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DECEMBER 2017 • \$4

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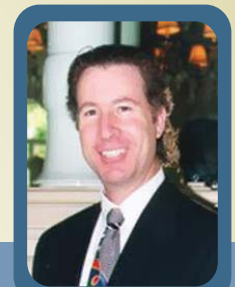


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On the cover (left to right): Corinne Chandler, Alan E. Kassan, Lisa L. Kantor, Glenn R. Kantor and J. David Oswalt  
Photo by Ron Murray

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# VALLEY LAWYER

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Valley Lawyer is published monthly. Articles, announcements, and advertisements are due by the first day of the month prior to the publication date. The articles in Valley Lawyer are written for general interest and are not meant to be relied upon as a substitute for independent research and independent verification of accuracy.

Printing Southwest Offset Printing

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# Doing the Right Thing

**ALAN E. KASSAN**

SFVBA President



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**F**OLLOWING THANKSGIVING, WE WIND INTO THE end of the year with a spirit of sharing and giving and spending time with loved ones. For most of us, December is a happy month. But, sadly, a lot of lip service is given this time of year to helping those less fortunate among us, but in reality, not enough time, money or spirit is invested in doing the right thing.

Earlier this year, Los Angeles Mayor Eric Garcetti commented on a recent study showing that homelessness in Los Angeles County had increased by 23 percent over the last year. 23 percent in one year! Incredible. But even more incredible is the sad fact that the fastest growing age demographic for homelessness is the age range of 18 to 24 year olds, where the population increased by 64 percent over the past year. The explosion of homelessness in the San Fernando Valley, at 4 percent over last year, was nowhere near the overall average, but even still, the count as of May 2017 had 7,627 homeless in our Valley communities.

We've all seen it... more tents, or box-shelters, or people pushing shopping carts jammed with their worldly possessions. It's more than a problem; it's a tragedy. Many people have a tendency to ignore the problem, or write-off the homeless as deadbeats or bums too lazy to work. But, in almost every case, those assumptions are not only unfair and discriminatory, they are totally false.

Approximately 50 percent of the homeless in Los Angeles County are people who are actually working...and working hard at one or more jobs. The problem is that they are not earning enough to afford the region's high cost of living.

Of course, housing is important, but food, clothing, childcare, healthcare, and transportation even more so, and after that, there just isn't enough money left to afford a secure

roof over their heads. A Harvard University study found that for over 2 million households in Los Angeles and Orange Counties, housing costs exceed 30 percent of income. For so many others, though, the problem is one of mental health and our society's failure to attend to those who need proper treatment and care.

Hopefully, Measure H approved in March and Proposition HHH approved late last year will begin to ameliorate some of these problems by putting more affordable housing on the market, and providing more transitional housing options and

professional counseling. While those efforts ramp up though, we all can, and should, make a special effort to help in whatever way we are able.

Over the last year, the SFVBA Board of Trustees has collected personal daily care essentials like toothpaste, toothbrushes, soap, shampoo, deodorant, lotion, shaving kits, and other personal care items at each of our monthly meetings, which we then box and hand-deliver to the LA Family Housing project in North Hollywood. This month, we will also

solicit gift cards and unwrapped children's toys for Haven Hills, the West Valley Food Pantry, and LA Family Housing.

Also, every December, we solicit donations from all of our members for our Blanket the Homeless campaign. That effort collects funds to purchase about 1,200 new blankets for distribution to organizations like Children of the Night, M.E.N.D., the Women's Care Cottage, Bridges, El Nido, Hillview Mental Health, Haven Hills, the San Fernando Valley Interfaith Council, the San Fernando Valley Mental Health Center, and LA Family Housing.

If you are already doing your part, thank you. If you want to do more, consider contacting one or more of the organizations I've mentioned, or any others you find, and try to help.

If everyone just did a little, an awful lot could get done!

Happy Holidays! 🏠





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## Hard Work Has Its Rewards

**MICHAEL D. WHITE**

SFVBA Editor



michael@sfvba.org

**I**T'S HARDLY UNUSUAL TO HEAR about attorneys who are active volunteers in their community, as the core of the law they serve is to serve the needs of the community and help build a stronger, more responsible society.

What is unusual, though, is finding a group of attorneys who work at a firm that has woven into its fabric a commitment to "doing well by doing good," while representing clients who are bringing suit for denied claims against some of the biggest and most powerful insurance companies in the country.

When I interviewed attorneys Glenn and Lisa Kantor as the winners of the this month's cover auction article on community service, I readily admit I was struck by their commitment to genuine justice—a commitment that, over the past 25 years, has earned the hard-charging firm the respect of arbitrators, mediators, judges, and even opposing counsel.

Northridge-based Kantor & Kantor's reputation is built, in no small part, on the groundbreaking work done by founding partner Lisa Kantor while representing clients in the areas of mental health and eating disorders.

Among a number of landmark cases, in 2011, she won the first federal appellate court ruling that determined health plans in California must pay for all medically necessary treatment for severe mental illnesses, including residential treatment. She later

successfully petitioned the California Department of Managed Health Care on behalf of a client with anorexia being discharged from a residential care facility, forcing her insurer to agree to pay for her treatment.

Debunking the "Perry Mason...TV version of justice," Kantor says "reality...is far different. We work long, hard hours digging and digging and justice seeps out only after a lot of hard work. I always tell our lawyers to be better prepared than the other side every time they walk into court, get on the phone, or have a meeting."


“

Justice only comes after a lot of hard work.”

To win for your client, she says, "You need to know more, you need to dig deeper... You need to have more information and that's how justice comes

because you have to dig hard for the truth."

The commitment to community service comes, says founding partner Glenn Kantor, from the firm's cornerstone of "seeking justice for those who've been denied it. I see the young lawyers here now taking over, so we're training some really good lawyers to walk in our footsteps."

The most tangible reward comes, he says, "When we get to tell a client, 'You won...you're getting your benefits...you get to have the surgery you need,' the tears of joy are a wonderful thing to experience. It's a reminder that we can do well by doing good." 



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SUN	MON	TUE	WED	THU	FRI	SAT
					<div>Valley Lawyer Member Bulletin Deadline to submit announcements to editor@ sfvba.org for January issue.</div>	
3	<div><div><div>VBN VALLEY BAR NETWORK</div></div><div>5:30 PM THE ATTIC SHERMAN OAKS VBN is dedicated to offering organized, high quality networking for SFVBA members.</div></div>	5	6	<div>Membership &amp; Marketing Committee 6:00 PM SFVBA OFFICES</div>	<div>Bankruptcy Law Section Recent BAP Opinions 12:00 NOON SFVBA OFFICES  Yi Sun Kim will lead the panel on the most relevant BAP opinions all bankruptcy attorneys should know. Bankruptcy Law Legal Specialization credit pending. (1.25 MCLE Hours)</div>	<div>Blanket the Homeless and ARS Legal Clinic 8:30 AM LA FAMILY HOUSING NORTH HOLLYWOOD  See page 33</div>
10	11	<div>12 Probate &amp; Estate Planning Section 10 Things To Do In Mediation (Recognizing and Avoiding the Most Commonly-Made Mediation Mistakes) 12:00 NOON MONTEREY AT ENCINO RESTAURANT  Retired Judges James Steele and Reva Goetz will discuss what it takes and what you need to know to be successful in mediation. (1 MCLE Hour)</div>	13	14	15	16
17	18	<div><div>Holiday Open House</div><div>December 12, 2017</div><div>5:30 p.m. to 7:30 p.m.</div><div>SFVBA Offices</div><div><div></div><div>Bring an unwrapped new toy or giftcard to benefit the children of Haven Hills and West Valley Food Pantry.</div><div>RSVP to 818.227.0490, ext. 2105 or events@sfvba.org.</div></div></div>				
24	<div></div>	26	27	28	29	30
31						



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



SUN	MON	TUE	WED	THU	FRI	SAT
<i>Happy New Year</i>						
	1 <b>SFVBA OFFICES CLOSED</b>	2 <b>Valley Lawyer Member Bulletin</b>  Deadline to submit announcements to editor@sfvba.org for February issue.	3	4 <b>Membership &amp; Marketing Committee</b> <b>6:00 PM</b> <b>SFVBA OFFICES</b>	5	6
7	8  <b>5:30 PM</b> <b>CHABLIS RESTAURANT TARZANA</b>  VBN is dedicated to offering organized, high quality networking for SFVBA members.	9 <b>Probate &amp; Estate Planning Section</b> New Laws <b>12:00 NOON</b> <b>MONTEREY AT ENCINO RESTAURANT</b>  <b>Board of Trustees</b> <b>6:00 PM</b> <b>SFVBA OFFICES</b>	10	11	12-13  01.12.18 01.13.18 See page 12	
14	15  <b>SFVBA OFFICES CLOSED</b>	16 <b>Taxation Law Section</b> Property Tax Update <b>12:00 NOON</b> <b>SFVBA OFFICES</b>  Former California State Board of Equalization Tax Counsel Michael LeBeau will provide an update on ad valorem property taxation, including the recent documentary transfer tax case, 924 North Ardmore Avenue, LLC v. Country of Los Angeles. (1 MCLE Hour)	17	18	19 <b>Bankruptcy Law Section</b> 10 Most Interesting Opinions of the Central District Court <b>12:00 NOON</b> <b>SFVBA OFFICES</b>  The distinguished panel includes Judge Virginia Kaufman and bankruptcy law certified legal specialists Roksana Moradi and James Selth. Bankruptcy Law Legal Specialization credit pending. (1.25 MCLE Hours)	20
21 <b>Family Law Section</b> New Laws <b>5:30 PM</b> <b>MONTEREY AT ENCINO RESTAURANT</b>  Don't miss this annual update. Approved for Family Law Legal Specialization. (1.5 MCLE Hours)	22	23 <b>Editorial Committee</b> <b>12:00 NOON</b> <b>TONY ROMA'S</b>	24	25	26	27
28	29	30	31			

01.12.18  
01.13.18

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## Friday, January 12

9:00 a.m.

**Practicing Law in Today's  
Regulatory Environment:  
Fee Agreements and Other  
Hot Ethics Topics**

James I. Ham  
Regulatory & Discipline Counsel  
for Legal Professionals  
2 MCLE Hours (*Legal Ethics*)

11:00 a.m.

**What Should You Tell Your Clients  
About Prop 65**

Stephen T. Holzer, Lewitt Hackman  
1 MCLE Hour

12:00 noon

**Lunch**

1:00 p.m.

**Eliminating Sex Harassment,  
Discrimination, and Bias in  
the Workplace**

Hannah Sweiss and Amy I. Huberman  
Lewitt Hackman  
1 MCLE Hour

(*Recognition and Elimination of Bias  
in the Legal Profession and Society*)

2:00 p.m.

**Growing Your Practice Through  
Litigation Finance**

Charles Brown, Pravati Capital  
1 MCLE Hour

3:00 p.m.

**Tax Reform Update:  
The Effect on You and Your Clients**

Georgette Greene, CPA  
Hutchinson and Bloodgood LLP,  
Certified Public Accountants and  
Consultants  
1 MCLE Hour

## Saturday, January 13

9:00 a.m.

**Nuts and Bolts of Estate Planning**

Alice A. Salvo  
Law Offices of Alice A. Salvo  
1 MCLE Hour

10:00 a.m.

**Top Ten Insurance Agent Mistakes  
and How to Advise Your Clients**

Elliot Matloff, The Matloff Company  
1 MCLE Hour

11:00 a.m.

**Escaping Bar Discipline**

Prof. Rob Barrett  
2 MCLE Hours (*Legal Ethics*)

1:00 p.m.

**Lunch**

2:00 p.m.

**Prevention of Substance Abuse**

David S. Kestenbaum  
Sponsored by Breathe Easy Insurance  
1.5 MCLE Hours (1 Hour *Competence  
Issues and .5 General*)

3:30 p.m.

**Human Lie Detector**

Paul Bishop  
1 MCLE Hour

## MCLE MARATHON REGISTRATION FEES

	Member	Non-member
<input type="checkbox"/> 2-Day Seminar	\$199	\$499
or		
<input type="checkbox"/> Friday, January 12	\$149	\$279
<input type="checkbox"/> Saturday, January 13	\$149	\$279
or		
<input type="checkbox"/> Per MCLE Hour	\$40	\$69
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(Pre-Registration deadline is January 5, 2018.)

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Membership Dues: \$ \_\_\_\_\_

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Expiration Date \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Signature \_\_\_\_\_



←  **SEPTEMBER 29, 2017** :

Attorney Referral Service is attending Van Nuys Arts Festival at Van Nuys Civic Center.



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←  **OCTOBER 11, 2017** :

SFVBA Immediate Past President **Kira Masteller** and Probate & Estate Planning Section Chair **Nancy Reinhardt** honored retired member, and frequent lecturer, **James Birnberg** for his service to the Bar and Section.



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←  **NOVEMBER 15, 2017** :

SFVBA officer **Barry P. Goldberg** and trustee **Amanda Marie Moghaddam** of Nemecek and Cole with LA Family Housing Director of Community Engagement **Ella Boyajian**, who addressed the Board last night about the homeless service provider's holiday gifts program and new campus. Trustees brought toiletries to donate to residents of its shelters.



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## Valley Lawyer 2018 Editorial Calendar

2018 ISSUE	COVER STORY	MCLE ARTICLE/SPECIAL FEATURES
January	Diversifying the Bench and Bar	Websites and the ADA
February	Judge of the Year	Sexual Harassment and Confidentiality Agreements Roundtable: Mentoring New Lawyers
March	Fastcase	Electronic Evidence and Social Media
April	Are You Kidding? Silly Cases	Squeezing the Most Out of California's Lemon Law
May	Fee Arbitration Program	Eminent Domain Point/Counterpoint: Bail Reform
June	Senior Members: The Way It Was	Gauging Diminished Capacity
July	Trustee Candidates	Off the Rails: Theme Park Rides and Safety Liability
August	Pets of the SFVBA	Maintaining Client Confidentiality (Ethics) Roundtable: Class Action Lawsuits
September	Meet New Bar President Yi Sun Kim	Mechanic's Liens
October	Managing Business Disasters	Representing Disaster Victims
November	Interviews with Past Bar Presidents	Effective Brief Writing Point/Counterpoint: Legalized Marijuana
December	Cover Auction	Estate Planning for Beginners

Articles are not limited to content focus. *Valley Lawyer* seeks articles covering all areas of law, plus articles focusing on the courts and judiciary, lifestyle, law practice management, social media and legal marketing, as well as humorous commentary about the practice of law. Submit articles and ideas to [editor@sfbva.org](mailto:editor@sfbva.org). Word count for feature article is 1,500-3,000 words; word count for MCLE article is 3,000-4,000 words, including 20 true and false questions for MCLE test.





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 23.

# Avoiding Liabilities from Environmental Agency Investigations

By Gary A. Meyer





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Manufacturers and business owners must educate their managers and other employees on how to comply with the myriad of federal, state and local environmental laws and regulations governing the classification, documentation, storage, and transportation of hazardous waste and materials. This article provides tips and strategies on how best to avoid, minimize and protect against government environmental enforcement liabilities.

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**T**HOUSANDS OF BUSINESSES IN THE SAN Fernando Valley, and tens of thousands more throughout Southern California, are subject to environmental enforcement liabilities either due to their use of hazardous materials, their environmental management practices, or hazardous materials found at their facilities.

Businesses, as well as their corporate officers, managers and employees, are subject to a myriad of federal, state and local environmental laws and regulations, with numerous governmental agencies and prosecutorial offices empowered to enforce those mandates.

The lengthy list of responsible agencies includes the Environmental Protection Agency (EPA), Department of Justice, and FBI at the federal level; CalEPA, Department of Toxic Substances Control (DTSC), several regional water quality control boards, and the California Attorney General's Office at the state level; as well as the County and City Attorney Environmental Enforcement Units and County and City Hazmat Health Departments at the regional level—agencies which have in their collective arsenals a dizzying array of administrative, civil and criminal penalties and fines, as well as injunctive remedies, to pursue both corporate and individual violators.

Cloaked in broad enforcement and prosecutorial powers, these agencies and their prosecutorial arms are known to push for stringent remediation remedies, costly fines and penalties, and sometimes jail time against corporate officers and compliance managers. In Los Angeles, both the City Attorney and the District Attorney oversee special units that deal solely with environmental enforcement and often are part of and coordinate with representatives from other agencies throughout the state.

The focus of this article is to provide tips and strategies on how best to avoid, minimize and protect against these government environmental enforcement liabilities.

### **Big-Ticket Environmental Activities**

Virtually every aspect of hazardous waste and material management—from record-keeping, manifesting, and labeling, to storage, treatment, transportation and disposal—is subject to regulation and enforcement, with violations in any of these activities covered by comprehensive administrative, civil and even criminal penalty provisions. Accordingly, the first and most fundamental thing a business owner or manager should do is be aware of, understand and properly inventory

all chemicals and hazardous materials used in their manufacturing or other business processes.

For example, businesses which handle volumes of hazardous materials in excess of those allowed in a reporting year—55 gallons of liquid, 500 pounds of solids or 200 cubic feet of compressed gas—must prepare and have a statutorily required Hazardous Material Business Plan (HMBP), as laid out in California Health and Safety Code §25501 et seq., on file with a designated hazardous material agency such as their local fire department.

An HMBP carefully and accurately lists the hazardous materials present in the workplace, details proper waste classification and labelling, and contains the material safety data sheets (MSDS) available for each material in question. In addition, businesses using hazardous materials or generating hazardous waste need to verify that they have obtained all the necessary environmental permits required for the use, storage, transportation discharge, and disposal of said materials or wastes.

While non-compliance with the rules mandating the maintenance of records and documents and permits may seem like mere paper violations, environmental regulators and prosecutors often take such non-compliance very seriously. A fundamental underpinning of many environmental laws and regulations relates to a company's obligation to have and maintain an accurate accounting of the materials and chemicals it uses, handles, stores and/or discharges at or from the workplace. Having such information is deemed critical to environmental agencies as it helps to safeguard and minimize actual or potential injuries from occurring to employees, first responders and neighboring properties.

More than just having the requisite environmental documents referenced above, it is vitally important that a company's hazardous material record-keeping be accurate. While a minor miscalculation or inaccuracy may be forgiven, anything resembling false or misleading record-keeping will likely result in serious legal ramifications.

Examples of misreporting or fraudulent record-keeping can include the mischaracterization of hazardous waste bound for disposal as a non-hazardous waste; under-reporting the amount of chemicals being stored or the volume of waste being discharged or emitted; or the tampering with monitoring equipment, which results in false or inaccurate reports. Implementing in-house quality assurance controls and keeping regular maintenance and controls on all



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environmental waste management equipment can help prevent unintended inaccurate or misleading record-keeping.

Other environmental activities can trigger investigations from agencies and lead to civil or criminal penalties.

### ***Waste Discharge into Public Sewers***

Companies that, for instance, produce wastewater through their metal plating operations are particularly in the zone for potential environmental investigations. Discharged waste water must be checked regularly for pH levels and heavy metal content. Environmental investigators can and often do test a company's waste water flow off-site without a company's knowledge, with test results showing evidence of illegal discharges can lead to criminal prosecution.

### ***On-Site Spills***

In the course of a company's business activities, such as the manufacturing, storage of chemicals, and transportation of materials, on-site spills can and do frequently occur. For a business with a long history at a single site, these spills may have occurred long before the passage of the hazardous waste laws in effect today. Nevertheless, environmental prosecutors have taken the position that spills, even occurring decades ago and still not cleaned up, can constitute an act of illegal disposal. While such cases may or should be more appropriately handled pursuant to an administrative cleanup and abatement order, they sometimes lead to the filing of criminal charges.

Accordingly, remediating spills and maintaining clean housekeeping practices and containment is important to prevent government scrutiny and possible enforcement penalties.

### ***On-Site Containment and Discharge Pipes***

If a waste or chemical flow is being managed, stored, treated, or transported on-site through a piping system, it is important to check for leaks and determine eventual flow or discharge points. Prosecutors often look for so-called pirate pipes or a bypass pipe or hose, alleging that the company is trying to manage or dispose of its waste in an improper or covert fashion.

### ***Storage of Drums***

The sight of dozens of 55 gallon drums stored on-site can trigger close scrutiny by regulators. This is especially so if the storage occurs near a facility's property line, railroad tracks, or a ditch or drain that leads off-site. Attention should therefore be given to having any hazardous materials held in properly conditioned, labelled, stored and documented drums, with lids in place. Improperly stored waste can trigger a host of criminal violations for exceeding 90-day storage limits and illegal disposals, as well as the obvious risk of fire, explosion, or injury.

### ***Asbestos Removal, Demolition, and Disposal***

Another red flag for criminal prosecutions involves the handling of asbestos or asbestos containing materials, also known as ACMs. Many buildings and building materials constructed prior to 1979 contain the now-heavily regulated insulation material. Dealing with asbestos is often an issue when dealing with building improvements, restorations, or demolition. It is important that ACMs—if removed or disturbed during renovation, construction, or roofing or flooring removal—be handled by companies licensed to handle asbestos-related projects.

### ***Transportation and Manifesting***

One of the most common violations involves the transportation of hazardous waste without a proper license or properly documented hazardous waste manifests. Generators of the waste being transported can be held liable for the violations of the transportation companies they engage or the disposal facility where their waste is processed. It is critical, therefore, that a company hires a properly licensed firm to remove, transport and dispose of its waste materials.

### ***Profit Motive***

If an investigation leads to the suspicion that sloppy or otherwise improper waste management was motivated by profit considerations, it becomes more likely that criminal charges may be filed. Regulators often associate a profit motive when a company takes short cuts in order to save money. Such short cuts, they argue, include previously mentioned pirate pipes or bypass hoses, or the hiring of unskilled, improperly trained workers to handle a company's on-site waste activities. Regulators will also look warily at acts they suspect involve concealment or conspiracy, such as the blending of hazardous waste with regular trash to avoid payment of expensive hazardous waste disposal fees.

Environmental investigations and the enforcement liabilities which often result from them can be triggered by a company's long history of non-compliance, even of minor violations, leading to an agency's view of that company as a "recalcitrant" or habitual violator. It is not at all uncommon for federal, state, regional and local agency representatives to share a company's reputation as a bad actor, with a long history of non-compliance—a situation that can result in that company's next violation leading to a much more severe penalty than would otherwise had been the case had the company maintained a more reputable compliance history.

An unwanted investigation can also result when a current or former disgruntled employee blows the whistle, and reveals to regulators his company's past or current illegal hazardous materials practices. So too can a competitor be the source of information leading to an inspection or investigation.



Another reason a business becomes targeted for an investigation is simply due to the type of business it operates. For example, specialized environmental task forces have been assembled in recent years to inspect and investigate such industries as metal platers and recycling facilities. These are operations, whether small businesses or larger companies, which use and handle a variety of hazardous materials and are viewed by enforcement agencies as low hanging fruit for enforcement.

The release of chemicals resulting from a fire, spill or explosion can also be expected to receive a high degree of scrutiny from enforcement agencies. While some of these events genuinely result from unforeseen accidents or circumstances, they often prove to be the result of poor management, inadequate training, equipment failure, or human error or negligence. Inspections will often “drill deep” to find fault, which of course, can be expected to lead to increased penalties or even potential criminal liability.

As described above, environmental liabilities can attach to, literally, every aspect of handling hazardous materials—storage, generation, labelling, documentation, transportation, discharge, and disposal. Even the handling of building materials such as ACM, lead or PCBs—all of which can be released during renovation, construction or demolition activities—must be done with care and in compliance with special handling practices. Business owners, operators, managers and employees need to be aware of, plan for, and be prepared to implement various critical protocols in the event of an environmental inspection or investigation.

### Inspection Time: Following Protocols

There are a number of preventative strategies that can be put into play when government health inspectors knock on your company’s door, request a tour of your facility, scrutinize your materials manifest and other records, and, possibly, collect a battery of soils samples. What are your rights and the rights of the inspector in such a situation?

The inspection rights afforded health officials under California’s Health and Safety Code §25185 are quite broad. However, the California Court of Appeals has ruled that such rights are not limitless and that an inspector must obtain a search warrant before entering a business’ premises if environmental criminal violations are suspected.<sup>1</sup>

Nevertheless, it is important for businesses to have an environmental protocol in place in anticipation of an inspector’s knock on the company’s door. Such a protocol should include detailed preparations in the event of a site visit, with a predesignated corporate team available to accompany the inspector comprised of individuals fully briefed on the company’s operations and able to accurately

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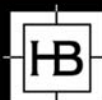
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and fully answer any questions or concerns. Responding to the inspectors' concerns and providing any requested documentation can help dispel further issues the inspectors may have and also help narrow the focus of the inspection.

It is also good practice to request an opening conference with the inspectors to ask for the reason for the inspection, and the nature and scope of their visit, especially if it was not pre-planned. This can help prevent a wild goose chase inspection without pre-determined boundaries.

Similarly, it is wise to request that the inspectors follow the company's safety protocols during their visit. This may help to keep the inspection within certain physical areas of the facility. Because memories fade and perceptions of what was seen vary from person to person and from time to time, company representatives should try to create a mirror image of what the inspectors observed. This includes requesting copies of all photos the inspectors take, asking for and obtaining split samples, taking complete and accurate notes of what was said and the observations made, and obtaining a copy of the inspection report.

At the close of the inspection it is good practice to ask for a closing conference to allow company representatives to answer questions or address concerns the inspectors may have, and request any clarification regarding any follow-up information or documentation the inspectors may request. Answering questions and resolving issues early on helps keep the focus of the inspection more narrow and lessens the chance the inspecting agency's concerns will be fueled.

A conference at the conclusion of the inspection may also present a good opportunity to clarify any misperceptions or misunderstandings the inspectors may have regarding the company's operations. For example, the inspectors may have noticed piping or valves which they may mistakenly identify as pirate piping or accumulated other evidence of past or ongoing illegal disposal practices. It may be, however, that such equipment is only a remnant from past operations that has been properly capped off and unused for some time.

Clarifying any such misperceptions can make a big difference as to whether the inspectors will enlarge the scope of their investigation and/or communicate inaccurate information about the company's practices to their enforcement supervisors, the prosecutor's office, or other agencies.

The interaction a company has both during and following the inspection can be a big factor in whether penalties are assessed and, if so, whether they are

modest or potentially much larger and take the form of administrative, civil or criminal penalties. While a negligent company's history of environmental non-compliance may be too much to overcome by simply good faith cooperation during and after an inspection, many investigations have enough gray area that post inspection strategies implemented by the regulated entity can prove helpful in minimizing its liabilities.

In addition to the protocols addressed above, a business subjected to an environmental investigation should retain counsel experienced in such matters and, if need be, environmental professionals with experience and knowledge regarding the compliance items at issue.

While the scope and purpose of each environmental inspection or investigation will vary, the target company's master objective plan should include the following.

First, ensure that appropriate steps are taken to safeguard the health and safety of its employees and others who may be impacted by any releases which have or may occur, or by work practices which may need improvement. Failure to make necessary changes or improvements, or a company's denial that there is anything wrong, will likely lead to additional types of liabilities that can take the form of third-party lawsuits, with increased remediation costs in the event of a spill or release, and more serious agency penalties.

Second, it is important to thoroughly evaluate, with the assistance of environmental counsel and consultant, the nature and scope of the company's actual or prospective areas of non-compliance. Is record-keeping in place and accurate? Have all required permits been obtained? Are they current and have proper notice and disclosures been made? Are containers containing hazardous wastes or hazardous materials in good condition, bermed, properly labelled and stored? Have any spills or releases been properly cleaned up? And are the wastes or byproducts from the company's operation being properly identified, transported and disposed of?

Third, the company should create a strategic plan on how best to communicate and otherwise deal with the inspecting agency or office. In this regard, it is important to first try to learn from the government the scope of the investigation and potential case. This involves trying to ascertain whether the government is contemplating a "don't let it happen again" warning, an administrative or civil penalty including injunctive relief, or, perhaps, a criminal filing.

Depending on what information the agency representatives or prosecutor's office may be willing to



A conference at the conclusion of the inspection may present a good opportunity to clarify any misperceptions or misunderstandings..."



provide, it is advisable to establish a good faith dialogue and take the opportunity to educate the government of any mitigating or exculpatory factors which may apply, including the applicability of any legal exemptions and other defenses, and any other helpful facts or evidence they may not be aware of.

For example, the investigating agency may be building its case based on an inaccuracy, such as the charge that the company did not have the requisite environmental permits. Or their case may be based on their incorrect assumption that a by-product constituted a hazardous waste when in fact the materials at issue tested as non-hazardous.

There is, of course, a strategic balance which needs to occur between revealing too much information upfront or holding back some in reserve for a later time. As a general rule, meeting with the regulators and prosecutors is usually most effective once the defense has thoroughly investigated the underlying facts and circumstances and can present its case to the prosecutor. Meetings between counsel, as well as all the individuals involved, can also be helpful in bringing about settlement. Well-planned and documented meetings can help create a positive rapport and go a long way in repairing poor relations and communications with the regulators. As stated, such a meeting can also help educate the prosecutor of mitigating or exculpatory factors.

There is, of course, a risk to showing too much of your defense hand or of over-selling your defense, making it important to establish and maintain credibility. A defense counsel's win at all costs attitude must be tempered with integrity, accuracy, thoroughness, and credibility to be effective.

Among the issues often discussed at such meetings include: are the prosecutor's incorrect determination of the toxicity or hazardous nature of waste at issue; the inspectors' factual inaccuracies or misperceptions of the company's operations; the elimination of individual liability of corporate officers or employees; negotiations regarding downgrading felony charges to misdemeanors; a criminal filing to a civil or administrative fine; the future commitments the company will make toward compliance, remediation which needs to occur; and any changes which need to be made in the company's operations.

#### **Arriving at a Settlement: Dollars and Sense**

The settlement of a case is a process which takes time. Accordingly, the development of trust between counsel, despite the adversarial relationship, is important. Often, several meetings spaced out throughout appropriate times during a case is necessary. The dynamics of each meeting will often differ depending on what is developing with the case at any given time, i.e., did the defense just win a motion; or is it a week before an important hearing in which

the court's ruling can significantly alter the case; or did the company just finish remediating the spill at issue, thereby establishing good will with the investigating agencies.

Because the prosecutor typically represents the environmental agencies investigating the case, it is important to try to establish a positive, communicative relationship and damage control with these agencies' representatives as well.

Most cases do settle, but usually only after a rather lengthy pre- and post-filing process of motions, discovery, communications and education. The main component of most settlements routinely involve the following:

1. **Individual vs. Corporate Liability.** As most cases name individuals as well as a corporate entity, sometimes a corporation will decide to take a plea as a trade-off for the dismissal of the case against an individual defendant. However, such horse-swapping does not always apply, especially if the corporation is concerned with the effect a plea will have on its permits or government contracts. Accordingly, a settlement with the federal EPA to avoid government contract suspension or debarment may be advisable.
2. **Felony vs. Misdemeanor.** Many charges are "wobblers," which can be filed as either misdemeanors or felonies. A prosecutor may, therefore, be willing to reduce a

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felony charge to a misdemeanor to facilitate settlement, as the burden of proving a felony, with a higher *mens rea* requirement, is more difficult.

**3. Criminal vs. Civil.** On occasion, a criminal filing can be settled by means of civil resolution. A mechanism often used is a settlement based on a Business and Professions Code §17200 filing, which addresses unfair business advantage, or California Penal Code §§1377-1378, which allows for a civil compromise of a misdemeanor. The trade-off can often be seen in the amount of settlement dollars.

**4. Payoff.** Settlement negotiations often deal with how payments are characterized, e.g., administrative costs or fines, investigative costs, charitable donations with a tax write-off, or creation of an environmental remediation fund.


Review of IRS Code 162, which lays out the requirements for business expense deductions, can be instructive, as can an understanding that the characterization of the fine can be just as important as the amount. Issue can also arise over any pet projects which receive funding, as settlement funds earmarked for agency training and education programs and other local projects are often appealing to local prosecutors.

**5. Other Terms of Endearment.** In addition to the amount of a penalty, to whom it is paid, and the party charged with paying it, other important settlement terms include the following issues: injunctive terms; remediation requirements; the possibility of future expungement; the option to plead no admission of liability, keeping terms of settlement confidential; and an agreement to mediate to resolving future problems involving terms of the settlement.

### The Morning After: Now What?

It is important to monitor compliance with the terms of injunction and other compliance terms to avoid recidivism and enhance the opportunity for expungement. If there are changes in a company's in-house or off-site management personnel, be certain the new team understands and follows through on the firm's settlement commitments.

Although a good settlement often results in neither party being truly satisfied, it is best to establish a win-win attitude and keep positive relations with both regulators and prosecutors.

If settlement terms require compliance over an extended period, schedule periodic meetings both in-house and with the appropriate regulators to keep tabs on the progress of compliance and other requirements. 

<sup>1</sup> See *Los Angeles Chemical Co. v. Superior Court*, 226 Cal.App.3d 703 (1990).

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# Test No. 110

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. Only corporate officers and managers and not employees are subject to complying with environmental laws and reputations.  
☐ True ☐ False
2. In California, only state environmental agencies such as Cal/EPA have jurisdiction over the enforcement of hazardous waste laws.  
☐ True ☐ False
3. Environmental violations can result in administrative, civil and/or criminal penalties and fines.  
☐ True ☐ False
4. In Los Angeles, both the City Attorney and District Attorney Offices have special units dedicated specifically to the enforcement of environmental laws and regulations.  
☐ True ☐ False
5. Virtually every aspect of hazardous waste management is subject to regulation and enforcement except for paper violations such as record-keeping or labeling.  
☐ True ☐ False
6. Businesses handling in excess of 55 gallons of liquid constituting a hazardous material within a reporting year, but under 500 pounds of waste solids, are not required to have a Hazardous Materials Business Plan on file at its business.  
☐ True ☐ False
7. On-site spills of hazardous materials are viewed by environmental agencies or prosecutors solely as a clean-up or remediation matter and not potentially as conduct which can lead to a criminal filing.  
☐ True ☐ False
8. Environmental investigators can test a company's wastewater flow off-site without a company's knowledge and such test results showing either elevated pH levels or high heavy metal content can subject the company to civil or criminal penalties.  
☐ True ☐ False
9. Hazardous waste generators can be held liable for the violations of the transporters they hire to move their waste.  
☐ True ☐ False
10. Asbestos containing materials if removed from the roof or the flooring of commercial buildings do not need to be handled by companies specifically licensed to do such work.  
☐ True ☐ False
11. Environmental investigations can be triggered from a company's history of just minor violations.  
☐ True ☐ False
12. Certain business operations such as metal platers or recycling facilities have been the target of environmental task forces which inspect such businesses.  
☐ True ☐ False
13. In California, an inspector need not obtain a search warrant before entering a business' premises if environmental criminal violations are inspected.  
☐ True ☐ False
14. When an environmental agency representative conducts an inspection the company should allow the inspector unfettered access.  
☐ True ☐ False
15. During an inspection it is good practice for the company to request copies of all photos taken by the inspector and to ask for split samples of any tests taken.  
☐ True ☐ False
16. Asking for and holding a conference with the inspector at the conclusion of the inspection presents the company with a good opportunity to answer questions and clarify any misunderstandings the inspector may have about the company's operations.  
☐ True ☐ False
17. After an environmental inspection a company should refrain from making any corrections or improvements to its operations as this may be construed as an admission of liability.  
☐ True ☐ False
18. At an appropriate time after an investigation or after a notice of violation has been issued, it can be helpful to meet with the inspector and/or the environmental prosecutor who may be considering filing charges to discuss any inaccurate information or misunderstandings they may have about your operations or waste management practices.  
☐ True ☐ False
19. Many environmental violations can be charged as either misdemeanors or felonies ("wobblers") and sometimes prosecutors may be willing to reduce a felony charge to a misdemeanor to facilitate a settlement.  
☐ True ☐ False
20. If a corporation is charged with an environmental crime, it will insulate a company individual from any such charges.  
☐ True ☐ False

## MCLE Answer Sheet No. 110

### 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.

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| 1.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 2.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 3.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 4.  | <input type="checkbox"/> True | <input type="checkbox"/> False |
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# A Law Firm that Does Well By Doing Good

By Michael D. White



*Photos by Ron Murray*





For the past 25 years, the Northridge-based law firm of Kantor & Kantor, the winner of this year's *Valley Lawyer* cover auction benefitting the Valley Community Legal Foundation, has woven the concept of finding justice for those wrongfully denied their disability and employee benefit claims by some of the nation's largest insurance companies into its very reason for being.

**W**ALT WHITMAN WROTE more than 150 years ago, “Judging from the main portions of the history of the world so far, justice has always been in jeopardy.” What was true then is, sadly, true now, particularly when achieving justice—the quality of being right and fair—involves butting heads with some of the biggest and most powerful insurance companies in the country.

Kantor & Kantor is a Northridge law firm whose focus is on obtaining justice for individuals wrongfully denied health, life, disability, and long term care benefits from insurance companies, or self-funded employer benefit plans.

After the tragic death of his wife several years ago, one John Doe sought payment of her \$150,000 life insurance policy, a melancholy, but common occurrence. But despite his timely premiums and his disclosure of all the information solicited by the insurer, the husband’s claim was cut by more than \$20,000.

A doctor, rendered totally and permanently disabled from his former occupation as an anesthesiologist due to severe depression and narcotic addiction, found his insurance claims denied and his policy terminated despite the terms laid out in his policy.

An 88-year-old woman submitted a claim to her insurer because she could no longer attend to her basic daily activities and needed a home health aide to assist her. Her long term care policy

expressly provided for these types of benefits and the woman had complied with all of her obligations laid out in the policy. Despite submitted proof of her need for a care-giver from her doctor, her daughter, and the care-giver herself, her insurance company denied the claim.

Kantor & Kantor represented each of the individuals described above, and in each case, obtained all of the insurance benefits they were entitled to receive.



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We take every one of our cases seriously and we help people who are in a tough spot.”

—Glenn R. Kantor

“When you’re young and wide eyed, you think a lot about the TV version of justice,” says Lisa Kantor, founding partner at Kantor & Kantor.

“It’s the moment on the stand when you get the person to admit that they are guilty, that flashy kind of Perry Mason justice that’s wrapped up in an hour.”

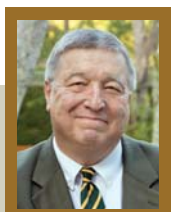
Reality, though, she says, is far different. “We work long, hard hours digging and digging and justice seeps out only after a lot of hard work,” she says. “I always tell our lawyers to be better prepared than the other side every time they walk into court, get on the phone, or have a meeting.”

Being better prepared and willing to work hard has paid off for the firm, which has built a sterling national reputation by winning major suits on behalf of clients whose insurance companies have failed or refused to pay disability, health, life and long-term care claims.

Over the past 25 years, the firm has jostled with and won major settlement claims against some of the country’s most powerful and influential insurance companies, including Prudential, Blue Shield, Mutual of Omaha, Metlife, Unum Provident, Sun Life and Cigna.

“You need to know more, you need to dig deeper,” says the University of Virginia School of Law graduate. “You need to have more information and that’s how justice comes because you have to dig hard for the truth.”

Genuine justice only comes, Kantor says, “when you get beneath the top layer of what’s going on. For our clients, you need to dig all the way down and that’s why clients in need don’t get justice unless they come to a firm like ours because we’re not just going to look at a denial letter and say, ‘Oh, well, they say you can do a sedentary job and that’s too



**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](mailto:michael@sfvba.org).



bad.’ The insurance company reached that conclusion, but we dig behind it. We look at it in detail, take it apart and analyze it and that’s hard work.”

The firm’s reputation is built, in no small part, on her groundbreaking work representing clients in the areas of mental health and eating disorders.

In 2007, Kantor won her first victory in an eating disorder case when she prevailed at the 9th Circuit on behalf of a young woman denied treatment by Kaiser for life threatening bulimia. Kaiser offered once a week group therapy, which was wholly inadequate care for the severity of the illness. At the time of her victory, there were no lawyers focusing their practice in this area of the law. Kantor was quickly inundated with numerous requests for representation. Over the past ten years, she has successfully



“

We tell our associates that they should be proud to be a lawyer and proud of what we do here.”

—Lisa L. Kantor

represented hundreds of individuals with eating disorders who have been denied life-saving treatment.


In 2011, in *Harlick vs. Blue Shield of California*, she won the first federal appellate court ruling that mandated health plans in California must pay for all medically necessary treatment for severe mental illnesses, including residential treatment.

Later, *Burton v. Blue Shield of California* was the first decision interpreting *Harlick*, with the U.S. 9th Circuit Court ruling that California’s Mental Health Parity Act mandated that Blue Shield cover “medically necessary treatment of severe mental illnesses” under “the same terms and conditions applied to other medical conditions.”

Other landmark cases taken on by Kantor include *Rea v. Blue Shield*, a class action that found the insurer must pay for medically necessary treatment, even though their plans specifically excluded it; *Shepard v. United HealthCare*, in which Kantor successfully petitioned the California Department of Managed Health Care on behalf of a client with anorexia being discharged from a residential care facility, forcing her insurer to agree to pay for her treatment; and *Jacobs v. Kaiser Foundation Health Plan*, which resulted in benefits for a client suffering from bulimia when her medical plan declined to refer her to an out-of-plan treatment facility and refused to pay for the cost of treatment.

Another case—*Thompkins v. BC Life & Health Insurance Co.*—was the first published appellate decision in California for an eating disorder case where her client was denied benefits for in-patient treatment of bulimia.

Very often, says founding partner Glenn Kantor, “People will ask, ‘How can they deny me?



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ERISA—the Employee Retirement Income Security Act of 1974—is a federal statute that sets minimum standards for most voluntarily established pension, life and disability, apprenticeship and health plans in private industry to provide protection for individuals in these plans. In effect, says Kantor, the most the court can force the insurance company to pay is the claim it should have paid in the first place.

“Why doesn’t that law get changed? Watch the news and you’ll see that very little can get fixed because we’re so polarized,” says Kantor. “We can’t accomplish much on a nationwide basis these days, so we take cases one at a time.”

Kantor’s clients “are inevitably all in pain,” he says, both physical and financial. His clients all invariably view the entire insurance industry as some giant, evil, single-minded monolith. Drawing on the firm’s national reputation among the insurance industry as a fierce, hard-charging advocate for the rights of the insured, Kantor quips that, “We love to be hated,” should be the firm’s tagline.

But, he quickly adds, “I want to be fair, though. I’m not going to say that the entire insurance industry is a rotten thing. I tell every one of our clients that they’re here because their insurer denied their claim. There are hundreds of billions of dollars paid out in claims to people every year and they don’t come knocking on our door saying, ‘Will you sue them. They paid my claim.’ We see and deal with the dark side. The key is to know what you can accomplish and what you can’t, and to take on the cases where we believe an unjust denial of benefits has occurred. We are much more concerned that the facts support our client than the amount of money



Photo from [www.kantorlaw.net](http://www.kantorlaw.net)





“

My parents are dedicated and I knew from a young age that I wanted to do what they do...”

—Andrew M. Kantor

at issue. A denial of a \$200 a month benefit to someone living on disability benefits can mean the difference between their children eating two meals a day or three.”

The 12-attorney firm is held, says Lisa Kantor, “to a very high ethical and professional standard and we get along with most counsel on the other side,” to the point that, “We are often referred cases from defense counsel, judges, and mediators. Those are the referrals of which we are the proudest. When the professionals we work with recognize our skill and determination, it tells us we are doing a good job.”

Lawyers “sometimes have a bad reputation, but here, we tell our associates that they should be proud to be a lawyer and proud of what we do here,” she says. “We help people and we want our attorneys to feel good about what they’re doing and we also want them to be active in the community and give back because you’re privileged to have gone to law school and you’re privileged to be here.”


Where would the Kantors like to see their firm in ten years?

“We’d like to see the firm continuing the legacy of seeking justice for those who’ve been denied it,” says Glenn Kantor. “I see the young lawyers here now taking over, so we’re training some excellent lawyers to walk in our footsteps,” adding that a high value on client service mandates that two attorneys be assigned to every case in order to facilitate communication with the client. “Our clients’ interests come first and we want there to be someone available for them any time they need to communicate with us.”

One of the young attorneys continuing that legacy is Lisa’s and Glenn’s son Andrew, a 2014 graduate of the University of California Irvine School of Law.

Now an Associate, the young Kantor—who also holds a graduate degree in Business Administration—worked at the firm as a client advocate before enrolling in law school. While attending UCI, he worked as a legal extern for Consumer Watchdog, a public consumer organization specializing in consumer-side insurance issues in the class-action context.

He also used the ERISA and disability claim experience gained at both Kantor & Kantor and Consumer Watchdog to write a highly-regarded seminar paper analyzing the incorporation of the Racketeer Influenced and Corrupt Organizations Act (RICO) into wrongfully denied insurance claims.

“We take every one of our cases seriously and we help people who are in a tough spot. We do what is best for them,” says Glenn Kantor. “When we get to tell a client, ‘You won...you’re getting your benefits...you get to have the surgery you need,’ the tears of joy are a wonderful thing to experience. It’s a reminder that we can do well by doing good.” 

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# Stress Free Holidays: A Primer for Attorneys and Their Clients

By Vanessa Soto Nellis and Terri L. Asanovich

**O**FTEN TIMES HOLIDAYS are stressful because idealized expectations conflict with the reality of family and its cast of characters. We would all love to sit as a family and share a meal with great conversation, but that may be unrealistic. Life is interesting because it is not perfect.

It is helpful to see people as they are during the holidays and manage expectations, accept what you cannot change, and, if you have never gotten along with Uncle Bill, face the fact that you probably won't enjoy his company this year. If your family is divided over politics, then it may be a good idea to agree in advance that political discussions are off limits.

## How Will Holiday Time Be Spent?

For many families—whether divorced

or not—how holiday time should be shared with family and friends is often a topic of disagreement.

For families who want to work together, there are several options for resolving how, and with whom, holiday time should be spent. Try a new schedule, particularly if children are involved. Moving them between various family members can be difficult for all involved so it might be best to come up with other ways to spend quality time with loved ones, perhaps invite them to come to you; share another holiday with them; visit when the children have a day off from school and traffic is not so bad and Facetime on the holiday; or work to resolve differences when parents are no longer together or if a child is unwilling to spend significant time with one parent.

In addition, Family Court Services can provide mediation for child custody disputes at the courthouse, or consider the collaborative divorce process, where couples considering divorce can negotiate an agreement with professional help, including collaborative lawyers, mental health professionals and/or child custody specialists.

A willingness to try new things and compromise is key to coming up with a solution. In any event, schedule appointments early, since therapists often take time off during the holidays and it is important to schedule sessions well in advance to allow ample time to address issues.

## What Can Be Done to Prepare for the Holidays?

Be honest about who you want to



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spend time with during the holidays and why, especially if being with family causes anxiety and stress.

Another option may be to get out of town on vacation or volunteer to help a good cause to avoid dealing with extended family tensions altogether. Inform family members in advance of your plans so that they know what to expect and can plan accordingly.

From a family law perspective, if parents have been involved in a rancorous, less than amicable divorce, it can only be hoped that that those involved would put their differences aside for the holidays and suddenly make rational, child-centered decisions. However, that being unlikely, the parties should expect continued tension during the holidays.

One way to manage expectations and establish boundaries is to file a request for the court to decide the children's holiday schedule well in advance of the holidays. The parties will be required to attend mediation before the court hearing to attempt to agree upon at least some holidays in advance. If there is not a custody order, the requesting party will need to show what holiday schedule is in the child's best interest as laid out in *Burchard v. Garay*.<sup>1</sup>

If there is a final custody order in place, the requesting party will need to show that there has been a substantial change of circumstances warranting a modification, and why that modification is in the child's best interests.<sup>2</sup>

It is important to keep in mind that holidays are known well in advance so parents should not delay asking the court to intervene, as it is routinely difficult to schedule a court date during holiday seasons such as Thanksgiving and Christmas. The parties involved can also retain a mutually agreed-to parenting plan coordinator with the authority to resolve specific custody disputes when the parties cannot agree. This is often more cost effective and often results in a faster decision.

## Los Angeles Crisis Hotlines

L.A. County Mental Health/Crisis Line .....	800-854-7771
Suicide Prevention Center (24 Hours) .....	213-381-5111
Suicide Prevention Crisis Center (24 Hours) .....	310-391-1253
Assaults Against Women Hotline (24 Hours) .....	310-392-8381
Women and Children Crisis Shelter (24 Hours) .....	562-945-3939
Child Abuse Hotline .....	800-540-4000
Rape Treatment Center (24 Hours) .....	310-319-4000
Alcoholics Anonymous (24 Hours) .....	213-936-4343
Cocaine Anonymous (24 Hours) .....	310-216-4444
Narcotics Anonymous (24 Hours) .....	909-622-4274
California Youth Crisis Line .....	800-843-5200
Haven Hills Hotline, Domestic Violence .....	818-887-6589
Elder Abuse Hotline .....	877-477-3646 or
.....	800-252-8966
Covenant House (for homeless and trafficked youth) .....	323-461-3131

A list of therapists experienced in family disputes can be found at <http://www.lacourt.org/flresource/ui/fl0107.aspx>.

## National Crisis Hotlines

Brief intervention .....	800-821-4357
Child Abuse National Hotline .....	800-252-2873
Child Abuse .....	800-422-4453
Cocaine National Hotline .....	800-262-2463
Children in Immediate Risk or Danger .....	800-843-5678
CyberTipline for Reporting the Exploitation of Children .....	800-843-5678
Domestic Violence Resource Hotline (referrals for shelters and counseling in your area) .....	800-799-7233 or
.....	800-787-3224 (TDD)
Friends of Battered Women and Their Children .....	800-603-4357
Kid Help (Children and adolescents in crisis will receive immediate help. Referrals to shelters, mental health services, sexual abuse treatment, substance abuse, family counseling, residential care, adoption/foster care, etc.) .....	800-543-7283
NAMI Helpline National Alliance for the Mentally Ill .....	800-950-6264
National Youth Crisis Hotline .....	800-448-4663
National Child Abuse Hotline .....	800-252-2873
National Mental Health Assn. (Provides free information on specific disorders, referral directory to mental health providers, national directory of local mental health associations.) .....	800-969-6642
National Institute of Mental Health Information Line (Provides information and literature on mental illness by disorder—for professionals and general public.) .....	800-647-2642
Runaway Switchboard (Provides crisis intervention and travel assistance to runaways. Gives referrals to shelters nationwide. Also relays messages to, or sets up conference calls with, parents at the request of the child. Has access to	
AT&T-Language Line.) .....	800-621-4000
SAFE (Self-Abuse Finally Ends) .....	800-366-8288
Youth Crisis Hotline: Crisis Hotline for Runaways or Youth in Crisis .....	800-448-4663

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Even if parents plan ahead, and obtain a custody order or agree upon a schedule, one or the other parent could disregard it, leading to holiday conflict. If this happens, communicate in a concise and amicable manner. For example, if mom returns the child four hours late, then an equitable solution is that dad should keep the child for an additional four hours. Or perhaps the receiving parent has the next holiday or makeup time. Frustrating visitation can be a basis to modify custody<sup>3</sup> and a parent can be found in contempt of court for failing to follow court orders.

### **Making It Personal**

What are some suggestions for coping with holiday stress?<sup>4</sup>

Understand that it's critical to keep expectations balanced and realistic. One cannot get everything one wants and some things will go wrong. Remember, everything does not have to be perfect and try not to worry about things that are out of your control.

It's also important to remember that families change and grow. This is especially true for families experiencing divorce, as holidays will be observed in a different way than in the past when the family was intact. Encouraging clients to pick some traditions and rituals and create some new ones can help re-inject specialness back to the holiday seasons.

Trying to do too much during the holidays can add fatigue on top of an already stressful situation. Utilize time management to pick and choose what things genuinely require attention. This will help generate the energy to experience enjoyable activities with family and friends.


Create a reasonable budget and stick to it. During the holidays, people

tend to overspend in an effort to buy happiness. We often see this with families in the process of a divorce. Reinforce to a client that material things do not buy happiness.

Don't isolate yourself. Get out of the house or office and take some time to honor lost or distant loved ones. It's normal to feel sadness and grief if you are separated from or have lost loved ones. If it is not practical to be with the ones you love, make plans to celebrate again when time permits.

Continue healthy routines such as daily exercise and walking. "The rhythm and repetition of walking has a tranquilizing effect on your brain, and it decreases anxiety and improves sleep," says nutrition-and-wellness expert Ann Kulze, M.D. Aim for a brisk, half hour walk every day.<sup>5</sup>

You can actually improve your mood by taking something outside to read in the sunlight. There is actually a type of depression called SAD (seasonal affective disorder) that some people experience due to shorter days or bad weather during the fall and winter months.

Take some personal time every day for yourself and be aware of post-holiday syndrome, which can occur when holiday activity suddenly ends, causing an emotional letdown. To help alleviate post-holiday syndrome, plan a rest day towards the end of the season to regroup and emotionally and mentally prepare for the New Year ahead. 

“  
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<sup>1</sup> *Burchard v. Garay*, 42 Cal.3d 531, 534 (1986).

<sup>2</sup> *In re Marriage of Burgess*, 13 Cal.4th 25, 37-38 (1996).

<sup>3</sup> Family Code §3040(a)(1); *Catherine D. v. Dennis B.*, 220 Cal.App.3d 922, 927 (1990); see also *In re Marriage of Wood*, 141 Cal.App.3d 671 (1983).

<sup>4</sup> Barton Goldsmith, Ph.D., "Ten Tools for Dealing with Holiday Stress and Depression. May the Holiday Season Touch your Heart," PSYCHOLOGY TODAY (December 21, 2011) <https://www.psychologytoday.com/blog/emotional-fitness/201112/10-tools-dealing-holiday-stress-and-depression>.

<sup>5</sup> Laurie Powlik-Kienlen, "25 Ways to Fight Holiday Stress," HEALTH (November 1, 2016), <http://www.health.com/health/gallery/0,,20306655,00.html#holiday-stress-busting-tips>



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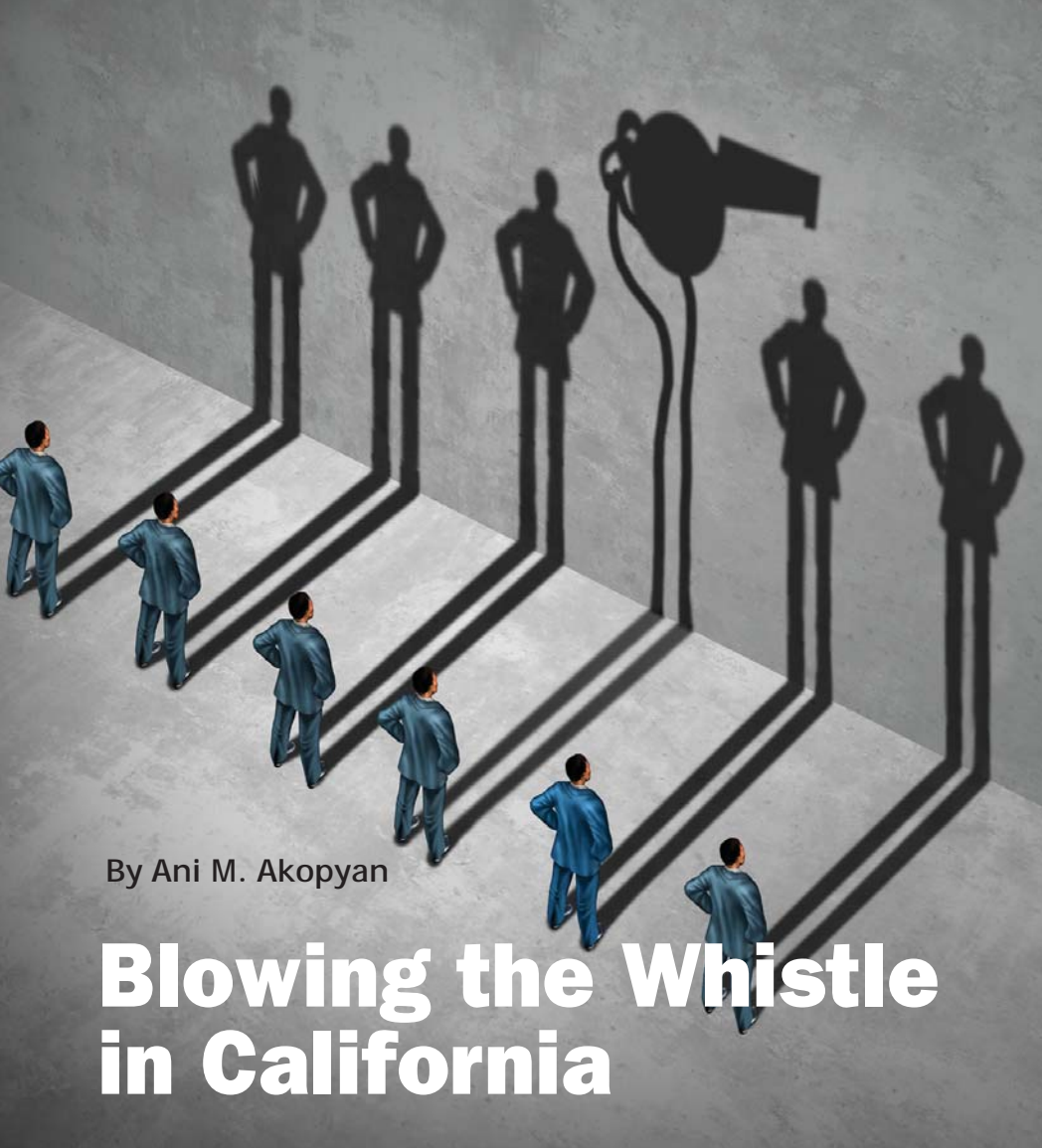
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By Ani M. Akopyan

# Blowing the Whistle in California

**I**N THIS DAY AND AGE OF California employment law, many employers and employees know what is and is not acceptable when dealing with certain forbidden conduct, such as the prohibition against sexual harassment or race discrimination.

When it comes to whistleblowing, however, many simply do not know their rights or legal obligations. Of course, getting it wrong can lead to unnecessary stress, and even worse, result in costly litigation. With so much at stake, it is important to take a closer look at this oft-litigated area of law.

In California, one of the most noteworthy whistleblowing statutes is Labor Code §1102.5. Enacted in 1984, the statute reflects a “broad public policy interest in encouraging workplace whistleblowers to report unlawful acts without fearing retaliation.”<sup>1</sup>

Labor Code §1102.5 prohibits an employer or someone acting on the employer’s behalf from retaliating against an employee for having blown the whistle, i.e., having engaged in a “protected activity.” This is a noteworthy distinction because, unlike other forms of retaliation, Labor Code

§1102.5 permits employees to sue individual supervisors for violation of the statute.

## Protected Activities

Contrary to the fear of most employers, not all activities by employees are protected activity and create whistleblower liability. To be protected under the California law, an employee must engage in one of the following acts during the course of their employment:

- Refuse to participate in an activity that would result in a violation of state or federal laws
- Provide information to or testify before a public body conducting an investigation, hearing or inquiry regarding the employee’s reasonably based suspicions that a local, state, or federal rule has been violated
- Disclose information to a government, law enforcement agency, or person with authority over the employee who has the authority to investigate or discover or correct a violation, of the employee’s reasonably based suspicion of illegal activity or noncompliance of a local, state, or federal rule or regulation. It’s important to note that the employee does not actually have to make the disclosure to be protected. It is enough for the employer to believe that the employee has



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or may disclose such information sometime in the future.

It does not matter why the employee blew the whistle; as long as they did. The employee's motivation has no impact on the employer's legal obligations. All that an employee needs to show is that they had a reasonable suspicion that a violation of a constitutional, statutory, or regulatory provision has occurred, or that they refused to participate in an activity that could result in such a violation.<sup>2</sup>

Recently, §1102.5 was amended to include whistleblower protections for employees who have not themselves engaged in the above-listed protected activities, but their family members who have, or are thought to have, engaged in such protected activities.

It is important to note that the protections end once employment ends. In particular, an employee cannot file a whistleblower claim for post-termination conduct, such as retaliatory defamation.<sup>3</sup>

### Prohibited Retaliation

An employee must also show that their employer imposed an "adverse employment action" because of the protected activity in order to have an actionable whistleblower claim.

According to *Patten v. Grant Joint Union High School Dist.*, an "adverse employment action must materially affect the terms and conditions of the employment."<sup>4</sup> Generally, a demotion, reduction in pay, loss of benefits, cutting-of-hours, and termination are viewed to be sufficient adverse employment actions. However, not all employment actions are actionable, no matter how distasteful they may be for an employee. For example, a transfer or negative job evaluation is often treated as a personnel decision and not as whistleblower retaliation.<sup>5</sup> It is not enough that the

action displeases, offend, or anger the employee.

### Employer's Defenses to Whistleblower Claims

When faced with a §1102.5 claim, an employer is required to present a legitimate, non-retaliatory reason for the adverse employment action.<sup>6</sup>

Once that is done, it becomes the employee's burden to prove that the reason offered by the employer is false, i.e., a "pretext," and that the adverse employment action was "caused" by the employee's protected activity.<sup>7</sup> As most employment attorneys know, this is often the most litigated issue when dealing with such claims.

As is often the case, employees do not have direct evidence that retaliatory action was caused by their whistleblowing. Therefore, in order for employees to prove their claims, they are often forced to rely on circumstantial evidence. This may include the proximity in time between the protected activity and the alleged retaliatory employment decision. For example, an employee may claim that after he refused to engage in violations of the law at his employer's request, he was demoted from his position.

In order to rely upon temporal proximity alone to demonstrate causation, an employee must show a "very close" proximity in time between an employer's knowledge of protected activity and an adverse employment action.<sup>8</sup> Some courts have held that one month is adequate, while others have held that a three month window is not sufficient.<sup>9</sup> This is usually the case when there is evidence of other reasons for the conduct that's been deemed retaliatory.

Regardless, in order to establish a causal nexus between the protected activity and the adverse employment action, it is essential that



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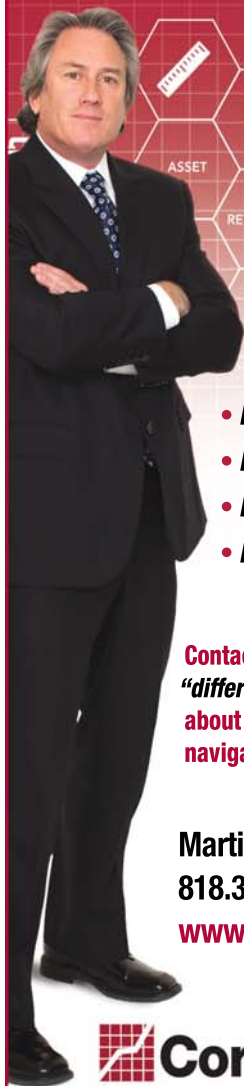
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the employee demonstrate that the employer was aware that the employee (or family member) had engaged in, or were going to engage in, a protected activity.<sup>10</sup> Therefore, an employer may try to defeat a whistleblower claim by claiming a lack of knowledge or suspicion that the employee had ever engaged in a protected activity.

Another method employers often defend against whistleblower claims is by demonstrating that the termination, demotion, or other adverse employment decision had nothing to do with the employee's protected activity and was caused only by other work-related, performance-based issues. For example, an employer may defeat a claim by demonstrating that a demotion or termination was due to well-documented performance deficiencies or policy violations.<sup>11</sup>

In the past, employers have also defended against whistleblower claims by arguing that the employee had not engaged in a protected activity because the reporting or refusal to participate in the alleged unlawful conduct was simply a part of the employee's job. For example, an employer would argue that a human resources representative's complaint concerning payroll violations was simply part of "doing her job" as a human resources representative.

However, as of the January 1, 2014 amendment to the Labor Code, employers can no longer argue such a defense because even if such protected activity could be deemed to be "part of the job," it is still protected and can form the basis of a legitimate whistleblower claim.<sup>12</sup>


## Future of Whistleblowing

As discussed above, there have been recent amendments to Labor Code §1102.5 that have broaden its scope. Additionally, over the past few years, many suits have been filed that have clarified statutory confusion and basically done away with a body of law that had previously required employees to first submit a claim with California's Labor Commissioner before filing a whistleblower lawsuit, i.e., an administrative exhaustion requirement.

“

...an employee must show a "very close" proximity in time between an employer's knowledge of protected activity and an adverse employment action.”

With violations of §1102.5 including civil penalties of up to \$10,000 per violation, in addition to all other penalties and damages that an employee may be entitled to, liability for §1102.5 can have serious

consequences for employers and make for attractive claims by employees. 

<sup>1</sup> *Green v. Ralee Eng. Co.*, 19 C4th 66, 77, 78 CR2d 16, 22 (1998).

<sup>2</sup> *Mize-Kurzman v. Marin Community College Dist.*, 202 CA4th 832, 850-852, 136 CR3d at 274-276 (2012).

<sup>3</sup> *Hansen v. California Dept. of Corrections & Rehabilitation*, 171 CA4th 1537, 1546, 90 CR3d 381, 387 (2008).

<sup>4</sup> *Patten v. Grant Joint Union High School Dist.*, 134 CA4th 1378, 1387, 37 CR3d 113, 119 (2005).

<sup>5</sup> *Mueller v. County of Los Angeles*, 176 CA4th 809, 822, 98 CR3d 281, 292 (2009).

<sup>6</sup> *McDonnell Douglas Corp. v. Green*, 411 US 792, 802-803, 93 S.Ct. 1817, 1824-1825 (1973).

<sup>7</sup> *Bowen v. M. Caratan, Inc.*, 142 F.Supp.3d 1007, 1031 (ED CA 2015).

<sup>8</sup> *Clark County School Dist. v. Breeden*, 532 US 268, 273, 121 S.Ct. 1508, 1511 (2001).

<sup>9</sup> The temporal proximity issue has been litigated more thoroughly in Fair Employment and Housing claims. *Richmond v. ONEOK, Inc.*, 120 F3d 205, 209 (10th Cir. 1997)—3-month period not sufficiently close; compare *Calero-Cerezo v. United States Dept. of Justice* (1st Cir. 2004) 355 F3d 6, 25—1 month sufficiently close to create inference of causal connection.

<sup>10</sup> *Morgan v. Regents of Univ. of Calif.*, 88 CA4th 52, 69-70, 105 CR2d 652, 666 (2000).

<sup>11</sup> *Unt v. Aerospace Corp.*, 765 F2d 1440, 1447 (9th Cir. 1985); *Flait v. North American Watch Corp.*, 3 CA4th 467, 479, 4 CR2d 522, 530 (1992).

<sup>12</sup> *McVeigh v. Recology San Francisco*, 213 CA4th 443, 469, 152 CR3d 595, 617-619 (2013).



## A Rush to Judgment Averted

**A** YEAR AGO, MELISSA'S LIFE COULD'VE been severely impacted had she not called the SFVBA's Attorney Referral Service for a referral to a reputable, experienced attorney. While grocery shopping, Melissa suddenly received several phone calls from her children and husband.


Melissa's husband—stricken with a severe medical condition that requires intensive care—had fallen from his bed, but her children couldn't enter the apartment to help him. She had felt confident about a brief trip to the market, relying on her children to get into the apartment should anything happen. What she didn't anticipate was a broken lock that prevented them from being able to help their father.

There was too much noise in the market and her family were extremely distressed, making it difficult to hear. Melissa stepped outside, remaining near the store's entrance. As soon as she stepped outside, though, a security guard swooped in, claiming she had committed petty theft.

"It was a rush to judgment," says ARS attorney Mark P. Brandt. "They convicted her before finding out what happened and they didn't get her side of the story."

The next day, Melissa called the ARS and was referred to Brandt, who presented her side of the story before the prosecutor filed a charge. Phone and medical records, documentation showing the lock had subsequently been replaced, statements from her children, husband and husband's doctor, and the necessary photographic evidence were gathered. Because of Brandt's swift action on her behalf, the case against Melissa was dismissed and her record remained clean.

Had Melissa waited even a few more days to call the ARS, prosecutors might well have filed a petty theft charge that would have been more difficult to defend and she would have had to rely on a court-appointed public defender.

"I help a lot of people and I like to help them," says Brandt. "That means giving it [the case] a lot of my time...when someone hires me, they are not hiring someone else to do the job. They are hiring me." 

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## Scholarship Recipient Jennifer Ramos

**D**ECEMBER IS TRADITIONALLY celebrated in our community as the season of giving and I can't think of a better way to wrap up our calendar year than by expressing the thanks of the Valley Community Legal Foundation for your generosity and by sharing the story of our third and final 2017 scholarship recipient.

For most children in affluent neighborhoods, choosing a high school is a relatively routine and banal process. However, for Jennifer Ramos and others who grow up in economically-challenged conditions, the process of choosing a decent school can be daunting.

Jennifer was fortunate to be exposed to civics courses in middle school, an experience that spurred her interest in studying law and government. So much so, that when she graduated middle school, she was determined to brave the often-grueling ninety minute commute to and from James Monroe High School. "The decision to commit to the Law and Government Magnet felt like the hardest decision I had to make at the time because of the hassle of getting

to and from school and my intense car sickness," she says.

Aside from the neighborhood issues of drugs, gangs and crime, as first generation immigrants, the Ramos family faced severe economic adversity all of Jennifer's high school years. To



participate in almost any activity meant fees and costs that she simply did not have. For example, she recalls, "any event that I participated in for speech and debate cost ten dollars each, and when you are in three events, the cost adds up because there are several tournaments every year."

**LAURENCE N. KALDOR**  
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phenix7@msn.com

As much as she loved participating in as many events as she could, her limited finances always posed an insurmountable hurdle. Although she remembers quite often feeling dejected, she promised herself that her financial hardship would never prevent her from achieving her full potential.

Throughout her high school years, Jennifer took advantage of numerous available free educational opportunities, as well as whatever extracurricular activities she could manage to afford, including serving as co-president of the speech and debate team and participating in moot court, where she received accolades for oral arguments presented in front of a panel of active attorneys, and in mock trials, where she acted as an attorney for both the prosecution and the defense.

Additionally, as a future community leader, she also served as a member of the Los Angeles Unified School District's Superintendent Council and as an intern for California State Assemblymember Adrin Nazarian. "Throughout my involvement in these activities, I have



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learned how the government works, how to write legal briefs, and argue my case. I've also written speeches that involve advocacy for legislative action," says Jennifer. "This year my speech was about voter suppression, where I actually proposed a legislative solution to Congress."

Setting her sights even higher, Jennifer is actively preparing for future challenges. "I have been given an opportunity that my parents didn't have while they were growing up," she says. "I am already settled in and doing extremely well at UCLA. I will continue to pursue my passions in the legal profession, which will allow me to be a civic leader, giving back to my Valley community, and making a positive difference in the world around me."

### ABOUT THE VCLF OF THE SFVBA

The Valley Community Legal Foundation is the charitable arm of the San Fernando Valley Bar Association, with a mission to support the legal needs of the San Fernando Valley's youth, victims of domestic violence, and veterans. The VCLF also provides educational grants to qualified students who wish to pursue legal careers. The Foundation relies on donations to fund its work. To donate to the VCLF and support its efforts on behalf of the Valley community, visit [www.thevclf.org](http://www.thevclf.org) and help us make a difference in our community.

Awarding the three scholarships this year, says VCLF President Laurence Kaldor, "has truly been the highlight of my tenure at the Foundation. Six years ago when I became a member of the Foundation, I was saddened to learn that the once thriving VCLF scholarship program was becoming dormant.

"When I took office in 2015, I insisted that the program be reinstituted to its fullest potential, albeit with the minimal funding and resources at the time," he says. "With your support we were able to double our scholarship giving in 2017 and I am proud to announce that we are on track to double our scholarship giving again in 2018."

From all of us at the Valley Community Legal Foundation we wish YOU a happy and healthy holiday season and a most joyous and prosperous New Year! 🏠

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