VALLEY LAWYER

MAY 2017 • $4

A Publication of the San Fernando Valley Bar Association

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VALLEY LAWYER

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Printing Southwest Offset Printing

A Much-Needed Filter

KIRA S. MASTELLER
SFVBA President

president@sfvba.org

FOLLOWING ANOTHER SUCCESSFUL JUDGES' Night honoring our Valley judges, welcoming and honoring our California Supreme Court Associate Justices, and celebrating yet another judge whose actions go above and beyond in helping to diversify our bench and those working in the legal community in California, all of this on the heels of our Bar having received the State Bar's Diversity Award last fall, I want to encourage all of our members to continue to focus on diversity, which is simply part of the equal rights and the protections guaranteed us under the Fourteenth Amendment.

As our Editor, Michael White, shares with you this month, the SFVBA will be participating in several different events as part of Law Day activities in May. Our Diversity Committee and members of our Board will also reach out to local public schools and participate in activities to bring about discussions in the classroom to get children thinking about critical legal issues such as equal protection and due process.

But what does that mean? What impact will a discussion about equal protection and due process have on the future of our children? If we look at other countries and their lack of due process and the lack of equal protection, we begin to uncover the answer.

> "What impact will a discussion about equal protection and due process have on the future of our children?"

The Fourteenth Amendment seems simple: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

And yet, we continue to restrict or limit these protections at a national level, state, county, city, school, club, work, and even at home, in some way every day. Let's get talking at work, at home, and in the community about "due process" and let's keep talking about "equal protection of the law."

Raise the question: If we could strain our opinions, our judgment, of ourselves and others through a Fifth Amendment and Fourteenth Amendment filter before we formed an opinion or passed judgment on another, what would the result be? Would we have as much bias? Would there be a truly "fair" opinion based upon specific facts versus a person's gender, ethnicity, religion or color? Could this filter work as the Fourteenth Amendment was intended to work?

Keep the conversation going and note the progress. Imagine how each of us can grow from the experience.

A Genuinely Special Day

MICHAEL D. WHITE
SFVBA Editor
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SOME CONCEPTS AND, INDEED, some things are worthy of special recognition. A day, perhaps, to pause and offer up appreciation for veterans, workers, and, later this month, Americans who have died in military service. Others…well. They're something else altogether and they are legion.

There are hundreds of often officially-designated days that Americans (or at least a few Americans) set aside to take a few moments to soberly weigh the cultural impact of…restless leg syndrome, Welsh rarebit, bowling leagues, tailgate parties, and the quizzically iconic "it could only happen in California," Chicken Boy.

But, on a more reflective note, there are other days of a much more genuinely serious vein set aside so that we can file a valid claim on the weight and measure of what holds us together as a society and a people.

Collecting the fixings for this issue's cover story, I was able to speak with former SFVBA President, Richard Lewis, who shared with me his feelings about May's national observance of Law Day. Law Day, he said, gives the country's legal community "a chance to say this is who we are, this is what we do, and that's important because the rule of law is the only real bulwark we have that separates a civil society from anarchy."

It was his choice of the words "lawful society and anarchy" that brought back some vivid memories, one in particular. In November 1999, I wangled an assignment from an Atlanta-based radio station to cover the World Trade Organization's Ministerial Conference. Intended as a three-day opportunity for representatives from around the world to discuss a complicated menu of international trade issues, the event, from its opening, degenerated into a chaotic collection of skirmishes between often-violent protesters and the Seattle police, and later, the National Guard.

Within hours of its opening, lawful, legitimate protest had largely given way to riot with the Ministerial garnering headlines around the globe as the Battle of Seattle—a medley of mayhem, disorder and lawlessness, and there I was, right in the middle of it, literally.

> "That's important because the rule of law is the only real bulwark we have that separates a civil society from anarchy."

Trying to move between off-site event venues was, to say the least, difficult as some streets were eerily quiet, guarded by jittery young guardsmen toting bayonet-tipped M-16s, while others presented bizarre throwbacks to a blitzed London, circa 1940—a jumbled buffet of smashed windows, clothing and radios discarded by looters, naked clothing store mannequins, rocks, railroad spikes, the choking stench of tear gas, and, most curiously, an abundance of discarded McDonalds cheeseburger wrappers. Ah, the memories.

To wit, Richard Lewis' words— "the rule of law is the bulwark between lawful society and anarchy"—carry a special weight for me.

Come this Law Day, I sincerely hope they will for you as well.

CALENDAR

MAY 2017

SUN	MON	TUE	WED	THU	FRI	SAT
	1 VBN VALLEY BAR NETWORK **5:30 PM** **CHABLIS RESTAURANT TARZANA**	**2** *Valley Lawyer* Member Bulletin Deadline to submit announcements to editor@sfvba.org for June issue.	**3**	**4** SFVBA Community Blood Drive **12:00 NOON** **ENCINO-TARZANA BRANCH LIBRARY** See Page 31 Membership & Marketing Committee **6:00 PM** **SFVBA OFFICES**	**5**	**6**
7	**8** Probate Settlement Officer Training Program **1:00 PM** **STANLEY MOSK COURTHOUSE ROOM 222** A panel of distinguished judicial officers and attorneys will discuss the highly successful LASC Probate Settlement Conference Program and the mediation process in probate. (2.75 MCLE Hours)	**9** Probate & Estate Planning Section Protecting Trustees from Liability **12:00 NOON** **MONTEREY AT ENCINO RESTAURANT** Attorney W. Rod Stern and Scott MacDonald, Merrill Lynch Special Needs Team, will provide insight into the liabilities trustees assume in managing trust responsibilities to beneficiaries, when managing assets, as well as court accounting and reporting. A review of case studies will illustrate pragmatic methods of limiting liability as a matter of practice for lay, corporate and professional trustees. (1 MCLE Hour)	**10**	**11**	**12** Bankruptcy Law Section Consumer Potpourri **12:00 NOON** **SFVBA OFFICES** Nina Javan, Dennis McGoldrick and Roksana Moradi will discuss consumer cases filed under Chapters 7,11, and 13, including the hows and whys of converting cases from 13 to 7, 13 to 11, and 11 to 7; exemptions and asset planning; undisclosed assets; cooperation with the trustee; and employing professionals in Chapter 13. (1.25 MCLE Hour)	**13**
14 Happy Mother's Day	**15**	**16** Taxation Law Section Tax Credit Update **12:00 NOON** **SFVBA OFFICES** Tax credit and incentive programs offer significant savings opportunities, but are rarely utilized. Participants will be introduced to various federal and state tax credits (R&D, GO-Biz, WOTC, etc.) with an emphasis on identifying available credits for clients and understanding the process for claiming these benefits. (1 Hour MCLE)	**17** Workers' Compensation Section Psychiatric Injuries **12:00 NOON** **MONTEREY AT ENCINO RESTAURANT** Dr. David Sones will review the language of Labor Code 4660.I and discuss how it is applied to psychiatric injuries, recent relevant WCAB findings and case examples. (1 Hour MCLE)	**18** Inclusion & Diversity Committee Demystifying the Judicial Appointment Process **3:00 PM** **VAN NUYS COURTHOUSE WEST** See Page 37	**19** Mindfulness and Your Practice **12:00 NOON** **SFVBA OFFICES** Priya Mohan will discuss mindfulness and how attorneys can best focus their energies and manage the stress levels that often come with simply doing your job! Free seminar! (1 MCLE Hour Competency Issues)	**20**
21	**22** Family Law Section Electronic Filing: Are You Ready for Trial? **5:30 PM** **MONTEREY AT ENCINO RESTAURANT** Supervising Family Law Judge Thomas Trent Lewis will address what family law attorneys need to know about electronic filing and will be available to answer attendees' questions regarding general family law issues. Approved for Family Law Legal Specialization. (1.5 MCLE Hours)	**23** Editorial Committee **12:00 NOON** **TONY ROMA'S**	**24**	**25** Inclusion & Diversity Committee Dinner at My Place **6:30 PM** **GRANADA HILLS** See Page 40	**26**	**27**
28	**29** Memorial Day **SFVBA OFFICES CLOSED**	**30**	**31**			

SUN	MON	TUE	WED	THU	FRI	SAT
				1 Membership & Marketing Committee **6:00 PM** **SFVBA OFFICES**	**2** *Valley Lawyer* Member Bulletin Deadline to submit announcements to editor@sfvba.org for July issue.	3
4	**5** VBN Valley Bar Network **5:30 PM** **CHABLIS RESTAURANT TARZANA**	6	7	8	9	10
11	12	**13** Probate & Estate Planning Section Update from the Court **12:00 NOON** **MONTEREY AT ENCINO RESTAURANT** Judge David Cowan and the Probate Bench will share the latest withthe group. (1 MCLE Hour)	14	15	**16** Bankruptcy Law Section Settling with the Trustees **12:00 NOON** **SFVBA OFFICES** Stella Havkin leads this popular seminar. (1.25 MCLE Hours) MEMBER APPRECIATION DINNER See Page 40	17
18 Happy Father's Day	19	**20** Taxation Law Section **12:00 NOON** **SFVBA OFFICES**	**21** Workers' Compensation Section **12:00 NOON** **MONTEREY AT ENCINO RESTAURANT**	22	23	24
25	**26** Family Law Section **5:30 PM** **MONTEREY AT ENCINO RESTAURANT** Approved for Family Law Legal Specialization (1.5 MCLE Hours)	**27** Editorial Committee **12:00 NOON** **TONY ROMA'S**	28	**29** New Lawyers Section Public Speaking **6:00 PM** **SFVBA OFFICES** Lou Shapiro discusses how best to communicate. (1 MCLE Hour) Inclusion & Diversity Committee Dinner at My Place **6:30 PM** **PASADENA** See Page 40	30	

The San Fernando Valley Bar Association is a State Bar of California MCLE approved provider. Visit www.sfvba.org for seminar pricing and to register online, or contact Linda Temkin at (818) 227-0490, ext. 105 or events@sfvba.org. Pricing discounted for active SFVBA members and early registration.

Call for Action

ELIZABETH POST
Executive Director

epost@sfvba.org

ON APRIL 7, A COALITION OF BENCH AND BAR LEADERS—INCLUDING Los Angeles Superior Court (LASC) Presiding Judge Daniel Buckley, Assistant Presiding Judge Kevin Brazile, Supervising Judge Huey Cotton, Judge Elizabeth Lippitt, SFVBA President Kira Masteller, President Elect Alan Kassan, Treasurer Barry Goldberg, Past President Jim Felton, and myself—met with State Senator Henry Stern in his Calabasas office to call on the freshman legislator to increase funding for California's trial courts in the 2017-18 budget bill.

The recession forced the LASC to eliminate 25% of its funded positions. Since the recession ended, however, new state funding for trial courts has been in restricted categories, while unrestricted funding necessary to restore and expand services has been reduced 8.7%. Currently, statewide funding reaches only 73% of the level required to carry out the court's current workload.

Senator Stern, who represents the western San Fernando Valley and sits on the legislative chamber's Judiciary Committee, voiced his support for our appeal to increase the trial court budget to meet the court's critical needs, which include hiring staff required to open and support more courtrooms and restoring court-employed court reporters. He also deliberated with the delegation about how to make our unified message stand out among other constituencies' competing needs.

Call for New Bar Leaders

Meeting with judicial leaders and elected officials is just one of the important roles of SFVBA trustees. The Bar Association's Nominating Committee is currently seeking attorney members who aspire to lead our Bar and who wish to be considered for nomination as a candidate for its 20-member Board of Trustees.

Trustees' responsibilities include setting policy and overseeing the association's finances. Trustees also work closely with our professional staff to improve and develop programs for the public, expand benefits and services for members, and promote the public image of lawyers and the justice system.

Sounds intriguing? The *2017 Application for Nomination to the SFVBA Board of Trustees* can be downloaded from our homepage at www.sfvba.org. Have questions? Contact me at epost@sfvba.org or (818) 227-0490, ext. 101.

By reading this article and answering the accompanying test questions, you can earn one MCLE credit. To apply for the credit, please follow the instructions on the test answer form on page 21.

ENTERTAINMENT IMMIGRATION LAW:
O-1 Extraordinary Ability Status

By Rebecca I. Pathak

The entertainment industry is heavily reliant on the talents of foreign actors, musicians, editors, designers, directors, writers, craftsmen and others who enter the United States to work. Securing nonimmigrant visa classification status in the U.S. as an accomplished artist using the O-1 extraordinary ability category can be nearly as challenging as producing a Hollywood blockbuster.

DURING THIS UNCERTAIN TIME FOR U.S. immigration law policy and enforcement priorities in general, the demand for "extraordinary ability" non-immigrants and permanent resident aliens, as determined by the U.S. Citizenship and Immigration Service (USCIS), remains quite high. As a matter of policy, the United States historically adopts immigration laws designed to attract the crème de la crème of foreign entertainment talent.

The list of accomplished applicants working within the entertainment industry who receive favorable treatment under the Immigration and Nationality Act include actors, musicians, fine artists, athletes, celebrities, directors, writers and others. For up and coming celebrities, crafting a successful entertainment immigration case, however, is a talent in and of itself. Only a handful of immigration law firms are capable of executing a successful entertainment immigration case for this pool of more junior extraordinary talent.

Securing nonimmigrant visa classification status in the United States as an accomplished artist using the O-1 extraordinary ability category can feel nearly as challenging as becoming an internationally recognized artist in the first place. As with achieving true celebrity, industry connections, name dropping, timing and pure lucky happenstance all play a part in the formulation, preparation, submission and advocacy required for a successful O-1.

Once the foreign-national entertainment professional secures nonimmigrant classification status, a path is cleared for the development of an employment based 1st (EB-1) category Lawful Permanent Resident or "green card" case. The high standards set forth by Congress and codified in the Immigration and Nationality Act, Code of Federal Regulations and Foreign Affairs Manual—and the sheer number of USCIS imposed procedural requirements, safeguards and norms–combine to render entertainment immigration one of the most challenging sub-disciplines of U.S. immigration law.

Making the Cut: O-1 Visas for Extraordinary Ability Aliens

The word "extraordinary" is defined as "going beyond what is usual, regular, or customary." When coupled with the term "ability," the legal standard required to secure O-1 classification status evokes images of international superheroes possessing no less than superhuman powers.

The Immigration and Nationality Act §101(a)(15)(O) defines an alien with extraordinary ability as a foreign national who demonstrates "sustained national or international acclaim" in the arts.[1]

The Code of Federal Regulations equates extraordinary ability in the field of arts with "distinction," while 8 C.F.R. §214.2(o)(3)(ii) regards "arts" broadly, including "any field of creative activity or endeavor such as, but not limited to, the fine arts, visual arts, culinary arts, and performing arts. Aliens engaged in the field of arts include not only the principal creators and performers but other essential persons, including directors, set designers, lighting designers, sound designers, choreographers, choreologists, conductors, orchestrators, coaches, arrangers, musical supervisors, costume designers, makeup artists, flight masters, stage technicians, and animal trainers."[2]

Different Strokes for Different Folks

Motion picture and television-related talent are treated somewhat differently under the U.S. immigration laws and are thus distinguished from those in the general, more broadly defined arts category. Hopeful O-1 applicants in the motion picture and television category are required to demonstrate a "record of extraordinary achievement"[3] that is "recognized in the field through extensive documentation."[4]

Foreign nationals seeking admission to the United States to work in the motion picture and television-related industries are therefore held to a slightly lower standard than the "sustained national or international acclaim" standard found in the general arts category.[5] However, individuals seeking to qualify for O-1 status in the motion picture or television-related classification are not permitted to use the "comparable evidence" that individuals qualifying under the general arts category are permitted to use.[6]

O-1 applicants seeking to venture to the United States in either the arts or the motion picture and television category are required to work in the area of their extraordinary ability.[7] This provision prevents O-1 aliens from gaining admission to the United States and then displacing U.S. workers by accepting employment outside the area of their remarkable skill. This advances the theory that an extraordinary ability alien could never displace a U.S. worker since the extraordinary ability alien's talents are unique and particular to the alien.

Producing a Successful O-1 Performance

An entertainment immigration attorney can represent both the petitioner and beneficiary in an O-1 petition submitted

Rebecca I. Pathak, founder of the Pathak Law Firm in Burbank, is a general practice immigration attorney with extensive entertainment immigration experience. She can be reached at ripathak@pathaklaw.com.

SFVBA JOURNEY TO CUBA
OCTOBER 22-27, 2017

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The San Fernando Valley Bar Association invites you and your guest(s) to join our private delegation for an eye-opening journey at this most pivotal time in U.S.-Cuba relations. Our specially designed program will explore Cuba's rich and varied cultural heritage. We will go beyond tourist corridors by engaging with local scholars, attorneys, musicians and artists who will offer in-depth commentary on the Cuban legal system, art, history, architecture, and religion.

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to the USCIS. Usually, the petitioner is an agent, manager, studio, cultural center, a production company, a distributor or another entertainment-related company qualified to accept service of process in the United States.

According to the law, "a foreign employer may not directly petition for an O nonimmigrant alien, but instead must use the services of a United States agent to file a petition for an O nonimmigrant alien. An O alien may not petition for himself or herself."[8]

The Foreign Affairs Manual 9 FAM 402.13-6 permits U.S. agents to act as the petitioner for foreign nationals who are traditionally self-employed. "An established U.S. agent may file an O petition in cases involving an alien who is traditionally self-employed."[9] The beneficiary in an O-1 petition submitted to the USCIS is the extraordinary ability alien. The beneficiary's essential support staff, spouse and children may piggyback on the O-1 beneficiary's classification by submitting concurrent requests for O-2 or O-3 status, respectively.[10]

The Code of Federal Regulations at 8 C.F.R. §214.2(o)(1) sets forth the procedures for submitting a request for O-1 classification to the USCIS. "Under section 101(a)(15)(O) of the Act, a qualified alien may be granted access to the United States to perform services relating to an event or events if petitioned for by an employer…

The petitioner must file a petition with the agency for a determination of the alien's eligibility…before the alien may apply for a visa or seek admission to the United States."[11]

There are some statutorily mandated and some customarily included items incorporated into a successful O-1 submission. The required components include a written contract between the petitioner and the beneficiary, or, if no written contract exists, a summary of the terms of the oral agreement under which the alien will be employed. In addition, the documents in support of the O-1 petition must include an explanation of the nature of the events or activities, including the beginning and end dates, and a copy of any itinerary.

A written advisory opinion from the appropriate consulting entity is another necessary component of an O-1 submission.[12] For instance, if the foreign national's extraordinary ability is directing, the Director's Guild of America must issue a "no objection" or "advisory opinion" letter.

This requirement again ensures the foreign national's employment in the United States is not supplanting a U.S. talent, since the O-1's directing accomplishments are unique to a particular director. The American union representing the interests of U.S. directors as a whole must consent to the employment of the foreign director before O-1 approval can be secured.

Additional documents customarily provided in support of an O-1 extraordinary ability case include carefully highlighted press and media coverage pertaining to both the beneficiary and the petitioner, as well as letters of support attesting to the beneficiary's superiority in the area of expertise. For instance, securing six or more support letters from notable authorities within the area of beneficiary's extraordinary ability goes a long way toward sustaining petitioner's burden of proof with the USCIS.

Furthermore, it is important to fully document the supporter's celebrity, the origins of their familiarity with the beneficiary, and establish the basis for how such a high regard of the beneficiary was formed. Although the reference letters are not a statutory evidentiary requirement for O-1 classification status, they can be used as a method of addressing beneficiary's qualification in each of the categories laid out in the Code of Federal Regulations.

It's a Wrap!

As clearly demonstrated, the evidentiary criteria required for an O-1 alien of extraordinary ability in the arts is arduous and often challenging to compile. First, the foreign national must be recognized as being prominent in his or her field of endeavor, with the Code of Federal Regulations requiring proof of at least three of the following criteria:

- Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications contracts, or endorsements

- Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications

- Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials

- Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications

- Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements.

- Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence[13]

It is important to note that comparable evidence can be submitted to establish the beneficiary's eligibility only when seeking to qualify for extraordinary ability within the arts.[14] The evidentiary criteria required for an O-1 foreign national of extraordinary ability within the motion picture or television industry is identical, with the exception that petitioner must submit documentary evidence to address at least three of the six specified criteria and they are not permitted to submit comparable evidence in the event the criteria do not readily apply to the particular beneficiary.[15]

Nomination for or receipt of a significant national or international award or prize, such as an Academy Award, Emmy, Grammy, Director's Guild Award or Palme d'Or, satisfies the distinction requirement.[16]

Presenting evidence in all of the six documentation categories for proving arts or motion picture and television extraordinary ability is highly recommended if the foreign national has garnered considerable press.

Some Recent O-1 Success Stories

The following are two examples of recent O-1 approvals secured for international entertainment celebrities seeking to work in the United States.

Isabella Missoni[17] is an Italian fashion blogger and designer who was a model and spokesperson for Guess and conceived and created a highly influential, award winning, international fashion blog with over one million followers. Throughout her successful career in high fashion, she collaborated with such elite designers as Louis Vuitton, Christian Dior, Chanel, Max Mara, Tommy Hilfiger and Steve Madden. Missoni was recognized for her design accomplishments by *Forbes* magazine and has appeared on the cover of *Vogue*, *Harper's Bazaar* and *Elle* magazines, among others. When Bloomingdale's Department Store and Zappos.com began selling her high fashion shoe designs, Missoni knew it was time to develop deeper roots in the United States. During her consultation with an entertainment immigration attorney, Missoni wondered whether she would qualify for the O-1, extraordinary ability classification status.

Though fashion models receive limited treatment under the U.S. Immigration and Nationality Act, her attorney successfully argued that Missoni was not only a fashion model, but an entrepreneur, blogger and designer, as well.

Irish Punk musician and icon Mary O'Connor[18] was invited to the United States by the Irish Arts Center in New York City to perform at a series of Saint Patrick's Day concerts. While she enjoyed some commercial success while performing with several punk bands in the 1980s and 1990s, she was primarily widely known for her long relationship with a British celebrity singer/songwriter.

O'Connor's attorney was able to craft an O-1 Extraordinary Ability petition by coordinating the collection of all necessary supporting documentary evidence for O-1 visa issuance at the U.S. Embassy in Dublin, Ireland. Her O-1 application approved, O'Connor entered the United States to begin a highly successful U.S. tour.

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[1] INA §101(a)(15)(O)(i).
[2] 8 C.F.R. §214.2(o)(3)(ii) Arts and Extraordinary ability in the field of arts.
[3] 8 C.F.R. §214.2(o)(3)(v).
[4] INA §101(a)(15)(O)(i).
[5] *Id.*
[6] Compare 8 C.F.R. §214.2(o)(3)(iv) with 8 C.F.R. §214.2(o)(3)(v).
[7] INA §101(a)(15)(O)(i).
[8] 8 C.F.R. §214.2(o)(2)(i).
[9] 9 FAM 402.13-6.
[10] 8 C.F.R. §214.2(o)(1)(i).
[11] 8 C.F.R. §214.2(o)(1).
[12] 8 C.F.R. §214.2(o)(2)(ii).
[13] 8 C.F.R. §214.2(o)(3)(iv).
[14] 8 C.F.R. §214.2(o)(3)(iv)(C).
[15] 8 C.F.R. §214.2(o)(3)(v)(B).
[16] 8 C.F.R. §214.2(o)(3)(v)(A).
[17] Names have been changed to protect the attorney client privilege.
[18] *Id.*

Test No. 103

This self-study activity has been approved for Minimum Continuing Legal Education (MCLE) credit by the San Fernando Valley Bar Association (SFVBA) in the amount of 1 hour. SFVBA certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education.

1. The relevant statute equates "extraordinary ability" with "innate talent."
   ❑ True ❑ False

2. Those seeking to work in the motion picture or television-related industries are held to a slightly lower legal standard.
   ❑ True ❑ False

3. Once a foreign national secures O-1 visa classification status, he or she is permitted to obtain employment in any field or discipline.
   ❑ True ❑ False

4. It is a conflict of interest for an entertainment immigration attorney to represent both the petitioner and the beneficiary in an O-1 submission.
   ❑ True ❑ False

5. An O-1's spouse and children may request derivative O-2 status based upon their relationship to the extraordinary ability foreign national.
   ❑ True ❑ False

6. A written advisory opinion letter from the appropriate consulting entity is a necessary component of an O-1 case to ensure the foreign national's employment in the U.S. does not detract from U.S. talent.
   ❑ True ❑ False

7. Comparable evidence is impermissible in establishing an applicant's eligibility for O-1 classification in the United States.
   ❑ True ❑ False

8. To demonstrate eligibility for O-1 classification status, an applicant could provide evidence of receiving a single significant national or international award or prize, such as receiving a Grammy nomination
   ❑ True ❑ False

9. The Code of Federal Regulations paints a broad stroke in defining "arts" to include flight masters and animal trainers.
   ❑ True ❑ False

10. An O beneficiary may self-petition.
    ❑ True ❑ False

11. An O-1 petition submission must include a written contract between the petitioner and beneficiary.
    ❑ True ❑ False

12. If the O-1 applicant has not yet received a significant national or international award or prize, one secondary proof to demonstrate extraordinary ability in the arts is evidence he or she commands a high salary in relation to others in the field.
    ❑ True ❑ False

13. Evidence of commanding a high salary in relation to others in the field may also be used to support an O-1 petition submitted under the extraordinary ability in motion picture or television as well.
    ❑ True ❑ False

14. Once a foreign national secures O-1 classification status, the path is cleared for the development of an employment-based 1st category Lawful Permanent Resident or "green card" case.
    ❑ True ❑ False

15. The Immigration and Nationality Act §101(a)(15)(O) defines an extraordinary ability alien as a foreign national who demonstrates x-ray vision.
    ❑ True ❑ False

16. Extraordinary ability aliens are permitted to displace U.S. workers.
    ❑ True ❑ False

17. A foreign employer may not directly petition for an O nonimmigrant alien but instead must use the services of a U.S. agent to file a petition for an O nonimmigrant alien.
    ❑ True ❑ False

18. The Foreign Affairs Manual authorizes established U.S. agents to file O petitions in cases involving aliens who are traditionally self-employed.
    ❑ True ❑ False

19. In support of an O-1 petition, a summary of the terms of the oral agreement under which the foreign national will be employed may be submitted in lieu of a formal written contract.
    ❑ True ❑ False

20. The documents submitted in support of an O-1 petition must include an explanation of the nature of the events or activities, including the beginning and ending dates and a copy of any itinerary.
    ❑ True ❑ False

MCLE Answer Sheet No. 103

INSTRUCTIONS:

1. **Accurately complete this form.**
2. **Study the MCLE article in this issue.**
3. **Answer the test questions by marking the appropriate boxes below.**
4. **Mail this form and the $20 testing fee for SFVBA members (or $30 for non-SFVBA members) to:**

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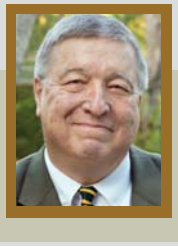
ANSWERS:
Mark your answers by checking the appropriate box. Each question only has one answer.

1.	❑ **True**	❑ **False**
2.	❑ **True**	❑ **False**
3.	❑ **True**	❑ **False**
4.	❑ **True**	❑ **False**
5.	❑ **True**	❑ **False**
6.	❑ **True**	❑ **False**
7.	❑ **True**	❑ **False**
8.	❑ **True**	❑ **False**
9.	❑ **True**	❑ **False**
10.	❑ **True**	❑ **False**
11.	❑ **True**	❑ **False**
12.	❑ **True**	❑ **False**
13.	❑ **True**	❑ **False**
14.	❑ **True**	❑ **False**
15.	❑ **True**	❑ **False**
16.	❑ **True**	❑ **False**
17.	❑ **True**	❑ **False**
18.	❑ **True**	❑ **False**
19.	❑ **True**	❑ **False**
20.	❑ **True**	❑ **False**

Law Day:
Celebrating the Rule of Law

By Michael D. White



Michael D. White is editor of *Valley Lawyer* magazine. He is the author of four published books and has worked in business journalism for more than 35 years. Before joining the staff of the SFVBA, he worked as Web Content Editor for the Los Angeles County Metropolitan Transportation Authority. He can be reached at michael@sfvba.org.

OVER THE ALMOST 60 YEARS since it was first established, National Law Day has morphed into a month-long calendar of law-related seminars, conferences and other events.

In 1960, the San Fernando Valley Bar Association established a Law Day Committee, chaired by one-time SFVBA president Albert Ghiradelli, to organize its own first Law Day by sponsoring a student essay contest to educate young people about the rule of law and motivate them to consider careers in the legal profession.

Almost six decades on, the observance will focus on educating the public on the myriad ways in which the U.S. Constitution's 14th Amendment, particularly its equal protection, citizenship, and due process clauses, have impacted—or, some might say, reconfigured and transformed—American law and society.

"Even though it is the 14th Amendment, it's at the very heart of our legal system and defines how we administer justice," says Los Angeles Superior Court Presiding Judge Daniel Buckley. Education of how the law works, he says, "is the critical first step in motivating people to enter the legal profession. We need for people to better understand how our court system works, how it compares and interacts with the other two branches of government, how judges do their job, and what place the court system plays in the application of the law. Only then can we encourage individuals to consider going into the law."

A Lack of Understanding

Based on his day-to-day observations garnered over more than 40 years as a judge and an attorney, Judge Buckley believes many people who wind up needing an attorney or going to court really don't understand the rule of law or how the system works.

That general lack of understanding, Buckley states, is based in part on the fact that civics is not being taught in schools as much as it used to be, alluding to the old Jay Leno "Tonight Show" man-on-the-street skit in which the late night TV host would ask passers-by simple questions about current events, politics, U.S. history and other topics.

"Leno would ask the most basic questions and people would be stumped. Sadly, I'm pretty sure there's a higher percentage of people now than before who'd fit into the skit quit well."

That, he says, "makes Law Day a genuine and critically needed opportunity to educate them on just how important the law and those who devote their lives to it are."

Law Day Is Born

Law Day was conceived in 1957, at the height of the Cold War, when the American Bar Association launched a campaign to set aside a "special day of celebration" to underscore the liberties enjoyed by the American people and their rededication "to the ideals of equality and justice under law."

The effort bore fruit when President Dwight D. Eisenhower issued a proclamation from the oval office setting aside May 1, 1959, as the nation's first Law Day.

The selection of that particular date—celebrated as International Workers' Day in Moscow, Pyongyang, Havana, Beijing, Warsaw, Budapest, East Berlin and a score of other Communist controlled cities—was no accident. The day was chosen to send a message starkly juxtaposing the American rule of law with the much-touted economic and political superiority of the socialist worker's paradises scattered across the globe.

"Whereas appreciation of the importance of law in the daily lives of our citizens is a source of national strength which contributes to public understanding of the necessity for the rule of law and the protection of the rights of the individual citizen," the official proclamation read. "By directing the attention of the world to the liberty

under law which we enjoy and the accomplishments of our system of free enterprise, we emphasize the contrast between our freedom and the tyranny which enslaves the people of one-third of the world today."

Carrying the ball a little further, Eisenhower took the opportunity to personally "urge the people of the United States to observe Law Day with appropriate public ceremonies and by the reaffirmation of their dedication to our form of government and the supremacy of law in our lives. I especially urge the legal profession, the schools and educational institutions, and all media of public information to take the lead in sponsoring and participating in appropriate observances throughout the Nation."

The importance of the day was underscored when Congress codified the proclamation in 36 USC §113, designating Law Day as "a special day of celebration by the people of the United States (1) in appreciation of their liberties and the reaffirmation of their loyalty to the United States and of their rededication to the ideals of equality and justice under law in their relations with each other and with other countries; and (2) for the cultivation of the respect for law that is so vital to the democratic way of life."

Law Day in the Community

The idea that we should celebrate the institution of law "is important simply because we are a society of law and that's what defines us as a nation," states SFVBA Past President Richard Lewis.

"I can remember some time ago when I was Bar president, we were talking about Law Day and I said then one of the reasons it was really important was exemplified in the movie HUD," he says. "The main character's uncle, the aptly named Aristotle, quoted his namesake when telling his son that 'a nation goes the way of the men it admires.'"

Law Day provides an opportunity, says Lewis, "to honor the men and women of the Bar, we show that we admire what they've accomplished because we are a society of law and we settle our disputes in a courtroom and not in a back room or a back alley."

Today in particular, he says, "the law and its value to society takes on even greater import and that makes observing Law Day even more important than it has been in the past."

The work of Lewis and several former Bar presidents and trustees to expand the scope of the Bar's Law Day involvement has morphed into an impressive year-round program of events, with staff and volunteer members participating in the campaign to educate both young and old on the value of the law and it impacts the society they live in.

In May, the SFVBA's Attorney Referral Service will participate in a "Lawyers in the Library" program in collaboration with the Los Angeles Law Library and the local Los Angeles Public Library. The one-day event will give members of the community the opportunity to have a brief one-on-one consultation with a volunteer attorney, referrals to other attorneys for representation, or resources and referrals to public agencies.

Past library events have shown tremendous public interest in accessing legal help in a variety of legal areas, especially family law, probate and estate planning, general civil, criminal law, employment law, personal injury, and immigration law.

Over the coming months, the Attorney Referral Service will provide legal assistance to the community via several timely immigration-related events, as well as workshops specifically aimed at reaching the Valley's senior citizens. In 2016, a single Law Day event at a local senior center symposium drew more than 950 attendees with a trio of similar events planned for this year.

Law in the Classroom

The ARS also plans a financial literacy program in May to introduce Valley high school and junior college students to the basics of fiscal responsibility.

The program "is important to help young people learn the negative consequences of not handling their finances correctly," says the Bar's Director of Public Services, Rosie Soto Cohen, who works with its Diversity Committee to coordinate the program. The goal, she says, "is to keep them from winding up in bankruptcy court in the future."

Court tours are scheduled year-round, as school and court schedules permit, for students at eight local high schools and junior colleges. The tours "are very popular with the students because they offer the opportunity to not only have the chance to see a trial as it happens, but talk with judges and attorneys, as well as bailiffs, court reporters, clerks, and translators to

see the wide spectrum of opportunities in the legal profession," says Soto Cohen.

Earlier this year, the Bar's charitable arm, the Valley Community Legal Foundation (VCLF), funded a presentation of "Defamation," a nationally-acclaimed courtroom drama addressing issues of race, religion, class, gender and the law. More than 200 students from four Valley high schools and an elementary school were engaged in the performance-cum-trial, not only as spectators, but as jurors who would later deliberate the issue brought up in the play and render a verdict.

VCLF Board Member Anngel Benoun worked closely with SFVBA President Kira Masteller to bring the play to students in the Valley. "We reached out to the play's producers in Washington, D.C. and they were very helpful in helping us set up the production," says Benoun. "It was a first time experience for the students, many of whom had never had any experience in a courtroom setting."

There's "no question that the play has gotten several of them to think about pursuing a career in the law," she says. "It got them thinking and that's exactly what we set out to do."

Several years ago, the Bar created an Explorer Law Post for students at Valley high schools interested in a future legal career. One of the first participants in the program was Katrina Herrera, a 2015 graduate of the U.S. Naval Academy and now a Second Lieutenant in the U.S. Marine Corps in training to earn her wings as a Naval Aviator.

"We met weekly to discuss legal issues and how the law impacts society," she recalls, crediting her experience in the Bar's Law post program with cementing her goal of attending law school once her military commitment is completed.

"I credit the program and the mentoring from experienced attorneys like David Karp for helping me develop my leadership capability," says Herrera. "It really helped me cultivate a desire to give back."

Another youngster impacted by the Law Post experience was then-Granada Hills High School student, Maha Kamel. "I had over-idealized notions of what it would be like to be an attorney, but my experience in the Law Post helped greatly to help me see what it takes to work in the law," she says. "The Law Post was a fantastic program and it helped greatly in my being able to get as far as I have."

A graduate of American University in Washington, D.C. with a degree in international affairs, Kamel is currently working with a contractor to the U.S. Agency for International Development on projects in Afghanistan, Pakistan, Jordan, and Moldova. Her ultimate goal is to attend law school and specialize in international law.

As SFVBA President in 2006, Richard Lewis was instrumental in the Bar's adoption of a local elementary school and sponsorship of a competitive writing contest for young students to pen essays on their thoughts about the law.

The contest "went a long way to get them interested in the law and how the system works," he says, attributing his own interest in the law to an elementary school reading of the late Harper Lee's *To Kill a Mockingbird*.

"Like many others, I was deeply impressed with the character of Atticus Finch," he says. "There he was defending a black man at a time when blacks in the South had few, if any, rights. I remember him saying 'We all stand before the law as equals' and that was very powerful to me. That's when I decided that the law was what I wanted to do."

Lewis' path to law school meandered a bit—college, a combat tour as a commissioned Army officer in Vietnam, and careers both in banking and teaching—before "I wound up where I am now. It was the best decision I ever made."

In the law, he says, "you can make a difference in so many people's lives…the rules say I don't care what color, gender, orientation, or anything else, you have rights and those rights will be protected."

Law Day "gives us a chance to say this is who we are, this is what we do, and that's important because the rule of law is the only real bulwark we have that separates a civil society from anarchy."

JURY TRIALS FOR JUVENILES: Justice Affirmed or Justice Denied?

In 1971, the U.S. Supreme Court issued its landmark ruling—*McKeiver v. Pennsylvania*, 403 U.S. 528 (1971)—on whether the equal protection clause of the U.S. Constitution's 14th Amendment guaranteed juveniles the right to a jury trial.

The 6-3 plurality opinion, authored by Justice Harry Blackmun, concluded that "despite disappointments, failures, and shortcomings in the juvenile court procedure, a jury trial is not constitutionally required in a juvenile court's adjudicative stage" and "equating the adjudicative phase of the juvenile proceeding with a criminal trial ignores the aspects of fairness, concern, sympathy, and paternal attention inherent in the juvenile court system."

Several justices expressed concerns that requiring jury trials would not only undermine confidentiality, but make proceedings "fully adversary" and destroy "the idealistic prospect of an intimate, informal protective proceeding," while failing to significantly improve the ability of courts to determine case facts, as well.

Writing for the dissent, Justice William O. Douglas argued that due process is accorded to all the litigants who come before the Court and therefore, "the juvenile is constitutionally entitled to a jury trial." The right to a jury trial was at the very core of the 14th Amendment and was seen by the framers of the Constitution as the defendant's check against overzealous law enforcement officers and biased judges.

In this point/counterpoint article, we invite our readers to consider both sides on a hotly-debated constitutional issue that continues to resonate through the legal system.

Genuine Equal Protection: The Case for Jury Trials in Juvenile Court

By Shep Zebberman

PEOPLE ARE OFTEN SURPRISED TO LEARN THAT A MINOR being accused of committing a crime in a juvenile court is not constitutionally entitled to a jury trial. It seems that equal protection under the law in this context would afford juveniles facing the same charges and consequences as accused adults the same right to trial by jury.

Neither the U.S. Supreme Court nor California has seen fit to require juveniles who find themselves facing incarceration, lifelong records, strikes and more, be entitled to trial by a jury of one's peers.

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Shep Zebberman, the principal at the Law Office of Shep Zebberman, has more than 25 years experience in the field of criminal defense, juvenile delinquency and dependency and educational rights law. A former Juvenile Court Referee, he can be reached at shep@zebbermanlaw.com.

Juvenile Jury Trials: Yes and No…Sometimes

By Douglas G. Benedon and Gerald M. Serlin

UNLIKE IN CRIMINAL TRIALS, CALIFORNIA DOES NOT GENERALLY accord the right to a jury trial in juvenile adjudications.[1] While limited exceptions may arise, the general rule precluding jury trials in juvenile matters remains sound and does not constitute a violation of equal protection.

Both the United States and California Constitutions guarantee their citizens equal protection of the law.[2] This means "that all persons similarly situated should be treated alike."[3]

Equal protection, however, does not require that all persons be dealt with identically. Rather, "the concept…compels recognition of the proposition that

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The Case for Jury Trials in Juvenile Court

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Instead, a juvenile is tried by a judge, commissioner or referee who acts both as the finder of fact and who makes the legal findings, rulings and sentence (known as disposition in juvenile lingo). A request in juvenile court demanding trial by jury was often met with a court's response that it would treat such a request as a waiver by the minor of juvenile court jurisdiction and certify the youth to be tried as an adult.

Courts have examined the issue of a juvenile's right to trial by jury using a due process analysis, focusing on the assurance of sufficient procedural safeguards and fundamental fairness. In *McKeiver v. Pennsylvania*,[1] the U.S. Supreme Court held that trial by jury in the juvenile court's adjudicative stage—juvenile lingo for trial—is not a constitutional requirement.

In so concluding, the Court listed 13 reasons why a jury trial is not a constitutional requirement centering on, among other things, the need to protect juveniles from the adversarial process of adult court by maintaining the unique function of a juvenile proceeding. Adding undue burden to the system was also a factor, i.e., costs, delay etc. The Court's analysis focused on the 6th Amendment and due process clause of the 14th Amendment to the U.S. Constitution.

The Court has declined to decide the issue of the right to trial by jury for juveniles based on the equal protection clause of the 14th Amendment. In *In Re Gault*,[2] Justice Hugo Black, in his concurring opinion, came close when he stated:

> "Where a person, infant or adult, can be seized by the State, charged, and convicted for violating a state criminal law, and then ordered by the State to be confined for six years, I think the Constitution requires that he be tried in accordance with the guarantees of all the provisions of the Bill of Rights made applicable to the States by the Fourteenth Amendment. Undoubtedly this would be true of an adult defendant, and it would be a plain denial of equal protection of the laws an invidious discrimination to hold that others subject to heavier punishments could because they are children, be denied these same constitutional safeguards."

However, Justice Black ultimately concluded that the law in question violated the 5th and 6th Amendments rather than the equal protection clause of the 14th.

What is the essence of the equal protection clause of the Fourteenth Amendment? Section 1 provides in part that "… No state shall...deny to any person within its jurisdiction the equal protection of the laws."

The equal protection clause was initially passed to protect freed slaves after the Civil War. Subsequent decisions—most notably *Brown v. Board of Education's* separate but equal analysis expanded its scope.

Most laws include an element of discrimination. Consider, for example, age restrictions on drinking or driving. The question answered by the equal protection clause is: Which group or class may object when treated differently by the law?

The U.S. Supreme Court initially started off equal protection analysis by incorporating groups or classes who were perceived disadvantaged by discrimination. It has subsequently refocused its analysis to focus on suspect classifications, rather than suspect classes.

A class-based approach would reserve heightened equal protection scrutiny for certain groups, such as African-Americans or women, whereas a focus on classifications considers race, gender, etc. as inherently suspicious categories for government protection. The class approach views equal protection as protecting identifiable groups; the classification approach focuses on the basis for discrimination.

The difference between the former approach and the modern trend is that to view the equal protection clause in terms of protecting the historically disadvantaged and powerless groups from more privileged and powerful ones would not treat discrimination against males the same as discrimination against females, for example. The later approach would presumably require the equal protection clause to protect any protected classification even if not perceived to be disadvantaged and any such legislation would be treated by the Court to be inherently suspect and only justifiable by compelling state interest.

Most laws are assessed to determine whether there is any rational basis for the law to be upheld. But if the injured person or groups is a member of a suspect class then the law in question is subject to a heightened scrutiny, in which case the law must have a compelling state interest to justify the discrimination, and the discrimination must be carefully tailored to serve those reasons. Suspect classes have historically included race, national origin and gender.

The focus of the Court's analysis has shifted to suspect classifications, rather than suspect classes shifting the analysis from equal protection clause protecting identifiable groups to focusing on the basis for discrimination. In the question of a juvenile's right to trial by jury, numerous fundamental rights are implicated which should trigger a strict scrutiny analysis.

Initially, substantial differences separated the procedural rights accorded to adults and those of juveniles. There were rights granted to adults that were withheld from juveniles. Rules governing the arrest and interrogation of adults by the police were not observed in the case of juveniles.

The juvenile court movement began in this country at the end of the last century. The early reformers were appalled by adult procedures and penalties, and by the fact that children

could be given long prison sentences and mixed in jails with hardened criminals.

A juvenile could be taken from the custody of his parents and committed to a state institution, pursuant to proceedings in which the juvenile court had virtually unlimited discretion, and in which a number of basic rights were denied—namely, notice of the charges; the right to counsel; the right to confrontation and cross-examination; the privilege against self-incrimination; the right to a transcript of the proceedings; and the right to appellate review.

The early reformers believed that society's role—and thus the juvenile court's role—was not to ascertain guilt or innocence, but rather focus on rehabilitation of the minor as opposed a punitive function as in adult court. The rules of criminal procedure were viewed initially as inapplicable to the juvenile system.

The proceedings were not seen as adversarial. The State was proceeding as guardian for the child. On this basis, proceedings involving juveniles were described as civil, not criminal, and therefore not subject to the procedural requirements afforded to adult criminal defendants. Juvenile cases are not technically considered convictions.

Since *In Re Gault*,[3] it has long been recognized that juveniles are entitled to most of the protections based on due process that an adult would be afforded in a criminal case. The two major exceptions are the right to trial by jury and the right to bail. This is because a sustained juvenile court petition, although not a conviction, can be used as a strike in the future and can send the juvenile to the functional equivalent of jail, whether called an industrial school, a ranch, a camp, or a hall, as well as many other collateral consequences identical to those of an adult.

In fact, perhaps one of the most severe consequences is that for certain offenses, a juvenile's record can never be sealed. For all intents and purposes, juvenile proceedings are now as formal, adversarial and potentially as punitive (and in some cases more punitive) as adult proceedings.

In light of these facts, it seems clear that the system created to deal with minors accused of committing crimes has graduated from rehabilitating delinquent behavior to the functional equivalent of adjudicating criminal conduct.

If so, the right to jury trial for juveniles accused of a crime should be analyzed under the 14th Amendment's equal protection clause under a heightened scrutiny standard. If the Supreme Court were to determine that equal protection entitles juveniles to trial by jury, as their adult counterparts are, the juvenile court could still maintain its special rehabilitative function and rehabilitative role if the jury found the petition to be true.

[1] *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971).
[2] *In Re Gault*, 387 U.S. 1, 13 (1967).
[3] *In Re Gault*, 387 U.S. 1 (1967).

Juvenile Jury Trials: Yes and No…Sometimes

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persons similarly situated with respect to the legitimate purpose of the law receive like treatment."[4]

Because an equal protection inquiry must be resolved on a case-by-case basis, the U.S. Supreme Court has "refrained…from taking the easy way with a flat holding that all rights constitutionally assured for the adult accused are to be imposed upon the state juvenile proceeding."[5] [6]

At first glance, it may seem that juvenile and criminal defendants are similarly situated and that both should be entitled to a jury trial. But it is the differences between these two proceedings which led *McKeiver* to resolve that juveniles are not generally entitled to a jury trial.[7]

As Justice Harry Blackmun detailed for the plurality, juvenile matters are rehabilitative in nature and "[t]here is a possibility…that the jury trial… will put an effective end to what has been the idealistic prospect of an intimate, informal protective proceeding. The plurality rejected the comparison of juvenile adjudications with criminal trials, observing that it ignored "every aspect of fairness, of concern, of sympathy, and of paternal attention that the juvenile court system contemplates."[8]

> "At first glance, it may seem that juvenile and criminal defendants are similarly situated and that both should be entitled to a jury trial."

In his concurring opinion in *McKeiver*, Justice Byron White similarly distinguished the juvenile adjudicatory system from a criminal trial.[9] He, like the plurality, focused on the rehabilitative nature of a "typical disposition in the juvenile court" that might, for example, authorize confinement until age 21 but "no longer and within that period…only so long as his behavior demonstrates that [the juvenile] remains an unacceptable risk if returned to his family."[10]

Justice White concluded, "[n]ot only are those risks that mandate juries in criminal cases of lesser magnitude in juvenile court adjudications, but the consequences of adjudication are less severe than those flowing from verdicts of criminal guilt. This is plainly so in theory, and in practice there remains a substantial gulf between criminal guilt and delinquency."[11]

That said, the *McKiever* plurality did not exclude the possibility that the Court might find a juvenile right to a jury trial where the juvenile proceeding began to look and feel like a criminal prosecution. "[T]he juvenile court proceeding has not yet been held to be a 'criminal prosecution' within the meaning and reach of the Sixth Amendment, and also has not yet been regarded as devoid of criminal aspects merely because it usually has been given the civil label."[12]

"Disillusionment" might "come one day" concerning trial of a juvenile without a jury.[13]

Thus, for example, in a more recent case, the Supreme Court held it unconstitutional to sentence an offender to life without the possibility of parole for a crime committed when he or she was a juvenile.[14] The Court reasoned that the Eighth Amendment does not permit a state to deprive a person of "any chance to later demonstrate that he is fit to rejoin society based solely on a non-homicide crime that he committed while he was a child in the eyes of the law."[15] The high court found that such a penalty "forswears altogether the rehabilitative ideal."[16]

In sum, our Supreme Court's jurisprudence confirms that because of the differences between criminal and juvenile jurisprudence, equal protection does not compel the use of jury trials for juveniles simply because they are available to criminal defendants.

As the differences between juvenile and criminal matters erode, equal protection may compel the use of jury trials for both, but that is a matter which requires resolution on a case-by-case basis.

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[1] Welf. & Inst. Code, §§675, 680, 701-702; *In re Daedler* (1924) 194 Cal. 320, 332 [no right to jury trial in juvenile delinquency proceedings]; *People v. Superior Court* (1971) 15 Cal.3d 271, 276, fn.3.
[2] U.S. Const., 14th Amend; Cal. Const., art. I, §§7, 24.
[3] *Cleburne v. Cleburne Living Center, Inc.* (1985) 473 U.S. 432, 439; see also, e.g., *Cooley v. Superior Court* (2002) 29 Cal.4th 228, 253.
[4] *In re Gary W.* (1971) 5 Cal.3d 296, 303; see also, e.g., *Manduley v. Superior Court* (2002) 27 Cal.4th 537, 568.
[5] *McKeiver v. Pennsylvania* (1971) 403 U.S. 528, 545; see *Id.* at p. 533. [acknowledging that not "*all* rights constitutionally assured to an adult accused of crime also are to be enforced or made available to the juvenile in his delinquency proceedings"], original emphasis.
[6] *In re Gault* (1967) 387 U.S. 1, 1366 ["We consider only the problems presented to us by this case"].
[7] 403 U.S. at p. 545; see also *id.* at 5477 [The juvenile court system still holds the promise of "accomplish[ing] its rehabilitative goals," and that by "imposing the jury trial" requirement in juvenile cases, the Court would impede the states' "experimentation" with "new and different ways" to solve "the problems of the young"].
[8] *Id.* at p. 550.
[9] *Id.* at p. 552.
[10] *Ibid.*
[11] *Id.* at p. 553.
[12] 403 U.S. at p. 541; see also *Id.* at p. 545; *Breed v. Jones* (1975) 421 U.S. 519, 530-531.
[13] *McKeiver, supra*, 403 U.S. at p. 551.
[14] *Graham v. Florida* (2010) 560 U.S. 48
[15] *Id.* at p. 79.
[16] *Id.* at p. 74.

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No More NAFTA?

The Effect on International Dispute Resolution

By Lisa Miller

THE NORTH AMERICAN FREE Trade Agreement (NAFTA) was referenced as the "worst trade agreement ever!" in the recent presidential election.[1] But what happens to international trade dispute resolution if President Donald Trump withdraws from it or re-negotiates its terms?[2]

NAFTA Dispute Resolution Basics

NAFTA is a free trade treaty between the United States, Canada, and Mexico that took effect January 1, 1994.[3] Among its other provisions, NAFTA includes dispute resolution mechanisms designed to stabilize North American trade through mandatory arbitration.

The goal is to easily resolve disputes among the partner trading nations and individuals who contract with a NAFTA party.[4] If the United States unilaterally withdraws, both Canada and Mexico would have little motivation to actively pursue continued existence of the dispute resolution mechanisms in NAFTA.

The NAFTA treaty references dispute resolution in three chapters.[5] Chapter 11, which sets out procedures for resolving investment disputes, assures both participants equal treatment among investors and due process before an impartial tribunal.[6] Chapter 19, which offers, as an alternative to judicial review by domestic courts, Article 1904. This prescribes a hearing mechanism for final determinations in anti-dumping and countervailing duty cases, including independent bi-national panel review.[7] And Chapter 20, which applies to all disputes regarding the interpretation or application of the NAFTA, focused on resolving disputes by agreement.[8]

Chapter 11 contains the investor-state dispute settlement (ISDS), which gives U.S. corporations the power to sue the Canadian or Mexican government regarding regulations the United States believes inflict a serious burden on U.S. firms doing business in those countries. Instead of going to a Canadian or Mexican court, U.S. companies can initiate arbitration before a NAFTA panel, which can assess significant financial penalties.[9]

Impact of a U.S. Withdrawal from NAFTA

A critical question lies at the core of the issue: Should the United States withdraw completely from NAFTA, how would the United States participate in dispute resolution for its agreements existing at the time of withdrawal?

If the United States does withdraw from NAFTA, this would likely take effect

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six months after notice of withdrawal.[10] During the six-month withdrawal window, arbitral tribunals could find jurisdiction over parties bringing NAFTA-specific claims. The effects of the withdrawal provisions of Article 2205 of NAFTA suggest that parties could file cases during this time.

Unlike other trade treaties, which typically secure the continuity of investment protections for many years, NAFTA does not include protections beyond the six-month period. Some parties may have a tight window to initiate arbitration: Article 1119 of NAFTA states that a disputing investor "shall deliver… written notice of its intention to submit a claim to arbitration at least 90 days before the claim is submitted."[11]

This means that an investor will only have 90 days to bring a new case in order to be allowed to submit formal arbitration prior to the United States' effective withdrawal. Arguably, once NAFTA is rendered irrelevant for U.S. traders, the international dispute resolution structures existing prior to NAFTA's implementation in 1995 would resurface.

For parties alleging that a host government has breached its obligations under NAFTA, dispute resolution mechanisms regarding the finance industry might be available under the World Bank's International Center for the Settlement of Investment Disputes (ICSID),[12] ICSID's Additional Facility Rules, or the rules of the United Nations Commission for International Trade law (UNCITRAL).[13] Nation-states engaged with international trade partners might be required to elect remedies available in the host country's domestic courts or resort to the options provided by the Geneva-headquartered World Trade Organization (WTO).

Pre- and Post-NAFTA Dispute Resolution: WTO Rules

Two dispute resolution options might exist, absent NAFTA. First, private negotiated agreements to consensually apply NAFTA processes and procedures in a private setting, with enforcement through designated courts; or, second, dispute resolution processes for international transactions resorting to pre-NAFTA international dispute resolution mechanisms.

Regarding the latter, an influential pre-NAFTA international trade agreement was the General Agreement on Tariffs and Trade (GATT), considered the only multilateral instrument governing international trade from 1948 until the WTO came into existence in 1995.[14] As the global agreement defining and overseeing international trade prior to NAFTA, the WTO dispute resolution procedures could control for post-NAFTA withdrawal international trade dispute resolution.[15]

The WTO Understanding on Rules and Procedures Governing the Settlement of Disputes Rules (sometimes referred to as Dispute Settlement Understanding or the DSU), similar to NAFTA's, aim to provide "security and predictability to the multilateral trading system"[16] and achieving "[a] solution mutually acceptable to the parties to a dispute and consistent with the covered agreements."[17] The WTO's DSU outlines and administers dispute resolution.[18] All 164 WTO member nation-states are subject to the DSU and are the sole entities permitted to file cases.[19]

The WTO's procedures adhere to the rule of law and include defined rules and deadlines, enhancing the predictability of trade relationship dispute resolution. Panels to hear disputes and adoption of panel decisions are both automatic, preventing nations from neutralizing the dispute resolution process by ignoring complaints. The goal is to standardize interpretations of specific contract clauses.

The DSU's stages of dispute resolution are consultation, good offices, conciliation and mediation, panel hearing, appeal, and

remedies.[20] WTO members promise that should fellow members violate trade rules, they will utilize the WTO's multilateral system instead of taking unilateral action. This implicates both abiding by the WTO's procedures and respecting judgments.

Regarding panel composition, the differences between NAFTA's three-person and WTO's five-person system are significant as the parties in a bilateral dispute may select two panelists, providing flexibility in choosing legal or non-legal expertise. In contrast, NAFTA allows inclusion of nationals of the disputing parties on the arbitral panels (except appellate proceedings). NAFTA parties exercise more direct control over selection of panelists than in WTO proceedings, where the Secretariat selects panels. In addition, WTO rulings are adopted automatically, absent consensus to reject.

The Dispute Settlement Body has the sole authority to establish panels of experts to consider cases and to accept or reject the panels' findings. The overall WTO scheme relies on prior adopted decisions to create legitimate expectations among WTO members;[21] appeals can uphold, modify or reverse.The WTO is empowered to accept or reject appellate determinations and monitor implementation of rulings and recommendations. Significantly, in the face of non-compliance, the WTO has the power to authorize retaliation.

Based on the volume of WTO arbitration panel and appellate body determinations, if NAFTA is gutted, WTO analyses will likely dominate international trade decisional law, except perhaps on issues comprised solely of NAFTA questions.

The Canada-United States Free Trade Agreement

The Canada-United States Free Trade Agreement (CUSFTA) went into effect on January 1, 1989 and was never terminated; it was merely suspended while NAFTA was in force. While NAFTA superseded CUSFTA, the Canada-United States trade deal was never withdrawn or otherwise cancelled.[22] The FTA includes a dispute settlement mechanism, focused on fair and expeditious resolutions.

The Trump Administration may cancel United States' participation in CUSFTA, a move that requires six months' notice. But the FTA was a Reagan-era achievement, spearheaded by the current U.S. Trade Representative, and President Trump may not care to deconstruct that legacy. But this ambivalence could lead to international trade uncertainty, resulting in heated disputes. In the current environment, U.S.-Canada international disputes would likely be governed by WTO rules.

Litigating Unfair Global IP Trade Cases

Charges of unfair intellectual property trade practices sometimes flow from international commerce with the U.S. International Trade Commission (ITC) recognized for its efficacy in international IP litigation.[23]

ITC §337 investigations[24] are becoming increasingly popular to address disputes relating to trademarks, copyrights, trade secrets, and claims of unfair competition. Where the alleged unfair act relates to products imported pursuant to international trade, the ITC offers cost-effective access to nationwide injunctive relief.

The Court of Appeals for the Federal Circuit recently created a national cause of action where none previously existed. Recognition of §337 as a remedy for international trade-related business torts—not just intellectual property issues—is rooted in a 2009 trade secret case that was brought before the ITC, *TianRui Group v. International Trade Commission*.[25]

In *TianRui*, the U.S. plaintiff claimed that a Chinese joint venture partner

misappropriated the plaintiff's trade secrets and provided them to a Chinese competitor.

According to the ITC administrative law judge, the "unfair acts" language in §337 gave the ITC broad authority to apply U.S. state trade secret misappropriation law to the conduct of a foreign employee even if the only relationship to the United States is the importation of products produced using those misappropriated trade secrets.[26]

The Court of Appeals for the Federal Circuit affirmed the ITC's broad authority to define and police unfair acts with a nexus to the import trade, even if the unfair acts occurred abroad. This affirmation offers international trade clients another venue in which to seek redress and highlights the increasing breadth of the ITC's authority to adjudicate and provide remedies for allegations of injury from international trade misconduct.

The Domino Syndrome

If the United States withdraws from NAFTA, other trade agreements could kick in, each with its own dispute resolution process. These administrative, arbitral panel procedures offer counsel opportunities to draft agreements strategically to focus dispute resolution in the direction most advantageous for the client.

The options include the World Trade Organization, the Canada-United States FTA, the International Trade Commission, and the United Nations Commission on International Trade Law.

Dispute Resolution Advice and Counsel: Strategic Drafting Considerations for Global-Facing Companies

Instability related to questions about the United States' participation in NAFTA provides opportunities for more freedom when drafting dispute resolution language. One of counsel's challenges is maximizing this uncertainty to clients' advantage when negotiating international agreements.

Absent NAFTA coverage, counsel might be able to effectively forum shop, including consideration of particular political climates. Agreements might selectively establish rules regarding dispute resolution with, for example, contract language that could set restrictions on panelists' nationalities.

Other considerations include analyzing decisional tendencies, in particular dispute resolution fora. This includes win-lose results for the client's industry, nationality, and forum. Enforcement and choice of law are important, as well. Additional issues include timelines that require speed (favoring complainants), or allow for delay (favoring respondents), or impose penalties. Terms could include more discovery (favoring larger parties), limit discovery, or rein-in costs and delays (favoring smaller entities).

Decision formats can be negotiated, including the use of precedent, depth of analysis, and support for conclusions. The forum for appeals, availability of agreed appellate procedures, and the particulars of enforcement might be discussed. Counsel advising companies importing goods from Canada or Mexico should be alert to possible filings.[27]

NAFTA's cancellation could also foster a multilateral dynamic, not currently present in NAFTA's trilateral context. In cases lodged under NAFTA, two complaining parties are contemplated. But in a WTO case, the moving party has a systemic option to garner support from any non-NAFTA nation that shares the filing party's concerns. This increases the political pressure on any party, possibly propelling one side to victory.

But this dynamic could interfere with a negotiated settlement as efficiencies could be lost when a NAFTA party tries to reach agreement with another NAFTA party, and a large group of WTO member nations become involved, rather than being limited to results that would apply only to a single NAFTA party.

In the current environment of political and economic fluidity, these are a few strategic approaches to consider. Looking forward, litigation of international agreements will undoubtedly propel far-reaching changes across industries, service sectors, and nations. If the United States withdraws from NAFTA, the likelihood of increased trade friction in the form of international trade litigation is almost certain.

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[1] Stephen Gandel, *Donald Trump Says NAFTA Was the Worst Trade Deal the U.S. Ever Signed*, FORTUNE FINANCE, September 26, 2016, available at *http://fortune.com/2016/09/27/presidential-debate-nafta-agreement/; http://video.cnbc.com/gallery/?video=3000554296.*

[2] Article 44(1) of the Vienna Convention on the Law of Treaties states that withdrawal from a treaty "may be exercised only with respect to the whole treaty unless the treaty otherwise provides or the parties otherwise agree." NAFTA Article 2205 provides that a "party may withdraw from this Agreement six months after it provides written notice of withdrawal…." NAFTA was enacted pursuant to the Trade Act of 1974, which provides for presidential authority to negotiate agreements dealing with tariff and non-tariff barriers. Section 125 of this Act allows the President to terminate and withdraw from these agreements. Pursuant to the

Omnibus Trade and Competitiveness Act of 1988 as well as the Trade Act of 1974, Congress authorized the president to negotiate tariff and nontariff barrier agreements. Based on all of this, the Administration seems to possess overlapping authority to act.

[3] North American Free Trade Agreement (NAFTA), INC. MAGAZINE, available at *www.inc.com/encyclopedia/north-american-free-trade-agreement-nafta.html.*

[4] Organization of American States; available at *https://www.reference.com/world-view/main-objectives-nafta-67404293e4d5a6e8*.

[5] NAFTA Secretariat; available at *https://www.nafta-sec-alena.org/Home/Dispute-Settlement/Overview-of-the-Dispute-Settlement-Provisions*.

[6] Chapter 11 procedures include provisions relating to party non-compliance with a final panel award.

[7] Although Chapter 19 panel decisions are binding, one level of review of binational panel decisions exists for NAFTA governments: the Extraordinary Challenge Committee (ECC) procedure. If either government believes that a decision has been materially affected by a panel member suffering significant conflict of interest, or the panel departing from a fundamental rule of procedure, or exceeding its authority, either government may invoke review by a three-person, binational Extraordinary Challenge Committee, comprised of judges and former judges. ECC decisions are binding as to the matter addressed; more detailed information available at *https://www.nafta-sec-alena.org/Home/Dispute-Settlement/Overview-of-the-Dispute-Settlement-Provisions*.

[8] The Chapter 11 dispute resolution process begins with government-to-government consultation. If the dispute is not resolved, a party may request a meeting of the NAFTA Free-Trade Commission, comprised of the Trade Ministers of the parties. If the Commission is unable to resolve the dispute, a party may call for a five-member arbitral panel; https://www.nafta-sec-alena.org/Home/Dispute-Settlement/Overview-of-the-Dispute-Settlement-Provisions.

[9] The Trump Administration might, as an example, focus on the $15 billion claim against the United States filed by TransCanada in NAFTA arbitration, alleging damage resulting from President Obama's actions on the Keystone XL pipeline.

[10] The U.S. President has the power (independent of Congress) under NAFTA's Article 2205 to withdraw from NAFTA six months after it provides written notice, "Article 2205: Withdrawal: A party may withdraw from this Agreement six months after it provides written notice of withdrawal to the other parties. If a party withdraws, the Agreement shall remain in force for the remaining parties." Full text available at *http://www.sice.oas.org/trade/nafta/chap-22.asp*.

[11] "Article 1119: Notice of Intent to Submit a Claim to Arbitration: The disputing investor shall deliver … written notice of its intention to submit a claim to arbitration at least 90 days before the claim is submitted, which notice shall specify: (a) the name and address of the disputing investor and, where a claim is made under Article 1117, the name and address of the enterprise; (b) the provisions of this Agreement alleged to have been breached and any other relevant provisions; (c) the issues and the factual basis for the claim; and (d) the relief sought and the approximate amount of damages claimed." Available at *http://www.sice.oas.org/trade/nafta/chap-111.asp.*

[12] For more information on ICSID structure, visit https://icsid.worldbank.org/en/Pages/about/Structure.aspx.

[13] United Nations Commission on International Trade Law; further information on UNCITRAL available at *https://www.google.com/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=United+Nations+Commission+for+International+Trade+law+(UNCITRAL&**.

[14] The WTO 1970s discussions were the first significant attempt to address non-tariff trade barriers.

[15] *http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1328&context=auilr.*

[16] See, Understanding on Rules and Procedures Governing the Settlement of Disputes (Understanding), art. 3, para. 2; available at *https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm*.

[17] See, *id*. art. 3, para. 7.

[18] Full text of the Dispute Settlement Understanding available at *http://www.wto.org/wto/dispute/dsu.htm.*

[19] *https://www.wto.org/english/thewto_e/whatis_e/tif_e/utw_chap3_e.pdf.*

[20] Understanding on Rules and Procedures Governing the Settlement of Disputes, Annex 2 of the WTO Agreement; available at *https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm*.

[21] The WTO appellate body's precedent-sensitive approach assures consistency and fairness in adjudication.

[22] When NAFTA was concluded, the parties' intention was that the FTA would kick back in automatically if NAFTA ceased to apply. But it is not clear if affirmative action is required to accomplish this. Matthew Kronby and Milos Barutciski, *Trump, Canada and the Future of NAFTA,* THE GLOBE AND MAIL, January 18, 2017, available at *http://www.theglobeandmail.com/report-on-business/trump-canada-and-the-future-of-nafta/article33664146/.*

[23] Jonathan Engler, *Tariff Act Section 337: USITC as a Fast and Effective Forum*, American Bar Association, Business Torts and Unfair Competition, March 14, 2016, available at *http://apps.americanbar.org/litigation/committees/businesstorts/articles/winter2016-0316-section-337-tariff-act-international-trade-commission-fast-and-effective-forum.html.*

[24] Under §337, infringement of intellectual property rights (and other unfair competition) in import trade is unlawful. Most investigations are triggered by allegations of patent or trademark infringement. Misappropriation of trade secrets, trade dress infringement, passing off, false advertising, and antitrust violations may be covered. For more information, visit the United States International Trade Commission website *https://pubapps2.usitc.gov/337external/*.

[25] *Tianrui Group Co. v. ITC*, 661 F.3d 1322, 1337 (Fed. Cir. 2011).

[26] Id., 661 F.3d 1322, 1327 (Fed. Cir. 2011).

[27] Considerations include assessing whether goods are in industries where trade actions are common (steel, chemicals).

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THE VALLEY COMMUNITY LEGAL FOUNDATION mourns the loss of one of its greatest friends, members and supporters, Barry T Harlan.

Barry was not only loved and respected by all who knew him, he was a giant in his field, with an estimable reputation that echoed far beyond his family and inner circle colleagues. Barry's friends knew him to be an extremely community-minded and vastly generous individual.

The Board of the VCLF will always remember how he actively fostered the VCLF's prosperity, allowing it to continue its mission of service to the legal needs of the youth and the less fortunate of the San Fernando Valley. Barry's achievements speak for themselves. Admitted to the California Bar in 1968, he rose to become a name partner and Chair of the Family Law Practice Group at Lewitt, Hackman, Shapiro, Marshall and Harlan. He played a pivotal role in the leading published case in California on post-nuptial agreements, entitled *In re Marriage of Burkle* (2006) 139 Cal.App.4th 712.

Throughout his life, he was recognized for his consummate skill. Honored as a *Southern California Super Lawyer* for the past 13 years, Barry was also named one of Southern California's Top 100 attorneys every year since 2013. A State Bar Certified Family Law Specialist, he was named one of the top 25 lawyers in the San Fernando Valley by the *San Fernando Valley Business Journal* and one of the Best Lawyers in Los Angeles, as published in both *the Los Angeles Times* and *The Wall Street Journal*.

Barry was also honored for his civic efforts, including recognition from the Van Nuys court for his work in organizing and scheduling attorneys to preside in family law mediation cases and presentation of the Stanley Lintz Award for outstanding professional and community service presented by the San Fernando Valley Bar Association. He was also instrumental in spearheading the creation of the children's waiting rooms in the San Fernando and Van Nuys courthouses. Soon after his passing and with the blessing of the Harlan family, the VCLF unanimously and enthusiastically created the Barry T. Harlan Fund to provide financial support to grants and scholarships that were near to Barry's heart.

If you wish to make a donation to the Barry T. Harlan Fund, please visit www.thevclf.org/donate, and either make your payment directly into the Barry T. Harlan Fund or into the General Fund, with a notation at the end of the online donation process. Or you can always pay with a check made payable to the VCLF and mail it to 5567 Reseda Blvd., Suite 200, Tarzana, CA 91356, and write "Barry T. Harlan Fund" anywhere on the check. Thank you for your support and helping us to make a difference in our community.

About the VCLF of the SFVBA

The Valley Community Legal Foundation is the charitable arm of the San Fernando Valley Bar Association. The Foundation's mission is to support the legal needs of the youth, victims of domestic violence, and veterans of the San Fernando Valley. The Foundation also provides educational grants to qualified students pursuing legal careers. The Foundation relies on donations to fund its work. To donate to the VCLF or to learn more, visit *www.thevclf.org* and help us make a difference in our community.

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The following members joined the SFVBA in March 2017:

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Receiving His Just Due

CATHERINE CARBALLO-MERINO
ARS Referral Consultant

catherine@sfvba.org

RICKY HAD BEEN EDNA'S DEDICATED CAREGIVER for many years and had developed a deep friendship with her, even helping Edna through the grief of her husband's death several years before. Devastated by the experience of her husband's death, Edna decided to reappraise her financial situation and prepare for the inevitable.

She shared her desire with Campos, who she wanted to name as the trust's administrator. He, in turn, asked his sister to recommend a lawyer to handle the complicated legal crafting of the document. An ill-advised referral to an inexperienced attorney resulted in a trust eventually being drawn up without the necessary components protecting Campos from the possibility of accusations that he had pressured Edna into naming him as administrator of the newly-minted trust. The situation was complicated when Edna, a Holocaust survivor in her 90s, died within three months of the trust being filed.

At first glance, the circumstances are somewhat curious, with several questions that beg to be answered. Under what circumstances did Edna die within just 90 days of the trust taking effect? And, more to the point, did Campos take advantage and exert undue influence on the elderly woman?

Edna had named Campos as executor because she had no relatives in the United States. The trust required Campos to gift her third-generation relatives, all of whom lived overseas, specified sums of money and other assets, while he maintained responsibility for the rest of her estate here.

When she passed away, Edna's third-generation relatives hired an attorney to dispute Campos' claim as the trust's executor even though they hadn't seen or had any other contact with Edna in over 30 years. The fact that she died within 90 days of the trust taking effect created an even bigger roadblock for Campos' case.

Campos lacked the necessary funds to contest the challenge to his position—a campaign that would require a competent attorney's expertise, as well as a significant amount of time in research and taking depositions from witness caregivers and friends. Nevertheless, he called the ARS immediately after learning that his appointment as the trust's administrator was being contested and was referred to Tarzana probate attorney Marc Edwards.

Over time, Campos' status as the administrator of the contested trust was legally recognized and, in time, he received his just due. "He's not a phony baloney guy. He doesn't have a fancy, fancy, schmancy office. He's just a hard working…lawyer for people, and for me he did great," said Campos of attorney Marc Edwards. "Without him, I would've gotten nothing."

The names in this column have been changed to assure the privacy of those involved.

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