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A Publication of the San Fernando Valley Bar Association

Valley Judges: A View From the Bench

Discovery: A Much-Needed Streamlining

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CONTENTS

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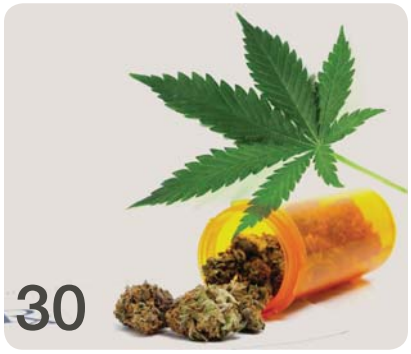

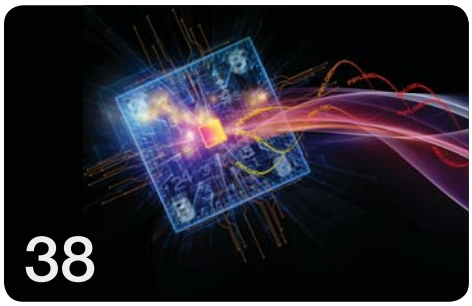

FEATURES

DEPARTMENTS

VALLEY LAWYER

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

Printing Southwest Offset Printing

Phasing-In a Successful Bar Transformation

DAVID G. JONES
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AS THE POSITIVE SIGNS OF BUSINESSES RE-emerging from the COVID-19 pandemic abound, we can see a new path for the San Fernando Valley Bar Association laid out before us.

Strong and steady leadership, excellent judgment, and sound decisions have combined to position the Bar on a track to leave the pandemic in the rearview mirror and reimagine a new and even brighter future.

A few weeks ago, while sitting on a strategic planning meeting with another Board of Directors, my colleague Janet Marinaccio, President and CEO of MEND—a wonderful and effective Valley community charity—who raised the issue of business recovery—more specifically, the various organizational phases experienced during and after times of crisis.

As I mentioned to Janet, the topic really struck me as it applied to the SFVBA.

While our Bar was never in dire condition, we were compelled, as every other business has been, to adapt to difficult times, including reduced revenue and possible cost-cutting measures and overhead reduction.

As she explained through reference to her sources, during times of crisis, an organization may cycle through several phases.

In brief, they are the: (1) crisis phase, characterized by cost-cutting, renegotiation, and staff reductions—cash-flow planning is the most important financial tool; (2) survival phase in which the imminent danger has passed and leaders can develop six-months-and-beyond scenarios using conservative financial projections; (3) stabilization phase, which allows organizations to restructure and focus more on core mission or programs to become a more stable entity; and, (4) reimagining phase that provides an opportunity to rethink how mission and programs get done.

Studied in light of these four phases, it can't be denied that the Bar cycled successfully through each phase to some degree or other.

At the outset of the COVID-19 pandemic, the SFVBA was faced with the prospect of reduced revenue streams and potential cash flow concerns.

But, through creative efforts to generate alternative sources of revenue and careful cost-cutting measures, the Bar was, within months, able to stabilize its cash flow concerns and move on from any fear of an overwhelming crisis. While some internal reorganization was necessary, Bar staff did an excellent job of filling the gaps and holding down the fort until we were able to navigate through that early critical phase.

Those early efforts allowed the Bar and its staff to quickly move on to the survival phase in which the organization was faced with a scaled-back, online version of itself.

The Bar and its members readily adapted to this new model of online events, including the Officer and Board Installation, the State of the Courts presentation, and numerous MCLE and related webinars. This allowed for a steady stream of revenues to fund operations and function in triage mode until greater stability could be achieved.

2021 BOARD OF TRUSTEES ELECTION
CALL FOR NOMINATIONS

San Fernando Valley Bar Association
founded in 1926

Contact info@sfvba.org

The SFVBA Nominating Committee seeks members who aspire to lead the San Fernando Valley Bar Association and wish to be considered for nomination as a candidate for its Board of Trustees.

Trustees' responsibilities include setting policy and overseeing the association's finances. Trustees also work closely with SFVBA staff to improve and develop programs for the public; expand benefits and services for members; promote the public image of lawyers and the justice system, and are active participants in SFVBA programs and committees.

2021 TRUSTEE ELECTION DEADLINES

MAY 2021	SFVBA TRUSTEE APPLICATION PERIOD OPENS
JUNE 8 (TENTATIVE)	DEADLINE TO SUBMIT TRUSTEE APPLICATION
JUNE 10	NOMINATING COMMITTEE ISSUES REPORT TO SECRETARY
JULY 1	NOMINATING COMMITTEE REPORT SENT TO MEMBERS
JULY 25	ADDITIONAL NOMINATIONS SIGNED BY AT LEAST 20 ACTIVE MEMBERS
No later than AUGUST 25	ELECTION BEGINS – BALLOTBOXONLINE/USPS FOR ELIGIBLE MEMBERS
SEPTEMBER 10	ELECTION DAY (VOTING ENDS AT 5:00 P.M. PST)
WITHIN 96 hours of the conclusion of ballot counting, and no later than SEPTEMBER 30	CERTIFICATION OF ELECTION RESULTS

See Article VII of the SFVBA Bylaws
https://sfvba.org/wp-content/uploads/2018/09/ByLaws-Final-approved-by-Board-7.27.18.pdf

To confirm your membership status, please contact info@sfvba.org or (818) 227-0490.

The SFVBA now firmly sits in the stabilization and reimagining phases. With funding in a solid place and restaffing of positions in process, the Bar is looking forward, through this difficult time, to both improve on its operations and organize and present even better programs and initiatives.

All this is due to positive energy and the fostering of a can-do environment by the Board of Trustees and the hard work and dedication of the Bar staff, all of which continues to encourage the development of new ideas and initiatives.

Rather than obsess about the details of particular events or projects, the Bar has emerged by focusing on the many positive aspects of the Bar's operations, rather than marinating in debilitating corrosive negativity that would gnaw away at the amazing energy of those so dedicated to the Bar's core values and goals.

On to our reimagined San Fernando Valley Bar Association! I, for one, can't wait to see it in action.

Check out *Funding Performance: How Great Donors Invest in Grantee Success*, developed collaboratively by the Leap of Reason Ambassadors Community, licensed under CC BY ND https://creativecommons.org/licenses/by-nd/4.0/ and https://leapambassadors.org/fundingperformancemonograph/?utm_medium=email&utm_source=sharpspring&sslid=MzMxNTQwMzc2NDA0AAA&sseid=MzIyMLM0NTGxtAAA&jobid=a3f479a5-8d4f-457b-8858-534830f23ec3.

Awesome…Totally

MICHAEL D. WHITE
Communications Manager
michael@sfvba.org

A FEW YEARS AGO, I OPINED here that the expressions "make a difference" and "make the world a better place" have become somewhat shopworn over the past several years, with their core meanings worn down by tiresome overuse.

Like the vacuous and seemingly endless repetition of the word "awesome," both phrases can almost immediately invoke a disturbing physical condition that I've come to call the *Krispy Kreme Syndrome*–a quasi-sugar rush leading to glazed-over eyes, throbbing temples, and debilitating drowsiness.

Not a lot has changed since then, but there comes a time when the aforementioned phraseology is actually appropriate and spot-on.

This is particularly true when applied to the subjects of two articles in this month's edition of *Valley Lawyer*—the SFVBA's Mock Trial Competition, and the judges who serve here in the Valley.

Both, in their way, demonstrate the total commitment of time, dedication and a desire to serve the greater good.

Like the proverbial 'making of sausage,' most simply don't know the amount of work that went into organizing the Bar's recent, ground-breaking Mock Trial Competition—the initial planning, assembling sponsors, the COVID-19-induced rescheduling, coordinating with participating schools, selecting and shepherding the student teams, implementing remote technology, on and on, all accomplished successfully due to the tireless efforts of SFVBA Trustee Kyle M. Ellis and the Mock Trial Subcommittee.

They threw themselves into the challenge and produced a genuinely "awesome" event that is sure to "make a difference" in the personal and professional lives of the law school students who participated in the competition.

"Four things belong to a judge: To hear courteously; to answer wisely; to consider soberly; and, to decide impartially." The Greek philosopher Socrates wrote those words 2,400 years ago and they remain as true today as they did way back then.

In cobbling together the background for the article on Valley judges, I had the opportunity to speak with several bench officers who are currently serving, or, in one case, have served, in the San Fernando Valley.

While each of them took vastly different paths to the bench—one is a former cop, another worked as a researcher for Time Life Books, while another washed dishes and cooked in a hospital to pay for law school—all of them were linked by their commitment to the sober, fair and wise administration of the law.

That commitment has been proven over the years by the respect that they're garnered from their peers, the attorneys who appear before them in court, and, most importantly, a public that looks to them for justice.

They impact people's lives each and every day and, in turn, are deeply affected by the often life-changing role they play in those lives.

They understand the role they play and gladly shoulder the weight of helping keep the fragile fabric of society and the Valley community that every one of them loves from unraveling.

Real people wear judicial robes and each has a story to tell, and it was a privilege to speak with each and every one of them.

CALENDAR

MAY 2021

SUN	MON	TUE	WED	THU	FRI	SAT
						1
2	3 VBN VALLEY BAR NETWORK ZOOM MEETING 5:30 PM	4	5	ZOOM MEETING 6 Membership and Marketing Committee 6:00 PM	7	8
9	10 Happy Mother's Day	WEBINAR 11 Probate and Estate Planning Section Behind the Scenes Regarding Reverse Mortgages 12:00 NOON Janice Cohen of Mutual of Omaha presents on the stormy history of reverse mortgages, how to help a family member whose deceased parent has left behind a home with a reverse mortgage, and triggers that make a reverse mortgage due and payable. (1 MCLE Hour) ZOOM MEETING Board of Trustees 6:00 PM	12 WEBINAR 19 All Members The Hiring Process 12:00 NOON Speakers Alicia Matricardi (Non Profits/Business), Sima Aghai (Disability and SSA) and Sanaz Bereliani (Bankruptcy) will share how to determine when you need help to bring your small firm to the next level, and what to look for in professional and administrative staff. They will talk about the pros and cons of 1099s vs. employees. They will share war stories about how hiring the right employee can propel growth, and how important it is to identify quality employees. (1 MCLE Hour) ZOOM MEETING Editorial Committee 12:00 NOON	WEBINAR 13 Business Law and Real Property Section Financial Planning and Your Practice Sponsored by NORTH STAR Resource Group 12:00 NOON Financial Planner Anthony Gizzarelli of North Star Resource Group | Law Division will address specifically how lawyers can best handle their financial planning and outline what factors can derail law professionals pursuing their financial goals. Free to All Members! (1 MCLE Hour) See ad on page 46	14	15
16	ZOOM MEETING 17 Mock Trial Committee 6:00 PM	WEBINAR 18 Taxation Law Section The State of the Art Market: Business, Tax, and Estate Planning Considerations 12:00 NOON Attorneys Sherri Cohen of Bonham and Jere Doyle of BNY Mellon will examine the current state of the global art, antiques and collectibles market, and provide strategies and planning techniques for collection management and disposition of such property from a tax, legal and estate planning perspective. (1 MCLE Hour) ZOOM MEETING ARS Committee 5:00 PM		ZOOM MEETING 20 Inclusion and Diversity Committee Meeting 12:15 PM WEBINAR Santa Clarita Valley Bar Association A View From the Bench 6:00 PM Presiding Judge Eric Taylor brings all up to date regarding LASC operations.	21	22
23	24				28 WEBINAR SFVBA, MCBA and SCV Bar Present Stretch Your Body and Relax Your Mind! 4:30 PM - 5:30 PM Virtual Yoga Workshop with SFVBA Board Members Alan Eisner and Taylor Williams-Moniz.	29
30	31 MEMORIAL DAY		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 19.

By Jessica W. Rosen

Discovery:
A Much-Needed Streamlining

It is critical for attorneys to familiarize themselves with the most recent changes to the Civil Discovery Act and how they will impact the preparation of discovery requests, responding to discovery, and discovery disputes.

OVER THE LAST FEW YEARS, THE CALIFORNIA state legislature has enacted several amendments to the Civil Discovery Act, a number of which alleviate strict requirements and resources that go into discovery motions.

One example authorizes Informal Discovery Conferences in all civil litigation matters and potential to skip the often arduous separate statement required for most discovery motions, while other changes, however, may require more resources and take more time to satisfy.

An example is the new requirement in producing documents to identify the request(s) to which each document or category of documents is responsive.

As a result, it is important for attorneys to familiarize themselves with the changes to the Civil Discovery Act and how they will impact the preparation of discovery requests, responding to discovery, and discovery disputes.

Informal Civil Matter Discovery Conferences

Enacted January 1, 2018, the legislature codified the procedure for requesting and setting Informal Discovery Conferences (IDC) in all civil matters.[1]

Though less recent than other amendments discussed in this article, more courtrooms now require or, at the very least, strongly encourage litigants to request IDCs prior to filing discovery motions.

> "More courtrooms now require or, at the very least, strongly encourage litigants to request IDCs prior to filing discovery motions."

The procedure in the California Code of Civil Procedure (CCP) is straightforward. The Code states that the parties may request or the trial court, on its own motion, may conduct an IDC "for the purpose of discussing discovery matters in dispute between the parties."[2]

To request an IDC, a party must file a declaration outlining the dispute and identifying the good faith meet and confer occurred. Any party may file a response and, if the trial court does not grant, deny, or schedule an IDC within ten calendar days, the request is deemed denied.[3]

If an IDC is not held within 30 calendar days from the date the trial court granted the request, the request is considered denied. If an IDC is granted or ordered, "the court may toll the deadline for filing a discovery order or make any other appropriate discovery order."[4]

Prior to requesting an IDC, the parties should familiarize themselves with the appropriate Superior Court's rules and applicable standing orders.

For example, the Los Angeles Superior Court, whose jurisdiction covers all of Los Angeles County, has its own approved forms to be used—"Stipulation—Discovery Resolution" and "Informal Discovery Conference."[5]

The Stipulation form outlines the procedure for requesting an IDC. Some procedures add more guidance and clarity, like requiring that an answer to the IDC request be filed within two court days.

Other procedures modify § 2016.080. For example, if the conference is not held within 20 days after the request is filed, the request for an IDC is denied.

Pursuant to the parties' Stipulation, filing an IDC request tolls the time for the moving party to file a discovery motion until after resolution of the IDC request, even if denied by order or by expiration.

The Informal Discovery Conference form is used to request or answer a request for an IDC.

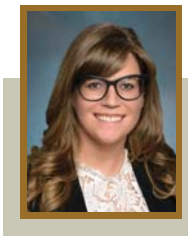
Motion to Compel Responses

Prior to January 1, 2020, the California Rules of Court required a separate statement to accompany a motion to compel further responses and other discovery motions.[6]

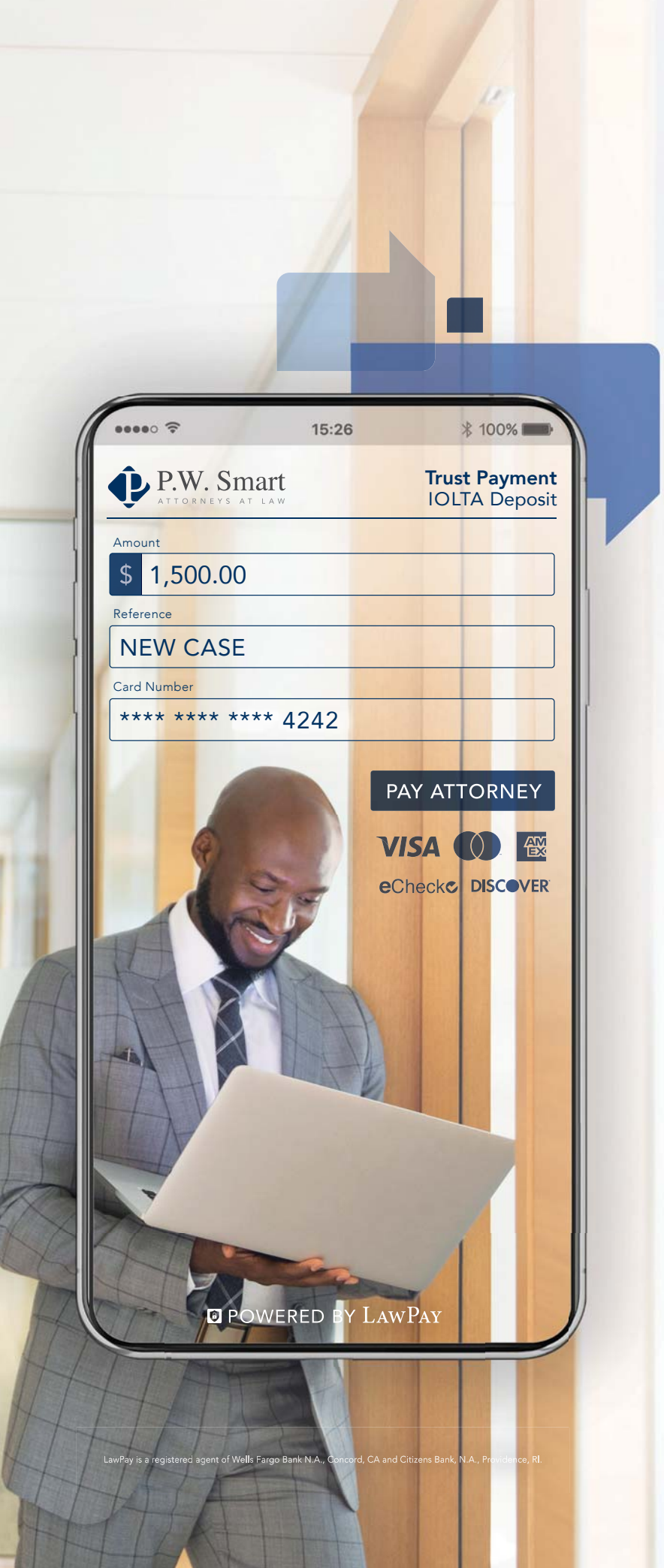
The purpose of the separate statement is to place the dispute in one package "so that no person is required to review any other document in order to determine the full request and the full response."[7]

Accordingly, no material could be "incorporated into the separate statement by reference" and the separate statement itself must be "full and complete."[8]

In theory, a separate statement could streamline the motion. But in practice, separate statements routinely result in a lengthy briefing, often with rote-repetition of formulaic arguments that only serve to burden the parties involved, as well as the court.[9]



Jessica W. Rosen is a litigation attorney with the Franchise & Distribution, and Employment practice groups at Encino-based Lewitt Hackman. She can be reached at jrosen@lewitthackman.com.



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There was no wiggle room. If the separate statement required by Rule 3.1345 was absent, or was not in compliance with subdivision (c) of the Rule, the trial court could deny the discovery motion on that basis alone.[10]

It was, therefore, imperative for the moving party to submit a separate statement, and include all required contents in that separate statement.

As of January 1, 2020, statutes authorizing discovery motions now provide that, in lieu of the separate statement required by the Rules of Court, "the court may allow the moving party to submit a concise outline of the discovery request and each response in dispute."[11]

The California Rules of Court were amended to maintain that a separate statement is not required when a court "has allowed the moving party to submit—in place of a separate statement—a concise outline of the discovery request and each response in dispute."[12]

Litigants initially rejoiced, but further review compels the trial court to allow the concise outline.

A separate statement is still required unless the court has allowed a concise outline in place of a separate statement. A court order is not required, while a trial court may identify this in, for example, on its court information website, or by circulating a Standing Order.

A party may inquire if the discovery dispute did not resolve at a case management or status conference, or at an IDC.

It is incumbent, therefore, to confirm a concise outline is authorized by the trial court before foregoing a separate statement. Otherwise, the moving party runs the risk of the motion being denied for failure to comply with the Civil Discovery Act and California Rules of Court.

Document Production

As of January 1, 2020, the Code of Civil Procedure requires that any documents or category of documents "produced in response to a demand for inspection, copying, testing, or sampling shall be identified with the specific request number to which the documents respond."[13]

This changes the previous CCP section that allowed documents to be produced as "kept in the usual course of business," or to be "organized and labeled to correspond with the categories in the demand."

This applies to electronically stored information, as well as physical—read, paper—documents.

The Code also maintains the requirement that responsive documents "shall be produced on the date specified in the demand," usually thirty (30) days from service and any additional days depending on type of service, "unless an objection has been made to that date."[14]

If the responding party knows or has reason to believe the number of documents, including the additional work of identifying and/or categorizing the documents to a specific request, will take longer to prepare, the parties should confer over an extension of time for production. The extension may be informal, but must be in writing.[15]

It is important to note that there is no deadline for a party to file a motion for compliance as compared to the deadline of 45 days from service of verified responses to move to compel further responses.[16]

Additional Sanctions

The legislature added a new Section to the California Code of Civil Procedure which supplements and provides additional grounds for monetary sanctions against a party, a non-party, or an attorney for conduct related to document requests.

The statute took effect January 1, 2020.

As a result, the court must impose a $250 sanction payable, on request, to the moving party if the court finds:

- A "party, person, or attorney did not respond in good faith to a request for the production of documents;"

- Responsive documents were produced within seven days before a hearing on a motion to compel production filed as a result of the responding party's failure to respond in good faith; or,

- The responding party failed to meet and confer in a reasonable and good faith attempt to informally resolve the dispute.[17]

The court may require an attorney to report the sanction to the State Bar and, consistent with other discovery sanction statutes, it may excuse imposing a sanction if the court makes "written findings" that the party "acted with substantial justification or that other circumstances make the imposition of the sanction unjust."[18]

Sanctions may be imposed only after notice and an opportunity to be heard.[19]

Section 2023.050 provides a presumption that unrepresented persons acted in good faith at the time of the alleged sanctionable conduct. However, such a presumption may be rebutted by clear and convincing evidence.[20]

No rebuttal presumption applies to parties or other persons represented by attorneys or to attorneys who, it is claimed, have committed sanctionable conduct.

Provision on Request

No longer must a responding party prepare "shells" for responses, at least for Interrogatories and Requests for Admission.

Enacted January 1, 2020, "to facilitate the discovery process," the parties may request Interrogatories and Requests for Admissions, and responses in electronic format.[21]

The amendments were not extended to Requests for Production.

Upon request, the propounding party must provide the requests in electronic format within three court days.

Likewise, the propounding party can request discovery responses in electronic format, and, upon request, the responding must provide the responses in electronic format within three court days.[22] [23]

The parties can agree on the document format—Microsoft Word or WordPerfect, for example. But, if the parties do not agree on an acceptable format, the requests or responses shall be provided in a plain text format.[24]

By default, the parties must transmit the electronic format by e-mail to the requesting party, or, if agreed to, by any method.[25]

If the party did not prepare the requests or responses in an electronic format, the party is not required to create

the requests or responses in an electronic format for the purpose of transmission to the requesting party.[26]

Finally, if the responding party does request the documents in an electronic format, the responding party must include the text of each request before a response.[27]

Conditions for Initial Disclosure

Effective January 1, 2020, the legislature added a new Section to the California Code of Civil Procedure to serve as an optional procedure for parties to exchange initial disclosures without waiting for discovery requests.[28]

While the trial court is not authorized to mandate exchange of initial disclosures, it is authorized to order the exchange of initial disclosure only if all parties stipulate to the discovery mechanism.

The relatively new procedure mirrors Rule 26 of the Federal Rules of Civil Procedure, which, within a 45-day period of a court order, requires parties to:

- Identify persons likely to have discovery information, as well as the subjects of the information, unless such information would be solely for impeachment;

- Supply copies, or descriptions by category and location, of all documents, electronically stored information, and tangible objects in the disclosing party's possession, custody, or control, that may be used to support claims or defenses, unless the document or information would be solely for impeachment; and,

- Produce relevant insurance agreements, as well as any agreement regarding potential indemnification.[29]

Also, the party is not excused from making initial disclosures because the case has not been fully investigated or contests sufficiency of another party's disclosure; or another party has not made requisite initial disclosures.[30]

The new Section also requires the parties to supplement or correct the initial disclosures when new material information becomes known or as ordered by the court. The party's disclosure and supplemental disclosures must be verified.[31]

In addition, it does not apply to unlawful detainer or small claims actions.[32]

Conclusion

For the most part, the amendments to the Discovery Act have the effect of making the discovery process easier and more impactful.

The changes to the California Rules of Court that facilitate exchanging questions and responses electronically, and provisions for IDCs can be expected to reduce some wasteful cost and complexity of the discovery process, and spare parties, counsel and courts from having to deal with the preparation, filing and review of lengthy, repetitive and uninformative separate statements.

Such a development is a change to be welcomed.

Other modifications—requiring a party to identify which categories of requests the responsive documents pertain to, for example—will create some additional work for the responding party, but they can be expected to make the response more useful to all involved and, overall, incrementally improve the discovery process.

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[1] Cal. Code Civ. Proc. § 2016.080.
[2] *Id.*
[3] *Id.* § 2016.080(b).
[4] *Id.* § 2016.080(c)(1) –(2).
[5] *See* Superior Court of Los Angeles's Locally Approved Civil Forms LACIV-036 LACIV-094. Note, this section does not consider the Personal Injury Courts' (aka PI Hub) IDC requirements.
[6] Cal. Rules of Court, Rule 3.1345(a)(4)-(7). In addition to motions to compel further responses, a separate statement must be submitted with the following discovery motions: (1) to compel answers at deposition; (2) to compel or quash production of documents or tangible things at a deposition; (3) to compel medical examination over objection; and (4) for issue or evidentiary sanctions.
[7] *Id.*, Rule 3.1345(c).
[8] *Id.*, Rule 3.1345(c).
[9] Subdivision (c) of Rule 3.1345 requires the moving party to include for each discovery request at issue, the following: (1) The text of the request, interrogatory, question, or inspection demand; (2) The text of each response, answer, or objection, and any further responses or answers; (3) Factual reason and argument for compelling further responses, answers, or production; (4) If necessary, all definitions, instructions, and other matters; (5) The full text of other discovery request(s) and response(s) on which a response depends; and (6) Summary of each relevant pleading, other documents, or discovery relevant to the discovery dispute.
[10] *See St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 778 ("[F]ailure to include separate statement required by Cal. Rules of Court provided justification of court's denial of discovery motion."); *Mills v. U.S. Bank* (2008) 166 Cal.App.4th 871, 893 (Because moving party "did not comply with the requirements of former rule 335 [current rule 3.1345], the trial court was well within its discretion to deny the motion to compel discovery on that basis.").
[11] Cal. Code Civ. Proc. §§ 2030.300(b)(2) (Interrogatories), 2031.310(b)(3) (Requests for Production), and 2033.290(b)(2) (Requests for Admission).
[12] Cal. Rules of Court, Rule 3.1345(b)(2).
[13] Cal. Code Civ. Proc. § 2031.280(a).
[14] *Id.* § 2031.280(b).
[15] *Id.* § 2031.270(b).
[16] *Id.* § 2031.320(a).
[17] *Id.* § 2023.050(a)(1)-(3).
[18] *Id.* § 2023.050(b) and (c).
[19] *Id.* § 2023.050(d).
[20] *Id.* § 2023.050(e).
[21] *Id.* §§ 2030.210(d); § 2033.210(d).
[22] *Id.* §§ 2030.210(d)(1); 2033.210(d)(1).
[23] *Id.* §§ 2030.210(d)(2); § 2033.210(d)(2).
[24] *Id.* §§ 2030.210(d)(3); § 2033.210(d)(3).
[25] *Id.* §§ 2030.210(d)(4); § 2033.210(d)(4).
[26] *Id.* §§ 2030.210(d)(5); § 2033.210(d)(5).
[27] *Id.* §§ 2030.210(d)(6); 2033.210(d)(6).
[28] Cal. Code Civ. Proc. § 2016.090.
[29] *Id.* § 2016.090(a)(1)(A)-(D).
[30] *Id.* § 2016.090(a)(2).
[31] *Id.* § 2016.090(a)(3)(A)-(B) and (a)(5).
[32] *Id.* § 2016.090(b)(1)-(2).

Discovery: A Much-Needed Streamlining
Test No. 151

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. Informal Discovery Conferences are required before filing a discovery motion.
❑ True ❑ False

2. The trial court, on its own motion, can conduct an Informal Discovery Conference.
❑ True ❑ False

3. A separate statement to a discovery motion must be full and complete, and shall not incorporate other material by reference.
❑ True ❑ False

4. A party filing a motion to compel further responses may now file a concise outline instead of a separate statement if allowed by the trial court.
❑ True ❑ False

5. The current Code of Civil Procedure § 2031.280(a) permits a party to produce documents as they are kept in the usual course of business.
❑ True ❑ False

6. Since January 1, 2020, a party must identify the document(s) or category of documents to the specific discovery request number to which the documents respond.
❑ True ❑ False

7. The trial court is authorized under Cal. Civ. Code § 2023.050 to impose a $250 sanction on a party, person, or attorney who did not respond in good faith to a request for production of documents.
❑ True ❑ False

8. The trial court is authorized under Cal. Civ. Code § 2023.050 to impose a $250 sanction on a party, person, or attorney who produced responsive documents within fourteen days before a hearing on a motion to compel production filed as a result of the responding party's failure to respond in good faith.
❑ True ❑ False

9. Cal. Civ. Code § 2023.050 does not authorize a court to impose a $250 sanction if the responding party failed to meet and confer in a reasonable and good faith attempt to informally resolve the dispute.
❑ True ❑ False

10. Sanctions under Cal. Civ. Code § 2023.050 is in addition to any other sanction authorized under the Civil Discovery Act.
❑ True ❑ False

11. To excuse imposing a sanction under Cal. Civ. Code § 2023.050, the court must make written findings that the party acted with substantial justification or that other circumstances make the imposition of the sanction unjust.
❑ True ❑ False

12. Monetary sanctions of $250 authorized under Cal. Civ. Code § 2023.050 may be imposed without notice.
❑ True ❑ False

13. Section 2023.050 provides a rebuttable presumption represented persons and attorneys that they acted in good faith at the time of the alleged sanctionable conduct, which can only be rebutted by clear and convincing evidence.
❑ True ❑ False

14. A party served interrogatories may request that the propounding party transmit the Interrogatories in electronic format.
❑ True ❑ False

15. The propounding party must deliver the electronic format of interrogatories within three court days after a request is made by the responding party.
❑ True ❑ False

16. If the parties cannot agree on the electronic document format, then the propounding party may select which format to use.
❑ True ❑ False

17. If the responding party requests the electronic format for interrogatories and/or requests for admission, the responding party must include the text of each request immediately before the response.
❑ True ❑ False

18. The trial court is authorized under Cal. Code Civ. Proc. § 2016.090 to mandate the parties exchange initial disclosures without waiting for discovery responses.
❑ True ❑ False

19. All parties must stipulate to exchange initial disclosures under Cal. Code Civ. Proc. § 2016.090 before a court may make such order.
❑ True ❑ False

20. The parties, having agreed to exchange initial disclosures, have a continuing duty to supplement or correct the disclosures when new material information becomes known or as ordered by the court.
❑ True ❑ False

Discovery: A Much-Needed Streamlining
MCLE Answer Sheet No. 151

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
$_____.

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Credit Card Number

_____ _____/_____/_____
CVV code Exp. Date

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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

Valley Judges: A View From the Bench

THE SAN FERNANDO VALLEY, says Los Angeles Superior Court Presiding Judge Eric C. Taylor, "is one of the most unique parts of Los Angeles County. It is rich in diverse cultures and has been a historically powerful driver in L.A. County business and industry."

A Los Angeles native, Judge Taylor has seen the Valley develop from a center of agriculture and manufacturing to a vibrant suburb of quiet, beautiful and diverse neighborhoods—"the most expansive area in our County, with many political representatives, police agencies and municipalities, and, now, with some of the most complex legal issues."

An "expansive area" indeed.

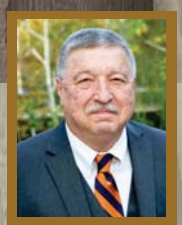
The Valley covers 260 square miles—a vast tract of land that equals the combined size of Boston, San Francisco and Washington, D.C. In fact, if the Valley, with a population of 1.75 million people, were its own city, it would rank as the fifth-largest in the country.

"With more than 23 years on the bench, I've watched our economy, and unavoidably our justice system, adapt to survive several significant recessions, including the Great Recession," says Judge Taylor.

"In these times, the court has contracted its operations dramatically, impacting our ability to serve the public due to reductions in our delivery points—courthouses—across communities."

A key development, he adds, was the trial court unification of local municipal courts into one Superior Court in 2000.

That move caused the pivoting from serving as 'The World's Largest Neighborhood Court' with 629 courtrooms in 58 courthouses to 557 courtrooms in 39 courthouses. The



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result was, says Judge Taylor, "an unavoidable reduction in our services in many communities, impairing access to justice because some were forced to travel further to appear in court."

However, says Judge Taylor, "the court's recent ability to leverage technology and other innovations has allowed us to offset many of the inconveniences resulting from contraction. Remote appearances and online services are more readily available to the public, and many matters can still be handled by mail—particularly traffic matters by written declaration instead of appearance. These tech tools equate to our flexibility to address the diverse needs of our communities."

How will the court pivot to meet those "diverse needs"?

"We'll continue to build on our technology," says Judge Taylor. "We're also looking into partnering with other local municipalities to develop remote computer access points to allow those without stable internet or devices to access the court's online platform."

In the medium- and long-term, he says, plans include the construction of a large, 30-courtroom courthouse in Santa Clarita within the next three to five years, "to help us spread our services out into Valley communities where we see significant population growth."

Judge Taylor says he and the court's administrative team "have been working closely with the [California State Supreme Court] Chief Justice, Judicial Council Director Martin Hoshino and Governor Newsom to establish a $2.4 million planning and design fund to allow us to plan to meet changing public needs. We are very excited about our plan to expand access and convenience in this way."

The Valley Team

"We have an incredibly strong group of bench officers in our San Fernando, Chatsworth, Santa Clarita, Van Nuys and Sylmar courts," says Judge Taylor.

They are, he adds, "among our best and brightest," with particular praise for Judge Virginia Keeny in Van Nuys and Judge David Gelfound in San Fernando and who supervise the court's Valley operations.

Calling them "dedicated and innovative, it was my honor to appoint them, while the judicial officers serving with them are active in mentoring youth in our Valley communities and have helped to spearhead our judicial mentoring program to help us identify

"We have an incredibly strong group of bench officers in our San Fernando, Chatsworth, Santa Clarita, Van Nuys and Sylmar courts."
– Judge Eric C. Taylor

Valley lawyers who show promise as future judicial officers."

Named the SFVBA Judge of the Year in 2020, Judge Virginia Keeny was named to the Bench by Governor Jerry Brown in May 2012. After five years as a Family Law Judge in Van Nuys, she shifted to Civil Court there, and was named to her current post as Supervising Judge of the Valley's Northwest District in December 2020.

Her responsibilities include overseeing the operations of the Van East and Van Nuys West courthouses, two of the busiest such facilities in the county-wide Los Angeles Superior Court network.

"There is a collegiality among the bench officers here and a willingness to help out with each other's overflow that is unparalleled in my experience," says Judge Keeny, expressing pride in the way the Northwest District weathered the peak of the COVID-19 pandemic and continued to provide access to the public.

"Our criminal courts have done a phenomenal job, as have our family court and our unlawful detainer court," she says. "We have five trial courts and while we reopened in June, they weren't able to have any jury or bench trials because of COVID-19," she says. "Starting then, the Trial Courts all agreed to take on mandatory settlement conferences from our Independent Calendar Courts. From last July to this past February, they've handled more than 306 mandatory settlement conferences."

That, says Judge Keeny, "is an incredible number and is a testament to their willingness to help each other and the community by taking on assignments well beyond what is regularly allotted to them. It's that sort of thing that is special about the Northwest District."

Judge Keeny's path to her current position led her from her upbringing in Washington D.C. to Los Angeles via Harvard and the San Francisco Bay Area.

After graduating from Harvard in 1983, she worked as a researcher and writer for a series on the Vietnam War published by Time-Life and came west serving as a paralegal at Morrison Foerster in San Francisco before earning her JD degree from Stanford Law School in 1988.

After law school, she served as a law clerk for Judge William A. Norris in the United States Court of Appeals for the Ninth Circuit before stints serving as a Public Interest Fellow at

Judge Virginia Keeny and 2020 SFVBA President Barry P. Goldberg

the civil rights firm of Litt and Stormer, and as a Senior Attorney in the Los Angeles District Office of the U.S. Equal Employment Opportunity Commission (EEOC).

Her first visit to the Southland convinced her that Los Angeles was where she wanted to settle.

"People in Washington, D.C. spend a great amount of time disparaging Los Angeles, its lifestyle, and what they feel is the lack of intellectual substance of the people who live there," she says.

"It was when I came to Los Angeles to interview for the clerkship with Judge Norris on a beautiful day in the spring of 1988," she says.

"I was standing on Bunker Hill and I suddenly realized that this was the most vibrant and beautiful city that I had ever experienced. I decided to stay, and I've been here ever since."

It was, though, the San Fernando Valley that more firmly underscored her decision.

According to Judge Keeny, the Valley "has such an interesting and diverse array of communities that it has all of the cultural richness and variety of the Los Angeles 'over the hill.'"

The Valley, she says, "has more diverse communities and cultures, as well as income range than, probably, any other district in the court. To me, that presents an opportunity to find ways to serve them and balance their unique needs and the various legal issues that they present."

Judge Keeny is quick to praise the San Fernando Valley Bar Association for its efforts to connect with, not only practicing attorneys and other professionals, but with the bench officers who serve in the Valley.

The Association, she says, "is unique in regard to its support of the court, its willingness to help out with all of the requests we've directed to them during the pandemic, and its offers to assist us with settlement and mediation services. It is a very special organization."

Judge Keeny's opinion of the Valley is echoed by Judge David B. Gelfound, who serves as her counterpart, supervising the Los Angeles Superior Court's North Valley District from offices in the courthouse in San Fernando.

"I have a vested interest in what goes on here," he says, reflecting on a legal career spanning three decades, virtually all of which was spent in the San Fernando Valley. "I'm a Valley guy and, between being an attorney and a judge, I've developed a love for this district and have no desire to leave."

Judge David B. Gelfound has sat on the L.A. Superior Court bench for 14 years and has held his position as Supervising Judge of the court's North Valley District for the past four.

His responsibilities include the well-being of 27 judges and the operations at courthouses in San Fernando, Santa Clarita, and Chatsworth, as well as a Juvenile Court in Sylmar.

The work also includes handling court prelims "and covering for whomever whenever that's needed though I'm not doing jury trials at this point," he says.

One of his primary goals?

"To make the job less isolating for the judges here and create a sense of camaraderie. That's particularly important for the new judges to make their transition. It can be overwhelming for them as there's so much to learn and when they come to my district, I want to ease that transition for them. I enjoy doing that, and I think that it's beneficial."

Judge Gelfound's path to his current position was, to say the least, diverse—one that took him from washing dishes and cooking at the Valley's Kaiser Medical Center, through law school to a seat on the Los Angeles Superior Court and his current responsibilities.

That spell in the hospital kitchen was more than 30 years ago, but it helped lay a foundation of empathy that has held this particular judge in good stead.

"Working in that hospital and interacting with so many different kinds of people—doctors, nurses, every level of staff person, and the public—taught me a lot," says Judge Gelfound, the San Fernando Valley Bar Association's Judge of the Year in 2019.

"I feel the experience really helped me to relate to and communicate with people more effectively and fairly both as a lawyer and as a judge. Because of all that, I feel I can relate a little better to the people we serve here."

"I graduated from Pepperdine Law School and, after I took the Bar exam, I left Kaiser after working there for eight years," says Judge Gelfound. "It was school during the week and work on the weekends making double time and

a half. It got me through college and law school. I was really fortunate."

All in all, he says, "If I hadn't had that job, I wouldn't have been able to make it through law school. Kaiser was a great learning experience for me."

On the criminal side, "we're seeing a trend toward more of an emphasis by prosecutors on treatment and rehabilitation for non-violent offenses," says Judge Gelfound, adding that future plans call for a new courthouse built in Santa Clarita, as the population of the Valley has "gotten a lot bigger."

Included in the North Valley District is the Chatsworth Courthouse, which opened in June 2002, and where day-to-day activities of bench officers in 11 courtrooms are overseen by Site Judge Melvin D. Sandvig.

Raised from infancy in the Valley, Judge Sandvig worked as a journeyman Teamster after graduating from John H. Francis Polytechnic High School in Sylmar.

While attending Valley College, in 1967, he considered joining the Los Angeles Fire Department and took the entry tests for the Police Academy "as practice without ever thinking I'd go into police work," he says. He passed the police testing process and decided to enter the ranks of the LAPD.

After probation, he worked at Parker Center in Accident Investigation handling, at the time, the investigations of every traffic accident within the Los Angeles City limits.

Time in court almost every day, he says, "gave me the opportunity of seeing how attorneys interacted with their clients and how they presented their cases. It seemed really interesting, and after being transferred from downtown out to the Valley, I decided to go to law school."

What followed was four years of night classes at what is now the University of LaVerne College of Law.

Admitted to the Bar in 1981, he practiced civil law with the Department's permission until his retirement from the LAPD after 20 years 'on the job.'

Judge David B. Gelfound

His primary work during that period was representing LAPD officers before the Department's Board of Appeals.

In private practice for 17 years after his retirement, Judge Sandvig was appointed to the Superior Court by then-Gov. Pete Wilson in 1998.

Following his appointment to the bench, he served in the Stanley Mosk Courthouse downtown and in Hollywood for a period before being transferred to Van Nuys, sitting briefly as Supervising Judge in San Fernando, and, more recently, to his recent posting at the Chatsworth Courthouse.

"It's like a real family here," says Judge Sandvig. "When I was serving as a judge downtown at Stanley Mosk, I could get to my chambers rather easily by walking through one door from the courtroom. In Chatsworth, it's like a cruise ship. I walk down a couple of hallways and get to see people, attorneys and bench officers. You get to interact with people, some of whom have been working here for years."

The Burbank Courthouse is located in the LASC's North Central District in the City of Burbank, which is located at the extreme eastern border of the San Fernando Valley.

Currently, Judge Michael D. Carter serves as Site Judge of the Burbank Superior Court, which also handles civil trial cases, as well as juvenile and adult traffic cases that occur within the City.

Born in Compton, Judge Carter graduated from Morehouse College in Atlanta, Georgia, in 1986.

He took a year off to work in banking to gain experience before relocating to New Orleans to attend law school at Tulane, where he originally planned to specialize in transactional law.

It was his work as an unpaid intern with a U.S. Department of Justice Task Force on Organized Crime that, he says, "gave me the opportunity to see an area of law that I knew virtually nothing about. That experience was key in my decision to work in criminal law."

Judge Carter returned to Los Angeles to work as an Assistant District

Attorney for 13 years, during which time he tried some 68 felony jury trials and, on his first assignment in 1991, served on the legal team that prosecuted four LAPD officers for their conduct during the Rodney King incident.

Later, Judge Carter was assigned to Central Trials, Special Prosecution and the Hardcore Gang Divisions before joining the Sex Crimes and Child Abuse Division, where he helped bring dozens of rapists and child molesters to justice.

Judge Carter was also assigned to a period with the Juvenile Court, an experience that markedly influenced his involvement in the Big Brothers/Big Sisters of Greater Los Angeles and the Inland Empire, where he has served for more than 30 years.

Currently serves on the organization's Board of Directors.

His work with the group allows him the opportunity "to intervene in the lives of young people before they do something that ends up with them being charged with a crime and appearing in court," he says. "I think that that is important. We all know where they can wind up without positive intervention and mentoring."

In addition, he has also participated in the County's Legal Enrichment and Development Program, which works to achieve the same goal of mentoring young people about the law and becoming productive members of society.

Judge Carter acts as a crime-prevention instructor to fifth graders for seven years and serves as the Director of the Los Angeles County Teen Court, which encourages peer mentoring between students from 43 schools "to apply restorative justice to keep them from doing something dumb and becoming another addition to the legal system."

Appointed to the Superior Court Bench by Gov. Gray Davis in 2003, he heard his first case at the Whittier Courthouse, where he was assigned a misdemeanor case calendar.

"That was a great experience for me as I had to handle a bit of everything," he says. "It gave me a chance to see the differences between being on one side of the bench and the other. Many attorneys question why judges do what they do, but being on the bench gave me an entirely different perspective."

"The positive thing about having a dedicated long-cause court is that it allows me to dedicate whatever time and resources are necessary to getting a trial completed as efficiently and effectively as possible."
– Judge Michael D. Carter

The shift from being a trial lawyer to being a trial judge, says Judge Carter, "provides the perfect position to see it all from both angles."

It was, he says, "an education," also demonstrated over the past 15 years by his work as an Adjunct Professor of Law at the nearby Glendale University College of Law.

"The thing I really like about Burbank is that it's a really small courthouse," says Judge Carter. "As such, I have the opportunity to be involved in more than I could be at a larger facility. We have four criminal courts and two misdemeanor courts, as well as a felony preliminary hearing early-disposition court, while my courtroom is for long-cause cases from Alhambra, Glendale, and Pasadena, as well as Burbank."

Long-cause cases are those resulting in trials forecasted to last three weeks or longer.

Judge Carter calls it the '210-Corridor Court' as any cases that occur in cities like Duarte, Arcadia, and Monrovia that fall into the long-cause category can be assigned to either one of two courts—one in Alhambra or Judge Carter's court in Burbank.

"The positive thing about having a dedicated long-cause court is that it allows me to dedicate whatever time and resources are necessary to getting a trial completed as efficiently and effectively as possible," he says.

"It's great for the attorneys and their clients because they're not tied up in an unnecessarily long trial and it's great for the jurors because it reduces the impact on their lives and work schedules."

Another positive, he says, "is that I can step in and help handle the misdemeanor calendar if a judge is out sick or on vacation. That gives me the opportunity to see how the misdemeanor side is working and help deal with any issue that might be impeding the process."

Like the crew of a submarine with every member cross-trained in, at least, one another's duties, all of the judges in Burbank are capable of stepping in to fill the gap in other courts.

"If I have two or three criminal hearings that have piled up on one another, I can have a misdemeanor judge step in because they know how it all works."

The two Civil Courts in Burbank operate very smoothly, says Carter. "Judge [William D.] Stewart has been on the bench a long time and handles that end very efficiently. All in all, it's

a very small courthouse, but we handle things very well.'

Burbank, he says, "is a relatively small community with great people. It's a very good place to be. I've worked downtown, and true, it's exciting, but I have to say that being in Burbank makes you glad to get up and go to work in the morning. My wife is also a judge, she works downtown, and I hear about the hustle-and-bustle, the traffic, and all of that, and, honestly, I come home every day a little more relaxed than she does."

Everyone at the Burbank Courthouse, says Judge Carter, "knows everyone else, so if I have to send a case to another judge to handle, I know that judge, who, in turn, knows why the case is being transferred and can communicate directly with me about any details. There is a high level of congeniality here that you most often don't get in large courthouses. That makes this a great place."

Los Angeles Superior Court Judge Elizabeth Lippett's (Ret.) legal career spans more than three decades and took the Colorado native from law school at the University of Denver to Los Angeles, where, after a decade with the Los Angeles District Attorney's Office handling a broad range of felonies, she was appointed to the Los Angeles Municipal Court in 1997.

Three years later, Judge Lippitt was elevated to the Los Angeles Superior Court, where she served for 20 years before retiring from the bench in June 2020.

At the time of her appointment to the Superior Court, Judge Lippitt had tried to verdict close to 100 felony jury trials as a criminal trial attorney, specializing in sex crimes, domestic violence and related homicides.

Before her last posting to the downtown Probate Division before retirement, Judge Lippitt sat in Dept. W at the Van Nuys East Courthouse, the second busiest courthouse in the entire county.

Interviewed for *Valley Lawyer* in 2018 after being named SFVBA Judge of the Year, Judge Lippitt said, "Sometimes I miss the slower pace of life in Colorado. Denver, by comparison to Los Angeles, is a small town, but I love where I live in a very rural part of Los Angeles County. When I get home, I'm surrounded by mountains, so, in some ways, I feel like I'm back in Colorado. I've got my horse a mile away, and I get my serenity there. I've had a lot of opportunities I wouldn't have had elsewhere. All in all, Los Angeles has been very good to me. Here, I've been able to evolve as my own person, rather than be stereotyped somewhere else."

Judge Lippitt's serenity was, sadly, shattered when her home, all of her belongings and her horse, were enveloped in one of the dozens of devastating wildfires that raged through California in 2018. The staggering loss predicated her return to the open spaces of Colorado, where she now lives.

Judge Lippitt has many memories of serving on the Bench in Van Nuys with a bittersweet memory of a particularly gut-wrenching case that comes to mind.

"A small boy had been horribly molested," she recalls. "His father was a gardener and his mother worked at a Vallarta [supermarket]. When the case was over and the defendant sentenced, the members of the jury pooled their jury money and more and gave it to the boy's family. They were good people and it was the decent thing to do."

Judge Lippitt also remembers that any time there was a crisis in the court, such as the flooding of the Van Nuys Courthouse East in January 2018, the 1994 earthquake, COVID-19, "the San Fernando Valley Bar Association was there, ready to help in any way. We never heard a peep of complaint from the Bar's members; it was a united 'How can we help?' It would be nice if other organizations could have such an attitude."

"I miss the people I worked with in the Valley because it is the people you work with, in any job, that make the load bearable," she says. "You can do anything as long as you're working with nice people, and there are a lot of really nice people in the San Fernando Valley."

Judge Elizabeth Lippitt (Ret.)

By Kyle. M. Ellis

Breaking Ground: The SFVBA's Virtual Inaugural Mock Trial Competition

IN MARCH OF 2020, COVID-19 MORPHED INTO A global pandemic. Unfortunately, at virtually the same time, the San Fernando Valley Bar Association was immersed in the preparations to host the organization's very first Mock Trial Competition.

Regretfully, the event—scheduled for April 2020—was cancelled, but only for a time as the Bar's Mock Trial Subcommittee was undeterred.

Over the following months, the group restructured and retooled its plans to work in a virtual environment, and knowing the need to address the urgent issues of our day, and rewrite a new fact pattern that would allow the Mock Trial competitors to work with the issues raised by both the COVID-19 Pandemic and the racial justice movement.

Preparations

Beginning in January 2021, four teams representing three law schools—UCLA, Pepperdine, and UC Davis—embarked on

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their preparations for trial in the case of *Plotkin v. City of San Palisades*.

The plaintiff, Parker Plotkin, alleged that the fictional City of San Palisades Police Department negligently caused him to contract COVID-19 when he was arrested during the San Palisades riot of May 31, 2020.

The facts of the case were crafted to challenge the competitors by requiring them to attempt to exclude evidence of the circumstances of the plaintiff's arrest, avoid red herrings such as the plaintiff's possible exposure to infection at a local grocery store, and navigate the sometimes ambiguous and contradictory deposition testimony of the witnesses who were called to testify.

The competitors and their coaches collectively spent hundreds of hours working through the facts and the law, honing their advocacy skills in preparation for the trial competition.

The Preliminary Rounds

All of their hard work paid off on April 9, when the SFVBA's very first virtual Mock Trial Competition began in two rounds that lasted the entire afternoon.

During the two preliminary rounds of the virtual Competition, each of the four-person teams had the opportunity to present their case as advocates for both the plaintiff and the defendant.

All four team members had a role, with two members from each team acting as counsel and the other two serving as witnesses.

During the preliminary rounds, the competitors were fortunate to have their cases presided over by two active judges—the Hon. Hayden Zacky; the Hon. Bernie LaForteza— and two retired judicial officers—the Hon. Reva Goetz and the Hon. Mary House.

The four were joined by more than 20 active attorneys who volunteered their time to help evaluate their performances and offer feedback and advice.

That evening, the Competition's five First Chair Sponsors presented awards to the five top individual advocates in the Competition. Scholarships were presented to the award winners by the Valley Community Legal Foundation.

The Competition was also supported by a large number of Second Chair Sponsors, many of whom donated both funds and volunteered time to make this year's Competition possible.

Among them were attorneys and law firms such as Lewitt Hackman; Kelvin Green; Alpert, Barr & Grant; Steven Sepassi; the Law Offices of Bruce Moss; and Erin Joyce Law.

Also joining them were several non-lawyer members of our community, such as The Seymour Group; and Flans and Weiner Auctioneers.

In short, a large cross-section of our legal and professional Valley community came together to recognize the dedication that every competitor put forward in the Competition.

Each and every sponsor played a major role in ensuring that the Competition met its goals and that the SFVBA can continue to support the professional development of these promising young students as they advance their careers in the law.

Gabriella Castro
(Pepperdine)
Best Opening
Presented by the Law Offices of Alice A. Salvo

Jon Zima
(Pepperdine)
Best Closing
Presented by Alleguez Newman Goodstein LLP

Matthew Michelsen
(UC Davis)
Best Direct Examination
Presented by G&B Law, LLP

Erin Weilbacher
(Pepperdine)
Best Cross Examination
Presented by Kraft Miles, A Law Corporation

$375 Individual Scholarships to each from VCLF

Eric Leroy (UC Davis)
Best Advocate
Presented by Barry P. Goldberg, APLC
$1000 Scholarship from VCLF

The Final Round

Also announced at the Awards Ceremony were the two teams advancing to the Final Round on the morning of April 10—the Pepperdine team, consisting of Rebecca Voth, Jon Zima, Gabriella Castro, and Erin Weilbacher; and the UCLA team, consisting of Kathryn Rosenfeld, Daniel Zhivanaj, Philip Raucci, and Lillian Tsao.

Presiding over the Final Round was the Judge Joel Lofton, and seven evaluators.

Representing the plaintiff was Rebecca Voth and Erin Weilbacher, while defense counsel consisted of Phillip Raucci and Lillian Tsao. The advocacy was fierce, as the skill displayed by both teams was reflected in the trial's very narrow result.

Ultimately the team from UCLA emerged victorious, with the Pepperdine crew achieving a very close second-place finish.

Each of the amazing participants in the Mock Trial Competition deserves heartfelt congratulations on the preparation, hard work, dedication, and advocacy skills they displayed during the competition.

Moreover, all of the competitors should be recognized for enthusiastically and effectively taking on the hard work of improving their trial advocacy skills.

The steps they are taking now to improve themselves as attorneys and advocates in the future are laying the foundation for long and successful careers in law. The San Fernando Valley Bar Association is proud to be able to play this role in helping them achieve their individual professional goals.

Looking Ahead

With the success of this year's event, the SFVBA's Mock Trial Competition Subcommittee is already looking ahead to 2022 and has begun the process of drafting a new prompt for next year's competition teams.

Another cause for excitement in 2022 is the increasingly strong likelihood that the COVID-19 pandemic will be behind us, and the Bar's next Mock Trial competition will be able to take place in person.

We plan to work together with our participating law schools, the Los Angeles Superior Court, the Valley Community Legal




First Place Team (UCLA) Kathryn Rosenfeld, Daniel Zhivanaj, Philip Raucci, and Lillian Tsao

$500 Team Member Scholarship from the Valley Community Legal Foundation




Second Place Team (Pepperdine) Rebecca Voth, Jon Zima, Gabriella Castro, and Erin Weilbacher

Foundation (VCLF), and the generous members of our legal community to make next year's event even bigger, better, and more rewarding.

We strongly urge anyone who has not had the opportunity to submit a donation to the VCLF in support of next year's scholarships, and be on the lookout for opportunities to volunteer, sponsor and assist with our 2022 Competition. Next year we will need more support than ever.

This year's Competition could not have happened without the invaluable and energetic support of our Valley legal community.

Sincere thanks to everyone that sponsored, volunteered, or helped in any way in making this year's event happen, and our gratitude in advance to everyone who will be part of our next event.

It is your generous support and active participation that will make the San Fernando Valley Bar Association's 2022 Mock Trial Competition a reality.

Any member of the SFVBA who would like to join us is welcome to join the Mock Trial Subcommittee's monthly meetings, which are typically held the third Monday of the month at 6:00 p.m.

By Charles White

The Chain of Fools:

The Admissibility Bar and Drug Evidence

LEROY COTY'S CASE STARTED and ended with cocaine and a box of breakfast cereal.

A police officer searched Coty's vehicle and discovered a single bag of cocaine inside a box of Golden Puffs cereal.[1]

After pleading guilty to possession of a controlled substance, Coty filed for a writ of habeas corpus on the grounds that the crime lab failed to properly test the cocaine as a controlled substance found in his possession.[2]

In addressing the issue, the Court of Criminal Appeals of Texas noted that courts have applied two conflicting approaches regarding the admissibility of drug evidence—most courts apply a traditional admissibility standard based on the assumption that the risk of forgery exists with any evidence, while others, however, impose a higher admissibility bar based on forgery concerns unique to drug evidence.[3]

This article takes the position against the majority approach and in favor of a more stringent admissibility standard for drug evidence.

Authentication Framework

Before a party can introduce evidence, it must first provide some indication that the evidence is what the party claims it to be—in other words, it must authenticate the evidence.[4]

For example, a prosecutor seeking to introduce a confession note allegedly written by the defendant must first present evidence that the defendant, in fact, wrote the letter.[5]

According to Federal Rule of Evidence 901(a): "To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is."[6]

This authentication standard is the same as the conditional relevance standard contained in Federal Rule of Evidence 104(b), which states that if a reasonable juror could find the conditional fact—authentication—by a preponderance of the evidence, Rule 901(a) has been satisfied.[7] [8]

Rule 901(a), in turn, allows for a party to exclude drug evidence.

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For example, in *Loper v. State*, "the State sought to establish a long and complicated chain of custody concerning the cocaine."[9] [10]

According to the Supreme Court of Delaware:

> "Because of the foregoing circumstances, and the additional problem that the cocaine field-tested and cocaine tested by the Medical Examiner's office were of questionable similarity, the State cannot be said to have established a valid chain of custody. As a result, the cocaine was not properly authenticated in accordance with D.R.E. 901(a).[11]

Meanwhile, a party can exclude narcotics through authentication without Rule 901. In *Crisco v. State*, the defendant showed that the State failed to prove that the drug tested was properly authenticated.[12] [13]

From the Supreme Court of Arkansas:

> "In the case before us, Crisco hinges his contention of lack of authenticity on the fact that Officer Hanes's description of the drugs differed significantly from that of the chemist, Michael Stage, in color and consistency. In fact, the chemist admitted that he would not have described the substance as off-white powder. Crisco's point has merit. True, there was no obvious break in the chain of custody of the envelope containing the plastic bag or conclusive proof that any tampering transpired."[14]

Yet, the Court added, "The marked difference in the description of the substance by Officer Hanes and the chemist leads us to the conclusion that there is a significant possibility that the evidence tested was not the same as that purchased by Officer Hanes."[15]

Chain of Custody Evidence Framework

The Supreme Court of Nevada excluded drug evidence because of chain of custody issues.

In *Abbott v. State*, the defendant showed that the State failed to establish a chain of custody for the evidence and therefore did not present sufficient evidence to support his conviction.[16] [17]

According to the Court, "[T]he State failed to establish an apparent link between the single clear package that [the officer] testified he confiscated from Abbott's body during the unclothed search and the four bags of white powdery substance [that other officers] testified to having seen on a table in the drug testing room at CCDC."[18]

Sixth Amendment Framework

Cases provide illustrations of ineffective assistance of counsel issues in drug cases. In *McBride v. State,* Israel McBride won on appeal over a motion requesting a chemist to conduct the necessary scientific tests and other examinations of evidence in the case.[19] [20]

The Court of Criminal Appeals of Texas found that "to meaningfully participate in the judicial process, an indigent defendant must have the same right to inspection as a non-indigent defendant."[21]

In another example of ineffective assistance of counsel, it was shown that the performance of "Major BG" was deficient in failing to obtain the litigation packet for the negative hair follicle test in time to evaluate its potential for admission in the event that the tactical decision was made to admit the negative test result as substantive evidence.[22] [23]

According to the United States Army's Court of Criminal Appeals, "The record demonstrates a reasonable likelihood that the hair follicle test was admissible and sufficiently reliable to warrant a reasonable defense counsel to obtain it in advance of trial, evaluate it, consider its admission, and if admitted, emphasize its weight on findings and, if necessary, sentencing."[24]

IV Drug Evidence

According to the Court of Criminal Appeals of Texas, a single laboratory technician might work on 4,944 cases during a six-year tenure as attorneys are increasingly introducing narcotic evidence at trial.[25] [26]

For example, in *State v. Conlin*, on October 22, 2010, police officers found evidence of a marijuana cultivation operation and several guns while executing a search warrant at Stephen Conlin's residence.[27] [28]

During two subsequent searches, officers found marijuana in a shed in his backyard. Conlin was convicted for the possession of five or more kilograms of marijuana with intent to sell.[29] [30]

Later, though, the Court of Appeals of Minnesota reversed the conviction noting that it was aware of only one case where "nonscientific evidence alone was sufficient to establish the identity and weight of a suspected controlled substance."[31] [32]

The court found that "[T]he state failed to produce evidence beyond a reasonable doubt, that Conlin possessed with intent to manufacture one or more mixtures of a total weight of five kilograms or more containing marijuana."[33]

The Admissibility of Drug Evidence

A comparison of the standards that courts apply to drug evidence shows two approaches—a business as usual method and a much stricter method.

Confronted with narcotics evidence, most courts have applied the traditional approach to admissibility by typically relying on law not best suited to cases involving narcotics.

For instance, in *People v. Jones*, the defendant was arrested for the possession of five separate packets containing a white, rocky substance that the police believed to be a controlled substance. Before trial, the State selected two of the five packets and tested their contents.[34] [35] [36]

The contents of the remaining three packets were not tested. Jones was tried and convicted of possession with intent to deliver 1.4 grams of cocaine, the combined amount that was contained in all five packets.[37] [38]

The appellate court reversed, finding that the evidence only supported the defendant's possession of 0.59 grams of cocaine with intent to deliver.[39]

The Supreme Court of Illinois later agreed, concluding that, "When a defendant is charged with possession of a specific amount of an illegal drug with intent to deliver and there is a lesser included offense of possession of a smaller amount, then the weight of the seized drug is an essential element of the crime and must be proved beyond a reasonable doubt."[40]

The court acknowledged that "the chemist failed to test a sufficient number of packets to prove beyond a reasonable doubt that defendant possessed one gram or more of cocaine."[41]

However, the court concluded that a chemist generally need not test every sample seized in order to render an opinion as to the makeup of the substance of the whole.[42]

At the same time, other courts have raised the admissibility bar in cases involving narcotics evidence.

In *State v. Roche*, two men were convicted of methamphetamine possession.[43] [44]

After conviction, it became public knowledge that a chemist had engaged in conduct such as "self-medicating with heroin sent to the crime lab for testing purposes."[45]

That chemist was the same one who had tested the substances recovered in both men's cases and who reported the substances in question to be methamphetamine.[46]

The Court of Appeals of Washington later reversed, finding that "this newly discovered evidence of [the chemist's] malfeasance broke the chain of custody and tainted the integrity of [the two men's] trials."[47]

Specifically, the court observed that "a rational trier of fact could reasonably doubt [the chemist's] credibility regarding his testing of any alleged controlled substances, not just heroin, and regarding his preservation of the chain of custody during the relevant time period."[48]

Later, in *Ex parte Coty*, the Court of Criminal Appeals of Texas moved Roche forward when considering whether a violation of due process should be presumed when a laboratory technician has committed misconduct in another case.[49]

According to the court:

> "After thoroughly reviewing the record, the filed briefs, and cases from other jurisdictions, we hold that an applicant can establish that a laboratory technician's sole possession of a substance and testing results derived from that possession are unreliable, and we will infer that the evidence in question is false, if the applicant shows that: (1) the technician in question is a state actor; (2) the

technician has committed multiple instances of intentional misconduct in another cases or cases; (3) the technician is the same technician that worked on the applicant's case; (4) the misconduct is the type of misconduct that would have affected the evidence in the applicant's case; and (5) the technician handled and processed the evidence in the applicant's case within roughly the same period of time as the other misconduct."[50]

Raising the Bar

The split of authority acknowledged by the Court of Criminal Appeals of Texas in Ex parte Coty suggests the test that should be used for determining whether the admissibility bar should be raised for narcotic evidence if the risk of forgery with narcotic evidence is similar to the forgery risk for other evidence.

In addition, if the circumstantial evidence typically used to admit exhibits under law not customized to narcotics is similarly able to quell concerns regarding that risk, then the admissibility bar should not be raised.

However, if there is a higher forgery risk with narcotic evidence, or if the typical circumstantial evidence does not alleviate doubts concerning narcotic authorship, the admissibility bar should be raised.

The Higher Forgery Risk

Assume the prosecution claims that the defendant possessed cocaine, while the defendant claims that the cocaine is a forgery.

How easy will it be to determine whether the cocaine was falsified?

The Court of Criminal Appeals of Texas relayed a finding from a trial court that a substance losing 10.75 grams between measurements is attributable to the evaporation of chemical compounds during the 31-month period between its analysis and reanalysis.[51]

The Supreme Court's opinion in *Melendez-Diaz v. Massachusetts* indicated that it is not evident that "what [Massachusetts] calls 'neutral scientific testing' is as neutral or as reliable as [Massachusetts] suggests."[52 53]

The Court backed that concern and noted that "[f]orensic evidence is not uniquely immune from the risk of manipulation."[54]

The Sixth Amendment's speedy trial guarantee, in turn, allows for exclusion of prejudicially delayed narcotics, meaning that "excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify."[55]

The district court's opinion in Bachtel indicated that sometimes "there is simply no way to determine how the witnesses' memories were impacted or whether the reliability of defendant's trial was compromised by the lapse of time."[56]

In other words, the admissibility structure is based upon the foundational belief that the detection of forgeries is critical. This supposition is borne out by the multitude of cases in which lab technicians testify that an anonymous substance is illegal.[57]

It is uniquely easy to create, and difficult to detect, narcotic forgeries.

On most city streets, supermarkets wholesale items that are identical in form and appearance. A recent case in which a defendant prevailed against testimony of an expert in the visual comparison or visual assessment method illustrates the susceptibility of narcotic chemistry to analysis error.[58]

The Impracticability of Standard Admissibility

Such concerns about narcotic forgery might well be acceptable if courts applied an admissibility standard that substantially quelled concerns about genuineness.

But, as noted, courts typically allow for the admission of narcotic evidence under laws not customized to narcotics cases.

The critical issue is that, as currently applied, such laws are outdated rules in an increasingly biochemical environment with a number of cases that suggest methods to exclude drug evidence.

First, a drug-sniffing dog may well be shown to be the reason narcotics must be excluded.

As support for this proposition, consider the case of *State v. Farmer*.[59]

In *Farmer*, law enforcement officers conducted a warrantless search of the defendant's car based, in part, on an alert by a drug-detection dog.

The trial hinged on the admissibility of the dog-alert testimony, indicating there was probable cause to search the car.[60 61]

Oregon's Court of Appeals found that the dog-alert testimony was improperly admitted because "the record d[id] not establish that [the dog's] alert was sufficiently reliable to contribute to a conclusion that there was probable cause to search defendant's car."[62]

In the 21st Century, it seems that the extraordinary has become ordinary with the notion that complex chemical formulas are familiar to either a wild animal or a domesticated pet seemingly quaint.

Yet, many courts continue to deem narcotic evidence admissible based upon the assumption of such canine competence.[63]

Second, cases indicate that narcotics may be excluded by inaccurate scales that indicate possible issues with the evidence in question.

In *State v. Richardson*, the district court for Hall County, Nebraska, allowed for testimony regarding the accuracy of the scale used to weigh the cocaine in part because "the court overruled Richardson's objection based on 'lack of proper and sufficient foundation, foundation contains hearsay and confrontation.'"[64 65]

Before it was reversed, the jury found the defendant guilty, and it further found that the weight of the mixture containing cocaine was 10.25 grams.[66]

On appeal to the Nebraska Supreme Court, Richardson alleged that the Court of Appeals erred when it affirmed the District Court's admission of evidence of the weight of the cocaine over his objection that there was not sufficient foundation regarding the accuracy of the laboratory scale used to weigh the cocaine.[67]

The state Supreme Court found that the chemist's testimony was improperly admitted because "testimony regarding general procedures used by the laboratory was not sufficient foundation to admit her testimony regarding the weight of the cocaine."[68]

In order for any of these rulings to hold water, it would have to be extraordinary for anyone other than the alleged author to have possessed the narcotics.

In *Regan v. State*, this was a possibility because even though Regan was convicted of felony possession of marijuana after being arrested while driving, the Supreme Court of Wyoming reversed in part after finding "the evidence insufficient as a matter of law to support a conviction of constructive felony possession."[69 70]

In *United v. States v. Pecina*, the district court acknowledged that the quantity of drugs is relevant and will most often be offered in the government's case-in-chief, because it must be proved to a jury and will impact the charge.[71 72]

Moreover, in *Pecina*, the government attempted to request a videotape of the defense expert's work in weighing and testing the drugs.[73]

A request to videotape the defense expert's work is more than ironic given that crime laboratories do not provide videotapes of their facilities, and crime labs are where the misconduct occurs.

All of these cases reinforce the reality that we live in a world in which many chemical compositions are certain. Thus, it seems appropriate to raise the bar on exactly what type of information allows for admissibility under laws not suited to narcotics cases.

For instance, in *State v. Irwin*, "during a trial in Kent County Superior Court, it was discovered that drug evidence had been in a sealed envelope stored at the Chief Medical Examiner's Office Controlled Substances Unit (OCME drug lab) was missing, despite there being no appearance of tampering."[74] [75]

Someone had replaced the actual drugs that were seized with pills taken to control blood pressure.[76]

One subsequent investigation uncovered "multiple issues at the OCME drug lab relating to the storage of the evidence, security at the lab, documentation of the evidence's arrival at and movement within the lab, and other failures in protocol."[77]

Irwin reflects the reality of modern crime labs and the fact that scientific hypothesis is truly hypothesis, especially in the realm of narcotic chemistry.

Courts, therefore, should not rely on lab reports and an individual's testimony to conclude that the facts contained in the report are genuine and that the drug was, in fact, in the possession of the alleged author of the narcotic substance in question.

Analysis Equipment

The equipment used to test suspected illegal narcotics may also indicate inadmissibility.

In some cases involving the admissibility of narcotic evidence, however, courts have tried to extend the protection of analysis equipment to the so-called forensic formula that is less hospitable to this type of process.

For instance, in *People v. Pope*, the trial court found that the failure of police to preserve for testing an apparently empty chemist's tray on which screening tests had been conducted deprived the defendant of due process of law and required dismissal.[78] [79]

Meanwhile, the Supreme Court of Colorado found that if the trial court concludes that the defendant's due process rights under either the United States or Colorado Constitutions were violated because the officer failed to preserve the residue of the field test, then the trial judge must decide on the appropriate sanction.[80]

People v. Pope illustrates at least two problems with applying a liberal version of the law on analysis equipment to narcotic evidence.

Under the traditional law of analysis equipment, one would want to preserve the material because it has intrinsic legal value.

In such cases, the material would be put back on the market through the likelihood that someone else could legally use the original.

Conversely, because narcotics often do not have similar characteristics, and because narcotics can only be sold on the black market, some individuals like the law enforcement official in Pope attempt to dispose of the narcotics as quickly as possible.

In *Commonwealth v. Scott*, the chemist "deliberately committed a breach of lab protocols by removing the samples from the evidence locker without following proper procedures," and forging an evidence officer's initials.[81] [82] [83]

Courts such as the Scott court also seem to grasp the way that crime labs work in applying the analysis-equipment doctrine. For a crime lab to report accurate information, the chemist would have to not pilfer the drug lockers or the evidence vault.

On the other hand, crime labs generally do not maintain video cameras with recordings that can be copied or shared with anyone—usually, a defendant facing a cocaine charge, even if a plea has already been entered.

Therefore, the fact that a chemist stated that a given substance is illegal says nothing more than the chemist thought the defendant's cocaine was admissible as evidence in court.

Inherent Problems

One of the few courts to recognize the problems inherent in applying a liberal version of the law on analysis equipment to narcotic evidence was the Appellate Court of Illinois in the case of *People v. Raney*.[84]

In *Raney*, the court noted "that in a controlled substance prosecution, the State must present sufficient evidence that the substance at issue is in fact a controlled substance, and the court also found that "the State failed to prove defendant guilty beyond a reasonable doubt based on the lack of proper foundation for [the expert's] opinion that the substance in the 14 packets contained cocaine."[85]

Given the difference between a letter and one kilogram of cocaine, courts should apply something approximating the more rigorous analysis utilized by the courts in Scott and Raney. It should not be enough that the alleged author was identified with cocaine by a chemist.

Instead, courts should require additional evidence that links the alleged author to the cocaine. Today,

many courts use a less rigorous analysis that only requires identification by a chemist to admit narcotic evidence.

Again, there are at least a few problems with applying this analysis to narcotic evidence—for example, the analysis equipment may indicate inadmissibility or more.

As support for this proposition, consider *Commonwealth v. Fernandez*, a case in which the defendant was charged with possessing cocaine with intent to distribute.[86] [87]

The government was allowed to admit certificates of analysis without calling the technicians who performed the laboratory tests to testify.[88]

After the defendant was convicted, the United States Supreme Court held in *Melendez-Diaz v. Massachusetts* that certificates of analysis are testimonial statements whose admission in evidence must be accompanied by live testimony that can be confronted.[89]

In *Fernandez*, the Supreme Judicial Court of Massachusetts observed, "As to the certificate of analysis admitted to prove that the plastic bag found under the seat of [the defendant's] automobile was cocaine, it was the only evidence of the identity of the bag's contents."[90]

The court noted, "Without question, the admission of the certificate of analysis was not harmless beyond a reasonable doubt" and ordered the conviction reversed.[91] [92]

Fernandez should not be read to bolster the argument that a chemical analysis can never be used to admit particular narcotic content given the abundance of misconduct in crime laboratories.

However, suppose a case features evidence of prior or subsequent self-medicating, or stealing drugs, so-called dry labbing, or falsifying test results at the same time, or interested third party's accessing the lab, the proponent should have to present evidence of something beyond the testimony of a chemist or the criminal background of the alleged author.

At the Crossroads

Courts across the country are increasingly at a crossroads with regard to the admissibility of narcotic evidence, with most courts clinging to the belief that the risk of forgery of narcotic evidence is no different from the forgery risk with other types of evidence.

As a result, they continue to apply an admissibility standard put in place when the "theory of science" was still primarily a theory.

A few courts, however, are beginning to recognize that laws not suited to narcotics are outdated and must be ratcheted up to address the facts that no substance identity is absolutely certain and that the forensic formulae of controlled substances are fungible and can be highly susceptible to mishandling.

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[1] *Ex parte* Coty, 418 S.W.3d 597, 599 (Tex. Crim. App. 2014).
[2] *Id.* at 602.
[3] *Id.* at 603.
[4] *Id.*
[5] Colin Miller & Charles White, *The Social Medium: Why the Authentication Bar Should Be Raised For Social Media Evidence*, 87 TEMP. L. REV. ONLINE 1, 2 (2014).
[6] *Id.*
[7] FED. R. EVID. 901(a).
[8] *See* FED. R. EVID. 104(b) ("When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The court may admit the proposed evidence on the condition that the proof be introduced later.").
[9] *See United States v. Branch*, 970 F.2d 1368, 1370 (4th Cir. 1992) (stating that authenticity is a question for the jury and indicating that admissibility is governed by the procedure set forth in Federal Rule of Evidence 104(b)).
[10] *See Loper v. State, No. 580, 1992, 1994 WL 10820 (Del. Jan. 3, 1994).*
[11] *Id.* at *1.
[12] *Id.* at *5.
[13] *Crisco v. State*, 943 S.W.2d 582 (Ark. 1997).
[14] *Id.* at 583.
[15] *Id.* at 585.
[16] *Id.*
[17] *Abbot v. State, No. 54813, 2010 WL 3497642, at *1 (Nev. July 6, 2010).*
[18] *Id.*
[19] *Id.* at *2.
[20] *McBride v. State, 838 S.W.2d 248 (Tex. Crim. App. 1992).*
[21] *Id.* at 249.
[22] *Id.* at 252.
[23] *United States v. Smith, ARMY 20120918, 2015 WL 4400220 (A. Ct. Crim. App. July 17, 2015).*
[24] *Id.* at *8–10.
[25] *Id.* at *10.
[26] *Ex parte Coty, 418 S.W.3d 597 (Tex.* Crim. App. 2014).
[27] *Id.* at 599.
[28] *State v. Conlin, No. A13–0666, 2014 WL 1272118 (Minn. Ct. App. Mar. 31, 2014).*
[29] *Id.* at *1.
[30] *Id.*
[31] *Id.* at *2.
[32] *Id.*
[33] *Id.*. at *6.
[34] *Id.* at *7.
[35] *People v. Jones, 675 N.E.2d 99 (Ill. 1996).*
[36] *Id.* at 100
[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *Id.* at 101.
[43] *Id.* at 100.
[44] *State v. Roche, 59 P.3d 682 (Wash. Ct. App. 2002).*
[46] *Id.* at 686.
[45] *Id.*
[46] *Id.*
[47] *Id.* at 690-91.
[48] *Id.*
[49] *Id.*
[50] *Ex parte Coty, 418 S.W.3d 597, 602 (Tex. Crim. App. 2014).*
[51] *Id.* at 605.
[52] *Id.* at 601 (quoting the "findings of the trial court").
[53] *Melendez-Diaz v. Massachusetts, 557 U.S. 305 (2009).*
[54] *Id.* at 318.
[55] *Id.*
[56] *United States v. Bachtel, No. 13–00159–01–CR–W–FJG, 2015 WL 2151788, at *3 (W.D. Mo.May 7, 2015).*
[57] *Id.*
[58] See, e.g., *Colbert v. State, 547 S.E.2d 714 (Ga. Ct. App. 2001).*
[59] *See, e.g., State v. Shalash, 13 N.E.3d 1202, 1203 (Ohio Ct. App. 2014)* (reviewing the trial court's decision not to grant the request for a Daubert hearing on a motion in limine to exclude the state's expert testimony on whether the substances seized from his premises by police were in fact controlled substance analogs).
[60] *State v. Farmer, 311 P.3d 888 (Or. Ct. App. 2013).*
[61] *Id.* at 889.
[62] *Id.*. at 890.
[63] *Id.* at 900.
[64] *Id.* at 893.
[65] *State v. Richardson, 830 N.W.2d 183 (Neb. 2013)*.
[66] *Id.* at 185.
[67] *Id.* at 186.
[68] *Id.*
[69] *Id.* at 190.
[70] *Regan v. State, 350 P.3d 702 (Wyo. 2015).*
[71] *Id.* at 710.
[72] *United States v. Pecina, 302 F.R.D. 492 (N.D. Ind. 2014).*
[73] *Id.* at 494.
[74] *Id.* at 496.
[75] *State v. Irwin*, ID No. 1309012464, 2014 WL 6734821 (Del. Nov. 17, 2014).
[76] *Id.* at *1.
[77] *Id.*
[78] *Id.*
[79] *People v. Pope, 724 P.2d 1323 (Col. 1986).*
[80] *Id.*
[81] *Id.* at 1327.
[82] *Commonwealth v. Scott, 5 N.E.3d 530 (Mass. 2014).*
[83] *Id.* at 536.
[84] *Id.*
[85] *People v. Raney, 756 N.E.2d 338 (Ill. App. Ct. 2001).*
[86] *Id.* at 705–06.
[87] *Commonwealth v. Fernandez, 934 N.E.2d 810 (Mass. 2010).*
[88] *Id.* at 812.
[89] *Id.* at 822.
[90] *Id.*(citing *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009)).
[91] *Id.* at 823.
[92] *Id.*
[93] *Id.*

CYBERATTACK ALERT: According to several recent media reports, an unnamed foreign nation has compromised newly-discovered flaws in the Microsoft Exchange Server email software and breached the cybersecurity efforts of more than 60,000 known victims.

Unlike previously reported hacks linked to espionage and high-value organizations, such as the federal government and large corporations, this one involved the private data of small businesses—including a large number of law firms—and local governments across the U.S.

This attack is on the heels of the SolarWinds' software breach and makes it unambiguously clear that American companies of all sizes and industries are targets for—and vulnerable to—this kind of cybersecurity hacking, both directly and through vendor software. The all-in business and legal costs associated with such breaches regularly reach into the millions of dollars, according to the Ponemon Institute's most recent study.

The Institute also found that planning and protective steps on the front end by businesses can dramatically reduce these costs.

Proactively planning for these risks can also help minimize the possibility of a breach and avoid the potential double victimization of a data breach: first by the breach itself, and then the legal liability, compliance costs, and regulatory enforcement actions.

These breaches and the related costs "are yet another illustration of the need for all businesses to include cybersecurity and privacy compliance as part of their risk management strategy," the Institute said.

The SolarWind 'Orion' platform data breach alone impacted approximately 18,000 public and private sector customers, according to Cyber Unified Coordination Group (UCG). The UCG also said that the Russian-backed Advanced Persistent Threat (APT) group is most likely responsible for the SolarWinds hack.

The National Institute of Standards and Technology (NIST) released the final version of its Zero Trust Architecture (ZTA) publication (NIST Special Publication 800-207) in August 2020, which will help organizations such as law firms deploy a security model for the future.

The National Security Agency (NSA) and Microsoft are also advocating for Zero Trust Architecture to help combat sophisticated cyber-attacks such as SolarWinds.

VIRTUAL COURT: Just as the COVID-19 pandemic may have brought permanent changes to the bar workplace and the legal workplace, it may also have forever changed the way courts operate.

As a result, in the long term, what has been called virtual justice may well be here to stay.

Whether that's positive, negative, or both depends in part on whom you ask, and on the type of proceeding being discussed.

For example, the Conference of Chief Justices and the Conference of State Court Administrators jointly endorsed a set of principles that said many court processes should remain online even after the threat of infection has passed, and many note that the technology gap has been nowhere near as wide as was feared.

However, many prosecutors and defenders alike say that jury selection and trials themselves are negatively impacted "by the lack of physical presence."

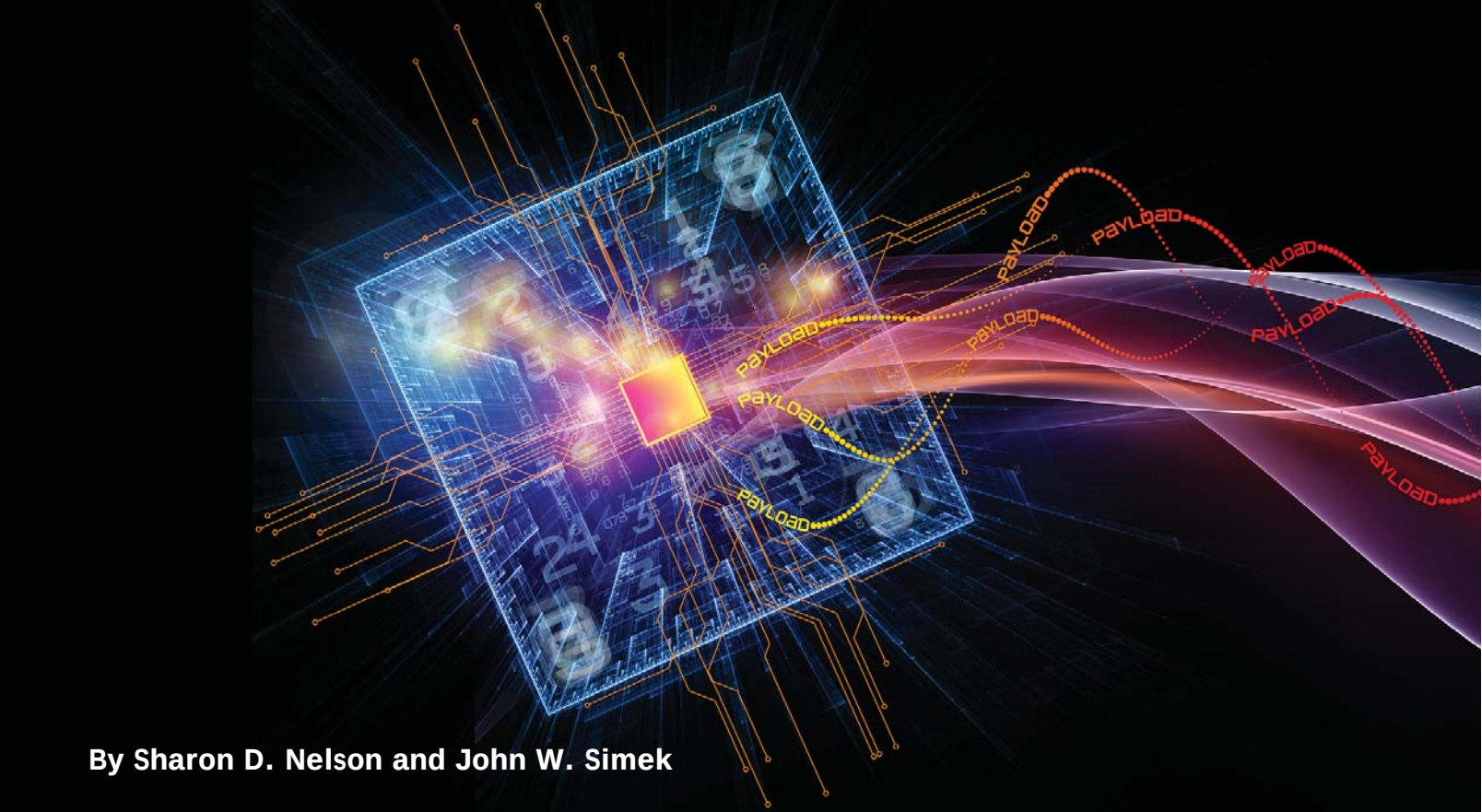
UNHOUSED ACTION ORDERED:
Both the City and County of Los Angeles have been ordered to offer housing to the entire homeless population of downtown L.A.'s 50 square-block 'Skid Row' by October.

U.S. District Judge David O. Carter recently set a timetable by which single women and unaccompanied children must be offered placement within three months, families must be given shelter within four months, and every indigent person on Skid Row would be given the opportunity to come off the streets by Oct. 18.

The groundbreaking 110-page order comes in response to a request for immediate court intervention submitted last week by the plaintiffs in a year-old federal lawsuit seeking to compel the City and County to quickly and effectively deal with the homelessness crisis.

In the scathing order, the judge wrote that the City and County of Los Angeles were guilty of creating an "inertia" that "has affected not only Black Angelenos, not only homeless Angelenos, but all Angelenos of every race, gender identity, and social class."

The judge said that virtually "every citizen of Los Angeles has borne the impacts of the city and county's continued failure to meaningfully confront the crisis of homelessness. The time has come to redress these wrongs and finish another measure of our nation's unfinished work."



By Sharon D. Nelson and John W. Simek

Goodbye VPNs: Hello, ZTNA

IN THE INTERNET WORLD OF TODAY, Virtual Private Networks (VPNs) are very much taken for granted.

But, there is a downside. Riddled with vulnerabilities, they are subject to costly and destructive cyberattacks, especially in the current work-from-home environment.

Enter Zero Trust Network Access.

What It is

The Zero Trust Network Access security model, also known as ZTNA, allows remote workers to access applications through a secure web-based gateway that implements least-privilege principles and supports Multi-Factor Authentication (MFA) and device security checks.

Unlike a standard VPN infrastructure, Zero Trust is highly scalable, more affordable, and easily integrates with various single sign-on (SSO) platforms readily available in the marketplace.

ZTNA also permits the configuration of access control policies to manage network access permissions based on users' privileges and devices.

Reappraising the Current Environment

An October 2020 study—commissioned by computer security consultancy Cloudflare and compiled by Massachusetts-based researcher Forrester—offered some revealing findings.

According to the study, working from home required firms to reappraise how they operated in a cloud environment.

However, 80 percent of the IT decision-makers interviewed said their companies were "unprepared" to make the transformation as existing information technology (IT) practices made it difficult to support employee productivity without compromising their network data security.

As a result, 76 percent of the decision-makers said their firms intend to accelerate their shift to the Zero Trust security framework.

More than three-quarters—76 percent—of decision-makers polled also said their companies' network security practices were "antiquated" and needed to shift towards Zero Trust Network Access, while 82 percent of the firms said they were "committed" to migrating to a Zero Trust security architecture.

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To achieve this goal, close to half of the firms surveyed elevated the role of Chief Information Security Officer (CISO) to board visibility, while almost 40 percent had already put a ZTNA pilot in place.

Migration Challenges

The migration towards Zero Trust, though, faces various challenges to being fully implemented.

Slightly more than three-quarters of those firms polled for the study specified Identity and Access Management (IAM) as the major challenge.

At the same time, almost 60 percent of all businesses have experienced some form of data breach or seen an increase in the number of phishing attempts during the ongoing COVID-19 pandemic. Ransomware attacks alone affected 29 percent of the respondents to the Cloudflare study.

Infrastructure outages and VPN connection latency issues disconnected one-third and 46 percent of workers, respectively.

In response, several software vendors have offered their services for free or on extended trial periods to allow customers to test their Zero Trust security solutions during the pandemic.

The free trial period has allowed companies to migrate to a Zero Trust security model, test advanced security solutions from reputable vendors, and select the products that met their security needs.

Why the sudden interest in a Zero Trust architecture?

The short answer is our migration to the cloud, increase in third-party service providers and the need for mobility. Protecting the security perimeter was effective as long as all the services and people were positioned within the network's perimeter boundaries.

A VPN dangerously assumes that a device outside of the perimeter is trustworthy and simply needs to connect securely to inside resources.

With more cloud services and a mobile workforce, architecture is seen as needed to provide security for the user and application regardless of location or what device is being used.

No Cure-All

Even though Zero Trust Network Access as a replacement for VPN is on the horizon, it is not a cure-all solution for everyone or every application.

ZTNA works well with applications that have migrated to the cloud, where users that require authentication for access are clearly recognized as such.

In other words, those users that need access have been identified, and trust is placed in them and them alone.

Where ZTNA doesn't work well is for applications that require exposure to the public.

Think about Zillow, Amazon, Expedia, Airbnb, and others that are, by their very nature, open to public access.

A user logging on to a public site just to see what new products are available for sale, for example, wants to remain anonymous until a purchasing decision is made.

Users, though, are still a problem even with ZTNA. If a cybercriminal gains access to a valid user's credentials, the door is wide open to unauthorized access to vital data and information.

In other words, if the user continues to recycle passwords over and over or fails to utilize Multi-Factor Authentication, an attacker can assume the role of a valid user.

The eventual introduction of Zero Trust Network Access was first seen a while ago, but COVID-19 has accelerated its arrival.

However, just like any other technology, ZTNA has to be securely implemented with strong authentication controls to secure critical data and access, but also protect users from themselves.

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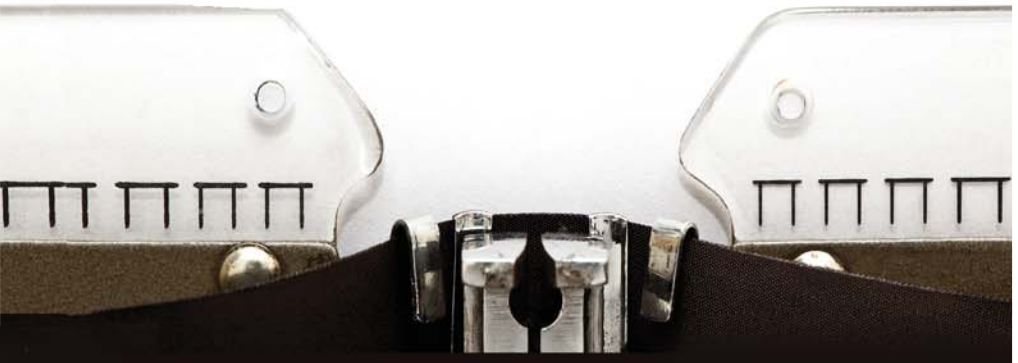
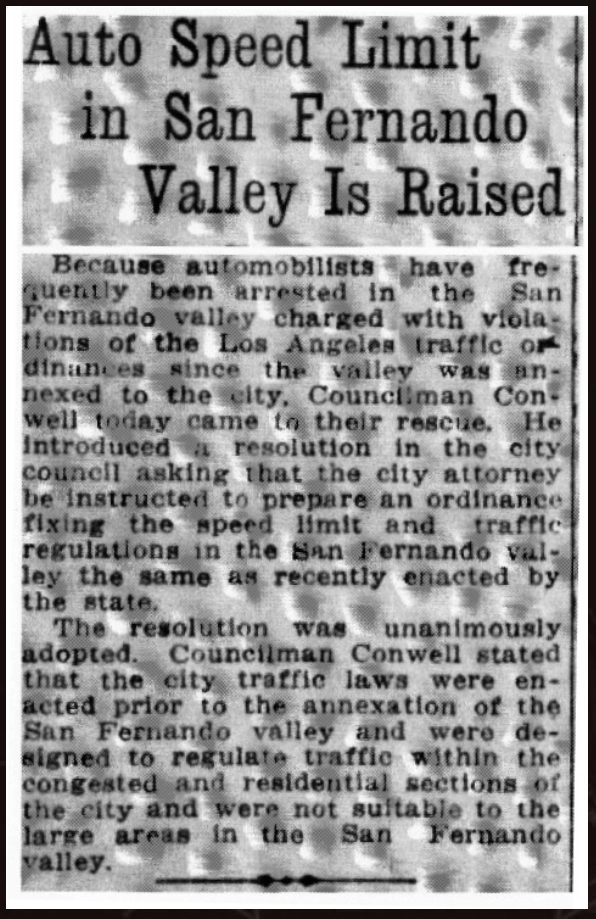
Retrospective





Auto Speed Limit in San Fernando Valley Is Raised

Because automobilists have frequently been arrested in the San Fernando valley charged with violations of the Los Angeles traffic ordinances since the valley was annexed to the city, Councilman Conwell today came to their rescue. He introduced a resolution in the city council asking that the city attorney be instructed to prepare an ordinance fixing the speed limit and traffic regulations in the San Fernando valley the same as recently enacted by the state.

The resolution was unanimously adopted. Councilman Conwell stated that the city traffic laws were enacted prior to the annexation of the San Fernando valley and were designed to regulate traffic within the congested and residential sections of the city and were not suitable to the large areas in the San Fernando valley.

It was July 31, 1915, and the *Los Angeles Herald* reported that the L.A. City Council had voted to establish speed limits for "automobilists" in the San Fernando Valley. The move was spurred by the growing number of speeders being arrested on the Valley's dirt roads. The new speed limits? 15 miles per hour for automobiles and 12 miles per hour for trucks.

Investing in the Future

JOY KRAFT MILES
VCLF Co-President

AMANDA MOGHADDAM
VCLF Board Member

joy@kraftlawoffices.com moghaddama@lawyersmutual.com

AS WE CONTINUE TO SETTLE WELL INTO THE new year, perhaps it is a good time to reflect on what we have all been through and where we may be headed.

In many ways, we are still in a sort of limbo. Whether fully vaccinated, biding our time until our second shot and full immunity, or simply hoping for some return to normalcy, we all share the same sense of anticipation mixed with a gnawing apprehension for what the future holds.

In this state of suspended animation, I think it might be helpful to reflect for a moment on the good around us.

The Valley Community Legal Foundation is a good example.

The organization has had an exciting first quarter, working hard to increase its charitable outreach. Most specifically, its goal of supporting education for those interested in pursuing a legal career.

In our most recent update, we shared about the VCLF's support for the SFVBA's Inaugural Mock Trial Competition, which took place virtually on April 9-10, 2021, and the decision of the Foundation's Board to present $3,000 in scholarships to the Mock Trial Competition's winners.

The SFVBA Sub-Committee overseeing the Mock Trial Competition determined that a $1,000 scholarship would be given to the law student receiving the Best Advocate Award, while a $2,000 scholarship would be given to the First Place Team.

The VCLF is also very pleased to announce that it received a $1,000 donation from the Burbank-based Lawyers' Mutual Insurance Company, as well as an anonymous $500 donation that has been earmarked for Mock Trial scholarships.

Both Lawyers' Mutual and the anonymous donor were very excited for the opportunity to support deserving students on their journey toward their law degrees.

The Foundation also voted to award these funds to the students determined to have given the Best Direct, Best Cross-Examination, Best Opening, and Best Closing—a total of $4,500 in scholarships to deserving competitors!

The Best Team fielded by UCLA received the $2,000 scholarship and was crewed by Kathryn Rosenfeld, Daniel Zhivanaj, Philip Raucci, and Lillian Tsao. The Second Place Team representing Pepperdine consisted of Rebecca Voth, Jon Zima, Gabriella Castro, and Erin Weilbacher.

The Best Advocate award went to Eric Leroy from UC Davis, who was awarded a $1,000 scholarship, while Gabriella Castro of Pepperdine and Jon Zima of Pepperdine, both received $375 awards for their Best Opening and Best Closing presentations, respectively.

The Best Direct Examination scholarship went to Matthew Michaelson of UC Davis, who was awarded a $375 scholarship, while the Best Cross-Examination scholarship went to Erin Weilbacher of Pepperdine, who also received a $375 scholarship.

Sincere congratulations to these outstanding trial participants!

Please read the feature article in this issue of *Valley Lawyer* for more details on the competition. Members of the VCLF were tremendously excited to watch as these law students exhibited their mastery of the prompt materials.

We hope that these scholarships not only help with books and tuition, but also give these very deserving students the confidence they need as they prepare to join our legal community as full-fledged attorneys. They are truly outstanding and we tip our hats to their accomplishments.

Our thanks to the judicial officers, both active and retired, who agreed to preside over the competition and we could not be prouder of our Bar members' generous donations of their time and funds to foster the next generation of advocates.

Seeing all of the planning of SFVBA Trustee Kyle Ellis and the Mock Trial Subcommittee he heads come to fruition was a genuine joy and inspiration.

Here's to an even more generous 2022!

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.

A Look Back, A Look Ahead

TAYLOR F. WILLIAMS-MONIZ
SCVBA President

info@scvbar.org

WITH SPRING RAPIDLY coming to an end, The Santa Clarita Valley Bar Association is eagerly looking forward to this coming summer when we hope to start having in-person gatherings to bring our Santa Clarita community back together!

Of course, COVID-19 impacted the Santa Clarita Valley Bar Association with events, including monthly board meetings as well as our monthly CLE luncheons and dinners, going virtual.

Despite the physical separation, though, the SCVBA continued to host a number of informative and entertaining events.

In February, the SCVBA hosted its annual Employment Law Update featuring Poole Shaffery & Koegle partner Brian E. Koegle, who updated the bar regarding all things good, bad and ugly regarding new employment law, including best COVID-19 practices.

The following month, attorney and mediator Sean Judge hosted a program—*Mediation, Settling and Finalizing Cases on Zoom*—that presented new useful mediation and settlement strategies that can be utilized given that mediations are now being held almost exclusively in a remote capacity.

Both the February and March events were well attended, fun and very informative.

This past April 15-29, the SCVBA hosted its 8th Annual High School Essay/ Speech Competition for students from the William S. Hart School District.

For the competition, the young scholars submitted their essays answering the following question—"If you could travel back in United States history to personally witness an event or series of events, leading to the enactment of national legislation, what event(s) would that be, and why is this legislation meaningful to you?"

The responses were extremely well written, and thought-provoking and the panel of judges selected the top three essays as the winners. The Board was extremely impressed with the high quality of all the essays that were submitted.

This month, on May 20, the SCVBA will host its *Annual View From The Bench* event with Judge Eric C. Taylor, Presiding Judge of the Los Angeles Superior Court.

Judge Taylor will provide his insights into the impact of the COVID-19 pandemic on the courts and what to expect over the coming months.

During the event, the three winners of the Essay/Speech competition will present their winning entries. We cordially invite members of the San Fernando Valley Bar Association to attend this great event.

On April 30, I had the opportunity to co-host a CLE with fellow San Fernando Valley Bar Association Trustee Alan Eisner.

The hour-long CLE—*Stretch Your Body and Relax Your Mind*—consisted of a yoga session with a discussion on the importance of mental wellness to members of the legal community.

The session was my first time teaching a zoom-yoga class; it was a blast!

As you can see, the Santa Clarita Valley Bar Association has remained active despite the limitations presented by the global pandemic.

With the anticipated reopening of businesses and a return to our pre-COVID routine in Los Angeles County and beyond this summer, the SCVBA is hopeful that in-person events will resume so that we can once again gather together in person to socialize and advance our legal community.

A reminder—elections for the SCVBA Board will take place this fall.

If you are interested in running for a seat on the Board, we heartily encourage you to do so, and we would also love members of the SFVBA to get involved with the SCVBA.

For more information about getting involved or standing for election to the SCVBA Board, please reach out to Sarah Hunt at info@scvbar.org.

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