

FOOTHILLS BAR ASSOCIATION

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Law Library Legal Clinic: a Great Success

*Kelly Keach, Reference Librarian
San Diego Law Library, East County Branch*

On Friday, May 6, attorneys from the Foothills Bar Association volunteered their time and expertise at the annual legal clinic in honor of Law Day. The legal clinic was hosted by the East County branch of the San Diego Law Library.

Nearly 30 people were assisted during the event. Attorneys answered questions about topics ranging from business planning to enforcement of judgments and from child custody to federal civil procedure. This year, the Law Library tried a reservation system. It was successful in providing greater organization to the day's events.

As part of the festivities for Law Day, the East County branch of the San Diego Law Library provided refreshments during the clinic and hosted two games. As always, the count-the-candy contest was quite popular. The John Adams quiz honoring the subject of this year's Law Day theme was entered by several people.

The Law Library is the only public law library in San Diego County. Funded entirely by a small portion of court filing fees, the Law Library is invested in connecting the public with our legal community.

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The Law Library would like to express their thanks to the many members of the Foothills Bar Association who volunteered their time: Dan Bacal, Leah Boucek, Ed Brien, Ron Detzer, Nancy Ewin, Bill Fischbeck, William Hannosh, Jennifer Hughes, Kimberly Kirkpatrick, Chuck Schmidt, Kim Staron, Cheryl Stengel, Catherine Tancredi, and especially to Carolyn Brock, a San Diego Law Library Trustee, who volunteered her time and coordinated the volunteer effort. ♦



FBA Writing Contest Winning Entry:

Beating the RAP

By Keith A. Jones

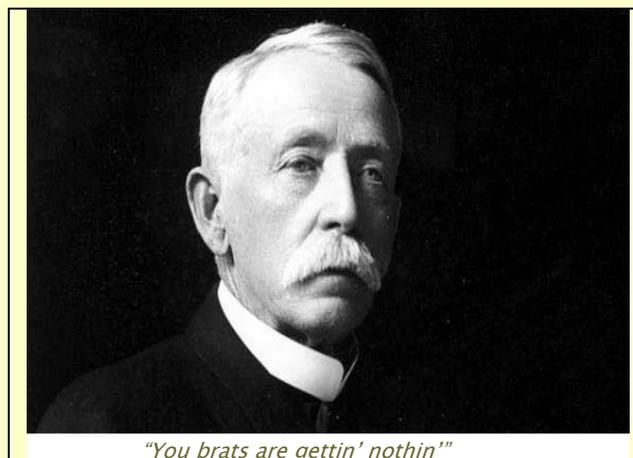
You've heard it before, and you'll hear it again. In movies and in crime dramas on television. Words uttered by that deviant miscreant whose character and conduct is above the law. He or she declares defiantly that, "I'll beat the rap."

But beating the rap isn't always so easy. Wise detectives, modern crime labs and efficient courts block their path to freedom. Truth and justice usually prevail as prison bars or lead bullets silence the criminal in a fashion typical of Hollywood endings.

But nearly a century ago, a wealthy lumber and iron magnate from Michigan found his own way of beating the rap. Not the criminal rap, but the rap that proved so frustrating and uncertain in its application that California attorneys could not be held liable for failing to understand and properly apply it. I'm talking about the Rule Against Perpetuities.

Some of us may recall from law school days that it had something to do with the vesting of a property interest not less than 21 years after some life or lives in being at the time the interest was created. Be sure to include a gestation period in your calculation. Don't quote me on that. And don't ask me to explain.

Rather, take a lesson from Wellington R. Burt, who passed away in 1919 at the age of 87. He had amassed quite a fortune which has been valued at \$100 million to \$110 million as of early 2011. How do we know today's value? Because Mr. Burt stated in his will that his vast fortune would not be distributed until 21 years after the death of his last surviving grandchild, which proved to be his last surviving granddaughter who passed away in 1989.



"You brats are gettin' nothin'"

Mr. Burt either wanted to test the RAP or envisioned an unusual plan for generation-skipping. Or perhaps his attorneys didn't understand it or couldn't satisfactorily explain it, so he took it upon himself to apply it. He must have understood the RAP better than his attorneys because his will has survived numerous challenges over the years.

Rumors circulated that he didn't like his family, so perhaps he beat them with the RAP? In any event, Mr. Burt's 12 descendants remained after the last surviving granddaughter's death to reap their share. One of his heirs is a great-great-great-granddaughter – talk about generation-skipping.

Not so fast! In predictable Hollywood style, the descendants became embroiled in litigation about how to split the estate. No doubt represented by lawyers unable to articulate and apply the RAP but nonetheless willing to join the fray for their share of Mr. Burt's fortune in the form of attorneys' fees.

Fortunately for Mr. Burt, a wise judge encouraged the parties to settle the litigation (much to the chagrin of the attorneys). Fittingly for the Hollywood ending, the distribution of Mr. Burt's assets to his RAP survivors was scheduled to occur on May 21. Now that's beating the RAP. ♦

FOOTHILLS BAR ASSOCIATION CALENDAR OF EVENTS

Contributions by Carolyn Brock, Cheryl Stengel and Kimberly Kirkpatrick

CIVIL LITIGATION SECTION

Thursday, June 23, 2011, the Civil Litigation Section will present "Enforcement of Judgments and Debt Collection Issues in Creditor Representation" with speakers Mandie Bullock, Esq. and Cheryl Stengel, Esq. from 12:00 noon to 1:15 p.m. at BJ's Restaurant in Grossmont Center in La Mesa.

See Page 5 of this newsletter for more information



ESTATE PLANNING SECTION

June 9, 2011 Daryl Golemb, CPA Topic: Value billing. The meeting will be held at Nancy Ewin's office 8166 La Mesa Blvd., La Mesa, CA from 12:15-1:30 p.m.

FAMILY LAW SECTION

The Family Law seminar information for the third Tuesday of the month (June 21) will be e-mailed when more information is available.

JUNE 2011 CALENDAR

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	6	7	8	9 EP CLE: Value Billing	10	11
12	13	14	15	16	17	18
19	20	21 Family Law CLE: Info to be e-mailed Board of Directors meeting 4:45 p.m.	22	23 Civ Lit CLE Enforcement of Judgments	24	25
26	27	28	29	30		

WRITING CONTEST JUDGE'S NOTES

by Jennifer Hughes

Thank you all for your enthusiastic participation in the writing contest. After hours of pouring over the various entries and seriously considering a twenty-way tie for the grand prize of a \$20 gift certificate (I was thinking of getting twenty \$1 gift cards for Wal-Mart, since your money might buy a lot more—of what, I cannot answer—there), I eliminated all of the imaginary contestants and KEITH A. JONES, fellow esteemed writer and attorney won by default, since he was the only breathing entrant.

True that I could have entered the contest myself, but as the sole judge, any determination in my favor over the other entrant(s) would seem bias, narcissistic and fundamentally unfair. But enough about me... I know when I'm beat (or when I would be had I ventured to prose spar with the formidable Mr. Jones, who has just been nominated for the San Diego Book Awards Associations 2011 Award for the Action/Suspense Category for his latest novel, *The Suspicious Spouse*), and his article, "Beating the RAP" evoked a wry but discerning chuckle from me, followed by a barely audible groan as I recalled the angst over what was—and continues to be—the bane of law students everywhere: Yep, the Rule Against Perpetuities.

The case to which Mr. Jones refers is *Lucas v. Hamm*, a 1962 case. Although it is true that the court did not hold Attorney Hamm liable for violating the arcane RAP, *Lucas v. Hamm* overruled *Buckley v. Gray*—a case which held that a third party beneficiary to a will does not have an action against the drafting attorney for negligent drafting because there is no privity of contract—thus making the law as it is today: where a contacting party (e.g., an attorney) knows the purpose of the contract is executed to benefit a third party, the third party has a right of recovery against the breaching party. This changed testamentary beneficiaries to intended—rather than incidental—beneficiaries, which is a sensible result in contract law (otherwise, the only person with standing to sue is six feet under).

The Rule Against Perpetuities is governed by California Probate Code § 21205, et seq., which now contains a ninety-year “wait and see” (cy pres type) period which virtually (but not entirely) obliterates the archaic rule that no interest can vest unless it vests within twenty-one years of a life in being (plus gestation) at the time of the creation of the interest. (For more riveting reading, see *Exclusions From Statutory Rule Against Perpetuities* California Probate Code § 21225.)

So, congratulations, Mr. Jones! We as attorneys know that it is not a bad thing to win by default. Less billable hours, but it achieves the desired result nonetheless (assuming you can collect the judgment). Speaking of which, I won't be at the next board meeting due to a pressing need for a vacation, so just let me know your address: the gift card's in the mail. ☺



FBA ARTICLE WRITING
CONTEST WINNER

Family Law Section Report

By Family Law Section co-chair Kimberly Kirkpatrick

One of the issues facing law firms is the security of our physical files. From a practice management standpoint, Detective Troussel discussed the importance of ensuring that law firms have a method of identifying potentially compromised information in the event of a break-in. For example, if a law office was burglarized, how would the firm quickly identify which files were taken and contact the clients? It is important to ensure that there is some system of redundancy of contact information so that if the physical file is stolen, the firm has the information necessary to alert the client.

It is also important to ensure that there is a means of contacting any former or current potential clients who may have listed personal information on an initial intake or interview form. These persons present a particular difficulty because they are not likely in any contact or address system used for actual clients. However, the initial consultation, while not resulting in an attorney-client engagement, may very well have included information that is valuable to an identity theft. In the event of a security breach, there are certain mandated requirements regarding alerting individuals whose information may have been comprised.

Detective Troussel shared information about a recent case in which apartment complex rental offices were broken into. All that was taken was files, yet the files contained such information as rental application, credit checks, copies of drivers' licenses, copies of deposit checks—a jackpot for identity thefts. The rental company faced the difficult task of trying to re-create all the files where an initial application was filed but an actual rental agreement never materialized.

We also received valuable information on protecting our own identities. The three big take-home messages are credit cards are much safer than debit cards, make sure both incoming and outgoing mail is secure and check your credit report on a regular basis.

Many thanks to Detective Troussel!!

Remember- Family Law Brown Bag seminars are held on the third Tuesday of each month. A free hour of MCLE credit for all FBA members! ♦

Civil Litigation: Next CLE

By Civil Litigation Section Chair Cheryl Stengel

On Thursday, June 23, 2011, the Civil Litigation Section will present “Enforcement of Judgments and Debt Collection Issues in Creditor Representation” with speakers Mandie Bullock, Esq. and Cheryl Stengel, Esq. from 12:00 noon to 1:15 p.m. at BJ's Restaurant in Grossmont Center in La Mesa.

The program topics will include debt collection strategies from pre-litigation negotiations to post-judgment remedies, including tactics for locating assets, and practical tips on effectuating wage garnishments, bank levies and liens, and creditors' legal rights and options in bankruptcy proceedings.

Ms. Bullock is Vice President and General Counsel of Little & Bullock Consulting, Inc., which provides expert witness services on construction personal injury cases, as well as risk management and training to contractors of all sizes. Prior to forming Little & Bullock Consulting, she was an associate attorney at CIR Law Offices. There she practiced creditors' rights and collections law, handling a large volume of cases from pre-litigation through satisfaction of judgment.

Ms. Stengel practices in the area of bankruptcy and insolvency counseling, representing debtors, creditors and trustees in all types of bankruptcy proceedings, Chapter 7, 11 and 13. She is certified as a specialist in bankruptcy by the Board of Legal Specialization of the California State Bar. She is associated with the Law Office of Michael O'Halloran in San Diego.

The cost of buffet lunch (pizza, salad and drink) will be \$17.00 if more than 19 people attend. If fewer than 19 people attend, then the cost of lunch will be whatever you choose. The seminar is free to members of the FBA and \$10.00 for nonmembers.

This activity has been approved for 1.0 hour of MCLE general credit by the State Bar of California. The FBA certifies this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing mandatory minimum continuing legal education.

If you have any suggestions for speakers or upcoming meetings, please contact section co-chairs, Mark Raftery at mraftery@epsten.com or Cheryl Stengel at cs@debtsd.com. ♦

Family lawyers do not get the respect they deserve. In terms of the potential breadth and complexity of issues which they face, family practitioners work in one of the most, and perhaps the most, exacting and demanding areas of concentration in the law.

d'Elia v. d'Elia (1997) 58 Cal.App.4th 415

New Section: The Red Onion

A Hyperbolic Taste of Irreverent Satire

Spanx for the Memories

By Sue Heathen

A recent study by the Domestic Animus Mitigation Necessitarians in Training (DAMNIT) conducted a countrywide survey of mothers around the US pertaining to items received as Mother's Day gifts.

Psychologists for DAMNIT classified the responses of gift recipients for this important holiday into five categories, which follow with examples, primarily for the purpose of enlightening wary significant others who struck out this year:

The Objection: this name was apt for the chosen overt response of many women who received household necessities, e.g., vacuum cleaners, for Mother's Day, and typically involved battery or assault by means of the item gifted. Police Chief Merite, responding to the aftermath of one such scene in Alpena*, Arkansas, knowingly shook his head, while younger police officers in attendance appeared to be nonplussed. Reporting from the front lawn, local newscasters commented on the remarkable ability of a one-hundred pound woman to lift a ninety-pound vacuum cleaner and beat her husband repeatedly with it. The husband is expected to survive and was quoted as saying, "I thought she'd like it."

Reciprocity: this title was chosen for the category of responses by women who received gifts they deemed hints of inadequacy—over over-adequacy—in some regard: Spanx bodyshapers. (Everyone loves them, as long as they are not a gift from someone else.) Other gifts in this category included blonde hair dye kits for brunettes, wetsuits with bikinis painted atop them, and face lift coupons (Editor's note: At least have the decency to pay for the face lift, instead of simply offering a discount coupon you cut from the paper! It's a double insult and the root of the law surrounding the development of the justifiable homicide defense.)

Another aptly named category, the respondents here will chose reciprocal suggestiveness over blunt force, and male givers of this gift type will be receiving soap, deodorant, Head & Shoulders shampoo, Rogaine (or coupons for hair plugs), Viagra and/or bran muffins for Father's Day, which—as you know—is just around the corner.

Passive-Aggressive: this category of respondents received a wide array of unwanted gifts, and the group is classified solely by the similarity of their responses, which included making a delicious Thai dinner to express gratitude, but completely forgetting that he has an anaphylactic shock response to peanut sauce; recycling his vintage comics because the gift recipient is green and she didn't know they were collector's items, and riding his ATV past a nail factory to ensure its readiness for the big weekend with the guys in the remote desert.

Co-Dependent: this category of respondents is only vaguely and subjectively discernable from those recipients who actually liked their gifts. The primary tell-tale sign—if you quick enough to catch it—is excessive fawning and gratitude over a gift which really isn't that great—such as a \$5 gift card to McDonald's (which, with inflation, will almost buy a happy meal), and ostentatious cheap plastic crap (e.g., plastic Santa for the front yard to be placed in storage for the next six months) from Wal-Mart which cost around \$1.

The Zen: is the gift of nothingness and non-duality for those who are supposedly enlightened. Since it cannot be given, but must be received, this group is really just a theory—there aren't any respondents in this study.

The conclusion of the study is that nothing says "I love you" like an American Express gift card. ♦

*Alpena: Interestingly, in Spanish, "al" is a contraction of "a" and "el", i.e., "to the," and "pena" means "punishment" or "trouble."

Blast Off with Hon Ignition Chairs

New Invention

by Jennifer Hughes

From the subject matter line of a recent e-advertisement which deftly eluded my spam filter, I—held captive by the riveting wordplay—read in detail about each attribute of the fine chairs (only \$293.33!) which have such unexpected boons as being “comfortable behind the desk *or* around the conference table”, choice of leather or polyester—the polyester comes with Nano-*Tex*[™] for “superior stain resistance”, and seat height adjustment. The chairs are available in black, black patent leather, faux black, quasi-black, and for \$39.93 more, black zebra.

Certainly I believe in giving credit where credit is due, so I confess that it was this masterful creation that bore the progeny of evolution in my mind: the “Scintillaty” (new hybrid word—just coined—for *scintillate* and *lady*).

For a mere \$2,999.98, you can get Scintillaty (as soon as I build it) which comes complete with all of the features of the Hon Ignition Chairs, but the best feature is revolutionary: an ejection device in the seat of every chair (with a control in the arm rests which controls the other chairs in the room) which is sure to keep conversation fresh and details to a necessary minimum.

An Executive model will be available for an additional \$1,293.93, which has no seat ejector but a master control in the armrest which

Naturally, there will be a panel covering the ejection control buttons in the armrest to prevent inadvertent ejection. (Another behavior modification technique might come simply in the act of opening the panel and letting one’s fingers linger menacingly over the ejection buttons.)

I will provide all prudent and necessary CONSPICUOUS disclaimers with the product, but I do recommend that if you elect to get on board the discovery train of relevance before it leaves the station, you purchase—along with the chairs—an adhesive backed 5” foam to adhere to the ceiling(s) of the room(s) in which the chairs are to be used.

I also suggest warning meeting attendees or clients that they will be ejected if respective contributions are irrelevant, logorrheic, or just plain tedious.

I look forward to sitting down and discussing my new invention with my investors, engineers, public relations people, and my wit administrator (who is presently on vacation, with no return date in sight). On second thought, I prefer to stand. ♦



FBA LIBRARY EXPANDS!

By Keith A. Jones, Esq.

Last year, the Foothills Bar Association teamed up with Attorney Credits, an approved MCLE provider, to videotape FBA's seminars. The FBA receives a copy of the final video in DVD format which it has used to establish a library for FBA members. Additionally, your FBA membership entitles you to a 20% discount on the MCLE programs offered by Attorney Credits, accessed via the web at www.attorneycredits.com.

The FBA recently received another set with five (5) new DVD's from Attorney Credits to expand its offerings. FBA members may now check out any of the following videos, and receive self-study MCLE credit:

- So You Settled Your Case, Now What? by Jon H. Espsten & Mark R. Raftery (Civ. Lit. Sec.)
- Medi-Cal Recovery – An Unavoidable Event? by Richard Scott Stewart (Est. Plan. Sec.)
- Estate Planning Opportunities Under the 2010 Tax Relief Act by Brad Dewan (Est. Plan. Sec.)
- Litigating the Personal Injury Case by George De La Flor (Civ. Lit. Sec.)
- Selected Issues in Legal Ethics by Professor Steven Berenson (Annual Hard to Get Sem.)
- Substance Abuse & Attorneys: Recognition, Understanding & Intervention by Mick Meagher (Annual Hard to Get Sem.)
- Update on Trust & Probate Litigation: Undue Influence by David Kross (Est. Plan. Sec.)

FBA members can borrow the DVD's for the seminars that they missed and earn the credit!

Contact the receptionist at the office of former FBA President, Nancy Kaupp Ewin, Esq., at (619)698-1788. Her office is located at 8166 La Mesa Blvd., La Mesa, CA 91942. You will need to complete a form and leave a deposit.

The FBA anticipates receiving more videos in the future, and will update the list at its website, www.foothillsbar.org.

For your other MCLE needs, don't forget to use your 20% discount at www.attorneycredits.com to purchase a wide variety of California-approved MCLE presentations. ♦



AttorneyCredits.com Legal Blog
 Social Media: Positive or negative affect
 on the law?
[http://www.attorneycredits.com/
 wordpress/category/attorney-website/](http://www.attorneycredits.com/wordpress/category/attorney-website/)

Change is the law of life. And those who look only to the past or present are certain to miss the future.

- John F. Kennedy



FBA NEWSLETTER PRODUCTION

Editor in Chief, Design & Layout:
Jennifer L. Hughes, Esq.

SUBMISSIONS

The FBA welcomes your submissions. Send articles, letters, flyers, notices and non-advertising submissions to Jennifer L. Hughes, Esq., at jlhughesesq@aol.com.

ADDRESS CHANGES

Send change of address and other contact information to Stanley J. Bacinett, Esq., at sjb@bacinettlaw.com.

ADVERTISING RATES

Business Card Size:
\$25.00 per issue
\$125.00 for 6 issues
\$250.00 for one year
(includes publication in annual attorney directory)
Issue Sponsorship: (Half page)
\$250.00 per issues

Send your advertisement to Keith A. Jones, Esq., at kjones9001@gmail.com for approval. Once approved, you will receive payment and other instructions. All payments will be made to the "Foothills Bar Association."



June 2011 Tentative Schedule--Family Law Settlement Pro Tem Judges

Please check the FBA website for updates



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