

Bar Bulletin

Serving San Luis Obispo
County's Legal Community

September–
October 2021

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MCLE Changes on the Horizon

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San Luis Obispo County



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Cover: Good food, good friends and relaxing jazz vibes highlighted the 2021 Summer Social. Photo courtesy of Chris Borgard.

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President's MESSAGE

by Joe Benson



Back to the Fun!

I write this after having just attended the Mid-State Fair on four separate days during its 12-day run. Making the trip over the grade and back down again was well worth it given the fun and the memories made with family. The last time I was at the fairgrounds was in March to receive my first vaccine shot. I think I prefer the Mid-State Fair configuration over the mass vaccine setup.

In addition to my kid getting over her fear of heights, at least for the rides that “look cool,” she also obtained three new stuffed animals from playing carnival games. Her college fund has suffered as a result.

Boot the Kids

With the beginning of school just around the corner, everyone in our house is excited about our daughter attending school in person, rather than in our backyard, garage and/or living room learning how to read, complete math exercises, and all the other things kindergarteners do. We feel fortunate to have

teamed up with another family who have two kids close in age to ours to form an education “pod” way back in March 2020.

I like to think of them more as a roving gang of three small girls who seek to find, capture and relocate anything small enough to carry in their hands—aspiring nature lovers/relocators, if you will. We live near a small creek, and it seems like every day a lizard, crawdad or some other small living thing is lovingly, but perhaps without complete consent, relocated to our backyard for careful study by their watchful eyes.

In late June we took a vacation to San Diego. While enjoying a cold (and surprisingly reasonably priced) lemonade during a break at the San Diego Zoo, I noticed an email from our daughter’s school with the supply list for first grade. After getting over the somewhat odd feeling that came with the realization that I’m now in a place in my life that I would receive such a thing, I was reminded of what many of my older colleagues

have told me. When talking about their kids, they mention the finite amount of summers you get to have with your kid before they presumptively leave for college or otherwise find far more interesting ways to spend their free time than hanging with their parents. Having that perspective has altered the way I look at our time together during the warm summer months and my willingness to go over the grade on a Wednesday night to attend the fair.

Live Music

Like many, I enjoy music of nearly all types, and I especially love the experience of watching a band play live. Having been without during the pandemic, I’ve been seeking out all opportunities to do so. I’m so desperate for it, I’m even willing to tolerate country music.

I can’t say I’m much of a Bret Michaels fan. But much like someone who is starving would eat anything, I was happy to hear any music. I was a bit disappointed at his last-minute

cancellation, as I had hoped to hear a bit of his concert emanating from the grandstand area as my daughter artfully navigated her way through the fairgrounds (and carnies) with me in immediate tow.

By the time you read this, and setting aside the evolving Delta variant situation at the time of this writing, “Concerts in the Plaza” at Mission Plaza in San Luis Obispo will have started. I’m looking forward to what has been a summer staple for our family since moving here and being able to once again enjoy a warm Friday night, cold beer in hand, with a watchful eye on my constantly moving child, while catching up with friends and seeing colleagues and clients doing the same.

Labor Day

Although who exactly came up with the idea is debated,¹ the start of what we now know as Labor Day was created in 1882 in New York City to celebrate the achievements, sacrifice and contributions made by laborers. The industrial revolution exacted an incredible toll on laborers in the 19th century, and the subsequent strikes and work stoppages resulted in the creation of a holiday for the “laboring classes”.²

Oregon was the first state in the union to make Labor Day an official public holiday in 1887, and by 1894, 30 states followed suit. In 1894, Congress passed a bill recognizing the first Monday of September as Labor Day and made it a federal holiday. President Grover Cleveland

signed the bill into law on June 28, 1894.³

In modern times, the Labor Day holiday marks the unofficial end of summer, and most kids view it with dread as it typically marks the end of their summer break and the return to school. I held that same viewpoint when I was a kid. For those students who have now gone through the pandemic and remote learning, I wonder if the opportunity to be back in person full time with their friends and teachers will result in a different viewpoint, at least for this year.

I hope you have a wonderful end of summer. Stay healthy and please get vaccinated, if you can. ■



*Joe and Carmen Benson
at the 2021 Mid-State Fair.*

Footnotes

1. “McGuire or Maguire? A Tussle Over Who Founded Labor Day,” by Jenny Gross, *The New York Times*, September 6, 2020.
2. P.J. McGuire, “Labor Day—Its Birth and Significance,” *The Union Agent* [Kentucky], vol. 3, no. 9 (Sept. 1898), p. 1.
3. “Public Acts of the Fifty-Third Congress of the United States” (PDF). *United States Statutes at Large*. 28: 96. 1894. Retrieved July 24, 2021.



Editor's Note

by Tara Jacobi

"Life starts all over again when it gets crisp in the fall."
—F. Scott Fitzgerald, *The Great Gatsby*

But before we get to the fall, let's look back on our summer. We celebrated our emergence from isolation during the Summer Social at Biddle Ranch in mid-July. Enjoy the photographs of smiling members gracing the pages ahead. Hope you were able to join us. If not, there will be more opportunities for future in-person events as our year continues.

Fall can sometimes seem more like a new year than the new year itself. Maybe it is because it coincides with the start of a new school year. It can also be a time for reflection. What did you learn this past year? Did you ever think that our working lives would become so dependent upon technology? Is Zoom your friend or foe? Take a look at Janet Wallace's article showing us all the possibilities we've held back, possibilities that Zoom facilitates and that may forever change our working lives. It will be interesting to see if what was once rarely acceptable in the legal field, either working from home or appearing remotely for a court appearance, now becomes the new norm.

I went back to school. Enrolling in UC Berkley's Professional Sequence in Editing has taught me you are never too old to pursue a passion. Yet, you must be brave enough to embrace all that comes with learning something new. Lawyers are decent writers. They are highly paid in exercising their craft. Yet, I've never had to categorize the function of words, correct their mechanics or improve clarity quite like this before. Never knew there are around nine types of pronouns, not just one, or a part of speech called a gerund. Embracing learning is

certainly a worthy endeavor. If there is something you're wishing to take to the next level, I highly recommend taking the challenge.

Maybe before you can get in touch with what you might wish to pursue further, you might need to get back in touch with yourself. With busy work and family-life schedules, this may seem impossible. Let Kara Stein-Conaway inspire you. She is showing us how it is possible. If she can find the time, you know you can too. Her article gives readers pointers for quality "me time." Don't downplay it because if you can make it a priority, you will find it will only serve to enhance what you have to give back to your family and working life.

Happiness will fuel your success unlike what most inner voices devise; happiness gives us the advantage to flourish as opposed to pushing ahead for our latest achievement. Find your happy place, find yourself a success and maybe tell us about it too. 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 July 28, 2021 — 62 gifts received totaling \$52,135

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

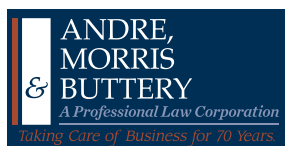
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The John L. Seitz Award Nomination Form

The John L. Seitz Award is given each year to honor an attorney or judicial officer who has made a significant contribution to the community through their community activities and involvement.

The Award

The award is \$1,000, which is given in the name of the recipient to a charity, community nonprofit organization or law school scholarship fund, selected by the recipient. The award will be presented at the San Luis Obispo County Bar Association's December meeting.

Selection

We need your help in selecting an attorney or judicial officer in San Luis Obispo County who has exemplified the spirit of our profession through their service to the community. Please use the form below to make your nomination.

The 2021 John L. Seitz Community Service Award

Name of Nominator

Name of Nominee

Instructions

On a separate sheet of paper, describe the Nominee's qualifications for the 2021 John L. Seitz Award. Attach your comments to this form and mail to:

Seitz Award Nomination
San Luis Obispo County Bar Association
P.O. Box 585
San Luis Obispo, CA 93406

Nominee's Address

Nominee's Phone

Nominations must be received no later than November 1, 2021. Thank you.



Superior Court of California County of San Luis Obispo

Judicial Mentor Program

The San Luis Obispo County Superior Court announces the formation of a joint Judicial Mentor Program with the Ventura County and Santa Barbara County Superior Courts, in collaboration with the Office of Governor Gavin Newsom. The purpose of this program is to assist in the recruitment and development of a qualified, inclusive and diverse judicial applicant pool. The program is designed to identify, encourage, and provide mentors for all attorneys considering a judicial career. One of the chief goals is to communicate to all sectors of the legal community the uniform message of Governor Newsom's judicial criteria and commitment to appointing a capable bench reflective of California's rich diversity.

Launch Date: The Tri-Counties Judicial Mentor Program will officially open with a virtual conference to be held on September 21, 2021, at 12:15 p.m. The conference will be hosted by the Chairs of the Judicial Mentor Program for the Tri-Counties: the Honorable Manuel Covarrubias (Ventura); the Honorable Gustavo Lavayen (Santa Barbara); and the Honorable Rita Federman (San Luis Obispo); and will be joined by Judicial Appointments Secretary Luis Cespedes. The date and time for the program will be posted on the Court's website at www.slo.courts.ca.gov.

The Judicial Mentor Program is a two-part program consisting of a one-on-one mentor committee and a community outreach committee.

Mentor Committee

Many judges have devoted time to the important work of mentoring persons interested in applying to the bench and this program will encourage them to continue and expand their efforts. The Presiding Judges of the Ventura, Santa Barbara, and San Luis Obispo County Superior Courts have identified a panel of mentor judges who will be available to assist attorneys seeking guidance in applying to the bench.

The role of the mentor judges is not to select or recommend candidates; rather their role is to provide information and feedback and to demystify the application and vetting process. Participation in the mentor program is not a guarantee of appointment.

Following the program launch on September 21, 2021, interested individuals may apply on the Court's website by submitting a Judicial Mentor Program Request Form to receive information on the next steps. Participants will be paired with a mentor judge who will discuss the prospective applicant's career objectives, answer questions regarding the application and vetting process, and be available to provide input as the candidate completes the application.

Outreach Committee

The Outreach Committee will work with all sectors of the legal community, including bar associations, public interest organizations, government attorneys, private law firms and solo practitioners. The goals of this outreach effort are to:

- Inform members of the legal community of the program;
- Disseminate consistent information regarding the Governor's judicial criteria; and
- Identify and encourage individuals in a position to assist in recruiting possible candidates for the bench.

If you need additional information, please contact the Court's Community Relations Office at judicialmentors@slo.courts.ca.gov. After September 21, 2021, you may apply for the program by visiting the Court's website at www.slo.courts.ca.gov.

A Tribute to Leandra Funkhouser

by David P. Warren, Esq.

This county, and this world, have been deprived of a bright light. Leandra Funkhouser was an excellent paralegal and, more importantly, a wonderful person and mother. Leandra passed on July 12, 2021, at the age of 39.

I had the privilege of working in this county since 2002, and Leandra worked side by side with me for almost 14 of those years. She lit up a room and all who knew her treasured her caring and kindness.

Leandra was devoted to doing an excellent job as a paralegal, and she cared greatly about the clients we served as people. Because we handled wrongful termination, whistleblower, discrimination and harassment

cases, we saw clients at their most raw and vulnerable time when a career they valued had been taken. She would always give that extra that characterizes someone who loves what they do and cares about the people they represent.

Leandra gave of her time to many causes, including San Luis Obispo County Women Lawyers, and she supported me in the volunteer work I did, including Fee Arbitration and Mock Trial. She could always be counted on to reach out when there was a need of any kind. At the same time, she was devoted to her children and their schooling, band and 4H participation. And busy as she was, when someone needed an assist, she was there to volunteer.



Photo courtesy of David P. Warren

Our clients universally praised and appreciated her work and how much she cared. I treasured her as a co-worker and as a person. She was like family after all our years together, and I will miss her smile forever. ■

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

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If you are interested in receiving prescreened, quality referrals, please call **Kerrin at (805) 541-5502**.



Doing Good Matters...

RISE:

Empowerment and Advocacy

by Sebonay Campos and Kristyna Gaytan

In the United States more than 12 million women and men are affected by intimate partner violence over the course of one year.¹ Seeking help and safety is one of the hardest things for a survivor to do.

It is emotionally devastating, and leaving an abuser is actually the most physically dangerous time for a survivor of domestic violence. One study found in interviews with men who had killed their wives that either threats of separation by their partner or actual separations were most often the precipitating events that lead to the murder.²

Society also places pressure on survivors to stay in the relationship, implying that being in a relationship, although abusive, is better than being a single parent. A survivor's reasoning for staying is complex and includes a variety of factors such as fear, guilt, financial status, culture and gender roles.

When a survivor comes to you and they've experienced intimate partner violence, it can be tempting to tell them what to do—that they *need* to leave and seek safety, that they *need* to do this and that. But that's the last thing that would be helpful to the survivor.

Control is a tactic abusers use to keep survivors simultaneously

afraid of them and yet reluctant to leave them: be it controlling a survivor's ability to go places, hold a job, access money, see friends or family, keep their children, or by using some other form of mental control to make the survivor feel dependent on their abuser. That's why it is not helpful to tell a survivor what to do because it's continuing the notion that they don't have autonomy of their own decisions and lives. As advocates, it's



best to educate them on their options and empower them to make the decision they are most comfortable with.

Leaving an abusive relationship doesn't always look like it does in the movies, grabbing the kids in the middle of the night and escaping into the darkness. In reality, some survivors are actively and secretly working with the system to escape as safely as possible.

"We come to a point in our life where we don't want to be living in trauma and dealing with

relationships that hurt us," said RISE client Jane Doe. "When I grew tired of the emotional and verbal abuse from my now ex-spouse, I felt lost and alone, so a good friend of mine referred me to RISE."

When a survivor is ready to leave or ready to hear their options around leaving, they can come to RISE. At RISE we offer crisis support where a certified crisis counselor can create a safety plan with the client that's tailored to their unique needs and goals. We empower survivors by providing them with as much information and as many resources as possible.

Part of a safety plan can include receiving legal services. RISE's legal advocates provide survivors assistance with processing and filing for a temporary restraining order, which can include emergency custody orders to keep the survivor and their children safe.

RISE's legal advocates follow an empowerment model, which means that we educate every survivor about their rights and go through the pros and cons of filing for a restraining order. Following the empowerment model, survivors are given information and options to choose for themselves. With

Continued on page 12

Doing Good Matters continued

this approach we give solutions and answers in a positive way, while giving survivors a sense of control of their own life choices. The survivor is always in charge of the process because they are the experts of their own situation. This is the core mechanism of the empowerment model.

One of the most common and difficult pieces of information RISE advocates provide is explaining that a restraining order is not always something that can be accomplished quickly. In fact, some cases can last months and not all requests are approved. Additionally, it can be surprising for survivors to learn of the risks surrounding filing for a restraining order that are often underestimated—particularly when they’ve been advised by law enforcement to get one.

“He would come to my home under the influence of a controlled substance and harass us. The San Luis Obispo Sheriff’s department told me to get a restraining order as soon as possible, otherwise they could not help me,” said Jane Doe.

Despite public belief, a restraining order unfortunately does not guarantee safety. The process can actually trigger more violence, as seen in a study where 11 percent of 231 women who had been issued a restraining order were killed by their partners. Twenty percent of the victims who had a restraining order were killed within two days of the order being issued; about

one third were killed within a month.³

“When I decided to leave my now ex-husband, it was really difficult because he began to threaten mine and my daughter’s life,” said Jane Doe.

Providing this information is not to scare the survivor or deter them from seeking a restraining order, but to make them aware of the risks in an effort to help them make an informed decision on what they feel is best for them.

If a client feels that the restraining order process is what’s appropriate, we help them create a timeline of the abusive incidents and put together evidence to strengthen their claim. RISE legal advocates then process the appropriate documentation and file it with the courthouse. When

A restraining order hearing can be retraumatizing for a survivor, who will be in a courtroom and have to be face to face with someone who might have tried to kill them. RISE advocates are available to accompany survivors to their court hearing as emotional support, and act as a source of strength. The survivor does not have to face their abuser alone or feel overwhelmed by the trial.

RISE client Jane Doe said, “My RISE advocate would accompany me to court, as I was terrified to face my abuser. He would send me threatening text messages every time I had a court date. She helped me stay strong through the entire process.”

If a survivor begins to feel overwhelmed by the trial, the legal advocates are also trained

crisis counselors and can help calm the survivor’s nerves by providing grounding techniques and other helpful tactics. Understandably, the trial can be confusing for a survivor. If they have any questions or concerns, the legal advocate is available to answer them.

RISE’s support does not end after the hearing is over. Advocates also arrange resources for clients, including working as liaisons with community programs to deliver the immediate needs of the clients: shelter, financial support, counseling and elimination of barriers that would prevent a survivor from thriving.

“RISE assisted me in communicating with an



a temporary ruling has been made we prepare the client for court, which can include referring them to an attorney that can represent them during the trial, or by preparing them to represent themselves.

“My RISE advocate was extremely knowledgeable and compassionate and went above and beyond to help me,” said Jane Doe.

advocate from the Victim Witness department of the District Attorney's office. Victim Witness was able to help me obtain security cameras that put me and my daughter at ease," said Jane Doe. "Because of the security cameras, I was able to capture each time he would break the restraining order and then report it to the police. He is now incarcerated, and we are forever indebted to the amazing advocate at RISE who helped me overcome the trauma and abuse I was living."

In addition to supporting survivors, RISE's goal is to educate all community members on intimate partner violence. We strive to make sure that everyone is understanding of the trauma that a survivor goes through, with the final goal of eliminating a culture of victim blaming.

We hope that this article is informative and insightful as to what survivors go through, so that when a survivor comes into your office you can treat them with the kindness and understanding they deserve.

RISE has two office locations on the Central Coast, in San Luis Obispo and Paso Robles. Community partners can reach the organization through our business line at (805) 226-5400. Additionally, survivors in crisis can use RISE's 24-hour crisis hotline at (855) 886-RISE, which is staffed by certified crisis counselors ready to provide immediate support with care and compassion.

If you would like to learn more about RISE or donate to provide more survivors access, you can visit our website at <https://www.riseslo.org/>. ■

Footnotes

¹ "Domestic Violence Statistics." *The Hotline*, 28 Sept. 2020, www.thehotline.org/stakeholders/domestic-violence-statistics/.

² "NCADV: National Coalition Against Domestic Violence." *The Nation's Leading Grassroots Voice on Domestic Violence*, ncadv.org/why-do-victims-stay.

³ Vites, VA, and SB Sorenson. "Restraining Orders Among Victims of Intimate Partner Homicide." *Injury Prevention : Journal of the International Society for Child and Adolescent Injury Prevention*, U.S. National Library of Medicine, 2008, pubmed.ncbi.nlm.nih.gov/18523113/.

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Congratulations, San Luis Obispo College of Law 2021 Graduates!

by Sharon Lizardo, Associate Dean and Professor

Donning bell-sleeved black gowns adorned by purple cords and sporting a gold tassel on a mortarboard cap, the San Luis Obispo College of Law Class of 2021 graduates were beaming with pride. The sunny afternoon modified-graduation ceremony commenced Saturday, June 5, 2021, in an outside area near the school. The rigorous law school curriculum was no easy task, since most graduates worked full-time while balancing family responsibilities.

Family and friends gathered for the processional march led by Mitchel Winick, Dean and President of the Monterey College of Law, the San Luis College of Law and Kern County College of Law; Jan Marx, the San Luis Obispo Campus Dean; Sharon Lizardo, an Associate Dean; and Stephen Wagner, a Board of Trustee representative. Faculty members longed to share in the celebration, but strict pandemic safety measures limited the attendance.

The ceremony included a "hooding," where a beloved family member or friend placed a purple hood over the graduate's head signifying the conferring of a Juris Doctor. Instead of a traditional keynote speaker, each graduate took the podium to spotlight what the law school experience meant and to give special thanks to their family and friends. It was a day for a "whole lotta love."

The Juris Doctor Recipients

- Gabriela M. Bonato
- James Frank Cooper
- Kizzy Garcia
- Kevin Scott Hamblin
- George Hindmarch
- Valerie A. Janiel
- Daisy Mercado
- Blanca E. Mejia
- Roxanna Vasquez-Calderon
- Olga Saito (class of 2020)

The New Admittees

Monterey College of Law's overall pass rate for the February 2021 California Bar Exam was 71.4 percent for first-time takers. The pass rate includes all the campus branches and surpassed the California ABA law school average pass rate of 65 percent and the statewide pass rate of 53 percent. Other SLOCL graduates were highly motivated to grapple with the July Bar. Meet the new attorneys from SLOCL.

George Hindmarch

A San Luis Obispo County native, George Hindmarch earned a B.S. in Business Administration from the University of Southern California. "I am incredibly grateful to the law school and am 100 percent positive that the networking helped me immensely." Along the way, he earned the West's Award for Scholastic Achievement.

Hindmarch received a well-balanced perspective in both civil and criminal law. On the civil side, he attributes working for the Ernst Law Group as, "Opening up my eyes to and becoming fascinated with the Law. The

law group cares deeply about the Central Coast, and I would not trade this experience in personal injury depositions and mediations."

Early in law school Hindmarch was summoned for jury duty. "It was Professor Wagner's case, and I was excused because I knew him as one of my professors." On the criminal law side, Hindmarch was a legal clerk/witness coordinator for the San Luis Obispo County District Attorney's Office. There, he had a ringside seat to observing the trial advocacy skills of deputy district attorneys in a high-profile murder case and other felony trials.

He is open to practicing in all areas of law and noted, "I am glad to have had experience in both civil and criminal law. My job hunt will center around the Los Angeles area where I have family and friends." For now, he is vacationing in Cabo San Lucas with some buddies.

Valerie A. Janiel

Valerie Janiel is hooked on books. "At an early age, my mom read to me, and I enjoyed it. Also, I liked doing math activity books." She grew up in Clovis and cherished the times Barnes & Noble had midnight openings of the boxes for the latest Harry Potter books.

Graduating magna cum laude from Fresno State University with a B.A. in Philosophy and a minor in Mathematics only whet her appetite for more. After college, Janiel moved to San Luis Obispo County and



From left, Kevin Scott Hamblin, Daisy Mercado, Valerie Janiel, Roxanna Vasquez-Calderon, Blanca Mejia, Kizzy Garcia, James Cooper, Gabriela Bonato, Olga Saito (not pictured George Hindmarch).

soon began law school. "I was aware of the commitment I was undertaking," she said. Janiel distinguished herself by earning the West's Award for Scholastic Achievement.

Upon learning she passed the Bar, Valerie said, "I was so excited to be on the other side of the finish line! It is one of the happiest moments of my life. It is surreal to finally be an attorney." One of the bar essays was in Evidence and called for objections. "I just put myself in the courtroom and answered the racehorse question."

On May 14, 2021, Janiel was sworn in as an attorney by the Honorable Charles S. Crandall. Currently, she is a San Luis Obispo Deputy County Counsel looking forward to developing her legal skills. After the Bar, she took a week off to vacation in the Redwoods with her dog. In October, she plans a camping trip to Big Sur.

Blanca Mejia

Blanca Mejia spent her early years in the Guadalupe and Santa Maria areas before earning a degree from Fresno State and then attending a police academy. Between the Fresno, Arroyo Grande and San Luis Obispo

police departments, Mejia served for about five years as a law enforcement officer. Part of her duties included testifying in court, where she became familiar with court rules.

Her recipe for success is hard work. "Looking back, you really need to go all in. You must be willing to put your life on pause for four years. Do whatever you need to do. If I got home late and still needed to study, I would with the help of coffee."

Her English and Spanish bilingual abilities helped in her former law enforcement career and in her clinical studies. During law school, Mejia interned for Matthew Loker and learned concepts in consumer protection cases. There she dealt with complaints, answers, discovery and court procedures.

Mejia has accepted an associate attorney position with Twitchell and Rice in Santa Maria. The firm practice areas are environmental and agricultural law and business law.

Olga Saito

Olga Saito hails from a city known as the "Cultural Capital of Russia," Saint Petersburg. Founded in 1703 by Peter the Great, the city is situated on the

Neva River. "It was a beautiful area to grow up in," she said. Saito earned a bachelor's degree in Law from the Saint Petersburg University.

About 15 years ago, Saito relocated to the United States, where she was able to earn her Juris Doctor through an accredited program with the California State Bar. She noted that Russian law is based on Roman codified law, whereas the U.S. follows English common law. Also, there is no tort law in Russia. When first studying law here, she admitted being overwhelmed, but she persisted until she focused her mind in a sharp way.

When first learning that she passed the Bar, Olga said, "I was so excited! I did not believe it at first. It did sink in, and I am ready to face the new challenge of being an attorney. I hope to become a prosecutor and hone my trial skills."

Thrive in the Law

Wisdom comes through seeking, and this was accomplished. On behalf of the SLOCL and MCL administration and faculty, we salute the graduates and wish for the best in their upcoming legal careers. We believe in you and know you will make us proud.

It has been my great pleasure to have known each graduate from our Evidence Class. Now, thrive in the Law, but also remember that a relaxed mind is more productive.

WELL DONE! ■

* Summer

Biddle Ranch Vineyard welcomed us back for San Luis Obispo County Bar Association in mid-July, approximately 100 ladies to enjoy the evening.

Founded by a group of friends, Biddle Ranch has a tasting room and guest house. Haute Skill tasty sandwiches. The wine was wondrous from our own varietals. The Jim Barnett Jazz Trio serenaded us. Essentially, the Summer Social allowed for a year of hibernation. It was a perfect night.

The Bar Association would like to thank Biddle Ranch. The Social would not be possible without their help.

Photos courtesy



Summer Social *

back to normal modes of socializing
Association's Summer Social. On a summer's
lawyers, guests and judicial officers gathered

Ranch hosts 17 acres of Chardonnay vines,
let provided several options for haute and
ly potent with Biddle Ranch serving up its
enaded us with jazz to lighten our spirits.
much needed in-person conversation after
of relaxation and social rejuvenation.
k the event sponsors. The Summer
generous donations.

of Chris Borgard



Congratulations to SLO County Bar Association's 2021 Scholarship Awardee!

Kristal Roman Romero
was the 2021 valedictorian of
Paso Robles High School and
will attend UC Berkeley this
fall, where she plans to double
major in political science and
ethnic studies. She is a first-
generation college student
and aspires to be a civil rights
attorney.

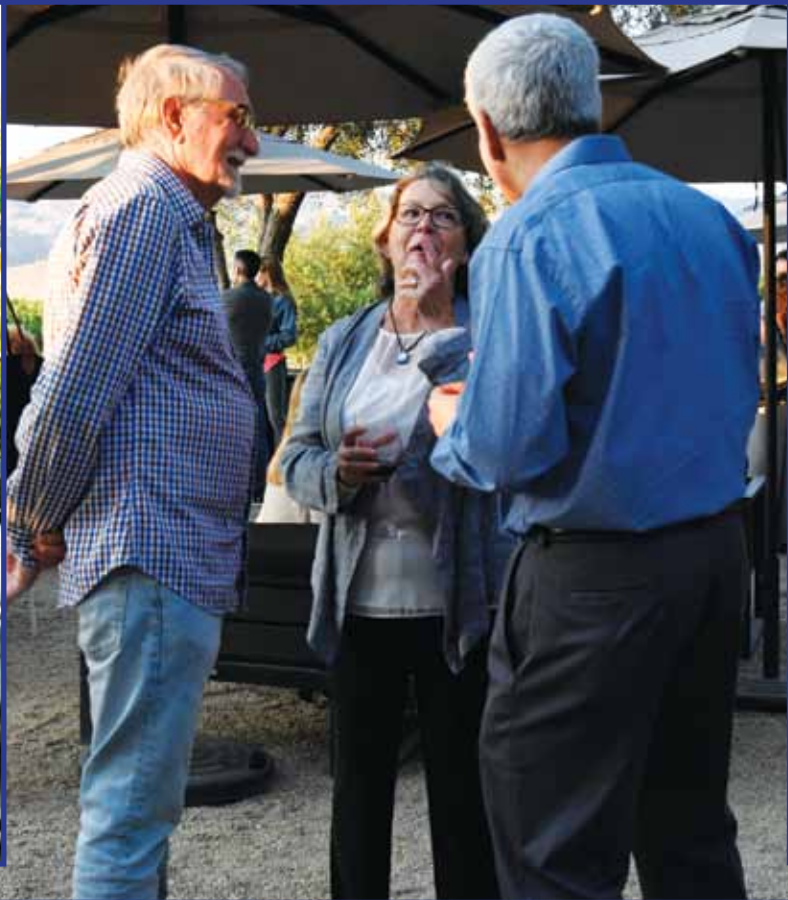
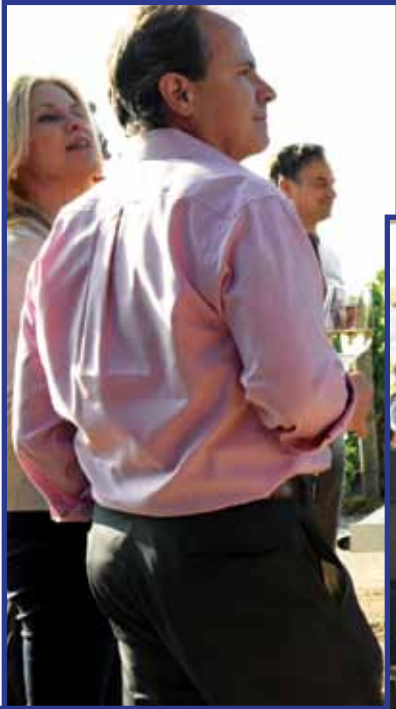
Congratulations, Kristal!



Photo courtesy of Kristal Roman Romero

Continued on page 18

* 2021 Summer Social *





Your Most Important Relationship Is With Yourself

by Kara Stein-Conaway

Toward the end of 2019, the editor of the *Bar Bulletin* asked me to write a series for 2020 where I would share my perspective about navigating the various important roles I was balancing in my life as a lawyer, law firm owner, wife and mama of two young children.

I was surprised and encouraged by how many lawyers reached out to me over the course of the year to tell me that they were comforted to learn they were not alone in struggling to try to find balance in life. They told me that based on the

stories and tools I shared, they had developed better boundaries with their work, which was allowing them to have more fulfilling relationships with their families. They told me they felt encouraged and nurtured by the messages that I was sharing. They told me that during a year filled with what sometimes felt like insurmountable challenges, my articles brought them comfort.

In December 2020, when I was honored with the Pentangelo Award for my contributions to the *Bar Bulletin* for this series of articles,

I received the final nudge to dive headfirst into a new adventure. In January 2021, I created *The Business Mamas Podcast* so that I could share my stories and tools for practicing more self-care and self-love with more people who I knew could benefit from hearing them.

The article I'm sharing with you here is a blog post I created from the 15th episode of the podcast. Here's to the beautiful world we'll create together as we all practice more self-care and self-love!

—Kara Stein-Conaway

In Episode 9 of *The Business Mamas Podcast*, I introduced a "Framework for Enhanced Well-Being—Focus on Beliefs, Relationships and Making Heart-Guided Decisions." I've talked about how focusing on this framework has led me to live much more in the present in my daily life.

Today, I want to talk with you more about relationships. When we think about relationships, most of the time we think about relationships with other people, like relationships with our children, our significant others, our close friends, or our other family members.

The relationship that we often don't think about much is the relationship that we have with ourselves. It turns out that the relationship we have with ourselves impacts all of our other relationships that we have with other people.

Your most important relationship is always the relationship you have with yourself.

What are you doing to nurture it?

If you aren't filling up your cup with overflowing kindness, you won't have love and kindness to share with others. Since showing up for others with love and kindness is essential for who I want to be in my relationships, first I must show up with love and kindness for myself.

I get to choose to be my own inner coach rather than my own inner critic. Some days it's challenging to choose this, but it's always the right choice, and with practice, it gets a lot easier. If you haven't already listened to my podcast episode, "My Breakdown that Led to My Breakthrough," that is Episode 2 on *The Business Mamas Podcast*. In that episode, I talk about how in December 2017, which was nearly one year into starting my own law firm, I had run myself so far into the ground that my cup was empty.

On one cool winter morning, I found myself physically on the floor

of my office, unable to get up for an hour—and it was a wake-up call for me. It was a wake-up call that my relationship with myself matters, taking care of me matters, and showing up with love and kindness for others, that matters to me. I know that I can't show up for others in the way I want to if I'm totally depleted.

In "My Breakdown that Led to My Breakthrough," I take you through the morning routine that I created for myself. I also talk about how I developed better boundaries with my work, including how I stopped working on Sundays. The daily practice of my morning routine, the time that I take for myself every morning to pour into myself, to nurture myself, to start my day off with a cup that is already full, is an incredibly important practice I have put in place. My morning routine allows me to take care of myself.

My morning routine is also an opportunity for me to continue to get to know myself. Just as we have

relationships with other people and we connect with them, wanting to get to know them better to learn what's really on their hearts and what's really important to them, we need to give ourselves that space with ourselves to learn what it is that's important to us, what our heart really wants, and to reflect on what is or isn't working for us in our lives.

By setting aside that time to be with ourselves, we create space to be able to hear that wisdom, that inner knowing that each of us has within us, but that often can't be heard with so much noise going on around us. That wisdom can't be heard when we're running around from task to task and we're not giving our heart the space that it needs to speak freely to us.

Another episode on *The Business Mamas Podcast* that is related to my relationship with myself is, "Carve Out Time for Joy." In Episode 4, I remind you of the importance of carving out time for joy. I ask you if it could be as easy as dancing a little bit every day in your kitchen. This episode is about creating the space for joy in our lives.

I ask you:

- 1) *Do you feel like you can't truly rest until all the work is done?*
- 2) *Do you feel like you can't play until all the work is done?*
- 3) *Do you have work spinning around in your mind when you are in a place where you are not at work and you want to be fully present and you want to be engaged?*
- 4) *What kind of activities help you sink into the present moment and really feel your joy?*

When I asked myself these questions, dancing was the answer that came through loud and clear for me. I feel my joy when I'm dancing and I feel present and it's really easy for me to just enjoy being in my body, feeling the music and dancing to the music.

If I love to dance, if I feel present when I'm dancing, if it's really easy for me to be present and joyful when I'm dancing, then, why am I not dancing more often?

It's been some time now since I originally wrote the article "Carve Out Time for Joy" and since I shared this message on *The Business Mamas Podcast*. I am happy to tell you that I dance so much more now than I did at the time when I originally wrote the article. By writing that article and then again by creating a podcast episode about that article, I took the time to really reflect and internalize that dancing brings me so much joy. I brought the consciousness to myself to say, okay, then do something about it. If dancing makes you happy and you are happy and joyful when you're dancing, then you need to do it more often!

I have been dancing a lot! Our family dance parties during the COVID-19 shutdown were a bright spot in a difficult time. It was a bright spot for all four of us: myself, my husband and my two sons. Just getting to know that each one of us gets to choose a song to dance to for the family dance party and that it's going to be a four-song dance party that we get to rock out to together has been so special and joy-creating. It's a beautiful part of my life.

By doing more of what brings me joy, in this case, dancing, I am naturally happier and healthier. That energy pours over the edges of my already filled cup and I share that happy and healthy energy with the other people that I am in a relationship with. Everyone wins when we do more of what makes us happy!

Another way that I cultivate my relationship with myself is by being in solitude. Webster defines solitude as "a state or situation in which you are alone, usually because you want to be." For me, solitude is

allowing the cultivation of a peaceful connection to myself. Webster defines lonely as "sad from being apart from other people."

How is solitude different from being lonely?

- *While loneliness is a feeling that you develop when you are longing for greater human connection, solitude is a feeling of peaceful connection to yourself.*
- *I am a full believer in the power of cultivating solitude.*
- *Allowing the silence to be with yourself is a brave act.*
- *Are you bravely practicing cultivating solitude and listening to the truths that emerge from this practice?*

You may naturally resist cultivating solitude. For many years, I had no interest in cultivating solitude. First, I didn't see the value in it. I very much identified as a doer and the idea of spending time with myself doing nothing seemed like a waste of my most precious resource, time.

Once I started practicing cultivating solitude, I realized that I was also resisting because when I got still enough, my intuition would speak to me. I would get direction from my inner knowing and receive answers to questions I didn't even know I was asking. I would receive clear guidance about what to do next. Have you experienced this in your life?

Getting this soul wisdom felt like a burden when I didn't feel brave enough to act on it. Why should you cultivate solitude despite feeling resistance that may be coming up for you?

The reason I resisted practicing cultivating solitude is the same reason why I choose to practice it now. I get clear answers from myself about my heart calling and about big decisions I need to make in my life. Listening to the wise messages

Continued on page 22



Kara Stein-Conaway

from myself is itself an act of bravery. When you aren't ready to make big brave moves in your life, it's easier to not listen to your intuition. Once you start really listening to your intuition, you'll feel called to take brave action.

The main ways I've practiced cultivating solitude are

by meditating, doing yoga, writing and going to retreats.

Meditation

I now practice meditation daily, and most mornings I do at least 10 minutes. I occasionally do shorter meditations, but 10 minutes is pretty common for me in my current morning routine. I've come to use meditation to calm myself and to center myself.

I do find the practice of breathing and observing my thoughts as they enter into my mind and then breathing and observing as they leave my mind to be a really freeing practice that I engage in.

When situations arise in my life that may be complicated or could sometimes elicit a stress response from me, because I am practiced at meditation I can also observe myself. That ability really helps me stay centered and calm through turbulence, which then enables me to respond in an optimal way rather than in a way that's not an expression of my highest and best self.

I'm very grateful to meditation for what it has given me, and I look forward to the journey that I am still on. I really do still consider myself a beginner at meditation, and I know there's so much more for me to learn.

Yoga

Another way that I practice cultivating solitude in my life is by doing yoga. When I was in law school, going to yoga class was my one regular weekly treat. In some yoga classes, I jumped right into having a present mind and released myself from the pressures outside of the yoga class for a full hour.

In other classes, it seemed like I was struggling most of the class, trying to get out of my busy mind and into my physical body.

I know that I improved at cultivating peaceful solitude as I practiced more. It's been several years now since I had a regular yoga practice, but it's something that helped me greatly when I was in law school. Maybe when my kids are older, I might join a yoga studio again. There was something really special about being in my own solitude but being surrounded by others who were also creating their own peaceful solitude as well. It was a really sweet energy.

Writing

Another way that I cultivate solitude and nourish the relationship I have with myself is through writing. My writing has a certain ebb and flow to it. I definitely have had times in my life where I set aside a few dedicated hours one day a week for writing. I have had other times in my life where I gave myself time for writing as part of my daily morning routine. I have gone through other times where I've felt like I didn't want to write at all. I wanted a break from writing, and I gave myself that break. My relationship to my writing is a fluid one. Some of the time that I used to set aside for writing has most recently transitioned into time that I'm now setting aside for my podcast.

It's an interesting transition. I'm more accustomed to writing my processing, but now I'm giving myself the opportunity to explore this new medium of podcasting as a way for me to express myself too.

Retreats

I have very much enjoyed attending retreats as a way of cultivating solitude and as a way of developing the relationship with myself. I remember that in 2018 I attended a retreat called Rootwell Women's Retreat. Much of the retreat was spent in silence. I actually didn't know that going into it. I'm not sure that I would have attended had I known, but I'm so glad that I did. At this retreat, I spent time moving my body with an intention of resourcing my body, heart, mind and spirit. I also spent time sitting on beautiful land and sitting on a rock like a lizard, just soaking in the sunshine.

I obtained clarity about choices I needed to make in my life about business and home-life balance. I also had poetry just bubbling up inside of me. That was my first experience writing poetry.

After another retreat I attended in late 2019, I challenged myself to be in solitude on my three-hour drive home. I didn't turn on any podcasts. I didn't turn on any audiobooks. I didn't listen to music and I didn't

have any other input or entertainment. I was just with myself for three hours on this drive.

I had been on the fence before the retreat about a hiring decision. I was having trouble figuring out what role I was hiring for in my law firm. On that drive home in solitude, I obtained clarity about what scope of skills I wanted my next hire to have. The clarity allowed me to then move forward with the decision that had been pending for a long time.

So for me, cultivating solitude is an act of discipline. I still resist it and I still find it challenging. I feel like I'm still very much a beginner at this practice, but in the times that I've practiced it, I've had really profound gains in my feeling of wellness and in obtaining clarity of purpose for the next steps that I need to take in my business and in my personal life.

My call to action for you is this:

- 1) *Have you created a morning routine?*
If you can use some support with that, please listen or re-listen to Episode 2, "My Breakdown that Led to My Breakthrough," where I walk you through how to create that morning routine.
- 2) *Are you carving out time for joy for yourself?*
If you can use some support with that, please listen or re-listen to Episode 4, "Carve Out Time for Joy."
- 3) *Are you setting aside time to cultivate solitude and giving yourself space to hear your own intuition speaking to you? When in your day can you carve out time to practice cultivating solitude?*

Remember, investing in this relationship with yourself will not only help you feel happier and healthier, but you'll be showing up as the most loving and kind version of you for all the other relationships that matter most to you too. ■

If you enjoyed this article and would like free resources to help you practice more self-care and self-love, visit www.karasteinconaway.com/linktree to listen to the podcast, receive a Morning Routine Guide, or sign up to receive inspiring emails from Kara. You can also learn more about the podcast on Instagram @karasteinconaway.

For more information about the Stein-Conaway Law Firm, P.C., where attorneys Kara Stein-Conaway and Jeff Stein help adults accused of crimes in SLO County protect themselves and their futures with their criminal defense practice, please visit www.steinconawaylaw.com.



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MCLE Changes on the Horizon!

by Jeff Radding

Coming soon are notable changes in MCLE credit requirements. The three-year reporting cycle remains the same, as does the total 25 educational hours to be met in each reporting period. Of the three required credit topics, the content and quantity of required hours in Legal Ethics and in Competence Issues (*“education addressing substance abuse or other mental or physical issues that impair a licensee’s ability to perform legal services with competence”*) remain the same. The significant change comes to the third required credit topic, Elimination of Bias in the Legal Profession and Society.

Beginning with the MCLE reporting cycle ending January 31, 2023 (State Bar surnames “N” through “Z”), attorneys must complete the same 25 hours of MCLE programming, including the one hour of Legal Ethics and one hour in Competence Issues.

However, rather than one credit hour in Elimination of Bias, *two* hours will be required. Furthermore, the content of at least one of those two hours must include a new subtopic requirement, *“Implicit Bias.”* The State Bar Rule defines this topic as, *“implicit bias and the promotion of bias-reducing strategies to address how unintended biases regarding race, ethnicity, gender identity, sexual orientation, socioeconomic status, or other characteristics undermine confidence in the legal system.”*

This new rule is based on a recent statute, Business & Professions Code §6070.5. This statute sets out the language

upon which the new State Bar rule defines the “Implicit Bias” credit and expresses a legislative intent “to ameliorate bias-based injustice in the courtroom.”

As a foundation for doing so, the California legislature made the following findings.

- (1) All persons possess implicit biases, defined as positive or negative associations that affect their beliefs, attitudes and actions towards other people.
- (2) Those biases develop during the course of a lifetime, beginning at an early age, through exposure to messages about groups of people that are socially advantaged or disadvantaged.
- (3) In the United States, studies show that most people have an implicit bias that disfavors African Americans and favors Caucasian Americans, resulting from a long history of subjugation and exploitation of people of African descent.
- (4) People also have negative biases toward members of other socially stigmatized groups, such as Native Americans, immigrants, women, people with disabilities, Muslims and members of the LGBTQ community.
- (5) Judges and lawyers harbor the same kinds of implicit biases as others. Studies have shown that, in California, Black defendants are held in pretrial custody 62 percent longer than White defendants and that Black defendants receive 28 percent longer sentences than White defendants convicted of the same crimes.
- (6) Research shows individuals can reduce the negative impact of their implicit biases by becoming aware of the biases they hold and



taking affirmative steps to alter behavioral responses and override biases.

The statute does much more, though, than just establish a new required (sub)topic of MCLE credit. The statute also specifies standards for content and administration of implicit bias programming, which includes these items.

- (1) MCLE providers must make reasonable efforts to recruit and hire trainers who are representative of the diversity of persons that California’s legal system serves.
- (2) The trainers shall have either academic training in implicit bias or experience educating legal professionals about implicit bias and its effects on people accessing and interacting with the legal system.
- (3) The training shall include a component regarding the impact of implicit bias, explicit bias and systemic bias on the legal system and the effect this can have on people accessing and interacting with the legal system.
- (4) The training shall include actionable steps licensees can take to recognize and address their own implicit biases.

These standards may limit the availability of qualified programming, especially in smaller counties. In the short term, though, the new rules will not apply for attorneys scheduled to report MCLE hours by this coming January 2022. Attorneys in the subsequent reporting period, however, will have to take a qualifying course before the end of January 2023. ■



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Trust, But Securitize

by Gregory W. Herring

• *Perfection* happens when a security interest becomes enforceable against the rest of the world. It requires attachment and usually some form of notice of the secured party's interest—often a UCC-1 filing under the Commercial Code (relating to fixtures and personal property) or a recorded deed of trust (relating to real property).

This article discusses how formal security interests and like vehicles can provide increased assurances, especially in fraught times like these, in our family law practices.

Attorney Fees

In re Marriage of Hatch (1985) 169 Cal.App.3d 1213 recognized that the practice of family law often requires attorneys to finance litigation by deferring fees, advancing case-related overhead, and even pulling from their own pockets for depositions and experts. "Banks and finance companies are licensed for the purpose of lending money; lawyers are not."¹

So how do we try to assure payment of fees?

The straightforward way is to require adequate retainers and attend to accounts receivable. Rules of Professional Conduct, Rule 1.15, governs the maintenance of trust funds and attorneys' use of client funds to pay their bills. Address these topics in written fee agreements.

Attachment of client files is *not* allowed.²

Family Code³ section 290 enables enforcement of fees orders under section 2030 (as well as any judgment or order under the Family Code) by "... execution, the appointment of a receiver, or contempt, or by any other

order as the court in its discretion determines from time to time to be necessary." Judicial liens on property are possible.⁴

Section 2032 subd. (d) authorizes a trial court to deem a case as involving complex or substantial issues of fact or law. It may then proactively determine the appropriate and equitable allocation of fees and costs, the sources for payments thereof, and related security.⁵

Family Law Real Property Liens ("FLARPLs") are statutory liens secured by community real property (see sections 2033 & 2034). Our brothers and sisters in other areas of practice sometimes marvel at how FLARPLs "guarantee" that family law lawyers will be paid in full! What could go wrong?! *In re Marriage of Turkanis & Price* (2013) 213 Cal. App.4th 332, 352 answered that—courts are also empowered to modify and expunge FLARPLs, even after recordation.

This is not radically different, though, from a court's powers relating to section 2030 fees orders. They, too, may be modified—and even vacated—pending a case's completion.⁶ At least the statutory lien provided by FLARPLs allows them to withstand bankruptcy.⁷ FLARPLs can still prove useful in select cases; do not let *Turkanis* totally eclipse them.

Voluntary charging liens can accomplish attachment. These are attorney liens upon funds at issue or judgments. *Fletcher v. Davis* (2004) 33 Cal.4th 61. *Hawk v. State Bar* (1988) 45 Cal.3d 589, 601 requires a clear written agreement and opportunity for the client to seek independent legal counsel. *Cal-Western Reconveyance Corp. v. Reed et al.*

Doverlyai, no proveryai: "Trust, but verify." Ronald Reagan famously repeated this Russian proverb in missile limitation talks with Soviet leader Mikhail Gorbachev. Family law lawyers do not negotiate arms treaties (although it sometimes seems like it in our often-volatile cases!). But we do seek for ourselves and for our clients the same kind of assurances "verification" provided in that Cold War context.

Debt is integral to our work, and cuts a wide swath. Clients have debts to us. Parties have them to each other and to their children.

For every debtor, there is a creditor. It is better to be a creditor *with* a security interest than one *without* one. A "security interest" is an interest in property that secures payment or performance of an obligation.

Security Basics

- *Statutory liens* are authorized by codes.
- *Judicial liens* are ordered by courts.
- *Voluntary liens* are made by individuals. They require (1) attachment and (2) perfection.
- *Attachment* occurs when a security interest becomes enforceable against the debtor. Essential requirements are the existence of a security agreement and the debtor's ongoing rights to the property used as collateral.

(2007) 152 Cal.App.4th 1308, 1321 clarified that, after the client obtains a judgment, the attorney must bring a separate independent action to establish the existence and amount of the lien, and to enforce it.

Third party guarantees, often made by parents and significant others toward ensuring a client's ongoing representation, can be secured through voluntary liens. An issue might be whether an attorney filing a Request for Orders for contribution to fees must disclose an existing third-party guarantee. The reputation-preserving answer is "yes!"

Child Support and Spousal Support

Abstracts of support judgments are not security interests or liens, but they can help ensure payments. Code of Civil Procedure section 697.320 subd. (a) authorizes them; the requirements are stated in Family Code section 4506. Abstracts, or the orders themselves, should be recorded in all counties where a support obligor might own property (commission a property search). If the obligor wishes to sell, encumber or refinance real property in a county where such papers are recorded, he must first gain clearance from the support recipient, affirming a lack of arrears.

The forms can be modified to cover *pre-judgment* orders. County recorders' offices sometimes accept those versions.

A risk of signing an abstract on a client's behalf is that the client may later be unreachable or uncooperative toward authorizing a release when the obligor eventually demands one. Avoid being caught in the middle by having *clients* sign and record abstracts.

When addressing support arrears arising from a real property transaction "tripped up" by an abstract, it is also a good time to consider whether to request the support obligor to post a bond from

the sales proceeds (see below).⁸

Section 5230 provides for earnings assignment orders for payment of child support and spousal support. An assignment for support has priority over any earnings withholding order.⁹

Section 4012 authorizes court-ordered security for child support upon a showing of good cause. *Franklin Life Ins. v. Kitchens* (1967) 249 Cal.App.2d 623, 636 interpreted an earlier version of that statute to permit a court to order a payor to maintain the children as beneficiaries of community property life insurance as reasonable security. *In Re Marriage of Drake* (1997) 53 Cal.App.4th 1139, 1165 upheld section 4012 orders, requiring a stock pledge and a real property lien, for a disabled adult child.

Courts may compel parents to deposit funds as security for child support.¹⁰ Sections 4600 *et. seq.* provide for asset deposit and sale orders for child support obligors who in bad faith fail their obligations. Section 17523 authorizes judicial liens on personal property against delinquent child support obligors. Notwithstanding a "shutdown" clause, Probate Code section 15305 gives courts discretion to order trustees to make income and principal distributions to satisfy child support orders.¹¹

Section 4339 authorizes court-ordered security for spousal support. This can include a forced trust fund.¹²

Section 4360 allows a court to order an obligor to establish an annuity, obtain life insurance or create a trust where it is "just and reasonable" in view of the needs of supported spouse. Arguably, this creates a significant exception to the foundational point of section 4337. That statute mandates the termination of spousal support on the death of either party (or the remarriage of the supported one) except as

otherwise agreed. *In re Marriage of Ziegler* (1989) 207 Cal.App.3d 788, 791 affirmed an order for a support obligor to maintain his survivor benefit plan for the benefit of his former wife, emphasizing that the obligor's spousal support obligation would still, in fact, terminate upon his death, with the insurance benefits then being paid by the third-party insurance company.

Code of Civil Procedure section 697.320 authorizes liens on the real property of any support obligor. *In re Marriage of O'Connell* (1992) 8 Cal.App.4th 565, 572 authorizes life insurance for child support and spousal support "security."

ATROS and Notices

Section 2040 mandates Automatic Temporary Restraining Orders (ATROs) in the summons beginning any nullity, dissolution or legal separation case. ATROs do not provide security interests. They do require maintaining insurance beneficiaries, prohibit non-probate transfers to "disappear" property, and bar the transfer, encumbrance, hypothecation, concealment or disposal of any property, except for transactions made in the "usual course of business" or for the "necessities of life."¹³ The other exceptions are the other party's written permission or else orders of the court.¹⁴

Post-filing notices of pending proceedings that may be served on insurance carriers toward maintaining health, life or disability insurance for a spouse's or children's benefits are authorized by section 2050. Section 2051 provides for notices to insurers following orders to maintain or purchase insurance. Other non-statutory "notices" may be sent to financial institutions, for instance toward "freezing" endangered accounts—be creative. In those situations, get court orders, too!

Continued on page 28

Trust, But *Securitize* continued

Parties may record notices of *lis pendens*. Careful: an initial petition failing to allege a community interest in specific real property does not state a “real property claim” supporting this.¹⁵ “It is strictly a binary process: If you properly plead a real property claim, you can file a notice of *lis pendens*; if you don’t, you can’t.”¹⁶ Attorney fees and costs may be awarded against a party improperly recording a *lis pendens* and then opposing a motion for expungement.¹⁷

Settlements/Judgments

Voluntary liens can facilitate resolutions. They are often included as part of marital settlement agreements and other family law “deals.” Securitization in an equities-heavy estate, for instance, might involve the creation of a security agreement and recordation of a UCC-1 lien attendant to a promissory note and stock pledges.

Seek options for collateral. Besides shares of stock, it might include paintings, collections, crops and endless other possibilities. I once used Roman columns in a Montecito case; they are “fixtures” subject to a UCC lien.

Landmines, which are often encountered during pressured settlement proceedings, include:

- *Under*-securitization or *over*-securitization. The creditor party will want adequate security. The debtor will chafe at having too much property tied-up. Appraisals might help ensure the right balance.
- Superior-positioned creditors. Commission title searches and purchase litigation guarantees.
- The *extent* of competing security rights. If the creditor party takes a subordinate position, will enough equity exist following a potential default?

- “Rights of first refusal.” These can diminish marketability and enable mischief by the holder.
- Failure to provide an obligor the right to potentially substitute alternative security *in lieu* of the original.
- Inadequate specification of requirements and timelines for a party to refinance a loan (typically a mortgage) to eliminate the other party therefrom. “Best efforts” can be code for “later litigation”!
- Foreign property. Does a creditor really want to have to retain foreign counsel and follow another country’s enforcement procedure?
- Failures to perfect. After negotiating and attaching a security interest (and billing therefor), counsel will have an unpleasant time explaining its worthlessness following this mistake.
- Failures to consider the Marketable Record Title Act (Civ. Code § 880.020 *et seq.*) anti-deficiency laws, state and federal securities laws and the like.

Transactional and real property attorneys exist for good reason—retain their assistance!

Conclusion

Security interests and like vehicles can provide increased assurances in family law practice. Creatively consider the tools available toward both collecting fees and zealously pursuing clients’ best interests. ■

Greg Herring is a CFLS, and a Fellow of both the American Academy of Matrimonial Lawyers and the International Academy of Family Lawyers. He is the principal of Herring Law Group, a family law firm serving “the 805” and beyond with offices in San Luis Obispo, Santa Barbara, and Ventura counties.

His prior articles and blog entries are at www.theherringlawgroup.com.

Footnotes

¹ *Hatch*, at pp. 1218, fn. 2.

² *Academy of California Optometrists, Inc. v. Super. Court (Damir)* (1975) 51 Cal.App.3d 999; California Rules of Professional Conduct, Rule 1.16 subd. (e).

³ All statutory references in the text are to the Family Code unless otherwise indicated.

⁴ *Rosenthal v. Rosenthal* (1961) 197 Cal.App.2d 289, 297-298.

⁵ Fam. Code §2032 subd. (d).

⁶ *In re Marriage of Cryer* (2011) 198 Cal.App.4th 1039, 1056. In *Csupo v. Csupo (Csupo I)* (2012) WL 1021716, an unpublished case, the Second District affirmed a trial court’s assertion of this authority in approving the parties’ “cancellation” of prior fees orders against the benefitting attorney’s objection!

⁷ See *In re Scott* (2009) 400 B.R. 257, a Santa Barbara case arising from a debtor spouse’s attempt in bankruptcy to avoid a FLARPL for my fees. While “judicial” liens are dischargeable, “statutory” ones are not.

⁸ California family law guru, Garrett Dailey, suggests this in his *Attorney’s Briefcase* resource.

⁹ Code Civ. Proc. §706.031 subd. (b).

¹⁰ Fam. Code §4550.

¹¹ *Pratt v. Ferguson* (2016) 3 Cal. App.5th 102, 114.

¹² *Witaschek v. Witaschek* (1942) 56 Cal.App.2d 277, 282.

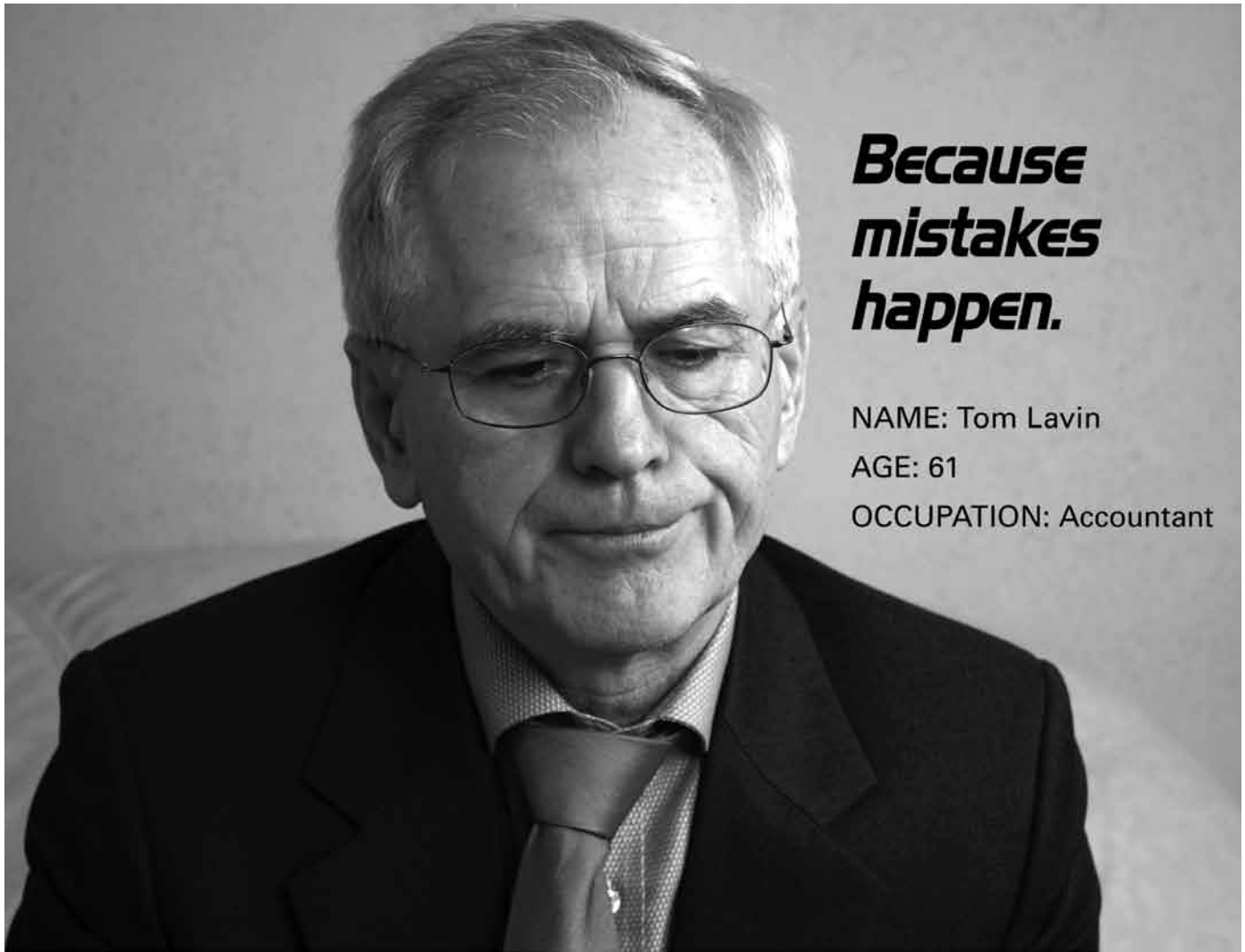
¹³ Fam. Code §2040 subd. (a)(2) (A).

¹⁴ *Ibid.*

¹⁵ *Gale v. Super. Ct. (Gale)* (2004) 122 Cal.App.4th 1388, 1394 - 1398.

¹⁶ *Kirkeby v. Super. Court (Fascenelli)* (2004) 33 Cal.4th 642, 648

¹⁷ Code Civ. Proc. §405.38.



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IN DEFENSE OF ZOOM

by Janet Wallace

Images courtesy of Janet Wallace

In February 2020, I celebrated my 40th birthday in Santa Barbara. Twenty of us rented out an inn for a long weekend getaway. The weekend's itinerary—drinks at Good Lion, dinner at Finch & Fork, viewing the latest exhibition at the Museum of Art—was everything I *would* have planned had I known that I was going to spend the next year sheltered at home. But for that weekend we were still splendidly naive about the impending pandemic. We crowded into bars, tasted each other's cocktails, blew out the candles on the birthday cake, utterly clueless that we would soon face a year of no face-to-face gatherings.

The thing is, I love gathering. I love gathering *as an art form*. I love threading a needle with an inventive party theme and pulling that thread through every minor aspect of an event. I'm not just talking about milestone events like baby showers and birthday parties. I'm talking about stitching together celebrations for Pi(e) Day, Tax Day, Taco Tuesday, National Pancake Day, the 20th anniversary of my favorite television show. You name it. Celebrations are my jam.

So the pandemic was a big bummer.

On April 2, 2020, day 19 of sheltering at home and longing for a gathering, I posted an invitation to my family's Facebook group. I requested everyone's presence on my newly upgraded Zoom account for "Happy Hour from Home." My family, an obliging bunch, logged in from their homes and time zones across the United States--North Carolina, Washington, Oregon, Illinois, Texas, California. We were

virtually connected! Another happy hour followed, and then another.

The pandemic weeks crawled by, each week with a new Sunday Happy Hour on Zoom, each week with a new theme. We wore fancy hats on Easter, ate sundaes on summer Sundays, whipped up Great Aunt Catherine's onion dip, answered 1960s trivia, and defended our favorite sports teams. One week, we wore "red and golden" at the request of a six year old. There was a Zoom family comedy hour, where everyone shared their best jokes. We expected *some* dad jokes, sure, but who knew the dads would have *so many* bad jokes?

A royal invitation was virtually delivered for Gramma's 92nd birthday. "Hear ye! Hear ye! Please wear regal purple or shining armor (i.e. your gray sweatsuit)," the invitation directed. "Crowns, tiaras and swords encouraged!" Someone brought a big ceramic dragon.

A new family member was born. We said hello on Zoom.

A family member passed away. We said goodbye on Zoom.



We were apart, together.

Meanwhile, with local friends, Zoom experiences were arranged. Brooke Edelman, a local florist, taught us how to arrange festive holiday centerpieces with flowers she delivered to doorsteps. We ordered retro curlers from Amazon and Zoomed one night to roll the pink sponges into our hair; we reconvened the next morning to remove the curlers and delight in the Shirley Temple ringlets reminiscent of our childhoods. Jacque Fields, co-owner of Wild Fields Brewhouse in Atascadero, ran us through an impressive lineup of beer tastings, which we paired with Lou Lou Cheese Girl charcuterie boxes, during a late night Galentine's Day celebration.



A few months into the pandemic and missing her usual outings, my mother-in-law, Wilda, announced she wanted to play Bingo on Zoom. She bought a plastic Bingo roller cage and recruited me to send out Bingo cards. Although no money is exchanged and winning requires only luck plus a modicum of attention to one's Bingo card, the competitiveness on Zoom is palpable.

In addition to being a Bingo fanatic, Wilda is also a notary. As it so happened, I was preparing an estate plan for a couple in north Los Angeles County, where Wilda also resides. Wilda agreed to provide notary services for the couple. On the arranged signing day, just after the signing concluded, Wilda sent me an email. She made no mention of the freshly-signed documents detailing the couple's important life decisions. The email simply said, "Liz and LeRoy want to join Zoom Bingo... can you please send them Bingo cards and the Zoom link?"

The word was out and people wanted in.

Well, not everyone wanted in. Some people loathe Zoom. With the draft of this Zoom Defense open on my desktop, I received a text message from my best friend: "Can I light my computer on fire at the end of this?! NO MORE ZOOM!"

Don't get me wrong, there's plenty to hate about Zoom. Zoom fatigue is prevalent. Zoom meetings zap us of our energy for various scientific reasons that would require me to cite sources (no thank you). Technological issues abound. Not everyone has access. Not everyone understands that the light source should be in front of you not behind you. Not everyone has figured out how to properly use the mute button.

"Did a toilet just flush during #SCOTUS oral arguments?!?" tweeted Bloomberg Law reporter Kimberly Robinson.

Surely you've seen Texas attorney Rod Ponton appear in court as an adorable white kitten, a digital filter that he (and his assistant) cannot figure out how to remove. If you have not seen the 40-second clip, I implore you to stop reading the *Bar Bulletin*, turn to your computer, and Google "cat attorney." Ponton telling the Judge that he is "not a cat" is peak pandemic Zoom comedy. Ponton is all of us: just doing our level best one year into a global pandemic, still fighting with the filters and the passwords and the unmute button



and the technical glitches and the distance learning and the endless stream of Zoom invites and the longing to be together again.

But, I'm here to *defend* Zoom, not to hold it accountable for its shortcomings.

In our profession, Zoom has accelerated a new era of justice. The outcomes of Zoom hearings must be studied so deficiencies are addressed (just as in-person outcomes should be studied and deficiencies addressed). However, Zoom-done-right has the potential of widening access to our justice system. If wielded carefully, Zoom has tremendous power to increase transparency and efficiency.

Yes, the pandemic exposed a deep digital divide, a common criticism of Court-via-Zoom, but attending court *in person* raises issues of access to adequate transportation, time off work and childcare. We've just grown accustomed to and accepted those IRL challenges, though maybe we ought to rethink things. Surely we should use this opportunity to reevaluate, surely we should seek some balance.

Further, Zoom allows attorneys to work from home (or from one's sailboat, if one is so lucky), provides an option for those with mobility challenges, and decreases commute and travel time. So much current dialogue centers on getting back to

normal, but embracing Zoom into a "new normal" could be enormously beneficial. Let's not hastily give it up simply because it has tired us out.

I turned 41 on Zoom. We played a modified version of the old icebreaker game Two Truths and a Lie while sipping pre-mixed to-go cocktails from Calwise Spirits Co. Here's a

truth: Zoom can't hold a candle to gathering with 20 of your BFFs for an in-person happy hour at your favorite Santa Barbara watering hole. Not even close. But Zoom allows us to be together, even as we are apart, cats included.

We are entering the final stretches of sheltering in place, but until we can gather in-person again I'll be celebrating *everything* on Zoom. And though I'll be elated to see people in person soon, I hope Zoom, in all its silver-lining glory, doesn't go away. We understandably associate Zoom with dark times, but I think it still has a place to shine. ■

Technology for Law and Business

by David L. Hagen

A Few Thoughts About Zoom

If you are doing any courtroom work, or hearings, you have used Zoom. They are another example of a young and smart company developing a very easy-to-use technology. To date, I do not recall hearing any discussion about the use of screenshots during Zoom hearings.

Before I talk about screenshots, I wanted to mention Google Duo. It is an app for one-to-one, live video conversations. It is just between two people, and generally needs a cell phone connection. Both people need the app, but it is free. The app connects to your contacts. When you open Duo, you can select someone from your contact list and call them. When they answer, you have a two-way video call. Good for attorney-client calls, and it's presumably as secure as a telephone call.

Screenshots

I have been using the screenshot function for years. It can be

done on a PC, and better on a cell phone or iPad. I used to buy different software and hardware just for experiment. You have to choose, however, between an iPhone and an Android device (like Samsung). If you want to use both, you need two separate phone numbers. So, I cannot explain the operations on an Android, but I am quite certain they will do the same thing.

Just as it sounds, a screenshot takes a photo of your entire screen, including the menus at the top, icons at the bottom and anything else showing. I have used it for many things over the years, such as maps, drawings, lists, as well as pictures of my friends that were posted on Facebook. I will explain quickly how to do it on a PC, then on the cell phone.

On a PC you can buy programs to help you take screenshots. However, the function is also built into PCs. When you see something on the screen you want to take a

picture of, press the key for "Print Screen." On my keyboard, this is abbreviated as "Prt Sc." The "Print Screen" does not print the screen. Rather, it takes a screenshot. Also, you need a photo-editing program (like the old Microsoft "Paint"). Immediately paste the screenshot picture into the photo-editing program, then save it. You have to do this every time, because a new screenshot will erase the previous one.

On an iPhone or an iPad, you do not have to save each picture individually. They are saved into your photos. The basic process often involves moving the device around, making your own video image move. The instructions are online.

An easier way needs to be set up first. This takes several steps, but is not particularly difficult. These are the steps on my older iPhone 7 Plus. Tap the "Settings" menu (on an iPhone, it is the gear icon). This opens a menu with a choice called "Accessibility." On "Accessibility" select "Touch."

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Then look for “Assistive Touch.” Default for “Assistive Touch” is “Off.” A touch turns it on, and a small black square, with a white circle in the middle, appears on the screen. After five seconds, this square becomes faint and transparent. This part you only need to do once.

Tap the little black square, and a much larger square will open, showing icons to control different functions. On my phone, one of them says “Device.” Tap that, then “More,” and you will see an icon for “Screenshot.” These instructions are for my iPhone 7 Plus. I searched online for “iPhone screenshots,” and saw plenty of videos explaining how to do them on newer versions of the iPhone. The point is, you can take a screenshot without having to move the phone.

Each screenshot is saved automatically. The small black square, with the white circle, will remain faintly on the screen. You do not have to go through the setup steps again. Note: The default is for the iPhone to make a shutter-click sound. You can change this.

Fingerprints

There are dozens of useful changes you can make under “Settings.” The problem is figuring out what they are called and where they are located. One of the more interesting iPhone options is/was Touch ID. You put your finger on the Home button, and the phone starts up. I tried it, and it mostly did not work. When I was getting the Live Scan fingerprints for the bar, the operator was having difficulty getting a good picture. I had to do it twice, and they were still not very good. The operator told me that

people’s fingerprints wear down as they get older.

I immediately thought of selling my practice and becoming a professional burglar. But, by this time, facial recognition systems were ubiquitous.

The iPhones 11 and 12 no longer have Touch ID. Instead, they use the facial recognition feature. All you do is hold the iPhone in front of your face, and bingo, the phone unlocks and you have access to all of the available features, including, of course, your contact list, emails, text messages, etc. Facial recognition works if you are wearing glasses, have contact lenses, are wearing a wig, etc. I just read it will soon work if you are wearing a COVID-19 mask. I personally think this is getting a little creepy. But millions of people obviously disagree with me.

Who Cares About Privacy?

I am not too surprised. During the Vietnam war protests, many protesters were certain the FBI was spying on them. I was watching a protest one day. I noticed there was a fellow in the crowd who was dressed to “blend in.” However, he was not protesting the war. He had an expensive camera and was taking pictures of people’s faces. I was surprised nobody else noticed. That was 50 years ago, so I should not be surprised we have “progressed” to the point where people are putting their faces online practically daily.

Fortunately, you can disable



the facial recognition (or fingerprint ID) and simply use a passcode. I have a seven-digit code. Using it has become virtually automatic, and it feels significantly more secure than anything that recognizes parts of my body. The most interesting thing about a passcode, is a control at the bottom of the menu for passcodes. You can

turn on a feature that says “Erase Data.” If someone steals, or subpoenas, your phone, they only get 10 tries to enter the correct password. After the 10th one, all the data on the phone is erased, permanently.

In 2015, a terrorist killed 14 people in San Bernardino. When the suspect was arrested, his iPhone was locked. The FBI was concerned about trying to unlock it, lest they use up their 10 tries and the data would be erased. The FBI sued Apple to make Apple unlock the phone. The case was never decided because the FBI found an iPhone expert who knew how to unlock it. If the suspect was using facial recognition, they could have just held the phone in front of his face.

Conclusion

I am going to continue practicing law instead of becoming a burglar. At this point, I suspect the FBI has enough data to recognize me if I was standing behind a redwood tree. ■

David Hagan may be reached at lawprofessional@charter.net.

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.

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 - November–December

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The *Bar Bulletin* reserves the right to reject or edit any contributions. By submitting contributions for publication, contributors consent under this policy to the editing of their work, the publication of their work and the posting of their work online. Contributors must include an e-mail address and/or telephone number, as they may be contacted during the editorial process.

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