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A Publication of the San Fernando Valley Bar Association

The Law School Experience, Part II: The Student Perspective

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CONTENTS

VALLEY LAWYER
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FEATURES

DEPARTMENTS

VALLEY LAWYER

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Printing Southwest Offset Printing

Practicing Law During a Pandemic

BARRY P. GOLDBERG
SFVBA President

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HERE IS THE THING—I AM A handshaker. I have always shaken hands. It just seems the right and civilized greeting; grasping someone hand to hand, looking them straight in the eye, communicating wordlessly that "I acknowledge you and I am ready to discuss business."

When I see a buddy at the market or in a restaurant, I don't shake hands. I say, "Hi" or "Yo, what's up?"

With all this virus stuff being discussed constantly, I have been watching how others act in a business setting.

Frankly, there is too much hugging and kissing for my comfort level.

Maybe, just maybe, if there is genuine affection and you haven't seen someone for a while, or they just made it through some horrible crisis, okay, they might get a hug.

But for lawyer business, a deposition, mediation or even a business networking event are the proper settings for a handshake.

I have reviewed the information sheets from the Center for Disease Control (CDC) and I will have to modify my behavior, at least for the time being.

I was in a mediation a few days ago and I put out a hearty fist bump. I felt like an idiot, and, to make it worse, the mediator said, "Oh yeah," and twisted his fist inward to bump elbows!

It occurred to me in a flash that in a legal setting, maybe we should contain ourselves a bit and just not touch each other for a while.

I am required to travel this month to attend a legal conference. I am going; I will be just a little more cautious than usual. I will bring my sanitary wipes and try not to touch surfaces or stick my fingers in my mouth or eyes. I will be attending bar functions and meetings. If you run into me, please, just try not to shake my hand!

As I was writing this column, a client came into my office to drop off some paperwork. I awkwardly avoided shaking his hand or fist-bumping, and proceeded to rustle around, looking for his case file.

> "No Touching and No Hand Shaking Zone"

After our meeting, he smiled and thanked me for my good work. Then, he stuck out his hand and looked me right square in my eyes. Of course, I warmly shook his hand and immediately hastened to the hand sanitizer.

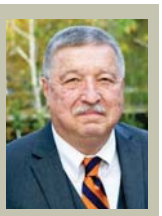
Okay, we need a plan in my office. Here is what I have come up with. I am making a sign. This is for real—an 8" x 10" piece of paper sandwiched in a plexiglass desk frame that will read something like: "Welcome to our law office. We love our clients! However, everybody is worried about getting sick and spreading viruses. So, for the time being, OUR OFFICE IS A NO TOUCHING AND NO HAND SHAKING ZONE."

I promise. After the panic is over, I welcome anyone and everyone to pay a visit, come on in and shake my hand.

Just, please, no fist bumps.

Wisdom From a 14-Year-Old 'Father'

MICHAEL D. WHITE
SFVBA Editor



michael@sfvba.org

I USUALLY AVAIL MYSELF HERE to talk about the editorial content of the issue of *Valley Lawyer* at hand.

This round, I want to take a minute and address the issue of how we treat one another, particularly those who have views and outlooks on things that differ from our own.

To say that we live in tumultuous times would be, at best, a gross irony as issues ranging from politics and the environment to immunization and the raising of chickens have become ammunition in a not-so-civil war of words that has replaced the cannon and bayonet with social media and websites.

The current state of affairs has led to online discussion blogs on how to prevent family fisticuffs between opposite political factions at Thanksgiving dinner and how to avoid giving birthday gifts that might trigger a recollection of some deeply-buried negative childhood experience.

Over the past several years, the internet, and a seemingly insatiable psychological need to be both heard and accessible at all times, have, it seems, combined to turn a growing number of people equipped with a phone into a combination photo/journalist, political commentator, stand-up comic, and, way too often it seems, character assassin.

Sadly, these developments haven't been balanced by equal headway in advancing standards of basic civility, manners and the psychological maturity required to deal with opinions that differ from one's own.

Think what you may of George Washington. He was known for displaying notable manners throughout his life—a period when diligence in social communication was common practice by all levels of society.

At age 14, he collected 110 canons of conduct under the title "Rules of Civility & Decent Behaviour in Company and Conversation." He drew them from the English translation of a French work that laid out practical standards for social intercourse based on common decency, courtesy, and self-control.

The little 30-page book is a gem and covers a sweeping variety of social activities such as not laughing at your own jokes or playing the flatterer.

No. 65 reads simply: "Speak not injurious words, neither in jest or earnest; scoff at none although they may give occasion," while No. 86 tells us that, "In disputes be not so desirous to overcome as not to give liberty to each one to deliver his opinion…" and No. 49 calls on the reader to, "use no reproachful language against anyone; neither curse nor revile."

Insights for the ages, from a 14-year-old kid from Virginia who, one day many years later, would be lauded as the Father of His Country. Perhaps, we should slow down, take a minute and ponder them.

We all have different opinions; we all have our way of looking at things, but I sincerely hope that we haven't yet reached the point where it is perfectly acceptable for an opinion that dares diverge from groupthink to be drowned out forever in a blizzard of Orwellian censure and verbal abuse.

It hasn't, at least quite yet, and, I sincerely hope, never will. Just a thought.

CALENDAR

APRIL–MAY 2020

SUN	MON	TUE	WED	THU	FRI	SAT
			1	2	POSPONED 3 Employment Law Section and Litigation Section Legal Ramifications of Interpreting and Translating **12:00 NOON** **SFVBA OFFICES**	4
5	6	7	Happy Passover 8	9	10	11
Happy Easter 12	13	WEBINAR 14 Probate & Estate Planning Section Medicare and Special Needs Trusts **12:00 NOON** Sheri L. Huff, MBA, HIP, CLTC and Kira Masteller, Esq. will lead the discussion. (1 MCLE Hour)	POSPONED 15 Workers' Compensation Section Recent Developments in Handling Subsequent Injury Benefit Trust Fund Cases **12:00 NOON** **MONTEREY AT ENCINO RESTAURANT**	16	17	18
19	20	WEBINAR 21 Taxation Law Section Real Property Tax Law Update **12:00 NOON** Attorney Michael Lebeau will update. (1 MCLE Hour)	22	WEBINAR 23 Business Law and Litigation Section Creating and Preserving a Record for Appeal **12:00 NOON** Sponsored by EXETER	24	25
26	27	28	29	30	1	2
3	VBN VALLEY BAR NETWORK 4 **5:30 PM**	5	6	TENTATIVE 7 Membership & Marketing Committee **6:00 PM**	8	9
Happy Mother's Day 10	11	TENTATIVE 12 Probate & Estate Planning Section **12:00 NOON** **MONTEREY AT ENCINO RESTAURANT** Board of Trustees **6:00 PM**	TENTATIVE 13 Business Law and Litigation Section Business and Property Appraisals for Litigation **12:00 NOON** **SFVBA OFFICES**	14	15	16
17	TENTATIVE 18 Family Law Section One Week Early due to Memorial Day Holiday State of Department 2 **12:00 NOON** **MONTEREY AT ENCINO RESTAURANT**	TENTATIVE 19 Taxation Law Section Advising the Global Family on Tax Matters **12:00 NOON**	TENTATIVE 20 Workers' Compensation Section Orthopedics and Permanent Disability **12:00 NOON** **MONTEREY AT ENCINO RESTAURANT**	21	22	23
24 31	25	26	27	28	29	30

The San Fernando Valley Bar Association is a State Bar of California MCLE approved provider. Visit www.sfvba.org for seminar pricing and to register online, or contact Linda Temkin at (818) 227-0495 or events@sfvba.org. Pricing discounted for active SFVBA members and early registration.

The SFVBA Facility Remains Closed and Staff Continues to Serve Members Remotely Through at Least April 19

ROSIE SOTO COHEN
Executive Director

rosie@sfvba.org

THE SFVBA EXECUTIVE COMMITTEE HAS extended the office closure until at least April 19, 2020 and maintains the operational changes announced on March 17, 2020.

The production of this month's *Valley Lawyer* issue was also affected by COVID-19's impact on our partners and non-essential business closures. Furthermore, to reduce potential health risks associated with production and the handling of the magazine, this issue will be circulated electronically with print copies available by request. We have increased the electronic circulation this month from 2,100 to 6,000 legal professionals in the area.

The SFVBA is in constant communication with the state and federal courts, and other agencies regarding current updates. To keep up-to-date on the latest developments, please visit the https://sfvba.org/covid-19-corona-virus-updates/ page on the Bar website. We will also continue to deliver timely updates by email and post regular updates on our Facebook (facebook.com/sfvba), LinkedIn (linkedin.com/company/san-fernando-valley-bar-association), and Instagram (www.instagram.com/sfvbar/) pages.

Our Attorney Referral Service (ARS) lines remain open, and many people are reaching out seeking legal assistance. If you have cases, which you cannot take, or clients which you cannot serve, refer them to the SFVBA's CA State Bar-certified ARS, Certification #0006, (818) 340-4529. Interested in joining ARS? Contact Miguel at miguel@sfvba.org.

We are permitting electronic filing on new arbitration matters, visit sfvba.org/fee-arbitration/ for details. Arbitrations that are currently pending the appointment of an arbitration panel should expect delays by an additional 30-60 days. Anyone with a scheduled hearing between April and May 2020 should contact Sonia Bernal, MFA Program Administrator.

We thank you for being part of the SFVBA family. We value your contributions to the Bar profession and commitment to our members and supporting community. Please continue to send your questions, ideas, and feedback to info@sfvba.org. As we go forward, we will be sure to keep you updated.

Message to our Members

LINDA TEMKIN
Director of
Education & Events

events@sfvba.org

THESE ARE CHALLENGING TIMES. SFVBA IS committed to keeping our lines of communication open and keeping you abreast of the latest developments regarding COVID-19 and its impact on the legal community.

As per all county, city and state guidelines, we can no longer accommodate events in our offices or in any of our Valley venues.

As a result, for the health and safety of our members and guests, we have postponed or scheduled educational seminars as webinars and postponed traditional networking events in April.

With the help of our section and committee chairs, we are offering selected events online and as webinars. As these online events develop, we will reach out to you via email, social media and our website www.sfvba.org.

We are considering the possibility of once again hosting the Meet the Experts | Summer Party, and hope to confirm the popular event, assuming large gatherings are advisable.

And though earning MCLE credit might not be foremost in your mind, a little distraction might be needed in the coming weeks.

To that extent, feel free to avail yourself of our challenging MCLE self-tests, which are offered monthly in *Valley Lawyer* magazine. It is best, at this time, to email back your tests to events@sfvba.org since receipt of traditional mail may be sporadic.

Please be assured that even if you don't see us, the SFVBA is here, working behind the scenes to assist you in any way we can. As always, any suggestions are welcome.

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.

Representing High Profile Clients

By Alan Eisner, Dmitry Gorin and Robert Hill

So-called high profile prosecutions present particular challenges to criminal defense attorneys seeking to provide their clients with competent representation. Some of these challenges, such as the erosion of the presumption of innocence pretrial by excessive media commentary, require well-developed mitigation efforts by defense counsel.

IN AN IDEAL WORLD, THE ADMINISTRATION OF justice would be blind to the wealth, celebrity, or social status of a criminal defendant.

The reality, however, is that so-called high profile prosecutions present particular challenges to criminal defense attorneys seeking to provide their clients with competent representation.

Some of these challenges, such as the erosion of the presumption of innocence pretrial by excessive media commentary, require mitigation efforts by defense counsel to minimize the unfairly prejudicial impact on their high profile clients.

Other practical considerations, such as the frequent review of high profile cases by supervisory personnel in the prosecutor's office prior to filing, actually present opportunities for a defense strategy that prove to be less typical than those in a more average case.

It is also important to keep in mind, though, that the underlying law does not change based on the defendant's notoriety. The elements of the alleged offenses remain the same; the burden of proof and the presumption of innocence remain undisturbed; and the defense attorney's duty to zealously advocate for their client remains paramount.

The differences between high profile representation and representation of the majority of clients are therefore one of emphasis rather than one of kind.

This article will explore several recurring areas, which, though present in many or most criminal defense cases, are of particular importance when representing a famous, infamous, or notorious client.

The Prefiling Stage – Review by Supervising Prosecutors

An important part of criminal defense practice is prefiling intervention—the process through which a defense attorney attempts to persuade law enforcement and the prosecuting agencies to drop, or reject, reduce, or divert charges against their client before formal filing of a charging document in court.

In practice, prefiling intervention takes the form of written and oral communication with an assigned detective or filing deputy district attorney or city attorney.

Defense counsel will present exculpatory evidence, if any, legal arguments concerning to applicability of criminal statutes to the client's alleged conduct, and mitigating information.

Any one of the aforementioned may not, by itself, foreclose a successful prosecution, but may persuade a filing prosecutor to exercise his or her substantial discretion in choosing not to prosecute the client or, in filing a reduced charge as a misdemeanor rather than as a felony.

In some cases, the prosecuting agency can be persuaded to divert a client's case to an informal office hearing or an alternative to court such as the Neighborhood Justice Program.

Prefiling intervention serves as an important collaborative part of the criminal justice system as prosecuting agencies have no interest in filing a case in court only to find out that substantial exculpatory evidence that they were unaware of actually exists.

Wrongful prosecutions do not serve the interests of justice and, do not enhance the credibility and reputation of the prosecutors who filed charges against the defendant who is later exonerated.

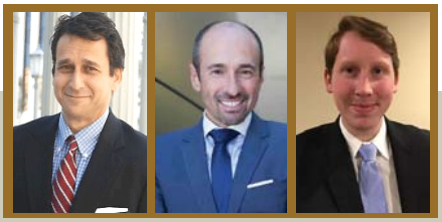
The latter consideration is substantially heightened in the case of a high-profile defendant, whose exoneration does much more to reflect poorly on the prosecuting agency that tries, and fails, to convict the defendant.

The reality of this dynamic provides an opportunity for defense counsel in the prefiling intervention stage. In a typical prefiling intervention, decisions are often made quickly by an assigned filing deputy prosecutor with or without input from the defense.

A large part of the effort that goes into a successful prefiling representation is finding out who the real decision-maker is and reaching that prosecutor with a succinct written position, any supporting character letters and other mitigating background information. This work is critical before the filing decision is made.

In a high profile case, the deliberative process which occurs before formal filing is much more extensive. Looking at the headline-grabbing cases of Robert Blake, Phil Spector, and Harvey Weinstein demonstrates that it took prosecutors months, and sometimes years, before bringing formal criminal charges in court against these celebrities. Their counsel had time to do their own investigation and present exculpatory and mitigating evidence to the prosecution before the filing of criminal charges.

In fact, it is not unusual for a prosecuting agency in a high profile case to affirmatively reach out to defense counsel



Alan Eisner and **Dmitry Gorin** are State-Bar Certified Criminal Law Specialists and partners in the law firm of Eisner Gorin LLP. **Robert Hill** serves as an associate at Eisner Gorin LLP. They can be reached at thebestdefense@gmail.com.

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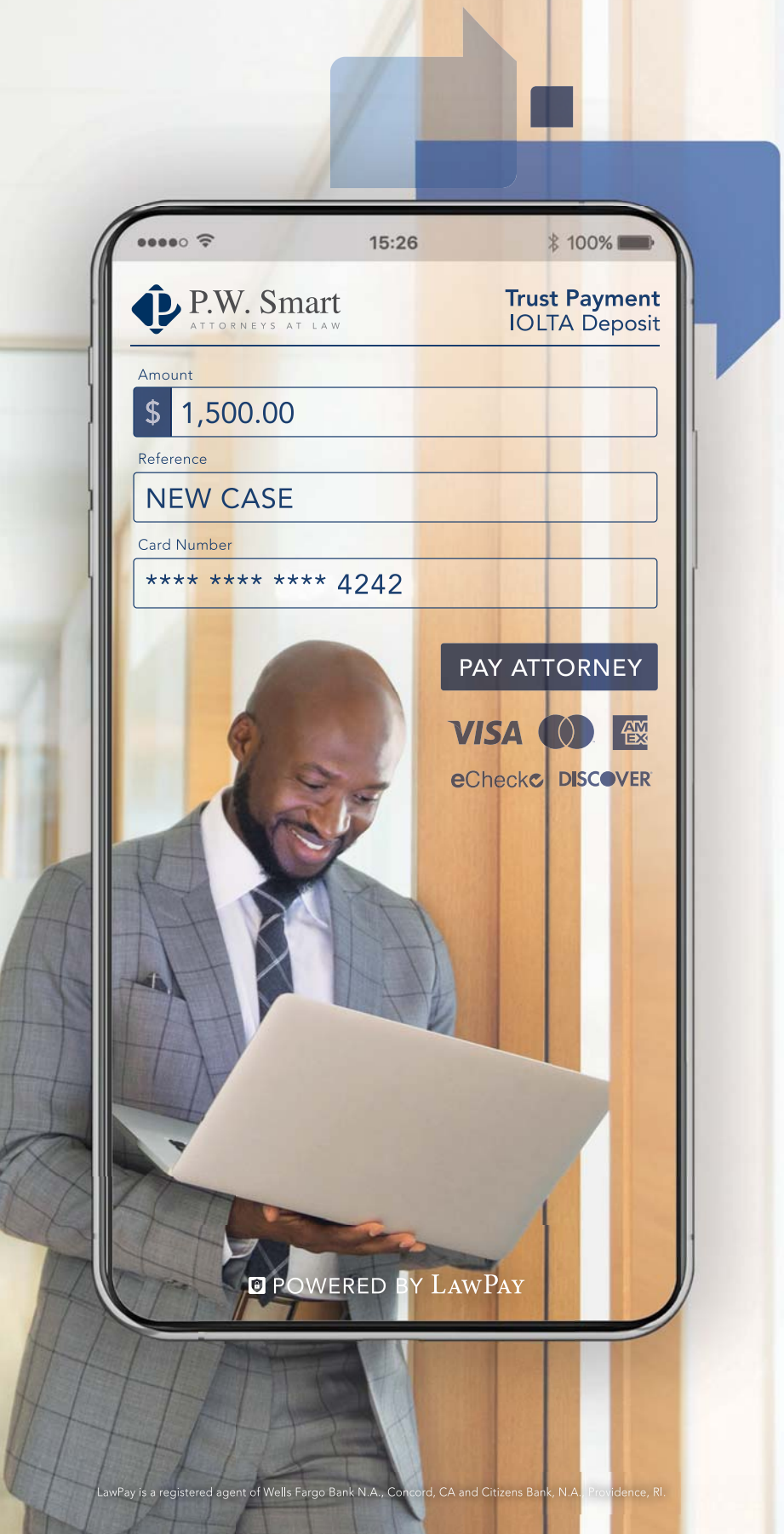

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for input and provide an opportunity for presentation of a defense case, whether consisting of mitigation or of additional evidence gathered through independent defense investigation. Often, there is also an opportunity for a face-to-face meeting between defense counsel and the filing prosecutor. Such meetings often include supervisor-level representatives from the prosecuting agency, prior to filing. This enhanced opportunity for meaningful input into the charge-filing process is very unusual outside of the high profile context. As would be expected, with greater access given the prosecutors prior to filing, the chances of having a borderline case rejected rather than filed increase.

The greater attention high profile cases receive inside investigative and prosecuting agencies sometimes results in other collateral benefits to high-profile clients.

> "The realities of representing a high profile criminal defendant, however, require particular attention to the differential treatment which wealthy, famous, and high-status individuals receive."

In some cases, a high-profile defendant may be afforded the opportunity to self-surrender, rather than simply facing arrest and either bailing out or being brought to court in custody.

Alternatively, the scrutiny a high-profile defendant's case faces through law enforcement efforts could uncover more incriminating testimony, than with an average person when law enforcement personnel have limited time to devote to the investigation.

Settlement/Plea Negotiations

Similar to the high level scrutiny paid to high profile matters in the pre-filing stage, settlement and plea negotiations in such cases often involve supervisory personnel in the prosecuting agency where most defendant's cases are resolved by a courtroom deputy or, possibly, a specially assigned prosecutor depending on the nature of the charges.

In the settlement context, the high profile nature of the client's case is a double-edged sword.

On the one hand, the supervising prosecutors do not wish to be seen as being overly-lenient in sentencing, which would result in media criticism and reputational harm to their agency.

On the other, the more extensive review of the case facts and mitigating information presented by the defense combined with the desire to avoid a potentially embarrassing acquittal at trial may change the prosecutor's strategy and provide an opportunity for a favorable negotiated resolution not available in most cases.

Litigation/Media Coverage

One of the most tangible impacts of a client's high-profile status on the defense is the likely presence of media in the courtroom.

Such an environment underscores the necessity of fielding reporters' inquiries in a professional and, ideally, positive manner for the client as, typically, criminal defendants are not portrayed in the most positive light by the press.

On the one hand, it is up to counsel to provide a defense perspective focusing on the presumption of innocence. On the other, speaking to the media may add more fuel and coverage to the story, that a client may want to have disappear from the front page.

Media coverage of court proceedings is stringently regulated by the California Rules of Court, which provides, in relevant part, that "[m]edia coverage may be permitted only on written order of the judge. The judge in his or her discretion may permit, refuse, limit, or terminate media coverage...".[1]

Prior to organizing in-court media coverage, a media organization is mandated to submit a form MC-500 order requesting access from the court in question.[2]

A Rule 1.150 request must be submitted by the requesting organization at least five days prior to the proposed coverage absent a showing of good cause. If timely submitted, the clerk is required to notify the parties involved of the request and the court is required to rule on the request.[3]

The court has discretion to hold a hearing on the request, but may also choose to rule on the request without a hearing.[4]

Rule 1.150 provides a non-exhaustive list of nineteen factors for the court to consider in ruling on a media request.[5]

Given the extensive list of factors, which includes "[a]ny other factor the judge deems relevant," it is fair to say that the court has substantial discretion in granting or denying a request for media coverage.[6]

That said, case law provides more specificity as to the most important considerations which should guide the court, and also highlights the particularly high stakes for a high profile defendant affected by the court's decisions regarding media coverage.

In *People v. Dixon*, the defendant was recommitted to a secure facility after being found by a jury to be a sexually violent predator within the meaning of the Welfare and Institutions Code.[7] [8] [9]

On appeal, Dixon argued, among other things, that the trial court erred by allowing the media to televise the proceedings, claiming that unnecessary media attention had denied him his right to a fair trial.[10]

While the outcome of *Dixon* itself depended on the particular facts of that case and the judge's failure to adequately consider the Rule 1.150 factors, some of the larger principles involved are relevant in high profile defense situations.

The Court of Appeals recognized that the public's constitutional right to access judicial proceedings does not include a categorical right to broadcast said proceedings.[11]

Quoting Justice John Harlan in the United States Supreme Court case of *Estes v. Texas*, the court noted that, "[w]ithin the courthouse the only relevant consideration is that the accused be accorded a fair trial. If the presence of television substantially detracts from that goal, due process requires that its use be forbidden."[12]

Justice Clark, writing for the plurality in *Estes*, identified several sources of prejudice to the defendant stemming from media coverage of the trial. They included "the jury's exposure to extraneous information and public pressure, the distraction caused by the equipment, the witnesses' potential access to the testimony of preceding witnesses,

the added pressure of being on camera and the temptation to put on a good performance, and the effect on the defendant's ability to communicate privately with his attorney and concentrate on presenting his defense."[13]

These factors are of particular importance in high profile cases in which witnesses and jurors will naturally expect to be scrutinized far in excess of what would normally be expected in a criminal trial.

Taken together, the impact of televised proceedings on the participants in the trial, as articulated by Justice Clark, can serve to erode the defendant's presumption of innocence. This process begins even before the case proceeds to trial through media coverage of the alleged crime itself and the investigative process, but reaches its zenith if the court permits television coverage of the trial itself.

As a result, defense counsel must make every effort to mitigate the negative impact on the client's right to a fair trial through pretrial litigation regarding media coverage.

Even if the court ultimately decides to permit filming, defense counsel should advocate for strict limitations and controls—the angles video cameras may be positioned, the filming of jurors or witnesses, or the number of reporters allowed into the courtroom, for example—that aim at preventing the type of coercive pressure to perform or reach a particular outcome envisioned by the *Estes* court.

Media Inquiries

Whether or not the court permits filming and audio recording of the actual in-court proceedings, a defense attorney representing a high profile defendant can expect to receive numerous inquiries from reporters and other interested members of the public.

If caution is not exercised, the attorney's responses to these inquiries can impact the attorney-client privilege, the client's presumption of innocence, and potentially taint the jury pool. It naturally follows, therefore, that the safest policy is to avoid any and all public comment regarding the case.

Alternatively, a press release with specific points can be distributed to inquiring media agencies by a public relations company retained to assist the client with managing the media.

Two different factors often make such a "no comment" policy unworkable, however.

First, the client often wishes to tell his or her own story. The client, of course, has a right to speak on his or her own behalf, even against the advice of counsel.

A defense attorney faced with a client who is determined to get their story out to the public will assuredly be confronted with the dilemma of letting the client speak directly or persuading the client to allow the attorney to make the public statements on the client's behalf.

The latter is almost always preferable, as a client's words will almost certainly be used at trial by the prosecution. In making statements on the client's behalf, the attorney must guard against revealing the contents of privileged conversations, as well as making inflammatory statements which could possibly taint a potential jury pool should the case proceed to trial.

Second, depending on the prosecutor, the government's representatives may be offering the media their own prejudicial statements concerning the client's case.

While trying the case in the media is disfavored if not disallowed by most prosecutorial agencies, press releases and other more formal statements to the media are commonplace. The need to respond to these statements is heightened in a high-profile case as potential jurors may be left with a one-sided presentation of the facts of the case if they only read about, or hear, from the prosecution prior to trial.

Again, striking a balance between professionalism and restraint on the one hand and zealous advocacy on the other hand is a difficult, but ultimately critical, task in a high profile case.

Conclusion

In our legal system, every defendant enjoys the same rights in the criminal justice system—namely, the presumption of innocence, due process, a trial by an impartial jury, etc.

The realities of representing a high profile criminal defendant, however, require particular attention to the differential treatment which wealthy, famous, and high-status individuals receive, for good or ill, when facing criminal charges in court.

These truths manifest in differential prefiling consideration of charges, heightened scrutiny of potential plea deals, and increased media attention both before and during trial.

A competent criminal defense attorney representing a high-profile client must be aware of these disparities and account for them when advising his or her client and preparing their best possible defense.

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[1] California Rules of Court, Rule 1.150, Subsection (e).
[2] *Id.* at Subsection (e)(1).
[3] *Id.*
[4] *Id.* at Subsection (e)(2).
[5] *Id.* at Subsection (e)(A-S).
[6] *Id.* at Subsection (S).
[7] *People v. Dixon* (2007) 148 Cal.App.4th 414.
[8] California Welfare and Institutions Code §6600 et seq.
[9] *People v. Dixon* (2007) 148 Cal.App.4th at p. 420.
[10] *Id.* at pp. 422-423.
[11] *Id.* at p. 431.
[12] *Id.* quoting *Estes v. Texas* (1965) 381 U.S. 532, 589 (conc. opn. of Harlan J.).
[13] *Id.* at pp. 431-432, quoting *Estes, supra*, at pp. 544-548.

Representing High Profile Clients
Test No. 138

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. High profile criminal matters are often reviewed more thoroughly by supervising prosecutors prior to filing.
❑ True ❑ False

2. The average defendant is more likely to be permitted to "self-surrender" to court than a high profile defendant.
❑ True ❑ False

3. The public's right to access court proceedings also includes a constitutional right to film and broadcast criminal trials.
❑ True ❑ False

4. When ruling on a media request, the court must consider the factors enumerated in the California Rules of Court.
❑ True ❑ False

5. The court has very limited discretion in granting or denying media requests.
❑ True ❑ False

6. The court is required to conduct an evidentiary hearing prior to ruling on a media request.
❑ True ❑ False

7. The court may grant a belatedly noticed media request upon a finding of good cause.
❑ True ❑ False

8. Courtroom deputies are most often the final decision-makers in approving negotiated pleas for high profile defendants.
❑ True ❑ False

9. Media coverage of a high profile investigation can threaten to erode the client's presumption of innocence.
❑ True ❑ False

10. When addressing the press on behalf of his or her client, a defense attorney must take care not to violate the attorney-client privilege.
❑ True ❑ False

11. Ultimately, the same legal protections such as due process, the right to an impartial jury, etc. apply equally to all defendants.
❑ True ❑ False

12. In high profile cases, there is less of an opportunity to present defense mitigation evidence prior to filing than in typical cases.
❑ True ❑ False

13. When courtroom proceedings are filmed, witnesses may feel the need the put on a good performance.
❑ True ❑ False

14. Prosecutorial agencies do not consider their institutional reputation when filing cases against high profile defendants.
❑ True ❑ False

15. A criminal defense attorney should never speak to the media in a high profile case.
❑ True ❑ False

16. The government's press releases concerning a high profile prosecution may taint the jury pool prior to trial.
❑ True ❑ False

17. In ruling on media requests, the court may consider any factor it finds relevant.
❑ True ❑ False

18. Even if a media request is granted, defense counsel should advocate for restrictions on camera angles, etc.
❑ True ❑ False

19. The ability of a defendant to communicate privately with his or her counsel during trial can be threatened by filming in the courtroom.
❑ True ❑ False

20. Review of a high profile case by supervising prosecutors sometimes provides additional opportunities for a favorable settlement.
❑ True ❑ False

Representing High Profile Clients
MCLE Answer Sheet No. 138

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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5. Make a copy of this completed form for your records.
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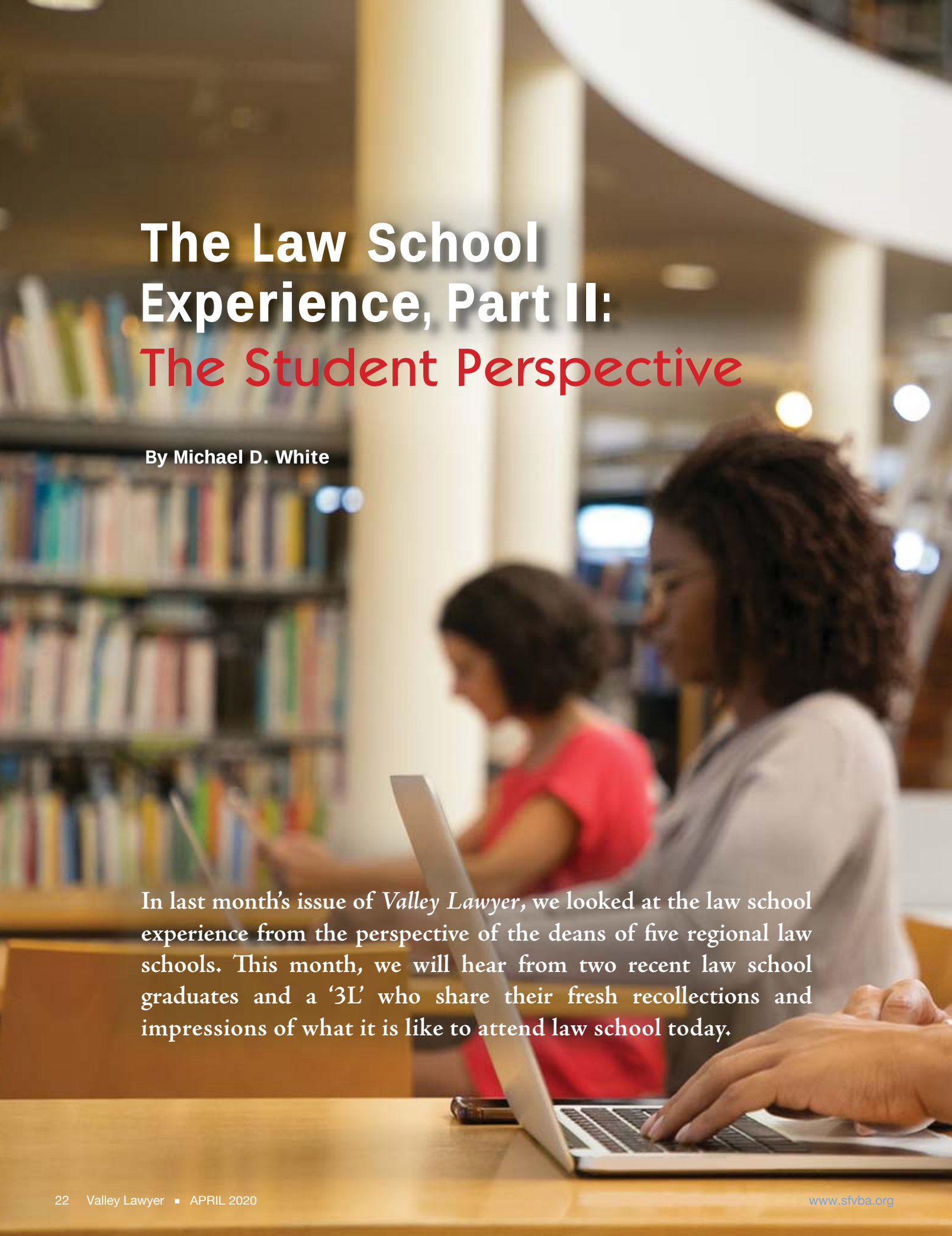
ANSWERS:
Mark your answers by checking the appropriate box. Each question only has one answer.

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



The Law School Experience, Part II: The Student Perspective

By Michael D. White

In last month's issue of *Valley Lawyer*, we looked at the law school experience from the perspective of the deans of five regional law schools. This month, we will hear from two recent law school graduates and a '3L' who share their fresh recollections and impressions of what it is like to attend law school today.

ACCORDING TO ONE WAG, "During the first year in law school, they scare you to death; the second, year, they work you to death; and the last year, they bore you to death."

'Tis true. Law school is, indeed, a unique environment beset with its own distinctive challenges, peaks and valleys, highs and lows.

At the same time, it offers an unparalleled opportunity to hone and sharpen one's analytical and research abilities, mature, improve writing and speaking skills, and think like a lawyer.

In last month's issue of *Valley Lawyer*, we looked at the law school experience from the perspective of the deans of five regional law schools. This month, we will hear from two recent law school graduates and a '3L' who share their fresh recollections and impressions of what it is like to attend law school today.

According to one, "I didn't know I had the capability of learning as much as I have and has opened the way to career goals that I never thought I would be interested in. The whole experience has been a revelation."

The reasons that attracted us to the stories of the following three individuals interviewed for this article were meant to set them apart. Instead, though they remain individuals with unique stories to tell, Pulled back the curtain to find that a multi-fiber 'Golden Thread' seemingly links them together.

All three attended, or are attending, small, lesser-known Southern California-based law schools; the two recent graduates both passed the Bar exam on their first attempt; two are immigrants; two are married with children; and, perhaps most notably, all three entered law school somewhat older, more mature and experienced than most of their larger-school counterparts—a fact that adds a different patina to their outlook toward their law school experiences.

Each has a familiarity with the 'real world' that has taught them commitment; patience; how to take ownership of their own work; how to learn from their mistakes; how to be organized and remain motivated; and that there is a difference between efficiency and effectiveness, and what is important is not the number of hours you put in, but how intelligently and diligently you work.

The merit of that 'real world' experience has taken hold over the past several years and was given considerable traction in 2009 when then Harvard Law School Dean Martha Minow directed the school's admissions committee to "give extra weight to applicants with experience since college."

Interestingly, the percentage of law students matriculating at Harvard straight from college dropped from around 40 percent before 2009 to 19 percent for the Class of 2020.

Our three subjects are motivated by a desire to achieve success by melding their life experience with hard work, a willingness to sacrifice, a mature grasp of the concept of delayed gratification, and drive.

Or, as Abraham Lincoln put it, "If you are absolutely determined to make a lawyer of yourself, the thing is more than half-done already."

Xiaona 'Diana' Ding
Never any Doubt

Diana Ding first came to the United States from China in 2013 to spend a year as a Visiting Scholar in Educational Leadership and Administration at California State University, Northridge's Michael D. Eisner College of Education.

A native of Heibei, a mountainous province about three hours west of the Chinese capital of Beijing, Ding worked for ten years as a Program Specialist and Research Associate at the Ministry of Education and the National Institute of Education Sciences prior to her scholarship visit.

"During my visit, I attended several classes, visited schools in the area and had the opportunity to attend an open house at the University of West Los Angeles Law School," she says.

"At that open house, I had the opportunity to meet several professors and the dean, who encouraged me to go to law school. Up to that time, I never really thought about it. I had a career in China. I said I'd maybe think about it, but really didn't take it seriously."

Ding returned to China and her work at the Ministry of Education, and two years

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passed before she started thinking seriously about returning to the United States to attend law school.

"Earning a doctorate in China can take about five years, and following a career as a researcher wasn't something I was really passionate about. So I thought, if I do a JD program, I would have a lot to give up and there would be a lot of risk, but at the same time, I knew how powerful a law degree could open up a lot of new paths for me," she says. "So I quit my job and came back to the United States to attend UWLA. I was really scared because I had no legal background, I was worried about my language skills, but I work hard and am a very quick learner."

Ding's taste for "hard work" and finely developed skills as a "quick learner" were honed when she graduated first in her class at the Beijing Institute of Graphic Communication, Department of Foreign Languages with an undergraduate degree in English.

She received her Master's degree in applied linguistics from the University of International Business and Economics, School of International Studies in Beijing, and taught English at the Chinese Ministry of Commerce's School of Foreign Studies.

"I did my homework and read several books about American law school, so when I arrived here, I sort of had some idea of what law school would be like, what kinds of courses I'd be taking, and how to study," she says. "The first day was still overwhelming. "My first class on contracts was taught by our dean. Our textbooks hadn't arrived yet and so the dean gave us a handout of about 15 pages on a single case to read before the next class. I'd heard that law school would involve a lot of reading and soon faced having to read four, five or six cases a week, and I was taking four classes that first semester. I studied really, really hard. I took four classes in my first semester and ranked first in three and second in the fourth. That convinced me that I could do it."

UWLA, "is a small, close-knit school, the professors were very supportive, but, she adds, there were challenges.

"The biggest one for me was that I was far away from home and really didn't have any support system. Most of my classmates were working during the day, so there weren't very many social activities. In graduate school in China, you have dormitories and can easily mix with other students. Here, it seems, students have less time to interact with each other. It was very intense and students working during the day and going to school in the evenings don't have a lot of time to socialize. That made life a little challenging, and, although I'd been here before for a year, I even had to learn how to drive!"

The first year, says Ding "was the most challenging because a lot of students were still learning how to study—learning the law is very different from learning other subjects. It calls for a new way of thinking and that takes some real effort. I think my years as a researcher really prepared me to handle the challenge of critical and analytic thinking," she says. "I really enjoyed the experience and was engaged in all my classes."

> "The first year, was the most challenging because a lot of students were still learning how to study– learning the law is very different from learning other subjects." – *Xiaona 'Diana' Ding*

Ding received with her JD Magna cum Laude and third in her class from UWLA in May 2019. She also was honored with the Witkins Award for having the highest grades in her contracts, real property, evidence, pre-trial litigation, immigration law, bankruptcy, and introduction to legal studies courses.

"As an international student, I had to get an EAD [Employment Authorization Document] from the government before I could start work after graduation," says Ding.

While preparing for the Bar exam, she taught, and still teaches, Legal Analysis and Writing at UWLA, the same class in which she served as a teaching assistant when attending law school there.

At the same time, she did an externship in immigration law and started networking with several groups, including the Women Lawyers Association of Los Angeles, the Southern California Chinese Lawyers Association, and the Asian Pacific Women Lawyers Alliance.

Ding passed the Bar Exam on her first try and was admitted to the California Bar this past February.

The first attorney in her family, Ding was the first to ever come to the U.S. to study. "My father, who died several years ago, had five years of formal education and my mother has two. It was tough when I decided to quit my job and study in the U.S. I received a lot of opinions from people who really didn't support my decision. They were worried. My mom initially was against the idea, but she came around and has been very supportive of me."

I love the concept of the American Dream, of being self-made, of being able to succeed through hard work," says Ding. "I have several paths ahead of me. I could combine my past experience with my law degree, my language skills, and my culture to go into education law, or immigration law by tapping into my resources back home to help people in China."

Once successfully through her first semester, says Ding, "I never had any doubts about whether I could do it. I tell my students that if I can do it, they can and this isn't even my language. This is a new chapter in my life and I'm very, very excited about it. I'm now living my own American Dream."

Felicia Williams
Creating a Balance

After several years as a realtor in the Antelope Valley community of Lancaster and earning her bachelor's degree in communications from the University of Phoenix, Felicia Williams decided to "obtain valuable, real-world experience" and become a lawyer.

Currently in her third year of law school at Abraham Lincoln University, she balances her law school studies, job as a realtor, and home responsibilities that center on her disabled husband and their seven-year-old son.

"I've had to become very organized," says Williams. "It took me some time to balance my schedule and live by a daily planner. I don't use my phone or a computer for that; In fact, I actually buy an old-school daily planner every year and hand-write everything. I time-block when I'm going to do my reading and my assignments."

The real estate business, she says, has given her the opportunity to "refer clients to trusted agents that I've worked with in the past and that's allowed me to earn an income and carve out time for my reading and my studies and spending as much time as I can with my family. It all balances out."

"When I first started at ALU, we had the option of attending live classroom lectures, but now, the entire program is live online using Adobe Connect," she says.

"It's a great experience; we can interact not only with the instructors, but with each other. It's almost the same as being in a physical classroom setting. If their online program wasn't available, I'm pretty sure I wouldn't be able to attend law school at all. Although we have several law schools here in Southern California, the distance from where I live to one of those schools would mean hours of driving for me."

Another advantage, she adds, is the flexibility of the school's online JD program. "All of the program's classes are recorded, so if I'm not able to 'attend' a scheduled class, I can watch it later. There is a state-mandated tracking system to monitor lecture attendance and whether we're attending a live or recorded lecture."

The one disadvantage to an online program, says Williams, is that direct human interaction is missing. "But, that really isn't such a big thing in my experience, though, because we have a chapter of Delta Theta Phi at the school that I belong to. That offers tremendous opportunities to meet my professors and fellow students face-to-face."

> "I didn't know I had the capability of learning as much as I have and doing so has opened the way to career goals that I never thought I'd be interested in." – *Felicia Williams*

Williams sees the law school experience as more than just learning about the law. The process of earning her JD "has taught me a lot about myself and life."

She was elated when she passed the 'baby bar' exam on her first try and was "really pumped up" because the passage rate for first-time takers is very low. "I told myself that if I do the work, there wouldn't be any reason why I shouldn't pass. I was really thrilled too when one of my essays was published on the California State Bar's website."

Attending law school has given her a different outlook on the world. "I look at the world and see it in a different way than I did before. On a lot of social media platforms, the police, for example, are portrayed as bad guys. While some are, most are doing their job trying to protect the community. In any profession, there are going to be a few rotten apples. The same is true of attorneys. They're out to serve the community, too, and that's what I want to do."

Can law school prepare you for what "real world" legal practice will be like?

"I've talked with many attorneys to get their own impressions of whether law school prepares you for real practice," she says. "They've given me real-life examples based on their own professional experiences. I think the law school lays the foundation of what to expect once you become an attorney, but we really don't know what is out there until we get into the real world. There are some things that just can't be taught in a classroom."

What keeps her "fired-up" is "the realization that I love to learn and that I actually enjoy learning about the law. I was once totally uninformed about all the things that I've been learning about."

Attending law school has been revelatory.

"I didn't know I had the capability of learning as much as I have and doing so has opened the way to career goals that I never thought I'd be interested in. The whole experience has been a revelation."

Narek Garibyan
A Calling Found

Brought to the United States from Armenia by his parents at the age of three, Narek Garibyan was raised in Southern California and attended Los Angeles Valley College before earning an undergraduate degree in Business Administration from California State University, Los Angeles, with the thought of going into business management.

"In my early 20s, I really wasn't sure what I wanted to do, but there was this little voice in my head that was telling me to pursue a career in the law. I never let that go and hung on to it. As my education progressed through junior college and my undergraduate studies, the possibility of studying the law became more and more of a reality. I knew I wanted to get a graduate degree in management, but law school was on my radar with the possible goal of running a business with a law degree."

Garibyan had just married when he made the decision to apply to Glendale University College of Law.

"I was 29 at the time. I had delayed the decision for several years because I knew what a tremendous commitment it would be. It was tough. It was day and night for four years. There was nothing part-time about it. It was very demanding, but, in reality, before I started, I had made it out to be a much bigger deal than it turned out to be. It was grueling and I put a lot of pressure on myself."

Glendale was his only choice because the school's JD program offers an evening curriculum that is specifically designed for people who work, have a family or other obligations that might keep them from considering law school at all.

"I attended classes at night, four nights a week for four years. It was close to where we lived, but that wasn't the most important factor that played in my decision as to what school to attend," he says. "I was looking for a school that would give me a sound legal education that would enable me to sit for the Bar exam and, hopefully, successfully pass it."

Garibyan says he wanted to be able to have one-on-one time with his professors in a small setting in a place where a student could walk in and everyone knows each other.

"I asked myself why go to a big name school and spend a lot of money on a legal education that I could get less expensively somewhere else. I'm not sure I would have gotten anything more out of attending one of those larger schools."

And, he discovered, "That's exactly what it was. A lot of people who don't know anything about Glendale automatically think that because it's not a big-name school, it's somehow easier to get through. In some ways, it's actually more difficult.

"A lot of people didn't make it because they couldn't keep up academically. They rejected a lot of people. There really is nowhere to hide, but it's one of those schools where they'll give you a chance and they leave it up to you whether you want to take it and run with it. In my first year, we started with about 49 students, and by the end of the second year, about half were gone. After four years, 15 of us graduated."

A few days following graduation, Garibyan was self-sequestered in a remote office outside their home studying for the Bar exam when his wife called with the news that she was expecting their second child.

"It immediately hit me what was at stake," he says. "I had, and have, a family relying on me and I could not take the exam with the attitude that I'd just take it again if I didn't pass. A lot of time went into preparing for the exam."

How did he react when he got the news that he had passed the Bar exam?

"I didn't cry, I sobbed for a good 20 minutes," he recalls. "People told me that it was four years of God-knows-what that was built up inside. My wife was crying; it was over. We got to enjoy the moment, but it was the beginning of the next chapter of my life. I was ready to move on."

Hired soon after receiving his law license, Garibyan is practicing as an Associate at Binder & Associates, a plaintiff's firm in Pasadena doing civil litigation focused in the area of personal injury. This month, the firm will be moving to Encino and changing its name to the Binder Law Group.

"There are times when I don't know something and have to ask our paralegal where a document is filed or how a form may need to be filled out. Law school doesn't teach you that; they teach you how to read, how to write. They improve your vocabulary. I read every single case I was assigned and took volumes of notes. In that process, I developed a certain skill set. The way I read and write and think has changed and I feel I can hold my own in a social setting among other attorneys or if I'm speaking with opposing counsel on the telephone."

He says, laughing, "I think they can take me seriously because I, at least, sound like I know what I'm talking about."

Now at what he calls "the other end" of the law school experience, Garibyan says, he has "found his calling" and "can't even imagine doing anything else."

With a business degree, he says he "would have wound up frequently changing industries and that was something I didn't want to do. I wanted to start a life-long career; I didn't want to just have a job."

By Dorothy Blake Richardson

Music Licensing: A Changing Landscape

THE LICENSING OF MUSIC CAN BE a complicated and daunting process, but new rules aim to make licensing easier.

U.S. copyright law provides for two separate copyrights for music—the sound recording and the musical composition.

The sound recording consists of the recorded performance of a musical artist, the author who performed on the recording and can also include the producer who captures and processes the performance.

The musical composition, on the other hand, consists of the melody, rhythm and lyrics of a song. The author or authors of a musical composition are known as the composer and the lyricist.

Musical compositions often have several co-writers—for example, the hit song "Old Town Road," performed by Montero Hill, aka rapper Lil Nas X, was written by Hill, Trent Reznor, Atticus Ross and Kiowa Roukema—which usually means they also work with several different publishers.

Musical compositions have long enjoyed federal copyright protection, while sound recordings only obtained federal protection in 1972.

However, recent changes to copyright law have expanded protection for recordings produced before that year. The Orrin G. Hatch-Bob Goodlatte Music Modernization Act (MMA) was signed into law on October 11, 2018. Prior to its enactment, pre-1972 recordings were covered by a patchwork quilt of state and common law decisions.

The MMA grants federal remedies for copyright protection to pre-1972 recordings for 95 years after the year of its first publication with certain additional periods of protection based on when the sound recording was first published.

While prior to enactment of the MMA, digital music services used pre-1972 recordings without a license and without payment, is no longer possible.

Infringement Penalties

Penalties for copyright infringement can be high with the damages for infringement of a musical work that is protected by a registered U.S. copyright that can include statutory damages of up to $150,000 per infringed work, plus attorney's fees.

Even the use of an existing recording or a musical composition in a user-generated video posted on YouTube constitutes copyright infringement unless it clearly meets the definition of fair use, which can be difficult to determine in advance.

Most record labels and music publishers have monetization agreements with YouTube to share in revenues generated by ads placed opposite their owned content. These content owners can elect to take down an infringing video from YouTube, an action that results in a

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strike against the infringer's account, or they can "claim" the content and earn a share of ad revenue.

Under YouTube's copyright policy, users who receive three strikes are subject to having their accounts terminated. The copyright owner also has the right to pursue the infringer in court for copyright infringement.

Music Licenses

In order to stay on the right side of the law, the user of music should be familiar with the several different types of music licenses and when it is necessary to obtain them.

Synchronization License:

Whenever a musical composition is used in an audiovisual work such as a motion picture, television program, commercial, industrial or music video, or even a website, a synchronization license must be obtained from the songwriter or the music publisher who controls the rights to the song.

There is no pre-determined fee for a synchronization license. The fee can range from zero to hundreds of thousands of dollars for a hit song used in a major motion picture or a national television commercial.

Master Use License:

In order to use an existing recording by a musical artist or musician in an audiovisual work, it is necessary to obtain a master use license that will include the right to use the recording for a specific purpose, duration and territory.

In the past, it was common practice for these licenses to be granted for limited territories—for example, only in the U.S. and its territories—but since most uses are now on the internet, licenses are now typically granted on a worldwide basis.

In many cases, the master use license fee will be granted for the same fee or on a "most favored nations" basis with the synchronization license fee.

Such a basis protects the owner of the master recording when the music publisher commands an extremely high synchronization fee.

In other words, in such a situation, the owner of the master recording can ride the coattails of the publisher.

Public Performance License:

Playing music on the radio, on television, or in any public arena, sports venue, in a store, bar or restaurant involves the public performance of a musical composition and a sound recording.

If a work is publicly performed, one or more licenses may be required depending on the particular use and the media involved. The musical composition component of the performance is licensed by one of four performing rights organizations (PROs) for the performance in the United States—The American Society of Composers, Authors and Publishers (ASCAP); Broadcast Music, Inc. (BMI); the Society of European Stage Authors and Composers (SESAC); and Global Music Rights LLC (GMR).

Each of the PROs can issue public performance licenses and collect license fees on behalf of its membership, which consists of music publishers and songwriters. Royalties generated from public performances outside of the United States are collected by a corresponding foreign performing rights organization in the country where the music is performed.

For example, in Canada, the PRO is the Society of Composers, Authors and Music Publishers of Canada (SOCAN). Most of these organizations have reciprocal collection agreements with ASCAP, BMI, SESAC and GMR.

Any radio station in the U.S., including digital radio stations that play music from the ASCAP, BMI, SESAC and GMR repertoire, must have a public performance license with each of those PROs.

Likewise, television stations, concert arenas and other commercial entities that play music must have

public performance licenses unless they qualify for an applicable exemption.

Radio stations and television networks enter into blanket licenses that cover the public performances of musical compositions with each of the PROs, meaning they pay an annual flat fee for access to all of the music in a PROs repertoire.

The annual fees paid to the PROs for public performances of music are often the subject of contentious negotiations. In some cases, the license is negotiated on a collective basis. Radio station licenses with the PROs, for example, are negotiated by the Radio Music License Committee.

Other uses of music that are considered to be public performances include the streaming of music on the internet, the hold music on the telephone, and the music in Broadway shows and dramatic musical performances.

However, it needs to be noted that the terms of the ASCAP, BMI, SESAC and GMR licenses only apply to non-dramatic musical performances.

The use of music for shows and musicals, known as grand rights, must be licensed directly from the music publisher and not through the PROs.

Several exemptions apply to the requirement to pay public performance royalties. The Fairness in Music Licensing Act of 1998, for example, exempts small commercial establishments such as restaurants from the requirement to pay public performance royalties for musical compositions.

In order to qualify for the exemption, a restaurant must have a total of no more than 3,750 gross feet of space—excluding customer parking space—and must transmit music that is already covered by a license with ASCAP, BMI, SESAC and/or GMR.

Other exemptions exist for the performance of music in record stores and other commercial establishments for the purpose of promoting retail sales of records. Performances for use in instructional activities in the classroom by non-profit educational institutions, at social functions organized by non-profit fraternal organizations for charitable purposes, and performance of music in movie theaters are also exempted.

Historically, radio stations in the U.S. have been exempted from paying public performance royalties for sound recordings, the rationale being that radio stations help to promote the sale of records. The precipitous decline in CD sales over the past several years, however, has called this exemption into question.

For many years, the recording industry has lobbied heavily for the establishment of a public performance royalty for sound recordings on the radio, which many other countries pay. However, its introduction in the U.S. has been met with stiff resistance from the National Association of Broadcasters and other groups.

As a result of this exemption, U.S.-based recording artists do not receive royalties for broadcast radio performances of their repertoire outside the U.S. because foreign artists do not receive identical royalties under similar circumstances in the U.S.

The right to receive royalties for the digital public performance of sound recordings was established with the passage of the Digital Performance Right in Sound Recordings Act of 1995. The digital performance right applies only to digital audio transmissions by webcasters, digital music services such as DMX and Music Choice, and satellite radio services such as SiriusXM.

Terrestrial radio and television broadcasters who broadcast over the air, even using digital signals, remain exempt from the requirement to pay public performance royalties for sound recordings.

Digital Royalties for sound recordings are established through rate proceedings before the Copyright Royalty Board. They are collected through SoundExchange, a non-profit organization previously affiliated with the Recording Industry Association of America (RIAA).

Statutory rates for the digital performance of sound recordings are only applicable to so-called non-interactive webcasts, such as Pandora, which was recently purchased by Sirius-XM, and do not include on-demand music streams.

Mechanical License:

A sound recording is generally owned or controlled by a record company by means of an exclusive recording or license agreement with the artist.

That agreement will include the right to make and distribute phonorecords, for example CDs, vinyl records or digital downloads, and to license the rights in the sound recording to third parties.

In order to use pre-recorded music on a physical device, a master use license is required from the record company.

Likewise, whenever a musical composition appears in a physical

form, such as a compact disc, digital download, DVD, video game, toy or greeting card, a mechanical license must be obtained from the music publisher. The fee for the mechanical license is either negotiated between the music publisher and the licensee, or is the subject of statutory rates, which are determined through arbitration proceedings before the Copyright Royalty Board.

Provided that a musical composition was previously published, any person can obtain a compulsory license to use it by following the procedures set out in Section 115 of the Copyright Act.

Those procedures include paying the statutory rate, rendering monthly accountings and obtaining the license before distribution of the record. If the user complies with the requirements of Section 115, they are not required to request a license from the copyright owner.

Historically, most mechanical licenses have been consensual although licensees have followed established statutory rates. However, digital music services have found it excessively burdensome to obtain consensual licenses on a song-by-song basis, so they have taken to sending out Notices of Intention (NOIs) to obtain a compulsory license under Section 115 in bulk, rather than seeking consensual licenses.

Currently, statutory rates are in effect for the use of musical compositions in phonorecords, digital downloads—digital phonorecord deliveries or DPDs—and ringtones.

The current statutory rate for the use of a musical composition on a CD is 9.1 cents for works of five minutes or less in duration and 1.75 cents for each minute or fraction thereof over five minutes, payable on a per unit basis for each record sold.

The statutory rate for DPDs is currently the same as for physical phonorecords. The rate for ringtones was set by the Copyright Royalty Board at 24 cents in October 2008, and remains so today. The Board also sets statutory rates for interactive streams and limited downloads, establishing a complex formula based on the licensee's revenues, other public performance royalties earned and the number of subscribers to the music service.

A limited download is a digital music file that is restricted, either by the period of time it resides on the user's computer or by the number of times the song can be played before it times out. Interactive streaming is the transmission of a digital music file to be listened to on-demand by the end-user.

To request a mechanical license, the licensee must first contact the music publisher who controls the song. The Harry Fox Agency (HFA), which has been owned by the Society of European Stage Authors and Composers since 2015, issues mechanical licenses on behalf of a large number of publishers.

However, not all publishers are affiliated with HFA, so it may be necessary to contact the publisher directly.

One of the main goals of the recently enacted MMA was to simplify music licensing for digital music services by providing for a blanket license for the use of musical compositions offered by digital streaming services. The MMA provides for the appointment of a Mechanical Licensing Collective (MLC), to be charged with administration of the blanket license.

The MLC is authorized to receive notices and reports from digital music providers, collect and distribute royalties, and identify musical works and their owners for payment.

In addition, the MLC is required to establish and maintain a publicly accessible database containing information relating to musical works—and shares of such works—and the identity and location of the copyright owners of such works and the sound recordings in which the musical works are embodied.

In cases where the MLC is not able to match musical works to copyright owners, it is authorized to distribute the unclaimed royalties to copyright owners identified in MLC's records, based on the relative market shares of such copyright owners as reflected in reports of usage provided by digital music providers for the periods in question.

In July of 2019, the Copyright Office designated Mechanical Licensing Collective, Inc., a group overseen by the National Music Publishers Association, which is composed of major music publishers and is affiliated with the key record labels.

The MMA also provides for the appointment of a Digital Licensee Coordinator (DLC) to coordinate the activities of the licensees.

In July 2019, the Copyright Office designated Digital Licensee Coordinator, Inc. (DLCI), a group jointly owned by Spotify, Amazon, Google, Apple and Pandora, to act as its authorized DLC.

Regulations to implement the blanket license have not yet been enacted and are currently undergoing a rulemaking period with comments sought from the public. A so-called blanket license is scheduled to become available as of January 1, 2021.

In the meantime, digital music services can avail themselves of musical compositions without liability as long as they use good faith, commercially reasonable efforts to identify and locate the copyright owners and accrue royalties for distribution when the blanket license becomes available.

Statutory rates for mechanical licenses are set by the Copyright Royalty Board (CRB), which was established under the Copyright Royalty and Distribution Reform Act of 2004.

Copyright Royalty Judges determine and adjust royalty rates, terms applicable to the statutory copyright licenses and also oversee the distribution of royalties deposited with the Copyright Office by certain statutory licensees and adjudicate controversies relating to distribution.

While under the previous version of the copyright law, the CRB was not authorized to consider licensing fees paid for the digital performance of sound recordings in its rate-setting proceedings for the performance of musical compositions.

Under the MMA, the new rate-setting standard will be a market-based willing buyer/willing seller standard. This is considered a victory for songwriters and music publishers who had long complained that they routinely received lower royalty rates than the owners of sound recordings.

Other Licenses

Other types of licenses that are required and used less frequently are print licenses, when sheet music is printed and reproduced, and theatrical licenses, whenever a musical work is performed on stage in front of an audience.

Conclusion

As the process of music licensing is bound to become easier for digital music services once new regulations have been enacted, it will remain a complex process for other music users.

It is safe to assume that in order to use any music owned by a third party, at least one and possibly more than one license will be required.

It may take a few years, but once the Mechanical Licensing Collective has created a comprehensive database, it should be much easier to locate music owners and contact them to request the appropriate license.

Member Focus

Without its individual members no organization can function. Each of the San Fernando Valley Bar Association's 2,000-plus members is a critical component that makes the Bar one of the most highly respected professional legal groups in the state. Every month, we will introduce various members of the Bar and help put a face on our organization.

Naomi L. Fribourg

Law School: University of California, Hastings College of the Law

Area(s) of Practice: Family Law

Years in Practice: 17 years

Firm: West Valley Family Law Group, APC, West Hills

What was your favorite TV program when you were a kid? "The Golden Girls."

The most daring thing you've ever done? "I had twins!"

If you had 24 hours to spend $1 million, what would you buy? "A small island in the Caribbean."

What food best describes your personality? "Mango con chili…sweet and spicy."

Attorney Naomi L. Fribourg represents clients in all family law matters, including divorce, custody, support, complex property division, restraining orders, adoptions, domestic partnership cases, and negotiated settlement agreements. In her previous products liability practice, Fribourg represented a variety of clients in all phases of litigation, from managing cases in their initial stages to preparing them for trial. After several years of working in this area, Naomi decided to devote her practice to family law, and her litigation experience has served her family law clients well.

Prior to attending law school, she studied abroad at the University of Barcelona in Spain and taught middle school Spanish at Robert Louis Stevenson School in Carmel, California.

Fribourg received her undergraduate degree from the University of California, Berkeley. She received her JD from the University of California, Hastings College of the Law, where she was a member of Hastings' nationally-ranked Moot Court Board and was selected to be a teaching assistant for the school's Legal Writing and Research program.

"I grew up in Woodland Hills and went to Taft High School and moved up to the Bay Area for college when I attended Berkeley," she says. "I loved it so much I stayed up there for 20-plus years until my husband and I decided that life would be easier in Southern California. I have lots of family here and it's a lot less expensive than living in San Francisco, especially with kids! We moved back here almost five years ago. It's nice to be back as an adult since the Valley has always been home to me."

Ryan Cadry

Law School: University of California, Davis School of Law

Area (s) of Practice: Business and employment law

Years in Practice: 7 years

Firm: Cadry Law Group, PC Encino

Would you rather own a private jet or a luxury yacht? "A luxury yacht."

Who taught you how to drive? "My father because everyone else was too afraid to get in the car with me."

Name three famous people you'd like to share a meal with. "Yanni. I grew up listening to his music. He inspired me to learn how to play the piano; George Washington. He was a brilliant statesman, and because his humility and moral values are standards that we should strive to live up to.; and Steven Spielberg because I want to be him."

What is your favorite work of art? "The Surrender of General Burgoyne by John Trumbull. It depicts an illustration of how adversaries can still exhibit civility and hospitality toward one another, even at times of conflict."

Cadry graduated from the University of California, Davis School of Law where he served as editor on two journals and was a member of the Trial Practice Honors board.

An active member of the SFVBA and several other bar associations in the Los Angeles area, he has been invited as a guest lecturer at various seminars on business law and employment law.

In his business litigation practice, Ryan represents small businesses in trade secrets disputes, unfair competition, partnership disputes, contractual matters, interference with business relations, and the like.

He is also heavily involved in transactional aspects of business law, including entity formation, corporate compliance, and cross-purchase/corporate redemption agreements, lease and license agreements, and asset and stock purchase agreements.

In the employment arena, Cadry represents both employees and employers in employment discrimination, wrongful termination, retaliation and wage and hour matters.

In addition to running a busy law practice, he enjoys long-distance hiking, watching films, reading novels, and spending a great deal of quality time with his wife and nine-month-old son, Noah.

By Emma H. Mark

The Foreign Agents Registration Act: The Law That Came in From the Cold

LENI RIEFENSTAHL WAS ONE OF THE MOST FAMOUS and talented film directors of her time. Her groundbreaking career did not take off in Hollywood, however. It was launched in 1934, in Nazi Germany, and she directed what is considered to be one of the most successful propaganda films ever made: *Triumph of the Will*. Riefenstahl directed several propaganda films for the Third Reich and was cozy with the infamous Joseph Goebbels and even with Hitler himself.

In 1938, she embarked on an American publicity tour in an attempt to secure the commercial release of one of her films. If the release had been successful, would the public's knowledge of the film's origins have mitigated its impact? Congress believed it would, and in 1938, it enacted the Foreign Agents Registration Act (FARA) in an effort to combat just this type of Nazi and Communist propaganda.

FARA sounds like, and is, a remnant of a bygone era. That is, until the 2016 election. It has since been dusted off and found itself at the center of several key indictments stemming from the Mueller investigation.

The Department of Justice is stepping up enforcement, and Congress has made its intention clear: It is giving some bite to a previously toothless law. FARA isn't going away, and government relations firms, law firms, and PR firms with foreign clients should be paying attention.

FARA's Modernized Reach

Over the years, FARA has evolved from identifying Nazi propaganda films to requiring registration with and disclosure to the Department of Justice of any public or political action in the United States on behalf of a foreign person or entity. FARA doesn't affirmatively prohibit any conduct, but it criminalizes acting on behalf of a foreign principal without making the required disclosures.

These disclosures are widely available to the public and are accessible online—making registration a sensitive issue for some individuals and organizations.

Registration also can be quite onerous, and agents are required to provide copies of any agreements, disclose any income received from the foreign principal, and provide copies of any materials produced, among other things.

The law's stated purpose is to keep the government informed of the source of information and the identity of those individuals and organizations attempting to influence U.S. public opinion, policy and laws.[1]

But why utilize such an antiquated enforcement tool now? The answer lies in the breadth of the law's reach.

Emma H. Mark is an attorney admitted to the State Bar of Arizona, who formerly worked at Mitchell Stein Carey Chapman in Phoenix, Arizona. While there, her practice included advising clients on compliance with the Foreign Agents Registration Act. She also has extensive experience representing clients in a variety of criminal and disciplinary proceedings.

FARA defines a foreign principal as the government of a foreign country; a foreign political party; any person outside of the United States who is not a United States citizen; and any partnership, association, corporation, organization or other combination of people organized under the laws of or having its principal place of business in a foreign country.[2] Essentially, any person or group outside the United States falls within the scope of the law.

Moreover, the law defines an agent of a foreign principal (i.e., the entity required to register) as a person who acts, in any capacity, at the order, request or under the direction or control of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed or subsidized, in whole or in major part, by a foreign principal and who engages in lobbying, public relations, fundraising, advertising or consulting within the United States on behalf of that foreign principal.[3]

The law's scope is clear: It encompasses practically anyone doing any work within the United States on behalf of someone in a foreign country.

Prosecutions Ramp Up

Between 1966 and 2007, there were no successful criminal prosecutions under FARA, and only three indictments were filed charging FARA violations.[4] Instead of prosecuting violators, the DOJ developed a practice of attempting to achieve compliance by sending letters advising prospective agents of FARA's existence and the registration requirements.[5]

The widely held view of the law, until now, was that the statute could be ignored. Individuals acting on behalf of a foreign principal could bank on the fact that no criminal prosecution would occur, even for blatant violations. This is, in part, due to the "willfulness" *mens rea* standard in the statute, which is required for criminal prosecution.[6] This enforcement climate led to an atmosphere in which lobbyists, consultants, law firms and other groups loosely complied, at best.

To illustrate, the number of FARA registrants in 1991 was 2,079. In 2014, it was only 561, and yet we know that there are more people working on behalf of foreign clients than there were 25 years ago.[7]

Recently, however, that has all changed.

With the dawn of the Trump Presidency came the Mueller investigation, and with that came the prosecutions of Paul Manafort and Rick Gates. The two men were charged with failing to register their lobbying activities on behalf of the former president of Ukraine, Victor Yanukovych.[8] This indictment permanently altered the industry perception of FARA.

The indictment alleged that Manafort and Gates hired two D.C. lobbying firms to lobby in the United States on behalf of The European Centre for a Modern Ukraine—essentially a mouthpiece for Yanukovych.[9] The Americans acted as middlemen between the lobbying firms and Yanukovych, including paying the firms' bills through offshore accounts and directing lobbying efforts in some circumstances.[10]

The law provides that a person can be an agent by acting "directly or through any other person." However, the indirectness of the conduct of Manafort and Gates is striking. They certainly acted as conduits between Yanukovych and the two lobbying firms; however, it does not appear that they themselves engaged in much political activity—they mostly hired others to do it for them.

The criminal indictment was likely a result of failed attempts by Manafort and Gates to cover up their activities more than the activities themselves. The DOJ sent inquiries to the men in 2016 about their activities in relation to the Centre, and they responded with a series of false and misleading statements.

They essentially told investigators that they had not done any outreach in the United States on behalf of Yanukovych or the Centre; rather, they merely served as a means of introduction to the lobbying firms, and asserted they had no responsive documents regarding the DOJ's request for information.[11]

Manafort's and Gates' attempts to cover up their conduct and their refusal to comply with FARA's requirements plainly met the "willfulness" element of the statute.[12]

Meeting the Willfulness Standard

The most recent high-profile FARA enforcement action involved former White House counsel Gregory Craig. The ex-Skadden partner was indicted on April 11, 2019, and charged with making false and misleading statements in relation to FARA.[13]

Craig was hired by the Ukrainian Ministry of Justice to author a report about the fairness of the evidence and procedures used in the internationally criticized trial of the former Ukrainian prime minister, Yulia Tymoshenko. Ukraine planned to deploy the report as part of a publicity strategy headed by Paul Manafort.

Craig's firm was reportedly paid over $4 million for its work, and the money was funneled through a bank account belonging to Manafort.[14] According to the indictment, despite advice to the contrary, after authoring the report, Craig engaged in public relations work in the United States by becoming involved in various PR strategies related to the release of the report; participating in meetings with

Manfort and a PR firm regarding media strategies; reaching out to a journalist and asking if they would take a meeting with a lobbyist for the Ukrainian government to discuss the report; and delivering the report to the journalist before it was publicly released and making a public comment about the report.[15]

Before trial, one of the charges was dismissed by the federal district court, which applied the rule of lenity and determined that the statements underlying count two of the indictment were not part of any formal FARA filing. As such, based on the court's reading of the statute, they could not form the basis for a FARA prosecution.[16]

Craig was acquitted of the remaining count on September 4, 2019. The case turned solely on whether the defendant's statements to DOJ officials were deliberately misleading, and the DOJ's failure to convict Craig "reflected both the challenge the Justice Department faced making its technical case resonate with the jury and the effectiveness of the former While House counsel when he took the stand to defend himself against [the] allegations."[17] This case also underscores the importance of the DOJ's ability to demonstrate that violators meet the threshold "willful" element before bringing criminal charges.

Civil Enforcement and Enhanced Power

The DOJ has also taken steps to capitalize on its civil enforcement authority—a tool it used in 2019—the first use since 1991.[18]

Under this authority, if the DOJ determines that a person is engaged in or about to engage in a violation of FARA, it can seek an order enjoining that person's activity and requiring compliance with the statute.[19] In May 2019, the DOJ successfully sought an order requiring Florida-based RM Broadcasting to register as an agent of the Russian-owned media outlet Rossiya Segodnya.[20]

Looking ahead, in addition to the FARA Unit's stepped-up enforcement efforts, Congress and members of the executive branch have taken steps to give the DOJ even more enforcement power, to get rid of exemptions, and to further support investigation efforts.

For example, last year, Sen. Chuck Grassley and Rep. Mike Johnson proposed identical bills to address what they see as ambiguous requirements under FARA.[21]

The proposed legislation would give the DOJ civil enforcement power to demand production of documents and testimony to ensure compliance, eliminate the Lobbying Disclosure Act exemption currently in the statue (which allows registrants to file under the Lobbying Disclosure Act instead of FARA unless the principal beneficiary is a foreign government or political party), and charge the DOJ with developing a comprehensive enforcement strategy to be reviewed by the the Office of Inspector General and the U.S. Government Accountability Office.[22]

It was reported that during William Barr's confirmation hearings, Sen. Grassley asked the Attorney General nominee to work with him on the legislation, and Barr committed to making the law a "top priority."[23]

Moreover, Sen. Tammy Duckworth, Sen. Dick Durbin and Sen. Richard Blumenthal also proposed legislation that would authorize the DOJ to impose civil fines against FARA violators; require the disclosure of all lobbying materials, even to a single person (which the law does not currently require); and require filing a statement with the name of each original recipient and the original date of distribution of all informational materials.[24]

The bottom line is this: Potential registrants can expect a shift in enforcement. What we traditionally think of as propaganda, the films of Leni Riefenstahl and the like, are no longer the focus. The efforts of Congress and the DOJ are now directed at foreign interference in our elections, fundraising and covert public relations strategies. The DOJ has escalated efforts to enforce disclosure requirements, and the axe is coming down on those who thwart the law's registration requirements—hard.

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[1] U.S. Department of Justice, Foreign Agents Registration Act of 1938 Frequently Asked Questions, www.justice.gov/nsd-fara/general-fara-frequently-asked-questions#2.
[2] 22 U.S.C. § 611(b).
[3] Id. § 611(c). The statute also exempts several activities from registration, such as diplomatic or consular officers and their staff members, private non-political activities, and legal representation. *See* 22 U.S.C. §613.
[4] U.S. Department of Justice Archives, Foreign Agents Registration Act Enforcement www.justice.gov/archives/usam/criminal-resource-manual-2062-foreign-agents-registration-act-enforcement.
[5] *Id.*
[6] 22 U.S.C. § 618(a).
[7] Miles Parks, *A "Toothless" Old Law Could Have New Fangs, Thanks To Robert Mueller*, NPR, Nov. 17, 2017, www.npr.org/2017/11/17/563737981/a-toothless-old-law-could-have-new-fangs-thanks-to-robert-mueller.
[8] Indictment of Paul J. Manafort, Jr. and Richard W. Gates III, Oct. 30, 2017, https://www.justice.gov/file/1007271/download.
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] Manafort ultimately pleaded guilty and was sentenced to three and a half years in prison for his FARA violations (He was sentenced to a total of 7.5 years for other crimes not at issue here). Gates pleaded guilty to one count of conspiracy to violate FARA, among other things, and to making false statements. He has not been sentenced.
[13] Indictment of Gregory B. Craig, April 11, 2019, https://www.justice.gov/opa/press-release/file/1153651/download.
[14] In January 2019, Skadden entered into a settlement agreement with the DOJ over the alleged FARA violations related to Craig's work on behalf of the Ukrainian government. Skadden agreed to retroactively register as an agent of a foreign principal and to pay a fine equal to what it received in fees and expenses for Craig's work ($4.6 million). U.S. Department of Justice letter Jan. 15, 2019, www.justice.gov/opa/press-release/file/1124381/download.
[15] *Id.*
[16] See Memorandum Opinion and Order, Aug. 16, 2019, www.politico.com/f/?id=0000016c-686c-da83-a96c-fafd98ff0000.
[17] *Case Against Ex-Skadden Partner Got Lost in the Weeds*, LAW360, Sept. 4, 2019, www.law360.com/whitecollar/articles/1195474/case-against-ex-skadden-partner-got-lost-in-the-weeds.
[18] *In Win For DOJ, Broadcaster Must Register as Foreign Agent*, LAW360, May 13, 2019, www.law360.com/articles/1159230/in-win-for-doj-broadcaster-must-register-as-foreign-agent.
[19] U.S. Department of Justice, FARA Enforcement, www.justice.gov/nsd-fara/fara-enforcement.
[20] DOJ Win, supra note 18.
[21] Press Release, *Sen. Grassley, Rep. Johnson Introduce Bill to Shine Light on Foreign Influences*, Oct. 31, 2017, www.grassley.senate.gov/news/news-releases/sen-grassley-rep-johnson-introduce-bill-shine-light-foreign-influences.
[22] *Id.*
[23] Prepared Remarks by Senator Chuck Grassley of Iowa, *Grassley On the Nomination of William Barr to be Attorney General of the United States*, Feb. 13, 2019, www.grassley.senate.gov/news/news-releases/grassley-nomination-william-barr-be-attorney-general-united-states.
[24] S.1679 Foreign Agent Lobbying Transparency Enforcement Act, 115th Congress (2017-2018), www.congress.gov/bill/115th-congress/senate-bill/1679/text?format=txt&q=%7B%22search%22%3A%5B%22S.+496%22%5D%7D.

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Photos by Ron Murray

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An Overview from the Chair

DAVID G. JONES
Attorney Referral Service
Chair

djones@lewitthackman.com

AFTER THE DUST FROM NEW Year's resolutions has settled, this time of year is the perfect time to provide an update and overview from my perspective as Chair of the SFVBA's Attorney Referral Service Committee, one of our Bar's most important, and one that I have served on since 2015.

As our members know, the ARS serves an important and growing need in the community, offering access to justice for those who are unable to find legal representation due to financial constraints or need the guidance and vetting of qualified, experienced attorneys to whom their cases will be entrusted.

Over the past several decades, the dedicated, self-funding ARS has helped thousands of San Fernando Valley residents in need of legal services with a staff funded by its efforts and many long-standing committee members who have invested years of Bar service to ensure its ongoing operation.

During the tenure of the SFVBA's current Executive Director, Rosie Soto Cohen, the ARS has developed into a more sophisticated business operation, largely due to her tireless efforts.

Under the leadership of former ARS Chairs, including current SFVBA President Barry P. Goldberg, and Past President Caryn Brottman Sanders, it moved into the digital age with a major campaign underway to build viability and an effective online presence.

Luckily for me, I took the reins of an ARS in outstanding condition as a result of the collective work of my predecessors.

In my time on the committee and as Chair, steps have been taken to fine-tune an already effective, well-organized and respected program into a more efficient and accountable operation.

Much work has gone into ensuring that the investment of money into the operation was maximized in terms of tracking outcomes for the cases which have been referred to ARS attorney panel members.

> Luckily for me, I took the reins of an ARS in outstanding condition as a result of the collective work of my predecessors.

We have appointed a new Associate Director of Public Services, Miguel Villatoro, who has been instrumental in developing creative marketing campaigns and ensuring the administrative aspects of ARS run smoothly. The ARS has also hired a new, highly qualified and effective ARS Consultant, Favi Gonzalez, who has significantly helped to raise the ARS' level of professionalism and community outreach.

Importantly, dedicated SFVBA staff, panel and committee members, and a Board of Trustees join forces to support the important work of the Service month after month and year after year.

Each and every effort of the ARS committee has been team-supported with overwhelming energy and time invested by those involved.

This fine-tuning of our operation has resulted in an Attorney Referral Service that better serves the Valley legal community and the public with enhanced consistency, stability and dedication.

The ARS is highly respected by our Valley community leaders, bench officers, and regional civic organizations. For that very reason and I am proud to have played a very small part in making it happen.

Valley Community Legal Foundation
of the San Fernando Valley Bar Association

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Valley Community Legal Foundation

San Fernando Valley Bar Association
founded in 1926

A Smile in a Dark Place

PATRICIA McCABE
VCLF Vice President

patricia@mccabedisabilitylaw.com

YOUR DONATIONS TO VALLEY COMMUNITY LEGAL Foundation support vital programs in the San Fernando Valley.

One of the worthy programs backed by a Valley Community Legal Foundation grant is Safe Passage, a charitable organization that works with women and children to break the bonds of domestic violence.

The VCLF grant goes to support Safe Passage's team of doctors and counselors, who provide key services including a domestic violence hotline, weekly counseling, medical and dental evaluations and reconstructive facial surgery and nutrition classes to victims.

Domestic violence can cause an adverse ripple effect on the emotional and psychological state of a survivor and the services provided by Safe Passage help begin the healing process for survivors.

Safe Passage focuses on a whole-person approach by offering programs that teach critical skills, including self-defense, computer basics and job skills, resume writing, interview techniques, job search methods, and how to structure personal and financial goals. Through those programs, women and children are empowered to take control of their lives and start building a better future for themselves.

Another community program supported by VCLF is Time2Heal, a Safe Passage-managed program for teens and children who have been witness to or victims of domestic violence.

The program offers counseling for teens and children in multiple formats, including in-person, tele-counseling via the computer, and telephone counseling. The multi-format approach allows participating youths to access counseling without the need of transportation.

The program helps teens and children learn critical management skills that address such issues as violence, anger, bullying, and harassment. This is critical as studies show that teens and children who witness violence between parents may also be at greater risk of being violent in their future relationships.

Safe Passage relies on the Valley Community Legal Foundation grant to keep its hotline operational, and its tele-counseling and telephone counseling programs up-and-running. Valley Community Legal Foundation is proud to support Safe Passage.

For more information on Safe Passage, visit their website at safepassageheals.org. Safe Passage and Time2Heal are registered 501(c)(3) charities.

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As an AmazonSmile charity, everyday purchases on Amazon can now be transformed into charitable donations to Valley Community Legal Foundation (VCLF).

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Whether you are shopping for technology, paperclips or household supplies, Amazon will make a donation to the Valley Community Legal Foundation. All purchases and products qualify.

It only takes a few simple steps to make sure Amazon makes a donation to the VCLF on your purchases: Type smile.amazon.com into your browser; Enter your login credentials for Amazon; You will see "AmazonSmile" on the left side of the webpage; Designate the Valley Community Legal Foundation as your charitable organization directly under the search box; and shop.

ABOUT THE VCLF OF THE SFVBA

The Valley Community Legal Foundation is the charitable arm of the San Fernando Valley Bar Association, with the mission to support the legal needs of the Valley's youth, victims of domestic violence, and veterans. The Foundation also provides scholarships to qualified students pursuing legal careers and relies on donations to fund its work. To donate to the Valley Community Legal Foundation or learn more about its work, visit www.thevclf.org.

Gearing Up for Competition

SARAH HUNT
SCVBA Executive Assistant

info@scvbar.org

THE SANTA CLARITA VALLEY Bar Association (SCVBA) is continually striving to give back for the many gifts that we enjoy as professionals living or working in the Santa Clarita Valley.

Several years ago, as part of an ongoing effort, SCVBA launched a speech competition for students attending high schools in the William S. Heart School District. That allows them the opportunity to demonstrate their research, writing and persuasive skills to influence how relevant and timely issues are perceived and resolved.

Over the last seven years, SCVBA has been privileged to recognize the outstanding achievements of these high school students.

> "Over the last seven years, SCVBA has been privileged to recognize the outstanding achievements of these high school students."

In the years since the speech competition program began, it has engendered no small amount of pride among members of the Board of Trustees and the Bar, as a whole, as it reflects the unique partnership with the community.

High school juniors and seniors who participate in the competition are required to give a short speech on a pertinent legal issue, with the top three speakers receiving cash scholarships.

The next competition is scheduled for later this year.

The event will give contestants the unique opportunity to make their presentations before a panel of Los Angeles Superior Court judges on the topic: "If you could travel back in United States history to personally witness an event or series of events, leading to the enactment of national legislation, what event(s) would that be, and why is this legislation meaningful to you?"

The top three contestants will be invited to SCVBA's Scholars and Bench Night at The Oaks Club in Valencia, where their cash scholarships will be awarded.

Without the help of the businesses and individuals that graciously sponsor these events, we would not be able to offer events such as the Speech Competition and Scholars and Bench Night.

Community members, friends & family are always welcome and encouraged to attend both events. If you are interested in sponsoring or attending these, or other SCVBA events, please visit www.scvbar.org, call the office at (661) 505-8670, or email info@scvbar.org. Members of the SFVBA, come watch the competition as well, and attend our Scholars and Bench Night.

For more information, please reach out to Sarah Hunt at info@scvbar.org.

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