

SONOMA COUNTY BAR ASSOCIATION THE BAR JOURNAL

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Winter Morning at Spring Lake, Santa Rosa

Minor's Counsel: Special Issues in Custody Matters and Representing Minors

SCBA's 27th Annual Careers of Distinction Awards

Ruth Bader Ginsburg: Her Story Continued

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By Malcolm Manwell

From the Editor: *Let's Tax the Air*

In the anything goes world of California taxation, Governor Newsome suggested taxing water. To be fair, his predecessor also wanted to tax water, so let's give them both credit for their creativity.

The suggestion stems from the fact that there are a handful of water districts in California that are struggling. So, instead of using a few million of the state's \$16.5 billion surplus to fix the problem, the Governor would impose a new water tax.

That way, once the problem was solved, the Water Tax could remain to shore up a state struggling to get by on only a \$16,500,000,000.00 surplus.¹

But to generate more water runs contrary to California politics. Even though our population has more than doubled and the aquifer in the Central Valley is being depleted, our leadership has declined to develop even one more gallon of new water supply since the California Water Project of the 1960s. Therefore, the Governor's plan is dead in the water.

So, looking about for a replacement, why not tax the air?

Before we scoff at such a notion, we should consult the source of truth in our time, Google. Google states a human can survive "three to four days" without water *but only "three to four minutes" without air!*

Clearly, then, water has only a fraction of the value of air. And to think, our new Governor was about to let all that excess value get away.

Air offers many benefits. Chief of which is that everybody loves it, and it is the only truly "equal" thing humanity has shared since the dawn of time. We all breathe air, regardless of race, religion, gender, marital status or national origin.

Thus, if we tax air, we won't have to set aside part of the proceeds to make reparations to those who weren't given their fair share in the past. Also, since there is already an abundance of air in this state, we won't need to build dams to get more. That will please California's anti-water environmentalists who hate dams anyway and now will be able to launch a new campaign to make us all conserve air and breathe less. There's something here for everyone.

And unlike the income tax, California's main source of

revenue which goes up and down with the vicissitudes of the economy, we'll always have folks breathing air in California. Therefore, an air tax would be fully insulated from the type of financial crises that occurred in 2008.

Since every person breathes approximately the same amount of air, there should be no legal objection that an air tax is being applied in a discriminatory fashion. If we equally tax residents and nonresidents who visit, it won't violate the Commerce Clause.

So, there you have it. The perfect tax.

Let's encourage Governor Newsome to think outside the box. Collect an air tax from every person who lands here, collect a fee on every truck and car that passes into California, have Californians pay their fair share by, say, adding a penny on the current \$.10 bag tax at the grocery stores, or pushing the sales tax over the \$.10 limit.

Of course, we must have exemptions, e.g. for those with emphysema who breathe out of air tanks, but we can easily make up the lost revenue by taxing air that dogs, cats, horses and other domestic pets take from California.

No environmental problems. No legal discriminatory problems. No baggage from the past; something everybody loves and is not subject to the ups and downs of the economy that attends the Income tax.

We can hand out blue "Let's Make California Great Again" hats and flaunt Donald Trump in the process. There's just something for everyone with the California Air Tax. ☺

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1. To be fair to Jerry, when he left office he was able to claim, through Governmental accounting, the true surplus was about \$30 billion.

<https://www.politifact.com/california/statements/2018/dec/18/jerry-brown/does-california-have-budget-surplus-nearly-30-billion/>



By Suzanne Babb
President, SCBA

From the President: A Short Tribute

To the People in Our Lives Who Help Us Keep it Real; and to Those Who Do the Real Work of this Organization: Many Thanks.

“You did not tell me there was to be no speaking,” my father said from across the table at the Cutthroat Saloon in Markleeville where we had

stopped for a bite before hitting the road. It was true. When I invited my mom and dad to attend that hearing in Alpine County, I did not specifically say that they would not be permitted to participate. I assumed it was implied. My mistake.

For years my parents had been asking to attend a court proceeding. This seemed like a great opportunity, particularly because our client happened to be my father’s old friend from college. He had found himself in a very tight spot, after his prior Nevada-based attorneys had royally messed up. He was understandably disillusioned while also needing new counsel, immediately. As one does in these situations, we jumped in.

Alpine County is nestled between Lake Tahoe and Yosemite. It is the least populous county in California. At that time it had two Judges and a population of 1,200. That’s 600 people per Judge, if we are doing math. The opposing counsel was a local attorney, well-known to the Court. From what I could tell, he handled any kind of dispute that arose in Alpine County from DUIs to convoluted real property issues. Our case fell into this latter category.

It was a very lengthy summary judgment hearing. In the course of it, the Judge even asked me to untangle a largely case-unrelated hypothetical. He commented: “I know in the busy courtrooms in which you typically appear, there isn’t the luxury of time to dig deeply into these heady legal questions and quandaries, but we have all the time in the world here. This is the only matter on the Court’s calendar today. Let’s explore!” It felt a bit like law school, and mostly I was enjoying it. I will also add that, having recently had an opposing counsel from Los Angeles characterize Sonoma County as “cow town,” I found this Judge’s perspective on our bustling legal community rather refreshing.

The Judge’s pleasantly-enthusiastic Socratic inquiry took a sharp turn, however, when in the middle of the other attorney’s argument, my father very audibly blurted: “bullsh*t!” At that point all the air was sucked out of the room, complete silence descended, and—in what can only be described as real life slow motion—the Judge paused at great length, looked up from the papers in front of him, over the top of his glasses, and stared long and hard at my parents. At that moment, my mom was still very energetically swatting and shushing my dad.

Other than the litigants and their attorneys, my folks were the only other people in that Alpine County courtroom. When the Judge’s gaze turned from my parents over to counsel’s table where I was seated with my client, I shrugged in such a way as to convey: *I don’t know those people.* Court-watchers? Tourists? It was, after all, a classic old courthouse, both stately and quaint. One could imagine visitors to the town stepping in, wandering around, catching a bit of local justice before heading to the Cutthroat Saloon.

After what felt like an interminable silence, the Judge finally turned his attention to my opposing counsel and said, Please continue.

A few days later I received the ruling from the Court. I called my dad:

>> Me: Hey Dad.

>> Dad: Who’s this?

>> Me: Your daughter; that’s why I called you “Dad.”

>> Dad: I’m going to need more.

>> Me: Among the offspring that call you Dad, there is a boy and there is a girl. I’m the girl.

>> Dad: Oh, are you the smartass?

>> Me: Yes.

>> Dad: Got it. What’s up?

>> Me: I wanted to let you know I just got the order on Tuesday’s hearing; it’s a win!

>> Dad: See? It works every time; I scared ‘em good.

>> Me: I’m sorry, YOU won. Congratulations.

>> Dad: You can thank me later. I’m going to go tell your Mom.

Let me be clear, my father does not lack an appreciation of how things work. His career revolved around advising others about how to make things work. My parents’ careers took them many places. They lived in Laos before I was born. When I was growing up, we lived in Lebanon, Afghanistan, Jordan, Washington, D.C.; I went through high school in the Philippines. Everywhere we went, every place that we lived, it was also their job to make sure their kids learned how to handle the obstacles of life, and to challenge us, and to protect us.

So, even though my dad was not wrong, he does know that it was not OK that he blurted in open Court. It *is*, however, more than OK that he wanted to be there, that he was caught up in a moment, and that he took credit for what transpired. If we are still doing math, that adds up. That moment was a confluence of all the ways in which my father was still doing his job: obstacles, challenges, showing up, his wry sense of humor, and that protective instinct all came together.

Continued on page 11

Minor's Counsel: Special Issues in Custody Matters and Representing Minors

On September 14 and 15, 2019, the Family Law section of the Sonoma County Bar Association held the annual training for minor's counsel, titled, "Special Issues in Custody Matters and Representing Minors."

This one-and-a-half-day training satisfies California Rule of Court 5.242, by providing the minimum eight hours of annual training that attorneys need to maintain their eligibility to be appointed as counsel for a child in family law proceedings. Those attorneys who are seeking to establish their eligibility for the first time must complete a total of twelve credits before they can be appointed as minor's counsel.

Judge Ornell presented about the authority for Courts to appoint minor's counsel as well as the duties and rights that attorneys have once they are appointed.

Once an attorney is appointed as Minor's Counsel, they have a duty to present what is in their client's best interests. Attorneys need to establish and build a rapport with their client. Dene Carroll and Andrea Ponticello discussed the different stages of child development and how attorneys can communicate with their clients at different ages as well as what developmental milestones to look for.

Attorneys appointed as minor's counsel need to review all the facts of the case as well as conduct interviews with the parents, their client, and all collateral sources. They must fully investigate all issues so they can present their client's best interest to the Court. They must also know when they need to file appropriate pleadings or motions on behalf of their client. One of the difficulties for an attorney appointed as minor's counsel, is if the client expresses a desire or objective that the attorney does not believe is in their client's best interests. It is important for the attorney to balance the wishes of their client with what is actually in their client's best interest.

The Honorable Shelly Averill and Dan Chester spoke about the legal and psychological aspects of presenting the child's view to the court. They discussed that in some cases it is important for children to be aware of the process and how decisions will be made, since these decisions will undoubtedly impact their lives.

Catherine Conner wrapped up day one with demonstrating various strategies for having difficult conversations.

Day two started with Deborah Reese discussing custody and visitation issues that minor's counsel needs to be familiar with, including documents to review and interviews to conduct. Then Charlotte Creaghan joined Ms. Reese and

presented on the topics of minor's counsel being able to recognize, evaluate and understand evidence of child abuse and neglect. They covered the effects of domestic violence and child abuse on children and dealing with Child Protective Services if that agency has become involved.

Mary Kelly Persyn wrapped up the training with her discussion about high-conflict divorce/custody cases and how that toxic stress impacts children. She talked about trauma-informed lawyering as a new way to think about the attorney-client relationship and how to use this type of lawyering in various aspects of the legal process.

This annual event was attended by attorneys from all over California, many of whom don't have access to the required educational training in their counties. ¶¶¶

By Beki Berrey

Beki Berrey is an Associate Attorney at the Law Office of Elissa Urlik, Inc.

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SCBA's 27th Annual Careers of Distinction Awards

The 27th Annual Careers of Distinction Awards Dinner was held on Friday, October 18th at the Luther Burbank Center for the Arts to celebrate the careers and lives of John R. O'Brien, and Kenneth D. Gack. The LBC was a new venue for the 2019 SCBA flagship event, and the 268 guests enjoyed mingling in the outdoor "plaza" reception area, while the presentation held in the lobby event area allowed for good visibility for both the video presentations as the speakers at the podium. The food was catered by Pacific Connection Catering & Events.

The videos were a highlight of the evening. Videographer Mike Tunick spent countless hours over a period of three months filming the interviews and doing the production work to create the tributes to John O'Brien and Kenneth Gack. Mike also created the opening video "Faces of COD" which included reflections from prior recipients of the award including Jack DeMeo, Michael Senneff, Judge Joseph Murphy and Thomas Kenney. The Bar Association, along with Ken and John, are deeply grateful to Mike for his integral contribution to making this year's COD event both entertaining and memorable.

Emcees SCBA President Suzanne Babb and SCBA Board Member David Berry then took the stage (in sartorial splendor) to kick off the evening's activities. After recognizing attending judges (both current and retired), past COD honorees as well as the District Attorney, they introduced the video honoring John O'Brien, which was especially noteworthy for his amazing work for 30 years raising money for his charity, the American Cancer Society, by running in The Human Race. This year, the Human Race awarded John the first "Champion Fundraiser" award for being the top fund raiser ever for the organization—\$500,000 as of the 2019 race. It will now become a perpetual award in his name going forward.

Hon. Laurence K. Sawyer (Ret.), long-time friend and partner, introduced John O'Brien with an often humorous account of his background and post-career activities. In talking with John's firm colleagues, Judge Sawyer said they described John as "caring and generous, always calm, never getting angry, and never bad-

mouthed anyone." Asking what achievement he was most proud of in his career, John answered, "besides having a wonderful family of which I am very proud...starting a very successful law firm and seeing it thrive..and my record of community service, with the top being able to raise over half a million dollars for the American Cancer Society."

Next up was the video introducing Ken Gack. Some comments about his mediating talent by friends and colleagues in the video included: "He is whip-smart...everybody likes him," "his ability to communicate with people and understand the dynamics of what enables cases to get settled makes him among the best mediators I've ever worked with." The video also described the time and energy he has devoted to causes he has committed himself to, such as Legal Aid and Surgical Eye Expeditions, with whom he volunteers every year, often in remote locations.

Brendan Kunkle then introduced Ken Gack, noting that Ken is one of the busiest mediator/arbitrators in the business—so this event definitely wasn't a retirement party. In his biography of Ken, Brendan noted that beyond his exemplary career, volunteer work and love for many activities and the outdoors in general, the primary driver of his life has been his family.

The evening wrapped up with an After Party, co-hosted by SCBA and the honorees. Guests were encouraged to continue to mix and mingle in the main area, retreat outside to the plaza, or enjoy snacks and drinks in the Carston Cabaret Room.

Thanks go to SCBA's Special Events Committee, committee Chair Carla Hernandez Castillo; SCBA President Suzanne Babb; SCBA Staff—Executive Director Amy Jarvis, Win Rogers, Susan Demers, Emily Rippen and Nicole Gonzalez; volunteers Terry Bell, Diana Duenas-Brown and Caren Parnes; the Luther Burbank Center and their staff; and a special thank you to our event sponsors: Carle Mackie Power & Ross, JAMS and Dunst Law Offices. ☞

By Caren Parnes

Caren Parnes, owner of Enterprising Graphics, works with SCBA to produce the Bar Journal and Annual Directory.



*At Left:
Mike Tunick,
Videographer
Extraordinaire*



*COD Honoree Kenneth D. Gack
with wife Holly Rickett & family*



*COD Honoree John R. O'Brien
with wife Cheryl & family*

Photography courtesy of Owen Scott Shirwo



Guests mingle outside during the reception



Emcees SCBA President Suzanne Babb & David Berry



Guests enjoying the honorees' video



COD Honoree John R. O'Brien accepting his award



Kenneth D. Gack & John R. O'Brien surrounded by past COD Honorees at the 2019 COD Awards Dinner



COD Honoree Kenneth D. Gack accepting his award



Hon. Dana Simonds, Hon. Shelly Averill & Hon. Jennifer Dollard



Past COD Honorees Michael D. Senneff & Patrick W. Emery



COD Honorees John R. O'Brien & Kenneth D. Gack show off their awards



Past COD Honoree & Sponsor Hon. William Bettinelli, Dan Lanahan, Sponsor Kim Corcoran & Past COD Honoree Mike Mullins



Past SCBA President Greg Spaulding, COD Honoree Kenneth D. Gack & Peg Spaulding



Debbie Latham, Holly Rickett & Jill Talley (Photograph courtesy of Josh West)

Ruth Bader Ginsburg: Her Story Continued

Part I of this exploration of the life and times of Ruth Bader Ginsburg focused largely on her Supreme Court writings in which she dissents. Her dissents were flavored with her distaste, not for her colleagues directly, but surely for their failures to continue the rich traditions of legal “discovery” from which she sprang.

This section will delve into the personal genesis of an iconic conscience of the court and, dare it be said, our beleaguered nation.

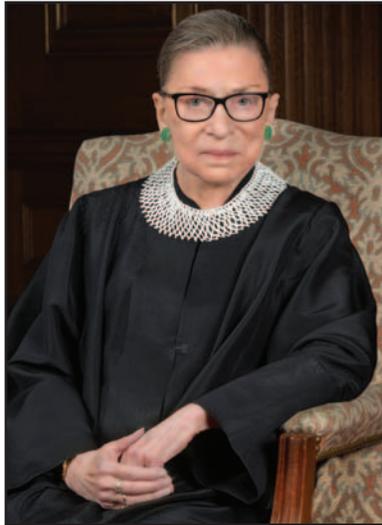
RBG was born in Brooklyn, NY in 1933. She was nicknamed “Kiki” by her secularly-oriented Jewish parents, because she kicked so much in utero and as a child. Hitler was on the rise, Kristallnacht was still five years away, WWII just six years off. The attendant Holocaust would take 6 million of her people on account of the same blood that flowed in RGB’s veins. The Depression was in full throttle, too, but RGB’s family was neither touched directly by Hitler’s perfidies, nor were they in starvation mode, as so many of her fellow Americans were.

It seems by all accounts that Kiki’s childhood was a happy one, guided by loving parents and family, especially by her mother, Celia.

It was often said of Celia Bader that had she been given the opportunities that her daughter Ruth had, she would have become a star in her own right, so prodigious were her talents, instincts, intellect, work ethic and value system. Imagine if Celia had come *after* the astonishing accomplishments of her famous daughter! Such is RBG’s legacy of equal rights for women that the foregoing is no hyperbole.

To summarize her beginnings and early life, RBG showed great promise from the start. Driven by Celia and from within, she became a star student and athlete, topping her high school class with all manner of accolades. One of her closest early friends in her Brooklyn neighborhood was an Italian Catholic girl who may well have prefigured her powerful relationship with another Italian American, Antonin Scalia. Ruth was able to look past her childhood friend’s assessment that, as a Jew, Ruth could never go to heaven. This too, perhaps, prefigured her ability to look past the intellectual and philosophical differences she had with Scalia that led her to her lasting friendship with him.

The idyll that was RBG’s early life was severely compromised by the loss of her mother in Ruth’s last week in high school. Celia’s cancer had consumed much of RBG’s high school years with long bus rides to New York hospitals interrupting studies and activities in substantial ways, including the enormous emotional toll the loss of her primary parent was wreaking on her. Celia’s untimely death undercut a life full of possibility for RBG, but did not disable her. She skipped her high school graduation, receiving her awards only informally following Celia’s passing. But Celia’s seeds had been firmly sown in her brilliant, dutiful daughter. Following in her uncle’s footsteps, RBG matriculated at Cornell, many miles to the west in Ithaca, ultimately rejecting the alternative of staying near her bereft father by attending a local college. Though she wouldn’t know it at the time, her decision to attend Cornell was one of her great ones in a life full of great ones.



It was a truth of the 1950s that men went to college for a B.A. degree whereas women went to get their “MRS” degree. Though RBG’s trajectory would take her to the pinnacle of establishing equal rights for women, she did indeed leave Cornell with her “MRS” along with her B.A. Cornell had spawned her life-long love affair with Marty Ginsburg, with whom she would establish a tremendous legal, emotional, intellectual and spiritual partnership. Their collaboration is well recounted in the film, *On the Basis of*

Sex and her own personal writings. It is remarkable that this Hollywood love story between RBG and Marty actually seems to have happened.

Besides being exceedingly attracted to one another, they shared the Jewish heritage of “Tikkun Olam,” a commitment to repair the world by assisting those less fortunate. Their marriage would be challenged by Marty’s testicular cancer. He managed to beat that cancer with the internal fortitude and strength of his marriage. With Ruth’s considerable help, he was even able to finish law school on time.

A second influence at Cornell was none other than Vladimir Nabokov, one of Kiki’s favorite professors. Nabokov is arguably the greatest non-native-English-speaking writer ever (with apologies to Joseph Conrad fans). RBG has often referenced his influence on her writing with his emphasis on “word pictures” and his demanding rigor with written communication.

Included in RBG's active social and academic life were vigorous athletic pursuits that continue in her famous workouts of today. She emerged from Cornell near the top of her class, Bachelor's degree and "MRS" well in hand.

What next? RBG's true life's work would take her to law school, Harvard to be precise, to be near Marty who was already there. The challenges that women faced in law school cannot be overstated. Their numbers were miniscule and the all-male bastion, old-boy network that made up the law schools of the '50s and well into the '70s made up a tough crowd. Look at our own bench, bar, and law schools today and you see a very different world from that of RBG's fledgling legal years. Her travails as one of the few women in the nearly all-male class at Harvard were marked by the kinds of discrimination RBG would battle as an advocate and professor throughout her career.

Comparing RBG to Thurgood Marshall is an apt way to understand her overall significance. He had been victimized by racism all his life as a black man. That he ended up arguing *Brown v. Board of Education* before the ultimately unanimous Supreme Court is the stuff of legend. That each of them succeeded wildly as counsel challenging the very institutions that retarded them, ending up on the Supreme Court themselves, is a wonder.

Long before Jim Crow there was "coverture," dictating that a wife was "covered" by her husband and thus had no legal rights of her own. Like Marshall, RBG certainly had her work cut out for her to wring change out of the enormous institutional sexism of the time. Her favorite John Stuart Mill quote reads: "The principle which regulates the existing social relations between the sexes—the legal subordination of one sex to the other—is wrong in itself, and now one of the chief hindrances to human improvement. . . It ought to be replaced by a principle of perfect equality." This from a man dead one hundred years before *Roe v. Wade* was decided!

RBG was greatly influenced by Simone de Beauvoir's *Second Sex* and Betty Friedan's *Feminine Mystique*. These classics of the '50s would help spark a feminist revolution that RBG grabbed the legal oar of, steering us all toward massive changes in the courts and society. As a young wife and mother, she had accepted the early challenge to women to "have it all." With her powerful partnership with Marty, she was enabled to do this, doubtless at some cost to traditional child-rearing family history of the time.

RBG's Law Review and top of the class standing at Columbia (she had transferred there from Harvard, again on

account of Marty) didn't guarantee the clerkships that her male counterparts of lesser accomplishment were obtaining. She suffered many rejections from clerkships for which she was eminently qualified purely on the basis of sex. She was even denied the chance to clerk for the great Learned Hand simply because he was unwilling to curtail his penchant for swearing. Yet her fortitude and brilliance shone through as she succeeded as clerk, professor and then leader of litigation teams that revolutionized the law of equal rights for women. Her work would take her to the top of the ACLU's litigation squad where she developed protocols and strategies that would influence the highest court in ways even they couldn't have seen coming. Along the way she secured a position studying comparative Swedish law that required that she learn Swedish in short order. These experiences would inform her later work. She understood that Swedish Law provides no precedent, but philosophical citations to it nevertheless became very useful in her work. ¶¶¶

End of Part Two of Three. Part Three is scheduled for the Spring 2020 issue. In the final part of this 3-part series, we review the great decisions and legal principles she advocated and the results.

By Hon. Elliot Daum (Ret.)

Judge Daum is a retired Judicial Officer of the Sonoma County Superior Court



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“Who Let the Dogs In?”—SCBA Service Animal Seminar

In August, Charmaine Stainbrook, Sonoma County Bar Association member and director of planned giving for Canine Companions for Independence, and Robert Schwinn, Canine Companions’ legal administration coordinator presented the seminar “Who Let the Dogs In?” for the SCBA. Canine Companions is the first and largest provider of service dogs for people with disabilities in the United States. Founded in Santa Rosa in 1975, Canine Companions has six training centers across the country and has provided more than 6,500 expertly trained service dogs to people with disabilities.

The August presentation focused on the laws that govern assistance animals and the protections and guidelines in place for these animals and their handlers. The following provides a summary of the presentation.

Americans with Disabilities Act (ADA)

The Americans With Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990), hereinafter referred to as the “ADA,” includes seven distinct titles. Of those, only Titles I-III pertain to workplace and public accommodation of service animals. Since the definition of what constitutes a “service animal” is contained in Title III, it is easiest to review these titles in reverse order.

Title III: Public Accommodation

Title III prohibits discrimination on the basis of disability in places of “public accommodations.” This term of art is specifically defined in the ADA, but generally includes private businesses that provide goods or services to the public. This includes businesses that are open to the public. Most of us encounter dogs, either task-trained service dogs or pets, in places of public accommodation like grocery stores, malls, big box stores and restaurants.

Title III provides the only definition of what constitutes a service animal. Under the ADA a service animal is defined as “any dog or miniature horse individually trained to do work or perform tasks for a person with a disability.” For purposes of this article we will use the term “service animal” and “service dog” interchangeably, but it is the case that the same rules apply to task-trained miniature horses. The work or task a service dog has been trained to provide must be directly related to the person’s disability. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.

In order to ascertain whether an animal is a service animal under the ADA, there are only two questions a business or public entity can ask when a person accompanied by a dog enters their establishment:

1. Is the dog a service animal required because of a disability?

2. What work or task is the dog trained to perform?

It’s important to ask these questions verbatim. It is more difficult to misrepresent yourself as a person with a disability, compared to simply responding affirmatively to the question: “Is that a service dog?”

A business cannot ask about the person’s disability or to see the task for which the dog is trained. Consider a dog that alerts to seizures—you can’t see the alerting behavior if a seizure is not impending, nor can you expect a person to induce a medical emergency. Keep in mind that comfort or emotional support are not considered tasks under Title III.

While the ADA allows public access to service dogs and their handlers, there are behavioral standards to which the dog must adhere. All service dogs must be under control and behave in a safe manner. If the dog is showing aggression—biting, lunging, snapping, growling—the business has the right to ask that the dog be removed from the establishment. Similarly, if a dog is barking uncontrollably, eating off floors, interfering with other customers or having toileting accidents, the business may ask the handler to remedy the misbehavior. If the handler does not take effective action to fix the dog’s behavior, the business can ask that the dog be removed and the customer served without the presence of the dog.

Title II: Accommodation in Government Buildings

Title II of the ADA is aligned with Title III and Title I as far as accommodating service animals is concerned. The main difference is that Title II covers state and local government buildings and establishments. These include city hall or public libraries.

Title I: Workplace Accommodation

ADA Title I addresses the accommodation of service animals from a different angle. Service animals that accompany an employee to work are viewed as “reasonable accommodations,” much like a screen reader for a person who has low vision, or an interpreter for an employee who is deaf.

Human Resources departments are responsible for evaluating and implementing accommodations required because of disability. Under Title I of the ADA, employers may request additional documentation including proof of medical necessity from a physician and permits discussion on how an animal can help. Workplaces are not limited to service dogs like Title III; rather, employees can request accommodation for any species of animal for a much broader range of conditions. Permitting an animal as an accommodation can also be done on a trial basis, so employers should not assume that the accommodation will be permanent if it is initially allowed.

Of course, confidentiality is key. Only the person with the

assistance animal can discuss the purpose of the accommodation or presence of a disabling condition.

Air Carrier Access Act (ACAA)

The Air Carrier Access Act, 49 U.S.C. § 41705 (“ACAA”) governs the presence of service and emotional support animals on planes. Air carriers can request a letter of medical necessity and up to 48 hours advance notice for emotional support animals to travel. Service dogs do not require documentation or advance notice but may be required to have a valid health certificate from a veterinarian. All animals should behave in a safe and controlled manner, regardless of their role, and may be excluded from the plane if they pose a safety hazard, are too large to be accommodated in cabin, or would prevent access to emergency exits or aisles.

Why does this all matter?

Enforcement of these laws matter because the consequences of out-of-control dogs impact people who rely on legitimate task-trained service animals for independence and safety. Aggressive dogs can be a safety threat that can lead to the permanent retirement of a service dog. Even minor distractions from untrained dogs can have significant consequences for a service dog trying to perform its job. When untrained pets posing as service dogs behave badly, people who truly need service dogs can face added discrimination and lose access to

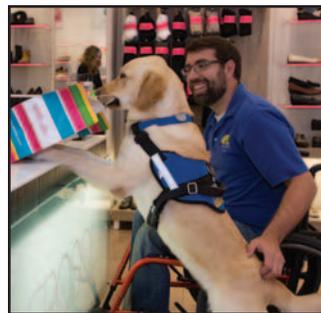
public places—both violations of the Americans with Disabilities Act. ¶¶

By Charmaine Stainbrook

Charmaine Stainbrook is an attorney and SCBA member and the Director of Planned Giving for Canine Companions for Independence.



A service dog retrieves a dropped phone for her handler



Photography courtesy of Canine Companions for Independence®



Above: Service Dog Renata carries a shopping bag as she assists her handler by pulling her manual wheelchair

At Left: A service dog retrieves a shopping bag from a cashier

From the President (continued from page 4)

In short, I have ended this year here, the way I started it—with a story. This one is about keeping it real. More specifically, it is about the people in your life who lovingly toss a flaming tumbleweed across your path here and there to remind you that you have been taught how to jump, and to keep you humble, and to laugh about it all with you later. Turns out, I do know those wacky court-watchers, your Honor. Enjoy the holiday season, and celebrate those people in your life who—in many-splendored ways—help you to keep it real. Cheers!

MANY THANKS

Thank you for allowing me to serve as President of the Bar Association this year; it has been challenging and rewarding. I pass the baton into the skilled and steady hand of Michelle Zyromski with tremendous gratitude to her, and the rest of the Executive Committee: Stephanie Hess, Mark Rubins and Mitch Greenberg for their support, guidance, and work in service to this organization over the past year.

In addition, as you all know, long-time Bar Association

Executive Director, Peter Steiner, retired at the beginning of this year. The stellar Amy Jarvis was elevated to the position, and was not allowed a mere moment to get her bearings. We threw multiple flaming tumbleweeds in her direction this year and she, and the Bar Association staff, never lost their footing. Thank you to Amy Jarvis, Win Rogers, Susan Demers and Emily Rippen. You, the members of this Association, are well-served by these passionate, hardworking folks.

Finally, I would like to thank the entire SCBA Board of Directors for their time, their insight, and their contributions. The Board is comprised of over 30 attorneys from every conceivable area of practice and includes the District Attorney, the Public Defender, County Counsel, the Dean of Empire Law School, the President of Sonoma County Women in Law, and all the top-notch representatives from your various areas of practice. They are all very busy in their work and their lives, and their volunteer time on this Board is tremendously appreciated. ¶¶

17th Annual Bench Bar “Retreats” to Redwood Empire Food Bank

The 17th Annual Bench Bar Retreat took a departure from previous pastoral locations this year, holding its meeting at the Redwood Empire Food Bank. Over 70 judges, attorneys and other legal professionals were treated to a special tour of the facility, led by its executive director, David Goodman. It was an eye-opening experience for many.

Goodman led the group into the cavernous warehouse that serves as a preparation and distribution center for imperfect produce and other agricultural products for 11 programs, staffed primarily by volunteers—approximately 8,500 of them, along with 59 staff members. The food bank serves several counties, but Sonoma is the primary beneficiary of the proudly debt-free organization. The group also toured the on-site kitchen collective, where its chef creates recipes based on the food in the warehouse. Dishes are cooked and frozen for distribution or are sold in the partner food connection market at the facility. The market also serves as an emergency food outlet. This many-faceted approach to achieving its initiatives of service to children, seniors and neighborhood networks, allows it to reach more individuals in need with great efficiency. It is the only one of its kind in the country and has been praised as a model for hunger relief organization and agency coordination.

The post-luncheon program focused on community outreach, diversity and inclusion, and addressed mentoring, pipeline issues, bar programs and pro bono opportunities. Panelists included the Hon. Shelly Averill, Lisa Carreño, CEO

of United Way Sonoma County, George Schell, General Counsel for the Presidio Trust and Martha Sullivan of Thornton Marketing.

The discussion centered on how lawyers can further connect with the community through outreach efforts and goodwill generation.

Judge Averill encouraged pro bono efforts from the bar association and Lisa Carreño emphasized that lawyers were needed in many capacities. George Schell remarked that storytelling and sharing stories among community members are great vehicles for engagement. Martha Sullivan spoke of the business-boosting aspect of pro bono work, stating that putting diverse people with different experiences together is a valuable tool to make our community better. Linking lawyers with these opportunities and doing further outreach to schools came to the fore as efforts to be pursued, perhaps with the bar association acting as a clearinghouse to match lawyers with non-profits.

Congressman Mike Thompson spoke later in the afternoon, focusing on the challenges the legislature faces in Washington and fielding questions from the group. It was an honor to have him participate in this year's retreat. ☐

By Joni Boucher

Joni Boucher is a contract paralegal, providing services directly to attorneys.

Sonoma County Bar Association Welcomes Our New Winter 2019-2020 Members!

Russell Clifford, with Clifford Financial Planning, Inc.

Janet Colligan, with Law Offices of Richard Sax

Betsey Cunningham, Law Student

Leslie Dawson, with Dawson CPA Firm

Rebecca Dinger, with Dinger Document Assistance

Ariana Eufrazio, Law Student

Mark Gabel, with Gabel Law Firm, P.C.

Andrew Grossman, with Carle, Mackie, Power & Ross LLP

A. Jeanne Grove, with Kaufman Dolowich Voluck LLP

Cenaida Guzman, with Perry, Johnson, Anderson, Miller & Moskowitz, LLP

Shana Hindley, with Smith Dollar PC

Monica Jimenez, Law Student

D’Arcy Kemnitz, with National LGBT Bar Association

Brendan Lappert, Law Student

Allan Mendez, Law Student

Melissa Meyers, Law Student

Stephanie Morales with Rodman & Associates

Kaela PerLee, Law Student

Debra Robertson, with JOHNSTON | THOMAS, Attorneys at Law, P.C.

Kaitlyn Schwendeman, with School and College Legal Services of California

Barrett Sink, with Sink Law Office

Andrew Spaulding, with Spaulding McCullough & Tansil LLP

Jasmin Torres Arreola, Law Student

Photography courtesy of Owen Scott Shirwo



Photos Left & Right:
Redwood Empire Food Bank
Executive Director David
Goodman leads tour of
facility for Retreat attendees.



Chris Honigsberg in conversation
with Hon. Nancy Shaffer



Tour of kitchen observing
volunteers preparing food



L-R: Deirdre Kingsbury, Robert Pittman, SCBA
Immediate Past President & Speaker Mitchell
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Cybersecurity for Lawyers (for MCLE Credit)

*Salutations, my illustrious friend. I seize this opportunity to extend my unalloyed compliments to you and your family. You don't yet know me, but I am in desperate need of legal services and your online profile has impressed me greatly. I am a Nigerian prince with \$15 million dollars and if you can do me but one tiny favor. . . .*¹

Computers and the internet have enabled a great transformation in the practice of law. But the advances in communication with clients, legal research, e-Discovery, and even the convenience of filing documents with the Sonoma County courts in the comfort of your sweats come with significant risk. Cyber threats and attacks are growing in size, frequency, and sophistication. In addition to the threats that affect the public at large, attorneys and law firms are attractive marks for targeted attacks because our files hold a treasure trove of sensitive information. Client personal information, case data and strategy, and the keys to your IOLTA account are but a few of the items that bad guys may be looking for. And it isn't just information thieves that you need to worry about. An angry opposing party in a family law case could just try and get revenge on the ex's attorneys by turning their computers into expensive paperweights.

No solo practitioner is immune; no law firm is too small: A 10-attorney firm in Providence, RI, was hit with a ransomware attack that it claimed cost it \$700,000 in lost revenue as it responded to the attack.² Financial repercussions aside, a breach could cause reputational harm (for a breach with mandatory disclosure requirements, or for simply having to tell a client that their information may have been compromised) and could expose you to discipline by the state bar for violations of the Rules of Professional Conduct.

An article cannot cover the breadth and scope of the threats that are out there in the space provided here. The good news is you do not have to understand binary to understand that the threat is real and you need to protect yourself, your

firm, and your clients from the onslaught.

California Rules of Professional Conduct

Although the means and methods of cyber attacks are relatively new, a lawyer's obligation to defend against such attacks are rooted in our age-old Rules of Professional Conduct.

The Duty of Competence requires lawyers to "apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably necessary for the performance of [legal services]."³ This duty is not limited to knowing the substantive law required for a representation, but also includes all of the activities required to perform those legal services. The Duty of Diligence requires "reasonable diligence" in representing the client.⁴ Reasonable diligence means, in part, that the lawyer "acts with commitment and dedication to the interests of the client."⁵

Under the Duty of Confidentiality, a lawyer "shall not reveal information protected from disclosure."⁶ Read in isolation, this could suggest that a violation requires an affirmative act of revealing such information. However, Business and Professions Code section 6068, to which Rule 1.6 refers, extends that by making clear that the lawyer is required to "maintain inviolate the confidence, and at every peril to himself or herself, to preserve the secrets, of his or her client." *Maintaining* the confidences and *preserving* the secrets impose the duty to defend your systems, subject to the standards of your Duty of Diligence, at least.

An Ounce of Prevention is Worth a Pound (or Ten!) of Cure

Who am I kidding? Reasonable cybersecurity measures will be more than an ounce of prevention. It is a difficult task because the adversary is so good at what they do and so pervasive. It takes several layers of planning and defense to harden your system against the threats. There are no security measures that are prescribed by law or the Rules of

1. You may think such appeals are obvious scams, but Americans lost over \$700,000 to similar scams in 2018. Megan Leonhardt, "Nigerian prince' email scams still rake in over \$700,000 a year—here's how to protect yourself," Apr. 18, 2019, <https://www.cNBC.com/2019/04/18/nigerian-prince-scams-still-rake-in-over-700000-dollars-a-year.html>.

2. *Moses Afonso Ryan v. Sentinel Ins. Co.*, 1:17-CV-00157 (D. RI, Apr. 21, 2017).

3. California Rules of Professional Conduct ("CRPC"), Rule 1.1(b)

4. CRPC, Rule 1.3.

5. CRPC, Rule 1.3(b).

6. CRPC, Rule 1.6(a)

Professional Conduct. Each operation must tailor its defenses to its risks. Here in a few words are some essential steps for you to consider:

Hire an Expert. Sure, you think you're the smartest person in the room. But having been on the inside of two major cybersecurity investigations, I can assure you that isn't true for hacking tactics and techniques or defensive measures. Get professional help to ensure your systems are appropriately defended and backed up.

Create a Written Cybersecurity Plan . . . The plan should not only address your policies intended to keep the bad guys out, but also what to do if there is a breach. The plan should include a description of the types of data retained on the system, where it is held, and whether it is encrypted (often called a data map). Understand the mandatory notification requirements under the California Data Breach Notification Law,⁷ which is applicable to anyone doing business in California, including solo practitioners. Notification may also be required under the laws of any other state in which an affected individual may reside.

. . . And Stick to It! Most breaches do not happen because the victim hadn't thought about the threat—but rather because they let their guard down. Training is essential. It may take some fortitude to say no when that name partner wants the Administrator password so he can upload a new app he wants to try, for example, but saying “yes” puts everyone at risk. Periodically audit your compliance—even if you are a solo practitioner. Many clients are demanding their service providers conduct cybersecurity audits as a condition of the engagement, so self-assess!

Firewalls; Anti-Virus; Software Patches. These are the first line of technical defense for your system. Keep threat signatures up to date and when a manufacturer develops a software patch for your operating system or a software application, install it promptly. Use (and retain!) firewall and network logs so that forensic teams can recreate the hackers'

actions and identify what data may have been stolen, if any.

Passwords. Without exception, any access point to the network must have a password. Recent guidelines from the National Institute of Standards and Technology (NIST)⁸ have moved away from specific password complexity standards in favor of more flexible standards that require passwords that are easy to remember but hard to guess. Using a password manager can greatly increase the usability of truly secure passwords.

Two-Factor Authentication. Passwords alone are not enough for public-facing network connections. Accessing remotely should require, at a minimum, two-factor authentication. This essentially means that to gain access from outside the office you need to log-in with an authenticator from two or more of the following categories: (1) something you know (e.g., PIN or password), (2) something you have (e.g., an app on your phone), and (3) something you are (e.g., fingerprint).

Cyber Insurance. Breach investigations are massively expensive. Check with your carrier to see if your existing coverage includes insurance for conducting investigations into cyber incidents and/or business interruption.

Further Information

Let's all exercise that Duty of Competence and acquire that learning and skill necessary to defend our computers, our networks, and our clients' data from the bad guys! Any general cybersecurity guides for business should be applicable to the solo practitioner and small/mid-size law firms. *The ABA Cybersecurity Handbook* (2d ed., 2017),⁹ in particular, should be helpful. The Small Business Administration and NIST each have small business cybersecurity pages that can also be a good launching point as well.¹⁰ ☐

By Chad O. Dorr

Chad is an associate attorney with Perry, Johnson, Anderson, Miller & Moskowitz, LLP.

(See next page for MCLE credit questions)

7. Civ. C. § 1798.82.

8. Digital Identity Guidelines, NIST SP 800-63B, June 2017, <https://doi.org/10.6028/NIST.SP.800-63b>.

9. <https://www.americanbar.org/products/inv/book/309654847/>

10. Small Business Association, Small Business Cybersecurity, <https://www.sba.gov/business-guide/manage-your-business/small-business-cybersecurity>; NIST, Small Business Cybersecurity Center, <https://www.nist.gov/itl/smallbusinesscyber>.

Cybersecurity for Lawyers (continued from previous page)

HOW TO RECEIVE ONE HOUR OF SELF-STUDY MCLE CREDIT

Below is a true/false quiz. Submit your answers, indicating true or false to each question, along with a \$25 payment to the Sonoma County Bar Association at the address below. Please include your full name, State Bar ID number, and email or mailing address with your request for credit.

Reception@SonomaCountyBar.org • Sonoma County Bar Association, 111 Santa Rosa Ave., Ste. 222, Santa Rosa, CA 95404

1. Hackers may see solo practitioners and small firms as softer targets than large firms with dedicated IT departments.
 2. The California Bar Association requires lawyers to use 8-character passwords.
 3. Solo practitioners are exempt from the California Breach Notification Law.
 4. The Duty of Competence is limited to the application of law to facts, not to practice administration.
 5. An attorney has complied with his or her Duty of Diligence if the cyber security measures used reasonably protect the interests of the client.
 6. A breach into an attorney's system could be grounds for a bar disciplinary proceeding.
 7. The Business and Professions Code requires a cybersecurity plan to be in writing.
 8. Training is an essential part of a cybersecurity plan.
 9. A cybersecurity plan should include a data map describing where sensitive data is stored on the system.
 10. Insurance for cyber incidents is automatically covered in an Errors & Omissions policy.
 11. Consequences of a cyber breach include only financial damages.
 12. Firewalls and Anti-Virus are key technical measures for network defense.
 13. Operating system and software patches are only advisory updates.
 14. A successful audit of your cybersecurity plan is a guarantee your network will not be breached.
 15. A two-factor authentication system could require a password and facial recognition.
 16. You're out of town and having trouble with your firm's two-factor authentication. It would only be for a few minutes so you should request your network administrator to suspend two-factor authentication while you log in.
- For questions 17-19: *You learn that the FBI has found some of your firm's data in the hands of a cybercrime syndicate they have just busted. One of the files confirmed to be in their possession is a jointly filed tax return for your local family law client. The opposing party has since moved to Tennessee. The return has both social security numbers listed.*
17. You may have to notify your client under the California Breach Notification Law
 18. You must determine whether Tennessee has an applicable breach notification law.
 19. Because you were hacked, your cybersecurity plan breached the Duty of Diligence.
 20. A two-page discussion of cybersecurity in the Sonoma County Bar Journal is all you really need to know to develop a reasonably diligent cybersecurity policy.

SCBA Movers & Shakers

*If you have new information about yourself or any other SCBA member, please send to **SCBA Movers & Shakers** at info@sonomacountybar.org. Include position changes, awards, recognitions, promotions, appointments, office moves,*

or anything else newsworthy. If your firm sends out notices to the media, please add info@sonomacountybar.org to the distribution list.

Peter Singler has moved his firm to Windsor, his new address is 103 Johnson Street . . . **Theo Arnold** has moved to Orange County . . . **Jeffrey Berk** is now with the City of Santa Rosa—City Attorney's Office . . . **David Berry** and **Elizabeth Fritzingler** have created a new firm, **Berry & Fritzingler, P.C.** located at 3500 Round Barn Blvd., Ste. 312 in Santa Rosa . . . **Michael Caballero** is now with California Department of State Hospitals in Sacramento . . . **Lisa Sennott** is now in Napa . . . **Danielle Restieaux** moved her office to 314 Center St., Ste. 2019 in

Healdsburg. . . **Brian Lance** is now with Abbey, Weitzenberg, Warren & Emery, P.C. in Santa Rosa . . . **C. Scott Malloy** has opened his own office at 1260 N. Dutton Ave., Ste. 239 in Santa Rosa . . . **Margaret "Peggy" Elliott** has retired. . . **Beki Berrey** is now with the Law Office of Elissa Urlik, Inc. in Santa Rosa . . . **David C. King** is a new panelist for the Arbitration & Mediation Center . . . **James Sansone** is now with Carle, Mackie, Power & Ross LLP . . . **Alexis Kent** will assume the position of General Counsel for Foley Family Wines.

Arbitration & Mediation Center

AMC is pleased to announce David C. King has joined our panel of neutrals



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2020 Upcoming Schedule of Seminars & Events

DATE	PROGRAM & PRESENTER(S)	WHERE
01/07/20	<i>Ethical Cannabis Practice: Legal Ethics for California Attorneys</i> Speaker: Omar Figueroa	SCBA Office
01/09/20	<i>Cal-OSHA Update—What the New Regulations Mean for Employment Practitioners</i> Speakers: Lisa Prince, Dave Smith	SCBA Office
01/14/20	<i>Utilizing Paralegals: Legal Ethics for Attorneys (and Paralegals)</i> Speaker: Shafiq Spanos	SCBA Office
01/24/20	<i>Sexual Harassment Training Requirements for California Employers under SB 1343 and Related Issues in the Workplace</i> Speakers: Kari Brown, Angela Clements	SCBA Office
01/28/20	<i>Traversing Cultural Differences in the Legal Profession</i> Speakers: Catherine Conner, Paul Lozada	SCBA Office
01/29/20	<i>Recent Developments in L&E (Case Law)</i> Speakers: Valorie Bader, David C. King, Michelle Neumann, Victor C. Thuesen, Nancy E. Watson,	SCBA Office
01/31/20	<i>Presiding Judges Luncheon</i>	Luther Burbank Center
02/03/20	<i>2020 New Laws and Forms for Civil, Family, and Probate</i> Speaker: Ken English	SCBA Office
02/20/20	<i>The Nuts and Bolts of the Sale of a Business</i> Speaker: Keenan J. McCullough	SCBA Office
02/21/20	<i>Legislation “ABCs” and Carve-Outs to Employment After Dynamex and AB5</i> Speakers: Chris Mazzia, Laney Rooks	SCBA Office
03/10/20	<i>Night at the Museum</i>	Sonoma County Museum
03/24/20	<i>Your Health First II</i> Speaker: Natalie Norman, TBD	SCBA Office
03/27/20	<i>Family Law Judicial Officers Luncheon</i>	Vintners Inn
03/30/20	<i>Undue Influence</i> Speaker: Dr. Glenn Hammel	SCBA Office

SCBA BAR JOURNAL

The *Bar Journal* is published quarterly by the Sonoma County Bar Association.
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 Content Development: Malcolm Manwell, John Borba, Joni Boucher,
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Submissions for the Bar Journal

The *Bar Journal* editorial staff welcomes articles submitted by its members. All submitted articles should be educational in nature, and can be tailored for the new practitioner or experienced lawyers. Feature articles should be between 750 to 1,000 words in length. Citations should be within the article's text (no footnotes). A byline must be included and articles must be submitted electronically. The editorial staff reserves the right to edit material submitted. For further information contact Amy Jarvis at 707-542-1190 x17. Submit all editorial materials by email to: amy@sonomacountybar.org. To place an ad contact Caren Parnes at 707-758-5090 or caren@enterprisinggraphics.com. All advertisements are included as a service to members of the Sonoma County Bar Association. The advertisements have not been endorsed or verified by the SCBA.

The editors and the Sonoma County Bar Association (SCBA) reserve the right to determine in their sole discretion whether material submitted for publication shall be printed, and reserve the right to edit all submissions as needed in any respect, including but not limited to editing for length, clarity, spelling, grammar, compliance with all laws and regulations (including not limited to libel), and further at the sole discretion of the editors and SCBA. The statements and opinions in this publication are those of the editors and the contributors, as applicable, and not necessarily those of SCBA. This publication is made available with the understanding that the editors and SCBA are not engaged in rendering legal or other professional advice. If legal advice is required, the services of a competent professional should be sought.

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