

FAY STENDER AWARD

Thanks to Justice McConnell for her wonderful introduction and to CWL for this stupendous award. Ever since I was told about it, I've been stunned, humbled, and awed.

I did a little research into Fay Stender when I learned about this wonderful honor. As I did, I began to look behind and around me, thinking, "Is this some kind of mistake? I'm nothing like Fay Stender or Lynn Schenk, a recent winner and former colleague of mine. Their careers shine so brilliantly on the large stage. I don't belong in extraordinary company like that."

But eventually I began to get it: CWL is not looking for clones of Fay Stender, people who have her personality or exact interests. It is looking for women who have demonstrated the *values* she personified: *a vision of the way things ought to be and persistence in trying to make them that way.*

I have had a chance to do that in my career. It happened to have been on the stage of appellate indigent defense. I'd like to tell my story, hoping some woman out there can make something happen on her own stage. The story has several chapters.

Chapter 1: A horrible problem

When I came out of law school and started clerking with the Court of Appeal in Los Angeles, one of the things that struck me most forcibly was the abysmal quality of appointed counsel work on appeal. Forget on-point case citations and references to the record. Spelling? Grammar? What's that? I kept thinking, "How could this person get out of grade school, much less pass the bar?" I knew it wasn't right. But at the time, neither I nor anyone else could do anything about it.

Chapter 2: Glimmer of hope

I eventually moved to San Diego and the Attorney General's Office, where I met Lynn Schenk. While there in 1972, we saw a bright spot. An organization called Appellate Defenders, Inc. (ADI), was starting up in San Diego. They used a core staff of experienced appellate attorneys to supervise a panel of private attorneys. The indigent briefs we saw from that office were actually *good*. They were a challenge to our legal skills, not a mute plea to feel sorry for the defendant for having such a bad lawyer. Eventually I joined ADI as a half-time staff attorney.

Outside of ADI's domain of San Diego, most of the appointed representation in California remained with unsupervised private counsel, mired in what we call, in retro speak, the Bad Old Days.

Chapter 3: A necessary but scary step

My career got a huge boost in 1979, when my boss was named to the superior court. ADI by then was funded by the State Public Defender, the head of which came down to San Diego to interview possible successors, including me.

I confess before all of you: I reacted in a completely un-Fay Stender like way. I told him, “I’ll make your job easy. I don’t want to be executive director. I work part-time and have a baby and two older children. I want to continue doing legal work. I couldn’t do all that and be a director, too.” He replied, “I don’t think I want you make my job easy,” and to my dismay chose me.

I see an audience of confident women out here, and it’s hard to imagine any of you ever have doubts about yourself. ☺ But I know everyone does at one time or another. I hope when you encounter a moment of self-doubt but others around you have confidence in you and need you and call on you, you will allow yourself to be kicked into doing scary things you would rather not be doing. My *very* reluctant “yes” made the rest of this story possible.

Chapter 4: Saving what we had

In 1983, four years after I became executive director of ADI, the whole structure threatened to come tumbling down. The Governor cut the budget of our funding source, the State Public Defender, in half and moved the money to the judiciary’s appointed counsel budget. ADI was to be shut down.

I could not let something that had done so much and promised so much just disappear without a fight. We had three months to find other funding. I drew on all my past experiences to draft a plan for a contract with the judiciary. To gain their support, ADI would cover the whole Fourth District, not just San Diego. We would add juvenile dependency cases to our plate and take on compensation claims.

It was a crazy three months, full of doubt, when I did dozens of budgets with a hand-held calculator and pencils and lots of erasers. But on the final day of our deadline, we signed a contract. ADI’s doors remained open.

Chapter 5: Giving birth to a vision

The fall of 1983 had saved ADI, but the rest of the state still lived in the Bad Old Days. At first.

Then, in the following few years, something semi-miraculous happened. Gradually ADI's success in bringing quality representation at a reasonable cost to the Fourth District was lighting fires in other areas. The word was spreading. Other Courts of Appeal began to seek their own projects based on ADI's model. The State Bar and bar associations in a number of counties provided support. A quiet movement was underway. Quality indigent representation, my long-time vision, was coming to life in front of my eyes.

By the end of the 1980s, the appellate projects were in place throughout California. No longer would a new law clerk at the Court of Appeal, on opening an appointed brief, be assaulted with a semi-literate document produced by an attorney with no training or qualifications. Soon the courts would be pointing to appointed work as a model that other lawyers should aspire to. Wow – from “abysmal” to “model.” What a change!

Chapter 6: Persevere and always remember

The decades since then have been less dramatic than the birthing process I have just described. But I can't say it's been “they lived happily ever after,” either. Indigent defense is a precarious business. Representing convicted felons has never been on the Top Ten list of popular causes. We cannot take it for granted but must sell ourselves over and over again. Even now, because of a 10-year funding stagnation, the projects are edging closer to the Endangered Species list.

At this point there are few if any appellate judges or active appellate attorneys who remember the Bad Old Days before the projects and understand what indigent representation could and would quickly revert to without them. It is vital they know. Losing institutional memory is dangerous. I'm telling you my story tonight so that you'll understand and help others remember.

In conclusion, to circle back to the start, CWL knows, in bestowing the Fay Stender Award, that one person, perhaps very unsure of herself at times, but very determined to make things work the way they should, *can* make a difference. Fay Stender did. I'd like to think that, in my very different way, I did, too. And so can you.

Thank you for this amazing honor.