

Santa Barbara Lawyer

Official Publication of the Santa Barbara County Bar Association
January 2021 • Issue 580

*Annual Message
from SBCBA's
First Latina
President
Elizabeth Diaz*



*Looking Forward! Message
From Presiding Judge*

Covid and Civil Lit 2021

*Use of Charts and Graphs
in Trial*

*Manage Stress and
Improve Work-Life Balance*

*Logging Off Social Media
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*2020 Bench and Bar
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Mission Statement

Santa Barbara County Bar Association

The mission of the Santa Barbara County Bar Association is to preserve the integrity of the legal profession and respect for the law, to advance the professional growth and education of its members, to encourage civility and collegiality among its members, to promote equal access to justice and protect the independence of the legal profession and the judiciary.



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SBCBA President Elizabeth Diaz

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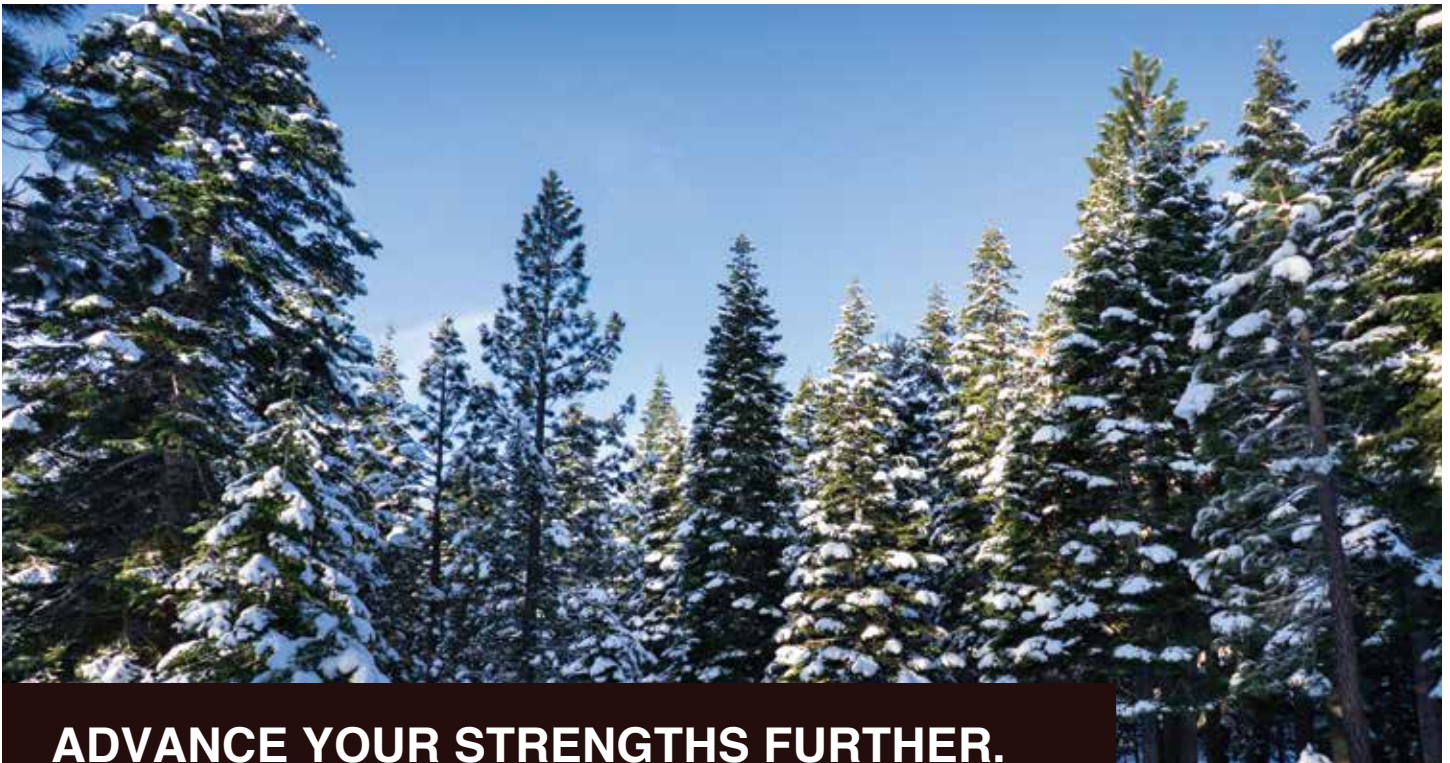
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Letter from the New Editors

ERIN PARKS AND TARA MESSING

We, Erin Parks and Tara Messing, are delighted and honored to take on the roles of Editor and Assistant Editor at the *Santa Barbara Lawyer*. We appreciate this opportunity to introduce ourselves, and outline some of our goals for 2021.

As new stewards of the magazine, we aim to support the Santa Barbara County Bar Association (SBCBA) in advancing the professional growth and education of the local bar; promoting equal access to the fair and efficient administration of justice; preserving the integrity of the legal profession and respect for the law; fostering cooperation between the bench, bar, and governmental agencies; while also encouraging civility and collegiality among SBCBA members.

With these ambitions in mind, we thank the outgoing Editor, Rosaleen Wynne, and Assistant Editor, Chad Prentiss. We strive to continue their responsiveness and thoroughness in our support of authors and the production of each issue. We inherit a publication established as a vibrant platform from which to explore articles on legal jurisprudence, current legislation and events, verdicts and decisions, and remedies for work/life balance, exercise and stress relief. We strive to build on the forum's objectives and the former editors' mission to activate dialog from local Santa Barbara County Bar Association members and allied fields.

Although the *Santa Barbara Lawyer* does not venture into the political realm, legal discussions can become unavoidably political. As such, we invite local legal practitioners to continue dialogues about social justice, inclusion, and privilege, particularly how these issues pertain to our community. Our focus this year is to create a forum within the *Santa Barbara Lawyer* to engage in rich and provocative conversations across power-differentiated communities, geographic distances, and disciplinary divides. We strongly encourage the submission of rigorously researched articles that show how law is deeply engaged with socio-political, cultural issues and climate issues.

One initiative in this direction is the conscious solicitation of work beyond the silos of only legal disciplines and from those who hail from regions not always represented in legally dominated canons and conversations. We urge contributors to reflect on citation patterns and broaden



Erin Parks



Tara Messing

Editor: Erin Parks is a California native of the San Francisco Peninsula where she attended Santa Clara University Law School, reveled in technical editing on Law Review, and studied International Dispute Resolution and Comparative Law abroad. She started her legal career in Santa Barbara in 1988, and as a sole practitioner emphasizes California Employment Law, Immigration, Estate Planning, Probate, and Trust Administration. Erin enjoys spending free time with her family, walking with her dog, and practicing global citizenship as an avid traveler and sustainable humanity volunteer.

Assistant Editor: Tara Messing graduated from the University of Maryland Carey School of Law with honors and a certificate in environmental law. She focuses her legal practice on public interest environmental law as a staff attorney with the Environmental Defense Center. Tara's legal experience includes both litigation and administrative matters, with a specific focus on environmental laws such as the California Environmental Quality Act, Endangered Species Act, and other land use laws. In addition to serving on the SBCBA Board, she is the incoming President for the Santa Barbara Women Lawyers Foundation and Vice President of Santa Barbara Women Lawyers. When not lawyering, Tara enjoys spending time at the beach with her husband and dog, Graham.

their circle of citations to include relevant work by under-represented scholars.

We are also committed to fostering conversations across disciplines and will make efforts to increase further the thematic and theoretical diversity of the articles published in the magazine. Such an orientation welcomes scholarship from affiliated fields that—although perhaps not identifying directly with legal discourse—can only enrich it. We envision *Santa Barbara Lawyer* as a platform from which scholars and practitioners from a range of fields can question, enrich, and extend the limits of legal practice, research, and discourse.

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Annual Message from Santa Barbara County Bar Association President

BY ELIZABETH DIAZ

When I was sworn-in as Santa Barbara County Bar President for 2020, I never imagined that there would be a global pandemic. A pandemic that continues to plague all of us. I never thought that last year's Annual Meeting would be held via Zoom without dinner, or that I would have conducted it from my home office that used to be my guest bedroom. I, like many of you, was not prepared for 2020. My internet was not prepared for last year. I did not know what Zoom was before 2020. But we adapted, and made it work.

In March 2020, when the Santa Barbara County Superior Courts closed for most of us, and our hearings were continued, we were all on pause. The Santa Barbara County Bar Association stepped in to keep our membership informed of important and relevant information. As soon as we received

Parks/Messing, *continued from page 7*

Besides scholarly articles, we encourage the submission of interviews, round-table conversations, visual essays, and statements of practice and pedagogy to support multi-authored work, voices of practitioners and educators of law. We are also committed to nurturing the work of emerging authors. We look forward to serving and bringing the many communities invested in legal scholarship and practice into the conversation.

Our inaugural issue owes much to the work of Santa Barbara County Bar Association's Executive Director / Assistant Editor, Lida Sideris, and Kathleen Baushke of Baushke Graphic Arts, whose generous assistance as we transition into our new editorial roles is invaluable. We are tremendously grateful for their support.

Finally, we would like to thank you for your continued support and feedback. We invite you to communicate with us directly about what you would like to read in the *Santa Barbara Lawyer* going forward: Law@ErinParks.com / tcmessing@gmail.com. ■

updates from the Chief Justice, the Presiding Judge, or the Court Administrator, we sent out email blasts and placed the information in our e-Newsletters. We encouraged our membership to ask questions about the court closures, and we posted the answers as soon as we received them because we knew that everyone was trying to figure out how to proceed with their cases.



Elizabeth Diaz

Last year, we cancelled all our in-person events. We did not have a Past Presidents' Lunch, Annual BBQ, Golf and Tennis Tournament, Justice Reception, nor our Annual Dinner. For the Santa Barbara County Bar Association Events Committee, it was a very uneventful year. But, once this pandemic is under control, we will resume our in-person events full force, and I look forward to seeing you at them.

This year, we will continue to hold Mandatory Continuing Legal Education programs through Zoom and encourage you to attend and support the Santa Barbara County Bar Association. Last year, we began weekly meditation sessions during the lunch hour on Fridays guided by Santa Barbara County Bar Association member, Arnold Jaffe. We look forward to continuing them throughout this year. Having attended, I highly recommend that you try it if you are able. We are working on offering Mandatory Continuing Legal Education credits for the sessions in the future considering the benefits of meditation to our legal community.

Last year, as Santa Barbara County Bar President, I had hoped to accomplish many goals that were circumvented by the pandemic. As the first Hispanic President to represent the local Bar, I am committed to increasing the organization's diversity and inclusivity. Towards that goal, in September 2020, I assembled a Diversity and Inclusion Task Force, made up of attorneys passionate about creating a more diverse local Bar membership, welcoming lawyers, law students and pre-law college students from diverse backgrounds to our organization.

Having been pre-empted from accomplishing many of my goals last year, I am very excited for, and look forward to, the renewed opportunity to serve you in 2021 as President of the Santa Barbara County Bar Association. ■

Message from the Presiding Judge of the Superior Court: Looking Forward!

BY GUSTAVO LAVAYEN

As we begin the year 2021, I wanted to take this opportunity to wish all of you a happy and safe New Year! To say that 2020 has been a tremendous challenge is a massive understatement. As I write this Article, I am very mindful of the horrible impact of the COVID-19 pandemic. Many in our community have suffered losses of every kind, including the most horrible loss, the loss of a loved one. Even if we and our family members have been fortunate enough to avoid being infected by the virus, none of us have escaped the reach of this pandemic. The pandemic has affected every aspect of our daily lives, including enjoying everyday activities that we took for granted, such as simply gathering with friends and family and, unfortunately for many, the ability to continue to work and provide for the necessities of life. And, of course, it has severely impacted court operations, litigants of every type, and all of you in your professional capacity.

Despite this grim reality, and despite the serious challenges still ahead of us for a great part of 2021, including a severely reduced court budget, we have the promise of several vaccines and, perhaps, the end of the pandemic by late 2021 to encourage us. In the interim, as the slogan goes, we must “carry on” and continually seek to increase access to the courts while the pandemic exists and do so in a safe manner for all.

While the pandemic initially required the court to drastically reduce operations, after the installation of video technology and the implementation of safety protocols, we have resumed operations in the civil courts at a level approximate to operations pre-pandemic. This has been possible due to the hard work of our CEO Darrel Parker and his administrative staff.

In the criminal courts, due to social distancing requirements, operations continue to be limited with priority granted to incarcerated defendants. Criminal jury trials have again commenced in Dept. 14 in Santa Barbara and are expected to commence in Department 8 in Santa Maria soon.

Nonetheless I recognize that there is still much to do to increase access to the courts in the coming year. We will

continue to strive to increase access for all litigants and, especially, to reduce the backlog of criminal cases. We must, however, do so with safety as a main concern.

As I write this, the Governor has again issued a statewide shut down order due to a post-Thanksgiving surge in COVID-19 cases. In order to ensure the ability of the court to continue even reduced services, we must keep

court staff, attorneys and litigants healthy and safe or suffer the risk of losing those most needed for the court to function at even a minimum level. For this reason, we can only increase operations at a level consistent with the safety of all.

Within this framework, court management and I will strive to be innovative with the use of technology and will continue to seek additional facilities that allow for social distancing of potential jurors in order to facilitate both criminal and civil jury trials. Our efforts, however, require the patience and cooperation of the entire legal community. We have seen how cooperation between the Bar and the court regarding the use of technology has allowed the court to resume operations. During these difficult times, your cooperation has been vital, and I thank you for it! Going forward, this continued cooperation and patience will be increasingly essential in order to allow all of us to increase legal services to our community. I look forward to working with all of you to achieve that goal.

I wish all of you and your families a safe, healthy and happy 2021! ■

Judge Gustavo E. “Woody” Lavayen was appointed to the Bench by Governor Brown in 2014. Prior to his appointment on the Bench, Judge Lavayen served at the Santa Barbara County Office of County Counsel in several capacities including Senior Deputy, Chief Deputy and Deputy County Counsel. Judge Lavayen served as a Deputy District Attorney at the Santa Barbara County District Attorney’s Office from 1985 to 1990 and was an attorney in private practice from 1984 to 1985. He was elected as Assistant Presiding Judge in 2018 and assumed the position of Presiding Judge for the term beginning January 1, 2021 and concluding December 31, 2022.



Judge Gustavo Lavayen

Civil Litigation in the Time of Covid

BY JUDGE DONNA D. GECK

As you know the Covid Pandemic shut down the Courts for a period in 2020. For several months now, the civil Courts have reopened albeit limited to appearances on Zoom.

Zoom appearances are not ideal but they do provide access to justice and access to the Courts which would otherwise be unattainable. Zoom appearances can be tricky. There can be trouble logging on. Speakers forget to unmute themselves. Worse, they fail to mute themselves when they should. Recently a lawyer made, shall we say, some unflattering remarks about the case that was just handled which were heard loud and clear by the Court, court staff and other Zoom participants! (Oops) On another occasion, due to a technical problem, the lawyers and clients could not hear the Court so they assumed the Court and court staff could not hear them. Bad assumption. Once again, the lawyers could be heard loud and clear. It would seem the most prudent course is to assume your microphone is always on and act and speak accordingly.

Here are a few tips to help you navigate through this strange Zoom court appearance world:

1. You need to master Zoom technology to efficiently represent your clients. If you are not familiar with Zoom technology, consult with the youngest person in your law firm and get a tutorial. The Zoom password changes on the first of each month. The Court may give you the new password and if you do not receive it, you can ask the clerk's office for it or get it from the secretary of each civil department. Monthly passwords are not posted on the Court's website to deter hackers and trolls.

2. Remember, just because you are on a screen you are still in Court. You should dress as if personally appearing in Court (at least from the waist up.) You should conduct yourself as you would if you were physically in Court. Be cognizant of your background and, especially if you are not in the office. The Court and other litigants will have a clear view of your messy house, dirty dishes, and other detritus which you may prefer to keep to yourself. Please quiet your crying babies, barking dogs and other noise which

may interfere with the proceedings. In case management conferences and other Zoom meetings when there are many participants, please state your name before you speak, which will make it easier for the Court and the court reporter to identify the speaker. Please keep yourself on mute until your case is called to avoid extraneous background noises.

3. Yes, bench trials are being tried on Zoom. It is your responsibility to ensure your client and your witnesses have access to the Zoom platform. As an officer of the Court, you should ensure that there is no one else in the room with the witness and ensure that your client and your witness are not accessing any reference materials, notes, or other testimonial aides. Exhibits may be emailed to opposing counsel. Hard copies may be delivered to the Court at the security door at the arch in the Anacapa Courthouse. A member of the court staff will retrieve the exhibits. Make sure you have exhibits provided to your clients and all witnesses. It is very helpful if you can master the screen share function which allows you to display a document or portion thereof, so that the Court, counsel, and the witness can all set it at the same time.

4. No, civil jury trials are not being held and will not be held for the foreseeable future. This may be an auspicious time to explore settlement possibilities. Please also consider whether you and your clients are amenable to waiving jury. The civil departments should be able to get you a bench trial date in a timely manner.

At the present time, there is only one courtroom in South County equipped to handle jury trials, Department 14, located in the Jury Assembly building. Plexiglas barriers have been installed in front of and beside the witness stand, between counsel at counsel tables and in front of the clerk and court reporter. The witness stand is sanitized after each witness testifies. A limited number of potential jurors are seated for *voir dire* and they are not seated in the jury box but socially distanced throughout the whole courtroom. The seats occupied by jurors are sanitized at breaks and during the lunch recess.

Only a handful of criminal trials have been tried in Department 14 over the last few months and given the Governor's most recent shut down orders, there will be no more



Judge Donna D. Geck

criminal jury trials for an unknown period. And remember, criminal jury trials take precedence over civil jury trials, so the delay in resuming civil jury trials will be significant.

The civil Bench thanks counsel and their clients for their patience and resilience in adapting to these difficult circumstances.

We know you and your clients miss being in court in person and the civil judges miss having you in our courtrooms.

Stay healthy. Stay safe. Stay sane, and before you know it, we will see you in Court! ■

Judge Donna D. Geck presides in Santa Barbara Superior Court Department 4, a civil courtroom. She was appointed to the Bench by Governor Arnold Schwarzenegger in June 2010. Prior to her elevation to the Bench, Judge Geck received a BA degree in Journalism from Marquette University and a Juris Doctorate Degree with Distinction from the University of North Dakota Law School. She is a member of the Order of the Coif. Judge Geck was licensed to practice in four States and practiced exclusively civil litigation including jury and court trials, arbitrations, and mediations. She was board certified as a Civil Trial Specialist by the National Board of Trial Advocacy and served as a Settlement Master for the Superior Court. Judge Geck is an Associate of the American Board of Trial Advocates (ABOTA), past president of the local California Coast Chapter, and past board member of CAL-ABOTA. She is a Master at the William L. Gordon Inns of Court and serves as a Teen Court Judge. Judge Geck is a member of the Santa Barbara Women Lawyers and previously served on the Board of Directors. She is also a member of the California Judges Association.



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Demonstrative Evidence: Charts and Graphs

BY ROBERT SANGER

Introduction (and two Announcements)

There is so much that is controversial as this is written, both politically and in new legal developments. Yet, it seems a good time to take a break and reflect on some basic trial practice issues. This Article looks at the use, misuse, and admissibility of demonstrative evidence, particularly charts and graphs. Of course, there are analogues in the public sphere in the use and misuse of charts and graphs in journalism—as well as political confrontationalism. We will focus on their more mundane application in the courtroom. But first:

Announcement One: The California Racial Justice Act of 2020 profoundly states: “There is growing awareness that no degree or amount of racial bias is tolerable in a fair and just criminal justice system, that racial bias is often insidious, and that purposeful discrimination is often masked, and racial animus disguised. The examples described here are, but a few select instances of intolerable racism infecting decision making in the criminal justice system. Examples of the racism that pervades the criminal justice system are too numerous to list.”¹ This is big.

Announcement Two: There is a new law on peremptory challenges to prospective jurors (AB 3070) based on a legislative finding that, “peremptory challenges are frequently used in criminal cases to exclude potential jurors from serving based on their race, ethnicity, gender, gender identity, sexual orientation, national origin, or religious affiliation, or perceived membership in any of those groups, and that exclusion from jury service has disproportionately harmed African Americans, Latinos, and other people of color.”² The limitations on peremptory challenges apply to all jury trials, civil and criminal, commencing January 1, 2022. However, since the new law is designed to ensure the constitutional right of the jurors to serve and the constitutional right of litigants to have a fair trial, lawyers are petitioning local courts to implement the procedures immediately.³ This is a topic that will be written about as it develops.⁴

Anyway, I thought we might take a break from the angst of politics and even these exciting new laws. When jury

trials resume in earnest, we will need to dust off our trial skills and think about the story we are going to put in front of the jury. Demonstrative evidence is an effective way to help tell a story. While there are many forms of demonstrative evidence, this article will focus on charts and diagrams. With apologies, I will start with an example from my own experience before moving to the analysis.



Robert Sanger

A Civil Case⁵

So, it is the late 1970's and two of Santa Barbara's finest civil lawyers—both of whom later became judges—were litigating over the manufacture of an allegedly defective commercial product. The defective product was sold to a regional wholesaler who, in turn, sold it to a local business owner who applied the product to individual jobs for customers. Bottom line: the product failed, the wholesaler lost customers and revenue, as did the individual business owner who had to remove the defective product on completed jobs and redo those individual jobs for each customer. One plaintiffs' lawyer was representing both the regional wholesaler and the business owner.

Virtually on the eve of trial, the plaintiffs' lawyer called me and asked if I could take one of the plaintiffs to trial. He explained that they had a settlement, but it fell through, and they were assigned to trial in two weeks in Department 6 before a visiting judge. The plaintiffs' lawyer said he would continue to represent the wholesaler but that there might be a conflict since the damages' claims were possibly at odds. Experts were designated but not deposed on either side, and the time had expired to take depositions.

Both the plaintiffs' lawyer and the defense lawyer wanted to keep the trial date. In those days it was not unusual to wait over five years for a trial department. They agreed that a new lawyer could substitute in for the business owner, and that the new lawyer could obtain a separate damages expert for the business owner, and trial would proceed without expert depositions. In making his pitch for me to take the case, the plaintiffs' lawyer observed that criminal defense lawyers try cases on short notice and without depositions, so I was just the person for the job. Flattery will get you everywhere!

I had great respect for this lawyer and was honored to be asked so I substituted in for the business owner. I found that the owner had been in business about a dozen years and that this disastrous product was applied to customer jobs in the third year or so. It was devastating economically after the jobs started to fail and customers started to complain. Although he started gaining market share right out of the box, he almost went out of business by year four and struggled to get caught up. However, he regained his excellent reputation and, after a significant two year decrease in revenue, his progress was back on track in year five and he prospered thereafter.

Within weeks, trial started and after introducing the financial records of my client's business, my expert, a UCSB economics professor, presented a chart based on quarterly profit and loss calculations that showed a steady increase in business for the first two years, a significant depression in years three and four and then eight years that were an almost linear upward extension of the first two years. The significant dip in years three and four was attributed to recalling jobs, stripping off the old product and refinishing with new product all at the owner's expense. This hurt his reputation at first and he lost new business as well. But, due to his persistence and honesty, his business came back after those two bad years.

The defense expert, from an accounting firm in Los Angeles often hired by the defense, had submitted a letter opinion that was uninformative but said my client suffered no loss. Since we were flying blind with no expert discovery, we had to deal with the basis for the expert's actual opinion at trial. The defense expert brought his own chart to trial that pretty much just showed a straight-line increase over the entire twelve years. On the stand, he explained that my expert was naïve and had not properly analyzed the data. On cross, I tried to get him to explain his data, but he stonewalled. He would occasionally say he was "using standard statistical adjustments." I finally put my expert's chart up on the easel (remember those?), and pointed to the twelve-year progression that suffered from a substantial dip in years three and four and asked how there could be no loss. He said the same thing; there was no loss.

And then—epiphany! I pointed to the dip and I asked, "Is this the standard statistical adjustment—you just exclude the two bad years as outliers?" Sure enough, he gave a pompous explanation as to how you should reject the inconsistent data from those two years because they were not consistent with the upward trend of the other ten years. I remember being disgusted and abruptly sat down. The plaintiff's lawyer later told me he was afraid that I had been too aggressive and that it might lead to a mistrial—he may

have been right. But we won and there was no motion for new trial or appeal.

Now, this could be a lesson in having a case with good facts or a tale of an ill-prepared, cocky young trial lawyer who got lucky. Still, it was a lesson in charts and graphs that I have never forgotten. Of course, in civil cases these days—and even in the 70's—opposing counsel should have the expert's report, an opportunity for an independent expert to help interpret that report and a pretrial expert deposition. In criminal cases, there are no depositions but under Penal Code sections 1054.1 and 1054.3, counsel on both sides has the duty to disclose expert reports and demonstrative evidence and to give opposing counsel an opportunity to challenge the expert, the opinion, and the charts. In both civil and criminal cases, a challenge to the proffer should be made at a 402 motion. Let us turn to the law regarding proffering or opposing demonstrative evidence.

The Law on Charts and Diagrams

First, charts and graphs are hearsay. "Hearsay evidence is generally inadmissible unless it satisfies a statutory exception. (Evid. Code, § 1200, subd. (b).)"⁶ If there is an objection, it must be "timely made and so stated as to make clear the specific ground of the objection or motion" to give the trial judge a chance to rule and to preserve the matter for appeal under California Evidence Code section 353(a). "Trial courts have broad discretion to admit demonstrative evidence such as maps, charts, and diagrams to illustrate a witness's testimony."⁷ However, if any part of the chart or diagram is hearsay, the proponent has the burden of establishing the foundational facts to show that it comes within an exception.⁸

Second, unless there is other evidence properly admitted to support information in the chart or diagram, demonstrative evidence can only be admitted for the purpose of demonstrating the admissible testimony of the expert witness. The seminal case on this is *People v. Kynette* (1940) 15 C.2d 731 which, in an oft-quoted passage, states that admissibility of demonstrative evidence "rests fundamentally on the theory that they are the pictorial communications of a qualified witness who uses this method of communication instead of or in addition to some other method."⁹

Third, the prohibition on demonstrative evidence containing inadmissible hearsay is particularly significant now given the limitations placed on case specific hearsay offered in expert testimony. In *People v. Kynette* (1940) 15 C.2d 731, the California Supreme Court held that the admission of case specific out-of-court statements violates the confrontation clause.¹⁰ However, even though the confrontation clause is not implicated if the evidence is presented by the

defense in a criminal case or by either party in a civil case, calling such testimony out as hearsay has led to a cottage industry of litigation limiting expert testimony in all cases. An expert can still base an opinion on reliable hearsay if it is not fact specific to the case. Therefore, anything that goes into a chart or diagram relating to case specific facts must be established through testimony of percipient witnesses or exceptions to the hearsay rule, like business records. And it must be established before the expert is on the stand, and before the proponent tries to introduce the demonstrative evidence as illustrative of the expert's testimony.

Fourth, if the charts and diagrams are going to be admitted into evidence, remember that the jury can dwell on them during deliberations.¹¹ Charts and diagrams can take on added significance as witness testimony fades from memory and the charts and diagrams are propped up around the room. If one side has them and the other does not, contested matters may be unduly represented in the deliberation room by the demonstrable evidence rather than recollection of the testimony on direct or cross-examination. California Civil Jury Instructions 5050, for instance, tells jurors little about how they are to evaluate demonstrative evidence: "During the trial, materials have been shown to you to help explain testimony or other evidence in the case. Some of these materials have been admitted into evidence, and you will be able to review them during your deliberations."¹²

Fifth, remember that demonstrable evidence is no more admissible than the opinion of the experts that it demonstrates. This invokes the United States Supreme Court's decision in *Daubert v. Merrell Dow Pharmaceuticals* (1993) 509 U.S. 579, and its progeny.¹³ In *Kumho Tire Co. v. Carmichael* (1999) 526 U.S. 137, the Court said, "The objective of [Daubert's gatekeeping] requirement is to ensure the reliability and relevancy of expert testimony. It is to make certain that an expert, whether basing testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field."¹⁴ And, in *Sargon v. USC* (2012) 55 Cal. 4th 747, the California Supreme Court said that ". . . the trial court has the duty to act as a gatekeeper to exclude speculative expert testimony."¹⁵ Therefore, just like the testimony they purport to illustrate, charts and diagrams cannot be used to convey expert opinions that do not have the "intellectual rigor that characterizes the practice in the relevant field"¹⁶ and they cannot be used to convey "speculative expert testimony."¹⁷ Opinions of experts (and their charts and graphs) are not supposed to be advocating for a side in a case, but are to be statements of hypotheses that are supported by the data.

Sixth, even if demonstrative evidence may be technically

admissible under the *Daubert*, *Kumho Tire*, *Sargon* trilogy, it still may be subject to objection under California Evidence Code section 352.^{18,18} This is particularly important considering the potentially misleading nature of technically accurate charts and diagrams. In my example from ancient history, the defendant's expert for the manufacturer presented a chart which showed the increasing revenue over the entire period of years but eliminated the bothersome yearly or quarterly data. The evidence he excluded was not only the actual evidence of tens of thousands of dollars (in 1970's dollars) of actual harm but was a part of the evidence that the variable—the defective product—was the cause of the damage.

Therefore, finally, counsel should request an Evidence Code section 402 hearing out of the presence of the jury before a chart or diagram is shown to the jury.¹⁹ The data for the representations in the chart or diagram must be supported either by independent competent evidence or by competent evidence from the proffered expert. In other words, this is the time to put the proponents to their proof. To do this, the lawyer needs not only the advice of his own expert but a good sense of what can go wrong with charts and diagrams.

When Charts and Diagrams Behave Badly

So, in the example case, the chart accurately depicted the testimony of the defense expert witness. It should have been excluded though because the data that is depicted was not reliable. Of course, we did not do a 402 motion (why, I do not know—those were the days). It redounded to our benefit that this came out in front of the jury (luckily, I admit) because the defense did not endear itself by presenting such a mendacious expert who had to have the truth beaten out of him. However, this chart illustrated one problem with demonstrative evidence: inaccurate data, often summarized as "garbage in—garbage out."

The chart also suffered from another failing. The exclusion of the two bad years was a dishonest manipulation of the data. But the defense chart also simply showed a linear upward progression through the entire twelve years. It did not depict year-by-year or quarterly numbers but, instead, depicted a linear trajectory from the beginning to the end point. Had the chart had the yearly or quarterly data plotted, it would have shown the loss. In this regard, the lesson is that charts show what they show. Here the chart accurately depicted data, that is, the linear progression from beginning of the business to the end. Of course, the intention was to deceive the jury into concluding that there was no loss. Had the chart gone into the jury room without explanation, it could have been very misleading to the jury.

In addition, there are a myriad of other issues with charts and diagrams that can lead to misleading the jury. This may require that the lawyer become familiar with the science of charts and diagrams by reading the literature. It is also possible to retain an expert in these matters. There are people involved in the study of misleading charts and diagrams on university faculties as well as elsewhere.²⁰ Beyond charts and diagrams that are based on false or misleading information, there are other issues to address, if nothing else, under Evidence Code section 352. Here are some of the concerns that should be considered:

- Titles, labels, or other text should be informative and should be strictly based on data. A chart labeled “Bullets Identified to the Firearm” should probably be labeled “Bullets and Firearms Source Comparison.” Identity is a conclusion and one that is no longer permitted. Furthermore, the chart should not contain identity conclusions but should set out points of comparison.
- Chart and diagram shading, hues and colors should be helpful and not argumentative. Clever or unintentional manipulation of shading, hues and colors can unfairly influence the observer.
- The manner of characterizing the data on the chart or diagram can change the meaning. For instance, we all have seen maps of the United States that are county by county representations of which major party won in that county. That map was predominately red. Now, if the map were clearly designated to represent counties, it would be demonstrative of that. However, if (as has been the case recently) it is offered to show who voted for the red candidate, it would be completely misleading. First, rural counties may be red but are larger geographically and less populated. Second, the designated outcome in the county does not show the votes of the minority. Third, some counties may have been won by large margins, which is not depicted.
- Similar problems occur when using characterizations of data that are not scale representations of the numbers or when characterizations trivialize the reality. For instance, showing a graph diagram with a hundred stick figures and ten who died in a pandemic minimizes the reality that, say over three hundred thousand actual human beings died nationwide.
- The scale also matters. One of the most used manipulative techniques is to truncate the bottom of the y-axis bar

graph. For instance, a two percent variation compared to the top ten percent of the graph looks substantial, while that same variation looks insignificant if the entire bar graph is depicted starting at the bottom of the y-axis with zero.

- Charts and diagrams can also depict so much information that they are undecipherable to the observer. The over inclusion can contain irrelevant information or just too much relevant information.
- Charts and diagrams can conceal uncertainty, which may be the result of measurement error or projection from samples. It may also be based on an algorithm that approximates a prediction. If uncertainty is an issue, it should be clearly identified.
- Charts and diagrams can imply causation from correlation. This is a problem addressed famously by David Hume, but it persists in charts and diagrams today. The fact that two phenomena occur at the same time in temporal proximity does not mean that one causes the other.
- Frequentist data, likelihood ratios and Bayesian analysis are often misleading, and reducing a conclusion to a single number or ratio can further confuse the observer.
- Anything else that does not feel right should be investigated. A chart or graph is supposed to be no more than an illustration of expert testimony, which should be clinical and not exhortatory.

Conclusion

Charts and Diagrams can be illustrative of testimony but can also be engines of deceit. Proffers should be made intelligently, and objections should be searching. ■

Robert Sanger is a Certified Criminal Law Specialist (Ca. State Bar Bd. Of Legal Specialization) and has been practicing as a litigation partner at Sanger Swysen & Dunkle in Santa Barbara for 47 years. Mr. Sanger is a Fellow of the American Academy of Forensic Sciences (AAFS). He is a Professor of Law and Forensic Science at the Santa Barbara and Ventura Colleges of Law and an Associate Member of the Council of Forensic Science Educators (COFSE). Mr. Sanger is Past President of California Attorneys for Criminal Justice (CACJ), the statewide criminal defense lawyers' organization, and Past Chair of the Board of Death Penalty Focus. The opinions expressed here are those of the author and do not necessarily reflect those of the organizations with which he is associated. ©Robert M. Sanger.

ENDNOTES

- 1 The California Racial Justice Act of 2020 signed by the Governor on September 30, 2020 amends Penal Code sections 1473 and 1473.7 and adds section 745 relating to criminal procedure. (A.B. 2542, sec. 2(h), 2020 Reg. Sess., ch. 317.)
- 2 A.B. 3070 was enacted to add, repeal, and add Section 231.7 of the Code of Civil Procedure, relating to juries. (A.B. 3070, 2020 Reg. Sess., ch. 318.)
- 3 For instance, the Alameda Public Defender made a formal request of the presiding judge of that County on October 23, 2020 to implement the procedures of the new Code of Civil Procedure section to take effect on January 1, 2021 rather than waiting for its effective date on January 1, 2022. By the time this is published, I would anticipate that there will be a formal request or requests that the Santa Barbara Superior Court do the same.
- 4 At the time of this writing, almost all counties have suspended jury trials due to the COVID-19 pandemic. Therefore, it is an opportunity to implement changes before jurors are summoned again in what may be a few months.
- 5 The trial was, of course, public. Nevertheless, the people involved, and the identifying details of the case are being obscured. Most everyone -- the other lawyers, the judge and at least one of the plaintiffs -- is deceased. Nothing that would be attorney-client privileged is disclosed.
- 6 *People v. Turner* (Cal. Nov. 30, 2020) __ Cal.5th __, 2020 WL 7018926, at *19.
- 7 *People v. Mills* (2010) 226 P.3d 276, 317.
- 8 See, e.g., *People v. Vasquez* (2017) 14 Cal.App.5th 1019.
- 9 *People v. Kynette* (1940) 15 C.2d 731, 755.
- 10 *Id.*
- 11 Charts and PowerPoints can be used in closing argument; however, they are not admitted in evidence. They should be limited to presentation of actual evidence admitted or some fair notations that reflect the oral argument. For instance, the Supreme Court of California has held that it is error for a prosecutor to turn "the deliberative process into a game" by denigrating the standard of proof beyond a reasonable doubt by using clever diagrams, like the outline of the State. (*People v. Centeno* (2014) 60 C.4th 659, 671).
- 12 CACI 5050, *optional language omitted*.
- 13 *Daubert v. Merrell Dow Pharmaceuticals* (1993) 509 U.S. 579.
- 14 *Kumho Tire Co. v. Carmichael* (1999) 526 U.S. 137.
- 15 *Sargon v. USC* (2012) 55 Cal. 4th 747.
- 16 *Kumho Tire Co. v. Carmichael* (1999) 526 U.S. 137.
- 17 *Sargon v. USC* (2012) 55 Cal. 4th 747.
- 18 Evid. Code § 352.
- 19 Evid. Code § 402.
- 20 Professor Alberto Cairo is an academic (with a good sense of humor) at the University of Miami. His most recent book not only breaks down the issues in detail but also includes a review of the academic literature. Alberto Cairo, *HOW CHARTS LIE: GETTING SMARTER ABOUT VISUAL INFORMATION*, (2019 [with new afterward in paperback edition 2020]).

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Bench and Bar Relations: A Year in Review

BY IAN ELSENHEIMER

Each year, the Santa Barbara County Bar Association (SBCBA) and the Santa Barbara Superior Court jointly hold four Bench and Bar Meetings. These quarterly meetings provide members of our local legal community with an opportunity to engage in an informal dialogue with the Presiding Judge over a variety of legal and logistical issues.

This Article will briefly describe the format of these Bench and Bar Meetings and will provide readers with a summary of the meetings that occurred in 2020.

Form of Meetings

Prior to each Bench and Bar Meeting, the SBCBA solicits questions and discussion topics from the Santa Barbara legal community via the *Santa Barbara Lawyer* and the SBCBA's e-newsletter. Members of the community that have relevant questions, concerns or comments are encouraged to submit those items ahead of time to the SBCBA's Bench and Bar Relations Committee Chair.

At each meeting, the Presiding Judge begins by providing attendees with a general update on changes to the Court's facilities, procedures, staffing, etc. Next, the Presiding Judge addresses questions and concerns that are submitted to the Bar Association and/or Court in advance. Lastly, the Presiding Judge invites attendees to participate in a round table discussion of any other outstanding issues.

If necessary, the Presiding Judge and/or Bench and Bar Relations Committee Chair will follow up on issues raised at these meetings and report back to the interested parties with the requested information.

In the past, these meetings have taken place at the Santa Barbara Court Video Conference Room in the Figueroa Division of the Santa Barbara Courthouse. However, the last three Bench and Bar Meetings of 2020 took place over

Zoom as a result of the COVID-19 pandemic. It remains unclear whether these meetings will revert to in-person meetings, or continue to take place electronically, after the restrictions on in-person meetings are relaxed.

2020 Meetings

Last year we were fortunate to have the Honorable Michael J. Carrozzo serve as our Presiding Judge. Judge Carrozzo and his team adeptly handled the Bench and Bar Meetings that took place on February 20th, May 21st, August 27th and November 19th. Below is a short summary of each of these meetings:

February 20, 2020. At the first Bench and Bar Meeting of 2020, Presiding Judge Michael Carrozzo began by explaining the judicial re-assignments that were made in order to assist with the MS-13 trials taking place in the Santa Maria Division of the Santa Barbara Superior Court. Judge Carrozzo and the meeting's attendees then discussed: (1) the Court's willingness to continue to allow deposition transcripts that utilize the "Southern California stipulation" to be used at trial; and (2) concerns of family law practitioners regarding child abuse in family law cases. The Court is still looking into both of these issues.

May 21, 2020. The COVID-19 pandemic, Governor Newsom's March 19, 2020 "Stay at Home Order" and temporary closure of the Courts caused the legal community to submit an exceedingly large number of questions and concerns to the Court and Bar Association prior to the May 21, 2020 Bench and Bar Meeting. As a result of the foregoing, the Court replaced the May 21, 2020 Bench and Bar Meeting with a Zoom based "Town Hall Meeting" where members of the Court addressed approximately 35 questions submitted by the public. A copy of the questions submitted, and the Court's responses thereto, can be found here: https://www.sbcourts.org/gi/notices/C19_Townhall052120.pdf.



Ian Elsenheimer

We look forward
to seeing everyone
at future Bench and
Bar Meetings!

August 27, 2020. At the August 27, 2020 Bench and Bar Meeting, Presiding Judge Michael Carrozzo and the Honorable Judge Thomas Anderle answered a question about the applicability of California Evidence Code section 1152 in family law proceedings and discussed logistical issues related to the setting and holding of jury trials during the Court's suspended in-person services.

November 19, 2020. No questions or concerns were submitted to either the Court or the Bar Association prior to the November 19, 2020 Bench and Bar Meeting. Accordingly, Presiding Judge Michael Carrozzo and Mr. Darrel E. Parker, the Court's Executive Officer, used this meeting as an opportunity to provide attendees with an update on the status of the Court's operations given the status of the COVID-19 Pandemic.

Judge Carrozzo and Mr. Parker informed attendees of the following:

The Court is not expecting to further reduce operations as result of Santa Barbara County being placed into the "purple tier" under Governor Newsom's "Blueprint for a Safer Economy" re-opening plan;

The Court is implementing furlough days for certain staff members in response to state budget cuts (although some critical staff will still be present on these furlough days to process emergency items like temporary restraining orders);

The Court and the Legal Aid Foundation of Santa Barbara County are working to implement an outdoor Legal Resource Center, which will offer assistance to self-represented litigants;

The Court and the Legal Aid Foundation of Santa Barbara County are working to implement a space for low-income self-represented litigants to utilize an electronic device for purposes of appearing at Court proceedings via Zoom; and

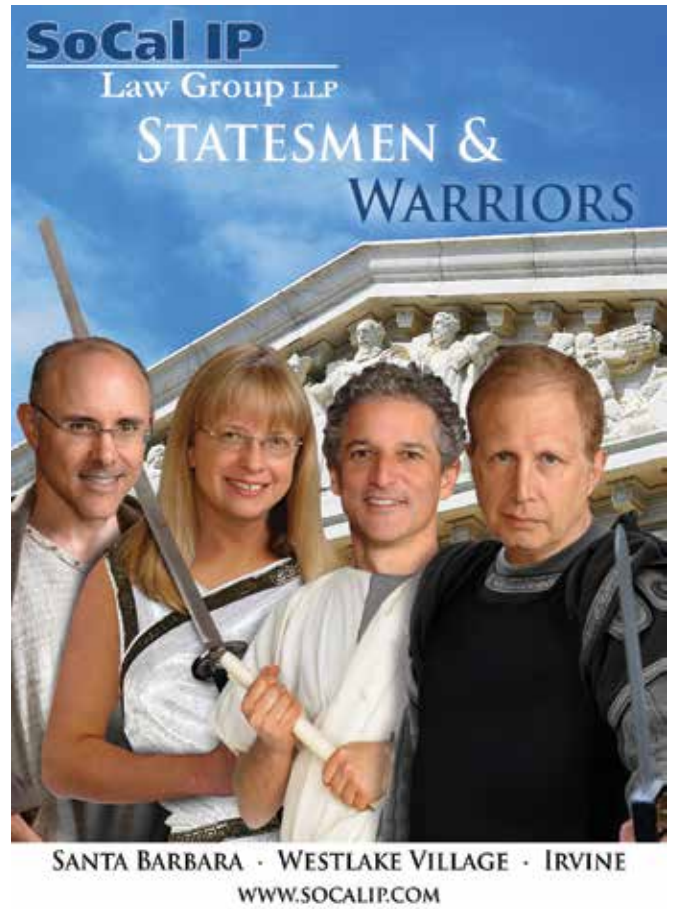
Jury trials are slowly happening in both the civil and criminal context, but the Court is requesting that litigants utilize bench trials if possible.

Conclusion

The Bench and Bar Meetings provide the Santa Barbara legal community with an invaluable opportunity to informally voice concerns to, and ask questions of, our Presiding Judge.

Although this year was wrought with challenges brought upon by the COVID-19 pandemic, both our legal community and the Court rose to the occasion. To that end, the Bench and Bar Relations Committee would like to thank Presiding Judge Michael Carrozzo, his fellow Bench

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How Attorneys Can Manage Stress and Improve Work-Life Balance

BY LAUREN WOOD

Emotional exhaustion and physical fatigue are often cited as two of the most prevalent causes of burnout in the legal field. These can negatively impact performance at work, life at home, emotional well-being and sometimes even lead to quitting the practice of law altogether. Although exhaustion and fatigue are wildly common in the law, that doesn't necessarily mean the two cannot be managed. Here are four key tips for avoiding burnout and improving your work-life balance:

Stay healthy.

I know you've heard this before: staying healthy is key to increasing energy, improving mental clarity and enhancing your emotional well-being. Eating a balanced diet—particularly one that is full of fresh vegetables, lean proteins and healthy fats, and avoids processed food and refined sugar—and getting regular exercise are absolutely mandatory to managing stress and feeling better at work. You cannot operate a peak performance if your body is not in good physical health. Ever notice how that donut you had in the morning made you feel sluggish in the afternoon? Well, it's not a coincidence. If you eat healthier and get at least some exercise, you will feel more productive.

I know what you're thinking: "But I work so much that I just don't have *time* to work out every day." Well, then make time. An excellent book I would recommend reading is *Miracle Morning* by Hal Elrod. The overall premise of the book is simple: wake up an extra 30 minutes early each morning to carve out time for things like exercise, meditation, affirmations and journaling, and it will improve the outcome of your day. While the exact formula won't always work for everyone, even a modified version that works best for you is proven to jump-start your day in a positive way, making you feel more energetic and more productive throughout the day. Who doesn't want to feel more productive at work?

My modified *Miracle Morning* routine includes 5 minutes of meditation, 10 minutes of combined "journaling" (which is time I use to list to-do's and map out my day) and positive

affirmations, and at least 30 minutes of exercise. I also make sure to carve out time in the evenings to read.

Improve your mental health.

Mental health is often something that is overlooked in the legal field. As lawyers, many of us are type A, have egos, are extremely driven and have a desire to succeed that by far exceeds that of the average individual. I mean, take a look at what you had to accomplish to get to where you are now—it's no wonder we put too much pressure on ourselves and allow stress to get the best of us.

There is a myriad of ways one can improve their own mental health. But everyone is different, so it's important to find what works best *for you*. That might mean professional therapy or counseling to work through what is adding stress to your life and help figure out ways to lessen those triggers or situations. Sometimes just getting more sleep can improve mental and emotional well-being. Or perhaps eliminating toxic lifestyle choices can lessen stress and improve mental health.

Alcohol and substance abuse are often key triggers to mental health issues. If you're finding that drinking or substances are causing anxiety, sleep deprivation, or fatigue, consider cutting them out—even if just for a month to see how you feel. My partner and I often "go dry" for a month or two out of the year and let me tell you: the mental clarity after a month without a drop of alcohol is astounding.

For me, I find that meditation helps best when I am feeling overwhelmed and need a minute (or 10) to reset. And I know plenty of lawyers who also swear by the power of meditation. One lawyer who was previously at our firm had a routine of closing his office door and his blinds and spending 30 minutes over the lunch hour meditating every single day. And he credited his longevity in the legal field to such practice. Put simply: find what works best for you but do something each day that *helps* your mental health rather than hurts it.

Prioritize what is most important.

At the end of the day, you need to decide what is most important to you: money or work-life balance (or perhaps



Lauren Wood

something else entirely). And there is nothing wrong with choosing the former over the latter. If you choose the financial stability that often comes with a physically demanding, stressful position, then you must go into it with the understanding and acknowledgement that perhaps your work-life balance won't be as stellar.

If, however, you're at a point in your life where you weigh family time, travel or a low-stress environment over the sheer desire to increase your bank account, perhaps a reevaluation of your current situation is in order. Maybe you're finding you just don't have the time to get to your kid's soccer game or take vacations when you want and want more time away from the office. If that's the case—and you're getting pushback from the demands of your practice or the firm that you're with—you might possibly consider a change in scenery entirely.

If you're overwhelmed by the billable hour requirement posed by most defense firms, think about switching to plaintiff's side work (where working smarter, not harder is often the motto), doing contract work or even starting your own firm, where you dictate your case load and you don't have to answer to anyone. If you choose to stay in an environment where you feel overworked or can't take the time away that you need, then know that is a *choice* and reframe your outlook accordingly.

Stop feeling guilty.

Put simply: stop feeling guilty for taking personal time, leaving the office early, or taking a vacation. And when you do take personal time for yourself, leave the office early to get to your kid's basketball game, or spend two weeks in the Maldives, *don't think about work*. We might be lawyers but that does not mean we cannot have a life. And it also doesn't mean that our work has to consume every hour of every day. Try your best to leave work at the office in order to improve the quality of your time away from the office. ■

Lauren Wood is a partner at the Law Offices of Schurmer and Wood. She specializes in plaintiff's side personal injury, wrongful death and medical malpractice cases across the State of California, with offices in Santa Barbara, Oxnard and Los Angeles. Ms. Wood sits on the Board of Directors for the Ventura County Bar Association (VCBA) and the Los Angeles Trial Lawyers Charities' (LATLC) and is a member of numerous professional organizations, such as CAOC, CAALA, WLALA and the SBCBA. She has been named a SuperLawyers Rising Star for the past five consecutive years. She enjoys playing golf and traveling in her free time and runs a travel blog called Travel is the Cure (www.travelisthecure.com).



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The Importance of Advising Your Clients to Log Off Social Media During Litigation

BY RENEE NORDSTRAND

In the third quarter of 2020, Facebook, the largest social media platform in the world, had 2.7 billion users. (<https://www.statista.com/statistics/264810/number-of-monthly-active-facebook-users-worldwide/>.) Other social media platforms including YouTube and WhatsApp also had more than one billion users each. With approximately 7.7 billion people in the world, at least 3.5 billion of us were online, which means social media platforms are used by one-in-three people in the world, and more than two-thirds of all Internet users. (Esteban Ortiz-Ospina, "The Rise of Social Media," September 18, 2019).

Social media sites and applications have tapped into our innate need to communicate and connect. Young and old are drawn and even addicted to their devices, with many posting daily on their social media accounts. They tell the world about themselves and post (and re-post) photos of everything: vacations, recreation, celebrations, friends, pets, activities, political leanings, to name a few. They may describe in detail how an incident happened or how badly they feel about something that happened. We all like to share our day-to-day activities with our family, friends, and acquaintances and often post only the "good" on social media, which may present only a partial or even misleading picture.

Given the prevalence of social media in our society, it has become standard practice for insurance companies and defense attorneys to run comprehensive computer searches and investigations to obtain information about a claimant's personal life as early as the date of an accident or dispute. Before social media became so popular it was much more challenging for defense lawyers to uncover this information; rather, they had to hire costly private investigators to conduct surveillance on claimants. Now, with a click of a button, they can discover years of information that may embarrass, humiliate, or hurt your client's liability and/or damage claims. They look for pictures or comments that can be taken out of context to prove your client is dishonest or exaggerating their claim. In the last 15 years or so, I've seen several well-meaning, unwitting clients spoon feed insurance companies and their lawyers information that

negatively impacts them and their case. They divulge potential witnesses, provide information and photographs that may be misinterpreted, and often make statements that can be misconstrued as an admission of guilt.

Your client's social media posts also may be revealed at inopportune times. Take for example the following two scenarios: During mediation negotiations for your client who is claiming an injured shoulder, the defense attorney produces a photo taken off Facebook that shows your client on vacation, hanging off the edge of a boat with his outstretched "injured" arm. Or at a deposition, when the defense attorney shows your client, who is claiming severe physical and emotional pain, post-accident Instagram photos of her partying at a nightclub and working out at a gym. The impact to these two clients' damage claims, not to mention their overall credibility, can be disastrous.



Renee Nordstrand

What Advice Should You Give Your Clients About Social Media?

If there is a single lesson to be learned, it should be this: never assume that anything that is shared online, publicly or privately, is fully confidential. On the contrary, such information, if relevant, is discoverable and admissible evidence in most legal forums. Thus, as attorneys, we have an immediate duty to advise our clients of the myriad of dangers of posting on social media. We must advise our clients to beware that most of the time these posts are not private, even though the settings might be marked private. A private account, whether it is on Instagram, Twitter, Facebook, Snapchat, TikTok, or one of the many dating apps, can help keep the general public from seeing posts. However, anyone already following an account can see and screenshot posts, making them easily viewable to others and potentially discoverable.

Even if the posts are not readily accessible, once you are in litigation, a client may be forced to provide information through a properly tailored discovery request or subpoena. This pertains not only to social media but also to content created on home and work computers, smartphones, and laptop hard drives. In some cases, the client created these posts prior to talking to a lawyer, in which case you can-

Feature

not tell the client to remove the posts because that would be advising the client to destroy evidence. Sometimes, in spite of your warning, a client may continue to post on social media. In such a scenario, it is prudent to have a special Facebook page for those clients so that you can follow them and see all of the posts they make, so you know everything the other side is likely viewing and could use against your client.

In sum, every lawyer in this day and age should be advising their clients how to properly manage their social media content from day one. The best thing for a person with a personal injury or any claim to do is to stop posting to social media altogether. A simple post explaining why they need to go “radio silent” for a period of time can help keep their loved ones informed. I send my clients a letter about Social Networking. If anyone would like a copy of the letter, please feel free to email me at rn@nblaw.us. ■

Renee J. Nordstrand is a partner at NordstrandBlack PC, formally Law Office of Renee J. Nordstrand, practicing law for the last 31 years. AV rated by Martindale Hubbell, Renee exclusively represents Plaintiff's throughout California in personal and catastrophic injury matters, including wrongful death and cases arising from trucking accidents.

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Santa Barbara Lawyer publishes monthly. Just like last year, in 2021 the deadline for content, copy, and photographs is on the first Monday of each month. There is no “soft deadline” without pre-approval from Erin Parks.

Articles

- Include a title or headline with your article. Include your name/title, and a short bio at the end of your article.
- Articles do not need to be laid out; plain text is easier for us to work with.
- Shorter paragraphs work best for our newsletter format. Aim for 600-1200 words.
- Microsoft Word, .rtf or .txt files are ideal. No PDFs.
- Please proof your material before you send it in! We cannot guarantee that we will catch every spelling, grammar, or punctuation error, and proofreading takes time away from our design and editing process.
- Please use the endnote format and *California Style Manual* for citations.
- Please review and submit a signed Author Agreement with your article.

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- Do not edit or crop your photos. Do not imbed images in Word or any other application.
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- **Coverage:** From time to time, an article idea, feature, profile, event, or photo opportunity may come along that you think should be in the magazine. Please send it to us when you think of it. This allows us to plan ahead and make sure it is covered.
- **Settlements, Verdicts & Decisions:** *Santa Barbara Lawyer* seeks to objectively report verdicts and decisions from cases involving firms and lawyers based in Santa Barbara County or involving issues of local significance.
- **Profiles:** We welcome suggestions.
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- **Space in the magazine:** *Santa Barbara Lawyer* is printed in multiples of four pages (i.e. an edition will be 28/32/36/40 pages long). Thus, when space is a concern, we may shorten or even omit an article. When this is done, we will take into account timing, need to publicize events or other deadlines, and whether the article can run in the following issue.
- **Content:** *Santa Barbara Lawyer* is a publication of the Santa Barbara County Bar Association (SBCBA), written by and for our membership. We reserve the right to reject content that runs counter to SBCBA’s published mission and goals or that is not of interest to our readership.

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Content should be sent to sblawyeromagazine@gmail.com

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Motions (short news items/announcements) should be sent to Mike Pasternak: pasterna@gmail.com

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officers and all Court personnel for their hard-work and dedication in 2020. We greatly appreciate their responsiveness, approachability, and genuine interest in solving the problems that our community members brought to the Court's attention.

We look forward to seeing everyone at future Bench and Bar Meetings! ■

Ian Elsenheimer is an associate attorney at Allen & Kimbell, LLP. Ian's practice focuses primarily on real estate, business planning, tax planning and civil litigation. Ian received his J.D. from the University of Southern California Gould School of Law in 2018 and his B.A. from the University of California Santa Barbara in 2013. Ian is SBCBA's current Bench and Bar Relations Committee Chair and he will continue to serve in that capacity in 2021. If you have anything you would like to discuss at any of the 2021 Bench and Bar Meetings, please contact Ian Elsenheimer at ielsenheimer@aklaw.net.



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Motions

Price, Postel & Parma LLP is pleased to welcome attorneys **Paul A. Roberts** and **Karen K. Peabody** to the firm.

Paul A. Roberts has been in practice in Santa Barbara since 1977 and has acted as Chief Executive Officer of law firms in Santa Barbara prior to his joining Price, Postel & Parma. Mr. Roberts has an established practice at Price, Postel & Parma that includes handling complex, high asset marital dissolution proceedings, which consist of litigating all issues including real estate, domestic and foreign, business issues, often involving the officers of publicly traded companies and spousal and child support and custody.



Paul A. Roberts

Mr. Roberts has been appointed by the Court to serve as a Judge Pro Tem and has been appointed by the Court to serve as a Special Master to manage and decide complex business and real property issues. He has also served as an expert witness in the legal malpractice field. He has attended and completed the Family Law and Mediation programs at the Strauss Institute of Dispute Resolution at Pepperdine University and is employed by local attorneys to serve as a private mediator to assist in bringing their cases to a mediated conclusion. He has taught Trial Advocacy to local attorneys. He also served on the Board for the Santa Barbara Lawyer Referral Service, Santa Barbara County Bar Association, and other non-profit organizations in the Santa Barbara area.

Karen K. Peabody is a litigator and appellate attorney who has been practicing in Santa Barbara since 1997. As a member of Price, Postel & Parma's Family Law Practice Group, Ms. Peabody provides counsel and representation to clients during all phases of family law proceedings.

Prior to joining Price, Postel & Parma, Ms. Peabody had a solo practice, Peabody Boris Law, emphasizing probate and trust litigation before transitioning to family law. Previously, from 1997 through 2013, Ms. Peabody was a partner in her former law firm, Nye, Peabody, Stirling, Hale & Miller, LLP, where her practice focused on civil litigation and appellate work in both state and federal courts. Ms. Peabody served as outside defense counsel for the Regents of the University of California and a number of counties and cities, specializing in counselling and defending public entity clients in matters involving a wide variety of legal issues, including employment law, civil rights, government tort liability, constitutional law, qualified immunity, administrative law and mandamus, criminal law, retirement and pension law, academic freedom, privacy rights, and state sovereignty at the trial and appellate levels. Ms. Peabody also served as an independent investigator for the University of California Santa Barbara.



Karen K. Peabody

Ms. Peabody is a member of the Santa Barbara Women Lawyers, Barristers Club, and the William L. Gordon Inn of Court.



John Ambrecht

John Ambrecht to host free webinar January 13, 2021 at High Noon.

John Ambrecht, a senior partner at the Santa Barbara estate planning and tax specialty law firm **Ambrecht & Associates**, will be hosting a January 13, 2021 webinar titled: "How to Prepare an Organization for Succession: One Success Model" on how to create an effective family business succession plan. He will be joined by **Shoham**

Adizes, a senior associate at the **Adizes Institute**, a global consulting firm with offices in 14 countries.

The presentation is especially geared toward estate planners, tax lawyers, tax accountants, lawyers rep-

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The webinar is free and presented by STEP, Business Families – Los Angeles, Special Interest Group. Join the luncheon presentation via Zoom from noon to 1:30 p.m. Email Ambrecht@taxlawsb.com to register.

Carre Boniface will begin a new chapter in Orcutt with the **Law Office of Aaron B. Smith** starting on January 4, 2021.

After 13 years of legal experience in Santa Rosa, Carre continued her legal career on the Central Coast by working the last 11 years working for Richard Weldon and Ernest DeGasparis in Santa Maria, CA. Upon the recent retirement of both Weldon and DeGasparis, Carre accepted the Legal Assistant position at the Law Office of Aaron B. Smith. Attorney Smith, a Santa Maria/Orcutt native, operates his office in Old Orcutt. His practice covers Estate Planning, Wills, Trusts, Probate, Trust Administration, Medi-Cal Planning, Business Law, Real Estate and Business Transactions, Business Formations, and Landlord/Tenant Law.

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Erwin Chemerinsky

on the state of the Supreme Court of the United States

Schedule

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| 8:30 AM to 9:00 AM | Sign In | |
| Breakout Session 1 9:00 AM to 10:00 AM | Attorney Competence* Doug Ridley, Ridley Defense *Competence Credit expected | Digital Marketing for Attorneys** Lorrie Thomas Ross, Web Marketing Therapy **Not eligible for MCLE credit |
| Breakout Session 2 10:10 AM to 11:10 AM | Employment and Privacy Law Angela Roach, Maxim Integrated Products, Inc. | Mock Trial Jessica Phillips & Samantha Baldwin, Maho Prentice, LLP |
| Breakout Session 3 11:20 AM to 12:20 PM | Business & Law Danielle De Smeth, Bamieh & De Smeth, PLC R.W. Hap Zeigler, Mesa Consulting LLC Jason Janzen, Palius, O'Kelley & Janzen CPAs | Immigration Law Kraig Rice, Santa Barbara Immigration Lawyers, Inc. |
| 12:20 PM to 1:00 PM | Lunch Break | |
| Joint Session 1:00 PM to 2:10 PM | Keynote Presentation Erwin Chemerinsky | |
| Breakout Session 4 2:20 PM to 3:20 PM | Environmental Law Linda Krop, Environmental Defense Center | Housing Law Panel Elise Cossart-Daly, Cossart-Daily Law, A.P.C. Robert Forouzandeh, Reicker, Pfau, Pyle & McRoy LLP, Michelle Roberson, Sierra Property Management, Alex Entrekin, Legal Aid Foundation of Santa Barbara, John Thyne, III, Law Offices of John J. Thyne III |
| Joint Session 3:30 PM to 4:30 PM | Judges Session*** The Honorable Von T. Nguyen Deroian The Honorable Pauline Maxwell ***Ethics Credit expected | |

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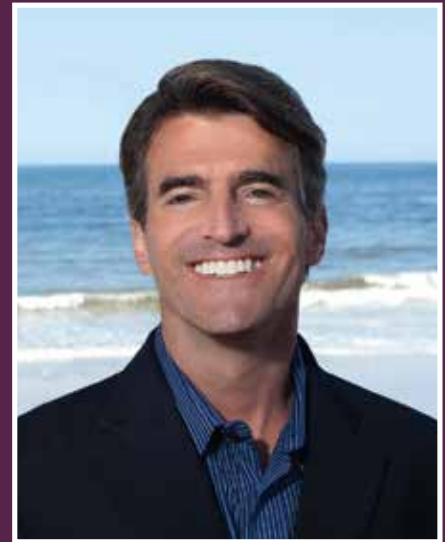
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