

RIVERSIDE LAWYER

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MAGAZINE

2007 Mock TRIAL WINNERS



MARTIN LUTHER KING, JR. HIGH SCHOOL 1ST PLACE



The official publication of the Riverside County Bar Association

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RIVERSIDE LAWYER

MAGAZINE

C O N T E N T S

Columns:

3 **President's Message** by *David T. Bristow*

6 **Litigation Update** by *Mark A. Mellor*

COVER STORIES:

8 **2007 Mock Trial Competition**
by *John Wahlin*

10 **Full Circle**
by *Alexis Demeo*

12 **Coaching Mock Trial: A Sport for the Mind**
by *Lana Kreidie*

Features:

13 **April Fool's Section**

23 **Notes on South America**
by *Richard Brent Reed*

26 **Judicial Profile: The Honorable
John C. Rayburn, Jr.**

by *the Hon. Oswald Parada*

29 **Opposing Counsel: Lana Kreidie**
by *Cosmos E. Eubany*

Departments:

Classified Ads 32

Membership 32



by David T. Bristow

I am thrilled to report to my fellow RCBA members that the crisis in our county's judicial system has finally been addressed, and, by all appearances, the county's political leaders have stepped forward and committed themselves to creating a framework for ensuring the future health of our county's courts.

This wonderful news literally came out of left field. Last week, during an RCBA softball league game (there's still time to join, by the way), as I stood aimlessly in left field, I noticed a woman in a business suit approaching the crowd behind the backstop. After she said something to the visiting team, a chorus of arms pointed in my direction, and she began to approach me.

Fearing a process server or a Fox News reporter, I furtively began to evaluate the potential escape routes, only to have Jason Gless hit a line drive over my head. After I collected the ball from the nether regions of the outfield, my chance to flee evaporated, and the woman was now standing adjacent to me on the foul line. The inning ended, and, resigned to my fate, I walked over to her.

"Mr. Bristow?," she inquired.

Once I affirmed my identity, she got right down to business. She identified herself as Pilar Solof, the Chief Administrative Liaison to Chief Justice Ronald George. Saying that she had been dispatched personally to convey the good news, she recounted how the state's Administrative Office of the Courts had been inundated with requests from Riverside County's elected leadership, all clamoring for a meeting with the AOC to resolve the problems in the county's judicial system.

Apparently, the calls had led to a secret high-level meeting between the AOC and our

county's elected leadership, at which they all agreed that the problem was severe and unprecedented. At the meeting, our county leaders recounted how they, in turn, had been besieged with calls from their constituents, all up in arms over the dysfunction of the Riverside County court system, with the civil justice system on permanent hold while the civil judges pitched in to try criminal cases, and the criminal trial backlog continuing to spiral out of sight. The chamber of commerce was demanding a solution, as the lack of a working judicial branch was beginning to have an impact on its members, and potential investors were pulling out of the county, since they could not be assured of protecting their investment. Mayors, city councils, school districts and all sorts of public agencies were complaining that they couldn't enforce their own ordinances, and that they were concerned about the attention their matters were (or were not) receiving from an overworked civil bench. Divorces were being delayed, trials weren't being conducted, judges were retiring out of frustration – it was a system on the verge of a meltdown. So our officials decided they had to do something, and met with the AOC.

At the meeting, it was agreed that the consolidation of the courts under the statewide supervision of the AOC had created a vacuum in local supervision of each county's court system. Our Board of Supervisors agreed that they would ask the presiding judge of the superior court to report on the status of the county judiciary on a quarterly basis, and would coordinate that report with reports from the county departments that have significant impacts on the judicial system, such as the district attorney, the public defender, and the sheriff.

(continued on page 4)

President's Message *(continued from page 3)*

Our state representatives committed to continue to sponsor and support legislation to increase the number of judicial officers in the county in order to bring us on par with the rest of the state, particularly Orange and San Diego Counties, which have roughly the same caseload as Riverside, but twice the judges. They expressed outrage over the state of our county's courts, and wondered how things could have deteriorated to such a degree.

The AOC committed to continuing to push for relief for Riverside and San Bernardino Counties, and wondered why the court constituents in Riverside couldn't cooperate like their counterparts in San Bernardino to ensure the efficient operation of the judicial system. (No good answer was forthcoming). It was observed that the Chief Justice did have the power under the state constitution to order judges from other counties to transfer to Riverside on a temporary basis to effectuate the efficient administration of justice, but that he was reluctant to invoke such drastic powers unless absolutely necessary.

In the end, our elected leaders pledged to do whatever it took to restore the luster and grandeur of our county judicial system, and to work with the state judicial leadership to achieve such a result.

Her report complete, I thanked Ms. Solof most profusely on behalf of all of the members of the RCBA, as well as the residents of the county. As she drove off in her hybrid, I castigated myself as a true April Fool for ever doubting that our elected officials would tackle this problem in a serious and efficient manner.

An April Fool, indeed.

David T. Bristow, President of the Riverside County Bar Association, is a Senior Partner with the law firm of Reid & Hellyer in Riverside.



by Mark A. Mellor

Only one section 170.6 challenge after appellate remand. Code of Civil Procedure section 170.6 permits a party or side to disqualify a judge assigned to hear the matter. Subdivision (a) (3) of the section provides in part that “except as provided in this section, no party . . . shall be permitted to make more than one such motion in any one action or special proceeding.” Subdivision (a) (2) provides such an exception where, after an appeal and remand, the same judge as the one whose judgment was reversed is assigned to, once again, hear the case. But this entitles a party to only one such challenge, regardless of whether a section 170.6 challenge had been exercised in connection with the first trial. (*Casden v. Superior Court* (2006) 140 Cal.App.4th 417 [44 Cal.Rptr.3d 474, 2006 DJDAR 7349] [Second Dist., Div. Seven].)

Judicial immunity under attack. The National Foundation for Judicial Excellence reports: “On November 7, 2006, the people of South Dakota will vote on a ballot initiative to amend the state’s Constitution. This proposal has been designated the ‘Judicial Accountability Initiative Law’ (J.A.I.L.). If adopted, a South Dakota citizen would be empowered to initiate legal proceedings against a judge when the citizen disagreed with the judge’s decision. The preamble to the J.A.I.L. initiative, in part, states ‘that the doctrine of judicial immunity has the potential of being greatly abused; and when judges do abuse their power, the People are obliged – it is their duty – to correct that injury, for the benefit of themselves and their posterity.’ The organizer and major proponent of the J.A.I.L. amendment is Ronald Branson who resides in southern California.”

Lawyer acting as escrow holder owes duty to both parties. In *Virtanen v. O’Connell* (2006) 140 Cal.App.4th 688 [44 Cal.Rptr.3d 702, 2006 DJDAR 7729] [Fourth Dist., Div. Three], one party’s lawyer agreed to hold stock in escrow pending negotiations between his client and the seller of the stock. After the seller sought to rescind the sale, the lawyer, presumably on the instructions of his client, closed the escrow and forwarded the stock to the transfer agent for transfer to the client. The seller sued the lawyer-escrow holder. The lawyer claimed that his only obligation was to his client. The court disagreed. By agreeing to become an escrow holder, the lawyer assumed duties to both parties. When a dispute arose between them as to the ownership of the securities, the lawyer should have deposited them into court and filed a complaint in interpleader.

For now, Alabama will continue to follow the U.S. Constitution. The ABA reported that four Republican candidates for the Alabama Supreme Court who claimed they could pick and choose which U.S. Supreme Court decisions they would follow – and said they were free to defy the rest – were defeated in the state’s primary election.

Class Action Fairness Act also covers “mass actions.” The “Class Action Fairness Act of 2005” [28 U.S.C. §§ 1332(d)(2), 1332(d)(5), 1453(a)], which expands federal court jurisdiction over larger class actions, does not apply only to traditional class actions but also to “mass actions.” See *Abrego Abrego v. Dow Chemical Co.* (9th Cir. 2006) 443 F.3d 676, for a further discussion of what the court terms the statute’s “muddled ‘mass action’ provisions.”

Arbitrator who withdraws may be liable for breach of contract. Common law arbitral immunity shields arbitrators from liability for their conduct in quasi-judicial proceedings. But where an arbitrator, after conducting a hearing, withdrew without justification, he and the arbitration organization that employed him could be liable for breach of contract. (*Morgan Phillips, Inc. v. JAMS/Endispute, L.L.C.* (2006) 140 Cal.App.4th 795 [44 Cal.Rptr.3d 782, 2006 DJDAR 7805] [Second Dist., Div. Four].)

Employment retaliation receives broad interpretation. In *Burlington Northern and Santa Fe Ry. Co. v. White* (2006) ___ U.S. ___ [126 S.Ct. 2405, 165 L.Ed.2d 345, 2006 DJDAR 7866], the U.S. Supreme Court settled conflicting interpretations of retaliatory conduct under Title VII. After *White*, a forklift operator, complained of sexual harassment, she was assigned other duties that were more strenuous, but there was no other change in her status. The court rejected a view expressed by some of the circuit courts that required a link between the challenged retaliatory action and the terms, conditions, or status of employment. Any employer actions that would have been materially adverse to a reasonable employee may be a basis for a retaliation claim.

Witness signature appended to will after death of testator does not validate the will. Probate Code section 6110, adopted in 1983, removed the requirement that witnesses to a will sign in the presence of the testator. But although witnesses are present during the signing of the will, their signatures must be appended before the death of the testator to validate the will. (*Estate of*

Saueressig (2006) 38 Cal.4th 1045 [44 Cal.Rptr.3d 672, 136 P.3d 201, 2006 DJDAR 7911].)

Victim of identity theft came out the winner. A criminal used Lepe's identity to purchase real property. When the thief defaulted on the trust deed and the lender foreclosed, the property had increased in value. Who is entitled to the profit? The trial court ordered the excess funds transferred to the county's general fund. The court of appeal reversed, holding that Lepe had a right to the fruits of the identity theft. (CTC Real Estate Services v. Lepe (2006) 140 Cal.App.4th 856 [44 Cal.Rptr.3d 823, 2006 DJDAR 7902] [Second Dist., Div. Five].)

School not liable where student killed at school bus stop. Under Education Code section 44808, a school district is liable only for injuries that occur when a student is on school property (or when the school has otherwise assumed responsibility for the student). In Bassett v. Lakeside Inn, Inc. (2006) 140 Cal. App.4th 863 [44 Cal.Rptr.3d 827, 2006 DJDAR 7904] [Third Dist.], a student was killed while at a bus stop designated by the school. But because the district did not own the property on which the bus stop was located, it was immune from liability.

D.A. is not "custodian" of records obtained in a criminal prosecution. Where civil and criminal actions were pending in a case where defendant drove into a crowd, plaintiff's lawyer in the civil case served a subpoena on the district attorney to obtain documents produced by defendant in connection with the criminal trial. When the district attorney objected to the subpoena, the trial court ordered production of the documents. The court of appeal granted the D.A.'s petition for a writ of prohibition. Because the D.A. cannot authenticate the records under Evidence Code section 1561, subdivisions (a)(4) and (a)(5), he is

not the "custodian" under that statute. (Cooley v. Superior Court (2006) 140 Cal.App.4th 1039 [45 Cal.Rptr.3d 183, 2006 DJDAR 8173] [Second Dist., Div. One].)

No relation back of amended complaint unless same injury is asserted. In an action for wrongful death, decedent's survivors sued the nursing facility where decedent had died. Later they amended their complaint to add a cause of action under the Elder Abuse Act. (Welf. & Inst. Code, § 15657). A wrongful death action compensates the heirs for their own loss. A cause of action under the Elder Abuse Act is for injuries to victims of elder abuse that survive their death. Thus, the first cause of action was for injuries sustained by the heirs; the second cause of action was for injuries sustained by the decedent. Because different injuries were asserted in the amended complaint, it did not relate back and was therefore barred by the one-year statute of limitations for claims under the Elder Abuse Act. (Quiroz v. Seventh Ave. Center (2006) 140 Cal.App.4th 1256 [45 Cal.Rptr.3d 222, 2006 DJDAR 8248] [Sixth Dist.].)

Mark A. Mellor is a partner of The Mellor Law Firm specializing in Real Estate and Business Litigation in the Inland Empire.



2007 Mock Trial Competition

by John Wahlin

Martin Luther King, Jr. High School won its first championship in this year's Riverside County Mock Trial Competition. In a very competitive championship round, King defeated one of the two participating teams from Murrieta Valley High School. Making its first appearance in the championship round, the Murrieta Valley-Black team finished in second place.

Once again, the Riverside County Office of Education and the RCBA combined to conduct the competition, which this year involved 27 teams from throughout the county. Under the same format as was used over the past few years, the participating teams competed in four rounds in the Riverside Hall of Justice, the Southwest Justice Center in Murrieta, and the Indio Courthouse. The competition then continued the following week, with the top eight teams competing in the "Elite 8" single elimination tournament.

The announcement of the Elite 8 teams was made at the awards ceremony following the fourth round on March 3, 2007. After the presentation of individual performance awards, the pairings were announced, with Corona High School competing against Murrieta-Black; Poly High School against Santiago High School; Woodcrest Christian School against Murrieta-Red, a second team from Murrieta Valley; and King against Indio High School.

Murrieta-Black, Woodcrest, Santiago and King were the winning teams in the quarterfinals and moved on to the semifinals on March 10. In the semifinals, King prevailed over Woodcrest and Murrieta-Black outscored Santiago. The championship round between King and Murrieta was held in Department 1 of the Historic Courthouse, with Justice Thomas Hollenhorst presiding. The distinguished panel of scorers included Presiding Judge Richard Fields, Judge Gloria Trask, Public Defender Gary Windom, District Attorney Rod Pacheco, and Deputy District Attorney Carlos Monagas.

This year's case, *People v. Campbell*, as presented by the Constitutional Rights Foundation, involved issues relating to bullying of high school students by other students. The defendant, Casey Campbell, a victim of bullying, was charged with various crimes relating to the attempted use of a destructive device at the school. The pretrial motion focused on the First Amendment and the constitutionality of a law prohibiting the sale or rental to a minor of video games depicting violence in or around a school. The law also prohibited the possession of such a video game by a minor. Justice Hollenhorst denied a defense motion, which asked that the video game law be ruled unconstitutional. Following the presentation of the prosecution and defense cases, he found the defendant guilty as charged.

The four finalists were honored in a ceremony following the trial in Department 1 of the Historic Courthouse. David Bristow, RCBA President, presented the Championship Award to King, along with a



Murrieta Valley High School

Photograph by Michael J. Elderman



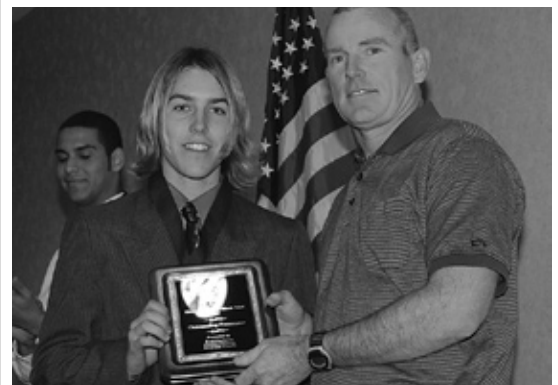
Santiago High School

Photograph by Michael J. Elderman



Woodcrest Christian School

Photograph by Michael J. Elderman



Cameron Lund (left) receives the Outstanding Prosecution Trial Attorney Award and Summer Internship from Guy Pittman (right) of the District Attorney's Office.

Photograph by Riverside County Office of Education



Ben Hampton, recipient of the Outstanding Defense Trial Attorney Award and Summer Internship with the Public Defender's Office.

stipends of \$1,000 from the RCBA and \$1,000 from the RCOE to defray expenses in the state competition.

The state competition was held on March 23-25 in Oakland. This was the first time Oakland, in Alameda County, hosted the event. The 2008 competition will return to Riverside, which has become the most successful venue in the state for the state competition.

As continued growth in the county brings more teams to the competition, it has become increasingly difficult to marshal the resources to conduct the mock trial program. Through the hard work of Judges Michelle Levine and Helios Hernandez, the superior court once again provided members of the judiciary to preside over almost all of the seven rounds of competition. The Steering Committee coordinated attorneys to score every one of the trials in each of the seven rounds. And the special event staff of the Riverside County Office of Education, under the direction of Tracey Rivas, worked tirelessly to stage the competition. Many thanks to the judges, attorneys, the RCBA staff, the staff of the Riverside County Office of Education, the superior court staff, and

all others who assisted in making the 2007 competition a success. Special thanks go to the attorneys who devoted many hours as attorney coaches for the participating teams.

This year's competition was conducted over two weeks due to conflicting school vacation schedules. Those conflicts will not exist next year, and the competition will again be held over the course of three weeks. Members of the RCBA are encouraged to participate as coaches, scorers, and Steering Committee members.

John Wahlin, Chair of the RCBA Mock Trial Steering Committee, is with the law firm of Best Best & Krieger, LLP.



by Alexis Demeo

Rocks probably had more knowledge of law than I did before I entered mock trial. The program had interested me since my freshman year, but my timidity had kept me away for two years. It seems like an oxymoron to put mock trial and timidity together, but such was my epic mock trial experience.

October 2005... I finally attended the informational meeting to attempt to make the team. Immediately, I was bombarded with formalities and a lecture from the Team Captain about the time and the dedication required to pursue mock trial. Though I would later learn such a speech was made to weed out the less dedicated students, I did not focus on his intimidating demeanor. Instead, I merely thought of how impressed I was by the maturity and eloquence that he displayed and wished that I might develop the same articulation during the year.

As a newbie, I tried out for a more minor character, just so I could make the team. At that point, I think I would have taken any position just to stand among those individuals, who had a demeanor unlike that of the average high school student. And, when I received news that I had made the team, I remember screaming and running around the building in an overzealous fit of joy. Needless to say, everyone on the team knew by then how much this meant to me.

From then on, it was like clockwork: witnesses memorize their statements, attorneys come up with their questions, and pretrial does their own thing in the workroom. But it would be far too simple to leave it like that. With every practice, the intensity was there to excel, dominate, and improve, so that when competition came around in February, the team would slide through to the top. No student was idle; there was always something to do, and when it was your turn to work with our two attorney coaches in the workroom for the week, your stuff had better be done, and in an exemplary manner.

I remember my first time with the attorney coaches. Before we had even begun discussing the case, they had called in every member of the team individually. The first thing I did was thank them for selecting me to be a member of the team. After that, the tone became more serious, as their critique began. They complimented me on my acting, saying that I was real without being overdramatic, and that if I kept it up, I could be one of the best witnesses. Again, I was all smiles and felt it was time for another happy dance as soon as I got back into the hall.

From that point on, I knew that I needed to prove myself – not just so our team could be the best that it could be, but because I wanted to make our attorneys proud. It seems a bit cheesy to say that, but I know it was true. Their dedication to our team was unwavering, and I wanted to show them that I took this just as seriously.

So, as our first scrimmage, which was to be a self-scrimmage, approached, I spent the majority of my time in front of a mirror, reciting my lines and making sure every word, every gesture, every tone in my voice was perfect. The anticipation as the scrimmage proceeded was suffocating. I was the second-to-last witness to go, before the defendant, and each passing witness made my heart accelerate. My thoughts dwelled on the fact that I had never done a debate before in my life, and on how I had always been close to pathetic when it came to verbal confrontations. And yet, here I was, soon to be crossed by a girl notorious for her speaking skills, whose intimidating demeanor had been one of the hallmarks of her reputation.

The rest of the details I will spare. Simply put, I came up and did my thing. As my direct went on, I could see the student attorneys nodding their heads in approval, and my heart was pounding so hard during my cross that the happiness could not settle in until afterwards, even though I had thrown off the attorney who crossed me to the point that she was at a loss for words.

From then on, my skills only developed further. After our first in-court experience, I was receiving hugs from everyone. Soon after, people were boasting that I would receive the Blue Ribbon Award. Then, once we had completed our first match in competition, it was calculated that I received the highest score, not only among all of the witnesses, but among all of our attorneys as well.

It seems almost surreal to look back on those events. A year before, I felt I would suffer a heart attack if I had to participate in a debate. At the present time, a cross seems natural, and my heart races, not from anxiety, but rather from anticipation. The transformation I had undergone was one of the most drastic that I had ever experienced in my life.

Looking back on mock trial when I first began, I had been the timid outsider. I had been intrigued by the eloquence and maturity my soon-to-be colleagues had shown in the way they talked and presented themselves. I never thought the day would come when I would be just like that, and yet I stand here today not afraid to speak out and contribute my word to the world.

And not only did I develop myself in the process, but I also developed a family. The members of mock trial became a huge aspect of my life as time went on. Not only did we spend the vast majority of our time together in preparation for competition, but even after we received our verdict and took home our third-place medals in the county competition, we continued to see each other. The sleepovers, movie nights, and prosecution v. defense football game remain some of my most treasured memories of the program. We were more than just a team. Through the struggles, tears, joys, and accomplishments, our team had become almost related, bound by an intense devotion to one program and connected through the ever-binding process of law.

But the story does not end there

It has been over a year since I ran through the halls in a fit of joy after making the team. Two weeks from now, it will be a year since last year's team entered the courts for our first match of competition. No longer am I the newbie who somehow excelled to become a "star" (considering that I did play the witness who was a soap opera

star last year). Rather, it is I who am the senior speaking out to the newbies who tried out. It is I who stood in for tryouts for the prospective attorneys as the defendant in our latest case. Truly, this is a process that comes full-circle in the end.

I look at new witnesses, and I see myself. I see the yearning to excel and the drive to prove that they, too, can handle themselves in an articulate manner like the rest of us – perhaps even more so. It has been my pleasure to watch their transformations, similar to my own, occur throughout this whole process. And, after competition, I hope to hear how they used these skills even outside of the courtroom. I think I would even do another round of my dancing through the halls if I heard that they slaughtered some interview to the point that their interviewers complimented them on how well they could articulate themselves.

For me, that compliment by the newspaper director was a true testament to how this program has influenced who I was. Not only did it allow me to finally express myself in an eloquent manner, to become a leading contributor in court, as well as in Advance Placement Literature discussions, but it has made me confident, not only in how I portray myself to others, but in every word that I say. It has also gotten me the respect and commendation of my fellow mock trial peers. It has gotten me a position as managing editor of the school newspaper after a very successful interview. And, perhaps, it might even inspire some newbie to step it up, excel, and allow this circle to continue...

Alexis Demeo is a senior at Santiago High School in Corona and plans to attend college next year and major in English and Creative Writing.



COACHING MOCK TRIAL: A SPORT FOR THE MIND

by Lana Kreidie

Mock trial is a sport for the mind wherein the brightest students at high schools across Riverside County prepare tirelessly to compete. To the students, it is fun; but the fun of the sport is tangential. After all they are preparing for the Mock Trial Competition, a serious matter, where only the best of the best survive.

No doubt, each team is different. But after observing the students in the lobby of the courthouse in the minutes before their first round of competition, one could sense their common dedication and initiative. They were dressed to play their part and were almost silent unless engaged in their role. While a team will have students play attorneys, witnesses, a bailiff and a clerk, a student cannot serve as a practice judge or an attorney coach. Those are shoes that attorneys from the community volunteer to fill.

I, along with Deputy Public Defenders Ruben de la Torre and Robert Rancourt, decided to coach the team at Santiago High School this year. The students' hunger to learn and their talents amazed me. Once the Constitutional Rights Foundation provided the students with the materials, they began to prepare for the competition. Given fictitious witness statements, case law, statutes, and evidentiary rules, the students are expected to put on a criminal trial. This year, a fictitious character named Casey Campbell is charged with placing an alleged bomb on school grounds in order to retaliate against school bully Sawyer Simpson. The defense argues that Simpson framed Campbell or planted the bomb him/herself. They argue that Simpson was seeking revenge against Campbell because Campbell confidently and boldly defended him/herself and talked back to Simpson.

One of the most challenging segments of the competition is the pretrial motion. The defense moves the court to find a statute unconstitutional because it is too vague and too broadly restricts free speech when it prohibits possession of all video games involving violence on school grounds. The prosecution defends the restriction as a narrowly tailored time, place and manner restriction that serves compelling government interests: the protection of our youth and the safety of our schools.

Once trial begins, the prosecution presents witnesses to prove that certain defined crimes were committed. In turn, the defense cross-examines the prosecution's witnesses to find weaknesses and inconsistencies in their statements.

The defense then presents witnesses to paint an alternative theory, and the prosecution is given the opportunity to similarly cross-examine the defense's witnesses. As in our courtrooms, the student bailiff maintains order while the clerk assists the court. At the competition, a real judge renders a verdict and real attorneys determine the scores. The pressure is high as the students must simulate a true-to-life trial. Without much guidance in the customs of our profession, the application of our laws, or the art of presenting facts in our courtrooms, the students need coaches. Attorney participation becomes the cornerstone of a team's success.

Coaching means a time commitment of an average of six hours a week. If coaching with cocounsel, the time commitment could be as low as three hours a week. In that short time, a coach can gain a sense of unparalleled satisfaction, and his or her team just might rise to the top. After working hard for several months, Santiago High School proudly ranked third in the county.

Helping them win is only a part of the fun. In the span of months, an attorney coach can have the privilege of watching a student become well-versed in objections and lawyerly demeanor. Not only will the attorney coach teach an aspiring attorney how to talk like a lawyer, but also how to strut like a lawyer. And from time to time, attorney coaches might even get a chance to laugh quietly at the idiosyncrasies of our profession. If and when an opportunity to coach presents itself, jump on it; it's free, inspiring, and maybe even therapeutic.

The Riverside Office of Education or your local high school could provide information about coaching opportunities. But it is a sport, and a serious one, for that matter. So if you're not in it to win it, then you are best off scoring on the sidelines.

For more information on coaching or scoring the 2008 Mock Trial Competition, please contact Tracy Rivas at (951) 826-6570 or at trivas@rcoe.us.

Lana Kreidie is a Deputy Public Defender with Riverside County and coached the 2007 Mock Trial Team for Santiago High School in Corona.



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News Briefs

EFFECTIVE IMMEDIATELY:

- Downtown Riverside will be rezoned to include prostitution and brothels. Any interested persons may obtain the necessary permits and licensing at the office of the County Clerk of the City of Riverside. Permits require a medical exam and a \$100,000 fee.

- New permits will be issued to local residents to operate methamphetamine clinics throughout the Inland Empire. Qualified applicants interested in this new career should apply on or before April 1, 2007.

COMMENCING APRIL 1, 2007, ALL CRIMINAL TRIALS WILL BE SUSPENDED UNTIL 2010:

- All alleged perpetrators will be released. Civil trials will be heard in both the Historic Courthouse and the Hall of Justice. As a result of the suspension of criminal trials and release of all defendants, the homeless of Riverside have the option of calling the Robert Presley Justice Center their new home. An interest list is forming for prime cell-block locations.

PRESIDING JUDGE TRANBARGER AND DISTRICT ATTORNEY ROD PACHECO TO HOST A CHARITY EVENT:

- The offices of the District Attorney and the Public Defender will host a charity event to support their offices during the three-year criminal trial suspension. The highlight of the evening will include his Honor Judge Tranbarger and District Attorney Rod Pacheco engaged in an arm-wrestling tournament while wearing Borat-like leotards.

(See News Briefs on page 15)

One Lawyer You Have to Love

A New Orleans lawyer sought an FHA loan for a client. He was told the loan would be granted, if he could prove satisfactory title to a parcel of property being offered as collateral. The title to the property dated back to 1803, which took the lawyer three months to track down.

After sending the information to the FHA, he received the following reply:

“Upon review of your letter adjoining your client’s loan application, we note that the request is supported by an Abstract of Title. While we compliment the able manner in which you have prepared and presented the appli-

cation, we must point out that you have only cleared title to the proposed collateral property back to 1803. Before final approval can be accorded, it will be necessary to clear the title back to its origin.”

Annoyed, the lawyer responded as follows:

“Your letter regarding title in Case No. 189156 has been received. I note that you wish to have title extended further than the 194 years covered by the present application.

“I was unaware that any educated person in this country, particularly those working in the property area, would not know that

(See One Lawyer on page 14)

Statutes of the Day

Civil:

Civil Code 3537: “Superfluity does not vitiate.”

Criminal:

Penal Code section 1170.15: “Notwithstanding subdivision (a) of Section 1170.1 which provides for the imposition of a subordinate term for a consecutive offense of one-third of the middle term of imprisonment, if a person is convicted of a felony, and of an additional felony that is a violation of Section 136.1 or 137 and that was committed against the victim of, or a witness or potential witness with respect to, or a person who was about to give material

information pertaining to, the first felony, or of a felony violation of Section 653f that was committed to dissuade a witness or potential witness to the first felony, the subordinate term for each consecutive offense that is a felony described in this section shall consist of the full middle term of imprisonment for the felony for which a consecutive term of imprisonment is imposed, and shall include the full term prescribed for any enhancements imposed for being armed with or using a dangerous or deadly weapon or a firearm, or for inflicting great bodily injury.”

Practitioner's Column – Real Estate

Although the real estate practitioner is undoubtedly familiar with the many applications of the Statute of Uses, a review of its more basic principles may be helpful.

In substance, the Statute provided that where one person stands seised of land to the use of another person, that other person should be seised of a like estate that he had in the use. Hence, in cases to which the Statute is applicable, its effect is to convert an equitable or use estate into a corresponding legal estate. Use estates or interests thus converted or changed into legal estates or interests are said to be "executed." For example, A, tenant of Blackacre in fee simple in 1540, enfeoffs B to have and to hold to B and his heirs to the use of C and his heirs. By virtue of the Statute, C has a legal estate in fee simple. The use declared in favor of C is executed into a legal estate by drawing to it the legal title and seisin which momentarily vested in B by virtue of the feoffment. B, in reality, serves merely as a conduit for the passing of the seisin to C. So also, if A in 1540m for value received, bargains and sells land to B and his heirs by a deed duly enrolled, B gets a legal estate in fee simple. The use raised by the bargain and sale in favor of B is executed into a legal estate. To spell this out more fully: A, by virtue of the bargain and sale, stands seised to the use

of B; since the Statute of Uses provides that where one person is seised to the use of another, the seisin shall be deemed to be in the one having the use to the extent of the use estate, A's legal estate is vested in B and united with B's use estate, thereby giving B a legal estate in fee simple. Similarly, where A enfeoffs B and his heirs to the use of C and his heirs, since B stands seised to the use of C, the Statute takes B's fee simple from B and vests it in C.

It should be noted that the legal estate vested in the cestui que use would usually be of the same size as the use estate declared in him, but in any event the person to whom the use estate was given would get no larger legal estate than that given to the feoffee to uses since it was the estate of the feoffee which was taken from him and vested in the person to whom the use estate was given. Thus, A enfeoffs B for life to the use of C and his heirs. C gets only a legal life estate since B's life estate was all that could be vested in C. The state of the title would be: estate pur autre vie in C, reversion in A in fee simple.

(From Moynihan, A Preliminary Survey of the Law of Real Property, West Publishing Co., 1940, pp. 103-104.)

One Lawyer (continued from page 13)

Louisiana was purchased, by the U.S., from France in 1803, the year of origin identified in our application.

"For the edification of uninformed FHA bureaucrats, the title to the land prior to U.S. ownership was obtained from France, which had acquired it by Right of Conquest from Spain. The land came into the possession of Spain by Right of Discovery made in the year 1492 by a sea captain named Christopher Columbus, who had been granted the privilege of seeking a new route to India by the Spanish monarch, Isabella.

"The good queen, Isabella, being a pious woman and almost as careful about titles as the FHA, took the precaution of securing the blessing of the Pope before she sold her jewels to finance Columbus' expedition.

"Now the Pope, as I'm sure you may know, is the emissary of Jesus Christ, the Son of God, and God, it is commonly accepted, created this world. Therefore, I believe it is safe to presume that God also made that part of the world called Louisiana.

"God, therefore, would be the owner of origin, and His origins date back to before the beginning of time, the world as we know it AND the FHA.

"I hope you find God's original claim to be satisfactory. Now, may we have our damn loan?"

The loan was approved.

McKenzie, Phillips & Banks

is looking for three associates to work immediately in their civil litigation department. The hours will consist of forty (40) hours per week, Monday through Friday, 9 a.m. to 5 p.m. for a salary of \$85,000 per year. Please contact (951) 555-1234 if interested.

Practitioner's Column – Criminal Law

This month we continue our series on crimes by reviewing crimes against the habitations of individuals:

The offences immediately affecting the habitations of individuals are only arson and burglary, to say nothing of the minor offences of runaway rings at the bell and wrenching off of door-knockers.

Arson is the malicious burning of a house, or outhouse; but an attempt to burn is not actually arson. And the surrounding of a building with Talacre coal, which notoriously refuses to burn, would not be considered felonious.

Burglary is breaking into a man's house, which the law of England figuratively styles his castle, looking upon the steps across the area as the drawbridge, and the gutter that runs along the top as the battlement, while the donjon keep is probably either the iron safe, or the copper. Oxford street is in the eye of the constitution a series of castles, and the wife of each honest tradesman is of course a chatelaine.

"A burglar," says Coke, "is one who entereth a mansion-house at night to commit a felony," as if any one who goes to dine with the Lord Mayor, intending to pocket any of the city spoons – not the aldermen, but the plate – he is guilty of burglary.

Four things are necessary to constitute a burglary in law; namely, the time, the place, the manner, and the intent, to which may be added occasionally the dark lantern, the crowbar, and the opportunity.

The time must be night, for there is no burglary in the day; and it was formerly difficult to determine what was really night, and what was day, till the statute of 1st Victoria, c. 86, was passed, which declares the night to be from nine in the evening till six in the morning; so that the burglars are apt to say, "That's your time of day!" when they are planning a burglary.

As to the place, it must be a mansion-house; but a coal cellar, or a larder connected with a house by a covered way, is considered a mansion-house for house-breaking purposes.

If I hire a shop and never lie there, it is no dwelling-house, and burglary cannot be committed therein; but I shall very likely lie in my shop, even if I do not sleep there, for I should be sure to puff my goods enormously.

The next essential to a burglary is the manner; for manners do not only make the man, but they also make the burglar; there must be a breaking and an entry, either by breaking a pane, or picking a lock; but a burglar must be at great pains, for he could not make an entry through a very little one. Getting down a chimney is a breaking and an entry, and, indeed, it may sometimes be both; for the burglar may break his leg, besides finding himself regularly in for it. A partial entry is sufficient after a breaking, as if a burglar gets stuck in the middle of a window-frame, and can neither get one way on the other, he has made a burglarious as well as what Coke would call a bunglarious entry. Walking into a house in the day-time, committing a felony, and breaking out at night is a burglary; but it would seem that the thief must have broken out in a fresh place to constitute the offense alluded to. The intent is also requisite to complete a burglary; for if a man walks from the top of his own house onto that of his neighbour, and tumbles through onto his neighbour's bed in the middle of the night, there will be a breaking and an entry, but no burglary.

The punishment of this crime varies according to circumstances; for when accompanied with an attempt to murder, the penalty is death, but in other cases is transportation or imprisonment.

(From Beckett, *The Comic Blackstone*, Collector Publishing Company, 1897.)

News Briefs (continued from page 13)

NEW CHANGES TO THE COURTHOUSE:

- In order to keep the court system, judicial officers and attorneys in tiptop shape, the judges will now be playing musical benches (the benches stop playing music when the judicial officer is seated). All judicial officers are to be transferred at least every two weeks, regardless of whether they are familiar with the subject legal material.

- All courtroom entry doors are to be replaced with revolving doors. This will permit attorneys to locate their judicial officer quickly and efficiently, by peeking in each and every courtroom. Court clerks are not permitted to inform the local bar as to where their judicial officer is located or where their case is to be heard will also be decided by Ward for an additional fee. Ward commented, "Since I don't make mistakes in deciding cases, I am confident that I will be able to dispose expeditiously of any appeals from my rulings. For example, I wrote most of the CACI instructions, so I know they correctly state the law. As long as I give myself those instructions before I decide a case, there will be no problem with legal errors that might lead to appeals."

Ethics Guy

An Ethics Advisor for the Rest of Us

(Editors' note: Advice dispensed in this column does not necessarily reflect the views of the Riverside County Bar, the State Bar, the American Bar, Roseanne Barr, or Harry's Bar.)

I'm Ethics Guy and this column is for you. If you're like me – a busy lawyer trying to make an honest buck in a dog-eat-dog world – you're sick and tired of those sanctimonious ethics advice columns in the State Bar Fishwrap that claim to tell you how to practice law and avoid ethical problems. You know the columns I'm talking about. They're usually written by some babe who used to be on the State Bar Star Chamber or in some equally ivory-tower environment and couldn't care less about the practical problems we working stiffs have to deal with. They not only purport to tell you what to do, they even award you credit for MCLE (that stands for Morons Causing Lawyers Expense, as far as this writer's concerned) credit for filling out a test and paying the lousy thirty-five bucks or whatever.

This column is different. I've been there, just like you have. Maybe I haven't been on the State Bar Court, but I've been in enough real courts and counseled enough real clients to have learned a thing or two about how to deal with same. I'm going to give you advice you can actually use to stay under the Bar's radar and make a reasonable living at the same time – without ticking off your clients enough to get reported to the Bar or sued for malpractice.

Ready? Let's see what's on our readers' minds.

Dear Ethics Guy:

For the last several years I've represented this flake of a small-business owner who I'll call Manny, always getting paid but usually working on the come for a long time, which has ticked me off no end. Now one of this clown's many creditors, who I'll call Moe, has consulted me about possibly suing Manny. Moe needs his money pretty badly, as he has some gambling debts to pay off and is likely to end up with a broken knee or two if he can't deliver. In fact, he's willing to pay me half of anything I collect! A much better deal than working for Manny ever was.

Trouble is, Manny's assets are all hidden in scam trusts and corporations. Since I set these scams up, I know where the assets are hidden and could easily prove to a court that the trusts and corporations are bogus, collect Moe's money, and pocket half. Here's my question: If I help Moe out, can Manny come back and make some kind of ethical claim against me for using confidential information against him?

Many thanks, Jack.

Dear Jack:

Not a problem, dude! Here's what you do: First, make sure you

dump Manny as a client before you start representing Moe. Since you've already talked to Moe, this will presumably require some adjustment of your office records to show no trace of Moe until after the date of your registered letter terminating representation of Manny. If you were smart and used Ethics Guy's Bombproof Retainer Agreement (note to readers: available for download for \$4.95 from EthicsGuy.com), dumping Manny should be instantaneous and foolproof. This step is very important because, as a former client, Manny will have lots less standing to whine about ethical violations than if you're still representing him when you take on Moe.

If you read my Bombproof Retainer Agreement when you signed up Manny, you'll see that it included a clause requiring Manny to give his consent to let you reveal his confidential information for any and all legitimate purposes – including, of course, helping an honest guy like Moe get his money back. This will take care of any claim by Manny that you're violating rule 3 100 by using that information about the bogus trusts and corpora-

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tions. The rule clearly says, in paragraph [2] of the discussion section, that revealing confidential information is not allowed “except with the consent of the client.”

Even if you screwed up and didn't use my Retainer Agreement, no worry. Rule 3 100(B) allows a lawyer to reveal “confidential information relating to the representation of a client to the extent that the member reasonably believes the disclosure is necessary to prevent a criminal act that the member reasonably believes is likely to result in death of, or substantial bodily harm to, an individual.” Here's my take on that clause: If you don't reveal the information about Manny's asset-hiding scams, Manny's going to commit a criminal act (defrauding Moe, his creditor) that will likely result in substantial bodily harm to Moe, who will get his knees broken when he can't collect from Manny. Therefore, I would say the exception would cover using the information to help Moe collect.

About now, some ethics wonk will be saying, “Yeah, Ethics Guy, but rule 3 100(C) says that before a lawyer can reveal confidential information, he has to make a good-faith effort to persuade the client not to commit the criminal act and tell the client he's deciding to reveal the information.” Gotcha covered. Rule 3 100(C) only says the lawyer has to do this stuff “if reasonable under the circumstances.” No way it's reasonable to tell Manny what you're up to. If he gets wind of it, he skips, and there goes the money, your 50 percent, and Moe's kneecaps.

The final thing you need to do is take care of any possible rule 3 310(E) problem. That's the rule that says you can't accept employment adverse to a former client if by

representing the former client you got confidential information material to the employment. You can accomplish this by getting Manny's consent – rule 3 310(E) says you can accept employment adverse to a former client with “the informed written consent” of the former client. What I would do is draw up a letter that says you'll (1) forget whatever money Manny currently owes you and (2) promise not to tell the IRS about Manny's bogus trusts and corporations (make sure you don't promise not to tell the courts, so you can use the information when you help Moe sue Manny!) in return for Manny's signed consent that you can represent “parties having dealings potentially involving similar subject matter to that involved in some or all of the former client's matters,” or some such obfuscatory verbiage. Hopefully, Manny won't be sharp enough to figure out what you're up to, and will sign the letter gratefully to get out of paying what he owes you (you might want to send him a big bill a few days earlier to kind of grease the skids). If none of the above works, you can always try the *in pari delicto* or *unclean hands* doctrine. Explain to the court that even though you may be technically violating some ethical no-no or another by suing Manny (most judges aren't really up on ethics stuff anyway, since they don't represent clients and don't have to worry about getting whacked by the State Bar), Manny is just as bad or worse for defrauding his creditors; also, the court shouldn't hold it against Moe, who's an innocent third party. The court will probably agree, give the money to Moe, and you'll get your 50 percent.

Hope this works out for you.
Sincerely, Ethics Guy.

Dear Ethics Guy:

A few years ago, this other dude and I formed a partnership and set up a firm specializing in suing small businesses under Business and Professions Code section 17200. That dried up after Proposition 64 passed and it got harder to find plaintiffs who had standing to sue. Our proposed new business plan is this: We dissolve our partnership and set up separate practices; then he sends letters to small businesses threatening to sue them under section 17200. Within a day or so after they get his letter, a letter arrives from me saying I'm setting up practice in the neighborhood and would be pleased to assist them with any legal problems they might have, including, of course, defending any lawsuits. With any luck, they hire me to defend the suit my buddy's threatened to file. After billing them a little, I tell them I can get the case dismissed for five grand. They pay up, I pay him the settlement money, he dismisses the case, my client is thrilled with the result, and I get the amount I've billed. Everything would be on the up-and-up, because he would only threaten to sue busi-

(See Ethics Guy on next page)

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Ethics Guy (continued from previous page)

nesses that were engaging in some kind of rip-off of customers and therefore were legitimately liable under section 17200. The beauty of the whole thing is that it wouldn't be necessary to find a plaintiff with standing because standing would never come up – I, as defense counsel, wouldn't raise it, but would just settle the case. Do you see any ethical barrier to this procedure?

Eagerly awaiting your reply,

John Smith, Esq.

Dear John,

Sorry, Ethics Guy's a step ahead of you on this one. One of my friends and I had something like this going for a while, but the State Bar took the position it was a breach of the duty to provide competent representation under rule 3 110 for defense counsel not to raise the standing point. Ergo, if you're going to do this, you'd better make darn sure your clients don't find out you didn't raise a meritorious defense, or you're liable to end up on the wrong end of a malpractice suit. Personally, I decided the risk wasn't worth it, but if you're one of those lawyers who carries malpractice insurance, maybe you'd be less risk-averse than I am. Good luck, whatever you decide.

Sincerely,

Ethics Guy.

Dear Ethics Guy:

I tried your "Ethics Guy's Bombproof Retainer Agreement" (note to readers: available for download for \$4.95 from EthicsGuy.com), and when my client didn't pay the bill, I sued her. We went to arbitration, and the panel (two big-firm yuppie lawyers and some public do-gooder) decided the agreement was no good because it required the client to sign a blank stipulation for entry of judgment in favor of me, plus a security agreement giving me a lien on all of her real and personal property. The arbitrators claimed this violated rule 3 300(B), because a lawyer can't "acquire an ownership, possessory, security, or other pecuniary interest adverse to a client," unless the client is "advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice." Your agreement doesn't contain any such written advice. What's the deal?

Confused in Pacoima.

Dear Confused:

We need to talk. Even a bombproof retainer agreement like mine can't accomplish anything without a little proactive user ingenuity. If you'd come to me earlier, before the arbitration, I would have advised you to nail a foreclosure notice on the client's front door, which you would then agree to release in exchange for her paying the bill and calling off the arbitration. Most clients spook when they think their houses might be at risk.

Once you get in front of an arbitration panel, all bets are off. You have to understand that the State Bar vets the panel members so that they're all guaranteed in advance to be anti-lawyer. Therefore, the problem wasn't the fee agreement. Rather, the panel was looking for a way to hurt you and seized on the glitch you mention as an easy way to do it.

On the brighter side, remember you're not entirely out of luck – all that happens if they think your agreement's invalid is that they void it and give you quantum meruit recovery, which is probably all you would have gotten out of the panel anyway. If you've faithfully followed Ethics Guy's Guide to Creative Billing (note to readers: available for download for \$6.95 from EthicsGuy.com), your timesheets should have more than ample justification for a hefty fee, even in quantum meruit.

Sorry it didn't work out so good for you, but don't blame Ethics Guy!

Sincerely,

Ethics Guy.

Well, readers, that's all we have space for in this issue. But keep those questions coming. Remember: Why settle for hypothetical advice when you can ask someone who's probably already tried whatever you did or are thinking about doing? Call Ethics Guy – he's been there.

The RCBA seminar in
**Plain English
For Lawyers**
Has been cancelled
for lack of interest.

Judicial Profile

California Supreme Court Justice Oscar Lovell Shafter

Justice Shafter, "late Associate Justice of this Court, was born at Athens, Vermont, October 19th, 1812. He came of a patriotic and cultivated stock. His paternal grandfather, James Shafter, fought at Bunker Hill, Bennington, and Saratoga, and was, afterward, for twenty-five years a member of the Vermont Legislature. His own father was for several years County Judge, a member of the Constitutional Convention of 1836, and more than once a member of the Legislature. He is described as being an able, intelligent, and upright man. His wife, the mother of our deceased brother, was a woman of superior endowments; majestic in form, with a countenance of infinite expression, and possessing rare conversational and social qualities. She lived long enough to mold his character and fix his principles.

He came to California in 1854, practiced law with great success until January, 1864, when he took his seat as an Associate Justice of this Court for the term of ten years, which position he held until December, 1867, when he resigned his place on account of ill-health, and afterward went abroad, still failing in mind and body, and died at Florence, Italy, January 22d, 1873.

In commenting upon a life of Lord Mansfield, which he had just been reading, he thus describes his

own method of studying law: "I began with the most general principles of the science of the law, and from them proceeded to principles that were relatively subordinate to them, and so on through series after series of dependent truths until the final details had been examined and exhausted. In other words, I began with the genera, from them proceeded to an examination of the different species included in each genus, and from them to individual truths of which those species were severally constituted. It will be obvious to every one that the memory must be most powerfully aided by this method of study. The principles of law, though in one sense their name is legion, yet all bear relations to each other, and, taken together, form a system; and if once mastered in those relations, so long as one of these principles is retained by the mind, the principle of association gives signal aid in recalling the others. I have for the last fifteen years prosecuted all my professional studies on the above plan, and although my memory is not remarkably tenacious, I have had no difficulty in remembering, when once acquired, all the details of legal truth that can be brought within the scope of legal principles. When I read a new decision, I always ask myself the question, 'Whereabouts in the system of law does the result ascertained belong?' In the twinkling of an eye its appropriate place is at once suggested to my thought, and I put it in its place, and then I stop and look at it there; and I find by experience that it is very apt to stay there without watching until I want it."

It was sometimes said of him, while at the bar, that he was slow in

the preparation of his cases. This was only another mode of saying that when he encountered a case which presented elements that were new to him, he was never satisfied that it was fully prepared for trial until he had subjected those elements to an analysis and classification which enabled him to master their minutest details.

So, of his decisions as a Judge, it was not seldom remarked that they savored of technical logic. But this was merely confounding logical analysis with the logic of the books. If his decisions have any prominent characteristic, it is that they present constantly the ruling presence of that faculty which combines the similar and rejects the dissimilar, and descends from the general to the specific. So that, in truth, his cases at the bar were not too laboriously prepared, nor his decisions from the bench too elaborately wrought. He merely applied to each the methods of study which are above described. As a consequence he was very successful at the bar, and his decisions from the bench have rarely been questioned.

(From 47 California Reports, pp. xiii et seq.)

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Letters to the Editor

To the Editors:

I understand from reading your publication that you folks are having trouble getting your civil cases resolved because of trial court congestion. Allow me to offer a solution, one I have used many times with success.

I start from the premise that most lawyers – and judges – are mortally afraid of what a real virtuoso trial lawyer – like me – can do with a jury and a courtroom. If you can establish yourself early on as such a force to be reckoned with, you need not depend on the whim of the court system for fast, effective justice, but may forthrightly claim the spoils of victory as the weak fall by the wayside. Accordingly, when I first enter the courtroom to begin a case, I stop, carefully remove my trademark cowboy hat, and calmly survey the landscape, noting shrewdly all features that may be of advantage to me in the battle to come.

After pausing a moment to let the full effect of my entrance be felt, I stride confidently to counsel table and stand at the ready, my hands loosely at my sides, as if ready to draw arms at any sign of danger. Then I stare fixedly, first at opposing counsel, and then at the judge himself or herself. I need say nothing; the atmosphere is laden with my unspoken query: Are you man – or woman – enough to do battle with me? Most of the time, the answer is no. The judge, knowing he or she will be no match for me in front of a jury, desperately wants by this time to avoid a trial and the inevitable loss of control that ensues when I take charge of a courtroom. Even less does opposing counsel wish upon himself or herself the wrath of judgment that will be meted out by the jury after I have had my way with them. A favorable settlement offer is invariably forthcoming.

I teach these and similar techniques for the resolution of cases at my annual Gunning For Justice Trial Institute in Jackson Hole. When you think you can handle it, I might just teach you a thing or two. It's not cheap, but we sell out every year and I'd advise early registration. So long for now.

Yours truly,
Sperry Gence,
Bull Shot, Wyoming

(Editors' note: For the interested reader, a more extensive version of this work appears in Mr. Gence's forthcoming book, *The Brave and the Bloodied – More War Stories From America's Greatest Trial Lawyer* (\$31.95 from Buckshot Press, Laramie, WY, 336 pp.).

To the Editors:

As forensic psychologists, we are familiar with emotional disorders and their behavioral manifestation in the seemingly normal adult. For that reason, we were dismayed at your last edition, in which you satirized our organization and some others in ersatz advertisements which, though doubtlessly intended to amuse, bespoke grave psychological suffering on the part of you, the authors. The thrust of your attack – a veiled cry for help, as you will someday come to realize – was to devalue our services by creating the impression our jury consulting consists of dispensing repackaged common-sense speculation about the likely views of jurors of various backgrounds in particular cases.

Please understand we take no umbrage at the aspersions you cast. We empathize fully with your need, at this stage of your emotional self-knowledge, to act out your feelings of aggression and hostility by targeting those, including ourselves, who seek only to help you and other attorneys. You may not be aware that in addition to being qualified forensic psychologists, we are also licensed clinical therapists. We are experienced in helping individuals such as yourselves overcome their self-doubts – the well-spring, after all, of the need to devalue the work of others – and live as free moral agents leading productive, mentally healthy lives. We strongly urge each of you to contact our offices today for a free initial consultation with no obligation.

Sincerely,

Sturm & Drang, LLC,

Forensic and clinical psychologists and consultants.

[The editors reply: You may be right about our emotional shortcomings, and perhaps you could help us overcome the compulsion to satirize organizations like yours, but then who would write this stuff each year? Don't sweat the phony ads – remember that psychological studies show any publicity, even negative, increases name-recognition and helps business in the long run. (It worked for Martha Stewart, didn't it?)]

NOTES ON SOUTH AMERICA

by Richard Brent Reed

In November 2006, my 92-year-old father and I had the opportunity to visit Brazil, Argentina, Uruguay, Chile, and Peru. Here are my findings:

Brazil

Twenty percent of the cars in Brazil run on ethanol, and over thirty percent run on natural gas (ethanol sells at half the price of gasoline, which costs about one dollar per liter). There are so many buses in Rio de Janeiro, there are bus traffic jams. And, even though Brazil is awash in hydroelectric power – thanks to financing by American banks – the hotels have the lights in the hallways on motion sensors, and the room lights cannot be turned on or left on without a room key. Brazil is proud of its energy-conservation policies, but it also boasts over 600 “favelas” (slums), many of which surround Rio.



Brazil - Christ of Corcovado



Brazil - Copacabana mosaics

as in “the girl from”; and Copacabana, an aboriginal name, meaning “Pleasant Place.” That it was. The coffee was the best in South America, but you can opt for an açai-guarana smoothie, full of antioxidants.

You can still visit the bar where the song “The Girl From Ipanema” was written. The girl herself, however, is 55, married, and living in São Paulo. Many tourists visit the 100-foot statue of Christ looming above the city on the Corcovado (“Hunchback”) mountain, but the hill to die for is the one above Ipanema Beach. It’s only 1,400 feet high, but the hang-gliding is great.



Brazil - Richard hang gliding over Rio

Argentina

Buenos Aires is a truly cosmopolitan city. The cuisine is Italian, the industry is German, the architecture is French, and there is almost as much English-language television there as there is Spanish-language television



Argentina - American ambassador's house

here. The wines are excellent, as is the whole-grain bread. The coffee was weak. Even the tango has been diluted with swishes, swirls, kicks, and other superfluous leg work. It has lost its Argentine flavor and has become, decidedly, French. The real beat comes from the “cumparsa” or drum bands that roam the streets of the tango district.



Argentina - Evita's balcony

Evita’s mystique, until her body was finally found in Italy, dug up, and reinterred in Buenos Aires. The Peronista Party is still winning elections. (This is the party that, under Juan Perón, opened Argentina’s doors to the likes of Adolf Eichmann, Josef Mengele, and other prominent Nazis.)

The town square in Buenos Aires is dedicated to the desaparecidos: the people, mostly children, who were kidnapped by the thousands about 30 years ago. The square is directly in front of the Casa Rosada: the governmental palace from whose balcony Evita addressed her public.



Argentina - Courthouse

Uruguay

There is nothing to see in Uruguay and nothing to do but drink mate, an herbal tea that is full of caffeine. It cost us \$4 each to get back into Argentina – well worth the price.

Chile



Chile - Santiago courthouse

If you've always wanted to vacation in a gulag, Chile is the place for you. It costs \$100 just to get into the country and, if Santiago is any indication, there is nothing to see. Chile grows a lot of grapes. You can have any wine you want, as long as it's Cabernet. The wine is palatable, but you can't drink enough of it to make you forget that you're in Chile.

Argentina doesn't like Chile because the Chileans constantly pour across the border, make money under the table, take advantage of free health care and other free services, have babies free of charge, and go back to Chile without paying taxes (or even tipping the doctors). This is probably why Argentina charges \$4 a head to people coming into the country, when they can enforce it.

After two long days in Santiago, my father and I were permitted to leave the country after paying a \$15 exit fee (many South American countries have "airport tariffs," even on domestic flights). If you must go there, haggle the locals out of a few pieces of lapis lazuli, since this semiprecious stone is mined only in Chile and Afghanistan. On second thought, just get it in Afghanistan.

Peru

Peru holds its elections on Sunday so that everyone can vote. (Our guide showed me his purple finger, which, in that context, is not a provocative gesture. The day after the election, a crowd demonstrated in front of the courthouse in Cuzco, protesting certain local judicial practices.) Peru is a poor country. Lima, a coastal city, looks like Long Beach. The national drink of Peru is a sort of brandy made from Muscat grapes called "Pisco": an aboriginal word meaning "hangover in a bottle." Cocaine is a huge problem in Peru, but a much bigger threat to the national health is the Pisco Sour. Just say "no."

An hour south of Lima by plane is Cuzco, the former capital of the now-defunct Incan Empire. (For those of you who slept through World History, the Incan Empire stretched from Colombia to Ecuador to Bolivia to Argentina and Chile. By the time the Spanish conquistadors showed up, in the 16th century, the empire was torn by civil war and imploding under the weight of its own socialist economy.) Cuzco is a checkerboard of 400-year-old churches, whose vaulted ceilings, art-smothered walls, and marble-clad interiors beggar the cathedrals of Europe. They were all built atop the Incan palaces and temples pulled down by the Spanish and, currently, the locals are not too thrilled about that.

You have to go outside the city to find Incan ruins like Sacsayhuamán (a name easy to remember and fun to say). Sacsayhuamán was an Incan seminary and was laid out to resemble a puma – one of the three sacred animals of the Inca, the other two being the condor and the serpent. Seems to me they should have called it "Sacsaypuma." The monolithic architecture of the Inca differs from that of the Egyptian pharaohs in three respects:

1. Whereas the Egyptians laid out their building blocks with uniform, geometric, linear precision, the Inca fitted their blocks together in a mosaic-like jigsaw pattern. The buildings themselves are biomorphic, suggesting turtle shells or reptile scales.
2. Whereas the Egyptian edifices rise out of flat, empty desert locations, the Inca looked for caves, springs, and other natural formations and built around them. Rather than standing out from their surroundings, Inca



Peru - Cusco as seen from Sacsayhuamán



Peru - Cusco court crowd



Peru - our hotel



Peru - Incan spa



Peru - Machu Picchu overview



Peru - Machu Picchu temple

temples are blended into the surroundings and almost seem to be organic. The Inca didn't care for pyramids.

Whereas the Egyptian workers got paid in beer, the Incan workers did not. There was no pay. Everyone was expected to spend a few years helping to build a local palace, temple, or pleasure-dome. After their tour of duty was up, the workers went back to their farms, where they grew potatoes, maize, yams, and quinoa (a high-protein Peruvian grain) for the communal food banks.

Hiking about Incan ruins at 14,000 feet is not to be attempted on a full stomach. Tourists who refuse to eat light and bring their over-consumptive dietary habits with them fall prey to what is called "altitude sickness." This entirely preventable malady is just an excuse for locals to sell tourists mate de coca – a tea made from coca leaves – and coca candy – a sort of cough drop that tastes like a Jolly Rancher made from raw spinach and lawn clippings. There is no danger from drinking the tea, since the leaves are dry and thin and make a very weak brew. If there were any medicinal value left in them, the leaves would have

gone to cocaine production.

A day in Cuzco is enough to acclimate one to the high altitude. From there, a train takes tourists through the Andes to the not-so-sleepy little town of Aguas Calientes, the jumping-off place on the way to Machu Picchu, the Lost City of the Incas. Machu Picchu was a temple complex, completed in about 1500 and abandoned about 30 years later. No one knows why Machu Picchu was abandoned, but the former inhabitants were sworn to secrecy as to its location. Consequently, the conquistadors never knew about it. The locals, many of whom still speak Quechua, kept the secret until a young American historian named Hiram Bingham teased it out of one of them in 1911. The people of Peru seem to revere Machu Picchu as a place that is "very spiritual" and full of mystical energy. I guess, with enough coca tea, it might seem so. There is no doubt, however, that the observatories, temples, terraces, and aqueducts indicate that some very clever stuff was going on at Machu Picchu before it was abandoned. Let us hope that, in 500 years, archeologists will say the same of our civilization.

South America Summary

I learned several interesting things about South America:

1. South Americans like to put strawberry yogurt on their cereal (the authentic, aboriginal breakfast is yogurt on quinoa);
2. Brazil sugars up all their drinks, even the fruit juice;
3. Brazil's cars do not run on ethanol;
4. Brazilian coffee is excellent;
5. Argentina's tango revival is only about ten years old and is, sadly, very French;
6. The Argentine constitution requires that you be a member of the Catholic Church to be president and you cannot ever have been divorced;
7. Uruguay has all of the fascination of a sensory deprivation tank;
8. Chile is good for nothing;
9. Peru makes the world's strongest coffee;
10. The month to visit Brazil is January, when the weather is hotter and the swimsuits skimpier;
11. Below the equator, water does, indeed, drain counter-clockwise.

The question that everyone asks is, "Did you feel safe?" The answer is "Yes." Most places are well-lit, though speed bumps are a ubiquitous remedy for a shortage of police. The only time I didn't feel that my wallet was safe was when trying to settle my restaurant bill.

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



JUDICIAL PROFILE: THE HONORABLE JOHN C. RAYBURN, JR.

by the Hon. Oswald Parada, United States Magistrate Judge

“John’s a great addition to the bench here, although I’ll miss the opportunity to watch his skilled advocacy in the courtroom. All the qualities that distinguished his leadership of the Riverside branch of the U.S. Attorney’s Office will be of great value to him on the court: his scholarship, his ethics, his compassion and his commitment to justice.” The Hon. Virginia A. Phillips, United States District Judge.

“Judge Rayburn is a man of high intelligence and outstanding judgment, as well as a true humanitarian. We are all – both the members of the bench and of the bar – very fortunate to have Judge Rayburn join our federal court.” The Hon. Stephen G. Larson, United States District Judge.

On October 13, 2006, John Charles Rayburn, Jr. was sworn in as United States Magistrate Judge. He became the newest magistrate judge in the district. The federal bench for the Eastern Division is now comprised of District Judge Virginia Phillips, District Judge Stephen Larson, Magistrate Judge Rayburn, and this author.

Judge Rayburn was born and raised in Southern California. He is the fourth of seven children and has five sisters and one brother. He has been married to his wife, Linda, since 1985 and has three children: Jennifer (age 19), John, III (age 17), and Joseph (age 15). Judge Rayburn comments that “with three teenagers in the house, there’s never a dull moment.” Judge Rayburn and his family currently live in the same home in which he and his six siblings were raised. With regard to his parents, Judge Rayburn commented: “I am also extremely fortunate to have wonderful parents. I am named after my father and, when announcing my appearance in court, I always introduced myself as ‘John C. Rayburn, Jr.’ out of respect for him. My father, who passed away in 1987, was a man of unwavering faith, a committed father, and a fantastic husband. My mother is, quite frankly, my role model. She has always demonstrated by example what it means to be a true friend to others.”

Judge Rayburn attended Damien High School, an all-boys Catholic High School in La Verne, graduating in 1978. Judge Larson (Class of 1982) and this author (Class of 1980) are also Damien graduates. Judge Rayburn’s proudest accomplishment at Damien was catching the winning touchdown in the CIF championship game at Anaheim Stadium during his senior year. (Judge Rayburn noted that, while it was technically the “winning” touchdown, it occurred on the first drive of the game, and the final score was 12-0.) Judge Rayburn’s daughter, Jennifer, graduated in 2005 from St. Lucy’s High School, which is one of the sister schools to Damien, the other being Pomona Catholic High School. Judge Rayburn’s two sons currently attend Damien also. John is a senior, and Joseph is a sophomore.

After high school, Judge Rayburn attended California Polytechnic University at San Luis Obispo. There, he met his wife, Linda. At Cal Poly, Judge Rayburn studied electrical engineering, following in his father’s footsteps. Judge Rayburn moved to San Diego in 1982 after receiving his bachelor’s degree and began working for San Diego Gas & Electric as an electrical engineer. In 1985, Judge Rayburn and his wife were married.



Judge Virginia Phillips swearing in Judge Rayburn



Judge Rayburn, Linda Rayburn, and children Joe, John & Jennifer



Judge Manuel Real and Tao Real



Judge David Naugle & Judge Rayburn



Judge Rayburn, Judge Phillips, and Judge Rita Coyne Federman



Judge Rayburn and Judge Oswald Parada

Judge Rayburn later obtained a master's degree from San Diego State University and planned to transition into the business side of the engineering field. However, in 1987, he changed career paths and moved to Oregon with his wife and eight-week old daughter. There, Judge Rayburn attended his first year of law school at the University of Oregon. He transferred to U.C. Berkeley's Boalt Hall for his final two years and graduated in 1990. Judge Rayburn's oldest son was born during his second year of law school, and his youngest son was born shortly after his graduation from law school.

Judge Rayburn spent his first year after law school as a law clerk for the Hon. Gary L. Taylor, United States District Judge. Judge Rayburn commented that his first year as a lawyer, clerking for Judge Taylor, "was the most enjoyable of my entire career." In 1991, Judge Rayburn began a 15-year career as an Assistant U.S. Attorney. In 2003, he was named the Chief of the Riverside Branch of the U.S. Attorney's Office, and he remained there until being sworn in as a magistrate judge in October 2006.

Of his experiences as a federal prosecutor, Judge Rayburn noted that "it was always a great privilege to represent the United

States in the finest courtrooms in the world, to be part of a team of simply outstanding prosecutors and staff members, and to battle across the courtroom with the finest and most professional adversaries." Those who had the pleasure of working with Judge Rayburn, whether at the U.S. Attorney's Office in Riverside or as opposing counsel, had this to say:

"As Chief of the Riverside Branch of the U.S. Attorney's Office, John repeatedly emphasized to me and to other assistants that our primary job was to do justice. His guidance in that regard was helpful, both in terms of focusing us on the crucial aspects of a given case, and in terms of making sure that we felt good about the decisions we made and positions we took. His concern for effecting justice is one of the many reasons why I think he will be an outstanding judge." Sheri Pym, Chief, U.S. Attorney's Office, Riverside.

"It was an honor and a privilege to work with and learn from John. He was highly dedicated to the mission of seeing that justice was done in every case. Justice was always his primary concern, not just winning or losing any given case. He was also a great mentor and friend." Jerry Behnke, Deputy Chief, U.S. Attorney's Office, Riverside.

"As attorneys, we are obligated under the code of ethics to zealously advocate for our client – the United States. John's frequent counsel to us was: zealous advocacy means to seek the truth and protect the rights of all – victims and defendants. John Rayburn is a leader who now will bring those qualities to his new challenge as a United States magistrate judge." Tony Raphael, Assistant U.S. Attorney, Riverside.

"John is open to resolving issues in a fair manner. When I have approached him regarding a resolution to a case, he has been atten-

tive, informed and receptive to what I had to say. Even if we did not ultimately agree, I believe John carefully considered and thought about my position.” Jesus Bernal, Directing Attorney, Federal Public Defender’s Office, Riverside.

“I have known Magistrate Judge Rayburn for close to 15 years. We have appeared opposite each other in many cases. He carried out his role as a federal prosecutor with integrity. He always would try to incorporate the defense concerns and reach a fair disposition on each case.” Joan Politeo, Deputy Federal Public Defender, Riverside.

With regard to his judicial appointment, Judge Rayburn commented that “[t]he biggest benefit of becoming a magistrate judge in the Inland Empire is having the privilege of joining such an extremely talented, dedicated, and skilled group of judges as Judges Virginia Phillips, Stephen Larson and Oswald Parada. It is truly my honor to have the opportunity to work with these three individuals, who have been both role models and friends.” Judge Rayburn’s wife, Linda, had this to say: “My family and I are extremely proud of John’s accomplishment of becoming a magistrate judge. He is very honored to join the Riverside judges in serving the Inland Empire. We know he will be very fair, conscientious, and open-minded.”

While welcoming the challenges and responsibilities of his new appointment, Judge Rayburn placed his life in this perspective: “My biggest blessing is my family. My three children make me fantastically proud, and my bride of almost 22 years is the most important part of my life.”

In conclusion, this author would like to express the following to Judge Rayburn: “I look forward to a long and rewarding future alongside my esteemed colleagues and dear friends, Judges Virginia Phillips, Stephen Larson, and John Rayburn. Your Honor, congratulations on a well-deserved appointment; welcome aboard, may God bless you, and good luck.”



OPPOSING COUNSEL: LANA KREIDIE

by *Cosmos E. Eubany*

Lana Kreidie's passion for defending our Constitution and desire to preserve human dignity led her to a career in law. Her passion, rooted in a unique childhood experience and an inspiring high school U.S. government class, grew over the course of her life. Born in Beirut, Lebanon in 1979, Lana grew up there at a time when Lebanon was continually wracked by conflict, both internal and external, that seemed to come in cycles. This conflict was the main reason why her family sought a nation that could provide stability for their children as well as the best opportunities for success. In March of 1989, when Ms. Kreidie was only nine years old, her family relocated to the United States.

She spent her formative years studying in California and gained admission to the University of California, San Diego (UCSD). At UCSD, she double-majored in Political Science and Communications. In addition to studying, she was very active in student government. After serving her class as a Senate Representative, Lana was elected by the UCSD student body to be their Commissioner of Academic Affairs. She also joined Kappa Kappa Gamma and soon took on a leadership position as the Vice-President of Standards for the sisterhood organization. In this position, she was tasked with the advancement of ethics and professional conduct among her sorority sisters. In addition to these prestigious posts, she was a member of the Chancellor's Organization of Allied Students. This was a public relations position wherein she represented her school and networked with UCSD alumni.

Ms. Kreidie's interest in the legal field peaked while she was serving as a Commissioner of Academic Affairs. In that capacity, she engaged in a debate about how to best distribute funds toward the academic needs of students. After presenting her proposal and vociferously defending her position, she was approached by faculty and encouraged to pursue law.

She received her Bachelor of Arts degree in 2001 and a few months later flew to San Francisco to begin a new



Lana Kreidie

chapter of her life as a "1L" at the University of California, Hastings College of Law. During her tenure at Hastings, Ms. Kreidie took an interest in international law. She served as a member of the Hastings International and Comparative Law Review and a year later was appointed to be a member of the editorial board. She became the Scholarly Programs Co-Editor, and she helped focus the school and community's attention on the war in Iraq in general and specifically on the international implications of the use of force to effect regime change. She graduated from Hastings in 2004 and received her Juris Doctor degree, as well as a Certificate of Concentration in International Law.

During her summers, she worked for the law firm of Buckner, Khouri & Mirkovich. There she gained exposure to personal injury, criminal defense, and bankruptcy. As a summer associate at Buckner, she helped prepare a personal injury matter for trial and had the opportunity to witness portions of the trial. This experience piqued her interest in litigation, and she discovered that she enjoyed interacting with clients and advancing her clients' causes at trial.

She quickly realized that developing presentation skills and experiencing the thrill of litigation were only a part of her motivation; she learned that her deep respect for our system of government and her desire to preserve human dignity were at the core of her interest in law. She recalls her childhood in Lebanon, where she witnessed law and order fall apart. The stark result was a country divided into factions, a lack of a centralized entity to protect the individual, and a state where the proper connections could be the difference between life and death. While attending Capistrano Valley Christian High School in California, she studied the Constitution and U.S. political history. She was fascinated by the development and evolution of the U.S. government. This gave her a profound level of respect for the institutions of the U.S. and its system for resolving disputes. The logical development of these core beliefs, she says, eventually led to her career in criminal law. Defending the accused, in her opinion, offered her

a way to both preserve human dignity and safeguard the Constitution.

After graduating from Hastings, she returned to Southern California, where she sat for the July 2004 bar examination. While awaiting the results, she volunteered at the Orange County Public Defender's office to determine whether she could see herself pursuing a career as a deputy public defender. Shortly after volunteering, she realized that she had made the right decision.

After she was admitted to practice, she applied for and accepted a position as a deputy public defender in Riverside County. She chose Riverside primarily because she admired the department's mission. Also, the county provided ample opportunities for professional development.

As a deputy public defender, Ms. Kreidie has had the privilege of guiding myriad individuals through the justice system. To Ms. Kreidie, when the work means helping clients regain their liberty, return to their families,

maintain their employment and, most of all, preserve their innocence, the job seems effortless.

After about a year and a half at the office of the Public Defender, she has advanced to the position of felony trial attorney.

To add to her hectic work schedule, Ms. Kreidie volunteers as an attorney coach for Santiago High School's Mock Trial Team. She takes pride in knowing that her team placed third in this year's county competition. In her spare time, Ms. Kreidie likes to read novels and to write poetry, and she loves to experience art. Ms. Kreidie also enjoys traveling and has visited over 22 countries, including England, France and Cyprus, to name a few.

Ms. Kreidie is well-accomplished, a credit to the profession, and an asset to this county.

Cosmos E. Eubany, a member of the Bar Publications Committee, is with the law firm of Graves & King, LLP in Riverside.



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MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective April 30, 2007.

John Howard Brown – Reid & Hellyer APC, Riverside

Allan B. Claybon – Snyder Walker & Mann LLP, Riverside

Moriah Douglas Flahaut – Lobb Cliff & Lester LLP, Riverside

Janet Hong – Snyder Walker & Mann LLP, Riverside

Marc S. Hurd – Law Offices of John E. Tiedt, Riverside

James F. Jordon – James F. Jordan & Associates, Indio

Michael R. Lewis – Burke Lewis & Ham LLP, Upland

Thien Huong T. Nguyen – Snyder Walker & Mann LLP, Riverside

Andrew Rogers (A) – Findlaw/Westlaw, Riverside

Stacy Cameron Sturm – Office of the County Counsel, Riverside

Bryan Wat – Snyder Walker & Mann LLP, Riverside

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