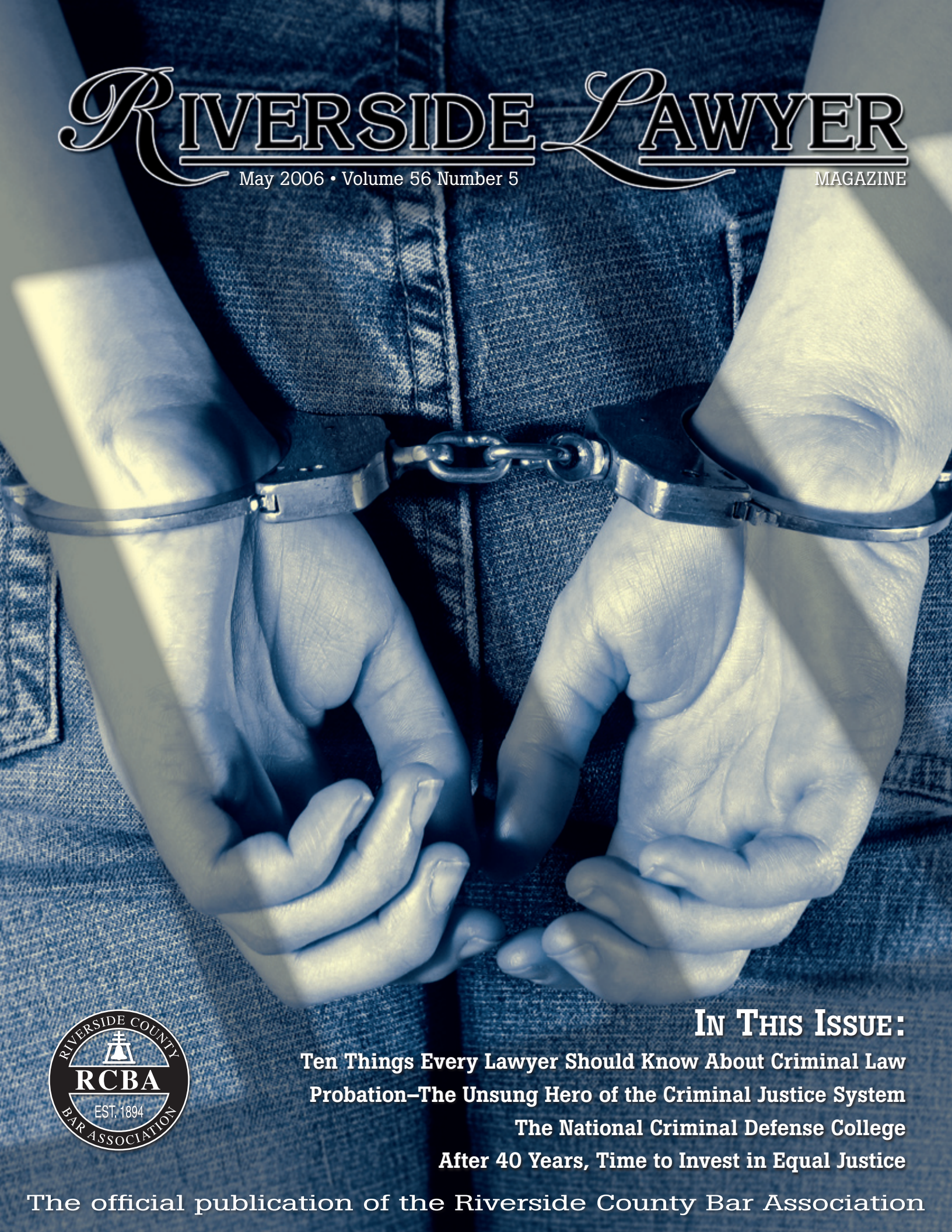


# RIVERSIDE LAWYER

May 2006 • Volume 56 Number 5

MAGAZINE



## IN THIS ISSUE:

**Ten Things Every Lawyer Should Know About Criminal Law**

**Probation—The Unsung Hero of the Criminal Justice System**

**The National Criminal Defense College**

**After 40 Years, Time to Invest in Equal Justice**

The official publication of the Riverside County Bar Association



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# RIVERSIDE LAWYER

MAGAZINE

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# MISSION STATEMENT

## Established in 1894

The Riverside County Bar Association, established in 1894 to foster social interaction between the bench and bar, is a professional organization that provides continuing education and offers an arena to resolve various problems that face the justice system and attorneys practicing in Riverside County.

## RCBA Mission Statement

The mission of the Riverside County Bar Association is to:

Serve its members, and indirectly their clients, by implementing programs that will enhance the professional capabilities and satisfaction of each of its members.

Serve its community by implementing programs that will provide opportunities for its members to contribute their unique talents to enhance the quality of life in the community.

Serve the legal system by implementing programs that will improve access to legal services and the judicial system, and will promote the fair and efficient administration of justice.

## Membership Benefits

Involvement in a variety of legal entities: Lawyer Referral Service (LRS), Public Service Law Corporation (PSLC), Tel-Law, Fee Arbitration, Client Relations, Dispute Resolution Service (DRS), Barristers, Leo A. Deegan Inn of Court, Inland Empire Chapter of the Federal Bar Association, Mock Trial, State Bar Conference of Delegates, and Bridging the Gap.

Membership meetings monthly (except July and August) with keynote speakers, and participation in the many committees and sections.

Eleven issues of Riverside Lawyer published each year to update you on State Bar matters, ABA issues, local court rules, open forum for communication and timely business matters.

Social gatherings throughout the year: Installation of RCBA and Barristers Officers dinner, Annual Joint Barristers and Riverside Legal Secretaries dinner, Law Day activities, Good Citizenship Award ceremony for Riverside County high schools, and other special activities.

Continuing Legal Education brown bag lunches and section workshops. RCBA is a certified provider for MCLE programs.

MBNA Platinum Plus MasterCard, and optional insurance programs.

Discounted personal disability income and business overhead protection for the attorney and long-term care coverage for the attorney and his or her family.

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*Submission of articles and photographs to Riverside Lawyer will be deemed to be authorization and license by the author to publish the material in Riverside Lawyer.*

*The material printed in Riverside Lawyer does not necessarily reflect the opinions of the RCBA, the editorial staff, the Publication Committee, or other columnists. Legal issues are not discussed for the purpose of answering specific questions. Independent research of all issues is strongly encouraged.*

# CALENDAR

## MAY

**10 DRS Board**  
RCBA – Noon

### Barristers

Cask 'n Cleaver – 6:00 pm  
MCLE

**12 RCBA Good Citizenship Awards/  
Riverside Superior Court Essay  
Awards**

Riverside Historic Courthouse, Dept. 1  
– 1:00 pm

**15 Family Law “Bonus/Special”  
Meeting**

RCBA Bldg., 3rd Floor – Noon

**16 Family Law Section**

RCBA Bldg., 3rd Floor – Noon  
MCLE

### RCBA Board

RCBA Bldg. – 5:00 pm

**24 EPPTL Section**

RCBA Bldg., 3rd Floor – Noon  
MCLE

**29 HOLIDAY**

(Memorial Day)

**31 DRS Mediation Seminar**

RCBA Bldg., 3rd Floor – 5:30 pm  
MCLE

## JUNE

**2 Judge Stephen Larson Enrobement  
Ceremony**

U.S. District Court – 2:00 pm

**7 Bar Publications Committee**

RCBA Bldg. – Noon





*by Theresa Han Savage*

It's May. On the 14th, we celebrate Mother's Day. I am dedicating this month's column to my mother – an amazingly strong, resilient, and loving woman.

Mom was born in 1939 in Korea. At this time, Korea was under Japanese occupation. Therefore, besides Mom's Korean name, Sun-Ae, she was also given a Japanese name, Noshida Aiko. Although she and her family lived in what is now known as "North Korea," Korea was a single country when Mom lived in the North. Mom recalls that living under Japanese rule was oppressive. However, she says that their lives were fairly comfortable because Grandfather was a successful businessman during this time.

After the end of World War II, the Japanese occupation of Korean ended. Thereafter, the Soviet Union occupied what is now North Korea and the U.S. occupied the South. In 1945, Mom's family became aware of the Communists' plot to kill her family because Grandfather supported capitalism. Therefore, Mom (six years old), Grandfather, Grandmother (seven to eight months pregnant), and Mom's two siblings (one of whom was an infant) made their 20-day journey by foot to Seoul to escape the Communists. They walked at night and hid during the day. She remembers being frightened and hungry.

Their new life in Seoul was not easy. The Korean War erupted around 1950 – five years after their escape to Seoul. During and after the Korean War (which ended in 1953), jobs were scarce. Grandfather struggled to provide for his family. Although there were "public"

schools in Korea at the time, they were not free. Mom got lucky. She somehow learned how to play and master the game of tennis. She was able to attend high school and a two-year college on a tennis scholarship. During this time, she worked at a bank to help out her parents and her siblings, who now totaled five. She says she remembers that they struggled to keep food on the table because their first priority was to pay tuition to ensure that all of the children attended school. All six children graduated from college.

While Mom was attending college and working at the bank, she met Dad. They dated for almost five years. During this time, Dad graduated from college and then served in the Korean military for two years (Korea has a mandatory draft). They wed in 1962. Dad became a civil engineer. They moved all over Korea, depending on the construction project he was heading. My siblings and I were all born in different parts of South Korea. In 1974, my parents moved to Guam, where Dad worked for a Korean construction company. Mom looks back on our six years in Guam with fond memories. She took English lessons, learned how to drive, and was busy raising her children – my brother, my sister and me. For the first time she can recall, food was abundant. In 1980, we moved to California so that my siblings and I would have better opportunities. Because of Dad's lack of English skills, he gave up his profession. He and Mom opened up several small business ventures. Although they now had to work seven days a week, we always knew we were loved and we never felt neglected. Even with her new role as a working mom, Mom was always there for us.

---

Mom has experienced some painful events. We lost our brother to a car accident in 1985 when he was just 21 years old. Mom still mourns his death. As a mother, I cannot imagine the heartache she must live with. She has also battled breast cancer, lost one kidney, and had numerous surgeries to repair a shoulder that was injured when she was a victim of a violent crime. She also suffers from Bell's palsy and tinnitus as a result of having shingles in the ear (Ramsay-Hunt syndrome – a recurrence of the chicken pox virus in the form of shingles).

Notwithstanding, you would not know how much Mom has gone through if you were to meet her. She



*Mr. and Mrs. Han with their five grandchildren, (left to right) Ethan, Andrew, Claire, Katie and James*

has a positive outlook on life. She laughs and smiles often, especially when she is with her five grandchildren. To them, she is “Mimi.” According to my son, Andrew (who will be turning nine on May 13th), Mimi makes the best food in the world. I agree. She cherishes the small things in life – she loves to care for her two pet rabbits, her goldfish, her garden, etc. She also loves to brag about her grandchildren. She is always available if anyone needs her. She loves to travel, especially by bus to different parts of the U.S.; she often mentions how proud she is to be an American and to live in such a beautiful country. She is empathetic and has a heart of gold. Even if she does not have much, she is willing to give what she can to anyone in need. Most of all, she has taught us how to live our lives by example.

When I was growing up, I never realized how lucky I was to have Mom. I sometimes wished Mom was like the “other” moms who understood the need to own designer jeans, attend rock concerts or wear nail polish and make-up. I also wished I could speak English at home, instead of Korean, especially when my friends were there. As an adult, however, I am awed by Mom, and grateful for the values and work ethic she instilled in me. And I appre-



*Mr. and Mrs. Han in Korea, 1960*

ciate her more and more each day. Thanks, Mom, and happy Mother's Day.

On another note, please remember to sign up to participate in our "Day of Reading and Giving" at Pachappa Elementary School on Friday, June 9th, from 9 a.m. to 11 a.m. This requires only two hours of your time, but will mean a great deal to the students. Please help make this event a success. I look forward to seeing many of you at Pachappa Elementary School!

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*Theresa Han Savage, president of the Riverside County Bar Association, is a research attorney at the Court of Appeal, Fourth Appellate District, Division Two.*





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# BARRISTERS

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*by Robyn A. Lewis, Barristers President*

It's already Spring, and there are just two more Barristers meetings left for the year. How quickly the time flies!

In April, we had the honor of hosting Steve Anderson of Best Best & Krieger, who spoke about environmental law issues. For those of you who may not know him, Steve is also the current president of the Inland Empire Latino Lawyers Association (IELLA). A special thank you to him for joining us at our meeting and leading such a wonderful discussion.

For anyone who is interested, IELLA provides legal services to qualifying indigent individuals through legal aid clinics staffed by volunteer attorneys in both Riverside and San Bernardino Counties. Subsidized by some funding from the United Way and Inland Counties Legal Services, these clinics are designed to make legal services available to the poor and underprivileged. For more information, please contact IELLA's executive director, Marcy Guzman, at (951) 369-5846.

On May 10, 2006, we will be joined by Inga McElyea, Executive Officer/Clerk of the Riverside Superior Court, for "A Practice Guide to Filing Documents with the Court." We are also pleased to announce that William Shapiro of San Bernardino, a well-known and well-respected trial attorney, will be joining us for our June meeting, which will be on June 14, 2006. He will be leading a discussion on "Trial Techniques."

For those of you unfamiliar with Barristers, it is an organization designed for newer attorneys in our legal community to have the opportunity to meet other new attorneys and to sit in on MCLE lectures from esteemed members of our local judiciary and bar association, who give practice tips and pointers that are of special interest to less seasoned associates. We encourage all new attorneys to join us, no matter where you may practice – not just civil litigators, but also new deputy district attorneys, deputy public defenders, other criminal defense attorneys, and depu-

ties from the City Attorney's office. We also welcome any member of the Riverside County Bar Association, regardless of how long you have been in practice.

If you would like more information regarding Barristers, you can contact me at (951) 686-8848 or at rlewislaw@yahoo.com.

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*Robyn A. Lewis (formerly Beilin) is the President of Riverside County Barristers.*

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*by Richard Brent Reed*

## Amnesty, Eh?

Thousands cross the border every day, seeking work. Some enter this country illegally. They are despised, ridiculed, and discriminated against just because they look different, have strange customs, and talk funny. I refer, of course, to the Canadians.

These people do the jobs that Americans won't do – jobs that involve things that are unpleasant, demeaning, and messy; things that are beneath most Americans. I refer, of course, to ice hockey. Ice hockey was built on the backs of immigrant labor. Without immigrants, the hockey industry would collapse. But that isn't the only thing Canadians do that Americans just won't do: They also tolerate the French, play Lacrosse, live six to an igloo, and eat Canadian food. Canadian cuisine – if it can be called that – is so unsavory that it makes English cooking seem almost palatable. Canadian fast-food restaurants would all but disappear, were it not for our brothers to the north.

But there is one vital, Canadian-saturated industry that provides a service that Americans are, apparently, incapable of providing for themselves. I refer, of course, to comedy. Not the low-level, foul-mouthed, raunchy, shock-driven, “blue” variety, for which Americans

are famous, but the dry, subtle, cutting-edge comedy that Canadians seem to have cornered. Without Canadian comedy landmarks like “Newsroom,” “Second City,” Dan Aykroyd, Rick Moranis, Howie Mandel, Leslie Nielsen, William Shatner, and Alex Trebek, Americans would have to laugh at their own jokes.

Let's face it: Wit, for most Americans, is just too much work. That's why we should open the northern border and let Canadians entertain us with their moose jokes, lumberjack songs, and monotonously plaid flannel shirts. And the Canadians who are here now should be granted amnesty through a guest-joker program that permits them to do seasonal stand-up work, as long as they promise to return home every six months and take Jim Carrey with them. We may have to put up with a vowel added to every question; we may have to print ballots in two languages; we may have to give the police red uniforms; we may even be asked to accept curling as a sport; but to ask Americans to get by without real humor or Pamela Anderson would be unthinkable.

We must abandon our protectionist attitude toward American comedy and let it compete freely in the marketplace of funny ideas. There are too many Canadian comedians and actors in this country for us to pretend that we could survive without them. Who will set up the gags? Who will sell the jokes? Who will deliver the punch lines? Who will do the cleaning-up? We can't just laugh at them and kick them out. It should not be a crime to hire a Canadian comic, only a Canadian cook.

---

*Richard Reed, a member of the Bar Publications Committee, is a sole practitioner in Riverside.*





# IN MEMORIAM: LOUISE W. BIDDLE

by Robyn A. Lewis

**W**e lost a star on April 14, 2006, with the passing of Louise Biddle, former Executive Director of the RCBA, member of the JNE Commission, and administrator for the Leo A. Deegan Inns of Court, among other credentials.

Even those who did not know her directly knew that Louise dedicated herself to the betterment of this legal community and all of its members. I only wish that I had the opportunity to thank her for all that she has done and, in particular, for all of the help that she offered to me personally. I am privileged to have had the opportunity to know such an amazing woman. I will miss her. We all will miss her.

I am certain that we could fill an entire issue with RCBA members' comments on, stories about and tributes to Louise Biddle, but the following are comments from just a few who knew and loved Louise.

**Terry Bridges, Reid & Hellyer:**

If the RCBA and Inns of Court could have a caring and loving mother, it would be Louise.

**Carol Greene, Office of the San Bernardino County Counsel:**

The Riverside County Bar Association and many of its members have lost an invaluable asset and friend with the passing of Louise Biddle. I met Louise shortly after joining the RCBA. She encouraged me to become active in the Bar Association, and in the process she became a role model and personal friend. When I am asked to describe Louise, the first word that comes to mind is class. She organized bar functions with a flair that made the RCBA the envy of surrounding counties. Louise made everyone feel welcome at the Bar Association and took a personal interest in members, becoming a personal friend to many. My husband, John Vineyard, and I were lucky to count Louise as a friend. Louise has been described as becoming a second mother to many in the Bar Association, and I think of her in that role. She encouraged me when she thought it was needed, but she also let me know when I was out of line. Louise shared every milestone with John and me over the last 15-plus years, from hosting our engagement party to attending the christenings and birthday parties of our children. We will miss her as a



*Louise W. Biddle, May 1931-April 2006  
RCBA Executive Director 1990-1997*

loved member of our family and we will remain thankful that her children, Lisa, Eric and Nan, shared her with us for so many years.

**Dan McKinney, Reid & Hellyer:**

Louise Biddle was a great person. She was classy and distinguished. For those of you who may recall RCBA history, Bill Cunningham was our director for many years. The small RCBA ran well. After his death, the RCBA went into the "dark ages." It had several executive directors who did not work out well. The finances of the Bar were in a state of disarray. We were renting a small basement in the old City Hall. In 1990, a bright ray of hope agreed to come out of retirement and become the Executive Director. Louise brought team-building and a sense of direction to the RCBA. She genuinely liked lawyers and the law. She had the "people skills" that created a sound working relationship between the bar community, the bench, the PSLC and the public. I was privileged to work with her from 1990 until the year I was president (93-94). Louise shared our vision of acquiring the RCBA building and worked far more hours than her job required to complete that task in 1994. The RCBA grew to be the powerful force it is today largely due to her supervision.

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Anyone who has been an officer in the RCBA during Louise's tenure can attest to the fact that we may have been the elected officials of the organization, but Louise was in charge. Her advice and direction were considered and respected and we saw the RCBA prosper through her guidance. I never missed an opportunity to thank her publicly, and I am pleased to do so again.

**Amanda Owen**, Fiore, Racobs & Powers:

I was so thankful to Louise for her help during my first year on the Board of the Inns of Court. As the Member at Large, I was charged with organizing the joint meeting. However, I had no idea what I was doing! Louise told me whom to call and whom to write to, which, of course, she knew, as the person who knew everything about the Inns of Court. Thanks to her guidance and expertise, it all came together.

**Judge Craig Riemer**, Riverside Superior Court:

There is only one way to explain Louise's devotion to local legal community. She was one of those rare people who genuinely likes lawyers. How else could anyone tolerate working in an organization run by and for lawyers? Even after she retired from her position as Executive Director of the RCBA, she continued to arrange the annual dinner for past presidents of the RCBA and continued to staff the Inn of Court. Some of those positions

carried salaries or stipends, but not enough to attract someone who didn't enjoy the people with whom and for whom she was working. Not only did she like lawyers, she recognized the importance of the role of lawyers and judges to the justice system. Over a three-year term, she volunteered hundreds of long and hectic hours in service to the state as a Commissioner on the State Bar's Judicial Nominee Evaluation Commission. Litigants and their counsel up and down California will benefit from her good judgment for the next 20 years. She worked hard, but never appeared to be frazzled. She achieved remarkable feats with small budgets. She was a lady, but had strong opinions, which she was not shy about sharing, at times quite bluntly. She loved us. How could we not love her back? We will miss you, Louise.

**David Werner**, Gresham Savage Nolan & Tilden:

Louise has been out there, as a part of my professional life, as long as I have been a lawyer in this community, since 1991. I knew her first as the Executive Director of the Riverside County Bar Association, and then she was there as a part of the Leo A. Deegan Inns of Court. All during that time, I have thought of Louise as our "mother hen," our protector, who loved us, guided us, and took care of us like nobody else could. She is irreplaceable, and I know that we will all miss her.



# TEN THINGS EVERY LAWYER SHOULD KNOW ABOUT CRIMINAL LAW

by Chad Firetag and Chris Harmon

1. **Get the client to a criminal defense lawyer.** As we all know, the general practitioner is becoming more and more of a dying breed. Gone are the days when a single lawyer could competently practice in several areas of law. Perhaps nowhere is this truer than in criminal law, where the price of making a mistake can be a client's liberty or life. Today the punishments and sentencing enhancements are more severe than they have ever been. Quite literally, there is no room for error. In light of all of this, it is never a bad idea to pick up the phone and give a knowledgeable criminal defense attorney a call should you find yourself with a criminal law question or issue.

2. **The Fifth Amendment is your friend.** Second only to actually committing crimes, talking to the cops is the most common way people get themselves into trouble. Rule numbers one, two and three for any criminal case: Never, never, and never allow a client to speak to any law enforcement or investigative agency until you can answer the following questions with absolute confidence. (1) What will my client say? This requires that you have a very honest (sometimes painfully so) conversation with the client, in which no punches are pulled by either the attorney or the client. (2) Do you believe the client? It goes without saying that if you do not believe your client, the chances are good that no one else will, either. Furthermore, if the client is not being honest, they will very likely be caught in the lie. (3) Does speaking to law enforcement benefit my client, and if so how and at what cost? This is really the million-dollar question. Assuming you get past the first two questions, you must spend some time with this last one. You *must* think through this last question like a master chess player; you cannot think just two or three moves ahead, you must analyze this one all the way through to the end. Allowing your client to talk to law enforcement can be a very risky move, but sometimes it can head off an investigation before it gets off the ground, saving your client a great deal of suffering. The bottom line – proceed with extreme caution!

3. **Know the local procedures and terminology of the court.** For your client, there is a big difference between the terms, "jail time," "straight time," "weekends," "Sheriff's Labor Program," and "home detention," and you had better be intimately familiar with each one of them. Each courthouse has different sentencing options

and programs and may use different terminology for them. For example, in Los Angeles County, "weekends" might actually mean checking into jail Friday night and leaving Sunday evening, while in Riverside County it has an entirely different meaning. The point is that you had better be familiar with all of the local procedures and terminology, or your client will be adversely affected. The last thing you ever want to receive is a call from a client who is asking why he just had to spend the weekend in the local jail celled up with "Bubba" now that he has learned that "weekends" means that he could have had home detention. If this happens, you had better check that your insurance premiums are paid up.

4. **Getting down to business – proper financial arrangements with the client.** For criminal lawyers, this usually means getting paid up front. While most attorneys in the civil arena are accustomed to billing clients on an hourly basis (and actually getting paid), criminal defense attorneys, almost universally, have found that it is best to quote a flat fee and demand that it be received prior to showing up in court with the client. This is generally the best fee arrangement for two reasons. First, our clients are usually individuals and do not usually have "deep pockets." This means that getting a client, especially one who is incarcerated, to pay monthly bills can be a challenge. Second, criminal lawyers usually cannot be relieved from a case for nonpayment of attorney fees. There is, however, one exception to this rule. In felony cases, an attorney may be relieved prior to trial after the preliminary hearing at the accompanying arraignment on the information (formerly arraignment in superior court). However, it must be clearly set forth in the retainer agreement that the attorney has been hired only through the preliminary hearing, and the attorney must appear with the client at the information arraignment to inform the court that they have been retained only up through the preliminary hearing. It is absolutely necessary that the attorney show up at the information arraignment, even if they have not been retained beyond this stage, so that the client is never before the court without counsel. At this stage, the client can then hire the attorney for the trial, hire another attorney, or request a court-appointed attorney.

5. **Pretrial release – get the client out of jail.** It is a universal maxim that clients do not like to be in jail and



are much happier when they are home with their families. This means they will like you a whole lot more if you can help arrange for their pretrial freedom. This is very simple for the attorney to accomplish – have them contact a reputable bail bondsman. A bondsman will typically collect 8-10% of the bail amount as the fee for posting the bond. Once the bondsman is paid, the client is usually released in a matter of hours. It is important to make sure the client and the client's family know that this is the bondsman's fee and this amount will not be returned to them, even if the client is rearrested. One word of caution – be very careful and review the law when it comes to relationships between bondsman and attorneys. A whole article could be written on the law in this area, but at a minimum, you must be aware that it is illegal for attorneys or bondsman to pay each other referral fees in any way, shape, or form. Even if no money changes hands between an attorney and bondsman, the very nature of their relationship could potentially trigger criminal or professional liability.

**6. Establish credibility with the client and with the client's family.** Needless to say, the prospect of incarceration for most individuals is extremely stressful. Because of this, oftentimes criminal defense attorneys play the role of "counselor" more than "attorney." This stress is particularly apparent when a young adult, maybe 18 to 21 years old, is incarcerated, and the client's mother is crying in your office because she doesn't want to see her child locked away for life. In these situations, the simple approach is the best: Spend time with the client's family and with the client to establish credibility.

**7. Know and use private investigators.** A good private investigator is probably the best weapon a defense attorney can use when establishing a defense. One cannot rely on the police to locate the defendant's alibi witness or the corroborating witness who can testify that the client was acting in self-defense, especially after the police's investigation has long been completed. Moreover, it is crucial to have the investigator, not the attorney, interview the witness. If the interview is conducted by the attorney and the witness testifies to something different than what they told the attorney, then the lawyer has created the problem of being both the attorney and witness. By consistently using private investigators, the attorney remains free to call the investigator to testify as an impeaching witness.

**8. Establish good working relationships with the prosecuting agencies.** In large legal communities, the chances that you will regularly oppose the same attorney are fairly low. For that reason, unfortunately, uncivil behavior among lawyers tends to be more the rule than the exception. However, in criminal law, we work with the same people on a daily basis. Building a good relationship with the district attorney's office or other prosecuting

agency is really the key to establishing a reputation that will be far more valuable in the long run of your career.

**9. Specific to DUI's: Remember to hold on to that pink piece of paper and call the DMV for a hearing!** Probably at least one time in your legal career, you will receive a call saying that your cousin, nephew, friend, etc., has been arrested for a DUI and, since you're a lawyer, you were called first. Although you should eventually refer them to a criminal lawyer (see no. 1), here is some initial advice. First, when a person is arrested for a DUI, their license is taken away and they are given a pink piece of paper. That pink paper is actually their driver's license, but it is good only for a short time. Second, on that piece of paper are instructions telling them that if they do not call the DMV within *ten days* of the date of the arrest and schedule a hearing to challenge the suspension of their license, their license will be suspended automatically. If they do schedule a hearing, the suspension is stayed until the hearing. Since most DMV hearings don't take place until maybe a month and a half to two months after the arrest, instead of having only a few weeks to arrange with their work or school for the suspension, the person should have months.

**10. Explore all negotiation opportunities before trial.** Although this heading is true for all kinds of cases, it is important to remember that at the core of every criminal trial is punishment. Further, given the excessively high sentencing enhancements that are used in "three strikes" cases, even petty thieves are receiving long stretches of prison time. The goal of every good criminal defense attorney is to ensure that the client suffers no sentence beyond what justice requires. In this regard, the defense attorney must be open, even if the client is initially unwilling, to engage the prosecution in negotiation. Every offer must be conveyed to the client in a frank manner, which means exploring the client's exposure – i.e., the maximum sentence the client could receive if convicted of all charges.



*Chad Firetag is with the law firm of Grech & Firetag and Chris Harmon is with Harmon & Harmon.*



# PROBATION – THE UNSUNG HERO OF THE CRIMINAL JUSTICE SYSTEM

by Marie Whittington, Chief Probation Officer, Riverside County

Probation: The release of a convicted offender on condition of good behavior.<sup>1</sup>

Probation – the only alternative to prison and jail – has been around since 1898 and was originally staffed by volunteers. It has come a long way in the ensuing 100 years, yet remains rooted in its original mission of holding offenders accountable while encouraging behaviors and attitudes consistent with the law-abiding community.

Probation suffers a certain obscurity in the criminal justice system. Everyone knows what each criminal justice agency does, but cannot describe what Probation does:

- law enforcement investigates crimes and makes arrests;
- the Sheriff also runs the jail;
- the District Attorney prosecutes;
- the Public Defender (along with defense counsel) defends;
- and the court adjudicates and sentences.

And then there is Probation.

## MYTHS ABOUT PROBATION

Myth #1: Probation deals only with juveniles.

Fact: Three-fourths of Probation's caseload consists of adults. In 2005, there were 14,000 adults and 4,000 juveniles under supervision.

Myth #2: Probation is like "getting off."

Fact: 80% of probationers serve jail time as a condition of probation. The conditions of probation are restrictive and hold offenders accountable through reporting, warrantless search and seizure, drug testing, and limits on where they can live and work and with whom they can associate. Violation of any of the conditions or court orders results in return to court and custody.

Myth #3: There are no serious offenders on probation.

Fact: 85% of adults on probation are convicted felons. More than 25% have drugs and weapons when searched by their probation officer.

Myth #4: Probation officers are just social workers, not real peace officers.



Marie Whittington

Fact: Probation officers are both peace officers and caseworkers. They have college degrees and lots of training. Some are armed because of dangerous assignments. Probation holds offenders accountable for complying with the court's orders and conditions of probation. Violations result in arrest and return to custody. Probation officers work closely with law enforcement on drug and gang task forces and arrest more felons each year than most police departments. Probation offers the only opportunity in the system for rehabilitation and change, and does work with offenders to correct criminogenic attitudes and behaviors.

## PROBATION SERVICES

In Riverside County, the Probation Department has many functions:

- Pre-sentence investigations and recommendations in both adult and juvenile court.
- Community supervision of both adult and juvenile offenders.
- School-based prevention through the Youth Accountability Teams.
- Prevention/intervention supervision for juveniles through informal probation (Welf. & Inst. Code, §§ 654 and 725).
- Operation of three juvenile halls (Riverside, Indio and Southwest).
- Operation of three residential treatment programs (Twin Pines Ranch, Van Horn Youth Center and Desert Youth Academy).
- Providing safe alternatives to confinement through home supervision, house arrest, and the community work program.
- Placement and supervision of juveniles in out-of-home care.
- Specialized courts – drug and mental health.

According to a growing body of research, criminal offenders, based on appropriate assessment, fall into three main risk groups:

- High risk – 20%: Offenders likely to reoffend because they have little motivation or ability to change their criminal behavior. This group includes career criminals and committed criminal gang members. Supervision should consist of intense surveillance and control to protect the

<sup>1</sup> American Heritage Dictionary.

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community, with prompt return to custody for violations. Treatment and counseling are unlikely to change attitudes or behaviors.

- Moderate risk – 40%: Offenders who, given their risk and needs levels, are likely to respond well to community supervision and corrective efforts and to have the highest potential to benefit from probation and treatment services.
- Low risk – 40%: Offenders who have low risk and needs levels, on whom the arrest/court process has had a significant impact so that there is little need for additional services.

Future program development will focus on these supervision needs to maximize resources and improve outcomes.

Probation's biggest contribution to public safety is the ability to be proactive. Unlike law enforcement, which reacts to crime after it happens, probation officers in homes and the community are able to spot the danger signs of pending criminal behavior and take action before the new crime is committed. The officers know that substance use, negative associates, instability (in home, school or job), and psychosocial symptoms are precursors of crime. They can take immediate corrective steps, such as service referrals, intervention, increased contacts, and

drug testing, to prevent a criminal event. We work with and support parents to increase their effectiveness.

Probation community supervision is cost-effective. It costs more than \$34,000 a year to keep an adult or juvenile in custody, but community supervision costs only \$2,000 a year. By dealing with offenders in their homes, we can identify those conditions that contribute to criminal behavior and attempt to apply services that will reduce or correct them. For instance, research<sup>2</sup> identifies predictors of youth violence as:

- Parental criminality
- Parental intoxication and addiction
- Parental violence towards each other or the children
- Family conflict and child abuse
- Low parental involvement in children's lives
- Poor family management
- Residential mobility
- Delinquent peers/siblings

Probation officers visiting the home track progress and make appropriate referrals to correct these conditions. In the words of probationer M.J., "Being on supervised probation has given me an opportunity for a new start in life. I'm so closely monitored that it's given me an incentive to stay clean."



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<sup>2</sup> OCCDP Report – April 2000.



# THE NATIONAL CRIMINAL DEFENSE COLLEGE

by Steven Harmon

Every summer, 192 criminal defense lawyers from all over the United States leave the comfort of their homes and migrate south to Macon, Georgia. While the temperature in Macon during the summer is always around 100 degrees and the humidity is always around the same number, and while Macon is probably not anyone's definition of a swinging town (although there is a Waffle House on every corner), these 192 lawyers actually stay there for two solid weeks; and for years thereafter, they yearn to return. Although everyone knows that criminal defense lawyers are not the smartest group around and that they practice criminal law only because they can't keep up with the civil lawyers, wouldn't you think they would at least be smart enough to stay out of Macon in the summer? As it turns out, the answer is: No!



Steven Harmon

The real answer to the question of, "Why Macon in the sizzling summer?," is that Macon is where the National Criminal Defense College is located.

Known as NCDC to all those who have been there and sweated through a sultry, Southern summer, it is the Mecca for all criminal defense lawyers wishing to study and learn more about their craft.

Twenty-one years ago, NCDC was established as an in-depth training program for criminal defense lawyers, and today it is recognized as by far the best training program in the country. Lawyers of all levels of experience come together for two weeks each summer for a hands-on, intensive trial-skills program some have described as "boot camp for lawyers." The goal of NCDC is for each student to learn new and creative ways to present and communicate to jurors the themes and theories of his or her cases. Students also learn how to better relate and communicate with their clients in order to tell the client's story in the most persuasive way possible.

Before the students arrive at the College, they are sent a "case" which they are expected to have thoroughly prepared for trial. Once they arrive, they are assigned to groups consisting of eight students each. During the two-week program, each student will actually perform every task required in a criminal trial. For example, every student will conduct a voir dire of "jurors" brought in from the community. As the days progress, each student will then give an opening statement, conduct direct and cross-examinations of various witnesses in the case, and

finally, give a complete closing argument. Each time the students perform these tasks, their work is tape-recorded so they can later see their performance and can measure their progress. During and after each performance, every student is critiqued and guided by an instructor who is always present during each training program. Because each group contains only eight students, everyone gets a great deal of personal attention and help regarding everything from content to style. In addition to the small group sessions, there are lectures and demonstrations given every day to the entire group by very experienced criminal defense lawyers from all over the country.

Even though the two-week program is absolutely exhausting for both students and faculty, it becomes a life-changing event for everyone. Both students and faculty leave the College with a new-found enthusiasm for trial work. It is exciting to return home and try new techniques and ideas learned at the College. Strong and lasting friendships are formed during this two-week "torture session," and every participant knows he or she is now a far better trial lawyer. Students often wish to return to the College for additional training, saying they want to keep expanding their trial skills. For both students and faculty, the two weeks in Macon turn out to be unforgettable on so many levels. It is encouraging to see so many lawyers from all over the country who are so dedicated to becoming better at their craft in order to help their clients.

At the end of each difficult summer in Macon, 192 lawyers will return to their courtrooms all over the country, and, thereafter, thousands of criminal defendants for years to come will benefit from this summer of struggle by receiving the highest and best-quality defense possible in this land. That is a wonderful legacy for a miserable two weeks in the summer in Macon. Come to think of it, Macon in the summer was probably chosen as the site for the College over other great "destination" locations because at those other great places, the criminal defense lawyers would be out running around doing fun and crazy things. In the hot, humid summer of Macon, all you can do is stay inside and learn. You ought to try it – it will change your life. For more information regarding NCDC, please contact it at (478) 746-4151 or at its website, [www.ncdc.net/college](http://www.ncdc.net/college).

*Steven Harmon is a Past President of the Riverside County Bar Association. He specializes in criminal defense and is on the faculty of the National Criminal Defense College.*





# AFTER 40 YEARS, TIME TO INVEST IN EQUAL JUSTICE

by Gary Windom

*“The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.” – Justice Black in *Gideon v. Wainwright*, 372 U.S. 335 (1963).*



Gary Windom

Forty years ago, in the landmark case of *Gideon v. Wainwright*, the U.S. Supreme Court declared that “any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.” Yet decades later, the promise of *Gideon* has not been fulfilled.

Too often, people who can’t afford to hire a lawyer must whisper back and forth to an attorney they’ve never seen before – an attorney with too many cases to spend more than a few minutes to learn the facts of each person’s case, and even less time to prepare a legal strategy.

In the misdemeanor arena, they might get a lawyer who has to serve more than 500 other clients per year, or in the felony arena, they may receive a lawyer who gets paid less to defend someone who might spend the rest of his or her life in prison than a lawyer who handles a routine real estate closing (as the New York Times found in an investigation in 2001).

In fiscal year 1999/2000, 12,711 people appeared on the Riverside County Superior Court arraignment calendars and were arraigned, pleaded guilty, and were sentenced without ever speaking to an attorney. Today, the Public Defender still is not representing clients at misdemeanor arraignment court.

The quality of justice people receive should not be determined by the amount of money they have. I believe that Americans want public defenders to have parity of salary, resources and workload with prosecutors. I believe they want national quality standards for public defenders,

just like for teachers or doctors. They can no more imagine demanding competence from a lawyer without the necessary tools than from a surgeon without a scalpel.

All Americans know that the only way to access justice is with competent legal representation. But in order to ensure fairness, attorneys need to have enough time and resources to represent an accused person adequately.

The law office of the Public Defender for Riverside County has allocated to it 130 trial lawyers who serve more than 35,000 clients a year. Although people who cannot afford an attorney are assigned one, our state does not have any “quality-control standards,” such as restrictions on the number of cases assigned to public defenders. This results in overworked lawyers juggling hundreds of cases a year, and often seeing clients for the first time in court. Recent efforts by our Board of Supervisors to balance the system by allowing our office to hire a substantial number of lawyers and support staff are laudable. However, efforts to balance past resource inequalities and to maintain pace with the rapid growth of our county require unyielding vigilance and commitment to ensure that we do not falter and that the residents of this county are not denied access to one of their most basic rights.

We cannot have a fair justice system without an effective public defense system. As at that moment in 1963 when the attorneys general of 22 states filed a “friend of the court” brief on Clarence Gideon’s side, the time is right for those who design and fund our justice system to insist that the system be balanced, fair, and effective.

True, it will cost money. But the cost of a system that treats rich and poor differently, or that does not address a major cause of wrongful convictions, or that the public does not have confidence in, is much higher. We cannot afford to wait another 40 years to make this investment in justice.

Unfair justice for those who can’t afford an attorney hurts everyone and damages the integrity of the justice system.

A person whose liberty is both guaranteed and challenged by the state is entitled to muster resources equal to those the state uses against him. Although our courts and laws do not mandate the use of attorneys in all cases or circumstances, it can be said that where liberty is at stake, our



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constitution insures the effective assistance of counsel for its citizens and persons within its borders.

We have come a long way since our arrival in 1999. We have increased the number of lawyers and staff. We have built lasting relations with members of the criminal justice family and the community. We have begun to hire and train lawyers to zealously provide competent legal representation to our clients. We have made our facilities more conducive to the operation of a law office for the benefit of our clients. But we have a long, long way to go before we achieve the cultural transformation necessary to realize the dream of a balanced criminal justice system and office.

The law office of the Public Defender for the County of Riverside provides its services precisely for these purposes and principles. Hence our motto: "We are the guiding hand to preserve human dignity in cases where citizens' liberties are at stake."

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*Gary Windom is the Public Defender for Riverside County.*



# NOMINEES FOR RCBA BOARD OF DIRECTORS 2006-2007

The RCBA Nominating Committee has nominated the following members to run for the RCBA offices indicated, beginning September 1, 2006. (See below for their positions and biographies.) Watch your mail for ballots. Election results will be announced at the RCBA General Membership meeting in June.



**David T. Bristow**, President-Elect 2005-2006, will automatically assume the office of President for September 1, 2006 to August 31, 2007.



**Daniel Hantman**  
*Vice President*

Daniel Hantman has been in the Riverside community since 1976. He came to Riverside to serve as the Senior Citizen Attorney at the predecessor of Inland Counties Legal Services (ICLS). In 1984, Dan went into private practice.

Prior to coming to Riverside, he obtained his education from UCLA, UC Berkeley and the University of San Fernando Valley College of Law. He spent almost eight years in Thailand, as a Peace Corps volunteer for two years and later supervising the establishment of English-language schools throughout that country. There he learned to speak Thai fluently.

Dan has been active in RCBA committees and sections since his days at ICLS. These include the Lawyer Referral Service, the Juvenile Law Section, the Estate Planning, Probate and Trust Section, the Continuing Legal Education Committee, and the Women's Law Section. He has sat as judge pro tem for the Riverside Small Claims Court and the Riverside County Juvenile Court. He was co-chair of the Mock Trial Blue Ribbon Committee and has been an attorney scorer for years. He has helped organize Bridging the Gap programs and Brown Bag MCLE seminars.

Dan also has been active in the Riverside Chamber of Commerce for many years. He has been President of the Downtown Division and is presently a member of the Downtown Division of the Greater Riverside Chamber of Commerce (GRCC). He participated in the GRCC Leadership Riverside program and has been active in the

UCR Citizens University Committee and numerous other community organizations.

Dan Hantman is currently on the RCBA Board as Vice President.



**E. Aurora Hughes**  
*Vice-President*

Thank you for taking the time to read the candidate statements. This is our opportunity to tell you a little about ourselves.

It is my desire to continue to serve our membership in the capacity of Vice-President of the RCBA. I have had the honor of serving on the Board, currently as the Chief Financial Officer, and in the past as Secretary and as a Director-at-Large.

My RCBA involvement has included serving on the Publications Committee and the CLE Committee and as the Legislative Committee Chair. As a member of the Board, I have served on the Personnel Committee and have participated in various projects and programs as requested by the President.

I am deeply committed to serving our membership and ask for your support.



**Harry J. Histen, III**  
*Chief Financial Officer*

I am a sole practitioner and make my office in Riverside, California and have done so since June of 1977. I have a fairly broad, general practice, with an emphasis on wills and trusts and general business law. I also do probate and conservatorship matters, family law matters, general civil litigation and real estate matters.

I was born in 1942 and am a "second career" lawyer and a graduate of Western State University Night Law School in Fullerton, California. Prior to becoming a lawyer, I had my major in mathematics and worked as a Computer Programmer/Systems Analyst for Rockwell, International on the Apollo and Space Shuttle Programs.

I was very active in bar activities as a younger lawyer and belonged to several panels and served on the Lawyer Referral Service Committee. I have served on the California State Bar Resolutions Committee. I have trained as a mediator both by experience and by tak-

ing mediation courses at the University of California at Riverside. I mediate privately and through the RCBA Dispute Resolution Service, as well as on a voluntary basis through the Probate Departments and Family Law Bi-Monthly Voluntary Settlement Conferences.

I believe that what I can offer the Bar is my experience and the diversity of my legal experience. I am currently a Director-at-Large on the RCBA Board.



**Jeremy K. Hanson**  
*Secretary*

My name is Jeremy K. Hanson. I am the sole proprietor of the Law Offices of Jeremy K. Hanson, a civil litigation firm that empha-

sizes plaintiff's personal injury and family law. I have been a member of the Riverside County Bar Association since 1999. During that time, I have proudly been an Associate Attorney for Donner, Fernandez, & Lauby, as well as an Associate Attorney for Heiting & Irwin.

From 2001 to 2005, I served as Secretary, Treasurer, Vice-President and President of the Riverside County Barristers. I also sat on the RCBA Board of Directors during the 2004-2005 term under President Michelle Ouellette.

I am running for the Secretary position simply because I enjoy working for the Riverside County Bar Association. I enjoy the camaraderie that comes along with the position, and the people who work for the bar are such a joy. Over the years, I have always felt that the Riverside legal community is a unique and special place to practice law. The Riverside County Bar Association is a big reason for that, and I look forward to keeping Riverside a unique and special place to practice law.

**Daniel E. Katz**  
*Secretary*

Daniel E. Katz is a litigation partner with the law firm of Reid & Hellyer in Riverside, California. Mr. Katz graduated from McGeorge School of Law with honors and has been with Reid & Hellyer since 1998. His practice areas include business litigation, real property litigation and appellate advocacy. Mr. Katz has been involved in litigating two cases that led to published opinions by the Court of Appeal – Frangipani v. Boecker (1998) 64 Cal.App.4th 860 and Coltrain v. Shewalter (1998) 66 Cal.App.4th 94.

He is a participating member of the Leo A. Deegan Inns of Court.

Currently, Mr. Katz is a Director-at-Large.



**Harlan B. Kistler**  
*Secretary*

Harlan B. Kistler is a native Riversider who attended Notre Dame High School. He was a student athlete in college, attending UCLA, ASU and the University of Iowa. He obtained his law degree from the University of Iowa College of Law.

He spent seven years as an associate attorney for Reid & Hellyer, practicing business litigation and personal injury. In 1996, he established his own law practice and he has since focused primarily on the practice of personal injury law.

Throughout the years, he has been involved in Barristers and the Leo A. Deegan Inns of Court, and he has assisted the Mock Trial program as a scoring attorney. He has contributed his time preparing family law documents for clients of the Public Service Law Corporation. Presently, Mr. Kistler is assisting the Riverside Superior Court as a mediator through the RCBA Dispute Resolution Service. He has served many years as an arbitrator for attorney-client fee disputes, lectured on "Marketing Your Law Practice" at Barristers, published articles in the Riverside Lawyer and participated in the Civil Litigation Section.

Mr. Kistler is actively involved in the community as a volunteer head wrestling coach at Martin Luther King High School. He founded the OrangeCrest Crushers, which is a youth wrestling program in Riverside. Similarly, he has partnered with Singh Chevrolet to continue the Perfect Attendance Program for schools in Riverside. Mr. Kistler has also been involved in many community fundraisers and is a former Kiwanis member. Mr. Kistler has been married fourteen years to Lori and has two sons, Harlan II and Nolan.

Mr. Kistler is currently on the RCBA Board as a Director-at-Large.



**Michael A. Bell**  
*Director-at-Large*

Michael A. Bell, born January 11, 1936; admitted to the bar: 1962, California; 1994, Nevada; 1995, D.C.

Riverside office of LaFollette Johnson Dehaas Fesler & Aames.

Education: University of Las Vegas (1956); Loyola University, Los Angeles (1958); Loyola University, Los Angeles (LL.B., 1962).

Member: State Bar of California; American Board of Trial Advocates (1973), Rank – Advocate, President San Bernardino-Riverside Chapter (1985-86); American Bar Association; American Inns of Court, Joseph E. Campbell Inn, San Bernardino County.



**Jacqueline Carey-Wilson**  
*Director-at-Large*

Jacqueline has practiced both criminal and civil law, and now specializes in appellate work. She was previously a research attorney at the Court of Appeal and is currently employed as a Deputy County Counsel in San Bernardino. After graduating from California State University, Fullerton with a Political Science degree, Jackie was a field representative for Congressman George Brown in Colton. She then attended Southwestern University School of Law and was admitted to the bar in 1995.

Jackie has been an active member of the Riverside County Bar Association (RCBA) since 1996. In 1997, she joined the Publications Committee of the RCBA as a writer and photographer for the Riverside Lawyer, and she is currently a co-editor. As co-editor, Jackie coordinates each month's publication, recruits writers, and reviews the content of the magazine. Jackie was also instrumental in the establishment and design of the RCBA web page – RiversideCountyBar.com.

In October 2005, Jackie was appointed to the State Bar's Public Law Section Executive Committee. Jackie assists the Public Law Section in educating attorneys who represent cities, counties, school boards, and special districts.

In November 2005, Jackie became a director of the Inland Empire Chapter of the Federal Bar Association. Jackie assists in coordinating events for the FBA and has written for the Federal Lawyer.

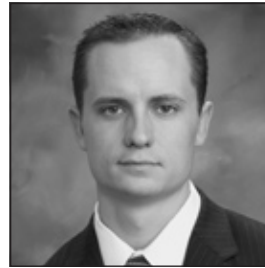
Jackie is co-chair of the Red Mass Steering Committee for the Inland Empire Communities. The Red Mass is for members of the legal community and their families to invoke God's blessing and guidance in the administration of justice. Jackie is also a member of the advisory board for VIP Mentors. The program recruits attorneys to serve as mentors for men and women on parole to assist with the difficulties they face upon their release from prison.

In January 2001, Jackie became a director of the Volunteer Center of Riverside County, and is now its President. The Volunteer Center is a nonprofit agency that provides services to seniors, youth, people in crisis, court-referred clients, and welfare-to-work clients.

Jackie and her husband, Douglas Wilson, have lived in Riverside for 17 years. They have three daughters, Katie,

Julia, and Grace, who attend Our Lady of Perpetual Help School.

Jackie's purpose in running for the board is to support its members by offering more educational opportunities and to strengthen the RCBA's relationship with the community.



**Chad W. Firetag**  
*Director-at-Large*

Mr. Firetag is a partner in the law firm of Grech & Firetag. During his time with the office, he has represented hundreds of clients, both private and indigent, on a number of different criminal matters involving drug offenses, domestic violence and white collar crimes.

Mr. Firetag graduated cum laude and Phi Beta Kappa from the University of California at Riverside in May 1998, with a B.A. in Political Science and a minor in History. He received his J.D. in 2001 from the University of California at Davis. During law school, he served as the Editor-in-Chief of *Environs: The U.C. Davis Environmental Law Journal*, was elected to the Order of the Barristers and was named the American Board of Trial Advocates Student Advocate of the Year. Mr. Firetag is currently a member of the Riverside County Bar Association and a member of the Leo A. Deegan Inns of Court. He is also active in the Riverside County Mock Trial Competition, having volunteered as a coach last year and having served on the Steering Committee the previous two years.



**Richard A. Kennedy**  
*Director-at-Large*

I look forward to the opportunity to serve the Riverside County Bar Association as a Director-at-Large. I currently serve as a board member of the RCBA Lawyer Referral Service, Inland Counties Legal Services and the Public Service Law Corporation. I also volunteer as an attorney-client fee arbitrator for the RCBA and as a temporary judge in Riverside County.

I graduated from UCLA with a Bachelor of Arts in History, then obtained my Juris Doctor degree from Western State University College of Law in Fullerton. I have been married to Alicia for over 16 years. We have two children, Richard and Ahmicqui.

In closing, I thank you for your considered attention and support.





**Robyn A. Lewis**  
*Director-at-Large*

Robyn A. Lewis (formerly Beilin) is an associate attorney with the Law Offices of Harlan B. Kistler, which is located in Riverside. Since Ms. Lewis' admission to the bar in 1998, her practice has focused primarily on personal injury and elder law. She has been an active member of the RCBA since joining her firm in 1999.

Ms. Lewis is currently President of Barristers, serving her term for that organization during 2005-2006. In that capacity, she has also served as a member of the Riverside County Bar Association Board. Ms. Lewis has served on the Executive Committee of Barristers for the last three years and organized such events as the BMW Oldtimers Social and the Holiday Social hosted by Barristers for the last two years.

In addition to her involvement with Barristers, Ms. Lewis is a contributing member of the Publications Committee and the Continuing Legal Education Committee of the RCBA, as well as a member of this year's RCBA Golf Tournament Committee. She is a member of the Leo A. Deegan Inns of Court and of the UCR Pre-Law Advisory Committee.

For the last three years, Ms. Lewis has had the pleasure of coaching the Mock Trial team of Santiago High School, which finished second in the county and thirteenth in the state last year and third in the county this year.

A graduate of Seton Hall University School of Law, Ms. Lewis is originally from the state of New Jersey. She married Jonathan Lewis of J. Lewis and Associates, who has a civil litigation practice in Riverside, in May of 2005.



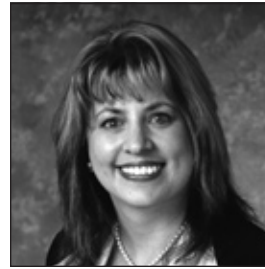
**Gary T. Montgomery**  
*Director-at-Large*

Gary T. Montgomery is a partner with the law firm of Thompson & Colegate LLP in Riverside, California. Mr. Montgomery attended Princeton University, where he received a bachelor's degree in Economics and was a member of the University's varsity football team. He then received his Juris Doctorate from Pepperdine University School of Law in 1993.

Mr. Montgomery is a participating member of the State Bar of California, Riverside County Bar Association, Riverside County Barristers Association and the Association of Southern California Defense Counsel. He also serves

on the Board of Directors for the University of California at Riverside Athletic Association.

As a defense attorney, Mr. Montgomery currently handles all aspects of civil litigation in the areas of personal injury and wrongful death, premises liability, tort defense, government entity defense, products liability, insurance, construction defect and business litigation. Mr. Montgomery and his family, which includes his wife Renee and three daughters, continue to reside in Riverside, where they are heavily involved in youth sports.



**Irena Leigh Norton**  
*Director-at-Large*

Irena Leigh Norton is a partner in the firm of Shulman Hodges & Bastian, LLP, anchoring the firm's established Riverside office, which opened in October 2003. Ms. Norton has a civil litigation practice, with an emphasis on complex business disputes and healthcare-related litigation. She grew up in Riverside, graduating from Notre Dame High School before attending the University of California, Irvine. She is a 1993 graduate of Georgetown University Law Center, and began her Riverside legal career as a civil litigator with what was then Thomas, Luebs & Mort. During her tenure, the firm changed names several times, eventually merging with Burke Williams & Sorensen, LLP in 1998. In 1999, Ms. Norton joined several colleagues to form the Riverside office of Akin Gump, where she remained until January 2005.

Ms. Norton has been an active member of the RCBA since beginning her practice in 1993. She is active in the community, currently serving on the Board of Directors for the Riverside County YWCA, and previously having served as Board Member and President of the Corona Historic Preservation Society and as Scholarship Chair on the St. Edward's School Board. She is a member of Soroptimist International of Corona. She is a devoted "soccer mom," involved with her children's spring and fall season soccer teams through AYSO. She balances her work obligations and community involvement with a busy family. She is married to Mitchell L. Norton, a lawyer in practice with San Bernardino County Counsel, and is also the mother of two boys, Samuel (9) and Benjamin (5), and a daughter, Christina (6). The family resides in Corona.



**Brian C. Unitt**  
*Director-at-Large*

Brian Unitt is the managing partner of Holstein, Taylor, Unitt & Law.

He received his B.A. in History and Political Science from UC Riverside, and his law degree from King Hall School of Law at UC Davis. He specializes in appellate practice, and over the past 21 years has handled over 50 appeals and over 30 writs. These have included an amicus brief and a petition for certiorari to the United States Supreme Court. He approaches that work from the perspective of a trial lawyer, having learned that craft from Bob Holstein, who was one of its finest practitioners.

Mr. Unitt has been a member of the Riverside County Bar Association since 1984. He is a member of the Consumer Attorneys of California, participating on its Amicus Committee, and is a member of the American Trial Lawyers Association. He served as Vice-President of the Inland Trial Lawyers Association in 1993. He serves as an arbitrator for the Riverside Superior Court, and a volunteer mediator for the Court of Appeal. He has taught continuing education seminars on civil procedure and tort law issues. He has been a guest lecturer on labor law issues for over 10 years for the Surveyors Apprenticeship program (IUOE Local 12).

Following the example set by Bob Holstein, Mr. Unitt has been active in community service. He helped organize golf tournaments to raise money for the construction of the St. Andrew's Newman Center, and to raise funds for the City of Hope. He served for four years on the board of Community Access Center, a Riverside-based nonprofit advocating for the rights of people with disabilities. He was a member of the Just Wage Coalition, which successfully advocated for the adoption of a written commitment by the Diocese of San Bernardino to pay "just wages" to construction workers who build its churches and other facilities. He has served for seven years as an adult leader in Boy Scout Historic Troop 2 in Riverside, and has taught adult leadership courses for

the California Inland Empire Council of the Boy Scouts of America. He has provided pro bono legal services to the board of the United Campus Ministry at UC Riverside and to Inland Congregations United for Change. He serves on the Riverside Community College Citizens Bond Oversight Committee.

Mr. Unitt is married to Patricia Lennan, a dental hygienist and clinical instructor at Loma Linda University School of Dentistry. They have two children, Ian and Rebecca. His hobbies include performing Celtic and American traditional music, gardening, fishing, reading, and golf.



# JUDICIAL PROFILE: COMMISSIONER LORI HUNT KENNEDY

by Donna Thierbach

This is the fifth profile I have had the pleasure of writing, and you would think I would come up with something different to talk about. However, I continue to be fascinated by the answers to my same old questions: Why did you become an attorney and how did you come to practice in Riverside County? (Just for the record, I am more than willing to accept “fan mail” with other questions you would like me to ask!)



Photograph by Michael D'Vila

Commissioner Lori Hunt Kennedy

Commissioner Kennedy grew up in New Jersey, but moved to Orange County, California when she was 12 years old. In high school, she always wanted to be in acting and never considered the practice of law. She attended California State University at Fullerton and, after graduation, decided to take a year off from school. She worked in sales and found she really enjoyed public speaking. About the same time, her father was attending Western State Law School and invited her to tour the school. That was all it took. She had just interviewed for a job as a page at NBC, in the hope of furthering her acting ambitions, but when she visited Western State, she enrolled right then and there! I thought perhaps there would be a real advantage to attending law school with a parent (because maybe there would be some assistance with briefing cases), but unfortunately, just when she started law school, her father graduated.

Commissioner Kennedy worked full-time in marketing while she attended law school. She thought she wanted to be a prosecutor when she graduated, but she could not participate in any of the intern programs because she worked. However, she was involved in Moot Court and Law Review, as well as doing a little clerking for her father.

Commissioner Kennedy took the bar examination in Riverside (on her birthday), which seemed to seal her fate of becoming a Riverside County resident. Shortly thereafter, she moved to Temecula, because of the affordable housing. She was going to go into private practice in Temecula, but when she met another new attorney, John Pozza, they decided to open an office together. Commissioner Kennedy said their practice at first was based on “food law” (i.e., cases that put food on the table), but ultimately focused on family and criminal law. As their practice evolved, Mr. Pozza handled the majority

of the criminal law cases, while she concentrated on the family law cases.

Commissioner Kennedy's current assignment is in family law. She said one of her favorite duties is handling the Juvenile Dependency Drug Court in Southwest, which works with those parents who have lost custody of a child due to drug addiction. She said she has learned a lot about addiction from the program, and it is wonderful to see the transition in the participants as they progress through the program. She related that the program is very successful, in that those parents who have completed the full program have regained custody of their children. At a recent Juvenile Dependency Drug Court graduation ceremony, she found the participants' stories very emotional and interesting.

Commissioner Kennedy is married and her husband is employed in the screening management field. (I thought that “screening management” had something to do with movie-making, and was getting ready to ask if she could get me Nicolas Cage's autograph, but then I learned that it involves investigating electricity theft.) Commissioner Kennedy met her husband through a friend, and – here's something that will remind you of those relationship grids in wills class – he was her friend's husband's brother. She said it was love at first sight, and they were married within a year. Commissioner Kennedy has two children, and they enjoy spending time at the beach. Last season, she had a lot of fun coaching Pop Warner cheerleading and was amazed at the competitiveness of the sport. Her team won the championship, and she is looking forward to coaching again next season.

Commissioner Kennedy said that, although at times she misses the advocacy of practicing law, she truly enjoys being a commissioner. She finds the family law calendar satisfying, because she has the opportunity to see results. However, she has enjoyed occasionally filling in on the Criminal Drug Court Calendar and welcomes learning new areas of law.

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*Donna Thierbach is formally a deputy public defender with Riverside County and is currently the assistance director of the adult division of the Riverside County Probation Department.*



# IN MEMORIAM: JUDGE JOHN BARNARD

by Justice Bart Gaut

John Barnard died on February 23 at age 76. John had been a judge of the Riverside Municipal Court and retired in 1991 as a Riverside County Superior Court judge. He is survived by his wife Jean and five children.

I first met John in 1962 when I interviewed at Best Best & Krieger for a job after law school. John was one of the younger partners in the firm, and after talking to him and some of the other lawyers there, I was happy to be hired. I worked with John for the next six or seven years at BB&K.

John had a lively law practice that included real estate law, business, corporate, and title work. John was a likeable guy who enjoyed his practice but didn't let it get the best of him.

John was born in Abilene, Texas and received his bachelor's degree from the University of Texas at Austin in 1951. During the Korean War, he entered the Navy, which eventually sent him to the submarine school in New London, Connecticut. After that, he was assigned to serve as a submarine officer in San Diego. When he left the Navy, he completed law school at USC and received his law degree in 1956.

After law school, John came to Riverside, where he began his practice with BB&K. He left in 1969 and practiced by himself for a short time until he was appointed to the Riverside Municipal Court in June 1971. He was appointed to the Superior Court in November 1981 and retired in 1991.

When first appointed, John presided over a number of criminal cases, the most notorious of which was the case of Richard Diaz, the nurse accused of killing 12 patients with drug overdoses. The parties in that case took the unusual step of stipulating to allow John to hear the case without a jury. Despite that fact, John's first love was hearing civil cases.



John Barnard

One lawyer, commenting on John's judicial ability said: "He's an incredible judge – the most judgely judge on the Riverside bench.... He has a presence that creates the proper atmosphere in the courtroom. He doesn't let lawyers dawdle or fool around, either. He's the best judge in terms of moving cases through the system and rendering decisions without delay."

John and his wife Jean had five children, including two sets of twins. One of the activities that the Barnard family enjoyed most was spending time at their beach cabin at Crystal Cove. Jean, John, and their family spent a great deal of time there, until the Cove was recently taken over by the state for the creation of a state park. Jean put it this way: "[T]he most important in [John's] life was his family and our favorite place to be with the family was at the Cove. We were so fortunate to have so many years there with family staying with us so often. Jonathan Livingston Seagull was a story that inspired us both."

In that connection, I think the notice of John's death from his daughter Wendy says it best: "Our father went to heaven today at 11:10 a.m. surrounded by the family. He looked wonderful and was peaceful. His family went to the pier in Newport afterward to remember him, and a seagull came and sat by them for a long time. My mother had told my father this morning to go be with Jonathan Livingston Seagull and be free and fly high. We felt truly this was a representation of our dad, and after a short time, the seagull flew away high in the sky and did not come back. Everyone in his family is at peace."

*Justice Bart Gaut sits on the Court of Appeal, Fourth Appellate District in Riverside. He was president of the RCBA in 1979.*





# CAN THEY DO THAT?

by Richard Brent Reed

You may have read the headline in the newspaper: “Judge dismisses initiative suit” (Press-Enterprise, Saturday, March 11, 2006). The City of Riverside decided to sue a citizen for attempting to put an eminent domain measure before the voters. The City lost and, being the good sports that they are, the City Council voted, unanimously, to appeal the decision and, if necessary, to appeal the appeal. My client, Ken Stansbury, was the spokesman for Riversiders for Property Rights, the group trying to gather signatures to get their charter amendment on the ballot. On November 7, 2005, the ballot title and summary was signed by the city attorney. The City filed its lawsuit to block the initiative on November 16, 2005, but the story starts much earlier.

In 1215, a bunch of English barons got tired of losing property to the Crown, so, at a place called “Runnymede,” they ganged up on King John (Prince John of Robin Hood fame) and forced him to sign the Magna Carta, guaranteeing to Englishmen the right of habeas corpus, the right to trial by jury, and, notably, the right to petition the government. In 1689, the British Bill of Rights put it this way: “it is the right of the subjects to petition the King, and all commitments and prosecutions for such petitioning are illegal.” In 1774, the right of Englishmen to seek redress of their grievances resulted in the Declaration and Resolves of the First Continental Congress and, in 1776, it culminated in the most famous petition of all, the Declaration of Independence. The author of that document, Thomas Jefferson, later said that “the opinions of men are not the object of civil government, nor under its jurisdiction . . .” (as quoted by Justice Douglas in *Schneider v. Smith*, 390 U.S. 17, 88 S.Ct. 682, 19 L.Ed.2d 799 (1968)).

Petition may take many forms, including lobbying Congress, picketing the Supreme Court, or writing letters to the President. Californians may redress their grievances through the initiative process, in which an issue may be presented to and voted on by the electorate. Citizens of a municipality have the right to speak up at a city council meeting or, if they are so inclined, to impose the will of the voters upon their elected officials by placing a measure on the ballot. That brings us to *City of Riverside v. Stansbury*.

In its complaint for declaratory relief, the City asked the court to rule that the issue of eminent domain was a matter of “statewide concern” and alleged that it could not be limited at the local level. The City also asked that the court absolve the City of its duty to put the measure on the ballot once the signatures were gathered. Oh – and the City wanted Stansbury to pay for the costs of the suit against him. Enter Robin Hood: I took the case on contingency.

Every time I have told someone that the City was suing a citizen to keep something off the ballot, without exception, the incredulous reaction was: “Can they do that?” To answer that question, we joined in bringing an anti-SLAPP motion authored by Karen Frostrom, attorney for Riversiders for Property Rights. (A SLAPP – strategic lawsuit against public participation – is one that infringes upon political speech – in this case, the right of petition.) The question before the court was: Is the City trying to shut the defendants up?

On March 10, 2006, in Department 3, our anti-SLAPP motion was heard. The Honorable E. Michael Kaiser emerged from his chambers bearing a stack of books. In an almost ceremonial manner, he opened the first book, then the second, then the third, painstakingly and methodically explaining the law to the City of Riverside: Eminent domain is not exclusively a “matter of statewide concern”; it can be limited at the local level; and, without an actual law to litigate, the case was not ripe and the City’s action was premature. As the judge read, reasoned, and ruled, the courtroom was transformed into Runnymede: the sovereign was being forced to submit to the rule of law and to listen to the will of his subjects. That is what the right of petition is all about: not just passing around a piece of paper, but the right to – in essence – shove it in the sovereign’s face and say, “Read it.” Judge Kaiser’s ruling was not just a legal exegesis, but a civics lesson as old as the Magna Carta itself. Unfortunately, the City Council did not hear a word of it.

*Richard Reed, a member of the Bar Publications Committee, is a sole practitioner in Riverside*



# OPPOSING COUNSEL: TIM HOLLENHORST

by Robyn A. Lewis

“A friend of mine once asked me why I was always smiling. And I explained to him it was because I lead a charmed life.”

If you know Tim Hollenhorst, a deputy district attorney with the Riverside District Attorney’s office, I am sure that you would agree that he is clearly a man who enjoys work with a passion but lives and enjoys life as well. Tim’s “charmed life” is founded on his pride in his profession, his love for the law, his close relationships with his family and friends, and even his devotion to his beloved yellow lab, Gracie. “I am very happy both professionally and personally.”

As Tim is the son of Justice Tom Hollenhorst, a justice of the Fourth District Court of Appeal, it is understandable how he gravitated to the legal profession as a career choice. His father explains: “[H]e literally learned to read reading probation reports. After dinner almost every night, I would spread a big pile of probation reports on the kitchen table, moving them from the unread pile to the ‘read and considered’ pile. Tim would go through them with great interest and ask lots of questions. When he got home from school the next day after court, he would want to know what happened on cases that caught his interest.” Tim added, “that was the highlight of my night, reading those things.”

Tim grew up taking trips to his father’s courtroom when Justice Hollenhorst was then a criminal trial court judge. “Both of my sons would come down to the courthouse. One would put on my robe and the other would be the defendant. They would then take turns role-playing and sentencing each other in my courtroom. To say the least, there was disorder in my court,” Justice Hollenhorst fondly recalls.

Criminal law has always been of interest to Tim. “That is really what my passion has always been.” But Tim went on to explain why he has always been fascinated by this particular field: “My goal in joining this profession has always been to do justice, do the right thing and hold people accountable for their actions.”

After growing up here in Riverside, Tim went on to graduate from the University of California at Santa Barbara in 1999, with a degree in political science. During his time at UCSB, he spent his junior year abroad, in the United Kingdom, studying American Politics at the University of Sheffield.



*District Attorney Grover Trask presents Tim with his badge following the probation-expiring ceremony.*

When he graduated from college, Tim began to think about law school. Surprisingly, Tim notes that his dad had wanted him to be a dentist at first. As Tim recalls, “a couple of poor grades in science classes quickly changed that idea.” Tim knew that he wanted to be a prosecutor and began applying to law school. One of his father’s close friends, Riverside Superior Court Judge Dennis McConaghy, recommended that he apply to the University of Kansas School of Law. “It’s actually a funny story as to why I went there,” Tim explained. “Judge McConaghy is like a second father to me. I have known

him my whole life. And he is a graduate of University of Kansas. When I was applying to law schools, I had asked him for a letter of recommendation. He said that he would only write me one if I applied to University of Kansas.” After he was accepted at Kansas, Tim made the decision to attend there, much to the delight of Judge McConaghy.

Law school was a wonderful experience for Tim. During the summers, he interned at the Riverside District Attorney’s Office. He also clerked at the Kansas City District Attorney’s Office for a year, where he did preliminary hearings.

Tim was also an attorney for a traffic court program at his law school. “Anybody, whether it was a student, faculty, or visitor, who got a traffic citation on campus could appeal it. We would then conduct a real trial in a courtroom in the law school. You would volunteer to be their defense attorney or a prosecutor.”

One of Tim’s most cherished courtroom victories was during a case that he tried while participating in that program. “I was a defense attorney. There was somebody visiting, who parked in a red zone and was ticketed. But I actually got him off the ticket. I took pictures and I found that the red marking had faded enough so that, at a certain time in the day, you couldn’t see it.” What was particularly sweet about Tim’s victory that day was that his dad was in the courtroom to watch. “So he got to see me in my first trial experience.”

Joining the District Attorney’s office was a natural progression in Tim’s life, after he graduated from law school in 2002 and passed the California Bar Exam. “I suppose it is a cliché, but being a prosecutor has always been something that I have wanted to do. Now that I am one, I am doing exactly what I want with my life.”

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Tim started off prosecuting misdemeanors and then went to the preliminary hearings unit. He spent a short time doing juvenile prosecutions until he went to the grand theft auto unit. "I was the trial team leader in that unit. I was the 'go to' person between our deputies and our supervisor. So if they had a question, needed trial advice, or just needed help, I was the person that they would go to. I really enjoyed that position."

Now with the identity theft unit, Tim has 15 jury trials under his belt (an impressive amount to anyone, let alone this civil litigation attorney). He has been elevated to the ranks of felony deputy after only 17 months from when he joined the office of the District Attorney.

Being a deputy district attorney has been incredibly rewarding for Tim. "I really enjoy the academic challenge of cases but also the social aspect of the law as well. I look forward to seeing my colleagues and opposing counsel every day." Tim commented that being a deputy district attorney can also be emotionally draining. "The hard part is when you become personally attached to your victim. It is hard to separate yourself sometimes from the reality of what we do." But Tim went on to explain that having a degree of personal involvement should be considered a strength instead of a weakness in a deputy district attorney. "If there comes a day when I can do that, when I can't separate myself, I shouldn't be a prosecutor anymore. I think that makes me a good prosecutor. I live in this community, I work in this community, I grew up in this community and my family is still here. Helping to protect this community is motivation to come to work everyday. It's a wonderful job that I have."

Tim's favorite aspect of being a deputy district attorney is the fact that he gets to try cases. "I enjoy being a trial lawyer. I enjoy the competitiveness, being in the courtroom, and I enjoy helping a jury determine the facts of the case, apply the law the judge gives them and then convincing them to do justice."

Often, people ask Tim about what it is like to be the son of Justice Tom Hollenhorst, who is such an institution in this legal community. And it is immediately apparent that Tim has nothing but love, admiration and

pride for a man whom we have all come to respect as a leading force in Riverside. "I think my dad has left some footmarks in our community that may never be duplicated. I have always been proud of my dad. My dad inspires me to be a better lawyer, man, colleague and friend, both professionally and personally. He has taught me that it is possible to be passionate about your profession and still be a good person. He helped open the door for me in this profession, but it has been my responsibility to work hard to achieve things for myself. I know the values that I have learned from him will stay with me forever."

One of Tim's most treasured moments since joining the D.A.'s office was during his very first felony trial. "It was really special to me because my dad came to watch. During a break, I asked him how I was doing. He responded that he wasn't going to tell me a thing but he wanted me to know that he was proud of me. That's what you want. You want to make your parents proud by doing the right thing the right way."

Justice Hollenhorst is equally proud of his son. "Tim and I are not only father and son, but we are also very good friends. As a friend, what impresses me most about him is his loyalty and his maturity about the criminal justice system. He loves the combat of trial yet he has as many friends in the defense bar as in the D.A.'s office."

From the little boy who learned to read from probation reports to a veritable force in the District Attorney's office. His "charmed life" is evidenced by his devotion to his job and his passion for living. Tim Hollenhorst is certainly a name that we are sure to hear about in years to come in this legal community.

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*Robyn A. Lewis is a member of the Bar Publications Committee and president of Riverside County Barristers.*



# CLASSIFIED ADS

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Experienced paralegal full or part time, family law or probate. \$18.00 - \$25.00 per hour DOE. Respond to Voltaire@charter.net

## Seasoned Counsel/New Admittees/Paralegals:

Statewide, AV rated Construction Defect law firm seeks ATTORNEYS interested in contract work for appearances and depositions throughout the Inland Empire.

We are also seeking experienced litigation PARALEGALS on a full time basis or for contract work. Please fax resume/ salary history to (619) 464-5414, or email smcbride@a-k.com.

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## Litigation Paralegal

Inland Empire firm of Reid & Hellyer, APC seeks litigation paralegal with at least 7+ years of experience in civil litigation. Excellent writing/research skills required for preparation of pleadings, propounding of/responses to discovery, etc.; ability to work independently. Computer proficiency in WordPerfect, Word, Lexis. Paralegal Certificate required. Fax cover letter, resume and salary requirements to Administrator (951) 686-2415 or e-mail cmcdavitt@rhlaw.com.

## Internship Wanted

Current Maric College Paralegal honors student seeking NO PAY internship with law office in Palm Springs or Rancho Mirage two days weekly. Mature and professional. Computer literate in Excel, PowerPoint, Word and Access. I am a registered process server, former accountant, office manager and residential property manager. Inquires: Gary Whitehead (760) 325-5668, palmspringsac@aol.com

## Conference Rooms Available

Conference rooms, small offices and the third floor meeting room at the RCBA building are available for rent on a half-day or full-day basis. Please call for pricing information, and reserve rooms in advance by contacting Charlotte at the RCBA, (951) 682-1015 or charlotte@riversidecountybar.com.



## MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective May 30, 2006.

- Daniel Branstine** – Dorsey & Whitney LLP, Irvine
- Steven F. Carlson** – Carlson & Johnson, Temecula
- Renato (Reno) Cervantes, Jr.** – Office of the District Attorney, Riverside
- Adam R. Dodge** – Sole Practitioner, Temecula
- Mark J. A. Flory** – James B. Church & Associates, Redlands
- Donald W. Hitzeman** – Rosenstein & Hitzeman, Temecula
- Susan M. Lee** – Elliot Snyder & Reid, Redlands
- Mimi Lin** – Varner & Brandt LLP, Riverside
- Mark A. Mandio** – Office of the District Attorney, Murrieta
- Denise Meena** – Sole Practitioner, Riverside
- Walter Meistrell (S)** – Law Student, Murrieta
- Jeffery T. Monteith** – Sole Practitioner, Hemet
- William W. Scott (A)** – California Market Values Inc., Riverside
- Kathleen S. Stosuy** – Elliot Snyder & Reid, Redlands
- Karla Szerdahelyi (A)** – Penny Bail Bonds, Riverside
- Christopher J. Whelton** – Sole Practitioner, Murrieta

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