nationally, such as *Dateline NBC's* story on Judge Strunsky's successful homicide prosecution of former police Chief Blair Christopher Hall who was convicted of drowning his wife, and *20-20's* interview with Judge Strunsky about his prosecution of local Pastor Kelle Lee Jaraka, also convicted of murdering his wife.

Judge Strunsky's election as a Superior Court judge meant that he and his family relocated to Rancho Mirage from Temecula in order to make the drive to Blythe five days a week. "An hour and twenty-eight minutes," Judge Strunsky said with a laugh. He is the only judicial officer sitting in Blythe and as a result, he hears criminal, traffic, drug court, family law, civil matters, small claims and unlawful detainers. While 80% of his caseload is criminal, he has had to get up to speed in a very short period of time with respect to the other areas of law, making him the proverbial judicial jack-of-all-trades. Judge Strunsky acknowledges that mastering family law in the few months he has been on the bench has proven to be a challenge due to the issues that can



Judge Burke Strunsky being sworn in by Judge Kelly Hansen.

arise in such proceedings, complicated by an overwhelming majority of self-represented litigants. However, Judge Strunsky is impressed with the litigants' overall respect shown in the courtroom, which has made his job a bit easier. Other judges in the county have also proven to be a big help, he says, being particularly generous with their time in acclimating him to the job. Judge Strunsky is assisted in his courtroom by his court clerk, Yadira Saldana, court reporter

Juliette Vidaurri and two Riverside County Sheriff's deputies – Deputy Jeffrey Phipps, a Blythe native who "knows everyone," Judge Strunsky said, as well as Corporal Jamie Lewis.

During his career at the District Attorney's office, Judge Strunsky prosecuted dozens of horrific child abuse cases. As part of the D.A.'s child abuse unit, he spent six years trying child abuse cases which he describes as some of the most difficult cases he's ever had, but he said that they were "the most rewarding cases to prosecute." Judge Strunsky described how he would get to know the child victims in these cases and would experience firsthand the huge weight that was lifted from their shoulders when the jury found that they were telling the truth. "It's incredibly scary for kids to testify," Judge Strunsky said. "However, the process is universal in turning their lives around on the path to healing."

After his daughter was born, Judge Strunsky and his wife Geraldine co-founded the Humanity of Justice Foundation, a California non-profit that provides resources and funding to combat child abuse throughout the United States. The agency's board of directors is made up of prosecutors and law enforcement officers and has partnered with Safe Alternatives for Everyone; the RCRMC Foundation, Rancho Damacitas Children and Family Services, and Oak Grove Center for Education, Treatment and the Arts. While Judge Strunsky and his wife stepped down from the board in 2015, the cause is still very important to them both. Judge Strunsky is also the author of *The Humanity of Justice*, a book of true-

crime stories as seen through the eyes of a criminal prosecutor with social and moral commentary. All proceeds from the sale of the book are donated to the foundation.

Judge Strunsky's 2017 New Year's resolution is to read all the old gems that most students are assigned to read in high school. He's just finished *Catcher in the Rye*, *1984*, *A Tale of Two Cities*, *Of Mice and Men* and *Lord of the Flies*.

Judge Strunsky received his bachelor's degree from George Washington University and his Juris Doctor from the University of San Francisco. He served as a White House intern in 1993 and 1994, during the Clinton Administration.

Mary E. Gilstrap is a partner of the law firm of Roemer & Harnik LLP and a past president of the Desert Bar Association.



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John M. Tomberlin – The Myers Law Group, Rancho Cucamonga

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“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.”

It is September 1, 1939 when Germany invades Poland and transforms eight-year-old Casimir Bieberstein's world forever. The son of a wealthy Jewish businessman, Cass happily lives in a thirty-room mansion. But when his family is forcibly ejected from their opulent and luxurious existence, Cass is immersed in a dark life he never could have envisioned in his wildest dreams.

After moving from one apartment to the next, Cass and his family are eventually forced into the Jewish ghetto in Warsaw nearly four years later. Cass, who is seeking justice and the neutralization of Arturo, responds in the only way he knows and becomes a sniper for the Jewish Resistance. As battles lead him to fight in the 1943 and 1944 uprisings as well as with the Soviet Army when they finally drive Germany out of Poland, Cass ultimately turns the tables on his oppressors and becomes a shining example of the inner-strength and determination of the Jewish people to never give up, no matter what.

Not without a Fight is based on the true story of a Polish Jew's journey to become a Resistance Fighter intent on seeking justice for wrongs while attempting to survive the atrocities of the Holocaust.

AUTHORS

D.W. Duke is an experienced California trial attorney who earned a bachelor of arts from the University of Michigan and a juris doctor from Washington University School of Law. He holds a fourth-degree black belt conferred by the World Tae Kwon Do Federation in Seoul, Korea, is a freelance editor for Oxford University Press, and he is the author of six books.

Thomas Biebers is the son of Casimir Bieberstein, a Holocaust survivor and member of the Jewish Resistance. He is an actor and businessman who served in the Marines and attended California State University Long Beach. Since then, he has built an impressive foundation of experience both in front of and behind the camera.