



PRESIDENT'S MESSAGE

Historic Supreme Court Nomination

By Ameer A. Mikacich

On May 10, 2010, President Barack Obama made history by nominating Solicitor General Elena Kagan to succeed Supreme Court Justice John Paul Stevens. Justice Stevens announced on April 9, 2010 that he would retire at the conclusion of the Court's term this summer. Kagan's nomination is encouraging news for women lawyers everywhere who aspire to advance their careers in the legal profession and break through boundaries which have traditionally existed in the law. If affirmed, Kagan will become the third female justice currently sitting on the United States Supreme Court.



At 50 years old, Kagan is one of the youngest persons ever nominated to the Supreme Court. Born and raised in New York City, Kagan came from a family of educators and lawyers. Her mother was an elementary school teacher and her father was an attorney. Both of her brothers are public school teachers. Kagan is said to have been a good student and an avid reader, who reportedly re-read Jane Austen's *Pride and Prejudice* every year. Not surprisingly, after attending Princeton, Oxford and Harvard Law School, she clerked for the federal Court of Appeals and Supreme Court, and then went into academia. As a professor at the University of

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2010 Mildred W. Levin Scholarship

By Courtney LeBoeuf, Scholarships Committee

The Queen's Bench Scholarships Committee is pleased to announce that **Tuyet Tu**, an outstanding student from the University of California Hastings College of the Law, has been selected to receive the Mildred W. Levin Scholarship. The scholarship, established in honor of the Hastings and Queen's Bench alumna, is awarded to second or third year students with financial need who exemplify the ideals represented by Mildred Levin: intellect, determination, compassion and integrity. As the recipient of the Scholarship, Ms. Tu will receive a \$1,750 award.

Ms. Tu, a second year law student, has distinguished herself as an active



member of the academic community. At Hastings, she is a member of the Hastings Women's Law Journal and is a past Secretary of Law Students for Reproductive Justice. Ms. Tu also demonstrates a firm commitment to public service. She is a Marshall-Brennan Program Constitutional Law Teacher at Lincoln High School in San Francisco. She has also served as a national intern for Project Vote Smart, collecting data on political candidates nationwide. Ms. Tu graduated, magna cum laude, from the University of Houston where she founded Students Against Violence Everywhere and was a coordinator of

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2010 Cocktails and Couture a Big Success!

By Jaime Touchstone, Co-Chair Business Development Committee

On May 4, 2010, Queen's Bench's Business Development Committee held its fourth annual Cocktails and Couture networking mixer. The event took place at the clothing and accessory boutique Beyond the Alley on Chestnut Street. Once again the event was a success drawing over 60 women from the legal, consulting, marketing, medical, design and advertising professions. Delicious food and wine donated by Buchalter Nemer and Trucker Huss, rounded out the evening of shopping and networking. Thank you for your attendance and we look forward to seeing you at the LEAADD Dinner in the fall.

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For Now, Patents Providing Exclusivity for Genes for Breast and Ovarian Cancer Ruled Invalid

By Melissa Malone, Co-Chair Legislative Issues and Reproductive Rights Committee

A recent summary judgment ruling in a patent lawsuit, if it stands on appeal, may prove consequential to the health of women throughout the U.S. *Association of Molecular Pathology et al., v. USPTO et al.*, Civil Action No. 09-cv-4515 (S.D.N.Y. March 29, 2010) (hereinafter “Myriad”).

Myriad Genetics controls certain patents that claim two isolated genes, BRCA1 and BRCA2, related to breast cancer and ovarian cancer. The patents also claim methods for analyzing the gene sequences of BRCA1/2, to identify whether mutations exist that signal a predisposition to breast and ovarian cancer.

The correlation between BRCA1/2 and breast and ovarian cancer is striking. According to one expert’s testimony provided in a declaration, women with the BRCA1 and BRCA2 mutations face up to an 85% cumulative risk¹ of breast cancer, and a 50% cumulative risk of ovarian cancer. Male carriers of mutations also are at an increased risk for breast and prostate cancer. Plainly, BRCA1/2 analysis can be critical to women diagnosed with breast and/or ovarian cancer, or with a family history of these diseases, to enable them to make informed decisions affecting their health and selection of medical treatment. The court in *Myriad* recognized:

A patient will not only learn of her risk for hereditary breast and ovarian cancer, but also can gain information that may be useful in determining prevention and treatment options. This information is useful for women who are facing difficult decisions regarding whether or not to undergo prophylactic surgery, hormonal therapy, chemotherapy, and other measures. [cite] Testing results for the BRCA1/2 genes can be an important factor in structuring an appropriate course of cancer treatment, since certain forms of chemotherapy can be more effective in treating cancers related to BRCA1/2 mutations. (citing witnesses’ declarations).

As the exclusive licensee of the BRCA1/2 patents, Myriad has the right to exclude all others from making, using, or selling any products or services claimed in the patents. Market exclusivity enables Myriad and companies like it to recoup the cost of research and development, and to attract investment dollars needed to drive further innovation and commercialization.

However, Myriad’s market exclusivity also means that only Myriad (or its sub-licensees) can provide BRCA1/2 analysis to evaluate a patient’s predisposition for breast and ovarian cancer. Myriad’s test, the BRACAnalysis Re-Arrangement Test, is available for over \$4000.² Myriad does not accept all insurance, and some women cannot pay for the test when the funds must come out of their own pockets. As a result of Myriad’s market exclusivity, some women simply do not have access to screening. A further consequence is that patents to isolated genes may be expected to hinder innovation, as there is a move to analyze panels of multiple genes in screening for predisposition to diseases and other traits.

Myriad took steps to enforce its patents against physicians and commercial laboratories that performed tests to detect BRCA1/2 mutations. In response, several doctors, laboratories, the ACLU, and the Public Patent Foundation filed suit in Federal Court in New York seeking declaratory judgment that the BRCA1/2 patents were invalid as being directed to un-patentable subject matter.

More specifically, Plaintiffs argued that genes are natural phenomena, and as such, are not patentable. Accordingly, the patents never should have been allowed to issue. Patentable subject matter is addressed in 35 U.S.C. § 101: “Whoever invents or discovers any new and useful process . . . or composition of matter, or any new and useful improvement thereof, may obtain a patent” Courts have long recognized that Section 101 prohibits patenting laws of nature. “The laws of nature, physical phenomena, and abstract ideas have been held not patentable.” *Myriad* at 97 (quoting *Diamond v. Chakrabarty*, 447 U.S. 303, 309 (1980)). To make a long opinion short, the Court in *Myriad* relied on precedent in ruling that the isolated BRCA1/2 gene sequences are products of nature and therefore not patentable subject matter. The patents were invalidated. The Court also found the method claims invalid under Section 101, because the act of comparing gene sequences was merely an un-patentable abstract mental process.

Defendants plan to appeal their loss to the Federal Circuit, which hears all patent appeals. Affirming the ruling would call into question the validity of thousands of patents for other isolated genes, which likely are tied up in licensing relationships. Alternative courses of action may be preferable to also opening the door to numerous lawsuits seeking to invalidate gene patents.

¹ “Cumulative risk” is the probability that an individual will develop a certain disease during a defined lifespan, assuming that the individual does not die of another cause.

² Myriad raised the price in April 2010.

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Patents Ruled Invalid

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One option would be for the Federal government to begin to exercise “March-In Rights” under the Bayh-Dole Act. March-In Rights set forth compulsory licensing authority that allow the Federal government to license to a third party an invention developed with government funding, without obtaining permission from the patentee or licensee. The government can exercise March-In Rights if the invention is not made available to the public on a reasonable basis. Where the technology in question concerns, as it does with BRCA1/2, detection of serious medical conditions, it may make sense to exercise compulsory licensing. To date, the government never has exercised its March-In Rights.

Lobbyists might also work with Congress to pass legislation requiring at least partial insurance coverage for BRCA1/2 screening. Their success may depend on a cost/benefit analysis weighing the cost of early detection versus the cost of treating breast and/or ovarian cancer without early screening. In any event, Myriad highlighted a patent issue—patentability of isolated genes—but also may have opened the door to potential avenues for beginning to address to healthcare issues.

Mildred Levin Scholarship

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the Thai Student Association. Ms. Tu is fluent in German.

Queen’s Bench is proud to honor this outstanding law student and wishes her much success and happiness as she continues her legal education and soon begins a legal career.

Thank you to this year’s Scholarships Committee, who consisted of Adrienne Jacobs Miller, Rebecca Hooley, Mia Ottilia Solvesson Hernandez, Pauline Farmer-Koppenol, Suizi O. Lin, Courtney LeBoeuf, and Gillian Morshedi. To arrive at our scholarship recipient, the Scholarships Committee interviewed the top three candidates, each of whom submitted a resume, an autobiographical statement and an essay addressing the question “What experience or event in your life motivated or directed you to pursue a career in law?”

President’s Message

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Chicago Law School, Kagan was selected to serve as an Associate White House Counsel under President Clinton. In 2001, Kagan was named a full professor at Harvard Law School, and in 2003, she became the first woman to be named Dean of the Law School by Harvard University’s then-president, Lawrence Summers.

Interestingly, Kagan has never served as a judge. In 1999, she was nominated by President Clinton to the U.S. Court of Appeals for the District of Columbia Circuit. However, her nomination lapsed without a confirmation hearing at the conclusion of President Clinton’s term. Commentators have also noted that Kagan had limited courtroom experience until her appointment to the position of Solicitor General, when on September 9, 2009, she made her first appearance in oral argument before the Supreme Court. Notwithstanding these observations, Kagan has garnered wide support for her nomination. On May 22, 2010, the NAACP unanimously endorsed Kagan to succeed Justice John Paul Stevens, stating “Elena Kagan has demonstrated a commitment to civil rights and equal justice under the law throughout her career.”

Women lawyers everywhere should find inspiration in Elena Kagan’s demonstrated commitment to the law and leadership. If confirmed by the Senate, Kagan will become the fourth female justice in Supreme Court history. We will watch with interest the confirmation process in the coming months.

Closer to home, we invite you all to join us at the Annual Judges’ Dinner to be held on June 15, 2010 at the Sir Francis Drake Hotel. This yearly event honors our local judiciary, and offers lawyers a unique opportunity to meet and speak with judges from the Bay Area courts. In these economically trying times, the judges are working ever harder to maintain the high level of access to the judicial system that we enjoy every day. Please join us on June 15 to express our gratitude and respect for the courts.

Queen’s Bench New Members

Please welcome the following new members who joined between May 1 and May 28, 2010:

- Robin McGinnis
- Andje M. Medina
The Veen Firm
- Elizabeth J. Rest
Idell & Seitel LLP
- Jessica Yeh





Legislative Issues and Reproductive Rights Committee Co-Chairs: Mary Catherine Wiederhold and Melissa Malone

Many Queen's Bench members volunteer their time to lead our many different committees. They dedicate their precious time, talent and resources to serve our members and our community. In the next several months, we will be featuring various committees and their co-chairs.

Mary Catherine Wiederhold

is currently the co-chair of the Legislative Issues and Reproductive Rights Committee. The committee monitors legal matters relating to women's reproductive rights, health, and employment. In addition, the committee highlights important cases and legislative issues through a



column in the Queen's Bench newsletter. Mary Catherine has been a member of Queen's Bench since 2007 and on the Board of Directors beginning this year.

Mary Catherine is a litigator with extensive experience in residential landlord-tenant law. She focuses solely on tenant representation. She has defended a wide range of clients faced with eviction actions. On behalf of her tenants, she has prosecuted affirmative lawsuits which include all elements of investigation, discovery, law and motion, mediation/settlement, trial, and appeal. She also has expertise with other real estate issues and represents individuals and businesses in state court.

She is also on the Executive Committee of the Lawyer's Club Inns of Court. She writes the legal column for the *Miraloma Life* (San Francisco) monthly newsletter. Mary Catherine has appeared on KALW's "Your Legal Rights" program to discuss landlord-tenant issues. She has spoken to the San Francisco Council of Women Realtors concerning issues relating to real estate brokers.

She earned her J.D. from the University of San Francisco School of Law and her Bachelor of Arts degree from the University of California, Berkeley. Prior to entering law school, Mary Catherine worked as a commercial real estate appraiser.

Melissa Malone

serves as Co-Chair of the Legislative Issues and Reproductive Rights Committee. She specializes in intellectual property law and currently is Of Counsel with the Borson Law Group in Lafayette, California.



Melissa is a patent attorney registered with the USPTO, with experience in drafting and prosecuting patents in fields including biotechnology, medical devices, software, building materials, and childcare inventions by new mothers. Her practice also includes providing patent strategy advice; litigating intellectual property and non-IP matters; conducting IP due diligence investigations prior to technology acquisition; pursuing domestic and foreign trademark protection; advising clients on branding strategy, trademark dispute resolution, and proper trademark use; and counseling clients on optimizing product life cycle.

Melissa has worked both as outside and in-house Intellectual Property Counsel, advising small and large enterprises on IP legal issues over a broad range of industries including pharmaceuticals, medical devices, consumer goods, and telecommunications. She has a Bachelor's Degree with Honors in Biology from Brown University and she graduated from U.C. Berkeley Boalt Hall School of Law in 1997. She is a member of both the California and Washington, D.C. Bars and the USPTO Patent Bar.

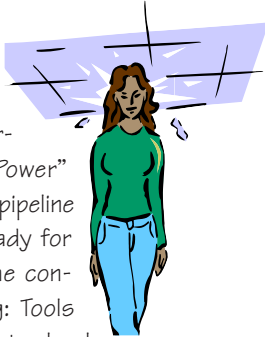
ANNOUNCEMENTS ...

JUNE 9, 2010

San Francisco Bar Association's No Glass Ceiling Task Force Conference

By Tammy Dawson, Co-chair,
Work-Life Balance Committee

On June 9, 2010 BASF will be sponsoring the second conference in their "Pathways to Power" series, intended to increase the pipeline of skilled women attorneys ready for partnership and leadership. The conference: "Starting Out Strong: Tools for Economic Success," is for entry level associates, recent graduates, and third year law students. There will be presentations on networking, gender bias, taking credit, and practical advice on finding mentors, billing, getting good work, building your reputation, and client development. The cost is \$40, **\$20 for students**, and includes lunch. For more information, go to www.sfbar.org/calendar/eventdetail.aspx?id=D107401B/D107401B. A future conference for mid-level associates is planned for the fall.



No charge to Queen's Bench members; \$25 charge for non-members. One Hour of Elimination of Bias California MCLE Credit will be provided. (See accompanying flyer.)

AUGUST 6, 2010

NCWBA Women's Bar Summit

By Andrea Carlise, Conference of Delegates

"Transforming Law, Transforming Lives" is the theme of the 2010 Women's Bar Summit, to be held in San Francisco on Friday, August 6, 2010 at Golden Gate University School of Law. Plan to spend the full day networking with other women's bar leaders as you share best practices and learn about trends in our rapidly-changing profession. After the Summit, we'll gather in the offices of our Diamond Sponsor, Perkins Coie, where we'll have a chance to continue our conversations with one another while admiring the views of the San Francisco Bay over hors d'oeuvres. For more information go to: www.ncwba.org/ourprograms-summit.shtml.

JUNE 15, 2010

Queen's Bench Annual Judges' Dinner

By Sarah King, Queen's Bench First Vice President

The Annual Judge's Dinner will be on June 15, 2010, at the Sir Francis Drake Hotel. Keynote Speaker is Golden Gate School of Law Dean Drucilla Stender Ramey. Cocktails at 5:30 p.m., Dinner at 6:30 p.m. Sponsor Tables (10 seats including a hosted judge) are \$1,250 if purchased by June 1, 2010 and \$1,500 thereafter. Individual tickets are \$90 for Queen's Bench members and \$125 for non-members and guests. (See accompanying flyer.)



JULY 21, 2010:

Queen's Bench MCLE "Techniques for Negotiating from a Position of Strength"

By Molly Mrowka, Co-Chair Education Committee

Queen's Bench Education committee invites you to a brown-bag lunch MCLE presentation on "Techniques for Negotiating from a Position of Strength," presented by Linda DeBene, Esq. and Cathy Yanni, Esq. of JAMS. Location: JAMS San Francisco, Two Embarcadero Center, Program on 14th Floor. Time: Registration from 11:30 AM to 12:00 PM, Program from 12:00-1:00 PM. Brown Bag Lunch, Beverages will be provided. Cost:

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CALENDAR OF EVENTS

June

- 1** **Board of Directors Meeting**
6:00 p.m.
- 2** **Juvenile Hall**
7:00 p.m.
Youth Guidance Center, 375 Woodside Ave.
- 15** **Judges' Dinner**
5:30 p.m.
Sir Francis Drake Hotel
See [flyer](#) for information and table reservations.
- 16** **Juvenile Hall**
Youth Guidance Center
- 29** **Business Development Committee Meeting**
6:00 p.m.
Mergis Group, 475 Sansome St., Ste. 520

July

- 6** **Board of Directors Meeting**
6:00 p.m.
- 7** **Juvenile Hall**
7:00 p.m.
Youth Guidance Center, 375 Woodside Ave.
- 21** **MCLE Program: "Techniques for Negotiating from a Position of Strength"**
11:30 p.m., registration
12:00 to 1:00 p.m., brown bag lunch
JAMS, Two Embarcadero Center, 14th Floor
See [flyer](#) for information.
- 21** **Juvenile Hall**
Youth Guidance Center
- 27** **Business Development Committee Meeting**
6:00 p.m.
Mergis Group, 475 Sansome St., Ste. 520



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