



REMARKS FROM THE PRESIDENT'S DESK -

By: *Fernando D. Vargas*

What Happens When a Man Tries to Drown Himself and Doesn't Succeed? The Lawsuit You Never Saw Coming

In a story that seems too strange to be true, a pool worker in Virginia who tried to take his own life is suing the people who saved his life – for not saving it fast enough. The man, Mateusz Fijalkowski, was in the middle of a bipolar episode when he tried to drown himself. Despite the fact that police officers and lifeguards worked together to successfully save his life, he claims they didn't act fast enough.

The facts behind the case

The incident took place in May of 2016 while 23-year-old Fijalkowski was working as an assistant pool manager at the Riverside Apartments. According to sources, Fijalkowski didn't know how to swim when he was hired. On May 26th he was seen by several people having what was described as a mental breakdown. According to witnesses, he started arguing with guests around the pool and threw his own phone into the pool.

Sources say he yelled at those around the pool that he was the lifeguard and that everyone had to get out. When police showed up to evacuate the pool and settle him down, Fijalkowski reportedly screamed at the police. The police were able to clear the area, at which point the disturbed man jumped into the deep end of the pool and submerged himself. It wasn't until he turned purple and was clearly drowning that the responders got him out of the pool and used CPR to save his life.

Fijalkowski was visiting the United States from Poland via an international summer job program. He was assigned to work at the pool despite the fact that he told them he could not swim. He had no history of mental health issues. He started working in the Fairfax County apartments three days after he arrived in the U.S. and was told to clean the pool, keep the deck chairs

arranged, and test the pH level of the water. The incident in question took place on this third day of work.

Fijalkowski's side of the story

The lawyers for Fijalkowski filed their lawsuit on April 27th in U.S. District Court. They claim that the first responders did not do enough to prevent the man from drowning and that by not doing so they violated his constitutional rights. They used a YouTube video to demonstrate that the emergency workers could have and should have gone in more quickly to save the 23-year-old. Fijalkowski claims that the police and first responders simply allowed him to sink before their eyes.

According to the video, he was underwater for more than two minutes, meanwhile there were eight police officers and a lifeguard just watching him drown. By the time he was pulled from the water, he was not breathing and did not have a pulse.

After the incident, Fijalkowski spent time in the hospital and was diagnosed with bipolar disorder. He wants the plaintiff's to be found responsible for more than \$100,000 medical expenses, which he now owes. One of the biggest points his attorney is trying to make is that the police prevented others from jumping into the pool to save the plaintiff until he had stopped moving.

(Continued on page 4)

Welcome WSBCBA New Members

Roxana V. Muro, Esq.

Amanda Stewart, Esq.

Inns of Court

A Second Look at a Year in the Joseph B. Campbell Inn of Court

by Mark H. McGuire, President

My time as the president of the Joseph B. Campbell Inn of Court is drawing to an end. It's now time to take a second look at the events of the past year, and to thank all those who have helped make it a wonderful year for the Joseph B. Campbell Inn of Court. While recently attending the Kaufman-Campbell Dinner in which Honorable Judge Bryan Foster was honored, I was reminded of how wealthy we are in legal talent in our community. Our county is rich in the tradition of civility and excellence in practice of law. We are fortunate to have so many members who continue this legacy. Many of our local Inn members attended the dinner, hosted by the San Bernardino Bar Association under the stars on a perfect evening in May.

I have been incredibly blessed to have the support of a wonderful board at the Inn of Court this year to help bring about all of our programs and outreach activities. They had to put up with me all year and should be given combat pay for the duties so honorably discharged. It goes without saying that they are greatly appreciated, but still it is best to say it.

My year as President of the Inn started off on an amazing note being able to attend the American Inn of Court National Achieving Excellence Awards Banquet in Washington D.C. at the Supreme Court of the United States. The evening's festivities were hosted by the Hon. Justice Elena Kagan. Our local Inn received two awards that night. One for the program "Twelve Angry Tweepers", put on by Linda Lindsey and Steven Bell, who also attended the dinner; and one for the board in achieving Platinum Status, yet again. As Yogi Berra would have said, "We have deep depth" in our Inn, and it shows.

That quality of excellence and depth in the Joseph B. Campbell Inn is perhaps most exemplified by the quality of the programs put on each year. This year Eric Anderson and Amar Hatti did not disappoint, holding up the Inn's high standards presenting six programs, each on a reboot of legal issues presented in classic legal novels. In October and November 2017 we revisited an updated version of the legal issues presented in "Anatomy of a Murder" and "To Kill a Mockingbird". In January and

March 2018, the Inn took part in panel discussions on the legal issues presented in "The Merchant of Venice" and "The Caine Mutiny" respectively. In April and May the Inn took a second look at the legal ethics and public policy issues presented in "Presumed Innocent" and "Bleak House".

Our Inn has a tradition of breaking up the regular schedule of meetings and taking time from the panel discussions, debates, and presentations to do outreach, take legal related field trips, and attend joint functions with other local Inns of Court. In December 2017 the Inn took a field trip to the San Bernardino Registrar of Voters. Michael Scarpello, the San Bernardino Registrar of Voters presented us with an update on local, State and National Election Law changes, as well as informing us of the invocative solutions his office has created and the unique programs they are participating in to make our elections secure, efficient, and broad based. In February many of our members attended the joint meeting of the four Inland Empire Inns of Court, hosted by the Leo A. Deegan Inn. The event took place at the California Citrus State Historic Park and we enjoyed a presentation on legal tactics and marketing by Carl E. Douglas, a member of the O.J. Simpson legal "Dream Team".

Mentorship and outreach are part of the core values of the Inn of Court in general and the Joseph B. Campbell Inn specifically. Each year we are entrusted with a group of third year law students from La Verne Law School for this purpose. This year we had four law students participate in our mentorship program. Each mentee was placed on a program committee and paired with the leader and mentor of that group. The law students participated in presenting and facilitating discussions on the legal issues presented in their program. The Inn is also a regular supporter of local High School Mock Trial teams, and this year we awarded three mock trial scholarships. Presenting these awards is one of the highlights of each Inn year.

Our final meeting of the year in June will take place at the San Manuel Tribal Court. There, Jack B. Osborn will introduce the Hon. Judge Claudette C. White, Presiding Judge of the San Manuel Tribal Court, Hon. Judge John P. Vander Feer, Presiding Judge of the Superior Court of California for the County of San Bernardino, and Justice Manuel A.

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My Time On The JNE Commission

By Angelique Bonanno



The State Bar of California employs several volunteer committees. I was honored to be selected and to serve for three years as a commissioner on the State Bar's commission on Judicial Nominees Evaluation, the "JNE Commission". I chose to apply to the Commission for two reasons, first the Inland Empire was not sufficiently represented in this very important process and second as a Family Law lawyer, it's no secret when a new judge is appointed by the Governor often times their first assignment right out the gate is Family Law. This is true even if the new judge has absolutely no prior Family Law experience. I wanted to make a difference and I wanted to be a part of the judicial vetting system with the goal of recommending the most qualified judicial officers for my community. What I did not know but quickly discovered, is the JNE Commissioners are some of the hardest working, most dedicated, and at the same time most collegial group of brilliant minds across the State of California that I have ever worked with. To be honest, there were times I wondered how I was so lucky as to even be in the same room with these amazing minds.

The purpose of the commission is to assist the Governor in the judicial selection process and to help promote a California judiciary of quality and integrity. The Commission provides an independent, comprehensive, accurate and fair evaluation of candidates for judicial appointment and nomination. The Commission is a three year term where approximately 35 individuals from around the State of California are assigned potential judicial candidates to vet, investigate and ultimately recommend appointment to the Superior Court bench to the Governor. This experience was truly one of the most rewarding of my legal career.

The first step in the judicial appointment process is to complete and submit an application. Applications can be found on the Governor's website (www.gov.ca.gov). A lawyer must have practiced law for at least 10 years before applying to the bench. The application is designed to identify a candidate's strengths as well as weaknesses. The intended end result is to install a diverse judiciary in terms of gender, ethnic background, geography and legal experience. The Governor is also looking for a judiciary who are well respected, command

a strong work ethic, and employ the appropriate temperament desired of a bench officer.

The application itself is extensive and time consuming, but what part of lawyering is not? Being a lawyer requires hard work and dedication. The same is true for the judiciary. Utilizing a mentor judge who has already navigated the process can be extremely helpful. It is essential the candidate submit a comprehensive and complete application. The Governor then assigns the JNE Commission a number of applications each reporting cycle for the vetting, investigation and recommendation process. Within the application, it is important to know what qualities, attributes and/or experiences the candidate has faced which may help set one apart from the next. It should also identify the candidate's legal background, experience (which can be viewed broadly), areas of the law in which the candidate has practiced, community involvement and personal interest. Why a candidate wants to be a judge, and setting forth this information in detail within the application is extremely important.

In my opinion, perhaps one of the most important qualities a judicial officer can possess is impeccable temperament. Most lawyers would agree judicial temperament is a paramount quality, and what makes a great judge. The application should therefore demonstrate the candidate's demeanor, decorum, patience, and ability to remain calm and thoughtful in difficult or challenging circumstances. Keep in mind, a judge needs to maintain the entire courtroom on a daily basis including the management of a heavy calendar, unruly litigants (and even sometimes lawyers), high emotion, extensive conflict and management of Court staff. A judicial officer has to balance each of these with finesse and ease. The applicant may be guided by describing experiences

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June 2018 Calendar

June 14 - Flag Day

June 17 - Father's Day

June 21 - Summer Solstice

June 21 - June MCLE:

"What It Takes To Be A Winner!"

(Continued from page 2)

Ramirez, Presiding Justice of the California Court of Appeal Fourth District, Division Two. Each presiding bench officer will present the status of their respective court.

In May our Inn held elections, or draft day, and tapped David Colella, a partner with Fullerton, Lemann, Schaefer & Dominick, LLP to head the Inn for the coming year and hopefully fix any of my blunders. His term starts in July 2018, and although I am sad to have the year finally come to an end, I know David will do a wonderful job— not only because of who he is but because of the team he has to support him.

I had a ball being President of this Inn for a year and in writing these articles. Thanks to all my mentors who allowed me to pick your brains and interview them, giving me the foundations for the articles. A special thanks to Claire Furness of the San Bernardino County Bar Association and Lisa Purcell-Rorick of

the Western San Bernardino County Bar Association, for edits and assistance in writing these monthly articles. Your local bar associations do great work in assisting all of us in the practice of law and deserve our appreciation and support.

Lastly, I want to thank you the readers for taking the time to read these articles and for your comments. I tried to bring a bit of my philosophically-inclined self to them while still making them relevant and interesting to a larger legal audience. If I have confused or offended any, I apologize. Alas, I am but a poor associate attorney struggling to find his way. In my defense, I end on this note from the Yogi himself, remember, “I did not say all the things I said.”

With all love and joy, thank you.

(Continued from page 1)

The defendant's side of the story

The Fairfax County Police Chief, Edwin Roessler, feels that the lawsuit is frivolous. He points out that the man was trying to kill himself and that his employees acted correctly in their response. Chief Roessler points to their training, which encourages “time and distance” when attempting to confront a person who is clearly mentally unstable. He added that when they realized he had drowned himself they acted quickly to save him.

The Police Chief also pointed out that in past cases, the police have been sued for being too aggressive with a mentally ill person. He has made numerous incredulous comments discussing the irony of suing someone for saving his life but not doing so fast enough. He also claims that if the officers or the lifeguard had gone in earlier, they may have been dragged under the water with the plaintiff.

The defendants also point out the measures they took to deal with Fijalkowski in a safe and respectful manner. They say that after the police were there, the plaintiff ignored them and kept blowing his whistle. The police got rid of all patrons and then brought in both an officer that spoke Polish and the Polish-speaking roommate of the plaintiff. Fijalkowski continued to ignore everyone. Instead, he was shouting, “I am the lifeguard,” and praying in his native language of Polish.

He had already entered the pool twice without incident before going in the third time, at which point he slowly walked into the pool until he was submerged in the deep end. He grabbed two vents in the pool to hold himself down. The officers are shown in the video walking around and watching, before Fijalkowski's supervisor jumps in and gets him out. Several police officers then got into the water as well to help drag the man from the pool.

CPR was then performed for several minutes. When the EMTs got there, an electronic defibrillator was used to revive Fijalkowski. Medical records show that Fijalkowski suffered from both cardiac and respiratory arrest.

Editorial Perspective

This case is a clear example of how some people seek out opportunities to prosper by taking advantage of the legal system. Individuals who bring the types of meritless claims, which not only shock the conscience but also give lawyers a stigma in the eyes of the general public are shameful- and the lawyers that open the doors of opportunity for such individuals are disgraceful. I believe in our system of jurisprudence and have all the confidence that in the end, the jury will have an opportunity to give this plaintiff exactly what he deserves- a defense verdict coupled with a bill for the costs of defense!

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wherein he or she has faced these kinds of circumstances.

The application also provides the candidate with ability to spotlight the basis for why he or she is best suited for the bench over other candidates. It requires the candidate to engage in personal reflection on education, training, legal and nonlegal experiences, community service and involvement, teaching, bar association involvement, writing experience, leadership roles, personal life and hardships. The application also requires the candidate to consider and respond to the roles in which lawyers and judges make in our society and why it is important. In this vein, it allows the application to reflect on past experience, future goals, to identify what the individual can bring to the bench.

The application also requires a detailed explanation about the candidates' past cases, including case names and numbers, names of opposing counsel, co-counsel, and the judicial officer who presided over the matter. The candidate is also asked to provide writing sample. Once the candidate's application is completed and sent to the Governor, he then decides which application will be sent to the JNE Commission. Once sent by the Governor, two to four individual JNE Commissioners are assigned for the investigation. Often times the candidate is also required to simultaneously undergo a vetting process by local bar associations. These multiple layers of vetting are designed to provide the Governor with as much information as possible before appointing a candidate for a judicial position.

The candidate's final step in the JNE investigative process is to undergo an in-person interview with the investigating Commissioners. If there are any corroborated and credible criticisms received about the candidate during the investigation, the lead Commissioner will deliver the information to the candidate in advance of the interview. The disclosure of the criticisms must be conveyed in such a manner as to strictly avoid breaching the confidentiality of the reporting individual. Criticisms are typically relayed regarding temperament, industry, integrity, ability, experience, health, physical or mental condition, or moral turpitude that would be considered unsuitable for a judicial officer. The candidate is given advance notice of such criticisms so as to be able to address them at the in-person interview, as well as allow for an opportunity to present evidence to refute the criticism.

The JNE Commission operates under the authority of Government Code Section 12011.5 and the JNE Rules, which can be found on the State Bar website (calbar.ca.gov). The Commission consists of mostly attorneys, however requires inclusion of retired judges and non-attorney public members. This allows for a variety of individuals, with varying background to serve as Commissioners. The full Commission convenes six times a year for two days, (half of the time in Los Angeles, the other half in San Francisco), wherein the applications and investigations of the candidates are discussed. The Commission conforms to strict rules of confidentiality to ensure its investigations of judicial candidates are undertaken with integrity, to encourage the free flow of information, and to promote the gathering of facts and opinions of others without fear of recrimination by those who submit feedback.

After the application has been presented to the full JNE Commission, a rating system is employed. Candidates are rated as either Exceptionally Well Qualified, Well Qualified, Qualified, or Not Qualified. The Commission's findings, investigation report and final rating is then submitted in a confidential report to the Governor. Only a candidate who receives Not Qualified rating is notified by the JNE Commission. All other ratings remain confidential. If a candidate is rated Not Qualified, he or she has the option to request reconsideration through the Review JNE process. As we often say in the JNE circle, "Once a candidate has completed the in-person interview, no news from JNE is good news."

If you are considering judicial appointment, there are some important things to remember. The Governor is looking for candidates who will perform the role with leadership and distinction. The applicant should be prepared to demonstrate his or her legal acumen, appropriate temperament worthy of a judicial officer, pro bono work, service as a temporary judge, teaching, writing, bar involvement and community service. While each of these is not absolutely necessary, it makes for a more well rounded candidate. The applicant should also consider sharing information about any obstacles they have overcome in their life. Whether or not they have a compelling story and how that rendered a significant life lesson. The most common mistake a candidate can make that will derail the chances of appointment is failure to disclose

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The "Jennifer Brooks Lawyer of the Year Award" is given each year by the Western San Bernardino County Bar Association to a local lawyer who demonstrates the finest qualities of our profession and long-term commitment to our community.

An award is also given each year to a Legal Assistant who exhibits the utmost in professionalism, experience, and assistance, not only to his/her employer, but also to the legal community and who goes above and beyond the call of duty.

If you know of a lawyer and legal assistant who merits these awards, please use this form to make your nominations and return it to the WSBBCBA no later than June 29, 2018 by 4:30 p.m.

NOMINATION FORM

Name of person making nomination (optional): _____

Phone number of person making nomination: _____

If you are an attorney, your state bar number: _____

Name of Lawyer nominee: _____

Address of nominee: _____

Qualifications upon which nomination is based: _____

Name of Legal Assistant nominee: _____

Address of nominee: _____

Qualifications upon which nomination is based: _____

REMEMBER TO FAX OR EMAIL THIS FORM ON OR BEFORE June 29, 2018
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On May 23, 2018, the Inland Empire legal community lost a colleague, a father, and a friend. Ron Powell, a leviathan in the field of criminal defense law, was taken from us much too early at the age of 59. Ron was an attorney dedicated to

his craft in representing defendants in criminal cases. He was not one of those attorneys who would simply “cut a deal for a plea bargain.” To the contrary, he was always willing to try a complex criminal case to its conclusion, steadfastly protecting the rights of the accused. Annoyingly, he was one of those attorneys who could simply receive a file a few days before a 3-4 week trial and provide a stellar defense for his client. Ron was beloved in the legal community. Opposing counsel, bailiffs, judicial assistants, and bench officers were all taken in by his charm, rapier wit, and sarcasm. He was a trial attorney who was never self-important and was often self-deprecating. He had an innate gift of thinking on his feet and being able to pivot his position if the situation warranted such a change in trial tactics. He was intelligent, glib, and always connected with his juries.

Ron was raised in Anderson, California – not exactly an incubator of extraordinary legal talent. He was able to graduate from California State University, Chico and then went to University of La Verne College of Law. He received his license to practice law in 1994 and set out on a course that culminated with working for the Law Offices of Michael A. Scafiddi in downtown San Bernardino. He was previously a panel attorney with the Law Offices of Earl Carter. Ron served his community for 24 years as a well-respected defense attorney. Ron tried in excess of 300 felony cases and in excess of 150 murder cases to their conclusion. Earl, and then Mike, gave him an opportunity for his legal talents to flourish.

Ron was an inveterate reader of books and magazines. However, his real passion was his love of the local sports teams. He witnessed numerous Laker championships. After years of torment, his beloved Kings brought him two Stanley Cup championships this decade and he attended Game One of the Finals against

the Rangers in 2014. His loyalty to the Los Angeles Rams was rewarded with their return to the Coliseum last year, and he attended the home playoff loss to the Falcons. He was a diehard Trojan fan and yearned for the championship days of John Robinson and Pete Carroll. His greatest sports passion lied with the Dodgers. When in college at California State University, Los Angeles, he used to attend almost every home game in the late 70s and early 80s. His heart was broken with last year’s excruciating Game Seven loss. However, he was one of the fortunate ones to attend Game Six when the Dodgers knocked out Justin Verlander and forced a Game Seven. Ron was willing to travel to satiate his passion for live sporting events. He saw a World Series game at Fenway Park. He recently attended a Green Bay Packer playoff game at the frozen tundra at Lambeau Field, when it was 6 degrees outside. He went to a Ryder Cup and the PGA tournament in Minnesota and Wisconsin, respectively.

Ron was an avid music lover. He attended hundreds of concerts. He had to be Ryan Adams’ greatest fan. He attended concerts all over the World to see his musical muse, including last year’s concert at the venerable Royal Albert Hall in London with his childhood best friend, Al Portney. He attended every Coachella Festival since 2006 with Al and his oldest son, Ryan.

Given all of these accolades, the one thing that made Ron the proudest was his children. They were the joy and inspiration of his life’s work. His son, Ryan, and his daughters, Natalie and Carly, have grown to be amazing adults. He always took great pride in their athletic and scholastic accomplishments. With the assistance of ex-spouse, Karin, and his longtime companion, Shauna, the bond between Ron and his children dwarfed any of the accomplishments he earned in his profession. He provided them with his “hard work” ethic, how to enjoy their lives and most of all, to have fun along the way. They are all a living testament to his greatness as a parent.

Ron will be sorely missed. His absence will affect everyone who knew him and will be a gaping hole for his friends and family. For those who practiced with him or against him, they will forever remember him as a personality which could not be replicated. He was a great attorney and an even better human being.

Written by Mitchell I. Roth and Michael A. Scafiddi

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information. As such, the candidate must be prepared to be open, honest, candid and forthcoming irrespective of the circumstances. This includes, but is not necessarily limited to the disclosure of any lawsuit wherein he or she was a named party, any judgments or liens, any arrests or detentions, any complaints lodged with the State Bar of California, (remember JNE is part of the State Bar, so we already know if you have one), or other negative matters the applicant hoped would never be discovered. The failure to disclose the negative circumstances only serves to magnify the significance of the underlying event. It also generally weighs heavily against successful emergence from the JNE process.

As I commented earlier, I joined JNE so my community would have a voice. I was literally the

only representative from San Bernardino County. I have seen over 600 candidate go through JNE during my three year tenure. I am pleased to say several of the candidate I personally vetted along with my co-commissioners now sit on the bench in a variety of counties. I am proud to have served on the JNE Commission. It has truly been one of the greatest adventures of my legal career. If you are interested in serving on the JNE Commission, you should apply. The deadlines are in May of every year. It is no easy task to be selected to serve on JNE, so a letter of recommendation is helpful. I strongly recommend other members of San Bernardino to apply. We need a continuing voice in our community!

WSBCBA Bar Bulletin

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Pictured above: Brian Brandt, Past President, Western San Bernardino County Bar Association

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NEWS BULLETIN

Save the Date

Bar Bench Gathering

“A Night of Magic”

Friday, September 14, 2018

6:00 P.M.

Bonanno-Flynn Home

Rancho Cucamonga

Installation Awards Ceremony & Dinner

Thursday, October 4, 2018

5:30 P.M.

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