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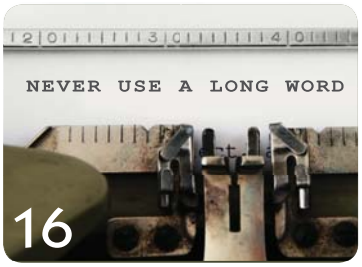

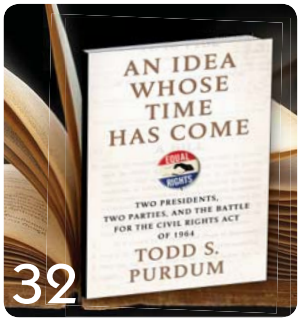

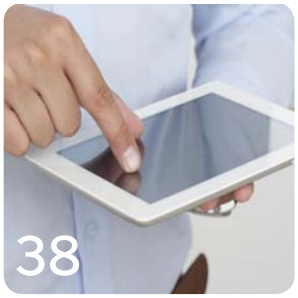

FEATURES

COLUMN

On the cover: *Richard Miller*
Photo by Marco Padilla

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VALLEY LAWYER

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Valley Lawyer is published 11 times a year. Articles, announcements, and advertisements are due by the first day of the month prior to the publication date. The articles in Valley Lawyer are written for general interest and are not meant to be relied upon as a substitute for independent research and independent verification of accuracy.

Printing Southwest Offset Printing

Lessons Learned at the Ice Cream Store

ADAM D.H. GRANT
SFVBA President

agrant@alpertbarr.com

WHEN I WAS GROWING UP, MY FAMILY HAD various traditions. Little did I know that my favorite tradition would become one of my life's most valuable lessons and something to pass on to my three daughters, Jordan, Jenna and Julia.

Life in Phoenix, Arizona during the 60s and 70s was pretty simple for me and included a family tradition of going out with my parents and three siblings to dinner and dessert. Because there were four children (two boys and two girls) in our family, all barely a year apart, my parents wisely opted for a very kid-friendly environment during dinner time.

We usually went to a particular BBQ place that had sawdust on the floor, miniature Conestoga wagons lining the walls and wait staff dressed up in western attire. Yes, it was a bit campy, but as a child it was very entertaining. The real treat was the trip to our local Baskin Robbins ice cream store. Each Sunday after dinner, the entire family piled into the Oldsmobile Vista Cruiser with wood side-paneling and traveled to the Baskin Robbins closest to our house. A couple owned the store and they always remembered the "Grant kids" as we tended to be… well, let's just say, not entirely quiet when we were all together.

Sunday after Sunday, each Grant family member ordered the same thing: my father, a root beer freeze (not a float!); my mother, strawberry ice cream; my brother and sisters, chocolate; and me, vanilla. Week after week we repeated this tradition. Some Sunday evenings were cut short by the realization that a certain amount of procrastination by one or more Grant kid meant that we had to rush home to finish some homework or school project. However, most evenings ended with all six of us licking away at our respective sugar cones.

As we returned to the same Baskin Robbins week after week, I often saw the same people. I remember paying attention to what ice cream they regularly ordered. I thought to myself, "Why would anyone not want to have vanilla? It's the best!" At some point, I made such a comment to my father. Without missing a beat, my father responded, "That's why there are 31 flavors." As a child, I accepted this explanation on its face and did not delve any further.

However, as I grew up, I learned that there were many other flavors to enjoy. Coffee, tempered to a softer consistency was dreamy. Jamoca® almond fudge seemed to satisfy my desire to have some kind of mix-ins with my ice cream. Coconut, with flakes of coconut in the ice cream on a hot night, really hit the spot. As a parent, I recalled my father's simple response and began to truly understand the lesson I learned at the ice cream store years earlier.

There are truly 31 flavors in this world and all should be appreciated and experienced. By that I mean, this world is fully of diversity. We are diverse in virtually every aspect of our life; both inside and out. The San Fernando Valley Bar Association has a Diversity Committee which actively seeks out ways to promote diversity in our profession and Valley community. The committee is one of inclusion and acceptance. I have found my life deeply enriched by appreciating what inclusion and diversity has to offer. Trying to understand other points of views, accepting those views as being important, and learning from them has made me a better husband, father, attorney, brother and friend.

I share these words, thoughts and musings with you as the President of the San Fernando Valley Bar Association to urge each of you to experience a different "flavor" in whatever way you are comfortable. Understand that each flavor is no more important than the next, even if it happens to be the flavor of the month.

I try and share these thoughts with my daughters in a way they can appreciate. At this time, Jordan is returning from her semester in Africa; Jenna is thriving at Cleveland High School after making the decision to explore beyond the realm of private school in hopes of experiencing more diversity; and Julia spent her Saturday night with a friend volunteering at a high school prom attended by all the children in the school's special education department.

I guess some lessons at ice cream stores last a lifetime, and beyond.

SUN	MON	TUE	WED	THU	FRI	SAT
1	**2** *Valley Lawyer* Member Bulletin Deadline to submit announcements to editor@sfvba.org for July issue.	3	4	**5** All Section **Does Your Liquidated Damages Provision Hold Water?** 12:00 NOON SFVBA OFFICE See page 18 Membership & Marketing Committee 6:00 PM SFVBA OFFICE	6	7
8	**9** Tarzana Networking Meeting 5:00 PM SFVBA OFFICE	**10** Probate & Estate Planning Section **Divorce and Death: Good and Bad Choices** 12:00 NOON MONTEREY AT ENCINO RESTAURANT Attorneys Peter M. Walzer and Jonathan Lurie will discuss areas where family law and estate planning intersect. Board of Trustees 6:00 PM SFVBA OFFICE	**11** Litigation Section **Analyzing Damages: Pre and Post Tax and Maximizing Recovery** 6:00 PM SFVBA OFFICE Forensic accountant Barbara Luna shares her valuable insights into analyzing damages.	**12** Real Property Section **Recent Developments in Foreclosure** 12:00 NOON SFVBA OFFICE Join us for the kickoff of our new and improved Real Property Section.	**13** Annual Member Appreciation Reception 5:30 PM THE STAND See page 21	14
15	16	**17** Taxation Law Section **Cancellation of Debt Income** 12:00 NOON SFVBA OFFICE Criminal Law Section **Monitoring Your Clients** 6:00 PM SFVBA OFFICE See page 9	**18** Workers' Compensation Section 12:00 NOON MONTEREY AT ENCINO RESTAURANT	**19** Networking Mixer 6:00 PM GORDON BIERSCH Sponsored by HUTCHINSON and BLOODGOOD LLP See page 9	20	21
22	**23** Family Law Section **Trial Tech Module Eight: Minor's Testimony** 5:30 PM SPORTSMEN'S LODGE Our outstanding Trial Techniques series continues with a distinguished panel of speakers discussing examination of a minor.	**24** Editorial Committee 12:00 NOON SFVBA OFFICE	**25** Bankruptcy Law Section **Metrocraft Factors** 12:00 NOON SFVBA OFFICE Ron Bender and Russell Clementson will update the group.	26	27	28
29	30					

SUN	MON	TUE	WED	THU	FRI	SAT
		1 **Valley Lawyer Member Bulletin** Deadline to submit announcements to editor@sfvba.org for August issue.	2 50 Years Civil Rights Act	3	4  Happy 4th!	5
6	7 **Tarzana Networking Meeting** 5:00 PM SFVBA OFFICE	8	9  Time to Renew Your Bar Membership! Renew online at www.sfvba.org	10	11	12 **Family Law Section** **Trial Tech Module Nine** 9:30 AM SPORTSMEN'S LODGE Our outstanding Trial Technique series concludes with a series wrap up, discussion of evidence and closing arguments.
13	14	15	16 **Workers' Compensation Section** 12:00 NOON MONTEREY AT ENCINO RESTAURANT	17	18	19
20	21	22 **Editorial Committee** 12:00 NOON SFVBA OFFICE	23	24	25	26
27	28	29	30	31		

CRIMINAL LAW SECTION

Monitoring Your Clients

JUNE 17, 2014
6:00 PM
SFVBA OFFICE
FREE DINNER

What is available in today's market for low risk participants who must be monitored? What is available for higher risk participants? (1 MCLE Hour)

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6:00 PM – 7:30 PM
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Time to Reset

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THIS MONTH'S ISSUE CONTAINS ARTICLES ON ACHIEVING A HEALTHY work/life balance. The articles share examples of how our members are balancing their professional and personal obligations. They also provide valuable tips to make an attorney's work a little easier.

In his article, Gary Haase shares his unexpected journey to Japan, where he now lives and works. Haase carved a unique path to reach a happy equilibrium between his professional duties and personal goals, one that required that he meld his interests in the law and public service. By viewing the law as a higher calling, Haase found the personal satisfaction he was seeking.

Our cover story on Richard Miller shows how one local attorney has incorporated his passion for flying into his everyday practice and service activities. With a busy practice and packed community service calendar, Miller takes to the skies to find peace and relaxation. His story will have you wondering how you can incorporate your hobby into your everyday schedule.

Steve Mehta's recommendations for note-taking apps and Douglas Abrams' essay on writing provide great tips to enhance your practice, thereby reducing some of the stress associated with legal work. In his column, Mehta shows readers how to use some of the most popular iPad apps in your everyday work. Abrams' essay highlights George Orwell's time-tested rules for writing for lawyers. The rules have been cited by judges across the country and have influenced scores of writers since its initial publication in 1946. This article and Orwell's essay on writing should be on every attorney's reading list.

I hope this issue inspires you to find ways to achieve a perfect balance. Your idea of balance and your method of achieving it may differ from others', but we all share the same common goal: to find happiness in all facets of life. Summer is the perfect time to hit the reset button, explore, and enjoy!

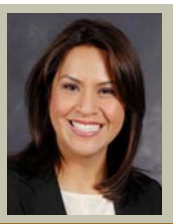
VCLF NEEDS YOU!

The Valley Community Legal Foundation seeks members for its Board of Directors. The Foundation raises money and donates funds to various charitable organizations. The Board is comprised of 40 people–community business persons, lawyers and judges–and meets the third Wednesday of each month. The Board is a friendly and energetic bunch. In order to apply, please forward your resume to Nominating Committee Chair Marcia L. Kraft at marcia@kraftlawoffices.com. Applications are being accepted through July 20, 2014.

VCLF
Valley Community Legal Foundation

A New Program for Law Day

ROSIE SOTO COHEN
Director of Public Services



referrals@sfvba.org

EACH YEAR, THE NATION observes Law Day during the month of May. The Attorney Referral Service of the San Fernando Valley Bar Association on its own, and occasionally with other organizations, sponsors free legal programs and legal clinics designed to educate people of all ages about the legal system and to celebrate the American heritage of liberty, justice and equality.

On May 1, 2014, the Attorney Referral Service of the San Fernando Valley Bar Association celebrated Law Day 2014 with an inaugural dialogue on access to justice. The Law Day program was held at the Van Nuys branch of the Los Angeles Public Library. Attendees learned about the ARS program and about how they can empower themselves when looking for and working with attorneys.

In addition to the new program, the ARS Staff created a Law Day Resource and Information Guide and educational packets. The Guide contained information about legal services and programs available to litigants in the San Fernando Valley, and the education packets defined frequently used legal terminology, both in English and Spanish. Attendees walked away with Law Day-themed giveaways, including a legal resource guide providing key tips and ideas they can apply when looking for adequate legal counsel.

The Law Day planning and implementation team included: LA LAW Library Librarian, Programs & Partnerships, Janine Liebert; LA Law Library Director, Programs & Partnership, Malinda Muller; LA LAW Library Sr. Librarian, Programs & Partnerships, Linda J. Heichman; Los Angeles Public Library Van Nuys Branch Senior Librarian Kelly Tyler; SFVBA Director of Public Services Rosie Soto Cohen; and SFVBA Referral Consultants Lucia Senda and Martha Benitez.

The ARS extends a special thanks to the Van Nuys courts for their continued support including the promotion of the 2014 Law Day program. The ARS also thanks SFVBA President Elect Caryn Sanders for her support and participation.

Pursuing that Work-Life Balance: A California Lawyer in Japan

By Gary O. Haase

THE OTHER DAY I CAME ACROSS THE FOLLOWING words that someone had posted online: *Live more, complain less. More smiles, less stress. Less hate, more blessed.*

What a great little mantra! When reading these three lines for the first time, I felt compelled to type them onto a blank page and post them next to my desk where they hang today.

What is it about these words that struck a chord with me? Is this an age-related phase that I am going through as a fortysomething adult? Or do affirmations like these help me achieve some semblance of a work-life balance, especially as a California boy in far-away Japan?

For whatever reason, I am enjoying an increased capacity to admire sunny statements like these and I am finding myself drawn to language that tends to encourage folks in their pursuit of fulfillment. I think we lawyers should accept any kind of encouragement we can get.

When I passed the California Bar Examination in 2004, I wouldn't have guessed that in 2014 I would be practicing U.S. immigration law in Japan as a member of both the State Bar of California and the Osaka Bar Association, while also working as a part-time university lecturer in Japan. But looking back, it kind of makes sense that I ended up selecting a path less travelled by my law school classmates. None of my relatives were lawyers, my folks were not college graduates, and I was almost 30 years old when I started law school.

The time I spent between college graduation and the start of law school allowed me to obtain some experience as a non-lawyer adult. I had interests in teaching and community service, and I was able to explore these areas as a teacher's assistant and sports coach, as an AmeriCorps National Civilian Community Corps (NCCC) participant, and as a teacher in the Japan Exchange and Teaching (JET) Program.

After practicing law for five years in California, I moved to Japan in 2010 to help my wife care for her sick parents. This was a challenging time. Dealing with health problems, career detours, and cultural issues is not easy. But as time passes and healing occurs, you find ways to grow and thrive. Moreover, experiencing tough times can build character and equip you with new abilities to relate to and help folks who might be going through similar rough patches. Eventually, I realized that I had been given an opportunity to evaluate my priorities. I am thankful for finding a career path in Japan that corresponds in varying degrees with my personality, strengths and interests.

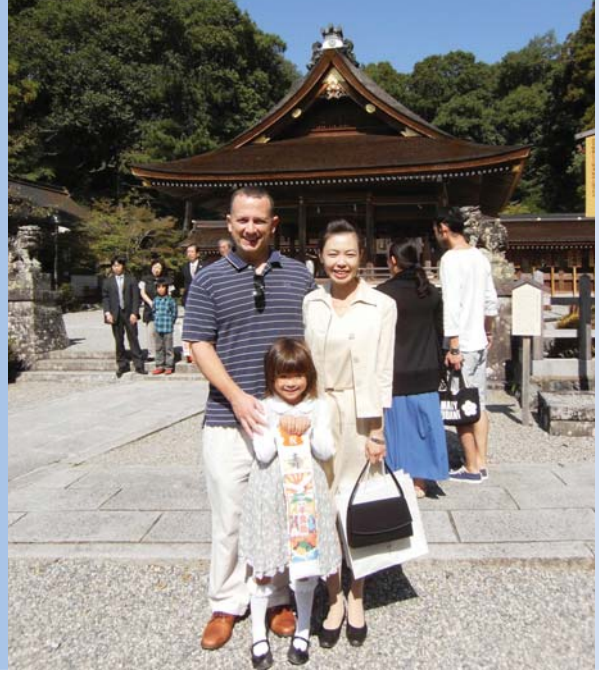
By adapting and viewing things from different perspectives, I started to identify opportunities to be grateful and reasons for finding more professional fulfillment. As I approach the tenth anniversary of my bar admission, I have determined that substantial contributors to my happiness as a lawyer are my law practice location, my law practice subject area, and my part-time teaching experience.

Practice Location

In my case, there are many reasons why being in Japan works for my wife and me, and adds to my career enjoyment. My wife is from Japan; she unfortunately had sick relatives and she wanted to return from California to Japan. Being able to help a spouse or partner live in their desired location can make a big difference for a relationship.

I, too, enjoy living in Japan. I had a wonderful experience as a JET Program teacher from 1996 to 1999 in Matsuyama,

Gary O. Haase lives and works in Japan. He is a part-time lecturer at Nara Women's University and he practices U.S. immigration law and business law at Ethos Law Office, where legal services are provided in Japanese, English and Spanish. He can be reached at g-haase@ethos-law.jp.


Japan before I became a lawyer in California. The JET Program enabled me to live on my own in a foreign country where I could pay off some college loans while teaching with other English-speaking teachers from around the world.

By living in another country, you can learn things on levels beyond how you might learn in a classroom or when your experience is limited to your home state or country. For example, my understanding of words like "prejudice" and "discrimination" was pretty much limited to my experience as a Caucasian male growing up in the San Fernando Valley in the 1980s. Flash forward to 1996 in Japan where I was walking down a quiet little street and I saw a middle-aged woman walking towards me from the other direction. When she saw me, she quickly moved her purse from her inside hip to her outside hip and increased her walking speed.

It was clear that this woman had decided based on my appearance alone that I might steal her purse, though this was the last thing on my mind. This example is presented not to make general statements about any countries or cultures but rather to share a personal experience.

At times I struggle with some of the ways that life in Japan can be different than life in California. But I am thankful for opportunities that stimulate personal growth and that may lead to better personal and professional relationships.

Practice Area

Becoming an immigration lawyer is something that kind of fell into place. I started working at a Japanese law firm located just a five-minute walk from the U.S. Consulate in Osaka, and we discovered that there were folks with questions about nonimmigrant visas. As an immigration lawyer, I enjoy using my legal background and native-English ability to assist people, often from cultures different than my own, as they proceed through the U.S. immigration process.

I am grateful that I could establish relationships with some accomplished U.S. immigration lawyers who have been generous with their tips and advice. I relied on the American Immigration Lawyers Association (AILA) as an excellent resource.

AILA maintains an online research database that led me to an excerpt from *LawyerLife: Finding a Life and Higher Calling in the Practice of Law* by Carl Horn III. A chapter titled "Twelve Steps toward Fulfillment in the Practice of Law" provided seemingly basic yet impactful recommendations such as "Be generous with your time and money" and "Embrace law as a 'high calling.'" I'd recommend it to any lawyer.

Practicing immigration law gives me a chance to help people in the local community and aligns with some of my personal interests, which contributes to my overall sense of professional fulfillment.

Teaching

I have always been interested in teaching. Growing up in the Valley, I had great teachers like Joe Rauser, and I watched movies like *To Sir, with Love* (1967), *Stand and Deliver* (1988), and *Dead Poets Society* (1989). Working at a law office while having a part-time teaching position allows me to satisfy these two career ambitions. I think it's healthy for me to get out of the law office on a regular basis to interact with teachers, administrators and students and to stay connected to campus life. Then when I return to the office, I find that I have a fresh perspective from which to approach the day's law-related tasks.

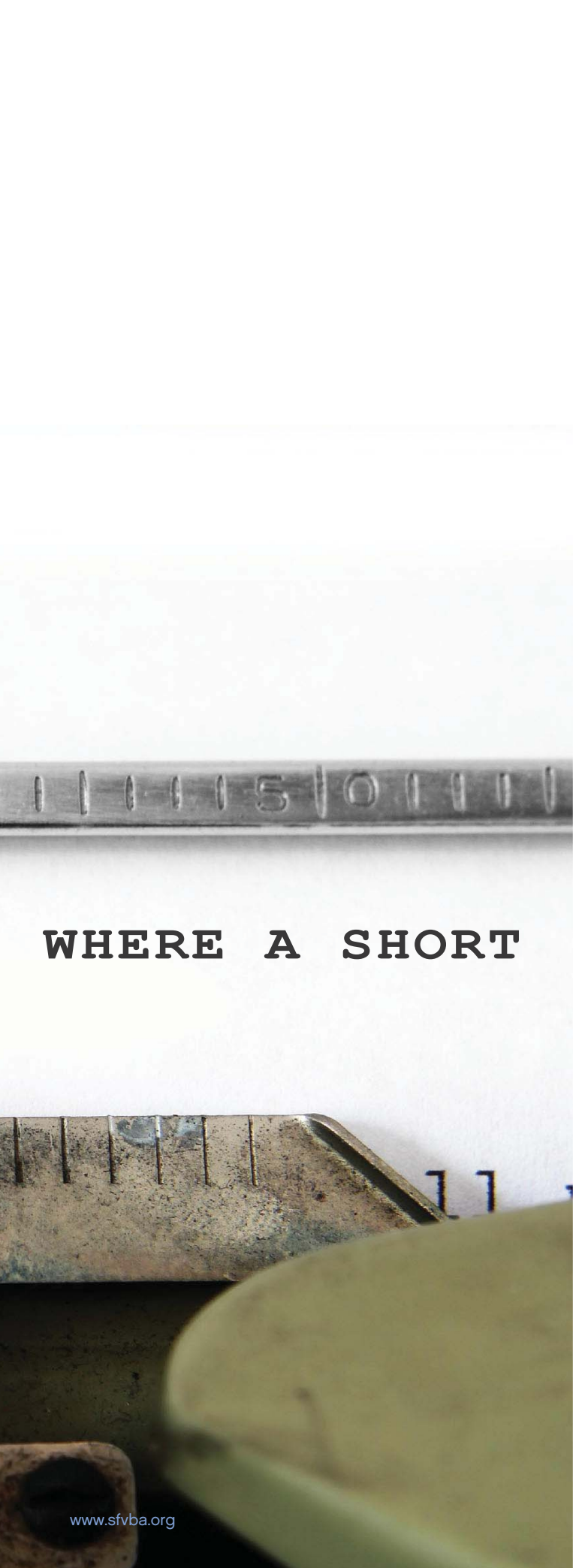
Teaching meshes well with lawyering. For example, an estate planning lawyer who teaches a class on wills and trusts at the local law school can establish him- or herself as an expert in the field. Additionally, I believe teaching any subject for which the lawyer is qualified can lead to professional and personal advancement.

I invite you to assess how your practice location and practice area may affect your level of professional satisfaction, and whether you should consider teaching on the side to help you achieve that balance.

Rules to Write By:

Orwell's Handbook for Lawyers and Judges

By Douglas E. Abrams



LIKE OTHER AMERICANS, LAWYERS AND JUDGES most remember British novelist and essayist George Orwell (1903-1950) for his two signature books, *Animal Farm* and *1984*. Somewhat less known is his abiding passion about the craft of writing. It was a lifelong passion,[1] fueled (as Christopher Hitchins recently described) by Orwell's "near visceral feeling for the English language."[2]

Orwell's most exhaustive commentary about writing was his 1946 essay, *Politics and the English Language*,[3] which minced no words. "[T]he English language is in a bad way,"[4] he warned. "Debased"[5] prose was marked by "abuse,"[6] "slovenliness,"[7] and a "lifeless, imitative style"[8] that was nearly devoid of "a fresh, vivid, homemade turn of speech."[9] A "tendency ... away from concreteness"[10] had left writing "dreary,"[11] "ugly and inaccurate."[12] "[V]agueness and sheer incompetence," he said, "is the most marked characteristic of modern English prose."[13]

Orwell's 12-page essay diagnosed what he called the "decay of language," and it offered six curative rules.[14] The diagnosis and rules still reverberate among professional writers. More than 65 years later, Judge Richard A. Posner calls the essay "[t]he best style 'handbook'" for legal writers.[15] Nobel Prize-winning economist Paul Krugman recently went a step further, calling the essay a resource that "anyone who cares at all about either politics or writing should know by heart."[16]

If I were a law partner employing young lawyers or a judge employing law clerks, I would add Orwell's essay to a list of reading recommended on the way in. If I were a young lawyer not required to read the essay, I would read it anyway. The entire essay is available for downloading at http://orwell.ru/library/essays/politics/english/e_polit.

Orwell stressed that he was dissecting, not "the literary use of language, but merely language as an instrument for expressing and not for concealing or preventing thought."[17] The narrower scope does not deprive legal writers because Justice Felix Frankfurter was right that "[l]iterature is not the goal of lawyers, though they occasionally attain it."[18] Orwell's essay approached language as a tool for clear communication, an aspiration that defines what lawyers and judges do throughout their careers. "The power of clear statement," said Daniel Webster, "is the great power at the bar."[19]

As Orwell's title intimates, the essay included criticism of political writing done by government officials and private observers. The essay's staying power, however, transcends the political arena. By calling on writers of all persuasions to "simplify your English,"[20] Orwell helped trigger the plain English movement, which still influences legislators, courts, administrative agencies, and law school legal writing classes.

This article proceeds in two parts. First I describe how judges, when they challenge colleagues or advocates in particular cases, still quote from Orwell's plea for clear expression and careful reasoning. Then I present Orwell's diagnosis of maladies that plagued contemporary prose, together with his six curative rules and their continuing relevance for today's lawyers and judges.

Take the Necessary Trouble

"[W]ritten English," said Orwell in his essay, "is full of bad habits which spread by imitation and which can be avoided if one is willing to take the necessary trouble."[21]

In 2012, the United States Court of Appeals for the District of Columbia Circuit quoted this passage in *National Association of Regulatory Utility Commissioners v. United States Department of Energy.*[22] The issue was whether the challenged agency determination violated the Nuclear Waste Policy Act of 1982, and the parties hotly contested the case with hefty servings of alphabet soup.

On page 48 of its 58-page brief, for example, the National Association argued that, "Although DOE has not disclaimed its obligation to dispose of SNF, it is undisputed that DOE currently has no active waste disposal program. . . . The BRC is undertaking none of the waste disposal program activities identified in NWPA §302(d). Its existence therefore cannot justify continued NWF fee collection."[23]

On page 24 of its 60-page brief, the agency countered that "[t]he plain language of the NWPA ... provides the Secretary [of Energy] with broad discretion in determining whether to recommend a change to the statutory NWF fee. . . . In section 302(a)(2) of the NWPA, Congress set the amount of the NWF fee—which is paid only by utilities that enter *{"pageset": "S97* into contracts with DOE for the disposal of their SNF and HLW. . . ."[24]

The National Association of Regulatory Utility Commissioners panel unanimously struck down the challenged agency determination. Judge Laurence H. Silberman's opinion quoted Orwell and admonished the parties for "abandon[ing] any attempt to write in plain English, instead abbreviating every conceivable agency and statute involved, familiar or not, and littering their briefs with" acronyms.[25]

Other decisions have also quoted Orwell's call to "take the necessary trouble" to achieve maximum clarity.[26] In *Sure Fill & Seal, Inc. v. GFF, Inc.*,[27] for example, the federal district court awarded attorneys' fees to the defendant on its motion to enforce the parties' settlement agreement. The court criticized both parties' submissions. "Imprecision and lack of attention to detail," wrote Judge Elizabeth A. Kovachevich, "severely dampen the efficacy of Plaintiff's written submission to this Court. Equally unhelpful is Defendant's one sentence, conclusory response that is completely devoid of any substance. Advocates, to be effective, must take the 'necessary trouble' to present the Court with coherent, well-reasoned and articulable points for consideration."[28]

"At times," Judge Kovachevich specified, "the Court was forced to divine some meaning from the incomprehensible prose that plagued Plaintiffs' written objections. Lest there be any confusion, the Court graciously did so even though it could have simply refused to give the faulty objections any consideration at all. The Court would have been equally obliged to treat Defendant's failure to provide meaningful response as a concession of Plaintiffs' objections."[29]

Like Soft Snow

Orwell held keen interest in politics, and his 1946 essay attributed "the decadence of our language" partly to political motivation.[30] "[P]olitical language," he wrote, "has to consist largely of euphemism, question-begging and sheer cloudy vagueness. . . . [W]ords fall[] upon the facts like soft snow, blurring the outlines and covering up all the details."[31]

This passage appeared in *Stupak-Thrall v. United States*,[32] a 1996 en banc decision of the U.S. Court of Appeals for the Sixth Circuit that carried no political overtones. The full court remained evenly divided on the question of whether the plaintiffs' riparian rights may count as "valid existing rights" to which U.S. Forest Service regulations are subject under the federal Michigan Wilderness Act (MWA). The dissenter criticized his colleagues who favored affirmance of the decision below. "The interpretation of the 'valid existing rights' language in Section 5 of the MWA to mean that [plaintiff] has no rights that the Forest Service is bound to respect is a good example of the distortion of language decried by" Orwell's essay.[33]

Orwell's Diagnoses and Cures

Orwell rejected the notion that "we cannot by conscious action

do anything about" the decline of language,[34] believing instead that "the process is reversible."[35] The essay's capstones were his diagnosis of the maladies that afflicted writing, followed by his six curative rules.

Orwell diagnosed four "tricks by means of which the work of prose-construction is habitually dodged."[36]

Dying metaphors. The English language, Orwell wrote, sustains "a huge dump of worn-out metaphors" that "have lost all evocative power and are merely used because they save people the trouble of inventing phrases for themselves."[37] He cited, among others, "toe the line," "run roughshod over," and "no axe to grind."[38] To make matters worse, "incompatible metaphors are frequently mixed, a sure sign that the writer is not interested in what he is saying."[39]

Operators or verbal false limbs. Orwell said that these devices cloud thinking because they "save the trouble of picking out appropriate verbs and nouns, and at the same time pad each sentence with extra syllables which give it an appearance of symmetry."[40] Among the shortcuts he assailed here were replacing simple, single-word verbs with phrases that add little if anything (beginning with "prove to," "serve to," and the like); using the passive voice rather than the active voice "wherever possible"; using noun constructions rather than gerunds (for example, "by examination of" rather than "by examining"); and replacing simple conjunctions and prepositions with such cumbersome phrases as "with respect to" and "the fact that."[41] "The range of verbs is further cut down by means of the '-ize' and 'de-' formations, and the banal statements are given an appearance of profundity by means of the 'not un-' formation."[42]

Pretentious diction. Orwell included words that "dress up simple statement and give it an air of scientific impartiality to biased judgments" (such as "constitute" and "utilize"); and foreign phrases that "give an air of cultural elegance" (such as "ancien regime" and "deus ex machina").[43] "Bad writers ... are always nearly haunted by the notion that Latin or Greek words are grander than Saxon ones," even though "there is no real need for any of the hundreds of foreign phrases now current in English."[44]

Meaningless words. Here Orwell targeted art and literary criticism, and political commentary. In the former, "words like 'romantic,' ... 'values,' ... 'natural,' 'vitality' ... are strictly meaningless." In the latter, the word "Fascism," for example, had "no meaning except in so far as it signifies 'something not desirable.'"[45]

Orwell believed that "the decadence of our language is probably curable" if writers would "let the meaning choose the word and not the other way about."[46] He proposed six rules. "These rules sound elementary, and so they are," Orwell wrote,

"but they demand a deep change of attitude in anyone who has grown up used to writing in the style now fashionable."[47] The rules are worth contemplation from lawyers and judges who write.

Rule One: Never use a metaphor, simile, or other figure of speech which you are used to seeing in print.

Orwell discussed clichés that might entertain, divert and perhaps even convince readers by replacing analysis with labels. "By using stale metaphors, similes and idioms," he said, "you save much mental effort, at the cost of leaving your meaning vague, not only for your reader but for yourself. . . . People who write in this manner usually have a general emotional meaning ... but they are not interested in the detail of what they are saying."[48] He urged "scrapping of every word or idiom which has outworn its usefulness."[49]

In 2003, concurring Judge Stephen R. Reinhardt of the U.S. Court of Appeals for the Ninth Circuit cited Orwell's first rule in *Eminence Capital, LLC v. Aspeon, Inc.*, a securities fraud class action.[50] The court of appeals held that the district court had abused its discretion by dismissing, without leave to amend, the first amended consolidated complaint for failure to state a claim. The panel reiterated, but rejected, the district court's conclusion that the plaintiffs already had "three bites at the apple."[51]

Noting that the district court failed to identify or analyze any of the traditional factors that would have supported dismissal without leave to amend,[52] Judge Reinhardt cautioned against "the use of cliches in judicial opinions, a technique that aids neither litigants nor judges, and fails to advance our understanding of the law."[53] "Metaphors," he explained, "enrich writing only to the extent that they add something to more pedestrian descriptions. Cliches do the opposite; they deaden our senses to the nuances of language so often critical to our common law tradition. The interpretation and application of statutes, rules, and case law frequently depend on whether we can discriminate among subtle differences of meaning. The biting of apples does not help us."[54]

"The problem of cliches as a substitute for rational analysis," Judge Reinhardt concluded, "is particularly acute in the legal profession, where our style of writing is often deservedly the subject of ridicule."[55]

Rule Two: Never use a long word where a short one will do.

This rule placed Orwell in good company. Ernest Hemingway said that he wrote "what I see and what I feel in the best and simplest way I can tell it."[56] Hemingway and William Faulkner went back and forth about the virtues of simplicity in writing. Faulkner once criticized Hemingway, who he said "had no courage, never been known to use a word that might send the reader to the dictionary." "Poor Faulkner," Hemingway responded, "Does he really think big emotions come from big words? He thinks I don't know the ten-dollar words. I know them all right. But there are older and simpler and better words, and those are the ones I use."[57]

Hemingway was not the only writer who valued simplicity. "Broadly speaking," said Sir Winston Churchill, "the short words are the best, and the old words when short are best of all."[58] "Use the smallest word that does the job," advised essayist and journalist E. B. White.[59] In a letter, Mark Twain praised a 12-year-old boy for "us[ing] plain, simple language, short words, and brief sentences. That is the way to write English–it is the modern way and the best way. Stick to it; don't let fluff and flowers and verbosity creep in."[60]

> "Orwell's essay approached language as a tool for clear communication, an aspiration that defines what lawyers and judges do throughout their careers."

Humorist Will Rogers wrote more than 4,000 nationally syndicated newspaper columns, including ones that spoke about language.[61] "[H]ere's one good thing about language, there is always a short word for it," he said. "'Course the Greeks have a word for it, the dictionary has a word for it, but I believe in using your own word for it. I love words but I don't like strange ones. You don't understand them, and they don't understand you. Old words is like old friends–you know 'em the minute you see 'em."[62]

"One of the really bad things you can do to your writing," novelist Stephen King explains, "is to dress up the vocabulary, looking for long words because you're maybe a little bit ashamed of your short ones."[63] "Any word you have to hunt for in a thesaurus," he says, "is the wrong word. There are no exceptions to this rule."[64]

Rule Three: If it is possible to cut a word out, always cut it out.

What if the writer says, "In my opinion it is not an unjustifiable assumption that..."? Orwell proposed a simpler, less mind-numbing substitute: "I think."[65]

This third rule also placed Orwell in good company. "The most valuable of all talents is that of never using two words when one will do," said lawyer Thomas Jefferson, who found "[n]o stile of writing ... so delightful as that which is all pith, which never omits a necessary word, nor uses an unnecessary one."[66] "Many a poem is marred by a superfluous word," said poet Henry Wadsworth Longfellow.[67] "Less is more," explained British Victorian poet and playwright Robert Browning, wasting no words.[68]

Judges, in particular, can appreciate this short verse by Theodor Geisel ("Dr. Seuss"), who wrote for children, but often with an eye toward the adults:

> "[T]he writer who breeds
> more words than he needs
> is making a chore
> for the reader who reads.
>
> That's why my belief is
> the briefer the brief is,
> the greater the sigh
> of the reader's relief is."[69]

Rule Four: Never use the passive where you can use the active.

The passive voice usually generates excess verbiage and frequently leaves readers uncertain about who did what to whom. The active voice normally contributes sinew not fat, clarity not obscurity.

Consider the second line of the Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness."

Historians have praised Thomas Jefferson as "a genius with language" whose draft Declaration resonated with "rolling cadences and mellifluous phrases, soaring in their poetry and powerful despite their polish."[70] Would Jefferson have rallied the colonists and captivated future generations if instead he began with, "These truths are held by us to be self-evident..."?

Rule Five: Never use a foreign phrase, a scientific word, or a jargon word if you can think of an everyday English equivalent.

One federal district court advised that legal writers gamble when they "presuppose specialized knowledge on the part of their readers."[71] In 2008, the U.S. Court of Appeals for the Seventh Circuit explained the dangers of presupposition in *Indiana Lumbermens Mutual Insurance Co. v. Reinsurance Results, Inc.*, which held that the parties' contract did not require the plaintiff insurer to pay commissions to the company it had retained to review the insurer's reinsurance claims.[72]

Writing for the *Lumbermens Mutual* panel, Judge Posner reported that the parties' briefs "were difficult for us judges to understand because of the density of the reinsurance jargon in them."[73] "There is nothing wrong with a specialized vocabulary—for use by specialists," he explained. "Federal district and circuit judges, however… are generalists. We hear very few cases involving reinsurance, and cannot possibly achieve expertise in reinsurance practices except by the happenstance of having practiced in that area before becoming a judge, as none of us has. Lawyers should understand the judges' limited knowledge of specialized fields and choose their vocabulary accordingly. Every esoteric term used by the reinsurance industry has a counterpart in ordinary English."[74]

Counsel in *Indiana Lumbermens Mutual Insurance Co.*, Judge Posner concluded, "could have saved us some work and presented their positions more effectively had they done the translations from reinsurancese into everyday English themselves."[75]

Rule Six: Break any of these rules sooner than say anything outright barbarous.

Orwell punctuated each of his first five rules with "never" or "always." Lawyers learn to approach these commands cautiously because most legal and non-legal rules carry exceptions based on the facts and circumstances. Conventions of good writing ordinarily deserve adherence because most of them enhance content and style most of the time. They became conventions based on the time-tested reactions elicited by accomplished writers. Orwell recognized, however, that "the worst thing one can do with words is to surrender" to them.[76] As writers strive for clear and precise expression, they should avoid becoming prisoners of language.

Orwell's sixth rule wisely urges writers to follow a "rule of reason," but I would rely on personal judgment and common sense even when the outcome would not otherwise qualify as "outright barbarity." Good writing depends on sound grammar, spelling, style and syntax, but it also depends on willingness to bend or break the "rules" when advisable to maintain the bond between writer and reader. Within bounds, readers concern

themselves more with the message than with what stylebooks say about conventions.

Orwell's fourth and fifth rules illustrate why good writing sometimes depends on departing from conventions. The fourth rule commands, "Never use the passive where you can use the active." Look again at the second line from the Declaration of Independence, quoted above. It contains a phrase written in the passive voice ("that they are endowed by their Creator with"). The active-voice alternative ("that their Creator endowed them with") would not have produced a result "outright barbarous," but Jefferson would have sacrificed rhythm and cadence. The passive phrase left no doubt about who did the endowing, and two extra words did not slow the reader.

Orwell's fifth rule commands, "Never use a foreign phrase, a scientific word, or a jargon word if you can think of an everyday English equivalent." But suppose, for example, that a lawyer or judge wants to write about "causation" in tort law, which would qualify as jargon because the term "causation" does not normally roll off the lips of laypeople. A readership of judges or tort lawyers will connect with the jargon easier than a readership of lay clients, who in turn will connect better than teenage readers in a middle school civics class. To an audience of lawyers who are comfortable with discussing "causation," choosing another word might even cloud or distort legal meaning. A writer uncertain about connecting with the audience can cover bases by briefly defining the term.

This rule of reason grounded in personal judgment and common sense extends beyond Orwell's first five rules to writing generally. For example, when splitting an infinitive or ending a sentence with a preposition would enhance meaning or produce a more fluid style, then split the infinitive or end the sentence with a preposition. Maintaining smooth dialog is more important than leafing through stylebooks that readers will not have leafed through.

Sir Winston Churchill, a pretty fair writer himself, reportedly had a tart rejoinder for people who chastised him for sometimes ending sentences with prepositions. "That," he said, "is the sort of arrant pedantry up with which I shall not put."[77]

Lack of clarity, Orwell's major target, normally detracts from the professional missions of lawyers and judges. What Justice William J. Brennan, Jr. called "studied ambiguity"[78] might serve the purposes of legislative drafters who seek to avoid specificity that could fracture a majority coalition as a bill proceeds to a final vote. Studied ambiguity might also serve the purposes of a lawyer whose client seeks to feel out the other parties early in a negotiation. Without maximum clarity, however, written buck-passing may compel courts to finish the legislators' work, or may produce an agreement saddled with misunderstandings.

Similar impulses prevail in litigation. Advocates persuade courts and other decision makers most effectively through precise, concise, simple and clear expression that articulates why the facts and the governing law favor their clients.[79] Judges perform their constitutional roles most effectively with forthright opinions that minimize future guesswork.

How often today do we still hear it said that someone "writes like a lawyer"? How often do we hear it meant as a compliment? Judge Reinhardt put it well in *Eminence Capital, LLC.*: "It is long past time we learned the lesson Orwell sought to teach us."[80]

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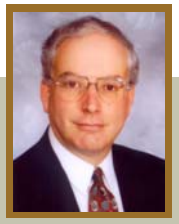
[1] George Orwell, *Why I Write* (1946) ("From a very early age, perhaps the age of five or six, I knew that when I grew up I should be a writer.").
[2] Christopher Hitchins, *The Importance of Being Orwell*, VANITY FAIR, Aug. 2012, at 66, 66.
[3] George Orwell, *Politics and the English Language*, in ESSAYS ON LANGUAGE AND USAGE (Leonard F. Dean & Kenneth G. Wilson eds., 2d ed. 1963).
[4] *Id.* at 325.
[5] *Id.* at 333.
[6] *Id.* at 325.
[7] *Id.*
[8] *Id.* at 332.
[9] *Id.*
[10] *Id.* at 330.
[11] *Id.* at 334.
[12] *Id.* at 325.
[13] *Id.* at 327.
[14] *Id.* at 336.
[15] Richard A. Posner, *Judges' Writing Styles* (and Do They Matter?), 62 U. CHI. L. REV. 1421, 1423 n.8 (1995).
[16] Paul Krugman, *Orwell, China, and Me*, N.Y. TIMES BLOGS (July 20, 2013).
[17] Orwell, *supra* note 3, at 335.
[18] Felix Frankfurter, *When Judge Cardozo Writes*, THE NEW REPUBLIC, Apr. 8, 1931.
[19] Letter from Daniel Webster to R.M. Blatchford (1849), in PETER HARVEY, REMINISCENCES AND ANECDOTES OF DANIEL WEBSTER 118 (1877).
[20] Orwell, *supra* note 3, at 336.
[21] *Id.* at 325.
[22] 680 F.3d 819 (D.C. Cir. 2012); *see* Douglas E. Abrams, *Acronyms,* 6 PRECEDENT 44 (Fall 2012).
[23] *Nat'l Ass'n of Regulatory Utility Comm'rs, Final Brief of Consolidated Petitioners* 48, 2011 WL 5479247 (2012).
[24] *Nat'l Ass'n of Regulatory Utility Comm'rs, Final Brief for Respondent* 24-25, 2011 WL 5479246 (2012).
[25] *Nat'l Ass'n*, 680 F.3d at 820 n.1; *see also Illinois Public Telcomm. v. FCC*, No. 13-1059 (D.C. Cir. Mar. 25, 2014) (per curiam) (order striking parties' briefs and ordering submission within two days, of briefs that "eliminate uncommon acronyms").
[26] *See, e.g.*, *Delgadillo v. Astrue*, 601 F. Supp.2d 1241 (D. Colo. 2007) (discussing confusion caused by confusing "attorney fees" and "attorney's fees" under the Equal Access to Justice Act); *Anthony A Gagliano & Co. v. Openfirst, LLC*, 828 N.W.2d 268, 271 n.2 (Wis. Ct. App. 2013) ("acronyms and initials make comprehension more, not less, difficult").
[27] 2012 WL 5199670, No. 8:08-CV-882-T-17-TGW (M.D. Fla. Oct. 22, 2012).
[28] *Id.* * 3.
[29] *Id.*
[30] Orwell, *supra* note 3, at 334.
[31] *Id.* at 333.
[32] 89 F.3d 1269 (6th Cir. 1996) (en banc).
[33] *Id.* at 1292 (Boggs, J., dissenting); *see also, e.g.*, *Grutter v. Bollinger*, 288 F.3d 732 (6th Cir. 2002) (en banc) (Boggs, J., dissenting), aff'd, 539 U.S. 306 (2003) ("[W]hatever else Michigan's policy may be, it is not 'affirmative action,'" quoting Orwell's "soft snow" metaphor); *Palm Beach County Sheriff v. State*, 854 So.2d 278 (Fla. Dist. Ct. App. 2003) (quoting Orwell's "soft snow" metaphor and holding that in applying sovereign immunity, there is no distinction between the "reimbursement" and "recovery" to which the plaintiff sheriff said his office was clearly entitled, and the right to "damages" which sovereign immunity precedent rejected); cf. *Quartman v. Martin*, 2001 WL 929949, No. 18702 (Ohio Ct. App. Aug 17, 2001) (in discussion of probable cause, quoting Orwell essay that "[p]olitical language . . . is designed to make lies sound truthful and murder respectable, and to give an appearance of solidity to pure wind").
[34] Orwell, *supra* note 3, at 325.
[35] *Id.*
[36] *Id.* at 327.
[37] *Id.* at 327.
[38] *Id.*
[39] *Id.*
[40] *Id.* at 328.
[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] *Id.* at 329.
[46] *Id.* at 334, 335.
[47] *Id.*
[48] *Id.* at 331-32.

[49] *Id.* at 334.
[50] 316 F.3d 1048 (9th Cir. 2003).
[51] *Id.* at 1053.
[52] *See Foman v. Davis*, 371 U.S. 178, 182 (1962) (stating the factors).
[53] *Eminence Capital*, 316 F.3d at 1053.
[54] *Id.*at 1053-54.
[55] *Id.* at 1054.
[56] A.E. Hotchner, *Papa Hemingway: A Personal Memoir* 69 (1966) (quoting Hemingway).
[57] *Id.* at 69-70 (1966) (quoting Hemingway); *see also, e.g.*, Kurt Vonnegut, Jr., The Latest Word (reviewing *The Random House Dictionary of the English Language* (1966)), N.Y. TIMES, Oct. 30, 1966, at BR1 ("I wonder now what Ernest Hemingway's dictionary looked like, since he got along so well with dinky words that everybody can spell and truly understand.").
[58] Susan Wagner, *Making Your Appeals More Appealing: Appellate Judges Talk About Appellate Practice*, 59 ALA. LAW. 321, 325 (1998) (quoting Churchill).
[59] Max Messmer, *It's Best to be Straightforward On Your Cover Letter, Resume*, PITTSBURGH POST-GAZETTE, Nov. 29, 2009, at H1 (quoting White).
[60] Robert Hartwell Fiske, THE DICTIONARY OF CONCISE WRITING: 10,000 ALTERNATIVES TO WORDY PHRASES 11 (2002); *see also, e.g.*, British Victorian novelist George Eliot (Mary Ann Evans), *quoted at* Plainlanguage.gov, http://www.plainlanguage.gov/resources/quotes/historical.cfm ("The finest language is mostly made up of simple unimposing words"); Irish poet William Butler Yeats, id. ("Think like a wise man but communicate in the language of the people."); C.S. LEWIS' LETTERS TO CHILDREN 64 (Lyle W. Dorsett & Marjorie Lamp Mead eds., 1985 ("Don't implement promises, but keep them.").
[61] Mark Schlachtenhaufen, *Centennial Snapshot: Will Rogers' Grandson Carries On Tradition of Family Service*, OKLA. PUBLISHING TODAY, May 31, 2007.
[62] Betty Rogers, *Will Rogers* 294 (1941; new ed. 1979) (quoting Will Rogers).
[63] Stephen King, *On Writing: A Memoir of the Craft*, 110 (2000).
[64] Stephen King, *Everything You Need to Know About Writing Successfully: in Ten Minutes* (1986), https://www.msu.edu/~jdowell/135/King_Everything.html.
[65] Orwell, *supra* note 3, at 331.
[66] Cindy Skrzycki, *Government Experts Tackle Bad Writing*, WASH. POST, June 26, 1998, at F1 ("most valuable," quoting Jefferson); THE FAMILY LETTERS OF THOMAS JEFFERSON 369 (E.M. Betts and J.A. Bear, Jr. eds., 1966) (letter of Dec. 7, 1818) ("stile of writing").
[67] III THE WORKS OF HENRY WADSWORTH LONGFELLOW WITH BIBLIOGRAPHICAL AND CRITICAL NOTES AND HIS LIFE, WITH EXTRACTS FROM HIS JOURNALS AND CORRESPONDENCE (1886-1891), at 278.
[68] Robert Browning, *Andrea del Sarto*, in PICTOR IGNOTUS, FRA LIPPO LIPPI, ANDREA DEL SARTO 32 (1925); *see also, e.g.*, SOMETHING TO SAY: WILLIAM CARLOS WILLIAMS ON YOUNGER POETS 96 (James E. B. Breslin ed., 1985) ("Everyone who writes strives for the same thing... To say it swiftly, clearly, to say the hard thing that way, using few words. Not to gum up the paragraph.").
[69] Richard Nordquist, "*We Can Do Better": Dr. Seuss on Writing*, http://grammar.about.com/od/advicefromthepros/a/seusswrite09.htm.
[70] Joseph J. Ellis, AMERICAN CREATION: TRIUMPHS AND TRAGEDIES AT THE FOUNDING OF THE REPUBLIC 56 (2007) (genius); Walter Isaacson, BENJAMIN FRANKLIN: AN AMERICAN LIFE 311 (2003) (rolling cadences).
[71] *Waddy v. Globus Medical, Inc.,* No. 407CV075, 2008 WL 3861994 *2 n.4 (S.D. Ga. Aug. 18, 2008).
[72] 513 F.3d 652 (7th Cir. 2008).
[73] *Id.* at 658.
[74] *Id.*
[75] *Id.*; *see also, e.g.*, *Miller v. Illinois* Cent. R.R. Co., 474 F.3d 951, 955 (7th Cir. 2007) ("much legal jargon can obscure rather than illuminate a particular case."); New Medium LLC v. Barco N.V., No. 05 C 5620, 2009 WL 1098864 * 1 (N.D. Ill. Apr. 15, 2009) (Posner, J., sitting by designation as a trial judge) ("All submissions must be brief and non-technical and eschew patent-law jargon. Since I am neither an electrical engineer nor a patent lawyer, . . . the parties' lawyers must translate technical and legal jargon into ordinary language.").
[76] Orwell, *supra* note 3, at 335.
[77] *See, e.g.,* Susan E. Rowe, *Six to Nix: Grammar Rules to Leave Behind*, 67 OR. ST. BAR BULL. 37 (Nov. 2006).
[78] William J. Brennan, Jr., *Some Thoughts On the Supreme Court's Workload*, 66 JUDICATURE 230, 233 (1983).
[79] Henry Weihofen, LEGAL WRITING STYLE 8-104 (2d ed. 1980) (discussing these four fundamentals).
[80] 316 F.3d at 1054.



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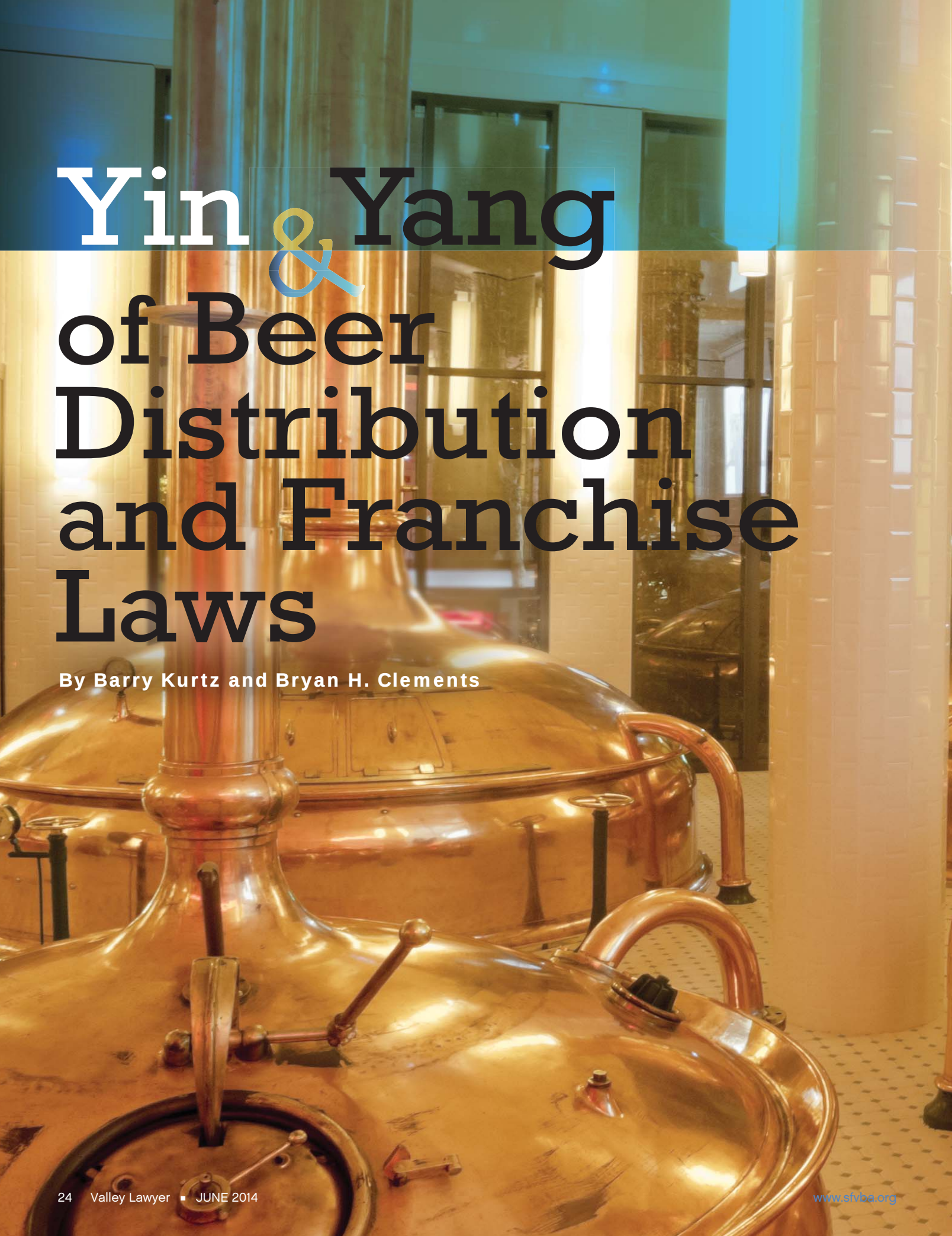
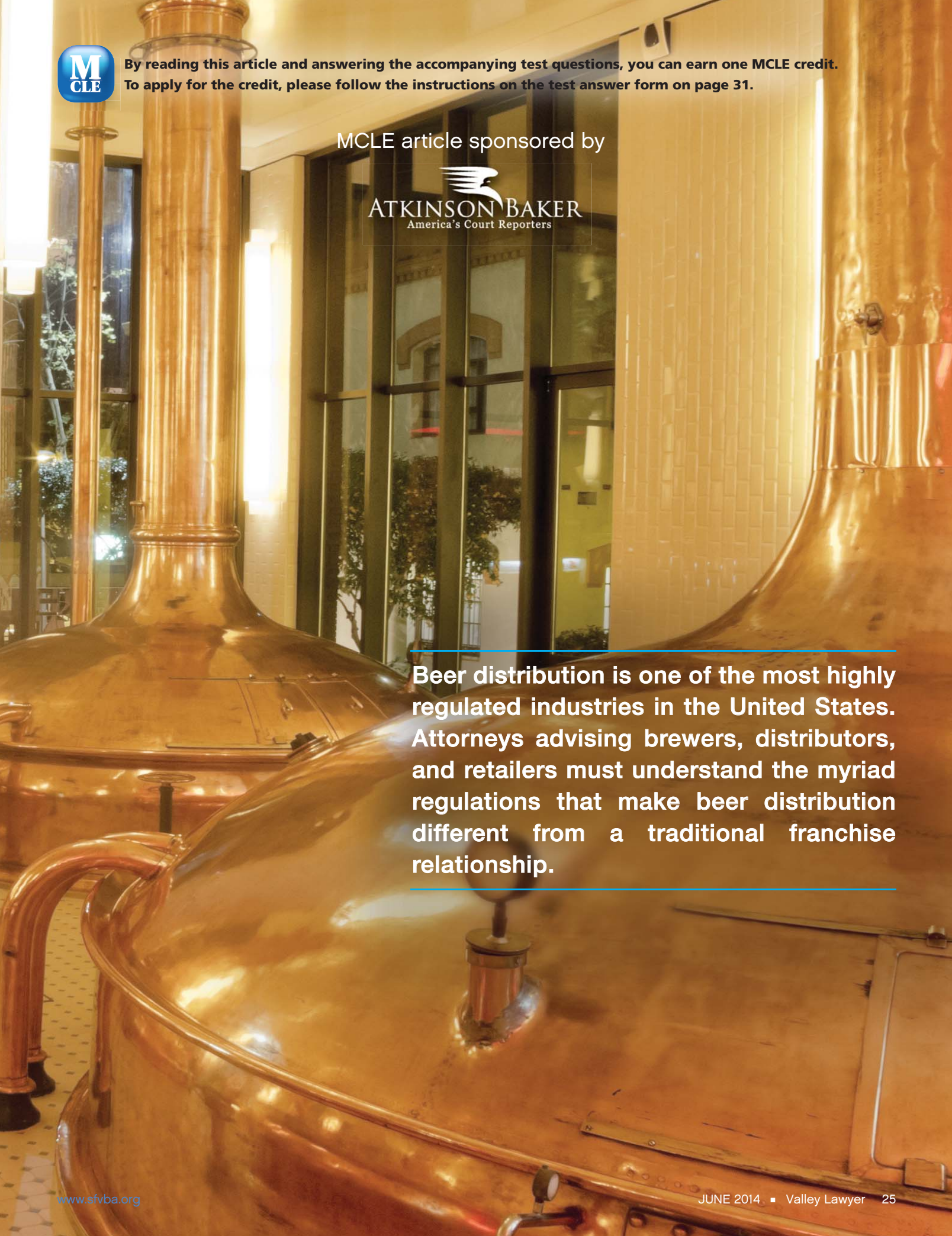


Yin & Yang of Beer Distribution and Franchise Laws

By Barry Kurtz and Bryan H. Clements



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Beer distribution is one of the most highly regulated industries in the United States. Attorneys advising brewers, distributors, and retailers must understand the myriad regulations that make beer distribution different from a traditional franchise relationship.

BEER DISTRIBUTION LAWS DIFFER FROM traditional franchise laws that govern restaurant, retail and service businesses in many ways, but they do share some commonalities. As a matter of fact, many states now regulate the relationship between those who brew or import beer into a particular state, known as brewers, and those who receive beer, warehouse beer and distribute beer to retailers, known as distributors, by way of special relationship statutes that have been patterned after, and closely resemble, the relationship statutes many states have passed to protect franchisees in traditional franchise relationships.

Comparing Traditional Franchise Relationships and Distribution Relationships

The typical definition of a franchise is a business relationship under which the franchisee's business will be substantially associated with the franchisor's trademark; the franchisee pays the franchisor a fee to engage in the business and utilize its trademark; and the franchisee will operate the business under a marketing plan or system prescribed in substantial part by the franchisor.

Franchising is regulated at the federal level by the Federal Trade Commission (FTC), which imposes very specific pre-sale disclosure requirements on franchisors selling franchises in any state by way of its amended FTC Rule on Franchising, known simply as the FTC Rule. It is also regulated at the state level through pre-sale registration, disclosure statutes and franchise relationship laws.

Thirteen states, referred to as registration states, require franchisors to register their franchise offering documents before offering or selling franchises within their borders, while 17 states have franchise relationship acts, in one form or another, aimed at protecting franchisees from unfair treatment after they sign a franchise agreement. Many states still have no franchise specific laws whatsoever and rely on the FTC Rule and on state remedies for fraud and breach of contract to address problems that arise in franchise relationships.

Distribution, as an all-purpose business relationship, is not regulated by federal or state laws. However, the distribution relationships involving various products are highly regulated at both the federal and state levels, including, for example, petroleum products, automobiles and alcoholic beverages.

In a typical distributorship arrangement, the distributor operates an independent business under its own trade name and purchases and resells the supplier's products according to its own procedures, not according to the supplier's system or prescribed marketing plan. The distributor's business is generally not associated with the supplier's trademark in the eyes of the customer, and it is unlikely that the distributor will pay a fee to engage in selling the supplier's products.

Unlike franchising, and as further discussed below, states take the primary role in regulating beer distribution. All 50 states regulate the sale and distribution of beer within their borders. Because of the dramatic brand consolidation that has occurred in the beer industry, many states address the distribution of beer separately from wine and liquor, making the beer distribution industry one of the most highly regulated industries in the United States.

To complicate matters, the differences among the states in terms of their statutes, regulations, licensing schemes, taxes and control processes result in a legal minefield that can be difficult to navigate for brewers, distributors, retailers and the attorneys who advise them.

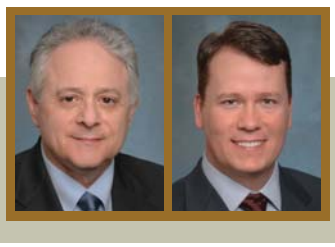
U. S. Beer Distribution: A Three-Tier System

Prior to 1919 and the passage of the 18th Amendment, brewers and producers of alcoholic beverages sold their products directly to retailers, which led to anti-competitive business practices and unscrupulous marketing tactics aimed at inducing excessive consumption. To combat that problem, the states ratified the 18th Amendment ushering, in the prohibition era and outlawing the manufacture, distribution and sale of alcoholic beverages.

The 21st Amendment repealed the 18th Amendment in 1933 and gave states the primary authority to regulate the distribution of alcoholic beverages, including beer, within their borders. The three-tier system of alcohol production, distribution and sale was born.

The three-tier system is designed to prevent pre-Prohibition style marketing tactics, to generate revenues for the states, to facilitate state and local control over alcoholic beverages, and to encourage temperance. Its three tiers consist of brewers (top tier), distributors (central tier) and retailers (bottom tier). Brewers produce the product and sell it to distributors, also called wholesalers, who then sell the product to retailers (retail stores, taverns, etc.), who, in turn, sell the product to consumers.

In many states, importers are treated as brewers, placing importers in the top tier of distribution. In less-populated states, however, large retailers may act as distributors by distributing beer products to smaller retailers, thus creating a four-tier distribution system.[1] In a decision handed down in



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May 2005, the U.S. Supreme Court, in *Granholm v. Heald,* found the three-tier distribution system to be "unquestionably legitimate."[2]

Licensing States vs. Control States

Although state statutory and regulatory schemes establishing the three-tier system vary substantially, states generally fall into one of two categories: license states and control states. There are 32 license states that regulate alcohol distribution using a hierarchical licensing system through which these states approve and sell different licenses to businesses in each tier. California, for example, is a license state.

Determining which licenses are needed is no easy task. It is common for states to require brewers, distributors and retailers to hold multiple licenses. Under a typical licensing scheme, brewers who brew beer in another state, but who wish to sell it in the license state, must obtain a manufacturer's license, or register with a regulatory body, in advance of signing a distribution agreement with a distributor to distribute its beer.

Beer distributors/wholesalers are required to purchase a beer wholesaler's license, which allows for the distribution of beer only, but must purchase an additional license to distribute distilled spirits or wine.[3] There are usually numerous types of retail licenses, as well as separate licenses for craft brewers[4] and special events.

Eighteen states operate as control states. Although control states also have licensing requirements, the difference between control states and license states is that at some point in the distribution process, these states obtain a direct interest in the revenues obtained through distribution by taking an ownership stake as distributors or retailers of the product. These states are also known to exert greater control over the conditions of sale and promotion of alcohol within their borders. By way of example, Pennsylvania and Utah are sometimes referred to as "sole importers" and require their citizens to purchase alcoholic beverages through state stores.

Relationship Laws: Specific Protections for Beer Distributors that Mirror Franchisee Protections

An inherent imbalance of power exists between the contracting parties in beer distribution relationships, resembling the imbalance of power that exists in franchising relationships. To address this problem in the beer distribution context, many states have passed legislation aimed at balancing power in favor of distributors by requiring good faith dealings between the parties to distribution agreements.

Not unlike franchising, which requires franchisees to make a substantial initial investment to get up and running, beer distribution requires a substantial investment in infrastructure by beer distributors, which is one of many reasons why most states have an array of statutes, rules and regulations aimed at balancing power in favor of distributors. These balancing protections may, in general, be boiled down to four categories: territorial protections, transfer protections, termination protections, and dispute resolution protections/ remedies.

Territorial Protections

To begin with, all states protect distributors by allowing brewers to grant distributors an exclusive sales territory for their brands. In fact, most states require brewers to grant distributors an exclusive sales territory for their brands. This differs substantially from franchising, however, considering franchisors may grant exclusive territories to their franchisees, but rarely do. The fact that states generally require brewers to provide distributors with an exclusive territory in which no competitors may distribute the brewer's beer, but franchisors are not required to provide exclusive territories to their franchisees, and typically do not, demonstrates the degree to which beer distributors enjoy even greater legal protections than do franchisees.

Transfer Protections

Most states also limit brewers' ability to prevent distributors from transferring their distribution rights under distribution agreements. Typically, states allow brewers to require distributors to provide them with written notice and obtain their prior approval before transferring any substantial portion of the distribution rights licensed under the distribution agreement to another distributor, or in advance of a change of ownership or control of the distributor. However, in most states, brewers may not withhold consent or unreasonably delay a distributor transfer if the transferee meets reasonable standards and qualifications required by the brewer which are nondiscriminatory and are applied uniformly to all distributors similarly situated.

The California Alcoholic Beverage Control Act, for example, provides that a brewer or supplier that unreasonably withholds consent "or unreasonably denies approval of a sale, transfer, or assignment of any ownership interest in a beer wholesaler's business with respect to that [brewer's] brand or brands, shall be liable in damages to the [distributor]."[5] In addition, most state beer distribution statutes allow distributors and their owners to transfer, bequeath or devise their interest in the distribution business, and the distribution agreement, without the need to obtain the brewer's consent, and sometimes without notice.[6]

Although the transfer related protections provided to beer distributors tend to exceed those afforded to franchisees in most jurisdictions, a few states do extend transfer protections to franchisees by statutory provisions that resemble those commonly provided to beer distributors. Interestingly, though, transfers tend to be less contentious in the franchise context and franchisors are usually willing to consent to franchise agreement transfers to qualified buyers provided

the franchisor receives payment of a transfer fee and the buyer signs the franchisor's then-current form of franchise agreement for the remainder of the term existing under the seller's franchise agreement.

Termination Protections

Protecting distributors against having their distribution agreements terminated or not renewed without good cause is, perhaps, the most significant protection states provide beer distributors. Some states limit the definition of good cause, and thus the right of the brewer to terminate the agreement, to instances in which the distributer has committed fraud, been convicted of a felony, filed for bankruptcy or knowingly distributed the brewer's products outside of its exclusive territory.[7]

Most states' statutes bar brewers from modifying, not renewing or terminating any beer distribution agreement unless the brewer acts in good faith. Termination and non-renewal restrictions are interpreted broadly and good cause is universally interpreted narrowly in the beer distribution context. As a result, beer distribution agreements take on a perpetual duration, more or less, in many states.

While less than a majority of the states provide specific statutory protections against the early termination of a franchise agreement by the franchisor, most states require a franchisor to have good cause to terminate a franchise agreement before its expiration. Good cause generally includes the failure of the franchisee to comply with any lawful requirement of the franchise agreement after notice and a reasonable opportunity, which generally does not exceed 30 days, to cure the failure. Filing for bankruptcy, failing to comply with the franchisor's system in a way that may damage the franchisor's reputation, underreporting sales or selling unauthorized products are just a few additional examples of acts that may constitute good cause for a franchisor to terminate a franchise agreement.

Although California has passed the California Alcoholic Beverage Control Act (ABC Act),[8] which contains some protections for beer distributors, California statutes designed to protect beer distributors against unreasonable termination are noticeably less comprehensive than most other states.

As stated above, most states require a brewer have good cause to terminate the distribution agreement. However, California is one of five states whose beer statutes do not have such a requirement.[9] The ABC Act does provide, however, that "No sale or distribution agreement shall be terminated solely for a beer [distributor's] failure to meet a sales goal or quota that is not commercially reasonable under the prevailing market conditions."[10]

Dispute Resolution Protections/Remedies

The remedy that primarily differentiates beer distribution law from franchise law is the legal right beer distributors have to reasonable compensation upon termination, for any reason,

of the beer distribution agreement by the brewer. In general, reasonable compensation payments are equivalent to one to three years' worth of the beer distributor's profits, calculated as one hundred percent of the beer distributor's gross margins on each case of the brewer's products sold to customers, multiplied by the number of cases of product actually sold by the beer distributor to customers during the twelve months prior to the termination.

If the brewer terminates a beer distribution agreement in bad faith, or for any reason other than good cause, the brewer must also pay the distributor the fair market value of "all assets, including ancillary businesses, relating to the transporting, storing and marketing of [brewer's] products" and the goodwill of the distributor's business.[11] Clearly, these protections go a long way toward shifting the balance of power back toward distributors in the beer distribution relationship.

In the franchising context, the remedies available to wrongfully terminated franchisees vary substantially from state to state. Wrongfully terminated franchisees may recover damages, such as lost profits and unrecouped expenses, but may also recover payments for goodwill, attorneys' fees and punitive damages according to the facts and the laws governing the franchise agreement.

In some states, franchisors may be required to repurchase inventory if they wrongfully terminate a franchisee. For example, California law provides that in the event a franchisor wrongfully terminates or fails to renew a franchisee's franchise agreement in violation of the California Franchise Investment Law "the franchisor shall offer to repurchase from the franchisee the franchisee's resalable current inventory … at the lower of the fair wholesale market value or the price paid by the franchisee."[12]

The level of protection from, or recourse pertaining to, any wrongful acts committed by franchisors that is available to franchisees depends entirely upon the state in which the franchisee is located and which state's laws govern the injured franchisee's agreement. In states without any franchise relationship laws, however, franchisees must rely on injunctive relief, common law fraud and breach of contract remedies to address the franchisor's wrongful acts. Beer distributors are substantially better protected than traditional franchisees with regard to dispute resolution protections and remedies for wrongful acts.

The three-tier system of beer distribution can trace its origins to the prohibition era and the 21st Amendment but modern beer laws governing beer distribution relationships between brewers and distributors have been patterned after franchise relationships laws. After all, brewers resemble franchisors in that they tend to hold a lion's share of the power in the beer distribution business relationship.

We can expect more and more states to pass relationship laws aimed at further balancing power in favor of distributors, as we continue to see in franchising, and to require good faith dealings between the parties in each of these contractual arrangements. Considering that trend, and the complexity of and differences among these statutes, it is easy to see why expert legal advice from an attorney specializing in this area of the law is essential at every step for those doing business in the beer distribution industry or in franchising.

[1] Charlie Papazian, *The Future of Beer Distribution in America* (published date unknown), http://www.globalbeeralliance.com/craftbrewing/pdf/Future_of_beer_distribution.pdf (humorously, the U.S. beer distribution scheme is sometimes referred to as the "four-tier system of beer distribution," citing the four tiers as brewers, distributors, retailers and beer drinkers).

[2] *Granholm v. Heald*, 544 U.S. 460 (2005).

[3] Id. at 476 (holding that New York and Michigan laws that permitted in-state wineries to ship wine directly to consumers, but prohibited out-of-state wineries from doing the same, unconstitutionally violated the Commerce Clause).

[4] See California Dept. of Alcoholic Beverage Control, "List of License Types" available at http://www.abc.ca.gov/permits/licensetypes.html (last visited May 11, 2014) (California Alcoholic Beverage Control website listing all of various licenses required in California).

[5] West's Ann. Cal. Bus. & Prof. Code §25000.9.

[6] See Iowa Code Ann. §123A.6(2) "[U]pon the death of a wholesaler, a brewer shall not deny approval for any transfer of ownership or management to a designated member, including the rights under the agreement with the brewer."

[7] Wis. Stat. Ann. §125.33(10)(b-c).

[8] West's Ann. Cal. Bus. & Prof. Code §23000 et seq.

[9] See Gary Ettelman and Keith B. Hochheiser, "The Legal Buzz: Miller & Coors II, To Sell Or Not To Sell (That Is The Question)," available at http://www.e-hlaw.com/articles_buzz_MillerCoors2.htm (last visited May 11, 2014) (stating five states, including California, Kansas, Missouri, Oklahoma and Wisconsin do not require that termination may be effected only if "good cause" exists. Of note, New York passed the Small Brewer's Bill in 2012 allowing small brewers to terminate without "good cause", provided they pay the distributor the fair market value of the lost distribution rights).

[10] West's Ann. Cal. Bus. & Prof. Code §25000.7.

[11] Idaho Code Ann. §23-1110(2).

[12] West's Ann. Cal. Bus. & Prof. Code §20035.

Test No. 68

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. The FTC Rule on Franchising imposes specific pre-sale disclosure requirements on franchisors selling franchises in five states.
   ❑ True ❑ False

2. All types of distribution relationships are highly regulated at the federal and state levels.
   ❑ True ❑ False

3. Unlike with franchising, states take a primary role in regulating beer distribution.
   ❑ True ❑ False

4. All 50 states regulate the sale and distribution of beer within their borders.
   ❑ True ❑ False

5. Distributors existed as early as 1919, purchasing alcohol from brewers and selling to retailers.
   ❑ True ❑ False

6. The 21st Amendment repealed the 18th Amendment and gave states authority to regulate the distribution of alcoholic beverages.
   ❑ True ❑ False

7. The three-tier system consists of brewers, distributors, and consumers.
   ❑ True ❑ False

8. The purpose of the three-tier system is to prevent pre-Prohibition marketing tactics, to generate revenues for the states, to facilitate state and local control over alcoholic beverages, and to encourage temperance.
   ❑ True ❑ False

9. In *Granholm v. Heald*, the Supreme Court found the three-tier system unconstitutional.
   ❑ True ❑ False

10. In states with smaller populations, large retailers may act as distributors to smaller retailers.
    ❑ True ❑ False

11. California is one of 32 licensing states able to approve and sell licenses to businesses in each tier.
    ❑ True ❑ False

12. States balance the power between brewers and distributors through protections of territory agreements and transfers or sales of distribution rights, protections against unreasonable termination, and dispute resolution protections for distributors.
    ❑ True ❑ False

13. Most states require brewers to grant distributors an exclusive sales territory for their brands.
    ❑ True ❑ False

14. The California Alcoholic Beverage Control Act provides that a brewer or supplier that unreasonably withholds consent or unreasonably denies approval of a sale or transfer of distribution rights cannot be held liable for damages.
    ❑ True ❑ False

15. The California Alcoholic Beverage Control Act (ABC Act) provides that a distribution agreement cannot be terminated solely for failure to meet a reasonable sales goal or quota.
    ❑ True ❑ False

16. California requires brewers to have good cause for terminating a distribution agreement.
    ❑ True ❑ False

17. Beer distributors have the legal right to compensation upon termination, for any reason, of the beer distribution agreement by the brewer.
    ❑ True ❑ False

18. Beer distributors are substantially less protected than traditional franchisees with regard to dispute resolution protections and remedies for wrongful acts.
    ❑ True ❑ False

19. In states without any franchise relationship laws, franchisees must rely on injunctive relief, common law fraud and breach of contract remedies to address the franchisor's wrongful acts.
    ❑ True ❑ False

20. In California, if a franchisor wrongfully terminates a franchise agreement, the franchisor has no obligation to repurchase inventory.
    ❑ True ❑ False

MCLE Answer Sheet No. 68

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
   5567 Reseda Boulevard, Suite 200
   Tarzana, CA 91356

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

_____
Credit Card Number Exp. Date

_____
Authorized Signature

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

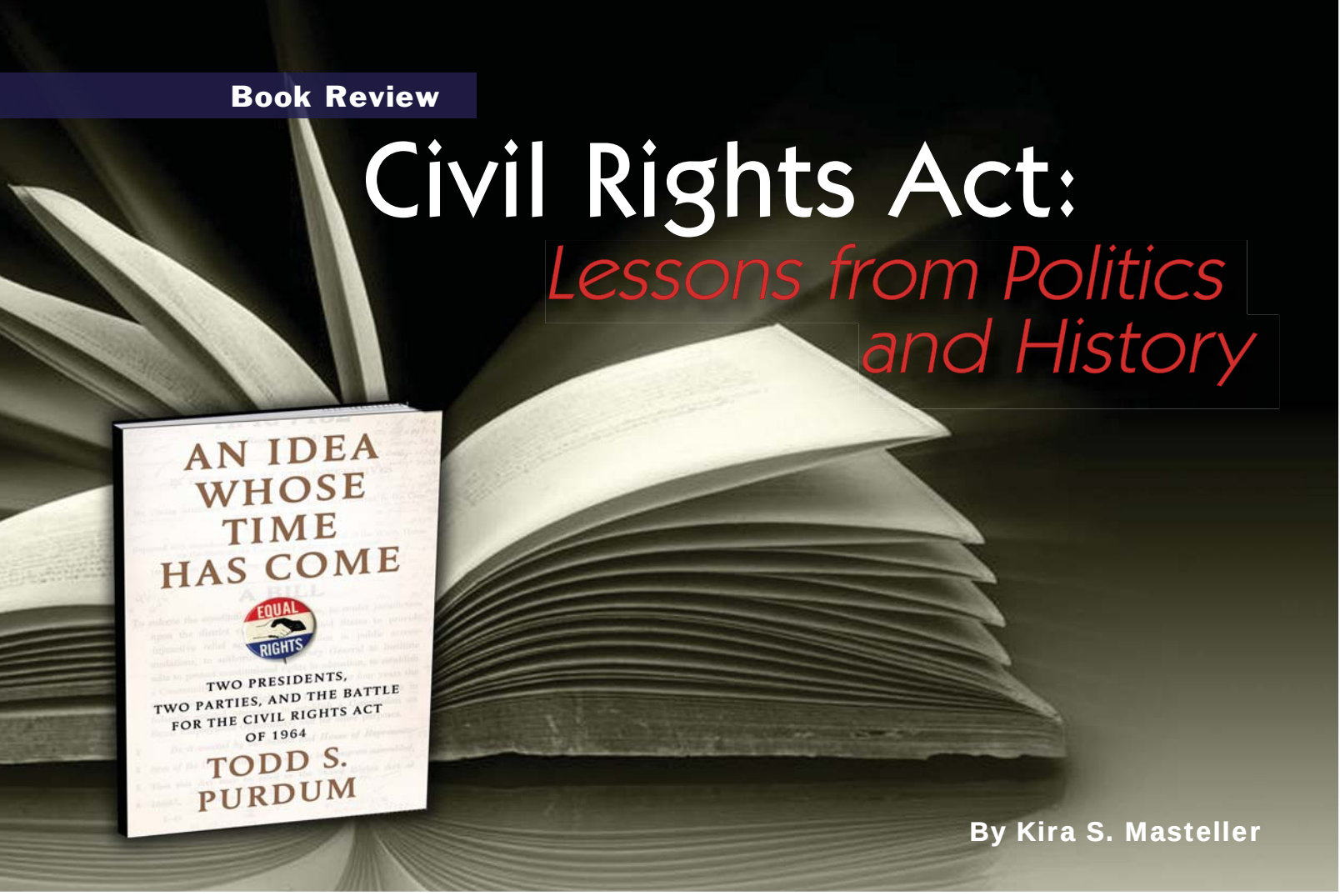
Name_____
Law Firm/Organization_____
_____
Address_____
City_____
State/Zip_____
Email_____
Phone_____
State Bar No._____

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

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

Book Review

Civil Rights Act: Lessons from Politics and History



By Kira S. Masteller

AN IDEA WHOSE TIME HAS COME: TWO Presidents, Two Parties, and the Battle for the Civil Rights Act of 1964 is the story of the legislative and political battle to pass the Civil Rights Act of 1964 (H.R. 7152). Author Todd S. Purdum delivers a compelling, suspenseful, well organized, and intense narrative about an incredibly important legislation that was difficult to pass. Purdum brilliantly captures and shares with us the courage and decency of the members of Congress and how their values prevailed.

I did not expect a book about the passing of legislation to be a page turner, but I was enthralled with this story from beginning to end. The author weaves in and out of the extreme political differences and difficult demeanors of Congressmen and other key players to bring to life the challenges faced at every turn.

Though the idea that all men are created equal was written in the Constitution, it was far from a reality for many Americans in 1963. Congress attempted to pass meaningful legislation in the late 1950s, but the legislation suffered compromises throughout the process that weakened its power to effect change.

The Civil Rights Movement up until that time had been a massive grassroots effort involving tens of thousands of black and white citizens whose labor over decades had aroused the nations' conscience and sparked the demand for change that made the monumental legislation possible.

Of the 535 members of Congress at that time, only five were black. Remarkably, the passage of the bill was a result of white men whose personal acquaintance with black Americans was limited. As leaders they pushed their moral fortitude and the historical argument for the bill's fierce necessity.

Purdum provides a deeper understanding of the leaders participating in the formation and ultimate strengthening of this legislation. Prior to reading the book, I had not been aware of the team that President John F. Kennedy and Attorney General Robert F. Kennedy formed to introduce strong legislation to the House.

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They were brothers on a mission, although frustrated politically by a pending re-election. The book also sheds light on the difficult relationship between Robert Kennedy and Lyndon B. Johnson, and how their perseverance to pass this bill after President Kennedy's assassination drove both of them to continue to work hard in spite of their feelings for one another and in spite of never having previously worked together.

By 1964, the Civil Rights Act was, indeed, an idea whose time had come. In February of 1963, President John F. Kennedy, in undertaking to celebrate the centennial of the Civil War, felt the country was on the verge of yet another interstate war. Kennedy's America was similar to Abraham Lincoln's America: two countries, North and South, Black and White. Americans were segregated by color on buses, in school, in restaurants, hotels, social clubs, stores, churches, and almost every other establishment.

Kennedy struggled with this uncomfortable political issue. While he advised the nation that "[it] needed to complete the work begun by Abraham Lincoln a century ago," it was not clear whether that would be a priority of his presidency or whether, due to his pending re-election, he would move slowly so as to maintain key Southern votes.

The President, with his brother Robert Kennedy—in response to the escalating activism and tragedy, including the Freedom Rides, defiant public school boards that closed their districts rather than integrate, the murder of four young girls in the bombing of a Birmingham church, and the arrest of Dr. Martin Luther King, Jr.—ultimately took a position that strong and effective legislation had to be passed so that "we do not continue to ignore the fact that many of our citizens do not possess basic constitutional rights."

Initially the Kennedy brothers set to work with advisors to create a civil rights bill that was strong enough to survive the scrutiny of both the House and Senate, with enough teeth to be effective when they were both done with it. The Kennedys met tirelessly with NAACP leaders, leaders of both parties, and leaders in Congress to get the bill to the floor of the House. From there the rollercoaster of strategic moves and players begins and proceeds slowly as a result of the deeply divided sides.

In the midst of the bill's early progress, President Kennedy was assassinated. Lyndon Johnson, who as Vice President, had not yet been participating in the enactment of this bill, suddenly becomes President and is faced with the importance of this bill to the country. Unfortunately, the congenial partnership of the President and Attorney General was lost because Robert Kennedy and Lyndon Johnson were not fond of each other.

They both supported the bill in spite of their feelings toward each other. Each man moved forward in different directions to win its passage. Lyndon Johnson early on is determined to complete what his predecessor started. Johnson put enormous effort into personally calling upon friends and favors to get influential senior leaders in the House and the Senate to move the legislation without it being watered down. Johnson stayed behind the scenes, powerfully influencing and pressuring Hubert Humphrey, William M. McColloch, Charles A. Halleck, Everett Dirksen and many others, maneuvering and steering in whatever way necessary to get the votes to pass the bill.

Robert Kennedy worked diligently at his own game plan, gaining support in the House and Senate. Even Ted Kennedy, then a very junior Senator, made a moving speech from the Senate floor rallying support for the passage of the bill.

Purdum guides us through the long days, weeks and months that these skilled legislators battle one another, maneuvering and outmaneuvering each other through a series of committees, amendments, filibusters, cloture, and many other timing schemes and tools that steer, push, dodge and drag the process on until finally the bill is passed.

Some of the major players in the passage of this legislation are well known, including John and Robert Kennedy, Lyndon Johnson, and Hubert Humphrey. However, Purdum highlights many heroes of which most Americans are likely unaware. But for the efforts of these little known heroes, the Civil Rights Act of 1964 would not have passed the House or the Senate.

The story is exciting, filled with personal and political information about these unknown heroes, the painstaking process, and their determined drive not to fail with respect to this idea whose times had, indeed, come. The lives of our entire country were reshaped for the better as a result of the passage of the Civil Rights Act, although the change that followed proved arduous for years to come. We should be forever grateful to these men who had the perseverance, strength and foresight to see the legislation through to its rightful passage.

The underlying tone of the book, which alluded to the political ramifications of having more federal intrusion and power over the states, made me pause and contemplate further what a delicate balance exists between protecting our constitutional rights (letting each state determine what's best for its residents) and upholding a basic principal in the foundation of the Constitution (that all men are created equal and should be treated equally).

Reviewing the various components of the legislation and contemplating the enforcement of its terms made me realize how many legal professionals nationwide would be involved in defining the furtherance of its purpose. Supreme Court justices, federal and state judges, the U.S. Attorney General, state attorneys general, city attorneys, district attorneys, and private attorneys across the nation would be utilized to enforce the legislation and carve out precedents as the nation adjusted to equal treatment, desegregation, and fair employment.

This legislation made doing the right thing for individuals the priority. It gave me great pride and renewed hope in our country to read this story about how our Constitution can work to protect people for the greater good.

Taking a Law Practice to New Heights

By Irma Mejia

Photos by Marco Padilla

Attorney Richard T. Miller balances a busy practice, home life and community service through a passion for flying.

AS THE SUMMER ARRIVES, LIFE TENDS TO SLOW down for many people. Many of our attorney members find summer to be the perfect time to pursue much needed rest and relaxation. Part of that relaxation is achieved through the pursuit of an active lifestyle, hobbies and creative activities. SFVBA attorney member Richard T. Miller's unique extracurricular interest is pursued year-round. With a law practice conveniently located near the Van Nuys Airport, Miller is able to indulge in his hobby of flying as often as his schedule permits.

Miller's interest in flying was sparked early on in his career. An Army veteran, Miller worked as a file clerk and later as a paralegal at the aviation defense firm of Kern and Wooley in West Los Angeles. At the time, the firm handled primarily aviation related insurance claims and litigation, providing Miller with an education in the handling of aircraft accidents and terminology. During that time, he attended Southwestern School of Law and became a licensed attorney in 1991.

Soon after passing the California Bar, he began working with Valley aviation attorney Arthur Wasserman, who subsidized Miller's pilot training. "I thought it was a good idea to learn how to pilot an aircraft in order to be better at aviation law," Miller explains. He attained his pilot's license in 1994.

His work with Wasserman led to the establishment of the firm Wasserman and Miller. In 2009 he opened his own practice in Van Nuys, adjacent to the Van Nuys Airport.

According to Miller, learning to fly is not nearly as difficult as learning to be a lawyer. "The airplane flies itself as long as you maneuver it correctly at the right times and stay away from problem situations, of which I had read about in many accident reports," he says.

To become a licensed pilot, Miller was required to complete a minimum of 40 hours of flight training, including 20 hours of cross-country flying (more than 50 nautical miles) and ground training; pass a written examination on weather, navigation, federal air regulations, and flight dynamics; and pass a medical examination.

His first time flying was, of course, with a certified flight instructor. "Probably most of the time was spent listening to the instructor and sweating a lot. It was both physically and mentally challenging and draining," recalls Miller. However, he describes it as a "happy accomplishment."

Once he acquired the necessary experience, the sky was the limit. He's flown all over California and Arizona. He's even flown with Wasserman to Oshkosh, Wisconsin in Wasserman's Cessna 180.

Flying is a hobby with serious risks. Miller himself has encountered a few tense moments in the air, including one time when his rental plane had an electrical failure and the radios were not working. "You are trained to fly to the nearest airport and get whatever problem there is repaired," he says. "I was able to land safely—without flaps—at a nearby airport, had the problem fixed, and flew back to Van Nuys."

Despite the risks, Miller's family is very supportive of his hobby. He has an encouraging wife who enjoys flying with him. He also takes other family members on flights, though he admits that some will refuse to get into a small plane. He also donates flights for local charity auctions.

While fun and exciting, flying is also an expensive hobby to maintain. As a member of the Capper Flying Club, Miller is able to split the cost of owning and maintaining an aircraft with several other pilots. Through his club, he has regular access to a Cessna 182, a high wing aircraft with a good safety record and room for three adult passengers. Monthly dues to his club are a little over $100, while the cost of flying, including fuel, will run well over $100 an hour. According to Miller, the flying club fees are much more reasonable than owning a plane on his own.

In addition to entertaining family and friends and piloting flights for charity, Miller's aviation skills come in handy at his law practice. If he can justify the expense, he will fly to one of the many airports in Southern California to make a court appearance. And sometimes Miller will need to fly to a location to investigate the airspace and airport circumstances, as in the case of FAA pilot enforcement actions.

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"Any flying contributes to my overall aviation knowledge, which in turn helps me better consult on aviation matters," explains Miller. In his practice, he sees cases on general aviation matters, including flying, buying, selling or leasing an aircraft, parking/hangar issues, flight training issues, FAA enforcement cases against pilots and mechanics, property damage and injury cases.

Along with general aviation matters, his firm serves a variety of blue collar clients on many types of civil and probate matters, including real estate, landlord/tenant, wills and trusts, business disputes and personal injury. His aim is to serve the community, with the goal of resolving disputes in the most economical fashion while vigorously representing his clients all the way through trial.

It is that desire to assist others that initially led to his interest in law. As an undergraduate political science major, he was impressed by all the lawyers who were influencing American politics and society. "I thought I might be able to help people live better in our society if I was able to assist them as an attorney," he says.

Miller continues that service through law as a member of the Attorney Referral Service (ARS) of the SFVBA. As an ARS panel member, Miller has become a longtime and dedicated volunteer of the Senior Citizen Legal Services Program, advising elderly clients at local senior centers. "We wouldn't be able to help as many people if not for Richard's willingness to speak to and help clients that many attorneys would otherwise reject," says Rosie Soto Cohen, SFVBA Director of Public Services. "With our programs, he is usually the first volunteer to enlist, whether it's for Lawyers in the Library or Law Day events."

He maintains his goal of serving all types of clients by accommodating their needs, often adjusting his fees and arranging payment plans. "One of the lowest referral fee checks we ever received was from his office for the amount of $3. He must have charged something like $30 to help a client who was in real need," recalls Soto Cohen. "It's a reflection of his commitment to help everyone. He goes out of his way to help clients that may not otherwise be able to find legal representation."

"I see myself as a blue collar lawyer. I personally grew up in an economically challenged environment and understand what it means to have little money," says Miller of his law practice and fee accommodations. "I try to make it easier for low income clients to afford my hourly rates and allow for payments over time. I try to help people by not charging for consultations and giving frank legal advice pertaining to their situation, including whether I cannot help them or whether they do not really need legal assistance at that time."

In addition to helping people through his practice, Miller is heavily involved in the Greater Van Nuys Rotary Club, of which he is currently President. Through the Rotary Club, he participates in several local and international service projects, from the continuing effort to eradicate polio worldwide to supporting special needs facilities in the San Fernando Valley to hosting an annual invitational track meet for local students. Miller's favorite Rotary Club event is the city-licensed monthly bingo game night at Birmingham Community Charter School to raise funds for the Rotary's service projects. "That is my pet project," he explains. "I try to lead the bingo committee and occasionally call the numbers."

He also belongs to several chambers of commerce and a local Toastmasters International Club. "I usually run into him whenever I'm at community events. It's a sign of his passion for community outreach," says Soto Cohen.

With a busy practice and several commitments to community service organizations, Miller finds that flying helps him to maintain a healthy balance between work, family and community service. "Flying is a good escape from life's stresses," he says. "It requires focus and concentration. You can't be distracted by other matters—or you shouldn't be flying. And it provides a nice sense of achievement."

He describes flying as a fun and freeing type of "work." "While in the air, I'm continuously vigilant about the plane operation, direction and surrounding airspace, listening for air communication over the headset. It's kind of like work but with a general sense of enjoyment and freedom—along with a healthy degree of controlled nervousness," he explains. "Afterwards, there is a continued sense of rewarding accomplishment. If I have had passengers along for the ride, they are most appreciative and thankful. And there's even another level of satisfaction if I've given this flight as a charitable donation."

Miller believes maintaining stress relievers are very important for attorneys. Along with flying, he keeps himself sane with physical exercise. "My other hobby is playing basketball—to the extent I can still move up and down the court," he says. Active efforts to separate work, home, and other extracurricular activities is what he calls "good mental therapy." His advice to attorneys seeking a healthy work/life balance? "Have some fun!"

Note-Taking Apps to Save the Day

By Steven G. Mehta

NOTES, NOTES, NOTES. IT sometimes seems that all attorneys do is take notes: client interview notes, witness notes, deposition notes, notes of meetings, notes of experts, and notes in mediation. But what happens to those notes? Do they get stored or, like me, do you eventually lose some of your critical notes?

Thanks to my iPad, I haven't had to worry about my notes. I can store them on the tablet, type or handwrite them, save them to my desktop computer automatically with backups, and even store them to the cloud. Over the years, I have taken thousands of notes with my iPad and used very few pages of actual paper.

The first thing to consider when selecting an app is your note-taking style. How do you like to take notes? Are you an active or passive participant in meetings? Do you have time to type carefully presented notes or is the conversation too fast-paced?

As a mediator, I have to take notes rather quickly and don't have time to engage in significant formatting of typewritten materials. If I were to type, my focus would be turned away from the clients and participants and towards the writing—something that would not be good for developing rapport. As such, I tend to focus on apps that allow me to handwrite notes with ease.

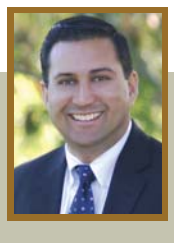
Below is a brief overview of some apps for the iPad that can make an attorney's note-taking life much easier.

GoodNotes

There are few great programs for the iPad that are designed to allow you to write nearly as quickly as handwriting. My current preference is GoodNotes. The user interface is pretty simple and graphically elegant. The user can use any type of digital paper background that he or she desires, including graph paper, lined paper, or even legal paper. When writing notes, it appears that you are writing on a notepad. The program works on both the iPad and the iPhone. The cost is $5.99.

GoodNotes has a variety of great features, including high-end digital ink technology that looks great. It allows you to type with the keyboard, handwrite, insert images, or draw perfect shapes easily. I find that I can write notes at high speed with ease and efficiency. I can highlight portions of the notes with a highlighter, change the color of a pen, underline key points, and keep track of multiple pages of notes in a flash. Users can even insert PDF documents, sign documents, and rearrange or delete pages as they like. It is very flexible.

The program doesn't slow down the writing process. Thanks to the powerful zoom window feature, you can write quickly with your fingers or with a stylus in a large area, and your handwriting will be shrunk automatically. You can continuously write until your heart's content—and without worry since it backs up your data to Box, Dropbox, Google Drive, or SkyDrive automatically.



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Ghostwriter

Another good program with similar function is Ghostwriter. Just like GoodNotes, Ghostwriter is a sophisticated universal text editor for iPhone and iPad with access to your iCloud and Dropbox documents. It lets you edit documents in text format and add HTML and Markdown format codes for creating emails and file attachments. The cost of this program is $1.99.

AudioNote

Some lawyers feel like note-taking loses something because you can't remember exactly what was said at the time the notes were taken. AudioNote, at $4.99, is an affordable solution to that problem. It combines the functionality of a notepad and voice recorder to create a powerful tool that will save you time while improving the quality of your notes. It's the perfect app for taking notes of meetings with experts, witnesses, depositions and other such detailed requirements.

AudioNote synchronizes your handwritten or typewritten notes directly with the audio input. One great feature of this app is that if you point to a section of your notes, the audio portion directly relevant to that note will play and remind you of what your chicken scratch was actually trying to note. This helps you avoid searching through the entire audio recording for the important sound bite you referred to in your notes. And if you didn't take notes during the meeting, you can add them later and link them to the corresponding audio portion of the interview. You can also export the audio recording along with the written portion so that you have a complete record.

When showing this app to attorneys, they have told me that it would revolutionize the way that they take notes of client, witness, and expert meetings. Of course, it is important to note that each state has different restrictions on recording a conversation without permission. AudioNote users should certainly pay heed to the legal requirements in their state.

Evernote

In my experience, the best tool for organizing thousands of seemingly random documents is Evernote. It is available for free on almost every platform: desktop computer, iPhone, Android, iPad, and many others. Premium and business subscriptions are available for higher amounts of storage.

Evernote allows you to send notes, documents, pictures, and random information from any source and store it in an easily searchable database organized according to topic. For example, you can create an Evernote notebook for a particular case. Everything relating to that case can go into that digital notebook and can be searched and accessed from any device that has Evernote installed. You can send documents to Evernote by email, text, web-clipping, or from note-taking applications.

In my practice, if a case doesn't settle at mediation, I create a notebook for the case and send all meeting, research, and telephone notes, documents, and other data regarding the negotiation to the Evernote file. Then I have access to all the data relating to the case when I need it for follow up.

Evernote also lets you easily share those notes with people that need it. So if you need to send an associate a note from a case file, you can instantly email or share that note and they will have immediate access. I can't count how many times Evernote has saved me when people have asked me about the specific offers that took place 4 months prior.

Notes will remain an inevitable part of the law practice. But with the help of technology, note—taking is made easier. Today, we can take as many notes as we want—without ever killing a single tree—and access them all at the flash of a button with the help of programs such as GoodNotes, Ghostwriter, AudioNote, and Evernote to save the day.

Administrative Professionals' Day Luncheon

The SFVBA celebrated Administrative Professionals' Day with a fun luncheon on April 23 at Braemar Country Club in Tarzana. Several firms and law offices joined in the celebration, including Lewitt Hackman, Law Offices of Alice A. Salvo, Greenberg & Bass, Kestenbaum Law Group, Law Office of William C. Staley, Law and Mediation Office of Lynette Berg Robe and Law Office of Michelle Short-Nagel. Karin Helton of Wasserman, Comden & Casselman was named Administrative Professional of the Year. Sponsors included Atkinson Baker Court Reporters, Hutchinson and Bloodgood, LLP, CityNational Bank and The Matloff Company.

New Lawyers and Criminal Law Sections

The New Lawyers and Criminal Law Sections organized an MCLE seminar on the "Nuts and Bolts of DUI Defense" on May 1. The presentation was made by Criminal Law Section Chair David Kestenbaum. Chairs of the New Lawyers Section, Yi Sun Kim and Megan Ferkel Earhart, helped organized the event which was free to members of both sections. Event and dinner were sponsored by Joey Hernandez Insurance Solutions.

NEW MEMBERS

The following applied for SFVBA membership in April 2014

Jeffrey Alpert
Encino
Family Law

Alisa Azizyan
Burbank
Law Student

David J. Davis
Davis Law Group, PLC
Los Angeles
Business Litigation

Joshua S. Davis
Gianelli & Morris
Los Angeles
Insurance Bad Faith

Nina Elisseou
Grayslake
Torts

Michael Hackman
Irvine
Litigation

Christine N. Han
Lemieux & O'Neill
Westlake Village

Ellen Katzman
Keller Williams Calabasas
Calabasas
Associate Member

Shant Michael Kayayan
West Hills

Bogdana Koiso
Los Angeles
Paralegal Association
Studio City
Paralegal

Limor Mojdehiazad
Beverly Hills
Family Law

Rob R. Nichols
Law Office of Rob R. Nichols
Woodland Hills
Bankruptcy

Aisha G. Oyarekhua
Granada Hills
Employee Benefits

Edgar Poghosyan
Law Office of Edgar Poghosyan
Encino

David A. Schnider
Schniderlaw
Sherman Oaks
Intellectual Property

Don't Blink or You'll Miss It

AMY M. COHEN
SCVBA President

amy@cohenlawplc.com

IT SEEMS LIKE JUST YESTERDAY I walked my 8-year-old daughter into school for her first day of third grade. Now we are just a few weeks from finishing the school year and starting another exciting (and too short) summer vacation. People who have children in high school or college like to tell new parents to "cherish every moment" because in a blink, it is gone. I agree, particularly as I look at my 3-year-old and wonder how she got to be so big, seemingly overnight. I catch myself sometimes wanting to slow down the clock, knowing that my little one is our last and that these milestones that we are passing will not come again.

Of course, the flip side to that advice is that we cannot cherish every moment. As most parents would agree, there are definitely moments—tantrums, sleepless nights, fights–that we might want to forget.

A few weeks ago I finally gave up on an old stroller that had a broken wheel and threw it away. I cried as I dumped it into the barrel, so many memories flashing through my mind attached to both girls. I laughed at myself a bit as well, wondering what some of my friends or colleagues might think of me if they knew I was that sappy and sentimental. That stroller welcomed our first daughter, carried her through many visits to Disneyland, cruises in Europe and Mexico and daily life in our neighborhood. When her little sister arrived, the stroller was once again pressed into service for trips around Disneyland, the Caribbean and the neighborhood.

As I put it into the trash, I did not see the dirty grey fabric, stained with countless goldfish crackers or fruit gummies; I saw the toothy grins of little girls safely buckled in for a ride, or the sleeping faces of the girls crashed out after a long day. I did not see the years of dirt caked onto the wheels, but remembered the dust and sand it had rolled through in several different parts of the world. With all of that in mind, I cried a bit as I said goodbye to their trusty steed and in a tiny way, said goodbye to another piece of their childhoods. I will say that for all of those memories, I have taken pictures (many featuring one of my girls sitting or sleeping in that stroller), and will have those to look back on. And as much as I can, I will try to keep my blinking to a minimum.

It also seems like just yesterday that I was sworn in as the President of the Santa Clarita Valley Bar. Here we are now more than halfway through my term and already almost halfway through 2014. Although I do not have a story to tell about throwing something out in relation to the Bar or sentimental memories like that, I thought that this half way point would be a good time to recap and also highlight some upcoming events.

In January, the SCVBA held our first event of the year at the Salt Creek Grille, hosting more than fifty of our members for a networking mixer sponsored by Scorpion Web Design. In February, we welcomed Professor Robert Barrett, who presented a CLE seminar titled "Avoiding Bar Complaints." In March, Nicole Faudree, Chair of the Department of Paralegal Studies at College of the Canyons, spoke on the effective (and correct) use of paralegals and paralegal interns in the legal practice. Our April CLE event provided credit for substance abuse and was presented by Bob Sharits of Action Family Counseling. Last month, our members once again came together for a networking mixer. As always, it was a well-attended event.

This month, we welcome Judge Ann Jones, Supervising Judge of the North Valley District. The event will take place at the Tournament Players Club in Valencia at 6:00 p.m. on June 19. Please join us for a great dinner and one hour of CLE credit. Later this year, we will once again welcome an author of legal thriller novels to our annual Dinner with the Author (scheduled for September 18) and our Installation dinner on November 20 during which April Oliver will be sworn in as President.

Please visit our website at www.scvbar.org for information on those and other upcoming events. Contact info@scvbar.org for more information or to register for these great events. I look forward to seeing you!

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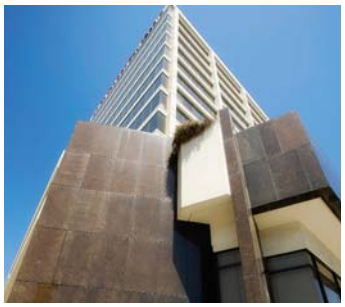


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