

RIVERSIDE LAWYER

July/August 2005 • Volume 55 Number 7

MAGAZINE



IN THIS ISSUE:

Riverside County Sheriff–
Homeland Security Efforts

Privacy, Productivity, and the
Paradigm LOST in Cyberspace

Judicial Profile:
Hon. Paul Dickerson



The official publication of the Riverside County Bar Association

Publications Committee

Robyn Beilin	Rick Lantz
Yoginee Braslaw	Mark Mellor
John Brown	Queenie Ng
Charlotte Butt	Richard Reed
Mike Cappelli	Michael Trenholm
Donna Hecht	Allen Turner
James Heiting	Glenn Williams
Aurora Hughes	Lisa Yang
Gary Ilmanen	

Editors Michael Bazzo
Jacqueline Carey-Wilson

Design and Production PIP Printing Riverside

Cover Design PIP Printing Riverside

Officers of the Bar Association

President Michelle Ouellette (951) 686-1450 michelle.ouellette@bbkllaw.com	President Elect Theresa Han Savage (951) 248-0328 theresa.savage@jud.ca.gov
--	---

Vice President David T. Bristow (951) 682-1771 dbristow@rhlaw.com	Chief Financial Officer Daniel Hantman (951) 784-4400 dh4mjg@earthlink.net
---	--

Secretary E. Aurora Hughes (909) 980-1148 ahugheslaw@aol.com	Past President Mary Ellen Daniels (951) 684-4444 med-atty@pacbell.net
--	---

Director-at-Large

John E. Brown (951) 686-1450 john.brown@bbkllaw.com	Harry J. Histen III (951) 682-4121 hhisten@harryhisten.com
---	--

Janet A. Nakada (951) 779-1362 jan@nakada-silva.com	Jay E. Orr (951) 956-5516 jayorr@aol.com
---	--

Executive Director
Charlotte Butt
(951) 682-1015
charlotte@riversidecountybar.com

Officers of the Barristers Association

President Jeremy K. Hanson	Treasurer John D. Higginbotham
Vice President Robyn A. Beilin	Secretary Charles P. Boylston

Member-at-Large
Christopher L. Peterson

Riverside County Bar Association
4129 Main Street, Suite 100
Riverside, California 92501

Telephone 951-682-1015	Facsimile 951-682-0106
Internet www.riversidecountybar.com	E-mail rcba@riversidecountybar.com

RIVERSIDE LAWYER

MAGAZINE

C O N T E N T S

Columns:

3 **President's Message** by *Michelle Ouellette*

5 **Current Affairs** by *Richard Brent Reed*

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

COVER STORIES:

12 **Riverside County Sheriff-Homeland**

Security Efforts

by *Lieutenant Joe De Armond*

14 **Privacy, Productivity, and the Paradigm**

LOST in Cyberspace

by *Allen C. Turner*

Features:

6 **What Does One Consider Tragedy**
by *Sylvia Chernick*

7 **Judicial Profile: Hon. F. Paul Dickerson III**
by *Donna Thierbach*

8 **Opposing Counsel: Rodric A. Pacheco**
by *Rick Lantz*

16 **Admission to the Bar of the**
United States Supreme Court
by *Jacqueline Carey-Wilson*

18 ... **VIP Mentors' Fifth Annual Recognition Luncheon**
by *Vicki Broach*

22 **Defender of the Constitution Award**

23 **Oswald Parada-Recipient of the Defender**
of the Constitution Award
by *John C. Rayburn, Jr.*

Departments:

Calendar	2	Classified Ads	28
Bench to Bar	11	Membership	28

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

JULY

- 30 Inland Empire Bankruptcy Forum**
“Highlights of the New Bankruptcy Law”
SB Hilton, 8:30 am – Noon
MCLE

AUGUST

- 10 Bar Publications Committee**
RCBA – Noon
- 17 DRS Board**
RCBA – Noon
- 24 Law & Media Steering Committee**
RCBA – Noon

SEPTEMBER

- 5 HOLIDAY**
- 7 Bar Publications Committee**
RCBA – Noon
- 8 – 11 State Bar Annual Meeting – San Diego**
RCBA Past President, James O. Heiting to be sworn in as State Bar President
Sept. 10, 10:30 a.m.
- 13 PSLC Board**
RCBA – Noon
- RCBA/SBCBA Landlord/Tenant Section
Nena’s Restaurant – SB (tentative) – 6:00 p.m.
- 14 Mock Trial Steering Committee**
– Noon
- 22 RCBA/Barristers Installation**
Mission Inn, Music Room





President's Message

by Michelle Ouellette

The theme of this month's *Riverside Lawyer* is security and the loss thereof. In our increasingly complicated world, the opportunities for loss of security, whether it be identity fraud, internet hacking or loss of our civil liberties, have significantly increased. As attorneys, we also have seen violence in the courtroom escalate at an alarming rate, as attorneys and clients crowd next to metal detectors and x-ray machines at the courthouse doors.

This era of uncertainty makes me nervous at times, and sad at others. Too often I see people react to the apparent loss of our protections by withdrawing, and hiding in what they perceive to be "safe" havens. Yet running away from insecurities and trying to ignore them serves only to allow them to continue. Perhaps the best way to fortify ourselves against the conflict around us is to reach out to others and lean on those who provide us with confidence. I turn to my family, my friends, and my colleagues to give me that sense of stability and safety that I need in moments of crisis. I try to keep myself surrounded by people I trust, and I must admit that it is partly their support that keeps me working towards a more secure community and laws that give our liberties greater protection.

Many of these talented and competent people are right here in our legal community, and I am pleased to report that both the RCBA and Barristers remain in "secure" hands. The election results for the 2005/06 boards are in, and the following are the new RCBA and Barristers board members:

- | | |
|--------------------------|--------------------|
| RCBA President: | Theresa Han Savage |
| President-Elect: | David Bristow |
| Vice-President: | Daniel Hantman |
| Chief Financial Officer: | E. Aurora Hughes |
| Secretary: | Janet Nakada |

- | | |
|-----------------------|--|
| Directors-at-Large: | John Brown
Harry Histen, III
Daniel Katz
Harlan Kistler |
| Barristers President: | Robyn Beilin |
| Vice-President: | John Higginbotham |
| Treasurer: | Charles Boylston |
| Secretary: | Christopher Peterson |

Please support these very capable and dedicated individuals in the coming year. We are also thrilled that Jim Heiting was elected to be State Bar President. He will be sworn in on September 10th. As far as we can tell, Jim is the first State Bar President from Riverside. Congratulations, Jim!

This is my last President's Message, as my term is now coming to a close. Thank you all for the opportunity to serve as Bar President this year. Riverside has a wonderful legal community, and it was an honor to be able to participate in so many activities, learn so many new things, and meet so many new people. I have appreciated the opportunity to be able to write these messages each month. Thank you for all of the letters, emails and comments on my messages – glad people are actually reading them! I want to be a writer when I grow up, so these messages were fun and challenging (even with Charlotte hounding me about constantly missed deadlines). Thanks also to my editors, Megan Starr and Charity Schiller, who not only provided quotes but worried endlessly about potential libel claims. And thanks to my long-suffering secretary Tammy Valverde for always trying to herd me to the right place, at the right time, with the right materials and wearing two matching shoes.

Compared to prior years, the RCBA is now running like a well-oiled machine. In large part, this is due to our board members – Theresa Han Savage, David Bristow, Daniel Hantman, Aurora Hughes, Harry Histen, Janet Nakada, John Brown, and Jay Orr – and our excellent staff, first and foremost our Executive Director Charlotte Butt.

In the Inland Empire, we seem to have a bit of an inferiority complex. When we compare ourselves with Los Angeles, Orange County and even San Diego, it seems we often think we don't measure up to the "big boys." Folks, we are now also the big boys and have a legal community to be very proud of. It's time to start feeling good about ourselves and the professional camaraderie that we enjoy. I hope to see you at the installation dinner of our new board on September 22nd. Have a wonderful summer!

Michelle Ouellette, President of the Riverside County Bar Association, is a Partner and currently chair of the Natural Resources Practice Group of Best Best & Krieger LLP. Ms. Ouellette represents municipal, district and private clients in environmental issues arising under the California Environmental Quality Act ("CEQA"), the National Environmental Policy Act ("NEPA"), the state and federal Endangered Species Acts, and wetlands regulations.



by Richard Brent Reed

On May 9, 2005, *Newsweek* published an article entitled “Gitmo Southcom Showdown” that included the following passage:

“Investigators probing interrogation abuses at the U.S. detention center at Guantanamo Bay have confirmed some infractions alleged in internal FBI e-mails that surfaced late last year. Among the previously unreported cases, sources tell NEWSWEEK: interrogators, in an attempt to rattle suspects, flushed a Qur’an down a toilet and led a detainee around with a collar and dog leash.”

Predictably, there were riots throughout Islam. On May 14, 2005, *Newsweek* issued a retraction, but not before 17 people had perished in the ensuing violence.

An investigation by *Newsweek* editor Mark Whitaker found that the source relied on by his reporters Michael Isikoff and John Barry could not be sure where or if he had read about the incident. Before rushing into print, the authors ran the story past two separate Defense Department officials. One declined to give a response; the other had a problem with another aspect of the story but did not dispute the Qur’an allegation. The crack journalists at *Newsweek* took silence as assent and ran with the story without further investigation.

The credibility of that dubious document, if it exists, depends upon the acceptance of several assumptions: 1) that it is possible to “rattle” someone by flushing a book; 2) that a U.S. interrogator would risk looking like an idiot; 3) that an American Standard toilet that won’t even accommodate paper towels could successfully pass a book; and 4) the officials at Guantanamo Prison would put their plumbing at risk. Despite these problematic improbabilities, the editors at *Newsweek* bought the account. So did a lot of hot-heads in the Middle East. The result: 17 dead in Islamic rioting. This would be a high price to pay, even if the Gitmo story were true, but this is the way news generates news. It sells copy.

In 1898, newspaper magnate William Randolph Hearst, the father of yellow journalism, insisted that his correspondent in Cuba cover the war with Spain ensuing from the sinking of the battleship *Maine* in Havana Harbor. His correspondent wired Hearst that there was, as yet, no war

with Spain. Hearst replied: You supply the pictures, I’ll supply the war. Hearst has been widely condemned for his use of the news media to manipulate public opinion and incite violence. Had Hearst written the *Newsweek* article, he would, at least, have provided pictures of the toilet.

The corruption of journalistic standards and the needless, utterly predictable, loss of life notwithstanding, there is a larger, more troubling issue here. Despite the complete debunking of the Qur’an flushing story, there are people out there – not just Muslim fanatics in the Middle East, but average Americans right here – who will insist that the story is true, guided by the notion that, because one might expect something like this to happen, it must have happened. This persistent belief, flying in the face of the facts, is an act of conviction: a leap of faith. Non-rational or even irrational belief may be appropriate in the context of theology or religion, but such an approach to geopolitics requires both a suspension of disbelief and the abandonment of critical thinking skills. In the legal context, this has had disastrous results.

In 1692, a court was convened in Salem, Massachusetts for the trying and hanging of witches. Arthur Miller, in his play *The Crucible*, gives us an insight into the mindset of an ideologue hell-bent to ignore the evidence. In that play, Judge Danforth, the chief magistrate of the proceedings, chides Mr. Hale, the well-meaning prosecutor, for being naïve in his approach to the trying of witches. Danforth instructs him from the bench:

“In an ordinary crime, how does one defend the accused? One calls up witnesses to prove his innocence. But witchcraft is *ipso facto*, on its face and by its nature, an invisible crime, is it not? ... Therefore, we must rely upon her victims... Therefore, what is left for a lawyer to bring out?”

In other words, when dealing with an “invisible crime,” the absence of evidence is evidence that an invisible crime was committed.

Those disposed to subscribing to conspiracy theories and invisible crimes should go to a used bookstore, buy a throw-away novel, and try flushing the book down a toilet. Or, better yet, try it with a copy of *Newsweek*.



WHAT DOES ONE CONSIDER A TRAGEDY?

By Sylvia Chernick

I recently became employed at our local superior court as a judicial secretary, after having worked for attorneys for the past 20 years. The change from private employ to public employ is different, to be sure. While there are any number of topics about which I could write, a recent event at work so impacted me, I have decided to write about my experience.

Not long ago our community read newspapers and watched TV news with horror when it was reported that a young man had shot his girlfriend. Both were then and still are minors. She is paralyzed from the chest down and has limited use of her arms. A jury just convicted him of attempted murder. As this case unfolded, court employees came to work each day and went about their business with a calm normality that belied the video cameras erected outside the courtroom and the news media vans camped in the front of our courthouse. This was all new to me. For the last 20 years, I have been able to go to and from work without ever wondering how I would get to the entrance or exit without having my likeness on the 5 o'clock news.

The trial went for two weeks. The young woman shot would testify. These were two young kids – boyfriend and girlfriend – their lives changed forever. You see, she was pregnant and decided to have an abortion. If he agreed with her in the beginning, boy, oh boy, he changed his mind that day. Neither of their parents knew about the pregnancy. She went to a local clinic and filled out the required paperwork. He came through the doors of the clinic and told her, “We’re leaving.” Evidently she replied “no” a few times and he countered by telling her a few times to leave . . . She did not get up to leave, so he shot her in the neck.

The day she testified, the courtroom was packed. This would be the first time this young couple would see each other since the incident. The tension in the courtroom was palpable. The audience watched as she described how she was paralyzed. She could raise her arms up from the elbows in a bent fashion to reach shoulder high. Her hands were fairly useless and she had no feeling from the chest down. When she cried as she testified, she couldn’t wipe her tears. Her mother sat next to her and did that. She described feeling as if her body had curled up into the fetal position when he shot her – sort of involuntarily

clamped together. But her mind could not reconcile why, when she looked down at her legs, they were still straight. Tears streamed down many faces as she testified.

The defense attorney, a very reputable, professional and kind man, asked her why she didn’t do anything when his client brandished a gun at her. He stopped in his tracks and had to catch his breath as she responded, “Because I thought he loved me.” The defense attorney paused. His young client began to cry and cry and cry. He used up a few boxes of tissue, his body heaving with emotion. At the end of the day, the news reporters would broadcast that she testified and that he cried. Somehow without even trying to, their reporting of this case was sensationalized.

I spoke with the court reporter the next morning and asked her if she was okay. Terri said she did okay until the end of the day, when the victim was leaving the witness stand. As the defendant, eyes filled with tears, watched her being wheeled away, he turned toward the audience, looking for his father. Terri collected her thoughts for a moment and said, “When father and son met glances, the father mouthed the words ‘I love you’ to his son.” Terri clearly felt sad. We both agreed that this was a very hard day to be a parent.

The trial progressed, and two weeks later, as I sat at my desk, I watched as the courtroom clerk, Martha, anxiously operated a photocopier. I asked her if I could help and she said she was fine, yet her demeanor reflected otherwise. I asked if she was okay and she explained that the jury went out a few hours earlier and had already returned with the verdicts. I followed her down the hall as she went into the courtroom. I stood behind Martha in the corner of the courtroom, my back against the door, and I watched the events unfold. I had never seen a verdict being read. I had no idea what happened procedurally. I was excited because I was going to learn something new.

I looked at the courtroom clock. It was about 4:15 p.m. The judge was seated at the bench, facing forward with a thoughtful look on his face. The court reporter was in her seat and poised. The defendant and his attorney were seated at counsel table with two deputies nearby. Three family members sat in the audience behind the defendant. The prosecutor was at counsel table and there were only a few other people in the audience. The attorneys stood as the jury entered the courtroom and took their seats. My heart sank when I saw the faces of the jurors. Several

(continued on page 25)

JUDICIAL PROFILE: HON. F. PAUL DICKERSON, III

by Donna Thierbach

I first met the recently elevated Judge Paul Dickerson when we worked at the office of the Riverside County Public Defender. What I immediately noticed was his easy-going style and his special ability to communicate effectively with clients. From back in his public defender days, I recalled the nickname “surfer.” Consequently, I had one burning question to ask him when I interviewed him for this article: “Do you really surf?” He said he began surfing in junior high, when he moved from Oregon to Newport Beach, California. He continues to love the sport and surfs most weekends, wind and swell conditions permitting. He also enjoys hiking and sailing. He took up sailing while in college, and has owned two sailboats. For the past six years, he has been on Judge Mager’s sailing crew in the Newport-to-Ensenada yacht race.

Just when you think you know someone – I learned from a Daily Journal article that Judge Dickerson had a Master’s Degree in Latin American Studies. Judge Dickerson explained that, as an undergraduate, he participated in a student exchange program in Costa Rica for nine months. The experience piqued his interest, so after earning his Bachelor’s Degree, he attended Georgetown University and earned his Master’s.

I give up! How did Judge Dickerson end up in the practice of law in California? He said that after earning his Master’s, he worked as a District Sales Manager for the Nissan Motor Corporation. His first assignment was at the Norfolk, Virginia regional office. While there, he lived in a seaside rental in Virginia Beach. Of course, the beach location was perfect, but he was later transferred to the Dallas regional office. In Dallas, he became involved as a volunteer for a literacy program and the Salvation Army.

Judge Dickerson said he had always been interested in law and he wanted to have an impact on society. He also wanted to have more of a choice in where he lived. So he left the company, returned to Oregon, and attended the University of Oregon, where he earned his Juris Doctorate. He had determined he only wanted to

take the bar once and decided Southern California was the place to live. He moved to California and, after passing the bar, he worked for Inland Counties Legal Services and then at a private law firm. However, he had clerked for a public defender’s office while he was in law school, so when he learned of an opening in the Riverside County Office of the Public Defender, he applied. From there, he made a transition to the Riverside County District Attorney’s Office. His last assignment with that office, before becoming a commissioner, was in the Environmental Crimes Unit. He said the Environmental Crimes Unit was a unique and interesting opportunity, because it was a combination of criminal and civil law.

Judge Dickerson said as a commissioner, and now as a judge, he enjoys trying to resolve cases. He is very satisfied with his current position and has no aspirations for another office. Surf’s up!



Judge Paul Dickerson

Donna Thierbach is formally a deputy public defender with Riverside County and is currently the assistance director of the adult division of the Riverside County Probation Department.



Photograph courtesy of Wayne Hoy

OPPOSING COUNSEL: RODRIC A. PACHECO

by Rick Lantz

Writer's note: Rod Pacheco is an Assistant District Attorney for the Western Division of the Riverside County District Attorney's office. Mr. Pacheco, 47, has been a resident of the Inland Empire for over 39 years. He earned his Bachelor of Arts degree in 1980 at the University of California, Riverside, and in 1983 earned his law degree at the University of San Diego Law School. He currently resides in Riverside with his wife and their four children.

L: In 1984 you went to the D.A.'s office. Why?

P: Because I had wanted to be a lawyer since I was in high school and then somewhere along the line I determined I wanted to be a prosecutor. I was doing something to help the community, a public service kind of thing.

L: I notice in your curriculum vitae where you took on a fair amount of homicide and death penalty cases. Why was that?

P: Death penalty cases are the ultimate. There's no case in the law, in any area of the law, that is more significant than the death penalty cases.

L: In 1996 you sought elective office. Why is that?

P: Years of frustration with the criminal justice system and how it worked and how it didn't work, and just an opportunity that came up, kind of at the last minute, for me to maybe have a larger impact on it, on the criminal justice system. That's why I went there. While I was there, I did a lot of public things as well. You know, concentrated on public safety, but I also did a lot of educational stuff.

L: Quite a new challenge for you.

P: It was quite a challenge because I didn't know anything about running for office. I had never run for office before. Not City Council, not School Board, nothing. Flukes. My life's a series of flukes.

L: On TV I once saw something on Bear Bryant. He had something on his desk that said, "The harder I work, the luckier I get." So maybe it wasn't so fluky.

P: I think work is part of it but I also think timing. Timing in life is everything.

L: What is the major difference in regard to getting things done between being a Deputy D.A. and a member of the Assembly?

P: It taught me new skills, being in the Assembly. In the prosecutor's office, while negotiation is part of the larger job, it's not required. You don't have to negotiate with anybody. When we file charges, we believe we have evidence to convict this person beyond a reason-

able doubt through jury trial. So negotiation really is more *noblesse oblige*. As a D.A., you need to learn how to fight and go over to the court and fight it out. To slug it out on behalf of the community, the gladiator for the community if you will. And then when I went to Legislature, it's completely the opposite. It's all about collaboration, it's all about working with people, Democrats; I'm a Republican, but I work very well with Democrats. Bill Lockyer was a Senator at the time I got there and now the Attorney General, we have a great relationship. So it's a question of figuring it out, in order to get something done, you have to collaborate, you have to work with people.

L: What did you enjoy the least as an Assemblyman?

P: Politics. Politics, it's like playing video games. You kill the monster, you make it to the end of the path, but there's no real goal. There's just no substance to it, is my point. It's a horrible and tragic waste of virtue and energy.

L: Why did you leave the Legislature?

P: I knew it was time. At the end of six years, it was time to come home. And I'm glad I did. Boy, I take my kids to school every morning. I was up there yesterday on a couple of projects I'm working on, and just don't even like being up there.

L: Is there a chance you'll be the next D.A. of Riverside County?

P: If the voters think I should be. I mean, if they hire me for the job, it's up to them. I'm going through the hiring interview. Wish me luck.

L: I do.

P: I want the job, I just have to convince them that I'm the person for the job, that I can do the work they need me to do.

L: The fact that you're a politician helps you in regard to meeting with people and dealing with people and negotiating and compromising, which I would assume the District Attorney has to do now and then, because it is a political office.

P: That's an absolutely good point. The system I'm in today requires collaboration between the District Attorney's office, the courts and the defense bar.



Rod Pacheco

L: Let me switch some questions around a little bit on you. What's your idea of perfect happiness?

P: My wife and kids. That's easy.

L: Who are your favorite writers?

P: I like some military writers but I like poetry as well. John Keegan is a military writer, and he's done ancient history too, the Greeks. I also like Winston Churchill. I like the manner in which he writes. *The History of the English-Speaking People*, I have that, I've read that. Then I like poetry. Kind of odd thing, I guess, for a prosecutor to like poetry. E.E. Cummings, Emily Dickinson. I've read a lot about Lyndon Johnson and I read a lot of Civil War stuff. I like military history, Napoleon.

L: What is the quality you like the most in yourself?

P: I'm determined. I'm real determined. I'm very persistent and determined.

L: What is the quality you like least in yourself?

P: Impatience. I'm impatient. And I recognize that and I do my best to control it.

L: Hypothetical: Today you're elected District Attorney of Riverside County and you walk over to the Presiding Judge. What is the one thing you would tell him or say to him so far as what changes you'd like to see in the court system?

P: Tomorrow is going to be no different than today. Today is going to be no different than yesterday.

L: Do you want to make a change?

P: Well, there will be changes because life is about changes. I believe, in saying that today is going to be no different from yesterday and tomorrow is going to be no different than today, that my job is to maintain the excellence of this office. In all its realms, not just in the prosecution of criminals, but also in working with the courts and with the defense bar, in those areas is where we need to collaborate. This is about doing a job and doing it well. Protecting the community.

L: Switching a little bit on you. In Riverside County, how serious do you believe are the street gangs?

P: I think they're our greatest threat, because our community's in transition and it's transitioning from a small agricultural county to a large suburban metropolis, if you will. It's been going on for the last 20 years and will

continue for the next 20 years. My point is, when other communities have boomed like that, crime can overwhelm that community if it doesn't pay attention to it. The type of crime that is the most dangerous is gang crimes. L.A. County is booming and then the gangsters moved in and before you knew it, they couldn't deal with it and they still can't deal with it. They're still under water. They're still drowning. There are thousands of gangs-bangers here.

L: And vicious.

P: I've dealt with these guys. They have no remorse. They don't even think about it. It's like when you accidentally step on an ant. That's how they see it. And the problem with gangs is you don't recognize how horrible it is until you're overwhelmed. They can't cut gangs out of L.A. because they're intertwined in their culture and in their neighborhoods and their fabric.

L: I'm going to ask you something off the wall. There's a big controversy, issuing driver's licenses to illegal immigrants. Do you have a position on that?

P: I'm opposed to them getting driver's licenses. I voted against it in the Legislature. We had another bill up there where they wanted to give in-state tuition credits to folks that were illegal. I said, wait a minute, a kid that lives in Arizona that comes to California has to pay out-of-state tuition, so he's going to pay more than somebody who's not even a citizen of the country.

L: Last question, which historical figure do you most admire?

P: I admire Abraham Lincoln, Winston Churchill, Martin Luther King.



BENCH TO BAR

The Honorable Sharon Waters, Presiding Judge, Riverside Superior Court

SWJC FAMILY LAW COURTROOM TO MOVE TO HEMET

The mid-county region of the Riverside Superior Court, which extends from Banning to Temecula, is the fastest growing area in the county. As the court anticipated, since the opening of the Southwest Justice Center (SWJC), there has been increasing and unprecedented high usage of the facility by the general public. The high volume has taxed the ability of the Riverside Superior Court to provide professional, expeditious services to the general public.

The SWJC criminal law departments are in critical need of further judicial assistance. Those departments have the highest ratio of pending felony trials to trial departments in the county. There is no available courtroom at that facility for any additional criminal law judicial resources.

Even more significant are the increased filings in the family law departments in the mid-county region. At this time there is only one family law department at SWJC and one family law department in Hemet. The family law judicial officer in SWJC carries the highest case load among the family law judicial officers county-wide and the Hemet family law judicial officer carries the second highest. Both judicial officers are in critical need of assistance.

Therefore, effective September 6, 2005, the SWJC family law courtroom will be temporarily moved to the Hemet courthouse, which currently has vacant courtrooms. Family law will then be consolidated under one judge and two commissioners working together. The court believes that temporarily moving the SWJC family law matters to Hemet and adding an additional judicial officer to that facility will help to insure that all family law cases are brought to a prompt and fair conclusion. The temporary move of family law matters will also open an additional courtroom for criminal trials at SWJC to the extent the court is able to obtain an additional assigned judge.

The decision to move the SWJC family law courtroom to Hemet, even on a temporary basis,

was not easily reached. The court is mindful of the inconvenience, and, in some instances, the hardship, this will cause to the residents in the communities. To lessen the impact, the Family Law Assistance Center and family law mediation services will remain at the SWJC and the clerk's office there will continue to accept family law documents for filing. Also, the Family Preservation Court and the self-represented litigant calendar, commonly known as Pro Per Day, will continue to be held at SWJC. The court anticipates changes with respect to the hearings on domestic violence matters emanating from the Lake Elsinore area and will be providing further information on that in the near future.

It bears repeating that the court intends this to be a temporary measure. It is contemplated that, with the construction of a new office building for county departments currently located in the Southwest Justice Center, space may become available in that facility for additional courtrooms. With the passage of SB 395, the courthouse construction bond, and SB 56, which would provide 19 additional judges in Riverside County, the court would be able to move the family law department back to SWJC and add at least one additional family law judicial officer to that facility.



RIVERSIDE COUNTY SHERIFF—HOMELAND SECURITY EFFORTS

by Lieutenant Joe De Armond

On October 30, 2001, the Board of Supervisors approved a lieutenant, four investigators and two deputy sheriffs to enhance disaster planning and coordination as it relates to terrorist events. These positions were used to coordinate at a regional level the Sheriff's Department's coordinated responses, criminal intelligence, hazardous device team and a coordinator. This funding was a priority established by the Board of Supervisors before there was homeland security funding.

Sheriff Bob Doyle has supported the need to better prepare our law enforcement personnel and other staff to respond to a terrorist incident/event. In September 2003, the Board of Supervisors approved the acceptance of a COPS Universal Hiring Grant (22 deputies), the formation of the Department's Homeland Security Team, and the use of \$306,000 of state homeland security grant funding for specialized equipment. In May 2004, the Special Enforcement Bureau (SEB) began the process of identifying, recruiting, and training staff. The team is comprised of a captain, a lieutenant, four sergeants and 28 deputies. SEB's focus was county homeland security, critical infrastructure protection, and a highly visible law enforcement presence in the County of Riverside. The Department has one of the very few full-time homeland security teams in the nation and the only team in the state.

Since 9/11, the Department has received five grants totaling approximately \$2,052,969 in homeland security grant funding. These funds are being used in a regional approach to prepare, train and equip our personnel in the event of a terrorist incident. Equipment and training were identified for various projects that have included:

1. Level A & B personal protection equipment for SEB.
2. Level C personal protection equipment for field-level personnel.
3. Portable detection devices.
4. Communications interoperability within Riverside County.
5. A state-of-the-art mobile command post with broadband satellite capabilities.
6. Cyber-terrorism specialized equipment (computers, sniffer, thermal imagers).
7. Training concerning weapons of mass destruction (WMD), terrorism and cyber-terrorism. This training is offered at our regional training center, Ben Clark Training Center, to all law enforcement agencies.
8. Armored personnel transport with portable CBRNE (chemical, biological, radiological, nuclear and explosive) facilities.
9. Training computer lab for WMD, plume modeling and other terrorist-related training.

Lieutenant Joe De Armond has served with the Riverside County Sheriff's Department for over 26 years in a multitude of assignments. After the terrorist attacks on September 11, 2001, the Riverside County Board of Supervisors created several new positions with an emphasis on disaster preparedness and anti-terrorism, including a position in the Sheriff's Department to coordinate preparedness and responses to a potential terrorist event in Riverside County. Sheriff Larry D. Smith charged Lt. De Armond with the responsibility of coordinating, preparing and equipping emergency "first responders" who would respond to incidents involving weapons of mass destruction or terrorism. He was also tasked with coordinating emergency response capabilities with other agencies, including county public health and county fire. He is the Co-Chair for the Riverside/San Bernardino Counties TEWG (Terrorist Early Warning Group) and the Co-Chair for the Riverside County Bio-Terrorism Advisory Committee on Planning and Detection.



ASSOCIATE ATTORNEY – REDLANDS

Immediate full-time position for associate attorney with 2+ years experience in estate planning, probate, corporate and transactional law, with some litigation. AV rated firm with diverse practice. Competitive salary and benefits. Send resume to: Brunick McElhaney & Beckett, P.O. Box 6425, San Bernardino, CA 92412, or fax to (909) 388-1889.

by Mark A. Mellor

Hospital may not assert a lien for difference between agreed charges and “usual and customary charges.”

Hospitals that contract with health insurers to accept less than their usual charges as “payment in full” have asserted lien claims under the Hospital Lien Act (Civ. Code, §§ 3045.1-3045.6) in personal injury actions for the difference between the payments received and the “usual and customary charges” for the services rendered. They can do so no longer. (*Parnell v. Adventist Health System/West* (2005) 35 Cal.4th 595 [26 Cal.Rptr.3d 569, 109 P.3d 69].)

Failure to read arbitration clause in contract does not excuse compliance.

Following California precedent in *Brookwood v. Bank of America* (1996) 45 Cal.App.4th 1667 [53 Cal.Rptr.2d 515], the Ninth Circuit concluded that arbitration may be compelled even if the party preparing the contract fails to call the other party’s attention to an arbitration clause and even if that party was unaware of the clause when signing the contract. (*Nagrampa v. Mailcoups, Inc.* (9th Cir. 2005) 401 F.3d 1024.) The court quoted *Brookwood* for the proposition that the contracting party “was bound by the provisions of the [arbitration] agreement regardless of whether [she] read it or [was] aware of the arbitration clause when [she] signed the document.” The court also held that any claim that the arbitration clause should not be enforced because it was contained in a contract of adhesion must be decided by the arbitrator and not by the court.

Voluntary payments made after expiration of section 998 offer are treated as part of the judgment.

Where defendant made a voluntary payment to plaintiff, after plaintiff’s offer under Code of Civil Procedure section 998 expired, the amount of the payment must be added to the amount of the judgment to determine whether plaintiff obtained a result more favorable than the offer. (*Arias v. Katella Townhouse Homeowners Ass’n, Inc.* (2005) 127 Cal.App.4th 847 [26 Cal.Rptr.3d 113] [Fourth Dist., Div. Three].)

Under federal rule, defendant who causes unnecessary service of process costs must reimburse plaintiff, regardless of who prevails in the action.

Federal Rule of Civil Procedure 4(d)(2) imposes a duty on parties to avoid making service of process unnecessarily expensive. In *Estate of Darulis v. Garate* (9th Cir. 2005) 401 F.3d 1060, defendant refused to waive service of process. The court held that this imposed unnecessary costs on plaintiff and plaintiff could recover these costs, even though he lost the case. California would probably apply a similar rule. Code of Civil Procedure section 415.30, subdivision (d) entitles a plaintiff to recover expenses incurred in serving and attempting to serve the defendant if the defendant fails to return an acknowledgment of service within 20 days after service by mail.

Whether acts by disqualified judge are void is before the Supreme Court.

In December, in *Hartford Cas. Ins. Co. v. Superior Court* (2004) 125 Cal.App.4th 250 [22 Cal.Rptr.3d 507], the Second District Court of Appeal, Division Five held that, where a judge discovered, after denying a motion for summary adjudication, that he was disqualified because of prior contacts with an ADR provider, the order was void. The California Supreme Court has granted review (Case No. S131554), so the case may no longer be cited.

Under Code of Civil Procedure section 998, successful plaintiff may recover expert witness fees even though these fees were paid by an insurer.

Code of Civil Procedure section 998 provides that the court may award expert witness fees incurred by a party when the judgment is less favorable than an offer made under the statute. In *Skistimas v. Old World Owners Ass’n* (2005) 127 Cal.App.4th 948 [26 Cal.Rptr.3d 319] [Fourth Dist., Div. Three], the trial court had held that, where defendants’ insurer, rather than defendants personally, had paid such fees, defendants did not “incur” the expenses and thus were not entitled to recover them. Relying on cases holding that parties may recover attor-

(continued on page 21)

PRIVACY, PRODUCTIVITY, AND THE PARADIGM

by Allen C. Turner

Nailing the wind to the wall is easier than writing anything current about the constantly evolving issue of internet security. Furthermore, the reader either knows a great deal more than the writer or a great deal less. Procrustes, of the legendary Bed, cut off the legs of guests too tall, and stretched those too small. Confounding bed fables, I hope here to reach the Goldilocks Compromise – not too technical—not too patronizing, but (oh my) just right.

You know that the practice of law requires special attention to issues of privacy and productivity. Privacy issues include protecting your client files, your work products, and your business files from unauthorized access to or disclosure of their contents. This would include theft of credit card numbers, bank accounts, and other elements of your modern electronic identity. Productivity issues include preempting nuisance and deliberate interference with your capacity to deliver services to your clients. Your electronic premises must be protected at least as well as are your physical premises.

Here is a security checklist:

- | Yes | No | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Post your burglar alarm code on the door? |
| <input type="checkbox"/> | <input type="checkbox"/> | Post your computer passwords on your monitor? |
| <input type="checkbox"/> | <input type="checkbox"/> | Leave the door unlocked when you leave the office? |
| <input type="checkbox"/> | <input type="checkbox"/> | Connect to the internet without a firewall? |
| <input type="checkbox"/> | <input type="checkbox"/> | Let strangers wander around your office and read over your shoulder? |
| <input type="checkbox"/> | <input type="checkbox"/> | Download free screensavers and toolbars? |
| <input type="checkbox"/> | <input type="checkbox"/> | Reply to all the junk mail you receive? |
| <input type="checkbox"/> | <input type="checkbox"/> | Open email attachments from strangers, especially dot-exe and dot-zip files |
| <input type="checkbox"/> | <input type="checkbox"/> | Send money to chain-letter strangers? |
| <input type="checkbox"/> | <input type="checkbox"/> | Send, reply to, or forward emails with long lists of cc: recipients? |

If you checked Yes to any of these questions, you are a victim-in-waiting.

Law office security means denying access to anyone who is not authorized to enter. It means denying exit to anything that should not go out. It means preventing harm to property in the event that unauthorized access does occur. Law Office Security Technology (LOST) includes everything between the front door and the dumpster out back – not just the computers.

The Law Office Security Technology (LOST) Paradigm shows the character of threats to your privacy and productivity.







Law Office Security Technology Paradigm

Add “pharming” to the litany of online threats. Ordinarily, when you enter a URL, say www.riverside-countybar.com, your browser translates it to a numeric address IP address like, 012.34.456.89. The pharming scam sends you to a different IP address, in fact a fake lookalike website. Watch for the lock and key symbol for Security Socket Layer Certificate (SSL) for legitimate secure online transactions. (Law Technology News. May 2005 p. 46).

Computer Security Self Defense:

1. Don't send, forward, or reply to multiple “cc:” joke email; you are creating a windfall of addresses for spammers.
2. Delete--before opening--unsolicited email from strangers, particularly if it contains attachments – especially dot-exe and dot-zip. They frequently contain viruses.
3. Windows users keep your updates current. Install Service Pack 2 and block internet categories that do not work within your business model, e.g. adult, sex, shopping, games, etc.
4. Avoid “phishing” requests ostensibly from banks, credit cards, etc to update your banking information. They look like the real thing but the “legits” will never ask for your personal identification or account numbers.
5. Do not download free screen savers, toolbars, weather thingies, etc. They contain spyware, trackers, etc. and slow down your computers and your productivity.
6. Switch from automatic to manual updates for various software programs. Many of them are always on and always tapping your computer resources.
7. Be a smaller target; consider changing from your browser from Internet Explorer to Firefox; your email

LOST IN CYBERSPACE

THREAT TO →	 ELECTRONIC SYSTEMS & FILES		 PHYSICAL FACILITIES & FILES	
	FROM ↓	Threat → Control 		Threat  → Control 
OUTSIDERS	Spyware, viruses, phishing, spam, hacking	Firewall, filters, anti-virus/spy, passwords, redundancy, backups	INTERCEPTION, INTRUSION, EAVES DROPPING	LOCK AND KEY, ALARMS, PATROLS,
INSIDERS	Misrouted email, fax, web abuse, sabotage	Procedures, web filters, time accounting, redundancy, backups	 PILFERING, GOSSIP, SABOTAGE.	PERSONNEL POLICY

server from Outlook to Eudora or webmail, your operating system from Windows to Linux or Mac. You may lose some functionality but gain much in operability.

8. Do not respond to those wiggly popups that tell you that your computer is running slow. Looks real but it is a clickable image. Right click on it and you will see that it is a fake.
9. Install a hardware firewall and a software firewall, e.g. ZoneAlarm; I prefer the free version.
10. Update your anti-virus & anti-spy programs frequently.
11. Change automatic software updates to manual. Automatics constantly tap your computer resources.
12. Take a lesson from Justice Learned Hand. Reasonable people adopt cost-effective loss prevention technology, whether shipboard radios (*T.J. Hooper*. 60 F.2d. 737 (2d Cir. 1932), *United States v. Carroll Towing*, 159 F.2d 169 (2d Cir. 1947)), or a lock on the front door, or computer anti-virus software.

There are numerous resources available online. Google (yes, it's a verb now) or yahoo

to < ethics AND "law office technology" > to stay up-to-date on issues and solutions to your internet security.

Allen C. Turner, Esq., is the webmaster for the RCBA website, www.riversidecountybar.com.



ADMISSION TO THE BAR OF THE UNITED STATES SUPREME COURT

by Jacqueline Carey-Wilson

On May 31, 2005, I was one of 15 members of the Federal Bar Association (FBA) to be admitted to the Bar of the United States Supreme Court. The admissions ceremony is sponsored by the Younger Lawyers Division of the FBA and traditionally held the day after Memorial Day.

On the morning of the swearing-in, the attorneys from the FBA entered the Supreme Court by the side entrance at 8:30 a.m. and signed in. Soon after our arrival, we were escorted into a beautiful room where we were given an overview of the morning events. At approximately 9:30 a.m., the FBA members and their guests were ushered into the courtroom. Inside the impressive courtroom, the attorneys were seated in the front row and our guests were seated in the back rows. William K. Suter, the Clerk of the Supreme Court, went over the morning calendar and we were instructed that the appropriate response following the oath was "I do." Promptly at 10:00 a.m., all nine Supreme Court justices entered the courtroom and began the morning calendar.

Three new Supreme Court decisions were announced prior to the admissions ceremony. Associate Justice Stephen G. Breyer delivered the opinion of the court in

Tory v. Cochran (2005) ___ U.S. ___ [125 S.Ct. 2108]; Associate Justice Ruth Bader Ginsburg delivered the opinion of the court in *Cutter v. Wilkinson* (2005) ___ U.S. ___ [125 S.Ct. 2113]; and Chief Justice William H. Rehnquist delivered the opinion of the court in *Arthur Andersen LLP v. United States* (2005) ___ U.S. ___ [125 S.Ct. 2129].

Upon the conclusion of the morning calendar, the clerk requested the motions for admission to the Bar of the United States Supreme Court. James S. Richardson, Sr., Treasurer of the FBA, stepped up to the podium, called each attorney by name and made a motion to the high court for our admission. An attorney with the Department of Veterans Affairs made a similar motion for several of its attorneys to be admitted to the Bar, and then a few attorneys made separate motions to have individual attorneys they were sponsoring be admitted. The attorneys seeking admission to the Bar of the Supreme Court were asked to stand, and when the oath was read, we gave the appropriate response.

Justices Sandra Day O'Connor and Ginsburg joined the newest members of the Bar at the reception sponsored by the FBA. Neither could stay for long because they were scheduled to meet with members of the Iraqi government drafting a new constitution for Iraq.

I attended with my husband, Douglas Wilson, my three daughters, Katie, Julia, and Grace, my parents, John



John and Dorothy Carey, Katie, Julia and Grace Wilson, Jacqueline Carey Wilson and Douglas Wilson



Supreme Court Justice Ginsburg and Jacqueline Carey Wilson



*Supreme Court Justice O'Connor and
Jacqueline Carey Wilson*

and Dorothy Carey, and my good friend, Allen Hopper. My guests were allowed to join me in the courtroom and during the reception. Normally, only one guest per attorney is permitted. However, this year the FBA made an exception because they were admitting only 15 members to the Bar of the Supreme Court, as opposed to the 50 that the high court can accommodate.

This was truly an extraordinary experience and the highlight of our seven-day stay in the nation's capital. Attorneys who have practiced at least three years and have not been sub-

ject of disciplinary action within the last three years are eligible for admission to the Bar of the Supreme Court. Your admission entitles you to practice in the high court, sit in reserved seating in the courtroom during oral argument, and use the public areas of the court's extensive law library.

For information on bar membership, visit the Supreme Court website at www.supremecourtus.gov. The admissions ceremony sponsored by the Younger Lawyers Division of the FBA is a unique way for FBA members to be admitted to the bar of the highest court in the land. The program is open to all FBA members, no matter what age. For information on membership in the FBA and on the annual Supreme Court admissions ceremony, visit the website of the Younger Lawyers Division of the FBA at www.fba-yld.org.

The FBA will begin to accept applications for admission to the Bar of the United States Supreme Court after January 1, 2006. Remember to apply early to insure that you can have a place at the next admissions ceremony, which will be take place, if tradition holds, on May 30, 2006.

Jacqueline Carey-Wilson is a Deputy County Counsel with San Bernardino and Editor of the Riverside Lawyer.



VIP MENTORS' FIFTH ANNUAL RECOGNITION LUNCHEON

by Vicki Broach

Photographs courtesy of Jacqueline Carey-Wilson

Forest Wright and James Heiting were honored in April at the annual lunch of VIP Mentors for their volunteer efforts as mentors to parolees re-entering society. Wright received an award for "Outstanding Attorney Volunteer." Heiting was honored jointly with his mentee, Alfredo Tafoya, as the "Outstanding Match."

VIP Mentors, formerly Volunteers in Parole, Inc., is a group of attorney volunteers who serve as mentors for men and women currently on parole from the state Department of Corrections. The attorney-mentor offers advice, friendship, and encouragement to his or her mentee. The statewide program began in Riverside County in 2000 and is now in its fifth year of operation. The annual awards lunch recognizes the contributions of everyone involved in the program.

This year's event was conducted by Magistrate Judge Stephen Larson. Assemblyman John Benoit and Larry Grable of the Office of the Governor attended to recognize the award recipients.

Also honored was Bentley Wilson, the "Outstanding Parolee." He spoke movingly about a long history of struggling with substance abuse and AIDS and his present successes educationally and in achieving his career goals.

Dawn Kuster was named "Outstanding Parole Agent." Three financial awards were presented, to Rasheed Bismillah, Michel Pierre, and Bentley Wilson, all of whom credited the program with facilitating their accomplishments on parole. All of the award recipients commented on the mutual benefits of the relationship between the attorneys and their matches.

During lunch, Joe Loya, the author of the recently published memoir, *The Man Who Outgrew his Prison Cell, Confessions of a Bank Robber*, gave the keynote address, in which he identified the two themes of "peril and heroism." He told about an early experience while on parole. One day, while eating at a Pasadena café, he was verbally abused by a mentally disturbed man:

"I was transformed immediately from compassionate man to that man's antagonist. After his hot barrage of unadulterated insult, something primal was sparked in me and my temper flared and my old ethic of responding to insult with violence seized me. In two seconds my fantasies about what I should do to that man turned frantic and bloody."

He contemplated violent action: "It was easy for me to think about picking up my restaurant knife and going over there to stab the man. I was tempted to revert to my jungle self. I was on the brink of ruining my life, and I realized that this is the place that



Forest Wright (center) with mentees Robert Rios and Mario Becerra



James Heiting, Cindy Heiting and mentee Alfredo Tafoya



John Vineyard (right) and mentee Michel Pierre

every parolee gets to where they have to decide if they stay out or if they go back. The moment of fatal peril."

Instead, he resisted: "But I didn't act. Instead I sat there and talked myself down. I reminded myself that I wanted to be a new man; that the violent ethic of retaliation wasn't what I sub-

scribed to anymore. I told myself that the man hadn't touched me, and I didn't perceive him as a physical threat.

"I'm not going to lie and tell you that I didn't feel the sting of humiliation. All the customers looked at me as if they expected me to act. I put my head down and waited for my food to arrive. I told my girlfriend that it was extremely difficult to sit there and do nothing, but nothing is what I intended to do...

"And that is the rub. I was committing the bravest act of my new free life, but because it was an absence of action, occurring in my interior world, nobody could witness it.

"When we are little boys and girls, we develop our understanding of heroism by the deeds that heroes do. First as young children, we watch cartoon superheroes on Saturday morning TV. Our superheroes act. They crush meteors headed for earth. They defeat space armies. Even biblical heroes like Samson slay armies with one big bone.

"As we grow older, we perceive the firemen who run into burning buildings as heroes because they act to save lives. Heroism is equated with action.

"But for the parolee, our measure of heroism is different. We are heroic when we don't act. When we don't pick up the needle again. When we don't pick up the bottle. When we don't commit domestic violence. When we don't pick up a gun. Or when I didn't act to stab that mentally ill man who disrespected me with the most vile, racist terms.

"We are heroes because we are acting against every instinct in our bodies telling us to do what we have always done, and that is give up. It takes great courage to act against our biography. The story we have always told ourselves about our lives. That we are losers. That life hasn't given us the breaks. That hope is for weak people.

"We are heroes because we have altered our imaginations of what can be. You can't see the moment when I tell myself that I want to have hope. You can't notice the minute when I choose to believe that effort will pay off. You can't witness the instant when I decide that I want to contemplate my own posterity. All this occurs in the landscape of the soul. And so our heroism is silent and without pomp and pageantry. That is the beauty of today. We acknowledge that time has revealed what couldn't be known in the beginning.

"I am a believer in change. Remarkable change. Miraculous change. I am a believer in compassion for the struggle that one must go through in order to achieve change. In my memoir, I chronicle how hard it was for me to change. There was in my mind a belief that I had lived for too long on the other side of taboo. And that this disqualified me from ever being able to live on the side of beauty and virtue. I thought that my crimes would be a permanent stigma on me, like the stain of Cain.

"But what I found was a willingness on the part of many people to accept me as a new man, worthy of acceptance on today's terms. In actuality, I was my own worst critic. People were treating me wonderfully everywhere I turned, but sometimes, and mostly rarely, at night I felt like a fraud for wanting to give up and lurch back to crime.

"The philosopher Wittgenstein wrote about spiritual struggle that sometimes he felt like a man glimpsed through a window in an unseen



David Philips and mentee Bentley Wilson



Joe Loya, Lynn Mawhorter and Vicki Broach



Yoginee Braslaw and mentee Dorenda Williams



Carol Greene and mentee Shelena Harris

storm, appearing to walk quite normally, but in fact keeping his balance only with the greatest exertion. I felt like that. Like the achievement of turning around my life would be hard-won. That didn't stop the doubting, though . . .

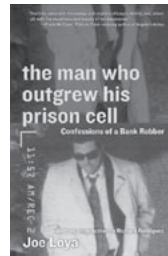
“What I couldn’t imagine was how much good will there is in the world. People were willing to give me another chance. Family embraced me when they saw me making an effort. My new friends confided in me to show me that they trusted me. My wife opened her heart to me. I was dealt with as if I’d always been in the company of good folks. I was given a chance to belong to community. Me, who had always been anti-social, raging against the world. Now the world opened their arms to me and it felt good to be received.

“I tell you that the parolee’s heroism is sometimes defined by inaction. But I’m not saying that action isn’t heroism. In fact, both are true. When the parolee doesn’t act to pick up a needle or gun, they are being heroic. And when the mentor to the parolee picked up their phone and got in contact with VIP, I’m here to say that their action was equally heroic.

“You humble mentors may think you are merely taking the parolee out to dinner, or to a movie, or helping them get their driver’s license, or whatever. But what you are really doing is creating an occasion for the parolee to live another moment on this side of taboo. You are creating the occasion for the notions of decency and community to take hold of the parolee’s imagination. You are creating the occasion for both sides of that new friendship to be heroic in a world that doesn’t always seem heroic in this modern age.

“ . . . the human heart is resilient. We can forgive others and we can forgive ourselves. And this is how community is formed. By seeing ourselves in the other. If I want to be treated good then I should treat you good. And that seems to be the ethic of VIP. That the community is better served when we serve the community. And serving the community is knowing that there is a vulnerable population on the margins of society and you move to incorporate them into the center of things. And the center can hold us all.”

If you would like to serve the community as a VIP mentor, please call the program director, Judy Davis, at (951) 782-4814 for information.



Joe Loya is an essayist, playwright, and contributing editor at the Pacific News Service. His opinion pieces have appeared in the Los Angeles Times, Newsday, the Washington Post, and other national newspapers. He frequently comments on politics, religion, criminal justice issues, and other cultural events.

For more information about Mr. Loya or his book, go to www.joeloya.com.

Vicki Broach is a Riverside attorney and chair of the Riverside advisory board for VIP Mentors.



Litigation Update *(continued from page 13)*

ney fees even though they do not have a personal obligation to pay them, the Court of Appeal disagreed, holding that the statute does not specify “that any particular person must have incurred the expert witness fees, just that the fees must have been actually incurred.”

Statute mandating relief from default based on lawyer fault applies, even though the lawyer is licensed only in another jurisdiction.

Code of Civil Procedure section 473, subdivision (b) mandates that the trial court grant relief from default where the lawyer for the

defaulting party files an affidavit stating the default resulted from her or his mistake, inadvertence, surprise, or neglect. In *Rodriguez v. Superior Court* (2005) 127 Cal. App.4th 1027 [26 Cal.Rptr.3d 194] [Sixth Dist.], the court held that this requirement applies even where the lawyer is admitted to practice only in another jurisdiction.

Criminal case regarding appellate jurisdiction may have implications for civil cases.

In *People v. Nickerson* (2005) 128 Cal. App.4th 33 [26 Cal.Rptr.3d 563] [Third Dist.], the Court of Appeal held that where a defendant is charged with both a misdemeanor and a felony, and after the preliminary hearing the magistrate strikes the felony, an appeal from a subsequent conviction of the misdemeanor lies to the Appellate Division of the Superior Court and not to the Court of Appeal.

This case might implicate appellate jurisdiction in a civil case that starts out as an unlimited jurisdiction case, but, because of pretrial rulings (e.g., reducing damages which may be claimed to less than \$25,000), becomes a limited jurisdiction case. Does this mean that an appeal from the resulting judgment should be filed in the Appellate Division of the Superior Court? Until this issue is clarified, it might be wise to file notices of appeal directed to both courts when confronted with this situation.

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

Republished with the permission of the State Bar of California Litigation Section.



DEFENDER OF THE CONSTITUTION AWARD

The Inland Empire Chapter of the Federal Bar Association presented its 2005 Defender of the Constitution Award to Oswald Parada, Directing Attorney of the Office of Federal Public Defender for the Central District of California's Eastern Division (which includes both Riverside and San Bernardino Counties). John Rayburn, the Chief of the United States Attorney's Office for the Eastern Division, presented Mr. Parada with the award at a May 5 luncheon held in the Mission Inn Music Room and attended by over 80 members of the Inland Empire legal community. Mr. Parada, a highly regarded criminal defense attorney, established the Eastern Division's Federal Public Defender Office ten years ago and was one of the founding members of our local Federal Bar Association.

The Defender of the Constitution Award honors an individual whose work clearly reflects his or her sworn commitment, as a member of the bar, to support and defend the Constitution of the United States. Anyone may nominate a candidate for consideration by the Board of Directors of our local chapter of the Federal Bar Association, which selects the recipient. A nominee must be a member in good standing of both the State Bar of California and the bar of the United States District Court for the Central District of California, and practice or work primarily in the Inland Empire. The nominee may be a judge or a lawyer, including a public attorney, government official, law enforcement official, law professor, or community activist.

The award, initiated last year when it was presented to United States District Judge Robert Timlin, is named in honor of Professor Erwin Chemerinsky, the long-time USC Law School professor who last year left Southern California for Duke Law School. For each of the past six years, Professor Chemerinsky has graciously presented his popular Constitutional Law lecture to lawyers of the Inland Empire, alternating between San Bernardino and Riverside Counties. Without notes or ever missing a beat, Professor Chemerinsky provides a brief but insightful and balanced summary of high-

lights of numerous cases from the Supreme Court's previous year's docket, as well as a preview of significant pending appeals.

A plaque containing a description of the award and a list of its past recipients is located in the Attorney Workroom at the George E. Brown, Jr., United States District Courthouse (Room 360) in Riverside. If you would like to nominate someone for the 2006 award, please submit the name of the nominee and a brief explanation of why he or she deserves the recognition to: Allena Johnson, United States District Court, 3470 12th Street, Riverside, California, 92501.



OSWALD PARADA – RECIPIENT OF THE DEFENDER OF THE CONSTITUTION AWARD

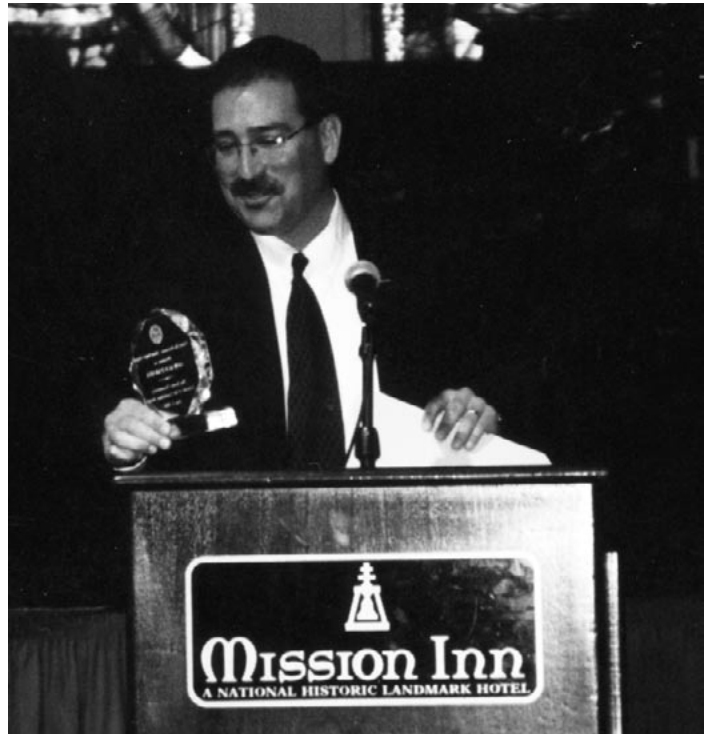
By John C. Rayburn, Jr.

Photographs courtesy of Jacqueline Carey-Wilson

I am a federal prosecutor, and I take immense pride in announcing my courtroom appearance by stating, “John C. Rayburn, Jr., for the United States of America.” I also fervently believe that my goal, and that of every other Assistant United States Attorney, is to do justice. Put another way, I strongly believe that our role in the criminal justice system is to defend the Constitution of the United States.

During my 14-year career as a prosecutor, I have had numerous battles with defense attorneys in and outside of the courtroom. And some of the most heated of those battles have occurred at the dinner table with my brother, who is a Public Defender and who, like me, believes that the best way to resolve legal disputes is to wrestle on the kitchen floor until someone cries “uncle.” From these numerous interactions over the years, I have learned that defense attorneys share an almost identical belief that it is their role in the criminal justice system to defend the Constitution.

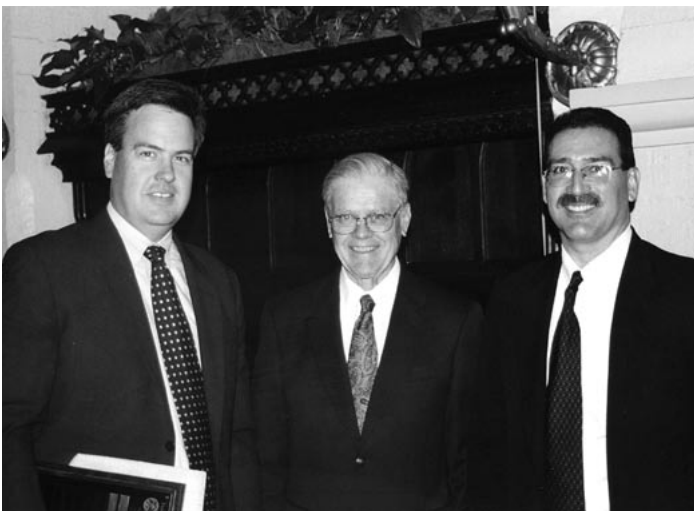
So if you are asking why I – the Chief of the Riverside Office of the U.S. Attorney’s Office and a career prosecutor – was chosen to present the Defender of the Constitution Award to Oswald Parada – the Directing Attorney for the



Oswald Parada

Federal Public Defender’s Office and a career defense attorney – you are not alone. The request seems akin to asking George Steinbrenner to present the 2004 World Series trophy to the Boston Red Sox. The answer to this question may lie in the fact that one’s most meaningful compliments are often paid by one’s adversaries.

After innumerable courtroom contests with Ozzie over the past decade, I feel I have gained invaluable insight into who my opponent across the courtroom truly is. From this vantage point, I have learned first-hand that Ozzie is an extremely talented lawyer. In trial, he has an uncanny and, from a prosecutor’s perspective, devastating ability to connect with each member of the jury while simply dominating the courtroom setting. Ozzie is blessed with the rare gift of being able to think incredibly fast on his feet; he likewise possesses an even rarer ability – seen in preciously few lawyers – to know precisely when it is time to get off his feet because the point has been made. Ozzie is also a tremendously gifted writer who presents his written thoughts in a clear, concise, articulate, and respectful manner.



Magistrate Judge Stephen Larson, Judge Robert Timlin and Oswald Parada



*Edwin Cherminsky reviews important
Constitutional cases 2004-2005*

While Ozzie's advocacy skills are rarely seen in other lawyers, what sets him apart from other outstanding advocates is his unmatched dedication and commitment to his craft and his client. When the client decides to go to trial, Ozzie doggedly employs every ounce of his energy and skill to prepare, then present, the best possible defense. When the client decides to plead guilty, Ozzie employs a like level of tenacity in pursuing the most favorable plea deal available.

However, what makes Ozzie a truly deserving recipient of this year's award is the unparalleled level of dignity and class he brings to bear in carrying out his role in the criminal justice system. This is not simply my humble opinion; rather, Ozzie's outstanding legal skills, dedication to his clients, and impeccable ethical standards are universally recognized by the esteemed judges on the federal bench, his colleagues in the defense bar, and his adversaries in the U.S. Attorney's Office. From my vantage point across the courtroom, I have gained the utmost respect for my worthy and honorable opponent, and I believe he richly deserves to be the 2005 recipient of the Defender of the Constitution Award.



What Does One Consider Tragedy? *(continued from page 6)*

held tissues in their hands and were wiping tears from their faces. All of them had a coloring that was pale, the kind of pale that comes just as nausea sets in.

I felt like a fly on the wall as I watched everyone and everything. After reviewing the verdict forms he had just received, the judge asked the clerk to read the verdicts. Martha read and read and read verdict forms, her voice professional and unwavering, each time asking the jury, "Members of the jury, is this your verdict?" After the verdict was read, the defense attorney asked that the jurors each be polled to give their individual verdicts. That meant Martha had to re-read each of the forms. She did, and after reading each verdict form, she asked, "Juror number 1, is this your verdict? . . . Juror number 2? . . . Juror number 3?" My mind raced. I wondered: They are saying he is guilty. What is that young man thinking? To some extent it couldn't be any surprise to him, could it? Did he hold out hope? He must have.

At some point as Martha read the verdict, the defendant's mother bolted out of the courtroom, overcome with emotion. Many of the jurors turned in her direction and watched her leave. When she collected herself, she returned to the courtroom and took her seat. And when she returned, the courtroom doors became revolving doors, opening repeatedly to let in members of the media, as well as members of the public. Suddenly, the audience was full. ". . . Juror number 4, is this your verdict? Juror number 5? Juror number 6?" She kept reading. The jurors responded, the pronunciation of their responses growing shorter, their voices sounding deep and solemn. They were still dabbing their eyes. They were regular people, the jurors. I could infer them to be

teachers, grandparents, sisters, dads, friends. What were they feeling? Were they angry? Were they sad? A few of the jurors looked over at the defendant. What were they looking for? I looked at the defendant. Was he smiling? That couldn't be a smile. Was he smirking? No way! He was just stressed out beyond belief and coping with terrible news.

I looked at the deputies' faces to see their reaction. By now a third deputy had arrived. They showed no emotion on their faces as they did their job, watching over the crowd and the defendant. As my eyes swept over the courtroom, I glanced back to Martha. I was looking at her hands as she held the papers she was reading. Her hands were shaking a bit; she was probably nervous. She had been reading for what seemed like half an hour by now. She had developed a rhythm, she spoke clearly and she hadn't stammered once. Her voice was strong. I looked up to see Terri, the court reporter. Her fingers were bouncing all over her machine as she easily kept pace with the words being spoken. I searched her face for emotion. Her face was blank. I looked at the judge. He was so focused on the defendant and on the jury as they responded to Martha's questions. It occurred to me as I watched the judge, his clerk and reporter – they are professionals in every sense of the word.

Finally – finally! – the verdict had been read, the jurors had all been polled. The judge spoke to the jurors and thanked them profusely for doing a fantastic job on this very difficult assignment. He explained that they were now free to speak to reporters, family and friends about the case, or they could choose not to speak with anyone – their choice. As the judge spoke to them, their eyes were fully locked on the judge's face. Their eyes told everything. They

were tired. They wanted to leave. And they did. I looked at the wall clock; it was 4:45 p.m. The attorneys stood to honor the jurors and, one by one, they got up and filed out of the courtroom. Some of the jurors looked at the defendant as they left. The audience emptied. The attorneys addressed a few legal formalities with the judge and then the courtroom went quiet. The prosecutor left. The defense attorney put his arm around his client and spoke softly into his ear. His words seemed somehow reassuring and the defendant, his head down, nodded, affirming he understood what he heard. The attorney squeezed his client's shoulder in a sort of "hang in there" gesture and he gathered his belongings and prepared to leave.

Then, like a firecracker exploding on a quiet night, a deputy called the defendant's last name and said, "Rise!" His voice pierced the silent air. He directed the defendant to turn and put his hands high against the wall. The defendant complied; he was thoroughly frisked and then shackled at the waist and at the feet. This was a first for me. I had never seen anyone frisked or shackled and there was enormous shock value in what my eyes were taking in. Somehow I felt uneasy. I couldn't imagine myself in a situation where I would be shackled and deposited into a cell. As my mind raced, I watched as the judge, Martha and Terri busied themselves shuffling paper at their work spaces. The deputies calmly went about their business and the defendant was led out of the courtroom down a secured hallway. I pushed my back into the door to open it and I peered down the secured hallway. He walked somberly, head down, with a deputy before him, two deputies behind him. What a tragedy . . . how sad.

I looked back into the courtroom, not at all prepared for what I saw next. I saw an empty courtroom. It was quiet, yet strangely filled with the sound of voices. Once I tuned out the mental noise, I realized that the judge, Martha and Terri were sitting silently, their bodies a bit slumped, their shoulders a bit rounded. They sat looking at nothing in particular, clearly spent of all emotion and energy. I stood there and looked at them for a few minutes. I had an urge to run into the hallway to get help, to say, "Hey, someone come in here! Something isn't right." I don't think they even knew I was there. I touched Martha's arm. No reaction. This was incredible to me. What was going on? It never occurred to me that I would see this particular scene. Goosebumps crawled all over my arms as I realized the impact – the deep, deep impact – this trial had on my colleagues. The judge left the bench to go to his chambers. I left the courtroom and met him in the secured hallway. I asked if he was okay. He said, "Today was a hard day . . . a very hard day."

I walked to my desk feeling totally numb. That 45 minute "learning exercise" felt more like it was three days

long. My mind was flooded with thoughts. I needed time to assimilate what just happened.

As I thought about this the next day, I realized I had a unique perspective in the courtroom that day. I saw everyone's faces. I saw "behind the scenes" and I saw the public perspective. That morning I asked Martha if she was okay. She had prayed and cried, she said. She still wasn't feeling entirely peaceful inside. Terri said she felt better than she did yesterday, but that she was very sad. The judge was just quiet.

I realized I witnessed three tragedies: two expected, and one totally unexpected. The victim and her family's life will forever be changed, physically and emotionally, and the defendant and his family's life will forever be changed – both obvious and painful tragedies. The unexpected tragedy is that those people in the courtroom who worked during this highly emotional trial were physically and emotionally impacted and they, too, will forever be changed.

Everyone went home after the trial with a heavy heart. The news media broadcast the verdict and, again, without trying, the story came across as sensationalized. The newspaper the next morning recapped how the case began, recited the verdict and told a bit about the families involved. I thought to myself, though it is not unexpected, no one gave a second thought about how this trial affected those at the court who worked so hard. They did their jobs quietly, professionally and without flash. While they may have had a personal opinion about the events that unfolded, and while they may have felt extreme emotions during the trial, they kept all of that to themselves. At the end of the day, they went home and somehow dealt internally with the dramatic descriptions brought into their courtroom. They did their best to insulate themselves from the pain they heard described. They came back to work the next day, smiled, said good morning and went about their business. What more can be said about them? Wow! I am so proud to work with such fine people.

It has been several weeks since this trial concluded and I am still not sure how I feel. That particular courtroom has since conducted two more murder trials. Two other courtrooms have held trials for child molestation, child torture and murder. Another courtroom conducted a trial concerning a terrible auto accident that left people critically wounded. Life at our court continues and new cases come in all the time. While many are quick to criticize – either in earnest or in jest – those who work for the court, I hope this article will alter your view. This is an experience that has truly changed me.

Sylvia Chernick, Governor, Desert Palm Legal Professionals Association



CLASSIFIED ADS

Free West's California Reporter

I will donate West's California Reporter, Vols. 70 through 244, to the first private practitioner who contacts me and removes them from my space in a Riverside Public Storage facility within seven days of contacting me. The books are contained in 9 large size Banker's boxes (12"h x 15.5"w x 24"). If they are not removed within seven days, I'll donate them to the next person on my list of contacts and so on until taken. Thomas V. Flaherty, Attorney at Law, (951) 683-3078.

For Sale – Professional Building

Riverside tri-level professional building with private offices and reception area on the main floor. Conference room, eating area, storage space. Good parking. Within walking distance to the Court House. Call for appointment: Realty Executives – Agents Michelle Larsen (951) 897-5790 or Jerry Rachman (951) 779-8444.

Office Space Available

Approximately 1460 sq. ft. of office space in a one story law office building near the Fairmount Park area in Riverside. Space consists of 4 contiguous offices 16 x 14 feet plus adjoining secretarial area. Building has ample parking. Lease price and terms are negotiable and would be full service. Contact Mr. Matheson or Kathy Hedges at (951) 684-2520.

Attorneys Needed

Corona firm needs Civil Litigation, Family Law and Criminal Law Attorneys. Please fax resume and salary history to (951) 734-8832 or email sherri@coronalaw.com.

1 Attorney Needed

AV-rated Riverside law firm seeks one attorney with 1-3 years experience in bankruptcy, business and commercial litigation. Salary is commensurate with experience. Send resumes to: Thompson & Colegate LLP, Attn: GTM, P. O. Box 1299, Riverside, CA 92502.

Law Firm Seeks Attorney

Established Riverside, CA law firm seeking an attorney, admitted in California, with 8 to 11 years civil/litigation experience. Salary negotiable. Submit resume to Redwine & Sherrill, 1950 Market Street, Riverside, CA 92501, or call (951) 684-2520 for Mr. Eagans or Mr. Matheson.

Legal Secretary

Riverside 3-attorney law firm seeking self-motivated person with 1-2 years experience in civil practice. Send resume and salary history in strict confidence to: Hiring Partner, 6183 Magnolia Avenue, Suite 336, Riverside, CA 92506.

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 August 30, 2005.

Kristina M. Beavers –
Sole Practitioner, Newport Beach

Brian L. Boles –
Office of the Public Defender,
Riverside

Cosmos E. Eubany –
Graves & King LLP, Riverside

Jason D. Feld –
Ulich & Terry, Irvine

Joseph W. Galasso, III –
Sole Practitioner, Riverside

Sandra Goern –
Inland Empire Latino Lawyers
Association, Riverside

David M. Grey –
David M. Grey & Associates,
Indian Wells

Andrew H. Lund –
Lund Law Firm, Riverside

Linda B. Martin –
Rinos & Martin LLP, Riverside

Carrie O'Connor –
Serembe Bakke & Seaman,
San Bernardino

Darla J. Sanderson (S) –
Law Student, San Diego

