

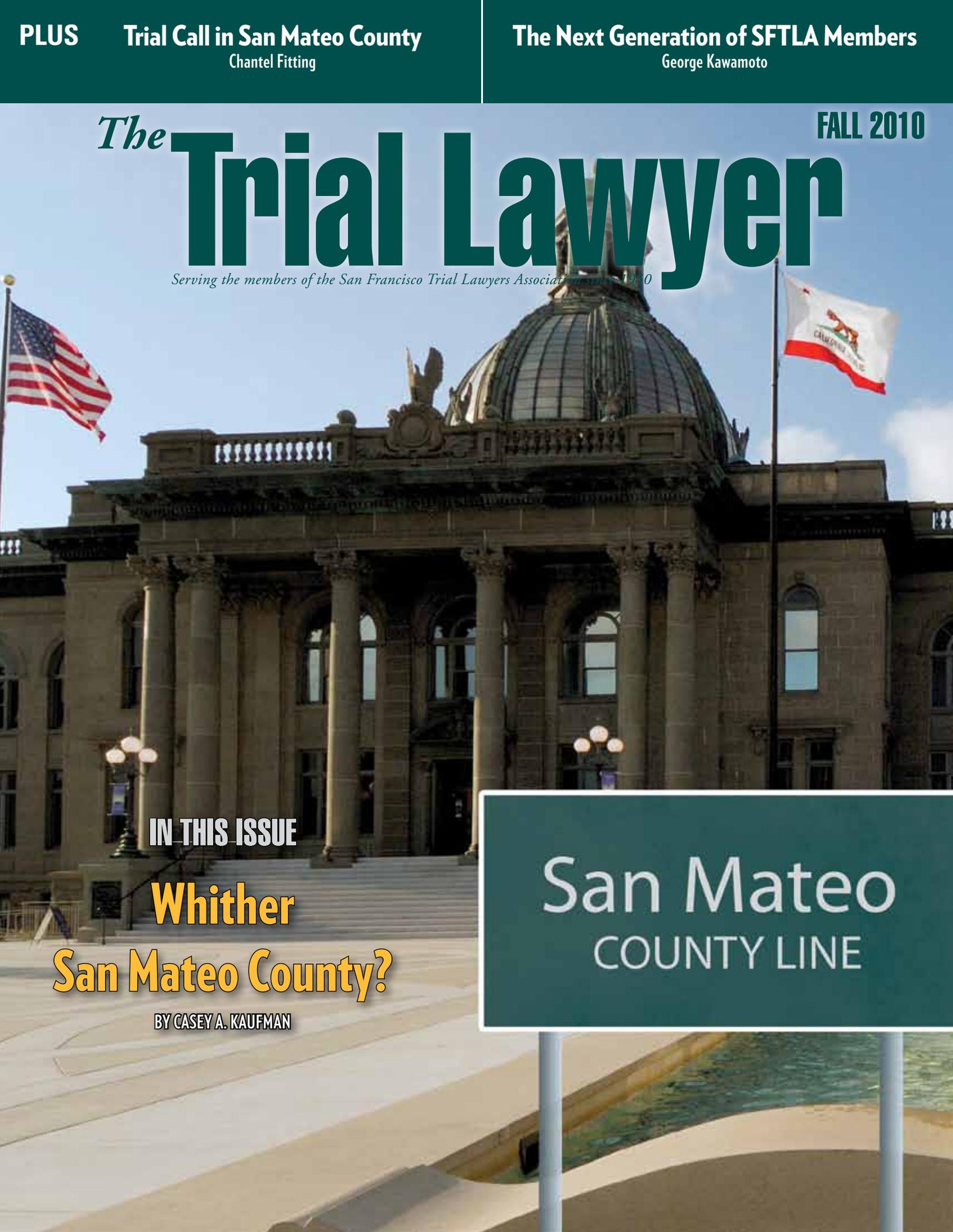
PLUS Trial Call in San Mateo County
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The **Trial Lawyer**

FALL 2010

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**Whither
San Mateo County?**

BY CASEY A. KAUFMAN

San Mateo
COUNTY LINE

Whither San Mateo County: NO LONGER WHERE PLAINTIFFS FEAR TO FILE?

Has San Mateo County become a plaintiff-friendly venue? Do some recent excellent trial results mean that the community as a whole has changed? Historically, attorneys have believed that San Mateo County juries favor big business and defendants in general, and that it is one of the more hostile Bay Area counties for plaintiffs. In this article, I hope to shed some light on the current state of affairs in San Mateo County through interviews with San Mateo County Judge Steven Dylina as well as personal accounts from attorneys Skip Walker, Anna Dubrovsky and Richard Schoenberger.

DEMOGRAPHICS, POLITICS, AND TRENDS

Demographics

As of the 2008 census, there were 707,730 residents of San Mateo County¹. The predominant racial makeup of the county was 45.8% white, 23.5% Asian, 23.1% Hispanic/Latino, and 3% African American². In 2000, the predominant racial makeup of the county was 49.8% white, 22.1% Asian, 21.9% Hispanic/Latino, and 4.1% African American.³

Political Views and Trends

The last Republican to obtain a majority vote in a presidential election in San Mateo County was Ronald Reagan in 1984 with 51.9%⁴. Since that time, the percentage voting for the Democratic candidate for president has consistently risen from 55.7% in 1988 to 73.5% in 2008 for Barack Obama.⁵

Of the 389,718 registered voters in 2008, 199,569 (51.2%) were Democrats, 83,411 (21.4%) were Republican, and 92,126 (23.6%) declined to state.⁶

Notably, 61.8% of San Mateo voters supported same sex marriage and voted against Proposition 8.⁷ The County had the 7th highest “no” vote among all California counties. In that same election, 62.6% voted against requiring parent notifications before terminating a minor’s pregnancy.

SETTLEMENT CONFERENCE JUDGE

STEVEN DYLINA

Judge Steven Dylina personally handles all civil Man-

datory Settlement Conferences in San Mateo County. When I asked Judge Steven Dylina for a short interview about San Mateo County juror’s attitudes towards plaintiffs, I anticipated a brief 15 minute conversation. Instead, I was treated to a two hour meeting covering a wide range of topics including effective settlement techniques, how he conducts his assignment as the sole settlement judge, and his opinions regarding San Mateo County jurors.

Legal Background and Judicial Career

Steven L. Dylina formed his legal roots in a 14 year general practice, teaming with his attorney wife, before a 10 year career with the San Mateo County Counsel’s office preceding his Judicial appointment in 2000. Currently, Judge Dylina is the only settlement judge in San Mateo, and every settlement conference and day of trial settlement discussion is conducted in his department. Before this assignment, he was on the San Mateo complex bench along with the Honorable Carol Mittlesteadt.

Judge Dylina as Settlement Judge

Judge Dylina’s mediation skill set includes experience, approachability, a grasp on reality, and unusual tenacity. He showed me two binders in which he keeps meticulous records of each and every of his settlement conferences, separated into those that resolved and those that were tried. By tracking every case that fails to settle in his department, as well as the outcome, he can assess his mediation approach as well as monitor the efficiency of the settlement program as a whole. The binder of successes is considerably larger than its partner.

When a case does not reach resolution in at a settlement conference, Judge Dylina sometimes says to the parties, “Your case may not have settled today, but it will settle eventually. Here is my business card and we will be talking again.” Continuing settlement discussions well after the conference is just one example of his level of diligence. He reasons that often parties just need more time to let the reality check from the settlement conference sink in before they are mentally prepared to resolve their suit. In fact, during our session, Judge Dylina received phone calls in which he continued trying to settle a case long after the settlement con-

ference had ended. He also told me of a highly complex case for which multiple full settlement conference days have been set aside to provide time for the judge's own presentations. He will devote scores of hours to resolving that suit without a trial. He credits the Presiding Judge Hall and Assistant Presiding Judge Freeman for the freedom and flexibility to approach cases in such an individual manner.

San Francisco attorney Thomas Brandi recently had an occasion to attend a settlement conference with Judge Dylina: "He is every bit as good, if not better, than any other mediator I have used. I can't say enough about his mediation skills." The settlement conference lasted all day, but the Judge never gave up, got frustrated, or resorted to judicial bullying. Brandi said later that "His effort and tenacity were astounding,

and it was only through his hard work that resolution was reached."

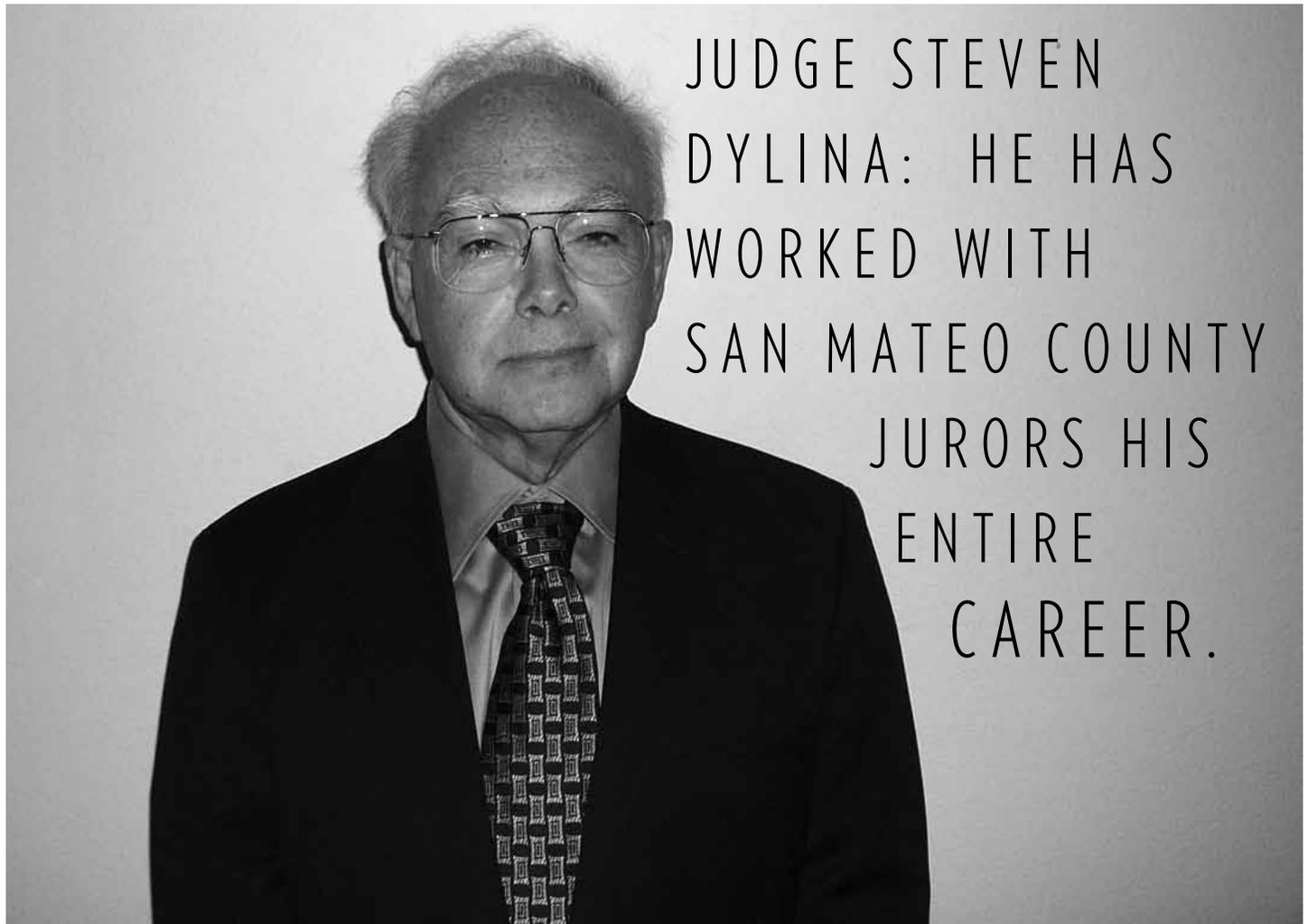
Judge Dylina considers this perseverance and creativity to be part of his assignment as settlement judge. He knows that the settlement conference system requires efficiency and results because, even though San Mateo County has about the same number of citizens as the City and County of San Francisco, San Mateo has fewer than half the judges (26 vs. 58). Judge Dylina appreciates that sometimes parties take positions that force a trial, but he feels that more often trials are a failure of reason. When there is any potential for settlement, he commits himself to realizing that potential.

Judge Dylina's Views of San Mateo County

Judge Dylina has worked with San Mateo County jurors for his

entire career, both as an attorney and judge, and maintains a great respect for them. He believes that currently, as it has always been, a good case with good attorneys and a likeable client will do well in San Mateo County. Overall the jury pool is bright, highly educated and has a high percentage of professionals, including engineers. Jurors are generally homeowners who believe in personal responsibility and want others to act responsibly as well. He believes San Mateo is a community of political and institutional continuity and stability, shown by the repeated re-elections of many public officials, and that jurors make decisions as part of this community.

The Judge has also observed that cases generally do not do well in San Mateo when the plaintiff is disliked, has a pre-existing injury, or has been anything less than truthful



during the entire proceeding. San Mateo jurors value their own time and, when they serve on a jury, they are apt to ask why the case has not settled and question whether their time is being wasted.

Overall, Judge Dylina believes that there is nothing preventing San Mateo jurors with a properly tried case from appropriately showing sympathy and empathy for a party. He feels juror attitudes have not changed in any substantial way, particularly in suits with significant injuries or egregious conduct. In his experience, jurors will not reward, and may actually punish, a plaintiff that tries to over-represent his or her damages. Before trial, he advises attorneys to do their homework, know their judge, and, above all, be prepared. During trial he advises attorneys to make their presentations brief and to the point, and realize that juror attention spans are as short as ever. Finally, Judge Dylina encourages attorneys to welcome and expect questions from the jury during trial.

YAO v. THRASHER

Walter (Skip) Walker (Walker, Hamilton & Koenig) and Don Krentsa (Meisel & Krentsa) obtained a \$5.6 million verdict in Judge Carol Mittelsteadt's department in October 2009. Their client, 70 year-old Han Yao, alleged that he was in an intersection in San Mateo when he was struck by defendant's vehicle and thrown 47 feet, suffering traumatic brain injury, tetraplegia, causing a 5 level fusion of his cervical vertebrae and the implantation of plates and screws in his left shoulder. The main issue at trial was whether or not plaintiff was in an unmarked crosswalk during impact. Defendant's accident reconstruction expert provided a scene diagram that included the location of the point of impact. Plaintiff then used this diagram to establish that the point fell directly within the legal definition of an

unmarked crosswalk. As a result the judge gave a jury instruction that plaintiff was within such a crosswalk when he was struck. The Yao jury, which was quite diverse in both nationality and gender, assigned plaintiff 51% comparative fault for a final result of about \$2.7 million.

Walker told of a jury in this case as diverse as any jury could be in the Bay Area. It was not overwhelmed by professionals or those that did not want to serve. During trial, the defendant's consistent refusal to accept any responsibility may have hurt her case. He felt that jury reacted positively to the degree of plaintiff's brain damage, shown via a day in the life video and through testimony of those who knew plaintiff before the incident. However, Walker was unwilling to label the jurors as purely sympathetic. He felt they took an analytic approach in analyzing the facts and valuing the damages for their verdict.

Walker contrasted this experience with one he had in San Mateo in 2000 regarding the drowning of a 14 year old boy in a lake. He recalls that jury as hostile and resentful to serve. He is unable to say whether this difference was a reflection on the atmosphere of San Mateo County, the personality of the judge, or whether it was simply the luck of the draw. All things considered, though, he believes that his different experience with the Yao jury can be linked to the changing economics of San Mateo County.

DASILVA v. RAMON ORNELAS AND THOMPSON & HARVEY TRANSPORTATION, INC.

Anna Dubrovsky (currently of Anna Dubrovsky Law Group, Inc.) and George Choulos (Choulos, Choulos & Wyle) obtained a \$4.7 million verdict in Judge Joseph Bergeron's department in March 2010. Their client, Clayton Miranda DaSilva, was riding a motorcycle midday on southbound Highway 35 when he

was struck by a northbound big rig whose rear wheels had drifted across the center double yellow line into the lane of travel. Defendants contended plaintiff was attempting to pass some friends to his right and was too close to the double yellow line, lost control, and ran into the trailer. Plaintiff claimed that as a result of the incident, he sustained multiple fractures, lost 85% of the use of his left hand, now walks with a limp, and underwent 17 surgeries. Plaintiff's approximate claimed damages were \$500,000 past medical damages; \$130,000 past wage loss; \$950,000 future medical damages; and \$85,000-\$285,000 future loss of household services. After a month-long trial, a jury of about equal men and women returned the verdict and assigned plaintiff 25% comparative fault, for a final result of about \$3.5 million.

The DaSilva jury was smart, detail oriented and extremely involved during trial. They asked upwards of 25 questions after experts testified and took both the process and their role very seriously. The jury liked the plaintiff, but also very much disliked the defendant trucking company. Dubrovsky feels that the jury was angered by the company's repeated inconsistent statements, lack of safety procedures, and its failure to follow the law and its own internal guidelines. Once the case was presented, the jury had no problem awarding significant damages (including over \$3.2 million for general damages).

Dubrovsky opines that once a San Mateo jury has decided to award general damages, it is apt to assign a higher monetary value than many other Bay Area counties. She believes that this is a result of the generally higher socioeconomic level of San Mateo County residents: they generally make good salaries and may own higher valued homes, and therefore are not afraid to make substantial awards.

LIYOU v. STATE OF CALIFORNIA

Richard Schoenberger and Douglas Saeltzer (both of Walkup, Melodia, Kelly and Schoenberger) obtained a \$12.2 million verdict in Judge Joseph C. Scott's department in July 2010. Their 17 year-old client was a pedestrian struck by a vehicle in a 2006 accident on El Camino Real in Millbrae. Plaintiff contended that a faulty crosswalk design plus a site distance issue in the uncontrolled intersection increased the likelihood of a pedestrian accident and Caltrans had failed to mitigate this known danger. As a result of the incident, their client suffered a catastrophic brain injury which left her in a permanent vegetative state. After a one month trial, the jury of five men and seven women returned a verdict with 50% liability assigned to Caltrans, 30% to the defendant driver, and 20% to the plaintiff.

Rich Schoenberger sat down with me and provided his impressions and observations of the Liou jury as well as his overall experience. First, the questionnaire for the 100-person venire revealed a vast majority of the panel as progressive with moderate/liberal political views. Given the large venire, Judge Scott was able to respect the hardship requests, particularly numerous given the trial's predicted length and timing (during the summer), and to excuse those who clearly did not want to serve on the jury. The overall socio-political snapshot of the jury pool was unexpected, but welcome.

Second, Schoenberger states unequivocally that this jury was the most attentive, timely (not one juror was late at any point during the trial), and engaged on a consistent basis than any he has previously experienced. They were intelligent, respectful of the process, conscientious, kind to each other, and thus honored the jury system and their duties as jurors. The case itself was interesting and quite dramatic, but at some point the jury took on a life of its own and acted in a synergistic manner, where the energy of the jury as a whole was greater than the sum of its members.

Last, he credits Judge Scott and his staff as well as the jury for the recognition that this was an important issue. Ms. Liou was in a crosswalk on El Camino Real, an important and heavily traveled thoroughfare in San

Mateo County. This case had to deal with public safety in their community, and a teenager had become catastrophically injured. There was an atmosphere of respect for the issue from all of those involved.

While Schoenberger acknowledges that this could have been a unique jury experience, he believes that San Mateo County citizens are trending towards the progressive end of the spectrum, which seems to be a byproduct of influences from communities to the north and south of the County. To him, the three excellent verdicts in San Mateo County in the past calendar year indicate a change in the community's views which increases its desirability as a Bay Area venue.

CONCLUSION

Have things changed? There is still a difference of opinion among practitioners. It may be dangerous to assume that things have changed from this sample of excellent results. As expected, each of these cases had unique facts, and jury pools are always going to be different. One thing is clear: San Mateo County juries are clearly able to render large verdicts in cases where there are good facts, good plaintiffs, and good attorneys.

END NOTES

1. http://factfinder.census.gov/servlet/ADPT-able?_bm=y&-geo_id=05000US06081&-qr_name=ACS_2008_3YR_G00_DP3YR5&-ds_name=&-_lang=en&-redoLog=false
2. Id.
3. Id.
4. <http://uselectionatlas.org/RESULTS/datagraph.php?fips=6&year=1984&off=0&elect=0&f=1>.
5. <http://uselectionatlas.org/RESULTS/index.html>
6. California Secretary of State. "Statement of Vote". http://www.sos.ca.gov/elections/sov/2008_general/sov_complete.pdf.
7. California Secretary of State. "State Ballot Measures (Proposition Numbers 1A-12) by County". http://www.sos.ca.gov/elections/sov/2008_general/57_65_ballot_measures.pdf



Casey A. Kaufman is an associate at The Brandi Law Firm. He is a member of the California, Arizona, Nevada, and Washington D.C. bars where he represents clients in the areas of elder abuse, product liability, personal injury, and actions against public entities.