

Algebra for Appople

where law meets mathematics

BY DEAN CHRISTOFFEL

When I first started college, I wanted to be a chemical engineer. I'm no longer sure what exactly a chemical engineer does, but I did know it then. I only remember it involved chemistry and math. A *lot* of math.

I soon discovered there was a fundamental problem with math. It's not that it was boring. No, it was that math was just, well, *complex*. And hard. Coincidentally, at the time I went to college, there was a movement to simplify life. Return to nature, make your own bread, wear Value Village clothes. You know, turn on, tune in, drop out. It seemed that everyone was simplifying everything, except perhaps the complex molecular chains of the pharmaceuticals they were consuming. So, I figured, why fight it? I simplified myself right out of the math department and into humanities.

Three years later, you won't be surprised to learn, while my former friends in engineering were getting good-paying jobs, I was still painting houses. Now, painting houses is an honorable trade, please understand. While not a job that requires mathematics understanding, neither does it require any understanding of the symbolic structure of Spenser's Elizabethan masterpiece *The Faerie Queene*. In fact, most days I could get by on just "¿Que color de pintura es este cuarto?"

I was saved from an almost certain existential dilemma by a chance encounter with a fellow who told me about this graduate school he attended that had only one exam per semester—and

that exam was an essay. Whoa! The Simplifying Gods were surely smiling upon me.

"Where, oh where, my enlightened friend, will I find this citadel of simplicity?"

"Why, the law school," he replied, "of course."

Law school, the only graduate school that does not require Statistics. So, of course, I went. It was thus that I was able to obtain a Bachelor's *and* an advanced degree (a Juris blinking *Doctorate*, for gosh sakes) while only taking a single math class. And that was *Algebra for Primary School Teachers*, where the most important lesson I learned was to repeat the mantra: "Algebra is only used by people who teach Algebra."

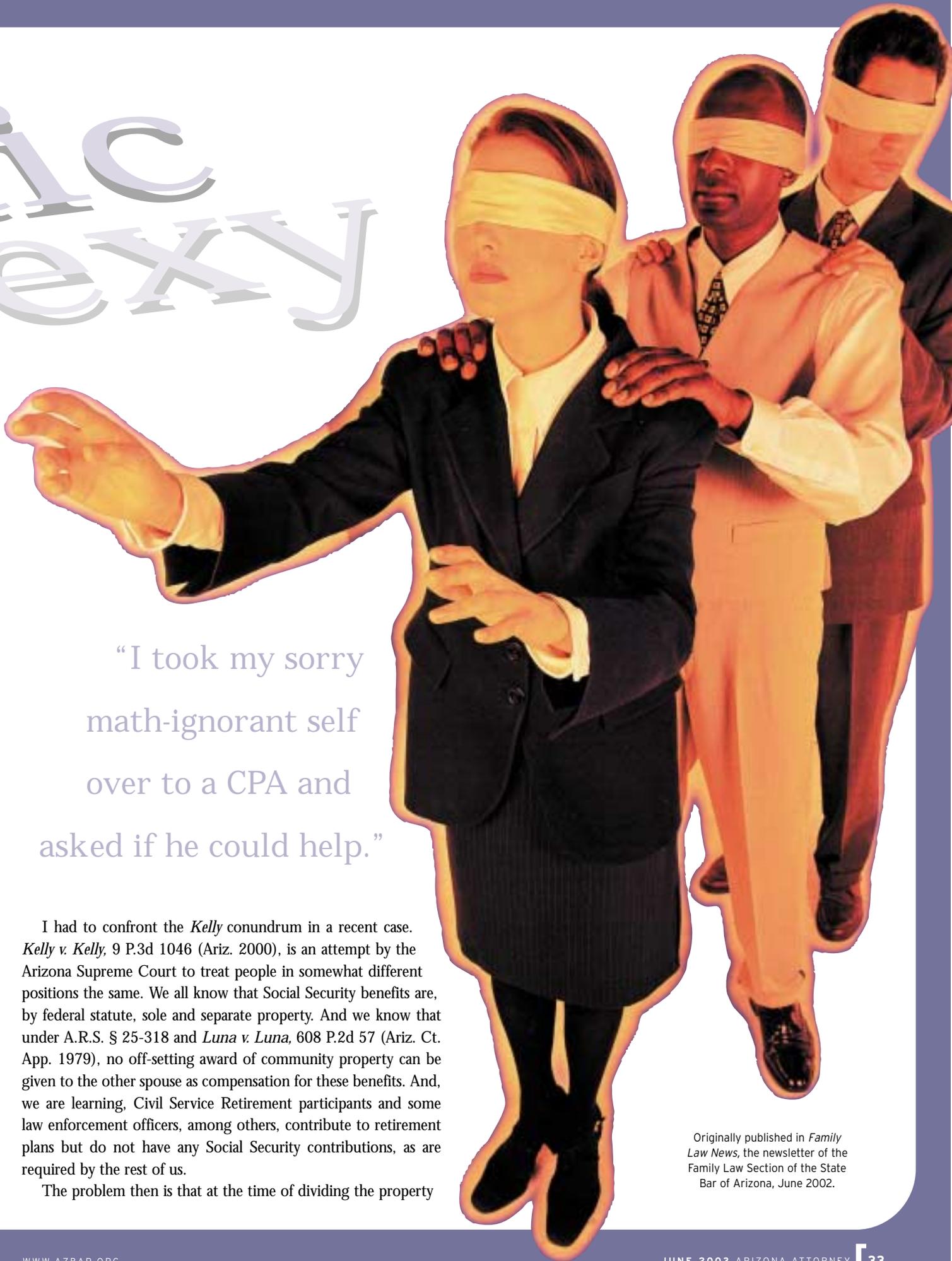
I share this history with you so that you'll understand better the problem I'm facing now, some 25 years into the practice of law.

Math. It's everywhere, any more. And I don't mean just figuring out what your fee would be if you got one third of the judgment, or what it means that every telephone call is two tenths of an hour. I mean real live hair-hurting stuff.

Here are two examples.

The first is the *Kelly v. Kelly* decision and its effect on the calculation of the value of retirement plans for law enforcement personnel. The other is more a moral dilemma of mine: In an effort to make just as much money as I possibly can, am I ignoring an obligation to help those less fortunate? And, more important, am I pricing myself out of a job from sheer greed? *Quo Vadis*, you know?

ERIC KELLY



“I took my sorry math-ignorant self over to a CPA and asked if he could help.”

I had to confront the *Kelly* conundrum in a recent case. *Kelly v. Kelly*, 9 P.3d 1046 (Ariz. 2000), is an attempt by the Arizona Supreme Court to treat people in somewhat different positions the same. We all know that Social Security benefits are, by federal statute, sole and separate property. And we know that under A.R.S. § 25-318 and *Luna v. Luna*, 608 P.2d 57 (Ariz. Ct. App. 1979), no off-setting award of community property can be given to the other spouse as compensation for these benefits. And, we are learning, Civil Service Retirement participants and some law enforcement officers, among others, contribute to retirement plans but do not have any Social Security contributions, as are required by the rest of us.

The problem then is that at the time of dividing the property

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at divorce these participants have to divide *all* of *their* retirement benefits while those in the Social Security system get to keep theirs. This, so says the Court, is unfair. Not that someone can keep all of something earned during the marriage, but that someone has to divide all. See? The Court actually said, and I'm not making this up, "To the extent individuals with Social Security benefits enjoy an exemption of that 'asset' from equitable distribution ... those individuals participating in the CSRS must, likewise, be so positioned."

The solution? Why, just pretend that the non-contributing party contributed to Social Security, figure out what that benefit would have been worth but for the fact it didn't happen, determine the present value of the calculation of the Social Security benefits and subtract this *Kelly Kredit* from the value of the real retirement benefit's

present value. *Voila!* You get something fair to split.

Now, I represent a law enforcement officer who contributes to a retirement plan but does not have Social Security taken from his pay. He, of course, believes that he should be treated the same as somebody on the Civil Service Retirement path and wants to exempt that part of his retirement that he would have received if he had participated in the Social Security system during the marriage.

Although I knew of *Kelly*, I had no way of knowing how one "calculates the present value of the Social Security benefits" and started asking some of my smarter lawyer friends.

Some of them knew what Social Security was but insisted that the use of the term "Social Security" and the word "value" in the same sentence was at best an oxymoron

and may even be one of the "big lies" left over from the Communist days of my youth.

The others, who had as little notion of what *Kelly* was going on about as I, suggested what lawyers everywhere suggest when confronted with something they don't understand and don't want to learn—Hire an expert, buy an opinion. It's that old adage: If you don't have the facts or the law, dazzle them with the baloney soufflé. And were there ever any better baloney soufflé dazzlers than CPAs?

So, I took my sorry math-ignorant self over to a CPA rumored to be working on the *Kelly* analysis and asked if he could help.

"Do you know," he asked, "what the greatest gift God gave Adam?" (I figured the correct answer was the ability to pee standing up, but sensing this was a rhetorical question, I remained obediently silent.)

"It was the power to name the animals," he continued. "That is how God gave Adam control and dominion over them. So, too, in this field. The ability to name the beast or to define the problem in our terms and words is what will give us control."

"Once we have determined the terminology, we can quantify the quantities and insert them into a series of simultaneous equations, which then can be transformed into an ideational structure we refer to as an economic model. Rather like quadratic equations." He paused, I knew, for effect. "You do remember quadratic equations from college, don't you?"

"Of course," I lied. "But the question is how much is it going to cost me to have you explain it to the judge whose only lasting memory of college may be the words to 'Louie, Louie'?"

Now here's where one of those surpris-

ing coincidences, which defy probability, always seems to occur when the certainty of mathematics meets the practice of law: The cost of his testimony was *precisely* that of the tuition for his daughter at Cal-Berkeley next semester! "Unless, of course," he went on, "you want more than just the testimony. Then it's another thousand for books and lab fees ... I mean, ahem ... for a written valuation report."

Those of you who have been in the divorce biz for a while may have already guessed the ending to this story, but don't stop me just because you heard it before.

We settled the case without the testimony or expense of the CPA. At a four-way marathon meeting, opposing counsel and I just made up formulas as if we knew what we were doing and kept a straight face throughout, each of us knowing the other was bluffing.

Even the clients got into the mathematical mayhem. Scribbling numbers on legal pads until we all began to shiver with algebraic apoplexy.

It was then that another of those surprising coincidences that defy all mathematical probability occurred. We were able to calculate that the value of the pension after the *Kelly Kredit* was *precisely* the value of the gross equity in the family residence. In the end, my guy got all of his retirement, and his soon-to-be-ex got the house. And we all felt that the job, as simplified, was done and done well. ▀

Go figure.

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