

# Bar Bulletin

Serving San Luis Obispo  
County's Legal Community

November–  
December 2021



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San Luis Obispo County



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*Cover: Judge Ginger Garrett retires, following a distinguished career and legacy of service. Photo courtesy of Chris Borgard.*

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# President's MESSAGE

by Joe Benson



## At the Finish Line

By the time you read this it will be November, and the annual tradition of making everything consumable have some element of pumpkin spice will be in full swing. My time as President will also be in its last few weeks.

As my time as SLO Bar's President comes to a close, I want to reflect on how incredibly grateful I am for having been able to work with our talented Board members who provided their time and wisdom to improve our Bar. I'm particularly grateful for their appetite to take risks, desire to seek out improvements and willingness to share their candid feedback on my ideas.

I'm also grateful to our Executive Director, Kerrin Hovarter, for making a positive and material impact to our organization. With Kerrin as our Executive Director, the future is bright and I look forward to seeing the association flourish in the years ahead.

I am proud of the work done to create an endowment fund that will perpetually provide scholarships to persons of color from our county who wish to pursue a career in the

legal profession. This fund has already made a positive impact on our first scholarship award winner, Kristal Roman, by (a) paying part of her tuition; and (b) providing her an opportunity to network within our local legal community to (hopefully) secure a future summer employment opportunity and/or mentorship as she progresses through her undergraduate and law school studies.

I'm excited to see the positive impact the endowment will have in the years ahead on future award winners and, more importantly, to see how their stories play out. Thank you again to all who have donated. You have made a wise investment in the betterment of our community.

For those who have not yet donated, I hope you will consider it. If you are of the mindset (which is easily understandable and completely relatable) that someone else will donate, and thus it is not necessary for you to do so, I would respectfully ask you to consider one of my favorite quotes. It comes from basketball coach Rick Pitino who, while coaching a struggling

Boston Celtics in March 2000, said, "*Larry Bird is not walking through that door, fans. Kevin McHale is not walking through that door, and Robert Parish is not walking through that door.*"

I think that quote is a great reminder that if you are hoping that somehow someone else is going to come along and solve a problem, take the initiative or make something better, you will probably be waiting a long time.

You can find details about the endowment and how to donate at <https://slobar.org/scholarship-opportunity-donations-needed/> or by scanning the QR code below.



## Get in the Arena

Perhaps you have heard President Theodore Roosevelt's famous speech, "Citizenship in a Republic," which he delivered at the Sorbonne in Paris on April 23, 1910.<sup>1</sup> The oft-quoted excerpt of that speech follows.

*"It is not the critic who counts; not the man who points out how the strong man stumbles, or where the doer of deeds could have done them better. The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood; who strives valiantly; who errs, who comes short again and again, because there is no effort without error and shortcoming; but who does actually strive to do the deeds; who knows great enthusiasms, the great devotions; who spends himself in a worthy cause; who at the best knows in the end the triumph of high achievement, and who at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who neither know victory nor defeat."*



President Theodore Roosevelt. Credit: Ann Ronan Pictures/Print Collector/Getty Images

I implore each of you to consider becoming more involved with our Bar Association. We need more people *"actually in the arena"* and fewer people feeling that their only viable contribution is to offer empty criticisms or, worse, to grumble silently and without a desire to see improvement.

We need diversity of thought and more people willing to roll up their sleeves, disrupt the status quo and get stuff done. Diversity of thought undoubtedly leads to better outcomes, and wisdom is often found in the collective.

As such, we want your help to make our organization and our legal community better. We have ample opportunities for you to help. Please reach out to me or any of our Board members and let's see if we can find the right spot for you.

Beyond the Bar Association, I'd like to encourage all of you to lean into our shared responsibility as educated and

empowered members of this community, and to use your training, experience and talent for the betterment of our community.

As stated in the CA Rules of Professional Conduct, *"A lawyer, as a member of the legal profession, is a representative and advisor of clients, an officer of the legal system and a public citizen having special responsibilities for the quality of justice."*<sup>2</sup> ■

## Footnotes

<sup>1</sup> <https://www.theodorerooseveltcenter.org/Learn-About-TR/TR-Encyclopedia/Culture-and-Society/Man-in-the-Arena.aspx>

<sup>2</sup> CA Rules of Professional Conduct (2021), Section 1.0, Comment 5

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



Photo courtesy of Kristal Roman Romero

**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.



## Editor's Note

by Tara Jacobi

something. I let that dream go. I thought I needed to be more sensible.

After, I couldn't begin to learn the value of creative pursuits because I was caught up in billable hours. A co-worker and young lawyer at the large firm I worked at in the city had a side gig as an actress in off-off-Broadway productions. How exactly she found the time for that endeavor I always wondered, although she was a single person in her late 20s at that time. Many that worked with her attended her performances on the weekends. It became the hot ticket to score at the firm when opening night was upon her.

For my second date with my husband, he took me to see an off-Broadway performance called *Collective Stories*. It is a play about writers. He didn't know it, nor did I fully comprehend it at the time what writing would mean to me. He was a drama theater minor, which was a good balance to a biology major.

Somehow while he was barely sleeping as a resident and I was overworked too as a young associate, we spent our weekend time creating mosaics. Twenty-plus years later, his family still has some of them. I didn't recognize it at the time, but it did help us greatly in decompressing from the work week and working our brains in a different way by cutting colorful tile, shaping designs and producing something artistic.

Some of us get it. We've either early on or later on in life realized the importance of a creative outlet. This issue of the *Bar Bulletin* brings readers the story about California Lawyers for the Arts, a nonprofit I was impressed with upon moving to the West Coast. I hope you enjoy reading about how unique their work is and maybe gain insight into the importance of creativity.

Whether it is theater, dance, music, writing, painting, photography or cooking, don't push it away like I did for years. You might find it actually helps balance a busy lawyer's working life. I know there is little time. And I know that little voice inside your head sometimes says, "What is the point? I am no Picasso." Yet, in the words of the famous painter, Henri Matisse, "Creativity takes courage."

I hope readers find the courage because I know the journey is worth it when you find what a creative outlet can be for you. Please submit your narratives to [slosafire@icloud.com](mailto:slosafire@icloud.com). ■

"There are no mistakes in art, mom." This is what my son said to me one day. "My art teacher told me that," he said. "Mom—she said, 'No mistakes!'" With eyebrows raised and a shaking head, he imparted his wisdom upon me.

"Imagine that," I said. I figured he was tired of hearing from his parents, teachers, coaches and others about how he might have made a mistake. Yet, in art class this was the one place, I suspect, where he didn't need to think or worry about making a mistake. How freeing.

I never knew how much I valued creativity until I became a parent. It just started to pour out of me. I think prior to this time in my life I just didn't have the time. I put myself through college and law school. My 20s and 30s didn't allow for this focus.

Wanting a child that is an inventive, outside-the-box type of thinker, with a passionate love of learning, respect for the outdoors and drive to serve others was the order I placed. My mother was a nurse. My father and I spent many meals, including holiday meals, at different restaurants at times when she was working. Yet, when she had the time, my happiest memories growing up on the East Coast were of us at art museums or theater performances in New York City.

It was my grandmother, my mother's mother with her efforts to take us annually to Broadway shows for the holidays, who considerably shaped my young adult world. I started at age three and somewhere as a teenager decided I wanted to be a professional dancer. "Till my toes bled," is the phrase my son likes to repeat back to me when I tell him how much I practiced, hoping he fully comprehends what it can take to get good at



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

As of September 29, 2021 — gifts received total \$52,485

Scholarship eligibility criteria and donation details are posted at [www.slobar.org](http://www.slobar.org).

For more information, please contact Executive Director Kerrin Horvarter at [slobar@slobar.org](mailto:slobar@slobar.org).



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# 2021 Lawyer Referral Information Service Barbecue Fundraiser Cooks Up a Winning Recipe With Community Service

by Kerrin Hovarter, Executive Director LRIS and SLO Bar Association

Photos courtesy of event volunteers

The San Luis Obispo County Bar Association Lawyer Referral and Information Service (LRIS) is a nonprofit organization (501c6), certified through the California State Bar. We assist *thousands* of callers every year to connect them with *free and/or low-cost* legal resources *or* attorneys who specialize in the area of law needed.

Often, when a caller reaches me they are desperate to be heard and desperate for any kind of direction. Most people do not know how to locate an attorney or where to find legal resources. A caller's audible, evident relief at the end of the call is why I do what I do.

Stressful situations can often lead to confusion for those trying to navigate through a difficult time. The LRIS is a valuable resource for this community, and I am pleased to continue connecting our community with free resources and top-quality attorneys.

We started this barbecue fundraiser in 2017 to assist with funds, but even moreso to further unite the San Luis Obispo community with our legal community. It is an opportunity to get together, have some fun, spread awareness about this program and further discuss how it helps those here in our community.

I have the honor of working with some amazingly dedicated

attorneys within this program. Every year they volunteer hours of their time to collect wood, sell tickets and take an entire day out of their busy schedules to barbecue in sometimes 90-degree weather to make this event possible. We are so grateful for the additional volunteers from the LRIS panel attorneys, as well as SLOLAF. Thank you, I am so grateful for your assistance!

This year, for the *first* time, we partnered with Jack's Helping Hand, offering an option to donate meals to that program's families. Jack's Helping Hand is an amazing organization in SLO County. Their assistance program, the heart and soul of the organization, provides everything



*Left, Don Ernst offers tri-tip at the September 30 fundraiser. Below, from left, Dennis Law, Stephanie Barclay, Brad Hill, Kerrin Hovarter and Ed Attala finish loading meals for Jack's Helping Hands families.*







*Above, from left, Dennis Law, Rick Long and Josh George help cook 200 tri-tips.*



*Above from left, Trevor Creel, Kerrin Hovarter, Rick Long, Josh George, Brad Hill, Ed Attala and Dennis Law help sell 185 meals.*

from high-tech wheelchairs to prosthetic limbs, from appointments with specialists to custom-designed eyeglasses or hearing devices for local children up to the age of 21.

This program also offers financial assistance to families of children with cancer or special needs to help with transportation, food and housing costs associated with out-of-area treatments. Jack's

Helping Hand assists more than 250 individuals each month. With *your* help we were able to donate **40** meals to their families!

The LRIS team/volunteers barbecued more than 200 tri-tips, sold 185 meals, donated 40 of those meals to Jack's Helping Hand *and* delivered a load of tri-tips, beans and bread to The ECHO Homeless shelter in Atascadero.

A special thank you to...

**LRIS Committee:** Michael Pick, Ed Attala, Josh George, Don Ernst, John Hosford, Joe Benson, Trevor Creel, Dennis Law.

**Volunteers:** Brad Hill, Stephanie Barclay, Carmen Ortiz, Rick Long.

**Sponsors:** Ernst Law Group, Ferman Law, The Baltodano Firm, Jeffrey Stulberg, Andre, Morris & Buttery, and Morris & Garritano Insurance Services. ■

## SLO Bar Announcements

### Save the Date for Our Winter Social—Thursday, December 9!

Plan to join us in person at the Monday Club from 5:30 to 8:30 p.m. as we enjoy good food, live music and ax throwing.

Also during the evening, we will present the Seitz Family Community Service Award and the Frank J. Pentangelo Award plus elect the 2022 Board of Directors. ■



### 2021 Judicial Evaluation Poll Results

Members, make a beeline for our website to see the long-awaited results of the 2021 Judicial Evaluation Poll. And, if you wait too long, they'll be archived on our website for future reference. ■

### Law Library Hours Extended

The San Luis Obispo County Law Library has expanded hours to be open 9 a.m. to 4 p.m. Monday through Wednesday and 9 a.m. to 1:30 p.m. Thursday and Friday. Hours may expand further, depending upon usage.

The Library has new computers with zoom access and legal research capabilities. ■





# Doing Good Matters...

## California Lawyers for the Arts

An Interview with Executive Director Alma Robinson

by Tara Jacobi

### ***Tell us about California Lawyers for the Arts (CLA).***

California Lawyers for the Arts is a multifaceted organization that provides artists, arts organizations and the community at large with advocacy, legal consultations, alternative dispute resolution services, and a full menu of educational programs.

### ***When, how and why was CLA founded?***

CLA was founded in 1974 as Bay Area Lawyers for the Arts (BALA) with a primary goal of protecting the economic rights of artists, who are often taken advantage of with lopsided contracts, intellectual property infringement and other abuses. A group of lawyers and artists came together to plan the organization's structure and programs. Our founding board president, Jerry Carlin, was an artist and a lawyer who had served as the first director of the San Francisco Neighborhood Legal Assistance Foundation.

### ***How has CLA's focus changed and evolved over the decades?***

We began to offer alternative dispute resolution services, including mediation and arbitration in 1980. Our next big change was when we became a statewide organization in 1987 and changed

our name from *Bay Area* to *California* Lawyers for the Arts and opened our first office in Los Angeles.

Soon after, we expanded our mission to include articulating a role for the arts in community development. Under this banner, we created job training programs for low-income youth and adults with paid internships with arts organizations and businesses.

### ***Who benefits from CLA's services?***

Our communities and the entire state benefit when artists are protected and supported, and when creativity is recognized as a fundamental element of human potential.

### ***Why should people consider supporting CLA?***

If you believe that artists need legal support, and that the arts are worthy of community investment, your participation through volunteer time and/or a financial contribution to CLA is a great way to support the creative sector.

### ***What makes CLA a one-of-a-kind nonprofit?***

We have undertaken strategic advocacy on behalf of the arts community through three distinct initiatives that have included



*CLA Executive Director Alma Robinson, via the Internet.*

Symposia on Arts and Healthy Communities; Dialogues on Arts and the Environment; and our successful work at the intersection of Arts in Corrections.

In our network of approximately 15 art and law organizations around the country, we are unique in fostering intersector dialogues and advocacy to strengthen the perceived value of the arts in society.

### ***What attracted you to CLA's cause?***

I was intrigued by the opportunity to break new ground through our alternative dispute resolution services. This program had been funded as a national model by the National Endowment for the Arts and

the Ford Foundation as a new application of conflict resolution methods to the needs of the artists and arts organizations.

As the first program director, I was tasked with putting the structure of the program together, developing our first training programs, building public awareness of these new services and convincing people in the midst of disputes that mediation was a more effective process for resolving business issues than litigation. It was an exciting time in the life of the organization, and this work stretched my capacity and imagination as an organizational leader.

***When did you start at CLA, in what role and how has that evolved?***

I was hired in 1980 to start the organization's Arts Arbitration and Mediation Services as a national model program. In 1981, I was promoted to be the organization's fourth Executive Director. At that time, I was one of four employees. CLA now has 18 employees and offices in five cities—San Diego, Los Angeles, Sacramento, San Francisco and Berkeley. In September, we celebrated my 40th year of employment with the organization and established our first endowment—the CLA Forever Fund!

***What is one of the greatest challenges you've experienced imparting CLA's mission?***

A great disappointment was the dismantling of the California Resale Royalty Act (CRRRA) through litigation that was brought on behalf of several artists in 2011. CLA (then BALA)

had supported the enactment of the CRRRA as Civil Code Section 986 in 1976 as an adaptation of the French *droite de suite*.

Unfortunately, efforts to enact a federal resale royalty for visual artists failed, so California remained unique in the U.S. by providing royalties to artists if their work was resold under certain conditions. The CRRRA was found unconstitutional during a series of decisions by the U.S. District Court and the 9th Circuit Court of Appeals. We now face the renewed challenge of enacting a federal statute that will fairly compensate visual artists for the increased value of their work when it is resold.

***What is one of the most satisfying and rewarding experiences you've had at CLA?***

Our week-long educational excursion to Paris in spring 2014 was amazing. During *Lights on Paris: Intellectual Property and*

practitioners from France, the U.K. and U.S. discussed the legal frameworks of artists' royalties and intellectual property in the digital age.

Field trips included visits to the Opera House at the Palais Garnier, a private tour of the Google Cultural Institute in Paris and the Hennessy estate in Cognac. This was surely one of the most stimulating and exciting MCLE programs we've presented during my tenure.

***Is there an achievement or accomplishment that you are most proud of?***

In collaboration with the William James Association and other organizations, we helped restore state funding for arts programs in state prisons throughout California. With grants from private foundations and the support of the California Arts Council (CAC), we produced evidence-based demonstration projects in four state prisons that showed the benefits of arts programs for incarcerated persons.

Dr. Larry Brewster, a professor at USF (now *emeritus*), designed pre- and post-surveys for participants in diverse arts classes. Based on our results, the California Department of Corrections and Rehabilitation funded a two-year \$2.5 million pilot project that started in 2014 with arts classes in 20 state prisons. That funding stream has since grown to an \$8 million/year program administered by the CAC in all 35 state prisons.

We currently have grants from the National Endowment for the Arts, the Andy Warhol

*Continued on page 12*



*Cultural Policies in the Digital Age*, we presented speakers from leading European artists' rights organizations, as well as UNESCO and the French judiciary. Legal



## Doing Good Matters continued

Foundation and the Art for Justice Fund to replicate the demonstration projects in five U.S. states—New York, Louisiana, Ohio, Michigan and Texas.

*Have you had any mentors during your working life and, if so, how have they contributed to your successes?*

I met Judge Thelton Henderson when he was an Assistant Dean at Stanford Law School, and got to know him when he supervised my law school externship at San Mateo Juvenile Court. During his subsequent service as a U.S. District Court Judge, I continued to seek his advice and moral support.

Just recently, he agreed to join me as a member of the Free at Last Coalition, which advocates to replace the 13th Amendment of the U.S. Constitution with a new constitutional amendment. The 13th Amendment abolished slavery and involuntary servitude, except as punishment for persons “duly convicted” of a crime.

*What is it about the arts or creativity that you value and why?*

As human beings, we all thrive when we realize that we have unique gifts. We sparkle when our creativity is valued. Artists singularly devote their lives to sharing their talents, and we all benefit from their examples of dedication, courage and passion. They deserve our support.

*Who inspires you?*

My first teacher was my grandmother, Isabel Wells Mauney. When I was five years old, she taught me how to read and play the piano, and her example continues to inspire me to persist in the face of adversity. She was the solo teacher and principal of a one-room school in rural Gaston County, North Carolina. When the Ku Klux Klan burned down the Mauney School, the family rebuilt it—twice—and she kept teaching.

I am also inspired by my Congresswoman, Nancy Pelosi, the Speaker of the U.S. House of Representatives, whose adroit leadership and tenacity never cease to amaze me. She is 80 years old and always looks as fresh as a daisy. She is persistent, articulate and very strategic in her approach to issues and the colleagues she works with in Congress and the White House, as well as to her constituents in the District.

*Is there anything else that you would like to share about CLA with our readers here on the Central Coast of California?*

We would welcome your participation in our activities. Now that more of our services are available online, there are more opportunities for people on the Central Coast to participate in our programs. Please let us know what you need and how we can offer our services to your communities: [www.calawyersforthearts.org](http://www.calawyersforthearts.org). ■

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# Judge Ginger Garrett Retires With a Distinguished Legacy of Service

## A Conversation with Tara Jacobi

*What drew you to a career in the law?*

I was always sensitive to unfairness and injustice as a child. I stayed out of school one time for three weeks as a fourth grader protesting the way the teacher had humiliated a little boy in my class. I refused to go back to her class and I won. They put me in another class.

I saw “colored” water fountains and waiting rooms. I didn’t understand why.

My church wouldn’t let an African American woman attend a service. I saw her removed from the congregation. I didn’t understand why she couldn’t go to our church.

I was an English major and I loved to write. I wanted to right wrongs. And I knew I did not want to teach English to 7th graders after a semester of student teaching. So, I went to Law School!

*Where did you initially work after law school?*

I worked for Drake, Knowles and Pierce, which was a law firm in Tuscaloosa, Alabama, that handled a lot of civil rights cases. We handled class actions based on race and sex discrimination, criminal and personal injury cases. The lawyers were terrific and the cases were challenging and interesting. I got a great amount of experience there and lifelong friends.

*What did you enjoy about working for Alabama Legal Aid? What did you take away from the experience?*

I worked for Alabama Legal Aid, which was a clinical program for the law school. I ran the clinic at Bryce Hospital for the mentally ill. We represented the patients in all kinds of cases, including family, civil, probate and criminal. I enjoyed working with the students and also the clients. That was my first introduction to the state hospital system in Alabama.

*What prompted you to decide to become a judge?*

It seemed like a logical step in my legal career. I had been elected by the judges to be a court

commissioner for several years. I was encouraged to put my name in the hat for Judge Christopher Money’s vacancy by judges and local attorneys.

### The Judiciary

*What court did you first preside over and for how long?*

I was a commissioner in a family law assignment, and I continued in that assignment for several months after I was appointed. I then moved to a criminal assignment where our court likes to start new judges.

*What did you enjoy most about your role as a judge? You mentioned it was the people that you will remember. Can you give us an example and tell us more about how the people you encountered impacted you?*

I enjoyed helping people. I think judges do it in many different ways. Making decisions is helpful. Making custody orders and monetary orders is helpful. Fair sentencing of those convicted of crimes is helpful to the victims as well as putting closure for the perpetrators. There are so many examples, I am not sure where to start.

I had a person I had sentenced to prison come back years later and thank me and present me with his five-year chip from Alcoholics Anonymous. He got sober while he was in prison and got his family back. I have seen juvenile offenders completely change the course of where they were headed and go on to college and become good parents. I have seen people with mental illness get treatment because our community is able to provide for it as the justice partners all buy in. All of these experiences taught me that we need to insist on personal accountability while treating people with understanding and compassion.

*What will be most memorable for you about your time on the bench? You mentioned your favorite assignment was with the Behavioral Health Treatment Court. Tell us more about why and when you came to realize this was your favorite assignment.*



I didn't know what to expect when I took on the Behavioral Treatment Court. I knew that I had a lot of experience dealing with mentally ill clients as an attorney, and I was always drawn to that area of focus and expertise.

When I practiced in Alabama, I set up patient advocate programs in all of the mental hospitals in Alabama through a federal grant agency that I worked for. I saw the warehousing and the lack of effective treatment that was going on. I talked to family members and learned as much as I could about what their loved one was going through and how it impacted the family. I had a number of clients who were mentally ill children with little or no resources or understanding by family members or school systems. I filed a class action suit against a school system in Alabama that was routinely expelling children for behavior connected to their disabilities without any sort of due process. We were able to settle this case and set up a good procedure for keeping both the schools safe from violent behaviors and also seeing that the children

and families had access to services to treat the mental illnesses.

So, when I had a chance to preside over this treatment court, it was right down my alley. We focused on housing, treatment compliance and employment. The people who came through that court were so talented. We had artists and writers and musicians. Graduations were really fun because they would show off all of these talents. I was deeply touched about how the people responded to being treated as people with all of the same needs that we all have. They were treated with dignity and respect. Expectations were placed on them and they excelled. They reunited with their families. It was the best assignment to see what happens when the whole community pulls together and takes a different approach.

*What might you be most proud of about your service?*

I am proud of having been a leader as Presiding Judge, Assistant Presiding Judge, Criminal Team

*Continued on page 16*



## Judge Garrett continued

Supervising Judge and Civil Team Supervising Judge. I did all of the assignments including Criminal, Civil, Juvenile and Family Courts. I was on the Appellate panel many times over the years. I worked in the San Luis Obispo and Paso Robles courthouses. I was on the statewide Access to Justice commission panel. I currently serve on the committee that vets judicial applicants for the counties of San Luis Obispo, Santa Barbara and Ventura for the Governor's office via the Judicial Appointments secretary.

I feel like I have done everything I could for the Court and leave with no regrets. I got to do everything I wanted to do.

*What did you find most challenging about being a judge and why?*

Probably the most challenging thing about being a judge is the volume of work and the hours that we keep; the constant conflict that we try to resolve and the isolation from our former friends who may be practicing attorneys.

*What improvements, if any, would you like to see in the judicial system?*

I think the judicial system needs to be more transparent. I think people need to understand it and not rely on television shows to give them their beliefs about how it works or doesn't work. Most people never come to court. Some only come once in their lives. They don't know what to expect. I think we, as judges, need to show our math and explain our rulings as best we can. Even if there is disagreement, at least the litigants can understand why and how we got there.

*Did you have any mentors that assisted you initially or throughout your career?*

Judge Christopher Money, Judge Barry La Barbera and Justice Marty Tangeman were all important and inspirational to me for different reasons.

I took over Judge Money's seat when he retired. I had the opportunity to appear in front of him many times while he was on the bench. He had a very good heart and always gave people the benefit of the doubt and second chances. He was tough but kind and very fair to both sides.

Judge LaBarbera has been a mentor and a good

friend for years. He taught me to slow down and take care of myself. He always had a measured and balanced approach to his workload and nothing bothered him.

Justice Tangeman is a real scholar and he taught me, by example, to do good research and writing. He didn't fly by the seat of his pants. He knew what he was doing because he prepared. He taught me to expect the lawyers to do the same and I did.

*Any words of wisdom for those looking to take this career path?*

I would say the best thing you can do to prepare for being a judge is to be a good lawyer. Do your homework. Treat people with kindness. Be a team player. Understand that you will be a judge 24/7 and that the life is not for everybody. It can be very isolating socially. But the rewards come back tenfold.

*Anything else you might like to share?*

It has been an honor to serve the San Luis Obispo County community as a judge. I will always be thankful for the appointment and the subsequent elections. COVID has been horrific, but I believe that the remote access to the court that we have developed is a good thing. Anybody with a phone can come to court. And if they don't have a phone, we can give them remote access in the courthouse even when there are no in-person appearances available. It should be easy to come to court and participate.

### Retirement

*What are your plans for retirement? You mentioned you wish to write and travel. Do you have any particular writing pursuits that you wish to pursue or places you might wish to travel?*

There are a number of things I want to do in retirement. I have always been a writer and now I have time to actually do it. I am writing a couple of novels and some poetry. Right now, I seem to be focusing on haiku. I find it fascinating and very challenging. I love to hike and am planning trips to Scotland, Patagonia and, of course, to Yosemite to hike and to write.

I would also like to get involved in the mental health community in San Luis Obispo and help anyway I can. I am very interested in working with

the Innocence Project at some point in the future. And you never know. I might come back as an assigned judge. Too soon to make that call.

## Appreciations

*Your colleagues wish to share the following.*

“I have mixed feelings about Judge Garrett’s retirement. On the one hand, I am very excited for her; Judge Garrett has worked incredibly hard as a lawyer and judge to serve our community, and she has earned the right to pursue her many talents and interests in retirement. On the other hand, I cannot stress how much I will miss her.

“Although I haven’t known Judge Garrett as long as my colleagues, I have become quite fond of her. She took me under her wing when I was just a baby judge. Judge Garrett’s humanity, sense of justice, humor and kindness are gifts that she shared with me immediately upon me becoming her colleague in December 2017.

“I wish her life’s blessings as she begins a new chapter in her life.” —Judge Baltodano

“I met Judge Garrett when she first came to town. Since I had lived in the South—and had fond memories of my time there—I was drawn to her accent. I remember thinking, also, ‘I love her sense of humor.’ She has the gift of being able to see humor everywhere. Judge Garrett was, then and now, a great storyteller who can capture the essence of people and situations in her descriptions. I never tire of listening to her stories and am looking forward to reading her first novel.

“After the governor appointed Judge Garrett to the bench, she began a criminal assignment. The joke around town was that she could sentence a defendant to the maximum term and the defendant would thank her profusely. I am not sure if the story is true, but I don’t doubt it. Judge Garrett is unfailingly considerate and polite, and she uses the right words to soften the blow of anything negative that she has to say.

“For the past six years, my office has been either next door to or two doors away from Judge Garrett, so we talked every day. Judge Garrett has always been my ‘go to’ person if I need advice. She can distill issues down to their simplest form, and give the best, grounded, common-sense advice.



*Along with Diana Nyad (left), the woman who swam 110 miles from Cuba to Florida at age 64, and Bonnie Stoll, Judge Garrett has participated in their EverWalk epic endurance events and considers both good friends.*

“Since Judge Garrett has handled every assignment, and every administrative post at the court (team leader, assistant presiding judge, presiding judge), she has a wealth of knowledge and experience that we will lose when she leaves. She will be missed.” —Judge Peron

“When I started in a civil assignment, I primarily knew Judge Garrett because I had appeared before her prior to my appointment to the bench. I knew that she was ethical and an excellent jurist, but I had no idea what a whip-smart, kind-hearted, funny and warm person she is. She is a rabid Alabama fan, but I won’t hold that against her.

“I consider her a dear friend and trusted confidant. I already miss her wise counsel on a daily basis. Judge Garrett is always willing to lend a hand, or an ear, when needed. She asks the best questions! Her guidance has definitely made me

*Continued on page 18*



## Judge Garrett continued

a better judge. As a presiding judge, she always had her door open for questions or concerns, and her leadership style was practical, inclusive and innovative.

“Judge Garrett’s contributions to the Court over the years, and especially during her tenure as presiding judge are unparalleled, and although small in stature, she leaves the Court with big shoes to fill.”  
—Judge Coates

“Ginger showed all of us what it meant to be a great judge. Judging isn’t about the outcome. Judging is about equity, justice, fairness, impartiality, due process and access to justice. It doesn’t happen in the dark and it doesn’t come about by unjust means. I understood from her what it meant to a client to be heard even when you had a losing argument, or a busy calendar and a crowded courtroom. And how one could lose with dignity. Our results may not have been any better or any worse than any other courtroom, but public defenders jockeyed to get assigned to Judge Garrett’s department.

“It was the same when, 15 years later, I was appointed to the bench, now only the second attorney out of Maguire & Ashbaugh. I was gifted with a new perspective—albeit a familiar one. The judges I respected and looked up to also looked up to and respected Ginger. She was the sage of the bench whose advice other judges sought. I knew what time she left for work and would often call for advice. It was always a great relief to hear her southern drawl answer the phone with, ‘Wassup?’ She has a gift of guiding others through the fog.

“When Ginger let us know that she was going to retire, I reflected on the emotion that Jim Maguire and Trish Ashbaugh exhibited 19 years earlier—remorse and pleasure. Pleasure wins because Judge Garrett is doing what she wants and doing it her way. Which makes me respect her even more.”

—Judge Guerrero

“Judge Garrett and I joined the bench within days of each other. Over the course of the 19 years since that time, she has become more than just a colleague; she has become a friend. She will be missed on the bench, however she will remain as a friend. The Court has lost a lot of experience with her retirement.

“Judge Garrett was a confidante, a friend with whom to laugh and share stories and someone with whom decisions and challenges could be discussed. As a judge, she always was thoughtful in her decision-making and always sought the appropriate legal and fair decision. Her background and experience in civil rights law in the south, early in her legal career, gave her an excellent perspective in her approach to cases. She always had an interesting story to tell and a great sense of humor; that always made our days better even during difficult times.”  
—Judge Harman

“We will miss Ginger terribly. She was a steadying force on our court, dispensing so much wisdom and wit and common sense in her Alabama accent. She had a way of cutting through all the legal talk and getting right to the heart of a dispute. She was a wonderful colleague and I could always count on her to check in after a day in court with a quip or a story that reminded all of us that justice is a very human endeavor. She never lost sight of the people in front of her and was passionate in making sure everyone in her court had a chance to be heard fully.

“I’m sure she will take all that energy and humor and compassion into the next chapter she’s writing for herself, but we’re feeling her absence in the courthouse.”  
—Judge van Rooyen

“Judge Garrett was, first and foremost, a good friend to me. Her exceptional judgment was often instrumental in helping me make difficult decisions. Judge Garrett showed great respect for the attorneys who appeared before her, and she truly valued their arguments in briefs and oral arguments. She really did consider arguments on both sides before making a decision, while always being careful not to prejudge an issue.

“Judge Garrett was grateful for the work of court staff, and she considered their needs before making any decision as Presiding Judge. Lastly, Judge Garrett very much appreciated the opportunity to consult with colleagues regarding court cases and administration. The Court will greatly miss her.” —Judge Barry T. LaBarbera (Retired)

“Early in her career as a commissioner, while I was working as a court staff attorney, Judge

Garrett asked me to assist her with a case that was troubling her. All I remember is that the case involved an unusual set of facts and the statute that was most clearly applicable would have worked an injustice to one of the parties.

"The approach that Judge Garrett took in deciding the case, even as a very new judge, became her hallmark. Rather than simply applying the most obviously applicable statute and moving on with her very heavy caseload, she set the time aside for a case that was probably not important to anyone except the two parties involved. She issued a ruling that was legally sound and provided a result that served the principles of justice. Most importantly, she exemplified a commitment to give each case her careful attention with the knowledge that the issues matter to the parties.

"As a colleague, Judge Garrett has been a friend and constant source of support to all of us. Her words of encouragement, insight and wisdom are treasures we will hold dear as we strive to follow her example. We wish her all the best in her new adventures." —Judge Federman

"Judge Garrett has been a dedicated public servant throughout her long career, and she is known for treating all parties with compassion and respect, especially those with mental health issues. Her easygoing demeanor and good-natured sense of humor immediately put people at ease, and she is a great listener who others seek out for advice and wisdom. She is widely respected by the bench and will be greatly missed." —Judge Duffy

"There are particular qualities found in an excellent jurist, and I truly believe Judge Garrett possesses all of them. She is well experienced in all of our assignments: civil, criminal, family and juvenile. The depth of her expertise is evident in the challenging cases that she has adjudicated in each assignment and the thoughtful decisions she has authored while on the bench.

"Judge Garrett is always well prepared, knows the law and how it applies in each unique case she considers. She has always encouraged appropriate argument and debate and has never been afraid to change her position when persuaded by those discussions. She has a wonderful manner, a soft Southern accent, and an innate ability to show

patience and compassion toward those who appear in front of her. I believe her goal has been a humble one: to come to the correct decision, given the facts and law at issue, while reassuring all before her that they have been heard.

On a more personal level, Judge Garrett has been an incredible colleague: she has been generous with her time and advice when solicited. She has shared her humor and positive attitude while being willing to roll up the sleeves on her robe and do the hard work. I consider my opportunity to have worked with Judge Garrett on the San Luis Obispo bench one of the highlights of my legal career.

Congratulations my friend! May your next chapter bring as much challenge and reward with fewer long hours and peremptory challenges. Thank you for your service. You leave quite a legacy." —Judge Hurst

*Thank you Judge Garrett for sharing this conversation with our legal community and for your service. We hope you are enjoying retirement. ■*

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# Taxing Powers Can Empower Social Justice

by Lisa Sperow

Every quarter I begin my regulatory business law class by asking students to name the government agency they appreciate the most. The Department of Homeland Security, the National Parks Service, and the Food and Drug Administration are frequently chosen. The Internal Revenue Service (IRS), however, has never been selected.

Perhaps that is because most people equate the IRS with taxes and, as Justice Marshall famously said in *McCulloch v. Maryland*, (17 U.S. 327 (1819)), “the power to tax involves the power to destroy.”

What many of my students—and frankly the general public—don’t realize is that the power to tax also includes the power to support, heal and forgive. In fact, the power to tax can be combined with public policy and taxpayer knowledge to empower social justice goals.

When I went to law school nearly 30 years ago, it was with the somewhat clichéd yet sincere desire to gain tools to make the world a better place. While I was excited to learn about the different types of lawyering that primarily focus on promoting the public good, the thought of becoming a tax lawyer to further the interests of social justice never occurred to me, nor, apparently, to my law school tax professor.

I explored the more obvious paths such as civil rights law and international law, and I even

spent my third year immersed in an interdisciplinary program that focused on combatting child abuse and neglect.

As part of this program, I interned the first semester in the district attorney’s unit responsible for prosecuting sex offenders and child abusers. I interned the second semester with a public defender who believed she could better protect the survivors of abuse by representing the alleged perpetrators. As I spent all-night shifts in a hospital emergency room interviewing parents who had brought children in with suspicious injuries and visited prisons to meet with convicted rapists and child molesters, I gained a great appreciation for those who practice this area of law—but I ultimately knew it was not the path for me.

After law school, I clerked for the 10th Circuit and then went to Washington, D.C., to follow my desire to serve the public by entering the Department of Justice’s Civil Division. In this role, I was able to work a diverse caseload that included pursuing those committing Medicare fraud, replevin cases to return government artifacts to the national archives and even a contract case alleging reverse discrimination.

While I loved being able to stand up in court and say I was there on behalf of the “people of the United States of America,” the job itself did not have the direct effects I was hoping to

achieve. It was not until I had my daughter and returned to the Central Coast to raise her that I learned to appreciate the possible social justice and civil rights implications of tax law.

I had taken the basic tax course in law school and can honestly say it was my least favorite class. As someone who loved law school and most of my professors, I dreaded this one class. The professor seemed to delight in belittling students, and his focus was on mundane issues such as “what is income” and “who are dependents.” He did not include any social justice implications of tax policy, tax law or the tax code.

The course was merely a series of numbers and definitions strung together without the stories of the people affected. It was devoid of any discussion of the impacts the actual policies, laws and codes made on the lives of people. The course neglected to teach us aspiring lawyers how justice might be promoted for citizens as one possible outcome of each of those policies, laws and codes.

It is a shame because the body of tax law is replete with social justice victories. Those who have studied Justice Ruth Bader Ginsberg’s career or even just seen the movie “On the Basis of Sex” know that one of her early civil rights cases was *Moritz v. Commissioner*, 469 F.2d 466 (1972), a tax case where the



10th Circuit held that denying tax deductions on the basis of sex is an unconstitutional violation of the Equal Protection Clause.

This case cleverly used a male plaintiff to address the element of gender discrimination in the entitlement to the caregiver deduction, ultimately leading the IRS to rewrite part of the tax code. The result was a major step forward for social justice via the taxing power of the government.

In addition, the landmark case *Obergefell v. Hodges*, 576 U.S. 644 (2015)—legalizing same-sex marriage in the United States—also stemmed from a tax dispute in which the plaintiff was denied tax benefits that heterosexual couples received because her deceased spouse was female.

In another important example, the power to tax affected the country's health care system. The *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012), case upheld the constitutionality of the Affordable Care Act when the majority opinion held, despite the government's argument to the contrary, that the federal government's authority to tax justified the Act's individual mandate regarding health care.

Along with the far-reaching repercussions of these landmark court cases in the areas of gender equality, gay marriage and health care, every day I see the social justice implications of tax law on the lives of my clients. In my current positions as the executive director of the Cal Poly Low Income Taxpayer Clinic (Clinic) and as a legal consultant for Cal Poly's Small Business Development Center/Entrepreneurship Center (SBDC), I witness people at opposite ends of the financial

spectrum and how tax planning, incentives and relief programs directly empower these clients and improve their lives.

Because the Clinic provides *pro bono* legal representation to low-income people who have a controversy with the IRS, most clients have experienced some type of financial, medical or emotional crisis (sometimes all three).

Recent clients include a victim of identity theft who learned that in addition to the loss of his laptop, wallet and credit cards, the perpetrator had sold his social security number and other information, resulting in someone using his social security number to report income he had not earned to the IRS. That fraud resulted in a \$36,000 liability for understatement of income.

Another client is someone who, in addition to losing her job, encountered life-threatening medical issues that led to early withdrawals from her retirement account in order to pay the substantial medical bills and to make ends meet—yielding a \$48,000 tax liability.

Finally, we dealt with a devastating case of an unemployed woman who, with her two young children, was able to escape an abusive spouse only to have what little money she had saved for a fresh start threatened by an IRS levy to pay a tax liability the abusive spouse had incurred and kept hidden from her.



*Charles Rettig, Commissioner of the IRS, and Lisa Sperow attend an event at the Tax Court in December 2018.*

Conversely, the people I advise while consulting with the SBDC are generally in happier circumstances—just starting out with new business ideas. They are excited, enthusiastic, and often a little frightened, yet optimistic, about their futures. These clients frequently come to me with an idea for a new service or product they have developed and want to produce and market. Many of them have concerns about how to make their business work while minimizing their tax liability.

They struggle with issues like how to compensate their employees when they do not currently have any capital or revenue, what type of records they need to keep, how to structure their organizations so that they can pay themselves and limit their liability. They are also curious about tax incentives,

*Continued on page 22*

business deductions and what exactly their obligations are regarding record keeping and reporting. I will never forget the time early on when a group whose business was really taking off came into my office and asked, “Is it bad that we haven’t filed any taxes in the last two years?” My response, in a word, “Yes.” They clearly had a deficit of tax law knowledge.

What both groups of clients have in common is their fear and lack of understanding of the IRS. Both groups are often pleasantly surprised to learn that there are mechanisms in place to help them achieve their goals and resolve their issues. Many are surprised to learn that there is even a Taxpayer Bill of Rights to ensure that they are fairly treated.<sup>1</sup>

For the Clinic clients, I explain how there are remedies available to them. Whether it be filing an identity theft affidavit or a request for innocent spouse relief to remove their liabilities or an Offer in Compromise to negotiate a settlement for the owed liability. All three clients in the above scenarios had successful conclusions. The victim of identity theft and the single mom both had their liabilities removed and ended up getting refunds of monies previously levied; the third was able to settle her \$48,000 liability for \$20. While the end results were positive, the road to get there was tortuous, lasting over two years in all three cases and requiring lots of substantiation and back and forth with the IRS for them to be able to move forward with their lives. Yet, in the end, we were able to use the tax code to achieve a socially just outcome.

For the entrepreneurs, my hope is to give them enough information and tools—coupled with referrals to quality accountants, bookkeepers and recordkeeping software—that they are empowered to grow their businesses with skill and confidence. With that knowledge, their businesses can thrive and they can feel confident that they are maximizing their potential while avoiding unnecessary repercussions.

There are also many other beneficial tax policies. Whether it be the Earned Income Tax Credit, the American Opportunity Credit, Education credits, write-offs for new businesses, medical deductions, business deductions, there are many ways individuals and businesses can utilize the provisions

of the tax code to improve their situation. These deductions and credits are clear evidence of the power of taxation in affecting public policy.

As seen recently, when the federal government decided to give economic impact payments to help alleviate financial distress caused by the pandemic, it relied on the IRS and people’s tax return filings to both calculate and distribute the payments. In addition, those who did not get their stimulus checks were able to do so by filing their 2020 returns. The tax code processes can be enlisted to help provide a societal safety net for these unusual circumstances.

Recently, President Biden took it one step further when he announced in July that as part of his American Rescue Plan he was increasing the Child Tax Credit and implementing a policy of allowing pre-payment of up to half of the Child Tax Credit through monthly payments in an attempt to help lift low-income families out of poverty.<sup>2</sup>

Thus, in addition to bemoaning the bite that taxes take out of our paychecks, we should also appreciate the social justice reforms, benefits and mechanisms for justice that the IRS and the tax code provide. One way to do so is to empower people with the knowledge of their rights and responsibilities as taxpayers so that they can fully avail themselves of the benefits the tax code offers rather than just focusing on the burdens.

Although tax policy as an instrument of social justice may not be the obvious choice for making the world a better place, or a well-developed part of the typical law school curriculum, I have found that the power to tax can also be an effective pathway to helping achieve social justice. ■

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## Footnotes

<sup>1</sup> <https://www.irs.gov/taxpayer-bill-of-rights>

<sup>2</sup> <https://www.whitehouse.gov/child-tax-credit/>

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*Lisa Sperow is the Executive Director of the Cal Poly Low Income Taxpayer Clinic. She and her students are available to provide free educational programs about the rights and responsibilities of taxpayers. You can reach her at [esperow@calpoly.edu](mailto:esperow@calpoly.edu).*

## November 11, 2021: Veterans Day

On Veterans Day if you know a veteran, thank them. Thank them for their service.

My favorite veteran is since deceased, but since writing an article about him and my mom, I've had veterans from all over the country reach out to me, allowing me to still have veterans to thank.

One in particular actually served in the Army's 66th Engineering group during Vietnam with my dad! He sent me photographs of their base camp, service members and the memorable Bob Hope show that I will always remember my dad talking about, as it must have been one of the highlights of his service.

Service men and women put their lives on the line everyday for this country. They are some of the most dedicated people you will ever meet in your lifetime if you are fortunate enough to know a veteran. And we would not be living as we do today without them—so thank them.

—Tara Jacobi







# Attending Law School in the Time of COVID

by Jan Marx, SLOCL Campus Dean

**H**ow did San Luis Obispo College of Law (SLOCL) fare during the COVID challenged 2020-2021 academic year?

Exceedingly well! Our local campus, as well as our founding institution, the Monterey College of Law (MCL), and our fellow campus, Kern County College of Law (KCCL), all soldiered on without missing a beat. None of our local students dropped out despite the extraordinary stress of the pandemic.

Overall, admissions have increased significantly, even though COVID forced us to offer all classes online. We were well positioned to pivot smoothly to virtual education when the pandemic hit, since MCL, in 2019, was one of the first two evening law schools granted authority by the State Bar to offer an online hybrid JD program. The hybrid program serves current students, and it also has attracted first-year and transfer students statewide.

This fall, SLOCL is holding in-person classes on our campus at 4119 Broad Street, San Luis Obispo.

MCL is proud of our system-wide 71.4 percent total first-time pass rate for the 2021 February Bar Exam and the 100 percent pass rate for all five graduates of KCCL's first graduating class. We beat the California ABA pass rate of 65 percent.

Our SLOCL first-time examinees had a 57.1 percent pass rate,

which beat the statewide first-time pass rate of 54 percent. Congratulations to all 10 first-time passers and the three previous graduates who joined them in passing the February 2021 bar exam. What does that say for our hard-working students and the dedication of our professors, attorneys, alumni and judges who gladly teach the next generation of attorneys for minimal stipends? It says they are wonderful!

On June 5, SLOCL held a joyful outdoor commencement ceremony for our six 2020 and nine 2021 graduates and their families. Many of our graduates are practicing locally and nationwide. To mention a few, Valerie Janiel is now a San Luis Obispo Deputy County Counsel advising the department of Social Services, where she worked when attending law school.

Jennifer P. Thompson is now an associate for the Lozano Smith firm, which just opened a local branch. Daisy Mercado has been hired by Mind Body, a local start-up now with a worldwide presence. Amy Kardel now holds a position with CompTIA, an international educational nonprofit that provides high-tech education and certification worldwide.

In October 2020, the longtime campaign by the California Bar Accredited Law Schools (CALS), spearheaded by MCL President and Dean Mitchel Winick, succeeded in convincing the Supreme Court to bring our

state's bar pass criteria into conformance with the rest of the country at a "cut score" of 1390, down from 1440.

The Supreme Court also created the retroactive Provision Licensure program, which provides that law school graduates who scored 1390 or higher on any Bar Exam dating from February 2020 to July 2015 are able to work as fully licensed attorneys after completing supervised practice hours. If any local attorneys are interested in supervising former students who now qualify for the program, please let us know.

Dean Winick and his colleague CALS Deans are now working to overcome a financial obstacle for our Veteran students, namely the abrupt decision of the Washington, D.C., office of the Veterans Administration Department of Education to discontinue California Veterans and their eligible dependents' access to financial support for legal education at California's 17 CALS law schools, including ours. Eligibility has been summarily denied under the GI Bill education program to all students at non-ABA-approved law schools in California.

Many of these schools, such as ours, serve Veterans and their eligible dependents under the Post 9/11 GI Bill in underserved communities and rural regions that do not have reasonable commuting access to traditional ABA law schools. Most of our current and potential Veteran students,

who are working full time and often have families, do not wish to move to an urban center to attend an expensive ABA Law School connected to a University.

The CALS Law School Deans, led by our own Dean Mitchell Winick, are starting at the state level and then will approach the federal decision makers to reinstate the GI funding. They received a unanimous bipartisan "Aye" vote from the CA Senate Judiciary Committee. Although this is a federal matter, demonstrating strong state support for our Veterans receiving their full benefits is an important first step. Stay tuned, we may need to call upon you to voice your support to our Congressional members in the future.

Keeping us in touch with our local legal and larger

community is the SLOCL Advisory Board, which I chair. Current members include attorney and Professor Erica Baltodano; Cal Poly Professor Ron Den Otter; District Attorney Dan Dow; Santa Maria nonprofit attorney Crystal Forsher; attorney and Latino Outreach President Jacqueline Frederick; Cuesta College trustee Barbara George; attorney for CompTIA International nonprofit Amy Kardel; San Luis Obispo Legal Assistance (SLOLAF) board member Angie King; trial attorney Lisa Lazzara; family law attorney Matthew Long; Cal Poly Professor of Constitutional Law Allen Settle; and long-time criminal defense attorney Jeff Stein. Student Bar Association President Seth Williams, a third-year law



student, also attends our meetings. If you would be interested in joining our Board at our quarterly lunch-time meetings, please email me, [jmarx@slolaw.org](mailto:jmarx@slolaw.org).

This year our Board established the SLOCL Advisory Board Awards program to provide some financial support for local students and recent graduates who are studying for the upcoming Bar Exam.

It is funded by donations from Board members and from the local legal community, including individual attorneys and a generous donation by the Central Coast Trial Lawyers Association. Award recipients will have been announced before this article is published. We hope to continue this program well into

the future, and perhaps establish an endowment someday. If

you would like to donate or learn more, just email me at [jmarx@slolaw.org](mailto:jmarx@slolaw.org).

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# Ethical Tenets Apply Even to Difficult Clients

by Gordon E. Bosserman

A recently published decision out of the Fourth Appellate District illustrates and underscores the title of this article.<sup>1</sup> The plaintiff there appears to have been a very difficult client to control. She was on at least her second set of lawyers when the ethical infractions occurred. It appears that her former attorneys were allowed to withdraw. The firm was replaced by attorneys Keven Jolly, Leah Berry and Joseph Nazarian (Jolly).

The case arose out of an automobile accident. It was originally set for trial in July 2019. A week before the trial, the plaintiff fired her attorneys, resulting in the vacating of the trial date. Plaintiff then hired Jolly and the trial was reset for January 2020. The written contingent fee agreement signed by the plaintiff with Jolly contained a provision which allowed Jolly to accept a settlement offer if Jolly believed in good faith that the offer was in the plaintiff's best interests and should be accepted by the plaintiff. It further provided that it was in Jolly's "sole discretion" to make this determination.

In the days before the new trial date, the relationship between Jolly and plaintiff deteriorated to the point where Jolly asked plaintiff to sign a substitution of attorney, and when that failed, Jolly made an unsuccessful attempt to withdraw as counsel on the grounds of there being a conflict of interest. When the motion to withdraw was denied, Jolly approached counsel for the defendant and asked if the previous offer to settle the case for \$150,000 was still open. He was advised it was. Jolly was aware that plaintiff had already rejected that number. Jolly then ad-

vised the plaintiff that he was taking the settlement offer. Over plaintiff's objections, Jolly accepted the settlement and signed a settlement agreement.

Plaintiff acting in pro per filed a motion to vacate in the form of a declaration in which she stated she had previously rejected the settlement and that she had informed Jolly that the settlement was unacceptable and not approved by her. At the hearing, the trial court dismissed the action finding that the plaintiff had failed to file a motion to vacate and had failed to file any written objection.

Plaintiff then hired another attorney who filed a motion to vacate. In opposition, Jolly filed attorney declarations going over the negotiations (confidential communications) leading up to the signing of the Jolly contingent fee agreement as well as copies of communications between plaintiff and Jolly. The trial court denied the motion to vacate and the plaintiff filed a timely appeal.

On appeal the plaintiff challenged the settlement and dismissal on the grounds that an attorney cannot settle an action without the consent of the client. The Court of Appeal agreed, and its discussion is useful to working attorneys.

The Court first recited the provisions of the Rules of Professional Conduct which state that the rules are designed to protect the public and the courts and to regulate the legal profession. (Rules Prof. Conduct, Rule 1.0(a)). The Court specifically cited Rule 1.2(a) and quoted the portion of it that states: "A lawyer shall abide by a client's decision whether

to settle a matter." It also held that on its face, Rule 1.2(a) invalidated the suspect language of the Jolly engagement agreement. The plaintiff and the Court of Appeal also discussed the State Bar Court ruling *In The Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Court 308, which held that a similar fact situation was evidence of the attorney's "overreaching" and amounted to "moral turpitude." (*Id.* at p. 314) The *Guzman* Court had also noted that an attorney's attempt to include such a provision in a contingent fee agree was in and of itself evidence of "overreaching."

However, the Court of Appeal did not stop there. It held that just the inclusion of such a provision in a contingent fee agreement created an "immediate" and "direct" conflict of interest in violation of rule 1.7 (b) of the Rules of Professional Conduct. Next, the existence of the subject provision necessarily required disclosure of the applicable provisions of the contingent fee agreement to opposing counsel which also represented a violation of the attorney's duty of confidentiality under rule 1.6 (a) of the Rules of Professional Conduct and Business and Professions Code section 6149. The Court of appeal also opined that the provision was also inconsistent with a client's power to discharge an attorney with or without cause. (*Franccasse v. Brent* (1972) 6 Cal. 3d. 784,790.)

The Court of Appeal disposed of the respondent's arguments without extensive discussion. One point made by the respondent, however, is worth mentioning. The respondent relied on comment [2] to rule 1.2 of the Rule of Professional Conduct, which noted that a client may authorize an



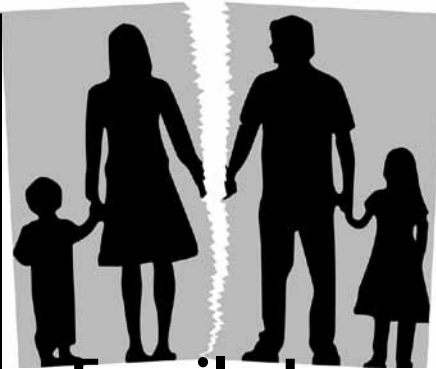
attorney to take certain actions on the client's behalf without further consultation with the client. This argument was dismissed by the Court of Appeal because there is also a clear statement that the authority may be revoked by the client at any time.

Finally, not only did Jolly lose their fee, the Court of Appeal also reported them to the State Bar under Business and Professions Code section 6086.7 subdivision (a)(2) which requires the Court of Appeal to notify the State Bar whenever a modification or reversal is based in whole or in part on the misconduct of an attorney. The Court of Appeal also noted that its action was consistent with Canon 3D(2) of the Code of Judicial Ethics which authorizes a trial judge to take appropriate action when he or she becomes aware that an attorney has done or failed to do something which amounted to a violation of the Rules of Professional Conduct, including reporting the offending attorney to the State Bar. The Court of Appeal concluded that its finding of a violation of rule 1.2 of the Rules of Professional Conduct and the potential violations of rules 1.6 (disclosure of confidential communications), 1.7 (same as 1.2), and 1.9 (attorney's opposition to former clients motion to vacate in order to protect their fee) required the Court of Appeal to report Jolly to the State Bar.

So, as they say, the moral of the story is that even difficult clients are entitled to an attorney's complete compliance with ethical requirements, and that every client maintains the right to be unreasonable and to reject an attorney's advice even when the client is being self-destructive. ■

#### Footnote

<sup>1</sup> Sayedeh Sahba Amjadi v. Jerrod West Brown, 2021 Cal.App. LEXIS 715 (the "Sayedeh Case")



## Further Expansion of —and Assertion of— “Guardrails” to CA’s Notions of “Domestic Violence” in Family Law

by Gregory W. Herring

Over the past 20 or so years, the Legislature has enacted a “hodge-podge” of confusing and sometimes contradictory provisions, as California Family Law guru Garrett Dailey has put it, in its rush to enact one domestic violence (DV) statute after another.

As of January 1, 2021, *coercive control* is a newly codified form of DV under the Domestic Violence Protection Act (DVPA) (Fam. Code §6200 *et seq.*). Family Code section 6320 provides for *ex parte* orders enjoining harassment, threats and violence. Under the statute, “coercive control” is defined as the following:

“...a pattern of behavior that in purpose or effect unreasonably interferes with a person’s free will and personal liberty. Examples of coercive control include, but are not limited to, unreasonably engaging in any of the following:

- (1) Isolating the other party from friends, relatives or other sources of support.
- (2) Depriving the other party of basic necessities.
- (3) Controlling, regulating or monitoring the other party’s movements, communications, daily behavior, finances, economic resources or access to services.
- (4) Compelling the other party by force, threat of force or intimidation, including threats based on actual or suspected immigration status, to engage in conduct from which the other party has a right to abstain or to abstain from conduct in which the other party has a right to engage.”

As of the same date, the standard for “disturbing the peace of the other party” sufficient to warrant DV orders is “conduct that, based on the totality of the circumstances, destroys the mental or emotional calm of the other party.” (Fam. Code §6320 subd. (c).) This grew from 2014’s *Burquet v. Brumbaugh* 223 Cal. App.4th 1140, 1146, which rejected arguments that the Penal Code’s stricter definition ought to apply.

In making these amendments, the Legislature was concerned about expanding the scope of abusive conduct beyond what was necessary, taking care to “...limit the application...to clearly abusive behaviors.” (Senate Judiciary Committee Analysis, cited by *In re Marriage of L.R. and K.A.*, Cal. App., July 27, 2021, D077533 (page citations are not available as of this writing).) The trial courts were left with the hard work of analyzing and applying these arguably amorphous notions, including in the context of complex child custody disputes (under Family Code sections 3020, 3111, and 3044, DV is an express factor in any custody matter).

*Continued on page 28*

## Guardrails continued

On July 27, 2021, the Court of Appeal issued its opinion in *In re Marriage of L.R. and K.A.* The opinion is now certified for publication. The case involved alleged DV in the context of a high-conflict custody proceeding. The Court emphasized that coercive control is to be viewed within “certain parameters,” including the following.

“...‘a mental state, objective reasonableness, causation, foreseeable harm, actual harm’—[toward] ‘provid[ing] strong guardrails to help ensure that the [law] will function as intended and not reach benign conduct that is ordinarily tolerated in relationships or that does not actually distress the person.’”

It explained, “[t]hese ‘guardrails’ are necessary because [a DV] order implicates fundamental liberty rights, as a violation of its provisions is a crime, ...and it is a factor that is weighed in child custody and visitation determinations.” The Court continued, “[r]especting these guardrails, courts are concluding that the [DV laws were] not enacted to address all disputes between [former and existing] couples, or to create an alternative forum for resolution of every dispute between such individuals.”

Earlier in the case, the San Diego trial court found that the mother involved acted “obsessively” in an incident with the father and their 10-year-old daughter during the mother’s scheduled parenting time at a visitation center. The trial court found that the mother was “aggressive and controlling” during the incident, and that she “escalated an already emotionally intense situation, and subjected both the [father] and the child to further distress,” and “she manipulated that child’s already sensitive emotional state to a degree that was not acceptable.” It noted that a responding law enforcement officer testified that it was “one of the worse” DV calls of his 28-year career. The trial court found that the mother “escalated [the situation] beyond control.”

Based on those findings, the trial court found that the mother committed DV by disturbing the father’s mental peace and calm, including through “controlling and coercive behavior.” It therefore issued DV orders against her, protected him and the child.

But the Court reversed, concluding that “[m]other’s conduct did not rise to the level of destroying father’s mental and emotional calm to constitute abuse with the meaning of the [law].” In short: *The trial court had the authority to handle the matter as a “pure” child custody dispute outside of the DVPA, and should have done so.*

This opinion immediately set off alarms. Appellate specialists raised concerns that the Court of Appeal appeared to have wrongly asserted its own assessment of the facts over that of the proper factfinder—the trial court.

At the substantive level, the opinion’s logic—if extrapolated—could erode hard-fought gains in the eyes of DV prevention professionals (including child development specialists, child advocates, women’s advocates, family law attorneys, judicial officers and many others). *Of course*, trial courts in *any* custody case have the authority to handle custody matters outside of the DVPA. Determinations of DV are always ones of degree. These analyses and applications are well within the normal purview of the trial courts.

As the Legislature continues to find it popular to expand notions of DV, *In re Marriage of L.R. and K.A.* may be a harbinger of further “guardrails” from the appellate courts. ■

*Greg Herring is a CFLS, and a Fellow of 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 primarily serving “the 805” with offices in Santa Barbara, Ventura, and San Luis Obispo Counties. His prior articles and blog entries are at [www.theherringlawgroup.com](http://www.theherringlawgroup.com).*

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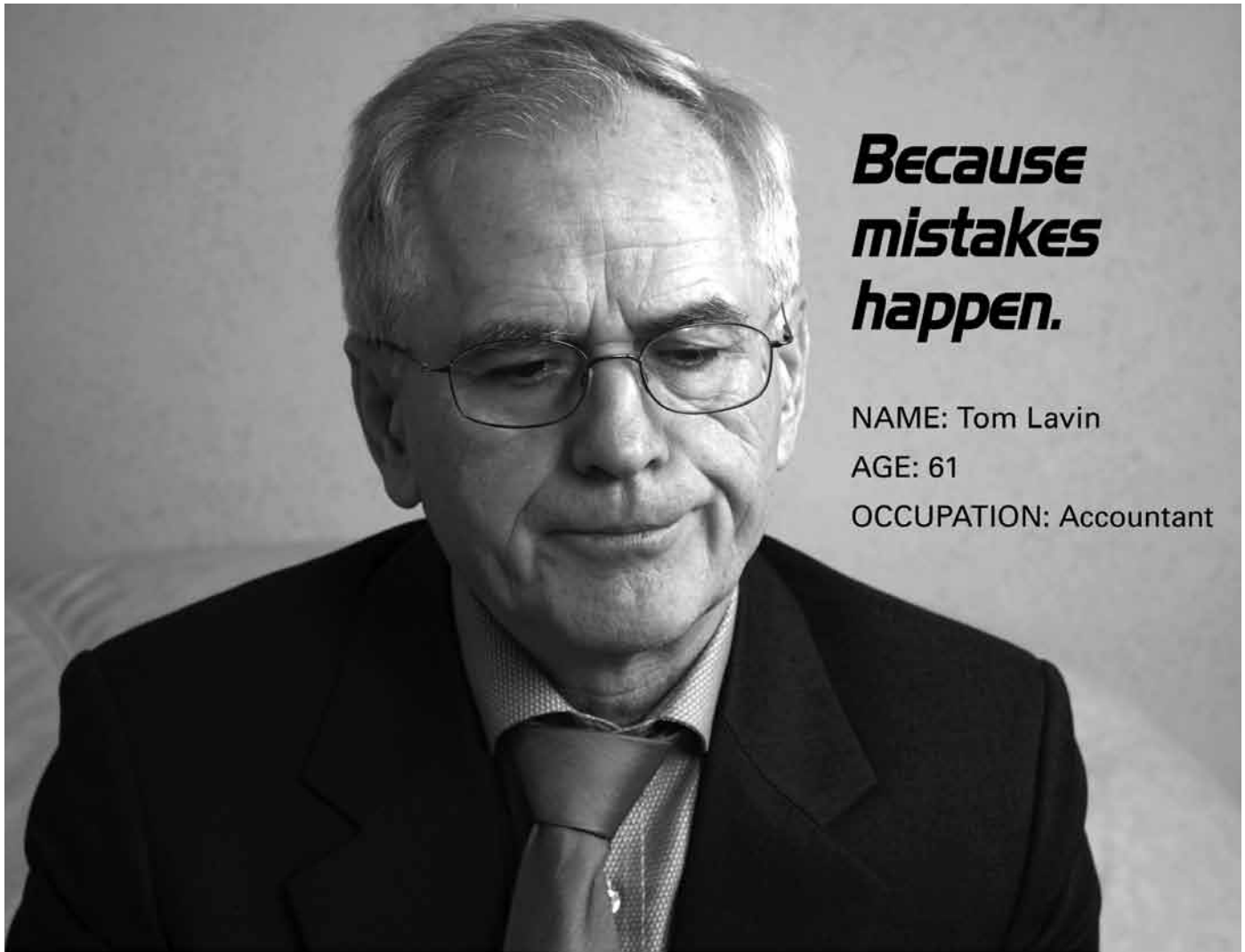


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