

BUSINESS LAW NEWS

Keith Bishop Receives Business Law Section's Lifetime Achievement Award

Mark Moore

The Business Law Section annually presents a Lifetime Achievement Award to “a member of the State Bar who over an extended period has made significant contributions to the Section or to business law generally in the State of California and who has achieved high status in the legal community.” This year, the recipient of the Lifetime Achievement Award is Keith Paul Bishop. Keith’s career, contributions and achievements have been outstanding, wide-ranging and disruptive (in the best sense!).

At the Start

Keith was born in Seattle, but the family soon moved to Salt Lake City and then again to Las Vegas. Through the 8th Grade, Keith and his family made the desert their home. The next change came in 1971 when he left home for Asheville School, a renowned High School in North Carolina. Asheville offered the antitheses of Las Vegas. The move was “from dusty to green” – from large city to small town, Red Rock to green valleys, “the Seventies” to “very formal.” Asheville School was and is a boarding school, and so a big change for Keith from the public schools in



Keith Bishop

Las Vegas. Meals at Asheville, taken with faculty, offer students a chance “to engage in respectful discussion and debate with their peers or one-on-one guidance with their teacher.” In the early 1970s, the young men were required to wear coat-and-tie and to attend class each day including Saturday. Keith learned to knot a bow-tie and has been perfecting the practice since then! Sunday offered a chance for reflection during Services and then an escape into the countryside. Keith’s longstanding passion for Greek and Latin as languages began in those high-school days. Asheville points out that it seeks “active, engaged, interested, curious kids.” Keith proved that to the combination can be a winning formula and in 1975 graduated from the Asheville School’s Fourth Form (12th Grade). As he put it, “I loved being there, and then it was time to go.”

To Harvard and USC Law School

So, if you are a recent High School graduate looking to continue your education, where but Harvard

University would you go? Keith's thinking was in a similar vein, and he graduated in 1978 with a major in Biology. He began as a Classics major with a focus on Latin and Greek. Early on, however, Keith decided that he did not want to spend his life in an academic setting. His change to Biology as a major was "with graduate school aspirations," as Keith puts it. On the other hand, his interest in the Classics continues to this day. With a desire to "see what the King really agreed to," Keith has started on a translation of the *Magna Carta*, in time for the 550 year anniversary next year of the signing of that historic Latin document. Keith says that Latin is a language well suited to legal principles and to the expression of law, and is his first love. As to Greek, it "is a much better match for philosophy." Harvard and Asheville would both be proud of their graduate who still finds the Classical Sciences interesting after almost 35 or 40 years.

There may be a hereditary component in play when it comes to the Bishop family and languages. Keith's younger daughter graduated this spring from UCLA with degrees in Linguistics and French and Greek and Latin. His older daughter speaks Japanese and his son is fluent in Spanish. The old adage about apples falling near the tree probably originated in Latin, but in the Bishop family it has been well translated!

In between Latin conjugation and rhetoric, organic chemistry and biology, Keith decided that the study of law would be a good next step. He enrolled at USC Gould School of Law in 1978 and began this next phase of his life. But another thing happened during the years at USC – Keith married Elizabeth, whom he first met as she was studying for her degree in Biology at USC. The two of them still have the textbook that she was studying when they first met: *Organic Chemistry* by Morrison & Boyd. One cannot help but ask if Keith's interest in Biology had multiple origins. In any case, he proposed to Elizabeth and married her after graduation from Law School at USC. The two of them then (finally) settled down to live and raise a family in Southern California. Elizabeth teaches children with moderate to severe Autism.

Keith's career began with a focus on administrative, corporate and securities law. He has helped shape this

area of law in California and other states for over 30 years.

In Public Life, Public Practice

Keith's career began in public service. From 1996 to 1997 he served as California Commissioner of Corporations and from 1993 to 1996 as Interim Savings & Loan Commissioner. This put him in the position of administering and enforcing California law in such areas as the offer and sale of securities (Blue Sky), regulation and licensing of securities broker-dealers and investment advisers, health maintenance organizations (HMOs), offering or selling franchises, and the regulation and licensing of credit unions, finance lenders, residential mortgage lenders and independent escrow companies. From 1993 to 1996, he served as Deputy Secretary for Business Regulation and as General Counsel for the California Business, Transportation and Housing Agency (BTH). In this capacity, his authority included oversight over the legal affairs and regulatory policy of the departments of banking (later known as the Department of Financial Institutions), corporations, real estate and alcoholic beverage control (ABC). Not to be left with idle hands at the end of the day, Keith's brief as Deputy Secretary/General Counsel for BTH also gave him authority over the legal affairs and regulatory policy of the California Highway Patrol, the California Department of Motor Vehicles and Caltrans.

Thus, for four years Keith played a role in the policy and enforcement of the State laws governing most financial services and transactions. I focus on one particular effort, since it shows the both the breadth of Keith's efforts and the foresight he brought in advocating market-based solutions that area tempered with protections against abuse of consumers. In 1995, Keith authored and advocated for a bill (AB 2465) to revise and modernize the Corporate Securities Law.

First, the bill proposed that California drop "fairness/merit" review of securities offerings under the "fair, just, and equitable" standard of the Corporations Code. Keith's bill proposed that purchasers be protected by access to information, to be delivered via adoption of a SEC-like registration program for securities offerings. But Keith also

believed in appropriate consumer protections, so his bill also provided for a right of rescission for the purchaser against the issuer of the securities or the broker-dealer employed by the issuer if the securities were deemed unsuitable. Finally, his bill placed faith in the transformative powers of modern technology. Under Keith's proposed bill, the Commissioner of Corporations would have been required to "develop and implement an electronic digital document copying, retention, and retrieval system for all applications, disclosure documents, permits, orders, certificates, and other documents filed or issued." No small feat, even if it were implemented today. Keith was on it, 20 years ago.

In Private Practice

Some lawyers leave their mark through public service, and others through private practice. Keith has served in both capacities.

Keith joined Buchalter Nemer in 2003 and in 2007 became the Managing Partner in the firm's Orange County office. In 2008, Keith joined the Orange County offices of his current firm, Allen Matkins Leck Gamble Mallory & Natsis LLP. At Allen Matkins, Keith continues to serve his clients in the corporate and securities arena. He represents clients in a wide range of corporate transactions, including public and private securities offerings of debt and equity, mergers and acquisitions, proxy contests and tender offers, corporate governance matters and federal and state securities laws (including the Sarbanes-Oxley Act of 2002 and the Dodd-Frank Act), investment adviser, financial services regulation, and California administrative law. His practice covers compliance, licensing, regulatory and civil enforcement issues. He has advised clients in connection with several internal corporate investigations, including investigations of stock option backdating and other alleged management malfeasance. Keith has also been retained as an expert witness to testify concerning corporate law, securities law and attorney malpractice. In 1997, he testified before the Subcommittee on Securities of the United

States Senate Committee on Banking, Housing and Urban Affairs.

Keith's engagements cover a wide range: NYSE listings, fairness hearings before the California Department of Corporations (luckily for Keith's private practice, AB 2465 did not pass!), response to hostile tender offers, enforcement matters regarding securities and banking laws, and advice regarding SEC examinations.

At the Bars and Other Pursuits

Keith has been a past co-chair of the Corporations Committee of the Business Law Section of the California State Bar and a member of the Executive Committee of the Business Law Section. His efforts in this regard included serving as Chair of the Executive Committee's Legislative Subcommittee. As such, he oversaw and directed efforts by the Business Law Section for adoption of Legislative Proposals to amend California business law. He has also served as Chairman of the Business and Corporate Law Section of the Orange County Bar Association and a member of the Administration of Justice Committee of the Orange County Bar Association. In the American Bar Association, since 2008 Keith has served as California liaison to the ABA Committee on State Regulation of Securities.

Another story of note, since it shows Keith's commitment to the legal profession. In 2005, Keith and several others in the Business Law Section took what were controversial positions in favor of a strong attorney-client confidentiality obligation. At the time, an SEC report and the Department of Justice's "Thompson Memorandum" suggested that waiver of the attorney-client privilege should be a normal part of cooperation and self-investigation. This would have severely weakened the California standard under which an attorney must guard the client's confidences "at every peril to himself or herself." Keith provided both analytical and public support for the opposite idea – that is, in the long run the bond of trust and confidentiality in the attorney-client relationship provides superior results for society by allowing sincere and open exploration of legal difficulties. We are lucky that voices such as Keith's were heard and

repeated, in some cases loudly. Ultimately, he changed the debate, and we all won.

Keith has also been an adjunct professor of law at Chapman University Law School and at the University of California, Irvine, Law School. He has taught classes in sales, administrative law, business organizations and corporate governance.

Publications

Keith was the author of the first treatise on the corporate law of Nevada, which is currently entitled “Bishop & Zucker on Nevada Corporations and Limited Liability Companies.” His book has been cited by the Nevada Supreme Court and the U.S. District Court. He serves as a practice consultant to Marsh & Volk, “Practice under the California Securities Laws” and a contributor to “Marsh’s California Corporations Law.” He writes frequently to comment on proposed state and federal regulations, sometimes on behalf of clients but often simply due to a desire that the proposing agency follow applicable administrative law. For example, in 2011 Keith wrote the SEC to comment on the SEC’s proposal to consider initiation of rulemaking on required disclosure of corporate political spending. Keith brought statistics, logic and rhetoric to bear in favor of the argument that the *cumulative* effects of disclosure requirements must be considered.

Keith’s recent publications include “The Attorney-Client Privilege and the Corporate Lawyer,” *California Business Law Practitioner*, Spring 2014, “California Blue Sky Law Problems for Foreign Issues and Foreign Issuers,” *Insights*, July 2009; “Silver Standard – There are many benefits to incorporating in Nevada but tax avoidance is not one of them,” *Los Angeles Lawyer*, November 2008; “A Shot Not Heard – The Court of Appeal Holds that an Issuer’s Directors and Officers Must Be Licensed as Securities Broker-Dealers,” *Business Law News*, Issue 3 2008; “The McNulty Memo – Continuing the Disappointment,” 10 *Chapman L. Rev.* 729, 2007; and “Ethically Speaking: Attorney-Client Confidentiality in the Post-Enron Prosecutorial World,” (Co-Author), *Orange County Lawyer*, August 2006. In keeping with his commitment to new technology, Keith’s blog is not a surprise. But

the volume and quality of the topics and content he posts is more than surprising. Virtually every day, one can go to Keith’s blog and find something of interest. In recent weeks, Keith’s blog has addressed the *Citizens United* case, whether President Lincoln engaged in the “unauthorized practice of law,” and what the word “including” means under Delaware law. By the way, the blog is in English rather than the Latin that Keith might prefer!

Conclusio et Terminatio

After watching his daughters ride the family horse for many years, Keith learned to ride hunter/jumper. He likes to travel and has visited Japan numerous times and has also visited Israel, Egypt, England, Italy, the Czech Republic, and China.