Bar Bulletin

Serving San Luis Obispo County's Legal Community

January–
February 2021

The Creation of an SLOCBA Endowment Scholarship

What Roles Do Lawyers Play in Elections?

Criminal Justice Reform in CA

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San Luis Obispo County
Bar Bulletin

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Cover: A voter hands in her ballot in downtown San Luis Obispo on Election Day, November 3, 2020. Photo courtesy of Chris Borgard. Background flag image via Creative Commons.

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President's MESSAGE

by Joe Benson

"You Will See the Association Continue to Evolve"

I'm humbled and honored to serve as 2021's San Luis Obispo County Bar Association President. First, I want to thank Stephanie Barclay for her leadership as our 2020 President. Stephanie did a tremendous job during an unprecedented time in our history. Thanks to her leadership and vision, our Association is now positioned to be stronger and better than ever. Stephanie's ability to focus staff and board member energy on meaningful initiatives, remove inefficiencies, and her willingness to make hard decisions will pay dividends to our Association for years to come. Thank you, Stephanie.

My wife and I moved to San Luis Obispo from San Diego in March 2016 after I was recruited by Mindbody. We had visited the Central Coast on multiple occasions, and the idea of being able to work and live in this wonderful community was always a shared dream. It was an easy "yes" when I was offered the job.

In November 2020, I was thrilled to join the team at Carmel & Naccasha LLP, further enabling our future in this wonderful place we now call home. My wife, father-in-law and sister-in-law are also attorneys; as you can imagine my mother-in-law is bored to tears at Christmas dinner.

Perhaps like many of you, I'm thrilled that we can soon put 2020 in the rearview, and I have a genuine optimism about 2021. By almost all accounts 2020 was a challenging year—a pandemic, the painful reality of social justice inequalities, an economic downturn, Zoom fatigue and a tumultuous election season. We also had the unfulfilled promise of murder hornets.

Also, like many of you, in March 2020 I had to rebalance my life to work from my new workspace (also known as my garage). I settled into the strangeness of wearing a mask everywhere and more than once having to drive home from a store empty handed after realizing in the parking lot that I forgot to bring a mask with me. I also discovered the very odd feeling of apprehension when meeting, or otherwise being around, people not "in my bubble." COVID-19's daily tumult cloaked nearly every aspect of our lives. Learning about workforce reductions, businesses failing, and friends and family members testing positive became at times nearly overwhelming.

The forced sequestration was not all negative. I am thankful to have a great job where I can work from home and serve my clients remotely. Being at home afforded me several other positives, including, but not limited to, teaching our five-year-old daughter how to ride with no training wheels (and later, to skateboard); learning how to cook something other than tri-tip; and improving my driveway jump shot. I also became slightly obsessive (in a good way) about correcting the various shortcomings in our backyard. I am also thankful for the extra time I got to spend with my family, even if "movie night" and backyard bonfires seemed to have lost their luster by August.

In July, I served as foreperson of the first jury trial in our County

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since the COVID-19 pandemic began (*People v. David Carl Angello, II, Case No. 19F-05590)*. As my practice has been focused on transactional matters, jury duty is (hopefully) the rare occasion where I will find myself in a courtroom.

I am truly grateful for the Court's efforts to mitigate the anxieties and risks of all in the courtroom. Presiding Judge Jacquelyn Duffy's comments to the pool of potential jurors during orientation was exactly what those who intrepidly answered the summons needed to hear—that the Court honored and respected their safety and their time. Judge Craig Van Rooyen's respect and concern during voir dire was clear to all, and the willingness to evolve and adapt to this unprecedented event to ensure that the judicial process continues is admirable.

Upon reflection of my jury service, I come away with a renewed respect for the criminal defense bar as well as those working in the District Attorney's office. I was also left with a profound sense of pride to be a part of our legal community and the great work you all do.

My goal as President in 2021 is to provide our membership with incredible value for their investment in the Association. As such, you will see the Bar Association continue to evolve, including changing the style and format of MCLE offerings, a new venue for our events (assuming relief from the restrictions in place at the time of print), exciting sponsorship opportunities, and a general disruption of the status quo. I hope you will join me in the thinking that change should not be feared, but instead embraced. As Heraclitus said "The only constant in life is change."

I welcome your candid feedback on the changes we make and also on other areas of potential improvement. I view feedback (no matter its flavor) as an indicator of engagement, and engagement as an indicator of success.

We have an impressive lineup of MCLE's *planned* for 2021. I suggest making reservations early to avoid missing out on the events as they are likely to sell out. Our events include the annual State of the Courts, insights on effective brief writing from the Superior Court's research attorneys, a lecture from renowned legal scholar Erwin Chemerinsky, two separate events on cannabis with each providing a State and County perspective, a workshop on handling stress, and a session that will provide the always-elusive substance abuse credit.

Additionally, the 19th Amendment exhibit we secured from the Library of Congress will be at the SLO Public Library May 1–15, 2021 (assuming relief from restrictions in place at the time of print).

Last, I encourage each of you to consider donating to our recently established endowment fund that will provide education scholarships to persons of color from our county who want to work in the legal profession. The events of this summer have clearly demonstrated an existing opportunity for the legal community to take a leadership position in our community, and donating to the endowment is an important step to that end. You can find details on donation opportunities at www.slobar.org and pages 8–9.

I wish you all the very best and hope you have a great 2021. ■

Meet the New President—Joe Benson

by Stephanie Barclay

Q: What is your background—where did you grow up, what were your hobbies/sports/interests growing up? When you were a child what did you want to be when you grew up**?**

I always say Orange County, California (La Palma, to be exact) because that is where I spent the most time total growing up. After my parents divorced, however, we bounced back and forth between La Palma and the Denver area.

I loved playing baseball as a kid—I still get butterflies in my stomach when I watch a game in person. I really wanted to be a sports agent when I grew up so that I could hang out with professional athletes and be at the games all the time.

Q: Where did you go to college (major?) and law school, and when did you graduate? What made those schools the right choices for you?

I graduated with a B.S. in business from Pepperdine University in 2006. I received my J.D. from Whittier Law School in 2010. I got a good-paying job right out of high school working at a telecommunications company (Nortel Networks), which caused me to erroneously believe I didn't need to go to college. I came to my senses a couple years later and realized I wanted to do more in life, so I got my butt into school. Both schools offered programs for part-time night students.

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Meet the New President—Joe Benson continued

Q: What drew you to law school and a legal career?

I wanted to be a (sports agent) lawyer since I was 12 years old, but I had this weird thought that I was not smart or capable enough. Everything changed when I served on the jury of a six-week trial in 2004 (I was 24). It humanized the profession, and I realized I was just as capable as the lawyers in the room. I blame all the episodes of "Law & Order" I watched as a kid for creating unrealisitic expectations. I'm still not sure why my Mom let me watch that television show so much.

Q: What types of legal practices have you worked in, over your career, and what does your firm specialize in currently?

My practice to-date has been focused on corporation and business transactions. I've just joined Carmel and Naccasha LLP, which handles a broad range of matters including corporate and business transactions, litigation, wills, trusts and estate planning, real estate, municipal law, employment law, education law and more.

Q: Is there any case or project that you handled that was particularly rewarding or inspiring?

I joined Carmel and Naccasha LLP in November 2020, so I'm looking forward to having many rewarding moments with them. Prior, I worked at Mindbody for 4 1/2 years and I'm proud of a number of deals I was involved with—especially those that secured material revenue as well as the various acquisitions that helped the company provide a better product.

Q: What ages are your kids?

Our daughter, Carmen, is 5 and is squarely focused on turning 6 in a few months.

Q: What do you enjoy doing in your time outside of work?

Hiking, amateur landscape designing, riding my Peloton and playing pickleball (it's fun being younger than everyone else on the court). ■

Please Join Us — State of the Courts on January 21 at noon, via Zoom

Editor's Note

by Tara Jacobi

2020 is a year for the history books. COVID-19 pandemic, global recession, police-involved killings, black life matters protests, the election—all coupled with our family and work lives alternated like never before—leaves most of us wondering how much more can we endure.

Philosopher and psychologist William James once said, "Most people don't run far enough on their first wind to find out they've got a second." As a runner, I appreciate this sentiment. Living in today's climate—I hope we breathe our second wind.

Changes abound. As your new Editor, I have a vision for the *Bar Bulletin,* which may or may not take hold. I hope to create a variety of ongoing sections that allow readers to look forward to themed articles in addition to feature stories and other contributions. Among the ideas, *Sections* rotates articles from the different bar sections; *Doing Good Matters* focuses on public interest work in our county; *Her Story* rotates articles from women lawyers; *Law School Forum* gives us insight into the happenings in legal education at our local law school; *Latinos & the Law* spotlights the issues and *Paralegal's Corner* offers perspectives from the Central Coast Paralegal Association.

Many bar association events that are regularly covered in the *Bulletin* are or will be canceled, leaving us space to get creative and writing. As we spend more time at home this winter, maybe your inner storyteller will emerge.

Lawyers certainly learn early that it is the narrative chosen that explains the case. It's not so much the facts but how the author weaves the facts, circumstances and characters to find a truth beyond what may be visible and have it come alive. Maybe this is what makes some of us good storytellers.

Some say winning jury verdicts arises from telling a powerful story. Maybe the story cannot help but be told. Are we a group of puppeteers pulling strings as each puppet takes its turn on stage, all the while knowing what is to be known, or are we truth-seekers agreeing to the terms of the ride for the sake of discovering what is fair and just? Maybe both.

I hope members will aspire to share the narratives that make up your working lives, as well as your passions and interests. Sharing leads us all to being better informed, inspired to do something and more connected as a legal community. I will start by sharing some favorite quotes about writing for inspiration.

"If a story is not about a hearer, he will not listen. And here I make a rule—a great and interesting story is about everyone or it will not last." – John Steinbeck

"Either write something worth reading or do something worth writing." – Benjamin Franklin

"As a writer you should not judge, you should understand." – Earnest Hemingway

Please submit your narratives to Tara Jacobi at slosafire@icloud.com. ■

The Story Behind the Creation of an SLOCBA Endowment

In September 2020, Joe Benson, the San Luis Obispo County Bar Association's newly elected President, proposed the idea to create an endowment to the Association's Board of Directors. The purpose of the endowment would be to provide educational scholarships to persons of color from San Luis Obispo County who have a demonstrated interest in pursuing a career in the legal profession. The proposal was unanimously approved by the board.

The endowment and scholarship awards, which are administered by The Community Foundation San Luis Obispo County, exist to help broaden the number of traditionally underrepresented groups in the legal profession. In addition to the scholarship award, the board will assist by providing networking opportunities to the recipients in order for them to obtain internships and mentoring from members of the SLOCBA.

"I believe that one element to solving the social justice issues our country faces is material investment by the community to provide access to education and job opportunities for people of color," Benson said. "The legal profession is uniquely positioned because we advise, educate and guide decision-makers. As such, our profession, and each of us individually, will only be made better by increasing the diversity among our membership. According to a 2019 California State Bar Study, only 23 percent of licensed attorneys identify as a person of color. I believe we can do better."

Scholarship Eligibility Criteria

1. Applicant identifies as a person of color;
2. Applicant is a graduating senior from any high school in San Luis Obispo County or an undergraduate student who graduated from a San Luis Obispo County high school;
3. Applicant has demonstrated an interest in pursuing a career in the legal profession (e.g. lawyer, paralegal, clerk, legal assistant, certified court translator, law enforcement, etc.)
4. Applicant is planning to attend, or is currently attending, a four-year university or community college; and
5. Applicant has demonstrated a financial need.

Awards

The minimum scholarship award amount is $2,000 and will increase as the endowment grows. The scholarship recipient(s) will also be invited as an honored guest to a SLOCBA event to network with the local legal community.

Donation Levels

The Board of Directors for the San Luis Obispo County Bar Association is soliciting tax-deductible donations for the endowment to provide education scholarships to persons of color who have a demonstrated inerest in the legal profession.

A sliding scale of annual attribution will be provided on the SLOCBA website and in each issue of the *Bar Bulletin*. Limited scholarship naming rights opportunities also are available.

• Founders Circle	$10,000
• Officer of the Court	$ 5,000
• Advocte	$ 1,000
• Barrister	$ 500
• Solicitor	$ 100
• Jurist	$ 50

For More Information

Scholarship eligibility criteria and donation details are posted on our website, www.slobar.org. For more information, please contact Executive Director Nicole Johnson at slobar@slobar.org. ■

The San Luis Obispo County Bar Association Endowment to Assist Persons of Color in Pursuit of a Career in the Legal Profession

Endowment Donors, as of December 22, 2020 — 34 gifts totaling $31,485

Founders Circle — $10,000

mindbody

Officer of the Court — $5,000

ANDRE, MORRIS & BUTTERY
A Professional Law Corporation
Taking Care of Business for 70 Years.

The McIvor–Hall Family

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CARMEL & NACCASHA LLP ATTORNEYS at LAW

Jennifer Alton
Joe Benson & Erin DeNatale
Douglas Federman
Rita Federman

MONTEREY COLLEGE OF LAW

Barrister — to $500

Michelle Gearhart
Joshua M. George
Matthew Guerrero
David & Sharon Juhnke

Solicitor — to $100

Baltodano & Baltodano LLP
Stephanie Barclay
George, Cyr & Christakos, Inc.
Jacqueline Vitti Frederick
William Herreras
Douglas Heumann
& Eveline Blanchett
Lisa A. Hogarty
The McIvor–Hall Family
Jed Nicholson
Gayle Peron
Michael R. Pick Jr.
Danielle Plevel
Clay A. Schroeder
Kara Stein-Conaway
Sheryl M. Wolcott
Alicia Valdez Wright

Jurist — to $50

Jan Howell & Steven Marx
Ken Jorgensen
Teri Sherman
Katie Zwarg

Bar Association Congratulates Two Standouts

by Raymond Allen

Patricia Ashbaugh Honored With the Seitz Award

At its Zoom holiday meeting, held December 3, 2020, the San Luis Obispo County Bar Association presented the John L. Seitz Community Service Award to Patricia Ashbaugh. The Seitz Award recognizes those lawyers whose community contributions exemplify the best attributes of the legal profession.

The award, which has been annually presented since 1989, is generously funded by the Seitz family, and is named for John L. Seitz, a longtime San Luis Obispo County Attorney.

Ashbaugh has practiced law in San Luis Obispo since 1977. She was the primary public defender for the county since 1980. Her community service began as soon as she arrived in the county. In 1979, she co-founded the Women's Network. This organization was meant to fill the need caused by the discriminatory practices of male-only businesses and service clubs. In 1981, she co-founded the Woman Lawyers Association.

She has served on the Board of Directors of the San Luis Obispo Symphony Association. She has mentored hundreds of students as a former San Luis Obispo Mock Trial team attorney coach. She currently volunteers at the Performing Arts Center and Transitions Mental Health Association.

Recently, the awards have started to catch up with her achievements. In 2016, the WLA named her the Outstanding Woman Lawyer. Earlier this year, Ashbaugh receiveded the Community and Public Service Award from The Community Foundation San Luis Obispo County. Now she adds the prestigious Seitz Award to her mantle.

Photo courtesy of Peter Stein

Photo courtesy of www.rhamesphotography.com

Kara Stein-Conaway Garners the Pentangelo Award

The Pentangelo Award, named in honor of Frank T. Pentangelo who was a longtime contributor to the *Bar Bulletin*, recognizes creative contributions to the *Bar Bulletin.* Kara Stein-Conaway, who practices criminal defense at her eponymous firm, won the 16th annual award.

This year, numerous worthy writers were in contention. Jan Marx wrote several articles on the achievements of women in the legal profession and an opinion piece in favor of Affirmative Action. Scott Taylor wrote a humorous piece relating how infected pigs almost caused an international incident and an incredibly poignant article about police violence. Stephen Hamilton wrote about the American Academy of Matrimonial Lawyers and contributed to an article on the new Paraprofessional career that will soon be available.

Stein-Conaway, however, was committed to sharing a voice not often heard in a professional journal. She opened up about her feelings of inadequacy as she juggled the demands of career, family and motherhood. She wrote heartbreakingly about the loss of her grandfather. She provided tips on spiritual and emotional growth, and she admitted that sometimes we must breakdown to rebuild to a better place.

Congratulations to both Patricia Ashbaugh and Kara Stein-Conaway. ■

What Roles Do Lawyers Play in Elections?

by Stewart Jenkins

Photos courtesy of Chris Borgard

Two lawyers (Jefferson and Adams) wrote the Declaration of Independence. A lawyer, James Madison, largely wrote the U.S. Constitution and the Bill of Rights. Another lawyer, Abe Lincoln, wrote the Emancipation Proclamation. The 14th and 15th Amendments to the Constitution guaranteeing civil and voting rights were written and pushed through by an Ohio lawyer, John Bingham. In our democratic-republic, it should not be surprising that lawyers have important roles to play in elections. Lawyers play their role with prudence and integrity, usually.

2020: The Worst of Times & Best of Times for Election Lawyers

Vote early! Vote often! Richard Henry Dana may have been the first to write down this classic electioneering expression.[1,2] There is little question that organized efforts to stuff ballot boxes—or vote in the name of folks buried in graveyards—were practices of corrupt political organizations in localities like New York City well into the late 1970s. Strategies to suppress voting by Blacks, Hispanics and immigrants have continued to the present (not only in the South).

In 2020, Donald Trump, who reached voting age in 1968, still seemed to view elections as won with graveyard votes and stuffed ballot boxes. His attorney, Rudy Giuliani, first voted in 1966. Both seemed to ignore decades of progress in every state building multi-layered controls preventing vote fraud.

Trump's apparent belief that elections are corrupt was verified when he urged supporters to vote by mail and then go vote in person. Legal actions were brought by Trump and Giuliani calling votes into question. But, with the alacrity of a SWAT team, lawyers defending the integrity of election officials,' voter rights, and ballot processing in multiple states and counties have secured dismissals.

Long before Election Day, however, vigilance and action to challenge voter suppression must be mounted. In 2020, legislative and local registrars' actions to limit—drop-off boxes, the number and location of polling places, requests for mail-in ballots, eligibility to register as a voter, early voting days, hours of voting—and actions adding ID requirements to register as a voter, continued to suppress voting by Black, Hispanic, immigrant, young and poor voters.

Challenging those suppression efforts in courts generated mixed results. But, regardless of outcome, each legal challenge generating media and press attention focused on how "the-powers-that-be" were trying to keep "the powerless" from having their say in the election.

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The November 3, 2020, national election in the midst of the COVID-19 pandemic brought about changes in the voting process, including physically distanced voting booths and the option for all Californians to mail in ballots.

Lawyers' Roles in Elections
continued

A little younger than Trump, in 1971 I had the privilege of being appointed one of the first deputy registrars of voters in San Luis Obispo County under the age of 21, after the voting age was reduced to 18—but only after turning to the press and Secretary of State Jerry Brown when our County Clerk denied me. Young men were registered with the Draft Board in high school, but a practical barrier to voting in those days was thrown up by the requirement that a registrar had to be found ***to interview and swear-in*** each citizen before he/she could qualify to vote.

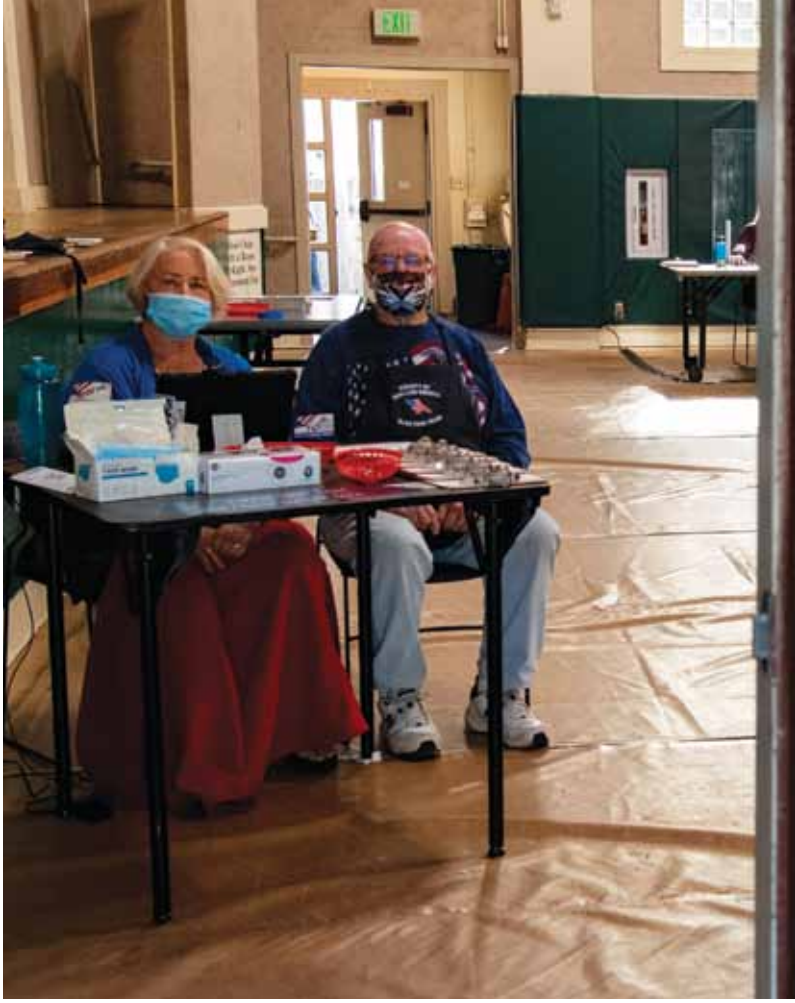
As deputy registrar, I travelled to the poorest towns, with the most rural and most overlooked residents in San Luis Obispo County. I soon learned that everyone, whether a rancher, cow hand, motorcycle gang member, convenience store clerk or farm worker, wants a say in who leads their country, state, county and town. And seeing officials put roadblocks in their way makes them that much more determined to vote, even if they must stand in long lines or drive miles to cast their ballot. By organizing to register and turn out voters, a small, committed band of us were able to markedly shift politics in San Luis Obispo County in 1972 and 1974, culminating in the election of Leon Panetta in 1976.

In 2020, roadblocks to voting thrown up by Michigan, Wisconsin, Pennsylvania and Georgia legislatures trying to suppress Black, Hispanic, immigrant and young voters, backfired. Lawyers like Stacey Abrams didn't just litigate, they organized, advised, recruited quality candidates and turned out folks who had long wanted their say. And the results showed up in each of those states.

Election Law: More Than Presenting a Case

Election law is about the promotion, conduct and defense of your democracy. Going to court is only a small part of that happy duty. Much of it is practical. Understanding the history and process is as important as reading the statutes, which change each year. There is a shortsighted tendency for each new batch of elected officials to change the written rules to make it easier for their faction to win, or harder for their opposition to prevail.

Elections are run on a county-by-county basis. Real election litigation is rarely a state affair.



More than 88 percent of San Luis Obispo County's 184,050 were by mail—both records. Above, election worker volunteers

Understanding how the election has been or will be conducted in your county is important for helping a candidate win the election—and that understanding is ***the*** key to litigating in a close race where an accurate count of legitimate votes[3] requires adjudication.

That understanding can be more important for the lawyer than the bare text of the Election Code, the Government Code or the California Constitution. It allows advice to candidates and their volunteers that can help them focus their efforts, help them avoid mistakes, and help them gather information and evidence useful if litigation is needed. In a close election, where litigation over the legitimacy of a few ballots may make a difference in the outcome, that understanding is critical. Lawyers who may face a vote counting challenge in a close election must follow one rule: keep your calendar clear the several weeks after the election and get to bed early election night. Speed and thorough attention are critical.

Understanding of local election practice is easy to acquire. County registrars must recruit a huge

registered voters cast ballots, and nearly 95 percent of those wait to assist voters at San Luis Obispo's Ludwick Center.

number of volunteers in polling places and counting center(s) every election cycle as precinct inspectors, precinct clerks and ballot-counting clerks. These jobs come with training and materials distilling the statutes, the Secretary of State's regulations, and the local practices into digestible useful knowledge. Over decades I have served as a polling place inspector or in the Clerk's office helping to count votes. I've also served campaigns in poll watching, turn-out efforts, or served as an observer watching the counting of the votes to assure accuracy. It is fun. You work with folks of all political persuasions and incorporate local knowledge about implementation of the law of elections on the ground.

All Politics Is Local, and So Is All Voter Fraud

Trump claimed he lost because of millions of fraudulent votes. The processes, double custody, intentional partisan balance at polling place of workers and of counting clerks forecloses it.

I have seen instances of real local voter fraud, but never aimed at influencing national elections. Concrete local financial advantage is the typical motivation. It is more likely to be committed by candidates and office holders who falsify where they live. I first saw this in 1980. I was reelected to the Port San Luis Harbor Commission, while one John Carter was elected to a second vacant commission seat. Carter was vice-president of his family's Kern County oil field construction company. It soon became apparent he had run for commissioner to give away Port San Luis to offshore oil companies for a crew base. I uncovered evidence that Carter had falsified his residence, registering to vote at a vacant lot in Avila Valley, while actually living many miles outside the district. Following prosecution by a principled young prosecutor, Teresa Estrada-Mullaney, Carter was convicted.

In 2020, rumors swirled that some candidates for offices in the City of San Luis Obispo didn't actually reside in San Luis Obispo. Time will tell.

Vote fraud is rare, but not non-existent. As a polling place inspector, I have seen and stopped a few individuals who brought in and tried to vote a blank absentee ballot sent to someone else. I have also seen close elections, particularly in beach towns, where dozens of vote-by-mail ballots were held from counting with the envelopes missing signatures or with signatures that did not match the voter's signature.

The Clerk has a statutory obligation to provide lists of these two different kinds of ballots held for further verification, correction or rejection. Advising a candidate and their supporters how to appropriately identify and help voters correct or verify their mailed in ballot envelopes can make the difference between a loss or victory.

In November 2018, in one small beach town, a survey I commissioned of the addresses where more than 120 such mail-in ballots had been returned to the County Clerk in "signature defective" envelopes produced a surprise. The almost uniform response of folks actually living where the purported "voters" were registered was that the individuals had never lived there. Ultimately, none of those signature-defective ballots ended up being cured or counted, but it did reveal a significant defect in the voting rolls for that city.

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Lawyers' Roles in Elections continued

In June 2018, I had the honor of representing[4] a local candidate for the board of supervisors in a close race, which at one point in the vote count had a margin in favor of our client of only 35 votes.

Elections Code Section 3019 had a disparate rule for how a registrar would reject or count ballots returned in envelopes bearing no signature or a signature not matching that of the voter. A voter who forgot to sign was to receive a written notice and have eight days after the election to cure their lack of signature. Under the statute, a "mismatched signature" simply had to be rejected.

The local registrar indicated he would cut off cure for ballots returned with no signature eight days after the election, but he would send out notice and continue to permit ballots returned with mismatching signatures to be cured until right before the end of counting (a three- to four-week process). Swift action to bring a writ of mandate to have the registrar treat both types of "signature-defective" returned ballot envelopes the same (equal protection) was brought.

Early and frequent advice for the campaign volunteers on how to swiftly help voters cure their signature defective ballot envelopes was given. And the litigation generated significant media coverage, educating voters about their right and time to cure defective ballot envelopes. All of this generated a much higher number of voters curing their defective signatures and getting them counted.

Three things happened. The Legislature amended Section 3019, extending the time to cure mismatched signatures. Our writ was denied just as it was apparent our client had won the election. This left us with a potential appeal to extend the time to cure for voters who forgot to sign, but a better legal remedy was available. The Legislature ultimately amended Section 3019 *again* to provide identical notice to cure and identical times within which to cure for both classes of returned "signature-defective" ballot envelopes.

Don't miss out on your lawyer's role in coming elections. Many satisfying opportunities to help voters and candidates participate in their government exist right here in your legal back yard, including through direct initiative, referendum and proposition, which are not addressed in this article. ■

Footnotes

[1] https://www.independent.com/2020/09/24/santa-barbara-election-czar-joe-hollands-mantra-vote-early/

[2] Richard Henry Dana was the fourth cousin of William Goodwin Dana, whose marriage in Mexico's California had brought him to manage the Rancho Nipomo before the Mexican American War.

[3] Every legitimate vote should be counted; illegitimate votes should not be counted. The mail-in ballot sent to a mother who fled her physically abusive husband is illegitimate when the abuser fills it out, forges her name on the envelope and drops it at the polling station with his own ballot.

[4] With a team of other experienced election lawyers.

Photo courtesy Stew Jenkins' website

Stewart Jenkins brings more than 35 years of experience to his practice in estate planning, real estate law and constitutional/government law.

Contact him at 1336 Morro Street, San Luis Obispo, CA 93401; (805) 541-5763 or info@stewjenkins.com. Website: www.stewjenkins.com.

Sample Jenkins' Election Law Cases:

- *Wilson v. San Luis Obispo County Democratic Central Committee (2009) 1975 CA4th 489*
- *Wilson v. San Luis Obispo County Democratic Central Committee (2011) 192 CA4th 918*
- *Barta v. Bowen, Superior Court, SLO, Case CV 11-0065*
- *Compton v. Gong, Superior Court, SLO, Case 18CV-0358*

Editor's Note: The opinions in this article do not necessarily reflect the opinions of the San Luis Obispo County Bar Association, its Board of Directors, or the editor or staff of the Bar Bulletin. *Opposing thoughts regarding opinions in this or any article are welcome.*

Q & A Criminal Justice Reforms Enacted in California, Part 1

by Tara Jacobi and Chief Deputy DA Lisa Muscari

Photo courtesy of Chris Borgard

While much of the nation pleads for criminal justice reform, California has enacted legislation to address certain issues. This two-part article, speaking with a prosecutor and a criminal defense attorney, gives readers insight into what is happening in their worlds. We begin with the perspective of Chief Deputy DA Lisa Muscari. In our next issue, we'll present the perspective of the defense bar.

AB 2542 California Racial Justice Act

What are some of the practical implications of AB 2542?

The law purports to eliminate discrimination in the criminal justice system but at the same time potentially discriminates against victims and witnesses. The nine-page, single-spaced, eight-point law was passed by the Legislature with very little discussion, debate or analysis.

What are the benefits of AB 2542?

It's a panacea that this bill will eliminate discrimination in the criminal justice system.

What are some problematic implications, if any, of AB 2542?

This law largely ignores the race, ethnicity or national origin of the *victims or witnesses* to the crimes, deprives all members of society of justice, notwithstanding indisputable and overwhelming evidence of an offender's guilt, and could apply to upend any future conviction in California despite a lack of any showing the state actually sought or obtained a conviction based on race, ethnicity or national origin.

There are five major problems with this bill:

First, the bill is unfair and unjust because it would require vacating a conviction, no matter how serious the crime, without any showing that the *alleged bias* had any impact whatsoever on the outcome of the trial, or that the defendant was deprived of a fair trial.

For example, under this bill, if in a murder case an officer exhibited a racial bias against the defendant, the case would have to be reversed, regardless of whether 50 people saw the defendant commit the murder, the jury was aware of the bias, the officer did not testify, and the person murdered belonged to the same racial group as the defendant.

The lack of a requirement of *showing of prejudice* will undoubtedly generate a challenge that it is violative of article VI, section 13 of the California Constitution. The bill is riddled with so many inadequately defined and legally unprecedented terms that there is no chance that courts will be able to figure out consistent standards for determining whether a violation occurred.

For example, the bill would prevent or overturn a conviction if "[t]he defendant was charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who commit similar offenses and the evidence establishes that the prosecution more frequently sought or obtained convictions for more serious offenses against people who share the defendant's race, ethnicity, or national origin in the county where the convictions were sought or obtained."

"More serious" or "similar" are undefined. The bill does not state how to calculate the alleged disparity between groups. Is it data showing dis-proportion going back five years, 10 years or more? This presupposes that there even is any data showing disproportionate treatment. What are the parameters? The bill gives no guidance.

The phrase more "frequently sought, obtained or imposed" is vaguely defined as meaning statistical evidence or aggregate data that demonstrates a "significant difference" between the comparative groups. What is the percentage for "significant difference?" The statute leaves it entirely up to the individual judge to decide without any guidance. This will lead to inconsistency in how this is interpreted and carried out by each individual judge.

Second, the law imposes heavy costs on local counties without any reimbursement to identify, locate, review and redact potentially thousands of files, just to provide relevant discovery.

Third, the wrong version of AB 2542 was

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passed. To avoid a conflict with AB 3070, AB 2542 was written in a way so that the provision, which allowed a violation of section 745(a) based on race, ethnicity or national origin being a factor in peremptory challenges, *would only* become operative *if* AB 3070 was enacted and become "effective on or before January 1, 2021." It won't, because AB 3070 now does not go into effect until January 1, 2022. And the provision of AB 2542 that was not intended to go into effect if AB 3070 passed (passed, but delayed) will now go into effect. Moreover, because of its broad and ambiguous language, this provision will be very difficult to interpret and reconcile with the provisions of AB 3070 that go into effect in 2022.

In other words, one of the primary reasons for delaying implementation of AB 3070 (e.g., to allow training to occur on the new guidelines) will be undermined since (i) even if it was possible to figure out how to apply the new standard imposed by AB 2542 regarding jury selection, there will be insufficient time to train on it, and (ii) the standard will only be in effect for a year so that a whole new set of trainings will have to occur again in 2021 to prepare for the new standard under AB 3070.

For example, AB 2542 makes it a violation for "[r]ace, ethnicity or national origin [to be] a factor in the exercise of peremptory challenges" without *explaining* what it means for membership in one of those groups to have been a factor. If a juror is challenged because the juror provides answers indicating the juror could not be fair due to the racial or ethnic background of the defendant, a victim or a witness, will "race or ethnicity" be deemed to be a "factor" in the exercise of the challenge? The law is silent on this.

Fourth, the law could easily result in unintended consequences. For example if, hypothetically, a defendant was Hispanic and the data showed that Hispanic defendants who committed sexual assault disproportionately received more severe sentences than all other groups for this offense, but the data also showed that Hispanic defendants received more severe sentences than any other group when the victims of the sexual assault were Hispanic victims, a Hispanic defendant would be entitled to a lesser sentence because his victim was Hispanic. (And the same would potentially hold true for a defendant in any group when the victim is of the same group as the defendant.)

Fifth, the law is not even-handed. It purports to make it a *violation* for a prosecutor to use race, ethnicity or national origin as a factor in exercising peremptory challenges—**even if no purposeful discrimination occurred**. But the law gives carte blanche to defense attorneys to engage in this conduct without being a violation.

Additional thoughts on AB 2542?
None.

AB 3070 Juries: Preemptory Challenges

What are the practical implications of AB 3070?

This legislation has been delayed and will not go into effect until January 1, 2022.

What are the pros and cons in changes regarding jury selection that AB 3070 might bring about?

Peremptory challenges shall never be used to improperly exclude potential jurors based on

Criminal justice protestors gather at San Luis Obispo's County charges be dropped against Tianna Arata, who organized a

their race, ethnicity, gender, gender identity, sexual orientation, national origin or religious affliction. Nothing is more fundamental to our system of justice. This law is nothing less than an upheaval of the California jury selection process. While this law will not go into effect until January 1, 2022, even before the delay, Chief Justice Tani Cantil-Sakauye created a working group that will consider whether modifications or additional measures are warranted to address impermissible discrimination against cognizable groups in jury selection.

One problem with the law is this: If a potential juror expresses a distrust of or has had a negative experience with law enforcement, that is *presumptively* an invalid reason for a prosecutor to exercise a peremptory challenge. However, the same rule does not apply to the defense if a potential juror trusts and respects law enforcement or has had generally positive experiences with police.

The second problem is that the standard used is "substantial likelihood," which would allow for a finding of an improper peremptory challenge even when a judge determines it is more likely than not that there was no discrimination.

Third, the law infers ill intent without any basis. The law does *not* require purposeful discrimination and punishes purported *unconscious thought*. It *presumes* implicit, institutional and unconscious bias has impacted the jury selection process without any evidence that a particular prosecutor possesses any bias, subconscious or otherwise.

Fourth, the law mandates evidentiary presumptions without any support or evidence. Instead of requiring some showing that a reason given for exercising a peremptory challenge is invalid or a pretext for bias, the law *automatically presumes* that a litany of seemingly valid reasons are presumed to be invalid. These commonsense reasons include expressing a distrust of law enforcement, having a close relationship with a criminal, being inattentive, and providing unintelligible answers. This presumption runs contrary to existing California court precedent, where it is presumed that a peremptory challenge is proper unless otherwise shown.

Fifth, the law runs counter to longstanding Supreme Court precedent. It allows for untimely objections, meaning objections made well after a jury has been selected and jeopardy has attached. Our Supreme Court has long held that, "to be timely, a *Batson/Wheeler* objection must be made *before* the jury is sworn."

Sixth, the law will have unintended consequences. It could hinder the prosecution in cases where persons of color have been victimized by presumptively invalidating challenges to jurors who may distrust key witnesses (e.g., police officers).

Seventh, the law may be unconstitutional. The motivation for creating a list of challenges that is intentionally and clearly tailored to make it difficult for the prosecution, but not the defense, to excuse jurors in all but a few cases may be pure. However, it skews challenges in a way that destroys the balance needed for a fair trial as required by due process, and thus it is likely to be challenged on grounds it violates section 29 of Article I of the California Constitution, due process.

Courthouse Annex to urge five felony and three misdemeanor protest on July 21, 2020.

Additional thoughts on AB 3070?

Justice will not be served if jurors are selected who have expressed an unwillingness to perform their most basic task, e.g., to fairly assess the

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evidence, and attorneys have been discouraged from exercising challenges for legitimate reasons because of the presumption of discriminatory use.

AB 1950: Probation: Length of Terms

What are the practical implications of AB 1950?

This law would drastically shorten the probation period in all criminal cases, including when an offender is convicted of a serious or violent felony, which would in turn hurt crime victims and reduce opportunities for the rehabilitation of offenders.

What are the potential benefits and/or detriments, if any, to AB 1950?

Current law gives judges the discretion to decide the appropriate length of a probation period based on factors such as the seriousness of the offense, the offender's criminal history, how much restitution the offender owes the crime victim, and what type of rehabilitative programming the court orders under existing law. If a judge believes that only two years of probation is appropriate, the judge can order that length of probation. Current law also permits judges to terminate probation early.

Pursuant to existing Penal Code Section 1203.3, a probationer who completes court-ordered programming and pays restitution to a crime victim can always ask the court to terminate probation early. Judges routinely grant these types of termination motions. Limiting probation to two years in all felony criminal cases is simply unnecessary when the courts already have the power to choose an initial period of probation that is appropriate for a particular case and to terminate probation early if an offender completes all probation conditions early.

This cap on one-year probation for misdemeanors, doesn't apply to any offense that includes specific probation lengths within its provisions. For example, under PC 1203.097, terms of probation are already set for domestic violence, child endangerment under PC 273a, PC 166(c), VC 23152/3, PC 502 and others. The two-year limit on probation for felonies does not apply to violent felonies (PC 667.5(c)) nor to an offense that includes specific probation lengths within its provisions nor to grand theft under PC 487(b)(3), embezzlement under PC 503, and PC 532a, false financial statements if the amount is greater than $25,000.

Additional thoughts on AB 1950?

None.

AB 3234: Public Safety

What are the practical implications of AB 3234?

Penal Code sections 1001.95–1001.97, will be added, creating a "Court-Initiated Misdemeanor Diversion" program in which the court in its discretion, and over the objection of the prosecutor, would be empowered to grant diversion on almost all misdemeanors (including violations of 23152 VC and misdemeanor violations of 23153 VC… DUI and misdemeanor DUI with injury). This law allows almost any misdemeanor defendant to apply for diversion.

This bill also addressed Elder parole and changes the current law. Currently, the law authorizes a review of the parole suitability of inmates who are 60 years of age or older and who have served a minimum of 25 years of continuous incarceration, and it lowers the age to 50 as "elderly" to be available to an inmate who had served 20 years of continuous incarceration.

What are the potential benefits and/or detriments, if any, to SB 3234?

This law allows a court to grant diversion for misdemeanor offenses, including DUIs, elder abuse and firearms offenses.

These grants of diversion are subject to almost no restrictions or qualifying criteria, and the period of diversion prior to dismissal is limited to a maximum of 24 months. No minimum period is specified. Further, there is no limitation placed on the number of times that diversion pursuant to this section may be granted to a particular defendant, nor are any guidelines set forth or limitations imposed on how an individual court chooses to exercise its discretion in granting diversion pursuant to this section. There is, however, an exclusion of a small number of misdemeanor offenses (e.g., registerable sex offenses, violations of domestic violence statutes PC 273.5, PC 243(e), and stalking PC 646.9, etc.) from eligibility.

Specifically with DUIs, this broad-ranging authority of courts to grant diversion without limitation on DUI offenses potentially has a very serious impact on the ability of the criminal justice system to deal with chronic and repeat DUI offenders. AB 3234 places no limitations whatsoever on

the eligibility of repeat DUI offenders for diversion. There is the real threat that a defendant may avoid being identified as a high-risk, chronic, impaired driver who poses an extreme danger to public safety. Current requirements after conviction include participation in education and sobriety programs and installing ignition interlocks, etc., which could easily be circumvented in the diversion program, further jeopardizing roadway safety.

Additional thoughts on SB 3234?

As noted, a subsequent DUI would not be able to be charged as a repeat offense since the first DUI would have been deemed never to have occurred after completion of diversion. This new law allows this diversion windfall to be offered to repeat offenders, which means that new offenses, including felonies, will no longer be able to allege the priors because they did not result in a conviction, but were diverted. This removes the important sanction for recidivist DUIs and puts more lives at risk on our highways by significantly reducing the sentence exposure for a would-be recidivist.

The law has a significant negative fiscal impact on California. This new law directly conflicts with federal highway funding programs, "potentially subjecting the state and California taxpayers to the loss of untold millions of dollars in highway funding that is critically necessary to maintain and expand our roadway infrastructure," said Vern Pierson, President of the California District Attorneys' Association.

"AB 3234 makes sweeping changes to public safety policy and could cost California untold millions in transportation funds, yet this bill was not granted a hearing in either the Assembly or Senate Public Safety Committees, nor in any Appropriations Committee. The circumvention of procedural due process was breathtaking, as are the provisions of the bill," Pierson added.

Additional CA Criminal Legislation

Discuss practical implications.

SB 1220, a police reform measure, would have mandated *Brady* notification (exculpatory information) from law enforcement agencies to prosecutors so that prosecutors are able to meet their Constitutional and ethical discovery obligations and to provide greater transparency in our criminal justice system. The Governor refused to sign the bill and instead vetoed it. The bill was approved by both the Senate and Assembly Public Safety Committees; there was only one No vote (Melendez) cast against the bill when it was considered by both houses. It had nearly unanimous bipartisan support from the entire legislature.

While the overwhelming majority of peace officers' personnel files do not have *Brady* material, a percentage does. SB 1220 would have made it possible for prosecutors to discover and disclose exculpatory evidence such as sustained disciplinary findings, bias or dishonesty. In recent years, the California Supreme Court has lauded and upheld the voluntary law enforcement practice of notifying prosecutors when an officer's file may contain *Brady* material. [*Association for Los Angeles Deputy Sheriffs v. Superior Court* (2019) 8 Cal.5th 28, 53-55; *People v. Superior Court (Johnson)* (2015) 61 Cal.4th 696, 713-714.]

The high court made clear, however, that no statute requires law enforcement agencies to make such notifications. Because no law compels it, some of California's largest agencies do not provide Brady notifications to prosecutors. Without this information, the defense is unable to confront law enforcement witnesses with prior misdeeds that may impact the witnesses' credibility. SB 1220 solves this problem by requiring law enforcement agencies to notify prosecutors when a peace officer has potential Brady material in his or her personnel file.

Discuss potential benefits and/or detriments.

The implementation of SB 1220 would have helped to ensure that law enforcement agencies comply with Constitutional requirements to disclose potentially exculpatory information contained in an agency file that the prosecutor is not aware of. This will afford both prosecution and defense an opportunity to more accurately evaluate the credibility of witnesses and make better decisions about whether to charge a case, resolve a case or proceed to trial. Once a judge decides to allow the information to be admitted as evidence, jurors would have been able to more fully evaluate the witness' credibility.

There are no detriments of this bill passing other than law enforcement having to review files and to provide the *Brady* material to prosecutors. ■

Doing Good Matters...

Stand Strong

by Helen Garrison

"Are you guys seeing a lot more cases since COVID?" As the Managing Attorney of the Legal Assistance Program at Stand Strong, an agency that assists survivors of domestic violence, sexual assault and stalking, I am asked that question frequently. The question especially arises in the context of domestic violence, where news stories claim that domestic violence is on the rise in this era of restrictions, economic impacts and fears related to COVID-19. And I always have to answer with, "It's complicated."

In early March, when fears of the pandemic began to hit our shores, news reports[1] abounded about increases in domestic violence globally. Agencies in China reported a dramatic increase in calls for help and anecdotally related stories of victims being trapped in homes with their abusers, with law enforcement stretched too thin to assist them.

Similarly, news stories from France, Italy and Spain related increases in intimate partner violence, as peoples' freedom of movement was restricted. The stories grimly described dire situations in which shelters had to close because of COVID-based fears, with governments and local agencies having to stretch to find ways to shelter victims wanting to leave their abusive situations.

Having heard and read these stories, we expected that similar increases in demands for help would occur here in San Luis Obispo County. Stand Strong Legal rushed to put remote work capabilities in place and to ensure that the ability to serve clients remotely would occur using telephone consults, secure online connections, and intake documents completed online uploaded into the cloud.

Some local attorneys even offered to take on TRO cases when we were unable to assist all of our clients. We clung to these protocols for support and braced for impact. But the impact we expected never came.

Rather than seeing an increase in requests for restraining orders and other legal services, our office saw a dramatic decrease in those requests. Of course, we were very busy in other directions. Phone calls to the legal line increased during the first weeks of COVID, but the questions were different. People wondered about their custody orders and how they should be followed in light of the pandemic. When professionally supervised visitation was ordered, most professional supervisors were unable to provide services, as they were not considered essential. This left parents with no way to see their children. The courts issued guidelines to assist parents and attorneys, and our office was able to provide that information to callers.

Several callers were concerned about their child support orders, since many of them were laid off and unable to work. Callers had to leave work to care for children at home. Initially, the local courts were open only for emergency services (like issuing temporary restraining orders).

Thankfully, the amazing staff in the San Luis Obispo County courts kept our courts open to provide these important services, while many counties closed their doors completely. We encouraged people to try to work out the visitation and support issues without court intervention. We tried to help them brainstorm other ways to ensure visitation could occur, even utilizing Zoom "visits." But "working things out," when one party has historically abused another, is often difficult, if not impossible.

Because of the policies related to releasing inmates and prisoners, we received calls from people who were concerned that a person who committed a violent crime against them would be released early. Many of these callers were not domestic violence victims, but were victims of other crimes like stranger assaults. We referred them to places where they could get assistance.

But the calls for domestic violence-related services did not come in. This reduced number of victims seeking services was seen agencywide in both Stand Strong and RISE, the two domestic violence service providers in our county, as calls to the crisis lines dramatically decreased at the onset of business closures and stay-at-home orders.

This left us puzzled and perplexed. Why were the victims not calling? Was DV decreasing, or was there a deeper, more nefarious reason? The lack of calls for help may have resulted from difficulties in accessing services. With many victims having to shelter at home with their abusers, the decreased lack of privacy led to fewer opportunities to access our office via telephone calls or online requests. Victims were no longer able to go to work or school or other safe spaces to contact help.

The increased restrictions placed upon people by the government also increased the abusers' abilities to control and restrict their partners' movements. Doctors were no longer seeing patients for non-urgent care, leaving victims without access to another source of reporting. Children were no longer seeing teachers and childcare workers, meaning that observations regarding domestic violence at home could not occur. Yet another avenue of reporting was lost to families. The switch from in-person to telehealth medical and mental health appointments meant that abusers could monitor these appointments, leaving victims unable to address their abuse with providers.

COVID-19 presented victims with additional barriers to obtaining services. The economic uncertainty left many victims jobless and afraid of becoming homeless if they were to leave. Also, entering shelters in the midst of fears of contracting the virus could have led victims to avoid leaving.

As businesses began to open, our legal office saw a gradual increase in the number of people seeking assistance with domestic violence legal issues. We noticed, however, a difference in these calls. Victims who reached out for restraining orders were less likely to follow through. In addition, the stories our potential clients told us revealed more dangerous and serious incidents of abuse than before COVID-19. Our agency as a whole saw shifts in requests for assistance as well.

Requests for counseling services rose significantly. (Stand Strong and RISE report a 100 to 200 percent increase in requests for counseling services during this pandemic). During summer 2020, calls to the crisis line increased significantly over calls during the last summer. With relaxed COVID restrictions and a return to the ability to leave the home and access methods of seeking assistance, victims were able to reach out to us for help. However, even with the increase in clients seeking counseling and crisis services, our legal department still saw much lower numbers of people seeking restraining orders or following through with separation from their abusers.

The decrease in requests for services certainly does not reflect the need for those services in our community. While requests for assistance from our office decreased, incidents of domestic violence significantly increased locally and nationwide. The San Luis Obispo County Sheriff's office experienced significant increases in domestic violence cases in March through October of 2020 over the same months in 2019. (The 2020 months of June and September, however, had slightly lower numbers than 2019).

Recently, the United States Attorney's Office for the Central District of California issued a press release[2] announcing a joint effort by three U.S. Attorneys in California and the District Attorneys' Offices from four California counties to launch an online outreach campaign to help victims of domestic violence during the COVID-19 pandemic. The outreach campaign was created to combat the "alarming rise in domestic violence with victims trapped at home with their abusers under increasing stress."

In support of this outreach, and to raise awareness, an article in the *San Jose Mercury News*[3] described a late-October virtual news conference wherein federal and state prosecutors from cities all over the state came together to share news of domestic violence trends in their areas and what they're doing to stop it.

"We're all really concerned because of COVID," Sacramento District Attorney Anne Marie Schubert said on the call. "We know the numbers are creeping up, we know that (domestic violence) is grossly underreported. In our county we realized quickly when this pandemic hit that we needed to do something more."

In addition to a surging increase in domestic violence, current research reflects another alarming trend—injuries by domestic violence abusers are more severe. In a recent study[4] published in a journal of the Radiological Society of North America, radiologists reported discovering deep injuries like broken ribs or repeated punches to the abdomen from domestic violence. These injuries are more severe than those usually seen by providers before COVID.

The study summarized, "During the COVID-19 pandemic,

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there was a higher rate of physical intimate partner violence (IPV) with more severe injuries on radiology images—despite fewer patients reporting IPV."

This trend toward more severe physical abuse is reflected anecdotally by staff at Stand Strong and RISE, who report hearing stories that are increasingly more serious and disturbing. We are seeing this trend in the legal office, where the number of clients seeking our services is smaller, but their cases tend to be more severe. The increase in violence and severe physical abuse is combined with lack of follow through. Many clients begin the process to separate and request a restraining order, only to withdraw their applications and cease to pursue separation.

As I write this article (in late November 2020), our county's incidents of COVID-19 are increasing. As of today we are in the purple tier. We face the possibility of a return to increased restrictions. As we approach a new season of increased restrictions, and the possibility of return to the most strict shut-downs, closures and stay-at-home orders, the avenues that were beginning to open for victims will once again close.

I sometimes lie awake at night, considering the tension and terror that a victim—isolated at home with their abuser, with little opportunity to reach for help—must experience. The increased restrictions should increase our vigilance in watching for signs of domestic violence and opening up new avenues for victims to ask for help.

Law enforcement officers and members of the San Luis Obispo County Intimate Partner Violence Coalition are working together to form a plan of outreach to victims in our counties. Medical officers can screen for signs of domestic violence even in telehealth situations. Social workers and school staff can check in on families to ensure everyone is safe. Neighbors and friends can check in on people they know have experienced domestic violence in the past. And all members of our community can help ensure this "pandemic within a pandemic" is met with education, intelligence and diligence. ■

Footnotes

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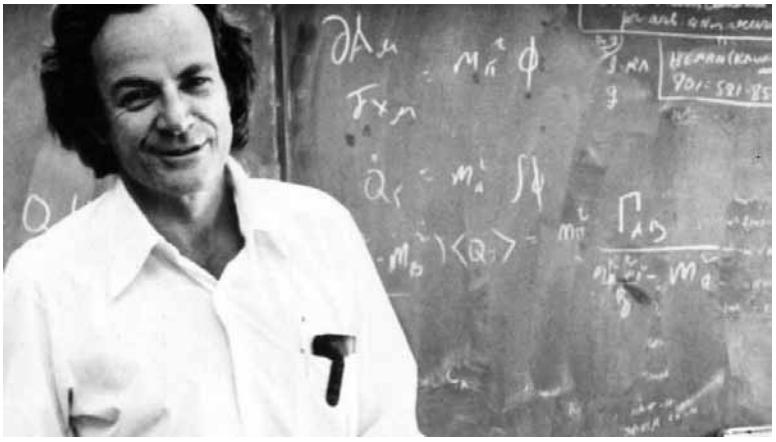

Fantasy Witnesses

Richard Feynman– Never Ask "Why?"

by Jeff Radding

Photos in the public domain

What trial counsel would not have wanted Richard Feynman as an expert witness? What attorney ever would have *welcomed* the prospect of cross-examining the late physicist? Richard Feynman was one of the smartest persons ever to walk planet Earth.

Growing up fully cognizant of Feynman's intellect, his sister Joan Feynman—a pioneering astrophysicist in her own right—described her strategy to subdue sibling rivalry. "Look," she told her brother, "I don't want us to compete, so let's divide up physics between us. I'll take auroras, and you take the rest of the universe." That's exactly what they did.

In a 1983 BBC interview, Feynman is asked a question he characterizes, ultimately, as "excellent."

Q: "If you get hold of two magnets and you push them, you can feel this pushing between them. Turn them around the other way and they slam together. Now, what is it, the feeling, between those two magnets?"

Mentally, I object: "*Your Honor, vague and ambiguous*." No need to, though, as Feynman interjects.

A: "What is the meaning when you say that there's a feeling? Of course you feel it. Now what do you want to know?"

Q: "What I want to know is what's going on between these two bits of magnets?"

A: "The magnets repel each other."

Dissatisfied with tautology and unable to foresee his fate, the questioner persists.

Q: "Well then, but what does that mean, or why are they doing that or how are they doing it? I must say that's a perfectly reasonable question?"

A: "Of course it's a reasonable question. *It's an excellent question*. Okay?"

But it is a "*why*" question. In his 1903 book, "*The Art of Cross-Examination*," New York attorney Francis Wellman drew upon decades of courtroom experience to illustrate vividly the dangers of cross-examining with "*why*." So sage was Wellman's guidance, more than a century later his book remains in print. (*Available, new, through Amazon, $5.90 paperback/$32.43 hardcover*.) But buckle your seatbelt, counsel, as Feynman explains the danger "*why*" presents on *direct*.

A: "But the problem that you're asking, you see when you ask why something happens, how does a person answer why something happens?

"For example, Aunt Minnie is in the hospital. Why? Because she slipped, she went out and she slipped on the ice and broke her hip. That satisfies it, people. It satisfies, but it wouldn't satisfy someone who came from another planet and knew nothing about things. First, he doesn't understand why, if you break your hip you go to the hospital. How do you get to the hospital when the hip is broken? Well, because her husband, seeing that her hip was broken called the hospital up and sent somebody to get her. All that is understood by people. And when you explain a "why," you have to be in some framework that you allow something to be true.

"Otherwise you're perpetually asking why. Why did the husband call up the hospital? Because husband is interested in his wife's welfare. Not always. Some husbands aren't interested in their wife's welfare. They're drunk and they're angry. And so you begin to get a very interesting understanding of the world and all its complications in order to… if you try to follow anything up,

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you go deeper and deeper in various directions.

"For example, why did she slip on the ice? Well ice is slippery. Everybody knows that. No problem. But you ask, "*Why is ice slippery*?" That's kind of curious. Ice is extremely slippery. It's very interesting. You say, "*How does it work*?" You could either say, "*I'm satisfied that you've answered me, ice is slippery*," that explains it, or you could go on and say "*Why is ice slippery*?"

"And then you're involved with something because there aren't many things as slippery as ice. It's very hard to get. Greasy stuff, but that's sort of wet and slimy. But a solid that's so slippery? Because, it is, in the case of ice, that when you stand on it, they say, momentarily the pressure melts the ice a little bit so you got a sort of an instantaneous water surface on which you're slipping. Why on ice and not on other things? Because ice expands. Water expands when it freezes so the pressure tries to undo the expansion and melts it. It's capable of melting it. But other substances get cracked when they're freezing, and when you push them it's just as satisfied to be solid. Why does water expand when it freezes and other substances don't expand when they freeze?"

Feynman's train of thought arrives at its destination.

A: "Alright, I'm not answering your question, but I'm telling you how difficult a "why" question is. You have to know what it is that you're permitted to understand and allowed to be understood and known and what it is you're not. You'll notice in this example that the more I ask why, it gets interesting after…that's my idea, that the deeper a thing is the more interesting.

"And, uh, we could even go further and say, why did she fall down when she slipped? That has to do with gravity, and involves in all the planets and everything else. Never mind, it goes on and on."

Feynman takes a quick breath and offers his answer to the pending question.

A: "And when you ask, for example, why two magnets repel, there are many different levels. It depends on whether you're a student of physics or an ordinary person who doesn't know anything or not. If you're somebody who doesn't know anything at all about it, all I can say is that there is a magnetic force that makes them repel. And that you're feeling that force.

"You say, "*but that's very strange, because I don't feel a kind of force like that in other circumstances*." When you turn them the other way they attract. There's a very analogous force, electrical force, which is the same kind of a question, and you say, "*That's also very weird*."

"But you're not all disturbed by the fact that when you put your hand on a chair it pushes you back. But we found out by looking at it that that's the same force, as a matter of fact, the electrical force—not a magnetic exactly in that case—but it's the same electrical repulsions that are involved in keeping your finger away from the chair, because everything's made out of, it's electrical forces in minor and microscopic details. There's other forces involved, but this is connected to electrical forces.

"It turns out that the magnetic and the electric force with which I wish to explain these things, this repulsion in the first place, is what ultimately is the deeper thing that we have to start, or we can start with, to explain many other things that everybody would just accept.

"You know you can't put your hand through the chair. That's taken for granted. You can't put your hand through the chair when looked at more closely. But why? It involves these same repulsive forces that appear in magnets.

"The situation you then have to explain is why in magnets it goes over a bigger distance than ordinarily. And there it has to do with the fact that in iron all the electrons are spinning in the same direction. They all get lined up. And they magnify the effect of the force until it's large enough at a distance that you can feel it. But it's a force which is present all the time, and very common, and is in a basic force of, almost, I mean I could go a little further back if I were more technical. But at an early level I would just have to tell you, that's going to have to be one of the things you'll just have to take as an element in the world, the existence of magnetic repulsion, or electrical. Or electrical attraction, or magnetic attraction."

Dr. Feynman identifies that inability to bridge the knowledge gap.

A: "I can't explain that attraction in terms of anything else that's familiar to you. For example, if we say the magnets attract like, as if they were by rubber bands, I would be cheating you, because they're not

connected by rubber bands. I should be in trouble; you'll soon ask me about the nature of the bands. And secondly, if we were curious enough you'd ask me, "*why rubber bands tend to pull back together again*?" And I would end up explaining that in terms of electrical forces that are the very things I am trying to use the rubber bands to explain, so I have cheated very badly, you see.

"So, I'm not going to be able to give you an answer to why magnets attract each other. Except to tell you that they do.

"And to tell you that's one of the elements in the world that different kinds of forces there are—there are electrical forces, magnetic forces, gravitational forces and others. And those are some of the parts. If you were a student, you'd go further, I could go further and tell you that the magnetic forces are related to the electrical forces very intimately. That our relationship between the gravity forces and electrical forces remains unknown, and so on.

"But I really can't do a good job, any job, of explaining magnetic force in terms of something else that you're more familiar with because I don't understand it in terms of anything else that you're more familiar with."

Why do magnets repel? Because they repel. Deal with it.

No further questions, your Honor, and this witness definitely may be excused. ■

Richard Feynman (1918–1988), B.S., MIT, and Ph.D., Princeton, both in physics. Worked on the Manhattan Project, won a Nobel Prize, played the bongos, invented quantum electrodynamics, all the usual stuff. What made him famous was that O-ring. After the *SS Challenger* disaster in 1986, he was named to the Rogers Commission, which investigated the failure. He dramatically demonstrated the catastrophic failure of the rubber O-ring seals by casually dunking an example ring in his glass of ice water during the hearings, noting how it became rigid, brittle, and prone to cracking. Live. On national television. (Courtesy https://faculty.uca.edu/)

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HERSTORY

Justice Ruth Bader Ginsberg's Lesson—
We Can Be Powerful While Empowering Others

by Kara Stein-Conaway

Photos in the public domain

I think more than anything, the life and legacy of the late United States Supreme Court Justice Ruther Bader Ginsburg (RBG) has taught us that we can be powerful, impactful, and that we can accomplish our wildest dreams, all while empowering others to rise with us.

RBG's legacy stands for the belief that you can be both powerful and kind. You can be both brilliant and respectful of others. You can have massive impact without needing to subjugate or scapegoat another person or group of people.

RBG showed us that when those in power, use their power to empower and uplift others, the stronger we all become.

We are unfortunately familiar with the leadership model where the leader is the stereotypical strong man who beats down everyone in his path to take his place at the top. His power is admired by some and his impact is measured by the damage that he does to others, and most often others who have the least power in society. He is seen as powerful by hurting those who are already hurting.

Power Over

The "power over" model of leadership is what many people think of when they think of power. "Power over" is based on the belief that power is a finite resource such that some people will have power and some people will not. Brene Brown, whose work introduced me to the concept of "power over" and "power with" uses an analogy to describe "power over:" "'Power over' is about believing that power is finite, like pizza—you have to hoard it and you don't want people who are different from you to have it.'" "Power over" is built by coercion, force, domination and control. "Power over" is maintained through fear. For one person to have power, in a "power over" situation, another person's power must be taken away.

Power With

Unlike the "power over" model, the "power with" model starts with the idea that there is no limit to power. "Power with" is not like a pizza. "Power with" is not a finite resource at all. The force that drives "power with" is empathy and a desire to cultivate inclusion.

RBG's life work was the antithesis of the "power over" model; she led using the "power with" model. RBG embodied a new model of power and a new model of leadership that resonates with so many of us. RBG's example inspires those of us who feel called to step into our own power as leaders, but who would never dream of becoming more powerful if it meant that in doing so we would be perpetuating a "power over" dynamic that is the opposite of everything we know in our hearts to be right.

For those of us who aspire to lead and want to cultivate our power for the benefit of humanity, RBG showed us the way.

- We can lead in a way that is kind not cruel.
- We can lead in a way that is uplifting not polarizing.
- We can lead with empathy not with hatred.
- We can lead with inclusion not division.
- We know that as leaders, the more we empower others, the stronger we all become.

RBG showed us the strength of the human spirit by facing and persevering through incredible challenges in her own life.

Perseverance

When asked for comment on the passing of Justice Ruth Bader Ginsburg, Jacquelyn Duffy, Judge of the Superior Court of San Luis Obispo said, "What inspires me most about Justice Ruth Bader Ginsburg was her perseverance. Throughout her life, she was challenged with professional obstacles and extreme personal hardship, and yet she always pressed forward with courage,

conviction, and an unwavering commitment to equal justice. Despite her diminutive stature, she was a giant who has become a beacon of hope for all who are facing seemingly insurmountable challenges."

RBG persevered and excelled in the male-dominated law school environment in the 1950s where her brilliance was not recognized and, instead, she was criticized for taking a man's spot at the law school. When RBG's husband contracted cancer in 1956, RBG was a law student. She attended class for her husband's law school classes and took notes for him in addition to attending her own law school classes. During this time, RBG also cared for their young daughter and her sick husband. [History.com]

When RBG faced gender discrimination and couldn't get a job as an attorney after graduating at the top of her law school class, she taught the next generation of lawyers as a law professor and served as the director of the Women's Rights Project of the American Civil Liberties Union (ACLU), where she argued six landmark cases on gender equality before the US Supreme Court. [History.com]

RBG ascended to the U.S. Court of Appeals for the District of Colombia and then to the U.S. Supreme Court. As a lawyer and then as a justice, RBG showed us exactly what "power with" looks like. The majority opinions and dissents that she wrote always sought to empower others by advancing the cause of equality for all. Until the very end of her life, when she added battling cancer herself to the other challenges she faced, RBG showed us how to use perseverance to advance the "power with" model of power.

Supreme Court Justice Ruth Bader Ginsberg (March 15, 1933–September 18, 2020) on a visit to Georgetown Law.

A Passionate and Persuasive Advocate, While Simultaneously Respectful of Others

Ginger Garret, Judge of the Superior Court of San Luis Obispo, said that Ruth Bader Ginsburg "loved the law and her passion was infectious. The sex-based discrimination that she experienced was palpable. Yet she used it constructively to morph the law in a way that has been beneficial to all." Judge Garret went on to add, "In my view, the reason Ruth Bader Ginsburg was so successful was because she was a good person with a good heart and common sense. As a lawyer, she knew how to argue in a way that was convincing, not offensive. She saw both sides of issues and was able to 'disagree without being disagreeable.'"

I think RBG had this ability that Judge Garret describes—she "knew how to argue in a way that was convincing, not offensive"—because RBG was motivated by a desire to rise together. RBG thirsted for equality. As a female attorney, she thirsted to be treated as an equal to her male colleagues She thirsted for equality for all of us. She approached all people, including her adversaries, with kindness, dignity and humanity.

When you see human beings as equal and all deserving of respect, it comes naturally that when you argue with them about their opinion differing from your opinion, that you do it in a way that honors their humanity and honors all of humanity. When people feel respected, they are also more receptive to considering new perspectives. The respect RBG gave others was a factor that made her incredibly effective as an advocate.

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Ginsberg continued

Uncommon Combination

Rita Federman, Judge of the Superior Court of San Luis Obispo said, "Justice Ginsburg achieved iconic status on a scale previously unheard of for a judge or justice. The reason may lie in her uncommon combination of courage, integrity, wisdom, good humor and grace."

Judge Federman's observations of RBG are the characteristics of RBG living out her "power with" life. RBG achieved power and influence, and her actions showed that she believed in the benefits of generating more power for us all. Removing the legal barriers that stood in the way of us all having access to that power was one of her greatest legacies. RBG's other legacy was the example she set for the way that she went about life and treated people.

RBG was the type of leader that we should teach our children to aspire to be like. If we raise children to lead in the way that RBG has shown us is possible, our future will be brighter and kinder.

Good leaders do not assert power over others. Good leaders want to be part of everyone rising together. Judge Duffy spoke of RBG's perseverance. RBG pressed forward with courage at every turn. Judge Garret emphasized how RBG was guided by her good heart and that she was passionate and effective as an advocate because of the respectful way she treated others. Judge Federman brought it all together for us. It was RBG's uncommon combination of courage, integrity, wisdom, good humor and grace that amazed us all.

RBG is the most beautiful example of how we can advocate for and embody a new "power with" paradigm of leadership. In this new leadership model, leaders are strong and also kind, leaders are passionate and also respectful, and leaders believe that nothing comes above having an empathetic heart.

We all have leadership opportunities in our lives. We are leaders in our families, in our law firms, in the community organizations where we volunteer, in how we treat our colleagues and our staff. We can embody this "power with" way of leadership and know that RBG's legacy lives on in us.

As trained advocates, lawyers can tend towards "power over" rather than "power with" leadership models.

In your family, will you empower your partner and children to speak their truths and share their unique perspectives more freely?

In your law firm, or your organization, will you treat your staff and colleagues with decency and respect, encouraging them to contribute and share because they know that you can be trusted not to tear them down with your power?

In the organizations that you volunteer in, can you be the voice that solicits the feedback from the group members who are less quick to jump in, acknowledging that they too have value to share?

As lawyers we are leaders in many contexts and, as such, we have opportunities everyday to advance this new "power with" model of leadership In doing so, we honor RBG's legacy and she lives on in our efforts. ■

Kara Stein-Conaway practices criminal defense at the Stein-Conaway Law Firm, P.C.; visit www.steinconawaylaw.com.

Latinos in the Law

What Should We, as Lawyers, Do to Support Progress Toward Racial Equity?

by Gregory Gillett

I am honored to write for the inaugural Latinos in the Law section of the San Luis Obispo County Bar Bulletin, especially in these unprecedented times. This past year has confirmed that we, as a society and profession, are not done with the conversation about race and justice. Despite the difficulties associated with talking about the subject, I am grateful that many more are now investing their time to it.

Societally, this moment demands more than a simple rehashing of my family's immigration story,[1] or a narrative about being a Latino lawyer. Instead, I think it is important to put our stories in the context of our society's current struggle for just and equitable systems of governance and ask ourselves what we, as lawyers, should be doing to support progress toward racial equity.

Implicit bias is real, and structural inequities permeate our legal system as a result. The evidence of these phenomenons is plain to see in the data. People of color are, at once, disproportionately *over*-represented in our criminal justice system and *under*-represented in elected office and among the ranks of business and property owners. What's more, we all have heard of the academic achievement gap, the wage gap, the wealth gap and the justice gap. These are systemic failures, policy failures, and therefore ripe for resolution if we are willing to recognize the vestiges of racial animus within the law.

So, what do we do as legal professionals to make change? First, let's address why we should act.

Why We Should Act

Attorneys are responsible for the quality of justice in their community. The preamble to the ABA Model Rules of Professional Conduct asserts that lawyers "should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession." It is our duty to improve our system, which means ensuring fairness through equity.

But improving the system does not mean limiting efforts to oiling the cogs of the system as it operates today—it demands innovation. The model rules also call on us to be "public citizens," suggesting that our responsibility to improve the quality of justice extends beyond the doors of the courthouse. Equal justice requires equality of opportunity to life, liberty and the pursuit of happiness.

In addition to our duty act, another reason lawyers should lead this charge is because we know how to lead. The challenges our society faces are complex, the path forward is unclear and the rules are unwritten. Solutions require investigation, communication and collaboration. This is what lawyers do. This is who we are.

Within the Court and Justice System

Historically, improving the quality of justice within our court system has focused on "access." To oversimplify, the notion has been that increasing access to the system will result in a more equitable system. We have seen programs to improve self-help, bolster legal aid and expand language access. However, the reason accessibility is not enough is straightforward: just because a person can go through the courthouse doors does not mean that she knows what to do once inside.

What the current civil rights struggle has highlighted is the need to granularly evaluate the foundational pieces of our justice system and, if needed, replace those pieces with processes and policy that result in equitable access to, and full inclusion in, that system. Fundamental to equity and inclusion is relatability. It is time to shift the discussion from accessibility to relatability.

For example, we should be analyzing the customs of court operations to see if they make sense to the public, all the public.

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Latinos in the Law continued

Do our local rules impede some and assist others? How does language play a role in understanding court conventions? How has digitizing our filings changed the relatability paradigm? How does the timing of hearings play a role in balancing equities? Do some courtroom customs create barriers to due process? Should judges have administrative control over court operations? Who should be lobbying for court budgets?

In asking these and similar questions, we are addressing the core issue of whether we can create an environment where folks from all backgrounds can not only access the court system but also fully use it.

In criminal justice, there have been a slew of law and policy moves meant to impact a system that has created tremendously inequitable results including bail reform, realignment, sentencing guidelines and drug reclassification. While these policy changes are worthwhile, lawyers should look closely within their own jurisdictions to analyze criminal justice administration to ensure equity.

For example, what does the process to determine charges look like? What is the policy on exercising prosecutorial discretion? Who is responsible for ongoing investigations to determine scope and depth? What demographic data is collected (and reported) on rates of arrest, charging and convictions? What training does the District Attorney's office undergo?

The intent is not to be critical of current local policy but, rather, to promote a discussion on the fundamental components of criminal justice within the legal community to encourage ongoing improvement—a responsibility that should not be left to the hard-working practitioners in the District Attorney's Office alone.

Related to our review of the court and justice system, we should also be taking this opportunity to look inward. Specifically, we should consider lack of diversity within our own ranks. While diversity within the practice of law is increasing throughout the state, how are we doing locally? What steps could we take to create an environment that encourages a diverse local bar? What investments have we made in future practitioners? What customs do we engage in that may not be inclusive?

The question of what lawyers of color bring to the table is a complex one. In short, because historically the practice of law has been predominantly white and male, including different perspectives disrupts the status quo. A disruption in the status quo can have lasting (and positive) effects on the quality of justice in our communities.

How to Be a "Public Citizen"

As with our responsibility within the court/justice system, we have the responsibility to inquire into the mechanisms, conventions and operations of all systems. And because of our training, we have particularly relevant skillsets that allow us to have an outsized impact.

I am not suggesting that each lawyer inquire into all systems, but rather, lawyers should be mindful about where their impact could be greatest. All systems can be analyzed to determine whether it promotes equity and full inclusion—including housing, education, healthcare, banking/lending, environment, etc. Even the makeup of youth sports teams can be analyzed to see if it is an equitable system.

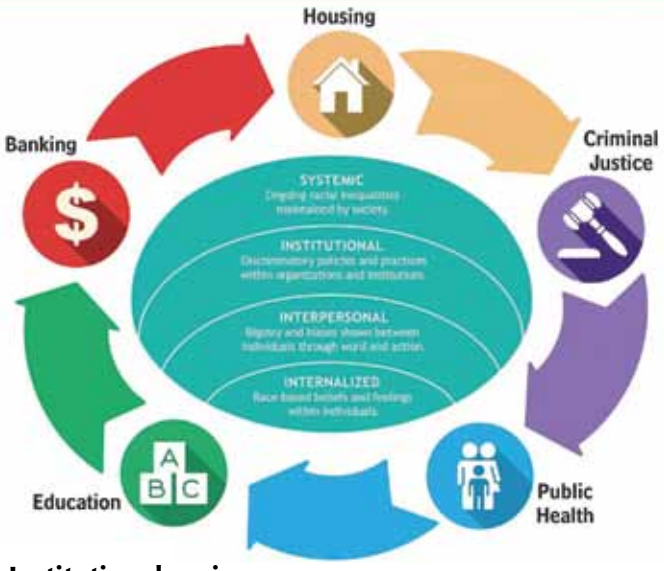
First, we lawyers must educate ourselves on racial inequity and the systematic results of racial animus. There are numerous articles and books on the subject, many of which can be found on the California Lawyers Association website: https://calawyers.org/racial-justice-committee-resources/.

We can, however, approach the issue without an academic command of racial justice if we apply lenses of fairness and common sense, know that we do not have the answers going in, and are willing to be uncomfortable with outcome.

Second, use the skills inherent in our profession to affect systemic change.

Investigate. As one of my law professors said, "the law is nothing without the facts." Find the data, especially demo-

What Racism Looks Like



Institutional racism
Institutional racism is distinguished from the explicit attitudes or racial bias of individuals by the existence of systematic policies or laws and practices that provide differential access to goods, services and opportunities of society by race. Institutional racism results in data showing racial gaps across every system. For children and families it affects where they live, the quality of the education they receive, their income, types of food they have access to, their exposure to pollutants, whether they have access to clean air, clean water or adequae medical treatment, and the types of interactions they have with the criminal justice system.

–Graphic adapted from Lietz, M. (2018, February 13). Not That Kind of Racism: How Good People Can Be Racist Without or Intent. [Blog post]. Retrieved from https://www.egc.org/blog-2/2018/2/12/not-that-kind-of-racism

graphic data on whichever organization you are investigating. If there isn't demographic data, ask why there isn't and how one would acquire the data. Ask leaders about the data, the conventions, the processes and the outcome. Along with questions, if the organization is a public entity, use the tools afforded to all citizens, including the Public Records Act and the Freedom of Information Act.

Analyze. With the ultimate questions of equity and justice, we must ask deep and important questions of all systems. The following are just a few.

Who benefits from this program/organization? Who does not benefit from this program/organization? Are all of the people who are intended to be included in the organization served? What factors play into the intended outcome? What does one require to be included in/benefited by this program? Where does the funding for this program/organization come from? What is the historical/current racial context for the issues being addressed by this program/organization? Does this organization/program have stated equity goals (and are they being met)? In what context does this program/organization operate and how does it relate to historic forms of oppression including race, class, gender, age, sexual orientation, disability, etc.? Questions such as these will, at a minimum, start a discussion on the issues of race and equity as it relates to the systems.

Finally, **lead**. Lawyers are sought out for their counsel and are often seen as leaders in the community. Take what you have learned, organize around the needed change, and oversee the progress. Expect discord and use your skills of civility.

It Is Time to Work

There is much work to be done within our courts and our justice systems to overcome systemic inequity, and now is the time to not only guarantee access to justice, but to also ensure all are included.

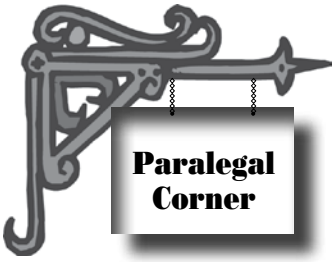
Further, we attorneys have the responsibility to act as public citizens. We have been afforded public trust and are looked to as leaders in the community. Although there is no explicit duty to seek out injustice, we do have a tremendous opportunity to affect a positive change in a time when change is expected.

Let us acknowledge the impact that some systems have had on people of color. Let us use our skills to rigorously evaluate existing conventions with an eye toward abolishing the customs and conventions that have precluded some and benefitted others. Let us not only demand diversity, equity and inclusion, but let us also be a part of the solution. It is time for all lawyers to work. ■

Footnotes

[1] For context, I am the son and grandson of Mexican immigrant farm workers who toiled in the fields and picked fruit off trees throughout the West for little pay in order to give me and my generation an opportunity to thrive. Within one generation, the work of my grandparents and parents have resulted in doctors, lawyers, accountants, teachers, nurses, firefighters, law enforcement officers, military leaders and businesspeople.

Gregory Gillett specializes in family law, education, juvenile, guardianship and conservatorship matters. Contact him at Gillett Law Firm in San Luis Obispo, (805) 980-9002 or gfg@gillettelaw.com; www.gillettelaw.com



Life in the Brave New World: Adjust, Adapt and Transform

by Jessica Blessing

Charles Darwin once said that "it is not the strongest species that survive, nor the most intelligent, but the most responsive to change." In 2020, we certainly saw the world change around us. In March, California, and much of the rest of the country and the world, came to a screeching halt with four little words, "stay-at-home order." Many of us in the legal profession were sent home with our computers, hoping to return in a couple of weeks or no more than a couple of months, but we would soon realize that it would be much longer.

Since last March, we have seen many changes, not only with the workforce but also with new technology. COVID-19 has been a catalyst for change in the legal profession and, as a result, I have learned the following three coping mechanisms: adjust, adapt and transform.

Adjusting to any new situation is hard, and COVID-19 proved to be a formidable foe. Many individuals were told to pack up their offices and sent home until further notice, not knowing if they would return. Some staff members were let go in order to keep the offices open during the pandemic. Litigation came to a screeching halt, with many courthouses shut down to minimize spread of the virus.

As time moved on, it became apparent that we would need to find new ways of conducting legal business and reopening the legal profession while remaining remote. As a result, many of us had to learn new technology, such as Zoom, which proved to be quite a challenge. The world around us was changing, and it seemed like we were faced with a new obstacle every week. The best way to deal with obstacles is to adjust our practices and expectations, rather than resisting them.

We can't always stop the wave of change, but we can certainly adapt to it. The new work-life COVID-19 forced upon us had its advantages and disadvantages. The pandemic made some people more productive, with a better work-life balance than while working in an office. The pandemic also had a positive effect on families, allowing us more time to spend together.

Zoom has played a crucial role in conducting board and staff meetings, and even court cases. Although we are physically apart, we have managed to come together and find ways to communicate. Working remotely has also shed a light on how we conduct business with our clients. Using technology, we can now talk face-to- face with a client in another city without leaving the comfort of our home or office. Although nothing can replace in-person meetings, Zoom and other platforms have opened another avenue of communication.

San Luis County Bar Association held their December holiday party via Zoom. Photo courtesy of Stephanie Barclay.

As paralegals, we have also had to adapt to the ever-changing rules and regulations coming from the Governor, local authorities and even individual courthouses. We have tried to navigate through each one to ensure that business proceeded as usual. The only certainty during these trying times is that for the legal profession to move forward, we must adapt to the changes that are coming at us and transform into this new normal the pandemic created.

Paralegals and other legal professionals have transformed and have been conducting legal business in new ways. Working remotely appears to be here to stay, at least for a while, and many of us have learned that life can still move forward from the comfort of our homes. We have proven to be productive and to communicate effectively with other support staff and our attorneys.

COVID-19 will most likely forever change the law firm structure. It might cause many firms to downsize their offices and have more individuals work from home, or it might do away with offices entirely. Only time will tell what the effects of this virus will be on the legal profession.

One thing is for certain—we should embrace the changes and keep transforming and challenging our previous expectations in order to create an even better work-life balance than we had before, not only for the remainder of the pandemic, but for years to come. ■

Bar Bulletin Editorial Policy

Contributions to the *Bar Bulletin* must be submitted electronically in Microsoft Word format directly to the 2021 Editor at:

slosafire@cloud.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 deadines noted 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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The cutoff dates for accepting advertisements, payments and articles are as follows:

January–February issue deadline	11/25
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May–June issue deadline	3/25
July–August issue deadline	5/25
September–October issue deadline	7/25
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Information on advertisement sizes and rates can be found online at **www.slobar.org.** All advertisements must be prepared prior to publication. Contact Nicole Johnson at (805) 541-5930 regarding methods of payment accepted.

2021 Bar Bulletin
Tara Jacobi, Editor
slosafire@cloud.com

HAVE AN ARTICLE FOR THE COUNTY BAR ASSOCIATION'S BULLETIN?

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