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JUNE 2020 • \$5

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Understanding the Past,  
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**Data Privacy Compliance:  
A Question of Security**

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# SFVBA Is Here for You

**BARRY P. GOLDBERG**  
SFVBA President



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**A**T SFVBA, IT IS BUSINESS AS USUAL, EXCEPT we have no face to face contact! Though we have had to postpone our calendar of in-person events and mingling with top lawyers and judges, our amazing online and Zoom programs have been very well attended.

As we practice law at our kitchen tables, it seems that we are interested and willing to log-in to the Internet to find out more about how the legal system is adapting to the New Normal and how we can learn more on how to serve our clients better. More on that a bit later.

One of the things that has not changed is the Attorney Referral Service (ARS) of the SFVBA.

In fact, at the ARS, it is business as usual as the ARS staff continues to expertly handle and place referrals with highly professional and well-qualified lawyers.

Associate Director of Public Services Miguel Villatoro has worked hard to re-certify the ARS with the State Bar of CA guaranteeing the Service has once again met the rigorous requirements to be recognized as a provider of bona fide referrals.

This means, among other things, that ARS attorneys meet the highest practice qualifications, such as specified years of practice, case experience, and the maintenance of malpractice insurance. The ARS also provides sufficient proof that it benefits the underserved community with numerous important outreach programs, that are of benefit to both the public and the legal communities in Los Angeles and Ventura counties.

Unfortunately, other so-called referral services do not bother to become certified by the State Bar as required by law and, in many cases, are operating illegally.

Case in point is *Jackson v. LegalMatch*. The court recently found that this online legal lead generator was operating as a referral service by definition and must, like the SFVBA's ARS, meet the rigorous standards laid out by the State Bar.

*LegalMatch* advertises to obtain leads and then delivers them out to attorneys who pay a hefty monthly subscription cost for the privilege of receiving the leads they receive. No real attention is paid to the attorney's qualifications, experience, or ability to handle a case in a specific area of law; malpractice insurance is not required.

Recently, the State Bar reached out to *LegalMatch* to assist them in becoming legally certified.

*LegalMatch* responded to the State Bar asking for a special dispensation to waive the malpractice insurance requirement for

its subscribing attorneys. In the meantime, *LegalMatch* failed to even apply to be certified.


In response, the State Bar has filed suit against *LegalMatch* seeking injunctive relief to prevent its operation in California. That decisive action has far-reaching implications to all the other legal 'lead generating' companies operating in the state with the State Bar seeking a declaration that attorneys are breaking the law by accepting leads from such uncertified operators.

That is the point where it all comes full circle. During this stay-at-home time, when there are scores of online programs designed to assist attorneys in developing marketing programs, expanding practice areas and sharpening skills, the SFVBA should be your default source with five informative webinars scheduled this month.

Go to the Events Calendar—<https://members.sfvba.org/calendar.aspx>—on the SFVBA website to register online.

- **June 4** - All Sections: Legal Ramifications of Interpreting and Translating
- **June 9** - Probate & Estate Planning Section: Evidentiary Issues
- **June 11** - Business Law & Bankruptcy Section: COVID-19 Effect on Real Property
- **June 16** - SFVBA Taxation Section: Qualified Small Business Stock
- **June 18** - All Sections: Practicing Post COVID-19
- **June 25** - Special Member Appreciation MCLE Elimination of Bias in Today's Global Workplace

We can all agree that the public is best served by being given access to skilled and knowledgeable lawyers and that people seeking legal assistance should be able to search and find those lawyers by looking online and elsewhere.

The public should have the ability to compare lawyers side by side and choose a lawyer that is a good fit. It is up to us to be sought out for our professionalism, knowledge and dedication to our craft. The time has never been better for the trustworthy lawyers serving our community to be known for who and what we are and what we can do for our clients—not for leads processed in an online swap meet. 



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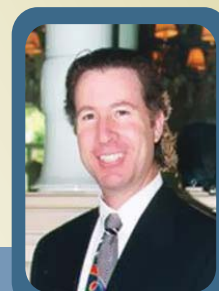


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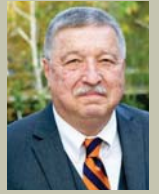
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# Reconnecting With Old Friends

**MICHAEL D. WHITE**  
SFVBA Editor



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**O**K...EVERYBODY SHOULD BE UP TO SPEED on how to handle themselves in this the Era of the New Normal—wash your hands, wear a mask when appropriate, social distance, avoid crowds, obey the aisle traffic flow arrows on the floor of your nearby Sprouts, and all that other stuff.

While we have had several months to reflect, it might be good to remember that a sense of humor, or, at least, an occasional whiff of it can do wonders.

Many years ago, the poet E. E. Cummings wrote, “The most wasted of all days is one without laughter.” He was right.

Frankly, though, perhaps we have wasted a few over the past several months minutely zeroing-in on toilet paper shortages and face masks rather than what we can take away and learn from all of this.

For my part, over the past couple of months, I have found a hidden bundle of potential chuckles by using some of my free time to blow the dust off of some pieces of sacred ‘literature’ that, frankly, I had not given more than a second thought to since high school.

I even gave *Catcher in the Rye* a second chance, but alas, no joy. I have an off-shore numbered account in a bank that shall go nameless on an as-yet uncharted Caribbean island that I will empty and present to anyone who enlighten me as to why so many folks think it is a work of unsurpassed genius.

Undeterred, I tackled my dog-eared Penguin paperback edition of *Pride and Prejudice* only to conclude that much time could have been better spent cruising Van Nuys Blvd. in my buddy’s 1966 Mustang convertible if the hunky and brooding Mr. Darcy had just stayed in out of the rain and the Bennet sisters had just left Hertfordshire to spread their wings to find suitable work in, say, Hoboken, New Jersey or somewhere in the Yukon.

My search continued with my reactions hereby recorded: *War and Peace*? I almost dislocated my wrist just trying to lift it. *The Grapes of Wrath*? Sorry. I’ve got enough troubles of my own, thanks. *Bleak House*? Yes. Yes it was. *Atlas Shrugged*? Off the record, I have no comment...and, yes, you can quote me.

There were more, but space is limited.


And then, satisfaction dawned in the most unlikely work.

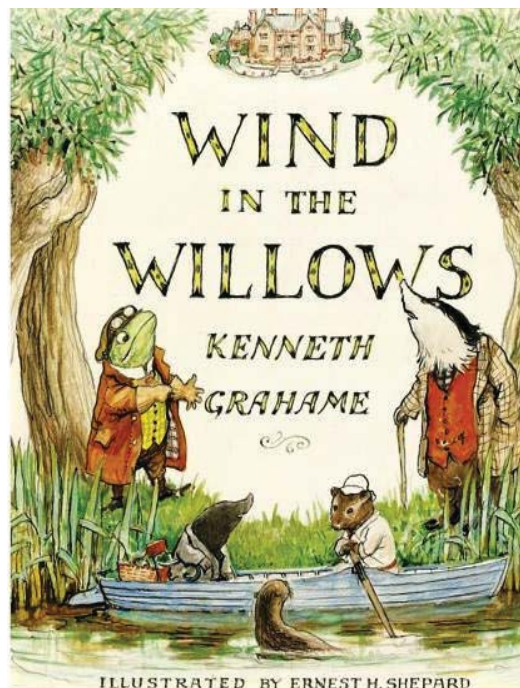
Back in 1908, a Scottish bank executive named Kenneth Grahame created a cast of animal characters to serve as the players in a series of bedtime stories he wrote for his four-year-old invalid son.

What resulted was *The Wind in the Willows*, an honestly singular masterpiece that chronicled the madcap adventures of Mole, Rat, Badger, and the one-and-only Toad of Toad Hall—a quartet of amiable English ‘gentlemen’ whose zany Edwardian-era escapades have been enjoyed by millions over the years.

Please, do not write it off as merely a children’s book. It is a tome for everyone of any age. None other than Theodore Roosevelt wrote Grahame to tell him that he had “enjoyed the book immensely” and “had come to accept the characters as old friends.”

The book has just about everything—these are, as one critic put it, “companions who drink and smoke, own houses, drive cars and trains, escape from jail, ‘spring clean,’ yearn for gastronomic nights in Italy, eat ham and eggs for breakfast, write poetry, and mess about in boats.”

It is pure fun—a wonderful, wildly escapist read and I can’t recommend it highly enough. You might try it. I did and it really took the edge off. 

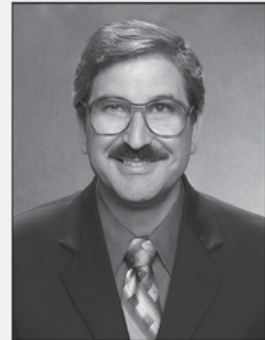


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	<div><div>ZOOM MEETING 1</div><div></div><div>5:30 PM</div></div>	2	3	<div><div>WEBINAR 4</div><div>All Section</div><div>Legal Ramifications of Interpreting and Translating</div><div>12:00 NOON</div><div>Sponsored by</div><div><b>QuickFee.</b></div><div>Getting Paid Made Easy</div><div>Barry Schreiber discusses the importance of interpreters and translators regarding your practice. Free to SFVBA Members! (1 MCLE Hour)</div><div>See ad on page 18</div><div>ZOOM MEETING</div><div>Membership and Marketing Committee</div><div>6:00 PM</div></div>	5	6
7	8	<div><div>WEBINAR 9</div><div>Probate and Estate Planning Section</div><div>Evidentiary Issues in Probate</div><div>12:00 NOON</div><div>Judge Mary Thornton House, Ret. updates the group. (1 MCLE Hour)</div><div>ZOOM MEETING</div><div>Board of Trustees</div></div>	10	<div><div>WEBINAR 11</div><div>Bankruptcy and Business Law and Real Property Section</div><div>COVID-19 Effect on Real Property</div><div>12:00 NOON</div><div>Sponsored by</div><div></div><div>What is the latest regarding evictions and landlord/tenant issues? Attorney David Smith will address. Free to SFVBA Members! (1 MCLE Hour)</div></div>	12	13
14	15	<div><div>WEBINAR 16</div><div>Taxation Law Section</div><div>Qualified Small Business Stock</div><div>12:00 NOON</div><div>Attorney and Certified Tax &amp; Estate Planning Specialist Andrea Kushner will discuss planning opportunities with Qualified Business Stock. These "old" rules have been re-invigorated after the passage of the Tax Cuts and Jobs Act. Section 1202 allows sellers of C corp. stock to exclude, under certain circumstances, 100% of their gain from federal income taxation. (1 MCLE Hour)</div></div>	17	<div><div>WEBINAR 18</div><div>All Section</div><div>Practicing Post-COVID-19</div><div>12:00 NOON</div><div>Sponsored by</div><div></div><div>This webinar will address the smartest moves an attorney can make in the post-COVID-19 reality. Free to SFVBA Members! (1 MCLE Hour)</div></div>	19	20
<div><div>21</div><div></div></div>	22	<div><div>23</div></div>	<div><div>24</div></div>	<div><div>WEBINAR 25</div><div>Special Member Appreciation MCLE</div><div>Elimination of Bias in Today's Global Workplace</div><div>3:00 PM</div><div>David G. Jones and Chrystal L. Ferber address discrimination against Asian Americans post-COVID-19 and other timely issues. (1 Hour Elimination of Bias MCLE)</div><div>See ad on page 37</div></div>	26	27
28	29	30	<div><div>WEBINAR</div><div>Special Member Appreciation Event</div><div>Cooking with Joy</div><div>4:30 PM</div><div>Zoom cooking social event.</div><div>See ad on page 37</div></div>			
<div><div>SFVBA COVID-19 UPDATES</div><div><a href="http://sfvba.org/covid-19-corona-virus-updates/">sfvba.org/covid-19-corona-virus-updates/</a></div></div>						



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By reading this article and answering the accompanying test questions, you can earn one MCLE credit. To apply for the credit, please follow the instructions on the test answer form on page 20.

# Data Privacy Compliance: A Question of Security

By Travers Morgan

Businesses, both new and old, are advised to appraise how they relate to privacy and consumer protection under the new California Consumer Privacy Act (CCPA). If a business waits too long to think about these issues, it may find itself having to reactively develop patchwork measures that could well cause inefficiencies in software maintenance or even result in a lawsuit.





**L**ET US SAY YOU HAVE A BRILLIANT IDEA WANT to make a new mobile application that could radically change the way people go about their daily lives.

As the creator of the application you would naturally be asking questions such as:

- What does the user interface look like?
  - How does the backend operate?
  - How will we gain traction and a community of users?
  - What security measures do we need to implement?
- or,
- How do I gain financing to help scale my application?

While these are legitimate questions in terms of application development, it is just as important to consider the legal questions and the law pertaining to intellectual property, privacy, content regulations, consumer protection, and advertising.

Specifically, in this article, we will discuss issues that a business may want to think about relating to privacy and consumer protection under the new California Consumer Privacy Act (CCPA). However, note that these questions

are not completely comprehensive of CCPA as the Act is a much more vast topic than what can be addressed in a single article.

### Who must comply with CCPA?

According to the California Consumer Privacy Act, a business is required to comply if they collect personal information from consumers in the State of California and also fall into one of the following categories:

- The business has an annual gross revenue in excess of \$25,000,000;
- Alone or in combination, annually buys, receives for the business's commercial purposes, sells, or shares for commercial purposes alone or in combination, the personal information of 50,000 or more consumers, households, or devices; or,
- Derives 50 percent or more of its annual revenues from selling consumers' personal information.

Additionally, if an entity owns or is owned by a business that falls into any of the categories above, they are also mandated to comply with the CCPA.

In the case of application development, it is likely that most businesses are small startups and do not fall into any of the above-named categories when they begin the development of the project.

However, both revenue and the accumulation of consumer information can accumulate rapidly if an application proves successful.

There are several reasons why it would be considerably more difficult for an app developer who has soared to success and suddenly falls under the definition of a business that must become CCPA compliant.

One of the reasons is that a software system may have to be completely redesigned on the backend to comply with the Act and include the capability of supporting consumer requests regarding the handling of personal data and providing proper just-in-time notifications regarding the collection of information.

Additionally, as companies mature, corrective measures to their operations can move more slowly and are more difficult to implement as they are less nimble as they were in the early stages of their development.


It could also be more difficult to have applications and software function more efficiently when patches need to be applied to the code rather than having the system set up to run efficiently from the start with CCPA compliance requirements in mind.


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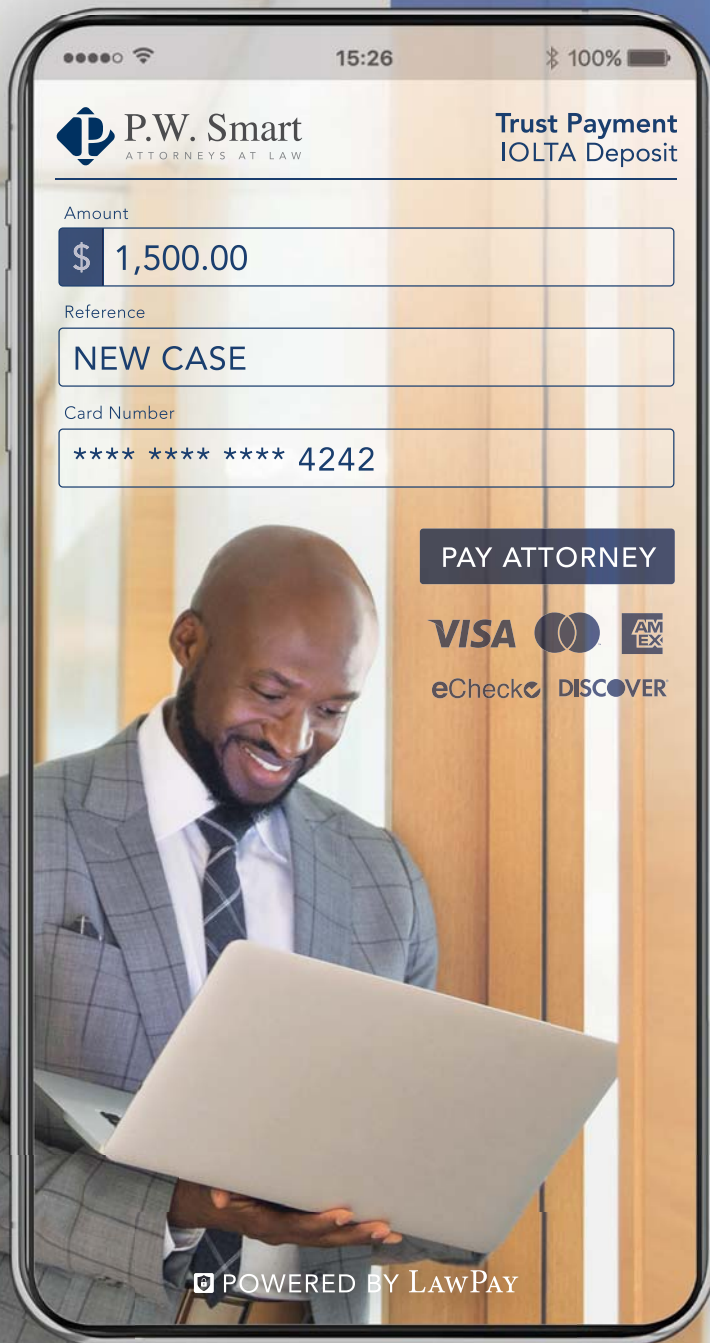
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Therefore, even though some startups in the software space may not currently fall under the defined business of CCPA, it is always a good idea to act as if you will be a success and make sure the business is in compliance from the beginning.

### Notice Requirement at the Time of Collection

Under the CCPA, consumers not only have the right to know what information a business has collected from them, they also have the right to be informed of the personal information being collected at the time it is being accumulated.<sup>1</sup>

A business that gathers a consumer's information at or before the point of collection is required to inform the consumer of the categories of personal data that is being collected, as well as the reason or purpose why the information is being amassed.

“

Consumers have the right to be informed of the information being collected at the time it is being accumulated.”

Further, if a business has already collected information from a consumer for a purpose that has been previously shared with the consumer, the business is prohibited from using the same information for a different purpose. To do so, the business would first have to inform the consumer of the new purpose for using the personal data.<sup>2</sup>

Thus, when developing an application that automatically collects personal information such as, geolocation data that becomes active upon launch of the application, a company will need to integrate a way to inform the consumer that their information is being collected and the purpose behind automatic collection at the time of the application's launch.

A banner or alert message directing the consumer to the company's privacy policy, which would disclose such collection in a more detailed manner, could be utilized in such a case.

### Notice Upon a Verifiable Request

In addition to the notification above, receipt of a verifiable



consumer request, businesses will also need to disclose the various categories of sources that are mined for the personal information; the business or commercial purpose for collecting or selling the personal information they collect; the categories of third parties who are recipients of the collected data; and, the specific bits of personal information the business has collected about that consumer.<sup>3</sup>

In other words, a business needs to have a system in place that can inform a consumer exactly from where the personal information was collected. (i.e., Did they purchase the information from another company? Did they collect it through an application, or was it actually provided by the consumer?).

The system will also require structuring so that the reason why the information and how it relates to the business that they are conducting can be explained.

For example, if a company collects email addresses,

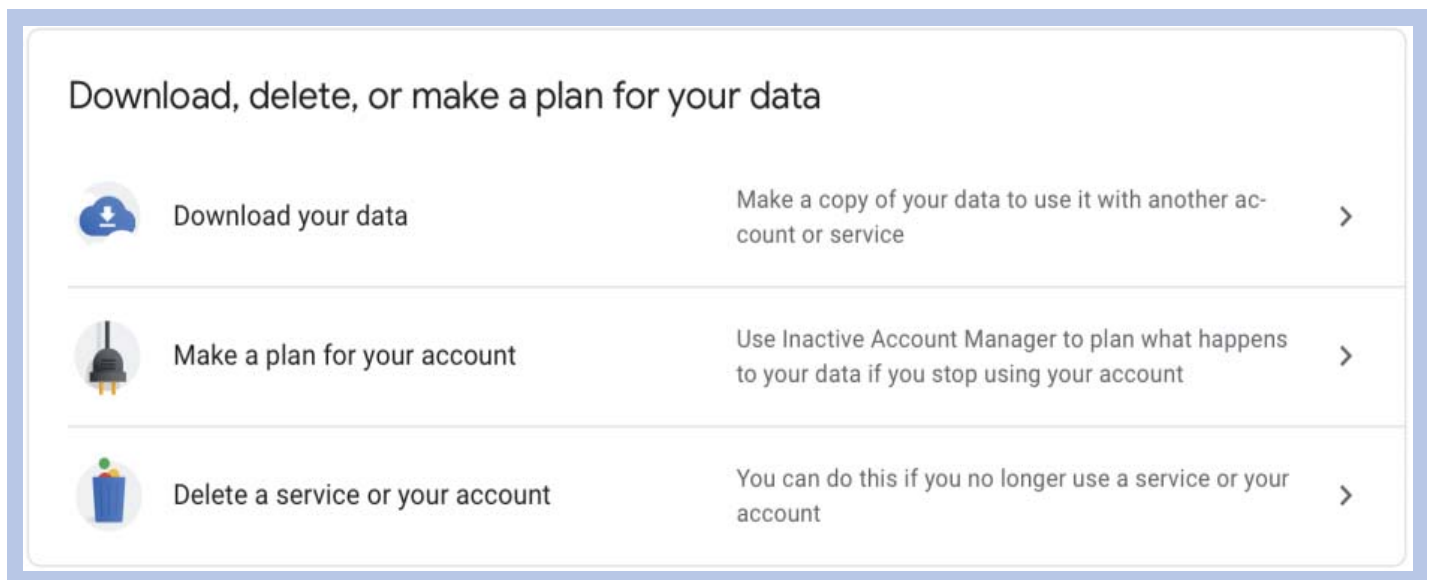
## Deletion Rights

According to the CCPA, a consumer “shall have the right to request that a business delete any personal information about the consumer which the business has collected from the consumer.”<sup>4</sup>

Further, the business in question will also need to inform consumers that they have the right to request deletion from their databases of any personal information. This option to request and also inform of deletion rights can be detailed in a privacy policy.

Therefore, when developing an application, it is good policy to configure the back end of the system to automatically delete information upon request of the consumer.

Because some systems need specific information to function properly, a company may need to think through how they plan to best respond to a consumer’s request to delete personal information for their system.



it may need to disclose that the information is being used to distribute a monthly newsletter or periodic advertisements.

Additionally, if the company needs to share the information with other businesses or individuals, it needs to explain this as well. For example, if a lawyer developed an application for client intake where information about a case is eventually stored for possible future use, there may be a need to disclose that the information will be shared with a court in the event of filing a case.

Finally, upon a verified request, as opposed to the required disclosure upon collection, the company must also identify the specific pieces of personal information that have been amassed, not just the categories of information collected.

What may be necessary, for example, is location data for a map feature to work properly. For this reason, it may look like an application does not function properly if all information is not stored in the system and, if the application is not working properly, bad reviews and negative publicity because of malfunctioning features could result.

A company needs to critically think through issues such as these throughout the development lifecycle to assure that either features are disabled or properly handled when a deletion request is received.

There are several exceptions to the data deletion option, such as, for example, the need to retain the consumer’s information due to compliance with a legal obligation or performance of a contract between the business and the consumer.<sup>5</sup>

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Google is a prime example of a company that has a genuinely responsive system like this in place.

If a consumer goes into their account setting on Google's website, they can easily navigate to the box shown above. The company has set up a system where the consumer can do all of the above simply without having to contact the company. An individual consumer can navigate to this page and download every piece



Consumers now have  
the right to direct  
a business that sells  
personal information not  
to sell theirs."

of personal information that Google has gathered and exercise the option of deleting the information that Google has stored.

**Opt-Out Rights**

Another factor that businesses will need to consider under

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the terms of the CCPA is that consumers now have the right to direct a business that sells personal information to not sell theirs.

This option is known as the consumer's opt-out right. Under its terms, a business is required to inform the consumer that their information may be sold and that they have the right to opt-out, if they wish.<sup>6</sup>

It is wise for a company to provide a clear and conspicuous link on its website homepage to a page that allows the consumer to opt-out of the sale of their information without requiring that consumer to create an account.<sup>7</sup>

This requirement differs from the consumer's deletion rights in that a business is mandated to provide the ability to opt-out of the sale of information while, at the same time, they may still be able to retain the information for other business purposes.

That reality will need to be woven into the entire development stage as a system needs to be in place to identify information that is not only being used for business purposes, but can, at the same time, be designated as not available for sale to outside interests.


A look at the footer of most websites can reveal a link that may well mean that the website being visited sells the personal information it collects.

For example, the bottom of Ticketmaster's website shows a link to opt-out of the sale of consumer information.

## Conclusion

It is essential to review the standards under the California Consumer Privacy Act in their entirety as it is scheduled to go into effect on July 1, 2020. Also, the state is still attempting to make revisions to the Act, so monitoring it for further developments is critical.

To sum up, privacy, and other areas of the law, such as intellectual property, content regulations, consumer protection, and advertising should be thought about from the initial stages of software development.

If a business waits too long to think about these issues and more specifically, the regulations dealing with privacy, it may find itself having to reactively develop patchwork measures that could well cause inefficiencies in software maintenance or even result in a lawsuit brought under the terms of the CCPA. 

<sup>1</sup> CCPA 1798.100(a).

<sup>2</sup> *Id.*

<sup>3</sup> CCPA 1798.110(c).

<sup>4</sup> CCPA 1798.105(a).

<sup>5</sup> *Id.* (d).

<sup>6</sup> CCPA 1798.120(a).

<sup>7</sup> *Id.* (b).

**Travers Morgan** is an attorney at Cislo & Thomas LLP where he counsels clients regarding intellectual property, data privacy, entertainment, and technology matters. He is admitted to practice in California, the District of Columbia, and before the United States Patent and Trademark Office, and can be reached at [tmorgan@cislo.com](mailto:tmorgan@cislo.com).





# Data Privacy Compliance: A Question of Security

## Test No. 140

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. CCPA stands for California Consumer Protection Act.  
☐ True ☐ False
2. The CCPA will start being enforced beginning July 1, 2020.  
☐ True ☐ False
3. A company should start thinking about privacy regulations such as CCPA at the beginning of the development lifecycle.  
☐ True ☐ False
4. The company that earns \$30,000,000 year in gross revenue must comply with the CCPA.  
☐ True ☐ False
5. A company that derives 30 percent of its annual revenue from selling personal information, receives the personal information of 20,000 devices, and earns \$40,000 a year in gross revenue must comply with the CCPA.  
☐ True ☐ False
6. A business must provide the categories of information it has collected from an individual at the time of collection.  
☐ True ☐ False
7. A business must disclose the specific pieces of personal information they have collected from a consumer at the time of collection.  
☐ True ☐ False
8. A business may change the purpose for which they use personal information without informing the consumer that the purpose has changed.  
☐ True ☐ False
9. A business must provide the commercial purpose for collecting personal information upon a verified request.  
☐ True ☐ False
10. A request to know the specific pieces of personal information must be a verifiable consumer request.  
☐ True ☐ False
11. Upon a verifiable request a business must disclose the categories of third parties with whom the business shares personal information.  
☐ True ☐ False
12. Under the CCPA a consumer has the right to request that a business delete any personal information they have from that consumer.  
☐ True ☐ False
13. A business does not need to inform customers that they have the right to request deletion of their information.  
☐ True ☐ False
14. Consumers have the right to direct a business that sells personal information to not sell their information.  
☐ True ☐ False
15. There are no exceptions to the deletion right under the CCPA.  
☐ True ☐ False
16. A company may retain information to perform a contract with the consumer even if the consumer has requested its information be deleted.  
☐ True ☐ False
17. Right to request not to have personal information sold by a business is known as an "opt-out" right.  
☐ True ☐ False
18. A company can place a link to opt-out of the sale of consumer information on any page on their website.  
☐ True ☐ False
19. If a consumer opts-out of the sale of their information the company must also delete that consumer's information.  
☐ True ☐ False
20. The State of California is attempting to make further revisions to the CCPA.  
☐ True ☐ False

## Data Privacy Compliance: A Question of Security

### MCLE Answer Sheet No. 140

#### INSTRUCTIONS:

1. Accurately complete this form.
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#### ANSWERS:

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

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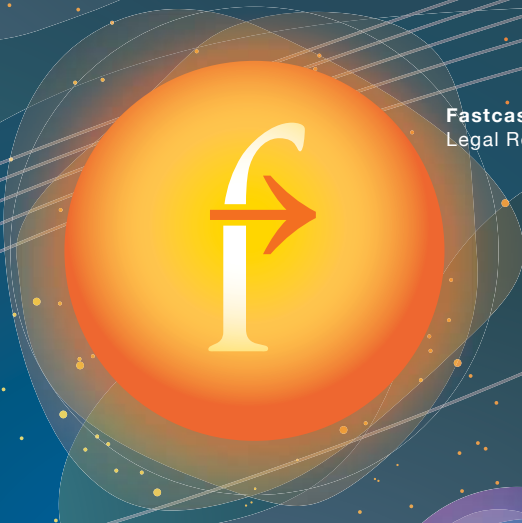


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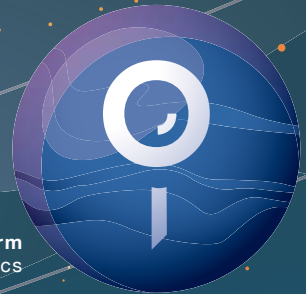
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An aerial photograph of a city, likely San Francisco, with a large, stylized blue virus particle graphic on the right side. The virus particle is detailed with spikes and a central core. The city buildings are visible in the background, and the overall color scheme is dominated by blue and grey tones.

# Pandemics and the Courts: Understanding the Past, Considering the Future

By Kyle M. Ellis

The court's reaction to the current COVID-19 pandemic has raised many questions in light of their reaction to past health crises and how, and if, they planned for the current situation. The answers hold the key as to how current experience may lead to changes in the way our courts and our elected leadership react to future emergencies.





**O**N JUNE 22, 2020, THE LOS Angeles Superior Court will begin its first tentative steps toward full operation by reopening courtrooms to civil law and motion, non-emergency petitions, and even a return on jury trials.

There have been many able comments on how the reaction of the court system as a whole has been unprecedented, and while some welcome the changes to the operation of the court under the circumstances, others wonder whether a less restrictive method could have been in place all along.

This article will briefly try to address these concerns in light of how courts reacted to past epidemics, and planned for the current pandemic. It will conclude by giving some thought to how current experience may lead to changes in the way our courts and our elected leadership react to future pandemics.

### The Past

It is almost impossible to begin the discussion of epidemic disease without beginning with the Black Death. A disease—bubonic plague—that so decimated the people during the 14<sup>th</sup> Century that it took almost two hundred years before populations recovered from its scourge.<sup>1</sup>

More than just death, the plague that killed hundreds of millions of people ushered in unprecedented social upheaval, and has been credited with the destruction of serfdom as a viable institution in Western Europe.<sup>2</sup>

As one might imagine, the operation of a system of justice was almost impossible in such conditions,

particularly when those with the ability—like judges—fled cities, and their responsibilities, such that “the administration of justice [became] impossible and no on[e] [could] obtain its rights.”<sup>3</sup>

The social contract that emerged in our own system of government—acknowledging the full weight of the police power of the state to implement health regulations in the service of the common welfare—can be seen as a reaction to both the Black Death and the epidemic diseases that were a constant danger to the people.

Indeed, the early United States recognized the importance of

“

The early United States recognized the importance of deferring to the State on the matter of quarantine and health laws.”

deferring to the State on the matter of quarantine and health laws. One such expression can be seen in *Gibbons v. Ogden*, which held that States have sole authority over both health and quarantine laws.<sup>4</sup>

### Business vs. The State

Much as today, the business interests of the community were often at odds with the authority of the State to use its

police power to quarantine.<sup>5</sup>

That conflict has often been viewed with a skeptical eye by courts, which have been generally unwilling to place the financial well-being of any person above the physical well-being of an entire community.<sup>6</sup>

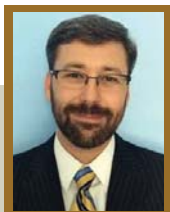
The contest between individual liberty and the authority of the State to quarantine individuals is a more recent development in light of amendments to the Constitution, such as the 14<sup>th</sup> Amendment, and with the different nature of the epidemic diseases that have stricken our country.

For example, prior to the 20<sup>th</sup> Century, “[m]any restrictions were for smallpox, a disease to which little or no moral stigma was attached. And the quarantine statutes provided that the afflicted must be given nursing care, free of charge, if they could not afford it. As the courts saw it, the statutes cared for the needs of all; there was no clash of interests.”<sup>7</sup>

Even with the changing nature of the challenges to the State’s authority to quarantine individuals, some more recent California cases recognize the clear authority of a health agency to implement even severe restrictions for the protection of the public.

In such a case, *In re Halko*, a court denied a habeas corpus petition for Eric Halko after being held in quarantine for 623 days, as the health authority determined that he was infected with spreading contagious tuberculosis.<sup>8</sup>

The further back into California’s jurisprudential history, the more



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cases there are that include epidemics and pandemics, and the nature and limits of governmental authority to issue quarantines.

For example, in *Jew Ho v. Williamson*, the court rejected the health authority of the City of San Francisco to draw a quarantine around its Chinatown District.

It found that a quarantine covering an area of 10-12 city blocks, with no provisions to stop the spread within the quarantine and no indication that the disease is present in all 12 blocks, will only worsen the conditions and spread the disease; the boundaries of the quarantine were specifically drawn to include Chinese and exclude other races; and there was insufficient evidence to show that the deaths attributed to the bubonic plague were, in fact, caused by the plague and not some other illness or disease.<sup>9</sup>

Perhaps most relatable to the current COVID-19 pandemic was the influenza epidemic of 1918-19.

Much as now, the City of Los Angeles ordered a halt to all public gatherings within its city limits beginning on October 11, 1918.<sup>10</sup> Subsequent to initial 'physical distancing efforts' the city went even further in issuing a 'Stay at Home' order on the Tuesday before Thanksgiving, 1918.<sup>11</sup>

Finally, after attempting to ease restrictions and 'reopen' the city in December and retreating to further quarantine procedures, Southern California emerged from the pandemic in February 1919.<sup>12</sup>

### What of the Courts Past?

And what were the courts doing during this time? Much as today, they were handling emergency litigation, making efforts to offer the necessary services of the court in any way it could, and trying to safeguard the health of both the public and its judicial officers.<sup>13</sup>

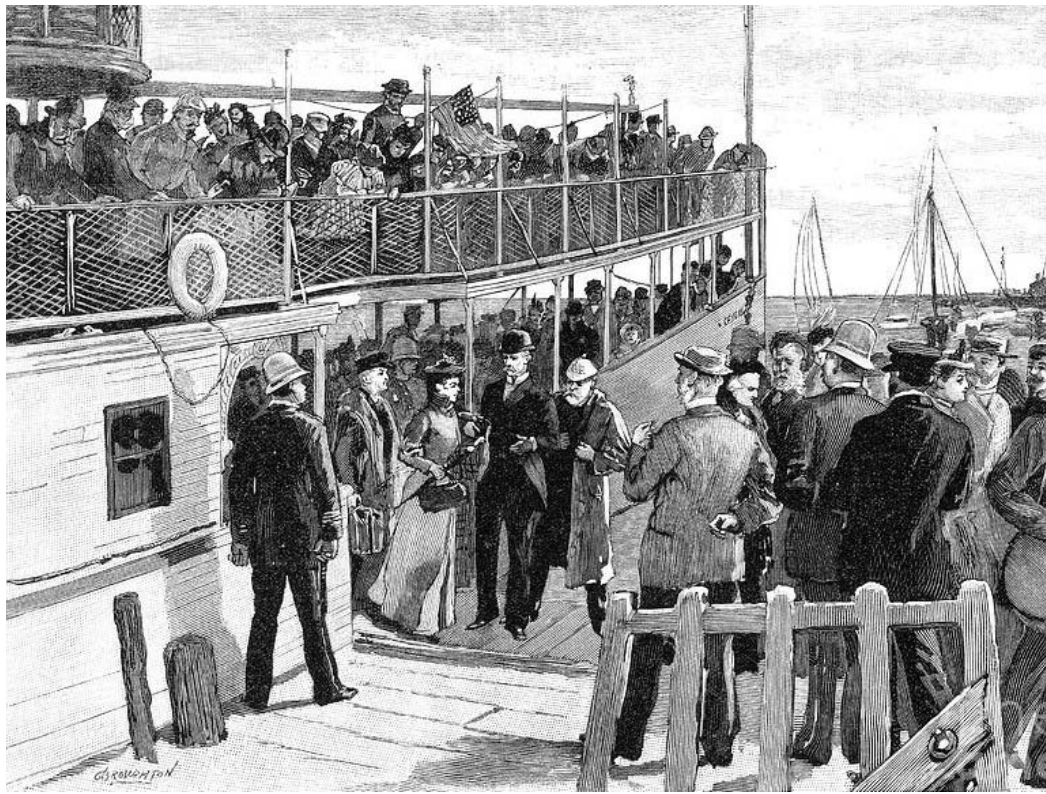
Still, however, there were incidents that could raise eyebrows, such as

when the Chief Justice swore in Division Two of the First Appellate District on January 2, 1919, during the height of the flu pandemic in San Francisco.<sup>14</sup>

Another legacy of the flu pandemic were the cases that emerged from it, such as *Citrus Soap Co. v. Peet Bros. Mfg. Co.* (regarding contract remedies when performance was affected by a 'stay at home order that prevented

opportunity to continue cases, develop a plan for its short term procedures, and transition the vast majority of its more than 4,300 employees to working remotely.

In the weeks since then, the court has heard emergency requests, and other limited matters. But, behind the scenes, the court has implemented an emergency epidemic plan, and has been developing ongoing plans



*Passengers from a newly arrived passenger ship were quarantined on New York's Fire Island during the 1892 cholera epidemic.*

timely delivery), or even *People v. Ong Mon Foo* (regarding the propriety of a murder conviction when the alleged perpetrator was wearing an 'influenza mask').<sup>15 16</sup>

### What of the Courts Present?

As it is nearly impossible to speak broadly about local courts, Federal Courts, and the state and federal courts of appeal, the focus here will be on the Los Angeles Superior Courts between March 17-19, 2020.

Perhaps less commonly known is that the shutdown gave the court the

on how best to efficiently operate the nation's largest trial court system during a pandemic-related lock-down. Some of the broad strokes of the emergency plan can be seen in the Judicial Council's 2006 California Court epidemic plan.<sup>17</sup>

Currently, we are in the initial phase of emergency-only activities, in which the court triages critical emergency matters and works to develop plans for long-term operation. The recommendation for long-term pandemic operations is then to implement the court's plan to increase the scope of the services offered the public, while also implementing





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*A policeman adjusts a man's facemask during the Influenza Epidemic of 1918.*

succession plans for staff and judicial officers that fall ill.

Since March 20, the judges and court administration have been working long hours to develop procedures and policies to implement when the court completely reopens in order to maintain a workable standard of physical distancing, staggering law and motion hearings throughout the day to prevent parties from waiting in the gallery, limiting the number of matters heard during any court day, and requiring judicial officers and their staff to wear masks.

Further procedures are being developed collaboratively between the court and the legal community, such as the San Fernando Valley Bar Association.

Those policies and procedures being jointly developed deal with the pandemic and are being crafted to

guide the court's action in the current and any future pandemic.

Whatever emerges now may become the best practices of the future with current laws and practices that are inefficient for the circumstances likely changed, as there are likely more valuable uses of the California

Chief Justice's time than issuing more than 160 emergency orders between March 13 and May 14 of this year.<sup>18</sup>

### **The New Normal**

The longer the COVID-19 pandemic affects our daily personal and professional lives, the more likely we will see permanent changes to the


availability of remote handling of depositions, oral arguments for law and motion, and other systems for handling juries and managing cases that emerge from their current planning stages.

The best practices that emerge could be codified by the legislature and may even become the normal practice for both attorneys and state courts.

“  
The best practices  
that emerge  
could be codified  
by the Legislature  
and many become  
normal practice.”



Similar to the way in which the black death radically reshaped European society some six centuries ago, we are very likely to see substantial changes to how our society functions in the wake of this modern pandemic.

The shape of and pace at which these transformations occur are within our own power to shape and affect and it rests upon us to make them wisely. 

<sup>1</sup> World Population Data: U.S. Census Bureau, *Historical Estimates of World Population*, Last Revised July 5, 2018; retrieved April 21, 2020. Available at <https://www.census.gov/data/tables/time-series/demo/international-programs/historical-est-worldpop.html>.

<sup>2</sup> Francis Gasquet, *The Black Death of 1347 and 1349*, London, George Bell and Sons, 1908. pp. xxi-xxii.

<sup>3</sup> Thomas Shevory, *Disease, Criminality, and State Power: Evolving Legal Rhetorics and Cultural Constructions*, [Prepared for Presentation at the Foundations Workshop on Political Myth, Rhetoric, and Symbolism; Annual Meeting of the American Political Science Association, Washington, D.C., August 30-September 3, 2000.

<sup>4</sup> *Gibbons v. Ogden* (1824) 22 U.S. 1.

<sup>5</sup> Thomas Shevory, *Disease, Criminality, and State Power 2000*. Describing how "[m]uch of the resistance to quarantine measures came from commercial interests, who had much to lose from the restrictions on commercial activity represented by the establishment of quarantine. Business interests not only resisted quarantines but often sought to deny the presence of disease or epidemic in their local communities."

<sup>6</sup> See, e.g., *Compagnie Francaise De Navigation A Vapeur v. Louisiana State Bd. of Health* (1902) 186 U.S. 380 (immigrant vessel turned away on fear of potential infection permissible under police powers); see also *Morgan's S.S. Co. v. Louisiana Bd. of Health* (1886) 118 U.S. 455 (Holding that the State police power to quarantine allows for imposition of fees on intra-state commerce for inspection for contagions).

<sup>7</sup> Wendy Parmet, *The Police Power and AIDS: The Limits of Legal Precedent*, *Journal of Health and Human Resources Administration*, Vol. 11, No. 4, Spring 1989, 444-458.

<sup>8</sup> *In re Halko* (1966) 246 Cal. App. 2d 553.

<sup>9</sup> *Jew Ho v. Williamson* (Cir. Ct., Cal. N. 1900) 103 F. 10.

<sup>10</sup> The City, October 11, 1918, The Los Angeles Times.

<sup>11</sup> *Do Not Crowd, Health Board Urges*, November 26, 1918, Los Angeles Evening Express.

<sup>12</sup> *Influenza Drops to Lowest Point Since October*, February 03, 1919, Los Angeles Evening Express.

<sup>13</sup> *Sit at Night to Save Tomatoes*, October 31, 1918, The Los Angeles Times (reporting that Presiding Judge Weller held court all night until 2AM in order to determine the fate of a large quantity of tomatoes in danger of rotting); *Skids Greased for Senor Flue: Moves to Reconsider*, December 18, 1918, The Los Angeles Times (reporting that Judge Frederickson was required to hear oral arguments in a motion for reconsideration because the judge in charge of the case was ill with the flu and was incapable of hearing the motion).

<sup>14</sup> *Newest State Court Begins Duties Today*, January 3, 1919, The Los Angeles Times; *Bay City Influenza Shows Big Increase*, January 3, 1919, The Los Angeles Times (reporting 459 new cases and 20 new deaths overnight).

<sup>15</sup> *Citrus Soap Co. v. Peet Bros. Mfg. Co.* (1920) 50 Cal. App. 246.

<sup>16</sup> *People v. Ong Mon Foo* (1920) 182 Cal. 697.

<sup>17</sup> Judicial Council of California, *Epidemics and the California Courts* (2006). The most recent revision for March 26, 2020, can be found here < [https://www.ncsc.org/~media/Files/PDF/Services%20and%20Experts/Areas%20of%20expertise/Emergency%20Preparedness/Redacted\\_Epidemics\\_and\\_the\\_California\\_Courts\\_handbook.ashx](https://www.ncsc.org/~media/Files/PDF/Services%20and%20Experts/Areas%20of%20expertise/Emergency%20Preparedness/Redacted_Epidemics_and_the_California_Courts_handbook.ashx) >.

<sup>18</sup> *Court Emergency Orders* (2020) retrieved May 14, 2020. Available at < <https://newsroom.courts.ca.gov/news/court-emergency-orders-6794321> >.



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- Domestic Violence: Not Guilty, Jury Finding of Factual Innocence (San Fernando)
- \$50 Million Mortgage Fraud: Dismissed, Trial Court (Downtown, LA)
- DUI Case, Client Probation: Dismissed Search and Seizure (Long Beach)
- Numerous Sex Offense Accusations: Dismissed before Court (LA County)
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# Identity Theft: Maintaining Your Financial Individuality

By David Mercy



**T**AKE A QUICK LOOK AT YOUR watch. When the second hand moves two digits, someone, somewhere has had their identity stolen.

It could be the kind of catastrophic theft that forces the victim into bankruptcy, such as a criminal taking out numerous real estate loans which are immediately headed straight to default, or it could be a minor inconvenience that can be taken care of with a few phone calls, like a thief using stolen credit card numbers to go shopping.

To varying degrees, the success of identity thefts, and the degree to which

they can do harm, are dependent on the amount of Personally Identifiable Information (PII) the crook has been able to obtain.

Primary examples of PII are name, address, date and place of birth and Social Security number, as well as medical, familial, educational, financial and employment data. The more a criminal has of those personal identification details, the more they can steal for illicit purposes.

The problem is that in the modern world of social media, many people unwittingly, and freely, volunteer much of this information, and criminals are paying attention.

Even though people are not posting their Social Security Numbers on *Facebook*, much of the users' peripheral information can be used to root out even the most secret data.

Familiarity opens doors, so knowing a few tidbits of information allows villains to parlay that into more info, and on and on.

Hopefully, everybody knows that if someone is about to type in a SSN into a website, the hairs should be standing up on the back of their neck.

While cyber-shadowing is useful for outright identity and credit theft, garnering PII from social media has proven to be a favorite method for



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hackers seeking to lure unsuspecting victims into clicking on disguised malware links in email Phishing attacks.

### What is Identity Theft?

The Fair Credit Reporting Act (FCRA) became law in 1968 and defines identity theft as “a fraud committed or attempted using the identifying information of another person without authority.”

As this allows for a wide range of implementations and varying severities of this crime, identity thefts generally fall into one of six categories:

- **Identity Cloning:**

This is the most far-reaching and severe, personally and professionally devastating a victim as it includes some or all types of identity theft,

wherein the perpetrator is literally out there pretending to assume the identity of the victim. They engage in criminal activities which permit them to circulate in the real world using someone else’s name and history.

- **Account Takeover Fraud:**

In the most common form of identity theft, criminals simply obtain an individual’s credit card information and use it for their own transactions. To a lesser degree, this type of fraud also includes the theft of checks, account numbers and other financial information.

“

Just remember  
to be yourself...  
and be the only  
one who is.”

- **New Account Fraud:**

This entails the criminal opening new credit accounts under a victim’s name using sensitive information such as a Social Security Number rather than using existing credit card numbers.

- **Medical Identity Theft:**

A criminal who gains access to a victim’s name and insurance information can use it to obtain free medical care and/or prescription drugs. While not as common, this scenario can have potentially devastating effects, as medical information in a doctor’s notes can be merged with a patient files, potentially causing potentially harmful treatments.

- **Business or Commercial Identity Theft:**

Not as uncommon as is thought. An ex-employee, or even a current one, uses a business name and information to obtain credit. While not always the same as embezzlement, it does sometimes share some of the same tactics.

- **Criminal Identity Theft:**

Probably the rarest of cybercrimes, it still can happen when a criminal is arrested and presents another person’s fraudulent identification to law enforcement. Innocent people have, in fact, been incarcerated due to this scheme.

### A Sign of the Times

We live in a time when more than 60 percent of Americans with bank accounts access them through smartphones, while most pay as much attention to the inherent security risks of mobile finance as they pay to the Terms and Conditions of such social media as *Facebook*, *Twitter*, or *Instagram*. That is, very little, if at all.

Never before in history, then, have people put so much at risk without knowing what those risks are or whether they are adequately protected. Most, unfortunately, learn how open their barn doors were only after the horse is long gone.

Victims of bank fraud, whether online or not, quickly learn that the Federal Deposit Insurance Corp. (FDIC) will not help either them or their bank as the FDIC only insures accounts against the failure and collapse of a bank.

Also, most banks do carry private insurance to protect depositors against fraud loss because Regulation E of the 1978 Electronic Funds and Transfer Act (EFTA) makes the bank responsible for consumer fraud losses.

As for the losses incurred by small businesses, there is no protection under the EFTA and, while some banks

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offer fraud protection for small business accounts as a competitive enticement, it is not required that they do so.

Compounded by the almost countless number of peer-to-peer (P2P) payment transactions taking place every day, the result is tens of billions of consumer dollars floating through cyberspace at any given time. Since the first ATM or debit card was introduced, criminals have been figuring out new and better ways to pocket other people's money.

Cybercriminals have long viewed mobile or remote use as the easiest way into a network, and for good reason—they are relatively easy to break into.

Even as quickly as mobile carriers respond to the ongoing threat with improved security, technically sophisticated cyber crooks still find ways to skirt the defenses. These are not street variety thieves; they are clever, sophisticated and criminals who invest much in carrying out their own nefarious brand of research and development.

### What To Do?

Anyone who finds themselves the victim of identity theft, should take the following five steps immediately:

- Examine all financial accounts and identify those that have been compromised;
- Contact one of the main three consumer credit bureaus: *Experian*,

*Equifax* and *TransUnion* to initiate fraud alerts;

- Contact all three bureaus to put a freeze on any credit reports. This will prevent anyone pulling your credit to open any new accounts;
- Report the fraud to the Federal Trade Commission at [www.IdentityTheft.gov](http://www.IdentityTheft.gov); and,
- Dispute all fraudulent activity with the creditor.

### 'Password' is a Bad Password

First thing, though, is change your passwords.

Often handled in cavalier fashion, such as being written on a Post-It note and stuck to a business server.

As annoying and inconvenient as they may seem, passwords form the first line of defense to protect information. Do not use the same password over and over because once a hacker cracks it, they have, in effect, been handed the Keys to the Kingdom. Be original and creative.

Odd as it may seem, 'Password' is only the second most used password. The most common is, unbelievably, '123456.'

Also, use an abbreviation for something that has meaning for you. For example, 'My son's birthday is November 12' can become a hard-to-crack 'MsbiN12.' How do you remember all of them? Write them down and store the list in a secure place, not on your computer.

### Prevention

As they say, an ounce of prevention is worth a pound of cure. Listing and describing the preventive steps that can be taken to keep cyberwolves away from your Personally Identifiable Information would fill this entire magazine and beyond, so a few basics follow.

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Requesting electronic statements from your banking and credit accounts may seem wise, but it is wiser to also take the steps to ensure that a provider's website is safeguarding your information.

The most important step, whether you are banking or simply buying something online, is to first check the URL, or address. It should start with 'HTTPS' not just 'HTTP.' The 'S' guarantees that information is protected by an added coating of security provided by a Secure Sockets Layer (SSL) certificate.


Be especially careful when using public WiFi connections as cyber crooks routinely use WiFi networks as nets to trap users and steal their information.

Even legitimate WiFi networks can be hacked. Data thieves have been known to park outside popular coffee shops and hack into the laptop computers of those inside enjoying their morning latte.

Those who frequently use public WiFi often are strongly advised to set up a Virtual Private Network (VPN) from a reputable source and beware of any offer of a 'Free VPN' for obvious reasons.

For 'snail mail' paper documents and packages, keep secure with either a locking mailbox or by renting a PO box at the local post office. Also, shred all financial statements, including those offers for credit cards, rather than just throwing them in the trash.

While some of these steps may seem obvious, it is incredible how many people simply do not think they are about to let loose with any amount of Personally Identifiable Information, including the single most important piece of information, their Social Security Number.

Having a presence on the internet is a good thing, but security is not guaranteed. Just remember to be yourself... and be the only one who is. 

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# White Collar Corner: When Government Corruption is Not Criminal

By Alan Eisner







**F**OR FOUR DAYS IN SEPTEMBER 2013, the vehicle lanes from Ft. Lee, New Jersey, that feed on to the George Washington Bridge (GWB)—the busiest motor vehicle bridge in the world—were shut down causing a massive traffic jam that brought the town’s streets to a complete standstill.

The traffic in Fort Lee rivaled that of 9/11 when the GWB was shut down completely—school buses idled in place, while an ambulance struggled to reach a heart attack victim, and police had trouble responding to a report of a missing child.

The reason for this chaos came to light during the trial in the case of *Kelly v. United States*.<sup>1</sup>

### The Plan

Bridget Kelly was, at the time, a Deputy Chief of Staff to New Jersey Governor Chris Christie tasked with garnering bipartisan support among the state’s mayors for Christie’s upcoming gubernatorial reelection bid.

The Mayor of Fort Lee, however, refused to pledge his support.

In response, Kelly hatched a plan of political retaliation with William Baroni, then Deputy Executive Director at the Port Authority of New York & New Jersey, the joint venture agency that manages the operations of public transportation facilities in the two adjoining states.

Christie had appointed Baroni to that position in 2010.

The plan, as detailed by David Wildstein, Baroni’s chief of staff, who would become the government’s cooperating witness, was to cause chaos in Fort Lee by shutting down

lanes of traffic onto the GWB, which connected Fort Lee with the heart of Manhattan.

Kelly agreed to the idea in a concise e-mail—“Time for some traffic problems in Fort Lee.”

Christie, Kelly and Wildstein also devised a cover story, falsely claiming that the lane closures were part of a traffic flow study to determine whether Fort Lee would keep its dedicated traffic lanes in the future.

### Fraud? Not So Fast

While this scenario sounds like clear-cut fraud—a trio of public servants used their public position to wreak havoc against their political opponents, causing great public harm, and then lied about it to cover their tracks—the U.S. Supreme Court disagreed in a recent unanimous 9-0 opinion authored by Associate Justice Elena Kagan.<sup>2</sup>

Federal fraud laws, the Court ruled, are not intended to prohibit schemes to defraud citizens to their right to honest and impartial government as they are limited to protect property rights, and are not intended to set standards of honesty and good government for local officials.

Allowing the federal government to make federal criminals out of local and state officials who behave dishonestly in the political arena, the Court reasoned, would seriously upset our Federalist system of government.

The government initially secured convictions for the



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Bridgegate conspirators, which were subsequently affirmed on appeal to the Circuit Court of Appeals. The defendants filed a writ of certiorari with the U.S. Supreme Court.

At the Supreme Court, the government conceded that precedent required a showing that the defendants' deceit must also have had the object of obtaining the Port Authority's money or property.<sup>3</sup>

It argued that the scheme did this in two ways:

- The plan commandeered part of the bridge itself, and took control of its physical traffic lanes; and,
- The defendants acted with the intent to impose additional costs on the Port Authority; namely the compensation of the traffic engineers and toll collectors who were tasked with carrying out the lane realignment.

Under either theory, argued the government, the scheme targeted a valuable right or interest that constitutes property under the fraud statutes.

### The Supreme Court Rules

The Court disagreed, holding that the scheme was not directed at the Port Authority's "property."

The lane realignment was an exercise of regulatory power and the use of Port Authority employees was incidental to the lane closures, it said, rejecting the government's characterization that the lanes themselves were "commandeered."

As Justice Kagan noted, the defendants did not physically make off with the lanes themselves, nor did they convert them to some private purpose for their own

“  
The Court ruled  
that not every  
corrupt act by a state  
or local official is a  
federal crime.”

financial gain. So too with the costs incurred by the scheme, which were an incidental effect of the scheme rather than its actual object.

The Court made clear in its decision that the harm to the victims—the loss of property—must be the object of the fraud and not simply a by-product of the fraud and went on to declare a general principle of federal law that federal prosecutors

may not use property fraud statutes to set standards of honesty, disclosure, and good government for local and state officials.<sup>4</sup>

Federal prosecutors cannot prosecute every lie by a public official, and, even if incidental costs are incurred, the lie cannot be prosecuted unless the costs or losses are its intended result.


The Court concluded by emphasizing that even though this particular case involved the blatant abuse of political power, including lies and cover-ups, and, even though it jeopardized the safety of the community and incurred a great financial cost, not every corrupt act by a state or local government official is a federal crime.


### The Need for Clear-Cut Law

None of this is to say that citizens are powerless to hold corrupt officials to account.

The states themselves could enact broader anti-corruption laws with criminal penalties to police their own officials. In fact, New Jersey, has such a statute on the books, as noted in Justice Kagan's opinion.

Though a previous effort by Congress to use federal law to address so-called honest services fraud was invalidated by the Supreme Court as unconstitutionally vague, a better-drawn anti-corruption statute could be passed in the future.

For the present, however, the 'Bridgegate' decision serves as a check on the authority of federal prosecutors to punish state and local officials who abuse their authority, but do not obtain property as a result. 



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<sup>1</sup> Bridget Anne Kelly, *Petitioner v. United States*, Case No. 18-1059.

<sup>2</sup> [https://www.supremecourt.gov/opinions/19pdf/18-1059\\_e2p3.pdf](https://www.supremecourt.gov/opinions/19pdf/18-1059_e2p3.pdf).

<sup>3</sup> *Cleveland v. United States*, 531 U.S. 12, 26.

<sup>4</sup> *McNally v. United States*, 483 U.S. 350, 360.



# THANK YOU ESSENTIAL WORKERS



**S**INCE 1926, THE SAN FERNANDO VALLEY BAR Association has been here to support you; similarly, members and sponsors have never failed to support the Bar, particularly during challenging times.

As businesses slowly begin to reopen, we have carefully considered when and how to reopen SFVBA's doors. We know how meaningful our move was and how much our beautiful space means to our members. It has been a place to come together, earn MCLE, and network.

Regrettably, at this time, it is not advisable to open our space for these purposes. Furthermore, the Bar has embraced remote work opportunities and, therefore, our staff will continue working and providing member services remotely. We intend to reevaluate these decisions at the end of June and will then communicate with all members.

As you make decisions for your own practices and businesses, we hope that you take advantage of the resources we have compiled in the COVID-19 News section on our website. The page includes useful guidelines, government health and safety information, and we have even compiled a list of court updates.

It is with sincere regret that due to the current circumstance, we will not be able to host our annual in-person Membership Appreciation event. Instead, we are embracing the opportunities afforded by technology to host fun virtual membership appreciation activities, programs, raffles and networking.

Our first Membership Appreciation virtual experience will be an interactive way for members to share quarantine stories and experiences. Members are invited to share photos, art, poetry, short videos on social media, or, and other projects hashtag #sfvbamembershipappreciation or email [info@sfvba.org](mailto:info@sfvba.org). The Bar will share submissions on

multiple platforms. Participants will be eligible for raffle prizes donated by our sponsors, Trustees and Trustee Candidates. More details will follow the first week of June.

Over the last few months, member engagement has been exciting and encouraging. From MCLE in technology and employment law webinars to court updates and VBN virtual happy hours, you are showing up, learning, and making it feel like a community. We continue to work with Section Chairs and sponsors to offer a variety of virtual programs and are committed to providing unique, relevant programs and events during this challenging time.

Additionally, SFVBA reminds members to take advantage of existing member benefits. Although our in-person benefits and events may be halted or postponed, we have a range of meaningful member benefits to offer you throughout this challenging time.



San Fernando Valley Bar Association

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SFVBA's Attorney Referral Service markets to the general public, conducts community outreach and operates a professional call center to generate referrals for its panel members. In 2019, panelists earned a combined \$1.2M in legal fees on cases referred by the ARS. The ARS is fully certified by the State Bar of California and complies with very specific terms and regulations to ensure that the public receives professional and competent representation. #0006



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### VALLEY BAR NETWORK

Launched in 2016, Valley Bar Network (VBN) has grown to a dynamic group of more than 50 attorneys and other professionals. The meetings, now held virtually on Zoom, in the evenings on the first Monday of the month, are fun, informal and provide a low-key structure to ease networking and information exchange.



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### BENCH BAR NOTES

Now more than ever, it is important for members to stay informed and updated on the State of the

Courts. SFVBA Bench-Bar Committee is working closely with the Court leadership to ensure appropriate state of the court updates and answer FAQs regarding COVID-19, including updates on courtroom and courthouse closures. SFVBA has been working diligently to provide court updates and information to members. A COVID-19 Q&A Presentation with LASC Leadership is scheduled for Friday, June 5, from 12:00 p.m. to 1:00 p.m. SFVBA is a LACBA affiliate; therefore, all SFVBA members are invited to attend. Select LACBA affiliation when registering at [https://lacba.zoom.us/webinar/register/WN\\_7zj390OLSVm2iwNYPLENeg](https://lacba.zoom.us/webinar/register/WN_7zj390OLSVm2iwNYPLENeg).

## SPECIAL Events

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# Section 31: Detailed and Confusing

By Mike R. Horwitz

**C**ALIFORNIA VEHICLE CODE Section 31—aka Section 31—can be confusing at first glance as it cross-refers to the duties of peace officers set forth in other portions of the Vehicle Code.

The Vehicle Code is a complicated web of sections, subsections, and lettered or numbered subparagraphs that specify the responsibilities of vehicle operators.

One only needs to keep in mind all the new technologies and add-on

components that the state's vehicle owners use aboard the diverse types of vehicles they operate to understand why the Code contains such a huge number of provisions regarding so many subjects.

Vehicles can be the cause of death and serious injuries, particularly in California, where long-distance commutes between home and work and inevitable accidents, are a daily, or hourly, occurrence.

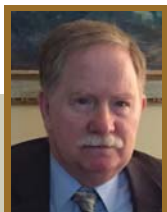
As a result, vehicles and their operation need to be regulated as death, serious injury and damage

to property can either be caused by accident or the intentional misuse of a vehicle.

## **Frustrating and Misunderstood**

Devices used in passenger vehicles and vehicles in general are heavily dealt with in the Vehicle Code. That helps explain, to some degree, why the Code is perceived as minutely detailed and confusing.

A vehicle is not just a passenger car as buses, motorcycles, and bicycles are considered to be vehicles, as well as “any device a person uses



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As stated above, this can be very confusing as the Vehicle Code, especially Section 31, is not fully understood by most courts, most prosecutors, and most defense attorneys, as well as the peace officers tasked with enforcing it.

A good part of the confusion is that most provisions of the Code cross-refer to other provisions making the reading even more vexing.

If an attorney's client is offered a plea bargain to plead guilty to Section 31 instead of a more serious violation and the client asks the attorney what does the Section say, most attorneys would have to either speculate what it means or inform the client they are in the dark as to what it contains.

“

Vehicle Code 31 is not fully understood by most courts, prosecutors, defense attorneys and peace officers.”

to travel on streets, alleys, parking lots, and places adjacent to streets, alleys, and parking lots.”

This can also explain why many cases and deposition transcripts sometimes show peace officers testifying as to their own lack of familiarity with the Code's provisions.

Section 31 provides that, “No person shall give, either orally or in writing, information to a peace officer while in the performance of his duties under the provisions of this code when such person knows that the information is false.”<sup>1</sup>

The phrase “while in the performance of his duties under the provisions of this code” asks what are the duties under the provisions of the Vehicle Code.

#### **The Online Research Option**

Online research has cut away some of the confusion because before the age of online access provided access to a vast pool of information, the traditional method of doing research was tedious and time consuming even if it was getting up from a comfortable location to retrieve a codebook.

Section 31 just refers to duties in general, which makes the research even more complicated.

Also the Vehicle Code, like other codes, cross-refers to sections, subsections, paragraphs, and other provisions in specifying duties of everyone using streets, alleys, freeways, and “places adjacent to those places.”

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As an example, one might think investigating, or arresting for, driving under the influence of alcohol is a duty under the Vehicle Code because driving under the influence is a crime dealt with in other sections, subsections, and subdivisions.<sup>2</sup>

Clearly, the client would have to accept the offer no matter what Vehicle Code Section 31 means.

### Specific Duties

In many situations, people have ignored the phrase “while in the performance of his duties under the provisions of this code.”

Most often, this occurred in search and seizure cases where the probable cause to arrest or detain was where a person provided untrue information to a law enforcement officer, while most people agree a person should not lie to a peace officer.

As an example of officer duties under the Vehicle Code, an officer

has duties in determining financial responsibility of a driver.<sup>3</sup>

An officer has a duty not to “stop a vehicle for the sole purpose of determining whether the vehicle is being driven in violation of the Code under

“

Most people agree  
a person should  
not lie to a peace  
officer.”


which the driver of a vehicle on a public highway has a duty to provide proof of financial responsibility upon demand.”<sup>4</sup>

Some might think investigating a crime set out in the Vehicle Code is a peace officer’s duty, but peace officers have a general duty to investigate

possible crimes. A traffic officer has a duty to investigate a violation of The Rules of the Road under the Vehicle Code.<sup>5 6</sup>

### DUI is Out

What is clear, however, is that neither investigating a driver operating a vehicle while under the influence of alcohol nor arresting for driving under the influence of alcohol are not a duty under the mandates of the California Vehicle Code.

Rather, it is the duty of all sworn law enforcement officers to enforce the law, particularly the law enacted by the legislature, backed by lower courts, which are obligated to follow the decisions of higher courts.<sup>7</sup> 

<sup>1</sup> California Vehicle Code § 31 VC.

<sup>2</sup> California Vehicle Code § 23152, subdivisions (a), (b).

<sup>3</sup> California Vehicle Code § 16028.)

<sup>4</sup> *Id.*, subdivision (a).

<sup>5</sup> *People v. Lovejoy* (1970) 12 Cal.App.3d 983, 986-987.)

<sup>6</sup> *People v. Ritter* (1980) 115 Cal.App.3d Supp. 1,4.)

<sup>7</sup> *Auto Equity Sales, Inc. v. Superior Court*, 57 Cal.2d 450.



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The advertisement features a dark background with a cup of coffee, several colored pencils, and a laptop keyboard. Overlaid on this are images of SFVBA merchandise: a white t-shirt with the association's logo, a small teddy bear wearing a logo shirt, a white tote bag with the logo, and a white card with the logo. The Zazzle logo is prominently displayed in large, stylized blue letters.



# 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.



## Jessica Wynette Rosen



**Law School:** Golden Gate University School of Law

**Area(s) of Practice:** Franchise and distribution, and business litigation

**Years in Practice:** 7

**Firm:** Lewitt Hackman, Encino

**What is your favorite 'daycation' spot?** "Ojai, California."

**Did you ever 'cut' class in high school? What did you do?** "I did

not exactly 'cut' class in high school. However, I did not have the best attendance record and was notoriously tardy due in part to dropping off my brother at his school in the opposite direction."

**What was your very first job?** "Part-time assistant and bookkeeper for my mother's accounting office, Sandra K. Decker, CPA."

**What quality do you admire most in a person? Why?**

Perseverance. Life is not always easy, nor is it generally handed on a silver platter. The need to overcome and prevail despite socioeconomic circumstances and/or other disadvantages is key to being successful in life.

Jessica Rosen grew up in the San Fernando Valley community of West Hills. She earned her undergraduate degree in History from the University of California, San Diego and a Master's degree in History from California State University, Northridge.

She attended law school at Golden Gate University School of Law where she graduated at the top of her class and received numerous accolades.

Rosen also interned at both the United States Court of Appeal for the Ninth Circuit and the First District Court of Appeal and, while awaiting her bar exam results, volunteered at the Legal Aid Foundation of Los Angeles.

She began her professional career as an Associate Attorney at a Westside law firm with a focus on appellate work in both federal and state appellate courts, and the U.S. Supreme Court.

Rosen then transitioned into trial litigation before joining Lewitt Hackman in Encino. As an Associate in the firm's Franchise & Distribution and Business Litigation Practice Groups she has successfully advised numerous clients and both prosecuted and defended cases.

When she is not working, she can be found baking pies, refurbishing mid-century furniture, and hanging out with her family, friends, and her pups.

## Allan K. Salinas



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

**Area(s) of Practice:** Family and immigration law, real estate, wills and trusts

**Years in Practice:** Almost one year.

**Firm:** The Law Offices of Allan K. Salinas, APC, North Hollywood

**What is your favorite professional sport? Why?** "Soccer because it

requires cooperation by all players when defending and attacking and at times special players are allowed to shine through."

**What is your favorite breed of dog?** "King Charles Cavalier Spaniel. I have two of them (Roscoe and Roen) and they are so loyal and calm. They have been the most supportive companions during these difficult times to my lovely life partner, Maria Lopez, and me."

**Your favorite Valley restaurant?** "Eat, which is located in the NoHo Arts District between Magnolia and Vineland."

**What's the scariest thing you've ever done?** "When I decided to open my own law firm. However, I have found that facing the things you fear the most allows you to grow and builds character."

Allan Salinas was born in Lima, Peru, and emigrated, with his family, to the United States when he was 12 years old.

He says his experience "as an undocumented student at L.A. Mission College and UCLA raised a love for public service lead to years of organizing for Los Angeles undocumented students seeking access to higher education."

After working as a policy researcher for the Mexican American Legal Defense and Education Fund (MALDEF) and graduating from the University of California, Los Angeles, he applied and was admitted to the University of California Hastings School of Law in San Francisco.

While in law school, he continued to pursue public interest work at the UC Hastings Civil Justice Clinic by assisting a low-income employee in receiving compensated for unpaid wages and breaks.

Salinas resides with his girlfriend Maria Lopez and their two dogs. He practices in North Hollywood. He enjoys running regularly in the NoHo community, reading, singing, playing his guitar, Muay-Thai Boxing and weightlifting.

# Referring the Best Attorneys Since 1948

The Attorney Referral Service of the SFVBA is a valuable service, one that operates for the direct purpose of referring potential clients to qualified attorneys. It also pays dividends to the attorneys involved. Many of the cases referred by the ARS earn significant fees for panel attorneys.

## Programs

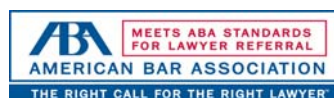
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# Regulated and Certified

**I**N THIS DAY AND AGE, WE HAVE everything at our fingertips, virtually.

For instance, if someone is looking for an attorney, they can type a few simple words on a search engine and boom you have results. But the question that begs asking is, 'How do you know if the attorney you are referred to is qualified?'

In short, that remains an unanswered question, particularly with so many companies that advertise themselves to the public, often online, as 'attorney/client matching services' and to the legal community as 'lead generators.'

So, what makes the Attorney Referral Service unique? It is clear-cut. SFVBA's Attorney Referral Service is authorized, regulated and certified by the State Bar of California.

As such, we are proud to announce the ARS' application for 2020 LRS recertification has been approved by the State Bar of California (Certification No. 0006).

Since 1948, ARS has actively complied with the State Bar requirements for recertification to demonstrate that the Service complies fully with the governing rules set by the State Bar.

The application request extensive information such as ARS' finances, outreach programs, and community engagement. That input provides the Bar a glimpse of the resources available to all individuals, including individuals of limited means, who contact the Service.

**MIGUEL VILLATORO**  
ARS Associate Director  
of Public Services



[miguel@sfvba.org](mailto:miguel@sfvba.org)


For example, one of our most popular outreach programs is the annual observance of Pro Bono Week at the Los Angeles Public Library in North Hollywood.

During the Week, ARS staff teams with the Los Angeles Law Library to have attorneys from our referral service available for free consultations with members of the public who have legal issues to discuss.

In addition, recertification is a tremendous achievement as we are able to offer access to resources and quality attorney referrals to the public in both Los Angeles and Ventura Counties.

The recertification process also assures that the attorneys listed with the ARS are in good standing with the State Bar, carry professional liability insurance, and are local and accessible. That process assures that the ARS is uniquely qualified to connect members of an even broader community with the best and most qualified lawyers for their needs.

Suffice it to say that those matching services and lead generators that operate without State Bar certification, and the attorneys that use them do not have the best interests of their unwary clients at heart.

According to current SFVBA President and ARS panel member Barry P. Goldberg, "It is just a matter of time before attorneys will face discipline for accepting leads delivered straight to their inbox without having to lift a finger." 



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## Would You Put Your Life on the Line

**ALAN E. KASSAN**  
Board Member



[akassan@kantorlaw.net](mailto:akassan@kantorlaw.net)

I HAVE BEEN FASCINATED OF LATE BY THE MYRIAD articles about people—most of them young—volunteering to be infected with COVID-19 in the name of science.

As I write, almost 25,000 people, from 102 countries have registered with 1 Day Sooner, an organization trying to help facilitate challenge trials of possible COVID-19 vaccines.

While I have been following it, the list has grown by over 1,000 volunteers a day, and the volunteer pace seems to be increasing.

The 1 Day Sooner website states that “human challenge trials deliberately expose participants to infection, in order to study diseases and test vaccines or treatments,” and that the trials “have been used for influenza, malaria, typhoid, dengue fever, and cholera.”

The idea, of course, is that if human challenge trials could speed up the development of a vaccine for COVID-19, thousands or even millions of lives might be saved. Vaccine trials ordinarily depend on the natural course of events to determine effectiveness. Healthy people are inoculated, and researchers then just wait and see if, over a period of time, those people evade the terrible symptoms of the illness.

By vaccinating a large group of people who have agreed to be immediately, voluntarily infected, the wait time is dramatically shortened. There is a lot more to be learned about how challenge trials work, the risks involved, whether the government would approve them, and the ethics of the whole concept.

I leave you to research those issues on your own. But,

“

One does not have to go so far as to put his or her life on the line to help others.”

here, the relevant question is this: What motivates people to volunteer for something that could literally cost them their lives?

That question has recently been posed to many of the challenge trial volunteers, and the essence of the responses is this: an innate sense of responsibility to improve the human condition. This makes sense from an evolutionary perspective.

And psychology studies have shown that giving to, and helping others creates powerful signals in our brains—signals that actually make us happier, healthier, and more successful. So, giving and helping are true win-win propositions.

All of this brings me to my point. One does not have to go so far as to put his or her life on the line to help others. Even small acts of kindness and charity have powerful effects for both the helper and the person or persons being helped.

The entire purpose of the Valley Community Legal Foundation is to engage those in our community able to help and give them meaningful opportunities to do so.

VCLF gives blankets to the homeless and supports woman’s shelters and food banks. It also runs programs to teach Valley high school students about the Constitution and offers scholarship opportunities to students interested in legal or law enforcement careers.

But we can only do all these things with your help. Please be a helper and consider donating anything you can to our efforts.

You can visit us at [theVCLF.org](http://theVCLF.org). It’s truly a win-win deal. Thank you and stay healthy! 

### 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](http://www.thevclf.org).

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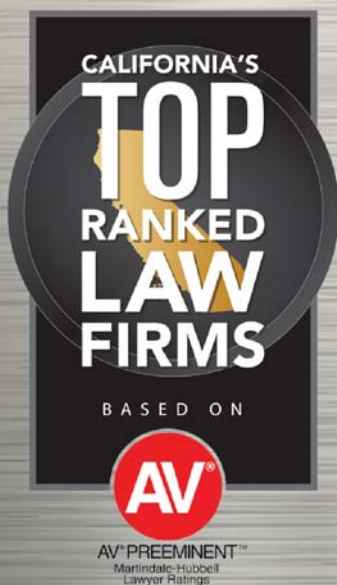
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