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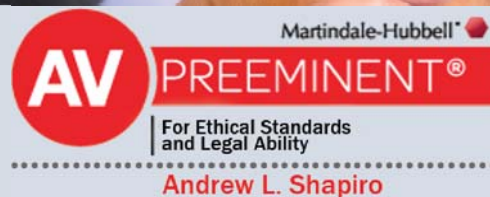
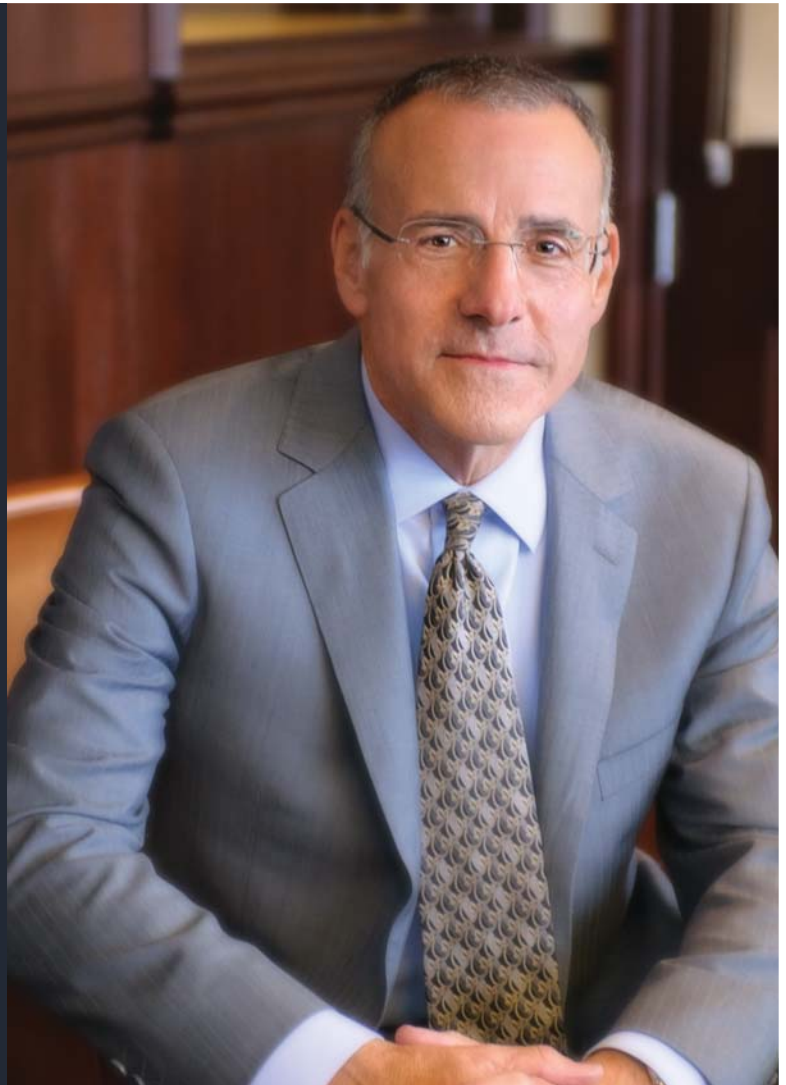
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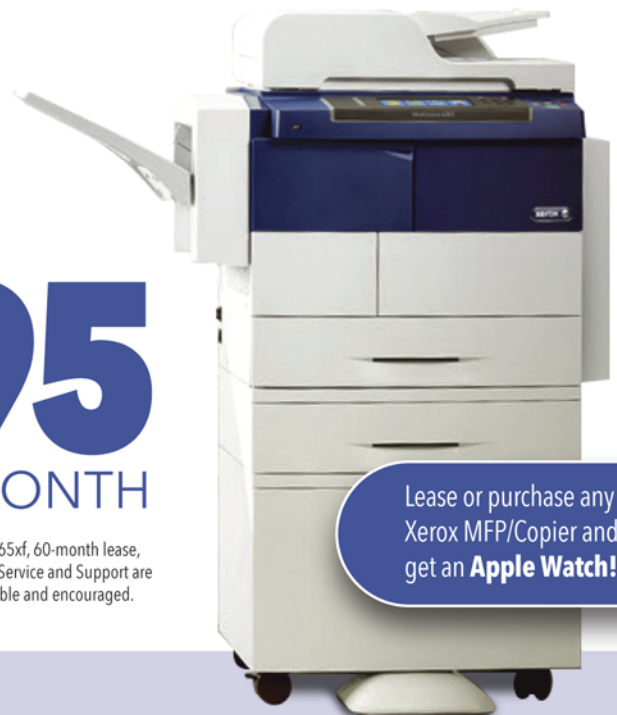


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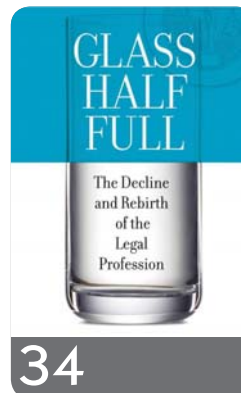
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An Uncertain Future

CAROL L. NEWMAN
SFVBA President



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AS I AM WRITING THIS President's Message, we have just had Judges' Night, at which we honored Los Angeles Superior Court Northwest District Supervising Judge Huey Cotton, Neighborhood Legal Services Executive Director Neal Dudovitz, and U.S. Court of Appeals Judge Harry Pregerson and U.S. District Court Judge Dean Pregerson, both whom have just taken senior status. What an inspiring event, and what a testament to the Valley!

But now that Judges' Night is over, it's back to what's really going on out there in the world. As a political junkie, I am closely following the presidential race, which, as of this moment, is shaping up as one of the most unique on record. ("Unique" is intended to be a safe and nonjudgmental term. Other descriptions may be equally appropriate.)

While the two parties could not be more different, both party establishments have been weakened, for better or worse. So this is certainly shaping up as an interesting election, at least from a purely historical perspective. Perhaps by the time you read this, both parties will have chosen their candidates. Or will we be facing brokered conventions? Stay tuned.

Meanwhile, the country must deal with the sudden death of U.S. Supreme Court Justice Antonin Scalia. While the health challenges of other justices, particularly Justice Ruth Bader Ginsburg, were well publicized in the media, Justice Scalia's death in his sleep was a shock. So the question now is: what happens next, in an election year? Is it fair that the fact of

the upcoming election should be used as a reason to delay justice?

Clearly the Supreme Court was intended to have nine justices—an odd number—to avoid tie votes, which do not accomplish anything. The Court should have its full complement of justices necessary to decide important legal issues. While no one can predict

in advance exactly how any of the justices will decide such issues (witness Justice Roberts' surprise deciding vote on Obamacare as just one example), it appears that the justices are now split 50-50 between conservatives on the one hand and liberals/moderates on the other. Yet, as a result of Justice Scalia's untimely death, the Court is

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now poised to become the pawn of both parties in a high-stakes match to try to load the dice as to how crucial legal issues will be decided going forward. As the *Los Angeles Times* said in a recent editorial, a prolonged battle over the vacancy will “reinforce[e] the impression that the justices are politicians in robes.”

The prospect of such a battle, regrettably, is likely. While this time the obstacle to a new appointment may be the Republicans while they hold out hope for a presidential victory in November, both parties have attempted to hold the Supreme Court hostage in the past. Neither side is blameless. Both parties should be ashamed of treating the Court as an extension of their agendas.

Certainly, and thankfully, we have numerous examples of Supreme Court justices, once in office, voting their consciences (and competently interpreting the law), regardless of who appointed them. We can only hope that the new appointee continues that tradition. Here is my wish list for the new Supreme Court justice:

- ✓ Someone who is a true legal scholar, not a politician, with the integrity, intelligence, and independence to decide each issue before him or her on its merits
- ✓ Someone who is not beholden to either party or to the president appointing him or her
- ✓ Someone who will earn the respect of his or her colleagues and the public, and who will help the Supreme Court burnish its image as the highest Court in the land, worthy of the greatest deference and admiration

This country deserves a top-flight Supreme Court with its full complement of nine members. That must happen sooner rather than later, and both parties should consider it their duty to make that happen. Waiting until the election is a risky strategy that could backfire on either side. There must be some candidate on whom the parties can agree. I'm available, LOL! 

Leading the Way

ELIZABETH POST
Executive Director




epost@sfvba.org

I AM WRITING THIS COLUMN ON A DELAYED FRIDAY NIGHT FLIGHT traveling back from Chicago. I just attended the ABA's three-day Bar Leadership Institute with SFVBA President-Elect Kira Masteller and Secretary Alan Kassan. The BLI is put on annually by the ABA's Division for Bar Services and the Standing Committee on Bar Activities and Services to provide leadership training for officers and executives of bar associations across the country. This year, the event was attended by more than 330 presidents-elect, bar officers, and executive directors from bar associations as large as the State Bar of California to a women bar association with just 200 members (and no staff).

This is the tenth BLI I have been lucky enough to join. (The SFVBA budgets to send the president-elect, secretary and myself every other year.) We learn a lot about inspirational leadership, best practices in governance, and effective communication. This year, Kira, Alan and I attended worthwhile workshops on maximizing member engagement, crisis management techniques, and cultivating relationships with our foundation and sections.

The best session was the last one on Friday, *Storytelling Tools of the Trade*, facilitated by famed improv theater Second City. We were taught improv skills to help us better listen and communicate our messages to members and the community. (I can't wait to try my new skills out when I get back to Los Angeles.)

What I find most valuable about attending the BLI is not the workshops but using the time away from the office to get to know my incoming presidents on a more personal level, find out what their goals are for their presidencies, and discuss how we can achieve those objectives together.

I also look forward to joining other bar executives who, despite managing bar associations of diverse sizes and memberships, confront similar challenges and opportunities. We brainstorm and share ideas that we bring home to our members. I look forward to introducing new ideas in the coming months and beyond! 

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					1	2
3	Valley Lawyer Member Bulletin Deadline to submit announcements to editor@sfbva.org for May issue.	5	6	Intellectual Property, Entertainment & Internet Law Privacy Issues vs. National Security 12:00 PM SFVBA OFFICE	8	9
10	11	Probate & Estate Planning Section California's New Revocable Transfer on Death Deed: Easy Non-Probate Transfer or a Monkey Wrench 12:00 NOON MONTEREY AT ENCINO RESTAURANT Erin L. Prouty will discuss the new law and requirements of this new type of deed as well as methods for revoking it, traps for the unwary, and complex rules relating to creditor's rights. (1 MCLE Hour) Board of Trustees 6:00 PM SFVBA OFFICE	13	John Stephens will discuss the law and technology citing the recent issue with Apple and encryption technology. (1 MCLE Hour) Membership & Marketing Committee 6:00 PM SFVBA OFFICE	15	16
17	18	Taxation Law Section Identify Theft 12:00 NOON SFVBA OFFICE Sharyn Fisk and Cory Stigile will discuss the impact of identity theft. (1 MCLE Hour)	Workers' Compensation Section Death Benefits 12:00 NOON MONTEREY AT ENCINO RESTAURANT	21	22	23
24	Family Law Section Private Judges, Special Masters and Parenting Plan Coordinators 5:30 PM MONTEREY AT ENCINO RESTAURANT Approved for Family Law Legal Specialization. (1.5 MCLE Hours)	Editorial Committee 12:00 NOON SFVBA OFFICE	27	28	29	30
			ADMINISTRATIVE PROFESSIONALS DAY 			



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1 <i>Valley Lawyer</i> Member Bulletin Deadline to submit announcements to editor@sfvba.org for June issue.	2	3	4 <i>LinkedIn</i> Networking for Attorneys Sponsored by FindLaw. 12:00 NOON SFVBA OFFICE See ad on page 24	5 Membership & Marketing Committee 6:00 PM SFVBA OFFICE	6	7
8 <i>Happy Mother's Day</i> 	9	10 <i>Probate & Estate Planning Section</i> California End of Life Option Act: Promoting Death with Dignity or Enabling Assisted Suicide? 12:00 NOON MONTEREY AT ENCINO RESTAURANT Health Care attorney Alan Sedley will discuss the California End-of-Life Option Act and its impact on you and your clients. (1 MCLE Hour) <i>Board of Trustees</i> 6:00 PM SFVBA OFFICE	11	12	13	14
15	16	17 <i>Taxation Law Section</i> Estate and Gift Tax Update 12:00 NOON SFVBA OFFICE Kira S. Masteller will bring the group up to speed on the latest changes in the estate and gift tax rules and regulations. (1 MCLE Hour)	18 <i>Workers' Compensation Section</i> 12:00 NOON MONTEREY AT ENCINO RESTAURANT	19	20 <i>Bankruptcy Law Section</i> The Flawed Chapter 13 Plan 12:00 NOON SFVBA OFFICE	21
22 <i>Family Law Section</i> 5:30 PM MONTEREY AT ENCINO RESTAURANT Approved for Legal Specialization. (1.5 Hours MCLE)	23	24 <i>Editorial Committee</i> 12:00 NOON SFVBA OFFICE	25	26	27	28
29  <i>Memorial DAY</i>	30	31				



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THE NOT SO FRIENDLY SKIES

When Pilots Violate Regulations, the FAA Swoops In

By Scott W. Williams



MOST ATTORNEYS THINK OF aviation law as it relates to injuries and property damage resulting from airliner crashes. While this may grab the media headlines, there is another side of aviation law being practiced far away from the civil courthouse: pilot certificate enforcement defense.

Pilots who fly in the United States are bound by voluminous and often ambiguous Federal Aviation Regulations (FARs). Keeping things

simple, pilots generally fly aircraft under one of three categories of operations under the FARs: Part 91 (corporate and general aviation); Part 135 (private charter); and Part 121 (scheduled airlines).

Some FARs are generic to all flight operations, while others may be specific to a certain type of operations. In general, Part 91 is the least restrictive, Part 135 more restrictive, and Part 121 most restrictive. FARs allow private pilots to take certain risks that charter and airline pilots may not. As an example,

certain aircraft maintenance items may be optional under Part 91, but mandatory under Part 135.

Violations and Investigations

Regardless of the type of operation, the FAA expects pilots to comply with all regulations, and the instructions of air traffic control (ATC), unless the pilot in command believes there is an emergency that requires a deviation.¹ For example, a Gulfstream 550 takes off from Van Nuys and is told by ATC (locally called SoCal Departure): “Climb and maintain 7,000 feet.”



Scott W. Williams is the principal attorney at The Small Business Law Firm, which represents small businesses, aircraft owners, and pilots. He is a commercial pilot with over 2,000 flight hours, and owns a Cirrus SR 20 at Van Nuys. Scott can be reached at swilliams@smallbusinesslaw.org.

If the pilot inadvertently climbs to 7,500 feet before correcting their error, and if that oversight caused a loss of minimum regulatory separation with another aircraft, a possible pilot deviation has occurred. In this case, the Gulfstream pilot will hear the most feared words spoken by ATC: "...Gulfstream #____, when you land, call this phone number."

Unfortunately, too many pilots land and quickly call that phone number, unaware that what they might say can and will be used against them. While it is perfectly safe to tell ATC: "My name is _____, my pilot certificate number is #____, and I was the pilot in command," many pilots go way beyond that. They may respond to FAA's questions like "what happened?" with a story that reads like a novel. In too many cases, the pilot confesses to other FAR violations that ATC didn't even know about.

If ATC learns of a possible pilot deviation, they forward the facts to the FAA's local Flight Standards District Office (FSDO). An Aviation Safety Inspector (ASI) at the FSDO is then required under the Pilots Bill of Rights (PBR) to notify the airman in writing of the investigation, and to include information on how the airman can obtain certain information, such as ATC recordings and radar data before they are destroyed.² After the ASI has gathered facts and reviewed the events, they have these basic options:

- **No Action**, meaning that either no violation was found or the interests of justice don't favor taking any further action aside from possible remedial training.
- **Warning Letter**. This is not a finding of a violation, but a statement by the FAA that they believe warrants putting a record in the airman's file for two years,

after which it will automatically be erased. If during the two years another violation occurs, the FAA can use an existing warning letter to enhance the penalties in the new case.³

- **709 Ride**. If the airman's piloting skills are in question, the FAA may want to observe the airman on an actual flight to ensure he or she is safe and competent in certain areas related to the possible violation. If the pilot doesn't pass, or refuses to take the 709 ride, the airman's license is revoked until the ride is passed.⁴
- **Enforcement Action**. The FSDO sends the matter to the FAA's Regional Enforcement Counsel, who will review the case and determine whether the violation warrants formal enforcement. If so, the matter then results in a Notice of Proposed Certificate Enforcement Action (NPCEA). The timing of the NPCEA is critical: the FAA only has six months from the date they knew (or should have known) about the potential violation to send out a NPCEA. If the FAA is late, the airman can motion to have their case dismissed under the stale complaint rule.⁵ A NPCEA can seek a suspension of a pilot's certificate for 30-180 days, or in rare cases, revocation. The FAA bases its penalties on the Sanctions Guidance Table,⁶ which seeks to provide uniformity so as to avoid wide variations in penalties for similar violations.

Get Out of Jail Free

Even if a pilot has committed a FAR violation, it is possible to avoid a suspension by timely filing an Aviation Safety Reporting System report with NASA. Pilots call it the "NASA

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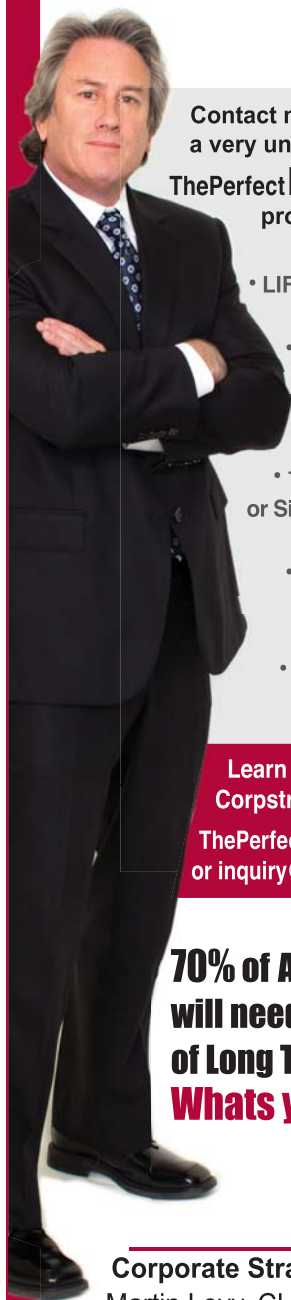
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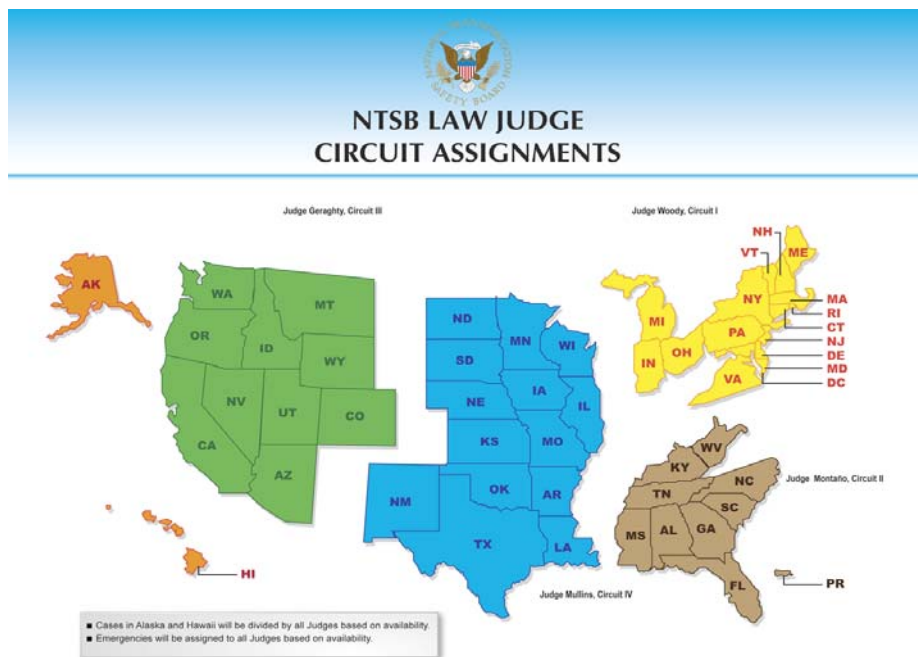
Report,” and affectionately refer to it as a “get out of jail free card.” For the NASA Report to stay a penalty in an enforcement action, the pilot must file it within 10 days of having actual or constructive knowledge of the potential violation; the violation must be inadvertent and not deliberate; and the violation must involve an “incident” but not an “accident.”⁷

Accidents are generally defined as major airframe damage or a personal injury requiring hospitalization; all other events are mere incidents. While a pilot can file a fresh NASA Report every morning for breakfast, they may only use the protection of the report to stay a penalty once every five years.⁸

is really a NPCEA with a cover letter calling it a complaint.

Due Process and a Hearing

Enforcement actions come in two flavors, “emergency” and all others. An emergency action is one where the FAA feels that the normal enforcement channels (which could take months) are not timely enough to protect the interests of aviation safety. In an emergency action, the FAA Counsel sends out an Order of Emergency Revocation, which requires the pilot to immediately surrender their certificate pending resolution of the case. If not surrendered timely, the FAA can impose a civil penalty of \$1,100 per day until it is.⁹



Once a pilot receives a NPCEA, they have four basic options: 1) accept the action and surrender their certificate for the suspension period; 2) negotiate a lesser suspension; 3) convince FAA counsel they timely filed a valid NASA Report (stays any penalty, but the violation itself still goes on the airman's record); or 4) file a Notice of Appeal with the National Transportation Safety Board (NTSB). Filing a Notice of Appeal causes the FAA to generate a complaint, which

In emergency cases, the pilot must be afforded a hearing before an Administrative Law Judge (ALJ) of the NTSB within 30 days.¹⁰ With non-emergency actions, a hearing date is usually set in 90 to 180 days. During the appeals process in non-emergency cases, the pilot keeps their certificate and retains all flying privileges. There are four NTSB ALJs in the entire United States that hear all pilot certificate enforcement actions, with each of them assigned

to a particular geographic region. In emergency cases, the NTSB will assign whichever ALJ is able to hear the case in the allotted 30 day timeline.

ALJ hearings are essentially bench trials, and are conducted under the Federal Rules of Evidence,¹¹ insofar as they don't conflict with the NTSB's Rules of Practice in Air Safety Proceedings. Each side is required to make written disclosures at the outset of the case, and may conduct reasonable discovery, although emergency cases make depositions a difficult scheduling challenge.

As the initiating party, the FAA (called the administrator) puts on its case in chief first. The administrator will call witnesses, and will usually introduce at least some physical evidence, which could be in the form of aircraft and/or pilot logbooks, ATC radar data, or ATC voice recordings. Although the administrator could call the pilot (called the respondent) during its case in chief, it rarely does so. After the administrator rests its case, the respondent puts on their defense. ALJs are skeptical about pilots making self-serving statements to save their own skin, so whenever possible, the pilot should plan on introducing corroborating evidence to support their contentions.

Decision and Appeals

At the conclusion of the closing arguments, it is customary for the ALJ to call for a recess, and then issue an oral decision from the bench, which is read into the record. If a violation is found, the ALJ then determines the penalty. ALJs typically give deference to the FAA's Sanctions Guidance Table, but may only do so if it is reasonable after considering all aggravating mitigating factors.¹²


If either the administrator or respondent does not agree with the ALJ's Decision, they can file an appeal with the full NTSB. The full five member

NTSB (presidential appointees, not judges) then review the ALJ's decision based only on written briefs and the hearing transcript. No further evidence is introduced, nor does any oral argument take place. Full NTSB Appeals review the ALJ's decision *de novo*, but usually defer to the ALJ's discretion on areas such as witness credibility.¹³

Until passage of the PBR in 2012, a full NTSB appeal was really the last opportunity to reverse an ALJ. While either party could technically appeal the full NTSB's decision to a U.S. Circuit Court of Appeals, the standard of review in a Circuit Court was so narrow that very few decisions were ever overturned. However, under the newer PBR, pilots now have the additional option to seek a *de novo* review of their case with the U.S. District Court.¹⁴ Not surprisingly, the FAA doesn't like the words *de novo* and has interpreted District Court hearings as a mere cursory review of the full NTSB. Pilots are anxiously awaiting an appellate court ruling on this issue.

A Kinder, Gentler FAA

The pilot community has long

complained about overzealous FAA enforcement that seeks to suspend first and ask questions later. In response, the FAA issued a new Compliance Philosophy that took affect September 3, 2015 for any violations after this date.¹⁵ The new philosophy attempts to resolve most violations that were inadvertent and not deliberate through counseling, remedial training, and warning letters. Enforcement actions are still a real option, but the FAA wants to use this more sparingly than in years past. Time will tell if the FAA's stated philosophy actually translates into less enforcement. 

¹ FAR 91.123.

² FAA Notice 8900.195.

³ FAA Order 2150.3B (6b).

⁴ 49 U.S. Code §44709.

⁵ NTSB Rules of Air Safety Practice §821.33.

⁶ FAA Order 2150.3B, Appendix B.

⁷ NASA Advisory Circular 00-46E

⁸ *Ibid.*

⁹ 49 USC §46301.

¹⁰ NTSB Rules of Air Safety Practice §821.56.

¹¹ Public Law 112-153 (aka the Pilot's Bill of Rights), Sec. 2(a).

¹² *FAA v McGuire*, NTSB Order EA-5636 (2014).

¹³ *Administrator v. Dustman*, NTSB Order No.

EA-5657 at 6 (2013), citing *Administrator v. Smith*, NTSB Order No. EA-5646 at 8 (2013).

¹⁴ Pilot's Bill of Rights, Sec. 2(d).

¹⁵ FAA Order 2150.3B (Change 9).

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DRONES: Friend or Foe?

By Janice L. Miller and Andrew Kerpelman, JD





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Drones are widely used today for positive uses like law enforcement, military, communications and commerce, while also posing a major threat to privacy, security and safety. There are limited federal and state laws regulating these pilotless aircrafts; however, more bills and regulations are being introduced to increase oversight over the personal and commercial uses of drones.



FRIEND OR FOE? THIS QUESTION IS AT THE forefront of the minds of people and organizations engaged in the burgeoning unmanned aircraft vehicles industry, commonly known as drones. Will drones be a positive tool for society, or do they pose tremendous threats to important parts of our daily lives and societal infrastructure? Will drones, if invited into our culture, create good—social, economic and personal—or will widespread or even limited introduction and integration of drones into our government, commercial and personal lives wreak havoc in ways up to now seen only in science fiction?

Will drones improve our lives and integrate seamlessly to serve as assistants in our daily endeavors or will drones hinder our commercial, personal, and social success, and interfere with our rights and freedoms? Whichever side of the equation you fall on, drones, like other technological advances, are here to stay!

What Is a Drone?

A drone is an aircraft or ship without a human pilot on board. They can be guided autonomously by onboard computers or remotely controlled by a pilot on the ground or elsewhere. Drones are commonly referred to as UAVs (unmanned aerial vehicles) or UASs (unmanned aerial systems).

Drones have military, commercial, professional, recreational, personal and public service applications. The drone market continues to expand and grow and every day it infiltrates a new segment of the modern landscape. It is anticipated over the next four years the drone market will grow to \$14.9 billion considering industry, market and technology trends that currently prevail.¹

History

The use of drones dates back as early as 1849 when the Austrian army used armed pilotless balloons against the city of Venice.² The first electronically remote controlled drones were built during World War I, developed in the interwar period and eventually used in training anti-aircraft gunners. This was the drone's primary use until camera technology was integrated in Radioplane's Model RP-71 Falconer in 1955.³

The RP-71 took still and motion pictures of battlefields and aided in reconnaissance and tactical maneuvers.⁴ Reconnaissance drones proved their value in the Vietnam War, setting the tone for future technological innovation and market attention.⁵ After Vietnam, and during the Cold War, unmanned aircraft developed into what we know them as today, a force in the information and monitoring sectors, as well as a tremendous military tool.⁶

Modern drones were introduced to the domestic market in the early 2000s when the U.S. Customs and Border Protection agency experimented with them to patrol the U.S. border with Mexico.⁷ Following tremendous success in surveillance and a direct impact on arrests and seizures, many began to explore further drone applications.

Hurricane Katrina spawned requests and spurred inspiration for more domestic applications, but a lack of sufficient regulations prevented drones from aiding in search and rescue and other efforts.⁸

In 2006 the Federal Aviation Administration (FAA) issued a certificate of authorization allowing UAV aircraft to be used in U.S. civilian airspace to search for disaster survivors.⁹ This was one of the first entries on a rapidly growing list of federal and local government and service applications for UAVs.

Governmental use of drones and regulatory schemes continued to grow and develop through the 2000s and into the 2010's. Today, the commercial and recreational markets have expanded exponentially. Commercial and recreational applications are the wave of the future, and a focus of many businesses and investors, manufacturers and technology companies small and large.

Current Regulatory Landscape

Federal

Federal regulations are in a state of flux. What is clear, however, is that regulating use of drones is the job of the FAA. To legally operate a drone, the owner/operator must comply with FAA regulations. Section 333 of the FAA Modernization and Reform Act of 2012 (FMRA) grants the Secretary of Transportation authority to determine whether an airworthiness certificate is required for a UAS to operate safely in the National Airspace System. This authority is being leveraged to grant case-by-case



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authorization for certain unmanned aircraft to perform commercial operations prior to finalization of the Small UAS (sUAS) Rule, which will become the primary method for authorizing small UAS operations once it is complete in the spring or summer of 2016.

By law, any aircraft operating in national airspace requires operational approval in the form of a Section 333 exemption and a Certificate of Waiver or Authorization (COA), a certificated and registered aircraft, and a licensed pilot. To open the skies to smaller commercial drones, discourage illegal operations and improve safety, the Section 333 exemption was introduced along with a blanket COA.

The first step in legal operation of a UAS is to petition for a Section 333 grant of exemption. If an exemption is granted, no airworthiness certificate is required.¹⁰ A petitioner may submit an application for exemptions if he or she believes that following a rule will burden him or her; the petitioner can provide a level of safety at least equal to that provided by the rule from which an exemption is sought; and the request is in the public interest. Exemptions apply to the use of a particular type of drone by an individual or company for a particular purpose, rather than just to the use of a single machine.

A petition for exemption is more likely to succeed if the proposed operations are similar to previously granted exemptions in kind, and procedures for operation. If an exemption is granted, a blanket COA is also granted.

Section 333 exemptions have been granted for activities ranging from simple aerial photography and videography to complex diagnostic and monitoring activities in the farming and fossil fuel industries. As of the writing of this article, more than 3385 exemptions have been issued.¹¹

The second step in the current legal operation of a UAS is acquiring a COA. A COA makes applicable FAA air traffic control facilities aware of proposed UAS operations, and provides the FAA the ability to consider airspace issues unique to UAS operations.

As of March 23, 2015, the FAA will automatically grant a blanket COA for flights below 200 feet to any UAS operator with a Section 333 exemption, provided the aircraft weighs less than 55 pounds; operations are conducted during daytime visual flight rules conditions and within the visual line of site of the pilots; and stay certain distances away from airports or heliports. To fly outside these parameters, petitioners must apply for a separate COA specific to the airspace required for their operation.

Third, the aircraft must be registered with the FAA. All unmanned aircraft operated for non-hobby or non-recreational purposes must be registered. Finally, the pilot must have an FAA airman certificate. The pilot in command (PIC) must hold either an airline transport, commercial, private, recreational, or sport pilot certificate, along with a current FAA airman medical certificate and a valid driver's license issued by a state, the District of Columbia, Puerto Rico, a territory, a possession, or the federal government. Lastly, the PIC must meet the flight review requirements specified in 14 CFR 61.56 in an aircraft in which the PIC is rated on his or her pilot certificate.

In short, the current process to achieve legal operation of a UAS is complex and time consuming. This is likely to change with the completion and institution of the new Small UAS Rule this spring/summer. The process may become more standardized and simple, user friendly and efficient.

An intermediate step toward simplification was the introduction of the FAA registry proposal. On October 22, 2015, the FAA published in the Federal Register its proposal to establish a registration requirement for hobby drones which compels every drone owner to register each drone that is purchased weighing over .55 pounds. This marks an effort by the FAA to determine



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what “platform would be appropriate for UAS registration and ways to minimize the burden to the regulated community.”¹² The proposal was open for public comment until November 6, 2015, at which point the Department of Transportation began its process of considering the comments and integrating them into a new regulatory system based on registration.¹³ However, the regulations remained opened to public comment for 60 days from the date of publication in the Federal Register.

In February, a piece of legislation, the “Micro UAS” or “Micro Drone” amendment was added to the Aviation Innovation, Reform, and Authorization (AIRR) Act, a bill that funds the FAA and must be passed by March 31, 2016 to keep the agency that oversees all aviation in the country functioning as normal.¹⁴ The rule would exempt drones under 4.4 pounds from upcoming FAA commercial drone regulations, meaning anyone could fly a drone for any purpose, so long as it is under the weight limit. The drones would still have to be operated under 400 feet, at speeds of less than 46 MPH, within line of sight of the operator, during daylight, and at least five miles away from any airport.¹⁵ The Amendment passed the House Transportation Committee but is not law yet.

The FAA hopes introduction of this amendment and the FAA Registry system will aid in preventing unauthorized operation and dangerous operations, as it will be easier to identify drone users, owners and operators, and punish or enforce regulations against those who do not comply.¹⁶

California and Local Regulations

“In 2015, nearly every state in the union considered some type of legislation that would affect unmanned aircraft operations, but such efforts often run afoul of federal responsibilities and could stymie a growing industry, according to speakers at an AUVSI-sponsored briefing on Capitol Hill. AUVSI President and CEO Brian Wynne said that while efforts are ongoing to create rules governing UAS, the lack of regulations is prompting states and municipalities to step in and fill the void.”¹⁷

The Association for Unmanned Vehicle Systems International (AUVSI) has created an incredible resource, a map tracking 2016 State Legislation on Unmanned Systems.¹⁸ The map provides all the details and subject matter of all the active legislation throughout the country.

In California, to operate a civil commercial drone, an owner must also comply with state regulations, but drone law has not fully developed, and regulation is currently at a minimum. California regulates use of drones in conjunction with public agencies and those contracting with public agencies, but there is limited intrusion on private use.

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An amendment of Section 1708.8 of the Civil Code passed last fall expanded prosecution for invasion of privacy when aerial drones are used to photograph or record another person in a private setting where there is a reasonable expectation of privacy. This amendment, which is aimed at paparazzi using drones to invade the privacy of celebrities, expanded the definition of “physical invasion of privacy.”¹⁹ The amendment is the only substantial new California law dealing with the use of drones.

Though there is little regulation, more changes could be on the horizon. This past fall, a bill (SB 142) was introduced that would prohibit drones from flying over private property at an altitude of less than 350 feet without express permission of the property owner. This could create an incredible obstacle to drone flights in the form of requiring an operator to obtain numerous permissions from private individuals or landowners on top of satisfying the current state, federal and local regulatory requirements.

Bills such as SB 142 could have a significant impact on drone operation, making it much more expensive and making flights more difficult to plan and regulate. SB 142 was vetoed by Governor Jerry Brown, but bills such as this are an indicator of what the near future may hold. Advocates for such bills argue they are designed to protect privacy, and critics maintain that such regulation stifles innovation and the growing California drone market. This is becoming the predominant debate as the drone industry grows; privacy and safety versus innovation and capitalism.

Local regulation of drone use is addressed through avoidance of restricted airspace and enforced by local police departments. For example, police in Holland trained an eagle to take down drones,²⁰ while police in Tokyo launched a drone squad designed to locate and capture nuisance drones flown by members of the public. The drones are equipped with nets to disable the nuisance drones and will patrol important areas like the prime minister’s office.²¹

Similar procedures are in development in Michigan as researchers work to create a “drone catcher” that pursues and captures other UAVs with a net shot from 40 feet away.²² In Miami, police are able to use jamming technologies to take down drones.²³ And a park ranger’s use of a taser on a drone operator was found justified in Hawaii.²⁴ Use of drones in violation of local rules can

result in large fines and even jail time in some states, including California.

Friendly Uses for Drones

There are numerous, perhaps limitless, positive applications for drones. Drones have been used extensively to monitor and inspect dangerous chemical facilities and other challenging locations such as oil rigs, skyscrapers, dams and bridges, and have replaced human labor where a significant risk to life and health existed.

Drones have been used widely for police work, firefighting, disaster relief including search and rescue missions, and have contributed significantly to newsgathering. Amazon is developing a delivery service using drones.²⁵ Drones have also served the government well in replacing soldiers on the ground abroad in times of war and peacetime.

There are many recreational and private applications for drones, including photography and videography, increased private security, real estate, topography, surveillance and safety, to name a few.

The potential for drones to supplement much of our daily activities and many sectors of the American and global economy in the near future is limitless.

“
The potential for drones to supplement much of our daily activities and many sectors of the American and global economy in the near future is limitless.”

Issues with Drones and Regulation

Many issues have arisen in recent years with the entry of drones into the mainstream. Drones have crash landed on the White House lawn, sprayed shrapnel at unsuspecting passersby, and injured bystanders, cutting them with their sharp propellers or simply crashing into them. Drones have interfered with emergency crews seeking to control wildfires and have come dangerously close to planes and helicopters, nearly resulting in collisions. Drones also pose a major threat to privacy, security and safety, both physical and informational.

The greatest difficulty or threat posed by mass introduction of drones into the airspace is the sheer difficulty of regulation. Thousands of drone flights a day present major logistics issues and demand a well thought out and meticulously planned and executed regulatory schema. All drones must be tracked in a manner that maintains safety of the airspace and of people on the ground. The FAA has been hard at work developing this infrastructure and will, it claims, release its final guidance this spring or summer.

As mentioned above, December 2015 marked the introduction of a recreational registration requirement as well as an invitation to comment in an effort to determine the most efficient means of monitoring and use of drones. The FAA has begun to tackle illegal operation of drones as well, but without a comprehensive regulatory structure, it is often difficult to determine the user or operator of an illegally operating drone despite the potential for numerous fines and penalties.

On The Horizon

In addition to the changing regulatory landscape, other important industry trends have legal implications. An insurance market is developing to support businesses proposing the use of drones, and though there is no mandate requiring drone insurance against potential personal injury, property damage or other incidents, it may be required in the future. Insurance companies may adopt strict operational protocols to qualify for insurance that could interfere with more lenient FAA and state requirements to operate legally.

The risk tolerance of the insurance industry with regard to drones is currently unknown. Acceptance by the insurance industry of commercial drone operation may become a large factor in the growth of the drone market and the future of the drone terrain.

California has been considering new drone ownership laws that could include licensing, insurance sold at the point of sale, and installation of a "kill switch" to shut off a drone should it operate illegally or in a reckless and dangerous manner.²⁶

From a business perspective, a recent blog suggested that the major commercial drivers in the drone industry for 2016 and beyond are an increase in fidelity or image quality; the need for smaller and better sensors; mobility; clone drones and China's impact; virtual and augmented reality; and competition and the potential that when the new FAA rules are formally presented, the barrier to get into the business of drones will be substantially reduced, meaning that more will enter the marketplace.²⁷

No matter the outcome of the regulations under consideration and the positive and negative uses of drones, it is clear drones will begin to play an increasingly significant part in our culture as they represent a great technological advancement and are the focus of a great deal of creativity and innovation. They are here to stay. It simply remains to be seen in what capacities they will be allowed and how they will be able to operate within the bounds of regulation. 🏠

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1. Drones are used solely for military purposes and are most commonly used internationally.
☐ True ☐ False
2. The first noted use of drones has been traced back to 1849 and Austria's military tactics in Venice via pilotless balloons.
☐ True ☐ False
3. Drones were introduced to the domestic market by way of the U.S. Customs and Border Protection Agency in the early 2000s as a way to monitor activity on the border of Mexico and the United States.
☐ True ☐ False
4. As of today, due to the fact that drones are pilotless aircrafts, by law, one does not need to have a pilot's license to operate one.
☐ True ☐ False
5. The first step for the current legal operation of a commercial drone is to petition for a FAA Section 333 exemption.
☐ True ☐ False
6. The current process to achieve legal operation is surprisingly simplistic and user friendly.
☐ True ☐ False
7. The FAA published in the Federal Register its proposal to establish a registration requirement for hobby drones which compels every drone owner to register each drone that is purchased weighing over one pound.
☐ True ☐ False
8. The Aviation Innovation, Reform, and Authorization Act is a bill that funds the FAA and would exempt drones under 4.4 pounds from upcoming FAA commercial drone regulations, meaning anyone could fly a drone for any purpose, so long as it's under the weight limit.
☐ True ☐ False
9. The AIRR Act has recently become law.
☐ True ☐ False
10. California regulations are very strict and large in number due to the rapid development of drone law in the state.
☐ True ☐ False
11. An amendment to California Civil Code 1708.8 is the only substantial new law dealing with drones.
☐ True ☐ False
12. A bill was recently introduced (SB 142) which prohibits drones from flying lower than 350 feet above private property.
☐ True ☐ False
13. Drones have very minimal positive applications.
☐ True ☐ False
14. The military has successfully used drones abroad to replace soldiers on the ground during war and peacetime.
☐ True ☐ False
15. Many cultural issues have arisen in recent years with the increased introduction of drones into the mainstream.
☐ True ☐ False
16. The main difficulty posed by the mass introduction of drones into airspace is the inability to completely and properly regulate them.
☐ True ☐ False
17. The inability to identify operators of drones as a result of the lack of successful regulation does not appear to pose any issues in terms of the FAA's attempts to tackle illegal drone operation.
☐ True ☐ False
18. An insurance market is currently developing to support businesses proposing the use of drones.
☐ True ☐ False
19. When the FAA's new rules are formally presented, it will be significantly more difficult to enter into the business of drones and, as a result, the presence of drones in the marketplace will decline.
☐ True ☐ False
20. Drones will play an increasingly significant part in our culture as they represent a great technological advancement and are the focus of a great deal of creativity and innovation.
☐ True ☐ False

MCLE Answer Sheet No. 90

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| 3. | <input type="checkbox"/> True | <input type="checkbox"/> False |
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SERVICE IS MORE THAN A WORD:

One Lawyer's Inside View of the California Air Patrol

By Bill Daniels



Photos by Paul Joyner

The Civil Air Patrol (CAP) was established by aviation enthusiasts immediately prior to the United States entering World War II to help in the defense of the country. Today, CAP is run entirely by volunteers who provide aerospace education, cadet programs and emergency services. CAP's California Wing is headquartered in the San Fernando Valley and counts 22 lawyers among its members, including SFVBA members Robert Ross, Bill Daniels, and Alan Yudkowsky, who is the commander of Hawker Senior Squadron 128 in Van Nuys.



A WHITE PINSTRIPED GULFSTREAM GLIDES briskly past a line of silver World War II vintage T-6 Texans trainers, the world-famous Condor Squadron at Van Nuys Airport. The squat white building behind the Texans is brightly lit on this first Monday in February of 2016. Inside, folding chairs are lined up in neat rows. Smartly turned out men and women mingle and make small talk. Some are in uniform. A voice calls out, “Face the flag!”

The pledge of allegiance rings out, crisp, deliberate. There is a short welcome and some brief, necessary comments. Then, the formal ceremony. In time-honored tradition, a flag is passed. There are salutes, handshakes and congratulations. And so Captain Alan Z. Yudkowsky takes command of Hawker Senior Squadron 128 of the United States Air Force Auxiliary, Civil Air Patrol (CAP). There is applause.

“We have the potential to do some really cool and important things,” Yudkowsky muses later over dinner at the 94th Aero Squadron, which overlooks the KVNY runways.

Parked across the two runways and just out of sight, is the squadron’s red, white and blue Cessna 182. Squadron 128 is, after all, a flying squadron.

Yudkowsky is a veteran lawyer in his early 60s. He is a Philadelphia native with a bachelor’s degree in humanities and vocal performance. In his younger days, he sang opera before turning to law. He earned his J.D. cum laude from New York Law School, which led to 25 years with a large Wall Street firm, practicing complex commercial litigation primarily in New York and California.

He came west to California in 1998 and in 2011 started his own general business litigation practice. Today, he is based in Calabasas, where, in addition to litigation, he also maintains a healthy mediation and arbitration practice, acts as an attorney settlement officer for the Central District, and serves often as a temporary judge for the Los Angeles Superior Court.

His wife of 33 years, Michelle, has a PhD in neuroscience. They have three children together. Yudkowsky also has a son from a previous marriage currently serving in the Navy. Spending time with the Civil Air Patrol is his way of giving something back.

“I first joined CAP in 1976, then served as a Northeast Region staff officer, but the experience only lasted a few years,” he recalls. “Life got in the way.”

That changed in 2013, when his family gave him a one-hour orientation flight as a gift. That short ride woke up his inner pilot and just one week later, Yudkowsky found himself rejoining CAP.



Three years later, he’s commanding the forty volunteers making up Squadron 128, flying missions in the squadron airplane and focusing on growing his squadron into a credible community resource. And he continues to serve as a California Wing legal officer.

About Civil Air Patrol

The California Wing has long been headquartered in the San Fernando Valley. The Wing itself is part of a national



organization with roots dating back to the troubled years building up to World War II.

In the late 1930s, a large group of aviation enthusiasts started agitating to put their planes and flying skills to use in defense of their country. One week before the Japanese attacked Pearl Harbor, the Civil Air Patrol was born.

During World War II, CAP volunteers logged more than 500,000 flight hours in their privately owned aircraft,

fighting the U-Boat threat off the eastern seaboard and in the Gulf of Mexico.

CAP planes flying coastal patrol rigged with small bombs and depth charges sank two enemy submarines. CAP volunteers flew thousands of hours of search and rescue, and are credited with saving hundreds of crash victims between 1942 and 1946. More than 90 CAP aircraft were lost in WWII. As many as 64 volunteer pilots were killed.

On July 1, 1946, Public Law 79-476 incorporated the Civil Air Patrol, stating the purpose of the organization is to be “solely of a benevolent character,” i.e., no more combat missions. Today, CAP is charged by Congress with pursuing three primary missions: aerospace education, cadet programs, and emergency services. CAP promotes aerospace education, both to its members and to the general public. It also maintains a robust cadet program, introducing young people to aviation, leadership training, physical fitness, and moral leadership.

Emergency services is the third leg of the mission tripod. This includes search and rescue, disaster relief, humanitarian services, homeland security, and counterdrug operations. Following 9/11, CAP aircrews brought back the first damage assessment photographs from Ground Zero. During the firestorms in Northern California last summer, CAP aircrews were the first to document fire damage for FEMA assessment teams.

CAP is run entirely by volunteers, who total more than 55,000 from coast to coast. The organization owns the largest fleet of single engine aircraft in the nation. In 2015, the United States Air Force declared CAP to be part of its Total Force.

In addition to its other missions, CAP pilots help train fighter pilots tasked with protecting the airspace over the Super Bowl.

“Bait for the F-15s,” Yudkowsky grins.

Legal Officer Corps

CAP’s California Wing counts 22 lawyers on its most current roster. The officer in charge is a sole practitioner who practices in northern San Diego County. “I’m really the little country lawyer down there in Fallbrook,” says Lt Col Carl Morrison, California Wing Director of Legal and Legislative Affairs.

Morrison spent twenty years in the Marine Corps and served as a Judge Advocate General before retiring as a Lieutenant Colonel. The Marines put him through law school and he’s had his own practice since passing the California bar in 1995. Today, his office is at the airport.

A longtime pilot, Morrison joined CAP after a guy in the hangar next door invited him to a meeting. A former registered lobbyist, he was first asked to serve as Wing Director of Legislative Affairs, then later added Wing Legal Officer to his duties. He oversees eight group legal officers, fourteen unassigned legal officers, and California Wing legal affairs in general.

"We do it all pro bono," Morrison says, estimating he spends three hours a week on CAP business. "It's rewarding. Lawyers are encouraged to do pro bono work anyway."

CAP legal officers handle a wide variety of matters, including routine contract issues with vendors or venues for

I am one of those volunteers, attending my first SAREX, short for search and rescue exercise. As a 20-plus year plaintiff personal injury attorney, I get to suffer through a round of tired lawyer jokes as some of the vets check my temperament. I'm also a pilot, so pretty soon the jokes peter out and the senior hands start asking me just what I am hoping to contribute to the group.

A SAREX is an opportunity for CAP volunteers like me to learn basic emergency skills, meet other volunteers from across Southern California, and practice against the day a real emergency beckons.

The procedures CAP teaches are especially valuable to volunteers who are not emergency response



CAP events, personnel issues, or how to handle people who should never have joined CAP because of one reason or another.

Then there's the less than routine, like how to address issues raised by a 14- or 15-year-old transgender cadet who wants to attend a CAP encampment as a member of the opposite sex. "We deal with a lot of sticky situations," Morrison says.

He is proud to claim a role in helping pass legislation in Sacramento benefiting CAP volunteers who serve on Air Force assigned missions. The law requires employers to treat those CAP volunteers like military reservists, meaning they cannot be fired or penalized for their service.

SAREX

Volunteers start gathering just before sunrise on a Saturday in some non-descript trailers behind a chain link fenced area at Los Angeles' Whiteman Airport in Pacoima.

professionals because they are the same standardized emergency response practices in place nationwide, across all governmental and non-governmental agencies.

The mission base staff is organized under standard principles specified by the Federal Emergency Management Agency (FEMA), following the Incident Command System (ICS), which incorporates a wide range of management features and principles, beginning with the use of common terminology and clear text.

ICS was developed in the 1970s after a series of California urban fires resulted in catastrophe. After the smoke cleared, studies revealed that shortcomings in emergency response had little to do with a lack of resources or money; rather, the different agencies used different language, or communication techniques, and so were unable to work closely together on the fly.

ICS is a key feature of the National Incident Management System (NIMS), described by FEMA as "a systematic, proactive approach to guide departments and agencies at all levels of government, nongovernmental

organizations and the private sector to work together seamlessly and manage incidents involving all threats and hazards—regardless of cause, size, location or complexity—in order to reduce loss of life, property and harm to the environment.”

At the SAREX, CAP puts all the pieces together training for the real world challenges they will face on a day everyone hopes will never come. Today, there are two CAP aircrews operating two Cessna 182s. The day starts with a mission briefing: two small aircraft are missing somewhere in mountainous terrain, go find them, and send in ground teams, if necessary.

Jefferson Law School in 1999 and hung out his shingle. His wife graduated two years later and joined the practice.

Veta has a personal reason for working with cadets. Growing up with divorced parents, Veta lacked a father in his life. Then he joined CAP at a friend’s encouragement. “CAP really took care of me,” Veta says. “They were my father figures. They kept me on the straight and narrow.”

The Vetas have two boys, ages 17 and 18, both of whom have been through the program. Ross Veta says that even though his sons are through as CAP cadets, he is staying in as a “pay back thing.”

San Diego Cadet Squadron 144 meets at a California Air National Guard base that is home to the 147th Combat



In the communications shack, I watch a trio of high school aged cadets in camouflage uniforms from the San Fernando Valley and South Bay working the radios. One cadet is there with his officer father. As we take turns practicing radio calls to the patrolling search aircraft, I notice that the cadets are taking special pride in their communications skills. I ask about how cadets can learn their jobs so quickly and am directed to yet another Southern California lawyer.

Cadet Squadron Commander

“We pride ourselves on building young leaders,” acknowledges Major Ross Veta, commanding officer of San Diego Cadet Squadron 144.

Veta is a former aerospace engineer turned lawyer, who practices with his wife, Suzanne Veta, also a former aerospace engineer, at their San Diego law firm, Veta & Veta. As an engineer, Veta worked on stealth resin technology as an Air Force contractor and later on jet aircraft propulsion systems. He graduated from Thomas

Communications Squadron. CAP cadets range in age from 12 through 21. Cadet training focuses on leadership skills and CAP core principals. On field trips, Veta’s squadron has visited an aircraft carrier to observe air operations and flown F-18 simulators with the Marines.

Squadron members also have a distinguished record participating as volunteers at the Cleveland National Forest. Their first summer, squadron cadets were credited with no fewer than 70 rescues. “The thing I take the most pride in is, we don’t just train. We do,” Veta says.

His cadets have a notable record in search and rescue. In the last two missions in which his squadron participated, his team found both aircraft. In a third mission, the team found a crash site, but it turned out to be an older one. “Our squadron has one of the largest, if not the largest, ground team resources in the state,” Veta notes.

Scanner School

“I will meet you guys at Signature North around 4:30 and we’ll take it from there.”



I'm listening on the telephone as Senior Member Robert M. Ross runs through our preflight planning checklist. Bob is a partner with Klass, Helman & Ross in Encino, where he practices criminal and civil rights law. He's a Loyola Law School of Los Angeles grad and a highly experienced commercial-rated pilot. His two-year old black Labrador, "Piper," is our unofficial squadron mascot.

Our plan is to fly Bob's Piper PA-28 Warrior from KVNY to Riverside Municipal Airport, where we'll be attending Scanner School. It's a sunny Friday afternoon.

We meet at Ross' plane at the appointed time, finish our preflight and launch into the sky from runway 16 Right. I'm in the left seat as pilot in command, Bob's on the right working the radios. In the back seat is 2d Lt Jimmy Loon, a retired medical device product development manager and our squadron's communications officer.

Bob and I are "Senior Members," lowest on the ranking totem pole. Traditionally, lawyers with ten years or more in practice are eligible for the rank of Captain out of respect for our training and education. To earn that rank, among other things, a volunteer must be active in CAP a minimum of six months.

We've split up flying duties on purpose. On any given Friday afternoon, the airspace between Van Nuys and Riverside is among of the busiest in the world. Having two pilots share the workload promotes safety.

In 2010, CAP accident rates were roughly one-quarter the general aviation rate, largely due to the organization's safety stressing culture. Bob and I embrace the CAP safety culture without question.

In CAP, what counts more than rank are the jobs a volunteer is qualified to perform, so training matters. Each job category has its own education and proficiency requirements. Volunteers are rated by qualification and must meet strict

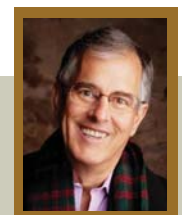


currency standards, meaning you cannot allow your skills to become rusty. It's all about safety first and being mission ready.

CAP aircrews have four slots: Mission Scanner, Mission Observer, Airborne Photographer, and Mission Pilot. A Scanner is the primary set of eyes of the air search team, tasked with scanning the ground for signs of a lost aircraft or hiker. This weekend, we'll spend roughly 12 hours learning Scanner basics.

Our classroom is in Riverside Senior Squadron 5's cinderblock headquarters. Just under 40 men and women from all across southern California are here for the classes, which run two full days. We're all here on our own time and our own dime.

Bill Daniels is an SFVBA Trustee and a plaintiff personal injury attorney in Sherman Oaks. He flies mostly high wing Cessna 172s and 182s, but has also logged time in low wing Pipers, Mooneys, Czech Zlins and Commanders, as well as gone dogfighting in Marchetti SF.260 fighters over Long Beach Harbor. He can be reached at bill@danielslaw.com.



"There's way more material here than they're covering in the lectures," Bob grouses as we catch our breath at the end of day one. He's scanning through the volumes of handout materials, bulky enough that they come to us on a thumb drive instead of on paper.

"I just hope we are absorbing enough to pass the test," Jimmy adds.

Then in the second day of lectures it all comes together and our training officer hands each of us a brightly colored certificate as evidence we've passed. We stride out to Bob's Piper with just a bit more swagger than when we arrived. We aren't just learning skills. We're forging a search and rescue team.


Squadron Meeting

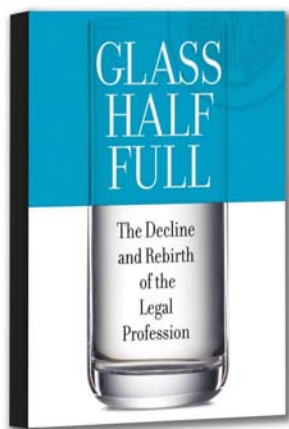
The next evening it's Monday and Squadron 128 meets at its regular time. We sift through achievements and events. Jimmy, Bob and I get "attaboys" for finishing Scanner School. Lieutenant Colonel Sarabjeet "Sarab" Lohara, a 30+ year veteran of CAP, gives us some tips on how to move up the aircrew ladder. (If you've ever eaten at the Subway sandwich shop across from the Van Nuys courthouse, you may have met Sarab. He's the owner.)

I don't see Capt. Jenny Lynn Burnett this evening, but she has a busy job in the film business, so that isn't unusual. Jenny Lynn is a squadron star; she is a pilot and our personnel officer. She's such a legend around KVNy that the local flight medical examiner has her picture up on his wall, right there with Tom Cruise. We have a small female contingent in our group and are always looking for a few more good recruits.

The agenda moves swiftly. There are announcements on upcoming aerospace education programs. Participants are solicited to work the Los Angeles County Airshow. A squadron ground team discusses a successful mission locating an emergency locator transmitter set off accidentally. We talk about who is current for CPR.

We are all volunteers: lawyers, non-lawyers alike, pilots and non-pilots. We spend our own time and our own money getting ready for that day when there is an airplane crash, earthquake, fire or flood, and we can help our neighbors out of a jam.

We learn, we train, we practice our skills, because well, you never know. Could be you'll never need us. But, maybe, just maybe, someday a lawyer will come to your rescue and it won't be in court. 



The Life and Death of the Legal Profession

By Adrienne A. Herrera

GLASS HALF FULL: *The Decline and Rebirth of the Legal Profession* by Benjamin H. Barton is among a growing number of books detailing a sobering account of the declining state of the legal profession. The book presents “four deaths” which the author feels are transforming the profession, painting the grim prospects of a “lost generation” of lawyers in great detail, before closing with a dash of optimism for the future.

Notably, that optimism only takes up the last twenty pages of the 320-page book. I’m not sure how proportional the amount written can be attributed to the glass being half-full, but I confess I had hoped for a bit more hope of cheerful outlook when I started this book.

“Law may have changed less than any other area of the economy between 1850 and today. The same basic product is being sold and the same basic service is being performed.” The

practice of law and law schools are notoriously resistant to change. But, as Barton quickly notes in his introduction, “[n]o one dodges the grim reaper forever.”

The book continues with a history lesson detailing the birth, death, rebirth, and death of the legal profession from 1776-1950. Barton reminds us the Depression also saw lawyer incomes falter, law schools close, and too many lawyers competing for too little work. Sounds familiar. I did not witness the Golden era described by Barton from the 1950s to 1960s, but I imagine it’s similar to the *Mad Men* era for marketing. Barton paints this era fondly, with lawyers navigating new territories in business and being paid handsomely.

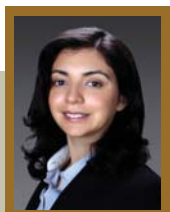
Next, Barton examines the transformations occurring in the legal profession from the birds-eye view. He theorizes there are four main elements contributing to the decline of the profession (the four deaths).

“Death from Above” describes in detail the challenges faced by Big Law

as clients fight back against the billable hour, bring more work in-house, and outsource simple legal tasks such as document review. I found the Dewey & Leboeuf case study to be interesting. Big Law was hardly left untouched during the last recession, but Barton suggests that Big Law should watch out for the computerization of the legal profession. The takeaway: no one is safe, not even those at the very top.

“Death from Below” uses Clayton Christenson’s theories on disruptive technologies to describe how online legal services (i.e., LegalZoom, Rocket Lawyer, Avvo) have begun to take away the work traditionally performed by solo practitioners and smaller law firms. The legal industry is not the only one to have suffered at the hands of the machines, but in reading this I still feel hope that we might escape being replaced by machines for another hundred years.

One remaining bastion of human representation is the courtroom: computers haven’t managed to get a



Adrienne A. Herrera is a business and employment law attorney. She is also a mediator. She may be reached at adrienneherrera@gmail.com.

toehold yet. Barton describes the plight of the pro se litigant very well. Arguably, most people will pay for a lawyer to navigate the courtroom.

"Death from the State" focuses mostly on tort reform. Barton paints plaintiff's lawyers as victims of their own success and greed to a certain degree. It's no secret that insurance companies do not pay what they used to, and some plaintiff's attorneys now play the numbers game by taking on a larger caseload and settling.

"Death from the Side" focuses largely on the increased competition amongst lawyers. This chapter can be summed up simply as displaced Big Law lawyers + new graduates = less work and lower wages. I know most lawyers went to law school to avoid math, but this is a fairly simple equation. Barton argues that this large oversupply of law school graduates is not a singular issue but that it compounds all of the other threats to the profession.


In Part II, Barton presents a close examination of America's law schools. There have been many headlines in the news lately about the law school situation in America, but Barton's graphs, charts, and information present the information in a manner that is hard to ignore. Again, it's no surprise that law school is no longer the safe choice to a middle class lifestyle.

Barton's method of presentation just backs it up with a lot of numbers. Presented with a wall of statistics, I found this part of the book to be particularly

sobering. Globalization has created a world economy where the winner takes all, where a few performers make a tremendous living while the rest make very little, even if the differences in the services provided is slight.

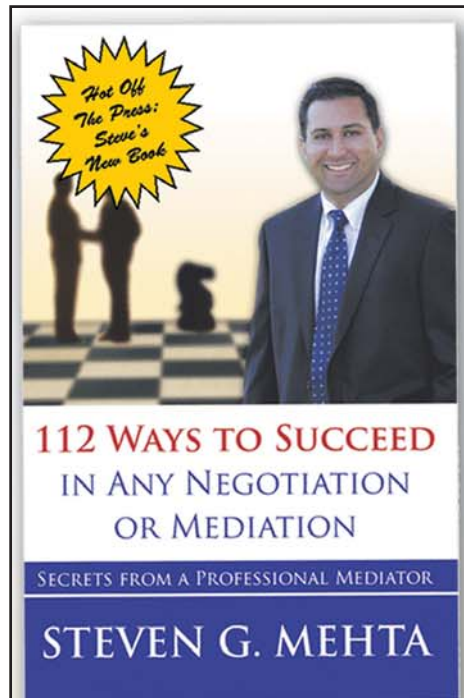
Finally, after all those chapters of fear-inducing descriptions about the impending death of the legal profession, Barton sprinkles in a few cheery predictions. First, the winner of the decline of the legal profession is really the consumer. Barton envisions a world where more legal services will be available to more people. There's a limit to how much lawyers can cut their rates—most lawyers have student loans after all. Computerization will only continue to make the law accessible to the public, and Barton argues that this is a good thing for society.

For members of the bar, Barton argues that the future will be brighter for those who are able to remain employed in the form of a happier lawyer. "When the dust settles we will have a happier, healthier profession, energized by the opportunity to do the challenging legal work that remains."

Barton admits that we will also probably be paid a bit less too. When confronted with extinction the legal profession has always managed to reinvent itself. I hope Barton is right in thinking that we can do so again. I found the book to be a comprehensive analysis of where we have been, where we are now, and where we hope to be going. 



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- David L. Fleck, Esq.



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Going From Survive to Thrive

RUBY ANTOSH COMES FROM a troubled past, to be sure, but her future is brighter than ever, thanks to the Boys and Girls Club of the West Valley, and support from local attorneys through the Valley Community Legal Foundation (VCLF) of the San Fernando Valley Bar Association.

Ruby, 19, has probably had to overcome more challenges throughout her 19 years than most of us have had to in twice as many years. She was born into a family facing challenges, with her father dying before her birth. Her mother tried, but she could not support Ruby and brother, which led to a string of foster home placements. And, as the case is all too often, the best weren't great, and the worst were dreadful.

Ruby remembers that time well, a time when eating enough was a rarity. "Most often, a 'meal' was a jar of peanut butter or jelly," recalls Ruby. "If food was not important, school was even less important."

Just getting by, getting a meal, having a safe place to stay with her brother was the focus of her life. As a child she was bullied at school. Ruby was lonely, and sadly she was



repeatedly exposed to drug and alcohol abuse from family members and in foster homes. Scholastics were not high on the priority list.

LAURENCE N. KALDOR
President



phenix7@msn.com

After a long time in the foster system, the court allowed Ruby and her brother to return to living with their mother who had been in trouble with the legal system. And Ruby began to work for a better life. She wanted to do well in school, and she worked hard.

While Ruby excelled in school and outside activities, her home life continued to be a negative environment. During that time, Ruby found support in the Boys and Girls Club of the West Valley. With after school programs, counselors, mentors, and results-driven programs, they gave Ruby the boost she needed.

"I have a support system at last. I have teachers and friends who believe in me, and I have the Boys & Girls Club," tells Ruby. "For starters, they tutor me whenever I struggle in a class. The tutors always work through problems with me, help me study, and even stay after hours until I am done."

HOW VALLEY ATTORNEYS CAN HELP LOCAL YOUTH

Ruby is just one of more than 3,000 local kids helped by the Boys and Girls Club of the West Valley, funded in part by Valley attorneys through their support of the VCLF. Every year the VCLF supports the Boys and Girls Club with financial contributions, from which real and positive result come, like the success of Ruby Antosh.

"The Boys and Girls Club is a great example of an organization the VCLF wants to support," says VCLF

President Laurence Kaldor. "They are providing great and necessary services to our community, and we are proud to support their efforts."

It's estimated that helping someone like Ruby costs about \$590 per year. That's right, just \$590, to help a child, impacted by life's challenges, a person affected by our court system, yet turning out to be a shining star.

"There are a lot of Rubys out there in the San Fernando Valley,"

tells Kaldor. "We'd like to help as many as possible. We love getting large corporate donations, but here's a very concrete way an attorney, a judge, or a business person can make a real difference. For a donation of \$590, we can help another Ruby next week."

To donate to the Valley Community Legal Foundation of the SFVBA or to learn more, visit www.thevclf.org and help us make a difference in our community.

NEW MEMBERS

The following joined the SFVBA in February 2016:

Oshin Baghrum
North Hills
Law Student

Zurit Barajas
Sylmar
Law Student

Hon. Mitchell Block Ret.

Jade Chen
Winnetka
UWLA Law Student

Lindsay Ann Cigler
Jeffrey M. Verdon
Law Group, LLP
Newport Beach
Estate Planning, Wills and Trusts

Megan L. Evanich
Los Angeles
Law Student

Stuart E. Fagan
Wheaton
Civil Rights

Daniel A. Fonda
Fonda & Associates, PC
Los Angeles
Civil Litigation

Anastasia Goncharko
Santa Clarita
General Practice

Terrance P. Huber
Encino
Real Property

Ella Hushagen
Neighborhood Legal Services
of LA County
Pacoima
Healthcare Law

Andrew J. Malatesta
Bononi Law Group, LLP
Los Angeles
Discrimination

Hon. Gregg Marcus Ret.

M. Justin McDermott
Law Offices of Stuart D. Zimring
Encino
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Law Student

Christina Oh
Cerritos
Law Student

Logan G. Pascal
Marina del Rey
Law Student

John F. Querio
Horvitz & Levy
Encino
Appellate

Sassoon Sales
Encino
Insurance Bad Faith

Lindzey Schindler
Jeffrey M. Verdon
Law Group, LLP
Newport Beach
Estate Planning, Wills and Trusts

Roberta Soto
Los Angeles
Civil Litigation

Timothy M. Thornton Jr.
Gray Duffy, LLP
Encino
Insurance Law

Helen Tran
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Ruby turned her life around, earning both the President's Gold Award and the Principal's Award at her middle school. Her academic achievements continued at Canoga Park High School, where she is ranked thirteenth in her class and on the school's Honor Roll. She was also recently named the Boys and Girls Club of the West Valley 2016 Youth of the Year.

In addition to her academic success, Ruby is very active in school activities. She is the captain of the varsity basketball team, co-president of a women's empowerment club, leader of track crew and chain crew, and treasurer of the Gay-Straight Alliance.

Of her Club experience, Ruby says, "When I step through the Club doors after school, I feel at home. I know all the staff members and they always help me when I need it. They are family."

A big source of encouragement for Ruby has been College Bound, a program of the Boys and Girls Club. The goal of College Bound is to ensure members receive the support needed to graduate high school on time, as well as helping them create a plan for the future. Whether the plan is to attend a two year, four year, public or private university or to graduate job ready, College Bound offers various resources to help boys and girls achieve their goals

"College Bound has been huge for my future. They have assisted me with everything—personal statements, applications, a resume, and scholarships. They have even taken me on college tours that have really opened my eyes."

"They have given me options I never thought would be possible. Now, against all odds, I will be the first one in my family to go to college." 



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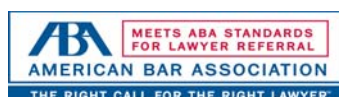
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Renewing Faith In The Future

PUNDITS USE THE TERM “the Lost Generation” when describing the latest batch of Millennials emerging from high schools and colleges. Facebook, Twitter, Instagram, Snapchat and text messaging have become the most common method of dialogue and discussion for these young people, replacing verbal conversation and writing in complete sentences. As a result, experts believe that there will be a substantial gap in marketable job skills—such as human interaction and the ability to communicate without the warmth of a blue glow—for a large majority of individuals within this demographic.

Fortunately, over the last several years, the Santa Clarita Valley Bar Association has been able to witness first hand some remarkable young people who have renewed our faith in the future of our nation and of the legal profession. Several years ago, SCVBA Trustee Jeff Armendariz, who chairs the Community Outreach Committee, took it upon himself to coordinate a speech competition for students in the William S. Hart High School District. The top three finishers, as determined by a panel of judicial officers from the Los Angeles Superior Court, are awarded financial scholarships from the bar association.

The competitors are asked to give a short speech on a topical legal issue. Recent topics have posed questions regarding the limits of the rights granted by the Second Amendment and issues regarding federal immigration policy.

This year’s competition will take place on April 19, when the students

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will be answering this question: “Against the backdrop of a presidential election, what ought to be our top national priority, and do our existing laws support or undermine this priority?”

The winners will be determined by a panel of six judges, who we would like to take this opportunity to recognize and thank: Hon. Cynthia Ulfig, Hon. Graciela Freixes, Hon. Hayden Zacky, Hon. Bernie Laforteza, Hon. Michael O’Gara and Hon. Alan Rosenfield. Without these judges graciously offering their time, the speech contest would not be the success that it has become.

This year, in addition to the event itself, the SCVBA will also be holding a special dinner on the evening of May 19, 2016, at TPC Valencia to recognize the winners and the judges, and to also earn CLE credit for a presentation on the status of our courts in our annual “View from the Bench” program.

The talent, passion, and promise displayed each year by the young men and women who participate in the speech competition is quite remarkable and the SCVBA takes great pride in providing scholarships to assist the winners in pursuing their goals and dreams.

We welcome everyone—members and non-members alike—to join us for the Speech Competition on April 19, 2016 at West Ranch High School in Stevenson Ranch, and for our celebration and CLE program on May 19 at TPC Valencia. Please feel free to contact info@scvbar.org with any questions. 

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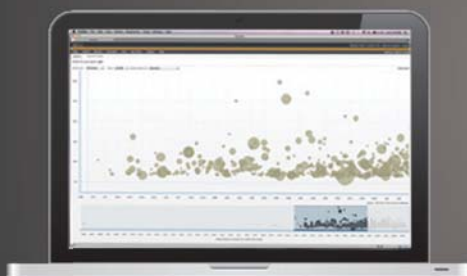
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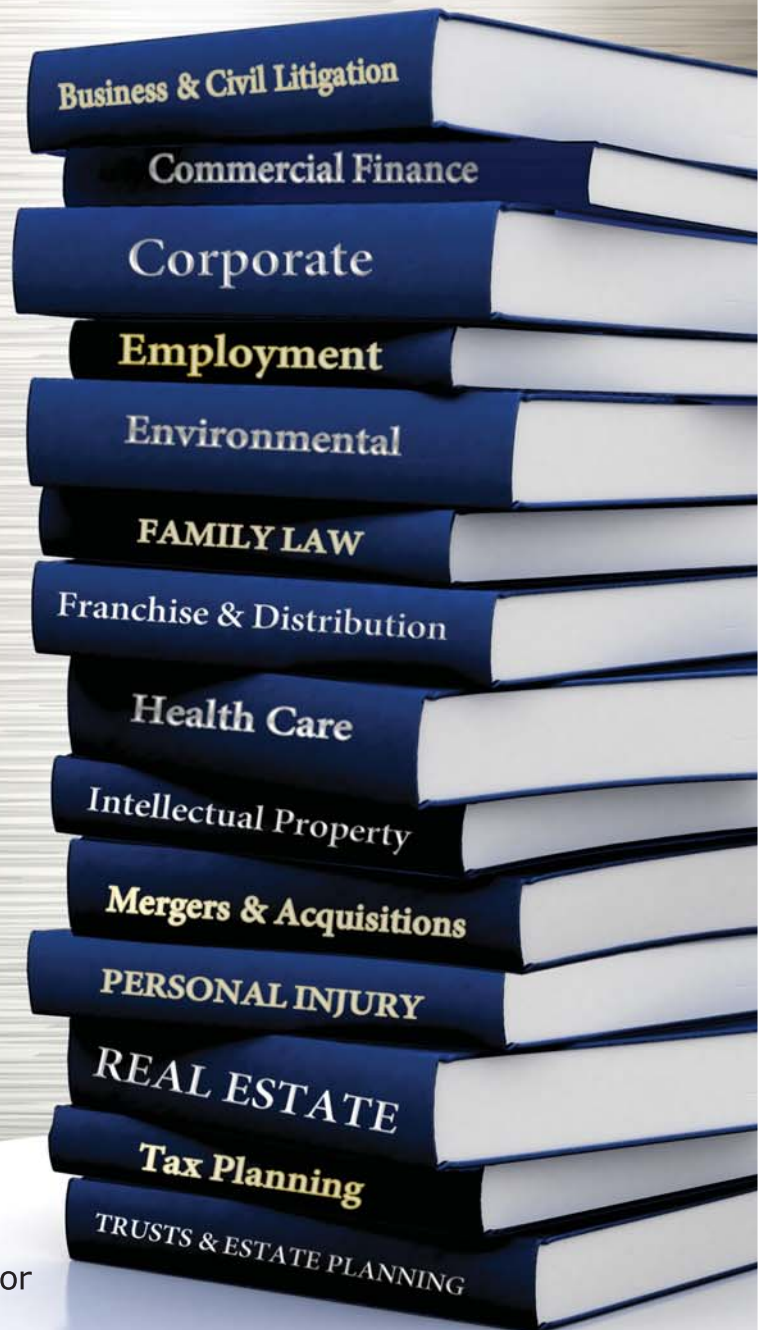
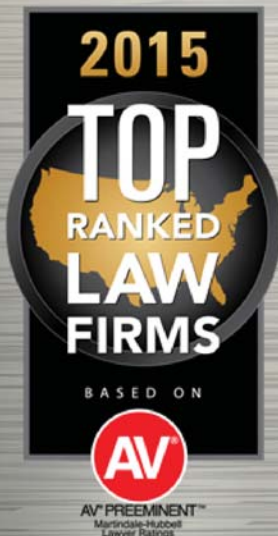
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