

CALIFORNIA LAWYER

DECEMBER 1998 \$5

1998 **Lawyers of the Year**

Plus

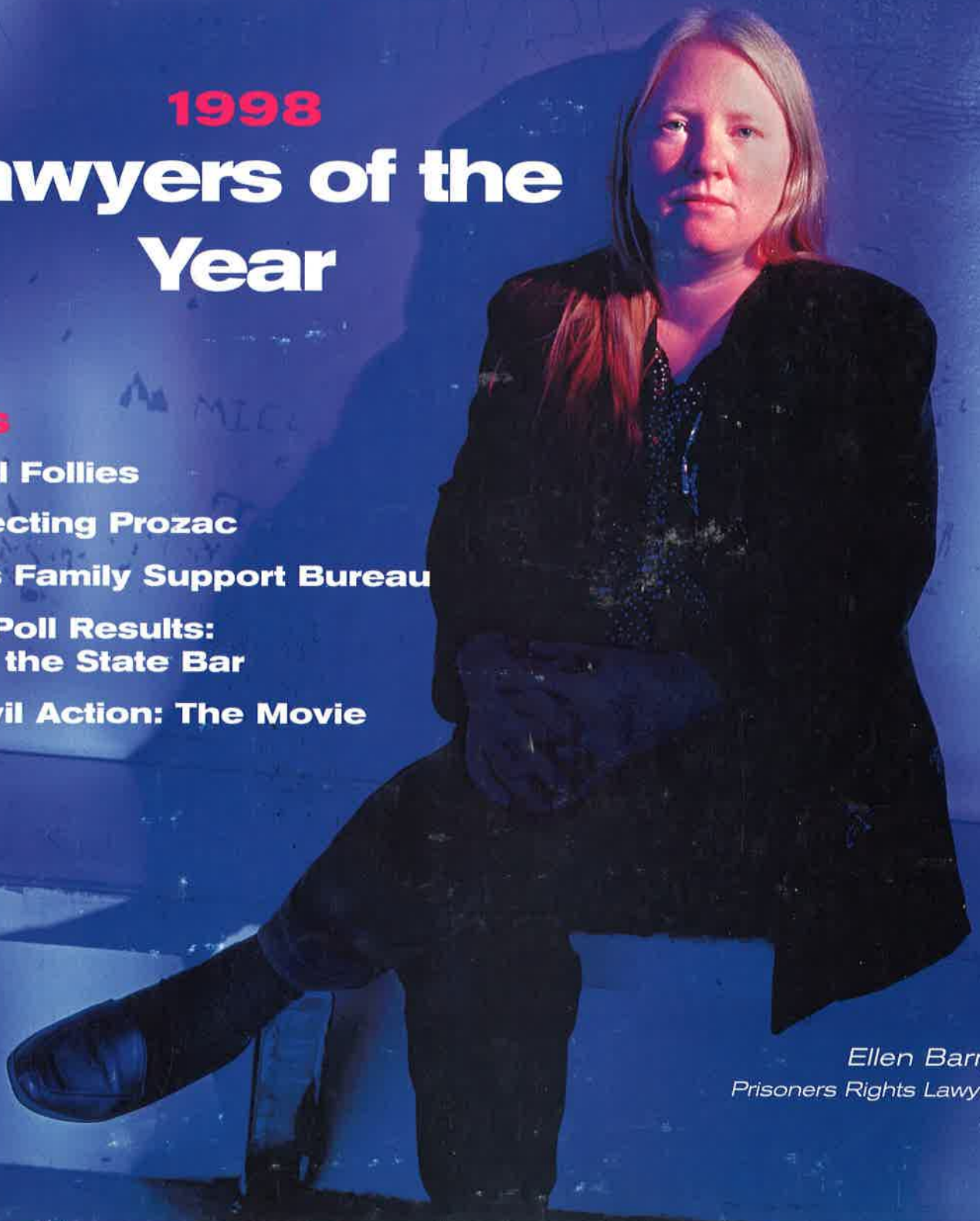
Legal Follies

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L.A.'s Family Support Bureau

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Bury the State Bar**

A Civil Action: The Movie



*Ellen Barry
Prisoners Rights Lawyer*

Lawyers of the Year

BY BETH GATCHALIAN-LITWIN, SUSAN KOSTAL, NINA SCHUYLER, AND JANET WEEKS • PHOTOGRAPHY BY MARK ESTES

Annually, CALIFORNIA LAWYER recognizes attorneys who made new law, were instrumental in crafting state or national policy, or continued exceptional work. Their diversity shows the profession's reach, influence, and fearless risk-taking—from Robert P. Varian's rare win in a Silicon Valley securities trial to Los Angeles sole practitioner Henry R. Fenton's role in reshaping HMOs. For these 20, it was a very good year indeed.



Ellen M. Barry

ELLEN M. BARRY

San Francisco-based public interest lawyer Ellen M. Barry received a MacArthur Foundation grant for \$275,000 this year for her work as director and founder of Legal Services for Prisoners with Children. "When we began [21 years ago], it was just me and a group of interns," she says. With this money, she won't have to write a grant proposal to raise funds for her own salary. The organization has become a powerful, national force that has shaped sentencing alternatives for imprisoned mothers and increased financial support for grandparents who assume responsibility for prisoners' children. Over the years, Barry has won cases against the California Department of Corrections to improve conditions for female prisoners. Most recently she settled a federal class action that will ensure adequate medical care for female inmates. This year Barry joined forces with feminist and political activist Angela Davis to help organize a conference that explored less punitive ways to deal with crime. The two are also coauthoring a book about women prisoners.

BERNIE BERNHEIM

Thanks to a former State Farm claims representative, Los Angeles sole practitioner Bernie Bernheim has developed quite a nice bad faith insurance practice. Less than a year after leaving Thelen, Marrin, Johnson & Bridges, Bernheim met the Taylors who,

believing they had purchased earthquake insurance, made a claim following the Northridge temblor. State Farm, however, insisted they had declined such coverage. With five law firms opposing him, the case was proving difficult for Bernheim until a former claims representative in State Farm's litigation unit produced a declaration claiming State Farm had withheld information and was aware that insurance claims had been forged. State Farm argued that this evidence was covered by attorney-client privilege, but the judge and the court of appeal ruled in Bernheim's favor. The case was reportedly settled for millions of dollars last year and prompted the Trial Lawyers for Public Justice to include Bernheim as a finalist for their 1998 Lawyer of the Year award. "It proves that one guy sitting at a computer with the power of subpoena can move mountains," Bernheim says.

This year Bernheim helped draft legislation that would give policyholders access to their claims files. Though the bill, AB 2322, failed in committee, Bernheim says he will be back working on other insurance reform bills. More than 75 percent of his practice now comes from Northridge earthquake claims, and he has set up an informal clearinghouse for documents and other data for plaintiffs lawyers suing State Farm.

LINDA R. OKESON

Riverside sole practitioner Linda R. Okeson prevailed in an unusual custody case that reinforced the presumption that children of a married couple are products of that union. Okeson represented a married woman who had become pregnant after a brief relationship outside the marriage. The alleged biological father sued before the child was born to establish his parental rights to the child they had conceived. Okeson tried the case and worked with



Linda R. Okeson

attorneys Diane and Andrew Roth, who successfully argued the case before the California Supreme Court. In April the court ruled that the biological father had no constitutionally protected interest in establishing a relationship with his son. *Dawn D. v Jerry K.* (1998) 17 C4th 932. Refuting the notion that the biological father was deprived of his son, Okeson says "the case helps to preserve the family unit" since the child has known only one father. "It also serves as a warning to men who have affairs with married women that they run the risk of not having a relationship with their children." Okeson went to trial in November in an equally complex dispute involving a child with

Lawyers of the Year

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he plans to give a substantial portion of the award to the legal center. "The legal staff deserves a raise."

ANTONY STUART

Reality-based television suffered a setback because of a case Los Angeles sole practitioner Antony Stuart took to the California Supreme Court. His client, Ruth Shulman, was videotaped for the now-canceled syndicated TV program *On Scene: Emergency Response* as she was being rescued from a car accident. The court ruled that Shulman could proceed with her lawsuit against Group W under a theory of invasion of privacy because the company broadcast footage from her private conversations with the medical team at the scene and inside the helicopter. *Shulman v Group W Productions* (1998) 18 C4th 200, mod 1998 WL 436054. The case halts the trend of ever-expanding First Amendment rights of

the media. "The significance of *Shulman* is that it upholds the right of privacy in a public place," says Stuart, who worked on the case with cocounsel Michael L. Goldberg of Virginia. "It's an important principle in today's world, where technology has made it so easy to eavesdrop or photograph private moments."

JAMES E. BLATT

Four years ago Hollywood service station owner Husep Bajakajian attempted to take \$357,000 in cash back to his native Syria without filing the proper reporting forms. Though lawfully acquired, the cash was seized under criminal forfeiture laws. This year, Encino criminal defense attorney James E. Blatt won Bajakajian's case in the U.S. Supreme Court, marking the first time the high court found such "grossly disproportionate" forfeitures unconstitutional under the Eighth Amendment's excessive fines clause. *U.S. v Bajakajian* (1998) 118 S Ct 2028. When the case, which Blatt won at the Ninth Circuit

((1996) 84 F3d 334) was accepted for review, Blatt was besieged with offers from more experienced high court counsel to take over the fight. "It was the first time in my career I ever really doubted myself," he says. But Blatt launched an ambitious campaign to prep himself, and he eked out a 5-to-4 win in a ruling in which the court's liberal wing was joined by Justice Clarence Thomas. An adept criminal defense attorney who pioneered the "cultural defense," Blatt calls the case "the best legal experience of my 25-year career."

THERESE MROZEK

Since taking over as outside corporate counsel for Cisco Systems a year ago, Brobeck Phleger & Harrison partner Therese Mrozek has had a banner year. Cisco, one of Silicon Valley's hottest and fastest-growing companies, has averaged one acquisition a month, with deals totaling \$983 million. In addition, Mrozek oversaw two dozen or so "seed financings," in which Cisco invested in

smaller, private companies, and she also continues to help in Cisco's defense of an ongoing FTC investigation. With Cisco's lean in-house staff, its general counsel, Dan Scheinman, and Mrozek need to be interchangeable. (The pair speak by phone nearly every evening.) On top of overseeing all of Brobeck Phleger's work for Cisco, Mrozek manages the firm's 115-lawyer Palo Alto office. And while Cisco takes up most of her time, Mrozek managed to sneak in an IPO for Corte Madera-based Restoration Hardware (one of the few in a relatively quiet IPO market), and helped a venture capital fund raise close to \$600 million.

PAUL J. SPIEGELMAN

As appellate attorney for condemned inmate Shawn Hill, Paul J. Spiegelman convinced the state Supreme Court to overturn Hill's death sentence based on prosecutorial misconduct, the first such reversal in 14 years. *People v Hill* (1998) 17Cth 800. A professor at Thomas

Jefferson School of Law in San Diego, Spiegelman "laid out chapter and verse" for instances of "outrageous and unethical" behavior by the prosecutor. "I remember that Justice [Janice Rogers] Brown didn't ask one question, but I saw her nodding her head in agreement. That's when I knew I had her vote," Spiegelman recalls. Indeed, a unanimous court found that the prosecutor's behavior—which included mistating the evidence and the law, and disparaging defense counsel—was so egregious it deprived Hill of due process and a fair trial. Spiegelman can claim another rarity: Though typically the offending prosecutor isn't named in court documents, Spiegelman argued that the court should take judicial notice of an unpublished decision involving the same prosecutor and acknowledge a pattern of misconduct. The prosecutor was chastised by name in the court's decision, and Hill, convicted of robbery, murder, and attempted murder, was granted a new trial.

HENRY R. FENTON

Los Angeles sole practitioner Henry R. Fenton is trying to take a scalpel to the managed health care industry. His case before the state Supreme Court will determine whether a managed care group must provide notice and a hearing before terminating a physician who has independent contractor status. *Potvin v Metropolitan Life Insurance Co.*, S061945 (review granted July 30, 1997). Fenton represents the estate of Dr. Louis E. Potvin, an Orange County physician who was dropped—or "deselected"—by Met Life. (Potvin died last year from pancreatic cancer.) Fenton lost at the trial court level but won at the appellate court level. Though many states have laws that give due process rights to doctors when terminated, they have done so when termination is due to quality-of-care issues. This case would extend these rights to business decisions. "The case is already having a very positive effect because some managed care groups are going ahead and granting



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by Stephen S. Ashley

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hearings," says Fenton. "Not only does this benefit physicians who have been terminated, but it also helps patients who might have their care disrupted if the doctor is let go."

LEWIS R. ROSENBLUM

Orange County Senior Deputy District Attorney Lewis R. Rosenblum has tried 62 murder cases in his 17-year career, and all have been convictions—a record according to the California District Attorneys Association, which named him its Prosecutor of the Year. Rosenblum routinely handles his office's most complicated homicides. Rosenblum secured the death penalty against a former L.A. County sheriff's deputy and Medal of Valor winner who shot a supermarket manager in the course of a robbery. He also secured convictions for three high school honor roll students who beat a fellow student to death. Colleagues call him a "complete" prosecutor for his all-around courtroom skills, but it is his cross-examination technique that is legendary. After hearing several key defense witnesses grilled on the stand, an Aryan Brotherhood prison gang member charged with killing a businessman threatened to "kill Rosenblum if he treats me like that on cross." Rosenblum did. The accused was convicted and sentenced to death.

ELIZABETH J. CABRASER

Think of any major medical or environmental class action litigation and Elizabeth J. Cabraser of San Francisco's Lief Cabraser Heimann & Bernstein has been involved. She has helped shape national mass tort litigation against the tobacco industry, makers of silicon breast implants, manufacturers of defective pacemakers, and others. Currently she's taking on the pharmaceutical companies that produce the diet drug combination fen-phen. In February she was named to the nine-member plaintiffs litigation management committee, which has reached a proposed settlement with fen-phen maker Interneuron Pharmaceuticals, Inc. that would allow thousands of plaintiffs to receive \$15 million in company assets and insurance proceeds from a settlement fund. Additionally, Interneuron will contribute \$55 million in royalties over a seven-year period, or contribute

company stock if royalties prove insufficient. The goal, says Cabraser, is to keep the company afloat so victims can be adequately compensated.

Though Cabraser has been a long-time class action champion, she came to the work by chance. Shortly after graduating from U.C. Berkeley's Boalt Hall School of Law, she began representing elderly clients who had been defrauded in investment schemes. She and Robert Lief, who later became her partner, filed their first class action in 1978 because it seemed the most efficient means of solving the problem. "I just thought I was going into a small Sonoma practice," she says. "The class action work really sprang up unplanned."

RALPH H. BAXTER JR.

Orrick, Herrington & Sutcliffe CEO and Chairman Ralph H. Baxter Jr. has proven bigger is better. This year Orrick Herrington acquired the 40-lawyer litigation department of New York's Donovan Leisure Newton & Irvine, the largest acquisition in the firm's 135-year history. "We're not just a firm with a New York office. We provide the same breadth, depth, and quality of service as the indigenous New York firms, which is important in world-level litigation," says Baxter. During Baxter's nine years as CEO, Orrick Herrington has doubled in size, logged record profits, and has significantly extended its international reach. This year it established a London office and was heavily involved in restructuring corporations and governments caught in the flagging Asian economy. The firm has been a conduit for transactions by Southeast Asian utility, power, and telecommunication companies, and this spring partners William R. Campbell in Singapore, Lawrence Peitzman in Los Angeles, and Marie B. Riehle in San Francisco counseled the Thai parliament in revising the country's laws.

"Good enough never is," says Baxter of his firm's achievements. "I read *Built to Last: Successful Habits of Visionary Companies* [by James C. Collins and Jerry I. Porras] a few years ago, and that phrase really resonated with our core values. We provide excellent service and always seek to improve the firm." The book is now standard issue for new associates. □