



Profile: Mike Kelly

Tells new lawyers, “It’s not about you... it’s always about the client.”

By **STEPHEN ELLISON**

Good fortune may have jumpstarted Mike Kelly’s law career, but his relentless drive, boundless determination and courtroom savvy have kept that engine purring for nearly 40 years.

Kelly, a partner with Walkup, Melodia, Kelly & Schoenberger in San Francisco, made the most of every opportunity he encountered in the early days, even when it meant taking over another lawyer’s left-over cases or working in criminal defense to pay his dues. He was fortunate to land a clerking stint with the Walkup firm while still in law school, and even when there wasn’t a job there waiting for him after graduation, he managed to find work at another prestigious San Francisco firm.

When he got a call a few years later about an opening back at Walkup, he jumped at the chance to return and has been there ever since, becoming one of the most decorated plaintiffs’ attorneys in the region – and perhaps the nation.

“This firm has really been the nursery for populating the larger community with really good lawyers who made their bones doing the work,” Kelly said about the Walkup firm, adding that it was among five very large personal injury firms in the city at the time of his arrival.

“So I didn’t mind going out and catching some arrows or getting defended, as it were” by taking unwanted cases left behind, Kelly continued. “In the process, I got to learn, got regularly into court and got a wide spectrum of stuff to work on. ... And I had a lot of autonomy because all the guys wanted to know was that the cases that were left behind were handled, that the clients, regardless of the outcomes, were happy because they felt like they were treated with respect and were represented by



Kelly

someone who gave their best efforts. It was a very unique deal. I don’t know if you could have replicated it if you wanted to. For a new lawyer, it was just a great opportunity.”

The best part, Kelly said, was having both a breadth of resources and a tried and true system in place. The Walkup firm has always been ahead of the times, he said, whether it’s using exhibits or visual aids or spending the money for experts. To this day, the firm remains on the cutting edge of advocacy, innovation and courtroom best practices.

Kelly, like most of his partners and associates, might use a lot of visual and demonstrative aids in trial, but where it’s possible, real evidence always trumps the bells and whistles, he said. And, for the client’s sake – as well as the jurors’ – he never loses sight of a case’s story.

“I like to think that we create an atmosphere in trial where, I hope, the jurors are rooting for my client,” he said, “and that they appreciate that our presentations are always honest and that we try our best not to waste their time by having the case run long ... to make it seem more important. That’s counter-productive.”

Indeed, being constructive is the order of the day when Kelly is in court. Even when it comes to his everyday dry wit and jovial disposition, he learned long ago there’s a time to flip off those switches.

“I’m told that I’m funny, that I have a good sense of humor,” Kelly said. “But I’m not ever funny in trial. I got scolded by a judge 25 years ago who told me he thought my sense of humor was not helpful in trial. And I heard it, I grabbed on to it and I stuck with it. So I would say, in trial, I’m all business.”

Commendable work

Raised in the Bay Area, Kelly’s parents were hardworking civil servants. His father was a toll collector on the Bay Bridge then moved to a position with the Department of Motor Vehicles, at one point heading the San Mateo office of the DMV. His mother was a schoolteacher for years in San Francisco, later moving to a mid-level manager’s position in the superintendent’s office.

Kelly said his interest in law likely started from watching lawyers on TV as a child in the 1950s and ’60s. Like many would-be attorneys from that era, he was intrigued by shows like “Perry Mason,” he said. Later, while attending undergrad school at Saint Mary’s College, he observed attorneys doing admirable work in the public’s eye – opposing the war in Vietnam, investigating President Richard Nixon’s involvement in the Watergate scandal, helping bring about racial equality and desegregation throughout the South.

“All of that work was headed up by smart and brave lawyers, and I think there was some inspiration there,” Kelly said. “The general perception of lawyers, I think, has changed some over time, due in no small part to the demonizing that has occurred from local and national chambers of commerce and insurance interests and corporate interests, as though the protection of people and their Second Amendment rights is somehow wrongheaded. That wasn’t the case then.



So it was exciting, and it was an opportunity to make a difference and make a change and be on the point, as it were, in terms of bringing about social change.”

The summer of 1972 was a busy one for Kelly. He graduated from Saint Mary's in May, got married in June, and started law school at UC Hastings College of the Law in August. By the end of his first year in law school, Kelly had become a father, so in the span of 12 months, his life had undergone a transformation. During law school, he not only clerked for Walkup, but he also clerked for the school, and by the time he graduated, he had two kids and was ready to start his career. The only problem was Walkup had no openings.

So he took a job with Sutton and Needham. He had met and become good friends with Craig Needham through a plaintiffs' lawyers softball league. “I started working for him with the expectation that I would help him with civil cases,” Kelly recalled. “But his partner was an ex-DA, and I did almost all criminal defense work for the three years I was there.”

Then, as things would have it, a number of lawyers left the Walkup firm. “I wasn't looking for a job,” Kelly said, “but I get a call out of the blue, saying, ‘Hey, we've made some changes here; we need someone we know with trial experience. Do you want to come back?’ To me, that was an easy choice, as much as I liked the guys I was working for. ... The odds of defending a criminal case successfully are not good. The odds of handling a bad civil case, at that time in history, to me looked a lot better.”

Earning his keep

Indeed, Kelly went on to turn those odds in his favor, focusing on protecting consumers from dangerous products and medical mistakes as well as representing those injured by others' negligence. He has handled more than 175 cases in which his client received at least a seven-figure award, and he has been elected to three of the elite attorney associations

from around the world – the Inner Circle of Advocates, the American College of Trial Lawyers and the International Society of Barristers, where he served as president in 2012-13. Kelly also has served on the governing board for major professional organizations, including the American Board of Trial Advocates.

In 2014, he was named Trial Lawyer of the Year by the California chapter of ABOTA and won the same award from the SFTLA in 2010. In 2012, the Consumer Attorneys of California bestowed him with the Robert E. Cartwright award for his work teaching trial advocacy. And in 2011, he was honored by the National Institute of Trial Advocacy with the Robert Oliphant Award for his pro bono contributions to advocacy teaching.

The NITA work is a source of great pride for Kelly. Over 20 years of teaching through the nationwide network, he not only got to train other lawyers, but he also enhanced his own skills and built countless relationships with other brilliant teaching lawyers.

“And they weren't all civil lawyers,” he recalled. “A lot of them were PI lawyers, but many were criminal lawyers and divorce lawyers, and so working with those lawyers who weren't doing what I was doing was very cool exposure to how to analyze trial evidence problems from somebody else's perspective. We would get into a routine on how we might challenge an expert or cross examine an expert or how we might go after bias. I got some great training – and made some good friends in the process.”

Like many a lawyer, when it comes to memorable cases, Kelly seems to recall the losses most. Those are the ones that haunt him all the time, he said, where he wonders whether he could have done something different – a decision not to call a particular witness or one argument as opposed to another or a motion to exclude or limit evidence – to change the outcome. But there are a few favorable cases he can recall fondly not because of the size of the award but because they made a

positive impact on his clients and/or the general public.

There was a class-action win in 2014 in which 8,000 SRA (surface replacement arthroplasty) hip patients got their cases settled. There was a case against Kaiser involving a woman who died of treatable pneumonia but was misdiagnosed due to Kaiser's flawed phone-in triage system, which has since been changed to get doctors involved earlier in the process. There was a victory against Bell helmets involving a Silicon Valley cyclist's fatal head injury that ultimately forced the company to alter its headgear so that it covered more of the lateral portion of the head.

And Kelly has won a number of obstetrics verdicts for the parents of infants who have suffered paralyzing injuries or cerebral palsy. Those cases are “feel-good from the standpoint that you know you've changed somebody's life for the better,” he said.

Then there was a verdict Kelly got for less than \$100,000 about 25 years ago in San Joaquin County, memorable perhaps just for the satisfaction of seeing opposing counsel lose. It was against a notorious defense lawyer there who had offered nothing to his client, Kelly said. “He was a horrible, terrible bully, and in some ways, it's the best verdict I ever got,” he recalled. “When it was over, I got a call from the court reporter and judge's clerk thanking me because he had been so insufferable that it appeared losing the case had made him a better person.”

Fishing, Giants and clients

When Kelly is not at work, tearing down defense attorneys or teaching abroad – he's been invited to South America, Japan and the Republic of Georgia – through NITA, he can probably be found somewhere near a body of water fishing. He has fished most of the back country creeks, rivers and streams of the Sierra Nevada, he said, and has a cabin “in the middle of nowhere” in Montana, where he often goes to sit and think – and fish.



And he might be seen, on occasion, at AT&T Park, having been a San Francisco Giants faithful for 60 years. “I’ve had Giants tickets for 35 years and go to a fair amount of games,” he said. “I was in fourth grade when the Giants lost to the Yankees in ’62. I had a transistor radio and lied to my teacher that I was sick so I could go to the nurse’s office and listen to the seventh game of the World Series. Then I really did feel sick when (Willie) McCovey lined out to end it.”

Kelly likely wouldn’t advise his mentees to lie – about anything – but he would recommend, without exception, they put their clients first.

“It’s not about you,” he said. “Often-times, lawyers get confused about their job and their role, particularly in personal injury cases, and they think somehow it’s about them – and it’s never about them. It’s always about the client.

“We got in this business because we believe in the system, we believe in the constitution, we believe this is the way to

make things right, whether it’s societal shortcomings or disputes between people,” Kelly continued. “All too often, more so with younger lawyers, people get confused with who this is about, who is the beneficiary, why we’re here. And we’re here always, every time for the client. If you remember that, I think you will always end up making the right decisions.”

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