

# RIVERSIDE LAWYER

July/August 2015 • Volume 65 Number 7

MAGAZINE

## TERRY BRIDGES

*Defender  
of the  
Constitution*



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 our members, our communities, and our legal system.

## Membership Benefits

Involvement in a variety of legal entities: Lawyer Referral Service (LRS), Public Service Law Corporation (PSLC), 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 the Riverside Lawyer.*

*The material printed in the 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

## August

- 12 RCBA/Riverside Superior Court Blood Drive**  
RCBA Building – Gabbert Gallery  
10:00 a.m. – 3:00 p.m.  
Walk-ins are welcome but appointments are strongly advised. Please call 951.682.1015 for information and appointments.

## September

- 24 RCBA Annual Installation of Officers Dinner**  
Mission Inn – Music Room  
Social Hour – 5:30 p.m.  
Dinner – 6:30 p.m.



## NOTICE

Notice is hereby given that the RCBA Board of Directors has scheduled a “business meeting” to allow members an opportunity to address the proposed budget for 2016. If you would like a copy of the budget, please go to the members section of the RCBA website, which is located at [riversidecountybar.com](http://riversidecountybar.com) or a copy will be available at the RCBA office.

**Thursday, August 13, 2015  
at 5:15 p.m. in RCBA Board Room**

RSVP by August 10 to:

(951) 682-1015 or  
[charlene@riversidecountybar.com](mailto:charlene@riversidecountybar.com)

**On the cover:** Terry Bridges receives the Erwin Chemerinsky Defender of the Constitution Award.

*photo courtesy of Jacqueline Carey-Wilson*



# President's Message

by Chad W. Firetag

## Collective Wisdom

As my time as the RCBA President is fast coming to a close, it's hard not to get a little nostalgic. It's difficult to imagine, but our bar association has been in existence for over a hundred years now and the bar has done wonderful things over that time. But where will we be in the next hundred years? Will we be relevant, or just a bygone bar association history passed by?

I certainly hope for the former, but I think that when we look to the future it's only wise to look back on our past. So in preparing for my final message, I started thumbing through the archives of the *Riverside Lawyer* (and the *Riverside County Bar Bulletin* as it was once known) to see just what our past looks like from today's vantage point.<sup>1</sup>

<sup>1</sup> The *Riverside County Bar Association Bulletin* started in 1950. Most of the early editions contained short articles on issues involving the Court (such as when the Municipal Court might be closed for the month due to vacations), or upcoming events, i.e., a picnic day or social gathering). The first President's Message started in March of 1964 by James Wortz, but it was rather short-lived as the President's message appeared sporadically from 1964 until November 1972, when Carl Yoder began the first "President's Corner." Thereafter, presidents who failed to submit their monthly messages did so at their own peril. Jim Ward once skipped the February 1974 President's Corner message "as a test to see if anyone would miss [it]," only to be chastised lightheartedly by Patrick Maloy who warned jokingly that "the impeachment of presidents was very much in vogue these days and that I (Ward) had better provide copy for the next bulletin." (Ward, March 1964.)

I must note that the archives are a fascinating slice of Riverside County's legal history. If anyone is interested, I suggest that you contact Charlene Nelson at the RCBA and ask to look through

Of interest to me was the last President's Message, which used to be known as the "President's Corner," for each past president. Many of the past Presidents found it apropos to look back and offer a few words of advice. In doing so, they offered countless gems of wisdom.

I wish that I could reprint more quotes, and I apologize if I omitted your favorite "Past President," but space doesn't allow the reprint of everyone. However, I believe the following gives a great sense of our bar association over the years; where we were, where we are, and where we'll be in future. Sometimes these messages were appreciative of their time as President, sometimes they were just plain funny and sometimes they were profoundly poignant.

So I hope you enjoy these tidbits of history – I know I did.

## Sometimes they were thankful

"This is my final Bar President's Corner and it would be inappropriate and ungracious of me to conclude the column without again expressing my thanks to the Executive Committee . . . I look back on the year with satisfaction and pride in the many tasks by which by your considerable help the Bar Association and successfully completed."

**Horace Coil (September 1975)**

## Sometimes they were worried

"In closing my concern over what has been going on at the state level I would like to quote from a recent speech by Stuart L. Kadison who is concluding his term on the Board of Governors. ' . . . The State Bar (is) becoming more and more an arm of the state government and less and less the constituted voice of the almost 50,000 lawyers of our state.' Think about it."

**Myron James (September 1976)**

## Sometimes they were looking to the future – a future already come and gone by now

"Perhaps twenty years from now we can look back at 1977-78 and reflect with total accuracy and complete perception on the transitional factors affecting the legal profession and the courts. Unfortunately, we can't wait twenty years for this reflection; history is NOW. The only way to cope with the present is to regularly reexamine the 'who, what, where, why and when' of our profession through a process sometimes referred to a "goal setting." "

**D. Richard Swan (September 1978)**

## Sometimes they read like "Tough Love"

"I am asking, however, that you step back and give a close look at this thing we call the Bar Association. Even if it doesn't solve some of

the archives. You'll find all sorts of interesting pieces of history, including a wonderful summary by Judge Woody Rich in 1954 explaining what Amendments in the Bill of Rights were applicable to the states under the 14th Amendment. (How things have changed, indeed.) There was a long-standing column that spanned over three decades from W.B. Gustaveson. This column started in 1955 in what Gustaveson called "Thoughts for the Month (and sometimes, "Thoughts for the Day") until 1970, when he entitled his piece "Gusts by Gus," which were compilations of randy and off-colored jokes and observations. Also interesting were the "Opposing Counsel" profiles, which featured Riverside County legal giants throughout the last 65 years.

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the problems of all of us, or all of the problems of some of us, it is an organization that is created for lawyers, and attempts to do the best for us. Unfortunately, it is hampered by our own lethargy. . . . So, what will the Bar Association do for you? Nothing, unless you get off your posterior and give it some minimal support. It wasn't formed as your slave to obsequiously report to you annually how it has improved your lot and life as a lawyer."

**Barton Gaut (September 1980)**

### **Sometimes they were humorous**

"Janet Williams, your new President, asked me if I would write one last column as a 'swan song.' I agreed to do so for some inane reason rather than insisting that she should do it herself, or putting the hook on Mike Clepper to do a 'guest column' to make up for the ones he missed during his tenure."

**David Moore (October 1985)**

### **Sometimes they were steeped in literary eloquence**

"As to the public image of lawyers, I would say that nothing much has changed since my first column. In fact, nothing much has changed since the times of Chaucer, when he made disparaging remarks about his 'Man of Law.' One hundred and fifty years later, Shakespeare suggested rather offhandedly in Henry VI: 'The first thing we do, let's kill all the lawyers.' And Dickens, as you will recall, devoted an entire novel to the frailty of the legal profession: Bleak House. . . . And so it goes into modern times. It should come as no surprise, then, to note that a number of articles appeared in various newspapers and magazines this year, vilifying lawyers in general. . . . There seems to be no answer to this particular public relations problem. I think most attorneys are aware of the need for monitoring the profession as a whole. Each member of the legal profession represents all attorneys as far as his client is concerned, and it is only through dealing fairly and honestly with each individual that he can improve the public image. . . ."

**(Another David Moore gem)**

### **Sometimes they were optimistic**

"Together, we can continue to exhibit the integrity and service implicit in being lawyers of community repute. I am optimistic about the continued pride and self-respect in our professional work as long as we maintain our individual internal vigilance and belief in high standards of professional conduct."

**Janet Williams (September 1986)**

### **Sometimes they implored us to greater heights**

"I hope that in the years to come we never lose sight of the fact that our primary reason for existence is for

the benefit of our members, with a strong emphasis on public service; that sensitivity toward individuals and the pursuit of justice is more important than statistics or appearances. . . ."

**Boyd Briskin (September 1987)**

### **Sometimes they were honored by it all**

"As I prepare to step down as your President, I'd like to thank you for this opportunity. It is a rare experience to bask in the glow of accomplishments of others. From my humble position as an attorney, I have stretched to representing the interests of the best and the brightest in our community. Serving as President of the Riverside County Bar Association has brought the great 'coup' to me (honor, prestige, recognition. . .) both within my professional and beyond it. . . ."

Was it good for me? Oh, yes, it was the best."

**Sandra Leer (September 1992)**

### **Sometimes they read like a suspense novel**

"Have you ever talked to a barricaded suspect while he's holding a loaded gun to his head threatening to kill himself and anyone else who attempts to subdue him? Well, strangely enough, a couple of weeks ago I did."

**Steven Harmon (July/August 1996)**

### **Sometimes they were filled with gratitude**

"This is my last opportunity to write you as your President, and I take this opportunity to thank you for the opportunity to be of service. It has been more than special for me, and a great and valued honor I will always cherish. A French proverb explains, 'Gratitude is the heart's memory,' and my heart is full of memories of this time."

**James Heiting (July/August 1997)**

### **Sometimes they were filled with hope**

"Of course, this last article should be filled with words of hope and encouragement for the next year. I want to bring joy to our membership, but we must be very mindful of how precious life is and whether this practice of law is worth all that we put into it. Is this practice of law, with its consuming nature, so important that we should give up ourselves and sacrifice the time that we should be spending with our families? I sit and think about this, yet I know I love the law, the fame, the fortune, and the excitement that it offers. Is it really all right with me that someday, I may just fall out and die, without any notice? Am I willing to accept that possibility without reservation? Maybe I am. Is that all right with each and every one of you? If it is, fine. If it is not, you need to think of another profession. I have lost several friends this year. I must admit, my thought, my personal thought, is that their losses are a result, in some part, of the practice of law. I can only pray for my fallen comrades and hope that



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I can make the decision to cut back and live a little. I leave you with this thought: 'Feel a reverence for life and all that enhances life. There is nothing of which we are so fond, and yet sometimes so careless with, as life.' ”

**Mary Ellen Daniels (July/August 2004)**

### **Sometimes they were proud**

“In the Inland Empire, we seem to have a bit of an inferiority complex. When we compare ourselves with Los Angeles, Orange County and even San Diego, it seems we often think we don't measure up to the 'big boys.' Folks, we are now also the big boys and have a legal community to be very proud of. It's time to start feeling good about ourselves and the professional camaraderie that we enjoy.”

**Michelle Ouelette (July/August 2005)**

### **Sometimes they were courageous**

“Pardon my meanderings in this last President's Message. I have had a lot of things to do during my presidency that I have thoroughly enjoyed. I have had only two matters that I was unable to attend to due to my illness. I want to thank each and every member of the bar association for supporting me, for their participation, and for their prayers, which have sustained me throughout my tenure.”

**Aurora Hughes (July/August 2009)**

### **Sometimes they were optimistic**

“The Riverside County Superior Court, the county bar association, and the legal community overall seem to be on the upswing. Your RCBA has survived the economic crunch and is settled and ready for another run of growth and for greater service and congeniality.”

**Harry Histen (July/August 2010)**

### **Sometimes they were encouraging**

“And I leave you all with a challenge – life can be busy, for sure, and there never seems to be enough time in the day for everything that we want to do. Believe me, I know! But I beg all of you to remember why it is that you practice in Riverside County. I am sure that if I were to ask you personally, many of you would say because of the small, tight-knit legal community that we

enjoy. The only way for that tight-knit legal community to remain and the only way for us to ensure that the history and tradition of our legal community go on is for all of us to continue to be involved. That is the legacy that I hope to leave, as that is the legacy that was left for me.”

**Robyn Lewis (July/August 2012)**

### **Sometimes they recognized the importance of the RCBA staff**

“The RCBA and each of its affiliated organizations all depend, not on their boards or presidents, but on the employees who dedicate themselves every day to making them run. . . Despite having more work added to their already full plates each year, they continue to thrive, and the bar, I believe, only gets better because of their work.”

**Christopher Harmon (July/August 2013)**

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In the end, my message is that over the years the story of our bar association has been all of these things: courage, optimism, honor, pride, gratitude, humor and ultimately, hope. When all is said and done, I would simply observe that our past has been great, and so will be our future.

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*Chad Firetag is an Assistant Public Defender for the Law Offices of the Public Defender, Riverside County.*



# DOINGS AT THE DISTRICT COURT

*by the Honorable Virginia A. Phillips*

The U.S. District Court is undergoing change at a rapid pace, throughout the Central District, and here in the Eastern Division.

The District's Clerk of Court, Terry Nafisi, recently announced her retirement effective July 1. A national recruitment for a new Clerk of Court is underway, but the process of filling this important and demanding position is expected to last at least a couple of months. During this time, the Court has tapped Kiry Gray, a Chief Deputy Clerk and the Deputy-in-Charge of the Eastern Division to serve as our Acting Clerk. All local federal court practitioners are familiar with Kiry and while all of us will miss her daily presence here in Riverside, it's reassuring to know that the Court will be in the best of hands during this transition.

The Court is undergoing an unprecedented transition of another sort as well. Six of our magistrate judges are retiring this year, more than in any other single year. The Federal Bar Association chapters of Los Angeles, Orange County and the Inland Empire joined to honor retiring U.S. Magistrate Judges Stephen Hillman, Robert Block, Carla Woehrl, Ralph Zarefsky, Margaret Nagle, and Victor Kenton at a sold-out dinner at the Millenium Biltmore Hotel in Los Angeles on June 9. Together they represent more than 100 years of dedicated public service and the testimonials presented about each of them were moving and inspiring.

Two of the new magistrate judges slated to replace them have already joined the Court, Gail Standish and Rozella Oliver. Judge Standish joins us from Winston & Strawn, where she was a partner concentrating in patent litigation and other complex business litigation. She graduated from UCLA Law School in 1993, where she was elected to the Order of the Coif and was an editor of the Law Review; she holds Bachelor's and Master's degrees from the Massachusetts Institute of Technology and served as an Air Force officer and Flight Test Engineer before entering law school. She clerked for the late Honorable William J. Rea here in the Central District, and served as an Assistant United States Attorney before joining Winston & Strawn. Her extensive experience trying civil and criminal cases makes her uniquely well-qualified for her new position.

Judge Rozella Oliver joins the Court from the United States Attorney's Office in Los Angeles, where she served as Chief of the General Crimes Section. During her career as a federal prosecutor in Los Angeles and Washington,

D.C., she tried cases ranging from cyber and intellectual property, antiproliferation, and technology export crimes. She also prosecuted civil tax matters, including corporate tax shelter litigation. She is a graduate (with distinction) from Stanford University Law School and received her Bachelor's Degree with honors from Harvard College. She was a law clerk for Judge Douglas Woodlock in the District of Massachusetts. Like Judge Standish, Judge Oliver's academic and professional credentials, as well as her personal characteristics, make her an outstanding addition to our bench.

The Court's complement of District Judges is nearly full, with only one open position, that of the Honorable Gary Feess, who retired in January of this year. The Court's workload in 2014 reflected an overall drop in case filings in 2014, mostly due to a 23% drop in criminal case filings. The number of civil case filings was relatively static, dropping only 1% from 2013. We continue to see a drop in real property and mortgage fraud cases, and in the number of cases removed from the state court, which is traceable to the improvement in the economic outlook. We also saw a 35% drop in student loan default cases last year, but a 16% increase in copyright cases, and a 42% increase in civil rights cases.

Despite the challenges posed by one of the highest weighted caseloads in the country, we continue to look for ways to improve in our service to the public, the litigants and counsel. In 2013, the Court began a pilot project to allow attorneys to open cases online and file complaints electronically. Initially, the pilot project allowed such filings only in copyright, trademark, and patent cases, ERISA cases, and student loan cases – but as of December 1, 2014, amended Local Rule 3-2 requires electronic opening of almost all civil cases, with limited exceptions. Our continuing efforts to expand electronic filing will assist the Court in streamlining its intake procedures, but we hope it will also prove more efficient for the bar, such as no more rushing through traffic to the Courthouse on the last day before the statute of limitations expires. Additional information about the program can be found on the Court's website.

Our Conviction and Sentencing Alternative program continues in its third year to be a great success, changing the lives of its graduates. We are looking forward to our third graduation ceremony on August 21, when another eight men and women will join the ranks of those who were selected for this program and successfully com-

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pleted it by receiving necessary treatment; attending meetings with the CASA judges, Pretrial Services Officer, federal prosecutors and defense counsel; and participating in community service and rigorous program requirements. Graduates avoid incarceration and benefit by attaining life skills to help them avoid future troubles with the law, but the impact of the program goes far beyond that, as the graduates attest in their immensely moving statements during the graduations. As one of last year's graduates stated, "This program saved my life." It is an honor for me to work with our CASA team, Judge Kiya Kato, DFPD Joan Politeo, AUSAs Tritia Yuen and Abigail Evans, and Pretrial Services Officer Camron Pitcher, and with the dozens of CASA participants here in Riverside. All are welcome to join us in Courtroom 2 on August 21 for the graduation of our third class.

*The Honorable Virginia A. Phillips is a District Judge sitting in the Eastern Division since 1999.*





# OVERVIEW OF THE IMMIGRATION COURT SYSTEM

by Kelly S. O'Reilly

Immigration law is one of the most complex and vibrant parts of the American legal system. With the influx of immigrants coming to the United States for more than 200 years, the government has gradually become leery of the undesirable byproduct of immigration: poverty, crime, health concerns, illiteracy, security threats, and violations of the immigration laws and regulations. Overtime, the government has come up with reasons for keeping illegal immigrants from coming to the United States or removing those who could not obey the laws. These are known as inadmissibility and removability grounds. Inadmissibility grounds are reasons for keeping undesirable illegal immigrants seeking entry to the United States. Removability grounds, on the other hand, apply to individuals who have been admitted to the United States, but later violated some aspect of the immigration laws and regulations.

The Department of Homeland Security (DHS) is the agency charged with the task of removing illegal immigrants from the United States. This removal process often occurs in immigration court proceedings. Immigration courts nationwide fall under the purview of the Department of Justice's Executive Office of Immigration Review (EOIR). EOIR dispenses its functions and responsibilities under the power of the Attorney General, and is comprised of approximately 58 immigration courts located throughout the United States and the Board of Immigration Appeals (BIA), which handles administrative appeals.

Immigration judges are responsible for determining the fate of non-United States citizens who have violated immigration law. They are vested with the authority to either order such individuals removed from the United States or grant them permission to remain in the United States. This is done through a series of administrative hearings wherein immigration judges hear

testimony, assess illegal immigrants' credibility, consider various applications for relief, make legal rulings on issues and evidence, and issue final orders of removal.

The DHS initiates removal proceedings by filing a charging document called a Notice to Appear (NTA). This document has to be served upon the foreign individual and must be filed in court. The NTA has several functions. It provides notice of the removal proceedings, contains factual allegations and alleged violations committed by an alien, advises of the right to hire an attorney, and lists the consequences of failing to attend a scheduled court proceeding. The NTA also includes the alien's name or alias and the alien's administrative number, commonly referred to as "A" number.

Removal proceedings typically start with a "master calendar hearing," where the individual alien is advised by the court of all his or her rights, responds to the charges listed in the NTA, and, if possible, applies for a specific relief from removal. Bond hearings are typically conducted at the first court appearance. The actual determination of the alien's ability to remain in the United States, both statutory and discretionary, is generally made at an "individual" or "merits" hearing, where testimony and documentary evidence are considered. Some of the most common relief applications decided at merits hearings include cancellation of removal, waivers of inadmissibility, adjustment of status, and asylum.

On average, a typical immigration court case consists of three to five hearings and will last about two years. At the conclusion of the case, the immigration judge will issue a decision, usually orally, regarding the alien's eligibility for relief from removal. Either the alien or the DHS can appeal the immigration judge's decision within 30 days from the day it is rendered. Immigration appeals are reviewed by the BIA and they take about 16 months.

## *In Memoriam*

**JUDGE ELWOOD M. RICH**

(1920 – 2015)

Immigration courts are busy. The top three busiest in the United States are the immigration courts in New York, Houston, and Los Angeles. In the fiscal year 2014, total immigration court cases received by all immigration courts nationwide were over 306,000. This number is unlikely to change, as the DHS is focusing its effort on removing illegal immigrants who fall under the government's enforcement priorities, including those immigrants who (1) pose a threat to national security, border security, and public safety; (2) have been convicted of certain crimes; and (3) have final orders of removal issued after January 1, 2014 or have committed other significant immigration violations.

It is hard to say if the President Obama's proposed executive actions will impact the immigration courts. Two of those proposed executive actions are of a particular interest. They are the Deferred Action for Parents for Americans and Lawful Permanent Residents (DAPA) and the expanded 2012 Deferred Action for Childhood Arrivals (DACA). DACA is a program designed to provide protection from removal and offer employment authorization to certain qualified teenagers and young people. DAPA, if passed, will offer similar protection and privileges to certain qualified parents of U.S. citizen or green card holder children. As of right now, the implementation of both DAPA and DACA is on hold pending a federal appeal, presently before the Court of Appeals for the Fifth Circuit, wherein Texas and other 25 states challenged the two above-referenced Obama executive actions. So for the time being, we will have to wait and see.

*Kelly S. O'Reilly is a nationally known immigration expert and former immigration officer. He is a highly sought after speaker on immigration and employment compliance issues. Mr. O'Reilly serves as the current chair of the Riverside County Bar Association Immigration Law Section and is a partner in the full-service immigration firm of the Wilner & O'Reilly where he provides free consultations. Mr. O'Reilly can be contacted at (714) 919-8880 and he welcomes email inquiries at [kelly@wilneroreilly.com](mailto:kelly@wilneroreilly.com).*



# SAVE THE DATE

The Riverside County Bar Association requests the pleasure of your company at the

## **Annual Installation Dinner**

honoring President Kira L. Klatchko,  
the Officers of the RCBA and Barristers for 2015-2016

**Special Presentation to Virginia Blumenthal,**  
recipient of the Krieger Award  
**and Steven Harmon,**  
recipient of the E. Aurora Hughes  
Meritorious Award for Service

Thursday, September 24, 2015  
Social Hour 5:30 p.m.; Dinner 6:30 p.m.

Mission Inn, Music Room  
3649 Mission Inn Avenue, Riverside

# MAGNA CARTA FEVER

by Abram S. Feuerstein

“Henceforth all fish-weirs shall be completely removed from the Thames and the Medway and throughout all England, except on the sea coast,” declares the Magna Carta,<sup>1</sup> which marked its 800th anniversary on June 15, 2015, at a ceremony at Runnymede in Southern England, the original swampy meadow site where bad King John and three dozen or so rebelling barons agreed to the terms of the “Great Charter” (English Translation).

The celebratory event crowned a year in which various Magna Carta copies on display at museums and libraries around the world attracted healthy crowds.<sup>2</sup> Visitors hoping to see the equivalent of a sacred religious scroll, a calligraphy masterwork, or a colorful illuminated medieval manuscript, likely left exhibit halls disappointed. Aside from some mundane provisions in the document, such as those dealing with fish traps, or eye-opening provisions sounding in religious discrimination against Jews,<sup>3</sup> the parts of the document that with time have been mythologized as the cornerstone for the “rule of law” in constitutional democracies are buried in a near, impossible to read, single block of Latin text.

In all, there are 17 copies of Magna Carta.<sup>4</sup> There are 15 in Britain, one in Australia, and one resides at the National Archives in Washington, D.C.<sup>5</sup> There are four surviving copies from 1215; others date from 1217, 1225, and 1297.<sup>6</sup> No evidence suggests that there is a single, “original,” Magna Carta.<sup>7</sup>

1 Chapter 33, Magna Carta. For an easy-to-read translation of the Text of Magna Carta, see D. Danziger & J. Gillingham, *1215: The Year of Magna Carta*, p. 275 (Touchstone Ed. 2005).

2 Locally, The Huntington Library, Art Collections, and Botanical Gardens in San Marino, California, is hosting an exhibit entitled “Magna Carta: Law and Legend, 1215-2015.” It features a draft of Magna Carta from an English statute book dating from the 13th Century, and likely the years 1286-1290. The Exhibit opened on June 13, 2015, and runs through October 12, 2015. The small volume probably was a lawyer’s reference book collected at a time when lawyers began to accumulate library materials to assist them in their work. See comments by Tom McSweeney (hereafter, “McSweeney/Howard Lecture”), a William & Mary law professor, March 25, 2015, University of Virginia School of Law, at <https://soundcloud.com/uva-law/magna-carta-800-years-after-runnymede-with-a-e-dick-howard-and-tom-mcsweeney>.

3 Chapters 10-11, Magna Carta. These provisions relate to the forgiveness of debts owed to Jewish lenders upon the death of the borrower.

4 See generally, Justice Breyer on the Magna Carta, interviewed by David Rubenstein, December 26, 2014, [https://archive.org/details/CSPAN3\\_20141226\\_194600\\_Justice\\_Breyer\\_on\\_the\\_Magna\\_Carta#start/120/end/180](https://archive.org/details/CSPAN3_20141226_194600_Justice_Breyer_on_the_Magna_Carta#start/120/end/180).

5 *Id.*

6 *Id.*

7 C. Breay, *Magna Carta: Manuscripts and Myths*, p. 34 (The British Library, 2010).

Like other medieval charters, Magna Carta was written on sheets of parchment manufactured from lime-soaked sheepskin.<sup>8</sup> The copies differ in size – they are approximately 18 inches square; the handwriting is cramped; the words small.<sup>9</sup> The four original surviving 1215 copies were written in iron gall ink, a purple-black or brown-black ink made from mixing iron salts with gallotannic acid usually extracted from oak tree galls.<sup>11</sup> And do not expect to see a John Hancock-like signature on any of the documents. Instead, the documents would have been authenticated with the King’s four-inch, beeswax and resin seal. Unfortunately, three of the four 1215 copies have lost their seals, and a lump of wax dangles from the fourth,<sup>12</sup> which in 1731 was badly damaged in a building fire that took place in a precursor to the British Museum and Library.<sup>13</sup>

Notwithstanding their plainness, the document marketplace places a sky-high value on Magna Carta iterations. Recently, a 1300 copy in poor condition, originally issued by the royal decree of King Edward I, turned up in the archives of Kent County, England, and has been valued in a range of \$15 million.<sup>14</sup> In 2007, a public auction of a version from 1297 realized \$21.3 million, a 15-fold increase from the 1980s when former presidential candidate Ross Perot acquired the same copy for approximately \$1.5 million.<sup>15</sup>

8 *Id.*, at 37.

9 *Id.* Of note, an advertisement by the Royal Mail and The Royal Mint on the inside back cover of the June 2015 ABA Journal touts a \$39 commemorative package that includes new British stamps, a newly minted coin, and a facsimile of Magna Carta that “unfolds to 17.75 inches x 12.5 inches.” The price includes free shipping.

10 James Podgers, *America’s Magna Carta*, ABA Journal, June 2015, at 38.

11 [https://en.wikipedia.org/wiki/Iron\\_gall\\_ink](https://en.wikipedia.org/wiki/Iron_gall_ink).

12 A group picture of the four 1215 copies, “re-united” at a special exhibit at the British Library in February 2015, appeared in the *Wall Street Journal*, Saturday/Sunday, May 30-31, 2015 edition, page C2.

13 C. Breay, *Magna Carta: Manuscripts and Myths*, p. 38-39; see also, 1215: The Year of Magna Carta, xii.

14 See “Magna Carta Worth \$15 Million Found in Archived Scrapbook,” <http://www.history.com/news/magna-carta-worth-15-million-found-in-archived-scrapbook>.

15 See [https://en.wikipedia.org/wiki/Ross\\_Perot](https://en.wikipedia.org/wiki/Ross_Perot). University of Virginia School of Law professor A.E. Dick Howard, whose 1968 book, *The Road from Runnymede: Magna Carta and Constitutionalism in America*, began a 50 year career of attempting to understand Magna Carta’s impact on this side of the Atlantic, relates a remarkable story about a conversation he had with Ross Perot’s personal attorney, Tom Davis, when they happened to find themselves sitting next to each other on an airplane flight. According to Howard, Davis had been sent to England by Ross Perot to negotiate with the family who owned the copy. When he completed the arrangements, Davis



But Magna Carta has never been about the visual reality of the document. Instead, the main question that arises is whether our modern-day reverence for Magna Carta is justified, or restated, why all the fanfare 800 years later? Just how did our view of a document that in part regulated fish traps in the Thames evolve to the point at which the character of Tony Hancock, played by actor Henry Fonda in the 1957 movie *I2 Angry Men*, turns to the other jurors and plaintively exclaims: “Does Magna Carta mean nothing to you?”<sup>16</sup> The answers to these questions require a tortuous tour through at least 800 years of British and American history. Here is a greatly abbreviated version.

## The First Four Hundred Years

Issued in 1215, Magna Carta was not intended to be a constitutional document outlining a democratic form of government. Rather, it represented a peace treaty between King John and his baronial adversaries relating to numerous grievances in an effort to avoid a civil war.<sup>17</sup> Some of the barons’ grievances related to the harsh and arbitrary ways in which King John had been raising money for his unsuccessful war efforts against the French. Others had to do with King John’s protracted fight with the Church, which resulted in an interdict over England that, among other things, prevented people from getting married.<sup>18</sup> In Magna Carta, King John agreed to various, heavily-negotiated concessions that limited his royal power.

As a peace treaty, it failed. With the support of the Pope at the time, Innocent III, King John repudiated Magna Carta within weeks and civil war erupted. But King John died a year later while on the verge of losing the war, and his nine-year-old son, Henry III — deftly handled by his guardians — re-issued Magna Carta to solidify Henry III’s political position in 1216 and, again, in 1217<sup>19</sup> and 1225. By then, Magna Carta began to acquire the attributes of statutory law.<sup>20</sup> And by 1297, King

Edward I, confronted by an armed nobility angered by a new set of taxes, re-issued a revised Magna Carta, enrolled it on the statute books, and ordered that Magna Carta be read twice a year “before the people” in the all of England’s cathedral churches.<sup>21</sup> Magna Carta also was confirmed at the opening of each Parliament, and by the mid-1300s, although changed from its 1215 origins, Parliament required the state’s officers to live by and uphold its terms.<sup>22</sup>

With the emergence of the strong monarchies of Henry VII, Henry VIII and Elizabeth I, Magna Carta seems to have taken a back seat in the 15th–16th Centuries or, possibly, it was simply taken for granted.<sup>23</sup> But it re-claimed the stage during the Stuart monarchies. James I came to power after Elizabeth’s death in 1603 armed with the concept that he ruled by the Divine Right of Kings, and that kings were above the law.<sup>24</sup> This view was shared by his son, Charles I, who came to the throne in 1625. Badly in need of funds for a series of wars, Charles attempted to impose various taxes without the approval of Parliament. His ship tax particularly was unpopular. Under the common law, notwithstanding that the whole country derived a benefit from a navy, “ship money” or taxes could only be assessed on towns along the coastal areas of England. Charles’ ship tax shifted the burden to inland counties.<sup>25</sup> Ultimately Charles disbanded Parliament and imprisoned some of its members.<sup>26</sup>

Emerging as a leader of the opposition to the crown in these years was Sir Edward Coke (1552-1634), who served as the Lord Chief Justice. As a lawyer, Coke (pronounced “Cook”) cited to Magna Carta as an expression of England’s “ancient” common-law and as a statement of the natural rights of all free-born Englishmen.<sup>27</sup> In addition to interpreting Magna Carta as a declaration of individual liberty, Coke also claimed that it was the source of the right to a trial by jury.<sup>28</sup> This truly was a lawyerly stretch from the provisions of Chapter 39, in which the barons had been concerned about being judged by those of lesser rank, and which provided:

No free man shall be taken or imprisoned or disseised or outlawed or exiled or in any way ruined,

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*Magna Carta*, pp. 267-74.

21 See [https://en.wikipedia.org/wiki/Magna\\_Carta#Great\\_Charter\\_of\\_1297:\\_statute](https://en.wikipedia.org/wiki/Magna_Carta#Great_Charter_of_1297:_statute).

22 C. Breay, *Magna Carta: Manuscripts and Myths*, p. 45.

23 According to James Podgers, during the Tudor dynasty, “Magna Carta slipped into relative obscurity.” Podgers, *America’s Magna Carta*, ABA Journal, June 2015, at 43. By contrast, curators at The Huntington Library note in the brochure accompanying the current Magna Carta exhibit, that by the time of the Tudors, “Magna Carta seemed an established and uncontroversial fixture of English law and government.” V. Wilkie and M. Robertson, *Magna Carta: Law and Legend*, 1215-2015.

24 C. Breay, *Magna Carta: Manuscripts and Myths*, p. 46.

25 See generally, [https://en.wikipedia.org/wiki/Ship\\_money](https://en.wikipedia.org/wiki/Ship_money).

26 See generally, [https://en.wikipedia.org/wiki/Charles\\_I\\_of\\_England](https://en.wikipedia.org/wiki/Charles_I_of_England).

27 Podgers, *America’s Magna Carta*, ABA Journal, June 2015, at 43.

28 C. Breay, *Magna Carta: Manuscripts and Myths*, p. 46.

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– concerned about laws regulating the export of a country’s patrimony – took the document and placed it inside a mailing tube. Confronted by a customs agent at Heathrow Airport inquiring about the tube’s contents, Davis advised the agent that it was a “copy” of Magna Carta. The agent, assuming that Davis meant a facsimile or souvenir copy of some type, let Davis pass. Once on board the plane, Davis placed the tube in the overhead compartment for the duration of the flight. See McSweeney/Howard Lecture.

16 *1215: The Year of Magna Carta*, p. 270.

17 See generally, *1215: The Year of Magna Carta*, pp. 245-266.

18 See McSweeney/Howard Lecture.

19 The 1217 re-issuance was a companion to what at the time was believed to be the more important Charter of the Forest. That charter ameliorated the laws relating to interference with the King’s hunting rights on over one-third of the land in England. It replaced punishments such as the death penalty with fines for such crimes as capturing deer on royal lands. The reason that the less significant Magna Carta, or the Great Charter, earned its “Magna” name is that it was written on larger paper than Charter of the Forest. See McSweeney/Howard Lecture; see also, [https://en.wikipedia.org/wiki/Charter\\_of\\_the\\_Forest](https://en.wikipedia.org/wiki/Charter_of_the_Forest).

20 See McSweeney/Howard Lecture; see also, *1215: The Year of*

nor will we (meaning King John) go or send against him, except by the lawful judgement of his peers or by the law of the land.

Subsequently, these and similar ideas fueled the eruption of civil war, the rise of Oliver Cromwell,<sup>29</sup> the establishment of a republic, and the execution of Charles I. In short, they demonstrated that a king could be removed when he exceeded his authority and acted “above” the law.

## The Trip Across the Atlantic

Coke’s interpretation of Magna Carta became even more far-reaching, however. He drafted the first Virginia Charter in 1606 in which would-be inhabitants of the colony were given all of the “liberties, franchises and immunities”<sup>30</sup> as if they had been born in England. Subsequently, Magna Carta became incorporated into the laws of the colonies, including those of Pennsylvania where William Penn adopted parts of it and published a Magna Carta commentary, *The Excellent Privilege of Liberty & Property Being the Birth-Right of the Free-Born Subject of England*.<sup>31</sup> And for the next 100 years, American colonists acted with the understanding that they possessed the ancient rights of Englishmen, that they should not be taxed on tea or other products without direct representation in Parliament and, finally, that Magna Carta justified an armed revolution to protect their natural rights from the tyrannical intrusions of King George. Against this backdrop, one can start to focus on what separates the American Revolution from the disastrous events in France in 1789, or in Russia in 1917. As Daniel Hannan has observed, “American Revolutionaries weren’t rejecting their identity as Englishmen; they were asserting it.”<sup>32</sup>

In the United States, therefore, Magna Carta’s transformation from its 1215 Runnymede peace treaty origins, with its regulation of fish traps, to a powerful statement of individual liberty to protect citizens against the state was well underway. And that would continue — from the passage of the Bill of Rights, to the subsequent expansion of the concept of liberty in Civil Rights legislation to include those originally excluded from its protections. When Martin Luther King was confined in a Birmingham city jail, and observed that an “unjust law is no law at all,” he clearly was pointing to a moral authority that rose above those “human law(s) that (are) not rooted in eternal law and natural law,” an echo of Coke’s Magna Carta analysis.<sup>33</sup> And beyond the United States, the United Nations’ 1948 Universal Declaration of Human Rights, which outlines

the basic freedoms to which all humans are entitled, likely can claim Magna Carta as its parent.

## Modern Times

Although the Supreme Court has cited Magna Carta in over 150 Supreme Court decisions, as Chief Justice Roberts recently noted, “(i)f you’re citing Magna Carta in a brief before the Supreme Court . . . , or in an argument, you’re in pretty bad shape. We like our authorities a little more current.”<sup>34</sup>

More than anything, therefore, Magna Carta is a powerful symbol of liberty and, if not originally intended as a constitutional document, its 800 year old roots give it a foundational or constitutional presence. If concepts like the Rule of Law, Due Process, Trial by Jury, Habeas Corpus, and Access to Justice are buried within its four corners or simply are not there, as if by magic history has placed them there in plain sight.

David Frost famously asked Richard Nixon about the legality of his actions in Watergate, and Nixon replied: “Well, when the president does it, that means that it is not illegal.”<sup>35</sup> Others may perceive similar sentiments when a former Secretary of State defends her use of a private e-mail server and deletes public records. Still others may focus on the use of executive orders by presidents in bypassing a legislative process to achieve policy goals. When political leaders act as if they are “above the law,” our understanding of Magna Carta’s limits on kingly authority may help bring them down to ground level.

Magna Carta necessarily provides only an incomplete explanation of how we define individual liberty. America inherited Magna Carta, but it also inherited religious traditions, both from the Old and New Testament; we are beneficiaries of Ancient Greece and Rome; the Dutch supplemented the English influence on the American colonies; and all of the above were shaped by a uniquely American concept of the “Frontier.” Luckily, however, when we stare into a museum display to celebrate Magna Carta’s 800th birthday, we can catch a glimpse of ourselves, too, and develop a firmer understanding of our legal traditions.

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29 Oliver Cromwell is said to have referred repeatedly to Magna Carta as “Magna Farta.” See [https://en.wikipedia.org/wiki/Magna\\_Carta](https://en.wikipedia.org/wiki/Magna_Carta).

30 Podgers, *America’s Magna Carta*, ABA Journal, June 2015, at 44.

31 *Id.*

32 Daniel Hannan, *Eight Centuries of Liberty*, *Wall Street Journal*, Saturday/Sunday, May 30-31, 2015 edition, page C2.

33 M.L. King, Jr., “Letter from a Birmingham Jail,” [http://www.africa.upenn.edu/Articles\\_Gen/Letter\\_Birmingham.html](http://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html).

34 See Law Blog, “Chief Justice Roberts Wishes Magna Carta an Early Happy 800th Birthday,” the Wall Street Journal, November 5, 2014, <http://blogs.wsj.com/law/2014/11/05/justice-roberts-wishes-magna-carta-an-early-happy-800th-birthday/>. Of note, as recently as June 15, 2015, in *Kerry v. Din*, an immigration and marital rights case, both the majority opinion authored by Justice Scalia, and the dissent written by Justice Breyer, analyzed Magna Carta’s role in the historical development of the rule of law and due process. *Kerry v. Din*, --- U.S. --- (2015).

35 See [https://en.wikipedia.org/wiki/The\\_Nixon\\_Interviews](https://en.wikipedia.org/wiki/The_Nixon_Interviews).

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# TERRY BRIDGES — DEFENDER OF THE CONSTITUTION

*by Judge David Bristow*

On Wednesday, May 6, 2015, the Board of the Inland Empire Chapter of the Federal Bar Association presented Terry Bridges with its highest honor at the IEFBA's annual luncheon featuring Erwin Chemerinsky, Dean of the School of Law at the University of California, Irvine.

Before an audience of approximately 120 guests, Mr. Bridges received the Erwin Chemerinsky Defender of the Constitution Award in recognition of his significant leadership role in the legal profession, both in the Inland Empire and state-wide, and in particular for the integral role he played in bringing a federal courthouse to the Inland Empire. He was the 13th recipient of the award, which honors those who have demonstrated an exemplary and distinguished commitment to the defense and support of the Constitution, and which is named in honor of Dean Chemerinsky, both for his exemplary devotion to the Constitution, and for his long-standing commitment to, and support of, the IEFBA.

Mr. Bridges is virtually an institution in the Riverside legal community, both as a trial lawyer and a leader in the Riverside community, legal and otherwise, for more than 50 years. A native son, he was born and raised in Riverside and attended Santa Clara University before obtaining his law degree from the University of Southern California. After passing the bar, he returned to Riverside and was hired at Best, Best & Krieger - the only firm with which



*Terry Bridges*

he interviewed. He tried his first case two weeks after starting with the firm, and quickly established his reputation as a trial lawyer. Specializing in business litigation, Mr. Bridges earned the distinction of being selected as a fellow of both the American College of Trial Lawyers and the American Board of Trial Advocates, and he is one of only a handful of local attorneys to be named a "Best Lawyer in America," an honor he held for more than 20 years.

As with any great leader, Mr. Bridges was not content to simply reap the bounty of his professional success, but has devoted substantial time and effort to his profession and community as well. He served as the President of the Riverside County Bar Association from 1987-88, and has long played a role in the RCBA's Judicial Evaluation Committee, which he chaired from 2001 - 2010. He is a founding Board Member and past President of the Leo A. Deegan American Inn of Court, and gives an annual address at the beginning of each year for the Deegan Inn's membership to remember and honor both Judge Deegan and the ideals upon which the Inn was founded. In recognition of his contribution to the profession, the Deegan Inn established the "Terry Bridges Outstanding Attorney Award" in his honor in 2007.

Notwithstanding his other remarkable achievements, it might be that Mr. Bridges' greatest contribution to the profession has been in the field of civility and legal ethics.



*Donna Carlson Reeves, Dean Erwin Chemerinsky, Dan Roberts, and Prof. Charles Duskow*



*Diane and Andy Roth, Sharon and Terry Bridges*



*Terry and Sharon Bridges*



*Tony Raphael and Judge Sheri Pym*



*Terry Bridges and Steve Harmon*

After recognizing early in his career that he was developing a “win at all costs” mentality, Mr. Bridges became a committed advocate for civility and a heightened ethical approach to litigation. He has served on several state-wide committees devoted to attorney ethics, and has been recognized with a host of awards for his efforts in this regard. Although his practice has evolved from litigation to mediation, he continues to be an ambassador for the principle that fairness and civility is a critical component of zealous - and successful - advocacy.

In spite of his illustrious legal career, what confirmed the selection of Mr. Bridges for the Chemerinsky Award was his role in bringing the federal courts to the Inland Empire. While the Central District of California has included the counties of Riverside and San Bernardino since its creation in 1966, the lack of a federal courthouse meant that the residents of the two counties were required to travel to Los Angeles (or, later, Santa Ana) to appear in district court. Railing against this inequity, Mr. Bridges, along with a core group of committed attorneys and leaders, advocated for the creation of an Inland Empire division of the Central District. Working closely with local Representative George Brown and the judges of the Central District, the group drafted legislation for

the creation of a separate division of the Central District of California, and Mr. Bridges testified before the House Judiciary Committee in support of the bill. The legislation was ultimately signed in to law, and the Inland Empire became the Eastern Division of the Central District of California in 1992. The George E. Brown, Jr. United States Courthouse opened its doors in 2001.

Furthering his support of the federal judiciary, Mr. Bridges has served on the Judicial Advisory Committee for Senator Barbara Boxer since 2008, vetting potential candidates for potential nomination to district judge positions in the Central District, and, since 2005, he has served as a member of the Central District’s Attorney Settlement Program, and serves on its advisory panel.

As the ultimate law in our Nation of laws, the Constitution plays a profound role in all of our lives. By recognizing Mr. Bridges, the IEFBA Board offers a reminder that it is only through individual commitment and perseverance that this majestic document fulfills its promise.

*David Bristow has been a U.S. Magistrate Judge since 2009. He was President of the RCBA in 2006.*

*photos courtesy of Jacqueline Carey-Wilson.*



*Terry Bridges and Dean Erwin Chemerinsky*



*Chad Firetag and Eric Keen*

# FEDERAL CRIMINAL PRACTICE IN THE CENTRAL DISTRICT OF CALIFORNIA

by Jeffrey A. Aaron

Many state lawyers are unaware of the opportunities to expand their practices, or sharpen their skills, that are available in federal court. This is particularly true of criminal defense attorneys, many of whom believe that federal court is less friendly to defense lawyers, and defendants, than state court. This is, like everything else in legal practice, both true and untrue. Certainly it is true that federal court requires lawyers to read and follow the rules (both the Federal Rules of Criminal Procedure and the local District Court rules), and federal judges are not shy about sanctioning attorneys who fail to do so. But, when compared with state court procedure and practice, there are aspects of federal court that favor the defense.

In terms of sentencing statutes and substantive law, there are marked differences between state and federal law. Federal sentences are longer for drug and pornography crimes, sometimes substantially so; but sentences for firearms enhancements, for example, are often less. Typical of federal court, the sentencing process is more formal. Defense attorneys are expected to attend the probation interview and to write a sentencing memorandum. Until the last few years, the major difference between federal and state sentencing was the mandatory nature of the sentencing guidelines — those guidelines are now advisory, making federal sentencing less rigid and formulaic.

The practical differences in federal court sometimes help the defense. Federal court does not have as many appearances as state court. Continuances can be obtained out of court by stipulations with the government or ex parte affidavits. There is usually no morning calendar in a trial court during trial, so what might take a week to try in state court will take two or three days in federal court. State law permits judges to engage in some case settlement discussions, but federal judges are specifically prohibited from doing so. This avoids the dilemma of a client going to trial before a judge who knows that the client turned down an especially generous plea offer.

Federal judges are not restricted by nature of the case — unlike state court which has family, criminal, juvenile, and civil courts, all staffed by judges who specialize in their specific area — and this means that each federal judge receives both criminal and civil cases. Federal judges and their law clerks (law school graduates or attorneys who help a judge research and write orders and opinions), often come from elite schools and firms. More so than in state court, federal judges have high expectations for the written work submitted by criminal litigators; but, again unlike state court, federal judges often provide well researched and written orders and decisions that can help an attorney litigate the client's case most efficiently.

Depending on an attorney's preferences, federal court may have more interesting cases. According to the 2014 fiscal years statistics, about a third of federal cases in the Central District of California are drug cases, about 30% are property crimes (fraud, identity theft, etc.), and 15% are immigration-related. Only about 3% are violent offenses. Thus, federal court cases often require knowledge of other fields, such as immigration law, financial regulation, business, and the like.

One of the positive aspects of practicing in federal court in the Inland Empire is its size. The Eastern Division of the Central District of California is in Riverside, and it has two District Judges and three Magistrate Judges. Attorneys practicing in this court quickly become acquainted with all the judges, which is not typical of the federal courts in Los Angeles, where, for example, it can be years before a lawyer appears in front of a judge. Because of the smaller size, and because each of the parties sees the other more often, there is a more cooperative atmosphere in the Eastern Division.

The Central District had about 23% fewer criminal cases in fiscal year 2014, but, surprisingly, that does not necessarily mean there are fewer opportunities for criminal defense attorneys. More so than in state court, federal criminal cases often have multiple co-defendants. The Federal Public Defender (FPD), of course, only represents one defendant, often leaving a number of co-defendants to be represented by Criminal Justice Act (CJA) panel attorneys. These attorneys, placed on a rotating panel of private practitioners, are appointed to represent indigents when the FPD has a conflict. The Central District has panel appointments for trial, appellate, and capital habeas cases; and an attorney can be on more than one panel.

The pay rates for hourly work for private attorneys who are on CJA panels is \$127 an hour. The maximum per case for felonies is \$9,900, and misdemeanors, \$2,800; but those limits do not apply if the case is deemed "complex," which is not infrequent. The hourly rate for capital cases is \$181. The federal payment rates compare favorably with the rates paid for panel work in County courts. Another advantage is the assistance provided by the FPD. The FPD and its national training organization, the Defenders Services Office, provide free training for panel members. Indeed, for panel applicants who do not meet the federal court experience requirements, the FPD has an unpaid mentor program. While the application period for the next year's trial panel closed early in June 2015, the appellate panel application period begins in December.

*Jeff Aaron is the Directing Attorney, Federal Public Defender's Office located in Riverside.*





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# MILITARY LAW PRACTICE

by Brian Cosgrove

A significant part of the practice of federal law necessarily includes attorneys working for the U.S. military. Military attorneys are known as Judge Advocates. The term “JAG” refers to the Judge Advocate General for each service and the “JAG” Corps for the Army, Navy, and Air Force. The U.S. Marine Corps does not contain a separate “corps” for attorneys. However, all are known by the military terminology as Judge Advocates.

Specifically, Judge Advocates are military commissioned officers assigned to the practice of law for one of the four branches of the military. Judges advocates are either active duty or reserve officers that have graduated from civilian legal education and have passed the state bar exam, and have successfully completed military training specific to their chosen branch of service and occupational specialty.

As an example, I completed U.S. Marine Corps Officer Candidate School (OCS) in 1991 after my first year of law school and was commissioned as a Second Lieutenant. After finishing my final two years of law school and passing the California state bar exam in 1993, I returned to Quantico, Virginia to complete six additional months of Marine Corps training at The Basic School (TBS), and another several weeks of training at the Naval Justice School (NJS) in Newport, Rhode Island. Following graduation from NJS, I was sent to my first duty station at the Marine Corps Air Ground Combat Center in Twentynine Palms, California.

The primary mission of a Judge Advocate is the practice of military justice. All active duty military personnel fall under the jurisdiction of the Uniform Code of Military Justice (UCMJ). An active duty service member accused of the commission of a criminal offense, anywhere in the world, is subject to prosecution by their commanding officer. Judge Advocates are assigned as prosecuting attorneys, defense counsel, and military judges for courts-martial. A court-martial is the federal military equivalent of a criminal court. A court-martial can be tried before either a military judge or jury at the selection of the accused. Regardless of rank or income, all accused service members are assigned military counsel to act as defense counsel. If convicted and sentenced to a term in custody, the service member serves the adjudged sentence in a military brig or at the military disciplinary barracks for longer sentences.

One of the unique characteristics of Judge Advocate law practice is the variety of positions and duties an individual will experience over the course of his or her career. During my time in Twentynine Palms, I was assigned as a defense counsel, legal assistance attorney, and as the chief pro-

secutor for the base. Over a six year period in Twentynine Palms, I served in these roles for two year assignments. Subsequently, I have served as both defense counsel and prosecutor, numerous times as the hearing officer for Article 32 hearings (the military version of a preliminary hearing), as an installation law attorney (reviewing contracts and requests to utilize base facilities), as a legal assistance attorney (drafting wills and providing general legal advice on family law, landlord tenant, and other common issues), as the Staff Judge Advocate for a large command (advising the Commanding General on legal issues involving personnel assigned to that command), and with an artillery firing battery in a non-legal capacity.

Rotations of duty stations and travel for training are also part of the reality of military practice. Over the course of my service, I have been assigned to units or training in Virginia, Rhode Island, and California at Camp Pendleton and Twentynine Palms. I have been sent to Japan, Hawaii, North Carolina, and Arizona to complete courts-martial and related administrative hearings. I was also mobilized for a one-year period of time to act as defense counsel for Marines accused of war crimes in Hamdania and Haditha, Iraq.

Judge Advocates that are deployed to areas of combat, most recently in Iraq and Afghanistan, fulfill a variety of military missions. Each command has attorneys assigned as part of the staff in order to advise on Rules of Engagement, Law of War, and Civil Affairs. Deployed Judge Advocates are also utilized for the traditional roles of military justice and legal assistance for those units and service members that need or are required to seek legal services in those areas of the world. Our own Judge Mark Johnson deployed to Iraq with the U.S. Army as a Judge Advocate in support of Operation Iraqi Freedom (OIF).

I continue to serve as a reserve Judge Advocate in the U.S. Marine Corps, currently assigned as the reserve Staff Judge Advocate for the 1st Marine Logistics Group at Camp Pendleton, California. I also volunteer with the Veteran’s Court for the Riverside County Superior Court as one of the attorneys with the Riverside County Public Defender’s Office. As an attorney for twenty-two years, it has been an honor serving in both the federal and state system, military and civilian. Both provide a unique role and experience in the system of criminal justice.

*Brian Cosgrove is a deputy public defender for the Law Offices of the Public Defender, County of Riverside.*



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by Ruben Escalante

Pro bono service is a gift. When my son was four years old, he wanted to change his name to the Hero. As a young father, I told him what I thought it took to be a hero. I told him that it took three things: first, you need to have courage; second, you need to love God; and, third, you need to serve others. Upon reflection and trying to live by that definition myself, I started to think about what it took to be a superhero.

To be a superhero, you need to have a special skill that you use to bring justice to others without expecting a reward. As lawyers, we have all been blessed with unique skills. There are countless people who every day seek justice, but who have no chance of obtaining it without those skills. Pro Bono service gives us the opportunity to be their superheroes; to bring them justice, show them mercy, and give them a voice. Robert S. Gerber, who was a champion of pro bono work at my firm before he passed away, used to say, "Practicing law will earn you a living, but doing pro bono work will give you a reason to live." That is why I call pro bono service a gift; it is a gift not only to the person who receives it, but also to the person who gives it.

However, make no mistake, like any gift, there is a cost to the giver. The cost to the lawyer for pro bono service is the lawyer's most precious commodity: time. It is for this reason that a community's successful commitment to pro bono takes effort and sacrifice not only on an individual level, but also on an institutional level. This is because institutions, such as law firms, can "make or break" individuals' abilities to give their time.

For example, my firm actively encourages its attorneys to participate in pro bono programs and permits them full billable credit for their pro bono efforts. As a result, partners and associates regularly participate in pro bono programs, such as finalizing the adoptions of children, committing to staff various legal clinics for entire days, taking on direct representation matters, and litigating major impact cases.

My firm also permits me to volunteer at the pro se clinic at the United States District Court in Riverside on a regular basis and even take on direct representation pro bono cases in the Inland Empire. It is my hope that local firms will also support the pro se clinic by committing to regularly send attorneys to volunteer there, realizing the benefits to the firm, its attorneys, and the community.

It was at the pro se clinic and my representation of a lady I met there that I was able to at least try to live up to the standard I set for my son. My client needed help trying a case against a man who allegedly swindled her out of her life savings. I remember telling her, "I don't know if you will win, but I will make sure you don't go through it alone." Another associate, Suzanna Winslow, and I were ultimately successful in recovering some of what our client lost. On the day of trial, I remember writing a note to my sleeping children. It read, "Dear Children, I'm off to slay dragons today. I'm going to fight evil. I'm going to help a poor person who couldn't help herself. Pray for me. Today, I will try to be a hero."

*Ruben Escalante is an Inland Empire native and continues to call it his home. He is a senior associate at Sheppard, Mullin, Richter & Hampton LLP, is an Officer of the Federal Bar Association—Inland Empire Chapter, a Board Member of the Public Service Law Corporation, and a Ninth Circuit Judicial Conference Lawyer Representative.*



## BECOME A SPONSOR

Please consider becoming a Sponsor of the RCBA's 2015 Installation of Officers Dinner on September 24, 2015.

Sponsorship will assist in deferring the cost of the event and allow more funds to go directly to the RCBA's giving back projects, such as the Elves Program, Good Citizenship Awards for high school juniors, Adopt-a-School Reading Program, Mock Trial, New Attorney Academy, and Project Graduate. Below are the different levels of sponsorship:

Bronze .....	\$100.00
Silver .....	\$500.00
Gold .....	\$750.00
Platinum .....	\$1000.00

Sponsors will be acknowledged in the dinner program and in the *Riverside Lawyer*. In addition, sponsors of \$500.00 or more will receive two complimentary tickets.

Please contact Charlene Nelson at the RCBA office, on or before September 8, if you would like to become a sponsor at (951) 682-1015 or [charlene@riversidecountybar.com](mailto:charlene@riversidecountybar.com).

# THE FEDERAL BAR ASSOCIATION – INLAND EMPIRE CHAPTER: A BRIDGE BETWEEN FEDERAL AND STATE PRACTITIONERS

by Antoine F. “Tony” Raphael

As I write this article, I reflect on the growth that the Inland Empire continues to experience. This growth is not just in the areas of population and housing; it is also reflected in the complexity of legal issues that judges and lawyers must tackle. As members of the Inland Empire legal community, we are in a position to be part of and to nurture this growth. The Federal Bar Association – Inland Empire Chapter (FBA-IE) continues to do that through the programs that the chapter presents throughout the year and through our partnership with other bar associations like the Riverside County Bar Association (RCBA). The programs of the FBA-IE often bring state and federal practitioners together to discuss topics of mutual interest.

The FBA-IE kicked off the New Year with a January program on Mediation Ethics and Confidentiality, which was presented by ADR Program Director Gail Killefer of the U.S. District Court and Associate Dean Susan Nauss Exon of the University of La Verne College of Law. In February, the chapter held its annual dinner event honoring the judges of the Central District of California. Chief Judge George H. King addressed the attendees on the State of the District. Professor Laurie L. Levenson was the keynote speaker and, along with exoneree Obie Anthony, presented an example of the important work that Loyola Law School’s Project for the Innocent is doing by endeavoring to exonerate those who are wrongfully convicted.

In March, as part of a program co-sponsored with the RCBA, Eastern Division Magistrate Judges David T. Bristow, Kenly Kiya Kato, and Sheri Pym provided an overview of federal practice and the important responsibilities of magistrate judges. In April, Kendall H. MacVey moderated our annual Federal Civil Practice Seminar featuring as speakers U.S. District Judges Virginia A. Phillips and Jesus G. Bernal and Magistrate Judges Bristow and Kato. In May, the chapter held its 15th Annual Constitutional Law Forum. This year the FBA-IE chose to honor Terry Bridges, a Riverside native and distinguished trial attorney who now serves as a mediator full-time, with the Erwin Chemerinsky Defender of the Constitution Award. The chapter also recognized the recipients of the annual Inland Empire Federal Bar Association Law Student Scholarship. This year’s recipients were Niles



Niles Pierson, Dan Roberts, Ami Sagel,  
and Marc Tran

A. Pierson and Marc “M.C.” Tran, both third year law students, selected for their scholastic excellence, connection to the Inland Empire, and outstanding personal qualities.

On June 24, Judge Bernal moderated a program titled, “California Proposition 47: Game Changer for Federal Criminal Cases?” The program featured as speakers U.S. Attorney’s Office Criminal Appeals Chief Jean-Claude André, San

Bernardino County Supervisory Deputy District Attorney Michael Dowd, San Bernardino County Supervisory Deputy Public Defender Daniel Edber, attorney David J.P. Kaloyanides, and Supervising Deputy Federal Public Defender Liliana Coronado.

On July 15 at noon, Magistrate Judge Jean P. Rosenbluth presented a program titled, “Random Thoughts on Writing for Judges.” Judge Rosenbluth drew on her experience as a magistrate judge and as the former director of legal writing and advocacy at USC’s Gould School of Law to offer writing tips, particularly for younger lawyers and law clerks. Finally, on August 17, the FBA-IE is teaming up with the American Red Cross to sponsor a blood drive, which will be held at the federal courthouse in Riverside.

Through our partnership with other bar organizations like the RCBA, the FBA-IE will continue in its tradition of presenting programs on topics of interest to our membership and the bar in general. But, this is a team effort! I encourage everyone to participate in the programs, to suggest programs on timely topics, and to be part of those programs as speakers or moderators. I look forward to seeing you at our future events.

*Antoine F. “Tony” Raphael, current president of the Inland Empire Chapter of the Federal Bar Association (FBA-IE), is an attorney based in Claremont. Mr. Raphael is a former Assistant U.S. Attorney and the former Chief of the Eastern Division of the U.S. Attorney’s Office. In his current practice, Mr. Raphael focuses on complex litigation and white collar criminal defense. Mr. Raphael can be reached at [tony@tonyraphael.com](mailto:tony@tonyraphael.com). Future programs and events of the FBA-IE may be found online at <http://www.fedbar.org/Chapters/Inland-Empire-Chapter/Calendar.aspx>*

*photo courtesy of Jacqueline Carey-Wilson*



# SUITS FOR A CAUSE

by Amy Leinen Guldner

“Suits for a Cause” is an annual clothing drive sponsored by the Southern California legal community to support the clients of WHW (Women Helping Women/Men2Work). WHW was started by two legal professionals who were survivors of domestic abuse, who faced the daunting task of rebuilding their professional wardrobes to return to the workforce. Today, WHW continues to assist disadvantaged men and women in building or rebuilding their professional wardrobes to enter the workforce and in providing comprehensive support, education and employment assistance to these individuals in making their way towards economic self-sufficiency through employment success.

Throughout the past two decades, many professions have gotten less formal and have given up the practice of requiring employees to wear suits. Not lawyers! Law is one of the last professions that still require a closet full of suits. For this reason, WHW relies heavily on the legal community for their business attire donations.

Suits for a Cause engages the entire legal community to help WHW fulfill its vision of helping disadvantaged job seekers achieve long term economic self-sufficiency through employment success. Suits for a Cause was the brainchild of WHW Advisory Board Member, Laurie Rowen, co-owner and founder of Montage Legal Group, who has organized the annual clothing drive for the past several years. In 2014, over 50 firms, groups and

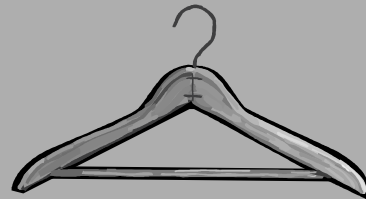
companies in Southern California participated in Suits for a Cause, including the Riverside County Bar Association.

This year, the Riverside County Bar Association will again participate in Suits for a Cause by collecting clothing during the entire month of September. WHW collects men’s and women’s clothing (business and casual) as well as accessories (shoes, ties, belts, purses, jewelry & toiletries), so please keep WHW in mind when you are cleaning out your closets. We appreciate your generosity and support of this worthwhile cause!

*Amy Leinen Guldner is a civil litigation attorney with Montage Legal Group, a network of experienced freelance attorneys. She is also a member of the Bar Publications Committee.*



The Southern California legal community is joining together for a clothing drive to support WHW (Women Helping Women/Men2Work)



## Suits for a Cause

September 1st through September 30th

All Riverside Law firms are Invited to Participate

WHW collects Men’s and Women’s Clothing (business and casual) as well as Accessories (shoes, purses, jewelry, and toiletries, etc). WHW provides comprehensive employment support services to empower disadvantaged men, women and teens to achieve economic self-sufficiency through employment success. If you have questions, or your law firm would like to join Suits for a Cause and collect clothing, please contact Laurie Rowen ([Laurie@montagelegal.com](mailto:Laurie@montagelegal.com)) of WHW’s Advisory Board of Directors. All participating law firms will be featured on WHW’s website.

For more information, see [www.whw.org](http://www.whw.org).

The Riverside County Bar Association Supports  
WHW and Suits for a Cause

**Drop Donated Clothing at:**

RCBA Office  
4129 Main Street, Suite 100, Riverside





## RCBA—RIVERSIDE SUPERIOR COURT NEW ATTORNEY ACADEMY

The Riverside County Bar Association and the Riverside Superior Court are pleased to announce the second year of the New Attorney Academy - our training program for new attorneys.

The purpose of the New Attorney Academy (hereafter "the Academy") is to provide professional guidance and counsel to assist newly admitted attorneys in acquiring the practical skills, judgment and professional values necessary to practice law in a highly competent manner and to encourage sensitivity to ethical and professional values that represent the traditions and standards of the Inland Empire legal community.

Specifically, the Academy is made up of a series of classes, which take place once a month. The curriculum will be taught by judges and noted attorneys in the community. Topics to be taught will include, but are not limited to, an introduction to the legal community, a practical and intensive primer on depositions and discovery, an introduction to practicing in court (court appearances, legal writing and research, pet peeves of the bench, etc.), transition into practice (dealing with clients, how to successfully participate in ADR, relations with other attorneys, case management, etc.) and an introduction to law practice management. The emphasis of these classes will be for a civil practitioner although anyone who has an interest in participating in the program is invited to apply.

At every session, the class will attend the monthly RCBA General Membership meeting for that month so as to promote membership in that organization and to allow for class members to participate in their legal community. The only cost for attending the Academy will be for the lunches provided at the RCBA General Membership meetings. The first program will be held in October.

Admittance to the Academy will be premised upon the following requirements:

1. Admittance limited to attorneys in practice 5 years or less
2. Admittance limited to RCBA members (applicants can join RCBA if they wish to participate in the Academy for a limited cost)
  - \$25.00 first year of admittance
  - \$120.00 less than 5 years (private)
  - \$95.00 less than 5 years (gov't)

If you are interested in attending the Academy and do not meet the criterium of the limited years of practice, we still urge you to apply as there may be additional availability for those attorneys who have been practicing longer to attend the program.

Once the attendees of the Academy graduate from the program, there will be several brown bag lunches organized throughout the remainder of the year. Those brown bag lunches will serve as an opportunity for graduates to continue to connect with judges and seasoned attorneys and to ask follow up questions or to discuss issues that they may come across in their practice.

If you are interested in applying for the academy, applications will be accepted through September 15, 2015.

For further information, please contact Charlene Nelson at the Riverside County Bar Association at 951.682.1015 or contact Robyn Lewis at rlewislaw@yahoo.com.



### **25th Annual Red Mass**

**Tuesday, October 6, 2015**

**at 6:00 p.m.**

**Our Lady of the Rosary Cathedral**

**2525 North Arrowhead Avenue**

**San Bernardino**

For further information about this event, please contact

Jacqueline Carey-Wilson

at (909) 387-4334

or Mitchell Norton at (909) 387-5444

# RCBA'S ADOPT-A-SCHOOL READING DAY

The RCBA's Adopt-a-School Reading Day was a big success. On June 8, attorneys and support staff participated in reading to students from kindergarten to sixth grade at Highgrove Elementary School. Eighteen participants went into classrooms and read either his/her favorite children's book or a book chosen by the students. The RCBA also donated \$500 to the school's library and many gently used or new books. The students, faculty and staff at Highgrove Elementary were excited for the visit and grateful to all who participated in the reading day. The RCBA wishes to thank the following individuals who read to the students or donated books or library funds:

- Anthony Beaumon
- Kristine Borgia
- Yoginee Braslaw
- Brittany Bulthuis
- Jacqueline Carey-Wilson
- Ella Chatterjee
- Silvana Gloriosio
- Tatiana Klunchoo
- Valerie Navarro
- Bryan Owens
- Judge Virginia Phillips
- Debra Postil
- Jordan Ray
- Heather Seigler
- Sheniece Smith
- Steven Smith
- Shumika Sookdeo
- Matthew Strickroth

*photos courtesy of Jacqueline Carey-Wilson*



*On November 22, 1963, I was in first grade at Highgrove Elementary School in Riverside when President John F. Kennedy was assassinated. I attended the ceremony when this plaque was dedicated in his memory at Highgrove the following year. The flame engraved on the plaque is symbolic of the eternal flame on President Kennedy's grave at Arlington National Cemetery in Virginia. The plaque remains at Highgrove Elementary School today.*

*— Charlene Nelson*



*Back row, l-r – Matthew Strickroth, Anthony Beaumon, Jordan Ray, Kristine Borgia, Yoginee Braslaw, Brittany Bulthuis, Silvana Gloriosio, Sheniece Smith, Jacqueline Carey-Wilson.  
Front row, l-r – Bryan Owens, Tatiana Klunchoo, Shumika Sookdeo, Valerie Navarro, Ella Chatterjee, Debra Postil.*



*Matthew Strickroth*



*Kristine Borgia*



*Jacqueline Carey-Wilson presented a check in the amount of \$500.00 to Principal Elizabeth Gosnell. The money was donated from the members of the RCBA to purchase books for the school's library.*



# OPPOSING COUNSEL: JOSEPH B. WIDMAN

by Boyd Jensen

The current Chief of the Inland Empire branch of the U.S. Attorney's Office is Joseph B. Widman. "Joe," as he is known to his colleagues, has served in the Central District's United States Attorney's Office since 2007 and has served in the Inland Empire since 2008. As a line prosecutor, Joe has tried numerous cases in matters ranging from murder, to major frauds against the federal government, tax crimes, to gun trafficking. In January 2012, Joe was appointed Deputy Chief of the Inland Empire branch, and has served as Chief since January 2014.



Joseph B. Widman

The United States Attorney's Office jurisdiction is very broad, not only in the Inland Empire covering Riverside and San Bernardino Counties and their approximately 4.4 million residents, but as part of the United States Attorney's Office for the Central District of California, it covers Los Angeles and Orange Counties, and even the three counties north of Los Angeles. With some of the top prosecutors in the region, the Inland Empire office works closely with federal agents from numerous agencies and offices, including the Federal Bureau of Investigation (FBI) and the Drug Enforcement Administration (DEA). In recent years the prosecutors of the U.S. Attorney's Inland Empire office have charged and tried a number of cases that have gained national attention, including cases involving white collar offenses, child exploitation, civil rights violations, terrorism, and political corruption. The office works in partnership with the District Attorney's Offices for Riverside and San Bernardino Counties, respectively, and other state law enforcement agencies, in federal/state task forces in the areas of child exploitation, political corruption, and international and interstate drug trafficking.

Joe was born in New York City and raised in Ossining, New York, which may be best known as the home of "Sing Sing" maximum security prison. His parents, a public school teacher and computer programmer for IBM, raised Joe and his older sister with a sense of civil purpose and responsibility. Joe played baseball and tennis in high school, and was very active in performing arts (his turns in school dramas and musicals leading to being dubbed "Class Actor" in his senior year). Even then his interest

in law and trial advocacy could be seen in his participation in county-wide mock trial competitions throughout high school. Joe was drawn to public affairs and excelled at public speaking and acting, so he naturally settled on a career in law.

After high school Joe majored in political science and prelaw at State University of New York in Binghamton. While in college, Joe worked with the group Students Against Drunk Driving and waited tables at Denny's Restaurant. After graduating from Binghamton, Joe spent the summer intern-

ing with the New York Civil Liberties Union where he was assigned the task of analyzing civilian review boards for local police departments in the New York area. In the fall, Joe headed off to law school at the University of North Carolina at Chapel Hill, where he served as an editor of the Law Review and volunteered and interned for a non-profit law firm, which represented indigent death row inmates at the appellate and collateral stages.

After law school Joe's malleable career included four and a half years at NYC Latham & Watkins litigating securities defense and at Kramer Levin Naftalis & Frankel working on copyright enforcement, including defending the maker of Trojan condoms against trademark infringement, before settling down in the Inland Empire as a prosecutor.

Joe enjoys tennis and running, is a pillar of the USAO's Baker to Vegas team and has served on the Riverside Bar Association Mock Trial Steering Committee. He is President-Elect of the Federal Bar Association, Inland Empire Chapter and a member of the Campbell Inn of Court in San Bernardino. He also loves to read and is a political junkie. Each Sunday morning his blocks of time include all major news network weekly programs. His wife, Vanessa Silberman, works in Communications and Strategic Initiatives for the Levitt Foundation and they are the proud parents of a beautiful five-year-old daughter.

*Boyd Jensen is a Riverside civil attorney. Mr. Jensen credits USAO colleague, Steve Merrill, as the primary source for the information in this article.*





# THE MOST IMPORTANT DECISIONS OF OCTOBER TERM 2014

by Dean Erwin Chemerinsky

By any measure, October Term 2014 was truly historic. The Supreme Court decided 66 cases after briefing and oral argument. With a nod to David Letterman, here's my top 10 list of the most important cases of the year.

10. *Ohio v. Clark*. In *Crawford v. Washington* (2004), the Supreme Court held that prosecutors cannot use testimonial statements from unavailable witnesses even if they are reliable. In *Ohio v. Clark* (2015), the Court offered an important clarification of what it means for a statement to be "testimonial": it must have been made with the primary purpose of creating evidence for the prosecution. The Court ruled that the introduction at trial of out-of-court statements by a 3-year-old boy to a preschool teacher about who beat him did not violate the Confrontation Clause because they were not made with the primary purpose of law enforcement purposes.

9. *Williams-Yulee v. Florida State Bar*. The Supreme Court upheld a provision in the Florida Code of Judicial Ethics that prohibits candidates for elected judicial office from personally soliciting or receiving funds. The Court, 5-4, ruled that the government has a compelling interest in preserving public confidence in the judiciary. This certainly is important in the 31 states that have similar provisions, but Chief Justice Roberts' majority opinion also indicated a willingness to uphold other regulations of speech in judicial campaigns when he declared: "Judges are not politicians, even when they come to the bench by way of the ballot. And a State's decision to elect its judiciary does not compel it to treat judicial candidates like campaigners for political office."

8. *Walker v. Texas Division, Sons of Confederate Veterans*. Texas allows non-profit groups to have license plates produced with particular messages, but refused to grant a request to make license plates with the confederate flag. The Court, 5-4, sided with Texas, concluding that license plates are government speech and the free speech clause of the First Amendment cannot be used to challenge when the government is the speaker.

But if license plates are government speech and the government can say whatever it wants, does this mean that the government can put any message it wants on license plates? What if the government wants to put a message that abortion is murder or even a message to vote Republican? More importantly, the Court's approach gives the government the ability to avoid free speech challenges by declaring that something is government speech. Could a city library choose to have only books by Republican authors by saying that it is the government speaking?

Could a city allow a pro-war demonstration in a city park while denying access to an antiwar demonstration simply by adopting the former as its government speech?

7. *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.* The Court ruled, 5-4, that disparate-impact claims are cognizable under the Fair Housing Act. It is very difficult to prove a racially discriminatory intent; decision-makers rarely will articulate a racist motive for their action. Thus, the Court's decision is an important victory for civil rights plaintiffs in allowing claims of housing discrimination based on proof that a policy has caused a racially discriminatory impact.

6. *Johnson v. United States*. The federal Armed Career Criminal Act, imposes an increased prison term upon a defendant with three prior convictions for a "violent felony." The "residual clause" in the statute defines this to include any felony that "involves conduct that presents a serious potential risk of physical injury to another." The Supreme Court declared this to be unconstitutionally vague. Federal courts now will be deluged by those who received sentencing enhancements under this provision and who seek to have retroactive relief. The Court did not indicate whether this will apply retroactively. Also, there are a number of other federal statutes that use similar language.

5. *Zivotofsky v. Kerry*. The Court, by a 5-4 margin, declared unconstitutional a federal law that allows a person born in Jerusalem to have his or her passport designate the birthplace as "Jerusalem, Israel." The Court held that this infringes the President's exclusive power to recognize foreign governments. Both Presidents Bush and Obama have argued that this is unconstitutional because they do not wish to take a position as to who is sovereign over Jerusalem. It is the first time in history that a federal statute limiting presidential power in foreign affairs has been declared unconstitutional.

4. *Arizona State Legislature v. Arizona Independent Redistricting Commission*. The Court held, 5-4, that an independent commission in a state to draw election district lines is constitutional and does not violate the Elections Clause of the Constitution or federal law. Thus, the independent commission for districting in California and other states is constitutional. This is an important tool used in many states to prevent partisan gerrymandering.

3. *Glossip v. Gross*. The Court upheld the use of midazolam as the first drug in the three-drug protocol for lethal injections, even though there is a significant risk

that it will not put a person being executed into deep unconsciousness and will cause the individual to feel excruciating pain. The Court, 5-4, said that the burden is on the person facing execution to show that a better, more humane alternative exists. Justice Breyer, in a dissenting opinion, urged the Court to reconsider the constitutionality of the death penalty and argued that it is likely unconstitutional.

2. *King v. Burwell*. The Court ruled, 6-3, in favor of the United States and held that those purchasing insurance from exchanges, whether created by the federal government or the states, are entitled to tax credits. Chief Justice Roberts wrote for the majority and acknowledged the ambiguity in the statutory language. But he said that ruling for the challengers would collapse the health care exchanges and that Congress surely could not have intended to give states the ability to undermine the Affordable Care Act by refusing to create exchanges. Without tax credits, many would not be able to afford health insurance on the exchanges. This would shrink the risk pools and dramatically increase the costs of coverage and price many others out. The result would be a spiral that would collapse the exchanges and undermine the entire Affordable Care Act. Chief Justice Roberts concluded his majority opinion by declaring: "Congress passed the Affordable Care Act to improve health insurance markets, not to destroy them. If at all possible, we must interpret the Act in a way that is consistent with the former, and avoids the latter."

1. *Obergefell v. Hodges*. The Supreme Court ruled, 5-4, that laws prohibiting same sex marriage violate the due process and equal protection clauses of the Fourteenth Amendment. Justice Kennedy, writing for the Court, explained that the Court long has protected the right to marry as a fundamental right. It is safeguarded under both the due process and equal protection clauses. The Court examined the precedents concerning the right to marry and concluded that "[t]his analysis compels the conclusion that same-sex couples may exercise the right to marry." The Court said that there is no difference between same-sex and opposite-sex couples when it comes to the importance of marriage for couples, for their children, and for society. This is a historic decision which means that same sex couples now can marry everywhere in the country.

## Conclusion

Perhaps most stunning is that the liberal justices – Ginsburg, Breyer, Sotomayor, and Kagan – were in the majority in all of these cases except for *Glossip v. Gross*. By every standard and measure, it was a truly exceptional year in the Supreme Court.

*Erwin Chemerinsky is Dean and Distinguished Professor, Raymond Pryke Professor of First Amendment Law at University of California, Irvine School of Law.*



# MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective July 31, 2015.

- Ruthann M. Elder** – Silver & Wright LLP, Ontario
- William A. Hadikusumo** – Sole Practitioner, San Dimas
- Karen D. Hasler** – Office of the Public Defender, Riverside
- Krista R. Hemming** – Sole Practitioner, La Quinta
- Thomas L. Hoegh** – Law Offices of Thomas Hoegh, Riverside
- Bruce A. Hughes** – Hughes & Hughes LLP, Tustin
- Lisa B. Hughes** – Hughes & Hughes LLP, Tustin
- Mohammad Iranmanesh** – Sole Practitioner, Riverside
- Tecla M. Lunak** – Law Offices of Tecla M. Lunak APC, Rancho Mirage
- Nicole A. Naleway** – Gaspard Castillo Harper APC, Ontario
- Sarah T. Peach** – Peach & Weathers, San Bernardino
- Richard Samuel Price** – Law Office of Richard Samuel Price, Redlands
- Steven M. Reiss** – Steve Reiss Patent Law Office, Ontario
- Debra J. Rice** – Law Office of Debra J. Rice, Riverside
- Brandon A. Sanchez** – Silver & Wright LLP, Ontario
- Steven D. Sanchez** – Gaspard Castillo Harper APC, Ontario
- April M. Smith** – Office of the District Attorney, Riverside
- David E. Wald** – Hughes & Hughes LLP, Tustin
- Darren J. Welsh** – Berkshire Hathaway Home Services, Las Vegas, Nevada
- Evan D. Williams** – Sole Practitioner, Riverside





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or [rcba@riversidecountybar.com](mailto:rcba@riversidecountybar.com)*

# CLASSIFIED ADS

## Office Space – Grand Terrace

Halfway between SB Central & Downtown Riverside. 565 to 1130 sq ft., \$1.10/sq ft. No cams, ready to move in. Ask for Barry, (951) 689-9644

## Office Space – Downtown Riverside

Riverside Legal & Professional Center. Downtown Riverside walking distance to Courthouse. Private Executive Suite offices, virtual offices and conference rooms rental available. We offer a state of the art phone system, professional receptionist and free parking for tenants and clients. Accessible from the 91, 60 and 215 freeways. (951) 782-8089.

## Victorville Legal/Executive Offices

100 to 260 Sq Ft. Conference/Deposition Room. Common Receptionist. Courthouse Close. Call Kris (760) 241-0784 or email [exsuite@yahoo.com](mailto:exsuite@yahoo.com).

## Cloud Based Bookkeeping – IOLTA365

IOLTA365 is a cloud based bookkeeping service specifically for IOLTA accounts. We handle the bookkeeping and keep your IOLTA account records in compliance with CA Rule 4-100. The lawyer provides electronic copies of all banking records and we create: (1) the main account register, (2) an individual ledger for each client matter, and (3) a three-way reconciliation showing the main register balance, total of all individual ledgers, and the adjusted bank statement balance. Please contact us via message on Twitter @IOLTA365 or via email [IOLTA365@gmail.com](mailto:IOLTA365@gmail.com).

## Complete Resource Center – Marathon-records.com

Marathon-records.com is a complete resource center for the solo and small firm lawyer. IOLTA One is an online bookkeeping application designed specifically for IOLTA accounts that reduces the task of keeping compliant records to a simple data entry function. IOLTA One prevents the most common IOLTA account errors and automatically produces a chronological account register, individual client ledgers, and a three-way reconciliation report in compliance with the rules of professional conduct and ALTA best practices. Visit online at [www.marathon-records.com](http://www.marathon-records.com) and sign up for a free trial.

## Wanted – Attorney for Job Position

Our firm (Lobb & Cliff, LLP) is looking for a four to eight year lawyer to handle real estate and business litigation. The position requires experience in drafting and responding to discovery and law and motion matters, taking and defending depositions, arguing matters in court and trying cases. This position is available in our Riverside, Murrieta and Orange County office. Candidate must be able to attend meetings, etc. at all locations if needed. L&C is a small business firm representing companies located in Southern California. Send resume via email to Susan Lowrance at [lowrance@lobbcliff.com](mailto:lowrance@lobbcliff.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 Charlene or Lisa at the RCBA office, (951) 682-1015 or [rcba@riversidecountybar.com](mailto:rcba@riversidecountybar.com).



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**Riverside County Bar Association**

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