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Survey: Women and California Law

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SURVEY: WOMEN AND CALIFORNIA LAW

This survey of California law, a regular feature of the Women's Law Forum, summarizes recent California Supreme Court and Court of Appeal decisions of special importance to women.

TABLE OF CONTENTS

I. CRIMINAL LAW

A. CHILD PORNOGRAPHY

United States v. Arvin, 900 F.2d 1385 (9th Cir. 1990).

A photo of a minor need not be obscene to satisfy the "lascivious exhibition of the genitals or pubic area" requirement of the Federal Statute regulating child pornography.

In *Arvin*, the Court of Appeal affirmed the conviction and sentence of appellant, Michael Arvin, under 18 U.S.C. § 2252(a)[1] for mailing three photographs of minor females engaged in sexually explicit conduct.[2] The court held that the district court did not err in refusing to dismiss the indictment and in excluding expert testimony.[3] The court also found the jury instructions, read as a whole, properly informed the jury as to the meaning of "lascivious."[4]

Arvin stipulated at trial that he knowingly mailed three photocopied photographs of nude female children to undercover officer Jeffrey Miller. Arvin mailed the photocopies in response to an advertisement placed by Miller in *Swinger's Digest* seeking a pedophile correspondent. The photocopies were of pictures he had purchased several years earlier. Arvin was not the photographer, nor did he seek financial compensation from Miller. All three pictures show apparently prepubescent girls completely nude, facing the camera with their legs apart so as to expose their genitals. The pictures were captioned "Lolita-Sex," "Skoleborn-School Children," and "Little Girls F__k too."

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1. 18 U.S.C. § 2252(a) punishes:

Any person who. . . knowingly. . . mails any visual depiction, if-

(A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(B) such visual depiction is of such conduct. . .

18 U.S.C. § 2256(1) defines a "minor" as "any person under the age of eighteen years." § 2256(2) defines "sexually explicit conduct" to include various specific sexual acts, as well as the "lascivious exhibition of the genitals or pubic area of any person." "Lascivious" is not defined.

2. *Arvin*, 900 F.2d at 1386-87.

3. *Id.* at 1390.

4. *Id.* at 1392.

Arvin's motion to dismiss the indictment was denied. The government's motion *in limine* to exclude expert witnesses on the question of whether the pictures were "lascivious" was granted.[5]

The court in beginning its analysis first focused on the difference between obscenity laws and child pornography laws. Citing *New York v. Ferber*,[6] the court stated that pornographic depictions of children do not receive First Amendment protection even if they are not "obscene."[7] While obscenity laws aim to protect "the sensibilities of unwilling recipients,"[8] child pornography laws aim to protect the children themselves from sexual exploitation and abuse.[9] The issue is whether the child has been physically or psychologically harmed in the production of the work. A sexually explicit depiction need not be offensive in order to have required the sexual exploitation of a child for its production.[10] Therefore, the obscenity tests regarding "community standards," "redeeming value," and "prurient interest" are not relevant in determining what constitutes child pornography.[11]

The appellant first argued to dismiss the indictment based on the district court's interpretation of section 2252(a).[12] Appellant claimed that since he had no commercial motivation, the statute could not constitutionally or by its terms apply to him.[13] However, the statute had been amended so that the mailing no longer need be for commercial purposes.[14] Appellant's second argument for dismissal was that the photos were not "lascivious" as a matter of law.[15] The court rejected this argument, conceding that while it was arguable that the pictures are not lascivious, the issue of lasciviousness was properly allowed to go to the jury.[16]

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5. *Id.* at 1387.
6. 485 U.S. 747 (1982).
7. *Arvin*, 900 F.2d at 1387.
8. *Miller v. California*, 413 U.S. 15, 18-19 (1973).
9. *Ferber*, 458 U.S. at 757.
10. *Id.* at 761 & n.12.
11. *Id.*
12. *See* note 1, *supra*.
13. *Arvin*, 900 F.2d at 1388.
14. (As originally enacted the statute required that the mailing be "for the purpose of sale or distribution for sale". Following the decision in *Ferber*, Congress amended the statute and deleted this clause.) *Id.*
15. *Id.*
16. *Id.*

Appellant further argued that he was deprived of a fair trial by not being allowed to present expert testimony on the issue of whether the pictures were lascivious.[17] Arvin made two arguments regarding the admission of expert testimony: 1) that the evidence should have been admitted under Fed. R. Evid. 702,[18] and 2) that the evidence should have been admitted to avoid a violation of the First Amendment.[19] The court found that the admissibility or exclusion of expert testimony is within the discretion of the trial court and that the benchmark for exclusion is whether the proffered testimony would usurp the function of the jury.[20] Whether a particular situation calls for the use of expert testimony is to be determined on the basis of "assisting the trier."[21] The court held that according to Arvin's offer of proof, the expert's testimony would not have been directed at any legally relevant factors or would have impinged on the jury's function.[22]

Appellant argued that the experts would have testified that similar photos are used for educational purposes. However, the court found that community tolerance for equivalent material is irrelevant.[23] Scientific or other value will not necessarily save a photo from legitimate prohibition.[24] According to appellant, experts also would have testified that the fact that someone may be sexually aroused by the photos does not necessarily make them lascivious. The court agreed but found that the fact that the photos have that effect may nonetheless be relevant.[25] The statute reflects a legislative determination that it is a form of child abuse for a photographer to pose a child sexually for purposes of the photographer's or another's sexual gratification.[26] Thus, the court found that the apparent motive of the photogra-

17. *Id.*

18. FED. R. EVID. 702 provides: "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, *may* testify thereto in the form of an opinion or otherwise." (emphasis added)

19. *Arvin*, 900 F.2d at 1389.

20. *Id.* (citing *United States v. Langford*, 802 F.2d. 1176, 1179-80 (9th Cir. 1986)).

21. *Arvin*, 900 F.2d at 1389 (citing Advisory Committee Note to Rule 702).

22. *Id.*

23. *Id.* at 1390.

24. *Id.* at 1389 (citing *Ferber*, 458 U.S. at 761 & n.12).

25. *Id.* at 1389.

26. *Id.*

pher and intended response of the viewer are relevant.[27]

Arvin's third argument was that the trial court wrongly instructed the jury on the legal definition of "lascivious." The judge gave a list of eight specific factors that the jury could consider.[28] The judge guarded against the jury attaching undue significance to any particular factor by cautioning them that the

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27. *Id.*

28. *Id.* at 1390-91 n.4. "[T]he elements of the offense break down into the following:

Number one is a knowing mailing. Now, in this case that's admitted, so there's. . .no necessity for you making a decision on that.

Second, a visual depiction. [T]he pictures in this case are obviously visual depictions.

Third, the use of a minor. You will have to decide that issue based upon your observation of the pictures themselves.

And finally, fourth element-and the one I think that you're going to have to wrestle with in making your decision, because I think it's the key to this case-is the lascivious exhibition of the genitals or pubic areas.

[W]hen you see the photographs, it is obvious that they do involve the genitals and pubic area. So your decision-you must decide whether the exhibitions are lascivious.

[T]he statute does not define. . .what the word "lascivious" means. But some courts have considered the subject of what lascivious means. Even those courts have not given to us a precise definition of what that word means. They have generally held that the word lascivious is virtually interchangeable with the word "lewd."

And the courts have also given us a listing of factors which you, as the decision makers, can consider in deciding whether the pictures are lascivious.

. . .I'm going to list for you eight factors which the courts have said that you would have to decide whether these photographs were lascivious-can consider in making that decision.

. . .[T]hese are the factors that you can consider in deciding whether the pictures involve the lascivious exhibition of the genitals or the pubic area:

Number one: whether the focal point of the pictures is on the child's genitals or pubic area.

Number two: whether the setting is sexually suggestive. For example, in a place or pose generally associated with a sexual activity.

Number three: whether the child is depicted in an unnatural pose, considering the age of the child.

Number four: whether the child was clothed or nude.

Number five: whether the pictures suggest sexual coyness or willingness to engage in sexual activity.

Number six: whether the pictures are intended or designed to elicit sexual response from the viewer.

Number seven: whether the picture portrays the child as a sexual object.

And number eight: [the] captions on the pictures.

[A] visual depiction need not involve all of those factors in order to be a lascivious exhibition of the genitals or pubic area, but those are the factors which you can consider. And the weight or lack of weight which you give to any one of those factors is for you to decide.

[T]hose pictures may not be found to be lascivious merely because you may not like them or because you may find them to be in bad taste."

weight given to any one factor was for them to decide.[29] Arvin's argument was that this instruction allowed the jury to find "lasciviousness" from the mere presence of one factor—for example nudity or suggestive captions. The court disagreed with this argument and stated that viewing the instructions as a whole, no reasonable juror would interpret them to allow a guilty verdict from the factor of nudity alone.[30] The court concluded that the jury was properly instructed. In fact, the court stated that "the jurors were told about as well as any jurors could be what they should consider in making a determination as to whether the pictures were lascivious."[31]

A clear definition of child pornography is essential to assist in the prosecution of pornographers and thus help prevent the exploitation and abuse of children. We need a standard that is specific enough to ensure that pornographers can not evade the intent of the law, as the defendant in this case attempted to do. At the same time, the courts need a standard that is easily comprehendible to the average juror. Here, the court is giving us a definition that meets both needs. By using eight factors for the trier of fact to consider in the interpretation of the term lascivious, the court sets out a flexible standard that is comprehensive enough to thwart circumvention, yet very understandable and usable for jurors.

*Linda Sullivan**

B. JUVENILE ARREST

In Re Samuel V., 225 Cal. App. 3d 511, 277 Cal. Rptr. 14, *modified*, 225 Cal. App. 3d 1623 A, ____ Cal. Rptr. ____ (4th Dist.

29. *See* note 28 *supra*.

30. *Arvin*, 900 F.2d at 1391.

31. *Id.*

* Golden Gate University School of Law, Class of 1992; University of California, Berkeley, B.A., Social Welfare, 1988.

1990).

The arrest of minors, without a warrant and solely upon a basis of probable cause, does not violate the Equal Protection Clause of the Fourteenth Amendment.

In *In re Samuel V.*, the court of appeal affirmed a juvenile court's ruling that defendant, minor Samuel V., remain a ward of the court and be detained in juvenile hall pending placement in a 24-hour school. The appellate court's holding was based on a finding that the Welfare and Institutions Code section which had allowed the particular type of arrest involved in this case did not violate the Equal Protection Clause of the Fourteenth Amendment.

Upon a report that Samuel had brandished a knife in the complex where he lived, peace officer Charles Pugsley told Samuel's mother to bring the minor to the police station where Pugsley could arrest him. The peace officer did not have a warrant for the arrest. At the police station, without being advised of his *Miranda*[1] rights, Samuel admitted being involved in the brandishing incident. After the admission, Pugsley advised defendant of his *Miranda* rights.[2]

While filling out a report, the peace officer asked Samuel whether the minor carried a knife. Defendant answered in the affirmative and, pulling a knife from his pants, gave it to Pugsley who proceeded to arrest Samuel for violation of California Penal Code section 417(a)(1),[3] which makes the brandishing of a weapon a misdemeanor, and section 12020(a),[4] which makes the carrying of a concealed dagger a felony.[5]

Samuel moved to suppress his statements and the knife al-

1. *Miranda v. Arizona*, 384 U.S. 436 (1966).

2. *Samuel V.*, 225 Cal. App. 3d at 514.

3. Penal Code § 417(a)(1) provides in part: "Every person who, except in self-defense, in the presence of any other person, draws or exhibits any deadly weapon whatsoever, other than a firearm, in a rude, angry or threatening manner, or who in any manner, unlawfully uses the same in any fight or quarrel is guilty of a misdemeanor . . . ." CAL. PENAL CODE § 417(a)(1) (West 1988 & Supp. 1991).

4. Penal Code § 12020(a) provides in part: "Any person in this state . . . who carries concealed upon his person any dirk or dagger, is guilty of a felony . . . ." CAL. PENAL CODE § 12020(a) (West 1982 & Supp. 1991).

5. *Samuel V.*, 225 Cal. App. 3d at 514.

leging they had been obtained as a result of illegal questioning. The motion was denied. Subsequently, Samuel admitted the felony charge and the misdemeanor charge was dismissed.[6] Having been declared a ward of the court a year earlier after admitting a burglary allegation,[7] defendant was ordered to remain a ward of the court and was detained in juvenile hall pending placement in a 24-hour school.[8]

On appeal, Samuel challenged the constitutionality of California Welfare and Institutions Code section 625(a)[9] which allows a peace officer to arrest a minor without a warrant and solely upon a basis of reasonable cause for believing that the minor has violated any law of this state.[10] Defendant raised an equal protection claim based on the language of California Penal Code section 836,[11] the equivalent of the Welfare and Institutions Code stated above but as pertaining to adults. Penal Code section 836 requires that for a warrantless arrest the peace officer have reasonable cause to believe that the adult committed a public offense in the peace officer's presence. Samuel contended that the differentiation involving the "in the presence" requirement was a violation of his Fourteenth Amendment[12] equal protection rights.[13]

Initially addressing the issue of whether Samuel could raise the constitutional claim for the first time on appeal, the appel-

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6. *Id.*

7. *Id.* at 513 n.4.

8. *Id.* at 513.

9. Welfare and Institutions Code § 625(a) provides in part: "A peace officer may, without a warrant, take into temporary custody a minor: [¶] (a) who is under the age of 18 years when such officer has reasonable cause for believing that such minor is a person described in Section 601 or 602 . . . ." CAL. WELF. & INST. CODE § 625(a) (West 1984 & Supp. 1991).

Welfare and Institutions Code § 602 provides in part: "Any person who is under the age of 18 years when he violates any law of this state . . . is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court." CAL. WELF. & INST. CODE § 602 (West 1984 & Supp. 1991).

10. *Samuel V.*, 225 Cal. App. 3d at 513.

11. Penal Code § 836 provides in part: "A peace officer may make an arrest in obedience to a warrant, or may . . . without a warrant, arrest a person: [¶] 1. Whenever he has reasonable cause to believe that the person to be arrested has committed a public offense in his presence. [¶] 2. When a person arrested has committed a felony, although not in his presence." CAL. PENAL CODE § 836 (West 1985 & Supp 1991).

12. U.S. CONST. amend. XIV, § 1.

13. *Samuel V.*, 225 Cal. App. 3d at 515, 516.

late court held the claim permissible since the issue was a pure question of law and one based, as revealed by the record, on undisputed facts.[14]

The court then upheld the constitutionality of the Welfare and Institution Code section by analyzing the legislative history and purpose behind the language of the statutory provision. Originally, Penal Code section 836 (with a requirement of "in the presence of the peace officer") had applied to both adult and juvenile misdemeanor arrests. Welfare and Institutions Code section 625(a) was enacted in 1961, allowing warrantless arrests of juvenile misdemeanants without a requirement of "in the presence of the arresting officer."[15] In 1971, the legislature added section 625.1 which implicitly imposed an "in the presence" requirement for warrantless juvenile misdemeanor arrests.[16] As a result of section 625.1, in 1977 the California Supreme Court invalidated[17] a warrantless arrest of a juvenile for a misdemeanor offense which was not committed in the presence of the arresting officer.[18] The following year the legislature repealed section 625.1.[19] The court of appeal held that this history showed a clear legislative intent to leave out the "in the presence" requirement in circumstances involving juvenile arrests.[20]

The court further stated that defendant's allegation of disparate treatment had previously been raised before, and been rejected by, the California Supreme Court in *In re Eric J.*[21] In that case,[22] the California Supreme Court held that for purposes of an equal protection claim, the challenger must first establish that the classification affects in an unequal manner two or more groups that are " *'similarly situated.'* "[23] The *Eric J.* court held that minors and adults were not similarly situated since the liberty interest of a minor is more restricted than that of an adult, that interest being subject to a tighter regulation by the state as

14. *Id.* at 1623a, 1623b.
15. *Id.* at 515.
16. *Id.*
17. *In re* Thierry S., 19 Cal. 3d 727, 139 Cal. Rptr. 708, 566 P.2d 610 (1977).
18. *Samuel V.*, 225 Cal. App. 3d at 515, 516.
19. *Id.* at 516.
20. *Id.*
21. *Id.*
22. *In re* Eric J., 25 Cal. 3d 522, 159 Cal. Rptr. 317, 601 P.2d 549 (1979).
23. *Samuel V.*, 225 Cal. App. 3d at 516.

well as being controlled by the minor's parents.[24] The supreme court further found that the purpose behind the state's regulation of the liberty interest of juveniles differed from that involved in the case of adults. To wit, the purpose of legislation addressing arrests of adults is principally punitive, punishment being a strong component of adult-related criminal legislation. In the case of juveniles, the purpose of legislation is for the most part rehabilitative, the punishment of minors being a means to an end, the end being treatment.[25]

Applying the analysis of *Eric J.* to this case, the court of appeal held that the equal protection challenge failed since the two affected groups here, adults and juveniles, were not similarly situated.[26] The court strengthened its holding by addressing the nature of the "in the presence" requirement, stating that such a requirement as applied to juveniles would hinder the state's rehabilitative goal of monitoring juvenile conduct and attacking character flaws at the inception before they could turn into criminal behavior.[27]

*Sarah Afshar**

II. FAMILY LAW

A. Lesbian Custody and Visitation Rights

Curiale v. Reagan, 222 Cal. App. 3d 1597, 272 Cal. Rptr. 520 (1990).

The former lesbian partner of the mother of a child conceived during the relationship through artificial insemination has no statutory right to custody or visitation when the couple's rela-

24. *Id.*
25. *Id.*
26. *Id.* at 516, 517.
27. *Id.* at 517.

* Golden Gate University School of Law, Class of 1992; University of California, Los Angeles, B.A., English literature, 1987.

tionship terminates.

In *Curiale*, the Court of Appeal held that a plaintiff with no natural or legal relationship to a child had no standing to assert a claim for custody or visitation against the child's natural mother with whom the child resides. Therefore, the trial court did not err in dismissing the plaintiff's complaint on the ground that it did not have jurisdiction to award custody or visitation to her. The plaintiff did not have a colorable claim of right to custody and there was no statutory basis for plaintiff's claim of parental status.

Between April 1982 and December 1987 plaintiff and defendant lived together in a homosexual relationship. Plaintiff and defendant agreed at some point during the relationship that defendant would conceive a child through artificial insemination and that they would both raise the child. The child was born in June 1985. From the time of the child's birth until June 1988, plaintiff provided the sole financial support for herself, defendant and the child.[1]

The relationship between plaintiff and defendant ended in December 1987 and plaintiff moved out of the home. The parties executed a written settlement agreement providing for shared physical custody of the child.[2] In June 1988, defendant informed plaintiff that she was unwilling to continue shared custody and visitation rights with plaintiff.[3]

Plaintiff filed a "complaint to establish de facto parent status/maternity and for custody and visitation," along with an order to show cause seeking custody and visitation. Defendant moved to quash the order to show cause and to dismiss the complaint, asserting plaintiff had no standing to initiate the proceeding.[4]

In granting defendant's motion to quash and dismissing the complaint, the trial court reasoned that none of the Civil Code

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1. *Curiale*, 222 Cal. App. 3d at 1599, 272 Cal. Rptr. at 521.

2. Plaintiff attached a copy of this settlement agreement to the complaint, but she did not assert any contractual claims in the trial court nor on appeal.

3. *Curiale*, 222 Cal. App. 3d at 1599, 272 Cal. Rptr. at 521.

4. *Id.*, 272 Cal Rptr. at 521-522.

provisions offered by plaintiff provided a basis for the proceeding. Plaintiff based her claim on Civil Code sections 7015, 7020, and 4600 et seq.[5] Civil Code sections 7015 and 7020 are part of the Uniform Parentage Act and deal procedurally with the determination of parentage.[6] However, the Court of Appeal stated that these sections do not apply in cases where the defendant is the undisputed natural mother as in this case.[7]

The Court of Appeal held that Civil Code section 4600 does not create jurisdiction.[8] Jurisdiction to adjudicate custody depends on some proceeding already properly before the court in which custody is at issue such as dissolution, guardianship, or dependency. Plaintiff had no standing to avail herself of any of these.[9]

The court stressed that there is no statutory or decisional authority to grant plaintiff rights of custody and/or visitation *over the objections* of the child's natural parent.[10] The court rejected plaintiff's argument that it would be in the best interest of the child to confer legal status on someone who is acting as the parent in a non-traditional family.[11] The Legislature has not granted a nonparent in a same sex bilateral relationship any right to custody or visitation once the relationship terminates.[12] Plaintiff argued that "with or without appropriate legislation", it is the court's role to "confront controversy" and "resolve dis-

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5. *See* notes 6 and 8 *infra*.

6. CAL. CIV. CODE § 7015 (West 1983) [Actions with respect to existence of mother and child relationship] Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship. Insofar as practicable, the provisions of this part applicable to the father and child relationship apply.
CAL. CIV. CODE § 7020 (West 1983) [Restraining orders; Offenses] states in relevant part: During the pendency of any proceeding under this part, upon application. . .by the party who has care, custody, and control of the minor child, the superior court may issue ex parte orders enjoining any party from contacting, molesting, attacking, striking, threatening, sexually assaulting, battering, or disturbing the peace of the other party or the minor child.

7. *Curiale*, 222 Cal. App. 3d at 1599-1600, 272 Cal. Rptr. at 522.

8. CAL. CIV. CODE § 4600 (West 1983) states in relevant part: In any proceeding where there is at issue the custody of a minor child, the court may, during the pendency of the proceeding or at any time thereafter, make such order for the custody of the child during minority as may seem necessary or proper.

9. *Curiale*, 222 Cal. App. 3d at 1600, 272 Cal. Rptr. at 522.

10. *Id.* (emphasis in the original) (citing *Jhordan C. v. Mary K.*, 179 Cal. App. 3d 386, 224 Cal. Rptr. 530 (1986)).

11. *Curiale*, 222 Cal. App. 3d at 1600, 272 Cal. Rptr. at 522.

12. *Id.* (citing *White v. Jacobs*, 198 Cal. App. 3d. 122, 243 Cal. Rptr. 597 (1988)).

putes regarding the care of children in non-traditional families."[13]

The court did not view the role of the judiciary as innovator of social policy, stating that "the Legislature is better equipped to consider expansion of current California law should it choose to do so."[14]

This case demonstrates the difficulty the courts have applying the limited and rigid construction of our current code provisions to the myriad of family structures that exist in our society. Citing the "complex practical, social and constitutional ramifications" of expanding the current statutes,[15] the court displays a hesitancy to take an active role in shaping policy. Unfortunately, as the plaintiff pointed out, while we wait for the Legislature to act, "the courts cannot avoid controversial claims and must deal with real families with real disputes today."[16]

*Linda Sullivan**

B. CONSERVATORSHIP

Kaplan v. Superior Court, 216 Cal. App. 3d 1354, 265 Cal. Rptr. 408 (1989).

A spouse may not institute and maintain a petition to establish conservatorship of another spouse.

The *Kaplan* court held that a private citizen may not initi-

13. *Curiale*, 222 Cal. App. 3d at 1600, 272 Cal. Rptr. at 522.

14. *Id.* at 1600-1601, (quoting *In re Marriage of Lewis & Goetz*, 203 Cal. App. 3d 514, 519-520, 250 Cal. Rptr. 30, 33 (1988)).

15. *Curiale*, 222 Cal. App. 3d at 1600, 272 Cal. Rptr. at 522.

16. *Id.*

* Golden Gate University School of Law, Class of 1992; University of California, Berkeley, B.A., Social Welfare, 1988.

ate conservatorship proceedings under the Lanterman-Petris-Short (LPS) Act.[1] Only the county's designated conservatorship investigator officer may file and prosecute a petition to establish an LPS conservatorship.[2]

In summary, the LPS Act mandates that when a person, as a result of a mental disorder, appears to be dangerous to self, others or is gravely disabled[3], peace officers and certain other designated persons may, upon probable cause[4], take that person to a facility designated by the county for up to 72 hours of treatment and evaluation[5]. If the professional staff of the evaluating agency find the person as a result of mental disorder or chronic alcoholism to be dangerous to self, others or gravely disabled[6], the individual may be certified for no more than 14 days of intensive treatment[7]. The patient can then file a writ of habeas corpus[8]. After the hearing on the writ the client would be released or held up to the 14 days.[9]

At this point, the person in charge of the evaluating agency may recommend to the conservatorship investigation officer that a conservatorship be established.[10] If the investigator concurs with that recommendation, the investigator petitions the Superior Court in the county where the patient resides to establish

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1. CAL. WELF. & INST. CODE §§ 5000 - 5550 (West 1984).

2. *See also* D. PONE, LPS CASE SUMMARIES OF PROTECTION AND ADVOCACY INC. (January 29, 1990).

3. "Gravely disabled" is defined in Welfare & Institution Code § 5008 (h)(1). It means a condition in which a person is unable to provide for his or her basic personal needs for food, clothing or shelter.

4. To constitute probable cause to detain a person pursuant to § 5150, a state of facts must be known to the peace officer (or other authorized person) that would lead a person of ordinary care and prudence to believe, or to entertain a strong suspicion, that the person detained is mentally disordered and is a danger to himself or herself or is gravely disabled. In justifying the particular intrusion, the officer must be able to point to specific and articulate facts which, taken together with rational inferences from those facts, reasonably warrant his or her belief or suspicion. *People v. Triplett*, 144 Cal. App. 3d 283, 287-88, 192 Cal. Rptr. 537, 540-41 (1983).

5. CAL. WELF. & INST. CODE § 5150 (West 1984). *See also* 2 W. JOHNSTONE & S. HOUSE, CALIFORNIA CONSERVATORSHIPS AND GUARDIANSHIPS § 15 (1990).

6. *See supra* note 3.

7. CAL. WELF. & INST CODE § 5150 (West 1984).

8. CAL. WELF. & INST CODE § 5275 (West 1984). Also, under Welfare & Institutions Code § 5276, the hearing on the petition for writ must be held within 2 judicial days after its filing.

9. CAL. WELF. & INST. CODE & 5275 (West 1984).

10. CAL. WELF. & INST. CODE § 5352 (West 1984).

conservatorship.[11]

In June of 1989, two psychiatrists treating Mrs. Sonya Adler, recommended that the Public Guardian[12] commence LPS conservatorship proceedings for Mrs. Adler. The Public Guardian, Mr. Douglas A. Kaplan, refused to act towards establishing a conservatorship. Mr. Kaplan felt that there were alternative measures to a conservatorship.[13]

Mrs. Adler's husband, Mr. Gerald Adler, petitioned the Superior Court to appoint himself and Ms. Carolyn Young co-conservators for Mrs. Adler, alleging she was gravely disabled within the meaning of LPS.[14] Mr. Adler alleged the Public Guardian failed to conduct a proper investigation and either failed to exercise his discretion under LPS, or abused that discretion by not commencing an LPS conservatorship proceeding.[15] Mr. Adler also argued that if the designated agency refused to act in establishing a conservatorship, any person authorized by the Probate Code to file a petition for conservatorship[16] may also pursue an LPS remedy.[17]

The trial court held that it had jurisdiction to entertain a petition brought by someone other than the county's designated investigation officer.[18] The Public Guardian filed an application for extraordinary relief with the Court of Appeal seeking Mr. Adler's petition.[19]

The Court of Appeal held that only the county's designated conservatorship investigation officer may file and prosecute a petition to establish a conservatorship under the LPS act[20]. The court cites the legislative intent noting that the Legislature has

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11. *Id.*

12. Each county in the state is directed to designate a conservatorship investigation agency. CAL. WELF. & INST. CODE § 5351 (West 1984). Yolo County has designated the office of the Public Guardian.

13. *Kaplan* at 1356, 265 Cal. Rptr. at 409.

14. *Id.* at 1358, 265 Cal. Rptr. at 410.

15. *Id.*

16. CAL. PROB. CODE § 1820 (a)(2) lists the proposed conservatee's spouse as one who may petition for conservatorship.

17. *See supra* note 3.

18. *Kaplan* at 1357, 265 Cal. Rptr. at 409.

19. *Id.*

20. *Kaplan* at 1360, 265 Cal. Rptr. at 411.

determined that the safeguards attending Probate Code conservatorships are insufficient and that the restraints of the Probate Code may be imposed only after complying with LPS[21]. The court also recognized that when the power of the state is invoked to deprive individuals of their freedom, the decision to commence judicial proceedings should be left to a public officer.[22]

A person subject to an LPS conservatorship is now further protected under The *Kaplan* court's holding regarding the LPS Act. *Kaplan* upholds the statutory protection of the LPS Act which strive to eliminate indiscriminate and involuntary commitment.[23] LPS provides a neutral public investigator to investigate the need for a conservatorship or find less restrictive alternatives to a conservatorship.

*Lisa K. McCally**

C. Spousal Support

In re Marriage of Watt, 214 Cal. App. 3d 340, 262 Cal. Rptr. 783 (1st Dist. 1989).

In an action for spousal support, a trial court must consider, in making its decision, the total contributions of one spouse to the other's attainment of an education and the reasons for the marital standard of living. Reimbursement for such contributions is limited to those expenditures directly going to the costs of the other's education and does not include ordinary living expenses.

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21. *Id.*
22. *Id.*
23. Cal. Welf. & Inst. Code § 5001 (West 1984).
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In *In re Marriage of Watt*, the court of appeal held that when making a spousal support award decision pursuant to California Civil Code Section 4801,[1] in a marital dissolution action, the trial court must take into consideration the contribution for living expenses made by one spouse to the other's attainment of an education. The court also held that a trial court, in applying the spousal support criterion, must consider the reasons for the actual marital standard of living, such as a depressed standard of living during the completion of the spouse's education. In its decision the court further held that under Civil Code Section 4800.3 ordinary living expenses expended for the spouse's education are not reimbursable community expenditures.

In 1985, the marriage of Elaine and David Watt was terminated.[2] The Watts had been married for nine and one-half years before separating. The couple had no children.[3]

During the entire nine and one-half years of marriage David was a full time student. He advanced from an undergraduate program to postgraduate studies and finally medical school. During the entire marriage, Elaine worked full-time using all of her income for family expenses. Five months after their separation David received his medical degree.[4]

At the divorce trial, the court denied Elaine's request for reimbursement for community funds spent on David's education.[5] The court ordered David to pay Elaine's attorney fees but did not grant her any further relief.[6] Elaine appealed the judgment and David cross-appealed on the issue of fees.

Elaine's appeal included the issues of spousal support based on need and funds for her career retraining.[7] The court of appeal found no error in this part of the trial court's decision.[8]

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1. All further statutory references are to the California Civil Code.
2. *Watt*, 214 Cal. App. 3d at 345, 262 Cal. Rptr. at 786.
3. *Id.* at 344, 262 Cal. Rptr. at 785.
4. *Id.*
5. *Id.* at 346, 262 Cal. Rptr. at 786.
6. *Id.* at 345, 262 Cal. Rprt. at 786.
7. *Id.*
8. *Id.* at 348-49, 262 Cal. Rptr. at 787. The trial court found that Elaine had no need, pursuant § 4801(a)(1)(A), for retraining or education to acquire more marketable skills. The court of appeal upheld the decision, finding substaintial evidence to support

Elaine raised three other issues on appeal. The first involved the interpretation of amendments to the Family Law Act,[9] specifically sections 4800.3, subdivision (b)(1) and 4801, subdivision (a)(1)(c)[10] which were enacted in 1984.[11] The court of appeal stated that although section 4800.3, subdivision (d) limits the exclusive remedy for the education or enhanced earning capacity of a spouse to reimbursement and loan assignment, it also elicits that nothing therein " 'shall limit consideration of the effect of the education, training, or enhancement, or the amount reimbursed . . . the circumstances of the parties for the purpose of an order for support pursuant to Section 4801.' "[12] Looking then to section 4801, subdivision (a)(2), the court held that the section should be interpreted broadly, stating "weighty" consideration should be given by the trial court to all of the working spouse's contributions to the other's attainment of an education and enhanced earning capacity when "deciding the propriety and extent of a spousal support award."[13] The court went on to say that nothing in the statute's language limits spousal contribution to direct educational expenses.[14] Finding that the court either failed to correctly interpret the applicability of section 4801, subdivision (a)(2) or made a finding contrary to the evidence regarding Elaine's contribution, the court of appeal reversed on this portion of the trial court's judgment.

Further regarding Elaine's appeal on the issue of support, the court of appeal agreed with the plaintiff that the reasons for the marital standard of living during the marriage should have been considered when the trial court was making its spousal

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the finding. *Id.* at 348, 262 Cal. Rptr. at 787.

Nor did the court of appeal find error in the trial court's denial of a spousal support award based on need. The court upheld the trial court's decision which was based on balancing Elaine's monthly net income with her monthly expenses. *Id.* at 349, 262 Cal Rptr at 788.

9. CAL. CIV. CODE § 4000 - 5174 (Deering 1984 & Supp. 1990).

10. The Legislature amended § 4801 subdivision (a) in 1988. Section 4801, subdivision (a)(1)(c) is now § 4801 (a)(2) and will be referred to as such hereafter. *Watt*, 214 Cal. App. 3d at 347 n.4, 262 Cal Rptr at 787 n.4.

11. *Id.* at 346, 262 Cal. Rptr at 786.

12. *Id.* at 350, 262 Cal. Rptr. 789.

13. *Id.*

14. *Id.* at 351, 262 Cal. Rptr. 789. In making the award the trial court shall consider under § 4801(a)(2) "[t]he extent to which the supported spouse contributed to the attainment of an education, training, a career position, or a license by the other spouse." CAL. CIV. CODE § 4801, (Deering 1984 & Supp. 1990).

support determination.[15] The trial court held, in error, that since Elaine's standard of living had not lowered from what it had been during the marriage, no support was necessary.[16]

The court of appeal found error in the trial court's application of section 4801 regarding the standard of living factor. The court of appeal held that in reaching its decision the trial court should not ignore the fact that the couple deliberately depressed their standard of living during the marriage by having one spouse absent from the work force while he attained his education, with the future expectation of the improvement of the community standard of living should David obtain his medical degree and thereafter practice medicine.[17] The trial court's straight dollar-for-dollar analysis was rejected as the sole factor in making such a support award.[18]

Finally, in regard to Elaine's request for reimbursement for contributions to David's education, the court of appeal disagreed with plaintiff's interpretation of section 4800.3. The court of appeal held that section 4800.3 is limited to reimbursement for expenses related only to education-related expenses, such as tuition, fees, and books.[19] As the community only paid for ordinary

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15. *Watt*, 414 Cal. App. 3d at 352, 262 Cal. Rptr. at 790.

16. *Id.* at 351, 262 Cal. Rptr. at 789-790.

17. *Id.* at 351, 262 Cal. Rptr. at 790. The Legislature, in August 1988, amended § 4801(A), which became effective January 1, 1989:

> To make the standard of living established during the marriage an overreaching reference point against which the court assesses the other spousal support factors. (Stat. 1988, ch. 407, § 1, p. 1555.) The trial court must also make specific factual finding concerning the appropriate standard. Further, the amendments now require the trial court to generally recognize the extent to which the working spouse contributed to the student spouse's attainment of an education, rather than considering this factor only with respect to the earning capacity of each spouse.

Id. at 352-353 n.8, 262 Cal. Rptr. at 790 n.8.

As the parties did not present the issue of whether the 1988 amendments would apply on remand, the court of appeal did not express an opinion concerning retroactive application. *Id.* at 353 n.8, 262 Cal Rptr. at 790 n.8.

18. *Id.* at 352, 262 Cal. Rptr. at 790.

19. *Id.* at 354, 262 Cal. Rptr. at 791. The court relied on the California Law Revision Comment to § 4800.3: " 'Subdivision (a) does not detail the expenditures that might be included within the concept of 'community contributions.' These expenditures would at least included cost of tuition, fees, books and supplies, and transportation.'(CLRC Com., West's Ann. Code, §4800.3 (1989 pocket part supp. p. 95.)" *Id.*

living expenses, no funds were reimbursable.[20]

The court of appeal further rejected Elaine's argument that unless it construed section 4800.3 as encompassing reimbursement for all living expenses "it must be declared unconstitutional." Elaine argued anything less than her interpretation is a violation of due process and equal protection.[21] The court stated that a right to reimbursement for a spouse's voluntary spending for the couple's living expenses during the marriage is not constitutionally guaranteed.[22]

In the alternative, Elaine asked the court of appeal to declare David's medical degree to be community property.[23] The court rejected this alternative holding, pursuant to section 4800.3, subdivision (d), the only remedy in California upon marital dissolution for educational contributions, from one spouse to another, to be reimbursement.[24]

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D. Community Property

In re Marriage of Hahn, 224 Cal. App. 3d 1236, 273 Cal. Rptr.

20. *Id.* at 354, 262 Cal. Rptr. at 791-792. Section 4800.3 states the basic rule that community contributions must be reimbursed. Section 4800.3, subdivision (b)(1): "The community shall be reimbursed for community contributions to the education or training of a party that substantially enhances the earning capacity of the party. The amount reimbursed shall be with interest at the legal rate, accruing from the end of the calander year in which the contributions were made." Cal. Civ. Code § 4800.3, (Deering 1984). Section 4800.3, subdivision (a) defines reimbursable community contributions. Section 4800.3, subdivision (a): " As used in this section, 'community contributions to education or training' means payment made with community property for education or training or for the repayment of a loan incurred for education or training." *Id.*

21. *Id.* at 345, 262 Cal. Rptr. at 792.

22. *Id.*

23. *Id.*

24. *Id.* at 355, 262 Cal. Rptr. at 792.

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516 (4th Dist. 1990).

When a divorcing couple stipulates to the value of the community house, the stipulation will not be set aside on a mere showing that one of the parties had limited knowledge, which that party treated as sufficient at the time of the stipulation.

In *In re Marriage of Hahn*, the court of appeal affirmed the trial court's ruling that the stipulation to the value of the divorcing couple's residence would not be set aside upon the husband's motion, prior to entry of judgment, to reopen the stipulated issue.

In this action for dissolution of the parties' marriage, the husband sought to have the family home sold and the proceeds divided.[1] He stipulated to the value of the residence, a value set by his own appraiser.[2] The trial court, however, granted the wife's request that the property be awarded to her with appropriate set-offs.[3] After the trial and prior to entry of judgement, the husband sought to reopen the issue of the house's value based on new evidence of its higher market value.[4] The trial court denied the husband's motion and the husband appealed.[5]

To emphasize the rationale behind the binding effect of most stipulations, the court quoted from Witkin on California Evidence,[6] holding that " 'a stipulation is an agreement between . . . adverse parties relating to a matter involved in a judicial proceeding' " and that a stipulation would have the force of " 'a judicial admission removing [the stipulated] issues from the case.' "[7] Also quoting from Restatement 2nd of Contracts,[8] the court held that " '[s]tipulations . . . simplify and expedite the proceeding, [as well as support] the policy of favoring compromise in order to reduce the volume of litigation.' "[9] A stipulation, like a contract, is an embodiment of a compromise.[10] As

1. *Hahn*, 224 Cal. App. 3d at 1238, 273 Cal. Rptr. at 517.
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.*
6. 1 Witkin, California Evidence § 648 (3d ed. 1986).
7. *Hahn*, 224 Cal. App. 3d at 1239, 273 Cal. Rptr. at 517.
8. RESTATEMENT (SECOND) OF CONTRACTS § 94 comment a (1981).
9. *Hahn*, 224 Cal. App. 3d at 1239, 273 Cal. Rptr. at 517.
10. *Id.*

such, reneging on one's promise not only evinces a lack of good faith and fair dealing, but in a context such as divorce it acts as an incentive for the other party to renege on other stipulated values of community assets, and thus turn an otherwise short trial into a full blown litigation.[11]

The underlying assumption behind the general rule is that a court should not have to continually redistribute community assets up to the time of final judgement on the basis of the frequently changing market value of those assets.[12] "The court is under no obligation to undertake a continuing responsibility to assume the role of an on-call broker or real estate appraiser . . . ."[13]

The court, however, recognized that the husband's appeal was not completely meritless since in certain instances a trial court could properly review a stipulated value.[14] To wit, if the property is sold or disposed of by the party entitled to it at any time before entry of judgment, or even after appellate reversal of the property division award, for a much higher value than that stipulated to, the trial court should review the stipulation.[15] The rationale behind this exception is that in case of a dramatic and actual change in the status of the property (i.e., sale, forfeiture, etc.), a court could readily determine the fair market value of the property and has discretion to relieve the parties from the stipulation.[16]

Here, however, there was no actual confirmation of the value of the property through either a sale, forfeiture, or some other method of disposition; rather, there was a post-trial request for evaluation based merely on more current information of market value.[17] The court of appeal held that the exception to the rule did not apply in this case and that it was well within the trial court's discretion to deny the husband's motion.[18] The husband's claim that he had been mistaken as to the value of the

11. *Id.*
12. *Id.* at 1241, 273 Cal Rptr. at 518, 519.
13. *Id.*
14. *Id.* at 1240, 1241, 273 Cal. Rptr. at 518, 519.
15. *Id.* at 1240, 273 Cal. Rptr. at 518, 273 Cal. Rptr. at 518.
16. *Id.*
17. *Id.*
18. *Id.*

house at the time of the stipulation was held not a proper defense.[19] Under contract law,[20] a party bears the risk of mistake when that party knows his knowledge to be limited and yet proceeds to form a contract.[21]

Since the court explained that in some situations a reevaluation would be proper, it found the husband's appeal not completely without merit and, therefore, denied the wife's request for sanctions for a frivolous appeal.[22]

*Sarah Afshar**

III. TORT LAW

A. Special Relationships

Wise v. Superior Court, 222 Cal. App. 3d 1008, 272 Cal. Rptr. 222 (5th Dist. 1990).

The wife of a sniper is not liable for the injuries caused by her husband either on the basis of a duty created by a special relationship or under general negligence principles. The court also held the wife not liable on the grounds of negligent entrustment.

In *Wise v. Superior Court*, the court of appeal granted Rosemary Wise's petition for a writ of mandate directing the trial court to vacate its order overruling her demurrer and to enter a new order sustaining her demurrer without leave to amend.

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19. *Id.* at 1241, 273 Cal. Rptr. at 519.

20. Restatement (Second) Of Contracts § 154(b) (1981).

21. *Hahn*, 224 Cal. App. 3d at 1241, 273 Cal Rptr. at 518.

22. *Id.*

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On or about September 21, 1988, John Southey Wise (decedent) mounted a sniper attack from the roof of his home. Before taking his own life, he severely injured several passing motorists, including the plaintiffs Ginger Myers and David Luchetti. The plaintiffs filed an action against the decedent's wife Rosemary Wise[1] and her sister Michelle Gendreau,[2] owner of the home in which the Wises resided.[3]

The trial court overruled the wife's demurrer to the complaint and the court of appeal granted the wife's petition for a writ of mandate directing that the demurrer be sustained.[4] For the purposes of the demurrer, the court of appeal assumed the facts, alledged by the plaintiffs, to be true.[5] The allegations in the first amended complaint were that the decedent had a "history of erractic and violent behavior prompted in part by his abuse of drugs and alcohol," and that he was a "human time bomb."[6] Specifically the plaintiffs alleged:

> '(1) a long history of arrests since 1965 including drug possession, robbery and burglary, and a conviction for grand theft and possession of dangerous drugs; (2) a long history of alcoholism and heavy drug use including heroin, LSD, cocaine, barbiturates, amphetamines, and marijuana; (3) a long history of psychiatric treatment for depression, aggressive behavior and criminal conduct; (4) a collection of wild and dangerous animals at defendants' residence including a boa constrictor and alligators and raised rabbits to feed these animals; (5) been unemployed for long periods of time including a lengthy time prior to and on September 21, 1988; (6) been observed romping naked in defendants' backyard with his two small pet alligators in 1987, and reported to police and defendants by neighbors; (7) access to and possession of an arsenal of weapons at defendants' residence including at least eight (8) pistols, four (4) rifles including an assault rifle, two (2) shotguns,

1. Individually and in her capacity as executor of decedent's estate.
2. Gendreau was not a party to Rosemary Wise's petition.
3. *Wise*, 222 Cal. App. 3d at 1011, 272 Cal. Rpt. at 223.
4. *Id.* at 1016, 272 Cal. Rptr. at 226.
5. *Id.* at 1011, 272 Cal. Rptr. at 223.
6. *Id.* at 1012, 272 Cal. Rptr. at 223.

> one (1) machine gun and ample ammunition for all of them. . . .'[7]

At least one week prior to the attack, Mrs. Wise left their home due to her husband's increasingly unstable behavior.[8]

The plaintiffs' complaint alleged alternative theories of liability. The complaint attempted to establish a duty by the wife to protect the motorists based upon a special relationship or upon general negligence principles. The complaint further alleged liability based on negligent entrustment of the weapons.[9]

In regards to the special relationship portion of the claim, the court of appeal held that the complaint failed to establish the requisite special relationship of the defendant to either the decedent or the plaintiffs.[10] The court recognized, that "in general one owes no duty to control the conduct of a third person to prevent him from causing physical harm to another," but at times a "special relationship may exist between the defendant and either the person whose conduct needs to be controlled or the foreseeable victim of that conduct,"[11] which does give rise to such a duty. Such special relationships, the court stated, included those "between parent and child (citation omitted), master and servant, (citation omitted), the possessor of land or chattels (who has a duty to control the conduct of a licensee) (citation omitted), and '[o]ne who takes charge of a third person whom he knows or should know likely to cause bodily harm to others if not controlled'. . .(citation omitted)."[12] The common link between these special relationships is the ability to control the third party. The court found no such ability in this case.

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7. *Id.* at 1012, 272 Cal. Rptr. at 224.
8. *Id.*
9. Negligent Entrustment:

> 'One who supplies directly or through a third person a chattel for the use of another whom the supplier knows or has reason to know to be likely because of his youth, inexperience or otherwise, to use it in a manner involving unreasonable bodily harm to himself and others whom the supplier should expect to share in, or be in the vicinity of its use, is subject to liability for bodily harm caused thereby to them.'

Johnson v. Casetta, 197 Cal. App. 2d, 272, 273, 17 Cal. Rprtr. 81. (1961) (quoting A.L.I. RESTATEMENT OF TORTS § 390).
10. *Id.* at 1013, 272 Cal. Rptr. at 224.
11. *Id.* at 1013, 272 Cal. Rptr. at 224-225.
12. *Id.* at 1013, 272 Cal. Rptr. at 225.

Finding that the natural relationship between the decedent and his wife created no inference of an ability to control, the court stated that the actual custodial ability must be shown.[13] The court disagreed with the plaintiffs' assertation that the decedent was " 'dependant upon the petitioner's supervision and control,' " and that the petitioner had assumed responsibility for her husband.[14] The court found instead that the decedent was an individual who was beyond self-control and beyond the control of another.[15]

Furthermore, the plaintiffs could not allege a special relationship between themselves and the petitioner.[16] The court found that neither the injury nor the harm was foreseeable.[17] The only violent threat that the decedent had made was towards a neighborhood cat, which had killed one of his rabbits. Moreover, the court stated that even if the petitioner knew of her husband's violent potential, no facts were alleged that she knew or could have known that her husband would engage in the type of attack which occurred.[18]

Alternatively, relying on the standards of ordinary care, the plaintiffs contended that a special relationship need not be plead, where the defendant, through her own actions, made the plaintiffs' position worse and created a foreseeable risk of harm from the third person.[19] The plaintiffs argued for the application of the ordinary standard of care as applied in *Pamela L. v. Farmer*.[20] In *Pamela L.*, the defendant allegedly knew of her husband's history of child molestation. Nevertheless, she encouraged and invited several young girls to use the swimming pool at her home while she was at work and her husband was home.[21] The court in *Wise,* however, distinguished *Pamela L.*, finding in that case, the victims and the harm to be forseeable. The young children were expressly invited by the defendant and the burden to avoid the sexual assault was minimal; she could

13. *Id.*
14. *Id.* at 1014, 272 Cal. Rptr. at 225.
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.*
19. *Id.*
20. *Id.* Pamela L. v. Farmer, 112 Cal. App. 3d 206, 169 Cal. Rptr. 282 (1980).
21. *Wise,* 222 Cal. App. 3d at 1014.

have merely asked that the plaintiffs not come over when she wasn't home.[22] In *Pamela L.*, there was a close connection between the defendant's actions and the harm incurred, a connection which the court did not find here.[23]

Finally, the court rejected the plaintiffs' claim based upon the petitioner's alleged negligent entrustment of the weapons to her husband.[24] The court found no facts to indicate that the "petitioner actually entrusted the decedent with the weapons he used to inflict the injuries."[25] Nor, did the court find that the possible co-ownership of the weapons gave rise to constructive negligent entrustment, as no facts indicated that the defendant aided or facilitated her husband's use of the weapons.[26]

In conclusion, the plaintiffs offered several public policy reasons why the court should follow the "trend to 'expand the list of special relationships which justify imposing liability,' "[27] and impose liability upon the petitioner in this case; to wit "the benefit to the community of reducing 'the risk that citizens will encourage mentally ill family members to repeat this all too familiar type of mass shooting-suicide incident;' "[28] the fact that the damages would be used to pay for the extensive medical bills; and the fact that there was home insurance available.[29] The court felt, however, that there were public policy reasons for limiting the scope of liability of the petitioner here.[30] Particularly, the court stated its belief that "the responsibility for tortious acts should lie with the individual who commits those acts; absent facts which clearly give rise to a legal duty that responsibility should not be shifted to a third party."[31]

While attitudes towards the roles of women in society have changed over the years, the plaintiffs, in this case, expose the

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22. *Id.* at 1014, 1015, 272 Cal. Rptr. at 225, 226.

23. *Id.* at 1015, 272 Cal. Rptr. at 226.

24. This claim was based upon the allegation that the petitioner had a community property interest in the weapons. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*, (quoting Pamela L., *supra*, 112 Cal. App. 3d at 211).

28. *Id.* at 1015. The court took offense to this suggestion, that the petitioner "encouraged" the decedent's attack. *Id.* at 1015 n.4, 272 Cal. Rptr. 226 n.4.

29. *Id.* at 1015, 272 Cal. Rptr. at 226.

30. *Id.*

31. *Id.* at 1016, 272 Cal. Rptr. at 226.

continuing attitude still held by some in society, that women are or should be responsible for the irresponsible acts of men. This attitude is prevelant in many rape cases, where the victim is often blamed for the acts of her attacker.

In this case, the plaintiffs seem to liken the wife's role to that in a parent-child relationship. They put the husband in the position of acting as child to his own wife, rather than as an individual, equal participant in a marriage. Fortunately, the court realized that merely because one is married, tortious liabilty for the actions of your spouse is not automatically imposed.

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