

PRESIDENT'S MESSAGE

First off, I would like to thank our immediate past president, Tara McGuinness for a job well done. She laid the foundation for renewing interest in our association which I hope to build on. Thankfully, Tara has agreed to stay involved as our membership chair.

We celebrated the 51st anniversary of our bar association at our annual Installation Dinner held at the Palos Verdes Country Club on the evening of January 16, 2004. We had the privilege of bestowing the William E. MacFaden Award upon one of our most respected and popular Judicial Officers, the honorable Francis Hourigan, and his wife Margaret for their years of dedication to the community, bench, and bar. Judge Eric Taylor passed the torch to our new Presiding Judge, Mark Arnold. I believe that everyone had a great time, especially, after the program, when we partied to the sounds of Stockyard with a cameo appearance by myself on bass and our Secretary, Craig Weinstein on keyboards. Thanks to everyone that attended!

Our State of The Court Dinner Meeting will be held March 11, 2004, 6:30 pm at the Torrance Marriott. The Presiding Judge for the Los Angeles Superior Court, Robert Dukes, and Judge Aviva Bobb, head of the Family Law Department will be our speakers, along with our own PJ, Mark Arnold. We will be unveiling our new and improved website that evening. It should be interesting and informative.

This year we plan to continue our traditional programs, and put an emphasis on social events and community outreach. Our board of directors and chairpersons are working hard to make your membership meaningful. In the near future we plan to have a joint meeting of the family, probate, criminal and civil sections. We are planning an outing to the Hollywood Park Race Track, and our 2nd Annual Columbus Day Golf Tournament is in the works. Comradery, the exchange of ideas, having fun and improving our image in the community are essential elements to our continuing growth and viability.

We welcome your participation, and look forward to seeing you this year!

David K. Yamamoto, President

*In Memoriam
Christopher Gray
1983-2004*



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CALENDAR OF EVENTS

SOUTH BAY BAR ASSOCIATION

<p style="text-align: center;">Employment Law and South Bay Women Lawyers Section Luncheon (1 Hour MCLE Credit)</p> <p>Date: Wednesday, March 10th Place: Torrance Marriott 3634 Fashion Way, Torr. Speaker: Robert R. Ronne, Esq. Topic: "Sex & Pregnancy" - Issues For Women In The Work Place <i>(lunch not just for women)</i> Time: 12:00 noon - 2:00 p.m. Prices: Members & Judges: \$25.00 Prepaid; \$35.00 at the Door, Non-Members: \$35.00 Prepaid; \$45.00 at the Door, Non-Member Attorneys \$50.00 Prepaid; \$60.00 at the Door</p> <p>RSVP to the SBBA by March 3rd. In order to receive a discount, payment must be received by the SBBA at least 5 business days prior to the event.</p>	<p style="text-align: center;">Annual State of the Courts (1 Hour MCLE Credit)</p> <p>Date: Thursday, March 11th Place: Torrance Marriott 3634 Fashion Way Torrance, CA 90503 Speakers: The Hon. Robert Dukes, <i>Presiding Judge of the LA Superior Court</i> The Hon. Mark Arnold, <i>Supervising Judge of the Southwest Dist.</i> and The Hon. Aviva Bobb, <i>Supervising Judge of Family Law Dept. of the LA Superior Court</i> Time: 6:00 p.m. Cocktails 6:30 p.m. Dinner 7:00 p.m. Program Prices: Members & Judges: \$40.00 Prepaid; \$50.00 at the Door, Non-Members: \$50.00 Prepaid; \$60.00 at the Door</p> <p>RSVP to the SBBA by March 4th. In order to receive a discount, payment must be received by the SBBA at least 5 business days prior to the event.</p>	<p style="text-align: center;">Family Law Section Luncheon (1 Hour MCLE Credit)</p> <p>Date: Thursday, March 18th Place: Torrance Marriott 3634 Fashion Way Torrance, CA 90503 Speaker: Philip Browning, <i>Director of LA County Child Support Services Dept.</i> Time: 12:00 noon - 2:00 p.m. Prices: Members & Judges: \$25.00 Prepaid; \$35.00 at the Door, Non-Members: \$35.00 Pre paid; \$45.00 at the Door, Non-Member Attorneys \$50.00 Prepaid; \$60.00 at the Door</p> <p>RSVP to the SBBA by March 11th. In order to receive a discount, payment must be received by the SBBA at least 5 business days prior to the event.</p>
<p style="text-align: center;">Probate & Estate Planning Luncheon (1 Hour MCLE Credit)</p> <p>Date: Tuesday, March 23rd Place: Torrance Marriott 3634 Fashion Way Torrance, CA 90503 Speaker: Ed Long, H.E.L.P. Time: 12:00 noon - 2:00 p.m. Prices: Members & Judges: \$25.00 Prepaid; \$35.00 at the Door, Non-Members: \$35.00 Prepaid; \$45.00 at the Door, Non-Member Attorneys \$50.00 Prepaid; \$60.00 at the Door</p> <p>RSVP to the SBBA by March 16th. In order to receive a discount, payment must be received by the SBBA at least 5 business days prior to the event.</p>	<p style="text-align: center;">Civil, Criminal, Family & Probate Section Joint Luncheon (1 Hour MCLE Credit)</p> <p>Date: Wednesday, April 14th Place: Torrance Marriott 3634 Fashion Way Torrance, CA 90503 Speaker: Randy Law, LexisNexis - Sales Executive Time: 12:00 noon - 2:00 p.m. Prices: Members & Judges: \$25.00 Prepaid; \$35.00 at the Door, Non-Members: \$35.00 Prepaid; \$45.00 at the Door, Non-Member Attorneys \$50.00 Prepaid; \$60.00 at the Door</p> <p>RSVP to the SBBA by April 7th. In order to receive a discount, payment must be received by the SBBA at least 5 business days prior to the event.</p>	<p style="text-align: center;">Family Law Section Dinner (1 Hour MCLE Credit)</p> <p>Date: Thursday, April 22nd Place: South Bay Grill 23805 Hawthorne Blvd. Torrance, CA 90503 Speakers/ Honorees: Comm. John Slawson & Comm. Glenda Veasey Time: Cocktails 5:30 Dinner 6:15 Prices: Members & Judges: \$35.00 P repaid; \$45.00 at the Door, Non-Members: \$45.00 Prepaid; \$55.00 at the Door, Non-Member Attorneys \$55.00 Pre paid; \$65.00 at the Door</p> <p>RSVP to the SBBA by March 11th. In order to receive a discount, payment must be received by the SBBA at least 5 business days prior to the event.</p>

coming soon...

CALENDAR OF EVENTS

May

Law Day

Manny Madrano

**Probate & Estate Planning Luncheon
A Night at Hollywood Park**

June

Probate & Estate Planning Luncheon

July

Angels Game

***More details to follow on all upcoming
events.....***

Opinions expressed in the Bulletin are not necessarily of the SBBA, its officers, directors, or members.

The South Bay Bar Association Barristers Bulletin is published monthly, except February and August. Articles on the topics of interest and letters from readers are welcomed and will be published as space allows. Submitted materials will be subject to editing and approval of content, with final approval for form and content to be under the authority of the Editorial Staff. Articles, announcements and advertising copy are due by the 15th of the month preceding publication.

Please submit your contribution to:
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“WHAT’S HAPPENING”

by
JAMES HALLETT

Like many of you, I was in awe at the miracle of the birth my children. It is one of those times that you are happy to be in a hospital. But even at such a happy time as the birth of a child, being in a place surrounded by illness and death on one floor and new life on another is a bitter sweet reminder of the circle of life.

We in the South Bay legal community have witnessed that circle of life in dramatic style this winter, with the devastation that has hit the **Gray** family and the renewal that has graced the **Inclan** family.

Many of you know **Susan Inclan**, **Tony Scott’s** legal assistant, who previously worked in the Superior Court Clerk’s office and the District Attorney’s office as a witness coordinator. Susan is married to Edward Inclan, who sells auto parts for street cars and race cars and also races cars (www.online-racer.com).

On New Year’s Eve, Susan gave birth to twin boys, Eddie and Alex, born very prematurely (28 weeks) and endangered from birth (Eddie was born at 2 lbs. 2 oz. and Alex was born at 2 lbs. 8 oz.).

The happy news is that the boys, though still vulnerable and still at Long Beach Memorial Hospital, are gaining weight with an excellent prognosis. Prayers remain welcome, but it looks like these blessed twins are going to be just fine.

"Circle of Life" was the caption on a beautiful color picture published in the Daily Breeze on February 9, showing 30 to 40 surfers floating on their boards in a circle in Bluff Cove, with a lifeguard boat shooting a water cannon in tribute during a memorial service for 20-year-old Christopher Gray, who died on February 3. Christopher is the son of **Judge Dudley W. Gray II**, grandson of **Dudley Gray Sr.**, and nephew of **Jeffrey Gray**.

The liturgy for a Roman Catholic Mass always includes the Prayers for the Faithful. It was fitting that the prayers at Christopher’s formal memorial service at St. Lawrence Martyr included a special prayer for "musicians and surfers."

A memorial fund has been established for the benefit of people in need. Donations can be sent to the Christopher Gray Memorial Fund, 904 Silver Spur Road, P.O. Box 391, Rolling Hills Estates, CA 90274.

Erin McGaughey, daughter of **Terry McGaughey**, passed the Bar Exam and continues to work at McGaughey and Spirito. She was married on February 22, 2004 to Michael Eatmon, a sales rep from North Carolina. At least so far, she intends to maintain McGaughey as her professional name.

Carol Elias Zolla, the daughter of **Judge Emily Elias** and **Charles Elias**, is a Certified Specialist in Estate Planning, in sole practice in San Jose. She is a UCLA Law Review alum. She will also be giving her parents their first grandchild in April.

Lori S. Ross, daughter of **Judge Ed Ross**, is back as an associate at Greenberg, Fields & Whitcombe. Lori’s husband, **Andy Hoye**, a former associate at the same firm, is in Kuala Lumpur finishing up a foreign service assignment, with his next stop still to be determined.

Another alum of the Greenberg firm, **Jonathan Klinck**, is now an Assistant U.S. Attorney with the civil unit downtown, primarily doing Title 7 (labor) work.

Popeney & Lebetsamer have relocated their offices to 3868 Carson Street.

Bill McKim, the "pinch hit" lawyer who has been living in Sun City but keeping in touch with the South Bay, has finally taken inactive status with the State Bar and is truly retired. He is still collecting South Bay war stories for what he hopes will someday be a TV series that would portray the practice of law the way it really is.

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Bench & Bar Report by Roy Daniel

The February 10, 2004 meeting of the Los Angeles Superior Court Bench and Bar Committee proved to be one of the liveliest sessions in many months.

The Court invited the current presidents of the Consumers Attorneys of Los Angeles, Tony Stuart, and the Southern California Defense Council, Paul Fine, to address the judges on “Issues and Challenges Facing the Bar and the Courts”.

It turns out that the “Issues and Challenges” as seen by both Bar groups are similar; but differ significantly from the view from the Bench.

The Consumer Attorneys and Defense Council Attorneys object to “...the time limits imposed on trials, especially on voir dire, opening statement and closing argument ...” arguing that the jury and the quality of justice benefit from the attorneys taking sufficient time to present their case. The Judges see the time limitations as a means of “...controlling the trial process...making it easier on the jury panel...and requiring counsel to be more direct and specific...”

The attorney groups object to “...the repetitious and unnecessary meetings and court appearances being ordered by the judges after the Case Management Conference...” causing wasted attorney time, additional client expense, and all to no effect on the conclusion of the case.

The judges see the ordered appearances as “...a means of complying with Court Rule 212...as a way of cleaning up problems in the case...of promoting settlement of the case...and proper trial setting...”

The attorney groups object to “...mandatory settlement conferences with the judge who will be the trial judge...” preferring that the settlement conference be with a judge who will not hear the trial. With this objection the judges agreed and indicated, “...that the matter will be reviewed and a process initiated...”

The attorney groups and the judges agreed “...that court funding is a serious problem upon which the bench and bar must work together to assure that the courts receive adequate funding to remain open and maintain the ability to service all cases...” The judges especially thanked the various bar associations of Los Angeles County for all of their support and efforts to maintain adequate court funding.

In the midst of the discussion of these issues the judges pointed out that one of the reasons for ordering attorneys to appear for multiple case conferences, for establishing trial time limits, and for other judicial directives, is that “...there is a clear failure of attorneys to comply with Court Orders and with Court Rules... there is generally a poor level of lawyering...good lawyers are an exception...a significant number of attorneys simply do not show-up for case conferences... and when they do they are unprepared to participate or contribute...non-preparation and non-compliance to Court orders is a common failure of counsel...”

Several judges concurred, “...perhaps between 1/3 to 1/2 of the attorney...simply have not done what they have to do...or were ordered to do...to be prepared...”

Needless to say the discussion did not make much progress from this point.

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“WHAT’S HAPPENING”

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Apropos of nothing in particular, here is a Denver law firm website worth a glance: www.ppbfh.com.

Cozette Vergari has two sons leading interesting lives. Ryan, age 24, a Claremont McKenna graduate, works for Price Waterhouse while he studies for the CPA exam. **Chase**, age 27, is a Northwestern Law School graduate, formerly with Proskauer, Rose in Manhattan, now working for a small boutique firm in Manhattan. Chase has been writing screenplays since he was age 8 and has now collaborated on a screenplay with two law school classmates that is being seriously vetted. He filmed a portion of it in January with a crew of professionals (and some amateur extras including Cozette) and is now marketing it to potential investors.

Denise Tomaiko took the Arizona Bar Exam last summer and joined the Arizona Bar in October. She is keeping her practice here, but most of her family lives in Arizona and she finally decided to make sure that the door remains open to her.

Gayle Eskridge is a member of the Corporate Advisory Committee of the Los Angeles County Human Relations Commission, addressing diversity initiatives and multi-cultural awareness programs in the workplace. She is also a member of the Torrance Human Relations Forum. She also donates her time to Friends of Cats, Inc. and Emergency Animal Rescue.

Most of you know that Judge **James Brandlin** spent nine (9) years as a Santa Barbara County deputy sheriff. But what I just learned is that he, while working as a Los Angeles County deputy district attorney, served as a reserve police sergeant for the Montebello Police Department, including active duty during the 1992 Los Angeles disturbances. He was the Montebello Police Department’s “Top Gun” target shooter with a .45 caliber weapon.

And, finally, one more mention of **Bob Welbourn**’s son, John.

By now you know John is a veteran offensive lineman for the Philadelphia Eagles. He was recently the centerpiece of a Sports Illustrated article on NFL offensive linemen. Sports Illustrated wrote as follows:

"[Offensive linemen] may be among the smartest men on the field, yet they also absorb the most physical abuse. 'Figure that one out,' says Welbourn, a fifth-year player who has a BA in Rhetoric from Cal. 'We are getting hit 70 times a game, and we watch more film than almost anyone else. To do our jobs, you have to have a specific mental makeup.'"

The mental makeup of a lawyer’s son, no doubt.

TORT TACTICS **WHY POLICE REPORTS ARE OFTEN DEAD WRONG?**

by Lawrence R. Booth
of Booth & Koskoff

Even in the simplest auto accident cases, police reports are often dead wrong. Even though the opinion of the investigating officer is usually not admissible, his conclusions can infect a case, create intractable positions by insurance carriers and persuade plaintiffs’ attorneys not to pursue the matter.

Only in a major injury case can the plaintiff’s attorney afford to hire investigators and experts to unwind the adverse impact of a poorly reasoned, inaccurate or just plain lazy report pinning the blame on the plaintiff.

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TORT TACTICS

WHY POLICE REPORTS ARE OFTEN DEAD WRONG?

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Winning the Seemingly Impossible Case

Our client's car made a left turn directly in front of the defendant's vehicle coming in the opposite direction. There was a tremendous collision which resulted in injuries to our plaintiff driver and one of his ten-year-old triplet girls. His wife was following in another car. The impact caused the plaintiff's vehicle to roll over onto its side and the injured triplet was ejected through a window of the van and pinned under the vehicle. (You have to realize that seat belts don't function very well in rollovers, especially with children.)

Our investigating officer interviewed the driver of the van and the defendant, and concluded that the plaintiff driver was at fault for turning left in front of another vehicle. The plaintiff, who was stopped in the intersection to make a left turn, claimed that the other vehicle ran the red light. Plaintiff driver claimed that he had waited for traffic to clear, that he watched the light for his direction of travel turn red, and before completing his turn he watched traffic heading the same way as the defendant stop at the limit line. Because he was soft spoken and not assertive and the other driver was more forceful, the officer believed the defendant. Interviews of the eye witnesses were superficial and fleeting and conducted by another officer, who was young and inexperienced. If she had thoroughly interviewed the three eye witnesses, she would have discovered that they completely supported the plaintiff's position but only if she took the time to sort out their stories. She didn't. She simply adopted the conclusion of the first officer.

Because the witnesses were located in various positions at or near the intersection, it was necessary to first do a thorough accident reconstruction with timing analysis so that the interviews with the witnesses prior to their deposition could be exactly and precisely conducted and so that the witnesses would be confident in their view that the defendant ran the red light.

Turning the Corner on Damages

The father (driver) sustained a disc injury to his neck with a prior injury, and as an engineer, his loss of earnings and even medical bills were not staggering. Similarly, the mother and two of the triplets only suffered emotional distress. The third triplet, who was ejected from the vehicle, sustained severe scarring to her head, face and buttocks.

But the real injury to this child was the past and future emotional distress of living with this disfigurement. This required a combination of doctors, including plastic surgeons and, most importantly, a child psychiatrist. The child had withdrawn from her friends and school activities, had nightmares and her emotional development was clearly arrested. The defense wanted to narrowly evaluate this case based on the cost of plastic revision and the likelihood of scarring after such revisions.

Lessons to Be Learned

This case illustrates the importance of ignoring police reports. They are more often wrong than right to some degree. After we concluded this case, we were involved in one where the officer recommended that a passenger, who was severely injured, be cited for not wearing a seat belt. It turns out the vehicle was equipped with an automatic seat belt which deploys as soon as you turn on the motor.

TORT TACTICS

THE REAL PURPOSE OF PUNITIVE DAMAGES

by Lawrence R. Booth
of Booth & Koskoff

In the November Barrister's Bulletin I published an article (which I have done for the past 20 years on various aspects of tort practice). This particular article had to do with the United States Supreme Court limiting punitive damages. A response to my article which was published in the latest Barrister's Bulletin by Carl Pearlston argues that plaintiffs should not receive the punitive damage awards but that they should go to some charity or other public interest. The problem with Mr. Pearlston's argument is that, as a practical matter, it is completely unworkable. In a serious case, of which I have had many and he may not have had any, a defendant who is concerned about punitive damages will always offer substantially more by way of settlement than the compensatory damages would every bring. If I were to tell a plaintiff in that situation that any punitive damage award would go to charity or some other public interest, he would have absolutely no incentive to turn down the offer and, consequently, some corporate defendant who regularly jeopardizes the life and limb of the public, would be able to walk away with a fraction of what otherwise might be awarded by a jury.

To put it simply, not only the plaintiff's attorney but also the plaintiff must have incentive to go through the kind of war necessary to achieve a major punitive damage verdict and cutting the ground out from the incentive is like the old defense canard of limiting attorney's fees. The real purpose is to reduce the potential exposure to punitive damages thereby jeopardizing the public good.

"More on Punitive Damages"

by Carl Pearlston

Mr. Booth postulates that having the punitive damage award go to the state is unworkable since it would encourage settlement at less than optimum results for the plaintiff, who would not want to press the trial of a punitive award in which he had no share. He states this would jeopardize the public good, as though the good of the plaintiff and his lawyer were synonymous with the public good. That is a conflation which the Trial Lawyers Association, now euphemistically called Consumer Attorneys, has vigorously championed in the face of demands across the country for tort reform. One reform approach, adopted by many states, is the imposition of caps on punitive damages, ranging from a fixed ceiling to fixed percentage of the compensatory award. Another approach, along the lines of my suggestion, is allocating a major share of any punitive award to the State. There are currently eight States (Alaska, Georgia, Illinois, Indiana, Iowa, Missouri, Oregon, and Utah) that statutorily impose a split of punitive damages, ranging from 33 1/3% to 75% going to the State. New York had such a statute, but it expired in 1994. Florida and Kansas both allowed similar statutes to lapse, and the Colorado statute was struck down by its Supreme Court. More recently, the Ohio Supreme Court, out of its own sense of fairness, ordered that 66 2/3% of a punitive damage award be taken from the plaintiff and given to a cancer research program, stating that the purpose of punitive damages was not served by giving the plaintiff all the money. There is clearly a growing recognition that it is unjust to unduly enrich the plaintiff and his attorney in the name of punishing the corporate defendant. And yes, such an approach does encourage settlement and avoidance of trial, and, as a Mediator, I think that is all to the public good.

Chief Justice Rehnquist of the US Supreme Court has proposed that all punitive damage awards be denied to plaintiffs, since such damages "are generally seen as a windfall to plaintiffs, who are entitled to receive full compensation for their injuries--but no more. Even assuming that a punitive 'fine' should be imposed after a civil trial, the penalty should go to the State, not to the plaintiff--who by definition is fully compensated." That statement comports with my understanding of the "public good".

Bench & Bar Report

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But, it was interesting to observe that the view of judges toward attorneys in general has not significantly changed in 30 years. The writer was reminded of the speech given by U.S. Supreme Court Chief Justice Warren Burger at the American Bar Association Annual Meeting in 1973. In that speech, the Chief Justice looked back on his years as a trial court judge in Minnesota, as an appellate court judge, and as a Supreme Court Justice and criticized the competence of trial attorneys, saying "...they came to court unprepared...with shoddy pleadings...sorry legal theories...and with inadequate briefs." Justice Burger deplored the "...low state of trial advocacy and the consequent diminution in the quality of our entire system of justice..."

It seems that there is still a significant gulf between the Bench and the Bar.

Editors Note:

Roy Daniel is a Director of the South Bay Bar Association and is the representative of the Association to the Bench & Bar Committee.