

The **BARRISTERS BULLETIN** of the South Bay Bar Association

June 2002

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VOLUME 28 NUMBER 5

PRESIDENT'S MESSAGE

The South Bay Bar Association "Ask A Lawyer" program was a complete success thanks to our members who volunteered their time. I would like to recognize the attorneys who helped with the event, Agnes D. Achstein, Elaine R. Drummond, Stanley O. Epstein, William N. Jacobson, Miriam J. Lebental, Bruce A. Mandel, Mark A. Miller, Ron Sokol, Michael Todaro, Karen L. Trimble, Craig D. Weinstein and David K. Yamamoto. Our attorneys provided free legal advice to over 50 people throughout the afternoon. We hosted the "Ask A Lawyer" program in celebration of Law Day, the event allowed us to give back to our community and help those in need of free legal assistance.

We are adding a new section to the South Bay Bar Association. There is now an **Employment Law Section**, if you would like to be a member of this new section, please contact Melissa at (310) 543-9773.

If you would like to submit an article for our monthly Barristers Bulletin please contact the SBBA office at (310) 543-9773. We are always looking for informative articles to publish in our newsletter.

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South Bay Bar Association "Ask A Lawyer" Program

Our annual "Ask A Lawyer" program, which was sponsored by SBBA in celebration of Law Day, was held on Thursday, May 9, 2002, from 10:00 a.m. to 1:00 p.m. at the Torrance Superior Court House.



Thirteen SBBA Attorneys, representing various legal specialties, were on hand to provide legal assistance, at no charge, to more than 50 people throughout the morning and afternoon.

The attendees were provided with legal assistance which "ran the gamut" from tax problems to family law.

Overall, the "Ask A Lawyer" program was a very successful event and was very much appreciated by all of the members of our community who participated.



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ATTENTION MEMBERS:

The South Bay Bar Association has added a new section! Please contact Melissa at SBBA (310) 543-9773, if you are interested in being a member of the new **Employment Law Section**.



SBBA Attornies providing a helping hand to the community on "Ask A Lawyer" Day

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of Los Angeles County, Inc.
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Opinions expressed in the Bulletin are not necessarily those of the SBBA, its officers, directors, or members.

The South Bay Bar Association Barristers Bulletin is published monthly, except February and August. Articles on 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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 Tel. (310) 543-9773, Fax (310) 543-3273,
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CALENDAR OF EVENTS

SOUTH BAY BAR ASSOCIATION

**Criminal Law Section Luncheon
1 Hour MCLE credit**

Date: Thursday, June 6, 2002
Time: 12:00 noon
Place: Torrance Marriott, 3635 Fashion Way, Torrance
Speaker: Maria E. Stratton, Esq., Federal Public Defender, Central District of California
Topic: "Basic Federal Criminal Practice and Procedure" – Come Ask Your Questions About Federal & Criminal Law
Price: Members & Judges - \$25.00 Prepaid
 \$28.00 at the door, Non-members - \$30.00 Prepaid, \$33.00 at the door
****Non-member attorneys - \$50.00 Prepaid & at the door**

**Family Law Section Luncheon
1 hour Law Practice Management
MCLE Credit**

Date: Monday, June 17, 2002,
Time: 12:00 noon
Place: Torrance Marriott, 3635 Fashion Way, Torrance
Speaker: Hon. Aviva Bobb, Supervising Judge, Family Law Department of The Los Angeles County Superior Court
Topic: "What's Happening In Family Law, Downtown, As Well As The Branch Courts"
Price: Members & Judges - \$25.00 Prepaid,
 \$28.00 at the door, Non-members - \$30.00 Prepaid, \$33.00 at the door
****Non-member attorneys - \$50.00 Prepaid & at the door**

****NOTE**

Attorneys who are not SBBA members will be charged \$50.00 to attend luncheons that provide MCLE credit.

For Reservations for all SBBA meetings –
 Call SBBA at (310) 543-9773

Be sure to check out our website for up-to-date information on upcoming events!

www.SouthBayBar.org

**Want To Have Your Message in Over
400 Law Offices – All Year Long???**

**Advertise in the South Bay Bar Association's
2002-2003 Membership Directory!!!**

Closing date for Ads is July 15, 2002!

Call Melissa at SBBA (310) 543-9773

IMPORTANT — SBBA EVENT POLICIES

Discounts. The SBBA offers a discount for any person who reserves and pays for an event at least 5 days in advance of the event. Payment can be made by mailing or delivering a check to the SBBA at 3465 Torrance Blvd., Suite C, Torrance, CA 90503, or charging it on a Visa or Master Card by calling (310) 543-9773. In order to receive a discount, payment must be actually received by the SBBA at least 5 business days before the date of the event.

Reservations. Please reserve for events as early as possible. In the event there is not adequate seating at an event, those persons who have reserved and paid for their reservations 3 days or more in advance will be given priority as to seating. Others

will be seated to the extent they can be accommodated. Your early R.S.V.P. and pre-paid reservation will enable the SBBA to ensure that there is adequate seating at its events enable it to avoid being charged for guarantees which are not met.

Cancellation. If the SBBA offices does not receive an adequate number of R.S.V.P.s at least 5 days prior to any event, the event will be canceled without further notice. Anyone who has reserved will be contacted.

Refunds. A full refund will be given if the SBBA cancels an event or if a reservation is cancelled more than 3 business days prior to an event. Otherwise, amounts paid will not be refunded.

TORT TACTICS

Auto Accident Exception to Prohibition Against Suing Employer

By Lawrence R. Booth of Booth & Koskoff

As everyone knows, generally speaking, employees cannot bring a civil action against his employer. Workers' compensation is the exclusive remedy and is intended to be a partial payment no-fault remedy. A recent settlement in Northern California illustrates the ingenuity of lawyers in getting around this exclusivity rule. The plaintiff was a passenger in a company-owned vehicle driven by his foreman. Both of them had stopped at a bar on the way back from a job site. The bar was not on a direct route. They met up with another foreman and a coworker at the bar, and the plaintiff foreman consumed several beers and two Kamikazes. Both the plaintiff and the foreman were apparently intoxicated.

Workers' Compensation Benefits

The workers' compensation carrier disputed the claim arguing that both the foreman and the plaintiff were not in the course and scope of their employment since they had taken a detour from a direct route back to the company premises. There is also an exclusion for

intoxication under workers' compensation. Therefore, the plaintiff was likely to not be able to collect even the partial payment or limited remedy of workers' compensation benefits.

Civil Action

Labor Code Section 3601 provides that the exclusive remedy against the employer also applies to a fellow employee except in two situations, namely, where the fellow employee attacks the plaintiff or where the fellow employee is intoxicated. Here, the plaintiff's attorney took the position that since the fellow employee was intoxicated, he could be sued civilly and then in a very clever twist was able to recover under the employer's liability policy since the foreman then became a permissive user. The plaintiff was seriously injured suffering neck injuries involving the spinal cord and traumatic brain injuries. The case was settled for \$4 million.

Moral

The moral of this story is that clever lawyers can often perform amazing miracles. The plaintiff's lawyer was faced

with the seemingly insurmountable problem of a client who was out drinking in a bar with his foreman, where there is a serious question as to whether either one of them was on the job, and where there was probably an exclusion for workers' compensation benefits in the first place due to intoxication. So, therefore, he would likely have no workers' compensation remedy. He couldn't sue his employer for the foreman's conduct in operating the vehicle because the only remedy against the employer is workers' compensation. So he goes around the backdoor by suing the employee under the Labor Code exception and then claiming that he is covered by the employer's liability policy on the vehicle. The result is a \$4 million recovery in a situation where many lawyers would have simply thrown up their hands and given up on the workers' compensation case initially and never dreamed of going after the employer's coverage through the fellow employee and the special exception to the Labor Code.



Got An Interesting Article or Announcement?

We'd Really Like to Hear About It!

If you have any articles or special announcements on topics which might be of interest to our readers, please send them to us. Articles and/or announcements submitted will be published as space allows and 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 (in electronic form if possible) to:

Melissa Rivera, Executive Director
South Bay Bar Association
3465 Torrance Blvd., Suite C, Torrance, CA 90503,
Tel. (310) 543-9773, Fax (310) 543-3273,
Email: Dir4SBBA@aol.com

ATTENTION MEMBERS:

The South Bay Bar Association Lawyer Referral Service has added a new specialty section to the LRS, an Alternative Dispute Resolution panel. If you are interested in this new specialty panel, please contact Nicole Watson the LRS Administrator at (310) 543-8777. We hope that this addition will help respond to the needs of the public. If you are not a member of the LRS and would like to join, please contact Nicole.

BRIEFS BY BLOODGOOD

BREACH OF CONTRACT CASE DECIDED BY US SUPREME COURT:

A Breach of Contract case with a remote Fact situation was just decided by the High Court.

Facts: The huge telephone companies had refused to lease equipment to "start-up companies" at reasonably low costs.

Held: Leasing access must be given. This limits the Telecommunications Act of 1996. Tationale: Increases competition. 7-1 Decision by Justice SOUTER.

(_____) v VERIZON ETAL,
_____, US _____, 5-13-02.

COMMENT: This case is worthy of our Bulletin because it is like Law School stuff. It is rare that a Contract case gets decided by the High Court.

AUTHORS COMMENT: As you can see from our 33 years of these Briefs, we give favor to Supreme Court decisions, both US and State.

We always remember local (Santa Monica) Attorney EARL WARREN who became the controversial Supreme Court Chief Justice. He had an unique way of deciding though cases. His "test" was: "IS IT FAIR"? So much for elaborate Legal theories!!

CRIM LAW: MAN FREED AFTER TWO YEARS IN PRISON WRONGFULLY:

Facts: In May 1999 one LOPEZ was convicted in Santa Ana Superior Court for Armed Robbery in Anaheim. The Prosecutor had withheld the fact that two Witnesses had said that LOPEZ was not the Robber!

Also in May 1999 another man, one SANTA CRUZ, had pled Guilty to three identical Robberies. He then told the LA Times that he had committed the Anaheim Robbery!

In July 2001 the LA Times had reported that two Robbery Victims had told the Orange County DA's Office that LOPEZ was not the Robber and that another man had Admitted to the crime!

On 1-11-2002 the Orange County DA filed papers with the Court asking that all charges be Dismissed!

Held: Case Dismissed on 1-11-2002!!

COMMENT: This is a "miscarriage of justice" case. Bad investigation.

LOPEZ is considering filing a "Wrongful Conviction" Lawsuit because he has a Wife and two little children and he lost that time with them.

PEOPLE v LOPEZ, Orange County Superior Court, May '99.
News Item., 1-11-2002

CAL JURY SELECTION RULES MODIFIED BY STATE SUPREME COURT IF "RACIAL STACKING" APPEARS TO TRIAL COURT:

Facts: In 1978 The Cal Supreme Court held that the Jury and the entire Venire must be removed from the panel if the Judge believes that "Racial Stacking" is going on.

Over the years, the Cal High Court accepted the Trial Court's denying an Attorney trying to remove a race from the Jury Panel.

Here, Defendant WILLIS, a black man serving a life sentence under the Three Strikes Rule, was convicted and Appealed. The Cal Ap threw out the Conviction when the Judge followed the "stacking" protocol.

Held: Overturned. "The Jury Selection does not have to begin anew once the Judge believes that either side is trying to "Racially Stack" the panel.

7-0 Decision by CHIN.

People v WILLIS, _____ C4 _____,
4-4-2002

EMPLOYMENT LAW: DISABLED WORKER CANNOT BE PROMOTED OVER ANOTHER WITH SENIORITY: US SUPREME COURT:

Facts: One BARNETT, an airline worker with a bad back wanted a mail-room job given to another with seniority. He sued the airline under the Americans With Disability Act (ADA). The case went up to the High Court.

Held: The Seniority wins. Employers do not have to accommodate the disabled worker.

5-4 Decision by BREYER. There was an unusual alliance of Justices with SCALIA, THOMAS Dissenting with liberals GINSBERG and SOUTER joining in the Dissent

BARNETT v US AIRWAYS, _____ US _____, 4-27-2002.

FAMILY LAW: LESBIAN COUPLE HAS A CHILD BY IN VITRO FERTILIZATION: CAN CHILD SUPPORT BE ORDERED IF A SPLITUP OF A COUPLE?

Facts: All parties had "pseudonyms". KAREN and CAROL were lesbian couple in Delaware which does not recognize such unions.

They wanted a child. KAREN went through the In Vitro Fertilization process and gave birth to a Son, DAVID. Both women paid for the process.

Then they split-up. Both went to Court. KAREN sought Child Support. CAROL sought Visitation Rights.

Held: Both get what they sought even through Delaware does not recognize same-sex arrangements!

In re DAVID CHAMBERS and

In re KAREN and CAROL CHAMBERS, Delaware Family Law Court. News Item.

Continued on page 5

BRIEFS BY BLOODGOOD

Continued from page 4

Comment: Why is this little case in our Bulletin? Because this is a new area of the Law. California, Pennsylvania and Washington are also wrestling with this novel issue.

MAXIMS OF JURISPRUDENCE:

Here are a few more of the great, useful Maxims of Jurisprudence in Cal Civil Code. You have seen several others in earlier editions. Don't forget to use 'em in your Pleadings and Motions and Jury Instructions. Be sure to read the Annotations to win.

CCC 3521. BENEFIT AND BURDEN.

He who takes the benefit must bear the burden.

CCC 3522. ESSENTIALS TO USE OF THING GRANTED.

One who grants a thing is presumed to grant also whatever is essential to its use.

CCC 3523. REMEDY FOR WRONG.

For every wrong there is a remedy.

CCC 3524. EQUALLY IN RIGHT OR IN WRONG.

Between those who are equally in the right, or equally in the wrong, the law does not interpose.

CCC 3525. PREFERENCE OF EARLIEST RIGHT.

Between rights otherwise equal, the earliest is preferred.

EDITOR'S NOTE: Telephone comments to GENE BLOODGOOD at (310) 316-1501.



President's Message

Continued from page 1

We would like to continue with our *Mystery Photo* game, however we do need your help. Please submit your baby pictures to the SBBA, 3465 Torrance Blvd., Ste. C, Torrance, 90503.

Don't forget to mark the following dates on your calendar:

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Family Law Luncheon – Monday, June 17, 2002 at the Torrance Marriott. Hon. Aviva Bobb, Supervising Judge, Family Law Departments of the Los Angeles Superior Court will be our guest speaker. Topic: "What's Happening In Family Law, Downtown, As Well As The Branch Courts." 1 hour Law Practice Management Credit.

Until next time...

Susan E. Hargrove



"Once again – can you identify this distinguished attorney?"

No one came up with the correct answer for this lovely little lady last month, so I'll give you a hint. She is a commanding individual and "W" has nothing on her.

If you think you can identify her now (and you should) – call Melissa at SBBA, (310) 543-9773, with your answer (or guess). If you are the first caller and you are correct, you will be "officially" recognized as the smart person that you are in the next Barristers Bulletin.

If you have a "Mystery Photo" you would like to submit – please send it to **Jim Hallett or to Melissa at SBBA.**

Mystery Photo

