

VALLEY LAWYER



OCTOBER 2021 • \$5

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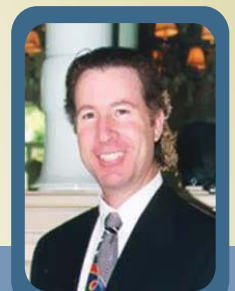
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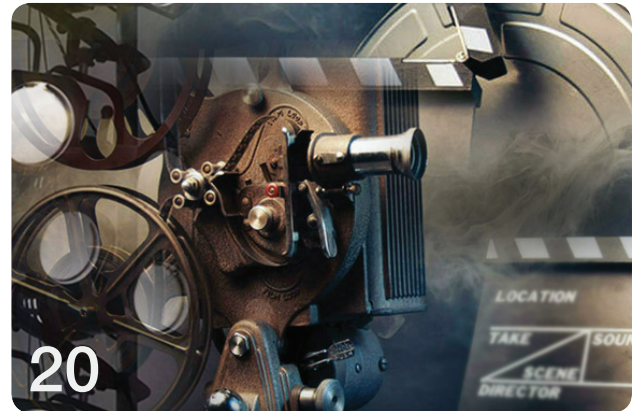
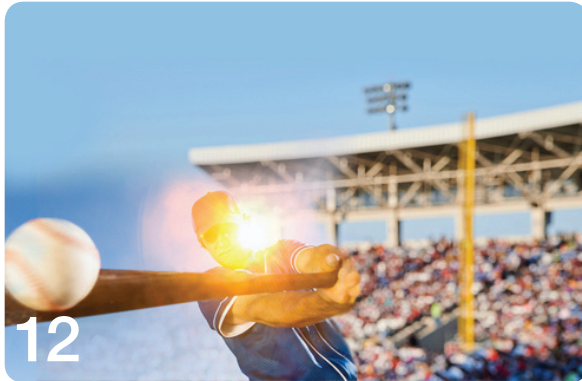
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PRESIDENT'S MESSAGE

Hope to See You (In Person) Soon

WHILE IT FEELS UNOFFICIAL to write this column before the new board term takes place, official things are taking place behind the scenes at the San Fernando Valley Bar Association.

As we go to publication the bar is currently undergoing an audit of the latest Board of Trustees Election. Next month we plan to introduce the full board for the 2020-2021 term. As of this writing, it looks like many of the people who helped the organization during the pandemic will return. I particularly look forward to some new faces on the board, sections, and committees.

The SFVBA has a difficult decision to make: when do we go back to in person events. We welcome member input. Informally members have said by a large majority they want section meetings, the Valley Bar Network, and our annual events to return in person in some capacity.

In addition, the bar offices and conference room rentals have been largely closed or unavailable for member use. At the first board meeting I plan to appoint trustees to a new safety and compliance committee. This committee will submit monthly reports to ensure the SFVBA is in compliance with both local rules and member comfort levels.

While it appears some of our events will continue remotely for the near future, member communications and "ease of use" will be a focus for the next few months.

Proposed changes include electronic calendars for each section, committee, and annual events. Instead of looking for emails, you will be able to automatically enroll in areas of interest, and events will automatically show on your iPhone, Google, or Outlook calendar.

CHRISTOPHER P. WARNE
SFVBA President



cw@warnelaw.com

Subscribable calendars have been used for season tickets to local sports teams and appointment based small businesses for some time. If an event changes, gets added, or canceled, your calendar will automatically update in an unobtrusive manner.

I hope more members will attend some of the amazing monthly MCLE events when they see events automatically on their calendar.

Further, email communications will be improved. The organization will soon allow members to choose which emails they get, and how often. For example, the SFVBA has recently started sending out court updates. Members will be able to select if they want to subscribe to these updates.

Or as another example, the tax and bankruptcy sections regularly have monthly MCLEs that crossover to other practice areas. Members will be able to choose which sections they get emails from.

As we return to in person, we want to support our local businesses. If you have a favorite event space or restaurant that would be a good fit for a happy hour or banquet, let the bar staff know. Or, ask to join the events committee.

Lastly – Please join me at the installation gala of our sister association the Santa Clarita Valley Bar Association. SCV Bar President Jeff Armendariz will be installed November 17 at the Oaks Club in Valencia. I am looking forward to announcing more joint events with the SCV Bar soon. SFVBA members can register at: <https://scvbar.org/event/awards-installation-gala/> 

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- Murder: Not Guilty by Reason of Insanity, Jury (Van Nuys)
- Medical Fraud Case: Dismissed, Preliminary Hearing (Ventura)
- Domestic Violence: Not Guilty, Jury Finding of Factual Innocence (San Fernando)
- \$50 Million Mortgage Fraud: Dismissed, Trial Court (Downtown, LA)
- DUI Case, Client Probation: Dismissed Search and Seizure (Long Beach)
- Numerous Sex Offense Accusations: Dismissed before Court (LA County)
- Several Multi-Kilo Drug Cases: Dismissed due to Violation of Rights (LA County)
- Misdemeanor Vehicular Manslaughter, multiple fatality: Not Guilty Verdict (San Fernando)
- Federal RICO prosecution: Not Guilty verdict on RICO and drug conspiracy charges (Downtown, LA)
- Murder case appeal: Conviction reversed based on ineffective assistance of trial counsel (Downtown, LA)
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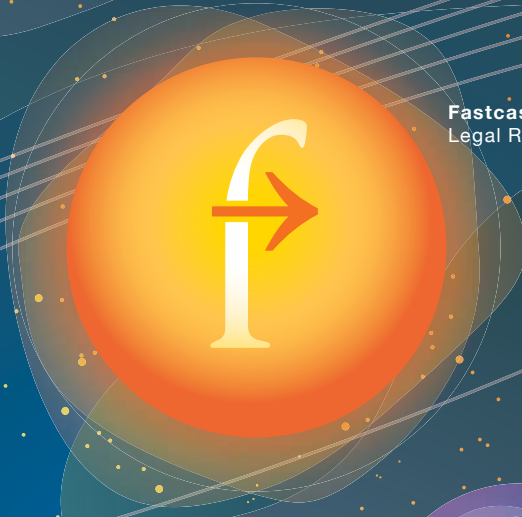
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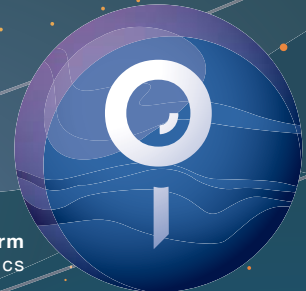
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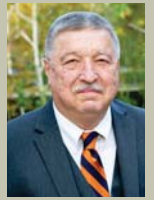
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Wisdom For the Ages

MICHAEL D. WHITE
SFVBA Communications
Manager



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Much has happened—some might say, degenerated—since I originally wrote this column for the April 2020 issue of Valley Lawyer. Based on the current state of political and social discourse, I thought it might be a good idea to give it a going over and another airing.

USUALLY AVAIL MYSELF HERE TO TALK ABOUT THE editorial content of the issue of *Valley Lawyer* at hand.

This round, though, I just wanted to share something that's been weighing heavily on my mind as of late.

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

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

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

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

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

Think what you may of George Washington. Hardly the Marble Man of cherry tree and Potomac dollar legend, he was known for exhibiting common decency and displaying notable manners and civility throughout his life—a period when diligence in social intercourse was common practice by all levels of society.

At the age of 14, he collected 110 canons of personal conduct under the title *Rules of Civility & Decent Behaviour in Company and Conversation*. He drew them from the English

translation of a French work that laid out practical standards for social intercourse based on common decency, courtesy, and self-control.

The little, 30-page book is a gem and covers a sweeping variety of social activities.

Washington's Canons include such activities as not laughing at your own jokes or playing the flatterer, while No. 65 reads simply: "Speak not injurious words, neither in jest or earnest; scoff at none although they may give occasion."

No. 86 tells us that, "In disputes be not so desirous to overcome as not to give liberty to each one to deliver his opinion..." while No. 49 calls on the reader to, "use no reproachful language against any one; neither curse nor revile."


Insights for the ages, from a 14-year-old young man from Virginia who, one day many years later, would be lauded as the Father of His Country. Perhaps, we should set the parking brakes on our iPhones and Twitter accounts, take a minute and ponder them.

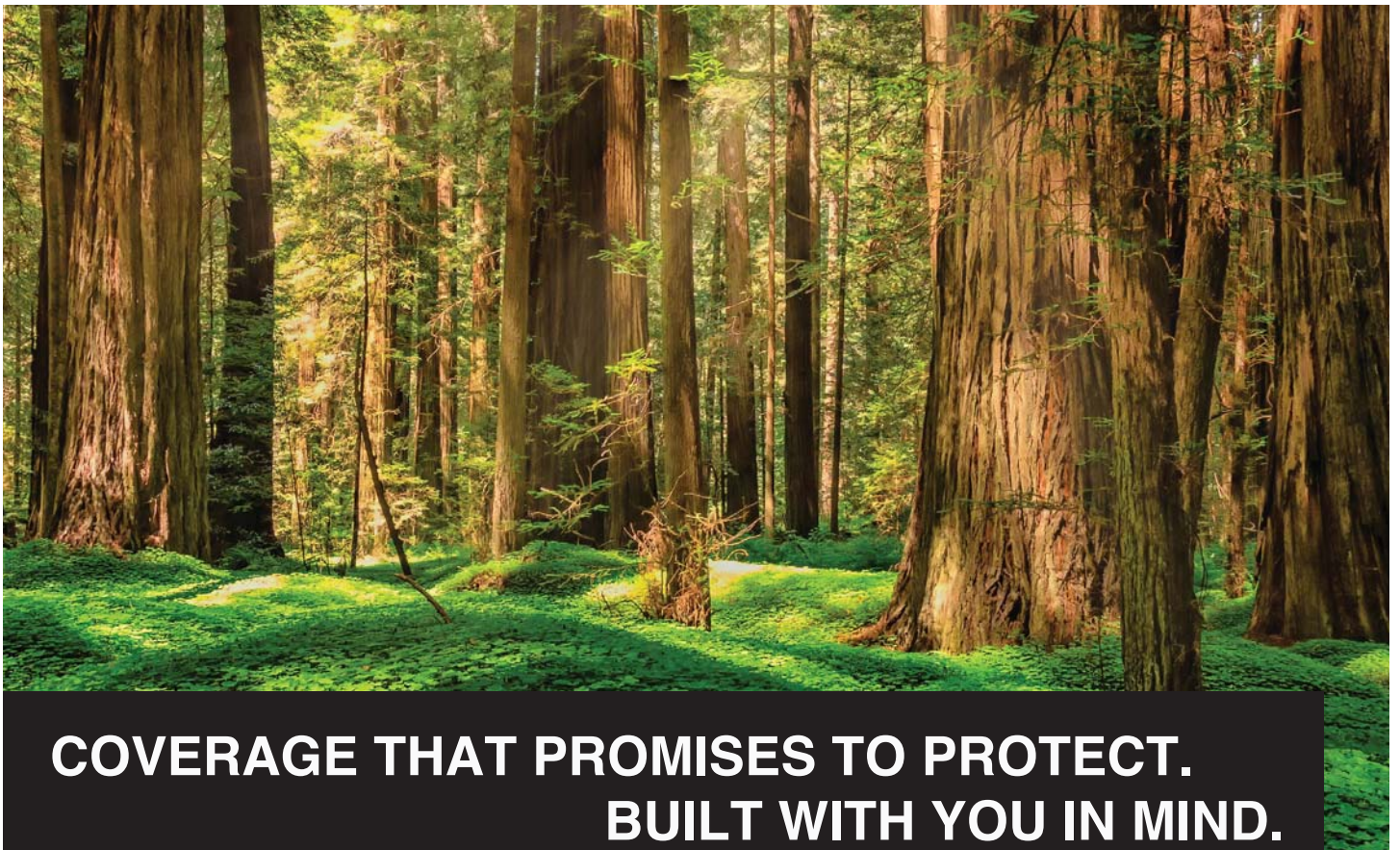
A contemporary of Washington who succeeded him as our nation's second Chief Executive, John Adams, once said, "Take care, for, blown away by a torrent of passion, we make a shipwreck of conscience."

He made that comment in December 1770 when he put his legal career on the line by taking a violently unpopular stance by defending the British soldiers being tried for their part in the Boston Massacre.

A "torrent of passion"—an apt description, perhaps, of the times we live in.

We are not clones of one another. Each of us has our own individual perspective, our own unique way of looking at things; but I sincerely hope that we haven't yet reached the point where it is perfectly acceptable for an opinion that dares diverge from conscience-less groupthink to be drowned in a tsunami of Orwellian invective and verbal abuse.

It hasn't, at least quite yet, and, I trust in our collective conscience that it never will. 



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| 3 |  4 ZOOM MEETING 5:30 PM | 5 MCLE WEBINAR Santa Clarita Valley Bar Association Reset, Recover, Renew: Wellness Strategies for Legal Professionals in the New Normal 12:00 PM Free for SCVBA and SFVBA Members! (1 MCLE Hour in Competence Issues) https://us02web.zoom.us/j/845678901234 | 6 FREE WEBINAR California Law on Sponsoring a Workplace Retirement Plan—What you need to know 12:00 NOON Learn about recent California legislation requiring employer-sponsored retirement plans for businesses with more than 50 employees by June 30, 2021 and businesses with more than five employees by June 30, 2022. ABA Retirement Funds hosts. Register: https://www.abaretirementfunds.com/register/ | 7 ZOOM MEETING Membership and Marketing Committee 6:00 PM |  Free Fastcase Webinars Get the most out of Fastcase All SFVBA Members have access to Fastcase https://www.fastcase.com/blog/free-fastcase-webinars/ | | |
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| 17 | 18 ZOOM MEETING Mock Trial Committee 6:00 PM | 19 WEBINAR Taxation Law Section IRS Current Enforcement Trends of Cryptocurrency Transactions 12:00 NOON Former DOJ Attorney Stephen Turanchik will discuss the IRS' focus in audits and enforcement as well as proposed Congressional legislation concerning cryptocurrency transactions. (1 MCLE Hour) | 20 | 21 ZOOM MEETING Inclusion and Diversity Committee Meeting 12:15 PM | 22 | 23 | |
| 24 | 25 | 26 | 27 | 28 | 29 WEBINAR SFVBA, MCBA and SCVBA Present Stretch Your Body and Relax Your Mind! 4:30 PM – 5:30 PM Monthly Interactive Exercise Workshop led by Board Members Alan Eisner and Taylor Williams-Moniz. All levels welcome, no equipment needed. Free to all. | | 30 |
|  31 | | | | | | | |



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By reading this article and answering the accompanying test questions, you can earn one MCLE credit. To apply for the credit, please follow the instructions on the test answer form on page 19.

By Lisa Miller

Grand Slam: Hitting a Litigation Funding Home Run

Litigation financing allows patent owners to fight for the right to monetize, in their own time and in their own way, while maintaining control over the asset and provides access to justice for litigants who cannot underwrite litigation.



ENTITIES PRODUCING INTERESTING TECHNOLOGY can count on misappropriation.

In fact, through trial, patent cases cost up to \$10 million, according to the American Intellectual Property Law Association. But awards far outweigh costs—punitive damages, potentially tripling compensatory awards, are in play since 2016 when the *Halo Electronics* case facilitated willful infringement findings.¹

And litigation increases as economic conditions deteriorate, as cash-strapped clients pressure counsel to cut costs.

Although patents can be monetized through sale or license, including to resolve infringement litigation, patent holders hesitate to do so with competitors, fearing loss of control over the property.

Enter Lit Fin

Litigation financing—also known as ‘lit fin’—allows patent owners to fight for the right to monetize, in their own time and in their own way, while maintaining control over the asset.

Lit fin provides access to justice for litigants who cannot underwrite litigation and minimizes risk by moving it to third-party funders, unlocking patents’ value for rights-holders.

Funders gauge claims as investment opportunities. Terms may vary, but usually the investor—a litigation funding company, hedge fund, private party, consortium, family office, other entity—pays attorney fees and costs in exchange for an interest in the recovery, without repayment obligations should a case goes sideways. Funders generally do not actively participate in case management or decision-making.

Lit fin is important as the tech industry focuses more on collaboration and product integration, while litigation has increasingly become a standard component of a start-up’s licensing attempts.

As a business case, some companies find it cheaper to infringe a start-up’s patents, then outspend them in court, as start-ups inevitably lack resources to fight established companies that appropriate their technology.

Lit fin also allows start-ups, universities, individuals, and smaller companies to aggressively protect their intellectual property while off-loading cost and risk.

Funders invest in the plaintiff-side files or bundled portfolios of both plaintiff and defense cases, which include ongoing and not-yet-filed matters. Risk-spreading

makes bundle deals attractive as litigators structure them to secure part of their expected profit even if they lose a case or two. Savvy law firms use lit fin connections for business development by passing advantages to clients via flexible fee structures.

However, these advantages cost money on the back end—lit fin is non-recourse, so funders get paid first, with interest, and interest rates are high lit fin is not a loan, so the usual interest rate rules don’t apply. Over the course of a lengthy trial, this adds up, eating into the plaintiff’s recovery.

Coming to Terms

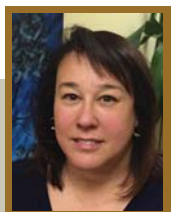
Patent litigation can feel glacial, which informs deal terms.

Funders, thus, must be capitalized and structured so they can commit enough resources to support the litigation in a stair-step fashion while they hold back some of the investment.

A mid-litigation off-ramp for funders might be part of a deal, allowing an early exit based upon a material negative ruling—a stay pending from the Patent Trial and Appeal Board, a resolution, a negative discovery ruling, an adverse *Markman* claim construction ruling, or other event.

Some funders force settlement using terms that increase the cost of financing if a reasonable settlement offer is rejected, but, once funders commit to financial backing, the issues include:

- What exactly is being financed—all litigation expenditures, a phase of litigation (post-*Markman* hearing litigation), experts, or some other arrangement.
- The amount, frequency, and mechanics of funding transfers.
- Repayment terms that consider the numerous possible different resolution scenarios that could occur.
- Risk allocation, including identifying the risks and describing how and to what extent each is shared.
- The degree of control over the settlement.
- Investor off-ramps, including when, why, and with what repercussions a funder can abandon the deal.
- Any reserve capital that the funder is holding, how the reserve will be treated, and reporting requirements regarding that reserve.



Attorney **Lisa Miller** is the principal of Lex Law Corp. and is licensed to practice in both California and New York. She consults, serves as an expert witness in several areas including litigation financing, and currently sits as an administrative judge hearing tax appeal cases in the San Francisco Bay Area. She can be reached at LM@LexLawCorp.com.

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Support for lit fin is not universal as concerns generally focus on frivolous lawsuits. However, because successful lit fin requires that funders back winners, frivolous cases rarely survive.

Trends in Litigation Finance

Ten states have regulated lit fin by broadly requiring registration, fee disclosures, non-recourse structure, the right of rescission, and a hands-off approach to the conduct of the case. Generally speaking, laws do not limit fees.

Although virus-related lockdowns have slowed litigation, lit fin is counter-cyclical.

Cash shortages actually provide opportunities for funders with litigation finance is expected to surge once the pandemic recedes and business gears back up.

Current economic challenges foster innovation, opening new markets or greater market share. As a result, patent litigation is expected to increase post-COVID-19, opening expanded lit fin markets.

COVID is expected to impact the tech sector in specific ways: Some companies are implementing reductions in capital expenditures by pursuing only the most lucrative and commercially viable inventions, abandoning less desirable applications.

Life sciences patent filings may increase as COVID inspires

new testing kits, therapeutics, and vaccines with the number of artificial intelligence (AI), data centers, remote working platforms, and 5G-related patent applications likely surging both during and after the pandemic. All of these areas will assuredly be busy in terms of infringement and enforcement.

Interestingly, some law firms are beginning to engage in lit fin on the funder side. Some defense firms are exploring self-funding plaintiff-side contingency work to add an additional revenue stream.

Legal Trends in the Patent Space

Infringement filings by non-practicing entities increased after the last decade's recessions.

The tech bubble burst, patent-rich entities failed, and businesses swooped in to purchase their patents at bargain basement rates. These savvy buyers are now defending their rights, but with a non-traditional twist as plaintiffs likely committed no bad acts are, in reality, likely shell companies that only hold patents, and possess few documents.

Traditional defensive moves such as counterclaims and over-zealous discovery don't work. This could re-cycle after 2021 and perhaps 2022.

Though patent suits traditionally run longer than other civil litigation and have mid-point off-ramps, the court in *Berkheimer v. HP* recognized that fact issues preclude early invalidation, limiting early case dismissals.²

At the Patent Board, Inter Partes Review institution rates—the first major hurdle for defendants—have fallen from 87 percent in 2013 to less than 60 percent in 2020. This means less litigation, making Inter Partes Review less attractive to defendants, and a decline in the risk to patent holders.

The America Invents Act of 2011 expanded the invalidation process in Inter Partes Review before the Patent Board, so defendants now seek review to challenge validity and pause district court litigation. Few patents survived early review.

As a result, defendants end litigation early or increase costs and interpose delay. Cases affecting how patent litigation progresses, and how it is funded, include:

- **eBay:** A successful patent plaintiff was not guaranteed permanent injunction, which had facilitated a large, early settlement, somewhat devaluing patent litigation.³
- **Alice:** Changed how courts analyze patent validity by encouraging defendants to seek early rulings invalidating patents, and ending litigation prior to discovery, thus increasing litigation risk for plaintiffs.⁴
- **TC Heartland:** The court limited the places plaintiffs could sue corporate defendants to either where defendant is incorporated or has a regular, established place of business and committed acts of infringement. This decision increased litigation uncertainty, as plaintiffs shopped new venues.



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When Judge Alan Albright took the bench in 2018, the Western District of Texas became a favorite venue for patent litigation, in part because of his speedy resolutions.

Currently, 20 percent of patent suits are now filed in the Western District.⁵

All of these developments have affected traditional lit fin risk/return analyses in the patent space, focusing especially on uncertainty regarding cost and duration.

Litigation Finance in the Patent Space

Because COVID has done much to crater the global economy, patent owners are seeking expanded avenues of monetization.

As the tech sector embraces product integration, companies in licensing negotiations can count on infringement and expensive litigation, opening the door to litigation finance.

Funders must calculate liability exposure, but most cases have not progressed through discovery, so plaintiffs are

“

To help blunt the effect of the pandemic, some patent owners take advantage of the government's time extensions for filing documents and paying fees.”

obligated to disclose confidential financial, legal, and technical facts, including patent-related details. Prospective patent lit fin clients will provide historic profit and loss statements, or open their books, or both, thus risking exposure of information to potential competitors in niche markets.

After early patent litigation processes resolve validity issues, this largely eliminates future risk making the de-risked patent worth more than any untested property and more attractive than an investment commitment. To help blunt the effect of the pandemic, some patent owners take advantage of the government's time extensions for filing documents and paying fees. This slows the pace of patent litigation, making funding more expensive and negatively affecting the lit fin deal structure.

Based on this slower-than-normal pace and the non-stop accumulation of interest on the repayment funds, funders who cover all financial aspects of extended patent litigation may eventually be entitled to almost all proceeds from the litigation's resolution.

As a result, the plaintiff may receive very little. If, for example, standard lit fin terms contemplate a 5-10 time return on investment, this can steeply increase as a case drags on,

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stifling investor returns by ensnaring liquidity in a deal without interim payment benchmarks.

On the positive side, attorneys with patent expertise can benefit from this expanding niche as firms with litigation finance capabilities or connections can offer this value to clients to differentiate themselves in the marketplace and help move cases forward.

Firms with sophisticated patent litigation practices can also create a secondary income stream consulting for funders looking for due diligence expertise in what is increasingly a hot market.

Components of these early assessments remain fluid, as both Congress and the Supreme Court creatively address the patent space, realigning expected case duration and value, venue, and remedies.

Segmenting Risk

Litigation finance serves to contemplate segmenting risk in the patent space, based on where a patent case is in its life cycle.

Early stage litigation timelines sensitively respond to delay maneuvers, procedural stratagems, and legal barriers. Important legal issues or bet-the-company business risk might require fully litigated results, further elongating the lit fin investment horizon.

An early-stage posture in the patent space contemplates procedural hurdles that could truncate litigation, adding another discrete element of risk.⁶

For this reason, early stage lit fin funders must likely accept a suppressed success rate that would, in the long-term, tend to stifle investment.

Later-stage litigation begins after the patent has been vetted and de-risked—a process that provides greater investor confidence in the outcome. But later-stage investors realize lower returns, with more dollars at risk, relative to early stage investors on the same litigation file.

At the same time that successful early stage litigation tends to provide greater return on investment over the course of the entire process, this correspondingly reduces the time-value of money and funders' associated time-based returns calculations.

Infringement defendants have several lit fin avenues available to them, as well.

Under-capitalized start-ups or smaller companies defending patent infringement claims from larger, moneyed competitors, as well as possible company-killing injunctions, turn to litigation finance with funders backing the defense in exchange for an interest in the defendant entity or profit-sharing on future sales...if any. 

¹ *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 136 S.Ct. 1923 (2016).

² 881 F.3d 1360 (2018).

³ *eBay, Inc. v. MercExchange, LLC*, 547 US 388 (2006).

⁴ *Alice Corp. v. CLS Bank International*, 573 US 208 (2014).

⁵ *TC Heartland v. Kraft Foods Group Brands*, 581 US ___, 137 S.Ct. 1514 (2017).

⁶ *Inter Partes Review, Alice, Markman, etc.*

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Grand Slam: Hitting a Litigation Funding Home Run

Test No. 156

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. Through trial, patent cases cost up to \$10 million, but awards outweigh costs. Since Halo Electronics, punitive damages are in play, facilitating willful infringement findings.
☐ True ☐ False
2. Because patents can legally be monetized through sale or license, patent holders who resolve infringement litigation using these approaches never lose control over their property.
☐ True ☐ False
3. Litigation financing allows patent owners to maintain control over the asset while fighting for the right to monetize.
☐ True ☐ False
4. Lit fin provides access to justice by moving risk to third-party funders, unlocking patents' value for rights-holders.
☐ True ☐ False
5. Funders do not gauge claims as investment opportunities.
☐ True ☐ False
6. Third-party investors pay attorney fees and costs in exchange for an interest in the recovery; there is no repayment obligation if a case goes sideways.
☐ True ☐ False
7. Some companies find it cheaper to infringe a start-up's patents, then outspend them in court; litigation financing allows start-ups to protect intellectual property while off-loading cost and risk.
☐ True ☐ False
8. As the tech industry focuses less on collaboration and product integration, litigation is decreasingly a standard part of a start-up's licensing attempts.
☐ True ☐ False
9. Risk-spreading makes bundle deals attractive: litigators structure the deal to secure part of their expected profit even if they lose a case or two.
☐ True ☐ False
10. Funders must be capitalized so they can commit resources to support the litigation while holding back some of the investment because patent litigation moves so slowly.
☐ True ☐ False
11. Mid-litigation off-ramps for funders allow an early exit upon a material negative ruling, such as stay pending Patent Trial and Appeal Board (Patent Board) resolution, negative discovery ruling, or adverse *Markman* claim construction ruling.
☐ True ☐ False
12. Cash shortages in the economy interfere with opportunities for funders because litigation financing is cyclical-synchronized with a tight global money supply.
☐ True ☐ False
13. As COVID inspires new testing kits, therapeutics, and vaccines, life sciences patent filings may increase: artificial intelligence, data centers, remote working platforms, and 5G-related patent applications will likely surge during and after COVID. All of these areas will be busy areas for infringement and enforcement.
☐ True ☐ False
14. Infringement filings by non-practicing entities increased after the last decade's recessions: the tech bubble burst, patent-rich entities failed, and businesses purchased their patents at bargain rates. These buyers are now defending their rights, but with a twist: plaintiffs likely committed no bad acts, are likely shell companies that only hold patents, and have few documents, so traditional defensive moves (counterclaims, over-zealous discovery) won't work.
☐ True ☐ False
15. In *Berkheimer v. HP*, the court declared that fact issues force early invalidation, which correspondingly increases the number of early case dismissals.
☐ True ☐ False
16. Because COVID cratered the global economy, patent owners are seeking expanded avenues of monetization. As the tech sector embraces product integration, companies in licensing negotiations can count on infringement and expensive litigation, which opens the door to litigation financing.
☐ True ☐ False
17. In early stage litigation financing discussion, most cases have not progressed through discovery, so plaintiffs must disclose confidential financial, legal, and technical facts, including patent-related details, risking exposure of information to potential competitors in niche markets.
☐ True ☐ False
18. After early patent litigation processes resolve validity issues, this largely eliminates future risk. This "de-risked" patent is worth more than any untested property and is a more attractive investment commitment.
☐ True ☐ False
19. To help blunt the effect of the pandemic, some patent owners take advantage of the government's time extensions for filing documents and paying fees. This slows the pace of patent litigation, making funding more expensive, affecting the litigation financing deal structure.
☐ True ☐ False
20. Later-stage third-party litigation funding investors realize higher returns compared to early stage investors on the same litigation file.
☐ True ☐ False

Grand Slam: Hitting a Litigation Funding Home Run

MCLE Answer Sheet No. 156

INSTRUCTIONS:

1. Accurately complete this form.
2. Study the MCLE article in this issue.
3. Answer the test questions by marking the appropriate boxes below.
4. Mail this form and the \$20 testing fee for SFVBA members (or \$30 for non-SFVBA members) to:

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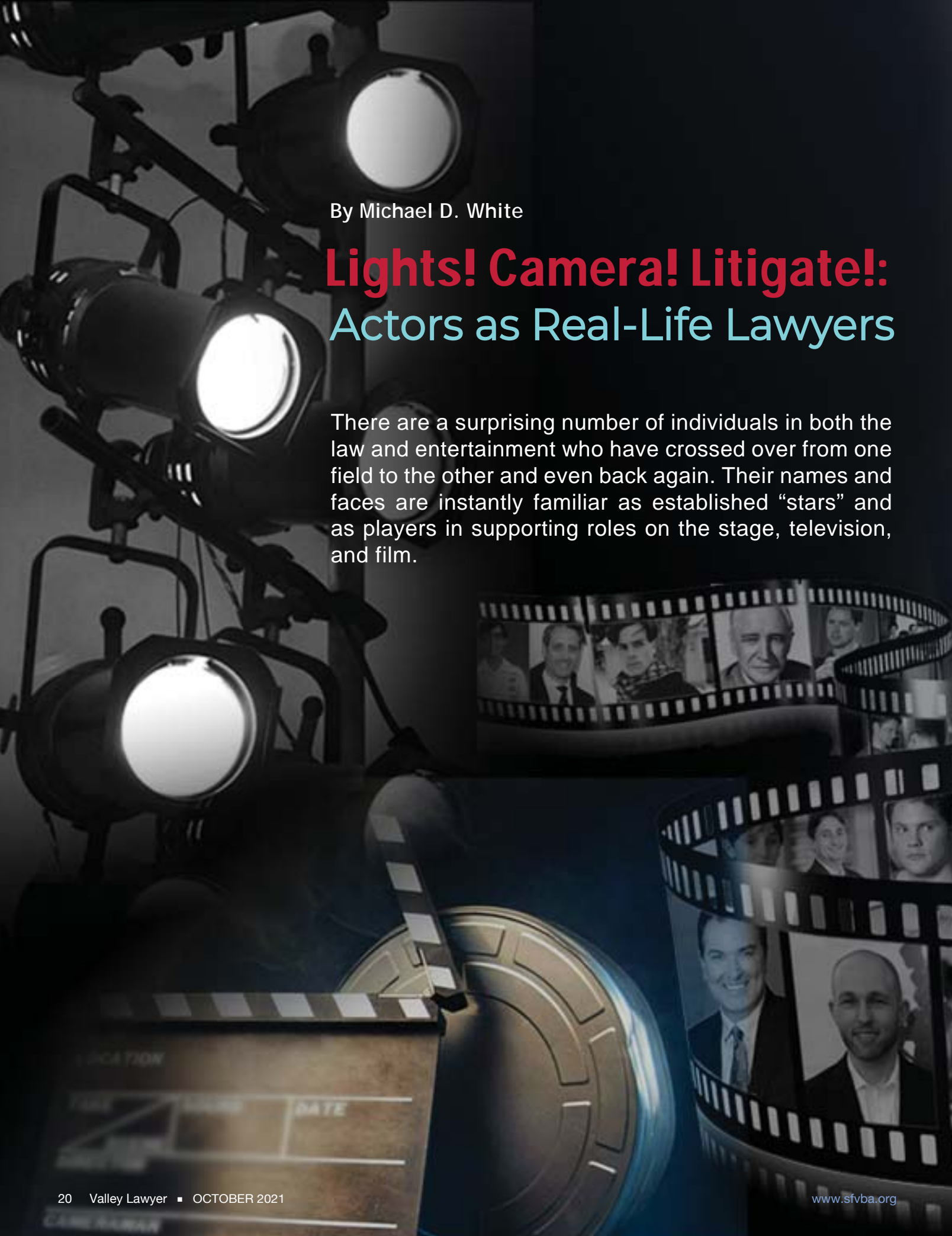
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By Michael D. White

Lights! Camera! Litigate!:

Actors as Real-Life Lawyers

There are a surprising number of individuals in both the law and entertainment who have crossed over from one field to the other and even back again. Their names and faces are instantly familiar as established “stars” and as players in supporting roles on the stage, television, and film.



THINK OF GREAT DRAMAS set in courtrooms, and what films come to mind?

Perhaps *To Kill a Mockingbird*, *A Few Good Men*, *The Verdict*, *Paths of Glory*, *Witness for the Prosecution*?

Those are just a few genuinely truly great, arguably classic, films with outstanding actors—Gregory Peck, Tom Cruise, Paul Newman, Kirk Douglas, Charles Laughton—portraying dedicated lawyers committed to finding the truth and representing their clients with dedication, energy, commitment and, by the nature of their medium, theatrics.

Interestingly, there are a surprising number of individuals in both fields—the law and entertainment—who have crossed over from one to the other and even back again for a variety of reasons.

Their names and faces are readily familiar as established “stars” and as players in supporting roles on the stage, television, and film.

Possible analyses are almost endless and can quite easily lead to the intriguing conclusion that actors are, in their own way, lawyers and that lawyers are, in their way, actors, as well as the question, ‘What connects the two?’

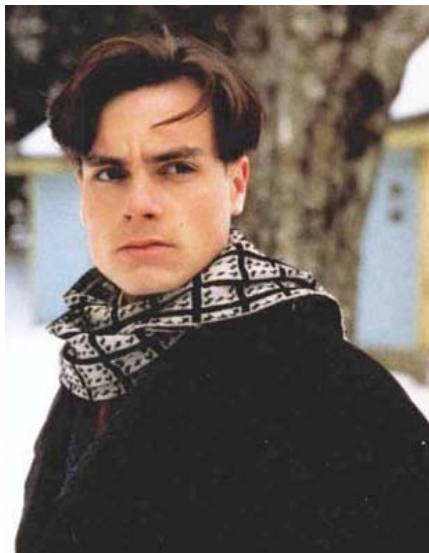
At its core, says entertainment attorney Michael DeBlis, “Theater is rooted in the idea that ‘art expresses the human experience. The same is true for trials. The very essence of a trial is a story—the story of a human experience. The goal of the attorney is to draw the jury into a re-constructed reality of past events such that they

‘see’ what happened even though they were not present to witness the original event.”

An attorney “is the producer of that event as well as the writer, director, and the actor in that event. A play is also a live event with the story at its core,” he says. The goal of the actor is to transform personal experience into a universal and recognizable form of expression that has the ability to change something in the spectator.

“Actors must guide the audience on a journey bringing with them their minds and hearts, and have to make real what is conceived and written in a script,” concludes DeBlis. “Lawyers take what they know to be the truth and convey that to a jury convincingly. If they can’t be convincing with the truth, then the case might as well be over before it ever began.”

And so, on with the show...



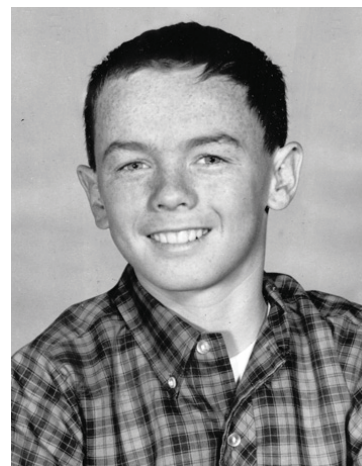
ZACHARY ANSLEY

Canada-born Zachary Ansley launched his acting career when he was 11 years old.

After graduating from the Circle in the Square Acting School in New York City, he acted in several stage productions before returning to Vancouver to resume his film and television career.

Ansley had roles in several popular television programs, including *The X-Files*, *The Outer Limits*, *21 Jump Street*, and *The Twilight Zone*.

He received his undergraduate and LLB degrees from the University of British Columbia and currently practices intellectual property, civil litigation, and maritime law in Vancouver, B. C.



BILLY BOOTH

Former child star Billy Booth played Dennis Mitchell’s best friend Tommy Anderson on the CBS 1950s sitcom *Dennis the Menace*. Guest appearances followed on *The Twilight Zone*, *My Three Sons*, *The Donna Reed Show*, *The Many Loves of Dobie Gillis*, and *The Andy Griffith Show*.

Booth graduated from the University of Southern California in 1971 and, three years later, the



Michael D. White is editor of *Valley Lawyer* magazine. He is the author of four published books and has worked in business journalism for more than 40 years. Before joining the staff of the SFVBA, he worked as Web Content Editor for the Los Angeles County Metropolitan Transportation Authority. He can be reached at michael@sfvba.org.

University of California, Hastings College of the Law.

Booth began his legal career after moving to the northern California community of Los Osos, where he practiced until his death in 2006.

He also taught business and real estate law at both Cuesta College and Cal Poly, San Luis Obispo.



GERARD BUTLER

Actor Gerard Butler was born in Scotland and, after graduating high school, entered the University of Glasgow School of Law. Following graduation, he worked as a trainee attorney with a law firm in Edinburgh.

An inveterate partier, he frequently missed work and, at age 25, was sacked just one week before he was slated to receive his qualification as a full-fledged barrister.

Relocating to London, Butler worked as a waiter, telemarketer, and trade show toy demonstrator before trying out for a stage role in a production of Shakespeare's *Coriolanus*.

His performance won high praise and, since 1997, has led to roles in numerous television shows and 56 films, including *Tomorrow Never Dies*, *The Mummy*, *Lara Croft – Tomb Raider*, *The Ugly Truth*, *Olympus Has Fallen*, and *The Phantom of the Opera*.



DANE CLARK

Clark, known for his work on the stage and on the radio in the years both during and after World War II, got his big film break when Warner Bros. studios signed him in 1943.

He worked alongside some of his era's biggest stars, often in war movies such as 1943's *Action in the North Atlantic* opposite stars Humphrey Bogart and Raymond Massey.

Born Bernard Zanesville, in Brooklyn, New York, Clark graduated from Cornell University in 1936 and, two years later, earned a law degree from St. John's University School of Law.

He worked through college and law school as a professional boxer, minor league baseball player, and construction worker.



JEFF COHEN

As a child actor, Cohen performed under the name Jeff McMahon and is best remembered for his portrayal of

Chunk in the 1985 Steven Spielberg production of *The Goonies*.

After working several summer jobs in the business departments of several studios, Cohen chose to pursue a legal career where he noticed that many of the most important figures on the business side of Hollywood had law degrees.

After four years at Cal Berkeley, Cohen earned a JD degree from the UCLA School of Law in 2000 and later became an entertainment lawyer in Los Angeles.

In 2002, he co-founded the Cohen & Gardner firm in Beverly Hills.



BOBBY DIAMOND

Active in the 1950s and 1960s before retiring from acting and turning to the law, Diamond was best known for his five-year stint as the child lead on the popular TV series, *Fury*.

Over the following years, Diamond had roles in several TV series, including *The Andy Griffith Show*, *The Many Loves of Dobie Gillis*, *The Twilight Zone*, and *My Three Sons*.

After earning a degree in broadcast journalism from San Fernando Valley State College (now California State University – Northridge), Diamond received his JD from the University of West Los Angeles and practiced personal injury and medical malpractice law from offices in Woodland Hills.

One of his finest courtroom hours, he once told an interviewer, involved a client accused of stealing a pair of slacks from a department store.

Over five years of legal maneuverings, he not only discredited a key prosecution witness but jacked up the out-of-court settlement in his client's favor from \$5,000 to \$250,000. "I even got the pants back," he said.



TEDDY DUNN

Known best for his portrayal of Duncan Kane in the TV series *Veronica Mars*, Dunn also appeared in the 2004 remake of *The Manchurian Candidate*. Over the next several years, he appeared in several series, including *The Gilmore Girls* and *Grey's Anatomy*.

Dunn attended Northwestern University, earned a JD degree from Boston College Law School in 2013, and practiced law with Walden Macht & Haran LLP in New York City from 2018 to 2020.

Prior to his work at Walden Macht, he served as a law clerk for a federal district judge, a litigation associate at Dechert LLP, and a legal intern for the International Criminal Tribunal in the former Yugoslavia.

Dunn also worked in the office of the Attorney General of Massachusetts and, currently, is an Assistant U.S. Attorney in Washington, DC.



ARTHUR HILL

The son of a lawyer, Hill was a Canadian actor best known for appearances in British and American theatre, films, and television.

He attended the University of British Columbia and continued his acting studies in Seattle, Washington.

After service as a mechanic in the Royal Canadian Air Force during World War II, Hill studied law at the University of British Columbia.

Lured into a career on the stage, he made his debut on Broadway in 1957 and, six years later, received a Tony Award for his performance in the original stage production of *Who's Afraid of Virginia Woolf*.

Hill acted in scores of films and television programs with such stars as Paul Newman, Angela Lansbury, Cary Grant, Marlon Brando, Fredric March, and Laurence Olivier in a successful career that spanned some 50 years.



SAMUEL S. HINDS

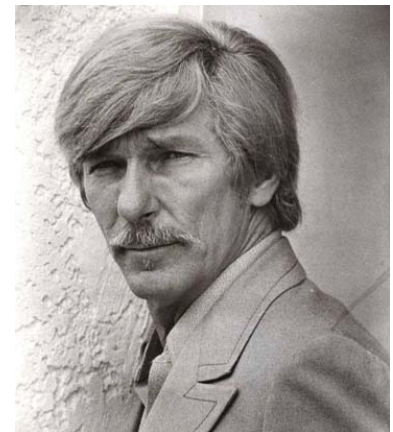
Born in Brooklyn, New York, Hinds started acting in Broadway shows at

age 54 after a three-decade career as a successful lawyer.

A graduate of Harvard and New York University Law School, he practiced law in Los Angeles and turned to acting after losing most of his money in the financial crisis of 1929.

After honing his craft at the Pasadena Playhouse, Hinds was cast in several Frank Capra films. He is best known for his portrayal of the dignified and upright Peter Bailey, the father of James Stewart's character, and founder of Bailey Building and Loan, in the 1946 classic film *It's a Wonderful Life*.

In the 1930s, he was known for his continuing role as actor Lew Ayres' father in the *Dr. Kildare* film series at MGM studios.



L. Q. JONES

Another native Texan with a familiar face and scores of roles in TV and films, Justus Ellis McQueen, aka L. Q. Jones, served in the US Navy during World War II before returning home to finish college.

Jones attended law school at the University of Texas, but left just one semester away from graduation to briefly play professional baseball and football, and ranch in Nicaragua.

He was inspired to try acting after corresponding with his former college roommate, TV actor Fess Parker.



CRAIG KIRKWOOD

Kirkwood took a hiatus from a successful film and television acting career to earn a JD from Loyola Law School in 2008.

Passing the bar exam on his first try, he worked as a criminal defense attorney before joining the Los Angeles County Department of Health Services staff as a Senior Associate.

A Los Angeles native, Kirkwood is best known as Jerry "Rev" Harris in the 2000 film *Remember the Titans*.

For a decade after enrolling in high-school drama classes, he was cast for roles in several TV series, including *Family Matters*, *The Fresh Prince of Bel-Air*, *JAG*, and *Courting Alex*.

He was nominated for an Emmy Award for Best Supporting Actor for his performance in the Disney production of *Hounded*.



CHARLES KORSMO

Born in Fargo, North Dakota, and raised in Minneapolis, Korsmo is best known for portraying Dick Tracy, Jr. in the 1990 film adaption of *Dick Tracy*

and as Jack, Peter Pan's son, in the film *Hook*.

He earned a degree in physics from the Massachusetts Institute of Technology in 2000 and worked at the U.S. Environmental Protection Agency before receiving his JD from Yale Law School in 2006.

After passing the New York State Bar exam, Korsmo was an associate in the New York office of Sullivan & Cromwell LLP and served as a visiting professor at Brooklyn Law School.

He is currently a professor of corporate law and corporate finance at the Case Western Reserve University School of Law.



ROBERT KRIMMER

Before acting, Krimmer enrolled in the JD/MBA program at University of California, Hastings College of Law, but left after accepting a scholarship to the American Conservatory Theater (ACT) MFA Program.

After completing the three-year program at ACT, Krimmer pursued an acting career that spanned 27 years. With appearances on *St. Elsewhere*, *Hill Street Blues*, and the soap operas, *Knots Landing* and *Days of Our Lives*, Krimmer is best known by soap fans as Rev. Andrew

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Carpenter on the ABC soap opera *One Life to Live*.

He also had lead TV roles in *Babylon 5*, *The Paper Chase* and *Family Medical Center*.

Following his acting career Krimmer earned his paralegal certificate, returned to law school, attending part-time classes at the Santa Barbara College of Law, while working as a paralegal during the day.

He graduated valedictorian, passed the California bar exam and now works as a business and real estate attorney in Oxnard.



MICHAEL MAGUIRE

An established star on Broadway, Maguire won a Tony Award in 1987 for his portrayal of Enjolras in the Broadway production of *Les Misérables*, receiving a Drama Desk Award and a Theatre World Award for the same role.

Born in Newport News, Virginia, he worked as a stockbroker before making his debut on Broadway. He has also appeared in several films including *LA Pictures*, *Cadillac*, *Go Fish*, *The Deep End of the Ocean*, *Busted*, and *Where The Day Takes You*, in addition to several prime-time television shows.

In 2008 he received a law degree from Southwestern Law School and now practices family law in Beverly Hills.



NIGEL PILKINGTON

Fluent in French and German, Pilkington attended Cambridge University and graduated in 1996 with a BA (Hons) degree in law. For the following six years, he practiced law in London before deciding to go into acting.

Starring in several popular English television series, Pilkington is best known for his voice-over work in numerous animated and claymation programs and films such as *Thomas the Tank Engine & Friends*, *Wallace & Gromit*, *Peter Rabbit*, and *The Jungle Book*.

He has also acted in numerous television programs and films, including *Downton Abbey*, *War Horse*, and *Casino Royale*.



GREG POEHLER

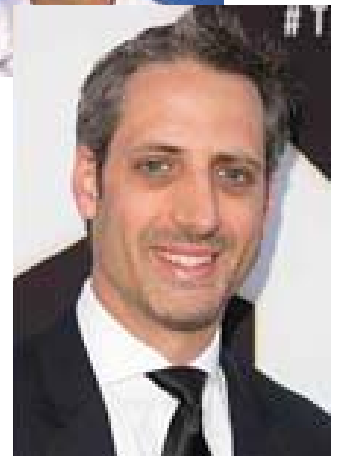
Younger brother of *Parks & Recreation* star Amy Poehler, Greg Poehler earned his undergraduate degree from Boston College in 1996 before enrolling at the Fordham University School of Law.

Graduating from Fordham in 1999 with his JD, he qualified to practice in both New York and Massachusetts. He was also licensed to practice before the U.S. Federal Court for the Southern District of New York, and the Fourth Circuit Court of Appeals.

In 2006, Poehler graduated from Stockholm University with a Masters in European intellectual property law.

After 12 years as a successful attorney, he decided to scrap his legal career, and remain in Sweden, where he found some success as a stand-up comedian in Stockholm nightclubs.

At that time, during the day, Poehler wrote the script for his first TV series, *Welcome to Sweden*, in which he currently plays the lead role and serves as the program's head writer and producer.



JOSH SAVIANO

Most familiar as character Kevin Arnold's best friend, Paul Pfeiffer, in the 1990s TV comedy-drama *The Wonder Years*, Saviano left acting after six seasons on the Emmy-Award-winning program.

A native of New Jersey, he decided to concentrate on his education and attended Yale, graduating in 1998 with a degree in political science.

Two years later, he received his JD from Yeshiva University and, after a few years in solo practice, joined the New York firm of Morrison Cohen LLP, where he made partner in 2013.

He left Morrison Cohen in 2015 to found the JDS Law Firm and Act 3 Advisors, a celebrity brand consultancy.




MORGAN WOODWARD

The stern, no-nonsense, craggy-faced Morgan Woodward's most iconic performance was as the mirrored-sunglasses-wearing prison camp guard in the 1967 film classic *Cool Hand Luke*.

During his 45-year career, the 6'3" actor racked-up guest star roles in more than 50 motion pictures and 160 television programs including *Wyatt Earp*, *Bonanza*, *Dallas*, and *Star Trek*. On the long-running TV western *Gunsmoke*, alone, he played 16 different characters in 19 episodes, the most such appearances of any actor on the show.

Woodward was born in Fort Worth, Texas. He learned to fly at age 16, and served in the Army Air Force as a pilot during World War II, and, again, in the Air Force during the Korean War.

He attended law school at the University of Texas after earning his undergraduate degree in corporate finance. 

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By Janice L. Miller and Andrew Kerpelman

Drones: Keep Watching the Skies!



FRIEND OR FOE? THIS QUESTION STANDS AT the forefront of the minds of those individuals and organizations engaged in the burgeoning unmanned aircraft vehicles industry.

Commonly known as drones, the question is whether they will serve as a positive advancement for society, or whether they will pose a threat to the foundational aspects of our daily lives and our societal infrastructure.

Will drones, if invited into our culture, create good—social, economic, personal—or will a widespread or even limited introduction and integration of drones into our government, commercial and personal lives sow havoc in a manner seen only in dystopian science fiction?

Can drones improve our current lives and integrate seamlessly to serve as assistance in our daily endeavors or will they work in opposition to our commercial, personal, and social success, and interfere with our rights and freedoms?

Whichever side of the equation you fall on, drones, like other equally challenging technological advancements, are here to stay.

What Is a Drone?

A drone is defined as an aircraft or ship without a human pilot on board that is guided remotely. They can be guided autonomously by onboard computers, or via remote control by a pilot on the ground or elsewhere.

Commonly referred to as UAVs—unmanned aerial vehicles, or UASs—unmanned aerial systems—drones have military,



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commercial, professional, recreational, personal, and public service applications.

The drone market continues to expand and grow, and every day it infiltrates a new segment of the modern landscape; in fact, it is anticipated that by 2028, the value of the global drone market size will reach a staggering \$501 billion.¹

History

The use of drones dates back as far as 1849 when the Austrian army used armed pilotless balloons against the city of Venice during the First Italian War of Independence.²

The first electronically remote-controlled drones were built during World War I, developed in the interwar period, and eventually used as targets to aid in training anti-aircraft gunners.

This was the drone's primary use until camera technology was integrated in Radioplane's Model RP-71 Falconer reconnaissance drone in 1955.³

The RP-71, developed for the U.S. Army, took still and motion pictures of battlefields and aided in aerial surveillance reconnaissance and tactical maneuvers.⁴

Reconnaissance drones proved their value during the Vietnam War, setting the tone for future technological innovation and market attention.⁵

After Vietnam, and during the Cold War, unmanned aircraft technology developed into what we see in the skies today—a force in the information and monitoring sectors, as well as a highly useful and effective military tool.⁶

The further capabilities of drones were unveiled in the early 2000s when the U.S. Customs and Border Protection Agency experimented with them to patrol the United States' border with Mexico.⁷

Following tremendous success in surveillance and a marked impact on arrests and seizures, further drone applications were explored in both the public and private sectors.

The devastation left in the wake of Hurricane Katrina in 2005 spawned requests and spurred the search for more domestic applications, but a scarcity of applicable regulations prevented drones from aiding in search, rescue, recovery and other post-disaster efforts.⁸

In part, as a result, the following year, the Federal Aviation Administration (FAA) issued a Certificate of Authorization that allowed UAV aircraft to be used within U.S. civilian airspace to search for disaster survivors.⁹

This move was one of the first entries on what has become an exponentially growing list of federal and local government/service applications for UAVs.

Governmental use of drones and regulatory schemes continued to grow and develop through the 2000s and beyond.

Today, the commercial and recreational markets have taken off at a breathtaking rate as commercial and recreational applications have become the wave of the future, as well as a fundamental point of focus of many businesses and investors, manufacturers, and technology companies of all sizes.

The Federal Regulatory Landscape

While 2016 ushered in an influx of new laws and regulations for drone operations, the legal landscape for drones and their uses is constantly evolving.

Those wanting to own/operate a drone legally in the U.S. must comply with Federal Aviation Administration (FAA) regulations. In 2018, for example, the FAA implemented the Special Authority for Certain Unmanned Aircraft Systems which is applicable only to unmanned aircraft that weigh less than 55 pounds at takeoff.¹⁰

The Special Authority (SA) gives authority to the Secretary of Transportation to use what the FAA calls “a risk-based approach to determine whether a drone requires an airworthiness certificate to operate safely in the national airspace system (NAS).”

The SA also gives the FAA the authority to grant exemptions, or waivers, to operating rules, as well as aircraft and pilot requirements on a case-by-case basis.

Without a Section 44807 waiver, drone operators are required to obtain an FAA Certificate of Airworthiness to ensure that the drone is safe to operate, and focus on safety-based concerns such as airworthiness, fuel venting, and the drone being an FAA-approved design.¹¹

The first step to legally operate a UAS without an airworthiness certificate is to petition for a Section 44807 waiver.

The FAA's chief anxiety with drone operation is safety, a concern reflected in the requirements for potential drone operators in the petitioning process. Petitioners are advised to prepare to describe how they plan to safely operate their UAS in order to minimize risk to persons and property on the ground or to the NAS itself.

The petitioner should also expect to describe the type of drone they intend to operate and include information on the aircraft performance and limitations along with pre-flight checks, maintenance, and repair ensuring that the aircraft is in a safe condition to fly.¹²

A petition for exemption is more likely to succeed if the proposed operations are similar to those that have been previously granted exemptions in kind.

The second step in laying the groundwork for the legal operation of a UAS is acquiring a Certificate of Waiver or Authorization (COA).

Currently, drones operating in the NAS require a Section 44807 exemption, as well as a COA. The FAA will issue

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a blanket COA for flights below 400 feet to drones with a Section 44807 exemption.

Under current FAA rules, any operator with a valid Section 44807 exemption—or a previously granted Section 333 exemption, which was subsequently replaced by Section 44807—can operate using either COA they have.

Owners/operators who wish to fly outside the parameters laid out in Section 44807 and the blanket COA are eligible to apply for a full COA that is specific to the airspace they wish to operate in.

In order to submit an application for a full COA, the drone owner/operator must go through the UAS Civil COA Portal, not the public docket as is the case with Section 44807 waivers.¹³

To date, Section 44807—and previously Section 333—exemptions have been granted for activities ranging from straightforward aerial photography and videography to complex diagnostic and field monitoring activities in the agriculture and fossil fuel sectors.

More than 5,551 exemptions have been issued, ranging from the inspection of infrastructure to aerial data collection in support of professional sports under the old Section 333 exemptions.¹⁴

The third step in legal operation of a UAS is ensuring that unmanned aircraft operated for non-hobby or non-recreational purposes are registered with the FAA.

The drone's registration information must be displayed on a fireproof plate in a manner that cannot be lost, defaced or removed during normal operation or destroyed in the event of an accident, while those wishing to register their aircraft must submit an Aircraft Registration Application to the FAA.^{15 16}

Finally, an aspiring commercial drone pilot must obtain a Remote Pilot Certificate from the FAA by meeting the following requirements:

- Be at least 16 years of age;
- The ability to speak, read, write, and understand English;
- Be in both a physical and mental condition to safely operate a drone; and,
- Successfully pass the initial Unmanned Aircraft General-Small (UAG) aeronautical knowledge exam.

If an individual meets those requirements, they are able to begin the process of becoming a commercial drone pilot.

The individual should expect to obtain an FAA Tracking Number by creating an Integrated Airman Certification and Rating Application profile prior to registering for their knowledge test. A government-issued photo ID is required

when attending an FAA-approved Knowledge Testing Center to take the UAG exam.¹⁷

As the chief concern of the FAA is safety, the UAG primarily focuses on how to properly operate a small, unmanned aircraft in a safe manner. The individual will also be expected to complete an FAA Airman Certificate and/or Rating Application, which can only be completed after passing the UAG test.¹⁸

Standardization

In an effort to standardize drone registration and identification, UAS Remote Identification, or Remote ID, has been implemented into drone operations with the goal of simplifying the use of drones and fully integrating them into the National Airspace System.

Remote ID will also help the FAA, law enforcement, and other federal agencies ensure that drones are flown responsibly by improving the overall safety and security of more complex drone operations within the U.S.¹⁹

Remote ID will require all drones not operating within an FAA-Recognized Identification Area (FRIA) to broadcast remotely such key information as the drone's ID, its location and altitude, velocity, control station location, elevation, and emergency status.

This information is required to be broadcast from takeoff to shut down.

All drones must be equipped and registered with a Remote ID by September 16, 2023; this allows drone owners sufficient time to retrofit their aircraft with Remote ID capabilities, while drone manufacturers will be required to equip all new drones with Remote ID no later than September 16, 2022.

April 2021 saw the implementation of the much-anticipated Operation of Unmanned Aircraft Systems Over People final rule which eliminates the need for an individual part 107 certification of waivers from the FAA for the typical operations of a UAS over groups of people.

Operations over people, moving vehicles and at night are now permitted depending on the risk that a small UAS presents to the people on the ground.

This risk factor is determined by placing the UAS in one of four categories to ensure that the UAS meets the requirements of the category it is placed in.²⁰ These four categories are based on the weight of the drone and require that the UAS does not have any exposed rotating parts that could cause lacerations.

- Category One, which includes UASs under 0.55lbs;
- Category Two, which applies to UASs over 0.55lbs that cannot transfer any more than 11 foot-pounds of kinetic energy upon impact with a rigid object;
- Category Three, which expands the potential kinetic energy to 25 foot-pounds; and,

- Category Four, which applies to any UAS that requires an airworthiness certificate.²¹

Any UAS conducting operations over people in an open-air assembly must also be in compliance with Remote ID.

Night operations are also permitted under two conditions—the pilot must complete an updated initial knowledge test or online recurrent training, and the UAS must have anti-collision lighting visible for at least three statute miles with a flash rate sufficient to avoid a collision.

Operation over moving vehicles is also now permitted for drones that meet the requirements for operations over people, and if it is not operated in sustained flight over moving vehicles.

California and Local Regulations

While the regulation of UAS falls primarily under the auspices of the FAA, state, local, and tribal authorities have also implemented their own rules and regulations concerning UAS operations, many of which are based on privacy rights and prohibit UAS operations from interfering with the emergency-related activities of first responders.

One example of California state laws regarding UAS operations and those concerns is an amendment of the Civil Code that expands prosecution for invasion of privacy when aerial drones are used to photograph or record another person in a private setting where there is a reasonable expectation of privacy.^{22 23}

While this amendment is geared towards paparazzi drone use, it intends to protect the privacy of individuals from drone snooping.

In a similar vein, AB 2655 Invasion of Privacy, which was signed into law in September 2020, prohibits first responders from taking photos of crime scenes or the scene of an accident “for any purpose other than an official law enforcement purpose or a genuine public interest.”²⁴

Any violation of this law is a misdemeanor and is punishable by a fine up to \$1,000. Protection of privacy therefore is undoubtedly a concern that California is actively trying to address with appropriate legislation.

California state law also provides first responders with certain protections from UAS interference and immunity from damages caused to drones that interfere with emergency activities.

SB 807, signed into law September 2016, for example, protects first responders from civil liability regarding damage to UASs in the event an UAS is interfering with their work.²⁵

Protection from civil liability regarding UAS damage for first responders allows them to respond to emergencies without the unease of possible repercussions in the event they damage a UAS that may interfere with their work.

Further, AB 1680 makes it a misdemeanor for a UAS to interfere with first responders during emergencies.²⁶

Such interferences also include using an UAS to purposely view the scene of an emergency or monitor the activities of emergency personnel.

Along with state laws, many cities and counties within California have their own ordinances regarding UAS operations.²⁷

Cities such as Calabasas and Yorba Linda place more stringent restrictions on UAS operations than those enforced. Both communities also make any violation of FAA regulations a misdemeanor.²⁸

Like that of the federal government, the primary reoccurring theme with these local ordinances is safety.

Other Southern California cities, such as Hermosa Beach, actually require UAS owners/operators to obtain an operating permit and identification number from the city.²⁹

Open space lands and parks in many cities and counties throughout the state also prohibit the use of drones without a permit.

As a result, due to the complexity of local UAS ordinances in California, it is advisable for all owners/operators of UAS to refer to local ordinances prior to planning a flight to ensure compliance with all regulations.

Friendly Uses for Drones

Despite the negative connotations, there are numerous, perhaps limitless positive applications for drones.

UASs have been used extensively to monitor and inspect dangerous chemical facilities such as oil rigs, and structures such as skyscrapers, dams, and bridges, and have replaced human labor where a significant risk to life and health existed.

Drones also can be used to assist the police, firefighters, and disaster relief workers involved in search and rescue missions, and newsgathering, but also have helped serve as a tool for humanitarian work.

UNICEF, for example, credits the use of drones in rugged, remote regions as indispensable, especially when carrying and delivering temperature-sensitive cargo and essential medicines.³⁰

The COVID-19 pandemic has bought the use of drones to the fore as UASs have helped deliver vaccines around the globe.³¹

Utilizing drones, companies like Zipline have been able to successfully deliver tens of thousands of vaccine doses to those in Ghana who otherwise may not have had access to these vaccines because of the need to maintain a precise cold chain temperature regimen before being administered to patients.

Zipline's use of drones have allowed delivery of the vaccines from the COVAX facility in Ghana, a facility lacking the infrastructure needed for more conventional cold chain delivery.

Because of Zipline's success, Zipline has had with other vaccine deliveries, pre-pandemic, companies like Pfizer have partnered with them to help deliver their vaccines to the people that desperately need it.³²

On the commercial side, companies such as Amazon continue to develop sophisticated delivery services using drones.³³

Amazon Prime Air has said it will use UASs to guarantee delivery in thirty minutes or less. While companies like Amazon and Alphabet-owned Wing, a competitor drone delivery company, have helped pioneer drone delivery, more and more companies such as Kroger are beginning to test their own drone delivery programs.³⁴

With the many recreational and private applications for drones—industrial photography and videography, increased private security, real estate, topography, surveillance, and safety, to name a few—the potential for drones in the near future to supplement much of our daily activities and many sectors of the American and global economy is virtually limitless.

On The Horizon

While the COVID-19 pandemic and a hoped-for economic recovery remain a priority with both federal and state legislatures, UASs and their operations have not gone unaddressed.

The ongoing issue of conflicting federal government and state, local, and tribal government regulations regarding on UAS operations is being addressed by the Drone Integration and Zoning Act—S2607—a bill that would proscribe zoning authority over commercial unmanned aircraft systems to state, local, and tribal authorities.³⁵

The bill, introduced to the Senate last March, grants regulatory authority to those government entities to preserve the privacy and protect the property of individuals in the event of unwanted and intrusive drone operations.

Under S2607, drones would be prohibited from operating within 200 feet laterally of any structure that exceeds 200 feet in height or within 50 feet of the top of such structures.³⁶

As of this writing, the bill had been read twice and referred to the Senate Committee on Commerce, Science, and Transportation.

Insurance and Risk

The insurance industry's level of risk tolerance regarding drones is currently unknown.

Acceptance by the insurance industry of commercial drone operation may become a more prominent factor as the drone market grows and the future of the drone terrain continues to develop. As drones have grown in mainstream popularity, insurance providers such as SkyWatch have begun offering hourly and monthly rates for drone liability

insurance with limits set that hover between \$500,000 and \$10,000,000.³⁷

The drone insurance industry is expected to flourish as their commercial and industrial applications grow and become more valuable—in fact, according to Emergen Research, the global drone delivery service market alone, valued at \$520 million in 2019, is expected to reach \$9.5 billion by 2027 with a compound annual growth rate (CAGR) of 44.2 percent.³⁸


Insurance, therefore, will undoubtedly become increasingly significant as time passes and the field becomes more and more valuable.

Drone insurance, however, does not stop at liability coverage with many other forms of insurance available now. Drone hull insurance, for example, has entered the market with companies such as DJI Care, Global Aerospace and AIG US offering insurance based on type, capabilities, and use.

Other forms of drone insurance are available to cover ground equipment and payloads such as expensive cinematography and thermal multispectral cameras, and gimbal systems. While recreational or commercial drone insurance is currently not required by federal law in the U.S., some states—Minnesota, for example—consider drones aircraft and require adequate insurance coverage.³⁹

No matter the outcome of drone regulations under consideration and the positive and negative uses of drones, it is clear drones will begin to play a significant part in our culture in the future as they represent a great technological advancement and are the focus of a great deal of creativity and innovation.

And the numbers prove it. As of August 2021, there are almost 1 million registered drones and approximately 243,000 FAA-certified remote pilots in the U.S.—confirmation of the impact that drones will play in the near future.⁴⁰

They are here to stay and it simply remains to be seen in what capacity they will be allowed and how they will be able to operate within the bounds of the law. 

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⁹ *Id.*

¹⁰ *Special Authority for Certain Unmanned Aircraft Systems* (Section 49 U.S.C. Section 44807).

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Confusing Trademarks:

The Next Course of Action

By Tal Grinblat



ONE OF THE MOST COMMON OBJECTIONS raised by the U.S. Patent & Trademark Office (PTO) in reviewing applications is the likelihood of confusion with third party registrations and earlier filed applications.

In such a case, an applicant that receives an objection claiming that the mark is confusingly similar to another party's trademark has several options.

This article will explore the standard used by the PTO in evaluating applications for the likelihood of confusion and the various options available to applicants who receive objections to their applications on that ground.

Standard for Likelihood of Confusion

The U. S. Code provides in pertinent part:

"No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it...(d) Consists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive..."¹

In evaluating a trademark application, the PTO reviews existing registrations and previously filed pending applications to identify any possible conflicts.

The applicable question in conducting the review is not whether people will confuse the marks, but rather whether the marks will confuse people into believing that the goods or services they identify originate from the same source.^{2 3}



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Options to Overcome Refusals

The options available to try to overcome refusals based on likelihood of confusion are varied.

They include presenting arguments as to why the marks are dissimilar and/or the goods or services are different; seeking consent for the use and registration of your mark from the owner of the cited registration/earlier filed application; and initiating a concurrent use proceeding should the facts support that option.

Addressing the Examiner's Objection

One of the tools available for practitioners to address an examiner's refusal that one mark is confusingly similar to another is by argument.⁴

The Trademark Office will take the following list of non-exhaustive features, known as Dupont factors, into account:

- The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. The more marks are different visually, phonetically, aurally and in other fashions, the less likely consumer confusion would arise. The basic principle in determining confusion between marks is that marks must be compared in their entireties—not dissected into parts—and must be considered in connection with the particular goods or services for which they are used and not in the abstract;⁵
- The relatedness of the goods or services as described in the application and cited registration(s) or earlier filed application(s). The more the parties' goods or services are different in terms of function, use or other aspect, the likelihood of consumer confusion is reduced. Specifically, two unrelated companies can have rights to the same mark if each party's mark is used in completely different fields;⁶
- The similarity or dissimilarity of the parties' trade channels—for example, how the goods or services are sold; whether one parties' goods are specialized, etc...
- Consumer sophistication. The more refined the consumer of a particular product or service, the less likely consumer confusion will arise;⁷
- The types of goods sold—for example, whether impulse or careful sophisticated purchasing. The more expensive an item, ordinarily, the more a consumer is likely to scrutinize the product therefore lessening the risk of consumer confusion;
- The number and nature of similar marks in use on similar goods. If a number of similar marks already exist

for similar goods or services, the more likely consumers would assess other aspects of the mark to differentiate source.

While any one factor may be sufficient to overcome the refusal, ordinarily, the more factors an applicant can show, the better the chance of overcoming the refusal of the application.⁸

Obtaining the Cited Mark Owner's Consent

A second option to try to counter an examiner's refusal to register a mark based on consumer confusion is seeking consent of the owner of the cited registration/earlier filed application for the use and registration of the mark in question.

A consent agreement may take a number of different forms and come to be under a variety of circumstances. These can include:

- Entering into a formal agreement with the cited registrant/applicant whereby the parties agree on certain usage restrictions—font, stylization, logo usage, use with other words.;
- Agreeing on limits on how the products and services are sold; or,
- Specifying channels of trade by which each party's products or services will be sold or advertised, agreements to cooperate in the event of any confusion, and other manners.⁹

While there is no per se rule that a consent, whatever its terms, will always tip the balance to finding no likelihood of confusion, consent agreements are given great weight because the Trademark Office takes the position that the parties closest to the matter are best equipped to assess the marketplace.

Further, the PTO's position is that its personnel should not substitute their own judgment concerning likelihood of confusion for the judgment of the real parties in interest without good reason, that is, unless the other relevant factors clearly dictate a finding of likelihood of confusion.¹⁰

While consent agreements receive great deference, so-called naked consent agreements—agreements that contain little more than a prior registrant's consent to the registration of an applied-for mark and possibly a mere statement that source confusion is believed to be unlikely—are typically considered to be less persuasive than agreements that, first, detail the particular reasons why the relevant parties believe no likelihood of confusion exists and, second, specify in detail the arrangements undertaken by the parties to avoid confusing the public.¹¹

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The more information the parties place in a consent agreement explaining why the parties believe confusion is unlikely, the more the PTO assumes the consent is based on a reasoned assessment of the marketplace, and, consequently, will lend more weight to the consent.¹²

As an example, when a client's recent application for the mark Jailbird for restaurant services was refused due to another registration for the identical mark for wines, the owner of the Jailbird wine brand was contacted and the blocking registrant's consent was granted.

The letter of consent explained why the parties' products—wines for the registrant and restaurant services for the other party—were different and not related. The argument was made that the price points for both party's goods and services were sufficiently different so as to avoid a likelihood of confusion; that the parties' respective goods and services will be purchased by sophisticated end users.

As such, the relevant intended consumers would purchase the respective goods and services only after careful research and study of the products and their sources.

Finally, the letter explained that in the unlikely event the parties learn of any instance of actual confusion, they would work together in good faith to alleviate such confusion. The signed letter of consent convinced the examiner and allowed the client's Jailbird mark for restaurant services to proceed to publication.

Concurrent Use Proceedings

Another option sometimes available to a party receiving a refusal based on likelihood of confusion arises when the party applying to register their mark has used it for a period of time which precedes the registration date of the cited registrant.

The process—called concurrent use proceedings—allows an applicant to apply to register their mark usually based on geographic limitation.

The statutory framework is found in the Trademark Act, which contains a proviso which mandates that an eligible applicant may request issuance of a registration based on rights acquired by concurrent use of its mark, either with the owner of an existing registration or earlier-filed application or with the common-law user of a conflicting mark.¹³

In a concurrent use application, the applicant normally requests a geographically restricted registration and identifies in its application one or more parties who concede to have rights to use the mark in other geographical areas.¹⁴

These other parties may own applications or registrations or they may have common law rights to a mark, but no application or registration.

There are two bases upon which a concurrent use registration may be issued:

- A determination by the Trademark Trial and Appeal Board that the applicant is entitled to a concurrent registration; or

- A final determination by a court of the concurrent rights of the parties to use the same or similar marks in commerce.¹⁵

An applicant is eligible to request a registration subject to concurrent use if it meets one or more of the following criteria:

- The owner of the registration consents to the grant of a concurrent use registration to the applicant;
- The concurrent use request is sought pursuant to a court decree determining the rights of the concurrent user; or,
- The applicant's date of use of its mark is before the filing date of the other pending application or existing registration.¹⁶

The applicant shoulders the burden of proving that it is entitled to a concurrent use registration.¹⁷


Thus, in circumstances when a client has used their mark before the filing date of another trademark, the concurrent use option is a viable and potentially effective option to obtain a registration.

This is true even if the identical mark for the identical goods or services has been used in another part of the country. The end result is that both parties obtain rights to their respective marks in their respective geographies.

Available Options

Several options exist when receiving a refusal that a mark is confusingly similar to another previously filed application or existing registration.

These options can vary—for example, explaining to the examiner why the marks and/or goods or services associated with each party's marks are different or why the channels of trade are different; seeking and obtaining consent from the owner of the mark blocking your trademark; or initiating concurrent use proceedings if the client's own use predates the filing date of the other party's application or registration.

Knowing the full landscape of available options can be instrumental in crafting a suitable strategy to address and overcome the examiner's refusal with the ultimate goal of obtaining the desired registration for the client's mark. 

¹ 15 U.S.C. § 1052.

² See *In re Shell Oil Co.*, 992 F.2d 1204, 1207, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993) ("The degree of 'relatedness' must be viewed in the context of all the factors, in determining whether the services are sufficiently related that a reasonable consumer would be confused as to source or sponsorship.").

³ See also *In re Majestic Distilling Co.*, 315 F.3d 1311, 1316, 65 USPQ2d 1201, 1205 (Fed. Cir. 2003) ("[T]he . . . mistaken belief that [a good] is manufactured or sponsored by the same entity [as another good] . . . is

precisely the mistake that § 2(d) of the Lanham Act seeks to prevent.").

⁴ *In re E. I. du Pont de Nemours & Co.*, the U.S. Court of Customs and Patent Appeals discussed the factors relevant to a determination of likelihood of confusion. 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973).

⁵ *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 750-51 (Fed. Cir. 1985).

⁶ See, e.g., *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1371, 101 USPQ2d 1713, 1723 (Fed. Cir. 2012) (holding that nothing in the record suggested a purchaser of test preparation materials who also purchases a luxury handbag would consider the goods to emanate from the same source, though both were offered under the identical COACH mark).

⁷ See, e.g., *In re N.A.D., Inc.*, 754 F.2d 996, 999-1000, 224 USPQ 969, 971 (Fed. Cir. 1985) (concluding that, because only sophisticated purchasers exercising great care would purchase the relevant goods, there would be no likelihood of confusion merely because of the similarity between the marks NARCO and NARKOMED).

⁸ *M2 Software, Inc. v. M2 Commc'ns, Inc.*, 450 F.3d 1378, 1383, 78 USPQ2d 1944, 1947-48 (Fed. Cir. 2006) (noting that relatedness between software-related goods may not be presumed merely because the goods are delivered in the same media format and that, instead, a subject-matter-based mode of analysis is appropriate).

⁹ See *In re N.A.D. Inc.*, 754 F.2d 996, 224 USPQ 969, 971 (Fed. Cir. 1985).

¹⁰ See *In re Four Seasons Hotels Ltd.*, 987 F.2d 1565, 26 USPQ2d 1071 (Fed. Cir. 1993); Trademark Office Manual of Examining Procedures, Sec. 1207.01(d)(viii) (2021).

¹¹ See *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1362, 177 USPQ 563, 568 (C.C.P.A. 1973) (noting that "[i]n considering agreements, a naked 'consent' may carry little weight," but "[t]he weight to be given more detailed agreements . . . should be substantial").

¹² *In re Donnay Int'l, S.A.*, 31 USPQ2d 1953, 1956 (TTAB 1994).

¹³ Trademark Act, 15 U.S.C. § 1052(d), Section 2(d).

¹⁴ See 15 U.S.C. § 1051(a)(3)(D).

¹⁵ *Id.*, § 1052(d); 37 C.F.R. § 2.99(h).

¹⁶ See *Id.* § 2.99(e).


¹⁷ *America's Best Franchising, Inc. v. Abbott*, 106 USPQ2d 1540, 1548 (TTAB 2013) (quoting *Over the Rainbow, Ltd. v. Over the Rainbow, Inc.*, 227 USPQ 879, 883 (TTAB 1985)).

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CASE BACKLOGS INCREASE: The average case backlog for state and local courts across the United States increased by about one-third amid the COVID-19 pandemic, according to a recent study compiled by Thomson Reuters.

The company's survey of more than 238 judges and other court professionals found that the average backlog in U.S. courts before the COVID-19 pandemic was 958 cases. The average backlog increased to 1,274 in the last year, according to the report—*The Impacts of the COVID-19 Pandemic on State & Local Courts 2021*.

Overall, about one-third of U.S. courts saw their case backlogs increase by more than five percent in the last year, and another 23 percent saw their backlogs increase by one to five percent, the report found. Altered operations and delayed proceedings because of court closures as a result of the pandemic contributed to the increase in backlogs, according to the report.

"Even in the best of times, the nation's courts consistently battle case backlogs for a variety of reasons," the report said. "When you add a public health crisis into that equation, it is easy to see why the backlog situation may become much more difficult to manage."

However, the survey indicated that most court professionals don't anticipate the trend of increased backlogs to continue.

About 42 percent reported that they expect a decrease in their backlog in the next year, while 32 percent don't anticipate any changes. Just eight percent of courts expect an increase in their backlog in the next 12 months.

Meanwhile, the report also provided several statistics about remote hearings, which courts have used to try to address their backlogs.

A total of 93 percent of survey respondents said they were involved in conducting or participating in remote hearings in 2020, while 89 percent are currently doing so in 2021. Of those currently participating in remote proceedings, nearly two-thirds are conducting trial and pretrial hearings online, according to the report.

"Judges, court staff and attorneys have risen to the occasion, adopting new technologies and finding innovative ways to keep the daily operations of civil and criminal court moving," said Steve Rubley, president of the government segment of Thomson Reuters.

"The report findings show that many of the pivots made during the last year and a half will far outlive the pandemic, furthering access to justice for those that need it most."



WISDOM THROUGH THE AGES: "For there is but one essential justice which cements society, and one law which establishes this justice. This law is right reason, which is the true rule of all commandments and prohibitions. Whoever neglects this law, whether written or unwritten, is necessarily unjust and wicked." — *Marcus Tullius Cicero*

BUSINESS APPROPRIATE: The Los Angeles Superior Court has extended the court's relaxed dress code policy, first implemented on April 1, 2020.

In light of the continued fluctuation trends in COVID-19 numbers in Los Angeles County, the court will remain flexible in its professional dress code," it said, adding that, "while not fully returning to formal business attire, all authorized persons, including, but not limited to prosecutors, public defenders, and private attorneys, should dress courtroom appropriate whether appearing in person or remotely."

The amended dress code policy also states that all authorized persons, including but not limited to public and private attorneys, may dress in relaxed business attire; relaxed business means a style of dressing for white-collar employees that is still professional and appropriate for both in-person court and remote appearances, but less formal than traditional courtroom business attire; and, for jury trials and more formal hearings as indicated by individual judicial officers, formal business attire is required. The revised policy, which takes effect on September 7, will remain in effect until the end of the COVID-19 emergency, when the state of emergency is lifted by the governor, or until further notice of the court.



PROPOSITION 22 OUT: An Alameda County Superior Court recently ruled California's Proposition 22 unconstitutional.

The Proposition—formally the Protect App-Based Drivers and Services Act, Bus. & Prof. Code, §§ 7448, *et seq.*—was a ballot initiative passed by a majority of California voters in the November 2020 election, which primarily aimed to classify application-based transportation and delivery companies' drivers as independent contractors rather than employees.

Proposition 22 arose in response to Assembly Bill 5, 2019 legislation codifying the California Supreme Court's decision in *Dynamex Operations West, Inc. v. Superior Court*, which created a new "ABC" test for determining whether workers are properly classified as independent contractors.

California law allows for an appeal to be filed within 60 days of notice of the entry of judgment. While the publically available case records show that judgment on the order has not yet been entered, it is likely that the respondents will appeal the ruling once they are able to do so. An ongoing appeal stays enforcement of a court's ruling, meaning that Proposition 22 will remain in effect during the appeals process. For full details, go to <https://www.natlawreview.com/article/alameda-superior-court-judge-rules-proposition-22-unconstitutional>.



Pro Bono

Serving and Connecting



The following article is reprinted from The National Law Review with the permission of Practice Panther.

MIGHT SEEM LIKE LAWYERS GET the short end of the judiciary stick when they offer pro bono work. After all, how are you supposed to benefit from doing work for free? In a competitive economy where attorneys have to make every minute count, providing complimentary legal services can feel like a waste of valuable time and energy.

However, pro bono work is not entirely devoid of compensation. Voluntary no-charge legal services are a critical part of any litigator's professional duties, no matter whether you've just passed the bar or you've run your own firm for years.

The ABA even recommends that lawyers spend at least 50 hours a year delivering pro bono services for clients of reduced means.

But why is that? What makes it so important for attorneys to offer their work as public service?

Pro bono work can touch nearly every part of your career, from your personal development to your community impact, making it a vital activity for anyone serious about the legal profession. Here are just a few elements that make pro bono work such a critical part of legal work.

Developing Professional Skills

Young lawyers know the feeling all too well. After earning your J.D. and landing your first job at a law firm, your supervisors relegate you to busy work and mundane activities while the senior associates handle the major assignments. However, there is a silver lining to this situation.

Firms often leave their low-priority pro bono projects to their less senior staff, providing an excellent opportunity to break out of the repetitive rut of minor work and gain

genuine hands-on experience in the legal field.

Voluntary legal services may not demand a high asking price, but for all intents and purposes, they are still real-world legal tasks. Like any higher-profile paid work, pro bono services require lawyers to develop strategies, submit briefs, argue cases, and navigate delicate processes.

While typically only the more established lawyers get to work on the most exciting or enriching cases, pro bono projects are available for lawyers of all skills and experience levels to address, providing ample opportunity to gain invaluable experience.

Complimentary legal projects might seem like a large amount of effort to put into a project without direct compensation, but you'll reap the rewards in other ways. By developing new or existing skills through pro

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bono work, you'll leap ahead of the competition as a versatile professional with a diverse toolbox of capabilities.

Cultivating Diverse Experiences

Even if you already have substantial professional expertise and experience handling significant cases, pro bono work can empower you to diversify your skillset.

With many firms becoming increasingly specialized in recent years, requests for voluntary legal services often provide a welcome opportunity to pursue more varied projects beyond your typical duties.

Since pro bono work opportunities often arise via public job boards or announcements, they are open for lawyers of any background or specialty to take on and provide a welcome chance for some newfound challenge or enrichment on the job.

For example, a family law attorney might handle an immigration case, or an IP lawyer could approach corporate law issues. The possibilities are nearly endless, and the rewards are just about as bountiful, too.

Not only can pro bono work add some much-needed variety to your routine, but by trying your hand at these more diverse cases, you'll have a chance to cultivate more robust skill sets that you wouldn't have had access to otherwise. In the process, you'll make yourself a more authoritative and well-rounded resource for your paying clients, affecting everything from your profits to your moment-to-moment productivity.

You'll also find yourself able to connect with a diverse network of attorneys as you pursue pro bono work. After all, while you may interact with a relatively small circle of associates in your routine work experiences, taking on pro bono work in fields outside your typical area of expertise lets you meet legal professionals from other specializations.

Networking is one of the secrets of becoming a successful lawyer, so using public service opportunities as a method

to gain new professional connections can be just what you need to advance your career.

Serving and Connecting

Lawyers do vital work for their communities in handling sensitive cases related to how their neighbors run their businesses, care for their families, and go about their daily lives.

“

By developing new or existing skills through pro bono work, you'll leap ahead of the competition as a versatile professional with a diverse toolbox of capabilities.”

However, there's no denying that legal services aren't accessible to everyone. Hiring a lawyer can be an expensive task, one that far exceeds many people's monthly budgets.

You can get around this limitation by willingly providing your work to your community free of charge.

The simplest reason to make pro bono work a top priority in your practice is that it's the right thing to do.

People seeking out legal services typically aren't in the most ideal situations,

and in offering your services for free, you can lend a helping hand to serve your community directly – without any strings attached. You'll show your community that you care about them, and in doing so, you'll forge a deeper connection to your existing clients.

As you reinforce your connections to the community with your complimentary offerings, you'll also forge a solid reputation in your area for delivering reliable and personable solutions to those who need them.

During a time in history defined by social and economic upheaval and uncertainty, offering an accessible hand to help is a remarkable and much-needed gesture that can make a genuine, tangible impact in your clients' lives.

Many lawyers first enter their profession intending to make a difference, and with pro bono work, you'll be able to do just that for your clients.

Every penny counts, but that doesn't mean that you should regard pro bono work as a low priority compared to paid opportunities.

Instead, offering your services for free has innumerable benefits for your clients and professional development alike.

If you're still building your legal practice or looking for a way to shake up your established routine, pro bono opportunities deliver the exact chances you're looking for. 🏛️

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Retrospective



From the *Los Angeles Daily Journal*, September 26, 1994...

Southern California



MAT KANJI / For the Daily Journal

VAST PROJECT – Nineteen courtrooms in the Superior Courts in Van Nuys and San Fernando, together with the Van Nuys Municipal Court, are taking part in a two-week settlement conference project in a bid to clear 2,000 cases from the courts. Nearly 400 attorneys have volunteered their time to serve as settlement officers. Participating in the project are, from left to right, Irwin S. Gevurtz, attorney and settlement officer; Edmund W. Clarke Jr., attorney and settlement officer; and Superior Court Judge Bert Glennon.



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Dear Phil

Dear Phil,

How do we get our firm back to 'normal' when the definition of same seems to change every day? Are Zoom meetings and working remotely here to stay or will we ever see a return to something resembling 'things the way they were'?

*Sincerely,
Regular Guy*



Illustration by Gabriella Sendor

DEAR REGULAR GUY,
The fact is, the new "normal" is that things change every day, and likely will continue to do so going forward for the foreseeable future.

Waiting for things to go back to the way they were before is not likely, and if you are sitting around waiting for that to happen, the legal profession is leaving you behind. If you have not already done so, you need to get used to, and comfortable with, handling the majority of your business remotely.

Even if you are inclined to appear in person for depositions or other matters, your client, opposing counsel, the court reporter, the judge etc. might not be comfortable with doing so.

Thus, at best, even if much of what we do returns to being in-person, there will very likely always continue to be a hybrid of digital and in-person going forward.

In order to succeed going in this environment, it is essential that you become savvy with the tech. This goes far beyond using the "share screen"

function on Zoom. While I have seen much of the profession become lazy with this new form of remote appearances, falling victim to what I call the "only getting dressed from the waist up approach" is a complete disservice to your client and the profession.

As professionals, the clients deserve to have representation that exceeds expectations and getting good results for your clients in the remote world, requires that you go above and beyond buying a webcam and turning it on. Be motivated to do better, learn new tricks, and outmaneuver your opponent with quality of presentation.

It is amazing what you can do with exhibits, the presentation of evidence, the quality of your presentation and the ability to captivate the trier of fact. Everyone can tell the difference between a low-budget film and a blockbuster. Be the latter.

Best,
Phil

Dear Phil is an advice column appearing regularly in *Valley Lawyer Magazine*. Members are invited to submit questions seeking advice on ethics, career advancement, workplace relations, law firm management and more. Answers are drafted by *Valley Lawyer's* Editorial Committee. Submit questions to editor@sfvba.org.



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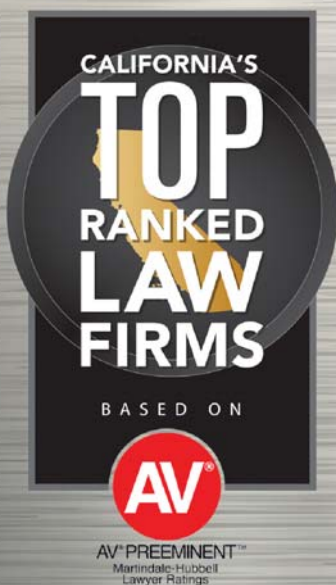
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