



PRESIDENT'S MESSAGE

Goodbye to Summer and Hello to Fall

by Anee A. Mikacich

As this newsletter is prepared, we anticipate the joy of Labor Day and another three day weekend. Before long, we will be fully into Fall. Many of you are probably in the throes of back-to-school with your children, or perhaps even beginning new academic or business ventures yourself. There are probably a few of you who are recovering from the Bar Exam and launching your new career. Although September signals the end of Summer, I like to think of it as a chance for new beginnings. The end of Summer brings with it numerous transitions.

At Queen's Bench, we are wrapping up another fantastic year with a series of Fall events which are sure to offer something for everyone. On September 14, 2010, please join us at the Sir Francis Drake Hotel near Union Square in San Francisco for the annual LEAADD Dinner. LEAADD stands for the professional association of women Lawyers, Engineers, Accountants, Architects, Doctors, Dentists and more. This wonderful event brings together women with varied backgrounds and educations for an evening of light conversation, networking, mentoring, and collegiality. Rarely do we have an opportunity to have so many accomplished women in the same room and the same time



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Asylum Granted to Battered Woman in Ground-breaking Refugee Case

by Vanessa Hierbaum, Chair of the Domestic Violence Committee

Following a landmark recommendation by the Obama Administration, an immigration judge granted asylum to a Mexican woman who was raped and severely battered by her common law husband in August 2010. In the *Matter of L.R.*, as the case is known for confidentiality reasons, the recommendation and the court ruling mark the first time domestic violence has been recognized as grounds for asylum after fifteen years of litigation and wrangling.

Women have had trouble fitting into the long established, some might say gender biased, policies established under U.S. and international asylum laws. To be granted asylum, one must establish a well founded fear of persecution on one of five grounds: race, religion, nationality, political beliefs, or membership in a recognizable social group. Establishing persecution, sadly, was easy enough for L.R. She suffered years and years of extreme and unrelenting physical and sexual abuse at the hands of her common law husband. L.R.'s two children, both the product of rape by L.R.'s husband, also suffered severe abuse by their father. The hard part was fitting L.R. into one of those five categories. And that is where two San Francisco women lawyers, and the Obama Administration, come into the picture.

Professor Karen Musalo, Founding Director of the Center for Gender and Refugee Studies at University of California, Hastings College of Law, has been representing victims of

gendered violence in asylum cases for over fifteen years. Musalo explained that for years, immigration judges and policy makers resisted recognizing gender-based violence on what amounted to a strict constructionist approach to the asylum laws. Simply put, there are five grounds for protection and gender isn't one of them. Ironically, gendered violence also ran into problems precisely because it was such a cultural norm in the countries from which these women fled. By definition, a cultural norm could not be persecution or so went the argument. On a more philosophical level, gender-based violence also did not neatly fit into the overarching purpose of the asylum laws: the protection of basic human rights from violent government interference. Victims of gender based violence, Musalo said, typically did not fear the government directly. They fear their husbands or their family or their tribal leaders or their community.

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August a Ground-Breaking Month for Female Justices

Queen's Bench celebrates the confirmation of Elena Kagan as an Associate Justice of the United States Supreme Court and the Judicial Council's approval of the nomination of Tani Cantil-Sakauye to the California Supreme Court. The actions constitute a significant step towards gender parity in the nation's highest courts.

The United States Senate confirmed Elena Kagan as an Associate Justice of the United States Supreme Court on August 5 by a vote of 63-37. Kagan is the 112th justice appointed to the court, and only the fourth female U.S. Supreme Court Justice. Kagan's assumption of her new role on August 7 will mark the first time in history that there will be three sitting female justices on the nine-member U.S. Supreme Court. Kagan will serve alongside Justices Ruth Bader Ginsberg, appointed by President Clinton in 1993, and Sonia Sotomayor, appointed by President Obama in 2009.

On August 25, the California Commission on Judicial Appointment unanimously approved Governor Schwarzenegger's nomination of Tani Cantil-Sakauye as

Chief Justice of the California Supreme Court. If voters approve the nomination in November, Cantil-Sakauye will serve a 12-year term, beginning after current Chief Justice Ronald M. George's slated retirement on January 2, 2011.

Cantil-Sakauye would be the first minority and only the second woman to serve as Chief Justice of the California Supreme Court. She would serve with sitting Associate Justices Kathryn Mickle Werdegar, Joyce L. Kennard, and Carol A. Corrigan. Together, the four female justices would constitute a majority of the seven-member California Supreme Court—a first in California history. Cantil-Sakauye has served as an Associate Justice for the Third District Court of Appeal since 2005. She is married with two daughters, ages 14 and 11.

Currently, only three states—Tennessee, Wisconsin and Michigan—have a female majority on their highest courts. Eighteen states, not including California, currently have female chief justices. Two states—Indiana and Idaho—do not have a single female justice currently sitting on their highest courts.

Judge Tani Cantil-Sakauye and the Collateral Source Rule

by Mary Catherine Wiederhold, Co-Chair of the Legislative Issues and Reproductive Rights Committee

“The collateral source rule is expressed as policy judgment in favor of encouraging citizens to purchase and maintain insurance for personal injuries and for other eventualities.” (*Helvend v. Southern California Rapid Transit* (1970) 2 Cal. 3d 1, 10.) This rule is made up of two parts. One part is an evidentiary rule that limits what the jury is told about plaintiff's other or collateral source compensation. The second part is a substantive rule that prevents reduction of the damages plaintiff “would otherwise collect from the tortfeasor.” (*Helvend v. Southern California Rapid Transit*, *supra*, 2 Cal. 3d 6.)

Although the collateral source rule had been long established in California, it has come under attack by “tort reformers.” Often, when a plaintiff receives injuries, the hospital will bill a nominal amount for its services. However, it has contracts with insurance companies to receive significantly less when an insured receives its services. Liability insurers complain that when the plaintiff receives reimbursement of her injuries based on the amount billed, without consideration for what her medical case actually cost, she actually obtains a “windfall.” The California Supreme Court recently agreed to consider whether a plaintiff's damages should be the amount of medical costs billed or the amount paid. (*Howell v. Hamilton Meats & Provisions, Inc.* (2009) 179 Cal. App. 4th 686, review granted Mar. 10, 2010, S179115.)

Justice Tani Cantil-Sakauye of the Third District Court of Appeal weighed in on the collateral source rule debate.

Governor Schwarzenegger recently nominated her to be the Chief Justice of California. She would be the first Filipina-American to become chief justice. She would be the second woman to serve in the post, along with Rose Bird. Unknown to many Bay Area attorneys, the Third District Court of Appeal reviews decisions from superior courts from 23 counties in the northeastern portion of California. The district extends up to the Oregon border.

In a published decision decided on August 9, 2010, she authored a 2-1 decision in favor of preserving the traditional collateral source rule. The case of *King v. Willmetts* concerned a Farmers Insurance defense attorney who was rear-ended three times while driving on Highway 99. He suffered back injuries and had surgery. He sued and the jury awarded him \$314,499.94 in damages for Willmetts's negligence. The trial court then granted defendant's motion for a reduction of medical billings and damages for a judgement of approximately \$221,000. This amount was less than defendant's Code of Civil Procedure section 998 offer of \$298,000. King appealed. The issue was whether the award should reflect the amount the hospital billed for medical expenses or the amount paid by the insurance company.

Judge Cantil-Sakauye analyzed the collateral source rule. She invoked the history of the collateral source rule and noted its two components. (*King v. Willmetts*, (Aug. 9,

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Asylum Granted to Battered Women

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Musalo made her first inroad in this area in 1996 case, *Kasinga*¹. *Kasinga* involved a woman who fled her tribe and her country to seek refuge from the genital mutilation that was planned for her by her tribal leaders. While hard to imagine now, the case was highly controversial and stoked a national debate reported in the *New York Times* and other major publications. It eventually became a cause celeb of women's rights groups, and public opinion swayed in favor of granting *Kasinga* asylum. The Board of Immigration Appeals, for the first time, recognized that an extreme harm, like genital cutting, could be persecution even if culturally acceptable, when the government was unable or unwilling to stop it. And a social group worthy of protection could be gender based too, such as women in Togo.

In the years that followed, Musalo and other immigration advocates tried to apply the principles of *Kasinga* to other gender-based requests for asylum. They were met with a surprising level of resistance. Domestic violence became the most high profile example. The stage was set in the hotly contested case of Rodi Alvarado. In that case, involving a Guatemalan woman fleeing horrific domestic violence, an immigration judge granted asylum, only to have the Board of Immigration Appeals reverse the decision, reasoning that *Kasinga* did not apply. Women's groups rallied again and convinced then Attorney General Janet Reno to vacate the Board's decision in January 2001. Suffice it to say, the incoming Bush Administration was less than enthusiastic about domestic violence as grounds for asylum and the case was in limbo for years.

The *Alvarado* case was still pending when the Obama administration submitted its brief in *L.R.* Top level officials in the Department of Homeland Security, for the first time, filed a legal opinion setting forth the strict criteria by which they would recommend asylum for *L.R.* and domestic violence victims like her, the crux of which was the inability of the victim to leave the relationship.

Musalo took on the representation of *L.R.* at that point and approached Simona Agnolucci of Howard Rice Nemerovski Canady Falk & Rabin of San Francisco to represent *L.R.*'s two sons. Why did the Obama Administration choose *L.R.* as its test case? Agnolucci speculates it was timing and luck, but also the particularly compelling facts. Musalo and Agnolucci were able to submit hundreds of pages of evidence designed to meet the new standards recommended by the Department of Homeland Security. *L.R.* was literally captive in a relationship that began when she was kidnapped and raped by her then teacher, and the local community was utterly indifferent to the abuse,

even of the children who wore sweaters during the summer to cover their bruises. A country conditions expert testified about the Mexican culture and laws that tolerate domestic abuse. *L.R.* herself testified that one judge said he would only help her in exchange for sex. Another expert testified how easy it is in Mexico to track people down through public databases, making relocation futile.

Musalo and Andolucci both emphasize the enormous symbolic importance of the *L.R.* case. Rodi Alvarado was also finally able to win asylum after the opinion was issued in *L.R.*, and Musalo has received calls from immigration attorneys in Israel and Canada wanting to learn more about it. But, for all its symbolic importance, the *L.R.* case technically has no precedential value because there was no appellate opinion. When you see how easily the winds change, says Musalo, it is clear this is not enough. Regulations or legislation that specifically address this issue are needed.

Let's hope regulators seize on the momentum created by the *L.R.* case. In the meantime, with dedicated attorneys like Musalo and Andolucci working so tirelessly on these issues, there is hope for battered women seeking refuge on our shores.

Collateral Source Rule

Continued from page 2

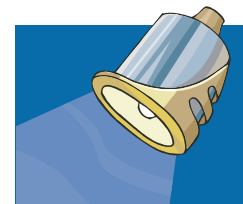
2010, C059236) ___ Cal. App. 4th ___, ___, slip opn. at p. 10, available at <www.courtinfo.ca.gov/opinions> [as of Aug. 17, 2010].) If the plaintiff receives money from her insurance company for her injuries, the collateral source prevents this information from being given to the jury. Plaintiff's overall damages are not reduced by money received for her injuries from her health insurance company.

The public policy behind not allowing a reduction was also explored by Judge Cantil-Sakauye. Buying and having health insurance benefits all Californians. Having health insurance to pay for injuries means that our taxes are not raised to pay for people who do not have health insurance. "If we were to permit a tortfeasor to mitigate damages with payments from plaintiff's insurance, plaintiff would be in a position inferior to that of having bought no insurance, because his payment of premiums would have earned no benefit." (*King, supra*, ___ Cal. App. 4th at p. ___, slip opn. at p. 11.)

Judge Cantil-Sakauye found that the rule, in part, "serves to compensate the plaintiff for the portion of the award that the plaintiff's attorney typically receives as a contingent fee, making the award a somewhat closer approximation to full compensation for plaintiff's injuries." (*King, supra*, ___ Cal. App. 4th at p. ___, slip opn. at p. 13, internal citations and quotations omitted.)

Plaintiff attorneys and consumer groups are watching to see what the California Supreme Court will do with these cases.

¹In *Re Kasinga*, 21 I.&N. Dec.357, Interim Decision 3278, 1996 WL 379826 (BIA).



California Women Lawyers (CWL) Liaison: Kelly Robbins

Many Queen's Bench members volunteer their time to lead our many different committees. They dedicate their precious time, talent and resources to serve our members and our community.

Kelly Robbins serves as liaison between Queen's Bench and the California Women Lawyers (CWL). CWL is the only statewide women's bar association and is dedicated to promoting the advancement of women in the profession of law and society. Ms. Robbins notes that the CWL annual dinner will be in Monterey on Thursday, September 23, and should not be missed!! Information is available at www.cwl.org. Among its achievements, CWL has a nationally recognized program to educate women attorneys who may seek a judicial appointment; monitors and comments on legislation impacting women; and facilitates recognition of outstanding women judges and attorneys by way of its Joan Dempsey Klein Award, Rose Bird Memorial Award and the Faye Stender Award.



CWL is comprised of affiliate member bar associations around the state, such as Queen's Bench, and depends upon its affiliates' leaders and the affiliate members to assist in promoting equality for women.

Ms. Robbins is a certified specialist in family law, and the founder of Robbins Family Law in downtown San Francisco. Her practice focuses on complex marital and domestic partnership dissolutions and custody cases, with experience in international jurisdictional challenges.

Ms. Robbins is a past president of Queen's Bench, and volunteers as a Settlement Master and as Attorney for the Day for the San Francisco Superior Court Family Law Division.

President's Message

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for the primary purpose of having fun and doing business together. This year, we are privileged to have as our keynote speaker, Rebecca Macieira-Kaufmann, President of Citibank California. Accredited as one of the most influential women of the Bay Area by the *San Francisco Business Times* and the 2010 Financial Woman of the Year according to the *Financial Women's Association of San Francisco*, Ms. Macieira-Kaufmann is indeed a role model for many women. Whether you are a sole practitioner running your own business, or an associate in a mega-firm, you will benefit from the wisdom of Ms. Macieira-Kaufmann, and the many talented women expected to attend this year's dinner. Please join us on September 14, 2010 at 6:00 p.m. for cocktails and at 7:00 p.m. for dinner at the Sir Francis Drake Hotel in beautiful downtown San Francisco!

Also slated for this Fall is our ever popular Past Presidents' Dinner, affectionately known to Queen's Bench Board members as the "PPD". This event honors and acknowledges our incredible Past Presidents. The list of Past Presidents is truly overflowing with accomplished

ladies who have given huge numbers of hours to this organization and to the legal community in general. The roster is a Who's Who of notable lawyers and judges who have helped make Queen's Bench a success since 1921. This event is in the early planning stages and does not yet have a location, but watch for further newsletter articles and email announcements. Please plan to join us for the Past Presidents' Dinner.

Last but not least, we have our annual Members' Meeting. This yearly event will likely take place in October. We will offer light refreshments and a chance to meet the officers and Board members. We will also report regarding the accomplishments of the past year and our plans for the future. The Members' Meeting will be conducted at a location to be determined in downtown San Francisco. Please plan to stop by after work for a quick recap of 2010 and forecast for 2011.

With so many great upcoming events, I hope that you have time to join us for at least one special night this fall as we say goodbye to Summer and hello to Fall.

ANNOUNCEMENTS ...

September 14, 2010: Queen's Bench LEAADD Dinner

by Jaime Touchstone
Co-Chair Business Development Committee

On Tuesday, September 14, 2010, the Queen's Bench Business Development Committee will hold its annual LEAADD Dinner, named for the Professional Association of Women Lawyers, Engineers, Accountants, Architects, Doctors, Dentists and More. This year's keynote speaker will be Rebecca Macieria-Kaufmann, President of Citibank California. Ms. Macieria-Kaufmann was named one of the Most Influential Women in Bay Area Business by the San Francisco Business Times and the 2010 Financial Woman of the Year by the Financial Women's Association of San Francisco. The dinner will take place at the Sir Francis Drake Hotel. No host cocktails begin at 6:00 p.m., dinner begins at 7:00 p.m. Tickets can also be purchased online at www.queensbench.org/leaadd.html. See accompanying flyer for details.

September 23, 2010: CWL Annual Dinner

California Women Lawyers' 36th Annual Dinner will be held on September 23, 2010 at the Portola Hotel & Spa in Monterey, California. Keynote Speaker is Mireille Guiliano. Chief Justice Ronald George will administer the Oath of Office to the incoming Board of Governors. Special Guest: Chief Justice Nominee Justice Tani Cantil-Sakauye. No host cocktails begin at 6:00 p.m., dinner begins at 7:00 p.m. Tickets can also be purchased online at www.cwl.org. See accompanying flyer for details.

October 6, 2010: CWL & JAMS present their MCLE "Cultural and Generational Differences in Negotiating"

California Women Lawyers and JAMS invite you to their MCLE "Cultural and Generational Differences in Negotiating" on October 6, 2010. 5:30 p.m.: Reception, 6:45 p.m.: Address from CWL President Jennifer Webber, 7:00 to 8:00 p.m.: Program. Location: JAMS San Francisco, Two Embarcadero Center, Suite 1500, San Francisco, CA 94111. \$20 for CWL members, \$30 for Non-Members. One Hour of Elimination of Bias California MCLE Credit will be provided. See accompanying flyer for details.

October 25, 2010: Queen's Bench Annual Members' Meeting

The Queen's Bench Annual Members' Meeting will be Monday, October 25, 2010, at 5:30 p.m., location to be announced. Pre-registration is requested by October 20, 2010. See accompanying flyer for details.

Queen's Bench New Members

Please welcome the following new member who joined between July 30 and August 27, 2010:

- Katrina Walasik

And welcome back to:

- Susanne Aronowitz
Golden Gate University School of Law
- Laura Cronin
Kaye Moser Hierbaum LLP
- Svetlana Kaff
Law Offices of Svetlana L. Kaff
- Allison C. Schutte
Hanson Bridgett
- Amy K. Skryja
- Trisha T. Pritikin



QUEEN'S BENCH NEWSLETTER

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CALENDAR OF EVENTS

September

- 1** **Juvenile Hall**
7:00 p.m.
Youth Guidance Center, 375 Woodside Ave.
- 7** **Board of Directors Meeting**
6:00 p.m.
Dillingham & Murphy, LLP
- 14** **Annual LEAADD Dinner**
6:00 p.m. No Host Cocktails, 7:00 p.m. Dinner
Sir Francis Drake Hotel, San Francisco
Keynote Speaker: Rebecca Macieira-Kaufmann
See **flyer**.
- 15** **Juvenile Hall**
7:00 p.m.
Youth Guidance Center, 375 Woodside Ave.
- 28** **Business Development
Committee Meeting**
6:00 p.m.
Mergis Group, 475 Sansome St., Ste. 520

October

- 5** **Board of Directors Meeting**
6:00 p.m.
Dillingham & Murphy, LLP
- 6** **Juvenile Hall**
7:00 p.m.
Youth Guidance Center, 375 Woodside Ave.
- 20** **Juvenile Hall**
7:00 p.m.
Youth Guidance Center, 375 Woodside Ave.
- 25** **Queen's Bench Annual Members' Meeting**
5:30 p.m.
Location TBA
See **flyer**.
- 26** **Business Development
Committee Meeting**
6:00 p.m.
Mergis Group, 475 Sansome St., Ste. 520



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