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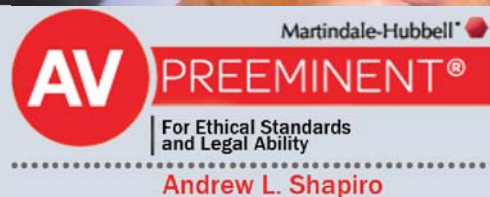
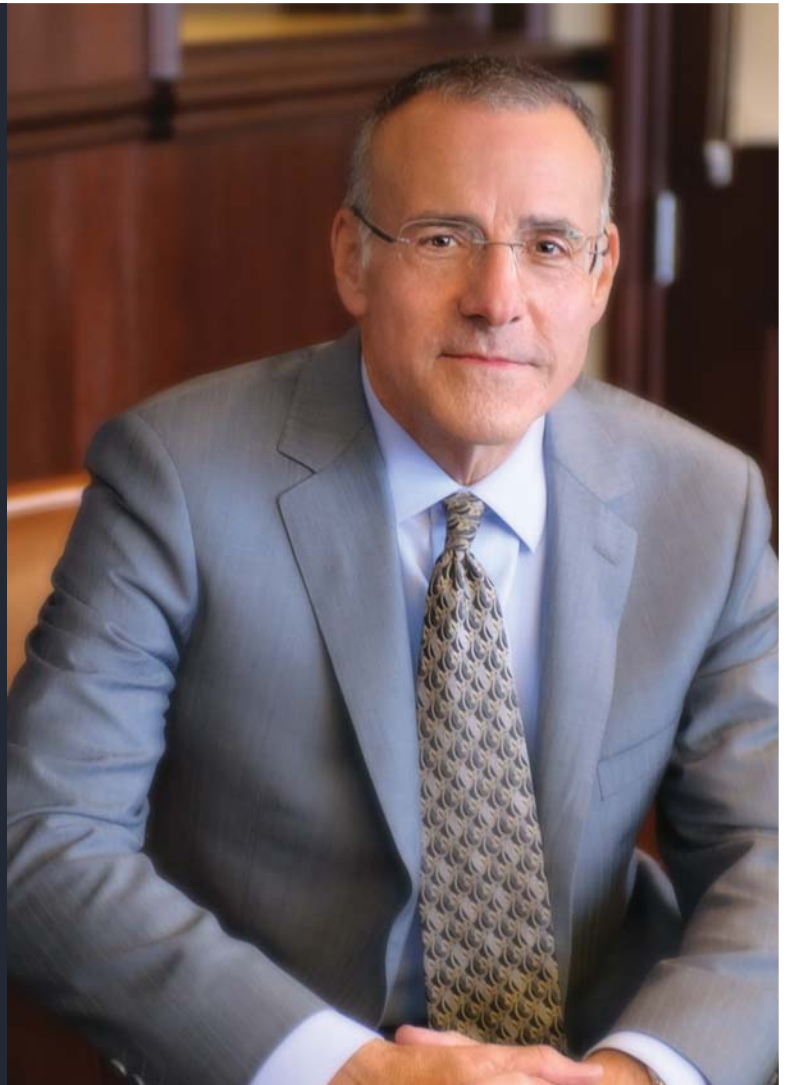
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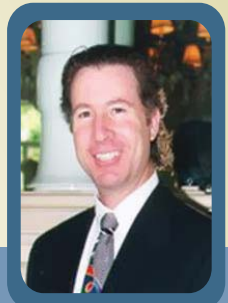
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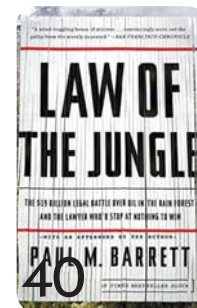
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On the cover: Larry Grassini
Photo by Paul Joyner

FEATURES

- 16** An Environmental Calamity:
The Porter Ranch Gas Leak | **BY BILL DANIELS**
- 20** When Sparks Fly: The Trial Lawyer vs.
The Appellate Lawyer | **BY HERB FOX**
MCLE TEST NO. 89 ON PAGE 29.
- 30** In Vino Veritas: Larry Grassini Savors Success in Courtroom
and Vineyard | **BY ELIZABETH POST**
- 38** Music Publisher Caught in Birthday Suit,
Agrees to Settle | **BY TAL GRINBLAT AND NICHOLAS S. KANTER**

COLUMNS

- 40** Book Review
Law of the Jungle | **BY SCOTT A. QUIGLEY**

DEPARTMENTS

- 7** President's Message
- 9** Executive Director's Desk
- 10** Event Calendars
- 13** Public Service
- 14** Photo Gallery
- 39** New Members
- 43** Santa Clarita Valley
Bar Association
- 44** Classifieds

CORRECTION: In *Book Review: A Justice's View of Global Truths* (February 2016, page 41), endnote 8 was published incorrectly. The correct endnote is *Abbott v. Abbott*, 130 S. Ct. 1983, 560 U.S. __ (2010). *Valley Lawyer* regrets the error.

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Valley Bar Network

CAROL L. NEWMAN
SFVBA President



carol@anlawllp.com

WHEN I ATTENDED THE ABA's Bar Leadership Institute two years ago in Chicago, one of the common themes for all bar associations was how to continue to be relevant. To my surprise, this was not only a concern for voluntary bars like ours, but also mandatory bars, which faced concerns about funding and oversight. It was instructive, but also daunting, to find out that across the nation bar associations are not only striving to flourish, but to survive.

When I was a younger lawyer, membership in the local bar association was considered something important to have, regardless of what the bar association provided to its members. You joined because you should. But that appears to be no longer true for many lawyers. Now there has to be a reason to join or to stay a member.

We have an ongoing conversation among our Board, officers, and staff as to what our members want and need that we can provide and that would set us apart from other providers. We constantly ask ourselves, "Why should lawyers join the SFVBA? What services and benefits should we offer that we aren't already providing?" Certainly we already provide exceptional MCLE, an award-winning magazine, active sections, mixers, collegiality, our Attorney Referral Service, and many other services and benefits that I'm going to be reminded were not mentioned here. But what aren't we providing to our members that we could provide?

The answer is business and resources. It appeared to us that the main thing our members might want is an additional source of good business. To put it another way, there can rarely be too many sources of good business. Most of us, no matter how many years we have been in practice, need to keep filling the pipeline. Cases settle or go to trial; transactions are completed; client relationships end for one reason or another; and then we must do it all over again. We've frequently heard it said that you never know where your next client is coming from. Every opportunity we have to tell our colleagues what we do for a living is a good opportunity.

In addition, those of us who are not general practitioners frequently need resources. We need to know who among our colleagues can

handle the work that we cannot handle. Additionally, if we need help with something in our practice, we need to know whom to call. You can never have too many resources.

This year, for the first time, our Bar is organizing its own business networking group, designed to drive business and provide resources to SFVBA members. By the time you read this article, our networking group, currently called the Valley Bar Network (or VBN), will already have started meeting with a core group of active participants, many of whom know the value of networking because they have been active with other networking groups. This group, which will be solely for current or prospective SFVBA members, will allow our members to get to know each other in a way that has not been available to you before.

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The credit for this new initiative must go to SFVBA Secretary Alan Kassan, who is also the Chair of our Membership & Marketing Committee. Alan has been spearheading this effort to get the Valley Bar Network off the ground.

For a couple of years the SFVBA had a relationship with The Esquire Network (TEN), an attorney-only networking group expressly designed to drive business to its members and provide resources. Until recently, the Bar hosted TEN's evening meeting in Tarzana. Additionally, for a period of time, SFVBA members could join TEN at a reduced rate.

We examined our relationship with TEN. We asked ourselves: is it too much to expect that with 2,000+ members we could gather 20+ of our current or prospective members in a room once a month to see if they could give business and resources to each other? We decided that it was worth trying to find out. We'll see.

The success of networking is evidenced by the fact that several of our Board members already host their own networking meetings. Additionally, several of us are already members of such groups as ProVisors and TEN. I have been a member of both organizations for years, and much of my business comes from them. So far as we are aware, these groups have been very successful. This proves the power of networking.

The Valley Bar Network is starting with evening meetings once a month. **All members are welcome, and you can bring friends and colleagues who are prospective Bar members.** We are hopeful that if there is enough interest, we can add one or more breakfast and lunchtime meetings as well.


Do you need new business? Do you need attorney resources for your practice? Let's give this a try. I look forward to meeting you at the Valley Bar Network. 🏠

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ELIZABETH POST
Executive Director



epost@sfvba.org

THE SAN FERNANDO VALLEY BAR ASSOCIATION IS VERY PROUD OF our Valley lawyers, and like proud parents, we find great satisfaction boasting about your successes and achievements. *Valley Lawyer* is our brag book—whether it profiles an accomplished member like Larry Grassini, or features articles showcasing members' expertise, or shares member announcements in our Bulletin Board. Contact me today with your announcements, articles or story ideas so that you too can be included in our brag book! 

BULLETIN BOARD

The Bulletin Board is a free forum for members to share trial victories, firm updates, professional and personal accomplishments.



Pasadena mediator and family law attorney **Mark B. Baer** has been named "Best Collaborative Divorce Practitioner—California" in Acquisition International's 2015 AI Legal Awards. In addition to this international award, Baer was recently selected "Best Family Law Mediator, 2015" for the "Official Best of Los Angeles Awards." Baer can be reached at mark@markbaeresq.com.

Maya Shulman has launched the Shulman Family Law Group in Calabasas. The new firm will bring expertise in the areas of interjurisdictional child custody conflicts and the division of assets. Shulman can be reached at mshulman@sflg.us.



Marcia L. Kraft, Larry Miller and Joy K. Miles have formed Kraft, Miles & Miller LLP, previously Kraft Law Offices, in Woodland Hills. The full-service law firm practices family law, estate planning, criminal law, and employment and civil rights litigation. The firm, a member of the SFVBA President's Circle, can be found at www.kraftlawoffices.com.

Sherman Oaks complex litigation firm **Pearson, Simon & Warshaw LLP** celebrated their 10th anniversary in January. The class action firm is a member of the SFVBA President's Circle. In the fall, the firm achieved a landmark \$1.864 billion antitrust settlement in a case alleging twelve Wall Street banks conspired to fix prices and limit competition in the credit default swaps market. The firm can be found at www.pswlaw.com.



Email your announcement to melissa@sfvba.org. Announcements are due on the first of every month for inclusion in the upcoming issue. Late submissions will be printed in the subsequent issue. Limit one announcement per firm per month.

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SUN	MON	TUE	WED	THU	FRI	SAT
WOMEN'S HISTORY MONTH						
		Valley Lawyer Member Bulletin 1 Deadline to submit announcements to editor@sfvba.org for April issue.	2	Membership & Marketing Committee 3 6:00 PM SFVBA OFFICE	4	5
6	Valley Bar Network 7 5:30 PM BUCA DI BEPPO ENCINO	Probate & Estate Planning Section 8 Update with Judge David Cowan 12:00 NOON MONTEREY AT ENCINO RESTAURANT Judge David Cowan will outline the upcoming changes and improvements to the case management systems. (1 MCLE Hour) <hr/> Board of Trustees 6:00 PM SFVBA OFFICE	Litigation Section and Encino Lawyers Association 9 6:00 PM GALLERIA COMMUNITY ROOM SHERMAN OAKS See ad on page 28	10	11	12
13	14	Taxation Law Section 15 IRS International Tax Enforcement 12:00 NOON SFVBA OFFICE Stephen J. Turanchik of Paul Hastings, who litigated for six years for the U.S. Department of Justice, Tax Division, will discuss FATCA and voluntary disclosures. (1 MCLE Hour)	Workers' Compensation Section 16 Anatomy of the Heart & Cardiovascular System 12:00 NOON MONTEREY AT ENCINO RESTAURANT Dr. Hirsch is the guest speaker. (1 MCLE Hour)	17 18 19 St. Patrick's Day 		
20	21	22	Litigation Section and New Lawyers Section 23 Interpleaders 12:00 NOON SFVBA OFFICE Attorney Matthew Erikson leads the discussion. (1 MCLE Hour)	24	25	26
27 <i>Happy Easter</i> 	Family Law Section 28 ESI for Discovery 5:30 PM MONTEREY AT ENCINO RESTAURANT Approved for Family Law Legal Specialization. (1.5 MCLE Hours)	Editorial Committee 29 12:00 NOON SFVBA OFFICE	30	31		

SUN	MON	TUE	WED	THU	FRI	SAT
					1	2
3 Valley Lawyer Member Bulletin Deadline to submit announcements to editor@sfvba.org for May issue.	4	5	6	7 Membership & Marketing Committee 6:00 PM SFVBA OFFICE	8	9
10	11	12 Probate & Estate Planning Section 12:00 NOON MONTEREY AT ENCINO RESTAURANT (1 MCLE Hour) Board of Trustees 6:00 PM SFVBA OFFICE	13	14	15	16
17	18	19 Taxation Law Section Identify Theft 12:00 NOON SFVBA OFFICE Sharyn Fisk and Cory Stigile will discuss the impact of identity theft. (1 MCLE Hour)	20 Workers' Compensation Section Death Benefits 12:00 NOON MONTEREY AT ENCINO RESTAURANT	21	22	23
24 Family Law Section 5:30 PM MONTEREY AT ENCINO RESTAURANT Approved for Family Law Legal Specialization. (1.5 MCLE Hours)	25	26 Editorial Committee 12:00 NOON SFVBA OFFICE	27 ADMINISTRATIVE PROFESSIONALS DAY 	28	29	30



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Porter Ranch Residents Know Their Legal Rights

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AT ITS MEETING ON JANUARY 12, THE SAN Fernando Valley Bar Association Board of Trustees formed an ad hoc committee to assist residents and businesses affected by the Aliso Canyon gas leak. Less than three weeks later, on February 2, 2016, the SFVBA and the Korean American Bar Association (KABA) of Southern California partnered with the offices of Councilmember Mitchell Englander and City Attorney Michael Feuer to host “Know Your Legal Rights” Town Hall and Legal Clinic at the Shepherd of the Hills Church in Porter Ranch.

Councilmember Mitchell Englander led an outstanding panel of independent legal experts from USC Gould School of Law, UCLA School of Law, City Attorney’s Office, and the Los Angeles County Department of Consumer and Business Affairs. The town hall was not designed to give attendees legal advice. The distinguished panelists, including Los Angeles County Assessor Jeffrey Prang, provided an unbiased overview of the city’s lawsuit and stipulated agreement with the Gas Company; the difference between the city’s and claimants’ lawsuits; the process of a civil lawsuit, how class action works, and the cost/benefit of class action versus individual litigation; how to report consumer fraud and real estate fraud; and state regulations for governing gas storage facilities.

The town hall meeting was live streamed and up to a 1,000 residents attended in person. Immediately

following the panel discussion, SFVBA Trustee Yi Sun Kim oversaw a free legal clinic for attendees to ask legal questions from a trustworthy, neutral source. At the town hall’s registration, attendees who planned to participate in the legal clinic received a numbered ticket. The number system would suggest that about 275 persons were interested in speaking with an attorney; eventually, about 150 to 200 residents met one-on-one with a lawyer.

More than two dozen SFVBA and KABA volunteer attorneys provided general educational information, reviewed documents, and gave appropriate legal referrals and resources. Volunteers advised individuals with legitimate legal concerns to seek more complete and personalized legal counsel as soon as possible. Referrals were made to the SFVBA Attorney Referral Service (ARS) and various alternative dispute resolution organizations. Residents left the clinic with a better understanding of the litigation process, mediation, fraud prevention, and resources to find a reputable attorney.

The work is not over, so many questions still remain. For the time being, volunteers are submitting their feedback on what questions were asked and what issues came up most often. The ARS is putting together a list of FAQs which will be made available to the public along with “Tips and Questions to Ask a Perspective Lawyer,” currently available at www.sfvba.org under Porter Ranch News Bulletin. 

THE ARS WOULD LIKE TO THANK THE FOLLOWING VOLUNTEER ATTORNEYS AND STAFF:

Henry Bahk	Jake Youngwoon Jung	Lloyd J. Lee	Robin E. Paley	Toni Vargas
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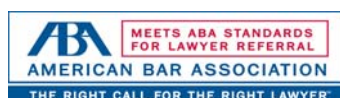
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AN ENVIRONMENTAL CALAMITY: The Porter Ranch Gas Leak

By Bill Daniels



THE GAS LEAK AT SOUTHERN CALIFORNIA Gas Company's Aliso Canyon storage facility is making headlines around the world. So, it's fair to ask: What are the root facts surrounding the disaster? Also, how is the gas well event impacting our Valley legal community?

Since the leak was first reported in November, we've seen a steady stream of data and comment flow from government, media and lawyers about what is actually happening on the ground and what it all means to the roughly 30,000 affected residents.

As this magazine goes to press, the California Department of Conservation Division of Oil, Gas and Geothermal Resources (DOGGR) just announced that the leaking gas has been permanently sealed. Regardless of when the well was capped, we can be sure that the legal aftermath will be with us for many years. Following is a brief update on what we know today.

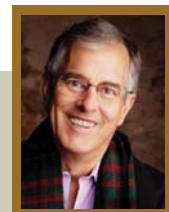
Background

Southern California Gas Company operates a natural gas storage facility in Aliso Canyon above the Porter Ranch community. The gas is stored deep underground in an old oil field. With the oil long gone, the Gas Company is using old oil wells to inject natural gas into the ground and then extract it when they need it. The Aliso Canyon facility is the largest of four such storage facilities and serves some 21 million people in the Southern California region.

The Gas Company reports it first discovered on October 23, 2015 that SS-25, one of 115 wells at the Aliso Canyon field, was leaking. The Gas Company made numerous attempts to stop the leak, but failed. Some California regulators complain they first learned about the leak from media reports rather than from the Gas Company itself.

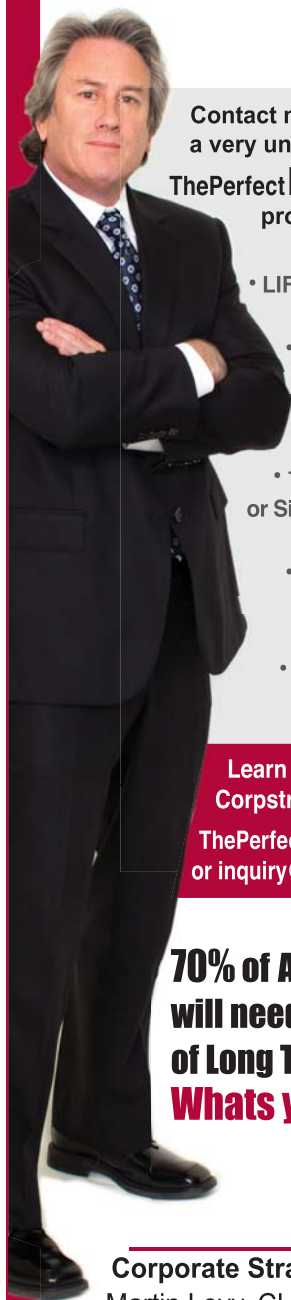
SS-25 was originally drilled in 1953 as an oil well. It was converted to natural gas storage in 1973. At its peak, SS-25 was leaking approximately 110,000 pounds of gas per hour. The leak slowed as the Gas Company reduced pressure in the storage field and drilled two relief wells intended to stop the leak. On February 18, DOGGR declared that the leak in the

Bill Daniels is an SFVBA Trustee who is presently representing Porter Ranch residents in connection with gas leak claims. He can be reached at bill@danielslaw.com.



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Aliso Canyon storage field has been permanently sealed.

On January 6, 2016, Governor Jerry Brown declared an emergency in Porter Ranch, opening the door to increased state resources. The Southland Regional Association of Realtors have amended residential purchase disclosure agreements for the San Fernando Valley to advise that there is "no definitive time frame for controlling the gas leak." Some banks are reportedly not lending against Porter Ranch properties at this time due to the emergency declaration by the governor.

Health Risks

The leaking gas is predominantly methane mixed with sulfur-based chemicals, which give the gas its distinctive, skunk-like odor. Common sulfur compounds that may be found in the leaking gas are Tetrahydrothiophene (THT), Tertiary Butyl Mercaptan (TBM), Dimethyl Sulfide (DMS), and Hydrogen Sulfide (H2S). The Gas Company claims both methane and the chemical compounds mixed with the methane are harmless at low levels. However, some experts caution that as the sulfur compounds break down in the atmosphere, they may present a health concern.

Other chemicals may be present in the escaping gas, such as

benzene, toluene, ethylbenzene and xylene, some of which are known carcinogens. It is presently unknown whether or not these compounds appear in sufficient quantities to pose a significant long-term health threat to the community. The Los Angeles County Department of Health is downplaying any risk. The Department states in a printed fact sheet that exposures to the gas leak chemicals "are generally not expected to lead to permanent or long-term health problems. However, short-term recurrent symptoms may occur"

Anecdotal evidence from residents indicates that the so-called short-term symptoms can be significant. Commonly reported health effects include nose bleeds, eye/throat irritation, headaches, nausea, dizziness, vomiting and listlessness. One civil lawsuit is making a claim for wrongful death, alleging the gas link is causally linked to the death of an elderly resident.

Long-Term Health Effects

While the Department of Health does not consider the chemicals released by the gas leak to pose long-term health risks, other experts warn that it is premature to rule out long-term problems given the unprecedented leak. Researchers at the University of Southern California's Keck School of

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Medicine announced they will study the long-term health effects of the natural gas leak.

Relocation

Some 5,000 families relocated away from the gas leak, according to Councilperson Mitchell Englander and *Los Angeles Times* reports. Many residents, including members of the SFVBA, relocated under a Gas Company program that either reimbursed them for relocation expenses or paid some of those expenses outright.

The original agreement between the Gas Company and the City Attorney's Office forced relocated residents to return to their homes within 48 hours after the well was declared sealed. The short deadline posed a hardship for many, particularly those with children attending two closed area elementary schools, Castlebay Lane Charter and Porter Ranch Elementary. On February 8, 2016, the City Attorney and the Gas Company reached a new agreement to lengthen the relocation time from 48 hours to eight days for residents to move back to their homes once the gas leak was stopped. The Gas Company will also reimburse moving expenses up to \$500.

Current Legal Actions

Residents report receiving numerous solicitations from attorneys for both class action and individual lawsuits by mail, electronic mail, and various other means. Various plaintiff firms from both Southern California and across the nation are engaged in extensive marketing efforts. There are reports of resident burn-out as a side effect of the marketing barrage.


On February 2, the Los Angeles County District Attorney filed four misdemeanor charges against the Gas Company, accusing it is releasing

hazardous air contaminants and then neglecting to report that release until three days after the leak began.

As of February 4, 2016, there were 52 individual complaints, ten class actions, and two civil enforcement actions (by the Los Angeles City Attorney and the State Attorney General, respectively) filed with the Los Angeles Superior Court. Many more lawsuits are expected. Lawsuits relating to the Porter Ranch gas leak are almost exclusively being filed downtown in the Los Angeles Superior Court.¹

A petition for a hearing on coordination of the civil cases was filed January 12 in Los Angeles and San Diego Counties. The petition was approved on January 30 by Chief Justice Tani Cantil-Sakauye, acting in her dual role as Chief Justice and Chair of the Judicial Council.

In granting the petition, the Judicial Council assigned Assistant Supervising Judge of the Complex Litigation Courts in Los Angeles, Judge Emilie Elias, to hold a hearing on coordination. The hearing is presently set for early March. In the interim, there is a general stay on all civil cases pending further orders by the court.

Attorneys for residents have formed a plaintiff committee to coordinate prosecuting their cases and share resources. Paul Kiesel of Kiesel Law is presently serving as interim liaison counsel and is expected to be confirmed in that role as events unfold.² The Gas Company is represented by two major law firms, Latham & Watkins and Morgan Lewis. 

¹ The notable exception is *SoCal Hoops Basketball Academy Corp. v. Southern Cal. Gas Co.*, San Diego Superior Court Case No. 37-2016-00000754-CU-TT-CTL, filed Jan. 11, 2016. Coordinating related actions pending in two or more counties is one factor supporting all cases being handled in a single coordinated proceeding. (C.R.C. 3.400(b)(4)).

² See C.R.C. 3.506.

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- Domestic Violence - Not Guilty, Jury Finding of Factual Innocence (San Fernando)
- \$50 Million Mortgage Fraud - Dismissed, Trial Court (Downtown, LA)
- DUI Case, Client Probation - Dismissed Search and Seizure (Long Beach)
- Numerous Sex Offense Accusations: Dismissed before Court (LA County)
- Several Multi-Kilo Drug Cases: Dismissed due to Violation of Rights (LA County)

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WHEN SPARKS FLY:

The Trial Lawyer vs. The Appellate Lawyer

By Herb Fox

Trial and appellate attorneys bring different skill sets and approaches to the common goal of serving their client's interests. This article is a primer for trial attorneys who want to understand what makes appellate counsel tick, and how, why and when to use them as part of a winning team.



By reading this article and answering the accompanying test questions, you can earn one MCLE credit. To apply for the credit, please follow the instructions on the test answer form on page 29.

TRIAL LAWYERS AND APPELLATE LAWYERS share the same goal: the best possible outcome for the client. But they often operate in parallel universes. The trial lawyer's vision is typically short term: jockey for the best tactical position and aim to win. The appellate attorney, in contrast, typically takes a longer strategic view: avoid snatching appellate defeat from the jaws of trial-court victory.

The different approaches of trial and appellate counsel should mesh like well-greased gears, and they often do. But sparks can and will fly, especially when the trial attorney tastes victory and the appellate attorney sees hazards ahead. When winning trial lawyers assure the client that the trial victory was clean and that reversals are rare, appellate counsel raise the yellow flag, urging caution. Students of the appellate process know that reversals happen every day, and they have all sweated through the tedious task of saving a precarious win from reversal by arguing that a clear error was harmless.

The key to synchronizing the combined efforts of trial and appellate counsel is mutual trust and respect for the disparate skill sets and approaches that each brings to the common goal of serving the client's interests. Here then is a primer for trial attorneys who yearn to understand what makes appellate counsel tick, and how, why and when to use them as part of a winning team.

Appellate Counsel: Nurture or Nature?

Many appellate attorneys trained as research attorneys (state courts) or clerks (federal courts) before entering private practice, and most have a strong research and writing background. They are found in appellate departments of large firms, at small appellate boutiques, or as solo practitioners.

Many (but not all) are certified as appellate specialists by the State Bar's Board of Legal Specialization, which requires that they pass a six hour exam; demonstrate substantial prior appellate experience in briefing and oral arguments; maintain a significant appellate law practice; and complete specialized and additional MCLE requirements as a condition of continuing certification. It's common for appellate specialists to have decades of experience in the state and federal appellate courts and to have drafted hundreds of appellate briefs.

How Appellate Attorneys Spend Their Time

When not conferring with trial counsel and clients, preparing for oral arguments, or mastering arcane rules of state and federal appellate procedures, appellate lawyers read, research, analyze, and write. Reducing a 2,500 page trial transcript into a 20 page short story for consumption by the appellate court, tracing the legislative history of an ambiguous statute, or trying to harmonize the holdings of discordant caselaw, are examples of appellate tasks that take long hours, patience, and perseverance. What also takes time, patience and perseverance is writing high quality, accurate and succinct appellate briefs that will be critically read and dissected by three (or more) appellate judges and their research staffs.

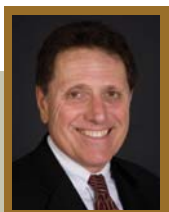
Why It Takes Time to Draft Appellate Brief Even Though Trial Brief Was a Winner

Apples and oranges all hang from trees, but that does not make them swappable. Trial briefs (or other pleadings in dispositive motions) are prospective. They tell the court what the evidence will show, and often lay out the governing law in a summary fashion. Appellate briefs are retrospective, tied down to the actual record as it unfolded at trial. They analyze, often in great detail, what law governs and why. Trial briefs persuade the trial judge why to find in favor of one party or another. Appellate briefs assist the reviewing court in identifying the correct law that applies to the case. Trial briefs will be quickly read by one judge and perhaps a research attorney. Appellate briefs will be poured over by three or more appellate justices and research staffs who will spend hours, not minutes, assessing the accuracy of the brief and the merits of the arguments.

These and other distinctions arise from the difference between trials and appeals. Trial courts resolve questions of fact; appellate courts resolve questions of law.¹

Decades ago, a Court of Appeal explained that appellate counsel's obligation to the reviewing court is to find the applicable law, and includes the "duty to study and to discuss the available authorities, both in California and, at least where there are none in California, in other jurisdictions."²

Thus, appellate work is "most assuredly" not the recycling of trial level points and authorities.³ Instead, appellate practice "entails rigorous original work in its own right."⁴ Indeed, the appellate practitioner "who takes trial



Herb Fox has been a Certified Appellate Law Specialist since 1998. He handles civil appeals and writs, dispositive and post judgment motions, and trial consultation for trial attorneys throughout Southern California. His two most recent published opinions are *Mitchell v. Superior Court* (2015) 243 Cal.App.4th 269 and *Schneer v. Lluarado* (2015) 242 Cal. App.4th 1276. He can be reached at hfox@foxappeals.com.



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level points and authorities and, without reconsideration or additional research, merely shovels them in to an appellate brief, is producing a substandard product.”⁵ As one court further explained:

For better or worse, appellate briefs receive greater judicial scrutiny than trial level points and authorities, because three judges (or maybe seven) will read them, not just one judge. The judges will also work under comparatively less time pressure, and will therefore be able to study the attorney’s “work product” more closely. They will also have more staff (there are fewer research attorneys per judge at the trial level) to help them identify errors in counsel’s reasoning, misstatements of law and miscitations of authority, and to do original research to uncover ideas and authorities that counsel may have missed, or decided not to bring to the court’s attention.⁶

Further, because intermediate appellate court decisions do not bind other appellate courts, the appellate practitioner is free, in appropriate circumstances, to urge the reviewing court to reconsider and reject existing case law.⁷ Trial courts, in contrast, are bound by *stare decisis* and so trial level briefs cannot urge the trial judge to disregard controlling precedent.⁸

In fact, appellate litigation is so distinct from trial-level efforts that courts determining fee awards have approved more attorney hours expended on the appeal than was incurred at trial.⁹

Attorney Who Knows the Case Best May Not Be Best Attorney to Handle Appeal

Any trial attorney is licensed to handle an appeal or writ proceeding. But knowing the case well can mean a lack of objectivity, which does not always make one the best candidate for the appellate proceeding.

A trial attorney’s intimate knowledge and passion for the case and the client may well be a disadvantage on appeal. Appellate justices expect a tempered and reasoned, if not dispassionate, articulation of the facts, the law, and reasons why the outcome was prejudicial error or, alternatively, correct. Thus, appellate courts have observed that trial attorneys who prosecute their own appeals may have tunnel vision. Having tried the case, “they become convinced of the merits of their cause. They may lose objectivity and would be well served by consulting and taking the advice of disinterested members of the bar, schooled in appellate practice.”¹⁰

Further, trial attorneys who “lack the time and interest to handle the appeal competently, or have neither the requisite expertise nor the time to become proficient in the

matter,” may owe their clients an ethical obligation to advise the association (or substitution) of appellate counsel.¹¹

Attorney Who Is Expert in the Area of Law May Not Be Best Attorney for Appeal

Expertise and experience in a particular area of law can be important. But the attorney whose practice focusses on an area of law may not be able to effectively communicate that law to a panel of appellate justices, all of whom are generalists. Appellate justices (except those in specialized courts such as the Bankruptcy Appellate Panel or patent case review by the federal Circuit Court of Appeals) hear cases from adoption to zoning, come from diverse backgrounds, and may not be well versed in the specialized vocabulary and technicalities of the law governing a case before them. Thus, appellate practitioners will assume that the appellate court knows little about the body of law governing the case, and will not assume in-depth knowledge of the legal issues. Appellate attorneys, who themselves are often generalists but for appellate law and procedure, are often in the best position to spoon the nuances of complex law to another generalist.

And speaking of appellate law and procedure, that is an arcane subject that appellate attorneys know well. This is especially true as for the appellate standard of review, which is the “compass that guides the appellate court to its decision” and “defines and limits the course the court follows in arriving at its destination.”¹² Unlike a trial where the battle is often about the facts, in “many appeals, the most contested issue is the standard of review.”¹³

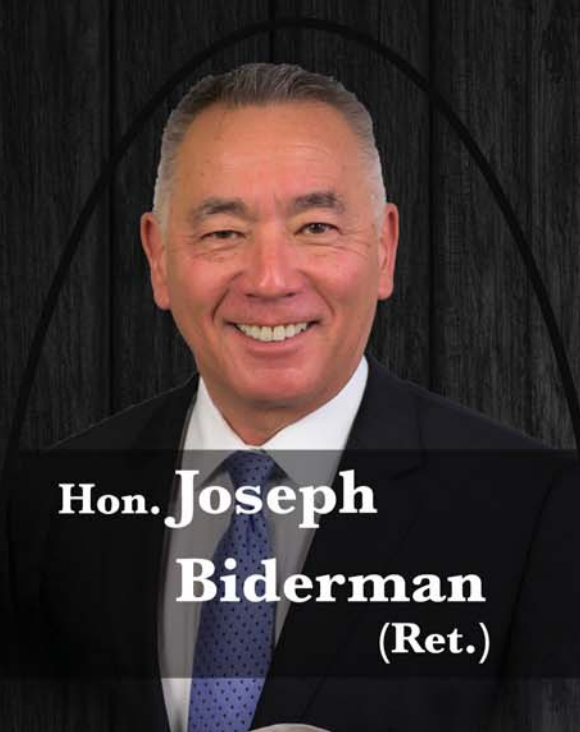
For that reason, trial counsel may well want a seasoned appellate attorney to raise and argue the standard of review that is most advantageous to the client’s cause.

The Client is Still the Client


When a trial attorney decides to associate in appellate counsel, it is easy to lose sight of who the appellate lawyer represents. But there should be no confusion: the client is always the client. Even where the trial attorney chooses appellate counsel and pays their fees, the appellate attorney has independent fiduciary and professional duties to the client, not to co-counsel, and must exercise their independent judgment in the best interests of the client.

There is no fiduciary duty between appellate counsel and trial counsel, apart from their duty of undivided loyalty to clients.¹⁴ That trial counsel may pay the appellate attorneys fees makes no difference; such payment does not create an attorney-client relationship.¹⁵ For these reasons, appellate counsel will often have the client execute the retainer agreement, and will independently apprise the client of all significant events in the appeal.¹⁶

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Brief Writing Services: Caveat Emptor

Many trial lawyers are solicited by firms that offer to deliver a fully drafted, signature ready appellate brief, which may or may not be written by attorneys licensed in California. Although it is not per se unethical to use such services, there are caveats.

The attorney who signs a ghost-written brief thereby adopts its contents, is fully responsible for accuracy of the brief, and must retain independent professional judgment regarding its contents. It may be necessary to disclose to the client the fact that a briefing service—not the client's attorney—wrote the brief, and the attorney remains responsible for assuring that there is no breach of confidentiality or privilege, or conflict of interest created by the use of the service.¹⁷

Additional caveats are that the brief writing service will not appear at oral argument, and in the event of errors or omissions in the appellate process, the company will not be the subject of the appellate court's criticism, or a sanctions motion or malpractice suit. The attorney whose name is on the brief will be responsible, even if that attorney did not actually draft the brief. Bringing in an appellate specialist as co-counsel will likely insulate trial counsel from such headaches. It will also allow for a collaborative effort to develop the best appellate strategy possible, and co-counsel available to advise and handle collateral issues such as appellate stays, record preparation, and post-appeal fee and cost awards.

Who's in Charge?

This can be the most difficult question of all. It not uncommon for trial counsel and appellate counsel to disagree on the identity and number of issues to be raised, or the best response to the appellant's issues. Disagreements also arise over handling weak or sensitive issues, and for respondents, when to concede that an error occurred at trial.

While candid (if not heated) discussions of these issues and strategies are beneficial, the experienced appellate attorney usually knows best on matters such as framing an appellate argument and how an appellate court might view a particular issue or the case as a whole. Most important, appellate attorneys are probably in the best position to choose which arguments to raise and which to abandon. As a general rule, it is rare for more than three reversible errors to occur at trial, and many errors are harmless. Trial court proceedings are rarely perfect, and minor errors usually do not warrant reversal on appeal.¹⁸

Thus, larding an appellate brief with a long litany of grievances, while occasionally justified, more often hurts



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credibility with the appellate panel. Knowing what issues not to raise on appeal—or as respondent, what issues to concede as error—can be as valuable as knowing what to raise and what to dispute.

On the same theme, appellate lawyers sometimes bring bad tidings after performing an objective and dispassionate analysis. Most of the time, trial judges do not commit reversible error, and an appeal from the adverse judgment is a waste of time and money, something the losing trial attorney does not want to hear. On the other hand, some appeals present a clear risk of reversal, something the winning trial attorney does not want to hear.

Trial attorneys should avoid the instinct to condemn the messenger. When appellate counsel advises not to appeal or, if retained to defend a judgment, signals the possibility of reversal, give that advice wide berth. Heeding the advice of appellate counsel might lead to settlement when appropriate, and may avoid costs, sanctions or worse by prosecuting a meritless appeal.

In one case, for example, the appellant retained appellate counsel and voluntarily dismissed the appeal on the recommendation of that attorney, and by doing so avoided imposition of costs on appeal. “Such a course of conduct is to be highly commended. One of the functions of a lawyer is to limit or even end litigation in an appropriate case.”¹⁹

Professional Cooperation and Congeniality Rules

Appellate counsel are unlikely to share the antipathy and distrust that may have developed over the course of the litigation between opposing trial counsel. Perhaps more important, they are unlikely to share the hostility between the parties that often occurs, especially in highly emotional matters such as hotly contested business litigation, probate and family law cases.²⁰

Thus, appellate lawyers tend to be congenial and to extend professional courtesies—such as extensions of time and cooperative record preparation—and the appellate courts expect nothing less. Antipathy and distrust between opposing counsel wastes time and energy and rarely serves client interests, especially on appeal, where there is little or nothing to gain from sharp tactics or attempts to game the system.

Appellate courts will almost never be hoodwinked by misconduct of counsel. Misstatements of fact or law, or violations of appellate rules and procedures, can and should be pointed out dispassionately and professionally. The best response to egregious violations is a motion for sanctions on appeal.²¹

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Timing is Everything

The best time to consult with or retain appellate counsel depends on the nature, value and complexity of the case. The best general rule is to consider bringing on appellate counsel early, and consult often. Appealable orders can creep up early in a case (e.g., anti-SLAPP motions, injunction and judicial disqualification applications, most probate orders, and some family law orders). The need or necessity for filing an interlocutory writ petition can arise as early as an order denying a motion to quash service of a summons or motion for summary judgment²² and continue all the way through orders on pre-trial motions in limine.²³

Appellate input can be particularly critical in drafting jury instructions and verdict forms, drafting or objecting to Statements of Decision, and of course drafting or responding to post-trial motions. In fact, sometimes the real reason to file a Motion for New Trial is to create or preserve issues for appeal, such as jury misconduct, newly discovered evidence, and excessive/insufficient damages.²⁴

For a responding party defending the judgment or order on appeal, early appellate consultation is important for a number of reasons, including a careful review of the timeliness of the Notice of Appeal and appealability. Where there is a defect, a timely Motion to Dismiss the appeal can save much time and grief for trial counsel and the client alike. 

¹ *People v. Cromer* (2001) 24 Cal.4th 889, 893 – 894.

² *Tate v. Canonica* (1960) 180 Cal.App.2d 898, 900.

³ *Marriage of Shaban* (2001) 88 Cal.App.4th 398, 408 - 410.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Auto Equity Sales, Inc. v. Superior Court of Santa Clara County* (1962) 57 Cal.2d 450.

⁹ See *Diversity v. County of San Bernardino* (2010) 188 Cal.App.4th 603, 622 (approving 385 hours for an appeal in a case where trial counsel incurred only 302 hours).

¹⁰ *In re Estate of Gilkison* (1998) 65 Cal.App.4th 1443, 1449–1450.

¹¹ Rule of Professional Conduct 3-110(C); Eisenberg, Horvitz and Weiner, Cal. Practice Guide: Civil Appeals and Writs (Rutter Group, 2015) at §1:97.

¹² *People v. Jackson* (2004) 128 Cal.App.4th 1009, 1018–1019.

¹³ *Id.*

¹⁴ *Saunders v. Weissburg & Aronson* (1999) 74 Cal.App.4th 869, 873-874.

¹⁵ Cal. Rule of Prof. Conduct 3-310(F).

¹⁶ Cal. Rule of Prof. Conduct 3-500; Business and Profession Code §6148).

¹⁷ Los Angeles County Bar Association Professional Responsibility and Ethics Opinion No. 518 (2006): "Ethical Considerations in Outsourcing of Legal Services," Los Angeles Lawyer (November 2006).

¹⁸ Eisenberg, Horvitz & Wiener, Cal. Prac. Guide: Civil Appeals & Writs (Rutter Group, 2015) ¶ 8:294.

¹⁹ *Small v. Hall's Furniture Defined Benefit Pension Plan* (2000) 79 Cal.App.4th 648, 650.

²⁰ See, e.g., *Patrick v. Alacer Corporation* (2011) 201 Cal.App.4th 1326, 1345n. 11 ("After many years, the parties have made it painfully clear they do not like each other. Less apparent is why they think we care.")

²¹ CCP §907; Rule of Court 8.276.

²² CCP §§418.10(c); 437c(m).

²³ See, e.g., *Mitchell v. Superior Court* (2015) 243 Cal.App.4th 269.

²⁴ Civ. Pro. §657; *City of Los Angeles v. Southern California Edison Co.* (1931) 116 Cal.App. 44, 50; *Schroeder v. Auto Driveaway Co.* (1974) 11 Cal.3d 908, 919.

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Test No. 89

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. Only attorneys who are certified by the State Bar as appellate law specialists may practice in the state Courts of Appeal.
☐ True ☐ False
2. Trial court level points and authorities can often be recycled as appellate briefs.
☐ True ☐ False
3. Appellate briefs receive greater scrutiny than trial court briefs.
☐ True ☐ False
4. Trial attorneys may urge a trial judge to disregard controlling case law because that case was wrongly decided.
☐ True ☐ False
5. The trial attorney is often the best attorney to handle the case on appeal.
☐ True ☐ False
6. The trial attorney who practices in a specialized area of law is not always the best attorney to explain that law to the Court of Appeal.
☐ True ☐ False
7. Appellate counsel owe fiduciary duties to a trial attorney who pays their fee.
☐ True ☐ False
8. An attorney who signs an appellate brief that was drafted by a brief-writing service is fully responsible for the accuracy of the contents of the brief.
☐ True ☐ False
9. In drafting an appellant's brief, it is always best to raise as many errors as possible.
☐ True ☐ False
10. In representing a respondent on appeal, it can be the best good practice to concede that the trial court erred but that the error was harmless.
☐ True ☐ False
11. An appellate attorney should never counsel a party to abandon or dismiss an appeal.
☐ True ☐ False
12. The decisive factor in an appeal is often the facts of the case.
☐ True ☐ False
13. Using a brief writing service will insulate an attorney from appellate sanctions or malpractice.
☐ True ☐ False
14. A Motion for New Trial is sometimes necessary in order to preserve issues for appeal.
☐ True ☐ False
15. One of the functions of an appellate attorney is to limit or end the litigation in an appropriate case.
☐ True ☐ False
16. If the opposing parties' brief contains misstatements of law or facts, the appellate attorney should point out those errors with dispassion and professionalism.
☐ True ☐ False
17. Consulting with appellate counsel is rarely useful until a Notice of Appeal has been filed.
☐ True ☐ False
18. Trial attorneys who do not have proficiency or time to become proficient in appellate law may have an ethical obligation to the client to consult with experienced appellate counsel.
☐ True ☐ False
19. Clients should be routinely counseled that appellate court reversals are so rare as to not be cause for concern.
☐ True ☐ False
20. The hours incurred by an attorney in trial will always exceed the attorney time spent on the appeal.
☐ True ☐ False

MCLE Answer Sheet No. 89

INSTRUCTIONS:

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| 1. | <input type="checkbox"/> True | <input type="checkbox"/> False |
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In Vino Veritas:

Larry Grassini Savors Success in Courtroom and Vineyard

By Elizabeth Post



Photos by Paul Joyner



Prominent Valley trial lawyer Larry Grassini has achieved a legacy of success in and out of the courtroom. His landmark court victories have transformed California law while providing financial relief for his clients. His family's vineyard is recognized for not only its fine Bordeaux wine but also for its reputation of teamwork and charity.

*“This land is your land, this land is my land
From California to the New York Island
From the Redwood Forest to the Gulf Stream waters
This land was made for you and me.”*

— Woody Guthrie



VALLEY LAWYER LARRY GRASSINI IS AMONG the most prominent trial lawyers in California and the western United States. In 45 years of practice in the Valley, he has over 125 jury trials and 11 verdicts exceeding \$10 million. But Grassini's journey didn't commence here in the Valley; it began 3,000 miles to the east and could be an inspiration for an American folk song.

Grassini grew up on Long Island, New York and received his undergraduate degree at St. Bonaventure University. In 1970, Grassini earned a J.D. from Catholic University of America in Washington, D.C. He and his new wife Sharon left their wedding in a new red Volkswagen bus with a peace sign on the back to travel across the country to California.

Larry and Sharon had no jobs, friends or family in California. They used the \$820 they received as wedding gifts to start their new life. He planned to establish residency here and take the bar exam. After taking the exam in San Francisco, they moved south to Los Angeles. According to Larry, they "didn't know the Valley from Santa Monica." But he was hired by North Hollywood sole practitioner Joe Hurley and shortly after built a house in Bell Canyon where they raised their five children along with horses, goats, and household pets.

Grassini tried his first case in 1971, two weeks after passing the bar. "In my second week as a lawyer, Joe walked into the library and said I'd be starting a jury trial in Burbank that afternoon," Grassini recalls. He adds, "I had never been in a courtroom, hadn't taken a deposition or propounded an interrogatory and I was so naïve my only worry was that I was wearing a green shirt instead of a starched white one. Joe told me the shirt was okay and that he'd tell me how to try a case at lunch. I tried it

in Dept. A, Burbank in front of Judge White and the jury gave my client a \$5,000 verdict with \$11 in specials. I was hooked and have never practiced anything but trial law for plaintiffs."

Grassini's law practice has evolved significantly since his early victory. "Forty-five years ago, I would try 12-15 cases a year, each one about a week. Now, it's one or two and they each take a month or two."

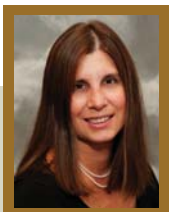
Wall of Fame

Built into walls in the entry and conference room of the Woodland Hills offices of Grassini, Wrinkle & Johnson are wood display boxes with miniatures and news clippings showcasing the firm's momentous verdicts over the years. The displays bring to life stories of lives impacted by Grassini and his firms.

The most memorable verdict early in his career is the product liability case of *Fortman v. Hemco*. Three-year-old Nichole Fortman fell out of her mother's moving Jeep and was seriously injured. The \$25.6 million verdict in 1986 was the largest individual personal injury verdict in U.S. history at that time.

"The defense argued that Nichole wouldn't live past her fifth birthday because of her injuries. With medical and attendant care we were able to provide for Nichole, several years ago we went to her 35th birthday party!"

Most people over the age of fifty remember ventriloquist Paul Winchell, his partner—a dressed, wooden dummy named Jerry Mahoney—and the "Winchell Mahoney Time" children's television show. Jerry is on display in a wooden box that pops out as you walk into Grassini's office. Grassini represented Paul Winchell in his decade-long fight against Metromedia concerning destruction of the Winchell-Mahoney tapes. The media



Elizabeth Post is Executive Director of the San Fernando Valley Bar Association, a position she has held since 1994, and Publisher of *Valley Lawyer*. She can be reached at epost@sfvba.org.



company erased the remaining tapes of "Winchell Mahoney Time" over a dispute with Winchell about syndication rights to the popular show.

In a six week trial in 1986, the jury awarded Winchell \$17.8 million. Metromedia appealed all the way to the Supreme Court but was unsuccessful; it was affirmed as the largest punitive damages verdict in California history at the time.

The impact of Grassini's work often extends far beyond large awards he wins for clients. A recent case, *Houck v. Enterprise*, made national headlines. The 2010 case concerned the untimely deaths of twenty-something sisters Raechel and Jacquie Houck in a fiery crash in a PT Cruiser rented to them by Enterprise Rent-A-Car. The car had been recalled by Chrysler the previous month. A jury awarded the parents \$15 million for their daughters' wrongful death.

This past December, President Barack Obama signed into law the Raechel and Jacqueline Houck Safe Rental Car Act of 2015, making it illegal for a rental car company to rent a car that is subject to a safety recall.

Grassini is proud of other landmark cases that have transformed California law. *Janeway v. Santa Barbara* changed the law of releases. Fourteen-year-old Katie Janeway drowned while attending a summer camp for developmentally disabled children operated by the City of Santa Barbara. The 2007 California Supreme Court decision held that a general release of liability will not release a tortfeasor for acts that would be considered gross negligence.

Cornette v. Caltrans changed a decades-old law when the California Supreme Court affirmed in 2001 an appellate decision that a plaintiff has the right to have a jury trial (as opposed to a court decision) on the issue of changed conditions. *Curlender v.*



Bio-Science Laboratories was the first appellate decision to recognize the tort of wrongful life. And *Bridget B. v. John B.* changed the law of liability against a defendant for transmitting HIV or other sexual diseases, from “the defendant knew” to “the defendant knew, or should have known that he had contracted the disease.”

Grassini’s accomplishments have earned him recognition and respect from both sides of the counsel table. He was twice recognized as “Trial Lawyer of the Year” by the Los Angeles Trial Lawyers Association (now Consumer Attorneys Association of Los Angeles) and in 2008, he became the ninth living trial lawyer to be inducted into CAALA’s Hall of Fame. In 2011, Grassini became the third plaintiffs’ lawyer to be inducted into the Association of Southern California Defense Counsel’s Hall of Fame.

All in the Family

Courtrooms are not the only places where Grassini feels at home. In 1989, the family purchased 107 acres north of Santa Barbara in Happy Canyon, a rural area near Santa Ynez. “We were looking for a place to eventually retire. It was beautiful ranch land.”

The family found out that the land was perfect for planting a vineyard, so in 2002, they planted a “few vines.” Grassini Family Vineyards and Winery opened in 2010.

“Realizing I was way out of my league when we first started to plant the vineyard,” Grassini acknowledges, “I relied heavily on consultants who said the rocky hillside soil and the hotter than average climate was perfectly suited for Bordeaux varietals. Our red varietals are Cabernet Sauvignon, Merlot, Petit Verdot and Cabernet Franc and



the white is Sauvignon Blanc. We just bottled our ninth vintage and it has received high praise from wine critics and sommeliers.”

Today, Grassini’s award-winning wine can be found in fine restaurants and wine shops up and down California, as well as the winery’s tasting room in downtown Santa Barbara. According to Grassini, “Happy Canyon has its own viticulture appellation (Happy Canyon of Santa Barbara County) and it’s becoming well known for its Bordeaux varietals.”

At the winery, Grassini leaves day-to-day decision-making to the CEO, his oldest daughter Katie—an attorney who tried several cases with her dad. Grassini “always wanted a family business.”



Photo by Kilho Park

In fact, the labels on the wine bottles are adorned with five birds, representing the Grassinis’ five children: Katie, Corey, Mandy, Leo and Molly.

The family environment extends to the vineyard’s employees and a special program was established to provide for them and their families. “We’ve had the same vineyard crew since we started and they are the heart and soul of our winery. A few years ago, our foreman learned his son had a serious health problem, not completely covered by our insurance.

“Sharon and I wanted to set up a fund to assist the crew in these types of emergencies so we dedicated a portion of the vineyard to the “Equipo” project. Equipo means team in Spanish. The crew has control of decisions on watering, pruning, picking and crushing [the grapes], and the wine is bottled under the Equipo label. It is a popular Bordeaux blend and a portion of the profit goes into a fund for bonuses and special needs of the crew.

“We also have a community garden that provides vegetables and 75 chickens that provide eggs for the crew and we just recently housed and fattened up a pig for the crew feast!”



Grassini is mindful of his legacy. "While the winery provides a product and the law firm provides a service, they both have the Grassini name behind them, so I want them to be the best they can be. Our reputation is paramount to me and I make sure we treat our employees, the public and our clients and patrons like I would want to be treated.

"I'm very proud that Grassini Family Vineyards was just voted the 2015 Small Business of the Year by the Santa Barbara Chamber of Commerce based on our local and charitable involvement in the community and the law firm has been listed as a first tier plaintiff's law firm by *Best Lawyers in America* since that award was created.

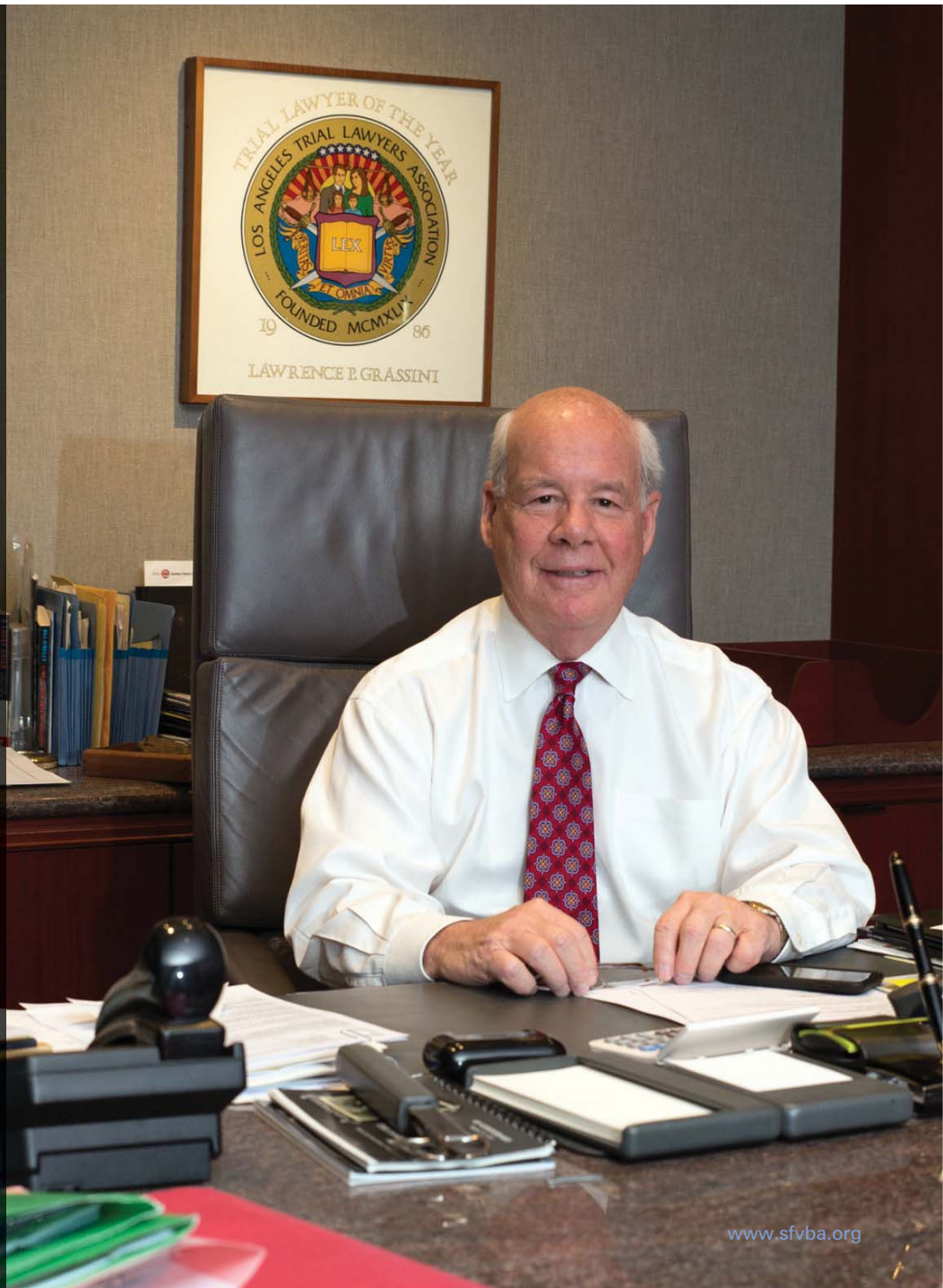
"We've come a long way from drinking Almaden from paper cups in the back of our Volkswagen bus... Just like coming to California turned out to be the right thing to do, so too did buying the land in Santa Ynez." For Larry and the Grassini family, what a strange and wondrous trip it's been. 🏠

WORDS OF WISDOM FROM A TOP TRIAL LAWYER

What words of advice can you offer to new attorneys who want to become trial lawyers? Try more cases. The insurance companies settle cases for top dollar only with lawyers they don't want to face in court.

How have court cutbacks affected the way you practice? You have to manage and move your cases forward without the assistance of the courts (since we no longer have individual calendar judges). You have to be more proactive than ever.

What can the Bench and Bar do to reduce the increasing delays in access to justice? Talk among the lawyers. Be civil with each other. Try to work things out without the court's involvement. It will keep time-consuming motions from bogging down the process.



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Music Publisher Caught in Birthday Suit, Agrees to Settle



By Tal Grinblat and Nicholas S. Kanter

IT'S ALMOST SETTLED. THE LEGAL battle over the ever-pervasive "Happy Birthday to You"—sung by waiters in corporate restaurants around the world to embarrassed birthday celebrants and diners—may now reside in the public domain for all users, much to the relief of many in the entertainment industry. And it all started with a documentary film maker who objected to paying a \$1,500 license fee.

In 2013, Good Morning to You Productions Corp., Rupa Marya and Robert Siegel (collectively "GMTY") filed a class action suit against one of the largest music publishing companies in the world, Warner/Chappell Music, Inc., and Summy-Birchard, Inc. (collectively "WCMI"), in the Central

District of California.¹ The suit sought to invalidate the copyright registration for the song "Happy Birthday to You."

GMTY claimed the song is in the public domain, that WCMI had no rights to the lyrics or melody, and that WCMI should return "millions of dollars of unlawful licensing fees" received over the years.

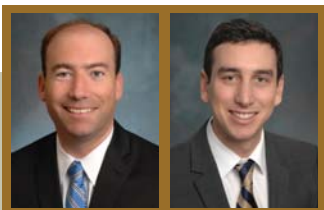
Validity of the Summy Copyright Registration

In 1893, Mildred and Patty Hill sold a manuscript containing 73 songs composed by the sisters, including one piece titled "Good Morning to All," to Clayton F. Summy. The melody was composed by Mildred and the lyrics written by Patty. Summy subsequently published the song in a songbook called *Song Stories for the*

Kindergarten. Summy applied to register the copyright in the songbook that same year.

As a musical work, "Happy Birthday" has two primary copyrightable elements, one for the music composition (the tune) and the other for the lyrics. Each one is protected against infringement independently.

The parties both conceded that the "Happy Birthday" melody entered the public domain years ago. The issue in the case was whether the lyrics were still protectable by copyright, and if so, who had those rights. WCMI contended that the Hill sisters authored the lyrics to the song, held it for several decades, and then transferred it to Summy Company in 1935, which subsequently published and registered the lyrics for federal copyright.



Tal Grinblat and Nicholas S. Kanter are intellectual property attorneys at Lewitt Hackman in Encino. They can be reached at tgrinblat@lewitthackman.com and nkanter@lewitthackman.com, respectively.


The issue for WCMI was that the copyright registration covered “arrangement as easy piano solo with text” and listed another person as the author of the lyrics. Hence, the copyright registration may not have covered the lyrics in the dispute.

Copyright Birthday Candles Begin Melting

The court held that WCMI had no evidence a transfer of the lyrics occurred from the Hill sisters to WCMI. It found that while the Hill sisters gave Summy Company the rights to the melody and the rights to piano arrangements based on the melody, no rights were transferred to the lyrics. The court explained that because Summy never acquired rights to the “Happy Birthday” lyrics, WCMI as Summy’s successor-in-interest did not hold a valid copyright in the “Happy Birthday” lyrics entitling them to collect royalty or licensing fees.

In February, the parties agreed to a tentative settlement whereby Warner/Chappell agreed to refund \$14 million in royalties collected, though the settlement is not yet finalized by the court. A preliminary approval hearing is scheduled for mid-March. If approved, it could mean a return of license fees to many who paid for use of the song since 1949.

The court ruling and proposed settlement signifies a landmark win for the Davids in this David and Goliath-like battle, particularly for musicians, entertainment producers and other artists around the world.

For attorneys representing business owners wanting to protect their clients’ copyrights, the case serves as a reminder to ensure clients have valid and documented ownership rights to their works before enforcing those rights. 

¹ *Rupa Marya, et al. v. Warner/Chappell Music, Inc., et al.*, C.D. Cal. (Sept. 22, 2015), 2015 WL 55684972015, 116 U.S.P.Q.2d 1563.

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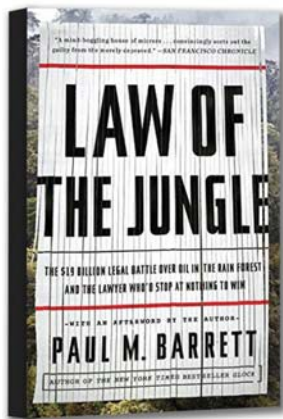
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Law of the Jungle

By Scott A. Quigley

LITIGATORS TEND TO BE hyper-competitive and by its nature, litigation provides a forum for that competitiveness to display its best and its worst. For attorneys, litigation can become a game and winning can come to mean more than the players or the reason for playing. For that reason, early in their training litigators are commonly advised to take a step back and take a good look at their clients and remember that for the client, this isn't a game at all—it's their life.

At the height of *Law of the Jungle: The \$19 Billion Legal Battle Over Oil in the Rain Forest and the Lawyer Who'd Stop at Nothing to Win*, a client asks, "Why don't they give us justice?" The author doesn't have the answer and it is not clear who "they" even are.

Bloomberg Businessweek editor and senior writer Paul M. Barrett,

best known for the New York Times bestseller *Glock: The Rise of America's Gun* (Crown, 2012), takes on the seemingly David and Goliath story of an inexperienced plaintiffs' lawyer taking on big oil. *Law of the Jungle* is a smooth and satisfying read and stands as a well-researched nonfiction narrative.

Though Mr. Barrett unquestionable has an opinion on his protagonist, the author for the most part manages to spread some disparagement to all sides. Thus, the unfolding of the story will satisfy entrenched members of both the plaintiffs' and the defense bar who will each come to the book with their own biases.

In 1993, Harvard Law graduate Steven Donziger filed suit in New York on behalf of farmers and indigenous peoples of the Ecuadorian rainforest against Texaco. Donziger was just a couple of years out of law school and had

never tried a civil case. The suit sought damages and remediation for Texaco ruining the waters and the land of the people and causing sickness and death. The suit would weave its way from New York to Quito to rural Ecuador and back to New York and beyond. Within the 20 plus year lifespan of the litigation, Texaco would be purchased by Chevron and Donziger would assume the role of lead attorney.

In the 1960s, Texaco explored and developed oil production in the northern Ecuadorian rainforest. In vigilant nations, environmental regulations were not even close to whatever they are now. In Ecuador, they were far worse and, according to Barrett and certainly Donziger, Texaco lived down to these standards or worse. The fallout included open and unlined pits, improper disposal of waste products, coating of roads with raw crude, seepage into ground water, runoff



Scott A. Quigley is employed at Claims Litigation Legal Business Administration at Farmers Insurance Exchange in Westlake Village. Prior to working at Farmers, Scott practiced as a trial lawyer in Lewiston, Maine. He is a graduate of Washington State University and the University of Maine School of Law. Scott may be reached at squigley777@gmail.com.


into rivers and streams in the Amazon watershed, inescapable residue, and more. The result was reportedly widespread illnesses and death that the indigenous peoples, as well as farmers who had migrated to the area to develop agriculture, had reportedly never seen or experienced before.


Donziger, who was disposed to and possessed the skills to be a crusader even before earning a law degree, was unquestionably and legitimately outraged by what he saw as Texaco's legacy in Ecuador (legacy because Texaco had pulled out of Ecuador before the suit was filed and later Chevron was the defendant in the suit while having little to no assets in Ecuador). He banded with lawyers and activists with more resources and experience than he and sought to remedy the injustice, and along the way, make a name for himself and maybe even a lot of money.

Donziger perceived there were tactics on the part of big oil that involved inconsistent positions, misrepresentations to the courts, payoffs and attempted payoffs, influencing politicians and jurists and even the military, and worse. As the case wore on, Donziger felt more and more compelled to match—or maybe even to escalate—the tactics with similar tactics. Therein lies the conflict

and the hook of *Law of the Jungle*. As the case goes on, where is the line between aggressive advocate and whatever lies beyond? Should that line be crossed? Innocent people who are sick and dying are, after all, unquestionably a righteous cause. Do the ends justify the means?

As narrative nonfiction, *Law of the Jungle* raises as many questions as it satisfactorily answers. Who was the victim: Chevron, Donziger, the Ecuadorian people, or all of the above? Did Donziger's blind ambition get in the way of his case or would a lawyer without Donziger's ambition and skills have failed to move the case anywhere at all. Were big oil's tactics dirty, and if they were, was it the right choice to counter with what seemed a like strategy?

These are but a few of the questions raised. Barrett has opinions on the answers, but those opinions, at least as written, lack some of the nuances that an attorney reader, particularly a litigator, will bring to the dilemma. Nevertheless, the facts present an extreme study of questions litigators face every day. *Law of the Jungle* provides the opportunity to look at these questions in extreme circumstances and to take a step back and think about the clients and to think about the right answer. 



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Giving Back to the Community

WHEN DRIVING INTO SANTA Clarita, you may notice a prominent sign proclaiming that the city has been named as one of the top twenty places to live in America. For the attorneys and other professionals of the Santa Clarita Valley Bar Association, we have the good fortune of living or working in this remarkable community.

The SCVBA aims to continue its growth as a symbol of the legal profession in our community and to educate our citizens about the law, the legal profession, and the judicial system. Over the last several years, our board has placed a special focus on giving back to the community for the gifts that we have been given, and working to better the Valley where we live and work.

One of our traditional events is an annual blood drive, which will be held on March 4 at the TPC Valencia. The blood drive will be held in conjunction with the American Red Cross and will support the Henry Mayo Newhall Memorial Hospital.

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A more recent tradition is the SCVBA's annual high school speech competition. The fourth annual competition will take place on April 19 at West Ranch High School in Stevenson Ranch. The competition is open to all juniors and seniors in the William S. Hart Union High School District and will be judged by a panel of six Los Angeles Superior Court judges. Cash scholarships will be awarded to the top three contestants.

This year's topic for the speeches is "Against the backdrop of a presidential election, what ought to be our top national priority, and do our existing laws support or undermine this priority?" The winners will also be recognized during a special presentation dinner at the TPC Valencia on May 19, 2016.

Anyone wishing to donate blood or to learn more about the speech competition can contact Jeff Armendariz, Chair of the Community Outreach Committee, at jeffarmendariz1@gmail.com. 



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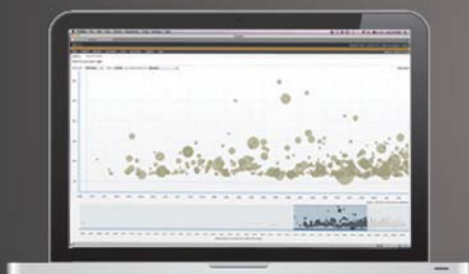
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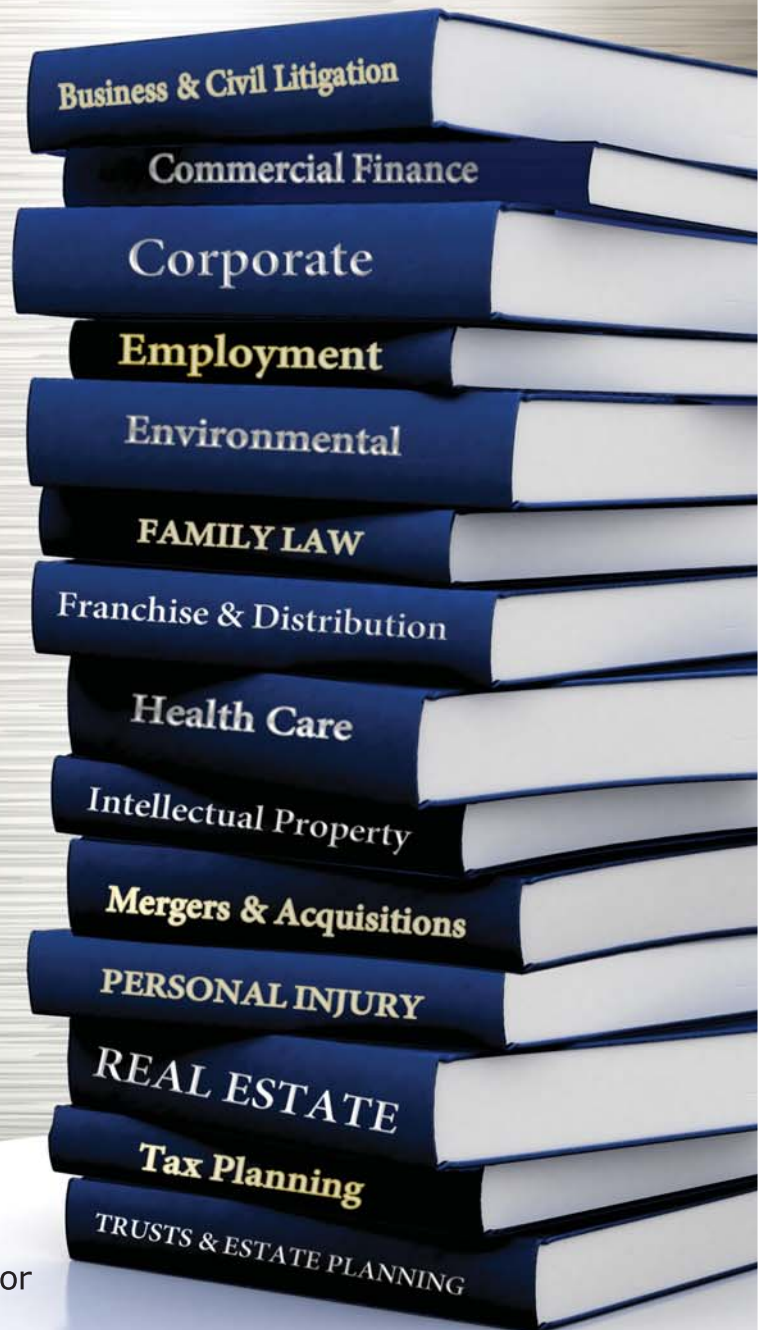
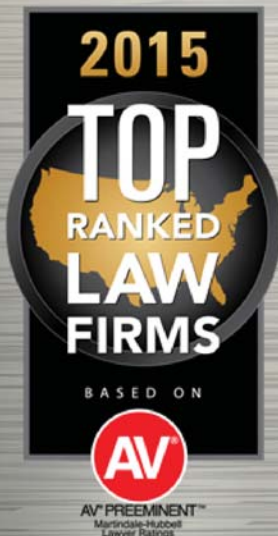
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