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Celebrating 75 Years
San Fernando Valley Bar Association
Association
founded in 1926

BarNotes

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San Fernando Valley Bar Association

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Mural Unveiled At Juvenile Court

Artist Armando Campero talked passionately about his messages to youth in the mural just unveiled in the lobby of the Sylmar Juvenile Court - the importance of education in preparing for the versatility of professions and achievements that are possible for them; sports as one of the means of establishing fair play, cooperation, physical and mental agility, for the growth of understanding of how character is built; and Lady Justice holding a sword and scale showing the balance of equality and justice.

Campero spoke at the unveiling and dedication of the Sylmar Mural on July 29. The mural, entitled *Justitia*, is the first of four murals to be presented by the San Fernando Valley Bar Association to the Valley's courthouses in Van Nuys, Sylmar, San Fernando and Burbank in commemoration of the SFVBA's 75th Anniversary.

"The goal of the Court Mural Project is to beautify our local courts and enhance community respect for the law," proclaimed SFVBA President Lyle Greenberg. "The murals will inspire the public and our profession for years to come."

Greenberg presented a commemorative plaque to Juvenile Court Supervising Judge Michael Nash and Sylmar Judge Morton Rochman. "The vibrant art will be something beautiful to look at for the thousands of people who visit our local courthouses daily, many we know who come for less than pleasant reasons. We hope that teachers will want to take their classes on field trips to view the murals, to educate the students about our justice system."

Armando Campero was commissioned to design the Sylmar and San Fernando murals. Born in Mexico City, he was an apprentice of world-renowned artist Diego Rivera. His powerful murals are displayed in Chicago, St. Louis, Spain, France, Mexico and Guatemala. His works include The Kennedy Saga in Mexico City and murals at the Compton courthouse, East Los Angeles Public Library and the University of Southern California's School of Medicine.

The San Fernando mural will be unveiled in September. The Sylmar mural was funded with a grant from the Valley Community Legal Foundation, the fundraising arm of the SFVBA.

BarNotes

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President's Message

Lyle F. Greenberg

Our Strength is Your Involvement In our Bar - Thank you

As the summer turns into fall, we are ending another successful year for the San Fernando Valley Bar Association. I have truly enjoyed and have been proud to be the President of the San Fernando Valley Bar Association. I am happy to say that many of the goals we set at the beginning of our term have been met with the help of our hard-working Officers, Trustees, staff and volunteers. The support that I have received has been extraordinary, and I count myself very fortunate to have had the confidence and commitment of such fine dedicated people. I most appreciate the personal and professional relationships that were developed and strengthened during this past year. Thank you.

A bar association is successful if it has an energetic and enthusiastic staff, Board of Trustees, section and committee chairs, and if it is committed to being responsive to its members and to a tradition of excellence. At the SFVBA, we are very fortunate to have staff as well as volunteer leaders who each year re-dedicate themselves to making this bar the best it can be, standing out in our community and in our profession, and providing benefits and services to our members.

This message is a "thank you" to our members and staff for what you have accomplished to date, to our Past Presidents for your continued interest, commitment and support, and, a word of encouragement for those of you who have just begun to participate in our organization.

While we can certainly count our successes by reviewing our fiscal stability and strength, our membership numbers, and the like, our greatest strength and asset are the members who participate in our activities and who seek leadership positions in our organization, as well as the consistently high level of dedication by our staff to our bar and our programs. Because of these individuals, we are successful and have continuity in our Bar. This

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Licensing Your Company's Intellectual Property: Choosing and Negotiating with Licensees

BY DAVID GURNICK

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

Today, intangible property is more important and valuable then ever. And business is as challenging as ever. So there are many reasons why companies that are secure in their own operations decide to license their intellectual property to others.

For businesses that focus on intangible property, licensing is a usual part of operations. For others, licensing can be a new income source, without heavy new capital investment. It can be a way to get others to develop a valuable technology. Through licensing, a company can get others to introduce its own products into distant markets faster. Whatever the reasons, licensees must be selected who meet the licensor's needs, and agreements are needed to accomplish licensor goals and encourage full performance by the licensee.

Most business people want agreements to be short and simple. But a well-planned agreement helps parties understand their rights and duties, especially when events take unexpected turns. Parties could be frustrated if a license is silent on key points, like what happens if sales are higher, or lower, than expected, whether sublicenses are allowed, limits on customers or geographic areas where a licensee may sell, grounds to end the license, who fixes problems with goods, and how much a licensee can modify the licensed property.

Recently, some intellectual property giants relearned these lessons. Comic book publisher Marvel granted 20th Century Fox a license to make movies based on X-Men comics. Afterward, Marvel started publishing a new comic called "Mutant X" with characters related to the X-Men, and authorized a broadcaster to do a TV series using Mutant X characters. After releasing the X-Men movie in 2000, Fox claimed Marvel's Mutant X licensing invaded its X-Men rights.

In an injunction motion, a court said Fox's view that a Mutant X TV series would hurt the popularity of an X-Men sequel, was equally plausible with Marvel's view that the TV show would benefit Fox by widening the audience for "X-Men." These issues could have been avoided by better license negotiation. (20th Century Fox v. Marvel 277 F.3d 253 (2d Cir. 2002)).

Taco Bell and some creative artists faced a similar problem, which better licensing arrangements could have avoided. Shields and Rinks conceived the "psycho Chihuahua," a feisty dog with an attitude. Taco Bell asked about licensing the Chihuahua for advertising. The parties discussed ideas, like a TV commercial with a male dog passing a female dog to get to Taco Bell food. Focus groups showed the ad concept would work. The parties also discussed license fees but didn't set a price and no license was signed.

When Taco Bell made the Chihuahua its national ad centerpiece, the artists had to sue, claiming an implied contract entitling them to be paid. Taco Bell defended saying copyright law preempted the claim. A trial court agreed, but an appeals court rejected the defense, holding that the plaintiffs might be entitled to the reasonable value of what they created and leaving it to a costly trial to decide. (Wrench LLC v. Taco Bell 256 F.3d 446 (6th Cir. 2001)).

Here are some key starting points for most intellectual property licenses.

- **Identify Licensed Property.** Step one is to define the property involved. Examples include web content made available to others (like the Google search engine), the image of a famous person (Joe Dimaggio selling coffee makers), a brand name ready to appear on collateral products (like Disney being licensed for toys), a cartoon character (Scooby Doo), a patent, a copyrighted writing (a computer program for managing inventory), a trade secret (a pizza recipe), or commercial know-how (a manufacturing process). Step two is defining the "license package." This includes items and help that licensees may need to fully use the licensed property, like technical documentation, history and attributes of a character, training, or camera-ready art.

- **Candidates for Licenses.** Unlike sales of consumer products or raw commodities, licensing involves continuing relationships. Licensors need to carefully choose whom they will work with as licensees. One way is to create a profile of the ideal licensee, listing their experience, reputation, credit history, and other characteristics that make them just right to use the licensed property. For example, it is unreasonable to expect a company that always made low-end consumer products to suddenly produce top quality goods. So a trademark previously associated with high-end goods should not be licensed to such a manufacturer. Similarly, a company whose goal is to receive ongoing royalties, should not license to a company with a history of credit or dishonesty problems.

- **Territory and Market Sector.** To maximize the value of a license, the owner should decide what market sector or geographic territory to let the licensee use the property. If the territory is too large, the property won't be fully exploited and profits and distribution scope will be lost. If too small, the licensee will be unable to maximize its own distribution. A related question is whether the licensee's rights will be exclusive within the defined market.

- **Duration.** The right term of a license requires more then just choosing 5, 10 or 25 years as a round number. It is linked to the property's natural life span, how long is needed before the property will need to be improved or updated, and how long the licensee will need to earn a reasonable return on its investment.

- **Royalties.** How much to charge is always a key question. It can be a one-time lump sum, periodic fixed amounts, or

ongoing royalties based on a percentage of licensee sales. The royalty approach is common because it lets the licensee pay only to the extent the property generates income, while linking licensor income to benefits the licensee derives. To assure that correct amounts are paid, royalty terms usually include a right to audit licensee sales records.

- **Ownership of New Matter.** A license should state who will own new data or creations that are derived from the licensed property.

- **License Review.** Build into the agreement a process for license review. This may be a right for the licensor to impose new usage standards, or an agreed time for the parties to negotiate adjustments in good faith to make the licensing arrangement more effective for everyone.

- **Risk Management.** A license may require parties to have liability insurance in case of claims, and assign responsibility for defense if a nonparty to the agreement claims either the licensed property or its use infringes their rights.

- **Breach and Remedies.** A good license tells what happens if a party breaches, what steps must be taken to cure, and what remedies will be used if the cure is not accomplished.

- **Solving Disputes.** Disputes are possible in any relationship and the traditional way to solve them is litigation. But increasingly alternative methods are used, like mediation and arbitration. A license can require that any mediator or arbitrator be someone with experience in the industry or type of licensed property involved.
- **Negotiating Strategies.** A good first negotiating step is to obtain a confidentiality agreement requiring the potential licensee not to disclose information learned from the licensor. This lets the parties negotiate more freely. Another step is to research each licensee's background. Today's privacy laws sometimes require prior consent depending what kind of background check is conducted. A third step is to exchange a summary of proposed terms that may be used as an outline that will evolve into the definitive agreement.

Intellectual property licensing can provide benefits to licensees and their customers, and new sources of revenue for licensors. Careful planning, negotiation and adherence to intellectual property license agreements, can avoid disputes and help all parties maximize the benefit from their arrangements.

Reflections on the Value of Private Mediation

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.

Neither life nor litigation comes with guarantees. The best we can do for our clients is counsel them in the odds of winning, the costs of losing, the risks of waging a war with an uncertain outcome, and our best advice on how to resolve the legal dispute at hand to their greatest advantage. In undertaking that task, consider counseling your clients on the advantages of engaging a private mediator, even where the court makes a pro bono mediator available to you. This could be the most valuable advice that you give your client. Here's why:

Choosing a private mediator is the first indication that both sides are willing to consider compromising their position for the benefit of settling the case before trial. When the court appoints a mediator, it's relatively easy for one side or the other to appear, sit patiently and dispassionately for three hours, and then declare that they have no interest or willingness to settle. On the other hand, when both sides agree to choose a private mediation, you've already cleared the first hurdle by establishing that both parties are willing to be there to consider a compromise in order to end the risk and the expense of litigation.

The very fact that both parties are willing to participate in mediation validates the optimistic view that at the very least both parties agree that the case is sufficiently substantial that it's worth investing in attempting to resolve the case without further litigation. Essentially, the bargaining "posture" of both sides is leveled by the time they arrive at a mediation where they've agreed to hire a mediator. This can save hours or sometimes months of tactical maneuvering and begin the difficult task of resolving the dispute.

Paying for a mediator's time motivates both sides to get to their best offer sooner. Although the Mediation process can at times seem agonizingly long, when the parties or their counsel are paying for a Mediators time, they will invariably be more forthcoming about their best offer or settlement range earlier in the session. The expense factor matters.

Scheduling a private mediation will reflect that the timing for settlement is right. If both parties agree upon a private mediation, they are also agreeing that the case is "ripe" for settlement discussions (however they evaluate that timeline). That is, they will have already determined their chances of recovery, their client's factual and legal defenses, and realistically evaluated the damages in the case before arriving at the hearing.

The parties will come to the private mediation with a realistic expectation of the costs of going forward with litigation. When you sit your clients down to recommend hiring a private mediator, you will undoubtedly also discuss with them the costs of going forward with the case, as against the costs of the private mediation. Thus, whoever is financing the litigation will begin to appreciate the future costs of trial preparation and trial, in the event the case doesn't settle. They will then balance the value of the private mediation, and if the case is "worth it", proceed with setting a hearing in an attempt to fix the costs, instead of continuing to incur them!

Agreeing upon a mediator is the first step towards compromise. Sharing the fee is the second step. When choosing a private mediator, the attorneys will have to communicate with one another, and search out someone who has a reputation as intelligent, sensitive, efficient, skillful, available and affordable. Often, this will mean agreeing to set the hearing before someone that only one of the parties' knows, or that one of the parties has been before for previous matters. This is an obvious show of good faith on the other party's part to accept this initial recommendation. It is the beginning of a compromise that opens the doors to settlement. Moreover, by both parties agreeing upon the mediator, they have taken the first step towards showing that they are desirous of negotiating the settlement "in good faith". There are no opportunities to make accusations to the contrary, if both parties agree to participate before a particular mediator.

The parties will need to work as a team in selecting a mediator who not only has expert-

ise in the particular type of case, but also someone who they have confidence can convene the matter efficiently and timely, and someone who is affordable within the confines of the case. In other words, if your opposing counsel won't agree to select a particular mediator due to his/her rate, you already know that he is not valuing the "amount in controversy" in the same range as you are. Agreeing to share a particular fee is the second important step to showing your good faith intention to attempt to end the litigation through mediation.

The negotiations don't have an automatic "breakdown" after three hours. I have found in my practice that the reluctant participant in the judicially appointed mediation will often sit patiently for the three hours, acting as though they are conducting themselves in good faith—but once the clock strikes four, they are out the door! The unfortunate reality of the pro bono system which the courts have set up for purposes of giving nearly every case a chance at a mediation hearing, is that lawyers have come to expect that they have the power to terminate the hearing, and suspend all further negotiation after the initial three hour conference, even where real progress is being made!

If the parties agree to participate in a private mediation, the negotiations may certainly still break down, but not before all possibilities of settlement are exhausted.

The next time you're ordered to mediate, consider these factors, and the wisdom of guiding your clients to get the best value from their buck. Recommend hiring a private mediator to your clients, and take the first step towards settling their case. You may be surprised by the added value in cost saving and maximizing your clients' advantages while minimizing the risk and uncertainty of trial. Invariably, this will enhance the value of your cases and your practice by delivering the best service for your clients. There are no guarantees in litigation, but good advice is our most valued commodity. Give it wisely.

Where does the fiscal year go? On October 1, we will begin our new fiscal year. In the upcoming columns I will talk about LRIS results of this past year.

We have taped two of the several cable television shows we developed to promote the SFVBA/LRIS. One program is on restraining orders and the other is a tour of the Chatsworth Courthouse with Judge Michael Knight.

This past year, we had set a goal to film a second series of cable television shows. We have done this. We had set a goal to increase our signage in local court facilities and we have done this. This coming year, my goal is to develop a plan to increase service to the community through some program that will assist those referral callers who need "brief or unbundled" legal services. The LRIS Committee has recommended that time be spent exploring these and other options as a way to further serve the community and to provide panel members additional opportunities for clients.

We are in the middle of the budget process for the Bar Association and the Referral Service. This year the process includes an even more detailed examination and an evaluation of each line of the budget. Included in this evaluation is a study of our Yellow Page advertising. We want to use our annual $30,000 yellow page budget in the most effective manner.

The LRIS Committee and the SFVBA leadership are scrutinizing the LRIS budget. They tell me that they have found a fiscally responsible budget. Strong and continuing support for LRIS has been reflected in responses to each of the two surveys we conducted in recent years. However, we justify that support by being wise in our planning and in our budgeting. Recently, another California bar association-sponsored referral service ceased operations because of budget problems. We know we must focus on developing new opportunities and services if we are going to be a part of the centennial celebration of the SFVBA.

This year I am serving as the President of Haven Hills, Inc., the domestic abuse shelter and counseling program. Many of you have worked with Haven Hills. It is also my challenge this year to help guide this program during difficult times for public charities.

LRIS and Haven Hills, Inc. are not in crisis by any means. They are both established programs providing the quality of services that the public needs and expects. However, these are times that need thoughtful planning, preparation and self-examination. The work LRIS and Haven Hills do must continue because quite simply their services are needed.

We have commissioned murals in our Valley court facilities showing "The Faces of Justice." At the referral service each day we hear their voices asking for help in a world where we have one lawyer for every 380 people in general and one legal services attorney for every 4300 persons living in poverty. Study after study shows that 80% of the legal needs of the poor are unmet and it is becoming rapidly the same statistic for the middle class. The California Judicial Council and the ABA in its Law Day theme speak of the goal of "access to justice." LRIS will continue to implement programs and provide services that play a role in achieving access to justice and equal justice.

Racehorses and Lawsuits A Question of Value

BY CHARLES B. PARSELLE

A graduate of Oxford's Honor 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.

The hardest things to evaluate accurately are racehorses and lawsuits. Both have huge industries built up around them. But lawsuits are harder. The difficulty in pricing a racehorse lies in the innumerable variables associated with these magnificent and delicate animals. Someone buys a colt for $50,000 and, against all odds, he wins the Oaks. Totally unpredictable, and rare. Suddenly his worth is $5 million. Someone pays $500,000 to have her mare impregnated by a Triple Crown winner – the pregnancy is guaranteed – but the offspring is a dud, sells for $25,000, or breaks a leg and has to be retired. What an enterprise.

Civil lawsuits are not necessarily harder in practice, but the theory of pricing lawsuits is far more complicated. It is more complicated because lawsuits are subject to two of the three great systems of exchange extant in the western world. The first and oldest system is theft. The most complicated definition of theft ever drafted is found in the Larceny Act 1916 (U.K.), which reads: "A person steals who, without the consent of the owner, fraudulently, and without a claim of right made in good faith, takes and carries away, anything capable of being stolen, with intent, at the time of such taking, permanently to deprive the owner thereof." Proving each of those elements – ten, by my count - was quite a chore. Theft as a method of acquiring things of value has been around a long time; indeed all the great empires were acquired that way. But fortunately for us, this is not the way lawsuits are valued.

Disregarding theft, in the legal profession we have to deal with two methods of pricing lawsuits. They are, respectively, the market price and the just price. These methods do not complement each other; they are in competition. The market price is what a willing buyer will pay a willing seller. The willing buyer and seller are like the reasonable man: they only exist as concepts or ideals. Maybe the buyer is desperate, the seller predatory, or vice versa; the market doesn't care a fig about the "just price," even though the great Scottish 18th century writer, Adam Smith, believed that an "invisible hand" was at work to ensure that everything came out all right in the end. Nowadays we don't believe in invisible hands, only countless hands creating the complex system we call capitalism. In the law, we deal with market prices every day. Every time a case settles out of court, it settles for the price a willing buyer was prepared to pay a willing seller. The concept of market price is the foundation of capitalism, and capitalism finds its way into the legal system at every turn.

In economic theory, one talks of the exchange of "goods." Anything that can be exchanged is a "good" (noun), even if it is not what we would ordinarily describe by the adjective "good." For example, pollution can be an exchangeable commodity, a "good." In nearly all lawsuits, one half of the transaction has already taken place, allegedly; that is to say, the defendant has received a "good" from the plaintiff. But the plaintiff, allegedly, has not been paid. Here we can speak of a willing buyer and a willing seller only in the most attenuated sense. Usually, the plaintiff claims the defendant has taken something of value from her, but the language used is different.

The language of the law is not the same as the language of economics. Instead of claiming the defendant has received something of value, the plaintiff alleges that she, the plaintiff, has been "wronged." The language of fault is imposed on the concept of exchange. The plaintiff lost something of value, e.g. her health, her business, the roof of her house, for which the other party to the event or transaction failed to pay the price, in spite of requests. The defendant must be made to pay the price. But what is the price, when and if there was an exchange, yet no willing buyer, no willing seller?

The legal system is the great bastion (outside of Cuba), of the other competing theory of value – the just price – and unlike Cuba (where capitalism is just waiting for Castro to "exit Stage Left") the legal system will always have to deal with "the just price," because justice is what the

legal system is all about. When a case goes to trial, there is no talk of market price. The willing buyer and willing seller fade away. In their place, the demanding "seller" (the plaintiff) and the unconceding "buyer" (the defendant) step forward. These parties must present, explain, justify, cajole, plead and persuade a jury of twelve skeptical third parties why each side's version of "the price" of the case is the "just price."

The theory of the just price has antecedents, both ancient and modern, and they make strange bedfellows. Religious and secular authorities in the Middle Ages were intensely interested in establishing criteria for the prices of things. The feudal system depended on it. They did not believe that matters would take care of themselves. The medieval scholastics, though deeply religious and living a life of Faith, did not believe in an "invisible hand." How ironic that the thoroughly metaphysical concept of an invisible hand should be left to an 18th century rationalist, Adam Smith. The true metaphysicians of Christendom did not believe that prices should be left to whatever the market would bear; they believed, in short, in a price that was "just." And so did Karl Marx! The great enemy of capitalism devoted much thought to the same enterprise that occupied the intellects of his great enemies, the Churchmen. Marx was equally against capitalism and religion, but both Marx and Catholicism struggled mightily to develop theories of pricing that would be "just" in the circumstances. And both failed. How strange that we in legal practice, while eschewing grand theories, also struggle mightily on a case-by-case basis to arrive at the value for a case that satisfies the demands of justice.

Whereas in trial, the concept of the just price takes over and dominates the proceeding, in mediation the concept of the willing buyer and willing seller once again makes its appearance. In mediation, one can watch the conflict and tension between the just price and the market price as it plays out in the negotiating process. Mediation is the only forum in which this occurs. In the business world, the market rules – anything and everything is exchanged for "what the market will bear." No matter if the seller has to dump her products at a loss, no matter if the buyer is forced to pay a huge premium due to shortages, everything depends on supply and demand. In the courtroom, the market is banished and everything depends on the judge or jury's view of the just value to be placed on the transaction in dispute. But mediation always occurs with trial as a potential option – therefore in mediation, the parties must perform the considerable intellectual feat of negotiating using both the concept of willing buyer/willing seller and the concept of the just price at the same time. That is why it is so fascinating. One watches day by day as parties work with these twin ideas – what will the market bear, what is the just price?

Usually, plaintiffs initially talk in terms of justice, the just or correct amount, while defendants calculate what the market (i.e. the plaintiff) will bear. During the course of the mediation, plaintiffs find themselves moving towards a "market price" – find themselves obliged to calculate the relative value of the offer now "on the table," compared with how much they would have to win at trial to "net" the same amount. Both sides have to calculate the costs involved in taking the case to trial, (though sometimes carriers insulate their adjusters by deliberating removing litigation costs from the calculus as a matter of policy). Yet defendants also use the calculus of the just price, because they have to – they have to because that is how the jury will evaluate the claim if it doesn't settle. Therefore, one sees both sides using a complex mixture of rationales to move from one position to another.

However the parties choose to negotiate, they are always working with these twin ideas – what is fair and just in the circumstances, versus what the other side will accept given the stresses and strains of litigation. It is complicated, but in the final analysis, racehorses are riskier!

President's Message continued from page 3

"strength from within" assures us of our future, the continuity in our programs, and the consistency in delivery of our mission statement to our members and the public at large. Our success is not the work of any one person, but rather, the combined efforts of our trustees, officers, staff, and many volunteers who have generously devoted their time and effort to our organization and community.

Our Executive Director Liz Post and our LRIS Director Michele Morley are operating a bar office that is friendly, efficient, and which strives to be on the cutting edge of technology and efficiency. Linda Temkin, our Events Coordinator, LRIS Counselors Valeria Ledezma and Gayle Linde, and Rosie Soto, are all to be commended for their dedicated efforts to our bar, its programs and members. They are simply the best bar staff and the successes of our organization, as well as our attentiveness to our members, can be traced to their devotion. Thank you.

Throughout the year, we have focused on building upon our past successes and the programs and activities that our bar has done so well, as well as enhancing communication and interaction among all of our members, leadership development (we held two Volunteer Leadership Conferences, with these programs to continue into the future), and promoting the SFVBA and its members to get more involved in county, state and national bar activities.

Our Officers, including Steve Holzer, James Felton, Marcia Kraft, and Christine Lyden, have been spectacular to work with this year and I commend each of them for their hard work and dedication.

Following our 75th Anniversary celebration, we have had an extraordinary year of accomplishments. Our Membership and Marketing Committee (Chairperson, Trustee Alice Salvo) have done an excellent job, spending the entire year working on developing our future state-of-the-art website. The work of our Conference of Delegates (Co-Chairs, Trustee Tamila Jensen and Past President Bernard Grossman) has again been recognized for their excellence as they prepare for the State Bar meeting in October. In the midst of a downturn in our national economy and decreased membership in other organizations, our bar has seen an increase in membership (now exceeding 2,100) as well as an increase in participation in our programs and section meetings. Our Bench-Bar Committee, Co-Chaired by Trustees Michael Convey and Judith Simon, have done an excellent job in addressing bench and bar concerns in the context of bi-monthly meetings with the judicial officers of our courts in San Fernando, Van Nuys, Burbank, Glendale, and now expanding to Pasadena. New sections and committees were highly successful, including Government Affairs (Chair and President-Elect Steve Holzer), Health Care (Chair Alan Sedley), Intellectual Property and Internet Law Section (Co-Chairs Holli Fillbach Simcoe and Deborah Sweeney), and Small Firm and Sole Practitioner Section (Co-Chairs, Trustee Cynthia Elkins Hogan and Lilianne Chaumont). Thank you.

Our Programs Committee (Co-Chairs Susanne Bendavid-Arbiv and Patricia McCabe) are to be congratulated and thanked for their very special efforts throughout the year to make our Annual Judges Night, Stanley M. Lintz Award & Community Recognition Dinner, and upcoming Installation very special and meaningful. Again, congratulations to Barry T. Harlan, our 2002 Lintz honoree, Assemblyman Robert Hertzberg, our Jerold Krieger Public Service awardee, and Cynthia Berman, our Volunteer of the Year.

Our Past Presidents have remained active and have been available to give guidance and I am very thankful for their assistance, particularly Lee Alpert, Gary Barr, Mark Blackman, David Gurnick, David Hagen, Barbara Jean Penny, Robert Weissman, and most of all, my predecessor, Christine Lyden. Her guidance, perspective and wit provided me great assistance throughout the year. Out of the fortuity that brought us together on the Board and placed us side by side, following each other as President, I have made a lifelong friend and confidante.

We have worked to complete projects started as part of our 75th Anniversary program, including our history project and court murals project (Co-Chairs, Treasurer Marcia Kraft, and Judge Alice Hill). The mural at the Sylmar Courthouse has been installed and unveiled, and we anticipate doing the same

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Wanted: Television Show Ideas and Panelists

Legal Forum, the cable television show sponsored by the SFVBA, is once again filming. The show is designed to educate the public on various legal issues, promote the Lawyer Referral and Information Service, and to entertain viewers. Some members may remember that several shows were produced a number of years ago. If you are interested in viewing tapes of these shows, they can be obtained from the Bar Office. If you have any ideas for topics or panelists for current shows, contact the show's host, **David Hagen**, at **(818) 992-1940** .

Look for Legal Forum on the public access channel of the Adelphia and Time Warner Cable Systems this fall.

Never Having to Talk to the SEC or California Department of Corporations

BY RICHARD GORDON

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

Whenever a transaction results in the issuance of securities (an "Issuer Transaction"), the attorney representing the Issuer must review both Federal and applicable state securities laws to determine whether the Issuer Transaction is exempt from the registration requirements of Section 5 of the Securities Act of 1933 (the "Securities Act") and qualification under state law.

There are a number of Issuer exemptions set forth in the Securities Act and state securities laws. Some of these exemptions are based on the type of security that is being issued, while others are based on the nature of the Issuer Transaction. This article will be limited to a discussion of those Federal and California securities exemptions most commonly used by securities attorneys in Issuer Transactions. While this article only discusses the most common California securities exemption, readers are cautioned that in an interstate Issuer Transaction, the securities laws of each state where prospective purchasers reside must be reviewed to determine whether the Issuer Transaction is exempt under applicable state law.

Federal Law

The Section 4(2) Exemption

Section 4(2) of the Securities Act exempts from registration "transactions by an issuer not involving any public offering." A party claiming this exemption has the burden of proof to establish its availability.

Unfortunately, the availability of the Section 4(2) exemption depends primarily upon judicial and administrative interpretations of this statutory provision. The benchmark Supreme Court decision in SEC v. Ralston Purina Co., 346 U.S. 119 (1953), established the basic principle that the private offering exemption is available only for offerings made exclusively to persons able to protect themselves. The ability to protect oneself depends on (1) access to the same kind of information as that which would be included in a registration statement and (2) the sophistication of the offerees.

Lawyers should be specifically aware that the Section 4(2) exemption is a "private offering" exemption and not a "private sales" exemption. Accordingly, the exemption will be lost if any offeree fails to meet the preceding criteria. This will result even if (1) the offeree does not ultimately purchase the securities and (2) all purchasers meet the standards described above.

Regulation D

In view of the subjective legal standards an attorney must consider in evaluating the availability of the Section 4(2) exemption, and the vagaries of ultimately being dependent on judicial and/or administrative interpretations of this exemption, securities attorneys have clamored for the adoption by the SEC of specific "safe harbor" rules that objectively can be relied upon in determining whether an Issuer Transaction is exempt from registration under Section 5 of the Securities Act. This has resulted in the SEC's adoption of Rules 501 through 508 under the Securities Act. These regulations are collectively referred to as "Regulation D".

Rules 501 and 502 of Regulation D set forth material definitions and common elements shared by more than one of the specific exemptions. Rule 503 provides for the filing of a notice on Form D with the SEC no later than 15 days after the first sale of securities in reliance on the Regulation D exemption. Rule 507 contains a disqualifying provision for an Issuer if the Issuer or any of its predecessors or affiliates has been subject to any order, judgment, or decree of any court temporarily, preliminarily or permanently enjoining such person for failure to comply with Rule 503. Finally, Rule 508 keeps Issuers from losing the Regulation D exemption where there are insignificant deviations from a term, condition or requirement of Regulation D.

The substantive exemptions set forth in Regulation D are contained in Rules 504 through 506. These rules are briefly summarized below.

Rule 504

The Rule 504 exemption is available for all Issuer Transactions, other than offerings by companies subject to SEC reporting requirements, investment companies and "blank check" companies (i.e. development stage companies that either have no specific business plans or purposes or have indicated that their business plans are to engage in mergers or acquisitions with unidentified companies). A Rule 504 offering cannot exceed $1 million during any 12-month period. While Rule 504 does not impose any specific disclosure standards as a condition of the exemption (note that all securities transactions are subject to the general anti-fraud disclosure requirements of Federal securities laws), and does not mandate any limitation on the number of investors, the rule does generally require compliance with the terms and conditions of Rules 501 and 502. These include:

1. Normal SEC "integration" standards will be applied in determining whether purported separate offers and sales of securities should be integrated for purposes of evaluating whether the Rule 504 exemption is available. In this regard, offers and sales of securities that are made more than six months before the start of the Rule 504 offering or are made more than six months after completion of the offering will not be considered part of the offering, so long as during those six months there are no offers or sales of securities by or for the Issuer that are of the same or similar class as those offered or sold in the Rule 504 offering. These integration standards apply to all other Regulation D offerings.

2. With limited exceptions beyond the scope of this article, neither the Issuer nor any person acting on its behalf may offer or sell the securities by any form of general solicitation or advertising. The prohibition on general solicitations or advertising applies to all other Regulation D offerings.

3. With limited exceptions, securities acquired in a Rule 504 offering will have the status of "restricted securities" acquired in a transaction under Section 4(2) of the Securities Act and cannot be resold without registration under the Securities Act or an exemption therefrom. The same restricted securities status also applies to any securities issued pursuant to Rules 505 or 506.

Rule 505

Rule 505 is available for Issuer Transactions of not more than $5,000,000 in any 12 month period. The exemption cannot be used by investment companies or an Issuer disqualified because of certain prior conduct of persons affiliated with the Issuer or a party receiving remuneration in connection with the offering. The specific disqualifications are detailed in Rule 262 under the Securities Act.

A Rule 505 offering can be made to an unlimited number of offerees, provided there is no general solicitation or advertising. The offering can involve an unlimited number of "accredited investors" as well as a maximum of 35 non-accredited investors. The term accredited investor is defined in Rule 501(a) of Regulation D. As to natural persons, an accredited investor is any person whose individual net worth, or joint net worth with that person's spouse, at the time of the purchase exceeds $1,000,000; or any person who

had an individual income in excess of $200,000 in each of the two most recent years, or joint income with the person's spouse in excess of $300,000 in each of those years, and has a reasonable expectation of reaching the same income level in the current year.

Non-accredited investors do not have to meet any sophistication or suitability requirements. However, if the offering is sold to any non-accredited investors, the Issuer must furnish written disclosure information that is specified in Rule 502(b)(2) at a reasonable time prior to sale. The specific mandated disclosures differ depending on the dollar amount of the offering and the nature of the Issuer. If the offering is sold only to accredited investors, no specific disclosure is mandated.

Rule 506

The Rule 506 exemption is identical to Rule 505 except the offering can be unlimited in dollar amount; there are no Issuer disqualification standards; and each purchaser who is not an accredited investor, either alone or with his purchaser representative(s), must have such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment, or the Issuer must reasonably believe immediately prior to making any sale that such purchaser comes within the description.

California Law

Section 25102(f)

Section 25102(f) is the most commonly relied upon exemption under the California Corporate Securities Law of 1968 (the "California Act"). This section exempts from the Issuer qualification requirements of Section 25110 of the California Act any offer or sale of any security in a transaction that meets the following criteria:

1. Sales of the security cannot be made to more than 35 persons, including persons outside of California. Rule 260.102.13 excludes from this count certain enumerated investors including "any person who comes within one of the categories of an accredited investor in Rule 501(a) of Regulation D".
2. All purchasers must have either a preexisting personal or business relationship with the offeror or any of its affiliates, or by reason of their business or financial experience or the business or financial experience of their professional advisors, they can be reasonably assumed to have the capacity to protect their own interests in connection with the transaction. If any one purchaser fails to qualify, the exemption is unavailable.
3. Each purchaser must represent that he is purchasing the security for his own account and not with a view for the sale or distribution of the security.
4. The offer and sale of the security cannot be accomplished by the publication of any advertising or other general solicitation.

In addition, under Rule 260.102.14, the Issuer who relies on Section 25102(f) is required to file, no later than 15 calendar days after the first sale in California, a notice with the California Department of Corporations either by filing a separate copy of the Form D notice filed with the SEC or by utilizing the form specified in the rule. The fee required by Section 25608(c) of the California Act must accompany the filing.

The exemptions described in this article are technical and detailed, and necessitate careful analysis and understanding of Federal and state securities laws to assure compliance with their requirements. This legal responsibility should not be undertaken by attorneys generally unfamiliar with these requirements.

President's Message continued from page 14

in San Fernando in the near future. Van Nuys and Burbank will follow. These are our gift to our courts and our community; they will commemorate our 75th anniversary as well as celebrate our key role in the San Fernando Valley. During this year we also had the honor of being invited to participate in the dedication of the new Chatsworth Courthouse.

I am becoming an Immediate Past-President. I have thoroughly enjoyed the privilege of serving as your leader this past year. It has been gratifying to see the organization grow and see the pride that our members have in being associated with a successful organization. I look forward to being your Immediate Past-President and participating and contributing to the organization on that level. I want to thank each and every one of you for your support and your individual contributions. I have had a rewarding term as President and realize that we would not have accomplished as much as we have without the help of our volunteers.

Over the past year we undertook to address numerous issues and projects - we have a long list of successes as well as a long list of things to be done. While disappointed that we could not complete every project that we started, I have great satisfaction in knowing that we were faced with challenges and handled them well and with integrity, that our organization is stronger by any definition today and we have a great deal of promise for our future. As we march forward into the 2002-2003 term and beyond, we will proudly announce new programs, additional benefits, and opportunities for our membership's participation. While I was President, we completed tasks and projects started by our predecessors, and certainly our future leaders will fulfill projects that the Board of Trustees of 2001-2002 began. I was very fortunate to have had a Board of Trustees that worked so well together, a cohesive group focused on the betterment of our community, our organization, and upholding our mission statement.

We have arrived at this point because we had the benefit of being lifted on the shoulders of those who preceded us. One of the greatest compliments that was shared with me this year was from a group of Past Presidents who were complimentary, impressed and appreciative of our efforts on behalf of this organization. They expressed gratitude for our efforts to maintain the integrity and excellence of this bar association, and felt that we had fulfilled our commitment as trustees of this special organization. If we are measured by what we have accomplished as well as the attitude and conviction by which we approached our tasks and challenges, we have done well and I am proud to be a member of this organization. Thank you.

Finally, I want to thank my wife Monique, my children Rebecca, Stephen and Lauren, and my law partner Alan Sedley, for their support and commitment to me, which in turn allowed me to work on behalf of our bar and the challenges that we faced this year.

I wish our 2002-2003 President, Steve Holzer, much luck, and I will support his efforts as President as others supported mine. Once again, thank you for allowing me to serve as President and for all of your efforts on behalf of our Bar and community.

Valley Cityhood:
Good Idea or Bad Idea?

**The Woodland Hills Chamber of Commerce,
San Fernando Valley Bar Association &
Woodland Hills - Warner Center Neighborhood Council**

Invite you to attend a special debate on Valley Cityhood.

**Thursday, September 26, 2002
6:00 to 8:00 P.M.
at the Warner Center Marriott Hotel**

Debate Participants include:

PROPONENTS:
Richard Katz: Co-chair Valley Independence
Laurette Healey: Co-chair Valley Independence
Jeff Brain: President, Valley Vote

OPPONENTS:
Cindy Miscikowski: LA City Council member
Rusty Hammer: President LA Area Chamber
Jeff Daar: One LA

Moderated by Lee Kanon Alpert

**Your participation is encouraged.
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A reputable and outstanding paralegal program is seeking people experienced in teaching paralegal skills for the Fall 2002 and Spring 2003 terms. If you are energetic, well qualified, and prepared, please email me at *Goldmaa@lavc.edu* for application and information packet.

Interviews to begin immediately.

September Events

calender and MCLE event listings

Probate and Estate Planning Section and Business Law Section

Topic: **What the Valley Economic Development Center Can Do To Help You and Your Practice**
Panel: William Powers, Esq.; Roberto Barragon, President VEDC; Vladmir Victorio, Program Manager SFV Financial Development Corporation
Date: September 10
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

ADR Section

Topic: **Taking the Leap from Part-Time and Pro Bono to Building a Private ADR Practice**
Speaker: Stephen Mason
Date: September 12
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

Harriett Buhai Center for Family Law Training for Pro Bono Volunteers

Date: Saturday, September 14, 2002
Time: 8:00 a.m. to 4:30 p.m.
Place: Loyola Law School
MCLE: 6.5 Hours
For more information call (323) 939-1444, ext. 321.

Workers' Compensation Section

Topic: **Wrongful Termination in Compensation Cases? Think Fair Employment & Housing Act**
Speaker: David Cohn, Esq.
Date: September 18
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

Information & Reservations 818•227•0490

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Food and beverages served at every MCLE event!

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

Healthcare Law Section

Topic: **Patient Advocacy: Who Speaks For The Patient?**
Speaker: Martin Gallegos, Director/California Patient Advocate
Date: September 18
Time: 6:00 p.m. Dinner and program
Place: West Hills Hospital, Physicians' Dining Room, Ground Flr
Cost: $30 members prepaid; $35 at the door
$35 non-members prepaid; $40 at the door
MCLE: 1 Hour

Litigation Section

Topic: **How To Successfully Mediate: What are the Ethical Concerns?**
Speaker: Steve Cerveris, Mediator
Date: September 19
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 Ethics

Intellectual Property & Internet Law Section

Topic: **Risky Business: What Every Attorney Needs to Know About Information Security**
Speaker: Dr. Stan Stahl
Date: September 20
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

Family Law Section and Criminal Law Section

Topic: **How To Best Represent the Client in Cases Involving Domestic Violence:**
What are the Family Law and Criminal Law Consequences?
Speakers: Judge Susan Speer; Peter Walzer, Esq.,CFLS; and Chris Melcher, Esq.
Date: September 23
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

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