



# BarNotes

A Publication of the  
San Fernando Valley Bar Association

## In This Issue

President's Message .....3

Corporate Lawyer On A Jury .....5

Members In The News .....7

The Practice .....8

Message from  
LRIS Coordinator .....10

Mediator's Notebook:  
The Negotiators Delimma .....11

The Mediation Bag: What  
Every Effective Lawyer Needs  
To Have In His Briefcase At  
The Next Mediation .....14

New Members .....16

Classified Ads .....21

## SFVBA Committee is Liaison Between Bench and Bar

The San Fernando Valley Bar Association Bench-Bar Committee meets bi-monthly with the supervising judges of San Fernando, Van Nuys and Burbank/Glendale for updates on procedural changes, court facilities, personnel changes, and community outreach programs that the courts operate. Its mission is to maintain open lines of communication with the judges by informing our membership of news from the Bench and in turn, by providing judges with valuable comments and feedback from the SFVBA membership and the public.

The biggest news is that the Chatsworth Courthouse will finally open for business on or about June 3, 2002. The SFVBA Board of Trustees participated in the dedication ceremonies and building tours on May 13, with SFVBA President Lyle Greenberg one of the key speakers.

There will be shifts in judicial assignments when the Chatsworth courthouse opens. Judge Michael E. Knight will move from his present assignment in Van Nuys to assume the responsibilities of Site Judge at Chatsworth. Commissioner Daniel F. Calabro will move from Glendale to assume a general trial court assignment. The remaining Bench officers at Chatsworth will come from San Fernando: Judges Robert J. Schuit, Melvin Sandvig and Harvey Giss will handle misdemeanor trial calendars; Commissioner Richard L. Brand will handle misdemeanor arraignments; Commissioner Martin E. Green will handle small claims and unlawful detainer cases; and Commissioner Kevil W. Martin will preside over the traffic calendar at Chatsworth.

The moving vans have been spotted at Van Nuys, too. The two family law departments (Judge Speer and Commissioner Weiss) are now on the Seventh Floor of the East Building (6230 Sylmar), with Judges Weisberg and Harris, who preside in general civil departments. The unlawful detainer departments (Commissioners Schwartz and McIntosh) have moved to the South Trailers. Small Claims will soon move to the East Building, and Juvenile Traffic will soon move to the West Building (14400 Erwin Street Mall).

The Van Nuys Court recently lost three misdemeanor trial court judges due to transfers and reassignments. It does not appear that these vacancies will be filled soon. This has resulted in a "crush" of last day misdemeanor trials.

To avoid having to send these cases out to other districts for trial, a new misdemeanor trial management plan is in effect in Van Nuys. On Day 8, 9 or 10 of a misdemeanor case, when the prosecution and the defense announce "ready," the misdemeanor court will expect either a plea, the start of the trial or a dismissal. If the court in which the case is pending is unable to immediately start the trial, the case will be sent to the next available misdemeanor trial court; if no such court is available, the case will be sent to the next available open felony court. If there is no open felony court, the case will be transferred to Department A for assignment to an open (not in trial) civil court; if there



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## President's Message

Lyle F. Greenberg

### Greatness: From the Eyes of Your Client

In the almost two decades I have practiced law, I have come to the realization that over time, and not necessarily on the first try, the good guys do win. In law as in life, the winner is not necessarily the big guy, the one with the most money, or with the most power. Take a look at those who crossed the law and lost, but who started with money and power: President Clinton, tobacco companies, Ford Motor Company and its Pinto, Enron, Arthur Andersen, and the list goes on.

The most recent institution that is being scrutinized by lawyers and the law is the individual clerics in the hierarchy of the Catholic Church. I personally do not believe that the church, as an institution, will irreparably suffer from these recent events as long as appropriate remedial steps are taken. The church will have to deal with individuals who have engaged in wrongdoing, including dealing with the process of how its institution addresses these issues, and it will also have to deal with redress to the victims. While the church will endure, the individual leaders of the church who are accused (and if ultimately proven) to have acted or handled complaints, etc., inappropriately, will be treated as they would if employed by any other company.

At times, a loss in the short run turns into a win in the longer run due to a clients or lawyers persistence, or a change in public perception or acceptance. It is the dedication and commitment of lawyers on behalf of their clients that frequently makes the difference between winning and losing. Cases, big and small across this country, are won by clients who believe in their cause and who want and get their attorneys to believe in them.

The winner in this system? The American people, consumers and believers. I have certainly had my share of wins, losses and draws, and I believe in the majesty and the accuracy of our system of justice. Where else in the world can an attorney issue a subpoena or obtain a court order compelling the attendance and production of documents by the highest elected official or one of the highest church officials to testify in a deposition, or to compel officials of a major company to stand before Congress and explain their pricing policies and destruction of documents?

Yes - sometimes it takes time for justice to prevail - it is not a perfect system - but as we have seen over the history of this country - the law is the great equalizer. We are all bound by it - Presidents and clerics and companies alike - and while some may squirm to a degree, we all must respond - silence and ignoring the claim does not suffice. You may have experts at the helm of damage control but eventually the law will catch up because "for every wrong there is a remedy." (Maxims of Jurisprudence, California Civil Code Sec. 3523)

The American public marvels at the ability of lawyers who are able to utilize discovery to get to the truth - and even more than that - that the recipients of the discovery actually respond. For each of you who have represented a client who has stood on principle - it is always gratifying for the attorney to uncover information that supports the client's position, and the client appreciates the trust that you had in their honesty. A client's "thank you" for believing in them becomes a powerful motivator and is often a satisfying payday. Because you believed when most others did not, you become their hero because you championed their cause.

Each of us has the opportunity for greatness in our lives - whether that greatness is defined by our clients or peers, by the way we practice law, or the pride of our spouses, children or friends in our accomplishments. Sometimes circumstances make us rise to the occasion and sometimes it is a unique effort that only we can imprint on a situation that creates the perception of greatness. As they said of Seattle Slew, he "was one in a million, and showed us there is that possibility in a game of impossibilities." While, I am not a horseracing fan, I am always interested in watching the great ones - how they achieved that status, held onto it, and handled it. It does not matter whether the performance is by a horse, an attorney or a sports figure; it is the effort of doing one's best that I like to watch. To adapt Forrest Gump's phrase, my belief is "Greatness is as Greatness does." So, whatever you do in life, give it your all. 🐾

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# Corporate Lawyer on a Jury

BY DAVID GURNICK



David Gurnick is managing partner of the Woodland Hills office of Arter & Hadden.

They said lawyers are not welcome and it can't be done. Despite what they said, I served on a jury.

Since California adopted the one day or one trial system (Govt. Code 68550; Cal Rules Ct. 861) and narrowed the excuses to avoid jury service (Civ. Code 203-204) the system has needed more people to potentially serve as jurors, and juries have been opened to lawyers.

At the sight of a summons, I considered seeking a postponement but decided to serve right away. Civic duty was reason enough. Another reason was that I had encouraged others to serve. And jury service would be educational for one whose work includes trying cases. There was even a fleeting hope for a pleasant experience, though nothing approaching the jury in *People v. Gray* (1882) 61 Cal. 164 (jury kept 3 kegs of beer on tap in jury room; drank 17 1/2 gallons of beer, two gallons of wine, and whiskey at every meal over 9 days of deliberating).

Finally, if everyone delayed or refused to serve, the court would be forced to use its more disruptive summons procedure. A court needing more jurors can order a sheriff to "immediately attach the person" of enough jurors to complete a panel. (Civ. Code 211) One would not want to be around the courthouse at a time like that.

On the appointed morning I drove up the parking ramp near the Van Nuys courthouse, showed the red jury subpoena to the attendant, and enjoyed being waived on for free. After years of paying to park, it was nice to be treated as a VIP.

Supervising Judge Paul Gutman greeted the many potential jurors in the assembly room. He asked how many did, and how many did not, want to be there. Judge Gutman said the hand count indicated a ten-fold increase in willing participants since he had first asked jurors this question in the assembly room. He also asked who wanted the jury system preserved, and the show of hands reflected overwhelming support. Judge Gutman noted the right to a jury is enshrined in the 6th and 7th Amendments. The 7th Amendment, he added, guarantees a jury in civil suits for over \$20, and a CPI adjustment would require another amendment.

One young upstart called out "first

they should ratify the constitution" and complained that being here was costing him money. Judge Gutman noted that the Constitution has been ratified, apologized for the state's small compensation to jurors (\$15 per day and 15 cents per mile, one way; Civ. Code Sec. 215), and added that some soldiers just died in Afghanistan to preserve our freedoms and jury system. By comparison, he noted, the sacrifice of a day away from work was modest. The spontaneous applause reflected support and gratitude for our armed forces and the freedoms they are fighting to protect.

My luck continued as I was called among the first venire, to the courtroom of Hon. Darlene Schempp for the sad case of a homeless man accused of burglary, theft and receiving stolen property in a Van Nuys neighborhood; and then called to fill juror seat 11. When asked my occupation I noted dutifully that I am a lawyer; representing franchise companies; not related to any police or criminal attorney; acquainted with some of both, but none connected to this case. Then I waited for the certain peremptory: "we ask the court to thank and excuse Juror #11."

While awaiting my dismissal, I learned many excuses to get off a jury. "Short attention span;" "can't understand English"

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# HON. THOMAS SCHNEIDER



Hon. Thomas Schneider, recently retired Supervising Judge of the Northwest District, is now available for mediation, arbitration, and discovery reference appointments. Known for having exceptional knowledge of the law while on the bench, Judge Schneider also established a reputation for himself as an excellent settlement judge, particularly in real estate, construction, and complex business matters.

# LINDA BULMASH, ESQ.

With over twenty-five years experience as a businesswoman, real estate professional and lawyer, Linda Bulmash is a recognized expert in negotiation and mediation and writes a monthly column for the Los Angeles Daily Journal, "Negotiate Like the Winners". She has successfully mediated several hundred complex disputes involving employment/workplace (including sexual harassment, discrimination and wrongful termination); serious injury torts and product liability; business; real estate; professional liability; insurance; construction defect matters.



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(sometimes spoken in English); and "the defendant just intimidates me" (sometimes followed by "please don't ask me to explain"), were examples. Defense counsel asked if jurors could be fair if the defendant did not testify. Many said "no," apparently rejecting the Constitutional freedom from self-incrimination. This was another way to get excused. Jurors, whose mission was to leave, learned quickly. Many simply incorporated by reference the excuse used by another juror, often saying "Just like the other juror, I also . . ." followed by the reason that just got another juror excused.

Nonverbal cues showed the Judge's frustration, but neither she, nor the trial lawyers forced recalcitrants to stay. Due mostly to reluctant panelists, the court had to call twice for more potential jurors, and selection lasted all the first day. My peremptory dismissal never occurred, and suddenly, the Prosecuting Attorney made an opening statement and testimony began.

The evidence showed that a woman and her baby were resting in their apartment. Their housekeeper, before leaving the apartment to wash laundry, first removed four gold rings from her hand and set them on the sink. The defendant jimmied a window to enter the apartment. He heisted the rings from the sink just as a relative happened to arrive for a visit.

The relative asked the defendant who he was and what he was doing there. The defendant said he was looking for someone, excused himself, and left through the front door. The housekeeper returned and said her rings were gone. A chase ensued, joined by the building manager who caught the defendant and turned him over to the police, who at some point had been called.

Only one witness saw the defendant in the apartment. This created a fact question, as the defendant claimed he was never

inside. He testified that a nearby pawnbroker loaned him the rings and he was in the area to sell them to the visiting relative. The relative denied knowing the defendant, but the defendant claimed they had done business before.

Throughout trial and summations, counsel on both sides epitomized civility, accomplished without yielding any advantage for their side. They exemplified vigorous advocacy at its civil best. After summations came the court's jury instructions, which were barely intelligible, and interminable, even to one trained in the law. But the jurors, eight women and four men from a range of backgrounds (among them a carpenter, engineer, schoolteacher, retiree, cable TV executive, and one lawyer) appeared to do their best to listen. Deliberation in earnest began the next day at 9 a.m. It was quickly apparent that the jurors were bright, articulate and had been attentive to the testimony. Different jurors reminded others of evidence that might have been overlooked. Jurors drew inferences that others agreed they would have overlooked. Three hours of deliberation were intense and also eye opening.

After a straw vote, one juror held out for acquittal. She could not take sides between the sole witness who saw the defendant in the apartment, and the defendant who denied being there. Prior felonies and some inconsistencies were not enough for this juror to accept one witness's testimony over contradictory testimony of another.

The jury decided on a test of the defense. The test involved retelling the defendant's version, but adding all inferences and incidents that must have happened for his testimony to be true. This yielded clear incredulities: a pawnbroker loaning valuable jewelry to a homeless ex-convict; a customer declining to buy but inexplicably giving chase and calling police; and unrelated prosecution witnesses deciding spontaneously

*continued on page 16*

# Members In The News



Dee Miller Siegel will be installed as President of the National Conference of Bar Foundations of the American Bar Association in August at the ABA Annual Meeting in Washington, D.C. Dee is a former President of the Valley Community Legal Foundation of the San Fernando Valley Bar Association, the Beverly Hills Bar Foundation, and the Beverly Hills Bar Association. She is a former Trustee of the Los Angeles County Bar Association. "My goals as President of NCBF are to elevate the "presence" of NCBF among the other ABA entities; to provide innovation and excellence in programming and communications; to increase the attendance at NCBF meetings; and to increase the membership of NCBF. We provide the best forum for all bar foundations to exchange ideas and information!"



SFVBA Past President and frequent Bar Notes contributor David Gurnick has written a 575-page book entitled Franchising Depositions, recently published by Juris Publishing Inc. The book is the only work available that focuses on strategy, law and forms for taking or defending a deposition in the context of a franchise relationship. David acknowledges the officers and staff of the San Fernando Valley Bar Association in the preface to the book. 🐾

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# THE PRACTICE

a series of essays on practice of law and life

## Getting Back On Track

BY DAVID R. HAGEN



*Dave Hagen is a principal at Merritt & Hagen. The firm's practice focuses on representing individuals and small businesses in bankruptcy. He speaks to attorneys often on the areas of bankruptcy, the marketing of legal services, and the practice of law. He welcomes your comments to this series of essays.*

About two years ago, I went to a birthday party for a long-time client and friend who was turning 100-years-old. This past weekend, I went to her memorial service.

Faith actually passed away about a month ago. Her passing was no surprise really. She had been in a nursing home for the past several months and, after all, she was 102 years old. Yet, someone passing on always carries some sadness. Waiting a bit of time to pass before the memorial service was really a good idea. It allowed the service to focus on the joy of her life achievements and not the sadness of her death. It was a very happy, joyous and uplifting occasion. Faith almost seemed present, especially when a taped interview from a year ago was shown. (She was invited to appear on the Tonight Show with Jay Leno and the tape was made for the producers. Unfortunately, her health did not allow her to ultimately appear on the show.)

This tremendous experience caused me to think that this is a great way to finish one's life journey- a happy and joyous memorial as opposed to a difficult and tearful funeral. But, this is not the purpose of this month's column. The purpose of this month's column is to relate something else I gained from this experience.

Two years ago (at her birthday party) my wife and I sat with a number of people whom Faith had helped over the years. She had helped them with such things as a loan, friendship, or business advice. Everyone around the table had wonderful things to say about how she had affected their life for the better.

At the memorial service, a number of people came forward and shared how Faith had enriched their life in one way or another. I was particularly impressed with a gentleman who was in the coin-operated amusement business. Faith was also in the "coin-op" business and this fellow was actually one of her competitors. He told a story about how years ago he had gotten out of the business and was considering getting back in. However, he had concerns about starting all over when he was 47 and had a young family. She encouraged him to get back into the industry and pursue his dream. She told him that she got into the business when she was 52-years-

old and if she could do it, certainly he could as well. (Can you imagine a 52-year-old woman getting into the coin-op business in the 50's? Her strength and tenacity were amazing.)

Employees got up and explained how demanding she was to work for, but that it was done in such a way that she was actually encouraging them to be the very best that they could be. They appreciated her driving force. All in all, it was a very fitting tribute to a recently concluded life journey.

What I learned, or relearned, from Faith and these experiences is that it's not important what you have or leave behind. Material issues were not even discussed at the memorial. Rather, what is important, at least to me, is the long lasting impact that you have on other people's lives. This is what creates true richness in a life. I was immensely impressed that everyone I met at these two events had something to say about Faith's positive influence in their life. It struck me that this, truly, is a great legacy to leave.

*continued on page 18*

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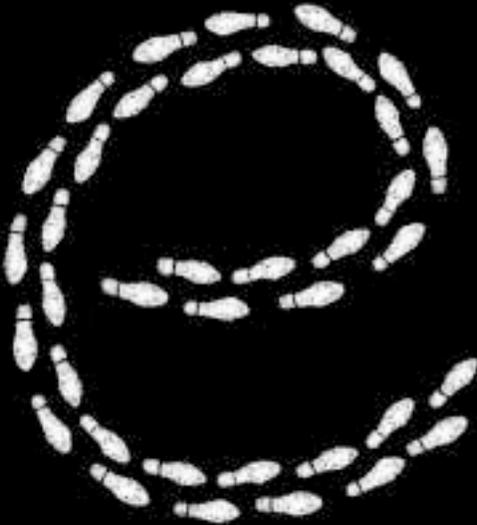
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## Arter & Hadden LLP

Attorneys

**Contact:**

In Woodland Hills

David Gurnick

dgurnick@arterhadden.com

818.596.2211

In Los Angeles

Harriet Welch

hwelch@arterhadden.com

213.430.3393

Bill Staley

wstaley@arterhadden.com

818.596.2222

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## Message From LRIS Coordinator

**Michele C. Morley**

The LRIS is required to submit an application for certification to the State Bar each February and we just received word that we have been recertified for this year. Compiling the information requested and completing the forms requires a couple of weeks of staff time. We provide complete financial information, detailed information about the responses in our client surveys, and describe in even more detail the operational changes that are made based upon the survey comments.

We answer twenty-two questions about our procedures for membership and referrals. We provide copies of our rules, survey forms, and membership materials. We list members on our LRIS Committee and provide the number of referrals they receive each year. We provide a continuous log of all referrals made during a month selected by the State Bar. We list each referral and the attorney that received the referral. We describe the services we provide to modest means and pro bono clients. Finally, we provide examples of all our advertising pieces used to promote the LRIS. This is a time consuming process, but it does give us an additional opportunity to look at our operation and the services we provide in detail. This is a good process for us to engage in at least on an annual basis.

During the month of May we waived the \$30 administrative fee. We publicized that this was done in recognition of Law Day celebrations. We also looked at the fee waiver as a pilot project to see if eliminating the fee increased either referrals or "no-shows." After we calculate the results from this project and the responses to our recent survey to LRIS members, we will report our findings. (It is not too late to return your survey form if you have not yet done so.)

As LRIS Director, I believe it is important to personally market LRIS in the community. In part this is the reason that I am on the Board and Executive and other Committees of the Woodland Hills Chamber of Commerce and Haven Hills, Inc. I also participate on a VICA Committee. I have found time and time again that marketing and networking opportunities abound in such organizations. There is also great satisfaction in serving as a conduit between various organizations. Many times people and ideas that benefit one organization can do the same for other organizations and I enjoy seeing the synergism that results. 📌

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# Mediators Notebook

## The Negotiator's Dilemma

BY CHARLES B. PARSELLE



A graduate of Oxford's Honor School of Jurisprudence, Charles Parselle was called to the English bar in 1966 by the Honorable Society of the Middle Temple, and has practiced law in California since 1983. An experienced litigator, his practice is now devoted to mediation and arbitration.

Life poses dilemma for all living creatures. The dilemma is that you must move in order to eat, but if you do move you may become food.

Mediation is a cheap solution to a specialized instance of this dilemma. It is the same dilemma for everyone involved in a dispute. The dilemma is how to win without getting killed. The word "killed" is used here metaphorically, but anyone who has faced an adverse jury verdict knows that it feels like death.

It is painful to lose. But the alternative, which is to settle, can be extremely unpalatable, and furthermore, it can be unacceptable to a client who believes, wrongly, that he/she is on the winning side of a righteous and profitable suit.

An attorney's duty is to provide staunch adversarial representation. A trial is a "take no prisoners" affair, in which the attorney must maximize every factual, legal, evidentiary and procedural advantage, and neutralize or minimize every weakness in the case, in order to win for the client. However, most cases that are filed (19 out of 20) never reach trial. Cases that do not succumb to demurrer, inertia, or summary judgment, mostly settle.

Settlement occurs through negotiation. Negotiation is not a "take no prisoners" affair. It requires a different attitude of mind and a different approach. The attitude of a trial attorney is "win or die in the attempt." There are no fine lines to walk. The attitude of a successful negotiator is more subtle. It is all about walking fine lines. The negotiator must hold, simultaneously, the attitude that she is willing to go to trial AND the attitude that she is willing to make concessions in order to settle. The negotiator must hold out for maximum advantage, while recognizing that she has already sacrificed the chance for maximum advantage in return for the chance of settlement.

Because of the tension inherent in the negotiating situation, it is inevitably stressful. There are several problems with the process of negotiation. First, a negotiation is difficult to begin, because it is perceived as being perceived as weakness. Because of this, negotiations are delayed. The commonest time to begin is when the court orders the matter to mediation, and even then, parties are often not psychologically ready.

Secondly, as Mark Antony said to the crowd: "You are not stones, but men." Men and women

nearly always react emotionally in a negotiating situation. I would like to collect \$1 for every time an attorney has called his opponent an "##@&^," (and that was a mild one). The parties often come to a negotiation with unexpressed bitterness towards their opponent, and what they perceive as low-ball offers are like salt rubbed in the wound.

Thirdly, once an overture or an offer has been rebuffed, the negotiating process often stalls and no one is willing to start it again. Time goes by, expenses mount up, the client calculates what has been spent compared to what is now being offered; the whole thing becomes more and more difficult. The courts then step in, with mandatory mediations, mandatory settlement conferences, but the court cannot mandate that the parties settle. They have a constitutional right to their day in court.

Fourthly, a settlement means a result which is also satisfactory to the opponent. But for some people, the sense of victory depends on the perception that the other party lost. In some people, the desire for revenge is potent and implacable.

The difficulties inherent in negotiation are greatly eased by the presence of a mediator. First, if you are reluctant to take the first step, call in a mediator and have him or her make the call for you. Secondly, the inevitable emotional reactions which occur in a negotiation can be fully expressed yet chan-



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neled harmlessly, and often with unmistakable relief, in the direction of the mediator. Thirdly, the rejections and rebuffs and posturing which are a part of negotiation need not, and usually do not, result in complete breakdown where a mediator is present to ameliorate their effects. And this means that the negotiation can proceed. Finally, there is the desire for revenge; if the desire to make the other side lose is greater than the party's perception of his or her own self interest, there is no remedy, it is the green-eyed monster which will engulf and devour any hope of rational settlement.

Every dispute has a subjective and an objective component. Attorneys are retained because they can view a case or a dispute more objectively than their clients. Clients rely on their attorneys to perform this function for them. But attorneys are bound by their clients' wishes, and are bound to view the dispute from their client's perspective. However capable may be the attorney in objectively analyzing the case, they have no choice but to defer to the client and to represent the client's desires in the matter. The presence of a mediator, entirely impartial, gives the attorney space in which to separate the subjective from the objective components of the dispute, and over the course of a few hours to develop a solution that works for the client and for the other side as well. ♣

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## The Mediation Bag: What Every Effective Lawyer Needs To Have In His Briefcase At The Next Mediation

BY JAN FRANKEL SCHAU, ESQ. AND DR. RONNIE BLAKENEY



Jan Frankel Schau is a former business and employment litigator. She is now devoting full time to the practice of Private Mediation and Arbitration of Civil Business and Personal Injury disputes with Valley Mediation Services in Encino. Ms. Schau can be reached at (818) 379-1789 or JFSMediator@aol.com.

Like the old West, the effective lawyer needs to be amply prepared with the proper provisions and meticulously well armed to assure satisfaction at the end of every legal battle. For that reason, he needs to carefully pack his briefcase with a few important supplies each time he ventures out to try to settle a case in the "new West" style. With the right set of tools in the briefcase, the attorney's shot at walking away from the mediation with a satisfied client before the sun goes down increases substantially.

To that end, be sure to pack your brief case carefully by bringing the evidence you intend to use to persuade the other side of the validity of your claims or defenses, a muzzle for yourself and a lasso for the errant client, ventilated pants for when the client's in the "hot seat" and a flak jacket for dodging bullets. Be sure to take along a few extra "chips" for the inevitable "horse trade" and by all means, don't forget an ounce of humility to sweeten the pot. Properly packed you'll be ready to engage in battle in the "new west" way.

*Bring the evidence you intend to use to contradict your opponents factual assertions.* If you know in advance that there are serious affirmative defenses raised which you contend can be controverted by evidence: gather the evidence and bring it with you. A neutral won't show it to the other side without your permission, but if you tell the neutral and your opposing party that you've got it, and you don't have it with you, you've lost a lot of credibility points. The neutral can be your ally in taking the "smoking gun" to the other side and telling them she's seen the smoke and smelled the fire—but she can't do that without being convinced that it's there in your briefcase to show!

For example, if the plaintiff is contending that your client breached the contract by failing to provide insurance naming his company as an additional insured, take the time to research the facts and bring the Declaration of Insurance. If the Plaintiff is claiming that the case is subject to a motion for summary adjudication due to the lapse of a license, bring the license, and any letters from the licensing board relating to the lapse. Without them, the neutral can't act as your ally in putting those issues aside.

If you contend your client will need future surgery at a cost of \$60,000.00, bring a medical report that suggests the need for the

surgery and the likely cost range and prognosis for recovery. Without it, the other side simply won't consider the potential cost in its evaluation for settlement.

This type of evidentiary information is ideally included in a legal brief provided to the opposing side before the hearing as well as to the mediator, with exhibits attached. However, if you are unwilling to share the documentation at the stage of the litigation during which mediation happens to fall, at least pack it in your briefcase. Hard evidence is worth a lot in the bargaining process and evaluation process—and so is the lack of it!

*Be prepared to use a muzzle if necessary.* The skillful mediator is part lawyer, part psychologist. She is trained to listen empathetically and to challenge the parties in a way that promotes self-evaluation and perspective, while always taking care to re-assure the parties that their views are being heard and their valid claims are validated. When a lawyer tells the story, it undermines the process and creates roadblocks and obstacles towards the catharsis involved in a true and lasting compromise of the case. In short, if you and your client really want to settle the case—keep quiet at the outset. Your expert advice and legal counsel will become critical later on in the process, but for the moment, put your muzzle on and sit tight.

Hopefully by the time your case reaches mediation you have done your legal work by researching the facts and the law to raise the proper claims and defenses. You have packed your briefcase with chips for swapping and evidence, which has already been presented to the mediator and opposing counsel in a well-prepared brief. After that, it's a matter of letting your client tell the story. It's a process that's critical to achieving a satisfying settlement. Let it be.

The beauty of mediation is often that it allows the parties a forum to be heard—unbridled. This is often the most difficult task of a trial lawyer. But understand that without this opportunity, the client often is unwilling to settle at any cost, because he/she remains stuck with the unsatisfied feeling of never "being heard" or "having his day in court". If you want to settle the case, it's imperative that you sit back and let your client tell his/her version of the dispute uninterrupted. Keep in mind the visual imagery of the Old West and put a muzzle on!

*Don't forget a lasso.* Although you must muzzle yourself during the opening statement to allow the client to express his/her anger/disappointment/indignation, you should always be alert and ready with a lasso to reign your client in if he/she goes astray. We've all seen the cases where the client gives away too much, or inadvertently reveals the real reason for the lawsuit. "I would

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never have filed this suit if he didn't act like he didn't care when I told him how hurt I was". Be tactful, be respectful, but cautiously lasso him back to the facts underlying the dispute whenever your client begins to stray.

The best way to do this is to simply interrupt and remind the client what the neutral wants to hear: "Tell her what happened to you physically when the car hit your car—where did your body impact with the vehicle?" If necessary, revert to "deposition style" questioning to get the client back on track. Then encourage the client to resume the reigns and trot on with the story.

*Advise your client to wear ventilated pants and a flack jacket.* Explain to your client in advance, that part of the process is necessarily that each side gets a chance to "vent" to the other about their complaints underlying the dispute. Once properly attired, allow your client to vent: give him the chance to tell the mediator (never have him speak directly to the other side or his/her counsel) all of the awful things the opponent did or didn't do that caused this legal dispute.

To a certain extent, you can usually anticipate the other side's arguments and articulate them for your client in advance so that the rage and surprise are somewhat diffused. Do as much preparation as possible, and then explain that it's your client's turn to hunker down and take the flack from the other side.

At this point, your client needs to be prepared for his turn in the "hot seat" and to take a few bullets in the process. This is when they need to wear the flack jacket to diffuse the bullets, along with well-ventilated clothing to prevent over-heating. Most clients would prefer to suffer the indignities of strong accusations, however false they believe them to be, in mediation than to suffer through the expense and risk of a trial.

Prepare your client to take whatever's dished out without jumping across the table or hopping out of his chair. Trust that an experienced mediator will know when your client is getting "too hot" and can no longer dodge the bullets being shot towards him. That's the time to call for a private caucus.

During the private caucus, the mediator should explain the likely judicial or jury reaction to the opposing side's story and help you and your client to analyze the credibility and weight of the evidence, as it's likely to be presented. Now that the whole story is "out in the room", use the mediator to help you begin the negotiating in earnest.

*Take some extra chips for swapping in the horse trade.* In many instances, it falls upon the creative mediator to add a few negotiating "points" to the mix just so they can be swapped away. For example, where the parties did business together, resulting in a lawsuit, there is almost always a question of reputation, and sometimes also an issue of apology to be

exchanged. It costs the parties nothing, but usually means a lot. Add it to your briefcase as an offer or demand. It's psychic pay-off that can make the difference on whether the case settles or not.

In other cases, there are issues which may appear to be inconsequential, and indeed may not be a part of the pleadings or admissible as evidence in court, but may again be additional "chips" which your clients can horse trade. For example, issues of insurance and indemnity for future acts, or issues of licensing and reporting of unprofessional acts against licensing boards may

*continued on page 17*



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...Liason continued from cover

are no such courts available, the case will be sent to a civil trial court with a direction that any civil case then in trial be recessed to accommodate the misdemeanor case.

This may cause some inconvenience, but criminal cases take precedence over civil matters and are entitled to these accommodations. The Court asks the Bar, jurors and litigants to have patience during this current "log jam" of misdemeanor cases.

Judge Mary Thornton House, Supervising Judge of the Northeast District, who now also supervises the North Central District (Burbank and Glendale), is a new addition to our Committee. Judge Randy Rhodes has moved from San Fernando to assume his duties as Site Judge at the Glendale courthouse. Judge Robert J. Sandoval is assigned as Site Judge at Burbank, and while Judge Sandoval is presently on leave due to illness, Judge Chesley McKay is the Interim Site Judge at Burbank. We look forward to continuing our strong relationship with the North Central District Bench officers and the Burbank and Glendale Bar Associations, who are also represented on our Committee.

Judge House has been working with the City of Glendale to address the issue of available parking at the Glendale courthouse. The City has agreed to make the parking structure, located one block North of the courthouse, available for public parking every other Friday.

As our courts implement the "one trial" jury system (see Rule 861, California Rules of Court), the SFVBA and our Committee continue to assume a leading role in promoting and encouraging jury service. There are many changes, some already implemented and some proposed, in the way jury service works.

Jurors likely will be called for service more frequently than in the past. There will be fewer jurors excused from service for claimed financial or other hardships. As practitioners, we may see smaller panels during voir dire; there may be limits imposed on the time allowed for voir dire; there will be earlier starting times for trials; and jury trials will be conducted on consecutive days---all in an effort to efficiently utilize the jury pool.

The courts will also be implementing procedures to reduce so-called juror "scofflaws." If a juror fails to appear after a third jury summons, an Order To Show Cause (OSC) hearing will be set, and fines of up to \$1,500 can be imposed. Fine payment matters will be referred to collection agencies.

The Bench-Bar and Government Affairs Committees of the SFVBA are monitoring four pending bills: AB 1698 (to convert eligible subordinate judicial officer (SJO) positions to judgeships, currently in the Senate Judiciary Committee); SB 1732 (relating to responsibility for improving and overseeing court facilities); AB 2238 (to prevent Internet posting of personal data pertaining to elected or appointed officials); and AB 2065 (to allow active and retired judges and commissioners to request that the DMV keep their address information confidential). SFVBA members may go to [www.leginfo.ca.gov](http://www.leginfo.ca.gov) to view the full text and comments regarding these measures. The Committee invites members' comments on this pending legislation that concerns the courts.

Also, watch the Bar Notes for updates from the Litigation Section on important amendments to the Rules of Court pertaining to the conduct of "fast track" litigation, to take effect in July 2002.

The Bench-Bar Committee can better serve you, the members of the SFVBA, if you let us know how we are doing. If you would like to discuss these or any other issues concerning the courts, or if you have concerns about individual Bench officers, you may contact-in confidence-SFVBA President Lyle Greenberg at (818) 884-5100, or Bench-Bar Committee Co-Chairs Mike Convey (818)464-2810 or Judy Simon (818)703-6337. 🐾

Corporate Lawyer on Jury continued from page 6

to frame a defendant, and aligning a story to do so. Suddenly the holdout juror exclaimed: "Stop. You're right. I'm convinced."

The prosecution would have a victory, but it would not be complete. One charge was grand theft. This required proof that the rings were worth more than \$400. The only value evidence was a single statement by the victim, valuing her rings at a higher number. The jury agreed better evidence would have been easy to present (purchase receipts or an expert opinion) and the victim's single answer did not prove value beyond a reasonable doubt. The jury found the theft to be petty.

The verdict forms were completed by noon. The Clerk read the verdicts and the Judge thanked and excused the jury. We exited in one elevator, exchanged compliments, thanks and goodbyes, and separated back into the public.

Judge Gutman also said most people find jury experience rewarding. This is doubly true for a lawyer. There are the satisfactions of fulfilling a civil duty and making the right decision in an important matter (important at least, to the participants and the community). For the lawyer there is the addition of seeing and helping conduct our legal system from a rare vantage, one that differs from the Judge's bench, the counsel table or the witness stand. While this article is a window, the doors to the jury are open and lawyers are more welcome than ever. 🐾



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dantablin@pacbell.net  
Litigation, Personal Injury

**Teresa Berman**, Law Student  
23266 Ostronic Drive  
Woodland Hills, CA 91367  
(818) 710-8317  
Fax (818) 710-8318  
teresaberman@socal.rr.com

**Sergio A. Castaneda**  
Castaneda & Associates  
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(818) 243-8871  
mkg\_libra@yahoo.com  
Associate Member

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22415 Del Valle Street  
Woodland Hills, CA 91364  
(312) 213-7428  
e-gamonal@law.northwestern.edu

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Universal City, CA 91608-1097  
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Fax (818) 506-4827  
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Fax (818) 783-5445  
goodfriend@law.com  
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clombard@daviescommunications.com  
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Mediation Matters of California  
18075 Ventura Blvd. Suite 228  
Encino, CA 91316  
(818) 344-1999  
arnoldst@aol.com

**Ellen L. Trumpler**  
T. Curtis Medical Corporation  
14531 Hamlin Street  
Van Nuys, CA 91411  
(818) 887-9384  
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*Mediator's Handbag continued from page 15*

not be required, or even legitimately considered by the attorneys in preparing the case for trial, but may be meaningful to the parties in their ultimate hope to "put the matter behind them". Offer to refrain from reporting unless compelled to do so by legal process, or offer to waive any rights to a claim for future indemnity in cases where your client is satisfied they couldn't or wouldn't be able to successfully gain indemnity on future claims due to issues with insurance or collectibility. Again, this may mean something to the party gaining the concession, and be worth something in exchange, and may prove to be a bargaining point worth offering up at no expense or cost to your client.

In short, the well-prepared lawyer should always attempt to think creatively and add a few non-monetary "goodies" into the arsenal that your client won't mind conceding in exchange for a better settlement. You'll be surprised at how many "chips" you can come up with if you carefully analyze the "big picture" of your case and pack your briefcase properly.

*Bring an ounce of humility.* Many attorneys are too proud to allow the mediator to assist them in striking a fair settlement for the clients. Humble yourself enough to allow the mediator to become your ally. Ask her advice, as a neutral third party. Let her tell your client the harsh realities you were thinking but were too deeply entrenched to bring to your client's attention.

Too often, the attorney gets in the way of the client's settlement by his/her sheer arrogance and pride. Sometimes, the fee factor becomes the primary obstacle, as the attorney sees another file clearing off his credenza in the shadow of a settlement. Although we all know the ethics involved in this kind of thinking, there is another motivation for bringing that ounce of humility with you as well: good work. When we do the best for our clients, our practices thrive and ultimately we are all better off.

Good luck packing all of your tools for your next mediation, and remember the Boy Scout credo: always be prepared! 🐻

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## MY THANKS TO THOSE WHO HELPED ENSURE THAT THE VALLEY COMMUNITY LEGAL FOUNDATION'S LAW DAY DINNER WAS A SUCCESS.

Anne C. Adams  
 Alan Friedenthal  
 William Kropach  
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### SPECIAL THANKS TO

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*The Practice continued from page 8*

It also causes me to think a bit about my legacy. Steven Covey talks about one of his seven habits of highly successful people being "begin with the end in mind". To fully understand this principle, he encourages everyone to think through what people might say about them at their funeral. Once someone knows what legacy they want to leave, they can identify their core values and put in place a plan to achieve these core values. I try to follow this advice.

Going to these events caused me to spend some time reflecting and reconnecting with my core values. It really allowed me to "get back on track."

As lawyers, and as human beings, we tend to disconnect from our core values. This is easy to do when our days are so filled with phone calls, faxes, email, radio, television and newspapers. Think about it, we have so many different sources of information coming at us that it is easy to get distracted from what is really important to us - our core values. For many (probably most) of us, we got into law to help people. Yet it is easy to lose sight of this fact in the work-a-day world.

How connected are you to your core values? Are you more focused on compelling discovery or staying connected with your core values? Are you still connected to the real reasons you practice law? It is so easy to get off track. Quite frankly, it had been several months since I had connected with some of my core values and I had become quite distracted. I have Faith and her memorial service to thank for getting me back on track. 🙏

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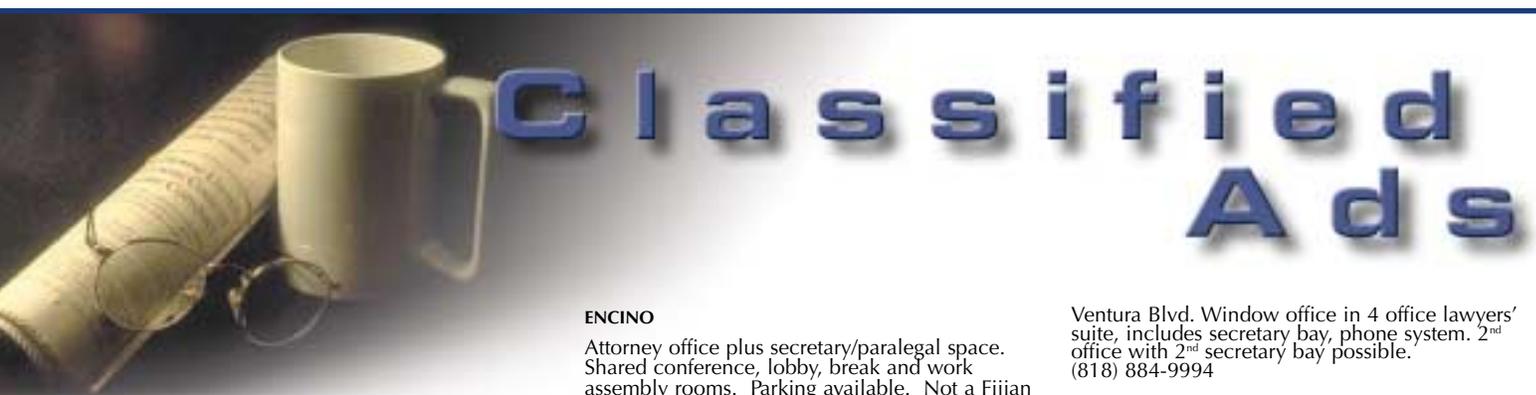
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- ✓ *Will your carrier* impose a substantial rate increase at your next renewal due to unstable market conditions?
- ✓ *Will your carrier* continue to insure "your type" of practice at your next renewal?
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# June Events

## calendar and MCLE event listings

### Legal Aid Foundation of Los Angeles

**Topic:** Unlawful Detainer Training: Representing Indigent Tenants in Eviction Actions

Date: June 5  
 Time: 6:00 p.m.  
 Place: 1102 Crenshaw Blvd. (just south of Olympic Blvd.)  
 Cost: Free to those who agree to handle 2 eviction cases.  
 MCLE: 2.5 Hours  
 To register, call David at (323) 801-7908.

### Probate and Estate Planning Section

**Topic:** The Criminalization of Mental Illness

Speaker: Judge Harold Shabo, Ret.  
 Date: June 11  
 Time: 12:00 Noon  
 Place: Radisson Hotel, Sherman Oaks  
 Cost: \$25 members prepaid; \$30 at the door  
 \$30 non-members prepaid; \$35 at the door  
 MCLE: 1 Hour

### Healthcare Law Section

**Topic:** The Current State of Durable Powers of Attorney  
**Re: Healthcare**

*Discussion of the Authority of Designated Patient Decision Makers in End of Life Healthcare Decisions*

Speaker: David Blake, Esq., V.P. Mission & Ethics, St. Johns Hospital  
 Date: June 18  
 Time: 6:00 p.m. Dinner and program  
 Place: SFVBA Conference Room, Woodland Hills  
 Cost: \$25 members prepaid; \$30 at the door  
 \$30 non-members prepaid; \$35 at the door  
 MCLE: 1 Hour

### Workers' Compensation Section

**Topic:** CIGA, Problem Child of the 21st Century

Speaker: Richard E. Guliford, Esq.  
 Date: June 19  
 Time: 12:00 Noon  
 Place: Encino Glen Restaurant, Encino  
 Cost: \$25 members prepaid; \$30 at the door  
 \$30 non-members prepaid; \$40 at the door  
 MCLE: 1 Hour

### Litigation Section

**Topic:** Sex, Lies, and Audiotape

*Get the inside scoop from Monica Lewinsky's attorney!*

Speaker: William Ginsburg, Esq.  
 Date: June 20  
 Time: 6:00 p.m. Dinner and Program  
 Place: SFVBA Conference Room, Woodland Hills  
 Cost: \$25 members prepaid; \$30 at the door  
 \$30 non-members prepaid; \$35 at the door  
 MCLE: 1 Hour

### Intellectual Property & Internet Law Section and Criminal Law Section

**Topic:** How To Protect Your Clients Re: Counterfeit Trademarks

Speaker: Seymour Amster, Esq.  
 Date: June 21  
 Time: 12:00 p.m. Lunch and Program  
 Place: SFVBA Conference Room, Woodland Hills  
 Cost: \$15 members prepaid; \$20 at the door  
 \$20 non-members prepaid; \$25 at the door  
 MCLE: 1 Hour

### Family Law Section and Probate Section

**Topic:** Probate and Family Law Crossover Issues

Speakers: Commissioner H. Ronald Hauptman  
 Date: June 24  
 Time: 5:30 p.m.  
 Place: Encino Glen Restaurant, Encino  
 Cost: \$35 members prepaid; \$40 at the door  
 \$40 non-members prepaid; \$45 at the door  
 MCLE: 1 Hour

### Business Law & Real Property Section

**Topic:** Exemption Planning in Bankruptcy

Speaker: David Hagen, Esq.  
 Date: June 26  
 Time: 12:00 Noon Lunch and Program  
 Place: SFVBA Conference Room, Woodland Hills  
 Cost: \$20 members prepaid; \$25 at the door  
 \$25 non-members prepaid; \$30 at the door  
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Information & Reservations 818•227•0490

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