



BarNotes

A Publication of the
 San Fernando Valley Bar Association

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New Board of Trustees Elected

Business law attorney James Felton was automatically elected as President of the San Fernando Valley Bar Association in the organization's September 9 election. Felton, who is a partner with the Encino law firm of Greenberg & Bass, served as an SFVBA trustee for just two years before moving up the officer ladder from Treasurer to Secretary to President-Elect of the Association. One of the youngest presidents in the Bar's seventy-seven year history, Felton was recently selected by the *San Fernando Valley Business Journal* as one of the Valley's "40 under 40". He is a life-long resident of the Valley, and is a graduate of Brandeis University and UCLA School of Law. He lives with his wife Robin and three young sons in Calabasas.

Van Nuys social security and disability attorney Patricia McCabe had served five years as a Trustee of the San Fernando Valley Bar Association Board of Trustees when she was termed out last fall. McCabe, a sole practitioner, chose to spend this past year completing her two-year term as President of the Valley Community Legal Foundation of the SFVBA. Having fulfilled her tenure, she redirected her attention back to the leadership of the Association and on September 9, became Treasurer of the SFVBA in an uncontested election.

Elder Law attorney Alice Salvo, who ran unopposed for President-Elect, and family law practitioner Richard Lewis, unchallenged for Secretary, round out the new Executive Committee. Salvo and Lewis were the incumbent Secretary and Treasurer, respectively.

Ten candidates competed for six Trustee positions. Newcomers Donna Laurent and Alan Sedley were elected along with incumbents Seymour Amster, Cindy Elkins, Kevin Rex and Myer Sankary. Laurent is a family law associate at Bleier & Cox in Encino and Sedley practices healthcare law at the Woodland Hills firm of Greenberg & Sedley. President Felton appointed public interest attorney Caron Caines and employment lawyer Everett Meiners to one-year terms. The 2003-2004 Board was installed September 20.

"I feel proud that our new Board represents the varied images and views of our members and our community," says Felton.

SFVBA Members also elected by near unanimous vote to amend the SFVBA Bylaws, the first revisions to the Association's governing documents since 1995. ⚡

Calendar of Events Page 23

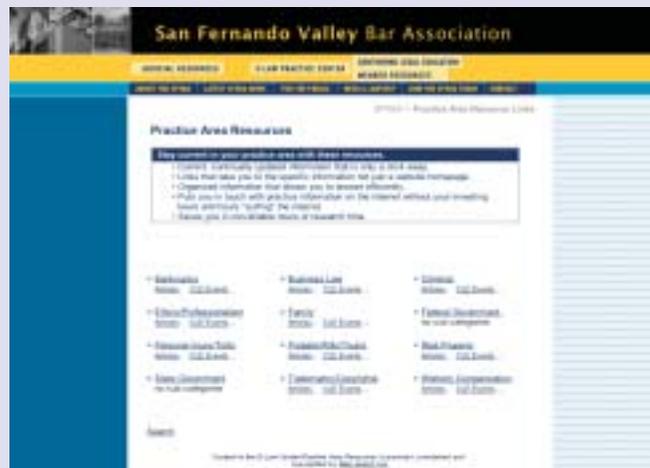
SFVBA Unveils New Website

After months of planning and preparation, the SFVBA launched its redesigned website at www.sfvba.org. The new site is a virtual law office for SFVBA members.

An E-Law Practice Center is a portal to online information in a dozen areas of laws. This current, continually updated Practice Areas Resources page takes you to information you need without your investing hours and hours "surfing" the Internet, saving you in non-billable hours of research time. The Judicial Resources page provides members with direct, timesaving Internet access to local state, and federal court information. Section members can join list serves for their area of practice.

An online database lets Members update their Member record, renew online and search our Membership Directory by name and area of practice. (The website was experiencing technical difficulties with the database at press time.) Members can register for events, book the Bar's conference room, and find a mediator online 24/7.

"The website is an extension of our Bar offices," say SFVBA President Jim Felton. "Our goal is to provide the value and convenience that Members ask for." ⚡



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President's Message

James R. Felton

FUTURE CERTAINTY

As you read my first President's Message, California may have a new Governor, the Dodgers may be in the playoffs, and the Dow may be over 10,000. Okay, perhaps none of these are true (the Dodger thing may just be wishful thinking). The problem with having to write these darn things a month in advance is that it is very hard to predict the future. So, let me tell you about the things that I think will be true thirty days later.

First, all of our sections have begun their 2003-2004 meetings. We have made a special push to get our section leaders together so we can set up some joint meetings and offer some interesting crossover learning and networking opportunities. All of our section chairs want to hear from you. Their names are listed here in Bar Notes, and please do not hesitate to contact them (or me) with any ideas you may have for programming opportunities. For that matter, don't be bashful about getting involved. We always need more people to come forward.

As I mentioned in my message at Installation, this Association is for you. We exist because you have deemed it important enough to join and get involved. We want to keep you.

Second, we have a new Board of Trustees (of course, I don't know who they are), but no matter which of the ten nominees is elected or appointed, we will have a very dynamic cast to again lead this organization. I also know (and pray) that our staff, led by Liz Post, our Executive Director, Linda Temkin, our Events Coordinator, and Michele Morley, our Director of the Lawyer Referral and Information Service, will again be ready to continue to represent you better than the staff of any other bar association. This is not a prediction. This is a fact.

Third, the Bar is in very good financial condition, and the LRIS had a great year recording record income. What the LRIS did over this last year is the equivalent of hitting four grand slams in the same game.

Fourth, our courts continue to face a severe budget crisis, and any lawyer that has contact with the court system will have to adjust to higher fees, possibly thinner court staffs, and likely more overworked judges. We have (and will continue to have) a very vibrant Bench-Bar Committee. The judges in the Valley are extremely committed to keeping us informed as to what is happening while giving us the opportunity to voice our concerns and give our help. Again, there is no shortage of good ideas when it comes to creating better relationships with our courts. My e-mail and phone number are listed in Bar Notes. Call me, write me, send a carrier pigeon, just don't keep it to yourself.

Over the next year, I will try not to waste your time (I try so hard not to waste my own time - it is the least I can do). We have a terrific organization. Jump on the train and let's go for a great ride. It shouldn't be too bumpy, there will be some good food along the way, and you will get to learn and laugh at the same time. There isn't a better bargain in town. 🍷

President James Felton can be contacted at (818) 382-6200 and jfelton@greenbass.com.



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Is it Safe to tell? Confidentiality in Mediation Proceedings after *Rojas v. Superior Court*



BY JAN FRANKEL SCHAU AND ALAN SALER

Both the litigation and mediation community are abuzz about the California Court of Appeals decision in *Rojas v. Superior Court* (2002) 102 Cal. App. 4th 1062. *Rojas* essentially holds that the confidentiality provisions in California Evidence Code Section 1119 do not apply to raw data or “non-derivative” evidence disclosed during mediation.

In *Rojas*, a group of tenants demanded the production of photographs and other writings disclosed during a mediation session in an earlier, related case. The defendants, (who were the plaintiffs in the previous action) refused, citing Evidence Code Section 1119. Los Angeles Superior Court Judge Anthony Mohr agreed. The tenants appealed and the Court of Appeal reversed. The case is now pending before the California Supreme Court.

The question mediators and lawyers are now grappling with is whether the Supreme Court will narrow the broad confidentiality that has historically protected writings prepared for mediation. Until the Supreme Court decides, lawyers and mediators should carefully consider the uncertainty created by the *Rojas* decision.

Although Justice Lillie’s majority opinion in *Rojas* refers to the “Mediation Privilege,” Evidence Code Section 1119(c) did not establish an absolute privilege. Instead, it provided that “all communications in the course of a mediation... shall remain confidential.” Under Section 1119(a) and (b), evidence of any oral or written communication or admission is inadmissible and not discoverable.

The majority in *Rojas* acknowledged that the Evidence Code protects statements, writings and all other evidence constituting “the substance of mediation, i.e., the negotiations, communications, admissions and discussions designed to reach a resolution of the dispute at hand,” but concluded that the Code did not apply to “pure evidence” such as photographs or core samples.

Prior to *Rojas*, the rules of confidentiality had been guided by *Foxgate Homeowners’ Assn. v. Bramalea California, Inc.* (2001) 26 Cal. 4th 1, 13, where the California Supreme Court held that “[d]ocuments and other materials prepared for purposes of mediation are protected from discovery.” But the scope of the mediation privilege in *Foxgate* was not as broad as the language of that holding made it appear. *Foxgate* arose after a special master reported facts to the Court regarding a party’s [mis]conduct during mediation. The Supreme Court determined that a court should not receive such communications, relying upon the confidentiality protections afforded under the Evidence Code. The decision did *not*, however, address the confidentiality of factual evidence presented by litigants at a mediation hearing.

In *Rojas*, the court looked through the complicated prism of admissibility of an attorney’s work-product in determining what evidence was “raw data” and what was privileged as “the substance of mediation”. On one end of the spectrum, “core work product,” consisting of material that solely reflects the attorney’s impressions, conclusions, opinions, or legal research or theories was entitled to absolute protection. Beyond “core evidence”, evidence that contained both factual information and an attorney’s thoughts, impressions and conclusions was only entitled to qualified protection, subject to a showing of good cause versus prejudice. (Code of Civil Procedure Section 2018(b).) On the other end of the spectrum, purely factual material was always discoverable.

Applying this analysis in *Rojas*, the court decided that raw test data, photographs, and witness statements were not protected from discovery or admissibility merely because they were produced in mediation. But the court below was instructed to weigh good cause for admissibility against the interests favoring confidentiality of test data in a chart, which may have revealed the attorney’s evaluation of the case or negotiation posture. Finally, evidence that is part of a compilation and prepared solely for mediation was held to be not discoverable, as clearly the attorneys “work-product”.

The over-riding principal that appears to have guided the majority in *Rojas*, is the desire to prevent using mediation to shield otherwise admissible evidence from discovery or use at trial. For that principle, the majority relied on Evidence Code Section 1120, which reads: “[E]vidence otherwise admissible or subject to discovery outside of a mediation...shall not be or become inadmissible or protected from disclosure solely by reason of its introduction or use in a mediation...”

Even before *Rojas*, confidentiality did not protect raw data or factual evidence from later discovery merely because a party disclosed it during mediation. The *Rojas* decision however, expanded this principle by applying it to writings that were prepared specifically for mediation. It is this aspect of the decision that has created such controversy.

Where do we Go From Here? What is Safe to Disclose and what is not?

Litigators may be surprised to learn that the *Rojas* decision has sharply divided the Professional Mediation Community. Many mediators believe that if the Supreme Court affirms *Rojas*, the decision will curtail the use of

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mediation and result in fewer settlements. The Southern California Mediation Association (SCMA) however, has officially supported the decision in an Amicus Curiae brief rejecting absolute confidentiality. SCMA expressed concern that if *Rojas* is overturned, parties may misuse mediation to “bury unfavorable evidence.” In turn, the potential for misuse may “make litigants think twice about agreeing to mediate.”

There are few certainties here, in light of the pending review by the Supreme Court. Irrespective of *Rojas*, however, litigants can be certain that communications between the mediator and a party or counsel remain sacrosanct and inadmissible if they involve the “substance” of mediation, i.e. negotiations, admissions and discussions designed to resolve a dispute. Parties and their counsel in private can freely communicate with the mediator without fear because Evidence Code Section 1128 provides that referring to mediation during any subsequent trial is grounds for vacating or modifying the verdict or decision. In addition, a mediator cannot testify in any civil proceeding as to any statement, conduct, decision, or ruling that occurs at a mediation unless it may give rise to or constitute a crime or contempt. Evidence Code Section 703.5; *Foxgate, supra*.

During a joint session, litigants must be aware that any raw data or facts may be discoverable and admissible, even if they intend to disclose this information or writing solely for mediation. Until the Supreme Court decides *Rojas*, prudence suggests that counsel should seek to protect any writings by making certain they were specifically prepared only for mediation and by stamping them “for mediation purposes only.” When in doubt, such writings should only be disclosed to the mediator and counsel should obtain assurance that confidentiality will be strictly maintained. It is always good practice, but imperative now that litigants know and trust the integrity of their mediator to honor and adhere to the duties of confidentiality. It is also certain that lawyers cannot assume that raw data or evidentiary facts have absolute protection from disclosure following introduction or exchange at a mediation hearing.

Regardless of the outcome of the Supreme Court’s decision on *Rojas*, it is evident that the mediation process will continue to be favored by courts and litigants as long as all parties understand the process and guard against misuse of it.

Jan Frankel Schau is an attorney and Mediator with Valley Mediation Services in Encino. She is Co-Chair of the ADR Section and can be contacted at JFSchau@valleymediation-services.com. Alan Saler is an attorney and Mediator with Dispute Eradication Services in Encino and can be emailed at alansaler@covad.net.

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Membership Has It's Priveleges!

Members In The News

Long-time member Mary Ellen Berke passed away after a battle with cancer on Saturday, August 23. Mary Ellen was a Past Chair of the Family Law Section and former Trustee of the SFVBA. A memorial service was held at the Del Rey Yacht Club on August 26.

Charles Rettig is Chair of the UCLA Extension 2003 Annual Tax Controversy Institute to be held on October 22 at the Beverly Hills Hotel. The Institute brings together tax practitioners from the federal government, Judiciary and private practice to discuss and debate policies, procedures and strategies that are involved in resolving difficult tax controversy issues. Speakers include IRS Commissioners Debbie Nolan and Dale Hart. Program and registration information for the Institute is available at www.uclaextension.edu/taxcon.

Marshall Glick is teaching a new UCLA Extension seminar on "The Essentials of Forming Nonprofit Organizations." The class is offered Saturday October 11 from 9:30 a.m. to 1:30 p.m. on the UCLA campus. The seminar takes students through the step-by-step process of forming a nonprofit. Attorneys earn 3.75 hours of MCLE credit. To enroll, visit www.uclaextension.edu. The course registration code is Q1221H. ↕

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Valley Community Legal Foundation Report



BY DAVID GURNICK

Starting this month, I have the honor to serve as Valley Community Legal Foundation President. Charitably minded leaders of the Bar Association created the Foundation in 1979 as the fund raising and philanthropic arm of the Bar Association. Our goals are to promote respect for the law and its institutions. We accomplish this by awarding grants for law-related projects; scholarships to students seeking law-related careers; and by honoring true heroes of the Valley -- police, firefighters and paramedics who risk personal safety to protect lives of people in our community.

Over the past four years we were ably led by Presidents Patti McCabe and Dee Siegel. Our annual Law Day dinner, chaired in recent years by Anne Adams and Barry Harlan, our grants program, chaired by Bob Kahn, and our scholarship awards, chaired by Christine Lyden, are sources of pride to our community. These will continue this year. A new goal is to develop even more support from the legal community. We will invite Valley lawyers, attorney services, bail bonds, court reporters, insurers, investigators, medical professionals, office suppliers, temp agencies, translators, and so many others who serve the legal community, to join us in giving back to promote respect for the law and its institutions.

With high levels of dissatisfaction and distrust, too many people feeling disjoined from the system, increasing fear of terror and lawlessness, low voter turnouts, growing income disparity between wealthy and poor, and a legal system that feels harder and more expensive to access, the need for our Foundation's services is great, and growing. With hero worship misdirected to big screen gladiators and misbehaving professional athletes, we need real heroes and true role models. People of substance whose everyday lives contribute true value to our society. Our Foundation can help recognize those who defend the weak, teach real morals to our children, and protect our freedom. The Valley's shelters, students, schools and law enforcers are some of the institutions and people who need and deserve our recognition, and our charitable support.

The Foundation belongs to the legal community. We are *your* Foundation. We will ask for your financial support. The officers and I (Anne Adams, Bob Kahn, Marcia Kraft, Christine Lyden and David L. Nadel, CPA) and our entire board of trustees, will appreciate your views, goals and suggestions. To share them with me, my email is dgurnick@lewitthackman.com.✉



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Current and future leaders of the SFVBA continue to donate their time, talents, and their invaluable and historical perspectives to the LRIS Committee. The LRIS Committee governs the operations of the LRIS. Present and past SFVBA presidents, officers and trustees serve on the Committee, are members of the referral panel, and donate time to LRIS projects such as the Legal Forum cable television production. Members of the LRIS Committee for 2003-2004 are Co-Chairs Christine Lyden, Richard Lewis and Hillary Grosberg and committee members Jim Felton, Steve Holzer, Alice Salvo, Marcia Kraft, Donna Laurent, Cynthia Elkins, Kevin Lynch, Roxanne Kaz, David Karp and Jeremy Golan. The LRIS Advisory Committee members are Mark Blackman, Caron Caines, Michael Prihar, David Hagen and Diane Karpman.

I am writing this column on September 11. On that day many people from many nations and in fact, in many countries died. To fully comprehend this day we need to extend ourselves outside the borders of our lives. A possible starting point is local. In today's *Los Angeles Times* there is an article on the recent shooting of students near Taft High School. For the past couple of days, there has been extensive coverage of this hideous tragedy. In an adjacent column to today's coverage there is an article about a 13-year-old boy and a 15-year-old girl who were shot to death in a drive-by shooting in South Los Angeles. The media daily reports are that children are being killed and frightened all over the world and in all of our neighborhoods. How do we stretch our compassion and understanding to the farthest borders rather than limiting our concerns to the places and people we think we know and understand? (In actuality, we often hear neighbors say to a television reporter, "they were such quiet and friendly people, I do not understand how this...fill in the blank...could have happened.")

The LRIS receives calls from people with a range of problems and a range of incomes. We do hear from the well-to-do and those not doing well. We talk to people who are quiet and agitated. We often speak with people originally from other countries and cultures. We try to help and refer each. Our panel makes this easier to do.

Time and time again I see our panel members extending themselves to help people with unique situations and with unique lives. As a profession, lawyers frequently ponder how a client could arrive in the place they find themselves. Why did the client act or fail to act? How could they think that what they are doing is wise or right? What in their backgrounds has led them to their current situation? However, the attorney deals with the circumstances as presented and often also reaches out to the injudicious client with empathy and compassion. When attorneys do this, they reach across cultural, economic, philosophical and style of living divides that are vast. These qualities of expansion of thought and willingness to deal with differences are a valuable skill to use each day in our personal as well as our professional lives. ♠

LRIS TIP: When LRIS staff schedules an appointment we request that the individual contact the attorney directly if they need to reschedule or cancel the appointment. Many of our panel members also place a confirmation call reminding the potential client of the appointment date and time. This is a good practice as it reflects that the appointment is important to the attorney and that the attorney is organized. It also confirms the appointment.

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Notice To Attorneys

Effective August 1, 2003, all Civil Drug Asset Forfeiture Cases filed in the Central District, wherein the value of the property to be forfeited exceeds \$25,000.00, and, arising from property, monies, etc. held by the District Attorney's Office, are being heard in the Central District, Department 66, Stanley Mosk Courthouse. In all other Districts, they are set according to local policy.

All Petitions for Civil Drug Asset Forfeiture filed in the Central District are filed at the Central Filing Window, Room 102, and are given a BS Case Number Designation.

For further information, please contact Linda Larsen, Courtroom Manager, Central Civil at (213) 974-5293.

Probate Form Revised for Use with Graduated Filing Fee

California's Judicial Council has revised Form DE-111, Petition for Probate, to include the estimated value of estates for the purpose of calculating the new, graduated filing fee. The mandatory form was required as of Aug. 17, 2003. It is available in courthouses where probate matters are heard and on the web at <http://www.courtinfo.ca.gov/forms/documents/de111.pdf>.

For additional information, call the Probate Division at (213) 974-5471.

Re: Extension of Chapter 12

On August 15, 2003, chapter 12 of the Bankruptcy Code was retroactively extended from its previous expiration date of July 1, 2003 to January 1, 2004. New Chapter 12 cases will be accepted for filing, and cases that were filed under other chapters between July 1-August 15, 2003, can be converted to chapter 12. The statutory filing fee for a chapter 12 case remains \$200.Ⓜ



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Stepping Across the Threshold of History- The Annual ABA Meeting



BY LYLE F. GREENBERG, SFVA DELEGATE TO THE ABA HOUSE OF DELEGATES

In a statement exclaiming that "leadership is open to every lawyer" and that the work of the ABA is important to lawyers, clients and our communities, the Honorable Dennis Archer became the first African-American President of the American Bar Association at the same time the ABA celebrated the 50th anniversary of *Brown v. Board of Education*. President Archer is a former teacher, lawyer, Mayor of Detroit, and Judge, and was eloquent in his proclamation to the ABA.

The ABA Annual meeting in August had an Expo, an agenda of MCLE and other programs that were exciting and as varied as the host city, San Francisco. The House of Delegates had a business agenda with the lofty goal of trying to complete its work consisting of 59 reports and recommendations in just 2 days. This agenda included numerous contested issues subject to significant debate, with the tension enhanced by the ABA's decision to forgo electronic voting (cost savings) and utilize a voice vote, or in instances of a close vote, utilizing the "stand and be counted" method. While less efficient, the "stand and be counted" approach is a good way to test the strength of conviction of the delegates. Electronic voting and the anonymity that goes with it is easy; standing in front of the House as those around you sit takes a little more backbone.

Our California Delegation, led again by Judge Laurie Zelon (we don't vote as a block, we only sit together) was as friendly

and welcoming to me as they were in our first meeting in February. The California Delegation met even before opening of the House, and because of the number of "California Delegates", we had the opportunity to hear presentations (and some lobbying efforts by) numerous proponents and opponents on many of the recommendations. The issues we addressed were quite varied and included the following recommendations:

- Urging law enforcement to videotape all interrogations of crime suspects (#10A-withdrawn);
- Urging the courts to provide an individual accused of a crime, before his/her plea, a full description of the collateral sanctions over-and-above the sentence imposed by the court (101A-approved);
- Urging each jurisdiction to define the practice of law and who may practice law, with consideration given to the potential harm and benefit to the public (#10B and 100-approved);
- An ABA Constitutional amendment to modify the purpose of the ABA to protect "all those conceived but not yet born" and a proposal supporting the enactment and implementation of laws securing to each and every child growing in the womb of the mother an unalienable life and liberty right to life until natural death (11-1 and 102 postponed indefinitely);
- Protecting the rights of any live born human clones (116A-withdrawn);
- Urging bar associations, government attorneys and police departments to address the disparate treatment of racial and ethnic minorities by the justice system with the goal of instilling confidence in our system (101B - approved);
- A series of recommendations supporting the independence of the judiciary (103-approved), encouraging judges to undertake outreach activities to the public (104-approved), reaffirming the ABA's support for adequate levels of compensation for state judges (105A-approved), and amending the ABA Model Code of Judicial Conduct in light of recent First Amendment challenges to judicial campaign speech restrictions (105B-approved);

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- Medicare claims adjudication process permit the beneficiaries due process throughout all levels of the claims and appeals process (107-approved);

- Encouraging government and business to adopt the internationally accepted definition of sustainable development and promote policies consistent with that definition (108-approved);

- Urging Congress and the Administration to elevate protection of the environment of the United States by elevating the EPA to Cabinet-level status (109-approved);

- Opposing the text of California's "Racial Privacy Initiative" (Proposition 54 on our October 7, 2003 ballot - 10C-approved);

- Supporting the Hague Convention on the Law Applicable to securities issues (111-approved);

- Permits the establishment of legal parent-child relationship by unmarried persons who are functioning as a child's parents when such adoptions are in the best interests of the child (112A-approved);

- Opposing efforts to repeal the sunset provision of the USA Patriot Act of 2001 and urging Congress to conduct a thorough review of the Act before extending or expanding surveillance authority under the Act (112B-approved);

- Encouraging (seemingly everyone) to establish programs and scholarships to enable law graduates to accept and remain in lower paying government and public service legal employment (113-approved);

- States that must draft provisional balloting statutes in conformity with the America Vote Act of 2002 (115-approved);

- Supporting increased federal funding to state and local governments to enable "first responders" to be ready and able to respond in case of terrorist attacks (117-approved);

- Encouraging efforts to secure safe, perma-

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David R. Hagen, Past SFVBA President

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

ment homes for children in need of substitute care (118-approved);

- Encouraging law schools to promote awareness of domestic violence through law school activities and programs (120-approved);

- Opposing legislation designed to repeal the low income housing voucher program that would eliminate the funding structure based on actual costs and replace it with a state administered block grant (121-approved); and

- A variety of other constitutional and bylaw changes including nominating committee issues, delegates at large, jurisdictional statements of standing committees, names changes for committees, the creation of standing committees, and swearing in ceremonies for lawyers newly admitted to the Bar.

With that overview, allow me to briefly address a couple of issues that occupied much of our House business and that I found interesting and may also interest you.

A proposed bylaw amendment (#11-3) that created significant debate and resulted in a request that we stand before our peers to be counted - was the proposal to retain special membership discounts for older lawyers (narrowly approved 217 to 194 - I voted in favor of the discount). The proponents spoke of the contribution of the older lawyers and the potential loss of membership if these members were burdened in their retire-

ment years with full membership costs, while the opponents argued that this loss of revenue (\$700,000 in the first year and \$4M in the fourth year) could not be handled by an organization dealing with the difficult economics of 2003, a significant reduction in investment income, and in the aftermath of the massive (\$9M) cost overrun on a technology project.

Of the 539 members of the House, I was only one of seventeen that attended an early morning special finance meeting and in-depth discussion, as well as a question and answer session following publication of the results of the audit and investigation of the technology cost overrun. Someone in the audience uttered that "air is the best antiseptic" and I share that sentiment - the ABA and Past President A. P. Carlton, Jr., are to be commended on their forthright and open approach to this issue. As a reminder, at the February 2003 Mid-Year Meeting, it was just then disclosed that a problem existed. Ultimately, there were several senior management changes including that of the CFO and CIO.

Late in the day on our second and final day, another recommendation that proved to be controversial involved opposition to the pursuit in the courts of one nation of war crimes charges against military personnel or government officials of another nation. (Recommendation 122) For comparison sake, note that the "older lawyer membership discount" recommendation had a total of over 400 votes cast while recommendation 122 relating to war crimes was postponed indefinitely by a vote of 114 to

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105. I voted to hear the matter on its merits and had it been heard I planned to vote to approve. Unfortunately, by this time of day, many people were headed to the airport and going home to places all across the country.

At about the same time of day, a recommendation was debated requesting Congress and the Executive Branch to ensure that all defendants in any military commission trials have the opportunity to receive the zealous and effective assistance of civilian defense counsel (310 - approved). It is interesting to see the contrast with the concern about providing constitutional protections in the military commission trials versus our own military who in fact sent military personnel to the ABA meeting to argue in favor of recommendation 122.

The most controversial recommendation that resulted in great debate, standing votes, last minute amendments and more standing votes, as well as significant media attention, related to an attorney's duty of confidentiality (recommendations 119 A, B and C which sought to change ABA Model Rule 1.6). These were argued during both days of the House of Delegates Meeting. Although two years ago (before revelations about alleged boardroom fraud and accounting irregularities at Enron, Tyco, WorldCom as well as other companies) the ABA rejected nearly identical changes in the model rules, at this meeting the ABA narrowly approved the recommendation (218-201) to loosen restrictions on a lawyers disclosure to authorities of a clients confidential information that may cause harm to another.

The debate pitted the ABA's traditional refusal to place society's concern about financial crimes above a lawyer's duty to keep client confidences, against those who would carve out exceptions to an attorneys sealed lips. The new ABA rules are consistent with numerous state rules that already bind lawyers. However, in California we still follow California Business and Professions Code §6068 (duties of attorney) and Evidence Code §956.5 (limited disclosure by attorney to prevent a client from committing a criminal act that the lawyer believes is likely to result in death or substantial bodily injury to another).

What we don't know is how government regulators (SEC, IRS, and others) will attempt to impose the ABA Model Rules on lawyers and particularly California lawyers. The ABA's new President, Dennis Archer, supports the new rules. Because I am your representative to the ABA House, you should know that I voted against these rule changes. The press seemed to be most interested, of all the business conducted in the House, in the debate and vote on the 119 series. The AP characterized 119 "as the lawyer can now snitch to authorities with a clear conscience."

The new rules permit disclosure of confidential client information if it would head off fraud, shady accounting or other wrongdoing that the attorney thinks would harm third parties including shareholders, or, where a client has used an attorneys services to commit a crime. This dramatically expands the present limited disclosure in instances of saving lives or preventing serious injury. In addition, the new ABA Model Rules state that a lawyer can and should report fraud or other law-

breaking up the chain of command in a business entity (corporation, partnership, etc.) and when not heeded, the attorney can go outside the corporation to the authorities.

The meeting concluded with a warm, positive spirit amongst all the ABA House members after the heated debate on the recommendations, while also recognizing that in our debate we have more in common than not, we are more aligned on technology, substantive and social issues than opposed, and the principles that we stand for, "defending liberty and pursuing justice", unify and strengthen us as American lawyers. 🐻

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Conference of Delegates Report

BY TAMILA JENSEN, CHAIR OF THE SFVBA DELEGATION

The Conference of Delegates of the California Bar Associations (CDCBA) held its annual conference in Anaheim, from September 4 through September 7, during the State Bar Convention. SFVBA has an eleven-member delegation under the CDCBA rules.

The delegates representing the SFVBA at the 2003 Conference were Patti McCabe, Louis Michelson, Bernard Grossman, Anne Adams, Cai Ryan, Roger Franklin and Tamila Jensen. The Conference was attended by thirty-eight bar associations from California, five at-large delegates and five specialty bars; 348 delegates attended the Conference. The Conference considered a hundred resolutions submitted by bar associations throughout the state.

Resolutions that are approved in principal by the CDCBA may follow several paths to enactment by the California legislature. Some are carried by the State Bar as a part of their legislative package, some are lobbied by the CDCBA directly, and some are lobbied by the proponent.

Of the resolutions that passed last year, all of the resolutions which the CDCBA placed with legislators and lobbied were passed. There were six pieces of legislation that have passed the legislature and signed into law by the Governor. They include laws establishing a priority for writs of execution for family support; changing the time period when commercial deposits must be returned to 45 days so that all the final CAM charges can be recouped by the landlord; raising the limit of attorneys fees in Mechanic's Liens to \$2,000; and closing a loophole to protect elderly dependants.

The Conference of Delegates is also the venue used by the State Bar for some of its most important ceremonial activities. For example, the new State Bar President was sworn in by Chief Justice George and gave a very moving speech to the assembled Delegates. Also sworn in were all of the members of the Board of Directors of the State Bar Board of Governors and the officers and directors of the Conference of Delegates. Addresses were given by Mr. Herman, the outgoing State Bar President, and Mr. Caposi, the incoming State Bar President. Juan Vargas received the Legislator of the Year award from CDCBA. Chief Justice George gave his annual State of the Courts address to the assembled delegates about the needs and issues facing us regarding court funding in the upcoming year. Associate Justices Chin and Baxter also attended. Attorney General Lockyear also gave an address to the assembled Delegates outlining the accomplishments of his office and the goals of his office for the forthcoming year.

This is the sixty-ninth year that the Conference of Delegates has assembled and the first year that it has gathered as the newly formed CDCBA. Anyone interested in becoming a member of the SFVBA delegation should contact new Co-Chairs Patti McCabe at plmccabe@aol.com or Louis Michelson at lemtax@earthlink.net. The 2004 Conference will be held October 7-10 in Monterey.

More information about the CDCBA can be found at their website, www.cdcba.org.

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October Events

calendar and MCLE event listings

VAST Training

Topic: The Current State of Parentage Law

Dates: October 7 and 8 (identical classes)
 Time: 4:00 p.m.
 Place: Marvin Braude Constituent Service Center
 6262 Van Nuys Blvd., Conf. Rm. 1B, Van Nuys
 Cost: Free to SFVBA VAST Volunteers
 MCLE: 2 Hours

Taxation Law Section

Topic: Update on Current Developments

Speaker: Boyd Hudson, Esq.
 Date: October 8
 Time: 7:30 a.m. Bagels and Program
 Place: Boldra, Klueger & Stein LLP, Woodland Hills
 Cost: \$10 members prepaid; \$15 at the door
 \$15 non-members prepaid; \$20 at the door
 MCLE: 1 Hour

ADR Section

Topic: Breaking Impasse in Mediation

Speaker: Jeff Krivis
 Date: October 9
 Time: 6:00 p.m. Dinner and Program
 Place: SFVBA Conference Room
 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: Mediation in Probate and Trust Administration

Speaker: Myer Sankary
 Date: October 14
 Time: 12:00 Noon
 Place: Encino Glen Restaurant, Encino
 ** NEW LOCATION **
 Cost: \$30 members prepaid; \$35 at the door
 \$35 non-members prepaid; \$40 at the door
 MCLE: 1 Hour

Workers' Compensation Section

Topic: Advanced Rating: Understanding Scheduled and Off-Scheduled Definition of Work Restrictions

Speaker: Tim Null
 Date: October 15
 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

Litigation Section

Topic: Saving Private Assets

Speaker: Ron Berman, Esq.
 Date: October 16
 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: The Current State of Parentage Law

Speakers: Commissioner James Endman;
 Glenn Schwartz, Esq.
 Date: October 27
 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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