

**Jane Kahn Acceptance Speech
Fay Stender Award
California Women Lawyers, October 11, 2012**

I am honored to be the recipient of California Women Lawyers' Fay Stender Award. Ms. Stender, a Bay Area attorney and founding member of CWL, spent much of her professional life fighting for prisoners' rights. She was committed to the representation of women, disadvantaged groups, and unpopular causes, and her compelling sense of justice was legendary. Although I moved to the Bay Area after Ms. Stender's death, I have long considered her one of my role models. I thank you for recognizing the importance of prison reform work with your decision to honor me with this award.

When I learned that I had been selected to receive the Fay Stender Award, I thought first of my clients, the *Coleman* class of 35,000 California prisoners, who have been diagnosed with a serious mental illness. The *Coleman* case, involved claims under the Eighth and Fourteenth Amendments to the U.S. Constitution, based on serious inadequacies in the delivery of mental health care in the California prison system. In its post-trial decision of 1995, the district court wrote that "the evidence of defendants' knowledge of the gross inadequacies of their system is overwhelming. The risk of harm from these deficiencies is obvious. The actual suffering experienced by mentally ill inmates is apparent." (912 F. Supp. 1282 at 1319) These prisoners, women and men, mothers and fathers, sisters and brothers, are members of our community.

By 2006, California's prison population had grown to 172,000—more than 200% over design capacity; as a result, mental and medical health care were both in crisis. In 2006, after Governor Schwarzenegger issued his Prison Overcrowding State of Emergency Proclamation, the plaintiffs in *Coleman* and *Plata* (a medical class action) filed motions to convene a three-judge court to limit the prison population. The motions were granted, and following a fourteen day trial, the three-judge court issued an order directing defendants to reduce the prison population to 137.5% of its design capacity. Defendants appealed this order, which the U.S. Supreme Court affirmed on May 23, 2011. We demonstrated in the overcrowding trial, and later to the U.S. Supreme Court, that after more than 20 years of litigation, the California Department of Corrections today, remains incapable of providing constitutionally adequate mental health care to these 35,000 California residents due to severe overcrowding in the prisons. Justice Kennedy, writing for the majority in *Plata v. Brown*, noted that "for years, the medical and mental health care provided by California's prisons has fallen short of minimum constitutional requirements and has failed to meet prisoners' basic health needs. Needless suffering and death have been the well-documented result."

Although Justice Kennedy wrote that, “as a consequence of their own actions, prisoners may be deprived of some rights that are fundamental to liberty ... prisoners retain the essence of human dignity inherent in all persons.” And, it is “respect for that dignity” which Justice Kennedy noted “animates the Eighth Amendment prohibition against cruel and unusual punishment.” (*Plata v Brown* at 12) In an era when the Supreme Court has limited civil rights and class actions, the court reinvigorated the power of the Eighth Amendment to address constitutional violations in this decision, which should benefit all American prisoners, especially the one million estimated to suffer from mental illness.

Over my 22 years of prison reform work, I have learned several important lessons:

First, there are significant risks to doing this work, which have nothing to do with the risk of physical harm. For those who enter the prisons and communicate with California prisoners through mail and phone, the risk is from the continued exposure to the horrific conditions that our clients must endure every day. This can be intolerable at times, as we can neither remedy these conditions nor rescue our clients from their suffering, and especially since we can leave prison at the end of the day, while our clients remain locked up. It is especially difficult when we observe particularly shocking prison practices or conditions that are routine and acceptable to prison staff. During one tour, I observed a mental health treatment team meeting held in the crisis unit, which was staffed by a psychiatrist, psychologist, social worker and counselor. A suicidal prisoner was brought into the meeting handcuffed and naked, except for a blanket wrapped around his waist. No one appeared disturbed by the prisoner’s naked state, except for the patient and me. Following the meeting, he was returned to his cell, where he slept on a thin mattress placed on the floor. These were acceptable practices to the staff working in this prison mental health unit.

However, prison reform work is not the only area of law where attorneys are exposed to “secondary trauma.” The legal profession needs to be more proactive in offering training and support for lawyers and staff on how to cope with the impact of this exposure and symptoms of burnout. In our office, we have developed *ad hoc* techniques for helping staff manage it, but welcome a broader discussion within the Bar to improve policies and find creative solutions in this area.

Second, I have learned to trust my gut response when observing and advocating on behalf of my clients. Early in my prison work, I found the client letters, prison visits with their searing images of pain and degradation, inpatient documents, and suicide reports overwhelming at times and often could not see how to use the heart-breaking individual client stories to advocate for the *Coleman* class. I often found myself discounting my distressed reaction, because I worried that

my response was due to my inexperience and was unprofessional. Yet, over time, I have seen how important my own reaction to my clients' experience is for gauging what facts "shock the conscience."

The attorneys and paralegals in my office read hundreds of prisoner letters which oftentimes detail the horrific conditions of confinement that we saw first-hand most recently during the overcrowding trial. It is through our clients' letters that we have learned about many of the unlawful policies and practices implemented at prisons in response to overcrowding and understaffing. One time, approximately seven or eight years ago, when the outrage I felt over an individual's situation simply boiled over, I could no longer ignore the individual facts and simply had to tell the story of this man's very sad and preventable suicide. Defendants' own documents and letters from our clients housed in the same unit detailed the facts of this preventable death. When woven into our motion for additional suicide prevention measures, his powerful story enhanced our motion and cast our legal and statistical arguments into human terms. We now regularly use Defendants' own documents, including their suicide reports, medical records, inpatient reports, etc. to illustrate the stories of our class members when requesting class-wide relief. It is persuasive and works. By the time we litigated the overcrowding case, we knew to trust our gut reactions as we walked through the over-crowded prisons with our experts. We listened to our clients' stories in lockdowns, holding cells, crowded dorms, and in the crisis units; we pulled their medical records; and we told their stories in our experts' declarations. We also directed the custody officer, who took photos at our direction, to capture scenes that "shocked" us. Some of these photos now appear in the SCOTUS opinion and can be viewed by Googling *Plata v. Brown*, and going to Appendix B.

The facts in your case may differ from holding cages, triple bunks, and suicidal prisoners sleeping on the floor, but you should learn to trust your gut reaction to them and if they "shock your conscience," figure out a way to use those facts to benefit your clients.

Third, and most importantly, value your colleagues. They are your best resource and oftentimes, your best support. In my work, these colleagues have included the many prisoner rights attorneys around the country, the talented folks at the Prison Law Office, the Employment Law Center, and California Appellate Project, the many experts who support this work, including Drs. Craig Haney and Pablo Stewart, the *Coleman* Special Master and his talented team, many of the dedicated custody and health care staff working for the CDCR, and the amazing Rosen, Bien, Galvan & Grunfeld lawyers, paralegals and support staff. I want to thank and acknowledge my colleague and friend, Gay Grunfeld, who is also a prisoner rights lawyer and a former Fay Stender award winner.

I also want to thank my friends, colleagues, and family, for being here with me today. I want to especially acknowledge two of my three sons who were able to travel here today, Ben and Joey, and my husband, Michael Bien, who has been my co-counsel, mentor, friend and greatest supporter for the past 39 years. Mike, when you appeared at my freshman dorm room 39 years ago and asked me to take a bike ride, I am so happy I said yes.

Finally, I want to end with a few words about Ralph Coleman, our name plaintiff. Mr. Coleman started the Coleman lawsuit by submitting an administrative appeal requesting mental health care in 1989. At that time, Mr. Coleman, a twice decorated Viet Nam Vet, was housed at a California prison that offered no supportive mental health services. His appeal was denied, but he resubmitted his request to the second level of review. It was denied again, but undaunted, Mr. Coleman sent it off to Sacramento for the Director's Level of Review, where it was rejected again. Mr. Coleman then drafted a civil complaint requesting mental health care, which he filed in the federal district court in Sacramento. The rest is history. As the name plaintiff for the past 21 years, Mr. Coleman has remained actively involved in the case, while placing himself at significant risk of harm. In accepting the award tonight, I am especially mindful of Mr. Coleman and the rest of the Coleman class. Thank you again.