



# BarNotes

A Publication of the  
 San Fernando Valley Bar Association

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## Volunteers Are Key to SFVBA Success

It was reported in last month's *Bar Notes* that the San Fernando Valley Bar Association surpassed 2,000 members in December for the first time in its seventy-five year history. (As of February 15, the SFVBA has 2,120 active members.) The Bar's strong leaders and capable staff are receiving praise for achieving this milestone; however, like most non-profit trade associations, the accolades should be equally directed toward the SFVBA members who volunteer to sit on committees, plan and participate in Section programs, and help carry out the work of our growing organization.

While the SFVBA has many dedicated and talented volunteers, more are needed to continue to refresh and stimulate our Association. Members interested in getting more involved can choose from more than two-dozen committees, including the LRIS Committee, Resolutions Committee (represents the SFVBA at the Conference of Delegates), Programs Committee, and the executive committees of the SFVBA Sections. Following are four of the SFVBAs more active committees:

- **The Government Affairs Committee** reviews court decisions and legislative initiatives affecting the practice of law for San Fernando Valley attorneys. The Committee makes recommendations to the Board of Trustees concerning submitting amicus briefs to the courts and taking positions on legislation and propositions.
- **The Membership and Marketing Committee** monitors the pulse of the organization and the profession. The Committee evaluates and creates the benefits and services that current and potential members want. The Committee also looks at ways to increase public awareness and use of the Lawyer Referral & Information Service. The Committee's primary focus this year is on upgrading the SFVBAs website to provide more and better services to members. Some of the upgrades on the Committee's wish list include listserves, live on-line MCLE programs, electronic newsletter, online Board elections, and more.
- **The Bench-Bar Committee** is the SFVBAs liaison to the courts. The Committee of local judges and attorneys meets bimonthly at an area courthouse to address issues facing the Bench and the Bar. The Committee has also set up monthly lunch meetings for the Barristers with the Valley judges. This new program provides young lawyers a unique opportunity to hear what each participating judge expects from attorneys appearing in their courtroom, as well as the chance to ask questions and receive candid answers in an informal setting. (The first lunch meeting is March 13 with Van Nuys Supervising Judge Paul Gutman.)
- The SFVBA has a long and distinguished history of community service. **The Public Service Committee** spearheads the Bar's pro bono efforts, including Ask-a-Lawyer program, *Blanket the Homeless*, and the Self-Help Centers. In January, the Committee sponsored an attorney training on legal services for reservists.

Members interested in joining a committee can call Executive Director Liz Post at (818) 227-0490, ext. 101 or email [epost@sfvba.org](mailto:epost@sfvba.org).

## Calendar of Events Page 23

SAVE THE DATE!

**APRIL 18<sup>TH</sup>**  
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## President's Message

Lyle F. Greenberg

### Twelve Angry Men

No, this is not a movie review, but rather, a series of observations and questions about our jury system and how we, as members of the San Fernando Valley Bar Association, can improve the public's present attitude toward jury service.

The jury system is an integral part of our system of justice, which, along with an independent judiciary, is key to our perception of fairness in the legal process. Americans speak with pride about our jury system and yet we all know at least one person who would rather go to the dentist than serve on a jury. In some instances, we are that someone.

Despite the negative public opinion about lawyers, law sells! Every single day newspapers and television news programs highlight lawyers, court decisions, and disputants locked in some controversy. The public is clearly interested in what we do as evidenced by the increase of law related entertainment over the past decades from Perry Mason and Harrigan & Sons in the 1950s and 1960s, to L. A. Law, and around-the-clock Court TV, which exhibits the actual process rather than a fictionalized one with a streamlined version of what the practice of law is really like in the trenches. People are interested in how the courts work, the disputes, struggles and conflicts that we deal with as well as those of our clients. They are interested in the human aspect of our work. Furthermore, everyone has an opinion and will tell you what they think about the latest controversy whether it be the Enron debacle, the Microsoft anti-trust case, or the latest murder trial on Court TV.

*continued on page 16*



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# Is A Malpractice Insurance Crisis Looming In Your Horizon?

## Are You Ready?

11 carriers have withdrawn from the California market. Will your carrier be next? The changes in the marketplace are troubling. It is an unknown future. Non-renewals are commonplace. Some carriers can't secure sufficient reinsurance to operate their professional liability programs. A major carrier was recently declared insolvent. Other carriers have been downgraded by A.M. Best. Severe underwriting restrictions are now being imposed. Dramatic rate increases are certain.

*It's all very unsettling.*

## Be Prepared. Be Informed. Lawyers' Mutual Policyholders Are.

### CHECKLIST

*You owe it to yourself to find the answers to these critical questions!*

- ✓ *Will your carrier* still be writing professional liability policies in California at your next renewal?
- ✓ *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?
- ✓ *Will your carrier* leave the marketplace because they can't secure sufficient reinsurance for their professional liability program?
- ✓ *Will your carrier* offer you a tail of unlimited duration if they decide to leave the market?

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# The Importance of Numbers: Why Attorneys Should Care About Accounting

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



Edward Poll, J.D., M.B.A., CMC, is a certified management consultant and coach in Los Angeles. He is the author of *Secrets of the Business of Law: Successful Practices for Increasing Your Profits* and *The Profitable Law Office Handbook: Attorney's Guide to Successful Business Planning*; and he is the creator of *Law Practice Management Review: The Audio Magazine for Busy Attorneys*. He is also the author of the ABA book, *Attorney & Law Firm Guide to The Business of Law: Planning & Operating for Survival & Growth*, and developer of *The Tool Kit for Buying or Selling a Law Practice*. For ordering information or to make suggestions or comments about this article, call (800) 837-5880 or E-mail [edpoll@lawbiz.com](mailto:edpoll@lawbiz.com). You can also visit Ed Poll on the web at [www.lawbiz.com](http://www.lawbiz.com).

Accounting is a world of numbers -- financial numbers. For a law office, accounting means keeping track of money flowing in and out of the practice, an activity attorneys seem to have little time for. But the importance of proper accounting procedures -- it's required for client trust record-keeping -- cannot be overstated.

An understanding of basic accounting can positively impact the internal operation of your firm and allow you to:

- Design and request the management reports that are important to you and that will help you manage and operate your practice more efficiently and more effectively;
- Understand, question and utilize financial reports and information presented to you; and
- Make changes in your future course based on an accurate interpretation of the reports and financial information.

Outside of the firm, accounting continues to help the lawyer by allowing you to:

- Speak the language of business, which is essential if you're seeking corporate clients;
- Understand and empathize with corporate or individual clients when they complain that business is slow or that the cost of doing business is rising, etc.; and
- Examine or cross-examine documents and experts where financial information is significant to the successful pursuit of your client's matter or litigation.

## An Accounting Glossary

Like any other profession, the world of accounting has its own language, and a knowledge of key financial terms will be valuable for any lawyer involved with financial matters.

**CASH vs. ACCRUAL ACCOUNTING:** Cash-basis accounting reflects only the collection of cash into the practice, not billings or work in progress (work not yet billed). Keeping track of cash coming in or going out is the basis for most small-firm finances. Accrual-basis accounting reflects income from billings (as contrasted to collections).

**ACCOUNTS RECEIVABLE:** Money that is owed for work performed and billed but not yet collected or received.

**ACCOUNTS PAYABLE:** Money (usually expenses) that is owed others and not yet paid out.

**AGING:** An analysis of how old billings and accounts receivable are.

**INCOME & PROFITS:** These are accrual accounting terms both referring to what is left over after expenses have been deducted from sales or revenues. Of little relevance to small firms using cash-basis accounting.

**REVENUE:** All the sources of cash to the firm including fees, awards, recoveries, etc.

# Bankruptcy

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**EXPENSES:** Costs of operations including salaries, rent, supplies, insurance, etc.

### Accounting Reports

Accounting and management reports that you prepare, or have prepared for you, can be critical to your firm's growth and success. Accounting reports that summarize the results of business transactions during a specific period of time are usually called financial statements, and are the first three explained below.

**CASH FLOW PROJECTION:** This is the most important report available to a law firm (or any small business). Cash flow projections are usually in the form of a spreadsheet with months (12 to 18) listed across the top and expense and revenue items listed to the left from top to bottom. (There are two separate sections: revenues and expenses) The amounts of money collected and spent by the month should be inserted into each grid "cell" with totals for the month and for the year computed. Cash flow reports are usually created annually and updated each month as more information is learned. (For an actual cash flow projection form, see the author's book Attorney & Law Firm Guide to the Business of Law: Planning & Operating for Survival & Growth, 2nd Edition, published by the American Bar Association, 2002.)

A monthly variance report can be created separately or included as columns in the cash flow projection. This highlights all the major changes from the projection compared to the actual amounts paid and received.

A daily cash report can also be used, where the previous balance is modified by the change in the day's cash position (cash in minus payments mailed out).

**INCOME STATEMENT:** This is also called the "profit and loss" statement, or "P&L," and is used to chart the figures used in accrual accounting. As such, it is not that important for cash-based law firms, although it does give an overview of the relative financial health of the business. Income statements are typically prepared on a quarterly or annual basis.

**BALANCE SHEET:** The least important report for a professional service business, a balance sheet is a snapshot of a firm on a certain date. It lists all assets and liabilities.

**ACCOUNTS RECEIVABLE SCHEDULE:** This monthly report shows how much money is owed by each client.

**ACCOUNTS RECEIVABLE AGING:**

Prepared monthly with weekly updates, the "aging" shows how much money is owed by each client and the month in which the bill was sent or how many months the bill is outstanding. This is an essential document for the effective practice of law.

**ACCOUNTS PAYABLE AGING:** Similar to the receivable aging, the payable aging



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is really worth talking about.

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is a monthly expense report that tells you how much is owed to whom and for how long. Based on your cash availability, you can use this report to pay your bills.

**WRITE-OFFS:** A monthly report that tells you how much billing you have eliminated. There are two basic types of write-offs: time that never gets billed because you do not want to charge for it and money previously billed but "written off" in response to a client's complaint or a negotiated resolution because of a billing disagreement.

**HOURS WORKED:** A regular report that compares hours worked and billed with the total hours that you set for your billing goal for the day, week or month.

### Accounting Support

While many lawyers and law firms will use the help of outside accountants or bookkeepers, the fact remains that you still need to be familiar with the information if you are going to learn from it. And one form of accounting help that has become invaluable to law offices, no matter who is doing the actual work, is computer software. There are many software programs that can help you prepare the reports mentioned above. Some of the most popular today include: Excel, Quatro Pro and Lotus, which are all spreadsheet programs. But don't forget word processing programs like WordPerfect, which are

very powerful and now offer some of spreadsheet and database functions that are essential to accounting.

A special mention should also be made about Quicken/QuickBooks, the number-one selling financial information software on the market. This relatively inexpensive program is easy to learn and capable of not only producing many reports, but it can also write your checks, maintain your check register, develop budgets and keep track of more than one bank account.

The technology exists to make your or your staff's life easier and to keep you better informed. So even if you're using an outside accountant or bookkeeper, you still can take information and generate reports internally. Also, since almost no accountants now work only with pencil and ledger, providing an accountant with information on computer disk will shorten their effort -- and reduce their fee -- since they can simply plug it into their automated system.

Understanding and working with financial information is the goal of accounting. Lawyers who spend the time and energy to improve their accounting skills can only profit from analyzing financial information to help guide the growth of their law practices. Understanding financial figures, learning the language of business and using accounting and management reports permit you to focus quickly on the financial side of your practice and delegate routine tasks to staff or outside contractors while you practice law, market your services and address only those areas in your firm that need adjusting to be even more efficient and more effective. 📈

# RICHARD GORDON

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# Consider Compliance With Securities Laws In Your Next Business Law Transaction

BY RICHARD GORDON



Richard Gordon is Of Counsel to Lewitt, Hackman, Shapiro, Marshall & Harlan. He has practiced securities and business transactional law in Los Angeles for more than twenty years and has served as the Chief Regulatory Counsel for the Los Angeles Regional Office of the Securities and Exchange Commission and as a Branch Chief in its Washington, D.C. headquarters. To make comments about the article, call (818) 990-2120 or e-mail [RGordon@lewitthackman.com](mailto:RGordon@lewitthackman.com).

Attorneys should always analyze whether a business transaction will result in the issuance of a security. This article will highlight some basic criteria for determining what constitutes a security.

Attorneys regularly advise and assist their clients in complying with applicable laws in their business transactions. Often Federal and California securities laws apply because the transactions involve the issuance of securities. These securities laws, if applicable, require the attorney to analyze the relevance of California and Federal registration and anti-fraud provisions to the transaction. For example, is there an exemption available for the securities being issued or must they be qualified with the California Department of Corporations under the California Act and/or registered with the Securities and Exchange Commission pursuant to the Securities Act? Do you need to be concerned with the adequacy of disclosures to avoid the potential application of the anti-fraud provisions of Federal securities laws and the California Act?

## Investment Contracts

While there are some minor differences, the basic definition of a "security" under the Securities Act and the California Act is the same. Conventional corporate securities such as stocks and bonds are obvious and, accordingly, are not discussed in this article. Others, such as partnership interests and other forms of profit participations, and promissory notes in various contexts, may be less obvious. Finally, and most importantly, the term "investment contract" serves as a catchall to include any arrangement where a person invests money in a common enterprise with the expectation of realizing a return primarily through the efforts of others. *SEC v. W.J. Howey Co.* (1946) 328 U.S. 293, 298-99 Under the *W.J. Howey* definition, numerous business transactions involving the sale of such items as real property, personal property, precious metals and gems, and franchises have, under certain circumstances, been deemed to be investment contracts and, thus, securities.

## Limited Liability Companies and Partnership Interests as Securities

The interests of limited partners (as opposed to general partners) in a limited partnership, or interests as non-managerial members in a limited liability company, will normally be considered securities. Courts in analyzing these business structures have used the *Howey* investment contract test and determined these interests to be securities because such interests involve investment in a common enterprise with profits to come solely from the efforts of others.

On the other hand, interests in a general partnership or joint venture normally are not securities because of the legal power of the general partners or venturers to participate in the management and/or business operations of the entity. However, this is not absolute and, accordingly, general partnership or joint venture interests can be determined to be securities, if the partner or joint venture investor can show that the agreement leaves so little power in the hands of the partner or venturer that the arrangement is actually analogous to a limited partnership. In addition, if the partner or venturer lacks sufficient business experience and expertise needed to exercise partnership powers, or the partner or venturer is so dependent on the managerial expertise of other partners or third parties that he cannot exercise substantial partnership or venture power, the investment contract analysis may be used to determine that such interests are securities.

## Notes as Securities

A "note" like "stock" and "investment contracts", is specifically included in the definition of a security under the Federal securities laws and the California Act. Nonetheless, under court decisions, notes have not always been deemed to be securities. In *Reeves v. Ernst & Young* (U.S. Sup. Ct. 1990) the Supreme Court explained that while common stock can be considered to be the

*continued on page 11*



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**Message From  
 LRIS Coordinator**

**Michele C. Morley**

Listening is a fine art. Even law schools are teaching listening techniques to first year students. The law school interns that work with the LRIS all comment that the experience improves their listening skills. We all know that the legal profession's number one client complaint is failure to communicate. However, the first step in communicating is listening. We all have suddenly realized in a conversation that our thoughts have wandered away from what is being said to us. We have a motion due first thing tomorrow. We have heard the similar facts many times. We think, "I really do not need all this information until later." One of the reasons that the public is losing trust in lawyers and doctors is that the public often feels that the doctor or lawyer is not listening. A good listener is fully present when you are a participant in a conversation. I recently met with a good listener.

Ronald Whiteman has been a LRIS panel member since 1981 and a lawyer since 1977. He is currently the Legal Director of the Free Clinic of Simi Valley. He has gone to the clinic one to two times a month for 25 years. His first day there was the day after he was sworn in as an attorney. As Director, he is committed to giving even more of his time from his busy practice. He also recently received a Chamber of Commerce of Simi Valley Volunteer of the Year Award. He chooses to share his time.

As an attorney practicing family law, Ronald feels he is professionally obliged to be sensitive to the emotional turmoil and turbulence the spouses and children often feel. He tells clients it is fine if they need to call and leave a message on his voice mail. He checks his messages often and always returns calls as soon as possible, and that includes evenings and weekends. You have a sense when visiting with Ron that he has been listening carefully to his clients since the very beginning of his practice. However, he feels he is an improved attorney because he has taken training in listening. That training occurred while he was pursuing degrees in psychology. He is close to completing his doctorate in psychology and has a Masters in Marriage and Family Counseling.

Ron does not simply make the statement to the client, "You will have to sell the house." He spends time listening to the client and asking questions such as, "What do you think about selling the house and what issues would a sale raise with you, your spouse, and your children?" He described one client who came to him in great anxiety for a divorce. Spending time listening to this client revealed more than usual levels of anger. Ron advised the client to take some anger management courses. The client and the spouse decided to do that. Several months later, the client came back to Ron's office and asked him to begin the divorce proceedings. The client warmly thanked Ron for his earlier advice and said that while he was still getting a divorce he was now doing it in the right way and without the anger. Clearly, Ron is providing service that exceeds the clients' expectations. While failure to communicate is the number one complaint of clients about attorneys, receiving good service ranks higher with clients than competence or fees.

Ron left home at an early age and spent a year in Vietnam. He was attending CSUN when he decided to attend law school. People along his way took time for him, and he now takes time for others. Whether it is returning phone calls, listening patiently and closely to a client, working at the free legal clinic, or studying psychology to become a better family law attorney, Ronald Whiteman is a counselor at law. ✍

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*Consider Compliance... continued from page 8*

"quintessence" of a security, the same cannot be said about notes, which are used in a variety of settings, not all of which involve investments. Accordingly, an approach based on the "economic reality" of the transaction rather than a strict definition of a security under Federal securities laws was utilized. Furthermore, the Court determined that the Howey test for determining whether investment contracts are securities was inappropriate. Instead, the Court utilized the so-called "family resemblance" test that begins with a presumption that a note is a security. That presumption, however, may be rebutted by a showing that the note has a strong resemblance to any of a number of categories of instruments that are not considered securities. These include:

- Notes delivered in a consumer financing;
- Short-term notes secured by a mortgage on a home;
- Short-term notes secured by a lien on small business or some of its assets;
- Notes evidencing a "character" loan to a bank customer;
- Short-term notes secured by an assignment of accounts receivable;
- Notes which formalize an open-account debt incurred in the ordinary course of business; and
- Notes given in connection with loans by commercial banks for current business operations.

The Court then proceeded to establish criteria for determining whether a note bears a "resemblance" to one of the above-identified instruments by identifying four factors to be considered. However, it did not explain their relative significance. These factors are:

**1. Motivation for the Transaction.** An instrument is more likely to be a security if the seller's purpose is to raise money for general business use or to finance substantial investments and the buyer is primarily motivated by the profit to be realized from the note. For this purpose "profit" means a "valuable return on investment", which includes interest. Conversely, a note is less likely to be considered a security if it is exchanged to facilitate the purchase and sale of a minor asset or consumer good or to advance some other commercial or consumer purpose.

**2. Existence of risk-reducing factor.** Does another regulatory scheme exist that significantly reduces the risk of the instrument causing protection under the Federal securities laws to be unnecessary?

**3. Reasonable expectations of the investing public.** Instruments will usually be considered securities if the public considers them securities, even if an economic analysis of the circumstances of the particular transaction might suggest a different conclusion.

**4. Plan of distribution of instrument.** Will there be common trading for speculation or investment? To establish "common trading" all that is required is that the instruments are offered and sold to a broad segment of the public.

### Rejection of Sale of Business Doctrine

The "sale of a business" doctrine assumed that the definition of an investment contract is generic to all securities (including stock) and that transactions involving, in substance, a sale of a business fail to meet the Howey test of an investment because, among other matters, the purchaser does not expect to realize profits solely through the efforts of third parties

The Supreme Court has rejected this

doctrine in two cases, Landreth Timber Company v. Landreth (U.S. Sup Ct. 1985) and Gould v. Rufenacht (U.S. Sup. Ct. 1985). In Landreth, the sale of a business through the transfer of 100% of its stock, the Court considered the context of the transaction (i.e., the sale of stock of a corporation) to be one to which the Federal securities laws generally apply, as the stock possessed all the characteristics traditionally associated with common stock. In Gould, the Court held the sale of a business doctrine to be inapplicable in a case involving a purchase of 50% of the stock of a closely held corporation. Applying the rationale of Landreth, the Court concluded that the sale of stock in a corporation is typical of the kind of transaction to which the Federal securities laws apply. Thus the stock was considered a security.

*The above discussion is intended to briefly identify some typical business transactions where careful securities law analysis is appropriate. Failure to address these legal considerations can result in serious adverse consequences to a business law client. ⚡*

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# THE PRACTICE

a series of essays on practice of law and life

## On Being Grateful



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.*

I try to be very grateful for what I have. I have good health, a great family and a successful law practice. And yet, as good as it is, it seems as though I continually need to remind myself of this good fortune. In fact, there are some times when I need to have it literally pushed into my face to keep me grateful. Let me give you an example:

Some time ago, I was driving my daughter to school. I didn't want her to be tardy, so I had moved through the morning's activities quite fast. She had wanted to wear the red crew neck shirt that day. I didn't want her to wear it because it was worn out. That produced some conflict as we tried to lay out my seven-year-old daughter's wardrobe for that day. Further, a couple of answers in her homework assignment were not correct and I felt she had been less than careful in doing her homework the night before. The car was running rough and I knew that it soon needed a tune up and probably some new tires. To make matters worse, the oil light

came on that morning. Getting your car repaired is as much fun as going to the dentist for root canal surgery. I knew that my schedule that day involved three appointments and a lunch meeting. Further, I still had several telephone calls to return from the afternoon before. A reply brief was due in 2 days and my client still had not sent me his signed declaration. Clearly, this was a day that was turning out to be less than fun.

Some days, it just seems as though everything goes wrong and that there are simply too many things to do. In fact, some times we feel like a rat on a treadmill, running and running and getting nowhere. I started to feel this way on this particular morning. This led to a sour demeanor and made me generally a grouchy person. I had lost my overall life perspective and was dwelling in negativity. Worse yet, I had become very ungrateful for the many fortunate things in my life.

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The whole morning came to a point, however, as I was walking my daughter to her classroom. At that time, I saw another student in the school who was also being helped to the classroom. His body was limp like a rag muffin. He didn't seem to be able to control his body. He was not in pain, but he seemed to be moaning a bit. As his mother helped him, it was obvious that they were both going through a very difficult time. After watching this scene for a couple of minutes, I quickly realized that this child probably had some serious learning disabilities or other developmental problems. When I thought about this on my way into the office, I began to feel very foolish. Here I was feeling bad about the things that I had to do today, but surely my problems that day were insignificant compared to those of the challenged child.

This lesson caused me to reevaluate my "state of gratitude" and get through what was still a challenging day.

The practice of law can be extremely stressful. We have such a high level of responsibility to our clients. The issues they present to us are not insignificant in their lives. They pay us a good deal of money (sometimes) to solve their problems. The practice of law is driven by deadlines. This produces additional stress. Many of us work in small firm environments, which mean that we also function as the management team and public relations department. This is an awesome responsibility. This stress can wear us down, cause us to lose our life perspective and degrade our "state of gratitude."

If you never feel this way, I would like to meet you as you have lessons I want to learn. If you do occasionally feel this way, I would encourage you to consider the lesson that I had forced upon me that morning. Generally, we are really quite fortunate. In fact, as attorneys, we are probably more fortunate than most. While solving legal problems for people is stressful, it is also very gratifying and an honor. There are many, many others on this planet that have much more difficult, and less rewarding, days than we have. Continuing to realize this, on a daily basis, will boost our "state of gratitude," help us keep a proper life perspective, and get us through our very busy days. ↕

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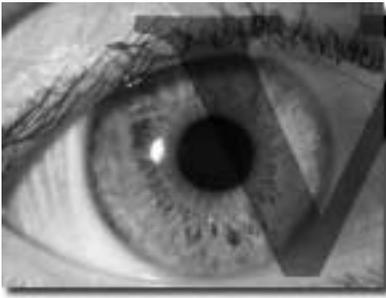
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# Viewpoint

By Phillip Feldman

*This article is the opinion of the author and does not represent the views or position of the San Fernando Valley Bar Association. The Editor welcomes members' comments on this or other areas of interest concerning our profession. Email comments to [epost@sfvba.org](mailto:epost@sfvba.org).*

## Has the State Bar of California Abdicated its' Role as "Public Defender" ?

The bar's primary objective of public protection and secondary objectives have suffered because of its existing "laissez faire" policy regarding high profile felonies. Past attitudes that the bar's role is to await the outcome of criminal conviction in order to "piggy-back" the hard work of local prosecutors is a disservice to the public and the organized bar.

When colleagues and laypersons follow the highly publicized exploits of Stephen Hogg, Esq., Marjorie Knoller, Esq. and Robert Noel, Esq., they are left with the correct impression that the State Bar of California protects such persons far beyond their presumption of innocence and entitlement to due process. Lay persons assume "the bar takes care of its own" while lawyers know the bar is more concerned with prosecuting infractors than zealously prosecuting egregious

lawyers in the face of political controversy.

The limits of lawyer-client privilege are controversial. Some feel any exception reduces client confidence in lawyers. Most of the country, including California, recognizes the threatened crime exception to the strict privilege. They reason that without respect for the rule of law society won't need lawyers so the exception is needed to best maintain client confidence. On an underlying reality level, some feel that some lawyers can't be trusted to exercise independent judgment to make the right choice between a threat of serious bodily harm and a ventilating, verbose client. Others believe than anyone incapable of exercising independent judgment ought not be admitted to the bar in the first place.

Over a year ago, Office of Trial Counsel received a formal

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complaint on behalf of the public against member Hogg. It noted that Evidence Code § 956.5 created a sufficient exception to the lawyer-client privilege so that the person responsible for the prospective murder of a minor could not hide behind privilege. The bar knew that neither confidentiality nor loyalty protected the lawyer whose timely revelation to authorities that the minor was being held hostage would have saved the minor's life. The Office of Trial Counsel erroneously concluded that Evidence Code § 956.5 did not permit its intervention even though it is neither vague nor over-broad. (People v Dang 2d Dist 11/26/01, Lexis 2543 which noted that ABA Rule 4-101(c)(3) requiring "imminent" threat of substantial bodily harm is more stringent than California's statute. On the other hand, unlike the ABA rule permitting disclosure, the California statute's heading notes disclosure is "necessary" because there is no privilege.) As all kidnap victims face such threats, attorney Hogg's lack of professional judgment lacked competence and ought not be swept under the State Bar's carpet.

Rights of all living creatures including those whose behavior threatens human life is also controversial. Animal rights activists disagree whether "every dog is entitled to one bite" vs. the responsibility we all have for our own conduct.

Over nine months ago, Office of Trial Counsel received a formal complaint on behalf of the public against Knoller and Noel. It stated that B&P § 6106 doesn't require awaiting the outcome of criminal proceedings, that both spousal abuse and battery had been used as grounds for discipline in the absence of conviction and that Penal Code § 399.5 proscribed the custody or control "of a dog trained to fight, attack or kill." Office of Trial Counsel concluded any attempt to investigate would interfere with the due process rights of the lawyers because they were criminal suspects. The bar decided to await the outcome of any criminal conviction.

Society does not need a mandatory group of organized lawyers to deal with criminal conduct resulting in conviction since the D.A., federal, state and local prosecutors do that job well. Discipline of lawyers whose moral turpitude, by available clear and convincing evidence, renders them a liability to their colleagues, the only organization legally empowered to represent all state lawyers and a threat to the public is the primary justification of Office of Trial Counsel.

Clear legislative mandates such as Evidence Code § 956.5 and Penal Code § 399.5 do not need the State Bar of California to superimpose political value judgments on their application. When an enforcement agency is motivated by fear of criticism and not social honesty it defeats its purpose. Perhaps the time has come for Office of Trial Counsel to report to others than scared "politicians" (the Board of Bar Governors) in order to properly perform its prosecutorial role on behalf of the public. ♣

**The Judge says he wants a copy of your motion in 10 minutes (and you left it at your downtown office). Opposing counsel cites a case you're unfamiliar with during their morning argument (and you want to research it before it's your turn this afternoon). Where do you turn?**

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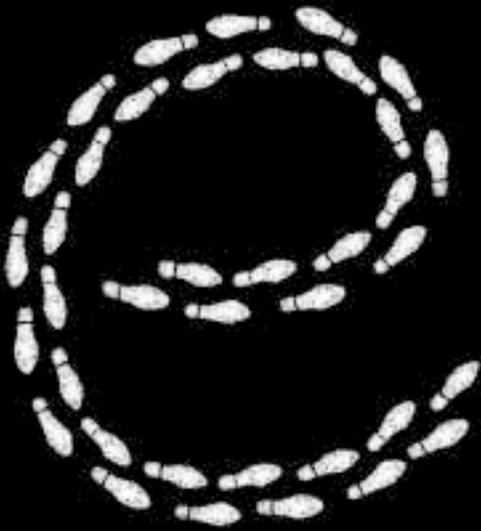
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*President's Message continued from page 3*

So, with all this excitement in the practice of law, why is it that so many who are eligible to serve as jurors try and find a way to avoid serving?

During a recent meeting I had with several members of the judiciary, I learned that the perception that jurors would avoid jury service at all costs was not entirely correct. I was told that jurors would be happy to serve if only they could do so without the scrutiny, challenges or the long waits in the Courthouse. Once impaneled, jurors take their responsibilities very seriously.

The Courts are doing their part by going to a system of "one day, one jury", allowing jurors to register for service via automated telephone systems and the internet, as well as posting notices on the web informing jurors of when and if they need to report to the Courthouse, thereby minimizing the sitting and waiting at the Courthouse to possibly be called and questioned as a potential juror in a case. Even with these methods of increased efficiency, the Courts struggle to maintain enough jurors to cover the cases going to trial, and, have far less latitude than ever in excusing jurors from service.

I always felt that one of the great mistakes of my generation was to rely on a volunteer military rather than a mandatory draft. Our jury system has essentially gone the same way as the draft. Fewer and fewer employers pay for jury service. Many potential jurors look for excuses to get out of serving. Eventually, we will have a mercenary jury system just like we have a volunteer military. By mercenary, I do not mean a "jury for hire", but rather, that the attitude of "others will serve, but I won't" is a mercenary and selfish one, which undermines how integral the jury system is to the principles of impartiality and fair play.

So, what can we as officers of the Court do? On a personal level, perhaps we can keep in mind that for many people this is the first personal exposure that they will have to our justice system. While the process of "examination" and "challenge" are part of the Code of Civil Procedure (see sections 222.5, 223, and 225 et seq.), perhaps jurors are right - our code and attitude do not suggest a warmth and appreciation for the importance of the role that jurors play in our system of justice. On the other hand, perhaps we have not done a good job informing the public about the importance of jury service or the reasons for the process of "examination" and "challenge". Imagine a newly sworn American citizen undergoing an interrogation to be a juror. We might be more sensitive when interacting with jurors by "interviewing" rather than "examining" them, or "electing" rather than "challenging" them.

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Perhaps this is a situation where we can lead best by example and inform the public in the process. Are we as lawyers ready, willing and able to serve on a jury? Several law firms have enacted policies that encourage and pay their attorneys if selected to serve. A good friend and former law partner of mine spent two weeks in jury service - to him it was an education, a civic responsibility, and a view of the very system that he believes in and which is an integral part of his profession.

But let's be realistic about this subject. Jury service is inconvenient. It disrupts our daily routine, work, school, vacations, etc. No one has anything good to say when they receive a jury summons. However, spending time in the jury box is a small price to pay for the privileges, rights and freedoms that we as Americans enjoy. To ask others to serve when we are not willing to do so ourselves is not only hypocritical, but also serves to fan the flames of animus that exists towards attorneys. So when you get your summons in the mail, please grumble a little less loudly and embrace the experience as an opportunity to serve, and, to educate yourself from a different side of our system of justice. You might be pleasantly surprised. 🐘

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SEE PAGE 23 TO REGISTER

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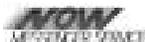
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# Notice To Attorneys

## UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

### Notice of Filing Location Policy

Effective March 1, 2002, all documents must be presented for filing at the division where the case is pending.

Criminal, capital habeas corpus petitions and civil cases, except those enumerated below, are deemed pending in the division where the district judge holds court. Therefore, subsequent documents for these cases must be filed at the location where the district judge is located.

Non-capital habeas corpus petitions, pro se civil rights cases, social security cases and other matters referred to a magistrate judge are deemed pending where the magistrate judge holds court. Therefore, subsequent documents for these cases must be filed at the location where the magistrate judge is located.

Documents not filed at the proper location will be returned to the filer. Court locations are as follows:

**Western Division**  
312 N. Spring St.  
Room G-8  
Los Angeles, CA 90012

**Southern Division**  
411 W. Fourth St.  
Room 1053  
Santa Ana, CA 92701

**Eastern Division**  
3470 Twelfth Street  
Room 134  
Riverside, CA 92501

Please refer to the court's website ([www.cacd.uscourts.gov](http://www.cacd.uscourts.gov)) to determine the location of the judge for pending cases. ↗

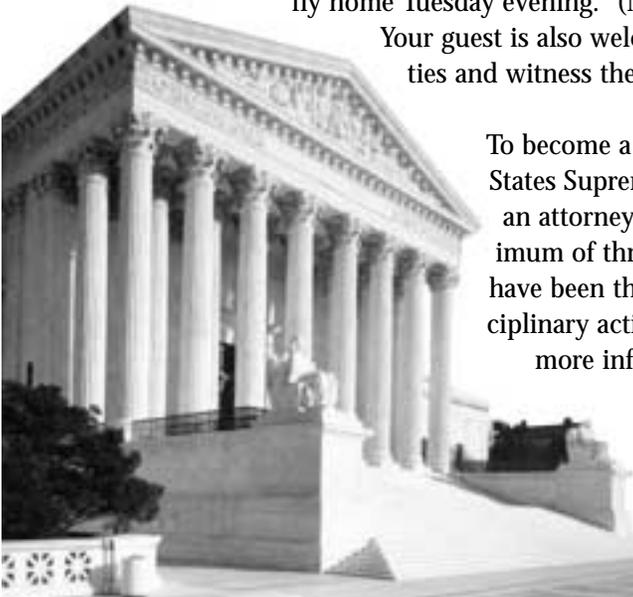
## Admission to the U.S. Supreme Court Bar

Each spring, Professor Robert Ackrich, Professor of Law at San Fernando Valley College of Law, sponsors the admission of area lawyers to the U.S. Supreme Court Bar. The four-day trip to Washington, D.C. is co-sponsored by the Alumni Association of the San Fernando Valley College of Law and this year for the first time, the San Fernando Valley Bar Association. Membership in either organization is not required.

Participants fly out of Los Angeles on Saturday May 25, 2002; sightsee and shop on Sunday and Monday; attend the admission ceremony on Tuesday morning; and fly home Tuesday evening. (Monday is Memorial Day.)

Your guest is also welcome to join in the festivities and witness the ceremony.

To become a member of the United States Supreme Court Bar, you must be an attorney in good standing for a minimum of three years and you must not have been the subject of any adverse disciplinary action during that period. For more information or to receive an application for this year's trip, contact Professor Ackrich at (818) 883-0529, fax (818) 883-8142 or e-mail [ackrichr@sflaw.edu](mailto:ackrichr@sflaw.edu). ↗



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# March Events

## calendar and MCLE event listings

### Small Firm and Sole Practitioner Section

**Topic:** Strategic Planning and Goal Setting  
**Speakers:** Barbara Lewis and Dan Otto  
 Centurion Consulting Services  
**Date:** March 8  
**Time:** 12:00 Noon 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

### Probate and Estate Planning Section

**Topic:** 2002 Legislative Update  
**Speakers:** James Birnberg and Sandy Rae  
**Date:** March 12  
**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

### Barristers Section

**Topic:** Lunch with the Valley Judges  
**Speaker:** Hon. Paul Gutman  
**Date:** March 13  
**Time:** 12:00 Noon Lunch and Program  
**Place:** Van Nuys Courthouse, East Wing, 2nd Floor  
 Judges Lounge  
**Cost:** \$15 members prepaid; \$20 at the door  
 \$20 non-members prepaid; \$25 at the door  
**MCLE:** 1 Hour

### Topic: Importance and Necessity of Employee Handbooks in Today's Litigious Society

**Speaker:** Brian P. McGilvray, J.D., M.B.A., SPHR  
**Date:** March 19  
**Time:** 12:00 Noon 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

### Healthcare Law Section

**Topic:** HIPAA: Federal Law to Improve Patient's Right to Privacy and Access to Health Information  
**Speaker:** Paul Anik, Esq.  
**Date:** March 19  
**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

### FIRST ALL SECTION- WIDE MEETING!!!

**Topic:** The Art of Networking  
 All SFVBA members are encouraged to attend this important dinner. Meet other Sections' members and learn how to improve your skills in making business and professional connections.  
**Speaker:** Mel Kaufman, founder of the Million Dollar Formula  
**Date:** Wednesday, March 20  
**Time:** 6:00 P.M.  
**Place:** Sportsmen's Lodge, Studio City  
**Cost:** \$35 members prepaid; \$40 at the door  
 \$40 non-members prepaid; \$45 at the door  
 \$30 Barristers prepaid

### Workers' Compensation Section

**Topic:** Review of the New Benefit Increase Bill AB749  
**Speaker:** Robert G Rassp, Esq.  
**Date:** March 20  
**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

### Family Law Section Joint Meeting with LACBA Family Law Section

**Topic:** Prenuptial Agreements After Senate Bill 78  
 This timely program will explore the impact of the recently passed S.B. 78. Panelists will discuss drafting techniques for agreements and their impact on litigation.  
**Speakers:** Peter Walzer of the Law Offices of Peter Walzer  
 Bruce Cooperman, CFLS, of Wasser, Cooperman & Carter  
 William Glucksman, CFLS of Kolodny & Anteau  
 Leonard Meyberg, Moderator  
**Date:** March 25  
**Time:** 5:30 p.m.  
**Place:** Sportsmen's Lodge, Studio City  
**Cost:** \$40 members prepaid; \$45 at the door  
 \$45 non-members prepaid; \$50 at the door  
 INCLUDES SUBSTANTIAL HANDOUT  
**MCLE:** 1 Hour

### Business Law & Real Property Section

**Topic:** LLCs: Are They All That They're Claimed To Be  
**Speaker:** David Gurnick, Arter & Hadden  
**Date:** March 27  
**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  
**MCLE:** 1 Hour

### Information & Reservations 818•227•0490

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

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