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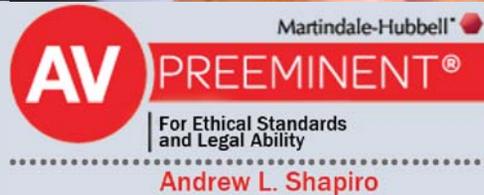
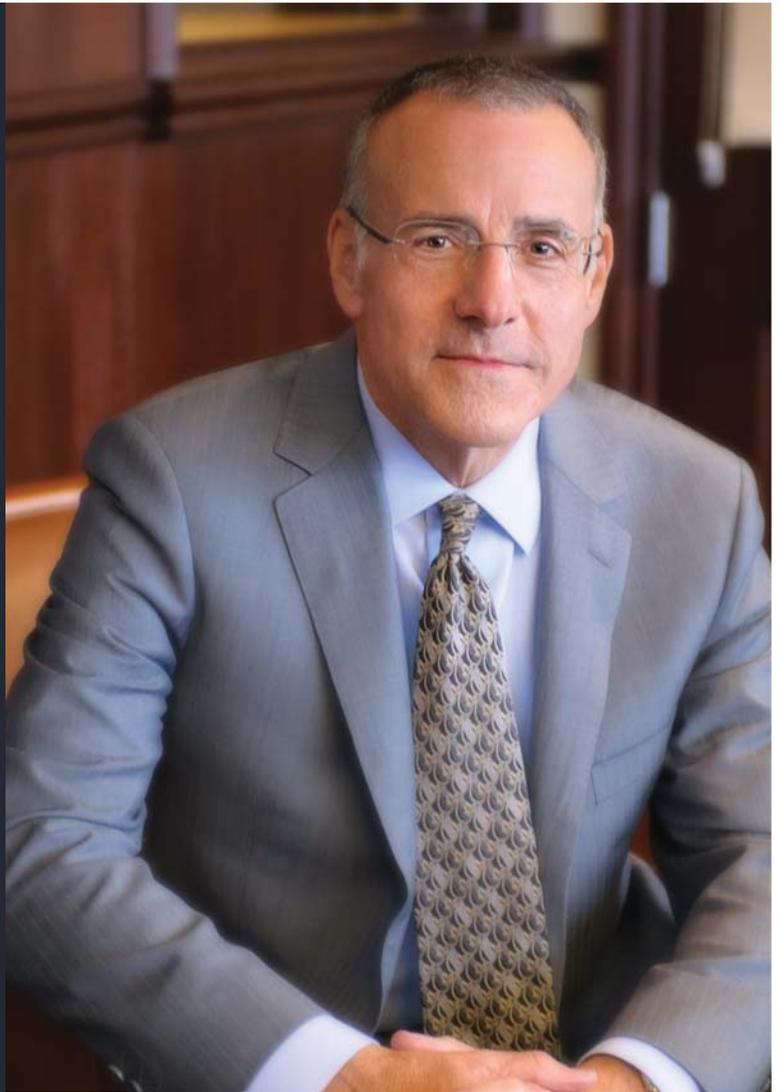
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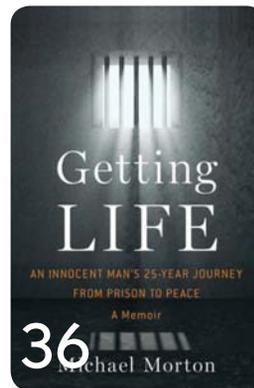
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## FEATURES

**12** Small Business Game Changer:  
Updated Federal White Collar Exemption  
Requirements | **BY BRIAN E. KOEGLE**

**16** Unlocking Secrets:  
Public Safety vs. Personal Privacy | **BY ADAM D.H. GRANT**  
MCLE TEST NO. 93 ON PAGE 25.

**26** Meet Your 2016 Trustee Candidates | **BY MICHAEL D. WHITE**

## COLUMNS

**36** Book Review  
A 25 Year Wait to Right a Wrong | **BY RANDI R. GEFFNER**

**46** Dear Phil  
Social Shoals

## DEPARTMENTS

**7** President's Message

**9** From the Editor

**10** Event Calendar

**11** Executive Director's Desk

**35** Photo Gallery

**38** New Members

**39** Valley Community  
Legal Foundation

**44** Classifieds

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## A New Legal Frontier

**CAROL L. NEWMAN**  
SFVBA President



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RECENTLY GAVE AN MCLE PRESENTATION ON LATEST developments in transgender law. This is not an area in which I practice, but I was intrigued because it is a very fast-moving area of the law. Set forth below are some of the points from my presentation.

At the outset, why is this area of the law so dynamic? An article in the Los Angeles Times from May 14, 2016 said, “Transgender law has emerged as the new frontier in civil rights law and the latest battleground for the nation’s culture wars.”

Thus, while the battle for lesbian and gay rights is not over, but may have reached a plateau, the “new frontier” is the rights of the “T’s” in the acronym LGBT. Why is this happening now? Are there more transgender people now than there used to be? Certainly in light of other advances in civil rights, it would appear that people now feel freer to express differences in gender expression.

There is no single or exclusive definition of what it means to be transgender. To put it another way, there can be different stages in the transition phrase of gender identity. Gender identity is the gender with which one identifies. While some persons may have radical surgery, others may not. The issue is more complicated, and more fluid, than that.

A common misconception about gender identity is that it involves sexual orientation. That is not necessarily true. It is not about being defined by whom one is sexually attracted to. Persons who identify as transgender may have always been attracted to the opposite sex, like Caitlyn Jenner, for instance. Being transgender is not about sexual orientation—it’s about gender orientation. Certainly this entire discussion raises questions about what “gender” really means.

The current lightning rod in the debate about transgender rights is the use of multi-stall bathrooms, and the first state to have passed a law regulating bathroom use is North Carolina. In House Bill 2, North Carolina not only blocked cities from enacting their own laws to ban anti-LGBT discrimination, but also banned people from using school and public agency bathrooms which do not correspond with their gender at birth. This law was passed in emergency session on March 23, 2016—the “emergency” having been Charlotte’s adoption of a human rights ordinance, which the legislature sought to stop.

On May 9, 2016, the U.S. Department of Justice (DOJ) filed a civil rights lawsuit against North Carolina to stop enforcement of HB 2, entitled *United States of America v. State of North Carolina* in the U.S. District Court for the Middle District of North Carolina. The DOJ sought declaratory relief and also threatened to curtail funding to the North Carolina Department of Public Safety and the University of North Carolina.

The Complaint states: “As set forth below, Defendants’ compliance with and implementation of Part I of . . . H.B. 2 . . . constitutes a pattern or practice of employment discrimination on the basis of sex in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* . . . ; discrimination on the basis of sex in an education program receiving federal funds in violation of Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.* . . . , and its implementing regulations, 28 C.F.R. Part 54 (2000), 34 C.F.R. Part 106 (2010); and discrimination on the basis of sex and gender identity in programs receiving federal funds in violation of the Violence Against Women Reauthorization Act of 2013 . . . , 42 U.S.C. §13925(b)(13).”

On that same day, North Carolina filed a lawsuit against the United States, entitled *McCrary v. United States of America* in the U.S. District Court, Eastern District of North Carolina, Western Division. This lawsuit claims that DOJ’s “radical interpretation” of Title VII of the Civil Rights Act “would prevent plaintiffs from protecting the bodily privacy rights of state employees” and is “an attempt to unilaterally rewrite long-established federal civil rights laws in a manner that is wholly inconsistent with the intent of Congress and disregards decades of statutory interpretation by the Courts.”

At press time, this clash of titans was not even close to being resolved. To date, no U.S. Supreme Court case has held that transgender status is a protected class, but on April 19, 2016, the U.S. Court of Appeals for the Fourth Circuit held that Title IX protects the right of transgender students to use the bathroom that corresponds with their gender identity.<sup>1</sup> Significantly, this is the same federal appellate court that would hear an appeal from either or both of the cases between North Carolina and the DOJ. Further developments are certain to occur. Stay tuned. 

<sup>1</sup> *G. G. v. Gloucester County School Board*, 2016 WL 1567467 (4th Cir. April 19, 2016).

# When Bankruptcy May Be the Best Solution...

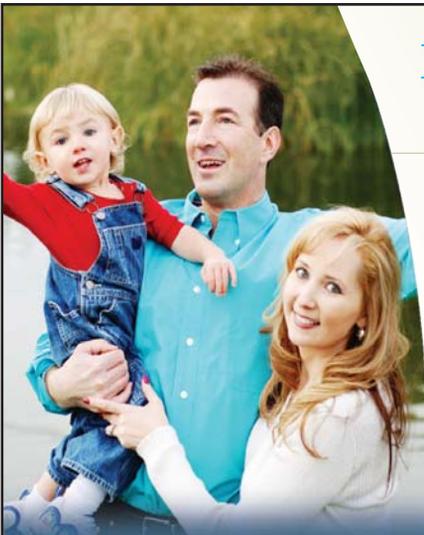
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# Time to Vote

**MICHAEL D. WHITE**  
SFVBA Editor



[michael@sfvba.org](mailto:michael@sfvba.org)

**W**ELL, IT'S TIME ONCE AGAIN TO PASS THE baton and this month's edition provides you with a roster of talented and dedicated attorneys who have (!!! MIXED METAPHOR ALERT !!!) planted themselves squarely in the batter's box and thrown their collective hat into the ring for election to the SFVBA Board of Trustees. The actual election begins next month when attorney members will be able to cast votes.

If elected office isn't on your bucket list, we would encourage you to bring your experience to bear in any one of the Association's 12 sections that strike a chord with you. The sections range a broad swath of legal quarters, including bankruptcy, criminal, family, entertainment and internet law, new lawyers, litigation, probate and estate planning, and worker's compensation, among several others.

Or, if the spirit so moves, please consider sharing your insights and expertise on issues of interest with your colleagues by contributing an article or book review to *Valley Lawyer*. The magazine has been honored by the Los Angeles Press Club and the National Association of Bar Executives, and is an ideal platform to better serve our community.

The intersection of technology and privacy has proved to be more of a head-on collision that's continuing to draw headlines around the world that trumpet the on-going battle between the FBI and Apple over data encryption and Microsoft suing the federal government over secret data requests.

With more questions than answers forthcoming, it's shaped up to be a fight that would make the Marquis of Queensbury blanch with the government's perceived need to know for the sake of a safe and secure society pitted against an individual's constitutionally guaranteed right to privacy. In this month's *Valley Lawyer*, attorney Adam Grant looks at the issue and addresses the uncomfortable tension between national well-being and perceived government overreach.

All in all, it's a well-crafted and informative outline of the issue that underscores just how antiquated our existing laws are when applied to the thorny conundrums that arise almost every day in our brave new world of smartphones, social networking, real time communications, apps, and cloud data storage.

Attorney Brian Koogle's piece this month on the impact of recent federal white collar exemption requirements on small businesses shines the light on another head-on collision between small businesses and the U.S. Department of Labor rules on minimum salaries that just so happen to come on the heels of California's new statewide minimum wage law. The article succinctly breaks down the new government mandate and its implications for California small businesses and provides critical recommendations for employers on how to prepare for the new threshold, which takes effect December 1. As with all issues of *Valley Lawyer*, the article is assembled with the sincere hope that you will be better informed and educated when you lay it down.

Please feel free to give me a call at (818) 227-0490, ext. 110 or email me at [Michael@sfvba.org](mailto:Michael@sfvba.org) with your thoughts. 



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						1 2
3	 <p><b>4</b></p> <p><b>Happy 4th!</b></p> <hr/> <p><i>Valley Lawyer</i> Member Bulletin</p> <p>Deadline to submit announcements to <a href="mailto:editor@sfvba.org">editor@sfvba.org</a> for August issue.</p>	5	6	<p><b>7</b></p> <p>Membership &amp; Marketing Committee</p> <p><b>6:00 PM</b> SFVBA OFFICE</p>	8 9	
			<p>5 Legal Marketing Secrets Your Competition Doesn't Know</p> <p>Sponsored by</p> <p><b>FindLaw.</b></p> <p><b>12:00 NOON</b> SFVBA OFFICE</p> <p>Salar Yamini will be the featured speaker. Lunch and seminar free to all current members!</p>		 <p><b>Time to Renew Your Bar Membership!</b></p> <p>Renew online at <a href="http://www.sfvba.org">www.sfvba.org</a></p>	
10	 <p><b>11</b></p> <p><b>5:30 PM</b> LOCALE TBD</p> <p>VBN is dedicated to offering organized, high quality networking for SFVBA members.</p>	<p>Board of Trustees</p> <p><b>6:00 PM</b> SFVBA OFFICE</p>	12	<p>New Lawyers Section Networking Mixer</p> <p>Sponsored by</p>  <p><b>6:00 PM</b> LAKESIDE CAFÉ, ENCINO</p> <p>Free Networking Mixer for New Lawyers!</p>	14	15 16
17	18	<p>Representing Landlords</p> <p><b>12:00 NOON</b> SFVBA OFFICE</p> <p>Attorney Mark Sharf will discuss the ins and outs of representing landlords in bankruptcy cases. Lunch and seminar free to all current members. (1 MCLE Hour)</p>	19	<p>Litigation Section</p> <p>Hot Topics with the Insurance Experts</p> <p><b>12:00 NOON</b> SFVBA OFFICE</p> <p>The expert insurance panel of Andrew Zehnder, Sandra Hunt and Robert Corenson discuss hot litigation issues and corporate compliance. (1 MCLE Hour)</p>	20	21 22 23
24	25	26	27	28	29	30
31						



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# The Bar's Technology Makeover

**S**UMMER IS A GOOD TIME for a makeover—whether restyling your hair, exercising more, changing your wardrobe, eating healthier. The San Fernando Valley Bar Association is commencing a makeover of a different sort this summer—a technology makeover. The SFVBA is investing in upgrading its systems so that we can provide improved and more effective services to members.

The first step in the SFVBA's technology transformation will be internet voting—the 2016 SFVBA Board of Trustees election will be going online. During the second week of August, all attorney members in good standing will be emailed a link to an electronic ballot. Voting will commence immediately and continue until Election Day, September 9, 2016. The few members who do not have email addresses, or whose emails bounce back, will be mailed a paper ballot. The online voting system is secure, more efficient—saving time and money—and ultimately, we anticipate, will increase member participation in our election process to choose future leaders.

Online voting is just the first step in the Bar's technology overhaul. Later this summer, the Bar's website, [www.sfvba.org](http://www.sfvba.org), will undergo a major facelift. (The Attorney Referral Service launched a standalone site two years ago.) Members will continue to be able to utilize the website to register for events, pay membership dues, access Fastcase, and update ARS case status reports and pay referral

fees. The new website will be easier to navigate and serve as a portal for up-to-date news and social media.

The final step of the Bar's technology makeover will be replacing the Association's 18-year-old membership database later in 2016. The current association management software (AMS) assists SFVBA staff in managing new and renewing memberships; processing seminar registrations and tracking members' MCLE credits; and making and monitoring attorney referrals. The new AMS will manage the Bar Association in the cloud with a platform designed to be easier for members and staff to use. The database will include a fee arbitration module, and integrate seamlessly with the new website and social media platforms.

I hope you like the new look!

I want to pay tribute to two longstanding members who recently passed away. Their wisdom and kind-heartedness will be missed.

**ELIZABETH POST**  
Executive Director

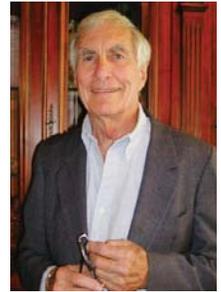


[epost@sfvba.org](mailto:epost@sfvba.org)

**Robert Finkel**

passed away at the age of 86 on June 3, 2016.

He practiced intellectual property law in Lake Balboa and was an active member of the Attorney Referral Service and SFVBA Intellectual Property, Entertainment, & Internet Law Section. Bob always had a smile on his face; a quotation on his website from his dad sums up Bob Finkel's persona: "If you see someone struggling with a heavy load, don't ask him if he needs a hand. Go over and help him."



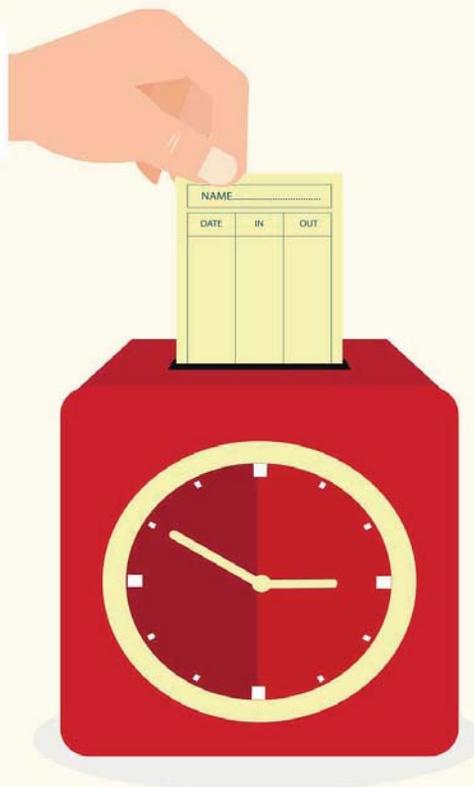
Family law attorney  
**Robert A. Adelman**

passed away on June 9, 2016 at the age of 65. A native Angelino, Bob was a certified family law specialist in Woodland Hills and an active member of the SFVBA Family Law Section. 



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By Brian E. Koegle

# Small Business Game Changer:

## Updated Federal White Collar Exemption Requirements

**N**O ONE EVER SAID DOING business in California—well-known as having a pro-consumer, pro-employee legislative perspective—would be easy! With some of the most stringent wage and hour employment laws in the nation, the Golden State has provided more than its fair share of challenges for small business owners over the years.

Following the recent passage of Senate Bill 3, which will see the statewide minimum wage increase to

\$15 an hour for most employers by January 1, 2022, small businesses around the state have raised their collective voice and have pled for relief, asserting that the wage increase will drive down competitive balance and reduce opportunities for growth. Just over one month after the minimum wage increase was announced, the other shoe dropped for many business owners when the U.S. Department of Labor (DOL) made its own announcement substantially increasing the federal

minimum salary for the so-called “white collar” exemptions.

That exasperated sigh you just heard? That comes from the collective small business population wondering when they will catch a break!

### Exemption Background

Under both federal and state law, every worker is presumed to be a non-exempt employee, meaning that s/he is entitled to be paid for all hours worked, and will be paid overtime according to statutory law. Federal law provides that workers are entitled to be paid overtime for work performed in excess of 40 hours in a given workweek. California law provides that, in addition to the forty hour threshold, an employee is entitled to overtime payments for work performed in excess of eight hours in a single workday.

Workers who are qualified as exempt are paid a salary, rather than an hourly wage, and are not paid overtime for work performed in excess of forty hours per week, or eight hours in a day. In order to qualify for an exemption from the overtime laws, an employee must meet two criteria: first, the minimum salary threshold, and, second, the “duties” test for one of the specific categories designated as “white collar exemptions.” The three most common white collar exemptions recognized under federal and state law are executive/managerial, administrative, and professional. Each exemption carries with it a separate and distinct duties test, based upon the day-to-day activities of the employee. The minimum salary threshold for the white collar exemptions is identical, and was the topic for review by the DOL.



**Brian E. Koegle** is a partner with Poole & Shaffery, LLP, a full-service business and employment law firm, providing counseling and litigation services to businesses across California. He can be reached at [bkoegle@pooleandshaffery.com](mailto:bkoegle@pooleandshaffery.com).

## Revisions to the Regulations

Following a directive from the Obama Administration in late 2014, the DOL began drafting proposed changes to existing federal law, which would raise the minimum rate of pay required for certain employees to be considered exempt from the federal overtime requirements.

In July 2015, the DOL published its proposed changes to the minimum salary portion of the exemption test, suggesting an increase in the threshold earning requirements from \$23,660 per year to a whopping \$51,740, more than double the original minimum salary. The DOL also opened a period of public comment through October 31, 2015, which resulted in over 250,000

comments pouring in from around the nation. Following the close of the public comment period, the proposed revision to the regulation changed slightly.

On May 18, 2016, the DOL published its final ruling increasing the minimum salary threshold

for the white collar exemptions to \$913 per week (\$47,476 annually). The new threshold becomes effective December 1, 2016.

As part of the accommodations made following the public comment period, the DOL attempted to soften the blow of this significant rate hike by allowing non-discretionary bonuses, commissions, and other incentive payments to count toward 10% of the minimum salary requirement. In addition, if the employee does not earn enough through those incentive payments to satisfy the minimum earning requirement, the employer may make a catch-up payment at the end of each calendar quarter in order to preserve the exemption.

However, if the employee is not paid the required rate (in either salary alone or a combination of guaranteed payments and incentive pay) and the employer fails to make a catch-up payment, the employee would revert to a non-exempt status and would be entitled to receive overtime pay for any hours worked during the quarter where the minimum salary threshold was not satisfied.

The DOL estimates that some 4.2 million workers will either receive substantial increases to their annual salaries to meet the increased salary requirement or become eligible for overtime as a result of the new regulations. The Department's intention is to provide a greater quality of life

for the American worker by reducing their hours worked, or increasing compensation for the extra effort expended as an exempt employee.

An often overlooked but very important factor of the new regulations requires the DOL

to re-evaluate the minimum salary threshold every three years, and to increase the salary basis to account for increases in the Consumer Price Index (CPI) over that period. In other words, in all likelihood, employers can plan on a guaranteed increase in the salary basis threshold every three years.

### Effect on California Employers

The impact of the new DOL regulations will be felt throughout the country, including here in California, which has one of the highest statewide minimum wages in the nation.

Under current California law, in order to qualify as exempt, white collar employees must earn no less than two times the state minimum

“

The impact of the new DOL regulations will be felt throughout the country, including here in California, which has one of the highest statewide minimum wages in the nation.”



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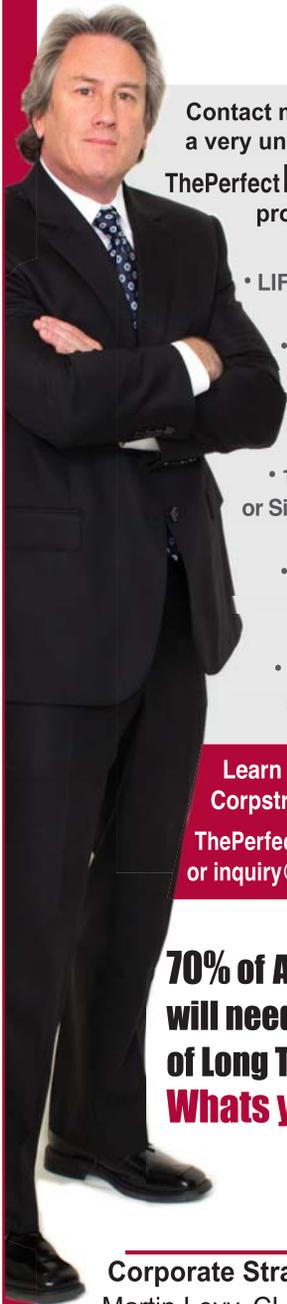
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wage. As such, as of January 1, 2016, the minimum salary threshold under California law was \$41,600, which falls short of the new federal requirement. Even after California's statewide minimum wage rises to \$10.50 on January 1, 2017, an exempt employee paid twice the state minimum wage rate would still fall nearly \$4,000 short of the annual federal minimum.

## Recommendations to Employers

So what should employers do now to prepare for the impending changes coming on December 1? First, a qualified attorney or human resources specialist should conduct a review of each exempt employee's job description to confirm that the essential job functions for the position still meet the requisite duties test for the applicable exemption. If the position meets the duties requirements, an evaluation should be done whether it is economically feasible to increase the employee's salary to meet the new \$47,476 annual salary requirement, or whether it makes more sense to re-classify the employee as non-exempt moving forward.

It bears noting that if an employee's status is changed from exempt to non-exempt, expectations regarding

work hours, overtime, and breaks should be clarified early, and reiterated often. Newly designated non-exempt employees should also be provided with a copy of any written policies or procedures regarding overtime (*i.e.*, if a supervisor needs to approve overtime in advance and/or if unapproved overtime can be grounds for discipline).

Second, employers should also remember that every non-exempt employee is required to maintain a written record of their actual time worked. This includes a punch for the beginning of every shift, beginning and end of each meal period, and the end of each shift. Inaccurate time records, short meal periods, and unpaid overtime have been some of the most prevalent claims in a recent barrage of class action and multiple plaintiff actions filed throughout California courts. Employers should also prepare for California to update its own statutory exemption requirements to either mirror or surpass the federal requirements.

With these revisions to the exemption requirements, small businesses nationwide are now sharing in the pain that California employers have known for years ... but at least we have sunshine and great beaches! 🏖️

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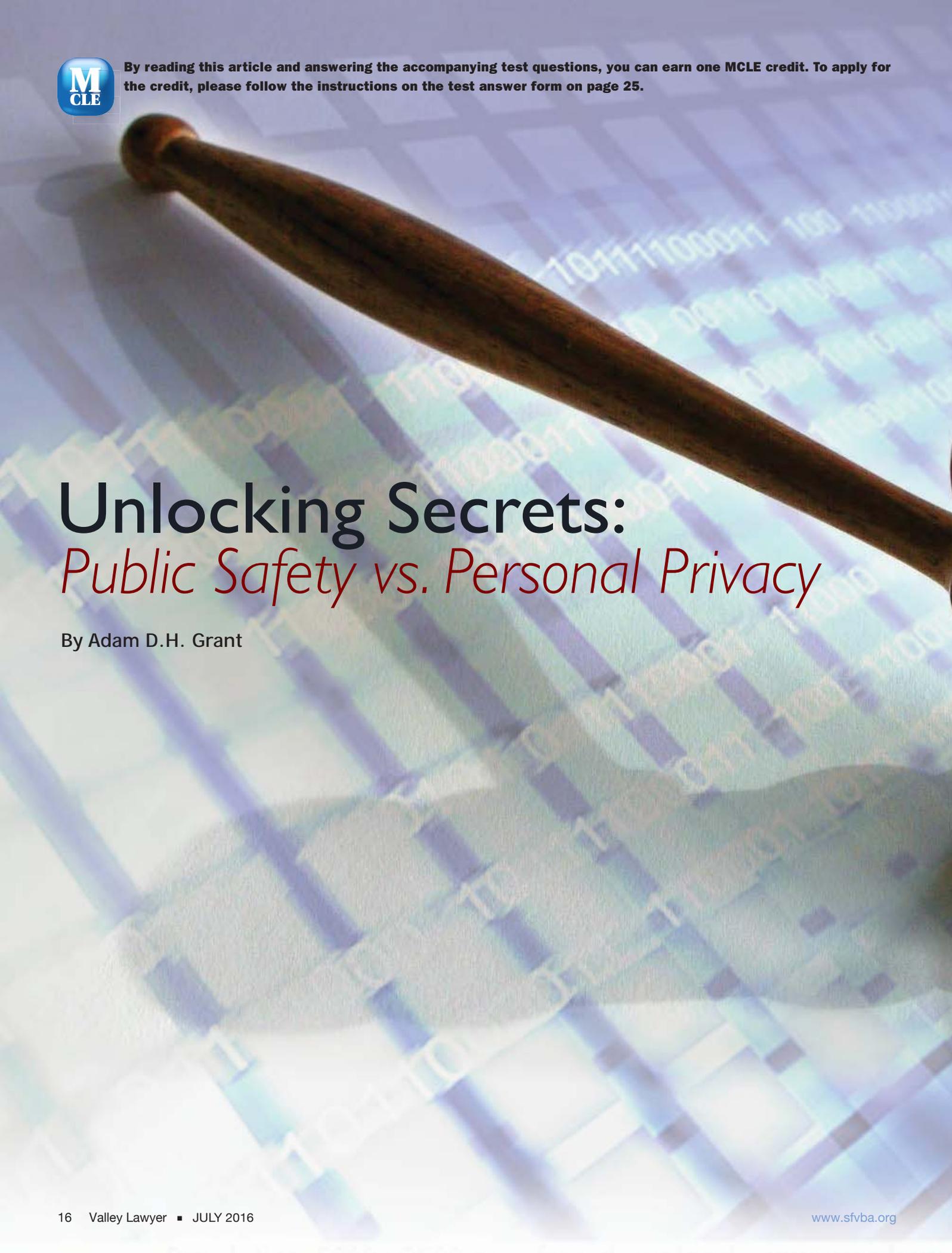
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A wooden gavel is positioned diagonally across the upper half of the page. The background is a blurred image of a computer keyboard with binary code (0s and 1s) overlaid in shades of blue and green.

# Unlocking Secrets: *Public Safety vs. Personal Privacy*

By Adam D.H. Grant

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The FBI investigation into December's brutal mass murder in San Bernardino has resulted in a collision between an individual's legal right to privacy and the need to cull information that could well be related to public safety and national security. Although legal action by the U.S. Department of Justice against tech giant Apple to retrieve critical data contained in homegrown terrorist Syed Rizwan Farook's iPhone abruptly ended this spring, the courts will continue to balance public safety with privacy rights as technology evolves.

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**S**INCE TECHNOLOGY GIANT APPLE BURST ONTO the smartphone market with the 2007 launch of the iPhone, the device has come to influence almost every part of our lives. But on February 16, 2016, it also became a national security matter when an iPhone and information it purportedly contained led to a major clash between the U.S. Department of Justice and Apple over the delicate issue of privacy rights.<sup>1</sup>

It all started months before....at a Christmas Party...in an otherwise quiet neighborhood in San Bernardino, California.

### Tragic Background

At 10:58 a.m. on December 2, 2015, Syed Rizwan Farook and his wife Tashfeen Malik entered a conference room rented for a training event and holiday party by Farook's employer, the San Bernardino County Department of Public Health (SBCDPH), and unleashed a barrage of bullets that killed 14 people and wounded another 22.

Over time, it became apparent that terrorism had materialized in our own backyard and that Farook's iPhone 5c, the Department of Justice (DOJ) believed, held the key to unlocking critical information that would expose otherwise hidden details as to who exactly had planned the mass murder and how it was facilitated.

Enter Farook's iPhone 5c. At 11:14 a.m., while the shooting was happening, a post appeared on Malik's Facebook page declaring allegiance to ISIS chief, Abu Bakr al-Baghdadi.

Malik and Farook died that afternoon in a gunfight with the police and in the hours and days after the attack, federal, state and local law enforcement agencies conducted over 500 interviews in a concerted attempt to uncover information, not only on motives, but also the identities of third parties who may have assisted in the attack, and where Malik and Farook traveled to and from, before and after the incident.

The critical key to unlocking the secrets they sought, however, were locked in Farook's iPhone 5c, which had been recovered from the couple's car pursuant to a search warrant.

Law enforcement faced two major hurdles in accessing the phone's secrets: the first, easy, the second, unyielding. Farook's employer, SBCDPH, owned the phone

and assigned it to him as part of its "Corporate Owned, Personally Enabled," or COPE program, through which an employer provides cell phones, among other devices, to be used and managed for business purposes by its employees.

Employers implement this program because it provides the employer more control over communications devices their employees use during the course of their work. As Farook's employer implemented the COPE program, law enforcement was obligated to obtain SBCDPH's authorization to conduct a forensic examination of the phone. Permission to examine Farook's iPhone was requested and readily obtained from the agency.

Additionally, Farook's employer had a written policy as part of its COPE program which allowed it to search all agency-issued digital devices at any time. This is a common practice in California, which invalidates most claims by employees that they have an expectation of privacy while using an employer-provide telecommunications device.

### U.S. Attorney's Office Seeks the Ultimate Order

In time, though, Apple, which developed both the iPhone and its operating software, proved to be the unyielding hurdle. According to the ex parte application filed by the U.S. Attorney's Office on February 16, 2016:

*"Despite the search warrant and the owner's consent, the FBI has been unable to search the subject device because it is 'locked' or secured with a user-determined, numeric passcode. More to the point, the FBI has been unable to make attempts to determine the passcode because Apple has written, or 'coded,' its operating system with a user-enabled 'auto-erase function' that would, if enabled, result in the permanent destruction of the required encryption key material after 10 erroneous attempts at the passcode."*

Simply, after ten failed attempts at inputting the passcode, Apple protocols call for data on the device to become permanently inaccessible. At the request of the U.S. Attorney's Office, Apple made itself available 24/7 to assist with the investigation, until it was, in its opinion, asked to develop an entirely new iPhone operating system.

Apple refused the request and, on February 16, 2016, the U.S. Attorney's Office filed a motion for an order "to assist in the execution of a search warrant using the



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capabilities that Apple has retained along with its encryption software, so the government can attempt to determine the passcode without the additional, non-encryption features that Apple has coded into its operating system, for the subject device only.”

The DOJ specifically sought an order that Apple must provide the FBI with a custom iPhone software file which would allow the agency to bypass the auto-erase function and access the data on Farook’s cell phone.

### U. S. Attorney’s Office Tries Everything in Its Quiver

The government’s first argument rested on the most sweeping discretionary law applicable. The All Writs Act, according to the motion, “allows all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.”<sup>2</sup>

According to the U.S. Supreme Court decision in *Pennsylvania Bureau of Correction v. United States Marshals Service*,<sup>3</sup> “[t]he All Writs Act is a residual source of authority to issue writs that are not otherwise covered by statute,”<sup>4</sup> while the Ninth Circuit, the ever present leader in application of the law to the technology, has held that a court has the power, “in aid of a valid warrant, to order a third party to provide nonburdensome technical assistance to law enforcement officers.”<sup>5</sup>

The U.S. Attorney also relied on a New York case in which it a court required a manufacturer to assist in accessing a cell phone’s files so that a warrant may be executed as originally contemplated.<sup>6</sup>

The motion and the citation to the timely order did not tell the entire story. A federal magistrate judge from the U.S. District Court for the Southern District of New York ruled that the government can compel a cell-phone manufacturer to help unlock a password-protected device to enable police to execute a search warrant. However, the magistrate judge inserted a key proviso which the DOJ did not address in the *ex parte* application. The magistrate approved the order, but cautioned that the manufacturer must be provided an opportunity to dispute the order if compliance with the order would be “unreasonably burdensome.”<sup>7</sup>

According to the *ex parte* application, “Apple has the ability to modify software that is created to only function within the subject device that would ensure the auto-erase function is turned off, allow for electronic submission of test

passcodes, and ensure additional delays are not created.” However, it would seem that the DOJ forgot not just one, but two very critical points when it filed the *ex parte* application.

Magistrate Judge of the Central District of California Sheri Pym granted the application and entered the order on February 16, 2016, without Apple being given an opportunity to file an opposition. Judge Pym granted the application as requested, but, in keeping with the language of the New York magistrate’s prior order, she included a caveat in the order: “To the extent that Apple believes that compliance with this order would be unreasonably burdensome, it may make an application to this Court for relief within five business days of receipt of this order.” Thus, Judge Pym left the door wide open for Apple to demonstrate why the order would be unreasonably burdensome.

### Champion of Privacy and Defender of Its Rights

On February 25, 2016, Apple filed a Motion to Vacate the order compelling it to assist the FBI and the Department of Justice and oppose the government’s Motion to Compel Assistance. At the outset of the Motion to Vacate, Apple appeared to champion the cause for the “basic security and privacy interests of hundreds of millions of individuals around the globe.” Additionally, it framed the issues around its request to “create a back door to defeat the encryption on the iPhone, making to its users’ most confidential and personal information vulnerable to hackers, identify thieves, hostile foreign agents, and unwarranted government surveillance.”

Apple then countered the Department of Justice’s reading of the All Writs Acts by arguing that it “does not give the district court a roving commission to conscript and commandeer Apple...” Additionally, Apple defined the two key components of the case, namely the needs of law enforcement, and the privacy and personal safety interest in the public, and addressed what is, in its opinion, the heart of the motion, the government’s blunder and the unduly burdensome nature of the order itself.

Apple also reminded the Department of Justice that it rapidly responded to all the FBI’s requests, but pointed out that the Department failed to consult with Apple on a key issue. Apparently, the FBI, without talking with Apple or reviewing Apple’s public guidance regarding its operating



A federal magistrate judge ruled that the government can compel a cell phone manufacturer to help unlock a password-protected device to enable police to execute a search warrant.”

system, changed the iCloud password associated with one of the attacker's accounts. As a result, the FBI, according to Apple, foreclosed "the possibility of the phone initiating an automatic iCloud back-up of its data to a known Wi-Fi network, which could have obviated the need to unlock the phone and thus for the extraordinary order the government now seeks." Apple asserted that if the FBI had simply asked Apple first, the entire litigation would not have been necessary.

Apple then walked through Magistrate Judge Pym's "open door" regarding the ability to challenge the order on the ground that it was "unduly burdensome." According to Apple, "[t]he software envisioned by the government simply does not exist today." As the company saw it, the government was forcing it to create a new version of the iPhone operating system to circumvent a very important security feature.

Apple estimated it would take a team of computer engineers up to a month to create a new operating system (OS) that would meet the company's exacting quality control standards and require an even more comprehensive level of testing and analysis. In addition, Apple's quality assurance department would need to insure that the new OS would not inadvertently destroy or alter any existing user data. The company clearly demonstrated that it fell within the "unduly burdensome" prong—specifically since the government mistakenly changed the iCloud password and, thus, set the entire legal process in motion.

Apple's Motion to Vacate attacks the very heart of the Department of Justice's heavy reliance on *United States v. Telephone Co.*<sup>8</sup> Apple focused on the fact that the District Court in the New York Telephone Co. case merely ordered the company to install a pen register (a simple device designed to record dialed numbers) on two telephones. The company noted that the Court found the order had complied with a three part test—first, the company was not "so far removed from the underlying controversy that its assistance could not be permissibly compelled";<sup>9</sup> *second*, the assistance needed was meager and the company did not have a substantial interest to not provide the assistance;<sup>10</sup> and third, there was no conceivable way the surveillance could have been successful without the company's assistance.<sup>11</sup> Apple then applied the test to the facts of its case and easily concluded that the court should reverse its prior order.

### **Abrupt End to a Bitter Dispute**

Shortly after the maelstrom of legal wrangling made headlines around the world, the entire dispute came to an abrupt halt. One day before the scheduled March 22, 2016 hearing on the Motion to Vacate, the court ordered the government to provide a status report.

Six days later, the Department of Justice filed a report which succinctly stated that, "[t]he government has now successfully accessed the data stored on Farook's iPhone and therefore no longer requires the assistance from Apple Inc. mandated by the court's February 16, 2016, order compelling Apple to

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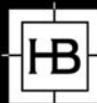
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assist its agents conducting the investigation. Since the status report was filed, Apple has requested information on the identity of the unidentified third party who assisted the FBI, as well as technical details of the computer procedures developed to access the data, a development that may well morph into a major privacy battle in 2016.

#### **What Is So Important about an iPhone?**

After all the legal maneuvering, the real question is why would such a case garner such worldwide attention? Why is the data stored in an iPhone so important? The answer is likely contained in a United Supreme Court Case Apple cited in its opposition, *Riley v. California*.<sup>12</sup>

On June 25, 2014, the Supreme Court issued its opinion in the case, which addressed the question whether the police properly searched Riley's mobile phone as part of a routine traffic stop. The officer accessed information on the phone and noted the repeated use of a term that the police associated with street gang activity. A detective specializing in gangs examined the phone's digital contents and based in part on the photos and videos the detective found on the device, later charged Riley in an earlier gang-related shooting with a recommendation for an enhanced sentence based on his gang membership.

Riley moved to suppress all of the evidence the police obtained from his cell phone. The trial court denied the motion and Riley was convicted. The Court of Appeals affirmed the denial and the conviction. The Supreme Court, however, reversed the judgment and remanded the case to the trial court.

The *Riley* decision is germane to the Apple case because of the Court's recognition of how ubiquitous the cell phone has become in our everyday activities and how such telecommunications technology has impacted the law and its interpretation.

The decision includes an extensive discussion of privacy rights associated with data stored on virtually everyone's mobile phone. In announcing the decision, Chief Justice Roberts observed that cell phones "are now such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy."<sup>13</sup> Further, in rejecting the government's assertion that searching for data stored on a cell phone is materially indistinguishable from searches of a person's physical items, Roberts retorted, "[t]hat is like saying a ride on a horseback is materially indistinguishable from a flight to the moon."<sup>14</sup>

The Court's analysis regarding warrantless searches spanned 40 years. In *Chimel v. California*,<sup>15</sup> when analyzing a warrantless search of a home, the Court laid the groundwork for the current search incident to arrest doctrine. The Court concluded that "[w]hen an arrest is made, it is reasonable

for the arresting officer to search the person arrested in order to remove any weapon that the latter might seek to use in order to resist arrest or effect his escape.”<sup>16</sup> In *United States v. Robinson*,<sup>17</sup> the Court turned its attention to a warrantless search of the arrestee’s person. In concluding the search was reasonable, the court explained that, “[t]he authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect.”<sup>18</sup>

Finally, the Court in *Arizona v. Gant*<sup>19</sup> recognized that the concerns for officer safety and evidence preservation expressed in the *Chimel* decision underline the search incident to the arrest exception. However, the Court allowed a warrantless search of a vehicle’s passenger compartment “when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.”<sup>20</sup> Using this trilogy of cases as the backdrop, the *Riley* Court made several interesting observations. First, it declared that the data stored on a cell phone “cannot itself be used as a weapon to harm an arresting officer or to effectuate the arrestee’s escape.”<sup>21</sup>

It’s interesting to note here that a certain mobile application (or app) can be used to broadcast a “panic” alert to pre-determined recipient’s emails via a text message as to the location of a person and his/her immediate need. Taking it one step further, it’s not difficult to imagine the app being used to broadcast to other criminals an arrestee’s exact location and a message indicating that he was being detained by the police. Clearly such information could be used to thwart an arrest or actually create a threat to the arresting officers.

The Court further opined that once police offers secure a cell phone, “there is no longer any risk that the arrestee himself will be able to delete incriminating data from the phone.”<sup>22</sup> But, in fact, another app is configured to erase all data from a cell phone when it loses its connection with blue tooth-enabled hardware that is tethered to the phone.

The Court recognized a key component to the issue of privacy, “[c]ell phones differ in both a quantitative and a qualitative sense from other objects that might be kept on an arrestee’s person,”<sup>23</sup> noting that cell phones have the capacity to hold an immense amount of data, including photos, videos, addresses, bank statements or medical information accumulated over a period of years.

Most notable was the Court’s discussion of the use of mobile apps with cell phones. The *Riley* Court recognized that “the average smart phone user has installed 33 apps on his phone, which can combine to form a revealing montage of the cell phone owner’s life.”<sup>24</sup> The Court even recognized there are more than a million apps available in each of the two major app stores.

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In the end, the Court ruled that given the immense quantity and quality of information stored on the average person's cellphone, the intrusion into a person's privacy is far greater than any legitimate governmental interest in searching the data stored on the phone incident to an arrest. The court specifically left open the possibility of a warrantless search if it was presented with evidence of exigent circumstances which were not present in this particular arrest.

A recent article in the *Wall Street Journal*<sup>25</sup> touched on what might likely be the next intersection of technology and the law—wearable technology and the workplace. The article addressed the question of how companies should handle data gleaned from an employee utilizing a wearable device. The article recognized that tracking an employee's whereabouts and work habits can trigger a number of privacy issues by raising the issue of disclosure and the use of the data collected, as well as whether an employer can require employees to wear such devices.

The recognition that intrusion into the data stored on a person's cell phone is greater than evidence located in a person's home will undoubtedly be used in the future to strengthen privacy laws and increase the use of privacy notices. Additionally, an appreciation of the quality of information and the ability to create personally identifiable information from non-identifying sources will likely lead to the expansion of the need to properly disclose when certain information is obtained and what the information will be used for by the company.

As technology evolves, cell phones and other communications devices will likely unlock many secrets that run the gamut from exposing a terrorist's communications with his cohorts to how often someone visits their office water cooler. Only time will tell. 

<sup>1</sup> *In the Matter of the Search of an Apple iPhone*, United States District Court Case No. 15-0451M.

<sup>2</sup> 28 U.S.C. Section 1651(a).

<sup>3</sup> 474 U.S. 34 (1985).

<sup>4</sup> *Id.* 43.

<sup>5</sup> *Plum Lumber Co. v. Hutton*, 608 F.2d 1283, 1289 (9th Cir. 1979).

<sup>6</sup> *In re Order Requiring [xxx], Inc. to Assist in the Execution of a Search Warrant Issued by This Court by Unlocking a Cellphone No. 14 Mag. 2258, 2014 WL 5510865*, at \*2 (S.D.N.Y. Oct. 31, 2014).

<sup>7</sup> *Id.* at \*3.

<sup>8</sup> 434 U.S. 159 (1977).

<sup>9</sup> *Id.* at 174.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 175.

<sup>12</sup> 134 S.Ct. 2473 (2014).

<sup>13</sup> *Id.* at 2484

<sup>14</sup> *Id.* at 2488

<sup>15</sup> 395 U.S. 752 (1969).

<sup>16</sup> *Id.* at 763.

<sup>17</sup> 414 U.S. 218 (1973).

<sup>18</sup> *Id.* at 235.

<sup>19</sup> 556 U.S. 332 (2009).

<sup>20</sup> *Id.* at 335.

<sup>21</sup> *Riley*, 134 S.Ct. at 2478.

<sup>22</sup> *Id.* at 2486.

<sup>23</sup> *Id.* at 2489.

<sup>24</sup> *Id.* at 2490.

<sup>25</sup> "Should Law Enforcement Have to Get a Warrant to Obtain Stored Emails," *Wall Street Journal*, May 22, 2016.



# Test No. 93

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. COPE stands for Corporate Owned Personally Enabled.  
 True  False
2. BYOD stands for Bring your Own Drink.  
 True  False
3. Syed Rizwan Farook owned the cell phone the FBI wanted to unlock.  
 True  False
4. The Department of Justice sought the subject order in a regularly noticed motion allowing Apple to file an opposition.  
 True  False
5. The iPhone erases after 10 unsuccessful attempts to access data.  
 True  False
6. The FBI could have easily accessed the data on the iPhone.  
 True  False
7. The All Writs Act is a state law.  
 True  False
8. The All Writs Act allows a court to do anything it wants.  
 True  False
9. Courts have issued writs forcing companies to assist in the search of cell phones.  
 True  False
10. Companies have no basis to challenge a request for assistance.  
 True  False
11. Apple could have easily created the software needed to help the FBI.  
 True  False
12. The FBI made it more difficult to access the iPhone because it changed the phone's iCloud password.  
 True  False
13. Apple argued that it was unduly burdensome for it to comply with the court's order.  
 True  False
14. Before entering the order, the District Court should have conducted a three part test.  
 True  False
15. The District Court denied Apple's Motion to Vacate the Order.  
 True  False
16. *Riley v. California* discussed a warrantless search of a teacher's cell phone.  
 True  False
17. Chief Justice John Robert believes that a cell phone might be seen as part of a person's anatomy.  
 True  False
18. The United States argued in *Riley* that a cell phone search is the same as searching a person.  
 True  False
19. The U.S. Supreme Court recognized that a cell phone differs in both a quantitative and qualitative sense from other objects that might be kept on an arrestee's person.  
 True  False
20. According to the U.S. Supreme Court, the average smart phone user has installed 44 apps.  
 True  False

## MCLE Answer Sheet No. 93

### INSTRUCTIONS:

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

San Fernando Valley Bar Association  
5567 Reseda Boulevard, Suite 200  
Tarzana, CA 91356

### METHOD OF PAYMENT:

- Check or money order payable to "SFVBA"  
 Please charge my credit card for \$ \_\_\_\_\_.

Credit Card Number \_\_\_\_\_ Exp. Date \_\_\_\_\_

### Authorized Signature \_\_\_\_\_

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

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### ANSWERS:

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

- |     |                               |                                |
|-----|-------------------------------|--------------------------------|
| 1.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 2.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 3.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 4.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 5.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
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| 19. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 20. | <input type="checkbox"/> True | <input type="checkbox"/> False |



# Meet Your 2016 Trustee Candidates

By Michael D. White

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In a few weeks, SFVBA members will have the opportunity to select a new slate of individuals who will sit on the Bar's Board of Trustees and steer the Bar through the upcoming year. The following pages feature mini-profiles of each of the candidates for Trustee. Each provides a glimpse not only of their professional qualifications and expertise, but also gives a brief look into what makes each one of them uniquely suited to lead.

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





**MATTHEW A. BREDDAN**

**What's your favorite book genre?**

I love horror stories. Stephen King is one of my favorite horror writers. The imagery created by most horror stories is left in large part up to the imagination of the reader.

**What do you do for fun?**

I enjoy spending time with my children (young adults) camping, white water rafting, and this summer we will be learning to scuba dive.

**What inspired you to become an attorney?**

I initially wanted to be in law enforcement. Then at some point in my college career, I decided that I wanted a family and that I didn't want them to worry if I was going to make it home after working in law enforcement. Law school seemed like the next logical step.

**What's your favorite kind of music?**

My music tastes are varied and largely dependent upon my mood. I like classic rock, country, classical music, pop.

**Who or what inspires you?**

My children inspire me. Providing for them; being a proper role model; supporting them; watching them grow and learn.

A graduate of the College of Law at the University of La Verne, Breddan specializes in family law with the Reape-Rickett Law Firm in Calabasas. A member of the SFVBA since 1998, he is also a member of the bar associations of both Ventura and Los Angeles counties.

He has also worked with the Red Cross to host several community blood drives, currently serves as a volunteer wrestling coach and active member of the Parent Booster Club at Agoura High School, and regularly sits as mediator—and pro tem—throughout Los Angeles County.

A self-described “people person” dedicated to serving the Valley legal community, Breddan feels that he “works well with people and has the ability to problem solve.”

If elected to the SFVBA Board of Trustees, he “would like to try to implement ways to assist both attorneys and clients, whether through community outreach-type programs or more targeted functions and events aimed at the Valley legal community.”



**NATALYA BYZOVA**

**What inspired you to become an attorney?**

I decided that I wanted to be an attorney early on when I was still in high school in my home county. I took an elective class which dealt with issues of law, politics and society. Russia was undergoing a rapid change in its legal system at the time. The teacher was a lawyer and a prosecutor who inspired me to pursue my goals.

**If you weren't practicing law, what would you be doing?**

I would be an entrepreneur of some sort, a personal trainer or a politician.

**What was your childhood career goal?**

When asked who I wanted to be, as a teenager, I would half-jokingly say, a “President.” Even though it is wise to be realistic in your goals, it's also important to have inspirational goals and not be afraid to shoot high.

**What do you do for fun?**

I love anything outdoors like skiing, going to the beach, and hiking. I also like reading, watching movies, and going out with friends and family.

**What are your memories of the first car you ever owned?**

My first car in the United States was a 1987 Ford Taurus which I bought from my friend for \$400. It was pretty beat up and regularly overheated on the freeway. You could see me driving with white smoke suddenly starting coming out from under the hood...a good sign to pull over.

Byzova, a graduate of Loyola Law School, has been in practice for the past four years, specializing in civil and real estate litigation and transactions.

A member of the association since she began her legal career in 2012, she serves the community by providing free tax preparation services for low-income families and is an active supporter of the Cancer Research Foundation.

Considered dynamic and hard-working, Byzova goals as a Trustee would be to help market a more attractive SFVBA to a new generation of lawyers; utilizing modern technology to improve the association's online presence and social media outreach; enhancing the quality of social events and MCLEs; and involving more judges and established attorneys to interact with members.



**MICHELLE E. DIAZ**

**If you weren't practicing law, what would you be doing?**

Probably something creative.

**What was your childhood career goal?**

When I was in high school, I thought about becoming a photographer.

**What's your favorite kind of music?**

Classic rock

**What are your memories of the first car you ever owned?**

A Volkswagen bug. I loved the freedom of having a car, and would spend hours driving through the canyons and along the coast—gas was a lot more affordable back then!

**Who or what inspires you?**

My husband and kids inspire me to work hard and be positive.

With 17 years of legal experience, Diaz currently focuses her practice on family law, with considerable background in both civil and insurance litigation. Prior to establishing her own firm, she worked in civil litigation in the areas of employment discrimination, catastrophic personal injury, and insurance coverage.

A current member of the SFVBA Board of Trustees, she is a graduate of UC Berkeley, holds her law degree *magna cum laude* from Whittier College School of Law, and serves in the Family Law Sections of both the Los Angeles County Bar Association and California State Bar. She also serves as a family law settlement officer and participates in Settle-O-Rama in the Superior Court's North Valley and Northwest Districts.

Diaz is active in the SFVBA's Attorney Referral Service, Mandatory Fee Arbitration Program, and Family Law Section, and is "a big fan of our local bar association's presence and service to the community."

Her goals? Utilize a "commitment, willingness and enthusiasm for what our bar association provides to the public and the attorneys practicing in the San Fernando Valley" and "help expand what we do in the community at a pace that continues the quality of what we do."



**HEATHER P. GLICK-ATALLA**

**What was your childhood career goal?**

I didn't have a specific career goal per se, but I knew that I wanted to somehow make a difference in the world. I've come to realize that helping one person at a time, be it through assisting them with their estate planning or helping someone form a charity, is my small way of making the world a better place.

**Any heroes in the legal field?**

My dad [SFVBA Member Marshall A. Glick]. I have always admired his dedication to our clients and the highest quality of individualized service he provides them.

**What do you do for fun?**

Spend time with my husband Nabil and our 17-month-old son, Nathan. We love going to the park and the beach!

**What's your most vivid memory of law school?**

I studied abroad in London the summer after my first year of law school with my closest girlfriends. We had a blast exploring the city together, and it was also the summer that sparks began to fly with my now husband Nabil, who also participated in the study abroad program through our law school, the University of San Diego.

Glick-Atalla is no stranger to the SFVBA or *Valley Lawyer* magazine. Last year, she and her father, attorney Marshall Glick, were interviewed for a story on father/child legal teams and co-wrote a 2014 article on non-profit risk management.

A San Fernando Valley native, Glick-Atalla worked her way through law school at the University of San Diego by clerking at a local law firm and worked at Bet Tzedek in Los Angeles while awaiting her bar results.

Specializing in estate planning and non-profit law, she feels her experience working both as a volunteer for non-profits, as well as counseling their boards and officers, will enable her to "make positive contributions to the SFVBA Board of Trustees."

Based on her personal experience with the power of professional networking, Glick-Atalla would like to see the Association coordinate networking mixers between different sections, such as tax and probate or litigation and business law, "where members of complimentary sections can network with each other in the hope of generating new leads for one another."



**DAVID G. JONES**

**What do you do for fun?**

Whenever I get the chance I love to surf fish on the Del Mar beaches in San Diego. I have been doing it since I was a kid, and to me there is no better way to connect with the nature and the ocean, than challenging yourself with just a rod, some live bait, and the tides.

**What inspired you to become an attorney?**

When I was in elementary school, we were assigned to be “attorneys” arguing both sides of the case relating to Japanese internment camps in California during the War. I had never spent as much time in a public library, where I scoured all of the decisions related to the issues, and of course my team won the case!

**If you weren’t practicing law, what would you be doing?**

I have been a huge sports fan since I was a kid, and always loved to write. I actually went to a kid sportswriter camp at UCLA growing up and dreamed of being a columnist for Sports Illustrated.

**Who or what inspires you?**

Actually, my kids inspire me. Watching them grow up and fight the battles and experience the joys related to school, friends and extracurricular activities constantly reminds me of what it was like to feel everything with great intensity and emotion.

Jones is a partner in the Woodland Hills law firm of Santiago & Jones, with 20 years of experience in the areas of civil litigation and employment and personal injury law.

Active in the legal community as a settlement officer with the Los Angeles Superior Court, Jones graduated cum laude from Whittier Law School in 1996.

He serves as a member of the SFVBA’s ARS Committee and, for more than five years, has participated in the ARS referral program for employment law-related matters.

As a member of the SFVBA Board of Trustees, Jones says he would “strive to energize member involvement and professional activity; work in creating a stronger connection between Valley court judges and bar members; and improve on the already excellent CLE presentation seminars through expansion to other areas of the law.”



**KATHY G. NEUMANN**

**What’s your favorite book genre?**

I love espionage novels. They take you to exotic places, and there are usually clever characters and twists to the story.

**Any heroes in the legal field?**

Alan Dershowitz, a zealous defender of civil liberties. Even when I don’t agree with him, I appreciate his brilliant legal mind.

**What do you do for fun?**

The most fun thing for me is playing games with my grandsons, and spending time with my family. I also love to travel, and enjoy live theater.

**What inspired you to become an attorney?**

Here’s a laugh...I wanted to help people, have financial security, and be respected. No, really.

**If you weren’t practicing law, what would you be doing?**

Probably executive recruiting or real estate sales.

**What are your memories of the first car you ever owned?**

Oldsmobile Cutlass convertible—it was HUGE—and I called it “Sherman,” as in the tank.

Neumann has worked as a sole practitioner for the past nine years in the areas of family law and personal injury. She currently serves as a daily settlement officer for the Los Angeles County Bar Association and is active in Settlement-O-Rama and as a Family Law Mediator in both the San Fernando and Van Nuys courts.

A 1996 graduate of the College of Law at the University of La Verne, Neumann worked her way through law school as a single mom, crediting her success as an attorney to her “enthusiasm, tenacity, friendliness, commitment, and reliability.”

Serving as a SFVBA Trustee for the past two years, Neumann wants to continue the work of the Board by helping grow the SFVBA’s membership rolls, offering low-cost services to litigants, increasing involvement with Valley charities, and enhancing the Association’s external communications.



**JOANNA SANCHEZ**

**What's your favorite book genre?**

Non-fiction or humor. Sometimes I need something that will make me laugh out loud.

**What's your favorite vacation spot?**

Too many to have a favorite. I do hold a special place in my heart for Spain, where I lived abroad for one year and again for a summer.

**Any memories of the first car you ever owned?**

Isuzu Rodeo and being 16 and driving it to work (the movie theater) the first day I got it, without having learned how to drive a manual/stick shift in advance. I was lucky I made it there alive. I stalled at every red light and stop sign.

**Who or what inspires you?**

Women who can balance their career with family and their personal lives.

Sanchez, a graduate of Southwestern School of Law, has maintained a family law practice with the Law Offices of Robert Gantman in Encino for the past eight years.

She currently sits on the SFVBA Board of Trustees and boasts a strong record of involvement with the Association, serving as a member of the Family Law Executive Committee; co-chair of the Inclusion & Diversity Committee; and as a MCBA representative.

Sanchez also provides pro bono family law services at the Harriet Buhai Center for Family Law in Los Angeles, and coordinated events for Mission College and the Pierce Law Club.

Sanchez counts as her strengths event planning, organization, and promotion, and, as a Board member, would work toward "enhancing the SFVBA's sections, reach and image throughout Los Angeles County; revitalizing Association events and CLEs to encourage attendance; and increasing diversity and participation in SFVBA events."



**ALLAN D. SARVER**

**What inspired you to become an attorney?**

I had wanted to be a lawyer since I was in junior high school. I enjoy and have a passion for the law, the interaction with clients and opposing counsel, and engaging in the courtroom process.

**If you weren't practicing law, what would you be doing?**

I enjoy being outside and love baseball. Coaching a high school baseball team would have been a top choice. I coached a high school team years ago and thoroughly enjoyed it.

**What was your childhood career goal?**

I wanted to be a professional baseball player. I [still] regularly play softball with a group of friends I have been playing with every Saturday for the past 33 years.

**Any memories of the first car you ever owned?**

A 1967 Oldsmobile Cutlass Supreme. It's a special memory because I rebuilt the engine as the car was just going to be junked. That harkens back to the days when one did not need a computer to work on a car's engine. A basic mechanical manual did the trick, along with some good tools and plenty of time, soap and water.

A sole practitioner since he graduated from the San Fernando Valley College of Law and was admitted to practice in 1982, Sarver specializes in general business law, with a focus on business and consumer bankruptcy. "My law practice has been based in the San Fernando Valley since 2000, so I have well-established roots in the Valley's legal community and can extend that knowledge and my relationships to the Bar," says Sarver.

Based in Encino and a member of the SFVBA since 1996, he has served as a member of the Bankruptcy Law Section and the ARS. If elected as a member of the SFVBA Board of Trustees, he says, "I would work to increase the SFVBA's visibility and bolster its outreach; and encourage similarly situated attorneys who have been members for years, but not active, to be more involved."

*Cutlass Supreme*



**HANNAH  
SWEISS**

**What inspired you to become an attorney?**

My six-year old daughter. She still inspires me every single day.

**What's your favorite vacation spot?**

My all-time favorite vacation spot was staying in a hut on the Red Sea in Basata, Egypt.

**Any heroes in the legal field?**

Erwin Chemerinsky. His avid passion and dedication to law is awe-inspiring.

**What do you do for fun?**

Anything outdoors: hiking, biking, swimming and running.

**What are your memories of the first car you ever owned?**

A Chrysler Sebring. It was a red convertible and on a sunny day at 16 years old, I couldn't have been happier.

Hannah Sweiss has practiced law for only three years, but has accumulated an impressive CV that includes chairing the SFVBA's New Lawyers Section and authorship of a pair of articles for *Valley Lawyer*.

Sweiss practices employment law and civil and business litigation as an associate at Lewitt, Hackman, Shapiro, Marshall & Harlan in Encino, and serves on the Boards of the Arab-American Lawyers Association, Southwestern Law School's Nickel Club, and the San Fernando Valley Southwestern Alumni Group.

Her extensive background, she feels, "would provide a different perspective to the SFVBA" as her "recent transition into law practice also provides me with the resources to connect with newer attorneys."

Sweiss has personally enjoyed her membership in the SFVBA and thinks that the growth opportunities for the Bar Association are tremendous. She is interested in growing the presence of the SFVBA and encouraging membership. "I would want to be involved in preparing programs that will provide SFVBA members with the foundation, resources, and network to advance in their practice areas. This is not only critical for the members' individual successes, but also for continuing the SFVBA's community-centric reputation."



**CHRISTOPHER  
WARNE**

**What inspired you to become an attorney?**

Attorneys are expected to constantly learn new things... How amazing is that?

**If you weren't practicing law, what would you be doing?**

Looking for the next great investment opportunity.

**What's your favorite book genre?**

Books authored by business leaders—successful people are always willing to share their greatest defeats, and how it made them stronger.

**What's your favorite vacation spot?**

Anywhere with a ski lift.

**What do you do for fun?**

Golf—which isn't fun at all sometimes.

Pepperdine law grad Christopher Warne served as COO of a private hedge fund and an associate attorney at Wasserman Comden & Casselman before his current role as Managing Attorney of Warne Law Firm in Woodland Hills. Representing clients in the areas of business, real estate and landlord/tenant litigation, he is chair of the SFVBA's Litigation Section and also serves on its Membership & Marketing and Valley Bar Networking Committees.

Warne is also active in the Santa Monica Bar Association and is a past member of the Ventura County Bar and Trial Lawyers Associations. In addition, he provides pro bono corporate counsel to non-profit groups serving the homeless, domestic violence victims, senior citizens, and others.

Warne "attends multiple events each week" of other attorney and professional groups to gain insights into ways to make membership in the Association more attractive to younger lawyers.

"I meet multiple attorneys in the Valley who are, and who are not, members of the Bar. I can share what is working at other organizations and how we can keep the Bar competitive. We need to make a marketing push at other organizations. We need to be viewed not as the competition, but a partner."

# REPORT OF THE NOMINATING COMMITTEE

**Present:** Caryn Sanders, Carol Newman, Kira Masteller, David Gurnick, Peta-Gay Gordon, Marlene Seltzer, Ron Hughes, Elizabeth Post

**Date:** June 8, 2016

Sanders announced that treasurer Anie Akbarian does not wish to be nominated for secretary because of personal conflicts. The Committee nominated the following for officers:

Barry P. Goldberg	Treasurer
Yi Sun Kim	Secretary
Alan E. Kassan	President Elect
Kira S. Masteller	President (automatic)

The Committee considered seven new applicants for nomination and three incumbent trustees who wish to continue serving on the Board.

The Committee considered them all qualified and nominated the following for Trustee:

Matthew Breddan	Kathy Neumann
Natalya Byzova	Joanna Sanchez
Michelle Diaz	Allan D. Sarver
Heather Glick-Atalla	Hannah Sweiss
David G. Jones	Christopher Warne

The meeting adjourned.



ELIZABETH POST, Executive Director

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# PHOTO GALLERY



On May 27, the SFVBA sponsored a **Red Cross blood drive** with Association Executive Director Liz Post and other Association staff members on hand to assist with registration. The drive was held at the Tarzana branch of the Los Angeles Public Library on Ventura Boulevard.

Attorney Referral Service consultants Fanny Arellano (seated, left) and Cathy Carballo-Merino talk with a visitor at a recent **Senior Symposium** held at the ONEgeneration Senior Adult Center in Reseda. The ARS, a program of the San Fernando Valley



Bar Association, participates in community events throughout the year, connecting panel attorneys with seniors in need of advice on such topics as estate planning, wills, conservatorships, living trusts, and medical and power-of-attorney issues.

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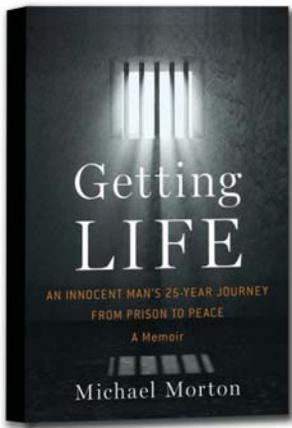
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# A 25 Year Wait to Right a Wrong

By Randi R. Geffner

**I**T'S BEST TO BEGIN THIS REVIEW with a warning—do not start reading this book unless you have a full day to devote to it. Although *Getting Life* is an unusual type of mystery read because we know the ending even before beginning the book, the story of Michael Morton's wrongful arrest, incarceration and eventual exoneration is so gripping that it is nearly impossible to put the book down. *Getting Life* is at once a personal memoir, a crime story, an indictment of the weaknesses in the criminal justice system, and an inspirational tale of a man who lost everything yet survived against all odds.

On the evening of his thirty-second birthday in August 1986, Michael Morton was a happy man, celebrating at a dinner with his beloved wife Christine and their toddler Eric. Eric was born with serious cardiac issues, and had survived and flourished following cardiac surgery which enabled him to play, eat and grow up just like other children. Life was good for the Mortons.

At home after the birthday dinner, Michael felt a little frisky, and Christine,

not so much. In a moment that Michael lived to regret for the next 25 years, he wrote a note to the sleeping Christine expressing his hurt over the way the evening ended. Michael closed the note with an affectionate "I love you" and left it for Christine in the bathroom. Christine never saw the note, as she was brutally bludgeoned and murdered in her sleep the following morning, after Michael left for work. Christine's body was found later that morning, after a neighbor worried when she saw three-year old Eric alone in the front yard.

Although law enforcement response to the horrific and terrifying murder was swift, Michael details how in the days following the murder, while he struggled to put one foot in front of the other while caring for Eric and processing the unthinkable loss, the local police missed multiple items of evidence, witness information, and sources of investigation. Police focus almost immediately centered on Michael. The theory hypothesized by the police, to which the prosecutors adhered despite the absence of any supporting evidence, was that Michael had brutally beaten

Christine to death because she refused to have sex with him on his birthday.

While focusing the investigation solely on Michael as the lone suspect, law enforcement all but ignored critical exculpatory evidence, including a bloody bandana found by Christine's brother at a construction site near the Morton home, the possible use of Christine's missing credit card in a jewelry store in another part of Texas, and the statements of neighbors that a strange man had repeatedly parked a van on the street behind the Mortons' home and walked off into the wooded area where the bandana was found.

Even more shocking was the police and prosecution decision to ignore the observations made by 3-year-old Eric to his grandmother, in which he described the crime scene and murder in detail, stating that the murderer was not Michael but a "monster" whom he described, and that his daddy was not home when Christine was murdered.

Michael was arrested and charged with the murder of Christine. Exculpatory evidence was never shared with the defense. When the trial judge



**Randi R. Geffner** is a senior associate attorney at Esensten Law in West Los Angeles, specializing in all types of civil and business litigation. Randi may be contacted at [rgeffner@esenstenlaw.com](mailto:rgeffner@esenstenlaw.com)

ordered all investigative reports be turned over to defense counsel, the evidence concerning Eric's eyewitness account, the presence of the van near the Mortons' home, and the usage of Christine's missing credit card were all absent from the records turned over. Despite the absence of witnesses or physical evidence tying Michael to the crime, on February 17, 1987, he was convicted of murder and sentenced to life in prison.

Eric, the center of Michael's broken life, was ripped screaming and crying from Michael's arms as he was led off to serve his sentence. In the ensuing years, Christine's family, who took custody of Eric, painted a picture of Michael as the monster who had destroyed their beloved sister and daughter.

*Getting Life* details the decades that Michael spent in the Texas prison system. Completely unfamiliar with the penal system and the regimen of mind-numbing and demoralizing routine which became his life for 25 years, Michael learned of necessity to navigate the prison social structure, and to behave such that he would not become the object of attack by guards or inmates. He read voraciously, started a prison book club, completed his bachelor's degree, and, in a testament to his strength and spirit, adjusted reluctantly to the heartless and cold life of a prisoner.

Worse, if possible, than the heartbreak that wrongfully put Michael behind bars, was the unimaginable heartbreak he endured when his son Eric barely remembered or recognized him on the twice-yearly visits he made to the prison in the earlier years of Michael's sentence. When Eric was a teen and old enough to make his own decisions, he chose to cease all contact with Michael, even changing his last name so as to sever all ties to the man who he was led to believe had brutally murdered his mother.

Against all odds, Michael never lost faith and never ceased to hope.

He maintained his innocence, to no avail. Michael's life forever changed yet again in 2005 when the Innocence Project, headed by famed O.J. Simpson defense attorney Barry Sheck, filed a motion requesting additional DNA testing on items of evidence from the crime scene. Five years later the motion was granted, enabling DNA testing on the bloody bandana. The bandana contained evidence of Christine's blood and the DNA of an unknown male. No DNA of Michael was revealed on the bandana.

In October 2011, Michael was released after spending nearly 25 years in prison.

The actual murderer was convicted in 2013 based largely on the DNA evidence that had been hidden and withheld by the prosecution.

In an unprecedented act, the Texas Supreme Court ordered a Court of Inquiry to determine whether prosecutorial misconduct had occurred in Michael's trial. As a result of the findings of the Court of Inquiry, the prosecutor on Michael's case, who had become a judge, pled guilty to criminal contempt, served a short jail sentence, resigned his judicial position and permanently surrendered his license to practice law.

*Getting Life* reads like a movie; Michael Morton is adept at putting events, people, and emotions into words that paint a vivid picture of decades of a life stolen from him. If there is any criticism to be had, it would be that, as a litigator reading the book, there is not enough detail of the trial and subsequent motions.

Due in large part to Michael's facility with words and endless optimistic attitude that is reflected therein, it is easy for the reader to forget that the events he shares are not the stuff of fiction. The real life saga of this man's journey to hell, and cautiously back again, is heartrending, powerful and ultimately inspiring. Spend a day curled up on the couch with *Getting Life*. 

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- \$50 Million Mortgage Fraud - Dismissed, Trial Court (Downtown, LA)
- DUI Case, Client Probation - Dismissed Search and Seizure (Long Beach)
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# First Annual Virtual Gala Honors Judge Michelle Rosenblatt's Service to our Community

**LAURENCE N. KALDOR**  
President



phenix7@msn.com

I'M NOT SURE WHAT I AM MORE EXCITED ABOUT—honoring Judge Rosenblatt's longtime service to the Valley Community Legal Foundation (VCLF) of the San Fernando Valley Bar Association or launching our first ever Virtual Gala! The good news for me is that we get to do both!

Many of you are probably thinking, "What's a virtual gala?" Well, let me explain... Our mission at the VCLF (the charitable arm of the Valley Bar) is to better our community by providing funding for programs, scholarships, and opportunities to deserving recipients. To do that, we raise money. To raise money, we put on events. Gala Award ceremonies are a common method of fundraising, and just as the world is going digital, so too, is our Gala!

The Virtual Gala is a way for people in the legal community to help us raise money in a fun and exciting way, and what could be more fun than experiencing a Gala from the comfort of your own computer, phone or tablet. The Virtual Gala does away with the rubber chicken dinner, and you can participate in a fancy dinner jacket or in the comfort of a t-shirt and your favorite sweat pants—because there is no jacket required! We're still offering a silent auction (online), raffle prizes, and goodie bags (delivered to your door), as well as lots of other ways to have fun and get involved.

We are also paying homage to a very important person. Judge Michelle Rosenblatt is one of the most respected

judges to have served on the bench in the greater Los Angeles area for the past twenty-three years. She is a delightful and kind person, gifted with a sound legal mind. Now, as she moves on to the next stage of her career, we are honoring her for her efforts in supporting the VCLF's mission.

As a leading board member of the VCLF for more than fourteen years, Judge Rosenblatt has spent countless hours of her spare time working on committees, projects and events. Her work has resulted in helping to raise

tens of thousands of dollars and thereby improving the lives and circumstances of many less fortunate members of the San Fernando Valley community.

I hope you read Terri Peckinpaugh's touching and artful tribute to Judge Rosenblatt. I hope you thank our sponsors by supporting them. I hope you visit the silent auction, bidding high and often. And, more

than anything else, I hope you see it in your hearts to honor the efforts of people like Judge Michelle Rosenblatt—who have done so much in the past—by donating to the VCLF and helping us continue in our mission.

But now, as is appropriate for a Virtual Gala, please raise a glass and join me in a toast to the 2016 recipient of the prestigious Pearl F. Vogal President's Award, the most Honorable Judge Michelle Rosenblatt—a giant in the hearts of our community and a lady with a giant heart herself. 🍷



## About the VCLF

The Valley Community Legal Foundation is the charitable arm of the San Fernando Valley Bar Association. The Foundation's mission is to support the legal needs of the youth, victims of domestic violence, and veterans of the San Fernando Valley. The Foundation also provides educational grants to qualified students pursuing legal careers. The Foundation relies on donations to fund its work. Please visit [thevclf.org](http://thevclf.org) to donate.



# Honoring Judge Rosenblatt

## Presenting the 2016 Pearl F. Vogel President's Award



By Terri Peckinpaugh

**T**HIS YEAR, THE VALLEY Community Legal Foundation (VCLF) is pleased to present the 2016 Pearl F. Vogel President's Award to the Honorable Michelle R. Rosenblatt, Judge of the Superior Court (Ret.) to honor and thank her for over fourteen years of dedicated service as a member of the VCLF Board.

Judge Rosenblatt served as a judge for twenty-three years: four on the former Los Angeles Municipal Court and nineteen on the Los Angeles Superior Court. Her courtroom assignments included Van Nuys, Pasadena, Burbank and the Stanley Mosk Courthouse in downtown Los Angeles, where she served with distinction in an unlimited jurisdiction civil court until her retirement in June 2016. In 2007, she received the San Fernando Valley Bar Association Judge of the Year Award.

Judge Rosenblatt is being honored with this President's Award for her service to the community, not only on the bench, but for her tireless efforts on behalf of the VCLF. She has been an advocate for the community and an avid supporter of the mission of the VCLF.

Over the years, Judge Rosenblatt dedicated countless hours of her time to the VCLF and undertook innumerable

tasks and projects, such as chairing the Dinner Committee for the highly successful 2008 Law Day Gala, as well as chairing a successful theater event in 2012 at the Cal State University Northridge Performing Arts Center. She served yearly on either the Grants or Scholarship Committees, served numerous times on the Nominating Committee, and formed a Committee in 2014 to create a New Member Board Manual. Judge Rosenblatt presented scholarship awards at high school graduations and regularly suggested nominees for the yearly VCLF Heroes in Law Enforcement Award.

At our meetings, Judge Rosenblatt facilitated and contributed to lively debate on controversial

issues, adding her own reasoning, intelligence and experience. Moreover, she always stated her positions in a cordial, non-confrontational way. She has always been the epitome of grace, dignity and professionalism in her personal and professional life.

Judge Michelle Rosenblatt is a leader and an inspiration. She is a lovely, amazing person and friend to all of us. As she steps into retirement, she will be missed for her contributions to the success of the VCLF.

From the bottom of our hearts, we thank Judge Rosenblatt for her support. She has made a difference to our community and to all of us who have known and served with her. 

*Photo By Michael Kaplan*

### Judgement By Others...

*"Judge Rosenblatt has served, with distinction, as a leader and as one of our core members with compassion and dedication for many years, long before I became a member of the board."*

*Judge Susan Speer, practicing judicial member of the VCLF for many years*

*"I recall Judge Rosenblatt's valuable involvement with our Annual Gala back in 2008. Due to her organizational skills, she helped the Gala take place without a hitch and it was the most successful Gala that I can recall. Thank you, Judge Rosenblatt!"*

*Stephen Holzer, practicing attorney, member and past president of the VCLF*

*"Acting as Co-Chair of the Grants & Scholarships Committee, I found Judge Rosenblatt's participation and recommendations to be one of the main reasons our committee made such a valuable impact on the community."*

*Terri Peckinpaugh, current Secretary of the VCLF Board*

We would like to express our  
*sincere gratitude*  
and extend a heartfelt

# CONGRATULATIONS

to the

## Hon. Judge Michelle R. Rosenblatt

2016 recipient of the Pearl F. Vogel President's Award

Congratulations and thank you for your service on the bench, to the VCLF, and to our community!

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Thank you for doing so much for so many.

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*Thank you for a lifetime of dedication  
to public service & the community!*

*From Dr. Maria Teresa T. Kaldor, PhD,  
Laurence N. Kaldor, Esq. & Family*

## Congratulations!

**Hon. Judge Michelle R. Rosenblatt**  
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## Congratulations to *Hon. Michelle R. Rosenblatt*

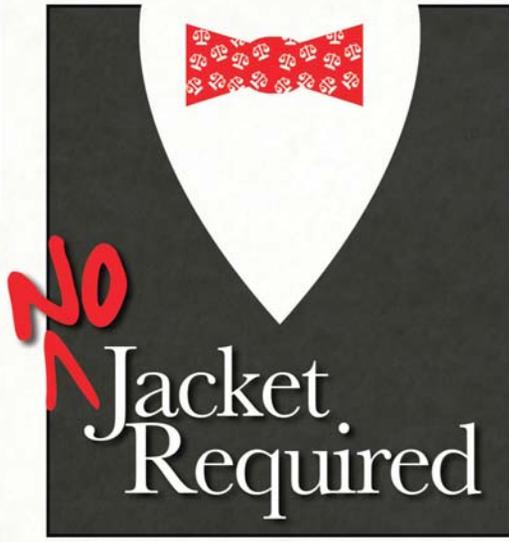
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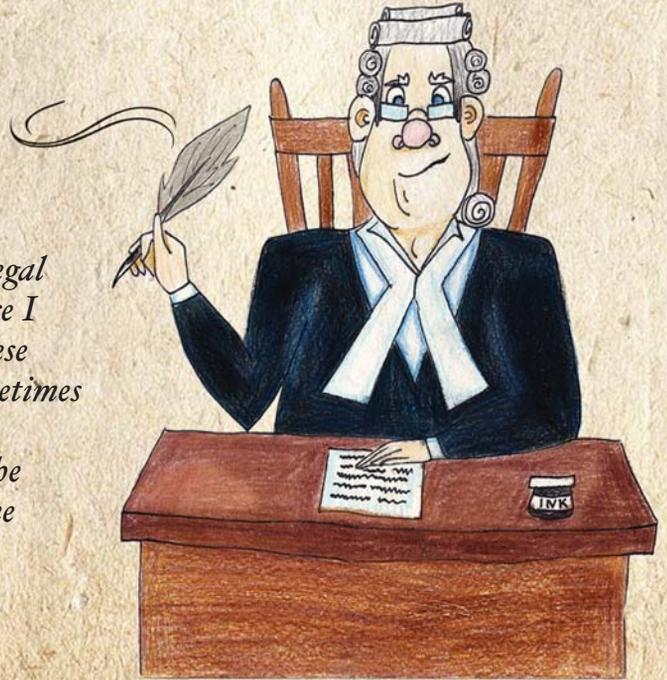
# Social Shoals

Dear Phil,

*I am a new lawyer trying to enhance my reputation in the legal community. To accomplish this, I attend Bar activities where I often see judicial officers before whom I appear. Many of these activities seem quite informal and very social, but I am sometimes unsure how to properly behave when socializing with these judicial officers. They act differently when they are not on the bench, but I do not know how I should act. Can you guide me through this social conundrum?*

Sincerely,

*In The Dark*



*Illustration by Gabriella Jenderov*

**J**UDICIAL OFFICERS ARE PEOPLE, TOO! AND THEY like to socialize. Their jobs can sometimes be isolating but they enjoy friends as much as you or I. However, when you are at the same social event as they are, you still need to behave in a professional manner—for your own sake, for your client's sake, and for the best interest of our profession. Be mindful of your words and actions at these social events. How you behave in these settings says a lot about who you are as a person and a lawyer. Conduct yourself accordingly.

For example, you may think an edgy, off-color joke is appropriate under the circumstances. But a bench officer in compliance with all the relevant ethics requirements might find that same punch-line offensive. It is best to avoid the topics of religion and politics in your discussions with judicial officers. These tend to be emotionally charged topics which can lead to heated arguments. Similarly, it is inappropriate to ask a bench officer anything about the bench officer's private life. If a judicial officer does share personal information with you, you may not share it with others.

And given the ease of posting to social media, you must be especially conscious of your actions as well as your words. Anyone can record you behaving questionably. The next thing you know, the recording is posted online and goes viral, possibly around the globe. Now everyone can

see your borderline behavior, including other members of the Bar, clients and prospective clients, and judicial officers who know you or might meet you in the future.

An excellent way to insure that you do not have problems resulting from these quasi-social professional events is to limit your consumption of alcohol. Everyone thinks they know when they hit their limit, but this is not always the case. You do not want to find yourself post-facto having to make excuses for your conduct.

And take this warning to heart: do not discuss with any judicial officer at these events any case that you may have pending in that court. Attempts at this kind of ex parte communication are inappropriate and may result in you being sanctioned by the court or the State Bar. None of this benefits you, your client, or your client's matter.

It is important for your career that you establish yourself in the legal community. Meeting attorneys and judicial officers and attending Bar events is an excellent way to make crucial connections. Follow my advice to help preserve your reputation while socializing with members of the bench and Bar.

Bonam fortunam,

*Phil*

**Dear Phil** is an 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](mailto:editor@sfvba.org).



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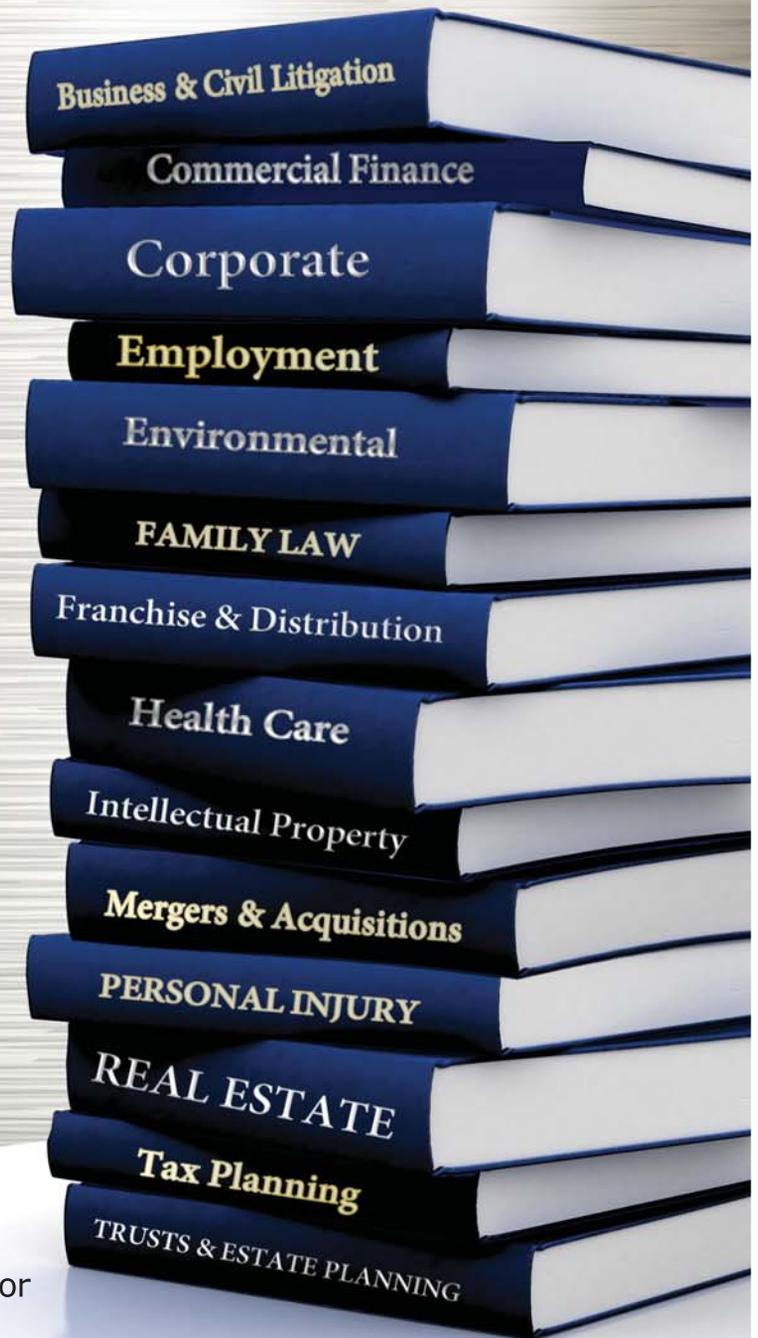
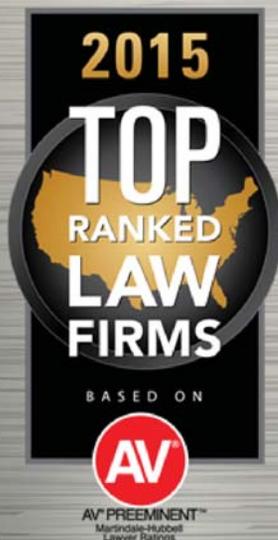
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