VOLUME 74 | NUMBER 4

APRIL 2024

RIVERSIDE LAWYER

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The Official Publication of the Riverside County Bar Association

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MAGAZINE

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★★★★★ *"King Law picked up my medical malpractice case and we found our self in trial at the San Bernardino Superior Court. During our 3 weeks of trial, I found the King brothers to be amazing trial lawyers. They clearly laid out the chronology of events and where the physician did not meet standards of care. I especially appreciated their strong, moral approach. These are not typical lawyers. They are the ones you hope to have on your side."*

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PRESIDENT'S Message

by Mark A. Easter

"A WEEK OFF THE GRID... IN CUBA"

So last month, I had the opportunity to join a team of people assisting some churches in the Santiago region of Cuba. Santiago is on the opposite side of the island from Havana, where most of the tourist activity occurs. We spent most of our time in the town of Cobre, which is the location of a copper mine that dates back to the 1500s…the first copper mine in the "New" World. Slaves from Africa worked in this mine for several hundred years; many of the current residents of Cobre are descendants.

What an adventure! This was an out of my comfort and control zone experience unlike any I had ever been before. Virtually no internet access, or cellphone/text capability, the entire time there. I was told that sometimes the government just "turns off the internet," especially if there is unrest anywhere in the country. Several times a day there were electrical blackouts that would often last 3 or 4 hours. And almost NO commerce. Virtually no place to buy even a can of soda, pack of gum, or bar of soap.

This is, needless to say, a very challenging place to live. Very hard for people to get food, shoes, basic medicine, or gas. A new pair of shoes costs the equivalent of a working person's monthly wages. Construction workers have no work because there is no fuel for the cement trucks. In fact, the government apparently "sends" doctors to Venezuela in exchange for fuel shipments. There are very few cars on the road. But lots of horse-drawn carts and wagons. I spoke with several women who had a husband or son in Nicaragua or Mexico, trying to make their way to the U.S. because conditions are so bad.

Taxicab, Cobre style (Diosmel waiving on the right)

AND YET! The people I met were friendly, kind, and happy. People lived in close quarters with each other and called their neighborhood "familia". The pastor of the church I mainly worked with was a former soldier in the Cuban Army and member of the Communist Party—but now he leads a congregation of joyful, enthusiastic people—people who clearly care about their community. And I heard the most amazing, vibrant, and soulful music! Religious activity is more or less only restricted in Cuba in public areas…. not in homes or "registered" churches.

And…while it was great to see the Cuban architecture, colors, classic old cars, mountains and jungle, the highlight for me was the numerous visits I had to homes and the stories I heard. Aided by my interpreter, a 30-year-old

continued on page 6

Typical Cuban colors!

One of the families I visited…

Another awesome family…

BARRISTERS
President's Message

by David P. Rivera

"Of Counsel"—Applications and Ethical Implications

The "of counsel" title once denoted a somewhat dusty relationship between a senior lawyer and a law firm. No more. Its meaning has evolved over decades. Today, the "of counsel" designation encompasses so many relationship variants that it has no single description. Examples include strategic working relationships between solo practitioners, a law firm and a part-time practitioner, and a law firm and an expert in a particular area of law.

As a more precise example, picture a close working relationship between two small firms specializing in franchise law. The first is skilled at franchise agreement drafting and negotiation. The second is reputed for its franchise law trial attorneys. The two firms complement one another, covering an area of expertise absent in the other.

This article broadly reviews the hallmarks that identify an "of counsel" relationship and some of the ethical implications that arise from it.

I. Description and Hallmarks

Traditionally, law firms marshaled their own ranks of attorneys—ranging from associates to partners—in service to their clients. The "of counsel" designation signifies a relationship distinct from those that ordinary job titles evoke. The conventional description of an "of counsel" attorney generally identified a retired partner who remained available to a firm in a consulting role. The evolving description encompasses many possibilities, such as a part-time affiliate, a senior attorney with no expectation of promotion to partner, or even a solo practitioner engaged by a firm to satisfy staffing shortfalls or provide special knowledge.[1]

The California Rules of Professional Conduct identify some hallmarks of an "of counsel" lawyer: such a lawyer maintains a "close, personal, continuous, and regular" relationship with a law firm, though not as an associate, partner, officer, or shareholder.[2] The Supreme Court of California has agreed with the State Bar, adding that "the essence of the relationship between a firm and an attorney of counsel to the firm 'is the closeness of the counsel' they share on client matters."[3]

The State Bar has elaborated on the "of counsel" designation, stating that it is acceptable to maintain an "of counsel" relationship and maintain a separate source of work, "so long as conflicts and other ethical implications do not arise." Guidance on the matter sets no limits on the number of "of counsel" relationships. Rather, it's based on the qualitative criteria of Rule 1.0.1, comment [2]. As an illustration, franchise law firm 'X' may theoretically serve as "of counsel" to law firms 'Y' and 'Z.'[4]

II. Ethical Implications

A. Conflict Analysis and Disqualification

The principal ethical issue regarding "of counsel" relationships is whether an "of counsel" attorney is considered to be affiliated with a firm so that the disqualification of one is imputed to the other.[5] The short answer is, "yes, disqualification imputes."[6]

California has adopted a single, de facto firm analysis for purposes of avoiding conflicts of interests.[7] As a result, all current and former clients of the principal firm and the "of counsel" attorney become relevant in determining ethical obligations and disqualifications. "[I]f the 'of counsel' is precluded from a representation by reason of rule [1.7] of the California Rules of Professional Conduct, the principal is presumptively precluded as well, and vice-versa."[8]

Imputed disqualification is based on policy reasons underlying the duties of loyalty and confidentiality. Attorneys have a duty of loyalty to preserve public confidence in the legal profession and the judicial process.[9] Attorneys obey confidentiality obligations to promote trust in client-attorney communications, which are fundamental to our legal system.[10] The close, personal, continuous, and regular nature of "of counsel" relationships involves

1 *People ex rel. Department of Corrections v. Speedee Oil Change Systems, Inc.*, 86 Cal.Rptr.2d 816, 829 (Cal. 1999)

2 Cal. Rules of Pro. Conduct R. 1.0.1 cmt. [2] (2018).
3 *Speedee Oil*, at 829.
4 State Bar Standing Comm. on Pro. Responsibility & Conduct, Formal Op. No.1993-129, pp. 1-2.
5 *Speedee Oil*, at 830.
6 Ethical screens, which are beyond the scope of this article, can avoid disqualification in some situations. Cal. Rules of Pro. Conduct R. 1.0.1(k), cmt. [5] (2018).
7 *Speedee Oil*, at 830.
8 *Id.*, at 830.
9 *Id.*, at 824.
10 *Id.*, at 828.

several of the same elements that support the established rule of vicarious disqualification for law firm associates, partners, officers, and shareholders.[11]

B. Fee Agreements and Fee Splitting

If an "of counsel" attorney seeks to divide fees with a principal law firm (e.g., he or she will earn a percentage of a client's fees paid to the firm), Rule 1.5 requires that the lawyers enter into a written agreement to divide the fee, that the agreement be fully disclosed in writing to the client, and that the client consent in writing to the division of fees.[12] Not only does a client have a right to know the basis for fee calculations, he or she is also entitled to know the basis for, and the extent of, fee splitting. Disclosure helps clients monitor and manage legal fees. It also discourages fee-creep that might otherwise be prevented by preestablished fee provisions.[13]

III. Summary

The "of counsel" relationship is an evolving one that finds application in a number of contexts. One common context exists in a cooperative relationship between transactional attorneys and trial attorneys. While these relationships can be beneficial to both sides of the relationship, it is important to know the identifying hallmarks. Attorneys in an "of counsel" relationship must be aware of the ethical implications that arise from it, namely imputed disqualification and the requirement for written fee agreements, client disclosure, and client consent.

Unrelated fun fact: International "Be Kind to Lawyers Day" is a globally celebrated holiday (of sorts) that occurs on the second Tuesday of April. This year, the holiday falls on April 9. Be kind to yourself (and other attorneys)!

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Contact me directly by email at drivera@alumni.nd.edu, or by text or phone call at (909) 844-7397.

David P. Rivera is a solo practitioner of business law in Highland, treasurer of the Hispanic Bar Association of the Inland Empire, and a member of the RCBA Bar Publications Committee.

11 *Id.*, at 830.
12 Cal. Rules of Pro. Conduct R. 1.5 (2018).
13 *Chambers v. Kay*, 126 Cal.Rptr.2d 536, 548 (Cal. 2002).

President's Column-continued from page 3

Mariano (left) and Diosmel

Con Mariano, mi interpreter much bueno! (waiving on the right)

man named Mariano, who teaches English at a Cuban university, I was able to hear from teachers, farmers, the seamstress, the guard, the hairdresser, construction workers, store owners, the refrigerator/freezer repair guy, and the nurse coming home after a long night shift (just like my own daughter back home). People who were struggling, but kept their spirit and sense of humor, and were very welcoming to this English-speaking, fedora wearing hombre from Los Estados Unidos. I also got to meet Diosmel, a very humble and courageous man, who works as a chaplain to men and women in a Cuban jail. Diosmel told me that the Cuban Government lets him work with these inmates because it recognizes that they come out of jail "with more discipline" as a result. He was very inspiring.

So it was a week without the ability to call, text, search the internet, buy things in a store, order food on a menu, or even count on electricity. But it was a week WITH some amazing people…people who I could empathize with…but also appreciate and learn from… that all of the distractions, conveniences, comforts, luxuries, and escapes we have here are to be appreciated and grateful for…but they don't necessarily result in happiness. CUBA…a fascinating place with struggling, resilient, and beautiful people…I shall return!

Mark A. Easter is the president of the RCBA, a partner at Best Best & Krieger LLC, and has been residing and practicing law in Riverside since 1989.

Practicing Responsibly and Ethically: Pre-Trial Publicity – A Tactical Balance

by David Cantrell and Cole Heggi

In high-profile trials like those involving celebrity disputes, sensitive employment discrimination matters, or a big-time corporate scandal, the court of public opinion can quickly intrude into the courtroom. Media relations (including of the "social" variety) connected with legal proceedings can be a tightrope walk for attorneys, especially under the watchful eye of Rule 3.6 of the California Rule of Professional Conduct. The Rule sets strict boundaries for lawyers' public statements before and during trial, aiming to preserve the sanctity of the judicial process while acknowledging the undeniable influence of public discourse. As usual, however, the Rule leaves a lot of room for the lawyer to use his or her best judgment in edge cases where there is no obvious course to take.

The crux of Rule 3.6 is that a lawyer is forbidden to make public statements that "the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter." In the age of social media, anything a lawyer posts on X or Facebook immediately counts as being publicly disseminated. Thus, the main issue to decide before posting on social media about your client's case is whether it will materially prejudice the trial.

Rule 3.6 provides a list of permissible subject matter for lawyers to publicize, provided that doing so does not violate the duty of confidentiality. Permissible information for publication includes the claim or offense alleged, information contained in a public record, the fact that an investigation is in progress, and the scheduling or outcome of any hearing or other step in litigation. (Rule 3.6(b)(1)-(4). Lawyers may also request assistance in obtaining evidence or information relating to the case. (Rule 3.6(b)(5). In some circumstances, a lawyer may issue a warning that a person involved in the case presents a danger to the public. (See full text of Rule 3.6(b)(6).) Finally, in criminal cases, lawyers are also permitted to publicize certain details about the accused, the investigation, and the arrest, and may request information about a suspect not yet apprehended.

While any decision whether to communicate publicly about a case depends on the particular circumstances, certain statements are completely out of bounds. Never present information to the public that is relevant to a material issue but would be inadmissible if presented at trial. (Rule 3.6, Comment [1].) Never issue false or deceptive statements about the case. (*Ibid.*) And do not make a public statement that violates a gag order, protective order, or confidentiality rule.

A lawyer deciding whether to publicize information should also think about how the timing of the statement will affect its prejudicial impact. A statement issued on social media early in a lawsuit that will not go to trial for a year or more will have a different impact than a trial lawyer's live tweet during voir dire (don't do this).

In some situations, Rule 3.6(c) offers a strategic lifeline, permitting lawyers to make statements that "a reasonable lawyer would believe are necessary to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client." This provision enables lawyers to issue statements to correct misinformation or false narratives in the public domain, provided these communications are carefully worded to avoid further prejudicing the case. By leveraging Rule 3.6(c), lawyers can engage with the media in a way that upholds the integrity of the trial process, ensuring that their interventions are targeted, ethical, and designed to maintain the balance between the right to a fair trial and the public's right to be informed.

If the Rule does not provide a clear answer for how to act in a specific situation, our best advice is to use common sense and to consider the integrity of the judicial process as the paramount concern. As with all other writings on social media, the safest bet is to simply not hit send/post/tweet unless you are certain about the impact of the content. If all else fails, consult an attorney who specializes in legal ethics.

David Cantrell is a partner with the firm Lester, Cantrell & Kraus, LLP. His practice focuses on legal malpractice and professional responsibility issues. David is certified by the California State Bar's Board of Legal Specialization as a specialist in legal malpractice law.

Cole Heggi is senior counsel at Lester, Cantrell & Kraus, LLP, where he also represents and advises clients on legal malpractice and professional responsibility issues.

Laughter is Timeless
The Joint Meeting of the Inland Empire Chapters of the American Inn of Court

by L. Alexandra Fong

The title of this article is the beginning of a famous quote by Walt Disney: "Laughter is timeless, imagination has no age, and dreams are forever." Walt Disney, winner of twenty-six Academy Awards (from fifty-nine nominations), holds the record for the most Academy Awards in history and was the subject of discussion at the joint meeting of the Inland Empire Chapters of the American Inns of Court.

On Wednesday, February 21, 2024, the Leo A. Deegan Inn of Court (Deegan Inn) hosted the joint meeting. As host of the evening's festivities, the Deegan Inn was responsible for selecting the speaker, and choosing the venue and caterer for the event. Stefanie Field, president of the Deegan Inn for the 2023-2024 program year, enlisted the assistance of a volunteer committee of Deegan Inn members, past and present, to assist in this exhausting, but exhilarating adventure.

Members from the Honorable Joseph Campbell (San Bernardino) Inn of Court, Southwest (Temecula) Inn of Court, The Warren Slaughter-Richard Roemer (Desert) Inn of Court traveled to Downtown Riverside for the dinner event, which was held at The Cheech Marin Center for Chicano Art & Culture of the Riverside Art Museum.

Hon. Les Murad (The Campbell Inn), Christopher Lockwood (The Campbell Inn), and Timothy Ewanyshyn (The Slaughter-Roemer Inn) stand in front of the 26-foot-tall lenticular installation by brothers, Einar and Jamex de la Torre

Over one hundred and twenty-five members of the four Inns were present. Members of the Inns were able to tour The Cheech's exhibits prior to the dinner meeting.

With the assistance of generous sponsors, JAMS, the Law Offices of Dawn Saenz, Thompson & Colegate, and the Briseno Law Firm, the Deegan Inn was able to defray the costs of the event.

Best-selling author Dr. Jeffrey Barnes was the evening's keynote speaker, and the topic of the discussion

Abram Feuerstein, past president of the Deegan Inn, prepares to swing at the piñata in this painting, "Agárate Papa" by Francisco Palomares

was "Walt Disney saw the world differently and you can too." Dr. Barnes is the author of two books based on the life of Walt Disney and the creation of the Disney theme parks, *The Wisdom of Walt* and *Beyond the Wisdom of Walt*.[1] Dr. Barnes enthralled the audience with stories of Walt's struggles, as well as his own struggles, including a brain tumor. Walt Disney's courageous story of resilience teaches us how a few simple choices can lead to greatness.[2] He reminded the audience that every great story does not end with "happily ever after" and that conflict is the key to an interesting story. The presentation reminded the audience of another Walt Disney quote, "All our dreams can come true, if we have the courage to pursue them."

The evening concluded with a self-guided tour of The Cheech, for those who were interested in viewing any of the almost 500 works of Chicano Art, including paintings, drawings, prints, mixed-media artworks, sculpture, and photographs.

Stefanie Field, president of the Deegan Inn (2023-2024), and Dr. Jeffrey Barnes, keynote speaker, stand in front of the two-story lenticular installation that projects an animated image of the Aztec Earth Goddess Coatlicue

1 https://thewisdomofwalt.com/
2 This is a quote from Dr. Barnes' website "The Wisdom of Walt."

If you are interested in joining The Leo A. Deegan Inn of Court, please visit our website at: www.deeganinnofcourt.org for additional information, including an application to apply for membership. Applications are accepted now through mid-summer, for the 2024-2025 program year.

L. Alexandra Fong is a deputy county counsel for the County of Riverside, practicing juvenile dependency in its Child Welfare Division. She is a member of the Bar Publications Committee. She is co-chair of the Juvenile Law Section of RCBA. She is a past-president of the RCBA (2017-2018) and the Leo A. Deegan Inn of Court (2018-2019.) She is an Emeritus of the Leo A. Deegan Inn of Court.

Gabriel White, Mary Reyna, and Abram Feuerstein, current and former members of the Deegan Inn, pose in front of the bronze donor heart sculpture by Einar and Jamex de la Torre

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Prospective Challenges for the Modern-day Prosecutor

by Justin J. Kim

While the jury trial process has remained relatively the same, the people have changed. Jurors are no longer operating under a blank slate. They have their views and their expectations. And now, more than ever, they are unlikely to change them.

Today, the reasonable person can control what they want to see and what they want to hear. Each day, they are inundated with information tailored to reinforce the same views. Naturally, these views are strengthened and rarely challenged. As a result, the modern-day juror is no longer one of common experience. Self-absorption has also led to a lack of shared experiences. Whether an influencer or the common user, their views are supported and validated, regardless of the source or veracity. Yet, skepticism towards the views of others has become the trend. In certain instances, it has become viral. Therefore, it is even more difficult to achieve consensus among a given cross-section of the community.

So, what are the implications for the modern-day prosecutor whose job is essentially to present the facts? Simply, the facts must now be presented in a manner that is tailored to the respective juror. The modern-day juror expects that the prosecutor will say what they want to hear and show what they want to see. Reminding jurors of their collective duties or amending the court's instructions can only go so far. At some point, their views will take precedence over any prescribed law.

The modern-day prosecutor must be ready to confront the individual expectations that result from a culture of consumerism and instant gratification. Patience is no longer a virtue. Information, services, and goods are immediately accessible. Messages are limited to the number of characters and visual content has been reduced. Each day, more knowledge is obtained, yet there is less effort or engagement in the pursuit. As such, the modern-day juror will expect the same quantification of facts when presented with a criminal case. The juror is no longer seeking or attempting to fit the pieces to the puzzle. Rather, they expect that the case will speak for itself, without a speck of inferences.

With the advent of social media, digital interactions have become the primary means of communication at the expense of personal interactions. In consequence, the modern-day juror might lack the interpersonal skills to navigate through conflict and therefore, might choose to avoid it altogether. Freedom of thought is limited to the extent that it does not offend others, thereby limiting honest and meaningful discourse. Hence, now more than ever, it is more reasonable to agree to disagree.

However, amid these changes, there is a common theme. Reasonable people still rely on their emotions to make sense of the facts. In theory and in practice, the juror has and will do, what they feel is right. Yet, for the modern-day prosecutor, it is entirely more difficult to predict or expect the same type of reactions to a particular set of facts. What once might have been considered compelling or indisputable evidence, is nevertheless subject to varying visceral standards.

In effect, the natural outcome is to consider every alternative in proving a single fact. Regardless of whether the prosecutor believes them to be reasonable, the objective is to embody each of the juror's views when presenting a case. In doing so, the modern-day juror can determine the facts pursuant to their perspective. For some, the challenge is greater than the incentive. But for the modern-day prosecutor, there is great reward in reaching an even truer verdict than before.

Justin Kim is a deputy district attorney in the Riverside County District Attorney's Office. He is currently assigned to the vehicular homicide unit.

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The Boston Massacre: Trial Tips from Lawyer John Adams

by Abram S. Feuerstein

Henry Pelham never forgave Paul Revere.

Within days of British soldiers firing upon a crowd on March 5, 1770 – which left five Bostonians dead and another half dozen wounded – artist and engraver Pelham[1] had masterfully sketched the violent confrontation. But Revere, a silversmith by trade who also produced copperplate engravings for books and magazines, somehow had gotten a hold of Pelham's drawing and promptly plagiarized it. By late March, Revere had sold 200 copies of "his" print.[2] Pelham later claimed that Revere had robbed him "as truly as if (he) had plundered me on the highway."[3]

A Paul Revere engraving widely distributed after the March 5, 1770 confrontation between Boston residents and British troops was intended to inflame emotions prior to the trials. Revere likely plagiarized the depiction from fellow engraver Henry Pelham, who never forgave Revere.

Aside from monetary motives, Revere, a long-standing member of the Sons of Liberty whose goal was to rid Boston of the British, understood the power of art in inflaming and forging public opinion. Art as propaganda. More than two-hundred and fifty years later, it is Revere's widely distributed print, included in most American history textbooks, that defines the very way we think of the Boston Massacre. Indeed, Revere's depiction of the Massacre, a slaughter of innocents by a firing line of British redcoats, is part of our national mythology. Yet, the image is a deeply distorted version of what actually had taken place.

Boston had been a distant and insignificant part of the British empire.[4] Its population stagnant, Boston's port already had been eclipsed as a trade and commercial center by New York and Philadelphia. In 1768, five years before the famous "tea party," nearly 4,000 British troops had been sent to and stationed in Boston to assist in the collection of taxes and to maintain the peace. Embedded with the population of 15,000 inhabitants[5] in an area of approximately one square mile, the lives of the soldiers became entangled with those of local inhabitants.[6] Daily friction eventually gave rise to an early March 1770 weekend characterized by several minor street flare-ups between soldiers and citizens.

Newspaper column printed on March 12, 1770 -- one week after the massacre -- showing coffin images with the initials of four of the five Bostonians killed.

By late Sunday night, however, crowds began to gather on King Street. They surrounded and taunted a group of outnumbered soldiers and pelted them with snowballs, ice chunks, rocks, oyster shells and, by some accounts, wooden clubs. More people took to the streets when, inexplicably, church bells rang out – typically an alarm signaling that a fire had started, and volunteers were needed to help extinguish it.[7] Then, in the confusion, after one of the soldiers had been pushed to the ground, someone shouted the word, "fire." The soldiers discharged their muskets. Once the gun smoke cleared and bodies became visible on the ground, a realization set in that the world in which these people lived– and their relationships with each other – fundamentally had changed.[8]

The crowds would not disperse until the acting governor, Thomas Hutchinson, who spent most of the remainder of the evening and early morning interviewing witness on a fact-finding mission, earnestly assured the crowd that he would conduct a full inquiry. "The law shall have its course; I will live and die by the law," he said.[9] He ordered the arrest initially of Captain Thomas Preston, who stood accused of murder for having given the order to fire, and shortly after the arrest of the eight soldiers who allegedly carried out Preston's order.

1 Pelham was the half-brother of the great early American Boston artist, John Copley. *See* Hiller B. Zobel, *The Boston Massacre*, p. 211 (W.W. Norton & Company, Inc.1970) ("Zobel"). The work by Zobel, a former Associate Justice of the Massachusetts Superior Court and professor at Boston College Law School, is considered to be the authoritative book on the Massacre.

2 *See* Dave Roos, "How Paul Revere's Engraving of the Boston Massacre Rallied the Patriot Cause," June 20, 2023 update, retrieved at *https://www.history.com/news/paul-revere-engraving-boston-massacre.*

3 Robert J. Allison, *The Boston Massacre*, pp. 27-28 (Commonwealth Editions 2006) ("Allison").

4 Zobel, p. 5.

5 There were approximately 15,000 inhabitants in Boston. Zobel, p. 5. *See also https://www.gilderlehrman.org/history-resources/spotlight-primary-source/paul-reveres-engraving-boston-massacre-1770.*

6 Serena Zabin, *The Boston Massacre: A Family History*, p. xvi (Houghton Mifflin Harcourt 2020) ("Zabin"). Many of the British soldiers assigned to Boston had been allowed to travel with their wives and children. Also, many of the soldiers had to be housed in the homes of Boston residents, which the army rented. Zabin's title – A Family History – is a little deceptive but is an effort to interpret the Massacre through the shared lives of the soldiers and their families on the one hand, and Bostonians on the other.

7 Zobel, p. 190.

8 Zabin, p. xvi.

9 Zobel, p. 203.

Official White House portrait of John Adams, who defended the soldiers accused of murder for firing on Boston's residents. (circa 1792 by John Trumbull)

Enter John Adams

Sitting in his law office the next day while thousands of Bostonians were meeting to demand the removal of the British troops, 34-year-old John Adams was approached by a friend of the soldiers and Captain Preston. He told Adams: "I am come with a very solemn Message from a very unfortunate Man, Captain Preston in Prison. He wishes for Council and can get none." Years later, Adams recollected that he replied without hesitation, "Council ought to be the very last thing that an accused Person should want [that is, lack] in a free Country."[10]

In agreeing to join the defense team,[11] Adams, a liberty party supporter, well understood the consequences to both his law practice and his growing and hard-earned reputation. He noted that he would "incur a clamor and popular suspicions and prejudices" against him,[12] and wrote to his wife, Abigail, that he had "consented to my ruin, to your ruin, and to the ruin of our children."[13] But Adams remained true to his oath as an attorney, and firm in his belief that the "law should not bend to the uncertain wishes, imaginations, and wanton tempers of men."[14]

Adams confronted several issues almost immediately. One of the most significant to emerge was the inherent conflict in his joint representation of Preston and the eight soldiers. Preston's best defense would be to show that he had not given the order to fire; by contrast, the soldiers would want to establish that their actions were justified because they were only following orders.[15] The conflict became crystal clear when in September 1770, the court ordered separate trials for Preston (*Rex v. Preston*), on the one hand, and on the other, all of the soldiers (*Rex v. Wemms*). Preston would go first.

In 1770, there were no conflict rules that would have disqualified Adams from serving as counsel in both trials.[16] But the soldiers themselves recognized the issue and wrote to the presiding judges: "(W)ould (you) be so good as to lett us have our Trial at the same time with our Captain, for we did our Captains orders and if we don't Obay is Command we should have been Confine'd and shott for not doing of it."[17] They questioned why Preston, "being a Gentelman should have more chance to save his life than we poor men that is Obliged to Obay his command."[18] The plea fell on deaf ears, Preston's separate trial took place first, and Adams remained of counsel to all of the defendants.

Other issues surfaced. Probably the most outcome determinative was jury selection. For some reason, before the Preston trial began on October 24, 1770, the Crown had failed to provide a prospective juror list to defense counsel as required by the rules.[19] As a remedy, it appears that the defense moved for and received an unlimited number of peremptory challenges and was able to "pack the jury" with loyalists, friends of the soldiers, businessmen who supplied the troops, and non-Bostonians from surrounding towns.[20] Adams equally was successful in picking a jury for the second trial, which opened a month later on November 27, 1770. Not a single one of the jurors came from Boston.[21] Absent overwhelming evidence of the defendants' guilt, the predispositions of the jurors nearly guaranteed acquittals.[22]

Adams as Storyteller

Continuing legal education seminars stress that good trial lawyers must be good storytellers. Notes and eyewitness accounts from the first trial, and – remarkably – a surviving court reporter's transcript from the second trial, confirm that Adams indeed was a great storyteller. At a time when trials lasted less than a day,[23] during the multiple trial days in both of the cases, Adams and the defense team selected witnesses and structured their cases in a manner that left little doubt that their clients would be acquitted. In Preston's trial, for every witness who claimed Preston had given the order to fire, the defense presented a witness who swore he did not. By the time the defense closed, it was not even clear that Preston or any of the soldiers had even shouted the word "fire," but, instead, it could easily have come from someone in the crowd yelling "Darn you, Fire" or "Why don't you fire."

Image of Crispus Attucks, who was one of the five colonists killed in the massacre. Of mixed African American and American Indian descent, he later would become a symbol of the Abolitionist movement.

As to the soldiers, Adams abandoned a defense based on the premise that they were only following orders. In its place, through approximately 40-50 witnesses, he painted a compelling picture that the soldiers were acting in self-defense when confronted by an unruly mob. One defense witness said that he saw the tall, mixed-race Crispus Attucks, a sailor and dock worker who became the first shooting victim of the massacre, knock down one of the soldiers with

10 Allison, p. 33.
11 Preston's friend, a merchant named James Forrest, earlier had approached two other attorneys, Josiah Quincy, Jr. and Robert Auchmuty, but both said they would only represent Preston if Adams also agreed. Allison, p. 33. Hence, Adams, Josiah Quincy, and Auchmuty comprised the team. Of note, Samuel Quincy, Josiah's older brother, was the Massachusetts solicitor general and would represent the Crown in its efforts to convict Preston and the soldiers. Zabin, p. 192.
12 David McCullough, *John Adams*, p. 66 (Simon & Schuster 2001) ("McCullough").
13 *See* National Park Service, Boston Massacre Trial," retrieved at *https://www.nps.gov/bost/learn/historyculture/massacre-trial.htm.*
14 *Id.*
15 Zobel, p. 241.
16 Zobel, p. 242.
17 Zobel, p. 242.
18 Zobel, p. 242.
19 Zobel, pp. 243-44.
20 Zobel, pp. 244-46.
21 Zobel, p. 271.
22 Zobel, p. 246, 303.
23 Zobel, p. 248.

a large club Attucks had been seen carrying through the streets of Boston.[24] Another witness claimed that shortly before the shootings he saw Attucks reach into a woodpile, grab two four foot clubs, and say, "Here, take one of them."[25]

The defense narrative also included what might be the first use of the hearsay exception known today as the "dying declaration." Patrick Carr, who had taken a shot "through his right hip (that) tore away part of the backbone,"[26] died several days after the March 5, 1770, shootings. His attending physician, Dr. John Jeffries, testified that in several conversations, Carr forgave the soldier, whoever he was, who shot him. Carr believed that the soldiers had fired to defend themselves and that they would have been hurt if they had not fired. He said that he "heard many voices cry out, kill them." Carr had told his doctor that he was a native of Ireland, that he had frequently seen mobs, and soldiers called upon to quell them, "but had never seen them bear half so much before they fired." Finally, according to his doctor, Carr said that "he was satisfied" that the man who shot him "had no malice, but fired to defend himself."[27] When later instructing the jury, one of the presiding judges noted: "This Carr was not upon oath, it is true, but you will determine whether a man just stepping into eternity is not to be believed, especially in favor of a set of men by whom he had lost his life."[28]

Perhaps the most important storytelling choice made by Adams in presenting a self-defense case was how he described the Bostonians who had surrounded and threatened the soldiers. Should he characterize such everyday Bostonians as a "mob" capable of rioting at any moment, a tactic that might backfire with a jury concerned with the city's reputation should they acquit the soldiers.

Instead, Adams "absolved" native Bostonians by assigning blame for the rioting to outsiders, especially the dead ones, including the "stout Molatto fellow" (Attucks) from Framingham "to whose mad behavior, in all probability, the dreadful carnage of that night, is chiefly to be ascribed"; as well as such "teagues" as "Carr from Ireland."[29] But he also blamed the Massacre as the inevitable result of British policy in quartering troops in Boston: "Soldiers quartered in a populous town will always occasion two mobs where they prevent one. They are wretched conservators of the peace."[30]

Finally, Adams and the defense team were able to tell a good story because of their thorough trial preparation. Hundreds of people had witnessed some parts of the events that gave rise to the Massacre. Dozens of these individuals had been deposed. Numerous people had been interviewed for newspaper accounts. Their stories needed to be understood, culled, and synthesized into a coherent account, notwithstanding the partisan filters they might possess and against a backdrop of a highly charged politicized atmosphere. By combing through the evidence and presenting a compelling narrative, at trial's end a confident Adams could declare, famously, that "Facts are stubborn things."[31] Exculpatory facts even more so. Adams told the jury that "whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence; nor is the law less stable than the fact; if an assault was made to endanger their lives, the law is clear, they had a right to kill in their own defense."[32]

In short, the solid factual presentation by Adams and the defense team enabled the juries in both cases to focus on the law and overcome any prejudices that might have been created by propaganda pieces such as Revere's Massacre drawing.

The Boston Massacre trials were noteworthy for other reasons. Given that the trials lasted several days, in what might be an American first the judges ordered the overnight sequestration of the juries mostly to prevent them from having contact with an inflamed Boston public, but also for practical, commute-based reasons given that the jurors lived outside the city.[33] Another first might be the articulation in American jurisprudence of a "reasonable doubt" standard in criminal cases. In charging the jury in the soldier's trial, one of the presiding judges observed: "If upon the whole ye are in any reasonable doubt of their guilt, ye must then, agreeable to the rule of law, declare them innocent."[34]

Adams Looking Back

Jury deliberations were relatively quick and resulted in full acquittals for most of the defendants. After his acquittal and release from jail, Captain Preston, fearful for his life if he remained in Boston, departed for England. In *Rex v. Wemms*, the jury determined that all eight of the accused soldiers were not guilty of murder, but that two of the soldiers, whose weapons' discharge could be traced to the deaths of specific victims, were guilty of manslaughter – also a hanging offense.[35] For them, Adams pleaded the merciful, well-recognized protection of "benefit of clergy." After the two defendants' thumbs were branded to ensure that the benefit of clergy could be used only once in their lifetimes, the two were released to rejoin their regiments.[36]

Over the next few years, Boston would commemorate the date of the Massacre, March 5, 1770, with annual celebrations and orations. They became rallying events for the American cause. Although he had defended the British

24 Allison, pp. 42-43. Little is known about the life of Crispus Attucks, including whether he was enslaved or formerly enslaved. There has been speculation that Attucks, who was of mixed African and Indigenous ancestry, may have used the alias "Michael Johnson" to avoid being returned to slavery. See National Park Service, "Crispus Attucks," retrieved at *https://www.nps.gov/people/crispus-attucks.htm*.
25 Zobel, p. 283.
26 Zobel, p. 199.
27 Zobel, pp. 285-86; see also, Allison, pp. 43-44.
28 Douglas O. Linder, "The Boston Massacre Trials: An Account," retrieved at *https://www.famous-trials.com/massacre/196-home*. Linder's work on famous and historic trials, maintained at the UMKC School of Law, is an invaluable resource, generally, as well as providing numerous materials relating to the Massacre itself. These include trial and deposition transcripts, key trial evidence, images of the trial, and John Adams' summation speeches and diary entries.
29 Allison, p. 48; Zobel, p. 292.
30 McCullough, p. 67; Zobel, p. 292.
31 Zobel, p. 293.
32 Zobel, p. 293.
33 Zobel, p. 250.
34 Zobel, p. 294.
35 There is some question as to whether, if found guilty, any of the soldiers would have hanged given that they likely would have received reprieves and pardons. Zobel, p. 303.
36 The troops by that time had been moved from Boston to New Jersey.

soldiers, John Adams, oddly, was invited to give the 1773 oration. He declined.[37] In his 1774, speech, John Hancock said that he had "the most animating confidence that the present noble struggle for liberty will terminate gloriously for America."[38]

For Crispus Attucks who died taking two British musket balls into his chest, even though Adams played to the jury's prejudices and pointed at Attucks as an "outside" agitator, a scapegoat of sorts, who was responsible for the Massacre's "carnage," Attucks today is viewed as a martyr – the first to die in the American revolution. In the 20th Century, Boston officially recognized March 5 as Crispus Attucks Day.[39]

A few years after his defense of the British soldiers, Adams wrote in his diary that the jury verdicts were "exactly right."[40] At a personal level, he noted that the representation of the Massacre defendants had been "the most exhausting and fatiguing Causes (he) ever tried." He grumbled a little about how little he had been paid.[41] After all, he had lost half of his law business in taking on the soldiers' unpopular cause.[42] But notwithstanding the grief and anxiety and public criticism he and his family had faced, he considered his role "one of the most gallant, generous, manly and disinterested Actions of (his) whole Life."[43] He also viewed it as "one of the best Pieces of Service (he) ever rendered (his) Country" given the "foul stain" that would have resulted from a "Judgment of Death" against the soldiers.[44]

In the mid-1780s, after the American Revolution, future president Adams served as America's first minister to the Court of St. James in England. He could not be sure, but he believed he saw Captain Preston on the streets in London. According to Adams, his former client passed him without speaking.[45] Facts may be stubborn, but so are people.

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.

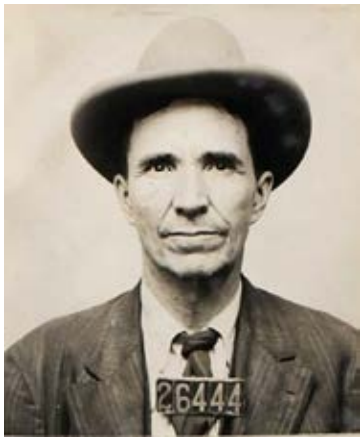
37 Allison, p. 55.
38 See "John Hancock's Boston Massacre Oration, March 5, 1774," retrieved at *https://www.famous-trials.com/massacre/200-oration.*
39 See National Park Service, "Crispus Attucks," retrieved at *https://www.nps.gov/people/crispus-attucks.htm.*
40 Allison, p. 56; see also, Diary Entry of John Adams Concerning His Involvement in the Boston Massacre Trials, retrieved at *https://www.famous-trials.com/massacre/199-diaryentry* ("Adams Diary Entry").
41 *Id.*
42 McCullough, p. 68.
43 Allison, p. 56; *see also*, Adams Diary Entry.
44 *Id.*
45 Zobel, p. 303.

People v. Barrett
The Trial of Riverside's First Police Officer Killed in the Line of Duty

by Chris Jensen

Frost was still on the ground in the morning, but it was anticipated to be a moderate day in the low 70's. Christmas was a pleasant respite from court business but it was now December 26, 1912, and court was back in session from its one day off. The Justice of the Peace, H.C. Hibbard, called case number 5526 on the morning docket, the preliminary hearing in *People versus Barrett*.

"Firsts" happen in life. We tend to celebrate "firsts" but not this one. This one was the murder of interim chief of the Riverside Police Department, John R. Baird. Chief Baird was the first Riverside police officer considered killed in the line of duty. What made this "first" worse was it was one of his own deputies who pulled the trigger.



Egbert Jay Barrett

John R. Baird was 33 years old and just recently appointed by the mayor as interim chief of police during the illness of Chief Coburn. With Chief Coburn's death on December 8, just a few weeks since the interim appointment, many were expecting the appointment to be made permanent any day.

Baird was a short overweight man. Many found Baird to be foul mouthed and not pleasant. He had been married for about 8 years and had no children. Prior to his appointment as deputy chief in June of 1911, Baird's experience had been as an office clerk. Others were surprised a seasoned deputy was not appointed interim chief.

Egbert Jay Barrett was 52. He was a husband and father of four. Throughout his adult life, Bert, as he was called, held a variety of jobs. He had been a teamster, drove the fire wagon for the city, and off and on had been a policeman. He was known as a quiet man with many friends. But, he had a drinking problem for most of his adult life. Friends looked out for him. He gained jobs because of his friends and many times promised to stop drinking to keep the jobs. Most found Barrett good natured and pleasant.

Barrett was the Patrol Officer on the night of December 15, 1912. Barrett was having issues with "colored girls" on 8th Street, now University, at a "rooming house." A call was put in to acting Chief Baird to investigate an alleged brothel being operated at the rooming house. Chief Baird and another deputy, Bill Lucas, went to where Barrett was waiting. On the arrival of the three at about 10:00 p.m., only women were in the premises. The deputies interviewed the women and left. Barrett stuck around a little longer thinking he could get a little more information. As agreed earlier, Baird, Lucas, and Barrett were to return to the alleged brothel at midnight.

At midnight the police again found no violations, so the three commenced to return to the police sttation. On the front steps of the building they were leaving, Baird confronted Barrett with a foul tirade accusing Barrett of being drunk. The verbal accosting of Barrett was bad enough that Lucas suggested the two return to the station to discuss the issue. They did.

At the station, Baird and Barrett sat down to talk. But it escalated to an angry tirade by Baird. Barrett cut him off calling Baird "a son of a bitch." Lucas interceded again and suggested they wait till Sunday to discuss the issue. Barrett apologized for his outburst. For a brief moment it appeared the discussion would be postponed. The two officers stood up. But Baird was not done.

Baird barked at Barrett, "come on in the back room, I want to have a talk with you." Barrett protested demanding they talk right where they were. Baird was having none of it and man handled Barrett and directed Barrett, "I will treat you like a drunken cholo", forcing Baird into the back room.

Only Baird and Barrett were in the back room. Lucas did not hear any arguing so he stuck his head in the room and advised Baird that he'd be going home.

By the time it took Lucas to place his gun in his desk and put on his overcoat, a shot rang out. Lucas ran to the back room. Upon entering, Lucas saw Baird lying on the floor with Barrett standing over him with a revolver in his hand. Barrett instinctively emptied his revolver, reloaded it and placed it in his holster. Barrett then turned to his locker, took off his gun, and commenced to change out of his uniform. Lucas rushed to call a doctor.

Once a doctor arrived, Lucas took Barrett down to the jail without an issue from Barrett. Baird was still breathing when Barrett left but wouldn't last long; he took 3 bullets, all to the head. Barrett was formally arrested and arraigned within a few days.

The District attorney was Lyman Evans who would become RCBA President in 1916. The defense was led by Miguel Estudillo, former state assemblyman and senator, who would become RCBA president the year after Evans.

The preliminary hearing of December 26, 1912, was short. Two witnesses were called to testify, Bill Lucas and the attending physician W. W. Roblee. Enough testimony was heard by Hibbard to hold Barrett over for trial, set for March 17, 1913. An entire week was set aside for this most unusual case.

By March 15, it was known Mr. Estudillo was engaged in an unrelated newsworthy story in Los Angeles with no immediate end in sight. The Riverside Court continued the Barrett trial to April 7.

On April 7, before special assignment Judge Wilbur from Los Angeles, voir dire commenced. By the end of the day, only 3 men were seated in the jury box. Of all of the potential jurors, only one had not read about the case in the Riverside newspapers. The one who had not read about it in the Riverside paper read about it in the Los Angeles papers. Most felt pre-disposed that Barrett was guilty. But, many would not consider the death penalty.

The morning of the 8th was more productive and a jury was rapidly impaneled. In front of a packed audience, testimony began. From the outset of the first cross examination, it was evident Attorney Estudillo was pursuing a self-defense finding.

The first two witnesses were the same as at the preliminary hearing; Bill Lucas and Dr. Roblee. Then Evans presented a little more evidence after his key witnesses then rested on April 8 at 2:40 in the afternoon. As was procedurally done at the time, the *People* were afforded their first argument after the close of their evidence.

Following District Attorney Evans argument, the defense called Bert Barrett to the stand. Calmly, quietly, Bert related his version of the incident. The difference in the presentation from that offered by the *People* was that Barrett testified Baird was angry and berated Barrett. Multiple times, Barrett stated, Baird peppered Barrett with "Bert, you've been drinking." Baird told Barrett, "I don't know what to do with you." It was at this point, according to Barrett, Baird told him that but for his family, he'd send Barrett home. He'd get rid of him. Baird then exclaimed to Barrett, "Damn you!" while reaching down with his right hand, which Barrett believed Baird was pulling a gun on him. Barrett reacted fast and shot Baird.

Bert professed to have had only two shots of whiskey on the day in question, one at 10:00 p.m. and the other about midnight. On cross examination, Evans had Barrett admit he'd been drinking for 25 years. But, Barrett stated he got along with all prior chiefs, drinking or not. Barrett told all he was offended by Baird calling him a drunk and that's why Barrett called Baird a name. Barrett confessed he continued telling Baird "this thing has gone far enough. You're not fit for the job you've got. This is no way to treat a man." Barrett remained on the stand the balance of the day and then continued in the next morning.

By noon on the 9th, Estudillo and his colleague, Lafayette Gill, began to illicit testimony from other witnesses that Baird was a hot head, a bully and "had it in" for Barrett. Evans strenuously objected to the line of questioning to which the court inquired if the defense had any more evidence of such. Estudillo replied in the affirmative.

Estudillo continued with the same inquiry. More objections ensued. Judge Wilbur ruled the reputation of a man may not be determined bad because of bad language but only because of bad conduct. However, Judge Wilbur afforded the parties time to research the topic before striking such evidence.

Additional evidence showed that deceased Chief Coburn had his deputies, including Barrett, come by Coburn's home while he was ill, to discuss certain steps being taken in an investigation regarding a prior event at the Glenwood Hotel (later the Mission Inn). It was believed Baird was upset that, in his opinion, his deputies were going around his back while Baird was interim chief. Another witness testified that he heard Baird state about the hotel issue that he would get to the bottom of it even if he had to use his gun. A local contractor testified he heard Baird state that at his first chance, he would "have his [Barrett's] head off." Another testified that on the day of the incident, he had observed Baird with two revolvers in his jacket. One of the other officers testified he heard Baird state "I'll get Bert."

Many character witnesses for Barrett were called, most notable citizens including a Justice of the Peace, a deputy sheriff, many government employees, and the brother of Frank Miller, the owner of the Glenwood Hotel. The defense rested.

The District attorney called rebuttal witnesses. And by 11:00 a.m. on the 10th, the case was closed and instructions were read to the jury.

The jury deliberated for over 7 hours into the evening of the 10th. A verdict was had. The attorneys were summoned and the defendant was returned to the court. By the time everyone was in place, the court room was crowded. The clerk was asked to read the verdict; "we, the jury, find the defendant, Egbert J. Barrett, guilty of manslaughter."

The defense informed the court a motion for new trial was intended. The court set sentencing for the next day, 10:30 a.m. Saturday morning.

On Saturday morning the court expressed its opinion that the jury took great care in granting leniency for the defendant by deciding on manslaughter. The court also opined that but for the drinking, the event probably would not have happened. District Attorney Evans stated he recognized the good opinion of the Riverside citizens on the character of the defendant and that he too had known the defendant for 20 years. Evans further opined many in town knew of Barrett's drinking and they too would also drink. Evans continued that had Baird known Barrett better he would not have berated Barrett when Barrett was drinking.

After all was said, the court sentenced Barrett to the maximum sentence for the crime, 10 years, to be served in San Quentin. Estudillo immediately moved for a new trial, or at least a hearing, which was denied. By 6:00 p.m. that day, Sheriff Wilson was on the road with the defendant to San Quentin.

An appeal was made asserting erroneous evidentiary rulings and improper instructions to the jury. On September 25, 1913, the appellate court ruled no prejudicial error. (*People v. Barrett* (1913) 25 Cal. App. 780).

Barrett served 6 years of the 10 years at San Quentin, being released on September 13, 1919. It appears upon returning to Riverside, Bert gained a job with at a local hotel. Shortly thereafter, Bert gained a position with the Riverside City fire department, a position which he held for many more years to follow.

Bert died July 13, 1944, and was buried at Evergreen Memorial Park in Riverside, the same cemetery within which Baird was buried in 1912.

Chris Jensen, Of Counsel in the firm of Reid and Hellyer, is president of RCBA Dispute Resolution Service, Inc. Board of Directors and chair of the RCBA History Committee.

Civil Litigation Complexities > Elucidated > Prevail

by Boyd Jensen

In Trial – "Black & White"

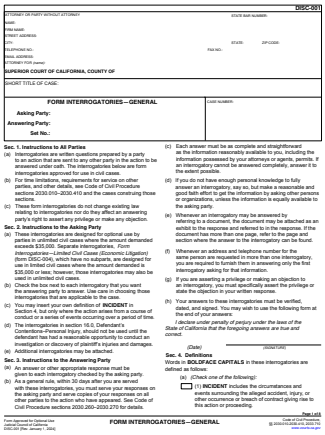
An orthopedic doctor as an expert who may testify that a party has a "neck injury" (subluxation, sprain, tear, arthritis, etc.); and that the party's complaints of pain are supported by an x-ray or a MRI. A formidable expert opinion, challenging to a non-doctor lawyer in front of a judge and a jury, who in all of their personal lives are used to simply accepting doctor opinions. We don't call them "Mr." We call them "Dr."

Whether you represent the plaintiff or defendant, you may elucidate the expert opinion in only a few questions by placing the x-ray or MRI in the view box, which most court rooms have, and ask, (1) "What is that called?" The doctor will say "An x-ray." (2) "Isn't an x-ray simply a depiction of radiation projected on film or a sensitive plate in colors of black, white, or shades of gray?" The expert has to say "Yes," because it is being projected right next to them, though they sometimes start to get nervous, because the x-ray is one of their medical complexities, which for decades elevates their opinions above the rest of us, though we can see black, white, and gray just as well as they can. (3) "Where is the color which shows the injury or pain?"

Counsel for plaintiffs can point to the exact image on the x-ray, and the allegations of pain and injury become crystal clear, so they will prevail. The prepared defense counsel can also elucidate the absence of even a simple black, white, or gray image, which disproves the expert's opinion about the "neck injury," and prevail. Even a child can see or acknowledge that they do not see, the black, white and gray image of an x-ray.

Discovery – "Court Authored & Free"

Before California Code of Civil Procedure section 2030.030, interrogatories and production requests could exceed a hundred requests; though earlier the federal courts figured out less was more in Federal Rule of Civil Procedure, Rules 26 and 33. Today, unbelievably, we have Judicial Council Forms – over a hundred of them – including nine general discovery forms – which are simple, elucidating, and to which objections are very rare. (Though I must disclose I do prefer Rule 26's Duty to Disclose.) Used for cross-examining in depositions, arbitrations, and at trial, these forms may be disarmingly effective.


DISC-001

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER:

NAME:
FIRM NAME:
STREET ADDRESS:
CITY: STATE: ZIP CODE:
TELEPHONE NO.: FAX NO.:
E-MAIL ADDRESS:
ATTORNEY FOR (name):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

SHORT TITLE OF CASE:

FORM INTERROGATORIES—GENERAL

Asking Party:
Answering Party:
Set No.:

CASE NUMBER:

Sec. 1. Instructions to All Parties

(a) Interrogatories are written questions prepared by a party to an action that are sent to any other party in the action to be answered under oath. The interrogatories below are form interrogatories approved for use in civil cases.

(b) For time limitations, requirements for service on other parties, and other details, see Code of Civil Procedure sections 2030.010–2030.410 and the cases construing those sections.

(c) These form interrogatories do not change existing law relating to interrogatories nor do they affect an answering party's right to assert any privilege or make any objection.

Sec. 2. Instructions to the Asking Party

(a) These interrogatories are designed for optional use by parties in unlimited civil cases where the amount demanded exceeds $35,000. Separate interrogatories, *Form Interrogatories—Limited Civil Cases (Economic Litigation)* (form DISC-004), which have no subparts, are designed for use in limited civil cases where the amount demanded is $35,000 or less; however, those interrogatories may also be used in unlimited civil cases.

(b) Check the box next to each interrogatory that you want answered. Do not check boxes for which you are choosing those interrogatories that are applicable to the case.

(c) You may insert your own definition of **INCIDENT** in Section 4, but only where the action arises from a course of conduct or a series of events occurring over a period of time.

(d) The interrogatories in section 16.0, Defendant's Contentions–Personal Injury, should not be used until the defendant has had a reasonable opportunity to conduct an investigation or discovery of plaintiff's injuries and damages.

(e) Additional interrogatories may be attached.

Sec. 3. Instructions to the Answering Party

(a) An answer or other appropriate response must be given to each interrogatory checked by the asking party.

(b) As a general rule, within 30 days after you are served with these interrogatories, you must serve your responses on the asking party and serve copies of your responses on all other parties to the action who have appeared. See Code of Civil Procedure sections 2030.260–2030.270 for details.

(c) Each answer must be as complete and straightforward as the information reasonably available to you, including the information possessed by your attorneys or agents, permits. If an interrogatory cannot be answered completely, answer it to the extent possible.

(d) If you do not have enough personal knowledge to fully answer an interrogatory, say so, but make a reasonable and good faith effort to get the information by asking other persons or organizations, unless the information is equally available to the asking party.

(e) Whenever an interrogatory may be answered by referring to a document, the document may be attached as an exhibit to the response and identified in the response. If the document has more than one page, refer to the page and section where the answer to the interrogatory can be found.

(f) Whenever an address and telephone number for the same person are requested in more than one interrogatory, you are required to furnish them in answering only the first interrogatory asking for that information.

(g) If you are asserting a privilege or making an objection to an interrogatory, you must specifically assert the privilege or state the objection in your written response.

(h) Your answers to these interrogatories must be verified, dated, and signed. You may wish to use the following form at the end of your answers:

I declare under penalty of perjury under the laws of the State of California that the foregoing answers are true and correct.

(Date) (SIGNATURE)

Sec. 4. Definitions

Words in **BOLDFACE CAPITALS** in these interrogatories are defined as follows:

(a) *(Check one of the following):*

☐ (1) **INCIDENT** includes the circumstances and events surrounding the alleged accident, injury, or other occurrence or breach of contract giving rise to this action or proceeding.

Page 1 of 4

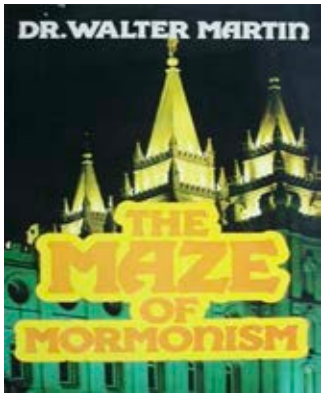
Form Approved for Optional Use
Judicial Council of California
DISC-001 [Rev. January 1, 2024]

FORM INTERROGATORIES—GENERAL

Code of Civil Procedure
§§ 2030.010–2030.410, 2033.710
www.courtinfo.ca.gov

For example, to Plaintiffs whose injuries over time are commonly different in medical records, (1) "Did you respond to the questions on the forms prepared by the California Judicial Council, which had been previously sent to you?" (2) "You answered these court approved questions under oath, correct?" (3) "You understand the question at 6.1 which asks whether you 'attribute any physical, mental or emotional injuries' to the incident?" (4) "In your response to question 6.2, why did you fail to include injuries, for which you now seek financial compensation?" As defense counsel, you may align yourself with the established judicial process, compared to the desire for money and on the very simple issue of injuries, which jurors understand, and plaintiffs should never get wrong. Plaintiffs can also use sections like section 12 Investigation – General for similar purposes against defendants.

Martin v. Johnson, 88 Cal.App.3d 595 (1979) – "Appellate Practice"



Appeals courts consistently seek to find the clearest and most resolute rulings in complicated appeals. The temptation in the above

appeal was to become entangled in the constitutional law complexities of freedom of speech and religion. In the above-entitled case, the Orange County "Bible Answer Man," Walter Martin, who had written a number of provocative books, articles, and pamphlets about the "Cult of Mormonism;" and offered numerous lectures on this theme, was verbally challenged at some lectures and in writing, "A Mormon Answers," by Bruce Johnson, a church member. Johnson published Martin's statements as "false." Martin, therefore, brought suit against Johnson and the Church of Jesus Christ of Latter-Day Saints (Mormon or LDS Church entities), to prove his statements were not false, that he had been disparaged and would have a forum to finally prove the lack of Mormonism veracity.

After discovery, defendants filed a motion for summary judgment to dismiss the action on the basis of freedom of religion and freedom of speech precepts. The motion was granted. At page 601— 602 the opinion summarizes, "Plaintiff's notice of appeal expressly states that he is appealing 'from the denial of (his) Motion to Set Aside Summary Judgment and (his) Motion . . . for a New Trial.' Defendants contend that Plaintiff's appeal should be dismissed because he has appealed from non-appealable orders. Defendants first assert that 'well settled authority in California forbids an appeal from a denial of a motion to set aside a previous judgment. . . .' Secondly, defendants urge that '(i) t is unquestioned appellate procedure that a Denial of a Motion for a New Trial is non-appealable.' As we shall explain below, defendants are correct in their assertion that Plaintiff's appeal from the trial court's denial of his motion for a new trial must be disregarded because such an order is non-appealable." Through a hundred pages of briefing about constitutionality, the appeal was decided on procedural matters. The appellate court elucidated the complexities of the process, avoiding the temptation of constitutional decision making.

Conclusion and Counsel

There are hundreds of examples of how to not necessarily simplify but elucidate facts and evidence in our litigation practice. These three examples introduce us to some patterns or templates, which can become habits, in one's complicated practice and presentation, to achieve successful litigation results… and prevail. Based upon my experience they include the following:

1. **Take, Maintain and Keep the "Moral High Ground."** The moral high ground is used 2,135 times by the United States Supreme Court and 15,951 times in California law. Sometimes the notion is misused, but the effort to maintain the moral high ground, does not mean your client or you are always right or that your cause is even just. It means that your presentation, in public and private, commands the respect of peers, judges, jurors, court staff, and your clients. Each case has weaknesses. Acknowledge them and move on transparently to elucidate your case's strengths. The author learned this multiple times, successfully defending rear end auto accident cases, after admitting negligence, but challenging the relief sought, on the issues of causation and damages.
2. **Unwavering Transparency.** I know that I am biased, but lawyers and judges are very necessary for commercial and social progess. Being able to see an "x-ray" for what it is – simply black, white and colors in between. Distilling the elements of life to find truth – personal knowledge, foundation, voir dire, hearsay, and more, will provide transparency – the real science of successful, social interaction.
3. **We Provide a Service.** "Certainly, life as a lawyer is a bit more complex today than it was a century ago. The ever-increasing pressures of the legal marketplace, the need to bill hours, to market to clients, and to attend to the bottom line, have made fulfilling the responsibilities of community service quite difficult. But public service marks the difference between a business and a profession…I can imagine no greater duty than fulfilling this obligation. And I can imagine no greater pleasure." – Justice Sandra Day O'Connor, 78 Or. L. Rev. 385, 391 (1999).

Boyd Jensen is a Riverside County Bar Association member, an Advocate Member of the American Board of Trial Attorneys, and has been rated AV Preeminent for over 35 years.

Poly High Wins Their 20th County Mock Trial Championship and Takes 5th in State

by Melissa Moore

Poly High School

Notre Dame High School

On January 25, 22 teams began competing in courtrooms across the county. Over the next 30 days, 24 judicial officers and countless attorney volunteers watched local high school students put on the trial of *People v. Clark* where Tobie Clark stood accused of the brutal murder of their father with a champagne saber. Chaparral High School, Martin Luther King High School, Murrieta Valley High School, Notre Dame High School, Palm Desert High School, Poly High School, Santiago High School, and Temecula Valley High School were our Elite 8 teams who ultimately fought for the title of best in county.

On February 22, Superior Court Judge Ken Fernandez presided over the Riverside County's final round that was held in Department 1 of the Historic Riverside Courthouse. Scoring the final were District Attorney Michael Hestrin, Public Defender Steven Harmon, Presiding Judge of the Superior Court Judith Clark, RCBA Past President Lori Myers, and defense attorney Virginia Blumenthal. After a hard-fought battle with rival Notre Dame High School in the final round, Poly High School emerged victorious.

It is hard to talk about mock trial in Riverside County without talking about Poly High School and this year was no exception. This marks their 20th victory in our local competition. On the weekend of March 23, the students at Poly went to Los Angeles and competed in the state competition. They not only took 5th place in the state after losing in the semi-final round to the team who ended up winning it all, but also took home a Best Defendant award for student, Aubrey Packer, who is the daughter of local attorneys, Trent Packer and Emily Hanks.

As always, it is the many volunteers from the legal community that drive the success of the program. Without coaches, judges, and scoring attorneys there would be no program. Thank you to all who participated in this outstanding program. A special thank you goes to David Rivera and the Riverside County Barristers Association for choosing mock trial as one of their outreaches and volunteering as attorney scorers. We look forward to a continuing partnership with the Barristers. If you would like to get involved in Mock Trial, please contact the Riverside County Bar Association.

Melissa Moore is the chairperson of the RCBA Mock Trial Steering Committee and a supervisor in the Riverside County District Attorney's Office.

In Memoriam
Daniel Hantman – *Mr. Riverside*
January 19, 1942 – February 14, 2024

by Jacqueline Carey-Wilson

The first time I met Dan Hantman was in January 1996 when he spoke at the RCBA "Bridging the Gap" program. Bridging the Gap educates new attorneys on various practice areas in the law. Dan had just finished giving a presentation on representing clients who are trying to obtain benefits from the Social Security Administration. I was struck by Dan's knowledge of this area of law and his commitment to his clients. Dan spent many years of practice advocating for seniors and disabled individuals. Dan chose a line of work that fit with his personal commitment to assist the most vulnerable in our society. Dan traced his passion for helping others to his strong family.

Daniel Hantman

Dan was a native Californian – born and raised in Los Angeles. He had two older brothers, Joseph Hantman and David Hantman, and a younger sister, Elizabeth Rudzinski. His parents, Jacob Hantman and Marcia (Levenson) Hantman, reared their children to be involved and give back to the community. From early childhood, Dan wanted to be an attorney. Dan fondly recalled the seeds of the profession being planted when his father took him to observe court proceedings as a young child. To reach his goal, Dan attended UCLA for the first three years of his undergraduate education and transferred to UC Berkeley for his final year, majoring in political science.

Before Dan entered the challenging world of law school, he decided to obtain some real-life experience by spending two years as a Peace Corps volunteer. Dan was assigned to Thailand, where he learned to speak fluent Thai while he taught English as a second language to high school students. Dan enjoyed his stay in Thailand so much that he wanted to stay an additional year; however, there were no openings with the Peace Corps.

Dan's additional year stretched out to six years when he was employed by the American University Alumni Association Language Center as a Provincial Officer. In this position, Dan was instrumental in establishing 11 centers throughout Thailand for teaching English as a second language. Today, many of the Thai people speak English. While in Thailand, Dan was devoted to the community and to understanding the Thai way of thinking and living. When Dan was about to leave the country, one of his Thai "mothers" affectionately wrote, "No matter how far away Dan is, he will always be remembered by his many Thai friends whom he called mothers, sisters and brothers."

Dan came back to Southern California and attended the University of San Fernando Valley College of Law. After Dan's graduation, retired Judge Ronald Taylor, who was then director of Inland Counties Legal Services (ICLS), hired him. At ICLS, he specialized in elder law. In 1984, Dan went into the private sector with a general civil practice. Gradually, his practice evolved into the specialty of representing clients who have been denied benefits from the Social Security Administration.

Dan always found time to give something back to the legal community. He served as president of the RCBA Board of Directors in 2007-2008 and was on the board for a total of nine years. He was also an active member of RCBA committees and sections, including Mock Trial, Lawyer Referral Service, Continuing Legal Education, Estate Planning, Probate and Trust Law, Family Law, Juvenile Law, and Environmental Law. Dan helped organize Bridging the Gap programs and brown-bag MCLE seminars. He was a member of the Social Security Advisory Committee. Dan also served as judge pro tem for the Small Claims and Juvenile Divisions of the Riverside County Superior Court. In 2005, Dan was honored by the Riverside Opportunity Center with the Golden Legal Eagle Award for his outstanding contributions to the legal community. In 2012, Dan was presented with the E. Aurora Hughes Award by the RCBA Board of Directors for his outstanding service and dedication to the RCBA.

Dan was also active in the Riverside community. He was a board member of the Greater Riverside Chambers of Commerce and served as the downtown division president from 1995 to 1996. He was the Chamber's official "way-finder" (i.e., human directional sign) for most events and was an avid volunteer for Keep Riverside Clean and Beautiful. Dan and his life partner, Marcia Gilman, adopted a stretch of Central

Avenue in the Canyon Crest area to keep clear of litter. On my way to Mass on Sundays, I would occasionally see Dan wearing a large sombrero on his head walking along Central Avenue picking up litter, doing his part to keep Riverside clean and beautiful.

In 2005, Dan was honored with the Iron Eyes Cody Award for exceptional leadership in raising public awareness about litter prevention and roadside and community beautification. The Keep Riverside Clean and Beautiful Advisory Board issued a press release, which stated, "Wherever there is a need, Dan can be found volunteering, leading the way, cheering and encouraging others to take personal responsibility for the environment."

Dan was a 10-year member of the Coalition for Common Ground, which is an organization that promotes diversity in the Inland Empire. Dan was on the Mission Inn Foundation and past chair of the Mission Inn Docent Council. As a member of the Docent Council, Dan gave tours of the Mission Inn four times a month. Dan also served on the International Relations Council of Riverside and the World Affairs Council. In 1998, Dan and Marcia traveled with Mayor Ronald Loveridge's Sister City Group to Korea and India to promote business, education, and cultural relations. On their way back to the U.S., Dan and Marcia toured China for two weeks.

When he was not working in the legal profession or promoting Riverside, Dan loved to travel for fun. He visited almost every country in Europe and East Asia. Dan also traveled to Mexico, Belize, Guatemala, Costa Rica, Peru, Egypt, Turkey, Israel, Jordan, Tanzania, Zanzibar, and twice to Cuba for social security workshops. While in Tanzania, Dan climbed 19,335.6 feet to the top of Mount Kilimanjaro in seven days and went on a safari. In Amman, Jordan, Dan participated in an archeological dig with Dr. Larry Geraty, former president of La Sierra University.

Dan found living and working in Riverside to be a very rewarding experience. I firmly believe that we have all benefited from Dan's dedication and commitment to the community, and to helping those in need. It is fitting that he passed away on Valentine's Day, as he had so much love in his heart. Dan, my dear friend, you will be deeply missed.

Jacqueline Carey-Wilson is a deputy county counsel for San Bernardino County, editor of the Riverside Lawyer, *and past president of the RCBA Board of Directors and the Federal Bar Association, Inland Empire Chapter.*

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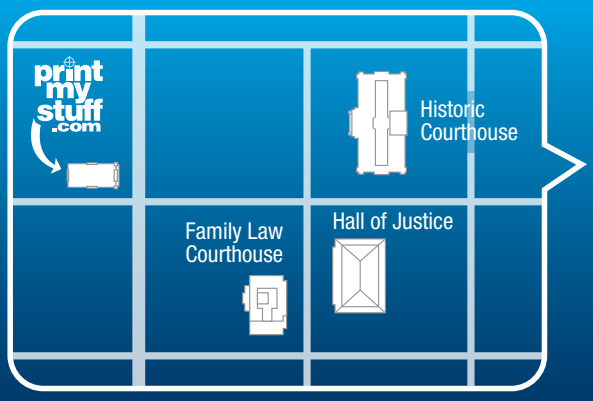

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4129 Main Street, Riverside. Next to Family Law Court, across the street from Hall of Justice and Historic Courthouse. Office suites available. Contact Charlene Nelson at the RCBA, (951) 682-1015 or rcba@riversidecountybar.com.

Conference Rooms Available

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

Part-Time Bookkeeper Position

RCBA is looking for a part-time bookkeeper. Contact Charlene at 951-682-1015 or charlene@riversidecountybar.com.

MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective April 30, 2024.

Randi M. Akasaki – Harris Ginsberg, Los Angeles
Julio Bonilla (A) – The Bonilla Group, La Mirada
Jorge E. Funez Chavez – Orozco Law Firm, Chula Vista
Timur E. Geffe – Law Office of Tim Geffe, Murrieta
Laura A. Hovelsen – Costen Ruiz Law, Los Angeles
Traci M. Kim – Court of Appeal Fourth District, Riverside
Antonieta Leal – Vistas Law Group, Ontario
Sandra C. Lechman – Aarvig & Associates, San Bernardino
Jasmine A. Mines – Solo Practitioner, Beverly Hills
Aiskell C. Roman – Brown White & Osborn, Redlands
(A) – Designates Affiliate Member

CALENDAR

APRIL

8 Roundtable with Judge Hopp
12:15
Zoom
MCLE

12 General Membership Meeting
Noon, RCBA Gabbert Gallery
Topic: "Adjusting Our Mirrors to Reduce Blindspots:
Evidence-based strategies to mitigate unconscious biases"
Speakers: Judge Jackson Lucky (Ret), Judge Gail O'Rane
MCLE – Implicit Bias

16 Family Law Section Meeting
Noon, RCBA Gabbert Gallery
Topic: "Judicial and Attorney Perspective for Special Needs
Children in Family Law Litigation"
Speakers: Judge Natalie Lough and Jeremy Roark
MCLE

MAY

3 Estate Planning/Probate
MCLE Marathon
8:30 AM – 3:30 PM
RCBA Gabbert Gallery

Events Subject To Change
For the latest calendar information please visit the RCBA's website at **riversidecountybar.com**

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 $30.00 and single copies are $3.50.

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

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, Reading Day and other special activities, Continuing Legal Education brown bag lunches and section workshops. RCBA is a certified provider for MCLE programs.

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