Bar Bulletin
Serving San Luis Obispo County's Legal Community
September–October 2019

On the Road

With Stephen Sterns Mobile Law Center

Summer Social Photos

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San Luis Obispo County Bar Association
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San Luis Obispo County
Bar Bulletin

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President's MESSAGE

by Michael R. Pick Jr.

A Riff on Perspective, Purpose, Satisfaction

If you are like me at all, the summer went way too fast! Between vacations, kids out of school and visitors, it was literally a blur. Hard to believe we are closer to 2020 than we are to 2018.

Thank you to all who supported the 2019 San Luis Obispo County Bar Association Summer Social at Biddle Ranch. It was a great time had by all. You can enjoy the event photos that begin on page 13. Thank you to Joe Benson who provided an excellent overview of marketing law at the June luncheon. Thank you to the Honorable Linda Hurst, Michele Rowe, Melanie Phillips, Herb Stroh and Martha Spalding who did an outstanding job presenting an overview of the conservatorship process in August.

In a bottom-line driven culture, it is easy to get caught up in our day-to-day tasks and forget the big picture of what role legal services plays and how the practice of law influences our society.

Not to sound too heady, but the lineage we are a part of includes 25 of the 56 signers of the Declaration of Independence, along with President Abraham Lincoln, Arabella Mansfield, Charles Houston, Honorable Thurgood Marshall and countless others who have pushed for a better society. These memorable Americans do not strike me as letting the minutia dilute their aim nor their message.

In such a small community we are not always given the opportunity to work on matters we feel will change the world or push society forward. Instead we can focus on being thorough, diligent, and integrity filled individual pieces working toward the same goal—an even better community.

As American Novelist E. L. Doctorow said, "Writing is like driving at night in the fog. You can only see as far as your headlights, but you can make the whole trip that way." Even if you cannot see the end goal in sight—in this instance the goal is a more perfect union—one must trudge forward with integrity to obtain the excellence this community has always strived for.

As with everything, perspective can bring motivation and satisfaction. So in lieu of just grinding out on whatever legal assignment you are working on, try to imagine yourself as a working part of a community of individuals driven toward excellence. I believe the right perspective can provide a greater sense of purpose as well as satisfaction with any career you have chosen. ■

Editor's Note

July–August Bar Bulletin *Correction: Photos of Attorney Hallie Ambriz taken by Peter Klein.*

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On the Road...

Stephen Stern's Mobile Law Center

by Raymond Allen

Photos by Shannon McMillan Photography

In April 2017, Stephen Stern rolled out the Mobile Law Center (MLC), a unique legal delivery system.

MLC is a beautifully renovated 1978 Airstream Argosy. Stern took pains with the design to make the interior calming and inviting. The cool colors are borrowed from a yoga studio. There are no legal books in massive shelves, no diplomas or certificates on the wall. It is open, airy and relaxing.

Stern spent time strategically planning the details of the MLC Airstream office. He worked with Nate Stover of Innovative Spaces in Santa Barbara. They completely gutted the Airstream. "They're meticulous," says Stern. "They went through piece by piece and restructured it, re-strengthened it, and did everything they needed to do to build it out."

The hard work paid off. The restored Airstream allows Stern to be mobile, accessible and flexible for clients. He provides flat fees for either limited scope or full service representation. He provides services on practical legal issues like consumer rights, debt, trusts and bankruptcy.

Stern believes that most people equate lawyers with expensive hourly fees and costs; intimidation and confusion; stress and anxiety; and impersonal and/or unprofessional treatment. Clients would often come to his office after a default judgment, a wage garnishment, or a bank levy. Many of the issues could have been easily resolved, but the client needed support on the front end. The client population he sought to assist with MLC was not necessarily low income, but they were often intimidated, elderly, disabled or agoraphobic. As a result, Stern wanted to reach out and help.

Sometimes he goes directly to a person's house. Often, however, he will announce that the MLC will be in a particular location. The model is similar to food trucks that use the Internet to announce where they will be on a given date or time. Clients benefit from this service. Stern parks the MLC at safe, discrete locations so that clients continue to feel calm and comfortable.

Delivering legal services in this manner is not for every lawyer. Stern acknowledges it fits his personality because his primary goal is to make a difference in the lives of his clients, not necessarily make money. "It is not a *Forbes* business model," he chuckles.

On the other hand, the possibility for franchises is interesting. It is understood, moreover, that Millennials are driving the economic landscape. They want goods and services to be available online, anytime. They want straightforward legal services at low prices. In the coming years, the evergreen retainer might become more endangered than the baiji dolphin.

Steven Sterns travels the law road in a renovated 1978 Airstream Argosy.

Mobile Law Center former office interns (from left): Julia Zarello, Anjni Desai, Malia Pletcher.

"I have helped wealthy clients get wealthier, but if I can help someone get on their feet that can be a game-changer." Although there is altruism involved, Stern confesses that the fulfillment he gets from helping his clients is incredible. "There is a personal benefit from helping others."

Jack Kerouac wrote, "What's your road, man? – holyboy road, madman road, rainbow road, guppy road, any road. It's an anywhere road for anybody anyhow."

For Stern, it's law road in the Mobile Law Center. He is driven to provide quality legal services at affordable prices to students, lower-income clients, and those clients paralyzed by fear. ■

The Uber Effect:

How Tech Companies Jumped on the Independent Contractor Track But Now Find It Going In Another Direction – Part 2

by Lisa Sperow and Kathy Eppright

In the previous issue of the *Bar Bulletin*, we discussed the recent changes in the legal tests used in California to determine whether an individual is an independent contractor or an employee. The evolution of the law has created some confusion. In this article, we continue to explore the significance of recent developments in the independent contractor versus employee designation arena in the context of Congress' 2017 tax reform.

The Odd Intersection of Changes in Independent Contractor Test With the 2017 Tax Reform

The Tax Cut and Jobs Act (TCJA) of 2017 created many benefits for sole proprietors and pass-through entities who work as independent contractors. The tax reform doubled the standard deduction and lowered the individual tax rates for most tax brackets. In addition, higher thresholds are now needed to bump taxpayers into higher tax brackets. These reforms, however, in general will lower the tax amounts that most sole proprietors and pass-through entities pay.

The TCJA also eliminated the deduction for unreimbursed business expenses for employees, but not for independent contractors. There are no longer deductions for items such as travel and mileage costs, meals and entertainment, tools and supplies, uniforms, union dues, and subscriptions.

To make up for this elimination, businesses can now claim a deduction if they reimburse employees and the reimbursements are excluded from the employee's taxable income. Employees are thus advised to request that their employers reimburse them and claim the deduction.

Another, perhaps more difficult solution, is for the employee to seek a pay raise to compensate for the lack of a previously allowed deduction. On the other hand, if these employees can change their status to qualify as independent contractors, then they may be able to take deductions for many business-related expenses. Therefore, the TCJA favors independent contractor status.

Confusion Surrounding the Tax Obligations of the Gig Economy

The average person's confusion about their tax obligations in the rising gig economy may be one of the reason lawmakers have been hostile to companies like Uber. Many of the individuals working in the gig economy do not understand how much in taxes they need to pay. This confusion is seen in recent IRS data showing that underpayment of estimated taxes by these workers rose nearly 40 percent from $7.2 million in 2010 to $10 million in 2015.

In addition, "Shortchanged" a study conducted by American University, found that one-third of respondents did not know whether they were required to file quarterly estimated payments and many did not understand record-keeping requirements.[1] Moreover, 43 percent did not know how much they would owe in taxes and did not set aside money to pay any tax liabilities. Furthermore, almost one-half did not know about any tax deductions, expenses or credits to offset their tax liability. Finally, almost 70 percent did not receive any tax guidance from the platform they worked with in 2015.

Many of the clients who seek the assistance of the Cal Poly Low Income Taxpayer Clinic are very surprised and confused when they learn that the odd jobs they have picked up to make ends meet come with tax reporting and recordkeeping obligation. It is apparent that many workers in the new gig economy need more guidance from the IRS or other sources regarding their taxes.

Steps Taken to Address the Confusion

Some progress has been made toward clarifying the confusion around taxation of the gig economy. In 2016, the IRS launched the Sharing Economy Tax Center webpage on the IRS website (https://www.irs.gov/businesses/small-businesses-self-employed/sharing-economy-tax-center) that provides more instructions to gig economy workers and addresses common issues they often face.

In 2017, Nina Olson, the National Taxpayer Advocate, in her annual report to congress elevated the lack of tax guidance for these workers to one of the nation's most serious problems facing taxpayers, bringing more attention to the issue. In addition, many industry platforms began issuing Form 1099-Ks to gig economy workers even when current law did not require them to do so. These forms show taxpayers the gross amount of all

reportable payment transactions. These actions have improved the situation, but there is still more to do to reduce the confusion in the gig economy.

Tips for Taxpayers

To make the filing process easier, taxpayers should separate their personal and business expenses throughout the year. It is important to document business expenses and note the purpose of each expense. Having separate credit cards and bank accounts for business expenses is key in this process. In addition, taxpayers should keep track of the miles they are driving for business purposes by using apps designed for this purpose or even an old-fashioned pen and paper. Taxpayers can also use accounting software systems to manage sales and expenses. They should update their system daily or at least weekly to stay on top of their documentation.

Requirements for Form 1099-K

The 2018 Intuit Tax Survey of self-employed found that while 32 percent of self-employed taxpayers properly reported their earnings, 32 percent underreported their earnings, and the remaining 36 percent did not report.

It is important to note that Form 1099-MISC is required on amounts paid by non-employers to service providers that exceed $600. However, if a payment is made via a credit or debit card, as is the case for most gig economy jobs, non-employers must use a Form 1099-K to report earnings, which has a much higher threshold.

A form 1099-K is required by an On-Demand platform only if the taxpayer has more than 200 transactions and receives payments exceeding $20,000. Since a majority of On-Demand platform workers earn less than $20,000 a year, most of them do not receive a Form 1099-K. Thus, while the self-employed individual is required to report all earnings over $400, most will not receive any type of corroboration—and failure to receive a 1099 is not an excuse for failure to file.

What Both Workers and Employers Should Know

Of course, some contractors will meet the new ABC test, but most will not. If you want to avoid the risk, the best approach is to only hire independent contractors if they are the type you would look up in the "yellow pages" in the old days. The plumber, the electrician, the landscaper, or some other type of trade that typically comes in for a one-time job will be fine. After *Dynamex*, these are the only types of contractors you can hire with confidence that they will be viewed as independent contractors.

If you venture into the grey area, the penalties you might face for misclassification of independent contractors are significant. For the misclassified worker, some deductions may be disallowed and back taxes may be owed, which will also trigger penalties for failure to pay and interest dating back to the original due date.

For the employer who fails to withhold federal income tax, the IRS imposes a penalty of 1.5 percent of wages paid, and for failing to withhold the employee's share of FICA, the penalty is 20 percent of the employee's share of the tax (or 40 percent if the employer did not file Form 1099-MISC).

If intentional misclassification occurred, the employer is subject to penalties of 20 percent of all wages paid and 100 percent of the matching FICA tax that should have been paid. Furthermore, the employer cannot recover any part of the penalty from the employee.

The California Franchise Tax Board (FTB) also has its own set of penalties for misclassification of employees. The FTB imposes penalties to employers ranging from $5,000 to $15,000 per violation or between $10,000 and $25,000 if the misclassification is deemed a pattern or practice of willful misclassification. Failure to withhold and pay payroll taxes can also result in a misdemeanor charge of $1,000 per misclassified worker and one year in prison. The employer also must post this violation on their company website with an explanation of the violation. The FTB also protects these misclassified workers by allowing them to seek up to three years' worth of unpaid wages (i.e. overtime and meal/rest break violations) and penalties from their employer.

It is highly unlikely the law in this area will take another detour, especially in California, so if you have independent contractors now that do not meet the ABC test and are going along for the ride, hoping for a carve out for your business, be sure you buckle your seatbelt. It looks like it is going to be a bumpy ride. ■

[1] Bruckner C. (2016, May 23). *Shortchanged: The Tax Compliance Challenges of Small Business Operators Driving the On-Demand Platform Economy*. Retrieved from https://www.american.edu/kogod/news/Shortchanged.cfm

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Lisa Sperow is the Executive Director of the Cal Poly Low Income Taxpayer Clinic.
Kathy Eppright is a partner with Andre, Morris and Buttery.

Remembering Neil Hovis

by Christine Hovis, Barry Hammer, R. Michael Devitt and Robert A. Del Campo

Photos courtesy of Christine Hovis

Neil Hovis passed away in April 2018. Neil had practiced law in our community over four decades.

George Neil Hovis was born in Jackson Center, Ohio, in 1932. He grew up and was educated in Ohio and briefly attended Colgate University before joining the United States Air Force. During his service in the USAF he was stationed in Florida, where he met Christine Harper.

Hovis joined the San Luis Obispo District Attorney's office in 1962 and worked there until 1970 when he formed a partnership with Norm Sherr. The firm became Hovis, Sherr and Del Campo and obtained the public defender contract for the county. After the public defender contract, he practiced in San Luis Obispo until about 1997, when he retired.

While in the District Attorney's office, Hovis was assigned to prosecute a murder case against a woman who shot her abusive husband. She went into the bedroom while her husband was drunkenly arguing on the phone with the police dispatcher. In the bedroom she coolly loaded the six-shot revolver. She then returned to the living room and emptied the pistol into her husband. At the time of the killing she had a broken nose and had just become pregnant.

Her lawyer, Lloyd Somogyi, obtained a few strategic continuances and the case came to trial when she was near term. The jury found her not guilty on self-defense grounds. However, later when she needed a lawyer, she contacted Hovis to represent her because she was impressed with his work.

When he passed away, Neil Hovis was survived by his wife Chris, two children and three grandchildren. Below are some recollections.

Christine 'Chris' Hovis

Neil and I met when he was stationed in Florida while in the United States Air Force. We married in 1955. We moved to Columbus, Ohio, where Neil attended Ohio State University. He completed his undergraduate and Juris Doctorate work in five years.

Afterward, we moved to San Francisco. Neil briefly worked for the Internal Revenue Service. In 1962 Neil took a job with the San Luis Obispo District Attorney's office. Our daughter, Robin, put it: "Daddy's a turdie in the coat house." We bought a house in the brand new subdivision of Laguna Lake, where we have lived since.

Once, Neil obtained a pistol that had been forfeited. It accidentally discharged while he was cleaning it. Neil did an excellent job of fixing the hole in the ceiling, but the bullet had cut a wire and the light would not work. I had the cartridge mounted with the label: "Fastest gun in the west" and presented it to Neil.

Neil had an strong interest in sports cars and the open road. He was active in the American Legion, the Elks, and he served as a board member for Achievement House. In his later years, Neil took on his greatest role—grandpa. After 63 years together, Neil left our two children, Robin Hovis James and George Neil (Joe) Hovis, and our three grandchildren.

Barry Hammer

I met Neil Hovis in 1963 when I joined the district attorney's office. The criminal side of the DA's office consisted of assistant District Attorney Bob Tait, and two deputies – Neil and myself. We were soon joined by Chris Money. We handled misdemeanors and felonies in the two superior courts (Timothy O'Reilly and Richard Harris) and in the Justice courts of San Luis Obispo (Paul Jackson), Morro Bay (Fred Schenk) and Arroyo Grande (Gerard Dana). The Justice Courts in Paso Robles (Roy Fanning) and Atascadero (John Burritt) were normally handled by a contract deputy—Roland Iverson.

Neil showed me around and introduced me to the three justice courts. We were fairly close and would lunch together when we were both in town. Neil was a straightforward, no-nonsense prosecutor. What you saw was what you got. Neil would evaluate a case and decide what it

was worth. Unless the defense came up with something new, they could either accept Neil's offer or try the case.

Neil was capable of thinking on his feet. In one sexual assault case, the victim quoted the defendant's pronunciation of 'plexiglass.' Neil noticed the defendant used the same unusual pronunciation—he mimicked the defendant's pronunciation in argument to convict the defendant. Neil won another case through his knowledge of cars. The defendant described how the car door opened—Neil proved it in fact opened the opposite way.

We left the district attorney's office within a year or so of each other. One time we were representing criminal co-defendants. Neil was normally calm and hard to ruffle. When I argued that his client was the real culprit, Neil made a passionate argument that they were trying to 'screw' his client. He persuaded the jury.

Neil was a real credit to the profession in this county, and he tried more than 100 jury trials in his career. I am glad to have known him and proud to have been his friend.

R. Michael Devitt

I was truly saddened by the passing of Neil Hovis. Neil was in the District Attorney's office when I first knew him, and was the prosecuting attorney on my first jury trial as deputy public defender.

All of my dealings with Neil, in that initial case and after, were always positive. He was always a gentleman, and when I reflect upon that first jury trial, Neil was never one to take unfair advantage.In that first case, my client was charged with driving under the influence of toluene, a form of paint thinner. My client had a prior criminal record, and the District Attorney was entitled to ask the defendant on the stand whether he was convicted of any felonies, and what the felonies were. My client was charged in a prior felony case with violation of Penal Code §7050.5.

I prepared my client to answer the former felony truthfully, and I had two choices, neither of which was particularly helpful. We practiced answering to the prior felony charge so that he would be prepared when Neil asked him about the charge. My client was ready to answer, "Digging up a dead body." In other words, he had disposed of human remains in a location other than a dedicated cemetery.

Neil only asked if he had been convicted of a prior felony, but he never asked what the felony was for. Neil did have an expert come down from Sacramento to testify, about driving under the influence of paint thinners. In any event, the jury acquitted my client.

My third jury trial was also with Neil, and in that case, my client was charged with attempted burglary. As I recall, my client was attempting to climb through a window when two young men, about 11 to 12 years old, began to throw rocks at him to dissuade him from entering the residence. The two young men testified to the attempted burglary.

While my client was also arrested and subsequently acquitted, Neil was the consummate gentleman and was often given the last word. After the jury had acquitted my client, who had remained in jail all this time, the judge told him that he was free to go. Neil got that last word in,

Chris and Neil with children George Neil (Joe) and Robin Hovis.

however, when he informed the judge that there was another charge against the man in Santa Barbara County. Some of the jurors might have heard that on their way out, much to their chagrin.

Throughout the years I had a number of cases with Neil, and I won some and I lost some. In all of those years, Neil was nothing but a gentleman.

Robert A. Del Campo

G. Neil Hovis was the senior prosecutor in Robert Tait's District Attorney's office in 1970. I first met him at that time when I joined the office. Mr. Hovis was open and friendly, he stepped forward to share his legal experiences in any case and followed up with specific guidance. Personally, he quickly explained how he would address the prosecution case—his recommended "do's and dont's" and "watch out fors." He helped a rookie avoid a perfect record—"all losses."

Continued on page 12

Remembering Neil Hovis *continued*

Neil left the District Attorney's office in 1970 or 1971. He and his partner, Mr. Norman Sherr, had started a law firm, and they were serving as contract public defenders. Neil served in the capacity of Felony Trial Defense Attorney for a period of three years. The legal defense for those accused of a murder, mayhem and an abundance of marijuana trafficking cases in San Luis Obispo Superior Court was the responsibility of Neil. He was a credit to our profession, facing off with the county's prosecutors weekly for three years. His abilities and commitment to presenting an honest defense case often moderated serious charges.

Upon termination of the public defender contract, Mr. Hovis continued his private practice until his retirement. A trusted friendship developed over our 12 years of practicing general law together. He placed great importance on family life and in that regard helped me guide my own actions, as my own family came along. I am proud to have known Neil, and I continue to admire his skills and approach to the practice of the law. ■

NEIL HOVIS
1304 Garden Street
San Luis Obispo,
CA 93401
544-6200
Ohio State University
1960

Neil Hovis during his time in the U.S. Air Force, circa 1955.

Left: 1985 San Luis Obispo County Bar Association Directory listing.

2019 Summer Social Toasts a 'Perfect Night of Fun'

July 18 at Biddle Ranch Vineyard

Biddle Ranch Vineyard was once again home to San Luis Obispo County Bar Association's Summer Social. As always, Mother Nature cooperated. On a beautiful mid-July evening, approximately 100 lawyers and a sprinkling of judicial officers gathered to enjoy the evening, the company and the fantastic wine.

Biddle Ranch Vineyard is a meticulously manicured venue. In addition, the food, provided by Bear and The Wren, was amazing. Wood-fired flat pizzas were made on site and served fresh and hot. The wine was wondrous. Biddle Ranch served up its very own varietals: a Pinot, a Syrah, a Chardonnay.

As expected, the Summer Social was a joy: no speeches, no live music and no MCLE credits. Just great conversation with great friends. In short, it was a perfect night of fun.

The Bar Association would like to thank the event sponsors. The Summer Social would not be possible without their generous donations.

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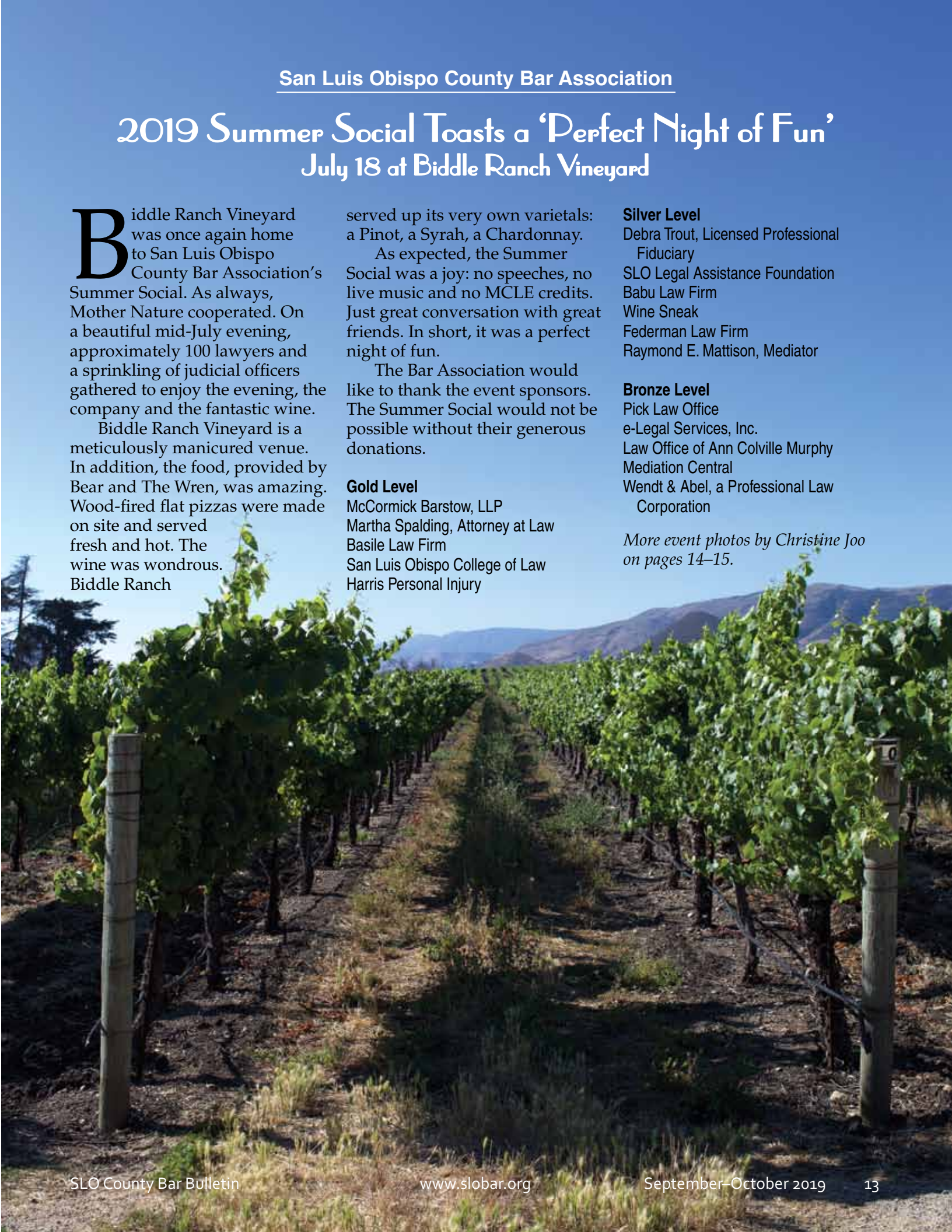
More event photos by Christine Joo on pages 14–15.



Allen Hutkin, Judge Rita Federman, Doug Federman, Judge Matthew Guerrero.

Jan Marx, Nicole Mullikin, Gabriela Bonato.

Matt Kennedy, Kiely Crow, Curtis Abram, Doug Federman.

Top, Sandra Coracero, Annettte Lares, Carmen Ortiz.
Above, Helen Garrison, Emily Creel, Trevor Creel.
Left, John Mahan.

Bear and The Wren prepared wood-fired flat and host venue Biddle Ranch Vineyard poured

pizzas on site to serve fresh and hot, their own wondrous varietals.

Above, SLO County Bar Executive Director Nicole Johnson, Steve Hill.

Left, Ziyad Naccasha, Ash Mehta.

Above, Tim Waag, Allen Hutkin, Jan Marx.

Left, Alex Newsum, Sean Nagle, Kevin Elder, Channy Russell.

2019 Summer Social

at Biddle Ranch Vineyard

SB 954 Requires New Mandatory Disclosures for Mediation

This article is presented by the ADR Section of the San Luis Obispo County Bar Association. Contributors are Dennis Law, David Warren, Craig McCollum, Scott Radovich, Laurie Saldaña and Raymond Mattison.

Effective January 1, 2019, SB 954 adopted changes to California mediation laws. Now, attorneys must give their clients written notification of the laws controlling mediation confidentiality. This article will review basic provisions of SB 954 and, in a question/answer format, address anticipated questions.

Mediation confidentiality is governed by Evidence Code section 703.5 and sections 1115 to 1129. SB 954 added Section 1129 and it amended Section 1122. The newly added section 1129 has the most immediate and direct impact.

With limited exceptions, attorneys must now provide their clients with a written disclosure of the mediation confidentiality restrictions contained in Evidence Code Section 1119 *and* obtain from their clients a written acknowledgement signed by the client stating that the client has read and understands the confidentiality restrictions. This disclosure must be provided to clients "as soon as reasonably possible *before* the client agrees to participate in the mediation."

Anticipated Questions With Answers

Following are answers to questions that we anticipate will frequently be asked.

Q: Are there specific requirements as to the content of the disclosure?
A: Yes. Illustration of content that satisfies the requirements for the disclosure is found in the statute, and is set forth in the endnote.[1]

Q: Are there specific requirements as to the form of the disclosure?
A: Yes. The disclosure must be provided on a single page not attached to any other document. The disclosure must be in at least 12-point font and contain the name of both attorney and client.

Q: Must the disclosure be signed?
A: Yes, both attorney and client must sign the disclosure.

Q: Are there any specific requirements concerning the language in which the disclosure is delivered?
A: Yes. The disclosure must be in the client's preferred language.

Q: When must the disclosure be given?
A: As soon as reasonably possible before the client agrees to participate in a mediation. If the attorney is retained after a client agrees to mediate, it must be delivered as soon as reasonably possible thereafter.

Q: Are there specified penalties for failure to deliver the disclosure?
A: None are expressly provided for by statute, but it is highly recommended that attorneys provide the disclosure. The consequences for failing to do so are currently unknown.

Q: Does failure to deliver the statement affect whether the mediation can go forward?
A: No.

Q: Does a mediator have a duty to give notice to the mediation participants pursuant to SB 954, particularly where one or more parties participating in the mediation are unrepresented by legal counsel?
A: Evidence Code Section 1122(a) limits the requirements of pre-mediation notification and disclosure to "an attorney representing a client participating in a mediation or a mediation consultation." Therefore, a neutral mediator, who is not providing legal representation to any of the mediation participants, would have no duty to comply with the section requirements.

However, the section would seem to apply when an attorney is acting as a mediator as well as representing the parties, particularly when she assists in scribing the settlement agreement and obtaining a court order approving it. This often occurs in Family Law cases.

Irrespective of the application of Evidence Code Section 1122(a) a mediator is generally required to

provide the participants, at the outset of the first mediation session, with a general explanation of the confidentiality of the mediation proceedings, whether they are represented by counsel or not. CA Rule of Court, Rule 3.854(b).

Q: What if only one of the clients or a representative of the client (*e.g.* insurance adjusters, corporate and public entity) appears?
A: The disclosure requirement only applies to "participants" in the mediation. ("….as soon as reasonably possible *before* the client agrees to **participate** in the mediation").

The insurance adjuster or risk manager is a "client" and "participates." The attorney-client privilege certainly applies to him. "Clients" who do not attend the mediation don't "participate" in that they do not share or obtain confidential information during the session. The same should be true for a representative of any entity, such as a corporation or public agency. If we go in another direction we are having folks who are not participating in the *mediation signing a form which, by its terms, is obviously not intended for them*.

Q: How can we enforce the settlement agreement or "deal memo" under CCP section 664.6 signed by the parties at the Mediation if we are prohibited from using writings created in the course of a Mediation?
A: You must explicitly provide in the agreement that it is enforceable in any later proceeding brought pursuant to section 664.6. Here is a common term used for that purpose:

"This document is binding on the parties, admissible in Court or other proceedings and is enforceable upon motion of any party made pursuant to Code of Civil Procedure section 664.6."

Legislative History

Many readers may be curious as to what is behind this change in the law. The legislative history will provide you with a better understanding of this new law.

The history of the legislation starts with Justice Ming Chin's concurring opinion in *Cassel v. Superior Court* (2011) 51 Cal.4th 113. The majority decision held that the mediation confidentiality protections contained in Evidence Code Section 1119 were essentially absolute and there was no exception that would allow a client to use confidential information in a legal malpractice suit brought by the client against his/her own attorney.

Section 1119 prohibits the disclosure in any subsequent proceeding or discovery of anything said or written at a mediation. In his concurring opinion Justice Chin agreed with the majority's conclusion, which was based on the literal language of the Evidence Code. While he agreed with the majority's conclusion (based on the Evidence Code language), he was not completely satisfied that the Legislature had adequately considered the need for accountability of an attorney to his/her client in a mediation.

Based on Justice Chin's concerns, the California Law Revision Commission (CLRC) was asked to obtain input from experts and interested parties and make recommendations for possible new legislation revising California law to better balance the interests between confidentiality and accountability.

In December 2017 the CLRC made a tentative recommendation to amend the mediation confidentiality laws to allow the use of information derived from a mediation in a client's legal malpractice action. This tentative recommendation received almost universal criticism and was never introduced. Instead SB 954 was then introduced. It was considered a "more measured" approach to the issue than was the case with the earlier proposals.

Section 1129, and its notice requirements, stem from a concern that clients should understand the wide scope of confidentiality attributed to mediations. Further, in view of the *Cassel* case, it notifies the clients that they are limited in their ability to use what occurs in a mediation proceeding in a later malpractice case against their attorney.

Conclusion

The simple take away from this article is that attorneys must now disclose to their clients the confidentiality laws applicable to a mediation. This disclosure is confirmed by a signed written acknowledgement that they have read and understand these confidentiality restrictions. Use the disclosure template (see next page) provided by the legislature to confirm that you have complied with your duties under the new law.

Continued on page 18

[1]SB 954 Required Statutory Disclosure Template

Mediation Disclosure Notification and Acknowledgment

To promote communication in mediation, California law generally makes mediation a confidential process. California's mediation confidentiality laws are laid out in Sections 703.5 and 1115 to 1129, inclusive, of the Evidence Code. Those laws establish the confidentiality of mediation and limit the disclosure, admissibility, and a court's consideration of communications, writings, and conduct in connection with a mediation. In general, those laws mean the following:

- All communications, negotiations, or settlement offers in the course of a mediation must remain confidential.

- Statements made and writings prepared in connection with a mediation are not admissible or subject to discovery or compelled disclosure in noncriminal proceedings.

- A mediator's report, opinion, recommendation, or finding about what occurred in a mediation may not be submitted to or considered by a court or another adjudicative body.

- A mediator cannot testify in any subsequent civil proceeding about any communication or conduct occurring at, or in connection with, a mediation.

This means that all communications between you and your attorney made in preparation for a mediation, or during a mediation, are confidential and cannot be disclosed or used (except in extremely limited circumstances), even if you later decide to sue your attorney for malpractice because of something that happens during the mediation.

I, _____ [Name of Client], understand that, unless all participants agree otherwise, no oral or written communication made during a mediation, or in preparation for a mediation, including communications between me and my attorney, can be used as evidence in any subsequent noncriminal legal action including an action against my attorney for malpractice or an ethical violation.

NOTE: This disclosure and signed acknowledgment does not limit your attorney's potential liability to you for professional malpractice, or prevent you from (1) reporting any professional misconduct by your attorney to the State Bar of California or (2) cooperating with any disciplinary investigation or criminal prosecution of your attorney.

[Name of Client] [Date signed]

[Name of Attorney] [Date signed]

Have you met…?

Ryan Andrews

After 10 years in the corporate world developing and managing compliance programs for complex industries in chemical manufacturing, aviation, aerospace and defense Ryan Andrews joined Carmel & Naccasha LLP, in October 2018. His corporate experience has focused on employment law, corporate and business transactions, import/export regulations, and industrial health and safety. He enjoys the problem-solving aspects of the business environment and brings a collaborative approach to helping clients understand and comply with the increasing regulatory landscape.

Originally from Southern California, Andrews moved to the San Luis Obispo area in 2014 to raise his family. Prior to joining Carmel & Naccasha, he worked for ACI Jet as their Director of Safety Human Resources, and Director of Safety and Compliance Systems.

He earned his B.A. in History from Cal Poly San Luis Obispo, and his J.D. from the University of La Verne College of Law. While attending law school, he received several merit scholarships, was on the Dean's List, and was the supervising technical editor for the University of La Verne Law Review.

Andrews lives in San Luis Obispo with his wife, two boys and their dog. He enjoys spending free time with his family, whether it is hanging out at home or at the beach. Occasionally, he can be found on a golf course.

Ken Baldwin

A partner with the law firm of McCormick, Barstow, Sheppard, Wayte & Carruth LLP, Ken Baldwin has worked at the firm for 31 years, since his graduation from King Hall School of Law at the University of California Davis. While the firm is based primarily in Fresno, it also has offices in Las Vegas, Reno, Modesto, Bakersfield, and in San Luis Obispo, following the firm's merger with Sinsheimer Juhnke McIvor & Stroh LLP, on January 1, 2019.

Baldwin splits his time between the firm's Fresno and San Luis Obispo offices, working two to three days per week in San Luis Obispo. His legal practice is focused on business transactions, real estate, and probate, trusts and estates. His clients include banks, corporations, general and limited partnerships and family operated farming and ranching businesses. He has an AV rating from Martindale-Hubbell and was designated a Northern California Super Lawyer from 2013 through 2019.

Baldwin serves on the board of directors for Catholic Charities Fresno, and does pro bono legal work for other nonprofit entities. He enjoys binge watching television shows (most recently "Stranger Things" on Netflix), and long runs with his dog, Lennie. His wife, Letty, is a registered nurse. His daughter, Madisen, recently graduated from Cal Poly San Luis Obispo with a plant sciences degree and now works in Sacramento. His other daughter, Olivia, is a sophomore at the University of California Berkley.

Baldwin has owned a home in Cayucos for 11 years. He loves the Central Coast and his goal is to eventually transition his entire practice here. ■

Note–If you are a new member of the San Luis Obispo County Bar Association and would like to be introduced to others in the organization, please contact the *Bar Bulletin* editor for inclusion in an upcoming issue.

SECRET LIVES OF LAWYERS

Jordan Cunningham, Assemblyman

by Raymond Allen

Editor's Note: "Secret Lives of Lawyers" is a recurring column. The goal is to highlight interesting things lawyers do to find balance or achieve fulfillment. If you would like to be included, or know of a lawyer that has an interesting side, please contact the Bar Bulletin *editor.*

Jordan Cunningham is an attorney. He has been a deputy district attorney and a criminal defense attorney. With his wife, Shauna Cunningham, he still practices criminal law, family law and education law. He admits, however, that his partner does most of the work at the firm. This is because he is also our state representative for Assembly District 35.

In 2016, Cunningham was elected to the office vacated by "Katcho" Achadjian. Upon reaching the Assembly, he set about becoming familiar with the language and the procedure of the legislative process.

"There was a huge learning curve," he says. "When I first got there I remember people were running around saying *House of Origin*, *House of Origin*. I had no idea what they were talking about."

He came to understand that "House of Origin" is the phrase used to describe the process of getting bills out of the Assembly. The Constitution sets the date the bills must get out of the Assembly. Sometimes the representative needs to vote on 400 bills within a very short period of time.

"The second year was easier and I started sponsoring some pretty big bills. This year I have the system down."

Cunningham also credits his legislative successes to his legislative director and chief of staff.

PG&E Mitigation Legislation

Cunningham has been at the heart of several major pieces of legislation that affect the Central Coast. As we all know, the PG&E power plant is set to close in a few years. Cunningham has been at the forefront of passing legislation for community impact mitigation. He was also instrumental in getting $120 million to PG&E employees who were promised bonuses if they stayed to help close the plant. Without the promise of the bonus, most employees would have left the plant and the area. The negative effect that would have had on the plant closure and our local economy is hard to overstate.

Cunningham is also taking a leadership role in transforming sections of the PG&E plant into a desalinization facility. This will mitigate future droughts and water shortages. Desalinated water could also be an asset that the region could sell to other drought-affected regions.

Human Trafficking Legislation

As a lawyer, Cunningham has training and experience in the application of the laws. Therefore, he is able to educate colleagues on the consequences of legislation. Among his priorities has been tackling human trafficking.

"Human trafficking is the fastest growing type of crime in the nation," said Cunningham. As an example, in April 2019, the Atascadero Police Department and the District Attorney's office Human Trafficking Task Force conducted undercover operations on numerous Atascadero massage parlors alleged to have been involved in human trafficking.

"Some legislators want to focus solely on punishing the traffickers," said Cunningham. However, the Assemblyman points out the legislature should take a three-prong approach: 1) punishing the traffickers, 2) providing victim support, such as counseling and relocation, and 3) curb the demand.

Prosecuting the end-user, or "john," is an example of curbing demand. The fines, according to Cunningham, should be stiff. Statistics suggest that johns are likely to be wealthy businessmen who can afford a steep fine. Those fines, thinks Cunningham, should be used to finance victim support programs and services.

According to an article by Matt Fountain in the *Tribune*, "Last year two bills [regarding human trafficking] were signed by Governor Jerry Brown." The first authorizes automatic 10-year protection orders for adult

victims of sexual or forced labor trafficking; the second allows prosecutors in some cases to introduce a victim's prior statements at trial.

The state legislature, however, did not pass the other half of the package; both of those bills died in the Assembly's Committee on Public Safety between July and September.

Improving the Cholame Intersection

Assemblyman Cunningham was also instrumental in securing $134 million in state transportation dollars for the construction of an overpass at the Cholame intersection.

The construction will allow eastbound traffic flowing to Highway 41 to go over the westbound traffic from Highway 46. The final project will create four lanes of highway (two lanes east/two lanes west) to match with the four lanes in Kern County.

This section of highway is ominously known as "blood alley" as a result of the alarming number of fatal car crashes that have occurred there.

In order to secure the funding, Cunningham met with or wrote letters to key principals—for example, Governor Jerry Brown, the California Transportation Commission, the California Highway Patrol and Caltrans. The project was approved in March 2018. At the time, Assemblyman Jordan Cunningham said, "This section of highway is critical to our economy, but currently has a fatality rate that is three times the state average. These investments will save lives."[1]

Working Across the Aisle

It seems as though politicians come in two flavors: those that extol the virtues of compromise and those that see compromise as weakness. "Working across the aisle" to get things done used to be the *raison d' etre* of legislators. Recently, the politics of outrage has prevailed. There are politicians who are seduced by the siren of the camera. They are not interested in resolution. They only want to rail against the imperfect. Cunningham, however, presents as a man willing to compromise to achieve his legislative goals.

The first bill he introduced, Assembly Bill 445, was co-sponsored by Democratic Assemblyman Patrick O'Donnell. The bill was designed to create a permanent $300 million Career Technical Education (CTE) fund to help K-12 schools "offer modernized vocational classes for California's rapidly changing job market," according to the press release at the time.

"By giving kids the tools they need to train and prepare for good-paying jobs, we can help lift countless Californians out of poverty and into the middle class," Cunningham said. "CTE opens doors for so many kids and builds a bridge between schools and the workforce."[2]

Unfortunately, the CTE was not made permanent. It requires annual renewal. As a consequence, the CTE was set to expire this year, but efforts at the critical juncture convinced the governor to keep the program going.

"There is a skills gap projected of approximately five million jobs by 2025. We need to focus on vocational occupations before it is too late," Cunningham said. Not everyone needs a degree in computer science or engineering. We also need plumbers, welders, and roofers to support and maintain the community.

The reality is that nothing gets out of California Assembly committee unless there is Democratic support. Thus, a Republican can either be an obstructionist or a collaborationist. Cunningham is cooperative, collaborative and productive.

Conclusion

The rise of Jordan Cunningham epitomizes the value of a law degree and a legally trained mind. His understanding of the law and procedures helps him see the consequences of legislation drafted and signed. His work in contentious courtrooms has made him diplomatic in the face of opposition.

Of course, the attainment of political aspirations does not occur without support of family and friends. "I want to express my gratitude to my wife. She is my law partner and my partner in life. I could not have done any of this without her." ■

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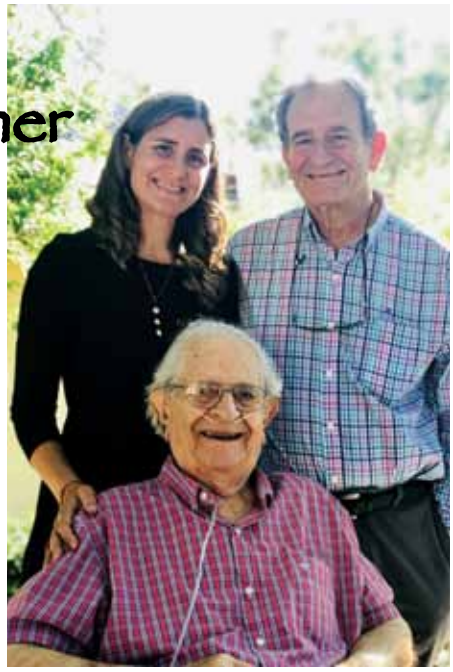
[1] *Paso Robles Daily News*, March 24, 2018.

[2] https://www.sanluisobispo.com/news/politics-government/article132054379.html

You Are Enough—
A Lesson I Learned From My Father

by Kara Stein-Conaway



Kara Stein-Conaway, father Jeff Stein, grandfather Sol Stein (seated).

I am enough. These three words hold immense power. As a criminal defense attorney, I see people in their fear, pain and deep sorrow. Whether they are an innocent person accused of something they didn't do and are in need of a champion, or they have made a mistake and are envisioning the life they have built disintegrating before their eyes, sitting with my clients is a privilege. I sit with them in all their humanity, and many times I witness people who feel like they are not enough.

During the past 10 years that I have practiced criminal defense, I have realized that much of the pain my clients are suffering from stems from a feeling of not being enough. Actually, I would go so far as to say that this pain is felt by many people in our society, regardless of whether they are criminal defendants.

Marisa Peer, an author, speaker and therapist, works with many people who seem to have it all. She has observed that her clients are very successful by society's measure, yet they are miserable and suffering. Peer concluded that the mental pain and suffering human beings experience is caused by feeling like they are not enough. She often traced the development of those belief systems to a childhood trauma or experience.

One example Peer gave was of a young boy who was required to cook his father dinner each night. When his father finished eating, he gave his leftovers to the dog and never permitted his son to eat the food that he had prepared. The little boy developed the belief that he was not worthy of even being able to eat a decent meal, that he was less worthy than the dog.

Hearing this story, I began to ponder my own childhood and relationship with my father, Jeff Stein. The very essence of his parenting was, "YOU ARE ENOUGH." As far back as my memory can go, I remember feeling that even though I made mistakes, I was always enough in his eyes and in his heart.

As a little girl, I loved gymnastics, even though at times it also scared me. No matter how demanding his work schedule was (and I now better understand exactly how demanding his schedule was), he was at those gymnastics meets. I knew that if I fell off the balance beam, he was there loving and supporting me, telling me that no matter the outcome, I was enough.

In high school, at my father's urging, I took up pole vaulting, and he was again at every single track meet. We spent afternoons traveling to weekday track meets and many weekends traveling to track meets. When it was my turn to vault, I started my run. I sprinted, pole in hand, hoping that the mechanics would mesh with my speed and the present wind conditions and that I would take flight. Sometimes the results weren't pretty (thankfully, I was wearing a helmet). Sometimes the results were beyond what I had ever dreamed possible. Knowing that at every meet, my father was there, that he was proud of me for being brave and for trying, and that he always thought I was enough regardless of the outcome was a gift. It was a gift because I was internalizing that message.

In 1975, my father began working as a criminal defense attorney. He knew his clients' pain, he saw their suffering, and he knew that by being with people, really seeing them, and reminding them that they are enough, he was doing good in the world.

He used his brilliant mind to develop strategies to address their short-term legal problems and also their long-term human problems. I know that my father has given this same incredible gift to all of his clients over the 40-plus years he has been practicing.

He has cared for their futures, he has been their advocate, but more than anything, just like he did for me, he has always shown up. He has always expressed to them that they are enough. He continues to do this for our clients to this day, and he continues to do this for me.

As a parent, beyond all other lessons that I seek to teach my little boys, who are now six and three, is that they are enough. Hurt people hurt people, and healed people heal people. People who know they are enough seek to support other people. People who know they are enough still make mistakes in their lives, but they know that they are worthy of putting in whatever effort is required to make the changes they need to make to live as the best versions of themselves.

I recognize that I am incredibly lucky to have a father who, throughout my childhood and now into my adult life, continues to remind me just how enough I am. Although the aerial flight sports are a thing of the past for me, beautiful new opportunities are always available when we are open to them. Knowing that we are enough is what gives us the bravery to move forward into the unknown and to go after our dreams.

In sharing this observation of my father, I hope that it inspires us all to remind ourselves, as well as the other humans we are lucky enough to share space with during this precious, short life we have that we are all enough. If someone ever told you that you're not enough, that was a lie. You are an amazing, beautiful, unique human being deserving of love. You are enough.

A practical tool for fixing an unhealthy belief system that Marissa Peer shares is putting up signs all around your home and setting reminders on your phone to pop up throughout the day. These signs and reminders read, "I am enough!" The constant reminders reinforce the new belief system and eventually crowd out the old belief system.

If you don't need the reminder that you are enough, then I hope you will share this tool with someone you think would benefit from it. ■

Jeff Stein and Kara Stein-Conaway at the 2019 SLO Bar Summer Social.

Kara Stein-Conaway and Jeff Stein practice criminal defense together in San Luis Obispo at the Stein-Conaway Law Firm, P.C.; visit www.steinconawaylaw.com.

The Scarlet Penal Code §290

by Jeff Stein and Jeffry Radding

Joining the Club

"*I don't want to belong to any club that would have me as a member*." With that, Groucho Marx famously left the Friars Club. Those on California's sex offender registry undoubtedly share Groucho's sentiment. The process for leaving the notorious §290 club, though, is far more complicated. No witty letter of resignation will do. Historically, the path to exiting the registry has been ominous, such that registration is commonly—and in most instances accurately—referred to as a lifetime obligation. Beginning January 1, 2021, and for good reason, for many that path will change.

Penal Code §290 *et seq.* is California's statutory sex offender registration scheme. Registration is mandatory upon conviction for a qualifying sex offense, misdemeanor or felony. Even if *not* convicted of a sex crime, a court can impose registration upon finding the underlying offense resulted from sexual compulsion or for sexual gratification.

Registration is the process of maintaining one's personal information—home, work, phones, cars, fingerprints and photograph—on file with the law enforcement agency for the community in which one resides. For those with more than one community of residence, registration in each area is required.

Moving? Within five days, register in the area of arrival and *un*register from the area of departure. Enrolled or employed at an institute of higher learning? Register there, too. Each birthday brings more than candles and creeping age: one's registration must be updated annually at that time. Homeless? Update every month. Custody is the price for not doing so: the failure to register, the failure to update, and even the failure to *unregister* when moving all are crimes.

The mechanics of registration may seem unremarkable, but for many the collateral consequences can be devastating. Although just a fraction of those registered are considered high-risk offenders, collateral consequences are indiscriminate for all so obligated. Being a registrant limits work and housing opportunities. It can limit government benefits. There also is, of course, the Scarlet "R": the fact of registration is subject to public disclosure on the Internet.

Registration as a public safety tool was born of Prohibition and the Great Depression. Organized crime recognized an opportunity for growth in the disparity between the demand for alcohol and the absence of a lawful supply. In response, major cities adopted "convict registration" (or "gangster") laws, applicable to vice and weapons offenders. Los Angeles implemented them in 1933, at the behest of District Attorney Buron Fitts. Sex crimes, though, were not yet part of the program.

California became the nation's pioneer in sex offender registration. In 1938, the Los Angeles Police Department created a Bureau of Sex Offenses, keeping detailed records of sex crime convictions. Bureau tracking, it was believed, could facilitate law enforcement efforts in investigating future crimes. In 1940, inspired by the Bureau's work and at the prompting of the local PTA, the Los Angeles City Council added seven sex offenses to its gangster ordinance. In 1947, the concept went statewide. That year, the California Assembly and Senate each unanimously passed AB 2097 to establish a sex offender registry. At 11:30 p.m. June 20, the bill landed on the desk of Governor Earl Warren.

In the field of corrections, Richard A. McGee is legendary. McGee served as California's Director of Corrections for 23 years. California's current training center for correctional officers is named for him. In retirement, he authored the book, *Prisons and Politics.* On July 2, 1947, in a memo to Governor Warren, McGee offered his thoughts on AB 2097.

McGee recognized registration as testing traditional boundaries of American liberty. "There is no group of offenses so revolting to the public mind as those enumerated in this bill. Any procedure which would in fact control or tend to control these individuals without jeopardizing the liberties

of others would seem to be in order. However, there is a principle involved which should not be disregarded. It has never been the practice in America to require citizens to register with the police, except while actually serving a sentence under the Probation or Parole Laws." McGee warned that the proposal "may be opening the door" to problematic expansion.

McGee also described for Governor Warren how sex offenders were not uniform in nature and that all were not dangerous, especially given the range of offenses the statute encompassed. "From the psychological point of view," he wrote, "there are many different kinds of human beings who might" commit any one of those offenses.

The spectrum of offenders McGee identified ranged from the "pathologically abnormal" and "often dangerous" on one end, to those who were "more of a nuisance than a danger" on the other. In between, McGee populated the spectrum with such personalities as, "individuals of low moral character but not necessarily psychologically abnormal" and "old men, drunks, and other individuals who may be mental cases but not necessarily dangerous" as well as those "only partially responsible because of intoxication." "Congenital homosexuals" may be convicted of sodomy, McGee curiously noted in illustrating his point, "but also included in this group, especially in acts with animals, are otherwise emotionally normal but feeble-minded individuals, and adolescent boys who are not necessarily sexually abnormal."

McGee believed lengthening periods of incarceration, probation, or parole to be the better approach to achieving the desired goals. "I am not recommending that this bill be vetoed," the politically aware McGee concluded, "but I believe the Governor should give careful consideration to the bill before signing it."

"There is much in what Mr. McGee says," Governor Warren expressed in a handwritten note, July 7, 1947, "but I believe we should give it a trial." Why not? With that, Penal Code §290 became law.

In contrast to its original ideation—a single statute comprised of six sentences totaling 333 words—sex offender registration is now governed by some 35 or more statutes and countless thousands of words. In 1947, §290 identified 13 qualifying offenses. There are now 38. In 1947, §290 provided registrant confidentiality, limiting access exclusively to law enforcement officers. Law enforcement now may publicly disclose the information "when necessary to ensure the public safety," and, with a few exceptions, registrants are fully identified on the "Megan's Law" website of the California Department of Justice.

In 2006, with a 70 percent majority, California voters adopted Proposition 83, the "*Sexual Predator Punishment and Control Act*" (aka "*Jessica's Law*"). Among other provisions, Prop 83 prohibited *all* registrants from living within 2000 feet of any place where children gather, including parks and schools. Until the California Supreme Court ruled that particular provision unconstitutional nine years later, registrants essentially were banned from residing in urban areas of the state, even having to abandon family homes.

In 1949, the crime of "lewd vagrancy," a violation of then-Penal Code §647(5), was added to the list of registerable offenses. The era was one of elevated social discomfort with homosexuality. In 1952, the DSM-1 categorized homosexuality as a "sociopathic personality disturbance." In 1953, President Eisenhower signed Executive Order 10450, prohibiting gays from federal employment. With "lewd vagrancy" subject to registration, Los Angeles records for 1950 document that the primary path to the registry was for having engaged in consensual homosexuality. Even today, the California Sex Offender Management Board (CASOMB) —the agency with registration oversight—reports that out of 88,000 registrants in communities statewide, only 3.6 percent are considered high-risk sex offenders.

Earl Warren was right: there *was* much in what Dick McGee said.

Quitting the Club

The existing statutory scheme does provide a path for terminating the need to register. It is, though, difficult and rarely used, requiring as a predicate a successful application for a Certificate of Rehabilitation (P.C. §4852.01 *et seq.*). Even then, the court's ability to grant relief applies only to a limited list of offenses. All others require a Governor's pardon. Governors don't pardon sex offenders.

Effective January 1, 2021, the process for obtaining relief from registration changes dramatically, the result of SB 384, comprehensive reform legislation adopted in 2017. A diverse coalition endorsed the bill, including such dissimilar interests as

Continued on page 26

CASOMB, the California Police Chiefs Associations, the ACLU, and many prosecutor and criminal defense attorney organizations. The unifying factor was the recognition that the existing system was burdened with a substantially risk-free population, and that carrying that load depleted law enforcement resources without corresponding benefit, to the *detriment* of public safety. The coalition's breadth increased the prospects of passage by alleviating a historic fear of legislators: that supporting criminal justice reform risks the label "soft on crime" at the next election cycle.

CASOMB planted the seed for eventual reform in its 2010 report to the legislature, recommending that, "California should concentrate state resources on more closely monitoring high and moderate risk sex offenders." In its 2014 report, CASOMB succinctly dissected the issue, with themes reminiscent of those Richard McGee voiced nearly 70 years before:

"Sex offender management is an extremely complex issue that continues to pose enormous challenges for state policymakers, who struggle to identify and implement effective and evidence-based policies and programs that are not merely reactions to individual tragic events. Myths about sex offenders continue to abound, such as the widespread belief that most victims are targeted by strangers, while in fact it is much more likely to be perpetrated by someone the victims know. These myths continue to influence policymakers and may have detrimental effects on public safety. Successful strategies must take into account current research on sex offender management, most notably the distinctions between various types of sex offenders and the different risk levels they pose to the public."

On October 6, 2017, Governor Jerry Brown signed SB 384 into law. The path for "quitting the club" is built into the statutory structure. Replacing the system of universal lifetime registration, SB 384 categorizes offenses and offenders into three tiers. Associated with each tier is a minimum period of registration. For tier one, that period is 10 years. Tier two is 20 years. Tier three registration remains a lifetime obligation.

For tier one and two offenders, following the minimum period, the registrant can apply to the Superior Court in the county of residence for discharge from the registration order. In response to the application, the District Attorney can either concede the issue or request an evidentiary hearing.

At the hearing, the District Attorney bears the burden of demonstrating that community safety is significantly enhanced by requiring continued registration. The court considers many factors, including the nature and circumstances of the underlying offense; the age and number of victims; whether any victim was a stranger to the offender (defined as being acquainted for less than 24 hours); criminal and relevant noncriminal behavior before and after conviction; successful completion of a CASOMB-certified treatment program; and the results of various risk assessment tests.

Admissible evidence includes declarations, police reports, and any other evidence considered reliable, material and relevant. Expert evaluations and testimony can enhance the prospects of a successful application.

If the court denies the registrant's application, it sets a time, from one to five years, in which it can be renewed. If, on the other hand, the court grants the application, the former registrant joins Groucho in celebrating the joys of non-membership. ■

Editor's Note

Jeffry Radding has been a practicing attorney since 1981. The Bar Association honored Radding with the John L. Seitz Award (1998) for his contributions to the community and the Frank J. Pentangelo Award (2009) for contributions to the Bar Bulletin. *In 1975, he brushed elbows with Groucho Marx at the Roxy.*

Jeff Stein has been a lawyer exclusively practicing criminal defense with an emphasis on sex offenses and registration since Gerald Ford was President of the United States (1975). In 2003, Stein was President of the San Luis Obispo County Bar Association. The Bar Association honored Stein with the John L. Seitz Award (2006) for his contributions to the community and the Frank J. Pentangelo Award (2010) for contributions to the Bar Bulletin. *In 2011, he served as President of California Lawyers for Criminal Justice. He continues in practice with his daughter, Kara Stein-Conaway.*

Further Reflections on Mike Sheridan

June 27, 1946 – November 21, 2018

by R. Michael Devitt

Family photos courtesy of Los Osos Valley Mortuary & Memorial Park website

It has been a while since my last *Further Reflections* article. I write this article about former Deputy Sheriff Michael Douglass Sheridan. On December 4, 2018, I attended the funerary services for Sheridan. As a former Marine, he was treated with full military honors.

According to his obituary, he was with the Sheriff's Depart--ment for 32 years. I first got to know him when he was the bailiff and representative of the Sheriff's office at an Inquest in San Luis Obispo regarding a possible suicide. To my recollection, the last time that there had been an Inquest in San Luis Obispo County was for the death of James Dean on "Blood Alley" at the "Y"-intersection on highways 41 and 46.

This particular Inquest involved David Goodrich at the California Specialized Training Institute. His duties were the handling of explosives, and specifically C4. In the course of these duties, he died when some C4 exploded at one of the units at Camp San Luis Obispo.

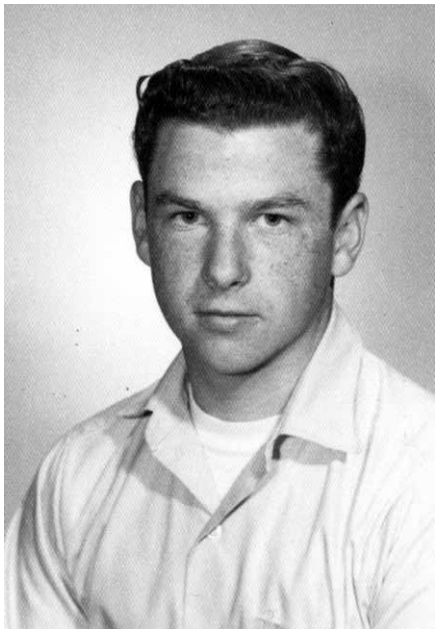
The incident was investigated by the Sheriff's Department, and because of the close ties between the Sheriff's Department and the California National Guard at Camp San Luis Obispo, it was decided by the Sheriff's Department to refer this matter to an outside judicial officer. The Coroner from Los Angeles County was contacted to be the hearing officer for the Inquest.

I was contacted by David Goodrich's widow to represent the estate of Goodrich and his wife. In my capacity as attorney for the widow, I was permitted to cross-examine witnesses, including members of the Sheriff's Department, and to present evidence on behalf of the deceased's widow. Also in attendance at the hearing was John P. Daly of the District Attorney's office.

The issue before the jury was whether the death was a result of accident or suicide. Sheridan was in charge of keeping the jury together, as a bailiff would, although I believe there were only seven jurors for the Inquest. As I recall, the hearing took place over a period of two to three days. Being an Inquest, I was not permitted to argue the case, but only to submit evidence or to cross-examine witnesses.

With respect to my position, I contacted a professor from Stanford who was an expert in both Inquests and explosives. The expert testified that, as is often the case, when someone was killed as a result of explosion, the person handling the explosives is killed as a result of accident. The hearing officer from Los Angeles then proceeded to charge the jury with determining whether the death was a result of an accident, suicide, or otherwise.

If I remember correctly, the majority of jurors needed to agree to a verdict. In this instance the jury determined that the



death was a result of accident. This was an extremely difficult case, as one can imagine. However, I felt that Sheridan did an outstanding job as bailiff in these proceedings.

I would like to mention one further note regarding Sheridan's duties and responsibilities as the bailiff. The jury's verdict was given to him to be given to the hearing officer. Sheridan knew what the jury's verdict was when he received the same from the fore-person. After he received the verdict, and before he gave it to the hearing officer, he winked at me. I experienced a sigh of relief as the hearing officer read the verdict, which was an accident.

Further reflecting on Mike's funeral, there were a number of Marine Corps servicemen, as well as Deputy Sheriffs, in attendance at his funeral services. A military rifle salute was given in his honor, and he was laid to rest with the dignity, class and style that he always exhibited in his duties. Mike Sheridan spent two tours of duty in Vietnam. ■

Mike Sheridan and family.

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

raymondinsf@yahoo.com

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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All advertisements in the *Bar Bulletin* must be submitted in .jpg, tif or .pdf format with a resolution of not less than 300 dpi. Flyers or announcements for the opening, closing or moving of law practices, upcoming MCLE programs or other events put on or sponsored by organizations other than the San Luis Obispo County Bar Association are considered advertisements, and therefore subject to this policy and to all applicable advertising rates.

The cutoff dates for accepting advertisements, payments and articles are as follows:

January–February issue deadline	11/24
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2019 Bar Bulletin
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