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Former VCBA President Bart Bleuel gets away just head of more than 300 runners and walkers. See page 18-19 for more race photos.

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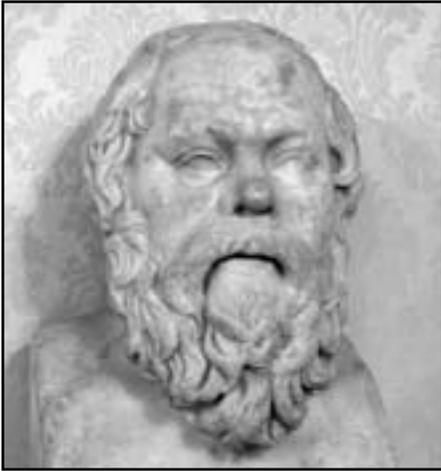
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I have to admit that in my zeal to insure legal relevancy of my President's Message last month, I misstated some essential historical facts. Trial by jury did not originate with the Romans. It sounded so good when I wrote it that I thought a bit of historical license would not matter. But as officers of the court, there can be no license when it comes to an assertion of fact.

We all know that one of the most significant jury trials in Western civilization took place in Athens in 399 B.C. A jury of 500, by a vote of 280 to 220, found Socrates guilty of corrupting the youth and not believing in the gods of the state. The death penalty was imposed by a vote of 360 to 140. The charges, the trial and the punishment were the subject of Plato's dialogues and have been addressed in innumerable treatises, discussions, debates and diatribes in the two-and-a-half millennia since.

No. 45 (Former President **J. Roger Myers**) and those of the relevancy school will see a trend in my recent articles going from the 19th Century Wild West to Ancient Rome and now to Greece in the 5th Century B.C. They may question the immediate significance of Socrates' trial for modern day lawyers. It was not obvious to me until I reread I.E.Stone's *The Trial of Socrates* (Little Brown and Company, 1988) which I pulled off the shelf thinking that if I wrote about Cicero and Cato last month, why not write about Socrates? Certainly there must be some humor there! Once into the book, however, I found a serious and timely relevance, as it mirrors the current debate over the prosecution of former government officials for what they might have said or opinions they might have expressed.

The prosecution and trial of Socrates has taken on a mythical character. It is often touted as the ultimate example of the suppression of free speech by a democratic society. Socrates is portrayed as a dissident, the Alexander Solzhenitsyn of his day, condemned to drink hemlock for the

PRESIDENT'S MESSAGE

By *Tony Strauss*

expressions of his beliefs. The event is considered by many as the "darkest hour" of the Golden Age of Classical Greece. But this picture of Socrates is not entirely accurate and the context of his trial is important to understand.

By the turn of the 4th Century B.C., Athens had suffered through a war with Sparta and two dictatorial coups d'état. In 411 B.C., pro-Spartan Athenians (primarily wealthy oligarchs) overthrew the democracy and established the dictatorship of the Four Hundred. This lasted only four months. But the city, already exhausted by war, suffered extreme violence. The war resumed when the Four Hundred were expelled, but in 404 the war ended in defeat when another coup established the dictatorship of the Thirty. Their reign of terror lasted eight months. Then in 401 a group of wealthy Athenians hired mercenaries to try to overthrow the democratic government once again. This coup failed, but Athens was nevertheless shaken.

As for Socrates, indeed he spoke his mind. However, rarely did it concern current politics. Instead, it was the theoretical and the ideal. In that context, he was anything but the champion of free speech. In fact, he ridiculed the hoi poloi (common citizens) for their ignorance and inability to govern themselves. It is Socrates who is cited in Plato's *The Republic* as advocating rule by philosopher kings. Socrates also asserted that political dissent should be punished and contrary opinions silenced. In the original "Socratic Method," he posed questions that could not be answered except by agreement with the interrogator.

But was this why Socrates was prosecuted? While Socrates stayed out of politics, his pupils used his techniques for political advancement and adopted his anti-democratic opinions. It just so happened that the "youth" he allegedly corrupted happened to be the ring leaders of the Four Hundred and later the Thirty. Among the Four Hundred included Socrates' favorite pupil, Alcibiades, the Benedict Arnold of the Peloponnesian War, who betrayed Athens for Sparta. Another noted pupil, Critias, returned as the head of the Thirty. Critias, for whom one of Plato's Dialogues is named, was a ruthless tyrant responsible for mass murder, including the execution of all of the males of the city of Eleusis. Socrates' pupils invariably included the sons of the oligarchs and anti-democrats and his teaching produced a group of young men capable of utilizing the Socratic Method to attain promi-

nence and establish his ideal of a totalitarian state. When this was attempted by violence for a third time in 401, the city had had enough. Socrates was not going to be allowed to teach any more future "terrorists" who might one day use their intellectual skills to impose another dictatorship. Better to put him on trial!

Socrates represented himself and did everything he could to antagonize and alienate the jury to insure his conviction. Whether he had a "fool for a client" will be forever debated. Once convicted, Socrates had to propose to the jury an alternative punishment to the death penalty sought by his accusers. Socrates said that he should be declared a civic hero and given free meals in the city hall for the rest of his life. The jury had no such option and the vote for punishment exceeded the vote for conviction.

Nice story. So what?

While this is not Athens at the end of the Peloponnesian War, our nation has recently experienced some very traumatic events. We have suffered from almost eight years of war, a near-depression economy and international disapprobation. It is easy to find people to blame. But whom should we prosecute? The policy makers? Those who carried the policies out? Or the lawyers whose opinions they followed? Nuremberg taught us that following orders is no excuse and we should not sanction the known violation of law. Is there a difference between following orders that you know are wrong, and doing your job when the Attorney General or the White House Counsel have opined that your actions are legal? Is there a difference between advancing a legal opinion that you know is without merit and one based upon a reasoned interpretation of law even if that interpretation is unpopular and justifies brutal conduct? A question currently debated is whether the authors of the legal opinions sanctioning torture should be tried for those opinions. Was Socrates responsible for the acts of Critias? Are the former government attorneys responsible for the horrors of Abu Ghraib and Guantanamo? How we answer these questions may lead future historians to conclude that this was one of our brightest or darkest hours.

Tony Strauss is the principal of Strauss Law Group in Ventura. He practices employment law and employment, business and real estate litigation with his son Mike and colleague Bruce Crary.

LRIS Today

By Alejandra Varela-Guerra

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If you are not yet a member and are interested in joining or want more information, please contact Alex at (805) 650-7599 or via e-mail at alex@vcba.org.

Alejandra Varela-Guerra is the Client Relations Manager at the Ventura County Bar Association.

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PATERSON ON FILM

By *Bill Paterson*

Because of the lag time before publication, reviewed films may be out of the theater by the time you read this. Anyone interested in them should eventually be able to find these films on Netflix or at a video rental store.

“Every Little Step”

Very few of us “follow our dreams” when selecting our life’s work. Most of us make compromises of various sorts in exchange for a regular paycheck. However, there are those who take a more perilous path. These are people so passionately committed to their dreams that they elect careers in which the risk of failure is overwhelming. In very few fields are the odds against success greater than in show business. Within that long shot group are those who work even higher off the ground without a net. Welcome to the world of dancers, where rejection is the norm and the “big break” remains tantalizingly out of reach.

In the early 70’s, choreographer and dancer Michael Bennett invited a group of fellow dancers to his apartment. In a marathon session they shared the ups and downs of their lives and craft. The resulting taped conversations were the genesis of the 1976 Broadway smash hit “A Chorus Line,” winner of the Pulitzer Prize for drama and nine Tony Awards. It was revived in 2006 and the long process of putting the show together started with an open casting call. Some 3,000 dancers auditioned for the 18 roles. Do the math. The aspiring young dancers in the long shuffling line outside the theater were competing to be in the top .006%. Imagine the resilience and unquenchable optimism it takes to compete against such odds, and the irony of watching thousands of hopefuls auditioning for a show based on the lives of struggling dancers like themselves.

“Every Little Step” is a documentary film which follows a group of these hardy souls from the first casting call until the final cast is selected. Whether you are fan of Broadway musicals, or (like me) fairly indifferent to

them, you will be hard pressed not to be captivated by “Every Little Step.” More than just a backstage look at the arduous process of casting a major musical production, the core of the film is the triumphs and disappointments of the young dancers we meet as their numbers are gradually winnowed down over a period of months. Some make the cut and keep their dreams alive. Others are left to nurture their dreams for another day.

Among the aspirants is a young woman whose father was a noted dancer. For as long as she can remember all she has ever wanted to be is a dancer. The pressure on her, as she works her way up to the short list of finalists, is enormous. And then there is the young man auditioning to play “Paul.” Paul is a tortured soul who has struggled to come to terms with the fact he wishes he had been born a girl but is desperate to learn how to act like a boy. At the audition he is asked to play a scene in which Paul recites his youthful sexual confusion and a later encounter with his unsuspecting mother and father when he meets them at a play costumed as a woman. It is one of those



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rare magic moments when a performance takes your breath away. It leaves several members of the audition panel speechless with emotion and the role is his.

Those of a certain age will recall ABC's "Wide World of Sports." It always began with a montage of various athletic triumphs and disasters with the signature line – "The thrill of victory and the agony of defeat." It is all here in "Every Little Step." To witness the reaction of the chosen few as they receive the news that they have been cast is to watch human joy in its purest form. However, the efforts of others we have grown to know and care about are not crowned with success. Anyone who has ever come up short of a cherished goal will feel an immediate kinship with them. "Every Little Step" is a real find. Now showing at the Paseo Camarillo.

Related DVDs

"Shall We Dance" (1997) – The original Japanese version and not the Hollywood remake. The story of a beaten down accountant in a dead end job whose life is jump started when he joins an eclectic group taking ball room dancing lessons. As charming as any film has the right to be.

"The Adventures of Priscilla Queen of the Desert" (1994) – A wonderfully unique road trip with Guy Pearce as a drag queen making his way across the Outback with two fellow performers on their way to a new gig. Funny, touching and worth it for the flamboyant costumes alone.

"Strictly Ballroom" (1992) – Another find from the folks Down Under. A comedy/romance set in the cutthroat world of competitive ballroom dancing, in which a young man rebels against the staid rules and masters the Paso Doble with a new partner. A terrific little film.

Bill Paterson is Of Counsel at Ferguson, Case, Orr & Paterson in Ventura, and writes regular film reviews.

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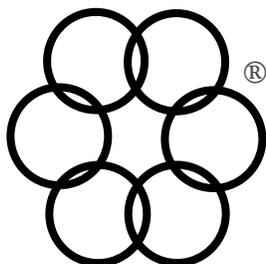
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CITATIONS is deeply saddened by the sudden passing of the Honorable Douglas Daily. The jurist, veteran public defender, musician and gentleman died among family and friends on May 2 after a brief battle with pancreatic cancer.

A retrospective on Judge Daily's life and career will run in next month's issue. Please share your memories with CITATIONS by emailing eric@lascher.com.



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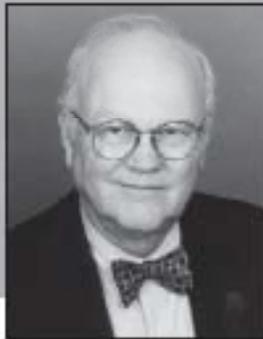
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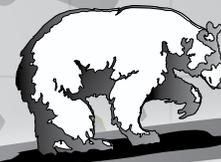
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Family Law Dispatch

By Greg Herring

There Ought to be a Law . . . or not!

At the beginning of each year, the California Legislature loads new meat into the grinder and starts making sausage. Since the 1970's, many of the links have been family law-flavored.

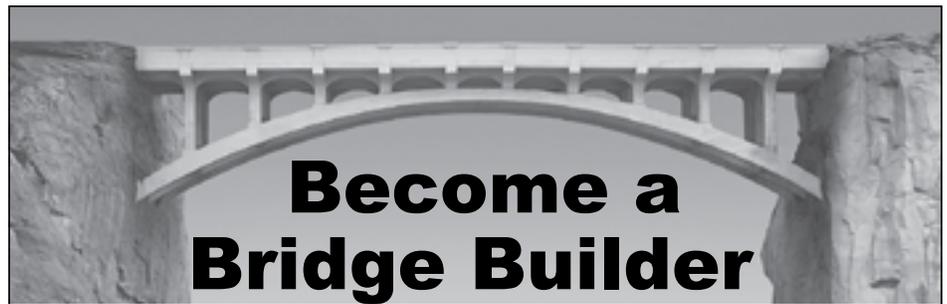
This is because legislators, like the rest of the population, began having more divorces and, thus, more opinions about family law. In the 1990's, District Attorneys and women's groups started pushing domestic violence to the fore, resulting in contests to see who could most harshly punish DV perpetrators. The legislation of lesbian/bisexual/gay/transgender issues has been a more recent trend.

Especially causing a ruckus this year has been Assembly Bill 612. As originally introduced, it would have imposed the so-called *Kelly/Frye* standard on scientific methods and theories used in child custody evaluations. AB 612 also particularly targeted the infamous "Parental Alienation Syndrome" ("PAS") in barring its consideration by courts and court-connected mental health professionals in determining custody and parental timeshare issues.

PAS is a highly-controversial creation from the late 1990's that is sometimes wielded by a parent in a custody dispute. The essential allegations are: (1) through verbal and non-verbal thoughts, actions and mannerisms, the other parent is emotionally abusing (brainwashing) the child into thinking that he is the enemy; and (2) such behavior is an actual psychological "syndrome."

One of AB 612's problems was that the *Kelly/Frye* Standard does not even apply to psychological opinion evidence. If all psychological testimony in child custody evaluations were subjected to the standard, perhaps *all* expert opinion testimony by child custody evaluators would thus be barred.

Continued on page 17



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Further, the mainstream psychological community has already rejected PAS. Instead of assuming that an “alienated child” has been programmed by a parent to be hostile to the other parent, the generally accepted approach is to begin with a primary, neutral, and objective focus on the child, his or her observable behaviors, and parent-child relationships.

More fundamentally, the question arises as to why family law court judicial officers themselves might not be competent to decide issues under *Kelly/Frye*? Why should special legislation be needed to target PAS, as opposed to other forms of “junk science” that are regularly handled in the civil courts? Especially when the California Supreme Court and others are trying to establish the equality of family law vis-à-vis civil law (especially through the *Elkins* Commission, discussed in the last *Dispatch*), why should family law courts uniquely be targeted by legislation that takes discretion from their hands?

Following an uproar from a variety of family law groups and lawyers, AB 612 was recently modified to state, “. . . a child’s expression of significant hostility toward a parent can in the discretion of the court be admitted as possible corroborating evidence that the parent has abused the child. The court cannot decide that an accusation of child physical or sexual abuse against a parent is false based solely on the child’s expression of significant hostility toward that parent.”

Whether one accepts or rejects PAS, AB 612 is a good example of the Legislature’s interest in family law and the ability of groups and lawyers to affect family law legislation. Participation is important, and a good way to do it is through the various Standing Committees of the State Bar’s Family Law Section (see, e.g., calbar.ca.gov/famlaw; this website leads to, among other things, the *capitoltrack* matrix of bills and status).

Greg Herring is a State Bar certified specialist in family law and is a partner with *Ferguson Case Orr Paterson LLP*. He is a Board member of the Southern California Chapter of the American Academy of Matrimonial Lawyers and past Chair of the Executive Committee of the State Bar’s Family Law Section.

LAW DAY 5K RACE PHOTOS





Significant Increases In Probate Filing Fees

By Amber Eisenbrey

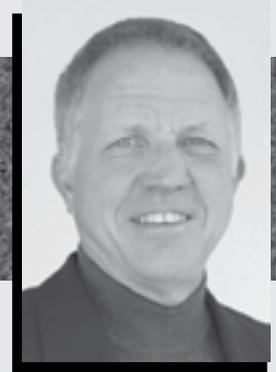
Although it has occurred without much notice (at least thus far), there has been a significant increase in probate filing fees. This is the legislative reaction to *Estate of Claeysens* (2008) 161 Cal.App.4th 465, in which the Court of Appeal held the previous system of a graduated filing fee based upon the size of the estate to violate the California Constitution, more specifically, to violate Proposition 6, a California initiative that repealed the inheritance tax in 1982. In response to the decision, the Legislature repealed Government Code §70650 and substituted the graduated filing fee with a flat fee of \$350.

The legislative changes, however, did not stop there. Certain exemptions for probate filings under §70658 were eliminated and other fees were increased. As a result, the following petitions all require a \$350 filing fee, in addition to the initial filing fee:

- Petition for order concerning sale, lease, encumbrance, grant of option, purchase, conveyance, or exchange of property.
- Petition for order settling account of fiduciary.
- Petition for order authorizing, instructing, or directing a fiduciary, or approving or confirming acts of a fiduciary.
- Petition for order concerning payment of compensation or expenses of an attorney.
- Petition for order concerning payment of compensation or expenses of a fiduciary.
- Petition for order concerning surcharging or removing a fiduciary.
- Petition for order transferring or authorizing transfer of property of an estate to a fiduciary in another jurisdiction.
- Petition for order allowing a fiduciary's request to re-sign.

Continued on page 21

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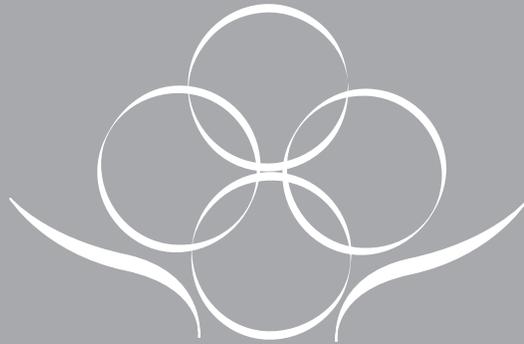
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- Petition for order adjudicating a claim to property under Probate Code §§850-859.
- Petition for order granting permission to fix the residence of a ward or conservatee outside California.
- Petition for order concerning payments for support, maintenance, or education of a ward or conservatee or a person entitled to support, maintenance, or education from a ward or conservatee.
- Petition for order concerning payment of surplus income to relatives of a conservatee (Prob. Code, §2423) or concerning substituted judgment (§2580).
- Petition for order affecting legal capacity of a conservatee under Probate Code §§ 1870-1901.
- Petition for order adjudicating merits of a claim under Probate Code §§2500-2507.

In addition, the filing fees for objections and other opposition concerning the internal affairs of trusts created by court order and special letters of administration have been increased from \$40 to \$200.

This legislation results in multiple \$350 filing fees for a single estate during a standard administration. The new fees also apply in conservatorships and guardianships, which means the \$350 filing fee will need to be paid for every accounting filed with the court. Practitioners should be aware of the fees and consider applying for a fee waiver when appropriate.

Ambrey Eisenbrey is an associate at Arnold Bleuel LaRochelle Mathews & Zirbel, LLP. Her practice concentrates on probate and trust litigation and administration, guardianship and conservatorship law, and estate planning.



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don't want to have a goddam thing to do with it. Jury duty is a complete
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The new president of the State Bar of California Board of Governors is Howard B. Miller, a partner at Girardi Keese in L.A. He will be the 85th president of the 222,000 member organization. Miller went to Pepperdine Law School and has been married 51 years in addition to having two children who are lawyers too...The nation's top high school mock trial competition has become an actual legal battleground. Earlier this spring, the Maimonides School, an Orthodox Jewish day school in Brookline, Mass., won the state mock trial championship and with it a coveted spot in the prestigious national competition in Atlanta. But the finals of the tournament fall on Saturday, and the students do not compete on the Sabbath. When tournament organizers refused to tweak the schedule, the students' parents and school officials did what supporters of any attorney-in-training might do: They hired a lawyer, a renowned litigator who has tried cases before the U.S. Supreme Court. Mr. Lewin filed a complaint of religious discrimination with the Department of Justice...

Brian Nomi checks in from Iraq – Wants everybody to know that he appears in the new Star Trek movie, albeit for all of three seconds. “There is a Starfleet Shipyard scene and I am wearing a blue jumpsuit, caring space ship repair parts. Kirk rides up on a motorcycle, throws something to a blue-suit guy, and then boards the shuttle followed by Pike. The scene is over in an

Exec's Dot...Dot...Dot...

By *Steve Henderson, Executive Director, M.A., CAE*

instant, and it took me 14+ hours of hard work to act in that scene!!” Brian can still be reached at briannomi@yahoo.com...

Carmen Ramirez was at Wooster College in Ohio, on behalf of **Alice McGrath**, who could not travel at the last minute. Ms. McGrath received an honorary degree of Doctor of Humane Letters. Honorary degree recipients are chosen by a faculty committee, and then voted on by the faculty as a whole and the Board of Trustees – ramirezmar@gmail.com...

Bart Bleuel returns from Clovis with swimming hardware in hand placing 6th in the 1650 free, 200 free, and the 100 breast. Also got a 7th, 9th and an 11th place finish – bbleuel@atozlaw.com... Launched May 11th, LawyersReputation.com contains information on such issues as lawyers' malpractice, disbarments, sanctions, as well as practical advice on how to find the best lawyer for a particular case. The public seems to be taking a much more proactive approach in monitoring, assessing and ultimately impacting the business of law... **Leah Gasendo** was selected April 17 to be the newest Administrative Law Judge for the California Unemployment Insurance Appeals Board in the Oxnard office. Leah can be reached at leahgasendo@yahoo.com... Longtime Court of Appeal deputy clerk Mary Rosa passed away May 19 – pneumonia...

Cristian Arrieta informs me that his firm has changed its name to Edsall Arrieta LLP. Their new website is www.edsallarrieta.com... Two books to recommend this month: *Lawyers' Poker: 52 Lessons that Lawyers Can Learn from Card Players*. By Steven Lubet. Oxford University Press, 288 pages, \$19.95. Secondly, *Winning the Patent Damages Case*: By Richard F. Cauley. Oxford University Press, 184 pages, \$185. (Sorry about that price)... Am reminded that I have again neglected to mention a few other lawyers who made the Super Lawyers list for 2009 and they all come from the same firm. Add **Mike Case**, **Greg Herring** and **Bob Gallaway** going back a few years too. **Terence Geoghegan** (during Spellcheck, egghead tries to replace Geoghegan, go figure) was the 50th person to point out the typo in last month's column identifying **Lee Hess** as Less Hess. The good news is Lee coincidentally won my Dodger

ticket giveaway by being the first to contact me on April 29...

On April 21, the Ventura County Board of Supervisors presented **Linda Ash** and **Dan Murphy** from the County Counsel's office with a Resolution of Commendation for “Successful leadership and teamwork in completing the Signalization Project on Santa Rosa Road.” Supervisor Parks presented it to the two of them at the podium... “Bold cocksucker omerta” and “Globes numbnuts omerta” – Two of Anthony Pellicano's pass codes for his wiretapping system, as disclosed in his conspiracy trial attorney Terry Christensen. VERBATIM: “It's wonderful news. The commission finally has the balls to do something.” Ulf Carlsson, upon learning the Commission on Judicial Performance had filed charges against Sacramento County Superior Court Judge Peter J. McBrien... Did you know that Chief Justice Ronald George, is on the California Lawyer Editorial Advisory Board?... SiteSeer: How Do I...? Wondering how to enjoy spring cleaning, write an executive summary, or compose your own iPhone ring tone? A website called How To Do Just About Everything, ehow.com, may be able to assist you...

On April 13th, **Judge Doug Daily** was one of the recipients of the Oxnard Knights of Columbus 2009 Public Safety Awards. You know the rest of the story... Lastly, from the ABA Journal, a mother whose breastfeeding is preventing a toddler's father from spending time with his child has two choices, a Canadian judge has ruled. Jennifer Johne, 35, can either wean the nearly 3-year-old or use a machine to pump breast milk for the girl's father, Carl Cavannah, 42, to feed her during his visitation time... **Mike Velthoen** accepted the role as managing partner at FCOP April 1st.

Steve Henderson has been the executive director and chief executive officer of the bar association and its affiliated organizations since November 1990. His twins, Megan and Max (12), matriculate from 6th grade June 9th. His eldest, Sean (16), experiences his last day of 11th grade June 5th and has planned a two-week trip to Armenia this summer. Lastly, King James is the man and likely to replace Jordan as the greatest ever.

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