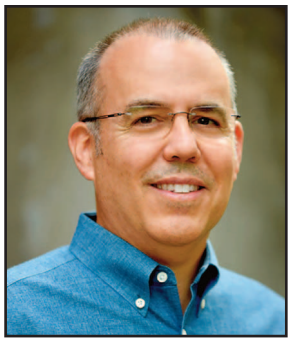
Sonoma County Bar Association

THE BAR JOURNAL

Volume 68 Issue 2 Summer '22

Sonoma County Olive Grove, near Petaluma, CA



By David Berry,
President, SCBA

President's Message: *2022 Bench/Bar Retreat: A Call to Action for Creating a Culture of Inclusivity*

My article in the last Bar Journal issue (*"Us and Them" or "You and Me"?*) introduced my hope to facilitate a conversation about the role of race, gender, and identity in the delivery of justice in Sonoma County.

On October 7, 2022, we will hold an *in person* (COVID permitting) Sonoma County Bench Bar Retreat on diversity, equity, and inclusion. Our panelists leading the discussion will be: *California Supreme Court Associate Justice Martin J. Jenkins*; *California Court of Appeals, First Appellate District, Division Five, Presiding Justice Teri L. Jackson*; *California Court of Appeals, Court of Appeal, Fourth District, Division Two (Riverside), Associate Justice Marsha G. Slough*; and *Santa Clara Superior Court Judge Erica R. Yew*. Sonoma County Superior Court Presiding Judge Shelly Averill remarked, "We are so fortunate to have such an esteemed panel presenting at our Bench Bar Retreat. This should be a special event."

In This Issue

Such an event could not happen without a collaborative effort between our bench and bar. On behalf of the SCBA, I extend warm thanks to Sonoma County Superior Court Judge Arthur A. Wick. At our last Bench Bar Retreat in 2019, he challenged those in attendance to lead on the issue of increasing diversity, equity, and inclusion in the delivery of justice in Sonoma County. As my SCBA presidency approached in December last year, I remembered that challenge and left his judicial assistant a telephone message asking whether Judge Wick would be willing to talk with me on the topic. His return call started a conversation that led to his offer to seek a panel for this year's Retreat. Judge Wick's efforts made this panel possible. According to Judge Wick, "As I approach my retirement from the bench, I want to leave our justice system better than I found it. I have been fortunate to travel around the state in my role as Judge. What I see makes me proud of how well the Sonoma County bench and bar work together. We can do better as it relates to diversity, equity, and inclusion. My hope is that this Bench Bar Retreat plays a role in pushing forward an important conversation."

Nicole Jaffee, who is the Chair of the SCBA Diversity, Equity and Inclusion Section, has similar views. "Talking about diversity, equity, and inclusion makes some people uncomfortable. Part of my focus is having the conversation in an inclusive way. It is not a zero-sum game with winners and losers. If we, as a legal community, have diverse and inclusive voices at the table, we will do a better job delivering justice to our broader community. I look forward to the Bench Bar Retreat and, more importantly, how we as a community use the effort to improve ourselves."

Dean Brian Purtill, who is the Dean of the only local law school, Empire College of the Law, has a long view on the topic. "Most of our students are here because they appreciate the relationship that now exists between the bench and bar, and that the local attorneys and Judges who teach here will be their colleagues in just a few short years. But we strive to do more than just create Bar Exam passers and practitioners. I tell every applicant at the start that I am looking for someone I can be

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From the Editors: *May Day, Mouseketeers, and How Shakespeare Helps Lawyers Bridge the Gap*

In this issue, your SCBA Bar Journal highlights diversity, Law Week outreach, and our shared purpose to respect and sustain the rule of law.

As you may know, in part as a Cold War political balance to International Workers Day on "May Day," the observance of Law Day in the United States (which has morphed into Law Week in Sonoma County) was codified in 1961 for "the cultivation of the respect for law that is so vital to the democratic way of life."[1] When our local bench and bar volunteers reached out to secondary school students to lead discussions about the 2022 Law Week theme of "Toward a More Perfect Union: The Constitution in Times of Change," some presenters were confronted with questions about the dispute regarding LGBTQ rights between the governor of Florida and the Disney organization. The conversations were candid and highlighted our legal community's commitment to the vital cultivation of the respect for law.

What can we lawyers do to continue to bridge the gap? One of the first things is to be aware of the broad policy differences between California and other parts of the country. I commend your attention to a thought-provoking *Atlantic* article about 21st century schisms and challenges entitled "Why the Past 10 Years of American Life Have Been Uniquely Stupid."[2] Social psychologist Jonathan Haidt, who studies emotion, morality, and politics, argues that social media elicits "our most moralistic and least reflective selves," inciting the "twitchy and explosive spread of anger," with millions of social media users becoming adept and receptive at "putting on performances" for strangers. This polarization, exacerbated by COVID-19 isolation, has eroded our common sense of purpose, akin to the Tower of Babel according to Haidt—"we are disoriented, unable to speak the same language or recognize the same truth. We are cut off from one another and from the past." Rather than a common and inclusionary vision of the democratic way of life, the consequence is social media echo chambers based on different narratives with different sacred values. One wonders what Minnie Mouse would do.

As a practical matter, in the face of the challenges Haidt identifies, attorneys can help with thick skin and the patience to facilitate courageous conversations. Recall the Bard's precept—"the first thing we do is kill all the lawyers."[3] Even a cursory reading of the context in which the lawyer-killing statement is made in King *Henry VI* reveals that Shakespeare was paying great and deserved homage to our venerable legal profession as the front-line defenders of democracy. The accolade is spoken by Dick the Butcher, a follower of anarchist Jack Cade, whom Shakespeare depicts as "the head of an army of rabble and a demagogue pandering to the ignorant," an insurrectionist seeking to overthrow the government. The prophetic acknowledgment 400 years ago that the first step any potential tyrant must take to eliminate freedom is to "kill all the lawyers" is, indeed, a classic compliment to law as a noble and necessary avocation. We are proud to be on the journey with you. Stay well.

By William Adams

William Adams is Of Counsel at Johnston Thomas Attorneys at Law; he serves as General Counsel for public agencies, corporations and home owner associations. He is co-editor of The Bar Journal.

1. Public Law 87-20; 36 U.S.C. § 113(b).
2. Haight, "Why the Past 10 Years of American Life Have Been Uniquely Stupid" (April 11, 2022), *The Atlantic*.
3. *King Henry VI, part 2, act IV, scene 2*.

President's Message (continued from page 3)

proud to call a fellow officer of the Court. To me, that means someone who can convey and receive conflicting positions with respect for and appreciation of the differences in all of us, and someone who understands that everyone deserves a seat at the table. Those are the messages of the DEI discussion we're engaged in, and I am excited for our students to find their roles in that discussion, and to see first-hand how we can explore ways to improve how we deliver justice in Sonoma County."

I started my legal career in downtown Los Angeles and moved to Sonoma County in 1998. I have been part of our legal community since then and a member of the SCBA board of directors for well over a decade. I am so proud of our local legal community (bench and bar), as we typically do great work *together*. There is a respect and pride I sense in everything we do. To me, the diversity, equity, and inclusion discussion is important. I cannot say where it will lead, but am excited to be on the journey with all of you (and us). I very much look forward to the Bench Bar Retreat and am hopeful it yields results all of us can agree are important.

SCBA Welcomes Our New Summer 2022 Members!

Kharman Aidun, Mullins Henderson Law

Margaret "Maggie" Barber, Legal Aid of Sonoma County

Daniel Cantrell, Blevans & Blevans, LLP

Shelley Crandell, Wine Country Family Law, P.C.

Diego Garcia, Dickenson Peatman & Fogarty

Azima Hanna, Law Student

Dillon Jackson, Blevans & Blevans, LLP

Kenneth Linthicum, Law Office of Kenneth R. Linthicum

Michelle Raff, Work Injury Law Center

Tal Segev, Law Student

Analyzing the *Dobbs* Draft Opinion and the Ramifications of Overturning *Roe v. Wade*

Editor's Note: This article, written by Hon. Nancy Case Shaffer (Ret.), addresses the leaked first draft of an opinion of the United States Supreme Court,[1] per Justice Samuel Alito, that would overturn *Roe v. Wade* and how that would diminish the rights of women. Chief Justice John Roberts publicly confirmed that the draft was authentic.

This article was written with expectation of being distributed in the *Summer Bar Journal* in advance of the *Dobbs* final decision, but the SCOTUS' June 24, 2022 release of the final opinions in *Dobbs v. Jackson Women's Health Organization* No. 19-1392, 597 U. S. ____ (2022) corresponded with the release of this issue. Since the analysis of this article is largely applicable to the Court's final majority opinion, we are running the article with this preface.

We don't force women to have abortions in America. The abortion controversy is whether any woman has the right to choose to terminate her pregnancy under any circumstances.

Justice Alito repeats a claim that the decision in *Roe v. Wade*[2] "[S]parked a…controversy that has embittered our political culture for half a century."[3] The controversy was already bitter and it wasn't new in 1973. The *Dobbs* ruling will make it far worse. Justice Alito concludes there is no such thing as unwarranted governmental intrusion when it comes to the decision to terminate a pregnancy. Under *Dobbs,* states will have the unfettered right to force all women in their jurisdiction to carry all pregnancies to term, regardless of the circumstances of the pregnancy—rape, incest, threats to the woman's life or health; regardless of the viability of the fetus; with no consideration for the woman. Under *Dobbs*, states can impose criminal penalties, including prison time, on any woman who seeks or obtains an abortion within their jurisdiction, as well as any and all who help her—even doctors performing abortions medically necessary to save the life of the mother.

The Draft enables a minority of Americans, whose religions teach that abortion is always immoral, to impose their beliefs on other Americans, the majority of whom do not believe abortion is always morally wrong.[4] In doing this, the Draft eviscerates fundamental rights under the United States Constitution, which can only be protected by the Supreme Court: the right to privacy, freedom of religion, as well as the judicial doctrine of *stare decisis*. Expressing contempt for the decisions in *Roe* and *Planned Parenthood v. Casey*,[5] Justice Alito does nothing to give the Petitioners and the majority of Americans who do not believe abortion is always morally wrong any confidence that their interests have been given fair consideration by the *Dobbs* majority. As written, the Draft will do nothing to quell concerns that it was intended, as it reads, to justify a pre-determined outcome promised by the former president when he appointed the three newest associate justices.

The Constitutional Right to Privacy

Ask yourself whether you could enjoy *your* life, *your* liberty, or pursue happiness without privacy?

Justice Alito writes: "Even though the Constitution makes no mention of abortion" *Roe* found that the Constitution confers "a broad right to obtain one" and *Roe* "imposed a *highly restrictive* regime on the entire Nation… ."[6]

Rights not expressly mentioned in the Constitution, including the right to privacy, have long been protected under the Fourteenth Amendment, as Justice Alito later acknowledges. Citing precedent going back to the early 1900s, *Griswold v. Connecticut*[7] affirmed

1. *Dobbs v. Jackson Women's Health Organization* (U.S. 1st Draft circulated Feb. 10, 2022, No. 19–1392) (hereafter "*Draft*").
2. *Roe v. Wade* (1973) 410 U.S. 113 (hereafter "*Roe*").
3. *Draft*, supra, at p. 3.
4. *America's Abortion Quandary* (May 6, 2022) Pew Research Center.
5. *Planned Parenthood v. Casey* (1992) 505 U.S. 833.
6. *Draft*, *supra*, at pp. 1, 2.
7. *Griswold v. Connecticut* (1965) 381 U. S. 479 (hereafter "*Griswold*").

Analyzing the *Dobbs* Draft Opinion (continued from page 6)

that certain peripheral—unenumerated—rights, were necessary to secure the specific rights granted by the Constitution. *Griswold* struck down a prohibition against the use of contraceptives as an unconstitutional infringement of the right of *marital privacy*, an unenumerated right. In 1972, *Eisenstadt v. Baird* [8] ruled that single individuals must be given the same protection under the Equal Protection Clause of the Fourteenth Amendment, holding there was a constitutional "right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." [9] The *Roe* court held that right necessarily included the right of a woman to decide whether or not to terminate her pregnancy.[10]

Roe's ruling was far less sweeping than Justice Alito suggests. "[T]he right of personal privacy includes the abortion decision, but..this right is not unqualified and must be considered against important state interests in regulation."[11] The *Roe* Court found that "most [lower] courts have agreed that the right of privacy...is broad enough to cover the abortion decision; that the right, nonetheless, is not absolute and is subject to some limitations; and that at some point the state interests as to protection of health, medical standards, and prenatal life, become dominant. We agree with this approach."[12] *Roe* then held that *before a fetus becomes viable*, the interests of the mother outweighed the interests of the state, so she had the right to choose to terminate her pregnancy.[13] Therefore, it

(Continued on page 8)

8. *Eisenstadt v. Baird* (1972) 405 U.S. 438.
9. *Id.* at p. 453.
10. *Roe*, supra, at p. 170.)
11. *Id.* at p. 154.
12. *Id.* at p. 155.
13. *Id.* at p. 163.

Analyzing the *Dobbs* Draft Opinion (continued from page 7)

was unconstitutional for states to criminalize pre-viability abortions.[14]

This balancing—in *Roe* of the competing interests of the pregnant woman and of the state—is one of the most important duties of the Supreme Court, especially with highly contentious issues like abortion. Justice Alito's Draft abdicates that duty. He simply finds the interests of a pregnant woman are not protected under the United States Constitution—not if she would choose to terminate her pregnancy. And so, Alito finds no interest for the Court to balance.

Justice Alito asserts: "The underlying theory on which this argument rests—that the Fourteenth Amendment's Due Process Clause provides substantive, as well as procedural, protection for "liberty'—has long been controversial."[15] Yet he goes on to acknowledge precedent holding that the Due Process Clause does protect fundamental rights not mentioned anywhere in the Constitution. Justice Alito writes: "In deciding whether a right [is protected], the Court has long asked whether the right is "deeply rooted in [our] history and tradition" and whether it is essential to our Nation's "scheme of ordered Liberty."[16] This is only part of the inquiry. "'Great concepts like…'liberty'…were purposely left to gather meaning from experience. For they relate to the whole domain of social and economic fact, and the statesmen who founded this Nation knew too well that *only a stagnant society remains unchanged*.'"[17]

Morals and mores evolve. *Dobbs* is being decided in 2022, not 1973 and definitely not in 1787. Justice Alito ignored precedent, history, and tradition considered by the *Roe* Court, and the subsequent fifty years of deeply rooted change in the history and traditions of our nation on the question of abortion.

The Constitutional Right to Freedom of Religion

According to Pew Research Center, as of May 2022, sixty percent of Americans believe abortion should be legal in at least some cases; not even all American Christians believe abortion is always morally wrong; and majorities across Christian subgroups say it should sometimes be legal, sometimes not.[18]

Roe said: "There has always been strong support for the view that life does not begin until live birth…It appears to be the predominant, though not the unanimous, attitude of the Jewish faith. It may be taken to represent also the position of a large segment of the Protestant community, insofar as that can be ascertained; organized groups that have taken a formal position on the abortion issue have generally regarded abortion as *a matter for the conscience of the individual and her family*."[19]

By refusing to recognize the constitutional right of a woman to be free from unwarranted governmental intrusion into her decision to terminate a pregnancy before the fetus is viable, the Draft would enshrine conservative religious dogma as the law of the land, protecting only one of the two important interests before the Court. Freedom of religion includes the right to be free from having the beliefs of any religion imposed on Americans by the government. Our nation does not have a state religion, by design of the Founders.

Stare Decisis

Justice Alito asserts "*Roe* was egregiously wrong from the start. Its reasoning was exceptionally weak, and the decision has had damaging consequences."[20] Therefore, he gives it no weight as precedent. *Roe* was upheld in 1992 by the decision in *Planned Parenthood v. Casey*.[21] Justice Alito is particularly derogatory in his comments regarding the analysis of *stare decisis* as the basis for the decision in *Casey*. The Draft will end *stare decisis*—death by poison pen.

(Continued on page 21)

14. *Id.* at p. 164.
15. *Draft*, *supra*, at p. 11.
16. *Id.* at p. 5.
17. *Roe*, supra, at p. 169 (conc. opn. of Stewart, P.) citing *National Mutual Ins. Co. v. Tidewater Transfer Co.* (1949) 337 U.S. 582, 647 (dis. opn. of Frankfurter, F.) (emphasis added).
18. *America's Abortion Quandary*, *supra*.
19. *Roe*, supra, at p. 159, fn. omitted (emphasis added).
20. *Draft*, *supra*, at p. 6.
21. *Planned Parenthood v. Casey* (1992) 505 U.S. 833.

Musings from the Bench: Uninterrupted

"Musings from the Bench" is an ongoing feature on the Judiciary by members of the Sonoma County Superior Court.

Is it possible that a United States Supreme Court Justice can have a hard time getting a thought expressed uninterrupted during oral argument? Yes. That is just what research starting in 2016 from Northwestern University found.[1] A second-year law student, Dylan Schweers, was sitting in his living room listening to oral argument for homework and distinctly heard Justice Ruth Bader Ginsburg being interrupted, and then Justice Sonia Sotomayor being interrupted, to the point where she finally said to the lawyer: "Let me finish my point." Whaaaat??!! Isn't there a rule that the lawyers have to stop talking if the Justices start? Why, yes, yes there is. But as he listened it kept happening. So what gives? That was the question the student and Tonja Jacobi, his law professor at Northwestern Pritzker School of Law, decided to investigate. They fed years of transcripts of oral argument into a computer for analysis (and even hand-coded some back to the years that Justice Sandra Day O'Connor was on the Court). The result? From 2004 to 2015 there were over 7,000 interruptions. And the female Justices were interrupted about three times as much as the men. I know, you ladies out there are saying "I'm shocked, shocked I tell you!" accompanied by an audible eye roll. (Yes—an audible squeaking because they roll so far back in your head.) Picture, as played in the podcast, the scene from the movie Casablanca: "I'm shocked—shocked to find that gambling is going on in here!" This idea that women get interrupted more than men is not new, nor is it unsupported by empirical evidence in any number of areas of life. However, the idea that even a U.S. Supreme Court Justice is interrupted three times more than her male colleagues, including by the male lawyers appearing in front of them, was pretty…discouraging? Maddening? I'm going with disappointing. With a tinge of "Oh, come on! Really?"

Another interesting point drawn from the research was that when women first get appointed to the Court they start with "polite" speech: "Sorry to interrupt but—but may I…," "Can I ask…," and "I'm going to ask a question." After time passes, that polite speech diminishes significantly. As another Justice attempts to interrupt, they just keep talking and often win the floor. Interestingly, the researchers concluded that Justice Sotomayor adapted the quickest to this less "polite," more direct linguistic style, which has led to her being seen as "aggressive."[2] Seriously? That old label? (And that's the polite version.) They also found that as the number of women on the Court increased, the number of interruptions of them also increased.

As a result of the research from Northwestern University, the United States Supreme Court decided in 2021 to issue a new set of rules for oral argument, making it a more structured exercise to address, in part, the fact that the female justices were interrupted three times more often than the male justices.

So what is a winning strategy, given this evidence? One is to realize that it happens, and if you are a woman lawyer and you "feel" like you get interrupted

1. This article is derived from *The Experiment Podcast: Justice Interrupted*, published in *The Atlantic* on October 21, 2021, and a story originally broadcast in 2017 on *More Perfect*, a WNYC Studios production *(and from the author's real-life experience)*.

2. An *NPR Morning Edition* article from June 15, 2009 (prior to her confirmation to the U.S. Supreme Court), "Is Sonia Sotomayor Mean," looked at this issue. It was noted that some labeled her a bully and believed she talked too much and dominated oral argument as an appellate court justice. Judge Guido Calabresi, former Yale Law School dean and Sotomayor's mentor, said he heard rumors that she was overly aggressive and started keeping track of the substance and tone of her questions with those of his male colleagues and his own questions. "And I must say I found no difference at all. So I concluded that all that was going on was that there were some male lawyers who couldn't stand being questioned toughly by a woman," Calabresi says. "It was sexism in its most obvious form." A sampling of two Court of Appeal oral arguments revealed her questioning was tough on both sides, but no tougher than that of her colleagues. In one, she asked five questions of the government lawyer, and her colleagues asked 61 questions. She interrupted the government lawyer seven times, while other judges interrupted him 66 times.

Uninterrupted (continued from page 10)

more than your male colleagues, it's not just in your head. Second, I think, is to realize we *all* do it.[3] We all interrupt, either at work, in court, or even with our loved ones. This particular study was just one of many highlighting the gender difference in the phenomenon. But the phenomenon is universal. And interrupting is rude. And it prevents a productive and full exchange of information. We should all stop doing it.

But, of course, that is not going to happen. In the courtroom, in particular, there is a competition of ideas almost always combined with a time pressure. Sitting on the bench, I sense the concern of advocates that I will be most persuaded by the last thing I hear, or that I will only remember the last thing I hear. I also sense the ever-present fear of counsel that a ruling will spring forth from my mouth before they have a chance to make their (very important) point. These are not unreasonable concerns. They are based on experience. Is passively waiting your turn a good strategy given these concerns? What if the court, or other side, never "gives" you your turn? I see this in witnesses too—the need to make sure something that is significant gets heard, the need to cancel the negative inference of a question with a quick denial before the question is finished. We are all familiar with the court reporter throwing up their hands as it becomes a vocal free for all. No one gets useful information out of that scene.

The best strategy I can suggest is for all of us to have a greater awareness of the urge to interrupt. And to resist that urge. In the courtroom, I am now more aware of interruptions as a result of this research. All sorts of interruptions: those interrupting me, lawyers interrupting each other, witnesses interrupting lawyers, etc. I believe part of the truth-finding function of our judicial process makes it incumbent upon me to minimize interruptions as much as possible. I hope I have always done so intuitively, but it is also now a conscious effort on my part. Oh, don't get me wrong. I *will* interrupt you. But I will try to do so less. I will try to listen as much (or more!) than I talk. And I will try to make sure that everyone who is in court to be heard gets to do so *uninterrupted*.

By Hon. Jennifer V. Dollard

Judge Dollard is a judge for the Superior Court of Sonoma County. She has served on the bench in Sonoma County since 2014, first as commissioner, then appointed by Gov. Brown as Sonoma County Superior Court Judge in 2017.

3. Interestingly, the greatest number of interruptions during oral argument on the Supreme Court was between two men, Antonin Scalia and Stephen Breyer. They spent 21 years on the Court together and had very different views. Justice Scalia interrupted Justice Breyer four times more often than any other individual justice—except for Justice Breyer who interrupted Justice Scalia almost twice as much.

Judicial Perspective on Diversity, Equity, and Inclusion

With the introduction of the Diversity, Equity, & Inclusion section in 2021, the Bar Journal reserves space for articles which address the relevant issues and goals of the section mission, as stated below:

The Diversity, Equity, & Inclusion section of the Sonoma County Bar Association works to create and support diverse leaders in our legal community, inclusive & equitable workplaces, and to develop a local pipeline of diverse legal professionals by providing relevant resources, training, and best practices for our members.

I have been asked to write an article on diversity, equity, and inclusion from the judicial perspective. This article will focus primarily on racial diversity. There are 330 million people living in America. Roughly 75 million are children, leaving about 255 million adults. Given that children begin to develop opinions on race well before they reach the age of majority, it is probably fair to estimate that there are at least 280 million opinions on race in this country. Each of these opinions is shaped by the race and individual experiences of the person who formed the opinion. There are approximately 2,287 justices and judges in California. I undertake this effort with great humility. The opinions expressed here are those of one white woman, who is a recently retired judge.

There are at least three important ways to look at the judicial perspective on diversity, equity, and inclusion: 1) the requirements of the office (the oath—the promises we make, and judicial ethics—the mandates we accept); 2) the actual diversity of the California bench; and 3) what judges can do to encourage diversity, equity, and inclusion on the bench and in the legal profession.

The Requirements of Judicial Office

To serve as a judge is a high calling. Nothing illustrates this better than the duties of fairness and impartiality. Whatever a judge's personal origins and history may be, the duty to be fair and impartial is integral to every judicial decision and act. Judges in California take an oath to uphold the Constitutions of the United States and of California. Racial discrimination has been held to be unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.[1] The California Constitution prohibits racial discrimination by governmental officials and agencies.[2]

The rules of judicial ethics prohibit discriminatory conduct by justices and judges. Judges "shall not" engage in speech, gestures, or other conduct that would reasonably be perceived as bias, prejudice, or harassment, including bias, prejudice, or harassment based upon race, sex, gender, gender identity, gender expression, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, or...sexual harassment.[3] And judges "shall require" lawyers in proceedings before the judge to refrain from manifesting such biases by words or conduct, against parties, witnesses, counsel, or others.[4] Finally, a judge must recuse if he or she holds a bias that would affect his or her ability to be fair and impartial in a case.

The overwhelming majority of judges understand that fulfilling these duties is an essential component of justice and to maintaining public trust in the judiciary. Judges who violate these duties are subject to discipline and even removal from office. For example, exhibiting racial bias is grounds for removal from office.[5,6]

Once on the bench, a judge's perspective on diversity, equity, and inclusion is expanded through experience and required courses on elimination of bias. The point of this training is to increase each judge's personal awareness of these issues. A judge can't just say "I'm a good person, a smart person; I've got this." Assessing one's own attitudes, words, and conduct for bias and the appearance of bias is part of the everyday work of a judge.

1. See, e.g., *Brown v. Board of Education of Topeka* (1954) 347 U.S. 483.
2. Cal. Const., art. I, § 32.
3. Cal. Code Jud. Ethics, canon 3B(5).
4. Cal. Code Jud. Ethics, canon 3B(6).
5. *Inquiry Concerning Van Voorhis* (2003) 48 Cal.4th CJP Supp. 257.
6. *Gonzalez v. Commission on Judicial Performance* (1983) 33 Cal.3d 359.

Judicial Perspective (continued from page 12)

Compare the expectation that a judge be perfectly fair and unbiased in each and every case, each and every day to a basketball player trying to make every three-point shot attempt or to a baseball player trying to bat 1000. Realistically, no human can achieve those goals. However, a basketball player can't get better at shooting three-pointers, a baseball player can't improve his or her batting average, and a judge can't become more consistently and fully fair and impartial, without constant practice. That means keeping impartiality and its nemesis, bias, always front of mind, backed up by an honest assessment of areas of weakness; of imperfection.

What we ask of judges in this regard is superhuman. And yet, day in and day out, judges do their best to get it right in every case—on the law, on the facts, and, critically, by even-handed and truly fair treatment of all who come before the court. That is why judging is a high calling.

To quote Benjamin Franklin: "The hardest thing for a man to do is to change long-standing prejudices of belief, but to succeed in doing it is a test of one's humanity."

The Actual Diversity of the California Bench

Marian Wright Edelman has been credited with originating the saying "You can't be what you can't see." Many others have echoed that thought. It is undeniably valuable for all citizens to see someone "like" them—whatever they may be "like"—in positions of importance and power. Ask any person of color or other minority if having judges they identify with on the bench does, or would, make them more willing to trust the judiciary to be fair and I suspect that you will get a definite yes. Ask white judges, and many may be more reticent because they see themselves as fair, as color blind. No matter how fair or impartial a white judge may be, he or she understands the life experiences and perspectives of individuals of other races, ethnicities, sexual orientations, and genders from the outside. The reverse is also true.

Bringing diverse perspectives onto the bench enriches the understanding of all judges and it promotes trust in the judiciary. If the governor would appoint someone "like me" to serve as a judge, then just maybe the entire system is not biased against people "like me." If judges who are not "like me" are friends and colleagues with judges who are "like me," maybe those judges do value and respect people "like me."

It isn't just people "like the judge" who benefit from a diverse bench. Whenever a judge who is not a heterosexual, white male is appointed to the bench, everyone who appears before that judge, has the opportunity to experience the competence, dignity, and fairness of that judge. And to appreciate that one does not need to be a heterosexual, white male to be a good judge.

Diversification of the judiciary in California has come slowly. The current governor fills most judicial vacancies by appointment. The Sonoma County bench appoints our Superior Court Commissioners. Our bench has appointed two African-Americans to serve as Commissioners: The Hon. Jeanne Buckley (Ret.) and the Hon. Anthony Wheeldin, and also Paul Lozada, who of Asian descent. Governors have appointed an Asian woman, the Hon. Cerena Wong (Ret.), two Hispanic women, Hon. Virginia Marcoida (Ret.) and the Hon. Karlene Navarro, who is also of Native American descent, to serve as judges, as well as two other judges of Native American descent, the Hon. Bradford DeMeo, and the Hon. Jamie Thistlethwaite (Ret.). No governor has yet appointed an African-American judge to our bench. The first Sonoma County judge who was not a white male was the Hon. Gayle Guynup, appointed in 1982. Currently, four of our 23 judge and commissioner seats are held by women. Sonoma County is approximately 40% Hispanic; currently, we have one Hispanic judge. We have a long way to go before we have a bench that reflects the diversity in our community.

A Call to Action

What can judges do to improve diversity, equity, and inclusion on the bench? Judges cannot comment on any matter that is pending before a court or that may come before a court. DEI issues often wind up in court. Also, judges may not say or do anything that will create the appearance of bias. Given these restrictions, judges are limited in what they can do outside of court to promote diversity, equity, and inclusion. One wonderful example of what judges can

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Gone Solo: Protecting Your Practice (& Clients) in Case of Your Death

This is part of a series directed at the business side of having a solo law practice. This installment is for MCLE credit (please see page 17 for questions)

No one likes to think about their own death. As solo practicing attorneys, it is our obligation to protect our clients, and that includes what will happen to our practice and clients' cases in the unlikely event of our unexpected demise.

I recall someone talking about an attorney who had just passed away, and how they were trying to figure out how to locate the attorney's client files and other business documents. My thoughts immediately envisioned a scenario where some stranger was coming into my home office to get client files, and my grieving teenage son was having to navigate that, all because I chose to have my office in our home. I really did not want that to be a scenario that my son (or any family member or friend) ever had to deal with.

As of 2018, 30% of attorneys in California who were in private practice were sole practitioners.[1] Typically, these attorneys do not work closely with anyone else, don't share office space, and sometimes do not even have any support staff.

Each of these solo practicing attorneys needs to know how to protect their practice and their clients in the event of their death.

An Estate Plan for Your Practice

Just as you should have a will or trust for your personal estate, the best practice for your law firm is to have an estate plan specifically for your practice. It is imperative that you tell someone about this plan.

One of the goals in preparing your plan is to protect your estate from being sued for malpractice after your death. The first inquiry should be to your malpractice insurance provider. Does your malpractice insurance include "tail" coverage? Tail insurance extends your malpractice coverage after your policy's end date, and it is offered by many companies.

As a solo practicing attorney, you need to take the time to make an estate plan to ensure that your clients are protected. Further, your planning will spare your loved ones the stress of having to deal with your business/practice when they are grieving their loss of you. It is a loving gift for your family and friends.

Procedures Manual

Part of the plan should be to create and keep an office procedures manual. This manual should include all the information that would be needed by someone else who must step in to help during any unplanned, even if only temporary, absence from your practice.[2] Taking the time to create an office procedures manual while you are healthy will prove invaluable if the worst-case scenario happens.

An office procedures manual can be kept in any format that is easy for you (printed out in a binder, or stored electronically), but it must be something that can easily be accessed in case of an emergency. Make sure to tell someone where it is and keep the information updated regularly. I've chosen to keep mine electronically, and print out a copy if any changes are made.

Important information to keep in your manual:

- List of all companies you do business with (insurance, banking, case management software, CPA, etc.)
- Passwords
- Account numbers
- Location of client files (both open cases and closed files)
- Personal emergency contacts
- Name and contact information of designated attorney to handle your practice in case of incapacity or death

1. 2018 Solo & Small Firm Tech Report, January 2019 *https://www.americanbar.org/groups/law_practice/publications/techreport/abatechreport2018/solosmallfirm/*

2. Winding Up Your Practice: From Temporary Vacations to More Permanent Leaves of Absence (*https://capcentral.org/procedures/case_manag/docs/winding_up_your_practice.pdf*)

Gone Solo: Protecting Your Practice (continued from page 14)

Office Organization

It is always a good idea to keep your office organized. If you suddenly pass away, you would not want either your non-lawyer family member or friend to have to go through and try to make sense of a disorganized office. These are some steps you can take to ensure that your office is organized:

- Keep an updated office procedures manual, in an easy-to-find location
- Ensure that keys to your office and filing cabinets are easy to locate—include in your office procedures manual the name of each individual who has a copy of each key, and their contact information
- Make sure your calendar is up to date
- Keep an up-to-date client list (including case numbers)
- When you close a case, promptly move it to your closed case file storage
- Keep your client billing up to date
- Keep your accounting/bookkeeping records up to date
- Reconcile your bank account(s)
- Keep your IOLTA account balanced and reconciled (if you have one)

Designate an Attorney or Practice Administrator

When an attorney becomes incapacitated in some way, or dies, then someone else has to step in. If the attorney has not designated an attorney to step in, and no attorney volunteers, then the court will have to step in and appoint someone.

The ABA Model Rules address the requirement of planning for your own unexpected demise as a requirement of diligence. Comment 5 to Rule 1.3 states, "To prevent neglect of client matters in the event of a sole practitioner's death... the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death... and determine whether there is a need for immediate protective action..."[3]

Although California has not adopted this rule, it is logical to look at the California Rules of Professional Conduct Rule 1.3, which also discusses the diligence requirement.

"A lawyer shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable diligence in representing a client."[4]

As a solo practicing attorney who is beginning to do your estate planning for your practice, you will need to designate an attorney who will step in upon your death and close your practice.

This task can seem as daunting as thinking about your own death. You need to find an attorney you trust, and one that practices the same area of law as you do. You need to find an attorney who will agree to be your designated attorney.

However, when thinking about reducing the probability of conflict of interests for your clients, it is best to choose an attorney that does not practice in the same county were you primarily practice. Why? Because the chances for conflict of interest are increased when selecting an attorney in your close legal circle.

You can assign certain tasks to a non-lawyer family member or friend, but any tasks relating to your actual legal services must be carried out by a licensed attorney.

Once you have found an attorney that agrees to be designated to step in, you will need to clearly define the details about when that attorney should step in. Only upon your death? Should they step in if you are incapacitated? What if you are only temporarily incapacitated? You and your designated attorney would be best

(Continued on page 16)

3. ABA Model Rules 1.3, comment 5: *https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_3_diligence/*

4. California Rules of Professional Conduct, Rule 1.3(a).

Gone Solo: Protecting Your Practice (continued from page 15)

served in drafting an agreement to close your practice, which will define and clarify all these details. You can find an Agreement to Close Practice on the State Bar website.[5]

What Happens if You Do Not Designate an Attorney to Step In?

Generally, when an attorney dies and does not designate a lawyer to be responsible for closing down their practice, the State Bar or local county bar association may provide assistance in closing down the law practice after obtaining authorization from the superior court. The court may appoint a practice administrator to handle these duties. When the court appoints an attorney to perform these tasks, they are generally not compensated for their time, unless that attorney has devoted "extraordinary time" to winding up the practice.[6]

Ethical Considerations

You have a duty to your clients, and that continues even upon your death or incapacity. This duty must remain your top priority, and as such, it is imperative that you get a plan in place that will look after your clients if the worst-case scenario happens.

The California Rules of Professional Conduct, Rule 1.1 states that you must always be competent in performance of your legal services.[7]

California Rules of Professional Conduct, Rule 1.4 requires that you shall "keep a client reasonably informed about significant developments relating to the employment or representation, including promptly complying with reasonable requests for information and copies of significant documents when necessary to keep the client so informed."[8] This requirement of communication with your client is also found in Business and Professions Code section 6068(m).

The court has held that "by failing to communicate to her clients, petitioner breached her professional responsibility."[9] And have further stated, "[f]ailure to communicate with, and inattention to the needs of, a client may, standing alone, constitute grounds for discipline."[10]

This requirement of communication with your client is also found in Business and Professions Code section 6068(m), which provides: "it is the duty of an attorney... [t]o respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services."

It is imperative that you have some sort of estate plan in place, including a designated attorney, to ensure that if you are incapacitated or have passed away, your clients and loved ones will not be left in the dark, and wondering what to do.

Helpful Resources

When you begin to think about your estate plan for your law practice, you should review the California State Bar website.[11] This link provides a document that includes a thorough checklist of 56 items that are required to close a law practice. You can use this checklist to draft your office procedures manual, and to ensure that you've thought about or have planned for some or all of the items on that checklist. On this page, you will also find some sample agreements to draft between yourself and your designated attorney.

If you would like to learn more about this topic, there is a self-paced MCLE on the Sonoma County Bar Association website titled, "Planning for the Inevitable: Ethical Obligations and Best Practices in the Planning and Execution of Closing a Law Practice." This MCLE is presented by Robin Estes.

By Beki Berrey

Beki Berrey is a solo practicing attorney at Beki Berrey Family Law, who practices exclusively family law in Sonoma and Mendocino Counties.

5. Closing a Law Practice: *https://www.calbar.ca.gov/Portals/0/documents/ethics/Publications/guidelines-for-closing-or-selling-a-law-practicev.1.pdf*

6. Planning for the Inevitable (handouts from the SCBA MCLE presented by Robin Estes)

7. California Rules of Professional Conduct, Rule 1.1(b)

8. California Rules of Professional Conduct, Rule 1.4(a)(3)

9. *Martin v. State Bar* (1978) 20 Cal.3d 717, 722

10. *Layton v. State Bar* (1990) 50 Cal.3d 889, 903-904

11. Closing a Law Practice, supra.

Gone Solo: Protecting Your Practice—Self-Study MCLE Credit

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. *Reception@SonomaCountyBar.org* • Sonoma County Bar Association, 3035 Cleveland Ave., Ste. 205, Santa Rosa, CA 95403

1. 30% of California attorneys in private practice (as of 2018) were sole practitioners.

2. Your estate cannot be sued for malpractice after your death.

3. "Tail" insurance extending malpractice coverage beyond the end date of the policy is offered by many insurance companies.

4. The ABA Model Rules are silent on whether a sole practitioner should prepare a plan in the case of their unexpected death.

5. Any estate plan for your law practice should address what will happen in the event of either death or incapacitation.

6. Your office procedures manual must be kept in paper copy only.

7. Keeping your business finances up to date is an important part of your office organization.

8. You can designate a non-lawyer family member to wind up all aspects of your law practice.

9. A non-lawyer family member is permitted to complete tasks related to the winding up of your law firm so long as those tasks do not relate to actual legal services.

10. You should designate an attorney from a different county and the same area of law to wind up your practice in the event of your death or incapacity.

11. You should try to designate an attorney where there is a reduced chance of conflicts of interest.

12. You do not need to tell anyone who you decide to make your designated attorney.

13. If you do not designate an attorney to close your practice in the event of your death or incapacity, the court will appoint an attorney.

14. An attorney appointed by the court to close your practice will be reimbursed for their services in all cases.

15. An attorney appointed by the court to close your practice will only be reimbursed for their services if the matter requires the devotion of "extraordinary time" in winding up a law practice.

16. It is part of your ethical obligation to your clients to ensure that you are competent in the performance of your legal services.

17. The California Rules of Professional Conduct set forth specific requirements that a solo practitioner must satisfy with regard to an estate plan for a legal practice.

18. Failure to communicate with your clients may be grounds for disciplinary action.

19. Each law practice must draft their own written agreement with the attorney they designate to wind up their practice; templates used for this purpose are per se invalid.

20. An attorney's duties to their clients are terminated by the death of the attorney.

Judicial Perspective on DEI (continued from page 13)

do is our upcoming 2022 Bench Bar Retreat, which is discussed in the President's Message in this issue. This year's Bench Bar retreat will focus entirely on diversity, equity, and inclusion. Judge Arthur Wick and SCBA President David Berry have worked tirelessly to make this program a reality and to gather the impressive panel of appellate justices and judges who will present this year. They are working closely with members of SCBA's DEI Section to create the program. The invitation list will ensure that as many diverse perspectives as possible will be represented by the attendees. It will be a call to action. When justices and judges of this caliber devote this much time and effort to addressing DEI issues, it says, in a way mere words cannot, that the judiciary in California is committed to making diversity, equity, and inclusion a reality in the legal community.

By Hon. Nancy Case Shaffer (Ret.)

Hon. Nancy Case Shaffer (Ret.) served on the Sonoma County Superior Court for 14 years, retiring in 2021. She served as President of the Sonoma County Bar Association in 2000.

Judge Shelly Averill Honored with Rex Sater Award

This year, the Sonoma County Bar Association, Family Law Section, honors Judge Shelly Averill with the Rex Sater Award for Excellence in Family Law. Judge Averill will be presented with this distinguished award on August 5th, 2022 at the Santa Rosa Golf & Country Club.[1]

Since 1997, the Family Law Section has honored individuals for outstanding contributions to the practice of family law in Sonoma County. The award is named after the late Hon. Rex Sater. Judge Sater was a beloved Sonoma County Superior Court family law judge who stressed the importance of parties taking an active part in settling their cases. Judge Sater embodied all that is good about family law. He believed that parties should be part of their own solutions in their family law cases and talked about the responsibility that we as lawyers carry to settle cases, for and with those parties, with integrity.

Judge Sater signing Judge Averill's oath card in 1996

In December 1996, Judge Sater presided over the swearing in of new lawyers from the Empire College Law School class. One of those students was Shelly, who during law school had served as a clerk in the Family Support Division (now DCSS) and had been assigned to Judge Sater's courtroom. Twenty-four years later, after a legal career that included being a family law practitioner, and ultimately a bench officer, Judge Averill was set to leave the family law assignment. Then in 2020, the Family Law Section voted to give this award to her. In doing so, the Family Law Section could not have chosen a more deserving recipient. On August 5, 2022, we will finally be able to present the award to Shelly[2]. It should be no surprise that Judge Averill embodied Judge Sater's philosophies. From her days in law school, and even during her early years of practice, Shelly learned from Judge Sater through both observation and experience. Like Judge Sater, Shelly's favorite part about being an attorney, and now a judicial officer, is settling cases with the involvement and empowerment of the very people whose cases are being settled. As a result, her judicial colleagues, her former practitioner colleagues, and countless people speak of her in the same admirable terms and aura of respect long affiliated with the esteem of Judge Sater.

When Shelly was assigned to Judge Sater's courtroom, she got to work closely with him and learn from him. Shelly beams when she talks about Judge Sater, referring to him as "an amazing man." She knows that her time as a law clerk in his courtroom influenced her approach to the practice of law and to her position as a judicial officer. Judge Sater's commitment to integrity and to empowering parties had a huge influence on Shelly's career. When asked to talk about the impact Judge Sater had on Shelly, she recalls "I don't think anyone could sit and listen to him every single morning talking about how important it was to be a part of your own solution and not practice in a way that embodied that message that he was saying. That definitely impacted how I approached family law." Judge Sater referred to her as "a friend of the court" when he would send her out in the hallway to help people reach agreements or ask her to help him input data into the DissoMaster, which was not his favorite task. Shelly remembers sitting in his chambers and creating DissoMaster printouts for him from the numbers that he would recite to her.

Assisting people reach agreements was always Shelly's favorite part about being a family law attorney and as a practitioner she helped numerous people with their family law challenges. Helping people come up with their own solutions to their family law case was always very rewarding for Shelly. This love for facilitating settlement carried forward into Shelly's career as a judicial officer, both in family law and criminal law assignments.

1. Go to *https://sonomacountybar.org/event/rex-sater-award-dinner-rsvp-today* for details about the event.

2. Judge Averill requested that she be referred to by her first name.

Rex Sater Award (continued from page 18)

Shelly was always willing to do judicial settlement conferences as a family law judge, sometimes encouraging people at the beginning of a trial to give it one more try. Shelly recalls settling more of her family law cases as a family law judge than presiding over family law trials; she found great reward in so often being a part of an agreeable solution for the parties, rather than having to make a decision for them.

When asked what advice Shelly would give to new family law attorneys, Shelly talks about the importance of being able to review both sides of the evidence objectively. She comments that the best attorneys are the ones that can see the other side's perspective. This ability makes one a far better attorney to settle cases, as well as take the case to trial if it comes to that. A pitfall of being a new attorney is that you are trained to be a zealous advocate which can impede your ability to be objective. Helping your client understand that there could be another outcome helps them be realistic about settlement options and possible court outcomes.

Shelly's ability to remain objective and her focus on helping parties make decisions to settle their own cases has made her a valued member of our family law community, loved by many. John Johnson, CFLS[3] and 2014 Rex Sater award recipient, states that Shelly is "independent, fair, judicious and trusted to make fair and sound rulings on evidence and issues."

Shelly known not only for her judicial temperament, but also for her competence in family law. Brandon Blevans, CFLS, writes about Shelly's time in the family law department: "Judge Averill's tenure was marked by her rare combination of warm judicial temperament, dedication to preparedness, and depth of mastery of family law. The family law community—and indeed, the community as a whole—benefitted greatly from her service."

Shelly's friend whom she met her first night in law school, Retired Commissioner Becky Rasmason, shares, "Judge Averill exemplifies everything that the Rex Sater award was intended to honor. She is driven by a desire to get the best possible outcome for families. She does everything possible to facilitate settlement of family law disputes and has worked hundreds of hours to make that happen. Judge Averill also has the keen ability to identify cases early on that need immediate orders. This usually facilitates settlement of the overall case. When cases must go to trial, Judge Averill is exceptionally knowledgeable and fair. Litigants get heard in her courtroom and sometimes that's all they need."

Chief DCSS attorney, Peggy Roth, captured Shelly's demeanor and heart when she wrote, "whether she was practicing family law, serving on a committee, or sitting on the bench, she has always been present, engaged, and calmly compassionate. It is a pleasure to work with someone who rises to their professional responsibilities without losing track of the human element."

(Continued on page 20)

3. Certified Family Law Specialist by the State Bar of California Board of Legal Specialization

Rex Sater Award (continued from page 19)

Attorney Wallace Francis writes "Judge Averill was one of the best, if not the best family law judge I have ever been before. Her instinctual understanding of the parties' relative positions, informed by her careful review of the facts and the law, made coming into her courtroom a rewarding experience, whether I was on the losing end or not. It made me proud to be a family law attorney."

Retired Commissioner Louise Bayles-Fightmaster, CFLS, who has known Shelly since she was in law school, writes, "I can honestly say that she was a compassionate, brilliant, and effective attorney while still in private practice prior to her appointment to the bench. Over the years I have had the great pleasure and honor to work with her, both when we were attorneys and when we were bench officers. She has a quick and creative mind for problem-solving at the highest level. Her temperament is exemplary. Even when frustrated or angry she maintains her balanced temperament."

Judge Averill & Carla Boyd Terre in May 2010 at a celebration honoring Shelly's judicial appointment.

Ethics, civility, and integrity are some of the words that immediately come to mind when thinking about Shelly. Joann Campoy, CFLS, writes "Judge Averill's ethics and civility were unwavering, no matter what her role and no matter how difficult the situation. I can think of no better example of what Sonoma County family law should aspire to be, than the example Judge Averill offers to us all."

Shelly has been assigned to the criminal law department and the family law department during her tenure as a judicial officer. Shelly has come to love being a criminal law judge and is currently the Presiding Judge of the court. Shelly appreciates the confidence that her fellow judicial officers have in her to select her for this role. Shelly's friend and colleague, Judge Dana Simonds, writes "since being appointed to the Sonoma County Bench, Judge Averill has also excelled as a trial judge in criminal cases. She enjoys the challenges of presiding over jury trials and providing a listening ear to the parties and victims. Judge Averill is patient, courteous and kind to all no matter who the person is or what they have done to get them before the court. Everyone in criminal court respects her intellect, her handling of people and her work ethic." It is no surprise that Shelly carries Rex Sater's spirit of excellence into her criminal law assignment.

Shelly's colleague and friend, Judge Dollard, shares that "as our Presiding Judge, Judge Averill cares very much about the welfare of our court family. She takes the time to hear concerns from many different interests, has the ability to understand many different points of view and synthesizes them to achieve the best outcome for the court, and all court users. She also has a tireless work ethic that leaves me in awe."

Shelly and her husband, Michael, live in Santa Rosa. Their eldest daughter, Brittany, her husband, Kellen, and their son, Wyatt (age 2) are moving from Davis to Santa Rosa in June. Brittany was only one year old when Shelly started law school; now Brittany is a second-grade teacher, carrying on her mother's love for teaching and learning. When Shelly is not serving in her role as Presiding Judge, her favorite thing to do is "anything Grandma." Shelly is thrilled that Wyatt and his parents will soon live close by. Shelly and Michael's youngest daughter, Lauren, lives with her significant other, Kyle, in Palo Alto and is an Associate at O'Melveny & Myers, LLP. Lauren graduated from UC Irvine Law School and took the California State Bar Exam exactly 25 years after Shelly took the bar exam while six months pregnant with Lauren. Shelly's sister and parents also live in Santa Rosa.

Shelly, you are so deserving of this award, and on behalf of the Family Law Section, congratulations my dear friend! Bravo!

By Carla Boyd Terre, CFLS

Carla Boyd Terre, attorney and mediator, is the owner of Terre Family Law, Inc., a four-lawyer family law firm in Santa Rosa. Carla is a former President of SCBA (2015), and Chairperson of the Family Law Steering Committee (2009).

Analyzing the *Dobbs* Draft Opinion (continued from page 8)

Conclusion

Justice Alito opines "It is time to heed the Constitution and return the issue of abortion to the people's elected representatives."[22] *Roe* may be a fiercely debated decision and it may be imperfect. But the *Roe* Court wisely balanced the competing interests on the issue of abortion when it held that no state could criminalize abortion of a fetus before it was viable because, at that point in the pregnancy, the woman's interests in making private, informed decisions for herself and her family outweighed the state's right to protect the fetus. *Roe* left states free to pass laws prohibiting abortions after the fetus became viable, which many have done.

The Draft gives states unfettered rights to control women's pregnancies from fertilization to birth, leaving pregnant women at the mercy of the states.

22. *Draft*, *supra*, at p. 6.

By Hon. Nancy Case Shaffer (Ret.)

Hon. Nancy Case Shaffer (Ret.) served on the Sonoma County Superior Court for 14 years, retiring in 2021. She served as President of the Sonoma County Bar Association in 2000.

Hon. Arthur A. Wick Retiring after 45 Years of Service

On May 9, 2022, Hon. Arthur A. Wick, Sonoma County Superior Court Judge, announced his upcoming retirement in a letter he requested be printed in the *Journal*.

His retirement date is July 29, 2022. We are holding his retirement letter to accompany a profile of Judge Wick that will be printed in our Fall 2022 issue.

In the meantime, if you wish to read Judge Wick's letter on the SCBA website, please go to *https://sonomacountybar.org/blog/retirement-message-judge-andy-wick*.

Judge Wick was appointed by Gov. Arnold Swartzenegger in 2006, capping a 45 year legal career with 15 distinguished years on the bench.

SCBA Summer '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.*

Morgan Yaeger Vukelic is now with Bay Area Legal (Bay Legal) in Napa . . . **Daniel M. O'Donnell** has moved his office to 100 Stony Point Rd., Ste. 200 in Santa Rosa . . . **Grace Glendon** is now with The Campopiano Law Offices in Santa Rosa . . . **Richard Abbey** has retired from Abbey Weitzenberg, Warren & Emery, P.C. . . .Congratulations to **Susannah Edwards** on being sworn in by Judge Averill and for being promoted to Associate Attorney at Terre Family Law, Inc. on June 1, 2022.

Law Week 2022: *Some Student Perspectives from Healdsburg High School*

Holly Rickett & Debbie Latham present to 4th period students

Seniors from Healdsburg High School returned from spring break to participate in Sonoma County Law Week in their Economics class on April 5th and 6th, 2022. The goal of Law Week is to expose students to legal issues that affect their lives through presentations, activities, and discussions led by lawyers, law professors, and judges. Four class sections took part as student leaders began with Google Slides and introduced the guest lawyers. In a post-event Google Form survey, more than 80% of students indicated Law Week was beneficial to them by meeting lawyers and discussing legal issues. This article will highlight class experiences, student responses, and key takeaway learnings.

Early Period Experiences

Law Week at Healdsburg High School started with the fundamentals of educating and advocating, as lawyers Peggy Roth and Jennifer Obergfell demonstated various tactics and skills and gave us an overview of how the legal system works. They sparked great conversations as they addressed their own backgrounds and career choices.

Peggy and Jennifer also discussed different options for becoming a lawyer and let the students know that community college could be a good route toward a legal career.

As they touched upon their own education, they also talked about their trial experience as examples of why laws are what they are and work the way they do. For instance, the lawyers discussed some laws that are significant today related to COVID-19 restrictions, LGBTQ protections, and gun rights. Peggy and Jennifer applied these laws to our everyday lives to show the impact they have on us.

They pointed out that those in class wearing masks could be perceived as supporting COVID-19 restrictions, compared to those without masks as either neutral or against such restrictions. Peggy and Jennifer discussed both sides of the gun rights legal debate, and as young adults, we developed our own opinions on the matter. Later in the class, we discussed these issues among classmates.

In the end, the discussion with the lawyers helped us to understand the importance of being respectful and open-minded.

Later Period Experiences

The later two class periods introduced similar topics but also had the opportunity for interactive activities.

Like the earlier class periods, our final classes met lawyers from Sonoma County. Holly Rickett and Debbie Latham both ended up as lawyers in different ways. Holly went to the University of Idaho to get her B.A, then to law school right after because she knew what she wanted to do. Debbie, on the other hand, didn't have to go far; she graduated from Healdsburg High and then attended Santa Rosa Junior College and Empire College. They both passed the bar exam on their first try, which gave many students hope—it showed that it just takes patience and effort to achieve your goals.

Holly and Debbie are both civil law lawyers who really care about their jobs and a justice system creating a safe and free environment for everyone. They questioned what we already knew, and the things that we did not know yet, testing us to our limits. It was an experience that we were all included in and we were all encouraged to give input.

During the final class period of the day, the students had the opportunity to engage in a mock courtroom scenario. Lawyers Jennifer Nix and Debra Newby set up a mock courtroom for us in which we were split

Law Week 2022 (continued from page 22)

Student Citlaly at the podium during mock trial demonstration

Debra Newby & Jennifer Nix presenting to 6th period class

Debbie Latham with students

into three groups: one supporting the suspension of a student who caused a disturbance in the school (prosecution); one protecting the student and arguing why he should be allowed to stay (defense); and one group deciding if the student gets to stay or not (jury).

The classmates in our exit survey indicated that the "presenters were really passionate about their jobs and explained possible career options for us to pursue relating to law." One senior shared that they "really liked how both presenters explained to us real-life scenarios that occur in their job and how they solve those problems...as well as both talking about the basics of the law." Another student commented on how much they enjoyed "how the lawyers were very outgoing and got everyone talking and making sure we understood."

Students in sixth period loved how interactive this presentation was and that we were able to participate with our guest speakers. We felt learning how to conduct a courtroom with order will help us in our future endeavors as we venture off to college. Other student comments included that the Law Week presentation was "fun and educational," and that "they really liked the activity we did during the period and learned more about how a courtroom decides on what will happen with a case." We found Law Week very inspirational and fun and we hope future seniors will participate too.

Conclusion

Overall, participating in Law Week was a fantastic experience in which we enjoyed learning about the legal system. We feel this event was important for us to attend since it is critical that we are aware of the law and understand our rights. Law Week was a welcome break from our usual studies and boosted our knowledge of the legal system.

The lawyers provided us with a wealth of new information that will be useful in our future. We learned about the varied paths these lawyers took to get to where they are now in their careers. These lawyers were fantastic mentors and role models for our senior class, who are still deciding what we want to do with our lives.

One of the highlights of the event was the knowledge assessment where we were divided into two groups. We were asked about the Bill of Rights as well as the legislation that we now have. The mentors made the activities a judgment-free zone, and no student was told their answers were incorrect. Something the lawyers said that remained with us was that nothing is flawless—it's acceptable to fail and then pursue your goals and succeed.

By Healdsburg High School Government/ Economic Class Student Leaders: Braulio Oseguera, Livi Oseguera, Becca Gonzalez, Viviana Gutierrez, Jocelyn Gonzalez, Allison Grande, Carmen Vega & Teacher, Dr. Dennis Perez

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, and welcome to summer 2022! Let's hope it's another wildfire-free season! Here's the latest from Empire College School of Law.

ANNOUNCEMENT: Transition to Non-Profit Status

Empire College School of Law (Santa Rosa, CA) and Monterey College of Law (Seaside, CA) are excited to announce the transition of the current Empire Law School program into a non-profit branch campus of Monterey College of Law. The new branch campus will start administrative operations in July 2022, start enrolling students in 2023, and be known under a slightly modified name, "Empire College of Law, a Branch of Monterey College of Law."

Dual Tracks / Impact on the Current Programs: Both the existing and new branch operations will be administered concurrently for a time. The result will be that Empire College School of Law will continue uninterrupted its long-standing history of quality and performance serving the region as a California Accredited Law School. It will stop taking new students after the Fall 2022 enrollment is completed and teach all students enrolled as of that time to the completion of their degrees at current tuition rates, which will be guaranteed to remain fixed through the scheduled completion date of each current Empire student's course of study. ***If you know anyone on the verge of deciding to go to law school, now is the time to enroll in Empire's last cohort under the existing framework to take advantage of the lower, fixed tuition rate.***

The Staff, Faculty and Location: Empire's Brian Purtill will continue as dean and the current law faculty and Empire professional staff will continue to provide academic programming and administrative support as the current Empire entity teaches out its students and the new branch campus becomes active. We are committed to providing a seamless transition for our current students through their currently scheduled graduation date. The new Monterey branch campus will be at the same location Empire occupies now, 3035 Cleveland Avenue, Santa Rosa, CA.

The History: As part of Empire's long-planned transition to a non-profit institution, it opened discussions with Monterey in 2020 about possible collaboration between the two schools. It was quickly determined that both institutions shared a mutual commitment to high-quality, affordable, and accessible local legal education and had much in common. Monterey College of Law (www.montereylaw.edu) is a 501(c)3 nonprofit California Accredited Law School with three successful regional campus locations—Monterey College of Law, San Luis Obispo College of Law, and Kern County College of Law, plus a separate hybrid online J.D. program.

For almost 50 years, both law schools have been the only graduate legal education programs serving their respective rural California regions. They both conduct respected evening programs with strong regional reputations. Their faculties consist of local lawyers and judges; their graduates serve as judges, prosecutors, public attorneys, private lawyers, and community leaders; they have similar curricula, admission standards, student-faculty ratios, bar passage rates, and tuition rates; and they share a strong commitment to academic support and student success. Lastly, and perhaps most importantly, the schools are dedicated to the mission of opportunity law schools to have their student populations reflect the diversity and values of the local communities they serve.

State Bar Approval / Start Times for New Branch: After many months of planning and seeking State Bar approval, the two schools are now ready to move forward with this project. Our plan for this transition was approved by the State Bar's Committee of Bar Examiners on April 22, 2022. Subject to approvals of other accreditation and regulatory agencies, it is anticipated that the teach-out will proceed smoothly and the new Empire College of Law branch campus will

Dean's List (continued from page 24)

enroll Pre-1L students in Spring and Summer 2023, and its first full First-Year cohort starting in Fall 2023. More information will be forthcoming as the project gets underway, but feel free to contact Dean Brian Purtill at *bpurtill@empirecollege.com* if you have any questions.

THE FACULTY: We have added Richard Horrell as our new professor of law. He is leading and team-teaching a new combination course this summer for incoming students. The class will cover not just jurisprudential issues and the courts, but also include practical study and exam-writing skills to better prepare the students for the first-year courses which will start in the fall. Welcome, Professor Horrell.

THE STUDENTS: We've enrolled 15 new students for the start of the summer trimester, a fine group which will combine with others for our last fall cohort coming up. Our graduation ceremony was held June 4, 2022. Thanks to all of you who sent in donations to our Honors Student Scholarship awards. All the money raised is distributed to our honors graduates to give them a financial boost while they study for the bar exam.

RECENT CASE UPDATE for You Civil Rights Lawyers (Or Anyone in Favor of Free Speech): A new decision from the Ninth Circuit protected a protester's right to chalk profane anti-police slogans on Las Vegas City property and not be arrested in retaliation for it, even though there was probable cause for the arrest. The Court overturned the district court's grant of the City's motion for summary judgment based on the qualified immunity rule, saying, among other things, that the right to be free of arrest for such exercise of one's freedom of speech was well established at the time of the arrest, making summary judgment on the qualified immunity rule inappropriate. *Ballantine v. Tucker,* **Docket:** 20-16805; **Opinion Date:** March 8, 2022.

Well, of course it's okay to disparage the police by chalking your opinions on public property. That was established back in 1960 by *Barney Fife v. Opie Taylor*, when Mayberry, North Carolina deputy sheriff Barney Fife arrested Opie Taylor after he was caught "red-handed" standing in front of a graffitied bank building with a piece of chalk in his hands. The writing on the building read:

"There once was a deputy called Fife, who carried a gun and a knife. The gun was all dusty, the knife was all rusty, 'cause he never caught a crook in his life."

Young Opie protested his innocence, and despite Deputy Fife's insistence on his own superior crime-detecting ability, Sheriff Andy Taylor exonerated his son Opie, not because of the qualified immunity rule, but because he hadn't learned how to write yet. Not exactly on point with the *Ballantine* case, but the real point was to send you a chuckle.

Until next issue...take care, everyone—and stay safe out there!

The wait is finally over!

We Have Moved!

Sonoma County Bar Association

SCBA has Officially Moved

Construction is ongoing in the building with minor work still happening in our office. This may limit the types and number of in-person activities we can host in June and July. That being said, members and friends are more than welcome to stop by our office at **3035 Cleveland Avenue, Suite 205, Santa Rosa, CA 95403** to say "Hi."

An office welcoming mixer will be held after the dust settles and we get ourselves a little more organized. Keep your eyes peeled for that announcement. We look forward to seeing everyone and showing off our new digs!

– *Amy Jarvis, SCBA Executive Director*

SCBA Bar Journal

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

Editors: John Borba & William Adams

Copyediting/Proofreading: Susan Demers.

Project Management, Advertising Sales, Graphic Design & Editing: Caren Parnes.

Bar Journal Committee:
Beki Berrey, David Berry, Kinna Crocker, Ellie Ehlert, Steven Finell, Amy Jarvis, Sarah Lewers, Danielle Podshadley, Brian Purtill

Front Cover Image, Summer 2022 Issue:
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Back Cover Image, Summer 2022 Issue:
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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 1,500 words in length. Citations should be footnoted. A byline must be included and articles must be submitted electronically, as a .txt readable file. Photographs are welcome at editors' discretion. 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@enterprisingraphics.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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Hall of Flowers, Sonoma County Fair, Summer 2019

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