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JANUARY 2018 • \$4

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Celebrating a New Year

IT SEEMS MOST APPROPRIATE to begin with a hardy "Happy New Year!" But while contemplating my message this month, I got to thinking, "Why do we even celebrate every new year?" and "Why January 1?"

Princeton Professor Denis Feeney suggests that keeping track of time is part of what makes us human. Time-tracking has played a big part in human survival in terms of success in hunting, agriculture, and travel. That makes sense. But still, why celebrate each January 1? Why not March 1, or October 1, for example. Turns out for hundreds of years, the Romans, whose calendar we adopted, did in fact celebrate the new year in March.

This also seems to make some sense given the onset of spring at that time. Spring brings new life and more sunshine. A perfect time to think about, and celebrate, renewal. In 46 B.C., Julius Caesar decided to change the lunar-based calendar to one based on Earth's rotation around the sun, probably because a solar-based calendar system made time keeping and month logging more consistent. Caesar also decided to move the new year celebration to January.

Some suggest that move had to do with the tenure of newly elected Roman officials which began in January. Others speculate it had to do with beginning the countdown to spring, with lengthening days following the winter solstice in late December, marking the shortest day of the year. We also know that in early January the

earth is closest to the sun, so perhaps this could have influenced the change. All well and good, but still, why celebrate the dawning of a new year at all? Particularly if, as Bono famously sang, "nothing changes on New Year's Day."

Psychologists suggest that the celebration is connected to our motivation to survive and even our success in doing so. Celebrating a new year provides a mechanism and justification for putting failure and disappointment behind us. It creates a sense of starting anew, with the wisdom that comes from another year of experience and with renewed optimism for success in the future.

Celebrating a new year brings people together to celebrate a new beginning without political or religious overtones, united in the common ideal

that we can all do better in the future. In this sense, and in celebration, we tend to be more magnanimous and tolerant, and we treat one another with love and respect. It just so happens that treating people well is also very good for our survival, since ultimately, in so many ways, we depend on our fellow humans for our own continued well-being.

And that all brings me to my point. In this time of political divisiveness, cultural conflict, and climate-caused chaos, it behooves each of us to make a special effort in the coming year to be just a little more magnanimous, a little more tolerant, and even a little more optimistic.

So, let's let the celebratory spirit continue throughout the year. We will all be healthier, happier, and more successful if we do! 🍷

ALAN E. KASSAN

SFVBA President



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Solving Diversity and the Rubik's Cube

MICHAEL D. WHITE

SFVBA Editor



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WHEN I THINK OF DIVERSITY, I IMMEDIATELY think of Rubik's Cube. Invented in 1974 by Hungarian inventor and architect Erno Rubik, the Cube was originally conceived as a working model to help explain three-dimensional geometry.

There are 43,252,003,274,489,856,000—that's 43 quintillion—ways to scramble a Rubik's Cube. In fact, if you were to turn a Rubik's Cube once every second, it would take you 1.4 trillion years to go through all the permutations. Curiously, it took Rubik one month before he was able to solve the Cube for himself. Today, every legal permutation of the Cube can be solved in 20 moves or fewer with the best speed cubers routinely solving the cube in under 6 seconds.

Exact figures as to how many Rubik's Cubes have been smashed against walls in frustration, utilized as doggie chew toys, or left to sit, forever ignored and unsolved, on office desktops around the world are, unfortunately, unavailable.

Anyway, my point? Diversity has an almost incalculable range of permutations, but, with some hard work and dedication, an increasingly advantageous degree of success can be achieved—that is, until some other permutation comes along. The possibilities are endless, because diversity isn't an end result based on quotas or percentages; it's an ongoing, never-ending, often frustrating and even painful process.



SFVBA Inclusion & Diversity Committee Co-Chair Joanna Sanchez told me that, regarding the legal profession, "As time passes and as we grow as a legal community, the definition of diversity is going to change. Before it mainly meant inclusion of women and those of different ethnic backgrounds. Now we're seeing it expanded to include the transgender community and people with disabilities."

What we all think of as diverse, "is always changing. I don't know that we can ever truly accomplish total diversity because it's going to constantly change over time and expand. Once you think you've reached 'diversity,' you probably haven't because there is going to be something new to learn about and include."

"Being diverse means we can't be exclusive in any way. We have to make sure that everyone is given the opportunity," SFVBA President Elect Yi Sun Kim told me when I interviewed her for this month's *Valley Lawyer* cover article.

"People's practices grow by learning from the experiences of others. We want people to feel comfortable about sharing their stories and I think when you have a diverse representation, everyone feels that they are more a part of the group."

Here's my wish for a Happy New Year for the Bar and its members; a year of genuine diversity—and inclusion—with all its possible permutations. 🏠

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SUN	MON	TUE	WED	THU	FRI	SAT
	1 SFVBA OFFICES CLOSED	2 Valley Lawyer Member Bulletin Deadline to submit announcements to editor@sfvba.org for February issue.	3	4 Membership & Marketing Committee 6:00 PM SFVBA OFFICES	5	6
7	8  5:30 PM CHABLIS RESTAURANT TARZANA VBN is dedicated to offering organized, high quality networking for SFVBA members.	9 Probate & Estate Planning Section New Legislation and Cases of Interest 12:00 NOON MONTEREY AT ENCINO RESTAURANT David Coleman updates the Section on new California legislation affecting probate, trusts and estates. (1 MCLE Hour). Board of Trustees 6:00 PM SFVBA OFFICES	10	11	12-13  01.12.18 01.13.18 Braemar Country Club 4001 Reseda Blvd Tarzana See page 21	
14	15  SFVBA OFFICES CLOSED	16 Taxation Law Section Property Tax Update 12:00 NOON SFVBA OFFICES 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. County of Los Angeles. (1 MCLE Hour)	17	18	19 Bankruptcy Law Section 10 Most Interesting Opinions of the Central District Court 12:00 NOON SFVBA OFFICES 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 Family Law Section New Laws 5:30 PM MONTEREY AT ENCINO RESTAURANT Approved for Family Law Legal Specialization. (1.5 MCLE Hours) See page 36	22	23 Editorial Committee 12:00 NOON TONY ROMA'S ARS Committee 6:00 PM SFVBA OFFICES	24	25	26	27
28	29	30	31			

SUN	MON	TUE	WED	THU	FRI	SAT
BLACK HISTORY MONTH						
				Membership & Marketing Committee 6:00 PM SFVBA OFFICES	2	3
4  5 5:30 PM CHABLIS RESTAURANT TARZANA VBN is dedicated to offering organized, high quality networking for SFVBA members.		6	7	New Lawyers Section 8 New Cannabis Laws 6:00 PM SFVBA OFFICES Free Dinner Meeting for all SFVBA New Lawyers. Doug Ridley will update the group on the recent cannabis laws. (1 MCLE Hour)	9	10
11	12	13 Probate & Estate Planning Section Foreign Beneficiaries and Foreign Assets 12:00 NOON MONTEREY AT ENCINO RESTAURANT Attorney Maria Soledad-Otero will discuss decedent's estates and trusts with foreign beneficiaries and foreign assets. (1 MCLE Hour) Board of Trustees 6:00 PM SFVBA OFFICES	14 	15	16	17
18  SFVBA OFFICES CLOSED	19	20 Taxation Law Section Tax Ramifications of an Irrevocable Life Insurance Trust 12:00 NOON SFVBA OFFICES Estate planning attorney Kira Masteller will discuss the income, estate and gift tax ramifications of an irrevocable life insurance trust from A-Z. (1 MCLE Hour) ARS Committee 6:00 PM SFVBA OFFICES	21 Workers' Compensation Section 12:00 NOON MONTEREY AT ENCINO RESTAURANT	 ANNUAL JUDGES' NIGHT DINNER THURSDAY FEBRUARY 22 WARNER CENTER MARRIOTT See page 15		
25	26	27 Editorial Committee 12:00 NOON TONY ROMA'S	28			



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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 20.

Access in Cyberspace: Reconciling Disability Rights, Regulation and Web Accessibility

By D. Shawn Burkley





The digital age is creating a new arena in which many relevant accessibility questions are being posed that have a direct impact on how businesses accommodate the broadest possible spectrum of customers and just how far the Americans with Disabilities Act and Section 508 of the Rehabilitation Act of 1973 extend.

RAMPED ENTRANCES TO BUILDINGS, CLOSED captioning for television, braille incorporated into public signage—many of the accommodations provided for the physically disabled have become so ubiquitous that it is hard to imagine a time when such things were not commonplace.

But the digital age is creating a new arena in which accessibility questions are being posed, questions that are especially relevant to businesses as the Department of Justice seems stalled in its efforts to promulgate new rules related to compliance with the Americans with Disabilities Act (ADA) and Section 508 of the Rehabilitation Act of 1973.^{1 2} As a result, courts and businesses find themselves faced with a new wave of litigation, a multitude of questions with few concrete answers available to them.

Case Law and Government Guidance

The Civil Rights Division of the Justice Department has succinctly described the “Online Barriers Faced by People with Disabilities.”³ Recognizing that “many people with disabilities use assistive technology to enable them to use computers and access the internet ... poorly designed websites create barriers for people with disabilities, just as poorly designed buildings prevent some from entering.”⁴

In this instance, as is often the case, court decisions provide a good overview of the fundamental issues arising when legislative aspirations intersect with the real world. For example, in *Access Now, Inc. v. Southwest Airlines*, the plaintiff’s assertion was that the “goods and services offered on the southwest.com website are inaccessible to blind persons using a screen reader.”⁵ Or more specifically, “southwest.com offers the sighted customer the promise of independence of online airline/hotel booking in the comfort and safety of their home. . . [but] even if a blind person ... has a screen reader with a voice synthesizer on their computer, they are prevented from using the southwest.com website because of its failure to allow access.”⁶

The court saw the fundamental question in the case as whether southwest.com was a “place of public accommodation” and whether the site fell into one of the 12 particularized categories provided by the ADA as enumerated in 42 USC §12181(7).

Finding that the 12 categories essentially described “facilities”—read: auditoriums, zoos, and laundromats—the court held that Southwest was not obliged to make any

accommodations. This is especially surprising as 46 percent of the bookings received by Southwest originated online. But the court was clear that “to fall within the scope of the ADA as presently drafted, a public accommodation must be a physical, concrete structure.”⁷

And, in essence, the court relied on a policy argument to justify its ruling, finding that, “To expand the ADA to cover ‘virtual’ spaces would be to create new rights without well-defined standards.”⁸

It is perhaps notable that the Eleventh Circuit seemed willing to consider the point on appeal but was forced to deny the petition because the appellants abandoned the argument that the website was a place of public accommodation, instead concentrating on the idea “that Southwest Airlines as a whole is a place of public accommodation because it operates a ‘travel service.’”⁹

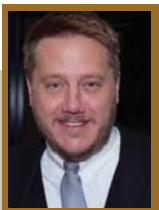
Financial Argument for Access

What defendants like Southwest may have been interested to learn is that, per the blog essentialaccessibility.com, “If a website isn’t accessible then it’s excluding over 60 million Americans with disabilities.” That converts into meaningful losses. For example, in the UK, the Business Disability Forum found that over \$15 billion was lost in a single year because of inaccessible websites.¹⁰ Thus, finance may prove to be the prime mover in adopting accessibility standards as history has shown that legislative progress has been remarkably slow.

Brief History of Disability Rights

It is undeniable that the disability rights movement developed concurrently with the civil rights movement.¹¹ The struggle for rights for the disabled actually began in the early 1800s, and gained considerable recognition though the well-publicized stories of figures like Hellen Keller and Louis Braille.¹² But prejudice was common as “people with disabilities were [often] considered meager, tragic, pitiful individuals unfit and unable to contribute to society, except to serve as ridiculed objects of entertainment in circuses and exhibitions.”¹³

Shocking to our modern sensibilities is the notion that the disabled were “assumed to be abnormal and feeble-minded and numerous persons were forced to undergo sterilization.”¹⁴ With sadly overwhelming numbers of disabled soldiers returning home at the end of World War I, Congress began to act, beginning with the National



D. Shawn Burkley practices in the areas of non-complex civil litigation and minor criminal defense in Sherman Oaks. He currently serves as Vice President for Fundraising with the Valley Community Legal Foundation. He can be reached at shawn@burkleyhouse.com.

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Defense Act, which provided instructional opportunities to soldiers to facilitate their return to civilian life and the Smith-Hughes Act, which created the first state-federal program for the vocational rehabilitation of veterans.

Two years after the end of the war, the Smith-Fess Act of 1920 furnished vocational training and guidance for non-military individuals with physical disabilities; the Social Security Act of 1935 made the vocational rehabilitation program permanent; and the Randolph-Sheppard Act and Wagner-O'Day Act, both of 1938, provided special incentives to the blind.¹⁵

Similarly, World War II provided an impetus to pass special legislation, including a prohibition on discrimination based on physical handicap in federal civil service employment.¹⁶

Arguably, one of the strongest forces to bring disability rights to the national focus was the labor shortages experienced during the war.¹⁷ Because the formerly unemployable were being called to do war work in factories and shipyards, access to those jobs was necessary. Thus, it likely wasn't an accident that Dr. Timothy J. Nugent created the ANSI-Barrier Free Standard (or ANSI A117.1) in 1948, which was formulated with the intent of "making buildings accessible to and usable by the physically handicapped."¹⁸

Accessibility and Civil Rights

The similarities with the civil rights movement were especially conspicuous when it came to the tactics used to advance disability rights. In fact, one tactic for obtaining accessibility took on special significance—the sit-in.

One of the earliest sit-ins occurred on May 29, 1935, when six young adults in New York objected to provisions in the New Deal's Works Progress Administration being interpreted so as to bar disabled jobseekers because they were "unemployable."¹⁹ Police were ultimately called in after nine days and a ten-day trial was held in which only the protesters without disabilities were sentenced.

While reflecting on a similar protest in which the San Francisco offices of Health, Education and Welfare were occupied by 150 protesters for 25 days in 1977, disability rights activist Judith Heumann said, "Through the sit-in, we turned ourselves from being oppressed individuals into being empowered people. We demonstrated to the entire nation that disabled people could take control over our own lives and take leadership in the struggle for equality."²⁰

Current Legislation

Section 504 of the 1973 Rehabilitation Act is often asserted as the antecedent of the ADA. Notably, the aforementioned protesters assembled when no meaningful regulations had

been promulgated in over four years relating to the Act and then U.S. Secretary for Health Education and Welfare Joseph Califano refused to do so.

In plain terms, §504 prohibits discrimination on the basis of disability by recipients of federal funds. It was directly modelled on contemporaneously passed laws which targeted racial and sexual discrimination.²¹ Still, by 1990, the need for broader legislation was evident, and the ADA was signed in law by President George H.W. Bush. Interestingly, the law was later amended by his son in 2008 to counter certain court decisions that asserted a heightened standard for determining who could be considered disabled.

The ADA is divided into three categories: Title I, which addresses employment; Title II, which applies to public entities and transportation; and Title III, which deals with public accommodations.²²

42 U.S.C. §12182 of Title III provides the general rule that, "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation."

As noted earlier, the question of whether "places of public accommodation" includes cyberspace wind up being the gravamen of most privately brought claims.

The Rise of the Web

Developing concurrently, but independently, of the disability rights movement was an idea that began being implemented in the early 1960s by a group of computer scientists.²³ Initially known as ARPNET, the idea that a series of computers could communicate by utilizing "open architecture" was quickly gaining acceptance and would be generally available to consumers a few short years after the ink dried on the original draft of the ADA.²⁴

The internet proved to be an extremely disruptive technology. Within a few years, familiar products and vendors—Thomas Guides, record stores, and travel agencies, to name but a few—would be made practically obsolescent. Black Friday would be challenged by Cyber Monday and by 2012, business to consumer online sales would top a staggering \$1 trillion.²⁵

Furthermore, access to government evolved quickly from the now seemingly primitive 1994 WhiteHouse.gov, which came with the explanation that it was "An Interactive Citizens' Handbook."²⁶ By the early 2000s, the majority of governmental interactions such as paying taxes, requesting information and services, even commenting on proposed rules and regulations, could be conducted online.

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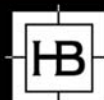
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Assistive Technology

As the internet became more pervasive in every element in people's lives, so-called assistive technologies began to develop to help the disabled navigate this new terrain. For example, screen readers and screen magnification software are now being used by the visually impaired.²⁷ Speech input software has helped those who may have difficulty typing with head pointers and motion/eye tracking devices now available for those unable to use a computer mouse or keyboard.²⁸

Rulemaking Deferred and Ultimately Denied

Rulemaking as to what actually constitutes an ADA compliant website hasn't kept pace with technology and now seems to have stalled completely despite the fact that in 2016, the Department of Justice maintained that "[r]ulemaking addressing web accessibility requirements is a high priority for the Department."²⁹

A largely unreported but significant development occurred on February 24, 2017 when the Trump Administration effectively put a halt to this already glacial process. As the result of Executive Orders 13771 and 13777, which were implemented to "require agencies to reduce unnecessary regulatory burden[s] and to enforce regulatory reform initiatives,"³⁰ the Department of Justice's rulemaking process with respect to the ADA (RIN 1190-AA72) was put on an unprecedented "inactive list."³¹

Thus, to quote one author, "There will be no regulations about public accommodations or state and local government websites for the foreseeable future."³²

The lack of government guidance has, per Minh Vu—a labor and employment attorney and partner at Seyfarth Shaw in Chicago—led to "the courts ... filling the void with a patchwork of decisions that often conflict with one another. The uncertain legal landscape has fueled a surge of lawsuits and demand letters filed and sent on behalf of individuals with disabilities alleging that the websites of thousands of public accommodations are not accessible."³³


That does not mean that recommendations for creating greater accessibility are in short supply. To the contrary, online sources like usability.com, for example, will provide basic recommendations on such topics as maintaining a website's high color contrast to assist with colorblindness; making sure that contextual links are more descriptive, such as stating "click here to learn more about this article" to help those using screen readers avoid generic and unhelpful links labeled "continue" or "more"; making sure there is an option for larger fonts; and using automated tools to analyze a site for accessibility.³⁴

With respect to the last suggestion, there is a plethora of free tools available to test a website for accessibility. They

include Accessibility Valet, AChecker, Cynthia Says, and EvalAccess, to name just a few.

Clearly, a more comprehensive resource is the “Web Content Accessibility Guidelines,” which were developed by the Web Accessibility Initiative to help web designers make webpage content as accessible as possible to the widest range of users, including those with the most serious disabilities.

The Web Accessibility Initiative is a subgroup of the World Wide Web Consortium, the same organization that standardizes the programming language followed by all web developers. Information for web developers interested in making their web pages as accessible as possible, including the current version of the Web Content Accessibility Guidelines and associated checklists, can be found at www.w3c.org/WAI/Resources.

These tools and resources may be the best hope for the disabled, given the economic arguments for accessibility and the current administrations virtual abandonment of making any regulatory changes to the current environment. Or to put it another way, rather than face the risk of a swelling tide of lawsuits, a business may wish to consider that “it’s much simpler, and considerably less costly, to improve web accessibility for all. A website that follows accessibility guidelines and is barrier-free also tells customers with disabilities that they’re valued and their business is welcome.”³⁵ 

Accessibility, July 21, 2017, <https://www.essentialaccessibility.com/blog/ada-guidelines>.

¹¹ Arlene Myerson, “History of the Americans with Disabilities Act,” *Disability Rights Education & Defense Fund*, 1992, <https://dredf.org/news/publications/the-history-of-the-ada>.

¹² “Introduction to Civil Rights for the Disabled,” *Georgetown Law Library*, November 9, 2017, <http://guides.ll.georgetown.edu/c.php?g=592919&p=4106389>.

¹³ “A Brief History of the Disability Rights Movement,” *Anti-Defamation League*, <https://www.adl.org/education/resources/backgrounders/disability-rights-movement>.

¹⁴ *Id.*

¹⁵ “Resources for Disabled Students, A Brief History of Legislation,” *Colorado State University*, <http://rds.colostate.edu/history-of-legislation>.

¹⁶ *Id.*

¹⁷ Audra Jennings, “Out of the Horrors of War: Disability Politics in World War II America” *University of Pennsylvania Press*, 2016.

¹⁸ “History of Accessible Facility Design,” *National Institute of Building Sciences, Whole Building Design Guide*, October 30, 2017, <https://www.wbdg.org/design-objectives/accessible/history-accessible-facility-design>.

¹⁹ Tanali Hamlet, “80 Years of Fighting for Disability Rights,” *Independence Care System*, May 28, 2015, <http://www.icsny.org/ada-disability-rights-movement>.

²⁰ Andrew Grim PhD, “Sitting-in for disability rights: The Section 504 protests of the 1970s,” *Smithsonian*, July 8, 2015, <http://americanhistory.si.edu/blog/sitting-disability-rights-section-504-protests-1970s>.

²¹ Arlene Myerson, “History of the Americans with Disabilities Act,” *Disability Rights Education & Defense Fund*, 1992, <https://dredf.org/news/publications/the-history-of-the-ada>.

²² 42 U.S.C. Chapter 126.

²³ Barry M. Leiner et al., “Brief History of the Internet,” *Internet Society*, 1997, <https://www.internetsociety.org/internet/history-internet/brief-history-internet>.

²⁴ *Id.*

²⁵ “Ecommerce Sales Topped \$1 Trillion for First Time in 2012,” *eMarketer*, February 5, 2013, <https://www.emarketer.com/Article/Ecommerce-Sales-Topped-1-Trillion-First-Time-2012/1009649>.

²⁶ Elahe Izadi, “The White House’s first Web site launched 20 years ago this week. And it was amazing,” *Washington Post*, October 21, 2014, https://www.washingtonpost.com/news/the-fix/wp/2014/10/21/the-white-houses-first-website-launched-20-years-ago-this-week-and-it-was-amazing/?utm_term=.8dabce555581.

²⁷ “Types of Assistive Technology,” *University of California at Berkeley, Berkeley Web Access*, <https://webaccess.berkeley.edu/resources/assistive-technology>.

²⁸ *Id.*

²⁹ “Statement Regarding Rulemaking on Accessibility of Web Information and Services of State and Local Government Entities,” *Department of Justice*, April 29, 2016, https://www.ada.gov/regs2016/sanprm_statement.html.

³⁰ “Current Unified Agenda of Regulatory and Deregulatory Actions,” *Executive Office of the President, Office of Information and Regulatory Affairs*, <https://www.reginfo.gov/public/do/eAgendaMain>.

³¹ *Id.*

³² Minh N. Vu, “DOJ Places Rulemaking on the ‘Inactive’ List,” *Seyfarth Shaw*, July 21, 2017, <https://www.adatitleiii.com/2017/07/doj-places-website-rulemaking-on-the-inactive-list>.

³³ *Id.*

³⁴ Alexsey Donets, “5 Simple Guidelines To Improve Your Website’s Accessibility,” *Usability Geek*, March 5, 2012, <https://usabilitygeek.com/5-simple-guidelines-to-improve-your-websites-accessibility>.

³⁵ “ADA Guidelines for Web Accessibility: Everything You Need to Know,” *Essential Accessibility*, July 21, 2017, <https://www.essentialaccessibility.com/blog/ada-guidelines>.

¹ “Statement Regarding Rulemaking on Accessibility of Web Information and Services of State and Local Government Entities,” *U.S. Department of Justice*, April 29, 2016, https://www.ada.gov/regs2016/sanprm_statement.html.

² “RIN 1190-AA65: Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities,” *U.S. Department of Justice*, April 29, 2016, <https://www.ada.gov/regs2016/sanprm.html>.

³ “Accessibility of State and Local Government Websites to People with Disabilities,” *U.S. Department of Justice*, June 2003, <https://www.ada.gov/websites2.htm>.

⁴ *Id.*

⁵ *Access Now, Inc. v. Southwest Airlines, Co.*, 227 F.Supp.2d 1312 (S.D.Fla.2002).

⁶ *Id.* at 1316.

⁷ *Id.* at 1318.

⁸ *Id.*

⁹ *Access Now, Inc. v. Southwest Airlines Co.*, 385 F.3d 1324 1328 (11th Cir., 2004).

¹⁰ “ADA Guidelines for Web Accessibility: Everything You Need to Know,” *Essential*



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Test No. 111

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. Title I of the Americans with Disabilities Act addresses places of public accommodation.
☐ True ☐ False
2. Under Executive Orders 13771 and 13777, final rules for web-accessibility are likely to be promulgated by the end of 2018.
☐ True ☐ False
3. The color scheme of a website should be considered when evaluating a website for accessibility.
☐ True ☐ False
4. The first sit-in protest for disabled rights took place in San Francisco in the 1970s.
☐ True ☐ False
5. AChecker and Cynthia Says are tools for checking a website's accessibility.
☐ True ☐ False
6. The Web Accessibility Initiative is a subgroup of the World Wide Web Consortium—the same organization that standardizes the programming language followed by all web developers.
☐ True ☐ False
7. Both President George H.W. Bush and President George W. Bush signed important legislation regarding accessibility.
☐ True ☐ False
8. The plaintiffs in *Access Now, Inc. v. Southwest Airlines, Co.*, were successful in their appeal to the Eleventh Circuit.
☐ True ☐ False
9. "Click Here" or "Continue" are not considered helpful link text for accessibility purposes.
☐ True ☐ False
10. In 2016, the Justice Department claimed that web accessibility was a high priority.
☐ True ☐ False
11. The White House published its first website in 1990, the same year the ADA was signed into law.
☐ True ☐ False
12. The ADA, as codified, is divided into three Titles.
☐ True ☐ False
13. Executive Orders 13771 and 13777 were implemented to "require agencies to reduce unnecessary regulatory burden[s] and to enforce regulatory reform initiatives."
☐ True ☐ False
14. 42 U.S.C. §12182 of Title III provides the general rule that: "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation."
☐ True ☐ False
15. If a website isn't accessible then it's excluding over one million Americans with disabilities.
☐ True ☐ False
16. In the past, some disabled persons were subject to forced sterilization.
☐ True ☐ False
17. The overwhelming number of disabled soldiers returning from World War I was a possible impetus for the adoption of early disability rights legislation.
☐ True ☐ False
18. 42 USC §12181(7) enumerates 12 particularized categories of "places of public accommodation" covered under the ADA.
☐ True ☐ False
19. Apparatuses and software that help the disabled use the internet are called "adaptive devices."
☐ True ☐ False
20. In plain terms, Section 504 of the 1973 Rehabilitation Act prohibits discrimination on the basis of disability by recipients of federal funds.
☐ True ☐ False

MCLE Answer Sheet No. 111

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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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 |
| 5. | <input type="checkbox"/> True | <input type="checkbox"/> False |
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**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*)
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Diversity in the Legal Profession: A Pipeline to Equal Access and Inclusion

By Michael D. White





There can be little doubt that over the past decades, great strides and advances have been made in both diversity and inclusion. But change has been slow, particularly in the legal profession. To better serve the shifting needs of the community, judges, attorneys and those that support their work are leading the charge to diversify the Bench and the Bar.

IN 2008, SFVBA PAST PRESIDENT RICHARD LEWIS, the first African-American president of the Bar Association, answered the call to diversify the legal profession and worked with the SFVBA Board of Trustees to form a standing Diversity Committee (now the Inclusion & Diversity Committee) to reshape the Bench and Bar by building an educational pipeline leading to the legal profession and judiciary.

Over the past decade, the Bar has earned a reputation as one of the most active groups of its kind in terms of actively promoting diversity and inclusion in the legal profession. In October 2016, the SFVBA was lauded for its efforts and was the recipient of the State Bar of California Bar Association Diversity Award. The Diversity Awards recognize outstanding efforts made by a bar association,

law firm, organization or attorney to promote diversity in the legal profession, in their organization, or among their peers.

In addition, the SFVBA has served as a long-time associate member of the Multicultural Bar Alliance (MCBA) of Southern California, an organization comprised primarily of minority bar associations. The MCBA, one of the largest of its kind in the entire country, shares the SFVBA's commitment to increasing diversity and promoting inclusion in the legal profession at large.

Below are some observations on the topic of diversity and inclusion from Bar leaders, judges, and staff who are intimately involved in the work of the SFVBA, and the legal community in general, to better mirror the image of the community they serve.

SFVBA Past President Carol L. Newman

"The edges of the envelope are being pushed. And there is some push back, but progress is being made in making the legal profession more diverse and inclusive, though it is slower than what's been hoped for," says attorney Carol L. Newman, Partner at Alleguez & Newman in Woodland Hills.

"I think the older, established law firms are trying to become more diverse and inclusive. But it really is a matter of how you bring people along in the profession," she says. "I was fortunate that I was with a series of firms and got very good training, so I was able to develop valuable skills that carried me through and was with two firms as a partner before going out on my own."

Diversity in the legal profession, Newman feels, "helps us be able to relate to the people we represent. It helps us appreciate the differences and the sameness of people. It makes



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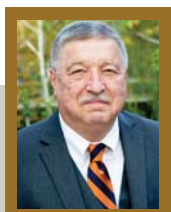
Diversity in the legal profession helps us be able to relate to the people we represent.”

—Carol L. Newman

us better rounded as lawyers to deal with society and the challenges we face every day,” adding that it also “focuses on differences between people. In fact, lot of us share the same things that are important to us...values that cross over differences in what we look like. Values and faith in the justice system.”

The key, says Newman, the SFVBA's first openly LGBT president and a veteran of more than 40 years as a practicing attorney, “is to appreciate differences in opinion and not demonize those who think differently from the way we do. We need to value the fact that others have just as strong a view as we may have and hold that view as honestly and sincerely as we do.”

The SFVBA's officers, Board of Trustees, Section and Committee heads, she says, “are a great example of diversity and I really hope that our Bar keeps that up and makes that a priority because that will make us stand out as special.”



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.

SFVBA President Elect Yi Sun Kim

Talk about diversity usually orbits around the topics of gender and ethnic background, says Yi Sun Kim, Partner at Greenberg & Bass in Encino.

“That’s certainly important and at the forefront of the discussion, but it’s also about culture, age, and the diversity of experiences, with the free exchange of ideas at the core of our approach to diversity and inclusiveness,” she says. “If you feel that you’re different from everyone else, you may have a harder time sharing your ideas and expressing yourself. It’s easier to communicate and identify with someone who shares a common experience. That’s particularly true among new lawyers. It only makes sense that if you see young people like yourself, you want to get involved more.”

A better understanding of people and their experiences, she says, “can only lead to a better understanding of

the problems they might face. You can then understand why some issues might be more sensitive to them than others.”

A graduate of Loyola Law School, with a decade as a practicing attorney, she feels that “what you learn in law school is book-based and not very practical. There should be more emphasis on how to interact with people of different backgrounds and learn what to be sensitive to. Maybe diversity could be more effectively incorporated into the classes that cover how to relate with clients.”

It all can’t but help attorneys to serve their clients and the community more effectively, Kim says. “We want justice to be blind. In furtherance of justice, when it comes to people being discriminated against or deferred to, we need to be more aware of those whose concerns are not universal.”



“

It’s easier to communicate and identify with someone who shares a common experience.”

—Yi Sun Kim

LA Superior Court Judge Paul A. Bacigalupo

The legal profession “must strive to make information available to young people about its profession and cultivate and support educational opportunities and students’ interest and involvement in the judicial system,” says Los Angeles County Superior Court Judge Paul A. Bacigalupo.

Lawyers, he feels, “can construct mentoring programs for new lawyers through minority and specialty bar associations, like the SFVBA’s Inclusion & Diversity Committee, and support efforts to create a culture of inclusion in law firms and legal organizations.”

At the same time, they “can participate in implicit bias or the elimination of bias training and examine the cultures where they work and identify the obstacles and opportunities for improving diversity and inclusion.”

Bacigalupo currently serves as Co-Chair of the California Latino Judges Association’s Judicial Appointment Support Committee, which mentors



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Lawyers can participate in implicit bias or the elimination of bias training and examine the cultures where they work.”

—Judge Paul A. Bacigalupo

and provides assistance to applicants throughout the judicial appointment process and presents judicial appointment workshops as a means to promote diversity and inclusion on the bench.

Likewise, Judge Bacigalupo says the court continues to educate judges about diversity and inclusion. He’s chair of the Judicial Branch’s Access, Ethics & Fairness Curriculum Committee and designs and develops programs to educate judges about sexual harassment prevention, LGBT and gender identification and sexual orientation, ADA issues, language access, cultural competency, persons with disabilities, the aged, community outreach, judicial demeanor, social media, and impartiality and bias in decision-making through programs and products in order to promote public trust, diversity, inclusion, equal access and fairness in the courts.

“The better educated we are on these topics helps all those who appear in the courts feel they belong and are being heard,” he says.

SFVBA Trustee Peta-Gay Gordon

Diversity and inclusion “adds differing viewpoints. Everyone comes with their own background, biases, beliefs and experiences and from that, the legal profession can be better able to help diverse clients. In the court system, for example, you’re better able to understand the stories that come before you as a judge,” according to attorney Peta-Gay Gordon.

“Diversity in the law profession needs to better reflect the actual population so that it’s not just a certain group of people making decisions for everybody else.”

Gordon would like to see “a special effort at reaching out to attorneys who are just starting out. My hope is that there is some way to bridge that gap to get more people involved and grow the Bar. We’ve done a pretty good job of trying to tap a lot of areas to grow the Bar. We’re doing what we should, but we should be doing more to reach out.”

With so many organizations to choose from, “It’s hard for people to carve out the time to concentrate on



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Diversity can be taught in the practicum phase of law school where they focus on learning hands-on.”

—Peta-Gay Gordon

one, so it’s going to be a constant battle to try to get in front of people, get them involved and hopefully retain them over the long-term. I think the Bar has done better

than most groups, but trying to grow and get better is always a good thing.”

Gordon has been a practicing attorney for 12 years. A graduate of the USC Gould School of Law, she currently serves as Vice President of the law school’s alumni association and is a Partner with Oldman, Cooley, Sallus, Birnberg & Coleman in Encino.

“There has to be a drive toward diversity and reaching people at a younger age whether it be promoting diversity of getting them interested in the law,” she says. “Diversity can be taught in the practicum phase of law school where they focus on learning hands-on whether it be through clinics or learning hands-on. It could also be woven into the cases that take on the issue of diversity.”

Slow headway “has been made getting into communities that need more legal assistance. That’s difficult because, geographically, this region is so huge. But, Gordon says, “There are still some communities where people don’t know what a will or trust is and how not having one or the other can affect their lives. That needs to change and that’s part of what we have to work toward.”

LA Superior Court Judge Huey Cotton

The greatest value of diversity “is that it prepares us for what’s next. We are rapidly evolving into a more interactive society, while borders and walls, for the most part, are coming down,” observes Judge Huey Cotton.

“We want the rule of law to survive these changes,” says Cotton, who practiced law for 27 years before being appointed to the Los Angeles Superior Court in 2009.

To do so, he says, “Our laws, and therefore our lawyers and judges, must understand how to fairly apply the law to these evolving social dynamics. The old view that a homogenous race, gender or culture based firm or legal community is best for society becomes a demonstratively false view when we

consider the interactive social future on the horizon.”

Over the years, he says, “I have seen well-intended lawyers and administrators implement hiring practices that helped diversify many law schools, law firms, and the judiciary. These change agents deserve our applause and respect. However, these change agents have been largely ineffective in fighting when the so-called reverse discrimination movement attacked the very meager progress that had been achieved.”

Consequently, “many institutions backed away from their active commitment to diversity. Instead, they elected to focus upon discussing diversity,” adds Cotton. “The extent of diversity in various institutions got worse, not better. At the same time,



“

We are rapidly evolving into a more interactive society.”

—Judge Huey Cotton

the institutions that did diversify actually reaped the benefit of diversity.”

According to Cotton, “Diverse firms find it easier to attract business from diverse communities, easier to select jurors, easier to understand and empathize with clients of diverse backgrounds and easier to interact

respectfully with lawyers or judges of diverse backgrounds. But this is the very environment being attacked and resisted. Given this upside, the overriding lesson on diversity is this—don’t give up on the process of diversifying our legal community.”

Co-Chair of SFVBA Inclusion & Diversity Committee **Joanna Sanchez**

“I think diversity is difficult to define,” says family law attorney Joanna Sanchez with the Law Offices of Robert Gantman. “For me, it means giving a voice and a seat at the table to everyone, not just a select few, but including people from under-represented communities, people who are not frequently seen in the legal profession, and not only attorneys, but those in other areas of the legal profession such as judges, paralegals and court reporters.”

According to Sanchez, “As time passes and as we grow as a legal community, the definition of diversity is going to change. Before it mainly meant inclusion of women and those of different ethnic backgrounds. Now we’re seeing it expanded to include the transgender community and people with disabilities.”

What we think of as a diverse society “is always changing. I don’t know that we can ever truly accomplish total diversity because it’s going to constantly change over time and expand,” she says. “Once you think you’ve reached ‘diversity,’ you probably haven’t because there is going to be something new to learn about and include.”

As a member of the SFVBA Board of Trustees, Sanchez says she would like to see “more programs focusing on enhancing diversity and attorneys of diverse backgrounds actually participating in the Bar’s events and programs. More often than not you see the same people at the Bar’s events and I think we need to reach out to the entire community to change that.”



“

As time passes and as we grow as a legal community, the definition of diversity is going to change.”

—Joanna Sanchez

The Bar “is a great organization. We have lots of resources and do amazing things for the community, but many people still do not know about us. That’s an ongoing challenge.”

In general, “We have a long way to go in terms of diversity in the legal profession and that’s what motivated me to get involved with the [Inclusion & Diversity] Committee, to work with the community colleges and high school students, and get young people to feel comfortable in a legal environment by meeting practicing attorneys, judges and others in the profession. That can get them motivated to go on and at least consider the legal profession as a career.”

The book cover features a photograph of Steven G. Mehta, a man in a suit and tie, standing next to a large chess piece on a checkered floor. A yellow starburst graphic in the top left corner reads "Hot Off The Press: Steve's New Book". The title "112 WAYS TO SUCCEED IN ANY NEGOTIATION OR MEDIATION" is in large, bold, blue letters. Below the title, it says "SECRETS FROM A PROFESSIONAL MEDIATOR" and "STEVEN G. MEHTA".

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Co-Chair of SFVBA Inclusion & Diversity Committee **Valarie Dean**

Diversity “is encouraging involvement of all types of people, no matter what race ...,” says Valarie Dean.

When asked how someone learns about diversity, Dean responded, “I do not think diversity and inclusion are taught in a textbook. In terms of the legal community, it means embracing others of diverse cultures, which isn’t something that’s taught, so to speak.”

“That goal of acceptance and inclusion was former SFVBA President Richard Lewis’ goal when he started the Diversity Committee years ago,” says Dean. “From what I’ve been told, back then, diversity wasn’t a focus of the SFVBA, even though the Valley has one of the largest diverse populations in Los Angeles County.”

Both Dean and Diversity Committee Co-Chair Joanna Sanchez, “continue to



“

We are far more diverse than many other bar associations because we encompass multiple cultures.”

—Valarie Dean

work in helping achieve the goal, which is to bridge the gap by including other diverse bar associations in our efforts. Developing those kinds of relationships in the legal profession is so very important,” says Dean.

Dean is Founder and CEO of TechnoTaries, Inc., a Tarzana-based company that provides virtual paralegal services to attorneys. Drawing on more than 30 years of experience in the legal field, Dean says she would like to see the Bar’s Inclusion & Diversity Committee, “continue its outreach so that we can bring various diverse cultures together in the Valley through our programs.”

Along with their collaborations with judicial officers and other legal professionals, “we can make a difference.” Dean says. “We are far more diverse than many other bar associations because we encompass multiple cultures. I’d like to increase the support given to every culture in the Valley as much as possible through our efforts.”

SFVBA Past President **Richard A. Lewis**

While the 2008 creation of the Bar’s Diversity Committee is readily seen as his brainchild, attorney Richard A. Lewis is quick to credit then-President Sue Bendavid as its real progenitor.

“The idea of forming a Diversity Committee was really Sue’s idea,” says Lewis, who had, just two years previously, served as the Bar’s first African-American president. “We agreed that it was critical that we work toward equipping the Bar in a way that would make it more effective in serving the Valley’s increasingly diverse community. I just helped it along.”

Getting the SFVBA involved in the 19-member Multicultural Bar Alliance of Southern California was “a major step in positioning the Bar as a professional organization that’s

serious about expanding its horizons in terms of diversity and inclusion,” he says. “We’ve been increasingly active in our involvement with the Alliance and to this day, remain the only regional bar association that’s a member of the group. I think that shows our efforts have been taken seriously.”

Diversity “is an ongoing process and we’ve come a long way,” says Lewis, alluding to the fact that the Bar’s current President-Elect, when she assumes office next fall, will be the Bar’s first Asian-American head.

“That shows a lot to me because by welcoming as diverse a collection of people as possible, you benefit tremendously from what they bring to the table. New perspectives, new ideas about policies and programs and ways in which we can better serve the community we are, in part, responsible for,” he says.



“

By welcoming as diverse a collection of people as possible, you benefit tremendously from what they bring to the table.”

—Richard Lewis

SFVBA Director of Public Services **Rosie Soto Cohen**

The Bar's Attorney Referral Service (ARS) and its Inclusion & Diversity Committee are symbiotically linked as the ARS funds the Committee's various outreach programs.

"We saw early on how important it was to start young people thinking about future careers in the legal profession," says Rosie Soto Cohen, who joined the Bar in 2001 as assistant to the Executive Director and was named Director of the ARS in 2008.

The Committee, she says, was tasked with creating programs that make the legal profession more diverse by working "through the pipeline," that is, investing time and effort into finding the most productive and impactful way to reach those young people.

Schools, says Soto Cohen, "were the obvious answer. Over time we adopted Maurice Sendak Elementary School, Milliken Middle School, helped create Reseda High School's Law and Government Magnet Program, and worked with Pierce College and Mission College to help them start their law clubs."

The ARS funds the awards given to winners of the Committee's essay contests, as well as the dramatic productions that are primarily aimed at elementary school students, and more.

"We've had productions with the Big Bad Wolf being sued by the Three Little Pigs and Snow White suing the Witch for poisoning her."

To reach middle school and high school students, the Committee and the ARS work hand-in-hand to organize court tours, speaking engagements with lawyers,




“

We work to find the most productive and impactful way to reach young people.”

—Rosie Soto Cohen

and meetings with judges "who the students can see and serve as role models. During the court tours, judges will take the time to bring in the bailiff, court reporter, and others involved in the profession," she says.

From the ARS' perspective, the goal, says Soto Cohen, "has always been to meet the needs of the community and often times that means needing a lawyer that is bilingual who, at least in the eyes of the client, can build a stronger relationship."

Currently, "we have a number of attorneys who are bilingual but we can certainly use more so that we can better reflect the community that we serve." 



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By Barry P. Goldberg

Social Media Primer for Attorneys

LAW FIRM MARKETING companies are offering various combinations of social media support, all the while touting how critical it is that attorneys maintain a social media presence, virtually promising that, as a result, countless new cases will be funneled their way.

On the other hand, attorneys see their kids constantly connected on social media and observe people taking pictures of what they had for lunch and posting the images on Facebook. Most

attorneys might well ask, "Why do I need to be on social media?" or "Why should a bunch of strangers care about what I'm having for lunch?" or "Who would consider hiring me or my firm after seeing such things on social media?"

Reasonably good questions to be sure, even more so when statistics are not readily available to substantiate the claim that a presence on social media will yield any particular results, particularly driving new clients and new business to an attorney or a law firm.

Clients and Social Media

So how much effort and money should be devoted to an admittedly time-consuming activity that fails to produce verifiable results? That is a question that can't be answered definitively and differs in every circumstance.

According to attorney marketing giant FindLaw, 84 percent of all consumers—read, potential clients—and a surprising 72 percent of the older baby boomer generation are regularly utilizing some form of social media. The kicker? More than half of consumers would be more likely to hire an attorney who is on social media. For the target 18 to 44 age group, an eyebrow-raising 69 percent would hire an attorney who maintains a presence on social media.

The explanation for this is fairly basic. Consumers of legal services, more often than not, check out lawyers and law firms online, with social media serving as an extension of a logical search pattern with websites such as AVVO, FindLaw, Justia and Lawyers.com displaying not only yours or your firm's profile, but those of scores of other legal practitioners. Also, consider that three-quarters of the people inhabiting the planet, including consumers of legal services, see apps like Facebook as the web.

To the inquiring potential client, sources such as Facebook provide canned snippets of material that most often doesn't tell much about the attorney and the law firm in question. Consider that many legal consumers have never hired an attorney before and are intimidated about even meeting one for the first time.



Barry P. Goldberg has practiced personal injury law for more than 30 years. He currently serves as Secretary of the San Fernando Valley Bar Association and can be reached at bpg@BarryPGoldberg.com.

FindLaw identified three basic behaviors that will, in brief, lead to good social media decisions—be authentic, be engaged, and be human. Done correctly, a social media presence may show the attorney in a more natural light. In other words, the attorney will be more human, more relatable.

So where should attorneys focus their attention and which sites are the most effective marketing tools? Even in this rapidly evolving environment, there is no one clear-cut answer. However, there are some excellent sites that any attorney could effectively utilize to develop a significant social media presence.

The most important sites for attorneys are undoubtedly LinkedIn and Facebook which, while both are very different in terms of audience and design, are both fairly easy to access, with a number of online tutorials to guide the beginner through the process of creating and maintaining a site.

A quick word about paid social media—it may not achieve the desired results because it is difficult for someone to be authentic for you. Since potential clients are looking for the relatable you, you probably already have the skills and knowledge to maintain a meaningful presence on social media.

LinkedIn

LinkedIn is absolutely required for attorneys. Most attorneys and law firms are already on LinkedIn, as it's relatively simple to maintain and is intuitively formatted. Essentially an online resume with virtually no downside, LinkedIn is frequently described as an extended business card and serves as a business-to-business platform that is accessed by those looking to retain or refer a customer to an attorney.

Like any resume, though, you should take care to accurately list your firm name and any contact information.

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Be crystal clear on the areas of your specialties so that a viewer would know exactly what kinds of law you practice, as well as what cases you will take on and what kind of cases you want.

No LinkedIn profile is complete without an attractive and engaging professional photograph. Preferably, try to use a smiling head shot, as people shy away from connecting with businesses and attorneys that do not have a photo.

LinkedIn is intuitive. It will prompt you with questions to help you create an effective profile. List education, degrees, licenses, memberships in applicable organizations, notable cases, and awards. Also, LinkedIn is an excellent platform to display any published articles, white papers and other accomplishments. Invite colleagues to give you a brief testimonial and return the favor. In short order, your LinkedIn profile will start to show results as you add content, reviews and testimonials.

You will also start linking with people and businesses that you know as you connect with friends and colleagues in your networking circles, alumni, and whatever professional organizations you might belong to.

As your LinkedIn network grows, you'll be able to take advantage of an interesting "feed" of daily information as you "like" articles, and share them with your network or potential clients with an interesting comment or observation. For example, if there is a post regarding a recent case or trial verdict, you should see this as an opportunity to comment and share your analysis on how the decision might affect your clients and fellow attorneys.

Being active on LinkedIn is an excellent way to be in front of the professionals you care about. If you meet a possible referral source at a networking event, they will remember you only until they meet another qualified attorney that practices the exact same kind of law that you do.



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By connecting on LinkedIn, you can regularly visit that referral source with posts, shares and comments, and be first on the list when that source is ready to make the referral.

Facebook for Attorneys

An attorney should have both a personal profile and a law firm business profile. Think of a Facebook business profile in the same way you approach your LinkedIn profile. A business profile should look professional, with high-quality photographs and detailed, informational content. This is an excellent place to automatically link your blog so that it posts immediately when you upload it to your website. Also, a business profile can host reviews and recommendations, while recent verdicts or other pertinent information should be added regularly.

The business profile is very effective for showing an attorney's or law firm's involvement in charitable causes. Facebook also provides attorneys the opportunity to share their participation in events such as celebrations and community events. This is very important because it begins the process of humanizing attorneys and making potential clients familiar not only with the firm's employees but with its culture. It's not out of the realm of possibility that occasionally there will be an overlap with a potential client of a hobby or an activity.

There are some significant differences for consumer practice areas like personal injury, estate planning, and bankruptcy. In the consumer area practices, it is actually a goal to reach out and engage the general public. This can be accomplished in many ways, including by advertising and boosting posts, with a strategy probably best managed, at least initially, by professional marketing companies.

Facebook is especially effective when a business profile is combined with an attorney's personal profile. Most attorneys do not immediately gravitate to sharing personal information,

particularly with clients. However, the modern legal consumer is craving information about the attorney who will be handling their case, so it is important to have a strategy or limits of what you will put on your personal profile.


A good guideline is to consider your personal Facebook profile as part of your high school or college reunion class. You want to be perceived as not only professional, projecting a level of civility and success, but that you also have a happy and positive life outside of the office.

If you want clients and referrals, you are not free to post every little detail of your life. Nothing untoward, unprofessional, vulgar or intolerant should ever be associated with you. Generally, politics are off limits unless you are perfectly at ease with alienating half of your potential clients and referrals.

Attorneys should interact with their online followers by liking posts, commenting and sharing. It's surprising how many people are prompted to interact with you on fairly simple and mundane events. It is highly recommended that attorneys post business-type blogs and information on their Facebook personal profiles sparingly, but consistently.

Is Social Media Right for Your Firm?

In the end, attorneys must recognize that their clients use social media, a fact that compels those in the legal profession to be present and relevant.

Attorneys that doubt the efficacy of social media should consider how it would impact a potential client if they learned from your Facebook or LinkedIn page that you were a thought leader in your area of law, have a happy home life, give back to your community through involvement in charitable events, and have hobbies just like other human beings. At a minimum, potential clients will feel more comfortable meeting and talking with you for the first time and grow to be proud to call you their attorney. 

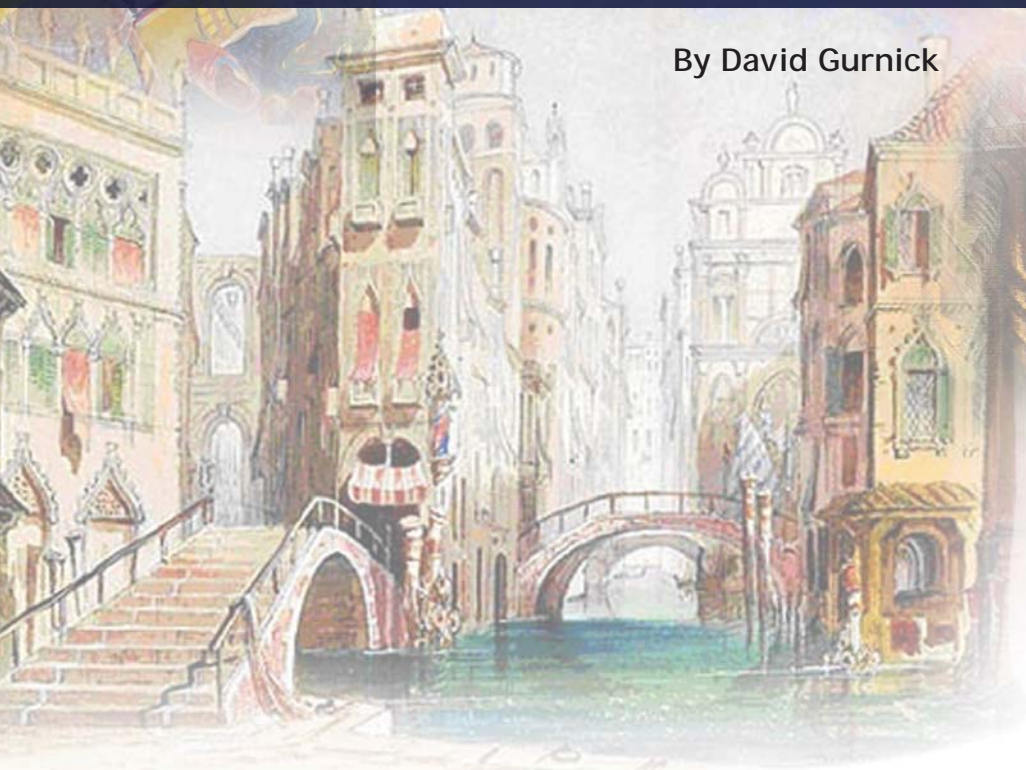




Unconscionability in California

Contract Power Tool for the Powerless and Powerful

By David Gurnick



IN SHAKESPEARE'S *MERCHANT of Venice*, Antonio guaranteed repayment of a loan, promising a pound of his own flesh to Shylock if the guarantee was breached. In *Rumpelstiltskin*, an imp agreed to turn straw into gold in exchange for a promise by the miller's daughter to give up her first born.

In modern times, in 1962 Washington, D.C., Ms. Ora Williams, who supported seven children and received government aid, defaulted in paying for a stereo. The contract let the furniture store, which knew her situation, repossess all items she had bought there since 1957.¹ In 1973, concert promoter Bill Graham

had a contract dispute with union musicians. The agreement required arbitration, with the arbitrator being a union representative.² These stories and cases involve agreements, each with a term that was so surprising, one-sided or harsh as to be considered unconscionable.

Most people can think of or imagine an oppressive contract or clause. Circumstances present in the negotiation and context of many consumer and commercial contracts create a risk of lurking heavy-handed, unfair terms:

- Often people do not read contracts they sign. Even Chief Justice John Roberts admitted



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he doesn't usually read the terms required in accessing computer websites.³ Few people do.

- They would not know if, buried deep within, was a promise to pay millions of dollars, or give a pound of flesh, or their first child.
- Many contracts are preprinted forms, prepared by one party (or the party's legal team). Think of pre-printed terms in property leases, car rental agreements, or agreements for wireless phone service.
- Many contracts are long and use small print. A Retail Installment Sale Contract people sign to finance a car purchase measures 28 inches in length, both sides filled with text. Agreements for bank or credit card accounts are so lengthy that they are printed in booklets.
- Often there is imbalance of bargaining power between contracting parties. The weaker party needs or wants the stronger party's service or merchandise and is willing to sign onto the terms of service. The stronger party has little to lose from a single lost sale and can therefore include strong, imbalanced terms in its agreement.

- Often one-sided terms are common in an industry, leaving no realistic alternative. Every provider of particular merchandise or service uses similar onerous terms.
- When the agreement is entered into, the weaker party is pleased or relieved to get the desired consideration—be it utility service, a loan, costly purchase, essential equipment, lease of space, or fulfillment of some other need. The party is in no mood, or position, and has no desire, to carefully review all the terms.

Culturally, Americans have a commitment to performance and enforcement of contracts according to their terms. But California statutory and case law is surprisingly favorable to victims of oppressive contract terms. Civil Code §1670.5 describes the doctrine of unconscionability.

When a court "finds the contract or any clause of the contract to have been unconscionable at the time it was made," the court has authority to "enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result." This rule "applies to contracts of all types."⁴ Moreover, unconscionability is not a



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jury question. It is a question of law “to be decided by the court.”⁵

Under the principal formulation of unconscionability, two elements must be present: procedural and substantive unconscionability. But they need not be present in the same degree. The more substantively oppressive a contract term, the less evidence of procedural unconscionability is needed for a court to find a term unenforceable, and vice versa.⁶

Procedural unconscionability focuses on “oppression” and “surprise” in making the contract.⁷ Oppression arises from unequal bargaining power, so that there is no real negotiation of terms and an absence of meaningful choice. Surprise involves the extent that agreed terms are hidden in a long printed form drafted by the party seeking enforcement. The doctrine’s substantive element refers to unfairness or unreasonableness of the term.⁸

To some, it is surprising how broadly California courts have expanded unconscionability to grant relief to businesses. In several cases even seemingly experienced or

sophisticated business people have been relieved from oppressive terms.

In the seminal *Graham v Scissor Tail* decision, a prominent, successful concert promoter was granted relief even though he had been a party to thousands of contracts of the type he challenged. The Court of Appeal recognized that he had no choice. Realities of his business as a concert



To some, it is surprising how broadly California courts have expanded unconscionability to grant relief to businesses.”

promoter forced him to sign the union’s oppressive contract on its nonnegotiable terms, or to not have any deal. “For all his asserted stature in the industry,” promotor Bill Graham was “reduced to the humble role of “adherent.””⁹

Other unconscionability decisions have also given relief to businesses

from overreaching terms. A longtime farming company bought heavy crop sorting equipment, which turned out to be defective. The company was granted relief from a damages limitation and warranty disclaimer that the manufacturer included in the sale agreement.¹⁰ In the field of business franchising, courts have recognized that agreements often have characteristics that lead to unconscionability, due to “vastly superior bargaining strength” of franchisors.¹¹

The theory underlying these decisions is recognition that “experienced but legally unsophisticated businessmen may be unfairly surprised by unconscionable contract terms.”¹² Thus, any “suggestion that a contract or clause cannot be unconscionable if it is accepted by a knowledgeable party has been repudiated by our Supreme Court.”¹³

In a 1980s trial that got wide media attention, humorist Art Buchwald sued Paramount studios. Buchwald claimed the successful Paramount film *Coming to America*, starring Eddie Murphy, was based on an idea and treatment he submitted.¹⁴ The Los Angeles Superior Court ruled in Buchwald’s favor. As a result, he became eligible to receive a share of the film’s net profits.¹⁵ But the studio claimed the film, which had earned over \$160 million in gross revenue at the time, had no profit, and claimed that under the studio’s accounting, it had so far lost millions of dollars.¹⁶

Art Buchwald challenged the studio’s accounting as unconscionable.¹⁷ But Buchwald was an experienced, well-known writer and personality. Moreover, he had been represented by a

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professional agent. Through the agent, Buchwald and his partner had been the ones to propose the term they challenged as unconscionable. But they had proposed the term knowing the provision was Paramount's standard term.

The trial court found that the agreement had not been freely negotiated; that Buchwald and his partner, despite their prominence, did not have sufficient clout to negotiate a better deal. The court found the accounting provisions to be overly harsh and one sided.


Some words and phrases used by courts in characterizing unconscionable contract terms include "shocks the conscience," "unreasonably favorable to the other party," "overly harsh," "unduly oppressive," "unfairly one-sided," "unreasonably favorable to the more powerful party," "that seek to negate the reasonable expectations of the non-drafting party," and "unreasonably and unexpectedly harsh having to do with central aspects of the transaction."

The Supreme Court recently summarized formulations of substantive unconscionability. The Court said "the core concern of the unconscionability doctrine is the absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party." The doctrine assures that contracts do not impose terms that have been described as "overly harsh," "unduly oppressive," "so one-sided as to shock the conscience," or "unfairly one-sided."

These formulations indicate that unconscionability is concerned with terms that are "unreasonably favorable to the more powerful party." These include provisions that negate the reasonable expectations of the non-drafting party, or unreasonably

and unexpectedly harsh terms having to do with "central aspects of the transaction."¹⁸

Cases are now legion in California, relieving victims from oppressive contract terms relating to arbitration and such other matters as limitation of liability,¹⁹ indemnification,²⁰ judicial reference,²¹ and requirement to give notice before filing suit.²²

The California Court of Appeal has ruled that the doctrine may be raised initially on appeal, even if not raised in the trial court.²³ The doctrine of unconscionability provides a powerful tool for victims of contract terms that may fairly be characterized as unfair, unduly oppressive, shocking or the like. 

¹ *Williams v. Walker-Thomas Furniture*, 350 F.2d 445 (D.C. Cir. 1965).

² *Graham v. Scissor-Tail*, 28 Cal.3d 807 (1981).

³ Debra Cassens Weiss, *Chief Justice Roberts Admits He Doesn't Read the Computer Fine Print* ABA Journal (Oct. 20, 2010) (http://www.abajournal.com/news/article/chief_justice_roberts_admits_he_doesnt_read_the_computer_fine_print/).

⁴ *Carboni v. Arrospide* (1991) 2 C.A.4th 76, 86 fn.5.

⁵ *Vance v. Villa Park Mobilehomes Estates* (1995) C.A.4th 698, 709.

⁶ *Armendariz v. Foundation Health* (2000) 24 Cal.4th 83, 114.

⁷ *A & M Produce Co. v. FMC Corp.* (1982) 135 C.A.3d 473, 486.

⁸ *Id.* at 486-487.

⁹ *Graham v. Scissor Tail* *supra* 28 Cal.3d at 818.

¹⁰ *A & M Produce Co. v. FMC Corp.* (1982) 135 C.A.3d 473, 486.

¹¹ *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1282 (9th Cir. 2006); *see also, Postal Instant Press, Inc. v. Sealy* (1996) 43 C.A.4th 1704, 1716-1718.

¹² *A & M Produce Co. v. FMC Corp.* (1982) 135 C.A.3d 473, 489-90.

¹³ *Stirlen v. Supercuts* (1997) 51 Cal.App.4th 1519, 1534.

¹⁴ *See, H.G. Prince, Unconscionability in California: A Need for Restraint and Consistency*, 46 Hastings L.J. 459, 524 (1995).

¹⁵ *See discussion in Adam J. Marcus, Buchwald v. Paramount Pictures Corp. and the Future of Net Profit* 9 Cardozo Arts & Ent. L. J. 545, 559 (1991).

¹⁶ *Id.* at 559.

¹⁷ *Id.* at 561-562.

¹⁸ *Sonic-Calabasas A, Inc. v. Moreno* (2013) 57 Cal.4th 1109, 1145.

¹⁹ *Lihotka v. Geographic Expeditions, Inc.* (2010) 181 Cal.App.4th 816.

²⁰ *Lennar Homes of California v. Stephens* (2014) 232 Cal.App. 4th 673.

²¹ *Pardee Construction Co. v. Superior Court* (2002) 100 Cal.App.4th 1081.

²² *Soltani v. Western & Southern Life Ins. Co.* 258 F.3d 1058 (9th Cir. 2001).

²³ *Lennar Homes of California v. Stephens* (2014) 232 Cal.App. 4th 673, 686.

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A Reflection and Gratitude

A NEW YEAR IS UPON US SO, PERHAPS, A reflection of the Attorney Referral Service's (ARS) accomplishments over the past twelve months is in order.

The year began with Rosie's return from family leave. Today, 13-month-old Mikayla brightens the office with every visit. New ARS Consultant Miguel Villatoro came aboard this summer and his experience as a paralegal has been put to effective use.

Several new attorneys joined the Service this past year, so we would like to officially welcome Troy Werner, Carlos Gallardo, Kimberly Offenbacher, Andrew Wyatt and Roxana Ahmadian to the program.

On that note, the ARS is always looking for new panel members, particularly those practicing in the areas of administrative law, automobile-related issues, business bankruptcy, and worker's compensation for federal employees, as well as geographical location coverage in Antelope Valley, and attorneys who are bilingual Spanish. If you practice in any of these areas or know someone who does, please don't hesitate to contact rosie@sfvba.org for an application.

We also want to thank our panel members for their hard work and for continuing to be part of our program. It makes us proud to see, day-to-day, how dedicated, skilled and professional our attorneys are.

The monthly ARS column in *Valley Lawyer* showcases our attorneys' skills and cases referred by the ARS. The column has garnered a lot of positive feedback from readers. If you are an ARS panel member with a noteworthy case experience you'd like to share, please contact catherine@sfvba.org.

ROSIE SOTO COHEN
Director of Public Services



rosie@sfvba.org


CATHERINE CARBALLO-MERINO
ARS Referral Consultant



catherine@sfvba.org

The tremendous amount of support from panel members allows the ARS to actively participate in community programs to help the public and to promote our programs. In 2017, the ARS hosted "Know Your Immigration Rights" program cosponsored by the Department of Neighborhood Empowerment, Councilwoman Nury Martinez, Central American Resource Center, LAUSD Parents & Community Engagement Unit, and the Mayor's Office of Immigrant Affairs; sponsored Law Day and Pro Bono Week legal clinics at the Van Nuys Public Library in connection with the LA Law Library and the LA Public Library; partnered with the Valley Cultural Center to staff legal information booths at the summer Concerts in the Park series; and took part in the Golden Future 50+ Senior Expo, Encino Family Festival, Van Nuys Arts Festival, and the Blanket the Homeless Legal Clinic.

The Senior Citizen Legal Program, one of our most effective community outreach efforts, is as strong as ever. When Catherine visits local senior centers to market the program, it's not unusual for attendees to comment that they'd contacted the ARS and, even if they couldn't be referred to an attorney, had been guided to other appropriate, helpful legal resources. If you are an ARS panel member and would like to learn more about participating in the Senior Citizen Legal Program, contact rosie@sfvba.org.

Lastly, we would like to thank the ARS Committee for another year of guidance and hard work. The staff appreciates your investment of time and effort, and hope that you enjoy serving with us to help the Bar's Attorney Referral Service flourish in its efforts to serve the Valley community. 

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VALLEY COMMUNITY LEGAL FOUNDATION OF THE SAN FERNANDO VALLEY BAR ASSOCIATION

EDUCATING OUR KIDS BEGINS WITH YOU

VCLF is proud to sponsor 600 high school students to attend the nationally-acclaimed play, *Defamation*, which puts the students in the jury box of this riveting courtroom drama. *Defamation* explores highly charged issues of race, religion, class and the law. *Hon. Virginia Keeny* will lead a pre-show dialogue with students.

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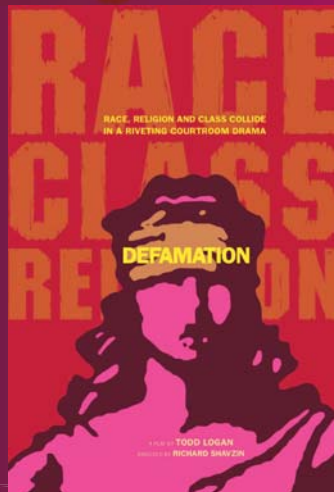
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VCLF Is Proud to Sponsor DEFAMATION, the Play

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

ON FEBRUARY 6, THE VALLEY COMMUNITY LEGAL Foundation will sponsor a performance at Calabasas High School Performing Arts Center of the nationally-acclaimed drama, DEFAMATION, a professional, traveling, theatrical courtroom drama about race, religion and class.

Written and created by Todd Logan, the play dramatizes a civil suit in which an African-American woman sues a wealthy real estate developer after being accused of stealing his watch. The 80-minute performance is followed by a 15-minute student-audience deliberation. The play's judge polls the students twice—once before the deliberation begins and again at its end. The final vote for the plaintiff or for the defendant decides the outcome of the trial.

Last February, more than 200 students from three Valley magnet high schools and participating law post and teen court programs attended the production.

Due to the success of last year's performance, and the generous support of our sponsors, the upcoming performance is expected to draw more than 530 students from seven San Fernando Valley schools—John Burroughs High School, Taft High School, Canoga Park High School, Northridge Academy High School, and San Fernando High School, as well as the Law and Police Magnet programs at James Monroe High School and Reseda High School. An added bonus for students attending the performance, a Los Angeles Superior Court judge will conduct a pre-show dialogue with the audience.



Alise Cayen, Program Coordinator of Reseda High School's Law & Public Service Magnet and Police Academy Magnet, shared that her students "thoroughly loved the play. There was nothing but positive feedback about the event," while SFVBA Immediate Past President Kira Masteller added that, "It was truly inspirational to see how engaged the student-audience was during the performance and especially the post-show discussion."


We cannot sell tickets to this student-performance. The VCLF relies on, and are immensely grateful for, your generous support. We encourage you to donate to the VCLF, affording us the opportunity to not only bring

DEFAMATION back again in 2019, but also to help fund the Foundation's community grants and scholarships program.

"How encouraging it is to see the community support such a worthwhile endeavor," says Los Angeles Superior Court Judge Virginia Keeny, VCLF Vice President of Scholarships. "The more money we raise from

educational projects like these, the more money we have to fund our scholarship programs."

For your convenience, the VCLF has created various sponsorship opportunities to make it easier for YOU to choose your level of support.

To make a donation or purchase a sponsorship, visit www.thevclf.org/donate and click on the link for DEFAMATION. For more details about how you can sponsor this event, please contact VCLF Event Coordinator Anngel Benoun at anngel4re@earthlink.net. 

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 and help us make a difference in our community.

NEW MEMBERS

The following joined the SFVBA in October and November 2017:

Tina Abdolhosseini

Law Office of Tina Abdolhosseini
West Hills, CA
Personal Injury

Jayd Banuelos

Westlake Village, CA
Civil Litigation

Michael S. Barth

Neighborhood Legal
Services of LA County
Workers' Compensation

Justin Chappel

Chappell Investigations
Studio City, CA
Investigations

Lucia J. Choi

Neighborhood Legal
Services of LA County
Glendale, CA
Housing

Claudia C. Contreras

Neighborhood Legal
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Pacoima, CA
Family Law

Alyson C. Decker

The Bloom Firm
Woodland Hills, CA
Litigation

Sarah K.H. Erlica

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Housing

Daisy O. Felt

Neighborhood Legal
Services of LA County
El Monte, CA
Immigration and Naturalization

Charles Foster

Camarillo, CA
Family Law

Angel S. Garcia

Park Regency Realty
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Christine Reynolds Inglis

Reape-Rickett, APC
Valencia, CA
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Susanna Mkrtchyan Litwack

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Workers' Compensation

Jessica A. Mejorado

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Kids In Need of Defense (KIND)
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Immigration and Naturalization

Martin Wolf

Wolf Law Firm
Los Angeles, CA
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Helen Wu

Los Angeles, CA
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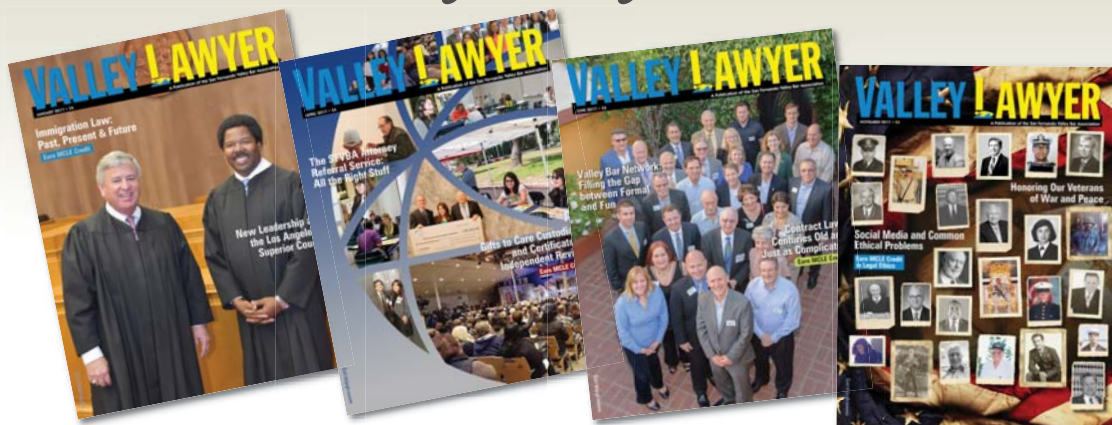
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