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Individual Rights: The Early Years

Religious Liberty... Lawyering & "The Times They are a-Changin"

Chief Justice Cantil-Sakauye: Protecting Access to Justice for All People

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), Riverside Legal Aid, Fee Arbitration, Client Relations, Dispute Resolution Service (DRS), Barristers, Leo A. Deegan Inn of Court, Mock Trial, State Bar Conference of Delegates, Bridging the Gap, and the RCBA - Riverside Superior Court New Attorney Academy.

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, 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.

The Riverside Lawyer *is published 11 times per year by the Riverside County Bar Association (RCBA) and is distributed to RCBA members, Riverside County judges and administrative officers of the court, community leaders and others interested in the advancement of law and justice. Advertising and announcements are due by the 6th day of the month preceding publications (e.g., October 6 for the November issue). Articles are due no later than 45 days preceding publication. All articles are subject to editing. RCBA members receive a subscription automatically. Annual subscriptions are $25.00 and single copies are $3.50.*

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

SEPTEMBER

19 **Family Law Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Jonathan Verk
MCLE

26 **Appellate Law Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Topic: Juvenile Dependency Appeals
Speakers: Alice Shotton, Carole Nunes Fong & Julie Jarvi
MCLE

28 **RCBA Annual Installation of Officers Dinner**
Mission Inn – Grand Parisian Ballroom
Social Hour – 5:30 p.m.
Dinner – 6:30 p.m.

OCTOBER

3 **Red Mass**
Our Lady of the Rosary Cathedral,
San Bernardino
6:00 p.m.
Call (909) 387-4334 for information

For the latest calendar information please visit the RCBA's website at riversidecountybar.com.

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 2018. The budget will be available after August 8. 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 or a copy will be available at the RCBA office.

Thursday, August 15, 2017
at 5:15 p.m. in RCBA Board Room

RSVP by August 11 to:

(951) 682-1015 or
charlene@riversidecountybar.com

Cover photo by Jacqueline Carey-Wilson

President's Message

by Jean-Simon Serrano

As I write what is my final column for the *Riverside Lawyer*, I reflect on something one of my predecessors told me at the end of the installation dinner last September: "Enjoy it. Go to everything to which you are invited. It will go fast." I've certainly enjoyed my time as President, but "fast" has been an understatement. I took this advice and accepted all invitations. Below are some of the things I experienced.

I had the honor of acting as a scoring judge for the final round of the 2017 Riverside County Mock Trial Championship. In years past, I had acted as a scoring judge for earlier rounds. This prior experience did not prepare me for the caliber of the presentation I saw in the final round. It was great to see high school students, whom had obviously invested a lot of time and effort into the difficult constitutional law fact pattern provided, argue for the rights of their clients. The polish and passion demonstrated by the participants leads one to hope they go on to become attorneys and practice locally.

When I was sworn in more than 10 years ago, it was a quick affair, done with my graduating class and I do not believe there were any parents in attendance. If any pictures were taken, I've certainly never seen them. The swearing-in ceremony in Riverside is something completely different. Thanks to Presiding Justice Manuel Ramirez (Court of Appeal, Riverside) and the Riverside County Superior Court (and likely many others), the swearing-in ceremony for new bar admittees in Riverside is truly a momentous occasion. The ceremony I attended this year was brimming with tearful and joyous family members, there to celebrate the new attorneys and their achievement. Presiding Justice Ramirez took the time to get to know each of the new attorneys and impart words of wisdom. I and my federal and San Bernardino analogs were provided an opportunity to speak to the new attorneys and encourage them to get involved in the local bar associations. Overall, it was a fantastic event and one that I would have not experienced but for my time here at the Riverside County Bar Association (RCBA).

I also enjoyed a very nice evening at the Asian Pacific American Lawyers of the Inland Empire (APALIE) installation dinner. Held at the Citrus State Historic Park, this was a fun evening that, in addition to installing the new board of APALIE, honored Presiding Justice Manuel Ramirez. It was a beautiful venue and I met some great attorneys at the event. I hope to attend further APALIE events and I hope their members remain active within the RCBA.

Though I have been aware of Project Graduate since its inception six years ago, I had the pleasure of attending their graduation for the first time. It was a heart-warming ceremony that was very moving for all in attendance. The program, a collaborative effort between the RCBA, the Department of Social Services (DPSS), and the courts, was developed to provide attorney volunteers to advocate for youths in foster care, and to provide guidance, ultimately culminating in their completion of high school. It is a wonderful program and it is inspiring to see all involved reaching out to help these students graduate high school. Former RCBA board member Brian Unitt and all others involved, cannot be commended enough for the work they have done with this program.

May was host to "Spring into Action," the RCB Foundation's first fundraiser. By all accounts, the event was a success. Held at Benedict Castle, the event included music, food, and items for auction. Among the items auctioned were vacation packages, helicopter rides, gift baskets, and tickets to sporting and other events. The event earned over $10,000 for the Riverside County Bar Foundation. These funds will help continue the RCBA's tradition of giving back to the community through various programs such as Project Graduate, the Elves, Good Citizenship Awards, Adopt-a-High School, and the RCBA Reading Day. I must commend the RCB Foundation committee for planning and putting together this event. It is my sincerest hope that this will only be the start of an annual springtime fundraising event for the RCB Foundation. Given the dedication and attention devoted to this year's event, I know the RCBA will be in good hands going forward.

In all, it has been a year that has passed quickly for me. Though I will not be President of the Bar Association much longer, I will certainly try to stay involved with the legal community, including some of the great programs and events to which I was introduced this past year.

Jean-Simon Serrano is an associate attorney with the law firm of Heiting & Irwin.

Barristers President's Message

by Erica Alfaro

Judicial Panelists

Judicial Reception

Barristers held its first annual Judicial Reception on May 17, 2017, at Grier Pavilion located on the rooftop of Riverside City Hall. It was a beautiful setting and we had a great turnout. I would offer a special thank you to the judicial officers that served on our panel: Hon. Becky Dugan, Hon. Gloria Trask, Hon. Jesus G. Bernal, Hon. Joseph R. Brisco (Ret.), Hon. Gail O'Rane, Hon. Lynn Donaldson, Hon. Richard T. Fields, Hon. John Vineyard. In addition, thanks to Greg Rizio for moderating the panel.

Barristers appreciates the support of our sponsors that made this reception possible including: Rizio Law Firm (Diamond Sponsor), Aitken Aitken Cohn (Platinum Sponsor), Best Best & Krieger (Platinum Sponsor), Blumenthal Law Offices (Silver Sponsor), Dennis M. Sandoval APLC (Silver Sponsor), JAMS (Silver Sponsor), University of La Verne College of Law (Silver Sponsor), Provident Bank (Bronze Sponsor), and Reid & Hellyer (General Sponsor). Finally, we hope to make this an annual event and are planning for next year. If you are interested in being a sponsor, please contact RCBABarristers@gmail.com.

Greg Rizio & Judicial panelists

(L-R) Ruthann Elder, Paul Lin, Hon. Becky Dugan, Council Member Mike Gardner, Rosemary Koo, Deborah Lucky, Hon. Jack Lucky, Eric Keen

(L-R) David Hamilton, Julianna Crawford, Shumika Sookdeo, Erica Alfaro, Mayor Rusty Bailey, Alexandra Andreen

(L to R) Hon. David Bristow, Hon. Gloria Trask, Wylie Aitken

(L-R) Shumika Sookdeo, Hon. Richard Fields, Erica Alfaro, Breanne Wesche, Elisabeth Lord, Hon. Gail O'Rane, Megan Demshki

Hon. Craig Riemer and Maria Riemer

(L-R) Richard Gerhardt, Jean Serrano, and Brian Unitt

Hon. Robert Hill and Hon. Lynn Donaldson

Barristers Election Results

Congratulations to the new Barristers board elected on June 14, 2017! The new board is as follows: President, Shumika T. R. Sookdeo; President Elect, Breanne Wesche; Past President, Erica Alfaro; Treasurer, Nesa Targhibi; Secretary, Priscilla George; and Members-at-Large: Megan Demshki, Braden Holly, Kris Daams, and Paul Lin. We are looking forward to an exciting new year.

(L-R) Barristers Board – David Hamilton, Alexandra Andreen, Christopher Marin, Erica Alfaro, Shumika Sookdeo, Nesa Targhibi, Julianna Crawford, Breanne Wesche

Upcoming Events

If you would like to stay updated regarding upcoming Barristers events, please follow Barristers at:

https://www.facebook.com/RCBABarristers
https://www.facebook.com/groups/40913849174
https://www.linkedin.com/groups/7059695
http://www.riversidebarristers.org

Thank You

It has been an honor to serve as Barristers president this year. About a year ago when the board first met to establish our year's goals, the board unanimously agreed that being involved and giving back to the Riverside community were our top priorities. Our successful year is attributed to the work of our dedicated board. Thank you to the following 2016-2017 board members for their support and commitment: Julianna Crawford, Nesa Targhibi, Priscilla George, Alexandra Andreen, David Hamilton, Shumika T. R. Sookdeo, Breanne Wesche, and Christopher Marin.

I am looking forward to serving on next year's board.

Erica Alfaro currently works at State Fund.

Photos by Brenton Burke

* ATTENTION RCBA MEMBERS *

How would you like to receive (or read) the *Riverside Lawyer* magazine?

Some members have told us they prefer reading the online version of the *Riverside Lawyer* (available on our website at www.riversidecountybar.com) and no longer wish to receive a hard copy in the mail.

OPT-OUT: If you would prefer not to receive hard copies of future magazines, please let our office know by telephone (951-682-1015) or email (rcba@riversidecountybar.com).

Thank you.

Coming Soon: A Resolution to Your Right (or Not) to Privacy in Wireless Devices

by Mohammad Tehrani

I. Introduction

Cellphones need cell towers to function. Cellphones make and receive calls and text messages through radio waves transferring signals between cell towers and cell phones. Each cell tower, or cell site, offers radial service coverage between one-half and five miles, depending on the area's population and interference. As a cellphone moves between areas covered by cell sites, it automatically connects to the cell site with the strongest available signal, preventing an interruption of coverage.

Data providers monitor and store their consumers' activity recorded by cell sites, including the cellphone's location, time of phone call, length of phone call, and numbers dialed.

On June 5, 2017, the Supreme Court agreed to review *United States v. Carpenter*,[1] a Sixth Circuit decision which determined that consumers had no reasonable expectation to privacy in the records stored by cell sites. In its opinion, the Court may be required to affirm, modify, or outright overrule the current state of Fourth Amendment case law which protects only "communications" but not metadata describing those communications.

II. The Reasonable Expectation of Privacy

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]"[2] A search by the state which is protected by the Fourth Amendment may be performed only after obtaining a warrant supported by a finding of probable cause.[3]

The Fourth Amendment enumerates only four categories of protected information. Nonetheless, communications have been protected since at least 1877.[4] By 1967, the Fourth Amendment's protections had extended to areas where there was an "expectation of privacy." An expectation of privacy could be shown if: "first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable'."[5]

III. The Fourth Amendment and Metadata

Metadata, simply, is data that provides information about other data, such as time, weight, length, frequency, and location. The United States Supreme Court has distinguished metadata from data since at least the 19th century. For instance, in an 1877 opinion extending the Fourth Amendment's protections to letters in the mail, the Court determined that there was no such protection applied to the letter's "outward form and weight,"[6] which was not shielded in any manner.

The current constitutional structure of metadata analysis was created in the 1979 opinion, *Smith v. Maryland*.[7] There, the Court determined that there is no reasonable expectation of privacy when a party "voluntarily turns over [information] to third parties."[8]

The Court applied this test to "pen registers"[9] installed by a phone company at the government's request to record numbers dialed from a robbery suspect's home.[10] A pen register is "a mechanical device that records the numbers dialed on a telephone by monitoring the electrical impulses caused when the dial on the telephone is released."[11] The Court noted that a pen register "does not overhear oral communications and does not indicate whether calls are actually completed."[12] It only recorded the communication's metadata.

This distinction was conclusive. The Court determined that, while perhaps not intentional, the caller at least "assumed the risk" that his caller information would be turned over to the government. The Court reasoned that by dialing out of his phone, he voluntarily used the phone company. In doing so, he voluntarily revealed his affairs to a third party, the phone company. Then, while perhaps unexpected, it was possible that the phone company would give this information to the government. Thus, the Court concluded government's collection of this

1 *United States v. Carpenter* (6th Cir. 2016) 819 F.3d 880, certiorari granted by *Carpenter v. United States* (June 5, 2017) --- S.Ct. ---, 2017 WL 2407484 (Mem), 17 Cal. Daily Op. Serv. 53124.
2 U.S. Const. amend. IV.
3 *Beck v. State of Ohio* (1964) 379 U.S. 89, 91, 85 S. Ct. 223, 225, 13 L. Ed. 2d 142.
4 *Ex parte Jackson* (1877) 96 U.S. 727, 733, 24 L. Ed. 877.
5 *Katz v. United States* (1967) 389 U.S. 347 (Harlan, J,. concurring).
6 *Ex parte Jackson, supra,* 96 U.S. at p. 733.
7 *Smith v. Maryland* (1979) 442 U.S. 735.
8 *Id.* at pp. 743-744.
9 *Id.* at p. 745.
10 *Id.* at p. 737.
11 *Id.* at p. 737, fn. 1.
12 *Id.* at p. 737.

data was a risk that the dialer voluntarily accepted.[13]

The Court's decision equivocates assumed risk, regardless of the degree, with a voluntary turnover of information. Since there is no reasonable expectation of privacy where there is a voluntary turnover of information, there is no Fourth Amendment protection. This rationale continues to govern the analysis of whether metadata is protected.

IV. *Smith*, Cell Sites and *United States v. Carpenter*

In 2016, the Sixth Circuit determined in *United States v. Carpenter* that there is no reasonable expectation of privacy in cell site records created and maintained by wireless carriers.[14] There, the FBI obtained the cellphone numbers of members of a large group who committed a string of robberies at Radio Shack and T-Mobile stores in the Detroit area.[15] Using these cellphone numbers, FBI obtained without a warrant from the suspect's wireless carriers each phone's cell site history.[16] This information included the date, time and length of each phone call, the phone numbers engaged on the call, and the cell sites where the call began and ended.[17] The FBI was able to match the suspects' phone locations and times with the locations and times of the robberies, resulting in conviction.[18]

The Sixth Circuit opinion relied heavily on an analogy to *Smith v. Maryland*, concluding that "for the same reasons that *Smith* had no expectation of privacy in the numerical information at issue there, the defendants have no such expectation in the locational information here. On this point, *Smith* is binding precedent."[19]

Like *Carpenter,* most circuits that have addressed the issue have determined that under *Smith* cell site information is not protected.[20] However, the Third Circuit has held that "[a] cell phone customer has not 'voluntarily' shared his location information with a cellular provider in any meaningful way."[21] Similar conclusions have been reached by state supreme courts in Florida[22] and New Jersey.[23]

V. Looking Forward

Since *Smith v. Maryland*, the technology capable of collecting and storing metadata has advanced greatly, becoming larger and more continuous. The Court will have to address the interdependency of technology with modern life and the continuing sophistication of metadata collection and recordation. This may require the Court to re-examine *Smith* and determine questions of whether using *any* wireless system entails an assumption of risk that the government can access that information, whether that still constitutes a voluntary turnover of data to the government and thereby eliminate Fourth Amendment protections for modern-age consumer technology.

Mohammad Tehrani is an employee of the United States Department of Justice as a trial attorney in the Riverside Office of the United States Trustee Program (USTP). The views expressed in the article belong solely to the author, and do not represent in any way the views of the United States Trustee, the USTP, or the United States Department of Justice.

13 *Id.* at p. 743.
14 *United States v. Carpenter, supra*, 819 F.3d 880, 888.
15 *Id.* at p. 884.
16 *Id.* at pp. 884-885.
17 *Id.* at p. 885.
18 *Ibid.*
19 *Id.* at p. 887.
20 *See United States v. Graham* (4th Cir. May 31, 2016) 824 F.3d 421; *United States v. Davis* (11th Cir. 2015) 785 F.3d 498; *In re U.S. for Historical Cell Site Data* (5th Cir. 2013) 724 F.3d 600.
21 *In re Application of U.S. for an Order Directing a Provider of Elec. Commc'n Serv. to Disclose Records to Gov't* (3d Cir. 2010) 620 F.3d 304, 317.
22 *Tracey v. State* (Fla. 2014) 152 So. 3d 504.
23 *State v. Earls* (N.J 2013) 214 N.J. 564 [determining that a warrant is required under state law but likely not under federal law].

Where Do Runaway Children Wind Up?

by Kathy McAdara

Operation SafeHouse is the only shelter for runaway, homeless and at-risk youth in Riverside County. With facilities located in both the east and west end of Riverside County, we are uniquely qualified to deal with this largely underserved population. Every year we will have over 600 young people between the ages of 11-17 come through our emergency shelters. Most come in through law enforcement—they haven't done anything to put them into juvenile hall, but it isn't safe for them to be on the streets. That's where SafeHouse comes in.

Our emergency shelters provide a three week program for the young people who receive not only shelter but counseling, family counseling, a school program, and recreation. Our goal is family reunification and we are successful over 80% of the time.

Other SafeHouse programs include long term apartment living for youth ages 18-22 who are transitioning into adulthood and a variety of mental health programs offered in the schools and the community.

We are also co-chair of the Riverside County Anti-Human Trafficking task force. On the task force, SafeHouse collaborates with the Riverside County Sheriff's Department, local police departments, the District Attorney's office and others to make sure that victims are provided with appropriate services.

Since our opening in 1990 we have grown from a small, grass-roots agency to one that is serving the entire Riverside County. Along with that growth comes the need for excellent board members to help us guide our agency. I hope that when you read this you might be interested in serving as a board member—we could use your help! Please contact me at Safehouse9@aol.com and let me know when you might want to come for a tour. I'm proud of what we do and am anxious to share it with you.

Kathy McAdara has been the executive director of Operaton Safehouse since 1991.

U.S. Supreme Court October Term 2016

by Dean Erwin Chemerinsky

In many ways, October Term 2016 was unlike any other in recent memory. From the first Monday in October until the April argument calendar, there were only eight justices on the bench. This affected every aspect of the Court's work, causing them to take and decide fewer cases and to avoid matters that were likely to lead to ideologically divided 5-4 rulings. There were no cases about the most controversial issues, like abortion, affirmative action, or gun rights. In fact, the Court was unanimous in over 50% of the decisions. This is not because the justices have suddenly found great consensus, but because of the types of matters on the docket.

In other ways, though, this term was similar to the prior ones under the Roberts Court. Once more, it was the Kennedy Court as Anthony Kennedy was in the majority in 97% of the decisions, more than any other justice. Even focusing just on the non-unanimous cases, Kennedy was in the majority in 93% of all of the cases, far more than any other justice.

Of course, the most important development during the term was the nomination and confirmation of Justice Neil Gorsuch. In Gorsuch's few months on the bench, he was consistently with the most conservative justices, including voting 100% of the time with Justice Clarence Thomas.

What were some the most important rulings of the term? In the criminal area, I would point to *Pena-Rodriguez v. California*, where the Court held that a hearing should be held when there is evidence of racial bias in jury deliberations. Justice Kennedy declared: "the Court now holds that where a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee." This changes the law in 42 states and at the federal level, where previously a judge could not inquire into jury deliberations and a jury verdict could not be impeached on this basis.

The most important free speech case was *Matal v. Tam*, where the Court declared a provision of the Lanham Act unconstitutional that denied registration of a trademark that "[c]onsists of . . . matter which may disparage . . . persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or dispute." The case involved a dance-rock group, comprised of Asian-Americans, that wanted to call themselves "The Slants." They were denied registration of the trademark on the ground that this is a term disparaging to Asians. Simon Tam, the leader of the band, said the goal was to appropriate this term back to the Asian community. The Court unanimously held that this provision of the Lanham Act was unconstitutional on the ground that it was viewpoint discrimination. The Court was emphatic that the government cannot regulate speech or deny benefits for speech on the ground that it is offensive, even deeply offensive.

For court procedure, *Bristol-Myers Squibb Co. v. Superior Court*, is likely to be very important in limiting the ability to sue out-of-state plaintiffs. Bristol-Myers was sued in California Superior Court by several hundred individuals from 33 states (including 86 from California) for injuries from the Bristol-Myers drug Plavix, a drug used to prevent heart attacks and strokes in people who are at high risk of these events. There is no dispute that Bristol-Myers has extensive contacts with California: it regularly markets and promotes its drugs in California and distributes them to pharmacies in California to fill prescriptions. But the Supreme Court ruled that Bristol-Myers could not be sued by the out-of-state plaintiffs in California.

There is no dispute that Bristol-Myers can be sued in California by those who reside there and took Plavix there. Bristol-Myers, though, objected to non-California residents being able to sue in that state for the injuries they incurred elsewhere. The Supreme Court held, 8-1, that jurisdiction did not exist for the out-of-state plaintiffs to sue in California. Justice Alito wrote for the Court and said that the out-of-state plaintiffs could not sue in California because there was not an "adequate link between the State and the nonresidents' claims." Justice Alito wrote: "The relevant plaintiffs are not California residents and do not claim to have suffered harm in that State. In addition, . . . all the conduct giving rise to the nonresidents' claims occurred elsewhere. It follows that the California courts cannot claim specific jurisdiction." This will make it much more difficult to sue out-of-state corporations.

Finally, in one of its most high profile actions, on Monday, June 26, the Court agreed to review the legality of President Trump's travel ban and allowed part of it

to go into effect pending its decision. On January 27, 2017, President Trump issued an Executive Order that has been widely referred to as the "travel ban." It suspended the refugee program for 120 days, capped the number of refugees at 50,000 instead of 110,000, and barred immigrants from seven designated countries for 90 days. The United States Court of Appeals for the Ninth Circuit upheld a preliminary injunction on the grounds that it was religious discrimination.

President Trump then issued a new Executive Order, that is now before the Supreme Court. Like the prior Executive Order which was announced on January 27, the new version issued on June 26 suspends the entire refugee program for 120 days. It caps the total number of refugees admitted this fiscal year at 50,000 instead of 110,000. It bars immigrants from Sudan, Syria, Iran, Libya, Somalia and Yemen for 90 days. The prior Executive Order also included Iraq, which is not on this list. Unlike the earlier Executive Order, the new version does not exclude those who have the lawful right to be in the United States, such as those with green cards and visas.

The United States Court of Appeals for the Fourth Circuit, in an en banc decision, affirmed a federal district court injunction to keep this from going into effect. The Fourth Circuit concluded that the travel ban was based on impermissible religious animus. Soon after, the Ninth Circuit affirmed a federal district court injunction to keep this from going into effect. The Ninth Circuit, though, focused on statutory grounds and said that the discrimination based on nationality was unjustified and violated federal law.

The United States government asked for a stay of these injunctions and also for the Supreme Court to grant review. The Supreme Court granted review in both cases and they will be heard in October. Additionally, the Court, in part, granted the government's request to lift the injunction and partially allow the travel ban to go into effect.

Specifically, the Supreme Court said that the travel ban could go into effect "with respect to foreign nationals who lack any bona fide relationship with a person or entity in the United States." The Court said that it was balancing the equities and that "[d]enying entry to such a foreign national does not burden any American party by reason of that party's relationship with the foreign national. And the courts below did not conclude that exclusion in such circumstances would impose any legally relevant hardship on the foreign national himself."

By contrast, the Court came to a different conclusion for those who have a bona fide relationship with a person or entity in the United States. The Court said that "For individuals, a close familial relationship is required…As for entities, the relationship must be formal, documented, and formed in the ordinary course, rather than for the purpose of evading EO–2."

The legality of the travel ban will be one of several blockbuster cases on the docket for next term. The Court also will be deciding issues such as whether federal courts can invalidate partisan gerrymandering, whether a business owner can discriminate against gay and lesbian couples based on his religious beliefs, and whether the government must get a warrant to access cell tower information. Justice Gorsuch's first full year on the Court promises to be a blockbuster.

Erwin Chemerinsky is Dean and Distinguished Professor of Law at University of California, Berkeley School of Law.

The History of Travel Bans in the United States

by Kelly O'Reilly

The "Travel Ban" has been a hot news topic since President Trump was sworn in as the President of the United States. This executive order, original and revised, has been subjected to scrutiny in our Federal Courts and has already cycled through the U.S. Supreme Court. Even then, the bans effects are still ambiguous and details are up for litigation.

The United States has always been a nation of immigrants. We are a nation that is comprised of foreigners. The current executive order has been dubbed as a "Muslim Ban" because of the territories and countries on that list are predominantly Muslim. However, there have been other times in our nation's history that travel bans have occurred. The justifications and purpose of these bans have been upheld on its legality despite the discriminatory side effects.

In 1882, the Chinese Exclusion Act was passed by Congress and signed by President Chester A. Arthur. This act stated an absolute ten-year moratorium on Chinese labor immigration. The purpose of this ban was to prevent declining wages in the workforce post Civil-War. The economic recession and the declining work wages were blamed on the Chinese immigrants for working at low wages. Therefore, for the first time in history, Federal laws prohibited entry of an ethnic working group. The Chinese Exclusion Act also implemented new requirements on Chinese immigrants who had already entered the U.S. in that if they left the U.S., these immigrants would need to obtain certificate to re-enter. Lastly, State and Federal courts were prohibited to grant citizenship to Chinese immigrants.

The 1882 Chinese Exclusion Act expired in 1892, but Congress extended the ban for an additional ten years in the Geary Act. This ban was made permanent in 1901. In 1943, Congress repealed all the exclusion acts. The Chinese Exclusion Act was a piece of legislature passed by Congress and signed by the president which became the law of the land. At the time, the United States Supreme Court ruled that "the power of exclusion of foreigners [is] an incident of sovereignty belonging to the government of the United States as a part of those sovereign powers delegated by the Constitution. Chae Chan Ping v. United States (U.S.S.C 1889) The Court gave great deference to the plenary power of the executive and legislative branches. Looking back on the history of the Exclusion Act, most scholars have concluded that the Act was counterproductive and did not achieve the economic impact intended. Instead, it caused generations of discrimination against Chinese immigrants. However, the legality of the Act and the Supreme Court decision was never overruled. Current legislation just renders the decision obsolete.

In 1917, the Literacy Act was also a federal law that preventing the immigration of specific groups. The bill originated from the idea that mandated literacy for immigrants. However, it had a provision called the "Asiatic Barred Zone" which prevented immigrants from much of Asian and the Pacific Islands. This Act was quickly challenged by Southwestern businesses in the U.S. as it interfered with Mexican agricultural workers. Many waivers of the Act's provision was implemented and the Act was supplemented by new laws which ended the ban. However, the legality of the Act not challenged.

The Immigration Act of 1924 (also known as the Johnson-Reed Act) restricted immigration of Southern Europeans and Eastern Europeans. The Act severely restricted immigration from Africans, Arabs, and Asians. The purpose of this Act was aimed at preserving American racial homogeneity. This Act significantly curtailed immigration from foreign nations into the United States until the Immigration and Nationality Act of 1965. Again, this law was passed by Congress and deemed legal based on the plenary powers of the legislative and executive branch.

Fast forward to 2017, President Trump signed an executive order restricting entry for 90 days by citizens from Iraq, Syria, Iran, Libya, Somalia, Sudan and Yemen. The purpose behind this ban was to curb the rise in terrorist activities and figure out a method in preventing terrorists from entering the United States. The legal basis behind this executive order is 8 USC Section 1182, which states,

> "Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate. Whenever the Attorney General finds that a commercial airline has failed to comply with regulations of the Attorney General relating to requirements of airlines for the detection of fraudulent documents used by passengers traveling to the United States (including the training of personnel in such detection), the Attorney General may suspend the entry of some or all aliens transported to the United States by such airline."

However, a 1965 revision of the law prescribed that individuals cannot be "discriminated against in the issuance of an immigrant visa" because of "race, sex, nationality, place of birth or place of residence."

On January 29, 2017, a Judge in New York temporarily blocks part of the order indicating that it violates due process and equal protection guaranteed by the US Constitution. On the same day a Judge in Massachusetts issued a temporary restraining order blocking a part of the order to restrict detention and removal of those who arrived legally from the seven countries on the ban. On February 3, 2017, a US District Court Judge in Seattle blocked the ban nationwide. A federal appeals court rejected the U.S. government's request to resume the ban and the Ninth Circuit ultimately also ruled against reinstated the ban.

On March 6, 2017, President Trump unveiled a new travel ban which excluded Iraq from the list and specifically indicated that permanent residents of the U.S. were not banned. Again, the legal basis of this ban is based on the President's broad powers to regulate immigration. On March 15, 2017, a District Court Judge in Hawaii blocked the new travel ban by issuing a restraining order. The Court reasoned that the ban violates the Establishment Clause of the Constitution by disfavoring Muslims.

On June 26, 2017, the United States Supreme Court finally decided that portions of the travel ban could be enforced. The decision exempted people "who have credible claim of a bona fide relationship" with a relative or organization in the United States. The U.S. State Department announced on June 29, 2017 that lists that only parents, parent-in-law, spouses, fiancés, children and children-in-law would be exempt from the ban on visas for travel to the U.S.

Once again, the definition of people with a "claim of bona fide relationship" had to be litigated. On July 13, 2017, a federal judge in Hawaii expanded the scope of the exempt list to include grandparents, grandchildren, brother-in-law, sisters-in-law, aunts, uncles, nieces, nephews and cousins of people already in the U.S. The Department of Justice reacted immediately with an emergency request with the U.S. Supreme Court for clarification. On July 19, 2017, the Supreme Court blocked the Hawaii judge's order.

From the current Department of Justice perspective, the president has broad authority to regulate immigration and prevent entry of aliens when deemed appropriate, which is for the purpose of national security. The federal laws give the president this broad power. History has allowed for these bans regardless of its popularity and discriminatory affects as our law gives great power to the executive branch. However, one noticeable difference between the current bans and historical bans are that President Trump's travel ban is based on an executive order and not a piece of passed legislature signed into law. Additionally, the revisions in 1965 preventing the discrimination against immigrant based race, sex, nationality, place of birth or place of residence is also something that was not in existence in the prior travel bans in our history. The 1965 revision basically rendered all previous travel bans obsolete.

The legal battle of each minute detail will be subject to litigation and scrutiny. Public opinion is split on this issue. The Courts will have to look closely to the ban and its effects as it is enforced. Regardless of the final outcome, the legal decisions in the upcoming months will shape the legal precedents and the power of our executive branch for the next generation.

Kelly O'Reilly, chair of the RCBA Immigration Law Section, is a founding partner of the law firm Wilner & O'Reilly, APLC, and is a former district adjudications officer for the U.S. Immigration and Naturalization Service in Los Angeles and Orange County. As an officer, Mr. O'Reilly was given the responsibility for adjudicating employment-based and family-based applications for lawful permanent residency, requests for travel, work authorization, and waivers of inadmissibility. He was also responsible for conducting marriage fraud interviews and requests for naturalization.

MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective August 30, 2017.

Ayman N. Billah – Solo Practitioner, Corona

Steven R. Guess – Office of the City Attorney, Riverside

Homan Hosseinioun – Office of the District Attorney, Riverside

Fay Katayama – Thompson & Colegate, Riverside

Monica Marie Mauricette – Retired, Moreno Valley

Leila Nasrolahi – Affiliate (Non-Attorney) Member, Corona

Charli Steed – Varner & Brandt, Riverside

Elena Medina Torres – Law Office of Elena Medina Torres, Riverside

Benjamin White – UC San Diego, La Jolla

A True Servant: Steve Harmon, Defender of the Constitution

by Ruben Escalante

The message from the Federal Bar Association (FBA) this year, nationally and locally, has been clear: serve. Whether it is pro bono service, mentoring the new generation of lawyers, or finding ways to engage the local community; serve.

The Inland Empire Chapter of the FBA is here to serve its members and the community. This year it has set up some great civic outreach programs, such as connecting with local high schools and continuing to encourage participation in the pro se clinic. It also put on informative MCLE programs, such as its Federal Practice Seminar, where the bar had an opportunity to hear from the judges in the Eastern Division, and the 17th Annual Constitution Law Forum, where the bar heard from Erwin Chemerinsky, Dean of UC Berkeley School of Law, one of the finest constitutional scholars in the country. The FBA is also planning to put on programs pertaining to ADR, Pro Bono, and Immigration before the end of the year. It also holds social events for the bench and bar, such as this year's Judges' Night, which welcomed judges from across the Central District to the Inland Empire, and where Associate Justice Mariano-Florentino Cuéllar provided the keynote address.

One of the greatest achievements the FBA had this year, was having the opportunity to present its prestigious Erwin Chemerinsky Defender of the Constitution Award to a true servant of our community, Steven Harmon.

The Erwin Chemerinsky Defender of the Constitution Award honors an individual whose work clearly reflects his or her sworn commitment to support and defend the Constitution of the United States of America. The nominee may be a judge, a lawyer, a government official, a law enforcement official, a law professor, or any other member of the community. The nominee must practice or work primarily in the Inland Empire. Past recipients include Judge Virginia A. Phillips, Judge Robert Timlin, Judge Oswald Parada, Andrew Roth, Art Littleworth, James Parkinson, Robert O'Brien, Judge Stephen Larson, John Porter, Professor Chuck Doskow, Dale Galipo, Judge Terry Hatter, Sean Kennedy, and Terry Bridges. This award could not have gone to anyone more deserving this year.

Steven Harmon is the Riverside County Public Defender, and has been since May 2013. As the Public Defender he advocates to protect the rights of the accused throughout Riverside County. Mr. Harmon is also responsible for training and supervising those who carry out this noble task alongside him, and ensuring they do so honorably and with fidelity to the Constitution.

Mr. Harmon carries out his responsibilities with a passion only a true servant could have. In an article he penned entitled, "This is Our Passion," (*Riverside Lawyer*, March 2017) he explains where this lasting passion comes from:

> But there is something in every person who works in the Public Defender's Office that makes them have to do this work. I think it is as simple as the realization that if we do not do this, then who will? When someone's freedom is at stake they must be defended, and if

Steve Harmon and Erwin Chemerinsky

Young Kim and Hon. David Bristow

Steve Harmon and Kay Otani

Dean Erwin Chemerinsky

Rubylyn Ramirez, O.G. Magno, Steve Harmon, Eric Keen, Jeff Zimel

Benjamin Schiff, Devin McComber, Eric Keen, Dean Erwin Chemerinsky, Joshlyn Pulliam, Sharunne Foster

> we don't do it, who will? This is a noble calling we all feel.
>
> Our clients and their rights are our passion. We will never stop trying to do everything possible for them. Even though this work is hard and often discouraging, we feel blessed because we get to do this work. We are blessed because this is the greatest work a lawyer can do. Our fight is a noble fight. There is no greater feeling for us in our careers than the pride we feel at the moment we are in battle protecting another person's freedom.

The source of his passion was also reflected in his inspirational remarks during his brief acceptance speech when presented with the Erwin Chemerinsky Defender of the Constitution Award. Mr. Harmon spoke about the criminal justice system, and how its purpose is to do justice. He said, "I've seen justice when it works. It is beautiful." He also commented on how justice is a fragile thing and "needs to be defended every day." Recognizing that it is not just his office that seeks to protect justice, he observed that judges, prosecutors, and defenders are all protectors of justice and that it "takes a village" to defend the Constitution.

These are the words of a true servant. However, Mr. Harmon is more than just words. He carries out his search for justice by leading by example. As one nominator put it, "Steve Harmon has dedicated his professional life to defending the constitutional rights of those charged with criminal offenses. Mr. Harmon represents his clients with compassion, sensitivity, intelligence, and civility." Although Mr. Harmon would never ask for it, it is this leadership and commitment that is worthy of honor in our community.

There are many indications of a true servant: One who serves selflessly, one who seeks justice, loves kindness and mercy, and embraces humility, and one who lives what he or she preaches. Steven Harmon is all of these things and more. The Inland Empire is fortunate to have him, and the FBA is honored to be a part of his quest for justice.

Ruben Escalante is an Inland Empire native and continues to call it his home. He is a partner at Sheppard, Mullin, Richter & Hampton LLP, is the President of the Federal Bar Association—Inland Empire Chapter, a board member of the Public Service Law Corporation, and a Central District Lawyer Representative.

Photos courtesy of Jacqueline Carey-Wilson

Ruben Escalante, Joseph Widman, John Aki, Steve Harmon, Dean Erwin Chemerinsky, Mike Hestrin, Kay Otani

Kay Otani, Joseph Widman, Cameron Edwards, Katie Neff, Andrew Saghian, Ruben Escalante

George Mason and the Bill of Rights

by Abram S. Feuerstein

George Mason, one of the 55 delegates who went to the Constitutional Convention in May of 1787, fully intended to support a new federal framework to replace the failing Articles of Confederation. He vowed to "bury his bones" in Philadelphia rather than leave the city without a new Constitution.[1] Yet, toward the end of the Convention, after several grueling Philadelphia summer months, Mason stated that he would "sooner chop off his right hand than put it to the Constitution as it now stands."[2] James Madison then recounted that Mason left Philadelphia "in an exceedingly ill humor indeed,"[3] becoming one of only three delegates who refused to give the new Constitution the "sanction of their names."[4]

George Mason

In an American History college course almost four decades ago, upon my becoming interested in the Anti-Federalists, the professor[5] suggested delving into the reasons for Mason's change of heart and subsequent refusal to sign the Constitution. Back then, I spent a good chunk of time with the three-volume edition of Mason's papers[6] and reviewed the exceedingly small number of secondary sources that existed about Mason. I wrote a paper, received a decent grade, and went on with life.

I had not given Mason and his self-amputation threats relating to the Constitution much thought over the years. Then recently, in light of deepening political divisions emerging since the November 2016 presidential election, I decided to re-read Federalist Paper Number 10, Madison's great essay on factions. Madison's work remains a masterpiece – both of writing and political thought. Reading it is nourishing, like eating potatoes, but you will want to consume it like the best of desserts, slowly – enjoying each spoonful while hoping the experience lingers. Well, Number 10 caused me to think back to Mason. Seemingly every founder has received at least 15 minutes of recent fame; some, like Hamilton receive standing ovations nightly from Broadway audiences. Surely Mason, one of the most widely respected intellectual leaders of his time, a mentor to his younger neighbor George Washington,[7] a man described by Thomas Jefferson as being "of the first order of greatness,"[8] deserved some public recognition. I wondered if there had been new scholarship that could shed light about the decisions Mason made during the summer of 1787.

Unfortunately, the Mason literature is still skimpy, and Mason continues as a historical figure cloaked in obscurity. Yet, as further noted in this essay, to the extent we celebrate both the Declaration of Independence as the document that sets forth our founding principles, and the Constitution (with its Bill of Rights) as the document that provides a governing framework for those principles, Mason, possibly more than any other founder, deserves the largest helping of our gratitude.

Early Masonry

Mason grew up in – and really never left – Virginia's Northern Neck area. Born in 1725, he was the fourth George Mason in a family whose origins in Virginia went back to 1655.[9] With land the basis of its wealth, his family had been part of a plantation aristocracy and, during his life Mason added substantial acreage to the family's

1 Jeff Broadwater, *George Mason: Forgotten Founder,* p. 174 (Chapel Hill 2006) (hereinafter, "*Broadwater*").

2 *Broadwater* p. 198.

3 Robert A. Rutland, *George Mason: Reluctant Statesman*, p. 90 (Louisiana State University Press 1961 – LSU Paperback Edition 1980) (hereinafter, "*Rutland*"). To make matters worse, on the trip back to his home in Virginia, Mason's carriage overturned resulting in injuries that required medical treatment. *Broadwater*, p. 209; *Rutland*, p. 91.

4 *Broadwater*, p. 205, quoting Madison's convention notes. More than three of the 55 delegates failed to sign the Constitution simply because they had left the Convention before its conclusion. *Broadwater,* p. 157. In sum, 39 delegates signed the Constitution and only Mason, Edmund Randolph (Virginia's governor), and Elbridge Gerry of Massachusetts (a former U.S. Vice-President under James Madison who otherwise is best known for the word, "gerrymandering") affirmatively refused to sign. *See https://constitutioncenter.org/learn/educational-resources/founding-fathers.*

5 Jonathan C. Clark, associate professor of history at Vassar College in Poughkeepsie, New York. Mr. Clark, who died in February 1983, had been a specialist in the colonial and Revolutionary War history of New York State. Poughkeepsie served as the location of the New York State Ratification Convention, which by a vote of 30-27 ratified the new Constitution while proposing 25 items to be included in a Bill of Rights and 31 amendments. *See generally, http://teachingamericanhistory.org/ratification/newyork/.*

6 Robert A. Rutland, ed., *The Papers of George Mason* (Chapel Hill, 1970).

7 *Broadwater,* pp. 57-58; see also, Gerard W. Gawalt, *George Mason and George Washington* (Self-published 2012).

8 *Broadwater,* p. 55.

9 *Broadwater,* p. 1.

land holdings, which grew to 75,000 acres mostly planted in tobacco.[10] His father died in a boating accident when Mason was only 10.[11] Mason's uncle, John Mercer, a prominent lawyer, took an active role in Mason's upbringing and exposed Mason to one of the great private book collections in the United States.[12] Mason never attended college,[13] and Mercer's library allowed Mason to absorb the classics, books on the decline and fall of Greco-Roman republics, and major legal treatises, including the writings of Sir Edward Coke.[14]

In the late 1740s, upon reaching majority, Mason undertook the responsibility of managing the family's plantation. He worked hard, achieved success, and earned the respect and became a leader of his community. By 1750, he married Ann Eilbeck. The couple had nine children that survived to adulthood, but Ann died in 1773 after a long illness induced by giving birth prematurely to twin boys, who also did not survive.[15] The Masons built an elegant, but modest, home, Gunston Hall. Completed in 1759, Mason personally supervised the design and construction.[16] Visitors today can tour the Georgian-style home and its extensive grounds along the Potomac River.[17]

Unlike fellow Virginians such as Jefferson, Madison and Richard Henry Lee, Mason was content to lead a somewhat private life and remain at his beloved Gunston Hall. He served as a Fairfax County justice of the peace commencing in 1747 but seldom attended its sessions.[18] He was elected to the vestry of his local parish in 1749 and remained on the vestry until 1785.[19] In his early 30s, Mason became afflicted by gout, and ill health became a constant theme in Mason's life and an excuse to remain at Gunston Hall.[20] According to one biographer, the painful episodes of the illness caused Mason at times "to be essentially humorless" and a "grouch."[21]

But, the Stamp Act of 1765 dragged Mason into public life. The end of the French and Indian War had left Britain with a mounting national debt that Parliament tried to remedy by passing a series of revenue-raising measures. These included the Sugar Act, the Currency Act, and the Stamp Act, which required Americans to purchase stamps for printed materials such as legal documents or even playing cards.[22] Mason protested. In a "Letter to London Merchants," he chastised those that would treat Americans like school children, and warned that should Parliament continue to pass similar measures, there could be a "general revolt in America."[23]

The Virginia Declaration of Rights

Increasingly drawn into the public arena as the dispute between Britain and the American colonies sharpened, in 1774 Mason helped raise money to aid citizens living in British occupied Boston.[24] He also authored the Fairfax Resolves,[25] a statement of fundamental principles concerning the "rights, immunities, and privileges" to which all Englishmen were entitled and which Mason contended were threatened by Parliament's despotic "taxation without representation" enactments.

By May 1776, the Continental Congress had called upon the individual colonies to organize new governments, and Virginia proceeded to adopt a bill of rights and a new constitution.[26] Mason took the drafting lead. In short order, Mason penned drafts of Virginia's Declaration of Rights and a Constitution and Form of Government. In both documents, the self-educated Mason, a non-lawyer, quickly synthesized his knowledge of Locke, Montesquieu, Cicero, and the history of republican governments, while incorporating his wide reading of legal treatises. Adopted on June 12, 1776, the Declaration of Rights in its first Article states:

> That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

Mason's two-page Declaration noted that government's purpose was to promote "the common benefit, protection, and security, of the people, nation, or community" (Article 3). It emphasized that "whenever any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, unalienable, and indefeasible right, to reform, alter, or abolish it" (Article 3).

Mason's Declaration also contained more specific provisions recognizing the importance of the freedom of the press ("one of the great bulwarks of liberty" – Article 12); the "sacred" and "ancient" right of "trial by jury" (Article

10 *Rutland*, pp.4 and 23; *Broadwater,* p. 8. Of note, a study of the 100 wealthiest Virginians in the 1780s ranked Mason forty-second. *Broadwater*, p. 14, citing Jackson T. Main, "The One Hundred" *William and Mary Quarterly* (1954).
11 *Broadwater*, p. 2.
12 *Broadwater*, pp. 3-4; *Rutland*, p. 7.
13 *Rutland*, p. 7.
14 *Broadwater*, p. 4.
15 *Broadwater*, pp.4-5, 58.
16 *Rutland*, pp. 13-18.
17 *See generally, http://www.gunstonhall.org/.*
18 *Broadwater*, p.15.
19 *Broadwater*, pp. 10-11.
20 *Rutland*, pp. 26-69; *Broadwater*, p. 9.
21 *Rutland*, pp. 28-29.
22 *Broadwater*, p. 30-31; *Rutland*, p. 31.
23 See "Mason's Letter to London Merchants," published in the London Public Ledger, retrieved at *http://www.gunstonhall.org/library/archives/manuscripts/letter_London_Public_Ledger.html.*
24 *Rutland*, p. 39.
25 *Broadwater*, pp. 65-67.
26 *Broadwater*, pp. 81-99.

11); the "free exercise of religion, according to the dictates of conscience" (Article 16); and "a well regulated militia" albeit one "under strict subordination to, and governed by, the civil power" (Article 13). Other provisions stress prohibitions against "cruel and unusual punishments" (Article 9), and acknowledge the right of a criminal defendant to a speedy trial (Article 8), at which he cannot be compelled "to give evidence against himself" (Article 8).

Drafts of Mason's Declaration of Rights had circulated in Philadelphia newspapers, and Jefferson was fully aware of Mason's work when he wrote the Declaration of Independence.[27] Indeed, early drafts of Jefferson's Declaration seem to borrow even more heavily from Mason.[28] Although Jefferson's library likely had many of the same books that Mason owned, and Jefferson easily could draw from the same sources (*i.e.*, Magna Carta, Natural Law, and Locke), the inexorable conclusion is that Mason's Declaration served as Jefferson's model.

The Constitutional Convention

Mason at age 62 was among the oldest of the delegates that convened in Philadelphia in 1787.[29] Other delegates knew of his reputation as the author of Virginia's Declaration of Rights and its constitution.[30] Seldom venturing beyond Virginia's Northern Neck, the trip to Philadelphia was the longest by far he had taken in his lifetime,[31] and the provincial Mason grew "heartily tired of the etiquette and nonsense so fashionable" there.[32] Mason, as well as the other delegates, understood that they were in Philadelphia not merely to revise the Articles of Confederation, but to craft a new federal government that would, in Mason's words, influence "the Happiness or Misery of Millions yet unborn."[33]

Mason was an active participant at the Convention. Over its four month duration, he gave at least 136 speeches from the Convention floor,[34] a number exceeded by only four or five other delegates.[35] During the proceedings, most of his concerns related to ensuring that the new central government would not threaten local interests. He wanted to curb the concentration of power in the executive, and advocated a 3-member presidency (one each from Northern, Middle, and Southern states) as well as a council of state to advise the president.[36] These proposals went nowhere. Mason pressed for a requirement of a two-thirds majority before Congress could pass commercial regulations.[37] The Convention defeated this. Other Mason ideas were rejected – among them: a one-term limit for the President; giving Congress, rather than the President, the power to appoint judges;[38] a prohibition on members of Congress from accepting any state or federal office during their terms in office and, for national officeholders, a one-year ban after leaving Congress;[39] Mason's opposition to standing armies in peace-time;[40] and Mason's opposition to presidential pardon power.[41]

To be sure, Mason had numerous "victories." Having lost on the inclusion of "maladministration" as a basis for impeachment, the Convention adopted his "high crimes and misdemeanors" language.[42] He successfully reduced the number of votes needed to override a presidential veto from three-quarters to two-thirds of both houses.[43] And, at Mason's urging, the House would originate all revenue measures.[44] Along the way, he had a major role in brokering The Great Compromise between small and large states relating to representation in the House and Senate.[45]

Dismayed by deals brokered between Northern and Southern interests that ran roughshod over several of Mason's positions and which allowed the slave trade to continue, Mason broke with many of his Southern colleagues on the issue of slavery, and delivered the Convention's harshest speech attacking the institution.[46] He observed that slaves had:

> "The most pernicious effect on manners, every master of slaves is born a petty tyrant. They bring the judgment of heaven on a Country. As nations cannot be rewarded or punished in the next world they must be in this. By an inevitable chain of causes & effects providence punishes national sins, by national calamities."[47]

These comments were consistent with Mason's long-standing disapproval of slavery. Twenty years earlier, Mason had focused on slavery's effect on Virginia's economy, and its impact in discouraging immigration by whites because their labor was not needed.[48] Mason's knowledge

27 *Rutland*, pp. 65-66.
28 *See https://en.wikipedia.org/wiki/Life,_Liberty_and_the_pursuit_of_Happiness.*
29 *Broadwater*, p.162. According to Broadwater, the average age of the delegates was 43. *Id.*
30 *Broadwater*, pp. 162-63.
31 *Broadwater*, p. 156.
32 *Broadwater*, p. 161; Rutland, p. 85.
33 Broadwater, pp. 157-58, 162.
34 *See http://gunstonhall.org/georgemason/essays/constitution.html.*
35 *Broadwater*, pp. 165, 205-06.
36 *Broadwater*, pp. 176-77, 201; *Rutland,* p. 87-88.
37 *Broadwater*, pp. 190-97, 211; *Rutland*, p. 87.
38 *Broadwater*, p. 178-79.
39 *Rutland*, p. 85; *Broadwater*, pp. 169-70, 188-89.
40 *Rutland*, p. 88; *Broadwater*, p. 190.
41 *Broadwater*, p. 211.
42 *Broadwater*, p. 200; *Rutland*, p. 89.
43 *Id.*
44 *Id.*
45 *Broadwater*, p. 175.
46 *Broadwater*, p. 191; *Rutland*, pp. 87-88. Earlier in the Convention, Mason also opposed a Southern proposal to count slaves for purposes of apportioning representatives but ultimately did not appear to take issue with the three-fifths ratio adopted by the Convention. *Broadwater*, pp. 179, 293 n. 63.
47 *Broadwater*, p. 191-92.
48 Mason's first known public writing relating to slavery took place in the context of his opposition to the 1765 Stamp Act. *Broadwater*, p. 33.

of history also led him to believe that the Roman Republic had been destroyed by the "introduction of great numbers of slaves."[49] But Mason was not an abolitionist. Notwithstanding Mason's anti-slavery opinions, Mason owned approximately 90 slaves[50] and like Jefferson, he never freed them.[51] And, even Mason's Convention speech centered on the effect that owning slaves had on the slave-owner, and not on the individual rights of slaves.

Mason in Dissent

As the Convention closed, on September 12, 1787, the delegates debated provisions relating to a jury trial right in civil cases.[52] Mason addressed the issue by noting that a "general principle...on this and some other points would be sufficient."[53] He then said that he "wished the plan had been prefaced with a Bill of Rights, & would second a Motion if made for the purpose – It would give great quiet to the people, and with the aid of the state declarations, a bill might be prepared in a few hours."[54]

Mason knew that he could draft a Bill of Rights in only a couple of hours, and that he could base it largely on the Virginia Declaration of Rights he had written 11 years earlier. Gerry of Massachusetts made a motion for the inclusion of a Bill of Rights, which Mason seconded.[55] There was little debate on the motion. It lost by a vote of ten states to none. Either the delegates believed that a Bill of Rights was unnecessary for a government of delegated powers, or they were tired and simply wanted to go home.[56]

A few more days of Convention business remained during which Mason won some proposals, and lost others. Because the Convention had conducted most of its work in secret, Randolph made a proposal to allow the states to review the Constitution and suggest amendments to be considered at a second convention.[57] No states supported the motion.[58] Mason, Randolph and Gerry

49 *Id.*
50 *Rutland,* p. 21; *Broadwater,* p. 33.
51 *Broadwater,* p. 33-35.
52 *Broadwater,* p. 202.
53 *Id.*
54 *Id.*
55 *Id.*
56 *Broadwater,* pp. 202-03.
57 *Broadwater,* p. 204.
58 *Id.*

Gunston Hall

by Michael Bujold

I had the pleasure of visiting Gunston Hall on a warm Sunday afternoon. Though located just 25 miles south of Washington DC, George Mason's estate appears today as if time stood still for more than two centuries. Two parallel rows of mature trees stand tall above grassy fields upon entering the grounds. The placement of these trees leads visitors through the vast fields toward the Hall's grand entrance. The Hall may feel small relative to the estate's total land size and its design simple, but the perfect brickwork and detailed upstairs window wells left no doubt about the structure's elegance and distinction.

A stroll behind the hall reveals modest gardens and more open fields. But unlike the trees at the entrance, it is the absence of trees that commands visitors' attention this time: to sweeping river views in the distance. This collection of vast fields, carefully placed trees and gardens, and the flowing river in the distance gives the estate a self-contained feel. And unfortunately, though not surprising for his day, George Mason's self-contained life on the estate included slave labor. Several slave quarters stand just feet from the Hall and serve as a stark reminder that lofty ideals did not always match life's realities.

Michael Bujold is employed as a trial attorney by the United States Department of Justice (USDOJ) in the Executive Office of the Office of the United States Trustee Program (USTP). The views expressed by Mr. Bujold are solely his views, and do not represent the views of the USTP or the USDOJ.

were out of step with the other delegates, who signed the Constitution on September 17, 1787, after which it was sent to the state ratifying conventions.

Before leaving Philadelphia, Mason outlined his "Objections" to the Constitution, and shared his thoughts with local Philadelphia politicians.[59] The "Objections" were later printed in pamphlet form. The first reason Mason gave for his opposition, "there is no Declaration of Rights," became the rallying cry for those opposing ratification, to be known by their political enemies — and posterity — as Anti-Federalists.[60]

Although there were some close votes in the state ratifying conventions over the next year, the Anti-Federalists lacked organization and leadership and the Federalists prevailed. Mason, a leading Anti-Federalist in the Virginia convention, was attacked personally; his mental faculties questioned.[61] His opposition to the Constitution was attributed to wounded vanity because many of his "pet" ideas had not been adopted.[62] Mason's chief argument against the Constitution — that it did not include a bill of rights — was ridiculed as an afterthought or a delaying tactic.[63] He paid a personal price for his opposition as political differences strained old friendships. His relationship with George Washington grew distant, and Washington referred to Mason as his "quondam friend."[64]

However, to secure passage of the Convention in several states, the Federalists committed to proposing amendments at the first Congress. Madison even made a campaign promise to secure passage of a bill of rights in order to win a close race for a House seat in Virginia.[65] Madison added several proposals but largely used Mason's 1776 Declaration of Rights as a model when he introduced the amendments in Congress.[66] Aside from the amendments themselves, within a few short years the republican principles espoused by Mason, suspicious of the power consolidated in a central government, would find voice in the dominant political party in the United States. Accordingly, Mason is a political figure that fits well within the American tradition of dissent.

After the Virginia ratifying convention, Mason retired to Gunston Hall. He died in 1792. Somewhat content to see the Bill of Rights amendments to the Constitution, the gout-stricken Mason found plenty to complain about in the legislative enactments of the new government.[67] In the end, the narrow view from Mason's Northern Neck window may have prevented him from having the vision to see a new national framework that could protect individual rights adequately. But, Mason's limited view somehow enabled him to produce the bold statement of liberty and equality principles embodied in the Virginia Declaration of Rights, and allowed him to resist the passage of the Constitution until it included a Bill of Rights.

Abram S. Feuerstein is employed by the United States Department of Justice as an Assistant United States Trustee in the Riverside Office of the United States Trustee Program (USTP). The mission of the USTP is to protect the integrity of the nation's bankruptcy system and laws. The views expressed in the article belong solely to the author, and do not represent in any way the views of the United States Trustee, the USTP, or the United States Department of Justice.

59 *Broadwater*, p. 210; *Rutland*, pp. 90-91.
60 *Broadwater*, p. 211; *Rutland*, p. 91.
61 *Rutland*, pp. 94, 96; *Broadwater*, p. 225.
62 *Broadwater*, p. 213.
63 *Broadwater*, p. 212
64 *Rutland*, p. 103.
65 *Rutland*, p. 105.
66 *Id.*
67 *Broadwater*, p. 241.

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Justice Thomas E. Hollenhorst Retires From the Court of Appeal

On June 28, 2017, Associate Justice Thomas E. Hollenhorst, announced his retirement effective August 1, 2017, after 28 years and 11 months of service on the Fourth District Court of Appeal, Division Two. He is one of the longest-serving justices on the California appellate court.

Justice Thomas E. Hollenhorst

According to Presiding Justice Manuel Ramirez, "Tom was an ideal judge, that rare judge who is blessed with both a head and a heart. He worked hard inside the courthouse, but never forgot to give back to the community." Ramirez noted that his colleague describes himself as a "plough horse," adding that the description is appropriate for a man who "was one of the hardest working, most prolific appellate court justices in the state, authoring close to 5,000 opinions." Prior to Ramirez's appointment in 1990, Hollenhorst served as the Acting Presiding Justice. Ramirez remarked, "Before I arrived, Tom had taken on the work of the attorneys from two empty justice positions, in addition to his own attorneys, and authored 315 opinions. As if that was not enough, Tom began the unprecedented practice of sending tentative opinions to counsel to prepare for oral argument."

As colleagues, Presiding Justice Ramirez observed Justice Hollenhorst's dedication to others: "Tom actively participated in community service through Rotary. He was involved in judicial education, teaching judges about ethics and scientific advancements that affect the law. He encouraged innovation in court technology. He offered internships to undergraduate and law school students, providing the majority of them with their first exposure to the legal profession. Most are now lawyers, at least one is a judge, and many others are equally enjoying careers outside the law. He participated in this court's 20-plus outreach programs at high schools and law schools throughout the Inland Empire where he and his colleagues encouraged more than 10,000 students to further their education. Tom enjoys time with family and friends. He frequently led and participated in motorcycle rides throughout the Western United States, and he flew small aircraft around Southern California. He is an avid fisherman, sharing his 'catch of the day' with his co-workers at the court; he dotes on his dogs; and he continues to pursue his love of music, taking weekly piano lessons." As time went by, these colleagues shared stories of their grandchildren. Ramirez opined, "Tom loves his grandchildren. You can see it when he shares a story about one or more of them. His face lights up the room."

Justice Hollenhorst received a B.A. from San Jose State College in 1968, a J.D. from the University of California, Hastings College of Law in 1971, and an L.L.M. from the University of Virginia School of Law in 1995. From 1972 to 1981 he worked as the acting district attorney, assistant district attorney, and deputy district attorney of Riverside County. In 1981 he began his judicial career. He was a judge of the Riverside County Municipal and Superior Courts until August 1988 when he was appointed to the Court of Appeal. In 1995, he published a study of the tentative opinion program that he co-founded. (Hollenhorst, Tentative Opinions: An Analysis of Their Benefit in the Appellate Court of California (1995) 36 Santa Clara L.R. 1.)

Justice Hollenhorst influenced statewide judicial education (particularly science and the law), judicial ethics, and court technology. He chaired the Center for Judicial Education and Research (CJER) Governing Committee and the CJER Ethics Education Committee. He was a member of the American Bar Association (ABA) Appellate Judge Seminar Series Planning Committee, the California Judges Association Ethics Committee, the Science and Law Steering Judicial Council Advisory Committee, and the Court Technology Judicial Counsel Advisory Committee. He served as a faculty member for numerous CJER programs and institutes. He often spoke to doctors at Loma Linda University on medical ethics.

In Presiding Justice Ramirez's opinion, Justice Hollenhorst is a man of many talents and interests, a modern day "Renaissance Man" who, on a daily basis, worked to improve the administration of justice and the lives of those he came into contact with. He saw himself as a public servant, devoting his life to serving others, most especially the taxpayers of California.

Individual Rights: The Early Years

by DW Duke

The Constitution of the United States, as originally ratified, dealt primarily with the relations between governmental units. It contained few provisions to protect the individual. Of those provisions, the contract clause of Article I, Section 10, was the most significant. This clause provides: "No State shall...pass any...Law impairing the Obligation of Contracts..." Although the Contract Clause addressed both public grants and private contracts, it primarily protected private contractual relations. More specifically, it prohibited laws that would favor the debtor at the expense of the creditor by postponing the payment of obligations.

Despite its intended protection of private lenders, the Contract Clause was first applied in cases that involved public grants. (*Fletcher v. Peck* (1810) 6 Cranch 87, *New Jersey v. Wilson* (1812) 7 Cranch 164, *Dartmouth College v. Woodward* (1819) 4 Wheat 518.) The *Dartmouth College* case was particularly significant in that it defined the state's authority with respect to public contracts. This decision allowed states to amend corporate charters following their execution and approval, only if such power was reserved when granting the charter.

For many years, the Contract Clause acted as the greatest restraint on state economic regulations. Beginning in the 19th century, however, as substantive process became increasingly significant, the importance of the Contract Clause to protect individual rights was significantly reduced. It was not until 1977 that the United States Supreme Court in *United States Trust Co. v. New Jersey* (1977) 431 U.S. 1, resurrected the contract clause by imposing a requirement that a state law impairing a state obligation must be "reasonable and necessary to an important public purpose." While the exact role of the Contract Clause today remains uncertain, it is clearly not the dead letter it was believed to be prior to *United States Trust Co*.

Coupled with the Contract Clause in the Constitution were prohibitions on "ex post facto laws" and "bills of attainder." An ex post facto law is one that, for the purpose of punishment, retroactively alters the law in a manner substantially prejudicial. In effect, it deprives a person of a right previously enjoyed. A bill of attainder is a legislative act that imposes punishment on named persons or an easily ascertainable group, without a trial.

The final major protection against state action in the Constitution was the "Privilege and Immunities Clause" of Article IV. It states: "Citizens of each state shall be entitled to all Privileges and Immunities of Citizens in the several States." The scope of the Privileges and Immunities Clause is somewhat limited, but its primary application has been to prohibit racial discrimination. In that respect, it substantially overlaps the Fourteenth Amendment.

The limitations on the federal government provided little more protection than did the limitations placed on the states. For example, Article III Section 9 prohibited suspension of the "privilege of the Writ of Habeas Corpus" and the federal limitations included prohibitions on ex post facto laws and bills of attainder.

The Bill of Rights

During the ratification debates of the Constitution concerns about individual rights were frequently expressed. James Madison proposed several constitutional amendments at the first session of Congress. The first ten amendments to the Constitution, ratified in 1791, became known as the Bill of Rights. The scope of the Bill of Rights remained uncertain until the Supreme Court reviewed the matter in *Barron v. The Mayor and City of Baltimore* (1833) 7 Pet. 243. It was determined, with Justice Marshall writing for a majority of the Supreme Court, that the Bill of Rights served as a limitation on the federal government and did not apply to action by the states.

> The First Amendment guaranteed freedom of speech, freedom of the press, the right to assemble peaceably, the right to petition the government for redress of grievances, the free exercise of religion and the prohibition of the establishment of religion by the government.
>
> The Second Amendment guaranteed the right to bear arms and to maintain a militia.
>
> The Third Amendment placed limitations on the quartering of soldiers in private homes.
>
> The Fourth Amendment prohibited unreasonable search and seizure.
>
> The Fifth Amendment prohibited double jeopardy, compulsory self-incrimination, and the taking of property without just compensation.
>
> The Sixth Amendment guaranteed, in criminal prosecutions, the right to counsel, the right to a speedy trial, the right to confront witnesses, and the right to compulsory process of witnesses in criminal cases.

The Seventh Amendment guaranteed jury trials in civil actions where the amount in controversy exceeds twenty dollars and limited the authority of judicial review in matters of fact decided by a jury.

The Eighth Amendment prohibited cruel and unusual punishment and excessive bail and fines.

The Ninth Amendment provided that the rights of the Constitution shall not be construed to deny or disparage the rights of the people.

The Tenth Amendment provided that powers not delegated to the United States by the Constitution or prohibited by it to the States, are reserved to the States and the people.

Following the Civil War three very significant Republican sponsored amendments were added to the Constitution though they are not actually part of the Bill of Rights. The first of these, the Thirteenth Amendment, ratified in 1865, was the nation's response to President Lincoln's Emancipation Proclamation which prohibited slavery. Soon after, in 1868, the Fourteenth Amendment was ratified. It has proven to be one of the most significant rights amendments in modern constitutional analysis. Today, the Fourteenth Amendment derives its greatest popularity from two of its clauses: "due process" and "equal protection." Later, in 1870 the Fifteenth Amendment, which prohibits racial discrimination in voting, was ratified. It was the Republican response to disenfranchisement of black voters by Democrat states in the South.

Related to the Privileges and Immunities Clause of Article IV is the Fourteenth Amendment Privilege and Immunities Clause. However, the two clauses differ in substance. During *The Slaughterhouse Cases* (1873) 16 Wall 36, the Supreme Court determined that the Privileges and Immunities Clause of the Fourteenth Amendment, which prohibits states from abridging the privileges and Immunities of national citizenship, did not incorporate into its protection the Bill of Rights. As a result, the Fourteenth Amendment Privilege and Immunities Clause is seldom relied upon in litigation involving individual rights.

Excerpt from Chapter I of Principles of Liberty, DW Duke, ©1991; RC Law Publishing Company.

DW Duke is the managing partner in the Inland Empire office of Spile, Leff & Goor, LLP.

Religious Liberty… Lawyering & "The Times They are a-Changin"

by Boyd Jensen

The change contemplated by Bob Dylan and the children of the post-war (often referred to as the "greatest generation"), pushed back against the culturally intrinsic and abundant religious influences including banning "sacrilegious" films[1], Jehovah's Witnesses refusing to say the "Pledge of Allegiance,"[2] organized religious instruction in public schools and released time for religious instruction.[3] Lawyers as advocates and law makers were involved. [This author recalls prayer at the beginning of each day of public school through the sixth grade.]

However, the more current "changing times" are turbulent and have some religious adherents convinced they are on life support. Travel restrictions of Muslim-majority countries,[4] state funding of parochial schools,[5] religious liberty executive order,[6] marriage licensing between same sex people,[7] contraceptive coverage under health insurance plans offered by religious colleges,[8] business withheld from same sex wedding reception,[9] same sex couple listed as parents on birth certificates,[10] students in Christian Club opposed to religious or "personal beliefs,"[11] and crimes for assaulting practitioners of the Amish religion.[12] Lawyers as advocates and law makers are involved.

Our First Amendment on religious liberty is seemingly simple: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof…" It's historic evolution is a compelling story of progress overcoming our reaction to and habits formed from the old religious world of our past. The Puritans (theocratically-dominated Massachusetts), Roger Williams, the Quakers, pervasive anti-Catholic sentiment, the Maryland Toleration Act, the Virginia Statute for Religious Freedom, and respected philosophers, thinkers such as Adam Smith and David Hume – all important to that evolution and the development of our First Amendment. Of the 56 Declaration of Independence signers, 25 were lawyers; and about the same of the Constitution, 32 were lawyers.

What religious liberty has always required is vocal, knowledgeable and willing advocates for the beliefs of others. In this regard, our role as lawyers and members of our bar even our local Riverside County Bar Association could not be more essential. After thousands of depositions and hundreds of testimony driven presentations before triers of fact, I have concluded that the members of our profession are the most forthright and caring of our civil liberties. It is not because we are more heartfelt or wiser. Rather, it is because we spend our professional careers on the boundary between truth and error. Standing as it were, in favor of facts we know to be true, and those we believe circumstantially seem to be true. Our vocation requires we stand at that cultural junction, armed with those facts and our knowledge of the law, able to offer advice and leadership to clients and earn the confidence and respect of our peers. No group of professionals is better suited to grapple with the consequences of life, and particularly its basic freedoms, including religious freedoms, than lawyers.

We generally see ourselves as advanced and ecumenical when it comes to religious tolerance. There is merit, which supports that perception. Yet with that knowledge and perspective, comes the responsibility to lead not just here at home but abroad. Television and the internet have brought our world closer together. Our values and the values of others are patent and contrastable. The harsh and cruel realities of cultures with limited experience in religious liberty have become all too familiar.

The U.S. State Department's *International Religious Freedom Report for 2015* demonstrates the enormous

1 *Burstyn v. Wilson* (1952) 343 U.S. 495.
2 *Minersville School District v Gobitis* (1940) 310 U.S. 586.
3 *Zorach v Clauson* (1952) 343 U.S. 306.
4 *Trump v. Nat'l Refugee Assistance Project et.al.,* (June 26, 2017) No. 16-1436; *Trump v. Hawaii* (June 26, 2017) No. 16-1540.
5 *Trinity Lutheran Church… v. Comer* (June 26, 2017) No. 15-577.
6 May 7, 2017 EXECUTIVE ORDER PROMOTING FREE SPEECH AND RELIGIOUS LIBERTY.
7 *Obergefell et.al v. Hodges* (2015) 135 S.Ct. 2584, 192 L.Ed2d 609.
8 *Wheaton College v. Burwell* (2014) 134 S.Ct. 2806, 189 L.Ed.2d 856; *Burwell v. Hobby Lobby Stores, Inc.* (2014) 134 S.Ct. 2751, 189 L.Ed.2d 675.
9 *Masterpiece Cakeshop v. Colorado Civil Rights Commission* (June 26, 2017) No. 16-111.
10 *Pavan v. Smith* (June 26, 2017) --- S.Ct. ---, 2017 WL 2722472 [No. 16-992].
11 *Whitlow v. California,* case No. 3:16-cv-01715-DMS-BGS [case dismissed by party plaintiffs].
12 Department of Justice, Office of Public Affairs, *Sixteen People Resentenced for Obstructing the Investigation of Assaults on Practitioners of the Amish Religion* (March 2, 2015).

work ahead to achieve international religious liberty. The problems are pronounced but there is hope. "When al-Shabaab militants attacked a bus in Kenya in December 2015, reportedly with the intention to kill Christians, a group of Kenyan Muslims shielded the Christian passengers and told the attackers they were prepared to die together. The Muslims refused to be separated from their fellow Christian travelers and told the militants to kill them all or leave them alone." (*Report's "Executive Summary."*)

Parishioners of the Emanuel African Methodist Church, alongside their lawyers, set an example we here in Riverside appreciate. Our community and Islamic Center in Riverside were saddened, following the San Bernardino terrorist attack; and many can recall the shooting of six at Riverside City Hall in 1998. In Charleston, South Carolina understanding and forgiveness were offered, along with seeking justice under the law for the community, hurt by killing of nine black citizens and church members.

Religious freedom, as many other civil rights, exists within the umbrella of societal tolerance. Tolerance for religious beliefs, differences in DNA and the effects of environment; tolerance for weakness and mistakes, for discipline and the expectation of excellence; and tolerance in speech and in behavior being necessary to effectively, justly and fairly manage the challenges of modern life. In this regard, equipped with a homogenous and yet expanding population around the world, we are able to embody the best of our beliefs of charity, forgiveness, hospitality and loyalty...and as lawyers we are best placed to continue to so serve.

Boyd Jensen, a member of the Bar Publications Committee, is with the firm of Garrett & Jensen in Riverside.

Chief Justice Cantil-Sakauye: Protecting Access to Justice for All People

by Jillian Duggan-Herd

On an annual basis, the Inns of Court in Riverside and San Bernardino counties meet for a joint session and program to focus on matters of ethics, skills and professionalism. This year the meeting was held in Palm Desert with the California Chief Justice Tani Cantil-Sakauye; Hon. Douglas P. Miller, Associate Justice of the Court of Appeal, 4th District; and Hon. Marsha G. Slough, Associate Justice of the Court of Appeal, 4th District slotted as the speakers for the evening. The format for the presentation was a question-and-answer session with the three honored guests taking turns answering questions from the moderator and audience.

At the onset of the presentation, the moderator asked Chief Justice Cantil-Sakauye about the letter she had written the week previous to Attorney General Jeff Sessions and Secretary John Kelly regarding ICE policy and immigration agents appearing at courthouses in California to target undocumented immigrants. In this letter, the Chief Justice pled with the federal government officials to consider courthouses as a sanctuary just like hospitals and churches as a safe haven for individuals from ICE detention. The Chief Justice's reasoning was to ensure equal and unbiased access to justice for all individuals and to not cool public participation in the justice system. In today's political climate, the Chief Justice's open letter has been met with ardent support as well as severe backlash. At our meeting, I was particularly struck by the Chief Justice's explanation as to why she felt she had no choice but to write such a letter. In her deductive reasoning, Chief Justice Cantil-Sakauye explained that the Governor has his duties, the police force have their responsibilities, and she felt as the top administrator for Courts, she had no choice but to state her concerns and requests to ensure trust between citizens and the justice system endured. The Chief Justice convincingly stated this letter was not political, but a necessity to protecting access to justice for all people.

Although the Chief Justice's letter was an initial focal point of the evening, she addressed many other issues and concerns involving the bar, the court system, funding, and her role as the Chief Justice. She commented on her many duties, including but not limited to the head of the State Bar of California, administration and business aspects of the Courts of California, as well as her own case load with the Supreme Court of California (which is no less than that of her fellow justices). Chief Justice Cantil-Sakauye articulated her ability to balance her many important duties and roles to the assistant research attorneys and a valiant team of individuals, judges, and justices on the Judicial Council.

The other presenters, Justice Miller and Justice Slough, both discussed their involvement with the Judicial Council and issues affecting the current state of our local courts. Justice Slough spoke about the use of technology in the court system with excitement. However, Justice Slough's outlook was realistic regarding the constant advancement in technology as a limit to the courts ability to use the technologies available at the same rate and pace as other industries. There was an acknowledgement from the panel of the frustrating disconnect between the development of new technologies from what is currently being implemented. However, the technological advancements that have been integrated have assisted the courts, practitioners' and the bench in serving litigants more efficiently and effectively. On a hopeful note, it was conveyed the incorporation of technology in the courts was an evolving and ever-changing process that will not stop developing.

The budget of the courts was also discussed at length and there was an acknowledgment from the Chief Justice that Riverside and San Bernardino counties are in desperate need of more judicial officers based on the population in these two large counties. On this note, the Chief Justice explained her role in working with the legislative and executive bodies of the State of California to address this shortfall to advocate for further spending; however, the turnover rate and short legislative sessions frustrate the work that is done in one legislative session as it is not necessarily carried over to the next. As a temporary solution, money has come from other sources to open up further seats, but there is still a huge deficit in the judges required in Riverside and San Bernardino counties to serve the growing population in a timely and effective manner.

The drive for this meeting was far for most, but well worth the time. Although most attendees were initially star struck by the acclaimed guests, after listening to the Chief Justice and Associate Justices speak so candidly about a multitude of issues facing the bench and bar, their depth of knowledge and passion towards their many roles was genuine and relatable.

Jillian Duggan-Herd is an associate attorney with the Law Office of Heather Cullen and has been practicing family law for the last 7 years.

Graduation of 2016-2017 Class of the RCBA-Riverside Superior Court New Attorney Academy

by Robyn A. Lewis

In October of 2014, the Riverside County Bar Association and the Riverside Superior Court launched a new training program for new attorneys, the New Attorney Academy.

The purpose of the New Attorney Academy ("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.

This year, the Academy began its third term in October with the curriculum taught by judges and noted attorneys in the community. Topics of the classes included an introduction to the legal community, a practical and intensive primer on pleadings, depositions, 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. Students were given tours of the Historic Courthouse, including a "behind the scenes look" at the clerk's office, the Family Law Court, and the Court of Appeals. The students enjoyed an introduction to trial that included an interactive class on voir dire and tips on openings, closings, direct and cross examinations from some of the most notable trial attorneys in the Inland Empire.

At every session, the class attended 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.

Students of the Academy were recognized for their participation at the May 2017 RCBA General Membership meeting and received a certificate, graduating them from the Academy.

Once again, the Academy was an enormous success, which is due in large part to the efforts of the Riverside County Superior Court and members of ABOTA (American Board of Trial Advocates) and CAOC (Consumer Attorneys of California, Inland Empire Chapter), and most particularly Judge John Vineyard, Judge Sharon Waters, Judge Gloria Trask, and Greg Rizio.

Back row (l-r) – Heidi Stryker, Leila Moshref-Danesh, Craig Hayes, Priscilla George, Leoni Gardner, Megan Demshki, Amelie Kamau, Samantha Hall-Jones, Theodore Lee. Front row (l-r) – Erika Green, Erica Alfaro, Judge Sharon Waters, Judge John Vineyard.

If you are interested in obtaining more information about the 2017-2018 New Attorney Academy, please contact Charlene Nelson at the Riverside County Bar Association or Robyn Lewis at robynlewis@jlewislaw.com.

Robyn Lewis is with the firm of J. Lewis and Associates, APLC. She is the chair of the New Attorney Academy and a past president of the RCBA.

Photo by Breanne Wesche

Opposing Counsel: James Husen

by L. Alexandra Fong

The Family Guy

James "Jim" Husen has been practicing mainly family law here in Riverside since 2000. What he particularly enjoys about family law is helping parents become better mothers and fathers of their children and helping hurting, confused litigants through the difficulties of divorce and custody disputes.

James "Jim" Husen

Jim grew up in Corona and graduated from Norco High School. He joined the Navy on his 18th birthday and spent seven and a half years traveling the world on an aircraft carrier with 6,000 other men. Jim was in charge of training other sailors how to handle radioactive materials while working on nuclear systems and his future wife Dorothy (who was also in the Navy) was his assistant. They later married, had two children and now have one granddaughter.

Jim decided to become an attorney while working for his younger brother, Brad, who is a personal injury attorney in Corona. Upon passing the bar exam in 2000, he opened his own practice, focusing mostly on family law. During this time, Jim and Dorothy struggled with both parenting and marital satisfaction issues. A counseling program helped them so much they later became certified facilitators of the program and helped other families with marriage, family, and premarital counseling.

Jim found the counseling principles he was learning helpful in his family law practice as he advised his family law clients. While on vacation in Alaska, he and his wife were inspired to become licensed marriage and family therapists by another vacationing couple, who, when describing their vocation, told them that they help people "find their true selves."

While continuing to work full time as a family law attorney, Jim and Dorothy together obtained master's degrees and became licensed as marriage and family therapists. Jim's experience as a therapist often helps him negotiate difficult cases. For example, he uses therapeutic listening skills when negotiating a deal for a client which creates the trust needed to reach acceptable outcomes for both sides without threats or making things worse.

Last year, Jim obtained his doctorate in clinical psychology so if you want to, you can call him Dr. Jim when you see him around the courts. Recently, he published a book entitled *A Case Study Treating Complex PTSD: One Woman's Heroic Journey* (ISBN 9781520796734). This book represents the culmination of Jim's experience and education in the assessment and treatment of childhood trauma. He is currently working on another book focusing on domestic violence and its effect upon normative child development.

Jim will obtain his license in clinical psychology next year and plans to use his knowledge and skills as a therapist, psychologist, and attorney to promote a deeper, more scientific understanding of the psychological and human factors underlying the disputes people bring to their attorneys and the courts.

After Jim becomes a licensed Clinical Psychologist, he will continue practicing family law while becoming established in this new field. He will be available as an expert witness in various cases, including family law, criminal law, personal injury, probate, and juvenile dependency. He can be reached at (951) 781-8985 or via his website at: http://www.jimhusen.com.

L. Alexandra Fong is a deputy county counsel for the County of Riverside, handling juvenile dependency cases. She is the president-elect of the Riverside County Bar Association and Riverside County Bar Foundation, Inc. She is also vice president of the Leo A. Deegan Inn of Court.

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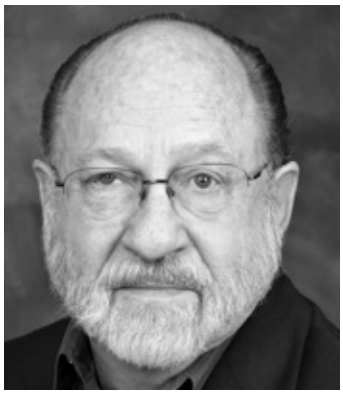
Editor's Note: *RCBA Dispute Resolution Service (DRS) is pleased to introduce you to the members of our experienced panel of neutrals who dedicate their time and legal expertise to our Riverside County public benefit alternative dispute resolution (ADR) programs. Please enjoy learning more about DRS panelist Don Cripe, whom the organization is honored and privileged to have involved in its private and court ADR programs.*



Donald B. Cripe

On any Friday morning, mediator/arbitrator Don Cripe is easily recognized roaming the halls of the Riverside courts wearing a cowboy hat and, usually, an Aloha shirt beneath his jacket. What seems to be a lifetime ago, Don became a panelist at DRS through the encouragement of Mike Donner and Geoff Hopper. He had been mediating "unofficially" for a while under the mentorship of Judge Charlie Field (Ret.). Once the relationship with DRS became official, Don became committed to the ADR field of practice.

Don closed the doors of his law practice in 2010. Since then, he has not looked back or regretted the decision. Now a member of a variety of professional ADR organizations and a co-founder of his own ADR service, CAMS (California Arbitration Mediation Services). During his 20 years of ADR service, Don has mediated a wide variety of cases throughout the Inland Empire. For a period of about five years, Don was the mediation panel supervisor for the program providing mediation services to the San Bernardino County Family and Civil Courts. Since the inception of the Riverside family court VSC program, Don has worked on behalf of DRS as a recruiter and liaison between DRS and the family court mediation panel. Before the family court mediation program began in 2010, Don had been active with the family court in previous mediation endeavors, working closely with bench officers and a subcommittee to design and implement the program. Don also serves on the Riverside County Superior Court civil mediation panel, besides being an active member of the Trial Assignment Mediation (TAM) panel. Augmenting his understanding of the court processes, Don is also a member of the Court's ADR committee.

Don is also a member of the commercial and consumer panel of arbitrators and mediators for the American Arbitration Association. Recently, he has been mediating AAA cases from the Los Angeles County District Attorney's Office to resolve consumer claims against Wells Fargo Bank. To fill his free time, Don is also a qualified panelist for the American Health Lawyers' Association, California Association of Realtors, the California Agricultural Mediation Program, and serves as an arbitrator for the Kaiser Office of Independent Arbitrators. For the past several years, Don has been an adjunct professor at the University of La Verne College of Law where he teaches mediation and negotiation. Aside from the above and administering his own company, Don lectures foreign graduate students on International Negotiation for Cal State San Bernardino.

"There is not a day I regret becoming a mediator," says Don when asked about career choices. "In this racket, I finally feel as if I am performing a service not only for our courts but, more importantly, for the parties who find themselves embroiled in litigation. A signed settlement agreement is as exciting to me as were verdicts in favor of my clients. A great sense of euphoria and satisfaction." Don is also proud of his service with DRS, stating, "I feel privileged to be among the panel of fine arbitrators and mediators with DRS. I get to learn from them to improve my skills."

Don explains his approach to mediation is eclectic, using what he refers to as the "chaos approach" in which he claims to keep everyone confused until he figures out what is going on.

Experienced and effective, Don has been a valued member of the DRS panel.

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27th ANNUAL RED MASS

Tuesday, October 3, 2017, at 6:00 p.m.

Our Lady of the Rosary Cathedral
2525 North Arrowhead Avenue, San Bernardino

The entire legal community and persons of all faiths are invited to attend the 27th Annual Red Mass on Tuesday, October 3, 2017, at 6:00 p.m. The mass will be held at Our Lady of the Rosary Cathedral, which is located at 2525 North Arrowhead Avenue in San Bernardino. The chief celebrant will be the Most Reverend Gerald R. Barnes, Bishop of the Diocese of San Bernardino. A dinner reception in the parish hall hosted by the Red Mass Steering Committee will follow the mass.

The Red Mass is a religious celebration in which members of the legal community of all faiths invoke God's blessing and guidance in the administration of justice. All who are involved in the judicial system, including lawyers, judges, legal assistants, court personnel, court reporters, court security officers, and peace officers, are encouraged to attend the Red Mass.

Nominees Invited for the Saint Thomas More Award and the Saint Mother Teresa of Calcutta Award

The Red Mass Steering Committee is accepting nominees for both the Saint Thomas More Award and the Saint Mother Teresa of Calcutta Award. Each award will be presented to a person who gives hope to those in need, who is kind and generous in spirit, and who is an overall exemplary human being. The Saint Thomas More Award is given to a lawyer or judge and the Saint Mother Teresa of Calcutta Award is given to anyone who is a member of the legal community or has made contributions to the legal community. The awards will be presented at the reception following the Red Mass.

The Tradition of the Red Mass

The Red Mass is celebrated each year in Washington, D.C., where Supreme Court justices, members of Congress, and sometimes the President attend at the National Shrine of the Immaculate Conception. Since 1991, the Red Mass has been offered in the Diocese of San Bernardino, which covers both Riverside and San Bernardino counties. For further information about this event or to nominate an individual to receive an award, please contact Jacqueline Carey-Wilson at (909) 387 4334 or Mitchell Norton at (909) 387-5444.

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