

VALLEY LAWYER

FEBRUARY 2010 • \$4

A Publication of the San Fernando Valley Bar Association

Archaic Rules for Modern Lawyers

Earn MCLE Credit

Q&A with SFVBA
Judge of the Year
Maureen A. Tighe

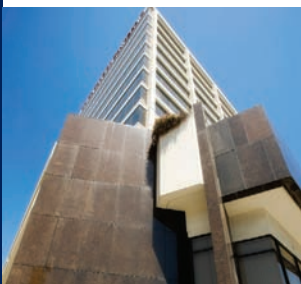
A Foot in the Door at
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FEATURES

- 10 Q&A with SFVBA Judge of the Year
Maureen A. Tighe **BY ANGELA M. HUTCHINSON**
- 14 California's Judicial Valentines **BY LISA MILLER**
- 18 Background on the
Bench-Bar Coalition **BY DIA POOLE**
- 20 Archaic Rules for Modern Lawyers **BY DAVID GURNICK**
PLUS: Earn MCLE Credit. MCLE Test No. 19 on page 23.
- 24 A Foot in the Door at the
Court of Appeals **BY TAMILA C. JENSEN**

DEPARTMENTS

- 5 President's Message
The Judicial Branch
BY ROBERT F. FLAGG
- 7 From the Editor
Rock n' Rule!
BY ANGELA M. HUTCHINSON
- 9 Public Service
Civil Progress and
Client Feedback
BY ROSIE SOTO
- 12 LOL
With us, It's Personal
BY HON. RICHARD ADLER
- 12 Above the Law
Civil Litigation
BY MARC R. JACOBS
- 27 Valley Community
Legal Foundation
Good News in Rough Times
BY STEPHEN T. HOLZER
- 28 Classifieds
- 30 Event Calendar
Networking Mixer
PLUS: More SFVBA Events



10



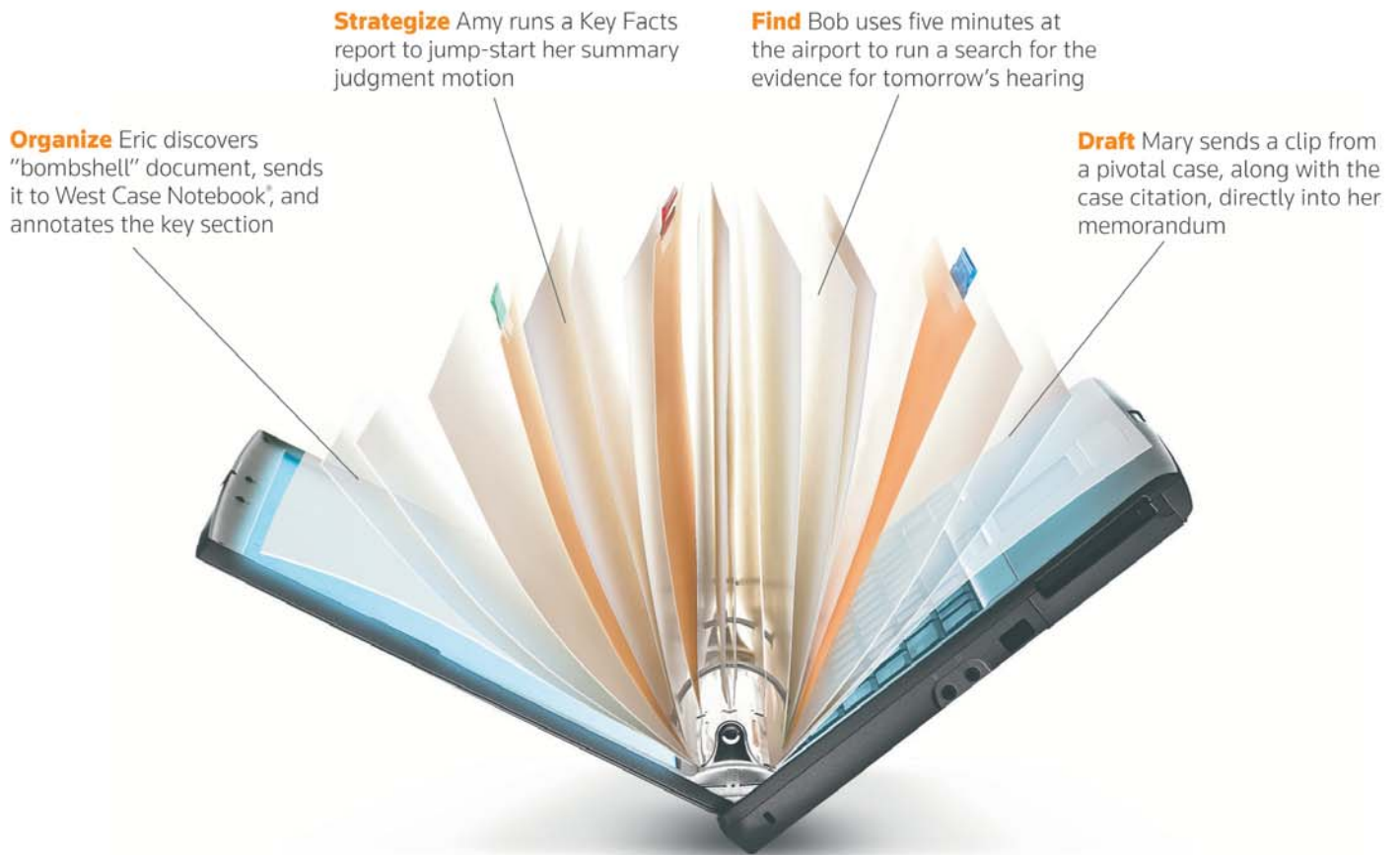
14



18



20



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ROBERT F. FLAGG
SFVBA President

CALIFORNIA'S ONGOING FISCAL CRISES HAS dramatically affected courts across the state.

As our members know, cost-cutting measures enacted first in Los Angeles County, and then statewide, include closing courthouses one Wednesday each month. That one day is an unpaid furlough day for court staff.

As constitutional officers, judges cannot be subject to reductions in pay. Yet, to their great credit, Los Angeles County judges have almost all volunteered to give up their pay for those days and, further, have directed that their foregone pay be allocated to staff members. This donation, amounting to an average of 4.5 percent of the judges' annual salaries, will allow staff to recoup one day's pay per quarter, partially ameliorating staff pay reductions.

Alas, the news for the coming fiscal year, and even for the balance of the current year, is not good. During the remaining months of this fiscal year, the Los Angeles Superior Court may close 38 courtrooms and lay off 485 employees, according to Presiding Judge Charles "Tim" McCoy. For the next fiscal year, Judge McCoy estimated there may be an additional 53 courtroom closures and further staff cuts. The impact of these closures will be felt primarily by our members who handle civil matters, because criminal cases have priority due to the constitutional guarantee of speedy trials for those accused of crimes. For that reason, criminal courtrooms are less likely to be closed.

There are no quick fixes for this crisis. Raising taxes is a non-starter to term limited legislators. With all areas of state operations suffering budget shortfalls, there are few options available to the courts for funding. Eventually the state economy will recover, business activities will increase, the ranks of the employed will again grow and state revenues will recover. We'll have to do the best we can with what we have. But for the long term, we have our work cut out for us if we are to avoid these dire circumstances in future.

One answer is education. By that I mean education of members of the state legislature. For a variety of reasons, there are few lawyers now serving as lawmakers. Many of those currently representing us in Sacramento do not fully grasp the nature of the judicial branch of our government. Too many legislators, faced with difficult budget choices, find themselves considering the courts as just another state agency, like the DMV or the Board of Barbering and Cosmetology. But the judiciary is a branch of government

co-equal with the legislature and the executive. Somehow, this lesson from 8th grade civics can become lost in the budget shuffle.

To see this first-hand, ask your family, friends and neighbors what they know about the three branches of government. I predict far too many will describe an understanding of the judicial system as some government department, rather than a co-equal branch of a threefold system of divided governmental responsibilities. There were many reasons ancient peoples wanted to be ruled by kings, not least of which was so they would "be as the other nations." There were very good reasons why the Founders rejected the rule of kings and put in place the divided form of government that now insures our freedoms.

Over the long term, our members can greatly assist the judiciary by helping educate our legislators so they develop a better understanding of the true nature of the courts. No one argues that education, health, welfare and infrastructure are unimportant. But overall, a strong and independent judiciary is critical to insuring that all other parts of government and society continue to function. Witness the lessons of history, and sadly, circumstances currently in view in those parts of the world where the warlord, the tyrant and the weapon call the shots instead of the rule of law.

As I've mentioned before, as lawyers we all have more impact on our society as a whole than we may know. As part of the 2,000 member strong San Fernando Valley Bar Association, our impact is multiplied. Those who work with or know members of the legislature or their staffs can use opportunities of interaction to educate those legislators and staffers. Nothing is more effective than the personal, local touch.

There are additional opportunities to advocate for the judiciary on a state-wide level through the Bench-Bar Coalition (BBC) and the Office of Governmental Affairs of the Administrative Office of the Courts (AOC). The Bench-Bar Coalition's activities include an annual Day in Sacramento, during which lawyers visit their legislators in their State Capitol offices. For more information on the Bench-Bar Coalition and the Day in Sacramento, please contact Dia Poole, the AOC's liaison to the BBC, at dia.poole@jud.ca.gov. 🐾

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From the Editor

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ANGELA M. HUTCHINSON
Editor

Dear Members,

This month's *Valley Lawyer* is focused on civil law. In association with our Judges' Night dinner on February 25, we also honor several prominent judges inside this issue.

There was a time when the word judge would refer to a courtroom judge, or at the very least, a judge on a court television show. In today's society, if you say the word judge to the average person, many associate it with music or reality TV.

From *American Idol* to *You Think You Can Dance* to *America's Got Talent*, these television personality judges are getting paid to rock and jam to the music or dances of talented and the not-so-talented contestants. In most of the talent competitions on TV, many of the judges are often paid millions of dollars based on their ability to boost ratings with their vibrant personalities. Then, the public votes to select the winner.

This process is similar to our legal system where the American people are given the responsibility of serving as jurors. A significant difference between TV judges and our appointed or temporary judges is that one decides on talent, the other justice.

It is an honor to recognize and celebrate the trailblazer judges. In one of our feature articles, we spotlight six temporary judges as California Judicial Valentines.

Judges serving in our local courthouses have the responsibility of ruling over important matters that affect the lives of Valley residents and businesses. For serving our San Fernando Valley community with such dignity and a passion for justice, our courthouse judges rock. Therefore, they receive the best of both worlds... to rock n' rule! 🎸

Have a lovely month!

Angela M. Hutchinson

VALLEY LAWYER 2010 EDITORIAL CALENDAR*

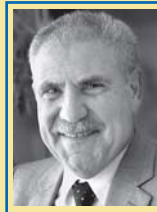
MONTH	ISSUE FOCUS/MCLE TOPIC	DUE DATE
APRIL	Business Law/Taxation	Feb. 15
MAY	Family Law/Children	March 15
JUNE	Alternative Careers/Attorneys Giving Back	April 15
JULY/AUG	Sports Law/Contract Negotiation	May 14
SEPT	Law and Technology/Law Practice Management	July 15
OCT	International Law/Human Rights	Aug. 13
NOV	Work and Balance/Workers' Compensation	Sept. 15
DEC	Members in the News/Year-in-Review	Oct. 15

*Submit completed articles or ideas via email. Word count for Feature Articles is 1,000-1,500. MCLE Articles are 2,500-3,500 words including 20 True and False questions.

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**Judicate West congratulates
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Judge Chirlin has handled Law & Motion, Civil Trials, and MSC's while on the bench. As a litigator for over 10 years, she practiced business and employment litigation. Throughout the years she has frequently traveled to several countries for special programs designed to educate students, lawyers, judges, and governmental agencies.

Judge Chirlin has been the recipient of numerous awards by various bar groups including "Trial Judge of the Year" by the Los Angeles County Bar Association. Attorneys who have appeared before her praise her courteous and respectful judicial demeanor, intelligence, and fairness.

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Civil Progress and Client Feedback



ROSIE SOTO
Director of
Public Services

ATTORNEYS OFTEN SAY THEY DON'T GET TO choose the area of practice they want; instead, they get to choose the cases they turn down. As ARS members progress in their career, they're careful to choose practice areas they have a passion for, and an aptitude for doing well. If there is a certain area of practice that attorneys want to be in, they practice; practice to enhance those skills, knowledge, and experience in order to increase the chances of getting it right.

In many ways, this is the common-sense step. If you want to be a great attorney, obviously you need to practice and perform over and over again. Same goes in sports. We live in Los Angeles, which means we've seen Kobe Bryant's entire NBA career. Bryant, a superstar with impressive career accomplishments, such as MVP awards, innumerable game winning shots and four NBA championships, is a "hoops junkie". He is privileged, in that he has the opportunity to learn about his flaws and strengths from countless critics. He also has the benefit of screening his performance; and so, he can figure out how to adjust to improve his performance over and over and over again.

Many ARS attorneys are like Kobe; they care so much about their profession they become junkies, "bar junkies" that is. Here, in theory, the practice of law and basketball are compared, but the two professions have their differences. NBA players are not compelled to get a college degree, men and women don't play on the same court, retirement age is late 30's, professionals are allowed to foul the opponent six times before getting pulled from the court (yet can suit-up for the next game), but most notably, NBA is televised live and has millions of viewers.

In the actual practice of law, there's no televised simulation. It's a time where the news industry and even Congress are struggling to arrive at a definition of journalism; the judicial system finds itself faced with that same question and several others. Judges and attorneys have yet to fully digest the last wave of communication technology, now


they're faced with a host of new guidelines on issues raised by the next technological revolution.

The federal rules prohibit broadcast television from courtrooms. Unfortunately, people can't learn nearly as much about important cases as simply as they could find the final NBA score. There's no footage of the latest trial to help attorneys evaluate how slow or fast they speak, how thorough or vague they come across, how intimidating they may appear when they fold their arms while trying to listen sympathetically, and there are no notable critics volunteering constructive information.

Granted, there's Public Access to Court Electronic Records (PACER). The system is commendable for allowing those interested to follow other people's cases. However, PACER does not exemplify the work of attorneys and judges, in NBA terms, the rules of the game, the game schedule, statistics, and the names of the players on each team.

It's unlikely that networks will cancel primetime shows like NCIS or American Idol to televise the actual legal profession. That's just not where the profession is now. So, how do judges and attorneys

evaluate their performance? They search for feedback from people willing to be honest, and do so in a skillful way that increases the chances of improving performance.

Feedback is valuable; attorneys may simply not realize which adjustments they should be making. Attorneys need someone outside of themselves who can give honest feedback in a timely manner. Make time to survey clients, and select people willing to be honest about sharing their opinions of what they see. Don't simply consider the feedback; make note of strengths and shortcomings and make adjustments to progress. 

Braden M. Cancilla is a very good attorney. He is intelligent and I like him a lot.

Attorney James G. Morris right away put me at ease. He answered all questions. His staff is also easy to talk to.

Irma K. Zahid is extremely knowledgeable and sympathetic. ARS staff was helpful and polite. The initial consultation lasted as long as was needed to answer all of my questions.

My consultation with Jeffrey M. Slater went very well. He is an honest attorney that I hope to hire in the future for other matters.

Katherine B. Pene is very friendly, professional and knowledgeable.



Q&A with SFVBA Judge of the Year Maureen A. Tighe

By Angela M. Hutchinson

UNITED STATES BANKRUPTCY COURTHOUSE

ON NOVEMBER 24, 2003, MAUREEN A. TIGHE BEGAN HER 14-YEAR TERM AS A JUDGE ON THE U.S. Bankruptcy Court for the Central District of California. Prior to her appointment, Tighe served as a U.S. trustee for the Department of Justice in Los Angeles. She managed and administered bankruptcy cases in the Central District of California. Tighe also served as interim U.S. trustee in the region which includes the Districts of Southern California, Guam, Hawaii and the Northern Mariana Islands.

Previously, Tighe served as an assistant U.S. Attorney in Los Angeles from 1988 to 1998. She served as deputy chief of the Major Frauds Section and chairperson of the Bankruptcy Fraud Task Force.

A pioneer in bankruptcy law, Tighe established the National Bankruptcy Fraud Working Group, which provides a national network of U.S. trustee attorneys, law enforcement agents, and prosecutors to address criminal bankruptcy fraud issue.

From 1986 to 1988, Tighe engaged in private practice at Sullivan & Cromwell in New York City. From 1984 to 1986, she served as law clerk to U.S. District Judge Harold Ackerman of the District of New Jersey.

In 1979, Tighe received her undergraduate degree Phi Beta Kappa from Douglass College of Rutgers University. She earned her juris doctorate in 1984 from Rutgers Law School, where she served as editor-in-chief of the *Rutgers Law Review*. *Valley Lawyer* is privileged to interview the San Fernando Valley Bar Association's Judge of the Year.

Q: How does it feel to be recognized as Judge of the Year?

A: It is really one of the greatest honors I have ever received. I am extremely flattered as well as humbled by such an award. It is also a great joy to me that my parents are alive to share this good news.

Q: How is the economy affecting the Bankruptcy Court?

A: Naturally, we are extremely busy. We will have over 100,000 filings in 2009. This is approximately a 70% increase in filings over 2008. The increase has been across the board – consumer and business cases, Chapters 7, 11 and 13.

Q: What are the highest types of cases that the Court receives?

A: We have more Chapter 7 cases filed, but the Chapter 11 cases are usually more complex and require more of our time. Because so many people are trying to save their homes, Chapter 13 has been very busy this year also.

Q: What inspired you to start the Self-Help Committee?

A: I realized that we had been requesting attorneys to volunteer for pro bono bankruptcy cases for many years and had not substantially changed the number of unrepresented

people, despite a good number of very dedicated volunteer attorneys. I also watched many individuals represent themselves quite successfully in the simple cases. I heard about self-help desks elsewhere and thought we should try it in bankruptcy court. I was hoping we could help people to represent themselves in the simple cases and then guide the

limited pro bono attorney resources toward people who needed more complicated advice.

Q: What goals did the Self-Help Desk achieve this year?

A: The desk was able to help over 1700 people, up from a few hundred in the first year of its existence. Neighborhood Legal Services (NLS) and a few very dedicated volunteers have done a great job

of helping these people decide whether they need to file bankruptcy, how to file a bankruptcy case or a proof of claim, or how to find an attorney if one is needed. In one of our busiest years ever, the judges have been able to spend more time deciding disputes because we can send unrepresented parties to the self-help desk for advice before they see us. Most importantly, NLS was fortunate to receive funding for one more year from the district's Attorney Admission Fund.

IN THE NEWS
Bankruptcy filings surged 32% in 2009, according to recent news reports. Data gathered by the Associated Press indicates that California had a 58% increase from 2008. More than 1.4 million bankruptcy petitions were submitted from the nation's 90 bankruptcy districts, making 2009 one of the worst years on record.

As private funding sources have dried up in this recession, we were concerned the desk would have to close. We are relieved that the money from the district will keep the desk open until private grants can be found for the following year.

Q: What type of clients use the Self-Help Desk?

A: Most visitors are low income and cannot afford an attorney, but the desk is open to anyone. Most visitors are people considering filing bankruptcy, but some are creditors who can't afford an attorney to figure out how to file a claim in a bankruptcy case. Where a person can afford an attorney and should really have a more in depth consultation, we encourage them to get an attorney through the San Fernando Valley Bar Association or the Central District Consumer Bankruptcy Attorney Association.

Q: How can attorneys contribute to the efficiency of the Self-Help Desk?

A: Volunteers who can dedicate a few hours each month can contact NLS and learn how to assist people coming in each Monday and Thursday.

Q: What can clients do to help make the Desk operate smoother?

A: They should see what questions can be answered first from the court's extensive material on its website – www.cacb.uscourts.gov. They can click on "Don't have an attorney" where they can watch a video and read our most frequently asked questions in both English and Spanish. When they come to the self-help desk, they should bring all papers related to their problem, whether that is a garnishment order or a notice of default. Lastly, be patient as our wonderful paralegal running the desk and the volunteer attorneys are always very busy trying to get to everyone!

Q: How does the public find out about the Self-Help Desk's services?

A: Visitors learn about it through word-of-mouth and flyers around the Bankruptcy Court and the San Fernando Valley's Superior Court locations. We considered advertising but delayed doing so due to a lack of funds. That was fortunate because we can barely keep up with the volume we are seeing without advertising.

Q: What are the future goals for the Self-Help Desk?

A: It would be ideal to expand our hours. In this funding climate, however, the immediate goal is to secure future funding.

Q: What are your future professional aspirations?

A: I am extremely happy serving in my current capacity and hope to stay here until retirement. As bankruptcy cases are basically about significant events in the lives of individuals and businesses, I have a front row seat to some of the most fascinating stories around. There are so many projects I am interested in to improve access to the courts, attorney training and introducing young people to the justice system, that I have lots to do whenever the caseload allows some breathing room.

Q: Is there anything else that you would like to add?

A: Many thanks to the San Fernando Bar Association for your consistent work with all the judges to improve our courts and the quality of legal practice in the Valley. 🐾

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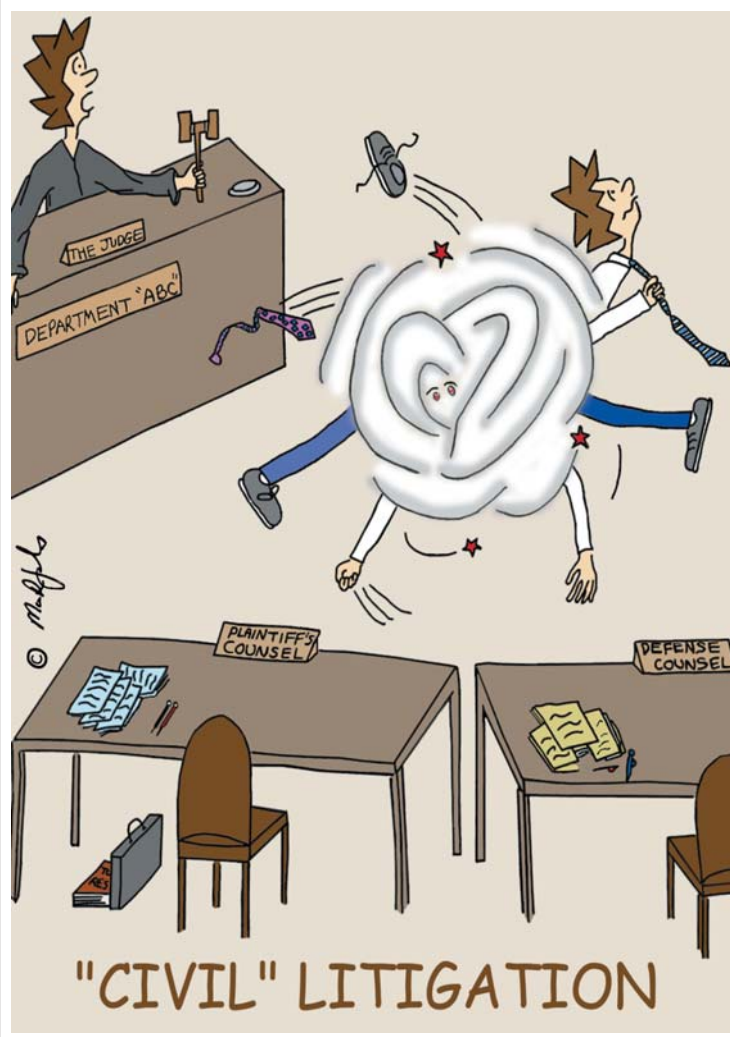
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LOL

The Lighter Side of Law

ABOVE THE LAW, By Marc Jacobs



If you have a LOL (Laughing Out Loud) story or moment that you have experienced with a client or would like to gather funny courtroom or law office stories from your colleagues, email them to Angela@sfbva.org.

With Us, It's Personal

A poem by Hon. Richard Adler

*After dinner coughing and suffering flu,
A sputtering Linda into bed directly flew.
Chest congestion and Robitussin couldn't keep her still,
So at four AM I gave her a sleeping pill.*

*With fever at 10 AM and unable to stand,
At last I telephoned doctor Sugarman.
At 11:30 AM the doctor had the illness description.
He phoned Rite Aid to prepare the prescription.*

*The voice of Rite Aid said to my worried kupp,
In ten minutes it would be ready for pick-up.
Just to make sure I waited two hours more,
Then walked from Foothill to the Canon store.*

*The short walk did not leave my feet sore,
But I waited in line for ten minutes more.
I asked for the medicine for Linda's throat,
To one of eight pharmacists clad in white lab coat.*

*Miss Lab coat returned with an empty hand,
But I did not have time for a new plan.
Before she started to speak I had a hunch,
You see she said "the Pharmacist is at lunch."*

*But I said in tones that pleaded,
My sick wife a prescription needed.
I told her a ten minute promise was made by phone,
And seven other lab coats meant she was not alone.*

*I cautioned of promises in these times of economic crunch,
Still she said "the pharmacist is at lunch."*

**PRESCRIPTIONS
PICK-UP & DELIVERY**



*I left for home but returned by foot again at four,
This time calling before I walked out the door.
Speaking dryly to Miss lab coat "Linda Adler again,"
Medicine in hand she returned, I said amen.*

*But Miss lab coat said Linda's insurance has expired,
Just now I sighed, feeling awfully tired.
Looking at the counter "With us, it's personal" is the motto,
Who knew that going to the pharmacy would be like lotto.*

*Linda does have insurance I said and off Lab coat flew,
That's when I met Mr. Lab coat number two.
I was loudly asked for Linda's birthday and year.
A drag queen looking for Dramamine started to peer.*

*I showed him my insurance renewal card,
Mr. Lab coat searched his computer real hard.
He found two listings with the very same name,
They misidentified Linda without a trace of shame.*

*Oh somewhere in this favorite land people munch and munch,
Somewhere at a 24 hour Rite Aid the pharmacist is at lunch.
And somewhere little children have consumer clout,
But there is no joy in Riteville – the pharmacist is out.*

Previously published in Advocate magazine, June 2009 issue.

Judge Richard Adler graduated from UCLA in 1968 and Loyola Law School in 1971. After serving as house counsel for a savings and loan association and as deputy district attorney, he was elected to both the Los Angeles Municipal Court and Los Angeles Superior Court. He is the author of BAJI and CALJIC jury instruction programs marketed by Thompson Publishing.



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California's Judicial Valentines

Six Temporary Judges Together – More Than A Century of Service

By Lisa Miller

THE LOS ANGELES SUPERIOR COURT HAS ONE OF THE LARGEST TEMPORARY JUDGE PROGRAMS IN the nation. Since its official inception in 1989, the Court's Temporary Judge Program has evolved into a highly effective volunteer program. (Informal judge pro tems programs were run by the branch courts and local bar associations like the San Fernando Valley Bar Association for many years before.)

Due to the dedication of Bar members, temporary judges make a significant contribution to the community. The Temporary Judge Program currently has 821 volunteers, 547 who took assignment last year, covering thousands of court calendars throughout Los Angeles County.

"Temporary Judges serve at the discretion of the Presiding Judge and must be members of the California State Bar in good standing for 10 years. They must complete an application for each three year term and receive training outlined in Rule 2.812, California Rules of Court. Panel attorneys may also be appointed as counsel, guardians ad litem, referees, special masters, court experts or fiduciaries as may be mandated or appropriate under the circumstances," according to the LASC website.

In celebration of Valentine's Day, *Valley Lawyer* is proud to feature California's Judicial Valentines of six prominent and long-time Temporary Judges that serve the Valley community.

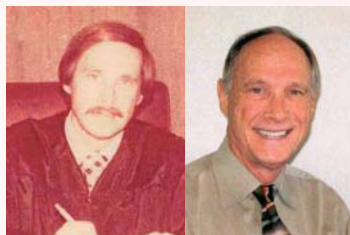
Growing with the Program Kenneth M. Yaeger has Served for 30 Years

Kenneth M. Yaeger of the Law Office of Kenneth M. Yaeger in Woodland Hills and Thousand Oaks has practiced civil litigation since 1973. He served as a deputy city attorney in Glendale and has been in private practice. He focuses on insurance matters, injured individuals, and businesses.

His volunteer work includes arbitration and mediation, and he acts as a mandatory settlement judge. He has been a Temporary Judge for the Los Angeles Superior Court for the past 30 years.

"In the early days, the robes fit me like a car cover off a Buick," Yaeger says.

With the passage of time, things have changed, however. "Over the years, I have grown into the black dress," he says.



Angeles Superior Court system. Even after 30 years, he continues to find it surprising.

"It has been an honor over the years to be entrusted with a portion of the legal system," he says.

The time he has devoted throughout all these years has been productive. Participation as a Temporary Judge has its rewards.

"Learning to be a neutral instead of an advocate makes for a better-thinking lawyer," he says.

He gives much of the credit to his functioning on the bench to the clerks and bailiffs in his various courtrooms. "They do many difficult tasks," he says. But no matter who appears before him, or who is working as court staff, Yaeger thanks the Temporary Judge program for providing an opportunity for him to serve.

"My Temporary Judge work has been rewarding, humbling, and a wonderful experience," he says. "I am thankful that I have been allowed to participate over all these years."

"My Temporary Judge work has been rewarding, humbling, and a wonderful experience."

Yaeger earned his juris doctorate degree in 1972 from the San Fernando Valley College of Law. He served as a staff sergeant in the United States Army, and was honorably discharged. He has handled more than 10,000 cases as a Temporary Judge.

Yaeger has never grown entirely accustomed to the responsibilities entrusted to Temporary Judges in the Los

From Motion Practice to Ascension to the Bench Aaron J. Weissman Focuses on Small Claims

At Los Angeles' Novian & Novian, Aaron J. Weissman's practice is comprised primarily of general, civil and business litigation matters, with an emphasis on civil law and motion and appellate practice. He has been a Los Angeles Superior Court mediator since 1994.



In his 28 years of law practice, he finds that nothing has been as satisfying as his service on the bench as a Temporary Judge.

"It was 1992 or 1993 when Judge S. James Otero, then a Superior Court Judge in Burbank [now a U.S. District Court Judge in the Central District], approached me about sitting as a pro tem in Burbank and Glendale," Weissman says. "He had gotten to know me from many appearances in one particular case, and he had learned that I was a law and motion and appellate attorney."

Based on Weissman's subject-matter background and expertise, Judge Otero initially asked Weissman to cover the Friday law and motion calendars. The Friday calendar included

"I have handled everything in law and motion."

probate matters and general status conferences (now case management conferences), so Weissman began expanding his knowledge base. Over the years in Burbank and Glendale, he handled calendars for Judges Otero, the late Judge Charles Stoll, Judge Charles Lee, the late Judge Thomas Murphy and Judge David Schacter.

"I have handled everything in law and motion," he says. "From simple, unopposed discovery motions and *ex parte* applications of all sorts, to extremely complex demurrers and motions for summary judgment."

Weissman's background prepared him thoroughly for the challenges of temporary bench service. He earned his juris doctorate degree from the University of West Los Angeles School of Law in 1980, where he was senior class president and a member of the law review. This began his dedication and attention to detail, a hallmark of his service as a Temporary Judge.

"I would go into court a day or two prior to the hearings and prepare all the matters on calendar, reviewing all of the motions, oppositions and replies and preparing notes and my own tentative ruling," he says. "Now I frequently handle small claims matters, usually in San Fernando."

Weissman has mediated cases for the Superior Court since the inception of the volunteer mediator program. He has handled numerous mandatory settlement conferences.

"I have always enjoyed the challenge of actually making a decision, as opposed to advocating a position, and the pleasure of working with counsel and parties with a mind toward resolution of matters," he says.

Judge of 'The People's Court'

Richard Baumann Focuses on Small Claims

By day, Richard Baumann represents creditors in complex commercial collections matters. He is a creditor's rights specialist, certified by the prestigious American Board of Specialization.



He has served in such high-level positions as membership on the Board of Governors of the Commercial Law League of America, the nation's preeminent organization of creditor's rights professionals. In 1991, he was elected president of the organization.

His favorite assignment has little to do with large, sophisticated creditors. It was his selection as a Temporary Judge of the Los Angeles Superior Court in 1980. He has served in the Van Nuys and downtown courthouses since then.

"My personal preference has been to serve in small claims court," Baumann says. "It is 'the people's court' and has a feeling of urgency that only the litigants themselves can bring to the bar."

Baumann usually presides over the night court calendars, to accommodate his law practice. He finds that the litigants cannot afford to take time off from their work during the day to air their grievances. But while some things remain the same, others have changed noticeably.

"I started volunteering when the jurisdictional limit of small claims cases was about \$500," he says. "The issues, if not the emotionalism, seemed much simpler."

Based on his years of expertise as a small claims court bench officer, he is concerned that, considering the current

"It has been a pleasure to serve over these last three decades."

jurisdictional limit of \$7,500, litigants can be at a significant disadvantage by not having attorneys present. But it does allow for some intriguing issues.

"One of the interesting aspects of small claims is the numerous ways the law comes into play," he says, "especially when coupled with sometimes fascinating fact patterns related by emotionally charged litigants."

He finds that small claims court offers participants an opportunity for a speedy resolution to their problems. Often, the situation has been eating at them for some time and their emotionalism reaches disproportionately high levels.

"The short time span between filing the complaint and having the trial allows for a much quicker pressure release than if the matter had been brought by an attorney as a limited jurisdiction case," he says. "They have their day in court, and then they can put the situation behind them and move on with their lives."

Baumann knows a little bit about moving – he earned his juris doctorate from the University of Wisconsin, before moving half a continent away to California and gaining admission to practice. But he has always been focused on commercial law.

He is a Fellow of the Commercial Law Foundation and is a member of the National Conference of Bar Presidents. He was on the Board of Directors of the Academy of Commercial and Bankruptcy Law Specialists, and on the Board of Directors of the American Board of Certification. Baumann writes and lectures extensively on commercial law, creditor's rights, and commercial collections. He is an associate editor of the Commercial Law Journal and wrote the American Lawyer's Quarterly pamphlet "Legal Aspects of Collecting an Account Receivable."

Even considering the demands on his schedule from his leadership posts, Baumann always finds time for the Temporary Judge program.

"Volunteer service in the Temporary Judge program, especially in small claims court, is exceedingly rewarding and fulfilling," he says. "It has been a pleasure to serve over these last three decades."

High Stakes Trials to Small Claims Travails Herb Dodell Sees All Sides

Herbert Dodell, principal of Los Angeles' Dodell Law Corporation, brings a varied practice background to the temporary bench.

He is a transactionalist, litigator, arbitrator, and consultant to LawFund Management Group, a lawsuit funding and management company.

Admitted to practice in 1966, Dodell has been a Temporary Judge with the Los Angeles Superior Court for more than 25 years. He started in the mid-1970's, serving in Van Nuys, Glendale and Chatsworth.

"It's the best non-paying job I ever had – this is a great gig," Dodell says. "It is our opportunity to be of service to the community, doing what we most like to do. It doesn't get much better than that."

Dodell has tried approximately 95 jury trials to a verdict in state and federal courts, as well as a number of non-jury trials. "We are taught [in law school] that the pursuit of justice is at the heart of the legal system, but financial and political

"The guiding principle is to follow the law."

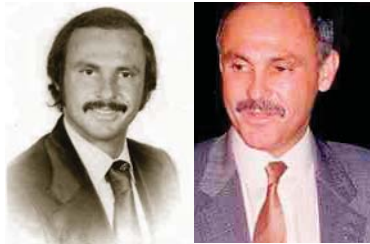
considerations have jaded the public's view of the legal system," he says. "[Temporary Judges] are blessed with the chance to change that. We can and we do."

Dodell was director of business affairs for Warner Brothers Entertainment and a Los Angeles County deputy district attorney. Although he enjoyed these high-profile assignments, the pleasures of working as a Temporary Judge tower in comparison.

"It is not often that a lawyer has the opportunity to share years of litigation experience with the public, in a constructive way, without financial motive or reward, and do something meaningful and fulfilling at the same time," he says.

Being able to use what he has learned on the bench in his practice has given him a whole new view on how to be a better lawyer. From the bench side, he has had the chance to see how appealing or unappealing advocates could be when on the counsel table side of the process. His greatest rewards come from participating in the administration of justice.

"Because we have no financial or political motive, we can give the time and interest to matters that are paramount to the litigant, but may be mundane to us," he says. "A full-time judge has to have other priorities. We don't."



Although he has spent countless hours in the courtroom as an advocate, his service to the public as a Temporary Judge is more rewarding.

"I have gained an entirely new perspective from the bench," he says. "At the end of a court day, I feel that I have done something to bring justice to people who have little or no experience with the judicial system."

Dodell is no stranger to tense courtroom proceedings. He successfully argued *Essex Insurance v. Five Star Dye House* before the California Supreme Court. *Essex* created landmark authority relating to an insurance company's obligation to provide a defense where its insured has been sued and the assignability of insurance bad faith cases.

"In small claims and temporary restraining order proceedings, where there are no lawyers, the public sees how our system works," he says. "It is our opportunity to prove to them that there really is justice, that it is fair, even if the result isn't what they expected, and that they had their day in court. How they are treated creates a lasting impression."

Most people understand the legal concepts if the objection and the ruling are explained, and they use the explanation to continue with the case. According to Dodell, some parties in pro per are pretty good, and some of the lawyers are not, creating an interesting dynamic. And this creates challenges.

"I wrestle with many of the cases, putting aside what I would like to do, in favor of what I must do. Ruling against someone whom I would like to help, but can't, is tough," he says. "The guiding principle is to follow the law."

Dodell especially relishes small claims calendar assignments, the epitome of life in the city, he says. Each is a story, and some of them are quite good. It can be tough to tell who is telling the truth and who isn't. Sometimes, you just don't know, he says. When that happens, the burden of proof requirement serves as the basis for a ruling.

"This is where true justice occurs – two parties, fighting with each other, without lawyers," he says. "Although most cases turn on credibility, the more important element is who has the burden of proof, and was it met."

Learning Through Judging Alexandra Leichter Learned Litigation as a Temporary Judge

In her private practice, Alexandra Leichter handles complex marital dissolutions and high-conflict child custody matters. She is an arbitrator, private judge, and discovery referee/special master.

She has taught law seminar on "Legal Environment of Business" and "Civil Pre-Trial Practice – The Practical Aspects" at Loyola Law School, University of Southern California and San Fernando College of Law. But none of this has been more illuminating than her assignment, remarkably early in her career, as a Temporary Judge.

"I was extremely lucky to be allowed to sit as a Temporary Judge before I even had five years' experience as a lawyer," Leichter says. "The then-presiding judge of the Beverly Hills



Municipal Court was desperate to have attorneys staff the small claims and municipal court benches.”

Leichter earned her juris doctorate degree from Loyola Law School, after receiving her bachelor's degree in mathematics from UCLA. She was admitted to practice in California in 1972. She speaks Hungarian, conversational French and Yiddish.

She has acted as a Temporary Judge all over the county for more than 33 years, including the Van Nuys, San Fernando, Burbank, Pasadena and downtown courthouses. Almost immediately upon her installation as a Temporary Judge, her favorite assignment became small claims court. According to Leichter, this was true because people were so directly honest (or dishonest) about their testimony.

“There was no obfuscation by the lawyers,” she says.

In addition, Leichter sat in municipal court and heard cases with lawyers presenting testimony on both sides. Since then, she has sat on assignment as a Temporary Judge in numerous courtrooms. In the last 20 years, she has been hearing almost exclusively family law calendars, as she is a certified family law specialist.

“The best part of being a Temporary Judge is how much I learned about trying a case myself,” she says. “I don’t think any

“The best part of being a Temporary Judge is how much I learned about trying a case myself.”

course could have taught me to be as good a trial lawyer as the experience of judging other attorneys’ cases did.”

This is probably one of the reasons she continues to love volunteering, anywhere from six to 12 days each year, to sit as a Temporary Judge. But not every assignment is an easy experience.

“The clerks, the judicial officers and the litigants appear to be grateful that we are helping resolve cases when the judicial officer is on vacation or is ill, the experience keeps us fresh and on our toes, and almost every assignment teaches us something new,” she says. “But at the end of the day, after much exhaustion and often a great sense of accomplishment, I, for one, am grateful that this is not my normal day job.”

Public Service, Personal Development **Miles L. Kavaller Puts the Public at East** **While Honing His Trial Skills**

Specializing in litigating matters that arise in the transportation business, Miles L. Kavaller practices in the federal and state trial and appellate courts. He litigates trade secret protection, insurance and bad faith claims, employment law and various commercial disputes as well.

He began his trial court career with the Bureau of Enforcement of the Interstate Commerce Commission as a trial attorney and assistant regional counsel, which provided a broad litigation experience. None of this gave him the insights



he gleaned from his bench service as a Temporary Judge.

“Service as a Temporary Judge has been an excellent way for me to use my training, education and experience,” he says. “Service to the community is an important part of a lawyer’s professional activities.”

Kavaller has served as a Temporary Judge at many of the Los Angeles County courthouses, including Van Nuys, Chatsworth, Valencia, San Fernando and Burbank. He most often hears traffic and small claims calendars.

“While I had a few interesting cases, the one I remember best was the small claims case brought by a dog owner against the groomer – he cut the animal’s hair way too short, according to the claimant,” Kavaller says. “Well, what are your damages?”

“We want to give the public the impression the court system is not unfriendly.”

I asked the claimant. ‘How would you be compensated for the dog’s ‘injury,’ if there was one?’”

Kavaller asked the groomer if he would agree to a free grooming, and he agreed. But the claimant refused. “I dismissed the case,” Kavaller says. “This ‘injury’ was far too trivial to address in court.”

Kavaller was admitted to the New York Bar in 1972 and the California State Bar in 1977. In 1977 he went into private practice and in 1985 became a sole practitioner. He has served as a Temporary Judge in a number of capacities.

“As a traffic court judge, I try to make those who appear before me as comfortable as possible, recognizing that this is probably the only time most of them will see the inside of a courtroom,” he says. “We want to give the public the impression the court system is not unfriendly.”

Kavaller hears civil calendars as well. He sees some special challenges in this regard, so he tries to take a constructive approach.

“In small claims court matters, I try to resolve cases by encouraging settlement, even when the case is being heard,” he says. “Settlements are much more easily enforced, because the parties have reached an agreement, albeit reluctantly. Judgments, as we lawyers know, are often difficult to satisfy.”

Kavaller believes service as a Temporary Judge has made him more sensitive to the perspective of the judges before whom he appears in his law practice.

“I am grateful to Los Angeles Superior Court Temporary Judge Program,” he says. “It has given me the opportunity to serve my community in a meaningful way. Unlike some others, I am not too good with a hammer or paint brush.” 🛠️

Lisa Miller is a Temporary Judge and trustee of the San Fernando Valley Bar Association. She can be reached at (818) 802-1709 or Lisa@LMillerconsulting.com. Information regarding requirements and an application to become a Temporary Judge are available online at www.lasuperiorcourt.org/TemporaryJudgeProgram/UI.



Background on the Bench-Bar Coalition

By Dia Poole

IN 1993, UNDER THE LEADERSHIP of the California Association of Local Bars (CALB), the State Bar of California, and the Judicial Council, a statewide Bench-Bar Coalition (BBC) was formed to enhance communication and coordinate the activities of the judicial community with the state, local, and

specialty bars on issues of common interest, particularly in the legislative arena. Securing adequate, dependable, and stable funding for the trial courts has been a primary focus for the BBC.

BBC membership includes judges and the presidents, past presidents, presidents-elect, executive directors or other person(s) designated by the president of a state, local, minority or specialty bar association; legal services organization; or statewide organization dedicated to improving the justice system.

The BBC is currently cochaired by Thomas J. Warwick, Jr., founding member of Grimes & Warwick in San Diego, a former Judicial Council member, and past president of the San Diego County Bar Association, and Presiding Judge William J. Murray, Jr., Superior Court of San Joaquin County, and a former Judicial Council member. Mr. Warwick represents the Southern California region, and Judge Murray, the Northern/Central California region. Members of the BBC's Executive Committee support the cochairs in carrying out leadership responsibilities on quarterly conference calls, meetings, working groups, and related coalition activities.

In addition to its conference calls, the Bench-Bar Coalition holds meetings in conjunction with the State Bar of California and the judicial branch. The statewide BBC also participates in Day

in Sacramento events, in which small groups of judges and bar leaders meet with their legislators to discuss issues of mutual interest, with emphasis on the judicial branch budget. Judicial Council members and leaders of special commissions and task forces also are invited to participate in this event, the first of which each year is held in conjunction with the State of the Judiciary address by the Chief Justice of California. The Administrative Office of the Courts' (AOC) Office of Governmental Affairs coordinates BBC activities.

Among the benefits derived from the coalition has been the development of strong working relationships and better communication between the judiciary and members of the bar, as well as enhanced advocacy efforts with the Legislature. Subject areas of joint interest include the judicial branch budget and the need for stable, adequate funding; access to justice; jury system improvement; alternative dispute resolution; court technology; new judgeships; and judges' compensation. The bar has kept the coalition informed about issues important to the Commission on Equal Access to Justice and the State Bar. 📌

For more information about the BBC or the BBC Day in Sacramento, please contact Dia Poole, the AOC's liaison to the BBC, at (916) 323-3121 or dia.poole@jud.ca.gov.

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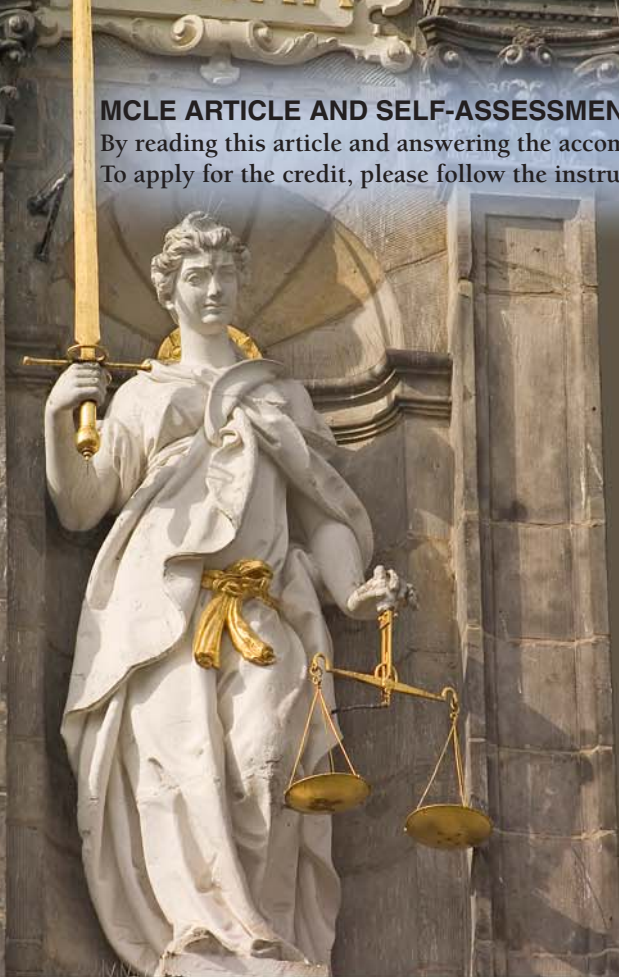


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ARCHAIC RULES FOR MODERN LAWYERS

By David Gurnick

IN LAW SCHOOL, FUTURE lawyers learn many longstanding principles of common law. After a few years of practice in a particular area some of these are lost to the lawyer's memory. But occasionally, an ancient, or arcane – but still applicable – legal principle can apply to a client's matter and is thus valuable knowledge for the lawyer. This article discusses some basic, even ancient rules of common or statutory law that may prove useful to any lawyer. For lawyers who remember, and even use some of these rules, it is still worthwhile to refresh memory of other rules that may have been forgotten.

English Law is California Law

The common law has roots in England, and this remains true in California today: “the Common Law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States or the Constitution or Laws of [California] is the rule of decision in all the courts of this State.” (Civ. Code §22.2). Thus, “the whole

body” of English jurisprudence “as it stood, influenced by statute” in 1850 forms the basis of California law.” *Martin v. Superior Court* (1917) 176 Cal. 289, 293. By adopting this rule, the Legislature superseded Mexican law, which had previously applied in California. *Credit Mgrs. Assn. v. National Indep. Business Alliance* (1984) 162 C.A.3d 1166, 1170.

As courts have noted, “common law is not immutable but flexible, and by its own principles adapts itself to varying conditions.” So the adoption of English common law does not require “unqualified application of all its rules.” *State of Calif. ex rel State Lands Commission v. Superior Court*. (1995) 11 Cal.4th 50, 75. Thus, “neither the Legislature nor the courts are precluded from modifying or departing from the common law, and frequently do.” *Schnier v. Supreme Court* (2000) 78 C.A.4th 703, 709. Departures from English common law include California's community property system, wherein the Legislature incorporated Spanish law rather than English rules on the marital

estate; and the civil discovery rules, which “established a pretrial fact-finding mechanism with a breadth not contemplated at common law.” *Id.*

The Rule Against Perpetuities

This rule has been called “every first-year law student's worst nightmare.” *Shaver v. Clanton* (1994) 26 C.A.4th 568, 570. The common law rule states: “No interest is good unless it must vest, if at all, not later than 21 years after some life in being at the creation of the interest.” *Id.* And, despite anxiety created by the rule, it has also been described as being “as clear and distinct as any other rule which has ever been declared by the court... No difference of opinion exists as to [its] terms.” *Id.* at 571. In contrast, another commentator observed: “The rule ... is one upon which the authorities refuse to come to any semblance of agreement as to its reason for existence.” *Id.*

In 1991, California adopted the Uniform Statutory Rule Against Perpetuities. (Probate Code §§21200 et seq.) Today, commercial, nondonative transactions are exempt from the rule.

Commercial leases are limited to a term of 99 years. (Civ. Code §718). Other property interests and transfers are invalid unless, *either*: (a) when created, the interest is certain to vest or terminate no later than 21 years after the death of an individual then alive; or (b) the interest either vests or terminates within 90 years after its creation. Probate Code §21205.

Rule of Adverse Possession

At common law, adverse possession let someone obtain title to real property without paying for it, by holding the property openly, and adversely to the true owner, for a specified length of time. California replaced the common law rule with a statute. (Civil Code §1007). Today, a claimant may obtain title to property by establishing five elements: (1) he or she occupied the property in a way that constitutes reasonable notice to the owner; (2) possession was continuous and uninterrupted for five years; (3) possession was hostile to the owner's title; (4) the adverse possessor claims the property as his or her own, under color of title, or claim of right; and (5) the adverse possessor paid all taxes levied and assessed on the property in the period. *Nielsen v. Gibson* (2009) 178 C.A.4th 318, 325.

It seems rare that today all these elements can be established. Why, for example, would someone pay someone else's taxes? But it does happen. In *Nielsen* 178 C.A.4th at 325, parents owned two lots and their daughter, who was out of the country, owned an adjoining third lot. Parents transferred their two lots. The transferee occupied all three lots and after the required period of time, won an action confirming title by adverse possession, as against heirs of the prior owner. *Id.*

Mailbox Rule

This rule concerns how acceptance of an offer may be communicated, to form a contract. Generally, acceptance occurs when it is actually communicated to an offeror. Under the Mailbox Rule, also called the *Effective on Posting Rule*,

consent is deemed to be communicated as soon as acceptance of a proposal is put in the course of transmission to the offeror. *Palo Alto Town & Country Village, Inc. v. Bbtc Co.* (1974) 11 Cal.3d 494, 500-501. The rule is codified in Civil Code §1583. Under the rule, acceptance of an offer to enter into a contract is effective and deemed communicated when placed in the regular course of mail. *State v. Agostini* (1956) 139 C.A.2d 909, 915. The rule applies even if a mailed acceptance never arrives. *Huizar v. Carey* (9th Cir. 2001) 273 F.3d 1220, 1223n.3.

The rule has various applications. A party can exercise an option by depositing written acceptance in the mail. *Palo Alto, supra*, 11 Cal.3d at 501. Under federal common law, mailing something raises a rebuttable presumption that the addressee received it. *Schikore v. BankAmerica Supp. Retirement Plan* (9th Cir. 2001) 269 F.3d 956, 961. If a sender shows enough evidence to raise the presumption, the other party has the burden to show the sent item never arrived. *Huizar, supra* 273 F.3d at 1223n.3. And an emerging issue is whether the Mailbox Rule applies to other forms of transmission, such as email and facsimiles. See *Am. Boat Co. v. Unknown Sunken Barge* (8th Cir. 2005) 418 F.3d 910, 914 (presumption of delivery should apply to emails).

Colgate Doctrine

This antitrust law doctrine originates in a 90-year-old Supreme Court decision. It relies on the principle of freedom to choose with whom one will, or will not, do business. Antitrust laws prohibit agreements, conspiracies and concerted action that unreasonably restrain trade. 15 U.S.C. §1. For many years, these laws prohibited suppliers from setting or fixing their distributors' resale prices. The rule was that resellers must be free to charge whatever price they wish. But in 1919, the Supreme Court ruled that a supplier could announce a resale pricing policy, announce that it will not do business with a distributor or reseller who fails to follow its policy, and act on the policy by refusing to

deal with a noncompliant distributor. *U.S. v. Colgate & Co.* (1919) 250 U.S. 300. The Court ruled that announcing and enforcing a policy does not form a conspiracy, because there is no "agreement." The *Colgate Doctrine* has come to mean that a company may choose who to do business with, and acting alone to end a business relationship does not violate the antitrust laws' prohibition against conspiracies and agreements in restraint of trade.

Rule of Escheat

Escheat is a procedure with ancient origins, in which the sovereign may acquire title to abandoned property if, after a number of years, no rightful owner appears. *Texas v. New Jersey* (1965) 379 U.S. 674, 675. "In this country the respective states have the attributes ascribed by the law of England to the crown in this respect, and the state is the recipient of all escheats caused by lack of heirs or otherwise." *State v. Savings Union Bank & Trust* (1921) 186 Cal. 294, 299. While commonly known as *escheat*, this term is actually a misnomer. The correct term is "*bona vacantia*" which refers to "ownerless goods." *Delaware v. NY* (1993) 507 U.S. 490, 497.

In the 1960s several states disputed which of them had escheat rights to abandoned property. An oil company owed money to small creditors who had not claimed or cashed royalty checks. The dispute was whether escheat rights to the monies belonged to the state where the payor (the oil company) was incorporated, or the state of its principal offices, or where payees of the checks were located. The Supreme Court ruled the money was property of recipients of the checks, they were creditors of the oil company, and the money should escheat to the state of the last known address of each creditor. 379 U.S. at 682.

Similar disputes between states have come to the Supreme Court multiple times. See e.g., *Delaware v. NY* (1993) 507 U.S. 490 (dispute over escheat rights to dividends and interest); *Penn. v. NY* (1972) 407 U.S. 206 (dispute over escheat rights to

unclaimed money orders). The cases concern intangible property. No serious controversy can arise between States seeking to escheat "tangible property, real or personal," for "it has always been the unquestioned rule in all jurisdictions that only the State in which the property is located may escheat. *Delaware v. NY* (1993) 507 U.S. at 497.

A more recent issue concerns unredeemed gift cards and gift certificates and whether they are intangible property that escheats to a state. As noted by a New Jersey court, states treat the question differently: "Some states have expressly excluded all gift certificates from their abandoned property laws . . . Other states make only certain types of gift certificates subject to escheat." *Matter of November 8, 1996, Determination of State, Dept. of Treasury* (N.J. Superior Ct. App. Div. 1998) 706 A.2d 1177, 1180.

In California, the Unclaimed Property Law establishes conditions in which unclaimed personal property escheats to the state. Code of Civ. Proc. §§1300, 1500, et seq. It is not a "true" escheat law because the state does not take ownership. Rather, the law give the state only custody and use of unclaimed property until the owner claims it. Its purposes are to protect unknown owners by locating them, and returning their property and to give the state, rather than a holder, the benefit of using unclaimed property which experience shows will largely never be claimed. *Azure Ltd. v. I-Flow Corp.* (2009) 46 Cal.4th 1323, 1328.

Sovereign Immunity

Under the ancient doctrine of sovereign immunity, no action lies against a government entity for its wrongs. The rule stems from what is now recognized as a fiction, that the sovereign or state cannot commit a legal wrong, and is therefore immune from suit. The rule also rests on the idea that it is better for an individual to suffer an injury than for the public to suffer inconvenience; and that government liability tends to slow government personnel in doing their duties for fear of claims. *Madison v. City and County of San Francisco* (1951) 106 C.A.2d 232, 250.

For decades these theories were strongly criticized. Even the Supreme Court expressed "disfavor of the doctrine of governmental immunity from suit." *FHA. v. Burr* (1940) 309 U.S. 242, 245. In 1961 the California Supreme Court abrogated sovereign immunity as an anachronism, lacking any rational basis. *Muskopf v. Corning Hospital* (1961) 55 Cal.2d 211, 216.

Responding to this decision, in 1963 the Legislature enacted the Tort Claims Act, Govt. Code §§810 et seq. which reestablished immunity. As a result, even today, "sovereign immunity is the rule in California;" and "governmental liability is limited to exceptions specifically set forth by statute." *People ex rel. Grijalva v. Superior Court* (2008) 159 C.A.4th 1072, 1079. Often, specific procedures must be followed to bring a claim against a federal, state or other government agency. And even where a claim is permitted, damages that are recoverable may be limited. (See e.g., Govt. Code Sec. 818, excluding punitive damages against a public entity).

Court Will Not Aid Illegal or Immoral Act

Several ancient doctrines establish that courts will not aid illegal or immoral acts. For example, "that the participants to an illegal contract who are *in pari delicto* can secure no relief based on such contract, is an ancient and most salutary one. It is part of the general rule that he who comes into equity must come with clean hands. *Norwood v. Judd* (1949) 93 C.A.2d 276, 284. A similar principle is expressed in the Latin phrase *ex turpi causa non oritur actio* (from an illegal act there can be no lawsuit). Under this principle, one who knowingly does an illegal act may not claim damages arising from it. Thus, courts refuse to aid a wrongdoer, either by enforcing an illegal contract or relieving a wrongdoer from obligations. Courts follow this principle not to help a defendant, but to restrict the use of judicial power to the furtherance of lawful ends, not to aid unlawful schemes. *Lizak v. Rottenbucher* (N.J. Chancery Ct. 1947) 53 A.2d 362, 365.

The principle has applied to refuse enforcement of claims for gambling losses, see e.g., *Kelly v. First Astri Corp.* (1999) 72 C.A.4th 462; collection of gambling debt, *Union Collection Co. v. Buckman* (1907) 150 Cal. 159; paying a commission to an unlicensed broker, *Richardson v. Roberts* (1962) 210 C.A.2d 603, and even to refuse enforcement of an agreement to deliver citrus whose poor condition made it unlawful to sell. *MacRae v. Heath* (1922) 60 C.A.64.

In recent years, the policy against aiding unlawful acts has been relaxed in some contexts. "The rule that courts will not aid enforcement of an illegal agreement or one against public policy will be relaxed where the transaction has been completed, no serious moral turpitude is involved, the defendant is guilty of the greater moral fault, and where reliance on the rule would permit the defendant to be unjustly enriched at the plaintiff's expense. *Hirsch v. Bank of America* (2003) 107 C.A. 4th 708, 720.

Knowing the Legal Principles

Again and again, courts note that today's legal principles have deep roots in the common law. See e.g., *All EMS Inc. v. 7-Eleven Inc.* (7th Cir. 2006) 181 Fed.Appx. 551, 556 (nonliability of breaching party when other party to a contract unjustifiably caused the breach by preventing breaching party from performing, is a rule that has deep roots in the common law); *Sterling v. Taylor* (2007) 40 Cal.4th 757, 771n.13 (noting a flexible, pragmatic view of the statute of frauds has deep roots in the common law). Knowing the ancient legal principles can assist lawyers in representing clients today. 🏠

David Gurnick is a State Bar Certified Specialist in Franchising and Distribution Law. David represents franchisors, franchisees, product manufacturers, consultants and professionals with the Lewitt Hackman firm in Encino. David chairs the SFVBA Litigation Section. He can be reached at DGurnick@lewitthackman.com.



MCLE Test No. 19

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

1. According to statute, the common law of England, where not in repugnant or inconsistent with the Constitution of the United States or California, is the rule of decision in all courts of California.
True
False
2. In California the common law rule against perpetuities still applies.
True
False
3. California law limits the term of commercial leases to 50 years.
True
False
4. In California the common law rule of adverse possession has been replaced by a statutory rule with five elements.
True
False
5. At common law adverse possession could be established without paying property taxes, but under California law today, payment of property taxes is one of the conditions to obtain title by adverse possession.
True
False
6. Under the Mailbox Rule, an item must be sent by certified or registered mail with a receipt, as a condition to accepting an offer by mail.
True
False
7. Federal common law establishes a presumption that if an item was mailed, it was received.
True
False
8. Mexican law once applied in California.
True
False
9. Community property rules and extensive civil discovery both existed under English common law.
True
False
10. States generally treat property the same way for escheat purposes, and generally agree on which of them has the right to escheated property.
True
False
11. Escheat is the correct name for the process by which states acquire title to unclaimed property.
True
False
12. Under the rule of escheat, the state takes possession of unclaimed property and will return it if claimed by the proper owner.
True
False
13. Under the rule of escheat, the state takes possession of unclaimed property and will return it if claimed by the proper owner.
True
False
14. Sovereign immunity is based on a legal fiction.
True
False
15. The purposes of California's unclaimed property law are to protect unknown property owners, return their property and give the state the benefit of using unclaimed property that will never be claimed.
True
False
16. Punitive damages generally are not recoverable against a government entity.
True
False
17. Because the California Supreme Court eliminated sovereign immunity as an anachronism, sovereign immunity is no longer the law in California.
True
False
18. Though once an important legal principle, the Colgate Doctrine no longer applies in its original form because of dramatic changes in toothpaste formulas over the years.
True
False
19. In recent years, the courts' policy against aiding unlawful acts has been relaxed if certain conditions are met.
True
False
20. When a company issues checks that recipients do not cash, escheat rights belong to the state where the company's bank is located.
True
False

MCLE Answer Sheet No. 19

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:

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ANSWERS:

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

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| 2. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 3. | <input type="checkbox"/> True | <input type="checkbox"/> False |
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A Foot in the Door at the Court of Appeal

By Tamila C. Jensen

THE FIRST QUESTION IN ANY appeal is whether the order or judgment in question is appealable. Under California law, the right to appeal in civil actions is entirely a creature of statute. An appeal can be taken only from a statutorily declared appealable judgment or order. (California Code of Civil Procedure Section 904; *Jordan v. Malone* (1992) 5 Cal.App.4th 18; See also, *Conlan v. Shewry* (2005) 131 Cal.App.4th 1354.)

This means, among other things, that parties to litigation cannot agree to present a matter to the court of appeal which is not otherwise appealable. It means that the legislature controls the right to appeal and a court cannot create a right to appeal that is not created by the statute. It also means that the court cannot limit a right to appeal that has been conferred by the legislature.

California follows the one final judgment rule. (*Griset v. Fair Political Practices Commission* (2001) 25 Cal.4th 688.) A final judgment is one that resolves all the issues and ends the proceedings. It leaves no issue undecided by the trial court. It resolves the dispute between the parties and leaves nothing else to be done. The rule is based on the premise that piecemeal appeals are costly and oppressive and that the public policy preference is to wait until the end of all litigation to review intermediate rulings.

"The rule was designed to prevent piecemeal disposition and costly multiple appeals which burden the court and impede the judicial process." (*Westamerica Bank v. MBG Industries, Inc.* (2007) 158 Cal.App.4th 109.) Several policy reasons underlie the one judgment rule. Interlocutory appeals can clog the appellate courts with multiple

appeals in the same case. Early appeals can produce uncertainty and delay. The trial court may correct or obviate the issue during the case. A more complete record is available when the case is complete. A complete record helps the appellate court craft a decision that is more helpful on remand. The one judgment rule is strictly construed unless the order or judgment falls clearly into an exception.

Code of Civil Procedure Section 904.1(1) codifies the one final judgment rule and is the sine qua non of civil appeals. It sets forth the orders and judgments from which an appeal may be taken in general civil actions. An appeal may be taken from a judgment; from an order after an appealable judgment; from motions to quash service of summons, granting a motion to stay an action on the grounds of inconvenient forum; from an order granting a motion for a new trial or denying judgment NOV; from an order discharging (or refusing to discharge) an attachment order; from an order granting or dissolving an injunction or refusing to do so; from an order appointing a receiver; from an interlocutory order in an action to redeem property from a mortgage or lien; from an interlocutory order in a partition action; from orders made appealable by the Probate Code or Family Code; from an interlocutory judgment or order directing payment of monetary sanctions if the amount exceeds \$5,000.00; from an order granting or denying a special motion to strike under Section 425.16 (SLAPP).

Probate Code sections 1300 through 1303 set out the grounds for appeal for all proceedings governed by the Probate Code. Many orders are appealable in probate which might be thought of

as preliminary in the case as a whole, but which finally resolve an important issue or end a step in the process. For example, a partial list includes orders confirming the sale of property; allowing payment of attorney fees or of a debt; surcharging a fiduciary; granting letters of conservatorships or guardianship; admitting a will to probate; determining heirship; final orders under Probate Code section 17200 (proceedings concerning trusts).

The Family Code provides that where the trial court has bifurcated issues and certifies that an appeal is appropriate, an appeal may be taken at the end of that portion of the case, even though there is no final judgment. (Family Code Section 2025.) The appellate court lacks jurisdiction under Family Code Section 2025 unless the appellant has obtained the certification of probable cause from the trial court. (*In re Marriage of Lafkas* (2007) 153 Cal. App.4th 1429.)

The question of whether an order or judgment is appealable is resolved by determining whether it is final, whether it is interlocutory but made appealable by statute, or whether it is an exception to the one final judgment rule and, thus, considered final for appeal purposes. Therefore, the first step is always to check the relevant statutes and related case law to determine whether an appeal may be taken. Matters that are not reviewed by an appeal may present an opportunity for review by way of a writ, but that is another kettle of fish. 🐟

Tamila C. Jensen is Past President of the SFVBA. She can be reached at tamila@earthlink.net.



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The Children's Waiting Room at the San Fernando Courthouse will be up and running in early 2010 through the generous contributions of Los Angeles County, the San Fernando Valley Bar Association Attorney Referral Service and the Valley Community Legal Foundation. The completion of the CWR in San Fernando means that the Valley now has two courthouses with such waiting rooms (the other one being in Van Nuys).



The Bar and the Foundation committed to a \$50,000 contribution toward the CWR and, together, they have now fulfilled that commitment. If at the courthouse, please be sure to go by the CWR to see what has been accomplished.

On another note, plans continue for the Foundation's Law Day Gala to be held June 5, 2010 at CBS Studios in Studio City. The Foundation is pleased to announce that Los Angeles County District Attorney Steve Cooley will receive the Heroes in Law Enforcement Award. Once the selection for the Armand Arabian Law & Media Award is confirmed, of course the Foundation will make an announcement. 🏆

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Networking Mixer

**Tuesday
February 16, 2010
6:00 PM**

**The Rack
Westfield Promenade
Woodland Hills**

**Play Pool! Enjoy Happy Hour
Appetizers & Drinks!
Free to SFVBA Members!**

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**Contact Linda at
(818) 227-0490, ext. 105 or
events@sfvba.org to RSVP.**

Probate & Estate Planning Section New Laws

**FEBRUARY 9
12:00 NOON
MONTEREY AT ENCINO RESTAURANT
ENCINO**

Attorneys Jim Birnberg and Sandy Rae will present their famous dog and pony show and highlight the important changes for 2010.

MEMEBERS	NON-MEMBERS
\$35 prepaid	\$45 prepaid
\$45 at the door	\$55 at the door
1 MCLE HOUR	

Workers' Compensation Section State Panel QMEs – The Multi-Specialty Approach

**FEBRUARY 17
12:00 NOON
MONTEREY AT ENCINO RESTAURANT
ENCINO**

Attorney Robert Pearman will discuss the various facets of the state panel QMEs.

MEMEBERS	NON-MEMBERS
\$35 prepaid	\$45 prepaid
\$45 at the door	\$55 at the door
1 MCLE HOUR	

Santa Clarita Valley Bar Association Avoiding the Bar's Attention: A Quiet Client is a Happy Client

**JANUARY 18
12:00 NOON
TOURNAMENT PLAYERS CLUB
VALENCIA**

This one-hour program examines the four most common client complaints to the State Bar, a common malpractice-complaint trigger, and related issues, and suggests some best-practices that can help to keep you out of the Bar's scrutiny and off the party-defendant's portion of a malpractice complaint caption.

MEMEBERS	NON-MEMBERS
\$30 prepaid	\$40 at the door
\$40 at the door	
1 MCLE HOUR LEGAL ETHICS	

Family Law Section Using Financial Experts: The Basics and Beyond

**FEBRUARY 22
5:30 PM
MONTEREY AT ENCINO RESTAURANT
ENCINO**

Commissioner Michael Convey and CPAs Don Miod and Mike Krycler will discuss when you should call in the financial experts and what situations justify forensic accounting.

MEMEBERS	NON-MEMBERS
\$45 prepaid	\$55 prepaid
\$55 at the door	\$65 at the door
1 MCLE HOUR	

Litigation Section The View from the Bench

**FEBRUARY 23
6:00 PM
SFVBA CONFERENCE ROOM
WOODLAND HILLS**

Judge Harwin is scheduled to address the group.

MEMEBERS	NON-MEMBERS
\$35 prepaid	\$45 prepaid
\$45 at the door	\$55 at the door
1 MCLE HOUR	

Business Law, Real Property & Bankruptcy Section Update on LLCs

**FEBRUARY 24
12:00 NOON
SFVBA CONFERENCE ROOM**

Attorneys Bob Klueger and Bill Staley will offer a lively discussion of recent case law.

MEMEBERS	NON-MEMBERS
\$30 prepaid	\$40 prepaid
\$40 at the door	\$50 at the door
1 MCLE HOUR	

Why do I belong to the SFVBA?

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"I have maintained my membership since moving to Encino seven years ago because of the convenience and quality of the CLE lunches, the local relevance of the publications, and the generous participants in the list serves who help us retain some of the collegiality of our profession."

Fastcase is an unexpected bonus which is also quite helpful to me as a practitioner in a small office."

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membership online at
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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.

**A Not-So-Subtle Reminder To The San Fernando Valley Bar Association Members:
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**Fastcase Webinars
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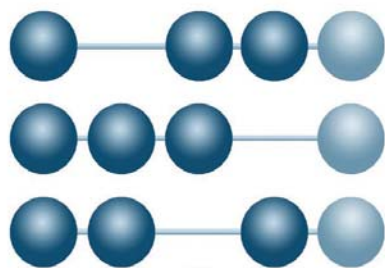
Friday, April 23, 2010 12:00 Noon – 1:00 PM PDT
(Register at <https://www1.gotomeeting.com/register/495524920>)

Wednesday, June 16, 2010 12:00 Noon – 1:00 PM PDT
(Register at <https://www1.gotomeeting.com/register/315303329>)

Monday, October 25, 2010 12:00 Noon – 1:00 PM PDT
(Register at <https://www1.gotomeeting.com/register/994545769>)



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