

SONOMA COUNTY BAR ASSOCIATION THE BAR JOURNAL

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Petaluma pasture at sunset, Sonoma County

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By David Berry,
President, SCBA

President's Message: "Us and Them" or "You and Me"?

An important goal for my term as SCBA President is opening a conversation about the role of race, gender and identity in the delivery of justice in Sonoma County. To forward that goal, the SCBA is forming a working committee

focused on discussing these issues. The purpose of this article is to introduce the topic, and set a tone for respectful discussion of issues that can cause conflict, mistrust, and intense reactions.

I will introduce the topic by explaining a template I invite the Bar Association to consider using to address these issues. It is called "what/so what / now what." I learned of it by hearing the story of an amazing 90-year-old Black man named Dr. Dudley E. Flood. He has used the technique to improve race relations. An aspect of Dr. Flood's life is the subject of "The Boycott" episode of a podcast called *Criminal*. The episode tells the story of his experience with race relations, including how he played a critical role in desegregating every public

school in North Carolina. He speaks unvarnished truths, including how his work taught him that everyone has important points of view that should be considered. He understood that law cannot force change. Change, if it is to come, must follow conversation, understanding, and a willingness to do something different. A theme underpinning Dr. Flood's thoughts is changing the conversation from "us and them" to "you and me."

Dr. Flood believes any problem can be solved by answering three questions: (1) what? (2) so what? and (3) now what? The "what" simply identifies and names the problem. The "so what" answers why it is a problem by asking how big an issue it is and to whom, since different problems can affect individuals and groups in different ways. The "now what" is the solution: what do we do differently now to fix the problem? Dr. Flood talks about the mistake of identifying the problem (what) and immediately seeking to solve it (now what), thereby missing an understanding of the texture of the problem (so what). Skipping "so what" tends to make solutions less durable.

Dr. Flood used the "what /so what / now what" system to identify and solve many issues he faced in combining neighboring Black and White schools. He learned that each community in North Carolina had *separate* problems with integration, and his system was able to adapt accordingly. One example involved new school colors. Each school had established colors and did not want to use the other school's prior colors for the new school because it felt like subjugation. The solution? Students from each school picked one of their old school's colors, a third "neutral" color was selected, and those three became the new school's colors. This solution worked because it did not leap from "what" (we need to pick school colors) to "now what" (just reuse colors from one of the prior schools) based on something less important (for example, not needing to repaint the gym). Rather it addressed the all-important "so what": No one felt subjugated by the new color choice. The result: a process—and new school colors—that the students embraced. Dr. Flood believes that the "what / so what / now what" system has universal

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President's Message (continued from page 3)

application. To learn more about Dr. Flood and the system, find the 35-minutes-long "The Boycott" episode here.¹

How could application of "what / so what / now what" work for us? Each of us undoubtedly has different responses when we hear the stories about (a) race, gender and identity, or (b) diversity, equity and inclusion. That is the "what." Examine your visceral reaction as you read snippets of four true stories of people I know.

Story one. A woman worked with a male boss for a huge company. Their job was fixing troubled projects and teams, often by firing people (mostly men). They were great at their jobs and were repeatedly promoted together. An *untrue* rumor explained her success: She was sleeping with her boss.

Story two. A woman grew up knowing she is lesbian. Early on she understood that openly identifying as lesbian would mean rejection by many in her community and her family. Even now, she finds that many people judge her based on her identity as lesbian, as opposed to who she is as a person.

Story three. Someone told an aging White man that White privilege explains his success. He had a tough childhood that he turned around by enlisting in the military. He served in Vietnam, where racism was not part of his experience. Financial success only followed early repeated failure. Hearing White privilege explain his success strikes him as an unfair oversimplification.

Story four. A minority-race male lawyer, while making a

court appearance, had to prove he was a lawyer by showing his bar card (an experience most lawyers never face). This strikes him as the product of racial bias.

Some of those stories may hit close to home. Others may not. The stories cause different reactions depending on the listener's perspective. A common thread for these stories is that preconceptions and biases surrounding race, gender and identity can cause harm through prejudice and misunderstanding. That is part of the "so what." A conversation on the topic is sure to find more "so what." To effectively talk about these topics, we can make the choice to open ourselves up to *sharing* and *hearing* stories that are different from our experiences, which may be unsettling or even upsetting.

As President of the Bar Association, I want to facilitate a conversation about diversity, equity, and inclusion issues in the delivery of justice in Sonoma County using the "what / so what / now what" system. Obviously, such a process will take buy-in from diverse populations within our community, and a willingness to try something different and perhaps uncomfortable. If Dr. Flood's confidence in the system is well-placed, using it may lead the SCBA towards a better system of delivering justice for our community. The first step in this process is the creation of the working group to address the issue. As it is just forming, I do not have details to share. However, I have the commitment of our leadership to seek to have this effort span years, so that we may make a meaningful impact. Please stay tuned, as I hope there will be much to report—including a request for your involvement—as we go forward. ☸

1. <https://thisiscriminal.com/episode-180-the-boycott-1-14-2022/>



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2022 SCBA Board Zoom “Retreat”

On January 15th, the 2022 SCBA Board met via Zoom for a two-hour “retreat” to report on 2021 and discuss direction for the coming year.

The meeting was called to order by 2022 SCBA President David Berry, followed by the participating board members briefly introducing themselves and their positions.

Membership and Programming

Executive Director Amy Jarvis provided a membership update and reported on the performance of the seminar program.

Membership is down by about 5%; there is a drop in revenue associated with section memberships and add-ons, the biggest of which was “practice areas”; however so far in 2022 the numbers are more in line with 2020 and are significantly better than this time last year.

There were 50 seminars in 2021, only 2 short of the goal. Attendance dropped in 2021. However, 2020 was an unusual year because there were numerous seminars well-attended dealing with the pandemic issues. Many programs are scheduled for the next few months and have been well-attended so far.

SCBA Offices Moving

Ms. Jarvis and Mr. Berry provided an update to the Board about the impending office move to the former Empire College building. Financially the rent is significantly reduced at the new building, so our overall rent

budget for the year will be reduced despite an overlap and double rent during the moving phase.

LRS Progress Report

Although it did not quite meet its challenging budget, the Lawyer Referral Service had a successful year. More referrals were made this year, which will pay dividends when the forwarding fees are paid in the future.

Committee Participation

Board members were reminded that they are expected to participate in at least one standing committee. The SCBA currently need new Chairs for the Membership Committee and the Communication Committee.

Treasurer’s Report

Ms. Jarvis read Treasurer Mark Rubins’ written statement to the Board about the financial health of the organization. The SCBA’s cash reserve is healthy, with enough to sustain the SCBA for around 7 years if the financial position remains the same. The 2021 loss was related to a significant reduction in income. However, the three years prior showed strong profit and there were still positive cash flows for the last two years. A return to in-person events and MCLE seminars should help the SCBA break even in the future.

Mr. Berry also reported that Mr. Rubins may be retiring soon, so the Board might need to identify a new Treasurer in the future.

(Continued on page 7)

SCBA Spring ‘22 “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.

Autumn Gillette is now with Perry, Johnson, Anderson, Miller & Moskowitz LLP in Santa Rosa . . . **Rodman & Associates, P.C.** has moved their office to 3562 Round Barn Circle, Suite 216 in Santa Rosa . . . **Elizabeth Feeney** is now with MP Law LLP in Santa Rosa . . . **Kristin Mattiske Nicholls** is now with Carle, Mackie, Power & Ross LLP in Santa Rosa . . .

Keenan McCullough is now with MP Law LLP in Santa Rosa . . . **Christine Brady** is now with the San Diego County Public Defender Office in San Diego . . . **Leslie Giovanetti & Florence Lesne** are now with Daryl Reese Law P.C. in Santa Rosa. . . **Tricia Seifert** is now with Redwood Empire Law & Mediation in Santa Rosa.

2022 SCBA Board Zoom “Retreat” (continued from page 6)

Diversity, Equity & Inclusion

Ms. Nicole Jaffee and Mr. Berry discussed President Berry’s intention to focus on Diversity, Equity and Inclusion (DEI) during his Presidency and beyond. Ms. Jaffee explained the goals of the section and will be presenting on this issue at each of the SCBA’s Board Meetings. The vision is to endorse diversity in our legal community, and to foster more inclusivity and respect. Valuing DEI allows us to better represent clients, encourage fairness in litigation and help our firms, businesses and community. DEI will launch a “Pipeline Pod Program,” where four people will be connected at various levels of studies, starting as young as high school, and each will serve as both a mentor and mentee. While each section of the SCBA has a focus in a specific area of law or practice, DEI touches everyone. It is hoped that focusing on DEI will help increase membership, provide valuable mentoring opportunities and help to find the future all-stars of our legal community.

Section Reports

In 2022 each section representative will be invited to share news on their section. This will not be a required report, but rather the section’s opportunity to inform the Board of upcoming plans and events. Reports were provided by R. Pittman of the County Counsel’s Office and B. Purtil of Empire Law School. Mr. Pittman provided a brief update of the main concerns of the

County’s Board of Supervisors. Mr. Purtil is seeking volunteers for his essay-writing skills program at the Law School. Members are asked to contact him if they are able to assist with the program.

2022 Events

Discussion was held about special events this year, and the consensus was to not hold the Careers of Distinction Awards dinner or the Judges’ Jubilee. Instead, the first the get together should be outside and COVID-safe, with the goal of connecting people and providing an opportunity for members to mingle and socialize. ☺☺☺

Minutes taken by Kinna Crocker

Article written by Caren Parnes

Kinna Crocker heads the firm of Crocker Law in Santa Rosa. She is Vice President of the SCBA, chairs the LGBTQI Law Section, and is a member of the Family Law Section and Bar Journal committee.

Caren Parnes is Principal of Enterprising Graphics. She has worked with the SCBA and the Bar Journal committee since 2005 to help produce the newsletter.

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REDWOOD LEGAL DOCUMENT SERVICES



by Amanda Neal

A Good Reason to Have a Certified Paralegal on Your Team

When it comes time to hire a paralegal or determine what educational opportunities are available to employees wanting to pursue being a paralegal, paralegal programs fall into one of the following categories:

- Four-year baccalaureate programs with a major or minor in paralegal studies;
- Post-baccalaureate programs, usually 3 to 12 months in length, awarding a certificate;
- Two-year community college programs, usually awarding a certificate or an associate degree; and,
- Programs offered by proprietary institutions, usually 3 to 18 months in length, awarding a certificate.

A paralegal is considered “certificated” upon graduation from a program and “certified” upon completion of an exam, a series of exams, or becoming a member of a national organization and applying for certification. If the designation of “certified” was earned as the result of testing, the paralegal is given a time span of between two to five years to complete specific continuing legal education requirements and apply for the designation to be renewed. A paralegal would not be eligible to test or apply for designations until they have completed specified educational requirements or have qualified through work experience.

A majority of the organizations offering opportunities for paralegals to become “certified” do not test applicants on California law. However, the exams through California Alliance of Paralegal Association (CAPA) and National Alliance of Legal Assistants (NALA) do. In order to qualify for the California-specific law exams through NALA, a paralegal must first become a “certified paralegal” (“CP” (aka “CLA”)). The “CP” exam is based on federal law. Once the paralegal becomes a “CP,” the paralegal can earn an “advanced certified paralegal” (“ACP”) designation in a California law subject, such as California-specific discovery.

There is no single authority in the United States or in California that oversees the paralegal profession. A paralegal is not required to be licensed. It is up to the supervising attorney of a paralegal to make sure the paralegal is qualified to serve as a paralegal in the given jurisdiction

and bill for services provided. Pursuant to California Business and Professions Code section 6450(d), a paralegal is required to complete four hours of continuing legal education in legal ethics and four hours of either general law or in an area of specialized law over the course of two years. The two-year span began in the year 2007. Therefore, the current two-year span is for the period January 1, 2021 through December 31, 2022 and the next two-year span will be January 1, 2023—December 31, 2024. A working paralegal is only required to complete eight hours of continuing education in that time frame by California law. However, for certified paralegals to maintain their certification, they must complete more than the California minimum educational requirements. For example, NALA requires 50 hours of CLE in a 5-year period to renew the “CP” designation.

If a certified paralegal is a part of your legal team, it should be understood and appreciated that that paralegal has made the commitment to continue to participate in educational opportunities above and beyond what is required by the state. Therefore, it may be beneficial to be supportive when the paralegal needs to attend a program necessary to keep the certification active. One of the great benefits of paralegals attending a local bar association program is that it gives that paralegal the opportunity to network with other attorneys, paralegals, judges, and professionals in their area, which can help when it comes time to work towards resolution on cases. Firms who employ certified paralegals may want to consider billing such paralegals at a higher rate, as those paralegal have had more education and most likely more experience and expertise than the average paralegal.

There are ways to confirm whether or not a paralegal has indeed earned the right to list CP, ACP, CCP, etc., after their name. The organization which awarded the designation offers ways to look up names and check their status. See the following page for certification details and links to look a paralegal up.¶¶¶

By Kimberly E. Davis, ACP

Kimberly (Kim) E. Davis, ACP, has been working for the last 16 years at Perry, Johnson, Anderson, Miller & Moskowitz, LLP. She earned her paralegal certificate through Sonoma State University in 2006 and her “CP” certification in 2014.

Have a Certified Paralegal on Your Team (continued from page 8)

Certification/ Number Awarded in USA Test	Agency/ Details	Term/ CLE	Requirement
AACP® (American Alliance Certified Paralegal) ¹ 84 in USA, 7 in CA No exam	American Alliance of Paralegals	3 years/ 18 hours before renewal	Membership, application, 6 years' experience or degree + 2 years' experience, must be employed to renew
ACP® (Advanced Certified Paralegal) ² 4,650 in USA, 267 in CA 20 hours online & exam	National Alliance of Legal Assistants (NALA)	N/A	Current CP + pass exam
CCP (California Certified Paralegal, registered trademark "under further review" as of 2/8/22) ³ 200 multiple choice questions	California Alliance of Paralegal Associations (CAPA)	5 years/ 40 hours before renewal	Bus. & Prof. Code Section 6450 Compliant
CRP (Core Registered Paralegal) ⁴ 13 in CA 2-1/2 hour exam, 125 multiple choice questions	National Federation of Paralegals (NFPA)	2 years/ 7 hours before renewal	0 – 5 years' experience + certificate, degree, GED, or HS diploma
CP/CLA® (Certified Paralegal/Certified Legal Assistant) ⁵ 6,967 in USA, 1,464 in CA 3 hour "Knowledge Exam" & 2 hour "Skills Exam" with essay, as of 9/2021, 72 tested, 52 passed "Knowledge Exam," as of 7/2021, 150 tested, 95 passed "Skills Exam"	National Alliance of Legal Assistants (NALA)	5 years/ 50 hours before renewal	Certificate or enrollment in last semester of paralegal program, degree + 1 year experience, or HS diploma + 7 years' experience
PP (Professional Paralegal) ⁶ 264 in USA, 3 in CA 4 hour exam, 4 parts, multiple choice	The National Association of Legal Assistants (NALS)	5 years/ 75 points of education credits	5 years' experience, bachelor's degree with 1 year experience, or paralegal certificate
RP® (Registered Paralegal) ⁷ 20 in CA 4 hour exam, 200 multiple choice questions	National Federation of Paralegals (NFPA)	2 years/ 12 hours before renewal	2, 6 or 7 years' experience + certificate, degree, or E6 military rank

1. https://aapipara.org/AACPs_by_State

2. <https://portal.nalamember.com/cp-directory>

3. <https://www.caparalegal.org/ccp-directory-lookup#/>

4. https://www.paralegals.org/i4a/memberDirectory/index.cfm?directory_id=22&pageID=3296

5. <https://portal.nalamember.com/cp-directory>

6. <https://www.nals.org/reports/reportsview.aspx?name=ActivePP>

7. https://www.paralegals.org/i4a/memberDirectory/index.cfm?directory_id=22&pageID=3296

Our Organization's Obligation to Protect Voting Rights and to Promote the Rule of Law

Bedrock principles and norms that support our fragile democracy are being challenged. The challenges are growing stronger. The challenges undermine our legal profession and our justice system.

We may soon be speaking of American Democracy as a memory of times past.

That would be a tragic outcome. We have to come together as professionals to protect against that possibility.

The Sonoma County Bar Association can and should serve as a vehicle to protect voting rights and to promote the rule of law.

The purpose of the SCBA includes:

"...to maintain the honor and dignity of the profession of the law, to increase its usefulness in promoting the administration of justice..." (Bylaws, Paragraph 3).

The Mission of the SCBA is "to serve the legal profession and enhance its professionalism, to serve its Sonoma County community, and to support and improve the justice system."

The SCBA, through its diverse membership, has, in recent years, participated in nationally-organized Law Weeks that provided instruction on the importance of voting rights; the importance of free speech (and free press); separation of powers; and the importance of the rule of law.

The SCBA may give consideration to:

- Promoting unimpaired voting rights
- Promoting the independence of the judiciary and separation of powers
- Promoting respect for the rule of law

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Our Organization's Obligation to Protect Voting Rights and to Promote the Rule of Law (continued from page 10)

- Promoting diversity and rights of all communities

This can be accomplished in many ways, including public speaking engagements, opinion pieces, press releases, and other community outreach. Individual members of the SCBA can effectively work together to develop energetic, timely and effective programs.

Is this within the mission of the SCBA? Yes.

Is this 'political' activity that alienates SCBA or community members? No more than any other activity that promotes the honor and dignity of the profession of law, or any activity that promotes or improves the administration of justice and the justice system. These activities have directly and expressly included protecting democratic principles and rights that are being eroded.

What has changed is that these principles and rights have been shown to be fragile.

We will all be diminished in ways that cannot yet be measured or expressed if our basic democratic principles are undermined. We have each taken an oath to support the Constitution of the United States. Collective action—and action by our professional organization—is appropriate to honor that oath.

SCBA members interested in protecting our governing principles may contact SCBA leadership; efforts may then be channeled and organized. ☰

By Chris Mazzia

Chris Mazzia is a local civil litigation attorney and SCBA member



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Legal Tech-nicalities: The Future of Legal Tech: Where are We Headed?

Legal Tech-nicalities is an ongoing column written by Eric G. Young, Esq.¹ The column's aim is to provide you with useful tips for using technology more effectively in your life and practice.

Having looked back over the past 25 years at some legal tech advances, our focus now shifts to the future. Marc Andreessen, co-founder of the formerly dominant web browser Netscape, once said, "Any new technology tends to go through a 25-year adoption cycle." How will new technology change law practice over the next 25 years? Here are a just a few predictions of the future of legal technology.

Legal Tech Will Become More Powerful

While technology already touches virtually every aspect of practice that lawyers and their staff undertake every day, over the next 25 years it will become even more powerful in terms of automation, artificial intelligence, and do-it-yourself legal services.

The Automation Generation

Blockchain technology (think DocuSign) is already here, and firms can expect to rely even more on this technology to automate many routine tasks. The use of tech tools to perform routine tasks will necessarily free lawyers and staff from the burden of the mundane, allowing us to deliver legal services more creatively and efficiently.

Law Practice of the Future = Human + Machine

From the moment artificial intelligence (AI) entered the legal lexicon, attorneys began debating whether machines could (or should) perform legal work. Today, it is difficult to ignore areas where intelligent machines "best" lawyers. A recent, controlled study pitted twen-

ty, seasoned attorneys against an AI-capable computer to review five non-disclosure agreements and accurately spot risks in the documents. Not only did the computer spot the risks with greater accuracy (ave. 94% v. 85%), but it also performed the task faster. On average, the attorneys took 92 minutes to review the contracts. The computer only needed 26 seconds.²

Despite these results, AI is not part of some dystopian future where machines completely replace lawyers. The future is more nuanced. At the same time, we should no longer assume AI is limited just to certain types of e-discovery matters. Over the next 25 years, AI will "robotize" legal tasks which until now was considered solely within the province of the human brain. One example is legal research, where a growing number of companies such as Blue J Legal, CaseMine, CaseText, Judicata, and Fastcase offer first-generation AI services.

If past is prologue, do not expect mega-companies like Thomson Reuters to passively accept these new competitors. In May 2020, Thomson filed a federal lawsuit against ROSS Intelligence, an upstart, AI-driven, legal research provider. Thomson alleged ROSS stole "critical features" of Westlaw to develop its own platform. Rather than fight Thomson, ROSS announced it would shutter operations after January 31, 2021.

Whether more lawsuits loom remains to be seen. Realistically, these efforts will become the legal equivalent of "Whack-a-Mole" as many new products and services pop up over the next 25 years.

DIY Legal Apps

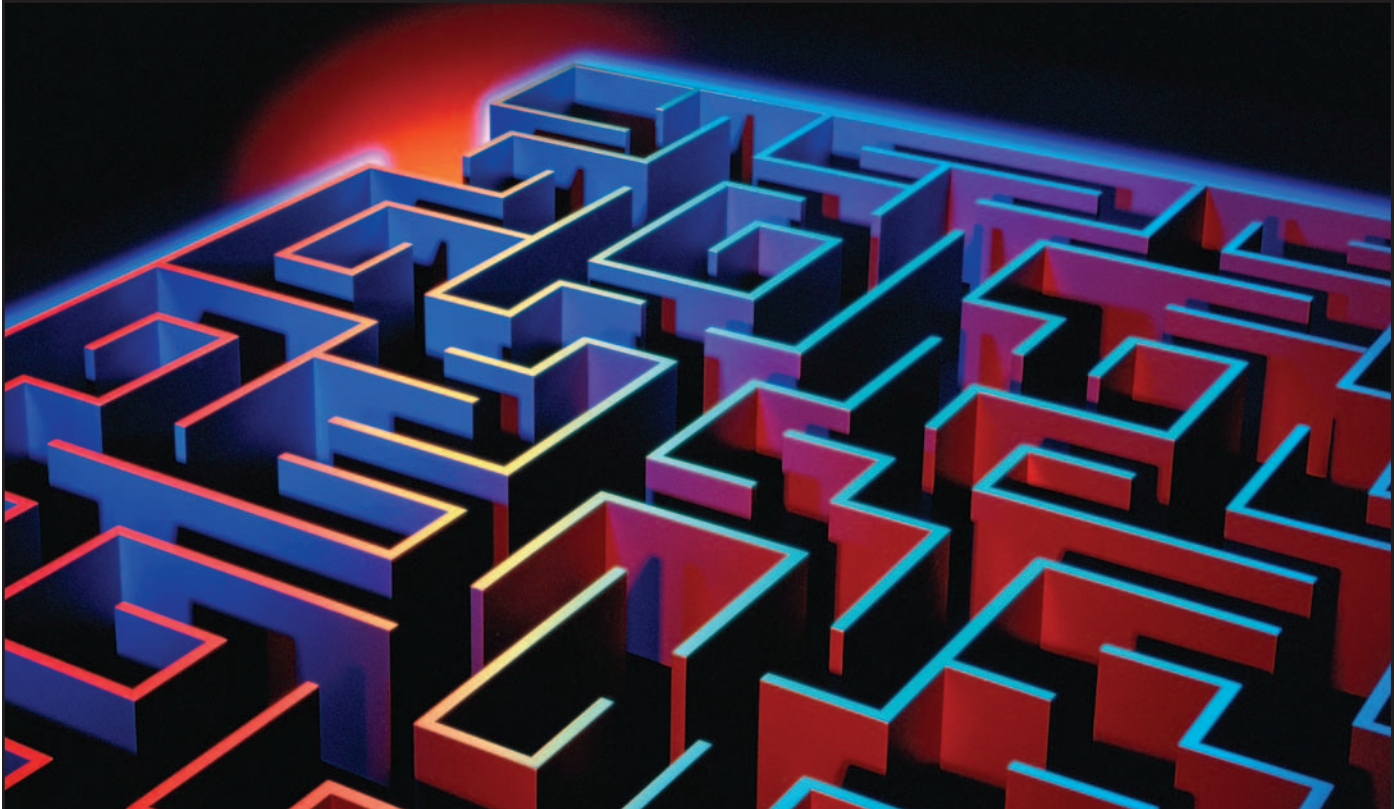
According to Legal Services Corporation, 86% of the civil legal needs of low-income Americans receive inadequate or no assistance.³ Over 25% of federal

(Continued on page 13)

1. Mr. Young is the principal attorney and legal tech geek at Young Law Group, a personal injury law firm in Santa Rosa. Questions or comments about the column, or suggestions for an upcoming article, may be directed to Mr. Young at admin@younglawca.com.

2. Leary, Kyree. "The verdict is in: AI outperforms human lawyers in reviewing documents." *Futurism.com*. <https://bit.ly/3gLOvf3>.

3. "The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans." Legal Services Corporation: Executive Summary. June 2017. <https://bit.ly/3oLFwxn>.

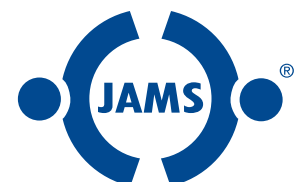


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Legal Tech-nicalities: The Future of Legal Tech

(continued from page 12)

district court cases filed from 2000 to 2019 involved a pro se plaintiff.⁴ In 2019, the National Center for State Courts reported anecdotally that 75% or more civil cases in state and local courts have at least one self-represented litigant.⁵ The United States lags in terms of using do-it-yourself (DIY) technology for legal services relative to other, western countries.

Over the coming years, advances in natural language processing (including visual and speech recognition), machine learning, and chatbots will allow the public to generate legal documents and get legal answers from guided questionnaires. This same technology

will also allow courts to expand e-filing capabilities and improve responsiveness. For example, the L.A. County Superior Court rolled out the "LACourt Connect" chatbot in June 2020 to automate inquiries and schedule remote hearings.⁶

DIY technology aimed at nonlawyers may continue to face stiff opposition from lawyers. One example can be seen in the story of "TIKD," an app designed to help users fight traffic tickets. On October 14, 2021, in response to lawsuit brought by the Florida Bar, the Florida Supreme Court ruled 4-3 that TIKD engaged in the unauthorized practice of law.⁷

(Continued on page 15)

4. "Just the Facts: Trends in Pro Se Civil Litigation From 2000 to 2019." United States Courts. February 11, 2021. <https://bit.ly/3rloimd>.

5. "SRLN Brief: How Many SRLs?" Self-Represented Litigant Network. 2019. <https://bit.ly/3sGWk9G>.

6. LACourtConnect home page. <https://my.lacourt.org/laccwelcome>.

7. Weiss, Debra Cassen. "Ticket fighting app was engaged in unauthorized law practice, top state court rules." ABA Journal. October 15, 2021. <https://bit.ly/36d7E60>.

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Legal Tech-nicalities: The Future of Legal Tech

(continued from page 14)

Increasing Legal Tech Budgets

As legal tech becomes more robust and varied, legal tech spending will substantially increase. Today, law firms spend an average of \$20,000 on software.⁸ Gartner Legal & Compliance Research, an international industry research provider, predicts a threefold increase in legal tech spending by 2025.⁹ This spending growth reflects the realization that legal tech tools are no longer a luxury, but a necessity, for law firms.

Expanding Remote Legal Work Arrangements

Remote work arrangements will continue. 67% of law firm workers reported they want their jobs to remain remote at least a few days a week.¹⁰ Law firms will find it difficult to avoid offering remote work arrangements if they expect to attract top talent.

Remote depositions, mediations, and court hearings are also here to stay. These are popular because they offer convenience and cost savings. Attorneys are no longer forced into bumper-to-bumper, commute traffic, towing the entire client file. Moreover, remote depositions help to address the nationwide shortage of court reporters. According to the Speech to Text Institute, 1,120 stenographers leave the field every year, with only 200 entering. These numbers mean a shortage of court reporters in the foreseeable future.¹¹ Consequently, attorneys who expect to have their depositions in person may be unable to obtain a court reporter, or they may have to pay a premium for in-person coverage. Like attorneys, court reporters view in-person depositions as inconvenient and more physically demanding. Attorneys are not the only ones lugging equipment and exhibits.

The California judiciary favors increasing remote court hearings to improve access to justice. The Chief Justice's Workgroup on Post-Pandemic Initiatives determined remote hearings improved access to justice and reduced court backlogs by as much as 130%. The workgroup recommended expanding and maximizing remote access on a permanent basis for most proceedings.¹²

Of course, not everyone supports remote legal work arrangements. Some law firms are already trying to entice workers back to the office with promises of improved working environments.¹³ Remote depositions and mediations also have certain disadvantages. While having great potential, remote court hearing also present, perhaps, the most dangerous pitfalls. The Brennan Center for Justice reported significant problems with remote hearings, including:

- Defendants whose bail hearings were conducted remotely had substantially higher bonds than in-person counterparts, sometimes by as much as 90 percent;
- Individuals detained for immigration violations were more likely to be deported when their hearings occurred over video conference rather than in person;
- Children providing remote testimony were perceived as less believable; and
- 37% of courts using videoconferencing were unable to provide secure, private communications between attorneys and their clients when appearing from different locations.¹⁴

(Continued on page 16)

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Legal Tech-nicalities: The Future of Legal Tech

(continued from page 14)

Welcome to the Metaverse

One could be forgiven for thinking the notion sounds a bit far-fetched, if even a little silly, that we will all, someday, live, work, and play in a “virtual reality.” Nevertheless, Facebook—sorry, Meta—is betting big that we will. The company has already opened its virtual world, “Horizon Worlds,” to anyone 18 years or older in the U.S., and it plans an initial investment of \$10 billion over the next year to build out the virtual world.¹⁵ Imagine the investment and advances over the next 25 years.

What does the “Metaverse” have to do with law practice? Everything, as Master Yoda would say. To understand why, however, requires using your creative thinking skills first.

Imagine for a moment you are scheduled for a Case Management Conference. Rather than open Zoom on your computer (Zoom is so yesteryear), you don a headset and your avatar enters a virtual, immersive, 3D version of the courtroom. The judge (or more accurately, the judge’s avatar) is there, along with the court reporter and even the bailiff to prevent any virtual mischief. The entirety of the courtroom, down to every detail, is replicated for your interaction. Think that still sounds ridiculous?

Before laughing it off, remember that prior to the iPhone, no one foresaw what we could do simply by tapping the face of a handheld gadget. To see where mobile devices could take us required an enormous amount of imagination. The Metaverse will be the next stop on the Imagination Train for everyone.

Like other companies and the general public, law firms and lawyers will create Metaverse identities. Intellectual property issues will result. New laws will be needed to address Metaverse torts and crimes. New ethics rules will be needed to address misbehaving lawyer avatars. The implications for lawyers and

the practice—both positive and negative—are enormous, which could form the basis for an entirely separate article.

Conclusion

The lawyer for the next 25 years must be both a creative and critical thinker, a knowledge engineer, tech systems influencer, and an expert in forward thinking. Working alongside new technology, the future lawyer will develop new ways of solving legal problems. The tools we use will change. So will our jobs. Thus, we have a choice—compete against those who adopt these new ways or play a role in the future of our profession. The latter is, by far, the better choice. ☸

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Dean's List: Report from Empire College School of Law

Going forward, the SCBA will feature this spot as a regular article. Brian Purtill, the Dean of Empire College School of Law, will report on the state of the school, students, staff, and faculty, as well as update readers on various developments in the law he finds entertaining. Happy reading!

Greetings, all! Here is the latest news from Empire College School of Law.

The Campus

Yes, there are still dust-covers and plastic sheeting in the halls as remodeling continues in most of the building, but we are up and running with six newly refurbished classrooms and new office space. We hope to have our library space completed by year's end. Feel free to call the Dean if you want to stop by for a visit.

The Students

A new session is underway at Empire College School of Law. We just started another group of first year students in January. Their courses in Contracts, Criminal Law, and Torts will run through our summer session with finals in early August. The best news is that under the new state and county COVID rules, only unvaccinated folks must wear masks inside the building. The majority of our professors and students have been participating via Zoom since March 2020. We now

expect most will return to campus so students can get the full benefit of being put on the spot face-to-face.

The Faculty

We added immigration law professor Chris Kerosky to the faculty this past year. In addition to the many hours he has dedicated to our students, he has also established an annual scholarship fund. We are excited to have the Immigration Law curriculum develop further with Prof. Kerosky's ideas and support.

For Your Consideration

In a terrific example of the old law school mantra "'words' is what we do, here," see the recent California Supreme Court case *Mickey Segal v ASICS America Corp.*, decided January 13, 2022, case number S263569. The court resolved a conflict in the courts of appeal as to whether costs related to the preparation of exhibits which were never used at trial are recoverable as having been "reasonably helpful to the trier of fact" under Code of Civil Procedure §1033.5(a)(13). The court ruled that costs related to such unused exhibits were not recoverable under that section, but may be recoverable in the trial court's discretion if they were reasonably necessary to the conduct of the litigation and reasonable in amount. (Code Civ. Proc., § 1033.5(c)(4).) The opinion contains a thorough rendition of the rules on statutory interpretation, and includes references to Black's Law Dictionary, the rules of syntax, and the use of Legislative intent. Enjoy! ☞

2022 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 go to the Seminars/Events tab at the top navigation bar for the list of events. Thank You.



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2022 Presiding Judge's "Luncheon"

On October 10, 2022, the Sonoma County Bar Association hosted the Presiding Judge's "Luncheon" via Zoom. We put "Luncheon" in quotes because only food for thought was served. Unsurprisingly, the COVID-19 pandemic was a dominant theme throughout the presentations.

DAVID BERRY, SCBA President

President David Berry opened the program by announcing *Food from the Bar*, a new partnership with Redwood Empire Food Bank to help our neediest neighbors. He noted that about one in six of our neighbors cannot afford to buy adequate food to sustain themselves.

He discussed the strain the lengthy COVID-19 epidemic has imposed on our justice system. He reminded us that the court system, like many employers, has suffered staffing losses and absences due to COVID but, like many essential service providers, has remained open for business while maintaining a constant workflow. He invited lawyers to be patient towards court personnel, when things that were routine before COVID take a bit longer now. Court staff and judicial officers are working very hard in extraordinarily difficult circumstances, and they would benefit from our cooperation and appreciation.

He then turned the program over to the Presiding Judge, the Honorable Shelly Averill.

HONORABLE SHELLEY AVERILL, Presiding Judge

Judge Averill delivered a State of the Court Report.

1. COVID-19

Judge Averill thanked her predecessor, the Honorable Bradford J. DeMeo, for shepherding the court through the excruciating first two years of the global pandemic.

Once COVID-19 struck, the court's top priority became how to protect the health of the court's staff, lawyers and litigants, and the public, while still carrying out the court's most essential functions. Personnel had to learn about the disease, about new regulations and guidelines from national, state, and local government agencies, and to apply that knowledge to the court's unique responsibilities.

At a time when the court needed to enlarge its staff to take on these new responsibilities, the court instead suffered from staff attrition, and, as David Berry point-

ed out, could not replace the employees that left us. Judge Averill reiterated David's plea for continued patience and understanding.

The inability to hire and retain enough court reporters forced the court to stop providing reporters in civil cases. This has adversely affected everyone involved. Legislation that became effective on January 1, which governs remote appearances in civil cases,¹ provides that, with stated exceptions, "the official reporter or official reporter pro tempore shall be physically present in the courtroom."² This statute prevents the court from using remote reporters—and there is a large number of qualified reporters who are only willing to work remotely—no matter how well the technology works.

2. Moving Forward

Now that new cases of COVID-19 appear to be decreasing, Judge Averill and Court Executive Office Arlene D. Junior hope to refocus on longer-term strategic goals and on rebuilding the court, which begins with refilling the many vacancies in the court's staff—especially replacing the human resource professionals that the court lost. Rebuilding the staff requires not only recruiting personnel, but also extensive training of the new hires. Ms. Junior has developed a training academy within the court, to help new employees become more effective and more professional.

Another strategic priority is for the court to become more efficient by making better use of the technology that it already has.

3. The New Criminal Courthouse

Vertical framing of the new criminal courthouse on Ventura Ave. is scheduled to start on April 25. Judge Averill thanked Judge Gary Nadler for his many years of hard, productive work on this project.

4. Supervising Judges

After she finished her report, Judge Averill invited each of the supervising judges to discuss developments in their respective departments.

(Continued on page 19)

1. Code Civ. Proc., § 367.75. This section repeals on July 1, 2023. *Id.* subd. (l).

2. Code Civ. Proc., § 367.75, subd. (d)(2)(A).

2022 Presiding Judge's "Luncheon" (continued from page 18)

HONORABLE JAMES G. BERTOLI,
Supervising Judge of the Family Law Division

1. New Judicial Officers

Commissioner Paul Lozada is filling in for Commissioner Rasmason in Courtroom 20.

Judge Peter Ottenweller is assigned to Courtroom 21.

2. Three-Tier System for Child Custody Disputes

The Family Law Division has adopted a system for handling child custody disputes that Fresno County created and around nine other counties have adopted.

Tier 1: When a court filing reveals a custody dispute, the judge immediately refers the custody matter to a mediator. If the mediator does not resolve all the issues disputed, it goes back to the judge, who can either decide the open issues or else send the matter to...

Tier 2: The judge initiates a fact-finding process, either by requesting specific information from the parties or by assigning the mediator to investigate and report findings to the judge. Interviewing the child could be part of this process. If the parties have not fully resolved the dispute, the judge can either decide the open issues, or else send it to...

Tier 3: The judge returns the matter to the mediator to report a recommended disposition.

Other counties have found that many custody disputes are resolved with an agreement between the parties in Tier 1. Judge Bertoli's limited experience with this system has been promising.

3. Orders

Orders, including proposed orders submitted by the parties, must now restate the provisions of all prior orders that remain in effect. It is no longer sufficient to state: "All prior orders not inconsistent with the present order remain in effect." This change will simplify enforcement, especially when a law enforcement officer becomes involved. This should also eliminate disputes about which prior orders do and do not remain in effect.

4. Remote Appearances

Judge Bertoli strongly favors making maximum use of remote court appearances for everything except trials. In his experience, this increases party participation, and it is more economical and efficient for everyone.

HONORABLE KENNETH J. GNOSS,
Presiding Judge of the Juvenile Division

Judge Gnost reported that, as of January, the Honorable Dana Beernink Simonds is presiding in the Juvenile Dependency Court. Judge Gnost presides in the Juvenile Delinquency Court.

Juvenile justice filings declined during the first 18 months of the pandemic, but they have increased sharply since students returned to their classrooms. There are also an increasing number of cross-over cases in which the same individual is before Juvenile Dependency Court and the Juvenile Delinquency Court.

HONORABLE PATRICK M. BRODERICK,
Supervising Judge of the Civil Division

Judge Broderick reported that all four civil courtrooms are open and trying cases. In addition, the Honorable Lawrence Ornell, in Courtroom 23 at the Civil and Family Law Courthouse, presides over probate cases.

The last civil trial before the pandemic, a jury trial, was completed in December 2019. The first civil jury trial since the pandemic began was concluded on February 4, 2022. Civil jury trials should resume on March 31. Civil trials without a jury were held and completed during the pandemic. Some of these were cases in which one party had demanded a jury trial, but then waived a jury to go to trial sooner. All four civil courtrooms should be in trial all the time.

Yet in deciding whether to try a civil case during the pandemic, the lawyers, the clients, and the witnesses must know about the possible consequences. During a jury trial, one or more jurors may test positive for COVID-19. In any trial, any participant might test positive for COVID-19. If that happens, everyone will have to be tested for COVID-19; public health officials must be notified; those who test positive will have to trace their contacts.

HONORABLE CHRISTOPHER HONIGSBERG,
Supervising Judge of the Criminal Division

Judge Honigsberg reported that the Criminal Division has been conducting jury trials throughout the pandemic. Jury selection is in the Jockey Club at the Fairgrounds. Prospective jurors feel comfortable there because it is a large space.

(Continued on page 20)

The Criminal Division has a robust pretrial release program, both pre-arraignment and post-arraignment. It is ahead of many other counties. The program works with justice partners, including the Probation Department and the Public Defender's office, especially about supervision during release.

New Penal Code section 1370.01 addresses mental health in the context of criminal law. It gives the court many options when a defendant is found to be incompetent to proceed to trial, including diversion to a treatment program. The court moved the diversion calendar to Thursday afternoon, which will give the court more time to explore diversion to treatment programs.

The Criminal Division is also pursuing increased efficiency through better use of technology, as Judge Averill discussed. Judge Honigsberg and another judge are experimenting with going completely paperless, doing everything on the computer exclusively.

The Criminal Division works collaboratively with its justice partners, and not only with the district attorney, public defender, and probation department, which are the most obvious. They also collaborate with the private defense bar, conflicts counsel, the sheriff's office, the county counsel, and Sonoma County Behavioral Health. Visiting judges invariably rave about how collaborative we are, and how this makes us more efficient and effective.

So Until Next Year when we hope to enjoy a luncheon without quotation marks, but with lunch and in-person

comradery, and where we can all shake hands (or at least bump elbows) again. ☺

By Steven Finell

Steven Finell, with offices in Santa Rosa and New York City, concentrates on complex litigation and appeals. He is active in the SCBA's Civil Bench Bar Section, chairs its Rules Committee, and serves on the Bar Journal Committee.

REMINDER (There's still time!)



The SCBA is ramping up for the first ever FOOD from the BAR Campaign!

Firms, legal companies, and bar associations will participate in a friendly competition to raise funds and volunteer hours in support of the Redwood Empire Food Bank. Prizes (and bragging rights) will be awarded.

DATES TO KNOW

4-15-2022 | Food From The Bar 2022 Begins
4-22-2022 | Kick-off Event
5-31-2022 | Food From The Bar Campaign Ends
6-03-2022 | Last Call

For more information and to sign up go to:
<https://refb.org/food-from-the-bar/>

SCBA Welcomes Our New Spring 2022 Members!

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Springtime in a Sonoma County Vineyard

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