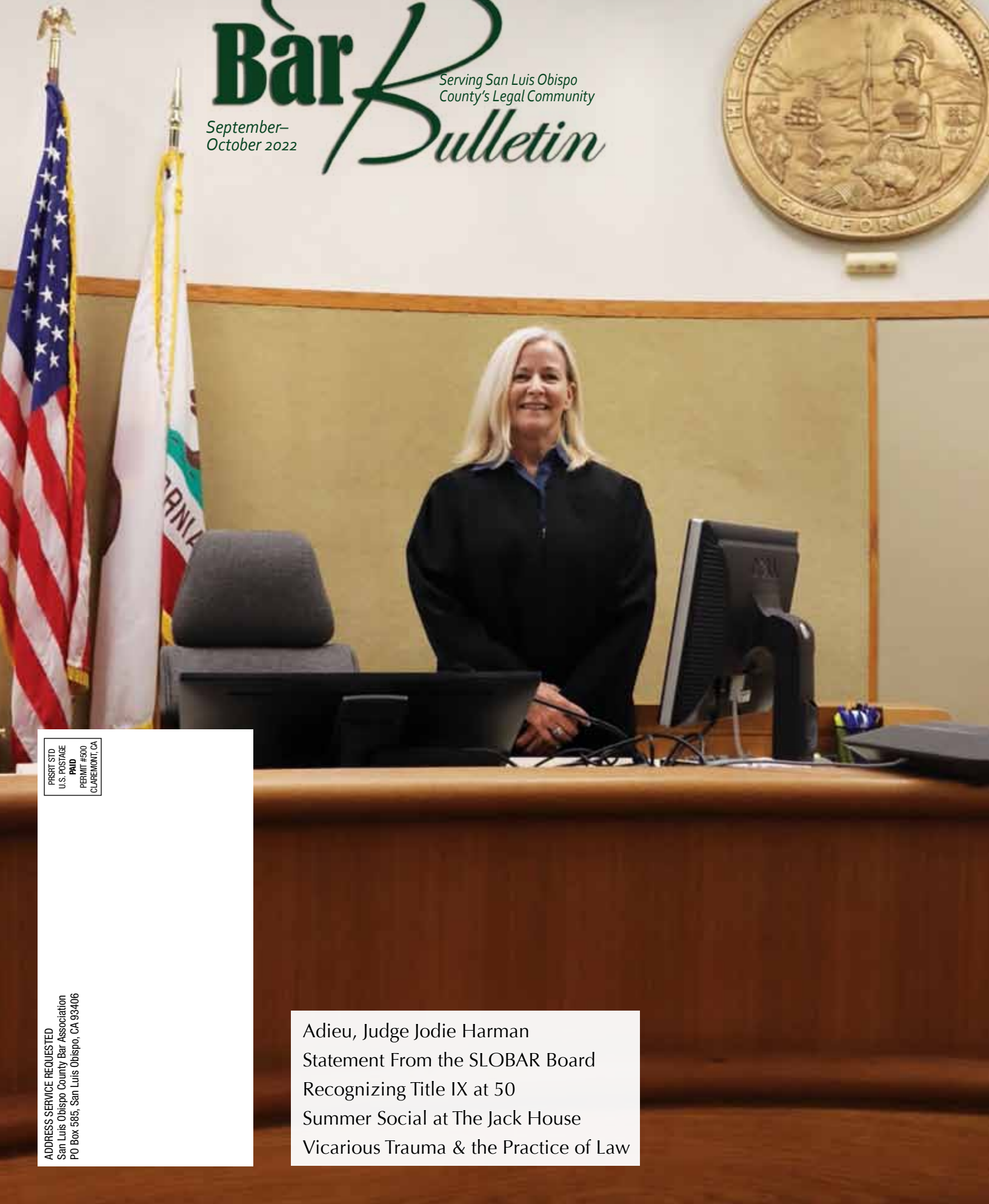


# Bar *Bulletin*

Serving San Luis Obispo  
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September–  
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Cover: San Luis Obispo County Superior Court Judge Dodie A. Harman retired in July 2022 after 20 years on the bench (story on page 10). Photo courtesy of Tara Jacobi.

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# President's MESSAGE



## Blackbird—Take These Broken Wings and Learn to Fly!

by Kara Stein-Conaway

I am sharing with you a song that I sing to my children when I'm putting them to sleep at night. After I share the song, I'll tell you the lessons that I hope to be teaching both my children and myself. I hope the lessons will resonate with you, too.

*"Blackbird singing in the dead of night  
Take these broken wings and learn to fly  
All your life  
You were only waiting for this moment  
to arise"*

*Blackbird singing in the dead of night  
Take these sunken eyes and learn to see  
All your life  
You were only waiting for this moment  
to be free*

*Blackbird fly, blackbird fly  
Into the light of the dark black night*

*Blackbird fly, blackbird fly  
Into the light of the dark black night*

*Blackbird singing in the dead of night  
Take these broken wings and learn to fly  
All your life  
You were only waiting for this moment  
to arise*

*You were only waiting for this moment  
to arise  
You were only waiting for this moment  
to arise"*

This beautiful Beatles song, "Blackbird," credited to Lennon-McCartney, is one that I've been singing to my children for years. I'm taking the time right now to slow down and to think about why this song is one of my favorite songs to come back to, and why this song holds a special place in my heart and feels like the message that I want to leave dancing around in their minds before they trail off to sleep.

*Take these broken wings and learn  
to fly.*

Isn't there something about all of us that at times feels broken, and yet we can still learn to fly?

Having a broken wing doesn't mean that you don't get to fly as a blackbird. You can still learn to fly. I want to teach my children that even though they feel that a part of them is broken or a part of them is struggling or having trouble with something, they can still fly. I want them to know that they can still be who they want to be and do what they want to do.

I want them to understand that feeling broken is just part of the beautiful human experience. I feel broken sometimes too. Leaning into that part of myself that may feel broken or down or not as in the zone as I like to feel, leaning into that and examining it and giving compassion to it, that's what allows us to learn to fly even while having a broken wing.

*You were only waiting for this  
moment to arise.*

To me, this message is that you were waiting for this moment in your life to realize that you are everything you need already. You are enough.

**Don't let that broken wing make you doubt yourself or doubt that you're ready for this moment, that you're ready for this life, that you're worthy of engaging in all of the ways that your heart calls you to engage.**

You were only waiting for this moment to arise is a stepping into power.

**It's stepping into power because you're realizing that if you can experience a broken wing, if you can experience an internal struggle, a pain, a disappointment or a loss and be with that feeling and still know**

**that you can fly, then that is such an empowering place to be.**

That is something that I certainly want my children to develop and to be able to feel.

*Blackbird singing in the dead of night, take these sunken eyes and learn to see.*

Sometimes closing our eyes gives us the best ability to see. Sometimes when my eyes are open and I'm taking in so many stimuli from the world around me, what I really feel called to do is to close my eyes, to let my eyes be sunken eyes. And by allowing that closure, we are allowing peace, and we are allowing quiet. That is where I really learned to see. I learned to re-open my eyes in a new way, in a way that feels completely free.

*All your life you were only waiting for this moment to be free.*

So, even with broken wings, and even with closed eyes, you were only waiting for this moment to be free.

You, little black bird. You, little child. You, human being. I'm speaking to myself and I'm speaking to every one of you.

We were only waiting for this moment to be free to realize that with broken wings and with sunken eyes, we are seeing ourselves with compassion, care and love. We are taking that time to be still and to go internally. This can lead us to realizing that we are in the moment and that we are free.

*Blackbird fly. Blackbird fly into the light of a dark black night.*

There will be dark black nights. It has felt like there have been a lot of dark black nights. And there may be many more.

**You, little Blackbird, you little child, and you human being, are flying into the light of a dark black night and you have everything that you need within you.**

**When you see yourself with**

**kindness and compassion and love, when you see your broken wing and you see your sunken eyes, and you see all pieces of yourself from a lens of love and compassion, you can fly through the**

**darkest of nights and you will feel free.**

*Blackbird singing in the dead of night. Take these broken wings and learn to fly.*

*All your life.*

*You were only waiting for this moment to arise.*

**This moment. Every moment is an opportunity to know that you have everything you need inside of yourself. You have everything you need to nurture and care and honor and love and support yourself through the darkest of nights.**

The reason that I sing this song to my sons at nighttime when I'm putting them to bed is because these are the lessons of my life that I want them to come to know for themselves. I want them to be

able to know that no matter how many broken wings, sunken eyes, or other ailments they experience, when they learn to choose to see the beautiful human beings that they are and to give themselves what they need when they are suffering and struggling, then every moment is a moment of infinite possibility, freedom and peace. If there is one thing that I have in my heart that I wish for my sons, as they continue developing into the human beings that they will become, it's that they know that they have this ability within themselves to find peace in the moment and to be free.

**I wish this for all of humanity. I hope that by sharing this song that is very dear to my heart, and the meaning behind it for me, I hope that it has reminded you that you were only waiting for this moment to arise and that you have everything that you need to live and experience this life in the most beautiful way. ■**



*This President's Message was adapted from Episode 29 of Kara Stein-Conaway's podcast, "The Business Mamas Podcast." 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](http://www.karasteinconaway.com/linktree) to listen to the podcast or receive a free Morning Routine Guide. 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](http://www.steinconawaylaw.com).*



## Editor's Note

by Tara Jacobi

*"Mother, mother  
There's too many of you crying  
Brother, brother, brother  
There's far too many of you dying  
You know we've got to find a way....  
Father, father  
We don't need to escalate  
You see, war is not the answer  
For only love can conquer hate  
You know we've got to find a way...."*  
"Don't punish me with brutality,"  
sang Marvin Gaye, a truth said by a beautiful man. In the 1970s when I was just a child, he was asking this country, "What's Going On," in this poignant song. And now again, we are still asking, What's going on? What is going on?

Interviewing is one of the most important ways lawyers get information. I don't remember learning about how to conduct this task in law school. It wasn't until I had to draft a pleading that I devised a plan of sorts when talking with clients for getting at the essential facts to not come up empty handed or lead astray.

Interviewing is something certain journalists do so well it makes me wonder what is their secret. How do journalist get their sometimes unwilling subjects to tell their stories and maybe even share something profound? The process of connecting and telling a person's story always intrigues me and never ceases to amaze me. It seems some people are almost born with this innate

ability to be a cross between an exceptional conversationalist and discrete detective all at the same time. To perfect an interview seems to be somewhat of an art form.

As Judge Harman leaves the bench, she shares some insight into her career and what is next. Readers may find her guiding principles that she takes from a speech by John F. Kennedy inspiring. In reflecting upon her service, she states, "I am proud to have always done my best to be a person of courage, judgment, integrity and dedication." Learn more about her journey to become a lawyer and judge, and her work as a lawyer and judge, in the pages ahead. Hear about her retirement plans and try your best not to turn green with envy.

The conversation about leadership continues in this issue, featuring the thoughts of legal community leaders Presiding Judge Craig van Rooyen and Women Lawyers Association President Maren Hufton.

Speaking of Maren Hufton, she shares with us a wonderful article about the history and anniversary of Title IX by interviewing June McIvor about her personal experiences with Title IX. What an incredible story about June's experiences growing up playing soccer, what opportunities were off limits for girls and women at the time, what changed, and what is to be.

And then there is the *Dobbs* decision. I had an incredible mother. Not all do. As a nurse working at a local community college, she and other nurses educated and provided health care for local college students. At a time when many employers were not required to address health care for their employees, the college was not offering health care to the

female nurses providing health care to the students. My mom spearheaded the campaign for the benefit of health care for the health care providers, the nurses. She was written up in publications. She was also fired for her efforts. But she did not remain silent. After reading the *Dobbs* decision in its entirety and reading several articles commenting on the decision...well, I decided to interview myself. It wasn't easy. As my mother once told me, nothing worth doing in this life is easy.

This brings me to Scott Taylor's article that addresses a lawyer's humanity. I admire how he classifies the typical boxes we like to place people in—helper, as opposed to someone who needs help, while breaking those boxes open to expose the reality. Yes, lawyers at times throughout their lives will need help themselves. And yes, this is part of the experience of being human, which, yes, even a lawyer isn't above.

Mentors play a significant role in our our life, especially in our life's achievements. Mentoring or guiding sometimes happens without us knowing, or at other times with significant organization that can bring about meaningful results. Take a look at what our law school is doing to mentor law students by allowing them to gain practical insight into life as a lawyer. Perhaps you might consider joining the ranks as a mentor yourself.

Without contributing writers, the *Bar Bulletin* cannot be a robust representation of the latest updates pertaining to the diverse legal specialties of the practice, as well as our legal community's happenings, explorations and adventures. Please consider sending a contribution to [tarajacobi@icloud.com](mailto:tarajacobi@icloud.com).

Thank you to our contributing writers. And thank you, mom. ■

# 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 2022 John L. Seitz Community Service Award

### Instructions

On a separate sheet of paper, describe the Nominee's qualifications for the 2022 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

Or email a copy of this form and a separate page with the Nominee's qualifications to:  
slobar@slobar.org

---

Name of Nominator (Your Name)

---

Name of Nominee

---

Nominee's Address

---

Nominee's Phone

**Nominations must be received no later than November 4, 2022. Thank you.**





# SAN LUIS OBISPO COUNTY BAR ASSOCIATION ENDOWMENT FUND

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The San Luis Obispo County Bar Association (“SLOCBA”) Scholarship Fund was established to broaden the number of traditionally underrepresented groups employed in the legal profession in SLO County with the goal of providing greater access to, and inclusion in, the legal system.

Our 2022 scholarship award winner is **Asusena Uribe**. She will be attending UC San Diego as a political science/international relations major. She then plans to attend law school, and intends to become an immigration lawyer. Asusena is a first-generation college student, and she enjoys spending time with her family.

The 2021 scholarship award winner was **Kristal Roman Romero**. Kristal was the 2021 valedictorian of Paso Robles High School. She is currently attending the University of California, Berkeley, working on her double major in political science and ethnic studies. Kristal is a first-generation college student and aspires to be a civil rights attorney.





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

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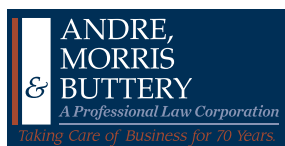
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# Adieu, Judge Dodie A. Harman

## Retirement interview with Tara Jacobi

### Judiciary

#### What will be most memorable for you about your time on the bench?

The People! I will always remember the incredible staff we have in San Luis Obispo. I was so fortunate to work with wonderful people. I have to make special note of the full-time clerks that I had during my 20 years—Roxanne, Teresa, Patrice and, of course, my clerk for about 16 years, Sara. I had great teams to work with including Des, Jamie and Natalie. With Michael (CEO), David (IT) and Tammy (CourtOps) keeping everything running so smoothly and being a pleasure to work with, all of us Judges are truly fortunate. There are so many other clerks, secretaries, IT folks, HR staff and I can't begin to set forth all of the names but, suffice it to say, every single staff member has enriched my life and time on the bench.

My fellow Judges are not just colleagues but friends. We have a great bench with tremendous camaraderie and respect for one another. We have raised our children together, seen each other through difficult life events and shared many great joys. I will always remember these times together. Then, of course, there are the justice partners—Drug and Alcohol Services, Probation, Public Defenders, Law Enforcement and District Attorneys and Private Attorneys. I have learned much from all of these individuals and have enjoyed being a part of each of their journeys.

I will also remember the adoptions I granted, the work with the recovery community, the citizens that came before me as jurors, litigants, witnesses, experts or defendants.

#### What did you enjoy most about your role as a judge?

I enjoyed most the ability to always do what was just, what was fair. I loved working with Judges all around the State to try to find the best solutions for our branch of government. The beauty of being a Judge is that you have colleagues all around the State who are always willing to consult with you, share experiences, and generally be there for you through the difficult times and celebratory times. This job can be very isolating, so it's important to have colleagues in SLO and around the State who trust one another, support one another, and with whom you are able to share your happiest moments.

I also really enjoyed the daily contact with the public and all of the members of the bar. I enjoyed watching talented attorneys as they navigated a case, be it through trial or settlements. Watching a talented and skilled



*Parisian sidewalk cafe. Via public domain.*

attorney in the courtroom is better than any television show. The courtroom is full of challenges, interesting issues, serious consequences and at the same time can be quite enjoyable.

#### What might you be most proud of about your service and why?

As so many know, my guiding principles throughout my career were set forth to me in a speech given by then President-elect John F. Kennedy. The words rang so true to me that my friend Sandy Mitchell had them printed and framed for me when I was sworn-in as a Judge. To paraphrase the speech:

To those of us to whom much is given, much is required...our success or failure, in whatever we may hold, will be measured by the answer to four questions:

- Were we truly persons of courage,
- Were we truly persons of judgment,
- Were we truly persons of integrity and, finally,
- Were we truly persons of dedication?

(I, of course, changed "men" to "persons.")

So, I feel that I have served living this creed. I am proud to have always done my best to be a person of courage, judgment, integrity and dedication.

I am proud of my work with the recovery community. I am also proud of the creation of the early disposition court for felonies, where we have probation, drug and alcohol services and mental health professionals all in the courtroom at the very first appearance with the attorneys and defendants to try to find together, as a team, the best solution for each case, a solution that is best for victims and defendants and our community, with an eye toward reducing recidivism.

I am also proud of my work at the State level teaching new judges and being an ethics advisor to judges throughout the State. I also am proud of ushering in our electronic case management system and having the privilege to work with so many talented staff members of that project.

## **What did you find most challenging about your service and why?**

The most challenging part of being a judge is the workload and the isolation. Judges around the State are having to do more with less. Many things during the past 10 years or so that criminal judges do used to be done at a different level, such as parole hearings. The entire post-conviction workload, whether it be parole, PRCS or petitions regarding changes in the laws resulting in in-depth reviews and hearings of extremely old cases has really added a lot to the workloads.

Another challenging thing is trying to find the resources to truly accomplish just results.

Of course, there have been many challenging cases and you want to devote all of your time and attention to the cases that come before you. A judge's work is not just in the courtroom though. We are on call and are judges 24/7. We have administrative duties, we have volumes of paperwork and requests that come before us to review, we have continuing education requirements and a responsibility to participate in our branch statewide as well as in our community, and we are on-call for search warrants at all hours.

The isolation is difficult too. Due to the nature of our work, we cannot be friends with attorneys who may appear before us or be involved in organizations that may become involved in litigation. We cannot be involved in politics or political issues and have to avoid most social media. There are a lot of restrictions on how we function in society.

It is for a good reason in that we are neutral parties in all matters, and you never want to have the appearance of impropriety to those coming before you. One just must recognize that it can be isolating.

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

First and foremost, more judges and more staff are needed to handle the increasing workload. I also would like to see a better long-term vision of the consequences of legislation relating to the judicial system. As an example, legislation that shortens the time of probation is a fine concept until you realize the impact it has on recovery programs that are encouraged by other legislation. This reduction in probationary time reduces the ability to participate successfully in drug related recovery or mental health recovery programs.

There has been a lot of focus on rehabilitation programs, however, the resources are limited due to lack of funding. There are not enough counselors, sober-living homes and residential treatment facilities for the number of people who need recovery.

In civil and family law, the caseloads also are



*Superior Court Judge Dodie A. Harman. Photo by Tara Jacobi.*

voluminous. Perhaps the greatest improvement would be to receive adequate resources for all case types.

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

Definitely! As a paralegal attending law school, I had Retired Judge Thomas Schneider, then a partner in the law firm for whom I worked.

I think mentors are so important for anyone starting in a career. Some mentors don't even realize that they are mentors. There are people in my profession whose career I looked at and certainly tried to model certain behaviors and principles. The first two that come to mind in this regard are the late Justice Ruth Bader Ginsburg, who has always been such a role model and inspiration for young female attorneys and judges. Retired Judge Judith Chirlin, from Los Angeles County, was someone I could look to as a shining example of being a judge. She started a program called "So You Want to Be a Judge" that was an excellent resource for me in understanding what being a judge means.

As to mentors to whom I could go and seek advice, I had several. On our bench here in SLO, I had the late Judge Christopher Money, Retired Judges Michael Duffy, Barry LaBarbera and Teresa Estrada-Mullaney. Each of these Judges was helpful, inspirational and supportive. From each of them I learned different aspects of being a judge and I learned the many different approaches to judging. I also had two great mentors from other counties. Retired Justice Tom Hollenhorst and Retired Judge Julie Conger have been instrumental in guiding me throughout my career. They got me involved in teaching, in ethics, and they were always available to me for any question or advice.

*Continued on page 12*



## Adieu, Judge Harman continued

### General Background

**Where did you grow up? What did you study as an undergraduate at the University of West Los Angeles?**

I grew up in Indianapolis, Indiana, and ultimately in Simi Valley, California. At the University of West Los Angeles, I studied Paralegal Studies after receiving an AA in Philosophy and AA in English and an AS in Administration of Justice at Moorpark College. At UWLA, I received my bachelor's degree in Paralegal Studies with five different specialization certificates in civil, criminal, and wills and trusts.

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

**While at the Southwestern Law School what did you think you might want to do after law school?**

I was always fascinated with the law. I worked in a law firm as a paralegal for six years. All through college and law school I worked full time and went to school at night. I always loved the courtroom and knew that I wanted to be in the courtroom trying cases. At my civil firm, it would take years before I would have been in the courtroom trying a case, so I decided that I would be a deputy district attorney. I had offers from a number of law firms and District Attorney offices and decided that in Riverside I would get the most experience in the courtroom.

**How did being a felony prosecutor prepare you for your work as a judge?**

I was fortunate to have worked for three District Attorneys that believed in justice first—Grover Trask in Riverside, Barry LaBarbera and Gerry Shea in SLO. During my years in these offices, I tried every type of case you could try and a very large number of cases. I believed in full disclosure to the defense and truly believed my job was to accomplish justice and not just see how many people I could convict. The idea of seeking the truth in every case certainly prepares you to act as a neutral, as a judge. The trial work, of course, prepares you for courtroom procedure, decorum and organization.

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

I had a number of judges and attorneys from both Riverside and SLO that approached me about applying for the bench. I discussed taking that next step with those judges and attorneys that I was closest to and decided that it was the right time for me to seek the position.

**What court did you first preside over and for how long? Where did you find yourself next? What court did you most recently preside over and for how long?**

I first presided over a combined criminal calendar for about eight years. I then went to Civil for three years.

During this time I also handled Conservatorships and Guardianships and then had the Friday Adoptions calendar. I really enjoyed this change in case type, and it was a pleasure to work with the civil attorneys and court attorneys.

I then returned to Criminal, however, this is when I became Presiding Judge (PJ) and decided that I wanted to create an Early Disposition court. Drawing from handling settlement conferences in civil and attending a mediation

seminar at Pepperdine, I thought we could bring some of these same principles of justice to the criminal courts. Working with Judge Jacquelyn Duffy and our justice partners, we created this new court over which I presided for all but one year.

**What did you enjoy about the different teaching and committee roles that you partook in over the years?**

Again, the relationships that were developed. I taught Ethics for about 16 years in the Qualifying Ethics program that has three-year cycles for all of the judges statewide. For about the same length of time, I also taught the New Judge Orientation one-week program that every new judge is required to take. During this time, I met judges statewide who became friends, and also individuals to whom I could turn to see how things are accomplished in the various counties.

As PJ and in my committee work, I learned a lot about the statewide system and different ways to administer justice. I was a member of the CJA Ethics Committee and the ACJ Ethics Committee and developed wonderful friendships and gained a deeper understanding of the challenges that judges face daily during their careers. The ability to assist judges as they navigated difficult issues was very rewarding.

**How was it to adjust to the bench during the pandemic? What positive changes, if any, might you have witnessed since that time?**

The pandemic created an interesting and challenging time. Our bench was blessed during this time to have an absolutely wonderful PJ in Judge Jacquelyn Duffy. I can't think of anyone who could have done the job as



efficiently and as expeditiously. She made our adjustment as close to effortless as possible. She garnered cooperation from the jail, the state hospitals and the attorneys in finding solutions to keep the wheels of justice rolling.

I talked to judges all around the state as to what was happening in their courts. Our court was one of a very few that kept the doors open throughout the changing social distancing requirements, that kept trials going and somehow assuaged the concerns of the staff and the judges. She got emergency orders in place through the chief justice and continually showed flexibility in how each judge conducted their courtrooms, while keeping it safe for staff, litigants, jurors and the judges.

I think that the most positive change from the pandemic response has been the realization that there are certain procedures that are more efficient when participants are able to appear remotely. It saves time and money for some people coming before the court. That is not to say that it doesn't also have its challenges, but it does have some advantages for some cases.

#### **What additional challenges for our court, if any, do you see ahead?**

The biggest challenge will always be time, money and resources in all aspects of the court operations.

#### **Retirement**

#### **What is next? What are your plans for retirement? Any hobbies that you wish to take to the next level?**

Next, as many know, is a move to France! I am leaving the State of California and moving to the State

of Washington and to France. I don't plan to sit as an assigned judge, as I truly plan to retire.

I am starting the next chapter of my life doing things that I have not been able to do. As a resident of France, I plan on embracing the French lifestyle. I intend to take patisserie classes for fun, become a *flâneur* and explore the architecture, the parks, the restaurants and cafés. I want to learn more about French history and art. I want to just sit at a café or in a park and read a book and people watch. I will continue my study of the French language in an effort to attain fluency. I also hope to take some philosophy and other courses at the Sorbonne. Paris has become a city where cycling is encouraged, so that will be nice for me as well.

I hope to travel to many other countries from my home in Paris. There is so much to explore and learn from other cultures, and I look forward to doing just that.

#### **Anything else you wish to share with our readers?**

I leave knowing that the SLO Court has an amazing group of judges and will continue to serve the community well. The SLO Bar has a great group of attorneys and, as it grows, I wish for them camaraderie and civility among one another and in the courts. I hope those with experience continue to mentor those who are new.

It has been a pleasure being a part of and serving this community. From every person I have encountered I have learned something, and my life has been enriched in some way because of those encounters. I know that I will see some of you in the future in another part of the world. Thank you for being a part of my journey! ■

*Page 12 – Parisian patisserie. Via public domain.*



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August 1, 2022

**"Our lives begin to end the day we become silent about things that matter."**

*—Martin Luther King Jr.*

Remaining silent oftentimes feels like an easier choice than the option of raising our voices. There have been times in history where people have remained silent in the face of grave injustice. As lawyers we have developed the tools to amplify our voices and to amplify the voices of others. After considerable and thoughtful debate, and while the San Luis Obispo County Bar Association (SLOCBA) Board of Directors acknowledges the diversity of our membership and that some of our members will not agree with our statement, this Board\* by majority vote has voted to make the following statement regarding the recent rulings of the United States Supreme Court in *Dobbs v. Jackson Women's Health*.

We, the San Luis Obispo County Bar Association Board of Directors, join with the sentiments of several local and national bar associations to make a public statement regarding the United States Supreme Court's June 24, 2022, ruling in *Dobbs v. Jackson Women's Health*.

Specifically, we join with the Board of the Women's Lawyers Association of San Luis Obispo County's statement, as follows:

*"As lawyers, we cannot reconcile the decision with Supreme Court jurisprudence and the principle of stare decisis. As women, we despair over the disregard for the centrality of reproductive choice to freedom and equality, and for the women, children, and all people who will suffer in accordance...Dobbs diminishes the freedom and equality of women, disproportionately impacts the freedom and equality of people of color and those living in poverty and threatens fundamental tenets of life in America based on privacy. The decision is antithetical to the advancement of women, a purpose to which we remain steadfastly committed...."*

As lawyers, we are responsible for improving the quality of justice. Therefore, when presented with judicial decisions that place rights once considered fundamental under our Constitution into the hands of individual states, we must question the analysis and basis for those decisions, even when they come from our highest court. Doing so helps to improve our judicial system and enhance the quality of justice for all impacted.

Finally, we, collectively and individually, take this opportunity to reaffirm our commitment to justice and equality for all people. We seek to promote equitable policy and systems that support the same. We do not tolerate any form of oppression through discrimination or otherwise.

Among our individual board members, we are taking action that includes donating money to voter registration efforts and advocacy groups and by sharing our perspectives through writing articles on this topic. We encourage you to consider taking action too.

Please direct any questions to the SLOCBA President, Kara Stein-Conaway.

Respectfully,

Kara Stein-Conaway  
President of The San Luis Obispo County Bar Association  
[slobar@slobar.org](mailto:slobar@slobar.org)

*\*San Luis Obispo County Bar Association Board of Directors who are judicial officers or who are currently seeking judicial appointment, Judge Matthew Guerrero, Judge-elect Erin Childs, Melissa Chabra and Gregory Gillett, recused themselves and abstained from this vote pursuant to the Code of Judicial Ethics.*

# The Historic Constitutional Construction: Liberty and Life for Men But Not for Women

by Tara Jacobi

## Dear Justice Alito:

"Deeply rooted in history," is the phrase I continuously read when reading your opinion on behalf of the U.S. Supreme Court's majority in *Dobbs v. Jackson Women's Health Organization*, No. 19-1392, 597 U.S. \_\_\_\_ (2022). It reads:

"These attempts to justify abortion through appeals to a broader right to autonomy and to define one's 'concept of existence' prove too much. *Casey*, 505 U. S., at 851. Those criteria, at a high level of generality, could license fundamental rights to illicit drug use, prostitution, and the like. See *Compassion in Dying v. Washington*, 85 F. 3d 1440, 1444 (CA9 1996) (O'Scannlain, J., dissenting from denial of rehearing en banc). None of these rights has any claim to being deeply rooted in history. *Id.*, at 1440, 1445."

Justices Breyer, Kagan and Sotomayor in their dissent wrote:

"The *Roe* Court knew it was treading on difficult and disputed ground. It understood that different people's 'experiences,' 'values,' and 'religious training' and beliefs led to 'opposing views' about abortion. 410 U. S., at 116. But by a 7-to-2 vote, the Court held that in the earlier stages of pregnancy, that contested and contestable choice must belong to a woman, in consultation with her family and doctor. The Court explained that a long line of precedents, 'founded in the Fourteenth Amendment's concept of personal liberty,' protected individual decision making related to 'marriage, procreation, contraception, family relationships, and child rearing and education.' *Id.*, at 152-153 (citations omitted). For the same reasons, the Court held, the Consti-

tution must protect 'a woman's decision whether or not to terminate her pregnancy.' *Id.*, at 153."

A right to autonomy. A right to life. A right to liberty. "Prove too much," ...it is too much.

Is it?

Is it too much for women to have their life, their liberty and their right to privacy? Is it too much for women to have the right to make decisions related to their health, their welfare, their life, their bodies, the health of their bodies, their liberty?

No woman wants to find herself in the position of choosing between putting her life at risk and terminating a pregnancy. Men won't be faced with this choice. Biologically they can't. They will never be faced with this choice of either risking their lives or terminating a pregnancy. Only women can biologically be faced with this choice. And not all women will be faced with a decision involving risking their health or their lives. Yet, some will. I was.

While pregnant over a decade ago, I learned the congenial heart condition I had at birth was more serious than I could have ever imagined. As a child when traveling to different pediatric cardiologists, my parents used to tell me I had a heart murmur. My mother was a nurse, and I felt very secure with her guidance in conversations with specialists. Yet, the medical standard of care at the time, in the 1970s, was for my parents to wait and see. Not to go ahead and perform open-heart surgery on a child because the safer catheter procedure had not yet been invented. Fast forward to the future, 40 years later and, well, I learned I have an Atrial Septal Defect (ASD),

in layman's words, a hole in my heart. And with this hole that existed for four decades, my heart was exhausted. It was grossly enlarged. At 40, I was at risk for heart failure and stroke. Yet, I was pregnant.

Prior to knowing about having the ASD, I had also come to know myself in those years of trying to become a parent, with another medical condition, polycystic ovary syndrome (PSO), rendering me infertile. To get pregnant I had to go through In Vitro Fertilization (IVF) in order to become a mother. IVF is not an easy task, medically or financially. My doctors, both my cardiologist and obstetrician, consulting with my fertility doctor, informed me giving birth should not be life threatening, but after doing so, I needed to have the catheter procedure to insert a surgical disc or patch to plug the hole in my heart because I was at risk for heart failure and stroke.

My son was born. As I like to tell him, he saved my life. I might never have learned about my heart condition worsening from birth because I wasn't paying attention to the few symptoms an ASD can present with. It wasn't until I was pregnant that a nurse suggested I have the more modern electrocardiogram to learn more specifics about my heart condition. My obstetrician, was beside herself. She called several times to check the results of the electrocardiogram. She did not believe the results to be accurate, as she knew me to be an avid runner, not someone who is lazy with or without valid reason about exercise. But I pushed myself without listening to my body without listening to the signs. I ignored them.

Before going for the catheter procedure in San Francisco, while nursing my son, I learned what I thought was impossible. Through all of the years working with a fertility specialist to solve that which could not happen naturally, well, it could happen naturally. I was pregnant again—pregnant without IVF. Pregnant with my compromised heart, which had just given birth—not an easy exercise regimen. During the birthing process heart rates are elevated for a prolonged period of time, risking arrhythmia for someone like me. Could I ask this of my physical self yet again? Could I push my compromised body to give birth?

After painful and thoughtful consideration, I knew I would be asking “too much” of my body, to give birth, yet again, with my compromised heart, with the state of my health. With reluctance but with reason, I terminated the pregnancy. With hope, I gave my son the mother he should have in his life.

Should that very private health decision be made by this Court? Should that very private health decision be made by state legislators? Should that very private health decision be made by the federal government? Should that very private health decision—about *my* health—be made by my doctors alone, on my behalf? Should that very private health decision be made by my spouse? Who is to decide what is and what is not life threatening enough for me to risk my life? ...Not me.

Not me? Not me? Not me?  
...Not me, a woman.

Wait, I digress. I digressed to a different period in time, or did I?

I ask you: Who is to decide what the constitution says of my fate?

Yesterday, women in these circumstances I describe, which I lived, relied upon the right of privacy enumerated in *Griswold v. Connecticut* 381 U.S. 479 (1965), which evolved to a constitutional right to terminate a pregnancy as stated in *Roe v. Wade*, 410 U.S. 113 (1973). Later, in the 1990s, the Court stated again in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) that *Roe* without a doubt established this right to privacy to terminate a pregnancy. In the recognized line of privacy cases, yes, there is a recognized line of privacy cases, which includes such cases as *Lawrence v. Texas*, 539 U.S. 558 (2003), when the Court affirmed again the right to privacy, even though it is not specifically stated in the constitution.



And again, in 2016, in *Whole Woman's Health v. Hellerstedt*, 579 U.S. 582 (2016), the Court ruled that a state cannot place restrictions of abortion services creating an undue burden, the standard employed by *Casey*, for women seeking abortion services.<sup>1</sup> Yesterday, we had these constitutional rights as women. All of us in our country did, from 1973 to the present, we did. Today, we don't.

The first case discussed in constitutional law in American law schools is *Marbury v. Madison*, 5 U.S. 137 (1803). It established this Court's power of judicial review to interpret the U.S. Constitution. Depending upon which constitutional scholar or

institution you consult, there are a number of ways judicial review works. The National Constitutional Center tells us there are seven interpretations: historical interpretation, textual interpretation, structural interpretation, doctrinal interpretation applying precedents, prudential interpretation, traditional interpretation and moral interpretation.<sup>2</sup>

But judicial review, judicial construction, judicial interpretation of the document, the U.S. Constitution, which according to the The National Constitutional Center was drafted in 1787, exists.

Justice Alito continues:

“A right to abortion cannot be justified by a purported analogy to the rights recognized in those other

[privacy] cases or by “appeals to a broader right to autonomy....”

It is hard to see how we could be clearer. Moreover, even putting aside that these cases are distinguishable, there is a further point that the dissent ignores: Each precedent is subject to its own *stare decisis* analysis, and the factors

that our doctrine instructs us to consider like reliance and workability are different for these cases than for our abortion jurisprudence.

“These cases are distinguishable,” Alito writes. Why? Why are they distinguishable from the line of privacy cases? Because they apply to the unborn or because they apply to women's right to autonomy? Or is it because this Court, or state legislatures, or the federal government has the autonomy, the power, to balance the interests of the unborn and a woman's body. Not women.

And what about reliance?

*Continued on page 18*



## Historic Constitutional Construction continued

Justice Alito continues:

"When a concrete reliance interest is asserted, courts are equipped to evaluate the claim, but assessing the novel and intangible form of reliance endorsed by the *Casey* plurality is another matter. That form of reliance depends on an empirical question that is hard for anyone—and in particular, for a court—to assess, namely, the effect of the abortion right on society and in particular on the lives of women."

I guess assessing women's concrete reliance on a right to privacy, autonomy, life and liberty is—too much.

In writing commentary for the *Atlantic*, Adam Serwer's "*Dobbs* Is No *Brown v. Board of Education*,"<sup>3</sup> states the following:

"The fact that the strongest 'originalist' case for *Brown* relies on a legislative debate that occurred after the 14th Amendment was adopted is ironic, because to accept it means accepting that the amendment's framers understood the concept of equal protection as an evolving one, not meant to remain frozen in a time when integrated schools and interracial marriage were deeply unpopular among white men, who were then the overwhelming majority of both voters and legislators. Those framers later came to understand what *Plessy* and Douglass understood from the start: that, as the attorneys in *Obergefell* argued, 'the abiding purpose of the 14th Amendment is to preclude relegating classes of persons to second tier status,' and that this purpose demands an examination of society's present and not just its past. What this means is that the majority that signed on to the opinion in *Dobbs* could not have reached the *Brown* verdict by Alito's own acknowledged method of constitutional interpretation, his jab at the dissenters notwithstanding."

Serwer concludes as the Court in *Brown* did, "The concept of equal protection is an evolving one," and he calls out the hypocrisy of the overly zealous historian or originalist constructionist of the Constitution in their steadfast, absolute literal interpretation knowing that, "*Dobbs* could not have reached the *Brown* verdict by Alito's own acknowledged method of constitutional interpretation." In essence, *Brown* required evolving equal protection, but *Dobbs* requires digressing, not affording equal protection to all, not affording women equal protection to the right to privacy in making decisions regarding their life and their liberty pertaining to contraception, marriage and child rearing.

Serwer continues. "Interracial marriage and integrated schools and businesses of public accommodation were not 'deeply rooted' in American history and tradition, nor are they explicitly mentioned in the 14th Amendment. Indeed, the amendment itself was meant to end the deeply rooted tradition of denying civic and political rights to American citizens, and help create a *new birth of freedom* in which the promises of liberty were not confined to a chosen few."

Not until the 19th Amendment in 1920, granting women the right to vote, were women even able to fully participate as citizens taking part in our system of voting and advocating for or against certain legislation. In 1866 when the 14th Amendment was enacted to extend rights to formerly enslaved people, women were not even considered, yet.

According to this Court, however, women are expected to live with this limitation of the 1866 version of the 14th Amendment, excluding them because the timing of their time to obtain 14th Amendment rights and protections is off, not deeply rooted

enough, not deeply rooted in history enough.

Serwer concludes, "In *Dobbs*, Alito and his defenders want to believe he was writing this generation's *Brown*. But the decision whose logic it mirrors is *Plessy*."

And what horrid logic now is upon women in digressing from *Roe*?

Adria Bendix, for NBC News, writes the following of the predicament in "How life threatening must a pregnancy be to end it legally?"<sup>4</sup>

"Many doctors now face a similar predicament. Most abortion bans that have gone into effect since Friday or will become law soon make exceptions for life-threatening situations that arise in pregnancy. But there's no clear legal definition of which conditions qualify for those exceptions, or how severe they have to be for a doctor to perform an abortion free of liability.

"What does the risk of death have to be, and how imminent must it be?" Lisa Harris, a professor of reproductive health at the University of Michigan, wrote in *The New England Journal of Medicine* recently. 'Might abortion be permissible in a patient with pulmonary hypertension, for whom we cite a 30-to-50 percent chance of dying with ongoing pregnancy? Or must it be 100 percent?'"

This is where we've gone. This is where women's health care now sits. And this is where it falls. Without clear guidelines or legislation—or potentially even with guidelines or legislation—doctors, those who are both confused and those not confused, or those with fear or without fear of liability, will make medical decisions prevailing over women's health and sometimes their lives. Not women.

Bendix continues. "'Often the rule is she has to be at imminent risk of dying,' said Priscilla Smith,

director of the Program for the Study of Reproductive Justice at Yale Law School. 'What that means is you're putting people at risk of dying right then, rather than this pregnancy endangers her life if it goes forward.'"

But there are many circumstances in which it is not clear whether a patient is close to death.

"It's not like a switch that goes off or on that says, 'OK, this person is bleeding a lot, but not enough to kill them,' and then all of a sudden, there is bleeding enough to kill them," Harris said. "It's a continuum, so even how someone knows where a person is in that process is really tricky."

Tricky. Yes, indeed. In balancing the life of a woman and the life of the unborn, who decides the health risks a woman should or should not take? As this Court has told us, certainly not women.

Women are not afforded a right

to privacy, a right to autonomy as to their health and their medical decisions as they are in other countries. "With sorrow," we clearly hear only men, not women, are afforded the Constitutional protections of the 14th Amendment.

On behalf of women faced with the horrid decision to either risk their health, and sometimes their lives in childbirth, or terminate their pregnancy, and those women deciding in favor of preserving their lives, in hopes of continuing to mother children at home, the Court should pause before turning a blind eye to women's fundamental constitutional right to privacy, autonomy, life and liberty, deeply rooted in decades of history in this Court's prior rulings—for the lives of women, the lives of women that will now be lost.

"With sorrow," I dissent. ■

## Footnotes

<sup>1</sup> Case law retrieved from Cornell Law School's Legal Information Institute at: [https://www.law.cornell.edu/wex/griswold\\_v\\_connecticut\\_\(1965\)](https://www.law.cornell.edu/wex/griswold_v_connecticut_(1965)).

<sup>2</sup> The National Constitutional Center, retrieved on July 13, 2022 at: [https://constitutioncenter.org/media/constfiles/Constitutional\\_Conversations\\_and\\_Civil\\_Dialogue\\_Thinking\\_Sheet.pdf](https://constitutioncenter.org/media/constfiles/Constitutional_Conversations_and_Civil_Dialogue_Thinking_Sheet.pdf). Some scholars use different terms like originalism or pragmatism to describe constitutional construction or interpretation.

<sup>3</sup> Adam Serwer, "Dobbs Is No *Brown v. Board of Education*," *The Atlantic Magazine* (July 8, 2022) retrieved online on July 12, 2022 at: <https://www.theatlantic.com/ideas/archive/2022/07/conservative-justices-alito-hypocrisy-dobbs-plessy-ferguson-brown-board-education/661505>.

<sup>4</sup> Adria Bendix for NBC News in *How life threatening must a pregnancy be to end it legally?* retrieved on July 12, 2022 at: <https://www.nbcnews.com/health/health-news/abortion-ban-exceptions-life-threatening-pregnancy-rcna.36026>.

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# Recognizing the 50th Anniversary of Title IX

With June McIvor, President and CEO of Tolosa Winery,  
and the Executive Team at Lumina Alliance

by Maren B. Hufton

Soccer star and civil rights advocate Megan Rapinoe recently stated in an interview with Terry Gross, of NPR's "Fresh Air," that when she was six years old, she and her twin sister joined a boys' soccer team because no girls' team yet existed.<sup>1</sup>

This summer marked the 50th anniversary of Title IX of the Education Amendments of 1972. Title IX is a civil rights law prohibiting discrimination based on sex in all programs or activities in all federally funded educational institutions, including universities and K-12 schools. Title IX is credited with the tremendous progress made toward equitable sports participation for girls and women, but it means much more.

The original 37-word statute reads: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

For many, the law has removed tremendous barriers based on sex in education. Indeed, some say Title IX is the most important law passed by Congress for women and girls since 1920 when women obtained the right to vote. Today, Title IX addresses not only sports equity but also access to education free from sex- and gender-based discrimination, including sexual harassment, domestic violence, sexual assault, stalking and dating violence.

At Cal Poly, I serve as the campus Title IX Coordinator. I talk about Title IX daily with students, employees, support persons and community members. As a woman attorney, I also serve as the President of the Woman Lawyers Association for San Luis Obispo, which, like me, celebrated a 40th birthday last year. During this anniversary year that delivered both the historic confirmation of Justice Jackson to the Supreme Court of the United States and the decision in *Dobbs v. Jackson Women's Health Organization*, Title IX and women's equity feels both deeply personal and more important than ever.

Title IX followed the Civil Rights Acts of 1964. Initially, the Civil Rights Acts only banned discrimination on the basis of race, color, religion or national origin. An amendment was added to include sex as a protected status, but it limited protection to employment. Women—of every race, color and religion—had no legal protection against discrimination in schools and universities. Academic life was very different for women and girls before the enactment of Title IX.

Barbara Winslow, an American historian, wrote, "Young women were not admitted into many colleges and universities, athletic scholarships for women were rare, and math and science was a realm reserved for boys. Girls square danced instead of playing sports, studied home economics instead of training for 'male-oriented' (read: higher-paying) trades. Girls could become teachers and nurses, but not doctors or principals; women rarely were awarded tenure and even more rarely appointed college

presidents. There was no such thing as sexual harassment because 'boys will be boys,' after all, and if a student got pregnant, her formal education ended. Graduate professional schools openly discriminated against women."<sup>2</sup>

In the following years, universities focused on removing the barriers that kept women from fulfilling their dreams of higher education. And 10 years after Title IX became law, women earned more bachelor's degrees than men for the first time in United States history.<sup>3</sup>

The President and Chief Executive Officer of Tolosa Winery June McIvor witnessed firsthand the impact of Title IX both on her own life and the lives of women and girls she has known. I asked the local attorney and businesswoman about her memories of Title IX.

"There aren't too many pieces of legislation of which I can say exactly where I was when I first learned about it (most were probably on the University of Virginia campus somewhere!). But I can picture exactly where I was when I first learned about Title IX. I was in the gymnasium of Saxe Middle School in New Canaan, Connecticut, in 1977, telling my P.E. teacher how excited I was, as someone who really enjoyed the coed intramural soccer program at Saxe, to play soccer at the high school."

McIvor recalled that her P.E. teacher looked at her in surprise and said, "There is no girls' soccer team at the high school!" However, after a pause and a look at June's stricken face, McIvor's teacher added, "But I can tell you how to get one."



The teacher proceeded to tell McIvor about the then five-year-old Title IX. This conversation launched McIvor on a trajectory that would shape the course of her life and career.

"I don't remember the numbers of sports team opportunities for girls compared with those for boys at New Canaan High School at that time, but the imbalance was pretty stark. My four-year quest to establish a varsity soccer team opened my eyes to the gender discrimination that was both systemic and personal. It also presented me with opportunities for personal growth at every turn.

"I rallied a small group of friends, and we started a petition to add a girls' soccer team and presented it to the school principal, who told us his hands were tied by the school board's budget. We started attending school board meetings, screwing up my courage to not only speak up at the meetings, but, at the age of 15, to also call board members at their homes in the evenings to plead our case. I wrote letters to the editor of the local newspaper and my Congressman and Senator and attended town council meetings. Four of us tried out for the boys' JV team, even though the coach had already said there was no way he would allow girls on his team. Finally, we talked the boys' varsity coach into coaching a girls' club team in the spring, only to be dumbfounded that he would not allow us to play on the one soccer field for the only fall club game we managed to arrange because his boys couldn't spare one day of practice on the field."

In the fall seasons, McIvor or a local woman volunteer coached the team. McIvor remarked that the one thing she and her teammates never did was hire an attorney or threaten legal action.

"It never occurred to us, and no one suggested it, although all of our arguments were based on the existence of Title IX, which said we were entitled to a team."



*On July 10, 1999, the U.S. women's soccer team secured a win for the ages at the Women's World Cup at the Rose Bowl. Before a sellout crowd of 90,185—the largest ever to watch a women's-only event—the U.S. posted a 5-4 shootout victory over China. Brandi Chastain scored the winning penalty kick, tore off her jersey and exulted in the moment. Her pose became "an enduring symbol of female strength, skill and triumph." The win, commemorated on its 20th anniversary by this statue, "helped change the paradigm for female sports and is among the great athletic moments in our nation's history."*

The perseverance of McIvor and her teammates paid off. At the school board meeting in the spring of McIvor's junior year, the school board approved \$1,200 for a girls' varsity soccer team, enough to pay for a coach and transportation to games.

"We wore old jerseys from the boys' teams. After the vote, we quietly left the ongoing meeting, but I am sure our whoops of joy reverberated through the hallways as we left the building."

McIvor's Title IX journey culminated with her election as a co-captain of the first-ever girls' varsity soccer team at New Canaan High School, the scoring of the first goal in team history, and when injuries to both McIvor and a couple of other players put her in goal, the setting of a school record for shutouts. The record stood for five years, at which time McIvor had become the coach for the then-new girls' junior varsity team.

McIvor built on her experience as a high school soccer player and coach when she served on the Board

of Trustees of the Women's Sports Federation, a national organization dedicated to promoting opportunities for girls and women in sports.

"I wish I could say that Title IX quickly broke down the barriers to girls' equal opportunities in school sports, but that was definitely not the case. On the board of trustees, I saw how far we still had to go, with girls' programs being consistently underfunded compared with the boys' programs, with drastically inferior practice and game facilities, equipment, coaching and more, sometimes truly dreadful conditions. Unfortunately, these discrepancies persist today."

In 1999, McIvor served as Chief Operating Officer of the 1999 Women's World Cup soccer tournament and bore witness to some of the immense achievements in sports wrought by Title IX.

"I knew that our ability to have sell-out crowds for women's soccer at venues like Giants Stadium and

*Continued on page 22*

## L for Title IX continued

Soldier Field was surely a testament to how far Title IX had propelled women's sports. As I watched the U.S. team lift the World Cup trophy in front of more than 90,000 spectators at the Rose Bowl, there was no doubt that the players on that team were the beneficiaries of Title IX.

"The impact of this U.S. legislation has also gone well beyond our borders. The dominance of the U.S. women's soccer team in the global game has led other countries to boost their own programs, from the grassroots to the elite level, to the point that there are now robust professional leagues not only in the United States but also in France, England, Spain and Germany, among others."

Of course, the increase in college attendance and sports participation of women and girls did not mean the end of sex- and gender-based discrimination in education.

During my childhood in the 1980s, in connection with the work done by attorneys like the iconic legal scholar Catherine McKinnon (a professor at the University of Michigan Law School—Go Blue!—while I was a student), courts established that sexual harassment created a hostile learning and working environment that was discriminatory under Title IX. As a result, schools and universities created procedures to address sexual harassment on campus. But broad public awareness of Title IX continued to focus on girls and women in sports.

The new century expanded awareness of the broader anti-discrimination and anti-harassment application of Title IX. Perhaps most significantly, in 2011 President Obama's Department of Education released what has become known as the "Dear Colleague Letter."<sup>4</sup> It put the onus on universities to end sex discrimination and sexual harassment on campuses or risk losing federal funding. And sex discrimination and sexual harassment included sexual violence.

While I was a young lawyer in Newport Beach, universities across the country were grappling with expectations that federally funded institutions stop, prevent and address sex discrimination and sexual harassment that included physical and sexual acts perpetrated against a person's will or where a person is incapable of giving consent. Sexual violence included rape, sexual assault, sexual battery and sexual coercion. And all of these acts of sexual violence were forms of sexual harassment covered by Title IX.

At about the same time, the Chief Executive Officer for Lumina Alliance (formerly RISE and Stand Strong), Jennifer Adams, first learned about Title IX when she took a Women's Studies course at Cal Poly when she was 30 years old. "I never played sports, so I was pretty unaware."

The Chief Communications Officer for Lumina Alliance, Jane Pomeroy stated, "I first learned about and began to understand the implications of Title IX while advocating for Title IX policy reform at UC Berkeley in 2012. At that time, campuses across the U.S. were being indicted for mishandling reports of sexual violence and harassment."

"While in grad school, I met many young women from across the U.S. whose reports of sexual misconduct to their respective Title IX offices were mishandled. I was inspired by their courage and perseverance in advocating for change," Pomeroy said.

Lumina added, "What is lesser known about Title IX is that it provides protective measures to students who have experienced sexual assault, sexual harassment, intimate partner violence and stalking."

When I joined Cal Poly in 2019 as the Director of the then Office of Equal Opportunity, I became the campus Title IX Coordinator, a federally mandated designated administrator tasked with evaluating

and responding to allegations of sex discrimination.

Today, the Civil Rights & Compliance Office (CRCO) at Cal Poly is responsible for the University's compliance with federal and state laws and regulations and CSU system policies and procedures regarding discrimination, harassment, sexual misconduct, sexual exploitation, dating violence, domestic violence, stalking, retaliation, whistleblower protection, conflict of interest and The Clery Act. In addition, the CRCO provides an impartial and neutral avenue for students, faculty, staff and other members of the University community to address concerns regarding any potential violations of CSU policies, and federal and state laws and regulations. A significant number of CRCO matters involve student parties, who may or may not have supporters and/or attorneys to assist them in navigating administrative investigations, resolutions, and sometimes hearings.

Parties to CRCO matters may elect to be accompanied by an Advisor to any meeting or interview regarding allegations. And *an Advisor may be anyone*, including a union representative from the Complainant's or Respondent's collective bargaining unit, an attorney, or, in the case of the Complainant, a Sexual Assault Victim's Advocate.

This work is difficult and benefits significantly from strong partnerships with the community, including Cal Poly Safer, the on-campus confidential survivor advocate, and Lumina Alliance. Lumina's mission is to empower those impacted by sexual and intimate partner violence.

"Our prevention and education department is working to promote understanding and the utilization of Title IX within local schools of San Luis Obispo County," said Lumina. To better serve students in need of support, the CRCO welcomes members of the community—

including counsel, law students and others with a strong ethos of care and compliance, and interest in education and equity—to join a network of volunteer community Advisors available to support student Parties. This pro bono opportunity supports the community and the university and offers valuable experience working with student parties in an administrative proceeding.

As we recognize the 50th anniversary of Title IX, it is vital to celebrate its many civil rights advancements.

“Title IX has transformed the landscape for women in education, sports, and, indirectly, the workplace. Yet, the promise of Title IX remains unfulfilled for many girls and women across our country, especially those of color or from low socioeconomic households. There is still a great deal of work to be done to achieve true

equity for girls and women,” said McIvor.

The WLASLO recognized the road ahead in a recent statement regarding the *Dobbs* decision. “The decision diminishes the freedom and equality of women, disproportionately impacts the freedom and equality of people of color and those living in poverty, and threatens fundamental tenets of life in America based on privacy. The decision is antithetical to the advancement of girls and women.”

The accomplishments of Title IX, stories from women like June McIvor, and the mission of organizations like Lumina Alliance offer inspiration to continue to strive toward an equitable world for all.

To support a Cal Poly student as a volunteer community Advisor, please contact [crco@calpoly.edu](mailto:crco@calpoly.edu). ■

## Footnotes

<sup>1</sup> <https://www.npr.org/2022/07/08/1110475932/soccer-star-megan-rapinoe-says-patriotism-means-demanding-better-of-ourselves>

<sup>2</sup> [https://faculty.uml.edu/sgallagher/The\\_Impact\\_of\\_Title\\_IX\\_-\\_GilderLehrman.pdf](https://faculty.uml.edu/sgallagher/The_Impact_of_Title_IX_-_GilderLehrman.pdf)

<sup>3</sup> <https://www.bestcolleges.com/news/analysis/2021/03/21/history-women-higher-education/>

<sup>4</sup> <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html#ftn2>

*Maren B. Hufton is the Assistant Vice President for Civil Rights & Compliance at Cal Poly and the current President of the Women Lawyers Association San Luis Obispo. Kimberly Wickstrom in the Civil Rights & Compliance Office provided valuable research and support for this article.*

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*SLO County Bar Association President Kara Stein-Conway (above right) introduces 2022 Scholarship Endowment recipient Asusena Uribe, who intends to become an immigration lawyer.*



*The 2022 San Luis Obispo County Bar Association's 2022 Summer Social was held Thursday, July 28, at Jack House & Gardens in San Luis Obispo. Truck-N-Tunes (above) provided live music.*

# SUM soc



*SLO County Bar Association Executive Director Ker Allen Hutkin, Joe Benson, Nicole Norris, Elizabeth C, Matthew Guerrero, Commissioner Erin Childs, Tara*





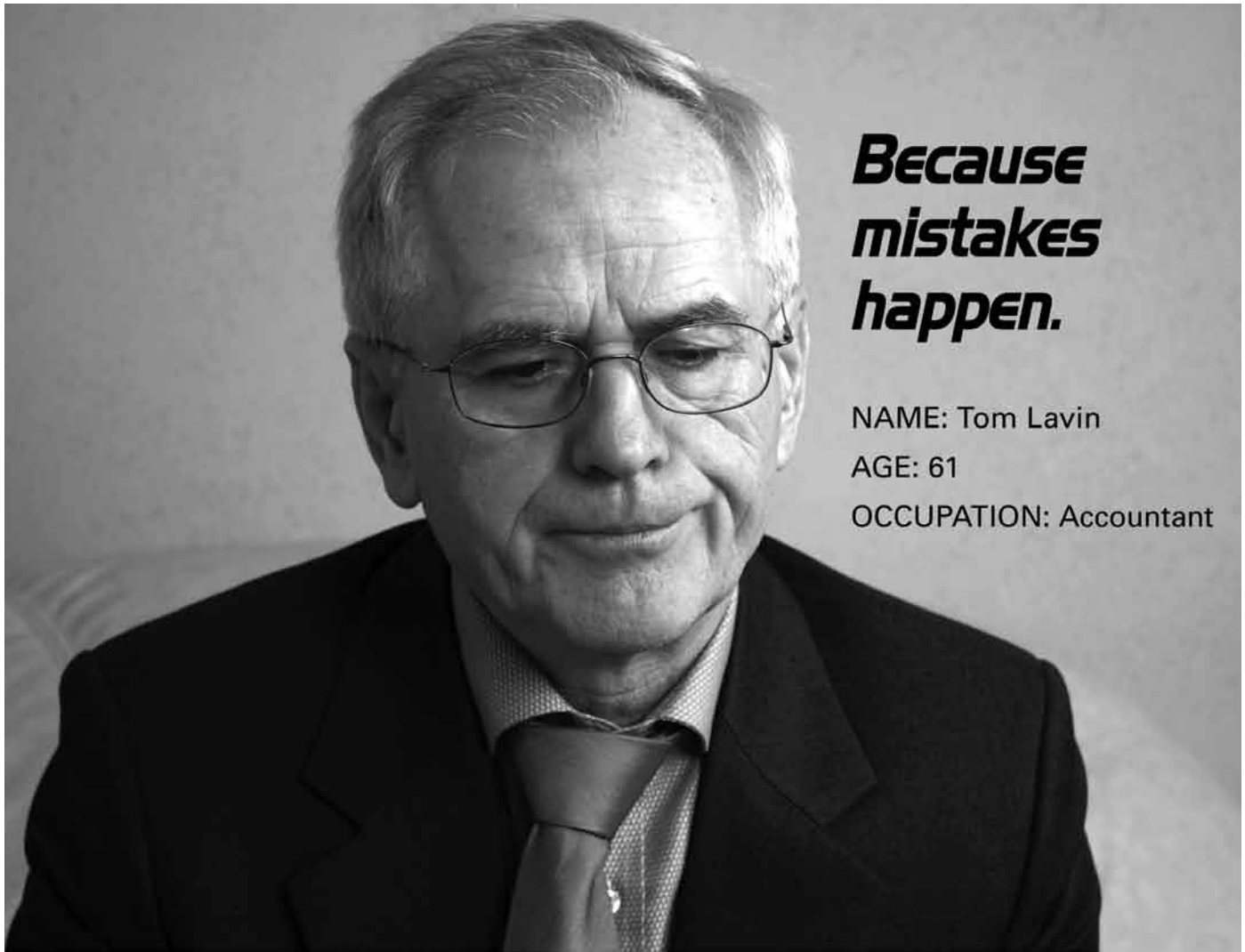
# MEMORIAL



Erin Hovarter (left) and the 2022 Board of Directors: Culley, Kara Stein-Conaway, Melissa Chabra, Judge Jacobi. Photos courtesy of Tara Jacobi.



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# Leadership: What Does It Mean to You?

by Tara Jacobi

*In the July–August Bar Bulletin, we began a conversation about leadership with our President Kara Stein-Conaway providing her insight into the topic. Our conversation continues with Presiding Judge Craig van Rooyen and Women Lawyers Association of San Luis Obispo County President Maren Hufton sharing their thoughts about leadership.*



***Judge van Rooyen, thank you for joining the conversation. What does leadership mean to you?***

I think leadership can mean different things in different contexts. In business, maybe it's motivating people and giving them the tools to maximize profits. In a political organization, maybe it's inspiring people to persuade and recruit voters or increase the size of the party. In government work, the goal always has to be serving the community. So a big part of leading a government organization is keeping your people connected to the goal of service and giving them the tools to better serve the public.

The dark side of government work is bureaucracy—when workers lose a sense of meaning in their jobs and become file pushers or, worse yet, power-wielders. Healthy government organizations put people first. As a judge, I do a better job if I'm trying to connect with the people in front of me and to carefully work through their problems than if I'm just trying to get through a calendar. (And let's face it, there are days when I feel like I'm just slogging through a calendar and I have to check myself and my motivation.) Litigants may not agree with a decision I make, but I want them to know they have been heard and I'm doing my best for them instead of just trying to get to the next file.

The same ideal motivates every member of our courthouse staff. The IT people are doing their work to give people access to justice. The clerks in and outside of the courtroom are doing their work to give people access to justice. The court reporters are doing their work to give people access to justice. The building maintenance folks are doing their work to give people access to justice. If I can give folks a sense of that shared vision and make sure they have the tools to serve, then I'm doing my job as a leader.

***Do you believe leadership involves molding individuals into a team? If so, how do you mold individuals into a team? If not, why not?***

The phrase “molding individuals” makes me nervous. More than two years into this pandemic, I think our court staff doesn't need to be molded as much as recognized and empowered. After a grueling couple of years, the people left in our court staff family are golden. They've already been through the refiner's fire. They don't need to be molded as much as protected and encouraged and reminded that we're part of a community with a common goal.

So much of our interactions have been mediated through screens during the pandemic. I think people are hungry for contact and to see each

other's faces and to feel like they're a part of a team that never quits. As we find ways to get together more, I think that sense of teamwork will re-emerge and deepen.

***What character attributes make for great leaders? What life experience might make for great leaders? And what experiences, strengths or challenges do you see useful for yourself as a leader?***

I'm no expert on leadership. I'm more inclined to be quiet and bookish. So, it's a stretch for me to hold forth on leadership attributes. If I think about people who have inspired me to keep pushing forward, they are people who believe in a goal and don't get down on themselves or their team when things get tough. (Exhibit 1 would be the outgoing PJ, Judge J. Duffy who led us through the first two years of the pandemic.)

I don't need for a leader to know everything or have all the answers. I do need a leader who will not give up hope and who will continue to find meaning in the day-to-day work of the organization and who is able to communicate that sense of purpose to me and other members of the team.

Leadership is different than being in management. Our facilities guy who took it on himself to come in early to clean the courtrooms and

*Continued on page 28*



## Leadership continued

wipe down chairs for jurors during the pandemic was leading the rest of us by reminding the team that we needed to figure out new ways to make the public feel safe and comfortable in this public space as we continued to do the work of justice. He was communicating a sense of purpose that was contagious—a contagion that we needed during that time period.

In terms of life experience, I don't think there is one pathway to leadership. In fact in this country we have traditionally defined too narrowly the pathway to leadership in a way that has marginalized many people and allowed others, who look like me, to hang on to our power. Just take a walk down the courthouse hallway with the pictures of all the county's retired judges to get a sense of how restrictive the picture of leadership has been in our community.

I came to this job the traditional way—as a white male prosecutor. Fortunately for the community, our shared sense of who belongs in leadership is being expanded and our picture of a life experience that matters and qualifies a person to be a judge is being challenged. Judge Estrada-Mullaney was a pioneer in that regard. We will soon have two more pictures of women on the wall when Judge Garrett's and Judge Harman's headshots are put up. I'm hoping to be part of a much more diverse line of faces by the time my own mug goes up.

The challenge will be to listen to new voices, to turn over power, and to allow them to impact court operations in ways that I might not have imagined because of my own particular background and life experiences.

***What approach do you continue to strive for when leading a group of individuals? What might you find the most challenging about your current experience as the Presiding Judge for our county and what might you find the most enjoyable about being in the role?***

Again, I don't think I have an "approach." I'm figuring out all this stuff on the fly. But one thing that is important if you're in leadership, I believe, is to be accountable for the organization. I feel responsible for how the court is doing overall. I feel responsible for whether we're meeting the needs of the community.

Like most courts in the state now, we have a pandemic backlog of cases that we're working through (although I think we're not in bad shape compared to many counties). I know law and motion work in civil courtrooms is backed up. We have some big trials in the criminal division that have been delayed, and it's hard to get misdemeanor cases out to trial. Our staff is stretched thin in some departments.

My job is to get people the resources they need to do their jobs well—not to place blame. In the end, if the Court is not meeting the needs of the community, the responsibility is mine. If it is healthy and serving the public, it's because we have a great CEO and because of the hard work people are doing behind their counters and computers and stenography machines.

***What leaders in history do you admire? Many leaders in history were not nice people or were deeply flawed people. Do you have any insight to share as to how one can be both?***

At the top of my list of great leaders is Nelson Mandela. I've

visited his little cell on Robben Island and seen the mattress where he slept on the ground for decades. For a man to live in those conditions and yet continue to have the sense of self and selflessness that he maintained is incredible. He led with dignity and commanded the respect of even his jailers and then somehow managed to avoid a bloody revolution when he was released. He led with his humanity out front, demanding that people relate to him as a man, not just as a symbol, and he managed to make other people feel human first—ahead of being a member of a party or racial group.

Most leaders, of course, are flawed. It helps if you're aware of your flaws. It helps even more if you can gather people around you who make up for your flaws. I'm lucky to have those people around me.

***How do you hope the next generation might learn to lead best?***

I have a 19-year-old daughter and a nine-year-old daughter. I'm looking forward to when their generation takes over. Hopefully it's not too late for them to make a difference. I think they already know they have to make changes in the way things have been done—that we're handing down to them flawed institutions. They have a sense that so much is in flux and decisions that are made now will have big effects on their futures. They will have to be adaptive and take new approaches to old problems.

If there's one attribute I could bequeath to them it would be a sense of dogged hope. It's that sense of hope, even when facing huge problems, that will give them meaning as they push forward to reform and reinvent the power structure.

*Thank you, Judge van Rooyen.*

*Maren Hufton is the President of the Women Lawyers Association of San Luis Obispo County. Maren, what does leadership mean to you?*

I think you're exactly right, Tara. Defining leadership is the easy part. Like the dictionary definition, I think of it as intentional facilitation of human experience.

Growing leadership competence, however, is a daily challenge—one I welcome—for any woman, parent and professional.

*Do you believe leadership involves molding individuals into a team? If so, how do you mold individuals into a team? If not, why not?*

That's a great question. A team can certainly result from leadership and coaching. But I believe leadership is more about shaping a team around the strengths and vulnerabilities of individuals, than it is about molding or otherwise shaping the individuals.

*What character attributes make for great leaders? What life experience might make for great leaders? And what experiences, strengths or challenges do you see useful for yourself as a leader?*

There are so many ways to be a good leader. Three characteristics I admire are authenticity, grace and perspective.

A good leader knows herself and that she doesn't know what she doesn't know. A good leader extends grace to all, including herself. And good leaders know that nothing is forever—whether good, bad or something else, entirely.

Good leaders also fail. And the best learn to fail fast. Like many women, I have high self-management and a deep fear of failure. Early in my career, however, a colleague told me that with few exceptions, there is very little that cannot be fixed (through contract or litigation). "You just amend."

I often remind myself of this, as well as the advice of a mentor that "[i]f you're going through hell, keep going." I keep a paperweight on my desk bearing these very words that help me face my fear of failure and grow from attempts. And as a manager, I believe the only real "mistake" is one about which I am not promptly informed.

*Continued on page 30*

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## Leadership continued

*What approach do you continue to strive for when leading a group of individuals? What might you find the most challenging about your current experience as Women Lawyers Association President and what might you find the most enjoyable about being in the role?*

In addition to the principles of inclusion and amplification Kara describes, I strive to practice adaptive leadership. Adaptive leaders seek to lead in complex systems, engage with interpersonal intelligence, and navigate uncertainty to drive innovation. They anticipate and identify friction, create momentum with empathy and persuasion, often patiently, and self-correct with nimbleness and agility, to deliver results. And the good ones? They make it look easy.

As the Women Lawyers Association President, the challenge and the enjoyment are one and the same: keeping up with the humble, expert and deliberate leaders who form the Board. Each member models thoughtful, inclusive and purpose-driven leadership.

*What leaders in history do you admire? Many leaders in history were not nice people or were deeply flawed people. Do you have any insight to share as to how one can be both?*

I am not sure we can ever really know another person, and we know history to be written by the winners! But I admire the bold authenticity of scientists like Jane Goodall and Sally Ride, and athletes like Billie

Jean King. I keep black and white photos in my office of Ruby Bridges on the schoolhouse steps and Kathrine Switzer running the Boston marathon. I admire the measured grace and spirit of reconciliation of Abraham Lincoln. And I appreciate very much the perspective shown by Hillary Clinton.

I'd posit that systems of power and oppression perpetuated different degrees of human flaws to produce most of history's cruelest leaders, and that only a select few were born to be psychopaths....



*Via public domain*

*How do you hope the next generation might learn to lead best?*

Generation Z is coming of age with a strong sense of self and of justice, but also with profound empathy, given the boundless inequity and access to information of today. As a mother and university administrator, I face the challenge of promoting *both* psychological safety *and* understanding of the stark realities of power.

I hope tomorrow's leaders combine their unique characteristics and opportunities to meaningfully problem-solve beyond cancel and grievance culture and through the crisis of climate change because there never before has been a better time, in the history of humankind, to be alive.

*Thank you, Maren Hufton.*

*Thank you to all three of our legal community leaders for participating in this conversation and giving us their thoughts on leadership. ■*

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# Vicarious Trauma & the Practice of Law

by Scott Taylor

Every litigator can identify “that case” that was the worst they ever saw, or the case they could never get out of their head. I just tried mine. I thought I was sufficiently jaded after 17 years as a lawyer, that I had seen everything. I was wrong. This profession has certainly taught me that when I thought I had seen everything, something will always come along to surprise me.

The case was a murder by torture case that blissfully stayed under the radar of the media, which meant the assistant district attorney and I got to try our case without the scrutiny, second-guessing or pressure of public attention.

My client was a homeless man who killed another homeless man for no discernable reason. The attack was caught on camera, and for 45 minutes, the victim was subject to punches, kicks and then strikes with landscaping rocks the size of softballs and a football. The damage inflicted by those stones was astonishing and resulted in multiple skull fractures, including a complete detachment of the face from the rest of the skull. Those photos are difficult to see, and the video is something I will never forget as long as I live.

I was fortunate enough to be working with an assistant district attorney who was incredibly professional. We were able to negotiate on the pictures to balance her interests in showing the injuries inflicted against my interest in avoiding particularly gruesome injuries that were either repetitive or not helpful to the finder of fact.

Despite this negotiation, when the judge saw the photos, he immediately started looking into whether

the County could offer services to our jurors who would be exposed to the trauma of seeing them. That is not typically a great sign for the defense on a murder by torture case. I wholeheartedly agreed that the jurors should be offered services. But it also got me thinking about the prosecutor and I who had just spent two years preparing our cases, and the impact that the case surely had on us whether or not we were prepared to admit it.

There is a general avoidance among attorneys in seeking help. There is a general stigma against seeking mental health treatment that acts as a barrier to many who need assistance from receiving it. I believe this problem, however, is even worse among attorneys because of what we do.

Speaking for myself, I don’t need help, I help other people. I am willing to bet many of my colleagues will identify with that sentiment. That stubborn pride almost killed me when I was younger. I was suicidal when I was going through some family trauma when my father was diagnosed with a malignant brain tumor, before I lost both of my parents to cancer. I didn’t know how to cope, and I didn’t have a good support system around me at the time.

I have to catch myself when I find myself acting like I can tough out anything because there is no requirement to do so, and you don’t get a prize at the end of your career for never going to therapy to help you process the traumatic experiences you have been exposed to over the years. Instead, those experiences manifest in other ways.

I learned in the military that leadership is sometimes best exemplified

by making yourself vulnerable to start a conversation. If our profession is going to change the stigma and assist attorneys struggling with the pressure and the traumatic debris we deal with regularly, it starts by acknowledging that we all share in that same experience.

Secondary trauma, or compassion fatigue, occurs when a person develops symptoms of exposure to trauma, even when that exposure is not a direct personal experience. Instead, it is a secondary reaction from witnessing the traumatic experiences of others.<sup>1</sup>

Most attorneys pride themselves on their ability to compartmentalize, separating their personal feelings from their professional objectivity. However, repeated exposure to trauma wears on everyone because attorneys are also human beings, and this normal emotional response occurs in all of us. A study in the Wisconsin Public Defenders Office found that 34 percent of their attorneys met criteria for secondary trauma and 75 percent met criteria for functional impairment, which is defined as a disruption in their personal life or family life.<sup>2</sup>

This is not unique to defense attorneys. A study of 23 Canadian prosecutors working with domestic violence and serious cases indicated that the attorneys experienced demoralization, anxiety, helplessness, exhaustion and social withdrawal.<sup>3</sup>

Judges also experience vicarious trauma, with one study finding that 63 percent of judges experience symptoms of trauma including sleep disturbances, intolerance of others, physical complaints and depression.<sup>4</sup> That explanation may come as some

*Continued on page 32*

## Vicarious Trauma continued

small solace to any attorney who has had a judge bite their head off for no apparent reason. Judges are human beings too and equally susceptible to experiencing vicarious trauma.

So, what are the consequences of all these lawyers experiencing vicarious trauma? First, is that the cumulative effect of these repeated traumas takes a toll. Most litigators I know tell stories about trials where they are working around the clock, scrambling to react to every change, preparing for every potential outcome, and weathering the chaos on behalf of their client.

On the other hand, I learned a long time ago that if I do not take care of myself, I cannot be an effective advocate for my client. If I work late into the night, perhaps I am prepared for every potential objection backed up with case law and a ready argument. However, if I am too exhausted in the courtroom to have my mind sharp enough to make a timely objection and then effectively articulate my position, I am not doing my client any favors. Striking that balance is always difficult.

Mental health is exactly the same. Every lawyer has a pile of files on their desk, a busy schedule, and free time is always at a premium. If you do not take the time to prioritize your mental health, however, you are not operating at your maximum abilities, which your client deserves. We all have an ethical duty to take care of ourselves so we can ensure that we can fulfill our ethical duties of diligence and competence for our clients.

The other major consequence is that it results in major damage in the attorney's health. The American Bar Association and the Betty Ford Center funded a study in 2015 of American lawyers and substance abuse. The study surveyed 12,825 licensed and employed attorneys over 19 states. The study found that 20.6 percent of lawyers screened positive for poten-

tially alcohol-dependent drinking problems. That number is shockingly high when compared to levels of a broad, highly educated workforce that screened at 11.8 percent. Lawyers experienced higher levels of depression, anxiety and stress as well—28 percent screened positive for depression, 19 percent for anxiety and 23 percent for stress.

Even though the surveys were anonymous and the bar associations insisted on turning off geo-locators to ensure anonymity to protect their attorneys, the attorneys skipped the drug use questions. They had no problem discussing alcohol, depression, anxiety and the other questions, but so many skipped the drug use questions that no findings could be made. That intentional omission speaks more about the problem than if they had answered the question.

It's not surprising that lawyers have higher rates of alcohol problems and poor mental health, but what is surprising is who is most affected—young lawyers. You would think that grizzled attorneys with a lifetime of trauma would score the highest on these problem areas. However, the opposite was true. Attorneys in their first 10 years of practice scored the highest rates of problematic alcohol use at 28.9 percent, with attorneys practicing for 11 to 20 years following in second at 20.6 percent. Being in the early stages of your career is strongly correlated with a high risk of developing an alcohol use disorder. Those trends were mirrored with depression, anxiety and stress as well, largely impacting younger lawyers.<sup>5</sup>

So how can we help our young lawyers, the future of our profession?

We start by recognizing and discussing the stigma surrounding seeking help to deal with the trauma that we see. We can preach individual responsibilities to young lawyers about work-life balance, stress management and healthy coping strategies, but the elephant in the room is

always going to be the pervasive fear surrounding the damage to their reputation if their colleagues learn they need to seek mental health treatment. That is the barrier to treatment, not individual responsibility. We as a legal community need to encourage an open discussion about the horrors we see, and the vicarious trauma we experience in order to protect each other and our young lawyers. If 20 to 30 percent of us are suffering from alcohol disorders and depression, it would be irresponsible of us to ignore those of us who are hurting.

I am personally grateful that my trial is over, and I can move on from dealing with those images and facts. I have a great support system now with a wonderfully supportive fiancé at home who is always ready with a ready ear and an open heart. I know that other lawyers in our community are not so fortunate in their support systems. Rather than see them become part of the statistics of the ABA study, I sincerely hope we can all be there for them. ■

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### Footnotes

<sup>1</sup> C.R. Figley, *Compassion Fatigue as Secondary Traumatic Stress Disorder: An Overview*, in *Compassion Fatigue: Coping with Secondary Stress Disorder in Those Who Treat the Traumatized*, 1-20 (Charles R. Figley, ed. 1995).

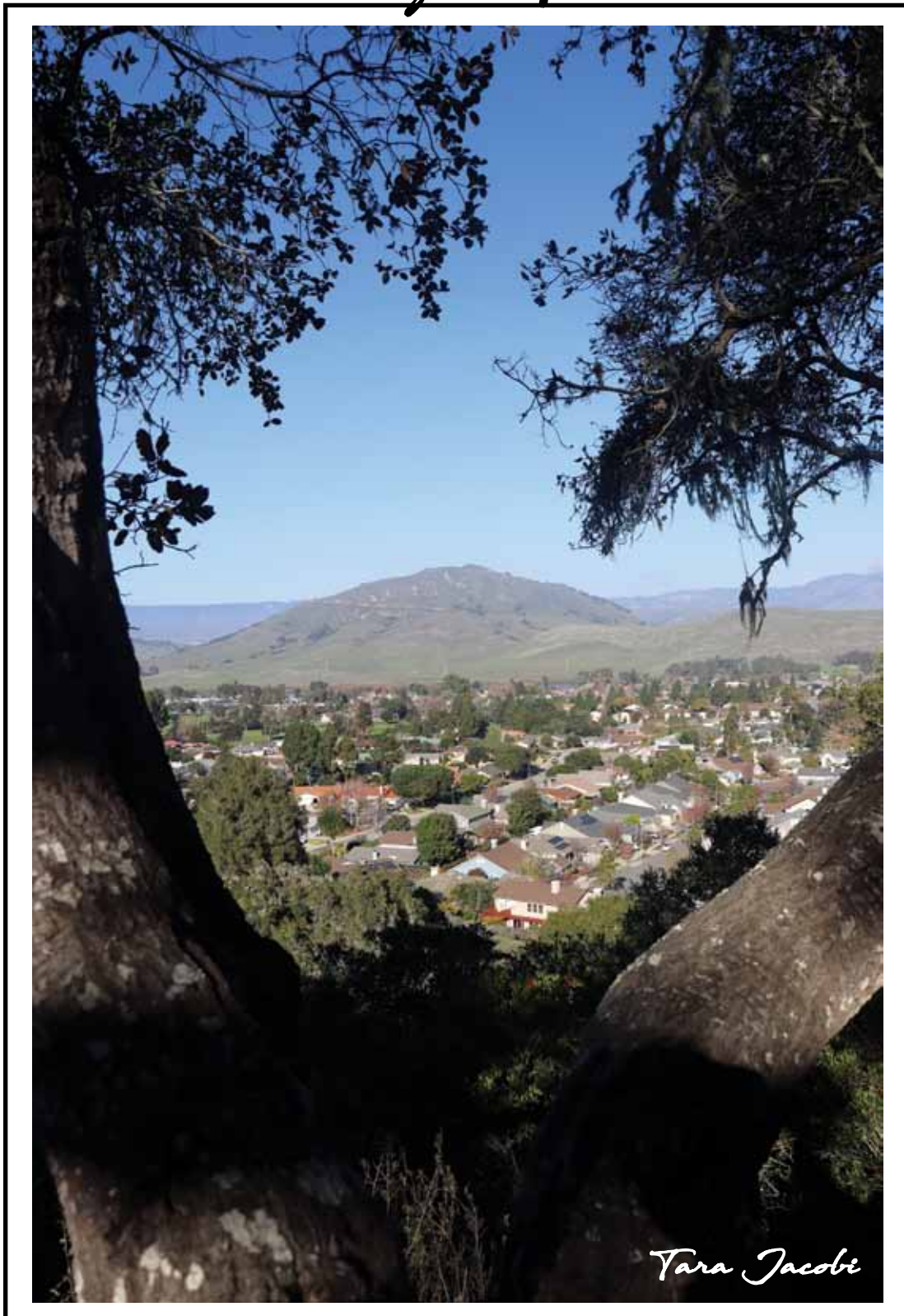
<sup>2</sup> A.P. Levin, Albert, A. Besser, D. Smith, A. Zelenski, S. Rosenkranz, Y. Neria (2011). Secondary traumatic stress in attorneys and their administrative support staff working with trauma exposed clients. *J. Nerv. Ment. Dis.* 199(12), 946-55.

<sup>3</sup> I.M. Gomme and M.P. Hall, *Prosecutors at Work: Role Overload and Strain*, 15 *J. Crim. Just.* 191-200 (1995).

<sup>4</sup> P. Jaffe, C. Crooks, B.L. Dunford-Jackson, & M. Town. *Vicarious Trauma in Judges: The personal Challenge of Dispensing Justice*, 54 *Juv. & Fam. Ct. J.* 1-9 (2003).

<sup>5</sup> P. Krill, R. Johnson, L. Albert (2015). *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, *Journal of Addiction Medicine*, Jan/Feb 2016, 46-52.

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