

Bar *Bulletin*

Serving San Luis Obispo
County's Legal Community

November–
December 2020



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and How SLO Courts Responded

David Hurst—The Laughs Are His
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Cover: Honorable Jacquelyn Duffy became the Presiding Judge of the San Luis Obispo Courts in January 2020 and has shepherded the Courts through all of the many changes brought about by the Coronavirus. Photo by Mark Nakamura, Nakamura Photography.

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President's MESSAGE

by Stephanie Barclay



Thanks to All and Good Wishes for a Better 2021!

This is my last President's message! (Insert giant image of me doing cartwheels here.) While I have appreciated and enjoyed the honor of serving as the 2020 President of the San Luis Obispo County Bar Association, writing these messages every two months has been torture. To those of you who have endured reading them, I thank you. For our extremely patient and professional *Bar Bulletin* Editor Raymond Allen, I am very grateful.

Just when it seemed like 2020 could not get any worse, we lost one of our nation's legal giants and one of the most influential Supreme Court justices in history. Justice Ruth Bader Ginsburg, a role model to so many of us, was only the second woman on the United States Supreme Court, where she served for 27 years until her death on September 18, 2020. Justice Ginsburg's most notable rulings and dissents advanced feminist causes. She transformed the law pertaining to gender equality. Her passing is a huge loss to the legal community,

and we should all do our best to honor her legacy for equal rights. May her memory be a blessing.

"May her memory be a blessing," is something you will hear us Jews say when someone dies. When you hear that said about Justice Ginsburg, it means, may we all be more like RBG. Jewish tradition does not focus on the afterlife. Jewish thought teaches us that when a person dies, it is up to those who bear her memory to keep her goodness and her values alive. We do this by remembering her, by speaking her name and by carrying on her legacy. In RBG's case, we must do this by continuing to pursue justice, righteousness and equality.

Equal rights scholars and advocates Greg Gillett, J.D., Ph.D., and Cornel Morton, Ph.D., are going to give us some ideas as to how we can improve fairness, equality and diversity in our courts and our local legal community on October 20. I hope you can all attend this thought-provoking and educational Zoom MCLE.

The SLO County Bar Association is also starting a fund with the Community Foundation of San Luis Obispo County to provide education scholarships to persons of color who have a demonstrated interest in the legal profession. All donations are tax deductible and can be sent directly to the Community Foundation of San Luis Obispo. Please help us build up this fund to improve fairness, equality and diversity in the legal profession. Many thanks to SLO County Bar Association Vice President Joe Benson for the vision and legwork to get this going.

I can't conclude my final President's Message without thanking our outstanding 2020 Board of Directors who have worked many volunteer hours to serve our membership during this most trying year. I asked a lot of them this year and they delivered.

Several members are resigning from the Board after dedicating many years to the bar association, and I am especially

Continued on page 5

Editor's Update

by Raymond Allen

In the July-August edition of the *Bar Bulletin*, there was a wonderful article written by Erica Flores Baltodano, "Why Meeting the Needs of the Moment Is All That Matters." Unfortunately, my edits caused two factual errors. First, the article stated that San Luis Obispo Legal Assistance Foundation (SLOLAF) had already given its website a facelift. In actuality, SLOLAF recently received funding from The Community Foundation San Luis Obispo County to initiate the update. The website facelift is coming soon!

Second, the article inaccurately stated that SLOLAF's housing and eviction services are funded by a grant in partnership with Legal Aid Foundation of Santa

Barbara County (LAFSBC). Actually, the LAFSBC grant funds SLOLAF's foreclosure prevention services. SLOLAF's housing and eviction services currently are funded by the California State Bar. Legal services for homeless veterans are funded by CAPSLO. I apologize for the errors and any resultant confusion.

Unrelated to the aforementioned errors, this will be my last edition of the *Bar Bulletin*. I will be yielding the Editor's quill to Tara Jacobi, who has been part of our legal community for more than a decade.

Tara Jacobi was born and raised on Long Island, New York. As an undergraduate, she studied political science and philosophy. While attending Pace University School of Law, she focused on international law. She also attended University College London. In New York City, she represented insurance companies and later represented the states of Maine and Nevada in developing their child support enforcement policies. She is a writer, teacher and lawyer who, like so many in the law, juggles more demands, debts and responsibilities than a mere mortal would contemplate. She now will add Editor to her accomplishments.

Some of you may have noticed that this is the first *Bar Bulletin* cover in two years to feature a judge. When I began my tenure as Editor in September 2018, I was committed to featuring bar members in the *Bar Bulletin*. However, I had to make an exception with this end-of-the year edition. The Honorable Jacquelyn Duffy has done such a remarkable job leading our courts through this year that I had to abandon my policy in favor of common sense. Thank you, Judge

Duffy and Michael Powell, for your gracious participation in the production of the article.

I would also like to thank all of the great writers who have contributed to the *Bar Bulletin* during the past two years. In particular, I would like to thank Kara Stein-Conaway, Kathryn Eppright, Scott Taylor, Dean Jan Marx, Steve Hamilton, Jacquelyn Vitti Frederick, Justice Martin Tangeman and Jeff Radding. I could always count on them for 1500 words. Finally, I would like to thank Jennifer Alton, who has encouraged and supported all my efforts. ■

President's Message continued

grateful to them and will miss them—Raymond Allen, Trevor Creel, Kevin Elder and Michael Pick. Thank you to the 2020 Board of Directors: Raymond Allen, Ryan Andrews, Joe Benson, Trevor Creel, Kevin Elder, Michelle Gearhart, James Graff-Radford, Honorable Matthew Guerrero, Michael Pick, Kara Stein-Conaway and Lisa Toke. Thank you, our members, for continuing to support your bar association, your community and each other during this very difficult time. I wish you all good health, happiness, peace of mind and a better 2021. ■



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David Hurst— The Laughs Are His Legacy

by Raymond Allen

Photos courtesy of Hurst family

It usually started innocuously enough. “I remember Dave would come into the courtroom,” said Kim Phillips. “While court was in session, of course, and while I’m clerking away and the judge is speaking, he would whisper ‘I have a joke for you.’ Most of the time they were not Court appropriate. But I so loved it and miss it so much.”

Francis O’Donnell remembered, “I always looked forward to David Hurst popping into any department I was clerking in because he always had a great corny (and sometimes inappropriate) joke. He could always make me laugh.”

One of the first things David Hurst ever told me was a joke. The joke was so ridiculous I laughed out loud. I think I was embarrassed by how funny I found it. Years later, I told the same joke to my son, Jaden. He thought the joke was pure genius. Jaden would ask me to repeat it over and over. He would laugh at the thought of hearing the joke. After years of hearing that same joke, my boy started to mouth the joke as I told it and joined in on the punch line.

A man with no arms walks up to a priest. He says, “I understand you’re looking for a bell ringer.”

The priest says, “Yeah, but how can you ring the bell? You don’t have any arms.”

The man says, “That’s OK. I will use my head and bang it.”

Desperate for a bell ringer, the priest hires the man with no arms.

The early hours of the day go OK, but when it came time to strike the noon bells for the faithful, the armless man was dizzy and had a headache. Nonetheless, at noon he ran toward the bell with his head. Unfortunately, he missed the bell, flew out the belfry and landed on the street below. He died instantly.

A crowd gathered around the man. They whispered, “Who is it, who is it?” Finally a villager stepped forward and said, “I can’t remember his name, but his face sure rings a bell.”



David Hurst, October 6, 1949–August 12, 2020.

“Dave made me laugh,” said Sara St. Cyr. “I miss him so much. He knew how to keep things light. He was thoughtful and kind and his absence leaves a place that cannot be filled.”

Ilan Funke-Bilu also remembered the laughter that followed in the wake of David Hurst. “We were not close,” said Funke-Bilu, “but we had common threads in our lives. We both went to the same law school. We both migrated to the Central Coast. He loved to laugh, to see others laugh, make people laugh or at least smile. No one could keep up with his serial jokes. I don’t remember any of his jokes. But I do remember he made me laugh as much as anyone. I laughed even when his jokes were not funny. His delivery was funny. His laugh was funny. His smile was infectious.”

“We once,” recalled Funke-Bilu, “went to see the San Jose Sharks play the New York Rangers in San Jose, when people were permitted the luxury of raw socialization. David drove. He drove fast. He was careless. He had a few beers to fuel the long drive. It was a great drive. I don’t remember the game, but I remember the trip with David. I remember the great

relief in returning home. Did I mention it was a great trip? It was a funny trip. I remember nothing much more than his big smile. He smiled virtually the entire trip there and back. The truth is that the trip was better than the game.”

A Life in the Courtroom

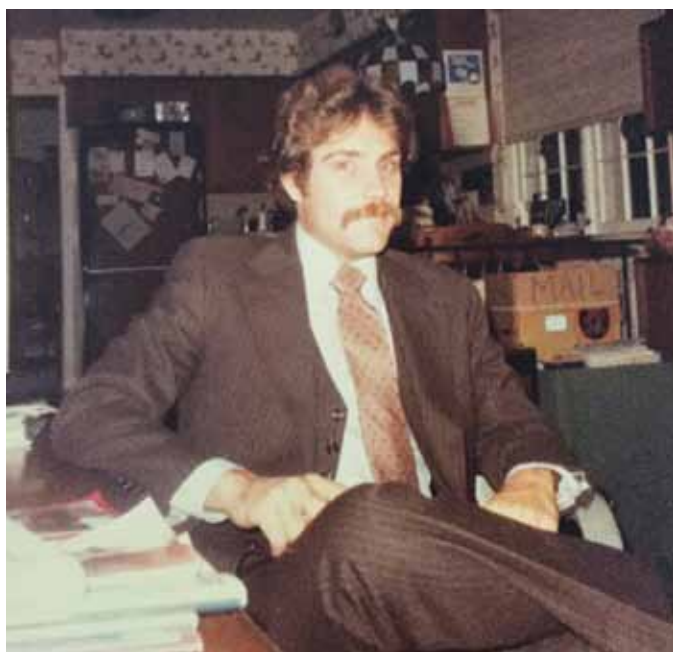
David Hurst was born in Pennsylvania on October 6, 1949. His father, a retired Navy pilot, flew for United Airlines. Hurst’s family lived on the East Coast, primarily in New Jersey.

When he was 18, Hurst enlisted in the United States Air Force. As he aged, Hurst drew greater and greater pride in the work he had done in the military. He was proud to be a Veteran.

After his service, he went to law school at Western State College of Law in Fullerton, California. He caught the attention of a young woman named Linda Davidson by way of an inappropriate joke in Torts. He earned an *Am Jur* in the class and eventually won the heart of his future wife, the Honorable Judge Linda Hurst.

“The ‘for better or worse’ did not describe our marriage,” recalled Linda Hurst, but ‘for better or worse’ definitely described Dave’s sense of humor.”

Hurst’s legal career focused on criminal law. He was a natural in the courtroom. After he passed the bar examination in 1980, he started in the Public Defenders’ Office of Solano County, then joined a well-known criminal defense office in Martinez



Dave as a young lawyer in Solano County before his move to San Luis Obispo in 1987.



Dave (self-described as Tom Selleck) holds daughter Aubrey, circa 1990.

(Contra Costa County), and then transitioned to the District Attorney’s Office back in Solano County. As a district attorney, Hurst developed expertise in prosecuting sex cases.

In 1987, Hurst accepted a position with the San Luis Obispo District Attorney’s Office and remained there for a number of years. He returned to criminal defense, which was his preference. He opened his own office, and later joined the Conflict Public Defender’s Office (CPD). He remained in this role until shortly before his death August 12, 2020.

Hurst was grateful to his colleagues in the CPD office who provided support for him at several times over the years when he had medical difficulties, but particularly when he was diagnosed with Stage 4 pancreatic cancer in February 2020. Hurst was well known for his generosity with his time and his knowledge. He was always willing to assist on a case, cover for another attorney, or counsel *pro pers* in court.

Continued on page 8



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The Laughs Are His Legacy continued

Hurst also enjoyed a good reputation as a criminal defense attorney from the Bar, the Bench and the community at large. He was always prepared, always willing to look at a case in a balanced way, and always advanced creative resolutions to complex cases. However, when cases could not be resolved, he was a spectacular trial lawyer. Until September 11, 2001, Hurst would use the skyline of New York City in closing argument to address reasonable doubt.

"I will always remember," said Judge Hernaldo Baltodano, "Dave's humanity and graceful use of deadpan humor. He will be missed by us all."

"Dave would be pleased to know how many people miss his presence in the halls, courtrooms and chambers. When he was deep into his illness," recalled Judge Hurst, "he came back to court to say his goodbyes and to personally honor his years of consistent hard work there."

Funny to the End

More from Ilan Funke-Bilu: "Humor is as important as water is to life. Why live if you can't laugh? David was a gift that I will miss. David's humanity was observed as he was approaching death. It is one thing to be funny when healthy, but it is quite another to meet doom with smiles. He may have lost his hair. He kept smiling. He may have lost his appetite, but he kept smiling. If you can't laugh, why live? When he was in so much



Dave and Aubrey in a "Born to be Wild" pose on a family vacation to Maui in 1995.



This year during the July 4th holiday, Dave and family spoofed Linda Hurst's badminton skills. Front row: Dave (left) and his brother, Jeff; back row from left: Linda, Aubrey and Jeff's daughter Kegan.

pain that he couldn't laugh, he took himself off Facebook. He must have felt terrible because he could no longer laugh with others and make them laugh."

Sadly, COVID-19 impacted Hurst's illness and his ability to accept help and contact from others. He did not advise his daughter, Aubrey, or Linda of his illness until February 14 of this year. Hurst's parents are age 93. He was unable to travel to them, and they were unable to travel to him. He could not have visits from his older children, Tori Celli Abernathy and Dave Forte. Even his visits with Aubrey and her partner, Macon, were limited by social distancing and his high risk.

Coronavirus also affected the ability of friends and family to properly mourn him. The Hurst family would love to have had a big, loud party filled with music, laughter and toasts to celebrate the way he lived his life. With continued COVID concerns, however, his family has decided to wait until travel guidelines can accommodate family travel and medical guidelines can accommodate emotional interaction. In the meantime, please raise a cup to Dave Hurst.

"David Hurst was a mensch¹," said Funke-Bilu. "He never subtracted from you. David Hurst's life was not about David Hurst. It was always about others: family, friends, colleagues, clients, and everyone else. Thank you, David....I miss you." ■

¹ "Mensch" is Yiddish for "a person of integrity and honor."

BE THE CHANGE YOU WANT TO SEE...



by **Jacqueline Vitti Frederick**

Photos courtesy of Jacqueline Vitti Frederick

Editor's Note: Attorney Jacqueline Vitti Frederick delivered this speech June 4, 2020, at the NAACP rally held on the San Luis Obispo County Courthouse steps.

I appreciate this opportunity to speak and to be the voice for the Latino community to stand here and say the Latino community understands and feels your pain—the pain that comes with injustice, the pain that comes from witnessing once again mistreatment and abuse of power, the pain that comes from being judged not by the content of your character but by the color of your skin.

The great Martin Luther King, among many wonderful statements, said: “I have a dream that my four little children will

one day live in a nation where they will not be judged by the color of their skin, but by the content of their **character**.”

As a young trial lawyer nearly 40 years ago, the second case I ever took to trial was an excessive use of force case against the Los Angeles Police Department involving my client—a young Latino who had done nothing wrong, but was assaulted by the police officer solely because he was Latino and living in a barrio area of L.A.

As a female trial lawyer, I have experienced gender inequality

and sexual harassment. I have had the privilege to represent many people over the years who have been discriminated against on the basis of their race, gender, age and more inequities. What I have learned from these experiences is that injustice is a hard word to define, but you know it when you feel it.

We’ve been going through a tough time in our country on many levels and especially recently with COVID 19—something we are all suffering through together. Together because we are all part of the

same race—the human race.

We are all feeling the same pent up emotions and feelings of uncertainty about our futures, economic stress, emotional stress and a feeling of powerlessness.

You are here because you want the world to know how much you care about your fellow human beings, how much you yearn for change and for some good to come out of the injustices that occur far too often, and the unwarranted and tragic death of a man named George.

So, is this going to be just another march, another rally, until the next time? So now, what do *you* do? How can we, how can you, effectuate change?

To the young people out there, you have the power—and I am counting on you—to make a positive difference in this beautiful world and planet we live on.

Be the change you want to see happen.

Be respectful and kind to your fellow human beings regardless of color, race, ethnicity, gender or gender identity.

Be a respectful and kind person yourself.

Don't just march in the streets and hold up cleverly worded and impassioned signs....

Do your part to actively participate to make this a better place—volunteer your time and talents to the organizations that strive for justice, equality and safety.

These local organizations are here and they need your energy, your passion.

You can volunteer with my friends at the NAACP to help their efforts to raise awareness and understanding of the issues that confront people of color.

You can volunteer with the Latino Outreach Council to help their efforts to bridge the cultural gap and integrate our Latino friends and neighbors in our community and appreciate how much they contribute to us by working in our fields and orchards, and so much more.

Our women's shelter organization Stand Strong needs you to help victims of domestic violence.

RISE, the organization that helps victims of sexual assault needs your support and help.

Donate your time to help a child feel supported and loved by volunteering to be a big brother or sister or a CASA volunteer.

There are numerous organizations that help the disenfranchised and the homeless people living in our community. They need you.

Join the Five Cities Diversity Coalition and Race Matters in their positive efforts to elucidate and educate and bring awareness to even subtle insidious forms of discrimination.

So many opportunities are there for you to effectuate change.

You can also make the world

a better place by small acts of kindness and love.

Martin Luther

King also said:

"Darkness cannot drive out darkness; only light can do that. Hate cannot drive out hate; only love can do that."

George Floyd's little six-year-old daughter has lost her father. He was not a perfect man, and had his troubles, as so many of us do, but in the end what he left to his little girl was so remarkably stated when at a rally for her father she shouted, "Daddy changed the world."

So go out and use your positive energy to change the world! ■



THE YEAR OF CORONAVIRUS • MMXX

by Raymond Allen

Cover and interior photos courtesy Mark Nakamura, Nakamura Photography

Refresh Your Recollection

In December 2019, the Chinese government in Wuhan treated dozens of cases of a pneumonia of an unknown origin. Within two weeks, the first reported death occurred. A 61-year-old man, a frequent customer of the open markets of Wuhan, died.

Cases began to emerge elsewhere. On January 20, the first American to be reported with the virus was from Washington state. He had just returned from Wuhan.

On January 26, 2020, the California Department of Public Health confirmed the first two cases of the “novel corona virus 2019” (nCov-2019) in California.¹ The public service announcement stated that the immediate health risk to the general public was “low.”²

Around the same time, the entire city of Wuhan, a city of 11 million people, was placed in lockdown. No one could enter or leave.

In February, a Princess Cruise ship docked in Yokohama, Japan, had 600 people onboard who tested positive for the virus. Reported cases, in country after country, expanded throughout February.

On February 4, President Donald Trump gave his State of the Union address. He did not mention the virus, its threat to the country, or his plan to deal with it.

Our New Presiding Judge

With the New Year, the Honorable Jacquelyn Duffy became the Presiding Judge of the San Luis Obispo Courts. On January 16, she gave her State of the Courts address to the local Bar. The outlook on that day was positive. Funding was increasing, construction projects were

being planned, and improvements throughout the court were being implemented. The mood was optimistic.

A State of Emergency

Optimism was short-lived and the COVID-related issues escalated fast.

On February 28, the first reported Californian’s death caused from COVID-19 was announced.

On March 3, Court Administrator Michael Powell sent a courtwide email out regarding workplace health precautions. He urged all court employees to avoid close contact with sick people; while sick, limit contact with others; cover your nose and mouth with a tissue when you cough or sneeze; wash your hands often; avoid touching your eyes; and clean and disinfect surfaces and objects that may be contaminated with germs.

The next day, in direct response to the death of February 28, Governor Gavin Newsom declared a state of emergency. The declaration was made “to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for broader spread of COVID-19. The proclamation comes as the number of positive California cases rises and following one official COVID-19 death.”³

On March 10, Judge Rita Federman alerted the Family Law section to the steps the court would be taking to minimize exposure to COVID-19. “We will be providing hand sanitizer and/or Clorox wipes to wipe down counsel tables. We recommend that all persons entering the courthouse be cognizant of the recommendation

by health professionals to frequently and thoroughly wash their hands.”

In addition, Judge Federman encouraged the use of Court Call for all non-evidentiary hearings. That same day, Judge Duffy sent out an email to all members regarding the COVID-19 precautions that would now take place within the courthouse.

On March 12, the governor issued additional guidelines, limiting the size of gatherings and recommending social distancing of 6 feet or more. By the middle of the month, Newsom had issued a stay-at-home order.

The next day, March 13, the county schools closed. On March 14, San Luis Obispo County had its first reported case. And on March 15, Public Defender Brad Cornelius, an attorney who had appeared in court daily, tested positive for coronavirus.

Meanwhile, on March 16, Chief Justice and Chair of the Judicial Council, Tani Cantil-Sakauye, authorized Judge Duffy to do any or all of the following: hold court sessions anywhere in the county, including the jail; declare a holiday for filing documents; declare a holiday to April 10 for computing time on criminal and juvenile cases, and extend the duration of restraining orders that would have expired. Judge Duffy ordered out-of-custody, non-domestic violence misdemeanors to be continued 60 days.

A few days later, in furtherance of the Chief Justice’s order for emergency actions, the court announced it would be closed, effective March 23, except for certain critical functions. The Chief Justice and the Judicial Council had determined that the court system, necessarily premised on a gathering of attorneys, staff

and citizenry, could not proceed as usual. As a result, "All jury trials are suspended and continued for a period of 60 days from the date of this order."⁴ San Luis Obispo would not have another jury trial until June 16, 2020. Attorneys were encouraged to appear without their clients. The court, on its own motion, began to notify attorneys that misdemeanor cases were continued.

Panic was near.

On the Friday before the court's closing, Judge Duffy addressed the entire court staff.

"It's kind of funny now, with our strict social distancing," recalled Judge Duffy, "but we gathered everyone into one of the large courtrooms. I explained that the courts must remain open during a crisis. We are essential."

Duffy also knew how difficult it would be if the court shut down completely. "I had spoken to the Presiding Judge from Butte County. The Camp Fire had forced her courthouse to close. That judge had described to me how difficult it was to restart afterward. I did not want that to happen."

"Chief Justice Cantil-Sakauye emphatically said, very early in the pandemic, that 'we are courts and we are open in crisis.' Her words resonated with me," said Duffy.

"We had no idea," remembered Court Administrator Michael Powell, "what this closure would look like."

Judge Duffy and Powell asked for volunteers to keep the essential functions of the court operating. Approximately, one-third of the employees and staff responded. In addition to their pay, volunteers would be awarded day for day service credits toward employment benefits. Those who sheltered in place, would be paid normal wages. As Friday ended, who would return for work on Monday was unknown.

Leadership

Many books have been written about leadership. The theme of most books on leadership is vision. A leader must be able to see where she is taking her people. A leader must also listen and ultimately decide which path to take.

Duffy was not alone in the assessment of the problems caused by COVID-19. Justice partners included Sheriff Ian Parkinson, District Attorney Dan Dow, Assistant Deputy District Attorney Eric Dobroth, Chief Probation Officer James Salio, Public Defenders Patricia Ashbaugh and Steve Rice, Criminal Defense Section Leader Joseph Parker, and Conflict Public Defender Barry Schiavo.

"The first meeting (of the justice partners) felt like we were in the Situation Room. It felt like a war room meeting," remembered Parker.

"These pressures fell on Judge Duffy," remembered Judge Matthew Guerrero. "She is remarkable in her dedication to the court and staff, her willingness to work with the justice partners, and her ability to carry the torch of leadership."

Initially, there was a great divide among the justice partners. There were partners, like Dan Dow, who wanted the court to completely and literally shut down for the safety of everyone. Noting closures in Ventura County, Contra Costa County and San Diego County, Dow argued that our courthouse should close for at least seven days. On the other hand, some justice partners wanted the operation of the court to remain open without any significant change.

Those opinions had no effect on the judge's plan. Judge Duffy balanced all the competing interests, but followed her own vision. The courts would remain open, and compliance with known science-based precautions would be followed. She balanced public safety



Honorable Jacquelyn Duffy became the Presiding Judge of the San Luis Obispo Courts in January 2020.

against both fear and panic. She also balanced public safety against access to justice.

"Because the circumstances were novel, there was no way we could institute policies that would not have to be changed. On the other hand, whatever was tried had to be 100 percent successful, or people were going to get sick and maybe die," said Parker.

Changes occurred weekly, but it was apparent that Judge Duffy's main concern was safety. All other priorities were secondary or tertiary. "To her credit," recalled Parker, "she did not impose more rules than were necessary to accomplish the goal."

On April 4, the court put up signage requesting court users to socially distance, wear face coverings and sit in only designated seats. On April 9, the court closure was extended in conjunction with the extension of Chief Justice Cantil-Sakauye's emergency orders.

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CORONAVIRUS continued

Civil and Family Law cases were indefinitely continued. Mentally Disordered Offender (MDO) cases were continued for a month. In mid-April MDO appearances, including trials, were conducted via WebEx. Criminal misdemeanor trials were suspended and all misdemeanor cases were continued 60 days. Non-evidentiary criminal appearances were conducted via Zoom⁵

On April 29, the Chief Justice permitted Judge Duffy to continue felony jury trials another 30 days.

By the end of April, 10 million Americans were out of work. The local, national and global economies had significantly contracted. A \$2 trillion stimulus measure was passed by Congress and signed into law by the President. The funds were meant to address the historic crisis.

"We are extremely fortunate to have a Presiding Judge who is proactive instead of reactive," said Judge

Craig Van Rooyen. "Even with the tsunami of change that has pummeled the courthouse since March, Judge Duffy has never been blindsided. She's always thinking two to three months ahead. That foresight has allowed us to stay on track and create a flexible new normal instead of existing in a constant state of crisis. Whether it's applying for emergency orders or identifying the exact seating arrangement for a safe jury trial, she is a step ahead of everyone else."

The New Normal

At the beginning of May, the global death toll surpassed 200,000 souls and the national death toll was approaching 100,000 people. The virus initially struck American seaboard regions, like Washington, New York and California, but by May and June the virus had spread into the interior of the country. People who had been skeptical, if reasonable, no longer

doubted the ferocity of the virus. The World Health Organization opined that the virus "may never go away."⁶

With this backdrop, the court staff returned to work. Initially, masks were required to be worn whenever an employee was away from her desk. But to garner maximum compliance, the masks were ordered to be worn at all times in the courthouse.

Court functions that had been suspended were resumed. They often resumed with a design alteration. The windows of Room 220 remained closed. Whatever business that could be conducted remotely, was to continue to be conducted remotely until further notice.

"As the Court was deemed an essential function," remembered Judge Matthew Guerrero, "courthouse employees were brought back from their home bunkers to operate the courthouse, even while cases climbed.



Judge Duffy appreciates the collaboration and flexibility of the legal community, sister institutions, staff and judges...

It was the people who demanded access to courts and the court that strove to meet the Constitutional obligations in criminal, civil and family. The court had to adapt and continue to operate, even in the face of calls to completely shut down operations."

Maintaining court operations required the effort and imagination of many people. "I want to make sure," said Judge Duffy, "that everyone understands any success the Court has had in navigating these very challenging times is due to the collaboration of our legal community, the tireless efforts of individuals at our sister institutions, our incredibly dedicated and hardworking staff—led by an exceptional CEO who never wavered in his steady leadership—and our remarkable group of judges, who were willing to handle any assignment (large or small) with flexibility and an unfailing commitment to providing justice in an unprecedented time."

In pertinence to the legal community, Judge Duffy said, "I am extremely grateful to the Bar for being so patient and flexible during these challenging times. All of you have maintained steadfast dedication to your clients while navigating rapidly shifting operations with professionalism (and even humor) despite facing the same health and safety risks as other essential workers."

Jury Trials

On May 21, the court announced that jury trials would resume June 15, 2020. After two days of motions *in limine*, jury selection on the case of *People v. Lewis* began on June 16. Significant precautions were implemented to secure the safety of staff, potential jurors and attorneys. For instance, jurors, who were usually ordered to the courthouse in groups of a hundred, were to come in groups of approximately 17. Those potential jurors that had hardships, such as medical conditions, scheduled pro-

cedures or vacations, or college examinations, were excused before they arrived at the courthouse. Moreover, standard questions were done in advance to reduce the time a potential juror had to be in the courthouse. Seating was distanced. Potential jurors did not just sit in the jury box, they sat throughout the courtroom. Most were in the gallery. Pursuant to a new court rule, masks were required of everyone unless that person was talking.

The next day, the defendant, Damion Lewis agreed to resolve his matter with a plea agreement. The potential jurors were excused, and the trial was vacated.

The first jury trial to completion occurred two weeks later. Beginning July 1, 2020, the case of *People v. David Carl Angello, II*, was heard before the Honorable Judge Craig Van Rooyen.

Three months after Amy Fitzpatrick moved to San Luis Obispo County from Stanislaus County in

Continued on page 16



... that has made it possible for the Court to navigate in these challenging and socially distanced times.

CORONAVIRUS continued

April, she prosecuted the first complete jury trial after the emergency pandemic orders were lifted.

Judge Van Rooyen was great, Fitzpatrick recalled. "He let the jury know that they were important and that the court was taking COVID seriously. He was clear and honest, and set the tone for the rest of the trial."

"During the selection process and trial," recalled attorney Joe Benson, "we were not asked to sit shoulder to shoulder in the jury box, but instead were assigned socially distanced seats in the jury box and the gallery. Judge Van Rooyen showed respect and concern for each individual juror during *voir dire*. He also showed a willingness to make real time adjustments to the seating arrangements to ensure everyone could properly see and hear. That was greatly appreciated."

Of course, there were a few hiccups. For instance, after the trial began, Defense Attorney Jay Peterson discovered that Judge Van Rooyen had previously prosecuted the defendant on a prior case. Of course, no one felt the judge had done anything wrong. He had simply forgotten this particular defendant during the intervening years. Nonetheless, as a precaution and to avoid the appearance of impropriety, Judge Van Rooyen recused himself from the remainder of the jury trial. Judge Duffy stepped in.

"She got herself up to speed on the legal issues of the case," said Fitzpatrick, and the case continued fairly smoothly.

On July 14, 2020, the jury began deliberations. "We were not asked to cram into a stuffy windowless backroom, but instead were given a very large room in the Ludwick Community Center," said Benson. "The facility was equipped with an



In her office, Judge Duffy has three handpainted Japanese characters given her by her mother; they represent Courage, Justice and Truth.

abundance of hand sanitizer, face masks and shields. These investments insured a focused deliberation process. We were not distracted, annoyed or focused on anything but the testimony of witnesses, the evidence and reaching a just verdict."

Benson continued: "I am truly grateful to the court for its efforts to mitigate the anxieties of jurors. The ability of the court to evolve during this unprecedented situation was remarkable. The willingness of Judge Duffy, particularly, to evolve and adapt insured that our vital judicial process continued to serve the community unabated. I would not be surprised if SLO County becomes an example to other communities."

After the verdict, when Judge Duffy was giving her final thoughts to the jury, she spoke from the heart. "I cannot remember her exact words," said Fitzpatrick, "but I remember she said what I have always felt in my heart. She made me believe in the system."

"I was inspired by the willingness of the jurors to appear in the middle of a pandemic," remembered Judge Duffy. "We had not had a jury trial in three months. We had been going through so much. They trusted

we would take care of them. I felt the weight of that responsibility."

"To me," said Judge Duffy, "they were 'guardians of justice.' And as I spoke to them, their courage made me recall the words of John Adams: 'Representative government and trial by jury are the heart and lungs of liberty.'"

Back to the Future

It might be that masks and social distancing remain. Certainly, remote meetings, remote court appearances, remote jail visits and remote office visits should remain. The fear, the isolation and the death, I pray, will not. It would be nice to visit and socialize again. It would be nice to shake hands and hug again.

Currently, inmates sentenced to prison remain in our local jail. No prisoners are being transported to the California Department of Corrections and Rehabilitation. Many, as a result, are incarcerated longer than they otherwise would have been. COVID has now made its way into the jail facility. Sections of the jail are quarantined. Obviously, the inmates, correctional officers and jail staff are in harm's way.

In addition, the logistics of

getting inmates that are quarantined to their video court appearances has been a challenge. Sgt. Jeremiah Mayes and Lt. Landgraf at the jail are to be commended for their tireless efforts.

Atascadero State Hospital, and all state hospitals throughout California, have been hit by the virus. Patients are no longer transported to court for their hearings. The efforts of people like Shelby Harsh, who has been remarkable in facilitating all the appearances of the mentally disordered offenders, have been remarkable.

On August 13, the court implemented new procedures to enter the courthouse. Every person will be screened before they enter. They will have their temperature taken and they will be asked questions regarding current symptomology. Given that the virus will remain for

an unknown time, the new normal may require us all to be part lawyer, part doctor and part hall monitor. We shall see what the future brings.

San Luis Obispo County, however, can feel relieved knowing that the pandemic, or any crisis for that matter, will be handled by the Presiding Judge with clear resolve and fearlessness. Because the court system is essential to democracy, everything will be done to insure the Constitutional framework. Behind her desk, Judge Duffy has three hand-painted Japanese characters. They were given to her by her mother. In translation, they represent Courage, Justice and Truth.

"I'm guided by the advice of my deceased Japanese mother. She grew up in Tokyo during World War II. She witnessed her homes repeatedly bombed to the ground. And she

would always say, 'Fall down seven times, stand up eight.'" ■

Footnotes

- ¹ On February 11, 2020, the World Health Organization proposed the official name: Covid-19, short for coronavirus disease 2019.
- ² <https://www.cdph.ca.gov/Programs/OPA/Pages/NR20-001.aspx>
- ³ <https://www.gov.ca.gov/2020/03/04/governor-newsom-declares-state-of-emergency-to-help-state-prepare-for-broader-spread-of-covid-19/>
- ⁴ https://newsroom.courts.ca.gov/internal_redirect/cms.ipressroom.com.s3.amazonaws.com/262/files/20202/Statewide%20Order%20by%20the%20Chief%20Justice-Chair%20of%20the%20Judicial%20Council%2023-2020.pdf
- ⁵ Ironically, Zoom appearances were first conducted because of a jail quarantine, unrelated to COVID-19. Public Defender Linden Mackaoui went to the jail and appeared with his client via Zoom into Department 3.
- ⁶ <http://www.nytimes.com/article/coronavirus-timeline.html>

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Appellate Advocacy in the Age of COVID-19

by Justice Martin Tangeman

The Court of Appeal, Second Appellate District, has adapted its practices in response to the evolving pandemic. Like so much else in our daily lives, much has changed. Gone are the days of the traditional oral argument. In those days of yore, counsel took their turns at the podium to speak directly to the justices assigned to decide their case, ready to persuasively advance their positions and defeat those of their adversaries, and to respond to the (sometimes) pointed questions and critiques posed by the black-robed jurists assembled at the bench. The setting was formal and the roles clearly defined.

But now the courtrooms are dark. These temples of appellate advocacy have been closed for more than six months now due to the pandemic. The appellate courts have been forced to find new ways to proceed without courtrooms. More importantly, we have been forced to proceed without our colleagues by our sides, and without the benefit of “live” arguments in our presence.

Courtrooms in the Age of COVID-19

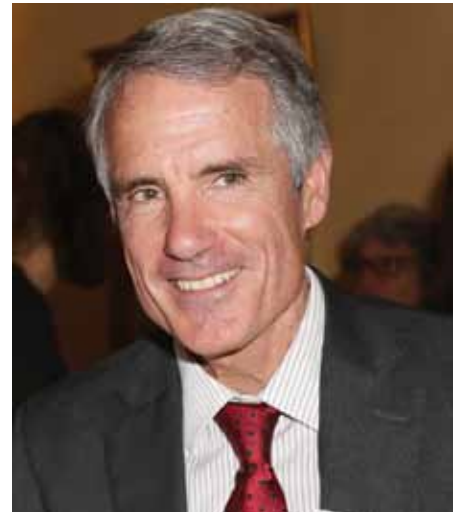
Welcome to the virtual courtrooms of the Age of COVID-19. We still wear our robes, but the settings are vastly different, even incongruent. We sit alone in our kitchens, dining rooms, or spare bedrooms converted into home offices. We stare at small screens and try our best to engage with others at distances near and far, all safely ensconced in their own “safe” zones (i.e., their dining rooms and home offices).

In the Second Appellate District, an order was issued last March suspending all in-person oral arguments in Los Angeles. Division 6 immediately adopted that order and suspended use of our Ventura courtroom. Beginning in June for Division 6, and in July for Los Angeles, the court began conducting oral argument by videoconference using the BlueJeans platform (which had previously been adopted by our Supreme Court with excellent results).

All counsel now appear remotely via video (or teleconference for those without video access), as arranged between counsel and the clerk’s office. Those participating in oral argument receive a specific emailed invitation to their designated session of oral argument, with different links for morning and afternoon sessions. Each session’s link is password protected to prevent non-participants from accessing the microphones or cameras.

Non-participants, including co-counsel who will not argue and members of the public, can watch and listen to all videoconference proceedings via the link posted on the court’s “Calendars” page. The links will be posted at least 24 hours prior to argument.

The manner of filing papers for the court’s consideration has also changed. The court will continue to receive correspondence and filings. The clerk’s offices in Los Angeles and Ventura remain open for that purpose but with sharply reduced staff on premises (others are working remotely). Consequently, staff is unable to respond to in-person



Justice Martin Tangeman at an October 2016 ABOTA dinner.

Photo courtesy of Rick Kraemer, Executive Presentations.

inquiries. Questions directed to the clerk’s office should instead be made by email at <https://www.courts.ca.gov/25071.htm>.

Since 2017, all filings by counsel have had to be made through the court’s electronic filing system (Cal. Rules of Court, rule 8.71). Specific formatting requirements are required (see 2DCA Formatting Requirements and Guidelines, posted at <https://www.courts.ca.gov/2dca.htm>). For self-represented litigants, paper filings may be made by placing them in a drop box located in the Division 6 lobby, or in Los Angeles at the entrance to the clerk’s office in the Ronald Reagan Building.

So how long will we be required to use virtual courtrooms for oral arguments? In the Second District, Administrative Presiding Justice Elwood Lui has informed us that we will continue to work remotely through at least January 4, 2021. More to the point, he does not anticipate a return to “live” oral arguments until mid-year of 2021 (which is consistent with the California Supreme Court’s proposed schedule). So we had all better get used to engaging in the “virtual” practice of appellate advocacy for the foreseeable future.

Practical Tips for Virtual Appellate Advocacy

With that background, I offer some practical tips for practicing appellate advocacy in the virtual courtroom.

First and foremost, ensure that you have a good wi-fi connection. So far, our biggest problem in oral argument has arisen when one party has a poor connection. This results in time lapses due to buffering, and sometimes lengthy delays and the need to repeat arguments, questions, or responses. This is at best annoying, and it certainly breaks the flow of concentration and discussion.

Second, please monitor the screen continuously for interruptions by the justices. In Division 6, our practice is to raise our hands to indicate our desire to pose a question or comment. I prefer this practice to our former practice—to simply interrupt the speaker. This new practice of raising hands allows the advocate to briefly complete their point before turning to the question. But be sure to be brief when completing your thought and acknowledging the questioner, who likely wants to follow up on the point just made; and don't change topics or arguments before acknowledging the questioner.

Third, I have been asked whether advocates should appear in a formal setting, and whether they should sit or stand. From my perspective, it makes no difference whether the advocate is at home or in an office, subject to a few suggestions. Try to clear the area behind and around you of unnecessary distractions. I find it easy to be distracted by family photos, stuffed animals, knick-knacks and other items commonly found in homes. It's best to have a plain wall behind you in the camera's view—so we focus on you and your argument, not your personal effects and mementos. And it's fine to argue from a seated position (if that is more comfortable for you—some advocates

prefer to stand). But don't move about on the screen, which can be disorienting to the viewer. And be careful of your facial expressions—be aware that you are much more visible on a screen than when viewed from a distance, as in court.

Fourth, bring only the minimum amount of papers to your virtual podium. Even more so than in court, the shuffling of papers is distracting and even annoying when amplified by the microphone in your computer. That's one reason why the best appellate advocates appear without notes or written materials (or with the bare minimum). Another benefit of doing so: It exudes confidence and is a sign of good preparation.

Of course, some things remain the same no matter how other things change. Division 6 is still a "hot bench" (meaning arguments are frequently interrupted by questions or comments). So despite the awkwardness of virtual arguments, you should not count on being allowed to complete your prepared remarks. Be constantly ready for interruptions, keep an eye on the screen for raised hands or other indications of an emerging question, and answer any questions directly and promptly before returning to your remarks.

Dos and Don'ts for Any Age

Finally, I would be remiss if, given this opportunity, I neglected to address general practices that should be employed in any courtroom argument, whether "live" or virtual. So here's a short list of some "dos" and "don'ts."

Do—

- **Prepare** carefully and thoroughly. You should know the record better than anyone—many close cases turn on the facts, and we often inquire about the facts. Be sure you understand the applicable standard of review and get well-acquainted with the facts of the significant legal

authorities. Update your research immediately before argument.

- **Listen** with rapt attention to the justices' questions and observations. They frequently provide the key to our analysis and the likely outcome. Then focus on the question, and answer it directly and immediately. It is *never* acceptable to say that you will answer the question later in your argument, or to try to move the focus from the question to your preferred argument.

- **Engage** the panel in discussion if possible. In my experience, a conversational tone is more effective than what sounds like a lecture, particularly in Division 6, which runs a more informal calendar.

Don't—

- **Repeat** your briefs or your arguments. This is a waste of your opportunity to persuade us. The briefs have been read, digested and analyzed. More importantly, repetition invites the listener's mind to wander rather than focus. You might as well stop talking.
- **Worry** about silence from the bench. It doesn't signal that you are likely to win or lose—it simply means the outcome is likely determined. If you represent the respondent and appellant's arguments were met with silence, consider simply asking the panel if there are any questions, and if not, sit down. In addition to pleasing the bench, you eliminate the opportunity for rebuttal. Knowing when to say nothing at all is a sign of the truly experienced advocate.

- **Make** ad hominem attacks. This point cannot be overemphasized. I have never heard an argument that was advanced by personal attacks on adversaries or (especially) the trial court. Judges and justices alike feel strongly about this. In my experience, your chances of successfully advancing your arguments decrease with each and every such attack.

Good luck on your next argument. See you in court! ■

Paraprofessionals: The Why • What • How of a Newly Minted Legal Position

by Raymond Allen

Despite evidence to the contrary, the California State Bar believes establishing a new legal profession will assist in helping low-income people “access justice.”¹ On April 21, 2020, the first meeting of the Californian State Bar Paraprofessional Working Group was held. See <http://board.calbar.ca.gov/Agenda.aspx?id=15587&t=0&s=false>

San Luis Obispo County attorney Stephen Hamilton has been selected as one of 16 members of the Working Group.² “I was selected to be the California Lawyers Association’s (CLA) representative to the working group, primarily due to my family law experience and background. However, I think I bring another perspective to the group as I am the only member of the working group from a small county.”

According to Hamilton, the creation of a new paraprofessional position in California is going to happen. It is a key component of Chief Justice Tani Cantil-Sakauye’s access to justice plans. The working group’s task is to make specific recommendations to the California State Bar regarding the creation, admission, regulation and scope of services that can be provided by the new paraprofessional position.

To carry out its objectives, the working group has been asked to conduct outreach. Hamilton said, “When we are able to resume in-person meetings, I would like to meet with the local bar and gather information to share with the working group.”

The states of Washington and Utah have already attempted to affect the “access to justice” issue. Washington has created Limited

License Legal Technicians (LLLTs). The creation of this legal profession was designed to [1] provide low-income individuals with affordable advocates not document preparers, and [2] ease the burden of a court system inundated with inefficient self-represented litigants.

Although LLLTs were established in 2012, research shows that the impact on “access to justice” is negligible. There are several reasons that the new position did not ameliorate the access to justice problem.

First, the legal market for the LLLT is the same as for attorneys. Pricing for services is based upon “the cost of doing business; the unpredictability of legal services required to solve an issue; the nature of parties to compete for a more favorable outcome in opposition to one another; and the significance of colleagues’ and competitors’ prices in determining one’s own.”³ For this new paraprofessional to make a living, he or she must still push the economic limits of the clients needing assistance.

Second, the new paraprofessional will likely perpetuate the same business models exemplified by lawyers, paralegals and document preparers. The paraprofessionals will strive to serve private clients, not public entities. According to Rebecca M. Donaldson (Harvard Law, 2016), “By pursuing private work through models akin to those already employed by lawyers, LLLTs will similarly need to charge enough to turn a profit and make a living.”⁴ This motivation undermines the goals of “access to justice.”

Finally, although the LLLTs in Washington were concerned about assisting low-income wage earners

in accessing justice, they were also motivated by their own economic needs.⁵ As a result, it is unknown whether a new paraprofessional legal position will impact access to justice more than it creates a glut on the legal profession.

Because paraprofessionals are not likely to impact access to justice, that role will continue to be filled by “public and private funding of legal aid in its many forms—nonprofit organizations, law school clinics and so on.”⁶

Notwithstanding the concerns caused in other jurisdictions by the implementation of a paraprofessional position, by July 2021 the State Bar’s working group is supposed to roll out its final report. Thereafter, there are two possibilities: the Bar could roll out the program statewide, or it could create pilot programs in individual counties. Expressing only his personal opinion, Hamilton hopes regional and subject-specific pilot programs are used before the program is established statewide. He believes that would be helpful to determine efficacy *vis-à-vis* reducing the number of *per se* litigants.

Although the paraprofessional position is going to happen, the good news is that the working group is interested in your opinion on how to best impact access to justice for the low-income wage earner. Stephen Hamilton has already indicated he will be reaching out to the San Luis Obispo County legal community to obtain a local perspective about this proposed new profession. If you want to receive information regarding meetings, which must be open to the public, please see <http://board.calbar.ca.gov/Committees.aspx> - subscribe. ■



The State Bar of California

Task Force on Access Through Innovation of Legal Services

Studying ways to increase access to justice for all Californians by responsibly harnessing the power of technology.

Background

Too many Californians needing legal services cannot afford an attorney or don't have meaningful access. A 2018 "Legal Market Landscape Report," commissioned by the State Bar, concluded:

- As in healthcare, education, and other knowledge-intensive professions, the cost of traditional legal services is increasing.
- Access to legal services is decreasing. A growing proportion of consumers are choosing to forgo legal services rather than pay the high price. In a recent study conducted by the National Center for State Courts, 76 percent of civil cases involved at least one party who was self-represented, roughly double the number 20 years earlier.
- Law is moving rapidly from a model of one-to-one consultative legal services to one where technology could enable affordable, one-to-many legal solutions.
- The public interest may be better served by regulatory approaches that encourage innovation in one-to-many legal solutions created by professionals from multiple disciplines.
- Modifying ethics rules premised on one-to-one legal services to facilitate greater collaboration across law and other disciplines could have many benefits: driving down costs; improving access; increasing predictability and transparency of legal services; aiding the growth of new businesses; and elevating the reputation of the legal profession.

By harnessing innovative approaches from the tech sector while maintaining our paramount commitment to protect the public, the State Bar hopes to help improve access.

The "State Bar's Task Force on Access Through Innovation of Legal Services" is charged with identifying possible regulatory changes to enhance the delivery of, and access to, legal services.

The Task Force will deliver its final report to the Board of Trustees no later than March 31, 2020. (The original report submission deadline, scheduled for December 31, 2019, was extended by the Board in November 2019.) In keeping with the State Bar's Strategic Plan goals and objectives, each recommendation is expected to balance the dual goals of public protection and increased access to justice.

Footnotes

- ¹ Donaldson, *Law by Non-Lawyers: The Limit to Limited License Legal Technicians Increasing Access to Justice* (2018) 42 Seattle Law Review 1.
- ² The working group was intended to have 16 members, but currently only has 12 due to vacant positions.
- ³ Comment (2018) 42 Seattle L.Rev. 1, 20.
- ⁴ Comment (2018) 42 Seattle L.Rev. 1, 42.
- ⁵ Comment (2018) 42 Seattle L.Rev. 1, 59.
- ⁶ Comment (2018) 42 Seattle L.Rev. 1, 70.

Task Force Charter

The Task Force will address three broad areas:

1. Definition of unauthorized practice of law

Review the current consumer protection purposes of the prohibitions against unauthorized practice of law as well as the impact of those prohibitions on access to legal services with the goal of identifying potential changes that might increase access while also protecting the public. In addition, assess the impact of the current definition of the practice of law on the use of artificial intelligence and other technology-driven delivery systems, including online consumer self-help legal research and information services, matching services, document production and dispute resolution;

2. Marketing, advertising, partnerships & fee-splitting

Evaluate existing rules, statutes and ethics opinions on lawyer advertising and solicitation, partnerships with nonlawyers, fee-splitting (including compensation for client referrals) and other relevant rules in light of their longstanding public protection function with the goal of articulating a recommendation on whether and how changes in these laws might improve public protection while also fostering innovation in, and expansion of, the delivery of legal services and law-related services, especially in those areas of service where there is the greatest unmet need; and

3. Nonlawyer ownership or investment

With a focus on preserving the client protection afforded by the legal profession's core values of confidentiality, loyalty and independence of professional judgment, prepare a recommendation addressing the extent to which, if any, the State Bar should consider increasing access to legal services by individual consumers by implementing some form of entity regulation or other options for permitting nonlawyer ownership or investment in businesses engaged in the practice of law, including consideration of multidisciplinary practice models and alternative business structures.

Task Force Composition

The Task Force has 23 members, a majority of whom are nonattorneys. A nonattorney majority helps ensure that the recommendations of the Task Force are focused on protecting the interests of the public.

Chair: Lee Edmon, Presiding Justice, California Court of Appeal, Second Appellate District, Division 3
Vice-Chairs: Toby Rothschild, Of Counsel, OneJustice; and Joyce Raby, Executive Director, Florida Justice Technology Center

Rev.1.28.2020

The Andreen Moot Court— Brady Bunch Edition

by Valerie Janiel

It probably does not surprise you to hear this year's Andreen Moot Court was a bit unusual, much like the rest of 2020. Instead of an auditorium of peers, family and blindingly bright light, competitors faced a laptop screen in an empty room. The deafening echo of one's voice was broken not only by the questioning of the justices, but also by the occasional connection glitch. Instead of looking across a divide separating student from the justices, competitors were met with an assortment of faces on a screen. Talking or remaining silent was complicated by a new factor—why is that mute button so small and hard to find when it is most needed?

It also should not come as a surprise that the law students adapted to the new setting much in the same way as the legal community quickly adapted to new practices and technology. Human nature inclines us to strive for purpose, fulfillment and the attainment of excellence. Plato refers to this as praxis. This constant pursuit of excellence fuels us to strive to reach our highest potential. With the passage of time comes change in the world to which we adapt and evolve in order to continue our growth. This usually involves integrating new ideas or technology into known practices—rarely are humans required to rebuild and start from scratch with little or no notice. As evidenced by our Constitution and our nation's founding fathers, however, rebuilding and starting fresh can lead to success.

The Andreen Moot Court

The Andreen Moot Court at San Luis Obispo College of Law (SLOCL) was established in 1977. Named in honor of the late Justice Kenneth Andreen, the program sets out to encourage thoughtful discussions about

modern issues involving fundamental rights. The importance of engaging in difficult conversations was not lost on Justice Andreen. During his time, he was a civil rights activist who marched alongside Dr. Martin Luther King and worked toward integration of the downtown Fresno business district with the Honorable Hugh Goodwin. Later in life, he remained connected to community events in as much as his career allowed.

The Andreen Moot Court has become a springboard for fourth-year students at SLOCL as they enter the legal profession and begin their law careers. As fourth-year student and finalist Roxanna Vasquez-Calderon stated, "My goal...was to be a finalist for The Andreen Moot Court, and I am very happy to have accomplished such achievement."

In the spirit of Justice Andreen, the Andreen Moot court challenges students to discuss sometimes controversial issues and become comfortable talking about the facts in a conversational yet respectful manner. It is indisputable that Justice Andreen would have been an active participant in our nation's dialogue today.

Historical Context

The year has come with struggles and competing ideologies about the rights of the individual and the interests of the government. In March, when action was taken to mitigate the impact of COVID-19 in communities, many people believed their rights were violated by the restrictions—the freedom to travel, leave one's house or practice religion in a house of worship, just to name a few. In May, our nation witnessed the senseless murder of George Floyd. In the following days and weeks, many people chose to exert their freedom of speech and assembly.

Across the nation, and here in San Luis Obispo, we saw those same citizens met with force, including CS gas, pepper bullets, and flash-bang grenades. As a fourth-year law student, it was impossible to not listen, learn and become involved in these conversations. However, as Vasquez-Calderon noted, "Having to prepare and commit for our performance was definitely a challenge during these uncertain times."

Sensitive Fact Pattern

In moot court virtual world, students began to learn to respectfully address the issues presented in the fact pattern. On one hand, the state's pursuit of equal protection for transgender student athletes. On the other, a Catholic high school with a gender policy in conflict with the state's regulation. Although many students in the class were raised with some religious background, most have never had a personal relationship with a transgender individual. In truth, most students have never even met a transgender person. Thus, when we began talking about the facts, most did not have any familiarity with what these concepts meant or how to speak about it in a conversational and civil way.

Discussing these issues in a sensitive manner across a virtual platform was challenging. As 2020 has made clear, technology and Wi-Fi connections do not always work seamlessly. Beyond the technical challenges, perception of peer feedback was limited to what was on the screen. Nonverbal communication became nonexistent with the use of Zoom technology and a lack of visual cues and body language. However, as Vasquez-Calderon noted, "We overcame any and all obstacles with resilience... we help, support and believe in one another." Our arguments evolved as we listened, learned and began to understand where each side's position was rooted.

As the semester went on, the class launched further into the case library and respective positions.

We began flight testing some not-so politically correct arguments. Normally in class, we would be able to discuss these topics as part of a roundtable discussion. Even if each of us did not have a working knowledge about transgender people or religion, we knew when statements were abrasive or uncouth. There were several times that words came out of my mouth, and I was unable to hide my own disdain for the argument.

We guided one another with appropriate terminology and honestly spoke about what arguments worked and which did not. Each week those arguments evolved and grew less abrasive and into a more graceful presentation. Each student developed a voice. As our confidence grew, the strength of our arguments did as well.

Acknowledgments & Adaptation

The success of the Andreen Moot Court Program and the growth of students is due in large part to two people—Professor Stephen Wagner and

Teaching Assistant and Assistant Dean for Faculty Support Dennis Meffert, a finalist from the 2018 Andreen Moot Court. Each worked tirelessly to deliver a moot court program substantially similar to prior years.

Just a few days prior to the start of the semester, Professor Wagner was instrumental to ensure that students continued to have the ability to participate in Moot Court. He worked with professors from Monterey and Kern to revamp the Moot Court program and to establish it in a virtual setting. Without his work to push the program to a new technology, students would not have been given the opportunity to practice in this new platform. Professor Wagner led by example and pressed through his own busy trial schedule in order to offer his time and guidance to us whenever needed.

Fourth-year student and Andreen Moot Court finalist Kizzy Garcia had this to add. “I attended the 2019 Andreen Moot Court at the Clark Center. Attending the event created

excitement for the upcoming moot court course. When COVID-19 came into our lives, moot court became unpredictable. However, Professor Stephen Wagner and teaching assistant Dennis Meffert put forth all of their effort to create an opportunity for us to gain experience in appellate advocacy.

“My favorite aspects of moot court include Professor Wagner’s introduction on how to engage and have a conversation with the Justices, how to speak in an appropriate volume, poise and the cardinal rule of never interrupting a Justice.”

Many would believe that participants of the 2020 Andreen Moot Court class experienced a unique moment in time, between the challenges in our nation and life moving into a virtual world. Upon retrospection, I believe it is easy to miss the forest for the trees. This year has been a testament to the diligent work of the legal profession, and to law students and legal professionals in our community. ■

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What Are the Impacts of Recent California Supreme Court Bar Exam Decisions?

Q & A With Dean Mitchel Winick, Monterey College of Law

by Raymond Allen

The California Supreme Court announced several far-reaching changes to the California Bar Exam on July 16, 2020. Prior to issuing its decisions, four members of the Court participated in a July 2, 2020, Zoom videoconference call with deans representing all categories of law schools in California. The following is a Q & A with Mitchel L. Winick, President and Dean of Monterey College of Law, who participated in the discussion with the Justices and who drafted the correspondence to the Court outlining the recommendations of the California Accredited Law Schools (CALS).

What were the primary concerns that the law school deans voiced to the Court?

The deans shared concerns about the serious impact that the delay of the July 2020 bar examination was having on graduates' careers and personal lives. These impacts include significant economic burdens, loss of employment opportunities, and financial stresses that many graduating law students are now facing because their opportunity for licensure as a California attorney is delayed and uncertain. Many graduates also are reporting significant psychological and emotional impacts, particularly for those of limited economic means, resulting from disruptions in living circumstances, family care responsibilities, parenting conditions, and conditions such as depression and anxiety disorders.

A growing number of law firms and public agencies have delayed employment offers and job starting dates for recent graduates until after the first of the year. The delays are attributed to a combination of the direct impact that the COVID-19 virus has had on the practice of law and the delay in licensing due to the rescheduling of the July 2020 bar exam. There is little that the Court can do to address the disruption of the legal industry by the Coronavirus, but it has direct control over decisions that can lessen the potentially devastating impact of denying or delaying licensure to recent law school graduates.

California is unique in having ABA-approved, State Bar Accredited, and Registered Unaccredited Law Schools. Did the different type of law schools agree on how to address the cancellation of the July 2020 bar exam?

Yes, there was fundamental agreement across the board on the menu of choices the law school deans presented to the Court. The key requests included cancelling the in-person September exam due to health and safety concerns, offering an online October exam to provide

a safe alternative in the fall, adjusting the minimum passing score ("cut score") from the artificially high 1440 to a number closer to the national mean (1350), and authorization of a supervised practice license (with or without an eventual bar exam) to address the delay and disruption caused by cancelling the July 2020 bar exam.

The only significant difference was that the ABA law school deans also advocated for authorization of a "Diploma Privilege" that would grant recent law school graduates a permanent license after a period of supervised practice without requiring a bar exam. The CALS deans were concerned that this recommendation was too difficult to administer given the fact that California has graduates from 40+ in-state and 70+ out-of-state-law schools who traditionally sit for the bar exam. The Court's decision to authorize a two-year supervised practice license within which time the bar exam must be taken and passed followed the CALS recommendation. A Diploma Privilege without a bar exam was not approved.

Were you surprised that the Court cancelled the September in-person bar exam?

Not at all. Although several other states continue to ignore the potential COVID-19 health and safety consequences of placing hundreds, and in some cases thousands, of unrelated individuals in a closed environment for 18 to 20 hours to take an in-person exam, cancelling the in-person exam in the midst of California's escalating pandemic was clearly the only sensible and safe call.

It sounds like the law school deans were in favor of the proposed October 5–6, 2020, online bar exam. This, however, has never been attempted before. Any concerns?

Certainly, there are concerns anytime that something this important is implemented for the first time. However, administering computer-based, high-stakes professional

exams is not new. Elements of the licensing exams for Architects, CPAs, Optometrists, Psychologists, Dentists, Veterinarians and Realtors, just to name a few, are already administered as computer-based exams. The decision to move the October bar exam online is not without consequences, however.

The National Conference of Bar Examiners (NCBE) refuses to provide a validated set of Multistate Bar Exam (MBE) questions for the second day of the proposed October exam. This means that October examinees will not be able to use the October California MBE exam results for applications to any other jurisdiction. There are also legitimate concerns about the security and stability of an online exam, fair access to reliable internet connections, distractions of at-home testing environments, and provision of appropriate testing accommodations. However, balancing public health and safety with these surmountable challenges, the Court made the right call to authorize an online exam alternative.

What is the long-term impact of changing the minimum passing score (“cut score”) from 1440 to 1390?

California has been out-of-step with the national cut-score standards for decades. The result has been that thousands of qualified law school graduates have been denied licensure in California despite consistently achieving some of the highest bar exam scores in the country. Furthermore, a recent report released by the State Bar analyzing 10 years of bar exam results clearly indicated that use of the artificially high 1440 cut score has had a significant and profound disparate impact on the basis of race/ethnicity. By bringing California in line with the national bar exam standards and creating a more fair and equitable scoring system, it is very likely that the Court has taken the most significant step forward for improving diversity of the California bench and bar since the Civil Rights Act of 1964.

You have previously advocated for adjustment of the cut score to 1330-1350 to be more directly in line with other major jurisdictions. Are you disappointed that the Court only adjusted the cut score to 1390?

Not at all. The Court specifically said that it will consider further changes to the cut score and the content and format of the bar exam as part of its soon-to-be convened Blue-Ribbon Commission for the Future of the Bar Exam. The national mean is the equivalent of 1350... New York is at 1330, Illinois is at 1340 and Texas is at 1350.... I believe that the Court will take these factors into consideration when it receives the Commission's

findings and has the opportunity (hopefully, when we are no longer in the midst of a pandemic) to consider alternatives for licensing attorneys in the future.

Will a Supervised Practice License adequately protect the public?

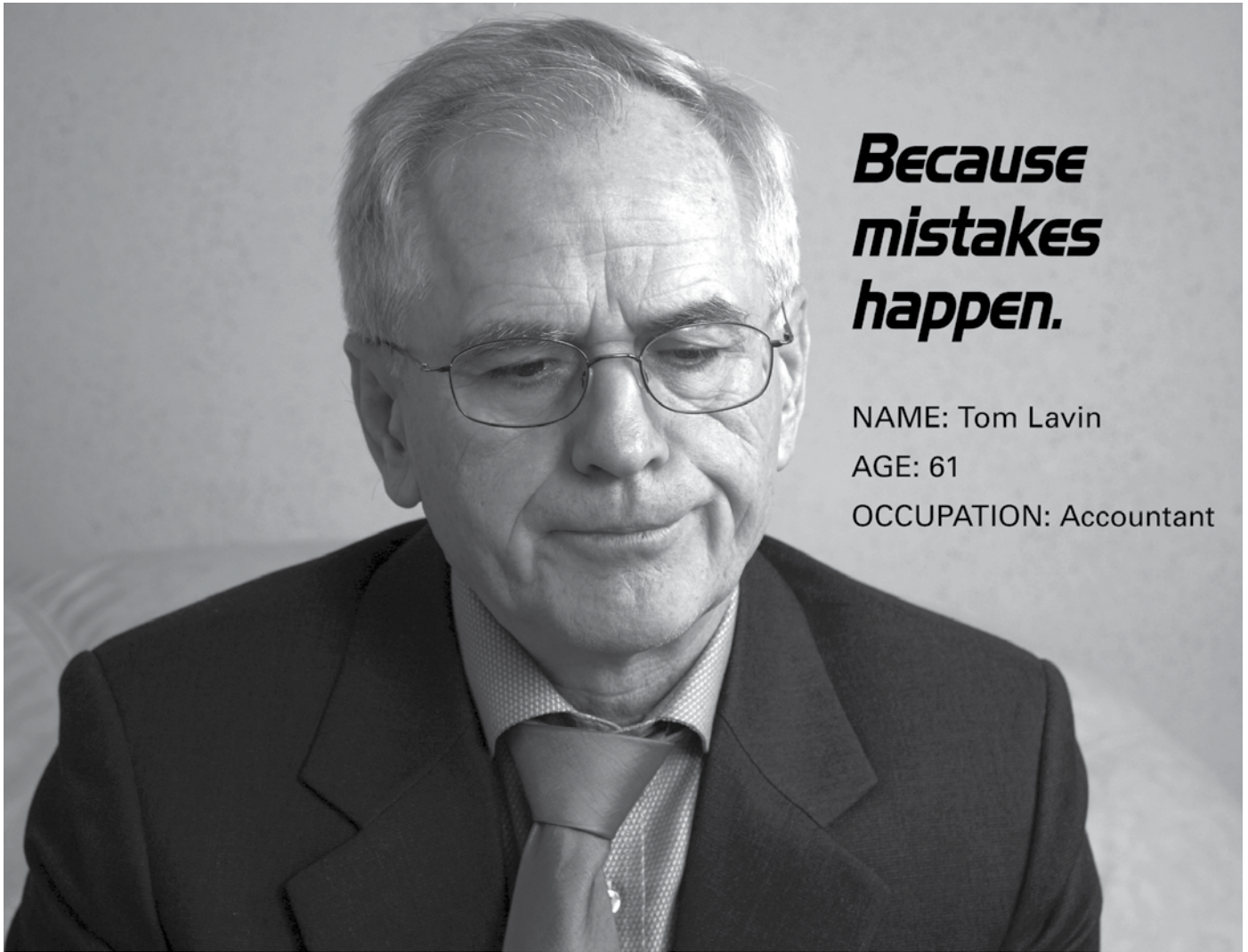
Yes, a Supervised Practice License actually enables the discovery and measurement of competency and merit beyond the limited scope of the bar exam. Many law school graduates who have not yet passed the California Bar Exam exhibit valued professional characteristics such as character, compassion, organization, service and selflessness that the current bar exam is incapable of detecting, much less measuring. While the current bar exam tests grit, a degree of academic competency, and high-stakes test-taking skills, these are not necessarily the most important qualities and values our profession demands of its competent and valued practitioners.

Academic competencies alone do not make good lawyers and citizens. They must be tempered with human qualities, not measured by the current bar exam content or format...qualities that identify a person as a selfless servant of others, an advocate, and a compassionate guardian of the rule of law. Alternative pathways for establishing minimum competency, such as a period of supervised practice, open up the possibility for identifying a broader range of competent, compassionate, qualified legal professionals who might otherwise be excluded by the narrow focus of the current bar exam.

With the cooperation and active participation by the practicing bench and bar, the proposed supervised practice license may go a long way to provide successful graduates with a pathway to practice. The longer-term impact is that the success of supervised licensed practitioners over the next two years may provide proof that a permanent alternative to the traditional bar exam should be considered.

Overall, given all of these challenges, did the Court make the right call?

The Court not only made the right call, but demonstrated their unique ability to strike a careful balance between public protection, oversight of the legal profession, fairness to recent law school graduates, and commitment to diversity of the bench and bar. The Court's decisions will fundamentally change who will be practicing law in California in the future...changes that are good, fair and long-overdue. ■



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My Breakdown That Led to My Breakthrough—

Why I Don't Work on Sundays or Go Without My Morning Routine

by Kara Stein-Conaway

I grappled with whether I wanted to share this story with you. As lawyers we are expected to take on extraordinary challenges and not let it show when we are struggling. I believe that the model of working ourselves into the ground as a measure of success and contribution is outdated and totally unhealthy. I am an advocate for developing a new way of relating to our work as lawyers and as human beings. I hope that by sharing this story with you, you feel empowered to develop a way of relating to your work that feels right to you.

Setting Boundaries

It was a cool winter Sunday morning in December 2017, when I kissed my one-year-old, Cameron, and four-year-old, Jackson, goodbye and headed to my office as I had done nearly every day since January 2017 when I had decided to open my own law firm. Typically, when I arrived in the early morning hours on the weekend, I was the only person in the building for at least most of the time, and I was able to tackle those more time-consuming projects without interruption.

But this morning was different. When I stepped into my office and closed the door, I was physically unable to make it to my chair or to even turn on my computer. Instead, I collapsed to the floor. I felt exhausted and I felt devastated. I wanted to be home with my sons. I knew that Cameron would be running around in that adorable way that babies run when they've mastered walking and

their little legs can't quite keep up with the excitement they feel about their new mobility. So, they run and tumble, run and tumble, and melt your heart with the absolute beauty of it all.

Jackson was beside himself with joy that his once-tiny baby brother who had previously just laid on the floor drooling had suddenly turned into a playmate who was interested and willing to participate in any play idea that Jackson could come up with. And I was missing it. I was missing a lot of it and I felt guilty and I felt angry. I was angry at myself because I was the one who packed up my work bag, drove to my office and left the beauty that was right before my eyes for the work challenges I was in no state to tackle.

I was 36 years old and never had experienced anything like this before. Before I had children, I would work a full day, bring my work home on the weekend and still take time to do things that nurtured me outside of work, too. Back then, time seemed more abundant.

But as I laid on my office floor this winter morning in December 2017, I realized that so much had changed for me. I still wanted to provide extraordinary care and representation to every person who trusted me with their futures. Now, I had two little boys who would not be little forever and who I wanted to spend more time with. I knew when I decided to open a law firm of my own that there would be challenges, but it took me lying emotionally

paralyzed on the floor that cool Sunday morning to realize that my current path was not sustainable.

This was my breakdown that led me to my breakthrough.

I committed right then and there while I was lying on the floor that I would no longer be coming into the office on Sundays. By setting that boundary, I immediately felt a huge sense of relief.

So in 2018, I stopped working on Sundays. Sundays became a day that I could count on to play with my boys and also set aside some time to nurture myself.

I am lucky enough to get to practice criminal defense with my father, Jeff Stein. One of the great joys of our professional careers is getting to brainstorm with one another about our cases.

While I learned many wonderful things from my father, he did not teach me about having healthy boundaries with work. For as long as I can remember, he worked all hours, all days of the week. So, when he would call me on a Sunday to brainstorm about a new case, I would get to gently remind him that I did not do case work on Sundays—and could we talk about this tomorrow? It took some training, but eventually my father learned that holding that boundary was important to me and he learned to call me on Facetime with his grandsons on Sunday and to save the case brainstorming for the other days of the week.

Continued on page 28

My Breakthrough continued

Creating a Daily Self-Care Routine

When I first stopped working on Sundays, I felt pressure to get seven days of work done in the remaining six days I was leaving available for work. To increase my efficiency, effectiveness, and productivity, I knew that I wanted to take additional steps to enhance my energy so that I could optimize each workday.

So, to help take better care of myself and to enhance my energy, I decided that every morning before work I would follow a morning routine. It has evolved over the years. I give myself the flexibility to revise it at any time. I'll share my current morning routine with you.

Start Your Day With a Kind Message to Yourself: Mantra

You can set the tone for your day by speaking kind words to yourself.

Just as I begin to realize that I'm awake each day, I tell myself something uplifting. What I decide to say also changes depending on what I need to hear. Currently my mantra is: I am happy, I am healthy, and today I get to help people.

Be In Gratitude

You can practice gratitude daily.

After saying my mantra, I tap into my heart and I ask myself what am I grateful for in this moment? Then, I say whatever comes to my mind. This morning I felt grateful that my body is strong and healthy and allowed me to play a 30-minute game of freeze tag with my boys after dinner last night.

Spend Time In Your Body: Exercise

You can give your mind a break by spending time in your body.

Although someday I think I may do longer morning workouts, my go-to exercise every weekday morning is 30 minutes or less. My favorite and the one that I go back to consistently is Shaun T's insanity Max 30 (which is a 30-minute version of the original longer Insanity program). However, I do take breaks from Insanity and try other Beach Body On Demand workouts. The one I'm currently enjoying is called Morning Meltdown. I paid about \$100 for an annual membership for Beach Body On Demand and it fits perfectly into my life. Before I had kids, I enjoyed going to the gym and to yoga studios. It was not only for the exercise but it was also a fun social outlet. However, since having children and having more time constraints, being able to exercise at my home in the early morning hours before my children are even awake has been the perfect fit for me.

Spend Time In Silence: Meditation

You can give yourself the gift of silence even if it is just for a few minutes.

Although I've sometimes set aside more time for meditation, currently I just commit to five minutes a day. I usually meditate right after I finish my exercise. I've used various apps to find guided meditations. The one I'm currently enjoying is called Insight Timer. I just downloaded it from the apple app store and it's free.

Connect With Your Loved Ones

There's a benefit of having daily connection time with your loved ones. It recharges you. It recharges them. You can build it into your daily self-care routine.

When it was time to stop breast-feeding my youngest son, Cameron, I felt this deep sense of loss. I realized when I allowed myself to explore that feeling, that I treasured the snuggles inherent in the breastfeeding experience. So, when I knew that breast-feeding was coming to an end but realized that what I was really sad to miss was the snuggling, I recognized that the morning snuggling did not need to end. Cameron is now 4 years old and he is still a mega snuggler. For as long as he is interested in snuggling with me, I will hold him in my arms and start the day with snuggles. It's a gift I don't take for granted. Jackson, who is 7 now, is happy with a morning hug but Jackson usually has other things he'd like to do besides snuggle. I'll take my morning snuggles with Cameron and a hug with Jackson for as long as the boys are up for it. Morning snuggles/hugs are one of my favorite parts of my morning routine.

Then, I get ready for work, and start working. I used to leave my house to head to the office, but given COVID-19, most days now I head to my home office.

This morning routine is how I take care of myself every day and how I start my day by filling up my cup so that during the day I can pour my energy into my clients and their cases. Then, when my work is done, I can pour my energy into my sons.

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When work challenges come up during the day, I know that I am better able to take them on because doing this morning routine elevated my mood and my energy. I'm happier and I'm more productive than I was before I became consistent with this morning routine. Taking care of myself in this way is a habit that has actually become remarkably easy to maintain. I crave my morning routine and I know my day will not be as good without it, so I stick to it.

Now, in addition to typically not working on Sundays, I generally don't work on Saturdays either. If I do need to work on the weekend, I can usually squeeze it into the early morning, late evening or during the time when we let the boys watch TV. In this way, I know that my weekends are reserved primarily for connecting with my sons.

One might think my work would suffer having developed these boundaries, but I've found the opposite to be true. I'm more efficient, more productive, and I am taking care of

my clients better now that I have healthy boundaries around my work. My commitment to the morning routine also helps me stay more focused during work hours and able to navigate an ever-evolving criminal law practice, while being there for my sons, and also being there for myself.

If you've struggled with having healthy boundaries with your work the way that I have, I hope that you will consider what steps you can take to develop the boundaries you need to prioritize your wellness and what matters most to you in your life. You can start by looking at your life and being honest about what is and isn't working for you.

- *Is there a boundary with your work that you know you need to set?*
- *What is that boundary?*
- *What steps can you take right now to set that boundary?*
- *Will you give yourself the gift of developing your own nourishing daily self-care routine?*
- *Given the other commitments you have, where in your day, can you*

carve out time for this new daily self-care routine?

Start small. Saying a morning mantra or focusing on gratitude when you first wake up can be done in less than two minutes. Maybe start there, and as you make space for more, add in other new components to your ideal morning routine that will help you start off your day feeling nourished, energized, and excited about getting to fill up the cups of your clients because your own cup is already full.

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

Kara Stein-Conaway practices criminal defense with her father, Jeff Stein, at the Stein-Conaway Law Firm, P.C. The new office of their growing firm is located at 1045 Mill Street in San Luis Obispo; visit www.steinconawaylaw.com. This is the sixth in a series that explore the intersection of women, business, law and family.



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