VALLEY LAWYER

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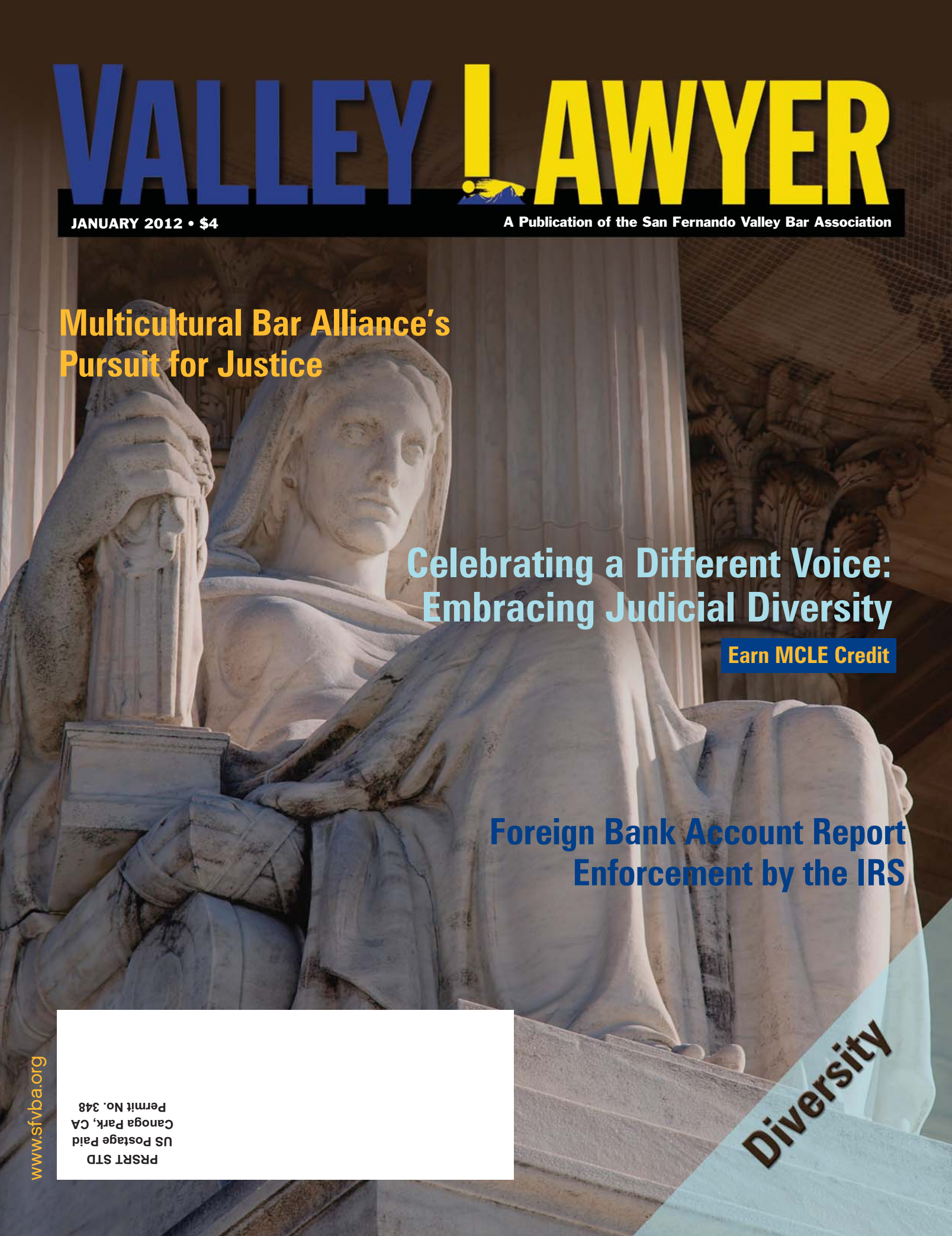
A Publication of the San Fernando Valley Bar Association



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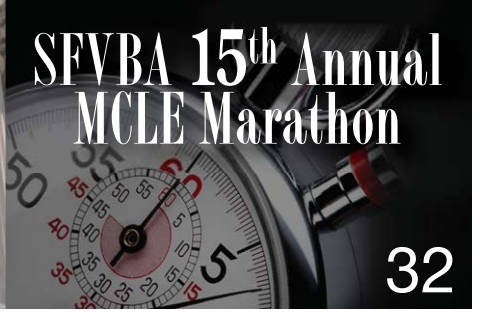

VALLEY LAWYER

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Achieving and Advancing Diversity

ALAN J. SEDLEY
SFVBA President

THE THEME OF THIS MONTH'S *VALLEY LAWYER* is diversity, a term too often conveniently tossed around by a number of those responsible for ensuring the appearance of 'fair' employment hiring principles in the workplace, a 'fair' distribution of student body cultural or ethnic representation in a school or some token semblance of open enrollment 'to all' for membership at the prestigious country club, like some rag doll whose tattered outfit proclaims somewhere along its shirt, "In America, equality for all!"

Through the years, we as members of society have each surely seen significant growth in the efforts to achieve diversity in business, at schools and in the social milieu. Throughout Los Angeles, as diverse a city in terms of its ethnic and cultural representation as you will find anywhere in the U.S., we have all been witness at one time or another of this growth of achievement to be inclusive, to ensure as best we can that individuals from all socio economic, ethnic and cultural strata are given equal opportunity to work, to learn, to participate. Sometimes these efforts are successful, other times they fail. Promoting diversity is rather simple. Accomplishing diversity, or better yet, advancing the cause of diversity to a significant level, is the challenge.

But why all this focus on achieving or advancing diversity? How critical is it in our country, our state or community to seek diversity? Well first of all, America thrives on diversity. A synthesis of the world's varied races, cultures and religions, America is a home to all, such that no one group can accurately label itself more American than another. The fusion of cultures in this country is so unique and so exceptional that citizens can be just as proud of their original cultural heritage as they are to be an American. Indeed, without its rich texture of religions, races and cultures, America would not be the nation that it is today. And once again, particular focus must be directed to Los Angeles, which stands as a microcosm of this national fusion of cultures, right down to the diverse neighborhoods of the San Fernando Valley.

Additionally, America as a whole, and Los Angeles in particular, serve as 'melting pots' for the assimilation of countless cultures, races and religions. Therefore, we must direct our energies and efforts to ensure that this concept of diversity is truly advanced, and not merely acknowledged.

I came upon an interesting article which drew the parallel between diversity and the birth and growth of American jazz. In his writing, Jeff Perry notes, "Long before the Civil Rights Act, long before *Brown vs. The Board of Education* and long before President Truman's integration of the armed forces, black and white jazz musicians where breaking social taboos in order to share and learn from each other.

In the 1920's, white musicians in Chicago would head down to the South Side after their gigs for after hours jam sessions with black musicians. In the 1930's, Benny Goodman, perhaps the most popular band leader of the time, added black musicians to his all-white big band—a revolutionary step for diversity in the workplace. In the 1950's, Stan Getz collaborated with Brazilian musicians to create a new musical style—Bossa Nova. Then as now, jazz possesses a culture that thrives, indeed benefits, from diversity. Jazz, it would seem, is America's original diversity success story."

Perry notes that for nearly a century, jazz has led black to white, white to black, Western to Eastern, American to European, Northern to Southern, visceral to cerebral. In jazz, Perry points out, working with, and learning from, people of other cultures are a core value. And so he asks, "What led these musicians to embrace diversity decades before it became the concept that we know today? How has that embrace led to jazz's evolution, strength, and constant change and innovation? And, what can the rest of us learn from the Jazz example?"

The SFVBA and in particular, its Board of Trustees, is deservedly proud of its reputation of recognizing the importance and advancement of the principles of diversity in our day-to-day interactions with other Bar members, and more importantly, in those interactions with members of our diverse Valley community.

The Bar's Diversity Committee, comprised of nearly a dozen thoughtful, imaginative and caring Board and Bar members, has as its mission, a commitment for the fostering of a more diverse and inclusive legal profession. The Committee offers educational and mentoring programs that encourage minority students in a number of Valley public schools to consider careers in law. Such programs include mock moot court competitions, writing and legal analysis exercises and perhaps a field trip to a local court or a live performance at an arts center focused on a legal theme.

The Committee has also made as a primary goal a concerted effort to encourage the association and active partnership of the Multicultural Bar Alliance with the SFVBA. The Alliance represents a virtual panoply of ethnic and gender-based associations, including the Bar Associations of—Asian Pacific, Arab American, Black Women Lawyers, Iranian American, Italian American, Japanese American, Korean American, Lesbian and Gay Lawyers, Mexican American, Philippine, Chinese Lawyers and Women Lawyers.

These and other goals of the Diversity Committee together represent a rather Herculean agenda. But with your commitment and active participation, there is no doubt that these goals should and shall be reached.

Alan J. Sedley *can be reached at Alan.Sedley@HPMedCenter.com.*

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From the Executive Director

Pioneers of Diversity

ELIZABETH POST
Executive Director

ENORMOUS PROGRESS WAS made in California in 2011 to make the legal profession a reflection of the community and clients it serves.

Chief Justice Tani Cantil-Sakauye was sworn into office as Chief Justice of California on January 3, 2011. She is the first Asian-Filipina American and the second woman to serve as the state's Chief Justice. Two days earlier, on January 1, 2011, Judge Lee Smalley Edmon assumed the position of Presiding Judge of the Los Angeles Superior Court, the nation's largest trial court system. She is the first woman to hold that post in the 121-year history of the court.

> "The San Fernando Valley Bar Association welcomes Chief Justice Tani Cantil-Sakauye and Presiding Judge Lee Edmon to our Annual Judges' Night."

On Thursday, February 23, 2012, the San Fernando Valley Bar Association will celebrate these pioneering women and welcome Chief Justice Cantil-Sakauye and Presiding Judge Edmon to our Annual Judges' Night at the Warner Center Marriott. Presiding Judge Edmon will give the State of the Los Angeles Superior Court while Chief Justice Cantil-Sakauye will engage the Valley's Bench and Bar in an open dialogue about her journey and our courts.

The evening will also celebrate our Valley judges. Van Nuys family law Judge Michael Convey will be honored as SFVBA Judge of the Year and criminal law Judge Michael Kellogg will be presented with an Inspiration Award.

Judge of the Year Michael Convey has the strong support of the Family Law Section for his judicial demeanor and intellect. He has involved himself in the education and volunteer programs of the Family Law and New Lawyers Sections, serves as a Director of the Valley Community Legal Foundation and is a former trustee of the SFVBA.

The life and career of Judge Michael Kellogg, who handles felony trials in Department N at the Van Nuys West courthouse, should inspire lawyers as well as students considering a career in the law. He overcame a diagnosis of polio at age six to play in the NFL with the Denver Broncos and Oakland Raiders. Upon his retirement from professional football, Kellogg coached and taught constitutional and criminal law for the Torrance Unified School District before entering the legal profession.

Since his appointment to the Bench in 1996, the popular bench officer has gained national attention for his involvement in the Ennis Cosby and the Angel of Death murder cases, as well as cases involving crimes against celebrities Paris Hilton and Joe Francis.

Last year's Judges' Night attracted over 350 members and bench officers. We anticipate that this year's event will sell out, so we encourage firms to make your reservations early. Judges' Night is an excellent opportunity for all members to socialize with colleagues, judges and other dignitaries outside the courtrooms in a collegial setting.

The Warner Center Marriott is located at 21850 Oxnard Street in Woodland Hills. A cocktail reception begins at 5:30 p.m., followed by dinner and the program at 6:30 p.m. Individual tickets are $75 and tables of 10 are $750. To make a reservation, contact Linda Temkin, SFVBA Director of Education & Events, at (818) 227-0490, ext. 105 or events@sfvba.org. Sponsorship and advertising opportunities are also available.

Liz Post *can be contacted at epost@sfvba.org or (818) 227-0490, ext. 101.*

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An Extraordinary Year for the ARS

ROSIE SOTO
Director of
Public Services

THE YEAR 2011 WAS extraordinary for the Attorney Referral Service (ARS), not only because of what was earned but also because of what was learned. The year was filled with many important lessons on how valuable the ARS is to clients, how valuable good panel members are to the ARS, and how valuable the ARS is for attorneys. One of the most critical lessons learned for the ARS is to value every potential case and each client to a higher degree.

In the spring of 2007, the ARS was contacted by potential client Nancy. She needed to obtain a power of attorney for her adult son, Rory, who was involved in a traumatic auto accident and was hospitalized. Nancy needed a referral to an attorney who could provide her with the ability to make medical and financial decisions for Rory, and she needed that referral immediately.

That would not be her only legal issue. Additionally, Nancy spoke with the ARS staff regarding a personal injury matter. See, Rory was severely and permanently injured in a car accident occurring on the Angeles Forest Highway. Nancy believed that the accident and resulting injuries arose out of negligence. She sought to file a civil action seeking monetary damages on account of those injuries.

ARS staff took the time to listen to Nancy's exact needs concerning both matters. The referral to the attorney who would help Nancy execute a power of attorney was performed without delay, as were the legal services. However, making the referral to an attorney to file a civil action for the personal injury case against Los Angeles County required multiple attempts, as it appeared to be a difficult case to win.

The ARS would finally refer Nancy and her family to veteran personal injury panel attorney Sol Danny Khorsandi of Sherman Oaks. Khorsandi partnered with trial attorney Arash Homampour of the Homampour Law Firm in Sherman Oaks. Over the next four years, they spent a considerable amount of time on the case and in working with the family.

In October 2011, Khorsandi contacted the ARS to let us know that a $6.1 million settlement was reached with the County of Los Angeles on behalf of Rory, the largest settlement ever reported by an ARS panel member. This victory tops the previous largest settlement award, $500,000 reported in 2006 by ARS attorney Drew Richard Antablin for a personal injury case.

> "A $6.1 million settlement was reached with the County of Los Angeles."

"The Bar gives special thanks to Mr. Khorsandi and Mr. Homampour for their dedicated and diligent work these past four years in bringing this referral case to a spectacular settlement," says Alan Sedley, SFVBA President.

SFVBA President-Elect David Gurnick also commented, "This demonstrates ARS referrals are to quality lawyers who can handle serious cases and benefit clients. This also demonstrates good lawyers should be members of our ARS panels."

For the ARS of the SFVBA, and other ARS programs across the nation that are approved by the American Bar Association, it is inspiring to know that when serious harm has occurred to the tune of more than $6M in damages, with all the places that clients could have turned to look for a lawyer—all the screaming commercials on TV, the graphic Yellow Pages ads, the slick websites—the family chose to contact the ARS of the SFVBA. "Trusted source" and "personal touch" are still the ARS's greatest assets.

The information contained in this article was disclosed with attorney and client consent.

A Lawyer's Duty

By Client Communications Committee

The SFVBA established the Client Communications Committee to address the number one reason for client discontent—need for better communication—and reduce negative contacts with the State Bar. The Committee, a volunteer group of a dozen veteran practitioners in wide-ranging fields of law, answers written questions from attorney members regarding problems they observed or dealt with that may have been avoided by better attorney-client communication. Responses are published anonymously in Valley Lawyer.

Q: A member wanted to know how to communicate with a client who "was convinced our defense is dead bang."

A: The panel agreed that the client's unreasonable expectations of the outcome and unrealistic views about how to achieve victory cuts across every field of law: civil or criminal, litigation or transactional, plaintiff or defense. There was close consensus as to how to deal with it at the outset of representation.

Isn't "Get the Facts" always the first step in analyzing a prospective client's problem? Once in a while in any area of law, counsel's initial sense might be that the client's position is the better one. Rarer, perhaps, is the attorney's accord that achieving the result might not take too long, cost too much or be that hard to accomplish. The client's belief structure, however, is pure Pollyanna!

Whether lawyers lived "The Paper Chase" at law school, or just saw the movie, doesn't Socratic methodology always start with "Why?" It's not only okay, but to clear the air, essential to inquire: "Why do you think our position is better than theirs?" Once counsel has got an earful of the client's rationale for "gotta win," isn't the next question going to be: "Why do you feel we can get there on a path without potholes in the road?"

What if, instead of logical reasons for the client's unduly optimistic belief structure, the lawyer suspects the client is reciting emotional reactions and wishes? Don't clients frequently try to motivate counsel by only positive aspects at the outset? Sometimes a simple leading question, like "You don't really believe that, do you?" can be a real ice-breaker.

Eventually, doesn't the lawyer need to do his or her fair share of communicating? Shouldn't the overly optimistic client be told about the variables that laypersons may not be familiar with? Lawyers have a duty to inform clients about risks as well as benefits of any particular course of action. (ABA Rule 1.0 (e); *Klemm v Superior Court of Fresno County* (1977) 75 Cal. App. 3d 893). The duty isn't reduced because raining on the client's wish-list parade doesn't always win popularity contests. Nor is the duty reduced because of the possibility that the client will decide not to retain the lawyer because the lawyer doesn't "believe" in the client's case.

As lawyers discuss these issues with their clients, here are some truisms that might be appropriate to share with the client to make sure the client understands the uncertainties of his or her case:

- Many facts are two-edged swords that cut both ways
- Good-guy/bad-guy, like beauty, is in the eye of the beholder
- Statutes, rules, and regulations are subject to interpretation by courts, and the interpretations are not always consistent
- Many things that seem black or white are often grey
- If common law had no flexibility we'd all still be cave dwellers
- In family law both statutes and common law give way to equity
- Equity turns on one key-person's sense of fairness
- Real juries may not be as wide awake as TV/movie juries
- Real juries' decisions turn on 6-12 key-person's sensibilities
- Replacing a judge with one arbitrator still leaves one key-person
- Sometimes good people don't have the same appeal as bad people
- Sometimes good people get convicted
- Sometimes bad people win
- Sometimes we never get a chance to tell our whole story
- Sometimes the cost of getting there isn't worth the cost of winning
- Whether one judge, three arbitrators or twelve jurors, they're all people
- Only death and taxes are certain
- Even lawyers can't use crystal balls to tell what's going to happen
- There are usually alternatives to "winner take all." In transactional law the goal is both sides win-win; in collaborative the goal is both sides win-win; and a mediator's goal is usually both sides win-win.

Law, and particularly litigation, is often a novel experience for many clients. That may explain why their expectations are often unreasonable. An attorney can best serve his or her client by working with the client to develop a reasonable set of expectations at the outset, with updates on an ongoing basis. That's what's meant by managing client expectations. Of course, once "managed," counsel needs to do his/her best to meet those expectations.

Written questions may be submitted to epost@sfvba.org or SFVBA Client Communications Committee, 21250 Califa Street, Ste. 113, Woodland Hills, CA 91367. The opinions of the Client Communications Committee are those of its members and not those of the Association.

MULTICULTURAL BAR ALLIANCE'S PURSUIT FOR JUSTICE

The MCBA plans to submit amicus brief urging reversal of appellate decision in Sander v. State Bar of California.

By Carol L. Newman

Left to right: Supreme Court of California Associate Justice Carol A. Corrigan, Associate Justice Joyce L. Kennard, Associate Justice Kathryn M. Werdegar, Chief Justice Tani Cantil-Sakauye, Associate Justice Ming W. Chin, Associate Justice Marvin R. Baxter and Associate Justice Goodwin Liu.

THE SAN FERNANDO VALLEY BAR ASSOCIATION is an affiliate member of the Multicultural Bar Alliance (MCBA), a regional organization comprised primarily of minority bar associations. The SFVBA joined the MCBA because of the SFVBA's commitment to increase diversity in the legal profession, in its own ranks, and in the composition of its Board of Trustees.

One of the current concerns of the MCBA is a case currently pending before the California Supreme Court– *Sander v. State Bar of California*, Supreme Court Case No. S194951, previously reported at 196 Cal.App.4th 614 (1st Dist., June 10, 2011). The opening brief of the appellant, the State Bar, was filed on September 23, 2011. The respondent's brief will probably have been filed by the time this article is published. As part of a statewide coalition seeking a reversal of the case, the MCBA intends to file an amicus brief urging reversal.

The California State Bar ("the Bar") maintains certain information regarding its applicants, including information regarding their ethnicity, bar exam scores and academic history. The Bar has consistently taken the position that this information is confidential and not subject to public access.

Plaintiff Richard Sander, a law professor at UCLA for more than 20 years, published a law review article in 2004 in which he contended that racial preferences or quotas in law school admissions hurt the chances of success of African-American law school students. Specifically, he contended in this article that racial preferences were not delivering the social and economic benefits claimed by supporters, because affirmative action resulted in sending academically ill-prepared minorities to elite law schools where they were likely to fail either to graduate or to pass the bar, while they would have had a higher success rate if they had instead been admitted to schools to which they were better suited academically.

Professor Sander's article ignited a firestorm of controversy, both pro and con, including allegations of racism. Professor Sander asserted that he was not a racist, but was simply trying to explain an achievement gap between African-Americans and whites in law school, and to proffer a solution. Critics contended that he was simply trying to destroy affirmative action.

Beginning in 2006, Professor Sander and others supporting him ("the Sander plaintiffs") began asking the Bar to provide them with information from admissions records of applicants for the California bar examination, consisting of 16 fields of data, including ethnicity, academic record and bar exam scores for every person who applied to take the California bar examination from 1972-2007. The Sander plaintiffs stressed that the data would be manipulated in such a way that individual applicants would neither be identified nor identifiable—they said they simply wanted statistics. The Bar did not have all of the information that the Sander plaintiffs wanted in the form in which they wanted it, but did have raw data.

In 2007, the Bar denied the Sander plaintiffs' request. The Sander plaintiffs repeated their request, and the Bar

denied it again in 2008. Thereafter, the Sander plaintiffs filed a petition in the San Francisco Superior Court to compel the Bar to produce the requested information. The parties stipulated to bifurcate the proceeding. Phase 1 was to determine only if the Bar had a legal duty to produce the requested records, while Phase 2 was to proceed only if the Court found the Bar subject to a duty of disclosure, and would address whether providing the records to the Sander plaintiffs would violate Bar applicants' privacy rights and/or impose an undue burden on the Bar that would justify limiting or denying the requests (i.e., would force the Bar to create a "new record").

After a bench trial on Phase 1, the Superior Court, Hon. Curtis Karnow presiding, denied the petition, on the grounds that the Bar's admissions database is not a public record subject to presumptive disclosure under the common law or under Proposition 59, which in 2004 added section 3(b) to Article 1 of the California Constitution.[1]

More specifically, the Superior Court held that (1) the common law did not impose a legal duty on the Bar to provide access to its records, either under the presumptive right of access to court documents grounded in the First Amendment right to open trial,[2] or the presumptive right of disclosure under the common law right of access to public records, and (2) section 3(b) of Article 1 of the California Constitution was inapplicable to the records request. The Sander plaintiffs appealed the ruling to the First District Court of Appeal.

On June 10, 2011, the Court of Appeal published its decision reversing the decision of the Superior Court, and remanding it to that Court for further proceedings. See 196 Cal.App.4th at 614. The Court of Appeal found that the Bar's admissions data are public records and that the lower court erred when it ruled that the Bar's records were not subject to disclosure under the common law presumption of access to public documents. 196 Cal.App.4th at 621 et seq.

The Court of Appeal expressly rejected the Bar's position that because the Bar is part of the judicial branch of government, its records are immune from the common law presumption of access unless they are "adjudicatory" documents, drawing a distinction between the Bar and the state courts, and holding that "[d]isclosure of the Bar's admissions data does not necessarily raise the concerns peculiar to the courts that have driven the development of the rule shielding many preliminary, unofficial court documents from public access. We perceive no basis for holding the Bar's raw admission data immune from public scrutiny . . ." 196 Cal.App.4th at 627.

Significantly, the Court of Appeal did not hold that the Bar must produce the requested information, because that was a Phase 2 issue, not before the Court on this appeal. Upon remand, the Superior Court was to "determine whether the Bar must produce the requested information after balancing the applicants' interest in confidentiality and the burden this request imposes on the Bar against the strong public policy favoring disclosure. The trial court is best suited to craft any qualifications to an order for production that can accommodate these concerns if possible." 196 Cal. App.4th at 618.

On August 25, 2011, the California Supreme Court granted review, but limited the issues on review to the following: "(1) What ground, if any, exists for finding that the information sought by plaintiffs is information that is subject to public disclosure? (2) What is the effect, if any, of the representation of confidentiality made by the State Bar to the individuals from whom the information was collected? (3) Does the form in which the requested information is regularly maintained affect whether the State Bar must provide the requested information?" Thus, the Supreme Court's order required the parties to address the two Phase 2 issues, which had not yet been addressed below.

In its opening brief filed on September 23, 2011, the Bar contended that the public had no right to access the Bar's admissions database, because (1) the Bar is part of the judicial branch of government and only the Supreme Court has the power to make rules regarding public access to Bar admissions records; (2) the common law right of access to government records does not apply to the Bar's admissions database; and (3) Proposition 59 did not create a right of public access to the Bar's admissions database.

Additionally, the Bar contended that the promises of confidentiality made by the Bar also militate against disclosure of the records sought. In this regard, the Bar asserted that (1) the fact that the information sought had been collected under a promise of confidentiality proves that it was not intended to be public information; (2) public disclosure of this data would violate the privacy rights of the applicants who provided the information believing it would not be made public; and (3) the Bar has an institutional interest in keeping its promises to applicants. Finally, the Bar argued that it does not keep the information in the form requested by the Sander plaintiffs, and should not be compelled to create it.

The MCBA's amicus brief, as presently contemplated, will focus on the confidentiality/privacy aspect of the argument in support of reversal. A growing body of computer science research indicates that data supposedly made anonymous can nevertheless be traced back to reveal identifying information. "Data can be either useful or perfectly anonymous but never both." (Ohm, *Broken Promises of Privacy: Responding to the Surprising Failure of Anonymization* (2010) 57 UCLA L. Rev. 1701, 1703-04; see also *Gellman, The Deidentification Dilemma: A Legislative and Contractual Proposal* (2010) 21 Fordham Intell. Prop. Media & Ent. L.J. 33, 34-35 ["No matter how many identifiers have been removed or encrypted and no matter how much data has been coded or masked, the remaining data may still be reidentified."].)

In short, this case presents significant legal issues, with regard to which the MCBA is taking a leadership role. Members of the SFVBA's Diversity Committee are active participants in the Multicultural Bar Alliance. Comments and participation in the Diversity Committee are welcomed.

Carol L. Newman *has her own law practice in Woodland Hills, focusing on real estate litigation, business litigation, civil appeals and dissolutions of non-marital relationships (palimony cases). Newman is a member of the SFVBA Board of Trustees. She can be reached at carol@carolnewmanlaw.com.*

[1] That provision now reads in pertinent part as follows:
(b) (1) The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

[2] Under the California Constitution, the State Bar is within the judicial branch of the state government. Article VI, section 9.

SFVBA Diversity Committee Takes Action

By Angela M. Hutchinson

STRIVING TO CREATE A MORE INCLUSIVE LEGAL profession by actively developing and participating in programs designed to improve diversity is the mission of the San Fernando Valley Bar Association's Diversity Committee. Currently, the Committee is seeking attorneys and law professionals who have demonstrated a commitment to diversity to become involved with its programs.

As the San Fernando Valley experiences demographic and economic changes, along with these changes come opportunities; opportunities to promote growth and to develop an environment that reflects the population. The legal field must be prepared to attract, develop and retain a more diverse talent pool. And the SFVBA's Diversity Committee shares that vision.

The attorneys participating in the Committee collectively share ideas and create strategic plans to accomplish organizational goals. The Committee's meetings focus on understanding the importance of creating an environment where diversity can be leveraged and utilized to promote growth. Becoming a committee member is a chance to define inclusion, overcome the fear of change and take on the role of an effective leader.

Also, the Committee provides an opportunity to give legal professionals and students interested in a career in law an opportunity to network and expand their leadership skills to a higher level. There is an emphasis on preparing students who have an interest in the legal field, and nurturing their skills as the next generation of leaders.

"You'll find diversity is big at SFVBA—diversity of gender, race/ethnicity, ideas, sexual orientation, professional insights, and personal perspectives. Opportunities to grow? Yes. A diverse environment? Definitely. A commitment to serving the community? Absolutely. Whatever you're looking for from joining this committee, you can likely find it by joining," states advertisement about the Diversity Committee.

Over the past few years, the Committee has been involved in various projects such as children's plays, court tours, the general law post program, teen court program/reception, power lunch and that's just to name a few.

"I am proud of all of our initiatives. Currently, our presence in schools throughout the Valley include leading class discussions regarding constitutional rights, being a resource to the teachers in schools to provide opportunities to visit courts, to attend mock trials and moot court competitions, teen court opportunities, providing speakers for themed projects and opportunities to attend plays and other legal themed events," says Kira Masteller, a Trustee on the SFVBA Board of Trustees and Co-Chair of the Diversity Committee.

She says, "I am hopeful that we will partner with UCLA's law school in potential community college projects that lead to more diversity in our local legal community."

Diversity, What is It Really?

Attorney John Yates, who is also Co-Chair of the Diversity Committee, openly shares his thoughts on diversity. "Non-diversity has been tried and found wanting. Here, think perpetuation of slavery, suppression of the rights of working class persons and the inability of individuals to recover for tortious acts of which they were the victims," says Yates.

"Obviously, non-diversity in the legal profession isn't the sole cause of the nation's past ills, but had the bench and bar been reflective of the communities in which lawyers practiced instead of exclusively white and almost exclusively male and privileged, much progress would have been made much earlier than was actually the case."

The Diversity Committee is continuously bringing information, resources and enthusiastic volunteer attorneys into the local educational arena to spark an interest in diverse youth. "We have been working the past two years to build an alliance with the Multicultural Bar Alliance in an effort to widen our member diversity through a joint membership program; John Yates is building on that goal by reaching out to several diverse bar organizations looking for shared membership opportunities," says Masteller.

"We have put a foot in the door at UCLA to work together in the community colleges to attract a diverse student population into local law schools. We are working toward bringing a more diverse group of trustees to our Bar Board."

When asked what diversity means to the Committee, Masteller shares it reflects all people present and participating. She says, "It means a melting pot of all (people) representing a community of one (people). While we may have different ethnic backgrounds and cultural traditions, we are all people living together in the same vicinity working to create and maintain the laws we have made over time and continue to improve upon them to the best of our ability."

She continues, "Everyone needs to participate in order to make a community great. I value the opportunity to be part of that participation and to promote an understanding in others of how wonderful that opportunity is and how important it is to take action and be a part of it, along with possibly providing them a means to do so."

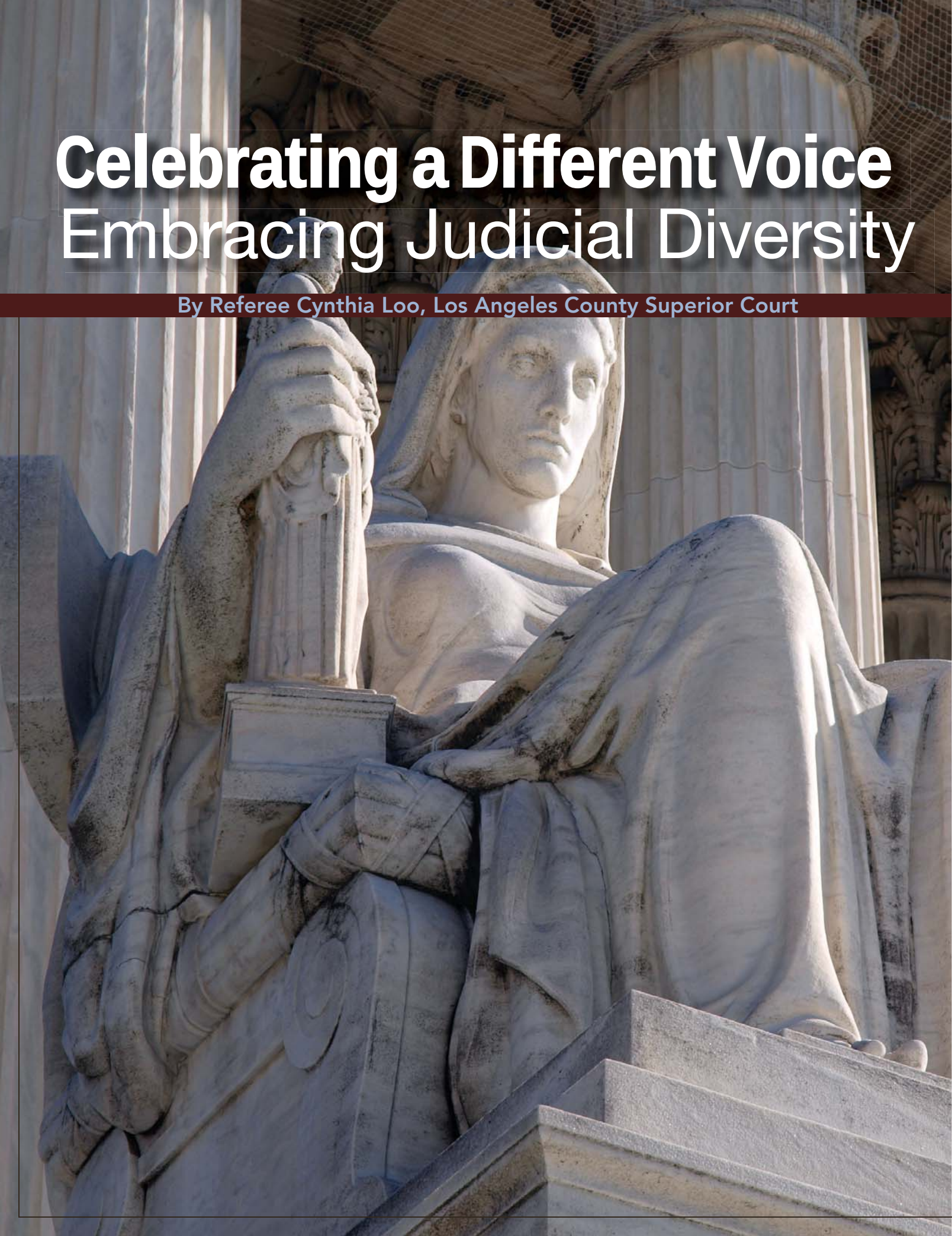
Join the Movement

Yates encourages SFVBA members to join the Diversity Committee, particularly those attorneys who want to have a bar and a bar leadership that reflects the composition of the legal community in which the members practice. "I see no other method of assuring that the particular interests of the member that arise from his or her personal cultural/ethnic background are taken into account by bar leadership when formulating policy and deciding what the SFVBA will devote resources to," says Yates.

The Diversity Committee meets on the last Friday of every month at 8:00 a.m. Meetings are held at the Lewitt Hackman firm located at 16633 Ventura Blvd., 11th floor in Encino. The Committee is open to all SFVBA members. To participate in the Committee, contact Committee Chair Kira Masteller at (818) 907-3244 or kmasteller@lewitthackman.com.

"The Diversity Committee is a critical component in keeping the SFVBA responsive to members' needs," states Yates.

Angela M. Hutchinson *is the Editor of Valley Lawyer magazine and has served the SFVBA in this capacity for 4 years. She also works as a communications consultant, helping businesses and non-profit organizations develop and execute various media and marketing initiatives. Also, Hutchinson is the author of a multi-cultural children's picture book, "Charm Kids." She can be reached at editor@sfvba.org.*



Celebrating a Different Voice
Embracing Judicial Diversity

By Referee Cynthia Loo, Los Angeles County Superior Court

By reading this article and answering the accompanying test questions, you can earn one MCLE credit in Elimination of Bias. To apply for the credit, please follow the instructions on the test answer form on page 23.

WHEN PRESIDENT CLINTON HAD AN opportunity to appoint a U.S. Supreme Court Justice, Ruth Bader Ginsburg initially was not his first choice. Clinton, however, became not only intrigued by her career, but also enchanted with her life story and big heart. Her mother died when she was in high school. Ginsburg attended law school classes for both her and her husband when he was diagnosed with testicular cancer. Though on law review at Harvard, she was rejected by every employer.

Before he met Ginsburg, Clinton was told, "As Thurgood Marshall had been to civil rights, Ruth Bader Ginsburg had been to women's rights." Ginsburg argued many women's rights cases in front of the Supreme Court on behalf of the ACLU. After becoming pregnant, she was demoted. Shortly after Clinton met with Ginsburg, he announced her nomination to be the second woman to the Supreme Court in the history of the United States.

Today, with President Obama's strong commitment to diversity, and with the confirmation of Justice Elena Kagan and Justice Sonia Sotomayor to the U.S. Supreme Court, for the first time in history, three women serve simultaneously on the Supreme Court. With more than 70% of Obama's confirmed judicial nominees being "nontraditional," or nominees who were not white males, Obama has far surpassed his predecessors in putting forth diverse candidates to the federal bench (Clinton administration 48.1%; George W. Bush 32.9%). According to Sheldon Goldman, professor at the University of Massachusetts and author of *Picking Federal Judges*, "It is an absolutely remarkable diversity achievement."

Progress towards achieving a diverse judiciary is also occurring locally. In January 2011, Tani Cantil-Sakauye became the first Asian-Filipina American, and only the second woman to serve as Chief Justice of the Supreme Court of California. For the first time in California's history, not only is its highest court a woman majority, but with the swearing in of Goodwin Liu on September 1, 2011, the court is also a majority of Asian justices.

Despite the progress in diversifying both the federal and state bench, female and ethnic minority judges still are vastly underrepresented in the judiciary. For example, despite more women being appointed to the federal bench, of the 778 active judges, only 250 or 32% are females (Federal Judicial Center, 2011). According to the Administrative Office of the Courts, 30.8% of California's judges are women; 33% of Los Angeles County's judges are women.

Within the past five years, California has made slight progress in the percentage of nontraditional appointments according to the State Bar of California Council on Access and Fairness, the "diversity think tank" that advises on advancing diversity strategies to enhance opportunities and advancement in the legal profession. The percentage of African American judges increased from 4.5% to 5.6% and is almost on par with their percentage in the population. Asian Pacific Islanders increased from 4.5% to 5.4%, Latinos 5.0% to 8.2% and women 27% to 30.8%. However, though the population of California is only 40% white, 72.3% of the judiciary is white.

In the San Fernando Valley, women judicial officers increased from 31.2% to 34%. What is particularly striking is that only 4.8% of the jurists are Latino given that

Steve Petteway, Collection of the Supreme Court of the United States

approximately 42% of the community is Latino. Clearly there is room for improvement.

A Commitment to Diversity

Similar to President Obama, the Los Angeles Superior Court has also made an explicit commitment to diversity. Presiding Judge Lee Smalley Edmon, the first woman to hold the position in the 121-year history of the court, stated, "Los Angeles Superior Court serves an incredibly diverse community. The more inclusive and diverse the judiciary system, the greater the degree of trust and confidence that the public will have in the integrity in our judicial system."

Besides forming the Superior Court Diversity Committee and making an effort to select commissioners from diverse backgrounds, the court has also hosted programs to highlight the importance of diversity and encourage members of underrepresented communities and lawyers with diverse backgrounds, to seek a judicial career, such as the *Diversity on the Bench: Judicial Vetting under Governor Brown* program on October 15, 2011, in which Governor Jerry Brown's senior advisor Joshua Groban was a panelist.

Governor Brown, to the surprise of many, has not selected an appointments secretary dedicated to judicial appointments. Previous judicial appointment secretaries played a significant role in increasing judicial diversity, notably Governor Gray Davis' appointment secretary, Burt Pines, now a Los Angeles Superior Court judge, and the current Site Judge for the Chatsworth courthouse. Many have said Governor Davis' legacy will be his judicial appointments that "changed the complexity of California's judiciary" to reflect the community. Several insiders credited Davis' ability to provide balance to a judiciary that had been "over-stacked with prosecutors" due to Pines' dedication to diversity and meticulous approach to judicial appointments.

During meetings with minority bar groups, and more recently during the Los Angeles Superior Court program, Groban confirmed diversity is important to Governor Brown and that his view of diversity goes beyond racial and gender lines and extends to life experiences. Acknowledging that previously prosecutors had been disproportionately appointed to the bench, Groban emphasized the Governor desires the bench to be diversified in experience and indicated that unlike in other administrations, others such as public defenders and civil attorneys are going to be seriously considered.

While Governor Brown has yet to appoint any judges to the Superior Court during his current term as California's 39th governor, he appointed UC Berkeley Goodwin Liu as an Associate Justice to the California Supreme Court, an appointment which surprised many legal analysts. While speaking to the *Los Angeles Times*, Governor Brown said he was not concerned that Liu never served as a judge; that among California's greatest judges was the late Roger Traynor, who was a tax professor at UC Berkeley. The Governor and Groban both emphasized there are no "litmus tests"—like trial experience, or a particular view on the death penalty.

Considering experience other than prosecutorial experience is more than just good practice, it's the law. The State Bar's Commission on Judicial Nominees Evaluation (JNE) in recommending judicial candidates to the Governor is mandated by Government Code section 12011.5(d) to "consider legal experience broadly, including but not limited *to* litigation and non-litigation experience, legal work for a business or nonprofit entity, experience as a law professor

or other academic position, legal work in any of the three branches of government, and legal work in dispute resolution."

Goodwin Liu was appointed to California's highest court to take the seat left vacant by Carlos Moreno, the court's sole Latino and Democrat who retired February 28, 2011. Few have been as revered as Moreno in the legal community. Moreno grew up near downtown Los Angeles, the son of Mexican immigrants, and attended its public schools. He was the first child in his family to attend college, earning his undergraduate degree from Yale and then graduating from Stanford Law School. Moreno is credited with empathetic decisions, such as his courageous lone dissent to the May 2009 California Supreme Court decision which upheld Proposition 8, which banned same-sex marriage.

On January 21, 2011, Moreno, himself an incredible proponent of diversity, was the guest speaker at a reception awarding Sharon Majors-Lewis the "Champion of Diversity Award" for her work as Governor Schwarzenegger's appointment secretary. She was both the first woman and African American to hold the post and was credited with increasing judicial diversity. For example, in an effort to draw a broader array of applicants, she revised the application to ask as to other non-trial experiences/skill sets such as mediation, as well as other disciplines such as administrative and family law.

To the standing room only crowd, Moreno urged that only by having a diverse bench can equal justice for all be obtained. Diversity serves as a structural safeguard against bias and prejudice. Diversity ensures a full and balanced deliberation and decision-making process. Diversity also increases the appearance of justice as well, because how can the public have trust in an institution charged with protecting the rights of all, if that very institution is segregated?

Differing Perspectives

There is empirical support differing racial groups may have different perspectives that bear on legal decision-making. A 2009 study by Professor Pat Chew and Robert Kelley of the University of Pittsburgh School of Law found a judge's race significantly affects outcomes in workplace racial harassment cases. Their data demonstrated African American judges rule differently than White judges, a finding, counter to the myth that race would not make a difference. Researchers believe race affects a judge's ability to appreciate the perspective of a plaintiff of another race.

Research indicates a large gap between legitimacy of the courts for blacks and whites. For example, studies demonstrate African American and Caucasian lawyers and judges differ in their views about aspects of the criminal justice system. For example, as noted by J. Gibson in the Journal of Empirical Legal Studies in 2007, 84% of white, but only 18% of black judges believed that African Americans are treated fairly in the criminal justice system.

Studies demonstrate there is some variance in jurisprudence between males and females. Jennifer Peresie noted in the Yale Law Journal article, "Female Judges Matter: Gender and Collegial Decisionmaking in the Federal Appellate Courts," a study examining federal appellate cases involving allegations of sexual harassment or sex discrimination. The study found plaintiffs were at least twice as likely to win if a female judge was on the panel. Scholars theorize that as women, they have the shared experience of being treated as a subordinate sex.

As Sherrilyn Ifill, Professor of Law at the University of Maryland notes, judicial decision making is not just about outcomes; it is also about the process. "Judicial decision-

making is about subjecting a given case to the most rigorous analysis— analysis that takes into account differing viewpoints that may be shaped by a judge's personal or professional experience."

U.S. Supreme Court Justice Bryon White shared that in conferences with his colleagues that Justice Thurgood Marshall, "would tell us things that we knew but would rather forget; and he told us much that we did not know due to the limitations of our experience."

Allison Lehrer, in *The Appointment of Women to the Federal Courts* (2011) notes Justice Ginsburg's participation in the 2009 U.S. Supreme Court decision in *Safford School District v. Redding*, when she was the only woman on the court. In a remarkable move following oral argument on the case which involved a 13-year-old girl who was strip-searched after allegations she had ibuprofen on her, Justice Ginsburg spoke to *USA Today* before the case was decided.

Justice Ginsburg was troubled by questions asked by her colleagues during oral arguments, such as Justice Breyer, who was "trying to work out why this is a major thing to say strip down to your underclothes," comparing it to wearing a bathing suit. Justice Ginsburg shared how her male colleagues seemed unable to appreciate the kind of devastating humiliation that a 13-year-old girl might suffer being strip-searched. This was said to potentially shame her colleagues in deciding in favor of the girl.

Justice Ginsburg was able to successfully advocate for the girl's interests, enabling her colleagues to understand there was an emotional aspect to the case. But her effort was said to go beyond what would have been necessary if more women had been there to support her opinion in normal deliberation.

Barriers and Best Practices

A 2010 study by The Brennan Center for Justice at NYU Law School, "Improving Judicial Diversity," identifies a number of obstacles to the diversification of the bench, as well as a number of best practices to increase diversity.

Implicit bias, stereotypes and attitudes that individuals are unaware of having is said to be a primary reason hindering efforts to diversify the bench. Numerous studies demonstrate that implicit biases alter one's behavior, including how one might give an interview or hire a candidate.

"A Future History of Implicit Social Cognition and the Law," authored by well-respected expert UCLA Professor Jerry Kang and Kristin Lane, documents the extensive research regarding implicit bias. Studies conclude all people stereotype others unconsciously. It arises from ordinary and unconscious tendencies to make associations. As Professor Kang notes, substantial evidence disputes any notion that individuals are literally colorblind or gender-blind.

Findings demonstrate the magnitude of implicit bias toward members of disadvantaged groups, which also includes implicit bias from specific minority groups against other minority groups. Implicit bias is pervasive and conflicts with conscious attitudes and intentional behavior. Thus, not withstanding protestations to the contrary, people are generally not blind to race, gender, religion, social class or other demographic characteristics. In numerous studies, participants systematically preferred socially privileged groups: young over old, white over black, light-skinned over dark-skinned, other peoples over Arab/Muslim, able over disabled, and straight over gay.

The research demonstrates why proactive steps must be made to counteract the unconscious tendency to appoint White male judges. As Professor Kang explains as a threshold

matter, in order to correct bias, decision makers must be made aware of their own implicit biases; bias that everyone has. "And this scientific knowledge has the potential to burst our complacent assumptions of objectivity and fairness. It can fundamentally alter how we might accept responsibility for the inequities around us."

As Professor Kang documents, implicit biases do predict behavior in the real world. For a striking example, Joshua Correll's 2002 study addresses how implicit bias predicts the amount of shooter bias—how much easier it is to shoot blacks compared to whites in a game simulation.

In the study, participants are asked to make one response if the person holds a weapon, and another if the person holds a harmless object such as a cell phone or wallet. Responses differed as a function of race: Participants were quicker to "shoot" an armed African American target than an armed Caucasian target, but slower to "not shoot" an unarmed African American target than an unarmed Caucasian target. These stereotype-consistent behaviors emerged among both black and white participants.

It is crucial to not minimize how implicit bias can predict behavior. In an important 2004 study by Marianne Bertrand and Sendhil Mullainathan, comparable resumes were sent to numerous employers in Boston and Chicago, but used names such as "Emily" or "Greg" to signal whiteness and "Lakisha" and "Jamal" to signal blackness. The simple manipulation of the name produced a 50% difference in callback rates. In 2007, researcher Dan-Olof Rooth replicated this study. Rooth sent resumes with similar qualifications to job listings in Sweden; however, each resume either denoted an Arab/Muslim name or a Swedish name. The results were consistent: an identically qualified candidate was 3.3 times more likely to be called back because he enjoyed a Swedish name.

Professor Kang suggests that while it is unduly optimistic to think it is easy to influence whether implicit bias translates into discriminatory behavior, fortunately these biases are malleable and the environment can strongly influence how and whether implicit biases translate into behavior. Studies demonstrate that exposure to positive examples of disfavored social category decreased implicit bias against that category significantly. One longitudinal study found women who attended a single-sex university had their average group implicit stereotypes against women decrease to zero. By contrast, a control group of women who attended a co-ed university had its average implicit bias increase. Researchers determined it was the exposure to female professors and administrators which explained the difference.

Progress is being made in this area. New legislation requires members of the State Bar's Commission on Judicial Nominees Evaluation (JNE) to complete a minimum of two hours of training annually in the area of bias in the judicial appointments process. Many believe that besides the JNE Commission, anyone involved in evaluating judicial applicants—such as those who advise the Governor as well as local bar association screening committees could benefit from bias training.

Collaborative and Systematic Efforts

Widespread agreement exists that an effort to increase diversity is best done by a collaborative, systematic effort. The Brennan Center for Justice study concludes leadership of high-ranking officials setting an inclusive tone is crucial. If diversity is a priority, the effort must be from top to bottom, including a Governor who pushes the issue, to the minority and women bar associations who must recruit qualified candidates.

Preliminary discussions have begun between the Governor's office and bar associations and will continue to occur, but it is clear an overwhelming amount of work and coordination needs to be done. Groban indicated a priority for this administration is outreach to those counties lacking diverse applicants: Orange County, Kern County, Madera County, Monterey County, Napa County, San Luis Obispo County and Shasta County as having too few candidates.

The Council on Access and Fairness is attempting to implement outreach programs in these counties, as well as addressing other areas to improve judicial diversity such as data collection for disabled and LGBT applicants, revision of the online application and training for JNE commissioners. However, success will be difficult unless there is coordination with the Governor's office, local bar associations and judiciary.

It is universally acknowledged having a mentor or support person is imperative. To that end, discussions between the California Asian Pacific American Judges Association, California Association of Black Lawyers Inc., Judicial Council and the California Latino Judges have begun to open the lines of communication, and possibly form a coalition to facilitate efforts to diversify the bench.

Court of Appeal Justice Candace Cooper (Ret.) is an influential jurist and outspoken advocate of judicial diversity. In a heartfelt 2008 tribute to former Justice Vaino Spencer, she shared her surprise at being asked to lunch by Justice Spencer and Justice Joan Dempsey Klein. During lunch, the Justices shared with the young lawyer that the new governor, Jerry Brown, wanted to appoint qualified women and minorities to the bench and urged her to apply. While she knew others who had judicial ambitions, she never considered herself judge material. At their urging, however, Cooper applied.

In 1979 she was appointed by Governor Brown to the Los Angeles Municipal Court and went on to a remarkable judicial career which included appointment to the Los Angeles Superior Court as well as becoming the Presiding Justice for the Court of Appeal, Division Eight, a career that may not have begun if it had not been for the intervention and encouragement of Justices Spencer and Klein.

Change comes slowly, but with the inspiration of the recent appointments of Justice Kagen, Justice Sotomayor, Justice Cantil-Sakauye and Justice Liu, a recognition of the value that different voices bring to the judiciary and affirmative steps led by leaders with vision, the goal of a diverse judiciary can be a reality.

Cynthia Loo *has been a referee with the Los Angeles County Superior Court for the last eleven years. She currently is the chair of the State Bar of California's Council on Access and Fairness judicial committee and on the governing boards of the Asian Pacific American Women Lawyers Alliance, the Asian Pacific American Bar Association and the ABA's Standing Committee on Minorities in the Judiciary.*

Loo wishes to thank Presiding Judge Lee Smalley Edmon, Justice Candace Cooper (Ret.), Professor Jerry Kang, and members of the Council on Access and Fairness, notably, Justice Carlos Moreno (Ret.), Patricia Lee and Judge Brenda Harbin Forte for their help and inspiration.

Loo can be reached at CLLoo@LASuperiorCourt.org.

Test No. 41

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 in Elimination of Bias. 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. For the first time in history, there are two women serving simultaneously on the U.S. Supreme Court.
   True
   False

2. With more than 70% of Obama's confirmed judicial nominees being "nontraditional," Obama has surpassed his predecessors in putting forth diverse candidates to the federal bench.
   True
   False

3. For the first time in California history, the California Supreme Court is a majority female and majority of Asian justices.
   True
   False

4. Due to progress made by President Obama, women now are proportionately represented on the federal bench.
   True
   False

5. Within the past five years, California has made slight progress in the percentage of women and minorities.
   True
   False

6. The population of California is 72.3% white, and its judiciary is 40% white.
   True
   False

7. Presiding Judge of the Los Angeles County Superior Court is the court's first woman to hold the position in the 121-year history of the court.
   True
   False

8. Governor Jerry Brown has pledged to increase diversity on the bench by appointing more prosecutors.

9. Governor Jerry Brown surprised legal observers by appointing UC Berkeley Goodwin Liu as an Associate Justice to the California Supreme Court.
   True
   False

10. The State Bar's Commission on Judicial Nominees Evaluation is mandated by law to consider a judicial applicants experience broadly, to not only consider those with prosecutorial experience but also to consider those with non-litigation experience.
    True
    False

11. Justice Carlos Moreno (Ret.) was the only justice to dissent to the May 2009 California Supreme Court decision which upheld Prop 8, which banned same-sex marriage.
    True
    False

12. There is empirical support that judges of differing racial groups may have different perspectives that bear on legal decision-making.
    True
    False

13. There is no gap between the way white and black judges view the legitimacy of the criminal justice system.
    True
    False

14. Studies demonstrate there is some variance in jurisprudence between males and females.
    True
    False

15. In the 2009 U.S. Supreme Court case *Safford School District v. Redding*, Justice Ruth Bader Ginsburg spoke with the media following oral argument and expressed that her male colleagues seemed unable to appreciate the kind of devastating humiliation that a 13-year-old girl might suffer being strip-searched. This was said to potentially shame her colleagues in deciding in favor of the girl.
    True
    False

16. Implicit bias is said to be a primary reason hindering efforts to diversity the bench. Numerous studies demonstrate that implicit biases alter one's behavior, including how one interviews or hires a candidate.
    True
    False

17. Substantial evidence demonstrates that minority judges can be literally colorblind-blind.
    True
    False

18. Implicit bias is pervasive and conflicts with conscious attitudes and intentional behavior. Thus, not withstanding protestations to the contrary, people are generally not blind to race, gender, religion, social class or other demographic characteristics.
    True
    False

19. In an important 2004 study, comparable resumes were sent to numerous employers in Boston and Chicago, but used names such as "Emily" or "Greg" to signal whiteness and "Lakisha" and "Jamal" to signal blackness. The simple manipulation of the name produced a 15% difference in callback rates.
    True
    False

20. Professor Kang states that in order to correct bias, decision makers must be aware that everyone has implicit biases. Fortunately, JNE commissioners are now required to attend two hours of bias training annually.
    True
    False

MCLE Answer Sheet No. 41

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 $15 testing fee for SFVBA members (or $25 for non-SFVBA members) to:

   San Fernando Valley Bar Association
   21250 Califa Street, Suite 113
   Woodland Hills, CA 91367

METHOD OF PAYMENT:
- ❒ Check or money order payable to "SFVBA"
- ❒ Please charge my credit card for $_____.

_____
Credit Card Number Exp. Date

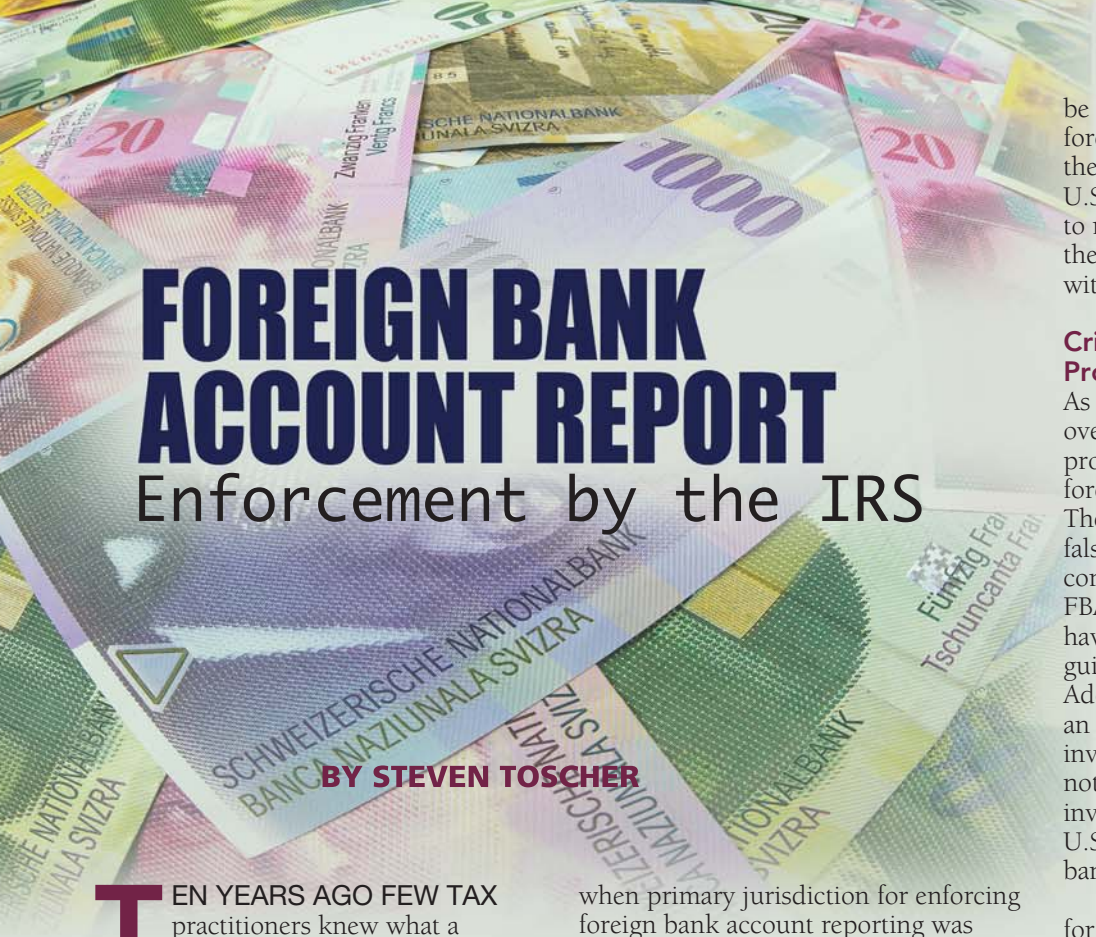
_____
Authorized Signature

5. Make a copy of this completed form for your records.
6. Correct answers and a CLE certificate will be mailed to you within 2 weeks. If you have any questions, please contact our office at (818) 227-0490, ext. 105.

Name_____
Law Firm/Organization_____
_____
Address_____
City_____
State/Zip_____
Email_____
Phone_____
State Bar No._____

ANSWERS:
Mark your answers by checking the appropriate box.
Each question only has one answer.

1.	❑ True	❑ False
2.	❑ True	❑ False
3.	❑ True	❑ False
4.	❑ True	❑ False
5.	❑ True	❑ False
6.	❑ True	❑ False
7.	❑ True	❑ False
8.	❑ True	❑ False
9.	❑ True	❑ False
10.	❑ True	❑ False
11.	❑ True	❑ False
12.	❑ True	❑ False
13.	❑ True	❑ False
14.	❑ True	❑ False
15.	❑ True	❑ False
16.	❑ True	❑ False
17.	❑ True	❑ False
18.	❑ True	❑ False
19.	❑ True	❑ False
20.	❑ True	❑ False



FOREIGN BANK ACCOUNT REPORT

Enforcement by the IRS

BY STEVEN TOSCHER

TEN YEARS AGO FEW TAX practitioners knew what a Foreign Bank Account Report ("FBAR") form[1] looked like and even fewer taxpayers new of their obligation to file the form. That is no longer the case. The Internal Revenue Service ("IRS") recently completed two Offshore Voluntary Disclosure Initiatives ("OVDI" or "Initiatives") in which approximately 30,000 United States taxpayers came forward and voluntarily disclosed their foreign bank accounts and past non-compliance to the IRS.[2]

These taxpayers were able to avoid potential criminal prosecution under the IRS long-standing voluntary disclosure practice and resolve their civil liability for additional taxes, interest and penalties. The most recent Initiative ended on September 9, 2011. The IRS announced that it collected $2.2 billion from taxpayers in the 2009 Initiative and an additional $500 million as down payments from taxpayers on the 2011 Initiative.[3]

Now that these two Initiatives have ended, what can now be expected from the IRS in terms of criminal investigations and prosecutions; civil examinations? And how will the IRS deal with taxpayers who come forward now and make a voluntary disclosure after the close of these formal Initiatives?

The Government's significant enforcement efforts in the foreign bank account area commenced in 2003 when primary jurisdiction for enforcing foreign bank account reporting was turned over to the IRS.[4] The watershed event occurred in February of 2009, when the giant Swiss bank, UBS, under threat of criminal prosecution from the U.S. Department of Justice ("DOJ"), turned over "secret" bank account information on approximately 280 of their U.S. clients and subsequently agreed to turn over information on many thousands more. The veil of Swiss secrecy was breached—forever.[5]

With the end of the two OVDIs, one could reasonably ask: Is this the beginning of the end of the IRS' enforcement effort? More likely, this is the end of the beginning. If the government can be taken at its word, the multi-front enforcement effort of the IRS and the DOJ will continue. As noted recently by IRS Commissioner Doug Shulman: "By any measure, we are in the middle of an unprecedented period for our global international tax enforcement efforts. We have pierced international bank secrecy laws, and we are making a serious dent in offshore tax evasion."[6]

The enforcement effort includes criminal investigations and prosecutions, IRS civil examinations and efforts by Congress to strengthen foreign bank obligations to report information on U.S account holders, as reflected in the recently enacted FATCA legislation.[7] Enacted in 2010, and now scheduled to be effective in 2014, FATCA will require foreign financial institutions to report to the IRS information on accounts held by U.S. taxpayers (or their entities). Failure to make the required reports subjects the banks to substantial and punitive withholding taxes.

Criminal Investigations and Prosecutions

As of the present date, there have been over 60 publicly announced criminal prosecutions arising out of the UBS foreign bank account investigation. The charges have included the filing of false income tax returns, tax evasion, conspiracy and the failure to file the FBAR form, all federal felonies. There have been 32 plea dispositions, three guilty verdicts and no acquittals—yet. Additionally, it is estimated there are an additional 100 pending criminal investigations for which charges have not yet been brought. These criminal investigations and prosecutions include U.S. taxpayers, attorneys, foreign bankers and foreign banks.

The sentences handed down for foreign account bank violations under the advisory Federal Sentencing Guidelines have ranged from probation to multiple years in jail. Very recently, on November 10, 2011, a former client of UBS was sentenced to one year and a day for conspiring to defraud the IRS.

Press reports suggest there are approximately eleven Swiss banks under active criminal grand jury investigation for illegally assisting U.S taxpayers in evading taxes. Investigating and prosecuting the banks is a core strategy of the DOJ and the IRS. Without the assistance of the banks and bankers, U.S. taxpayers would find it difficult if not impossible to avoid U.S. taxation through the foreign banking system. The strategy has paid big dividends for the Government. The UBS investigation and its fallout helped persuade approximately 30,000 U.S. taxpayers to enter into the OVDIs.

Credit Suisse Account Holders

There is now a repeat of that strategy relating to another Swiss banking giant—Credit Suisse. Taxpayers have started receiving the letters similar to those which UBS clients received, indicating that a request for information on U.S. account holders has been received and that Credit Suisse has been ordered to turn over the information to the Swiss Federal Tax Administration (the Swiss IRS) and then to the IRS

unless the U.S taxpayer can demonstrate the turnover of the information would violate Swiss law, including the U.S.-Swiss Tax Treaty. Taxpayers who banked with UBS did not fair well in preventing the turn over of account information to the IRS and it is unlikely that Credit Suisse account holders will do any better.

Civil Enforcement Efforts

The criminal investigations and prosecutions are but one prong of the Government's multi-faceted enforcement effort. There are not enough resources to prosecute every person who might be guilty of a tax crime, including one related to a foreign bank account. Accordingly, a robust effort should be expected by the civil examination function of the IRS to examine those taxpayers who are believed to have foreign bank accounts and who have not come forward on their own through the voluntary disclosure process.

While a letter from an IRS Revenue Agent investigating a civil tax matter is a far happier greeting than a grand jury subpoena served by the Criminal Investigation Special Agent, these civil examinations contain their own set of challenges.

These challenges include the potential of a referral to the Criminal Investigation if "firm indications of fraud" are discovered during the audit and the large, some would say draconian, civil penalty liabilities for failure to appropriately report the existence of a foreign bank account. While the more serious penalties relate to willful failures to report the income or the existence of the foreign account, such as the 50 percent willful FBAR penalty[8] or the 75 percent civil fraud penalty[9], there are also substantial penalties where the taxpayer will have to show reasonable cause in order to avoid those penalties, a standard more difficult for a taxpayer to meet.[10]

The draconian nature of the penalties is made clear from the IRS' own announcements.[11] In their example of a penalty calculation, assuming there was $1 million in an account beginning in 2003 and it earned a modest $50,000 of interest income each year, the potential civil liabilities, tax, accuracy related penalty, accrued interest and the 50 percent willful FBAR penalty, totals $4,375,000. As one can see, the civil exposure—even if a taxpayer is lucky enough to avoid a criminal investigation

and prosecution—is very substantial, indeed life threatening from an economic point of view.

Many practitioners ask whether the IRS will really assert these draconian penalties. While the IRS may have a considerable burden of proof in sustaining willful penalties and asserting these very large penalties implicates constitutional limitations[12]—the answer is yes. The leadership of the IRS appears committed to vigorously enforcing the laws relating to these foreign information reporting penalties.

There is no question that the multi-faceted enforcement effort will continue, including criminal investigations and prosecutions, civil examinations and the assertion of large civil penalties. As a practical matter, just like every taxpayer who commits a criminal violation will not be caught and punished, not every foreign account holder will fall within the net of IRS civil enforcement efforts. But if the enforcement effort continues as anticipated and the FATCA legislation is implemented, the risks of being caught will increase dramatically. Criminal investigations and prosecutions take a severe toll on any taxpayer—even those who are not convicted. Civil tax enforcement efforts—when large draconian penalties are at stake—pose a similar hazard. Both can be "life" threatening.

A Voluntary Disclosure is Still Possible

Thus far, 30,000 taxpayers have entered into the formal OVDIs. Some believe many more taxpayers have quietly amended their tax returns or are starting to comply with their foreign reporting obligations prospectively. The question is how many more taxpayers are still out in the cold, waiting for the next foreign bank to come under scrutiny? No one knows for sure. Estimates range from hundreds of thousands to millions of U.S. taxpayers.

Based upon the recent activity concerning Credit Suisse, there appears to be many U.S. taxpayers who have not come forward. What should those taxpayers do at this time? While the formal OVDIs have now terminated, the IRS and DOJ's long-standing voluntary disclosure practice and policies are still in effect[13] and there is still time to come forward with a voluntary disclosure if the taxpayer's name has not already been turned over to the Government.

The current IRS policy on voluntary disclosure generally provides that a voluntary disclosure occurs when the communication to the IRS is truthful, timely, complete, and when (a) the taxpayer shows a willingness to cooperate (and does in fact cooperate) with the IRS in determining his or her correct tax liability; and (b) the taxpayer makes good faith arrangements with the IRS to pay in full, the tax, interest, and any penalties determined by the IRS to be applicable.

A disclosure is timely if it is received before:

a. the IRS has initiated a civil examination or criminal investigation of the taxpayer, or has notified the taxpayer that it intends to commence such an examination or investigation;
b. the IRS has received information from a third party (e.g., informant, other governmental agency, or the media) alerting the IRS to the specific taxpayer's noncompliance;
c. the IRS has initiated a civil examination or criminal investigation which is directly related to the specific liability of the taxpayer; or
d. the IRS has acquired information directly related to the specific

liability of the taxpayer from a criminal enforcement action (e.g., search warrant, grand jury subpoena).[14]

Even if the taxpayer has received a letter from Credit Suisse (or another foreign bank) stating that information has been requested by the IRS, the taxpayer may still be eligible if the Government has not received the information on the specific taxpayer. However, if a foreign banker or adviser has already provided the name of the taxpayer to the IRS (e.g., they are cooperating with the IRS or DOJ), it is likely too late.

When a taxpayer does come forward and qualifies for a voluntary disclosure, the IRS will not recommend, and the taxpayer will be able to avoid, a criminal investigation and prosecution. However, the termination of the formal OVDIs leaves taxpayers guessing as to what the civil examination and penalty regime will be.

Under the recently concluded OVDI, taxpayers were expected to file amended returns for the years 2003 through 2010, pay all tax and interest, a 20 percent accuracy related penalty and a 25 percent foreign information reporting penalty on the highest value of their foreign bank accounts and other foreign financial assets during that period of time.

It is fair to conclude that unless there are mitigating circumstances, at a minimum, in any voluntary disclosure made now, the IRS will be looking for a civil resolution framework similar to the last OVDI, although the penalty structure will likely be higher. The 2009 OVDI foreign information-reporting penalty of 20 percent was increased to 25 percent in the 2011 program.

While the uncertainty of the civil penalty structure does create a more complex judgment for both the tax practitioner and the taxpayer—what is important is that the practice regarding voluntary disclosures which allow taxpayers to avoid criminal prosecution is alive and well and taxpayers wanting to avoid potential criminal prosecution should act promptly. Moreover, the IRS Commissioner has made clear that in considering penalties, the IRS should continue to "draw a clear line between those individual taxpayers with offshore accounts who voluntarily come forward to get right with the government and those who continue to fail to meet their obligations."[15] The line referred to by the Commissioner is a bright, rigid and unforgiving line.

A taxpayer who has committed a very serious and provable criminal tax violation can receive the benefits of the voluntary disclosure practice and avoid prosecution. The sins of the past are basically forgiven, at least for criminal purposes. But in order to qualify, the taxpayer must get to the IRS before the IRS gets to the taxpayer.

A taxpayer whose case is much less egregious—but on the wrong side of this line—may find himself the subject of criminal investigation, potential prosecution and incarceration. Timing is everything in the voluntary disclosure world and the clock is ticking for U.S holders of foreign bank accounts who are not yet in compliance.

Steven Toscher *is a principal of the law firm of Hochman Salkin Rettig Toscher & Perez, P.C., where he specializes in civil and criminal tax litigation and controversy. He is a co-author of the BNA Tax Management Tax Crimes Portfolio, No. 636-3rd, and a frequent lecturer and author on tax controversy topics. Toscher can be reached at toscher@taxlitigator.com.*

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[1] The Foreign Bank Account Report form is a TD F 90.22.1 and is authorized under the Bank Secrecy Act (Title 31 U.S.C Sections 5311-5330). For more in depth analysis of the substantive requirements and history of FBAR enforcement, see Toscher and Stein, "*FBAR Enforcement is Coming!*, CCH Journal of Tax Practice & Procedure (December-January 2004); Toscher and Stein, "*FBAR Enforcement–an Update*, CCH Journal of Tax Practice & Procedure (April-May 2006); Toscher and Stein, "*FBAR Enforcement–Five years Later*, CCH Journal of Tax Practice & Procedure (June July 2008).

[2] See IRS News Release, IR-2011-94, September 15, 2011.

[3] Id.

[4] See IRS News Release, IR-2003-48, April 10, 2003.

[5] For a more complete discussion of the UBS matter, see Toscher, "*Civil and Criminal Tax Enforcement Implications of the UBS Enforcement Initiative and the Future of Voluntary Disclosure*," 52 Tax Management Memo No. 3, 43 (January 31, 2011).

[6] See IRS News Release, IR-2011-94, September 15, 2011.

[7] FATCA was added as part of the Hiring Incentives to Restore Employment Act of 2010 and is codified in Sections 1471-1474 of the Internal Revenue Code.

[8] See Title 31 U.S.C. Section 5321(a)(5). The IRS must prove willfulness by "clear and convincing" evidence and a general presumption of correctness afforded to tax assessments does not apply. See CCA 200603026 (September 1, 2005). See also *Williams v Untied States*, CA No. 1:09-cv-437 (E.D. Va. Sept. 1, 2010). See recently, *Browning v Commissioner*, T.C. Memo 2011-261 (11/3/11) (holding taxpayer liable for fraud penalty in part because of undisclosed foreign bank account).

[9] See Title 26 U.S.C. 6663.

[10] See for example, Title 26 U.S.C. Section 6677, relating to certain failures to report transactions with a foreign trust.

[11] See IRS OVDI FAQ No. 12.

[12] See Toscher & Lubin, "*When Penalties are Excessive – The Excessive Fines Clause as a Limitation on the Imposition of the Willful FBAR Penalty*," CCH Journal of Tax Practice & Procedure, December 2009-January 2010.

[13] The current IRS policy is contained in Internal Revenue Manual (IRM) 9.5.11.9 (October 6, 2011) and the DOJ Policy is contained in the Tax Divisions Criminal Tax Manual (2008 Ed.), Sec. 4.01 and Sec. 3 (Tax Division Policy Directives and Memoranda), pp. 3-12 and 3-13.

[14] IRM 9.5.11.9 (October 6, 2011).

[15] See Statement by Commissioner Shulman on Offshore Income, March 26, 2009, Doc. 2009-6833, 2009 TNT 57-11.

HEALTH CARE REFORM AND DIVERSIFIED EMPLOYEE BENEFITS

A look at the changes coming in 2012, 2013 and 2014

By Martin Levy, CLU/RHU

FIRMS SPONSORING GROUP HEALTH PLANS should be aware of the changes coming to the health insurance industry as part of the "second stage" of health care reform. The market and carriers have already extended the key provisions of the Patient Protection and Affordable Care Act, including:

- **Extended Coverage for Young Adults.** Group health plans and health insurance issuers offering group or individual health insurance coverage that provide dependent coverage of children must make coverage available for adult children up to age 26. There is no requirement to cover the child or spouse of a dependent child.

- **Access to Insurance for Uninsured Individuals with Pre-Existing Conditions.** The health care reform bill provided for the establishment of a temporary high risk health insurance pool program to provide health insurance coverage for certain uninsured individuals with pre-existing conditions.

- **Eliminating Pre-Existing Condition Exclusions for Children.** Group health plans and health insurance issuers may not impose pre-existing condition exclusions on coverage for children under age 19.
Coverage of Preventive Health Services. Group health plans and health insurance issuers offering group or individual health insurance coverage must provide coverage for preventive services. These plans also may not impose cost sharing requirements for preventive services. Grandfathered plans are excluded.

- **Prohibiting Rescissions.** The health care reform law prohibits rescissions or retroactive cancellations of coverage. Group health plans and health insurance issuers offering group or individual insurance coverage may not rescind coverage once the enrollee is covered, except in cases of fraud or intentional misrepresentation.

- **Limits on Lifetime and Annual Limits.** In general, group health plans and health insurance issuers offering group or individual health insurance coverage may not establish lifetime limits on the dollar value of benefits for any participant or beneficiary or impose unreasonable annual limits on the dollar value of benefits for any participant or beneficiary.

- **Improved Appeals Process.** Group health plans and health insurance issuers offering group or individual health insurance coverage must implement an effective appeals process for appeals of coverage determinations and claims.

What's New for 2012?

Insurers that issue group health will have to abide by some new requirements. These major and minor adjustments should be kept on one's radar.

- Should plan benefits materially change, the plan issuer will have to provide notice in writing at least 60 days beforehand to plan sponsors and participants.

- Health care plan summaries will have to meet new formatting and content guidelines for clarity, and in the case of fully insured plans, the plan issuer must provide electronic or hard-copy summaries at designated times during the enrollment process.

- Group health plan participants could actually get rebates in 2012 under certain conditions. In 2011, insurers had to start notifying the Department of Health and Human Services of their medical loss ratios—that is, the percentage of premiums that they spend on clinical services and efforts to improve health care quality as opposed to administrative overhead. The minimum medical loss ratio is 80% for individual and small group insurers and 85% for large group insurers. If a plan issuer doesn't meet this medical loss ratio test for 2011, it must issue rebates to enrollees beginning on August 1, 2012.[1,2]

What Happens in 2013?

There are four important changes scheduled for 2013 that employers must recognize and publicize.

- Companies will have to disclose the value of employer-sponsored health insurance coverage to employees on W-2 forms for the 2013 tax year. Big businesses are already doing this, but the IRS allowed a grace period for companies with less than 250 W-2 employees.

- Companies will also be required to inform their workers about health care insurance exchanges, health care premium subsidies and free choice vouchers.

- There will be a $2,500 cap placed on annual flexible spending account (FSA) contributions, with COLAs in future years.

- Either the plan issuer or the plan sponsor must pay an annual per-member fee to the Patient-Centered Outcomes Research Institute for fiscal year 2013 (which starts October 1, 2012) and subsequent fiscal years. This annual fee equals $1x the number of covered lives; in fiscal year 2014, it will double to $2 per covered life.[1,2]

What is Scheduled to Happen in 2014?

The second stage of health care reform wraps up with a flourish in this year, with 10 significant changes. By this time, a whole new health insurance market is supposed to be in place and businesses will step into the "new world" of health care insurance.

- In 2014, firms with 50 or more employees will be required to offer a minimum level of health care coverage to active employees. So what exactly is minimum coverage? The federal government defines it using two criteria: the health plan chosen has to cover at least 60% of covered health care costs, and the plan can't cost a worker more than 9.5% of his or her household income. If firms with 50 or more employees can't meet this test, they will pay a penalty of $2,000 to $3,000 per employee, which some companies may elect to do this.

- New reporting requirements start for businesses. Employers will annually have to inform the IRS if they are offering minimum health care coverage or not, the duration of any waiting period, the number of FTEs per month covered and their names, addresses and taxpayer ID numbers. They will also have to report the monthly premium for the cheapest coverage option in each enrollment category and the employer's percentage of the total allowed cost of benefits under the plan.

- A company might be eligible for the Small Business Health Care Tax Credit if (1) it employs 25 or fewer FTEs (apart from owners or family members) whose annual wages are $50,000 or less and (2) it pays 50% or more of the health care coverage for single workers.

- Also, the wellness program incentives cap rises from 20% to 30%, so here's another reason to encourage workers to participate in wellness program (and to seek federal grant funding for said programs).

- Businesses with 200+ employees will be asked to automatically enroll all FTE and PTE into group health plans. Employees may opt out.

- As state health insurance exchanges are supposed to be up and running, employers must provide a free choice voucher to qualifying employees in 2014.

- Employers cannot make employees wait more than 90 days for health insurance coverage in 2014, and non-grandfathered plans must also provide coverage for clinical trials related to life-threatening illnesses.

- The retiree reinsurance program reimbursing firms for up to 80% of qualifying retiree medical expenses will be gone in 2014 and maybe before then if its funding runs out.[1,3,4]

Of course, much of the aforementioned could well be thrown into disarray should the Supreme Courts rule the mandate to purchase as unconstitutional. Insurance carriers would retract from the market rather than expose themselves to guaranteed issue without the "mandate" to purchase. Stay tuned!

***Martin Levy, CLU/RHU** is a principal of Corporate Strategies Inc., an employee benefits company catering to small and medium sized companies, located in Encino. Marty can be reached at (800)914 3564 or Marty@CorpStrat.com.*

[1] www.makinghealthcarereformwork.com/healthcarereform/assets/library/55770320659CAEENABC.pdf [4/11]

[2] uhc.com/united_for_reform_resource_center/health_reform_provisions/medical_loss_ratio.htm [9/4/11]

[3] www.makinghealthcarereformwork.com/healthcarereform/assets/library/55770320659CAEENABC.pdf [4/11]

[4] seyfarth.com/index.cfm/fuseaction/publications.publications_detail/object_id/696586a2-1439-4e95-931b-15f1fcee6747/AnEmployersGuidetoHealthCareReform.cfm [4/15/10]

San Fernando Valley Bar Association

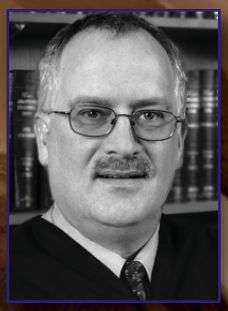
Annual Judges' Night

Thursday, February 23, 2012

Warner Center Marriott

21850 Oxnard Street, Woodland Hills

5:30 PM Cocktail Reception
6:30 PM Dinner and Program



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Los Angeles Superior Court
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New Members

The following applied as members to the SFVBA in November 2011:

Victoria L. Brown
San Fernando Valley Business Journal
Woodland Hills
(818) 676-1750 x12 • vbrown@sfvbj.com
Associate Member

Thomas L. Hoegh
Law Offices of Thomas Hoegh
Woodland Hills
(818) 466-5535 • tom@hoeghlaw.com
Litigation

Marc Karish
Karish & Bjorgum, PC
Pasadena
(213) 785-8070 • marc.karish@kb-ip.com
Intellectual Property

Joel B. Kelman
Ventura
(805) 647-1159 • jkelman1234@gmail.com

Nejat Kohan
Law Offices of Nejat Kohan
Palm Springs
(760) 799-2964 • nejatkohan@juno.com
Real Property

Amarpreet Singh Malik
Law Offices of Edward C. Ip & Associates
El Monte
(626) 228-0638 • amar@lawyer4dui.com
Criminal

Annette Mann
Law Offices of Marcia L. Kraft
Woodland Hills
(818) 883-1330 • annette@kraftlawoffices.com
Estate Planning, Wills and Trusts, Family Law, Probate

Brandon C. Murphy
Morris & Associates
Burbank
(818) 524-2336 • bmurphy@jgmorrislaw.com
Litigation, Probate

Kanteh Kevin Ong
Asvar, Odjaghian & Associates
Woodland Hills
(818) 227-4848 • kko@aoalaw.com
Workers' Compensation

Karen S. Socher
Law Offices of Marcia L. Kraft
Woodland Hills
(818) 883-1330 • karen@kraftlawoffices.com
Family Law

Sarah Thrift
Lewitt, Hackman, Shapiro, Marshall & Harlan
Encino
(818) 990-2120 • sthrift@lewitthackman.com
Paralegal

Macie D. Tuiasosopo
Detroit
(520) 204-4519 • macietui@gmail.com
Law Student

Jessica C. Wright
Los Angeles
(805) 886-6582 • jessica@jessicacwright.com

Patricia Zamora
Downey
(562) 927-7444 • pzamoralaw@gmail.com
Criminal

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Nuts and Bolts of Estate Planning
Alice Salvo, Esq.
Law Offices of Alice Salvo
1.5 Hours MCLE

11:00 a.m.
How to Tailor Your Employment Mediation to Maximize Outcome and Client Satisfaction
Max Factor, Esq. Steven Paul, Esq. and John Weiss, Esq.
ARC
1 Hour MCLE

12:00 Noon
Lunch

1:00 p.m.
Is That Considered Malpractice?
Terri Peckinpaugh and Wesley G. Hampton
Narver Insurance
1 Hour MCLE (Legal Ethics)

2:00 p.m.
How to Tell When Your Client is Lying to You, and How to Get Them to Tell You the Truth, With...or Without the Polygraph
Jack Trimarco
1 Hour MCLE

3:00 p.m.
The Ethical Collection of Fees
Myer Sankary, Esq.
1 Hour MCLE (Legal Ethics)

4:00 p.m.
Bias in the Legal Profession
Myer Sankary, Esq.
1 Hour MCLE (Elimination of Bias)

Saturday January 14

9:30 a.m.
Law Firm Productivity Seminar
Annie McQuillen, Esq
Thomson Reuters Westlaw
1 Hour MCLE

10:30 a.m.
Top Ten Insurance Agent Mistakes: What to Advise Your Clients
Elliot Matloff
The Matloff Company
1 Hour MCLE

11:30 a.m.
Intellectual Property 101
John Stephens, Esq.
1 Hour MCLE

12:30 p.m.
Lunch

1:30 p.m.
The Danger Zone: Escaping Bar Discipline
Professor Robert Barrett
2 Hours MCLE (Legal Ethics)

3:30 p.m.
Dealing with Stress: How to Prevent Substance Abuse
The Other Bar
1 Hour MCLE (Prevention of Substance Abuse)

Registration Form and Membership Application

(Pre-Registration Deadline is January 6, 2012)

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Firm _____

Address _____

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Phone _____

Fax _____

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State Bar No. _____

Bar Admission Date _____

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or		
Friday, January 13	$89	$199
Saturday, January 14	$89	$199
or		
Per MCLE Hour	$25	$50
✔ Class Attending		
Late Registration Fee	$40	$60
MCLE Self-Study Key Drive (with Marathon Registration)	$79	$79
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Membership Dues: $ _____

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Santa Clarita Valley Bar Association

The Melting Pot

BARRY EDZANT
SCVBA President

THE CITY OF LOS ANGELES has always been known as a melting pot of diverse cultures and religions. In fact, it is perhaps one of the most diverse cities in the world. The Santa Clarita Valley, encompassing Valencia, Saugus, Newhall, Stevenson Ranch, Canyon Country and Castaic, is without a doubt a mini melting pot in and of itself.

So it is not a surprise that the makeup of our attorneys in the Santa Clarita Valley is but a small sampling of our Valley's overall diversity. One need not look too far to see this reality. Of our last four Santa Clarita Valley Bar Association past presidents, three have been from diverse cultures. Tamiko Herron (African American), Rob Mansour (Lebanese) and Paulette Gharibian (Armenian) have held the reins of our organization. The cultural diversity of our other members includes a large Asian sampling, Persian, Latin, Indian, Canadian and European. No doubt, I've not mentioned many others.

While Santa Clarita is considered a middle to upper-middle class community, like any substantial community there is a section of the population that struggle daily to meet the needs of their families. In addition to lower income families, Santa Clarita has several groups of people who need help from our many charitable organizations, and individuals willing to help. These include our senior citizens, single parents, challenged teenagers, those inflicted with life threatening illnesses and our small but growing homeless population.

The Santa Clarita community is very fortunate to already have excellent organizations providing valuable services for our citizens in need. Organizations such as The Food Pantry, The Senior Center, The Michael Hoefflin Foundation, Single Mothers Outreach and many others are always a visible presence in Santa Clarita. But as Santa Clarita continues to grow, there is a greater need for pro-bono legal services for our less fortunate citizens.

Moving forward, the Santa Clarita Valley Bar Association will be taking a more substantial role to help improve the needs of our citizens. The SCVBA is committed to designing a program where our community can freely approach members with simple legal questions, and when the need and opportunity arises, to undertake more substantial cases, pro-bono, for those who cannot afford legal services. The SCVBA is looking into many wonderful charitable organizations within the community and asking how to help. Whether it's simply lending a helping hand at a charitable function, or providing full legal services, the SCVBA will have a more visible presence in the community.

But these goals are lofty for a small bar association. The association needs, and will be asking its members, to become more involved in the Santa Clarita Valley Bar Association to accomplish these goals. Realistically, this is not a one-year process. It would be foolish to even think so. To be sure, it's a long-term commitment from SCVBA members, board and the entire community. But it's a challenge worth undertaking, and without a question, is necessary for the underprivileged citizens.

***Barry L. Edzant** is a Valencia attorney specializing in lemon law, auto fraud and personal injury cases. He can be reached at (661) 222-9929 or at BarryE@Valencialaw.com.*

Valley Community Legal Foundation

A Time to Give

HON. MICHAEL R. HOFF, RET.
VCLF President

HAPPY NEW YEAR FROM THE Valley Community Legal Foundation! As many may know, the VCLF is undergoing some structural changes. There is not going to be a gala this year, although it has been tentatively rescheduled for 2013 (stay tuned for details). The decision was made after lots of soul searching and discussion among the Board.

The national economic situation played a large role in the decision to not have the gala. Instead, the Foundation is going to have a number of smaller events that will hopefully attract law firms' interests, participation and financial support. It is the Board's goal to find ways to have fun and at the same time make money so that the VCLF can be of assistance to the needy of the Valley.

The first small event is going to be a night with Hal Holbrook as he does a time honored salute to Mark Twain at the new Valley Performing Arts Center at Cal State Northridge. The event is scheduled for February 4 and includes a pre-theatre dinner at CSUN's Orange Gove Bistro. Tickets are limited; contact the Bar office to see if tickets are still available.

Giving Time or Money

People think that attorneys just make money and do not care about the other less fortunate residents of the Valley. The VCLF was founded to change this perception and to let people know that attorneys do care about the less fortunate people and organizations that operate mainly in the Valley. SFVBA members' assistance is needed and wanted. The VCLF is a 501(c)(3) charitable corporation and donations made to it are fully tax deductible. So now is the time to take that extra holiday cash and consider donating it to the VCLF.

The Foundation has a Board of Directors that consist of approximately 40 people. Many members of the Board are attorneys, but not all of them. If SFVBA members are not personally able to participate in the VCLF, please refer friends and colleagues to donate their time and resources.

Some of the recent and noteworthy projects that the VCLF has done include the Children's Waiting Rooms at the Van Nuys and San Fernando courthouses. For attorneys who do not get to court that often, the Children's Waiting Rooms were designed so that the children of litigants and witnesses do not have to bring their children into the courtrooms to hear their parents battle each other over custody and child support matters.

The VCLF also furnished the waiting room for children at the new Topanga Division of the Los Angeles Police Department. In addition, the VCLF supports a number of charitable organizations, such as Haven Hills and CASA, that help people that are in trouble.

One of SFVBA members' New Years resolutions should be to write a check to the VCLF and mail it to the Foundation at the Bar office. Giving always makes one feel better and will enable the VCLF to accomplish much more that it has in the past.

Hon. Michael R. Hoff, Ret. *can be contacted at mrhoff2@verizon.net.*

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Executive office in "A" building–great views, freeway close, reception, conference, copier, sec. space available, support staff as needed. Please call Joan (818) 783-8830.

SHERMAN OAKS

Executive 14 x 20 window office, secretarial space and phone system. Kitchen, conference room, available – copier, fax and form pleading program. Call Larry Epstein at (818) 905-0531.

VAN NUYS/CANOGA PARK

Excellent for attorneys, professionals. Great mid-Valley locations. Van Nuys 600-1,500SF and Canoga Park 400-600SF. Fantastic prices and terms. Honest, clean and working. Call owner direct, Ken (818) 909-7551.

WOODLAND HILLS

Beautiful suite and great location at Topanga and Victory. 12'x16' window office in law suite. Secretarial bay available. Reception room, conference room, kitchen, fax, copier and internet access. Street parking available. Call (818) 716-6400.

SUPPORT SERVICES

PROFESSIONAL MONITORED VISITATIONS AND PARENTING COACHING

Family Visitation Services • 20 years experience "offering a family friendly approach to" high conflict custody situations • Member of SVN • Hourly or extended visitations, will travel • visitsbyIlene@yahoo.com • (818) 968-8586/(800) 526-5179.

SECRETARIAL SERVICE

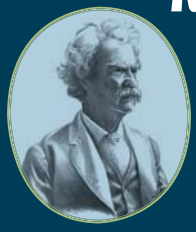
Legal/General Secretarial Service (telecommute). Skills include computer, transcription, light bookkeeping, billing/collections, dealing with vendors, and calendaring. Please contact Susan Newman at (818) 587-9130 or gsjnewman@aol.com.

Calendar

Valley Community Legal Foundation of the SFVBA Invites You to Attend

MARK TWAIN TONIGHT

Starring HAL HOLBROOK



Valley Performing Arts Center
California State University Northridge

February 4, 2012 at 6:15 PM

$150 per Person

(Includes ticket, dinner at the Orange Grove Bistro and parking)
Proceeds to benefit VCLF's Grants, Scholarships and Special Projects

Probate & Estate Planning Section
Using Trusts to Motivate Financial Literacy

JANUARY 10
12:00 NOON
MONTEREY AT ENCINO RESTAURANT
ENCINO

Attorney Jon Gallo will give the latest on incentive trusts in this multi-media presentation.

MEMBERS
$35 prepaid
$45 at the door
1MCLE HOUR

NON-MEMBERS
$45 prepaid
$55 at the door

Business Law, Real Property & Bankruptcy Section
Three Case Studies of Financial Fraud: Private Morality and Public Consequences

JANUARY 11
12:00 NOON
SFVBA CONFERENCE ROOM
WOODLAND HILLS

Chris Hamilton, a CPA specializing in fraud and forensic accounting in the context of complex civil and criminal litigation, will present what has become the defining topic of our time.

MEMBERS
$30 prepaid
$40 at the door
1MCLE HOUR

NON-MEMBERS
$40 prepaid
$50 at the door

Workers' Compensation Section
How to Make Gold Out of Third Party Aspects in WC Cases

JANUARY 18
12:00 NOON
MONTEREY AT ENCINO RESTAURANT
ENCINO

Workers' compensation attorney Gold Lee will lead a discussion on Third Party aspects and be available for a Q&A.

MEMBERS
$35 prepaid
$45 at the door
1MCLE HOUR

NON-MEMBERS
$45 prepaid
$55 at the door

Paralegal Section
Social Networking Research and Investigations: What are the Legal and Ethical Issues?

JANUARY 24
6:30 PM
SFVBA CONFERENCE ROOM
WOODLAND HILLS

Join us for the kickoff event of the year! Richard Harer of Specialized Investigations will explore social networking sites as tools for research and what legal and ethical complications arise from using these sites. This is a hot topic of interest to both paralegals and attorneys.

MEMBERS
$35 prepaid
$45 at the door
1 MCLE HOUR (Legal Ethics)

NON-MEMBERS
$45 prepaid
$55 at the door

Family Law Section
Beyond Elkins: Valley Style

JANUARY 23
5:30 PM
MONTEREY AT ENCINO RESTAURANT
ENCINO

A must attend! Judge Michael Convey and attorney Peter Walzer will offer the most pertinent details from their recent (longer and much more expensive) presentation of *Beyond Elkins, New Rules, New Forms* that was originally presented in December to the LACBA Family Law Section. This seminar will be tailored to Valley family law practitioners. Please note the additional MCLE given for this presentation.

MEMBERS
$45 prepaid
$55 at the door
1.5 MCLE HOUR

NON-MEMBERS
$55 prepaid
$65 at the door

Santa Clarita Valley Bar Association
Networking Mixer

JANUARY 24
6:00 PM
SALT CREEK GRILLE
VALENCIA

Contact (855) 506-9161 or info@scvbar.org to RSVP.

MEMBERS
FREE

NON-MEMBERS
$20 (Applied toward membership if you join SCVBA at the door)

Litigation Section
Nursing Home Litigation

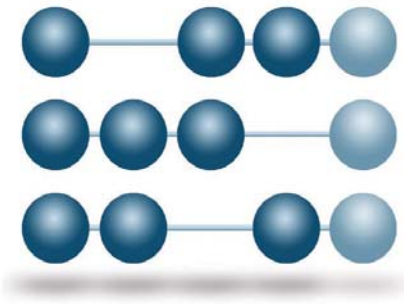
JANUARY 26
6:00 PM
SFVBA CONFERENCE ROOM
WOODLAND HILLS

Attorney Steven Peck will outline the intricacies of nursing home litigation.

MEMBERS
$35 prepaid
$45 at the door
1MCLE HOUR

NON-MEMBERS
$45 prepaid
$55 at the door

The San Fernando Valley Bar Association is a State Bar of California MCLE approved provider. To register for an event listed on this page, please contact Linda at (818) 227-0490, ext. 105 or events@sfvba.org.



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