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THE BAR ASSOCIATION OF SAN FRANCISCO/Summer 2020



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SAN FRANCISCO ATTORNEY

A PUBLICATION OF
The Bar Association of San Francisco
www.sfbar.org

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SAN FRANCISCO ATTORNEY

(ISSN 0744-9348) Volume 46/Number 2.
Published quarterly for \$36 per year by the Bar Association of San Francisco, 301 Battery Street, Third Floor, San Francisco, CA 94111. Periodical Postage Paid at San Francisco, CA, and at additional mailing offices. Subscription inquiries and changes of address should be sent to *San Francisco Attorney*, 301 Battery Street, Third Floor, San Francisco, CA 94111. POSTMASTER: Send address changes to *San Francisco Attorney*, 301 Battery Street, Third Floor, San Francisco, CA 94111.

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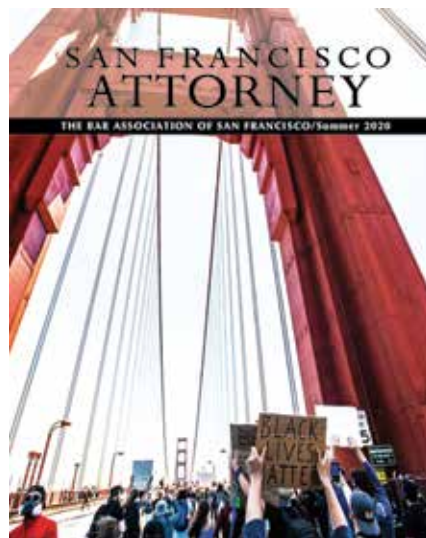
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On Our Cover

BLACK LIVES MATTER PROTEST

June 6, 2020

Protesters demonstrate on the Golden Gate Bridge after the death of George Floyd.

Photo credit: Chris Tuite

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remember. More information to come.

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PROXIMITY

CREATES



CONNECTION



A

s we continue to confront the unprecedented challenges of COVID-19, I cannot begin this column without expressing how proud I am of the Bar Association of San Francisco (BASF) and the Justice and Diversity Center (JDC). I have always been proud to be part of these organizations, but never more so than now. BASF and JDC have not faded into the background in this crisis.

Stuart Plunkett

To the contrary, through hard work, creativity, and a sense of duty and desire to help, BASF and JDC staff have adapted to working remotely and pivoted to providing critical information and resources for practicing law in the Bay Area in the time of COVID-19. And we continue to provide representation to those in need of JDC's pro bono legal services.

We have grown stronger, not weaker, in the face of these challenges. Our members have noticed. Our Executive Director and all of the staff and volunteers

who work so hard appreciate your positive feedback. Please keep it coming. Please also have in mind that we continue to need your support, including financial support, to ensure our continued success.

This issue of *San Francisco Attorney* focuses on what we are learning from the coronavirus crisis—a crisis that has forced all of us to examine not only how we serve our clients and communities, but also how we live, work, and connect with each other. In some lines of work, sheltering in place has meant unemployment

**THE REALIZATION THAT WE CAN
LARGELY RUN OUR PROFESSION
REMOTELY IS A RELIEF WHEN WE
HAVE NO OTHER CHOICE. BUT WHEN
WE DO HAVE ANOTHER CHOICE,
WHAT WILL WE CHOOSE?**

and shuttering of businesses, some permanently. But by and large, the legal profession is learning how to operate remotely and connect virtually. Indeed, we are quickly becoming experts at remote operations.

The realization that we can largely run our profession remotely is a relief when we have no other choice. But when we do have another choice, what will we choose? And what are the implications of those choices?

Now seems like an appropriate time to ask what we should do with our new remote prowess. Recognizing that everyone will have perspectives based on factors like personality, job responsibilities, home life, and commute options, I offer my perspective: I hope to see things return to the way they used to be.

How can we continue to work remotely and not lose the things that make practicing law in San Francisco such a rewarding experience? Those of us who have worked here for many years know that we are a tight-knit community, despite our numbers. It's tough to walk outside and not run into a fellow lawyer on the street. San Francisco is unique among American cities in having a large legal community located in a small and dense financial center where everyone walks to get where they need to go during the day—and not in tunnels or skywalks—because the weather is conducive to walking year-round. Meeting colleagues and clients for lunch or coffee is easy, and happy hour is just across the street. I'm not ready to lose these things.

Proximity creates connections and builds relationships. I believe our sense of community as a profession—the very character of who we are as San Francisco lawyers—derives from the physical attributes of this great city. How much of our passion for the law will we lose from staying at home? Can we remain a community of lawyers dedicated to equal justice and service to those in need? The moments I have been most inspired by my fellow attorneys over the years have been at gatherings where I could hear extraordinary speakers with great ideas and then talk face-to-face with others who were also inspired. We need our events. Ask anyone who is trying to plan an alternative event now, and they will tell you there is no substitute for meeting in person.

And who loses the most when we work remotely? I think of the newest members of our profession and how important it is that they have access to those who will teach them the practice of law, impart on them the values and standards of our profession, and lead them



PROXIMITY CREATES CONNECTIONS AND BUILDS
RELATIONSHIPS. I BELIEVE OUR SENSE OF COMMUNITY AS A
PROFESSION—THE VERY CHARACTER OF WHO WE ARE AS
SAN FRANCISCO LAWYERS—DERIVES FROM THE PHYSICAL
ATTRIBUTES OF THIS GREAT CITY.

by example. I think of how hobbled they are in building the social and professional networks that will expand their experiences and opportunities. Many of these folks are new to San Francisco like I was when I started my career here in 1996. I knew almost no one. My social and professional network developed largely because of the ‘small world’ experiences that are so much of what San Francisco is about. These relationships serve as the foundation of my professional well-being.

There is something enriching and expansive about working together in person, even working in proximity to each other.

Certainly, we do not face the prospect of empty buildings and empty streets. Offices will reopen and many of us will return. Those of us who need to work remotely for personal reasons will, and employers may allow remote working as a matter of convenience. Business models may change, floorplans may change, employers may see opportunities to cut expenses for

SAN FRANCISCO IS UNIQUE AMONG AMERICAN CITIES IN HAVING A LARGE LEGAL COMMUNITY LOCATED IN A SMALL AND DENSE FINANCIAL CENTER WHERE EVERYONE WALKS TO GET WHERE THEY NEED TO GO DURING THE DAY.

office space—second only to salaries in impact on the bottom line. But in the process of making decisions about remote operations, when avoiding a virus is not the principal consideration, I hope we will weigh not just personal convenience and the bottom line, but also the social and cultural costs of losing togetherness.

What if we are given the choice to work from home so long as it is consistent with our obligations, like court appearances? I worry that without further guidance from employers, the impact may still be significantly negative. Seeing your mentors and other colleagues in the office on a daily basis is something most of us have taken for granted. If those folks may or may not be there on any given day, if the greatest contributors to mentorship and a positive work environment choose to work from home regularly, the cost to others will be

great. If our colleagues come to work just one or two days a week, is that a day when they are looking to talk and mentor? Or is it crunch time because days in the office are so rare?

We are a social profession, one that thrives on interaction and the exchange of ideas—in kitchens and conference rooms and on walks to get coffee. As work-from-home policies evolve, let's be thoughtful, not just expedient.

Don't get me wrong. I love my husband and I love my dog, and it's been just terrific getting to spend every waking hour of each and every day with them for three solid months. But now I'm ready to return—to roam the halls of our offices and the streets of San Francisco. I hope to see you there soon.

Stuart Plunkett is a partner at Alston & Bird and the 2020 President of the Bar Association of San Francisco and the Justice & Diversity Center.




“First Republic cares about us like family —
we truly value the relationship.”

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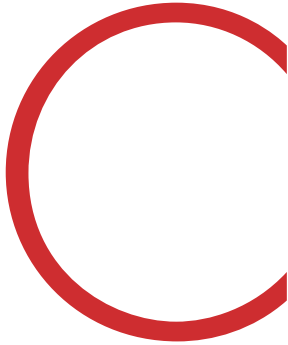
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BARRISTERS REPORT

THE PANDEMIC'S IMPACT ON JUNIOR ATTORNEYS AND DIVERSITY





COVID-19 has turned 2020 on its head—and with no end in sight, all of us are settling into the “new normal” that many predict will change how lawyers work not just temporarily, but forever. As all of us adjust to this reality, it is important to highlight groups that will be particularly affected by it—junior and diverse attorneys.

Kelly Matayoshi

It is difficult to focus on these concerns. We are struggling to adapt to the new practice of law while balancing concerns for health and safety, family obligations, mental health—and the fact that existing issues like racism have not abated.

Below I outline advice to law students and junior attorneys on practicing, to seasoned attorneys on how to help, and to everyone on diversity as we face these challenging times together.

Law Students and New Graduates

Law school is about learning the law, of course, but it is also about the connections that you make with fellow classmates, professors, alumni, and more. While

law schools can and will adapt to distance learning and instruction, how do law students create meaningful connections that will endure past graduation? It is certainly hard, but doable. Everyone is feeling isolated now, and we are all reaching out through our Zoom screens to interact with others.

Take advantage of this. Schools, bar associations, firms, and companies are all moving their content online. When the pandemic started, I told the Barristers Club Board of Directors that bar associations are needed now more than ever before and we increased our content and offerings. Interactions online can actually be easier than in-person meetings since attorneys do not need to travel—or even change out of their pajamas. Join a

AS LAWYERS, IT IS OUR JOB TO STAND UP AND FIGHT AGAINST RACISM. IT IS NOT ENOUGH TO NOT BE RACIST, WE MUST BE ANTI-RACIST. WE HOLD A POSITION OF POWER IN THE LEGAL SYSTEM, AND MUST CONSCIOUSLY WIELD THAT POWER—AND DO SO RESPONSIBLY.

bar association and go to events, but do not stop there. The downside of large online events is that it is difficult to be noticed and create one-on-one connections. So identify specific people to reach out to or target smaller events so you can follow up on a more individualized basis. In short, creating meaningful connections is still doable, it just takes more and different efforts.

For recent graduates, the biggest struggle is the uncertainty about the future—from the bar exam to jobs and the economy. It is not easy to graduate into a recession, and even harder when it is not just the economy but public safety at issue. While your plans may be disrupted, that does not mean you cannot be planning. Success may need to be reframed or viewed differently, but you are not alone in this struggle. You have at your fingertips a community of attorneys who want desperately to help you, and we are ready when you call.

Junior Attorneys

At a time when we should be building our careers, it can instead feel like we are simply passengers on a wild and crazy roller coaster. While some of this cannot be helped (and at times all you can do is hold on), grab the steering wheel. Do not expect that others will figure out how to help; they are busy grappling with their own issues. Even though many aspects of practicing law are out of your control, focus on the parts that you do control.

Invest in yourself. Take time to do trainings that you were previously too busy to do. For example, the Barristers Club has focused on generating practical skills trainings and has benefited from being able to bring in non-local speakers as well. Become an asset that your employer cannot live without, and when the dust settles on the pandemic you will emerge a better and valued lawyer.

Create something. You do not need to join a preexisting project. Create it yourself. Write articles or speak on panels to raise your profile. Identify pro bono cases to take on. If it does not exist, make it.

Be visible. Without being seen at the office every day, it is easy to be forgotten—out of sight, out of mind. Staying at the top of someone's mind can be as simple as sending an email or making a phone call. It does not even need to be about work, but even little touches can create an impression.

Seasoned Attorneys

As leaders in this profession, you are shouldering much of the burden of ensuring that we continue to provide

top-notch legal services and emerge from this crisis intact. While you are balancing many concerns, do not forget about junior attorneys. This is a group likely to be overlooked. It is assumed that they will be ‘fine,’ and thus are often not prioritized. That is a mistake.

Junior attorneys are the future face of the legal profession. Good attorneys do not just appear, they are built. It takes time and effort from experienced practitioners to teach and mentor junior attorneys. Now is the time to refocus these efforts and ensure that the future generation of lawyers is well-trained and ready to lead.

Diversity and Anti-Racism

Reports show that during a recession, diverse attorneys are the ones who are most negatively impacted. As firms and companies focus on staying afloat, diversity efforts are set aside—as a problem for another day. But if diversity takes a back seat during every recession, progress will never be made. Diversity must stay front of mind now more than ever as diverse and female attorneys are more likely to be struggling, receive less work, or be overlooked. Not everyone stands on equal footing, and the pandemic and recession will highlight these differences. Business-as-usual will not be enough—it will take extra and special care to simply maintain the status quo.

Beyond diversity within the legal profession, attorneys have a role in shaping laws, policies, and cases that affect minority communities everywhere. The coronavirus pandemic has heightened racial tensions across the nation. Racism against African Americans and Asian Americans in particular has continued and

escalated, adding problems to communities that are already struggling with the pandemic.

Even within the Bay Area “bubble,” reports of racist words and actions against Asian Americans surfaced soon after the pandemic began. They serve as a stark reminder that perhaps we are not so far from the Chinese Exclusion Act and Japanese internment camps after all. For African Americans, the pandemic has not slowed patterns of injustice long endured and perpetuated. The killings of Ahmaud Arbery and George Floyd are only two examples, and ones that are unfortunately all too familiar.

As lawyers, it is our job to stand up and fight against racism. It is not enough to not be racist, we must be anti-racist. We hold a position of power in the legal system, and must consciously wield that power—and do so responsibly.

Kelly Matayoshi is a senior associate at Farella Braun + Martel and the current Barristers Club President. Her practice focuses on business litigation and employment, with a focus on the consumer products industry.



CONFLICT INTERVENTION SERVICE

*Transforming Lives, Transforming Affordable
Housing, Transforming Community
in Times of COVID-19*



Carole Conn and Roger Moss

The voice on the helpline message for the Bar Association of San Francisco's (BASF) Conflict Intervention Service quaked with fear: "Please help me. I'm an elderly gay man with HIV. My roommate brings a stranger home every night. He laughs when I plead for him to follow the rules. If I catch the virus, I will die."

**DESPITE A SIGNIFICANT SURGE IN
HELP REQUESTS DRIVEN BY
COVID-19 RELATED DISPUTES,
CIS MAINTAINED ITS 24-HOUR
RESPONSE GUARANTEE
THROUGHOUT THE CRISIS.**

It was late in the afternoon on Friday the thirteenth this past March. As panicked calls from distressed people cascaded into the helpline, the Conflict Intervention Service (CIS) faced its greatest challenge.

Earlier in the day, San Francisco Mayor London Breed had announced an eviction moratorium, relieving many residents but triggering confusion at the same time. An unprecedented shelter-in-place order was rumored. It followed on Monday, March 16, effective immediately across the Bay Area.

When people are frightened, they hunker down. They lash out. They act out. When they are jammed together in unwise space-sharing arrangements, fear and trauma make things unmanageable and sometimes dangerous. CIS has helped hundreds of desperate people trapped in bad situations avoid eviction and homelessness through its many service offerings.

The advent of COVID-19 tested CIS, starting with a huge increase in help requests. Rapid response is the program's touchstone. We guarantee every help request a touchback within twenty-four hours, seven days a week, 365 days a year. Service delivery begins with the first contact. Could we keep up?

John W., the terrified elder with an irresponsible roommate, was stunned when CIS returned his call twenty-two minutes later. He had made a dozen calls over three days before an attorney with the Aids Legal Referral Panel suggested he contact CIS. Terrified, worn out, despairing, John's surprise was soon matched by the empathy he received from a CIS Conflict Navigator who listened not only for the details but also for the emotions driving the conflict and distress. CIS presented a communication plan for constructive dialogue to address the conflict.

Following the plan, John posted an urgent message on his roommate's door. The much younger man, Kyle, subleased a room in John's two-bedroom, one-bath flat in Cole Valley. The message was firm—that unless strangers stopped entering the home, John would need to take further action—while offering an olive branch in CIS language. Kindly and respectfully, John asked Kyle to join him in a facilitated conversation to discuss his concerns.

Deploying ombuds strategies, a CIS attorney-mediator met with Kyle by Zoom on Saturday morning, explaining John's sincere concerns, and the potential consequences Kyle faced under the circumstances, such as legal action or a restraining order. Having John's sentiments conveyed without judgment and in a way he could hear them, Kyle owned up to his dismissive



Activists gathered outside of San Francisco's City Hall on May 1 rallying for the #CancelRent movement amid a crippled economy that has displaced many.

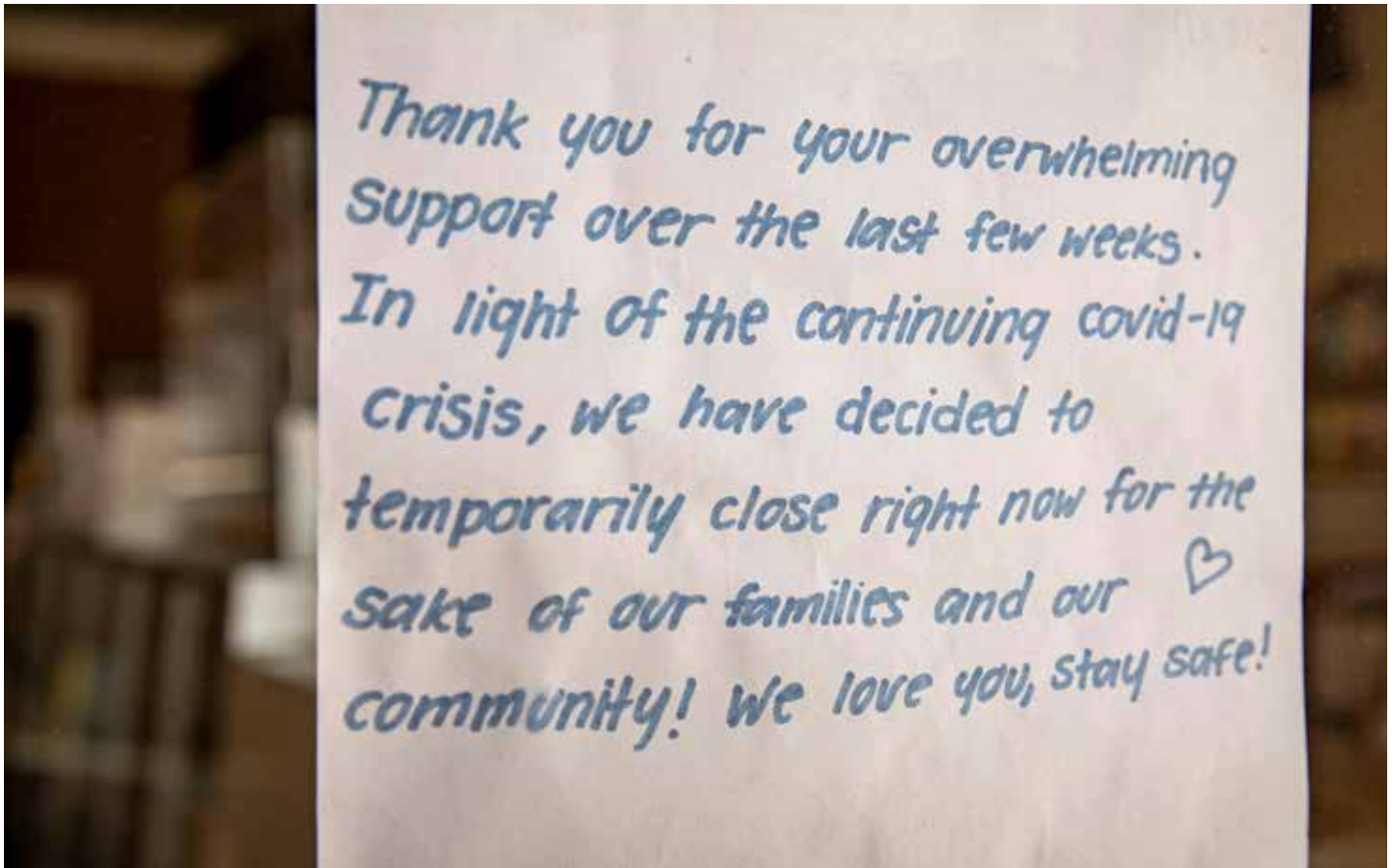
attitude about John's health concerns. A graduate student at UCSF, he also possessed the maturity to change up his game. He agreed to meet with John later in the day.

While Kyle engaged with CIS, one of our mental health licensed mediators prepared John for a direct conversation with his roommate, about whom he had very high emotions. Later that day all four participants were linked up via video conference. Within thirty minutes, Kyle thought it best to take living together during the heightened period of contagion off the table and offered to stay with friends until the crisis passed, while keeping up his rent payments to John. Through swift intervention, entirely online, two members of the LGBTQ community

bridged their generational differences, honored their common interests and concerns, and entered into a practical solution for the moment.

The resolution was memorialized in a mediation agreement that was drawn up during the video conference. It was transmitted, signed, and distributed among everyone entirely online, within ninety minutes following the meeting.

These stories are woven from the fabric of the COVID-19 global pandemic, which has caused a level of economic instability comparable only to the Great Depression. At the time of this writing, over 100,000 people have died from the disease, and over 40 million



Handwritten sign at restaurant thanking customers for support while they close due to coronavirus.

claims for unemployment have been filed nationally. Food banks are overrun; entire industries brought to a standstill.

In San Francisco, residents and businesses were early to shelter in place and shut down. Eviction moratoria for residents and business owners went into effect immediately to defer rent payments in attempts to stabilize housing and the significant small business community that makes up nearly all of the businesses in the City. Nonetheless, the COVID-19 effects were and will be felt here for a while to come. What happens when those deferred rent and mortgage payments come due? CIS is already preparing.

In late 2016, BASF was awarded the opportunity to design and implement a novel community-focused housing mediation program through grant funding provided by the City and County of San Francisco through the Mayor's Office of Housing and Community Development. From its inception, CIS departed from traditional mediation, looking to press the boundaries of facilitative conflict engagement in favor of relationship restoration and harm reduction between tenants and landlords. CIS offers creative, flexible, nimble, and fast interventions to de-escalate the conflict. Since its first cases in January 2017, CIS has grown four-fold to assist monolingual 'mom and pop' landlords, provide mediation support to Right to Counsel eviction defenders, and engage with specific

larger-scale public housing environments in the Fillmore/Western Addition districts of San Francisco.

In the fall of 2019, CIS expanded its role with the Tenant Landlord Clinic (TLC) sponsored by the Lower Polk Community Benefit District. Established via funding spearheaded through the Office of Supervisor Aaron Peskin in late 2017, the TLC is a unique coalition that includes CIS, the Center for Negotiation and Dispute Resolution at UC Hastings College of the Law and the San Francisco Apartment Association, with referrals available to tenants and landlords who seek dispute resolution from CIS and legal help through BASF's Lawyer Referral and Information Service. Until 2019, the TLC program had only been available to intervene in the district's residential conflicts; when last year funding became available to complete the Supervisor's full vision to include the same services to address commercial tenant-landlord conflicts, CIS expanded to serve the small merchant community in the Lower Polk district. Under COVID-19 shelter-in-place protocols, the demand for CIS small merchant services quickly exploded. Commercial tenants and landlords both have sourced CIS for ombuds engagement and conflict intervention consultations, in which they receive communication coaching, negotiation approaches, and referrals to legal assistance.

On Sunday, March 31, CIS help requests spiked, particularly from residents and small merchants of the Lower Polk district, which had been saturated with postcards announcing services from the Lower Polk Tenant Landlord Clinic. April rent was coming due and people who had just been laid off from work were panicking. Fortunately, CIS is open every day. De-escalating tensions quickly is critical and constructive

FEAR OF NOT MAKING RENT IS NO LESS TROUBLING FOR COMMERCIAL TENANTS, ESPECIALLY OLDER "MOM AND POP" MERCHANTS SUDDENLY DEVASTATED BY MANDATORY BUSINESS CLOSURES.

intervention should not wait. In the months that would follow, CIS increased staff availability in the days before rent was due to meet the inevitable surge in help requests.

Fear of not making rent is no less troubling for commercial tenants suddenly devastated by mandatory business closures. Longstanding business owners and immigrants in particular often consider making timely rent payments as a point of honor. They were traumatized by laying off loyal employees; some faced the loss of their homes as well as businesses.

Fredericka is an example. For thirty-six years the artist and Catalan immigrant has operated a multimedia production company and gallery in the Lower Polk district. Her business was already stressed by changing consumer habits and the effects of gentrification when the shutdown hit. She reached out to the office of Supervisor Aaron Peskin for assistance on March 29;

CIS connected with her that evening and delivered services over the next sixty days.

Fredericka had received generous assistance from her third-generation family landlord in the past, but she deeply feared telling him that she could not make April's rent. CIS provided Fredericka's landlord information on the Mayor's commercial eviction moratorium and offered to facilitate a rent deferment conversation. While the landlord declined mediation, contact from CIS helped the parties relax and begin constructive conversations directly with each other about the future.

This small merchant leased retail space on the street for her gallery and separate basement space for her production facility. Fredericka was already moving her business online and had diminished need for the gallery. With communication coaching from CIS, she and the landlord developed a plan to reorganize her space so she could survive the shutdown and thrive afterward. The landlord plans to renovate her street space and re-lease it at market rent. With collaboration and CIS guidance on strategies for communications, calamity catalyzed opportunity for landlord and business tenant alike.

Two nonprofit theater groups and a social service organization were among other businesses that made urgent requests for help from CIS. Our response included corresponding on the weekends and late in the evenings. For the most part, CIS has provided merchants and commercial landlords robust ombuds support along with a detailed review of the moratorium rules, and referrals to organizations providing legal services, negotiation strategy advice, and communication coaching.

CIS service activity has identified a pattern among business tenants. All too often, they would rush to make large decisions (like permanently closing a business) too quickly, without proper consideration of the situation from a place of detachment. We work hard to restore the calm needed so a business, its employees, and the landlord can work through challenges together. Above all, CIS interventions helped put the fear impulses of commercial tenants in check, to great effect.

Despite a significant surge in help requests driven by COVID-19 related disputes, CIS maintained its twenty-four-hour response guarantee throughout the crisis. Over 200 San Francisco residents received substantial services during the first two months of shelter-in-place; many more received helpful consultations and needed referrals. The team stretched its limits, but anyone needing help got it. This remarkable program response was made possible from a project design that set up for coordinating services quickly on the first call and leveraging a roster of independent mediators with disciplines in social work, psychology, and law, so an array of approaches would be possible. Innovative thinking from the legal tech and online dispute resolution movements also informs CIS program practices.

From a small pilot—focused on addressing conflicts that lead to eviction in supportive housing communities—CIS has grown into a robust program that provides a comprehensive continuum of conflict engagement and dispute resolution services with innovative modalities. These include ombuds investigation, situational analysis, communication coaching, mediated negotiation, and formal mediation delivered online and in person. CIS also facilitates conversations among traumatized

residents in large housing communities informed by cultural humility and restorative justice practices. It provides ‘best practices’ training and education around how to create and maintain successful tenant-landlord relationships. CIS readies now for the future, for the continuation of an already successful service delivery model that seamlessly fits that future, with free and low-cost services. CIS looks forward to restoring tenant-landlord relationships wherever needed and navigating conflict to keep residents in stable homes, and business owners in their successful locations.

Carole Conn is the Director of Public Service Programs for BASF’s Conflict Intervention Service, Alternative Dispute Resolution and Lawyer Referral and Information Service. She brings her passion and innovative program development experience to expand access to justice and resolution, however possible.

Roger Moss provided program design for CIS and serves as its supervising mediation counsel. A business career in retail real estate informs his approach to conflict engagement. Roger is an active member of the bar in California and Washington, and has served as the chair of the Association for Dispute Resolution of Northern California.

Conflict Resolution Consulting

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SAN FRANCISCO COURT OFFICIALS BALANCE ACCESS TO JUSTICE WITH PUBLIC HEALTH CONCERNS

Laura Ernde

Long lines to get through security. Courtrooms and jury assembly rooms reconfigured so people can stay six feet apart. Staggered schedules allowing fewer people to be in the building at the same time. Face masks and hand sanitizer everywhere.



During the 1918 flu pandemic, judges held outdoor court sessions to prevent crowding indoors. In this photo, courtesy of the Influenza Encyclopedia at the University of Michigan, open-air police court is held in Portsmouth Square, San Francisco.

These are just a few of the changes we can expect to become routine as San Francisco Superior Court begins to ramp up after nearly three months of curtailed service. Court officials were forced to postpone all but the most urgent matters and rethink many of their processes and procedures on short notice when the city's shelter-in-place orders went into effect March 16 to reduce the spread of COVID-19.

As the court began to prepare for the resumption of jury trials, court officials emphasized the need for patience and flexibility.

"Everyone has to realize that the process is not going to be like it was six months ago," said Presiding Judge Garrett L. Wong. "There are going to be changes. Patience is required."

Wong and Court Executive Officer T. Michael Yuen emphasized that they would be following the guidance of public health officials and taking all steps possible to protect the health of the public, along with lawyers, judges, and court staff.

In a phone interview during the lockdown, Wong and Yuen said the need to balance access to justice and public health has guided their decision-making process from the start of the crisis.

A PUBLIC HEALTH CRISIS EMERGES

Early in the year, the court began monitoring media reports about a mysterious new respiratory illness sickening people in China. In mid- to late-January, court officials emailed judges and staff, asking them to be vigilant about hand-washing and stay home if they felt sick.

“Back then if you were to tell me just a mere two months from then everything in the world would be shutting down I would have thought there would be no chance,” Yuen said.

As public health warnings began to heighten, Wong and Yuen began drawing up contingency plans in the event of a shutdown. Wong reached for a pamphlet the previous CEO had given him regarding what to do in the event of an isolation or quarantine order. He consulted with the court’s supervising judges in probate, criminal, family, and civil to determine the essential needs. On March 17, about 75 percent of the courtrooms closed, along with clerks’ offices. Drop boxes were placed outside for incoming paperwork, which would be processed by a minimum level of staff.

The goal was to keep as many judges and court staff at home as possible while making sure the public still had access to the courts for urgent matters such as

criminal arraignments and civil matters that could not wait. Judges came into the courthouse only when they couldn’t handle hearings remotely. “We didn’t want them to come into the courthouse just for appearance’s sake,” Wong said.

The emergency orders from Chief Justice Tani Cantil-Sakauye and the Judicial Council helped considerably, allowing the courts to declare a sixty-day court holiday for the purposes of meeting filing deadlines, Wong said.

As the weeks went on, Wong and Yuen continued to evaluate the situation and make changes where needed. They communicated the new policies and procedures on the website and through telephone and video outreach. Fifteen hundred people signed up for an April 21 webinar organized by the Bar Association of San Francisco where the judges answered questions about the process and how litigants with urgent matters could request a hearing.

At that time, eleven courts remained open—five at the Hall of Justice, five at the Civic Center, and one at the Juvenile Justice Center. Among the hearings that could not be delayed were criminal arraignments and release hearings, probate court requests for temporary conservatorship, delinquency proceedings, dependency hearings and requests for temporary restraining orders and gun/domestic violence restraining orders.

THE SCRAMBLE FOR PPE

One of the biggest challenges was procuring scarce personal protective equipment and cleaning products for the staff. The court worked through the county



San Francisco Superior Court Presiding Judge Garrett L. Wong during the April 21 virtual State of the Court presentation and Q&A hosted by the Bar Association of San Francisco's Litigation Section.

government to obtain supplies and reimbursed employees for store-bought items, Yuen said.

Yuen said the court was focused on the human side of things. “When dealing with 450 people, how do we protect them and their personal health—not just as individuals but the families they live with? How do we make sure they’re practicing safe habits at work that translate to safety at home as well?” he said.

Wong noted that a number of the judges are older, putting them at higher risk if they contracted the coronavirus. Yet, all stepped up and did their part to make sure the courts handled as much business as possible.

“The judges have all really pitched in. I think it’s an understanding of what they signed up for. It’s a commitment to the administration of justice,” said Wong, who wanted to keep the court business flowing as much as possible to prevent the backlog from growing too large.

The crisis also forced the court to quickly adopt new technology that was previously in the planning stages.

“This accelerated the need to have technology that allows us to communicate with the public and lawyers in a secure and expedient fashion,” Wong said. “In that way, it’s been a good thing. It’s forced everyone to be more collaborative.”

**IF PEOPLE ARE ALL WEARING MASKS,
HOW WILL JURORS BE ABLE TO EVALUATE
THE CREDIBILITY OF WITNESSES?
HOW WILL WE MAKE SURE COURT
REPORTERS ARE ABLE TO HEAR WHAT'S
BEING SAID? HOW WILL LAWYERS HAVE
CONFIDENTIAL SIDE CONVERSATIONS
WITH THEIR CLIENTS?**

Wong and the other judges who preside over civil courts have also been encouraging litigants to settle cases where possible.

“Everyone recognizes there will be a bottleneck of cases. Everything we can do to chip away will be so much better in the long run,” Wong said.

WHEN JURY TRIALS RESUME

We don’t yet know what the fallout will be. But one thing is almost certain—the court activity that will be the most difficult and unpredictable to resume in the face of the pandemic will be jury trials.

If people are all wearing masks, how will jurors be able to evaluate the credibility of witnesses? Jury instructions will have to be rewritten. How can you incorporate remote testimony without infringing litigants’ rights? How will we make sure court reporters are able to hear what’s being said? Can a jury deliberate while maintaining social distance? How will lawyers have confidential side conversations with their clients?

The Judicial Council is developing statewide guidelines on best practices. Wong said that judges will also be listening to local lawyers for suggestions on how best to proceed.

“We want to make sure the legal community feels like there’s due process here,” Wong said. “It may not be the way it was six months ago but it’s the best we can do. We’re trying to take a positive view of this. We are going to make whatever adjustments we can to make sure we enable justice to take place in our courts.”

As activity begins to increase again, the court’s priorities include criminal cases, along with civil cases where deadlines are looming. But the court officials recognize the need to resume jury trials.

Although few cases get to a jury these days, the specter of the jury trial is what often creates an incentive for cases to settle, noted David Levine, who teaches civil procedure and remedies at UC Hastings College of the Law in San Francisco.

In some ways, the decisions facing the court aren't that different from those facing schools, he noted, but that doesn't mean it's going to be easy.

"How the heck do we pull this off?" Levine asked. "It's going to look worse than the line at Costco—three hundred people lining up for screening."

At the same time, the public will be relying on the courts to resolve any number of disputes that will inevitably arise when the economy resurges.

THE IMPACT ON LITIGATION

Because trials will take longer, they will become more expensive—both in terms of the public cost to hold the court proceedings and the private costs borne by the litigants.

"Smart lawyers will use this to say to their clients, 'This is why we should think of these different kinds of ADR [alternative dispute resolution] devices,'" he said.

Courts will face some knotty constitutional questions as well, Levine said. Will criminal defendants be willing to waive their right to confront witnesses in person (allowing remote testimony)? "I can see defense lawyers going crazy saying if the jury sees my defendant in a mask, they're going to think he's guilty."

Not to mention the complications created by the need to maintain social distancing.

"Think about the defense lawyer whispering to their client. It's just going to be awkward," Levine said.

Lawyers will face similar challenges in trying to settle cases through arbitration and mediation.

Remote mediations should work well in concept. But in reality, videoconference is not a true substitute for face-to-face meetings, said Jason Wolford, a San Francisco tenants rights lawyer.

"There are things you do in person that you can't do on Zoom call. You can't have a 'walk and talk' with a mediator in the same way we're doing it on Zoom," he said. "If my client is having a deposition taken and I'm not in the same room I'm not getting all the same visual cues to get the full experience and pick up on things. If I'm taking defendant deposition I can't see them fidget and pace around the room."

On the other hand, litigants on both sides will be contending with the same challenges.

"Everyone's in the same boat. Everyone's going to have to adjust," Wolford said. "We're in a new age here, at least for the foreseeable future."

Laura Ernde is a San Francisco-based communications consultant. She has covered legal affairs for more than a decade, as a journalist and former editor of the California Bar Journal.



CHANGE AMIDST CALAMITY

How COVID-19 Changes the Legal Landscape for Diverse Attorneys

When the San Francisco Bay Area issued its shelter-in-place order on March 16, 2020, industries across the region scrambled to adapt. Restaurant owners transitioned to a takeout-only model, merchants boarded up their storefronts, and San Francisco's public transportation system almost completely shut down. The pandemic has affected everyone's life in some way, but for those studying or practicing law, a unique set of challenges has arisen.

Nuala Bishari

Classes have moved online, job fairs have been canceled, and the in-person July 2020 California Bar exam is delayed to September, where students will take it online. In the midst of all of this are concerns about burgeoning lawyers of color. In an industry struggling to increase diversity, will the latest barriers to education and careers inhibit diversity in the field of law?

Wendy Hernandez, a 3L at UC Hastings College of the Law, says that her studies were profoundly impacted

by the shelter-in-place order. A native of Los Angeles, with "proud roots in Honduras," Hernandez was the first in her family to graduate high school, college, and law school. This spring the end was in sight: Hernandez was set to graduate from UC Hastings, and take the California Bar exam in July, before beginning her dream career as a nonprofit corporate counsel.

But when the shelter-in-place order went into effect, Hernandez's carefully-laid-out plan was sent into disarray.



"It's hard to make a name for yourself. My work speaks for itself, but they don't get to see my personality, how I conduct myself around the office."

—Donovan Bonner
on moving to a new firm
in the midst of a pandemic

"So many things were lost: the weekly mediations I co-facilitated at the San Francisco Superior Court were canceled, the sense of collegiality in my courses vanished and were replaced with my peers and professors on my laptop screen, and the opportunity to celebrate my law school graduation in community and with family has been postponed to an undetermined date," she says.

On top of all that, her mother lost her job due to the coronavirus, adding significant financial stress. The delay in the bar exam means that Hernandez is two months further away from being able to practice law, pay off any accrued debt, and help support her family. All of this had made preparing for the bar even trickier.

"I imagine that even a traditional law student has found it extremely difficult and distracting to focus on bar studies while we face a global pandemic and a much-needed uprising demanding racial equity," Hernandez says.

Bar exam delays and online classes are creating challenges for law students, but new lawyers also face challenges. Employment lawyer Donovan Bonner recently switched law firms and states, moving from Barran Liebman in Oregon to Coblenz Patch Duffy & Bass in California. It was a difficult move; Bonner enjoyed Barran Liebman, which hired him straight after he graduated from the University of Oregon's School of Law in 2017. But his family is based in California, and he missed the state's diversity.

"In my firm, I was the only African American," he explains. "Any room that I walked in—if it was an attorneys' get-together, or a happy hour, or a dinner—I could count on my two hands how many African-American attorneys were in the room. Usually, I'd be the only one."

In normal times, the transition from one firm to another would be tricky enough, but the pandemic made it worse. Bonner gave notice and had to clean out his desk

alone, in an empty office. There was no goodbye party. And then the country slid into an economic collapse.

“I was a little panicked,” Bonner says. “I was leaving a job during a pandemic when people were starting to get laid off. I was worried I was going to be the first person on the chopping block at my new job. I was like ‘should I retract my resignation?’ It brought me a lot of anxiety. I was like ‘am I going to have to put my loans on hold, am I going to have to put my life on hold if I move and then get laid off?’”

Luckily, Coblenz Patch Duffy & Bass anticipated his concerns and confirmed that his job was secure. Now, Bonner is faced with the challenge of making an impression as the new guy in a company where he hasn’t met the vast majority of the staff.

“I went from a twenty-two-attorney firm to one with over a hundred employees,” he says. “It’s hard to make a name for yourself. My work speaks for itself, but they don’t get to see my personality, how I conduct myself around the office. There are a lot of factors I can check off the list, but I can’t do it over Zoom calls.”

In the wake of the pandemic, the way law is being practiced, too, has shifted. Rukayatu (Ruky) Tijani is the founder and CEO of Firm for the Culture, where she helps social entrepreneurs trademark their brands. The company has always run itself virtually, so the stay-at-home order didn’t have a massive impact on day-to-day operations with paying clients. But Tijani works in a one-to-one model: for every trademark client she takes on, she turns around and offers free and low-cost legal education to someone else. Maintaining that model has

“The pandemic is forcing the legal field—as a whole—to assess the ways it has traditionally served law students, lawyers, legal officers, and the public at large. [...] The legal field is slowly but surely realizing a diversity of viewpoints and backgrounds is absolutely crucial if we are to remain a relevant institution in our society today.”

—Rukayatu (Ruky) Tijani
Firm for the Culture





"Lawyers are the warriors with the pen that can challenge inequality in courts, assist nonprofits and foundations trying to right the wrongs and downfalls of society, and rewrite the laws that have oppressed the same communities for centuries, but our profession can't do so diligently without diversity. It's not only important to have a diverse array of lawyers, it's urgently necessary."

—Wendy Hernandez
3L, UC Hastings College of the Law

required some creativity; in-person events and seminars are now held over Zoom or conducted through webinars. The upside of the shift to an online-only business is that her team has been able to spend more time reaching new communities, and the company has seen its visibility grow as a result.

But the outbreak of COVID-19 carries more weight for Tijani than just how to adapt her company. It's an opportunity, she says, to innovate and think outside the box. And in order to do that successfully, a diverse field of lawyers is needed.

"The pandemic is forcing the legal field—as a whole—to assess the ways it has traditionally served law students, lawyers, legal officers, and the public at large," Tijani says. "From emergency orders requiring the release of prisoners due to COVID-19, to courthouse judges and officers racking their brains in figuring out whether or how to keep the courtrooms open, the legal field is slowly but surely realizing a diversity of viewpoints and backgrounds is absolutely crucial if we are to remain a relevant institution in our society today."

Bonner, too, thinks that the current climate of 2020 could have a positive impact on the future of law—but not necessarily in relation to the pandemic. As hundreds of thousands of people around the country march for civil rights in the wake of George Floyd's death, he hopes that there will be a rise in people of color pursuing careers in law.

"Black families have been laid off during this pandemic," he says, noting that it's not an easy time

to take on debt. But “on the flip side, with everything that’s happening in the world, there may be a rush of people of color applying to law school. That would be an exciting outcome.”

For Hernandez, there’s still a battle ahead. The bar exam in September looms on the horizon, and the pressure to represent her community is high. In the U.S., Latina lawyers only comprise 1.4 percent of the legal profession. At the same time, Latinx people are the second-most incarcerated population in the country. The fight for diversity in the field is far from over, but its importance is only becoming more obvious.

“Lawyers are the warriors with the pen that can challenge inequality in courts, assist nonprofits and foundations trying to right the wrongs and downfalls of society, and rewrite the laws that have oppressed the same communities for centuries, but our profession can’t do so diligently without diversity,” Hernandez says. “It’s not only important to have a diverse array of lawyers, it’s urgently necessary.”

Nuala Bishari is an award-winning journalist based in San Francisco, where she covers politics, public health, homelessness, and crime. Her work can be found in SF Weekly, the San Francisco Examiner, and In These Times.

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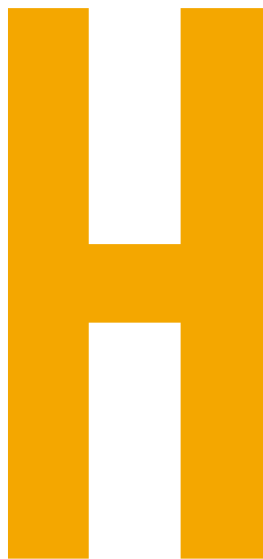
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Small Firm Lawyers Adapt to New Reality

Laura Ernde



How are San Francisco's solo and small firm lawyers handling the coronavirus pandemic from a business and personal standpoint? To find out, we interviewed—at a social distance, of course—a handful of lawyers across several practice areas. Our aim was to provide a snapshot of their work-at-home life during the first months after shelter-in-place orders went into effect in mid-March. Some were working remotely before the crisis. Others quickly retooled to be able to work at home and are now trying to imagine life back in an office again. Here, they share lessons, opportunities, and successes. The interviews have been condensed and edited for clarity.

Lindsey S. Mignano

Partner, Smith Shapourian Mignano
San Francisco

Type of law practice:
Business law

Years in practice:
Nine (four at a small firm)

How have you adapted to sheltering-in-place?

LM: We've been a virtual law firm since 2016, so things haven't changed much. We were all set up already. We have everything in the cloud, online. We haven't had a problem with the work-from-home transition.

We're millennials. We grew up on computers. We have no problem working without secretaries.

We're serving venture-funded startup types. They're either our age or older but tech-savvy. We've been advising clients about PPP (Paycheck Protection Program loans) and various grant options.

How are you handling socially distanced business development?

LM: Our biggest generator is speaking in-person or on webinars. We've been more active on the blog because we've had less billable work. I blog twice a week. We



Lindsey Mignano

don't get a lot of business that way. It's more about Zoom presentations, where people can see us talking about something we know a lot about. We were blogging more than we've ever had, with almost weekly coronavirus-related updates. That's all anyone wants to hear about these days.

Give an example of something good that's come out of this crisis.

LM: I used to do a lot of business development in-person – breakfast, lunch, dinner, and happy hours. For me, it's a pleasant change. I don't have to see anybody I don't want to see.

I get up every morning and meditate, exercise an hour every day. I've been journaling, doing yoga, going for long walks three to five miles every day. Healthwise, I'm in the best health and best shape of my life. I've been

working with a dietician/nutritionist. Because I have been staying home and not going to these events and not eating out I'm able to follow the rules. I'm eating less and drinking less.

Richard J. Zuromski

Zuromski Law Office
Pacifica

Type of law practice:

Business litigation and counseling

Years in practice:

Seventeen (six as a solo practitioner)

How has your practice changed?

RZ: I started as a virtual law firm. Other than court appearances, nothing really changed that much. In the type of work I do I don't often see clients in person. It didn't make much difference to me. Now I might see them more because everybody knows how to do Zoom.

I work with a lot of restaurants and retail. I do commercial litigation and commercial real estate type work. The majority are struggling. They're the folks out there trying to get PPP loans or trying to see how they can work with their landlord to modify their leases. They had someone breach a supply contract or purchase agreement allegedly because of the COVID-19 problem. Those are the cases.



Richard Zuromski joins a Zoom call. You might recognize his virtual background from the popular sitcom The Office.

How are your clients' struggles affecting your business?

RZ: Some are a little behind (in their payments). Just like a landlord and a tenant need to work together, the attorney and client need to work together. That's why you have to be careful in selecting clients. Be careful to make sure you're helping people and not hurting yourself. I'm a small business person. I have a family to feed. At the same time, my goal is to help.

How are you keeping the business development pipeline going?

RZ: Because we're not doing in-person networking I'm doing twice as much online networking. Zoom calls

with the bar association, for example. I'm on one or two calls literally every day. We exchange ideas about how we're handling the downturn, issues that are coming up. It's nice to check in with other people who are having the same problems.

Katherine Zarate Dulany

Zarate Dulany Law
Daly City

Type of law practice:
Employment law and litigation

Years in practice:
Nineteen (six as a sole practitioner)



Katherine Zarate Dulany

What's one challenge you faced and how did you overcome it?

KD: My husband also has a business of his own. He also was primarily home-based. When this happened we had to figure out how to split the responsibilities for distance learning (for two children, ages six and nine). It's taken a while. It's almost like musical chairs. We have to take turns being the point person—for six hours on most days. We've found that just having a schedule, having a routine, having things the kids can work toward, helps.

How has your client work changed?

KD: During the first few weeks, I was able to be proactive about the Families First Coronavirus Response Act. I was telling my clients this is big. It was hard because it was in the middle of everything just crashing. That's when I had the stamina to wake up at 4 a.m. and figure out what was going on. That felt very rewarding to me, to be able to give my clients a heads up early on, figuring out what employers can do. A lot of the options weren't great.

It was nice to be able to help clients who were just confused and they had every right to feel shocked and confused and worried. There were no black and white answers to a lot of these questions. There were some gnarly questions. There were some off-the-wall questions. There are going to be more.

Was there anything that surprised you?

KD: A great eye-opener is how collaborative our solo and small firm community is. I've been able to cherish all the friends who people outside of our world would

consider as competitors. We are asking each other questions and sharing responses, feedback, resources.

Give an example of something good that's come out of this crisis.

KD: One of the soft successes has been the ability to maintain sanity and positivity and gratitude. Right now I feel that we're in a bubble and it's a safe bubble. It's easy to predict. You stay home and you stay safe. I go to the grocery store and I arm myself as if I'm going into warfare. It's more of a mental success to take what is a horrible situation and make it positive. It's crazy how this whole situation has unlocked so many things I didn't know about my own neighborhood. Before this, I was always trying to get out. I now realize it's actually a gem. This past weekend we literally found San Bruno Mountain. I knew there was a park there, but we found a trail that goes to the top of the mountain. It's a reserve with beautiful hiking. We went to the top and we saw the East Bay. We saw the Pacific Ocean.

Jason Wolford

Partner
Wolford Wayne
San Francisco

Type of law practice:
Tenant's rights litigation

Years in practice:
Twenty-two



Jason Wolford

How have you adapted to sheltering-in-place?

JW: We've had our entire team (of seven, including three lawyers) working remotely since a few days before the lockdown was announced. We—either my partner or myself or a paralegal—will go into the office once a week to check the mail and water the plants, etcetera. We're learning how to do it. We're trying to take advantage of Zoom to have our weekly case calendar meeting on Monday of every week.

What are the challenges you face?

JW: We used to have a lot of in-person consultations. Having to communicate with tenants over the phone and Zoom makes it a little more difficult to get the full story and get documents, etcetera. Since the courts have reduced their calendars, the affirmative lawsuits that we have in court—that we have filed for wrongful eviction

—are not getting heard. Defendants and insurance companies seem to be using the moment to slow things down.

What is the impact on your clients?

JW: Tenants fighting habitability problems who are still in their homes are suffering a little more because of it. In cases where a landlord is trying to evict them, they have some refuge here. If tenants can't pay due to COVID they can enter into a payment plan. There's no eviction unless there's a safety issue.

What are the prospects for resuming work that can't be done remotely?

JW: We are anxious to get back to quote-unquote normal if and when it's safe to do so. We're envisioning in all likelihood it's not going to be a barn door opening. We'll need social distancing. Our foremost concern is the safety of our employees and our partners. Also the safety of clients. Some are elderly and disabled. We'll have to figure out a protocol for engaging clients in a different way. Many aren't comfortable with Zoom. They're not super comfortable with computers. We're going to have to balance that.

How are you and your family adapting at home?

JW: I have two kids, both in high school. One's a senior. He's the one most affected. No graduation, no prom. All that fun stuff is not there. But if that's our biggest complaint I count myself very lucky.

One of the funny things I've noticed, I had not worn my normal shoes in two months. I put them on. I think my feet are changing. My shoes don't fit quite the same.

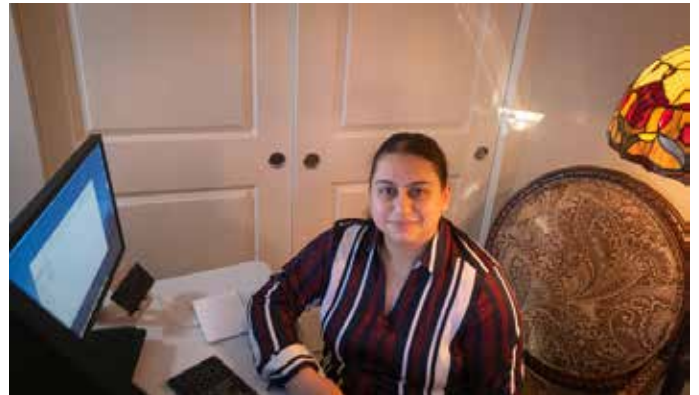


Saja A. Raoof

Saja Raoof, Inc.
Of Counsel, Philip Levin and Associates
San Francisco

Type of law practice:
Immigration law

Years in practice:
Sixteen



Saja A. Raoof

How has your practice changed since the pandemic?

SR: I've actually been very busy since the pandemic started, counseling foreign nationals and the companies that employ them about work visas. These are people who are already in the U.S. I've also been hired by a number of companies since the pandemic started to start petitions. The fact that I have been busy speaks to the legitimate needs that businesses have to continue to hire foreign nationals in this economy. The bread and butter of my practice are nonimmigrant visas, like H-1B, L-1 and TN visas, and employment-based green cards.

How are you personally coping with uncertainty?

SR: I remind myself that it's important to put things in perspective. My challenges pale in comparison to people who have lost loved ones to the pandemic. And our clients who are facing the public health and economic consequences that everyone is dealing with, plus the immigration repercussions. Reminding myself of that energizes me to do my best and persist.

Since I travel quite a bit I was already set up for working remotely. My clients are almost all tech-savvy. We were already comfortable using email and video conferencing. On that front, it hasn't been as challenging for me as for my colleagues who litigate or need to visit their clients in prison, for example.

How are you managing to keep work and personal life separate?

SR: I have been maintaining a structured schedule. I have defined my work hours and rest hours. Instead of taking the ferry from Larkspur to SF, my commute is between the living room and the study. In the study, I only work. In the living room, I only relax.

Give us an example of something good that's come out of this crisis.

SR: I think the legal profession has really come through for its clients and come up with innovative ways to meet clients' needs. I know an attorney, Don Pangilinan at my of counsel's firm, who wakes up at 3 a.m. every morning to get work done before his kids wake up.

In the immigration arena, since the day immigration lawyers flooded airports to help foreign nationals affected by the Muslim ban in early 2017, we've been engaged in a very important struggle for our clients. And we continue to be persistent and resilient.

Laura Ernste is a San Francisco-based communications consultant. She has covered legal affairs for more than a decade, as a journalist and former editor of the California Bar Journal.



JUDGE KAHN DISCUSSES HIS JOURNEY TO THE BENCH, COMMON MISTAKES LITIGATORS MAKE, AND HOW TO AVOID BURNOUT

Courtney M. Brown

San Francisco Superior Court Judge Harold E. Kahn is a well-respected judge, who has used his knowledge and passion for the law to make a difference in our community. He has been a strong supporter of the Barristers Club and the Bar Association of San Francisco. This year, the Barristers Club is delighted to present Judge Kahn with its Tara L. Riedley Barristers Choice Award.

I recently had the pleasure of speaking with Judge Kahn about his career as a trial attorney and San Francisco Superior Court judge. Here are some of the highlights from our conversation.

From your time as a solo practitioner, is there a case that stands out as being a really interesting case?

I had one extraordinary case!

I represented DPR Construction and its founders who were sued for a variety of competition torts by the company that had previously employed the founders. When I first met the founders, DPR had about twelve employees and a few small jobs. Three years later, when the case resolved on the eve of trial, DPR had become one of the largest construction companies, not just in the Bay Area, but in the country. It had huge revenues, was

doing enormous projects, and had offices throughout the United States. During the time I represented it, DPR was the fastest-growing company in the Bay Area three years in a row. So the case was challenging because my clients were extremely successful very quickly. While the plaintiff contended that the rapid success was due to tortious conduct, it was clear to me that the success was due to the talent and hard work of the founders and their employees. There were no trade secrets, proprietary information, or interference in obtaining widely publicized and highly sought-after large construction jobs. But the optics—astonishing growth—raised all kinds of suspicions, vastly increased the stakes, and made for an interesting case.

WHEN I SEE THE HARD-WORKING ATTORNEYS IN COURT, I REMIND MYSELF WHAT IT WAS LIKE TO BE A LAWYER, SO I WON'T FORGET HOW DIFFICULT IT IS TO ZEALOUSLY REPRESENT CLIENTS.

Why did you want to be a judge?

After almost twenty years as a litigator, I felt I had done everything I wanted to do as a lawyer, and the work I was doing started to feel repetitive. While all my cases were venued in the Bay Area, I did a lot of traveling outside the Bay Area to meet with clients and witnesses and to take and defend depositions. The traveling got to be very wearing. I was putting in long, exhausting days. During one deposition road trip, I decided I wanted to try something else, and shortly thereafter I applied to be a judge. I thought then—and know now—that being a judge would provide me with new learning curves and expose me to areas of the law and human behavior that I was unlikely to see in my private practice.

I loved being a lawyer, but I had come to a point where I needed a break from the long hours and constant worries about my clients. Like many lawyers, particularly those

who have their own practices, I was thinking about my clients and their problems twenty-four seven. Even when I was on vacation, I did not stop thinking about how I could advance my clients' interests. It felt like I was never off work. I would often wake up in the middle of the night and jot down ideas on how to pursue my cases. Also, I frequently fretted whether I had too much work or too little work. Trying to achieve that elusive balance of enough but not too many cases was an ever-present concern, and I usually erred on the side of too many. I had become that quintessential obsessed litigator/small businessman. When it got to the point that it felt like a grind, I looked for another legal job that I believed I was qualified to do. But giving up being a lawyer was not easy. Advocating for my clients was enormously satisfying, and often lots of fun.

Have any aspects of being a judge surprised you?

The one thing that surprised me most is that when I became a judge I no longer thought about work all the time. As a judge, with rare exceptions, as soon as I am done for the day, I stop thinking about work. However, if I have a gnawing feeling that I made a big mistake that day I will dwell on how, if at all, I can correct my error. As a judge, I have no stake in the outcome of a case. I know it may surprise many, but in the vast majority of cases I handle as a judge, I am indifferent about the result. I simply do not care who wins or loses. My job as a judge is to provide a forum for fair and impartial adjudication and to use my best judgment while adhering to all applicable rules, not to help or hinder anyone, and certainly not to root for one side or the other. The job of

a judge is finite and does not intrude into my vacations or the middle of my nights. After obsessing as a litigator for many years, the fact that my mind easily and quickly turns off the work switch has been a pleasant surprise.

I am aware that many judges believe that being a judge is a high-stress job. Even when handling high-profile or high-stakes cases, I have never felt that way. As a lawyer, particularly when I had my own practice and felt the pressure of meeting payroll and clients' sometimes unrealistic expectations, I felt very tethered to my job. Not so as a judge. For me, even when I work long hours like I did when I was in law and motion, being a judge is considerably less stressful than being a lawyer. When I see the hard-working attorneys in court, I remind myself what it was like to be a lawyer, so I won't forget how difficult it is to zealously represent clients.

IT IS IMPORTANT TO HAVE INTERESTS OUTSIDE OF THE LAW AND FRIENDS WHO ARE NOT LAWYERS, PARTICULARLY THOSE WHO CARE NOTHING ABOUT THE LAW. IT IS FAR TOO EASY, ESPECIALLY IN THE EARLY YEARS OF PRACTICE, TO BE CONSUMED BY BEING A LAWYER.

What are the most common mistakes you have seen attorneys make in your courtroom?

A troubling and unfortunately much too frequent mistake, made by both newer and experienced lawyers, is not knowing the applicable rules. There are lots of rules, both substantive and procedural, and some of the rules change often and vary among differing courts even within the Bay Area. In my view, once you step into a courtroom, you are charged with knowing the rules of the road that pertain to your case. If you are in trial, make sure you know the rules of evidence, particularly the full array of objections to evidence and how to overcome those objections. For example, know how to make or avoid a meritorious *Sanchez* hearsay objection. If you are making or opposing a motion, make sure you know the rules that apply to that motion such as the shifting burdens on a summary judgment motion, or not going beyond the pleadings and judicially noticeable facts on a demurrer. I also see many attorneys who have insufficient knowledge of the substantive law that applies to their case or are unaware of the latest developments in that substantive law. Each time you write a brief or go to court, ask yourself whether you are fully up-to-date on the rules. And always make sure that the cases and other authorities you are relying on are still good law.

Another common mistake is not knowing all the pertinent facts that relate to your case. Much like the key to real estate is location, location, location, the key to good advocacy is preparation, preparation, preparation. That calls for speaking with all the witnesses who are willing to speak with you and deposing those who are

not, and most importantly asking the right questions and nailing down the answers. Being a litigator is hard and often exhausting work, especially when in trial. There are no shortcuts to being adequately prepared.

Another thing I see much too often is *ad hominem* attacks on opposing attorneys. Focus on the merits of your case, not on the personality of opposing counsel. Attorneys sometimes become so immersed in their poor relationship with opposing counsel that they bring that relationship with them into their briefs and their courtroom advocacy. Don't. Very few cases are won by pointing out the character flaws in opposing counsel.

What advice would you give newer attorneys about preventing burnout?

Try different areas of the law. Don't be afraid to seek a new job or ask for different work from your current employer. Inertia kicks in for all of us and then the easy thing is to do tomorrow what you did yesterday. But

what you are doing today may not be enjoyable, may even be too stressful or insufficiently engaging for you at this point in your life. My recommendation is to try new things, have the courage to say "I tried this area of the law or have been at this firm or this job for a while and now I am going to try something else." The more you learn about and are exposed to different areas of the law and different jobs, the more likely you are to find the area of the law and the job that is best suited to you at this point in your life, which is the best way I know to counter burnout. Some people are content doing the same thing for long periods of time and experience no signs of burnout. But, if you are like me, impatient and needing to do something new from time to time, seek out change. When I feel I have mastered something, boredom, a form of burnout for me, creeps in and what works best for me is to move on to another area and start from the bottom of the learning curve instead of continuing to do the same thing over and over again.

Also, it is important to have interests outside of the law and friends who are not lawyers, particularly those who care nothing about the law. It is far too easy, especially in the early years of practice, to be consumed by being a lawyer. As interesting as you may find your job and other attorneys, there is life outside of law. Explore it. Revel in it. Quite likely doing so will make you a better lawyer and a more interesting person—and may avoid or reduce burnout in the process.

MUCH LIKE THE KEY TO REAL ESTATE IS LOCATION, LOCATION, LOCATION, THE KEY TO GOOD ADVOCACY IS PREPARATION, PREPARATION, PREPARATION.



The iconic Unisphere in Queens, New York, a symbol of the 1964 World's Fair, dedicated to "Man's Achievements on a Shrinking Globe in an Expanding Universe."

I understand you enjoy going to World's Fairs and the Olympics. Is there something that interests you about those events?

I love the feeling of the world coming together and showing our commonality and our differences as well as our best ideas and strongest competitors. Even in the age of the Internet, the world is a very diverse place. Particularly with World's Fairs, you get to see little bits of culture from all around the planet. There is also a sense of good feeling; a sense of people working together to make for a better life for all instead of the destruction and hatred that fills so much of our daily news. Of course, in the Olympics, there is strenuous competition among athletes and countries, but it is almost always

competition to be the best, not to demean or reduce the other competitors. When I go to World's Fairs and Olympics, I enjoy meeting people from faraway places and hearing their stories. I like to find out why they came to be at this place, what their lives are like in their home countries, and what they think of Americans and our ways. It is my way of accessing the incredible variety of our world. I have met many interesting people at both Olympics and World's Fairs and hope to continue doing so.

Courtney M. Brown is a litigator at the Law Offices of Mary Catherine Wiederhold and is a board member for the Barristers Club. Her practice focuses on representing tenants facing a variety of issues including wrongful eviction, housing violations, and fire-related losses.

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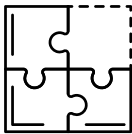
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Great Egret perched on abandoned car tires in San Francisco Bay.

THE PANDEMIC'S IMPACT ON REGULATORY ENFORCEMENT

Jon-Erik W. Magnus

CONFUSION AND CONFLICT CREATED BY COVID-19 AND SHELTER-IN-PLACE ORDERS

Environmental investigations and remedial actions in the Bay Area were upended by COVID-19—not by the virus itself, but by the shelter-in-place orders and the various regulatory guidance directing what work could proceed. The initial shelter-in-place orders, issued March 16, 2020, by six Bay Area counties, created intense confusion regarding what environmental work in the region was allowed to proceed. At the local level, there was scant guidance from Local Oversight Programs (LOPs). At least one LOP (San Mateo County) stated that environmental investigations and cleanup were not “essential,” and could not proceed. Others were silent. In contrast, the California State Water Resources Control Board (State Water Board) explicitly stated that the shelter-in-place orders do not excuse compliance, including investigation and cleanup work, but offered a mechanism to “petition” for relief. California’s Department of Toxic Substances Control (DTSC) has not issued public guidance but has articulated a policy that is similar to the State Water Board’s approach to potentially responsible parties on a site-by-site basis. And to round things out, the United States Environmental Protection Agency’s (USEPA) own guidance on fieldwork added another layer of complexity as it is reasonably interpreted to defer to local shelter-in-place orders thus suggesting that fieldwork was on hold.

WHEN ASKED, “SHOULD MY PROJECT PROCEED?” AN ENVIRONMENTAL CONSULTANT MIGHT HAVE A DIFFERENT ANSWER FOR EACH SITE IN ITS PORTFOLIO, DESPITE THE SIMILARITY IN SITE CONDITIONS AND THE APPLICABLE SHELTER-IN-PLACE ORDER, DEPENDING ON THE POLICY OF THE REGULATORY AGENCY OVERSEEING THE CLEANUP.

When asked, “should my project proceed?” an environmental consultant might have a different answer for each site in its portfolio, despite the similarity in site conditions and the applicable shelter-in-place order, depending on the policy of the regulatory agency overseeing the cleanup. And while it is unlikely that a responsible party would find itself subject to the active oversight of all four agencies mentioned above at any one site, it is not uncommon for a site to be jointly managed to some degree by more than one agency (i.e., LOPs and the Regional Board or DTSC and the USEPA.) Thus, there could be differing, yet equally applicable guidance, at any one site.

Fortunately, revised shelter-in-place orders on May 4, 2020, removed some uncertainty for environmental projects (generally permitting environmental work to proceed outdoors) but the chronology of COVID-19 orders and subsequent agency guidance illustrates the uncertainty thrust upon regulated businesses and individuals in the Bay Area.

BUSINESSES CONFRONTED BY THE VIRUS STRUGGLE WITH REGULATORY COMPLIANCE

While the impact of COVID-19 orders on environmental projects may have been partially resolved,

ongoing compliance with environmental laws will continue to present challenges for the foreseeable future based on the virus itself and related health orders. This is borne out in the example of the retailer wondering whether it will be penalized for measures designed to minimize exposure to the virus: providing shopping bags for free, supplying single-use bags, or refusing to accept empty cans and bottles at the cash register—actions intended to avoid close-proximity transactions and contact with non-disinfected items. In California, stores may not provide a single-use bag unless it is made of recycled material and must charge a minimum of 10 cents for a reusable bag or bag made of recycled material.



A discarded surgical mask on a San Francisco sidewalk.

(Pub. Res. Code § 42283.) California's bottle redemption law generally requires a retailer that sells a beverage in a recyclable container to accept and pay redemption value at the cash register or pay an in-lieu fee of \$100 a day to the state. (Pub. Res. Code § 14571.6.) Both sets of laws were adopted with laudable goals of reducing waste and encouraging recycling. Under the current circumstances, however, such practices increase the opportunity for exposure to the virus, putting environmental goals at odds with public health objectives.

Gov. Gavin Newsom's April 22, 2020, Executive Order N-54-20 provided a sixty-day suspension of the state's single-use bag and redemption laws in deference to the health and safety concerns triggered by COVID-19. But despite the reprieve in connection, the order's sixty-day suspension did not apply to over 150 local jurisdictions with their own single-use bag ordinances in effect prior to January 1, 2015. (This particular "quirk" is due to the state statute's preemption clause, which allows continued enforcement of local single-use-bag laws in effect by September 2014). And even if a similar reprieve could be obtained from the 100 plus local jurisdictions, what are retailers to do after the sixty-day suspension expires and retailers must once again confront their regulatory obligations juxtaposed with the pandemic?

Similarly, entities that operate statewide will find that relief available in one region is not necessarily available in the Bay Area, despite similar COVID-19 and regulatory challenges. As an example, the South Coast Air Quality Management District has published an extensive COVID-19 Enforcement Discretion Policy, providing relief to regulated entities impacted by COVID-19. The Bay Area Air Quality Management District has not published a similar policy.

GOV. GAVIN NEWSOM'S APRIL 22, 2020, EXECUTIVE ORDER PROVIDED A SIXTY-DAY SUSPENSION OF THE STATE'S SINGLE-USE BAG AND REDEMPTION LAWS IN DEFERENCE TO THE HEALTH AND SAFETY CONCERNS TRIGGERED BY COVID-19.

THE REGULATED COMMUNITY'S ROLE IN THE PANDEMIC RESPONSE

As more businesses are permitted to reopen in the Bay Area, operators will continue to feel the strain of new COVID-19 regulations superimposed on already existing laws. This is particularly true for the essential businesses that must remain open to provide essential services to the public such as keeping the lights on, ensuring that medicine is available, and keeping the pantries stocked. But grocers, pharmacies, and many big-box stores, in particular, stand out from other businesses. Not only must these stores adopt measures to protect their own employees from COVID-19 but they are also charged with policing the public who enters their facilities. The obligation goes beyond simply limiting the number of people in a given store and requires that these retailers enforce COVID-19 health orders: no facemask—no service. This "private enforcement" of the health orders



Rules meant to protect against the transmission of COVID-19, in English and Spanish, displayed at the entrance to a Bay Area commercial construction site.

is an integral part of a scheme designed by public health officials to “flatten the curve” and reopen the state’s economy. It’s also a scheme that on more than a few occasions has been met with public resistance). The majority of businesses have risen to the occasion and now find themselves a part of a different sort of “public-private partnership,” having become a material element of the apparatus necessary to stem the tide of COVID-19 infections.

The cooperation of essential businesses, many of which are a part of the regulated community, are a necessary part of the COVID-19 response—essential to moving California to a post-COVID “new normal.” As regulators and the regulated community navigate these uncharted territories in the collective response to COVID-19, there will undoubtedly be fits and starts. It is reasonable, therefore, for both regulators and the regulated community in California to attempt to harmonize the existing maze of regulations and guidance that impact day-to-day public health, safety,

and the environment with a new layer of ever-evolving COVID-19 health orders.

COLLABORATION IS THE BEST PLAN FOR SUSTAINABLE LONG-TERM COMPLIANCE

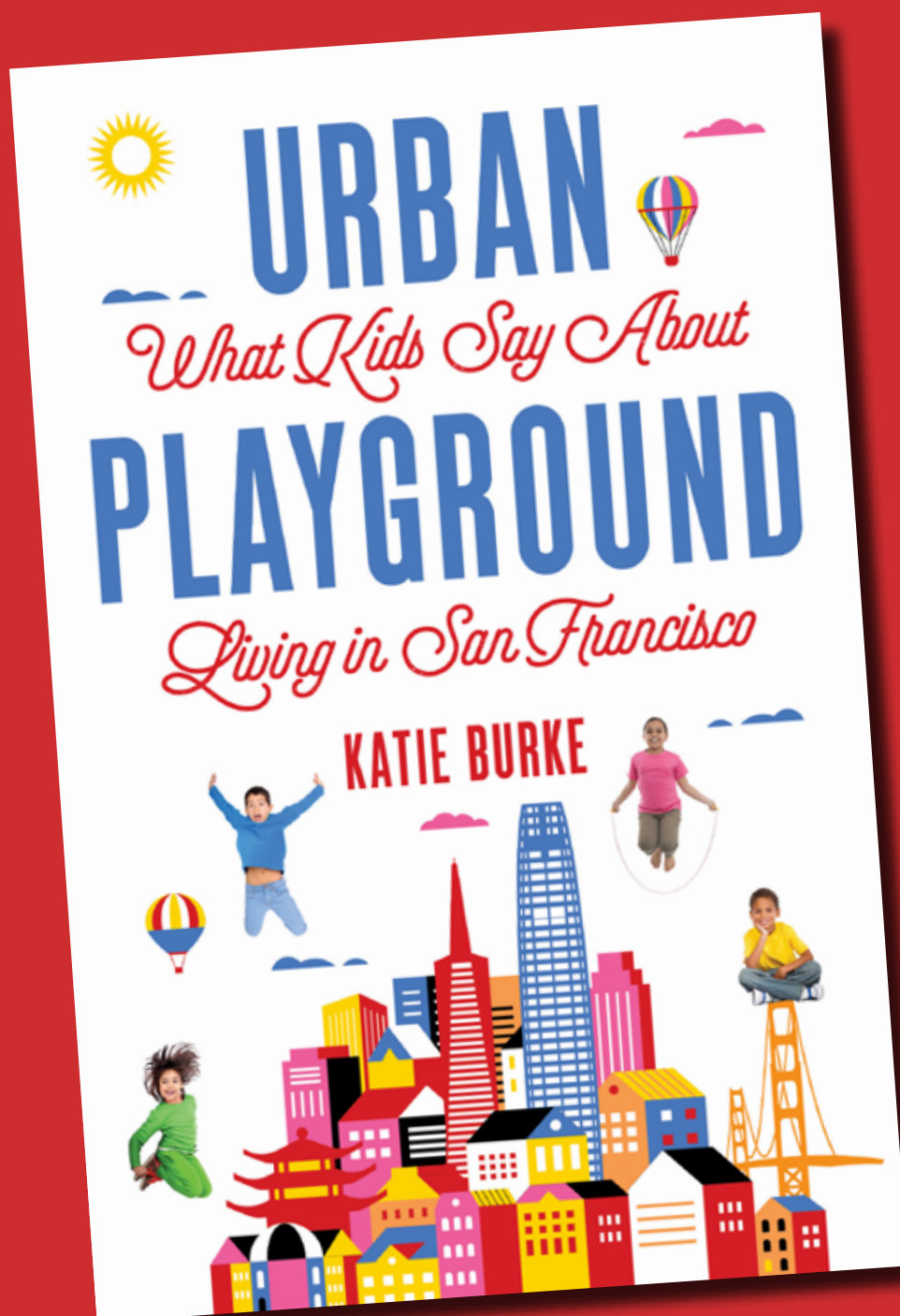
For the regulated community, this means frank communications with regulators regarding what is and what is not working. Potential and real conflicts created at the intersection of COVID-19 health orders, disease etiology, and existing laws need to be promptly communicated to the agencies responsible for enforcement with a request for relief and collaborative dialogue. This also means making a good faith effort to remain in compliance, to the extent practicable, and documenting the steps taken to do so.

For regulators, at all levels, there needs to be a mechanism to timely identify such conflicts and an openness to address and collaboratively resolve concerns raised by the regulated community. This will require agencies to do two things. First, every agency should have a conspicuously published COVID-19 policy on its website that, at a minimum, creates a specific channel for communication of COVID-19 matters. Second, in the case of non-compliance due to COVID-19, agencies should be willing to demonstrate flexibility to work with a regulated entity to create a realistic, and resilient, road map to long-term compliance. To this end, the State Water Board and the nine Regional Boards, should be commended for being the first to publish an easily accessible, statewide policy, that includes a mechanism for requesting regulatory relief based on COVID-19 orders. By late May, the San Francisco Regional Water Quality Control Board alone had received thirty-eight requests for relief in connection with COVID-19, twenty-five of which were granted.

The notion of “discretionary enforcement” has created some conflict among regulators. The California Environmental Protection Agency (CalEPA) issued a strong rebuke of the USEPA’s own discretionary enforcement policy. CalEPA went so far as to say that it would pick up the slack created by the USEPA’s policy. And USEPA Region IX staff has taken the position in some enforcement matters that they will continue to pursue enforcement, notwithstanding the policy directive from Washington. However, an inflexible enforcement regime makes little sense as it necessarily requires marginalizing the impact of a global health crisis. Some level of enforcement discretion is appropriate where violations have arisen due to the pandemic response or the conflicting guidance. Penalizing businesses for short-term noncompliance in the face of an unprecedented public health threat, especially where the non-compliance is a function of public health and safety initiatives, is perversely counterintuitive. The public is best served when the regulator and the regulated entity work together to achieve long-term regulatory compliance in the face of an evolving public health crisis.

Jon-Erik Magnus is an attorney at Rogers Joseph O'Donnell in San Francisco. Mr. Magnus' practice includes defending and counseling clients in connection with environmental and regulatory matters. The opinions expressed in this article are those of the author and do not necessarily reflect the views of the law firm or its clients. This article is for informational and educational purposes only and is not offered as and does not constitute legal advice or legal opinions.

BOOK REVIEW



Book by Katie Burke
Reviewed by John O'Grady

URBAN PLAYGROUND

What Kids Say About Living in San Francisco

All of us are neck-deep, nearly drowning, in the volume of daily messaging. Yet, the internet must think we want more, pumping out a vast sea of digital content faster than we can navigate.

That's why it's so refreshing to close the lid on the laptop. But it shouldn't take a pandemic—I'm pleased to report that, for me, it did not—to switch it up entirely. I reached for the newly published paperback, "Urban Playground: What Kids Say About Living in San Francisco," written by family law colleague Katie Burke.

And so, for a little while, I escaped into the land that little ones inhabit. Have you ever wondered what it's like to be a kid in San Francisco? How distinctly refreshing it is to see the city all around us through fifty sweet and curious pairs of eyes belonging to children ages five to nine who have nothing to sell us.

You'll meet J.P, aged nine, from Visitacion Valley, who thinks all orange-colored foods (except carrots) are terrific, and the same goes for the Golden State Warriors and the Golden Gate Bridge. And there's Alex, who's five, and can walk from home in NoPa to Golden Gate Park to examine insects...when he's not too busy exploring Japantown. Seven-year-old Kimaya loves the library; she can speak Spanish and English and navigates the city in a wheelchair, always on the lookout for ice cream.

Intrigued by the book's preface, I caught up with Katie Burke to ask a few questions from her perspective as the author.

Q: Why did you write the book?

I've been a writer since 2004, almost as long as I've been a lawyer. Throughout my writing career, I've written a lot about San Francisco and its real-life characters, all non-fiction. (You can't make this stuff up, as they say!) A few years ago, I started writing to and for kids, starting with my six nieces and two nephews. In February 2017, my mom told me she had an idea for my upcoming birthday, which was that she would buy a subscription to StoryWorth so that I could write weekly stories for my nieces and nephews. Only

my mom could put me to work and call it a birthday present!

But since I am a writer and I love my little nieces and nephews, I immediately said yes and spent the next year writing stories, all of which StoryWorth packaged into a beautiful three-volume set of books at the end of one year. Two years ago, I began writing a monthly column for *The Noe Valley Voice* with a feature story on a different child or set of siblings living in Noe Valley. Then I met my book publisher, who suggested I interview fifty San Francisco kids about growing up in the city and turn it into a book.

Q: What did you learn in writing it?

I already knew this, so it's more a reinforced belief than a lesson, but so important to emphasize: All kids thrive on attention and our curiosity about them. Almost every child I interviewed asked me, "I'm going to be in a BOOK?" They felt so privileged to have their voices heard and validated in print. And I felt so honored to spotlight their lives and perspectives.

Q: What was your biggest surprise?

My biggest surprise was the surprise of many interviewees' parents. For each interview, I left it to the child and their parent(s) whether to have the parent(s) listen in. Many parents who opted to attend were so enchanted with and amused by their children's stories. A few told me afterward, "I had no idea about that" or

“I knew about that but didn’t realize my kid was still thinking about it.”

I felt happy to foster conversational threads between these kids and their parents. That was my purpose in writing the book. That’s why I wrote five discussion questions after each profile, based on that child’s unique life circumstances, so kids and their significant adults can learn more about each other as they read the book together.

Dedicated to the children of San Francisco, “Urban Playground: What Kids Say About Living in San

Francisco,” by Katie Burke, is available through your local independent bookseller or on Amazon. By the way, all the children interviewed between the summer of 2018 and the summer of 2019 have one more thing in common...they got older.

John O’Grady leads a full-service estate and trust law firm in San Francisco. His practice includes estate planning & administration, probate, and trust litigation.



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