



# BarNotes

A Publication of the  
San Fernando Valley Bar Association

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## Legal Forum Premieres on Adelphia

The San Fernando Valley Bar Association's cable show *Legal Forum* premiered on Adelphia Channel 25 in October. The half-hour talkshow tackles legal issues of interest to the public.

David Hagen, a past President of the SFVBA and an accomplished public speaker, moderates *Legal Forum*, while another past President, Leon Bennett, is seen and heard as the announcer on the show. Hagen also hosted the SFVBA's original *Legal Forum*, which aired in 1996. According to Hagen, "The overriding purpose of the show is to provide useful information to the public. We also want to demystify the legal process, while being somewhat entertaining. This is a way that the bar association has attempted to be more relevant to our members and the public, and being on the cutting edge of what bar associations can be."



Legal Forum Host David Hagen and Judge Michael Knight

"*Legal Forum* is an excellent tool to introduce the public to the services offered by our lawyer referral service," adds SFVBA LRIS Director Michele Morley. "The LRIS is producing a high quality show presented by delightfully informative members of our Bar Association. Not only are we educating the public, but also we are introducing them to representatives of the best lawyers in practice."

*Legal Forum* began production in August and has filmed five episodes to date, with more shows in development. Chris Jurgenson and Laura DiGilio of CJ Productions are the producers.

The pilot episode addressed restraining orders and featured family law attorneys Barbara Jean Penny and Tom Lewis. The follow-up episode was a virtual tour of the Chatsworth Courthouse. The camera visited a courtroom and judge's chambers, and drew attention to the public artwork. Judge Michael Knight, Site Judge for the courthouse, spoke eloquently about what a privilege he feels it is to serve as a judge.

Irene Mak, a public interest attorney with the courthouse's Domestic Violence Clinic, was interviewed on how the public should conduct themselves in court, what the various locations are in a courtroom, and what areas are out of bounds, such as the well. The tour also visited the jury assembly room where Michelle Cramton, the court administrator, talked about the amenities at the court for jurors. It is possible that a separate program focusing on jury service will be produced from the film taping at Chatsworth.

According to Morley, "*Legal Forum* is a lot of work, but we are having fun. We are all talking like we work full-time in the Industry. Last week there was a fire on the set, but the "show must go on" and did."

Sue Bendavid-Arbiv and Lyle Greenberg represented the employer's and employee's perspectives of employment issues in another episode. The latest show covered Cyberspace Law. Intellectual Property attorney Deborah Sweeney discussed basic terminology, what can be used off the Internet and how, what privacy protections there are on the Internet, what protections are available for a creatively produced work, and how individuals and businesses can use the Internet. In the restraining order and employment law episodes, "letters" from individuals were used as the basis of discussion. In the Internet segment, Sweeney answered e-mails from "viewers".

*Legal Forum* currently runs on Adelphia stations, but will soon be seen on other cable stations throughout the greater San Fernando Valley. The LRIS plans to distribute copies to key locations such as libraries and schools. ♣

## Calendar of Events Page 23



Behind the scenes of *Legal Forum* at the Chatsworth Courthouse.

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## President's Message

Stephen T. Holzer

### **Increasing the Value of SFVBA Membership— The Coming Enhanced Online Experience**

The SFVBA has been online for several years — in fact, since the last century (we put up our website in 1996). In an exciting development, we now are upgrading the website (www.sfvba.org) to meet our members' needs for the 21st Century.

Your SFVBA membership will increase in value with this upgrade. When completed, the new website will offer you a number of features that will enhance your practice. While some of these features have been offered in some form on the bar's existing website, the new site will upgrade these features to provide you with a more efficient and enjoyable Internet experience.

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These areas will offer tools not only for legal research but also practice aids (such as databases) and networking tools such as listserves. You will be able to use most, if not all, of these tools at no cost.

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# Judgment Protects Bad Business Judgment

BY DAVID GURNICK



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

A shareholder-director-officer of a small corporation breaches her contract with fellow shareholders, and acts outside her authority in replacing a key service provider. Her fellow shareholder-directors remove her and the corporation claims she breached her fiduciary duty. These were some of the facts in a recent decision holding that the business judgment rule prevented liability for these actions. *Biren v. Equality Emergency Medical Group* 2002 DJDAR 10873 (Sept. 19, 2002).

The individual, Biren, was chief financial officer of Equality Emergency Medical Group, Inc. The corporation provided emergency room services for hospitals. It outsourced billing and accounting. When the billing service fell behind, Biren investigated what to do. She spoke with another client who was also dissatisfied with the same provider and she checked references for other billing companies.

As problems with the billing service mounted, Biren viewed the situation as a crisis. She fired the billing service and contracted with a replacement. But she failed to get board approval for her actions. Her failure breached a shareholder agreement saying any billing service contract required prior written consent of shareholders. Biren testified later that she mistakenly believed as a director and CFO she had authority to contract on behalf of her company, and anyway, she couldn't reach the other shareholders and directors because they were away on vacation.

## Business Judgment Rule Protects Mistaken Actions Taken in Good Faith

In the fiduciary duty claim, the court found Biren reasonably relied on information she believed was correct. That is, she acted in good faith. The court applied the rule that a director is not liable for mistakes in business judgment made in a good faith belief regarding the corporation's best interests. (citing *Barnes v. State Farm* (1993) 16 C.A.4th 365, 378).

The business judgment rule protected Biren though she was wrong about her authority to act, her actions breached a written contract, and she failed to get required board approval for the contract she entered into. Her actions, taken in what she felt was an emergency, resulted from her belief that she had a fiduciary

duty to protect the company's financial stability and her mistaken belief that she had authority to act. The business judgment rule "protects well-meaning directors who are misinformed, misguided and honestly mistaken," (*FDIC v. Castetter* (9th Cir. 1999) 184 F.3d 1040, 1046), unless the person knows that their acts are illegal or that they are acting outside their authority.

## Court Gives Deference to Informality of Small Corporation

The court of appeal also considered the informal way many small corporations operate. "It is well known that corporations which include only a few shareholders do not often act with as much formality as larger companies. This is especially so where the members of the board personally conduct the business of the corporation," the court noted. EEMG was a small corporation, run informally by physicians who worked 12 hours shifts in emergency rooms. Though it had not complied with statutory rules to be a "close corporation" (see Cal. Corps. Code Sec. 158), it had no distinct lines between management levels, and there was no self-dealing by Biren. These facts helped persuade the court that Biren's actions, while mistaken, were an honest mistake.

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## Written Amendment Requirement Can Be Amended Orally

Biren did not entirely escape liability. Damages were awarded for her breach of the contract requiring shareholder approval to change service providers. One of the issues in this cause of action was whether the parties could orally amend a written agreement that said any amendment had to be in writing. The court said parties, by their conduct, can waive a requirement that amendments be in writing.

In this instance the parties' conduct waived the requirement that any consent to change service providers be in writing. Therefore, an oral consent could have satisfied the contract's requirement for shareholder consent. Biren had not sought such consent; and the court found that had the other shareholders been consulted, they probably would not have terminated the original billing and accounting provider. Therefore, Biren was liable for damages caused by the unauthorized termination.

## Statement of Decision Supersedes Trial Judge's Oral Remarks

During trial, the judge had made some comments indicating he would decide the matter the other way. The court of appeal held she could not rely on the trial judge's earlier remarks because the final judgment and formal findings controlled. (citing Burbank-Glendale-Pasadena Airport v. Hensler (1991) 223 C.A.3rd 577, 591).

Against the backdrop of today's corporate accounting scandals, the Biren decision reinvigorates, by reaffirming, some basic corporate law, contract and litigation principles. First, the business judgment rule will still protect a director or officer against liability for actions taken in good faith, even when hindsight shows they were mistaken. Second, a written contract that says it can be amended only in writing, may still be orally amended in the right factual circumstances. Finally, a trial judge's oral remarks during trial are not conclusive with regard to the court's ultimate decision. The statement of decision controls. ⚖️

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# Mediator's Notebook

BY CHARLES B. PARSELLE

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

## Bacon & Coke



Sir Francis Bacon, a lawyer, died in 1626, about the time the colonies on the East Coast were getting started. He still rates five pages in the Encyclopaedia Britannica. He approved of lawyers, writing: "The greatest trust between man and man is the trust of giving counsel." [Essay: Of Counsel] In negotiations, he preferred to use a mediator.

In 1573, Bacon went up to Trinity College, Cambridge. At that time, Cambridge was dominated by the thought of Aristotle, regarded as the last word in knowledge: the charter of Trinity forbade the teaching of anything else. Bacon was the first English-speaking person to launch a systematic attack on the Aristotelians. His work "*The New Organum*" was published in 1620 and went through many editions. It successfully challenged Aristotle's closed world-view based in deductive reasoning, in favor of inductive and empirical methods.

In 1661, a young man went up to Bacon's old college, Trinity, by the name of Isaac Newton. He found a very different intellectual climate than that so systematically assaulted by Bacon forty years earlier. Trinity had opened its gates to the Cartesians and the Aristotelians were in retreat. It is interesting to speculate how the history of science might have been altered if Newton, always attracted to metaphysics and alchemy, had entered a Trinity College still trapped in the closed world of Aristotle. A large part of the credit for the change in intellectual climate must go to Bacon. The influence of Bacon on English thought during the intellectually-tumultuous years of the Restoration of Charles II may be gauged from the following: in 1665, Newton published his ground-breaking work on "Opticks" (sic) in the very first publication of the proceedings of the newly chartered Royal Society – the frontispiece of that publication carried three pen-and-ink portraits – the King, the President (now forgotten) of the Royal Society, and the long-dead Francis Bacon. He formed the intellectual bridge between the mediaeval and modern worlds.

His career as a lawyer ended in disgrace, broken on charges (admitted) of corruption. Bacon was never much of a private lawyer; his interest lay in preferment under the Crown. Ignored by Elizabeth I, his career took a turn for the better when James I ascended the throne in 1603. Bacon was then 42 years old. He was knighted, appointed successively solicitor-general, attorney-general, and finally, in 1621, lord chancellor. Dismissed from that office, fined the huge sum of £40,000, imprisoned briefly in the Tower of London, he went on to publish his most influential works, writing: "If I be left to myself I will graze and bear natural philosophy." He died in 1626 of a sudden chill after stuffing a dead chicken with snow to determine whether that would delay putrefaction.

He was outlived by eight years by his formidable rival, Sir Edward Coke, pronounced "cook" (1552-1634). Coke had also served as solicitor-general, attorney-general, then Chief Justice of Common Pleas, finally Chief Justice of King's Bench, before his dismissal by James I. Coke then entered Parliament, and played

a large part in the passage of the Petition of Right (1628), which forms an important link between Magna Carta (1215), the Habeas Corpus Act (1679), to the Declaration of Independence (1776). Coke told the Commons: "Let us put up a Petition of Right. Not that I distrust the King, but that I cannot take his trust but *in a parliamentary way*."

Bacon and Coke were prolific writers, the one progressive and visionary, the other staunchly rooted in the past. Bacon defended the royal prerogative, Coke the common law. Coke prevailed; the next twenty years was to witness the triumph of Parliament and the public execution of the monarch.

Coke's learning was steeped in the 400-year old tradition of the common law. During his lifetime, he personally collected and compiled over 600 legal decisions, which he reported with commentary in Coke's "Reports." He also wrote a 4-volume treatise on the common law entitled "The Institutes." The influence of these works cannot be exaggerated; without them the unwieldy, complex, encrusted, uncodified mass of law that was the common law might have foundered under its own weight. Bacon might have favored this result; he was in favor of a legal system based on general principles and codification.

Coke's Institutes and Reports saved the common law from itself, and permitted its transportation as a coherent entity from the old country to the new world. Even Bacon admitted it: "Had it not been for Sir Edward Coke's Reports...the law by this time had been almost like a ship without ballast." The first and most influential volume of the Institutes was Coke's Commentary on the earlier work of Chief Justice Littleton, known as "*Coke on Littleton*," a treatise on property rights. The *Second Institute* is a detailed commentary on Magna Carta (1215) and 38 other charters and statutes – "Magna Carta," said Coke, "is such a fellow that he will have no sovereign."

Coke's *First and Second Institutes* are in the earliest catalogue of the Harvard College library (1723), and many of the lawyers among the founding fathers and the next generation studied and struggled with *Coke on Littleton*:

- Daniel Webster wrote he could never understand a quarter of *Coke-Littleton*: "No boy of twenty could understand Coke," the study of which caused him "to despair and almost to give up law for school teaching."
- John Adams confided to his diary: "*Wood's Institutes of Common Law* and *My Lord Coke's Commentary on Littleton* I never read but once. These two authors I must get and read over and over again. And I will get them and break through all obstructions."
- Patrick Henry was admitted to the bar after six weeks' study of nothing but *Coke-Littleton* and the *Virginia Statutes*. His license was signed by the Randolph brothers, who stated that Henry was "very ignorant of the law," but had genius and "would soon qualify himself."

- Mr. Justice Story of Massachusetts tried "day after day" to read Coke-Littleton, then "set himself down and wept bitterly..." but "went on and on, and began at last to see daylight...when I had completed the reading of this formidable work, I felt that I breathed a purer air and that I had acquired a new power."
- Thomas Jefferson: "Coke Littleton was the universal elementary book of law students and a sounder Whig never wrote nor profounder learning in the orthodox doctrines of British liberties."
- John Rutledge of South Carolina: "Coke's *Institutes* seem to almost the foundation of our law."
- John Quincy Adams struggled valiantly with the "folio of Lord Coke which has been hanging heavily upon me these ten weeks."

In one critical respect, the arch-conservative Coke was more progressive than Bacon. While Bacon favored and defended the royal prerogative (which didn't save him from disgrace), Coke attacked the prerogative, flatly denying that it had the force of law. He wrote: "The law of England is divided into three parts: common law, statute law, and custom, but the King's proclamation in none of them."

More dramatic (and foreshadowing Chief Justice John Marshall by more than 200 years), in Bonham's case (1610) Coke went so far as to challenge the supremacy of an Act of Parliament: "When an act of Parliament is against common law, right and reason, the common law will control it and adjudge such Act to be void." Coke's assertion of the supremacy of common law judges over all other authority whatsoever did not stand the test of time. Compare John Marshall's less sweeping but more successful claim, that the constitution is the highest law and the Supreme Court the final arbiter of its meaning.

So one has a curious paradox: the thirteen colonies started a revolution and created a new nation, but the founding fathers remained content with a legal system having its origins in the reign of Henry II (1152-1189). The common law system, only found in English-speaking countries, is quite different from its great rival, the civil law system found in most European countries. If one walks into a French court today, one might be surprised to see the prosecutor sitting on the bench with the judges, the judges doing most of the questioning, the role of the defense lawyer largely confined to his final, highly emotional oration ("plaidoirie"). Walking into a French attorney's office, one can hardly fail to notice the absence of shelves lined with books, no law reports, just a few slim red paperback volumes setting out the codes (but far, far shorter than the California codes). Yet if you were to walk into the Court of Common Pleas in Westminster Hall in the year 1625, you might feel quite at home. Apart from the wigs and gowns, it would seem familiar.

There is something to be said for a legal system so adaptable that it can survive 800 years, transport itself thousands of miles to different parts of the globe, and retain its relevance into the 21st century. In this, Edward Coke remains the pivotal figure, whose life work was to make the common law accessible to future generations. Bacon may have influenced the possibility of a Newton, but as far as the development of the law is concerned, Coke trumped Bacon. Yet today, few people study Coke, while philosophy students still read Bacon; their rivalry endures.

And it was Bacon, a consummately subtle negotiator, who expressly approved of the practice of using a mediator in the conduct of negotiations, writing: "It is generally better to deal by speech than by letter, and *by the mediation of a third than by a man's self*.... In all negotiations of difficulty, a man may not look to sow and reap at once, but must prepare business, and so ripen by degrees." [Essay: Of Negotiation] ♣

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## A Proposal for an Alternative to the Alternative Dispute Resolution System in Los Angeles County: Reality Based Settlement of Professional Negligence Cases

BY JAN FRANKEL SCHAU, ESQ.



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

The Alternative Dispute Resolution system in civil lawsuits in Los Angeles County is based upon a tacit compact between the Court and the litigation Bar, that lawyers and retired Judges know best how to predict the outcome of trial. Thus, litigants are offered either lawyers or Judges to mediate or arbitrate their cases. Rarely, but occasionally, one encounters a non-lawyer who acts as a professional mediator. Invariably, even those non-lawyers have been trained by attorneys on how to conduct their hearings to most closely mimic what a Judge or jury would do. But what of the confused and befuddled juror who, faced with competing "expert" points of view, is left to "guess their best"? Why are we acceptant of that model of dispute resolution as though it were the singular most effective and fair?

The solution to this baffling dilemma of approximating fairness in a judicial outcome at the settlement level is obvious: engage professionals in the field out of which the contention is borne. With neutral physicians, architects, contractors, accountants, stock brokers, and the like, acting as co-mediators or arbitrators with the lawyers or judges appointed or chosen, the parties could at least attempt to base their case's resolution on "reality", not

simply the best guess of the neutral and the lawyers on what a lay jury will understand and accept as true.

The immediate example that comes to mind is the case of a medical malpractice. Too often, the physicians are not present for the mediation hearing, or, if they are present, are so resentful of being named and inconvenienced by the lawsuit that their position is locked in stone, and they refuse to consent to any settlement, even where the insurance carrier and lawyer agree there is clear exposure to liability. In these cases, why not engage a neutral physician to look at the medical records of significance and work with both sides to attempt to explain the likely testimony by experts on either side and the vulnerabilities and strengths of each side's position? Working alongside a skillful mediator or arbitrator, a physician could offer a variety of factual scenarios to help both sides see the issues more clearly.

For example, in a recent and pending medical malpractice case, Plaintiff's decedent, an elderly woman, suffered a stroke and presented to the emergency room, where her stroke was diagnosed and she was admitted to the hospital. Within three days, she suffered a massive stroke and died. The defense lawyers came to the mediation with no consent to settle, claiming that medically, when a stroke is diagnosed, there is no effective treatment that can prevent the stroke from its natural sequelae. In the absence of any medical practitioner to respond, neither Plaintiff's counsel nor the hired mediator could respond to this argument. The case simply couldn't settle based upon that proposed defense, as it was raised during the hearing on mediation for the first time.

*continued on page 12*

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## Message From LRIS Coordinator

**Michele C. Morley**

Driving back from the SFVBA Board retreat I thought about this column. This is the month that I report on the final LRIS numbers for the fiscal year that just ended. I will do that, but first must report that the Board members and SFVBA leadership continue to support the LRIS. They view LRIS as the most significant public service program the Bar Association sponsors.

This support would not be there if it were not for the excellent work done by all the panel attorneys. LRIS staff does not thank you often enough. Thank you for being so willing to take on difficult cases. Thank you for taking the time to find the facts and the law that other attorneys have missed and that makes each referral a case with possibilities for success. Thank you for meeting with clients that may not immediately generate fees. Thank you for seeing that each referral client has the real potential of leading to other opportunities for representation. Thank you for your civility and your professionalism. Thank you for your continued support.

This year LRIS generated more referrals than last year and the second highest number in the last 10 years. Once again, our panel attorneys made over one million dollars in fees from our referrals. We began to see the results of our marketing efforts in the business community by the increased number of business law referrals. We increased our numbers in family law, criminal law and employment law while maintaining our good numbers in other areas of practice. We have expanded placement of our signs and business cards in the Courts. We have a cable television show that has filmed four shows with more in production. We have increased our Internet referrals in numbers and in quality. We continue to be a resource that can be counted upon by the community and the Courts.

**The current LRIS Committee members are Christine Lyden, Richard Lewis, Alice Salvo, Marcia Kraft, Hillary Grosberg, Donna Laurent, Roxanne Kaz, Jim Felton, Kevin Lynch, and Cindy Hogan. Of course, President Steve Holzer is a member. In addition we have a Resource/Advisory Committee that includes attorneys David Hagen, Diane Karpman, Caron Caines and Mike Prihar.** Obviously the quality and prominence of LRIS Committee members and advisors clearly shows the high regard the program enjoys within the SFVBA.

I must extend a special thank you to Christine Lyden and Richard Lewis who continue to serve as Co-Chairs of the LRIS Committee. I also want to specially thank David Hagen and Leon Bennett who have undertaken the task of writing, hosting, and advising on the cable television show. Each of these attorneys spends many hours away from their practices and families because of their determination to make the LRIS program successful and creative.

Lastly, I am in need of attorneys practicing family law who would be able to accept a modest means case or two this year. Panel members accepting a modest means case cap their fees at \$1900 with a fee rate of \$75 an hour. I will absolutely not impose on you with any more modest means referrals than you agree to accept. ✍



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...*Alternative Dispute...* continued from page 10

Even in a personal injury case, where the treatment and claimed damages are at issue, a neutral physician could offer advice on the proper treatment of a particular claimed injury, the extent of treatment necessary or called for, and the likely prognosis for recovery in view of the treatment. In other words, if there's no way that the Plaintiff's claimed symptoms could arise two years after the accident, a physician can help to elucidate that—to both client and lawyer. On the other hand, if the injury is sufficiently severe that the neutral physician is inclined to concede that the Plaintiff may be looking at a lifetime of suf-

fering, why not get that out in the open to both sides at the earliest possible moment?

For example, where there is a "soft tissue" injury in a patient with a prior laminectomy of the cervical spine, is a chiropractic manipulation indicated or appropriate? How much pain can such a victim expect and what prognosis if treated or not? Wouldn't a physician be helpful to enlighten Plaintiff, his counsel and the defendant's lawyer and insurance adjuster?

In a construction case, a neutral architect or contractor could help the attorneys and their adjusters understand how the structure of a building comes together—and what vulnerable points may cause the type of damage that Plaintiff describes and of which she complains. A professional neutral architect or contractor could help the neutral facilitator and the attorneys and adjusters to read the blue prints, the specification sheets, the plat maps and the technical portions of the contract to help to discern "who goofed". Ultimately, this could also be a great savings to the parties who each have a position to defend and therefore are actively engaged in pointing fingers at the other tradesmen.

It is truly only out of arrogance that lawyers and judges act as mediators and arbitrators and thereby profess to accurately foresee the outcome of professional negligence cases. Why not agree to examine and engage in an alternative to the current alternative dispute resolution system by hiring a panel of neutral experts to shed reality-based light on how a particular case should be resolved?

Detractors and naysayers will cover from this challenge and respond by pointing out the prohibitive expense of such a panel. However, consider the savings: hiring a neutral professional on an hourly basis for purposes of participating in the mediation or arbitration process would be far less expensive than each side hiring an expert to review records, provide a report, testify at deposition and at trial. The alternative ADR system that I propose would contemplate only a modest amount of preparation, as a typical lawyer or judicial neutral does. For example, the Doctor would not be asked to review the entire medical history in advance of the hearing, but rather would be present to hear the particular facts that each side intends to bring out at trial.

The next time you have a significant professional negligence case ordered to alternative dispute resolution, consider your alternatives and look for a panel which offers professionals in the field in which you are litigating. It could be the best alternative you'll make for your clients and the most effective way to resolve your legal dispute! 🐿



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# THE PRACTICE

a series of essays on practice of law and life

## On Stress

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.*

The practice of law involves a good deal of stress. As I look over the articles that I have written over the past several years, I notice that one of the themes is stress in the practice of law. In extreme cases, stress can lead to rapid heart rate, neck tension, lower back pain, dry mouth, headaches, digestive problems, overeating, insomnia, fatigue, sweating and rapid breathing.

The symptoms of stress sound a lot like the "fight or flight" alarm system in animals and humans. This system is designed to sound a warning, create a response, and then shut down. When the animal is scared, it runs or attacks, and the event passes. But when we are stressed, we leave the alarm system on and clanging. Many times, the event does not pass. We obsess about it over long periods of time and, in some cases, develop the symptoms of stress described above. The consequences can be deadly. I have seen people die at early ages from the symptoms resulting from stress. Further, I have seen people who are consistently "stressed out" have their immune systems eaten away over time and fall prey to other illnesses as well.

This month, I want to reflect a little bit on stress and share some of my observations. It is my hope that, if I am in any way normal, many of you will be able to relate to some of these observations.

Much of stress is really just fear. I would like to take credit for an observation this fundamental, but I cannot. Actually, I took some time reflecting upon this during my vacation last summer. In the September 2002 edition of Men's Health, a clinical psychologist at the UCLA School of Medicine named Robert Maurer, Ph.D., set forth this thesis in a very interesting article entitled "Why Stress Doesn't Exist." He believes that the symptoms of stress described above are the exact same symptoms of fear. He believes that stress is really just fear.

Did you know that stress was not really even "invented" until 1936 by Dr. Hans Selye? Dr. Maurer has treated hundreds of individuals with symptoms of stress over the past twenty-two years by convincing them that stress doesn't exist. Dr. Maurer suggests that most stress is really fear and that most of these fears are related to a fear of some type of failure, inadequacy, or loss of control. When you think about the practice of law, the stress we usually feel probably relates to one of these three fears. Fear that you will lose control of some aspect of our practice or a case, or fear that we may not be doing the best that we can, or, more importantly, the best that can be done in a particular case, or fear of just plain losing a case. (It does happen, but that doesn't mean we have to like it.) Let's face it; most of us "type A" personalities like to have absolute control over our environments. This leads to fears and stress.

Of course, the best way to deal with fear is to acknowledge it and to find out a way to manage it, but that is beyond the focus of this month's column.

Stress is what you make it. It seems to me that if someone had an unlimited amount of money and didn't have to work,

they would have a great deal of personal security and thus little stress or fears. Well, this simply isn't the case. Wealthy people have plenty of stress because they probably still have many of the same basic fears and anxieties as the rest of us. I remember hearing a story about a couple who were heirs to a major, major fortune. They lived in a beautiful home in the hills above the city and didn't have to work, ever. I can't imagine that they would have any stress whatsoever. Yet, they indicated that they were extremely stressed – stressed that the decorating of their living room would not go properly or by a feeling of being rushed in getting ready for their next vacation in Europe.

Now I can't imagine how someone in that position could let themselves be stressed by those issues, but I am sure that they were actually feeling stress. I could see that they were showing signs of some of the resulting symptoms. This experience caused me to believe that stress is what we make it out to be, or what we allow ourselves to be fearful of. This makes it very understandable how these apparently very wealthy individuals felt "stressed," or that almost anyone from any walk of life can feel stressed.

Dealing with stress takes effort. For me at least, the best way to deal with stress is to identify it and to develop strategies to effectively deal with it. I have discussed some of these strategies, like meditation and maintaining a proper life focus, in past columns. Quite frankly, analyzing and acknowledging stress is perhaps the most difficult part of dealing with it. However, I have also found that it is much more difficult if you don't eat well, sleep well, and keep yourself in a reasonable shape. I have found that when your body is not functioning properly or you are run down, it is much easier for stress to affect the core of your being.

Don't get me wrong, I don't want to pretend that I know everything about how to deal with stress. Like most lawyers, I struggle to manage my stress level. My understanding of stress and how to manage it evolves every day. In fact, as you can see, perhaps one of my most important revelations with respect to stress occurred just this last summer. I don't pretend to have all the answers. (If I did, I would write a best selling book or become a motivational speaker.) However, my hope that some of my experiences are similar to some of your experiences and that some of my insights will in some way help your thought process as you find ways to deal with the daily stress in your law practice. ♣

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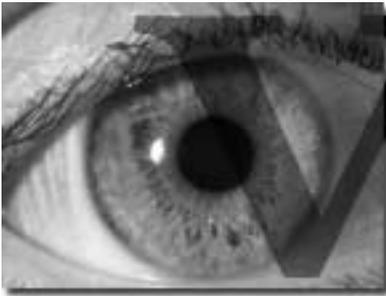
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# Viewpoint

BY BERNARD GROSSMAN

*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).*

## How Do California State Bar Conventions Impact the Membership of the San Fernando Valley Bar Association and the General Public?

Attorneys understand that the general public frequently deprecates our profession. Conversely however, while they seem to hate us more, statistics prove that the usage of attorneys had generally escalated over the past several years.

One of the most vexing problems is the image that seems to be that our State Bar convention meetings are under the control of attorneys who are either wild eyed liberals, or lawyers who are solely out to propound a political agenda. We surely know that former Governor Pete Wilson did not have many good things to say about us.

The images of our bar conventions became so negative that recently the State Bar Board of Governors had to work out a scheme to allow the Conference of Delegates to exist. However, as to the few resolutions enacted at our bar conventions that may embarrass it, the State Bar hierarchy also wanted to shield itself from public scrutiny. Clearly the media

makes much of a very few resolutions adopted by California lawyers at these yearly bar conventions.

Most of our image problem relates to issues highlighted by the media, wherein the public perception is that lawyers are desecrating public sacred cows. Examples of these matters are debates relating to keeping, or abrogating capital punishment; as to resolutions seeking to diminish sentences arising out of minor drug offenses; and of course many of our citizens are enraged by the fact that attorneys in criminal trials naturally must sometimes resort to legal technicalities to defend criminal defendants.

Fortunately the mass of resolutions advocated by our bar delegates are of a positive nature. Unhappily these issues are overlooked because they don't sell newspaper.

The true image of the efforts of attorneys elected or selected by local bar associations to discuss issues concerning the law

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is really a great benefit to the general public.

A second plus for what occurs at our yearly meetings is directed to resolutions that make the practice of law less complicated and procedurally sound, both for the public and for practicing attorneys.

Another subject that may not be completely understood by the average attorney is that bar convention resolutions are transmitted to committees of the State Bar for review. In that process, proposals when adopted are set forth in a priority pecking order. Then the most important proposals adopted at our conventions are actively advocated to the state legislature and to the executive branch of our government by State Bar lobbyists. This process really works because sixty to eighty percent of the resolutions are made into law.

Our message is simple. Bar association's resolutions committees promote the general welfare of California citizens, the judiciary, and the practicing lawyers as well. Likewise, this message is not meant solely to be of academic interest. The San Fernando Valley Bar Association Resolutions Committee wants to urge that each of our Sections and/or individual members of our Association make an effort to produce more input of matters of concern, both to the general public and our bar association and its membership.

The following is the process to assist in this task: Any Section or attorney member of our Association who has even the faintest idea for a change in the law, rules of court, statutes, and/or procedures affecting attorneys or the general public, should contact the chairperson of our Resolutions Committee, Tamila Jensen, or any member thereof to express the concepts of such proposed legislation.

These ideas don't even have to be put in writing. Once there is input, the Resolutions Committee will write such resolutions if the submitted ideas are adopted by the Committee. Of course any member is welcome to join in our debates as to proposed resolutions of concern to them. Later our packet of resolutions will be acted upon at the State Bar convention level.

It should also be noted that resolutions do not have to be presented in any particular time frame. This is so because our Resolutions Committee personnel can process such ideas whenever presented, and later offer such proposals at the next successive bar convention.

Our committee urges such input as a most important function of our local bar association. ↗

Bernard Grossman was President of the San Fernando Valley Bar Association from 1975 to 1976 and is Vice-Chair of the SFVBA Resolutions Committee.

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President's Message continued from page 3

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#### ONLINE DUES PAYMENT AND EVENT REGISTRATION

You will be able online to pay your bar dues and even register for upcoming events.

#### NOTICE OF EVENTS

You will now be able to receive notice of your Section's meetings and other bar events via e-mail; no longer will you have to rummage for that flyer or make that last-minute call to your friend to remind you of the time and place for the meeting or event you want to attend.

#### LEGAL NEWS

The Home Page of the new site will on a daily basis feature a scrolling marquee of "Today's Legal News". By clicking on any headline of interest to you, you will be linked to the full news story.

#### SPONSORSHIP OPPORTUNITIES

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The new site will offer seminars for MCLE credit via "steaming video". You will be able to sit at your office or home-office desk and watch the video on your computer. While both non-SFVBA members and members can take advantage of this feature, as an SFVBA member you will be able to register for these on-line MCLE offerings at a discounted price.

Liz Post, our Executive Director, and the Membership & Marketing Committee chaired by Alice Salvo have over the past few months been working diligently to implement the new website. Presently, we anticipate the site will replace our existing site in early 2003. If you have any particular features you would like to see on the site, please feel free to offer your suggestions either to Liz (epost@sfvba.org) or to Alice (salvolaw@pacbell.net). ↕



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# Announcements

## Family Law Mediators Needed in Van Nuys

The San Fernando Valley Bar Association Family Law Section schedules attorney members to serve as volunteer mediators each day for the family law courts in Van Nuys (as well as San Fernando). Qualifications include at least five years experience and knowledge of the new Dissomaster software. Interested family law practitioners should call Barry Harlan at (818) 907-3279 or email [bharlan@lewitthackman.com](mailto:bharlan@lewitthackman.com).

## U.S. District Court Central District of California Notice from the Clerk

Scanned civil judgments, orders, and minute orders are now accessible on-line for a fee through WebPACER. To establish a PACER account, contact the PACER Service Center at [pacer.psc.uscourts.gov](http://pacer.psc.uscourts.gov) or at (800) 676-6856.

## A Window of Opportunity

The powerful video "Windows of Opportunity" will be screened at a free seminar sponsored by the American Association of University Women – San Fernando Valley Branch and Haven Hills, Inc. The seminar, which will examine the impact of violence on very young children, will be held at Kaiser Permanente in Woodland Hills on Thursday, November 21 at 7:00 p.m. The video, which was produced by the California Children's and Families Commission and funded by Prop 10 monies, is being distributed by the State Attorney General's Office.

The video, narrated by director/actor Rob Reiner, makes clear that exposure to violence at a very young age can lead to physiological problems in children. This is an extremely important and moving video, full of new information that will help our community become aware of this serious issue.

Following the video, a panel of experts will explore the physiological and psychological exposure to violence has on the brains of children from newborns to 6 years old. The panel will take questions and light refreshments will be served.

The seminar will be held in Entrance 5, Auditorium C at Kaiser Permanente. The seminar is FREE and open to the public. For more information, call Marya Harrington at (818) 887-3213, ext 2 or email Ginny Hatfield at [ginny.hatfield@asm.ca.gov](mailto:ginny.hatfield@asm.ca.gov).

## State Bar International Law Section Sponsors Seminar

On Tuesday, November 5, the International Law Section of the State Bar will present a seminar on Reducing Payment Risk in International Transactions: How to Make Sure Your Client (and You) Get Paid. When a buyer is located in an emerging market, the financing challenges and risk factors of a transaction multiply. This program of leading authorities and experienced practitioners will provide invaluable advice on how to reduce the credit risks of sales to such buyers while creating financing terms that encourage sales.

The seminar will be held at the Olympic Collection Conference Center, 11301 Olympic Boulevard, Los Angeles. Registration begins at 8:00 a.m. The program runs from 8:30 a.m. to 12:30 p.m. The cost is \$90 for State Bar International Law Section members and \$95 for non-members. The seminar provides four hours of MCLE credit plus a one-hour self-study tape on Elimination of Bias.

For information or to register, click <http://www.calbar.org/ils/2002-risk.htm>.

## NOTICE

San Fernando Valley College of Law  
Library Hours  
Effective November 1, 2002

<b>Monday</b>	<b>10:00 a.m. — 10:00 p.m.</b>
<b>Tuesday</b>	<b>10:00 a.m. — 10:00 p.m.</b>
<b>Wednesday</b>	<b>10:00 a.m. — 10:00 p.m.</b>
<b>Thursday</b>	<b>10:00 a.m. — 10:00 p.m.</b>
<b>Friday</b>	<b>10:00 a.m. — 5:00 p.m.</b>
<b>Saturday</b>	<b>10:00 a.m. — 5:00 p.m.</b>
<b>Sunday</b>	<b>10:00 a.m. — 5:00 p.m.</b>

These new hours may be extended during Dead Week, Finals Week, and subject to change in-between semesters and on holidays.

For questions or comments, contact the Library Director at (818) 883-0529 ext. 156 or by email at [jrimonte@uwla.edu](mailto:jrimonte@uwla.edu).



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Approximately 250 members, spouses, and other invited guests attended the San Fernando Valley Bar Association's Annual Installation Gala at the Warner Center Marriott on September 28. Environmental law attorney Stephen T. Holzer was installed as President of the Association and LRIS Director Michele Morley received the President's Award from Outgoing President Lyle F. Greenberg. The evening concluded with standup comedy by former Channel 7 sportscaster Bill Weir. Proceeds from a raffle and tribute booklet raised more than \$4,000 for the SFVBA's Court Mural Project.



# 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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# November Events

## calendar and MCLE event listings

### ADR Section

**Topic:** Update on the Court's ADR Program:  
*How Does It Work and How Is It Doing?*  
**Speaker:** Julie Bronson, Administrator ADR  
**Date:** November 7  
**Time:** 6:00 p.m. Dinner and Program  
**Place:** SFVBA Conference Room, Woodland Hills  
**Cost:** \$30 members prepaid; \$35 at the door  
\$35 non-members prepaid; \$40 at the door  
**MCLE:** 1 Hour

### Probate and Estate Planning Section

**Topic:** View From The Bench  
**Speaker:** Judge Richard Kolostian  
**Date:** November 12  
**Time:** 12:00 Noon  
**Place:** Radisson Hotel, Sherman Oaks  
**Cost:** \$30 members prepaid; \$35 at the door  
\$35 non-members prepaid; \$40 at the door  
**MCLE:** 1 Hour

### Small Firm and Sole Practitioner Section

**Topic:** Winning a Challenge To Your Fees and  
Other Fee Tips & Tricks  
**Speaker:** George S. Zugsmith, Esq.  
**Date:** November 8  
**Time:** 12:00 p.m. Lunch and Program  
**Place:** SFVBA Conference Room, Woodland Hills  
**Cost:** \$25 members prepaid; \$30 at the door  
\$30 non-members prepaid; \$35 at the door  
**MCLE:** 1 Hour

### Intellectual Property & Internet Law Section

**Topic:** Trade Secrets  
**Speaker:** Keith Gregory, Esq., Greenberg & Bass  
**Date:** November 15  
**Time:** 12:00 p.m. Lunch 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

### Young Lawyers/Barristers Section

**Topic:** Housing Law  
**Speaker:** Roberta Stovitz, Esq., Neighborhood Legal Services  
**Date:** November 19  
**Time:** 12:00 p.m. 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

### Workers' Compensation Section

**Topic:** Toxic Exposure: Missed Third Party Cases  
**Speaker:** Rafael Metzger, Esq.  
**Date:** November 20  
**Time:** 12:00 Noon  
**Place:** Encino Glen Restaurant, Encino  
**Cost:** \$30 members prepaid; \$35 at the door  
\$35 non-members prepaid; \$45 at the door  
**MCLE:** 1 Hour

### Business Law and Real Property Section

**Topic:** Assignment for the Benefit of Creditors  
**Speaker:** David Kupetz  
**Date:** November 21  
**Time:** 12:00 p.m. Lunch 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

### Litigation Section

**Topic:** Cufflinks to Handcuffs:  
*Criminal Law Issues for Civil Litigators*  
**Speaker:** Steve Meister, Esq.  
**Date:** November 21  
**Time:** 6:00 p.m. Dinner and Program  
**Place:** SFVBA Conference Room, Woodland Hills  
**Cost:** \$30 members prepaid; \$35 at the door  
\$35 non-members prepaid; \$40 at the door  
**MCLE:** 1 Hour

### Family Law Section

**Topic:** Getting a Judgment Entered: Secrets From the Bench  
**Speaker:** Judicial Bench Officers  
**Date:** November 25  
**Time:** 5:30 p.m.  
**Place:** Encino Glen Restaurant, Encino  
**Cost:** \$38 members prepaid; \$45 at the door  
\$45 non-members prepaid; \$50 at the door  
**MCLE:** 1 Hour

Information & Reservations 818•227•0490

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