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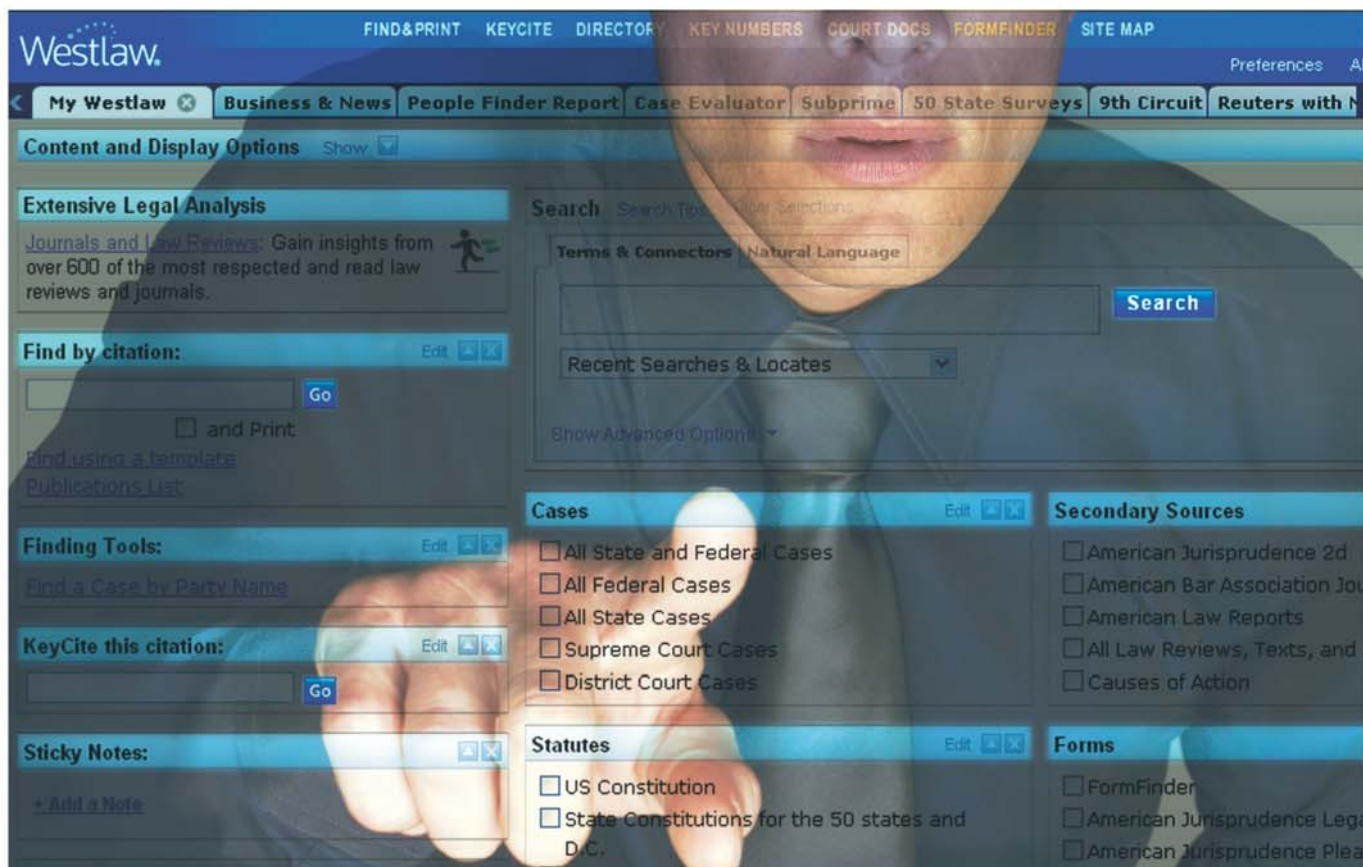
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Can I Make a Difference?



ROBERT F. FLAGG
SFVBA President

WHEN I VISIT ELEMENTARY and middle school classrooms as part of our Law Day presentations, one of the students inevitably asks, "How much do you make?" I always give them an honest answer, generally a range. I know that whatever I say sounds like a lot to a 5th, 6th or 7th grader. But I remind the class that I had to graduate high school and go on to college and law school for 7 more years, and then into the practice of law for 20+ years. I try to tell them that I became a lawyer because I wanted to make a difference. I'm always left with the impression that they don't really believe me and think I became a lawyer to make lots of money.

When I have talked to colleagues over the years, more often than not each has told me a similar reason for their becoming a lawyer. "Making a difference" as a lawyer means, to me, doing everything I can to the best of my ability to advance my client's best interests. As a member of a group with similar interests, such as the San Fernando Valley Bar Association, it means doing what I can to help the organization move forward in accordance with its goals. As a member of a family and the community, it means carrying my part of the load and contributing to growth wherever and however I can.

Many lawyers have made a difference throughout history. For the 20th Century, one attorney comes to mind before all others: Mohandas Karamchand Gandhi, widely known as Mahatma Gandhi, who through nonviolent means faced down an empire and created a nation, inspiring many others in many other nations to follow his example, with world-changing results all over the globe. But what if you are not Gandhi? Do you wait to make any effort at all unless and until you can create a nation in one day, end segregation or consign apartheid to the dustbin of history? No, the answer is that you do what you can, with what you have and where you are.

Earlier in my term as president I talked about the concept of "giving back." That is, returning the favors done for

you that allowed you to progress in your profession, to those around you and to your community. I mentioned I preferred the term "pay it forward." The concept was described by Benjamin Franklin. Franklin wrote that he loaned a sum of money to a friend of his in need. When the friend returned to pay Franklin back, Franklin told him instead to extend the same loan to another person in need and to instruct that person to do the same in lieu of paying back the friend. Novelist Robert Heinlein, in the 1940s, coined the term "pay it forward" for the process described by Franklin.

"Pay it forward" means taking some of what you have received and passing it along to someone else. In one sense, we all do that in our professional practice. We exercise the legal knowledge and skills that we learned and developed over the years to represent our clients. The term "pay it forward" is meant to encompass far more – to extend to the things we do, the activities we engage in, over and above our professional lives. It means doing something not for immediate gain, not to earn a fee, but for a long-term gain, even gain for the community at large, rather than for oneself. It means to advance someone else's interest, even at some cost to yourself, whether of your time, your knowledge, your abilities or your hard-earned wealth.

As an association, we recently celebrated another milestone marking our joint effort with the Valley Community

Legal Foundation, our charitable arm, when we saw the grand opening of the second children's waiting room in the Valley at the San Fernando Courthouse. Along with the first waiting room we previously helped create at the Van Nuys courthouse, these two facilities represent the joint efforts of lawyers, members of the Valley community and our elected officials to provide a safe place for children whose parents must appear for hearings at those courthouses.

Tireless volunteer members of our Bar Association have provided opportunities for our members and others to obtain continuing legal education credits at reasonable prices. Through the efforts of those and other enthusiastic Bar members, we have provided opportunities to meet and exchange ideas with fellow legal professionals and those of other professions, such as certified public accountants, financial planners, etc.

As Adlai Stephenson remarked, addressing the United Nations in his eulogy for Eleanor Roosevelt on November 9, 1962, "She would rather light candles than curse the darkness, and her glow has warmed the world." Our approach is similar: the San Fernando Valley Bar Association is a beacon to the Valley community because of our combined efforts. We are making a difference together. 🕯

Robert F. Flagg can be contacted at robert.flagg@farmersinsurance.com.

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ANGELA M.
HUTCHINSON
Editor

Summer greetings!

Our June issue of *Valley Lawyer* has a diverse range of article topics for lawyers, including patent false marking litigation, fire property damages and stress management for attorneys. In particular, be sure to read about *Alternative Careers for JDs*. The list below features other career paths for attorneys aside from practicing law at a firm.

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Angela M. Hutchinson



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Blowing the Whistle on Patent False Marking Litigation

By Gary D. Mann

MANY ATTORNEYS HAVE CLIENTS THAT SELL products which are marked or advertised as patented or “patent pending.” These businesses may not be aware, however, that they could find themselves subject to a fine in the millions of dollars if diligence is not exercised to ensure that this marking is correct initially and that it remains correct over time.

Under the provisions of a patent statute a fine of up to \$1 million, for example, may be awarded against a seller of as few as 2,000 improperly marked articles. Moreover, a suit for this penalty can be brought by any member of the public. A so-called “whistleblower,” this kind of litigant need not be a competitor or a patent owner.

A provision of the Patent Act, 35 U.S.C. §292, provides a cause of action against those who falsely claim that their products are patented or under a patent pending status. While this provision has been around for a long time, a recent court decision has resulted in the filing of a number of patent false marking suits, focusing attention on this potentially lucrative cause of action.

Elements of a Patent False Marking Claim

The cause of action for patent false marking is a so-called *qui tam* action, i.e., the action may be taken by any private individual on behalf of the government. For a successful false-marking action two elements must be proved:

1. An unpatented article has been marked as patented (or an article is incorrectly marked under a patent pending designation) and
2. The marking was done with intent to deceive the public.

For a violation, the statute calls for a fine of “not more than \$500 for every ... offense.” Previously, many lower courts had interpreted the \$500 per offense award to mean \$500 as a single fine for continuous false marking, regardless of the number of products sold. But in a recent case, *Forest Group, Inc. v. Bon Tool Co.*, 590 F.3d 1295 (Fed. Cir. 2009), the U.S. Court of Appeals for the Federal Circuit held that the “offense” relates to *each article* that has been falsely-marked, as opposed to each offense that might entail multiple articles of the same kind. Thus, for example under the *Forest Group* rule, a business that sells 10,000 falsely-marked widgets would be subject to a fine having an upper limit of \$5,000,000, rather than a fine with an upper limit of \$500.

With this kind of award potential it is not surprising to see this increase in false marking litigation. In fact, holding companies recently have been formed for the purpose of bringing *qui tam* actions in false marking cases. There is a cottage industry of would-be plaintiffs already out there actively looking for violators and hoping to profit handsomely. During the approximately 3-month period following the December 28, 2009 issuance of the *Forest Group* decision, there have been about 114 false marking cases that have been filed in federal court. Of those cases, 40 suits were filed by a single, Chicago-based firm.

Limitations to a Patent False Marking Claim

There are a couple of limitations to keep in mind, however. First, the \$500 per article amount represents an upper limit. A court in its discretion can award a lesser amount. Second, a party is going to have to prove intent to deceive.

As to the upper limit, it is true that the amount of the fine could be \$500 per article. But, on the other hand, a court could award a fraction of a penny for mass-produced articles. The current state of the law provides no clear-cut guidance as to what a proper amount should be in any given case.

As to the intent element, sellers should not rest too easy in a belief that proving an intent to deceive would be an impossible hurdle in their case. The *Forest Group* court said that an “assertion by a party that it did not intend to deceive, standing alone, is worthless as proof of no intent to deceive where there is knowledge of falsehood.” The court further noted: “Intent to deceive is a state of mind arising when a party acts with sufficient knowledge that what it is saying is not so and consequently that the recipient of its saying will be misled into thinking that the statement is true. . . . A party asserting false marking must show by a preponderance of the evidence that the accused party did not have a reasonable belief that the articles were properly marked.”

Ways to Get into Trouble under the Statute

How can one get into trouble under this statute? Here are some possible scenarios:

1. Failing to remove a patent number from an article (or from advertising) when the patent is no longer in force due to passage of the 20-year patent term or failure to pay patent maintenance fees when due
2. Placing a patent pending notice on an article (or in advertising) when a patent application was not filed

RICHARD F. SPERLING, ESQ.

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or failing to remove such a notice when the patent application has lapsed

3. Placing a patent number on an article (or in advertising) when in fact the article does not fall within the scope of at least one of the claims of the patent.

Claim Interpretation is Not an Exact Science

As to scenario (3) above, note that the scope of patent claims can be interpreted by an adjudication of the claims in court or Patent Office proceedings. Thus, there can be a situation where a product seller may not be in violation of the false marking statute prior to any such adjudication, but is in violation afterwards if the patent number is not promptly removed. This is what happened to the seller in the *Forest Group* case where the intent element of the statute was satisfied as the result of a claim interpretation adjudication.

Determining whether an article falls within the scope of one or more claims of a patent can involve a complex claim interpretation analysis. Claim interpretation is not an exact science. Thus, for example, one who has made a seemingly minor product design change from that shown and claimed in an issued patent should be careful about continuing to mark the products. They may well have fallen within the scope of the patent prior to the design change, but no longer do so. In that situation, the changed products should no longer be marked with the patent number.

Advantages for Patent Marking

The U.S. patent laws do not require a seller or patent holder to mark the applicable products. However, there remain strong advantages in doing so. Patent marking serves as constructive notice of the patent to competitors for damages purposes. Otherwise, the date that the infringer had actual knowledge of the patent often must be proven for controlling the start of the damages calculation period.

In some circumstances the advantages of patent marking can include:

- Deterring potential competitors
- Helping with marketing efforts by suggesting that the product is innovative
- Obtaining an award of damages from an infringer for a damages calculation time period of up to 6 additional years
- Providing support for a claim of willful patent infringement against an infringer, thus possibly trebling the damages award.

The decision whether or not to mark or advertise products with a patent number or a "patent pending" notice involves a weighing of the risks and rewards. For sellers who do chose to mark, continuing diligence should be exercised to ensure that their patent marking is correct initially and remains so over time. It is recommended that companies audit their marking practices and institute a patent marking policy. ⚡

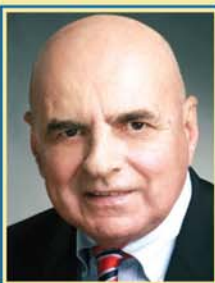
Gary D. Mann is a partner in the Woodland Hills office of the national Intellectual Property law firm of Fitch Even Tabin & Flannery. He can be reached at (818) 715-7025 or gmann@fitcheven.com.

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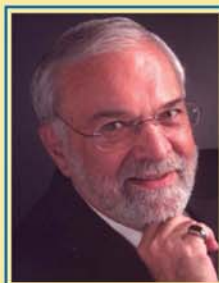
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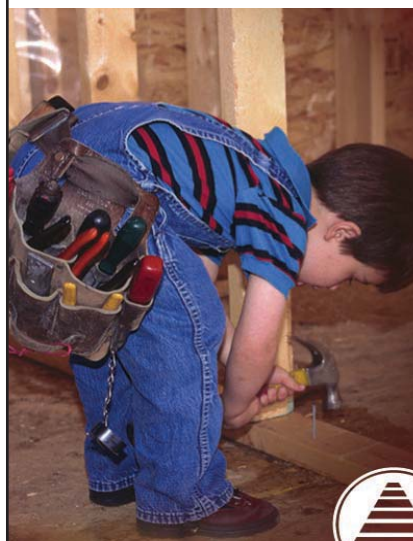
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Q&A with Judge Jay C. Gandhi

By Angela M. Hutchinson



Jay C. Gandhi

to the Indian-American community and the entire Asian-American community for their overwhelming support and encouragement.

Q: Why did you choose to work for the federal court versus the state court?

A: It was like coming home. I clerked for a federal judge after law school, and my clerkship was one of the most professionally and personally rewarding years of my life. Also, during my 12 years at Paul, Hastings, Janofsky & Walker LLP, my practice was concentrated in the federal courts.

Q: What advice can you give to lawyers that are aspiring to become a judge?

A: Maintain the highest level of integrity and civility. This means not only with your clients and the Court, but also with opposing counsel, third parties, your staff – everyone. Trite as it may sound, it is, indeed, a small world, and your reputation drives your success.

THE SAN FERNANDO VALLEY BAR ASSOCIATION CONGRATULATES Vijay “Jay” Chand Gandhi on his appointment as United States Magistrate Judge for the United States District Court for the Central District of California. Judge Gandhi was sworn in as a Magistrate Judge on April 14, 2010. He presides over matters arising from all three Divisions of the Court. The Central District of California is the largest district in the nation and is comprised of the seven counties of Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura.

Judge Gandhi will be the first Indian-American federal judge in the Central District and only the second Indian-American federal judge in the history of the United States. At age 38, he will also be one of the youngest federal judges currently serving in the Central District.

Previously, Judge Gandhi was a litigation partner at Paul, Hastings, Janofsky & Walker LLP where he practiced law for nearly twelve years. Judge Gandhi specialized in complex business litigation and class actions. His practice areas included corporate governance, securities, consumer rights, intellectual property and real estate.

Judge Gandhi is also the author of several literary works, including co-authorship of a book on securities law claims. He is also an alum of the Trial Attorney Partnership with the Orange County District Attorney’s office where he worked as a volunteer Deputy District Attorney. Judge Gandhi received his J.D. degree from the University of Southern California Law School, graduating *Order of the Coif*.

With great pride, *Valley Lawyer* is excited to share Judge Jay C. Gandhi’s journey with SFVBA members.

Q: What inspired you to work in the legal field?

A: The interdisciplinary aspect of the law fascinates me. The law incorporates teachings, both academic and practical, from many other disciplines, such as history, philosophy, economics and psychology. With hyper-specialization being the norm nowadays, the legal field remains one of the last refuges for those who enjoy learning about different subjects.

Q: Why did you pursue becoming a judge instead of continuing to practice law as an attorney?

A: While I found the practice of law gratifying, I felt called to do more.

I wanted to give back to the community and I craved a more meaningful work goal, a goal beyond merely trying to win more clients and cases. So, to me, a judge’s role seemed ideal – to serve the community and to impartially administer justice.

Q: As the first Indian-American federal judge in the Central District and the second Indian-American federal judge, what does this appointment mean to you?

A: I am deeply humbled. I am grateful to my immigrant parents for their hard work, along with their support and understanding, and the opportunities they provided for me. And I am grateful

Q: How has being a member of bar associations helped your professional and career development?

A: Bar associations provided an important forum for the exchange of ideas and information with fellow practitioners, and also served as a vital link to the judiciary. Some of the most valuable lessons and insights I gained were from so-called war stories shared by a judge or lawyer over dinner.

Q: What role do you believe bar associations should play as it relates to the courts?

A: The bench and the bar are essential partners, and should work together to strengthen and improve the legal profession and the administration of justice.

Q: Tell us about your involvement with non-profit organizations that give back to the community.

A: I am passionate about youth development. If you instill confidence, drive, and integrity in young people, they will survive and thrive in our complex society for the rest of their lives. I served on the board of directors of two non-profit youth development organizations – Learning for Life and Camp Fire. Both organizations help young people develop valuable life skills.

Q: How do you persevere through life's difficulties when the road ahead seems bleak?

A: I keep moving forward. To imprecisely borrow a quote from Oliver Wendell Holmes, we must sail sometimes with the wind and sometimes against it, but we must sail, and not drift, nor lie at anchor.

Q: On a lighter note, what is your favorite movie, book and song?

A: Favorite movie is *The Godfather*. In fact, I keep in my library a first edition, signed copy of the book by Mario Puzo. Blame my undergrad philosophy major, but favorite book is *The Republic* by Plato. Selecting a favorite song is a bit more difficult, but currently I'd go with *I'm Alive* by Kenney Chesney and Dave Matthews. 🐾

San Fernando Valley Bar Association



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Sherman Oaks Lawyer Wins \$15 Million Verdict in Boston for Medical Malpractice



By James E. Fox

THE CONVENTIONAL WISDOM IS THAT LAWYERS should not represent relatives nor take out-of-town cases. SFVBA member James E. Fox violated both rules. When he first received the call for help from his cousin, Brian, in 2004, his first reaction was “No way.” Fox had heard of “pro hac vice” but never thought it could ever apply to him.

Four years later, after 45 depositions and 150,000 frequent flier miles, a Boston jury found two prominent Harvard physicians guilty of malpractice and awarded \$15,000,000 in damages for the death of 3-year-old Jason Fox.

The case had been rejected by four prominent Boston plaintiff firms and the statute of limitations was about to expire. The plaintiff had no place to turn. Of course, the Sherman Oaks cousin who specializes in malpractice trials wanted to help. Brian was “family.” Brian lived in Philadelphia and the claimed malpractice occurred in Boston and involved troubling questions about negligence, causation and damages. There were many reasons to avoid this case, but a malpractice case against Harvard physicians with international reputations (textbook authors with heavy CVs) had a magnetic appeal.

Jason had been born with a very serious heart defect – several holes in the heart and an absent pulmonary artery. His long-term survival was in doubt. Because of his condition, Jason had complex cardiac surgery in Philadelphia, but his doctors in Philadelphia were concerned that even though Jason survived this initial surgery, along with multiple catheterizations, he needed more skilled care. They referred Jason and the family to Dr. James Lock, a renowned pediatric heart specialist in Boston.

Dr. Lock was a Harvard professor and Physician-in-Chief at the famed Boston Children’s Hospital. He told Jason’s parents that he could help Jason and do what the doctors in Philadelphia were unable to do. The parents had been encouraged and eager to travel to the renowned Harvard Hospital. The parents agreed to the recommendation of Dr. Lock, who performed the complex cardiac procedure involving catheterization of Jason’s tiny arteries. Unknown

to Jason’s parents, Dr. Lock conducted a risky aggressive procedure using multiple injections of contrast dye. So much dye was injected into Jason’s heart and lungs that it leaked into his brain, causing seizures.

Although Jason survived the dye overdose, he suffered another trauma when he was given a powerful sedative, Propofol, by Harvard Professor James DiNardo, an anesthesiologist, during an MRI. Jason stopped breathing inside the MRI tunnel, and although he was resuscitated, he never again either spoke or crawled even though he survived for another year before his death at age 3.

Drs. Lock and DiNardo both denied any improper medical conduct, and claimed that Jason’s pre-existing cardiac defects justified the procedures they performed. They claimed that without them Jason would not have survived childhood.

It was understandable why many Boston lawyers had rejected the case. The trial would be on the defendants’ “home turf.” The defendants had top flight Boston medical malpractice defense firm, Sloane & Walsh, and trial counsel William Dailey, Jr. (who had never lost a malpractice case).

In the beginning, the Sherman Oaks’ lawyer did not foresee taking 45 depositions at cities throughout the United States, nor the years of bitter law and motion activity. Half the battle was obtaining qualified experts who were willing to travel to Boston and take on the Harvard establishment. It was a six week jury trial. (More than 30 large cartons of documents had to be shipped to Boston for the trial). The road to that verdict was long, tough and very expensive. Here are a few of the highlights:

Two years into discovery, plaintiffs uncovered the existence of an electronic medical record that proved that the original printed record had been materially altered. This was a huge development impacting on the credibility of the defense. Defendants’ lack of credibility, despite their Harvard pedigrees, became the central theme of the plaintiffs’ case.

Dr. Lock claimed it was essential to administer to Jason a large dose of contrast media (double the amount

recommended by the manufacturer). He said this dose was needed to better visualize the arteries during heart catheterization. But plaintiffs proved that Dr. Lock was engaged in product research and development of a device he intended to implant in Jason and eventually received huge royalties for this device. At trial, plaintiffs argued that Dr. Lock was using Jason as a “guinea pig” (the jury apparently agreed). A plaintiffs’ expert from a Midwest hospital courageously testified that defendant Lock used dangerously excessive amounts of contrast dye.

Jason’s post-catheterization MRI and Dr. DiNardo’s use of Propofol during the procedure proved to be a major element of the case. At issue was this question: Did Dr. DiNardo shut off the Propofol infusion pump during the code resuscitation? Plaintiffs claimed that he neglected to do so and that the resulting lack of oxygen from prolonged Propofol-induced bradycardia caused Jason permanent brain damage. And even though Jason did live for approximately one year after this event, plaintiffs claimed he was never the same as he was before the Propofol-induced arrest. From that time until his death, Jason remained non-responsive, nonverbal and with little physical movement.

It was argued to the jury that the Propofol disaster was the real and final cause of his death. Plaintiffs presented convincing evidence of record alterations that had been obtained during the four years of pre-trial discovery. In Houston, Texas, despite stiff defense opposition, plaintiffs located and deposed of the anesthesia “fellow” who actually wrote the anesthesia record concerning the Propofol infusion. She admitted that she was not in the operating room during the procedure and did not witness the administration of anesthesia. Plaintiffs argued the anesthesia record was concocted and falsified and the jury agreed. This concocted anesthesia record cast serious doubt on the competence of Dr. DiNardo, and credibility of the entire defense case.

At trial the seven defendant doctors were all represented by the same lawyer – a unified defense. The plaintiffs exploited the unified defense and charged that the defendants’ stories were coordinated and lacked credibility. The jury agreed. The defense was so neatly coordinated that it backfired. The jury simply did not believe the defendant’s testimony. Those 45 depositions around the country paid off, as plaintiffs were able to develop inconsistent stories over four years of discovery. At trial, several of the defendants “flip-flopped” on their deposition testimony so they would be consistent with each other.

Once in a while, Valley practitioners should step out of their comfort zone. Take an out-of-state case! It’s different! It’s challenging! It is one of the benefits to being a solo or small firm lawyer – Yes, you can! 🏹

James E. Fox practice areas include medical malpractice, legal malpractice, products liability, personal injury and wrongful death. Since 1957, the law firm of Fox and Fox has been providing legal representation to victims of catastrophic injuries. Fox can be reached at (818) 986-4494 or foxandfox@sbcglobal.net.



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To apply for the credit, please follow the instructions on the test answer form on page 19.

The Hidden Secret Among Lawyers

Stress, Anxiety and Addictions

By Dr. Lois Suenaka-Thelen

SOME LAWYERS HAVE SAID their job feels like being in prison without parole. Concerns shared by many attorneys are the never ending stress of long hours spent on the job, meeting deadlines, the fear of losing lawsuits when costly mistakes are made, their responsibility to their clients in crises, and the uncertainty of the outcome their work will have on their cases. Other stressors, just to name a few, are working in an adversarial environment that is highly competitive, having catastrophic thoughts of failure and suicidal ideations, and strained family relationships which account for high divorce rates among lawyers.

The solo practitioner can have even greater stress due to the responsibility of running an office without a support staff to do the time consuming menial tasks that take precious time away from more pressing and demanding work. Add to this, the solo practitioner often feels isolated working alone.

In the book *Stress Management for Lawyers*, written by Amiran Elwork, Ph.D., he writes, "Surveys of lawyers have consistently found high rates of job dissatisfaction, dropping out of law and switching to new careers." Elwork notes that law school does not prepare its students for the stressors related to their jobs.

Female lawyers, especially married women, despair that the legal profession is not family friendly. In light of their caretaking role as the primary caregivers for their children and sometimes caring

for their aging parents, many feel guilty because their time devoted to their work minimizes the quality time spent with their children and family.

What about recreational time for self-care and renewal? The lack of time and fatigue takes its toll. The unmarried female lawyer's lament is "who has time for dating and starting new relationships? There aren't enough hours in the week and when I do have some extra time I am so exhausted and behind on personal matters I feel discouraged that I will ever find a mate."

These issues are not new or a secret among lawyers. So what is this hidden secret confronting increasing numbers of lawyers? To illustrate what this secret is, a case study of a lawyer seeking counseling may be illuminating. Let's call him RJ, age 44, married with three young children. He left a law firm eight years ago to begin a solo practice.

When RJ entered counseling he was feeling severely depressed so that he was barely audible when he spoke. He complained of feeling extremely anxious and experienced panic which was often debilitating. He reported that sleep was elusive and he longed for uninterrupted sleep. In the morning, his insomnia left him feeling exhausted, not refreshed. Having to face another long day at work felt daunting.

RJ's mounting fatigue interfered with his ability to focus and concentrate on his work. He said he felt helpless to find a solution to his problems and felt overwhelmed by the pressures of

working on a prolonged and difficult case with "so much at stake financially." He was panicked that he was losing control. He fixated on "losing everything and becoming homeless." On several occasions, he had considered "ending it all" by killing himself. He said that he felt sad and hopeless about his future. At home, marital discord colored his relationship with his wife as the couple engaged in shouting matches in the presence of their children.

The hidden secret of depression, which includes paralyzing anxiety, alcohol and substance abuse, suicidal ideation and ebbing self confidence, are not issues discussed among lawyers. Keeping this information secret and hidden is necessitated by the competitive nature and adversarial environment within the legal profession, where a perception of confidence and competence demand that one repress any stigma associated with depression, leaving one feeling isolated without help. To do otherwise risks appearing "weak" and may be tantamount to professional suicide. Often, these concerns are not shared with their spouse for fear of not being understood and ridiculed. To compound these matters, there is much self-blame and shame for feeling out of control.

Confronted with catastrophic thoughts of failure and the anxiety and pressures associated with the demands of litigation, some seek relief through alcohol and other substances in an effort to numb their feelings by

self-medicating. As noted earlier by Elwork, some lawyers choose to leave the profession due to burnout, another indication of chronic depression. Others, on the other hand, work even longer hours to ensure greater control over their anxiety at the expense of their family and personal life. Many ignore and neglect their health needs such as annual doctor visits for physicals, regular exercise and nutritional needs.

Biological imbalances are created by chronic stress. Cortisol, a stress hormone produced by the body, is triggered leading to greater anxiety and panic. This powerful chemical is released by the adrenal glands and results in extreme physical discomfort, serious impairment in thinking and judgment, missing deadlines and making avoidable and costly mistakes. Thus, left unchecked, chronic stress and unhappiness can lead to paralyzing depression. It can predispose one to serious medical issues such as alcoholism, high blood pressure, heart disease, and a host of other stress related disorders requiring medical attention.

What about interpersonal relationships with one's spouse and family? Let's return to RJ and his personal life. RJ reported that his long hours away from home even on weekends had caused much quarreling and marital conflict. Due to his state of exhaustion, frustration and mounting anxiety, RJ had become impatient with his family. His wife accuses him of being angry and critical, often fueled by his perfectionism where "good enough is never good enough." She complains that he is emotionally withdrawn and unavailable. Physical intimacy is rare.

RJ admits that he yells at his kids and scares them. He feels ashamed that his children are growing up to be afraid of their dad. He says that when he comes home after a long grueling day at the office, he just wants to be left alone. His spouse, on the other hand, has spent a long day with the children and longs for adult companionship. She wants his participation in household matters and help with the kids and their homework. Meanwhile, all RJ wants to do is relax and be left alone. No more demands! He says he feels a lot of guilt because he

doesn't have any energy left to give to his children, even to play with them. There are threats of divorce.

Here, we see an unhappy family in distress. Every member of this family is hurting. Marriage and family life becomes more challenging when outside pressures are brought to bear, namely one's work, the current financial downturn and an uncertain future. Coupled with depression and anxiety, add alcohol and substance abuse to the mix, and there are serious repercussions ahead.

The Journal of Law and Psychiatry, Vol.11, 197-209 reported that "studies of intoxicated individuals have indicated that the presence of alcohol in the bloodstream interferes significantly with the acquisition and recall of new information, both critical cognitive capabilities for practicing lawyers."

A study conducted by the Department of Psychiatry and Behavioral Science, School of Medicine, University of Washington, reported that 1180 lawyers were assessed with the *Michigan Alcoholism Screening Test-Revised* (MAST).

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The MAST is highly respected for its reliability as a screening tool. If an individual answers yes to five or more of the MAST's 24 true-false statements, it is very likely that the individual is abusive of or dependent on alcohol. The statistical data used in this report reflects this population.

A study conducted by K. Merikangas, J.F. Leckman, et. al., "Familial transmission of depression and alcoholism," 42 *Archives of General Psychiatry* 368-374, estimates that 3 to 9 percent of individuals in Western industrialized countries suffer from some form of serious depression. "Indicative of the difference between the general population and lawyers in the Washington study of distress symptoms, 19% of the Washington lawyers suffered from statistically significant levels of depression. Of these individuals, most were experiencing suicidal ideation. In addition, they typically isolated themselves which greatly exacerbates the risk of their acting upon these suicidal thoughts."

Based on this information, it is strongly recommended that lawyers who are experiencing these symptoms enter counseling or medical treatment and make an attempt to end their isolation, thus reducing the possibility of acting upon their suicidal ideation.

Eighteen percent of the lawyers were problem drinkers. According to the *National Clearinghouse for Alcohol and Drug Information*, (Supra, note 17), this percentage is almost twice the approximately 10 percent alcohol abuse and/or dependency prevalence rates for adults in the United States. "Alcoholism and depression are independent disorders, and alcoholism is generally not a masked form of depression. Yet five percent of the Washington lawyers suffered from both alcoholism and depression. This result is of particular concern because depression that follows the onset of alcoholism is associated with poor social consequences and undesirable life events, such as marital breakdown, and has been shown to be highly predictive of suicide attempts and relapses."

It is also interesting to note that in the 42 *Archives of General Psychiatry* 386-394 (1987) reported that while

approximately 18 percent of the lawyers who practiced 2 to 20 years had developed problem drinking, 25 percent of those lawyers who practiced 20 years or more were problem drinkers. Alcohol abuse and dependency is a chronic and progressive disease. It can take many years to become evident in some cases. As a result, those who have practiced longer appear to be more susceptible to developing problem drinking."

An additional note of interest in gender difference indicated that men were more likely than women to develop into problem drinkers, while women were more likely than men to experience depression.

An intriguing correlate reported by the University of Washington Study was that "cocaine use exceeded twice the national average. Since the users tended to be younger, we do not yet have definitive data as to how many will develop into cocaine abusers. However, it is of real concern that 26 percent of the sample in the study had used cocaine at some point in their lives, compared to 12 percent for the general population.

What is a real concern to the abusing practicing lawyer is the statement made by the ABA *Fifteenth National Conference on Lawyer's Professional, Responsibility, Impaired lawyers discipline or rehabilitation*, that states in part, "Since mere possession of cocaine is a felony, conviction of which mandates disbarment for violating the rules of professional responsibility in most jurisdictions..." (May, 1989).

An alarming message written by The Legal Profession Assistance Conference on *Alcohol Abuse and Addiction in the Legal Profession* reports the following: "Lawyers and judges are no exception... alcoholism appears to account for 95% of addictions in lawyers and judges. Roughly 1 in 5 lawyers are addicted to alcohol." The article posits that "there is a correlation between alcoholism and malpractice and discipline. Studies in Canada and in the United States estimate that approximately 60% of discipline prosecution involves alcoholism as does 60% of malpractice claims."

Further, the State Bar of California has the power to impose court jurisdiction under the State Bar Act upon an impaired lawyer. (Bus. & Prof.

C. § 6180 *et seq.*) For example, serious personal problems, including marital difficulties or financial pressures, can interfere with the attorney's performance of his or her professional responsibilities and result in a violation of ethical rules. (See *Smith v. State Bar* (1985) 38 Cal.3d 525, 540, 213 Cal.Rptr. 236.245 ["even in the face of serious personal problems, an attorney has a professional responsibility to fulfill his duties to his clients or to make appropriate arrangements to protect his clients' interests"; *Gary v. State Bar* (1988) 44 C3d 820, 824, 244 Cal.Rptr. 482, 483-484 [alcohol problem]; *Snyder v. State Bar* (1976) 18Cal.3d 286, 293, 133 Cal.Rptr. 864, 868 [mental and emotional strain]

Clearly, the staggering consequences of this hidden secret cannot be ignored. Many lawyers, including successful lawyers, handling large cases find themselves overwhelmed and anxious. The successful ones, however, find solutions to their problems, including problems lawyers can't publicly admit. It is not surprising to learn that some of the best advocates have spent time in counseling.

Being well helps lawyers (and their clients). In RJ's case, he made the courageous decision to seek counseling where he could freely discuss his concerns in a safe and totally confidential setting. The outcome for RJ was significantly improved by gaining the insights and behavior adjustments necessary to address the chronic stress undermining the deterioration of both his career and family life. With some course corrections and tools to work with, his confidence was restored. RJ continues his solo practice as a litigating attorney. 🐼

Dr. Lois Suenaka-Thelen is a licensed Marriage and Family Therapist with a private practice in Sherman Oaks since 1988. Dr. Suenaka-Thelen specializes in relationships, depression and anxiety disorders. She can be reached at (818) 501-4923 or loisthelen@dslextrreme.com.



MCLE Test No. 23

This self-study activity has been approved for Minimum Continuing Legal Education (MCLE) credit by the San Fernando Valley Bar Association (SFVBA) in the amount of 1 hour in Detection/Prevention of Substance Abuse or Mental Illness. 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. Most law schools adequately prepare the future lawyer for the stressors of the profession.
True
False
2. Alcohol and substance abuse among lawyers is nearly twice that of the general population.
True
False
3. Cortisol is a natural hormone produced by the body to help alleviate stress and anxiety.
True
False
4. Lawyers in solo practice generally have less stress than those who work for large firms.
True
False
5. Studies indicate that there is no direct correlation between alcoholism and malpractice discipline.
True
False
6. Male lawyers are far more likely to experience work related depression than female lawyers.
True
False
7. Depression is often coupled with anxiety, difficulty concentrating and staying focused.
True
False
8. Chronic stress unchecked can affect ones thinking and judgment and making avoidable and costly mistakes.
True
False
9. When a lawyer feels overwhelmed by stress, interpersonal relationships are strengthened through honest self-disclosure.
True
False
10. Lawyers as a professional group are better informed about their health needs and take necessary action more than the general population.
True
False
11. Acquisition and recall of information is significantly compromised with alcohol consumption.
True
False
12. Suicidal ideation, in and of itself, is not a serious risk requiring medical treatment and counseling.
True
False
13. Alcoholism is a masked form of depression.
True
False
14. Alcohol abuse is a chronic and progressive disease and it doesn't take long to become evident to others.
True
False
15. The longer one practices law, a higher percentage become vulnerable to alcohol dependency and abuse.
True
False
16. In many jurisdictions, possession of cocaine is a felony with conviction leading to disbarment.
True
False
17. Studies estimate that approximately 60% of discipline prosecution involves alcoholism as does 60% of malpractice claims.
True
False
18. Impaired lawyers due to serious personal problems and special circumstances are often relieved of their professional responsibilities and duties to their clients.
True
False
19. Women tend to become more anxious and closet problem drinkers than men.
True
False
20. Symptoms of depression do not include loss of energy or insomnia.
True
False

MCLE Answer Sheet No. 23

INSTRUCTIONS:

1. Accurately complete this form.
2. Study the MCLE article in this issue.
3. Answer the test questions by marking the appropriate boxes below.
4. Mail this form and the \$15 testing fee for SFVBA members (or \$25 for non-SFVBA members) to:

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

METHOD OF PAYMENT:

- ☐ Check or money order payable to "SFVBA"
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Credit Card Number _____

Exp. Date _____

Authorized Signature _____

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

Name _____
Law Firm/Organization _____
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State/Zip _____
Email _____
Phone _____
State Bar No. _____

ANSWERS:

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

- | | | |
|-----|-------------------------------|--------------------------------|
| 1. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 2. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 3. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 4. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 5. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 6. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 7. | <input type="checkbox"/> True | <input type="checkbox"/> False |
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| 9. | <input type="checkbox"/> True | <input type="checkbox"/> False |
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| 12. | <input type="checkbox"/> True | <input type="checkbox"/> False |
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| 17. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 18. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 19. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 20. | <input type="checkbox"/> True | <input type="checkbox"/> False |

Alternative Careers for JDs

By Lance M. Werner

Reprint permission provided by the Michigan Bar Journal; article previously published in the June 2004 issue.



OCCASIONALLY, LAWYERS FIND THEMSELVES at a crossroads in their careers. They reach the conclusion that the practice of law no longer interests them, which raises the question about what they can do with their law degrees besides practicing law. Law school graduates and new attorneys may also face the same dilemma. I made it through law school and passed the bar exam, now what? There are numerous people who have successfully switched careers and found happiness down a different career path. This brief article will examine some options that are available to people who wish to research alternative legal careers.

Career Choices and Self-Assessment

The career options for a person with a Juris Doctorate degree are only limited by his or her imagination. Developing a career plan is an important step when considering a change of career. When developing a career plan it will be crucial to identify personal interests. It is also important when designing a career plan to take a self-inventory of any skills currently possessed, such as previous management or accounting experience through previous employment. It will be easier to identify which jobs might be a “good fit” after a person has completed a self-inventory. This process can also identify areas that may need reinforcement through the learning of new skills and possibly further schooling.

There are numerous resources available on the Internet that have career assessment and personality tests such as the Keirsey Temperament Sorter II, (http://www.advisorteam.com/temperament_sorter/register.asp?partid=1). These sites may assist with the self-assessment process.

When considering an alternative to legal practice it is vital to make educated decisions regarding what direction one should take to ensure the best fit. One way to accomplish this is through research. It might be useful to people employed in a field that is of interest to gain additional insight about the prospective field. Another consideration is to find a mentor to assist with the learning process that is integral to any new

employment setting. Setting long-term goals can also be a useful tool when considering a change of careers. It might be helpful to set five-year goals and even ten-year career goals within a prospective field. This process can help lend direction to a person’s efforts. The process of considering a new career can be daunting. Fortunately, there are a number of texts and other resources that can provide guidance to JDs engaged in the endeavor of trying to find a new career.

There are several texts that are excellent resources for someone considering a new career. One text that I have found particularly insightful is *What Can You Do With a Law Degree? A Lawyer’s Guide to Career Alternatives Inside, Outside, & Around the Law* by Deborah Arron. This book features a cornucopia of useful information on alternative careers. Some of the areas covered are successful career development, dealing with changes, self-assessment techniques, conducting research about alternative careers, coping with transition, putting plans into action, and there are also extensive appendices containing a myriad of practical resources and research tools.

There are a number of other useful texts. They include: *Judgment Reversed: Alternative Careers for Lawyers* by Jeffrey Strausser, *The Lawyer’s Career Change Handbook: More than 300 Things You Can Do With a Law Degree* by Hindi Greenberg, JD, *Preferred: 400+ Things You Can do With a Law Degree (Other Than Practice Law)*, published by Federal Reports, Inc., and *Alternative Careers for Lawyers*, by Hillary Mantis. It should be noted that these texts are only a few that are available.

There are a number of electronic resources that are also available and of great use to anyone wishing to research and identify potential alternative legal careers. *The Occupational Outlook Handbook*, produced by the U.S. Department of Labor, Bureau of Labor Statistics, located at <http://www.bls.gov/oco/>, is a tremendous research tool for anyone seeking insight into different careers. The resource outlines various facets of different careers including information about the nature of the work, working conditions, and also what requirements may be needed to begin a career in the selected field. This resource

would be a good place to being researching alternative legal careers.

There are a number of other electronic resources that can also be of assistance to people who are researching potential careers. Some other useful resources are: Occupational Information Network, O*net OnLine, <http://online.onetcenter.org/>, JobStar, Career Journal.com from the Wall Street Journal, <http://www.jobstar.org/tools/career/spec-car.cfm>, and Michigan Occupational Reports for Exploration, http://www.michigan.gov/careers/0,1607,7-170-22526_23422-64989—,00.html. These websites only represent a fraction of the information that is available on the World Wide Web.

Searching for Potential Employers

The next step after deciding on a career path will be to find a job. Searching for potential jobs has become much easier because of the Internet. There is a multitude of websites that are exclusively dedicated to job hunting. Among the resources that are available are two well known sites, Monster.com, <http://www.monster.com/>, and Yahoo's HotJobs, <http://hotjobs.yahoo.com/>. Both of these sites have extensive job listings that are searchable by both geographic area and field. Both of these sites also permit users to submit a résumé and apply for jobs online. The best news about these resources is that they are for the most part free, unless additional paid services are sought such as résumé and cover letter writing assistance.

There are a number of other employment sites available as well. A few sites that have a multitude of job listings are: America's Job Bank, <http://www.ajb.dni.us/>, USAJobs, for federal employment opportunities, <http://www.usajobs.opm.gov/>, and Executiveopenings.com, <http://www.executiveopenings.com/>.

Conclusion

The prospect of starting a new career can be intimidating, but it also can be exhilarating and rewarding. The sources that have been covered in this article represent a fraction of what is available. Initially, it may be useful to engage in wide scope searches for information. One electronic tool that is particularly useful in this respect is the Google search engine, <http://www.google.com/>. It will be of the utmost benefit for people seeking a change of career to arm themselves with as much information as possible to enable them to be knowledgeable consumers in today's job market. 🐼

Lance M. Werner, a member of the Committee on Libraries, Legal Research and Legal Publication, is a reference librarian at MSU–DCL Law Library and has been with MSU–DCL since 1998. He earned a B.A. in Psychology from the University of Northern Colorado in 1996, a J.D. from MSU–DCL in 2001, and a M.L.I.S. from Wayne State University in 2004. Mr. Werner is a member of the State Bar of Michigan and the American Association of Law Libraries. Before becoming a librarian Mr. Werner was employed as a small business manager in Colorado. He can be reached at (517) 432-6878.



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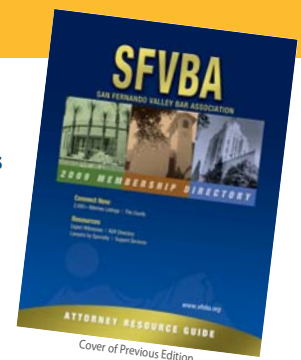
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Ranch Damages for Trespass-by-Fire

By Douglas G. Gray

N KELLY V. CHICAGO BRIDGE AND IRON, 178 CAL.APP.4TH 442(2009), the court considered fire damage recoverable by property owners and deliberated on:

- When damages may be recovered in excess of the fair market value of the property at the time the damages were suffered;
- The recoverability of attorney's fees pursuant to Section 1021.9 of the Code of Civil Procedure;
- The recoverability for damages for annoyance, discomfort and inconvenience; and
- When damages to trees may be doubled pursuant to Section 3346 of the Civil Code.

The Second Appellate District unanimously affirmed three aspects of the trial court's ruling:

1. Doubling the jury's verdict of \$375,000 for tree damages to \$750,000 pursuant to Civil Code Section 3346;
2. Approving the jury's verdict of \$2,629,810 as the costs of rebuilding and repairing the plaintiff's property, which had a fair market value of \$1,800,000 at the time of the fire; and
3. Awarding attorney's fees of \$756,900 pursuant to Section 1021.9 of the Code of Civil Procedure.

The Facts

The Ranch

Kelly purchased his 34-acre ranch in northwestern Los Angeles County in 1972. It had three houses, each with its own pasture, a vintage wooden barn, garages, a kennel, chicken coops, tack buildings, stud barns, hay barns, and utility buildings. It had 150 to 200 oak trees and an environmentally protected stream. The plaintiff lived on the ranch from 1972 to 1994 or 1995. Then, he rented the three houses. He retained the right to use other portions of the property and continued to store personal items there.

The Fire and Floods

In early June 2002, the defendant was constructing a water tank about 15 miles from Kelly's ranch. The jury in the liability trial found that the defendant

"negligently and recklessly" caused the fire (known as the "Copper Canyon fire") but did not find malice.

The fire burned the hillsides surrounding Kelly's ranch and destroyed the barn and a number of oak trees. In the winters of 2002-2003 and 2004-2005, heavy rains further damaged the ranch. The jury found that the fire was a "substantial factor" in the flooding.

Doubling the Damages for Lost Trees Was Proper

The appellate court concluded that "the plain language of section 3346 mandates the recovery of double tree damages in this case," which specifically concerns damage to trees caused by trespass. The court held that "it is now established that the spread of a negligently set fire to the land of another constitutes a trespass."¹

The court rejected the appellant's claim that Sec. 13007 of the Health and Safety Code applies, which would not permit doubling of the damage, and concluded that "the trial court properly awarded double damages for injury to Plaintiff's trees..."

\$2.6 Million for Restoration Costs was Proper

While the general rule limits property damages to the fair market value of the property at the time of the tort, the

“personal reason exception” permits awards in excess of the fair market value where the restoration costs are reasonable. The appellate court rejected the appellant’s contention that the damages were unreasonable as a matter of law based on comparisons of awards in other cases.

The court stated that, “Damages must be assessed in the matter “most appropriate to compensate the injured party for the loss sustained in the particular case...”

The court concluded that “there was substantial evidence that a person in Plaintiff’s position reasonably could choose to restore the property to its prefire condition and that the damages awarded by the jury were necessary for such restoration.”

Attorney Fees of \$756,900 were Proper

Code of Civil Procedure, Sec. 1021.9 holds that in an action to recover damages to personal or real property resulting from trespassing on lands either under cultivation or intended or used for the raising of livestock, the prevailing plaintiff is entitled to reasonable attorney’s fees.

In *Kelly*, the ranch was rural horse property, improved with facilities for horses. It was zoned for agricultural use, and had been used to breed a variety of animals. Advertisements published both before and after the fire indicated that the ranch could be used for livestock-type purposes; most of the tenants had maintained horses or other animals.

The court rejected the appellant’s contention that Sec. 1021.9 did not apply because the ranch was not at the time of the fire under cultivation or being used for the raising of livestock. The appellate court noted that, “[T]here is no requirement in the statute that the property be used at the time of the wrong for raising livestock – the statute requires only that the property be ‘intended’ for such use.”

Attorney’s fees are therefore properly recoverable when a trespass is committed by fire and the property satisfies one of the several alternative bases listed in Sec. 1021.9.

Kelly’s Damages for Annoyance and Discomfort Were Disallowed

The jury had awarded \$543,000 for

Kelly’s annoyance and discomfort, but this award was disallowed by the court. Cases considering this question² had involved plaintiffs who were “occupants” in the sense that they physically resided on the property. Those cases permitted damages for annoyance and discomfort.

The appellate court concluded that Kelly’s use of the property to store personal property did not qualify him as an “occupant,” so he could not recover damages for annoyance and discomfort. 🐾

Douglas G. Gray represented Kelly in all phases of the case, including both the liability and the damages trials. He can be reached at (818) 888-7632 or douglaw368434@aol.com.



¹ *Elton vs. Anheuser Busch Beverage Group, Inc.* (1996) 50 Cal. App. 4th 1301, 1305-1307.

² *Kornoff vs. Kingsburg Clifton Oil Co.*, (1955) 45 Cal. 2d 265; *Armitage vs. Decker*, (****) 218 Cal. App. 3d; *Arcadia, California, LTD vs. Herbert*, (1960) 54 Cal. 2d 328; *Herzog vs. Grosso*, (1953) 41 Cal. 2d 219; *Anderson vs. Souza*, (1952) 38 Cal. 2d 825.

Recovery Analysis

What Some Rural Property Owners Can Expect

Under *Kelly v. Chicago Bridge and Iron*, 178 Cal.App.4th 442(2009), property owners may recover:

- Double damages for lost trees
- Damages in excess of the fair market value of the property where the owner has a personal reason to repair the property and the costs of repair are reasonable
- Attorney fees
- Damages for the annoyance and discomfort they suffer as a result of the fire trespassing upon their property when plaintiffs are “occupants”



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SFVBA Member Mark Shipow Pays it Forward

By Angela M. Hutchinson

Teaching Justice to America's Youth

THE SAN FERNANDO VALLEY BAR ASSOCIATION WOULD LIKE to recognize attorney Mark Shipow for his commitment to mentoring youth. He volunteers as a coach in the mock trial competitions for middle and high school students for the Constitutional Rights Foundation (CRF). CRF is a non-profit organization dedicated to helping young people learn about their constitutional heritage, give voice to their ideas and opinions, and make well-informed decisions as citizens in a democracy. The student competition consists of the students conducting a trial of a criminal case, based on a fictitious fact pattern and supporting materials.

Mark Shipow is a 1979 graduate of UCLA Law School. He spent the first 27 years of his career as a commercial litigation attorney in major law firms, most recently as a partner in the Los Angeles office of Holland & Knight. He now has his own practice where he handles commercial litigation, including intellectual property, shareholder and partner disputes, real estate disputes, and contracts. In addition to Shipow's work with the CRF, he is regularly involved with the UCLA's Law School first year law school mentor program, and frequently judges the UCLA Moot Court competitions.



Mark Shipow

Q: Why do you feel it is important for attorneys to pay it forward?

A: We are very privileged to be able to practice law in the U.S. judicial system, and privileged to be U.S. citizens. We all have an obligation to pay for that privilege by, in part, helping others and giving of ourselves to society. Everyone needs to choose how they want to give, but we all need to do so in some way

Q: How did you first get involved with CRF?

A: Last summer, a client/friend told me that the person who had been coaching the Sierra Canyon Middle School team was going to coach the high school team. The school therefore was looking for a volunteer coach for the middle school team, and my friend asked whether I might be interested. I do not have kids at Sierra Canyon, and my previous experience with middle-school-aged children was when my son and daughter were that age (they are now 26 and 24, respectively), and my volunteer work with Boy Scouts when my son participated. I do have some teaching experience in terms of conducting seminars and tutorials, but those involved primarily practicing attorneys. I had never before heard of the CRF mock trial competition. However, after getting some information on the program, it sounded interesting and challenging.

For the last couple of years I have had my own civil practice (after nearly 30 years as a litigator in large firms). When I went out on my own, one of the things I decided early on was that I would try to take advantage of new and different law-related opportunities, whether they were directly related to my practice or not. This seemed like one of those opportunities that I should take. My friend recommended me to the Principal of Sierra Canyon, Irene Allert. After meeting with her and the prior coach over the summer, they asked me to coach and I accepted.

Q: What do you enjoy most about the mock trial?

A: The fun started last fall. The CRF mock trial program is very well run and highly structured. The case for the fall program involved an entertainment critic who was murdered. The defendant was a stand-up comedian who had been "trashed" by the critic after one of his performances. Fact statements were provided for four prosecution witnesses and four defense witnesses. Students played the roles of the eight witnesses, including the defendant, as well as three prosecution attorneys and three defense attorneys, a bailiff and a court clerk. The competition involved conducting a bench trial of the defendant, accused of murder. Each aspect of the trial

(opening/closing and witness direct and cross-examinations) is strictly timed, and a set of rules governs the conduct of the trial, including making objections (which are somewhat pared down from those normally available).

Q: How much effort is involved in volunteering with CRF?

A: Shortly after the fall semester started, we held an informational meeting for those seventh and eighth graders interested in participating in mock trial. More than 2 dozen kids showed up. Some of the students had participated the prior year, while others were novices. I spent about 30 minutes telling the students about myself, and about the mock trial program. I told them my primary goal was to help them learn something about our legal system, making it as fun and interesting for them as possible. I emphasized that there was going to be a lot of work involved. It turned out that was an understatement.

Over the next approximately 10 weeks, I met with the students 2-3 afternoons per week for about 90 minutes, plus each Sunday for about 3 hours. In addition, I spent a significant number of hours preparing materials and "lesson plans" for the participants. Having my own practice allowed me the flexibility to devote time to this program. I also had help from an assistant coach and from a few parents who were also lawyers.

Q: What takes place during your coaching sessions with the students?

A: During our meetings, I helped the students understand the facts of the case. We worked together to prepare a chronology of the key facts. We also worked together to outline the key testimony from the various witnesses. Working as a group and in small teams, we prepared testimony outlines for direct examination and cross examination of all eight witnesses. We also work in small teams to prepare opening statements and closing arguments, and to learn about making and opposing evidentiary objections. We also worked with the clerks and bailiffs to teach them the duties they would fulfill during the trial. In essence, I take the students through the entire learning experience of conducting a criminal trial, albeit a shortened one.

Q: Tell us more about the specifics of the competition aspect of the mock trials.

A: The competition rounds were held in November. We had split our students into a prosecution team and a defense team, each with 3 attorneys, four witnesses, a clerk and a bailiff. In the

first round, our defense team was paired with the prosecution team of another school. The competition was held at the Stanley Mosk Courthouse downtown, in one of the large courtrooms. Parents and friends were in attendance. A judge or attorney presided as the judge for the trial, and 2-3 attorneys acted as scorers.

The students for both teams handled themselves just as in a real trial, dressed accordingly, speaking respectfully, conducting the trial. It was truly amazing to see how polished all of the students were. Although most of the material was scripted, it was necessary to adjust and ad lib on many occasions, and the students did that very well. Every aspect of the trial was subject to strict time limits, and so the students had to be able to very carefully focus on the particular task, and add or cut in order to accommodate the time restraints.

Our team did quite well in its first round. Scores were published the next day, and we eked out a narrow victory. The following week our prosecution team competed against another school's defense team. Our prosecutors performed even better than our defense team, and gained another victory. We

therefore advanced to the quarter finals, in which our prosecution team again competed and again won. Our defense team then was assigned to compete in the semifinals, and unfortunately suffered a narrow loss to the team that then went on to win the competition. Several of our team members were recognized with outstanding achievement awards.

Q: Would you encourage other attorneys to become a CRF volunteer?

A: Yes. The mock trial experience was terrific. I had a great time working with, teaching, and learning from the students. I think they enjoyed the experience as well. The feedback I received from the students and parents was generally very positive and appreciative. Although everyone had to work hard, I believe we succeeded in making the exercise fun and interesting. And winning certainly helped! 🏆

Mark Shipow can be reached at (818) 710-1906 or mshipow@socal.rr.com. To volunteer for the Constitutional Rights Foundation's Mock Trial Competition, contact Senior Program Director Laura Wesley at (213) 316-2128.



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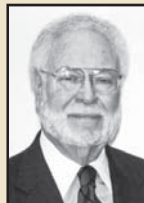
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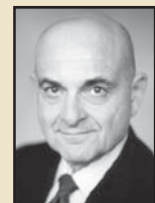
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– Creator Stan Lee, *Amazing Fantasy* #15 (August 1962)

QUOTING PETER PARKER'S Uncle Ben in *Spider Man* may seem misplaced in an article about attorneys' contributions to their community. However, it is very much appropriate given the incredible gifts that many SCVBA members have been blessed with in their professional lives. One of the cornerstone goals of the Santa Clarita Valley Bar Association's Executive Board for 2010 is to increase members' ability to give back to the community which has helped build and sustain their individual practices.

In October, the SCVBA will recognize several local heroes in the community during the 6th Annual Law Appreciation Day. This event has become one of the premier awards events in the Santa Clarita community, and has been praised for recognizing those who make this community exceptional. In addition to recognizing individuals who have gone above and beyond in local law enforcement ranks, the Bar also recognizes local citizens who go the extra mile and give of themselves unselfishly for the collective good. The event will take place beginning at noon on October 1, 2010, at the Hyatt Regency Valencia and will include a very special guest speaker.

Additionally, the SCVBA is investigating new ways to increase membership participation in pro bono and community service activities. The newly-formed Community Services Committee has been charged with

identifying and implementing a program which will provide greater opportunity for Santa Clarita Valley lawyers to donate their time to clients who otherwise might not be able to afford the services of competent legal counsel.

While it may not be viable to have a stand-alone program right away, the Bar is looking to cooperate and work in conjunction with other organizations which already have volunteer and/or pro bono panels of counsel available for the community. Eventually, the goal of the SCVBA is to be the primary resource in the community for individuals and not-for-profit agencies in need of reduced fee and pro bono legal services.

For those who have an interest in participating, and would like more

information on the new Community Services Committee, please contact Mark Young at myoung@donahoeyoung.com.

As a reminder, the Santa Clarita Valley Bar Association's June CLE event will take place on June 17 at 12:00 noon, at the TPC-Valencia. The program in June will provide attendees with the mandatory one hour of MCLE credit in the Elimination of Bias category, required every three years. The event includes a lunch and is being generously sponsored by L/B/W Insurance and Financial Services (www.lbwinsurance.com). Members pay \$35 and non-members pay \$45 to attend. 📌

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New Members

The following new members joined in March and April 2010:

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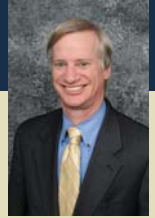
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SEYMOUR I. AMSTER

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Valley Community Legal Foundation of the SFVBA Annual Law Day Dinner



*Building a Better Community Amidst
The Challenges of the 21st Century*

**Saturday, June 5, 2010
at 6:00 PM
CBS Studios, Studio City
Silent and Live Auction**

Probate & Estate Planning Section Recognizing Elder Abuse: Prevention through Planning

**JUNE 8
12:00 NOON
MONTEREY AT ENCINO RESTAURANT
ENCINO**

Attorney Stuart Zimring will discuss recognizing the signs of elder abuse and the best means to protect your clients.

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

Family Law Section Self-Defense Techniques for Lawyers



**JUNE 12
1:00 PM – 3:30 PM
TARZANA KARATE STUDIO
TARZANA**

Learn how to defend and protect yourself in your office, car and on the street. The hands-on training will be taught by Grand Master Ho Sik Pak and includes a discussion about self-defense led by Gary Weyman, Irene Mak and Michelle Robins.

MEMBERS
\$30 includes a book showing simple self-defense techniques

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.

Workers' Compensation Section Dental, TMJ and AMA Guide Impairment

**JUNE 16
12:00 NOON
MONTEREY AT ENCINO RESTAURANT
ENCINO**

Dr. Burton Sobelman, DDS, will discuss the AMA guides regarding dental impairment and the impact on workers' comp cases.

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

New Lawyers Section Best Practices for New Lawyers

**JUNE 16
6:30 PM
SFVBA CONFERENCE ROOM
WOODLAND HILLS**

Financial Adviser Serria Bishop of Waddell & Reed will outline the common financial mistakes to avoid when starting a new practice, and will explain how financial planning can help you build and manage a successful practice, and can help protect yourself.

FREE to New Lawyer Section Members
1 MCLE HOUR

Santa Clarita Valley Bar Association Elimination of Bias in Your Practice

**JUNE 17
11:30 AM
TOURNAMENT PLAYERS CLUB
VALENCIA**

Myer Sankary discusses how attorneys can try to eliminate bias in their daily practice.

MEMBERS	NON-MEMBERS
\$35 prepaid	\$45 prepaid
\$45 at the door	
1 MCLE HOUR ELIMINATION OF BIAS	

Litigation Section Litigation Defense Strategy

**JUNE 17
6:00 PM
SFVBA CONFERENCE ROOM
WOODLAND HILLS**

James Curry, Supervising Attorney for Bollington Stiltz et al., staff counsel for Farmers Insurance Exchange, discusses the defense and insurance perspective and best tools to employ in preparation for trial.

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

Women Lawyers Section Dressing the Part

**JUNE 22
12:00 NOON
NORDSTROM
WESTFIELD TOPANGA PLAZA MALL**

How people perceive you is key to job performance. Join us for this informal gathering and meet with a Nordstrom's sales professional to discuss how to best present yourself in court and in the office.

MEMBERS	NON-MEMBERS
\$30 prepaid	\$40 prepaid
\$40 at the door	\$50 at the door

Business Law, Real Property & Bankruptcy Section Prejudgment Remedies in a Down Economy

**JUNE 23
12:00 NOON
SFVBA CONFERENCE ROOM
WOODLAND HILLS**

Attorney Alan Mirman will discuss this timely topic.

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

Family Law Section The Current State of Palimony in California

**JUNE 28
5:30 PM
MONTEREY AT ENCINO RESTAURANT
ENCINO**

Attorney Carol Newman will discuss palimony and give tips on how best to advise your clients.

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

All-Section Meeting Calendaring as a Risk Management Strategy

**JUNE 29
12:00 NOON
SFVBA CONFERENCE ROOM
WOODLAND HILLS**

Joseph Scott of CompuLaw, LLC/Deadlines on Demand LLC, addresses the importance of rules-based calendaring to prevent the leading cause of malpractice claims – calendar-related errors. It also covers malpractice carrier mandates, the complexities of the rules, as well as common mistakes and how to prevent them.

FREE to SFVBA Members
1 MCLE HOUR LEGAL ETHICS

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Wednesday, June 16, 2010 12:00 Noon — 1:00 PM PDT

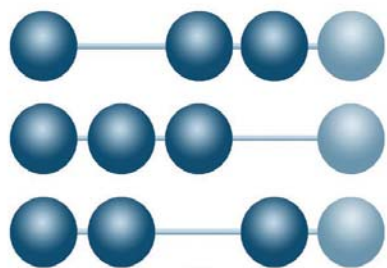
(Register at <https://www1.gotomeeting.com/register/315303329>)

Monday, October 25, 2010 12:00 Noon — 1:00 PM PDT

(Register at <https://www1.gotomeeting.com/register/994545769>)



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