

# Bar Bulletin

Serving San Luis Obispo  
County's Legal Community

January–  
February 2019

**SLOLAF Raises Funds  
to Serve Vulnerable  
County Residents**

**Dan Dow  
Chooses New  
District Attorneys**



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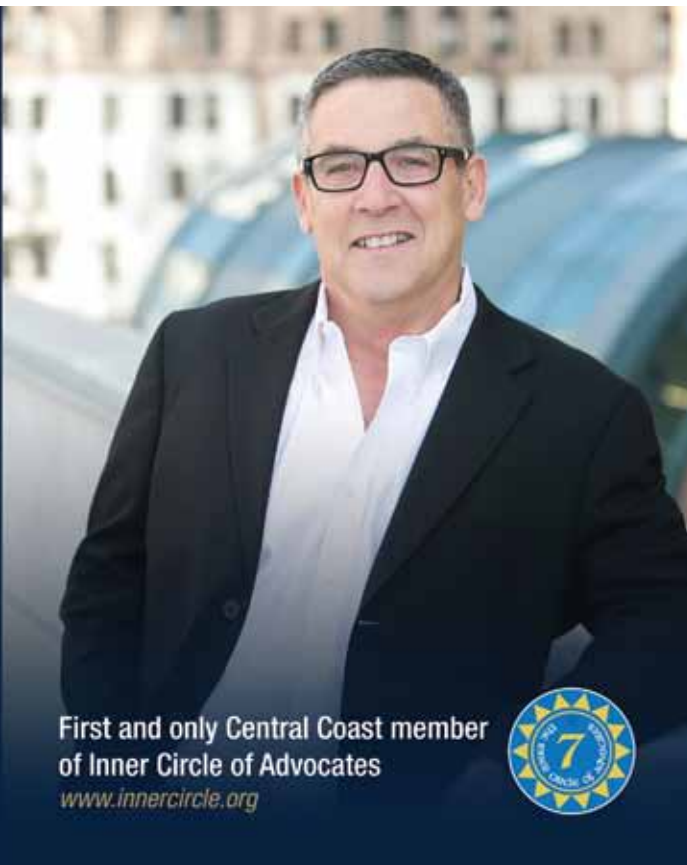
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**CONTENTS**

President's Message: What Are Your Perceptions of Gratitude?	4
Welcome President Michael Pick	5
Dan Dow Chooses New District Attorneys	6
SLOLAF Gala Raises Funds to Serve Residents	12
Welcome Leslie Kraut, Newest Bench Officer	16
2018 Holiday Party	18
Seitz and Pentagelo Awards	20
Editor's Message	22
Top Five Techniques to Use With Difficult Clients	23
SLOCL Presents First Justice Andreen Moot Court	26
LRIS Barbecue Fundraiser and LRIS 101	27
Bar Bulletin Editorial and Advertisement Policy	34

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# President's MESSAGE

by Michael R. Pick Jr.



## What Are Your Perceptions of Gratitude?

If you are reading the *Bar Bulletin*, you, just like me, have many reasons to be grateful. In my mind, gratitude is simply a matter of the perception of valuing the things around you. In the hopes of this submission not sounding too much like a memorandum of points and authorities, I present to you five perceptions of gratitude.

First, we live in paradise! With the comfortable climate, 80 miles of beaches, 250+ wineries, cornucopia of agriculture, low density, great outdoor activities, and the general laid-back vibe, San Luis Obispo County, from my perspective, is the best place to live. It is nothing short of a blessing to call San Luis Obispo County home.

Second, the practice of law in this community is special. For many attorneys in "town," who have practiced out of the area, they know that practicing law in this area is unique. I recall my first appearance in front of Judge Crandall, where the habits and

customs of Southern California practice were still ingrained. Gracefully, Judge Crandall gave me some advice that things are different in this community and to ease up on the aggression. His guidance was invaluable as well as correct. We have a community of talented and effective lawyers who are professional and collegial. We should all be grateful to practice in this community.

Third, the "non-lawyers" who make up our legal community. We have amazing people who perform many of the tasks that do not get the attention lawyers receive, although their work is critical to serving clients. The quality court clerks, court reporters, file clerks, bailiffs, paralegals, legal secretaries and process servers we work alongside make the practice of law in this community easier and stronger. Thank you to everyone behind the scenes serving our legal community.

Fourth, our judges. We have an amazing team of judges and support team who care about the integrity of our legal system, the

administration of justice and the welfare of attorneys in our community. It is hard to imagine a place where the bench and bar work together more effectively. Thank you to our judges!

Finally, the San Luis Obispo County Bar Association Board of Directors. The Board for 2018 did an amazing job despite a number of anomalies such as the unprecedented contested judiciary race, a change in the long-term executive director, and our previous president moving off the board early because of judicial appointment. Sheryl Wolcott was an amazing president that served our community tirelessly. Thank you, Sheryl, for providing me a great template from which to work.

I'm thankful and humbled for the confidence you have in me and my ability to serve as the San Luis Obispo County Bar Association President this year. I appreciate the friendships I've made and hope to make many more this coming year.

A special thank you to Collette Hillier who served as the

## President's Message continued

*Bar Bulletin* editor. Although our new editor, Raymond Allen, will do a fantastic job as editor and director, Collette will be missed.

Our Board for 2019 is stacked. Along with the return of the Honorable Matthew Guerrero, Sheryl Wolcott, Martha Spalding, Kevin Elder, Chelsea Olson-Murphy and James Graff-Radford serving on the board, Stephanie

Barclay has agreed to serve as Vice-President and Trevor Creel has agreed to serve as Secretary / Treasurer. Also, Joe Benson will be joining the board and will provide a new voice.

I have no doubt that this group of people will serve the bar in a meaningful and effective way. I am personally grateful to have gotten to know everyone

and serve shoulder to shoulder with them. I look forward to another great year.

In conclusion, I would challenge everyone to take stock of what we have in our community and assign the value to it that it deserves. If you are like me, you will be left with an immense feeling of gratitude. ■

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## A Warm Welcome to SLO Bar President Michael Pick!

by Sheryl Wolcott

**W**e are fortunate to have Michael Pick taking the helm as President of the Bar Association for 2019. As a sole practitioner at the Pick Law Office, he is a civil litigator specializing in real estate, business and estate disputes.

He was raised in various cities across California and began his ongoing practice of martial arts at age five. He also played football and basketball as a youth, and dreamed of being a Laker when he grew up. When the NBA didn't come calling, Pick joined the United States Marine Corps right out of high school, serving honorably, including service in Operations Restore

Hope and Continue Hope in Somalia and Operation Distant Runner in Burundi.

While in the Marines, Pick worked with attorneys who inspired him, and that planted a seed. Upon completing his service, he visited San Luis Obispo and soon returned as a student at Cal Poly. There he earned his undergraduate degree in 1999 and met his wife of 18 years. He went on to earn his law degree from California Western School of Law in San Diego in 2004. In 2008, Pick and his family happily returned to San Luis

Obispo, where he and his wife are raising their three sons, ages 14, 12 and 5.

When he's not working for his clients or volunteering his time to the Bar Association, the Fee Arbitration Committee, and the Legal Referral and Information Services, Pick loves spending time with his wife and family, watching his boys participate in sports, reading, camping, hiking, music and "routine doses of faith."

Please welcome Mike Pick, your incoming Bar President. ■



# Dan Dow Chooses New District Attorneys

by Raymond Allen

Photos courtesy of Christine Joo

## Dan Dow and the Question of Character

**O**n March 8, 2018, in response to an election challenge, Dan Dow expressed his viewpoint for *The Tribune*. He wrote, "I'm an Army veteran, career prosecutor, husband and father. I'm not a career politician, but I'm honest and I'm willing to admit I don't have all the answers for society's ills. What I do have is my word; my record; and my team; each of which I proudly stand behind."

*Espirit de corps* is a military term that is used to express team morale. Military leaders have long understood that success requires every person in the corps to embrace the goal and seek excellence. The development of excellence requires appropriate tools, training and preparation; honest feedback; and relentless determination. Putting the team together is the first step in building a quality organization.

At last count, there were 35 deputy district attorneys. Four of those were hired by Barry LaBarbera, 14 were hired by Gerry Shea, and 17 have been hired since Dan Dow took office.<sup>1</sup> Dow is putting a permanent thumbprint on the district attorney's office and on the legal landscape of our criminal justice system.

Recently, I stopped by the district attorney's office to speak

to Dow about the new deputies and his approach to team building.

## Deciding Whom to Hire

Dow is incredibly gracious. He offered and made me an individual cup of espresso. He ushered me to his office. Although he probably had a full schedule of meetings and events that afternoon, we chatted casually. He sat with an open posture and made continuous eye contact.

A deputy district attorney has great discretion. His or her basic personality can have long-term effects on the lives of hundreds of individual criminal defendants. As a result, the first question I asked Dow was, "How do you decide whom to hire?"

"When we recruit and interview, the number one thing we look for is ethics," said Dow. "Because the discretion of a deputy district attorney is so great, we need to make sure they understand the focus is on justice." The mission of the office is "bring justice and safety to our community by aggressively and fairly prosecuting crime and protecting the rights of crime victims."

One interview technique, Dow explained, is to role-play with interviewees regarding ethical issues. If you were the prosecutor, what would you do in this situation? These hypothetical

scenarios provide insight into whether the candidate is a "win-at-all-cost" type of person. Dow tells all new hires that they "are expected to always provide every bit of evidence that is exculpatory." As a result, deputy district attorneys are willing to allow a criminal defense attorney to review their physical file at any moment.

In hiring, "We also look at life experience, the exercise of judgment and the ability to work independently," said Dow. "We want people that have unique life experiences, not just people who have gone to college, then law school, and are now looking for a job with a district attorney's office. Without life experiences, your worldview might be too rigid."

"We look for men and women who have played sports. There are many values that sports teach: competitiveness, drive, self-motivation, being a team player and accepting a challenge."

Once hired, Dow does "not grade deputies on jury trial victories. Winning is not an appropriate goal. Justice is the goal."

Diversity in the office is another goal. I asked Dow what his strategy was for increasing racial and ethnic diversity within the office. After pointing out that many of the recent hires reflect diversity, Dow explained how his office reaches out to law schools.





*New San Luis Obispo Deputy District Attorneys include, left to right, Kris Baughman, Nicholas Quincy, District Attorney Dan Dow, Phil Joo, Ashley Cervera, Delaney Henretty, Lisa Muscari, James Graff-Radford, Michael Frye.*

When hiring for entry-level deputy positions, "We actively reach out to Black and Asian law school associations." The goal is to get people of color, who otherwise might not think about a career as a prosecutor, to think about making positive change in the legal system from the inside.

### **Nikhil Dandekar**

Nikhil Ashok Dandekar was the first deputy district attorney hired by Dan Dow, on October 27, 2014. As a boy in Texas, Dandekar watched *Law and Order*, a long-running NBC series that chronicled the development of a criminal case from the incident to the prosecution, and dreamt of being an FBI agent. Later, as he became self-aware of his skills in writing

and oration, the dream evolved. He wanted to be a prosecutor.

He went to the University of Texas at Austin for his undergraduate degree, then to the University of Illinois College of Law. After law school, Dandekar moved to California. He had few connections, no employment offers and no money. After three months of living on a friend's futon in Los Angeles, he got an opportunity as a volunteer attorney in Santa Barbara.

"I spent a year there learning about the Penal Code, conducting preliminary hearings and getting a crash course in domestic violence prosecution...."

Finally in September 2014, he had his interview with the San Luis Obispo County District

Attorney's Office. "I instantly clicked with all my interviewers, getting an offer a week later."

For a young professional, San Luis Obispo can be challenging. The cost of housing is very high. The opportunity to socialize with other young professionals is limited because of the region's demographics. Nonetheless, Dandekar has made good friends at the office and enjoys a variety of activities and hobbies.

"I've 'retired' from basketball after chronic knee injuries, but I still play tennis, golf and softball. I hope to continue doing so for as long as I am physically able." In addition to sports, Dandekar has developed an interest in photography. He spent much of

*Continued on page 8*

## New District Attorneys continued

2018 learning the art and crafting his skills in the medium.

"I also enjoy spending time volunteering with kids. In particular, I work with Big Brothers Big Sisters and coach the Mission College Prep High School mock trial team."

Being a deputy district attorney is rewarding and fulfilling. Dandekar says, "I believe in the work that I do because I want to help people. As a prosecutor, as clichéd as it may come across, I feel like I am making a difference in the community, and to me, that alone makes it worth it."

On the other hand, being a prosecutor can be hard. "The most difficult part of this job," says Dandekar, "is informing victims of crime that I cannot prove a case, or telling them that I was unable to prove the case at trial. I take a lot of pride in my work and, because that effort is motivated in part by the closure a successful prosecution can provide for victims, it feels very personal when I am unable to give them that closure."

### James Graff-Radford

As Dow settled into his position as the district attorney, the office was transforming through significant personnel changes. Some deputies were promoted out of the courtroom and into administration of the office; some deputies quit or retired, and some became bench officers. As a result, the district attorney had to hire many new attorneys. After Nik Dandekar, Dow's office hired, in chronological order, Chris White, Nicholas Quincy and Ashley Cervera.



*Dan Dow, Kris Baughman, Nicholas Quincy, Phil Joo, Michael Fry and James Graff-Radford enjoy a light-hearted moment during the photo shoot.*

In October 2015, Dow hired James Graff-Radford. Like many of the deputy district attorneys, Graff-Radford had been a deputy elsewhere. He made a lateral transfer from Riverside County.

Graff-Radford became excited about the law when he participated on the mock trial team at Palm Desert High School. That experience made him want to practice law. His mock trial coaches, David Greenberg and John Christl, were recently hired prosecutors working for the Riverside County District Attorney's Office. "They were so devoted and conscientious that they bought pizza for us before every practice. Their enthusiasm for both the legal profession and public service was contagious. At least three of us who were on the team became lawyers and another became a sheriff's deputy."

Ironically, years later, when Graff-Radford had completed

law school, passed the bar and got a job with the Riverside District Attorney's Office, David Greenberg was there to coach him some more. "He remains a mentor to this day."

Attorneys are driven, goal-oriented control freaks. There is no sense in arguing nature versus nurture; it is enough to know that it is true. Graff-Radford's pedigree has the familiar feel of the overachiever. His father and two uncles immigrated to the United States from South Africa. They all practice medicine, and patients now travel from all over America to be seen by them. Graff-Radford's aunt, who lives in England, is an artist and has designed sculptures for the royal family. She also designed a major piece for the 2012 Olympics, which were held in London. His mother is a successful real estate agent who, at an age many would retire, still works six days a week.



"Those who came before me," Graff-Radford says, "set a very high bar."

Like all the deputies, Graff-Radford takes seriously the mission of the office. "Balancing the ethical obligations as a prosecutor with our duties to the public makes the job difficult but rewarding at the same time."

The job of a deputy district attorney gets infinitely more difficult when you are soaking wet. Graff-Radford recalls that the funniest and scariest thing to ever happen to him in court was right before a *voir dire*. Just as he was about to start his questioning of potential jurors, he spilled a full pitcher of water all over counsel's table. The civility of San Luis Obispo likely surprised him: "Everyone in court acted like nothing happened."

### Phillip Joo

Born in Southern California, Phil Joo attended Valley Christian High School in Cerritos, completed his undergraduate work at University of California Irvine and graduated from Chapman Law School.

After a brief stint as an insurance defense attorney, he applied throughout the state to become a prosecutor. He wanted to become a deputy district attorney because he had interned with the Orange County and Los Angeles County District Attorneys' Offices during law school.

In June 2014, he was hired by the Kings County District Attorney's Office. Although jarred by the cultural and lifestyle difference, he loved his work. He maintained his long-distance relationship with his girlfriend, Christine, and settled in to

Hanford, California. Eventually, they were married and Christine, who works in public relations, followed Joo to the Central Valley.

Joo quickly moved from the misdemeanor calendar to the general felony calendar. The small rural area was awash with criminal street gangs, illegal drugs and prison violence. Oddly, this is the perfect laboratory for a young deputy district attorney.

In general terms, when young people are placed in positions of power with great discretion, they either become tyrannical or prodigal. Some deputies value career over the mission. Their true nature soon surfaces. Luckily, Joo's basic nature seeks fairness. He is, perhaps, one of the kindest people on the planet.

Toward the summer of 2017, Joo began to look for work in Southern and Central California. When he interviewed with the San Luis Obispo County hiring team, he was struck by the sincerity of Dow. Joo felt they had a good connection. "His message was clear," said Joo. "He wanted all of his deputies to always do the right thing. To search for truth, to act on truth." If that means dismissing a case, then Dow would support that decision. However, Joo said, "If we are going to prosecute, then he wants us to be aggressive and prosecute to the fullest extent of the law. This is a good office to work for."

When he is not working, Joo enjoys the beauty of the area. He hikes and backpacks and loves Montaña de Oro. He plays on a softball team that features deputies and spouses. He and Christine also enjoy cooking and eating good food. Their favorite

restaurant is Ember in Arroyo Grande.

Joo likely will have a positive impact on criminal prosecution in our county. Any of us could become a criminal defendant or a victim of a crime. It is good to know that people like Phil Joo are working in the criminal justice system for all of us.

### Jon Kawashima

In February 2018, Dow hired Jon Kawashima, who finds fulfillment in being a prosecutor. In many respects, he has groomed himself for the job. He was a communication major and criminal justice minor at California State University Fullerton. He went to law school at Pennsylvania State for the sole purpose of becoming a prosecutor. He believes, like many in the office, that the purpose of his job is to seek truth and justice.

Although being a deputy district attorney can be stressful, he finds solace in his faith, his family and the fun he finds on weekends. He enjoys local restaurants and the incredible vistas and parks around town.

Being a deputy is not all stress and litigation, however. Kawashima recalls a jury trial that took a turn toward the funny. While doing his direct examination of the victim of a robbery, Kawashima asked the victim if he saw the man who robbed him—twice—in court?

"Yes," replied the victim.

"Please point him out and describe an article of clothing."

The victim then pointed directly at the district attorney's investigator.

D'oh!

*Continued on page 10*

## New District Attorneys continued



*Lisa Muscari, Delaney Henretty and Phil Joo appreciate all the Central Coast has to offer.*

### **Delaney Michael Henretty and Lisa Beth Muscari**

Lisa Muscari's grandfather came to America from Calabria, Italy, the area euphemistically called "the toe of the boot." He settled in Chicago and married a beautiful Polish woman. Muscari's father was a physicist, and she grew up in the burly city of Chicago, surrounded by strong and intelligent people.

Early in life, Muscari fell in love with the beauty of Colorado. She attended the University of Colorado in Boulder, earning a Bachelor's degree in chemistry and a Master's degree in Business Administration (MBA). She received her law degree from the University of Denver. During law school, Muscari volunteered at a local law office where she was allowed to try misdemeanors under the supervision of a lawyer. Her first trial was as a defense attorney, and she won. Simply put, "The People did not prove their case."

In one of her law school classes sat a United States Marine. Muscari thought the uniform was cool, but was persuaded to join the Marines when she discovered that the Judge Advocates would provide a lot of trial experience.

Delaney Henretty traces his American lineage back to the 1600s. "Elder John Strong, first Elder of Eleazer Mather's Church in Northampton, Massachusetts, is a direct ancestor of my mother. William Miller, direct ancestor of my paternal grandmother, lived down the street."

Wikipedia has this to say about John Strong: "Strong was born in about 1610 in Chard, Somerset, England and emigrated to Massachusetts with his pregnant wife and a one-year-old child in 1635 aboard the sailing ship *Hopewell*. During the 70-day sea voyage, his wife, Marjory Deane (md. 1632) had a baby while they were still at sea. She and their infant child died within two months of their arrival."

"My other family, the Mains, also came [to the American Colonies] before the Revolutionary War, but we believe they were loyalists to the Crown and then came back later after emigrating to Canada in the wake of the Revolutionary War.

"James Henretty was a blacksmith who immigrated to the Shenandoah Valley when the King seized his lands in the plantation of Ulster in the early 1800s."

Henretty had gone to the University of Michigan to be a doctor. He later changed his major and received his undergraduate degree in mechanical engineering. He graduated Magna Cum Laude. After college, he worked for Chrysler Corporation as an engineer.

Feeling unfulfilled, Henretty moved to Colorado. Like Muscari, Henretty fell in love with the beauty of the state. An outdoorsman, he skied and rode his motorbike. He worked at various jobs in Denver; for instance, he was a diesel auto mechanic. At age 26, Henretty decided he wanted to be a combat infantry officer and joined the United States Marine Corps.

Joining the Marines as an officer starts with the Officer Selection Office (OSO). A captain begins the training and determines if you will continue on to Officers Candidate School (OCS) in Quantico, Virginia. As destiny designed, the lives of the granddaughter of a recent Italian immigrant and the ancestor of an original colonial settler of Massachusetts were about to intertwine. Lisa Muscari entered

the selection office wearing Navy blue wool pants, a wool hat with flowers, a rope tied around her waist and a plain grey shirt that said "College." Henretty spotted Muscari.

"I noticed right away," he recalls with a smile.

She says, "I remember during runs, when we were supposed to be silent, he would yell out 'Muscari!' I liked that."

After more training at OCS, they were sent to the basic school, known as TBS. All Marines are trained at TBS in basic skills of combat because all Marine officers are considered line officers. After TBS, they each went to their respective specialty school. Muscari was sent to Naval Justice School in Newport, Rhode Island; Henretty stayed at Quantico to complete his Infantry Officer course.

They were independently billeted to Twentynine Palms, a Marine base 50 miles northeast of Palm Springs. Twentynine Palms is sarcastically referred to as "Twentynine Stumps" or "Stumps" because of its desert location. In the mystical, magical, romantic world of Stumps, Muscari and Henretty dated, they fell in love, and they were married. They lived in base housing. Muscari worked at the Judge Advocate Office and Henretty was a platoon commander for the Marines 3rd Battalion, 4th Marines, 7th Marine Regiment.

In the USMC, Muscari was assigned to be defense counsel. She remembers that among the first cases she handled was a rape case. A young male corporal was charged with raping a

woman. Muscari learned that the alleged victim was the girlfriend of the corporal's best friend.

The woman was sacrificing the friend in order to try to save her relationship. The rape allegation fell apart when Muscari uncovered the fact that the alleged victim and the corporal had been together, at the shooting range, the day *after* the alleged rape. Dismissal.

In 2001, Henretty resigned his commission in the Marines. He wanted to be a lawyer and attended the University of San Diego Law School. During law school he had opportunities to clerk for the appellate court and then the Contra Costa County District Attorney's Office. When he graduated law school and passed the Bar, Henretty took a position with the Riverside District Attorney's Office and was assigned to their Indio office.

In 2004, Henretty made a lateral transfer to San Bernardino County District Attorney's Office in Joshua Tree. Meanwhile, Muscari was still in the Marines. She had risen to head prosecutor at Stumps. Soon, however, she also resigned her commission, sat for the California Bar, and became a deputy district attorney in San Bernardino.

Henretty and Muscari worked for the San Bernardino District Attorney's Office for 12 and 10 years, respectively. In 2018, they moved to San Luis Obispo to join our district attorney's office. They had met Dan Dow in Indio. "He is an amazing, principled man," said Henretty.

"It was a hard decision to leave San Bernardino because we knew everyone, we had great

relationships." Also, by this time they had three children: a 19-year-old boy and twins in the eighth grade.

The deciding factor for their move was Dow's leadership. Henretty says, "In the Marines we learned two principles of leadership: one, set the example, lead from the front; and two, take care of your Marines."

In the military, this is called "servant leadership." To be a good leader, you commit to serving others. Muscari and Henretty believe that Dow was called to leadership to serve others. "In his heart, he tries to live that idea out."

Muscari and Henretty, like most attorneys that move to San Luis Obispo, are struck by the beauty of the place. They have also been struck by the consistent level of civility and collegiality among attorneys. Here, the lawyers often agree on the conclusion; we just disagree on the best approach to reach that conclusion.

"I believe," Henretty said, "pursuing justice is the best job in the world." ■

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<sup>1</sup>In order of hire: Nikhal Dandekar, Chris White, Nicholas Quincy, Ashley Cervera, James Graff-Radford, Rebecca Speer-Mathews, Michael Frye, Stephen Wagner, Chris Peuvrell, Megan Baltierra, Phillip Joo, Jon Kawashima, Lisa Muscari, Delaney Henretty, Kris Baughman, Danielle Baker and Scott Hunter.





*Ziyad Naccasha receives 2018 Access to Justice Advocate award from SLOLAF's Stephanie Barclay.*



*Dallas Mosier, SLOLAF outgoing president (above), introduces Erica Flores Baltadano, incoming president (below).*



# SLOLAF GALA

## RAISES FUNDS TO SERVE COUNTY RESIDENTS

**by Erica Flores Baltodano, SLOLAF Board Member**  
**Cover & interior photos courtesy of Renoda Campbell Photography**

**S**an Luis Obispo Legal Assistance Foundation (SLOLAF) held its fifth annual fundraiser, "Masquerade in the Big Easy," at the home of Lisa and Michael Toke on September 22, 2018. The event, which sells out year after year, was attended by 250 guests who collectively raised an incredible \$150,000 to benefit SLOLAF's programs. SLOLAF provides free legal services to vulnerable San Luis Obispo County residents in need, including seniors, veterans, and families.

The 2018 Access to Justice Advocate award was presented to Carmel & Naccasha LLP for its steadfast commitment to access to justice and community service. Ziyad Naccasha accepted his firm's award, but shared the stage with Associate Dallas Mosier, who has served as president of the SLOLAF Board of Directors for the past four years. Instead of the traditional jump in the pool, Dallas announced that SLOLAF has named its incoming board president. I am honored and look forward to stepping into the board president role in January 2019. In the meantime, here's a recap of SLOLAF's successful evening and a brief update on the exciting growth that lies ahead.

"Masquerade in the Big Easy" featured a fun-filled silent auction and live auction with professional

auctioneer Todd Ventura. Guests enjoyed an impeccably prepared dinner by Farmhouse Corner Market, New Orleans-inspired hurricane and Sazerac cocktails, and reserve wine tasting by Tolosa Winery. A three-piece jazz band set the mood while people visited the casino table or had their fortunes told by a fortune teller or palm reader, sponsored by Radovich Mediation Group. I knew it was going to be a good night when the palm reader revealed my deep passion for service and reminded me of my ability to lead others toward good deeds.

Indeed, SLOLAF relies on the generosity of the legal community and others to support its programs, including the Senior Legal Services Project, which handles a variety of legal matters for SLO County seniors in need. SLOLAF also provides legal services to veterans who are homeless or at imminent risk of becoming homeless, and in August, SLOLAF unveiled a new Family Law Advice Clinic in collaboration with the San Luis Obispo College of Law to help low-income residents with legal advice on divorce, custody and other family law matters.

In addition to hiring a part-time Bilingual Outreach Coordinator to increase our reach and ability to serve Spanish-speaking

*Continued on page 14*





*Dressed for the gala's theme are (from left) Jeri Cain, Trudy O'Brien, Robyn Randall and Valerie Hosford.*



*Auctioneer Todd Ventura consults with Emcee Wendy Thies Sell.*



*Above, from left, Renate Paine, Sam Blakeslee, Thomas Paine.*

*Below, from left, Dr. Mary Genevieve, Jennifer Blomfield, Steve Adamski, Nellie Salisbury.*



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*Renee Mosier*



*Above, Consuelo Meux. Below, Debbie Trout wins the wine-filled fridge.*



*Mical Bovee, Jenn Bovee, Al Eschenbach and guest Alisa.*

clients, SLOLAF is thrilled to welcome Donna Jones as our new Executive Director. Jones is a CPA with expertise in the areas of finance and nonprofit management. She has been an avid supporter of SLOLAF for the past several years, and her side passion for special event décor is the reason why SLOLAF's annual fundraiser always looks so amazing!

The addition of Jones to the SLOLAF team will allow Stephanie Barclay to step into a new Legal Director position to expand our legal services programs, increase the number of volunteer attorneys who help us fulfill our mission, and ultimately make it possible for us to serve more clients in need.

SLOLAF's reputation as a competent, capable and well-run legal services organization has given funders the confidence to continue funding us, but a full one-third of our budget is funded by our annual fundraiser. As such, we are immensely grateful to our local attorneys and friends for their ongoing support, especially those who made significant contributions

to the success of "Masquerade in the Big Easy," such as our Access to Justice Sponsor Carmel & Naccasha LLP.

"Jazz music is the power of now," Wynton Marsalis once said. "There is no script. It's conversation. The emotion is given to you by musicians as they make split-second decisions to fulfill what they feel the moment requires."

It is imperative that SLOLAF, like a skilled jazz musician, be able to make decisions to fulfill the needs that the moment requires, and in this moment, SLOLAF is the only place many local residents can turn to for free legal services. Thank you to everyone who helped to make "Masquerade in the Big Easy" our most successful fundraiser to date. The Tokes have generously offered their home again for SLOLAF's Sixth Annual Fundraiser. The event will be held on Saturday, September 21, 2019.

If you would like to help plan the event or learn more about sponsorship opportunities, please contact Stephanie Barclay at [stephanie@slolaf.org](mailto:stephanie@slolaf.org) or (805) 548-0792. ■





*Cynthia Valenzuela, Jacqueline Frederick, Esperanza McCullough*



*Pat Collins, Melissa Rapp*



*Above, Angie King, Barry LaBarbera, Jeanne LaBarbera, Lisa Toke, Scott Wall*

*Below, Dave Becker Trio.*



*Jeanne Webber, Chie Park*



*Sherri and Dave Parkinson.*

# Welcome Commissioner Leslie Kraut, Our Newest Bench Officer

by Ann Duggan and Rita L. Neal

**I**t was late one afternoon in 1994 in Ventura Superior Court when a Japanese diplomat/defendant, feigning an inability to speak English, was delaying a busy misdemeanor arraignment calendar by pretending he could not comprehend the proceedings that involved him. The court was frustrated because without a Japanese interpreter available, which was typical then and still is now, the man could neither be arraigned nor even told that his case would have to be delayed until a day when an interpreter could be available.

Court staff were furiously working the phones to find someone to help speak to the man when the courtroom bailiff, who had become friendly and familiar with the latest crop of young, recently hired lawyers in the courthouse, suggested that the court reach out to a resourceful and enterprising young attorney who was conversationally fluent in Japanese. On his suggestion, the court summoned Deputy District Attorney Leslie Kraut to the courtroom to do what she could to help the man and move his case along. A wise decision!

As it turned out, Kraut's experience from having taught in Hanamaki, Japan, for a year prior to starting law school, as well as her fluency, paid unexpected dividends for the court that long afternoon. From her experience in-country, Kraut became familiar with the importance of the

customary formality of a proper "business" introduction and encounter. Thus, when she found the man in the courtroom, Kraut introduced herself in a formal manner, complete with a courteous and respectful bow, and the delicate receipt and exchange of business cards. An amiable but direct conversation in Japanese ensued, which concluded with the man's realization that faking a language barrier wasn't working or helping him. Thus, in clear and passable English, the man not only admitted to the court that he understood what the court was telling him, but that he was ready to dispose of his case that very day, without any interpretive assistance. Crisis averted!

The rest of the calendar then proceeded to its conclusion without any further incident or delay, much to the relief of everyone there. As Kraut left the courtroom, a grateful Judge Jack Smiley proudly exclaimed, "Do we know how to pick 'em or what?!"

Undoubtedly, our local San Luis Obispo Superior Court has made a similar assessment of Kraut's distinguished and diverse legal background and, based on that assessment, on October 24, 2018, offered her the position of Court Commissioner to fill a vacancy created by the appointment of current Commissioner Tim Covello to Superior Court Judge. Kraut begins her duties as commissioner on January 7, 2019. Kraut's broad and unique personal, educational and



career experiences make her exceptionally well qualified to preside over the various types of cases she will confront as Commissioner.

Raised by a young, widowed mother who possessed only a high school education, Kraut learned at a young age that she had to work hard and often independently to achieve her goals. Along the way, she has had some truly amazing experiences, which include not only her year in Japan, but an internship in Colonial Williamsburg for an early American history program while in college, a post-college stint working full time for a fishery's lobbyist in Washington, D.C., internships at the U.S. Attorney's Office and City Attorney's Office in San Diego, an internship at a Barrister's Chambers in London during law school, and time spent as a CASA volunteer.



Kraut graduated from the University of California Santa Barbara in 1988 with a Bachelor's degree in History. She then graduated from the University of San Diego School of Law in 1993, where her natural and exceptional courtroom abilities and demeanor resulted in her being named the chair of the Appellate Moot Court Board during her third year, as well as her receipt of the Dean's Commendation for School Service and the Order of Barrister's Award for Excellence in Oral Advocacy and Brief Writing upon graduation.

Following graduation from USD, Kraut passed the Bar and accepted a position as a Deputy District Attorney with the Ventura County District Attorney's Office, where she worked until May 1998. Her experience there included a rapid progression through increasingly difficult assignments and included felony jury trial experience, juvenile delinquency prosecutions, asset forfeiture and white-collar crime prosecutions, and finally felony domestic violence prosecution. It was in Ventura that Kraut met and married her husband, Matt Kraut.

In 1998, the couple moved to San Luis Obispo County, at which time Kraut accepted a position as a Deputy County Counsel with the San Luis Obispo County Office of County Counsel, where she has worked for the last 20 years. Originally hired to represent the Department of Child Welfare Services in dependency matters, Kraut's versatility was quickly recognized, which resulted in her being presented with an astonishing variety of unique and often complicated assignments, including being tasked with writing and arguing responses to appeals of child dependency

cases in the Ventura appellate court.

Her experience in appellate matters has resulted in three successful arguments that resulted in published opinions, the most notable of which was *J.H. v. Superior Court* (2018) 20 Cal.App.5th 530, which now stands as important authority on the question of the extent to which the California Supreme Court's test for admitting expert opinion after its decision in *People v. Sanchez* (2016) 63 Cal.4th 665 would apply to limit the use of Department of Social Services reports in Child Dependency matters. (The Court of Appeal concluded that the *Sanchez* limitations do not render such reports inadmissible.) Kraut's success on the *J.H.* appeal was received throughout the state among County Counsel's offices with enormous relief and overwhelming praise.

In addition to her appellate work, as a Deputy County Counsel Kraut has handled administrative, probate and civil matters for the San Luis Obispo County Office of the Public Guardian—an assignment that has also included several conservatorship jury trials—and has advised both the District Attorney's Office on administrative and civil matters, and San Luis Obispo County Grand Jury on its conduct and investigative functions.

Her final assignment prior to accepting the Commissioner's position was as counsel for the County Department of Child Support Services, which had been challenged by the recent and unexpected departure of its director. Without prior experience in the field, Kraut quickly educated herself on enough of this unique



*Robert, Joseph, Leslie and Matt Kraut*

area of the law to provide a badly needed calm and confident presence in court as the department searched for a replacement director.

Thus, Kraut brings to the bench an impressively broad and deep background in several areas of the law, which includes experience as a trial and appellate litigator in civil, criminal and administrative matters. One would be hard-pressed to find another lawyer with a legal background as diverse as Kraut's. San Luis Obispo County Counsel Rita Neal describes Kraut as "a bright, talented and smart lawyer" who will bring "a wonderful judicial temperament" to the bench with her.

Kraut and her husband, Matt Kraut, have two sons—Robert, who is a senior at Arroyo Grande High School and who is a competitive, interscholastic surfer, and Joseph, who is in his second year at U.C. Berkeley on Regent's Scholarship studying Computer Science and Statistics. Kraut is an avid gardener, cook and traveler, who described her newest legal endeavor as "a dream come true," and herself as "extremely grateful" for this latest career opportunity. ■



Beth Marino and Hon. Jesse Marino



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Joseph Diehl



Khouloud and Forrest Pearson



Sunny Hawks,  
Lisa Huey

Steve Hill,

Rob McCann

Roseanne Seitz



Robert



Tom Sokat

Nancy Greene

Scott Wall,  
Allen Hutkin

Anne Cyr,



The 2019 San Luis Obispo County Bar Association members are, from left, Ex-Officio Sheryl Wolcott, President Stephanie Barclay, Secretary Marybeth Bulletin Editor Raymond Allen, Director David Graff-Radford. Not pictured are Director Chelsea Olson-Murphy and Martha S.



Jeff Stulberg, Ashley  
Jan Marx, Matthew

and Taylor Ernst,  
O'Leary



and Emilie Schultz



Frank Kopeinski

David Vogel



# 2018 HOLIDAY PARTY December 6

**Photos courtesy  
of Gail Pedalue**



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Collette Hillier and Dennis Law



Hon. Ginger Garret

Hon. Gayle Peron



*Continued on page 20*

## Seitz Award & Pentangelo Award Presented at Holiday Party

### Seitz Award

The San Luis Obispo County Bar Association presented the 2018 John L. Seitz Award to Stephanie Barclay.

The Seitz Award, presented annually since 1989, recognizes those lawyers whose community contributions exemplify the best attributes of the legal profession. The award is generously funded by the Seitz family, and it is named for John L. Seitz, a long-time San Luis Obispo County attorney.

Barclay has been executive director of the San Luis Obispo County Legal Assistance Foundation (SLOLAF) for a number of years. The agency's goal is to expand free legal services to those who normally would have no access to justice as a result of their socio-economic status. "SLOLAF was formed due to the shortage of legal aid in San Luis Obispo County for vulnerable citizens," Barclay says.

During her tenure as executive director, SLOLAF has grown to serve an ever-greater number of low-income clients. Volunteer attorneys provide about \$150,000 in pro bono work to SLOLAF, and local attorneys and firms also give a considerable amount in cash donations. A large portion of the donations are raised at the SLOLAF annual fundraising event. This incredible event,



*Michael Seitz and Sheryl Wolcott (right) present the John L. Seitz Award to Stephanie Barclay.*

organized by Barclay, has become the crown jewel of the local Bar-related social affairs.

In her acceptance speech, Barclay was quick to thank the volunteer attorneys and the SLOLAF staff. She then introduced incoming Executive Director Donna Jones. Beginning this year, Barclay will focus on delivering legal services to SLOLAF clients in her new role as legal director.



### Pentangelo Award

The Pentangelo Award, named in honor of Frank J. Pentangelo who was a longtime contributor to the *Bar Bulletin*, recognizes the creative contributions published in the *Bar Bulletin*. The 2018 award was presented to Scott Taylor, a solo criminal defense practitioner, who was formerly a Judge Advocate General in the United States military.

Taylor's articles of note were on civility in the practice of law, the complex interplay between state and federal marijuana laws, and how to represent the difficult criminal defense client.

As the 14th Pentangelo Award recipient, Taylor was selected from a number of outstanding writers who contributed to the *Bar Bulletin* last year. In addition to having his name appear on the Pentangelo Award's legacy plaque, Taylor also received a gift certificate to Buona Tavola.



*Sheryl Wolcott presents the Frank J. Pentangelo Award to Scott Taylor.*





Leslie Tos,  
Alan Carter

Sharon Lizardo,



Katie and Douglas Hilton



Erin DeNatale and Joe Benson



Joseph Kalet,  
Lupita Ontiveros

Donna Jones,



Jane Heath

Kevin Elder



Michael Blank

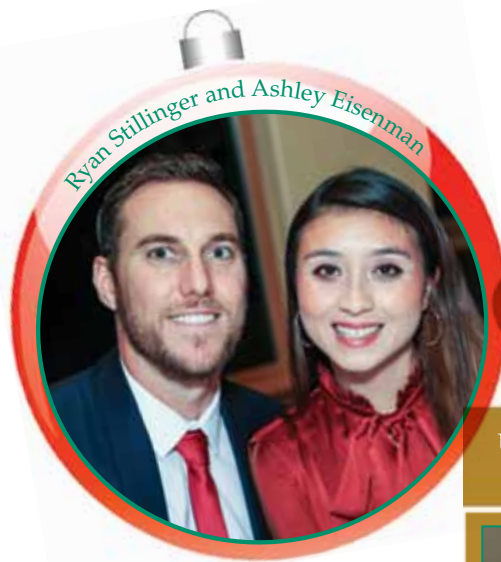
Paul Ready



Jay and Logan Raftery



Continued on page 22



## Editor's Message by Raymond Allen

Without fanfare, Collette Hillier has been turning straw into gold. As the editor of the San Luis Obispo County Bar Association's *Bar Bulletin*, she has woven together the people, the stories and the ever-changing law into a vibrant tapestry.

The strength of her editorial touch was allowing writers the time and space to organically tell their stories and teach their lessons. Her light touch made reading the *Bar Bulletin* a pleasant experience. After two years, however, she has decided to hand her quill to another. I am that fortunate recipient.

I stand on the shoulders of editorial giants. I also work with a Board of Directors that has authorized some exciting changes. With this edition you should immediately see a difference. We are back to publishing six issues each year and using quality paper. You will see more photographs in color. The cover and some interior photographs will be without margins, or "bleed," off the edge of the page. All of these changes will give our *Bar Bulletin* an extra polished professional look and feel.

As to content, we remain dependent upon the contributions of the attorneys, paralegals, office staff, court staff and bench officers of the



*Outgoing Bar Bulletin Editor Collette Hillier has passed the editorial quill to Raymond Allen.*

county. Although the *Bar Bulletin* can never become a political forum, I welcome thoughtful and respectful differences of opinion. Finally, I welcome any and all criticisms regarding our *Bar Bulletin*; however, be warned, my standard response will likely be, "You're absolutely right. You should write an article about that."

Please send your article submissions or ideas to [raymondinsf@yahoo.com](mailto:raymondinsf@yahoo.com). ■



# TOP 5 Techniques to Use With the Difficult Criminal Client

by Scott Taylor

Anyone who has practiced criminal law knows the difficult client extremely well. At the mention of their very name, a headache begins to form as we prepare ourselves mentally and emotionally to deal with yet another diatribe and list of complaints. Looking back, however, these are always my favorite clients. Let me tell you why.

First, let's discuss exactly the client I am talking about. Usually the client has a criminal record, and there is solid, if not overwhelming evidence against him or her. The client talks a lot with the jailhouse lawyers either in or out of custody and is convinced that there is a silver-bullet motion that will make the case go away. Or the client believes there is a police conspiracy against them, and if we can just find a way to recuse the DA or the judge, we can get the case into the hands of someone reasonable who will either dismiss the case or finally give them the program they need and did not work the last few times.

They are the same clients who complain to the bar that they have not spoken to you in six months, and when the bar asks you what is going on, you produce your logs showing you have been to see them every few weeks since you got the case. I have several different names running through my mind, as I write this, of clients I will never forget.

There was one specific person who changed my view of difficult clients. I represented a client who had overwhelming evidence against him. He did not want any deal. He stated repeatedly that a jury of his peers would never convict him. No matter how many times I pointed out that the jury would not be comprised of the people he was talking to at the jail, he would not be deterred. We took his case to a jury trial with the Shaggy defense (it wasn't me), and I banged my head against a brick wall trying everything I could think of to give him the best shot possible.

After we lost, he was facing a very serious prison sentence, and he thanked me. I was really confused and I asked him why, since he was heading to prison for a long time. It was then that he told me that in his entire life, I was the first person to ever stand up for him.

Most criminal lawyers I know are really busy, oftentimes doing legal triage. This is especially true for public defenders or people who take public defender conflict cases. It is easy to forget that most of us in the legal community have vastly different life experiences than our clients, especially the difficult ones who oftentimes had no support system, and likely never had a chance in life to be successful. The last thing in the world that client wants to hear is that they are running out of chances, especially not from an attorney who only sees them in

the courtroom and only really seems to want to talk about a guilty plea. To paraphrase Arthur Miller, attention must be paid.

What difficult clients want more than anything is attention, and to feel like someone, anyone, cares about their case. And who can blame them for that? All of the behavior we see—the loud complaining in court, filing handwritten silver-bullet motions, conspiracy theories, bar complaints, and angry voicemails and letters—all of that can be fixed with attention.

The approach I have always taken with these clients centers around the basic premise that they need to feel important, and they need to care, with the aim of earning that client's trust so that when it really matters they will trust me. They need to trust me when I tell them to take a plea rather than go to trial. They need to trust me when I tell them it's a terrible idea to testify. And if I have done nothing to earn that trust, I will merely be a spectator when they implode at trial and become food for the criminal justice system. So how do you earn someone's trust who has learned their entire life that people will always let them down?

## Technique Number 1: Jail Visits

I have always been astonished at the number of lawyers who do not visit their clients at the jail. That is one of the first promises

*Continued on page 30*



# ***San Luis Obispo College of Law Presents The Inaugural Justice Kenneth Andreen Moot Court Event***

**by Jennifer Thompson**

**W**hat are the limits of First Amendment speech and freedom of the press in these times of social media, high-level leaking, claims of fake news, and the desire of Congress to protect the secrets and policy decisions of the Executive?

These are some of the complex, challenging and uncannily current issues that were tackled by law students at the San Luis Obispo College of Law's (SLOCL) recent appellate moot court.

On September 15, 2018, SLOCL, a branch of the Monterey College of Law (MCL), presented the inaugural Andreen Moot Court. The moot court is named to honor Justice Kenneth Andreen (1924-2017). During the early part of his career, Andreen was a civil rights activist. He proudly marched with Dr. Martin Luther King, Jr., he was a champion of civil liberties, and he had a reputation for seeking justice for all.

At the age of 35, Andreen was appointed by Governor Edmund Gerald "Pat" Brown to the Fresno County Municipal Court. In 1980, Andreen was appointed by Governor Edmund "Jerry" Brown to the Fifth District Court of Appeal, where he served until his retirement. After retirement from the appellate bench, he served as an appointed judge in various counties, including San Luis Obispo. He lived in our community for more than 25 years.

The Andreen Moot Court is modeled after the Monterey College of Law Heisler Moot

Court, which has been presenting interesting and difficult constitutional questions to the public for more than 20 years. It was designed from its inception to be a community event that would engage the MCL students and the public in debate and dialogue on the most pressing constitutional issues of the day. SLOCL plans to continue this tradition locally.

The Andreen Moot Court gives students an opportunity to study, write and argue about constitutional issues. During summer 2018, all 4Ls participated in a semester-long class taught by Professors Stephen Wagner and Steven Rice. The semester culminated in a qualifying event. Local judges heard the students' oral arguments. Professors Wagner and Rice, along with members of the SLOCL administration, chose four finalists to present at the Andreen Moot Court.

The four—Jonathan Crumpton, Benjamin Jacobson, Dennis Meffert and Jennifer Thompson—met twice a week for the six weeks. During the first few weeks, we presented all of the arguments. Ultimately, one position was assigned to each student. During the last few weeks of preparation, we honed our arguments through a collaborative process, and we offered suggestions to one another. The professors gave invaluable feedback about the content of our arguments and how to present to the court.

Professor Stephen Wagner explained, "As part of our preparation, we urged the student

lawyers to have a 'conversation with the court,' which is a tactful way of saying 'demonstrate command of the case file and the arguments.' As professors, we are on 'speed dial' with the finalists and our prep sessions are tremendously rich with insight and collective wisdom."

We all had different reasons for wanting to participate in the public event. Meffert participated for the networking opportunity and to gain experience in a real courtroom setting. "The experience gained from participating in moot court is unreal. Learning the essence of litigating can only come from real life experience. The networking opportunities that come with participating in moot court are also priceless. There are a lot of people that come from the legal community to watch it."

Crumpton wanted the public speaking experience. "I wanted to participate in the Moot Court to show myself that I could conquer my fear of public speaking. Professor Wagner and Professor Rice make an awesome team! They gave me the tools and the confidence I needed to speak publicly without fear."

We learned a great deal from our professor mentors and the experience. Jacobson said that the best advice he got was to "completely understand your argument."

The two pieces of advice that I remember best, and which turned out to be 100 percent true, were "The argument is really a

conversation with the justices” and “If you know the facts and the cases well, then you’ll have no trouble presenting your argument and answering the justices’ questions.”

All of the practice and preparation culminated at the Veteran’s Memorial Building, where we presented our legal arguments to the panel of the Justice Kenneth Gilbert, Justice Martin Tangeman and Judge Gayle Peron. The presentation began with a video to set the stage for the audience. The video included current news clips that explained the facts and the issues to be argued: does the First Amendment protect the right of an employee who leaked information from the Executive Office or protect a newspaper who published that leak? We were each given 15 minutes to present our arguments. The two students representing the appellants were given an additional three minutes for rebuttal.

It really did feel like a conversation with the panel—not a performance for them. The jurists interjected questions and hypotheticals throughout our arguments. Engrossed in the dynamic discussion, time evaporated.

The rapid-fire questions and interruptions were Crumpton’s least favorite part of the experience. “The judges hit me with a line of questioning three sentences into the discussion. I had prepared a substantial amount of material that I was not able to address with the court. This was frustrating to say the least. I learned that when engaged in a trial to expect the unexpected.”

Justice Tangeman commented, “I thoroughly enjoyed the Moot Court proceedings. As a group, [we] aggressively questioned the students, and they were not found wanting. I was impressed with their level of preparation as they thoughtfully responded to our constant interruptions. They remained cool under pressure, which was no small feat, especially as they were observed by more than 100 observers who had come to support them. They were respectful but firm. They are off to a good start, and the law school and the community should be proud.”

All of the students were honored to be chosen and for the opportunity. Jacobson put it best, “It was an honor to perform in front of two talented Appellate Court Justices and an amazing Superior Court Judge.”

Stay tuned for future San Luis Obispo College of Law Andreen Moot Court experiences. They are sure to be as exciting as the first. ■



*Participants in the Moot Court event were (from left) Professor Stephen Wagner, Jennifer Thompson, Benjamin Jacobson, Justice Arthur Gilbert, Judge Gayle Peron, Justice Martin Tangeman, Dennis Meffert, Jonathon Crumpton and Professor Steven Rice.*

*Jennifer Thompson graduated in December 2018 with her class. She will sit for the February Bar. She currently works for the City of San Luis Obispo. She has worked in either the Finance or Utilities Department for 15 years. Upon passing the Bar examination, she would like to pursue a career in “water law, land use and property law, government law, and possibly family law.”*



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## Lawyer Referral and Information Service

# Serves Up 'Q' at Drive-Thru Fundraiser

On September 19, 2018, the Lawyer Referral and Information Service (LRIS) held its Second Annual Drive-Thru Tri-Tip Fundraiser. Approximately 100 meals were sold, which raised more than \$2,000 after expenses, according to LRIS Director Kerrin Hovarter.

LRIS would like to thank all of the attorneys and friends of LRIS who drove through the Andre, Morris & Buttery parking lot and purchased a tri-tip meal to go. LRIS sends a special thank you to Rick Long, who donated his time and barbecuing skills to make the event a success. ■



*The Barbecue Team included, from left, Josh George, Rick Long, Cynthia Peterson, Trevor Creel, Sheryl Wolcott, Nicole Johnson and Kerrin Hovarter. Photo by Dennis Law.*

## What You Should Know About LRIS

by Kerrin Hovarter, LRIS Director

Each year, thousands of San Luis Obispo County residents and many out-of-state residents contact the San Luis Obispo Lawyer Referral and Information Service (LRIS) seeking legal assistance or resources. LRIS's mission is to provide individuals and businesses a referral to an experienced, qualified attorney. If an attorney is not appropriate to the caller's situation, we will refer the caller to a local agency or free resource that may help with their legal matter.

It is the goal of LRIS to promote the rule of law while at the same time sustaining and improving the quality of, and public trust in, the administration of justice and the legal profession. LRIS is a much-needed public service that brings together people in need of legal assistance and experienced attorneys. The San Luis Obispo County Bar Association LRIS is approved by,

and follows all rules and regulations set forth by, the Supreme Court of California and the American Bar Association for all lawyer referral services.

LRIS fields between 3,000 and 4,000 inquiries each year and connects approximately 200 callers per year with qualified, reputable attorneys that specialize in the area of law that is needed. Callers are not always connected with a referral to an attorney. When appropriate, callers are referred to free resources or governmental agencies such as the Child Support Department, Family Court Services, RISE, Stand Strong, California Rural Legal Assistance, San Luis Obispo Legal Assistance Foundation, Veterans Assistance Program, SLO Law Line, Creative Mediation, or other approved agencies. LRIS attorneys do not handle pro bono matters.

*Continued on page 29*

### Our Mission

To provide individuals and businesses a referral to an experienced, qualified attorney. If an attorney is not appropriate to your situation, we will refer you to a local agency or resource that may help with your legal matter.

### Our Assurance

Confidentiality. To protect your privacy, we will only discuss the information about your legal issue to the extent necessary to make a referral.

### Our Guarantee

All attorneys in our service are in good standing with the State Bar of California, carry malpractice insurance, and meet experience requirements set forth by LRIS Rules.

### Our Goal

To point the community in the right direction for all legal needs.

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## About LRIS continued

Most attorneys who participate in LRIS joined the service for two reasons: 1) they would like to develop new client relationships and 2) they are interested in giving back to the community. SLO LRIS could not provide this service without the dedication of participating attorneys.

Attorney Robert Bettencourt, who has participated for the past eight years, says "LRIS is an invaluable legal resource for our community. The program director, Kerrin, does an excellent job providing details about potential cases, which are sent to those of us who accept LRIS referrals in our specific area of expertise. On average, about 70 percent of the cases referred by LRIS to my office result in a new client for me, making this a great resource for me and the other attorneys who participate locally."

Attorney Bradley Hill is also a long-time panel member. "I have been a loyal member of LRIS for a number of years. This dates back to when I was fortunate enough to be on the SLO County Bar Association Board of Directors, when LRIS was established in conjunction with the County Bar Association and the State Bar of California. Over the years LRIS, and its competent staff, including Kerrin Hovarter, have been a valuable source of clients to my practice. The referral fees are very reasonable, and LRIS is set up to efficiently match a client's legal needs with a competent attorney that specializes in the client's particular area of need.

"I also have referred hundreds of legal inquiries to LRIS over the years, and appreciate having an effective and competent outlet to refer potential clients for their legal needs, if I'm not in a position to help that particular member of the public. If you have not tried the services of LRIS, I highly recommend that you do so at your earliest opportunity. Thank you, LRIS, for providing necessary and valuable legal services to our local community!"

Attorney Scott Taylor says, "It has been great to work with LRIS! It has been a great way to connect with clients who are serious about hiring an attorney."

Initially, when LRIS receives a call, we first determine whether the caller is seeking to hire and retain an attorney or seeking free legal assistance. If the caller is seeking an attorney, LRIS takes down all parties' names, case numbers and a timeline of the situation. LRIS then contacts the next attorney in rotation that specializes in that particular area of law. LRIS asks each panel attorney to perform a conflict check before receiving the details/timeline.

Attorneys then review the details and decide whether they are interested in the case. If interested, the attorney provides available dates and times to offer the client. If the attorney is not interested, LRIS moves on to the next attorney in rotation. Attorneys are not obligated to take a case sent to them. LRIS attorneys provide a 30-minute consultation, which is included in the \$50 administrative fee paid to LRIS. Callers are informed the initial consultation is to meet the attorney, discuss details of their case, what options they have, and for the attorney to let them know what the hourly rate and/or retainer fee would be, if the attorney accepts their case.

To participate in LRIS, attorneys must submit their experience specific to the area of law for which they would like to receive referrals. Many practice areas are available. LRIS provides attorneys who range from solo practitioners to those in small firms. Some have been attorneys for more than 20 years and some for only five years. All LRIS attorneys are experienced and knowledgeable in specific areas of law. All LRIS attorneys are in good standing with the California State Bar and maintain professional liability insurance. We are grateful for the loyalty that our attorneys have shown to the LRIS and for assisting us in providing this public service.

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- 1) **Individual limited membership** (LRIS registration and membership in up to three panels) — \$150
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These percentage fees from panel attorneys help staff LRIS and advertise this public service. Most callers learn of LRIS online or by direct referral from local attorneys. The ABA, California State Bar, SLO Bar Association, local courts, governmental agencies and community organizations are direct callers to LRIS. We are always seeking new ways to spread the word about this service provided by LRIS attorneys. The next time you receive an inquiry about an area of law you don't practice in, please know that experienced LRIS attorneys are well suited to serve the needs of your referral.

Attorney applications to join LRIS are reviewed by the Executive Director and LRIS Oversight Committee, made up of attorneys who volunteer their time to make sure this public service operates smoothly. The Committee is comprised of Joshua George, Edward Attala, Dennis Law, Johnathan Hosford, Sheryl Wolcott, Trevor Creel, Michael Pick and Neil Tardiff.

Thank you to all participating SLO LRIS attorneys! We are grateful to these attorneys, and we would love to have you join us. If you have any questions or would like to request an application, please contact SLO LRIS Executive Director Kerrin Hovarter at (805) 541-5505. ■



## TOP 5 continued

I make to my clients when I am first appointed on their case, that I will visit them in jail. Otherwise, the message that you send when you only see them in court is that they are not worth your time, and that message is received loud and clear during the five-minute conversation in the attorney consultation room. Such a small thing goes a long way. My general rule is to visit my client in jail before every court date, so that my client has a reasonable expectation of what is going to happen instead of just sitting there in the jury box waiting for his or her attorney to show up, discuss the case for five minutes, and then move on to the next case.

### Technique Number 2: Promises

The biggest complaint clients have about their lawyers is communication. From the beginning, setting clear expectations of what you are going to do before the next court date is critical. Assigning the client homework also goes a long way. Typically, my homework involves sending me a letter with the questions they have in the case so I can respond to every question they have. Keeping promises to the client is also something incredibly easy that too often does not happen. If you say you are going to contact the client's mother to update her on what happened, take five minutes and make the phone call before moving on to the next case.

### Technique Number 3: Put Everything in Writing

I'll admit, this technique serves two purposes. First, sending your client letters at the jail shows you took the time to work on the case. While you are diligently working on your client's case, at the jail they have no idea what is going on, and most clients are not going to assume you are just doing an awesome job on their behalf. They will assume you are doing nothing and lose faith in you. Sending even short letters to update them goes a long way. Sending long letters answering their legal questions with case cites so they can read the cases themselves in the law library goes an even longer way. It shows you care, and it gives them something productive to do that steers them in the right direction.

More selfishly, it creates a record. I have a copy of every letter I send and receive in my computer. It serves as a record for me when that inevitable ineffective assistance of counsel complaint comes from a client who got a result he or she didn't like. That inevitable complaint isn't personal, it's just

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another way for your client to try and find that silver-bullet remedy to make all of their problems go away.

As frustrating as it is that loyalty is a one-way street, it is the nature of the business. It is never personal. In the past year, I have had to make an ineffective assistance of counsel complaint and a bar complaint against attorneys I respect, because I had to act in the best interests of my client rather than trying to win a popularity contest. Given a long enough career in criminal law, we have all been on the receiving end, and it is never personal.

### Technique Number 4: Talk Strategy With Your Client

To earn your client's trust, it is not enough to simply tell them what will likely happen. I like to treat it like a law school exam—show your work! The most effective tool that I have to earn the trust

of my client is the criminal jury instructions. First, I like to start any case by printing out the jury instructions in the case to frame everything I do. Secondly, it helps to guide the client down the right path. I like to produce a Power Point presentation for clients to go over every element, and for us to consider whether we can realistically challenge that element or not. Then I discuss every potential defense strategy and list out the pros and cons of each approach.

I have only had one client where I had to tell that person that the client made strategic decisions, but I made tactical decisions. That was a very special circumstance, but even that client got printouts of tactical and strategic decisions and the rationale behind them to show why I was making the decisions I was making. When you bring your client into your strategic

mindset, nine times out of ten, they agree with our approach and buy in, which means by the time we get to an important decision, they trust you and will follow your advice. Also, cynically, it serves as a fantastic record to demonstrate that you made tactical decisions in the case when the ineffective assistance of counsel complaint comes.

#### **Technique Number 5: Be Willing to Lose**

If you are a criminal defense attorney concerned about your win/loss record, you are in the wrong line of work. Difficult clients will keep coming back to the same silver-bullet motion that they are convinced you need to file. The worst thing you can do in the face of that request is nothing. You send the message that their views do not matter, and that they need to shut up and color while you do your job that

affects their entire life. The first approach is documentation.

Many of the silver-bullet motions have no reasonable basis. For example, filing a motion to recuse all San Luis Obispo Superior Court judges because one judge has a conflict and, therefore, must be influencing all the other judges against the client is a frivolous motion. Send the client a letter explaining why you will not file the motion, citing the appropriate ethical rules and cases that apply. The client will be frustrated, but at least his or her concerns are being heard and given attention.

The second approach can often make us look foolish, but goes the longest way to earning a client's trust. If there is a reasonable basis, if you can make a logical and legal argument, file the motion even though you know it is likely doomed. Our

*Continued on page 33*



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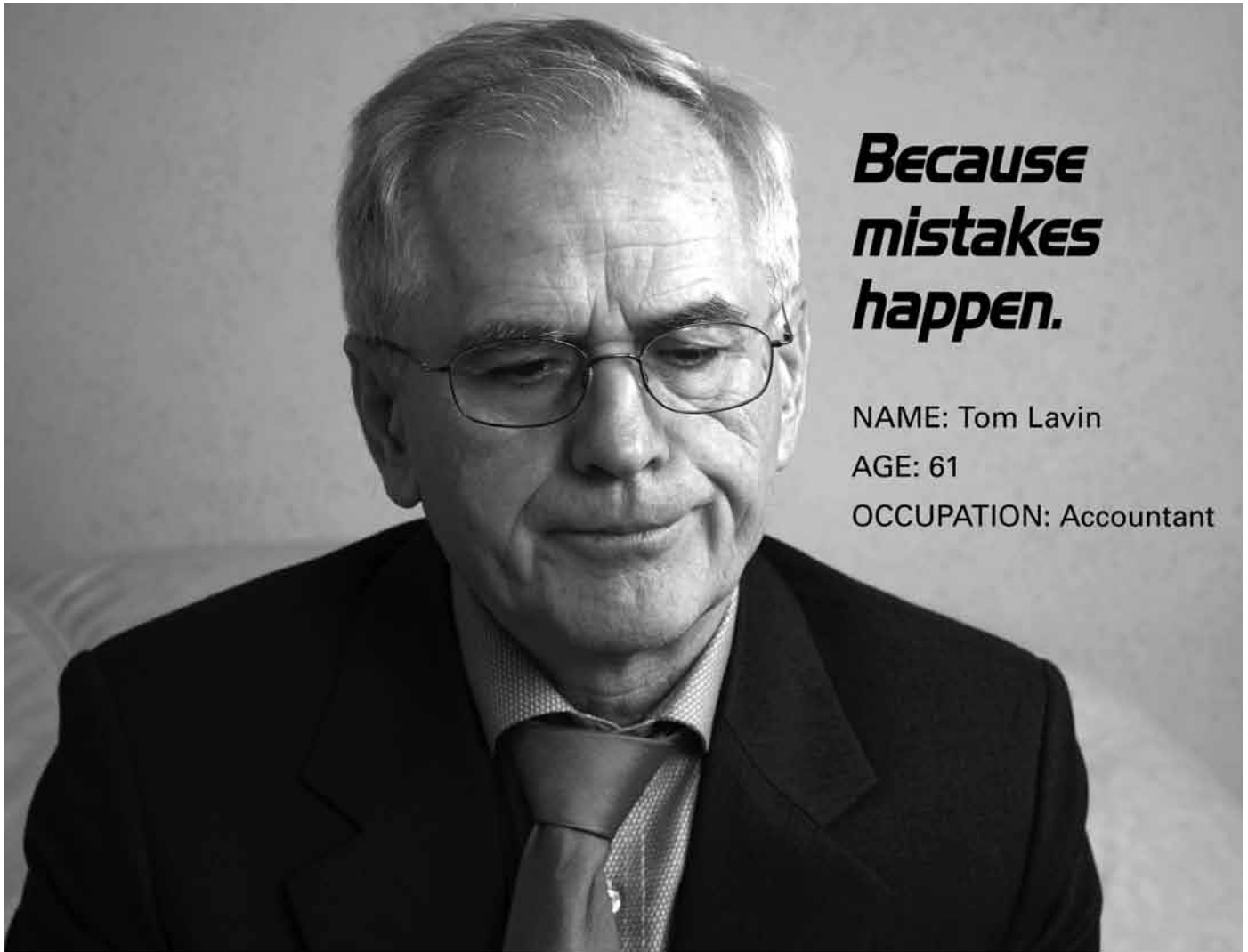
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## TOP 5 continued

judges can spot a client control motion when it comes in, and I have never seen a judge look down on a criminal defense attorney fighting an uphill battle in motions practice when it is clearly an issue the client cares about.

No one likes to lose, and it is never fun getting your teeth kicked in on a motion in front of your colleagues, but your client needs to see you fighting for them more than you need to win. After you lose the motion, your client's frustration gets transferred to the judge who ruled against you instead of you, who at least tried. That allows you to move on to the issues that matter in the case rather than the periphery issue that the client cannot let go.

The longer I practice, the more I employ all of these strategies for all of my clients, not just the most difficult ones. We all love the dramatic courtroom victory or the not-guilty verdict in the face of overwhelming evidence, and we will always have those stories to tell. I believe, however, that my efforts fighting for the client who has no faith in the system—and doing my part to make that client believe he or she had a fair shot—is equally, if not more, valuable. At a minimum, we want our difficult clients to feel better about the process to give them an opportunity to turn things around rather than project all of their mistakes onto everyone around them. Sometimes we have a client that is just royally

screwed from the beginning, and all that we can offer is being the one person to give them their humanity back, to treat them with respect and dignity when no one else will. I believe that is worth my time. Although in the middle of a case with a difficult client is never fun, when the case is over with the benefit of hindsight I have never regretted taking the time to provide the attention that must be paid.

*Scott Taylor is a former public defender, who joined the Air Force to serve as a Judge Advocate General's Corps (JAG) officer in 2010. He continues to serve as an instructor at the JAG school training new prosecutors while maintaining his private practice in San Luis Obispo. ■*

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Contributions to the *Bar Bulletin* must be submitted electronically in Microsoft Word format directly to the Editor at:

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Footnotes will not be published; any essential notes or citations should be incorporated into the body of the article. Contributors are encouraged to limit the length of their submitted articles to 2,500 words or less, unless the article can be published in two parts in successive issues.

The *Bar Bulletin* is published six times per year:

- January–February
- March–April
- May–June
- July–August
- September–October
- November–December

To ensure consideration for inclusion in the next scheduled edition, articles, advertisements and payments must be received by the 25th of the month, as stated at right.

The *Bar Bulletin* reserves the right to reject or edit any contributions. By submitting contributions for publication, contributors consent under this policy to the editing of their work, the publication of their work and the posting of their work online. Contributors must include an e-mail address and/or telephone number, as they may be contacted during the editorial process.

Your submission of photographs to the *Bar Bulletin* authorizes their publication and posting online. All photographs must be submitted in .jpg or .pdf format with a resolution of not less than 300 dpi via e-mail or, for large files, WeTransfer. Please include the photographer’s name and that you have permission to use the photograph.

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