VALLEY LAWYER
DECEMBER 2021 • $5
A Publication of the San Fernando Valley Bar Association

Top of the Class: Attorney Christian Oronsaye

Civility in Lawyers' Writing

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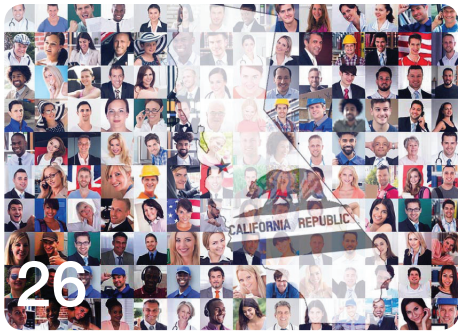

On the Cover: Attorney Christian Oronsaye
Photo by Ron Murray

FEATURES

DEPARTMENTS

VALLEY LAWYER

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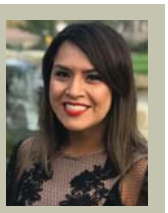
Safe Return to In-Person and Hybrid Events

ROSIE SOTO COHEN
Executive Director



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AS WE ENTER THE LAST MONTH OF 2021 AND COVID-19 restrictions continue to lift, the San Fernando Valley Bar Association (SFVBA) Board of Trustees is looking forward to bringing back in-person events.

While it is unfortunate that we could not gather in 2021 for in-person annual galas and events, we know SFVBA members want to stay connected as we navigate this new normal.

Under the leadership of SFVBA President Christopher P. Warne, the Board is hard at work and, after hearing the SFVBA COVID-19 Compliance Committee's recommendations for hosting in-person events, policies have been voted on and will soon be finalized to safely resume in-person meetings, events, and services to our members.

Whether you wish to participate or celebrate from a distance, virtually, or want to participate in an engaging in-person event, we are here to serve the members and offer options.

With regards to SFVBA in-person events, for now, members should expect to show proof of full vaccination or negative COVID-19 test within the last 72 hours; proper face coverings will continue to be required unless actively eating or drinking; safety signs from both the County and City of Los Angeles will be posted throughout the premises; members must adhere to venue policies as well when SFVBA hosts events outside the Bar office; expect written policies, procedures and waivers for in-person events; and, ultimately, the Executive Committee (Ex Com) will review all plans for in-person events.

The Board approved the COVID-19 Compliance Committee's recommendations highlighted above, which are subject to be revised by the Ex Com after seeking professional legal counsel.

Because all in-person SFVBA events require authorization from Ex Com, members who wish to plan an event/program or share an in-person event on the Bar's calendar must submit the proposed event for approval. The Ex Com meets on the second and fourth Tuesday of each month and will approve, postpone, or deny SFVBA programming or the distribution of another Bar program.

> "The recently approved budget allows the Bar to continue to offer valued member benefits."

We are very thankful that we continued to serve members during the pandemic, albeit primarily virtual. In 2022, members should expect more in-person meetings, events and networking options as the Bar looks forward to once again filling its calendar of events with both in-person and virtual events to reenergize our strong sense of community. We hope to see you at these events, virtually or in person.

Regarding membership and benefits, membership numbers are down significantly two years in a row. The SFVBA has had a strong history since 1926 and, over the years, the SFVBA has experienced adversity, adapted, and evolved, and we look forward to working with our membership, leadership, community, judicial officers to do just that.

The recently approved budget allows the Bar to continue to offer valued member benefits such as Fastcase; at least four printed issues of *Valley Lawyer*; the Attorney Referral Service (ARS); the Valley Bar Network (VBN); Mandatory Fee Arbitration (MFA); Access to 10+ hours of free legal education; section meetings, both in-person and virtual; Judges' Night (TBD); a Mock Trial Competition; Meet the Experts/Mediators; a Member Directory listing for each member; the great work of the Inclusion and Diversity Committee; Dinner At My Place (coming soon); the Passing of the Gavel for the new Chief Bankruptcy Judge, and more.

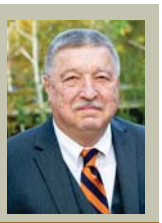
As thrilled as we are to have Board authorization to return to in-person events, regrettably, there will be no Holiday Open House.

Safety planning and protocols take time, and we are instead planning for 2022. This holiday season, though, SFVBA will not be hosting its Toy Drive, so we are instead asking members to help bring holiday joy to families and children in our communities that are in need. You can still donate holiday gifts or gift cards to families at Haven Hills and the West Valley Food Pantry directly or contribute to Blanket the Homeless at vclf.org.

It is a privilege to serve our membership in the best way possible. And, on behalf of the SFVBA staff, thank you and Happy Holidays!

The Law's Golden Thread

MICHAEL D. WHITE
SFVBA Communications Manager



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IN THE TRUE SPIRIT OF FULL disclosure, both my niece and nephew are attorneys.

Extremely intelligent and capable, the trails they've blazed through the legal forest primeval have gone in markedly divergent points of the compass.

Niece Natalie, a graduate of Pepperdine Law School, has spent the last ten years practicing personal injury law here in Southern California, while nephew Chris, who received his JD from the McGeorge School of Law, serves as an Assistant District Attorney in northern California.

Multi-lingual and well-traveled, she has taken an interest in international affairs, with the goal of working for the U.S. State Department; her brother spent three years clerking for a federal appellate judge in Anchorage, Alaska, followed by a tour of duty with the Los Angeles County District Attorney's office before migrating northward.

The sheer breadth of their experience has enlivened many a family holiday gathering with chuckles, grins and sometimes epic stories of satisfaction and frustration, victory and defeat, justice applied and, sometimes, justice denied.

But, interestingly, as disparate as their niches are, their paths converge at one critical point—they both possess an almost ethereal reverence for the law.

"I really couldn't see myself doing anything else," my nephew once told me, calling the law "the glue that holds our society together." Natalie nodded.

Without it, he said, "there would be chaos. As disjointed and ill-applied as it sometimes is, it's just about all we have that holds us together. It's quite a responsibility to see that it's evenly applied and respected," adding that, "Sometimes, it's easy to forget that what we do is a high calling."

A "high calling" and a profession that neither of them could picture themselves abandoning.

> "The law, disciplines people in terms of the decisions they make and how companies do their business."

The same observation was shared with me by the subject of this month's *Valley Lawyer* cover piece—Nigerian-born attorney Christian Oronsaye, who came to the United States to practice law because, in his words, as a young boy, "I never thought about anything else other than becoming a lawyer."

What drew him to continue his education and, ultimately, practice law in the United States?

"The opportunities for growth here and the nature of the legal system," he says. "I originally worked as a transactional lawyer and considered working in the telecom sector or corporate governance [in Nigeria]. That narrowed my opportunities, as opposed to the way it is here, where there are opportunities in fields of practice and specialization."

The law, he told me, "disciplines people in terms of the decisions they make and how companies do their business."

As attorneys, he adds, "We need to keep ourselves on the leading edge in terms of how we practice. We should plan to learn as much as we can every year. Looking at what is best to apply to our practice."

The Golden Thread of the Law, what it is by statute and what it should be in blind application, it seems, stretches far from Nigeria to California.

There's something remarkably encouraging in that.

CALENDAR

DECEMBER 2021

SUN	MON	TUE	WED	THU	FRI	SAT
28 	29	30 	1	2 WEBINAR Inclusion and Diversity Committee Presents ***Pathways to Law*** **12:30 PM** A series designed to familiarize high school students with the many opportunities available to them in the legal profession. Judge Firdaus Dordi will address the students at Birmingham High School.	3	4
5	6	7	8	9	10 WEBINAR Bankruptcy Law Section ***Recent Cases From the District Court*** **12:00 NOON** Roksana D. Moradi-Brovia with Tamar Terzian and Eliza Ghanooni will review the latest significant cases. Approved for Bankruptcy Law Legal Specialization. (1.25 Hours MCLE)	11
12	13	14 WEBINAR Probate and Estate Planning Section ***Probate and Divorce Crossover Issues*** **12:00 NOON** Attorney Scott Klopert will present a practical approach to navigating the intersection of family and probate law, before, during, and after marriage. (1 MCLE Hour) Board of Trustees **6:00 PM**	15	16 ZOOM MEETING Inclusion and Diversity Committee Meeting **12:15 PM**	17	18
19	20 ZOOM MEETING Mock Trial Competition **6:00 PM**	21	22	23	24 	25
26 	27	28  See ad on page 41	29	30	31	

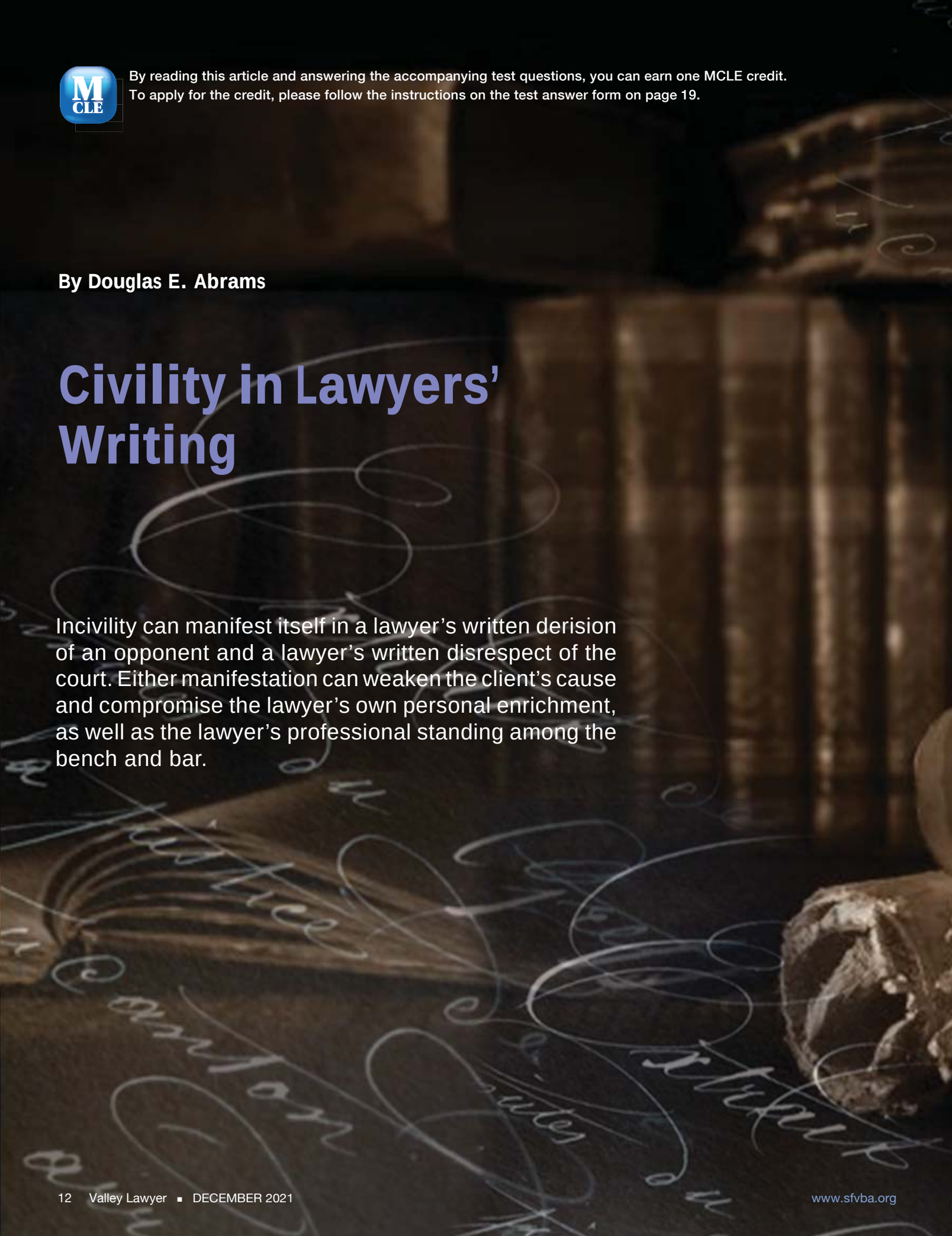
SFVBA COVID-19 UPDATES
sfvba.org/covid-19-corona-virus-updates/

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

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

By Douglas E. Abrams

Civility in Lawyers' Writing



Incivility can manifest itself in a lawyer's written derision of an opponent and a lawyer's written disrespect of the court. Either manifestation can weaken the client's cause and compromise the lawyer's own personal enrichment, as well as the lawyer's professional standing among the bench and bar.

A FEW YEARS AGO, AMERICAN BAR Association President Stephen N. Zack decried the legal profession's "continuing slide into the gutter of incivility."[1]

An ABA resolution "affirm[ed] the principle of civility as a foundation for democracy and the rule of law, and urge[d] lawyers to set a high standard for civil discourse."[2]

The ABA initiative echoes federal and state courts that call civility "a linchpin of our legal system," a "bedrock principle," and "a hallmark of professionalism."[3] [4] [5]

Justice Anthony M. Kennedy says that civility "defines our common cause in advancing the rule of law."[6] Chief Justice Warren E. Burger called civility a "lubricant[] that prevent[s] lawsuits from turning into combat."[7]

"Courtesy is an essential element of effective advocacy," agrees Justice John Paul Stevens.[8]

The adversary system's pressures can strain the tone and tenor of a lawyer's oral speech, but the strain on civility can be especially great when lawyers write. Words on paper arrive without the facial expression, tone of voice, body language, and contemporaneous opportunity for explanation that can soothe face-to-face communication. Writing appears cold on the page, dependent not necessarily on what the writer intends or implies, but on what readers infer.

> "Civility assumes that we will disagree. It requires us not to mask our differences, but to resolve them respectfully."

This article is in three parts—Part I describes two manifestations of incivility, a lawyer's written derision of an opponent, and a lawyer's written disrespect of the court; Part II describes how either manifestation can weaken the client's cause; and Part III describes how incivility in writing can also compromise both the lawyer's own personal enrichment and the lawyer's professional standing among the bench and bar.

Part I

"[C]ivility is not a sign of weakness," President John F. Kennedy assured Americans in his Inaugural Address in 1961 as he anticipated four years of face-offs with the Soviets.[9]

"Civility assumes that we will disagree," says Yale law professor Stephen L. Carter, "It requires us not to mask our differences, but to resolve them respectfully."[10]

The advice prevails, regardless of whether incivility pits lawyer on lawyer, or whether it pits lawyer against the court. Each of the two manifestations of incivility warrants a representative example here.

Lawyer-On-Lawyer Incivility

When Chief U.S. Bankruptcy Judge Terrence L. Michael (N.D. Okla.) considered whether to approve a compromise in In re Gordon, the contending lawyers in the Chapter 7 proceeding detoured into written lawyer-on-lawyer invective.[11]

In a filing to support its motion to compel discovery from the bankruptcy trustee in Gordon, the lawyer for creditor Commerce Bank charged that the trustee and the United States had engaged in "a pattern... to avoid any meaningful examination of the legal validity of the litigation plan they have concocted to bring... a series of baseless claims."[12]

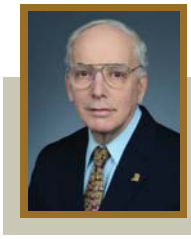
"[T]hey know," the bank's lawyer continued, "that a careful examination of the process will show the several fatal procedural flaws that will prevent these claims from being asserted."[13]

"Only by sweeping these issues under the rug will the trustee be able to play his end game strategy of asserting wild claims...in hopes of coercing Commerce Bank into a settlement (which the Trustee hopes will generate significant contingency fees for himself)."[14]

The trustee charged that the bank's lawyer had impugned his character with accusations that he had compromised his fiduciary obligations for personal gain. Judge Michael denied the trustee's sanctions motion on procedural grounds, but he chastised the bank's lawyer because "personal and vitriolic accusations have no place as part of a litigation strategy."[15]

The court instructed the parties to "leave the venom at home" because "[w]hether you like (or get along well with) your opposition has little to do with the merits of a particular case." [16] [17]

Some courts have moved beyond instruction. In the exercise of inherent authority, these courts have sanctioned lawyers, or have denied attorneys' fees, for incivility.[18]



Douglas E. Abrams is Associate Professor of Law Emeritus at the University of Missouri School of Law. Four U.S. Supreme Court decisions have cited his law review articles and he has written or co-written six books, which have appeared in a total of 22 editions. His latest book is *Effective Legal Writing: A Guide for Students and Practitioners.*
This article originally appeared in *Precedent*, The Missouri Bar's quarterly magazine. Reprinted by permission.

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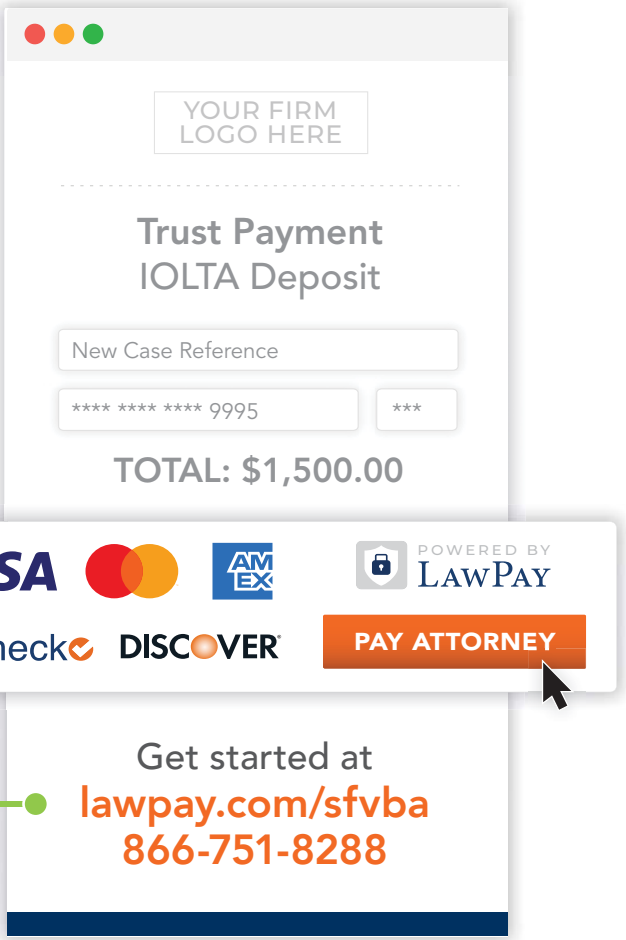

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Some courts have even sanctioned the client who, having retained the lawyer, bears some responsibility for the lawyer's conduct.[19]

Lawyer-on-Court Incivility

Gordon's written recriminations pitted counsel against counsel, but lawyers sometimes venture into incivility that disrespects judges and the court.

Every appeal involves at least one party who believes that the lower court reached an incorrect outcome, but few judges deserve criticism for incompetence. Lawyers for aggrieved parties are more likely to receive a serious hearing (and more likely to perform their roles as officers of the court) by firmly, forcefully, but respectfully arguing a judge's good faith misapplication of the law to the facts, rather than by resorting to insinuations about the judge.

Insinuations surfaced during the federal district court's review of the magistrate judge's report and recommendation in *In re Photochromic Lens Antitrust Litigation*.[20]

A party's lawyer contended that the magistrate judge was "misled" concerning relevant legal standards, and that the judge made her recommendation without "any reference to the voluminous underlying record." The lawyer further contended that she "conducted no analysis, much less a 'rigorous analysis,'" and decided "based on no evidence, a superficial misreading of the evidence, or highly misleading evidence."[21]

The district court approved the magistrate judge's recommendation and report in significant part, but did not stop there.

The court also publicly reprimanded the lawyer for crossing the line: "It is disrespectful and unbecoming of a lawyer to resort to such language, particularly when directed toward a judicial officer. Its use connotes arrogance, and reflects an unprofessional, if not immature litigation strategy of casting angry aspersions rather than addressing the merits...in a dignified and respectful manner."[22]

Part II: Incivility's Costs to the Client

Lawyers whose writing descends into incivility risk weakening the client's cause, perhaps irreparably. The Chief Justice of the Maine Supreme Court confides that "[a]s soon as I see an attack of any kind on the other party, opposing counsel, or the trial judge, I begin to discount the merits of the argument."[23]

As they determine the parties' rights and obligations by applying fact to law, perhaps judges sometimes react this way because civility projects strength and incivility projects weakness. "Rudeness is the weak man's imitation of strength," said philosopher Eric Hoffer.[24]

The lawyer's first step toward civility may be an early candid talk with the client, who may feel grievously wronged and may believe that the surest path to vindication is representation by a junkyard dog waiting to be unleashed. The client's instincts may stem from movies and television dramas, whose portrayals of lawyers sometimes sacrifice realism for entertainment.

Without this early talk, the client may mistake the lawyer's civility for meekness, and courtesy for concession. The client needs to understand that a take-no-prisoners strategy can disgust any decision maker who shares the sensibilities expressed by the Justices and judges quoted above.

One Illinois trial judge recently had this advice for lawyers: "No judge has ever been heard to endorse or encourage the use [of mean-spirited] writing. Not one. You may feel better writing it and your client may feel better reading it, but your audience is the judge, and judges abhor it."[25]

Judicial abhorrence scores the client no points. Justice Sandra Day O'Connor says that, "It is enough for the ideas and positions of the parties to clash; the lawyers don't have to."[26]

"It isn't necessary to say anything nasty about your adversary or to make deriding comments about the opposing brief," added Justice Ruth Bader Ginsburg, who said that such comments "are just distractions. You should aim to persuade the judge by the power of your reasoning

and not by denigrating the opposing side...If the other side is truly bad, the judges are smart enough to understand that; they don't need the lawyer's aid."[27]

Judges are not alone in advancing civility for projecting strength.

John W. Davis, perhaps the 20th Century's greatest Supreme Court advocate, understood his judicial audience.

"Controversies between counsel," he wrote, "impose on the court the wholly unnecessary burden and annoyance of preserving order and maintaining the decorum of its proceedings. Such things can irritate; they can never persuade."[28]

Part III: Incivility's Costs to the Lawyer

Aside from compromising the client's interests, incivility can damage the lawyer's own personal enrichment and professional standing. Incivility "takes the fun from the practice of law," says Judge Duane Benton of the U.S. Court of Appeals for the Eighth Circuit.[29]

"Being a lawyer can be pleasant or unpleasant," explains Judge William J. Bauer of the U.S. Court of Appeals for the Seventh Circuit, who adds that "[w]hen we treat each other and those with whom we have professional contact with civility, patience and even kindness, the job becomes more pleasant and easier."[30]

Moving from the lawyer's personal enrichment to professional standing, the Preamble to the ABA Model Rules of Professional Conduct recites "the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous, and civil attitude toward all persons involved in the legal system."[31]

Model Rule 8.4(d) operates against "conduct that is prejudicial to the administration of justice."[32]

The Model Rules' spotlight on professional obligation is fortified by commands for civility in federal and state court rules; state admissions oaths; and unofficial codes that some professional organizations maintain for their member lawyers.[33 34 35]

The ABA Model Code of Judicial Conduct imposes reciprocal obligations of civility on judges in the performance of their official duties.[36]

These professional commands and expectations mean that descent into incivility can damage the lawyer's reputation with judges and others lawyers. The damage seems greatest when the court's opinion calls out the offending lawyer publicly, either by name or by leaving the lawyer readily identifiable from the appearances listed atop the opinion.

In the two decisions featured in Part I of this article, the offenders may have had belated second thoughts when the court shined the spotlight.

"Just as lawyers gossip about judges and most litigators have a 'book' on the performances of trial judges, we judges

keep our own book on litigators who practice before us," confides one federal district judge.[37]

During my judicial clerkship, I learned early that when many judges pick up a brief or other submission, they look first for the writer's name. A writer with a track record for civil, candid, forceful advocacy gets a head start; a writer who has fallen short must make up lost ground.

Incivility brings tarnish, but civility brings luster. Justice Kennedy calls civility "the mark of an accomplished and superb professional."[38]

A veteran federal district judge concurs: "The lawyers who are the most skillful tend to be reasonably civil lawyers because they project an image of self-confidence. They don't have to stoop to the level of acrimony."[39]

Even without public rebuke or other disdain from the bench, word gets around. In cities, suburbs and outstate areas alike, the bench and bar usually remain bound by mutual relationships, word of mouth, recollections, and past experiences.

Lawyers with sterling reputations for civility stand a better chance of receiving civility in return. Sooner or later, for example, a lawyer may need a stipulation, consent to a continuance, or similar accommodation from opposing counsel or the court. Like other people, lawyers get what they give.

In a challenging employment market, maintaining a reputation for civility can also enhance a lawyer's professional mobility. Lawyers sometimes receive appealing lateral job offers from a nearby public- or private-sector adversary who respects not only their competence, but also their professionalism.

Being smart is not enough. Plenty of lawyers are smart, but fewer lawyers earn respect for genuine professionalism as they seek the best possible outcomes for their clients.

Because few Americans—including few lawyers–spend their entire careers with their first employer, enhanced lateral mobility can be a significant reward for unswerving commitment to an honorable law practice.

As members of a largely self-governing profession devoted to the rule of law, lawyers are judged by expectations sometimes higher than the expectations that judge other professionals.[40]

President Theodore Roosevelt said that "[c]ourtesy is as much a mark of a gentleman as courage."[41]

"The greater the man, the greater courtesy," wrote British Poet Laureate Alfred, Lord Tennyson in his epic poem, *Idylls of the King*.[42] The greater the lawyer too.

Conclusion: The Will to Win

"All advocacy involves conflict and calls for the will to win," said New Jersey Supreme Court Chief Justice Arthur T. Vanderbilt, but the will to win is only one ingredient of professionalism.

Advocates, he added, also "must have character," marked by "certain general standards of conduct, of manners, and of expression."[43]

One prime marker of an advocate's character is civility.

Civility in advocacy resembles sportsmanship in athletics. Sportsmanship presumes that each athlete wants to win within the rules of the game; a sportsmanlike athlete who does not care about winning should not play.

Civility similarly presumes that each advocate wants to win within the rules of professionalism; a civil advocate who does not care about winning should not represent a client. Civility and forceful advocacy, like sportsmanship and forceful athleticism, define the total package.

---

[1] James Podgers (ed.), *From Many Voices, a Call for Public Civility*, 97 A.B.A.J. 58, 58 (Sept. 2011) (quoting Zack).
[2] *Id.*
[3] *Wilson v. Airtherm Prods., Inc.*, 436 F.3d 906, 912 n.5 (8th Cir. 2006).
[4] *Wescott Agri-Prods, Inc. v. Sterling State Bank, Inc.*, 682 F.3d 1091, 1096 (8th Cir. 2012).
[5] *Cardello v. Cardello*, No. FA020088156S, 2002 WL 31875435 * 1 (Conn. Super. Ct. Dec. 4, 2002).
[6] Louis H. Pollak, *Professional Attitude*, 84 A.B.A.J. 66, 66 (Aug. 1998) (quoting Justice Kennedy).
[7] Warren E. Burger, *The Necessity for Civility*, 52 F.R.D. 211, 214-15 (1971).
[8] Marvin E. Aspen, *Let Us Be "Officers of the Court*," 83 A.B.A.J. 94, 96 (July 1997) (quoting Justice Stevens).
[9] Joint Congressional Comm. on Inaugural Ceremonies, *Address by John F. Kennedy*, 1961 (Jan. 20, 1961).
[10] Stephen L. Carter, Civility 132 (1998).
[11] 484 B.R. 825 (N.D. Okla. 2013).
[12] *In re Gordon*, 484 B.R. 825, 827 (N.D. Okla. 2013).
[13] *Id.*
[14] *Id.* at 827-28.
[15] *Id.* at 828.
[16] *Id.* at 830-31.
[17] *Id.* at 830.
[18] G.M. Filisko, *You're OUT OF ORDER!*, 99 A.B.A.J. 32 (Jan. 2013); Wescott Agri-Prods, Inc., supra note 5, at 1095-96 (citation omitted).
[19] *See, e.g.*, Wescott Agri-Prods, Inc., *supra* note 4, at 1096 (citation omitted).
[20] No. 8:10-md-02173-T-27EAJ, 2014 WL 1338605 (M.D. Fla. Apr. 3, 2014).
[21] *Id.* at *1 n.1.
[22] *Id.*
[23] Leigh Ingalls Saufley, *Amphibians and Appellate Courts*, 14 MAINE B.J. 46, 49 (Jan. 1999).
[24] Eric Hoffer, *The Passionate State of Mind: And Other Aphorisms* (1955).
[25] Naomi Kogan Dein, *The Need for Civility in Legal Writing*, 21 CBA RECORD 54 (Feb./Mar. 2007) (quoting Judge Michael B. Hyman).
[26] Sandra Day O'Connor, *Professionalism*, 76 Wash. U. L.Q. 5, 9 (1998).
[27] *Interviews with United States Supreme Court Justices: Justice Ruth Bader Ginsburg*, 13 SCRIBES J. LEG. WRITING 133, 142 (2010) (quoting Justice Ginsburg) (italics in original).
[28] John W. Davis, *The Argument of an Appeal*, 26 A.B.A.J. 895, 898 (1940).
[29] Duane Benton, *Chief Justice's Address to Members of the Missouri Bar*, Sept. 24, 1998, 54 J. MO. BAR 302, 302 (1998).
[30] J. Timothy Eaton, *Civility*, *Judge Bauer and the CBA*, 28 CBA RECORD 8 (2014) (quoting Judge Bauer; citation omitted).
[31] ABA Model Rules of Prof'l Conduct, Preamble [9] (2015).
[32] *Id.*, R. 8.4(d) (2015).
[33] *E.g., Standards for Professional Conduct Within the Seventh Federal Judicial Circuit* 120-21, 123 (2013).
[34] Filisko, *supra* note 18 (quoting S.C. oath).
[35] *See, e.g., Am. Bd. of Trial Advocates' Principles of Civility, Integrity, and Professionalism*, https://www.abota.org/index.cfm?pg=Civility.
[36] ABA Model Code of Judicial Conduct R. 2.8(B) (2015).
[37] Aspen, *supra* note 8, at 96.
[38] Louis H. Pollak, *supra* note 6 (quoting Justice Kennedy).
[39] Laura Castro Trognitz, Bench Talk, 86 A.B.A.J. 56 (Mar. 2000) (quoting Judge John G. Koeltl, S.D.N.Y.).
[40] ABA Model Rules of Prof'l Conduct, Preamble [10] (2015).
[41] Cliff Sain, Earth's Atmosphere, Springfield (Mo.) News-Leader, Feb. 26, 2008, at 3C (quoting Roosevelt).
[42] Alfred, Lord Tennyson, *Idylls of the King*, *The Last Tournament* (1859-85).
[43] Arthur T. Vanderbilt, *Forensic Persuasion*, 7 Wash. & Lee L. Rev. 123, 130 (1950).

Civility in Lawyers' Writing

Test No. 158

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. Courts have sanctioned lawyers but never deny attorneys' fees for incivility.
   ❑ True ❑ False

2. Some courts have sanctioned the client who, having retained the lawyer, bears some responsibility for the lawyer's conduct.
   ❑ True ❑ False

3. Personal and vitriolic accusations have an important place as part of a litigation strategy.
   ❑ True ❑ False

4. Lawyers for aggrieved parties are more likely to receive a serious hearing by firmly, but respectfully, arguing a judge's good faith misapplication of the law to the facts, rather than by resorting to insinuations about the judge.
   ❑ True ❑ False

5. In *In re Photochromic Lens Antitrust Litigation*, the court publicly applauded the lawyer for crossing the line.
   ❑ True ❑ False

6. Lawyers whose writing descends into incivility strengthen the client's cause.
   ❑ True ❑ False

7. Justice Sandra Day O'Connor said that, "It is enough for the ideas and positions of the parties to clash; the lawyers don't have to."
   ❑ True ❑ False

8. The Preamble to the ABA Model Rules of Professional Conduct recites "the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous, and civil attitude toward all persons involved in the legal system."
   ❑ True ❑ False

9. ABA Model Rule 8.4(d) operates against conduct that is prejudicial to the administration of justice.
   ❑ True ❑ False

10. The ABA Model Rules' spotlight on professional obligation is not fortified by unofficial codes that some professional organizations maintain for their member lawyers.
    ❑ True ❑ False

11. The ABA Model Code of Judicial Conduct imposes reciprocal obligations of civility on judges in the performance of their official duties.
    ❑ True ❑ False

12. As members of a largely self-governing profession devoted to the rule of law, lawyers are judged by expectations sometimes lower than the expectations that judge other professionals.
    ❑ True ❑ False

13. Justice Kennedy calls civility "the mark of an accomplished and superb professional."
    ❑ True ❑ False

14. Aside from compromising the client's interests, incivility can damage the lawyer's own personal enrichment and professional standing.
    ❑ True ❑ False

15. The lawyer's first step toward civility may be an early candid talk with the client.
    ❑ True ❑ False

16. An ABA resolution affirmed the principle of civility as a foundation for democracy and the rule of law.
    ❑ True ❑ False

17. President John F. Kennedy assured Americans in his Inaugural Address in 1961 that "[C]ivility is not a sign of weakness" as he anticipated four years of face-offs with the British.
    ❑ True ❑ False

18. The client may mistake the lawyer's civility for meekness, and courtesy for concession.
    ❑ True ❑ False

19. Attorneys should aim to persuade the judge by denigrating the opposing side.
    ❑ True ❑ False

20. If the other side is truly bad, the judges are smart enough to understand that; they don't need the lawyer's aid.
    ❑ True ❑ False

Civility in Lawyers' Writing MCLE Answer Sheet No. 158

INSTRUCTIONS:

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

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

METHOD OF PAYMENT:

❑ **Check or money order payable to "SFVBA"**

❑ **Please charge my credit card for**

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Authorized Signature

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

Name _____

Law Firm/Organization _____

Address _____

City _____

State/Zip _____

Email _____

Phone _____

State Bar No. _____

ANSWERS:

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

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

By Michael D. White

Top of the Class: Attorney Christian Oronsaye

Graduating at the top of his law school class, attorney Christian Oronsaye's personal and professional journey has taken him from Nigeria to New York to a successful law practice in Southern California.

Photos by Ron Murray

CHRISTIAN ORONSAYE CAN'T remember a time when he didn't want to become an attorney.

"I was watching the TV in 1987 or thereabouts and I remember that very well seeing a story about a Nigerian human rights lawyer who was very active in the field of human rights," he recalls.

The lawyer was highly-respected and University of London-educated Chief "Gani" Fawehinmi, who several years later was named Senior Advocate of Nigeria, the country's highest legal post.

"I asked my dad, 'Hey, who is this man?' He said, 'He is a lawyer.' I asked, "If I become a lawyer, would people hear me?' He said, 'Yes.' And so that stuck with me. I was probably five or six at the time. That stuck with me. That became the foundation for my legal training, and I never thought about anything else other than becoming a lawyer."

Oronsaye happened to enjoy science in high school with several of his teachers steering him to a career in medicine.

"The president of my high school back in the day was a doctor and so was my brother, Dr. Maxwell Oronsaye. They both thought I should follow their advice, but I chose not to. I set my mind to it and I can assure you that I would probably not be able to do anything outside the law."

Born in Jos, Plateau State, Nigeria, Oronsaye's family moved to Edo State and lived in the capital, Benin City. There, he attended high school and qualified for a five-year program at Ambrose Alli University, during which he earned a degree in law [Equivalent of a Juris Doctorate].

While in law school, he served as President of the Faculty of Law Students' Association, and at the Nigeria Law School, was ranked first out of the 4,881 students that took part in the national bar exam. His scores remain, officially and to this day, the highest in the history of the Nigerian law school program.

Five years as a successful transactional attorney with one of the country's largest law firms led to his receiving a scholarship to study for a Master's degree at New York University, serving as a legal advisor to the Nigerian Mission at the United Nations, and eventually settling with his family in Southern California.

Following his move to the United States, Oronsaye joined a litigation law firm. The work there and his studies at NYU formed the foundation of his current practice in employment law.

"When I started in litigation, I became fascinated with it being so incremental," he says. "And so I just measured on its three aspects… habitability, personal injury, and employment law. That was the foundation of how I started with my litigation practice in the U.S."

Faced with the decision of whether or not to return to Nigeria, Oronsaye opted to remain in the U.S. Why?

"The opportunities for growth are here and the nature of the legal system," he says. "I originally worked as a transactional lawyer, and considered working in the telecom sector or in corporate governance. That narrowed my opportunities, as opposed to the way it is here, where there are opportunities in fields of practice and specialization."

And why the move west to California?

"I have a friend here who is a college classmate, and one day I decided to pay him a visit. I hadn't been to California, and it was nice and beautiful, so it was like a dream come true for me. And that was how I chose to stay in California."

Oronsaye started to research practicing law in California and found that, in his words, "the diverse practices here are unique compared to some of the other jurisdictions. So, I felt that this was a place where I should be. And so I chose California as my home. I like to like to travel a lot and I think that there's so much to explore, from the woods, to the beaches to the mountains to ski, you just find everything here."

Growing up in Nigeria, California was, he says, a remote legend. "You're talking about millions of different kinds of people and the weather, which brings a lot of people here. It has a huge economy that can be compared with many nations. All that put together and California is very immigrant-friendly and holds a place for anyone who is looking at starting a specialist legal practice. It's a place that welcomes everyone with an open heart. And I think that that's what attracts people, too. If you can dream it, you can do it here."

Christian Oronsaye with wife Ivie, (front row, L-R) daughter Eghosa and sons Efosa and Eseosa

Licensed to practice in California in 2015, Oronsaye founded Ivycrest Attorneys in Chatsworth, CA. He has since then established himself as a capable and successful attorney focusing on employment, housing and habitability, personal injury law and litigation.

He has appeared before the U.S. Court of Appeals and served as the lead attorney in the landmark decision of *Osahon v. U.S. Bank National Association, 2019*.

"The law is the only situation that offers the opportunity to actually experience and teach others about behavior," he says.

"For example, people go into a mall, not knowing if they are going to slip and fall. It's a case on its own that impacts the lives of everyone involved. The person who's injured; and the owners of the store who shift their behavior and their attitude as to what to do to prevent such things in the future."

The law, he says, "disciplines people in terms of the decisions they make and how companies do their business."

As attorneys, he adds, "We need to keep ourselves on the leading edge in terms of how we practice. We should plan to learn as much as we can every year. Looking at what is best to apply to our practice."

Oronsaye's life experience has, he says, melded with his personal drive to succeed in his chosen profession.

"I've always wanted to make something of myself and have always tried to use my experience to make the best out of every situation and take advantage of every opportunity that comes my way," he says, crediting his wife, Ivie Oronsaye, with

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Christian Oronsaye (right) with attorney Opia-Enwemuche and paralegal Ninette Reyes.

playing "a very huge role in helping me to get ahead as she has always said that 'if you set your mind on something, you can achieve anything.'" That has helped shift my attitude towards life. Anything's possible. Just choose to target your mind."

A self-described "family man," Oronsaye has committed himself to make time for his family—his wife of 12 years and their three children.

"The practice of the law is very consuming, so I have to not only ensure that I practice well, but balance that with my family ties to make sure that my family is cared for."

Being a "family man is what is most important to me with a loving wife who is is very, very supportive," he says. "You know, it's something to have a wife as a homemaker who allows you to advance your dream at the expense of her own. Those are the things that have helped me to this point. I have learned that other people can make sacrifices as well."

Volunteerism and doing pro bono work also play a large part in Oronsaye's approach toward maintaining a personal and professional balance.

"I like to volunteer my time to help people in need, and enjoy helping people at our church who are seeking legal advice, directing them into areas where they can get help. For low-income people who cannot even afford to hire an attorney, I try to provide them with services so as to ensure that at least they have a voice. I believe that an informed society where people have and know their rights and obligations is much better for all of us."

Why?

"Because the truth is, life can be really empty for attorneys. They can become consumed by their work. It's very important for lawyers to take the time to address their mental health."

The COVID pandemic, he says, "has caused a lot of very serious mental health issues because before we could go out and meet face-to-face with other lawyers and clients. Before, you could go outside your office for a deposition. Now we sit in our offices and in our homes to do business, so it's important to be involved in things that help us keep balanced and enjoy the stability."

GOODBYE, BRICK AND MORTAR: When legal technology company Clio surveyed American consumers in 2018, 23 percent said they would be open to working with a lawyer remotely, but in 2021, 79 percent said a remote option would have a positive influence on their decision to hire a particular lawyer.

Also, in 2018, only 4 percent of consumers said they preferred to communicate through videoconferencing at any stage within a legal matter, but in 2021, more than 50 percent of respondents said they strongly preferred using videoconferencing across multiple stages of a legal matter.

Speaking at the recent virtual Clio Cloud Conference, Clio CEO and co-founder Jack Newton, stated, "The idea of a brick-and-mortar law office being the primary place that lawyer-client interactions happen is gone—and gone for good."

CALIFORNIA PARAPROFESSIONALS: Under a proposal currently up for public comment, legal paraprofessionals in California could represent clients in court in some instances, though not jury trials, and could have minority ownership interests in law firms.

Among the practice areas mentioned in the proposal by the California Paraprofessional Program Working Group are family law, housing, consumer debt, employment/income maintenance and collateral criminal.

The public comment period ends Jan. 12, 2022, and the State Bar of California Board of Trustees is expected to consider a final proposal shortly thereafter. Bar Executive Director Leah Wilson says that the bar has studied this general concept since at least 1987 and that she hopes it will now become a reality.

LSAT SCORES CLIMB: "Unprecedented" continues to be the word of the moment; this time, it's how one law school admissions consultant describes the nationwide increase in median Law School Admission Test scores among this year's first-year law students. Final admission figures won't be released by the American Bar Association Section of Legal Education and Admissions to the Bar until later this month, but consultant Mike Spivey has data from more than two-thirds of all law schools and says not one has reported a drop in their median LSAT score. So far, the biggest reported jump has been four points at Lewis & Clark Law School; six others have reported three-point increases, while 42 schools have reported two-point increases. Median LSAT scores rarely change by more than a point from one year to the next, according to Reuters.

PRO BONO HOURS INCREASE: Given that most of us isolated ourselves as much as possible during the first year of COVID-19, it might be natural to assume that lawyers' pro bono participation in 2020 was less than in 2019.

However, according to a recent report from the Pro Bono Institute, the average number of pro bono hours worked in 2020 by individual lawyers in its Law Firm Pro Bono Challenge was 69.19—an increase of 15 percent over average pro bono hours worked in 2019.

Pro bono and legal aid experts cite the ease of remote legal service vs. commuting to meet with clients in distant locations, as well as other factors—including a heightened focus on racial justice—that may help account for the increase.

FAUX POP TARTS?: The Kellogg Company has been hit with a $5 million lawsuit claiming its 'Whole Grain Frosted Strawberry' Pop-Tarts are deceiving consumers by failing to warn them that the strawberries are not its only fruit filling ingredient, reports Lawyer Monthly magazine.

"Strawberries are the Product's characterizing ingredient, since their amount has a material bearing on price and consumer acceptance, and consumers expect they are present in an amount greater than other fruits," the lawsuit said. "The Product's common or usual name of 'Whole Grain Frosted Strawberry Toaster Pastries,' is false, deceptive, and misleading, because it contains mostly non-strawberry fruit ingredients."

The plaintiff, Elizabeth Russett of New York, alleged that she would not have purchased the strawberry Pop-Tarts, or would not have paid the same amount, had she known the truth about the Kellogg product.

Attorney Spencer Sheehan, who is representing Russett, said, "Consumers deserve to know that when they see something labelled as 'strawberry,' it mainly contains strawberry [...] Words have to have some meaning."

Under U.S. Food and Drug Administration regulations, products must not be labelled in a way that is false or misleading. However, other legal experts who represent food and drink companies in advertising and regulatory litigation do not believe Kellogg has mis-labelled its strawberry Pop-Tarts.

Adam Fox, partner at Squire Patton Boggs, said, "The claims asserted in these cases strike me as so weak that the courts confronting them may dismiss them as implausible."

FROM VOLTAIRE: Words for today...

"No opinion is worth burning your neighbor for."

"Those who can make you believe absurdities can make you commit atrocities."

"Think for yourself and let others enjoy the privilege of doing so too."

"It is clear that the individual who persecutes a man, his brother, because he is not of the same opinion, is a monster."

California Employment Law: An Overview

By Laura L. Horton

CALIFORNIA WORKERS continue to benefit from the 2021 California State Legislative plan, proving to be a busy year.

Several key bills were enacted covering a range of employment-related topics. Here are some bite-sized updates:

Silenced No More

On the heels of the #MeToo movement, one of the most significant bills is SB 331, the "Silenced No More Act."

Employees who settle their claim of discrimination, workplace harassment, including a failure to prevent harassment or discrimination, or retaliation for reporting harassment, or discrimination, can no longer be silenced. Confidentiality in settlement agreements is now prohibited.

This amendment empowers survivors to speak out, hold perpetrators accountable, and shine a light on abusers and discriminators to prevent similar harm to other employees.

The upgrade applies to all settlement agreements entered into after January 1, 2022. SB 331 also prevents overly broad confidentiality and non-disparagement clauses in severance agreements.

The "Silenced No More" bill expands existing law previously limited to sexual harassment and discrimination based on sex.[1]

California Family Rights Act Expanded

AB 1033 includes "parent-in-law" in the definition of family care and medical leave.

Laura L. Horton practices exclusively in the areas of civil rights, labor and employment law, and serious personal injury. She graduated from the Pepperdine University School of Law in 1991 and is a recipient of the California Employment Lawyers Association's CELA Torch Award. She can be reached at laura@horton-law.com.

Any employer with five or more employees must grant eligible employees up to 12 weeks of job-protected time off from work annually to provide care to a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner with a severe medical condition.

An employee must initiate a mediation before a civil action may be filed if working for a company with between five to 19 employees.

Mediation is complete if neither party requests the mediation, the employer fails to respond to the employee's request within 30 days, the parties agree not to participate in a mediation, or the Department of Fair Employment and Housing does not initiate mediation within 60 days of a request.[2]

Arbitration – Payment of Fees

The employer must pay for the arbitrator's fees in most employment arbitrations. The employer could obstruct an arbitration proceeding by delaying payment or failing to pay the required fees.

SB 762 corrects this issue and requires the employer to pay arbitration fees within 30 days of the due date. It also requires the arbitral forum to timely invoice the employer, providing copies of the invoices to all parties.

All parties must agree to any extension to pay. This is an essential change because failing to pay arbitration fees can cause a waiver of arbitration, allowing the claimant to return to court and have their case heard by a jury; plus, it can include an award of sanctions, including attorneys' fees.

SB 762 also requires that any time frame specified in a forced arbitration agreement for the performance of an act to be reasonable.[3]

Pandemic Protections for Workers

Legislators clarified the rules requiring notice to employees who may have been exposed to COVID-19 through AB 654, which became effective on October 5, 2021.

Now, employees present at a worksite who may have been exposed must be notified by their employer, who, in turn, must give notice to public health agencies within 48 hours or one business day, whichever is later.

The bill exempts certain licensed health facilities already obligated to report.[4]

Another bill, SB 93, provides rights to employees laid off because of the COVID-19 pandemic. Generally, it applies to industries hit hardest by the pandemic, including hospitality, airport service, janitorial, and security employers.

"An employee must initiate a mediation before a civil action may be filed if working for a company with between five and 19 employees."

Eligible employees must be offered re-hire in order of seniority. The employee must be given at least five business days to accept or decline.

Even if the business is sold, the new owner must recall the employees of the former owner, and the obligations remain if the employer relocates the company in California.

The new law also includes anti-retaliation provisions and recordkeeping obligations for three years. The California Division of Labor Standards Enforcement has exclusive jurisdiction over the enforcement of these new rules.

Remedies include reinstatement, back pay, benefits, injunctive relief, and civil penalties.[5]

Newly Essential – Agricultural Workers

AB 73 expands the definition of essential workers to include agricultural workers who need access to the personal protective equipment (PPE) stockpile for emergencies, including wildfire smoke.

The new law also requires employers to provide training in the use of such protective equipment.[6]

Quotas – Warehouse Workers' Rights

Large warehouse distribution centers must now provide a written description of each quota the employee is subject to for a defined period; and any potential adverse action that may result if the employee fails to meet the quota. AB 701 enacted these changes.

Employees need not meet quotas that prevent complying with meal and rest periods, using bathroom facilities, or following occupational health and safety laws.

The new law creates a rebuttable presumption of unlawful retaliation if an employer discriminates, retaliates, or takes adverse action within 90 days of the employee initiating a request for the employee's quota or personal work speed data making a complaint a quota violation.

The law can be enforced by an employee through the Private Attorney General Act.[7]

Quotas – Restrictions on Use for Pharmacy Employees

SB 362 restricts chain community pharmacies using quotas for employees.

Pharmacists who work for large chain pharmacies are routinely forced to meet quotas based on business metrics. The pressure of quotas can negatively affect patient care. Failure to meet the quotas can cause adverse employment actions, including termination.

Now, these pharmacies are prohibited from establishing a quota

for a pharmacist or pharmacy technician.[8]

Wage Theft – A New Criminal Offense

Employers who steal wages from its workers now face a criminal charge.

AB 1003 creates a new offense, punishable as either a felony or a misdemeanor for an employer's intentional theft of wages.

Wages, gratuities, benefits, or other compensation may be recovered under Penal Code §§ 1202.4 and 1203.1.

The Labor Commissioner may commence a civil action for additional remedies under the Labor Code. For purposes of this section, independent contractors are considered employees.[9]

Tips and Delivery People

Workers who deliver food for a food delivery platform can keep their tips.

AB 286 prohibits the food delivery platform from taking any tip or gratuity from the delivery person. It also requires disclosure to the customer and the food facility of a cost breakdown of each transaction.[10]

Protections for Garment Workers

Governor Newsom's signing message for SB 62 underscored the bill's importance, which provides for an hourly wage and significant new protections for garment workers.

Newsom stated, "These measures protect marginalized low-wage workers, many of whom are women of color and immigrants, ensuring they are paid what they are due and improving workplace conditions."[11]

SB 62 expands the definition of a garment manufacturer and prohibits the manufacturer from paying compensation on a piece-rate basis unless a collective bargaining agreement is in place. It also imposes joint and several liabilities for unpaid wages on any person who contracts for the performance of garment manufacturing.

Employees can also recover attorneys' fees and $200 per pay period for each pay period the piece rate pays the employee.

This bill requires garment manufacturing employers and brand guarantors to keep all documentation including, contracts, invoices, purchase orders, work orders, style or cut sheets, for four years.[12]

Additional Damages for Plaintiffs' Families

While SB 447 is not specific to employment cases, it is still an important change to California law.

Previously, wrong-doers could escape liability for non-economic damages if the plaintiff died before judgment was entered.

Under SB 447 "pain and suffering" damages survive the death of a plaintiff to provide the family the full range of injuries for full justice.

SB 447 authorizes a decedent's representative or successor in interest to recover pain and to suffer damages if the action was granted a preference before January 1, 2022, or was filed on or after January 1, 2022 and before January 1, 2026.[13]

Contractors – Expanded Penalties

Direct contractors can now be held liable if the subcontractor fails to pay wages, fringe, or other benefit payments under SB 727.

In addition, the direct contractor's liability extends to penalties, liquidated damages, and interest.[14]

Record Retention Expanded

SB 807 extends the time an employer must retain employment records from two to four years.

This reflects the recent change in the statute of limitations to three years to file an administrative charge with the Department of Fair Employment and Housing (DFEH.)

The statute of limitation is tolled during the time the DFEH is investigating or mediating a complaint.[15]

Cal/OSHA Enforcement Power

Workers may be better protected now that SB 606 has expanded Cal/OSHA's enforcement powers.

This bill created two new Cal/OSHA violations categories—"enterprise-wide" and "egregious," which carry additional penalties.

It gives Cal/OSHA additional subpoena power during investigations and expands its ability to seek an injunction.

SB 606 also establishes a rebuttable presumption that a violation is enterprise-wide if the employer has a written policy or procedure that violates Health and Safety laws.[16]

Minimum Wage and Disabilities

Employers who employ workers with disabilities will be subject to the minimum wage laws.

SB 639 phases out the subminimum wage certificate programs that allow employers to pay less than minimum wage for employees with physical or mental disabilities by January 1, 2025.[17]

PAGA Exemptions

SB 646 provides a narrow exemption from the Private Attorneys General Act (PAGA).

Janitorial employees represented by a labor organization for work performed under a valid collective bargaining agreement containing certain provisions such as providing for minimum wages and benefits are exempt.

The bill contains a grievance and binding arbitration process to address PAGA violations, and the arbitrator has the authority to award all remedies under the Labor Code.[18]

ABC Test – Certain Exemptions Modified

AB 1561 modifies several exemptions from the ABC test of Dynamex, including licensed manicurists, subcontractors, data aggregators, underwriters, and manufactured housing dealers.[19] [20]

AB 1506 extends the sunset to the newspaper carriers' exemption from the ABC test to 2025.

The new law requires all newspaper publishers or distributors who hire or directly contract with newspaper carriers to submit specified information regarding their workforce to the Labor and Workforce Development Agency.[21]

Public Works Contractors Pay Records

AB 1023 modifies existing requirements for contractors or subcontractors of public works projects.

Currently, pay records must be furnished to the Labor Commissioner once every 30 days while work is being performed on the project, or within 30 days after the final day work is performed.

Failure to furnish records can result in a penalty of $100 per day, not to exceed $5,000 per project.[22]

Public Employee Unions

SB 270 authorizes public employee unions to bring an unfair labor practice charge to the Public Employment Relations Board for failing to provide certain information regarding new hires.

It also creates a civil penalty up to $10,000.[23]

Implicit Bias Program for Nurses

AB 1407 requires hospitals to implement an evidence-based implicit bias program as part of the training of new nursing program graduates.[24]

The Outlook for 2022

2022 will be the second year of the two-year legislative cycle.

The Legislature in Sacramento will work on the two-year bills stalled in 2021. Some of the key two-year employment bills include:

- AB 1041, expanding family and sick leave to allow workers to care for chosen family members;
- AB 95, giving workers the right to take bereavement leave;
- AB 1119, protecting workers from discrimination based on family caregiving responsibilities; and
- AB 995, expanding paid sick leave from three to five days.

According to Mariko Yoshihara, legislative counsel & policy director for the California Employment Lawyers Association, the Legislature "will be taking on worker privacy issues, such as the Private Attorneys General Act (PAGA), and pandemic-related measures like employer-mandated vaccine policies and supplemental sick leave."

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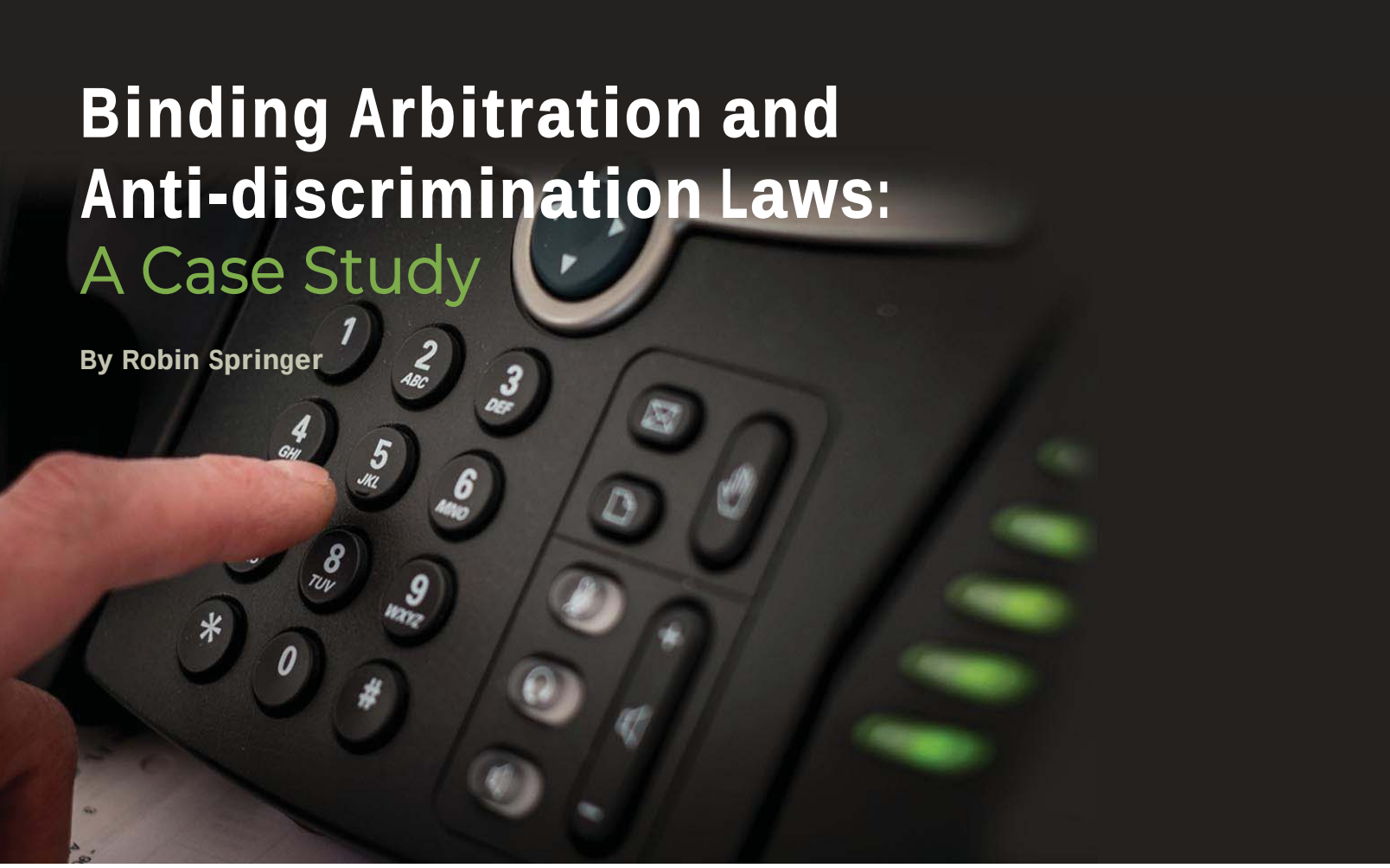
[1] Amends *Code of Civ. Proc.* § 1001.
[2] Amends *Government Code* § 12945.2.
[3] Amends *Civ. Code* § 1657.1 and *Code Civ. Proc.* § 1281.97.
[4] Amends *Labor Code* §§ 6325, 6409.6.
[5] Adds and repeals *Labor Code* § 2810.8.
[6] Amends *Health and Safety Code* § 131021 and *Labor Code* § 9110.
[7] Amends *Labor Code* § 138.7 and adds part 8.6 to *Labor Code* § 2100.
[8] Amends Business and Professions Code §§ 4113.7 and 4317.
[9] Adds Penal Code § 487m.
[10] Amends *Business and Professions Code* § 22598 and adds §§ 22599.1, 22599.6.
[11] Office of CA Governor Gavin Newsom, Press Release, September 27, 2021, https://www.gov.ca.gov/2021/09/27/governor-newsom-signs-legislation-creating-nation-leading-worker-protections-for-garment-industry-additional-measures-to-combat-unfair-pay-practices-and-improve-workplace-conditions/.
[12] Amends *Labor Code* §§ 1174.1, 2670, 2671, 2673, 2673.1, 2675.5 and adds *Labor Code* § 2673.2.
[13] Amends *Code of Civil Procedure* § 377.34.
[14] Amends *Labor Code* § 218.7; adds *Labor Code* § 218.8.
[15] Amends *Government Code* §§ 12930, 12946, 12960, 12961, 12962, 12963.5, 12965, 12981, and 12989.1.
[16] Amends *Labor Code* §§ 6317, 6323, 6324, 6429, and 6602; adds *Labor Code* §§ 6317.8 and 6317.9.
[17] Amends *Id.* § 1191 and repeals *Labor Code* § 1191.5.
[18] Amends and repeals *Labor Code* § 2699.8.
[19] *Dynamex Operations W. v. Superior Court* (2018) 4 Cal.5th 903.
[20] Amends *Labor Code* §§ 2778, 2781, 2782, and 2783.
[21] Amends *Id.* § 2783.
[22] Amends *Id.* § 1771.4.
[23] Amends *Government Code* § 3558.
[24] Amends *Business and Professions Code* §§ 2786 and 2811.5; adds *Health and Safety Code* § 123630.5.

Binding Arbitration and Anti-discrimination Laws: A Case Study

By Robin Springer



ACCORDING TO AT&T, IN3Q 2016, MORE than 99 percent of Americans were covered by the company's network.[1]

There were an estimated 144 million AT&T wireless customers in the U.S. and Mexico, and more than 390 million people in those countries could access AT&T's 4G LTE network.[2] [3]

The numbers from 1Q 2019 are nearly identical.[4]

Prior to approximately 4Q 2016, when customers called AT&T, they were able to use Dual-Tone Multi-Frequency (DTMF) or an Interactive Menu System (IMS) to transact their business–whether it was to pay bills, upgrade service, or call with questions.

But by the fourth quarter of 2016, if not before, AT&T removed the DTMF option, precluding customers from using the buttons on the keypad, instead requiring users to speak.

"You don't have to press buttons," AT&T's IMS informs callers. "You can talk to me like I'm a real person."

There are more reasons a caller might prefer DTMF than there are numbers on a keypad—On a train. In a waiting room. Laryngitis. Brain injury. Cerebral palsy. Autism. Really tired after a long day. Just don't feel like talking. The list goes on.

Many people dislike DTMF, and IMS allows those users to circumvent it. But DTMF was already there. It was already functional. It already serviced a vast number of customers. It complied with the law. Why remove it?

It is estimated that 14.9 million, or 6.2 percent of people 15 years and older, have difficulty seeing, hearing, or having their speech understood; 2.8 million of those people—1.2 percent—are the ones who have difficulty having their speech understood.[5]

There are untold others who have difficulty speaking even though their speech is understood by others. And that's just in the United States.

So, based on AT&T's own calculations, more than 2.77 million people have been negatively impacted by its removal of DTMF. This move, combined with AT&T's inaccessible Interactive Menu System (IMS), triggered federal and state anti-discrimination laws.

Robin Springer is an attorney and the president of Computer Talk, Inc., a consulting firm that is committed to shifting the paradigm of disability through awareness and education. She can be reached at contactus@comptalk.com.

AT&T's Inaccessible IMS Violated Federal Rules

When people think about laws to protect individuals with disabilities, they usually think of the Americans with Disabilities Act. But, when it comes to telecommunications, the ADA is preempted by Federal Communication Commission (FCC) Rules.

FCC rules regarding IMS are found in the Telecommunications Act of 1996 and the Code of Federal Regulations.[6] [7]

Providers of IMS must ensure the service is accessible to and usable by individuals with disabilities, if readily achievable.[8]

The fact that AT&T already provided DTMF "*suggests evidence that it was readily achievable," according to FCC sources. "It certainly indicates it was feasible*."

Providers must include at least one mode that does not require user speech.[9]

Pressing zero to opt out doesn't count because it doesn't make IMS accessible; it's an alternative solution and not what was intended by the FCC rule.[10]

According to the rule, "*[Providers should] evaluate accessibility, usability, and compatibility of their services and incorporate that evaluation...as early and consistently as possible...identifying barriers to accessibility and usability as part of their product design and development process*."[11]

AT&T's Inaccessible IMS Violated California Law

The Unruh Act states that:

> "*[a]ll persons within the jurisdiction of this state are free and equal, and no matter what their…**disability [or] medical condition**…are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever," thus prohibiting discrimination by all businesses against enumerated classes, including people who have disabilities or medical conditions."*(emphasis added)[12]

The Legislature used the words '*all*' and '*of every kind whatsoever*' in referring to business establishments covered by the Unruh Act, and the inclusion of these words leaves no doubt that the term '*business establishments*' was used in the "***broadest sense reasonably possible***."(emphasis added)[13]

To prevail under Unruh, a plaintiff can prove her case on the merits or by proving that an ADA violation occurred.[14]

Because the ADA is inapplicable, the plaintiff could not prevail on her Unruh claim by proving an ADA violation occurred.

However, since Title IV of the original ADA is codified at 47 U.S.C. § 255, which is governed by the FCC, Plaintiff should be able to meet that element by proving an FCC violation occurred.

The plaintiff need only prove her case by one of these methods. Prevailing plaintiffs are entitled to recover actual damages—in no case less than $4,000—for each and every offense.[15]

U. S. Supreme Court Precedent

Like many large companies, AT&T has contractual language requiring customers to arbitrate any disputes that may arise between it and the customer.

When this language was challenged in court on the grounds that it unfairly benefitted the defendant, the issue made it to the U. S. Supreme Court, which ultimately held that arbitration clauses are enforceable.[16]

Thus, the plaintiff's options regarding the state law claim were limited to arbitration or small claims court.

However, because the FCC is the only entity that can adjudicate Section 255 complaints, the plaintiff could also file a complaint with the FCC.[17]

Arbitration

The Arbitration Act was enacted in 1925, when contractual agreements were primarily between businesses and were usually negotiated and agreed upon by all parties to the contract.[18]

Today, however, customers generally lack any ability or authority to demand changes in contractual terms, putting them at a disadvantage.

Arbitration is not necessarily impartial, tending to be pro-defendant; plaintiffs are limited in their ability to appeal an unfavorable decision; cases are often limited in scope; and because the amounts in controversy in individual consumer cases are typically small, it's hard to find attorneys who are willing to take these cases.[19] [20] [21] [22] [23]

Additionally, the arbitration process is private, and results are typically confidential so, even if a company is found liable, there is no public record of wrongdoing and therefore no incentive for the defendant to cease engaging in the same wrongful conduct.[24]

To address these issues, in September 2019, the U.S. House of Representatives passed H.R. 1423, the Forced Arbitration Injustice Repeal Act (The FAIR Act), which would prohibit a pre-dispute arbitration agreement from being valid or enforceable if it requires arbitration of an employment, consumer, antitrust, or civil rights dispute.[25]

The Act was not brought to a vote in the Senate.[26]

Small Claims Court

Small claims court benefits the defendant in that damages are limited, currently $10,000 for individuals in California; plaintiffs cannot be represented by counsel; and decisions are not appealable.[27]

In this case, the plaintiff chose small claims court. She began by briefly explaining the nature of her disability, which includes difficulty multi-tasking, processing information, and speaking, all of which affect her ability to use IMS.

The judge's response? "Well, you seem to be talking to me just fine."

Do you see how, from the first words out of the judge's mouth, his analysis was not, "did the defendant violate the law," rather it was, "is the plaintiff disabled enough"?

And that's the wrong analysis.

In 2008, Congress passed The Americans with Disabilities Amendment Act (ADAA) in response to Supreme Court decisions that narrowed the definition of disability under the ADA.

Congress stated that disability should be construed broadly, and the primary object of attention should be whether businesses have complied with their obligations and whether discrimination occurred, not whether the individual meets the definition of 'disability.'[28]

IMS taxes the cognitive system as well as linguistic and speech systems because it requires the user to orally use target words to trigger the desired service; increase articulation and volume of speech; repeat oneself; and listen to an audible cue while the system is processing one's request.

Additionally, since users cannot always anticipate what the IMS is going to say, they must process information in the moment and quickly make a response, which can be difficult or impossible for users with cognitive-linguistic deficits.

While these factors are crucial for IMS developers to understand, they are irrelevant to this legal analysis.

The judge was not familiar with the pertinent laws and he did not understand the disabilities at play. He was not aware of the required legal analysis. And he did not allow the plaintiff to proffer evidence regarding such.

The plaintiff enumerated the elements of the applicable laws, applying evidence to support her contentions and meeting each element required to prevail.

She submitted a brief presenting a cogent written argument to accommodate for her difficulty processing information and speaking. It outlined state and federal law, recited the facts, and included exhibits, including documentation of special damages incurred as a consequence of AT&T's discrimination.

AT&T's representative presented the company's case by tossing out a string of politically correct yet meaningless words and phrases without even stringing them together in actual sentences: "We are committed to…handicapped… ADA…whole department…take seriously…"

The defendant continued by stating that plaintiff could have used AT&T's website or walked into any store and paid her bill in person or read the teeny tiny fine print on

paid her bill in person or read the teeny tiny fine print on her bill each month to advise herself of the company's commitment to accessibility.

The judge asked, "Why didn't you go into the store to pay?"

Why didn't the plaintiff hop into her car—assuming she can drive—drive to an AT&T store, park her car, get out of her car, walk to the store, bombard herself with the sensory overload she would face in the store…month after month after month?

Because that's not what the law requires.

The judge asked, "Why didn't you pay online?"

Turning on a computer, getting online, navigating to a specific website, creating an account, remembering and being able to return to the site, entering a username and password, navigating to the proper screens and reading and following online instructions bear no resemblance to pressing '1' on a keypad to pay one's bill.

But that's irrelevant.

The law requires that IMS be accessible, without the use of speech, to people who have difficulty speaking or having their speech understood.

The judge said "Maybe you're the only one who needs [DTMF]. Why should they keep it just for you?"

Do you know what the judge never said? He never said, "Why did AT&T violate the law?"

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[1] 3Q 2016 AT&T by the numbers, https://www.att.com.
[2] *Id.*
[3] *Id.*
[4] 1Q 2019 AT&T by the numbers, https://www.att.com/Common/about_us/pdf/att_btn.pdf.
[5] 2010 Census.
[6] 47 USC § 255.
[7] 47 CFR § 7 et seq.
[8] 47 CFR § 7.5(b).
[9] 47 CFR § 7.3 (a)(1)(ix).
[10] 47 CFR § 7.3(ix).
[11] 47 CFR § 7.7.
[12] Cal Civ Code § 51(b).
[13] *O'Connor v Village Green Owners Assn*., 33 Cal. 3d 790, 795 (1982).
[14] Cal Civ Code § 51(f).
[15] Cal. Civ. Code § 52(a) (2017); *Munson v Del Taco, Inc.*,46 Cal. 4th 661, 667 (2009).
[16] *AT&T Mobility LLC v. Concepcion*, 563 US 333 (2011).
[17] 47 USC § 255(f).
[18] 9 U.S.C. et seq.
[19] Michael A. Satz, Mandatory Binding Arbitration: Our Legal History Demands Balanced Reform, 44 Idaho L. Rev. 19, 30-31 (2007);https://www.nolo.com/legal-encyclopedia/arbitration-pros-cons-29807.html.
[20] Satz, supra at 30-31.
[21] https://www.courts.ca.gov/1328.htm.
[22] *Advantages v Disadvantages of Contractual Arbitration*, Cal. Prac. Guide Alt. Disp. Res. Ch. 5 § 5.4 (2020).
[23] Morsch, J., *Unconscionability Should Not Be the Sole Arbiter of Whether to Enforce Mandatory Arbitration Provisions*, 30 Loy. Consumer L. Rev. 24, 28 (2017).
[24] Conduct of Arbitration Proceedings, Cal. Prac. Guide Alt. Disp. Res. Ch. 5-H e. § 5:395, Ch. 5-H f. § 5.396; Ch. 5-H (5) § 5:402.7g, Ch. 5-H 17. § 5:403.20 (2020).
[25] https://www.congress.gov/bill/116th-congress/house-bill/1423.
[26] *Id.*
[27] https://www.dca.ca.gov/publications/small_claims/basic_info.shtml.
[28] 42 U.S.C. 126 § 12101.

Member Focus

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

James R. Felton

Law School: University of California–Los Angeles School of Law

Area(s) of Practice: Business, commercial and real estate litigation, bankruptcy and insolvency-related matters

Years in Practice: 33

Firm: Managing Partner, G&B Law, LLP Encino

What was your favorite activity in high school? "Going to high school football games."

What would you be doing if you weren't an attorney? "Floundering on the PGA Senior Tour."

What's your dream vacation location? Why? "Cabo – beautiful weather and great golf."

What's your favorite book genre? "Autobiographies by comedians."

Why did you decide to go into the law? "I suspect that my father's law practice probably had the most effect on me wanting to become a lawyer. Before I knew what they were or why they were, I was replacing the pocket parts in his CA Code books. I watched him interact with clients and now scratch my signature on documents as he did. You don't often realize how much you mirror your parents and then one day wake up and realize that you are just like them."

Attorney James R. Felton grew up in Woodland Hills, attended El Camino Real High School there, and graduated from Brandeis University in Waltham, Massachusetts, with a Bachelor's degree in English and American Literature before attending law school at UCLA.

Admitted to the California Bar in 1988, his legal career began with a firm that specialized in municipal law before branching out into commercial and real estate litigation.

"I joined Greenberg & Bass [now G&B Law] in 1991," he says. "Over my years at G&B Law, my practice has evolved to include commercial litigation and now bankruptcy work. At present, I would say that about 50 percent of my time on legal matters is spent on commercial litigation cases and roughly the other half on bankruptcy."

In addition to his work at G&B Law, Felton has been appointed on numerous occasions as a state court receiver, primarily in family law matters.

Felton was President of the SFVBA in 2004 and has served on the Board of Directors of Jewish Federation Council of Greater Los Angeles and as a volunteer with The Alliance for Children's Rights.

By Charles White

Defiled Nachos and Cold Lobster: Ordering Up a Civil Suit

ON OCCASION, ORDERING FOOD CAN BE problematic, even dangerous, with a customer sometimes having to take it all the way to trial.

Case in point: While on duty, North Carolina Highway Patrol Trooper Chris Phillips took a meal break to order food at the drive-through window of a Taco Bell Restaurant.[1]

Seeing that a law enforcement officer had placed an order, an employee of the restaurant—identified here only as Jones—spat in the trooper's food before serving it to him.

Shortly thereafter, while consuming the food, the trooper noticed a substance on his nachos that appeared to be human saliva.[2] [3]

A suit was filed with the court noting:

"In the instant case, we hold that there is at least a genuine issue of material fact as to whether Jones's acts were within the scope of his employment and in furtherance of Restaurant Management's business.

"The record shows that when he spat in the trooper's food, he was in the act of performing his job preparing that food for the trooper. His concealed act of spitting into food while preparing it related directly to the manner in which he carried out his job duty of preparing the food for consumption by the customer.

"Indeed a jury could determine that his act of spitting in the trooper's food was done within the scope of his employment."[4]

Trooper Phillips case was voluntarily dismissed and the case was settled after the Court of Appeals issued its opinion.[5] [6]

Attorney **Charles White** received his LL.M. with an emphasis in Taxation from Chapman University Fowler School of Law and his JD from the University of South Carolina School of Law. He earned his Bachelor of Business Administration [BBA] in Management from the University of Georgia.

A partner at the law firm that represented Trooper Phillips was not sure whether they secured experts in the case, reasoning that the defendants settled because they feared that punitive issues might be raised.

In fact, with a jury trial looming, the defendants wanted nothing more than for the case to go away.

The case fees were based on a contingency agreement with regular superior court costs. The total cost of handling the case was in the neighborhood of $2,500.

Trooper Phillips, who happens to be black, later stated that the server who spit in his food would have done that to any trooper that visited the Taco Bell's drive-through.[7] [8] [9] [10] [11] [12] [13] [14]

The Question of Merchantability

The Uniform Commercial Code addresses merchantability, which provides that...

> *"unless excluded or modified (Section 2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind."*[15]

The Code also indicates that, under that section, the serving for value of food or drink to be consumed either on the premises or elsewhere is considered a 'sale'.

It also states that goods to be merchantable must at least...

> *"…pass without objection in the trade under the contract description; and, in the case of fungible goods, are of fair average quality within the description; are fit for the ordinary purposes for which such goods are used; run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; are adequately contained, packaged, and labeled as the agreement may require; and conform to the promise or affirmations of fact made on the container or label if any."*[16]

As applied here, according to the California Civil Code, "*Implied warranty of merchantability*" or "*implied warranty that goods are merchantable*" means that the consumer goods must meet each of the following:

- Pass without objection in the trade under the contract description;
- Are fit for the ordinary purposes for which such goods are used;
- Are adequately contained, packaged, and labeled; and,
- Conform to the promises or affirmations of fact made on the container or label.[17]

The Phillips court suggested:

> *"Thus, we must address the first-impression issue for North Carolina law of whether a food patron's ingestion of a food preparer's saliva constitutes an injury unto itself, sufficient to satisfy the injury required to sustain a claim of breach of implied warranty of merchantability. Our deliberative process in deciding this novel issue is guided by court decisions in other jurisdictions which hold that spitting upon a person may constitute a criminal assault or battery."*[18]

The court concluded that,

> "*The trooper's claim for breach of implied warranty of merchantability does not fail as a matter of law for failure to state an injury as against Restaurant Management of North Carolina, accordingly, we hold that the trial court erred in granting summary judgment to Restaurant Management on this issue."*[19]

Intentional Infliction of Emotional Distress

The Phillips court agreed that the trial court erred in granting summary judgment to Restaurant Management on the claim of the intentional infliction of emotional distress.[20]

The court acknowledged:

> *"Having considered the reprehensible nature of defendant Jones's act in this context, and viewing the facts before us, we cannot say, as a matter of law, that a food preparer surreptitiously spitting in good intended for a patron's consumption does not rise to the level of extreme and outrageous*."

Furthermore, in his sworn complaint, the trooper stated that he suffered severe emotional distress as a result of the consumption of the saliva-contaminated food.

The trooper received counseling twice from the medical staff employed by the North Carolina State Highway Patrol, even though he was not prescribed any medication.[21]

Cold Lobster, Fried Tort

In another food-related case, the court considered what happens if the customer does not pay.

Some years ago, Valerie Lashley and her sister arrived at The Catfish Inn, a local seafood restaurant, in Titusville, Florida.[22]

Lashley ordered lobster, but because the lobster was cold and still frozen in the middle, she called the waitress over and asked to substitute the under-cooked lobster with an order of fried shrimp.[23] [24] [25]

The waitress replied that she could order fried shrimp, but she would have to pay for both the lobster and the shrimp.[26]

The restaurant manager was called to the table and, being advised of the circumstances, and told the waitress to return the lobster to the kitchen and have it reheated, while informing Lashley that he would call the police if she refused to pay for both.[27] [28]

Lashley refused and was arrested. She was handcuffed and led out of the crowded restaurant to a waiting squad car that took her to the nearest police station where she was charged with 'defrauding an innkeeper.'[29]

What resulted was a tort case involving claims of malicious prosecution, intentional infliction of emotional distress, and slander. The charges against Lashley of 'defrauding an innkeeper' were dropped, but she filed a civil suit against both the manager of the Catfish Inn and the City of Titusville.

In rendering its decision on the matter, the Lashley court noted:

> *"In this case, a jury could find that appellee did not have probable cause to believe that the appellant was committing fraud on an innkeeper; rather, the true purpose and intent behind the appellee's calling the police was to attempt to coerce and intimidate this patron into paying money she did not owe. If a jury were to find that, even though the food was not edible and appellee knew or should have known that it was not edible, he nevertheless persisted in calling the police and executing an arrest affidavit in an effort to coerce payment, a claim of malicious prosecution, including punitive damages, would be sustainable."*[30] [31]

> "The waitress replied that she could order fried shrimp, but she would have to pay for both the lobster and the shrimp."

The court went on to suggest that…

> *"As indicated above, the facts could sustain a finding that the appellee's intent was to cause appellant emotional distress sufficient to induce the appellant to pay money she did not owe. Appellee seems to want to argue that the appellant was the architect of her own misery because she refused simply to pay for the meal. Certainly, it is true that when threatened with the ignominy of arrest in a public place, being led away in handcuffs, placed in a squad car, and charged with a petty crime most people would pay $12.03 no matter how inedible the food. However, appellee cannot avoid a trial on the merits because he happened to confront someone who called his bluff."*[32]

[1] *Phillips v. Rest. Mgmt. of Carolina, L.P.* (2001) 146 N.C.App. 203, 206-07.
[2] *Id.* at p. 207.
[3] *Id.*
[4] *Id.* at p. 209.
[5] Telephone conversation: Superior Court of Buncombe County (February 22, 2021).
[6] Telephone conversation: Bob Long, Jr., Partner, Long Parker Payne & Anderson, P.A. (February 24, 2021).
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] UCC 2-314.
[16] *Id.*
[17] Civil Code Section 1791.1.
[18] *Id.* at p. 212.
[19] *Id.* at p. 213.
[20] *Phillips v. Rest. Mgmt. of Carolina, L.P.*, 146 N.C.App. at p. 213.
[21] *Id.* at p. 214.
[22] *Lashley v. Bowman*, 561 So.2d 406, 407 (D.Ct.App. 1990).
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *Id.* at 409.

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Retrospective Reminiscences

By Kenneth M. Stern

HAVING MOVED TO THE San Fernando Valley with my family, as a four-year-old in 1955, I particularly enjoyed the Retro section of the November 2021 edition of *Valley Lawyer*.

Living in the Valley for so long, I have had personal experiences with most of the places described in the section and I wanted to share some reminiscences of some on the list and a few more.

White Front, Zody's, Akron, Fedco, Gemco Department Stores: My father was very smart, but due to raising a family after coming home from serving in World War II, he did not go to college. Having only a high school education, he worked mostly as a retail clerk at all of the stores mentioned here.

White Front, until it went out of business; Akron, too, until it shuttered its stores; Fedco, also, until it closed up shop; and Gemco, as well, until it eventually closed for good.

But, Zody's. There, he was able to extend himself, beyond retail clerk, retiring as the store's head toy buyer.

And by the way, what did he do when he retired? He finally did what had been missing in his life. He started taking courses at Valley College, not to earn a degree, but just for the joy of learning.

Thrifty Drugstores: My Uncle was a pharmacist at the Thrifty, located at the corner of Louise Avenue and Saticoy Street. While Thrifty is long gone, its best attribute, its ice cream, thank goodness, lives on at Rite Aid Drug Stores.

The Big Do-Nut Drive-In: The Big Do-Nut was at the northeast corner of Sherman Way and Reseda Blvd. One cannot write of The Big Do-Nut, without discussing that glorious triumvirate—Sav-On Drugs (later transformed into a boxing and concert venue, now a church), The Reseda Theater and The Big Donut.

All three merged for me on a typical Saturday afternoon, starting from the east, working my way west. Stop at Sav-On, to get three candy bars for 25 cents. Move West, to the Reseda Theater, to watch a movie, sometimes having to wait in a line, wrapping around the block, e.g., to see *Bambi* or *Dumbo*.

After the movie, I would amble further west, to The Big Donut, on the way collecting an orange soda from a vending machine, to get several donuts, to munch on, while waiting for my mother to pick me up.

I was quite dismayed when The Big Donut was levelled torn down to make way for a gas station.

Piggly-Wiggly Supermarkets: Growing up on Louise Avenue, between Roscoe Blvd. and Saticoy Street, my family mainly shopped at the Ralph's at the Southeast corner of Louise and Saticoy. But we also got our groceries at the Piggly Wiggly at the northwest corner of Balboa Blvd. and Saticoy Street. I liked that store for a couple of

reasons—the name and the entry that featured a weird full-length turnstile sort of gizmo one had to go through to get in.

And, one cannot write about that intersection without mentioning Jeb's Diner, across the street from Piggly Wiggly, on the east side of Balboa. Jeb's was an iconic local diner. So much so that when it went out of business, the Thai restaurant that took over the location, was named Jeb's Fortune House to benefit from the goodwill of its original name.

Evan's White Horse Inn: The White Horse Inn was at the Southwest corner of Roscoe Blvd. and White Oak Avenue. I attended Northridge Junior High School and, when I walked home after school, I walked right past it. Right before reaching the Inn, I would regularly stop at the liquor store, next door to it to the west, and buy a Royal Crown Cola. In later years, I frequented the White Horse Inn with its excellent food at reasonable prices. Its patrons were genuinely saddened when it went out of business.

The Palomino Club: The Palomino Club was a popular country music venue on Lankershim Blvd. in North Hollywood. The last time I was there, was to see one of my first clients play his saxophone.

He was very talented and I represented him in a dispute with the Texas band, Asleep at the Wheel, in a dispute over who owned the saxophone. Sitting on a bar stool once, right next to me, was Bonnie Raitt, who had played in a band with my client.

I was an acquaintance of Bonnie's, having first met her at her free, anti-nuclear power plant concerts at Woodley Park. We would chit-chat after the concerts while she was breaking down her equipment.

Northridge Skateland: Located at the intersection of Parthenia Street and Lindley Avenue, Skateland was pretty much my home on weekends and during the summers from about the seventh to tenth grades.

The building is currently morphing into The Trebek Center, a homeless shelter named in honor of the late game show host, Alex Trebek, whose family has donated a significant amount of money to the project.

Original Van Nuys Courthouse: The original Van Nuys Courthouse was not the current civil courthouse.

> "Perhaps, thirty years from now, in some retrospective article, people will be asking, what was a Post Office?"

It was a two, or three, story courthouse on the site where the Van Nuys Criminal Courthouse now sits. The original courthouse was torn down in 1981 a few years after I started practicing law.

I can remember first going to that house of justice when I was about seven to ten years old with a friend and his mother. I'm not sure why we were there. Perhaps, she had a traffic ticket to pay.

What did I do when I was waiting? Have any of you roller skated on a courthouse porch? I have.

In the courthouse, I once walked into an empty courtroom and found the actor Ted Danson clutching the podium with his eyes closed, apparently visioning a scene he was going to do in some production.

I did not want to distract him so I quietly slipped out the way I had come in.

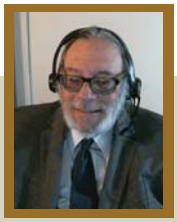
Preliminary Hearing Courthouse: There once was Meadowlark Market, on the west side of White Oak Avenue, a few blocks south of Victory Blvd. My family occasionally shopped there. My stronger connection to it was the fact that the store sponsored my Little League baseball team.

Over the years, it morphed from a market into a courthouse for preliminary hearings. One day, I was sitting in the peanut gallery waiting for my client's case to be called when I noticed, in a pharmacy-related robbery case being heard, that the defendant looked an awful lot like me.

I started speculating as to what might happen when the witness was asked to state whether anyone in the courtroom resembled the perpetrator of the crime. Sure enough, when the witness was asked, if there was anyone in the courtroom, who looked like the perpetrator, the witness identified the defendant, then identified me. I was not prosecuted.

A U.S. Post Office now stands where the courthouse, ex-Meadowlark Market, once stood, and I sometimes wonder if I am the only person who has used that location in each of its three functions.

Perhaps, thirty years from now, in some retrospective article, people will be asking, what was a Post Office?



Kenneth M. Stern, whose office is in Northridge, has been practicing law for 43 years. He is a Certified Appellate Specialist, having representing clients in approximately 130 appeals, in the Ninth Circuit, and, in excess of 500 California State appeals. He also is experienced doing trial work and can be reached at kenneth.stern.982@my.csun.edu.

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San Fernando Valley Bar Association founded in 1924

VCLF Welcomes Valley Dialogue

JOY KRAFT MILES
VCLF President

joy@kraftlawoffices.com

DURING THE PANDEMIC, THE VCLF HAS used its board meetings to invite elected officials to dialogue with us about issues facing the San Fernando Valley.

This year we have heard from California State Senate Majority Leader Robert Hertzberg, who represents the San Fernando Valley; Los Angeles City Councilmember Bob Blumenfield, who serves the West Valley; and Los Angeles City Controller Ron Galperin.

At our October 20, 2021 VCLF meeting, Los Angeles City Controller Ron Galperin spoke to us about the City's finances and shared snapshots from his very comprehensive website—lacontroller.org.

> "L.A. City Controller Ron Galperin shared snapshots from his very comprehensive website."

Galperin took the initiative to collect and present understandable and accessible data in a transparent manner for our community. Galperin, a former business attorney, business owner, and journalist, serves the taxpayers as the watchdog at City Hall, making sure public dollars are spent efficiently and effectively. He is able to do this effectively as the elected paymaster, auditor, and chief accounting officer for the City of Los Angeles.

His website has a page—*COVID-19 Resource Hub*—that contains data and information to help L.A. residents in businesses, as well as providing information about vaccination efforts, new infections and number of deaths, all sorted by community, age, ethnicity, and gender.

He created a "virtual checkbook" where all of the City's transactions, payees, and purchases for goods and services are available and transparent for all to see.

Galperin, through the use of interns and many volunteers to assist his limited staff, has created maps to visualize the needs and resources in our community. For example, his website's top "hit" is his map of food banks and food pantries to address the issues of food insecurity facing many families.

Galperin's website also contains a discussion of his report on pay equity in the City entitled *Closing the Gap: Women's Pay and Representation in the City of L.A.*

The report notes that, for example, only 28 percent of the City's workforce are women, and the City's Police, Fire, Public Works, Airport, Transportation, and Water & Power Departments continue to be male-dominated. The average pay for women is 76 percent of what men make.

When focusing on the top 100 highest paid City employees for 2019, only two were women; 56 of them were Caucasian, while 21 were Hispanic, 15 were Black, and 8 were Asian.

When examining racial equity in Los Angeles, Galperin found that Caucasian employees received the highest pay, while Black employees and employees who identify as another ethnicity or race received the lowest.

Black women earned 25 percent below average amount paid, while Caucasian men earned 21 percent above the average, with an average difference between the two groups of $52,000.

Galperin has also mapped out the issues of toxic emissions, rent inequities, COVID job losses, and homelessness in our city, and all of that information is to be found on his website.

It is our aim that by engaging elected officials in our charitable work and learning about the issues facing our community, that we are able to join forces to make the San Fernando Valley a better community for all of us.

ABOUT THE VCLF OF THE SFVBA

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

Introducing the New SCVBA Board

SARAH HUNT
SCVBA Executive Assistant

info@scvbar.org

ON NOVEMBER 17, 2021, THE Santa Clarita Valley Bar Association hosted its annual Awards & Installation Gala at the Oaks Club, overlooking the Santa Clarita Valley, with our members enjoying cocktails and live music on the Club's outdoor patio.

If you have not yet joined us at one of our events at The Oaks Club, we hope that will change this coming year!

Following tradition, our guests brought unwrapped toys which will be delivered to the Santa Clarita Service Center just in time to bring some cheer to families in need for the holidays.

Leading the SCV Bar Association thru 2022 will be Jeffrey Armendariz as President; Corey Carter – Secretary; Robert Castillo – Treasurer; and Barry Edzant, Cody Patterson, John Noland, and Christine Inglis as Members-at-Large.

The newly appointed board was sworn-in by Honorable Eric C. Taylor, Presiding Judge of the Los Angeles Superior Court Taylor F. Williams-Moniz is our immediate past President, while we are fortunate to have the SFV Bar Association President, Christopher Warne serve as the SFVBA liaison.

At the Gala, two Guests of Honor were presented with awards: Susan A. Owen, Managing Partner at Owen Patterson & Owen was honored as Lawyer of the Year, and Vicki Engbrecht, now retired Superintendent of the William S. Hart Union High School District was honored with the Bar's President's Award.

Looking ahead to 2022, the SCV Bar Association calendar is filling up nicely and we hope to see you at some of our events throughout the year, whether at our Networking Mixer on January 20 at the Salt Creek Grille in Valencia; at our monthly CLE events; or at our 1st Annual SCVBA Golf Tournament in April, to just name a few!

We have many socials and 'Friends and Family' days planned as well, and look forward to seeing you!

Please visit our website at www.scvbar.org to view our full event calendar.

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