

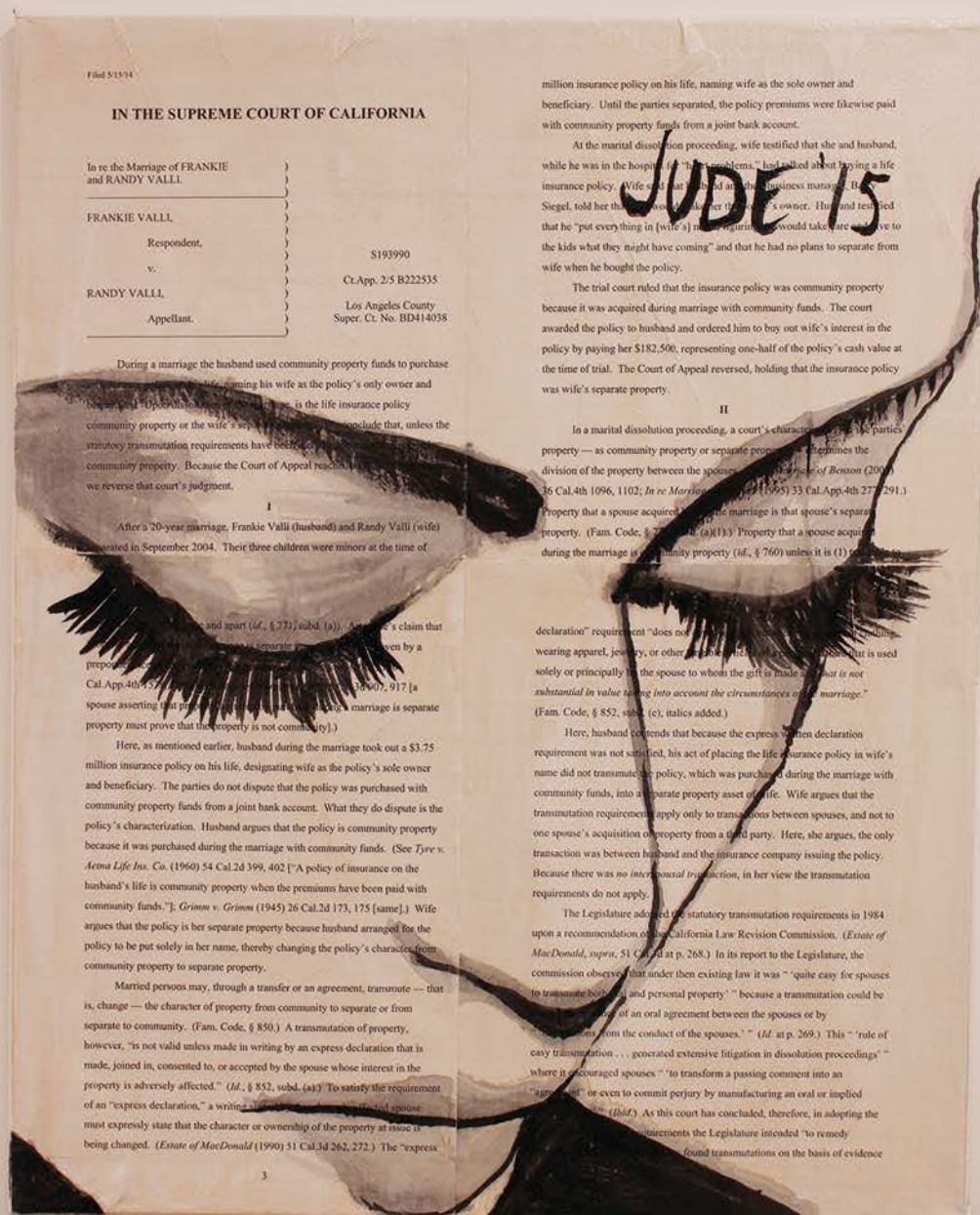
VALLEY LAWYER

AUGUST 2015 • \$4

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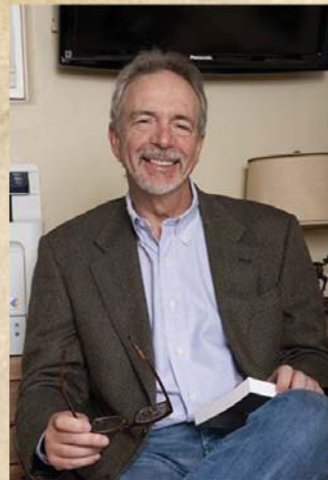


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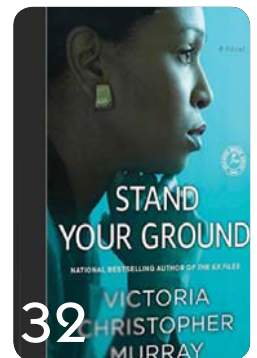
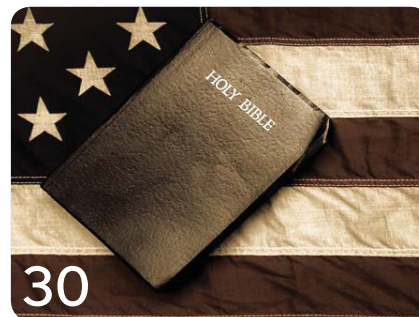
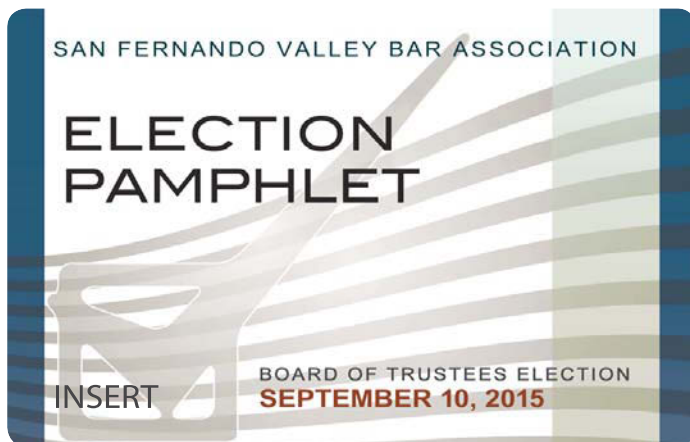
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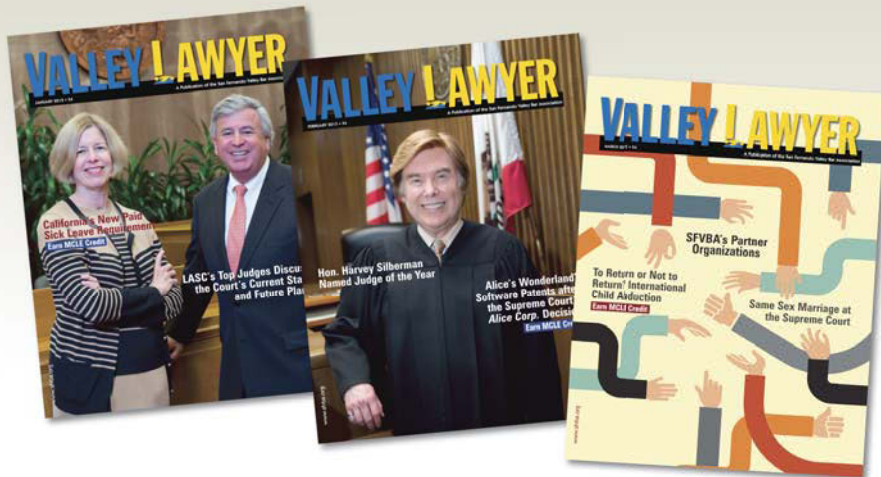
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Liberty and Justice for All

CARYN BROTTMAN SANDERS
SFVBA President



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CHANCES ARE YOU GREW UP reciting the Pledge of Allegiance which culminates with the phrase "liberty and justice for all." What is liberty? What is justice?

According to Merriam-Webster's Dictionary, liberty is defined as "the quality or state of being free;" "the power to do as one pleases;" "freedom from arbitrary or despotic control;" and "the positive enjoyment of various social, political, or economic rights and privileges." Justice is defined as "the maintenance or administration of what is just especially by the impartial adjustment of conflicting claims or the assignment of merited rewards or punishments;" "the administration of law;" and "the establishment or determination of rights according to the rules of law or equity."

In the past year, I have seen same-sex marriage legalized in the United States; the Washington Redskins lose their copyright; riots following different police actions; lawsuits over the right to die; the legalization of marijuana; the removal of the Confederate flag from a state capital; and limited access to the courts.

Each of these events involves and perhaps calls into question the definition and application of the concepts of justice and liberty. This is evident by the fact that many of these events generated mixed reactions with questions about why each of the decisions was made and their possible applications. Can judges or court clerks refuse to marry same-sex couples on religious grounds without violating the law? Should the name of a football team be changed or the use of a flag be prohibited because it may be offensive

or a symbol of something negative? Can a state pass drug laws that conflict with federal laws? Should police conduct be judged in part by race and public opinion? Should bills be tabled due to religious or lobbying pressure instead of popular vote? Can we fail to fund the courts?

As an attorney, I am often asked my opinion on these types of events, or asked to explain them from a legal perspective. And as an attorney, I, too, at times, ponder the basis for the decisions. Each of these questions could be its own law school assignment or bar exam question. They are based on the fundamental principles on which our country was founded, the basic principles in the Constitution, and the principles of "liberty and justice for all." Why then are there so many sides to each argument and is there truly a right and wrong answer?

The arguments surrounding a few of the issues seem to involve concepts that truly go back to the establishment of this country, namely freedom of religion, the separation of church and state, federalism, and the coequal branches of government.

Freedom of religion and the separation of church and state are front and center in the arguments over abortion, same-sex marriage and "right to die" legislation. Religious groups have lobbied for and against abortion for decades and, more recently, about "right to die" legislation and same-sex marriage. "Right to die" legislation has been tabled in California on what many supporters believe are religious grounds.

The U.S. Supreme Court has ruled on the same-sex marriage issue using the power given to them to determine the constitutionality of state laws. Now certain state leaders have determined that court clerks or judges that disagree with the ruling on religious grounds can refuse to follow that ruling. This is fundamentally wrong no matter on which side of the table you happen to be. While we enjoy the fundamental right of freedom of religion (or freedom from religion), we do not have (nor should we have) a fundamental right to violate laws or moot those laws based on religious beliefs.

This is a slippery slope and underscores the importance of the

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separation of church and state. If I feel that I cannot do the job I was hired to do based on my religious beliefs, especially when that job involves the liberties and freedoms of someone else, then I need to find a different job.

If legislators' decision on a piece of legislation is based on their own religious beliefs and not the rights and freedoms of others, they should rethink not only their decision but their choice of profession. If we start to allow legislators, judges,


court clerks, and even police officers to pick and choose what laws they enact and enforce based on religious beliefs, we risk not only losing our system of law and government, but the very freedom of religion they think they are fighting for. Is the next logical extension that if those in power can only enact or enforce laws based on religious beliefs, then the general public can only obey them based on their various religious beliefs? I am confident this would lead to scary

consequences and serve to deprive the vast majority of "liberty and justice for all."

Since I chose to focus this article on the constitutional and fundamental concepts of "liberty and justice for all," I would be remiss in not addressing the issue of access to justice and the funding of the judicial branch, the third and coequal branch of the government. In California, we have endured budget cuts to the courts and have seen the drastic and dramatic effect they have had on access to justice. Small claims courts have been terminated entirely in some counties.

Some litigants have to travel in excess of 30 miles to have an unlawful detainer case heard, while other litigants cannot obtain rulings on child support, custody and dissolution matters in a timely manner. Additionally, the courthouses are in dire need of repair to simply continue to remain open and functioning. We hear from legislators that there are so many other more worthy things that need money that the courts just don't rank high enough on the list of priorities.

I wish I had the answers to this dilemma, but I don't. However, what I do know from grammar school is that the judiciary is the third coequal branch of government. Neither the legislative nor the executive branch of government have faced the budget cuts that the courts have faced and neither branch has been forced to beg for money to merely stay afloat.

"Liberty and justice for all" depends in part on the protections provided by a functioning judicial system. Many of the counties, Los Angeles especially, have really done a great job of improving efficiencies, but access to justice continues to suffer. While the courts did receive some additional funds this year—for which I am grateful—it wasn't enough to bring any of the county court systems back to the necessary level of functionality required to protect public access. Please reach out to your legislators and encourage them to lobby for increased court funding so that liberty and justice can truly be available to all. 

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FROM THE EDITOR

Valley Lawyer Wins SoCal Journalism Award

THIS SUMMER, *VALLEY LAWYER* was honored by the Los Angeles Press Club with a Southern California Journalism Award for Best In-House/Corporate Publication. Executive Director Liz Post and SFVBA Past President and Editorial Committee Chair David Gurnick joined me in accepting the award at the Millennium Biltmore Hotel in Los Angeles on June 28.

The award was granted for our November 2014 New Lawyers' Issue featuring a cover story on World War II veterans and the wisdom they have to share with younger generations.



Featured in that cover story are Ninth Circuit Appellate Court Judge Harry Pregerson, workers' compensation Judge Donald Foster (Ret.), SFVBA Past President Albert Ghirardelli, and retired attorney James Fizzolio. All four are distinguished veterans and local attorneys and judges. It was an honor to have met them and to have been able to highlight their experiences in this publication.

The award was issued after a panel of judges from press clubs nationwide praised Valley Lawyer for its variety of engaging features and departments. They noted that

IRMA MEJIA
Publications & Social
Media Manager




editor@sfvba.org

we "produced a good mix of features, columns and service/advice stories in this issue, which keeps things interesting as a reader moves through the book. Interactive components, like a quiz, and advice stories, like an article offering tips on content marketing a solo practice, are good 'news you can use' elements for readers." The award-winning issue can be viewed at sfvba.org.

This special recognition was earned thanks to the hard work of our staff, including Liz, our talented graphic designer Marina Senderov, and our dedicated volunteer Editorial

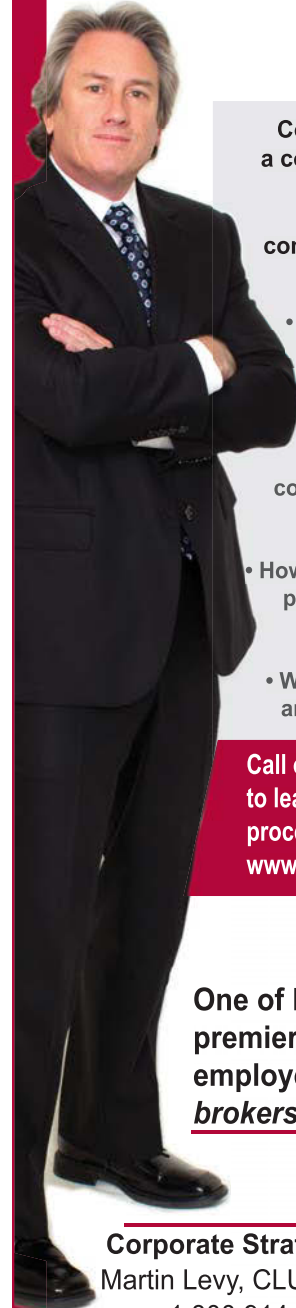


Committee, which includes David Gurnick, Michelle Robins, Lisa Miller, Mark Shipow, Kimberly Offenbacher, Mel Kohn, and Terri Asanovich. Of course, the strength of this publication lies in the contributions of our members like Christopher Blaylock, Anthony Zinnanti and Judge Mary Thornton House who contributed to the award-winning issue.

I encourage members to continue writing excellent articles and to consider joining the Editorial Committee where you will have a direct impact on the future of this award-winning publication. 

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2	Valley Lawyer Member Bulletin Deadline to submit announcements to editor@sfvba.org for September issue.	4	5	Membership & Marketing Committee 6:00 PM SFVBA OFFICE	7	8
9	10	Board of Trustees 6:00 PM SFVBA OFFICE	12	Employment Law Section California Paid Sick Leave: What You Need to Know! 12:00 NOON SFVBA OFFICE Kimberly Westmoreland, Counsel at Klinedinst, PC, will outline the new Healthy Workplace/Healthy Families Act of 2014 which went into effect on July 1. Are you and/or your clients in compliance? A general overview of the law will be discussed highlighting the practical implications on employees and businesses. (1 MCLE Hour)	13	Protecting Your Data 12:00 NOON SFVBA OFFICE See ad below
16	17	Editorial Committee 12:00 NOON SFVBA OFFICE	18	Joint Mixer with Santa Clarita Valley Bar Association 6:00 PM EL PATRON, TARZANA See page 36	21	22
23	24	Multicultural Bar Alliance Annual Summer Networking Reception TAIX RESTAURANT LOS ANGELES	26	27	28	29
30	31					

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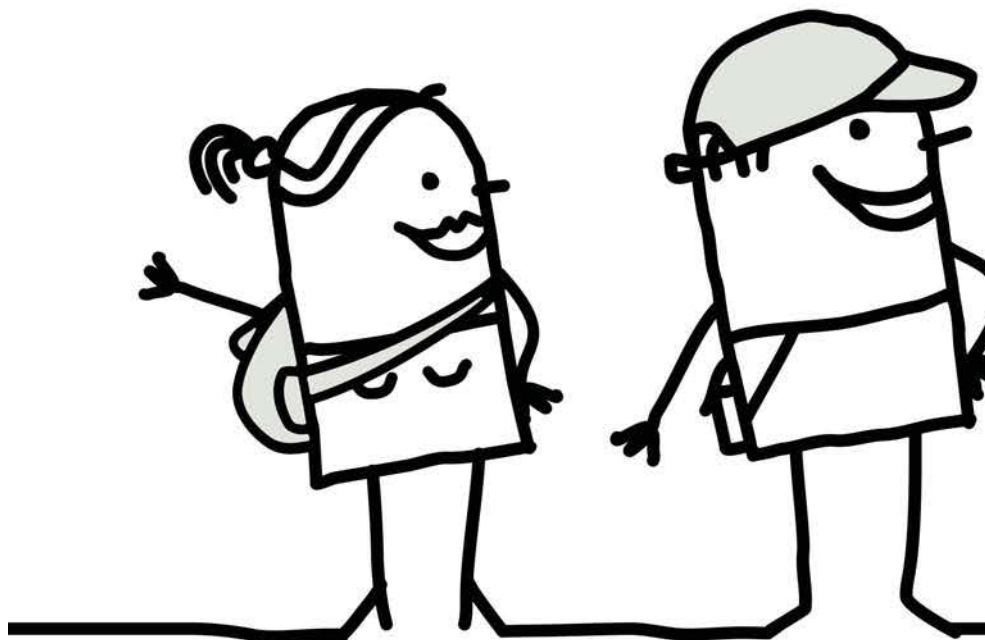
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LATINO HERITAGE MONTH (SEPTEMBER 15 – OCTOBER 15)						
		1 Employment Law Section 12:00 NOON SFVBA OFFICE	2 Membership & Marketing Committee 6:00 PM SFVBA OFFICE	3	4	5
6 Valley Lawyer Member Bulletin Deadline to submit announcements to editor@sfvba.org for October issue. 	7	8 Probate & Estate Planning Section 12:00 NOON MONTEREY AT ENCINO RESTAURANT Board of Trustees 6:00 PM SFVBA OFFICE	9 Business Law & Real Property Section 12:00 NOON SFVBA OFFICE	10 SFVBA ELECTION DAY 	11	12
13 Tarzana Networking Meeting 5:00 PM SFVBA OFFICE 	14	15	16 Workers' Compensation Section 12:00 NOON MONTEREY AT ENCINO RESTAURANT	17	18	19
20	21	22	23	24  INSTALLATION CELEBRATION & LINTZ AWARD DINNER See page 29	25 Bankruptcy Law Section Opinions of the Woodland Hills Bankruptcy Judges 12:00 NOON SFVBA OFFICE Always one of the most important and popular seminars of the year. (1.25 MCLE Hours)	26
27 Family Law Section Domestic Violence 5:30 PM MONTEREY AT ENCINO RESTAURANT Judge Lopez-Giss and attorney Donna Laurent will discuss all aspects of domestic violence. Approved for Legal Specialization. (1.5 MCLE Hours)	28 Litigation Section Calendarling In California State Court-Steps and Traps for the Unwary 6:00 PM SFVBA OFFICE Julie Goren, author of "Litigation by the Numbers," will teach the complexities of calendarling and walk attendees through the steps that must be taken to calendar deadlines correctly, avoiding common mistakes and pitfalls along the way. (1 MCLE Hour)	29	30  Does Your Bar Membership Expire Today? Renew online at www.sfvba.org or call (818) 227-0490			

Fun with Trademarks and Copyrights: Parody, Satire and Lampoon

By David Gurnick

There are distinct differences between parody, satire and lampoon. Intellectual property attorneys should be able to recognize these differences and understand the respective case law to best protect their clients' trademarks and copyrights—or to best argue their clients' fair use of other people's work.





By reading this article and answering the accompanying test questions, you can earn one MCLE credit. To apply for the credit, please follow the instructions on the test answer form on page 20.



PEOPLE KNOW THAT GENERALLY THEY ARE NOT allowed to use other people's trademarks and copyrights. Copying someone else's work or using someone else's trademark in a way that causes confusion is unlawful. But poking fun at someone's trademark, or using someone else's work or brand as social criticism or commentary on the work itself is often permitted if it is parody, satire or lampoon. These combination literary-legal concepts are part of the doctrine of "fair use" which is a defense to a claim of copyright or trademark infringement.

What Are Parody, Satire and Lampoon?

Parody has been defined as "a composition burlesquing or imitating another, usually serious, piece of work." It is "designed to ridicule in nonsensical fashion, or to criticize by brilliant treatment, an original piece of work or its author."¹ Usually, parody requires borrowing from the work being parodied. Otherwise, the viewer or reader or listener would not be aware of the burlesque or imitation, or criticism. Popular examples of parody include *Saturday Night Live's* comic sketches that mock popular celebrities, or *The Simpsons*, *Family Guy*² or *South Park*³ parodies of popular culture.

The U.S. Supreme Court stated that for copyright law purposes, "the nub of the definitions, and the heart of any parodist's claim to quote from existing material, is the use of some elements of a prior author's composition to create a new one that, at least in part, comments on that author's works."⁴ The Supreme Court added, "parody needs to mimic an original to make its point, and so has some claim to use the creation of its victim's (or collective victims') imagination."⁵

Satire has been defined as "a work which holds up the vices or shortcomings of an individual or institution to ridicule or derision, usually with an intent to stimulate change; the use of wit, irony or sarcasm for the purpose of exposing and discrediting vice or folly."⁶ The Supreme Court, indicating a less favored status for satire than for parody, stated that satire, "can stand on its own two feet and so requires justification for the very act of borrowing."⁷ The meaning of satire was also illuminated by the Texas Supreme Court, which stated:

[s]atire, particularly realistic satire, is a distortion of the familiar with the pretense of reality in order to convey an underlying critical message. Satire deals with actual cases, mentions real people by name or describes them unmistakably (and often unflatteringly), talks of this moment and this city, and this special, very recent, very fresh deposit of corruption whose stench is still in

the satirist's curling nostrils. . . . Perhaps the most famous example of satire is Jonathan Swift's 1729 essay, "A Modest Proposal," in which he advocated that the children of the Irish poor be sold and slaughtered for meat. The article was intended to criticize English landlords and political economists, but Swift was widely criticized by those who misunderstood the satire.⁸

The Texas Court noted that the United States has a long and storied "tradition of satiric comment" and that public figures and judges often bear the brunt of satire.⁹

Lampoon "is a form of satire, often political or personal, characterized by the malice or virulence of its attack;"¹⁰ it is a writing that ridicules and satirizes the character or personal appearance of a person in a bitter, scurrilous manner.¹¹ Or it is criticism of someone or something by using ridicule, irony, or sarcasm.¹² Many people will recall *Mad Magazine* as well as *National Lampoon* as publications that ridiculed and criticized many institutions and aspects of American culture. These publications could fairly be called lampoons.

Satire, Lampoon and Parody Applied in Trademark Cases

Trademarks might be used in a parody or satirical manner. This is illustrated in several court decisions. In one case, a manufacturer of a chewy dog toy parodied the famous Louis Vuitton trademark.¹³



Many people may recall the Jordache Jeans brand that was popular in the 1970s and '80s. The brand conducted widespread advertising featuring thin women, viewed at the time as having sex appeal due to their wearing tight fitting Jordache denim jeans. A company decided to parody the brand with a product identified as Lardashe Jeans.¹⁴ The product was "blue jeans for larger women with a smiling pig and the word "Lardashe" on the seat of the pants."¹⁵ The court found that the respective marks were not confusingly similar. The court also noted that when a party "chooses a mark as a parody of an existing mark, the intent is not



David Gurnick is certified by the State Bar as a specialist in Franchising and Distribution Law. His practice also includes licensing and intellectual property. David is with the Lewitt Hackman firm in Encino and is a past president of the San Fernando Valley Bar Association. He can be contacted at dgurnick@lewithackman.com.



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necessarily to confuse the public but rather to amuse.”¹⁶ With regard to the original trademark owner’s objection to being parodied, the Ninth Circuit, quoting the famous parodist Will Rogers, stated:

“Now everything is funny as long as it is happening to somebody Else, but when it happens to you, why it seems to lose some of its Humor, and if it keeps on happening, why the entire laughter kinder Fades out of it.”¹⁷

The court added that the same principle is true in trademark law, noting that “no one likes to be the butt of a joke, not even a trademark. But the requirement of trademark law is that a likely confusion of source, sponsorship or affiliation must be proven, which is not the same thing as a ‘right’ not to be made fun of.”¹⁸

The case of *Tommy Hilfiger Licensing, Inc. v. Nature Labs, LLC*¹⁹ concerned a manufacturer of perfumes designed for pets. The manufacturer created brand names that parodied famous high fashion perfumes for people, such as Timmy Holedigger (parodying the Tommy Hilfiger brand), CK-9 (parodying Calvin Klein’s CK-1), Pucci (parodying Gucci), Bono Sports (parodying Ralph Lauren’s Polo Sports), Miss Claybone (parodying Liz Claiborne), and White Dalmatians (parodying Elizabeth Taylor’s White Diamonds). A District Court noted:

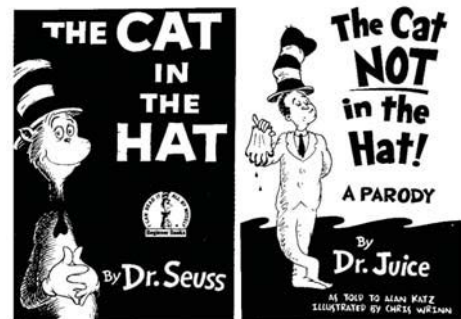
where the unauthorized use of a trademark is part of an expressive work, such as a parody, the Lanham Act must be construed narrowly... Specifically, it has held that the public interest in avoiding consumer confusion must be balanced against the public interest in free speech. Cases finding that First Amendment interests prevail involve nontrademark uses of mark—that is, where the trademark is not being used to indicate the source or origin of consumer products, but rather is being used only to comment upon and, in the case of parody, to ridicule, the trademark owner. In such cases, the parodist is not trading on the good will of the trademark owner to market its own goods; rather, the parodist’s sole purpose for using the mark is the parody itself, and precisely for that reason, the risk of consumer confusion is at its lowest.²⁰

In another case, *Cliffs Notes, Inc. v. Bantam Doubleday Dell Pub. Group, Inc.*,²¹ the Second Circuit ruled that “Spy Notes” was a parody of “Cliff’s Notes.” The publisher of Spy Notes intentionally used some of the identical colors and aspects of Cliffs Notes’ well-known cover design. But the slight risk of consumer confusion from this usage was outweighed by the public interest in free expression.

Some Risks in Using Parodied Marks

Not every claimed parody or satire will be found to be fair use. And labeling a work as parody will not necessarily be effective. After the infamous murder trial of O.J. Simpson, Penguin Books and Dove Audio sought to publish and distribute “The

Cat NOT in the Hat! A Parody by Dr. Juice.” Their work was a “rhyming summary of highlights from the O.J. Simpson double murder trial.”²² Here are the covers of the two books:



The defendants’ title was obviously similar to *The Cat in the Hat* and included a character, named “Dr. Juice,” similar in name, and appearance to the title character of Dr. Seuss’s book. In the following image, from the court decision, Dr. Seuss’ title character is on the left, and a character from the defendant’s work is on the right²³:



The publisher of Dr. Seuss books claimed trademark and copyright infringement and was granted a preliminary injunction. Affirming, the Ninth Circuit stated:

In several cases, the courts have held, in effect, that poking fun at a trademark is no joke and have issued injunctions. Examples include: a diaper bag with green and red bands and the wording “Gucchi Goo,” allegedly poking fun at the well-known Gucci name and the design mark, the use of a competing meat sauce of the trademark “A.2” as a “pun” on the famous “A.1” trademark. Stating that, whereas a true parody will be so obvious that a clear distinction is preserved between the source of the target and the source of the parody, a court found that the “Hard Rain” logo was an infringement of the “Hard Rock” logo. In such a case, the claim of parody is no defense “where the purpose of the similarity is to capitalize on a famous mark’s popularity for the defendant’s own commercial use.”²⁴

In *Wendy’s International, Inc. v. Big Bite, Inc.*²⁵ a small, new chain of sandwich restaurants sought to compete with national chains. Defendant’s TV commercials parodied ad campaigns of other fast food chains. In one commercial, a cute, pigtailed, freckle faced little girl, apparently recognizable as Wendy’s trademarked character, ordered a Big Bite

sandwich and said, "Ain't no reason to go any place but Big Bite."²⁶ That statement parodied a phrase trademarked by Wendy's ("Ain't no need to go anyplace else.").



Big Bite 1983 TV Commercial



Wendy's Registered Trademark
(U.S. Trademark Reg. 936803)

Wendy's claimed the commercial gave the false impression that Wendy's own character endorsed or sponsored Big Bite.²⁷

A U.S. District Court in Ohio noted "it is fairly well established that an advertiser such as Big Bite may lawfully use a competitor's trademark for the purpose of comparing its wares directly to those of the competitor," and added, "no uniform rule exists where, as here, the advertiser compares his goods to those of another implicitly or indirectly by using the other's mark in a satirical or humorous manner." The court noted "courts facing this issue have reached widely different results for widely different reasons."²⁸

The court found that Big Bite's commercials were inoffensive, entertaining and light-hearted spoofs that did not misrepresent or make false statements about Wendy's products. But the court issued a preliminary injunction anyway, because evidence showed there was some confusion between the marks among the buying public.²⁹

Thus, one's belief that his or her conduct is lawful fair use may turn out to be incorrect. A trademark owner's claim may thus result in a finding of infringement.³⁰

Court decisions on whether a trademark usage was parody or satire thus have an element of subjectivity. There is risk that a court may find confusion between usages, and that a use does not qualify as a parody, satire or lampoon, and thus was not a permitted fair use. Potentially serious consequences can follow. The federal trademark law (the Lanham Act)³¹ authorizes a court to order preliminary and permanent injunctive relief, and various measures of damages. A successful plaintiff can recover actual damages, and potentially triple damages. A victim of infringement can require an infringer to disgorge profits attributable to the infringement. Court costs are also recoverable.³² In a case found to be exceptional, the court can also award reasonable attorneys fees to the prevailing party.³³

Parody, Satire and Lampoon in Copyright Cases

Parody, satire, and lampoon have their roots in literature. As such, they are defenses to claims of copyright infringement by works of literature. Establishing that a literary work is a true parody, satire or lampoon can help establish the defense of fair use.³⁴

Campbell v. Acuff Rose Music involved a parody, by a rock music group 2 Live Crew, of an earlier Roy Orbison song, *Oh Pretty Woman*. The Supreme Court analyzed fair use, applying a

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statutory four factor test set forth in the Copyright Act.³⁵ The Supreme Court gave reduced significance to the statute's first factor, which is the purpose and character of the use, whether commercial or nonprofit.³⁶ The statute's second factor, or the nature of the original work, was found by the court to be "not much help . . . or ever likely to help much in separating the fair use sheep from the infringing goats in a parody case, since parodies almost invariably copy publicly known, expressive works."³⁷

With regard to the third factor in fair use analysis (amount and substantiality of the portion of the original used), the Supreme Court found in favor of the defendant, noting that a parody "must be able to 'conjure up' at least enough of that original to make the object of its critical wit recognizable."³⁸ *2 Live Crew* had copied the key opening bass riff (musical phrase) of the original, and words of the first line, comprising the "heart" of the original.³⁹ But the Supreme Court was satisfied this was not "a substantial portion" of the parody itself or "verbatim" copying of the original; it was not a case "where the parody is so insubstantial, as compared to the copying," as to resolve the third factor against the parodist. The Supreme Court was satisfied that "no more was taken than necessary."⁴⁰

Regarding the fourth fair use factor, "effect of the use upon the potential market for or value of the copyrighted work," the Supreme Court noted this factor does not concern injury to the market for the original that results from the parody's critique or disparagement of the original. In other words, a work that critiques another, may well reduce using public's esteem for the work that is the subject of the parody. That result is not relevant to the test's fourth factor. Rather, this factor concerns whether the new work affects the market by acting as a substitute for the original.⁴¹

In a recent case, *Kienitz v. Sconnie Nation LLC*,⁴² a federal court and Court of Appeals upheld a fair use defense by a defendant clothing manufacturer. The defendant used a professional photographer's photo of a mayor, shown below, taken at the mayor's inauguration, as the basis for an image on t-shirts. The defendant had downloaded the photo from the city's website. The defendant then made t-shirts with the phrase "Sorry for Partying," which was a response to the mayor's effort to close down an annual block-party event. The original photo and image that appeared on the t-shirts are shown here:



Original Photo of Madison, Wisconsin Mayor Michael Paul Soglin by Photographer Michael Kleinitz



Image on T-Shirt Made by Sconnie Nation, LLC

The Seventh Circuit commented that there was no good reason why the defendant should be allowed to appropriate

someone else's copyrighted efforts as the starting point for their lampoon, when so many noncopyrighted alternatives, such as snapshots that they could make themselves, were available. The court added that the fair-use defense is not designed to protect lazy appropriators but is to facilitate uses that would not be possible if users had to negotiate with copyright owners. The court also noted that the usage could hurt the photographer's commercial opportunities. But all these considerations did not overcome the fact, in the court's view, that "by the time defendants were done, almost none of the copyrighted work remained."⁴³

But in copyright cases as well, the parody, satire, lampoon defense often does not succeed. In the *Cat in the Hat* case discussed above, the court quoted some content of the defendant's work:

*A plea went out to Rob Shapiro
Can you save the fallen hero?
And Marcia Clark, hooray, hooray
Was called in with a justice play.
A man this famous
Never hires
Lawyers like
Jacoby-Meyers.
When you're accused of a killing scheme
You need to build a real Dream Team.
Cochran! Cochran!
Doodle-doo
Johnnie, won't you join the crew?
Cochran! Cochran!
Deedle-dee
The Dream Team needs a victory⁴⁴*

The Ninth Circuit noted that while these stanzas retell the O.J. Simpson tale, mimicking Dr. Seuss' style, they did not hold his style up to ridicule.⁴⁵ In other words, the defendant used Dr. Seuss' style not to parody or ridicule Dr. Seuss, but to tell their own other story. The fair use defense was therefore rejected, and the preliminary injunction was upheld.

Parody, satire and lampoon can be fun. They are literary tools seeking to poke fun at the expense of the work that is their subject. The result may not be fun for their target.⁴⁶ But in many cases, the courts have ruled that the use of these tools to mock trademarks and copyrighted works is fair game. 

¹ Holman, *A Handbook to Literature*, Third Ed. (Odyssey Press 1972) 380.

² See e.g. *Burnett v. Twentieth Century Fox Film Corp.*, 491 F.Supp.2d 962 (C.D. Cal. 2007) (Dismissing based on defense of parody, claim by Twentieth Century Fox and celebrity Carol Burnett that television show *Family Guy* infringed copyright and violated California's right of publicity. "The episode at issue put a cartoon version of Carol Burnett/the Charwoman in an awkward, ridiculous, crude, and absurd situation in order to lampoon and parody her as a public figure.").

³ See e.g., *Brownmark Films, LLC v. Comedy Partners* 682 F.3d 687 (7th Cir. 2012) (dismissing, on ground of parody, claim that television show *South Park* infringed copyright).

⁴ *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 580 (1994).

⁵ *Id.*

⁶ *Metro-Goldwyn-Mayer v. Showcase Atlanta Co-Op Productions, Inc.* 479 F.Supp.

351, 357 (N.D. Ga. 1979).

⁷ *Campbell v. Acuff-Rose Music, Inc.* 510 U.S. 569, 581 (1994).

⁸ *New Times, Inc. v. Isaacks* 146 S.W.3d 144, 151 (Tex., 2004) (some internal punctuation and citations omitted).

⁹ *Id.* at 151.

¹⁰ *Garvelink v. Detroit News* 522 N.W.2d 883, 886 (Mich. App. 1994).

¹¹ Holman, *A Handbook to Literature*, Third Ed. (Odyssey Press 1972) 286.

¹² Lagoon definition, OxfordDictionaries.com, available at http://www.oxforddictionaries.com/us/definition/american_english/lagoon (last visited July 17, 2015).

¹³ *Louis Vuitton Malletier S.A. v. Haute Diggity Dog, LLC*, 507 F.3d 252 (4th Cir.2007).
¹⁴ *Jordache Enterprises, Inc. v. Hogg Wyld, Ltd.*, 828 F.2d 1482 (10th Cir.1987).

¹⁵ *Id.* at 1483.

¹⁶ *Id.* at 1486.

¹⁷ *Id.* (quoting Will Rogers, Warning to Jokers: Lay Off the Prince, in *The Illiterate Digest*, I-3 *The Writings of Will Rogers* 75 (1974)).

¹⁸ *Id.*

¹⁹ 221 F. Supp.2d 410 (S.D.N.Y. 2002).

²⁰ *Id.* at 414 (citations omitted).

²¹ 886 F.2d 490 (2d Cir. 1989).

²² *Dr. Seuss Enterprises, L.P. v. Penguin Books USA, Inc.* 109 F.3d 1394 (9th Cir. 1997).

²³ *Id.* at 1394.

²⁴ *Id.* at 1405-1406 (internal citations omitted, citing *Gucci Shops, Inc. v. R.H. Macy & Co.*, 446 F.Supp. 838 (S.D.N.Y.1977); *Nabisco Brands, Inc. v. Kaye*, 760 F.Supp. 25 (D.Conn.1991); *Hard Rock Cafe Licensing Corp. v. Pacific Graphics, Inc.*, 776 F.Supp. 1454, 1462 (W.D.Wash.1991)).

²⁵ 576 F. Supp. 816 (S.D. Ohio 1983).

²⁶ 576 F. Supp. at 818. Versions of McDonald's Ronald McDonald character and KFC's Colonel Sanders also appear in the 1983 Big Bite commercial. The commercial can be viewed on the internet at www.youtube.com/watch?v=Dq225Qxl_Us.

²⁷ 576 F. Supp. at 820.

²⁸ *Id.* at 823.

²⁹ *Id.* at 822.

³⁰ If there is doubt about whether a proposed mark may infringe, the potential user could seek declaratory relief. Quality Inns adopted this approach when it sought to establish a chain of economy hotels to be called McSleep Inn. *Quality Inns Int'l. v. McDonalds Corp* 695 F. Supp. 198 (D.Md. 1988). A District Court in Maryland ruled that the proposed brand would infringe the McDonald's trademark, refused to grant Quality Inns the declaration it requested, and enjoined Quality Inns from using the McSleep mark.

³¹ 15 U.S.C. Secs.1051 et seq.

³² 15 U.S.C. Sec. 1117(a).

³³ *Id.*

³⁴ *Campbell v. Acuff Rose Music Co.* 510 U.S. 569, 579 (1994) ("We thus line up with the courts that have held that parody, like other comment or criticism, may claim fair use."). But the defense is not certain. *Id.* at 581 ("The fact that parody can claim legitimacy for some appropriation does not, of course, tell either parodist or judge much about where to draw the line. Like a book review quoting the copyrighted material criticized, parody may or may not be fair use. . . .").

³⁵ 17 U.S.C. Sec. 107.

³⁶ *Campbell, supra* 510 U.S. at 584. ("The mere fact that a use is educational and not for profit does not insulate it from a finding of infringement, any more than the commercial character of a use bars a finding of fairness. If, indeed, commerciality carried presumptive force against a finding of fairness, the presumption would swallow nearly all of the illustrative uses listed in the preamble paragraph of § 107, including news reporting, comment, criticism, teaching, scholarship, and research, since these activities "are generally conducted for profit in this country."").

³⁷ *Id.* at 586. In *Campbell* the original work was a song, which the court found to be at the core of the types of works copyright law protects. Some other types of work, such as copyrighted functional works of a business competitor, could receive even less deference under the second factor.

³⁸ *Id.* at 588.

³⁹ *Id.* at 588.

⁴⁰ *Id.* at 589.

⁴¹ *Id.* at 591.

⁴² 766 F.3d 756 (7th Cir. 2014).

⁴³ 766 F.3d at 760.

⁴⁴ *Dr. Seuss Enterprises, supra*, 109 F.3d at 1401.

⁴⁵ *Id.* at 1402.

⁴⁶ See e.g., *Bourne Co. v. Twentieth Century Fox Film Corp.*, 602 F.Supp.2d 499, 507 (S.D.N.Y.2009) (tune and lyrics of defendants' song I Need a Jew resembled Disney's *When You Wish Upon a Star*. Defendants claimed their song poked fun at Walt Disney's purported anti-Semitism. Though Disney did not write the song or own the copyright, the court accepted this argument as supporting a parodic character and granted summary judgment for the defendant).



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Test No. 82

This self-study activity has been approved for Minimum Continuing Legal Education (MCLE) credit by the San Fernando Valley Bar Association (SFVBA) in the amount of 1 hour. SFVBA certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education.

1. Parody is a work that imitates another work, for comedy, good fun and laughter.
☐ True ☐ False
2. The purpose of satire is usually to stimulate change by using wit, irony or sarcasm to reveal or discredit vice or folly.
☐ True ☐ False
3. Lampoon is in a category by itself, and is not considered a form of satire.
☐ True ☐ False
4. The Supreme Court has ruled that parody need not mimic an original to make a point.
☐ True ☐ False
5. A district court noted that when the unauthorized use of a trademark is part of expressive work, the Lanham Act must be applied liberally.
☐ True ☐ False
6. Courts can determine that a work of parody is not fair use if the intent is to use another person's work not for ridicule or critique but rather as a means for the infringer to tell their own story.
☐ True ☐ False
7. The Copyright Act sets forth a four factor test to assess whether a use is a fair use.
☐ True ☐ False
8. The recent case of *Kienitz v. Sconnie Nation LLC* demonstrates that even a seemingly lazy appropriation of someone else's copyrighted work can be fair use if the final product is a complete transformation of the original work.
☐ True ☐ False
9. Parody usually involves borrowing from the work being parodied.
☐ True ☐ False
10. The Texas Supreme Court determined that satire "is a distortion of the familiar with the pretense of reality in order to convey an underlying critical message."
☐ True ☐ False
11. Publications such as *People Magazine* and *Vanity Fair* are considered examples of lampoon.
☐ True ☐ False
12. In the right circumstance someone else's trademark may be used in a parody or satirical manner.
☐ True ☐ False
13. Courts have quoted Will Rogers' famous saying, "Now everything is funny as long as it is happening to somebody Else."
☐ True ☐ False
14. Courts have ruled that companies have a right not to be ridiculed.
☐ True ☐ False
15. The Lanham Act does not allow courts to weigh the public interest in avoiding consumer confusion against the public interest in free speech.
☐ True ☐ False
16. Courts have determined that true parody is very subtle so that a clear distinction cannot be made between the source of the target and the source of the parody.
☐ True ☐ False
17. Courts have enjoined parody when it is found that the parody can cause confusion among consumers.
☐ True ☐ False
18. The consequences of trademark infringement are minimal.
☐ True ☐ False
19. Diminished public esteem for a work that is the subject of parody is not a relevant factor in determining the parody's effect on the market.
☐ True ☐ False
20. In many cases, the courts have ruled that the use of parody, satire, or lampoon to mock trademarks and copyrighted works is fair game.
☐ True ☐ False

MCLE Answer Sheet No. 82

INSTRUCTIONS:

1. Accurately complete this form.
2. Study the MCLE article in this issue.
3. Answer the test questions by marking the appropriate boxes below.
4. Mail this form and the \$20 testing fee for SFVBA members (or \$30 for non-SFVBA members) to:

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| 2. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 3. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 4. | <input type="checkbox"/> True | <input type="checkbox"/> False |
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| 20. | <input type="checkbox"/> True | <input type="checkbox"/> False |

SAN FERNANDO VALLEY BAR ASSOCIATION

ELECTION PAMPHLET

BOARD OF TRUSTEES ELECTION
SEPTEMBER 10, 2015

Dear SFVBA Member:

Attorney members of the San Fernando Valley Bar Association have the unique opportunity to elect their Bar Leaders by voting in our annual Board of Trustees election. By allowing members to choose from a ballot of candidates rather than a predetermined slate, our Board of Trustees is more representative of our membership.

Ballots will be mailed to attorneys the second week of August. Election Day is September 10. I encourage members to take a few minutes to review the following Election Pamphlet and read each candidate's statement. The nominees have contributed to the programs and success of our organization, and represent a cross-section of our Sections, areas of practice and our community.

Thank you for your support and membership this year. I appreciate you giving me the opportunity to serve you.



CARYN BROTTMAN SANDERS
President
San Fernando Valley Bar Association



CAROL L. NEWMAN

PRESIDENT



I'm honored and very proud to be the next President of the SFVBA and (so far as I'm aware) the first openly LGBT President. I have had the pleasure of working with President Caryn Sanders this past year as President-Elect. I'm a member of the Membership & Marketing, Sponsorship, and Diversity Committees, and a past Co-Chair of the former Business Law, Real Estate & Bankruptcy Section. I'm also one of the Bar's liaisons to the Multicultural Bar Alliance, a unique organization of Los Angeles-area bar leaders of which the SFVBA is proudly a member.

The theme of my term as President will be "Claim our Power," referring to our position as one of the largest and most prestigious regional bar associations. We represent a geographic area which, if it were a separate city, would be the fifth largest city in population in the United States. We have a mission to represent this very diverse and growing population.

I have two goals. First, I want to create more opportunities for our members to network with each other and to establish more relationships with other networking partners so that our members can develop more business. Second, I want to establish relationships with other bars and officeholders to expand the visibility and influence of our Bar. I look forward to serving as your President for 2015-16.

KIRA S. MASTELLER

CANDIDATE FOR PRESIDENT-ELECT



I am honored to be running for President-Elect of the SFVBA. Through my many successful years on the Board, most recently serving as Treasurer and Secretary, I feel I have gained a great deal of experience with respect to the machinations of running our community Bar Association. I look forward to continuing the standard of excellence we strive for.

We provide many opportunities for our Members to network, to become involved in community and legal programs, to earn MCLE credits (often without expense), to enjoy access to research, to meet and celebrate our local judges, and gain relationships with other lawyers to share business or share ideas.

I will be working with our Board to continue providing great service, planning more meet-and-greet business and resource opportunities, creating interesting education and community programs, and generating new ways to use our membership in beneficial ways.

I invite ideas from all of our Members and thank you for allowing me to be of service to our Bar Association.

ALAN E. KASSAN CANDIDATE FOR SECRETARY



I am honored to have been nominated for the position of Secretary of the San Fernando Valley Bar Association Board of Trustees.

I have faithfully served as a Trustee on the Board since 2012, and have been an active participant at Board meetings and Board events. I have also served as Chairperson of the Association's Membership & Marketing Committee over the last year. That Committee meets monthly and is always working not only to attract new members, but to find new ways to enhance Association membership for existing members. I hope to continue my service as a Trustee, and my work on the Membership & Marketing Committee and ask that you support me.

I am a San Fernando Valley native. I have also raised my own family, and practiced law here for the last 29 years. Serving my community has always been a part of my DNA. I have acted as a Judge Pro Tem, a volunteer mediator, and have been active with a variety of professional and non-profit Boards and Associations over the last many years.

My law practice is very specialized but also service oriented. I represent employees and other insureds to help them recover benefits for life insurance, long term care insurance, long term disability insurance, and health insurance claims when they are wrongfully denied.

With your vote and support I hope to continue serving our community as a member of the Board of Trustees, and to help advance the stature of our Association. I invite and encourage all members to become more involved in our Association, and if you have questions or ideas, email them to me, or anyone else on the Board!

THANK YOU FOR YOUR VOTE!

ANIE K. AKBARIAN CANDIDATE FOR TREASURER



I am honored to have been nominated for Treasurer of the San Fernando Valley Bar Association. It has been a privilege and a joy to serve the Bar, our members and the legal community by being an active participant as a Trustee of the Board. I have had the honor to work with some of the most brilliant and dedicated individuals.

I am a trial attorney practicing and litigating both plaintiff and defense cases involving personal injury, civil litigation and family law for almost eighteen (18) years. I have offices in Encino and Glendale. I speak, read and write fluently Farsi and Armenian as a second language.

I also serve as a Los Angeles Superior Court Temporary Judge for over ten years. Since 2011, I have also become a panel attorney for the Los Angeles Police Protective League and continue to serve our men and women in uniform.

I look forward to having the honor of becoming an officer of the SFVBA. I hope that you will support me for Treasurer.

Anie N. Akbarian, Esq.

JONATHAN BIRD CANDIDATE FOR TRUSTEE



As a Trustee for the San Fernando Valley Bar Association, I would like to continue my work with the various committees I serve on. Being a Trustee has been truly rewarding, and I have enjoyed working to build our great organization for the benefit of our members and community. I continue to serve on the Attorney Referral Service Committee, which has helped me to understand both the micro and macro issues affecting our growth. As a member of both the Board and the ARS Committee, I have been able to share insight of the inner workings of each, hopefully for the benefit of both, and the membership as a whole.

I have practiced law in the San Fernando Valley for over 17 years, first as an insurance defense lawyer, before transitioning to the other side at a plaintiffs' firm, before opening my own firm in 2010. Today, I devote most of my practice to representing consumers and small businesses in litigation matters in state and federal court.

Being a trial lawyer has taught me a great deal about humility and the importance of giving back and has led to my side projects in civil rights actions. It is my hope to continue to serve the community on the Board, with the ARS and through my other volunteer activities with the courts and Public Counsel.

I would like to continue to use the position on the Board of Trustees as an opportunity to strengthen the Association and to reach out to our local community to let them know we are here as a trusted asset and a place they can turn to for solid lawyer referrals by improving our court and community outreach system. With that, we can all reach more clients, benefitting the community as a whole.

VITO A. CONSTANZO CANDIDATE FOR TRUSTEE



I am honored to be running for a position on the Board of Trustees of the San Fernando Valley Bar Association. I have lived in Tarzana for 26 years. Early in my career, I worked as a Deputy District Attorney in the Valley—at the Van Nuys and San Fernando courthouses. I have been very active in the community, including leadership positions with the UCLA Alumni Association and St. Anne's Home.

If elected, I would work to bring substantive programming to our members that would be useful in their practices and to increase networking opportunities.

Thank you for considering me for the Board of Trustees.

WILLIAM A. DANIELS
CANDIDATE FOR TRUSTEE



IT'S AN HONOR TO BE INCLUDED
WITH SUCH
DISTINGUISHED CANDIDATES.

VOTE FOR ME.

FREE BEER.

Bill Daniels

DANIELS LAW

BARRY P. GOLDBERG
CANDIDATE FOR TRUSTEE



I am honored and humbled by the opportunity to serve my community as a member of the Board of Trustees for the San Fernando Valley Bar Association. I am now in my 30th year of practice and am proud to both live and work in the San Fernando Valley. In fact, I am a native of the Valley and lived my entire life here. As such, I have a unique viewpoint about the Bar Association's position in our community.

I have been the Co-Chair of the Attorney Referral Service Committee for the past four years and was originally recruited by former Bar President Alan Sedley. I have been particularly inspired by great leadership of the past presidents, David Gurnick, Adam D.H. Grant and Caryn Brottman Sanders. I believe that I can add to their excellent legacy of innovation and service to my community.

My small personal injury plaintiff firm has grown considerably in the last few years as a result of a lifetime of in person networking and, more recently, understanding and successful online presence. It is my hope that I can bring the skills I have learned to a wider audience and help the Bar Association evolve during a time of considerable change in the practice of law in Southern California. I operate my law firm at the highest ethical levels, with transparency and personal responsiveness. My commitment to the Bar will be the same.

My main focus if elected will be to engage younger lawyers in Bar activities and programs. As a personal mentor to several first and second year lawyers, it is apparent that their initial experiences practicing law are far different from when I began practicing. I believe the Bar Association has the potential to supplement early training and instill the core values which have made our community great: skill, ethics, and charity. I ask for you to vote for me for Trustee of this great organization.

PETA-GAY GORDON CANDIDATE FOR TRUSTEE



The opportunity to run for a seat on the San Fernando Valley Bar Association's Board of Trustees is not taken lightly. I moved to the San Fernando Valley from Kingston, Jamaica at the age of nine, and have lived here ever since. While attending Tarzana Elementary, Portola Middle School, then El Camino Real High School, I met, and befriended, other immigrants from a variety of countries, as well as native Californians. These connections provided unparalleled insight about SFV's diverse culture and instilled within me respect for those who call it their home.

After going as east as possible in L.A. County to attend Claremont McKenna College, I returned to SFV and commuted to USC Gould School of Law. I am now a Partner at Oldman, Cooley, Sallus, Birnberg & Coleman, LLP in Encino, where I have been practicing trusts and estate law since February 2006. I made a commitment to help clients navigate through the complex court system while facing life's most difficult challenges, and have achieved this goal by working diligently and creatively to meet their needs.

The San Fernando Valley Bar Association is our diverse community's direct link to legal resources. It is also the institution to which we, as legal professionals, can turn to continue our legal education, to improve our practice and to give back to the community. As an attendee of the Probate & Estate Planning Section's monthly lunches, I have witnessed the educational and networking opportunities the Bar Association provides to fellow attorneys. As a Trustee on the Board, I would apply my skills and respect for SFV's residents to assist the Bar Association in strengthening its relationship with the community and its legal professionals. Most meaningful to me would be the opportunity to give back to the community that welcomed me to this country.

ALEXANDER J. HARWIN CANDIDATE FOR TRUSTEE



Thank you for your consideration for my second term on the San Fernando Valley Bar Association (SFVBA) Board of Trustees. Many of you know me through family, as a friend, as a colleague, as opposing counsel and/or through business. For those I have not had an opportunity to meet, the following should provide a little background.

Like many of you, I was born and raised in the San Fernando Valley and moved over the hill post-high school to attend UCLA and then Loyola Law School. In 2004, I moved back to the area after getting engaged to my lovely wife Sandy. Wasserman, Comden, Casselman & Pearson graciously took a chance on me out of law school, and Lewis Brisbois Bisgaard & Smith LLP (Lewis Brisbois) hired me a few years later.

As a partner at Lewis Brisbois, my practice concentrates on advising and defending employers from claims of wrongful termination, discrimination and wage/hour violations. I have been a member of the Beverly Hills Bar Association's Labor & Employment Executive Committee for many years and rose through the ranks to become Chair of the Section in 2011.

After our first family home purchase, it was clear that it was both personally and professionally prudent to become more Valley-centric. As a result, I jumped on the opportunity to take over for Judge Michael Hoff on the SFVBA's Board of Trustees last spring.

On a personal level, I was attracted to the SFVBA's philanthropic endeavors and the fact that my children Logan (6) and Jacob (3) could actively participate in events such as Blanket the Homeless. On a professional level, I strongly believe that being an active SFVBA member has significant business generation value. As a Trustee, I am committed to further developing the SFVBA as an asset to Valley attorneys. One way that I can contribute to business generation is that as a partner at a large law firm, I frequently receive inquiries for attorney referrals outside my firm's practice areas. I look forward to working with you and learning about your ideas as well. Thank you again for your support.

DAVID G. JONES

CANDIDATE FOR TRUSTEE



I am excited to be nominated and have the opportunity to serve on the SFVBA Board of Trustees. I believe in the importance of our bar association as a means for connecting the bar of the San Fernando Valley.

I have been practicing in various areas of civil litigation for nearly nineteen years, fifteen of which have been in the San Fernando Valley, in Woodland Hills. The primary emphasis for my practice has been employment law, advice and litigation.

My firm, Santiago & Jones, specializes in employment law, transactional estate work, complex probate and estate litigation disputes, and general civil litigation matters.

I am an active member of the SFVBA Attorney Referral Service for employment matters, and a member of the Employment Law Section of the Bar. My involvement with the Bar referrals has been very rewarding, and is a highlight of my bar activities. Clearly, the guidance that our Bar Association provides to Valley residents in need is one of SFVBA's lasting accomplishments.

The foundations built by past leaders of the Bar such as the referral service is part of what differentiates the SFVBA from other bar associations. I have relationships with various past presidents and officers of the SFVBA and consult with them regarding their thoughts on improving the bar association.

My primary focus is to increase membership and energize member participation through social functions offered by our Bar Association. I believe that the ability to network with fellow bar members with various areas of legal expertise can prove invaluable for both new members and established attorneys in the community. Given the relationships created at such events, our Bar should strive to create member friendly events which attract new members and encourage existing members' relationships. I will work to dedicate resources for such events and strive to take advantage of the numerous great Valley venues for these purposes.

So with this, I ask that you cast your vote for me. I will work tirelessly to bring energy and creativity to the SFVBA, in an effort to improve our bar association and honor your trust. Thank you for your support and vote.

MARLENE SELTZER

CANDIDATE FOR TRUSTEE



Vote for Teamwork

Please vote to allow me the privilege of representing you and our colleagues as the voice of our SFVBA membership. My door, telephone and email are always open to your suggestions. Together we can help our bar grow and provide benefits to our members by networking to better represent our members and the legal needs of our community. Let's work together to build the reputation of our Bar as one that cares for our members and the public!

President's Award

For almost two decades, I have volunteered and supported the San Fernando Valley Bar Association to the magnitude of receiving the President's Award for outstanding service and dedication.

SFVBA

Probate & Estate Planning Section, Women Lawyers Section, Senior Center, Conference of Delegates, Nominating Committee, Website Committee, 100th Anniversary Committee, Probate Volunteer Panel, Special Events, Monroe High School Self-Help Clinic, Mediation Advocacy, Educational Seminars.

Law Practice

I am an active Elder Law and Estate Planning Attorney focusing on Probate, Special Needs Trusts, Conservatorships, Trust Administration and Medi-Cal Long Term Care. I recognize the importance of listening as a valuable tool in identifying and solving problems for my clients ranging from 3 years old to 99 years old.

Endorsements

Seymour Amster, David Gurnick, LeAnne Maillian, Marc Sallus, Laura Conti, Roxanna Kaz, Carol Newman, Alan Sedley, Gerald Fogelman, Richard Lewis, Judith Perez, Mina Sirkin, Diane Goldman, Kira Masteller

JOHN F. STEPHENS

CANDIDATE FOR TRUSTEE



I am honored to be nominated to serve as a Trustee. I previously served as a Trustee from 2009-2011 and as Co-Chair of the Intellectual Property, Internet & Entertainment Law Section from 2005-2012. I am currently the Chair of the Inclusion & Diversity Committee.

I am a partner at Sedgwick LLP in Los Angeles. With 20 years of experience, my practice focuses on media law, intellectual property and cyber security.

I dedicate my time outside the office to further the issue of diversity in the legal profession. In past years, in addition to serving as chair of the SFVBA's Inclusion & Diversity Committee, I have held several leadership positions within GLAAD, including serving as the organization's Co-Chair.

I believe that working to improve the SFVBA is important for the advancement of the legal profession and our community. Bar associations bring together talented attorneys for the purpose of bettering the profession and helping the local community. These help foster positive changes and offer the opportunity for all the members to learn and assist one another to succeed.

TONI VARGAS

CANDIDATE FOR TRUSTEE



I am honored to have been selected to run for a second term on the Board of Trustees. My first term has been a year of learning. I hope to receive your vote so that I can continue to serve on the Board and continue to support and assist our Bar Association in its many efforts to ensure the highest standards in our legal community. In addition to the programs and events that support our legal community, there are services and projects that directly impact members of our community who are most at need.

I am a public interest attorney who has worked for Neighborhood Legal Services of Los Angeles as a health law staff attorney for the past 12 years. I am inspired by the San Fernando Valley Bar Association's commitments to our community through annual events such as Blanket the Homeless. As a member of the Board of Trustees, I am able to use my time and energy to ensuring this association remains strong, growing and respected. Thank you for your consideration.

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ART OF THE BAR

Winners of the Valley Lawyer Art Contest

By Irma Mejia

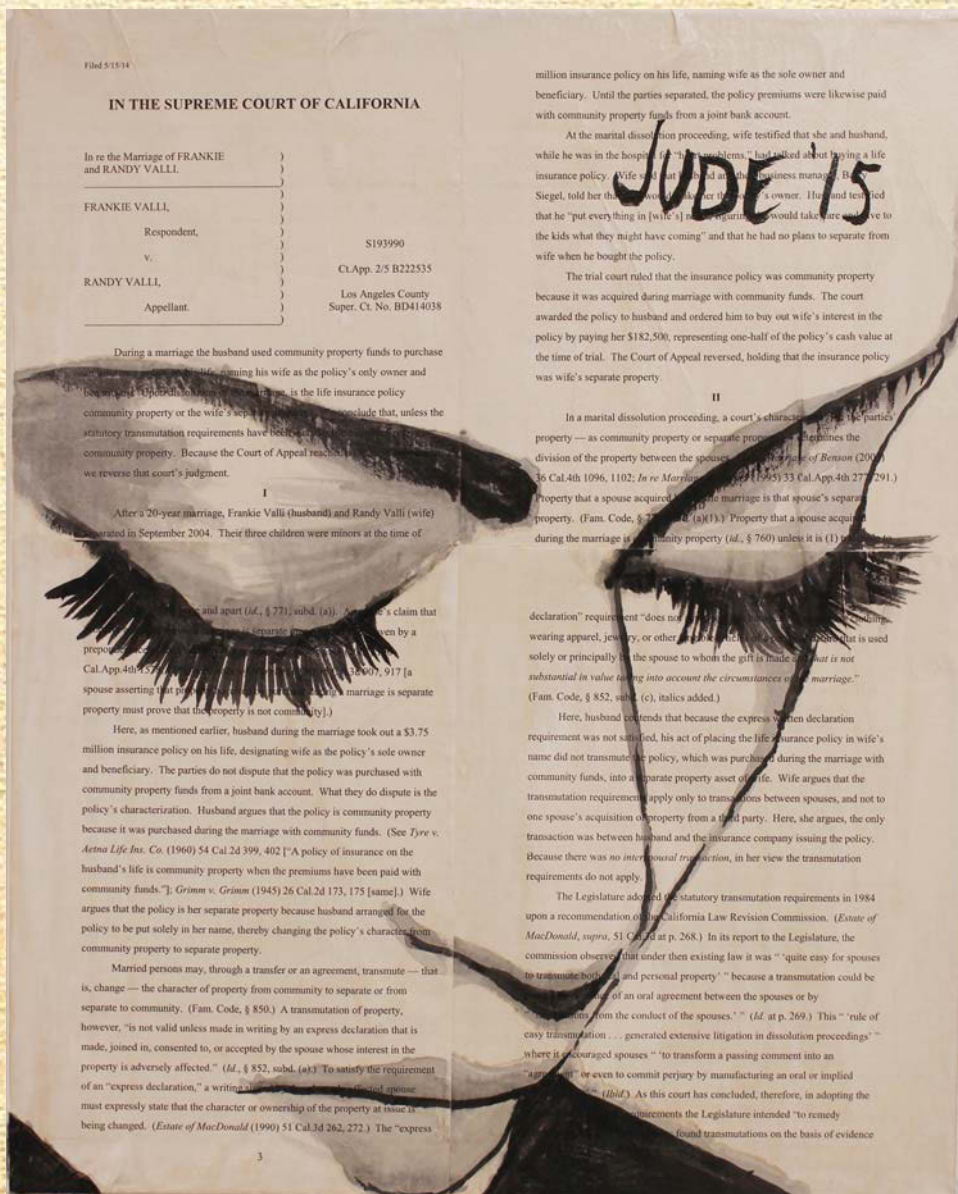


When our art contest was first announced in May, we could not predict the response it would generate. The judges were excited by the number of entries but also by the amount of talent displayed in each work of art. According to one of the judges, the contestants easily could be full-time artists instead of lawyers. While the judges wanted to provide honorable mentions to all the entries, space constraints only permit us to present a few. The following pages feature the winners and runners-up in the first-ever *Valley Lawyer Art Contest*. We expect you'll be just as impressed as our judges were.

1ST PLACE: Exhibit I: Big Girls Don't Cry Jeremy Salvador

14" x 18" Ink on copier paper adhered to canvas

Perhaps the most anticipated California Family Law ruling of 2014, *In re Marriage of Valli*, helped put to rest the tensions between two conflicting presumptions—that of Cal. Evidence Code §662 (title presumption) vs. Cal. Family Code §2581, which presumes property acquired during the marriage is community property. Created with pages from the ruling stained with coffee and painted with calligraphy ink, the title of the artwork is aptly derived from one of litigant's famous songs.



JEREMY SALVADOR, also known by the artist pseudonym Jude, is a forensic accountant by day and a contemporary artist by night. He has been painting for over two decades. He has been at Miod and Company, LLP in Valencia as an accountant since 2009 and can be reached at jeremy@miod-cpa.com. More of his artwork can be viewed at www.jude.ink.

ARTIST'S INSPIRATION

"One of the documents on my desk had been stained by my coffee mug. Perhaps it was the stresses of the day, but in that moment there was something beautiful about its aesthetic simplicity, the ink contrasted with the stained background. That document was the Valli case and the piece eventually became the one seen here. Currently, all of my art is created with legal and business documents, painted with varying dilutions of calligraphy ink and stained with coffee. I want to show the beauty I find in these documents and break down the preconceptions of the kind of personality who chooses to become an accountant. If my pieces can provoke the kinds of notions and emotions that leave an indelible impression on the viewer, then I will have accomplished my purpose."

JUDGES' COMMENTS

"The artwork was so original. I admire how he combined the law with pop culture."

"It is current, creative and very thought provoking."



2ND PLACE:

Working Puzzles: A Love Poem

Sandra Cannaday Knapp

ARTIST'S INSPIRATION

"For the past year or so, I have been working picture puzzles as a way to work my brain and am amazed at how I can remember a piece that should fit when I see it. The part about my cat refers to the only one out of three that is allowed to sit on the table where I work my puzzles. I wanted to write a happy poem about our never-ending search for love. This is why I called it a love poem, because we know when we meet "the one" we have been searching for."

JUDGES' COMMENTS

"The words flowed off the paper. The format was a work of art itself."

"Loved the puzzle!"

The hardest puzzles are ones where
Pieces seem to fit, but don't.

The right blue gleams of glass,
And you try many The exact dancing color of leaves
Times to make Green, unaware of anything but sun,
Them fit, because The full numbers of innies and outies.
They are just the right
Bend or curve, tall or squat, and the one

You hold in your hand is such a pretty piece
You don't want to let it go. Then
Lazes prettily near. **You set it aside, though not**
She is the only one **Very far, since a soft, furry cat**
You allow on the table,
Where she nuzzles and purrs.

But, every once-in-a-while a small, languid paw drifts
Over the finished part, quietly, almost not there, and
Toes a stray tile she would like to scamper

Away with. You just pet her, shove
To play with, but Her soft clawed palm aside, say
I understand the In a gentle voice: "They aren't yours
The allure." You

Go back to your search, perusing other colors, other
Shapes, smooth, knobby and keeping you from sleep.

Then, suddenly, you smile inside and out,
Speaking again: "There you are! The one I was
Looking for!"



SANDRA CANNADAY KNAPP has practiced family law for over 31 years and has been a poet since the age of 19. Her book of poems, *Woodwinds*, was published in 1998. She has compiled two new books which she hopes to publish soon. She can be reached at sandracknapp@gmail.com.

3RD PLACE:

The Adventures of Fiona the Fig Tree

Ken Tennen

The day that her mom told her that the family was going to move to Texas, Olivia smiled and pretended to be thrilled. Her mom and dad were very excited about the move and even Buster wagged his tail, although Olivia wasn't sure Buster fully understood the conversation. She was pretty sure that Buster was just happy that Olivia's mom and dad were enthusiastic about something. Olivia decided she needed some time to think about the move.

For Olivia, the best place to think about serious things was in her favorite tree, an enormous black mission fig tree. She climbed its sturdy limbs higher and higher until she reached the platform her dad made for her about three-quarters the way up. Olivia hadn't given it much thought until that day, but now she realized that her fig tree platform was her favorite place on earth. She had seen pictures of tree houses and had asked her dad to help her make one. But before they started the project, she told her dad that she only wanted a platform, not a full treehouse with walls, windows, and a door.

The platform was also special because only Olivia ever went up there. In fact, once the platform was in place, Olivia was the only person who had ever sat on it. Her dad suggested that they could make a ladder, but Olivia decided against the idea. Her mom and dad weren't big tree climbers to begin with, and most of her school friends either were afraid to climb that high or were not allowed by their parents to climb tall trees. Right after her platform was finished, she secured Buster in his hoist-basket and pulled him up to her platform on a sturdy rope she found in the barn. Right away, Olivia could see that Buster didn't like the platform, didn't like the hoist basket, and didn't like the rope. When she lowered him back to the ground, he jumped out of the basket and spun around in happy circles.

As Olivia sat on her platform, gazing out at all of the fruit orchards below, she began to miss her home, her trees, and her platform. How can she miss something before she had even left? The family wasn't going to move to Texas for six months, so she still had plenty of time to enjoy herself until moving day! But that thought didn't help her feel better. She wondered if the new people who would move

into the house would take as good care of the fruit trees as she and her dad did. Would the new people have kids? Maybe they will have a girl like her! And if they did, she might make friends with Mr. Spaulding and climb the fig tree and enjoy the platform!

The more she thought about it, however, the less she liked the idea of someone else taking her place. She wondered if Mr. Spaulding would remember her after she was gone. Of course he would, she thought to herself, Mr. Spaulding remembered everything. She had considered asking her dad to help her take down her platform but

decided that was just her being mean. Why not let the new girl enjoy the platform? What new girl? She didn't know if there was going to be a new girl living in their house, or a boy, or older kids, or people without any kids at all.

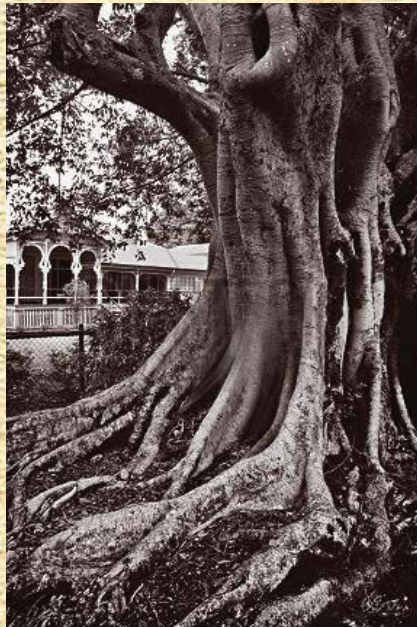
Whenever Olivia stayed a long time on her platform, Buster would run down the hill to a shady spot where he could keep an eye on her. If she made any move to climb back down, Buster would race up the hill and be waiting for her by the time she reached the ground. That was, of course, unless Buster fell asleep because Olivia spent too long sitting on her fig tree platform. Sometimes, when the platform was in the sun, Olivia would lie on her back, letting the sunshine warm her skin. But on sunny days, her mother would make

her put lotion on her skin to avoid sunburn. Olivia hated the smell of the lotion so she never spent too long lying in the sun. She knew that if she came back to the house with even slightly pink skin, her mother would remind her about the lotion and make a big deal about it.

Olivia was lying on her platform thinking about the move to Texas, the fig tree, her platform, and keeping track of her time on the platform to avoid the lotion discussion, when she heard Mr. Spaulding calling her name. Sure enough, when she looked down, she saw Mr. Spaulding playing with Buster at the base of the fig tree. They got along great.

"Are you going to stay up there forever, girl?" Mr. Spaulding yelled up at her. "Buster, here, tells me that you've been up there for days now!"

"Oh, Mr. Spaulding! You know Buster exaggerates!"



Olivia yelled back, starting her climb back down to the ground.

"Don't be silly, Olivia," Mr. Spaulding replied, looking up at her as she climbed her way down through the tree branches. "Buster is a dog and dogs don't talk."

Olivia laughed, but it was only half a laugh. "But you just said....."

"I said no such thing!" Mr. Spaulding interrupted. "Anyway, I can tell something is on your mind, Olivia. Do you want to share it with me? Tell me what's going on with you, Sweetie." Mr. Spaulding called her "Sweetie" sometimes. Actually, he called her that a lot. She liked it when he called her that. Her mom and dad just called her Olivia.

Olivia got on her hands and knees and began wrestling with Buster, something they both enjoyed a lot. While she wrestled with Buster, she thought about how she was going to answer

Mr. Spaulding. She didn't exactly know how to tell him what was bothering her.

Mr. Spaulding waited patiently while Olivia finished playing with Buster, brushed the dirt and dust off, and stood facing him. "Well, you know we're going to move to Texas in a few months, Mr. Spaulding, and I was thinking a lot about that."

"I see," said Mr. Spaulding. Olivia didn't say anything, even though she knew that Mr. Spaulding was waiting for her to tell him more about what was bothering her.

"It's going to be great! We're going to be in a new house – well, it's an old house but a new house for us I mean....." she began rambling.

"And that's what's bothering you, Olivia?" Mr. Spaulding looked into her eyes as if he could hear what she was thinking.

"No, that's the good part."

"I see," Mr. Spaulding patiently said again.

"It's just that there is a part of me that doesn't want to leave California at all. I'm sure everything will be fine in Austin, the new school, new friends, but I am already missing being here. I know that sounds stupid but...."

"Why, that's not stupid at all, Olivia. That's perfectly normal. You've been here most of your life and it's what you know, what you're used to. Does your place in Austin have any trees for you? I know that you're somewhat partial to trees!" Mr. Spaulding said, smiling at her.

"Dad told me that there lots of pecan trees on the property we're moving to, but he also said that the pecan trees aren't very good for climbing."

Mr. Spaulding laughed. "Why would anybody plant a tree, like a pecan tree, if it's never going to be a good climbing tree?"

Olivia tried her best not to laugh, but she knew what Mr. Spaulding was going say next. A little giggle escaped just as Mr. Spaulding said, "Why.... they must be nuts!"

Mr. Spaulding could always cheer Olivia up and put her in a happy mood. "But I will miss this fig tree and my platform and the orchard and you." She began to tear up.

"In that order?" Mr. Spaulding said, looking down at her, one eyebrow raised.

"No! Of course not!" Olivia began, until she realized that Mr. Spaulding was only teasing her. Then she added, "I'm both happy and sad about moving away. I love being here and I love this fig tree and the orchard, like I said, so I'm sort of sad about that."

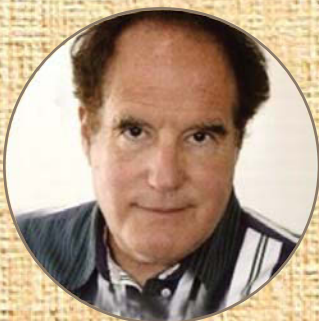
"Well then!" Mr. Spaulding said in an enthusiastic voice, "Why not take the fig tree with you?"

Excerpted from the original which can be found at www.sfvba.org.

JUDGES' COMMENTS

"It is a well-written, original story I would share with my 9-year-old daughter."

"A sweet story, perfect for children. Even adults planning a big move with kids would benefit from this tale."



KEN TENNEN is a probate and estate settlement attorney based in West Hills with nearly twenty years of experience. He can be reached at ken@tennenlaw.com.

ARTIST'S INSPIRATION

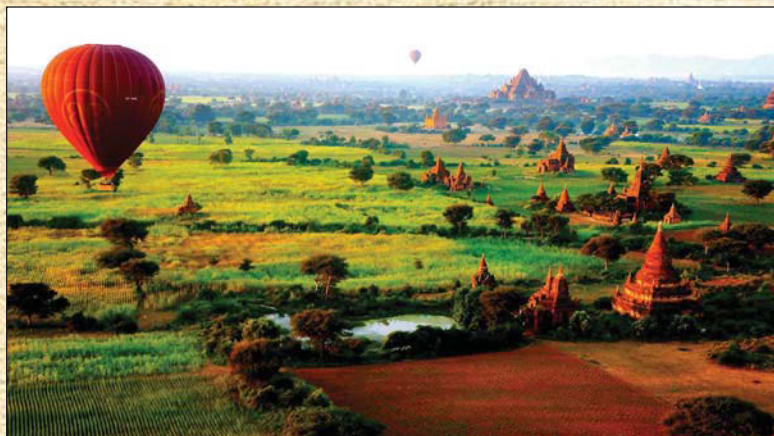
"I was inspired to write the story when my wife and I brought an air-layered clone of our family fig tree to Austin, Texas, where our two sons live. It was my wife, Diane, who suggested that I write a young readers' story. I write a lot of stories but very few of them are for children or young readers. I am working on a novel wherein the population of the world is reduced from seven billion to seven million. It is not a young reader's book, but if I publish it, I may do a version appropriate for high school students."

HONORABLE MENTIONS



Bagan, Myanmar
Brian Michaels

**The Law Office
of Brian Michaels**
Encino
brmlaw@aol.com



Night Landscape
Robert A. Weissman

Weissman & Weissman
Westlake Village
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HOLY BIBLE

Does *Obergefell v. Hodges* Imperil Religious Liberty?

By Brian J. Goldenfeld

WHenever government assumes a greater role in a societal or cultural debate, we must expect both intended and unintended consequences. The U.S. Supreme Court's decision to make same-sex marriage a constitutional right under the Fourteenth Amendment will generate huge conflicts—in some cases unforeseen—with the First Amendment right to the free exercise of religion.

Until this constitutional showdown is ultimately decided, the campaign on the part of some same-sex marriage advocates to vigorously go after religious people and institutions that do not actively support same-sex marriage will intensify. In their orthodox versions, none of the teachings of the three major faiths in the United States (Christianity, Judaism, and Islam) condone same-sex marriage, so there will be a myriad of legal challenges in

lower courts against those institutions once same-sex couples are inevitably denied marriage vows by them.

The language of Justice Anthony Kennedy's opinion elevates same-sex marriage to a civil right, meaning that a refusal to comply with the demand of same-sex couples to be married will likely subject a religious organization to penalties, the most obvious being the loss of tax-exempt status, which means that a church, mosque, or synagogue would be forced to operate as a for-profit corporation subject to corporate tax laws. This would cause the closing or reorganizing of religious institutions en masse, since many already operate on a bare-bones budget.

Justice Kennedy tried to reassure religious organizations by stating that "those who adhere to religious doctrines may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage

should not be condoned." However, the exact language in a court opinion is significant, and Kennedy's use of the word "advocate" instead of "exercise" is revealing.

In his dissent, Chief Justice John Roberts flags this judicial sleight of hand. "The majority graciously suggests that religious believers may continue to 'advocate' and 'teach' their views of marriage," he wrote. "The First Amendment, however, guarantees the freedom to 'exercise' religion. Ominously, that is not a word the majority uses."

Justice Kennedy could have included a sentence that carved out an exemption to the law for religious institutions or people acting according to their conscience and the teachings of their faith but he chose not to. This indicates that he and the other four justices in the majority believe that the implied right to same-sex marriage in the Fourteenth Amendment trumps




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the explicit right to the free exercise of religion in the First Amendment.

Consider the following recent cases: an Oregon bakery has been fined \$135,000 for refusing to bake a wedding cake for a gay couple; New York has fined the owners of a farm \$13,000 for refusing to host a same-sex wedding on their farm; and the state of Washington fined a florist \$1,000 for refusing to provide flowers for a same-sex wedding. All of these fines were based on non-discrimination ordinances that were passed prior to the Supreme Court finding a constitutional right to same-sex marriage. Now, with the full weight of the Constitution on their side, state and local officials will strengthen these ordinances and give them more teeth with regard to enforcement.

Proponents of traditional marriage are fighting back to ensure that the free exercise of religion is not impeded by the Court's ruling. The First Amendment Defense Act, proposed by Senator Mike Lee of Utah, would strengthen religious liberty protections in federal law by offering specific protections for individuals and organizations that support traditional

marriage. However, even if the bill passed Congress, it would have to survive a possible veto by President Barack Obama, and beyond that, it would also have to pass scrutiny by the courts with regard to the *Obergefell* decision.

This begins a new era for religion in America. Many religious institutions that have self-governed since the inception of the country will now be forced to adopt a government-imposed definition of marriage in contradiction to their doctrinal beliefs. Those that do not conform will pay a price, which could include loss of tax-exempt status, fines, or even forced closure. One of the founding principles of America is the free exercise of religion, but that once fundamental right now comes with a caveat: the freedom to exercise religion as long as your religion includes the government's new definition of marriage. 

The opinions stated are the author's only and do not purport to represent opinions of the SFVBA. Alternative views and comments are also welcome and will be considered for publishing in Valley Lawyer.

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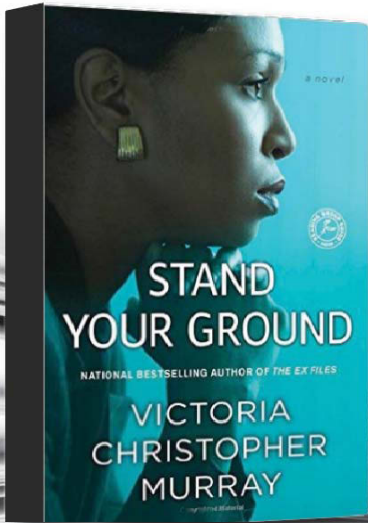
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- DUI Case, Client Probation - Dismissed Search and Seizure (Long Beach)
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Lives Intersected Amid Controversy

A Review of *Stand Your Ground: A Novel*

By Reid L. Steinfeld

“We were two women. Two mothers. One with a son and one without. We were two people whose lives were forever linked and forever changed. We were Janice Johnson and Meredith Spencer. Forever hopelessly connected.”

THIS COMPELLING CONTEMPORARY NOVEL IS told through the eyes of two mothers. *Stand Your Ground: A Novel* (Touchstone, June 2015) by Victoria Christopher Murray is written from the perspective of a grieving mother, Janice Johnson; the wife of an alleged killer, Meredith Spencer; and through the eyes of alleged killer, Wyatt. The backdrop of the story relates to the “stand your ground” laws; however, there is very little law in this book. It is really a love story that makes you feel as if you are part of the relationships between Janice and her husband and Meredith and her husband throughout the intense trial.

The story begins in the Johnson home when the police inform the Johnsons that their 17-year-old son, an Ivy League-bound honor student, has been shot and killed in an upscale neighborhood of Philadelphia. The fast paced story takes off from there with many twists and turns as we learn about the dynamics between the Johnsons, the police, the community, and the Spencers.

As told through the grieving eyes of Janice Johnson, we learn about the difficulties of raising a black son in

Philadelphia, family secrets, other family tragedies and how hard it is to keep a family together after such a tragedy. Along with the trauma of the death of their son, Janice has to deal with her brother-in-law wanting to provide his own street justice to the killer. The story takes the reader through the Johnsons’ past, as well as the grief they experience with the police, the investigation and just being able to see their dead son. The first section ends with the gut-wrenching process of the funeral.

The second section of the book is told through the eyes of Meredith Spencer and goes back and forth between her meeting her husband to the time of the shooting. Although Meredith did not witness the shooting, which took place in the street in front of her house, she knows from what she saw that her husband is not telling the truth to the police about the events surrounding the death of the teenager. Wyatt’s close friend, an attorney from Texas, goes to Philadelphia to help defend Wyatt. The attorney is a hard charging man, who will say and do anything to ensure that his client goes free.



Reid L. Steinfeld has been an attorney licensed in California since 1979. He is employed by the receivables management firm Grant & Weber in Calabasas. His practice includes representing providers before the Workers’ Compensation Appeals Board as well as in civil court. He may be reached at reid.steinfeld@grantweber.com.

The novel features the trial as told through the eyes of both Janice and Meredith, as it goes back and forth between their perspectives of the testimony. Though the author takes liberties with respect to the legal process, the reader gets an insight into the difficulty of prosecuting a case when self-defense and “stand your ground” defense are raised. The reader also learns about the different strategies employed by the parties and the author’s attempt to show the personal hardships that have occurred to the families during the trial. The book’s conclusion is riveting as seen through the eyes of Wyatt Spencer, the alleged perpetrator of the crime.

Murray’s novel is a very good read but as a lawyer it leaves me wanting more. “Stand your ground” laws are very controversial in America today and this book does little to clarify the issue. The book’s title would imply that the “stand your ground” issue is the central theme of the story but it really isn’t. In fact, it was almost too cliché in the way the characters are portrayed and the author does little to resolve racial stereotypes. I read books generally to either escape real life or to learn something new; this book did neither for me. It is a “slice of life” fiction that left me wanting more.

If the reader is looking for a legal thriller, this is not the book for you. However, if you are looking for an entertaining read with interesting plot twists as told through the eyes of the participants, this book should satisfy you. It’s a story that could easily be an episode on *Law and Order*. 🏛️

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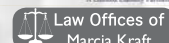
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Learning from a Loss

LET'S FACE IT, NO ONE LIKES to lose. It can be particularly tough for someone with a competitive mentality or spirit, someone who has possibly spent years honing their skill to be successful. If you ask any seasoned litigator, trial work is not for the faint of heart. And many might tell you that it takes a certain competitive edge to be successful in the field (or possibly even a cutthroat mentality). Some attorneys like to compete, or even "fight," and some tend to thrive on confrontation.

But as with many things in life, there can only be one winner. In a lawsuit of course, there are generally two (or more) sides to the story. The jury or judge parses through the facts and evidence, listens to the witnesses, and picks a winner. And by doing so, also picks a loser. However, although the attorney does not necessarily prevail for his or her client, there is usually a lesson that can be learned. And if there is some takeaway from the experience, perhaps we do not really lose, even those of us who might be particularly competitive.

AMY M. COHEN
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In a column last year, I wrote about a case that I believe should have settled. Unfortunately, it did not and an arbitration was held. As you would expect, there was a winner and a loser and my client did not come out on top. As disappointed as I was that I did not get a better result for my client, I tried to focus on a few things that made the loss a little easier to take. That lesson, along with others from past cases, keep me going to the next case.

First, there is satisfaction in having a client tell his story. Sometimes, even when the client knows that they might be unsuccessful, they simply want to be heard. They want to be able to tell their story to a neutral (we hope) third party, and have that person (or people) decide. Because even if the outcome is not what they hope it will be, the client can walk away knowing that they tried, knowing that they were able to tell their side of the story and feel that they were heard. For many people, that is enough.

Second, you must prepare for anything. Several years ago I argued against a demurrer. As many litigators

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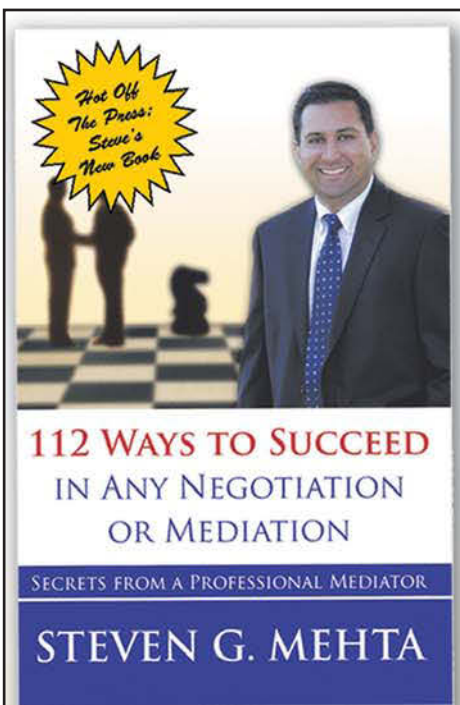
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know, the ruling on a demurrer that is not overruled is generally to sustain with leave to amend at least once, allowing the plaintiff an opportunity to fix any perceived defects. The Rutter Group even comments on this general likelihood. I went into the hearing believing that I could successfully argue my opposition and that, at the very least (or in a worst-case scenario), my client would have an opportunity to amend. Unfortunately, despite the assurances of The Rutter Group and several well-seasoned attorneys in my corner, the judge granted the demurrer without leave to amend. The lesson learned? Never assume that a judge or jury is going to fall in line with history or precedent or The Rutter Group. There is no such thing as a slam dunk in the courtroom and you should prepare for every possible outcome and inform your client accordingly.

Finally, you should not believe everything your client tells you. Or at the very least, take it all with a grain of salt. One of my mentors once told me that he generally believed that the truth of most litigated matters lay somewhere between what his client told him and what the other

side argued. Over many years, I have watched his maxim play out many times. Because people see and hear situations differently depending on where they are standing, you should always leave yourself open to another interpretation of a set of facts. Although your client might adamantly argue a particular point, if their perspective was colored by any distractions or outside influence, they might remember the situation differently than someone else who was not as distracted. As in *My Cousin Vinny*, "Are you sure about those five minutes?," someone might believe that they recall something correctly and are clear in their conviction, but be aware of the possibility that they could be wrong.

Losing is difficult regardless of the playing field. It becomes more so when you are fighting on behalf of someone else, or perhaps, feeling as if someone else's livelihood depends on the outcome of your battle. It is tough to bounce back from a loss and pick up another file, jumping right back into the fray on behalf of another client. But if we are able to learn anything from a loss that will help us in the next round, then perhaps our work was not in vain. 

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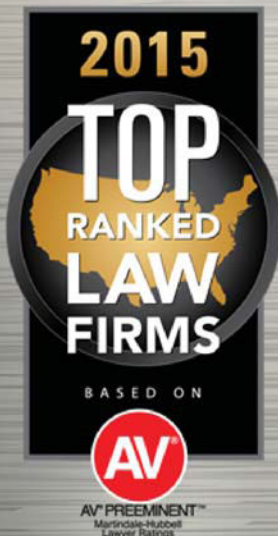


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