

# Bar *Bulletin*

Serving San Luis Obispo  
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May-June 2020

***Trish Ashbaugh Retires June 30***

***Women Lawyers Association Charts  
Its History & Helps Celebrate the  
19th Amendment's Centennial***

***Aporkalypse Now!***

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*Cover and page 18 – Attorney Trish Ashbaugh. Photos by Peter Stein.*

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# President's MESSAGE

by Stephanie Barclay



## “I Know We Will Not Be the Same. Be Well.”

Colleagues, as I write this on March 25, 2020, there is little on my mind other than COVID-19 and the effects it is having in our community and all over the world. The collective distress caused by the health care and economic crisis is palpable. We are all making extraordinary changes to how we live our lives, operate our practices and serve our clients.

By the time you read this, the situation will, unfortunately, be even worse than it is as I write this. And then it will get better. And then we will return to our offices, to our clients, to our social lives and to our customs. I do not know what our community will look like after COVID-19, but I know we will not be the same.

I love Raymond's Allen's "May 1 Law Day Open House Postponed" article, page 5 in this *Bar Bulletin*, where-in he challenges us to rise to the occasion and come out of this crisis better than we were when we entered it. I believe we can and will do that.

Remember that first and foremost, the legal profession is a helping profession. We can all do our part to help in this crisis. Our clients' immediate needs are likely changing, but we have the tools to adapt to that change. We can help advise clients by phone or email on employment laws, government benefits, advance health care directives, eviction laws and consumer scams. We can answer questions over the phone to help people even if they are not our clients.

Don't be afraid to step outside of your specialty practice in this state of emergency. If you don't know the answer, you can find the answer. Don't hesitate to call on a colleague to point you in the right direction. You can help more than you know.

Just as medical students, retired physicians and veterinarians are being asked to get ready to fill the anticipated emergency medical reserve need, we too can leave our comfort zone temporarily to help our community's immediate legal needs. If you want to help and

don't know how, contact me at [stephanie@slolaf.org](mailto:stephanie@slolaf.org). There are a lot of needs right now, and while we might not be able to manufacture ventilators or protective medical equipment, we can do our part to help.

During this crisis, the San Luis Obispo County Bar Association will do its best to keep you updated on any changes with the Court's policies and procedures as well as any changes to local laws. If there are any other ways that we can help support you, please let us know.

We will continue to offer MCLE as soon as we are able. We are looking into online options; however, we recognize that as much as we value the information and MCLE credit we receive from our monthly lunches, the networking and in-person contact with colleagues is also a valuable component that is difficult to replicate online.

I know I already miss seeing your faces, and I can't wait to see you all on the other side of this. Be well. ■

# May 1 Law Day Open House Postponed to August 20

by Raymond Allen

National Law Day—May 1, 2020—occurs without an open house at the San Luis Obispo County Courthouses. Fears of the spread of the coronavirus (COVID-19) led the San Luis Obispo County Bar Association and the Courts to postpone the event to August 20.

Usually, Community Law Day events are conducted across the country to help youth and adults understand how the law keeps us free and how our legal system strives to achieve justice. Every year, since 1958, the President of the United States has issued a Law Day proclamation recognizing the importance of this day.

The reality of a global pandemic led to a dramatic refocus on health safety. Modeled after the approach taken in South Korea and China, the United States began to contain and isolate. In an unprecedented wave, major gatherings canceled. Entire sports leagues postponed or canceled. Amusement parks shut down. Conventions canceled. In short, heretofore unheard of swaths of commerce and activity stopped. The risk of the spread of the virus outweighed any conceivable benefit from any gathering or activity.

Individual behavior also altered. Local and state health agencies suggested we stop shaking hands. The elbow bump became the new salutation. Handwashing and sanitizers are ubiquitous. We self-quarantine and isolate to prevent the spread of this virus. "Self-protective quarantine, lockdowns of outbreak clusters and testing are

the best precautionary approach to pandemic outbreaks," wrote Nassim Nicholas Taleb, author of the book *Skin in the Game*.<sup>1</sup>

There is no doubt that society and socializing will re-emerge. It will be interesting, however, to see what remains important on the other side. As global inhabitants, we could re-calculate the essential elements of life or we could simply re-start the engines of commerce. We could appreciate the beauty of each other, celebrate the great gift of being able to touch and hold and be together, or we could remain isolated—or worse—go back to our trenches to battle on.

Past need not be prologue. There is no need to recreate division and hate, isolation and ignorance. When we re-emerge from our enforced cocoon, we should no longer accept the foolishness of the proverbial *us versus them* dichotomy—if for no other reason than it does not, and cannot, ever work.

As Martin Luther King, Jr. once wrote, "It really boils down to this: all life is interrelated. We are all caught in an inescapable network of mutuality, tied into a single garment of destiny."<sup>2</sup> Thus, we are all responsible for it all. ■

<sup>1</sup><https://www.forbes.com/sites/kenrapoza/2020/03/12/china-and-south-korea-models-seem-like-only-way-to-contain-covid-19/#4858471347d3>

<sup>2</sup>King, Jr., *The Trumpet of Conscience* (1968), page 69-70.

*Editor's Note: The opinions and conclusions in this article do not necessarily reflect the opinions of the San Luis Obispo County Bar Association or its Board of Directors. As always, opposing viewpoints regarding this or any article are welcome.*

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## **Our History—From 10 Women Attorneys & 0 Judges to Today**

by **Tara Jacobi**

Photos courtesy of **WLASLO**

In 1981, Women Lawyers Association of San Luis Obispo County (WLASLO) was founded. Our mission back then is what it still is today—the advancement of women in the legal profession and in the community at large. WLASLO membership, open to both women and men, implements this mission through distinctive traditions and programs, which include the annual Judicial Reception, monthly MCLE and social lunches, mock trial support, a scholarship program, the Outstanding Woman Lawyer (OWL) Award, and affiliation with California Women Lawyers Association.

### **WLASLO's Beginning**

According to our archives—housed in the infamous box, which most WLA members have heard about but have never seen—in the 1980s fewer than 10 women lawyers were living and practicing in San Luis Obispo County. There were no women judges. Vastly outnumbered by men, the founding members felt the need to support each other by forming a minority bar association. Donna Beck was the organization's first President. Patricia Ashbaugh was the second President.

### **Judicial Reception**

As WLASLO President in 1990, Jan Marx recalled: "There was just a handful of women lawyers and not one woman judge in San Luis Obispo County. Women attorneys faced various intimidating experiences of being seen as the 'other' at that point in time. There was a lot of traditional male bonding going on in the legal community, including the county bar association committees, social lunches, all-male service and fraternal organizations. Some of the more prominent attorneys (all men) would play golf with the judges (all men) on Wednesday afternoons. The only interaction the few women lawyers had with judges occurred in the formal and legally constrained context of the courtroom.

"The issue facing me as WLA President was—how could women lawyers establish collegial



relationships with the judiciary? The WLA Board and I came up with the idea of an annual Judicial Reception with food and maybe some wine at a local restaurant. It was an instant success! The judges were pleased to be honored and happy to converse with women lawyers on a casual social basis." Hence, our most well-known tradition, the Judicial Reception, was born.

At some point, the Judicial Reception developed an opening practice whereby the judges would share a bit of information about themselves. In 2015, the year I was President, we asked the judges to share their favorite work of art or painting and explain why. The audience was left to guess which judge selected each painting we displayed. According to our current President, Meghann Triplett, the recent ice breaker asked judges to provide the best piece of advice they ever received. The audience had to guess which judge was given what advice.

### **A Woman for Judge**

In 1991, in celebration of our 10th anniversary, WLASLO drew attention to the fact that there were still no women on the bench by carrying out the well-publicized campaign, "A Woman for Judge." WLA created an information packet featuring nine highly qualified women who had applied for judgeship, and it was published in the *Telegram-Tribune* newspaper. As a result of our advocacy, the Board of Supervisors urged Governor Pete Wilson to appoint a woman to the bench.

In 1992, WLASLO was happy to welcome the Honorable Teresa Estrada-Mullaney as the first





WLA Board members, from left, Kara Stein-Conway, Immediate Past President; Meghann Tripplett, President; Lisa O’Leary, Secretary; Skye Christakos, Publicity Chair; Sheryl Wolcott, Membership Chair; Elizabeth Culley, Treasurer; Megan Crosbie, Member at Large; Lisa Sperow, Scholarship Chair.

woman judge in our county. “Today, 30 years later, our local bench is 50-50 men and women. Not to say that WLA had anything to do with that gender sea change, but we are happy to take a bit of credit,” said Marx.

### Monthly MCLE Lunches

In 1991, WLASLO also became an MCLE provider, and our monthly lunches were birthed. This became an opportunity for members to enjoy lunch, networking and educational presentations. With our Vice President in the lead and input from the board, she usually sets our calendar of MCLE topics for the year. Certain months are loosely reserved for certain types of credit. In March each year, for example, we tend to offer bias credits relating sometimes to discussions focused on biases against women in the legal profession. In December each year, we tend to offer the ever-coveted ethics credits.

As a WLASLO member for almost a decade, Doug Federman reported that our legal ethics programs are his favorite because they are “thoroughly informative.” He also has enjoyed spending time with a good group

*Continued on page 8*

San Luis Obispo County Bar Association  
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The Library of Congress 19th Amendment Centennial exhibit, originally planned for April 19–May 2 at the San Luis Obispo Library, is rescheduled to August 13–29. Law Day will be August 20.

## WLASLO History continued

of people. He believes that “men should feel comfortable about joining and attending WLA events.”

Some more seasoned members like to joke about how our lunches progressed over the years from the backroom of the local noodle restaurant, to a banquet room of an Italian restaurant, to now a conference room complete with a PowerPoint screen at a new hotel, The Kinney.

*Editor’s Note: The May event has been canceled for now.* On May 21, 2020, there will be a presentation on the 19th Amendment by Santa Clara University Professor Nancy Unger at the Madonna Inn. This is the Elimination of Bias MCLE event that WLA is co-sponsoring with the San Luis Obispo County Bar Association. The SLO Bar is organizing the Annual Law Day, rescheduled to August 20, 2020, which will include a 19<sup>th</sup> Amendment Exhibit on loan from the Library of Congress (August 13–29).

### WLASLO Social Lunches

Within the past couple of years, the Board wished to increase its networking opportunities. Each month members are given the opportunity to meet for a social lunch at a different location, which is now hosted by a rotating board member. Longtime board member Sheryl Wolcott took the lead on this idea.

“One of the things our members enjoy about WLA is simply getting to know people in the legal community, especially those whose practice areas differ from our own. A few years ago, we started WLA ‘Social Lunches,’ which are simply a monthly come-if-you-can lunch at a variety of local restaurants, which require no RSVP and no agenda. This year, the lunches are the third Friday of each month. We e-mail the specific location, date and time to our membership in advance. Our hope is that each lunch brings a cross-section of members together,” said Wolcott

### Supporters of Mock Trial Competition

WLASLO can take credit as being the first sponsor of our local schools’ Mock Trial Competition. Today, many members donate and actively participate in mock trials at all educational levels in public schools, Cuesta College and Cal Poly.

### WLASLO Scholarship Program

Our Scholarship Program has a long history of providing monetary support to local female



2019 OWL Award Winner Lisa Sperow (center) is joined by Eddy Quijano and Meghann Triplett, WLA President.

residents in their journey through law school. We have been fortunate to have a tireless Committee Chair, Lisa Sperow, who for the last six years has worked hard to pay it forward to SLO natives attending law school.

She shared the following: “I truly enjoy my role as scholarship chair because it gives me a chance to meet and learn about all of these amazing law students with connections to our county. Each year I am so impressed by the high caliber of applicants. We tend to have applicants from all backgrounds, ages and experiences who are dedicated to improving the lives of others through volunteer work, their studies and their professional lives. The hardest part for the scholarship committee is picking only three or four to award with scholarships each year when we’d like to recognize more.

“I also enjoy,” said Sperow, “meeting the recipients at the Judicial Reception and hearing how much receiving the scholarship meant to them. One recipient informed me that she was going through a tough time financially and emotionally and was starting to doubt her decision to attend law school because of the sacrifices she and her family were making when our scholarship award letter arrived! She said it felt like a validation and a sign from God that she was doing the right thing. It is also rewarding when recipients, such as Kara Stein-Conaway and Shannon Bio, graduate from law school, become lawyers and eventually join the board of WLA!”



“As a San Luis Obispo County native,” said Bio, “I appreciate that the scholarship is designed to advance women in the legal field who have connections to San Luis Obispo County. At the time I applied, I was in my first year of school at Santa Barbara College of Law, working full time, traveling at night to Santa Barbara for class, and paying for everything with private loans. In addition to the relief the scholarship funds provided, I was also very grateful for the chance to meet local judges and attorneys at the award ceremony, an opportunity that later became an advantage, as it made me feel more comfortable as an attorney working with the same people as colleagues.”

“Law school was hard,” remembered Stein-Conaway. “Learning to process information in an entirely new way sometimes felt overwhelming. Knowing that other women—who had been where I was, had made it through law school and had become practicing attorneys—were selecting me as a scholarship recipient, felt like they were telling me that they had confidence in my abilities and were cheering me on.”

**WLA Awards: Outstanding Woman Lawyer (OWL) Award / Rising Star Award**

In 2012, the Board discussed the awards offered to attorneys within our county. Many women were doing amazing things to help other women lawyers or other women in our community. We decided to honor them. There were plenty of awards that recognized trial lawyers or lawyers involved in the community, but we wanted an award that recognized women who helped women.

The Outstanding Woman Lawyer (OWL) Award honors a law school graduate with seven years or more work experience, three or more of

those in San Luis Obispo County. The candidate would also be engaged in helping other female attorneys, or women in business, advance in our community.

This year, Lisa Sperow is our well-deserving recipient. She was recognized for her leadership as the Executive Director of the Cal Poly Low-Income Taxpayer Clinic and for toiling in the trenches, for half a dozen years, coordinating our Scholarship Program. Essentially, she is paying it forward by fundraising and handing out those funds to young women lawyers wishing to find a career in the law. This is us honoring a woman supporting women in the legal profession.

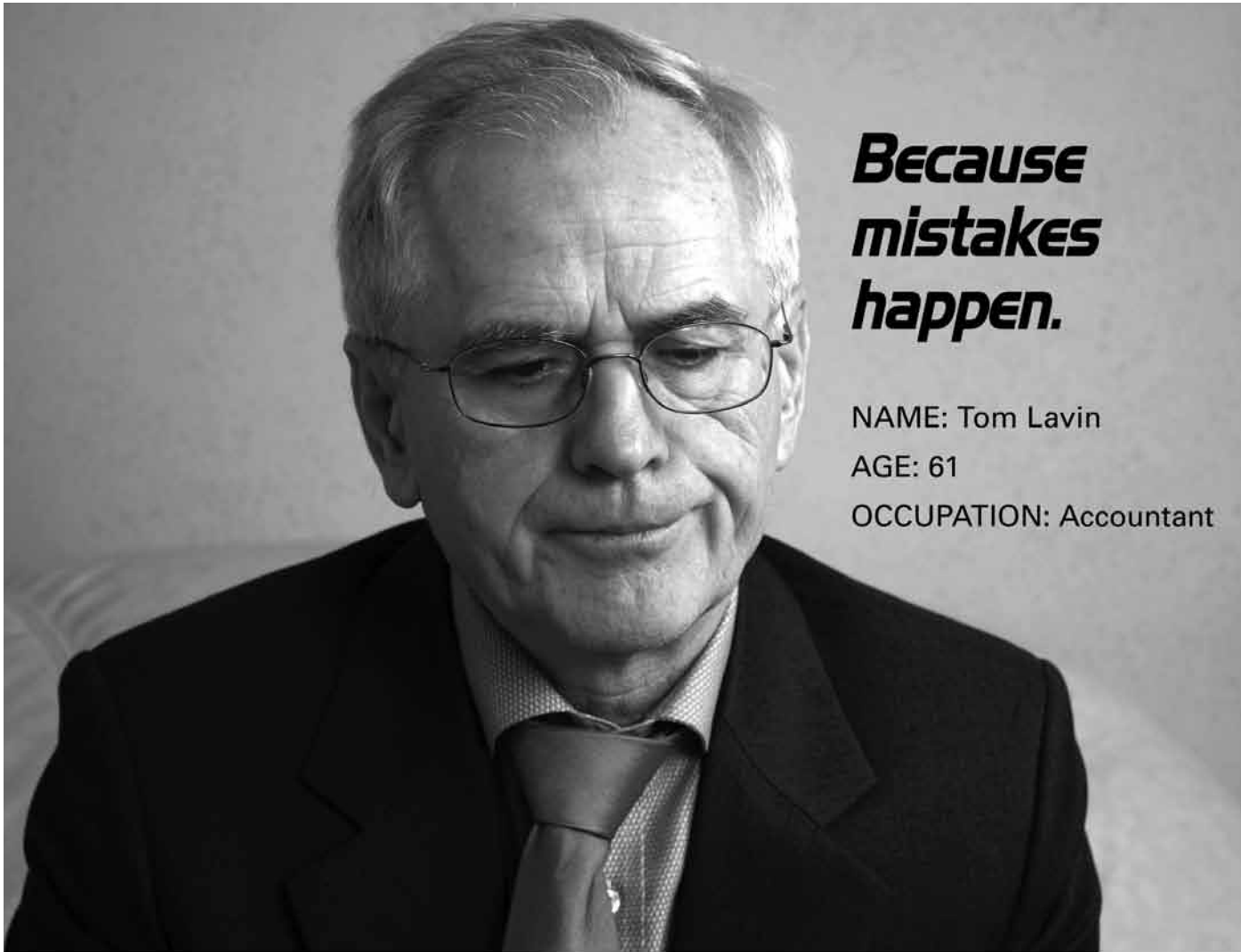
*Continued on page 11*

**Prior WLASLO OWL Award Recipients**

- 2019 Lisa Sperow – Faculty, Cal Poly
- 2018 Erica Flores Baltodano – The Baltodano Firm
- 2017 Patricia Ashbaugh – San Luis Obispo County Public Defender
- 2016 Jan Marx – Faculty, San Luis Obispo College of Law and former Mayor of San Luis Obispo
- 2015 Jennifer Alton – Alton & Allen, Inc.
- 2014 Alicia Valdez Wright – SLO County Family Law Facilitator
- 2013 Jacqueline Frederick – The Frederick Law Firm, Nipomo
- 2012 Angie King – San Luis Obispo Senior Legal Services Project

**Presidents of Women Lawyers of San Luis Obispo County**

1981 Donna Beck	92 Karen Medeiros	03 Angie King	14 Collette Hillier
82 Donna Beck	93 Angie King	04 Jill Buckley	15 Tara Jacobi
83 Patricia Ashbaugh	94 Ann Bell Wilson	05 Margaret P.J. Webb	16 Nicole Norris
84 Barbara McCallum	95 Jalyne Giles	06 Kathy Eppright	17 Natalie Laake
85 Patricia Stevens	96 Wendy C. Kramer	07 Nancy Warren	18 Ellen Drews
86 Anne M. Russell	97 Kathryn “Katie” Shore	08 Stephanie Barclay	19 Kara Stein-Conaway
87 Karen S. Gray	98 Betty R. Sanders	09 Julie Casey	<b>2020</b> Meghann Triplett
88 Mary Harris	99 Jacqueline Vitti Frederick	<b>2010</b> Christine Dietrick	21 Erin DeNatale
89 Suzanne Fryer	<b>2000</b> Midori Hill Feldman	11 Elisabeth Sperow	<b>40th Anniversary</b>
<b>1990</b> Jan Howell Marx	01 Dinah Palmtag	12 Linda Selig Blonsley	
91 Phyllis Pennington	02 Kimberly Daniels	13 Jane Heath	



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## WLASLO History continued

### California Women Lawyers

WLASLO is affiliated with California Women Lawyers (CWL). This affiliation gives our members the opportunity to learn about cutting-edge legal issues and to network with other women lawyers statewide. Previously our board consisted of a board member serving as a liaison between the two organizations. Jacqueline Frederick served in this role from 2004 to 2019. She shared the following.

“One of the most significant experiences of my career was in 2002, when I ran for the position of Superior Court Judge for San Luis Obispo County. On balance, it was a wonderful experience from which I learned so much. There was at the time only one female judge on the bench. And although I did not want to make

my gender an issue in the campaign, I was surprised at how it did become relevant. It made me realize that gender issues in the legal profession were still a factor and that more needed to continue to be done to ensure that women in the legal profession were treated with equality in position, pay and opportunities to excel professionally.

“I decided that I could contribute to this by joining the Board of CWL as the liaison to the WLASLO. It was an extremely rewarding experience to meet and work with other like-minded women who wanted to make a positive difference for women in the legal community and in society. I am very proud of the many accomplishments of CWL and WLASLO in supporting women in our profession to achieve their highest potential.”

The essence of WLASLO is the enthusiasm of our members. Our traditions are distinctive and our committees are purposeful. We have evolved from 10 members to nearly 70. In 2021, we will celebrate our 40th anniversary. We might just throw a party—come and join us! ■

*Tara Jacobi, born and raised on Long Island, NY, studied political science and philosophy, then focused on international law while attending Pace University School of Law and University College London. She represented insurance companies while working in private practice in New York City. Before transitioning to state government, she worked for a variety of nonprofit organizations. She represented the States of Maine and Nevada in developing their child support enforcement policies.*

*She currently lives on the Central Coast with her husband and son while working as a teacher and freelance writer.*

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# Trish Ashbaugh Retires June 30 As Head of the Public Defender's Office "With Dignity and Quiet Ferocity, She Is Among the Best"

by Raymond Allen

Fred Astaire was the most elegant and natural dancer to ever grace stage and cinema. But as Ginger Rogers once said, "I did everything he did, but backwards and in high heels." Good point.

This might be how we should think of Patricia "Trish" Ashbaugh. She entered the legal profession when it was dominated by white men. She was a complete novelty in our courts for many years.

On June 30, 2020, Ashbaugh will foreclose that option and retire from the public defender's office.

With dignity and quiet ferocity, Patricia Ashbaugh is among the best criminal defense attorneys ever to walk through the bar of a courtroom.



Her longtime partner, James Maguire, was thought of as one of the best criminal defense attorneys of his time. Judge Harry Woolpert would jokingly tell others, "When I commit my crime, I'm going to use Jim Maguire." Maguire, however, is smart enough to realize the error. "When I commit my crime," he insisted, "I'm going to use Trish."



## Brief History in Time

Amelia Smila was the daughter of a West Virginia coal miner. James Nemec supported his family as an insurance claims adjuster. In 1952, Amelia and James Nemec introduced Patricia Nemec to the world.

The family initially lived in a duplex in downtown Los Angeles. Later they moved to a house in Inglewood, then to Torrance. As a child, Ashbaugh learned to knit. She became proficient and started making clothes for her Barbie dolls. She knits to this day.

When she was a bit older, the family moved to Chatsworth and Ashbaugh graduated from Chatsworth High School. In 1970, she was accepted into the University of California Davis.

## College and Law School

At Davis, Ashbaugh was a math major. In an early calculus test, she received a grade of 12/100 and began to reconsider her career path. "I must tell you that I passed the class with a B," she recently said. The re-evaluation process, however, was well underway. She switched to the social sciences with a dual major, political science and rhetoric.

"I chose those majors because I was socially and politically aware, and because of the times."

In 1974 after graduating, Ashbaugh went to law school. As an undergraduate, she volunteered with the Yolo County Public Defender's Office. They gave her the opportunity to work on prisoners' rights cases. She was inspired to pursue social justice.

In the summer of 1975, she met John Ashbaugh while commuting from Davis to Sacramento. They both took the bus to their jobs.

She was an intern at the Municipal Court; he was a graduate student who worked with the Governor's Office of Planning and Research.

According to John Ashbaugh, both sets of parents were "old fashioned," so the young John Ashbaugh and Trish Nemec kept the scope of their developing relationship private. By the end of the year, however, they were secretly engaged.

In April 1977, after graduating with a degree in urban design from University of California Berkeley, John Ashbaugh moved to San Luis Obispo. In May, Trish Nemec graduated from law school. She studied for the bar examination with fellow student, Sister Simone Campbell of the Sisters for Social Service.

After the bar, the couple took a five-week vacation through Europe. They engaged in random wandering and detours that took them through West Germany, the Netherlands, France, Switzerland, Austria and back to West Germany. They generally stayed at cheap youth hostels. Sometimes, they would take the time to follow the recommendations of *Fodor's Guide*.

## Early Career

Upon returning to San Luis Obispo, they were married and settled into their lives. John recalls that they lived in "an illegal apartment conversion."

The year before the Ashbaughs arrived in town, Richard Carsel and his brother, John Carsel, held the public defender contract for San Luis Obispo County. After John Carsel left the firm, Richard Carsel hired Trish Ashbaugh. At the time, she was one of only three female



*Trish and Jim Maguire, December 1993.*



*Trish Ashbaugh in court, June 1993.*

attorneys in the county. She was the only woman that appeared at the court house.

Within six months, Carsel hired James Maguire and Donald Umhofer. The firm became known as Carsel, Maguire, Ashbaugh and Umhofer. Other notable public defenders hired around the time were Stew Jenkins, Betty Sanders, Don Ernst, Sylvia Stewart and Lee Cunningham.

*Continued on page 14*

## Trish Ashbaugh Retires continued

### Maguire and Ashbaugh

In December 1981, Maguire and Ashbaugh left the Carsel firm and formed their own partnership. Umhofer went to the district attorney's office before being appointed to the bench.

"Trish and I got along famously," said Maguire. "I was happy for the partnership because each of us could leave the office with confidence, whether it was for a vacation or for our health."

The two partners were interconnected for almost 40 years. "I remember," said Maguire, "when I wanted to climb Aconcagua, the second highest peak in South America, I had to get permission from three women: a client I was defending on a serious criminal charge; Christine, my wife; and Trish."

### *People v. Worth*—

#### The Case of the Crab Rustlers

In the early 1980s, there was a sea change in the appointment of public defenders. Whereas it had been possible for a public defender to represent multiple defendants if he felt there was no conflict and the defendants were willing to provide a waiver, after *People v. Mroczko* (1983) 35 Cal.3d 86, 113 this practice was ended. Henceforth, all indigent criminal defendants in a multiple defendant case would be given separate counsel.

As a direct result, in *People v. Worth*, the court declared that local attorney Ilan Funke Bilu could not represent the father and the two sons because there was an inherent and unavoidable conflict. The court appointed Ashbaugh for Frank Worth (son) and Jeff Stein for Fred Worth (second son). Funke Bilu continued to



*John Ashbaugh and Trish Ashbaugh attend a holiday gathering.*

represent Don Worth, the father. The Deputy District Attorney assigned to the case was John Trice.

Don Worth and his two sons were alleged to have stolen crabs from the ocean. Crabs, for the uninitiated, are caught by placing crab pots, or cages, on the bottom of the sea floor. Bait and a sinker are placed inside. A float connects the cage to the water surface. The cage is configured in such a way that the crabs can crawl in, but they cannot crawl out.

At the time, some salmon fishermen from Alaska were crabbing off Point Buchon, near Montaña de Oro. The Worths would pull their boat alongside the crab pots of these fishermen and haul the crab pots onto their boats or disconnect them from the floats. The goal was to destroy the competition in the Dungeness crab industry.

Crab pots are rather generic, but the floats that connect the pots to the surface of the water are labeled by the crabbers. The Worths retained some of the crab pots. Often, they would replace the victims' float with their own personalized float.

After a while, the affected fishermen realized something was wrong and reported their concerns to the long-serving local Fish and Game warden, Drew Brandy. Brandy had his young and eager assistant, Eric Wheng, surveil the area where most of the thefts were occurring. He used a telephoto lens and took photos of what he believed was a crime. The photos, however, were so grainy that they could have just as easily been proof of the Loch Ness Monster.

After 40 years, the details get murky. "I think," said Funke Bilu, "that they were discovered when



suspicious crabbers notified the Fish and Game warden. The warden then watched the area. Maybe. But I also remember someone was able to identify the cages by some markings. Stein will know."

"Search warrants were issued," said Stein. Fish and Game searched the Worth's facility and recovered other crabbers traps. "Damning evidence," remembered Stein.

In addition, remembered Trice, "They found Air-Vol blocks that the victimized crabbers had purchased and used as sinkers for their traps. The Air-Vol blocks were distinctive, and the victims also had the receipts."

"By this time, the case was getting national attention," said Stein. "There was quite a roar. The industry magazines were running articles all the time."

"I remember one Alaskan fisherman telling me," said Trice, "that if this had happened up in Alaska the Worths wouldn't need a trial."

As the trial neared, the offer to the father was six months in jail; no jail time for the sons. Restitution would be owing to the victimized crabbers. The trio, however, was adamant that they would not take a deal. They fixated on the terrible grainy photographs and ignored the evidence obtained from the warrant.

The trial lasted six weeks. At one point "We moved to Cuesta because the new courthouse was not big enough," recalled Stein.

"No," countered Trice, "it was out at Camp San Luis in a church that had been converted into an auditorium."

Trice wanted to impress upon the jury how extensive the crime was by bringing all the

stolen crab pots into court. The only location big enough at the time was this auditorium. Trice stacked a mountain of stolen cages on the stage while he led Wheng and Brandy through direct examination. "Wheng," recalled Stein, "was a great witness."

In the end, all three crab rustlers were convicted. Don received one year in jail, Frank received 180 days in jail, and Fred received 90 days in jail. Ironically, they spent more time in a cage than the crabs did.

### **Rex Krebs Trial**

On November 12, 1998, Rex Allan Krebs attacked Cal Poly student Rachel Newhouse, beating her unconscious with his fists. She was raped and murdered. In 1999, Krebs beat, raped, tortured and killed Cuesta College student Aundria Crawford.

Upon arrest, Krebs confessed to District Attorney Investigator Larry Hobson. Later Krebs told a reporter, "If I am not a monster, then what am I?"

Maguire and Ashbaugh, along with William McLennan, were appointed to defend Rex Krebs. Their main job was to explain that although Krebs was a violent perpetrator, he was also a victim of abuse. He had been traumatized by his mother's boyfriend. When Krebs would wet the bed, he would be forced to sleep in the wet sheets or wear the soaked underwear on his head to school. He was beaten continually.

The prosecution team included John Trice, Tim Covello and investigator Hobson. The Honorable Barry LaBarbera presided over the proceedings. As a result of enormous pretrial

publicity, the defense filed a motion for change of venue. Although the motion was denied by Judge LaBarbera, Ashbaugh wrote the winning appellate brief. On remand, the trial was moved from San Luis Obispo to Monterey County.

"Trish was the best strategist," said Maguire. "She was a great technical lawyer. Of the motions filed by the defense, hers were successful; for example, the motion to move the trial."



*Patricia Ashbaugh works at the Monterey House, circa 1999.*

As a result, the attorneys and court moved to Monterey. All the attorneys were given a housing allowance. The defense attorneys decided to pool their allowance and rent a space together. They were able to secure a gorgeous house about 10 minutes from the courthouse. They worked and lived together for months.

According to McClennan, Ashbaugh was mellow and easy

*Continued on page 16*

## Trish Ashbaugh Retires continued

to live with. "We would split the cooking duties, but Trish was incredible. She was the best cook of the three of us—by far."

During the trial, Ashbaugh was unflappable. "One thing that struck me," recalled Trice, "was that I knew she had two daughters, like me. I am sure defending a man who raped and murdered two young women must have taken an emotional toll on her." However, "throughout the trial she dealt with issues with aplomb and professionalism."

"I remember Trish gave a terrific final argument during the penalty phase," said McClennan. "She was dedicated, level-headed, grace under pressure."

"They had a good team," added Trice. "She made a great mitigation argument. It took the jury a week before it reached a death recommendation."

### The Ever-Changing Legal Landscape

Around 2000, Ashbaugh had the observation that punishment could not be the only tool in the

tool box for the criminal justice system. Ashbaugh understood that the complicated matrix that led to criminal behavior could not be understood simply by determining if the crime had been committed. She knew that a small percentage of the criminogenic defendants were committing most of the crime, but those who were not criminogenic needed a different outcome. Thus, she enlisted the assistance of the social science community and hired a full-time social worker to the public defender's staff.

Recent years have seen her engaged in an endless string of task force meetings. She has been instrumental in the changes to sentencing, mental health delivery, and drug and alcohol treatment to criminal defendants.

"She has attended lots of Justice Partner meetings, and contributed good ideas to implementation of a variety of changes and services," said Judge Dodie Harman. "She is interested in the [criminal justice] system and finding best outcomes for her clients."

Ashbaugh was instrumental in setting up the Early Disposition Court (EDP). Along with other partners, like Probation, the district attorney's office, and drug and alcohol, Ashbaugh worked to establish parameters that would make EDP more than just an Arraignment Court.

The EDP Court resolves the majority of criminal cases that enter the courthouse, sending criminal defendants to the necessary services quickly.

"The sooner we can get a defendant into treatment," said Judge Harman, "the more likely the success."



Having attorneys who are committed to working hard to resolve cases and work with the other side is critical. Ashbaugh has led the way in advancing this revolutionary approach to criminal justice. "She is good at explaining services to clients," said Harman, "because she has so much experience with what those services offer."

The role of the criminal defense attorney has changed dramatically. "When I first started," said Ashbaugh, "the role of the public defender was to make sure that the defendant's rights were protected. Now, the role includes dealing with social issues like homelessness and drug and alcohol abuse. Problems caused by other forces are now issues for the public defender to deal with."

In a quiet moment, Ashbaugh ponders the impact of all the collaborative work on advocacy and the presumption of innocence. That fault line will be for the next generation of lawyers to consider.





## Character Evidence

Ashbaugh receives praise from attorneys and bench officers for her tireless work for the defense.

She has led the Public Defenders Arraignment/EDP team for years. She appears before Judge Harman, who said, "She is a fierce advocate for her clients. She doesn't let go. I respect that. I also appreciate that she does it respectfully."

Judge Harman also admired how Ashbaugh never complained about double standards that affect women in the law. Forty years ago, the courtroom was a much different place. "When women came into the profession, they had to always be serious and professional," remembered Harman.

A man might be able to joke around, but the perception was that a woman who joked might be deemed frivolous or unprofessional. Thus, for many women lawyers of Ashbaugh's generation, there was a need for absolute seriousness, professionalism and diligence. As a result, Ashbaugh always maintained complete professionalism and a strict decorum in the courtroom.

Ashbaugh was much tougher than her slight stature would suggest. "You don't want to mess with her," said Maguire.

"She was not the most vociferous," recalled Funke Bilu, "but she did not take any shit."

According to Jeffry Radding, "[Patricia and I have] shared the local courtrooms through four decades. From time to time, we've shared cases. One prominent talent is evident that Ashbaugh possesses: she's mastered the art of listening,

and listening is perhaps the most distinguishing characteristic of a skilled lawyer."

Judge Ginger Garrett was hired by Maguire & Ashbaugh 30 years ago. "Over the years," Garrett said, "I have come to know her passion for her work and the fact that she always gives her best efforts for every client."

In private, however, Ashbaugh could afford to show her kind, funny, generous nature. When she left on a vacation, for instance, she knew to a degree of reasonable certainty that her staff and attorneys were conspiring to prank her.

"We once turned her office into a break room, complete with couch and coffee. Another time we filled it completely with balloons," said long-time public defender paralegal Amy Broomfield. "Trisha always took it the right way. She understood the prank was a welcoming home."

## Marriage, Children and Grandchildren

In 1984, John and Trish Ashbaugh had their first child,

Anna. Four years later, on the day they were to move into their newly built home in San Luis Obispo, their second daughter, Laura, was born. John recalled, "It was a race to see who would deliver first: the contractor or Trish." Because life can be that way, Anna was terribly sick at the exact same time. The couple recruited help from friends and shouldered on. In the end, both the home and the children are wonderful.

Those little girls now have careers and children of their own. Anna Ashbaugh Steffen graduated from Northwestern. The Steffens recently moved from Illinois to Goleta. Anna Steffen works for Apeel Sciences. She has two children, Oscar and Nina Louise. Laura Ashbaugh Fiedler also graduated from Northwestern. She lives in Walnut Creek, California, and works for Chevron. On February 11, 2020, she gave birth to Charles Jones Fiedler.

*Continued on page 18*



*Trish Ashbaugh with daughters Laura and Anna, now adults with children.*



## Trish Ashbaugh cont.

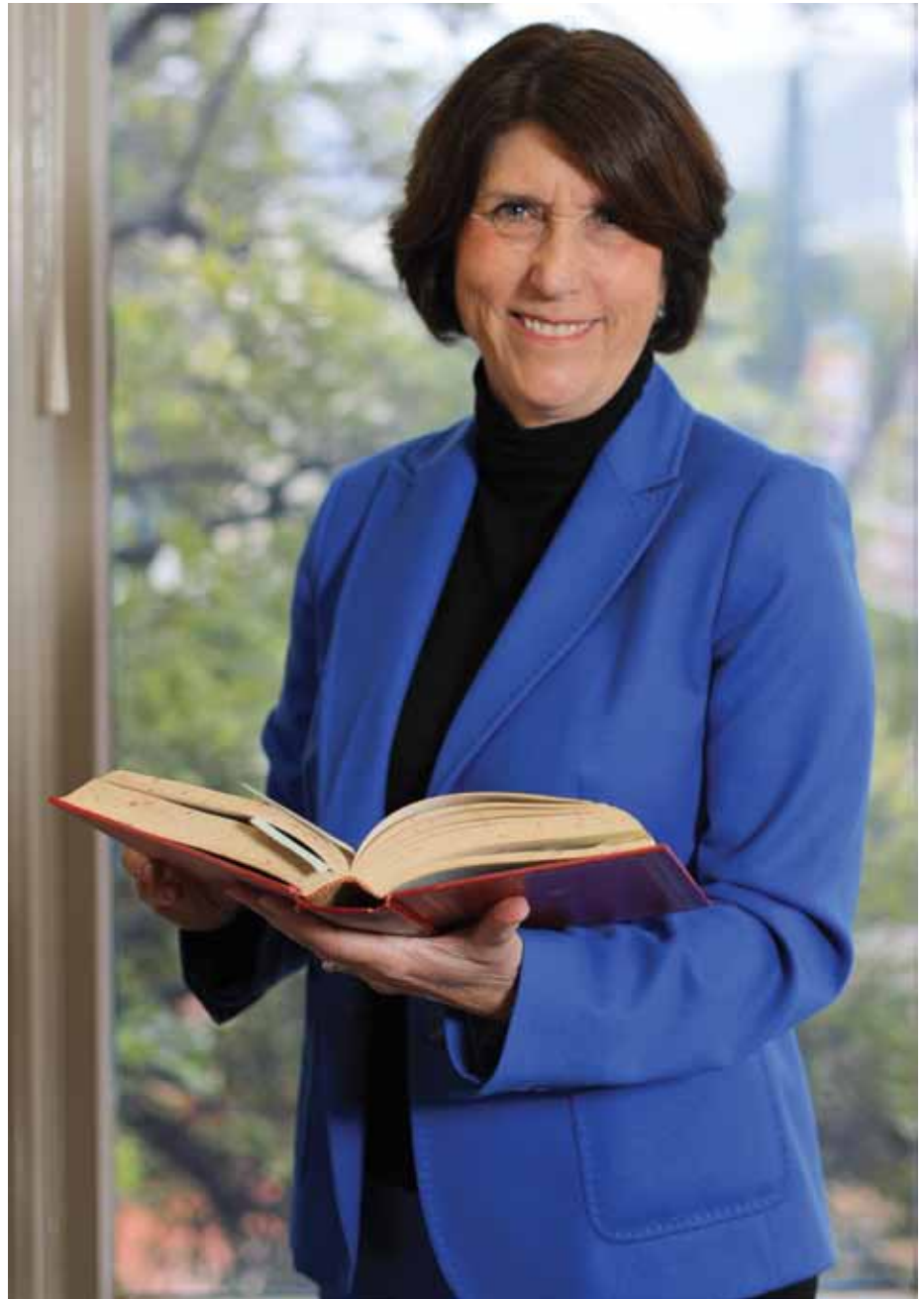
The benefits for Ashbaugh of being a grandmother now outweigh the satisfaction of being a criminal defense attorney for the indigent. The knitting hobby will be put to good use as a doting grandmother. She has already made baby blankets and seasonal hats. With more time, she will be able to bundle up the whole family. Warm hearth, cozy sweaters and laughter shall replace jail visits, business suits and battles with clients and district attorneys.

### Legacy of the Lady

As retirement nears, awards and honoraria are catching up to Ashbaugh's accomplishments. In 2016, the Women Lawyers Association (WLA) of San Luis Obispo, an organization she co-founded in 1981, awarded her the Outstanding Woman Lawyer (OWL) Award, their highest and most prestigious award.

Earlier this year, she received the Community and Public Service Award by The Community Foundation of San Luis Obispo. The award is given to a woman who has, by virtue of her profession, distinguished herself by outstanding professional service to the community.

Ashbaugh consistently fought for her clients, even those that made representation difficult. Trice, for instance, remembered a defendant who exhibited extreme and outrageous behavior. "He would threaten her. He would yell at her. He would hurl insults at her. Yet, through it all, Ashbaugh stayed calm, and kept her professional demeanor and composure. She represented this guy to the best of her ability."



Since 1984, Trice and Ashbaugh opposed each other on many major cases. The respect is patent. "Trish," declared Trice, "is clearly the best criminal defense attorney in the county."

In addition to fighting with and for her clients, Ashbaugh also fought with county administration to further the needs of the indigent. It was Ashbaugh who got the Public Defender's office more funding for attorneys,

social workers, investigators and support staff. It was Ashbaugh who made it a priority to secure additional county beds for incompetent defendants. And it was Ashbaugh who led the fight for mental health and drug dependency resolutions.

Matt Fountain, a San Luis Obispo reporter, put it succinctly, "Ms. Ashbaugh is a legend."

And the legend lives on. ■

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# Aporkalypse Now!

by Scott Taylor

One of my favorite parts of military service is the unpredictable nature of it. I have worked as a JAG since August 2010 and have had a chance to see the world on the government's dime. I have stood on a street corner for hours just so I could salute a van that carried a three-star general. I have participated in a mock trial wearing a snake skin coat to teach prosecutors how to litigate, and sometimes I am in a position where I have to be ready to answer literally any legal question that comes in.



In summer 2019, I was reassigned from the JAG School where I had been teaching litigation to Kadena Air Base in Okinawa, Japan. When I was reassigned, I did not know much about Okinawa except 1) the battle of Okinawa, 2) the setting for Karate Kid 2, and 3) the only place to obtain a Hattori Honzo sword.

Spending time in Okinawa has been an awesome experience because I have learned a lot more about the island, some of which was surprising. I went to northern Japan previously

for a two-month assignment, and the Japanese people surrounding the base were amazing. I was expecting a little bit of resentment that American troops are still on Japanese soil almost 75 years since World War II, but I never detected it.

Okinawa is a different story, primarily because of the relationship with the Central Government of Japan. Okinawans resist the Central Government, and by extension seem to grate under the military presence of the United States. The battle of Okinawa was one of the last major battles in the Pacific Theatre during World War II, and the site of Hacksaw Ridge, which Mel Gibson recently made a movie about. One fifth of the island consists of U.S. military installations, and it is the first place I have ever felt like an occupying force serving overseas. Relations with the host nation can be tense there sometimes, especially when U.S. service members commit crimes, most notably DUIs.

I had an opportunity at the New Year to work as an acting Staff Judge Advocate (SJA) at Kadena Air Base. This was a large opportunity for me because as a Major, I was filling in for a Colonel, someone two pay grades above me. Most Air Force bases are run by a Colonel, but Kadena has a Brigadier General in charge because of its size and importance.

The Air Base is situated right on the South China Sea and projects U.S. Naval and Air power through some of the most congested shipping lanes in the world in an area where there are ongoing territorial disputes, most recently between China and Indonesia.

Kadena is an installation of about



50,000 people, and the legal office had a staff of 34 people that I had come in to lead. The key to coming in as an acting SJA is to keep the operation running smoothly without any curveballs.

The last time I was an acting SJA, it was at Vandenberg AFB. That week saw an oil spill in Santa Barbara. The installation commander called me on a Saturday to say the Environmental Protection Agency had requested storage of the burst oil pipeline section on base until they could complete their investigation and wanted to know if I had any legal problems with that—and, oh by the way, it would be on base in about 10 minutes. So, while I was hoping this time around for no surprises, what I dealt with was the aporkalypse.

I got a phone call from the on-call JAG, who is supposed to answer oddball questions unless he or she needs to raise the matter up the food chain. It was Friday night around 2000 hours, and I was just out trying to get some good sushi after being in the hot seat all week. The on-call JAG called me and started out by saying, "I promise, this is not a prank."

He then proceeded to tell me that Okinawa was experiencing the first outbreak of Swine Fever in approximately 30 years. Japanese farmers had to kill about 2700 infected pigs and needed to bury them within 3 km



of where they were infected within 72 hours. Both the time and distance restrictions are directly related to not spreading this very infectious disease. The town mayor was in a bind because the only place that the pigs could be buried was U.S. property, specifically property owned by Kadena Air Base that we were not using. The land in question was unused because it was in the glide path of the runway, and it was designed to be a buffer.

The General wanted to support the request to help improve relations with the local prefecture and try to build some good will. The problem was whether we could and should do it. The first document to consult was the Status of Forces Agreement (SOFA) we had with Japan. The original SOFA was signed by Douglas MacArthur at the close of the war, and it has been added to ever since. Staying at the office to well after midnight, there was nothing in the SOFA about infected pigs. There was, however, a provision that says if we are not using land and there is a request from the Japanese people to temporarily use the land, we should agree to it. It was clear under the SOFA agreement that we could do it, but the question quickly became should we.

I was a part of the working group at 0900 hours on Saturday, which incidentally was a Japanese holiday, so a lot of the people we had to coordinate with were not in the office. As the only lawyer in the room, I was surrounded by commanders, Lieutenant Colonels, and two Colonels who outranked me and wanted to get to "yes," because the General wanted to say "yes."

As the only lawyer in the room, I was, not surprisingly, the only person taking notes as we called higher headquarters in Tokyo to discuss the matter. Those notes formed the basis of the international agreement. I got

significant pushback from the commanders in the room who wanted to get to "yes" and thought I was getting in the way, and I had to explain that my answer was "yes, but...."

Normally, when a Colonel tells you to jump, the only relevant question is "how high?" However, as a JAG, it is my job to sometimes be the person standing up to authority and giving unpopular advice. When planners are selecting military targets for example, if an objective is targeted solely because it has great cultural value for our opponent, it is the JAG in the room who stands up and says that targeting such a site would be a violation of the law of armed conflict.

As I had Colonels breathing down my neck because they thought I was getting in the way of what the General wanted, they expected me to simply ask "how high?" But my job was to say "we will try to get to 'yes,' but we have to keep in mind 1) the laws of gravity, and 2) the limits of my athletic ability." In this instance, we all wanted to get to "yes" to help out the host nation dealing with a public health crisis, but I had several concerns that I needed to address:

- 1) Who was going to dig the hole and bury the pigs?
- 2) When a typhoon uncovered the pigs, who would re-bury them?



3) When the pig remains leaked into the groundwater or a stream, who was responsible for cleanup?

4) Who was responsible for erecting a fence and signs to keep people away from the site for three years until the virus was gone?

5) Who was going to monitor the site to make sure the mound of dirt over the carcasses was replenished as the site settled?

The answer to all of those questions was the Japanese Government, and we needed those conditions to be met because we accepted what ultimately became 6000 infected pigs from three farms. It was a heavy lift from a lot of U.S. military and civilian personnel on a weekend to get the project done, but it went all the way to the Ministry of Foreign Affairs (equivalent to our Secretary of State) to approve the deal and accept liability should anything go wrong.

We got to "yes" for the General and were able to help the prefecture government that doesn't really enjoy us being on the island. Most importantly, we successfully stopped the disease from spreading. Although I was assured by the bioenvironmental folks that I could eat a diseased pig and suffer no consequences, I was wary of eating pork in my ramen the rest of the trip.

I will never forget the aporkalypse, but it is a reminder that part of being a JAG means answering questions out of left field that you have no experience with and doing your best to get to the right answer. There are a fair amount of JAGs working as lawyers in San Luis Obispo County, and I am willing to bet they have similar stories of answering questions on the fly and working quickly to get educated about a new situation. When you see us heading off on orders to our bases, sometimes we really are going to another world. ■

# Have you met...?



**Sadie Weller**

Sadie Weller grew up in San Luis Obispo, and in 2009 she graduated from SLO High School. In 2012, she received a bachelor's degree in metabolic biology from the University of California Berkeley, and in 2017 she received her law degree from UC Davis School of Law.


Following law school, she worked as a graduate law clerk for one year at the Contra Costa County Public Defender's Office in Martinez, California. She then worked as an eviction defense attorney at Legal Assistance to the Elderly in San Francisco, helping seniors and adults with disabilities remain in their homes.

Looking to return to SLO and contribute to her home community, Weller recently joined the staff of SLOLAF.

She enjoys hiking, re-discovering the Central Coast, rooting for the Los Angeles Lakers, and spending time with her family.

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**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, raymondinsf@yahoo.com, for inclusion in an upcoming issue.



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# An Intimate Experience With End of Life—

*Learning to cultivate the worthiness we seek in our lives now and want to experience in our final days*

by Kara Stein-Conaway

*“Love and belonging are essential to the human experience. As I conducted my interviews, I realized that only one thing separated the men and women who felt a deep sense of love and belonging from the people who seem to be struggling for it. That one thing is the belief in their worthiness. It’s as simple and complicated as this: If we want to fully experience love and belonging, we must believe that we are worthy of love and belonging.” —Brené Brown<sup>1</sup>*

On September 9, 2019, as my sister and I sat with our 95-year-old grandfather, Solomon Stein, the chaplain came to visit him. The night before, my grandfather had drifted into what appeared to be a restful sleep, and he remained so as the chaplain spoke to me and my sister. The chaplain told us that when he had spoken to my grandfather the week before, he had never seen anyone more at peace at the end of their life than my grandfather. My grandfather had no regrets. He was complete and knew he was so very loved.

After more than 60 years of adventures, love, marriage and partnership with my grandfather, my grandmother, Rosanna Stein, passed away on November 23, 2012. At the time of her death, both she and my grandfather were 89 years old.

Within months of my grandmother’s death, I moved back to my hometown of San Luis Obispo with my husband and our infant son. For the last six years of my grandfather’s life, and since he lost my grandmother, I spent nearly every weekend visiting with him.

Being in his presence was a gift. My grandfather was a wonderful storyteller, he was a



Jeffrey Stein with his father Solomon Stein.

patient listener, and he was also someone with whom I could just sit. I could hold his hand. I could snuggle up next to him and just be held. I can’t ever remember seeing him rush. He was always so very present with me.

When I read Brené Brown’s quote above, it immediately reminded me of my grandfather. “If we want to fully experience love and belonging, we must believe that we are worthy of love and belonging.” I think that one of the keys to my grandfather’s joy-filled life is captured by this quote and illustrated by a story that my grandfather told me.

When my grandfather was in junior high school growing up in Brooklyn, New York, his mother would often hand him a quarter, which he said was a lot of money back then, and tell him to treat himself to a three-course meal at his favorite Chinese restaurant after school. From the way his eyes would shine and the way that he smiled when he told this story, it was clear to me that although he remembered the experience of eating at this restaurant, what he was truly savoring was feeling treasured by his mother.

*Continued on page 24*



## An Intimate Experience continued

I believe that he carried that feeling of being treasured and loved with him throughout the rest of his life. He also learned to treasure and love himself. Because he felt worthy of love and belonging, he was able to fully experience love, both in giving it and in receiving it.

On September 9, 2019, my Grandpa Sol, one of the kindest human beings that I have ever known, took his last breaths. In the 95 years that he was alive, he lived in a state of joy, of gratitude, and of giving and receiving love. He focused his energy on the beauty he saw before him and inspired us all to do the same through his example.

The loss of his life is one of the deepest losses I have ever experienced. Even though he lived to 95, no amount of time with him could have felt like enough. I wish the rest of our days could be filled with just being around him. Not being able to stop by for a hello, some hugs and kisses, and listening to his stories is a new reality that I'm still not ready to accept.

Although I shed many tears in the days leading up to his death and the days following his death, I am also letting myself feel the immense joy that was sharing this one precious life with him and knowing that he lives on in me when I share his wisdom with others.

My grandfather knew his worthiness; he knew it even as a young boy. If he ever forgot it during the many years of his life, he certainly knew it as an old man. His worthiness was not conditioned upon anything: not on how much he weighed, how

much money he had, or even what others thought of him. He knew he was worthy of love, and in knowing that he was worthy, he fully received and took in all of the love that we poured into him during his life and during the days leading up to his death.

Death and dying are not commonly discussed in our society. I think, in part, that's because we fear death. I think what we really fear about death is not the non-existence. I think it's the fear that we will leave this world without cultivating the love and belonging in our lives that we so desire. So, to cultivate the love and belonging we seek both in our lives now and that we want to experience in the final days leading up to our deaths, we need to claim our worthiness right now. And, when it feels like it's slipping away, we need to reclaim it.

### How Do We Claim or Reclaim Our Worthiness?

What actions can we take?

One way we can claim or reclaim our worthiness is by practicing self-compassion.

Brené Brown, in *The Gifts of Imperfection*,<sup>1</sup> credits self-compassion researcher Kristin Neff with explaining that there are three elements of self-compassion: self-kindness, common humanity and mindfulness.

Brené Brown's abbreviated definitions of those elements follow.

**Self-kindness**—"Being warm and understanding toward ourselves when we suffer, fail or feel inadequate, rather than ignoring our pain or flagellating ourselves with self-criticism."

**Common humanity**—"Common humanity recognizes that suffering and feeling of personal inadequacy are part of the shared human experience—something we all go through rather than something that happens to 'me' alone."

**Mindfulness**—"Taking a balanced approach to negative emotions so that feelings are neither suppressed nor exaggerated. We cannot ignore our pain and feel compassion for it at the same time. Mindfulness requires that we not 'over-identify' with thoughts and feelings, so that we are caught up and swept away by negativity."

In the spirit of my grandfather, I will continue to practice claiming my own worthiness, and I hope you will, too.

For me, of the three elements of self-compassion, practicing self-kindness is the one that I find most challenging and that I'm going to commit to practicing more often.

One way in which I will practice self-kindness is to allow myself to feel into negative emotions. I recently worried about how the unknown outcome of a client's case would impact my client's life. I allowed myself to feel into that worry, and by exploring it—rather than ignoring it or trying to distract myself from it—I found that the feeling itself transformed into a feeling of caring and compassion rather than worry. The physical sensation in my chest adjusted from tightness to lightness. The feeling changed in this beautiful way because I practiced self-kindness by allowing myself to

create the space to actually feel the worry.

This felt like a huge breakthrough. As feelings of worry or stress come up for me again, rather than trying to distract myself away from those feelings, I'm going to allow myself to acknowledge and feel those emotions. I'm excited to see where this new practice can take me.

### Which Most Challenges You?

Out of the three elements of self-compassion—self-kindness, common humanity and mindfulness—which one is the most challenging for you to practice? What can you do to practice it?

How can you use self-kindness, common humanity or mindfulness to help you claim your worthiness, like we learned from my Grandpa Sol?

Who can you ask to keep you accountable for practicing self-kindness, common humanity or mindfulness?

If practicing self-kindness is your goal, then how can you remind yourself to treat yourself kindly?

If practicing common humanity is your goal, then how can you remind yourself that you're not alone in your experiences?

If practicing mindfulness is your goal, then how can you incorporate a mindfulness routine into your day, and what might it look like?

Who else in your life do you think could benefit from learning more self-compassion?

In what ways can you model for others what it means to treat yourself with compassion?



*Kara Stein-Conaway, her son and Grandpa Sol.*

In this new decade, and in the spirit of my grandfather, I hope that by sharing this reflection and my new self-kindness practice, you have some inspiration for how you can start integrating a self-compassion practice into your routine. You might be surprised by how much it changes your perspective and your quality of life.

“A moment of self-compassion can change your entire day. A string of such moments can change the course of your life.”

—Christopher K. Gerber

I fully believe that as lawyers, when we are taking care of ourselves, our families, and those we love, it's from that space that we contribute most meaningfully to the world and to the lives of our clients. ■

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<sup>1</sup>Brown, B. (2010). *The Gifts of Imperfection: Let Go Of Who You Think You're Supposed To Be and Embrace Who You Are*. Published by Hazelden, Center City, Minnesota.

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*This is the third in a series of articles Stein-Conaway has written for the Bar Bulletin. Her articles explore the intersection of women, business, law and family.*

# Discover, Prepare & Present Powerful Trial Scenes & Themes

by J. Jude Basile



## Look at Your Own Story

Every trial is a story of a human experience. In order to discover and present the story of our case we must first look at our own story. What is our life story? How did we arrive at this place today as a trial lawyer, as a parent, spouse, friend or child? How many roles do we play in our own story of life? We must first look at our own story of who we are. What has been our life's experience that has brought us to who we are? Can we look at our past openly and honestly, perhaps through the eyes of others to search for some understanding of who we truly are?

Can we imagine our life as a movie? Each chapter and each scene of each chapter, examined. What scenes have we edited out of our life and left on the cutting room floor? Why have we edited these scenes out? Can we pick them up off the floor and look at them? What might we learn about who we are if we examine these scenes from our past? This is an exercise that is not easy.

This exercise of examining who we are may be done in a variety of ways. The most effective way, I have experienced, is through psychodrama. The name itself is something that may make you hesitate.

Psychodrama has been defined as the search for truth through dramatic action. There are a number of trained psychodramatists that can lead a group through this exercise of self-discovery and understanding. It has been used by some lawyers since the 1970s when first introduced by Attorney John Ackerman and Gerry Spence through a wonderful psychodramatist named Don Clarkson. Ackerman and Spence first introduced psychodrama to trial lawyer training at the National Criminal Defense College.

Psychodrama uses the methods of role reversal, doubling, and reenactment among others. It encourages spontaneity and creativity. I highly

recommend every trial lawyer experience psychodrama. Workshops are available through the National Psychodrama Training Center.

Psychodrama is an action method. Writing about psychodrama is like writing about riding a bicycle. We must get on the bike and ride to experience it. Reading about it is not the same. I urge everyone to experience this unique method of self-discovery and personal growth.

How can we hear, understand and present the stories of the people we represent if we do not try to understand our own story? If we can take some time and look at our own lives, it will open us to looking at others.

Our ability to connect with other human beings (jurors) is within the essence of our humanity. We so often can lose this connection by being too much in our head. So many cases are presented by dumping a bucket of facts on the jurors without a clear guide of directing basic human feelings to do what is right. We must constantly be aware of our humanity and be willing to show our humanity to others.

## Look, Listen, Experience

The next step in discovering and developing themes is NOT to rush into what you think the theme should be. Traditional methods of trial preparation were to begin with the jury instructions and find the facts to satisfy the elements. This fails to look at the client's story of their life and how they came to need a lawyer. Lawyers can too often get caught up finding facts to fit the elements of a cause of action and miss the powerful emotional scenes that will move the jurors.

A wonderful exercise to start the process is what is sometimes called empathetic listening, or doubling. This exercise involves exactly what it says. Just listen and feed back to the other person what you are hearing. Do not give advice. Do not



question. Do not answer. Just listen and feed back what you hear. You should sit beside the person and try to mirror as much of their body position as possible. Try your best to feel what the other person is feeling, be the other person and look deep beneath the surface of what is going on.

For example, in a wrongful death case, the person or client who is doing the talking may start talking about how much they miss the person who was wrongfully killed. You may respond by tuning into what you believe or feel the person is saying and repeat it back to them as though you are them. You might listen and feed back to them what you feel is not being said. The other person can take this or reject it and continue talking. You may discover there was unfinished business with the person who was killed. Get in touch with the feelings and where they are coming from and leading.

Another exercise is reenactment. This can be done once we have learned the basic facts of a scene or story. The scene is reenacted in the present tense, in the here and now. The lawyer can play various roles from the scenes. One warning is not to use your client in a scene if you feel it may re-traumatize them. For example, if there has been a terrible scene of suffering, you should either employ a certified psychodramatist or do the scene yourself without the client present. Reenactment of scenes with you playing the roles of various persons is perhaps the most insightful way of case understanding and preparation.

You can never spend too much time or learn too much about your client's life story. Spend time in their life. Get out of your office and into their life. Go to their home, their work, their school. Spend time with their family and friends. Imagine yourself in their roles as a parent, child, student, friend, boss or worker. Feel what it is like to be them today and in other scenes from their life. Go through a day with them.

### Focus Groups

**There is only one thing you can do wrong with focus groups: Don't do them.** I believe we may have reached the day that it is malpractice if the first time a lawyer presents a case to strangers is in a courtroom.

Focus groups do not have to be expensive. You can post a sign in a public place and ask people to show up at your office some evening to "give us your opinion." I like to run an ad in a local paper—

"Evaluate a court case." Have prospective members call a back line at your office. Your paralegal can screen them for demographics and then call them to show up. Many people will do this for sandwiches and drinks.

You may get more sophisticated and creative in how you recruit members. I have run an ad stating, "Participate in a Focus Group—wanted conservative business people and Republicans 45 years and older, \$75 and lunch, 8:30 to 4:30." You may use an employment agency or hire a professional focus group company to recruit.

Try to do what is sometimes called "concept" focus groups. Once you have a group together, tell them what the case is about in 25 words, three sentences or less. Lead a discussion of what they think and feel just hearing those three sentences. Ask them what they want to know, what they feel is important, who they would want to talk to? What would they ask? What would they like to see?

Show them a scene from the case. Ask the questions again. Continue to add more facts, especially bad ones. Ask them to give you a title if this were a movie. Ask them if what they have heard reminds them of any scenes from their lives. Ask permission for them to share these with you and the rest of the group.

These initial focus groups are also an excellent training ground to practice group formation *voir dire*. This is a subject for another time but is, basically, leading a non-judgmental, non-argumentative discussion. Introduce a troubling topic, such as deep pockets, big verdicts, money for love, race, greedy lawyers, etc., and invite the group to discuss these with you. It is amazing how we can raise our credibility with such discussions held in an open, accepting way. We can form a group with us as the leader.

You should have individual questionnaires for each group member asking what they feel is the strongest and weakest points for each side. These questionnaires should be completed before an open group discussion, so you can get individual feedback and opinions before the influence of a group discussion.

After conducting several of these concept groups, you will begin to get a feel as to what themes are most important. You can then look at your case with this information and begin to construct a story line.

*Continued on page 28*

## Discover the Story continued

### Construct the Case Story With Emotional Content

Structure the story with a consistent theme. Most themes can be tied to one or all of these three words: Trust, Fairness and Love. Look at what you have learned in the focus groups and time with your client and see if there has been lost trust or misrepresentations, what is the basic unfairness in the story, what love or positive feelings have been injured or lost.

An excellent source for understanding the importance of “story” is the book “The Story Factor” by Annette Simmons. This book demonstrates and explains how using stories provide inspiration, influence and persuasion.

Every part of the trial should tell a story. Introduce your themes and stories in jury selection. For example if one of your themes is “a company that ignores safety,” you may lead a discussion of on-the-job training. What kind of training is provided to the jurors at work? Do they feel it is necessary, important and why? If the theme is the “value of love,” a discussion can be on whether we should and how can we put a price on the priceless?

Opening Statement is a tremendous opportunity to take control of the entire case. I do not believe a case is won in opening, but the stage can be set to win your case. An excellent outline of the structure of an opening is in “David Ball on Damages,” by David Ball Appendix B.)

Always, always, always focus on the conduct of the defendant first. Do not start with the plaintiff’s conduct or with a sympathetic, grief-stricken story of sorrow. Jurors will focus on what they hear first. They also are suspicious of lawyers who try to use an emotional appeal to manipulate them. Instead, focus on the defendant’s conduct by telling a story using facts that will lead the jury to their own

conclusion of how the defendant broke the rules and must be held responsible.

Emotion is how all decisions are made, often times subconsciously. We should not tell the jurors how they should feel but present facts and scenes that lead them to the feeling.

### Presentation of Evidence

It is our absolute duty and responsibility to entertain the jury. Respect their intelligence. Do not beat a dead horse. So many times in trial we are tempted to go over and over the same point. The jurors’ time is precious. If they see you continually repeat the same points, they will tune you out because they feel why pay attention—this will all be said again...and again...and again....

If you feel you must repeat something, do it in different ways. Use different witnesses, exhibits, video clips. Trust the jurors. They are human beings and if you are telling an interesting story, with meaning and the proper amount of emotional content, they will be with you.

### Final Thoughts

Take time to look at your own story, what has made you who you are. Discover who your client is. Find out what others feel are the most powerful and persuasive parts of the story that motivates them to do the right thing. Put the story together, focusing on the defendant’s conduct first, with facts that lead to an emotional feeling of what is the right thing to do. Go get the justice! ■

*Jude Basile has been a trial lawyer since 1982. He is a member of the Inner Circle of Advocates and recipient of numerous Outstanding Trial Lawyer Awards. He has obtained numerous seven- and eight-figure jury verdicts.*

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# Days of Yore

by James Duenow

I came to San Luis Obispo in 1965. I had graduated from the University of Minnesota Law School and just served three years as a Judge Advocate General (JAG) officer at Oxnard Air Force Base. When I arrived, I found work with Abe Brazil. He was a prominent sole practitioner. Brazil started me at the generous salary of \$800 per month. He added a membership at the country club. This was, however, of no use to me because I was a Hubert Humphrey liberal Democrat. I didn't fit in with the country club set.

In those days San Luis Obispo only had two judges: Richard Harris and T.J. O'Reilly. There were about 60 lawyers in the county, not counting the lawyers at the District Attorney's office.

Monday was an important court day. The probate, family law, civil law and motion, and trial calendars were called between the two judges. As a result, about two-thirds of the lawyers in the county were in court each Monday.

We also had lots of civil jury trials in those days; about 20-25 per year. If a case could not be settled by insurance adjusters it just about always went to trial. There was no mediation, arbitration or any other alternative dispute resolution (ADR) system. There was just a jury trial.

The civil jury trial was and is the great equalizer. It lets ordinary folks take on the rich, the corporations and government on a nearly level playing field. This was before the modern proliferation of the paid for "expert" witness. Parties just came in and told their stories.

In those days everyone smoked in the courtroom. Everyone. The judge, the jurors, the audience, the lawyers—everybody who wanted to smoke, smoked.

In those days juries deliberated late into the evening. It was not unusual for a verdict to come in at 9 or 10 at night. Of course, we had to call the judge in from home and sometimes sober people up.

In those days we had no public defender. Indigent criminal defendants were served by lawyers randomly picked from the local bar by the presiding judge. I remember getting calls from Judge Harris and being told, "Get your fanny over here kid, you've got the brass ring."

Right away I knew he had another murder case for me to defend. You see, they wanted me on these



*Attorneys Burke, Duenow and Peterson, back in the day.*

cases because I had lots of criminal law experience as a JAG officer. They wanted me so that if they got a conviction, it would not be lost on appeal because of inadequate defense counsel.

Eventually I got tired of being appointed to all these murder cases. I also didn't like that the county paid only about half of the regular hourly rate for the work. I was being over worked and underpaid for working cases that often involved the death penalty. When that penalty was possible, the trials were very high stress.

So, I went in to see Judge Harris and told him I was sick and tired of the routine. I told him I would only continue to take murder cases if the death penalty was taken off the table. He agreed. It may have been illegal, but it worked.

When I tell young lawyers that I tried 142 civil jury trials in my career, they audibly gasp. I actually had 16 in one year. The trial often lasted only four to six days. We'd pick the jury, do openings and take a witness or two on Tuesday. Wednesday and Thursday were witness days. We'd meet Thursday evening with the Judge to decide on the jury instructions. Then argue Friday morning—starting at 8:30, so the jury would get the case before noon. Most often we would have a verdict by the end of the day Friday, otherwise the next Tuesday.

In those days discovery was much different. It was before the computer. We thought the electric typewriter was a huge breakthrough. You couldn't just push a button and spit out a hundred or so interrogatories. You had to actually draft them by hand.

Although much has changed, the great governor is still the civil jury trial. We must see that the civil jury trial is preserved as an essential tool, and we must help young lawyers learn how to use this tool. Hope springs eternal. ■



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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:

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- March–April
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**To ensure consideration for inclusion in the next scheduled edition, articles, advertisements and payments must be received by the deadlines noted at right.**

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