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MAGAZINE

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Historic Riverside

Intelligent Design

One Nation Under God?

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RIVERSIDE LAWYER
MAGAZINE

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Mission Statement

Established in 1894

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

RCBA Mission Statement

The mission of the Riverside County Bar Association is to:

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

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

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

Membership Benefits

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

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

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

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

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

MBNA Platinum Plus MasterCard, and optional insurance programs.

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

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 Riverside Lawyer.

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

Calendar

DECEMBER

20 **Family Law Section**
RCBA 3rd Floor – Noon
MCLE

26 **HOLIDAY**

28 **LRS Committee**
RCBA – Noon

JANUARY 2006

3 **RCBA/SBCBA Environmental & Land Use Law Section**
RCBA 3rd Floor – Noon
MCLE

4 **Bar Publications Committee**
RCBA – Noon

7 **RCBA/SBCBA Bridging the Gap**
Free program for new admittees
RCBA 3rd Floor – 8:00 a.m. - 3:45 p.m.
MCLE

9 **CLE Committee**
RCBA – Noon

10 **PSLC Board**
RCBA – Noon

11 **Mock Trial Steering Committee**
RCBA – Noon

Barristers
"Stress Management"
Speaker: Molly McCormick, MACPC
Cask 'n Cleaver – 6:00 p.m.
MCLE

12 **Civil Litigation Section**
RCBA 3rd Floor – Noon
MCLE

13 **General Membership Meeting**
"Supreme Court Nomination Hearings as Kabuki Dance"
Speakers: Charles Doskow, Dean Emeritus & Professor of Law, University of LaVerne College of Law;
John Cioffi, Asst. Professor, Political Science, University of California, Riverside
RCBA 3rd Floor – Noon
MCLE

President's Message

by Theresa Han Savage

Happy Holidays! I can hardly believe that 2005 is already coming to an end. Suffice to say, I think that 2005 has been a great year for the RCBA.

The RCBA worked very hard to provide you with quality programs at our monthly bar meetings. We had many distinguished guests come and speak to our organization in 2005 – Chief Justice Ronald George of the California Supreme Court; Judges Alex Kozinski and Stephen Reinhardt of the United State Court of Appeal for the Ninth Circuit; and Professor Laurie Levinson from Loyola University School of Law in Los Angeles. We also had our local judicial officers take time out of their busy schedules to give us an update on the status of their courts – Magistrate Judge Stephen Larson of the United States District Court, Central District, Eastern Division; and Presiding Judge Sharon Waters of the Riverside Superior Court. I hope you enjoyed these programs. We are working to bring you more quality programs at our meetings in the coming year.

One of the most exciting events in 2005 was the election of our own past-president, Jim Heiting, as the 81st president of the California State Bar. Jim is the first attorney from the Inland Empire to become president of the State Bar. As such, Jim leads the largest state bar organization in the United States – the State Bar of California, which has over 200,000 members. Nevertheless, even with Jim's "star status" in the State Bar, he remains as approachable, friendly, and humble as ever. I hope you were able to attend the reception on November 15, at the Mission Inn, where we honored Jim for achieving this milestone not only for himself, but for the Inland Empire. The reception was a success and attended by approximately 200 people. I want to thank everyone who helped sponsor the reception – your generosity made it possible for the RCBA and SBCBA to host such a wonderful reception. On another note, I hope you attended our annual joint meeting with the SBCBA held on December 15 at the Mission Inn, when the State Bar President spoke about his goals for the year.

As we come to the end of 2005, I wish you and your family a wonderful holiday season. I also want to remind you to keep the less fortunate in mind this holiday season – and if you want to help make the holidays a little more festive for them, please help us with our annual Elves Program. What a wonderful way to spread a bit o' holiday cheer. If I don't see you in the next few weeks, see you in 2006!

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

Barristers Profile: Cosmos E. Eubany

By Robyn Beilin-Lewis, Barristers President

Cosmos E. Eubany

In doing these profiles of new members of our Riverside legal community, I never grow tired of getting the opportunity to meet new people. I am continually impressed with the interesting and dynamic men and women who have recently joined the Riverside County Bar Association and am proud to be able to spotlight them in this magazine. Cosmos E. Eubany, an associate with the law firm of Graves & King, is no exception.

Born in Nigeria, Cosmos seemed to be destined to become a lawyer, as his father was an attorney in that country. However, after moving to Southern California when he was about ten years old, Cosmos seemed to have other plans. After being admitted to the University of California at Irvine, Cosmos initially had plans to be a doctor, but his love for politics soon brought about a change in his career path. Cosmos graduated from UC Irvine with a bachelor's degree in Political Science and a minor in Criminology in 2000.

After his college graduation, Cosmos moved to Washington D.C. to take part in a "think tank" known as the American Council for the United Nations University. The American Council for the United Nations University is a U.S. nonprofit organization that provides a point of contact between Americans and the primary research organ of the United Nations University ("UNU"), which focuses intellectual resources from all nations on world problems.

While working for the UNU, Cosmos had the opportunity to research international organized crime as well as the International Criminal Court. After the United States Army commissioned the UNU to research the applicability of the jurisdiction of the International Criminal Court to environmental issues surrounding internationally situated U.S. military bases, Cosmos contributed to "Environmental Crimes in Military Actions and the International Criminal Court – United Nations Perspectives," a paper that was later published by the Army.

Upon his return to California from Washington, D.C., Cosmos enrolled at the prestigious University of California Hastings College of the Law. Cosmos continued his interest in international law by joining and becoming an editor of the Hastings International Comparative Law Review. His article, "Justice for Some? U.S. Efforts Under Article 98 to Escape the Jurisdiction of the International Criminal Court," was later published.

In April 2002, ten countries ratified the Rome Statute of the International Criminal Court, bringing the total number of ratifications to over 60, and thus establishing the International Criminal Court. In his article, Cosmos explored the United States' refusal to pursue ratification of the treaty, which would have allowed the International Criminal Court to assert its jurisdiction over U.S. nationals. Particularly, his focus was on U.S. efforts to seek bilateral "non-surrender" agreements with other nations under Article 98(2) of the Rome Statute, which would allow the United States to opt out of the jurisdiction of the International Criminal Court.

During law school, Cosmos also studied abroad at the Sorbonne in Paris and was part of a delegation of law students that made a week-long visit to Haiti. Through his affiliation with that delegation, Cosmos lectured Haitian law students at the École Supérieure Catholique de Droit de Jérémie (ESCDROJ), which is located in a remote city in western Haiti. The delegation was also sponsored by various companies, which donated computer equipment to enable the Haitian law school to have access to the Internet. Cosmos was a member of the Hastings Negotiations Team and a research assistant to Professor Ugo Mattel. He graduated from Hastings in 2004 and successfully sat for the July, 2004 California Bar exam.

While a law student, Cosmos was a law clerk for the Law Offices of Dawn L. Hassell, a small San Francisco-based plaintiff's firm that specialized in medical malpractice and personal injury. It was there that Cosmos realized his love for litigation and his desire to focus on that niche as he began his professional career. "Working for that firm, I realized that I really liked litigation. Working for [Ms. Hassell] in a small environment, I got a lot of hands-on experience."

Now an associate attorney with the law firm of Graves & King, Cosmos' mostly defense practice focuses on general liability issues. Graves & King, whose main office is in downtown Riverside, is a defense-oriented firm, which specializes in construction defect litigation, general liability defense (including wrongful death, personal injury, products liability, and premises liability), and public entity defense.

Cosmos is a member of the Riverside County Bar Association and a new member of the Publications Committee of the *Riverside Lawyer*. He enjoys being a member of our close-knit legal community and looks forward to each and every day as an attorney. "I like the idea that every day I encounter something that I have never done before."

Although as a freshman associate attorney, he does not have a lot of free time, he enjoys exhilarating sports, like snowboarding and skydiving, and spends much time reading historical books. He is also currently heading up a chapter of the UC Irvine Alumni Association for Southern California.

Please join Cosmos and the rest of the members of Barristers at our next meeting, which will be on January 11, 2006, at 6:00 p.m. at the Cask 'n Cleaver in downtown Riverside! We look forward to seeing you!

Judicial Profile: Hon. Sherrill Ellsworth

by the Honorable Albert J. Wojcik

Hon. Sherrill Ellsworth

Judge Sherrill Ellsworth graduated from the Western State University College of Law in 1987. While in law school, Judge Ellsworth clerked for the law firm of Best Best & Krieger, and upon graduation, she worked as an associate with the firm of Thompson & Colegate. She then worked for attorney Rodney Walker, eventually taking over his practice upon his appointment to the bench in 1989.

Judge Ellsworth's personal life encompasses a wide range of interests and activities. She is a voracious reader, a gourmet cook, and a consummate movie devotée, with a critical eye for an occasional movie "gem." Judge Ellsworth likes the outdoors and enjoys camping, hiking, and fishing. She is undoubtedly the best, albeit probably the only, kayaker (if there is such a word, i.e., she paddles a kayak) on the bench.

Judge Ellsworth enjoys traveling and is a world traveler. She has visited such places as Turkey, Ireland, Fiji, Scotland, Russia, Italy, Greece, Romania, the Baltic countries, and Chicago, which I know is not a country, but which is one of her favorite cities.

In addition to her interests and activities, Judge Ellsworth is devoted to making her community a better place through her involvement in many local civic organizations. She also volunteers a great deal of her time, effort, and energy to her church.

Judge Ellsworth's greatest love and source of pride are her children, Alex, 14, Dana, 17, Danielle, 21, Tescra, 22, Isaac, 25, and Corisa, 27. Her children and her husband Craig, who is a dentist practicing in Riverside, are the center of her universe.

Judge Ellsworth engaged in the general practice of law from 1987 until 1996, with an emphasis on real estate law and business litigation. Judge Ellsworth also developed a criminal law practice, and during the period of 1992 through 1996, represented a great number of individuals through the Conflicts Panel. In addition, Judge Ellsworth handled some personal injury matters.

Judge Ellsworth represented two young men in a civil suit who were the subjects of alleged sexual abuse by an adult female. The criminal case drew national interest, including comments from Jay Leno, David Letterman and others on their television programs. Under prior law, the victim of statutory rape could only be female. Through her efforts, after numerous appearances at hearings before state legislators in Sacramento, Judge Ellsworth was instrumental in changing the law on statutory rape to include underage males. The new law, enacted in 1993, has been adopted by numerous other states.

In 1990, Judge Ellsworth began serving the court by sitting as Judge Pro Tempore throughout Riverside County, primarily in the courts in Hemet and in Banning. As Judge Pro Tempore, she heard a variety of civil and criminal matters.

In 1996, Judge Ellsworth was hired to serve on the bench as commissioner. She was assigned to preside over a variety of high-volume calendars, ultimately being assigned to preside over the family law calendar in the Hemet court.

Judge Ellsworth has gained a reputation for patience, innovation, and keen wit in handling the family law calendar. As a commissioner, Judge Ellsworth created several progressive programs, some of which have become models for programs adopted through the state, such as the Dedicated Self-Representative Litigant Calendar.

Judge Ellsworth has been involved in mock trial, has taught family law classes on a national level, is an educator for CJER, and has chaired the Domestic Violence Institute for the past three years.

Judge Ellsworth was appointed to the bench in 2005 and is currently assigned to the Family Law Court in Hemet.

The Honorable Albert J. Wojcik is a Judge of the Superior Court of the State of California and is assigned to the Southwest Justice Center located in Murrieta.

Historic Riverside

by Bruce E. Todd

The theme of this month's magazine is "Law and Religion," and therefore I thought that I would shed some new light on a couple of historic edifices that contain Riverside's two oldest churches. Both of these impressive structures are worth a visit regardless of your religious affiliation.

The oldest existing church structure is part of the Magnolia Presbyterian Church located at 7200 Magnolia Avenue in Riverside (near the Parent Navel Orange Tree at the intersection of Magnolia and Arlington). This wood-framed Gothic structure was completed in 1881.

Local history tells us that, in 1880, five people met at the home of James Benedict and obtained $1,700 for the construction of a new Presbyterian church. In the fall of that year, a contract was awarded to A.W. Boggs, a Riverside architect and contractor, to build the church. The original structure consisted of only the large church auditorium and a small entrance vestibule.

Reverend A.G. Lane, the first pastor of the new church, delivered the first sermon at the building's formal dedication on April 24, 1881. It was announced that the construction cost ($4,500) had been fully paid. Many considered it to be, for its cost, the finest church south of San Francisco.

It should be noted that some of the church's original organizers were also some of the early leaders of Riverside. These included S.C. Evans, who had become a prominent financial and real estate development leader. Others were James Benedict, whose "Casa Grande" residence on the present site of Ramona High School was a social center, and Albert White, a civic worker who later became one of the first Riverside County Supervisors and the namesake of White Park.

The church was expanded in 1883 with the addition of a manse with ten additional rooms. A lecture room was added in 1889. The building has now been designated as a city cultural heritage landmark.

Currently, the old church building is used as a fellowship hall and social center. Services are held at a modern sanctuary located next door. Bradley Copeland, the current senior pastor, notes that there have only been 11 senior pastors at the church since the church was constructed in 1881.

Riverside's second oldest existing church is, by some accounts, an even more impressive architectural structure. This historic edifice, located at the corner of Mission Inn and Lemon (next to the Riverside Public Library), is home to the Universalist Unitarian Church.

The building was designed by A.C. Wollard and constructed by the aforementioned A.W. Boggs. Reverend George H. Deere, the original minister, had previously considered the design of the church in light of visits he had made to the English countryside. He worked with Wollard to design a structure of Norman and English Gothic architecture. Construction began in 1891 and was completed for a cost of about $25,000. This amount included the lot, sanctuary and a parish hall. The first service took place in February of 1892 and the church was formally dedicated in June of that year.

The church walls are of brick, faced with red sandstone from a quarry in Flagstaff, Arizona. The floor of the interior vestibule in the 50-foot tower is made of marble quarried in Colton. The stained glass windows were designed and manufactured by Sebiling Wells Glass Company in Chicago. These windows memorialize some of the most important people involved in the founding of the church.

In the late 1940's, city officials wanted to buy the property, intending to demolish the church to accommodate parking for a new library. After many years of negotiations, the city gave up its attempt in 1966. By this time, the congregation had purchased a secondary location in expectation of vacating the downtown site. No longer needing this additional site, the congregation was able to sell it and use the proceeds to pay for most of a $300,000 renovation in 1988. Despite this renovation, the church structure still stands essentially as it did when originally constructed back in 1891.

Now regarded as one of Riverside's architectural gems, the edifice was formally dedicated as a city cultural heritage landmark in 1977. In 1979, it was listed on the National Register of Historic Places.

For history buffs, it should be noted that the first church in Riverside was the First Congregational Church, which was built in 1873. Alas, this structure at the corner of Vine and Sixth no longer exists.

Bruce E. Todd, a member of the RCBA Bar Publications Committee, is with the law firm of Ponsor & Associates in Redlands.

Intelligent Design

by Kirsten S. Birkedal

Kirsten Birkedal

Intelligent design is the theory that certain features of the universe are best explained by an unidentified intelligent force. Last month, two candidates running in the race for the Palm Springs Unified School District's Board of Education, Debra Kay Ahlers and Meredy Shoenberger[1], both said that if elected, they would support teaching intelligent design or creationism in school.[2] Perhaps when Ahlers and Shoenberger made these statements, they were unaware that the United States Supreme Court had held teaching creationism unconstitutional and that the constitutionality of teaching intelligent design is currently being determined by a Pennsylvania federal court judge in *Kitzmiller v. Dover Area School District*.[3]

Since the theory of evolution was first taught in public schools, it has been a hotly contested issue. In 1925, John Scopes, a Tennessee public school teacher, was convicted for violating a statute that made it illegal to teach evolution in the classroom. It took until 1968 for the Supreme Court to declare anti-evolution statutes, like the Tennessee ban, unconstitutional under the Establishment Clause.[4]

With the Supreme Court ruling that anti-evolution statues are unconstitutional, those opposed to the teaching of evolution in the classroom had to change their focus. They began to advocate teaching a theory known as creation science or creationism. The theory of creation science holds that a supernatural creator was responsible for the creation of humankind. For almost 20 years, the theory of creation science was promoted by several school boards as an alternative theory to evolution that should be taught in public school science courses. Then, in 1987, the Supreme Court issued a decision in *Edwards v. Aguillard* that put an end to the teaching of creation science in public schools.[5] The court found that the belief that a supernatural creator was responsible for the creation of humankind is a religious viewpoint. It also found that a requirement of teaching such a belief advances a religious doctrine "by requiring either the banishment of the theory of evolution from public school classrooms or the presentation of a religious viewpoint that rejects evolution in its entirety."[6] As a result, the court held that a requirement that public schools teach creation science violated the Establishment Clause of the First Amendment because of its religious purpose.[7]

With creation science banned in the public school classroom, support has been growing for a new alternative theory known as intelligent design. The theory of intelligent design was developed in the mid-1990's and holds that certain features of the universe in general and living things in particular are best explained by an unidentified intelligent force. Like creation science, intelligent design is another alternative theory to compete with evolution. However, supporters of intelligent design contend that, unlike creation science, it is a verifiable scientific theory that does not promote religion.

To date, intelligent design has become an issue in several states, including Kansas, Ohio, and Arizona. At the moment, all eyes are on the state of Pennsylvania and the current federal court case, *Kitzmiller*, which will determine whether the Dover public schools can teach intelligent design as part of their science curriculum. The case was brought by eleven plaintiffs, all Dover residents, who are suing the Dover School Board for adopting a policy that requires ninth-grade students to hear about intelligent design before their biology lessons on evolution. According to the Dover policy, teachers must read a statement that informs students that there are gaps in Charles Darwin's theory of evolution and that intelligent design offers a different explanation of life's origins. The statement also references a book entitled "Of Pandas and People," which is available for students if they want to learn more about the theory of intelligent design.[8]

The plaintiffs are represented by the American Civil Liberties Union and Americans United for Separation of Church and State. They argue that the Dover policy violates the constitutional separation of church and state.[9] The defendant, the Dover School Board, is represented by the Thomas More Law Center, a legal group that promotes

[1] On November 8, 2005, Meredy Shoenberger was elected to a seat on the Palm Springs Unified School District's Board of Education.

[2] Byron, Bill, "What should our kids learn?," *The Desert Sun*, October 23, 2005. (Available at http://www.thedesertsun.com).

[3] Civil Action No. 04-CV-2688, United States District Court for the Middle District of Pennsylvania, the Honorable John E. Jones III.

[4] The Arkansas statute was based on the Tennessee statute that was the focus of the Scopes trial. *Epperson v. Arkansas*, 393 U.S. 97 (1968) (holding the Arkansas anti-evolution statute unconstitutional).

[5] 482 U.S. 578 (1987).

[6] *Id*. at 596.

[7] *Id*. at 589-94.

[8] *Kitzmiller* Complaint. (Available at http://www.aclu.org/evolution/legal/complaint.pdf.)

[9] *Id*.

and defends the religious freedom of Christians. The Dover School Board is also supported by the Discovery Institute, a think tank based in Seattle, Washington that promotes the teaching of intelligent design in the classroom. The Dover School Board's defense is that the statement about intelligent design has no religious purpose and does not advance religion. Instead, it argues that the plaintiffs and the ACLU are censoring classroom discussion, which is a violation of the First Amendment's protection of freedom of speech.

The main issue contested at trial was whether intelligent design is a form of creationism or a scientific theory. The attorney for the plaintiffs argued that most scientists reject the theory of intelligent design as a subjective idea that has not been proven scientifically.[10] On the other hand, the attorney for the Dover School Board argued that intelligent design is science. In order to prove his case, he had his lead witness, Michael J. Behe, a biochemistry professor at Lehigh University, testify about the scientific background of intelligent design. Behe's testimony lasted over several days of trial. He testified that living organisms are so highly complex that an unseen, intelligent designer must have created them.[11] Behe also testified that the designer he references is God.[12]

While Behe's testimony was used by the defense to give scientific credibility to the theory of intelligent design, it seemed to be contradictory at times. For example, on one hand, Behe testified that intelligent design is a scientific theory, yet he admitted that it is a theory that is difficult to test scientifically or to verify in the traditional sense. Also, the fact that Behe admits that the designer is God is troubling for the defense's case, especially as the defense contends that there is no religious purpose behind its classroom statement.

The trial ended on November 5, 2005, and a ruling by Judge John E. Jones III is expected soon. Judge Jones will likely base his decision on the *Lemon* test, from the Supreme Court case of *Lemon v. Kurtzman*.[13] First, Judge Jones must decide whether the Dover School Board's purpose in introducing the statement about intelligent design in the classroom was religious or secular. If Judge Jones finds that the Dover School Board had a secular purpose, then he must answer the more difficult questions, which are whether the statement advances religion in the classroom and whether the statement produces excessive government entanglement with religion.[14] No matter how Judge Jones rules, the case is expected to be appealed.

Meanwhile, all eight members of the Dover School Board were defeated in last month's election. The Dover voters elected candidates who do not support teaching the theory of intelligent design in public schools. Religious broadcaster Pat Robertson then warned the residents of Dover that, if a disaster strikes, they cannot depend on God because they "voted God out of your city" by ousting the school board members who favored intelligent design.[15]

The *Kitzmiller* case has garnered national attention. School boards across the country will likely wait for the outcome of this case before they promote any policy requiring the teaching of intelligent design in the classroom.

Most likely, the Palm Springs Unified School District will not require the teaching of intelligent design in their public schools any time soon. In order to adopt such a policy, at least one member of the school board would have to initiate the proposal, and then a majority of the school board would have to approve. In addition, any California school board that adopted a policy of teaching intelligent design would face the consequence of the high cost of defending a lawsuit similar to the *Kitzmiller* lawsuit. Finally, the school board would lack the support of the State Superintendent of Public Instruction, Jack O'Connell. O'Connell has stated that he will keep intelligent design out of California classrooms.[16] O'Connell said that divine creation would be an appropriate topic for discussion in history-social science or English-language arts curricula.[17]

Intelligent design and the teaching of evolution itself are issues that evoke passion and frustration for school administrators, school board members, parents and students. The outcome of the Pennsylvania federal court case, *Kitzmiller*, could either put an end to the intelligent design movement or legitimize its place in the science curriculum. Therefore, attorneys who represent and advise school districts and school administrators should be prepared to advise their clients about the constitutionality of teaching alternatives to evolution such as intelligent design.

Ms. Birkedal is a recent graduate of the University of Oregon School of Law. She is delighted to report that she achieved a passing score on the July 2005 California Bar Examination.

[10] Getlin, Josh, "The Case of Behe vs. Darwin," *Los Angeles Times*, November 5, 2005. (Available at http://pqasb.pqarchiver.com/latimes/access/922110661.html?dids=922110661:922110661&FMT=ABS&FMTS=ABS:FT.)

[11] Behe's Trial Testimony, October 17, 2005, Morning Session, Page 95. (Available at http://www.thomasmore.org/pdfs/Behe_10-17_Morning.pdf.)

[12] *Id.*

[13] 403 U.S. 602 (1971).

[14] See *Kitzmiller* Complaint, *supra* note 6.

[15] Associated Press, "Robertson warns Pennsylvania town that ousted school board over intelligent design," *MSNBC*, November 10, 2005. (Available at http://www.msnbc.msn.com/id/10004363.)

[16] McLean, Hilary, "State Schools Chief Jack O'Connell Defends California Science Standards," California Department of Education News Release, September 28, 2005. (Available at http://www.cde.ca.gov/nr/ne/yr05/yr05rel118.asp.)

[17] *Id.*

New Law Raises Questions About Required Harassment Prevention Training

by Richard Whitmore and Michael Blacher

As of January 1, 2005, California employers are required to train supervisors on prevention of harassment. This seemingly straightforward requirement has prompted numerous questions from employers who may be subject to the new law. Some of those questions and a discussion of possible answers follow.

1. What does the new law require?

Commonly known as A.B. 1825, new Government Code section 12950.1 mandates that all California employers having 50 or more employees provide at least two hours of instruction for supervisors on sexual harassment prevention. Generally, the training must occur by January 1, 2006. Thereafter, such training must occur every two years, but new supervisors must be trained within six months of assuming the duties of a supervisor.

A.B. 1825 extends the requirement of Government Code section 12950, which took effect in 1993. That statute requires employers to post and distribute information to employees regarding sexual harassment. (The sexual harassment information sheet can be downloaded at www.dfeh.ca.gov/Publications/DFEH%20185.pdf.)

Federal law does not require similar training. Nonetheless, the Equal Employment Opportunity Commission recommends that employers provide anti-harassment training. (More information is available at www.eeoc.gov/policy/docs/harassment.html.)

2. Which employers are covered?

All California employers that have 50 or more employees are subject to the new law. If an employer has fewer than 50 employees but uses independent contractors, and if its combined number of employees and contractors is 50 or more, then that employer must provide the training.

It is not clear from the statute whether the minimum of 50 employees must be full-time, full-time equivalents (FTE's), or simply a total of 50 persons, including part-time, seasonal and temporary employees. Similarly, it is not clear whether the statute covers an employer with fewer than 50 employees in California, but more than 50 when including employees in other states. Given the public policy of preventing sexual harassment, it is entirely likely that the Fair Employment and Housing Commission (FEHC) and the courts will attempt to apply the requirement broadly so as to maximize the coverage of the new law.

The State of California is a covered employer and must incorporate harassment prevention into other mandatory training for supervisors.

3. Who must receive the training?

The statute requires training of "supervisory employees" who are employed as of July 1, 2005. Although there is no definition of "supervisory employees" in the new law, California's Fair Employment and Housing Act (FEHA) defines "supervisor" as follows:

> "any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend that action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

(Gov. Code, § 12926, subd. (r).)

Although useful as a guide, the FEHA definition still leaves some questions unanswered. Is a lead worker a supervisor for these purposes? Are managers who serve as policy makers covered? Is an independent contractor who may have some limited supervisory authority over employees covered?

It is likely that the FEHC and the courts will attempt to apply the statute broadly to further the public policy of preventing harassment.

4. When must the training occur?

The general requirement is for the training of supervisors by January 1, 2006, and every two years thereafter. Nonetheless, there is a specific statutory exception: If an employer has provided training to supervisors since January 1, 2003, then the deadline of January 1, 2006 does not apply.

However, employers must provide the training to a supervisor within six months of assuming supervisory duties. So, presumably, if an employer provided training in 2003, but promoted employees into supervisory positions in 2004, it is not relieved from providing more training, notwithstanding the 2003 exception. As a practical matter, therefore, when an employee is promoted to a supervisory position, the two-year window is actually six months. Employers will have to monitor supervisor appointment dates during each six-month period and assure that the new supervisors have not been on the job for longer than six months without receiving the training.

5. What is the subject matter of the training?

The statute requires training of supervisors only on prevention of sexual harassment. Although there is a reference in the new law to training on "harassment, discrimination and retaliation," apparently this is limited to matters involving gender. Presumably that would include sexual orientation, although the statute does not expressly address that issue. The new law does not mandate training on prevention of harassment based on race, national origin, religion, ethnicity, disability, or other legally protected status. Nevertheless, many California employers require their employees, including supervisors, to take harassment prevention training on the broader range of topics, not just sexual harassment. Indeed, the statute describes the mandated training as a "minimum threshold" that should not discourage employers from providing more training than is required.

The training must "include information and practical guidance regarding the federal and state statutory provisions." Further, the training must include "practical examples" that are designed to assist supervisors in preventing harassment, discrimination, and retaliation.

6. What type of training is required?

The statute requires "classroom or other effective interactive training and education." It is not clear whether online, internet or other forms of computer training would suffice. Are they "interactive" enough?

7. Who must conduct the training?

The instructors must be persons with "knowledge and expertise" in matters involving harassment, discrimination, and retaliation. Most covered employers likely have in-house personnel and/or human resources staff with "knowledge" of these issues, but do they have "expertise"? Ironically, they may have expertise if they work for an employer who has had multiple complaints of harassment, which they have had to handle.

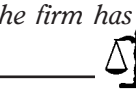
The statute requires that the training cover both the federal and state laws. There is a question whether a lawyer would be needed to assure adequate review of those laws, but the statutory emphasis on "practical guidance" regarding such laws suggests that a lawyer is not required.

8. What are the penalties for noncompliance?

There are no penalties identified in the statute for failing to provide the training. The Department of Fair Employment of Housing (DFEH) may issue an order requiring an employer to provide the training, but the method of enforcement of that order is not clear. The new law does address the consequences of providing or not providing the training in subsequent litigation. According to the statute, the failure to provide the training to an individual supervisor does not produce automatic liability for the employer. Conversely, providing the training does not automatically insulate the employer from liability.

Obviously, the statute does not address all of the consequences in future litigation if an employer does not provide the required training. An employer who has ignored the statutory mandate will undoubtedly have that fact pointed out to a jury as an example of its failure to take all reasonable steps to eliminate harassment. The failure may not create automatic liability, but it will likely be a factor for the jury to consider in assessing liability and damages.

Richard Whitmore, Partner, and Michael Blacher, Associate, are with the firm Liebert Cassidy Whitmore. Liebert Cassidy Whitmore, which maintains offices in San Francisco and Los Angeles, represents public agency management in all aspects of labor and employment law, including labor relations, civil litigation and education law. Additionally, the firm has an extensive management training program.



One Nation Under God? The Battle over Separation of Church and State

by Cosmos E. Eubany

While the nation watched the United States Supreme Court deliberate the constitutionality of maintaining religious symbols in federal buildings, it averted its eyes from an arena in which the subsequent battle would be raged. That arena was the classroom, and the subsequent battle, over the Pledge of Allegiance.[1]

In January 2005, Michael A. Newdow brought an action to challenge the constitutionality of the Pledge of Allegiance. Specifically, he challenged the words "under God" as a violation of the Establishment and Free Exercise Clauses, and prayed the court to grant an injunction removing the phrase from the Pledge and stopping the recital of the Pledge in public schools.

On September 14, 2005, Judge Karlton of the United States District Court for the Eastern District of California handed down an order finding that the school district's policy of reciting the Pledge of Allegiance impermissibly coerced a religious act, and as such was a violation of the Establishment Clause.

Mr. Newdow is an atheist who believes that reciting the Pledge of Allegiance in school is an unconstitutional government endorsement of religion. Accordingly, he filed an action on behalf of himself and his daughter, as well as various Doe and Roe parents and their children. The action was filed against the United States of America, the United States Congress, the Elk Grove Unified School District, the Sacramento City Unified School District, as well as various other state government actors. The action challenges a phrase that has been a part of the Pledge of Allegiance for 50 years.

The phrase "under God" has not always been a part of the Pledge of Allegiance. In 1942, the United States Congress enacted the Pledge of Allegiance to the flag; however, the Pledge as originally enacted did not include the phrase "under God." It read in pertinent part, "one Nation indivisible, with liberty and justice for all." It was not until 1954 that Congress amended the Pledge of Allegiance to include the phrase "under God." It is this phrase that Mr. Newdow now challenges in court.

Mr. Newdow's suit is his proverbial "second bite at the apple." He filed a similar suit in March of 2000 on behalf of himself and his minor daughter, who had to recite the Pledge of Allegiance in her classroom. The United States Court of Appeals for the Ninth Circuit found that the school district's policy of reciting the Pledge of Allegiance violated the Establishment Clause. The court, however, failed to address the question of whether the federal statute codifying the Pledge of Allegiance was unconstitutional. The matter was appealed to the United States Supreme Court, which dismissed the claim, opining that Mr. Newdow lacked prudential standing to bring the action because he did not have legal custody of his minor daughter.

Judge Karlton's order of September 14, 2005 was a reiteration of the Ninth Circuit's opinion. The district court held that the Ninth Circuit's decision still had precedential value because the Supreme Court had dismissed the case based on prudential standing concerns and not based on Article III standing. While Article III standing, according the district court, is a Constitutional requirement that a party must show before a court has jurisdiction to hear a matter on its merits, prudential concerns are court-imposed restrictions. Because a court has the discretion to ignore its prudential concerns and hear a case on its merit, but lacks the same discretion as to Article III standing, a matter decided on its merits and later dismissed based on prudential standing concerns still maintains precedential value. Therefore, Judge Karlton reasoned, because the Supreme Court had dismissed the Ninth Circuit's ruling based on prudential concerns, the Ninth Circuit's ruling still set a precedent that was binding on the Doe and Roe plaintiffs in the present complaint. As a result, Judge Karlton held that the school district's policy of reciting the Pledge of Allegiance in the classroom was a violation of the Establishment Clause.

[1] The words of the Pledge of Allegiance were codified by 4 U.S.C. § 4, and read as follows: "I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation *under God*, indivisible, with liberty and justice for all." (Emphasis added.)

However, the district court failed to address the issue of whether the federal statute codifying the Pledge of Allegiance was unconstitutional. The court noted that because the school district's policy of reciting the Pledge of Allegiance was a violation of the Establishment Clause, the plaintiffs could enjoin the school district from enforcing this policy. This remedy, according to Judge Karlton, rendered the plaintiffs' action moot because the remedy resolved the case and controversy. The plaintiffs could no longer argue that they suffered an injury in fact, because the school district could no longer require the recitation of the Pledge of Allegiance.

Professor Vikram Amar, a constitutional law professor at the University of California, Hastings College of the Law, believes that although Mr. Newdow has won the battle, he has a slim chance of winning the war. The next battle promises to take place in the Ninth Circuit, where the matter is already being appealed. Professor Amar believes the Ninth Circuit will reverse Judge Karlton's ruling because it misreads the Supreme Court's earlier ruling on the meaning of prudential standing. If the Ninth Circuit reverses and remands the case to federal district court, and if Judge Karlton still rules in favor of the plaintiffs, the argument will have to survive yet another appeal before the Ninth Circuit. Assuming that the ruling is upheld in the Ninth Circuit, it will be appealed to the Supreme Court. There, Professor Amar believes, Mr. Newdow will not have enough votes in the court to declare the Pledge of Allegiance unconstitutional. This process will take a long time and will likely maintain the status quo. In the meantime, the district court's ruling is a victory for Mr. Newdow because for the time being the school district can no longer enforce its policy of reciting the Pledge of Allegiance.

With its ruling, the district court avoided having to apply recent Supreme Court rulings in which it drew a distinction between government activities that endorse religion and those that recognize the religious history of the nation and its laws, the former being a violation of the Establishment Clause and the latter, a permissible recognition of history. The Pledge of Allegiance challenge seemed ripe to test the Supreme Court's seemingly arbitrary standard; however, it appears that the battle in the classroom will not resonate very far. The battle to clarify the Supreme Court's standard will have to be staged in another arena. Stay tuned.

Cosmos E. Eubany is an associate of Graves & King LLP in Riverside and a member of the RCBA Publications Committee.

Reception Honoring James Heiting, State Bar President

The reception was held on Tuesday, November 15, 2005, at the Mission Inn in Riverside. Photographs by Michael J. Elderman.

Michael Clepper, John Brown

Richard Reed, Dan Walters

Justice Jim Ward (Ret.), John Boyd

Jim and Cindy Heiting with their grandchildren, Jake, Vaughn and Brianna

Michael Sachs, Joe Rank

Jim and Cindy Heiting; Cindy and Grover Trask

Don and Cathy Zimmer, Mayor Ronald Loveridge (Riverside)

J'Amy Pacheco (San Bernardino Bulletin), Jacqueline Carey-Wilson

Judge Linda Wilde (San Bdno Superior Court), Matthew Marnell

Steve Saleson, Bruce MacLachlan, Bruce Varner, Jim Heiting

Marcia LaCour, Wilfred Schneider

Shauna Albright, Dan Hantman (RCBA Vice President), Najat Reikes

Dennis Thayer, John Porter, Connie Porter

Jeff Stone (Dist. 3 Supervisor, Riverside County), Jim Heiting

Jim Heiting, Hon. Alan Crafts

Jim presented with outstanding achievement award by Theresa Han Savage

Theresa presents gift from RCBA to Jim

Penny Alexander-Kelley presents Jim with SBCBA's lifetime honor membership award

Field Representative Jonathan Sassani presents a Certificate of Recognition on behalf of Assemblyman John Benoit

Field Representative Ted Lehrer presents Resolution on behalf of Senator Bob Dutton, Assemblymen Bill Emerson, John Benoit and Russ Bogh

Janice Boyd, President of Riverside County Law Alliance

Jim Heiting, Diane and Andy Roth

Champagne Toast

Hans Heiting (son), Kari Terkelsen, Aaron Heiting (son), Katherine Bell, Jim and Cindy Heiting, Jake Heiting (grandson), Anya Heiting (daughter-in-law), Vaugh Heiting (grandson), Brianna Heiting (granddaughter), James Heiting, II (son)

ACKNOWLEDGEMENTS

The RCBA and SBCBA would like to thank all the sponsors listed below. This special reception to honor James Otto Heiting, State Bar President, would not have been possible without their generous contributions. The reception was held on November 15, 2005, at the Mission Inn in Riverside.

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Holiday Greetings

Warmest thoughts and best wishes for a wonderful holiday and a very Happy New Year!

Litigation Update

by Mark A. Mellor

Non-party may be sanctioned for discovery abuse.

A trial court was held to have properly sanctioned a lawyer, who was neither a party nor an attorney in a pending case, who took advantage of an obvious error in the subpoena for his deposition and for the production of documents in his possession and, based thereon, failed to comply with the subpoena. (Sears, Roebuck and Co. v. National Union Fire Ins. Co. (2005) 131 Cal.App.4th 1342 [32 Cal.Rptr.3d 717, 2005 DJDAR 9913] [Second Dist., Div. Eight].) The case also dismissed the lawyer's appeal from his unsuccessful attempts to disqualify the discovery referee who imposed the sanctions, because the denial of a motion to disqualify a trial judge is not appealable and may be reviewed only on a petition for extraordinary writ.

Lawyers are not entitled to fees incurred before confirmation of bankruptcy reorganization plan.

A law firm represented husband in a dissolution action. A year after the parties entered into a marital settlement agreement, husband filed for bankruptcy, and subsequently the bankruptcy court confirmed a reorganization plan that provided that the law firm would be paid if the sale of husband's house attained a specified sales price. It did not. And the lawyers were out of luck. Not surprisingly, the Court of Appeal held that the lawyers' claim was discharged by the reorganization plan. (Zimmerman, Rosenfeld, Gersh & Leeds LLP v. Larson (2005) 131 Cal.App.4th 1466 [33 Cal.Rptr.3d 111, 2005 DJDAR 10013] [Second Dist., Div. Four].)

Small claims jurisdictional amount will be increased.

A.B. 1459 (Canciamilla) and S.B. 422 (Simitian) will increase the small claims jurisdiction in actions brought by a natural person from $5,000 to $7,500.

Judicial privilege provides no immunity for assault on litigant.

When a court-appointed discovery referee physically assaulted a litigant, he was not protected by the judicial privilege, even though he claimed he was merely exercising his judicial powers to compel the parties to proceed with a scheduled deposition. (Regan v. Price (2005) 131 Cal.App.4th 1491 [33 Cal.Rptr.3d 130, 2005 DJDAR 10071] [Third Dist.].)

State court filings increase slightly.

The Judicial Council reported that total statewide filings in the superior courts increased about three percent during fiscal year 2003-2004. Filings in the Court of Appeal increased by over six percent. Filings in the Supreme Court declined by three percent. The numbers for filings during this period were: Superior Court, 8.8 million (including 189,854 general civil filings and 786,703 limited civil filings); Court of Appeal, 22,824; and Supreme Court, 8,564. Although general civil filings represent only 2.2 percent of the trial court filings, they create 12 percent of the courts' workload. (Judicial Council of California, 2005 Annual Report, pp. 23- 27.)

Motion for attorney fees after appeal must be served and filed within 40 days of notice of issuance of remittitur.

California Rules of Court, rule 870.2(c)(1) provides that a notice of motion to claim attorney fees on appeal must be served and filed "within the time for serving and filing the memorandum of costs under rule 26(d)." Unfortunately, the cross-reference is cause for confusion; the current version of rule 26(d) specifies when the remittitur is deemed issued, but is silent as to the "the time for serving and filing the memorandum of costs." That piece of information is in rule 27(d), which provides that the memorandum of costs on appeal must be filed within 40 days after the clerk sends notice of issuance of the remittitur.

The source of this confusion is explained in footnote 5 in In re Marriage of Freeman (2005) 132 Cal.App.4th 1 [33 Cal.Rptr.3d 237, 2005 DJDAR 10239] [Second Dist., Div. Four], where the court states: "Rule 26 . . . was formerly numbered as rule 27, and still appears under that designation in the published Rules of Court. It was renumbered by action of the Judicial Council, operative on January 1, 2005. (See Disposition Table at the beginning of Title One of Appellate Rules.)"

Vexatious litigant may be liable for attorney fees.

When litigants have been declared "vexatious," the court may require them to post security. The amount of security may include attorney fees to be incurred by the defendant, because the vexatious litigant statute (Code Civ. Proc., §§ 391 et seq.) provides an independent statutory basis for awarding attorney fees to a defendant forced to defend an action brought by a vexatious litigant. (Singh v. Lipworth (2005) 132 Cal.App.4th 40 [33 Cal. Rptr.3d 178, 2005 DJDAR 10315] [Third Dist.].)

Immunity protects law enforcement officials from liability for mistaken incarceration.

Government Code section 845.8 entitled defendants to summary judgment where they had incarcerated plaintiff for almost a month based on a mistake in identifying a parole violator. (Perez-Torres v. State of California (2005) 132 Cal.App.4th 49 [33 Cal.Rptr.3d 227, 2005 DJDAR 10347] [Second Dist., Div. Three].) The case also contains a useful discussion of the principles of res judicata.

A defendant contesting personal jurisdiction must file motion to quash before taking any action relating to the merits of the action.

Code of Civil Procedure section 418.10 authorizes a motion to quash service of summons within the time allowed for filing a response to the complaint. If the motion is timely made, "no act" by the party making such a motion, "including filing an answer, demurrer, or motion to strike," shall be deemed to be a general appearance. (Code Civ. Proc., § 418.10, subd. (e)(1).) But this does not mean that defendant can necessarily wait until the filing of the responsive pleading to file a motion to quash. Any action relating to the merits of the case, before the motion is filed, constitutes a general appearance. (Factor Health Management, LLC v. Superior Court (2005) 132 Cal.App.4th 246 [33 Cal.Rptr.3d 599, 2005 DJDAR 10613] [Second Dist., Div. One] [seeking discovery to oppose a preliminary injunction before filing a motion to quash constitutes a general appearance].)

A case to read when relying on legislative history in the interpretation of a statute.

In Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc. (2005) 133 Cal.App.4th 26 [34 Cal.Rptr.3d 520, 2005 DJDAR 11938] [Third Dist.], the Court of Appeal provides a detailed syllabus on the use and misuse of "legislative history." The opinion reiterates the oft-stated rule that the court may refer to legislative history only if the statute is ambiguous. It explains in great detail how a request for judicial notice of legislative history should be presented to the court and then provides an exhaustive list of what documents may and what documents may not be considered by the court in determining the intent of the legislature from the legislative history.

Mandatory provisions of Code of Civil Procedure section 473, subdivision (b) do not authorize setting aside a summary judgment.

Code of Civil Procedure section 473, subdivision (b) mandates relief from a default judgment based on an attorney filing a declaration of fault. But even though plaintiff's lawyer failed to oppose a motion for summary judgment, it could not be set aside under this subdivision because the statute is limited to default judgments. This was a summary judgment, not a default judgment, and the general rule charging clients with the negligence of their lawyer remains. (Prieto v. Loyola Marymount Univ. (2005) 132 Cal.App.4th 290 [33 Cal.Rptr.3d 639, 2005 DJDAR 10682] [Second Dist., Div. Eight].)

Note: Aside from relief from default judgments, Code of Civil Procedure section 473, subdivision (b) also commands the setting aside of dismissals resulting from lawyers' fault. For the relief to be available, the lawyer must unequivocally acknowledge his or her mistake, inadvertence, surprise, or neglect. And the court must award compensatory attorney fees to the opposing party. (See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2005) ¶¶ 5:292 et seq.)

Report of possible crime is privileged.

Civil Code section 47, subdivision (b) bars a civil action for damages based on statements made in an official proceeding. This included a report to the police wherein defendant reported a possible crime. Therefore the ruling of the trial court in sustaining defendant's demurrer without leave to amend was affirmed, even though plaintiff alleged that the unfounded police report had been filed in retaliation for his having reported misconduct by defendant. (Brown v. Department of Corrections (2005) 132 Cal.App.4th 520 [33 Cal.Rptr.3d 754, 2005 DJDAR 10824] [Third Dist.].)

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

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CURRENT AFFAIRS

by Richard Brent Reed

Here are some highlights from the new Iraqi Constitution:

Equal Protection

Article 14: Iraqis are equal before the law without discrimination because of sex, ethnicity, nationality, origin, color, religion, sect, belief, opinion or social or economic status.

Fundamental Rights

Article 15: Every individual has the right to life and security and freedom . . . .

Equal Opportunity

Article 16: Equal opportunity is a right guaranteed to all Iraqis . . . .

Right To Privacy

Article 17: Each person has the right to personal privacy as long as it does not violate the rights of others or general morality.

Star Chambers

Article 19 (4): The right to a defense is holy and guaranteed in all stages of investigation and trial.

(5): The accused is innocent until his guilt is proven in a just, legal court.

(7): Court sessions will be open unless the court decides to make them secret.

Right To Work

Article 22: Work is a right for all Iraqis . . . .

The Takings Clause

Article 23 (1): Private property is protected and the owner has the right to use it, exploit it, and benefit from it within the boundaries of the law.

(2): Property may not be taken away except for the public interest in exchange for fair compensation. This shall be regulated by law.

Poverty Exemption

Article 28 (2): Low-income people should be exempted from taxes . . . .

Insurance

Article 30: The state guarantees social and health insurance . . . .

Unlawful Detention

Article 35 (b): No one may be detained or investigated unless by judicial decision.

Free Speech

Article 36: The state guarantees, as long as it does not violate public order and morality:

1st – the freedom of expressing opinion by all means.

2nd – the freedom of press, publishing, media, and distribution.

3rd – freedom of assembly and peaceful protest will be organized by law.

Quotas And Reparations

Article 110 (1): The federal government will administer oil and gas extracted from current fields in cooperation with the governments of the producing regions and provinces on condition that the revenues will be distributed fairly . . . all over the country. A quota should be defined for a specified time for affected regions that were deprived in an unfair way by the former regime . . . .

The Iraqi constitution is a good beginning: fundamental rights are guaranteed (Article 15); speech, press, and assembly are protected (Article 36); and property rights are respected (Article 23). It is reassuring to know that legal representation is not only just, but "holy" (Article 19), and that a trial will be public except when the judge wants it to be private. And, to eliminate any future controversy, the Iraqis had the foresight to actually write a right of privacy into their constitution (Article 7). The provision for federal health insurance in Article 30, however, conceals an invasiveness in its penumbra that will overshadow and swallow up whatever expectation of privacy the Iraqis may have in mind.

Article 110 has the most significance for Americans in that it answers: Who owns Iraq's oil? What is to become of Iraq's oil? and, What sort of regime has just been deposed? The oil belongs to the Iraqis; the profits go to the Iraqi people; and Saddam Hussein's regime was despotic. The war in Iraq – like our own war for independence – has produced a constitution. Some Bostonians may have decried the American Revolution, saying, "No blood for tea!," but the American Revolution was not about tea any more than the Iraqi conflict is about oil. As the Iraqis themselves have stated in their eloquent preamble: "Terrorism and takfir did not divert us from moving forward to build a nation of law." ("Takfir" means declaring someone an infidel.)

The Iraqi constitution may not be perfect (what constitution is, nowadays?), but it does make one happy omission: there is no income tax. Like I said, it's a good start.

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

Court Suspends Civil Trials to Relieve Criminal Case Backlog

Riverside County: Beginning December 12, 2005, trials in most civil cases in Riverside County courts will be suspended, Presiding Judge Sharon Waters announced today. The suspension will remain in effect through January 20, 2006, when trials in a limited number of civil cases may resume if the backlog of criminal cases is eliminated. If the backlog still exists, then trials of affected cases could be postponed for several months.

"We are no longer able to try all pending criminal cases in the departments normally assigned to try them," said Judge Waters. "Criminal cases have strict time limits. If we cannot begin a criminal trial within the time limits, the case must be dismissed. We regret the delay in trying civil cases, but we have no choice. We cannot allow criminal cases to be dismissed unless we have used every resource available to us."

While caseloads have expanded with the increasing population of the county, the number of judges has not kept pace. Since the year 2000, Riverside County's population has increased by 20 percent. During that same time period, the bench of the Riverside County Superior Court has grown by only one judge. There are now 3.7 judicial officers per 100,000 county residents – the lowest ratio ever. Among the 14 largest (most populated) counties in the state, Riverside' ratio of judicial officers to population is the lowest.

"The Board of Supervisors has recently authorized substantial increases in staff to our justice partners, the Sheriff, the District Attorney and the Public Defender, to deal with their expanding caseloads," Judge Waters observed. "A bill to give us additional judges so that we could keep pace has stalled in the state legislature. Even that bill gives us far fewer new judges than we need, as shown by independent studies. It is simply no longer possible to try all the cases with a judicial staff only one greater than we had in the year 2000."

Trials of small claims, landlord-tenant, family law, and probate cases will not be delayed by the suspension. However, Judge Waters cautioned that even those cases may be delayed in the future if temporary suspension is not effective in relieving the press of criminal cases.

Separate and Lift

by Joseph Peter Myers

Charity may be "faith-based"; but so is war. We are currently engaged in trying to bring some form of democracy to Iraq and other parts of the Islamic world where it has never existed (or at least that is what is said by our leaders). We have encountered extreme hatred and violence, which are, most often, based upon religious beliefs that are in opposition – and that all seem driven to control the prospective "democratic" government that might emerge, if a civil war does not occur first. We have seen the results of religious control of the mechanism of government in the former Yugoslavia, and the willingness of various factions (remembering that the Serbs, Croats, and Muslims of that region share an identical ethnicity) to massacre each other. The Holocaust, the Armenian Genocide, the Irish Rebellion provide further examples of the dangers of providing "the faithful" – virtually any of "the faithful" – with the power of the State. Yet, despite the fact that 21st-Century Americans know this history, the wisdom of the 18th-Century Americans who understood that there must be separation between Church and State is continuously and vigorously challenged by those who insist that their own religious beliefs must reign – and that the power of government, and the funds of the State, must support them.

These "faithful," who have received astonishing largesse from our current Administration's "faith-based" programs, and who have not shied away from bringing their alms bowls to the United States Treasury, will resort to virtually any means, ranging from the intimidation of others, to the establishment of religious "litmus tests" for judicial nominees, to the trivialization of their own beliefs, in order to see their own religious beliefs so supported. While it is intriguing that so many of the most vocal politicians attached to those practices are found to have feet of clay, the great majority of Americans still do not seem to "get it." While the celebration of a religious holiday – in a land where we are all free to honor holidays from an almost limitless number of beliefs – is wonderful when it is done outside of the bounds of government, such celebration is divisive when it is done with governmental support. The Christmas festival is not simply a time to exchange gifts or smile a lot – if one is a practicing Christian, it celebrates the birth of the Son of God and a miracle. When the zealots claim it is simply secular, and governmental displays of the Nativity are balanced with images of Frosty the Snowman, they are not promoting their belief, they are cheapening it.

We each need to understand the religious beliefs of others. We need to respect the practice (or not) of all faiths. But it is wrong for our governmental institutions to do anything to establish one faith above others, or above no religious faith. To do otherwise is to endanger our own democracy, and to begin a slide into the devastation that people who believe God is on their side have so often created.

Joseph Peter Myers is a sole practitioner in Riverside.

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Conference Rooms Available

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

Membership

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective December 30, 2005.

Robyn Borton – Law Offices of Robert Walker, Riverside

Dawn D. Cowles – Lively & Ackerman, Temecula

Michael R. Diliberto – Advantage Arbitration and Mediation Services LLC, Los Angeles

Philip A. Kraft – Burke Williams & Sorensen LLP, Riverside

Elisabeth Lord – DiMaggio & Lord, Banning

Peter J. Meyers (A) – Security Bank of California, Riverside

Johnwilly C. Osuji – Sole Practitioner, Ontario

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