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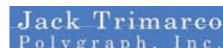


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FRIDAY, JANUARY 13

- 9:00 a.m.
Partnership Agreements
 Wesley Hampton, Narver Insurance
 Gary Barr, Alpert Barr & Grant
1 MCLE Hour (Legal Ethics)
- 10:00 a.m.
Top Ten Insurance Mistakes and How Best to Advise Your Client
 Elliot Matloff, The Matloff Company
1 MCLE Hour
- 11:00 a.m.
Elimination of Bias
 Carol Newman and John Stephens
1 MCLE Hour
(Recognition and Elimination of Bias)
- 12:00 noon
Lunch
- 1:00 p.m.
Practice, Manage, Grow: Leveraging Technology to Maximize Efficiency and Increase Your Bottom Line
 Thomson Reuters
1 MCLE Hour
- 2:00 p.m.
Fraud's Origin and Consequences
 Chris Hamilton, CPA, CFE, CVA
 Arxis Financial, Inc.
1 MCLE Hour (Legal Ethics)
- 3:00 p.m.
Common Misconceptions: Marriage, Divorce & Cohabitation
 Veronica R. Woods
 Lewitt Hackman Shapiro Marshall & Harlan, ALC
1 MCLE Hour
- 4:00 p.m.
Employment Law Update
 Hannah Sweiss and Tal Yeyni
 Lewitt Hackman Shapiro Marshall & Harlan, ALC
1 MCLE Hour

SATURDAY, JANUARY 14

- 9:30 a.m.
Nuts and Bolts of Estate Planning
 Alice A. Salvo
 Law Offices of Alice A. Salvo
1.5 MCLE Hours
- 11:00 a.m.
Avoiding Bar Discipline
 Professor Robert Barrett
2 MCLE Hours (Legal Ethics)
- 1:00 p.m.
Lunch
- 1:45 p.m.
Prevention of Substance Abuse
 Greg Dorst, The Other Bar
1 MCLE Hour (Competence Issues)
- 2:45 p.m.
If It's Not Admissible, Why Bother?
 Jack Trimarco
 Jack Trimarco Polygraph Services
1 Hour MCLE

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On the cover (left to right): LASC Presiding Judge Daniel J. Buckley and Assistant Presiding Judge Kevin C. Brazile
Photo by Ron Murray

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SFVBA President



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IMMEDIATELY FOLLOWING THE NOVEMBER elections I was scheduled to speak to an accounting group in Tarzana. The topic was "Post-Election Estate Planning and Estate Tax Planning." Of course, not having a crystal ball, it was a very speculative presentation based upon President-elect Donald Trump's posted plan to simplify our income tax system and to repeal entirely the federal estate and gift tax.

While preparing for the presentation, I couldn't help but spend some time reviewing the Trump/Pence platform regarding immigration (also speculative), and after reading local news stories regarding the City of Santa Ana declaring itself a "sanctuary city," I was interested in knowing more about how they could be affected by the proposed changes.

The Santa Ana City Council approved a resolution to designate itself a sanctuary city. The move was made to address fears within the community that, for example, legal students worried that their illegal parents will be deported. It's important to keep in mind that the resolution is not an ordinance and will merely maintain the status

quo—meaning, not reporting undocumented immigrants. Its significance, however, is that Santa Ana officials want their residents who are in the country illegally to know that their city officials are going to do what they can to protect them.

Lobbyists against immigration have criticized Santa Ana's decision and have stated that it is "very sad that the city is not focusing upon the suffering American citizens, such as the homeless families and unemployed American citizens in Santa Ana, instead of promoting the breaking

of federal immigration laws." The resolution, they say, "invites federal lawbreakers worldwide to settle in Santa Ana."

After hearing about the Santa Ana resolution, my first question was, what about Los Angeles County, where, according to the Migration Policy Institute, more than one million of the estimated 11 million immigrants in the country without legal status currently live.

Los Angeles has not declared itself a sanctuary city, as Mayor Garcetti avoids using that term, saying it is "ill-defined." He describes Los Angeles as a very welcoming city where law enforcement officers should not and do not ask people for their papers. LAPD Police Chief Charles

“

We can be voices that are heard in advance of the coming changes by communicating our concerns, opinions, and proposals to our local, state and national legislators.”



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Beck has made it clear that the LAPD has no plans to get involved in any deportation efforts by the federal government and would continue a longstanding policy against directing officers to stop individuals solely to determine their immigration status.

Chief Beck states that he needs the cooperation of the over 500,000 illegal immigrants who live in the City of Los Angeles to work with their local police to serve as eyes in their neighborhoods to help prevent violent crime and become part of the fabric of Los Angeles. "For a local law enforcement agency to take on the role of immigration enforcement tears that fabric apart," Beck has said.

Currently, information on anyone arrested in Los Angeles is run through a national system that checks for warrants, with Immigration and Customs Enforcement (ICE) notified automatically of an arrest or detainment at that time. If ICE makes contact, LAPD will release the detainee to them, but if ICE does not make contact, LAPD will not hold the detainee beyond their release date.

President-elect Trump's agenda would remove all federal funds to so-called sanctuary cities. Because the term is very loosely defined, a sanctuary city may or may not have a specific designation or have a resolution or ordinance that clearly identifies a city as a sanctuary. This could mean that he will punish cities that act like sanctuary cities because they are not complying with federal immigration laws. It isn't clear at this point whether Los Angeles is prepared to lose federal funding if determined to be a sanctuary city.

Notwithstanding the sanctuary city issue, President-elect Trump has provided more details about his immigration plan, focusing on the economy and jobs for U.S. citizens and the safety of our country. His plan would change existing law to severely limit the issuance of work visas in order to require companies to look to American workers first to fill jobs—including the unemployed, teenagers, and the disabled who, Trump says, have been kept out of the workforce as a result of open immigration policies.

States, cities, communities, companies, individuals, and other countries all have very valid concerns on all sides of this issue. I will continue watching this most sensitive issue evolve and I urge our members and professional communities do so as well. We can be voices that are heard in advance of the coming changes by communicating our concerns, opinions, and proposals to our local, state and national legislators and potentially ring a bell on Capitol Hill before new legislation is passed. 



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A Sobering Pause

IN THE SPIRIT OF FULL disclosure, I have to admit that my past courtroom experience has been solely limited to reruns of Perry Mason and classic legal dramas like *Anatomy of a Murder*, *Witness for the Prosecution*, *Judgment at Nuremberg* and *To Kill a Mockingbird*. On the other hand, I should, perhaps, be grateful.

But I have to say there's nothing that Stanley Kramer, Otto Preminger, or Robert Mulligan could bring to the screen that could match the feeling of wonder that I felt when I entered the Presiding Judge's courtroom in the Stanley Mosk Superior Courthouse in downtown Los Angeles.

At this point, I beg forgiveness for my use here of a hackneyed adjective rendered virtually meaningless by tiresomely ubiquitous overuse. It was awesome. Yes, I am fully aware that if everything is awesome, nothing is awesome, but the experience really was...awesome. (I've drained my awesome quota for the next 15 years.)

It's more than just a large room with theatre seats, and, while technically not used as a venue for trials, it has been the site of several significant legal proceedings, including the announcement of the verdict in the 2013 *Michael Jackson vs. AEG* wrongful death lawsuit, and, more recently, a procedural hearing involving the 70-plus attorneys representing the litigants in the costly Semptra Energy-Porter Ranch civil action.

Frankly, whatever the case (no pun intended), it was sobering to pause for a while and consider the vast scope of the intricately woven blanket of the law that we all shelter under. Taking a step back, though, couldn't that be said about any courtroom? Or at least it should be.

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"To have respect for the court and the judicial branch and for what we're all trying to do here is at the core of what we're doing," Judge Daniel Buckley, the new Presiding Judge of the Los Angeles County Superior Court, told me during my interview with him.

Judges "aren't asking respect for themselves as individuals, but what they represent and that is the law itself," he said, adding that, unfortunately, "that respect is not always shown and we sometimes struggle with civility in the courtroom. I don't mean to be flippant, but I do think there is a lot to learn in the book *Everything You Need to Know You Learned in Kindergarten*."

An interesting observation, but only one of many shared during the time I was able to spend with both Judge Buckley and Assistant Presiding Judge Kevin Brazile. It was a privilege to spend a few minutes with them and learn a little about how that blanket of the law is threaded together.

Public Face of the SFVBA

This month, we're glad to feature the first of what will be a regular column spotlighting the activities of the SFVBA's

MICHAEL D. WHITE
SFVBA Editor



michael@sfvba.org

Attorney Referral Service (ARS), one of the handful of similar operations in the state.

Every month, the bilingual ARS team fields hundreds of telephone inquiries from area residents with little fanfare, assisting callers desperately in need of legal assistance with referrals to qualified attorneys in a variety of areas, from personal injury and bankruptcy to real estate and criminal law.

Their work is routinely involved, always challenging, and, sometimes, heart-wrenching, but they—SFVBA Director of Public Services Rosie Soto Cohen and referral consultants Fanny Arellano and Catherine Carballo-Merino—handle the daily volume of calls with professionalism, discretion and a high degree of empathy.

The public face of the San Fernando Valley Bar Association, the State Bar-approved ARS is a worthy operation delivering much-needed, and little-heralded, assistance to the community and the people who make it happen deserve continued support. We hope the new column will help get it the attention and support it deserves.

Regards. 

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SUN	MON	TUE	WED	THU	FRI	SAT
Happy New Year						
1	2	3	4	5	6	7
SFVBA OFFICES CLOSED		Valley Lawyer Member Bulletin Deadline to submit announcements to editor@sfvba.org for February issue.		Membership & Marketing Committee 6:00 PM SFVBA OFFICES		
8	9	10	11	12	 13-14 SFVBA 20th Annual MCLE Marathon Braemar Country Club Earn all your participatory credits, including specialized credits. <i>See page 3</i>	
 5:30 PM CHABLIS RESTAURANT TARZANA VBN is dedicated to offering organized, high quality networking for SFVBA members.		Probate & Estate Planning Section Legislative and Case Law Update 12:00 NOON MONTEREY AT ENCINO RESTAURANT David Coleman will discuss new laws and updates. (1 MCLE Hour) <hr/> Board of Trustees 6:00 PM SFVBA OFFICES				
15	16	17	18	19	20	21
 MARTIN LUTHER KING JR. DAY SFVBA OFFICES CLOSED		Taxation Law Section An Update from the Board of Equalization 12:00 NOON SFVBA OFFICES Jerome Horton will outline recent changes occurring at the Board of Equalization. (1 MCLE Hour)				
22	23	24	25	26	27	28
Family Law Section New Laws 5:30 PM MONTEREY AT ENCINO RESTAURANT Judge Michael Convey, Commissioner Michelle Short and Barry Harlan, CFLS, discuss the latest regarding new laws and statutes. Approved for Legal Specialization. (1.5 MCLE Hours)		Editorial Committee 12:00 NOON TONY ROMA'S				
29	30	31				

SUN	MON	TUE	WED	THU	FRI	SAT
BLACK HISTORY MONTH						
			1 <i>Valley Lawyer</i> Member Bulletin Deadline to submit announcements to editor@sfvba.org for March issue.	2 Membership & Marketing Committee 6:00 PM SFVBA OFFICES	3 Bankruptcy Law Section Attorney's Fees 12:00 NOON SFVBA OFFICES Judge Victoria Kaufman and attorney John Faucher will discuss the distinction between consumer debt and business debt for purposes of the means test and to obtain attorney's fees under \$523. (1.25 MCLE Hours)	4
5  VBN VALLEY BAR NETWORK 5:30 PM CHABLIS RESTAURANT TARZANA VBN is dedicated to offering organized, high quality networking for SFVBA members.	6	7	8	9 All Members Quadrant Planning 5:30 P.M. ROSE, SYNDER & JACOBS ENCINO Silver Sponsor Rose, Synder & Jacobs, Accountants and Advisors, will discuss what kind of planning structure works best for your clients. Seating is limited. (1 MCLE Hour)	10	11
12	13	14 Probate & Estate Planning Section 12:00 NOON MONTEREY AT ENCINO RESTAURANT Board of Trustees 6:00 PM SFVBA OFFICES 	15 Workers' Compensation Section WPI Analysis 12:00 NOON MONTEREY AT ENCINO RESTAURANT Dr. Bruce Fishman outlines the latest regarding WPI under Almarez Guzman. (1 MCLE Hour)	16	17	18
19	20  SFVBA OFFICES CLOSED	21 Taxation Law Section Partnership Profit Interests 12:00 NOON SFVBA OFFICES Frederick Muller will outline and detail the latest regarding partnership profit interests. (1 MCLE Hour)	<div> <div>  </div> <div> <p><i>Save the Date</i></p> <p>SFVBA ANNUAL JUDGES' NIGHT GALA TUESDAY, APRIL 4, 2017 SHERATON UNIVERSAL</p> <p>WITH SPECIAL GUESTS Associate Justices of the California Supreme Court Justice Carol A. Corrigan and Justice Ming W. Chin</p> <p>Judge of the Year Paul A. Bacigalupo Stanley Mosk Legacy of Justice Award Honoree Judge Thomas Trent Lewis Diversity Award Honoree Judge Holly J. Fujie</p> <p>Call (818) 227-0490, ext. 105 for sponsorship opportunities for this must-attend event!</p> </div> </div>			
26	27	28 Editorial Committee 12:00 NOON TONY ROMA'S				



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- David L. Fleck, Esq.



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It's a Girl!

THE SAN FERNANDO VALLEY BAR ASSOCIATION can feel like a small, close-knit family. Though our organization tops 2,000 members, collegiality and camaraderie abound among our members, Board of Trustees and staff.

The SFVBA welcomed our newest family member over the Thanksgiving holidays. On November 26, Mikayla Rose Cohen was born weighing six pounds, 13 ounces and measuring almost 20 inches. Mikayla is the beautiful daughter of SFVBA Director of Public Services Rosie Soto Cohen and her husband Michael. Mikayla was in a rush to join her family, born about a half hour after her parents arrived at the hospital that Saturday morning!

We congratulate Rosie and Michael and wish the first-time parents all the happiness on their new journey with Mikayla.



ELIZABETH POST
Executive Director




epost@sfvba.org

Save the Date

The SFVBA's Annual Judges' Night is always the must attend event of the year for our bar association. This year's celebration, scheduled for April 4 at the Sheraton Universal, includes two very special guests, California Supreme Court Associate Justices Ming W. Chin and Carol A. Corrigan.

At its December meeting, the Bar's Board of Trustees selected the honorees for the evening. Los Angeles Superior Court Judge Paul A. Bacigalupo is SFVBA Judge of the Year; Family Law Supervising Judge Thomas Trent Lewis is the recipient of the Stanley Mosk Legacy of Justice Award; and Judge Holly J. Fujie will receive the organization's Diversity Award.

We expect record attendance. Firms interested in sponsoring the program can contact Director of Education & Events Linda Temkin at (818) 227-0490, ext. 105 or events@sfvba.org. 

Valley Lawyer 2017 Editorial Calendar

2017 Issue	Cover Profile	Lead Feature	MCLE
January	LASC Leadership	Cybersecurity	Immigration Law
February	The Challenges of Solo Practice	ROUNDTABLE State Bar Divide	Intellectual Property
March	Judges' Night	Driverless Car Liability	Class Action
April	Attorney Referral Service	Artificial Intelligence	Probate/Estate Planning
May	Law Day	POINT/COUNTERPOINT 14 th Amendment	Entertainment Law
June	Valley Bar Network	ADA Compliance	Contracts
July	Board of Trustees Candidates	Product Labeling	Family Law
August	Brain Trust: Valued Experts	ROUNDTABLE Current State of Legal Education	Real Property
September	Meet the New SFVBA President	Prisoner's Rights	Bankruptcy
October	Paralegals: The Boots on the Ground	Food Safety Liability	Labor/Employment Law
November	Veteran Lawyers	POINT/COUNTERPOINT 2 nd Amendment	Sports Law
December	Cover Auction	Juvenile Justice	Environmental Law

Articles are not limited to content focus. *Valley Lawyer* seeks articles covering all areas of law, plus articles focusing on the courts and judiciary, lifestyle, law practice management, social media and legal marketing, as well as humorous commentary about the practice of law. Submit articles and ideas to editor@sfvba.org. Word count for feature article is 1,500-3,000 words; word count for MCLE article is 3,000-4,000 words, including 20 true and false questions for MCLE test. Word count for column (i.e., Book Review, Duly Noted, Finding an Expert) is 1,000-1,500 words.

Post Prop 64: Keeping Employees off the Grass

By Amy I. Huberman

CALIFORNIA LAWS PROTECT several employee characteristics, but an employee's use of marijuana is not one of them—even if recreational cannabis use has now been legalized for adults over 21, thanks to the recent passage of Proposition 64, the Adult Use of Marijuana Act (AUMA).

Due to current licensing requirements for marijuana product businesses, legalized recreational sales won't begin until January 1, 2018. Any employees in California who are using cannabis now are either obtaining marijuana illegally, have a prescription for medicinal use, or are growing their own for personal consumption.

Whether an employee's use is illegal or legal, employers still have the power to define company drug policy, refuse to hire or train candidates, or terminate at-will employees for their use of cannabis.

State and federal laws put employers in a bit of a bind because of the stark difference in the two branches' policing of marijuana. California's Compassionate Use Act of 1996¹ provides prescription marijuana users protections from certain criminal charges, including possession of the drug. The federal government, however, still considers marijuana a Schedule 1 drug (among the most dangerous and addictive), and therefore, illegal.²

As a result, the dilemma Californians now face is not limited to our state, as 28 others and the District of Columbia have taken steps to either decriminalize

cannabis possession, allow medicinal use, greenlight recreational use for adults, or all of the above.

Over the last several years, the courts have forged a clear path through the weeds—they have generally been unwilling to force employers to accommodate employees who break federal law.

In 2008, the California Supreme Court held in *Ross v. RagingWire*³ that an employer may lawfully terminate an employee who tests positive for marijuana, even if the marijuana use is for lawful medical purposes under California law.

In the *RagingWire* case, plaintiff Gary Ross suffered chronic pain due to injuries sustained while serving in the U.S. Air Force and was designated a qualified, disabled individual under the California Fair Employment and Housing ACT (FEHA). He had a valid physician's prescription for medical marijuana, which he obtained when traditional methods of treatment failed to alleviate his pain.

When Ross underwent new employee drug testing and tested positive for marijuana metabolites, his employer, RagingWire, terminated him. Ross claimed the employer violated the FEHA, failed to make reasonable accommodations for his disability, and terminated him wrongfully and in violation of public policy. California's Supreme Court disagreed with all of the plaintiff's claims, stating:

*The Compassionate Use Act . . . simply does not speak to employment law. Nothing in the act's text or history indicates the voters intended to articulate any policy concerning marijuana in the employment context, let alone a fundamental public policy requiring employers to accommodate marijuana use by employees. Because the act articulates no such policy, to read the FEHA in light of the Compassionate Use Act leads to no different result.*⁴



In *Shepherd v. Kohl's Department Stores, Inc.*,⁵ the federal court offered a different analysis in its unpublished order. Although the federal court, Eastern District of California, ruled in favor of the employer on most issues including the plaintiff's arguments regarding FEHA violations, the court found for the plaintiff on other claims.

In this case, Justin Shepherd was a material handler who was diagnosed with acute and chronic anxiety in 2011, when he received a physician's recommendation for medical marijuana. The following year, Kohl's updated its company policy to state that "employees in California and certain other states would not be discriminated against in hiring, firing or other employment actions, if the employee had a valid medical marijuana use recommendation."⁶

Continuing to use cannabis, Shepherd strained his back at work in 2014, and while seeing a medical provider for a worker's compensation claim, agreed in writing to submit to a drug test. When drug testing showed positive results for marijuana's active ingredient, delta-9-tetrahydrocannabinol (THC), plaintiff was suspended and then later fired.

Shepherd filed seven causes of action, three of which alleged violations under FEHA, plus invasion of privacy under the state's constitution, wrongful termination in violation of public policy, breach of implied contract, and defamation. Kohl's filed a motion for summary judgment.

Regarding the FEHA claims, the district court relied heavily on *RagingWire*, but also said:

To the extent plaintiff attempts to argue around the holding in RagingWire by asserting his FEHA claim is based on defendant's failure to follow its own policies, the court is unpersuaded. . . Plaintiff presents no authority, and this court has found none, suggesting a cognizable FEHA claim can be

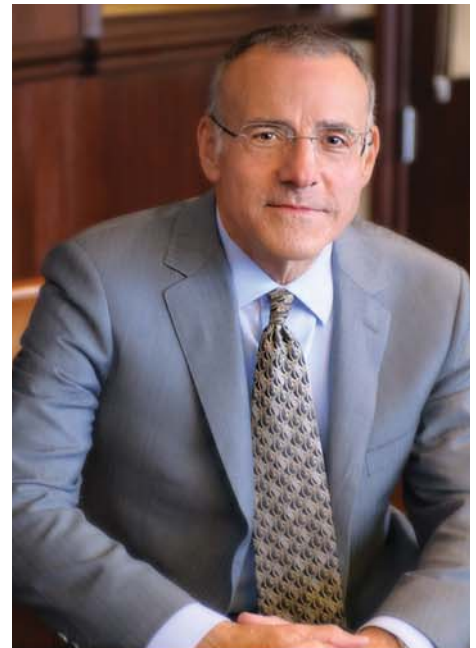
*based simply on an employer's failure to abide by policies not required by FEHA. While the failure to abide by its own policies may be a breach of an implied in-fact contract, for the reasons discussed below, refusing to accommodate an employee's marijuana usage does not violate FEHA.*⁷

As to Shepherd's invasion of privacy claim, the court also found for the employer—Kohl's company policy, it said, reserved the right to require employees to submit to drug testing when involved in worker's compensation matters. But in regards to Shepherd's claims of breach of contract and fair dealing, and allegations of defamation, the court agreed with the plaintiff.

Kohl's company policy included two provisions addressing marijuana use by employees. One provision stated, in part, that employees or applicants "will not be discriminated against should they test positive for marijuana components or metabolites." Another provision states the same, but then adds that nothing shall prevent the employer "from imposing discipline for any employee who used, possessed or was impaired by marijuana at any Kohl's location or in the performance of Kohl's business."⁸

Here, a reasonable jury could conclude from the defendant's policies and the plaintiff's testimony that the parties agreed, subsequent to his 2006 acknowledgment of the at-will nature of his employment, that plaintiff would not be discriminated against for his medicinal marijuana use, since he was a registered medical marijuana cardholder.⁹

The court, therefore, denied defendant's motion for summary judgment as to the plaintiff's causes of action for breach of an implied contract and the covenant of good faith and fair dealing. In other words, a genuine dispute of material fact still existed.



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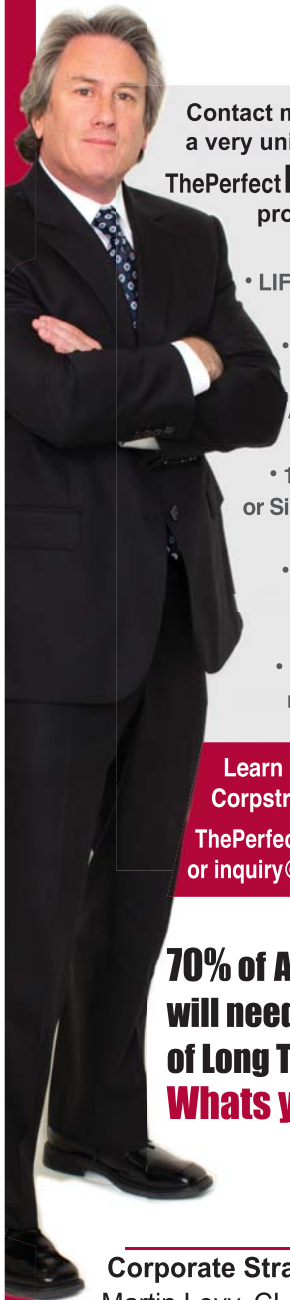
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The court found that the defendant employer acted with malice (with a “reckless disregard for the truth”) when it terminated Shepherd, in relation to his defamation claim. Kohl’s sent Shepherd an “Associate Counseling Form” stating that he had violated three company policies: “(1) [R]eporting to work in a condition unfit to perform your duties or under the influence of alcohol, illegal non-prescription drugs or other intoxicants or controlled substances. Using, consuming or selling illegal non-prescription drugs, alcohol or other intoxication or controlled substances on Company property; (2) Violating safety rules pertaining to specific work areas; and (3) Acting in conflict with the Interest of Kohl’s.”¹⁰

Shepherd provided evidence that marijuana metabolites can be found in a user’s system 30 days after use, though impairment would only last a few hours. In addition, he testified at his deposition that he had not used marijuana several days prior to his work injury.

The court found that a genuine dispute of material fact still existed and that a reasonable jury could find that Shepherd was not unfit to work and that the statements in the “Associate Counseling Form” were made with a “reckless or wanton disregard for the truth.”¹¹

Beyond California Dreamin’

Employers whose workforce includes employees outside of California need not fret; courts tend to take a pro-employer stance in other states as well when it comes to marijuana use.

For example, Colorado residents have been legally using marijuana for medical purposes since 2000 and recreationally since 2012. But this past June, the state’s Supreme Court ruled in favor of Dish Network¹² rather than for the former employee suing for wrongful termination under Colorado’s lawful activities statute,¹³ which “generally makes it an unfair and discriminatory labor practice to discharge an employee based on the

employee’s ‘lawful’ outside-of-work-activities.”¹⁴

Plaintiff Brandon Coats was a quadriplegic who was confined to a wheelchair as a teenager. He obtained a license for medical cannabis use in 2009 to treat muscle spasms. The court noted that Coats used marijuana in his own home after working hours.

Despite establishing those facts, the Colorado Supreme Court upheld the trial and appellate court decisions, finding that “Coats’s use of medical marijuana was unlawful under federal law and thus not protected by §24–34–402.5.”¹⁵

In Washington State, plaintiff Jane Roe was prescribed marijuana for symptoms related to severe migraine headaches. Roe’s use of medicinal marijuana relieved the symptoms associated with her migraines and allowed her to work and care for her children.

Roe only used the marijuana at home. She was offered a position at TeleTech, contingent on the results of a reference and background check and a drug screening. Informed of the company’s drug policy, Roe notified the company of her medical marijuana use. After her drug screen came back positive, she was terminated.

Roe then sued TeleTech for wrongful termination in violation of the Medical Use of Marijuana Act. On summary judgment, the Washington State Supreme Court held that the state’s Medical Use of Marijuana Act did not regulate the conduct of a private employer or protect an employee from being discharged because of authorized medical marijuana use.¹⁶

Hazy Shades of Drug Testing

If courts across the country are hesitant to protect medical marijuana users, it’s a pretty good bet they won’t protect the recreational users either.

While termination of employees never comes without risks, it does not appear that terminating an employee for marijuana use, and exercising their new

found right under Proposition 64, will violate the FEHA or other employment laws.

In addition, as long as employers have drug testing policies in place, an employer can still require an employee it reasonably believes is under the influence at work to submit to a drug test. But the *Shepherd* case raises a predicament. Because cannabinoids are fat soluble, they tend to stay in the user's body for longer periods of time than other drugs or alcohol. Current drug testing methods for cannabis include urinalysis, hair analysis or saliva tests, which can detect THC for several weeks after use according to the National Institute on Drug Abuse.¹⁷

Given that one employee could have a cocktail or two during lunch every day and, depending on the individual, return to work perfectly sober, while another employee smokes half a joint every two weekends and carries cannabinoids in their system for weeks afterwards—drug testing begins to look a little unfair.

It may be time for employers to consider eliminating drug testing altogether, except for employees whose duties affect their own or others' safety, i.e., operators of heavy equipment, emergency services workers, delivery personnel, etc., or those whose industries require drug testing by federal law.

Marijuana Laws Still “Young, Wild & Free”

California became the first state to legalize medical marijuana in 1996, while Colorado became the first to legalize its recreational use in 2012.

Despite two decades of prescription use and four years of recreational use, the laws still remain murky when it comes to employment matters.

The courts, as seen above, have been cutting a clear way forward for employers. But actual legislation had remained ephemeral until California's Proposition 64. AUMA amends parts of California Health & Safety Code¹⁸ and specifically states:

Nothing in Health & Safety Code § 11362.1 shall be construed or interpreted to amend, repeal, affect, restrict or preempt:


(e) Laws providing that it would constitute negligence or professional malpractice to undertake any task while impaired from smoking or ingesting marijuana or marijuana products.

(f) The rights and obligations of public and private employers to maintain a drug and alcohol free workplace or require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growth of marijuana in the workplace, or affect the ability of employers to have policies prohibiting the use of marijuana by employees and prospective employees, or prevent employers from complying with state or federal law.

Employers should proceed with caution; hiring, firing or imposing discipline should always be handled with care, as we saw in the *Shepherd* case. As a result, employers are recommended to do the following:

- Review existing policies and practices regarding medicinal and recreational drug use.
- Consider whether or not drug testing is really necessary for all positions.

- Train management to spot signs of drug or alcohol impairment vs. signs of allergies, flu symptoms, etc.
- If an employee seems to be under the influence at work, is smoking marijuana during breaks, or violating company drug policy in any way, consider documenting the policy violations with written notices to the employee in question, before termination.

Though the historic trend from the bench has been to side with the employer in wrongful termination for marijuana cases, that may soon shift. There's no indication the federal government will move cannabis from its Schedule 1 list in the near future, but more and more states are decriminalizing medicinal and recreational marijuana, with some others, like New York and Nevada, now requiring employers to accommodate registered medical marijuana user employees. 

¹ California Health & Safety Code §11362.5.

² Drug Enforcement Agency, <https://www.dea.gov/druginfo/ds.shtml> (last visited December 5, 2016).

³ Gary Ross v. Ragingwire Telecommunications, Inc., 70 Cal.Rptr.3d 382 (2008).

⁴ Id. at 392.

⁵ *Shepherd v. Kohl's Department Stores, Inc.* (E.D. Cal. 2016) WL 4126705.

⁶ Id. at p. 1.

⁷ *Shepherd*, WL 4126705 at p. 4.

⁸ Id.

⁹ Id. at p. 10.

¹⁰ *Shepherd*, WL 4126705 at p. 10.

¹¹ Id.

¹² *Brandon Coats v. Dish Network, LLC*, 350 P. 3d 849 (2015).

¹³ Colorado's Revised Statutes §24-34-402.5

¹⁴ *Brandon Coats*, 350 P.3d at 850.

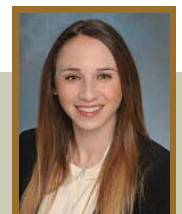
¹⁵ Id. at 853.

¹⁶ *Roe v. TeleTech Care Management (Colorado) LLC*, 171 Wash.2d 736 (2011).

¹⁷ Nat'l Inst. of Drug Abuse (August 2016), <https://www.drugabuse.gov/publications/research-reports/marijuana/what-are-marijuana-effects>.

¹⁸ *Submission of Amendment to Statewide Initiative Measure—Control, Regulate and Tax Adult Use of Marijuana Act, No. 15-0103* (December 7, 2015), [https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20\(Marijuana\)_1.pdf](https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20(Marijuana)_1.pdf).

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Immigration Law

Past, Present & Future

By Ron Tasoff



The recent presidential campaign revealed Americans' diverging positions on immigration, both legal and illegal. This article examines one of the primary planks in President-elect Donald Trump's platform—namely, a reappraisal of who qualifies for entry visas into the United States, and why, as well as plans to end the flow of undocumented immigrants from Mexico and elsewhere.

GIVEN THAT NEARLY 38 PERCENT OF THE residents of the San Fernando Valley—and the City of Los Angeles City—were born in a foreign country, it is quite likely that many lawyers practicing in the San Fernando Valley will be asked questions regarding changes in immigration law policy under the incoming Trump administration.

Controlling illegal immigration was one of the major campaign promises made by candidate Donald Trump, despite data showing that the number of undocumented immigrants has declined since the Great Recession of 2007. Indeed, in the first seven years of the Obama administration, over 2.5 million people were removed—the legal term for deportation—from the United States, compared to two million during the previous Bush administration, more than the total sum removed by all 19 presidents of the 20th Century.

More accurately, at this time, no one can really say what the President-elect will do after inauguration day. He talked tough during the campaign, but in August, he told Fox News host Bill O'Reilly that, "Lots of people were brought out of the country with existing laws. Well, I'm gonna do the same thing... Now the existing laws are very strong..."

In other interviews, he said that his policy would focus on "bad dudes," perhaps in reference to the current DHS Priority Enforcement Program in which top priority is given to aliens convicted of felonies and gang members, and second priority are those convicted of significant misdemeanors, including crimes of domestic violence and driving under the influence. In 2015, 91 percent of removed aliens were convicted of a crime.

Although what initiatives the Trump administration will employ to counter illegal immigration, including the building of a wall along the Mexican border, are still unfolding, there may also be some significant changes in legal immigration policy as well—or maybe not. Thus, a very basic understanding of the structure of existing immigration law would be helpful.

A Short Overview of Immigration Law

The Immigration and Nationality Act¹ (the Act) has four primary goals: family unification; allowing skilled individuals to work in the United States while protecting the jobs of American workers; refugee/asylee relief; and diversity.² With obvious simplicity, the Act divides all of humanity into U.S. citizens and non-citizens.



Ron Tasoff has been a California State Bar-Certified Specialist in Immigration Law since 1985 and has exclusively practiced immigration law for over 40 years. He is a partner in the Law Firm of Tasoff and Tasoff in Encino and can be reached at ron@tasoff.com.

THE PRESIDENT-ELECT'S 10 POINT IMMIGRATION PLAN

1. Begin working on an impenetrable physical wall on the southern border.
2. End catch-and-release. Under a Trump administration, anyone who illegally crosses the border will be detained until they are removed out of the country.
3. Move criminal aliens out day one, in joint operations with local, state, and federal law enforcement.
4. End sanctuary cities.
5. Immediately terminate President Obama's two illegal executive amnesties. All immigration laws will be enforced—we will triple the number of ICE agents. Anyone who enters the United States illegally is subject to deportation.
6. Suspend the issuance of visas to any place where adequate screening cannot occur, until proven and effective vetting mechanisms can be put into place.
7. Ensure that other countries take their people back when we order them deported.
8. Ensure that a biometric entry-exit visa tracking system is fully implemented at all land, air, and seaports.
9. Turn off the jobs and benefits magnet. Many immigrants come to the United States illegally in search of jobs, even though federal law prohibits the employment of illegal immigrants.
10. Reform legal immigration to serve the best interests of America and its workers, keeping immigration levels within historic norms.

Under the 14th Amendment of the U.S. Constitution, "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."³ Congress has additionally provided citizenship for certain children of U.S. citizens born abroad.

The Act then subdivides the class of non-citizens into immigrants and non-immigrants. Immigrants are people who are allowed to live and work in the United States permanently, although there are a myriad of ways to lose that status. Referred to in the Act as "lawful permanent residents," or LPRs, they receive a non-citizen registration card also known as a "green card."⁴

Non-Immigrants

Non-immigrants are individuals who are allowed to legally enter



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the United States for a temporary period of time to pursue specific goals or activities. Non-immigrant categories include visitors for pleasure or business, professional workers, treaty investors, intra-company transferees, and crime victims and their family members who have suffered substantial mental or physical injury, such as victims of domestic violence, who are willing to assist law enforcement.

President-elect Trump has indicated he will nominate Senator Jeff Sessions of Alabama to be Attorney General. A long-time legal immigration restrictionist, there is a possibility that several categories of non-immigrant working visas could be diluted or eliminated, including the H-1B visa, which is utilized by many high-tech professionals to work in the United States.

SELECTED NONIMMIGRANT VISAS

** Designates Employment Authorized*

- B-1 Temporary visitor for Business
- B-2 Temporary visitor for Pleasure (Tourist Visa)
- E-1 Treaty Trader, spouse and children*
- E-2 Treaty Investor, spouse and children*
- F-1 Student Visa (* possible)
- H-1B Work Visa for Specialty Occupations (professions), however subject to a quota that allows less than half of qualified applicants to be granted status*
- J-1 Visas for exchange visitors*
- K-1 Fiancée and Fiancé Immigration Visa*
- O-1 Extraordinary ability in Sciences, Arts, Education, Business, or Athletics*
- P-1 Individual or team athletes or entertainment groups*
- R-1 Religious workers*
- U Victims of specified crimes who assist law enforcement
- T Victims of human trafficking
- TN Trade NAFTA visas for citizens of Canada and Mexico in enumerated professions*

Note: Citizens of certain countries do not need visas to come to the United States for business or pleasure. The Visa Waiver Program enables foreign nationals from most developed countries to visit the United States for up to 90-day visa-free.

Deferred Action and Temporary Protected Status

Over the past few years, a third category of non-citizens has become prominent, namely those legally allowed to temporarily stay in the United States for humanitarian reasons. This category includes “temporary protected status” (TPS) and “deferred action for childhood arrivals” (DACA) status.

Deferred action status—a form of prosecutorial discretion—has long been part of immigration law and has been applied by past presidents from Eisenhower to Obama for various groups of non-citizens—and has included people

who were able to escape from Cuba and El Salvadorians and Guatemalans who came to the United States after Hurricane Mitch hit those countries in 1998.

However, the number of DACA recipients—also known as dreamers—has topped more than 750,000. By definition, dreamers are non-citizens that came to the United States before they turned 16 years old, have lived here since June 15, 2010, and have no serious criminal record. Recipients are given employment authorization documents and their status can be renewed every two years. Since this program was created by an Executive Order signed by President Obama, it can just as easily be canceled by one issued by President Trump.

Quantitative and Qualitative Restrictions on Legal Immigration

There are two barriers stopping the masses from legally immigrating to the United States. First there are quantitative restrictions, or quotas, which limit the number of people who can come to the United States in any one category of eligibility or from a specific country.⁵ Second, there are qualitative restrictions—people that Congress has determined should not be allowed to reside here due to a myriad of reasons, ranging from criminal convictions and health issues to membership in a terrorist organization.⁶

Although there are waivers for some grounds, most require a showing of extreme hardship to a close U.S. citizen or LPR relative. The various categories of non-citizens that Congress has given a path to LPR status can be broken down into five groups: family based immigration; employment-based immigration; refugees/asylees; investors; and successful applicants to a diversity lottery selection process.

There are a multitude of ways that a non-citizen, including an LPR, can become subject to removal or barred from re-entering the United States after a trip abroad. The most common reason is a criminal conviction. However, some of the grounds of removal found in section 237 of the Immigration and Nationality Act that apply to activities that are not considered so egregious, especially for crimes involving controlled substances (including marijuana), firearms and domestic violence. For instance, the violation of a civil protective order is considered a removable offense. Even the act of remaining abroad for over one year continuously may result in abandonment of LPR status and confiscation of a non-citizen's green card.

For lawful permanent residents, the discovery of a removable offense might occur when the person is arrested and booked for any offense and a fingerprint check reveals a criminal record. Others, after traveling abroad without incident for many years, find out upon being routinely inspected at an airport that Custom and Border Protection

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(CBP) officials have access to new databases. Still others are caught upon applying for naturalization or renewal of their green cards, which, like passports, expire every ten years.

IMMIGRANT VISAS CATEGORIES aka Lawful Permanent Resident (Green Card) Status

FAMILY BASED

Immediate Relative

(No quota restrictions)

- Spouse, child (unmarried and under 21) of U.S. Citizen (USC) or parent of adult (over 21) USC son/daughter

Preference System

(Subject to quota limit of 226,000)

- Unmarried adult son or daughter of USC
- Spouse or child (under 21) of LPR
- Unmarried adult son or daughter of LPR
- Married son or daughter of USC
- Brother or sister of adult USC

REFUGEES AND ASYLEES

(Subject to quota set each year by President approximately 80,000)

EMPLOYMENT BASED

(Subject to quota limit of 150,000)

EB1 (First Preference)

- Noncitizen of extraordinary ability
- Outstanding professor/researcher
- International executive or manager

EB2 (Second Preference)

- Advanced degree or exceptional ability workers

EB3 (Third Preference)

- Baccalaureates/skilled workers and unskilled worker (such as housekeepers)

EB4 (Fourth Preference)

- Special Immigrants (religious workers, abandoned children, etc.)

EB5 (Fifth Preference)

- Immigrant Investor (\$1 million or \$500,000 in redevelopment zone + creation of 10 new jobs)

DIVERSITY VISA PROGRAM (GREEN CARD LOTTERY)

(Subject to quota limit of 55,000)

The Three and Ten Year Bars

In addition to the quantitative and qualitative limitations stated in the Act, regulatory policy and procedures can

However, upon their departure, they immediately become subject to the three or ten year bar of section 212(a)(9)(B) of the Act. Although eligible for a waiver, prior to the Obama administration's policy to allow applicants to receive their waivers before they attend their interviews abroad, many applicants were forced to spend months waiting for their waivers to be processed while living abroad.

Being a lawful permanent resident is not, in actuality, all that permanent. Only one thing can halt the possibility of the loss of legal immigration status—naturalization. Once a person has held LPR status for five years, or three if married to U.S. citizen, he or she is eligible to apply.

The applicant must also show that during that period he or she has been a person of good moral character, and has spent at least half the period physically in the United States. The applicant must also pass citizenship and American history tests and be able to speak and read basic English, although exceptions exist for the physical and mentally disabled and long-term LPRs who reach a certain age.

FIVE FACTS ABOUT ILLEGAL IMMIGRATION IN THE UNITED STATES

1. There were 11.1 million unauthorized immigrants in the United States in 2014, a total unchanged from 2009 and accounting for 3.5% of the nation's population. The number of unauthorized immigrants peaked in 2007 at 12.2 million.
2. The U.S. civilian workforce included 8 million unauthorized immigrants in 2014, accounting for 5% of those who were working/looking for work.
3. The 5.8 million Mexican unauthorized immigrants living in the United States made up 52% of all unauthorized immigrants in 2014, down from 6.4 million in 2009.
4. Six states accounted for 59% of unauthorized immigrants in 2014: California, Texas, Florida, New York, New Jersey and Illinois.
5. A rising share of unauthorized immigrants have lived in the United States for at least a decade. About two-thirds (66%) of adults in 2014 had been in the United States at least that long (median time 13.6 years).

⁴ The current version of the card, USCIS Form I-551, is a high security document, white and bluish green in color, that is machine readable and contains the alien's photograph, fingerprints, and signature, as well as optical patterns to frustrate counterfeiting.



7 There is an important exception for noncitizens who are beneficiaries of an immigrant relative petition or labor certification application filed before April 30, 2001 and certain noncitizens related to such individuals, see section 245(i) of the Act.



Test No. 99

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. Some of the goals of the Immigration and Nationality Act are to reunite families and protect American workers.
☐ True ☐ False
2. A child born abroad with at least one U.S. citizen parent may be able to claim U.S. citizenship.
☐ True ☐ False
3. Non-citizens who enter on B-1 Business visas are allowed to work in the United States.
☐ True ☐ False
4. There is no quota for parents of U.S. citizens who are over 21 years old.
☐ True ☐ False
5. There is no quota for spouses of LPRs.
☐ True ☐ False
6. The current "green card" is not green.
☐ True ☐ False
7. An LPR can be removed for violation of a civil protective order.
☐ True ☐ False
8. An LPR could lose his or her green card if they remain abroad for over 12 months.
☐ True ☐ False
9. Naturalized U.S. citizens can be deported from the United States if they commit aggravated felonies.
☐ True ☐ False
10. ICE officers are in charge of protecting America's borders from noncitizens attempting to enter the U.S. without inspection.
☐ True ☐ False
11. The spouse of a U.S. citizen who entered without inspection and lives in the United State for more than one year cannot return to the United States for three years even if they qualify for an immigrant visa unless they are granted a waiver.
☐ True ☐ False
12. A lawyer in a criminal matter should always know his client's immigration status because a plea to a lesser offense that might be beneficial to a U.S. citizen could result in removal if the person is a noncitizen, unless the client is a permanent resident of the United States.
☐ True ☐ False
13. A non-citizen here illegally can never become a naturalized U.S. citizen.
☐ True ☐ False
14. LPRs married to U.S. citizens can naturalize two years before those who are not married to U.S. citizens.
☐ True ☐ False
15. Both U.S. Citizenship and Immigration Services (USCIS) and the Immigration courts are parts of the DHS.
☐ True ☐ False
16. If an undocumented non-citizen is married to a U.S. citizen, they can apply for their green card in the United States if a penalty fee of \$2,000 is paid.
☐ True ☐ False
17. According to the Immigration and Naturalization Act, all people are either U.S. citizens or non-citizens.
☐ True ☐ False
18. A non-citizen can get a green card if they win a lottery.
☐ True ☐ False
19. The number of unauthorized immigrants peaked in 2007 at 12.2 million.
☐ True ☐ False
20. Approximately one out of three people in the San Fernando Valley were born in a foreign country.
☐ True ☐ False

MCLE Answer Sheet No. 99

INSTRUCTIONS:

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

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ANSWERS:

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

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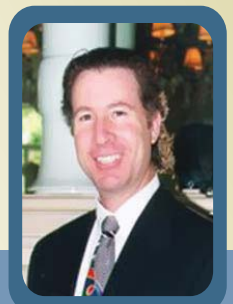


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The Latest A-Team

New Leadership at the Los Angeles Superior Court

By Michael D. White



Photos by Ron Murray

IN ONE OF HIS FREQUENT MOMENTS OF ZEN enlightenment, Yankee catcher and peerless philosopher Yogi Berra once said, “When you reach a fork in the road, take it.”

As mind-bending as that may sound, it’s a conundrum almost universally faced by a typical young person trying to decide what trail to take in life. Los Angeles Superior Court new Presiding Judge Daniel Buckley and Assistant Presiding Judge Kevin Brazile were no different.

Struggling over which “fork to take,” Judge Buckley recalls his choices were relatively simple—teaching or the law. “I knew I’d enjoy teaching, but something drew me toward the law.”

After earning his undergraduate degree from the University of Notre Dame, he settled on the law and now, more than 40 years later, considers his decision to work toward a judgeship “to be the best professional move I’ve ever made. No one in my family had been a judge and no one close to me was a judge. I thought I may not have the right connections or the right resume.”

That was then, but this is now. On January 1, Judge Buckley—who, back then, “had no idea that I’d be where I am now”—will take the reins as Presiding Judge of the Los Angeles County Superior Court with responsibility for the next two years for the well-being of 549 judicial officers—462 judges and 87 commissioners—who handle thousands of criminal, civil, family law, juvenile delinquency and dependency, mental health, probate and traffic cases annually, as well as assuring the smooth day-to-day operation of 38 courthouses scattered over an area four times the size of the state of Rhode Island.

Admitted to the California Bar in 1980, Judge Buckley was a partner at Breidenbach, Buckley, Huchting, Halm & Hamblet in Los Angeles, serving as managing partner for seven years, before being named to the bench by then-Governor Gray Davis in 2002.

Proving beyond a reasonable doubt that one can successfully take two “forks at once,” Judge Buckley has taught many judicial education classes on evidence, ethics, technology and new judges’ orientation. He also serves as an adjunct professor at USC Gould School of Law, Loyola Law School, Southwestern Law School and his alma mater, Notre Dame.

At a recent orientation session for neophyte judges, Judge Buckley taught a course on a topic key, he feels, to success in the courtroom: trial management. “The first thing is to let everyone in the courtroom know from the outset what your expectations are,” he says. “That’s goes for the lawyers, the jurors, and through the lawyers, the witnesses. As long as you’re consistent and firm in insisting that those expectations are met, you dramatically reduce the number of situations where something unfortunate or frustrating happens.”

Should “something unfortunate or frustrating” happen, “you deal with it directly and patiently and, if need be, get the jurors away from seeing or hearing things that might inappropriately influence them. Consistency and keeping your ears and eyes open 110 percent of the time are critical.”

A case in point occurred early in Judge Buckley’s career on the bench. It was one of the first trials that he heard—a heart-wrenching case with some very tough issues impacting the life of as sympathetic a plaintiff you could have, a medical malpractice case that concerned a baby boy who was born with some significant birth defects,” he recalls. “The family was suing the neonatologist and, sadly, the issue was not how severely damaged the child was, but how long the little boy would live.”

Needlessly complicating the already tragic situation were the opposing lawyers who “detested each other and couldn’t agree whether the lights in the courtroom were on or off. They were extremely contentious and it didn’t help the process in what was a very, very sensitive situation.”

The attributes of a good teacher, he says, “are the same as the attributes of a good judge—patience, a willingness to listen, in-depth understanding of the subject matter, an ability to connect with the people in front of you, and the ability to communicate why a decision is being made are all critical to both endeavors.”

Judge Buckley was assigned to the Pomona courthouse in 2009, where he served as the Supervising Judge of the East District, and, three years later, became the Supervising Judge of the civil courts, with responsibility for the management of all civil cases in Superior Court courthouses across the county.

In January 2015, he became Assistant Presiding Judge, having amassed more than twelve years’ experience on the bench with assignments in criminal, limited and general jurisdiction civil, and probate cases.

One area of particular interest to Judge Buckley is technology and “how it can be utilized to expedite case management and better handle the huge volume of files that pass through the system every year.”

Crediting his predecessors for their work in injecting technology into a court system buried in paperwork, Judge Buckley acknowledges their foresight in instituting a new case management system in probate, small claims, and adoption, but adds there’s a lot more work to do.

“We still haven’t taken the next step of e-filing which gets us into a potential paperless environment, though our judges know that they can have paper on demand,” he says. “We have a long way to go in setting up the acceptance and the culture for new case management systems and e-filing.”

Invariably, implementing new technologies mandates change to the status quo. “Either the operations are changing because of technology or technology is changing because of operations,” says Judge Buckley.



"We've contracted with a consultant who will be working with us over the next year to cast a fresh eye on ADR," says Judge Buckley. "We're looking at utilizing it across all case types and having lawyers volunteer their time to serve as mediators and having the consultant give us advice on every case type."

Judge Buckley feels that his primary job "is to help our judges do their best work given the limitations and reduced budgets we're having to contend with by improving facilities and activating technology that helps them transition to better case management systems."

That, he says, will give judges "what they need to work better and the court system the resources and tools they need to more effectively address their workloads and serve the public and the lawyers who appear before them. Two years from now, I'd like to say that we improved communication with 550 colleagues."

"We have those challenges and when we look at technology to help the traditional officer or staff member, we have internal changes going on at the same time, such as submitting absence requests electronically or, for example, having electronic access to probable cause determinations rather than having to request faxes from various police agencies."

At some point, he adds, "we'll mandate e-filing for lawyers, but not for self-represented litigants, so we have a lot of challenges both in the individual use of a case management system in the courtroom. We'll also have to train and prepare several hundred judges and their courtrooms so they're in the position of reevaluating a case on a Friday and returning on a Tuesday after a three day weekend to find they're working with a brand-new case management system. There are lots and lots of challenges and they all balance on implementing the right system and training people how to use it properly."

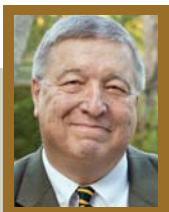
A "particular priority," Judge Buckley says, is "resurrecting" the court's Alternative Dispute Resolution Services (ADR) program.

Begun more than 20 years ago and decommissioned in 2013 because of budget cuts, the ADR was the largest and the most successful dispute resolution operation in the country. In its last year of operations, the department successfully handled 12,906 cases, according to court records.



Working directly with Judge Buckley to reach those goals is the new Assistant Presiding Judge, Kevin Brazile, a self-described "potential private pilot, avid sports fan and double Bruin," alluding to his having earned both his undergraduate and Juris Doctorate degrees from UCLA.

Urged by friends to enter law school, Brazile realized once there and after passing the Bar in 1984 that, though he "just wanted to be the best lawyer I could be," slowly developing in the back of his mind was the idea that he should aspire to be a judge.



Michael D. White is editor of *Valley Lawyer* magazine. He is the author of four published books and has worked in business journalism for more than 35 years. Before joining the staff of the SFVBA, he worked as Web Content Editor for the Los Angeles County Metropolitan Transportation Authority. He can be reached at michael@sfvba.org.



Prior to his appointment to the Superior Court by Governor Davis in December 2002, he served as Deputy County Counsel for Los Angeles County and as Division Chief and Assistant County Counsel for the General Litigation division. He credits his eighteen years with the County Counsel's Office, where he saw judges in action every day as he worked as a civil trial attorney in both state and federal court, for helping him commit to attaining his goal.

"At the County Council, I got to know judges and got to represent judges, and people were saying, 'You should really give it a shot,' and then even some judges encouraged me to get on the bench. All that was a great motivation to pursue my new goal," he recalls.

Arguing appeals before the U.S. Court of Appeals and the California Court of Appeals, his extensive experience with the Council also included successfully arguing the case of *Conn vs. Gabbert* before the U.S. Supreme Court in 1999. The high-profile decision, which overturned an earlier appeal decision by the U.S. Ninth Circuit, balanced on whether a prosecutor had violated an attorney's 14th Amendment right to practice his profession when the prosecutor executed a search warrant on the attorney at the same time his client is testifying before a grand jury.

Most recently, Judge Brazile served for two years as Supervising Judge of the civil departments and, before moving to downtown to hear unlimited civil trials, acted as the site judge at the West Covina courthouse. At the same time, he was assigned to the El Monte and Glendale courthouses, hearing arraignments, misdemeanor trials, and felony preliminary hearings.

"Working as an attorney and later on hearing cases from the bench, it became clear to me that the lawyers who saw the most success were the ones who put in the time and the preparation," says Brazile.


"This is going to be a real adventure," he says. "I'm going to be learning some new things and I'm very excited about working with Judge Buckley. He's genuinely committed to making sure judges have the tools they need to do their jobs. I want them to know that we're there for them and be sure we've got their back."

There are a number of key issues that need to be addressed—more courtrooms, getting the governor to fill existing judicial vacancies, infrastructure enhancements to improve workflow, upgrading facilities, and finding a new location for the mental health court in San Fernando that was recently shut down because of structural instability.

"We wanted to have a new mental health court in Hollywood, but it doesn't look like that's going to happen," he says, alluding to reduced budgets. "It doesn't look like we're going to see much of an increase in terms of money from the governor, so we'll just have to see how things work. We'll do our best."

Judge Brazile sees his new job as an opportunity to help the new Presiding Judge make his agenda a reality. "My job is to help him do that, while, at the same time, part of my job is to learn and absorb as much as I can so that I can fill the position in two years," he says.

"I'm fortunate in that I've known Judge Buckley for a long time and we've worked together since I was the supervising judge in Civil Court. I've known him a long time and have a great deal of respect and admiration for him. I consider him a genuine role model."

Being a judge, Brazile says, "can be very hard work and our job will be to make their job easier in any way we can." 







The New Digital Divide: Cybersecurity in the Office

By John F. Stephens

ONLY RECENTLY, AND MOSTLY due to high profile cyber breaches in the media, have executives at large companies discovered a new awareness of the current cyber risks to their business.

As a result, major corporations and organizations are recruiting talented professionals and devoting a sizeable amount of resources to addressing the cyber risk environment. This is a positive step given the cleverness and ever evolving sophistication of hackers and the cyberattacks they perpetrate. But it's not just large companies of 250-plus employees that face cyber risk; it's also medium-sized firms with 50-249 and smaller ones with fewer than 50, as well. And often those

businesses are prime targets since they unlikely have the same high level of security.

It's become apparent that there is a new growing digital divide between small to medium-sized businesses that don't have the same access to knowledge and resources as large businesses to protect against cyber risks. Unfortunately, this often results in many small and medium-sized businesses going bankrupt after just a single breach.

While this reality appears gloomy, it also provides an area of opportunity for lawyers to offer their clients value-added service by educating the owners of less-than-large businesses about potentially devastating cyber threats and what can be done to minimize that risk.

Culture Clash

It's important to note that the nature of enterprise is to take risks to achieve goals that prospective businesspeople and entrepreneurs believe are worthwhile. Lawyers, however, tend to work in the opposite manner. They tend to be highly risk averse. To minimize this contrast, it's important to keep in mind that the client will resist changes aimed at improving cybersecurity, especially if excessive cost is involved in their implementation. However, this is where a good lawyer knowledgeable of the risks involved in turning a blind eye to the threat of a cyberattack can explain the reality of the danger and how it could, potentially, fatally impact the client's business.



John F. Stephens is the chair of Sedgwick LLP's Cybersecurity and Privacy practice group. He focuses his practice on data privacy and digital marketing issues, as well as several other areas including media and entertainment litigation; live entertainment transactional matters; intellectual property licensing and transactions; and specialty insurance coverage and litigation. He can be reached at johnfrancisstephens@gmail.com

Lawyers have a reputation not only for being risk averse, but they're also known for being slow to change. Despite their intelligence and skill at finding novel approaches to legal issues, they are often considered laggards and Luddites when it comes to changes that might affect their practices. Difficult to believe though it may be, some lawyers still prefer to avoid computers and leave all necessary online communication and research to members of their support staffs. A decade and a half into the 21st century, however, it's time for all practicing lawyers to reevaluate their work routines and skill sets.

Data Security

All companies, whatever their business, need to be diligent in their efforts to protect sensitive customer, patient, and client information. But in a profession where the volume of sensitive information is huge and confidentiality is paramount, lawyers surprisingly lag behind in adopting modern security practices.

As corporate data breaches become more serious, clients will demand stricter data security in their law firms. Lawyers who know enough about security—or can understand the concepts well enough to work with experts—to answer clients' questions about how their information is protected are likely to win more business in the future. And it is very important that your firm's cybersecurity be operating at the highest level possible given the resources available and, at a minimum, meet the requirements of all applicable state and federal laws.

Cyber Insurance

One safeguard is cyber insurance, which is offered for financial protection on electronic risks for everything from a systems failure to hacking attacks, but it's often not clear to policyholders what is actually protected and what

areas of current and potential attacks are uninsured.

The problem from an insurer's perspective is that the definition of a cyber risk or attack have morphed significantly and the areas that the concepts cover are now too broad to be adequately covered by a single comprehensive cyber insurance policy. Therefore, there is now a real requirement both from the policyholder's and the insurer's viewpoint to clarify and understand what is required of a policyholder for internal security and what the different types of cyber insurance actually cover.

What is certain is that much more knowledge is required by policyholders about their internal IT structure, media communications and public relations, employee training and security, and the cyber issues within the industries or service sectors that the business is working across.

It's now abundantly apparent that insurance policies, as they're currently written, do not adequately cover cyber risks. Recent work in cybersecurity is often aimed at detection and the reduction and elimination of current cyberattacks; however, effort should also be put into analyzing broader potential risks and communicating possible threats.

Currently, cyber insurance is used to protect businesses and individual users from internet-based risks and is related to information technology infrastructures and activities. Risks of this nature are typically excluded from traditional liability policies and, as a result, it has become very important to understand exactly what cyber risks are lurking in the shadows and what specific threats your insurance covers.

In a business environment that seems chronically susceptible to breaches, purchasing cyber risk insurance may sound like common sense. Yet despite historic increase in data breaches in 2015, less than

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- Domestic Violence - Not Guilty, Jury Finding of Factual Innocence (San Fernando)
- \$50 Million Mortgage Fraud - Dismissed, Trial Court (Downtown, LA)
- DUI Case, Client Probation - Dismissed Search and Seizure (Long Beach)
- Numerous Sex Offense Accusations: Dismissed before Court (LA County)
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fifty percent of corporations have adequate cyber coverage. Often the cyber coverage taken by corporations does not cover the full extent of their risk and liability. This is particularly true in the case of their policyholder's data liability, media exposure and PR damage.

Shockingly, more than two-thirds—a full 67 percent—of small and medium-sized businesses (SMBs) are often completely unaware that dedicated cyber insurance even exists. This situation has come to light at a time when SMBs are often more vulnerable than large companies to the aftereffects of a data breach. Small and medium businesses have fewer resources to handle the media and public relations fallout from an attack, as have often been seen recently, putting them out of business.

The reality is that juggling the demands of already-small budgets and narrow profit margins can discourage the purchase of potentially expensive cyber insurance. In addition, cyber insurance products are often complex and can contain many threat exclusions. This is where an attorney, educated on both the current cyber threat environment and knowledgeable about the policyholder's vulnerability to threats can be very helpful to the SMBs in particular.

An insurance agent can provide basic information to policyholders regarding what products are currently on the market to provide comprehensive cyber risk coverage.

The majority of small and medium sized businesses have little or no knowledge of insurance premium costs, nor do they have an understanding of the likelihood of a

breach or knowing exactly what a cyber policy would cover. These are all huge areas of opportunity or added value that an attorney educated and armed with up-to-date information in the topic can provide.

Cyber-insurance can be a highly effective risk management tool that effectively transfers a policyholder's network user risks to their insurance company.


Counsel Your Clients

When counseling a client on reducing cyber risk, simply recommending the purchase of insurance to protect if a loss occurs in lieu of preventing that loss in the first place is not good advice. Contractual risk management is key to avoid risks associated with

your client's vendors who are often one of the top sources of cyber breaches.

The famous Target breach was caused by an HVAC vendor that had access to Target's network for billing. The hackers went through the vendor right into

Target. Vendor contracts should have indemnify provisions and require the vendor to have cyber risk insurance. These simple steps will allow you to assist your client to manage risk and in some cases transfer liabilities to other parties without having to pay for broader insurance coverage.

Cybersecurity, and cyber opportunities, should be a primary area of concern for attorneys who are knowledgeable not only in the current cyber risk environment, but also know of qualified cyber insurance brokers and vendors who specialize in privacy risk assessments who will be able to help their small and medium sized businesses clients stay in business. 



Cyber insurance products are often complex and can contain many threat exclusions.”

Much Ado About Nothing?

“The first things we do, let’s kill all the lawyers.”

– Henry VI, Part II, Act IV, Scene 2

FEW WOULD DISPUTE THAT this line, penned by Shakespeare four-and-a-quarter centuries ago, is among his most famous. What has been debated, however, is its intended meaning. Over the years, much ado has been made over what is a single line uttered as an aside by a relatively minor character in the play with the largest cast of all Shakespeare’s productions.

To most, the line is widely believed to be an expression of general contempt for the legal profession—one of the first documented lawyer jokes. However, there are many others who, having read and analyzed the line in context, see it differently.

In the play, the sardonic plea for mass litigicide is uttered by Dick the Butcher, a ruthless villain and disciple of the rebel Jack Cade, who has marched his rebel army of commoners into London, asserts his claim to the throne of England, and promises fanciful reforms. In the scene, a boastful Cade trumpets his own claimed valor and the changes that he would decree to create the ideal England, all while being mocked by his skeptical followers.

He tells of a glorious time when currency shall no longer be necessary, when he will clothe and feed the people (and, as an aside, make it a felony to drink small beers)—a utopia where all will worship Cade as their lord. In the midst of Cade’s proclamations about his vision for a new and improved England, Dick the Butcher inserts the famous line: “First thing we do, let’s kill all the lawyers.”

Many of those who have reviewed this line in context suggest this is not a slight to practitioners of a contemptible profession, but the first item on a checklist of steps necessary to overthrow the

government and impose autocratic rule. That is, through the abolition of law and order—by literally killing the lawyers—a despot would be free to seize control and become supreme ruler with unchallenged authority. As Supreme Court Justice John Paul Stevens explained in his analysis of the line, “Shakespeare insightfully realized that disposing of lawyers is a step in the direction of a totalitarian form of government.”¹

Suffice to say, the last several months have been trying, not only for our country, but for our profession. Whatever your political beliefs, one thing is abundantly clear: the recent presidential election brought many legal issues to the fore, and raised many questions about the regard held for the rule of law, whether by our leaders or the people.


As attorneys we are bound to support the Constitutions of the United States and the State of California, maintain the

SAMUEL R.W. PRICE
SCVBA President



sprice@pooleshaffery.com

respect due to the courts of justice and judicial officers, and undertake the cause of the defenseless and the oppressed.² Many of the events leading up to, and since, the election have given many in our profession pause. Whether real or just perceived, threats have been levied against the rule of law and long recognized notions of justice.

Whether these threats will come to pass is unknown. But as a critical line of defense, it is our obligation and sworn duty as attorneys to ensure that our nation remains firmly dedicated to the precious legal foundations upon which this country has flourished—among them, the rule of law, due process, and the equal protection of the rights and freedoms guaranteed by both the Constitutions to all citizens, even those with whom we do not agree. 


¹ *Walters v. Radiation Survivors*, 473 U.S. 305, 371, n. 24 (1985).

² *California Bus. & Prof. Code* §6068.

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CERTIFIED BY THE STATE BAR AND ONE OF California's oldest lawyer referral programs, the SFVBA Attorney Referral Service (ARS) provides the public with access to the appropriate resources to fit their legal needs.

Every month, ARS referral consultants field, on average, more than five hundred telephone calls from the public that cover a broad spectrum legal issues, from criminal, family, personal injury, real estate, and tax law, to probate, immigration and setting up a franchise.

When handling a query, the consultants utilize an effective computerized screening process to best define the caller's situation and determine precisely why the services of an attorney might be needed. The consultants then forward the formatted information to an ARS panel member who practices in the area of law related to the caller's needs. The attorney will then either decline the referral or agree to a 30-minute general consultation with the caller.

For example, one recent referral involved a caller who required legal representation because she hadn't received an inheritance because the executor of the will did not comply with the provisions of the legally-drawn document. According to the will, the caller, living on a fixed income, was entitled to a portion from her parent's bank accounts, a share of the proceeds from the sale of their house, and a portion of the family's heirlooms. An ARS member probate attorney took the case and was able to help the caller claim her rightful inheritance.

**CATHERINE
CARBALLO-MERINO**
ARS Referral Consultant




catherine@sfvba.org

In another case, a Kenyan national was seeking asylum in the United States after he was tried, convicted, and imprisoned in Nairobi. He sued for wrongful imprisonment in court and won on appeal, but the government of Kenya threatened him with a return trip to prison. He fled to Southern California where a call to the ARS resulted in a referral to an immigration attorney who is currently reviewing his case.

In addition to providing the public with a much-needed connection to critical legal help, the ARS sponsors two programs that help those without the means to hire an attorney—the Senior Citizen Legal Services Program (SCLSP) and the Modest Means Program (MMP).

The SCLSP assists Valley senior citizens seeking affordable legal assistance by reducing the cost of legal fees, while the MMP helps qualified, low-income Valley residents acquire legal counsel.

Working to increase public awareness and better serve its members, the ARS is currently fine-tuning its marketing strategy. Its SCLSP coordinator is arranging for regular onsite availability at local senior centers to provide information and one-on-one screening for seniors who feel more comfortable meeting face-to-face with a referral consultant. Additionally, a campaign to regularly provide the local media with information about the ARS and its activities is being crafted.

The ARS is also laying out plans to become more involved with the community through sponsoring and attending select community events to better communicate what services it offers and how it aids both the legal profession and the residents of the San Fernando Valley. 

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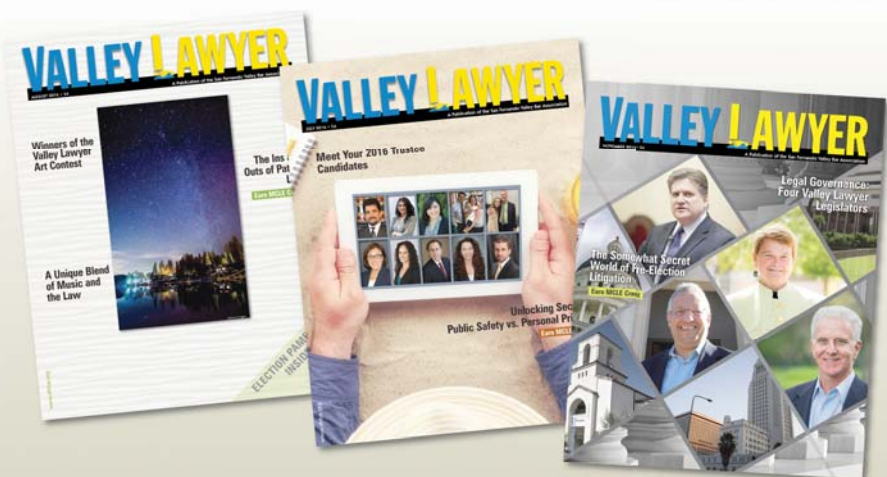
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JANNYDA SRE FIRST participated in the Boys and Girls Club of Pomona Valley the summer before her freshman year of high school and has been intimately involved ever since. She attributes the life affirming lessons and incalculable benefits of the organization to her bright future ahead as she proudly soldiers through her freshman year at UCLA.

The Boys and Girls Club is her home and everyone at the club is her family. She reflects, "They have supported me and pushed me to achieve greatness. I have learned many crucial life skills and gained numerous experiences that are definitely life changing."

Life for Jannyda before the club was not so bright and sunny. She grew up in the projects in a small apartment with her mother and two brothers. Life was difficult enough being the youngest and the only girl. "I never knew my father," she recalls. "But I always wanted to."

As for the necessities, her mother did the best she could with what they had—she acknowledges that mom provided the basics, "a roof over my head, clothes on my back, and food in my stomach."

"But the one thing that she did not provide was affection," Jannyda continued. "She always held back her feelings from me. I never knew why, and until this day, I'm still not quite sure."

Jannyda's isolation was not limited to affection, for the entirety of her childhood, she was kept locked in the small apartment with her brothers anytime they weren't attending school.



They were essentially shutoff from the outside world. Into her early high school years she wasn't afforded any extra-circular activities, a social life or any friends whatsoever.

"It was like living in a cage," she remembers with great sadness. "I was never given the opportunity to hang

out with friends after school or even have sleepovers. We did not have cable television. We did not have internet. We did not have freedom. My mother restricted everything."

Their living space was sparse and cramped, she remembers with sorrow, "It literally felt like I was living inside a cage."

Compounding her living situation, when she was at school, she was

embarrassed by life she had no control over. "We were not like other families. My mother was incapable of work, so we lived off of government assistance my entire life. We had social security (SSI), medical, food stamps, and Section 8 housing," she explained.

She was mortified to have to wear ratty hand-me-down clothing most of the time. And the worst part was they were from her brothers.

Most years it was difficult for her mother to pay all of the essential bills. Jannyda carried such shame as a child, "People would mock me, taunt me, and just destroy my self-esteem."

It wasn't until she found the Boys and Girls Club that her life began to finally change for the better. "It was the

About the VCLF of the SFVBA

The Valley Community Legal Foundation is the charitable arm of the San Fernando Valley Bar Association. The Foundation's mission is to support the legal needs of the youth, victims of domestic violence, and veterans of the San Fernando Valley. The Foundation also provides educational grants to qualified students pursuing legal careers. The Foundation relies on donations to fund its work. To donate to the VCLF or to learn more, visit www.thevclf.org and help us make a difference in our community.

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club that changed it all and showed me that I should use the things I dislike about my lifestyle as motivation to aim for an even better lifestyle in my future and the future of my own family.”

In 2014, she was nominated to be the Boys and Girls Club of Pomona Valley’s 2014-2015 Youth of the Year. Some of her peers told her that she should not be the Boys and Girls Club’s representative because of her underprivileged and uncouth upbringing. Others picked on her “bad habits” and claimed that she did not fit the role of “Youth of the Year.”

Jannyda’s Teen Director, Lance Holliday, who nominated her, always believed in her. He encouraged her to continue to thrive and prove to everyone who doubted her that she could rise to the honor. Jannyda remembered, “He taught me how to be humble but to not let them silence me. He showed me that my story can make a big impact and let my voice move the people. I was the club’s Youth of the Year for two years and I hold that title proudly because I’ve worked for it. I worked to change myself as a whole. I wanted to be better. I wanted to have a better attitude, a better view, and simply be a better person. I didn’t want to let the negativity going on at home to affect me anymore.”

The Boys and Girls Club taught her so many things about life and how to overcome her own personal struggles. They also taught her how to be a better person through community service. “I didn’t want any of the other people around me to suffer anymore. I wanted everyone—children, teens, and even adults—to understand that there is always a helping hand. You may not find it at home, you may not find it at school, you may not even find it within the circle of your friends, but you will definitely find it at the club. At the club, each and every one of us is special in our own way and we have different potentials.

“The club showed me that I had the potential to make an impact among our youth and myself. I have to admit, sometimes I did not want to be the bigger person or hold my tongue when people say hurtful things to me and constantly bring me down. And I know a lot of people can relate. But Victor Caceres, the Executive Director at my club, told me that, ‘Sometimes we simply have to brush it off because the most successful people fight the toughest battles. Not all battles were won, but that did not stop them.’ ”


“The club, the members, and the community,” Jannyda said, “are my motivation.”

VCLF AT WORK

Jannyda is just one of more than 3,000 local kids helped by Boys and Girls Clubs, 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 results come, like the success of Jannyda Sre.

“The Boys and Girls Club is a great example of an organization the VCLF proudly supports,” says VCLF President Laurence Kaldor. “They are providing great and necessary services to our community, and we are proud to fund their efforts.”

It’s estimated that helping someone like Jannyda costs about \$590 per year. That’s right, just \$590, to help a child, impacted by life’s challenges, a casualty of the impoverished sectors of our society, yet turning out to be a shining star.

“There are a lot of Jannydas out there in the San Fernando Valley,” says Kaldor. “We’d like to help as many as possible. We love getting large corporate donations, but here’s a very concrete way an individual, an attorney, a judge, or a businessperson can make a real difference. For a donation of \$590, we can help another Jannyda right now.” 

DEFAMATION

The Play Comes to the San Fernando Valley

By Anngel Benoun, VCLF Board Member

THE VALLEY COMMUNITY LEGAL Foundation of the San Fernando Valley Bar Association and PESA's Teen Court Project for Justice is proud to bring the play Defamation to the San Fernando Valley on Monday, February 13, 2017. The performance will be attended by the Law Magnets of Reseda High School and James Monroe High School and high schools participating in PESA's programs, including John Burroughs, Grant, Van Nuys, Taft, Canoga Park, Northridge Academy, and San Fernando High.

Nationally acclaimed, Defamation is a riveting, brilliant and shifting jigsaw puzzle of a courtroom drama that explores the highly charged issues of race, religion, gender, class and the law with a twist...the student audience is the jury and through post-show discussions and deliberations, gives them a unique opportunity to engage in civil discourse about the pressing issues of the day. Written by playwright Todd Logan, Defamation opened in November 2010 and has played to countless students audiences throughout the United States.

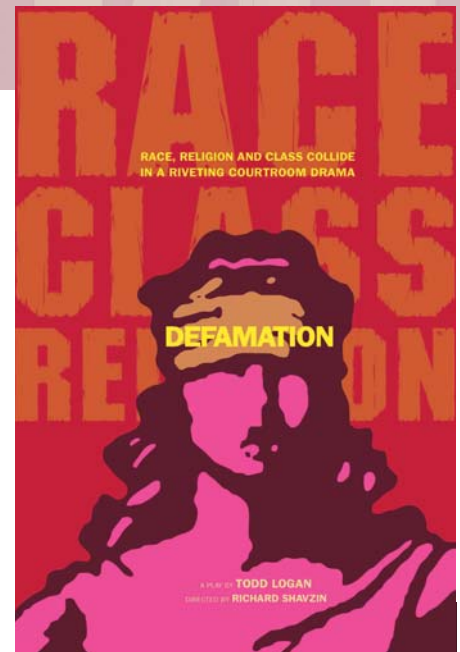
SFVBA President Kira Masteller has long had a passion for fostering diversity within the Association and the community and the first Bar committee she served on was the Diversity Committee (now called the Inclusion & Diversity Committee). She said a mission of "the bar association, the judiciary, the school district and the community at large is to see diversity on the Bench, legal careers and in law enforcement, and when I read about the play and the interactive participation with a judge and the cast, I knew this would be a fantastic opportunity to allow students to actively participate in the learning and the teaching of acceptance of differences."

VCLF President Laurence Kaldor adds, "This is exactly the type of live interactive educational experience our young legal aspirants need in order to awaken and expound the creative aspects of their legal instruction. Performances such as these bring to life the colorful world of the legal practice while highlighting its complexity and importance within our societal evolution, especially with regard to how our legal system relates to our civil liberties. It is our sincerest privilege to continue to avail our Valley youth to opportunities such as this."

"Los Angeles is a melting pot of all peoples and yet somehow in this greatly diverse San Fernando Valley, we have pockets of intolerance and bias that we need to evolve out of," Masteller states, adding "I, along with the Bar Association and VCLF, are part of the necessary change in our community to be inclusive and to celebrate the diverse population that we are."

How can SFVBA members help? Members may sponsor student admission to the event to be held at St. Bernardine's Church in Woodland Hills. Sponsorship of a student is as little as \$15 for one student and only \$10 per student if sponsoring 10 or more students. For more information on sponsorships, contact Anngel Benoun at anngel4re@earthlink.net or wait for email blast coming to your inbox soon.

Kira's message to the membership is simple, "How can we miss the opportunity to bring the learning gift of Defamation to our children so they may become leaders in diversity, setting an example for their families, peers, city, state and country? We can't and that opportunity is here because of our volunteers and members and our courage to dream big!" 🏛️



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