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MAGAZINE

In This Issue:

RIVERSIDE COUNTY RCBA EST. 1894 BAR ASSOCIATION

The official publication of the Riverside County Bar Association

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

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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

FEBRUARY

14 **Mock Trial – Round 1 (Regional)**
Riverside HOJ/SW Justice Center/Indio Courts- 6:00 p.m.

15 **LRS Committee**
RCBA – Noon

16 **Mock Trial – Round 2 (Regional)**
Riverside HOJ/SW Justice Center/Indio Courts – 6:00 p.m.

17 **Joint RCBA/Riverside Law Alliance General Membership Meeting**
"All the News That's Fit to Print About the Federal Court in Riverside"
Speaker: Judge Virginia Phillips, U.S. District Court
RCBA Bldg., 3rd Floor – Noon
MCLE

20 **HOLIDAY (Presidents' Day)**

21 **Family Law Section**
"Unbundled Services"
Speaker: Sue Talia, Esq.
RCBA Bldg., 3rd Floor – Noon
MCLE

22 **EPPTL Section**
RCBA Bldg., 3rd Floor – Noon
MCLE

22 **Mock Trial – Round 3 (Regional)**
Riverside HOJ/SW Justice Center/Indio Courts – 6:00

25 **Mock Trial – Round 4**
Riverside HOJ – 9:00 a.m.

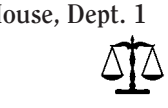
Mock Trial Award Ceremony – 1:00 p.m.
Moreno Valley Convention Center
14177 Frederick Street, MV

MARCH

1 **Bar Publications Committee**
RCBA – Noon

2 **Mock Trial – Round 5**
Riverside Hall of Justice – 6:00 p.m.

4 **Mock Trial – Final Four**
Riverside Historic Court House, Dept. 1 – 9:00 a.m.
Mock Trial – Championship
Riverside Historic Court House, Dept. 1 – 1:00 p.m.



President's Message

by Theresa Han Savage

Just 35 years ago, only 10 percent of first-year law students were female. By 2000, women comprised nearly half of first-year law students. Despite the increasing number of female attorneys, women still make up a small percentage of judges and partners at large law firms.

On the United States Supreme Court, we will have only one woman Supreme Court Justice, Ruth Bader Ginsburg, after the retirement of Justice Sandra Day O'Connor. As of 2001, of 655 federal district court judges, only 136 were women. The number of women on the California Supreme Court, however, totals three out of seven justices (almost 43 percent) – Justices Kathryn Werdegar, Joyce Kennard and Carol Corrigan (who was confirmed on January 4, 2006 after Justice Janice Rogers Brown resigned).

Let's look at our local community here in Riverside. On the California Court of Appeal sitting in Riverside (Fourth Appellate District, Division Two), Justice Betty Richli is the sole female justice out of six justices (there is one vacancy created by Justice Ward's retirement). In the Riverside superior courts, we have a total of 69 judicial officers; 14 of them are women – approximately 20 percent. When you look at the larger local firms, all of them have but a very small percentage of female partners.

With the exception of the California Supreme Court, the number of women in the top legal positions is quite dismal. The reasons for the small percentage of women, however, are not simple. They range from the "glass ceiling," to personal choices made by women attorneys, to inflexible work schedules for women who have children.

I have often heard people saying that there is no glass ceiling – if women attorneys are willing to work just as hard as their male counterparts, there is no barrier. It sounds fair. In many instances, it may be true. I believe that it can be true if these women do not have any children. However, what this statement fails to recognize is that women attorneys – who choose to have children – often cannot devote their lives *solely* to their jobs. (Now, I know that there are some "super-women" who can do it all. I'll admit that I am not one of them.) I guess you can call it a choice. However, as a legal profession, we should recognize that women attorneys are an invaluable resource to our profession. Do we want to lose some of our brightest attorneys because we are not willing to admit that our profession is not that conducive to working mothers?

Although we may think that sexism is a thing of the past, it is still prevalent. When male attorneys become fathers, their careers are hardly affected. Partners do not perceive them as less dedicated, and their partnership tracks are unaffected because many do not take "paternity leaves." In contrast, once a female attorney has a child, she is often perceived differently. After she returns from her maternity leave, she may be questioned about her lack of production *during* the year she took leave; often, her dedication to her job may be questioned.

Recently, the Los Angeles Daily Journal published a series of articles featuring different female attorneys. It was an interesting read. Some women who became mothers continued working – but these women often had husbands who had flexible schedules or families that helped. Others simply took a hiatus from the law. The Daily Journal articles and other articles that feature work-

ing women attorneys shed light on a very important fact in keeping women in the profession – flexibility. In a report entitled "Balanced Lives: Changing the Culture of Legal Practice" that was published in 2001, inflexible work schedules were cited as a primary cause of early attrition and the "glass ceiling" encountered by women in law firms.

When I graduated from UCLA Law School in 1993, I would say that women comprised about half of our graduating class. On an anecdotal note, out of six women in my group of close friends, three are stay-at-home moms, one works for an insurance defense firm, and two of us (including me) work for the government. A majority of our male classmates, however, have become partners in law firms. I do not know if we would have predicted these numbers while we were attending law school because the women were just as engaged, if not more so.

When my first son was two years old, I made a decision to continue to work because I loved my profession. I, however, realized that continuing to litigate full-time was not compatible with the level of involvement I wanted to have in raising my son. Fulfilling part-time work in the private sector was not available to me at that time. Hence, I found the *perfect* job – intellectual stimulation with flexible hours – as a research attorney. I would say it was my personal choice to leave private practice. I, however, might have taken a different route if a more flexible work schedule had been available to me in the private sector. Now that I have three children, I cannot tell you how grateful I am to be working at the court. If I did not have the flexibility my job affords me, I, too, might have left our profession.

We have come a long way and the legal profession has progressed a great deal in the past decades. However, I recognize that we still have a long way to go to make our profession more open to women attorneys.

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

By Robyn Beilin-Lewis, Barristers President

Barristers started off the new year with a presentation on stress management – a topic that all of us, not just the new attorneys, are sure to relate to. We were joined by Molly McCormick, M.A., C.P.C., who led our discussion. A special thanks to her for flying down to the Inland Empire to give us her comments and thoughts on such an important issue.

Barristers also participated in the Bridging the Gap program, which is designed to acquaint new admittees with the practice of law. These new attorneys had the privilege of getting practical tips and advice from Judge Gloria Trask, Commissioner Thomas Hudspeth, Judge David Naugle, Aurora Hughes, Brian Pearcy, and Jeff Van Wagenen. Barristers provided a tour of the judicial center, which included a stop at the Victor Miceli Law Library.

Meetings are held at 6 p.m. on the second Wednesday of each month at the Cask 'n Cleaver, which is located on University Avenue in downtown Riverside. We are pleased to announce the following schedule of speakers for the upcoming months:

February: Chris Harmon and Chad Firetag, "Consideration of Criminal Law Implications in Civil Cases."

March: Inga McElyea, Executive Officer/Clerk of the Riverside Superior Court, "A Practice Guide to Filing Documents with the Court."

April: Steve Anderson, Best Best & Krieger, "Environmental Law."

May and June: To be announced.

For those of you unfamiliar with Barristers, it is an organization designed for newer attorneys in our legal community to have the opportunity to meet other new attorneys and to sit in on MCLE lectures from esteemed members of our local judiciary and bar association, who give practice tips and pointers that are of special interest to less seasoned associates. We encourage all new attorneys to join us, no matter where you may practice – not just civil litigators, but also new deputy district

Judge Gloria Trask with new admittees in historic Riverside County Courthouse

attorneys, deputy public defenders, other criminal defense attorneys, and deputies from the City Attorney's office.

If you would like more information regarding Barristers, you can contact me at (951) 686-8848 or at beilinro@yahoo.com.

John Higginbotham (Barristers Vice President) and Chad Boylston (Barristers Treasurer)

Robyn Beilin-Lewis, President of Barristers and a member of the Bar Publications Committee, is with the Law Offices of Harlan B. Kistler.

Buyer Beware

by Jean M. Landry

To many potential homebuyers, the idea of living in a community in which one's neighbors are required to maintain the outward appearance of their homes and forbidden to park cars on their lawns is appealing to the point where they are willing to pay hundreds, even thousands of dollars a year for the privilege. In fact, common interest developments (CIDs), as they are known, are becoming ever more common in the California real estate market. According to a May 2, 2005, article in the Riverside Press-Enterprise, more than one in every four California households is in some type of CID, and such projects make up over 60 percent of new housing starts in the state. Sadly, what these figures reflect is that many more unsuspecting Californians will be learning what many of their neighbors already know – dealing with a homeowners' association (HOA) can quickly become one of your worst nightmares.

Common interest developments are governed by the Davis-Stirling Common Interest Development Act, enacted in 1985. (Civ. Code, § 1350 et seq.) These code sections outline the rights and responsibilities of members of CIDs statewide. They also place what very few limits exist on the powers of the governing board of a CID, the HOA board of directors. On the local level, individual declarations of covenants, conditions and restrictions (CC&Rs) contain the ground rules for the operation of the HOA. CC&Rs may also place limits on the powers of the HOA, but these are, for all intents and purposes, contracts of adhesion. When purchasing property in a CID, a prospective buyer must accept and agree to the governing documents, including the CC&Rs. The CC&Rs are equitable servitudes. They are liberally construed to facilitate the operations of the CID, and can be enforced by any owner against another, as well as by the HOA, with the winner to be awarded attorney fees and costs. (Civ. Code, §§ 1354, 1370.)

Despite the importance of these statutes and documents, few CID homeowners are at all familiar with them. Because of the HOA's strong enforcement rights, this unfamiliarity can be a recipe for disaster. Many property owners violate the rules without having any idea what the rules were to begin with. The learning process can be costly, as enforcement often proceeds by way of fines. (Civ. Code, § 1363, subd. (g).) It can also create acrimony between neighbors, since, often, enforcement and fines result from them tattling on one another. Many owners may also be unaware that their porches, balconies and patios may not be theirs alone, but open to common use. (Civ. Code, § 1351, subd. (i)(1).) And many property owners do not realize that the HOA board of directors can raise their assessment as much as 20 percent every year, for any reason the board sees fit, without any vote of the membership. (Civ. Code, § 1366, subd. (b).)

In response to horror stories, in which homes were foreclosed upon and sold by HOAs without proper notification to the homeowner for failure to pay a few dollars in assessments, the California legislature, in the past few years, has attempted to limit the power of HOAs. A brief review of the Davis-Stirling CID Act demonstrates that the vast majority of its provisions giving any concrete rights at all to property owners have been enacted only recently. The basic character of these new rules in itself demonstrates the nature of the power wielded by an HOA. For example, pursuant to legislation effective in 2003, an HOA board has the power to change the operating rules of the HOA without the approval of the property owners, so long as notice of the proposed change is provided. (Civ. Code, §§ 1357.100-1357.130.) If the members disapprove of such a rule change, they have the burden of calling a special meeting at which a vote of a quorum of the members is required to overturn the change. (Civ. Code, § 1357.140.) Remember, this is a new rule *limiting* the power of an HOA board! A rule requiring that HOA members be notified annually that a failure to pay assessments on time can result in nonjudicial foreclosure became effective only in 2003. (Civ. Code, § 1367.1.) Laws requiring a fair, reasonable and expeditious dispute resolution procedure for owners were added only in 2004. (Civ. Code, §§ 1363.810-1363.850.) As the *Press-Enterprise* reported in its May 2, 2005, article, despite strong legislative support, a veto by Governor Schwarzenegger killed a bill designed to limit the foreclosure power of HOAs to those properties with delinquent assessments in excess of $2,500. Nevertheless, effective January 1, 2006, Civil Code § 1367.4 has been added and Civil Code § 1365.1 has been amended for all liens recorded on or after that date. The new provisions bar foreclosures for delinquent assessments or dues of less than $1,800, unless those assessments are over 12 months past due. Delinquencies of less than $1,800 that are not 12 months old may now be pursued by the HOA in small claims court.

Of course, there are also the cases where even the few rules limiting board power that exist are ignored. For an

HOA board, there is no downside to taking or pursuing an unreasonable, unauthorized, or even illegal action against a property owner. Under such circumstances, the property owner has little recourse but to institute and suffer through months, if not years, of costly and emotionally painful litigation in the hope of vindicating his or her rights. For some who cannot afford the process, or do not wish to suffer through it, capitulation to an outlaw HOA board action is the only available option. This can reinforce a coercive method of action by a board that already has little true restraint on its ability to act. Those who choose to fight learn this all too quickly. The board is the final arbiter of what the governing documents say and whether any action violates those documents. There exists no motivation for a board to listen to any reasonable or even unquestionably correct argument a property owner might make. The cost of involving attorneys is of no consequence to an HOA board, given its power over fines and assessments, whereas it can be a huge financial drain on an individual property owner. An unscrupulous board knows this and takes advantage of it. Once attorneys are involved, the HOA's counselor has little, if any, motivation to suggest that the board change its position. Absent the existence of bad faith or willful, wanton or grossly negligent conduct by the board, there is simply no reason not to push any position that it takes as far as it can. (See Civ. Code, § 1365.7.) And because HOA boards are made up of homeowners who often have negligible experience or real management qualifications, their belief in, and adherence to, unreasonable, unauthorized, or even illegal positions is a frighteningly real proposition.

Consequently, all people should be counseled to consider carefully the decision to purchase property in a CID and should thoroughly review the CC&Rs and other governing documents. Is the buyer willing to risk the financial and emotional strain of litigation should the HOA board's eye be cast in the buyer's direction? It hardly needs stating that the emotional toll can be particularly high in matters involving one's home, even if the dispute does not result in resort to the courts. Persons already owning CID homes should hope that they have and keep good neighbors. They should also become very familiar with their governing documents and should be meticulous in their adherence to the rules, taking special care to ensure that all assessments are timely paid. While, sadly, even such care cannot guarantee that the HOA board will not institute some action against them, it does provide the only hope property owners have of ultimately prevailing if they choose to stand and fight. Such is the power of the CID association.

Jean M. Landry is a member of the RCBA and a research attorney at the Court of Appeal in Riverside.

Unlawful Detainer: Relief in Less Time?

by Michael L. Bazzo

One of the most significant characteristics of an unlawful detainer action is its summary nature. The shortened timelines applicable to such claims allow issues of possession of real property to be resolved as quickly as possible. Under existing law, motions for summary judgment are to be filed on five days' notice in an unlawful detainer action, but the law is silent on whether motions for summary adjudication may be made upon the same shortened time.

Code of Civil Procedure section 1170.7 allows parties to an unlawful detainer action to bring motions for summary judgment on an extremely shortened time frame, but does not mention motions for summary adjudication. Motions for summary adjudication still have to be made on 75 days' notice, which is a near impossibility, given the greatly abbreviated life of an unlawful detainer action. This omission creates an inconsistency with the Legislature's general provision, under Code of Civil Procedure section 437c, subdivision (f)(2), that motions for summary adjudication must "proceed in all procedural respects as a motion for summary judgment." Presently, the law creates the possibility that the litigant could move for summary judgment and be barred from requesting the lesser included relief of summary adjudication.

In September 2005, I had the opportunity to attend the Conference of Delegates of California Bar Associations as a Delegate for the Riverside County Bar Association. The above issue concerning motions for summary adjudication was presented by way of resolution by the San Francisco County Bar Association. After oral debate, the Conference resolved to recommend that legislation be sponsored to amend section 1170.7. The simple clarifying language merely adds that motions for summary judgment *or for summary adjudication* may be made at any time after the answer is filed upon giving five days' notice. Summary judgment or *summary adjudication* shall be granted or denied on the same basis as under section 437c.

This amendment, if passed by the Legislature, will provide a useful mechanism for narrowing the issues in summary proceedings to recover real property. Narrowing the issues for trial by way of summary adjudication benefits both the litigants and the court and makes sense in the unlawful detainer arena, just as it does in any other action.

Michael L. Bazzo is co-editor of the Riverside Lawyer and is an associate with the law firm of Arias Aaen in Riverside. His practice emphasizes real estate law.

Tree Lawyer

by Randall S. Stamen

I am known as the "tree lawyer" to a number of judges and attorneys outside of Riverside and San Bernardino Counties. My cases typically involve trees that have fallen on people, trees that are blocking somebody's view, or trees that have grown across property lines and damaged neighboring homes; I defend and prosecute tree and landscape contractors. I also act as a consultant to attorneys throughout the United States who are involved in tree-related litigation.

It is interesting that I have very few local tree cases. I maintain a general civil litigation practice in Riverside and San Bernardino Counties. However, I do tend to be involved in many local cases that concern adjoining properties, such as easement disputes.

Tree disputes are neighbor disputes. As any judge or mediator will tell you, neighbor disputes are particularly nasty. People who are ordinarily rational and nice turn into monsters when it comes to their own property. By the time people call me, they are taking their trash cans out a week early just to irritate the neighbors they are feuding with.

I could tell you twenty "tree killing" stories that would make your jaw drop in astonishment or make you laugh until you cried. An airline pilot recently admitted to me at a holiday party that he dressed up in black, crept into a neighboring property during the night, and killed a tree to improve the view from his home. The pilot's wife kept a lookout and arranged to flick their patio light off and on if her husband was in danger of being detected.

Several years ago, one of my cases was featured on the CBS news program, *48 Hours*. A neighborhood watch captain was caught on videotape spraying his neighbor's tree with the herbicide Roundup in the middle of the night. The CBS reporter interviewed me and my clients. Despite the fact that the reporter and his film crew taped me for almost an hour, my ten seconds of fame literally lasted ten seconds. When the reporter attempted to interview the neighborhood watch captain, he had "no comment."

The media are fascinated with neighbor disputes, especially when they involve wealthy homeowners. Each time one of my cases is in the media, I get a slew of weird telephone calls, emails, and letters for a few weeks. Recently, one woman wanted to know if I could recover money for her on a "per inch" basis. Apparently, the woman's neighbor cut the tips of her encroaching tree branches.

My practice did not always involve trees. I began practicing at Reid & Hellyer in 1992, during the height of the recession. I am indebted to the late Don Powell for guaranteeing my job while my friends in law school were having their offers rescinded. I later practiced with Tom Miller. Tom is now with Reid & Hellyer. Riverside sure is a small town.

I got into tree law because of my dad, Ted. He was a farm adviser for the University of California's Cooperative Extension Service at its Moreno Valley office. My dad began the Master Gardener program in Southern California and also constantly ran landscape-related seminars for government workers, golf course superintendents, etc. Until I left Riverside to go to college, I attended many of my dad's seminars while my brother and sister chose to stay home with my mom.

I started to pick up tree cases when master gardeners and others in the green industry found out I had become an attorney. In 1997, I published a book, California Arboriculture Law, that discussed cases and statutes concerning trees. The book is written for lay people. I self-published it out of greed. It is amazing how little money ends up in your pocket after a publisher takes its cut. Two trade associations distribute my book for me. So far, they have sold about 5,000 copies.

I also speak and write for trade magazines and trade associations on the topic of tree-related litigation and risk management. The speaking engagements have allowed my wife, Teri, my kids, and me to travel to some amazing places in the United States, Canada, and Mexico. I don't think Teri or I will forget our January trip to Green Bay, Wisconsin for a long time. I am still shooting for a speech in Europe or Australia.

I truly enjoy public speaking, whether it be to 50 people or 1,000 people. For the most part, the only rules that apply when you take the stage are to keep the audience awake and to end on time. It's a little different from the courtroom.

My presentations typically include very funny and very sad stories. Contractors and others begin to really understand the law and to take risk management seriously when I illustrate theories with true cases. A PowerPoint slide of a 100-foot-tall eucalyptus tree lying on an occupied car is an attention-getter. I recently had a former client, whose neck was broken by a tree, speak with me at UCR. You could have heard a pin drop as he told his story.

I feel fortunate whenever I get to speak at UCR or represent a local client. Riverside, and its legal community, have treated me very well. I look forward to practicing law, living, and raising my kids in Riverside for years to come.

Randall S. Stamen, of the Law Offices of Randall S. Stamen, is a member of the RCBA.

Kelo Therapy

by Richard Brent Reed

On November 3, 2005, the House of Representatives passed H.R. 4128: the Private Property Rights Protection Act of 2005. The act, if ratified by the Senate, will cut off federal funds from any city, county, or state redevelopment agency that takes private property for economic redevelopment. Section 2(b) states: "A violation of subsection (a) by a State or political subdivision shall render such State or political subdivision ineligible for any Federal economic development funds for a period of 2 fiscal years following a final judgment on the merits by a court of competent jurisdiction that such subsection has been violated, and any Federal agency charged with distributing those funds shall withhold them for such 2-year period, and any such funds distributed to such State or political subdivision shall be returned or reimbursed by such State or political subdivision to the appropriate Federal agency or authority of the Federal Government, or component thereof." In other words, no more pay for play. If an agency abuses, it loses.

Section 4(a) permits a private right of action: "Any owner of private property who suffers injury as a result of a violation of any provision of this Act may bring an action to enforce any provision of this Act in the appropriate Federal or State court, and a State shall not be immune under the eleventh amendment to the Constitution of the United States from any such action in a Federal or State court of competent jurisdiction. Any such property owner may also seek any appropriate relief through a preliminary injunction or a temporary restraining order." What's more, if the plaintiff prevails, he gets his attorney fees, costs, and expert witness fees. This provision shifts the balance of power from the state, county, or city to the private citizen, where it belongs.

With the *Kelo* decision, redevelopment agencies all across the country smelled blood in the water and stepped up their plans to pave over America. Section 7(a)(4) correctly observes that, in "the wake of the Supreme Court's decision in Kelo v. City of New London, abuse of eminent domain is a threat to the property rights of all private property owners, including rural land owners." *Kelo* created a 2,000-mile-wide Cherokee Strip from coast to coast, except the land would go, not to Sooners, but to developers.

Congress's PPRPA, along with proposed state legislation and local initiatives, will, hopefully, stanch the hemorrhaging of property rights in California and return power – and the land – to the people.

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

Crossing the Rubicon

by Michael L. Bazzo

In 49 B.C., Julius Caesar, frustrated by the politicians in Rome who he believed sought to undermine his authority over his handling of the war, crossed the Rubicon River and uttered the now-famous words ascribed to him by Suetonius, "Alia iacta est" (the die has been cast). This act and phrase have now come down to us as a symbol of determination and not looking back once a decision has been made. Caesar's crossing of the Rubicon is significant historically, because he took his massive army and marched into Rome, an act that was forbidden by Roman law and politics. The outcome spelled the end of the Republic and the beginning of the Empire and military rule.

This month, on the anniversary of the birth of President Abraham Lincoln, we are reminded that for a time in our history Lincoln battled with his own demons, in the form of ambitious politicians and powerful generals, all of whom at least entertained the idea of personal control of the Union during the crisis that was the War Between the States. In the early stages of this conflict, Lincoln was forced to make some prompt and weighty decisions that would affect the state of the fragile Union.

Like a page ripped from the Roman texts, history nearly repeated itself during the summer of 1862. McClellan, the Union general appointed by Lincoln at the time, led a massive army of several hundred thousand soldiers and positioned them in the Maryland farm country just outside of Washington, D.C. McClellan was a staunch Democrat who despised everything about the majority in Washington. McClellan had two memorable character traits: blaming others for his inaction and overestimating the number of his enemy. The two are inextricably related . . . . He believed he faced 200,000 rebels in the Peninsula Campaign when, in reality, it was more like 60,000. He could have easily won a victory, had he moved decisively. The overestimation caused inaction, and he blamed Washington for not sending reinforcements.

In the summer of 1862, McClellan wrote to his wife, blaming the lack of success of the Union on Lincoln. He believed that Lincoln had deliberately withheld reinforcements so as to prolong the war so the abolitionists would have time to grow strong enough to turn the conflict into a revolution against slavery. In fact, the editor of the New York World newspaper insisted that the Union army was staunchly anti-abolitionist and that Lincoln wanted to cause a defeat in the Peninsula Campaign to prolong the war for these very reasons.

On July 8, 1862, McClellan sent Lincoln a paper he had written on his "general views of the rebellion." In it, McClellan insisted that the war not be one that seeks to subjugate the people, property or territorial organization of states and that "forcible abolition of slavery should not be contemplated for a moment." He went on to state that "a constitutional and Christian policy demanded that Southern civilians, their property and institutions be strictly protected by the Federal armies."

During that hot July, McClellan entertained thoughts of taking matters into his own hands. In the overheated atmosphere of partisan politics, McClellan received numerous letters urging him to turn his massive army on Washington, take possession of the city, and assume the government as provisional president until an election could be held to reverse the results of 1860. McClellan told his wife that he could hardly imagine such a course, yet he found the thought hard to dismiss and saved the letters in his personal archive. On July 29, he remarked, "If they leave me here neglected much longer [without reinforcements] I will feel like taking my rather large military family to Washington to seek an explanation [and] I fancy under such circumstances I should be treated with rather more politeness than I have been of late."

McClellan's paper of July 8 touched a nerve with Lincoln, who had one eye on local politics and the other on England and France, where the potential of intervention was a distinct possibility – especially in England, where Southern cotton was not reaching the English textile industry due to the Union blockade and thousands were out of work, hungry, and nearing revolt. Lincoln was warned that if a decisive battle was not soon won, the English government would have no choice but to recognize the rebels or be driven out of power itself by its own people's revolt. By the end of July, this threat was looming ever closer to becoming a reality, and every politician and general knew how quickly such a crisis could escalate.

The prospect of a long and bloody battle greeted the month of July. McClellan remained across the Potomac, daily becoming more disgusted with Washington politics and perceived ineptitude. Threats of intervention by England and France increased exponentially with each passing day.

Radical statesmen were urging McClellan to act, and all the while, Stonewall Jackson's Confederate Army increased.

Lincoln faced a crossroads: to stay the course until successful or abandon the war where it was. Lincoln determined that he could not abandon the war, calling for 300,000 more troops, at the same time stating that he felt it was time to make slavery a counter in the game.

In the summer of 1862, the abolitionists were still a very small minority. Though most Democrats and Republicans on the Hill believed it was time that slavery became as much an issue as restoration of the Union, it was abolitionist Senator Sumner who rallied the cause by insisting that the first step was to reinforce the battalions with the idea. Prior to this time, the cause for both Union and rebel foot soldiers was the restoration of the Union or the maintenance of states' rights. Against this backdrop, Lincoln had to tread carefully. He told Sumner that he would proclaim emancipation immediately, but for the fact that "half the [Union's] officers would fling down their arms and three more states would rise."

At first, Lincoln proceeded cautiously, proposing a plan for gradual emancipation. Lincoln worked incessantly on the document and carefully considered every possible issue. At a cabinet meeting on July 22, 1862, he announced his decision on slavery. His mind was made up. He knew full well that this document would be what he termed the "friction and abrasion" of the war itself.

And there was still McClellan, across the river sitting and waiting with a massive army. A decision was made to bring McClellan and his army home to Washington. This served to fuel McClellan's ire towards Lincoln, but effectively defused a potentially catastrophic situation. However, Lincoln still needed a victory to permit his proclamation to work its desired effect on the world.

On September 17, 1862, near a small town in Maryland called Sharpsburg, two grand armies would collide along a tiny stream called Antietam Creek. It would forever be remembered as the bloodiest day in American history, with 23,000 American casualties in a single day – more than in the entire Revolutionary War, the War of 1812, or the Mexican War. In the East Woods along the Hagerstown Pike, nearly 3,000 were killed or wounded in just under 15 minutes. Miller's cornfield was completely razed and with it went nearly 2,000 rebels. The famous Union "Irish Brigade" lost nearly 50% of its 1,200 members in under an hour. Mathematically, an American died every ten seconds over the course of the 11-hour battle. It was the single greatest loss of American life in one day, with the Twin Towers tragedy a close second. By most historians, it is considered a draw.

In Washington, a marginal victory was the spin, and Lincoln got what he wanted. The course of history was forever changed. Had McClellan given in to the demands of his constituency and his ego, he may have cast the die and crossed the Potomac before Lincoln had a chance to decide the nation's course. Fortunately, McClellan rang true to his character trait of inaction, and the nation was spared military rule and the possible fate that engulfed the Roman Empire.

Michael L. Bazzo is co-editor of the Riverside Lawyer Magazine and is an associate with the law firm of AriasAaen in Riverside. Mike is also a civil war reenactor serving with the 8th Louisiana Infantry, Company E, of the American Civil War Society.

The Right to Date

by Richard Brent Reed

It all started with *Rulon-Miller v. International Business Machines Corp.* (1984) 162 Cal.App.3d 241, a California case (of course), in which Virginia Rulon-Miller was fired because her date(s) with the competition's account manager constituted a "conflict of interest." She sued; she won. The court found that IBM's policy definition of "conflict of interest" was vague. But if being in love – or in like – constitutes a conflict of interest, how does one define a "relationship"; how does one quantify love?

Black's Law Dictionary defines "dating" as… nope, it's not there. Black's Law Dictionary defines "fraternizing" as . . . no, that's not a legal term, either. ("Fraternize" derives from the Latin "frater," meaning "brother." A fraternity is, therefore, a brotherhood.) It's not Black's fault that dating is undefinable. Some relationships defy definition, even for the relatees. Nowadays, "just friends" could mean anything, whereas "significant other" can mean next to nothing. "I think I'm falling in love with you" often runs headlong into, "I thought we were just friends." One party will ask, "How many dates have we had so far?," to which the other replies, "This isn't a date." And yet, human resource directors seem to be able to identify office romances from twelve stories up and a hundred miles away. What qualifies as a "relationship"? A half-minute kiss? A two-minute hug? Holding hands? One-night stands? What is a "date"? Dinner and a movie? Dinner and skip the movie? A drink after work? A drink before work?

Despite the lack of an accepted definition, more and more people – and entities – are treating dating, when it comes to coworkers, as a sort of tort. Many companies have adopted policies against fraternization among coworkers, even when that fraternization takes place outside the office. Why are businesses suddenly interested in micromanaging the sex lives of their employees? Corona attorney Kent Hansen put it succinctly: "Sexual harassment has gotten to be such a dollar drain." In today's hypersensitive environment, some employees have taken the liberty of complaining that just knowing of an intra-office romance is enough to make them feel uncomfortable; that the secretary who dates the boss creates an uneven playing field – as it were – and, therefore, a hostile work environment. Businesses have responded to this new sensitivity by taking, shall we say, prophylactic measures.

In New York, the Jackson Lewis Workplace Survey turned up some interesting – some might say "disturbing" – trends last year. When participants were asked, "Was your company sued by an employee for any reason during the past year?," 58% of the respondents who answered yes to the question cited gender discrimination as the basis for a charge. In the 2003 survey, 48% cited gender discrimination. In 2004, 20% of the respondents said they have a policy regulating coworker dating at their company, up 7% from 2002.

Since businesses are not bound by the Constitution's limitations on government, companies are at liberty to regulate the private lives of their employees. Yet an employer cannot unfairly discriminate against an employee's religious beliefs, because the freedom of religion is viewed as a fundamental right. Even trade unions enjoy some protection under the First Amendment right "peaceably to assemble." Dating may not always be peaceable, but it should be afforded some legal protection. Trading glances predates trade unionism, and courtship has been around longer than courts, yet dating has been marginalized in modern jurisprudence and daters have been largely disenfranchised.

The Constitution does not mention "dating," per se, but it does refer to "the pursuit of happiness." If dating isn't, by definition, the pursuit of happiness, what is? Dating involves an entire penumbra of Constitutional rights: the right of association allows you to associate with whomever you choose; kissing is a form of nonverbal speech; a really good hug usually involves at least one free press. If procreation is a fundamental right, then dating is necessary and proper.

Unfortunately, labor unions have taken control of the debate over coworker fraternization: workers must be allowed to meet and talk about their jobs, but smooch-

(continued on next page)

Current Affairs

by Richard Brent Reed

Senate v. Alito

By the time that this article goes to press, Judge Samuel Alito will have been confirmed to the United States Supreme Court on the advice and consent of the Senate. Many senators are concerned about Judge Alito's nomination to the Supreme Court. Senator Dianne Feinstein purports to be concerned with the survival of *Roe v. Wade* and the right to gestational privacy. Ironically, Senator Patrick Leahy insists that Judge Alito must demonstrate that he will place limits on "government overreaching." (That's senatorial code for "executive branch overreaching.")

Senators are not as worried about *Roe v. Wade* as they are about the survival of *Wickard v. Filburn*. In the dark places that senators don't like to talk about, they are terrified that Judge Alito will erode Congress's penumbral powers that lurk in the shadows of the Commerce Clause. They worry about *Roe v. Wade*, but they lose sleep over *United States v. Lopez*.

"Government overreaching," as Senator Leahy aptly put it, found its perfection in *Wickard v. Filburn*, which gave the federal government untrammeled authority to micromanage a farmer's household baking. Congressional power went unchallenged for about 60 years until the court ruled, in 1995, that Congress could not use the Commerce Clause to prohibit the possession of a firearm in the vicinity of a school. That federal gun ordinance was declared unconstitutional in *United States v. Lopez*. Senator Feinstein sees in *Lopez* a disturbing precedent. No doubt her colleagues are equally disturbed.

Who Gets the Fish?

Remember that slippery slope? It doesn't get much slipperier than this: On January 1, 2006, a couple was married in Eilat, Israel. The bride's name was "Sharon." The groom's name was "Cindy." Sharon is 41; Cindy is 35. It was a "mixed marriage": Sharon is Jewish; Cindy is not. Sharon is a British citizen; Cindy was born in Israel. The bride wore white; the groom wore nothing at all. Sharon is a millionaire who imports clothing and promotes rock bands in England. Cindy is a performer. Despite their obvious differences, they took the plunge.

They have no plans to move in together. Sharon met Cindy 15 years ago. They were introduced by Cindy's personal trainer. In December 2005, Sharon finally proposed. Before you get the wrong idea, Cindy is a big, handsome, male. He is also a dolphin. As Tevye put it in *Fiddler on the Roof*, "A bird may love a fish, but where will they build a home together?" More importantly, where would they get a divorce?

Though the wedding ceremony has no legal significance – yet – the couple's disparate citizenship would require their dissolution to be adjudicated in an international court – a court of admiralty. An annulment would be appropriate. Even though the dolphin brain is as big as a human brain, this dolphin's capacity to contract must be called into question. His name is "Cindy," after all. This is a very gender-confused animal and, therefore, can hardly be expected to form the *animus contrahendi* required to enter into a marriage. Most likely, one of the parties was perpetrating a fraud, and even maritime law would find the arrangement to be meretricious. Sharon gave her consent freely enough, but Cindy is obviously in it for the fish.

The Right to Date *(continued from previous page)*

ing is, somehow, unimportant. All discussion seems to be centered around the right to gather and complain about working conditions – not about frolic and detour at the corner bar – as if the water cooler were a hallowed place and the local watering hole less hallowed. Assembly to organize a walk-out is to be considered sacred, while walking out with the cutie in the next cubicle may be forbidden.

So the day is finally here: you have more right to unionize than you have to date. It's okay if you want to meet with a colleague to complain about your boss, but God help you if you ask that colleague out for a beer. You can chat about work, but not about romance. You can discuss benefits, but not dating privileges. A potentially romantic tryst can be sanitized by chatting about overtime. The take-home lesson for amorous employees, then, is this: if you schedule an assignation with your colleague, you had better make it a business meeting. In other words, if you wind up in the heat of passion with a coworker, be sure to bring up your health package.

In Memoriam: Donald F. Powell

Remembrances by David T. Bristow

Donald F. Powell

The Riverside legal community lost one of its giants with the passing of Donald Powell on December 2, 2005. Mr. Powell was a senior member of the firm of Reid & Hellyer, where he practiced for more than 40 years. At the time of his passing, Mr. Powell was one of only three attorneys from the Inland Empire listed in the business litigation section of the "Best Lawyers in America." He specialized in real estate and land-use issues, as well as complex civil litigation, including breaches of contract, economic torts and corporate disputes.

A consummate professional and practitioner, Mr. Powell epitomized what a lawyer can and should be. He was intelligent, competitive, inquisitive, and diligent, but above all, he took the responsibility of solving his clients' problems seriously, and personally. To the end of his career, his devotion to his clients never waned, and he could nearly always be found in the library, researching an issue in order to "solve the puzzle" and win his case. His passion for the law can be traced to many factors, but perhaps most of all to his mentor, Enos Reid, one of the founders of the firm of Reid, Babbage & Coil, which later became Reid & Hellyer following a merger with the San Bernardino firm of Sur & Hellyer. It was Enos Reid, himself one of the giants of the Riverside legal community, who taught Mr. Powell, along with the other young attorneys at Reid, Babbage & Coil, such as David Moore, the proper way to practice law, and Mr. Powell, in turn, spent his professional career honoring his mentor, as well as the law firm he created.

Mr. Powell was raised in Northern California; he attended U.C. Berkeley as an undergraduate and thereafter obtained his law degree from the University of California, Hastings College of the Law in San Francisco. He was elected to the law review at Hastings and was a member of the Order of the Coif. While attending Berkeley, he met his wife and lifelong friend, Bobbie. The two of them traveled to Riverside following his graduation so he could interview for a position with Reid, Babbage & Coil. Once he was hired, Don and Bobbie moved to Riverside and made it their home. Don was active in the Riverside Legal community and in the community at large. Don accumulated a very loyal following of clients, many of whom became his close friends. Among his clients – and friends – were Blue Banner Company and D'Elia's Grinders.

Don represented the Burlington Northern & Santa Fe Railway for many years on a variety of matters and tried numerous types of cases, including felony crimes, over the course of his career. In recent years, Don successfully represented a major developer in a critical dispute involving the ability to develop the Redlands "Donut Hole," and also successfully represented an elderly woman in a complicated trust and real estate dispute with a Santa Barbara developer and former actor, Fess Parker.

Don and Bobbie were active in the Riverside cultural community, and Bobbie served for many years as the Executive Director of the Riverside Art Museum. Their daughter, Leslie – whom Don referred to as "Junior" her entire life – is a museum professional in San Diego. Leslie and her husband, John, became the parents of twin boys in 2004. Don referred to his grandsons as "the Twinners."

David T. Bristow, President-Elect of the RCBA, is with the law firm of Reid & Hellyer.

Remembrances by Judge Victor Miceli, Ret.

Don Powell, more than just a great lawyer!

Much has been said about Don Powell's lawyering skills. I would like to share some of my memories of Don away from the court, garnered over many years of knowing him.

Unless you knew Don very, very well, you might think of him as being withdrawn and perhaps distant. Such was not the case. Although quiet and low-key, Don was, as we used to say, "with it." Don was very intellectual and a voracious reader on a myriad of subjects. (Where did he find the time to read other than law-related materials?) Don had a probing mind and liked to engage in dialogues. With a barely discernible smile, he would ask searching questions, inserting his wit, seeking to expose any absurdity or incredible position. There never was any malice, but Don did not "suffer fools gladly."

Perhaps many are not aware that Don played football on the first team at Cal against many of the PAC-10 teams. Don was not boisterous, but when Cal defeated any of the "hated rivals," his step was lighter and his mood was brighter. His other great football passion was the San Francisco 49'ers. I was favored to be invited to his annual Super Bowl party. Strangely, the invitations were not forthcoming after Joe and Steve left the 49'ers. Don was hopeful they would rise again so he could resume his annual Super Bowl fête. Don followed the fortunes of the team closely, looking for the second coming of Montana and Young, but it is not soon to be.

Don was an avid and dedicated handball player, playing at the "Y" and the Tournament House with the same group of cronies for many, many, years. In later years, I was never quite sure if the attraction was the game or the excuse to meet afterwards at Rubio's to relive the day with his buddies.

Traveling was another of Don's passions. Don tried to take at last one overseas trip each year, traveling to places he had not yet been or returning to a favorite for deeper immersion with the locals. As a popular TV series claims, to Don the "goal was not the destination but the journey." To travel with Don was an extraordinary experience. Don would eschew the tourist traps and venture off the beaten path to where the locals lived. With his quiet demeanor and engaging smile, he would soon learn where the natives ate, what they ate, and what they suggested should be visited. Wherever he went he left his mark. When others would travel to a place that Don had visited and "Riverside" was mentioned, they should not be surprised to hear, "How is Señor Powell," or "Say hello to Mr. Don."

I had the pleasure of spending many a Monday Night football game with Don at the packing house. Most often we would sit near each other, within conversational proximity. I can hear him now, in his quiet, barely audible tone, so that only he and I could hear, when one of the group made an outlandish or bizarre comment, asking, "Is that right, Judge?," or, "What do you think about that?"

Don knew many people, some of whom were his friends. I trust that I was his friend.

He is missed. I cherish the many good memories I have of Don Powell.

Good-bye, good friend. May you R.I.P.

Judge Victor Miceli retired from the Riverside Superior Court in 1991.

Litigation Update

by Mark A. Mellor

Owner of any interest in property is entitled to recreational use immunity. Civil Code section 846 immunizes property owners from liability arising from the recreational use of their property. In *Miller v. Weitzen* (2005) 133 Cal.App.4th 732 [35 Cal.Rptr.3d 73, 2005 DJDAR 12579] [Fourth Dist., Div. One], http://www.courtinfo.ca.gov/opinions/documents/D044911.PDF, defendants had resurfaced a driveway over property owned by the county over which they had an easement. The county used the property for a horse trail. Plaintiff claimed to have been injured when her horse slipped and fell as a result of the dangerous surface of the driveway. The court rejected plaintiff's argument that the recreational use immunity did not apply because defendants did not own the property. The court pointed out that the statute applies not only to owners but includes anyone who owns any interest in property; therefore, the owner of an easement is also entitled to the immunity.

California adopts "sophisticated user" doctrine. Under the "sophisticated user" doctrine, a manufacturer was held to be entitled to summary judgment in its favor in a "failure to warn" case where the injured plaintiff was a "sophisticated user" and, as such, reasonably should have known of the risk. In *Johnson v. American Standard*, Inc. (2005) 133 Cal.App.4th 496 [34 Cal.Rptr.3d 863, 2005 DJDAR 12366] [Second Dist., Div. Five], http://www.courtinfo.ca.gov/opinions/documents/B179206.PDF, the Court of Appeal relied on a number of cases from other jurisdictions to reach this conclusion. The case involved a certified HVAC (heating, ventilation, and air conditioning) technician who was injured by escaping gas while repairing an air conditioning system.

Presumably because this doctrine appears to be new in California law, our Supreme Court has granted review. (Jan. 4, 2006, S139184.)

State Bar gains authority to fight unauthorized practice of law. The State Bar Office of Governmental Affairs reported that S.B. 894 (Sen. Joe Dunn), signed by Governor Schwarzenegger, authorizes the State Bar to pursue the unauthorized practice of law by non-lawyers, using the same civil remedies available to it as in cases of disbarred or resigned lawyers. The new legislation permits the Bar to seek an order from the superior court to assume jurisdiction of the illegal practice, to assist the court in returning files to clients and to assist the clients in finding other counsel. Existing criminal penalties for the unauthorized practice of law remain unchanged.

If you discover evidence of a non-lawyer practicing law in this state, we recommend that you report this to the State Bar as well as to the local district attorney.

Biological father lacks standing to assert paternity of child conceived during mother's marriage. Family Code section 7630 (part of the Uniform Parentage Act) specifies the persons who have standing to file an action to determine paternity. This includes the child, the natural mother, or a "presumed father." Family Code section 7611 lists the conditions under which a man is presumed to be the father. Under this section, the man to whom the mother is married or, if the child is born within 300 days of the termination of the marriage, was married, is the presumed father. Another presumed father is one who "receives the child into his home and openly holds out the child as his natural child."

In *Lisa I. v. Superior Court* (2005) 133 Cal.App.4th 605 [34 Cal.Rptr.3d 927, 2005 DJDAR 12444] [Second Dist., Div. Eight], http://www.courtinfo.ca.gov/opinions/documents/B182219.PDF, the court concluded that this statute compelled the conclusion that a biological father who had no relationship with the child had no standing to seek a determination of paternity. The court also held that the statute did not violate the constitutional due process rights of the biological father.

"Ladies Day" is once again before the Supreme Court. In *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24 [219 Cal.Rptr. 133, 707 P.2d 195], the Supreme Court held that the Unruh Civil Rights Act (Civ. Code, § 51) prohibits charging persons of one gender more for goods or services than those of another gender. Relying on *Koire*, the Court of Appeal in *Angelucci v. Century Supper Club* (2005) 130 Cal.App.4th 919 [30 Cal.Rptr.3d 460, 2005 DJDAR 7893] [Second Dist., Div. Five] held that a supper club violated the Act by admitting women free or at rates lower than those charged to males. But *Angelucci* nevertheless held for the defendant on the ground that plaintiff could not sue for discrimination when he had failed to ask for the reduced rate himself. The California Supreme Court has granted review. (Oct. 19, 2005, S136154.)

Bankruptcy Court has power to suspend lawyer. *In re Lehtinen* (Bankr. 9th Cir. 2005) 332 B.R. 404 [2005 DJDAR 12828] held that the Bankruptcy Court had the power to suspend a lawyer from practicing before it. The

lawyer had, without the client's consent, sent substitute counsel to a meeting with creditors and failed to appear at the client's confirmation hearing.

Tort Claims Act is not limited to tort claims. Government Code sections 900 et seq. require that, before suit may be filed against a state or local public entity, specified claims procedures must be followed. Because these statutes are part of what is generally known as the Tort Claims Act, there is a common misconception that the claims requirements apply only to tort claims. The Tort Claims Act is not so limited. Before filing suit on a contract claim against a public agency, plaintiffs must also comply with the claims procedure. (*City of Stockton v. Superior Court* (2005) 133 Cal.App.4th 1052 [35 Cal.Rptr.3d 164, 2005 DJDAR 12870] [Third Dist.], http://www.courtinfo.ca.gov/opinions/documents/C048162.PDF.)

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Litigation Update *(continued from previous page)*

"Goodwill" belongs to a business and must be transferable. An individual's reputation, even if it creates an expectation of future professional patronage, is not "goodwill" that must be valued in a marital dissolution. Such a reputation is to be considered as the individual's earning capacity. "Goodwill" belongs to a business and is transferable. (*In re Marriage of McTiernan and Dubrow* (2005) 133 Cal.App.4th 1090 [35 Cal. Rptr.3d 287, 2005 DJDAR 12855] [Second Dist, Div. Eight], http://www.courtinfo.ca.gov/opinions/documents/B161255.PDF.)

A statement that is "substantially true" cannot be the basis for defamation. It is hornbook law that truth is a complete defense to an action for defamation. But how close to the truth must the statements be? *Raghavan v. Boeing Co.* (2005) 133 Cal.App.4th 1120 [35 Cal.Rptr.3d 397, 2005 DJDAR 12918] [Second Dist, Div. One], http://www.courtinfo.ca.gov/opinions/documents/B175025.PDF, held that it is sufficient if the substance of the allegedly defamatory communication is true; inaccuracies in details do not bar the "truth defense."

The "golden rule" pertaining to summary judgment motions is losing some of its glitter. In *United Community Church v. Garcin* (1991) 231 Cal.App.3d 327, 337 [282 Cal.Rptr. 368], the court stated: "This is the Golden Rule of Summary Adjudication: If it is not set forth in the separate statement, it does not exist." The case held that a violation of the separate statement of undisputed facts requirement by plaintiff precluded an award of summary judgment in its favor. But in *Parkview Villas Assoc., Inc. v. State Farm Fire & Casualty Co.* (2005) 133 Cal. App.4th 1197 [35 Cal.Rptr.3d 411, 2005 DJDAR 13010] [Second Dist., Div. Seven], http://www.courtinfo.ca.gov/opinions/documents/B174017.PDF, the court applied a different standard where the party *opposing* the motion had filed a defective separate statement. The court held that the trial court abused its discretion by granting the motion because of this failure and that it should have given the party opposing the motion an opportunity to cure the procedural defect. For a further analysis of the applicability of the "golden rule," see *San Diego Watercrafts, Inc. v. Wells Fargo Bank* (2002) 102 Cal.App.4th 308 [125 Cal.Rptr.2d 499].

Federal standards impose greater duty of care on drivers of commercial vehicles. The standard instruction as to the defendant's duty of care in an automobile collision case imposes a "reasonableness" standard. But 49 Code of Federal Regulations part 392.14 provides: "Extreme caution in the operation of a commercial motor vehicle shall be exercised when hazardous conditions, such as those caused by snow, ice, sleet, fog, mist, rain, dust, or smoke, adversely affect visibility or traction. Speed shall be reduced when such conditions exist." *Weaver v. Chavez* (2005) 133 Cal.App.4th 1350 [35 Cal.Rptr.3d 514, 2005 DJDAR 13145] [Second Dist., Div. Four], http://www.courtinfo.ca.gov/opinions/documents/B176286.PDF, reversed a judgment for defendant when the trial court had refused to instruct the jury in accordance with the federal rule and had merely given the standard instruction based on Vehicle Code section 22350, which defines the driver's duty of care as "reasonable or prudent having due regard for weather, visibility, the traffic on, and the surface and width of, the highway ...."

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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Law Library

by Gayle Webb

It's a New Year, so we decided it was time for a new face on the Law Library's website. Take a look at us at www.lawlibrary.co.riverside.ca.us – thanks to our effervescent Reference Librarian Bret Christensen, we have a fresher, friendlier face, with some photos that really do us proud. Some of our more frequently asked legal questions have been added for the public, as well as additional research guides. Our current monthly *Just Another Newsletter* is also available, along with archives of past issues. You may also find the updated list of law book publisher contacts useful.

Of course, you can still search our complete inventory of books, computer programs and audiovisual materials. Only a few are accessible outside the libraries by web address links – you don't really expect the major legal publishers to give anything away for free, do you?! The "Ask Us" email reference option gives you the opportunity to send us your questions day or night. No, we're not sleeping here so that we can answer you immediately at 2 a.m., but we do check our email several times a day during our open hours. Take a look at www.lawlibrary.co.riverside.ca when you have a moment – we think you'll be as pleased as we. Now, if only the rest of us could get facelifts . . .

Something special is happening this year – April 28, 2006 will mark our *65th year* of service to the Riverside community. You will be seeing glossy seals on all of our correspondence (a sample is on our website, too), newspaper articles, and a whole host of activities and events to commemorate this occasion. In January, we launched our "new" website and celebrated *National Book Week* with a display entitled "Staff and Board Recommends . . . " – books we and our judges and attorneys think you may also enjoy reading in your spare time. Yes, we all do read things other than law books! I guarantee the reviews displayed with the books will inspire many of you to run right over to your favorite book store/coffee house to get your own copies.

Also, a reminder that state and federal tax forms are available, free of charge, at the Law Library. We have a large supply of the most commonly requested forms and, of course, all can be photocopied or downloaded from www.irs.gov and www.ftb.ca.gov. My personal favorite is 4868 ("Extension of Time"). Happy filing!

The Law Libraries will be closed to observe the following holidays:

Monday, February 13 – Abraham Lincoln's Birthday

Monday, February 20 – Presidents' Day

Gayle Webb is the County Law Library Director.

Classified Ads

Paralegal – Part Time

Part time paralegal needed for growing business, real estate and civil litigation practice. Experience preferred. Strong organizational skills required. Flexible schedule. Please fax or email resume to: John Vineyard, (fax) 951-774-1970 (email) jvineyard@vineyardlaw.com

Riverside County – Indigent Defense Contracts

Request for Proposals – The County of Riverside will accept proposals from attorneys interested in providing defense services in the Riverside County Superior Court, county-wide, under contract to the County, for indigent defendants in adult and W & I 600 et. seq. criminal proceedings in which the Public Defender has declared a conflict; in mandatory probate proceedings; and in certain W & I 5000 et. seq. proceedings. The RFP document will be available at the County's website, www.co.riverside.ca.us or directly from the Purchasing Department at 2980 Washington St., Riverside, CA, (951) 955-4937, on February 13, 2006.

Those interested in bidding on all or a portion of the contracts should note that a Pre-Bid Meeting will be held Thursday, March 2, 2006, at 9:00 a.m. at the Purchasing Department. The Bid Closing Date is Monday, April 10, 2006.

Immediate Opening – Pro Se Staff Attorney

United States District Court, Central District of California – The Pro Se Staff Attorney will work under the supervision of one or more U.S. Magistrate Judges on pro se habeas corpus, civil rights actions and Social Security cases. At the present, the Court anticipates that the applicant will work primarily in conjunction with cases assigned to the Eastern Division of the Court and would be assigned a duty station at the federal courthouse in Riverside. *w*: Strong academic credentials from an ABA-accredited law school, polished writing skills, and superior analytical ability. Bar membership and litigation experience preferred. Salary range: $56,896 to $124,572 plus benefits. Please submit resume, writing sample and, if out of law school for less than two years, a law school transcript.

For more information, visit the Court's Web site at www.cacd.uscourts.gov. Refer to Job Announcement No. 06-10.

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 February 28, 2006.

Babak Robert Farzad
Farzad Law Corporation, Orange

Floyd Fishell
Chandler Fox & Fishell, Riverside

Julian Fox
Chandler Fox & Fishell, Riverside

Rahman Gerren
Office of the City Attorney, Riverside

Timothy J. Hollenhorst
Office of the District Attorney, Riverside

Jean M. Landry
Court of Appeal, Riverside

Carrie E. S. Miranda
Lubrani & Smith, Riverside

Kyle A. Patrick
Ord & Norman, San Francisco

Renewal:
Jose S. Ramos
Retired Attorney, Grand Terrace

Jamie Wrage
Gresham Savage Nolan & Tilden, Riverside

In Memoriam

David Oliver Smith, Jr.

May 9, 1927 – January 7, 2006

Errata

Although it would have been a spectacular feat and worthy of Houdini for "Hanging Judge" Issac Parker to have been born in 1938 and died in 1886, he was actually born in 1838.

(January 2006 issue of Riverside Lawyer, Book Review article)