VALLEY LAWYER

NOVEMBER 2014 • $4

A Publication of the San Fernando Valley Bar Association

Reflections and Guidance: World War II Veterans Share Their Story

Ten Tips for Effective Brief Writing

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New Lawyers

VALLEY LAWYER
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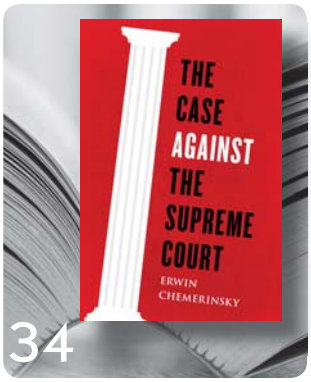
NOVEMBER 2014

Winner of the 2013-2014 NABE Luminary Award for Excellence in Regular Publications



On the cover (clockwise from top left): *Al Ghirardelli, Hon. Donald Foster (Ret.), James Fizzolio, Hon. Harry Pregerson*
Photo by Paul Joyner

FEATURES

COLUMN

DEPARTMENTS

VALLEY LAWYER

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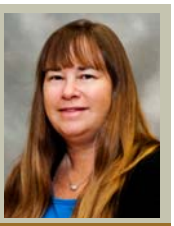
Thankful–Despite It All

CARYN BROTTMAN SANDERS
SFVBA President



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NOVEMBER IS HISTORICALLY looked at as a time to reflect and to give thanks. As lawyers in Southern California, sometimes it may seem like there is not a lot to be thankful for and certainly not a lot of time to reflect. For those who know me, I will not say that I am always a "rainbows and unicorns" or "glass half full" type of person. But we all have something to be thankful for. Sometimes we just need to take the time to recognize and embrace it.

I can honestly say that while battling traffic on the 405 this morning (2 hours 15 minutes to Santa Monica) on my way to court for what promised to be a very contentious hearing, giving thanks was very far from my conscious train of thought. When my 8:45 hearing began at 11:40, only to be continued to 1:30 and not seeing the judge until 2:00, it got even further.

During the lunch break, at the watering hole for those of us who think that caffeine is a food group, I approached opposing counsel and his client, and tried to discuss resolving some of the issues. Being new to the case after years of contentious litigation, I figured what do I have to lose? We had a congenial discussion and I presented my proposal. While I did not leave with a consensus as to how to resolve the situation, they at least agreed to consider the proposal before court resumed.

When court resumed, the judge took his time to painstakingly consider all of the pending issues and opposing counsel and his client were far less adversarial and obstructive than I had been warned about. My client was very pleased with the end result.

At the end of a day that had me questioning both my choice of residence and choice of profession, I find that I have a lot to be thankful for. I am thankful that my matter did not conclude before lunch, that I did not buy into the theory that the parties were far too contentious to agree on anything, and that in preparing my proposal, I gave the judge a roadmap to follow in considering the many issues and that he did, in fact, truly and thoughtfully consider each of those issues.

Of course, I have had many similar days with less satisfying results. But it is those seemingly rare days that keep me going in this sometimes frustrating profession and for which I am thankful. I am sure that no matter what area of law you practice, or what profession you are in if you are not a lawyer, you too have days that make it all seem worthwhile and I encourage you to embrace those days and to be thankful.

In this time of reflection and thanks, I want to say thank you to all of you who have ever volunteered your time and/or donated money to this wonderful organization that I am lucky enough to lead this year. Without the volunteers, there would be no bar association. It may be cliché, but volunteering your time, or "giving back" truly can be a rewarding experience and one that leaves you grateful for the opportunity and others thankful for your help. Join us this year and I'm sure that you will be thankful that you did—and we of course will be thankful that you did.

A "thank you" article would not be complete without thanking some people that I have thanked before, but can never thank enough. Thank you to Liz Post, Linda Temkin, Rosie Soto Cohen, Lucia Senda, Martha Benitez, and Irma Mejia, the extraordinary Bar staff. Liz Post was honored this year with a Justice Armand Arabian Leader in Public Service Award and the SFVBA was awarded a Luminary Award for Excellence in Regular Publications for *Valley Lawyer* by the National Association of Bar Executives.

And last, but certainly not least, thank you to my family for supporting me in my life, my career and in my Bar activities.

Take some time to reflect and be thankful this month!

SUN	MON	TUE	WED	THU	FRI	SAT
NATIVE AMERICAN HERITAGE MONTH						1
2	*Valley Lawyer* Member Bulletin 3 Deadline to submit announcements to editor@sfvba.org for December issue.	4 	Small Firm & Sole Practitioner Section and Litigation Section 5 SCOTUS '14 –'15 Trends and Predictions 12:00 NOON SFVBA OFFICE Appellate attorneys Steven Fleishman and John Querio of Horvitz & Levy give the inside scoop on critical Supreme Court cases. (1 MCLE Hour)	Intellectual Property, Entertainment & Internet Law Section 6 *Impact of Alice Corp. v. CLS Bank International* 12:00 NOON SFVBA OFFICE Thomas Morrow discusses the impact of the U.S. Supreme Court's decision on the availability of patents for computer-implemented inventions and alternative means of protecting unpatentable innovations. (1 MCLE Hour) Membership & Marketing Committee 6:00 PM SFVBA OFFICE	7	8
9	Tarzana Networking Meeting 10 5:00 PM SFVBA OFFICE TEN THE ESQUIRE NETWORK	Business Law & Real Property Section 11 Boundary Issues 12:00 NOON SFVBA OFFICE David Marcus will update the group. (1 MCLE Hour) 	Probate & Estate Planning Section 12 Ethics of Counseling Estate Planning Clients Day change due to holiday 12:00 NOON MONTEREY AT ENCINO RESTAURANT Attorney Linda Retz leads a legal ethics discussion regarding estate planning issues. (1 MCLE Hour—Legal Ethics)	Bankruptcy Law Section 13 Chapter 13 Update 12:00 NOON SFVBA OFFICE Always one of the most popular seminars, Judge Maureen Tighe joins attorneys R. Grace Rodriguez and Stella Havkin. (1 MCLE Hour) New Lawyers Section Sponsored by Greenberg & Bass Q&A with Judge James Steele, Ret. 6:00 PM SFVBA OFFICE FREE TO SFVBA NEW LAWYERS! Join us for dinner and this informative session with the judge who will discuss stories from the Bench and give essential tips on courtroom demeanor. (1 MCLE Hour)	14	15
16	17	Taxation Law Section 18 Ethics for Tax Lawyers 12:00 NOON SFVBA OFFICE Kneave Riggall will outline the problems tax attorneys might encounter. (1 MCLE Hour—Legal Ethics)	Workers' Compensation Section 19 12:00 NOON MONTEREY AT ENCINO RESTAURANT	20	21	22
23 30	Family Law Section 24 Hot Tips 5:30 PM MONTEREY AT ENCINO RESTAURANT Gary Weyman and our distinguished panel of judges and attorneys offer insight into the latest family law developments inside and outside the courts. Approved for Legal Specialization. (1.5 MCLE Hours)	25	26	27 	28	29

CALENDAR

DECEMBER 2014

SUN	MON	TUE	WED	THU	FRI	SAT
	1 *Valley Lawyer* Member Bulletin Deadline to submit announcements to editor@sfvba.org for January issue.	**2** Editorial Committee 12:00 NOON SFVBA OFFICE Criminal Law Section See page 32	**3**	**4** Membership & Marketing Committee 6:00 PM SFVBA OFFICE	**5** Recent Developments in California State and Local Taxes See page 41	**6** Blanket the Homeless and ARS Legal Clinic L.A. FAMILY HOUSING, NORTH HOLLYWOOD 
7	**8** Tarzana Networking Meeting 5:00 PM SFVBA OFFICE THE ESQUIRE NETWORK	**9** Probate & Estate Planning Section 12:00 NOON MONTEREY AT ENCINO RESTAURANT (1 MCLE Hour) SFVBA Holiday Open House! See ad below	**10**	**11** Marketing Yourself on the Web See page 41	**12**	**13**
14	**15**	**16**	**17** Workers' Compensation Section 12:00 NOON MONTEREY AT ENCINO RESTAURANT (1 MCLE Hour)	**18**	**19**	**20**
21	**22**	**23**	**24**	**25** 	**26**	**27**
28	**29**	**30**	**31**			

HOLIDAY OPEN HOUSE

Tuesday December 9, 2014

5:30 p.m. to 7:30 p.m.

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THIS MONTH'S ISSUE FOCUSES ON NEW LAWYERS, PROVIDING valuable advice for their professional journey. This issue also coincides with Veterans Day, a time when we, as a nation, honor the men and women who have served in our armed forces. Our cover story was created with these two important themes in mind. In looking to celebrate our veterans and gather wisdom to share with the newest members of the profession, we turned to those SFVBA members who are part of the Greatest Generation.

Over the course of their lives, these unassuming gentlemen have lived through many great adventures and have gathered tremendous wisdom to share with readers of all ages. It's a terrific privilege to have listened to their stories. I am delighted to share them with you. I am also very grateful to Jim, Al, and Judge Foster for participating in our cover story. I am especially grateful to Judge Pregerson, whose schedule is very busy, but who made time the day of his 90th birthday to join us for the feature.

As part of that feature, we've also incorporated a listing of other SFVBA members who have served in the military. We want to recognize their service to our country with what will become an annual listing in this publication. As this is the first year of the project, some members may have been missed. If you have additional names to add to the list of veterans, please submit them to the email address listed above.

The best part of my job is that each month brings exciting new features. I encourage you to continue to share your stories, knowledge and opinions. As you'll see on page 37, *Valley Lawyer* was recently awarded a prestigious award. Together, we'll continue to produce an award-winning magazine for years to come.

2015 EDITORIAL CALENDAR

JANUARY
Submission Deadline: **November 15, 2014**
New Laws

FEBRUARY
Submission Deadline: **December 1, 2014**
The Courts

MARCH
Submission Deadline: **January 5, 2014**

APRIL
Submission Deadline: **February 2, 2014**

MAY
Submission Deadline: **March 2, 2014**

JUNE
Submission Deadline: **April 1, 2014**

JULY
Submission Deadline: **May 1, 2014**

AUGUST
Submission Deadline: **June 1, 2014**
Special Insert: *Board of Trustees Election Pamphlet*

SEPTEMBER
Submission Deadline: **July 1, 2014**

OCTOBER
Submission Deadline: **August 3, 2014**

NOVEMBER
Submission Deadline: **September 1, 2014**
New Lawyers
Bonus Distribution: *State Bar Swearing-In Ceremony, Pasadena, CA*

DECEMBER
Submission Deadline: **October 1, 2014**
Cover Auction Winner/Public Service

CIVILITY, PREPARATION, AND REPUTATION:
CPR TIPS AND SKILLS FOR NEW ATTORNEYS

By Judge Mary Thornton House

THE JUDGES OF THE LOS Angeles Superior Court want to welcome those new lawyers who have passed the July 2014 California Bar Examination and are getting sworn in this November. You are the newest warriors of justice. When asked by *Valley Lawyer* to provide some tips for new attorneys, I asked Judge Kevin Brazile, Judge Darrell Mavis, and Judge Michael Stern to join with me to weigh in on what judges believe new lawyers should know. We all felt it was an honor to do so. We believe the cornerstone for new attorneys starting out is to keep in mind civility, preparation, and reputation—CPR for short.

Civility

If the July 2014 State Bar exam passage rates reflect the trends of the last few years, it is logical to predict that California will be welcoming at least 5,000 new lawyers to its ranks, if not more. They will be asked to take the following oath reflecting an important new sentence added this year:

> I solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of an attorney and counselor at law to the best of my knowledge and ability. *As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy, and integrity.*" (Emphasis added)

> "Not everyone who walks in your door should be your client."

It is not serendipitous that the recent change to the attorney oath expressly requiring allegiance to civility is a theme reflected by all of us. I have always advised new attorneys to "try the case, not the counsel." Judge Stern highlights the need for civility in his exhibits checklist by requiring that counsel work together.

Judge Mavis makes civility a top priority. "Be civil. You can zealously represent your client while being civil, courteous and cooperative," he says. "Attorneys have an obligation to be professional with other parties, counsel, and the courts. This obligation includes civility, professional integrity, candor and cooperation, all of which are essential to the fair administration of justice and conflict resolution."

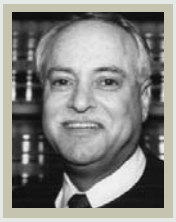
Judge Brazile elaborates on this theme by asking that all new new lawyers engage in "civility and more civility." He says, "You will have much more of an advantage by cooperating with opposing counsel, being reasonable and willing to compromise."

"As a new attorney and counselor at law, it is important that you act and carry yourself as a professional," says Judge Brazile. "Before sending a harsh email or filing a motion to compel, consider talking to opposing counsel in person or by phone. Patience and understanding goes a long way toward resolving issues. The phone or in-person meeting can be your best friend!"

Preparation

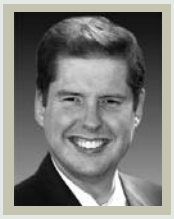
The second theme that we focus on as judges is preparation. It is never, ever acceptable to enter the justice arena without preparation. Think about it: you are responsible for safeguarding your

CONTRIBUTORS



Judge Michael Stern presides over a direct calendar of cases in Department 62, Stanley Mosk Courthouse.

Judge Kevin Brazile is assigned to the Stanley Mosk Courthouse and will be the head of the LASC's Civil Division in 2015.



Judge Darrell Mavis is the Assistant Supervising Judge of the Northeast and North Central Districts and presides over a criminal calendar.

client's rights. It is equivalent to the duty of a doctor to assure her patient's health. Would you want your doctor to fail to read lab reports, x-rays, and prior examinations before diagnosing you? Absolutely not! The same applies to your duty as an attorney.

Judge Mavis mandates as his second point of advice that "vital to being an effective advocate is preparation. Only by being fully prepared will you be able to zealously represent your client." He continues to advise, "Once you think you are fully prepared, talk with a mentor or other experienced lawyers to see if you really are ready. Look for opportunities to test your preparation–moot court, mock argument or mock trial. In the end, you want to know that there was nothing more you could have done to be ready."

Judge Brazile also provides that the minimum ground rules for in-court appearances require the most basic of preparation. "Know what your case is about factually," he says. "You should also know when the case was filed and any upcoming hearing dates. If the matter has been set for trial, know the trial date. If there is any outstanding discovery you should know what it is. Find out if any discovery or motions are being contemplated or have been recently filed."

While this may seem too basic for newly-minted attorneys, it can't be repeated often enough. He continues by saying, "If you are at a settlement conference you should have settlement authority or someone either with you or available by phone who does. If you are appearing for another attorney or trial counsel, you should know when he or she will be available for trial or the next scheduled or contemplated hearing."

Key to successful preparation is your skill for writing. The sharpest tool to being an effective advocate in today's crowded courtrooms (and getting the attention of the judge) is effective writing. I am often asked what judges look for in a brief and I tell them pith and clarity. By pith, I mean intense, meaningful, and brief.

Judge Brazile offers even more guidance. "If you file a demurrer, motion to compel discovery or motion for summary judgment, always include a brief introduction summarizing your argument and setting forth clearly what you want from the court. Always include a time-line as part of your introduction or summary of argument. Always make your strongest arguments at the beginning of the motion papers and put the weaker arguments at the end." He continues by saying, "Keep your legal arguments short, concise and most of all clear and on point. Avoid string cites, and it is always better to cite a Supreme Court or Second Appellate District decision."

Judges do not like their time wasted, hence the plea for brevity and accuracy. Judge Brazile asks new lawyers on behalf of him and his fellow judiciary, "Before you file a demurrer, advise plaintiff by letter or telephone why you are filing the demurrer and whether the plaintiff would agree to amend the complaint or dismiss a cause of action(s)." Judge Stern's adjoining checklist for getting exhibits admitted is an excellent roadmap for trial preparation with a mind to not wasting the judge or jury's time on clerical, but critical, requirements to making a record.

Reputation

A wise woman (my mother) once told me that a person's reputation is only as good as their last bad act. This is especially true in the legal community. Judge Mavis makes it clear that new attorneys must be mindful of their reputation. "You don't get a second chance to make a first impression," he says. "As a new lawyer, you are quickly developing a reputation which could last a lifetime. In everything you do,

Ten Commandments for Trial Exhibits

By Judge Michael L. Stern

In preparing and offering trial exhibits, THOU SHALL:

I. Contact the court clerk to inquire how the judge prefers exhibits to be marked and to determine what computer, projector, or screen arrangements should be made for displaying exhibits.

II. Meet and confer early with opposing counsel to exchange and mark all exhibits, including demonstratives, to prepare a joint exhibit list.

III. Compile a joint list with consecutive numbers that describes each exhibit separately.

IV. Separately mark and number each page of every exhibit, including photos.

V. Group exhibits together logically in the order in which they will be introduced.

VI. Place exhibits in 3-ring binders, no more than 3" with an index and tabs, ensuring that there are copies for the judge, clerk, witness, and each party's counsel.

VII. Offer opposing counsel stipulations regarding authenticity and/or admissibility.

VIII. State a description and the number of each exhibit on the record.

IX. Provide impeachment exhibits to opposing counsel and the judge before offering them at trial.

X. Never, ever hide the ball.

you are forming your reputation. A great reputation will open doors for you that you otherwise never could."

Attorneys often get a bad reputation by committing easily avoidable errors. Judge Brazile cautions, "If you cite a case to the court in motion papers, make sure the case has not been overruled or de-published. While this may sound so very basic, it happens more often than you might think or believe."

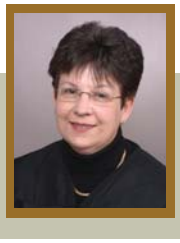
One way to avoid a reputation ding is to look at the bigger picture when evaluating a client or their case. Not everyone who walks in your door should be your client. Judge Brazile offers new attorneys a wise warning. "Before you take on a case, make sure you screen the case carefully as to the merits. For example, in an employment case, will your case survive a demurrer or summary judgment? Can you develop a good theme that will make the case convincing to a jury?" he says. "Assess whether your client will be difficult to handle or control, which could be a sign that you do not have a strong case or your client will have credibility issues with a jury." This can be difficult to gauge, but an important step to building the kind of life-long reputation you'd want.

> "Judges and jurors smell arrogance in attorneys."

Judge Stern wins the pith award in his final admonition: "Never, ever hide the ball."

Final Thoughts

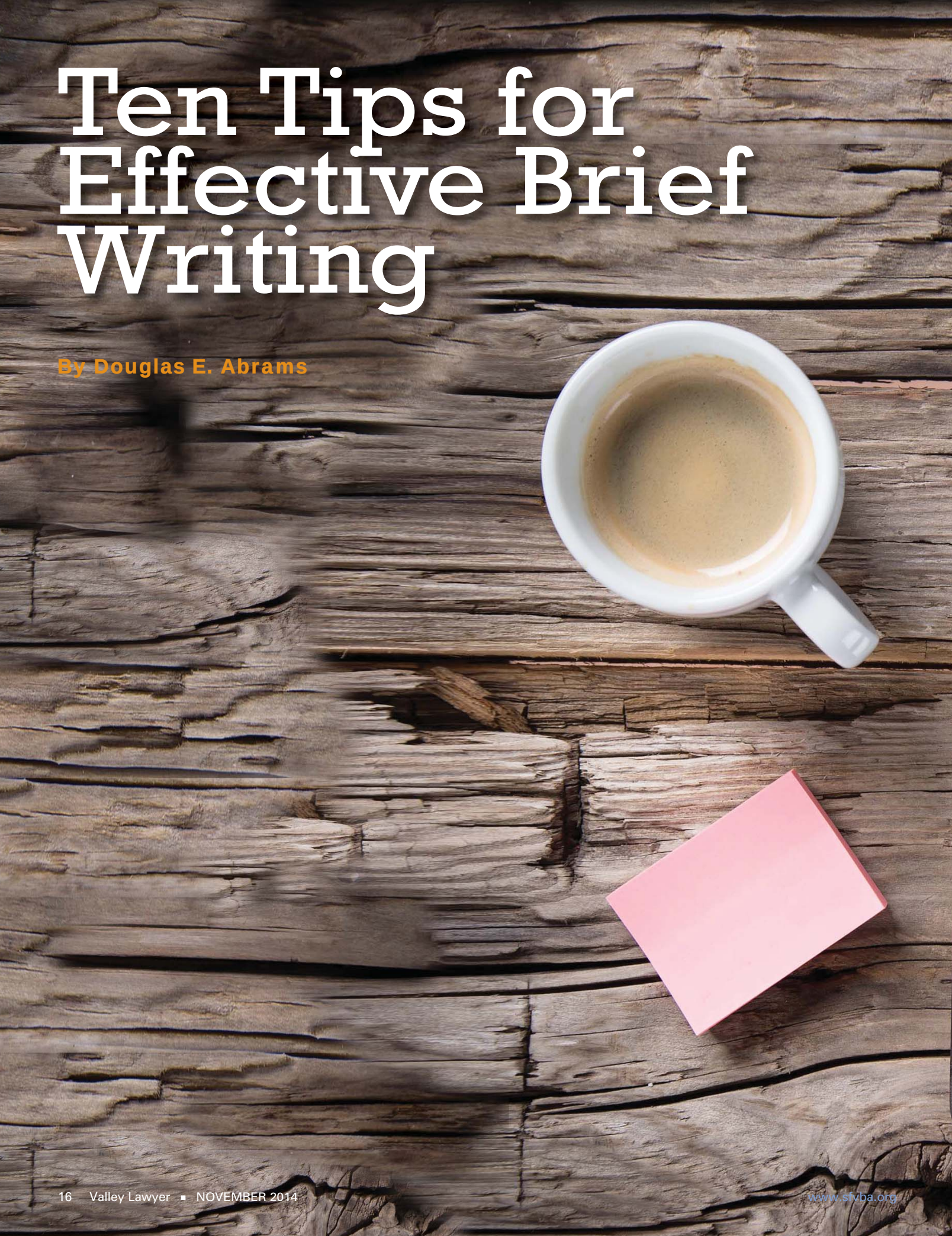
On a final note–and stepping outside the CPR mnemonic–endeavor to have contact with people outside the legal community. The local bowling league of community members from all walks of life can be a very cheap but extraordinarily insightful jury focus group. Judges and jurors smell arrogance in attorneys and have disdain for such attitude. Simply, it's hard to be arrogant after you have volunteered at the local food bank or union mission.



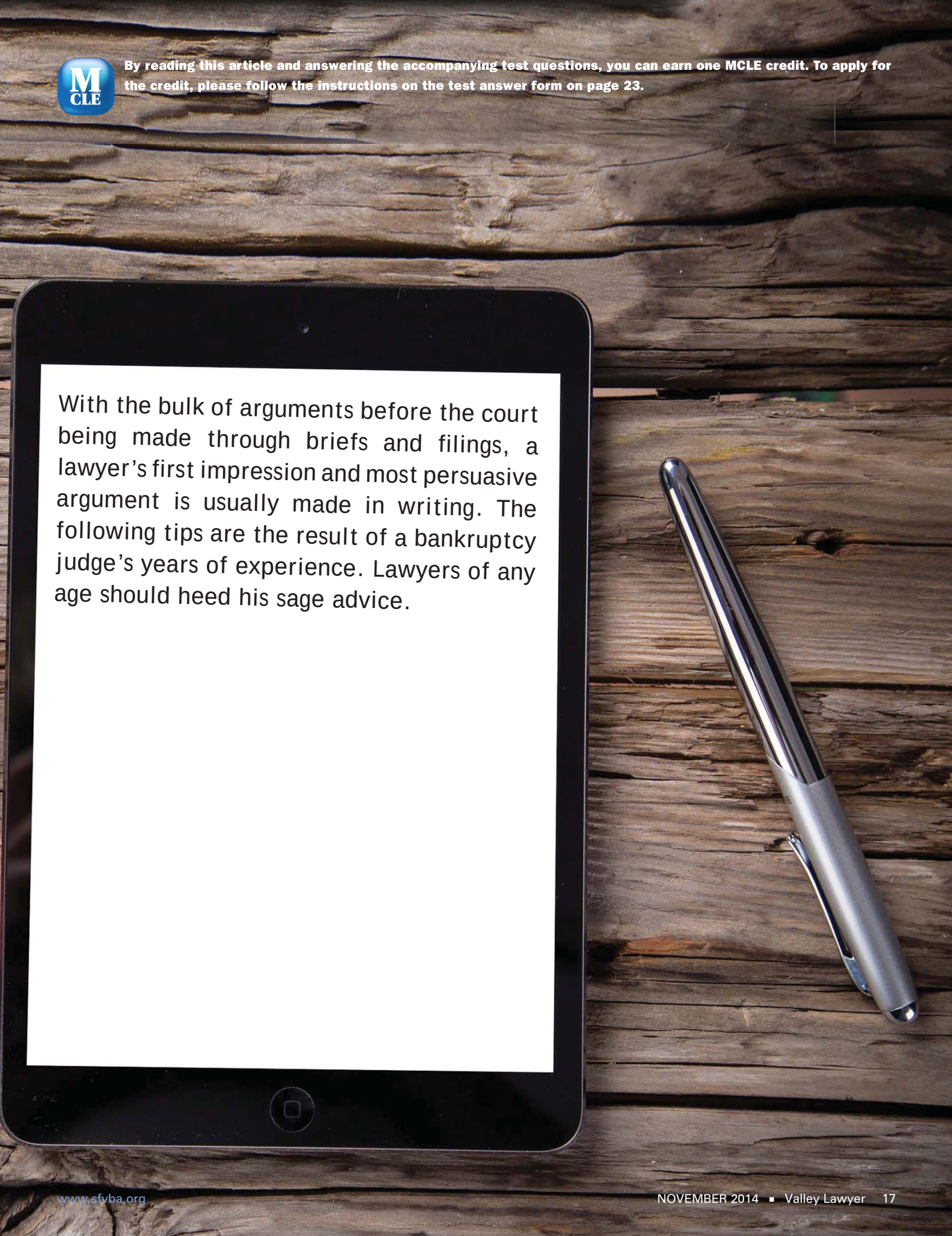
Judge Mary Thornton House is the Supervising Judge for the Northeast/North Central Districts and Supervising Judge of Hub Operations. She is in her nineteenth year on the bench and was honored in 2013 by the SFVBA as their Judge of the Year.

Ten Tips for Effective Brief Writing

By Douglas E. Abrams



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 23.



With the bulk of arguments before the court being made through briefs and filings, a lawyer's first impression and most persuasive argument is usually made in writing. The following tips are the result of a bankruptcy judge's years of experience. Lawyers of any age should heed his sage advice.

BY THE TIME CHIEF U.S. BANKRUPTCY JUDGE Terrence L. Michael (N.D. Okla.) considered whether to approve a compromise in *In re Gordon* in 2013, the Chapter 7 proceeding had descended into recrimination and acrimony.[1]

To support its motion to compel discovery from the bankruptcy trustee, the lawyer for creditor Commerce Bank alleged that the trustee and the United States had engaged in "a pattern . . . to avoid any meaningful examination of the legal validity of the litigation plan they have concocted to bring . . . a series of baseless claims."[2] "[T]hey know," the bank's lawyer wrote, "that a careful examination of the process will show the several fatal procedural flaws that will prevent these claims from being asserted."[3] "Only by sweeping these issues under the rug will the trustee be able to play his end game strategy of asserting wild claims . . . in hopes of coercing Commerce Bank into a settlement (which the Trustee hopes will generate significant contingency fees for himself)."[4]

The trustee responded that the bank's lawyer had impugned his character with accusations that he had compromised his fiduciary obligations for personal gain. Judge Michael denied the trustee's motion for sanctions on procedural grounds, but criticized the lawyer's personal attack: "If Commerce and/or its counsel have evidence of . . . grossly improper conduct, they have a duty to inform the United States Trustee and, possibly, the State Bar of Oklahoma. . . . Such personal and vitriolic accusations have no place as part of a litigation strategy."[5]

Leave the Venom at Home

In his fifteen years on the bankruptcy court bench, Judge Michael had read his share of briefs and other filings. Experience led him to write "Ten Tips for Effective Brief Writing," and to post them on the court's website to guide counsel.[6] He directed the *Gordon* parties to Tip 9, "Leave the Venom at Home."[7]

"Whether you like (or get along well with) your opposition," the tip advised, "has little to do with the merits of a particular case. The most effective attack you can make is to persuade . . . me that the other side is wrong. Remember, if you win, they lose."[8] Tip 9 concluded with an illustrative list of words not to use in brief writing: ridiculous, scurrilous, ludicrous, preposterous, blatant, self-serving, and nonsensical.[9] Seasoned advocates could add others.[10]

Tip 9 makes good sense. "It isn't necessary to say anything nasty about your adversary or to make deriding comments about the opposing brief," says Justice Ruth Bader Ginsburg. "Those are just distractions. You should aim to persuade the judge by the power of *your* reasoning and not by denigrating the opposing side. . . . If the other side is truly bad, the judges are smart enough to understand that; they don't need the lawyer's aid."[11]

"All advocacy involves conflict and calls for the will to win," explained New Jersey Supreme Court Chief Justice Arthur T. Vanderbilt, but advocates "must have character" marked by "certain general standards of conduct, of manners, and of expression."[12] More than 70 years ago, legendary Supreme Court advocate John W. Davis advised that "controversies between counsel impose on the court the wholly unnecessary burden and annoyance of preserving order and maintaining the decorum of its proceedings. Such things can irritate; they can never persuade."[13] The Chief Justice of the Maine Supreme Court confides that "[a]s soon as I see an attack of any kind on the other party, opposing counsel, or the trial judge, I begin to discount the merits of the argument."[14]

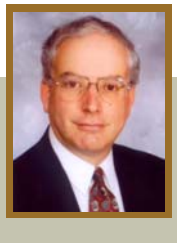
Another leading Supreme Court advocate concurred: "The argument *ad hominem* in a brief is always unpardonable, not simply because it is something no decently constituted brief-writer would include, but because, like all other faults, it fails of its purpose: appellate courts have a hard enough time deciding the merits of the cases presented to them without embarking on collateral inquiries as to the personality or conduct of the lawyers involved. They recoil from any attempt even to ask them to consider such matters, and are always embarrassed by the request."[15]

This rest of this article profiles Judge Michael's other helpful "Tips for Effective Brief Writing." All ten tips warrant careful consideration from lawyers who prepare submissions for trial or appellate courts.

Tip 1: Your Goal is to Persuade, Not to Argue

"Guests on The Jerry Springer Show argue. Lawyers persuade," says Judge Michael. "The idea behind an effective brief is to have the audience (the judge and/or the law clerk) read the brief and say to themselves, 'why are these parties fighting over such an obvious issue?'"[16]

Judge Hugh R. Jones of the New York Court of Appeals posited the advocate's dual objectives this way: "First, you seek to persuade the court of the merit of the client's case, to create an emotional empathy for your position. Then you assist the court to reach a conclusion favorable to the client's interests in terms of the analysis of the law and the procedural posture of the case."[17]



Douglas E. Abrams, a University of Missouri law professor, has written or co-authored five books. Four U.S. Supreme Court decisions have cited his law review articles. This article originally appeared in *Precedent*, The Missouri Bar's quarterly magazine. Reprinted by permission.

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Lawyers, judges, commentators, and court rules commonly label courtroom presentations as arguments. But neither objective defined by Judge Jones leaves much room for lawyers who argue (that is, bicker) in the lay sense of the word. Written and oral "persuasion" more accurately describes the advocate's goal.

Tip 2: Know Thy Audience

"The first thing anyone should do when they begin writing a brief," Judge Michael continued, "is find out whether the judge that will decide their case has already written on the issue. . . . It is extremely frustrating . . . to have counsel in either written or oral argument raise an issue and be completely ignorant of the fact that we decided that issue in a published opinion last week, last month or last year."[18]

Knowing the work product of the judge or the court is easier today than ever before thanks to court websites, Westlaw, Lexis, Fastcase and similar search engines that place currency only a mouse click away. Federal and state judicial directories can help lawyers get a feel for the bench they will seek to persuade, and so can informal discussion with cooperative friends and acquaintances in the local bar.

Tip 3: Know Thy Circuit

"We are bound by published decisions of the United States Court of Appeals for the Tenth Circuit," said Judge Michael in the Northern District of Oklahoma bankruptcy court. "If they have disposed of an issue, we must follow their lead. . . . I can't [ignore that disposition], even if I wanted to."[19]

First-year law students learn the distinction between binding and persuasive precedent, and the sources of that distinction in the federal and state courts' hierarchies and jurisdictional rules. "Authority based on precedent is content-independent," says Professor Michael E. Tigar, "in the sense that the obligation to follow it does not depend upon logic or persuasiveness, but upon the authority's position as binding."[20] Speaking about his Supreme Court colleagues, Justice Robert H. Jackson explained, "We are not final because we are infallible, but we are infallible only because we are final."[21]

If the case does not appear controlled by binding precedent, or if a precedent's application to the facts remains open to reasonable question, persuasive precedent can influence the decision. Persuasive force depends on the precedent's logic and reasoning, and on its likely harmony with binding doctrine. Persuasiveness is a judgment call, first for the advocates and ultimately for the court.

Tip 4: Know the Facts of the Cases You Cite

"Real disputes are fact driven," Judge Michael wrote. "For me, the facts of a case are at least as important as the legal analysis. Be wary of the case which is factually dissimilar to yours, but has a great sound bite. Be sure . . . to explain why the factually dissimilar case is applicable to your situation."[22] Judge Michael also advises lawyers to remain "cognizant of the difference between the holding of a case and the dicta contained therein. Most judges . . . find little value in dicta unless we already agree with it."[23]

"Facts," said Justice Benjamin N. Cardozo, "generate the law."[24] In one of his classic essays on advocacy, Justice Jackson confided that "most contentions of law are won or lost on the facts. The facts often incline a judge to one side or the other."[25] After arguing dozens of appeals in the Supreme Court, Davis agreed: "[I]n an appellate court the statement of the facts is not merely a part of the argument, it is more often than not the argument itself."[26]

Judge E. Barrett Prettyman of the U.S. Court of Appeals for the District of Columbia Circuit said this about the perils of citing precedent without appreciating the constraints imposed by the prior decision's facts: A precedent is "authority for the decision there rendered upon the question there presented in the light of the facts there involved, and it is persuasive for the validity of the reasoning used. . . . Sentences out of context rarely mean what they seem to say."[27]

Tip 5: Shorter Is Better

Judge Michael recounted that "Thurgood Marshall once said that in all his years on the Supreme Court, every case came down to a single issue. If that is true, why do most briefs contain arguments covering virtually every conceivable issue (good, bad or indifferent) which could arise in the case. Weak arguments detract from the entire presentation."[28]

"I have yet to put down a brief," reports Chief Justice John G. Roberts, Jr., "and say, 'I wish that had been longer.' . . . Almost every brief I've read could be shorter."[29] Justice Stephen Breyer similarly says that most briefs are too long, and he urges advocates, "Don't try to put in everything."[30]

A few months before ascending to the Supreme Court bench more than 70 years ago, Judge Wiley B. Rutledge advised advocates to be "as brief as one can consistently with adequate and clear presentation of the case."[31] Supreme Court advocate John W. Davis said that the most effective briefs are "models of brevity,"[32] and he praised the "courage of exclusion"[33] because "the court may read as much or as little as it chooses."[34]

Justice Benjamin N. Cardozo warned that unduly prolix briefs threaten to distract the court because "[a]nalysis is useless if it destroys what it is intended to explain."[35] Justice Jackson advised that, "Legal contentions, like the currency, depreciate through over-issue. The mind of an appellate judge is habitually receptive to the suggestion that a lower court committed an error. But receptiveness declines as the number of assigned errors increases. . . . [M]ultiplying assignments of error will dilute and weaken a good case and will not save a bad one."[36]

Tip 6: Quality Is Job One

Judge Michael turned to candor and due care. "Check your cites. Make sure they are accurate and that each case you are

relying on is still good law. . . . There is nothing more frustrating than being unable to find a case because the citation contained in the brief is wrong. There is nothing less persuasive than finding out that a case you have cited to us has been overruled or misquoted. These flaws weaken your entire presentation."[37]

Similar advice comes from Judge Prettyman: "Whatever else you are in your brief, be accurate. Be accurate in your references to the record. Be accurate in your references to the authorities. Be accurate in your references to statutes. Be accurate in your quotations, of whatever sort they may be."[38]

Judge John C. Godbold of the U.S. Court of Appeals for the Fifth Circuit called accuracy the advocate's "uncompromising absolute," not only because inaccuracy diminishes persuasion, but also because the lawyer's professional credibility may take an enduring hit.[39] "Judges do not always call lawyers on what they think may be purposeful misstatements," explains Professor James W. McElhaney, "because intent is always hard to prove. But judges talk with each other—their club is a small one."[40]

Tip 7: Present the Facts of Your Case Accurately

Judge Michael warned that "If you are submitting a pre-trial brief, don't allege facts that you cannot prove. As a corollary, don't forget at trial to prove up the facts you promised to prove up in your brief. If you are submitting a post-trial brief, make sure the facts are in the record."[41] "Nothing, perhaps, so detracts from the force and persuasiveness of an argument," said Justice Rutledge, "as for the lawyer to claim more than he is reasonably entitled to claim."[42]

Tip 8: Tell Me Exactly What You Want

"Every brief (and motion, for that matter)," said Judge Michael, "should conclude with a statement telling the judge exactly what you want done in the particular case. We need to know."[43]

Judge Jones advised appellate advocates to conclude with "a succinct, precisely phrased request for the exact remedial relief that you seek,"[44] rather than "leave it to the court in the first instance to fashion the remedy."[45] "Do not simply say, 'Therefore, for the foregoing reasons, the judgment of the lower court should be affirmed (or reversed).' Almost always, you want some particular remedy within an affirmance or reversal."[46]

Tip 10: Seek Reconsideration Sparingly

The first page of this article discussed Judge Michael's Tip 9, "Leave the Venom at Home." Tip 10 concerns do-overs.

"If we spend 50 or more hours researching and writing an Opinion (which is not uncommon)," Judge Michael reasoned, "why would one expect us to change our mind unless there is an obvious and egregious error? Most motions to reconsider are a waste of everyone's time. If you don't like the decision, appeal."[47]

Court rules permit motions for reconsideration, but one leading Supreme Court advocate disparages these motions

as "the losing lawyers' last gasp and, most often, little more than that. The vast majority have no chance of success and little reason for being filed except for the belief that nothing will be lost by a final effort to avoid defeat."[48] Professor Tigar advises that before pursuing a vain attempt, counsel should make a "searching inquiry into whether it would waste the client's money and—in an extreme case—subject the lawyer to sanctions for dilatory tactics."[49]

Comprehensive Briefs and Powerful Arguments

As Justice Louis D. Brandeis ascended to the Supreme Court bench in 1916, he observed that "[a] judge rarely performs his functions adequately unless the case before him is adequately presented."[50] Justice Felix Frankfurter later concurred that "the judicial process [is] at its best" when courts receive "comprehensive briefs and powerful arguments on both sides."[51] Adequate presentation depends on comprehensive, powerful, yet dignified give-and-take about the procedural and substantive law that determines the outcome.

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[1] 484 B.R. 825 (N.D. Okla. 2013).
[2] *In re Gordon*, 484 B.R. 825, 827 (N.D. Okla. 2013).
[3] *Id.*
[4] *Id.* at 827-28.
[5] *Id.* at 828 (N.D. Okla. 2013).
[6] Terrence L. Michael, Ten Tips for Effective Brief Writing (At Least with Respect to Briefs Submitted to Judge Michael), available at http://www.oknb.uscourts.gov/sites/default/files/JMFiles/briefwritingtips.pdf.
[7] *In re Gordon, supra* note 1, at 830-31.
[8] *Id.* at 830.
[9] *Id.* at 830-31.
[10] E.g., James W. McElhaney, *Twelve Ways to a Bad Brief*, in *II McElhaney's Litigation* 142, 144 (2013): (adding "manifestly, clearly, fatal, clear beyond peradventure, logic that is fatally flawed, egregious, contumacious, mere gossamer, must necessarily fail, totally inapposite").
[11] *Interviews with United States Supreme Court Justices: Justice Ruth Bader Ginsburg, 13 Scribes J. Leg. Writing* 133, 142 (2010) (quoting Justice Ginsburg) (italics in original).
[12] Arthur T. Vanderbilt, *Forensic Persuasion*, 7 WASH. & LEE L. REV. 123, 130 (1950).
[13] John W. Davis, *The Argument of an Appeal*, 26 A.B.A.J. 895, 898 (1940).
[14] Leigh Ingalls Saufley, *Amphibians and Appellate Courts,* 14 MAINE B.J. 46, 49 (Jan. 1999).
[15] Frederick Bernays Wiener, *Briefing and Arguing Federal Appeals* §83, at 258 (1961); see also, e.g., John C. Godbold, *Twenty Pages and Twenty Minutes - Effective Advocacy on Appeal*, 30 SW. L.J. 801, 817 (1976) ("Reflections on the adversary throw a shadow on a spokesman's own standards and on the strength of his presentation. . . . [F]irmness, and preservation of one's own points and rights, seldom necessitate strident accusations or even discourtesy.").
[16] Michael, *supra* note 6.
[17] Hugh R. Jones, Appellate Advocacy, Written and Oral, 47 J. MO. BAR 297, 298 (1991), reprinted in *7 Precedent 20* (Winter 2013).
[18] Michael, *supra* note 6.
[19] *Id.*
[20] Michael E. Tigar, Federal Appeals: Jurisdiction and Practice §1.05, at 12 (2d ed. 1993).
[21] *Brown v. Allen*, 344 U.S. 443, 540 (1953) (Jackson, J.) (opinion concurring in result).
[22] Michael, *supra note* 6.
[23] *Id.*
[24] Lloyd Paul Stryker, The Art of Advocacy 11 (1954) (quoting Cardozo).
[25] Robert H. Jackson, Advocacy Before the Supreme Court: Suggestions for Effective Case Presentations 37 A.B.A.J. 801, 803 (1951).
[26] Davis, *supra note* 13, at 896.
[27] E. Barrett Prettyman, Some Observations Concerning Appellate Advocacy, 39 VA. L. REV. 285, 295 (1953).
[28] Michael, *supra note* 1; *see also*, e.g., John W. Davis, *The Argument of an Appeal*, 26 A.B.A.J. 895, 897 (1940) ("More often than not there is in every case a cardinal point around which lesser points revolve like planets around the sun, or even as dead moons around a planet; a central fortress which if strongly held will make the loss of all the outworks immaterial.").
[29] *Interviews with United States Supreme Court Justices: Chief Justice John G. Roberts, Jr., 13 Scribes J. Leg. Writing 5*, 35 (2010) (quoting Chief Justice Roberts).
[30] *Interviews with United States Supreme Court Justices: Justice Stephen G. Breyer, 13 Scribes J. Leg. Writing* 145, 167 (2010) (quoting Justice Breyer).
[31] Wiley B. Rutledge, *The Appellate Brief*, 28 A.B.A.J. 251, 254 (1942).
[32] Davis, *supra note* 13, at 895.
[33] Quoted in George Rossman, *Appellate Practice and Advocacy*, 16 F.R.D. 403, 407 (1955).
[34] Davis, *supra note* 13, at 897.
[35] Benjamin Cardozo, *The Nature of the Judicial Process* 127 (1921).
[36] Jackson, *supra note* 25, at 803.
[37] Michael, *supra note* 1.
[38] Prettyman, *supra note* 27, at 295.
[39] John C. Godbold, *Twenty Pages and Twenty Minutes - Effective Advocacy on Appeal*, 30 Sw. L.J. 801, 816-17 (1976).
[40] McElhaney, *supra note* 10, at 143.
[41] Michael, *supra note* 1; see also, e.g., Raymond S. Wilkins, *The Argument of an Appeal*, 33 CORNELL L.Q. 40, 42 (1947) ("Nothing will forfeit the confidence of the court more effectively than the misstatement of the record or the statement of a fact off the record.").
[42] Rutledge, *supra note* 31, at 254.
[43] Michael, *supra note* 1.
[44] Jones, *supra note* 17, 47 J. MO. BAR at 304.
[45] *Id.* at 300.
[46] *Id.*
[47] Michael, *supra note* 1; *see also, e.g.,* Robert L. Stern et al., *Supreme Court Practice* §§15.5-15.6, at 726-27 (8th ed. 2002) ("[T]he Supreme Court seldom grants a rehearing of any kind of order, judgment, or decision. . . . [A] rehearing attempt by the losing party to present the same arguments anew, even in improved fashion, has hardly any chance of success.").
[48] Robert L. Stern, *Appellate Practice in the United States* §16.1, at 441 (2d ed. 1989).
[49] Tigar, *supra note* 20, §11.01, at 418 & n.15.
[50] Louis D. Brandeis, *The Living Law*, 10 ILL. L. REV. 461, 470 (1916).
[51] *Adamson v. California*, 332 U.S. 46, 59 (1947) (Frankfurter, J., concurring).

Test No. 73

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 "Ten Tips for Effective Brief Writing" were written by Supreme Court Justice Samuel Alito
   ❑ True ❑ False

2. A judge will look favorably on venomous attacks launched at opposing counsel.
   ❑ True ❑ False

3. According to Judge Hugh R. Jones, a lawyer's first objective is to persuade the court of the merit of his or her client's claim.
   ❑ True ❑ False

4. A lawyer's second objective is to assist the court in reaching a favorable conclusion for his or her client's interests.
   ❑ True ❑ False

5. It is never advisable to research a judge's published opinions.
   ❑ True ❑ False

6. Lawyers should keep abreast of published appellate decisions.
   ❑ True ❑ False

7. It is important to know the facts of the cases you cite.
   ❑ True ❑ False

8. Thurgood Marshall once said that every case contained three separate but equally important issues.
   ❑ True ❑ False

9. Chief Justice John Roberts advises lawyers to write shorter briefs.
   ❑ True ❑ False

10. It is not important to check cites to ensure they are still good law because the judge will check them for you.
    ❑ True ❑ False

11. It is ok to allege facts that cannot be proven.
    ❑ True ❑ False

12. All conclusions should be long, convoluted, and obliquely allude to the result you desire.
    ❑ True ❑ False

13. Motions for reconsideration are usually ineffective and a waste of time.
    ❑ True ❑ False

14. According to Professor Michael E. Tigar, the obligation to follow a precedent is not based on logic or persuasiveness but rather on the authority's position as binding.
    ❑ True ❑ False

15. Lawyers should not cite cases that are factually dissimilar just because they provide a great sound bite.
    ❑ True ❑ False

16. Accuracy is of utmost importance because inaccuracy diminishes persuasion and hurts a lawyer's professional credibility.
    ❑ True ❑ False

17. According to Justice Louis D. Brandeis, a judge performs best when the cases before him are adequately presented.
    ❑ True ❑ False

18. Prior to submitting a motion for reconsideration, a lawyer should carefully determine if it is a waste of the client's money and if doing so could lead to sanctions.
    ❑ True ❑ False

19. According to Judge Michael, liking or getting along with opposing counsel has very little to do with the merits of a particular case.
    ❑ True ❑ False

20. Judge Michael makes it clear that a lawyer's duty is to persuade rather than to get into arguments, as is often done by the guests on the Jerry Springer Show.
    ❑ True ❑ False

MCLE Answer Sheet No. 73

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 $_____.

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Credit Card Number Exp. Date

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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.

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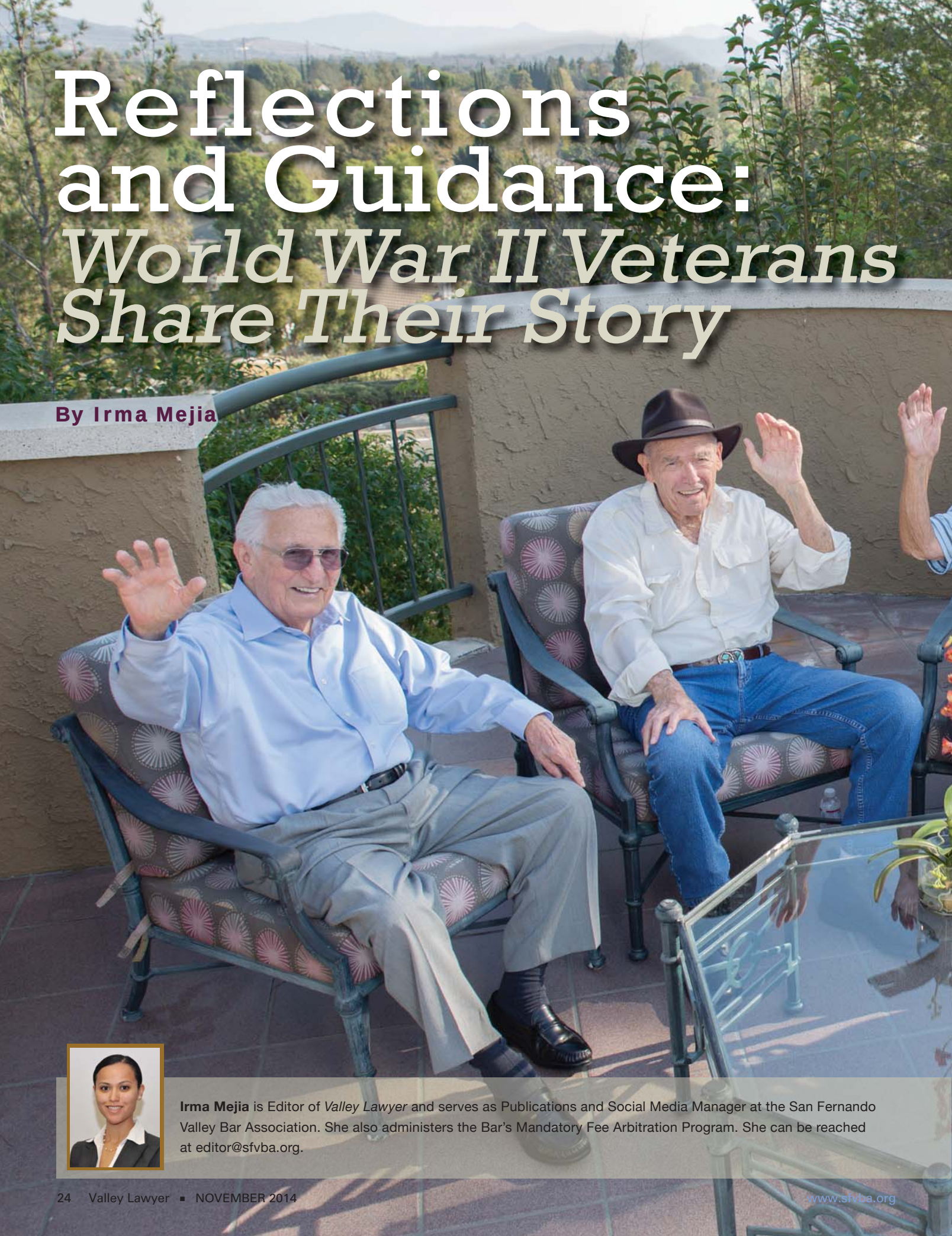
State Bar No._____

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

Reflections and Guidance: *World War II Veterans Share Their Story*

By Irma Mejia



Irma Mejia is Editor of *Valley Lawyer* and serves as Publications and Social Media Manager at the San Fernando Valley Bar Association. She also administers the Bar's Mandatory Fee Arbitration Program. She can be reached at editor@sfvba.org.

This Veterans Day *Valley Lawyer* highlights four distinguished veterans and members of the SFVBA. All four served our country with distinction during World War II and continued on to impressive legal careers with far-reaching impact on the practice of law. These unassuming men with their incredible life experiences are a rich source of wisdom for attorneys of any generation.

Photos by Paul Joyner at The Reserve in Thousand Oaks.

ATTORNEYS OF THE VALLEY HAVE MADE remarkable contributions to our nation. Members of the Greatest Generation, like attorney Albert J. Ghirardelli, Ninth Circuit Appellate Court Judge Harry Pregerson, retired attorney James M. Fizzolio, and retired workers' compensation judge Donald Foster, have played key roles in shaping the Valley, the practice of law and the country itself. Ghirardelli, Pregerson, Fizzolio, and Foster came of age during the Great Depression and as young men served their country during the Second World War. These experiences shaped their lives and influenced their careers.

All four of these veterans contributed to the war effort in different ways. Jim Fizzolio enlisted in the Army in 1942 and served as a captain while stationed in the Philippines. "I says. "The worst thing that could have happened to me was to be classified as a 4-F [not acceptable for military service]. I would have to go through life thinking about what I would tell my grandchildren. My biggest worry was that the war was going to be over before I got there."

Pregerson began his training in the Army and Naval ROTC programs while studying at UCLA. He went on to serve in the Marines as a first lieutenant during the war and was wounded in both legs during the Battle of Okinawa in 1945. "Every square foot [of the battlefield] was soaked in someone's blood," he says. He earned a Purple Heart for his service. "I was mad that I was hit. Why would someone want to shoot a nice guy like me?" he says. "It was a big wakeup call. You appreciate your life. And you learn how important the

enjoyed serving," he says. "I also enjoyed spending time in Manila, being out in a different part of world, and was very fortunate not to have been in any physical encounters."

Al Ghirardelli was drafted into service in 1943 and served in the 97th Infantry Division of the U.S. Army. "Service was inevitable," he says. "My mother didn't want me to go but you couldn't argue with the government." Ghirardelli underwent amphibious assault training and was eventually sent to Germany where he fought in the Battle of the Ruhr Pocket. He was wounded in combat, receiving a rifle shot to the jaw in 1945. He was awarded a Purple Heart and Bronze Star for his service.

Judge Harry Pregerson explains that not only was it inevitable that young men would have to serve in the military but it was expected and even desired. "It's what you did," he common soldier is. They're the ones who won the war, not the generals. You have respect for them."

Judge Donald Foster's participation in the war effort began when he worked for a private contractor as a pilot instructor. He had completed civilian pilot training and was qualified to train pilots in aerobatics, cross-country, night, and pursuit flying. As he describes it, when the war began, he was much more valuable as a flight instructor than a soldier since the military needed pilots. So he and other instructors received a deferment from the draft. Once the private contracts were cancelled, he enlisted in the U.S. Army Air Force where he served as a flight instructor and ferry pilot. "We had the highest priority when it came to traveling," he says. "We could bump anyone off a plane because it was important to have us get to a certain location to transport planes."

A skilled pilot, Foster flew every type of plane available at the time, from the P-39 Airacobra to the P-51 Mustang fighter bomber. He even transported Russia-bound planes from Montana to Alaska, a treacherous trip at the time, which under normal weather conditions would only take about five days to complete. After transporting planes, munitions and people to bases throughout the United States, he was assigned to North Africa. From there, he flew to Italy to evacuate soldiers as the war ended and transport them to them to Algiers or Casablanca where they would board ships bound for home.

Reflecting on their service, all four look back with pride. Foster credits his military training to acquiring important life skills that would be of great use later on in his legal career. His already meticulous attention to detail was further developed as a pilot, a job during which "any mistake could be fatal," he says. He also had to be able to maintain an even-temper and steady hand in the face of mounting challenges, including iced carburetors, engine failures, and near-collisions in the air, all of which he experienced. After dealing with those emergencies, nothing could knock him over in court.

With a slight chuckle, Ghirardelli says of his service, "It was a real positive part of my life because I forget all the bad parts I think."

Through laughter, Pregerson, who served in the Pacific, recalls one particularly bad aspect of the war effort. "I pretty much knew a war was going to happen. My father had been in France in the First World War so I took French in school to be able to speak to the French girls when I got there," he says. "It was my biggest disappointment. I took ten units of French. A damn bit of good it did for me!"

Nearly all of them returned from the war knowing they were going to be lawyers. And nearly all benefitted from the GI Bill which was designed to help servicemen readjust to civilian life.

Fizzolio explains that it was his love of the law that made him want to become an attorney. And he credits the GI Bill for helping him get through Yale Law School. "It was a big opportunity," he says. "I had that advantage and used the opportunity to go to law school." He went on to establish the fabled workers' compensation firm of Fizzolio & Fizzolio with his twin brother in Van Nuys. He also served as chairman of the California Workmen's Compensation Commission for the State Bar, as an arbiter for the American Arbitration Association, as a judge pro tem for the Los Angeles Municipal Court, and as president of the Burbank Bar Association.

Foster, on the contrary, didn't initially plan on studying law. "I think my parents knew before I did," he says. "They said I liked to argue but I didn't think I was arguing." After the war, he worked in radio and the insurance industry before attending Southwestern Law. "Becoming a lawyer was prestigious," he says. "It provided many opportunities to influence society and continue with public service." As a lawyer, he worked for the Auto Club and an insurance company before joining a top workers' compensation firm. He became a workers' compensation judge in 1972 and retired from the bench in 1991.

Foster also credits the GI Bill with helping him establish his life as a civilian after the war. "I think the benefits were terrific at that time. It paid through 3½ years of law school. I bought a house and raised a family," he says. "It was a terrific advantage. Without the GI Bill it would have been really tough."

"The GI Bill was in many ways probably one of the most important pieces of legislation ever passed by Congress," says Pregerson. "It gave so many people who had the potential to make something important out of their lives the chance to do that."

Having grown up during the Depression, Pregerson witnessed a lot of limitations on people's potential. In fact, he recalls being the only boy in his class able to attend college right after high school because many families weren't capable of paying for higher education. The son of a U.S. Postal Service employee, Pregerson cites Clarence Darrow and the early labor movement as a major influence in his desire to attend law school. He eventually studied law at UC Berkeley.

He was in private practice for more than ten years before being appointed to the bench. "It was a big awakening

HONORING VETERANS

THIS VETERANS DAY, THE SFVBA RECOGNIZES THE FOLLOWING MEMBERS WHO HAVE SERVED IN OUR NATION'S MILITARY. WE ARE GRATEFUL FOR THEIR SERVICE IN UPHOLDING THE CONSTITUTION OF THE UNITED STATES AND ADVANCING THE IDEALS OF LIBERTY, JUSTICE, AND RULE OF LAW.

Hon. Arman Arabian, Ret., Army, 1956-1958 ▪ **Tony Beller**, Army, 1969-1971; Reserves 1971-1977
David Berglund, Navy ▪ **W. Scott Bowersock**, Army, 1961-1964 ▪ **Jeff Briskin**, Marines, 1969-1972
Robert Louis Finkel, Air Force, 1954-1958 ▪ **Kelvin P. Green**, Army National Guard, 1979-2014
Kenneth Green, Army, 1957-1958 ▪ **Lars Johnson**, Navy JAG, 2000-2004; Reserves 2004- 2007
Stephen A. Lenske, Army Reserve, 1965-1969; Army JAG, 1969-1972; Army Reserve JAG, 1972-1996
Richard A. Lewis, Army National Guard, 1964-1968; Army, 1968-1969; Army Reserve, 1972-1976
Maurice Lewitt, Army, 1954-1956 ▪ **Steven Lundberg**, Air Force, 2002-2006
Alfonso Martinez, Air Force, 2000-2004; Reserves 2004-present ▪ **Richard T. Miller**, Army, 1974-1977
Robert Ronka, Army, 1968-1970 ▪ **Hon. Marvin D. Rowen**, Ret., Marines, 1953-1959
Robert "Rocky" Star, Navy, 1965-1967 ▪ **Julias Stewart**, Navy, 1983-1989
Rob Taylor, Army, 1985-1992; Reserves 1992-2000 ▪ **Daniel Ueno**, Navy, 1996-1998; Reserves 2003-present
George Vorgitch, Air Force, 1951-1955 ▪ **Frederick J. Weitkamp**, Army, 1945-1946
Scott W. Williams, Air Force, 1989-1992 ▪ **Irving Zaroff**, Navy, 1961-1963; Reserves 1963-1971

Please contact the Editor at editor@sfvba.org to add a name to the Bar's growing database.

when I went on the municipal court and my pay dropped by two thirds," he says. He was appointed by President Lyndon Johnson to the U.S. District Court, Central District of California in 1967 and elevated to the U.S. Ninth Circuit Court of Appeals by President Jimmy Carter in 1979. "I try to spend my life helping as many people as I can," he says. "That's what's important to me."

Ghirardelli knew from an early age that he wanted to study law. "There was a period in the 1930s when there were a lot of notorious gangsters that were rounded up by the FBI," he says. "It made me want to be a special agent." His school's career counselor informed him that to qualify for the FBI he needed to study either accounting or the law. So after the war, he used his disability benefits to help pay for his education at USC School of Law. Upon graduating, he says he thought to himself, "Well, I've gone this far, I might as well see how this turns out."

It turned out quite well for him. He returned to the Valley and took a job with a firm where his cousin was a partner. "I handled everything that fell off the table," he says. "Bankruptcy, divorce, adoption, wills, business transactions. I learned a lot." He then went on to become the Assistant City Attorney for the city of San Fernando where he worked on landmark water rights cases fought between the Valley and the city of Los Angeles. He also served as President of the San Fernando Valley Bar Association in the 1950s. "In those days, the Bar had only about 250 members in the whole Valley," he says.

It was a very different community of lawyers back then. All agree that the lawyers were more collegial, more civil and courteous, and more helpful. Ghirardelli recalls one time when he sat in court waiting for a judge and the attorney next to him offered him advice on his case. "Can you imagine an attorney helping another attorney like that today?" he asks. "If you got to the Valley and you were a jerk, everyone would know about it within 24 hours," says Pregerson. "You wouldn't be happy after that."

When asked what advice they would share with today's new attorneys, they each had a unique bit of wisdom to share. Foster advises new lawyers to be diligent about networking. "Keep a card of everyone you meet and be persistent," he says. He also advises new attorneys to consider corporate counsel or getting an early start as a personal injury investigator. "You learn a lot and it's a strong foundation for employment in workers' compensation."

For those considering starting a new firm, Fizzolio recommends putting careful thought into selecting a business partner. "Find yourself an associate who can weather the storm with you," he says. "I happened to have a brother. We made a great duo that went on for years and years"

In addition to stressing the importance of internships to gain trial experience, Pregerson recalls the advice given to him by a law professor, "Work hard, be honest, and you'll make it."

Lastly, Ghirardelli says, "It's a challenging profession but very rewarding. You do a lot of good for a lot of people but it's a lot of hard work. Be prepared for that."

CONTENT MARKETING YOUR SOLO PRACTICE

By Christopher W. Blaylock

OURS IS AN INTERESTING economy. Despite some recent growth, new college graduates are still experiencing significant career delays due to a sluggish job market. A generation or two ago, a new lawyer could expect to roll out of the bar and straight into a lucrative position with a respectable firm. For many Millennials, this is no longer the case. In 2012, approximately 50% of new law graduates remained unemployed nine months after graduation; a number that held true even for prominent schools like UCLA or Berkeley.

But there is a silver lining. California's economy is actually growing again, if only slowly; and better still, a huge chunk of the recent economic movement has come from micro-business startups. This offers opportunity for those who are paying attention. In fact, chances are that you're reading this article because you have already decided that hanging your own shingle may be your most viable career option.

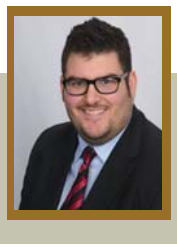
Whether you're planning to put your newly honed legal mind to work on client cases, in the business sector, or for other lawyers themselves, you won't get far without a sales plan. To this end, I suggest you consider a content-based marketing strategy. Across the business world, content marketing is king. In fact, some sales experts have even gone so far as to suggest that content marketing is the only marketing left.

What is Content Marketing?

Back in the 1990s and early 2000s you could put up a simple website, bury a few keywords somewhere on one of your pages, spam the major search engines, and watch the traffic, and revenue, roll in. However, earlier this year, Google quietly rolled out the biggest change to its search algorithm in a decade. With this update, Google made good on its promise to start delivering higher-quality search results—results people really wanted. Enter content marketing.

Already a buzzword for a couple of years before Google's update, content marketing is the practice of using quality online content to draw the attention of the big search engines–and the public. In a nutshell, content marketing is the process of developing and sharing the kind of material that people genuinely want to read, watch, listen, and share. Great YouTube videos and corporate blogs are both examples of potentially effective content marketing strategies. The point, however, isn't about form, but quality.

Content comes in all shapes and sizes, but what sets good content marketing strategies apart is their focus on genuine value. Consumers are overwhelmed by the rush of data thrown at them every single day. They don't read everything they see; that's impossible. Instead, people are



Christopher W. Blaylock is a criminal defense and personal injury attorney in Los Angeles. He is Co-Chair of the SFVBA's New Lawyers Section and Vice-Chair of the Solo Firms Committee of the Young Lawyers Division of the American Bar Association. He can be reached at chris@chrisblaylocklaw.com.

getting pretty good at sorting content and great tools are being built to help. In short, your prospective clients are looking for material that shocks, inspires, motivates, entertains, informs—anything that can actually make their lives a little bit better, a little bit easier, a little bit wealthier. This is the content you should be developing.

Great Content Sells Itself—Almost

While some content literally does sell itself—going viral in a matter of hours and, sometimes, making the producer quite rich in the process—most good content sits unnoticed for lack of publicity. I stated earlier that content was the way to customer's hearts, and I stand by that claim. But there is more to the equation than just producing quality YouTube videos explaining constitutional law to laypeople (even ones with cool animations and great sound effects). You also have to share your content if you expect anyone to take notice.

This is where social media comes into the picture. Many people think that social media marketing is all about generating longer lists of Facebook friends and picking up more Twitter followers. That can work, sort of, but it's not really the point. Much of the value in social media marketing isn't easy to measure. It doesn't come from blog hits, or Pinterest posts themselves, but from the engagement that these things drive. If you have 10 million blog hits but no one bothers to stay for more than 10 seconds, you're failing.

Pretty much everyone is on social media, even your grandparents and preschool-aged nephews. Your customers almost certainly are. In order to garner their attention, you have to give them something. Most of you have received that Facebook notification that says "Please like my new law firm page" and most of you probably click like out of the generosity of your heart, but the engagement too often stops there. Only about 2% of the people who like a business Facebook page ever bother to return, often because there would be no point since they would get nothing out of it. An effective content strategy, driven by a strongly engaged social media presence, can change that.

Content Marketing Still Takes Work (and Lots of It)

It would be nice to say that content marketing was this cool new thing that made all your sales for you. Unfortunately, nothing could be further from the truth. While I believe that content marketing is the new lawyer's best friend, it is absolutely going to take a ridiculous amount of work to pull off. I don't say this to scare you off but rather to make you sit up and pay attention to the following advice.

Content marketing is an involved process that requires you to develop, and engage with, your audience every single day. This doesn't mean that you have to post a new blog article twice a day—though that does work for some lawyers. It does mean that you have to at least take the time to log onto Twitter every day and respond to your followers. You can read all kinds of articles about the most effective number of posts per day, but ultimately it depends both on the nature of your audience and on the type of your content.

It is also important to remember that content marketing is a long-term strategy. You can't expect to publish a blog post tonight and have ten new clients walk in your door tomorrow morning. It will never happen. What will happen is that if you stick to your commitment, and regularly create, share, and engage great content, people will begin to notice, and so

will the search giants. As your audience grows, so too will your search ranking, which will in turn help to grow your audience.

A Few Caveats

Yes, there is always a catch. Lawyer marketing is slightly more challenging that other industries because of our commitment to a high ethical standard and because of the nature of client confidentiality. Have a care when you post online. Remember that Facebook is not Vegas; what you post will almost certainly not remain where you post it, no matter the level of privacy you set. The same goes for all the other venues, even email and text messaging. Whatever you commit to writing should be carefully thought out as it may reflect poorly on you down the road and whatever you commit to a digital medium should be gone through with a fine-tooth comb.

With this warning in mind, I'd like to very concisely set out some of the ethical rules you face when marketing your firm online. Keep these rules firmly in mind as you set out on your new content development strategy, while not specifically designed for content marketing, they can easily be applied.

Ethical Advertising

An attorney has a duty to avoid false or misleading advertisements and cannot improperly solicit clients. Every advertisement must be labeled as an advertisement, impersonation or a dramatization, if applicable. Mailing materials must also be labeled as "advertising materials." In any ad, an attorney cannot raise unjustified expectations or make unverifiable comparisons. In addition, an attorney must keep records of the content and placement of any advertisement for two years.

Solicitation

Attorneys cannot seek professional employment for pecuniary gain by initiating a live or telephone contact with a prospective client with whom the attorney has no prior relationship. Specifically, an attorney cannot make in person, live telephone contact, real-time electronic contact, or a direct solicitation, unless an attorney has a prior personal, family or professional connection with the person or company. In addition, attorneys may not employ an agent or third party to do that which she or he cannot.

In essence, create great content that offers your viewers something valuable in return for their time, share it out across many social networks, and do it all with a sense of ethical class that puts you, literally, a cut above the rest. In return, clients will eventually take notice of your effort and reward you with their business.

PHOTO GALLERY

Installation Celebration & Lintz Award Dinner

Wednesday, September 17, 2014

Braemar Country Club

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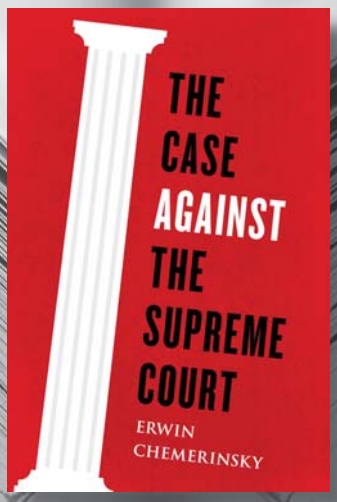
1. Lintz Award Recipients Sandra and Dan Davisson and VCLF President's Award honoree Sharley Allen **2.** SFVBA Executive Committee David Kestenbaum, Kira Masteller, Caryn Brottman Sanders, Carol Newman and Adam Grant **3.** Yi Sun Kim and Jennifer Nohavandi **4.** Caryn, Francesca and Donald Sanders **5.** Martha Benitez, Kestenbaum and Lucia Senda **6.** Gonzalo Freixes and Alex Kasendorf **7.** Seymour Amster, Jodi Berman Levine, Masteller and Myer Sankary **8.** Kathy Neumann and Newman **9.** SFVBA Past Presidents Richard Lewis and Lee Kanon Alpert **10.** Tamiko Herron **11.** Michelle Short-Nagel **12.** Cari Pines and Judge Harvey Silberman

Book Review

The Case for The Case Against the Supreme Court:



A Review of Erwin Chemerinsky's Latest Work

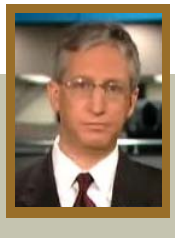
By Anthony D. Zinnanti

THANK GOODNESS SOMEONE finally wrote this book. In his latest work, *The Case Against the Supreme Court* (Viking, September 2014), renowned constitutional law professor, attorney, and Dean of UC Irvine, Erwin Chemerinsky, delivers a well mapped argument regarding the United States Supreme Court's historic failure to deliver on the basic tenets of individual protection and to enforce the United States Constitution in times of crisis.

As to the contemporary high court, Chemerinsky's work relates a trove of examples of troubling judicial activism aimed at government and corporate protection to the exclusion of fundamental logic and the promise of individual empowerment. This quick and engaging read is impeccably researched and well balanced in its argument.

The Case Against the Supreme Court is organized into three parts. The first part covers the Supreme Court throughout history; the second examines the current Court; and the third concludes with suggested improvements for future courts. The work closes with the heartrending case of *Hui v. Castaneda*, a case of prisoner neglect resulting in a slow and painful death at the hands of indifferent government officials, providing yet another example of the Supreme Court insulating the government from accountability. This conclusion is an appropriate echo of Chemerinsky's opening salvo examining the history of high court opinions on involuntary sterilization, slavery and the progress of equality.

Throughout, Chemerinsky qualifies his position with the anticipated accusation of liberal bias. A few lighthearted lines convey Chemerinsky's concern that the work will "be criticized as a liberal's whining that the Court's decisions have not been liberal enough." Chemerinsky writes, "But my goal was not to write *The Liberal Case Against the Supreme Court*; it was to make a case against the Supreme Court that those all across the political spectrum can accept."



Anthony D. Zinnanti is a California lawyer whose practice is dedicated to appellate and post-conviction matters, including major civil cases and serious felonies. He has handled hundreds of matters comprised of criminal appellate and trial litigation, family law, immigration and civil proceedings. He is also an avid outdoorsman, with a keen interest in fly fishing, traditional archery and big game hunting. He can be contacted at adzesq@gmail.com.

While some self-deprecation appropriately tempers Chemerinsky's position, he is ultimately on very solid ground. The cases that illustrate weakness in the Court's leadership and unwillingness to protect the minority view in times of crisis are pivotal in our nation's development.

The Case Against the Supreme Court is as much a teaching tool as it is a thematic presentation. I read this work from the perspective of a fairly experienced appellate litigator, and with fond remembrance of my mindset as a starry eyed 1L. As to the latter, the supernal portraits of judicial giants such as Oliver Wendell Homes and Hugo Black left their indelible mark as to the existence of some creative and incontrovertible wisdom emanating from the hallowed chambers of the high court. However, now tempered by the years of my professional doings, I receive *The Case Against the Supreme Court* as a cathartic comfort of sorts, in which the curtains are pulled back and the wizardry is appropriately exposed as the work of mere mortals who simply caved to nationalistic fervor when they were otherwise lawfully and morally obliged to be the voice of reason.

Chemerinsky's teaching point is that the seemingly lonely and occult world of the robe is no more insulated from the concerns for popular sentiment and accounting of finite political capital. Where the interned Japanese American and vocal anti-war dissident were entitled to a just and moral reading of the Constitution, the Court turned its back, leaving their lives as the fodder of calculated abandon.

On this observation, and in counterpoint, Chemerinsky segues to an examination of Earl Warren's fifteen year tenure as Chief Justice. In his examination of the Warren Court's progressive opinions, Chemerinsky does not relent from the troubling questions of how that Court failed to find constitutional grounds for that which is inherently fundamental to democratic function. Further, Chemerinsky is openly critical as to the extent of the Warren Court's progress in enforcing the rights it acknowledged, and whether the progress was mere empty promise.

It is with this position that I take issue. Arguing what he considers "the failure to achieve equal educational opportunity" and "the failure to provide adequate counsel in criminal cases," Chemerinsky meanders into the social sciences and provides data which, while very well documented, may be contrary to the practical experience of some readers. However, the greater theme is how these two sub-arguments reveal Chemerinsky's view of what the Supreme Court is supposed to be. Are we to rightfully expect that the justices of the high court be omniscient and omnipotent when it comes to fashioning all facets of our social fabric?

Absent the political pressures levied on the other branches of government, there is a reasonable expectation the Court should exercise independence in the context of the proactive mending of social wrongs. But how far is the Court to go within the confines of its constitutional establishment?

While historically the answer to that question has been elusive, the willingness of the contemporary high court to engage in judicial activism in favor of powerful constituents is of unprecedented concern. Recent decisions of the Roberts Court indicate that the Court is capable of being omniscient and omnipotent when it wants to. A poignant example is the Court's 5-4 decision in *Mutual Pharmaceutical Co., Inc. v. Bartlett*.

While *The Case Against the Supreme Court* is rife with examples of the logical, moral and legal failures of the Court, Chemerinsky is not of the opinion that the Court always gets it wrong. The impetus for putting pen to paper, however, was Chemerinsky's defense of the Court in the course of teaching and his progressive difficulty with harmonizing the Court's decisions with the constitutional principals those decisions offended.

As argued by Chemerinsky, the course of pro-business/anti-consumer decisions, the conferring of immunity upon government in the face of even the most egregious abuses, the involvement of the high court in *Bush v. Gore*, in stark violation of the principles of federalism, and the untethering of big money influence upon the political process, makes inescapable the existence of grave dysfunction and even an abdication of the Court's proper constitutional role.

The final part of *The Case Against the Supreme Court* queries "What to do about the Supreme Court?" Chemerinsky ponders the question of eliminating the Supreme Court. While he harkens back to its appropriate exercise of power, for example, in the matter of *United States v. Nixon*, the question lingers as to whether the Court has strayed so far—throughout all of its history—so as to justify its nullification. He examines the question, again, delving into some social science and comparative governmental theory.

Ultimately, his analysis rests upon the value and viability of judicial review in the context of the Court's ability to effect social change. Chemerinsky emphasizes the crucial necessity for judicial review, and notes that in the "terrible mistakes made by the Court" there was usually a dissent, a dissent that could have been the majority opinion.

Chemerinsky concludes with a litany of suggested reforms. He notes that the adoption of even a few of the suggested reforms would constitute the most significant reform since the Court's inception. Either way, it is time that the mystique surrounding and insulating the Court from scrutiny fall away. There is a compelling call for greater transparency and communication with the public.

As a practitioner, I have often looked upon my own certificate to practice before the Supreme Court in light of the troubling questions set forth in *The Case Against the Supreme Court*. Is it all for naught? Or, is it enough to seek that kernel of hope, perhaps the ever present threat of judicial review righting a wrong and cloaking the righteous suitor in the protection of the law? How do we derive such fundamental fault and celebrated justice from the same four corners of the Constitution?

In resolution of that quandary, Chemerinsky's thesis is refreshing and thought-provoking. His approach is appropriately as bold as a Helen Thomas question in a White House press conference.

This book comes at the right time in history and by way of the person with the right credentials. *The Case Against the Supreme Court* is definitely one for the library, the practitioner, and the engaged citizen whose ultimate recourse is with this fallible, but indispensable, institution.

SFVBA Wins National Association of Bar Executives Luminary Award

THE SAN FERNANDO VALLEY BAR ASSOCIATION WON THE prestigious Luminary Award for its monthly magazine, *Valley Lawyer.* SFVBA Publications & Social Media Manager Irma Mejia was on hand to accept the Luminary Award in the category of Excellence in Regular Publications for Bar Associations under 5,000 members at the National Association of Bar Executives (NABE) Communication Workshop in Indianapolis, IN on October 3, 2014.

Since 1994, the NABE Communication Section has recognized excellence in bar association communication by honoring outstanding projects of the past year. The panel of judges of bar association communication professionals nationwide praised *Valley Lawyer* for its member-centric content; focus on the San Fernando Valley legal community; mix of substantive and association business; and its updated design.

Valley Lawyer is published by Editor Mejia, SFVBA Executive Director Elizabeth Post, Graphic Designer Marina Senderov and a volunteer Editorial Committee of SFVBA members.

Fastcase Representative Leigh Lowry and Valley Lawyer Editor Irma Mejia

Post Receives Recognition for Public Service

SFVBA EXECUTIVE DIRECTOR LIZ Post was recognized for her lifetime commitment to public service at the Encino Chamber of Commerce's 15th Annual Armand Arabian Awards Luncheon on October 2, 2014. Post was presented with the Justice Armand Arabian Leaders in Public Service Award by the retired California Supreme Court justice. The award honors those who have exemplified leadership in public service. Post celebrated her twentieth anniversary as SFVBA Executive Director in early 2014.

Linda Temkin, Liz Post, Marlene Seltzer, Lucia Senda, Martha Benitez, Rosie Soto Cohen and Liz's daughter, Hannah Friedman (front)

Exciting Times for the New Lawyers Section

YI SUN KIM
New Lawyers Section Chair
ykim@greenbass.com

THIS WILL BE AN EXCITING YEAR FOR NEW lawyers at the San Fernando Valley Bar Association. The Bar is focused on providing valuable resources, networking opportunities and continuing education just for you.

The New Lawyers Section concentrates on new attorneys with six or less years of experience. The Section has undergone a complete reboot and a dedicated group of members has organized a full lineup of special programming for the upcoming year.

The event series kicks off this month with an evening with Honorable James Steele. Judge Steele recently retired from the Los Angeles Superior Court, where he presided over unlimited civil matters, and then became one of the most experienced sitting trial judges in the Probate Division. Judge Steele will discuss stories from the Bench, offer tips on courtroom decorum for new attorneys, and participate in a Q&A session. This event will be held on Thursday, November 13 at the Bar office. The event will be free to current SFVBA members and dinner will be provided.

Starting in January, the New Lawyers Section meetings will generally be held on the third Thursday evening of each month. Future programs include workshops on strengthening essential skills; panels on starting your own firm or pro bono opportunities; and social events and happy hours. This Section will also participate in joint programs with other sections of the Bar pertaining to specialized areas of practice that new attorneys may be interested in pursuing.

The leaders of the Section want to serve as a resource to all new lawyers who may need help navigating the Bar, meeting other colleagues and finding their place as a Valley lawyer.

Meet the New Lawyers Section Executive Committee

YI SUN KIM
Greenberg & Bass

Yi Sun was admitted in 2007. After serving on the SFVBA's Board of Trustees last year, she was recently elected for an additional two-year term. During her service, she worked towards recruiting new attorneys to the Bar and fostering relationships to connect those fresh faces with seasoned attorneys. Yi Sun practices in areas of bankruptcy, business litigation and business transactions. She hopes this year is just the first stepping block in making this Section a valuable and formidable segment of the Bar.

CHRISTOPHER W. BLAYLOCK
Law Offices of CW Blaylock
chriswblaylock@gmail.com

Chris was admitted in 2012 and opened his own firm while serving of-counsel to other firms. He practices in areas of criminal defense and appeals, and personal injury accident matters in Los Angeles and Ventura Counties. He is a member of various bar organizations and serves as Vice-Chairperson of the ABA's Young Lawyers, Solo Firms Committee, which will assist him in chairing this Section. An active participant in his community, Chris was born and raised in Southern California and currently lives with his wife in Sherman Oaks.

Chris's goals for this section? "The law profession's best attribute is that like-minded attorneys can help one another strive forward in his or her careers," he says. "The Section should be a network where new attorneys can ask questions, get answers, and learn new skills. Further, as new attorneys we should make it a priority to change common opinions about lawyers. The Section should certainly play a role in shaping new attitudes."

JENNIFER NOHAVANDI
Rosengarten & Associates
Law Offices of Jennifer A. Nohavandi
jennifer@rosengartenlaw.com

Jennifer is also a Southern California native, who has been an attorney since 2011. For three years, she has been an associate with

Rosengarten & Associates, practicing civil litigation. In April of 2014, Jennifer recognized a need in her community and responded by opening her own unique practice. The Law Offices of Jennifer A. Nohavandi specializes in helping families of children with special needs advocate for their educational rights. Jennifer successfully balances both her current position at Rosengarten & Associates with her new endeavor at her own firm.

"As a new attorney myself, I know how difficult it can be to navigate the transition from law school into the world of legal practice," she says. "My hopes and goals for the New Lawyers Section is that we will begin to inspire other new attorneys to become more active in their community; that we will bridge the gap between the older (and wiser!) generation of attorneys and the young and eager new attorneys; and, finally, that we will be able to provide new attorneys with resources and creative ideas for how to build a solid foundation for their legal career."

HANNAH SWEISS
Lewitt Hackman Shapiro Marshall & Harlan
hsweiss@lewitthackman.com

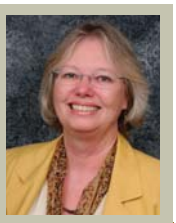
Hannah is brand new, having just been admitted in 2013. She is an associate with the Employment and Business Litigation Practice Groups at Lewitt Hackman Shapiro Marshall & Harlan. Her practice primarily includes providing counsel to employers to reduce risk of employee claims as well as defending employers against claims made by employees.

Within a short time, Hannah has already become very active in the Bar and other areas of the community. She was similarly engaged while attending law school, serving as a law clerk for the California Department of Consumer Affairs, Bureau of Real Estate; as an intern at the Los Angeles County District Attorney's Office; and as President of her law school's Real Estate Association, Middle Eastern Law Student's Association, and the Graduate Class Gift Committee.

Her goals for this Section echo the desires of the other committee members. "I would like to put together programs and events that will facilitate new lawyers in the transition into the life of a full-time lawyer," she says. "Part of the transition is the immersion into the legal community and establishing a network with other local lawyers. The SFVBA New Lawyers Section is a place where new lawyers will have the opportunity to grow within their local legal community."

Advancing a Legislative Agenda

TAMILA C. JENSEN



tamila@earthlink.net

THE CONFERENCE OF DELEGATES OF THE CONFERENCE OF California Bar Associations (CCBA) met in San Diego from September 11 to 13 in conjunction with the State Bar Annual Meeting. The SFVBA delegation has been participating in the Conference of Delegates from its early days, when it was under the auspices of the State Bar. This year was no different. The SFVBA delegation, led by Roger Franklin, was again a vigorous participant.

The role of the Conference is to consider and recommend changes, corrections, and additions to the laws of California. It is an opportunity for California's lawyers to directly impact our legislative system. If a resolution is recommended for approval by the Conference, the Conference leadership, working with a professional lobbyist, finds a legislative sponsor who turns the resolution into a bill and shepherds it through the legislative process in Sacramento. The final tally from the 2014 Conference will be available online at the CCBA website and sponsors of the various resolutions will soon be asked to lobby their related bills in Sacramento.

Of the resolutions approved by the 2013 Conference, 28 resolutions were embodied in 21 bills. Of those bills, five bills (embodying six resolutions) had been signed into law by Governor Jerry Brown by the time of the 2014 Conference. Another nine bills (embodying twelve resolutions) were awaiting signature. Seven bills died, but some of those will be reintroduced in the next legislative session.

This is not only a record of the Conference, but also makes the Conference the most effective organization in the state in terms of legislative success of its agenda—improving the laws of the State of California.

Some of the resolutions were included in omnibus bills making non-controversial, but necessary and important, corrections of the law. Others were stand-alone bills. For Example, AB 1932 requires appellate decisions have a brief statement of reasons. No longer can the justice simple say "denied" or "affirmed." AB 2154 provides that the filing of an appeal does not stay an attorney fee award in a family law matter. AB 2104 prohibits a homeowners' association from banning drought tolerant landscaping. AB 1856 amends the law regarding judicial bonds to permit the deposit of current financial instruments and cashier's check in lieu of bond.

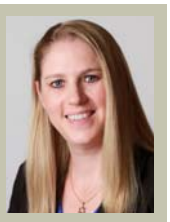
The SFVBA delegation introduced a resolution giving probate court judges the authority to refer a case to the LPS conservatorship process. This year the resulting bill died in committee, but it will be reintroduced again in the next legislative session. If adopted, it will provide much needed relief to those who qualify for LPS services and their loved ones.

The Conference also works with the California Law Revision Commission and Judicial Council (as to rules of court) and was active in supporting the budget bill, which restored some judicial funding. CCBA was recognized by Senator Mark Leno, Chair of the Budget Committee, with a signed copy of the budget bill.

The work of the Conference is broad in scope, important, and presents a rare opportunity to have a positive effect on California law. Anyone interested in joining the SFVBA delegation should contact Roger Franklin at rogerfranklin@prodigy.net or Tamie Jensen at tamila@earthlink.net.

Being Thankful

AMY M. COHEN
SCVBA President



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THERE WAS A CRISPNESS IN the air this morning, one that has been missing for several months. It seems that fall might finally be here. With all of the heat that we had through September and into October, I found myself missing sweaters and being comfortable (and not too warm) in jeans and sweatshirts. Of course, come March I'm sure I will be wishing for shorts and t-shirts once again, but I am OK with that. Change is normal, and good.

For the Santa Clarita Valley Bar Association, the arrival of fall means that it is time for the annual changing of the guard. This month, I end my tenure as President of the Association and handover the reins to April Oliver, who will be sworn in at our Installation dinner on November 20 at TPC-Valencia.

Also this year, we are celebrating our Tenth Anniversary. Formed in 2004 by a group of local attorneys wanting to do more for each other and the Santa Clarita community, the group has not only survived, but has grown over the past ten years. We hope that you will consider joining us at our Installation Dinner and Tenth Anniversary Celebration, as we commemorate our ten years and honor some of our members who helped start our organization, as well as install the 2014-2015 Board of Trustees.

Over the past year, the Association has continued to provide quality education programs and offer mixers and networking opportunities to our membership, and we welcomed our third legal thriller author. We also continued our work in the community, assisting with a local blood drive, as well as organizing food and toy drives. We look forward to continuing these programs in the coming year, and will be welcoming back our local high school speech competition as well.

On a more personal note, this past year has been a busy one for me, juggling the usual work and home life and adding the Association events, but it has also been a successful one. As I prepare to end my term as President, and prepare for the new season (and coming holidays that follow right behind), I am thankful. Not only for the opportunity to lead the Association, but I continue to be thankful for all that I have. I am thankful to my husband, Rob, and my daughters for their patience and understanding as we rearranged schedules to make sure everyone was where they needed to be over this past year, with our many activities and commitments.

I'm thankful to the other members of the Board of Trustees, for their ongoing dedication to the organization and their hard work. I am thankful to April, who will step up and take things over this month and the incoming Board that will join her, and I'm thankful to the committees of Board members and general members who assisted with planning events. I'm also grateful to the membership, without whom we would not have an association.

Finally, with so much negative news in the media, I'm thankful that I live in a safe neighborhood and that my children are able to attend good schools. I'm thankful that all of our extended family members have been called home from active military duty and are safe, and I have the same wish for others whose family members are still overseas or in the line of fire. At the same time, I'm thankful for our freedom and for the men and women who continue to serve to preserve that freedom.

Now that the school year is back in full swing, we once again find ourselves busy with activities and making sure our children are where they need to be. As the holidays approach, we may become frazzled, worrying about scheduling events or presents or our finances. But even in the midst of all of the chaos that comes with the changing of the pages of the calendar and the whirl of our lives, remember to pause and take a moment. Consider all that you have and be thankful.

We wish all of you a very happy holiday season.

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Dear Phil

Establishing Attorney-Client Boundaries

Illustration by Gabriella Senderov

A client has asked that I meet with him during the weekend. I want to be responsive to the client, but also value my personal time and don't want to be taken advantage of. How should I handle this?

Sincerely,

At my client's beck and call

IF PARAMETERS AND EXPECTATIONS are set early on and then regularly applied, it is easier to deal with individual situations. Some attorneys do not place restrictions on when clients can contact them. Sometimes that is because of the nature of the attorneys' specific practice (such as in criminal law). Sometimes that is because of the attorneys' own personality or for perceived client development reasons.

If at the outset of the relationship an attorney has told or implied to the client that the attorney is always available, the attorney needs to carry through on that promise, which includes accepting calls or meetings during evenings or weekends. If an attorney regularly responds to emails and phone calls during evening and weekend hours, it will be difficult to avoid doing so when a specific request is made. Of course there are particular situations when even an "on-demand" attorney is not available, but those will have to be kept to a minimum.

Some attorneys prefer a greater separation between working hours and personal time. Most clients will respect that distinction, so long as they understand from the outset that this will be the attorney's approach. To do this, the attorney should make reference to this issue at some point early in the relationship. For example, the attorney could make the following limitations: "My office hours are 9:00 a.m. to 5:00 p.m., Monday through Friday. Please feel free to contact me during those times," or "I know sometimes there are emergencies that arise after normal business hours, which I will try to respond to, but otherwise I'm generally not available evenings or weekends."

It is important to be consistent. Don't tell the client you focus on business hours, but then in practice respond to emails and phone calls at all hours of the night and weekend. That mixed message will make it difficult to claim personal time later without impacting the client relationship. Of course, you still need to be flexible in emergency or unusual situations.

So, if you have told the client you are always available, you will be hard pressed to avoid an evening or weekend meeting, unless you have a specific prior commitment. If you have made the client understand that you are available only during business hours, it should not be a problem to say to him, "I'm sorry I can't do a weekend meeting, but I'm available first thing Monday."

Balancing your work and personal life is not easy. Decide what balance you want to achieve, and then do everything you can to keep that balance. As long as you are clear and consistent in the message you send to clients, they usually will understand and respect your decision.

Good luck!

Phil

Dear Phil is a new advice column appearing regularly in *Valley Lawyer* Magazine. Members are invited to submit questions seeking advice on ethics, career advancement, workplace relations, law firm management and more. Answers are drafted by *Valley Lawyer*'s Editorial Committee. Submit questions to editor@sfvba.org.

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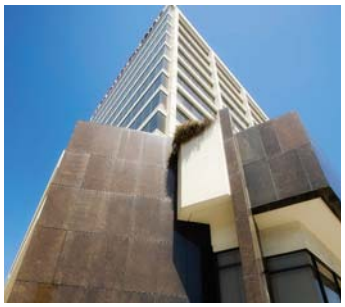


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