VALLEY LAWYER

MARCH 2021 • $5

A Publication of the San Fernando Valley Bar Association


## HIPAA: To Preserve and Protect

Earn MCLE Credit

## The Value of Experience: SFVBA Past Presidents Share Their Insights

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# CONTENTS

MARCH 2021

VALLEY LAWYER
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12

22


28


32

## FEATURES



## DEPARTMENTS

# VALLEY LAWYER

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# The Challenges of Leadership

**DAVID G. JONES**
SFVBA President

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RECENT HOLIDAYS AND observances have helped us reflect on history, both good and bad, and the stories that illuminate what has gone on before.

With the Presidents' Day holiday and Black History Month now past, we have been drawn into thinking about the leaders of our nation, as well as leaders in the Black community, and the other tradition that starts marks this time of the year—baseball, America's pastime.

For any true fan, this is the beginning of a season that warms the soul and serves as a reminder of memories like oiling up the old glove when you were a kid, or gearing up for Spring training for your favorite team—hopefully, the Dodgers.

Baseball has its leaders as well, and, of late, has done an excellent job in recognizing its past team leaders in, the example, the Negro Leagues, a goal so apt for this time of year.

Leaders who stepped up to the plate, literally and figuratively, in difficult times.

One thing that makes any team, any community great is the diversity of opinion that can create collective wisdom and judgment that allows a group to make good decisions, but at the same time, make leading a difficult task.

I have held several leadership positions in the past. In law school, I served as president of the Student Bar Association, and over the years, have led, with others, various organizations and campaigns.

During my time as Student Bar president, I was schooled in the art of listening to my fellow students and the members of the Board and, while there was occasional drama, in most cases, we were able to execute on goals and through the process with all forging a respect for each other given our collective commitment to making things better for our fellow law students.

I have taken my experience and tried to apply it to making our Bar the best it can be. It is not easy, and I am not perfect as missteps will happen and things sometimes go sideways.

> "Leaders, and others, face constant criticism–a national hobby, be it in politics or on social media."

To be clear, I serve as president of the San Fernando Valley Bar Association for a one-year term and the challenges I face pale in comparison with those in other far more lofty posts.

Yet, the nature of the challenges, though, are similar in that leadership of any organization of any size or make-up comes down to its people—its members—and any leader who believes that they can simply create a vision and execute it without consideration for the people is sadly misguided. This cannot happen in a vacuum.

There are many qualities that make a great leader, but one of the most important is to recognize and allow diversity of opinion and ideas, while holding people together for a general collective vision for the particular organization.

Leaders, and others, face constant criticism—a national hobby, be it in politics or on social media.

An effective leader must have a tough skin, though, to keep the vision moving forward and achieve targeted goals being disciplined enough to ignore extreme opinions which do not advance those objectives.

It is a constant balancing act of taking in criticism and using sound judgment to make good decisions. There are many ways where a leader can misstep, and rarely does an entire group lend 100 percent approval with all decisions.

We have an outstanding team composed of members that are committed to making the Bar thrive and it is that positive energy that motivates me, our officers, Board members, and staff to shoulder-through the tough times.

The bottom line is that now is a great time to reflect on leadership at all levels.

Many of us, lead small firms or manage staff and the opportunities to exhibit sound leadership are all around us and can, for example, lead groups of attorneys working on community projects or initiatives to help those in need, and so much, much more.

When we do, let's do it with an open ear and a team approach. The results will speak for themselves.

# Leadership: Past and Present

**MICHAEL D. WHITE**
Communications Manager

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NO LESS A PHILOSOPHER than the great baseball Hall of Famer Joe DiMaggio once said, "A person always doing his or her best becomes a natural leader, just by example."

It's been almost a century now since the San Fernando Valley Bar Association was organized by a group of visionary attorneys who saw the Valley not only for what it was—a rural appendix to a greater 'over the hill' Los Angeles proper—but what it would become.

Navigating the group since then, have been its presidents—men and women who have shared the same vision as their forebears—under different circumstances and distinct challenges over the years, to be sure—always selflessly "doing his or her best" for the betterment of the legal profession, the Bar, and the unique Valley community it serves.

As Shakespeare wrote in The Tempest, "What is past is prologue"—in other words, what comes in the future is built on the foundation of the past.

In putting together this month's cover article, I was able to 'speak' with more than a dozen of the Association's past presidents to get their hindsight on the highs and lows of wielding the gavel at Board of Trustee meetings, motivating the Board and Bar members, and steering one of the largest and most respected professional organizations in the state.

What lessons from the past on how to wield leadership can be taken up by future Bar leaders?

Carol Newman, SFVBA President in 2016, told me that the best way to approach success was "to reach down in the organization and lift up the people whom you believe would be the best leaders—be proactive, not reactive."

Speaking directly to future Bar chiefs, Lee Alpert, who held the post in 1986, said, "Take pride in what you do as it will speak to who you are and the Bar and its members have earned and deserve your very best efforts. Be proud of your profession and show it by your actions. Consider a long-range plan and remember it is not all about you, it is about the best interests of the organization and its members."

David Gurnick, who served two separate terms as SFVBA President (1994 and 2013), advises: "Keep the SFVBA focused on our mission: helping improve the legal profession, access to justice, inclusion and serving our members and our community. During your time as a Bar leader, make sure to nurture the leaders who will follow you, in the traditions of warmth, respect and integrity of our Bar Association."

Sadly, Alan Kassan, who led the Bar in 2018, was unable to participate in the interview process for this month's cover article due to the February 16 death of his father.

The members of the SFVBA join with our staff to extend our sincere condolences to Alan and his family at this very difficult time.

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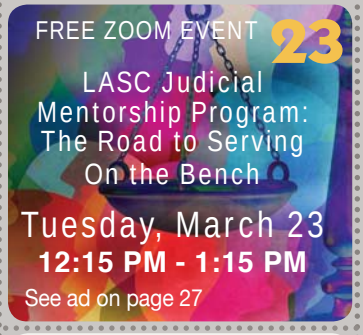
# CALENDAR

## MARCH 2021

| SUN | MON | TUE | WED | THU | FRI | SAT |
|---|---|---|---|---|---|---|
| **WOMEN'S HISTORY MONTH** | | | | | | |
| | **1** VBN VALLEY BAR NETWORK ZOOM MEETING 5:30 PM | **2** WEBINAR 9 Probate and Estate Planning Section What You Always Wanted to Know About GALs But Were Afraid to Ask 12:00 NOON Speakers Vivian L. Thoreen and Marc L. Sallus explore the method to obtain a GAL, the GAL's role in Probate matters, the ethical issues regarding GALs, and the method to obtain fees as a GAL. (1 MCLE Hour) Board of Trustees 6:00 PM SFVBA OFFICES | **3** | VIRTUAL EVENT **4** State of the Courts 12:15 PM - 1:15 PM Supervising Judge Virginia Keeny gives an update and answers members' questions. See ad on page 20 ZOOM MEETING Membership and Marketing Committee 6:00 PM | **5** | **6** |
| **7** | **8** | **9** | **10** WEBINAR 17 Litigation Law Section Zoom Depositions: Demonstrating All the Technical Details You Need to Know Sponsored by VERITEXT LEGAL SOLUTIONS 12:00 NOON Presenters: Anthony Ellis of Ellis & Bakh Trial Lawyers & the Veritext remote depo specialists. Moderator: Christopher P. Warne of the Warne Law Firm. Free to All Members. (1 MCLE Hour) Interactive Workshop! (Zoom Depositions) 1:15 PM - 2:15 PM See ad on page 44 ZOOM MEETING Editorial Committee 12:00 NOON   | **11** WEBINAR Business Law and Real Property Section Crowdfunding and Syndicated Investment Strategies 12:00 NOON Chay Lapin, Senior Vice President Kay Properties addresses this timely topic. (1 MCLE Hour) | **12** | **13** |
| **14** | **15** | **16** WEBINAR Taxation Law Section Tax Issues in Bankruptcy: Dischargeability and Beyond 12:00 NOON Attorney David Reeder will discuss tax issues arising in bankruptcy cases including dischargeability of taxes, treatment of claims in Chapter 11, litigating against the IRS in bankruptcy cases & more. (1 MCLE Hour) | | **18** ZOOM MEETING Inclusion and Diversity Committee Meeting 12:00 NOON | **19** | **20** |
| **29** WEBINAR All Members Reset, Recover, Renew: Wellness Strategies for Legal Professionals in the New Normal 12:00 NOON Special one-hour interactive webinar (Competence Issues) with Lita Abella, Sr. Program Analyst, Lawyer Assistance Program of State Bar of California. Attendees will need their smart phones. Free to All Members! | |   **30** WEBINAR New Lawyers Section Meet the Bosses 5:30 PM Starting or Switching Up Your Law Practice? Hear from some of the top legal professionals in their field of law. | **24** **31** | **25** | **26** | **27** |

**SFVBA COVID-19 UPDATES**
**sfvba.org/covid-19-corona-virus-updates/**

**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.**

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

By Alan J. Sedley

# HIPAA

*Health Insurance Portability & Accountability Act*

## To Preserve and Protect



Every byte of personal, individual identifiable data, such as that stored at banks, schools, places of employment, and online merchant services–name, address, social security number, date of birth, bank account numbers, employers, and the identity of family members, for example–could, with a simple send command and without adequate safeguards in place, effortlessly become the source of exploitation, monetization, and even personal humiliation.


CLOUD
MEDICAL DATA
PAA
SE URITY
PERSONAL FILES
MEDICAL
COMPLIANCE
ASSWORD
ECURITY
MEDICAL
INFORMATION

OVER THE PAST THIRTY YEARS, RAPID-FIRE advances in technology have resulted in the massive electronic dissemination of information across countless numbers of networks and platforms.

As a result, it has become essential that effective safeguards be designed and implemented to protect the public from both the inadvertent and deliberate collection and dissemination of personal information by others unauthorized to do so.

Every byte of personal, individual identifiable data, such as that stored at banks, schools, places of employment, and online merchant services—name, address, social security number, date of birth, bank account numbers, employers, and the identity of family members, for example—could, with a simple send command and without adequate safeguards in place, effortlessly become the source of exploitation, monetization, and even personal humiliation.

Not the least of all individual privacy concerns, and a readily available source for potential breaches of security, involves the security of personal health information.

With that in mind, and as information technology and its advancements and growth continue to surge, there is a palpable sense of urgency among those in both the health care industry and in government to address the growing threat to patient confidentiality and privacy.

In response to those concerns, the tech industry went to work to develop a multitude of security hardware and software programs, while federal and state legislators sought to craft laws, rules and regulations to enforce the implementation of such necessary safeguards.

## Enter HIPAA

The need for national standards for the privacy of individually identifiable health information gave rise to the promulgation of the Privacy Rule, issued by the Department of Health and Human Services (HHS), to serve as an element of the Health Information Portability and Accountability Act of 1996 (HIPAA).[1]

HHS issued the Privacy Rule to implement the requirements of HIPAA and provide standards for the protection of certain sensitive personal health information.

The Privacy Rule standards address the use and disclosure of individuals' health information, called protected health information, or PHI, by organizations or individuals subject to the HIPAA Privacy Rule, one of a series of rules implemented by HHS under the HIPAA legislation.

Other rules promulgated under the Act include its Transactions and Code Set Standards, Identifier Standards, as well as the Security Rule, and the Enforcement Rule.[2]

The HIPAA Privacy Rule standards address the use and disclosure of individuals' health information—for example, PHI, by organizations, or covered entities, subject to HIPAA Privacy Rules—as well as setting standards for individuals' privacy rights so as to provide the covered entity with the necessary tools to control exactly how an individual's health information is used.

Within HHS, the Office for Civil Rights has the responsibility for implementing and enforcing the HIPAA Privacy Rule regarding compliance activities. In addition, the Office assesses civil monetary penalties for those covered entities and others who violate these standards.

Basically, a primary goal of the HIPAA Privacy Rule is to ensure that individuals' health information is properly protected, while, at the same time, allowing the flow of information needed to promote and provide high quality health care to individuals.

## Who is Covered

The HIPAA Privacy Rule applies to health plans, health care clearinghouses and any health care provider—the aforementioned covered entities—that transmits health information in an electronic form in connection with transactions for which the HHS Secretary has adopted standards under HIPAA.

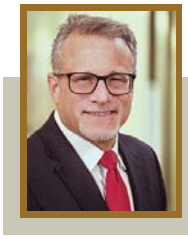
## Health Plans

Individual and group health plans that provide or pay the cost of medical care are designated as covered entities.[3]

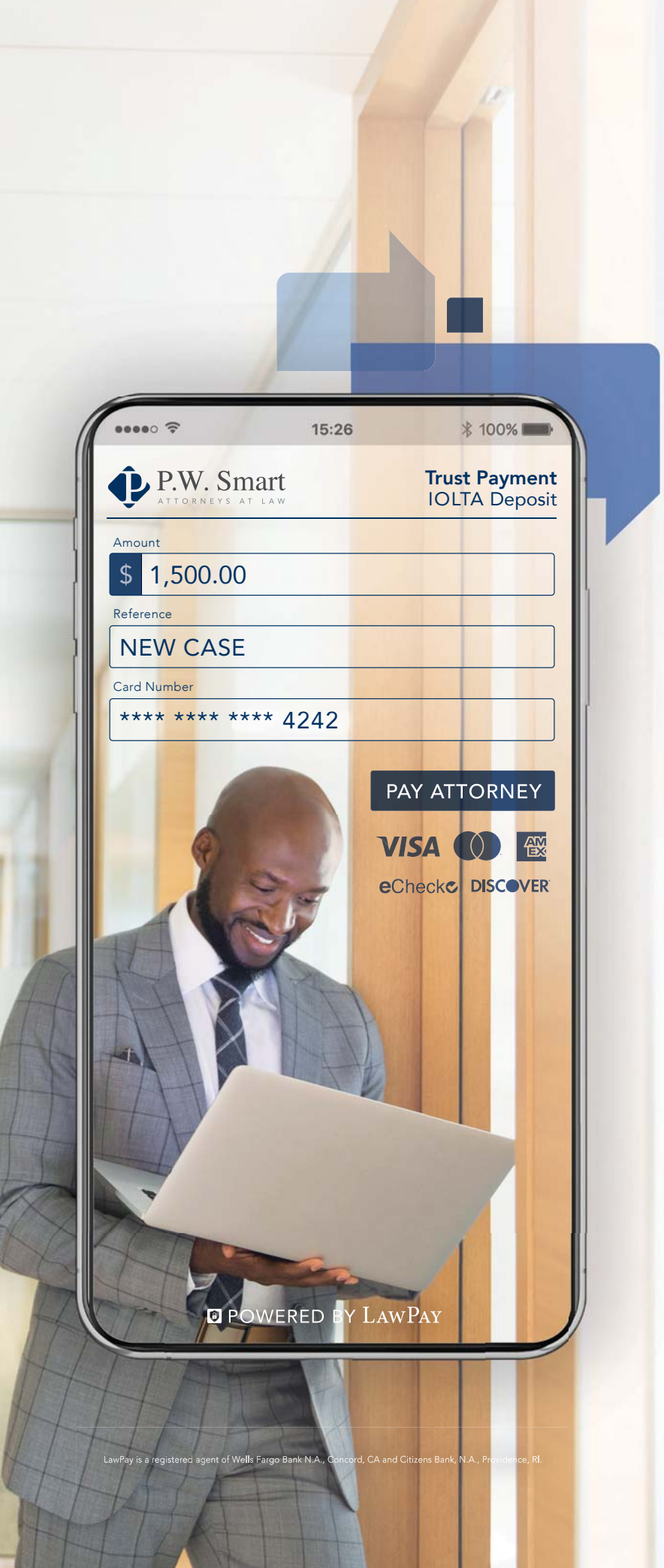
Health plans include health, dental, prescription drug and vision insurers, health maintenance organizations (HMOs), long-term care insurers, and federally provided health plans such as Medicare, Medicaid, or Medi-Cal in California, Medicare Advantage, and Medicare supplement insurers.

Health plans may also include employer-sponsored group health plans, government and religious-sponsored health plans, and multi-employer health plans.

There are certain exclusions to the definition of a health plan for purposes of the HIPAA regulations—a group health plan, for instance, covering fewer than fifty employees that is self-administered by the employer is not deemed a health plan within the province of HIPAA.[4]



**Alan J. Sedley** serves as Senior Counsel at the firm of Nelson Hardiman in Los Angeles. His career-long focus has been on healthcare and medical-related law. He can be reached at asedley@nelsonhardiman.com.

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**Health Care Clearinghouses**

Health Care clearinghouses are covered entities for purposes of the HIPAA regulations that process nonstandard information they receive from another entity into a standard—for example, standard format or data content—or vice versa.[5]

Examples of health care clearinghouses include billing services, community health management information systems, and repricing companies.

In most instances, health care clearinghouses receive individually identifiable health information only when they are providing such processing services to a health plan or health care provider in its legal capacity as a business associate.

In these instances, only certain provisions of HIPAA are applicable to the health care clearinghouse's uses and disclosures of protected health information.[6]

**Health Care Providers**

A health care provider who electronically transmits or receives patient health information in connection with certain standard transactions is designated as a covered entity.

A health care provider deemed to be a covered entity under the HIPAA regulations—the Transactions Rule—is broadly defined as a provider of medical or health services under Medicare Part A—e.g., hospital services—or Part B—e.g., physician services—or any other person or organization that furnishes, bills for services rendered, or is paid for health care in the normal course of business.

Such a provider will include physicians—whether or not the physician in question operates a solo practice or is a member of a large health care provider group—dentists, and chiropractors, as well as hospitals and other institutional providers of health care services such as long term care facilities, health care outpatient clinics, and diagnostic facilities.

For purposes of the HIPAA Privacy Rule, such transactions would include claims, benefit eligibility inquiries, referral authorization requests, or other transactions for which HHS has established standards as laid-out in the HIPAA Transaction Rule.[7]

A transaction where, for example, a health care provider transmits PHI to a health plan to obtain authorization for patient care to ensure coverage eligibility falls within the provisions of the Rule.

**Business Associates & Covered Entities**

For purposes of the HIPAA Privacy Rule, a business associate is a person or organization, other than a member of a covered entity's workforce, "that performs certain functions or activities on behalf of, or provides certain services to, a covered entity that involve the use or disclosure of individually identifiable public health information, or PHI."[8]

A business associate functions or activities on behalf of a covered entity include claims processing, data analysis,

utilization review, billing, transcription services, temporary staffing services, and software development/maintenance.[9]

Business associate services to a covered entity are limited to legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services.

Note, however, that persons or organizations are not considered business associates "if their functions or services do not involve the use or disclosure of PHI, or where any access to PHI by such individuals would be considered incidental."

By definition, a covered entity can be the business associate of another covered entity.

When a covered entity uses a business associate to perform such functions or activities on behalf of the covered entity, HIPAA regulations require that the covered entity enter into a business associate agreement with the business associate.

Such an agreement will include provisions imposing specified written security safeguards on the PHI used or disclosed by its business associate, such as administrative, technical, and physical safeguard requirements as laid out in the HIPAA Security Rule.

Effectively, every safeguard provided by the Rule is required unless there is a justifiable reason not to implement the safeguard or an appropriate alternative to the safeguard is implemented and achieves the same objective.

An example of such a reason could be the requirement to encrypt emails containing PHI.

Such a requirement might not be applicable if such emails are not sent beyond a firewalled, internal server.

If a covered entity or business associate only uses such emails as an internal form of communication—or has an authorization from a patient to send their information unencrypted—there would be no need to implement this particular safeguard.

**What Information is Protected**

The HIPAA Privacy Rule protects all individually identifiable health information held or transmitted by a covered entity or its business associate, in any form or media, whether it be electronic, on paper, or by oral communication.

The Rule considers this information protected health information, or PHI.[10]

Individually identifiable health information is information that relates to:

- The individual's past, present or future physical or mental health or condition, The provision of health care to the individual; or,
- The past, present or future payment for the provision of health care to the individual, and that identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual.[11]

De-identified health information is not protected health information, and, therefore, there are no restrictions on the use or disclosure of de-identified health information.[12]

To fall under the de-identified information safe harbor, certain data should not be in the information disclosed—names, in whole or in part; geographical identifiers; phone or fax numbers; email addresses; medical record numbers; account numbers; vehicle identification numbers (VINs); vehicle license plate numbers; web urls; and internet protocol (IP) addresses.

Additional prohibited data includes biometric identifiers, such as retinal and voice prints and fingerprints; full face photographic images; social security numbers (SSNs); health insurance beneficiary numbers; and any other unique identifying number, characteristic, or code.[13]

**Patient Privacy Right**

The HIPAA Privacy Rule establishes a patient's right to receive a Notice of Privacy Practices (NPP) from a Covered Entity, which specifies the ways in which the covered entity will use and disclose the patient's PHI.[14]

Under the Rule, the NPP must be written in plain language, include all of the required content and elements

set forth in the Rule, and be either provided or made available at specified times and locations.[15]

Among other requirements, the NPP must contain anticipated uses and disclosures of the individual's PHI by the Covered Entity for purposes of treatment, payment and health care operations, as well as a description of each of the other uses or disclosures which the covered entity may make without obtaining the individual's written authorization.

The description must also be sufficiently detailed so that the individual is placed on notice of the anticipated use or disclosure.

The Notice of Privacy Practices must also set forth a statement of the individual's rights with respect to PHI, such as the right to:

- Request restrictions on certain uses and disclosures of PHI;
- Receive confidential information from the covered entity;
- Inspect, copy and amend the individual's own PHI; and,
- Receive an accounting of disclosures (but not uses) of PHI.

A covered entity is required to act on an individual's request to access, inspect a copy of their own PHI with certain exceptions, within thirty (30) days of the request if the PHI is accessible on-site or sixty (60) days if the PHI is located off-site.

A covered entity is permitted to deny access to certain public health information with no opportunity for appeal.

Such information includes psychotherapy notes; information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding; information held by prisons on inmates; information held by a research entity when the individual has agreed, as part of the research protocol, to the limitation on access for the duration of the research project; and, information obtained from someone other than a health care provider under a promise of confidentiality.

A covered entity may also deny access to certain PHI if upon review, another licensed health care provider has determined that the request is reasonably likely to endanger the life or physical safety of the individual or another person; the PHI contains a reference to another person; the access requested is reasonably likely to cause substantial harm to such other person; or the request is made by a personal representative and the access is reasonably likely to cause substantial harm to the individual or to another person.

If access is denied on the grounds stated immediately above, the individual has the right to have the denial reviewed by a licensed health care professional, designated by the covered entity, who did not participate in the original denial.

**Patient's Rights to Amend**

A patient has the right to have a covered entity amend PHI to ensure that the information is accurate and complete for as long as the covered entity maintains the PHI.[16]

Should the covered entity accept the requested amendment, it must make the correction in all affected efforts, make reasonable efforts to inform its business associates and others that have received the PHI of the correction, and notify the patient of those actions.

A covered entity may deny a patient's request to amend its PHI if, for example, the PHI was not created by that covered entity; the PHI is excepted from the right of access such as psychotherapy notes, and information in reasonable anticipation of, or for use in, a civil, criminal or administrative action or proceeding); or, in the covered entity's opinion, the PHI is already accurate and complete.

In such instances of denial, the covered entity must provide the individual with a timely, written denial, the basis for the denial, the individual's right to submit a written statement of disagreement, and a description of how the individual may complain to the appropriate federal agency such as the Department of Health and Human Services.

A covered entity that is informed by another covered entity of an amendment to an individual's public health information must, as well, amend the PHI in its own records.

**Violations of HIPAA**

The HIPAA Enforcement Rule establishes the framework for compliance and investigations, and determining the amount of civil monetary penalties to be imposed upon covered entities who violate any provision of the HIPAA Privacy and Security Rules, as well as the procedures for hearings.

The Enforcement Rules establish critical definitions that significantly affect the extent of civil monetary penalties.[17]

They include reasonable cause, reasonable diligence, and willful neglect.[18]

Most critically, the Rules define willful neglect as a "conscious, intentional failure or reckless indifference to the obligation to comply with the provision violated" and could result in significant civil monetary penalties ranging from $100 per violation up to a maximum of $25,000 levied by the Office of Civil Rights.[19]

**The HITECH Act**

Despite requiring that the relationship between covered entities and business associates be memorialized in a written agreement that sets forth the several requisite provisions, the original HIPAA regulations offered no avenue for enforcement against business associates who violated their agreements or the provisions of HIPAA.

The HITECH Act was enhanced by subjecting business associates directly to the standards set forth in the HIPAA Security Rule, as well as certain aspects of the HIPAA Privacy Rule. This was done through the promulgation of the Omnibus Rule, which extends direct liability to business associates for HIPAA violations.[20]

The Omnibus Rule implemented HITECH's requirement that business associates must comply with the HIPAA Security Rule in the same manner applicable to covered entities.

Minimum compliance for business associates includes developing and performing a full risk analysis, as well as developing and implementing internal policies and procedures intended to satisfy the required elements of the HIPAA Security Rule's physical, technical, and administrative ePHI safeguards.

To the extent that the business associate receives or generates PHI, the associate must also comply with the basic provisions of the HIPAA Privacy Rule prohibiting the use and disclosure of PHI in any manner not permitted by the Privacy Rule.[21]

Moreover, a business associate that is engaged to carry out one of the covered entity's responsibilities under the HIPAA Privacy Rule—for example, handling an individual's request for access to their PHI—must comply with the Privacy Rule in carrying out those responsibilities.

A business associate's failure to comply with the requirements of the HIPAA Privacy and Security Rules can possibly give rise to direct liability and potential civil monetary penalties levied by the Office of Civil Rights.

**Breach Notification**

Before the HITECH Act, there was no express requirement that a covered entity notify an individual, such as a patient, about an unauthorized disclosure of the individual's PHI.

Under the HITECH Act, Congress addressed that omission by defining a breach of PHI as the "unauthorized acquisition, access, use or disclosure of PHI which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would reasonably have been able to retain such information."[22]

Tossing out the Office of Civil Rights attempt to clarify the instance of a breach of PHI in terms of a risk of harm threshold standard, the subsequent Omnibus Act took a harder stance.

According to the new standard, unauthorized disclosures of PHI are presumed to be a breach requiring reporting, unless the covered entity can demonstrate a low probability that the PHI has been compromised—for example, when that the breach event was remedied before it could constitute a vulnerability or that the information was not accessed.

This shifts the burden of proof to the covered entity, and requires that the covered entity either assume that every unauthorized disclosure is a breach, or perform a risk analysis on every such incident to determine whether the incident can be mitigated to the extent that it no longer constitutes a breach, using a specific delineated set of factors.

Those factors include the nature and extent of the PHI involved with the covered entity required to conduct an investigation to determine whether the PHI was actually acquired or viewed.

Once the covered entity performs such a risk analysis, it can then determine whether there is a low probability that the PHI has been compromised.

If the analysis does not convincingly demonstrate to the covered entity that the PHI was not compromised, the required course of action dictates notification to the individuals and reporting to the Office of Civil Rights.

**Breach Analysis**

The breach analysis under the Omnibus Act can best be summarized as a four-step process—discovery; investigation; analysis; and response, whether or not notice and reporting are required.

Any deviation from an analysis, or an attempt to pre-determine an outcome in the course of the investigation such that a non-breach is determined and thus reporting avoided, could very well give rise to severe monetary penalties.

In addition, civil actions could be brought by the individual whose PHI was breached, once the incident is objectively reviewed by the Office of Civil Rights when the occurrence was brought to light.

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[1] 45 CFR. § 164.501; Public Law 104-191.
[2] 45 CFR. § Part 164.
[3] *Id.* §§ 160.102, 160.103.
[4] *Id.* § 160.103.
[5] *Id.*
[6] *Id.* § 164.500(b).
[7] 45 CFR. §§ 160.102, 160.103. The Transaction Standards are established by the HIPAA Transactions Rule at 45 CFR. Part 162.
[8] 45 CFR. § 160.103.
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] 45 CFR. § 164.502(d)(2), 164.514(a) – (b).
[13] *Id.* § 164.514(c).
[14] *Id.* § 164.520.
[15] *Id.* CFR. § 164.520(b).
[16] *Id.* § 164.526.
[17] *Id.* § 160.401.
[18] *Id.*
[19] *Id.*
[20] *Id.* § 164.103(b), 164.302, and 164.500.
[21] *Id.* § parts 160 and 164.
[22] American Recovery and Reinvestment Act of 2009, 42 U.S.C.A. § 17921.

# HIPAA: To Preserve and Protect
## Test No. 149

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. A transaction where a health care provider transmits PHI to a health plan to obtain authorization for patient care to ensure coverage eligibility falls within the provisions of the HIPAA Transaction Rule.
❑ True ❑ False

2. The HIPAA Privacy Rule protects all individually identifiable health information held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral communications.
❑ True ❑ False

3. De-identified health information is protected health information, and therefore, there are numerous restrictions on the use or disclosure of such information.
❑ True ❑ False

4. A mobile home license plate number is not considered identifiable information under the HIPAA Privacy Rule.
❑ True ❑ False

5. The HIPAA Enforcement Rule establishes the framework relating to compliance and investigations and determining the amount of civil monetary penalties to be imposed upon covered entities who violate a provision(s) of the HIPAA Privacy and Security Rules.
❑ True ❑ False

6. A dentist who electronically transmits or receives patient health information in connection with certain, standard transactions is designated as a covered entity.
❑ True ❑ False

7. A psychiatrist must comply with a patient's request to view his psychotherapy record, including the psychiatrist's notes taken during the patient's therapy session.
❑ True ❑ False

8. The breach analysis under the Omnibus Act can best be summarized as a four-step process, which includes discovery, investigation, analysis, and response when notice is deemed to be required
❑ True ❑ False

9. One aim of the HITECH Act was to require that a business associate adhere to those same standards required of a covered entity under the HIPAA Security Rule.
❑ True ❑ False

10. A company serving as a business associate to a covered entity cannot also fall within the designation of covered entity under the definitions set forth in the HIPAA Privacy Rule.
❑ True ❑ False

11. An individual's health insurance company is not a covered entity as that term is defined under the HIPAA Privacy Rule.
❑ True ❑ False

12. The HIPAA Privacy Rule is designed to protect an individual's PHI stored in electronic form only, such that the individual's PHI recorded in the form of a paper medical record does not fall within the provisions of the Privacy Rule.
❑ True ❑ False

13. Absent in the provisions of the HITECH Act, the subsequent Omnibus Act provided that a business associate who violates the HIPAA Security Rule could give rise to direct liability and potential civil monetary penalties against the business associate.
❑ True ❑ False

14. The HIPAA Privacy Rule establishes a patient's right to receive a Notice of Privacy Practices from a covered entity.
❑ True ❑ False

15. A prison inmate's demand that he be given access to view his PHI must be granted.
❑ True ❑ False

16. A chiropractor does not have to allow a patient to amend his PHI if the chiropractor believes that in her opinion, the PHI is already accurate and complete.
❑ True ❑ False

17. Contained within the HIPAA Privacy Rule is an express requirement that a covered entity notify an individual about an unauthorized disclosure of the individual's PHI.
❑ True ❑ False

18. PHI is an acronym for Patient Health Information under the HIPAA Privacy Rule.
❑ True ❑ False

19. Three identifiable rules set forth within the HIPAA regulation are the Privacy Rule, Security Rule and Transaction Rule.
❑ True ❑ False

20. A component of individually identifiable health information includes the individual's history of complaints of poor customer service directed at his health insurance company health plan.
❑ True ❑ False

## HIPAA: To Preserve and Protect
## MCLE Answer Sheet No. 149

**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:**

**San Fernando Valley Bar Association**
**20750 Ventura Blvd., Suite 140**
**Woodland Hills, CA 91364**

**METHOD OF PAYMENT:**

❑ **Check or money order payable to "SFVBA"**
❑ **Please charge my credit card for**
**$ _____.**

**Credit Card Number** _____

**CVV code** _____ **Exp. Date** ___/___/___

**Authorized Signature** _____

5. **Make a copy of this completed form for your records.**
6. **Correct answers and a CLE certificate will be mailed to you within 2 weeks. If you have any questions, please contact our office at (818) 227-0495.**

**Name** _____
**Law Firm/Organization** _____
**Address** _____
**City** _____
**State/Zip** _____
**Email** _____
**Phone** _____
**State Bar No.** _____

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

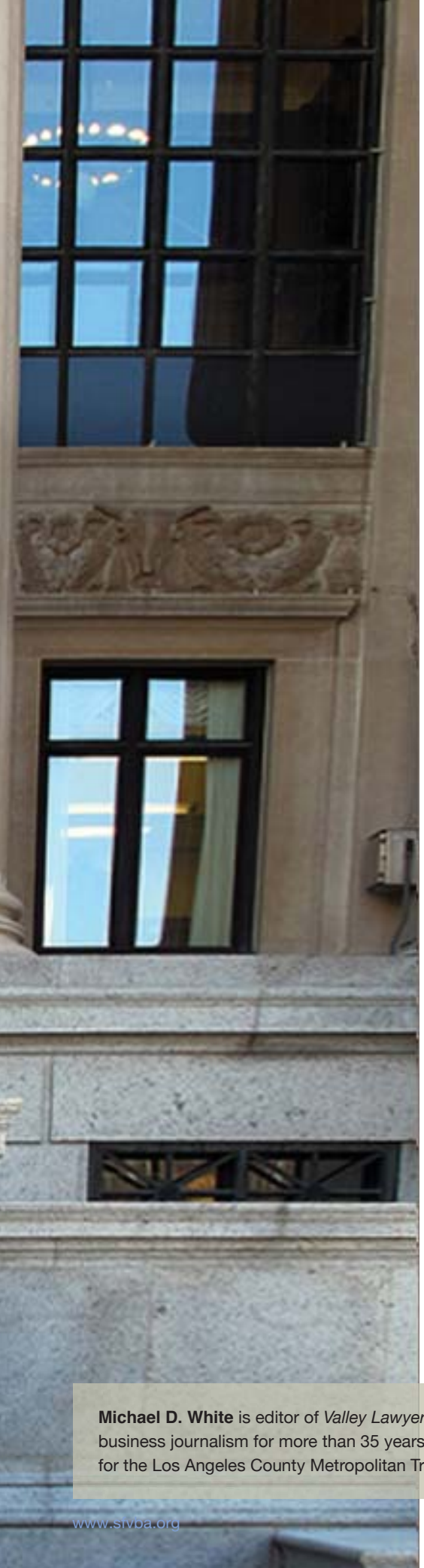
| | | |
|---|---|---|
| **1.** | ❑ **True** | ❑ **False** |
| **2.** | ❑ **True** | ❑ **False** |
| **3.** | ❑ **True** | ❑ **False** |
| **4.** | ❑ **True** | ❑ **False** |
| **5.** | ❑ **True** | ❑ **False** |
| **6.** | ❑ **True** | ❑ **False** |
| **7.** | ❑ **True** | ❑ **False** |
| **8.** | ❑ **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** |

By Michael D. White

# The Value of Experience:

## SFVBA Past Presidents Share Their Insights


Leading the San Fernando Valley Bar Association from its founding in 1926 to this very day have been Boards of Trustees, from which have come the Bar's Executive Officers–its Presidents–who have led the Bar, navigating the organization all the while providing guidance and overcoming the myriad of challenges facing not only the Bar, but the legal profession and the community, as a whole



WHAT IS PAST, WROTE William Shakespeare in his play *The Tempest*, is prologue, and, while the original context is one of the choices between doing good and doing evil, in today's context, the quote has come to mean that what has gone before sets the stage—the context—for the present.

In just five years, the San Fernando Valley Bar Association will have served the Valley community for 100 years; a period in which its members have seen the Valley—a land mass—develop from a rural cornucopia of orange and olive groves, cattle ranches, wheat fields, and chicken farms into a thriving, diverse community of manufacturing, industry and commerce. A community covering as much ground as Boston, San Francisco, and Washington, D.C. combined that would, if counted as its own independent city, rank as the fifth largest in the entire nation.

From the beginning of that century of service, the Bar has been instrumental in providing the Valley community with access to justice—from its early efforts to provide the Valley's handful of attorneys with a professional organization to call their own and the campaign to establish the first of several courthouses to its current status as one of the most active legal and community service bar associations in the entire state.

Leading the group to this very day have been Boards of Trustees, from which have come the Bar's Executive Officers—its Presidents—who have led the Bar, navigating the organization all the while providing guidance and overcoming the myriad of challenges facing not only the Bar, but the legal profession and the community, as a whole.

**Taking the Helm to Diversity**

When he took office as President of the San Fernando Valley Bar Association in 2006, Richard A. Lewis saw the need to steer the Bar into better alignment with the changing face of the Valley community. Lewis served as SFVBA President in 2006 with the goal of making the Bar a much more diverse organization.

The challenge became the accomplishment he is most proud of when the Bar became an active member of the Los Angeles-based Multicultural Bar Alliance with the SFVBA claiming the distinction of being, to this day, the only regional Bar that is a member of the group.

"The Valley has become a very diverse community and in order to better represent their clients, Bar members have to understand the issues being faced by the people in the community so that when an individual comes to an attorney about a particular issue, the attorney needs to have a better filter to understand the particular challenges the person is dealing with," says Lewis.

"The Bar has shown real growth in that regard and I hope that I was able to be instrumental in helping that effort along."

**Goals vs. Time**

According to Caryn Brottman Sanders, who led the Bar in 2015, the Bar's Executive Officers find themselves with more to accomplish in terms of goals than there is time to fulfill them.

"I think one of the greatest challenges facing any incoming Bar

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president is that we are only president for one year," she says. "That means one year to try to accomplish your goals, while also working with staff and potentially new trustees or trustees that have been around a while and are reluctant to change."

Kira S. Masteller faced the same issue—motivation—during her 2017 term as SFVBA President.

"Getting board members to be active and excited about promoting the Bar and its membership was a challenge," she says. "There were some political issues that created a rift between Board Members that was also challenging to navigate because, of course, you cannot make anyone happy in a discussion as a leader where you do not take a position."

But she adds, "disagreement is what makes the Board aware of what's going on in our community and helps us to see many sides of an issue."

According to Alan J. Sedley, the greatest test he encountered when he was handed the President's gavel in 2012 was "the challenge of how to have the Bar be seen as an indispensable go-to organization to the near two million Valley community residents."

"I took a stab at this from the outset, asking my Board to use their best efforts to spread the word that the SFVBA should be regarded by the public as a "Must Have – Must Need" resource for legal guidance and legal assistance in the Valley, and beyond," he says.

"I believe that I achieved that goal; the Bar referral service blossomed during my tenure, as did the re-emerged affiliate Valley Community Legal Foundation. Attendance at the annual Judges' Night set a new record at the time, and volunteerism by Bar members at any number of community functions flourished as well."

**Challenges Out of the Blue**

Sometimes, though, challenges come in different, and entirely unexpected forms.

"I was president of the Bar in 2020, the year of the pandemic," says Barry P. Goldberg. "Most of the Bar's programs were live events like Judges' Night and other events. Live events were all cancelled and a main source of the Bar's revenue dried up."


*The City Municipal Building in Van Nuys was dedicated in 1933. The SFVBA was the motive force behind establishing the Valley's first Municipal Court in the new building.*

As a result, Goldberg was forced to sideline his goal of growing more revenue to meet increased expenses during an unprecedented time in the Bar's history.

"I had to fairly crunch numbers and budgets in order to make it to the end of my term," he says, a process that involved "both boosting online programs and increasing memberships and making drastic cuts along the way. Those deep cuts included payroll reduction, renegotiating rent terms, and relying on the digital [rather than print] publication of *Valley Lawyer*."

Commenting on the impact that the COVID-19 pandemic has had on the Bar, Kira Masteller feels that "the Bar has managed well through COVID by continuing to provide MCLE programs and networking events."

Pre-pandemic, she adds, "The Bar was working hard to open up more in-person events with its new inviting [office] space and networking opportunities. It was going very well, but they have really been thrown for a loop in supporting the expense without those events."

The Bar, adds Masteller, "is going to have to get creative yet again to keep going and providing its Members and the community with resources

and opportunities to get together as lawyers and share experiences, resources and opportunities to be of service."

The massive cuts in the Los Angeles Superior Court's budget created another unique hurdle for the Bar to straddle, according to Adam D.H. Grant, who led the Bar in 2014.

"The cuts resulted in the court being forced to shutter its pro bono mediation service for litigants," he says. "The budget cuts required a dramatic reduction in the work force. Fortunately, the program had grown substantially over the years, but unfortunately, it required a great deal of administrative support."

Gary L. Barr, who led the Association in 1992, faced another challenge, one that made headlines in the news and went to the core of the Bar's core belief in the independence of the judiciary.

"There was a move to remove a judge over the sentencing of an individual in a criminal case," Barr recalls. "I strongly believe in the independence of the judiciary and that a Judge should not be removed over the sentence in a criminal or a particular decision in a matter."

The Board of Trustees, he says, "unanimously agreed with my position and the Bar publicly supported the independence of the judiciary and argued that the Judge should not be removed over the exercise of her discretion. The Bar received a great deal of publicity over its position, including television and newspaper interviews."

The stand "not only helped the Judge who was not removed, but increased the visibility of the Bar."

One challenge, though, is timeless—the quest for new members.

Increasing membership "and finding ways to provide more benefits for our members and to entice new members" was a primary goal of Leon F. Bennett, who headed the group in 1998.

**Polishing and Modernizing**

Fred Gaines saw the same challenge when he took over the reins as SFVBA President in 1999, a time when, he says, "the Valley served as a home to "smaller, suburban-type law practices" with family and bankruptcy attorneys in the majority.

"For corporate, entertainment, contract law and the like, people were still 'going over the hill' to Los Angeles proper of Century City," he says. That all changed, however, when "we saw a major shift in that with the development of the Warner Center office complex and the number of law firms establishing themselves on the Ventura Boulevard corridor in Encino and Sherman Oaks."

*Liz Post was named Executive Director of the SFVBA in 1994 and served in that position for the following 25 years.*

The shift in the make-up of the Valley's legal community offered not only opportunities to grow membership, but "we found ourselves heading into the new century with the need to upgrade our computer system, energize our programs, and enhance our image," he says.

Gaines gives much of the credit for "polishing and modernizing" the organization to former Executive Director Liz Post, who came aboard in 1994 and went on to serve as the organization's "motive force" for 25 years.

He also lauds David Gurnick, the SFVBA's only two-term President—1994 and 2013—for that "polishing and modernizing."

"I was on the Board and served as an Officer in '94 when David was President," Gaines says. "Our Executive Director had left and we were without one for quite a while. David was going in every day, opening the mail and making sure everything was running, all while conducting his own legal practice. He was instrumental in keeping things afloat and hiring Liz. All of us who've come after owe him an awful lot."

One of the accomplishments that Gurnick best remembers came in his 2013 term.

It was, he says, "a fortuity born of tragedy as the SFVBA was able to give $100,000 to the Valley Community Legal Foundation."

The funds, he recalls, "were part of a referral fee our Attorney Referral Service received from a tragic personal injury case. We recognized the gravity of loss that generated the money, and were grateful to turn it into something good by giving it to the Foundation."

For Robert A. Weissman, Bar President in 1996, it was building the reputation of the SFVBA as an organization that gave back to the community by learning from the success of other groups.

"I recognized from activities in other organizations that to get them done, I had to start well before becoming President," he says, citing the Bar's Blanket the Homeless program as an example.

"I felt that our association needed to be known for "giving back." Without the help of our then Lawyer Referral Service Director and [future SFVBA Presidents] Mark Blackman and Christine Lyden, the project would never have continued. It's now a flagship program of the SFVBA and has continued for 25 years!"

**Advice for Future Presidents**

Speaking to presidents yet to serve, Carol L. Newman, Bar President in 2016, says: "Reach down in the organization and lift up the people whom you believe would be the best leaders —be proactive, not reactive."

Lee K. Alpert, who led the organization in 1986, feels strongly that if someone doesn't have the time to give their all to the position, they should pass on the opportunity to serve as President of the SFVBA.

"This is an organization that has been around and survived for decades and established new relationships with the judges, the communities and members of our profession and others," he says.

"It takes time and leadership to maintain it and grow it…Take pride in what you do as it will speak to who you are and the Bar and its members have earned and deserve your very best efforts. Be proud of your profession and show it by your actions. Consider a long-range plan and remember it is not all about you; it is about the best interests of the organization and its members."

"This is an organization that has been around and survived for decades and established new relationships with the judges, the communities and members of our profession and others,"
*–Lee K. Alpert*

David R. Hagen served the Bar as President in 1997. He succinctly stated, "Don't sweat the small stuff. The SFVBA, as an organization, is bigger than any president or Board member's term. It has been around for a long time and will outlast any of us."

Robert Weissman advises incoming Executive Officers to "plan ahead because everything takes longer than you think. Determine as much as possible about what you desire to accomplish before you become president and begin implementing it. Determine what assistance you'll need and have it lined up or in the process of being obtained before you become president."

"Don't just serve," he adds. "Serve with a plan you've already begun executing before you become president and bring that plan to fruition during your term."

Caryn Sanders advises that new SFVBA presidents "use the three years as an officer to get a head start on developing a plan or goal for your presidency and to reach out to people that can help you with that plan or goal in advance as one year goes really fast."

According to Adam D.H. Grant, SFVBA President in 2014, incoming Bar presidents should learn to "delegate and appreciate." He encourages them to "rely on the amazing trustees who sit at the table for your support and delegate to them as if you were doing yourself. And always remember to tell the staff as frequently as possible how much you appreciate their dedication and hard work."

Two-time Bar president David Gurnick that new Bar leaders "make sure to nurture the leaders who will follow in the traditions of warmth, respect and integrity of our Bar Association."

"Realize that the Bar is a truly collaborative effort of the trustees, members and staff, and you should recognize the strengths of the people around you and tap into those strengths. You should not take yourself too seriously; you should enjoy the experience."

# INTRODUCING THE LOS ANGELES SUPERIOR COURT'S JUDICIAL MENTOR PROGRAM

IN NOVEMBER, 2020 THE LOS ANGELES SUPERIOR Court introduced its *Judicial Mentor Program*, an initiative focusing on two interrelated goals: formal mentorship and community outreach for those experienced attorneys interested in becoming a judge.

A goal of the program—a one of a kind in the state which serves as a pilot program for several other counties—is to promote and emphasize California's commitment to appointing a highly capable bench reflective of the rich diversity of the state.

Accordingly, the mentorship program seeks to identify and develop qualified, inclusive, and diverse judicial applicants practicing in Los Angeles County.

Judges are appointed as mentors to practicing lawyers who seek a seat on the bench and participate in training programs to ensure effective mentorship to the mentees.

In addition, the mentors will provide honest advice and guidance on how best to navigate through the application process and identify helpful pursuits to prepare the mentees to become better-qualified candidates.

The mentee will obtain first-hand knowledge of the process and procedures in preparing for and applying to the Governor's office in Sacramento for an appointment.

SFVBA's Inclusion & Diversity Committee desires to reach any and all practicing attorneys who may have an interest in being appointed to the bench and to demystify any beliefs or assumptions that tend to dissuade attorneys from applying.

The program is available to all practicing attorneys in good standing with at least ten-years' experience, while those who have been in practice for less than ten years can reach out to the Mentorship Outreach Committee for input on suggested ways to enhance a future application.

The program does not accept attorneys who have already submitted to and have pending applications before the Governor.

The mentorship officially ends when the application is submitted and participating in the Judicial Mentor Program does not guarantee an appointment to the bench.

For more information, those interested should attend the SFVBA's Inclusion & Diversity Committee's *LASC Judicial Mentorship Program: The Road to Serving on the Bench Zoom* event on March 23, 2021, from 12:15 pm to 1:15 pm.

Panel speakers will include Judge Paul Bacigalupo, Judge Firdaus Dordi and Commissioner Marilyn Mordetzky.

# California's Critical Housing Shortage:

## The Housing Accountability Act

By Alicia Bartley

THE NUMBER OF THOSE UNHOUSED IN LOS Angeles County is up for the third time in four years, according to the County's annual survey that was released in June of last year.[1]

This significant increase comes, say County officials, despite hundreds of millions of dollars spent and new programs that are housing a record number of people.

At the same time, California's overall homeownership rate is at the lowest level since the 1940s.[2] [3]

Currently, the state ranks 49th out of the 50 states in homeownership rates and in the supply of housing per capita with only one-half of California households able to afford the cost of housing in their local regions.[4] [5]

### A Critical Driver

It is widely recognized that local land-use policies and regulations are a critical driver in the inability of Los Angeles County, and other local jurisdictions in the state, to combat homelessness and housing affordability as communities have traditionally resisted affordable housing and new housing in general, while complicated discretionary approval processes for housing development projects have prevented or delayed development of much-needed housing units.

California now has an accumulated unmet housing backlog of nearly 2,000,000 housing units and must provide for at least 180,000 new units annually to keep pace with growth through 2025.[6]

Recognizing that housing supply has not kept up with population and job growth statewide, the California State Legislature has made recent amendments to a law originally enacted in 1982 in an effort to address local opposition to housing growth.

The law—the Housing Accountability Act (HAA)—establishes that, as the overarching policy of the state, a local

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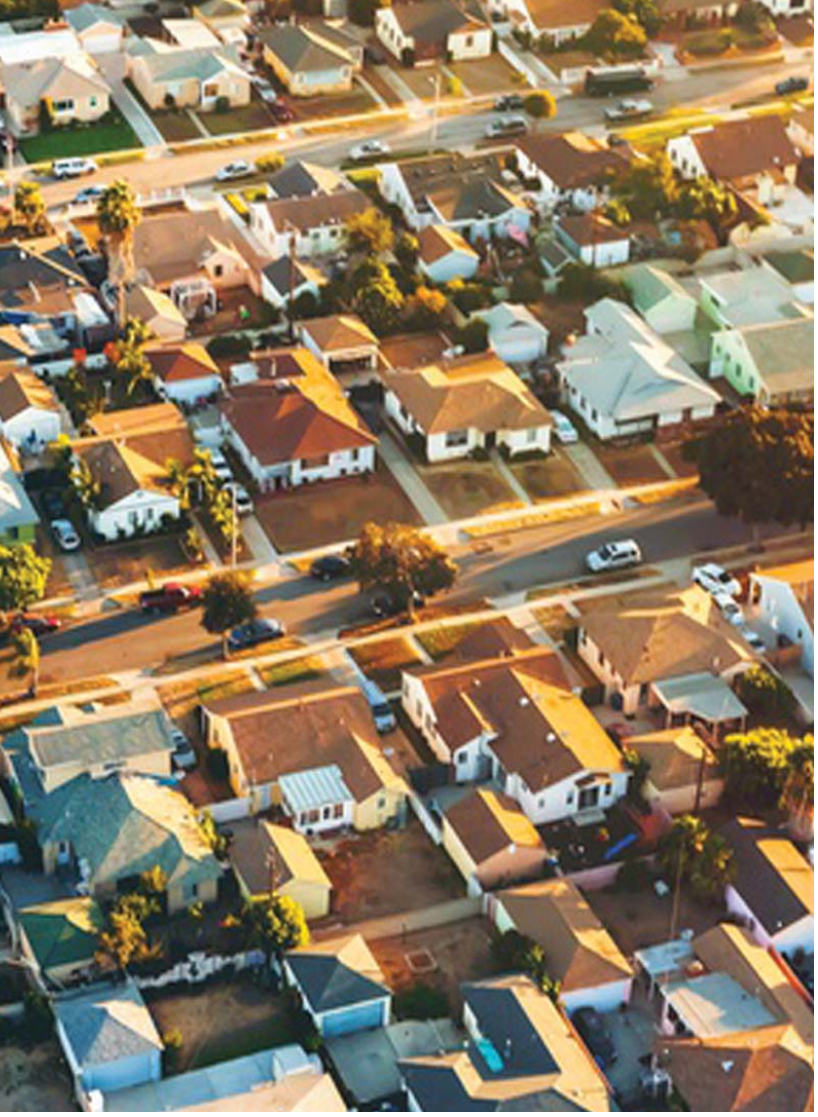

government may not deny, reduce the density of, or make infeasible housing development projects that are consistent with local development standards.

In recent recognition of the state's critically low housing stock, the HAA has been amended seven times since 2017 to augment and reinforce its provisions.[7]

**The HAA as Amended**

Under the HAA, a housing development project is defined as:

- A use consisting of residential units only;
- A mixed-use development consisting of residential and non-residential uses with at least two-thirds of the square footage designated for residential use; or,
- Transitional or supportive housing.

In addition, the development must consist of more than one residential unit. However, according to the HAA, the development can consist of attached or detached units and can occupy more than one parcel of property so long as the development is included in the same development application.[8]

The law provides that "[w]hen a proposed housing development project complies with applicable, objective general plan, zoning, and subdivisions standards and criteria, including design review standards, in effect at the time the housing development project's application is determined to be complete," a local jurisdiction may disapprove the project under only very limited circumstances.[9]

Specifically, to disapprove a housing development project, or to condition it in a manner that results in a reduction of density or otherwise renders it infeasible, the local jurisdiction must base its decision "upon written findings supported by a preponderance of the evidence on the record" that both of the following conditions exist:

- The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used here, a specific, adverse impact is defined as a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete; and,
- There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.[10]

Moreover, to give developers greater certainty in what standards, policies, and conditions apply, the HAA provides that those standards, policies and conditions must meet the following criteria and must:

- Be consistent with meeting the local jurisdiction's share of its Regional Housing Needs Allocation (RHNA), which is the total number of new housing units the local jurisdiction must plan for in a certain planning period as assigned by the California Department of Housing and Community Development;
- Be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development; and,
- Meet the definition of *objective*, which are those standards that involve no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform

benchmark or criterion available and knowable by both the developer and the public official.[11]

The HAA provides additional protections for projects that contain housing units—including emergency shelters—that are affordable to very low-, low-, or moderate-income households.

**A Project Denied**

In addition to the findings described above that apply to all housing development projects, to deny a housing development project that includes affordable units, a local jurisdiction must also make specific findings based upon the preponderance of the evidence of one of the following:

- The jurisdiction has adopted a housing element in substantial compliance with California's Housing Element Law and has met or exceeded development of its share of the RHNA in all income categories proposed in the housing development project;[12]

- As proposed, the housing development project would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households;

- The denial of the housing development project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households;

- The housing development project is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project; or,

- The housing development project meets both of the following conditions: it is inconsistent with both the local jurisdiction's zoning ordinance and the general plan land use designation on the date the application was deemed complete; and is in a jurisdiction where the local agency has an adopted housing element in substantial compliance with state Housing Element Law.[13]

To qualify for these additional protections, the housing development project, must include either 20 percent of the total units set aside for lower-income households, or 100 percent of the units for moderate- or middle-income families.[14]

Finally, the HAA provides for a private right of enforcement.

In any action to enforce the HAA, should a court finds that a local agency disapproved a housing development project in violation of the Act, it must issue an order or judgment compelling compliance within sixty (60) days, and will retain jurisdiction to ensure that its order or judgment is carried out.[15]

If the court finds that the local jurisdiction acted in bad faith in denying the project, the HAA empowers the court to issue an order or judgment specifically compelling the local jurisdiction to approve the proposed project.[16]

In addition, the HAA specifically provides that a successful plaintiff will be awarded its reasonable attorneys' fees and costs.[17]

**The Response of Local Jurisdictions**

As detailed above, local jurisdictions have no real power to deny or make substantive changes to any housing development project that complies with the jurisdiction's general plan and zoning regulations under the amendments to the HAA.

Local agency responses to the changes in the law have varied.

On one end of the spectrum are jurisdictions that have wholly embraced the state law.

In March 2020, for example, the City of Santa Monica adopted an emergency ordinance that provides for an administrative approval process for all affordable housing projects and market-rate housing projects that are consistent with the requirements laid out in the HAA.[18]

Recognizing that a discretionary review process requirement for housing development projects that must be approved under state law adds time and expense to housing production without providing any benefit to the community, the City of Santa Monica acted to eliminate such discretionary review.[19]

On the other end of the spectrum are jurisdictions such as the City of Los Angeles, which, to date, has not taken any action to eliminate discretionary approval processes for projects that are consistent with the HAA.

Moreover, the City's discretionary decision-making bodies continue to disapprove projects despite their obligations under the HAA.

In one example that has recently worked its way through the judicial process, a developer proposed a housing development project consisting of 577 housing units that was consistent with all of the City's applicable development regulations.[20]

After approval by the Director of Planning, the project was appealed to an area planning commission (APC), which, over the objections of its planning staff and the advice of the City Attorney, ignored the mandate of the HAA and denied the project.

In doing so, the APC failed to make any of the required findings for disapproval of the project under the HAA.

The developer then filed a lawsuit challenging the project denial and the Los Angeles Superior Court ruled in the developer's favor, finding that the APC had "clearly acted in bad faith and acted on its own frolic and detour…to impose its own view of appropriate public policy…"[21]

The court further found that the City's bad faith actions in the case justified an "order or judgment directing the local agency to approve the housing development project" under the HAA, and awarded the developer its reasonable attorneys' fees and costs.[22]

While the court ultimately ruled in the developer's favor, the frivolous appeal and illegal action of the APC resulted in the project being delayed by more than fifteen months.

The Los Angeles City Attorney will likely characterize the case as an example of the need for additional training and education on the HAA for its land-use decision-makers.

Perhaps, though, a better solution would be for the City to amend its zoning ordinances to eliminate discretionary approval processes for projects for which approval is mandated under state law.

### Confronting NIMBY

The recent amendments to the HAA are an important step in addressing the critical housing shortage, not only in Los Angeles County, but state-wide, as well.

By removing arbitrary discretion away from local decision-makers, who are often swayed by NIMBY project opponents, housing development projects that are entirely consistent with local zoning ordinances and regulations can be approved and constructed without unnecessary cost and delay.

This added certainty ultimately serves to reduce the cost of housing units and results in housing becoming more available and affordable for more Californians.

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[1] https://www.lahsa.org/news?article=726-2020-greater-los-angeles-homeless-count-results.
[2] *Id.*
[3] California Department of Housing and Community Development, *Housing Accountability Act Technical Assistance Advisory (Government Code Section 65589.5*) (September 15, 2020).
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] Government Code Section 65589.5.
[8] *Id* § 65589.5(h)(2).
[9] *Id* § 65589.5(j).
[10] *Id.* § 65589.5(j)(1)(A), (B).
[11] *Id.* § 65589.5(f).
[12] Government Code § 65588, et seq.
[13] Government Code § 65589.5(d), (i).
[14] Id. § 65589.5(h)(3).
[15] Government Code § 65589(k)(1)(A).
[16] *Id.*
[17] *Id.*
[18] City of Santa Monica Interim Ordinance No. 2633.
[19] *Id.*
[20] *District Square, LLC v. City of Los Angeles*, Los Angeles Superior Court Case No. 20STCP00654, Statement of Decision dated September 24, 2020.
[21] *Id.*
[22] *Id.*

By Martin Levy

# Protecting Your Most Valuable Asset

MOST PEOPLE INSURE THEIR material possessions, their homes and their cars, but many people don't recognize what is probably the most valuable asset—their ability to earn an income.

The question is: If an individual becomes sick or injured and can't work, will that person be able to pay their bills and maintain the same or similar standard of living?

What are the odds of becoming disabled? That's an odd question as the answer depends on what you read and what you consider a disability.

But, understanding the comprehensive nature of a particular occupation—what is it that needs to happen for a person to be fully able to earn—may diminish any interest in the odds in-favor of simply recognizing the power of protecting one's self.

Let us just say that it is, or should be, a much more pressing concern for earners of greater incomes.

Typically, in the past, young professionals, and in particular law students, were taught early on that their most valuable asset was their ability to earn a living.

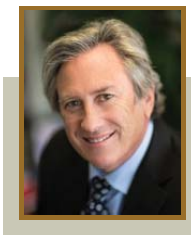
When choosing to go to law school and follow the law as a profession, they committed to an investment in their careers by taking on significant debt, and/or committing to certain employment relationships to assure they would be able to meet their financial obligations.

They began to live a lifestyle, perhaps have families, acquire assets, and commit to their education obligations. Thus, they began to earn.

As a matter of course, most were taught to seek and purchase disability insurance as a means of protecting their incomes from disruption. That was likely true then, and is still the case today.

But much has changed in the business of law since then, and much has changed in the business of protecting one's livelihood through disability insurance.

Look at it this way, unless you just happen to have an uncle named



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Bill Gates, it is highly unlikely that you have anyone prepared to pay your bills should you become disabled.

**Individual Disability Insurance**

Years ago, attorneys had many choices with respect to the purchase of an individual disability contract. There were many to choose from as contracts were broad in nature and specific in their definitions to qualify for benefits.

Contracts also had a host of consumer-centric riders that enhanced the policies such as Cost of Living Adjustments (COLA) that kept benefits growing; Return of Premium (ROP) benefits that may have refunded some of all of the premiums; Non-Disabling Injury (NDI) benefits that paid cash, much like an AFLAC policy; and, almost always, either a Residual or Proportionate Income rider, or both.

More significantly, they had Own –OCC, or an Own Occupation' Definition of Disability.

A typical non-cancellable individual disability policy defined Total Disability as "solely due to sickness or injury, you are unable to perform the material duties of your regular occupation, even if you are at work in another occupation."

Your occupation meant "the occupation or occupations, if more than one, in which you are gainfully employed for the majority of time, at the time of your becoming sick or disabled."

Carriers have further defined the definition of occupation to a single specialty—contracts recognized that specialty and paid benefits based on your inability to do that specialty.

Theoretically, then, one could be a trial lawyer, suffer an injury precluding appearances in court, and earn a comparable income doing office work and still receive full benefits.

Even more compelling, also provided were residual and/or proportionate benefits, which provided that should injury or sickness disrupt a person's income, but not necessarily lead to a reduction in time lost at work, so long as a loss of income was suffered, the individual would also receive some percentage of benefits.

These contracts have been regarded as "pieces of gold" by many insurance advisors and financial planners, as the terms were locked-in and the contracts non-cancelable.

As a result, most seasoned professionals retain the coverage they purchased at young ages.

In the mid-90s, insurance companies began to see a dramatic rise in the number of claims they were receiving. Some of those policies were found to have claims that were easily substantiated, and in many cases, people took advantage of the carrier's favorable verbiage.

Also, due to changes in the healthcare industry, many physicians became dissatisfied with managed healthcare changing their practices.

As a result, they soon recognized that their disability insurance policies could hasten their retirement with many filing claims in record numbers.

Insurance carriers were unprepared as many of them recognized they had issued policies that were extremely generous with easily validated claims.

In response, individual disability underwriting became more stringent, the costs for new policies rose, underwriting tightened, and carriers were increasingly challenged with lawsuits over claim disputes.

Into the early 2000s, a class action lawsuit against one of the leading individual disability carriers—UNUM—resulted in uniform changes to contract language, easing the burden on a claimant's ability to collect.

But, policies became harder to acquire, limits were placed on claims for back/neck, and mental/nervous disorders, and individual disability

insurance carriers realized they could no longer remain competitive.

Thus, the availability of non-cancelable disability insurance options for attorneys became limited.

Coincidently, with the economy booming, a dramatic rise in incomes and the lack of evolution in disability insurance products meant most attorneys and other professionals were left woefully under-insured.

**GROUP Disability Coverages**

Many professionals affected by this under-insurance sought ways to increase their protections.

Professional groups, such as the California State Bar, offered group association coverage that supplemented individual policies. Or, if a professional had a staff, they could alternatively purchase employer group disability insurance and add a secondary layer of coverage to their existing individual plan.

These group contracts differed significantly compared to the broad promises of the individual plans, integrating with governmental benefits, and limiting claims for conditions like back, spinal, and mental conditions.

Nonetheless, they added coverage thus giving more discretion to the insurer over the timing of when they would be obligated to pay a claim.

When crafted properly, this group coverage would pay in addition to any individual coverage, and, further, if properly designed with premiums passed-through as income would ensure that benefits would be received as tax-free, as in the benefits included in the individual policies.

Still, the group coverage was limited to 60 percent of an individual's income, and even if the additional benefit was $10,000 or $15,000 a month, many still found themselves grossly under-insured in relation to their expenses and lifestyles.

> "Simply put, people were spending more than they could protect and still be dependent on their health to earn."

**Enter Supplemental Buy-Up Disability**

The limits of older disability coverage, even when combined with a group insurance plan, still leave many professionals under-insured as lifestyles and incomes simply outpace the disability market.

Simply put, people were spending more than they could protect and still be dependent on their health to earn.

Insurance markets responded with supplemental buy-up coverages that can offer simplified issue, or with three or more participants, even guaranteed issue coverages.

These too are own-occupation specific contracts, allowing professionals to become insured and secure reimbursement of up to 70 percent of income upon sickness or injury.

As a result, many professionals can now purchase coverage that supplements both their individual and group program coverage.

**Lifestyle Lump Sum and Specialty Disability**

A host of newer policies is addressing areas of disability that can substantially protect lifestyles even more effectively.

One newer evolution of disability insurance can now add an additional layer of coverage to professionals in the form of a lump-sum benefit.

Such policies are crafted to pay disability benefits in a lump sum at six-month intervals when the insured is continuously disabled during this period.

Typically paying a stated lump sum—available from one to ten times earnings at the end of six, 12, and 18 months with a final payment at 24 months following a disability—these policies provide assured cash benefits as a result of a disability.

The transfer of risks—key man, disability buy-out, disability overhead, alimony obligation, loss of a pilot's license, retirement contribution disability, actor and voiceover, stock option and pension completion, and loan indemnification, for example—are all available to address the significant exposures and obligations, which, if unaddressed, could result in financial ruin if left un-insured.

Disability insurance is critically important for professionals, while factoring in additional financial obligations due to divorce, educational expenses and debt, real estate, business commitments, and medical expenses, disability insurance is a critical component part of every financial plan.

**THE CASE OF THE WINDSOR KNOT:**

A California federal judge recently called out an attorney for not wearing a tie during a virtual hearing on his firm's $6.8 million securities settlement, saying male attorneys have taken the informality of COVID-19-era remote hearings too far while joking, "At least there's not cats on the screen."

The lighthearted discussion about dress etiquette in the age of pandemic-safe virtual court proceedings kicked off a short hearing in which U.S. District Judge Edward Davila gave his final sign-off on the firm's settlement to resolve a decade-old proposed securities class action that was initially filed in March 2011.

At the start of the Zoom hearing, the judge reacted to the waterfront Zoom background of the attorney, asking him if he was at a resort.

The attorney said he was using a Mount Vesuvius Zoom filter, prompting the judge to ask, "They don't wear ties at Mount Vesuvius?, quickly adding that, "Your colleague's office asked me to ask about your tie."

The judge's question prompted Priebe to jump up from his seat, revealing that his blue collared shirt was untucked. The attorney disappeared from the screen, returning moments later with a tie that he quickly wrapped around his neck.

The judge said the hearing participants would wait to observe Priebe's tie tying skills. "I recognize that the remote technology affords us some latitude, but I do like that if a man appears, to at least have a tie on," the judge said.

"Thanks for your indulgence. At least there's not cats on the screen," the judge added, referencing a Texas attorney who went viral recently after logging into a Zoom hearing unknowingly sporting a cat filter.

The attorney apologized and, as he tied his tie, he recalled an anecdote of the late Justice John Paul Stevens, who once unwrapped his silk bow tie and retied it on the bench after he was accused of wearing a clip-on. The attorney also said his father, who passed away a few months ago, never knew how to tie a tie.

As the attorney tightened his Windsor knot, the judge again thanked him for donning a tie, adding, "I didn't mean to make fun of you" and recalling that he recently held a court hearing over Zoom in which a participant was leaning back in his chair with his feet on his desk, "perhaps hoping if I would help him identify if there were holes in his shoes that needed to be repaired.

**FINANCIAL HARDSHIP RELIEF:** The American Bar Association House of Delegates approved about 30 wide-ranging measures today, including a resolution that urges the federal government to implement programs to assist law graduates and law students experiencing financial hardship due to their student loans.

The policy proposals, which were typically approved by overwhelming margins, enable the ABA to lobby legislators and file amicus briefs in these policy areas.

Advocates for the student loan modifications in HOD Resolution 106C said that even before COVID-19 slowed the U.S. economy, "many young lawyers struggled with their student loans given the legal profession's uncertain job market and their high student debt."

Several studies have found that recent law graduates carry an average of about $145,000 in student debt, while last summer the National Association for Law Placement reported that 49 percent of the law schools surveyed stated that employers had rescinded employment offers, while many other offers were pushed into 2021.

The new policy recommends extending loan repayment terms, allowing either refinancing or transferring of obligations to federal from commercial programs, and authorizing suspension or forgiveness of student loans in certain situations.

**JACK RYAN GOES TO COURT:**

The widow of spy thriller author Tom Clancy reportedly wants a court to rule that the author's estate is the exclusive owner of the rights to his famous character Jack Ryan. News media outlets report that Alexandra Clancy's lawsuit says that the author's estate should be the sole beneficiary of any posthumous books featuring the character who was first introduced in the popular novel *The Hunt for Red October*. Alexandra Clancy is suing the personal representative of Clancy's estate, J. W. Thompson Webb, for allowing other entities to profit from posthumous book revenues.

The author's first wife, Wanda King, is a partial owner of those other entities. Tom Clancy died in 2013. According to the suit, "Tom Clancy made Jack Ryan; and in a sense, Jack Ryan made Tom Clancy." The lawsuit was filed in the Circuit Court in Baltimore, Maryland.

By Alfredo Gonzalez

# Working From Home? Protect Your Critical Data

WHEN IT COMES TO cybersecurity and remote threats one needs to look no further than the old adage that knowledge is power.

Cybersecurity awareness training is key to ensuring that the newfound remote workforce is aware that there are still bad actors out there trying to gain access to sensitive personal information and corporate data.

Last year, while the San Diego-based Identity Theft Resource Center reported a 30 percent decrease in data breaches, there was a corresponding significant increase in actual cyberattacks, usually carried out by phishing.

**What is Phishing?**

Phishing is made up of a variety of strategies used by hackers to try and trick you or your employees to gain access to sensitive information, systems, or financial accounts.

Phishing can lead to serious issues such as the injection of dormant viruses and ransomware into a system, and Trojan keystroke loggers, which run through hidden scripts that cause intermittent issues that require administrative access gained through strengthened rights to solve.

When the keystroke logger is harvested, the cyber pirates then have access to the system and possess full administrative rights to take control and cause havoc across shared unprotected resources.

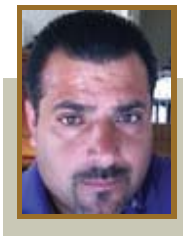
In some of the worst recorded cases of phishing, hackers have actually utilized fear tactics to gain access to corporate resources such as user account information.

**Examples of Fear Tactics**

Hackers utilize generic email addresses such as HR@, or Human Resources@, or Accounting@ and employ them to exploit users.

For example, one known email-based attack is sent from an HR@ email address stating that due to the latest official COVID-19 mandates all employees are now required to wear protective gloves before using the office copier.

The hackers then request that the employee digitally sign a new—read,



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phony—HR document by clicking on an accept button and login with their network credentials to validate their signature.

Once the employee clicks on the link, a bot—a software program that operates on the internet and performs repetitive tasks—is injected into the target system's background to record the employee's credentials and simultaneously install a small remote access agent, similar to any one already installed in the system.

By the time the targeted firm realizes it has been phished, the damage has probably already been done as the hackers more than likely have installed a ransomware virus across network shares and/or extracted sensitive, confidential data.

Email addresses can be acquired in a variety of ways that do not necessarily involve hacking.

The most common method is to have someone else getting hacked, and then have their address book, including your address, harvested and turned into a treasure trove of potential phishing victims.

**Spear Phishing**

One of the most common phishing techniques that has gained recent traction is spear phishing.

Hackers are becoming more patient and, rather than taking a shotgun approach at trying to catch unsuspecting victims, they now utilize the contact information readily available on corporate websites to gain company executive titles and email addresses.

They in turn use this information into intelligence in an effort to exploit the corporate structure and organization by sending email requests that seem to come from within the organization itself.

These emails are typically targeted at accounting personnel such as the controller, accounting manager, or other partners, and request immediate payment to a vendor or the expedited processing of an "emergency" wire transfer.

If a firm lacks a solid business procedures plan in place that specifies transfer limits, procedures, and proper checks and balances for such requests, it can be susceptible to substantial loss.

This particular type of spear phishing ploy has gained traction as of late due to a skyrocketing increase in the use of mobile devices to check and manage email accounts.

Hackers have become adept at exploiting a flaw with mobile devices in which only the name of the sender and not the email address is visible. Unless the sender's email address is verified, it appears that the email is being sent by a legitimate, trusted contact.

**How to Stop Phishing**

With cyber pirates utilizing internal email addresses, and impersonating the Internal Revenue Service, the World Health Organization, the Centers for Disease Control, delivery services, financial institutions, and public utilities, a firm's best course of action is to be proactive.

The first step is to adequately educate and train staff—the first line of defense against any cyberattack.

The more aware a company's employees are, the more they will be able to identify a threat and significantly increase the chances of preventing a system breach and the resulting theft of critical data and sensitive information.

**Awareness Training**

As cybersecurity is the primary concern of competent IT departments, hackers are, at the same time, becoming more clever in planning their attacks.

Those parallel developments call for increasingly effective measures to create systems in which system access is strictly regulated and monitored by properly trained employees.

The best way to train employees is to expose them to various phishing techniques in a controlled environment by creating a solid baseline for testing the access to the phish-prone percentage of a firm's users.

This can be done by creating simulated phishing attacks to assess employee response and providing them with information and automated training to hone their security skills.

It is critical to conduct both pre- and post-training phishing security tests to determine the percentage of end-users that are phish-prone and provide them with several, effective remedial options in case they fall prey to a simulated phishing attack.

**Endpoint Protection and Email Filtering**

Proactive monitoring and detection of unwanted network traffic activity helps to identify and mitigate network compromises and internal attacks.

An effective approach to this endpoint protection is the implementation of solutions that use a multi-layered defense to provide the highest possible level of protection by detecting malware pre-execution, during execution and post-execution.

Organizations need to protect their email before it is delivered to the end-user through cloud delivered managed detection and response, which helps by proactively preventing breaches before they occur.

**Crypto Prevention**

In some instances, organizations can deploy effective honeypot ransomware protection to prevent ransomware from encrypting files. When malicious activity is detected all non-essential programs are terminated, stopping malicious software from spreading.

Another key action to protect a remote work environment is to restrict remote desktop protocol (RDP) access and implement a virtual private network (VPN) solution with 2-factor authentication and RDP access only available through the VPN.

If implementing a VPN is not an option, there are solutions that can provide intrusion detection and protection from brute force attacks such as implementing country blocking

and the whitelisting only the addresses of the remote workforce.

**Data Protection**

Protecting sensitive corporate data also requires incorporating hard drive encryption, backup and disaster recovery strategies into an effective corporate security strategy.

It is important to consider two key questions: How much data can you afford to lose? And how long can you afford to have your system paralyzed?

When it comes to on-site backups, most organizations just want that sense of security in that they have a copy or a backup of their data.

Although data backup and disaster recovery are overlooked as a cybersecurity strategy, it is very important to understand that if a firm is hit by ransomware, there are only two options.

- Pay the ransom and hope that the hackers don't leave a back door for future access whereby they encrypt the data again at a future date and hold it for ransom a second time; or,

- Refuse to pay the ransom and restore the captive data from your backups—that is, if your backups are available and weren't encrypted as well—and hope that the weak link where the system was compromised can be identified and remedial action be taken.

Either option points to critical data loss, downtime and increased risk.

It is very important to separate a backup network from a production network and create separate security accounts so that backed-up data is protected.

However, a false sense of security develops if the backup infrastructure is accessible by the same security accounts because most ransomware will search for any and encrypt all shareable resources, including backups, thus making it impossible to access them and recover data.

Most on-site backup strategies also fail to take into account how or where they will recover to, as well as the amount of time it will take to build out a new, secure environment to get the backups restored.

**Disaster Recovery/Strategy**

With the increase in ransomware attacks and breaches, it is critical to consider implementing a disaster recovery solution against a ransomware outbreak.

With a solid disaster recovery strategy, an organization can minimize the downtime to hours instead of days by implementing a solution that is built on a federated cloud storage infrastructure and completely separate from that of the corporate infrastructure.

> "Cybersecurity awareness training is key to ensuring that the newfound remote workforce is aware that there are still bad actors out there..."

An effective disaster recovery solution should provide a minimum of AES-256 encryption of the data, both at rest and in transit, and should require a strong decryption key that is kept in a secure place, preferably a safe with controlled access.

When it comes to a disaster recovery protocol, it is critical to ensure that not only data, but full systems including system state, files, and databases can be retrieved.

The protocol—tailored to the specific needs of the firm—should incorporate the flexibility to recover and forward the data to either a cloud environment or on-site premise similar or dissimilar hardware.

**Perimeter Protection**

A firm's data and infrastructure are critical components to its business and the current need to work remotely is now adding numerous points of entry to system networks.

The current trend of working remotely makes it imperative that a solid perimeter protection strategy is in place.

The first step in defending against a perimeter threat is recognizing what it is and implementing effective intrusion detection technologies.

Implementing a Virtual Private Network (VPN) solution with two-factor or multi-factor authentication is key to limiting external access as smaller firms often fail to implement advanced firewall and intrusion detection systems (IDS). Geolocation and country blocking is also advised for those firms not involved in international work.

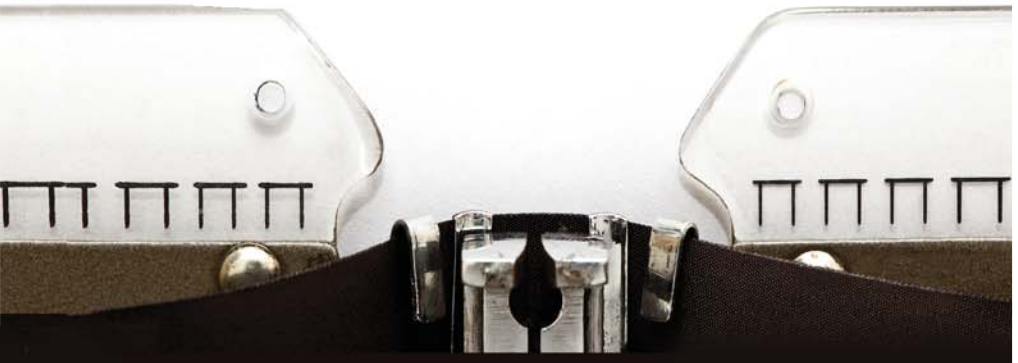
Restricting access to internal resources and systems and enabling logging on firewall and Intrusion Detection System (IDS), then forwarding the logs to a centralized security information and event management platform, is crucial in monitoring and mitigating a brute force attack or attempted network hack.

It is also important to consider network isolation and segmentation based on functionality, roles and least privilege policies to limit the exposure surface.

One of the most cost-effective measures against limiting the impact of a ransomware event is to keep business critical infrastructure isolated from daily operations and the end user environment—an effective way to contain malware activity from propagating.

By isolating its data, a firm can create an accurate and secure protocol to account for—and protect—sensitive information. This is especially important in the event of a system breach where an investigation is necessary to identify any unauthorized access to and the theft of that data.

# Retrospective



## C. NEWELL CARNS JUDGE CANDIDATE

C. Newell Carns, well known Los Angeles attorney, has announced his candidacy for judge of the Los court, office No. 11, and already has started an active campaign, supported by a strong organization of his friends.

Mr. Carns, who is a graduate of the University of Pennsylvania, has had a wide and varied experience and business career. He has been a resident of Los Angeles since 1912, except for the time he was in military service during the world war. Among his business experience may be mentioned connection with large Philadelphia corporations, trust department of the Title Insurance & Trust company, and the real estate business. He is a past president of the North Hollywood Kiwanis and also a past president of the San Fernando Valley Bar association. He also served as assistant to the secretary of the Los Angeles Bar association. He has been active in Boy Scout work and in Masonic and B.P.O.E. lodges.

C. Newell Carns served as President of the San Fernando Valley Bar Association in 1928, the second individual to hold the post. This news clipping announcing Carns' candidacy for a seat on the Los Angeles Municipal Court was published in the Eagle Rock Advertiser of March 23, 1933. Carns won the election and went on to serve untill 1964 when he retired from the Municipal Court bench.

# 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.

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# We Have a Winner!

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

miguel@sfvba.org

SINCE IT FIRST BEGAN operations, San Fernando Valley Bar Association's Attorney Referral Service has recognized the importance of supporting students pursuing a career in the law.

As a result, the Service created its Law School Scholarship Program to encourage and financially assist qualifying undergraduate students.

Students applying for a scholarship are asked to submit an essay of no less than 1,000 words expressing their academic goals and aspirations, as well as their reasons for desiring to pursue a law degree.

The results of our latest scholarship competition are in, our judges have made a decision, and we are proud to announce the winner of our inaugural scholarship award.

After carefully reviewing entries, the ARS Committee proudly presented the Law School Scholarship award to Paige Hafner.

Currently attending St. Olaf College in Northfield, Minnesota, she is pursuing a double major in Psychology and Race & Ethnic Studies, along with a concentration in Latin American Studies, with plans to pursue a JD after graduation.

"I am honored to be chosen as the winner of the SFVBA ARS Law Scholarship," she said on being notified of the award.

"Receiving this scholarship will help ease the worry of paying tuition on my own. I am thankful for this blessing and I look forward to continuing my studies in law."

Our nation's youth are our future and we thank and salute all those who submitted their essays for consideration and we wish them the best in their future endeavors.

To Paige Hafner and all participants we say, "Stay strong and don't give up on your dreams."

# 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

# Fundamental Changes

**AMANDA MOGHADDAM**
VCLF Board Member

moghaddama@lawyersmutual.com

IT IS DIFFICULT TO SUMMARIZE and celebrate the start of a new year when so many things feel the same, while the COVID-19 pandemic has so fundamentally changed our day-to-day lives that the past months seem, at once, like the blink of an eye and an eternity.

And while we celebrate this new beginning, yet wallow in the sameness, I think it is important to take refuge in the things we can control and the small differences we can make in the lives of others.

So many of us fondly remember our law school years nervously practicing and preparing for trial advocacy classes, moot court competitions, and other first and second year extracurriculars.

I know that I, for one, am sad for those students who may not get those same performance butterflies that, I can say now, were so very important to gaining confidence as a litigator.

The current state of things, though, offers our membership the opportunity to make a genuine and lasting impact on our next generation of advocates.

The VCLF is pleased to announce its support of the SFVBA's Inaugural Virtual Mock Trial Competition, a virtual event scheduled for April 9-10, 2021.

The VCLF Board's January meeting included guest speaker Kyle Ellis, an SFVBA Trustee and Chair of the Bar Association's Mock Trial Competition Committee.

The VCLF is grateful for his taking the time to present this very important Bar event, and we hope that you will consider supporting it too.

At the Mock Trial Competition, four-person teams from California law schools will compete for the coveted Best Team, Second Place Team, Best Advocate, Best Opening, Best Closing, Best Direct Examination, and Best Cross-Examination awards, presented by the SFVBA Board.

Four teams will advance to a semi-final round, and the prevailing two teams will go head-to-head for the Best Team award.

During each trial, two of the students will serve as advocates and the other two students will be witnesses. The roles reverse when sides are changed and each student is given an opportunity to try the case.

Over the course of an hour, students will offer opening statements, conduct witness examinations, and present closing arguments and be scored on their ability to effectively use exhibits, present cohesive and persuasive theories of the case, address the strengths and weaknesses in the evidence, and apply the law to the facts of the case.

They will also be evaluated for their professionalism, ethics, and civility displayed in relation to the court, opposing counsel, and the witnesses.

The Inaugural Mock Trial Competition was set to take place in-person in April of last year with the Committee working very hard to ensure that the law students would benefit from a "real" courtroom experience.

Plans called for the competition rounds to take place at the Burbank Courthouse with a full reception to follow, but, like so many things this last year, the Committee had to cancel the event in response to the global pandemic.

Since then, Committee members have been working tirelessly since then to plan a safe, virtual event for this coming April.

The VCLF will be providing scholarship funds to selected competition winners, and we are privileged to be able to support this very special event as we foster the next community of legal advocates.

We hope that you will join us by offering your support, either monetarily by earmarking a donation to VCLF to be used for the Competition's scholarships or by volunteering to serve as an evaluator or for the competition.

In other news, VCLF board members Alan Kassan, Deborah Chodos, and Yuri Aberfeld have undertaken the daunting task of updating and simplifying the VCLF's website—a task that, when completed, will help make it easier to both donate to support the Foundation's programs and stay apprised of our philanthropic activities.

The VCLF Board hosted State Senate Majority Leader Bob Hertzberg, at its February meeting.

He shared his insights on the current state of both the San Fernando Valley and California, as well as the impact of the COVID-19 pandemic on the unhoused, the Valley's pre-pandemic housing crisis, unemployment, educational opportunities for Valley students, and the challenges facing the legal system.

On a personal note, as one of the newest members of the VCLF Board, I am truly ecstatic to be working closely with the charitable arm of the SFVBA.

I am always amazed at what we can do with a little organizing and elbow grease, and am so grateful to the Board for bringing me into the fold.

Here's to a giving-filled 2021!

### 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.

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