

SONOMA COUNTY BAR ASSOCIATION THE BAR JOURNAL

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Covid-19 Shelter-in-Place sign entering Bodega Bay, Sonoma County

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By Michelle Zyromski,
President, SCBA

President's Message: Character and Opportunity in the Time of Pandemic

Indian neuroscientist Abhijit Naskar has written that “Catastrophe reveals character.” More prosaically, former Chicago mayor Rahm Emanuel famously said, “Never let a crisis go to waste.” Character and opportunity? Upon reflection, I discover both probably are true.

First, a word about character. As I alluded to in my statements to the Bar Membership in March, when the widespread shelter-in-place orders were first issued, we all know heroes who have emerged during this pandemic. My best friend is a nurse practitioner who deservedly has been profiled in the newspaper for her frontline work caring for our homeless population. Her husband, an international businessman whose avocation is boxing, has been streaming daily instructional videos to his clients suffering from Parkinson’s disease so their muscles won’t atrophy. My brother-in-law, a banker, has been working long hours and driving all over Northern California, helping to shepherd his clients through the small business PPP loan application process. We all know folks like these. They need to be celebrated. Someday, their stories will be told, and it will inspire generations not yet with us.

Among those heroes too are so many of our colleagues. The lawyers advising clients facing immediate legal peril in the civil arena; the attorneys and judges maneuvering through the criminal justice system in the face of myriad restrictions from the state and county; those of our members who in their practices have been giving true meaning to the designation “counselor at law.” They’ve been out there fighting the good fight under the worst of circumstances. We should also give a nod to lawyers who regularly wear other hats as well, oftentimes in our roles serving on non-profit boards. It’s apparent how desperate and deteriorating the current situations are of charities, cultural arts, advocacy groups, and the like. We face the stark reality that some of these beloved Sonoma County institutions may have to permanently close their doors. Neither the government nor the usual private sector angels have the money to tourniquet all of these organizations’ hemorrhaging. But that doesn’t mean we’re all going to give up and quit. We need to fight. And generously give of our knowledge and talents. It will be a mark of our collective character to see how many of our community institutions we can save.

Which leads me to opportunity. The economic crisis—perhaps unprecedented in American or even world history—is

the next wave of this virus. The number one thing that will save us navigating through that wave will be getting the economy going again as fast as possible. We need to combat the economic devastation and personal harm that the business closures have wrought—and soon.

What are the ground-level opportunities? Think about it. They’re everywhere. The client who couldn’t pay the rent? Who’s going to help him or her renegotiate their lease? The ex-spouse who defaulted on child support payments? Who’s going to keep him or her out of jail? The home builder, responding to our concurrent housing crisis, stopped in his tracks by Code Enforcement? Who will be there to explain to the government that we must deal with two crises at once? You get the idea. There exists abundant every-day opportunity for lawyers to lend their skills helping our clients through this crisis.

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By Malcolm Manwell

From the Editor: A Woman's Voice

I am not a woman, and this is not about my voice; it is about all of our voices.

It is hard for most men to realize what it feels like to be raped or physically assaulted. But I have a female friend who does. She works in the mental health field. She tells me the crime statistics and other sources of data com-

compilation show about 1 in 4 women have been raped and about 1 in 3 have been sexually abused or molested in her life.

We men do not have one scintilla of a right to touch a woman in a way she doesn't want. And not to allow a woman the right to voice a violation of that is dangerous.

By the time I started law school in San Francisco in the early 1970s, the old, long established presumptions and rules which undermined a complainant in sexual assault cases began changing. The law heard and started resetting the standards, and women's voices started being heard in a genuine way.

The rules on sexual harassment in the work place also started changing back then. Flash forward to today. The central idea behind, say, the regular mandatory seminars is to train and inform so we adjust our standards and hear women's voices.

Yet, today it seems as if we are going sideways or perhaps even backwards. Because we are watching and reading and hearing arguments, e.g. *The NY Times*, trying to convince us that "inconsistencies" in Tara Reade's telling of her story should

cause us not to listen to her. This is completely opposite of the approach taken by that same side a little over 18 months ago when they supported Christine Blaise Ford's voice.

At one point in the Ford saga, Senator Maize Hirono of Hawaii told the men of America to "shut up" and listen to the woman. Yet, today, only a short time later, Sen. Hirono has shut up and is listening only to the man. The standards applied to Ms. Ford are not being applied to Ms. Reade.

What we all should be asking ourselves today is why does the party affiliation of the accused man matter? Isn't there a deeper issue here? Don't all women deserve to be heard regardless of the accused's political party?

This is not simply a problem for women. It is a problem for all of us. We need to apply uniform standards, and especially when it comes to the treatment of women because of our history of not listening to women's voices.

It is also dangerous to ignore the right of a woman to exercise her voice. The chilling effect on future women, because of what leaders and *The Times* have just done, will last for decades.

As an attorney, I understand why both sides deserve due process. But that is not what is happening here. We either agree to listen for the good of all, and stop shunning this woman over the politics of her alleged attacker, or this becomes the future.

A double standard is no standard at all. ☐☐☐

President's Message (continued from previous page)

But there exists a higher level of opportunity as well. Our generation of lawyers and judges will be the one that crafts the modern jurisprudence of a pandemic—governing the line between public health and personal liberty.

Governor Newsom and others have expressed the aspiration that the pandemic holds the opportunity for a new Great Awakening of progressive policies and programs. But citizens in the street—in our state Capital and elsewhere—are expressing an equally great weariness with government control over their lives.

Who will be on the front lines of that battle?

Lawyers, of course.

And that battle is playing out here in Sonoma County just as much as anywhere else. Why couldn't it be a few of us to engage in that fight? Why couldn't it be one of us, who ascends those august, white marble steps one morning, butterflies in stomach, about to argue before the highest court in the land?

Now is the time to be thinking about that kind of opportunity.

After all, the time is now to start living the narratives that will answer our grandkids years hence when they ask, "What did you do during the Pandemic of 2020"? ☐☐☐

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Allan D. Hardcastle: Holding the Line

Allan D. Hardcastle served as a judge on the Sonoma County Superior Court from 1997 until his retirement in 2020. The thorough and even-handed quality of his work made him a respected jurist among local litigators. Before he became a judge, he had a successful career as a trial lawyer in private practice and in the military. The full scope of Judge Hardcastle's career offers valuable lessons to trial lawyers.

One of two children, Hardcastle was born in Paso Robles, California. His father worked as a radio disc jockey at a time when radio was a civic centerpiece for many communities. The family moved north as his father's work took him to radio stations in the San Joaquin and Sacramento areas. Hardcastle's younger brother became a 4-time All-American swimmer at UCLA, and placed fourth in the 1976 Olympic trials in the 200-meter backstroke race.

In 1977, Hardcastle earned his undergraduate degree from the University of the Pacific. He left the UOP Stockton campus in 1976 after only three years of study and entered law school in what would have been his fourth-year as an undergraduate. He was drawn to the law because it offered professional independence and a diverse field of work. As a first-year law student at University of the Pacific-McGeorge School of Law, then-law school dean Gordon Schaber told his incoming class, "There is nothing smarter than the collective wisdom of 12 people in a jury box." Hardcastle would choose a career in trial practice.

In 1979, at age 24, Hardcastle graduated from McGeorge, became a licensed attorney, and went on to join the Army's Judge Advocate General Corps. Following intense leadership and military law training courses at the Army's Judge Advocate General School, Hardcastle was deployed to Fort Benning, Georgia. Fort Benning is a 284-square-mile military installation that straddles the Alabama-Georgia border next to Columbus, Georgia, and supports more than 120,000 residents and employees. It was here that Hardcastle tried over 80 jury trials as criminal trial counsel and defense counsel. He also earned his Airborne wings after completing paratrooper training.

In one notable case, Hardcastle was called to defend a young Army sergeant accused of murdering his wife's illicit lover. The sergeant had discovered them upon returning home early from a temporary duty assignment and a fight ended

the paramour's life. Hardcastle argued successfully that the surprise encounter weighed against the formation of premeditation, an essential element of the crime. The sergeant bear-hugged his lawyers when the jury returned an acquittal. Through accomplishments such as these, Hardcastle forged lifelong friendships with fellow soldier-lawyers.

From 1983 to 2002, Hardcastle continued to serve in the Army JAG Corps as a reserve officer, where he presided over courts martial. He reached the rank of lieutenant colonel when he retired after 23 years of service. He attributed his decision to stay in the military after his active duty service ended to the tremendous camaraderie of soldiers. Hardcastle recalls, "You show up alone in a place like Columbus, Georgia, and the Army takes you in and its soldiers support each other."



From November 1982 to 1986, Hardcastle worked as an associate attorney for Geary, Shea, O'Donnell, Grattan, & Mitchell, rejecting several job offers before choosing the Geary, Shea law firm. He recalls meeting with William Geary and Michael F. O'Donnell, learning that they had served as a Marine and an Airman, and thinking that they shared much in the way of courage, commitment, and reliability. As an attorney in private practice, Hardcastle excelled in civil litigation and often handled cases with Mike O'Donnell as co-counsel.

In 1984, Hardcastle and O'Donnell defended a residential apartment complex in a six-week jury trial. A fire disaster case, the plaintiff alleged that a faulty fire escape caused him to suffer severe burns after a fire broke out in his apartment. Hardcastle cross-examined the fire captain who had arrived first to put out the fire. Although initially a hostile witness, the fire captain established that the plaintiff actually attempted to escape through the front door of the apartment, and the resulting flow of oxygen into the apartment had ignited the fire that caused his burns. After the plaintiff's counsel rested their case-in-chief, O'Donnell accurately assessed that the plaintiffs had failed to meet their burden of proof. O'Donnell rested his case-in-chief without presenting a single witness. The jury returned a defense verdict.

The practice of law places a premium on good judgment. Further, the importance of judging correctly goes up with
Continued on next page

Allan D. Hardcastle: Holding the Line (continued from previous page)

the stakes. A tactical mistake in the fire disaster case could have resulted in a loss of millions in an unfavorable jury award. But more importantly, Hardcastle reflects that lawyers worthy of emulation possess more than the ability to assess a situation objectively; they listen well, speak plainly, and try to help people. These elusive qualities contribute to a successful trial lawyer's career.

Hardcastle's success in the courtroom led him to join Norbert Babin and Martin Seeger to establish the law firm of Babin, Seeger and Hardcastle in 1986. His practice combined plaintiffs' and defense work, with a focus on personal injury and product liability cases. He was a managing partner of the firm until he was appointed to be a judge of the Superior Court of Sonoma County in 1997.

Over the course of his judicial career from 1997 to 2020, Hardcastle presided over every division of the court except the Family Law Division. He found that supervising the Juvenile Division was the most professionally satisfying. For those children who overcame adverse circumstances early in life, a fulfilling moment awaited the supervising judge. Moreover, he found the ability to help and protect vulnerable members of the community from danger gratifying.

From 2012 to 2013, Hardcastle was President of the California Judges Association, a 2,300-member association and the largest of its kind in the world. In that position, he lobbied state and county officials to finance courthouses and judge's salaries and court operations in underfunded counties. In addition, he worked to revise the judicial ethics rules to give judges greater due process rights with the Commission on Judicial Performance. As a lawyer, Hardcastle was even named "Boss of the Year" by the Sonoma County Legal Secretaries Association.

Judge Hardcastle presided over his cases with great skill. His knowledge of the law, sense of humor, and most importantly, his sense of fairness that governed his decisions made him an exemplary judge. All who came into contact with him could believe in the honesty and integrity of our judicial system. His example is one for future judges to follow. ☞

By Edward Lester

Edward Lester is an associate attorney with Geary, Shea, O'Donnell, Grattan & Mitchell, P.C., an A/V-rated law firm that regularly handles complex civil litigation, public entity defense, all aspects of winery and vineyard law, family law, and estate planning.

Introducing New SCBA Staff Member Ann Horn

The SCBA staff is pleased to introduce the membership to the Sonoma County Bar Association's new Administrative Assistant, Ann Horn. Ann submitted the following short summary profiling her personal and professional background, and SCBA responsibilities.

I was born and raised in Sonoma County. I've lived in Rohnert Park, Santa Rosa and Forestville. I graduated from El Molino High School in 1991. I lived in Sonoma County until I was 25, then I moved to Vacaville where I lived for 19 years. While I was in Vacaville, I attended CSI Career College and earned my Certificate in Administrative Medical Assisting. Right after graduation, the college hired me to do Administrative/Reception work. I was promoted later to Registrar and Administrative Assistant to the On-Site Administrator and Director of Education.



I moved back to my hometown of Rohnert Park in the Fall of 2019. I'm so happy to be back. I've always wanted to return to my roots, to be closer to my family and the friends I grew up with. I am the proud mother of an amazing son, Theron, who is an Army veteran. I am also a proud mom to three dogs and parrot. During my time off, I spend as much time with my son as I possibly can, snuggle my dogs and hang out with family and friends.

I started working at the Sonoma County Bar Association in mid-January of 2020. As Administrative Assistant, my job responsibilities include membership renewal, MCLE registration, mail processing and general assistance with administrative tasks. I am really enjoying the job. I love the ladies I work with and enjoy my interaction with all the members of the SCBA. ☞

Kudos to the Law Week Volunteers!

Unfortunately, Law Week 2020 had to be cancelled due to the COVID-19 school closures. However, we still have positive news to report: The topic, "Rule of Law," infused new enthusiasm into the event. We had so many attorneys volunteer to present to students that we were able to fill all open slots unusually early in the process. And, the hard work of our Law Week 2020 Committee, including Dale Miller, Laney Rooks, Andrew Spaulding, Destinee Tartuffe, Mike Wanser, Jack Sanford, Rebecca Gallagher, and Susan Demers, resulted in an outstanding curriculum. Accordingly, we have decided to adopt this same curriculum for Law Week 2021. We also want to acknowledge

Rebecca Gallagher, now retired from SCOE, who worked diligently to reach out and confirm 34 presentations at Sonoma County Schools including the Juvenile Justice Center and the Sonoma County Probation Camp. We would not have student audiences without Rebecca's tireless efforts and enthusiasm with this project. We look forward to covering this important topic next Spring and hope that you will join us then. In the meantime, take care and stay safe. ☸

*By Carmen Sinigiani & Adam Eberts, Law Week Co-Chairs.
Carmen D. Sinigiani is a partner in the law firm of Spaulding McCullough & Tansil. Adam Eberts is a partner in the law firm of Eberts Law Group.*

Status of SCBA Programs During Shelter-in-Place Order

SCBA staff and the Executive Committee are continuing to monitor the situation surrounding the Shelter in Place Order and social distancing requirements. As of this writing, we've determined it's unlikely we'll be able to host in-person seminars through at least early Fall. Instead, we will continue to provide "distance learning"

through live webinars on Zoom, on-demand videos linked through our website, and self-study options through the Bar Journal and our website.

The most current information on the status of any program will be at www.sonomacountybar.org

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2020 Family Law Judicial Officer's Luncheon

This year's annual Family Law Judicial Officer's Luncheon was held on March 3, 2020 at the Luther Burbank Center for the Arts.

Presiding Family Law Judge James G. Bertoli, Judge Lawrence E. Ornell, Judge Barbara Phelan and Commissioner Becky A. Rasmason all spoke at the luncheon, providing updates for their respective departments and showing their appreciation for the Family Law bar.

Judge Phelan is the newest member of the Family Law bench. She heard misdemeanors for about a year before moving over to hearing Family Law matters in January 2020.

Family Court Services have been severely backlogged. Judge Bertoli announced that the recruiting process would be starting soon to help alleviate the backlog; however, that improvement wouldn't be seen until end of summer. (*Note: This update was written before the courts closed due to COVID-19.*)

Judge Bertoli also announced that there is a significant change coming to the local court rules, not just to the rules in the family law division, but to all divisions. A lot of stale rules and redundancies will be eliminated.

Joyce MacLaury retired as Family Law Facilitator at the end of January. The goal was to have the transition to a new Family Law Facilitator completed by the end of March.

Judge Bertoli is pleased with how the e-filing process is going and said that the process was "hitting its stride."

He outlined the significant increase in domestic violence applications for 2020. In all of 2018 there were 318 applications for restraining orders. In 2019 there were 641 applications. In just January and February of 2020 there have already been 123 applications for restraining orders.

Custody matters are being heard in Department 20 when DCSS is involved. Matters are being set this way for convenience so that parties aren't bouncing around between two different courtrooms.

Judge Ornell is really enjoying the Family Law assignment. He would love to have feedback from the Family Law bar, but hasn't determined a way to get the feedback anonymously. He asked if anyone has any ideas on how attorneys can provide him with anonymous feedback, to let him know.

Commissioner Rasmason asked that attorneys remember that they need to file substitution of attorney forms when they have completed their work on a case, even if they only represented a client in a limited scope. She also requested that attorneys be realistic about their ability to actually go to trial when they set dates. Further, she requested that attorneys ask for an extended hearing if they need more than the 20 minutes allotted.

Judge Bertoli offered a special thanks to the attorneys who have volunteered as Family Law panelists, as well to those attorneys working as minor's counsel. He asked for other attorneys to consider doing this important work.

Judge Phelan just joined the Family Law bench in January 2020. She has seen how hard the family law attorneys are working for their clients and she appreciates all that hard work. She has great respect for the work the family law attorneys do, all the efforts made and their civility with other lawyers.

Commissioner Rasmason has also noticed the increased civility amongst the Family Law bar and wanted to make sure everyone knew that it was much appreciated. ☺

By Beki Berrey

Beki Berrey is a Family Law attorney with a solo practice. She has been practicing law in Santa Rosa since 2011.



*Above, L to R: Speakers
Hon. Jim Bertoli, Hon. Lawrence
Ornell, Hon. Becky Rasmason &
Hon. Barbara Phelan*

Photography courtesy of Star Dewar



*At Right, L to R:
Michael Liotta, Margan
Vukelic & Tricia Seifert*

*At Left (L to R):
Marla Keenan-Rivero,
Toni Labra, Sierra Countis
& Marianne Skipper*

Remembering L Stephen Turer

Steve Turer died in his Santa Rosa home surrounded by his family and close friends on February 25, 2020 at the age of 75. He had struggled with heart problems and a number of other medical issues in his later years. He retired in 2015 after 45 years of practicing criminal defense law in Sonoma County.

Born in 1944 and raised in Brooklyn, New York, Steve attended Brooklyn Law School, graduating when he was only 22. He passed the New York bar exam but immediately relocated to Northern California. He started out in Shasta County where he started a legal aid program while waiting to take the California bar exam. However, given his New York background, living in Redding didn't last long, and he soon landed in Sonoma County where he started his legal career working for Bob Bell, who was a well known criminal defense practitioner. Through the 1970s, Steve taught at Santa Rosa Junior College. In addition to teaching a course on contracts, he taught a course that he referred to as "Monday Nights with Steve," a philosophy and critical thinking class where the only requirement was to attend.

He started trial work early in his career. His first trial was defending a fellow involved in a bar fight, and Bob Bell had told him to appear in front of Judge James Jones to obtain a continuance of the trial date. However, Judge Jones wouldn't have it. He asked Steve if he was a lawyer who worked for Mr. Bell. When Steve affirmed, the Court told him he could try the case himself come Monday. He did, and he won, convincing the jurors that his client acted in self-defense. From then on, he knew he loved trial work, and that he had a knack for it.

Through the next several decades, Steve tried many cases, including several homicide cases, winning most of them, and making a name for himself as a tenacious and aggressive litigator.

For Steve, lawyering was an art and he had mastered it. The courtroom was his stage where he was the star actor and the center of it all. He made it look effortless, and only those around him knew that he spent countless hours preparing his cases outside the courtroom – studying, and re-studying the facts and the legal issues surrounding them.

He was incredibly well known for his cross-examination style. He was a true New York lawyer; no one else could

mimic his bold, aggressive style and actually pull it off. Perhaps my favorite part of watching his cross-examinations was the way he would circle his prey. Instead of going straight for the kill, he would thoughtfully pick around the edges developing the storyline that served his client best. Sometimes, he would jump from topic to topic and occasionally, when I was sitting as his second chair, I would become concerned that he had forgotten to finish a line of questioning. However, he always went back to each line of questioning. Often when the witness wasn't suspecting it, he'd start firing off the last of his questions in rapid succession, revealing weaknesses, and even fallacies in the witness's earlier answers. I can't remember a witness that Steve could not tame.



It always blew my mind that Steve could have a conversation with anyone, anywhere. He was aware of the news headlines, what was going on in politics, the latest in the sports world, what was going on in the community, and in Hollywood. He loved to talk, but he was also good at listening. It all translated into an ability to converse with jurors, and for them to open up to him. In every trial, he'd tell jurors that throughout the trial they would have to listen to the attorneys, the witnesses, and the judge, but that in *voir dire*, the Latin term for "to speak," it was their time to talk, and for the court and parties to listen. He somehow put jurors

at ease and made it easy for them to reveal their thoughts and feelings, utilizing their revelations to educate the rest of the panel, develop for cause challenges, and teach them about his case even before making his opening statement.

Although there are great stories about his epic trials, skilled cross examinations, and brilliant legal defenses, what those of us who were closest to him know was that he fought hard for each and every one of his clients. Every case mattered, every client mattered. It didn't matter whether it was a remarkable case or fascinating fact pattern. He was dedicated and passionate about giving every client a capable advocate and voice. He knew he was often their lifeline. In the many years since I first started working for Steve, countless people have remembered my name and face as being linked to him, and have approached or called me just to tell me how Steve changed or saved their life, or the life of a family member.

Continued on next page

Remembering L Stephen Turer (continued from previous page)

Friends of Steve often joke that he had nine lives given he evaded his death many, many times. Not only did Steve have nine lives, he also had the energy of nine lives. In addition to his robust practice, he was a social butterfly who attended at least a few social gatherings on a weekly basis. He was a true sports fan who regularly attended Giants, 49er, and Warriors games. He frequently attended charitable and political events, was an avid moviegoer and typically went out for social lunches and dinners several times a week. Frankly, even when I was in my twenties, I couldn't imagine keeping up with his agenda.

While Steve was passionate about law, he also loved to cook. He was incredibly good at it, too. He almost left the practice of law to open a New York style deli, renting a location in Railroad Square and creating his menu, but ultimately decided that law was his true calling. Later, in the early 1990s, he appeared in several episodes on a cooking show. He never declined an opportunity to cook for his family and friends and became known for his impressive Passover meals where he would feed a couple dozen people,

For many in the community, Steve's lawyering skills are what he will best be remembered for, but foremost I will remember Steve for his warm spirit. I would occasionally tell people who didn't know him well or like him much that while he seemed like a bulldog in court, he was really a loving Labrador, and sweet as could be to his family, friends, and all those who encountered him outside the courthouse. He was jovial, compassionate, and never dull. He embraced spending time with his family—his wife, his children, and his grandchildren, talking almost daily to his son and daughter even though they live in different states. He loved experiencing life, having good conversation, and being with his loved ones and friends. He was a philanthropist who strongly believed in being part of the community, both the legal community and the greater community, and he gave to both.

I am a prime example of his giving nature. Since I was a child, I knew I wanted to be an attorney but I didn't necessarily have a plan on how I was going to get there. I was sixteen when I scored what was supposed to be a summer gig in his office (as a favor to my mom, thanks to his wife and my mom's friendship). I grew in that office for the next thirteen years, and became a lawyer, in large part thanks to everything Steve did for me. Steve became not only my mentor but also my dear friend and a second father to me. While we spent countless hours talking about law, we spent almost as many hours talking about life. His advice in both arenas was always thoughtful, and often correct.

He had no reason to bestow upon me all the opportunities he provided, to open up the many doors he did, but he did anyway. And I am not the only one. There are a few of us whose legal careers he helped form. He taught us skills that could not be taught in law school, or learned by watching court proceedings. He helped us experience cases that would be out of reach if we weren't working on them side by side with him. He taught us how to think about our cases from every angle and outside the box. He showed us how to be effective lawyers. He also passed on a bit of his tenacity and a sprinkle of his boldness to us, and I for one will never be able to thank him enough. ¶

By Orchid Vaghti

Orchid is the principal of the firm Law Office of Orchid Vaghti in Santa Rosa with a specialty in Criminal Defense. She is also the SCBA Criminal Section Co-Chair.



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Response to Spring 2020 Article

I am writing in response to an article in the Spring 2020 issue of the Sonoma County Bar Journal entitled *Word to the Unwary: Statewide Rent and Eviction Control are Here*.

In the article, the author, Mr. Kevin Konicek, classifies the new state law, AB 1482, as rent control. I disagree with this characterization. Further, I disagree with the assertion that rent control is inherently bad.

Rising rents are harming our communities. These costs are stripping residents of their income and savings, restricting housing opportunities, forcing people into homelessness, and intensifying racial and economic inequality. Predatory rent increases and the resulting displacement have lasting impacts on the health of residents, especially children, and their communities.¹

The issue of unaffordable rents is prevalent in Sonoma County. Forty percent of people who live in the County rent their homes.² Fifty-three percent of renters pay one-third or more of their income in rent.³ This leaves little to no remaining income to provide for basic needs for one's self and family. At Legal Aid, we often meet clients who are forced to choose between paying rent and buying food or going to the doctor. Labor sectors that this County depends on (tourism, agriculture, wine production etc.), not to mention teachers and health care workers, cannot afford their housing, placing the economic survival of everyone in our community at risk.

AB 1482's Rent Cap Protection is Not Rent Control

Classifying AB 1482 as rent control is a mischaracterization. The protection under AB 1482 limits rent increases to approximately 8-10% each year, a significant return on any investment, and two to three times what most rent control

ordinances allow. In addition, rent control laws provide for specific administrative processes that landlords and tenants must use before accessing the civil court system. This can cause delays in the eviction process. No such administrative processes exist under AB 1482.

Rent Stabilization Stabilizes Communities

A rent stabilization program can balance the needs of renters to have access to stable housing as well as protect the constitutional rights of property owners. Even in jurisdictions that have rigorous rent stabilization programs, landlords maintain the right to a fair return on investment ensuring that rent stabilization does not limit a landlord's right to a turn a reasonable profit.⁴ As a further protection for landlords and developers, the state imposes limits on how cities may impose rent control, like limiting rent stabilization on new buildings and single-family homes, through the Costa Hawkins Act.

Rent stabilization has received criticism from the development community and economists. However, new research from the Columbia University Graduate School of Business finds that rent control contributes to social welfare and reduces inequalities.⁵ Further, claims that rent stabilization has negative effects on the development of new housing are generally not supported by research.⁶ In the Bay Area, construction of multi-family housing is substantially higher in cities with rent stabilization than in cities without it.⁷ ■■■

By Ronit Rubinoff

Ronit Rubinoff has been the Executive Director of Legal Aid of Sonoma County for seventeen years, and has been a public interest attorney for 25 years.

1 Prevention Institute (2017). "Healthy Development without Displacement: Realizing the Vision of Healthy Communities for All." Bay Area Regional Health Inequities Initiative (BARHII) (2016). "Displacement Brief: Housing Insecurity and Displacement In The Bay Area." Desmond, Matthew & Rachel Kimbro (2015). "Eviction's Fallout: Housing, Hardship and Health."

2 Town Charts. "Sonoma County, California Housing Data" <http://www.towncharts.com/California/Housing/Sonoma-County-CA-Housing-data.html>.

3 Town Charts. "Sonoma County, California Housing Data" <http://www.towncharts.com/California/Housing/Sonoma-County-CA-Housing-data.html>.

4 *Birkenfeld v. City of Berkeley*, California Supreme Court, 17 Cal.3d 129 (1976).

5 Columbia Business School (2018), "Affordable Housing and City Welfare."

6 Columbia Business School (2018), "Affordable Housing and City Welfare." Haas Institute (2018). "Opening the Door for Rent Control: Toward a Comprehensive Approach to Protecting California's Renters." Barton, Stephen (2017). "Benefits of Rent Stabilization."

7 Barton, Stephen (2017). "Benefits of Rent Stabilization."

Highlighting the Sonoma County Public Law Library

The Sonoma County Public Law Library has been serving the legal community in Sonoma County for almost 130 years. Its patrons include attorneys and students, but mainly members of the public. The majority of self-represented people who walk into the Law Library have already tried to find help with private attorneys or local organizations. The Law Library staff serves these people and everyone else who seeks these services. The Law Library acts as a research center. A variety of organizations send people to the Law Library because it is the only facility open to the general public with such an extensive collection of legal reference and research materials. Trained legal research professionals are available to guide them. 30,000 volumes of cases, regulations and constitutions, along with treatises, on-line legal databases such as WestLaw and LexisNexis, and other research material are available to help people with their research.

The Sonoma County Law Library is now an official U.S. Department of State Passport Acceptance Facility. With this status, the library offers the convenience of applying for and/or renewing one's passport in a county building with ample free parking. People can schedule an appointment and the library staff will quickly and efficiently process the application.

On January 22, 2020, the Law Library hosted an open event to honor former Congressman Douglas Bosco (Ret.), Hon. Gayle Guynup (Ret.), and Law Librarian Kimberly Tucker (Ret.), for their contributions to the Law Library. Many judges, lawyers, elected officials, and other patrons attended the event, where the guests heard the law library's success stories from Judge James Bertoli, the President of the Law Library Board of Trustees, and Nikolaos Pelekis, the current Law Library Director. A recently remodeled conference room

with a forty-person capacity was named after Congressman Bosco and Judge Guynup. A second conference room for six people was named after Kimberly Tucker. These conference rooms are available for community usage.

The Law Library is located at 2604 Ventura Avenue in Santa Rosa. The Library is currently closed to the public due to the pandemic but offers remote services including book rentals Monday through Friday from 10:00 A.M. to 2:00 P.M. Please call at 707-565-2668 for the most current information. ☎

By Nikolaos Pelekis
Law Library Director

*At Right:
Nikolaos Pelekis,
current Law
Library Director,
with Kim Tucker,
Law Library
Director from
1999-2017.*



*At Left: Hon. Gayle
Guynup (Ret.), Hon.
James Bertoli &
Congressman Douglas
Bosco (Ret).*

2020 Upcoming Schedule of Seminars & Events

Due to the fluid nature of the SCBA event plans and schedule during Covid-19, we are directing our newsletter readers to view our seminar and event schedules online.

Please visit <https://www.sonomacountybar.org> and look at the left home page sidebar for the list of events. Thank You.



*Statue of Ruth Bader Ginsburg outside the
Sonoma County Public Law Library*

Overcoming the Hearsay Exclusion in Trust and Estate Litigation

Introduction

A challenging hurdle in trust and estate litigation is that the key witness—the person with the most knowledge regarding the estate planning instrument being interpreted—has died and cannot testify at trial. As such, any statements the deceased made regarding their estate planning wishes are technically hearsay. Luckily for litigators, the Evidence Code provides a number of hearsay exceptions to ensure that the deceased's voice is heard at trial.

General Hearsay Rule

As most practitioners recall from law school, California Evidence Code §1200 provides that “[e]xcept as provided by law, hearsay evidence is inadmissible.” Hearsay is defined as “a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated.” For example, if during a trial related to the disposition of decedent Lucy's estate, Sarah testifies Lucy told her that Denise would inherit Lucy's entire estate, such statement is subject to a hearsay objection. As Lucy is now deceased and unable to testify at trial, her statements to Sarah are hearsay and cannot be admitted as evidence, unless the statement is subject to a hearsay exclusion. The reasoning behind the exclusion of hearsay is that out-of-court statements are not subject to cross-examination, rendering the statements potentially unreliable. In the example above, the parties cannot question Lucy about her statements. As a result, the parties cannot judge Lucy's credibility or question her memory or foundation for her statement. Luckily, there are a number of exceptions that are helpful to practitioners in trust and estate litigation which potentially make Lucy's statements admissible.

Exception Evidence Code §1260—Statement Concerning Declarant's Will, Revocable Trust Or Amendment

Evidence Code §1260 provides one exception to the hearsay rule. It permits the admission of statements (1) that the declarant has or has not made a will or established or amended a revocable trust; (2) that the declarant has or has not revoked their trust or an amendment to a revocable trust; or (3) that identify that the declarant's will, revocable trust, or an amendment to a revocable trust. The out of court statement is only admissible if the declarant is unavailable to testify. Interestingly, Evidence Code §1260 initially only applied to wills, but was amended in 2011 to include statements regarding trusts, as well. The reasoning being that trusts have become an increasingly popular estate-planning vehicle.

The *Estate of Morrison* (1926) 198 Cal. 1 is the seminal California Supreme Court case which recognized this exception to the hearsay rule, which was later codified by Evidence Code §1260. It provides a good illustration of the application of the exception. In that case, Leon Morrison (“decedent”) left his entire estate by will to Marion Scott. Ms. Scott received decedent's will in the mail following his death and multiple challenges to the document ensued on the grounds it was a forgery. During trial, Ms. Scott called as witnesses two nurses who treated decedent before his death. The nurses testified that prior to his death, decedent showed them the will. Ms. Scott also presented the testimony of another witness who was a patient at the hospital with decedent. The patient testified that decedent mentioned the will and the fact he had left his entire estate to Ms. Scott. The contestants objected that such statements were hearsay, which the trial court overruled. The California Supreme Court held the statements admissible on the grounds that such statements went to the issue of whether decedent created a will.

As with a number exceptions to the hearsay rule, the court is permitted to exclude statements that fall within the section 1260 exception if the statement “was made under circumstances that indicate its lack of trustworthiness.”

Notably, while Evidence Code §1260 provides that statements made by a declarant regarding their execution of a will or trust, revocation of a will or trust, or identifies the will, trust or an amendment, it is still subject to Probate rules such as Probate Code §§8223 and 6125.

Exception: Evidence Code §1261—Decedent's Statements Offered in Action Against Estate

Evidence Code §1261 also provides an exception to the exclusionary hearsay rule. Specifically, it provides that a declarant's statement is not inadmissible as hearsay “when offered in an action upon a claim or demand against the estate of the declarant if the statement was made upon the personal knowledge of the declarant at a time when the matter had been recently perceived by him and while his recollection was clear.” By requiring the statements to be based on personal knowledge at the time when the matter was recently perceived and while the recollection was clear before admission into evidence, section 1261 is designed to protect the party against whom the hearsay statements are offered. As with section 1260, section 1261 also permits the court to exclude the statement for its lack of trustworthiness.

Continued on next page

Overcoming the Hearsay Exclusion in Trust and Estate Litigation (continued from previous page)

Until the enactment of section 1261 in 1965, California recognized the Dead Man's Statute, which prohibited a party who sued on a claim against a decedent's estate from testifying about any matter occurring before the decedent's death. However, this rule ultimately prohibited both the decedent from testifying (as a result of their own death) as well as the surviving claimant. As a result, courts were often forced to make decisions regarding the disposition of an estate with little to no evidence. In fact, the California Supreme Court expressed frustration about the Dead Man's Statute in *Light v. Stevens* (1911) 159 Cal. 288. In that case, which involved payment of a note, the Supreme Court stated "[o]wing to the fact that the lips of one of the parties to the transaction are closed by death and those of the other party by the law, the evidence on this question is somewhat unsatisfactory." *Id.* at 292. A number of states continue to recognize some form of the Dead Man's Statute.

Estate of Luke (1987) 194 Cal.App.3d 1006 illustrates the application of section 1261. In that case, decedent died intestate. His wife predeceased him. A dispute arose over the distribution of his community and separate property. During the probate of his predeceased wife's estate, decedent submitted an affidavit stating certain property was his separate property "traceable to funds he received from the sale of a business he owned prior to marrying." The court held the statements in decedent's affi-

davit were inadmissible hearsay as such did not meet the requirements of section 1261. Specifically, the court held that decedent's statement in the affidavit described events which took place over a period of 40 years beginning when [decedent] sold his drug business in 1936. [decedent's] recollection of how he handled the proceeds of the sale is not the recollection of a recently perceived event nor was there any evidence [decedent] had a clear recollection of these events when he wrote the affidavit. Therefore, the court erred in admitting [decedent's] affidavit.

Conclusion

Probate Code §§1260 and 1261 are both useful tools for practitioners in ensuring decedent's statements regarding their estate plans are admitted into evidence. When preparing for trial, it is important to obtain as much evidence as possible regarding any statements the deceased made and fully evaluating whether such statements are admissible pursuant to any exception to the hearsay rule. ■

By Stephanie Rothberg

Stephanie Rothberg is an attorney with
Spaulding McCullough & Tansil LLP.

(See next page for MCLE credit questions)

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.

Correction from Spring Movers and Shakers:

Michael Fish joined Merrill, Arnone and Jones as a partner in May 2012 (8 years).

Deirdre Kingsbury and **Noreen Evans** have opened their own firm, Evans Kingsbury LLP, 1275 4th St., Ste. 258, in Santa Rosa . . . **Amy Winters** is now with Barulich, Dugoni & Suttman Law Group, Inc. in Burlingame . . . **John Kelly** and **Erin Carlstrom** moved their firm, Kelly, Carlstrom & Associates, to 111 Santa Rosa Ave., Ste. 401, in Santa Rosa . . . **Amanda Neal** is now with the Law Office of Carolyn Vandyk at the new address of 1144 State Farm Dr. in Santa Rosa . . . **Janice Sternfeld**

has moved her office to 4727-B Hoen Ave. in Santa Rosa . . . **Ellyn Moscovitz** is now with Legal Aid of Marin in San Rafael . . . **Richard O'Hare** is now with Johnston | Thomas in Santa Rosa . . . **Christopher M. Haws** has moved to Sherman & Howard LLC, in Denver, CO. . . **Jeremy L. Olsan** has opened Law Offices of Jeremy L. Olsan in Santa Rosa . . . **Stephen-Bela Cooper** is no longer with CMP&R.


Overcoming the Hearsay Exclusion in Trust and Estate Litigation (continued from previous page)

HOW TO RECEIVE ONE HOUR OF SELF-STUDY MCLE CREDIT

Below is a true/false quiz. Submit your answers to questions 1-20, indicating the correct letter (T or F) next 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.

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- 1) Hearsay statements are never admissible at trial.
- 2) Out of court statements may be excluded as hearsay at trial as such are potentially unreliable.
- 3) Evidence Code §§1260 and 1261 provide exceptions to the exclusionary hearsay rule.
- 4) Jane dies. At a trial, her statements regarding the creation of her will are hearsay.
- 5) Any out of court statement as to whether the declarant made a will is admissible pursuant to Evidence Code §1260.
- 6) Jane executed a will leaving her estate to Sarah. Jane dies and Jane's daughter seeks to have the will set aside on the grounds it is a forgery. The testimony of Jane's friend, Nancy, that Jane told her she created a will should be excluded as hearsay.
- 7) The Court has no discretion to exclude statements subject to the Evidence Code §1260 exclusion.
- 8) Statements decedent made regarding changes to a beneficiary form of a life insurance policy are admissible pursuant to Evidence Code §1261 if the distribution is challenged.
- 9) Decedent told his wife shortly before his death that he had no intention of ever making a will. After his death, his son produces a will. Decedent's statement to his wife is admissible pursuant to Evidence Code §1260.
- 10) Just before her death, decedent advised her son that although she had not reviewed her will in over twenty years, she recalls she left her entire estate to him. Decedent's will left her entire estate to her daughter. Decedent's statements to her son are inadmissible.
- 11) California still recognizes the Dead Man's statute.
- 12) Evidence Code section 1260 applies to wills and trusts.
- 13) The Court has no discretion to exclude statements subject to the Evidence Code §1261 exclusion.
- 14) Statements made by deceased regarding the revocation of a will are admissible pursuant to §1260.
- 15) Decedent was in an automobile accident and suffered a concussion. While recovering in the hospital, decedent told his wife he left his entire estate to charity. Decedent had previously expressed no interest in gifting to a charity. Such a statement is inadmissible at trial challenging this distribution.
- 16) Nancy testified at trial regarding the distribution of decedent's estate. Nancy dies before the conclusion of the trial. Her testimony at trial should now be excluded as hearsay.
- 17) Decedent wrote her will on a napkin prior to her death. She showed her daughter the napkin and identified it as her will. The daughter's testimony regarding decedent's statements are admissible.
- 18) To be admissible pursuant to §1261, the out of court statement must be based on the personal knowledge of the declarant.
- 19) §1260 always applied to both wills and trusts.
- 20) The Dead Man's Statute prohibited the testimony of a party who sued on a claim against a decedent's estate.



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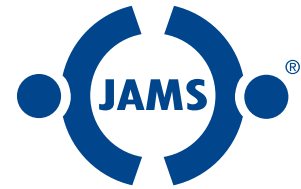
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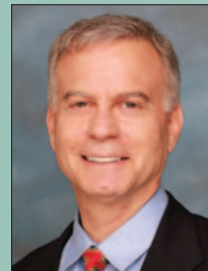
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Sonoma County Legal Community During Covid-19

As of this writing, it has been about 2½ months since the Sonoma County “Stay-at-Home” order was implemented on Wednesday March 18th. The legal community, along with all other professions, has had to navigate the viral storm during these unprecedented times. The Sonoma County Superior Court closed to civil matters on March 16th, with continuations for 60 days. As early as March 23rd, the court began to implement video arraignments and some sentencing and case resolution hearings. E-filing in civil cases resumed April 15.

Law offices have adapted to the current situation in a variety of ways. The Bar Journal committee thought it might be interesting to the membership to take a sampling in the legal community to find out how firms are coping with the limitations on their practices. This article compiles responses from six legal professionals—four attorneys and two paralegals in different areas of law, about how they have been coping, both personally and professionally. Some of their responses have been edited for length and clarity.

Holly E. Rickett, Deputy County Counsel, Office of the Sonoma County Counsel

How are you proceeding with the day-to-day running of your practice during the coronavirus lockdown?

The entire Sonoma County Counsel’s Office of more than 50 employees moved to a complete virtual office operation on March 13, 2020 for health and safety reasons. Since then, our Office has always been considered “open for business,” albeit through technological contact. We are all considered essential workers as our Office represents all County Departments, through the Board of Supervisors, including Emergency Services, the Public Health Officer and the Sheriff.

Although there was an initial learning curve to hooking up home computers with VPN (virtual private network) in order to remotely access our Office’s shared drives and documents, all staff were able to have that in place and functioning quickly. I attend an office-wide Zoom meeting once a week and a Covid-19 specific issue Zoom meeting three times a week. Other than those, each attorney and staff is tasked with continuing to represent their Department clients on a myriad of issues as best as they are able through teleconferencing. Our attorneys are focused on legal needs related to the pandemic, but also many related to the running of regular, and busy, County business.

What has changed with how you are having to approach your particular field of law?

There has been some very esoteric, not run-of-the-mill legal

research done during this challenging time. Personally, I learned a lot about isolation and quarantine orders and enforcement of the California Health and Safety Code. As we learned in the 2017 and 2018 fire emergencies, as government lawyers who represent all County entities, it is particularly important that we are available for our clients and are nimble and flexible in our approach. Every County Department was impacted by the effects of this virus and as their legal counsel we are there to support our clients in delivering all necessary services to Sonoma County citizens.

What has been the most challenging thing about this situation?

Trying to really listen to what a client needs and then coming up with creative options in a very challenging time!

Chris Krankemann and Sarah Lewers, Krankemann Law Offices, P.C.

How are you proceeding with the day-to-day running of your practice during the coronavirus lockdown?

Our firm instituted a hygiene protocol in early March, before the formal shelter in place order. At the same time, we began to limit in-office visitors. Our staff and attorneys began preparing for working from home in the event there was a closure ordered. Our firm uses an online filing system for our case files, so we were already fairly well situated to begin working from home. We are not doing in-person meetings with clients at this time, although it does not seem to have impacted client communications in any way.

What has changed with how you are having to approach your particular field of law?

Frankly, nothing much has changed. There are court dates which have been continued, but we are able to appear at depositions and other events using video technology.

How are you navigating the economic challenges? If you are a larger firm with employees, are you keeping your office open or not?

Our firm is essentially running in its normal fashion, with the exception that most of the attorneys and staff spend significant time working remotely. While our office is strictly closed to the public since the shelter in place order took effect, we still come to the office on occasion to manage essential tasks, such as retrieving mail and picking up office supplies.

What has been the most challenging thing about this situation?

The uncertainty of when the courts will return to normal operation. As of now, trials and other important dates are

Continued on next page

Sonoma County Legal Community During Covid-19

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subject to rescheduling, but we do not know how far out they will be rescheduled. There is also, of course, some delay in ongoing litigation as a result of the court closure. For the most part, clients have been understanding of the change in circumstances, although some are disappointed that the progress on their cases has been limited due to the closures of the court.

Thomas P. Kelly III, Attorney at Law

How are you proceeding with the day-to-day running of your practice during the coronavirus lockdown?

Still coming into the office as normal, but clients cannot come in person for anything. All meetings are done by video or telephone conference. Clients appreciate handling meetings in this manner to stay safe, and it seems to be working well so far.

What has changed with how you are having to approach your particular field of law?

With so many people out of work and virtually all businesses closed, the expectation is there will be a wave of bankruptcy filings in the second half of the year that will exceed the wave from 2008. In the near term, active cases under Chapters 11, 12, & 13 require ongoing monthly payments for as much as 5 years, and we will likely start seeing a large number of defaults in those cases as payments are missed in the next 60-90 days. All Court and 341 hearings are being done by teleconference. The Northern District has suspended many rules, and has allowed for Court documents to be signed by clients remotely, as opposed to requiring in-person wet-ink signatures. ECF has remained fully operational throughout so case filings have not been affected at all.

What has been the most challenging thing about this situation?

Biggest concern is the uncertainty of how long the situation will last. Long term plans are near impossible. Clients are faced with extraordinary circumstances, and it is very difficult to advise them without any time horizon. So far, banks and other financial institutions are being more cooperative than back in 2008 by agreeing to forbearances and deferments of mortgages, loans, and credit cards very readily. However, most have seen their income decrease dramatically. As more time passes, these financial problems will escalate.

Jennifer Hendrickson, Hendrickson Law Group, PC

How are you proceeding with the day-to-day running of your practice during the coronavirus lockdown?

I work at home remotely. My partner goes into the office. Our

office is set up so that we have a private suite. We don't meet with clients in person for the most part. Most everything can be done by phone and e-mail these days. It's not the difficult transition for us that it is for, say, a criminal defense attorney, where being in court often is required. Managing client expectations is probably the hardest—clients don't understand that the country is closed and that means the court is closed, too.

What has changed with how you are having to approach your particular field of law?

Nothing, really, except the pace of how quickly things move along. Some things are on hold. We have some orders unsigned and some things moving slowly. We did a deposition via Zoom/telephone, others have been cancelled for now, and we have pushed back trial dates, but other than that, it's generally business as usual, just at a slower pace.

How are you navigating the economic challenges? If you are a larger firm with employees, are you keeping your office open or not?

My partner and I are the only "employees," so we just don't have the stressful issues around payroll and employees coming into the office or setting them up to work remotely. Right now I'm grateful to be a true solo for that reason.

What has been the most challenging thing about this situation?

Hmmmm.... I think it's the uncertainty. We don't know how long this will last. The staying at home isn't a big deal to me—I'm happy being at home. But I know there are people going stir crazy, and we can't do this forever. People are bleeding money and unable to feed their families.

Heather Lord, Paralegal, Law Office of Kathleen J. Smith

How are you proceeding with the day-to-day running of your practice during the coronavirus lockdown?

We are a small family law firm with a solo practitioner, one paralegal (me), and a legal secretary. Our attorney and I are working remotely from home. Our secretary is the only person going into the office to accept payments, receive deliveries, and perform her daily tasks as usual. We are not open to drop-ins from clients and we are only accepting phone consultations.

We are set up on a cloud-based practice management software through Abacus and our phones are set up through Ringcentral, a VOIP, which allows our entire staff to work remotely as if we were in the office. Phone calls have been

Continued on next page

Sonoma County Legal Community During Covid-19

(continued from previous page)

seamless which was a big concern for our office when we began to think about working remotely.

What has changed with how you are having to approach your particular field of law?

Our office practices primarily Family Law, including DVRO cases, Guardianship cases and a limited number of Juvenile Dependency cases as well. All family law and probate (guardianship) hearings, as well as Family Court Services appointments have been continued. Dependency hearings are still being held through “Zoom.” My attorney relayed that this platform works well and it allows our clients to appear remotely with her. The ability to hold these hearings by Zoom is invaluable to clients for these types of cases. There have been a number of cases of parents who are raising concerns regarding custodial exchanges and the worry that children will be exposed to coronavirus in one household and unintentionally spread it to the other household, or that children will develop COVID-19 as a result of rotating between homes. We have been able to advise our clients that the County’s Health Order states that custody Orders should be followed as ordered. The only recourse clients in Family Law have right now is to file ex parte requests for true emergencies and our office has had to file a number of them due to true emergency situations that have arisen.

What has been the most challenging thing about this situation?

The most challenging thing for me personally, has been working from home as a mom of a young daughter who is having to engage in distance learning for the remainder of the school year. Juggling working from home and “teaching” from home has been very challenging. It has also been challenging for me to not have face time with clients, my favorite part of my job, and to not see my “work family” every day.

**Mandee Neal, Paralegal,
Law Offices of Carolyn Vandyk**

How are you proceeding with the day-to-day running of your practice during the coronavirus lockdown?

We are a very small family law practice with one lawyer and one paralegal. Carolyn and I only began working together two months before the pandemic. I was able to navigate the computers, emails, remote VPN Networks, mailing systems, e-filing portals and telephones. For the most part, we have navigated them very smoothly. We were able to contact our network management company and they helped remotely to ensure that we could access our network securely from home.

What has changed with how you are having to approach your particular field of law?

Reaching out to our clients before they need us and making sure that they know we are still there for them has proved to be a critical part in maintaining our clients’ confidence in our firm. I have always avoided giving clients my cell phone number because, prior to the SIP, there had been no need to cross that boundary. This has been one big change that I have had to accept in order to allow clients the access that they need. Fortunately, our clients are very respectful and have not taken advantage of this so far. Family law is unique in this way; our clients are going through the most difficult time of their lives. They are in a heightened emotional state already and adding the stress of the pandemic, many of them need a little extra security from us. Carolyn understands that and so we make efforts to give that to them, in whatever ways that we can. The lawyer/paralegal relationship is based on trust. I feel that this experience has strengthened that trust to a new level.

How are you navigating the economic challenges?

I will say that Carolyn has been incredibly supportive with regards to the economic impact of the COVID-19 pandemic. Neither of us had any idea what to expect when this first began. Our communication has been superb and we have both understood that we must change our economic strategy, both personal and as a firm, as we become more and more clear on what the firm will look like at each level of the SIP.

What has been the most challenging thing about this situation?

The unknown. Trying to stay focused during these ever-changing times has proven to be the most difficult part for me. My mind wants to solve the problem, make sense of it, prepare for the possible pitfalls, and provide a sense of comfort for the anxiety. I have learned that this is not possible. I must focus on the things that are in my control now and not get distracted by the unknown. Working from home has provided more time to make healthy meals, fit in a half-hour workout in the middle of the day and even an evening walk with the dog before it gets cold and dark. These are a few of the ways that I make sure to take care of my mental and physical health during these times of fear and uncertainty. ¶¶¶

Interviews compiled by Caren Parnes

Caren Parnes is the SCBA Bar Journal

Production Manager designer & contributor

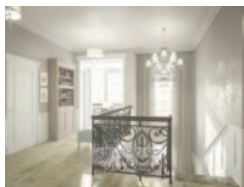
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Remembering Thomas P. Kelly, Jr. (1936-2020)

Thomas P. Kelly, Jr. passed away February 24, 2020. A native Texan, he worked his way through the University of Texas as a brakeman on the Southern Pacific Railroad, earning business and law degrees, and developing a lifelong love of Longhorn football. He served in the Air Force as a JAG in Vietnam, and then worked in San Francisco as a railroad lawyer. Ambitiously, in the late 1960's, he moved to Santa Rosa with his fiancé Joyce knowing no one. He joined Anderson & McDonald, now the Abbey firm, where he would be a partner for thirty years, before running his own practice for twenty more.

There were many ways people came to know Tom. He was a lector at St. Eugene's Cathedral, and a Contracts and Corporations professor at the Empire Law School, where he was one of the founding faculty. Tom was a devoted counselor for the Eritrean community, many of whom considered him one of their own. A strong advocate for Sonoma County business, he particularly championed the construction industry. Charity was always a part of his life, especially on behalf of parochial schools and the Law Enforcement Chaplaincy.

Tom and his wife Joyce were a study in contrasts. He was the dark haired Catholic Republican Texan, she the blonde Protestant Democratic Englishwoman. Perhaps such a pairing could only have occurred in San Francisco in the 60's, where they had worked together and fallen in love. Their marriage, at his passing three months shy of their 50th anniversary, produced three children, Heather, Tom III and John, all of whom followed him into the profession.

For Tom, law practice was like basketball. He had honed that skill as a short, thin, awkward teenager in San Antonio. He shot 10,000 free throws then, developing an outstanding jumper, and earned a spot on his high school team. Decades later, arriving home to his kids playing hoops, he would call for the ball, and shoot from an impossible distance. Invariably, he hit. Was it skill? Was it luck? Was it both? Did it matter?

His day was generally conducted like clockwork. Even on the weekends, he could be found at his desk at the office at 9 A.M., answering his telephone with a curt "law office," without any other salutation. His memory was fantastic. At one time he was jokingly referred to as the master of the obscure

statute, but his organizational skills were slightly less so. Possessed of a hearty laugh, intelligence was the coin of his realm, and education the marker of achievement. A bit long winded, his conversations always seemed to turn to railroads, when his face would light up like a child delighted with a train set on Christmas.

Tom was tough to your face, and praised you behind your back. Imperious in the courtroom, he was humble with clients. A reservist for thirty years, retiring as a Colonel, his Air Force support staff were continually bemused by the contrast. In jest, they got him the license plate "HMBLTOM." He placed it on his Porsche with pride. Sometimes called a "grumpy Matlock," despite being a civil not criminal practitioner, the gruff exterior concealed a deeply religious respect for the value of every human life. A military officer and student of the history of warfare, the core of his spiritual values was still betrayed by his longtime computer password, "peacenow."

His weakness was Rocky Road ice cream, and while no gourmet, he could cook fantastic San Antonio-style enchiladas and pretty good Chicken and Walnuts. He loved his wife Joyce's garden, although lamenting his own brown thumbs. An outdoorsman when young missing Eagle Scout by a whisker, he nevertheless refused to ski, claiming to

have broken his leg on the bunny slope at Squaw. Stern in confrontation over values in court, he melted in the presence of children, almost always accurately guessing their age, with an extra year for good measure. He would strike up conversations with them, never talking down. Instead, he always made them feel "big." He had been the littlest one himself once, of course.

But it was law practice to which he gave his first, best, and ultimately final measure of devotion. For him, practicing law was fun. It was the best single thing you could do. He couldn't see why anyone would do anything else. Growing up with him, cross-examination could come at any time, and his "ah-ha!" at his kids' admissions against interest revealed the twinkle in the eye of a man in his element.

Perhaps the greatest tribute to him is the large number of his students at the Empire College of Law who spoke of his

Continued on next page



Remembering Thomas P. Kelly, Jr. (continued from page 22)

dynamism as a professor. So many went on to fulfill the values he held dear, and he remembered nearly all of them. Although he perhaps had not always let them know how impressed he had been with their work, he made sure his family knew. The continuing impact of those students is the best tribute he probably could have imagined to the spirit of the profession he was so delighted himself to have practiced.

Thomas P. Kelly, Jr. was 83 years old. ☞

By John Kelly

John Kelly (Berkeley Law '02) is a member of the SCBA Board, and chair of its Business and IP Law section. He is President of the Sonoma Valley Unified School District Board of Trustees and a partner in Kelly, Carlstrom & Associates in Santa Rosa.



Tom & Grandkids, ~2019. L-R: Clara, Miles, Allegra, Siena & Ruby



The Kelly Family, ~1980. Tom & Joyce, with, L-R: Tom III, Heather, & John

Other Members Who Recently Passed

We are sad to announce the passing of three SCBA members during the past three months.



Kirt F. Zeigler

Kirt Zeigler, 2014 Careers of Distinction Honoree, passed away on April 15, 2020. He was 80 years old.

He and partners Ed Anderson and Robert Disharoon founded in 1982 what is now the Santa Rosa law firm of Anderson Zeigler.

We will be including a biographical article about Kirt in our Fall issue.



Norbert C. Babin

Norbert Babin, long-standing member of the SCBA since 2008, passed away on May 13, 2020. He was 85 years old.

Norbert was a long-time attorney in Sonoma County at Babin & Seeger, LLP; formerly Babin, Seeger & Hardcastle, a prominent insurance defense firm in the 80s and 90s. Norbert practiced law for 50 years and was a leader in his field of expertise. He graduated from the University of California, Berkeley, served in the United States Army for two years and received his JD from Golden Gate University Law School in San Francisco.



Craig K. Welch

Craig Welch died unexpectedly of a heart attack in his home in Healdsburg on April 1, 2020. He was 72 years old.

Craig had practiced law since 1977, and has been the principal of The Law Office of Craig K. Welch in Petaluma since 1998, specializing in bankruptcy and reorganization, and represented both business and consumer clients. He received his JD from Golden Gate University in San Francisco.

“Night at the Museum” Mixer & Tour

On Tuesday, March 10, 2020, approximately a week before the shelter-in-place order went into effect in Sonoma County, the Sonoma County Bar Association held a new mixer event hosted by the SCBA Archive Committee called “Night at the Museum.” The event was held after hours (5:30 P.M. – 7:30 P.M.) at the Museum of Sonoma County in downtown Santa Rosa, which provided both a fun venue for a mixer and also offered as a bonus a tour of the museum and its current exhibit by staff.

The exhibition running during the event was called “From Suffrage to #MeToo: Groundbreaking Women in Sonoma County,” which celebrates this year’s centennial of the ratification of the 19th Amendment. The exhibit profiles over 20 women from the 19th century to the present day who helped build our community and fight for the rights of women—from Suffrage to the 2017 Year of the Woman. This exhibit is on hiatus while the Museum is closed during shelter-in-place, but will run through September 20th. It is an excellent exhibit and worth a visit whenever we finally have an opportunity to visit museums again! Check out the information on the exhibit at <https://museumsc.org/suffrage-metoo>.

In addition to this interesting look back at the broader Sonoma County community through the lens of the women

who helped build it, the Archive Committee brought interesting memorabilia from the archives profiling the legal history of the county.

After enjoying some beverages and appetizers while browsing the exhibit and mixing with other attendees (with appropriate social distancing), SCBA President Michelle Zyromski introduced the tour with some memorable words on the topic of the centennial that bear reprinting here:

“So—Why are we here? What are we celebrating?”

Two sentences: “*The right of citizens of the United States to vote shall not be denied or abridged by the United States or any state on account of sex. Congress shall have the right to enforce this article by appropriate legislation.*”

That, my friends, is the 19th Amendment to the United States Constitution.

When I heard that the Museum was going to launch this exhibit, I was excited that they were recognizing the 100th anniversary of the passage of the 19th Amendment with exhibits highlighting the local accomplishments of Sonoma County women.

Continued on next page

Photography courtesy of Caren Parnes



L to R, SCBA Staff & volunteers, Win Rogers, Joan Guillaumin, Emily Rippen & Susan Demers



SCBA staff Ann Horn mans the refreshment table

Attendees enjoy snacks & conversation while taking in the museum exhibit



At Left: Museum exhibit profiling District Attorney Jill Ravitch's campaign & election to office



At Right: SCBA President Michelle Zyromski with museum staff Katie Azanza

At Right: Museum staff member describes museum artifacts



“Night at the Museum” Mixer & Tour (continued from previous page)

This exhibit reflects an appreciation for the real, day-to-day truth that History Matters. We as lawyers know this. To us, it's called Precedent. We stake our cases on this principle. It's what guides us as we figure out what we can and should do when facing a particular set of facts. We need to know precedence because it's what teaches us the lessons of history.

Here in this sweeping exhibit, we can see and feel the spirits of these strong women who forged their own paths in their time and who in their own way changed Sonoma County history.

I'm lucky to be reminded every day that history matters. This chair is usually located with three others and a couch in our living room. It belonged to Augusta Metzger and we are reminded of her every time we enter the room and enjoy her furniture with family and friends. The Koniceks have kept her stories alive by handing them down through the generations, and a synopsis of that history is part of this exhibit. You will read about her story and about Frances Martin and Sarah Finley near here, and about many others in this exhibit. Don't miss the stories of Jill Ravitch, Judy Sakaki, and Gaye LeBaron, who is the legendary storyteller of Sonoma County history.

It is important that we learn their histories and why they mattered in their lifetimes and how we are shaped by their legacies. It's not an understatement to say that we women stand on their shoulders and should respect what they did to contribute to the life we enjoy now and the fact that we can vote in every primary and general election and take that right for granted.”

The tour that followed gave background on a few of the artifacts in the exhibit and then took us into the museum storage areas and showed us some rare items they did not have on display.

It was altogether a fascinating and enjoyable evening.

Thanks go to the SCBA's Archive Committee: Chair Rose Zoia, Emily DeMeo, John Geary, Edward Lester, Josh Myers, Laura Rosenthal, Tad Shapiro and Carrie Wong, for their hard work in making this event a reality, and Joan Guillaumin for volunteering to help out with the setup and refreshments. ¶¶¶

By Caren Parnes

*Caren Parnes is the SCBA Bar Journal
Production Manager designer & contributor*

Photography courtesy of Caren Parnes



Archive Committee presentation of SCBA historical memorabilia



Attendees examine artifacts in the basement of the museum during the tour

*At Right:
SCBA President
Michelle Zyromski
introduces attendees
to the exhibition
while pointing out
her family's
antique chair*



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SCBA Bar Journal

The *Bar Journal* is published quarterly by the Sonoma County Bar Association.

Editors: Malcolm Manwell, John Borba;

Project Management, Advertising Sales, Graphic Design & Printing: Caren Parnes;

Editing: Joni Boucher; *Copyediting/Proofreading:* Susan Demers;

Photography: Star Dewar;

Content Development: Malcolm Manwell, John Borba, Joni Boucher,

Michelle Zyromski, Susan Demers, Amy Jarvis;

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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 Susan Demers at 707-542-1190 x180. Submit all editorial materials by email to: susan@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.

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Sonoma County Bar Association Welcomes Our New Summer 2020 Members!

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Ed Balme, Student

Steve Disharoon, with Wood, Smith, Henning & Berman, LLP

Kathy Jalilie, with DCSS

Margene Larson, with Wine Country Family Law & Bankruptcy Office, P.C.

Simeon Scallon, Student



SONOMA COUNTY BAR ASSOCIATION

111 Santa Rosa Avenue, Suite 222, Santa Rosa, CA 95404-4945

(707) 542-1190 x100 • Fax (707) 542-1195

www.sonomacountybar.org • info@sonomacountybar.org

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