



Reinventing Contracts

By J. Kim Wright

Note: First published in Law Practice Today Magazine (a publication of The Law Practice Management Section) <https://www.lawpracticetoday.org/article/reinventing-contracts/> on June 14, 2019. Republished with permission.

What and who are contracts for?

Recently I conducted a very unscientific survey on social media, asking non-lawyers about what a contract is for, and for comments about their experiences with contracts. For most people, a contract is a long, written document with a lot of information no one understands. They're afraid to sign them because they don't understand them. They do want something that spells out an agreement, something to help everyone remember what they agreed to, and they want to be able to count on each other to perform. Almost all of them talked about contracts as a way of preventing conflict and especially not wanting to ever go to court. They want their contracts to be understandable. They want to be able to look back and remember what they were trying to accomplish in the first place.

Because I am known for my work in contracts, I often get queries from the web. This query is a good example: "We know many attorneys but none that are able or willing to write fair, balanced contracts that spend more time on making sure the agreement is easily understandable and has a comprehensive conflict resolution process that avoids litigation."

A common statistic thrown around the legal community and the internet is that 90% of people don't read a contract before they sign it. For example, do you read your car rental agreement? And who actually reads terms and conditions before checking the box? A couple of years ago, a [story](#) made the rounds about how 22,000 users had clicked the box and agreed to clean toilets and pick up animal waste in exchange for wi-fi service. Most users had just clicked without reading. When someone actually did read the T&C, he discovered a reward and the unusual terms. The company [blog post](#) explains more.

After almost 30 years of being a lawyer, teaching business law and training lawyers in contracts, I have seen

many long, complex contracts that make no sense to me. I've seen contradictory clauses and fragments clearly left from prior uses of a template. Once, I offered a contract drafting class with some clever clauses involving Mickey and Minnie Mouse. I was pretty shocked when a potential client brought in a contract for me to review and some silly Mickey and Minnie language was in their contract.

A lawyer once told me that it was his job to make sure that his contracts were hard to understand. "That way, I can argue for whatever my client wants when the deal falls apart," he told me. I pity the parties who have to live with his contracts after they sign them.

But we are stuck with that, aren't we? The best we can do is try to avoid the worst mistakes, right? As lawyers, we have been taught to see contracts as documents that a judge will interpret when things fall apart. Contracts have to be complex and complicated, don't they? Not so fast.

Proactive and Preventive Law

A worldwide movement is focused on the user experience of contracts, seeking to make contracts relevant, readable and even focused on the well-being of all the parties. Proponents of proactive law point out that contracts are meant for people, not judges.

One of the champions of the movement is Finnish legal consultant, lawyer and contract innovator [Helena Haapio](#). Inspired by the preventive law movement of Louis Brown, Haapio has written, spoken, and practiced extensively on the topic.

"Both preventive law and proactive law emphasize the lawyer's role as a planner helping clients to achieve their objectives. In the practice of preventive law—as well as in the literature dealing with it—risk management and dispute avoidance often come to the fore. While these elements are important, the supporters of proactive law do not want to be associated solely with a message toward problem prevention, dispute avoidance, or risk management. To use the medical analogy, the idea is not only to prevent ill-health but to promote wellbeing. The goal is to embed legal knowledge and skills in clients' strategy

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UPCOMING EVENTS – MARK YOUR CALENDARS

SFPA Board Meeting – October 2, 2019, 5:30 P.M., San Francisco Public Library, 100 Larkin Street, Mary Louise Stong Conference Room, 1st Floor.

SFPA 47th Annual Meeting – October 25, 2019, 8:30 A.M. The Bar Association of San Francisco, 301 Battery Street, 3rd Floor, San Francisco.

CCP Exam – November 1, 2019, 1:00 P.M., Fresno City College, 1101 E University Ave, Fresno, CA.

CAPA November Conference – November 2, 2019, 8:30 A.M., McCormick Barstow LLP, 7647 N Fresno St, Fresno, CA 93720.

SFPA Fall Social – November 6, 2019, 6:00 P.M., The Englander, 101 Parrott Street, San Leandro, CA.

SFPA Board Meeting – November 13, 2019, 5:30 P.M., San Francisco Public Library, 100 Larkin Street, Mary Louise Stong Conference Room, 1st Floor.

SFPA Pro Bono Committee / CSUEB Paralegal Program Volunteer Match Event – November 16, 2019, 10:00 A.M. - 2:00 P.M., Cal State East Bay Oakland Center, 1000 Broadway, Oakland, CA.



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and everyday actions to actively promote business success, ensure desired outcomes, and balance risk with reward.”

–Helena Haapio, [“Introduction to Proactive Law: A Business Lawyer’s View, Scandinavian Law”](#)

So how can lawyers shift from the perspective that contracts are for future litigation to living documents that support the ventures our clients are undertaking?

Several legal trends are shifting the traditional, stodgy approach to contract drafting and negotiation.

Plain Language

Why do so many contracts still use archaic, repetitive language, and include legal jargon?

When I was in law school over 30 years ago, **plain language** drafting was already seen as the professional standard. There are national and international standards, organizations, books, and experts about plain language.

Cheryl Stephens is one of the pioneers of the plain language movement. I asked for her comment: “Contracts are supposed to document a meeting of the minds, which is impossible when at least one party doesn’t even understand it. And I have met many lawyers who don’t even know the effects of the material they put in contracts. Plain language revision is a first step: not only to make the meaning clear, but also to expose the logical disconnects, gaping holes, and other deficiencies in the material. Unfortunately, few lawyers want to take the time to ensure that a contract is understandable. And I think fear of change is their downfall.”

Values-Based and Conscious Contracts

Values-based contracts (also known as collaborative contracts), **Conscious Contracts**, and integrative contracts are a hot topic. Of more than a dozen topics I teach, I am asked about this more than any other and have taught it to law societies, corporate lawyers, big city, small town, and rural lawyers on five continents, so far. Many clients find the approach to be more attractive than the usual adversarial process. They are often sought out by those involved in the growing area of conscious business, Conscious Capitalism, impact investing and social entrepreneurship, who are looking for a lawyer who understands their long-term goals and missions.

Values-based contracts have many components. I won’t

go into detail about all of them, but I hope this outline gives you a sense of how they work.

The Mindset Shift

Most lawyers think of contracts as just documents, but a values-based contract (VBC) is both a process and a document. The process is built on a relational mindset. The document is an outcome and memorialization of the process.

With our adversarial mindsets, lawyers can approach contracts like a wargame that requires a strategy to dominate the other. We talk about “winning the deal,” which generally sets up a hostile environment over the life of the contract.

In the VBC, the goal isn’t to exploit the other but to create a trusted relationship that fulfills the needs and interests of both parties. A contract isn’t a competition, but an alliance meant to benefit all the parties. The content, language, and tone should reflect that.

Creating or Strengthening Trust

At the beginning of the VBC process, the parties sit down together and have a conversation about what is really important. Lawyers can facilitate these conversations by encouraging openness, but the relationship belongs to the parties. My role includes coaching my client to have the hard conversations in the beginning before they’re deep into a relationship that blows up.

They talk about their visions for the world, their purpose in creating this particular agreement with these particular people, their values, and other big-picture conversations. These conversations establish a touchstone for trust, an experience of what it is to work together, and a place to return when things get tough later.

Other conversations that may be relevant include the strengths of each party, their needs and resources, their comfort level with risk, their reactions to conflict, and how they like to work with others.

These conversations offer an opportunity to test the relationship for alignment and create a foundation for sustainability while identifying potential pitfalls. Can these parties work together? Should they join forces in the common mission of the contract? They don’t just cover Who, What, How, and When, but also Why.

This touchstone becomes the core of the contract. The parties then negotiate terms in alignment with their stated purposes, values and principles. Their goals are

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transparent. It is clear what each will get out of the relationship and what they're willing to give. In those cases where someone really is trying to take advantage, that becomes clear, too.

A Bespoke System for Addressing Change and Engaging Disagreement

Once the parties have the relational conversation, most want to find a way to maintain that level of relationship and trust. The next step of the process is to create their own system for "Addressing Change and Engaging Disagreement" (ACED, also known as Peace Pact or Harmony Clause) that aligns with their values and forwards the mission.

When change occurs or a conflict arises, the ACED provides a structure for engaging in problem-solving, not arming for war. Clients generally know that it is in the best interests of both parties if resources are focused on business, not conflict.

Fulfilling the structure of the ACED is a pre-condition to filing a lawsuit, that is, a to-do list about what to do when something changes or one is upset. (This is based on legal theories similar to arbitration and mediation in contracts.)

This is a VUCA world—Volatile, Uncertain, Complex, and Ambiguous. Change happens. These contracts are not intended to be thrown in a drawer and pulled out when someone is angry. They're working documents, more like constitutions that get amended when circumstances change. The VBC recognizes that when something changes, the parties can adjust their course and can problem-solve together.

An ACED can be very personal or more arms-length, depending on the circumstances. The ACED helps in preventing conflict and resolving those conflicts which arise as quickly as possible. Because it is created by the parties, it makes sense to them. It can be as simple as scheduling a meeting or seeking advice. For two Buddhist organizations, I drafted an ACED which had sitting in meditation together as its first step.

The best resource to learn more about this type of contract is a book by Linda Graham Alvarez, *Discovering Agreement: Contracts that Turn Conflict into Creativity*, first published by the American Bar Association in 2016. The website ConsciousContracts.com includes links to many articles from magazines which go into more detail.

These are not your father's contracts. "Writing a conscious contract was a life-changing event for me. It required me to undo all the posturing—looking for that position of strength in each paragraph—and forced me to actually think deeper about our weaknesses and strengths and, more importantly, how do we handle our emotions and seek a mutually beneficial relationship, designed for success," said one client, Ric Coven of Breiting, a privately held brand management company that includes, among others, a coffee roaster and real estate development company.

Even the way they're approached is different. In Perth, Australia, I worked with a group that included lawyers, service providers, and people with disabilities and their family members. The workshop teams were actual clients and actual companies providing services. Each group was facilitated by a lawyer. This is some of the feedback about values-based contracts from that workshop:

- I think it forms the foundation of a good working relationship between both parties. By understanding each other's values, it lends itself to better relationships when things work and how to deal with things going wrong.
- It established the principles of shared understanding and trust.
- It helped to "know" the other parties quite well and to feel comfortable that you have similar values before entering a contract. I like the building of relationship aspect and the idea of working together instead of a "breach of contract."
- Values become an important focus for the relationship of the contractual parties.
- Contracts will be individually tailored to the person.
- Simplicity, clear understanding for both parties from the beginning, and the opportunity to discuss the strengths and weaknesses of both parties.
- The contracts are then individualized to suit both parties, which is great, not the one size fits all approach as now.
- It sets real boundaries and creates a working partnership about what each party believes, how issues will be dealt with and what to do when conflict arises.

Legal Design and Design Thinking

Legal design and design thinking are terms that cover a lot of ground, from font selection and document design to in-

fographics and the process of coming to an agreement. They are being used in many areas of law, including the contract negotiation and drafting process.

Stefania Passera is a designer who specializes in contracts. She and Helena Haapio have been offering interdisciplinary "Legal Design Jams" which challenge people to rethink contracts and prototype new approaches. I like this quote from her [website](#):

"As an information designer, my job is to solve complex communication problems. Contracts seemed to be a genre of documents in dire need of a user-centric makeover. We can pick any contract, and, at a glance, they just look and feel and read the same. This, from a design point of view, makes no sense: why so much sameness in different documents for different users with different needs and skills, produced by different organizations to regulate different transactions with different goals? At best, we are foregoing the opportunity to create a meaningful touchpoint and build positive relationships and experiences with suppliers and clients. At worst, we are leaking economic and relational value!"

Visual Contracts

About seven years ago, South African commercial lawyer Robert de Rooy was concerned about the complexity of contracts and their inaccessibility to a large percentage of the population. He began developing, researching, and advocating for contracts for illiterate people to independently understand contracts, guide behavior, and improve the relationship between contracting parties. He soon developed the world's first comic contract, using pictures to help people better understand agreements. Rob's Comic Contracts grew from the work of preventative and proactive law, approaches led by the late Professor Louis Brown, and Professors Tom Barton (USA) and Helena Haapio (Finland).

"Contracts are documents written by lawyers for lawyers, and if you are someone of low literacy, it is virtually impossible to understand," Rob has said.

Comic contracts may sound like a crazy idea, but visuals are making their way into law practice more and more. Infographics, charts, legal design, and even emoticons are finding fertile ground in the legal profession. In 2016, Rob's Comic Contracts won the prestigious innovation award given by the International Association of Contract and Commercial Management (IACCM) and in 2017, Comic Contracts were featured in [Fortune Magazine](#).

In 2017, Western Australia University convened a [conference to explore creative approaches to contracts](#). The conference host had independently been exploring vi-

sual contracts in the form of comic books. Professor Camilla Baasch Andersen had worked with John Maguire, formerly the chief innovation officer and later the CEO of Aurecon. Aurecon is an engineering firm with over 7,000 employees, mostly in South Africa, Australia, and the Middle East. Named as one of the top employers in Australia, the company works on big projects like major hospitals. As engineers, Aurecon is interested in design innovation and sustainability.

Working with Dr. Andersen, Aurecon converted its employment contract to a comic book. John Maguire spoke at the conference about converting the long, dry, fine print into a series of comics that were clear, handled the issues and engaged the readers.

Visual contracts require a level of clarity and precision not required in the long text-based contracts. As they took the long and cumbersome contract apart, they became more and more aware of terms that did not fit their values or culture. They had to reverse engineer the complex lawyer-focused agreement to get back to their true intentions and needs in the contract. What did they really want to accomplish? How would this contract reflect their workplace culture and values? (And what were those values anyway? Did they ever even share those with their employees?) The contract became a tool to transform and align their culture.

If a picture is worth a thousand words, as is often said, then what were the important words that needed to be in the contract and what were the images which could replace those words? The resources below offer images and more information about the process.

Reinventing Contracts

This has been a survey of some of the more relational and interesting trends in contracts. Hundreds of others are engaged in some aspect of this shift in contracts from weapons and legal guidance to relational, user-friendly tools for success.

These models and tools aren't for every contract or every client. Sometimes we want a purely transactional, arms-length agreement. For example, I don't generally negotiate and discuss values when I am buying a meal in a restaurant at a turnpike exit. That is a short-lived relationship that fits a more transactional approach. However, if I'm entering a contract for a long-term business partnership, I want the process to reflect the connection.

While the concepts are not difficult, the application may be challenging. Conventional lawyers are not generally trained in such holistic approaches. Many lawyers have realized a world of knowledge exists outside of the legal curriculum. They're learning new skills, new

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ways of doing things, and new ideas while integrating all those together with their legal skills. Integrative lawyers offer the broader perspectives necessary to blend the roles of peacemaker, adviser, coach, and consultant. 

About the Author - J. Kim Wright



Kim Wright is a leader in the integrative law movement and is the author of two ABA books: *Lawyers as Peacemakers* (2010) and *Lawyers as Changemakers* (2016). She was co-chair of the ABA Section of Dispute Resolution Relational Practices Task Force in 2018 and was chair of the Task Force's Summit on Relational Practices. Contact her at jkimwright.com.

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31st Annual CAPA June Conference Recap

By **Michael Schiraldi**

Back on June 15, 2019, the California Alliance of Paralegal Associations ("CAPA") held their 31st June Education Conference held at the Hilton San Francisco Airport Bayfront Hotel in Burlingame. Hosted by the San Francisco Paralegal Association and in conjunction with the other nine paralegal associations of CAPA, "Confluence: Coming Together" was a successful event, because of the teamwork of the associations as well as our attendees, speakers, exhibitors, distinguished guests to coming out on a typical Bay Area summer day (fog in the morning, the sun peeking out in the afternoon, and fog rolling back in at night).

The CAPA Con weekend kicked off with a special Friday night, SFPA social in the City. On June 14, 2019, the SFPA Summer Social was held at Patriot House located in the Embarcadero. We had approximately 35 attendees that night, which included 2 of our sustaining members – Sue Hammer of First Legal and Heidi Cornell of MacroPro, 4 CAPA board members, and one of the speakers at the event – Professor Toni Marsh. Thank you to our SFPA members, our CAPA affiliates, our sustaining members, and other distinguished parties for joining us. We had an awesome time and it set the tone for the next day's main event.

At the conference, there were four tracks with each track having 4 sessions throughout the day. Attendees could cherry pick of which track session to go to; ie go to advanced litigation in the AM then head over to employment in the afternoon. We had 21 speakers at the event. This year's tracks included advanced litigation, ADR/mediation, employment, and corporate.

The day started with our morning keynote the Honorable Garrett Wong, the presiding judge of San Francisco County Superior Court, who discussed ethics and courtroom etiquette. He also highlighted stories from his prominent career that broached these subject areas. The other keynote speaker was the Honorable Mary Wiss, also from San Francisco Superior. Judge Wiss for a long time was one of the two designated complex Judges within the County. Judge Wiss's presentation entitled "Maximize Headaches, Minimize Headaches" chatted about the important of paralegals within the profession and our obligations and due diligence within an ethical setting.

Other intriguing speakers within our specific law sections included the Honorable Maria-Elena James (Ret.) on personality preferences to overcoming bias, Mr. Kanach's corporate law discussion, Craft Beer Trademarks and Litigation, concrete examples of UPL (unauthorized practice of law) of the freelance paralegal by Professor and Director of Paralegal Studies of George Washington University, Toni Marsh, and a discussion of proving sexual harassment and discrimination by Bobby Shukla, Esq. The event featured speakers who were Judges, mediators, lawyers, court personnel, professors, and corporate entities.



During the announcement for CAPA Paralegal of the Year, once again, the SFPA comes through with the blue ribbon. The SFPA's own Amy Jo McGuigan took home the blue ribbon and won Paralegal of the Year as awarded by Overstreet & Associates! (See insert feature within At Issue for further information regarding Amy).

This gives the SFPA back-to-back winners for this prestigious award. First runner-up was June Hunter of SDPA (San Diego Paralegal Association), and second runner-up was Melissa Gutierrez of FPA (Fresno Paralegal Association). Congratulations to all three women for their accomplishments!

Next June's event will be at a location TBD at this time. More details to follow!

We would like to thank CAPA for putting on a tremendous event and to all of the speakers, exhibitors, and attendees who made it out. 

THE MARSH REVIEW

Toni Marsh



Legal Advice

You're sitting in your office when Jane, a regular client of your firm, walks in. She's got a cast on each wrist and is hurried and flustered.

"I fell down and broke my wrists at Luxury Food Mart last Tuesday," she says, "and this morning some guy from Luxury Food Mart came to my house with this." She holds a piece of paper gingerly between her bruised fingers.

You read the paper. It's a waiver form that says Luxury Food Mart will pay all of Jane's medical expenses if she agrees to waive her right to pursue legal action against Luxury Food Mart.

Jane tells you the story: "I was in the salad dressing aisle at Luxury Food Mart. I was wearing my good Clark walking shoes and was wearing my glasses. I was paying attention to everything around me. I wasn't on my phone or talking to anyone. Suddenly, out of nowhere, for no apparent reason my feet slid out from under me. I flew up in the air and landed on both hands. I was in agony. It turns out I broke both wrists.

When I looked at my hands they were oily and there were tiny shards of glass in both palms."

Jane has until noon to sign the waiver or Luxury Food Mart will withdraw it. Jane's medical expenses are already high. She's a single mother with two small

children; she'll have to hire someone to help care for them. She's a waitress and won't be able to work until her wrists heal – at least three months. She's worried and wants to sign.

It's 11:30 am. All of the lawyers are at a huge trial and unreachable.

What do you do?

Before we answer that, let's see if we can figure out what happened.

When Jane looked at her hands they were oily and had shards of glass in them. What does that tell us?

It's pretty likely that a glass bottle of oil broke on that floor.

But the floor was perfectly clear, so what does that tell us?

That someone cleaned up the broken bottle but didn't clean it well.

What does that tell us?

That the store knew about the hazard and made the hazard even worse by removing the physical evidence of it but not remedying it. The store had notice.

What does that tell us?

That Luxury Food Mart was negligent.

We know Jane was wearing good shoes, wearing her glasses, not talking on the phone, and not distracted.

What does that tell us?

That Jane was not negligent, so Luxury Food Mart is fully liable.

Jane is a single mother who will need to hire help for her children and won't be able to work for three months. She has major injuries to both hands. She was, and still is, in agony. What does that tell us?

That Jane is going to have some major damages and will probably be able to recover a lot of money from Luxury Food Mart. Way more than just her medical expenses.

So what does all that tell us? Should Jane sign that waiver?

NOOOOOOOOOO!

Every fiber of your being is yelling NOOOOOOOOOO!

Can you tell Jane not to sign?

NOOOOOOOOOO!

Instinctively you know this. Now let's figure out why.

CAPA, the ABA, and most importantly California law all agree that paralegals cannot practice law.

The CAPA Ethics Guidelines define what's proscribed through a combination of canons. First, the guidelines direct paralegals to disclose their status as non-lawyers so clients understand that the person they're dealing with cannot and should not offer legal advice.

The Guidelines further prohibit paralegals from doing the tasks that comprise practicing law – establishing an attorney-client relationship, setting fees, signing legal documents, appearing in court, and interpreting or expanding upon legal advice that they relate on behalf of attorneys.

Finally, the Guidelines call on paralegals to self-regulate the extent to which they can independently assist clients.¹

The California Business and Professions Code §6450 prohibits paralegals to provide legal advice.

Of all the tasks that the law prohibits, providing legal advice is the crucial one because it's the essence of practicing law; the other prohibited tasks are really just different flavors of practicing law. Representing clients in court; selecting and explaining documents; performing legal services for a lay person; even establishing fees all require legal judgment.

The question of UPL is also particularly relevant to paralegals: because they are so knowledgeable and are often the primary point of contact with clients, it would be all too easy for them to cross the line and offer legal advice.

So what is legal advice?

Legal advice is:

1. Applying independent judgment upon a set of facts and circumstances
2. So as to alter the legal position
3. Of a lay person

If any of these three aren't present, it likely isn't legal advice. Consider each in turn:

If you review the facts, determine that Jane has a good case and tells her she shouldn't sign the release, you will have exercised independent judgment to alter the legal position of a lay person, which means you will have given Jane legal advice.

Change any one of those elements and it changes the outcome:

If you relate the facts to your lawyer and your lawyer tells you to tell Jane not to sign, you aren't exercising independent judgment.

If your lawyer decides to take Jane's case and you assist Jane in completing the forms she'll need to proceed, you're not changing her legal position.

If you tell your lawyer that in your opinion Jane has a good case, you aren't altering the legal position of a lay person.

In other words, legal advice is applying general principles to a specific case.

Many states, including California, have adopted or approved the ABA's stance that to practice law is to

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Legal Advice (continued from page 9)

render services that call for the professional judgment of a lawyer, which is the educated ability to relate the general body and philosophy of law to a specific legal problem.²

Other states have defined legal advice in similar terms. The Nevada Supreme Court held that a touchstone of whether an activity constitutes UPL is whether an unlicensed person offers “advice or judgment about legal matters to another person for use in a specific legal setting.”³

And the Ninth Circuit of Oregon held that, “The practice of law means the exercise of professional judgment in applying legal principles to address another person’s individualized needs through analysis, advice, or other assistance.”⁴

The paralegal’s dilemma is that they know so much substantive and procedural law that it’s difficult not to apply their vast general knowledge to specific circumstances so as to alter the legal positions of lay people, especially when they have so much contact with the public. But the paralegal who is wise as well as smart will recognize the traps and avoid them through restraint and caution. 🗝️

¹ [CAPA Ethics Guidelines](#)

² ABA’s Model Code of Professional Responsibility Ethical Canon 3-5

³ In re Lerner, 124 Nev. 1232 (Nev. 2008)

⁴ Oregon State Bar v. Robin Smith, and People’s Paralegal Service, Inc., 942 P. 2d 793 (Or. Ct of Apps 1997).

Toni Marsh is the Director of the George Washington University Paralegal Studies Program, and a Professor of Paralegal Studies. She has employed, taught, managed, and studied paralegals since 1990 and researches the paralegal profession around the world.

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SFPA’s Featured Paralegal



Amy Jo McGuigan is CAPA’s Paralegal of the Year for 2019.

Amy has been a Paralegal since 2001, completing her coursework at the University of California, Santa Cruz. Amy is a leader in the paralegal community within San Francisco. Currently, she serves as Secretary and Board Member of the SFPA. Within the SFPA, she is an energetic trailblazer by being an active mentor to those interested in criminal justice work and a contributor to the SFPA’s quarterly newsletter, *At Issue*. Additionally, Amy serves on the board of the Bar Association of San Francisco Paralegal Section and is the CLE coordinator of the section. Finally, she is also a member of the National Association of Paralegals. She is empathetic, creative, and conscientious.

Amy presented at BASF’s trial boot camp paralegal day with a distinguished panel, “50 Days To Opening Statement: Depositions, Preparation And Summaries, Trial Binder Preparation, Exhibits, Etc.” Amy also will be presenting in November for the National Business Institute in their Civil Trial Boot Camp.

Her efforts go beyond the SFPA. Amy’s career started with the Federal Public Defender in the Northern District of California for 15 years where she assisted on several complex death penalty trial cases, one of which resulted in an acquittal. She currently works at Swanson & McNamara LLP, where she is the sole paralegal supporting five attorneys. Always meeting the challenges, Amy’s work has been impeccable representing defendants in complex white collar cases and other misdemeanors and felonies. Most importantly, Amy’s compassion towards her clients stands out. She never forgets their humanity and her commitment is exemplary. Her sense of mission, her drive, her devotion to a job well done is what makes her an extraordinary paralegal and person.

2020 SFPA ELECTION

Attention all SFPA Members!

It is time for election for the 2020 Board for the SFPA.

The nomination period has begun. Any SFPA member may place in nomination the name of any SFPA voting member. Nominations are due no later than October 11, 2019. Nomination Forms have been distributed via e-mail.

Once the nomination period is over, the election ballot period will begin for voting members. The election period will be tentatively from October 18 to October 25 (by 6:00 A.M.). Ballots may be cast at the annual meeting by voting members, as well.

Election results will be announced at the Annual Meeting and e-mail shortly thereafter.

California is considering new and improved UPL Rules – will it happen?



Note: These are the opinions of the author, and not the opinion of any board or association that she is a member or director of.

You know those three little letters that you hear at every paralegal seminar. It causes experienced paralegals to cringe. It makes attorneys nervous. Yes, you guessed it, UPL, the all too familiar “Unauthorized Practice of Law,” the rule that states that a paralegal cannot practice law, establish attorney-client relationships, set fees or split fees with attorneys, give legal opinions or advice, or represent a client before a court or agency. Well, the State Bar of California has sought public comments to proposed regulations to create exceptions to allow licensed professionals to provide specified legal advice and services.

In response to a Legal Market Landscape Report commissioned by the State Bar of California, the Task Force on Access Through Innovation of Legal Services (ATILS) has decided to propose new regulatory changes to loosen the current UPL rules in the hopes that it will close the “justice gap,” the gap that exists between those who need legal assistance and the resources (or lack thereof) available to them.

Three of the task force’s 16 proposed regulatory changes and “recommendations for specific exceptions to the current restrictions on the UPL,” include:

- 2.0 - UPL Exception for Individual Legal Service Providers to Provide Specified Legal Advice and Services with appropriate regulation
- 2.1 - UPL Exception (with appropriate Regulation) for Entities Composed of Lawyers, Legal Service Providers or a combination of the two

The State Bar announced that they were open to receiving public comments regarding the new proposals and that there would be a public hearing on August 10, 2019 at the State Bar of California in San Francisco to discuss same. Shortly after the 60 day public comment period began, the online comments in support and in

opposition to the proposed UPL reform options started rolling in. As of August 5, 420 comments were received by over 200 commenters. About 200 of those comments were submitted in opposition to the UPL regulatory proposals, and only about 15 were in favor.

Those in favor stated:

“If we are educated enough to give our lawyers advice on the law, and in turn they use our research to inform the client, then under certain circumstances we should be able to deal with the public directly... [C]ontract paralegals bring clients to the attorneys and should be able to share in the proceeds, especially if they are doing all the work. . . This will only allow the attorney and paralegal to build a firm and both parties mutually benefiting. I completely support this agenda!” - Contract Paralegal in CA

“It would help keep the flow of cases in the courts because so many people are representing themselves as per pro without basic knowledge of the law or legal abilities to file the proper motions to meet deadlines, which impact their rights to a fair and impartial judicial process.” - Supporter from San Leandro, CA.

“As other states move to allow no-lawyers to provide legal services, it is time for California to move in this direction too. Many Californians are currently denied legal services because they cannot afford to pay [attorneys].” Supporter in CA

“In order for law firms to innovate and become more efficient, it is needed [sic]to have skills of different viewpoints in ownership level decisions.” - Law firm in Mountain View, CA

Not everyone was as optimistic about legal service providers practicing law—those in opposition stated:

“Non-lawyers do not operate under the same ethical obligations or with any comparable training/education, and as such, are not obligated or qualified to give competent legal advice ... an unrestricted non-lawyer giving any kind of erroneous legal advice would undoubtedly harm the public.” - Anonymous commenter from Glendale, CA

“... non-lawyers [are] dragging down the practice of law.” – Anonymous worker’s comp attorney in Orange, CA.

“This is going to erode the quality of legal services in the state by allowing unlicensed individuals to give legal advice and own law firms. It is going to devalue my license and hurt the public.” – CA Attorney

“California is already overrun with too many lawyers, as the state allows non-traditional, non-accredited paths to the profession. As a lawyer, I have invested a significant amount of RESOURCES (financial, time, etc.) to be able to practice my profession and to do so competently. It is a high bar for a reason. I have worked hard to get where I am at. Your suggestion to allow non-lawyers to provide legal advice is wrong for so many reasons. I would like my profession to at least maintain the little bit of respect and dignity it has left here in California. Not to mention, you are cutting into the livelihoods of people who have made the investments. Many of us incurred massive debt to be able to provide legal advice.” - Attorney in San Bernardino County, CA

“With non-lawyers investing in and driving the practice model, clients will be all but guaranteed a profit-driven experience with their lawyers, where the handling of their matters will be affected more by the “bottom line” than their best legal interests.” - Lawyer in Oakland, CA

On August 10th, 2019, the time came to give verbal comments. I went to the State Bar of California, it was my first time there. Given that I had read that many people opposed the proposed regulations, I was expecting many attorneys to show up with pitchforks, but to my surprise, just the opposite happened.

Many people at the hearing gave testimony thanking the task force committee for putting the topic on the discussion table. The committee received words of encouragement, and generally many, including attorneys, talking about how they could see this working. I was surprised

to see that many of the people who showed up were actually speaking of non-lawyers in a positive way. The State Bar video-recorded the hearing. While it’s still early and we don’t know how this will end, one thing is for sure—if these regulatory proposed changes are approved, it will dramatically change the traditional legal landscape as we’ve known it in a radical way. Stay tuned. 🗣️

Links:

[Webcast of August 10, 2019 hearing at the State Bar of California](#)

Elizabeth Olvera is the former president of the San Francisco Paralegal Association. She is a paralegal, registered LDA (legal document assistant), and immigration consultant at Olvera & Associates, and is proud that she directly impacts her community to gain access to affordable legal assistance.

2019 CCP Results and Update

by Michael Schiraldi

The ninth and tenth California Certified Paralegal Examinations took place in June in Sacramento and San Francisco. Tina Cartwright of Alhambra, CA and Leora Johnson of Santa Rosa, CA passed the exam and earned the CCP designation. At this time, twenty (20) have passed the exam and earned the CCP designation.

The next exam will be November 1 in Fresno. More exams are planned for 2020. Dates and locations to be announced.



EDITOR'S NOTE: The writer recently assisted in a two and half week wrongful death, product liability trial in Santa Cruz.

The Lion, the Witch, and the Jury – Overcoming Trial Performance Anxiety

I hate trial.

The long days. Burning the midnight oil. The weekend work. The sleepless nights. The dazed and hazed confusion as you try to remember what day it is. Not seeing your family, friends, and significant other, or too tired or wired to acknowledge them. The enormous pressure attending every day, presenting demonstrative evidence with the eyes of the jury on you, praying that you do not screw up.

Paralegals are wedges. The wedge is the most primitive tool known to people. That is our role during trial. Attorneys are devourers of wedges as our role is invaluable. The stress, however, weighs heavy. During trial, one will go to sleep at night wishing plague on the entire judicial system and then wake up next morning hoping for settlement. It rarely happens.

I love trial.

The exhilaration. The terrifying lows. The dizzying highs. The creamy middles. It is a roller coaster. Sure, I might offend a few of the bluenoses with my pacing back and forth and colorful ties. I will never be the darling of the so-called "California Natives." However, paralegals get in tune during trial. On many occasions, it brings out our very best – on both a practical and emotional level.

Trial is daunting. Make no mistake; it takes all of a paralegal's wit to survive the challenge. As these tasks bear down, the worry is always building. At times, we may feel overwhelmed by the process.

The following are some quick, practical tips of how to overcome some common trial performance anxieties from a paralegal's prospective.

Breathe

Breathe. Seriously, breathe in the air.

In the large scheme of things, work is not life or death.

We dedicate ourselves to our role, because of the intrinsic reward of doing a good job and coming through. The best compliments are the accolades received from either your attorneys, the opposing attorneys, the judge, or the jury that you did a tremendous job.

So stay calm, cool, and collected. We tend to work best when we are relaxed. Use whatever meditation tactics you prefer - whether it be music, yoga, ect. - to get you geared up for the grind ahead. Just be you.

Finally, remember to eat and hydrate. Just because someone on the trial team eats like a bird or is skipping lunch, does not mean you should.

Learning to Fly

I have told you once, I have told you twice, all seasons of the year are nice, for knowing the local rules (and to a further extent, knowing your courtroom and the computer applications you will utilize).

You need to know what your courtroom has when it comes to technology. Does it have a plug and play system, i.e. a screen and an outlet to plug in your trial laptop? Does the room have an Elmo only? Do you know how to use Trial Director, PowerPoint, or whatever computer program your firm has decided to go with competently?

The trial attorney will lean on the paralegal to be able to handle whatever equipment is available. They have enough to worry about. If you do not know how to use the computer software or tools, then you do not have the appropriate skills nor the correct mindset to go to trial. We must educate ourselves to utilize the programs if we do not know how to use them well before we arrive at the courthouse.

The Piper at the Gates of Dawn

As you head into battle, one of the most important things is to be prepared by having everything that you need (whether it be exhibits, the phone number for your witness, technology cords, or yellow post-its) at your

fingertips. You do not want to be caught without having the necessary materials. Always make a list of what you need before and during the trial.

You also need to be cognizant of whether you are playing at home (think 400 McAllister) or on the road (think Stockton or Santa Cruz). If the paralegal has the home field advantage, typically, you will be heading back to your office in your trial clothes, but you can restock any supplies, make copies easily, and sleep in your own bed.

If you are in hostile territory, you can change into your play clothes, but you do not have the comfy confines of your office for supplies and accessories. If you are away from home sweet home, Dorothy, be prepared by either setting up a mobile office (by having all the supplies at your fingertips) or knowing where the closest Kinkos/Staples is.

Us and Them

You are a statue. You show nothing to everyone when you are at counsel's table.

One of the most valuable lessons that I learned is through the jury. The jury is looking at everything. You cannot show emotion. Even when someone is lying his or her ass off, you cannot betray how you feel. I feel it is best to avoid looking at the jury at all costs. You can sneak a glance occasionally to see what they are looking at or when they are taking notes. However, do not stare at them like animals in the zoo nor frown or get frustrated when a ruling does not go your way. You are merely a stand in actor/actress in the scene. Let the attorneys, judge, and witnesses play out the scene – you meanwhile do what you do best: taking notes,

getting organized for the next witness, and having the next exhibit in hand.

Shine On You Crazy Diamond

If a mistake should arise, brush it off. Continue and carry on.

Mistakes will occur – no such thing as a perfect game in trial. Witnesses will screw up. Exhibits will not be printed correctly. Jurors show up late. You need to be able to roll with the punches and adapt on the fly. Those that can achieve this will be the most successful – win, lose, or draw.

Trial is analogous to riding the Giant Dipper when you barely made the height requirement. The anticipation as you wait in line hearing the crowds squeal with delight above you, hearing the rickety old rails as the cars clamber over them. The excitement you feel being latched in, when suddenly you are off to the races with that marvelous first dip into the darkness and then climbing to the top as you soak in the California sunshine. Then suddenly you are falling, dropping at breakneck speed, hanging on for dear life as you twist and turn through the caverns, praying and hoping that the ride comes to the end, and finally, finally it stops and there is enormous relief flooding over you. The inspector unlatches you as you wobble out and you tell yourself never again. But as you look back one last time at the mountain that you climbed, you smile and hear a familiar voice ask you: 

Are you ready to go again?

Michael Schiraldi is a paralegal at The Brandi Law Firm, and current SFPA board member and CAPA Director. He resides in San Francisco.

Paralegal Day 2019 Recap

by **Michael Schiraldi**

On Saturday, May 18, 2019, the SFPA held their annual Paralegal Day at the SF Bar Association. There were over 60 attendees in the audience, including voting members, student members, and non-members throughout the Bay Area and California.

President Denise Bashline kicked off the day with a motivated speech about commitment and volunteering, followed by our 6 MCLE speakers. The topics and distinguished guests were as follows:

- The Movement Towards Holistic Defense, by Brendon Woods, Esq.
- The Role of the Fiduciary, by Meredith Taylor, MFT, CLPF
- Estate Planning: Tips for Putting Your Personal and Professional Affairs in Order, by John Hanft
- Paralegal Ethics – What You Need to Know, by Pro-

Paralegal Day 2019 Recap

(continued from page 15)

Professor Lisa Hutton, Program Director JFK Legal Studies Department

- Speaking Out: New Laws Affect Confidentiality Provisions in Nondisclosure Agreements with Employees, by Paul Mahler, Esq.
- Trial Presentation Skills for the Litigation Paralegal, by Juliet Jonas, J.D.

Our MCLE speakers spoke passionately about the topics presented ranging from honing the paralegal's trial presentation software skills to ethics to estate planning and fiduciary work. Mr. Woods was especially passionate and inspiring with his topic regarding holistic defense by behalf of the Alameda County Public Defenders' Office. All of our presenters were tremendous.

During the day, the SFPA also raffled off prizes including the SFPA tote bag and 3 free admission to the CAPA June Conference that was held in Burlingame on June 15. (See article in this issue for details on the recap of the June Conference.)

We greatly and profusely thank Brendon Woods, Esq., Meredith Taylor, MFT, CLPF, John Hanft, Professor Lisa Hutton, Paul Mahler, Esq., and Juliet Jonas, J.D. for speaking at this year's event. Special thanks to Aaron Connelly of SDL, Paul Wright of D1 Discovery, and Lora Templeton of One Legal for our three wonderful exhibitors and sponsors at the event.

Finally, thank you to all of our attendees at this event. We hope to see you at our Annual Meeting on Friday October 25, 2019. 🗓️



Meredith Taylor, MFT, CLPF presenting
The Role of the Fiduciary



John Hanft presenting Estate Planning: Tips for Putting Your Personal and Professional Affairs in Order

Subscription to the quarterly SFPA newsletter, *At Issue*

The SFPA's newsletter, **At Issue** is published four times per year, and contains compelling, informative and practical information, including feature articles on a broad range of topics, practical articles on all branches of law and different aspects of paralegal practice, social updates, section event calendars and reports, a featured paralegal bio and information (to get to know individual members better), as well as any other relevant announcements of events and resources of interest to our membership.

The SFPA is a diverse, lively and engaged group of legal professionals, and our newsletter is a great way to remain informed about our presence in the Bay Area and beyond, and receive information you can use in your own practice from people actively working in the field. We also welcome content from authors within our membership - please email mvs@brandilaw.com or bgocchiogrosso@gmail.com with inquiries.

SFPA Board Members 2019

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SFPA provides a number of opportunities to participate, plan, and shape our organization. The SFPA Board would like to invite interested members to volunteer if so inclined. Our next board meeting will be on October 2, 2019 at the San Francisco Public Library. Come join us – we would love to see you! Please contact us at info@sfpa.com if you would like to find out more.

About the San Francisco Paralegal Association

The San Francisco Paralegal Association is a nonprofit organization created to represent the paralegal profession as an independent, self-directed profession, to enable paralegals to enhance their professional development, and to support the expansion of the delivery of legal services in an economic and effective manner.

More information about our Board of Directors, bylaws, committees and practice sections can be found in the [About](#) section of the SFPA site.

Please visit our [Calendar](#) to find out about upcoming events.

If you're interested in joining the SFPA, information about how to do so can be found in the [Membership](#) section of the SFPA site.

To submit an article, please send requests to bgocchiogrosso@gmail.com or mvs@brandilaw.com.