

In This Issue

President's Message3

More New Life for Unconscionability
Ninth Circuit Strikes Arbitration
Clause5

Bench-Bar Committee Report7

The Practice: A Juror's Confession ..8

Message from
LRIS Coordinator11

Welcome to The Valley12

Can We Survive?
Solo and Small-Firm Practitioners
Face New Challenges14

New Members16-19

Classified Ads21

Calendar of Events23

SFVBA CELEBRATES SEVENTY-FIVE YEARS OF FELLOWSHIP AND SERVICE

Hundreds of members, judicial officers, politicians and friends gathered at the Universal Sheraton Hotel on September 29 to celebrate the seventy-fifth anniversary of the founding of the San Fernando Valley Bar Association and the installation of the organization's new officers and trustees.

The evening kicked off with the premier of the documentary *Lawyers of the Valley: A Tradition of Fellowship and Service*. The 15-minute video, narrated by Emmy Award winning actor Kelsey Grammer, told a humorous and insightful story of the SFVBA's seventy-five year history.

The tragic events of two weeks earlier were in everyone's mind. The Gala opened with a moment of silence and a heart-felt rendition of God Bless America led by the Horace Heidt Orchestra. Many of the evening's speakers expressed their sympathy for the victims and their admiration for the resiliency of our nation. And the Roscoe Swing Dancers concluded the evening with a lively number to the patriotic song *Boogie Woogie Bugle Boy*.

Lyle Greenberg, after being sworn in as SFVBA



Past SFVBA Presidents Larry Edmisten (1945) and Albert Ghirardelli (1955) (with his wife) and Ernestine Fields.

President by State Bar President Karen Nobumto, told of his August visit to Arlington Cemetery with his teenage son, Stephen. Seeing the Capitol building in the distance, his son remarked that the Capitol building surely housed the power and strength of our country. Greenberg recalled his almost precognizant answer,

continued on page 4



New SFVBA President Lyle Greenberg (bottom center) with the 2001-2002 Board of Trustees.

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Bar Notes

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Bar Notes is published 11 times a year. Articles, announcements, and advertisements are due by the first day of the month prior to the publication date. The articles in Bar Notes are written for general interest and are not meant to be relied upon as a substitute for independent research and independent verification of accuracy.

Layout & Design
Pre-press & Printing,

Master Graphics Printing
(818) 343-0500

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LYLE F. GREENBERG
SFVBA PRESIDENT

Duty • Honor • Country¹

September 11, 2001, is a day that we will remember forever. Certainly we will remember it for its devastation of families and its insult to our sense of security. However, it is also the day our country's patriotism was reborn. In a span of 19 minutes, generations of our citizens, for the first time in their lives, defined themselves as Americans. With all that has happened over the past several weeks, there are too many questions and very few answers. From the perspective of a Bar Association, two questions stand out. First, what can we do as guardians of the law and our Constitution to protect civil liberties and educate the public about these great institutions of America? Second, will a casualty of this war be our civil liberties? As lawyers promoting the law and the protection of civil liberties, our battlefield is ignorance and our weapon is education.

In a recent middle school class, in the first days after September 11, the following discourse occurred between a young boy and his teacher:

Young Boy: "The September 11 attack would not have occurred if the United States did not permit "those people" to be here."

Teacher (stated clearly, concisely, and without hesitation):
"Then you would not be living in America."

Young Boy: "Why not?"

Teacher (said firmly and with absolute certainty to the student who is now paying attention):
"Because in America we are all equal and welcome. If "those people" were not permitted to be here, then you would be living in a country called something other than America."

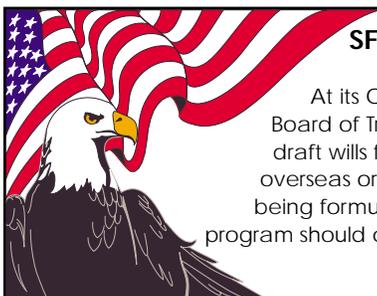
When we are alone with our thoughts, do we uphold the Constitution or do we carve out exceptions because of the fears arising from the events of September 11?

I hope that as attorneys we can be as direct and as supportive of our rule of law as the Teacher was with the Young Boy. Over the next weeks and months, we will see articles and incidents brought to our attention that call for us to stand up and speak about the rule of law in America, the Constitution, and the great principles upon which this Country was founded and for which it stands. If we are silent, and fail to speak in support of the law, then we have failed in our duty to educate and uphold our great treasures, including principles of free speech, freedom of religion, and freedom of press. If we speak, are we doing so with the recognition that those who listen to us are seeking to understand the law and its boundaries and we have an opportunity to make a lasting impression on them? Recognizing that the events that transpired on September 11 and thereafter have caused fear and consternation throughout our country, we have an opportunity and responsibility over the months ahead to try and alleviate fear with education. As a Bar Association, we can and should share our knowledge with the public and celebrate the rule of law and our Constitution, even when the fear of many around us prompt them to call out for limiting civil liberties.

Please join me in celebrating the Constitution and upholding and protecting our civil liberties, not finding an exception or reason to limit them. Our civil liberties cannot be compromised and should not be counted as another victim of September 11. Now more than ever in our lifetimes, we need attorneys to communicate with clients and the public about the beauty and fairness embodied in our Constitution and its application, and this nation's desires and goals of freedom and justice for all.

Each year our Bar Association and the Foundation of the Bar provide numerous opportunities to celebrate our legal system and its heroes. You can join the Speakers Bureau and share your knowledge and experience with business groups, classrooms of children, and others who seek Bar members to speak about the law. You can also join our members and our heroes at the following events next year: our Judges' Night Program in February, at the Law Day Dinner in May, and at our Stanley Lintz Community Service Awards Dinner in June. Please join us as a tribute to our system of justice. ✍

¹General Douglas MacArthur, speech to the West Point Cadet Corps, May 12, 1962. "These three hallowed words ... are your rallying point to build courage when courage seems to fail, to regain faith when there seems to be little cause for faith, to create hope when hope becomes forlorn."



SFVBA Drafting Wills For Reservists & Guardsmen

At its October 9 meeting, the San Fernando Valley Bar Association Board of Trustees voted unanimously to set up a pro bono program to draft wills for reservists and national guardsmen who are activated for overseas or homeland defense service. The details of the program are being formulated at press time. Attorneys who wish to volunteer for this program should contact Executive Director Liz Post at (818) 227-0490, ext. 101 or LRIS Director Michele Morley at ext. 103

Gala continued from Cover

that "the symbolism of the Capitol building was not so much about power, but rather, represented the spirit of participation of our leaders in furtherance of the principles of our country. In fact, the spirit is not restricted to the walls of the Capitol, but exists all around us."

"It exists... in the halls of the U.S. Supreme Court, the Library of Congress, the chambers of City Hall in Los Angeles, and the rows of seats filled at a town meeting in Iowa; it lies vibrantly in the souls of those who were buried right in front of them at the Tomb of the Unknowns, and in each soul buried within the never-ending landscape of Arlington. Most critically, that spirit exists in the minds and the hearts of the citizenry throughout our country."

Greenberg underscored the September 11 events to encourage members to get more involved with the SFVBA, "We are learning, on a painfully daily basis, that the most logical and gratifying manner to meet many of our challenges and insure success, is to maintain our resolve and our spirit, and to work together... By doing so, we will continue to improve our profession, safeguard the independence of our judiciary, and ensure access to efficient and fair justice in our community, which, after all, serves as a foundation of our great country."

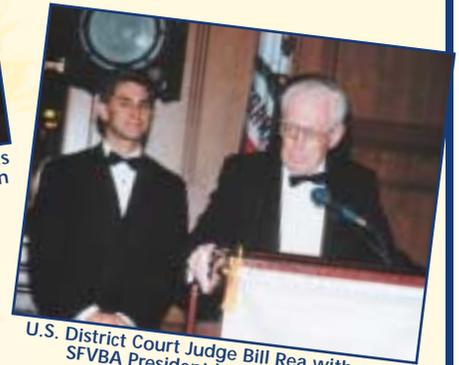
The anniversary celebration included the presentation of the Stanley Mosk Legacy of Justice Award to long-time U.S. Court of Appeals Judge Harry Pregerson. Former California Supreme Court Justice Armand Arabian paid tribute to Mosk's judicial legacy in the areas of civil rights and liberties, free speech and free press, equal protection, privacy, state constitutionalism, employee rights, and consumer protection. Arabian recalled how Pregerson's Van Nuys sidewalk office was a block away from his back in 1963.

Speaking of his two good friends and colleagues, Arabian declared, "On separate paths, they blazed through every uncharted frontier of challenge for the common good. As sentries, with a watchfulness that never slept, they have been weapons in the celestial armory of truth, each cordial, collegial, and judicially powerful."

Mosk's wife Kaygey and son Richard Mosk were present. Other guest speakers and dignitaries included Congressman Brad Sherman, County Supervisor Zev Yaroslavsky, District Court Judge William Rea, and City Controller Laura Chick. In addition, many of the SFVBA's past presidents were in the audience and were recognized for their leadership. 🐾



Immediate Past President Christine Lyden is recognized by Congressman Brad Sherman



U.S. District Court Judge Bill Rea with new SFVBA President Lyle Greenberg.



Judges Richard Kolostian & Anthony Mohr enjoy the evening with their spouses.



New Valley Community Legal Foundation President Patricia McCabe is sworn in by State Bar President Karen Nobumoto.



Judges Gregg Marcus and Michael Hoff enjoy the evening with their spouses.



Christine Lyden presented the President's Award to Mark Blackman for his years of community service for the SFVBA.



Kaygey Mosk and Armand Arabian presented the Stanley Mosk Legacy of Justice Award to U.S. Court of Appeals Judge Harry Pregerson.



Immediate Past President Christine Lyden is recognized by Supervisor Zev Yaroslavsky.



SFVBA Past Presidents Barbara Jean Penny, Gary Barr (with wife Joy) & Thomas Trent Lewis (with wife Kris).



Swing dancers set the mood for the evenings festivities.

More New Life for Unconscionability Ninth Circuit Strikes Arbitration Clause



BY DAVID GURNICK



About the Author:

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

Unconscionability is a judicially created doctrine, codified in 1979. The Civil Code permits a court to refuse to enforce a contract or clause that was unconscionable when made. (Civ. Code Sec. 1670.5). While the statute does not define the term, case law has held that it has both a procedural and substantive element. For many years, courts were not receptive to claims that contracts were unconscionable, as reflected by the difficulty of establishing both elements and prevailing in an unconscionability defense to contract enforcement.

Recent cases reflect renewed judicial interest in the doctrine. In a recent case, the Ninth Circuit struck an arbitration clause based on unconscionability. Ticknor v. Choice Hotels 2001 U.S. App. Lexis 20318 (9th Cir. Sept. 12, 2001). The decision is the most recent example of a trend breathing new life to this contract defense.

The Ticknors owned an Econo-Lodge hotel franchise. They brought a claim against the national franchisor. The franchisor demanded arbitration. However, the court rejected the demand because the arbitration clause was unreasonably one-sided. It let the franchisor bring claims in court, but forced the franchisee to submit claims only to arbitration, and set venue far away, at Choice hotel's headquarters state (Maryland).

Earlier this year, a State court reached a similar conclusion in another franchise dispute. Bolter v. Superior Court 87 Cal. App. 4th 900 (2001). Three owners of carpet cleaning franchises had claims. Their franchisor demanded arbitration in Utah. The Court of Appeal agreed the arbitration clauses were adhesive, essentially satisfying the procedural unconscionability element. The franchisees were small, one-person businesses with limited financial ability. The cost to arbitrate in Utah was so high that it would prevent any remedy on their claims. The court said the franchisees would have to arbitrate, but found the Salt Lake City venue was unconscionable.

Unconscionable arbitration clauses are not unique to franchising. In the employment context the California Supreme Court ruled last year, that arbitration of discrimination claims is permitted, but found an arbitration agreement unconscionable because it was not

mutual as to all claims, and did not permit full recovery to the employee. Armendariz v. Foundation Health Psychare Services 24 Cal.4th 83 (2000). The Central District of California reached a similar conclusion in Ferguson v. Countrywide Credit 2001 U.S. Dist. Lexis 14436 (Apr. 23, 2001) rejecting a clause that imposed costs on employees they would not incur in court, requiring employees, but not the employer, to submit claims to arbitration, and limiting discovery that employees could take.

The revival of judicial receptivity to unconscionability is also shown by the recent Supreme Court decision in Donovan v. RRL 26 Cal.4th 261 (2001). The Court used the doctrine not to relieve a weaker party of burdensome arbitration, but to permit contract rescission by the party that was responsible for the unconscionable term. A car dealer's newspaper ad stated a mistakenly low price for a luxury car.

A customer insisted on buying for the mistakenly low price, and sued after the dealer refused. The trial court ruled for the customer, based on a statute requiring car dealers to sell cars at the advertised price. (Veh. Code Sec. 11713.1). On appeal, the Supreme Court said forcing the dealer to sell at the price they advertised, would result in an unconscionable contract. The court found the dealer's mistake was in good faith and the erroneous price was 32% below a usual price. The court said a contract was formed, but permitted the dealer to rescind, noting a growing willingness to allow avoidance where a mistake is so grave that enforcement would be unconscionable.

While courts are more willing to find unconscionability, they have not abandoned careful consideration of the facts. In Soltani v. Western & Southern Life Ins. Co. 258 F.3d 1038 (9th Cir. 2001) several employees claimed they were wrongfully terminated for violating a company rule making them pay policyholders' insurance premiums. Their agreement with the employer set a six month time limit to make their claims, and required 10 days written notice as a condition to any claim.

The Ninth Circuit found many precedents upholding six month statutes of limitations and said the short time limit to sue was not unconscionable. However, there was no justification for the 10 day notice rule. Ten days was not enough time for the company to investigate a claim, try to settle, or take corrective action, and it was non-mutual. The court therefore found that the 10 day notice requirement was unconscionable.

In other recent decisions, courts continued to reject unconscionability claims. In Little v. Auto Stigler 2001 Cal. App. Lexis 730 (Sept. 17, 2001) a wrongful termination claim, the defendant employer demanded arbitration and the court granted the motion because the arbitration clause was mutual and did not impose costs on the employee beyond what would be incurred in court. Another case, Marin Storage v. Benco Contracting 89 C.A.4th 1042 (2001) involved a claim that an indemnification provision was unconscionable. Applying the same procedural and substantive unconscionability analysis, the court said an indemnification clause in a commercial relationship involving risks to both parties was not so unreasonable, unjustified, or one-sided as to shock the conscience.

Courts are still willing to reject claims of unconscionability, but recent decisions indicate a renewed judicial willingness to seriously consider and to grant relief based on the doctrine. ♣

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



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BENCH-BAR COMMITTEE REPORT

In the June 2001 issue of *Bar Notes*, we reported on the ongoing work of the Bench-Bar Committee, which meets every two to three months with the supervising judges of the three area courthouses in Van Nuys, San Fernando and Burbank/Glendale. We maintain communication with the judges on issues of concern to the public, the Bench, and the Bar, such as the status of the new Chatsworth courthouse, the transition at Van Nuys to direct calendaring and the aftermath of court consolidation. Our Committee is here to allow the judges to communicate their reports, concerns and issues to the Bar and the public and for the judges to hear from members of the Bar and the public on how the courts and judges are operating in the community.

A recent significant development is the proposed Case Management Plan for the North Central District Courts in Glendale/Burbank. Since the passage of the Trial Court Efficiency Act (Proposition 220) and court unification, there is a need to maximize the judicial and physical resources in North Central. The custody facilities at the Glendale courthouse are outmoded and pose a security threat to deputies, court employees and the public. At the same time, the custody facilities at the Burbank courthouse are "state of the art." Also, State-mandated "one trial" jury service has meant that more jurors must be called for criminal cases. The available parking and juror facilities are more adequate at Burbank than at Glendale.

In summary, the Plan calls for realigning cases so that all misdemeanor and felony cases will be heard in the Burbank courthouse, and all civil cases will be heard in the Glendale courthouse. Each courthouse will keep its calendars of "local" cases (traffic, small claims, limited jurisdiction, unlawful detainer and City Attorney filings). In addition, the District Attorney and Public Defender offices would be consolidated at Burbank. Civil calendars at Glendale will be staggered to maximize the already limited space for court employee, juror, public and attorney parking.

Some concerns about this Plan have been expressed by some community leaders in Glendale and Burbank, the police and the public. Our Committee is here to address your questions, concerns, or suggestions regarding this Plan, so let us know what you think about it. We will forward your input to the bench officers at North Central and keep you advised on the status of the Plan as it is implemented.

As part of our ongoing committee work, we need to know if you have any concerns or suggestions on the current status of court programs and operations that impact your practice, such as the transition to direct calendaring in Van Nuys, the "one trial" jury service and courthouse facilities. If you have concerns about individual bench officers, contact us in confidence. We will communicate your concerns and suggestions to the Valley bench officers and work with

them to improve court programs and operations.

In addition, the bench officers in the Valley have asked us to ask you how the courts can better serve the Bar and the public through community outreach programs. The bench officers want your suggestions for programs or operations that they can present to better inform and educate the public and to improve the administration of justice

at Valley courts. Recent suggestions have included "meet the judges" nights and "how to" programs on jury service, small claims and traffic. Again, we want your input and suggestions in this area.

If you have any other questions or suggestions on how our Committee can better serve you, please contact the Chair Mike Convey at (818)464-2810 or SFVBA President Lyle Greenberg at (818) 884-5100. ✉

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THE PRACTICE

A JUROR'S CONFESSION

A series of essays
on practice of law
and life

BY DAVID R. HAGEN



About the Author: *Dave Hagen is a principal at Merritt & Hagen. The firm's practice focuses on representing individuals and small businesses in bankruptcy. He is a past president of the SFVBA and has been a Trustee for the L.A. County Bar Association. 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 want to confess. I recently served as a juror at the Superior Court in Van Nuys, and want to confess that I found the experience to be relatively painless.

I never served as a juror before. I always found a way to get out of service. Counsel for one of the parties would not allow me to serve on a jury. Certainly, I would be excused. Further, we have all heard stories about sitting in the juror assembly room for weeks on end. I just couldn't imagine the endless boredom. Further, my ego tells me that Merritt & Hagen would come to a standstill with me sitting in a jury assembly room for weeks on end. There are many reasons, or rationalizations, for not doing jury duty. Some of these excuses were created by false perceptions or an inflated sense of self worth. However, many of these excuses were created by the system itself.

The good news is that this is beginning to change! Some of the Superior Courts in Los Angeles have recently undertaken a "one-day, one-trial" system. Under this system, you are on call for an entire week. Each night you need to call in to see whether your group needs to appear the following morning. If you are called, you only have to wait around for one day. If you are not assigned to a jury, you have done your duty. If you are called to serve on a jury, you only serve the length of the trial regardless of its duration.

Now if they are only talking about one day or the possibility of one jury, I thought I certainly could afford to do my civic duty and show up. (Quite frankly, I secretly harbored the hope that I would get to sit on a jury as I thought it would be a most interesting experience considering my perspective as an attorney.)

When I showed up, I was pleasantly surprised at how we were treated. Yes, we were all herded into the big jury assembly room on the first floor at Van Nuys. However, there were plenty of chairs, couches, etc. There were even a couple of desks that had pay-by-the-minute Internet access. We were shown a video on what jury service entails and then one of the judges even came to talk to us for a few minutes. This made us feel connected to the system and made us feel that the Court understood that our time and contribution was important. At lunchtime, we were told the places where we could easily get lunch. One restaurant even offered us a 10% discount just for being a juror (the food was pretty good and the service was excellent)! The court staff kept us informed as to what was going on upstairs and gave us some idea as to whether we might be called in the afternoon. At the end of the day, they did not need any more jurors and I was excused for a full year.

The reason I wanted to share this information with my fellow members is not necessarily to extol the virtues of this new jury service system; although, I think that this is an important message for all of us to get out to the public. Rather, the point of this month's column is to show, by way of example, that we are doing something right! Jury service used to be a long, arduous affair. Now, it seems to me, it has been made as painless as it might possibly be. As I've said in prior columns, as a society I do not think we take enough time to celebrate things that go well. We seem to dwell on all the negative aspects of our culture. This change is something that went well and we should celebrate it. To make things even better, members of the SFVBA can be proud that our bar association had something to do with this change. Your bar association took an active part in helping to bring this change about.

This "one day, one-trial" system arose out of a blue ribbon committee formed by the Los Angeles County Bar Association. They received a grant, hired facilitators and undertook a study on how to establish better rapport between the courts and the community which they serve. A focus group was set up downtown and in Van Nuys. The individuals who participated in the focus groups consisted of representatives from all of the stakeholders in the court system. This included judges, court administration, law enforcement, attorneys and litigants. I participated in the Van Nuys focus group for the first year as a representative of our bar association.

During this first year, one of the issues that immediately became apparent was that jury service was, for many, an unpleasant experience and people would try and avoid service if at all possible. Later in the process, a summit was held with a large number of representatives from the various stakeholders in the court system. Our bar association sent a large number of its leaders to present our perspectives. As a result of this work, the court instituted the one-day, one trial system.

The court system saw something that needed to be changed, took reasonable and measured steps to change it, and implemented this change successfully. This success works to everyone's benefit. We did something right and we should celebrate it. Congratulations to everyone who participated in creating this new system! Congratulations should also go to each and every member of the SFVBA because it is your support of

continued on next page

William J. Kropach **WORKERS' COMPENSATION** STATE CERTIFIED SPECIALIST



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David R. Hagen, Past SFVBA President

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"The Practice" continued

our bar that allowed our leaders to get involved and get something positive done.

Now, don't get me wrong, the new system is not perfect. The system requires that you extensively read the Jury Summons and that you call in each night to see whether your services are needed. I found this a bit confusing, even though I consider myself to be of at least average intelligence. One night, I could not even get through on the phone line. Further, a number of potential jurors were interested in getting some work done while they were waiting for their names to be called. I found people trying to work on coffee tables, etc. This being the case, I think that it would be appropriate to have more work kiosks available for those that wanted to do something other than read books. If we are asking business people to miss time from work, we should at least try to facilitate their ability to get as much work done as possible while they are doing their civic duties. All things considered, though, these are minor changes that can easily be made.

It is not common enough that things get done to make bureaucracies more efficient and relevant to the people that they serve. However, this is a good example of how things can be changed and can serve as a template on how we can attack other problems to the betterment of the legal system and society in general. ☛

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Wednesday, Dec. 12th, 9 a.m. - 12:15 p.m. pacific time

"Recent Developments in California Ethics" with Erwin Chemerinsky
Thursday, Dec. 13th, 9 a.m. - 1:30 p.m. pacific time

"Elimination of Bias" with Carol C. Copsey, Esq.
Thursday, Dec. 13th, 2 p.m. - 3 p.m. pacific time

"Substance Abuse" with Arthur Bosse
Thursday, Dec. 13th, 3:30 p.m. - 4:30 p.m. pacific time

"Retirement Planning After the Economic Growth and Tax Relief Reconciliation Act" with Kerry R. Windmuller
Friday, Dec. 14th, 9 a.m. - 1 p.m. pacific time

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MESSAGE FROM LRIS COORDINATOR

MICHELLE C. MORLEY

The numbers for LRIS are very positive for the Bar's fiscal year ending September 30. For the second year in a row, our not-for-profit LRIS program has ended in the black. We have made 2501 referrals; approximately 120 were through iLawyer. Our percentage fee income was the highest ever. Calculated from that income we know that LRIS attorneys received over \$1,000,000 in income from our referrals. The yellow pages continue to be the primary source of our referral calls. In addition, fellow attorneys referred 19 percent of our callers to us. The courts, the Self-Help Legal Resource Center, and other agencies continue to be a good source of referrals.

Thinking about these numbers and trying to calculate the consequences of unfolding events reminded me of Albert Einstein's comment that, "[A]s far as the laws of mathematics refer to reality, they are not certain, and as far as they are certain, they do not refer to reality." This may be true and valuable to think about, but the thought does not provide the comfort we seek. This led me to a poem by LA based poet, Timothy Steele.

Golden Age

*Even in fortunate times,
The nectar is spiked with woe.
Gods are incorrigibly
Capricious, and the needy
Beg in Nineveh or sleep
In paper-gusting plazas
Of the New World's shopping malls.*

*Meantime, the tyrant battens
On conquest, while advisers,
Angling for preferment, seek
Expedient paths. Heartbroken,
The faithful advocate looks
Back on cities of the plain
And trudges into exile.*

*And if any era thrives,
It's only because, somewhere,
In a plane tree's shade, friends sketch
The dust with theorems and proofs,
Or because, instinctively,
A man puts his arm around
The shoulder of grief and walks
It (for an hour or an age)
Though all its tears and telling.*

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Welcome To The Valley

BY SEAN E. JUDGE

As a young litigator starting out with a large firm, I recall facing moments of truth early and often. I remember my first law and motion appearance (an unopposed motion to compel responses to form interrogatories before a judge described to me as "The Surgeon of the Proof of Service" – I was terrified), my first deposition (in Urdu, no less), my first arbitration, and my first jury trial (fortunately, a win). At each step of the way, I had the support, assistance and resources of a large firm behind me.

But after a number of years as an associate and senior associate, I was faced with the decision of staying and trying for partnership, or moving on and trying something else. When my time for partnership came in 1999, I chose to go for it. Although I didn't know it then, this was the beginning of an unexpected journey that would land me in the western San Fernando Valley, having the time of my life practicing law.

I practiced at the firm for seven years, and had done what every associate did: worked hard, came in on weekends, obtained good results for our clients, participated in firm events and managed not to offend too many higher ups in the process. My wife and I had bought a home, were raising a toddler, and had (and continue to have) great friends. I was ready to "ascend", and left it to the prevailing wisdom of the partnership to decide my fate.

On the night of the decision, I was one of the few who waited around late at the office for the decision. A few sips of mid-priced single malt, (I was still an associate after all) and I was ready to hear it. The door faces that entered my office that night foretold the inevitable. Many made it, they said, but you weren't one of them. You have partnership potential, and we hope you'll stay, another added. As my beloved baseball team has been saying since 1917, it was "wait 'til next year". Or was it?

When I first gave it some thought, the notion of leaving to open my own practice in the Valley was dismissed as foolish by many of those supposedly in the know. "You don't have enough clients to take with you", "Why would you give up a steady income, especially with a family?" "You must be equal parts nuts and balls". All this and more.

But I am here to tell that starting my own practice in Woodland Hills in January of 2001 was among the best things I have done, personally and professionally. Although I am still building my practice, to those of you wrestling with such a decision, if you decide to make the move to fly solo, and if you do it right, you won't look back. I have benefited from a few guiding principles and experiences that I'd like to share.

Talk with those who have done it as often as they will talk with you. Everyone who has left a firm has a story about how they began. Listen, listen and listen again. Each lawyer with whom I spoke had at least one pearl of wisdom that began "You'll want to make sure that you do this, or don't do. . ." A great source of just about everything you always wanted to know about going solo is Jay Foonberg's masterful *How to Start and Build a Law Practice*, 4th ed. ABA Law Practice Management Section. I refer to that book often, and it is replete with useful and helpful information.

Don't burn bridges. A wonderful, and at times financial-life-saving source of business has been my former firm and other firms for whom I am able to do contract work. Think about it: If they liked you, liked your work and were sorry to see you go, it is mutually beneficial for you to do hourly contract work. For a flat hourly rate, you do the work and send them a bill. Overhead is often minimal, and by doing the work as an independent contractor, you save the firm payroll taxes, workers' compensation premiums, health insurance premiums, 401k or profit sharing, etc. Doing contract work also helps maintain ties with friends and former colleagues, and, by necessity, you keep in touch.

Have enough capital to get through the slow times. Whether your clients are contingency clients or billable hour clients, you have to pay your bills and provide for yourself or your family. In virtually any start-up practice, there will be good months and some not so good. When,

not if, the latter comes your way, you need to have enough reserve capital to get through until the contingency fees are received and distributed, and/or the receivables start getting paid.

Stay on your marketing plan. Have a plan, follow through and keep following through. The first key is letting people know what you do and that you are out there on your own. Get involved in the Bar association activities, seminars and community work. At the outset, I sent out announcements to as many people as I could possibly think of who I wanted to know about my law practice. Old colleagues, some of who have moved on to mega-firms, have been a great source of referral business for me, as have old law school friends with whom I have renewed friendships in the past year. The key is staying in touch so that you are thought of when a referral opportunity comes along.

Stay within your area of expertise, and refer when necessary, but don't shy away from challenges. I have had a number of cases come my way that require some expertise in litigation, but that are in areas in which I had limited experience. Know your limits and capabilities, and refer matters you do not feel equipped to handle. But if a matter comes along that you know you can handle with a diligent extra effort and some extra hard work, go for it. You will expand your expertise, and this will, in turn, increase the likelihood of referral business in the future. On the flip side of that equation, I was recently referred a case that I had to decline, but I went the extra mile to stay in contact with the potential client to make sure she was happy with the referral. Small things like that are simple to do, but important. Not only can they generate referrals in the future, they generate good feelings.

Find a good accountant. At law firms, an associate's primary financial concern is hitting the firm's milestones (often a billable hour minimum or target) and generating bonuses and raises. As a solo, it's all about how much you have and how much you owe. I find that it is crucial to know this at all times, and to plan accordingly.

Keep overhead reasonable. Use technology to its fullest. A modest investment in an online research service, with a database of court forms has served me well, and has been a great way to save time and contain overhead.

Yes, my small operation is a work in progress, hopefully continuing on a growing path. I have learned to be a bit more patient, a bit more flexible, to give myself a bit more time to generate work product and to avoid the rushes with which I plagued my former secretaries (yes, Mary and Ellen, there is hope).

I can say with certainty, though, that I am having more fun practicing law than at any time in my life. My office is located just over one mile from my front door; I come to work in the morning refreshed and arrive home at night happy to see my wife and children. The Valley has been my home for nearly 8 years, and having my office here has been a blessing. Thinking and worrying about making this move was harder than just doing it. But after nine wonderful months, I can't imagine practicing law any other way or in any other place. 🐾

To comment about the article, email the author at sean@judgelaw.net or call (818) 610-8799.

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Can We Survive? Solo and Small-Firm Practitioners Face New Challenges

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



About the Author: Edward Poll, J.D., M.B.A., CMC, is a coach for attorneys and a certified management consultant in Los Angeles who advises attorneys and law firms on how to deliver their services more effectively while increasing their profits at the same time. 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 book, *Attorney & Law Firm Guide to The Business of Law: Planning & Operating for Survival & Growth*, published by the ABA, and developer of *The Tool Kit for Buying or Selling a Law Practice*. To make suggestions or comments about this article, call (800) 837-5880 or send E-mail to edpoll@lawbiz.com. You can also visit Ed Poll on the web at www.lawbiz.com.

What does the Cape Hatteras Lighthouse on the Outer Banks of North Carolina have in common with the legal profession? They have both been fighting for survival. Due to the shifting of ocean currents and the erosion of the once-wide beach that had protected it since its construction in 1870, the tallest lighthouse in North American was in danger of crumbling into the sea. It was recently moved one-quarter mile inland to a new - and hopefully secure - location.

Similarly, events and circumstances - some beyond anyone's control, but others firmly within the grasp of attorneys themselves - are threatening to erode the foundations of sole and small-firm practice. For example, lawyers antagonize clients to the point where they file more complaints with state bar associations than there are lawyers in the state. In California in 1996, there were 130,000 attorneys and more than 140,000 telephonic complaints to the Bar. Nevada and other states have similar statistics.

And some state bars have lost the confidence of their members. California is the first state to have the mandatory bar status examined under the political microscope. Former Governor Wilson vetoed a bill to approve the bar's dues and sent a stinging message saying that the bar had failed its mission. This left the State Bar of California without money to operate, and the disciplinary system was closed. Fortunately, a dues bill was enacted, and the California State Bar is recovering - slowly. But attorneys in Texas and other states have also begun to question the mission of the bar.

In addition to the loss of confidence from clients, the rising complaints by consumers and now the loss of trust in

lawyers' own professional organizations, Congress took a little bit more from the plate of attorneys' performance of legal services when it passed a taxpayers' bill of rights. One of the provisions in this bill extends to accountants a limited privilege (attorney-client privilege) when representing clients before the Internal Revenue Service. This privilege was previously the hallowed territory of attorneys in representing clients. However, many clients perceive that accountants can perform services for them just as well, if not better, at a

lower cost. While one can technically argue that a responsible client would have a disincentive to engage an accountant since this new privilege does not extend to criminal and other matters beyond the appearance before the Internal Revenue Service, attorneys are nevertheless faced with more intrusion into traditional legal practice.

Lawyers will soon be faced with "multi-discipline practices" in this country. Europe, Australia and Canada all have accounting firms providing services in many different disciplines, including the law. And the largest employer of attorneys in the U.S. may well be Arthur Andersen Consulting. In these kinds of practices, professional services are offered under an umbrella organization that provides accounting, legal, financial and other services. It's a "one-stop shop." Real estate matters are now being handled by brokers with pre-printed forms for offers and

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acceptances. Employee benefits consulting firms prepare pension and profit-sharing plans without the need of attorneys. Environmental consultants frequently never involve attorneys. The list goes on and on.

Can we survive as sole and small firm practitioners?

Can attorneys endure this onslaught on the profession? I believe the answer is a resounding "yes!" Whereas the lighthouse had only two choices: stay where it was and be washed out to sea or allow itself to be moved to a safer inland location, the legal profession has many alternatives.

First, lawyers need to address the client's concerns in a more effective and meaningful way than they've done in the past. Attorneys must become more client-focused. It's not important what you can do, what you want to do or what you think the client wants. The only thing that matters is what the client actually wants. That means that you must start by talking with your clients, not just to your clients. Really listen to your clients; don't just hear them.

Clients want communication with their attorneys and dedication to their concerns more than they want cheap fees. In fact, client focus groups indicate that clients understand that they must pay for their legal representation and they are willing to do so - provided the attorney is giving them the type of service they desire. So ask your clients about the type of service they're looking for. Implement their requests, and tell them you are doing so.

Each client wants to be treated differently. That means you must be flexible; your staff must "buy-in" to this process and become part of an effective team of "service providers." After all, without the client, there really is no need for the lawyer - or the staff.

In addition to talking with clients about how they would like to be served, there are specific steps you can take that will endear clients to you. Here are some examples.

- Prepare a budget for the client's approval.
- Send short, easily understood status reports regularly to the client.
- Visit the client's site.
- Be realistic in your evaluations of the process and merits of the client's matter.
- And, of course, return telephone calls promptly.

Clients appreciate good service and even refer more clients to those who treat them well. But, most importantly, the client will look to an attorney as their lead counsel; counsel in the original sense of being the first person to go to with a problem or challenge. And then you, the lawyer, will resume your traditional role of servicing the needs that you are competent to handle

and bringing in your network of experts and advisers to perform the other tasks requested.

This is the way that attorneys can survive - and even flourish - as individuals and as a profession. We can progress and prosper by recognizing the importance of the client and the desire of the client to be treated with respect and care. 🐘



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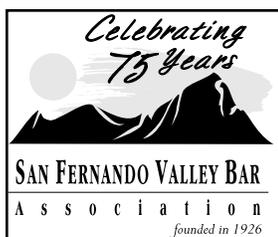
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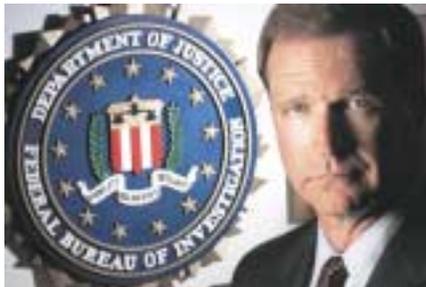
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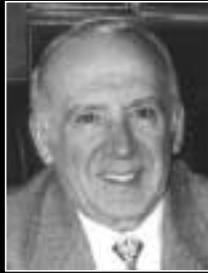
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SFVBA delegates Roger Franklin, with wife Marsha and Minnie Mouse, Bernie Grossman, and Tamila Jensen attended the Conference of Delegates at the State Bar Annual Meeting in Anaheim September 6-9.

NOVEMBER EVENTS

NOVEMBER 8 - TUESDAY

The Unlawful Detainer Equal Access Project

Topic: Training on Representing Indigent Tenants in Eviction Actions
 Time: 6:00 p.m. – 9:30 p.m.
 Place: 1102 Crenshaw Blvd.
 Cost: Free to those who agree to handle 2 eviction cases during the next 12 months.
 MCLE: 2.5 hours
 RSVP: Call Millie at (323) 801-7915.

NOVEMBER 13 - TUESDAY

Probate and Estate Planning Section

Topic: *View From Department 11*
 Find out about what's happening in Department 11. Join us and hear about the latest developments and updates firsthand.
 Speaker: Judge Thomas W. Stoever
 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

Board of Trustees and Executive Committee Meetings

Time: 4:30 p.m.
 Place: SFVBA Conference Center, Woodland Hills

NOVEMBER 14 - WEDNESDAY

Workers' Compensation Section

Topic: *Discussion of Anti-Depressants and Selective Serotonin Reuptake Inhibitor Therapy*
 Find out the latest on the use of anti-depressants with this leading medical authority.
 Speaker: Noel Lustig, M.D., PhD
 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

NOVEMBER 15 - THURSDAY

Women Lawyers Section & Small Firm and Sole Practitioner Section

Topic: *How Web Pages Can Help Your Practice*
 Do you have your own web page? Should you? Find out at this informative meeting.
 Speaker: Cys Bronner, PGServices Internet Marketing Group
 Time: 12:00 Noon
 Place: SFVBA Conference Room, Woodland Hills
 Cost: \$5 members prepaid; \$10 at the door
 \$10 non-members prepaid; \$15 at the door
 MCLE: 1 hour

Litigation Section

Topic: *Wheeling & Dealing With the Wordsmiths – Using Media to Your Advantage*
 Learn how to respond to media attention regarding your case and client and how to deal with a high profile case and understand the media ground rules.
 Speaker: Michael Strick, Media Consultant
 Time: 6:00 p.m.
 Place: SFVBA Conference Center, Woodland Hills
 Cost: \$25 members prepaid; \$30 at the door
 \$30 non-members prepaid; \$35 at the door
 MCLE: 1 hour

NOVEMBER 26 - MONDAY

Family Law Section

Topic: *Conciliation Court: How to Resolve Custody Visitation Cases*
 Attend this panel discussion regarding resolution of custody issues.
 Speakers: Counselors with the San Fernando Valley Conciliation Courts
 Time: 5:30 p.m.
 Place: Encino Glen Restaurant, Encino
 Cost: \$35 members prepaid; \$40 at the door
 \$40 non-members prepaid; \$45 at the door
 MCLE: 1 hour

NOVEMBER 27 - TUESDAY

Executive Committee Meeting

Time: 7:30 a.m.
 Place: Coco's Restaurant, Woodland Hills

NOVEMBER 30 - THURSDAY

Intellectual Property & Internet Law Section

Topic: *Business on the Net*
 Philip Akalp, Esq., President of mycorporation.com, will speak on the trials and tribulations of doing business on the Internet, both from a legal and business perspective. He will discuss online corporate formation and trademark issues raised by corporate name selection.
 Speaker: Philip Akalp, Esq.
 Time: 12:00 Noon
 Place: SFVBA Conference Center, Woodland Hills
 Cost: \$5 members prepaid; \$10 at the door
 \$10 non-members prepaid; \$15 at the door
 MCLE: 1 hour

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