Spring 2008

The LITIGATOR

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We practice law in exciting, yet challenging times

By: Jill P. Telfer, CCTLA President

On the world front, we have seen more than 80,000 Pakistani lawyers fighting for an independent judiciary after the country's President suspended the nation's constitution and arrested seven supreme court justices. The attorneys engaged in public protests, resulting in thousands being detained, including Aitzaz Ahsan, the president of the Supreme Court Bar Association. He remains under house arrest.

Our own country is witnessing change, with a new-found optimism in tough economic times. In the face of foreclosures, lay-offs and out-sourcing, the Presidential election has brought hope to many, with the race between a politically savvy female and an inspiring African American on one side and a decorated war hero, waiting to find out who will be his opponent, on the other side. Each of these candidates, at least at one time in the not so distant past, was considered to be an underdog.

At home here in Sacramento, CCTLA in the past has fought to retain an independent judiciary with the past recall effort against one of our prominent judges. We continue to fight to maintain our clients' access to the courts and to a jury. We have faced draconian changes in the Worker's Compensation laws, protracted delays of getting cases to trial, and rising court costs.

Given the vast resources of insurance companies and corporate defendants, we, too, are the underdog. But we share a strong sense of optimism because of our public purpose in representing the individual, and our solidarity as plaintiff trial lawyer.

I am honored to be your president this year. As a sole practioner, I recognize that CCTLA must continue to offer support and resources to our members through educational programs, the list-serve, the deposition and brief bank, and social programs that bring us in touch with those in our community. Here is a brief summary of what we will offer this coming year.

EDUCATION

The quality educational programs offered by CCTLA in the past will continue this year, with Past President John Demas directing this effort. "Practicing Under the California State Bar's New Guidelines for Civility and Professionalism" will be the subject of our luncheon seminar of March 21, with the Honorable Judge Loren McMaster and Allan Owen speaking. Luncheon seminars are offered each month, with CCTLA Treasurer Wendy York chairing this program.

The Tahoe Annual Seminar will be held on Friday and Saturday, March 28-29, at Harvey's South Lake Tahoe with a variety of topics, including a unique and interactive program, "How to Build Rapport with Jurors, Witnesses and Judges," taught by John Zelbst and Joseph Low. Both are faculty members of Gerry Spence's Trial Lawyer's College—considered one of the most prestigious and selective trial advocacy colleges in America. The class will be unforgettable—designed to shake you out of your comfort zone and learn by full participation. You'll walk away with new tools in your arsenal of weapons to beat your opponent at your next trial.

Other topics will include Liens, Quick Hits (fascinating speciality areas of law,

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Allan's CORNER

By: Allan J. Owen

Here are some recent cases culled from the Daily Journal before I left for Hawaii. Please remember that these cases are summarized before the official reports are published and may be reconsidered or de-certified for publication, so be sure to check for official citations before using them as authority. My apologies if some of these were in earlier columns; I didn't have them available on the beach:

Paying Doctor Outside of Workers' Comp

In Perrillo v. Presley, 2007 DJDAR 18063, plaintiff had a Workers' Comp case and a third-party case. Employee's attorney retained a psychologist who billed through Workers' Comp. Comp paid part, but not all, of his bill. Psychologist tried to get remainder of bill covered through third-party case; attorney refused. Doctor yanked his bills from the Workers' Comp system and sued the attorney. Doctor won a jury trial and Court of Appeal reverses finding that because the psychologist's work was compensable through the comp system, he had no right to payment in the civil suit. The case does say that a physician could recover in a Workers' Comp case and a related civil suit for services rendered separately in the two forums, such as medical reports.

Admissibility of Settlement Negotiations

In Zhou v. Unisource Worldwide, Inc., 2007 DJDAR 18500, plaintiff was involved in an accident in 2003. He was involved in a later accident in 2004. He sent letters to the insurance carrier on the second accident itemizing his injuries and demanding settlement. At trial in the first accident, trial court excluded these letters on the basis that they were settlement negotiations and privileged under Evidence Code 1152. Appellate court found that they were settlement negotiations; however, they should have been admissible because they were not written as part of the claim at trial. In other words, the Evidence Code section only precludes admission of settlement negotiations of the claim involved in the trial at hand. The appellate court affirmed the judgment, however, finding that the exclusion of the evidence was harmless.

Expert Witness Exchange

In Hirano v. Hirano, 2007 DJDAR 18636, case was first called for trial March 10, 2003. Plaintiff's motion to continue because plaintiff was in the hospital was denied and action was dismissed for failure to prosecute. Appellate court reversed on procedural grounds and following remand, a new trial date of September 12, 2005 was set. Case actually called for trial Jan. 9, 2006, and trial court granted defendant's motion to preclude expert testimony because there was no compliance with the demand for exchange of expert witnesses with respect to the trial date in 2003. Appellate court reverses grant of non-suit because discovery was re-opened and a new "initial trial date" is set when the prior judgment was reversed. The appellate court notes that it is "now well settled that discovery automatically re-opens following a mistrial, order granting new trial or reversal on appeal." Fairmont Insurance Company v. Superior Court, (2000) 22 Cal 4th 245.

Time Within Which to File Amended Complaint

In Pagarigan v. AEtna US Healthcare of California, Inc., 2007 DJDAR 18666, trial court sustained demurrers without leave to amend. Different dates of orders on different defendants. Oct. 25, 2005, Court of Appeal reversed as to some defendants with instructions that demurrers should have been sustained with leave to amend as to certain causes of action. Notice of remittitur sent Feb.

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Trial Lawyers For Public Justice Update

Title IX Retaliation & Defmation Case Filed Against Florida Gulf Coast University

By: Sarah Dean, Public Justice Correspondent

Public Justice has filed a federal lawsuit against Florida Gulf Coast University, charging that the school is retaliating against and defaming an accomplished athletic coach because she expressed concern that FGCU is violating a federal law designed to ensure gender equity in education.

Four days after the lawsuit was filed, FGCU fired Coach Jaye Flood, the most successful coach in FGCU history and this year's Atlantic Sun Conference "Coach of the Year."

The lawsuit stands on Title IX—the same law that Flood said the university is flouting—and notes "a continuing series of retaliatory acts" against Flood.

The complaint charges that, after Flood spoke up for gender equity in FGCU's athletic department, the university gave her a low job-performance rating for the first time in her tenure, placed her on probation and administrative leave, denied her a salary raise and bonus, and announced her contract will not be renewed when it expires this summer. The school also "made defamatory statements intended to damage her professional reputation," the suit says.

"Rather than treat our complaints about the athletic program seriously and respectfully, the university has been picking off female coaches one by one," Flood said. "It's really for everyone that I'm taking this action because this unfairness has to stop."

Public Justice Attorney Adele Kimmel said Title IX of the Civil Rights Act prohibits policies, practices and programs at federally funded educational institutions that discriminate on the basis of gender.

"FGCU has responded to complaints that it is violating Title IX by taking retaliatory actions that further violate Title IX," said Kimmel. "Coach Flood should be lauded for advocating gender equity in FGCU's athletic program, not pilloried."

The complaint, filed in the Fort Myers Division of U.S. District Court, notes that the university is conducting a series of investigations aimed at Flood, but has not fully informed the coach about either the underlying basis for the probes or the findings.

Flood took the FGCU volleyball program from a fledging in the NCAA's Division II to a Division I tournament contender. In raising concerns about Title IX compliance at the school, she had pointed out disparities between men and women's athletic programs in marketing, donations, facilities and staffing.

"University officials have spent their energies working to discredit and damage a highly successful and dedicated coach who cares deeply that all of the school's athletes and coaches have an equal opportunity to succeed," said Public Justice lead counsel Linda Correia, a partner of Webster, Fredrickson, Henrichsen, Correia & Puth, P.L.L.C. in Washington, D.C. "Coach Flood is filing this lawsuit to ensure that the promise of Title IX becomes a reality for everyone at FGCU."

Public Justice has successfully prosecuted more Title IX litigation against universities and colleges than any law firm in the country, including landmark suits against Brown University and Temple University. In November 2005, its threat of a Title IX suit prompted Florida A & M University to reinstate its women's swimming and diving teams.

At its 25th Anniversary Celebration last fall in Washington, DC, Billie Jean King, a pioneer in women's sports, lauded Public Justice for its extraordinary work and accomplishments advancing equal rights.

To learn more about Public Justice or to join the Public Justice Foundation, go to www.publicjustice.net.

CONSUMER ATTORNEYS OF CALIFORNIA

CALIFORNIA COLLEGE OF TRIAL ARTS

AND THE

CAPITOL CITY TRIAL LAWYERS ASSOCIATION

PRESENT

ANNUAL *Tahoe Ski Seminar*

Harveys Lake Tahoe Casino Resort

Stateline, Nevada

March 28-29, 2008

EXHIBITORS

THE JAMES STREET GROUP • HIGH IMPACT LITIGATION, INC.
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ROOM RESERVATIONS: Harveys (800) 455-4770
Booking Code: S03CAOC • Rate: Thursday $129 / Friday and Saturday $179
Cut-Off: March 13, 2008 or until the block is sold out

PROGRAM

FRIDAY AFTERNOON
Track 1: **Liens: Stop Getting Stiffed**
Track 2: **Quick Hits: What You Need To Stay Current From A to Z**

WELCOME RECEPTION
Sponsors: **The James Street Group, Capitol City Trial Lawyers Association, Don Galine, Harveys**

SATURDAY MORNING
Track 1: **How To Build And Maintain A Rapport With Jurors, Witnesses, And Judges**
Track 2: **Substantive Law and Motion Battles**

KEYNOTE LUNCH SPEAKER: R. REX PARRIS
Juror Bias: 12 Angry Men

SATURDAY AFTERNOON
Track 1: **How To Build And Maintain A Rapport With Jurors, Witnesses, And Judges**
Track 2: **Getting The Recovery Your Client Deserves**

CAOC reserves the right to substitute speakers and/or topics.

SKI WITH THE STARS!

Ski Director Stuart Chandler will coordinate a meeting time and place on THURSDAY and/or FRIDAY for those who would like to meet up on the hill. Call Stuart at (559) 431-7770 or email stuart@chandlerlaw.com

COMMITTEE

Chair: Donald L. Galine / **Co-Chair:** Jill Telfer
Committee: David M. Arbogast, Robin E. Brewer, Stuart R. Chandler, John N. Demas, Christopher L. Kreeger, Lisa L. Maki, Jill P. McDonell, Cynthia McGuinn, Daniel Rodriguez, Wendy York, Michael M. Reyna, Lori Sarracino, Wendy Murphy, Laurie Klimchock

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❒ CAOC has permission to communicate with me by fax and email.

❷ **TAHOE SEMINAR PRE-REGISTRATION FEES:** Deadline to pre-register is March 21. AFTER MARCH 21, ADD $25 TO THE BELOW FEES. Registration includes CD-ROM syllabus and MCLE Certificate of Attendance.

❒ $255 CAOC Member
❒ $150 CAOC Law Office Support Member
❒ $355 Attorney Non Member

❸ **METHOD OF PAYMENT:**

❒ Check enclosed. Check #_____
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REFUND POLICY: *Refunds will be honored only if a written request is submitted to CAOC at least seven days prior to the date of the seminar and will be subject to a $50 service charge. Registration substitutions may be made only when the substituting party holds the same membership category as the original registrant. MEMBERSHIP IS NON-REFUNDABLE.*

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PLEASE REGISTER ONLINE AT WWW.CAOC.COM/08TAHOE

"Pillah" Talk©

with Stewart Katz

An ongoing series of interview with pillars in the legal community
By: Joe Marman

STEWART KATZ

Stewart Katz has a practice of primarily defending criminal defendants and pursuing cases of civil rights violations for law enforcement violations of arrestees and inmates civil rights under 42 USC § 1983.

Q. How did you get started in your pursuit of civil rights cases?

A. During law school at McGeorge, I promoted punk rock concerts, and we had many problems with the Sacramento Police Department and the Sacramento city manager. I had difficulty getting concert permits, and my customers at the concerts were arrested and harassed. The city and the police were telling people that I was a PLO terrorist. I pursued my own case during law school against the Sacramento police and the city manager. Later, when I became an attorney, I defended my customers' resisting arrest charges at the concerts, I won the criminal cases, and then I pursued the civil rights cases.

Q. Did you win those first cases?

A. Let's say that the lawsuits served their purpose.

Q. Why did you choose your own specialty of law, and are you satisfied with what you are doing now?

A. I do enjoy it. It is not very remunerative, but it is rewarding. I get good results, but looking at the time and effort, I think I could do better doing other types of law. I am motivated by morals and principles, where no one else would pick up these cases.

Q. What do you like and do not like in your chosen profession?

A. It is always an uphill battle except for in San Francisco, or Los Angeles. Judges are often pro law enforcement.

Q. Do you ever get tired of the huge obstacles in taking these cases, such as unlikable clients, former prosecutors as judges and law and order juries?

A. Sometimes I do. The government has deep pockets to defend these cases. They will pay 10 times in defense costs what they could settle these cases for. Juries are better in state courts than in federal courts, since they are more local. Judges are often unfamiliar with the nuances of civil rights laws. Before, in federal courts, you could get a trial within two years, now the federal courts are backed up for six years. The government's motivation is frequently not to settle too quickly. They want to wear down the civil rights attorney. Frequently, they make these cases cost prohibitive. In federal court, often we only get one-half hour for voir dire. Every case has a Summary Judgment Motion to respond to. I practice 80-90% in federal court, and I am just starting to experiment in State courts.

Q. How frequently are you able to get the law enforce-

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17, 2006. On Apr. 6, 2006, that defendant brought an ex parte motion to dismiss the case because the complaint was not amended within 30 days of the remittitur. Plaintiffs moved to stay the case because the case was on appeal as to other defendants. After dismissal, plaintiff moved to set aside dismissal under §473. Trial court denied that motion and appellate court affirms finding that CCP §472(b) is clear. Plaintiff argued that because the court ordered the trial court to sustain the demurrer with leave to amend, there was no duty to amend until the trial court acted and the appellate court blew that arguement off. As to the §473 motion, they find that the plaintiff's actions were not reasonable and found that it couldn't be an attorney fault mandatory reversal because there was no mistake but instead it was intentional conduct by the attorney.

Health Insurance

In Haley v. California Physicians Service, 2007 DJDAR 18941, Shield rescinded plaintiff's health insurance policy for misrepresentations in the application process after plaintiff had both a gastric bypass and was hospitalized for an auto accident - both happened within a couple of months of the issue date but the rescission was six months after issue date of the policy. Plaintiff sued, trial court grants summary judgment to Blue Shield. Appellate court reversed finding that Health & Safety Code §1389 requires that for a carrier to rescind a health insurance contract for a material misrepresentation or omission in the application, the plan must demonstrate that the misrepresentation or omission was willful and that the carrier made reasonable efforts to ensure the subscriber's application was accurate and complete as part of the pre-contract underwriting process.

Default Judgment Binding On Insurance Carrier

In Belz v. Clarendon America Insurance Company, (2008 DJDAR) plaintiff sued contractor alleging defects in construction. Contractor failed to notify his insurance carrier. Default was entered. Insurer later learned of the lawsuit and moved to set aside default which was unsuccessful. Default judgment was entered. Homeowner then brought suit against the insurer on the judgment. Insurer contended that a default judgment was not covered by the insurance policy where there was no notice of the suit, and here the insured failed to give notice in time for the insurer to protect its interests. Insurer was granted summary judgment over plaintiff's objections that the insurer needs to show prejudice before enforcing the notice and cooperation clauses. Court of Appeal reverses finding that where a default judgment results from a lack of notice by the insured to the insurer, the insurer must show actual and substantial prejudice and that the mere inability to investigate the claim thoroughly or to present a defense does not satisfy the prejudice requirement.

Summary Judgment - Evidence

In Decola v. White Bros. Performance Products, Inc., (2008 DJDAR) plaintiff's decedent was killed and plaintiff injured while riding the decedent's self-built motorcycle. Plaintiff sued parts manufacturers, alleging that as decedent rounded a turn, the lowered side stand on the motorcycle came in contact with the ground and did not automatically retract, causing a loss of control and the crash. Defendants White and Tolimar were brought in as Does, and each moved for summary judgment alleging that the side stand was not its product, that they did not design, assemble, fabricate, test, inspect, manufacture, distribute, wholesale, ship or retail the subject side stand and thus owed no duty and were not in privity with plaintiff.

Defendants submitted declarations from their sales manager, their president, their material science expert and an outside expert showing that White manufactured exhaust systems only. Tolimar's president declared he examined the subject side stand and that the subject side stand was not manufactured by Tolimar. The expert said he did electron microscopic scanning, etc., and there were significant differences between the subject side stand and exemplar side stands manufactured by Tolimar.

Plaintiffs put their own expert declarations in showing that the differences between the subject stand and the exemplar stands were minor variations and were manufacturing variations and that he felt the similarities demonstrated the parts were consistent with parts made by the same manufacturer. The court tentatively denied the motions, but at oral argument, defense counsel pointed out that the similarities were between the subject and one exemplar which had not been proven to be a Tolimar side stand.

Plaintiff's counsel stated that the exemplar was originally produced by Custom Chrome and was represented to him as a White Bros. product; however, since these facts were not included in the opposition papers, the court reversed itself, but gave plaintiff's counsel an opportunity to substantiate the relationship of Example B to the subject side stand (prove it was a Tolimar stand).

Plaintiffs then filed new opposition, including a declaration from their attorney which averred that she met with Custom Chrome's attorney and a Custom Chrome representative and at that time, the attorney represented that the subject side stand was not one of theirs but was a part manufactured and delivered by White, and that this information was repeated in a letter.

The declaration went on to state that Custom Chrome's attorney then informed plaintiff's counsel that they had an exemplar of a White Bros. side stand that was identical to the subject side stand and that was provided. It was taken to plaintiff's counsel's office in an unopened vacuum sealed package labeled "Burley Brands" and it had an instruction sheet for mounting which stated that it was a White Bros. product, part number 12-1200X and that White then identified Tolimar as the sole manufacturer of this stand.

Court granted the motions, ruling that the attorney's declaration did not adequately prove the chain of custody establishing that Example B was from the defendants and that it contained hearsay statements. Appellate court affirmed finding that the defendants met their burden and that plaintiff's experts did not testify as to the example's origins and that plaintiff's opposing evidence was insufficient. Basically, the court held that the product package and the enclosed instruction sheet was inadmissible hearsay. Tough case.

Submit a Good Brief — An Arbitrator's View

By: John V. Airola

JOHN AIROLA

I have been on the Arbitration Panel here in Sacramento County for a number of years, and I do from three to six arbitrations per month. I am writing this article because I am often shocked at the substandard work done by plaintiffs' attorneys.

The following sets forth some standard rules to follow to ensure that you are: (1) Properly representing your client; (2) not appearing to be incompetent to the opposing counsel and the insurance adjustor, thereby injuring your reputation in the legal community; and (3) not irritating the arbitrator by presenting sloppy and disorganized work.

Know the rules for basic pleading format.

When the arbitrator sees the title page of your brief, it should look neat and abide by the guidelines set forth in California Rules of Court, rule 2.100, et seq. Also, make sure that you don't handwrite information on the front page like the date, time and arbitrator. Overall, your pleading should look professional and clean.

Make sure *your brief* is used as the arbitrator's guideline to the evidence.

If your brief is sloppy and does not contain the proper substantive information, the arbitrator will use the defense attorney's brief as the guide. If this happens the plaintiff's lawyer has already lost professional credibility. Your brief should, at least, set forth: The facts of the accident; liability; injuries and medical treatment; residual problems / complaints; medical bills; wage loss; other damages; and a conclusion. Further, each section should contain a full and complete description. In other words, in the "injuries" section, **do not** simply say, "please see medical records attached as Exhibit B." Rather, you should always summarize your client's injuries. Under the "medical bills" section, **do not** write, "Please see all medical billings attached as Exhibit "C." List and calculate all special damages. If you make the arbitrator do these things for you, he or she will be extremely irritated and will conclude that you were too lazy to put the information together. In addition, you are seriously hurting your client's chances in arbitration and your reputation in the legal community.

Attach all medical bills and wage loss documentation to your brief.

Even though most arbitrators (me included) are quite lenient regarding evidentiary rules, they may be annoyed when the plaintiff's attorney does not submit documentary evidence of medical bills, wage loss and other special damages (if available). Remember that the plaintiff bears the burden of proof. Therefore, attach the documents which prove the plaintiff's case. In addition, defense attorneys sometimes create issues concerning special damage totals. Be prepared and have the documents attached.

Attach documents which makes sense.

For example, if you attach discovery responses to your brief, make sure you attach the questions as well. This is, of course, particularly important when submitting the responses to requests for admission or special interrogatories. Without the questions, the answers are useless.

Do not include a long, legal analysis on an undisputed issue.

Occasionally I will review a plaintiff's arbitration brief that is eight pages long (or more) in a case where liability is undisputed by the defense. In the "liability" section, I will see that there are two pages of legal authority and analysis on negligence and causation. Do not waste your time putting this information in your brief. The arbitrator does not read it, and it makes you look like you don't know what you are doing. In most small and medium-sized plaintiffs' cases, you can prepare a brief that is six pages, or less, and contains all of the necessary information. Be clear and concise. The arbitrator will appreciate it.

Do not attach your entire file to the brief.

Some plaintiff's attorneys ascribe to the school of thought that "More is more." It isn't! Only attach what you need to prove your client's case. It is your job to "separate the wheat from the chaff," not the arbitrator's.

Bad paperwork is the one, sure way to devaluate your cases and kill your reputation.

When you arbitrate a case, at least three other people are seeing your work: (1) The arbitrator; (2) opposing counsel; and (3) the adjustor. If your paperwork looks like you are lazy, inexperienced or simply a bad practitioner, you will not get top dollar for that case. Over time, your entire reputation in the legal and insurance communities will be affected, at which time you will not get top dollar for **any** of your cases.

In addition to your arbitration brief, you may prepare a number of other documents which present the opportunity for you to show the defense, and the adjustor, that you prepared, competent and one step ahead of them.

These other documents normally are: The demand, discovery responses, the mediation brief and the settlement conference statement. Take these opportunities to show that you are an excellent practitioner. Remember, your paperwork "advertises your preparation and competence." If your paperwork is bad, your reputation will follow.

Pillah Talk

Continued from page 5

they make these cases cost prohibitive. In federal court, often we only get one-half hour for voir dire. Every case has a Summary Judgment Motion to respond to. I practice 80-90% in federal court, and I am just starting to experiment in State courts.

Q. How frequently are you able to get the law enforcement or the government to pay your fees under 42 USC § 1985?

A. Very rarely.

Q. Do you have any memorable cases that you recall?

A. I had the Bin Han case, where my client was a research scientist at UC Davis and was accused of stealing stem cells. After I obtained an acquittal, the crowd chanted, "Shame on you" to the prosecutor as he was leaving the courtroom. The Alison Doubleday case in front of Judge Karlton was a joy because Judge Karlton is very open-minded. The Blanford v. Sacramento case was a gut-wrenching loss. 13 shots were fired by police at a kid holding a sword in his front yard. I lost on a Summary Judgment Motion. It was a terrible result, and it still hurts.

Q. Do you think handling civil rights cases has changed recently?

A. TV has made juries more sophisticated. This makes it harder on the defense, when the juries expect a multi media presentation.

Q. How can we repair the poor health care and treatment of prisoners?

A. It is a very messed up system, with lousy work conditions for the prison guards. Who would want to work there?

Q. Do you think there should be different penalties for law enforcement misconduct such as sanctions against the overzealous officers, rather than suppression of evidence, or changes in the laws on legal processing?

A. That has always been a good philosophical question. The Prison Litigation Reform Act has made it more difficult for lawyers such as myself, by reducing attorneys fees and reducing the number of theories that can be utilized.

Q. Do you have any thoughts on changes in the legal systems in the last 10 years, such as the suppression of constitutional rights in Guantanamo, or torture of prisoners?

A. It appears that people in power tend to think the laws are there to perpetuate their own agendas. It has been going on since Nixon and Mitchell.

Q. What do you think of Alberto Gonzalez firing the federal prosecutors or his refusal to acknowledge that water boarding is torture?

A. That was ridiculous. To deny that water boarding is torture is an example of twisted logic. These people are without a well-calibrated moral compass.

Q. What do you think of the US Supreme Court taking the vote out of the Florida people and putting Bush in power?

A. It proves that the government and the US Supreme Court have a political agenda.

Q. I understand that you were the appellant's attorney in the case that just came down from the California Supreme Court in Ross v. Raging Wire, where the employee had traces of marijuana in his urine, and despite any evidence of work impairment, the Supreme Court ruled that an employer has the right to terminate an employee for that reason alone. How do you feel about that?

A. Despite Proposition 215 passed by the California voters and the subsequent clean

up legislation that offered protection to workers, it is a terrible decision. It is absurd to find that an employer can fire an employee without any evidence the marijuana having any job interference.

Q. What do you like to do in your spare time?

A. I love to ride on my Eddy Merckx single-gear brakeless road race bike on the American Bike Trail. If I am not at my job, you can probably find me on the bike trail.

CCTLA members made a donation to the Sacramento Mustard Seed School, affiliated with Loaves & Fishes. This free, private school provides a safe, nurturing and structured learning environment for homeless children. From left, CTLA President Jill Telfer, Mustard Seed Co-Director Janet Green and Executive Director Debbie Keller.

President's Message

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including sports law, and Title IX litigation) and "Substantive Law and Motion Battles.". The seminar is always well-attended, so get your reservations early.

The fourth annual California Regional Trial Lawyers Conference will be at the Meritage Resort in Napa, June 13-15. David Ball will be teach how to litigate in the age of tort reform, and CCTLA board members and past presidents will be speaking on Litigating Motor Vehicle Collusion cases. Employment litigation programs will be offered.

CCTLA's Problem Solving Clinic will be offered the last Thursday of the month, from 5:30-7:30 p.m. at the Sacramento Courthouse. CCTLA President-elect David Lee is the chair of the program. The clinics provide practical tips on improving your law practice.

The second Tuesday of each month, CCTLA Past President Jack Vetter presides over the Q&A Luncheon at Vallejo's: brainstorming and assistance for particular cases via roundtable discussion.

DEPOSITION AND BRIEF BANK

We have begun a deposition and brief bank so our members can share resources. The website is being finalized so the bank will be user-friendly. Please forward briefs, pleadings, discovery and other case materials to me or chair Jonathan Stein so that we can upload them to the brief bank.

COMMUNITY EVENTS

I know many within our ranks do humanitarian acts every day that appear to be unrecognized. But with each act of kindness, you give credibility to our profession. CCTLA recognizes we have the opportunity to represent the individual against the powerful, no matter our motivation. As a consequence, we make powerful enemies who have great resources. These powerful enemies want to villanize attorneys to drive a wedge between our clients and us. These efforts will have less success as we become better people. Giving back to the Sacramento community is one of our primary goals this year.

The annual Silent Auction and Reception to benefit the Sacramento Food Bank will be held May 22, from 5:30-7:30 p.m. The food bank is dedicated to assisting those in need by alleviating immediate pain and problems and moving these individuals towards self-sufficiency and financial independence.

The Mort Friedman Humanitarian Award 2008 Recipient will be announced at that event. This award is given to a CCTLA member in recognition of his/her heart, soul, and passion as a trial lawyer in service to the community. Last year's recipient was Allan Owen.

This spring, we again will be collecting "law suits" and other business attire from our members to donate to those in need who are attempting to find employment. In the fall, the Mustard Seed Helmet and Bike Benefit will take place, benefiting underprivileged children. Last year's event was extremely enjoyable and inspiring. We have other charitable events tentatively planned.

In the words of Robert Kennedy:

"Each time a man stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends forth a tiny ripple of hope, and crossing each other from a million different centers of energy and daring, those ripples build a current that can sweep down the mightiest wall of oppression and resistance."

We, as trial lawyers, are given the opportunity to send out ripples of hope. Please share with us your thoughts on how CCTLA can better serve the community—and please participate in our charitable events.

We welcome the Honorable James M. Mize as the new Sacramento Superior Court presiding judge. Judge Mize has brought a new sense of optimism to Sacramento County lawyers in evaluating creative measures to assist in getting civil cases to trial in a timely fashion. We also welcome new CCTLA board members John O'Brien, Jonathan Stein and Travis Black.

CCTLA welcomes each one of you to participate in our committees and programs. Together, we can improve the lot of those in our community—which will help us to become better trial lawyers.

RECENT VERDICTS

CCTLA member Mike Jansen received a unanimous verdict in Yolo County in Gingras v Patel, a MIST (scratch on rear bumper) case. The award of $9,655 includes $3,000 for past pain and suffering, $6,655 for chiropractic treatment. Plaintiff, a 22-year-old college student, had to drop out two quarters as a result of her injuries. Defense used accident deconstructionist Neuman and Biomechanist Sean Shimada, who opined the impact met the threshold for slight muscle injury, but not threshold for ligament or brain injury.

Allstate's CCP 998 offer was $1,500, so verdict is approximately 6 1/2 times the offer.

Past CCTLA President John Demas tried the motor vehicle collision case of Sweeny v. Do in Sacramento Superior Court in front of the Honorable Steven H. Rodda, and received a $41,500 jury award. In this rear-end collision, the property damage was less than $1,500, medical specials approximately $5,500, which included Kaiser and some massage therapy outside of Kaiser, and wage loss was $6,800. The plaintiff suffered soft tissue injury to neck and back and recovered fully within a year and a half after the collision, so no residual injury.

The case is noteworthy for several reasons. It was tried efficiently with the treating doctor's testimony on videotape. Liability was not contested in that plaintiff served requests for admissions as to causation, reasonable and necessary treatment, etc. The responses were not verified, and thus, were deemed admitted after motion. Due to the admissions, defense counsel was unable to dispute the necessity or cost of medical treatment and massage therapy. At trial, the big fight was over the claimed wage loss.

Plaintiff's counsel asked the jury for approximately $55,000, and defense counsel David Johansing asked for $5,000. After adding in costs, Allstate had to pay approximately $44,500.

Holiday Reception draws friends and family

CCTLA's Annual Meeting and Holiday Reception was held Dec. 13 at Sofia's Restaurant, with 122 members in attendance, including 11 members of the judiciary.Those honored were:

Judge of the Year
Associate Justice Tani Cantil Sakauye

Clerk of the Year
Susan Carey

Advocate of the Year
C. Brooks Cutter

Above, Advocate of the Year C. Brooks Cutter and family.
Below, Bill Kershaw and C. Brooks Cutter

Above, 2007 CCTLA President John Demas congratulates Susan Carey, honored as Clerk of the Year.

CCTLA Executive Director Debbie Keller, Senator Deborah Ortiz, Glenn Ehlers, Robin Brewer and Jim Frayne.

2008 CCTLA President Jill Telfer and 2007 President John Demas

Above left, Honorable Judge James Mize; above right, Honorable Judge Ronald Robie and Mike Jones.

Above, Clayeo Arnold, Dan Wilcoxen and Allan Owen

Honorable Michael Virga, Kyle Tambornini and Rick Crow.

Right, Honorable Brian Van Camp, Denisa Palilonis and John Poswall.

Left, Associate Justice Tami Cantil Sakauye with her Judge of the Year plaque.

CAOC continues to pursue political reform

Consumer Attorneys of California (CAOC) is your first line of defense in Sacramento and at the ballot box.

California voters rejected Proposition 93, which would have provided sought-after job stability for California legislators. Predictably, dozens of legislators are now jockeying for new leadership positions in the Legislature, and we are seeing a mad rush to fill future vacancies in the Senate and Assembly. This is truly an insider's game.

A swift resolution of a potential leadership battle occurred in the Senate when the Democratic caucus voted to retain Senate pro Tem Don Perata (D-Oakland) as leader through the end of his term. At the same time, the caucus acted quickly to ensure stable leadership by designating Sen. Darrell Steinberg (D-Sacramento) as pro Tem-elect. Steinberg is the well-known former chair of the Assembly Judiciary Committee who repeatedly showed a strong desire to protect the rights of consumers, small businesses, and the injured.

Across the hall, the Assembly was the site of high drama as a dozen legislators campaigned to fill the post currently held by Speaker Fabian N ez (D-Los Angeles). With no immediate clear choice as N ez' successor, the Assembly Democratic caucus voted to keep N ez at the helm through the balance of his term while setting a date of March 11 to select his successor. Much like the seemingly sudden ascension of Steinberg in the Senate, Assembly Member Karen Bass (D-Baldwin Hills) emerged in the late evening on Feb. 27, with enough support in her caucus to secure the election. Bass was confirmed as the next Speaker of the Assembly with a full vote on the floor on Feb. 28.

California now rests in strong capable hands with the new leadership of Steinberg and Bass. Speaker N ez and pro Tem Perata are to be commended for their years of service and foresight and ensuring an orderly transition of leadership.

The internal political dynamic of the failure of Proposition 93 is playing out against the backdrop of a state in severe financial straits. In response to severe deficit projections, the Legislature acted quickly to implement cuts, and the governor imposed a freeze in state spending as interim measures to stop the fiscal bleeding. With painful cuts on the horizon, any legislative goals will be scrutinized for potential impact on state finances.

Meanwhile, the legislative chaos has not slowed the business community from introducing legislation in Sacramento aimed at denying the rights of the injured and cheated.

Several high profile bills have been introduced that are designed to hurt plaintiffs' lawyers and in turn, limit rights. Each

is sponsored by the Civil Justice Association of California (CJAC), the tort reform group behind last year's unsuccessful class action initiative.

- SB 1202 by Sen. Tom Harman (R-Huntington Beach) would allow judges to withhold part of the plaintiff's attorney's fees in class action lawsuits until all class members have been contacted and have received their portion of the settlement.
- AB 1905 by Assembly Member Anthony Adams (R-Hesperia) would permit a defendant to appeal a class action certification order.
- AB 1891 by Assembly Member Roger Niello (R-Fair Oaks) would amend Code of Civil Procedure section 128.5 sanctions.

At the same time, countless bills have been introduced that mount a more subtle attack on the civil justice system. AB 644 by Assembly Member Mervyn Dymally (D-Compton), was amended in January to radically revise arbitration awards. Another, SB 229 by Senator Bob Margett (R-Glendora), would have potentially reduced insurance required to be carried by heavy equipment operators.

We are working with the City of Beverly Hills to address video surveillance storage problems that will not result in the destruction of important evidence. Finally, we are weighing in on potential encroachments on employee protections in important wage and hour laws.

Often, we can head off legislation before it is even introduced. The Beverly Hills Bar Association was considering legislation that would have required parties to pay mediator costs, even in situations where the parties did not voluntarily agree to mediation. After CAOC joined the Judicial Council and the Defense Counsel to voice objection, the proposal died.

Other problems on the horizon include a bill sponsored by the California Space Authority which would immunize private commercial space carriers that will transport passengers to the moon. Already, Virgin Galatic has received more than $31 million in passenger deposits from people committed to fly on space vehicles.

As we are working to protect your practice; we are also working to make your lives a little easier. Through our work with the Judicial Council, we are entering the final phases of establishing rules governing the discovery of electronic evidence.

Right now, the absence of clear rules frequently results in the production of little or no electronic discovery. Once approved by the appropriate internal committees, the proposal will be amended into AB 926 (see CAOC sponsored bills) for legislative action.

Also on tap is a working solution to court overcrowding in jurisdictions like Riverside, where it takes more than five years for a civil case to go to trial (see SB 1630 below).

A significant project spearheaded by CAOC President-elect Chris Spagnoli is designed to find an economical and fair way to resolve small civil cases. Consumer attorneys across the state have volunteered to be part of a CAOC task force examining options for pilot projects or through legislation that will allow people with low dollar value injuries to still obtain meaningful redress.

With an early Spring Break this year (March 13 through March 24), the judiciary committees will probably begin conducting hearings upon the legislators return in March and will continue through May 2, the policy committee deadline. We will keep you posted on these and other bills that may impact your practice.

Lobby Day 2008

Mark your calendars now for CAOC's Lobby Day on May 6. Lobby Day is the "must attend" event for CAOC members. You will join lawyers from around the state and the CAOC lobbying team to make your voices heard in Sacramento.

The event is an opportunity to meet with legislators from your area and talk to them about issues that affect you and your clients. By spending a day in the Capitol discussing our most important issues, you remind legislators to fight to protect the legal system.

Lobby Day 2008 will feature guest speakers, a free half credit of MCLE, a legislative briefing, legislative visits, a Consumer Advocacy Tent and an evening reception with legislators.

Tort & Trial seminar syllabus is available

The seminar, "What's New in Tort & Trial: 2007 in Review," was held on Wednesday, Jan. 16, at the Holiday Inn, with 56 in attendance to hear speakers, Craig Needham, Christine Spagnoli and Kevin Lancaster. Special thanks goes to all three speakers who once again provided a very effective overview of a overwhelming volume of information. If you missed this seminar, the Tort & Trial syllabus is available for $100. Contact Debbie Keller at 451-2366 to place your order.

Capitol City Trial Lawyers Association
Post Office Box 541
Sacramento, CA 95812-0541

MARCH

Friday, March 21
CCTLA Luncheon
Topic: Practicing Under the California State Bar's New California Attorney Guidelines of Civility and Professionalism
Speakers: Honorable Loren McMaster and Allan J. Owen, Esq.
Location: Firehouse Restaurant - noon
CCTLA Members - $25
Non-Members - $30
MCLE Credit = 1.5 (ethics)

Thursday, March 27
CCTLA Problem Solving Clinic
Topic: TBA; Speaker: TBA
Location: Sacramento Courthouse, Dept 5
Time: 5:30 to 7 p.m.
CCTLA Members Only - $25.

Friday/Saturday, March 28-29
CAOC & CCTLA Annual Tahoe Ski Seminar
Topics include: Liens, Quick Hits, Substantive Law & Motion Battles; How to Build and Maintain a Rapport with Jurors, Witnesses & Judges; Getting the Recovery Your Client Deserves; and more! Harvey's Lake Tahoe Casino Resort.
For additional information, see page 4
or contact CAOC, 442-6902.

APRIL

Tuesday, April 8
Q&A Luncheon - noon
Vallejo's (1900 4th Street)
CCTLA Members Only.

Thursday, April 24
CCTLA Problem Solving Clinic
Topic: TBA; Speaker: TBA
Location: Sacramento Courthouse, Dept 5
Time: 5:30 to 7 p.m.
CCTLA Members Only - $25.

Friday, April 25
CCTLA Luncheon
Topic: How Attorneys Can Get a Case Primed for a Successful Mediation
Speaker: Nicholas K. Lowe, Esq.
Location: Firehouse Restaurant - noon
CCTLA Members Only - $25.

MAY

Tuesday, May 13
Q&A Luncheon - noon
Vallejo's (1900 4th Street)
CCTLA Members Only.

Thursday, May 22
CCTLA's 6th Annual Spring Reception and Silent Auction
Location: Home of Allan Owen & Linda Whitney
Time: 5:30 to 7:30 p.m.

Thursday, May 29
CCTLA Problem Solving Clinic
Topic: TBA; Speaker: TBA
Location: Sacramento Courthouse, Dept 5
Time: 5:30 to 7 p.m.
CCTLA Members Only - $25.

Friday, May 30
CCTLA Luncheon
Topic: Take 2 Aspirin and Call Me in the Morning: Why Recent Cases Like Henry V. Superior Court & Metcalf V. County of San Joaquin May Not Be As Bad As They Appear
Speakers: Robert Bale, Esq. and Stephen Davids, Esq.
Location: Firehouse Restaurant - noon
CCTLA Members Only - $25.

JUNE,

Friday/Saturday/Sunday, June 13 - 15
4th Annual California Regional TLA Conference
Topics include: David Ball on Damages, Tips from the Masters, Dissecting the Auto Case, Employment and Liens. Meritage Resort.

CCTLA COMPREHENSIVE MENTORING PROGRAM

The CCTLA Board has developed a program to assist new attorneys with their cases. If you would like to receive more information regarding this program or if you have a question with regard to one of your cases, please contact:

Jack Vetter: jvetter@vetterlawoffice.com
Chris Whelan: chwdefamation@aol.com
Cliff Carter: cliff@ccalawcorp.com

Contact Debbie Keller @ CCTLA at (916) 451-2366 for reservations or additional information with regard to any of these events.

CCTLA Calendar of Events