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Celebrating 75 Years
San Fernando Valley Bar Association
Founded in 1926

BarNotes

A Publication of the
San Fernando Valley Bar Association

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Court To Transfer Caseload Between San Fernando and Chatsworth

As part of its budget reduction plan, the Los Angeles Superior Court has decided to transfer its general civil operations from its San Fernando Courthouse in the North Valley District to its Chatsworth Courthouse, and to transfer its criminal operations from Chatsworth to San Fernando. The transfer will be effective June 30, 2003. The Chatsworth and San Fernando Courthouses will both continue to hear traffic and small claims matters. Family Law matters will remain in San Fernando.

In order to ensure a smooth transition for the police agencies and the public, it is necessary to designate a cut-off date of June 27, 2003 for the acceptance of new criminal filings at the Chatsworth Courthouse. Effective June 30, 2003, all new criminal matters will be filed at the San Fernando Courthouse.

BENCH OFFICER	MOVING FROM	MOVING TO
John P. Farrell	San Fernando Dept. A Courtroom Phone: 818-898-2610	Chatsworth Dept. F49 Courtroom Phone: 818-576-8403
Michael Farrell	San Fernando Dept. M Courtroom Phone: 818-898-2426	Chatsworth Dept. F50 Courtroom Phone: 818-576-8402
Barbara Scheper	San Fernando Dept. D Courtroom Phone: 818-898-2622	Chatsworth Dept. F46 Courtroom Phone: 818-576-8430
Howard J. Schwab	San Fernando Dept. C Courtroom Phone: 818-898-2616	Chatsworth Dept. F48 Courtroom Phone: 818-576-8480
L. Jeffrey Wiatt	San Fernando Dept. J Courtroom Phone: 818-898-2634	Chatsworth Dept. F47 Courtroom Phone: 818-576-8440
Richard L. Brand	Chatsworth Dept. F41 Courtroom Phone: 818-576-8420	San Fernando Dept. M Courtroom Phone: 818-898-2426
Melvin Sandvig	Chatsworth Dept. F47 Courtroom Phone: 818-576-8440	San Fernando Dept. N Courtroom Phone: 818-898-2422
Robert J. Shuit	Chatsworth Dept. F48 Courtroom Phone: 818-576-8480	San Fernando Dept. J Courtroom Phone: 818-898-2634

Department S (formerly know as Division 130) of the San Fernando Courthouse has been designated as the Arraignment Court for the pending misdemeanor files transferred from Dept. F41 of the Chatsworth Courthouse. In order to capture all felony and misdemeanor statistics, each courtroom in San Fernando will be assigned both a Department and Division designation.

Additionally, the Chatsworth Courthouse will no longer staff the lock-up after June 27, 2003, and will no longer process any custody matters after that date. All felony and misdemeanor custodies will be taken to the San Fernando Courthouse for processing; all custodies on traffic warrants will be taken to the San Fernando Courthouse for processing.

The action is related to a $57.3 million deficit in the court's $604 million operating budget for this fiscal year. According to Presiding Judge Robert A. Dukes, "It was clear that several of our courthouses might best serve the justice interests of the various constituencies that use our services if their caseloads were consolidated elsewhere and the facilities themselves converted to other uses consistent with our mission."

Closure of the Chatsworth lock-up will result in annualized security cost savings of more than $1 million. No additional reductions in court staffing levels are anticipated. "It is our intention to have as little impact as possible on our customer services," Dukes said.

The San Fernando Valley Bar Association participated in agency meetings conducted by North Valley Supervising Judge Alice Hill to give input regarding the proposed consolidation. The SFVBA has also teamed with the Los Angeles County Bar Association and other bar associations across California to contact state legislators to express the community's concern about the threatened loss of adequate funding levels that the California courts need to sustain our justice and legal system.

Division	Department	Bench Officer
130	S	Martin Gladstein
131	J	Robert Schuit
132	D	Cynthia Ulfig
133	C	Harvey Giss
134	R	Gerald Richardson
135	N	Melvin Sandvig
136	A	Vacant
137	B	Alice Hill
138	G	Warren Greene
139	M	Richard Brand
500	E	Ronald Coen
501	F	Shari Silver
502	H	Charles Peven
503	I	Meredith Taylor

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President's Message

Stephen T. Holzer

Bar Democracy In Action

By the time you read this in your June 2003 edition of *Bar Notes*, the SFVBA Nominating Committee will have performed its annual duty of recommending candidates for the Board of Trustees. Each year, the Committee recommends candidates for the approximately half dozen Trustee positions that become available as a result of such things as term limits (a Trustee is limited to serving two 2-year terms) or vacancy as a result of a Trustee becoming an Officer.

The Nominating Committee is appointed by the SFVBA Executive Committee and this year consists of Lyle Greenberg, Immediate Past President, who Chairs the Committee; Jim Felton, President-Elect; Christine Lyden, Past President; Marcia Kraft, Chair, Government Affairs Committee; Gerry Fogelman, Trustee and Co-Chair of the Criminal Law Section; Cari Pines, Chair of the Family Law Section; and myself. We believe that the Committee fairly represents the SFVBA community.

The Committee Members do not pretend, however, that we have a monopoly on wisdom insofar as Bar leadership is concerned. Thus, our Bylaws provide that any SFVBA Member in good standing can also have his or her name placed on the election ballot by petition. While the petition process is rarely used, it is available.

As with all representative organizations, the rhythm of leadership selection and change is bittersweet. For those of us who have spent years in the Bar leadership and who are approaching the close of a formal leadership career, leaving the leadership is like leaving a comfortable home. This is heightened by the fact that, over the

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Your Heritage, Your Right, Your Duty:
The Origins of the Jury System in the United States

BY JUDGE HOWARD J. SCHWAB

Trial by jury is one of the most fundamental rights afforded in the United States of America. The origins of right to jury in this nation are said to have come from England. However, even though there is a direct link between the American jury and that of Great Britain, its source is much more ancient and in fact is greatly connected with the ancient Mediterranean world. The peoples that had the greatest influence on the jury system in Great Britain had their origins on the European continent including the Greeks, the Romans, the Franks and the Normans.

In the democracy of ancient Athens in the fifth century BCE, the whole legal system was controlled by lay people, as there were no professional attorneys or judges. The judge would be chosen by lot as well as the jurors from the citizens. In a criminal case, a citizen would be drafted to be the prosecutor and the accused would defend oneself. The great philosopher Aristotle wrote of the jury system in Athens in some detail. Athenian juries were utilized in not only criminal cases but in civil matters as well.

Ancient Rome in the days of the Republic also had trial by jury. At the time of its origins, all the citizens would sit in judgment in order to vote on a legal matter; however as the city became larger and larger, this became impractical. As such, juries became smaller and specialized. For example, if impeachment charges were being brought, then the Roman Senate would be the proper jury. If a civil matter was to be tried, a body of assessors or referees would be assembled by a judge to assist in resolving the lawsuit. In ancient Rome, the lay juries decided both the facts and the law. However, as the Roman republic gave way to the Roman Empire, the jury began to disappear. Trials would only take place before a judge with appeal by citizens to the Emperor of Rome himself. In fact, the Emperor would often sit as a judge in certain important trials and would be guided in the law by legal scholars.

In the year 395, the Roman Emperor Theodosius the Great died dividing the Roman Empire into two parts, the West and the East. The East survived (with a short interruption) until 1453 as the Byzantine Empire. However, the West was overtaken by various barbarian Germanic tribes and fell in 476. It was these Germanic tribes that were to bring about the resurrection of the jury system in legal proceedings.

One of these Teutonic peoples, the Visigoths, had committed great depredations upon Rome and had conquered Gaul. However, they were driven out by another Germanic tribe known as the Franks. The Franks expanded their dominion and under Charlemagne, ruled much of France, Germany and Italy. In the reign of Charlemagne, a certain specified number of people in the community were placed on a select list to be called upon to decide local customs and also to determine certain facts in controversy. These ancestors of the modern jury were called "doomsmen" and had powers of adjudication which not even the nobility could usurp.

The use of laypersons to resolve disputes was well known among other Germanic tribes, including the Saxons, who had invaded England in the fifth century and conquered the Britons. Although it is unclear as to the extent of the use of lay people to resolve differences in Anglo-Saxon England, it is known that they utilized the doctrine of "12 thegns" in order to investigate a question asked of the King.

It will be noted that the number "12" is often used as the number of the jurors to be called on a given cause. According to tradition, it is because that number mirrors Jesus and the 12 disciples in the Gospels. During the Middle Ages and even shortly thereafter, the belief was prevalent that as God ruled the universe, so the King ruled his kingdom and as Jesus had 12 disciples, so the judge who acted on behalf of the King, would have 12 advisors. Thus it appears that the origin of the jury of 12 arose out of influence of New Testament Scripture.

The jury as it is now known did not come into play until after the Norman Conquest of England in 1066. The Normans were Norsemen who had settled in Northwest France, and who had also conquered much of Southern Italy. The Norman kings, once they had taken control of England, utilized juries to answer questions of local concern. An official of the King would go to a certain area and a group of individuals, who resided in the locality, usually 12 in number, would be called upon under oath to give "true answer" to a question of concern to that district asked of the Crown. Thus the jury, as presently known, began to be formed as a body of neighbors summoned by a public official to give under oath an answer to questions posed to them relating to local affairs. Originally juries were used to resolve disputes only in civil suits when claims of the Church were in conflict with those of the State. However, in the twelfth century under Henry II, the role of the jury began to expand in England and jurors were utilized in the cases of persons who were dispossessed of their property.

In the Middle Ages disputes were often resolved by trial by combat in which the parties (or champions hired by the parties) would fight in a tournament with lance and sword to determine their respective rights in a legal controversy. The jury trial became a bloodless alternative to this rather crude matter of resolving differences and one could have juries to determine an issue if both sides agreed to be bound by the jury verdict. Resolution was by a sworn inquest of neighbors known as "proof of the Country" since the jurors acted as representatives of the "Country" or district in which the controversy had arisen.

Originally the jurors were 12 persons who had been witnesses or knew something of the case and would actually make inquiries of the facts before coming to court. Thus, personal knowledge of the events in contest was a prerequisite in order to be a juror and a thin line was drawn between a witness and a juror at that time. However, by the early years of the thirteenth century, jurors were no longer witnesses and were instead to be impartial without knowledge of the dispute to be resolved.

The Sheriff would call 12 "free and lawful men" in the neighborhood who would answer questions brought before them. The jurors evolved from being advisors on a question under oath to an officer of the King under very narrow circumstances to becoming finders of fact in more and more areas of litigation. However, the jury was still under the thumb of Royalty and was seen more as a tool of the King rather than a guardian of public liberties. In fact, if a jury rendered a decision contrary to the desire of the Crown, those jurors could be prosecuted "or attainted" for rendering a "false verdict" and be punished for their decision if it did not coincide with the wishes of the King. However, an event in seventeenth century Great Britain would change all that, the English Civil War.

In the early part of the mid-seventeenth century the issue arose whether or not the legislative body of England of Parliament was separate to or under the total control of the King who was Charles I at that time. A bloody civil war took place in which King Charles I was defeated and beheaded. Although the monarchy after a brief interruption was restored in England, its powers were more limited than before. This lessening of control by the Crown would change the function of the jury from that of the blindly obedient servant of the King to the protector of public liberties.

In 1670, William Penn and William Mead, both Quakers, were accused of preaching and propagandizing their faith. When charges were brought against Penn and Mead, the jury acquitted them, even

though the judge on behalf of Royal aims ordered the jurors to convict. In retaliation, the jurors were starved for three days, found in contempt of the Crown, fined, and imprisoned. One of the jurors, Edward Bushell, filed a petition for Writ of Habeas Corpus in a higher court, the Court of Common Pleas, which ruled in favor of the jury stating that the judge had no power to punish a jury for rendering a verdict contrary to the judge's direction. *Case of the Imprisonment of Edward Bushell, for Alleged Misconduct as a Juryman*, 22 Charles II A.D. 1670 [Vaughan's Reports, 135]. While the court was to instruct the jury as to the applicable law, the jury had the sole power to determine the facts and the issue of guilt or innocence based upon legal principles and evidence presented to them. It was at this point, that the history of Great Britain and the United States would become intermingled because William Penn would become the Founder of the Colony of Pennsylvania.

The trial of William Penn had a tremendous impact upon those who lived in the 13 Colonies in North America. To these individuals, the trial by jury was an important protection against the English government which they found had become more and more oppressive. Thus, after these colonists gained their independence (forming the United State of America), the Constitution had been enacted, and a Bill of Rights framed, trial by jury was guaranteed. When the Bill of Rights was ratified on December 15, 1791, the right to jury had become an integral part of the American national experience.

The Federal Constitution guarantees the right to jury in criminal prosecutions under the Sixth Amendment and in certain civil matters filed in the United District Court under the Seventh Amendment. The right to jury in the State Courts is granted in both criminal and civil cases under Article 1, section 16 of the California State Constitution. The Sixth Amendment right to jury trial in criminal cases is binding on the states. Duncan v. Louisiana (1968) 391 U.S. 145. However, the Federal right to jury in a civil case is not applicable to the states, but is based solely on the rights set forth in the California Constitution. Walker v. Sauvinet (1876) 92 U.S. 90; Crouchman v. Superior Court (1988) 45 Cal.3d 1167, 1173 fn 5.

The importance of jury service cannot be overemphasized. The United States is a representative government: that is, laws are passed by elected officials. Citizens of this country have the opportunity to directly involve themselves in government by means of the vote and by jury service. Here, each citizen individually performs an important task to guarantee the strength of this nation and the liberties to which it is sworn to protect. The jury has a long, noble history with its origins not only in England but also the ancient and medieval world. It is a right and a duty that stems from a revered and proud heritage.

Judge Howard J. Schwab hears civil matters in the North Valley District of the Los Angeles Superior Court.

Purchasing New Technology: Evaluating the Impact on Your Firm

BY EDWARD POLL, J.D., M.B.A., CMC

Purchasing new technology represents a major commitment in time and money. Yet many lawyers and law firms seem to make the decisions of what to buy and when to buy without adequate preparation and usually without fully understanding what the impact the new hardware or software will have on their firms.

Buying new technology is such an important step that I've come up with following four questions that can be used as criteria in the decision-making process. Before taking the leap, ask yourself:

1. What is the return on investment ("ROI") of the purchase?
2. Will the new technology increase the competence of my staff and make the office more efficient?
3. Will the new hardware/software allow me to do something I couldn't do before?
4. Will the quality of my services be improved?

If you cannot answer these questions, you are not ready to buy.

Return on Investment

One method to determine the benefits of a technology purchase is by measuring its financial results. And the most common measure is called return on investment or "ROI."

There are several ways to approach ROI. Here's one: Say the slated expenditure is $1,000, and the expected savings or the expected increase in net revenues is anticipated to be $100 annually. Taking the savings as the numerator and the expenditure as the denominator, the percentage is 10 percent per year, which is the return on investment of the purchase.

Another way to look at this is to figure that the $100, if it occurs each year, will result in a "recovery" of the entire investment after ten years, or, said another way, that the "payback period" is ten years.

A 10-percent return is usually considered too low to make the purchase (investment) unless there are other factors involved (see below). There is no one right or correct rate of return. The return selected or expected is a function of personal choice, available alternatives, and available resources for investment.

When you have a number of projects and expenditures competing for your attention, using ROI is a great way to rank them in the order of financial preference. Then, depending on the budget and resources available, you can select the projects to be undertaken by proceeding down the list, taking the most productive or profitable first.

This analysis, besides being important for your decision-making process, can also come into play if you need financial assistance. With bank borrowing or lease financing, the provider of the capital will want to know how the purchase will impact your practice and how you plan to repay the new debt.

Let's look at a real-world example of how ROI actually works. Tom, a transaction attorney, recently had a large turnover of personnel in his office, and he was upset because the productivity of the new staff was below the level of the previous one. Tom thought he had two options that made sense. The first was to wait out the time until his new staff became more proficient under his watchful tutelage. The second choice

was to purchase software that was created specifically for the type of practice he had. Tom determined that the new system would cost $15,000 in actual expenditure plus the cost of training the staff for a period of three months in its operation. Tom also determined that the productivity of his staff would increase at least two-fold from its current level. This would mean he could handle more cases and increase his cash flow. Tom also figured that the new software would save the cost of one-half a staff person. He calculated that the net increase in savings and in profitability would amount to $30,000 in the first twelve months alone. Tom's ROI would be 200 percent the first year! And his payback period was six months, meaning that at the end of 180 days, Tom would have recouped his initial investment.

In Tom's case, the financial decision was a no-brainer, and he went ahead with the purchase. But, he forgot to take into consideration the impact of the purchase on his staff. Tom reported to me that his staff was resistant to the change; that they were afraid of the new system, and that, since they never participated in the decision-making process, they had no "investment" in the outcome. So, the new system just sat on the desk until it became obsolete. Not only did Tom not experience the savings or the profits, he further lost touch with his staff and increased his own frustration at not being able to "push the work through the system." Which leads us to the second consideration.

Will Staff Competency and Office Efficiency Increase?

Tom needs to go back to the drawing board to create a psychological atmosphere in which his staff will focus on the needs of his clients and the firm's needs to produce the clients' documents as quickly as possible and to convert their work product to cash. And one way to do that is to bring the staff into the new technology, decision-making process early. This is essential if they are the ones who will be working with the new hardware or software. While they cannot dictate the system, staff ideas can improve it, and their participation is essential if the system is to work. Without this participation and "buy-in," Tom 's choice was: Get a new system or get a new staff.

Of course, this choice between new technology or new staff is rarely so extreme. The normal situation is where the purchase of new technology can assist the staff increase their competency and efficiency. For example, the purchase of a case management system such as Amicus or TimeMatters allows the office to become much more systemized and efficient. While the learning curve may be extended, the resulting efficiency and elimination of duplicative efforts can be significant!

Allowing Me to Do Something I Couldn't Do Before?

Purchasing a new system may also allow you to enter a new practice area. For example, one of my clients, a major law firm, was accustomed to performing services in the financial services industry. Their services were based on an hourly rate for significant matters requiring one-of-a-kind efforts. Yet,

many of their clients also had work that was repetitive and more like a commodity, which the firm could not perform for a price the clients could afford. To solve the problem, the firm crafted a new approach that included use of the Internet, a custom-designed database with all the information from the client, the results of litigation available for all interested parties 24 hours a day, and an almost-paper-less operation. While this new system was very expensive to create, it allowed the firm to enter a new practice area, compete successfully with smaller law firms, and expand its market share with many of its clients.

Will the Quality of Service Improve?

Many lawyers focus on technology that relates to litigation. Yet, there are many other ways that new technology can affect your day-to-day operations. For example, Palm-type products let you have your calendars and contact information at hand at all times, and lightweight laptops keep you working whenever and wherever you want. These and other technology improvements allow you to be more available to your clients and to improve your services across the board.

Technology is a tool, not a toy. In the running of a law office, this concept is often given lip service when the sexiness of the new toy governs the purchasing decision. ROI, staff competence and office efficiency, exploring new practice areas, and improving the quality of service are all better measures for evaluating the decision to purchase new technology.

Edward Poll, J.D., M.B.A., CMC, is a coach to lawyers and certified management consultant who shows attorneys and law firms how to be more profitable. Ed's latest book is *Collecting Your Fee: Getting Paid From Intake to Invoice* (ABA 2003); he is also the author of *Attorney & Law Firm Guide to The Business of Law, 2d ed.* (ABA 2002) and *Secrets of the Business of Law: Successful Practices for Increasing Your Profits*. To make suggestions or comments about this article, call (800) 837-5880 or send an e-mail to edpoll@lawbiz.com.

Message From LRIS Coordinator

Michele C. Morley

From time to time, I like to acknowledge the work of our panel attorneys and the success they achieve for our referral clients. The panel members do not applaud themselves. I learn of a small part of the good work done through client surveys and receipt of percentage fee payments. Katherine Pene, of Briskin, Latzanich and Pene, recently won a referral case that earned LRIS almost $28,000 in referral fees. That payment certainly adds value to LRIS' bottom line. However, it is the story about this case that is worth the telling.

We referred a 78-year old gentleman, Mr. Thomas, to Katherine on an insurance bad faith. The case involved an automobile accident that resulted in substantial injuries and damages. The policy limits were $15,000. The plaintiff had offered to settle for the policy limits. The carrier let the settlement offer expire with no response and did not inform the insured about the settlement offer. At the conclusion of the trial, a verdict of $240,000 was entered; the carrier paid their $15,000 policy limits. At this point in his life, Mr. Thomas was left with a $225,000 judgment against him.

Despite a court-ordered mediation and a settlement conference on the insurance bad faith claim, the carrier never offered more than $1,501 to settle. At the conclusion of the insurance bad faith trial, the verdict was $272,250 to pay the underlying judgment, including interest and $77,750 in compensatory damages. A claim for attorneys fee and costs had been severed before trial, and was tried to the Judge after the verdict; $147,720.50 in attorney fees and $37,818.76 in costs were awarded. Because of a misunderstanding of the Judge's instructions by the jury, punitive damages were not awarded. It was decided not to appeal this and the other appealable issue of not being able to present evidence that the insurance carrier's behavior in this case was a pattern in their business practices. After two trials and two hospitalizations for stroke/stress, Mr. Thomas was ready to consider his victory a victory and end his pursuit of justice and fair dealing.

I asked Katherine what she did in the initial consultation that resulted in Mr. Thomas coming to her after his underlying trial was concluded. She responded that she did what she always does with potential clients. She does not try to "sell" them. She listens and conveys that she understands what they are saying and with how they are feeling. She feels that an attorney must be honest with the client from the first. She told me that she actually discourages litigation more often than not. She explains that litigation is not pleasant and is often not cost-effective. She does not take some cases because the attorney and the potential client have to agree on the perspective of the case and how they should proceed. She evaluates the clients; what will they be like to work with and how they will be perceived by a jury?

I asked her how she prepared her clients for testimony. She responded that she tells them that they have told their story to many people. They are just going to tell it again to a group of twelve who are really paying attention and are interested in what the witness is saying. Katherine does not use notes, because she has learned that they are distracting and that you want the jury to be watching the witness, not an attorney fumbling for a note or a piece of paper.

When you talk with Katherine in person, she immediately conveys that she is focused on what you are saying and is listening to your every word. She never seems hurried or distracted and I happen to know she is usually litigating major cases.

None of what Katherine told me were unique trial techniques or a special manner of working with a client. As Einstein said, "Make everything as simple as possible, but not simpler." In this case, Attorney Pene kept it simple for the client, and for the jury. It proved more complicated for the carrier.

SAN FERNANDO VALLEY BAR

Association

2003 All-Section Networking Meeting & Lintz Award Dinner

Tuesday, June 10, 5:30 p.m.
Calabasas Inn,
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INTERACTIVE PRESENTATION ON
Perception, Memory, and Suggestibility:
Is It Just Your Client's Perception or Reality?
by Robert Shomer Ph.D.

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Stretching Your Practice:
Electronic Searching And Filing Of Trademarks

BY DAVID L. HOFFMAN

Most business or general attorneys regard intellectual property (IP) as an enigma. This is especially true when it comes to patent practice. After all, there is a separate "patent bar" required for representing patent applicants in the U.S. Patent & Trademark Office ("PTO"). By contrast, a trademark applicant can be represented by any lawyer. Accordingly, all lawyers can potentially file trademark applications. For those who want to venture into trademark law, and in particular for those who want to perform trademark searches and/or file trademark applications, I am writing this article to help you spot important issues before it is too late.

Due to the Internet, filing trademark applications can be a fairly simple matter, especially once you have done one or two. This is especially true for trademark applications because the PTO recently created a system called TEAS (Trademark Electronic Application System), which enables preparing and filing applications via the Internet. In fact, to encourage electronic filing, effective June 24, 2003, if you file a trademark application by express mail (the current typical manner), you will no longer get the benefit of the date of deposit in express mail as the filing date. The PTO will only give you the date of actual receipt.

The PTO's web site for trademarks is at www.uspto.gov/main/trademarks.htm. To electronically file, you select TEAS. The steps for filing are relatively easy and you can even pay by credit card. However, due to the simplicity of electronic filing, critical determinations can readily be overlooked. The danger of electronically filing trademark applications is that one might take actions prematurely, e.g., before a full investigation of other prior marks. Client do-it-yourselfers can save themselves attorney's fees, but end up with an application of little or no value.

The most important work comes before an application is even filed. Searching, clearing and selecting the mark, are critical. In addition, describing the goods and/or services, selecting the type of application, (i.e., intent-to-use or use based), and whether to file state and/or Federal trademark applications. One must also understand the difference between specimens and drawings. The PTO, in the case of any conflict between the drawings and specimen and/or description of the mark, considers the mark to be what is shown in the "drawing." For example, when the drawing is simply a typed form of the mark (known as "block letter form") the application is for the broadest protection. Alternatively, the drawing may include words with a logo or stylized words (e.g., written in script such as the famous Coca-Cola® mark). The registration that will issue will be on the words plus logo as shown in the drawing. Accordingly, all specimens, i.e., examples of how you use the mark, must contain the words and logo as shown in the drawing. When you file in block letter form, the specimens can use those words in any form, including with a logo, coloring, script, etc.

The protection you obtain from a trademark registration may last forever, or at least many years. One Coca-Cola® registration is about 110 years old. It makes sense to file on the right mark upfront. In addition, the time invested from the date of filing a trademark application or from the date of first use, is critical in determining your client's rights. The importance of use and selection of the right trademark thus is evident. Every five years after registration, use of the mark as shown in the drawing must be proven in order to maintain the registration. If the client changes the style of the mark, the registration may become worthless if it is not in block form.

Trademarks can be searched on the same PTO web site by selecting "TESS" (Trademark Electronic Search System). First and foremost, understand that the TESS database is limited to federal trademark applications and registrations. It does not include many other trademarks, including state trademark registrations, "common law" users (those who use marks but never applied for registration), and domain names. These search areas can find users with prior rights, and which it is best to do before filing an application. A small change to the mark before filing (and before launching the product or service) could avoid serious problems later.

A TESS search is an excellent "screening" tool in an ideal trademark selection process, as follows: Create a list of potential trademarks; search each on TESS; pick the safest trademark; then perform a "full search," i.e., a search of state registrations, common law users and domain names on that mark.

When searching, look for marks that are close in spelling and sound, and sometimes in meaning. Look for marks in related goods or services, not just the goods or services with which the client will use the mark. For example, if searching GOTCHA for hats, search all clothing, helmets and headbands. If the hats are sports-style caps, you may also want or need to search sporting goods. You may need to search for just "GOT" and just "CHA" so you get similar marks. You would not want to miss "GOT CHA" (as two words) or even "GOT YOU." If the word or phrase is not that common, it may be useful to search for a close word or phrase without any restriction on the goods or services.

You may need to adjust the search

strategy depending on the results. For example, if no one is using "GOT" in clothing, you may need to search "GET." You would not want to stop searching at "GOT", then find out that there is someone using "GET YAH" on caps after you have invested not only in a federal registration, but also in a national roll out. There are many more considerations in searching, but the point is simply that careful search and mark selection can save a lot of headaches down the road. There are also important factors to consider in preparing the trademark application itself.

It is important in any trademark search and selection process to understand how infringement is determined. Trademark infringement is determined by considering eight factors (in some circuits the factors vary). The usual, most important three factors are the similarity of the marks in appearance, sound, meaning or otherwise; the relation of the goods and/or services of the marks; and the strength of the first mark. For example, Xerox® will obviously get much greater protection than an internet business named E- Shoppe opened last week due to long use, extensive sales, and advertising of Xerox® is also strong because "Xerox" has nothing to do with the goods (copiers).

Remember; the most important part of preparing a trademark application is the search and selection process prior to filing.

David L. Hoffman has been practicing IP law exclusively for over seventeen years. His practice includes procurement, litigation, licensing and infringement clearance

The San Fernando Valley Estate Planning Council

Presents

Attorney Steve Kurtz

THE ADMINISTRATION OF A PROBATE ESTATE WHEN A DECEDENT DIES AFTER FILING BANKRUPTCY

The San Fernando Valley Estate Planning Council will hold its next monthly meeting on Thursday, June 26, 2003, at 6:00 p.m., at the Airtel Plaza Hotel, 7227 Valjean Avenue, in Van Nuys. Seating is limited. For further information contact:

Robert Weinstock, Treasurer
818-591-9282 • rweinstock@beaco.com

The Tax Effects of Holding Title to Your Residence in Another Entity

BY MICHAEL DANIELS, ESQ., CPA

Many practitioners suggest a transfer or re-title on a personal residence as part of asset protection or estate planning strategies for their clients. Unfortunately, clients may suffer a loss of tax benefits associated with residence ownership. The main tax benefits associated with home ownership are the exclusion of gain from its sale and the mortgage interest deduction.

Two main requirements for obtaining the exclusion of gain from the sale of a personal residence are “ownership” and “use”. The ownership test generally requires that the taxpayer own the residence directly, not through an entity. The IRS rulings indicate that when title to a residence is held through a different entity, such as a partnership, corporation, or limited liability company, the deductions and benefits associated with the home ownership will be either fully or partially lost. Holding the residence in a revocable trust will not cause the taxpayer to lose any benefits because the IRS has ruled that a taxpayer is the owner of a residence.

Similar to revocable trusts, a taxpayer, including a husband and wife taxpayer, may hold their residence through a limited liability and retain the residence tax benefits.

Typically, by default, an LLC with two or more members will receive the classification of partnership, assuming no steps are taken other than to form the LLC. The general approach of the tax law is that a "business entity" with two or more members is classified as either a partnership or a corporation, and entities with one member are either classified as a corporation or are disregarded altogether. Generally, one will lose their tax benefits by holding the residence through a partnership or corporation. However, a husband and wife can be an individual and can hold their residence through an LLC and still avoid the loss of tax benefits if the LLC is considered a disregarded entity for tax purposes. The IRS has recently ruled that a husband and wife in community property states can be members of an LLC and elect disregarded entity status. The result would be the same if the husband and wife held the LLC through a revocable or irrevocable their trust.

If the election to disregard entity status for tax purposes is made, entity ownership of the residence does not thwart the ability to take the mortgage deduction or take advantage of the sale of residence exclusion (IRC121).

Thus, to be assured that the tax benefits associated with home ownership remain intact when a personal residence is held in a limited liability company, the interest should be held through a single member limited liability company or by a husband and wife. By electing to disregard the entity, a sepa-

rate entity does not stand in the way of the owners obtaining the tax benefits associated with home ownership. Recent IRS regulations allow the residence exclusion when title is held by either an LLC treated as a disregarded entity or certain trusts.

It is important to note that even though the IRS may consider an entity disregarded for income tax purposes, for collection purposes the entity will be recognized. In CCA 199930013, the IRS Chief Counsel recognized the legal distinction between a single-member LLC and its owner. The Chief Counsel determined that the IRS may not levy on the assets of a single-member LLC to satisfy the owner's personal tax liability. The Chief Counsel specifically stated that the fact the LLC elected to be disregarded for federal tax purposes does not empower the IRS to disregard the entity in collection matters.

As far as tax exchanges of real estate are concerned, disregarded entity status may be valuable. The exchange of property for an interest in a single-member limited liability company (LLC) that holds like-kind property also is not excluded from eligibility for non-recognition treatment, as long as the LLC is a disregarded business entity for federal tax purposes. PLR 200118023. Where a taxpayer proposed to exchange an interest in real property for an interest in a single-member limited liability company, a private letter ruling held that the acquisition of the LLC could be treated as the acquisition of §1031 like-kind replacement property to the extent that the LLC's property at the time of the exchange consists of qualifying like-kind property; any other property held by the LLC would be taxable to boot. [Priv.WD 200118023]

One should also be aware that one may qualify for the mortgage interest deduction, but not for the exclusion on the gain from the sale of the residence. This is because exclusion of gain from the sale of a residence and the mortgage interest deduction contain different requirements. Equitable and beneficial ownership may be enough to take the mortgage interest deduction, while the gain on sale exclusion requires actual direct ownership or ownership through a single member LLC.

There are two cases worth noting allowing the mortgage interest deduction for taxpayers that were not on title. Trans v. Commissioner, T.C. Memo 1999-233 is the most recent tax court memo case and that case followed Uslu v. Commissioner, T.C. Memo 1997-551. In Uslu, the taxpayers could not qualify for a home mortgage loan because of a recent bankruptcy. In Uslu, the taxpayer-husband and his brother agreed that the brother would obtain the loan for the property and the taxpayers would pay the mortgage and all other expenses for maintenance and improvements. This Court held that although the taxpayers did not hold legal title to the property, they were the equitable owners and were entitled to deduct mortgage interest paid by them with respect to the property.

Consequently, there could be enough case law allowing the mortgage interest deduction by establishing equitable and beneficial ownership, yet possibly losing the residence sale exclusion, by having the property titled in another entity. Thus, after transferring the residence to an LLC and electing disregarded entity status, there is a substantial likelihood of retaining both the residence exclusion and home mortgage deduction.

Michael Daniels is a CPA and attorney, has an M.S. in taxation and is a certified specialist in taxation law. He can be visited on the web at www.michaelddaniels.com.

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Vocational Rehabilitation

Business Law & Real Property Section

Construction Defect Law Seminar

Friday, June 6, 2003

4 Hours MCLE Credits

University of West Los Angeles
San Fernando Valley Campus
21300 Oxnard Street, Woodland Hills

MODERATOR
Hon. Marvin Rowen, Ret.
of Judicate West

PROGRAM

8:30 A.M.	**REGISTRATION AND CONTINENTAL BREAKFAST**
9:00 A.M.	**NEW CONSTRUCTION DEFECT LAW: MANDATORY MEDIATION AND CONTRACTOR'S RIGHT TO FIX** *Fred Gaines, Esq., Gaines & Stacey LLP* *James Acret, Esq. Thelen Reid & Priest LLP*
10:00 A.M.	**LITIGATION STRATEGY FOR ADR AND TRIAL** *Leigh Datzker, Esq.* *G. Christian Roux, Esq., Weston, Benshoof et. al LLP*
11:00 A.M.	**FUNDING RESOLUTION OF CONSTRUCTION DEFECT CLAIMS: INSURANCE COVERAGE** *Stanley Shure, Esq., Zevnik Horton LLP*
12:00 P.M.	**LUNCH**
12:30 P.M.	**BEHIND THE SCENES: HOW THE NEW CONSTRUCTION DEFECT LAW CAME TO BE** *Nick Cammarota, General Counsel, California Building Industry Association* *Mark Milstein, Esq., Verboon, Milstein & Peter LLP*

Co-Sponsored By Judicate West

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Membership Has It's Priveleges!

President's Message continued from page 3

last decade or so, the SFVBA has been exceptionally well run and financially very stable, thus sparing the Trustees and Officers from crisis management and allowing them to focus on the "big picture" of the organization's goals and programs.

The melancholy of past and soon-to-be past leaders is essential, however, for the vibrancy of the organization. As the old leadership leaves, the new leadership arrives with new enthusiasm and new visions for the future. Every Member of the SFVBA realizes, or should realize, that he or she is a potential Trustee, Officer, or Section or Committee Chair, provided only that the member is willing to put in the required effort. This constant opportunity to become an SFVBA leader and to shape the future of the organization is, I expect, one of the reasons our Membership has such an upbeat view of the SFVBA.

I have in the past mentioned that the SFVBA enjoys a situation rare in the case of volunteer organizations these days— we are financially stable; we are recognized as one of the Nation's premier local bar associations (having just gained a seat in the ABA House of Delegates); we have an expanding Membership; and, very importantly, we do not have stratified cliques of the "in" groups and "out" groups. The leadership consists of a spectrum of attorneys from various practice areas who often have differing views that are molded, with good humor, into a consensus.

Those of you involved in various volunteer organizations know that the SFVBA's fortunate situation, while not unique, is nonetheless rare. Each of you has a real opportunity to become part of our organization's future leadership and to be part of taking us to even greater accomplishments. Please give consideration to becoming such a future leader.

The SFVBA invites members to submit articles for Bar Notes. Articles should be educational in nature, and can be tailored for the new practitioner or experienced lawyer. The typical article is 800 to 1,200 words in length, and contains no footnotes. Articles can be submitted electronically to epost@sfvba.org. For additional guidelines, contact Liz Post at (818) 227-0490 ext. 101.

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June Events

calendar and MCLE event listings

Business Law & Real Property Section

Topic: **Construction Defect Law Seminar**
Date: June 6
Time: 8:30 a.m. Registration;
8:45 a.m. Program and Continental Breakfast
Place: University of West LA, San Fernando Campus, Woodland Hills
Cost: $55 members prepaid; $75 at the door
$75 non-members prepaid; $95 at the door
MCLE: 4 Hours

All-Section Networking Meeting and Lintz Award Dinner

Presentation of 2003 Stanley M. Lintz Award to Sharley Allen and SFVBA Volunteer of the Year to William J. Kropach
Topic: **Perception, Memory and Suggestibility**
Speaker: Robert Shomer, Ph.D.
Date: June 10, 2003
Place: Calabasas Inn, Calabasas, 5:30 p.m.
Cost: $50 SFVBA Members
MCLE: 1 Hour

Probate and Estate Planning Section

Topic: **Death and Property Taxes**
Speaker: Rick Auerbach, Los Angeles Tax Assessor
Date: June 10
Time: 12:00 Noon
Place: Radisson Hotel, Sherman Oaks
Cost: $30 members prepaid; $35 at the door
$35 non-members prepaid; $40 at the door
MCLE: 1 Hour

Taxation Section

Topic: **Risks and Obligations of the Attorney in Criminal Tax Fraud Investigations**
Speaker: Mark D. Pastor, Esq.
Date: June 11
Time: 6:00 p.m. Dinner and Program
Place: SFVBA Conference Room, Woodland Hills
Cost: $30 members prepaid; $35 at the door
$35 non-members prepaid; $40 at the door
MCLE: 1 Hour

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* Please note that no credit will be given unless notice of cancellation is provided 48 hours before scheduled event

Small Firm and Sole Practitioner Section

Topic: **Stress Management for Attorneys**
Speaker: Dr. Diana Shulman
Date: June 13
Time: 12:00 Noon
Place: SFVBA Conference Room, Woodland Hills
Cost: $20 members prepaid; $25 at the door
$25 non-members prepaid; $30 at the door
MCLE: 1 Hour

Workers' Compensation Section

Topic: **Case Law Update**
Speaker: Hon. Mark Kahn, Regional Manager
Dept. of Industrial Relations
Date: June 18
Time: 12:00 Noon
Place: Encino Glen Restaurant, Encino
Cost: $30 members prepaid; $35 at the door
$35 non-members prepaid; $45 at the door
MCLE: 1 Hour

Barristers/Young Lawyers Section

Program: **Networking Mixer**
Date: June 18
Time: 5:30 p.m. – 7:30 p.m.
Place: BJ's Restaurant, Woodland Hills
Cost: Free of Charge! Sponsored by Lewitt, Hackman, et al.
RSVP: Linda @ 818-227-0490 ext. 105

Litigation Section

Topic: **Orthopedics: Everything You Always Wanted to Know**
Speaker: Clive Segil, M.D.
Date: June 19
Time: 6:00 p.m. Dinner and Program
Place: SFVBA Conference Room, Woodland Hills
Cost: $30 members prepaid; $35 at the door
$35 non-members prepaid; $40 at the door
MCLE: 1 Hour

Family Law Section

Topic: **Hot Tips from the Bench and Bar: What Every Family Law Attorney Needs to Know**
Speakers: Judicial Officers and Experienced Family Law Attorneys
Date: June 23
Time: 5:30 p.m.
Place: Encino Glen Restaurant, Encino
Cost: $38 members prepaid; $45 at the door
$45 non-members prepaid; $50 at the door
MCLE: 1 Hour

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