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July–August 2021

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After 40 Years Practicing Law,
Michael Seitz Retires

Meet Markie Jorgensen,
Assistant SLO City Attorney

Sex Offender Registration—
Termination of Duty Now Available



**We are very pleased to
announce that we have
expanded our firm!**

**We have recently added four attorneys to our firm,
and we could not be any more excited.**

WARREN A. SINSHEIMER, III AND DAVID A. JUHNKE

Longtime San Luis Obispo Attorneys, Warren A. Sinsheimer, III and David A. Juhnke joined Andre, Morris & Buttery on March 22, 2021 as Of Counsel Attorneys. Warren and Dave previously worked with McCormick Barstow in the San Luis Obispo office. Warren continues to handle Estates and Trusts matters. Dave continues to handle both Transactional and Litigation matters.

CAMERON T. COTTON AND MICHAELA R. COTTON

Cameron T. Cotton and Michaela R. Cotton joined Andre, Morris & Buttery on March 1, 2021. Michaela previously worked with Latham & Watkins in the San Diego office and she has joined our Litigation Group and our Employment Law Group. Cameron also worked at the San Diego office of Latham & Watkins and has joined our Estate/Trust Group and our Real Estate & Transaction Group.

**We are thrilled to welcome these four amazing attorneys to our firm,
and we are looking forward to working with them!**

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San Luis Obispo County



CONTENTS

President's Message—A Fourth of July to Remember	4
Editor's Note	6
San Luis Obispo County Bar Association Endowment	7
How Does LRIS Serve the Community & SLO Bar?	8
Reserve Your Tickets for the Summer Social July 15	9
Meet Markie Jorgensen, Assistant SLO City Attorney	10
After 40 Years Practicing Law, Michael Seitz Retires	12
Doing Good Matters—Wilshire Health & Community Services Mediation Center Brings People Together	16
Herstory—The CA Bar Exam—A Conversation	20
Fantasy Witness—Galileo Galilei	22
Sex Offender Registration—Termination of Duty Now Available	26
Metamorphosis of an Attorney	28
Central Coast Reverie	29
Bar Bulletin Editorial and Advertisement Policy	34

*Cover: Michael Seitz bids farewell to the practice of law after 40 years.
Photo courtesy of Chris Borgard.*

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President's MESSAGE

by Joe Benson



A Fourth of July to Remember

The Fourth of July is my favorite holiday. There is something special about the combination of a warm summer evening, socializing, patriotism and, of course, the inherent danger of explosives. When I was a kid, the Fourth of July meant an evening of freedom from the usual bedtime routine, our family dog running away (see above regarding explosives), and hanging out with cousins I had not seen since either Memorial Day weekend or Christmas (depending on how much my parents and their parents liked each other).

Quick History Refresher

Celebrating America's Independence Day, which of course falls on the Fourth of July each year, dates back to the 18th century and the American Revolution. On July 2, 1776, the Continental Congress voted in favor of independence, and two days later delegates from the 13 colonies formally adopted the Declaration of Independence. From 1776 to the present day,

July 4th has been celebrated as the "birth" of American independence, with festivities ranging from fireworks, parades and concerts, to the more casual family gatherings and barbecues.

The tradition of setting off fireworks on the Fourth of July began in Philadelphia on July 4, 1777, during the first organized celebration of Independence Day. A 13-gun salute in honor of the original colonies was fired from ships. The *Pennsylvania Evening Post* reported, "At night there was a grand exhibition of fireworks (which began and concluded with 13 rockets) on the Commons, and the city was beautifully illuminated." That same night, the Sons of Liberty set off fireworks over Boston Common.

In 1781, months prior to the key American victory at the Battle of Yorktown, Massachusetts became the first state to make July 4th an official state holiday.

In 1870, Congress made July 4th a federal holiday and in 1941, the provision was expanded to grant a paid holiday to all federal employees.

Fireworks and the Law

As nearly every law student is taught in torts, fireworks, in a slightly attenuated way, helped shape American jurisprudence. *Palsgraf v. Long Island Railroad Co.* 248 N.Y. 339, 162 N.E. 99 (1928) is the leading case in American tort law on the question of liability to an unforeseeable plaintiff. What if that box of explosives dropped on the train platform had instead been a box of ice cream? Where would the boundaries of proximate cause be drawn instead?

Reminder— Fireworks Are Dangerous



Jason Pierre-Paul appears in a 2016 public service announcement.

It goes without saying that fireworks are incredibly dangerous and should be left to professionals. A recent example of this danger occurred when NFL player Jason Pierre-Paul suffered a major hand injury on July 4, 2015, after a firework exploded in his hand, resulting in his right index finger being amputated.

Even the professional pyrotechnicians struggle though. During the annual “Big Bay Boom” extravaganza in San Diego in 2012, a software error caused what should have been an 18-minute show to instead occur in about 15 seconds. I can only imagine the disenchantment felt by spectators who likely made the typical investment of arriving several hours prior to stake out a nice spot, finding ways to keep their kids placated while anticipating a nice evening of fireworks choreographed to music. The payoff to their investment was an impressive, but short-lived, show, after which they were informed “that’s all, folks!” and instructed to head home. Yikes.

The New Normal

Last year, the Fourth of July was different for my family, as it likely was for most of you. My wife, daughter and I went to stay with my wife’s family in a lightly rural part of Bakersfield for a couple days. There were no organized fireworks shows at the Country Club or the college or anywhere else. Much to my surprise and delight, instead the good people of Bakersfield put on spectacular, if absolutely unlawful, fireworks shows from their driveways. Standing in the circular driveway of my in-laws’ house, there were fireworks in every direction that rivaled most



San Diego pyrotechnicians suffered an “oops” in 2012. Photo courtesy www.theatlantic.com/national/archive/2012/07.

professional fireworks shows I’ve seen. It was exciting, loud and slightly terrifying. I kind of hope they do it again this year.

I hope you and your loved ones have a safe, healthy and happy summer. ■

SLO County Bar Association Announcement

Nicole Johnson has resigned as the Executive Director of the San Luis Obispo County Bar Association. She served in this role from December 2017 through April 2021. Johnson has been an incredible asset to the Bar Association. We are grateful for her service in advancing our mission, and we wish her well in her future endeavors.

In June, Kerrin Hovarter, Executive Director of the Lawyer Referral and Information Service (LRIS), accepted the position of Executive Director for the SLO County Bar Association. “I’m excited to see her talent, work ethic and ingenuity applied in this expanded role,” Board President Joe Benson said.

To contact Hovarter at the SLO Bar Association, please use the existing phone, (805) 541-5930, and e-mail, slobar@slobar.org.



Editor's Note

by Tara Jacobi

I got married on my lunch hour. I wore the same ivory suit I wore to court that morning that afternoon. Chris started the day asking another resident to cover him so he could get to City Hall in Manhattan. We both went back to work after. Growing up, celebrations were not a big part of my family life. When burying my parents, I realized I was finally celebrating the joys of their lives, albeit at their respective funerals.

Writing is my favorite thing about lawyering, but reading or crafting a great story is what I will remember most about this experience we call life. C.S. Lewis states in *An Experiment in Criticism*, "Those of us who have been true readers all our life seldom fully realise the enormous extension of our being which we owe to authors....In reading great literature I become a thousand men and yet remain myself. Like the night sky in the Greek poem, I see with a myriad eyes, but it is still I who see. Here, as in worship, in love, in moral action, and in knowing, I transcend myself; and am never more myself than when I do."

I recently placed a story about my parents in a national history magazine. It is a story about letters I discovered while clearing out my parents' retirement home in Florida. My mother saved the letters my father wrote to her while serving in Vietnam. She also saved letters from a young Vietnamese girl, who cleaned my father's barracks, who wrote to him upon his return, wondering if he was happy now that he was able to return home. When I took my son to purchase the magazine at Barnes and Nobel, watching his eyes light up when he saw his grandparents' photos and his mother's name gave way to tears in my eyes.

Life can be challenging. There is so much evidence of this everywhere you look. Especially,

with lawyering. Clients tumble onto you with a bundle of problems. Not just legal. They can be entangled with financial challenges, physical and mental health concerns, emotional and social issues, relationship difficulties, discrimination and unfair treatment.

One of my favorite movies and lines about lawyering is when George Clooney playing *Michael Clayton* says, "There is no play here. There is no angle. There's no champagne room. I am not a miracle worker, I'm a janitor." I've felt that way too.

Celebrating. Technology has greatly changed how and what we celebrate. Many people are going to be celebrating our emergence from isolation after the year plus that we've recently experienced. Get ready members. Our annual Summer Social is happening. It is scheduled for Thursday, July 15. Mark your calendars. Check your emails for further details. Some say as the restrictions lessen we could be living in the Roaring '20s once again.

A partner once said to me he had seen Wall Street swing drastically up and down several times during his tenure. It was his evidence that life is seasonal, full of the all the hope contained in a planted seed, as well as the bursts of joy from blooming flowers, funerals but celebrations too, a bag of pits, which don't forget also contain cherries. Despite the ladder in place you might choose to climb or the roller coaster ride you strap yourself into, you'll encounter surprising turns along the way. Great literature or stories encompass truths of our never-ending unfolding humanity.

Enjoy the journeys provided in the articles ahead, authored by Cynthia Corbin, Jennifer Alton and Helen Silva Garrison. And grab a seat in that courtroom where Jeff Radding calls his next fantasy witness, leaving us to ponder characters who take the stage.

Chris once asked my favorite color. I told him gray. So, he wore a gray polo shirt for the first time we met in person. I am chastised for that favorite color choice. Yet, I will defend it. Gray defines it. As literature tells us, we obtain a fallible portrayal of the whole picture of each characters' truths in the story. Whether you are the planted seed patted down by the farmer, or grinning as you are collecting on all your bets, or scratching your head because of the chaos abound, I know the gods are laughing at us. The trick is to learn to laugh with them while glimpsing behind the wizard's curtain revealing the absurdities—but do stop to celebrate.

Please submit your narratives to slosafire@icloud.com. ■

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

As of June 3, 2021 — 61 gifts received totaling \$51,135

Scholarship eligibility criteria and donation details are posted at www.slobar.org.

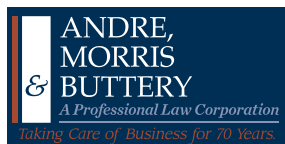
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How Does LRIS Serve the Community and SLO Bar Association?

by Kerrin Hovarter, Executive Director LRIS and SLO Bar Association

The San Luis Obispo County Bar Association sponsors the Lawyer Referral and Information Service (LRIS), a nonprofit organization matching community members looking for legal representation with experienced attorneys. LRIS listens to the legal needs of individual callers and refers them to panel attorneys.

In 2019 and 2020, LRIS answered between 3,960 and 4,350 telephone calls. From 2018 through 2020, LRIS connected between 96 and 178 callers to panel attorneys for consultations. If a caller cannot afford an attorney, they are connected with a free or low-cost community resource. The most requested legal advice is related to family law, landlord-tenant issues and employment law.

To join LRIS as a panel attorney, please contact Kerrin Hovarter at lr@slobar.org or (805) 541-5502.

Community Testimonials

Avery fast, easy, and efficient way to connect with an attorney to fit your specific needs. They are kind and knowledgeable. Highly recommend!

—Candice M.

Very helpful! I'll for sure use this again. They did all the groundwork for me in finding the right counsel for the right injustice. Use them and support them!

—Kevin S.

LRIS Panel Testimonials

For eight years now, I have been a panel member with LRIS. It has been and remains a superb relationship (at least on my end...). While it does lead to paying cases from time-to-time, more often my interaction with the people referred from LRIS is simply a chance to provide a little practical experience and guidance to lay persons for whom a dispute or a litigated matter is a new and strange and worrisome experience.

And, the vetting process from Kerrin and her folks is always great.

As long as I practice, I will happily remain a panel member with LRIS.

—Christopher C. Lewi, Esq.
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I have been a member and supporter of LRIS since it started and have found it to be an excellent supplemental source of new clients over the years.

I would strongly recommend that if you are not already a panel member of LRIS, you should join.

In exchange for the modest panel member fee, I have enjoyed giving many pro-bono consultations as a way to give back to the local community and help local citizens with a legal opinion on their case or issue.

I have also enjoyed helping LRIS maintain its position to help local citizens in all areas of the law, above and beyond the specialty panels I have participated in over the years.

People always seem to appreciate someone listening to their issue or legal dispute. For those consultations that have turned into new clients, I have found the LRIS referral fees to be very reasonable! Over the years, LRIS has been an excellent supplemental source of new clients and a tremendous asset to the San Luis Obispo County community!

—Bradley J. Hill, Esq.

Your Expertise Needed for These Areas—

- Education Law
- Workers' Compensation
- SSI Appeals
- North County Family Law

The Lawyer Referral & Information Service (LRIS) has an urgent need for attorneys who practice in the legal areas listed above.

We receive many calls from potential (paying) clients, and we need attorneys to refer.

LRIS is a nonprofit community service program sponsored by the San Luis Obispo County Bar Association and certified by the State Bar of California.

If you are interested in receiving prescreened, quality referrals, please call Kerrin at (805) 541-5505.

JOIN US for the SLO County Bar Association

in person Summer Social



2019 photos courtesy of Christine Joo



**5:30-8:30 p.m.
Thursday, July 15, 2021**

**Biddle Ranch Vineyard
2050 Biddle Ranch Road**

Food by Haute Skillet
Music by Jim Barnett Jazz Trio

Meet the inaugural scholarship
awardee.

Tickets include food and two wine
tickets. Additional wine can be
purchased individually through
the winery.

Space is limited, so RSVP early for
members and your guests. RSVP on
the SLO Bar website event calendar.





Photo courtesy of Markie Jorgensen

Meet Markie Jorgensen, Assistant City Attorney for San Luis Obispo

by Tara Jacobi

What brought you to San Luis Obispo?

I am a Cal Poly graduate and my fiancé, Daniel, is a Los Osos native. After my 1L year, I interned with the San Luis Obispo City Attorney's Office, where I was first introduced to municipal law. Through this internship, I had the good fortune of working with, and learning from, our City Attorney Christine Dietrick

and former Assistant City Attorney Jon Ansolabehere, who have both been incredible mentors ever since. While I wanted to get "big law" experience after law school, after my summer with Christine and Jon, I knew I wanted to make it back to San Luis Obispo to practice, ideally in the City Attorney's Office.

As the Assistant City Attorney for San Luis Obispo, where does your focus lie?

The San Luis Obispo City Attorney's Office advises the City Council, all advisory bodies, and all city departments. As Assistant City Attorney, I am the legal advisor to the City's Planning Commission, which reviews projects or legislative items that often involve land use and environmental law issues. Additionally, given that our office advises all city departments, my focus spans many areas: public contracting, public employment, constitutional law and more.

What are some advantages and challenges for the City of San Luis Obispo?

Like all communities, the SLO community has many strongly held beliefs on various issues, including social justice, land use and development, policing, etc. Those very personal, important issues can be difficult to navigate, but our community is well situated to engage and collaborate with one another, foster symbiotic relationships to effectuate change, and has demonstrated compassion and understanding in the process.

What attracts you to representing a municipality?

Working for a municipality allows me to gain a robust understanding of the issues central to our community and provides me the opportunity to assist our city leadership in addressing those concerns. I am grateful for the opportunity to serve the community and to hopefully make a beneficial impact, even if it is small, on the city.

When did you start practicing law, and how has that evolved?

I started practicing law in 2017. After graduating from UC Davis School of Law, I moved to San Diego where I practiced business litigation at an international law firm. Working in a big law firm allowed me to learn from some of the state's top lawyers and to work on cutting-edge cases. After big law, I moved on to a boutique employment litigation firm, where I was able to gain incredible discovery, motion practice, and pre-trial preparation experience. I enjoyed my time at both firms, but when I learned there was an opportunity to move back to San Luis Obispo, to serve the community, and to continue learning from City Attorney Christine Dietrick, I knew I had to go for it!

How is it working in San Luis Obispo as opposed to attending college here?

I fell in love with this city when I went to Cal Poly, but I have an even deeper appreciation for the community, the local businesses and the city leadership now that I have an "inside" look. Our city leadership is devoted to the well-being of our entire community, and they are generally incredible people. Our local businesses are resilient, innovative and loyal to the community, and our residents are compassionate, creative and determined. As a college student, I did not put much thought into what made San Luis Obispo so great, but now I know: it is the result of a lot of hard work and a very special, thoughtful community.

What do you take pleasure in living here in San Luis Obispo?

I love that there is something for everyone

in San Luis Obispo. You can enjoy amazing food downtown, hike incredible trails, head to the beach, wine taste in Edna Valley, the list goes on. I also appreciate our engaged community. There are a lot of passionate voices with important messages. Our community sincerely cares about one another, the success of our businesses, the preservation of SLO's beautiful environment, and advancing diversity, equity and inclusion in the city.

It is a pleasure working with and for a community that values the history of San Luis Obispo but also fights for a brighter and better future for all. I am also very excited to join, and get to know, the tight-knit legal community in SLO made up of remarkable lawyers with diverse backgrounds and practices!

What do you enjoy doing when you are not working?

When I am not working, I enjoy spending time with family, especially our adorable nephews (with one more on the way), going on walks in Morro Bay (where we live), doing DIY house projects, and exercising.

Thank you for sharing Markie. And welcome back to San Luis Obispo. ■

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After 40 Years of Practicing Law, Michael Seitz Decides to Retire

by Raymond Allen

Cover photo and page 13 courtesy of Chris Borgard

*My long two-pointed ladder's sticking through a tree
Toward heaven still,
And there's a barrel that I didn't fill
Beside it, and there may be two or three
Apples I didn't pick upon some bough.
But I am done with apple-picking now.*

—From “After Apple-Picking” by Robert Frost



Illustration via Creative Commons

Early Years

Michael Seitz hails from a family of attorneys. His father, John Seitz, for whom the San Luis Obispo County Bar Association Seitz Award is named, was a longtime local attorney. John Seitz founded the local firm of Shipsey & Seitz with attorney Gerald “Jerry” Shipsey. Seitz’s brother, Jon Steven Seitz, was also a local attorney.

Michael Seitz initially wanted to become a teacher, but with the passage of Proposition 13, he understood that the funding for education in California would soon be gutted. He wrote a letter to his father explaining his decision to study law.

The response from the senior Seitz was the only letter John Seitz ever wrote to his son. It simply said, “Thank you. Please do it.”

After getting an undergraduate degree in General Education and Political Science, Seitz took off to Europe. He had intended to stay for six months, but his plans were interrupted when he injured his knee playing Frisbee on a beach in Sardinia. Instead of staying in Europe, he flew back home for the surgery.

During his recuperation, the relationship with his future wife, Sharon, blossomed. Instead of going to law school in Indiana (University of Notre Dame), he decided to stay on the West Coast near Sharon. He opted for the University of Oregon School of Law.

Seitz did well in law school. He had read *The Paper Chase* by John Jay Osborne, so he had some idea about the Socratic Method. More importantly, he was raised in a family of people who enjoyed discussing events and ideas. “I remember sitting

at the dinner table, and we would discuss the invasion of Cambodia (1970), the Christmas Day bombing of Hanoi and Haiphong (1972), and the impeachment of Nixon (1974). So I was ready to debate and discuss big issues,” he said.

In law school Seitz worked on the Law of the Sea Treaty.¹ He was interested in maritime law, but realized that there were not enough opportunities in this area.

Career

Initially, Seitz worked at his father’s firm. He recalled his first case—his father had a family law client who was delinquent on his support. Prior to the hearing, the senior Seitz had told his son that if someone from the family did not come up with some money, it could go very badly.

“I remember,” said Seitz, “it was late December, right before Christmas. We were the last case called and it had gotten dark outside.” The case was assigned to Judge Richard C. Kirkpatrick.

“I argued that the client should not be held in contempt for failing to pay his support, but the judge ordered 10 days in jail forthwith. That meant the client would spend Christmas in jail.” To avoid that, the client’s family, who had been watching from the gallery, immediately paid the amount owing to the wife. “I thought, wow, Judge Kirkpatrick read that situation perfectly.”

After six months working for his father, Seitz volunteered to work at the district attorney’s office, where DA Chris Money was a good friend of the elder Seitz. During his time there, Seitz garnered

valuable trial experience. Afterward, he returned to Shipsey & Seitz and practiced in the areas of family law, criminal law, probate and estate planning.

One of Seitz's family law cases involved attorney Martin Wolff, who was disbarred in 1999. Seitz had been hired by his wife. While in line at the clerk's office to file the Petition and Summons, Seitz saw Wolff in line in front of him. A court clerk also noticed. She took Seitz aside and filed the documents. Seitz returned to the line and served Wolff then and there.

Later in the case, the wife sought support. Wolff had declared he earned \$15,000 per month. Seitz got an order for support based on that figure, but Wolff never paid a dime. Instead, Wolff threatened to kill himself. This put everyone on edge for a period of time. Wolff eventually disappeared. Years later, Seitz saw him selling condos on Maui. Wolff was booted off the island and started running Bibles to China.

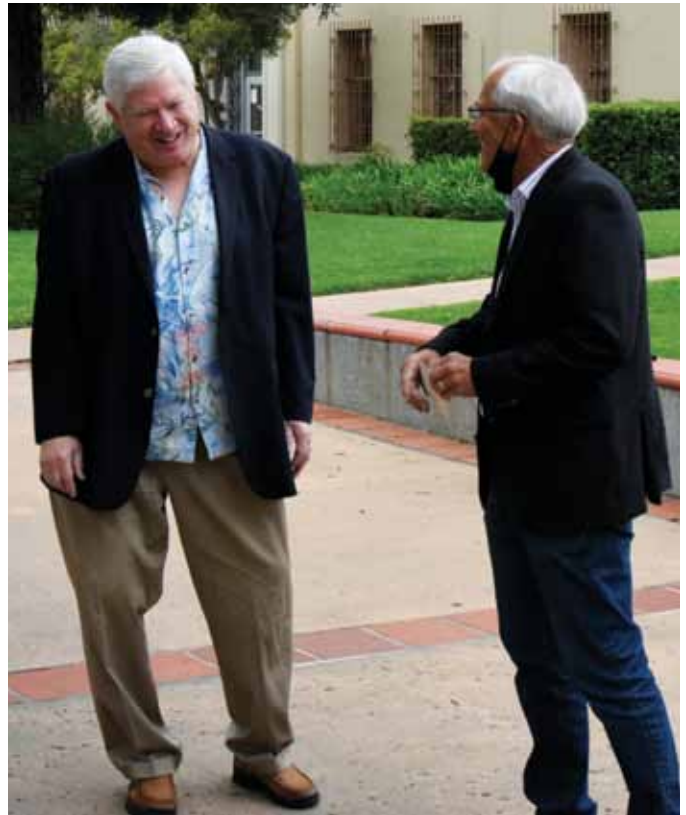
Seitz later worked at Borton, Petrini and Conron, a Fresno-based firm. He returned to the Central Coast to assist with end-of-life care for his father, who was suffering from the ravages of amyotrophic lateral sclerosis (Lou Gehrig Disease). Seitz also worked briefly at Hoge, Fenton & Appel and at Hall, Hiatt & Seitz. Later still, he rejoined his father's firm of Shipsey & Seitz, where he remained for decades.

During his years as a civil attorney, Seitz often defended companies like Pacific Gas & Electric. In one personal injury case, local attorney Don Ernst sought to depose the person most knowledgeable (PMK) regarding the incident. Ernst flew Sally Devine, the McDaniel's court reporter, and Michael Seitz up to the PG&E building in San Francisco. During the deposition, the witness' responses made it clear that he had no information to provide. Ernst got pissed off. He threw his notepad on the table. He screamed that the defendants were playing hide the ball and keeping him from talking to the people who had relevant information.

"Let's go off the record," said Seitz.

"Don, have a candy bar. Your blood sugar must be low." That pissed Ernst off even more. Both men remained angry as they sat side by side on the drive back to the airport. Neither attorney spoke. When they got into the plane, there was a deadly silence.

The court reporter finally said, "You two need to kiss and make up. I don't want to die in this plane because you two are mad at each other."



Michael Seitz and John Ashbaugh trade legal tales.

According to Ernst, "Seitz was a typical wonderful, good-natured defense lawyer. He always put up a PMK witness that didn't really know anything. You always had to do it (deposition) twice."

"Seitz caused me to eat too many candy bars...."

Family and Friends

Sharon Seitz, Michael's wife, is a sweet, salt-of-the earth person and the bedrock of the Seitz home, according to longtime friend Kayce Slade. Together they are an incredibly active couple. They love the rodeo, Las Vegas, friends and parties.

Michael and Sharon Seitz were blessed with two wonderful children, Caitlin and Christopher. Caitlin Baumhefner is employed by Wilshire Home Services as a licensed marriage and family therapist. She attended University of California Davis as an undergraduate, and she received her M.S. from the University of Southern California in marriage and family therapy.

Chris Seitz graduated from San Luis Obispo High School. He attended the University of Maryland, and in 2007 he was drafted by professional Major League Soccer team Real Salt Lake. He currently plays for DC United.

Continued on page 14

Michael Seitz Retires continued

In 2012, Chris Seitz put his soccer career on hold for a brief time in September, despite having no guaranteed contract for the 2013 season. He decided to donate bone marrow to save the life of a random stranger for whom his bone marrow was a match.² Because of this act, he was later named the 2012 MLS Humanitarian of the Year.³ He was inspired to do this by the kindness of his father, Michael Seitz.

Years before, when his older brother, Jon, was suffering from leukemia, Michael Seitz donated his own bone marrow via the process of apheresis. According to longtime friend and local attorney Ray Mattison, Chris was so impressed by the generosity of his father that he decided to donate bone marrow to the “first person who needed it.”

Seitz often appears to be shy, but he has a great sense of humor. “Sometimes you wouldn’t even think he was listening,” recalled Slade, “then he would just burst out with this huge laugh.”

The couple offered to build a house with an elevator behind their own home if his elderly mother was willing to live with them. Unfortunately, she died before the home was constructed. “Michael was incredibly close to his mother and called her every day,” remembered Mattison.

Friends have been an important part of the Seitz marriage. “He never forgets a friend,” said Kayce Slade. In their heyday, the Seitzes would throw huge parties out at Camp San Luis.

“I remember,” said Mattison, “Mike and Jon would be up on the stage singing ‘YMCA’ by the Village People. There might have been some alcohol involved.”

Friends describe Michael Seitz as a man with endless energy and a big heart. Every year at Christmas, for example, Seitz would make the traditional Danish pastry *Kringle* (pronounced *kring-ley*) from scratch.⁴ Then the couple would deliver, rain or shine, the homemade treats to all of their friends. It was a beautiful, heartwarming gesture of true friendship.

Retirement

In retirement, Seitz plans to stay active. One goal is to complete the novelized life story tentatively called *Confessions of a Soccer Dad*. This is loosely based on the time he spent watching his son playing youth soccer. The book is outlined,



The Telegram-Tribune ran this photo (1950s?) when Michael Seitz's father, John (left), set up a law office at Monterey and Osos streets (J.P. Andrews Building)

with Gerald W. Shipsey, whose father and grandfather practiced law in the same building.

Michael and Sharon Seitz recently donated West Law books from the original practice to the San Luis Obispo Law Library. Photo courtesy of the Seitz family.

but Seitz is waiting for his son, Chris Seitz, to retire from professional soccer before publishing.

Conclusion

Robert Frost reminded us in his beautiful poem “After Apple-Picking” that the winter of life generates dreamlike memories and feelings. Michael Seitz can feel proud of the work he has accomplished in the law. He has, for 40 years, comported himself with an honor and professionalism we can all admire. He looks back on this wonderful career, like one looking through ice cleared from a drinking trough, and recalls that it was good and had value.

Thank you, Michael Seitz, for your service to the law. ■

Footnotes

¹ The Law of the Sea Convention defines the rights and responsibilities of nations with respect to their use of the world’s oceans, establishing guidelines for businesses, the environment, and the management of marine natural resources. The Convention, concluded in 1982, replaced the quad-treaty 1958 Convention on the High Seas. https://en.wikipedia.org/wiki/United_Nations_Convention_on_the_Law_of_the_Sea

² http://espn.go.com/espn/otl/story/_/id/8539079/how-fc-dallas-goalkeeper-chris-seitz-became-bone-marrow-donor-choices-faced-trying-help-save-life

³ https://en.wikipedia.org/wiki/Chris_Seitz#cite_ref-0_14-1

⁴ For a short and sweet history of the Kringle, check out <https://whatscookingamerica.net/Bread/Kringle.htm>

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Doing Good Matters...

Conflict in the Midst of COVID-19:
How Your Local Community Mediation Center
Brings People Together in Unconventional Ways

by Kelly Donohue, Marketing & Outreach, Wilshire Health & Community Services

In a time where everything we take for granted was shaken, the norms of how we live and work have dramatically shifted. And in the wake of these shifts lie vast chasms between colleagues, families, neighbors and friends on how to approach these changes.

Creative Mediation has seen these challenges firsthand. As San Luis Obispo's local community mediation center for nearly 30 years, its mission has been to help people talk about what matters most. While the programs have varied over the years, they have included a wide variety of conflict resolution services to meet community needs, including parents navigating conflict with teens, older adult and caregiver issues, civil and small claims court mediation, restorative dialogue program with at-risk youth, and community-based, town-and-gown issues between landlords, tenants, roommates and neighbors.

As would be expected, Creative Mediation saw a dramatic increase in conflict as a result of the compounding issues on people's lives during a pandemic. Similar to most businesses, Creative Mediation was forced to adapt in order to continue delivering service. The increase in conflict, without the ability to

mediate cases in person, created a challenge that ultimately led to opportunity.

Made up of a small team of five staff members, Creative Mediation is part of Wilshire Health and Community Services, a large, regionally operating nonprofit. As the company-wide policy shifted towards Zoom meetings and Telehealth, the staff at Creative Mediation saw an opportunity early on to bridge technology and communication.

Conflict coaching, a 30-minute conversation helping an individual process, understand or prepare for conflict was moved remotely. Providing one-on-one coaching over the phone was a seamless process. In-person mediations proved to be a more difficult transition. Mediation is reliant upon a facilitated space between parties, in-office or at the courthouse, with multiple parties or stakeholders.

The Creative Mediation team researched industry standards in existing digital mediation models and implemented best practices before moving to an online platform. With Zoom leading the charge on providing safe, confidential online meetings, they were able to provide an online space for parties to participate via video or phone, with a neutral

third person to facilitate the process.

Each mediation includes a "tech host" who handles formalities: introductions, managing Zoom rooms, acting as scribe for written agreements, requesting verbal signatures and e-mailing any agreements to all parties. This included the court or probation when involved.

Mediators facilitate the process just as they would in person, in the hopes that both parties



Wilshire Creative Mediation staff participate in a mo

come to an agreement. The mediation is voluntary, confidential, client-centered and neutral, creating a space for parties to feel empowered to come up with their own solutions with the help of a facilitative mediator. The challenge of operating new technology and creating confidential and effective systems in under a month was no easy feat. But the growing pains diminished day by day, as the opportunities became clear.

Tracey Scuri, Programs Assistant for Creative Mediation said, "The online mediation is so simple. You can do it from wherever you are. It de-escalates the situation and gives you tools for navigating conflict. The cases are different, but the process is important. They just need a process that works for both sides."

What was once a challenge had become a benefit, as services could now reach more people by removing transportation or time

as barriers to participating. Broken business agreements, disheveled living arrangements, and community disagreements on COVID-19 protocols were just a few of many conflicts to arise after March 2020.

Scuri said, "It seems like in a lot of these cases things have built up; it's compounded when you don't communicate. It just builds and builds until somebody explodes. Something minor can end up being a huge thing in your life."

Such was the case for a neighbor-neighbor conflict Scuri mediated, in which two neighbors had noise complaints over the years, reaching a tipping point mid-pandemic. A family was living nearby a young professional, who was traveling or working within his office on most days. After the stay-at-home orders went into effect, he began working remotely out of his home. While the dog barking had proven to be a challenge pre-pandemic, it became increasingly more disruptive while he was working and taking meetings from home.

Meanwhile, the family was struggling with challenges of their own, balancing the family dogs with several kids now remotely attending school from home. The communication between the parties hadn't gone well, and eventually they were referred to mediation services to resolve their dispute. While both parties were hesitant that the process would work, Scuri said, "A neutral third party can be incredibly effective at helping bring resolution to a long-standing conflict."

The new technology has not been a barrier in effective communication, as was found with this case. After a lengthy mediation over Zoom, parties were able to move beyond their position, and

discuss their underlying issues. By addressing these issues, they were able to acknowledge each other's needs and find a solution. Particulars like how to communicate when there was an issue, understanding and working with each other's schedules, and discussing ways to mitigate dog barking more effectively were the basis of their agreement. Because of the opportunity to mediate online, long gone were the days of noise violations and tough conversations between two neighbors doing their best to operate during this unconventional season of life.

Conflict is not the only issue that Creative Mediation and its parent organization, Wilshire Health and Community Services, have navigated during Covid-19. Wilshire's hospice, home health and community-based agencies have also adapted to continue delivering services during the pandemic. With 70 years of experience in the healthcare industry, it was a matter of "how" not "if."

Continuity of care was critical. Clinical care teams operated with the highest public health standards for PPE and safety. In between visits, Wilshire provided no-contact telehealth, shifted modes of care like counseling and therapy to phone or Zoom, and even had music therapists playing at patient's doorsteps. Wilshire's mission, to help people live a better life, meant that the interdisciplinary team went above and beyond to do "whatever it takes" for patients and their families. These measures have been critical in providing access to physical and social-emotional healthcare.

The clinical care teams operate much like a hospital in the

Continued on page 18



Online mediation. Photo courtesy of Kelly Donohue.

Doing Good Matters continued



Facts About Wilshire Health and Community Services and Creative Mediation

- Long Form Video: <https://www.youtube.com/watch?v=TW3IWbcAEcA&t=2s>
- Press Kit for Wilshire Health and Community Services: <https://www.wilshirehcs.org/presskit/>
- Fact Sheet for Creative Mediation: https://www.wilshirehcs.org/wp-content/uploads/2020/07/WHCS_CreativeMediationFlyer_8.5x11_072120_WEB.pdf
- Websites: www.wilshirehcs.org / www.creativemediation.org
- Wilshire Health and Community Services is comprised of three agencies that provide critical support in the community, including: Wilshire Hospice, Wilshire Home Health, and Wilshire Community Services. Creative Mediation is a program of Wilshire Community Services.
- Wilshire Health and Community Services has been serving the Central Coast for more than 20 years.
- Wilshire's mission is *Helping People Live a Better Life*.
- Wilshire Health & Community Services, Inc. is a not-for-profit, 501(c)3 tax-exempt organization.



Above, a Wilshire Creative Mediation staff member mediates during a conference call. Photo courtesy of Kelly Donohue.

Left, an example of online mediation. Photo courtesy of Shutterstock via Wilshire Creative Mediation.

home, providing skilled and compassionate healthcare like nursing, physical therapy and wound care. The patients receiving this care are typically recovering from surgery, managing a disease, struggling with pain management or living at the end of life. Their healthcare is supplemented with social-emotional support for patients and their families, including music therapy, spiritual counseling and grief support.

In addition to healthcare, Wilshire also provides a wide range of older adult supportive services like counseling, therapy,

transportation, friendly visits and, of course, mediation, to keep homebound and isolated older adults connected and healthy.

Creative Mediation has been a critical component to providing a broad safety net of services across the wellness spectrum. From talking about what matters most, to receiving quality end of life care, Wilshire Health and Community Services is living up to its promise to help friends and neighbors on the Central Coast live a better life—especially during a once-in-a-lifetime pandemic. ■



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The California Bar Exam—A Conversation

by Cynthia Corbin and Jennifer Alton, Esq.

We all arrived at birth perfectly calibrated. Each with the right and ability to reach our own potential. Each with the absolute makings of greatness. And each with the certainty that we can rise to our own best.

Cynthia Corbin has been my most trusted confidante for more than a decade. She has parented our now teenage son—in ways we simply cannot. We are grateful. Our families have enjoyed the past Easter, Thanksgiving and Christmas holidays together—during a global pandemic. Our bonds

are sacred. We both hail from New York.

Cynthia and I have shared many deep conversations on many deep topics. Recently, we discussed the California Bar Exam and the lowering of the score in order to help minorities. Cynthia Corbin is Black.

When I asked her to testify to our private conversation by writing an article to enlighten, she politely declined. I honored and remained quiet. For a short time. Upon deep reflection, I approached her again. This time she agreed. —J.A.

To whom this may concern, As a young girl, my mom taught us kids to speak up and be present for what we believed in. Even though I was a shy child, I felt it was irresponsible not to speak up, show up, and even gently debate on issues if I thought someone was wronged (like if myself, or one of my siblings were being punished).

Mom didn't really mean for this to include her. She would often say to me, "Cynthia Denise, believe it or not, you don't know everything!" Boy, was she right. As I grew older, I learned to hold my tongue a bit, simply live my truth, and not feel the need to speak on everything I thought was wrong with the world. It's often not my place.

I recently learned that the Bar Exam passing score was lowered in the state of California, to be more aligned with several other states. Apparently, the passing score in California was significantly higher than the passing score in other states.

Well, bravo! That sounds like a no-brainer to me. Sounds like it was long overdue. I imagine it took a lot of effort. However, I hope that I speak for many others when I say that I was taken aback when I learned that the main reasons for the petition to lower the score was so that it would allegedly give "minorities" a better chance of passing the Bar.

Seriously? I am not in the law profession and have never taken the Bar Exam. I am, however, a designated "minority." I would be remiss if I sat idle while this continues to be acceptable mentality, at least among the petitioners in this case.

This mentality only continues the systemic thinking that white people are somehow smarter than anyone else. Perhaps if it continues to be said over and over again, and in the main aspects of education and professional careers, not only the current generation, but the future generation, will also buy into it. It's sly, but with diligence, the mentality

can and will live on. If we sit idle without speaking up, that is exactly what will happen. It's so deeply rooted, that most never even realize it.

We are telling young people that although we get into the same schools, read the same books, are taught the same material, and are invited to the same study groups as our white counterparts, that because we are something other than white, we are not smart enough, or capable of passing the same Bar Exam. So, because the nice white leaders of law school are "advocating" mainly on our behalf, it's now easier for us minorities, because all or most of the white people are doing just fine in passing the exam. Yes, I am being sarcastic, but it's only to make a point.

If you are without a disability and are afforded the same exact opportunities as the next person, the only things that I can think of that wouldn't put you on the same playing field are a lack of discipline (comes in all races),

or a lack of preparation (again, comes in all races).

But wait. I forgot the most important reason. What if you have convinced yourself that you are somehow not smart enough? In that case, you have already failed before you ever show up for the exam. That would make you your own worst enemy. Why would you believe such a thing? Could it be from the very beginning that this mentality was inadvertently conveyed to you?

I'm not so naive to think that there are no other factors in one student adapting and perhaps doing better in law school than another student. Perhaps the striving student is from a second or third generation of attorneys. Perhaps one person has more responsibilities at home and can't study as much as another. Perhaps one is more stressed about finances than another. And let's face it, some folks are just smarter than others.

I believe that we have a long climb overall, in the way that we were taught to think about race. There is, no doubt, much work to be done in many areas. I don't, however, believe one race is smarter than another. I pause here because it's tireless—and a shame really (but necessary)—to still be trying to convince people of this. Again, I don't have the luxury of being idle. My ancestors literally died that I may be able to speak freely.

Anyway, I guess what I'm trying to say is that lowering the score for the California Bar Exam is positive for everyone, in my opinion. It is good for Whites, Blacks, Latinos, Asians and, let's not forget, it is good for law schools to have their students who do the work, and study

hard, to pass the Bar Exam. It is my belief that the petitioners of this new cut score had overall good intentions. I don't believe there was any ill will at all, to anyone.

I simply believe that the added "minority" reason is something that they, too, have systematically bought into, and probably without realizing that it does nothing more than keep the roots firmly planted. It's handed down from one generation to the next. I can't completely blame them. In learning institutions, as well as in equal and fair hiring, as one moves into their careers, it is important to give each person (regardless of race) the same opportunities. That is a much better way to be an advocate than to continue the mentality that one race is inherently superior to another.

In closing, it's true that I certainly don't know everything. Thank you for listening. I hope that I have stayed in my lane of merely being a minority. For that reason alone, I felt that it was my place to at least voice my concern. I do not pretend to be all-knowing of the law profession or what a law student or the leaders of law schools endure. The change won't happen overnight, and most likely not in our lifetime.

My hope is that one would at least pause—and not allow this mentality to continue. I respect your profession and your compassion for others. Please accept my sincerity in this matter. Godspeed!

—Cynthia Corbin



Cynthia Corbin and Jennifer Alton discuss the CA Bar Exam. Photograph courtesy of Jennifer Alton.

As I (J.A.) write, I am listening to "Stand by Me." Otis Redding. To my mind, Humanity wants what the Human Condition has wanted throughout all of the ages. We want each others' Reverence. Regard. Respect. And yes, in our quietest hour, we want each others' love. We want to know that our brethren will stand by us—and stand with us—on this life journey.

May we endeavor to stand shoulder-to-shoulder with the full faith and credit that we can each stand and succeed—on our own merits. Alas, we arrived at birth perfectly calibrated to do so. ■

Cynthia Corbin holds a bachelor's degree and a graduate degree. She retired following a successful 30-year career as a 911 dispatcher with the San Jose Police Department.

Jennifer Alton is an attorney in private practice and works in academia.

Fantasy Witnesses

Galileo on Remand

by Jeff Radding

Images via Community Commons

I, Galileo, son of the late Vincenzo Galilei, Florentine, aged 70 years, arraigned personally before this tribunal, and kneeling before You, Most Eminent and Reverend Lord Cardinals, Inquisitors-General against heretical depravity, after having been admonished by this Holy Office entirely to abandon the false opinion that the Sun is the center of the world and immovable, and that the Earth is not the center of the same and that it moves.... (I) wrote and caused to be printed a book in which I treat of the already condemned doctrine, and adduce arguments of much efficacy in its favor, without arriving at any solution: I have been judged vehemently suspected of heresy, that is, of having held and believed that the Sun is the center of the world and immovable, and that the Earth is not the center and moves.... I abjure with a sincere heart and unfeigned faith, I curse and detest the said errors and heresies... And I swear that for the future I will never again say nor assert in speaking or writing such things...."

Such reads Galileo's signed repudiation of heliocentrism... written by the Lord Cardinals and presented for Galileo's signature after convicting him and threatening imprisonment. His signature likely saved the aged Tuscan from custody, condemned instead to home confinement—where he

remained for his final nine orbits around the sun.

Galileo's trial marks an inflection point in human intellectual history. The year was 1633. The book in controversy, "Dialogue Concerning the Two Chief World Systems," imagined conversations among two philosophers and a layman exploring the competing theories of Copernicus and Ptolemy as to the nature of the solar system. Participating were Salvatia, in defense of Copernicus; Sagredo, the agnostic layman; and Simplicio, the proponent of Ptolemy's geocentric model—the design deemed compatible with Church doctrine. Galileo likely placed himself at peril due to Salvatia's superior cogency. It was of no help that for Ptolemy's advocate Galileo chose the name Simplicio—"simpleton."

Galileo's trial proceeded amidst a pandemic; the bubonic plague brought commerce and transportation to a standstill, and widespread death. Ten Cardinals sat in judgment for the Tribunal of the Holy Office of the Inquisition. Seven Cardinals voted to convict; three abstained. Besides his exile, Galileo was ordered to recite the seven Penitential Psalms once a week for three years. By public edict, his book was banned.¹

Galileo had been cancelled.

Centuries later, the United States Supreme Court modernized the admissibility of scientific

evidence, tossing aside the *Frye* standard—requiring its foundation to be "generally accepted" in the relevant scientific community²—and replacing it with a "gatekeeper" judicial function—requiring trial judges to make a preliminary assessment whether the reasoning and methodology underlying an expert's testimony is scientifically valid and properly can be applied to the facts of the case. *Daubert v. Merrell Dow Pharmaceuticals* (1993) 509 U.S. 579 (1993). The California Supreme Court later followed the path *Daubert* blazed. *Sargon Enterprises v. University of Southern California* (2012) 55 C.4th 747.

In 1633, heliocentrism was not at all generally accepted. Would it, though, survive this new legal standard? Putting time in a blender—and assuming *Daubert* and *Sargon* to be retroactive—Galileo's case is remanded to the Superior Court. Galileo Galilei resumes the stand in his own defense. He still is under oath.³

Counsel: Mr. Galilei, good morning and welcome back. You recall what brought you to court?

Galileo: I imagine that the cause of my having been ordered to come before the Holy Office is to give an account of my recently printed book; and I suppose this because of the order given to the printer and to myself, a few days before I was ordered to come to Rome, not to issue any more of those books.

Q: If I showed you the book, would you recognize it?

A: I hope so; I hope that if it is shown to me I shall recognize it.

Q: Can you describe the controversy?

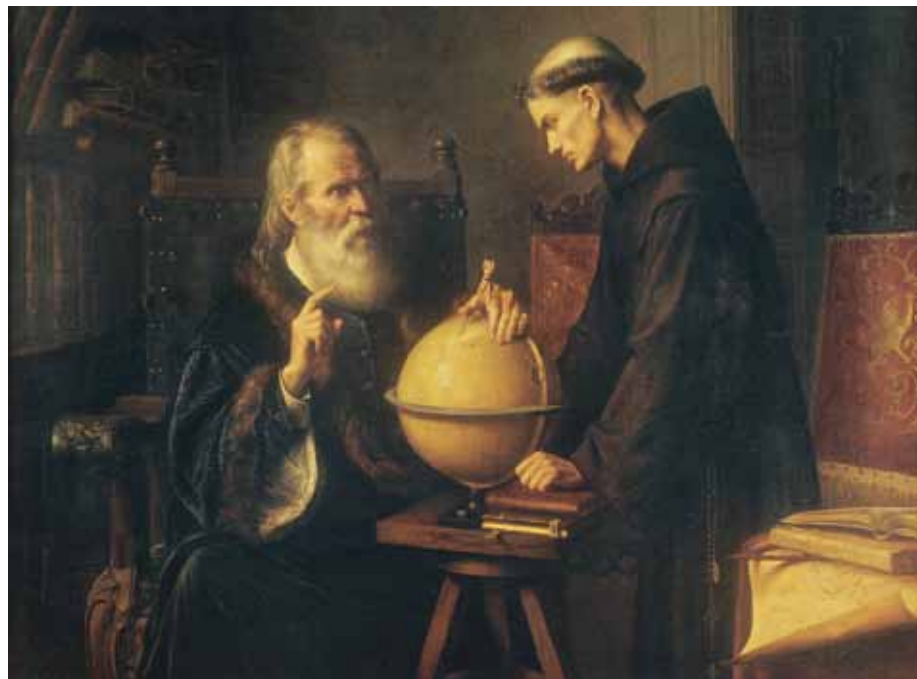
A: It is a book written in dialogue, and it treats of the constitution of the world, or rather, of the two chief systems, that is, the arrangements of the heavens and of the elements.

Q: What led to these proceedings?

A: In 1616 I came to Rome of my own accord, without being summoned.... In Rome I treated of this business with some Cardinals who governed the Holy Office at that time, in particular with Cardinals Bellarmino, Aracoeli, San Eusebio, Bonsi and d'Ascoli.... The cardinals wished to be informed of the doctrine of Copernicus, his book being very difficult to understand for those outside the mathematical and astronomical profession. In particular they wanted to know the arrangement of the celestial orbs under the Copernican hypothesis, how he places the Sun at the center of the planets' orbits, how around the Sun he places next the orbit of Mercury, around the latter that of Venus, then the Moon around the Earth, and around this Mars, Jupiter and Saturn; and in regard to motion, he makes the Sun stationary at the center and the Earth turn on itself and around the Sun, that is, on itself with the diurnal motion and around the Sun with the annual motion.

Q: How did that turn out?

A: Concerning the controversy that went on about the said opinion of the stability of the Sun and motion of the Earth, it was determined by the Holy Congre-



Galileo demonstrating the New Astronomical Theories at the University of Padua. Google Art Project

gation of the Index that this opinion, taken absolutely, is repugnant to Holy Scripture, and it is to be admitted only *ex supposition*, the way in which Copernicus takes it....

Lord Cardinal Bellarmino informed me that the said opinion of Copernicus could be held hypothetically, as Copernicus himself had held it. His Eminence knew that I held it hypothetically, namely in the way Copernicus held it, as you can see from an answer by the same Lord Cardinal to a letter of Father Master Paolo Antonio Foscarini, Provincial of the Carmelites; I have a copy of this, and in it one finds these words: "*I say that it seems to me that Your Reverence and Signor Galilei are proceeding, prudently, by limiting yourselves to speaking hypothetically and not absolutely.*"

This letter by the said Lord Cardinal is dated 12 April 1615. Moreover, he told me that otherwise, namely taken absolutely, the opinion could be neither held nor defended.

Q: Were you given a reason, and further guidance?

A: In the month of February 1616, Lord Cardinal Bellarmino told me that since the opinion of Copernicus, taken absolutely, contradicted Holy Scripture, it could not be held or defended, but that it might be taken and used hypothetically.

The witness is cross-examined:

Q: If we were to read the minutes of your meeting with Lord Cardinal Bellarmino, would that refresh your recollection of what transpired?

A: I do not remember that I was told anything else nor can I know whether I should recall what was then said to me even if it were read to me; and I say freely what I do recall, because I claim not to have contravened in any way the precept that is not to have held or defended the said opinion of the motion of the Earth and stability of the Sun on any account.

Continued on page 24

Fantasy Witnesses continued

Q: Isn't it true you were told not to hold, defend, *nor teach it in any way*?

A: I do not recall that this precept was intimated to me by any other way than by the voice of Lord Cardinal Bellarmino, and I remember that the injunction was that I might not hold or defend; and there may have been also a "*nor teach*." I do not remember that there was this phrase "*in any way*," but there may have been.

Q: Despite the bias of your book, you do not believe Copernicus to be correct, do you?

A: In regard to my writing of the published "Dialogue," I did not do so because I held the Copernican doctrine to be true. Instead, deeming only to confer a common benefit, I set forth the physical and astronomical reasons that can be advanced for each side; I tried to show that neither set of arguments has the force of conclusive demonstration in favor of the one opinion or the other, and that therefore to proceed with certainty one had to know the decisions of higher teaching, as one can see in many passages in the "Dialogue." So for my part I conclude that I do not hold and, after the determination of the authorities, I have not held the condemned opinion.

Q: And what is your opinion?

A: ...I have neither maintained nor defended in that book the opinion that the Earth moves and that the Sun is stationary but have rather demonstrated the opposite of the Copernican opinion and shown that the arguments of Copernicus are weak and inconclusive.

With that, on redirect Galileo

requires rehabilitation:

Q: Is your skepticism about Copernicus based on science or upon the dictates of faith?

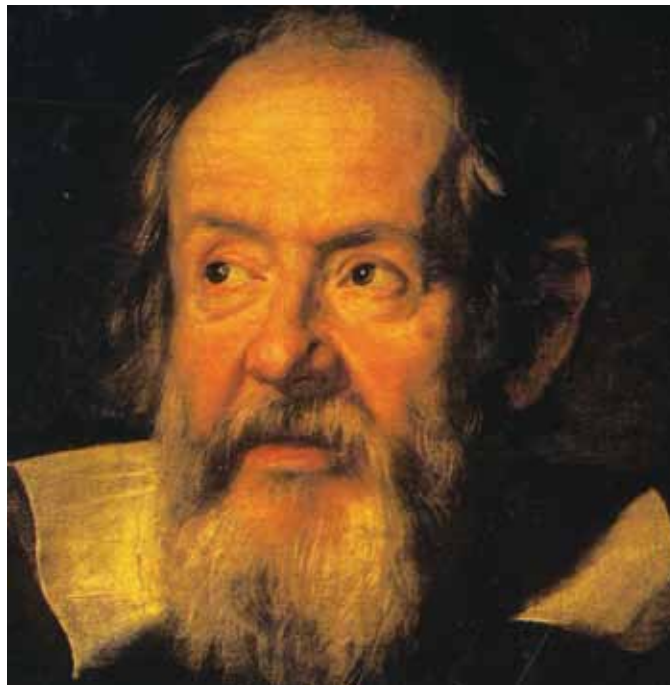
A: A long time ago, that is, before the decision of the Holy Congregation of the Index, and before I was issued that injunction, I was undecided and regarded the two opinions, those of Ptolemy and Copernicus, as disputable, because neither the one nor the other could be true in Nature.

But after the said decision, assured by the prudence of the authorities, all my uncertainty stopped, and I held, as I still hold, as most true and indisputable, Ptolemy's opinion, namely the stability of the Earth and the motion of the Sun.

Q: As a scientific matter, though, you do believe Copernicus was correct, do you not?

A: I do not hold this opinion of Copernicus, and I have not held it after being ordered by injunction to abandon it. For the rest, I am here in your hands; do with me what you please.

With the *Frye* standard superseded, the general acceptance of heliocentrism is of subordinate import. Under *Daubert/Sargon*, controlling is scientific validity based on reasoning and methodology. Galileo's equivocal testi-



mony—though likely intended to save his own life—provides the judicial "gatekeeper" with little basis to open the gate and permit evidence of Copernican theory.

Welcome, Galileo, to 2021. It ought to look familiar. A plague rages. Ideas are censored. The Earth is stationary.

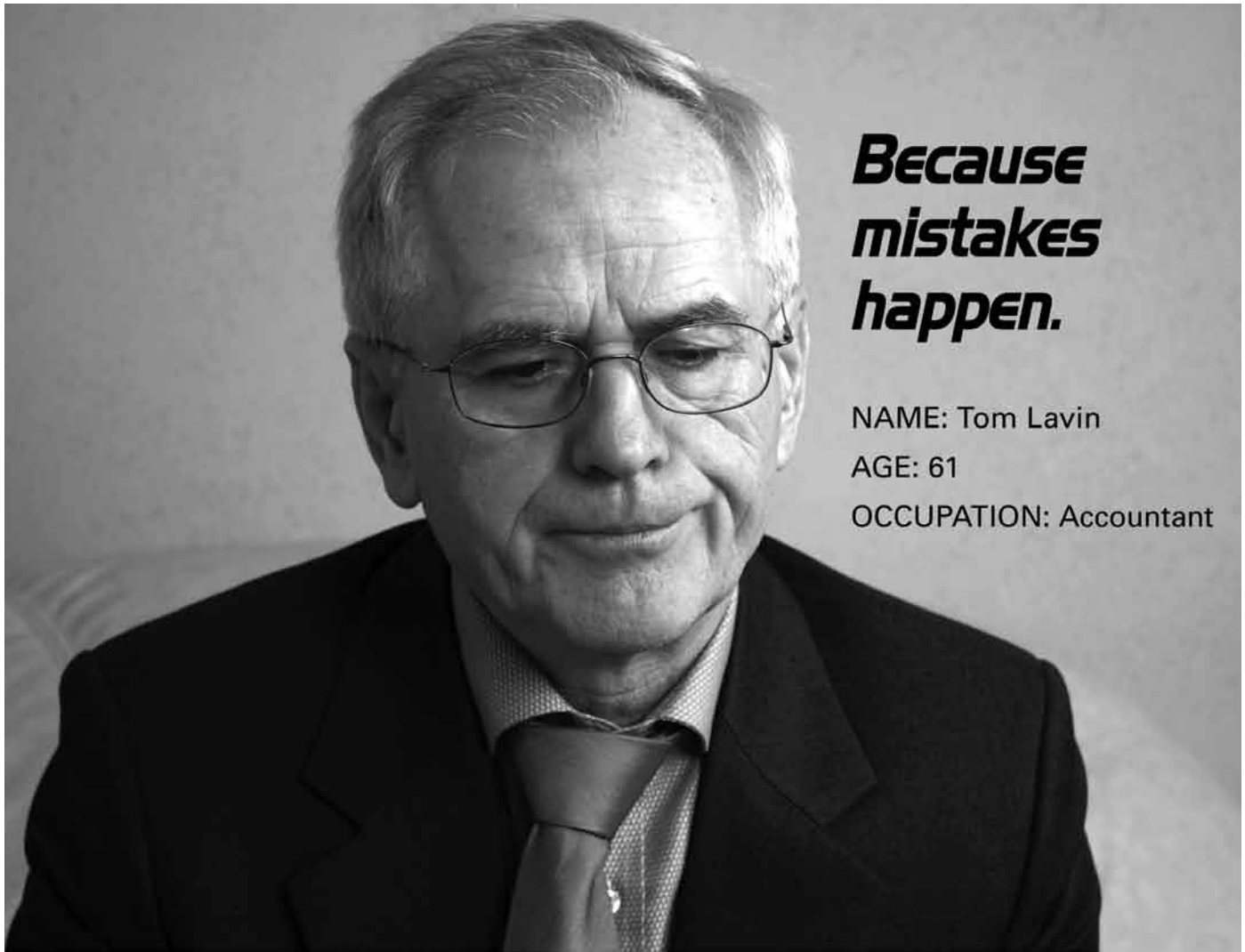
The witness may be excused. ■

Footnotes

¹ "Dialogue" remained on the *Index Librorum Prohibitorum* until 1835.

² *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923), "Just when a scientific principle or discovery crosses the line between the experimental and demonstrable stages is difficult to define. Somewhere in this twilight zone the evidential force of the principle must be recognized, and while the courts will go a long way in admitting expert testimony deduced from a well-recognized scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field in which it belongs."

³ Galileo's testimony is taken verbatim from transcripts of the 1633 trial.



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mistakes
happen.***

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Sex Offender Registration—Termination of the Duty is Now Available

by Jeffrey R. Stein

Beginning in the 1940s, California started what became a national firestorm of new state legislation mandating registration for convicted sex offenders. When it began, the message to those required to register was that the burdensome requirement would be with them forever, a lifetime obligation. The justification for this imposition was the belief, unsupported by any evidence, that prospective sexual offenders would be more readily discovered and apprehended if a ready list of likely suspects in the form of past offenders was quickly and easily at hand (see *The Scarlet R—Penal Code §290* in the September-October 2019 *Bar Bulletin*).

Since that time, the list of those compelled to register has grown to include about 100,000 people, who, at least once a year around their birthday or more often if they move, or if they are transient, must contact law enforcement and confirm their home address and other information. It is worth noting that this heavy burden falls also on law enforcement to repeatedly track this huge group, with uncertain enforcement value for their efforts. Nuances in the law have made it additionally criminal to fail to timely register in strict compliance with existing statutory obligations. Failure to timely renew registration for a felony authorizes a new felony, with a mandatory minimum 90-day jail sentence as one of the requirements.

Other subtle aspects of the registration duty is the requirement that some must register at multiple locations, even if they have only one home, if there are other places where they “regularly reside.” These strict duties and punitive consequences exist for registrants to notify law enforcement of even minor changes in address in the same apartment building. Making the impact harsher for those required to register, changes in law and technology have created readily available internet access to personal and residential information as part of the Megan’s Law movement, propelled by the public’s belief that publication of names and addresses of registrants enhances public safety even at the price of causing embarrassment, humiliation and sometimes personal harm to those required to register.

Science and Experience Compelled Ending Lifetime Registration

Social science research, whether conducted by or discovered by the California State Sex Offender Management Board, has confirmed during the last 10 years that

lifetime registration constitutes bad public policy, needlessly burdening past

offenders and law enforcement alike, with the net effect being that public safety is harmed and registrants are unproductively subjected to harshness, scorn and derision. California has been far behind other states in recognizing and correcting this policy misjudgment. Politics were at the root of the resistance to change, with members of the legislature fearing primary opponents claiming “soft on sex offenders” campaigns.

The good news is that in 2017, law enforcement, prosecutors, victim groups, and a wide swath of legislative influencers joined with the California legislature and then-Governor Jerry Brown to end lifetime registration for most sex offenses in California. A multi-year legislative effort culminated in a reform, first proposed by the Sex Offender Management Board and known as “Tiered Registration.”

In place of lifetime registration for all offenses was created a system of registration for a minimum specified period of years, the duration of which is based on the conviction offense and a separately conducted analysis of dangerousness for some offenses and registrants. Once the minimum years had been accomplished, qualified registrants become eligible to seek approval for removal from the registry. At the heart of this shift was the development by the social science community of behavior testing instruments that provide reliable and widely accepted tools for assessing the risk of re-offending for sex offenders. Known as SARATSO (State Authorized Risk Assessment Tools for Sex Offenders), they are promoted and viewed across the board as providing an informed, evidence-based, data-driven violence prediction and re-offense predicting scientific model for enhancing community safety (<http://www.saratso.org>).

Developed by a group of penologists and social scientists, as an outgrowth of their research and study of the offender population and their patterns of post-release and post-treatment conduct, these testing tools have given the policymakers a basis to conclude that many offenders can be tested and reliably assessed as appropriate candidates for removal from the sex offender registry without imposing danger or risk to the community.

For law enforcement, the benefits are primarily these: (1) the tremendous amount of time and resources expen-



ded on verifying the current residences of vast numbers of past offenders, which prevented more productive use of limited police resources, can responsibly be applied to other priorities; and (2) with the saved law enforcement resources previously expended on registrants who are determined to be low risk for reoffending, the attention can be turned to dealing with high-risk offenders that demonstrably produce serious criminal conduct in the community. The net effect is a safer society and the reduction in unintended burden on past offenders who have paid their debt to society and demonstrated by years of offense-free and compliant behavior that they need not continue to be registered.

Termination of Registration Application Process Begins July 1, 2021

The operation of the new system, holding out the possibility of termination of the onerous burden of sex offender registration, offers eligibility for initiating a request to terminate registration beginning July 1, 2021. All attorneys can consider alerting clients to this potential relief available, so that they can begin the process of determining how and if they fit into the statutory relief available and how best to maximize their opportunity to successfully petition for removal. For those not comfortable delving into this area of practice, it offers a way to inform past registered clients of the opportunity presented by the new termination system. Granted the distress that registration has caused for all people impacted by it, no greater appreciation will be experienced than assisting in lawfully ending the obligation to register.

Although the mechanics for requesting termination are still in development [at the time this was written], the broad outlines are available. Most current registrants are eligible for applying once they satisfy the criteria set forth in the law. These include demonstrated fulfillment of the period of required registration, ranging from 10 years to 20 years since their release from custody and continued compliance with the periodic registration obligations. Treatment history and current risk of reoffending are likewise key concerns that must be addressed. If a conviction has occurred for failing to register, eligibility for ending registration is delayed and added time is imposed before an application is deemed timely. Any new conviction for a new registerable offense is a serious blow to viability of an application.

The procedure for all petitions to terminate the duty to register begin with notification being served for the petitioner on law enforcement and prosecutors, ensuring that community safety is prioritized. The applications must be filed in the county where the registrant currently resides. Law enforcement and prosecutorial authorities, both in the county where the conviction was suffered and

in the county where the registrant now lives, are required to be served. This component is viewed as a safeguard to allow the court, with the ultimate responsibility to decide whether termination is appropriate, to have input from all interested parties. Both prosecution and law enforcement have 60 days each to respond to the request to terminate and to research, review and evaluate the petition to terminate. All notified parties have the opportunity for input on how the petition to terminate should be treated by channeling input to the prosecutor in the county of residence. The current registration county prosecutor is entitled to require that the court conduct a hearing where relaxed admissibility rules permit in virtually any material evidence, as part of the process to determine whether the termination of registration will have a detrimental effect on community safety.

The court in any hearing requested is tasked with determining if community safety would be significantly enhanced by requiring continued registration. This standard invites both parties to introduce a wide array of potentially specialized evidence and expertise in the background, context and management of sex offenders in general, and the petitioner's circumstances specifically. Included as factors can be individual traits and demonstrated activities as well as professional opinions from qualified experts in the field. It seems clear that in pursuing termination of the duty to register, courts will pay close attention to public safety considerations.

Counsel in preparation of these applications must address and thoughtfully confront the risks that are part of the community safety context and be prepared to mitigate concerns raised in order to best present the client's justification for termination. When the court determines that the application is not appropriate to grant, the judge determines the time delay before a further application to terminate may be brought. The legislation authorizes delaying subsequent applications for up to five years, making clear the importance of anticipating the concerns and preparing to meet them.

This legislation marks a first opportunity for virtually every registrant in California to demonstrate that they can be trusted to be off the registry. For most, the burden of registration is one of the most wounding experiences of their lifetime. Your service to these clients and the society at large comes together as the law reaches to overcome, for registrant and law enforcement alike, the counter-productive and burdensome vestiges of this ill-conceived system.

Should questions come up, feel free to explore any associated concerns either with the broad issues of registration or the narrower issues regarding termination by email, jeff@steinconawaylaw.com, or by phone at the Stein-Conaway Law Firm, (805) 748-5243. ■

Metamorphosis of an Attorney

by Helen Silva Garrison

I am Helen Silva Garrison, managing attorney of the Legal Services Department at Stand Strong. Day after day, I help clients who are survivors of domestic violence, intimate partner violence, sexual assault and stalking. I don't have to charge for my services because I work for a nonprofit agency. I should feel good about myself, right? After all, I am working to "do good," employed by a wonderful agency, and happily doing it at a lower pay scale than I would receive in the private sector.

Recently, however, I discovered that my "good" was not "good enough." I discovered that there was a deeper side to me, one that I wasn't even aware of all these years, and one that I was ashamed to learn that I had. I had to make a change, a complete shift in how I relate to my clients. To take you on this journey with me, I will have to expose you to the ugly, deep crevices in the back of my mind.

The revelation started one evening in downtown San Luis Obispo. As I was walking along, I met a woman who needed help buying her dinner. She told me that she was homeless. Of course I would help her. I bought her dinner and then stood outside with her talking for a while. I felt good about myself. Wasn't I, again, being so nice and helpful?

But then, I noticed something about myself. My body position was all wrong. I was turned at a slight angle away from her. My arms were in a crossed position. I was listening to her and responding, but I wasn't *really* having a

conversation. I was being "nice" to her, but I realized that, inside, I was feeling superior to her.

Immediately, I was shocked at myself! I maintained a cool facial expression while discreetly turning my body toward her. I leaned into the conversation and began to listen, not as a superior rescuer, but as an equal. And this woman became so much more interesting to me. I wanted to talk to her. I wasn't just being polite standing there. I wanted to know her, and to call her my friend.

That night, I pondered the circumstances in my head. I began to peruse those dark crevices. I am educated. I am white. I am middle class. Many of my clients are of other races. Many of them do not speak English. Most of them are poor. Was I looking at them as if they were beneath me? Was I considering myself superior? Was I their "white rescuer?"

And I realized, with much chagrin, that I was. The ugly truth jumped out at me—deep down I was feeling that I was the superior human being who was helping people I thought were beneath me. I was kind to them. I was trauma informed. I was working to "help" them. But I wasn't their friend.

I began to explore what it would be like to consider my clients as my equals, to look at them as friends rather than just clients. Now, don't judge. I knew I had to maintain professionalism. We would be friends with very well defined roles and boundaries. I simply wanted to change how I related to my clients.



Illustration via Creative Commons

And I did. As I would meet with a client or even talk about a client, I would check myself internally. What judgments was I bringing to the relationship? What pre-formed conceptions and prejudices was I acting upon? I let myself step into my client's shoes, realizing that they were sons, daughters, sisters, brothers, parents. They were people, just like me.

And, as I wiped away the fog of my prejudices and notions of superiority, my clients took on new life. They were no longer the needy "other" whom I would "rescue" out of their situation. They were people, real people. And each one had things I could appreciate about them. I could partner with them, with the knowledge and licenses I had, to change things they wanted to change, to join them in gaining freedom, safety and comfort. I could empathize and really feel what they felt about their children. And together we could figure out what would work best for their families.

Suddenly, everything about my work changed. When a client would call, instead of sighing and worrying about the additional work, I would look forward to talking with them. I was interested in how their day was, how

they were doing, what progress they were making. They didn't take over my life. They made my life more full and meaningful.

There were difficulties that arose from this change. Investing in clients means working competently for them in the best way an attorney can. Investing in friends requires more—more time, more emotion, more availability. Court proceedings became harder. Now that I am connecting with my clients, I join them in their disappointment when court does not go their way. But the connection helps, too. When I have to discuss difficult realities of their cases and talk to them about hard decisions, I do it from a place of friendship.

I no longer dread those conversations because I want to join them in that difficult place and help them struggle through.

In Trauma Informed Legal Advocacy training, we are taught to be sure to take care of ourselves. We have to set boundaries. We have to take time to do things that refresh us and help us stay healthy. I worried that having more connection with clients would make it hard to set those lines, and client relationships would encroach upon my personal time. Instead, being connected to my clients made it easier to say, "I care about you. I want to hear this; but right now, I need time with my family."

So, here is where I encourage all of you readers. I admitted the ugly—that I was viewing myself as the rescuer of people that were beneath me. I missed out on some beautiful, rich relationships because of my perceptions. Can you search your own thoughts and feelings? Are you feeling that some people are beneath you because of their education, economic situation, race, religion or social groups? Can you try to catch yourself when you feel that way, and instead, see every human being as your equal?

If you can, you have a beautiful road ahead of you, and I encourage you to take that journey. ■

Central Coast Reverie



Photographer's Note

I took this photograph on the northern end of Morro Strand State Beach one chilly evening as the distant stratus clouds seemed to squeeze the last drops of light out of the sun as it sank over the horizon.

Fast-forward several months to a summer foreshadowed by concerns of large-scale heat waves, drought, and an extended wildfire season.... I am yet again reminded of how lucky we are as residents of the Central Coast to be so near to these calming, cool coastal spots for some summer relief and reprieve.

Chris Borgard, Bar Bulletin photographer

Bar Bulletin Editorial Policy

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

slosafire@icloud.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 deadlines noted at right.

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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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Tara Jacobi, Editor
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