



BarNotes

A Publication of the
San Fernando Valley Bar Association

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SFVBA MEMBERS SAY ...

The San Fernando Valley Bar Association Long Range Planning Committee took a major step toward implementing the SFVBA Strategic Plan by surveying members this summer.

The strategic plan, developed by the Board of Trustees last fall, has three goals: to be a beacon to our members by providing well-defined services to meet the diversity of their needs; to strengthen the relationship between the SFVBA and its sections to increase participation and better serve members needs; and to be a respected and influential voice in the community through our successful outreach and branding activities.

The SFVBA launched the electronic survey on June 17 to determine how the Bar can be a beacon to members; a strong 18% of recipients responded. Highlights of the responses included:

- 58% of members work or live in the West San Fernando Valley, west of the 405 freeway;
- 59% of attorney members are sole practitioners, with 78% of members practicing in law firms of less than six attorneys;
- 80% of members like to receive SFVBA communications via email, compared to 55% who prefer traditional snail mail;
- 58% of members wished they had more time to attend more section meetings; only 16% cited expense and 22% time of day as obstacles to attending seminars, while 31% wished the topics were more relevant or substantive;
- 68% of members prefer seminars of less than three hours in length, while 34% wished that the SFVBA offered online courses;
- 90% of members read *Bar Notes* within a week of its arrival; 70% of readers rated the contents of *Bar Notes* excellent or good and most valued the calendar of events (62%), practice area articles (72%) and court updates (63%). Readers would like to see added judicial profiles (54%), analysis of new legislation (55%) and new products and services to lawyers (51%). One member suggested adding "maybe letters to the editor, try to generate more interaction between newsletter and readers."

The three most important reasons why attorneys are members of the SFVBA are networking with other

legal professionals, continuing legal education, and professional development.

The top four member benefits that members are utilizing are Section membership (42%), *Bar Notes* (64%), library privileges at the University of West Los Angeles School of Law (37%) and the SFVBA Web site (36%).

Four programs or services that members would like the SFVBA to offer are insurance programs (41%), fee arbitration program (31%), networking mixers (31%) and a 401k program (34%).

New Lawyers (less than six years of practice) were surveyed separately; 54% of New Lawyers are either sole practitioners or work in small law firms; 71% have either started or are thinking about starting their own practice.

- 88% feel it important for the SFVBA to have a mentor program;
- 69% would attend a Law Office Management course and preferred monthly lectures on procedural aspects of the practice of law (50%), networking and marketing (58%) and acquiring new clients (60%);
- 69% would attend a court orientation program;
- 96% would find it valuable to have access to a motion/document bank housed on the SFVBA website; 96% of New Lawyers prefer to receive SFVBA communications via email.

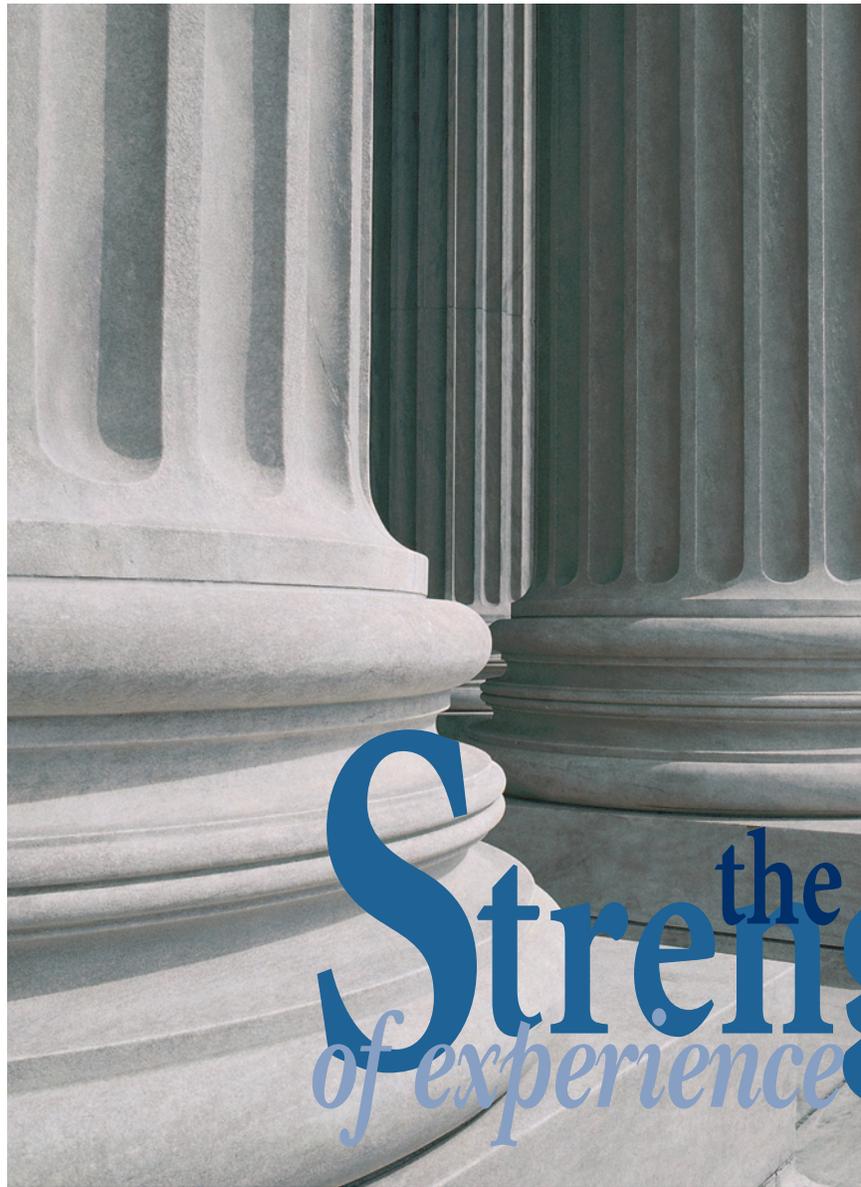
The surveys were anonymous but members were invited to provide additional comments. One member suggested, "As a sole practitioner, I would love a small area/office to use to meet clients if necessary and more convenient. I work mostly from my home, and this would be a wonderful addition. Perhaps an "on-line" reservation service could be provided. Also, if you don't have it already, a free "wi-fi" internet connection at your office building would be great to keep in touch with my office, emails, files, etc. Thanks."

Another wrote, "(I) think the SFVBA does an excellent job! I feel a part of it."

Throughout the new Bar year commencing October 1, the SFVBA Board of Trustees and the Long Range Planning Committee, chaired by President Elect Patricia McCabe, will heed the advice of members and work towards developing new programs and improving existing services to ensure that the SFVBA is a beacon to our members. 📌

What are the THREE most important reasons why you are a member of the SFVBA?





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Back To The Future

Michele C. Morley, LRIS Director



Recently an executive at another bar association expressed surprise at how long we have been making referrals at the San Fernando Valley Bar Association. Those of you who have read the history of our organization know that the San Fernando Valley Bar Association established the Legal Aid and Lawyer Reference Service in 1948. From these beginnings, the LRIS grew.

As panel attorneys renew your memberships in the LRIS each year, you are also truly renewing your commitments to serving the public. The LRIS staff and Bar leadership recognize the contributions that you make to the Bar Association and the public. We do consider it a mission to inform and enlighten the public about the good works that attorneys perform daily and what a valuable resource our membership is for the communities we serve. The SFVBA/LRIS attorneys' history is one of being explorers searching for new ways to practice law and serve the public. We are now embarking on new adventures of exploration as we go back to the future.

The LRIS has established a listserv of LRIS attorneys to map the course and chart the future of LRIS and its members. We are spending considerable time imagining what technology will mean for the practice of law. We are agreeing that we will all have to become explorers in this new world. One of the issues is the move towards middle-income individuals representing themselves by using the do-it-yourself materials and information available on the Internet.

An argument can be made that attorneys are recognizing the value of being a source of information by the fact that most attorney websites include substantive information for the benefit of the public. Some commercial referral services are using the automated intake, instant interview, and an open-ended inquiry form on the website. Some sites will answer a simple legal

question for a set fee of \$25 or so. Online form preparation is now widespread. In fact, some law firms sell legal documents and forms. One immigration firm promotes its ancillary job placement service. In August, LRIS member Anthony Zinnanti gave a presentation of his design of a virtual and paperless legal practice.

The Internet world exists. We do have the ability to adapt and find new opportunities. We know that no technology can match the human interface. We know the truth in the saying, "the lawyer who represents him/herself has a fool for a client." Except in possibly simple legal matters, independent study will not substitute for representation by a lawyer. We have to set out towards the new world and take bold steps towards the information and technology world that is on our horizon.

The Layers

*I have walked through many lives,
some of them my own,
and I am not who I was,
though some principle of being
abides, from which I struggle not to
stray.*

*When I look behind,
as I am compelled to look
before I can gather strength
to proceed on my journey,
I see the milestones dwindling
toward the horizon*

*and the slow fires trailing
from the abandoned camp-sites,
over which scavenger angels
wheel on heavy wings.*

*Oh, I have made myself a tribe
out of my true affections,
and my tribe is scattered!
How shall the heart be reconciled
to its feast of losses?*

*In a rising wind
the manic dust of my friends,
those who fell along the way
bitterly stings my face.
yet I turn, I turn,
exulting somewhat,
with my will intact to go
wherever I need to go,
and every stone on the road
precious to me.*

*In my darkest night,
when the moon was covered
and I roamed through wreckage,
a nimbus-cluded voice
directed me:*

*"Live in the layers,
not on the litter."
Though I lack the art
to decipher it,
no doubt the next chapter
in my book of transformations
is already written,
I am not done with my changes.*

Poem by Stanley Kunitz.
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(so he ought to know) ♣



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President's Message, continued from page 3

- Lintz Awards
- Bet Tzedek Legal Services Event

Off the record, I nominate the Italian American Bar Association to receive the "fun" award for 2005. If you haven't attended one of their delightful events, you are missing mingling with great people (attorneys, judges and anyone else who attends.) You don't have to be Italian, just enjoy having fun, eating and drinking with Italians. There is no MCLE credit; but plenty of fun, fun, fun!

I am proud we were so successful reaching out to the American Bar Association, State Bar of California, Los Angeles County Bar Association, other Bar Associations, and the community.

Thank you for your input and participation in our San Fernando Valley Bar Association sections and events. For those of you who did not participate, thank you for your willingness to think about participating in the future. This is the first step to future participation and maybe even a little fun.

My commitment to our San Fernando Valley Bar Association and all of you remains strong. I will continue my goals of reaching out as I begin working with the Los Angeles Bar Association and the American Bar Association. Together we can have fun, laughter and gaiety, while seeking serious accomplishments on behalf of all our fellow attorneys.

Thank you for a fun year! 🐾

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BY L. ROB WERNER, SCVBA PRESIDENT

SCVBA Law Day Features District Attorney Cooley, Sheriff Baca and Santa Clarita Mayor Smyth

The SCVBA will be having its first Law Appreciation Day event, on the first Monday in October - October 3, 2005 from noon to 1:30 at the Santa Clarita Valley Sports Complex located at 26407 Golden Valley Road.

The event is to honor people working in or with the legal and law enforcement community as well as local heroes. John Boston, Editor of the *Signal* will MC the event. Other confirmed speakers and presenters will be District Attorney Steven Cooley, Sheriff Lee Baca, Santa Clarita Mayor Cameron Smyth, Captains Patti Minutello and Ellen Conley of the Sheriff and Highway Patrol, and D.A. in charge of the Newhall court, Dan Damon. Supervisor Michael Antonovich may also give a presentation but has been unable to confirm as of the writing of this article. We are also awaiting confirmation from the Fire Department and the Public Defender's office.

We hope this event will become a traditional program in our valley. It is cosponsored by the City of Santa Clarita, the Santa Clarita Chamber of Commerce, the Sheriff's office, the District Attorney's office and the local California Highway Patrol.

We are selling tables (10 seats each) for \$500. Those purchasing tables will get recognition at the table as well as in the program. We ask that any unused tickets be given back to the Bar for our comp tickets most likely to be given to honoree's placed at the table. Business size advertisements

in the program may be purchased for \$100. We are keeping the price of individual tickets for this luncheon low at \$25 per person. We would like attorneys to bring their staff to this event. However, we do have limited seating, so early reservations are recommended. E-mail santaclaritavalleybar@yahoo.com for interest in tickets or advertising.

Our September meeting will take place on the 15th at Marie Callender's in Valencia at 27630 The Old Road. Remember, our regular meetings are on the third Thursday of each month. They are dinner meetings with the exception of September, December,

March and June. So this will be a lunch meeting. The meeting will feature a debate among legal and public officials on annexation of Castaic, Stevenson Ranch and other areas by the City of Santa Clarita from unincorporated Los Angeles County areas. For reservations, contact Jane McNamara at elderlaw@jmlaw.org. Those not wishing to make advance reservations may pay at the door.

The Santa Clarita Valley Bar Association is a corporation. We recently received confirmation of non-profit status from California and the Internal Revenue Service.

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Notice To Attorneys

VAN NUYS CHANGES LIMITED EX PARTE SCHEDULE

Effective Sept. 1, 2005, Limited Civil Ex-Parte Hearings at Van Nuys Courthouse East, 6230 Sylmar Ave., Van Nuys, will be heard Monday through Thursday at 9:00 a.m. in the courtroom to which the case was regularly assigned.

Parties must file the paperwork and pay the appropriate filing fees in the Van Nuys East Clerk's Office, Room 107, by 8:45 a.m. in order to be heard the same day.

Ex-parte hearings on unlawful detainer matters will continue to be heard in Department P from Monday through Thursday at 1:30 p.m. ↗

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Report From The Foundation



BY ANNE ADAMS, VCLF PRESIDENT

I want to thank you for your support last year. This month I'd like to highlight the court advocacy program through Haven Hills. Haven Hills assists domestic violence victims in the San Fernando Valley in a variety of ways. They provide referrals to shelters, medical facilities, and psychological counseling. Haven Hills also maintains its own shelter. In addition, Haven Hills provides legal referrals and provides staff and volunteers to assist domestic violence victims when they go to court to obtain restraining orders.

Court advocates work directly with domestic violence victims to help them obtain the assistance they need by providing referrals, giving them emotional support, and accompanying them to court.

When domestic violence victims go to court to obtain a restraining order to stop future violence, they frequently are intimidated by the thought of seeing the person that physically abused them. Many people may also find the restraining order hearing to be a very uncomfortable, embarrassing process because they may need to testify in open court about the abuse in front of the person who hurt them and in front of others.

Haven Hills provides someone to accompany the domestic violence victim to court. The court advocate will provide emotional support to the domestic violence victim while an attorney may be assisting the victim with the restraining order hearing.

The court advocacy program provides the support domestic violence victims frequently need to break away from people who hurt them. Without this support, many domestic violence victims would probably return to the person who is abusing them because they don't know where to get help and they don't have the emotional support to create new lives for themselves and their children.

Please remember the work of the Foundation when you receive your dues notice. You can make a tax deductible donation to the Foundation when you return your SFVBA dues. We appreciate your support. ♣

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Small Firm Beat

The Sky Has Fallen! So Now What? Mark Williams Speaks on Preparedness after Disaster.

By Lisa Miller, Chair, Small Firm & Solo Practitioner Section

SFVBA Small Firms luncheon attendees breathed a collective sigh of relief after an exhaustive office disaster preparedness presentation by Mark Williams of Williams Records Management.

Williams, president of the company for more than 20 years, advised attorneys at the SFVBA offices in Woodland Hills regarding protecting business documents as well as clients' vital records. According to Williams, vital records include contracts, leases, insurance documents, payroll information, formulae, bank records, reports and manuals, among other items.

"Three types of disasters generally plague law firms: mechanical, natural and man-made," Williams explained. "These can range from earthquakes to floods to computer viruses and terrorist attacks, and everything in between."

Williams advised law firm principals to decide what is critical to running the business. This includes identifying crucial staff and data. "What does the firm own? What moneys are owed? What benefits are due the employees?" Williams asked. "The answers to these questions are just the tip of the iceberg for preparedness purposes."

According to Williams, off-site daily back-up of all data is central to rebuilding after disaster. And tapes must be checked and tested at least monthly, if not weekly,

if possible. "Keeping back-up tapes at home is not advisable," he said. "Too much chaos."

"Counsel should set up communications strategies for employees," he said. "Some employees have significant commutes and need to know what to do and whom to call."

Williams suggested that law firms issue to all employees laminated emergency call lists, including cell numbers. The firm should require that all employees carry this emergency contact list at all times. But preparedness doesn't end there, according to Williams.

Attorney Anne C. Addams, a solo practitioner in Woodland Hills and SFVBA Foundation Chair, attended the meeting. She plans to immediately implement much of Williams' suggestions, she said. "I do family law, debt collection defense, debt negotiation, Chapter 7 bankruptcy and wills and trusts," she said. "You would not believe the number of vital records I have on hand for clients. Now I have a structured plan for protecting them in a comprehensive way."

Principals of the firm need to have a separate list of all vendors, also laminated, as well as a back-up list off site.

The firm should negotiate alternate space arrangements in case of emergency. This should, ideally, be done now for space some distance from the home office. And agreements need to be renewed regularly.

"Space considerations are not, alone, enough to preserve a law firm's continued business efforts," he said. "The office manager must document all computer applications, including whatever version the firm is currently using, and update the list on a rolling basis."

Williams advises lawyers to assign tasks to create a plan from the ground up. The firm should then train all new hires, using established checklists.

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Liz Milan, a sales associate with Prudential California Realty in Sherman Oaks, also found significant value in the presentation. "In my real estate practice, I handle a tremendous amount of private information for clients," she said. "In the event of an emergency, now I have a plan to not just maintain the documents, but keep the data completely confidential and safe from prying eyes. That's very important to me and my clients."

Williams suggested that firms ask themselves some critical questions before disasters occur. These include: What should the firm do when disaster strikes? Does the firm have a written disaster plan? Does the firm identify and back up vital records? Does the firm have a written recovery plan?

On-Line Office: David Michail Speaks on Internet Marketing

Westside solo practitioner David Michail addressed the group on digital marketing issues and considerations. Michail focuses his practice on mass communications, copyrights, trademarks and licensing, business and corporate law, entertainment, Internet and mergers and acquisitions matters.

"Many law firms don't understand that types of electronic marketing mediums include e-mail, websites, Internet banner ads and search engine optimization," Michail said. "These outlets trigger a number of common legal issues."

Michail explained that law firms must be aware of compliance regulations in the context of trans-jurisdictional advertising. Other concerns include unauthorized practice of law, unfair and deceptive trade practices and consumer privacy.

"E-mail activity is controlled by both state and federal rules," Michail warned. "This applies to marketing in general and digital marketing in particular."

The California Rules of Professional Conduct, Rule 1-400, addresses some presumed examples of violations. These include guaranteeing results, testimonials without proper disclaimers, direct solicitation of those lacking mental capacity, transmissions not identified as "newsletter/advertisement" or something similar, improper use of "specialist" designation, or untrue or incomplete communications regarding fees.

"The California e-mail rules are quite comprehensive," Michail said. "The California Business and Professions Code means business."

He informed attendees regarding the particulars controlling their activities related to implying immediate cash recovery, using likenesses of others, disclosures regarding costs in contingency cases, and retaining communications for at least one-year. "And remember, state law still governs regarding unfair or deceptive advertising," he said.

Michail provided an overview of penalties and liability for violating these state rules. "Enforcement can come from many sources," Michail explained. "These include State Bar discipline, Business and Professions Code Sections 17500 and 17200, and the Attorney General."

Michail concluded with an overview of Website marketing considerations as well as the California On-Line Privacy Protection Act, sometimes referred to as "OPPA." He warned that banner advertising is subject to the same rules as other media concerning disclosures, misrepresentations and State Bar rules.

"And search engine optimization is fine," he said. "But be careful if the firm is using another firm's name in search engine keying to direct traffic to the Website. The test is still likelihood of confusion in the workplace." ❄

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*Santa Clarita Valley Bar Association,
continued from page 7*

Our association is entering an election cycle and time is running out for those who wish to seek office. Please contact us at our e-mail address or speak to a Board member immediately if you have interest in running for a position. In addition to the elected positions we are seeking to invigorate our committees. Many of the committees need a new chairperson. Please contact me to let me know if you have an interest in chairing or becoming active in one or more of our committees. These include Community and Public Relations, Courts and Court Liaison, Events, Meetings, Membership/Membership Benefits, Fund Raising, Grievance and Mediation, Networking, Pro Bono, Debate Forum (sponsoring school debates) and Internet Committees. If you're interested you may e-mail me at lrobwerner@yahoo.com.

Rand Pinsky is putting on a wine tasting event in October at the Agua Dulce Winery. Besides the sampling of wine, this social event will include an optional dinner. For further details e-mail Rand at Pinskylaw@hotmail.com. President-Elect William Lively is working on setting up a fund raiser at the Canyon Theater. We will reserve the theater for one performance and reception which will include food service. This should be a great social affair and a wonderful opportunity to invite clients to an event which benefits our association. If you would like to help out on this event, please contact Bill at Wmlively@sbcglobal.net.

We are closing in on our goal of 100 members. If you know any attorneys who live in the Santa Clarita Valley but work elsewhere, please let them know about us.

Finally, don't forget about our weekly column in the local paper, the *Signal*. We need attorneys to write 500-700 word essays. It gives us all a chance to vent in press on our areas of law or legal issues. Please send the essay to jshaffery@pooleshaffery.com. 🍷

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Know When to Say No



BY BARRY SMITH

When one of your clients calls to ask if you can represent him, or a family member, in a drunk driving case, you may be tempted to say yes, even though your practice is estate planning and business litigation. The client obviously feels comfortable with you, and you don't want to say no and cause the client to look elsewhere for legal advice. After all, it is only a drunk driving ticket. Isn't that simply a step above a speeding ticket? So, even though you haven't seen the inside of a criminal courtroom for a very long time, perhaps never, and that criminal casebook from your first year in law school lies gathering dust on your shelf, you say you will handle it. You have stepped into the lion's den, and Leo is hungry.

To accept any matter where you initially lack competence does not require that you constantly refer business to your competitors. The canons of ethics acknowledge that you can gain the expertise by research and study. But it is a wise lawyer indeed who is able to recognize when to say yes and when to say no. A yes today may translate into a malpractice suit tomorrow. At a very minimum a client on the losing end of what was a winnable drunk driving ticket will not think fondly of his counsel, particularly when he loses his license for six months, has to attend sobriety classes and pays insurance premiums for the next five years that are treble the present rate. The social stigma associated with a DUI lingers for years. Just in case you are still vacillating over this issue, take the following test which consists of 10 questions common to many drunk driving charges, and see how you score. Following the test is an explanation of each question.

- The ideal witness you would want in a DUI case is**
 - A passenger in the car.
 - An unbiased passerby who saw everything.
 - The bartender who sold the drinks.
 - Someone at the police station who witnessed the testing.
- The most accurate test for blood alcohol is**
 - Urinalysis.
 - Breath, using scientific equipment.
 - Blood, analyzed in the lab.
 - DNA fragmentation (RFLP or PCR).
- If you are deemed to be inebriated at the police station or emergency room, is this a crime?**
 - Yes
 - No
 - No, but experts will extrapolate backwards to determine if you were inebriated while driving.
 - Yes; you are presumed inebriated while driving if you are inebriated at the station or emergency room.
- Nystagmus (HGN) means**
 - In geometry, the point at which an arc meets a tangent.
 - A coordination test, i.e. finger to nose.
 - Involuntary movement of the eyeball.
 - Inability to focus the eye without rapid blinking.
- The breath analyzer tests for alcohol in breath. But, the crime involves your blood alcohol level. How is this determined?**
 - There is an accurate, scientific correlation between the two.
 - The breath and blood alcohol levels are inversely proportional over time.
 - There are microscopic blood cells in all deep lung samples (alveolar) and thus Blood Alcohol Content can be measured in a breath test.
 - There is a relationship between breath alcohol level and Blood Alcohol Content but it is more qualitative than quantitative.
- Radio waves can interfere with electronic equipment.**
 - You may argue, in defense, that radio waves in the police station interfered with the breath machine and threw its results into question.
 - No – all machines are equipped with filters to preclude interference.
 - No – there are radio waves at all times from police radios, etc., but scientists have debunked the interference theory and it is good only in defense counsel's mind.
 - No – breath machines use a narrow band width, and frequencies outside the Kz. range being used are immaterial.
- Women, who consume the same amount of alcohol as men, may show a higher Blood Alcohol Content because**
 - Women usually weigh less than men.
 - Women lack certain enzymes in the GI tract that break down alcohol.
 - Oral contraceptives can produce formaldehyde in the blood and elevate Blood Alcohol Content.
 - Women usually metabolize all drugs at a slower rate than men.
- The equipment used to test you can be faulty, or the operator can make mistakes.**
 - Calibration of the equipment within the last six months is critical.
 - The standard reference vials are URL certified.
 - No breath sample is retained for further testing.
 - Machine warranties are usually 2 years or 500 tests, whichever comes first.
- The prosecution's evidence is best attacked by**
 - Cross Examination of the arresting officer.
 - Discrediting the accuracy of the equipment used and the results obtained.
 - Introducing your own eye witnesses.
 - Putting your client on the stand.

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10. A DUI ticket is usually a misdemeanor, but can be a felony if
 - A. There is a child in the car.
 - B. You refuse to test.
 - C. You have a prior DUI within 10 years.
 - D. You injure someone in an accident.

Answers to the Questions

1. A. A passenger in the car can testify firsthand as to the stop, what the officer said, did, and how the defendant responded. The same passenger may also speak about how much alcohol had been consumed. Eyewitnesses (answer B) are sometimes unreliable, bartenders are busy people and don't see the arrest, and witnesses at the police station are usually other law enforcement personnel or fellow arrestees.
2. C. Blood analysis is superior. It takes time and you need to go to a medical facility, but it is the best. DNA is not affected by alcohol.
3. C. It is not a crime to be under the influence at a police station. Many states (like California) have a per se statute – if you are drunk at the station you are presumed to be DUI for the three hours prior. The presumption is rebuttable.
4. C. Horizontal gaze nystagmus is a field test used by police to see if drugs or alcohol is involved. The eyeball will involuntarily jerk when moved from side to side, and the more alcohol consumed, the earlier it will occur. Beware the officer who opines on this medical test conducted often right by the side of the road at night under less than optimum conditions.
5. D. The breath machine measures alcohol in breath, and then converts that to a Blood Alcohol Content (using an average gained from group studies.)
The range varies from one person to the next by as much as 40% however; this can translate to +/- 0.03% on a Blood Alcohol Test. If the legal limit in your state is .1% and your client was .12%, there could very well be an arithmetic explanation.
6. A. If you don't believe this, ask yourself why restaurants display "MICROWAVE IN USE" signs or hospitals ask you not to use cell phones while on the premises. Similarly, airlines ask you to turn off all electronic equipment at takeoff and landing. Why? Relate your defense argument to something the jury can understand.
7. B. Women do lack an enzyme, gastric alcohol dehydrogenase, that breaks down alcohol – thus more alcohol is absorbed into the blood than for their male counterparts. Oral contraceptives can elevate Blood Alcohol Content because they produce acetaldehyde. Formaldehyde is used to embalm corpses.
8. C. Ideally you would like to do your own analysis, but the breath machines do not retain a sample for further independent testing. You are at the mercy of the machine and its operator. Calibration is required much more often than every 6 months. The vials aren't certified, but the chemicals that go in them are. Warranties vary, but 90 days is typical.
9. B. A seasoned officer can be tough to discredit. Eyewitnesses are notoriously shaky. Clients do not always do well on the stand. By attacking the equipment and/or the operator you shift the focus from the stop, the field tests, the observations, etc. all of which may be damaging, to a piece of equipment sitting on a desk. And we all know that equipment, like a computer, is fallible. Don't car alarms sometimes go haywire?
10. D. Most states elevate to a felony if someone is injured, and require three or more convictions within the prior 7 to 10 years to charge this conviction as a felony. Having a child in the car or refusing to test are usually sentence enhancements, but the case is still charged as a misdemeanor.

How Did You Do?

If you scored 0-4 correct, a lost cause.
If you scored 5-8 correct, there is hope.
If you scored 9-10 correct, ready for prime time.

The moral of the story is that we should stick with our core competencies and if we are tempted to break out into previously uncharted waters, do one of two things. Either resist the temptation and tell the client that it is in his best interests to go elsewhere, or, say yes and bring in someone to look over your shoulder and step in to do the heavy lifting if need be. Going it alone is often a recipe for disaster and malpractice.

Imagine yourself at trial. Your trial. The charge is legal malpractice. Your client's new counsel asks you to explain yourself. What do you say? 🐘

Barry Smith practices in the Los Angeles area and can be reached at loysd@ix.netcom.com.

California Supreme Court Expands Employer Liability for Sexual Harassment Consensual Relationships Can Lead to Employer Liability



BY CYNTHIA ELKINS

The California Supreme Court in *Miller v. Dept of Corrections* (No S114097 Cal. July 18, 2005) has expanded the scope of employer liability by finding that an employer can be held liable for claims of "hostile work environment" sexual harassment when a supervisor grants preferential treatment to employees with whom the supervisor had a consensual affair.

In *Miller*, two employees accused a prison warden of having affairs with at least three subordinate employees and providing preferential and favored treatment to his "paramours". The lawsuit was dismissed by the trial and appellate courts, finding that the warden's alleged conduct may have been "unfair" but that it was not discriminatory because the women who asserted the complaint were not subjected to any sexual advances by the Supervisor, were not personally treated in a sexually demeaning way, and were not denied raises or promotions because of their sex/gender.

The Supreme Court disagreed with the prior rulings. The Court found that liability could exist for an employer based on the Supervisor's conduct of preferential treatment. The Court stated that isolated instances of favoritism by a supervisor toward a female employee with whom he's conducting a consensual sexual affair might not constitute sexual harassment. However, when such favoritism is sufficiently widespread and pervasive it may create a claim of "hostile work environment" for those other "non paramour" employees in the office.

If those *not* involved in the relationship are denied promotions, raises, and other perks or benefits of employment because they are *not* having an affair with the boss, they could assert a claim of hostile work environment claiming that they have suffered "adverse consequences" by not having an affair. The Court felt that any other finding would send a message to female employees that management perceives them as "sexual playthings" or that the way for them to get ahead is to engage in sexual conduct with their supervisors or management.

Also, it is important to remember the potential for liability for a claim of sexual harassment from the subordinate employee involved in the relationship. Once the "voluntary" relationship terminates, it would be easy for the subordinate employee to claim that the relationship was not in fact "voluntary" but was a forced relationship. The employee could easily assert that keeping his/her job or receiving a promotion was conditioned on continuing the relationship - hence resulting in a "quid pro quo" allegation of sexual harassment.

A potential claim for "hostile work environment" sexual harassment could also exist based on any sexual comments and actions which occurred in the workplace between the two even if such occurred during the relationship, but which the subordinate employee could claim were "unwelcome" and "offensive".

Employers must be vigilant to monitor their employee's workplace conduct. Employers have several options:

- **Institute a Non Fraternalization policy:** Attempt to prohibit all personal relationships between supervisors and subordinates on the basis that such can lead to complaints of favoritism, conflicts of interest and potential claims of workplace harassment. However, an employer cannot prevent employees from having personal relationships outside the workplace, due to claims of privacy and labor code prohibitions against an employer regulating off duty conduct.
- **Monitor Workplace Relationships (Carefully):** Employers should make an effort to ensure that personal relationships are in fact "consensual" and do not interfere with the workplace and do not create a hostile work environment.
- **Adopt a "conflict of interest" policy:** This would make it clear that employees who find themselves in a personal relationship will not be allowed to continue their employment relationship as supervisor and subordinate due to the inherent conflict of interest (reviews, raises, bonuses, etc.).

Following the Supreme Court's recent finding in *Miller v. Department of Corrections* workplace romance takes on a whole new concern of potential liability for the employer. ☘

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Members in the News

The law firm of Stone, Rosenblatt & Cha announced that **Kristi W. Dean** has joined the firm as a Principal. Ms. Dean practiced law under the auspices of her own firm for 18 years and brings a wealth of experience to the firm. "We are very impressed with the breadth and quality of experience Ms. Dean brings to SRC," said Managing Director, Ira Rosenblatt. Ms. Dean joins the firm's Insurance Defense and Commercial Litigation practice groups.



Leslie Blozan, who has practiced with Ms. Dean for years, also joins the firm as an Associate. Ms. Blozan will join the firm's Insurance Defense and Commercial Litigation practice groups. "Both Ms. Dean and Ms. Blozan are dedicated to our mission to help our clients achieve their strategic and financial objectives. We are thrilled to have them on our team," said Rosenblatt.



Stone, Rosenblatt & Cha joined the San Fernando Valley Bar Association as a firm member in July. The 19-attorney firm, located in Warner Center, is an A-V rated business law firm serving their clients' litigation and transactional needs.



Elayne Breslaw, an Associate member, was nominated by Bet Tzedek Legal Services for the State Bar of California Wiley W. Manuel Award for Pro Bono Services. The Award recognizes the contributions of many lawyers, law students, paralegals, and secretaries who volunteer their time and expertise on behalf of low-income and poor clients. Breslaw donated more than fifty hours as a volunteer Intake Worker to Bet Tzedek during the past year.



Stephen M. Levine, a trustee of the SFVBA and Co-Chair of the SFVBA Business Law, Real Property, Employment Law and Bankruptcy Section was recently made partner at Wolf, Rifkin, Shapiro & Schulman LLP. ⚡



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Policyholder Update

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COOL HOLIDAY WISHES

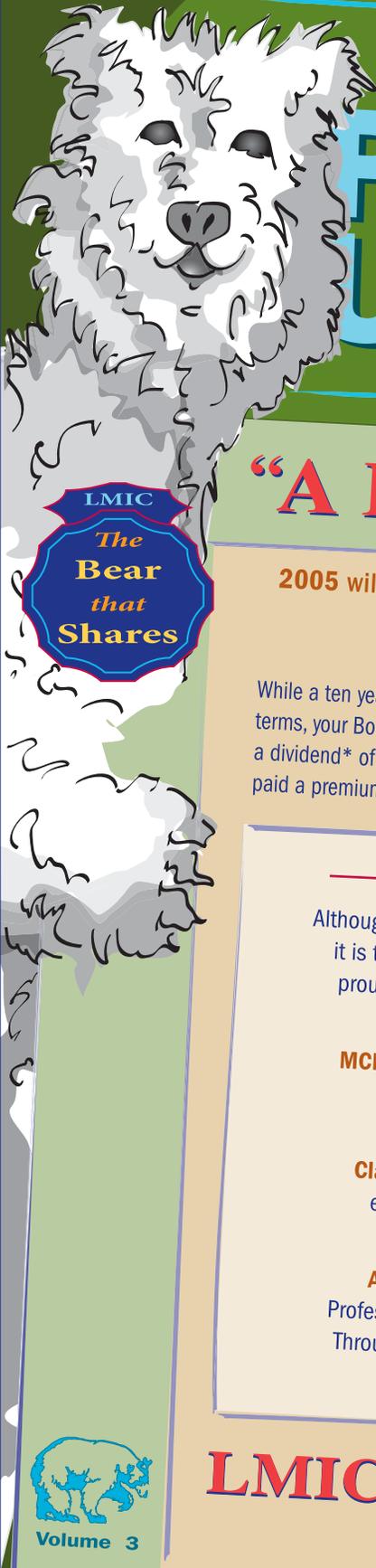
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September Events

Small Firm & Sole Practitioner Section

Topic: **Managing Your Office**
Speaker: Richard A. Lewis
Date: September 14
Time: 12:00 Noon
Place: SFVBA Conference Room, Woodland Hills
Cost: \$20 members prepaid; \$25 at the door
 \$25 non-members prepaid; \$30 at the door
MCLE: 1 Hour

Workers' Compensation Section

Topic: **Impairment Rating Re: Individual's Ability to Perform Daily Activities**
Speaker: Mark Hyman, M.D.
Date: September 21
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

Family Law Section and LACBA Minor's Counsel Subcommittee

Topic: **How to Effectively Work with Minor's Counsel**
Panel: Judge Wendy Kohn; Sandra Etue, Esq.; Frieda Gordon, CFLS
Date: September 26
Time: 5:30 p.m.
Place: Encino Glen Restaurant, Encino
Cost: \$40 members prepaid; \$45 at the door
 \$45 non-members prepaid; \$50 at the door
MCLE: 1 Hour

Probate & Estate Planning Section Cocktail Reception with Probate Court Personnel

Date: September 27
Time: 6:00 p.m.
Place: Encino Glen Restaurant, Encino
Cost: \$20 members prepaid; \$25 at the door
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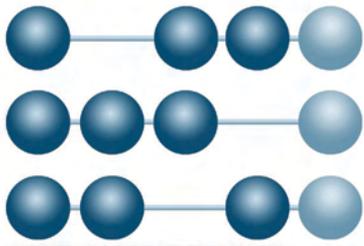
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