

# RIVERSIDE LAWYER

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MAGAZINE



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*(left to right)* Richard Kennedy, Harlan Kistler, John Higginbotham, Aurora Hughes, Daniel Hantman, David Bristow, Harry Histen, Christopher Harmon; *Not pictured* - Robyn Lewis, Daniel Katz and Charles Boylston



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# RIVERSIDE LAWYER

MAGAZINE

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# MISSION STATEMENT

## Established in 1894

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

## RCBA Mission Statement

The mission of the Riverside County Bar Association is to:

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

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

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

## Membership Benefits

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

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

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

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

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

MBNA Platinum Plus MasterCard, and optional insurance programs.

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

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*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

## NOVEMBER

- 20 Family Law Section**  
“State Bar Investigation”  
Speaker: Terry Martin, Esq.  
RCBA – Noon  
(MCLE)

**22-23 Thanksgiving Holiday**

- 28 Estate Planning, Probate & Trust Law Section**  
RCBA – Noon  
(MCLE)

## DECEMBER

- 3 New Admittee Swearing-In Ceremony**  
Dept. 1, Riverside Historic Courthouse – 10:00 a.m.
- 4 Deegan Inn of Court**  
Victoria Club – 5:30 p.m.
- 5 Bar Publications Committee**  
RCBA – Noon
- 11 PSLC**  
RCBA – Noon
- 12 Mock Trial Steering Committee**  
RCBA – Noon
- 14 Joint RCBA/SBCBA Annual General Membership Meeting**  
Speaker: State Bar President Jeffrey Bleich  
Riverside Marriott, Regency Ballroom – Noon  
(MCLE)
- 19 Estate Planning, Probate & Trust Law Section**  
Best Best & Krieger – Noon  
(MCLE)





*by Daniel Hantman*

The State Bar of California's 80th Annual Meeting was held on September 27-30, 2007, at the Anaheim Convention Center and Marriott Hotel. Over 3,500 attended the event. The Riverside County Bar Association (RCBA) Board wishes to thank all the judges, commissioners, attorneys, and accompanying family members who represented Riverside County.

Chief Justice Ronald M. George gave his 12th Annual "State of the Judiciary" address to a joint meeting of the Judicial Council's Bench-Bar Conference, the State Bar, and the California Judges Association. He spoke directly about Riverside's situation:

"Nowhere is the impact of having too few judgeships more apparent than in Riverside County. With one of the fastest growing populations in the nation, Riverside's courts have been overwhelmed by filings. On more than one occasion over the last few years, all civil courtrooms had to be closed for weeks at a time so that all courts and judges could be devoted to handling a staggering backlog of criminal matters – with pending time limitations that demanded court action or dismissal of the charges. Needless to say, these delays had severe negative effects upon the rights of civil litigants and the law practices of their counsel."

Chief Justice George personally expressed his appreciation for RCBA Past President David Bristow's written and spoken comments over the past year on the challenges to our court system.

At the Bench-Bar Coalition luncheon on September 28, Sharon Majors-Lewis, Judicial Appointments Secretary, Office of Governor

Arnold Schwarzenegger, gave the keynote address, entitled, "New Judgeships: The First Fifty and Beyond." She reported on her visits to many of the counties and the impact of the significant increase in the population, especially in Riverside and San Bernardino. She had encouraged the public bar's senior attorneys, DA's, PD's, county counsels, city attorneys, commissioners, etc. to apply, but with very little success because of the inadequate pension plan for new judges. She spoke to the issues of diversity appointments, governor-legislature disagreements, the transfer of ownership of courthouse facilities from the counties to the state and funding.

Later in this edition, you will read about the Conference of Delegates meetings, which are held in conjunction with the Annual Meeting. And for anyone who needs Continuing Legal Education (MCLE), the Annual Meeting offers numerous classes to meet State Bar requirements. We would encourage more of our RCBA members to attend next year's Annual Meeting. Please contact me or Charlotte for more information.

As you may know, the RCBA is one of the larger bar associations in California. We now have 1078 members. We were established in 1894. The state legislature had established Riverside as a county in 1893, made up mostly of land from San Bernardino and Imperial Counties. (Riverside had become an incorporated city in 1883 as part of the County of San Bernardino.)

On the opposite page, you can read our RCBA Mission Statement. It speaks of "service" to our members, to our community and to our legal system. We encourage all of our members to become involved in these

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laudable “services” to the extent that your available time permits and in the manner best suited to your expertise. The RCBA has 11 committees, from Bar Publications to Special Events, and 11 sections, from Appellate Law to Landlord/Tenant Law. If you have an interest in any of these, please call the RCBA office for a Committees and Sections Enrollment Form, or go to the bar’s website, [www.riversidecountybar.com](http://www.riversidecountybar.com), to download a copy.

“Membership Benefits” are also summarized on the opposite page. If you have any questions about these, or if you have suggestions or recommendations for your Board of Directors, please call, write or email us.

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*Dan Hantman, president of the Riverside County Bar Association, is a sole practitioner in Riverside.*



*by Gayle E. Webb*

## Coming Events for the Legal Community

If you weren't able to make our first participatory MCLE program in October, you won't want to miss the second in a continuing series of presentations geared specifically to attorneys: "How to Successfully Direct and Cross-Examine Business Valuation Experts."

On Saturday, December 8, 2007 from 12 noon to 2 p.m., Hugh M. Christensen, Managing Director of Valuation and Business Litigation Services for HBLA, Certified Public Accountants, Inc., in Irvine, will discuss the art and science of business valuations, the real job of the valuation expert, whether the expert is using the correct appraisal method, and how to tell if the financial analysis is really complete.

This MCLE program will earn you two hours of participatory credit and will cost only \$20, to cover the cost of materials. Feel free to bring a sack lunch; bottled water will be provided. Attorneys interested in more information should call Bret, our Public Services Librarian, at (951) 955-6397.

Don't forget to stop by for those self-study credits by checking out some of our newer CEB Program CDs: *Construction Litigation Defects: Hot Topics 2007*; *Recent Developments in Employment Practice, Torts, Real Property, Business Law, Estate Planning Administration, and Ethics*; *Key Evidence Issues: The Jefferson Approach*; and *Ballon on*

*Internet and Intellectual Property Law*. You can also sign up for your very own circulation card, which will speed up the checkout process.

By the time this issue is published, the Inland Empire Latino Lawyers Association (IELLA) will have celebrated another successful year and honored its volunteers at an invitation-only reception/fundraiser held in the Law Library on Friday, November 9. The Board of Law Library Trustees will accept requests for use of the Law Library after hours for professional gatherings such as this in accordance with policies developed by the Librarian and the Board. Inquiries should be made through the Law Librarian at (951) 955-6395 or [gaylew@rclawlib.org](mailto:gaylew@rclawlib.org).

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*Gayle E. Webb is the Riverside County Law Library Director.*



by Charles P. Boylston

## Where Everybody Knows Your Name

The Barristers' 2007-2008 year began Wednesday night, October 10, with its first meeting of the season at the Cask 'n Cleaver. As President this year, I am privileged to have the opportunity to help Barristers continue to provide a valuable service to Riverside Bar Association members.

This, of course, begs the question: What service does Barristers provide? Throughout the time that I have attended Barristers, it has always been a chance to meet with other attorneys at similar places in their careers, to share similar experiences, to discuss the nuts and bolts of litigation and the practice of law and, on at least one occasion (as Matt Benov never lets me forget) to sit quietly and meditate. In the past few years, Barristers has made more of an effort to reach out to the community. In years past, we have become more involved in charitable work. The organization has made an effort to become more involved in the legal community at large. Barristers has hosted functions for the entire Bar Association and participated in the Bridging the Gap seminar provided to new admittees. Barristers has always provided speakers on various topics to educate the newer bar members and to provide an opportunity to accumulate necessary (and sometimes rare) MCLE credits.



Charles P. Boylston

When my presidency first began, I asked my board: Is this what Barristers is going to continue to provide? The short answer, as I explained at the first meeting to the Barristers in attendance, is yes. Barristers will continue to be a place for attorneys to hear interesting speakers. Barristers members will still be able to acquire necessary MCLE credits, includ-

ing, every now and then, some of the more elusive ones (bias, anyone?). Barristers will be an organization that is part of the legal community and the community at large in Riverside, hopefully generating interest and the occasional dollar to assist charitable legal organizations in Riverside. Under my presidency, however, Barristers will also be something else this season—something I believe is essential for new admittees, as well as long-time practitioners. Barristers will be a place to go and relax. Although we will not have meditation every meeting, we will try to lighten the mood somewhat. Barristers should be, in my opinion, a social organization first. Attorneys all need a place to go to celebrate their successes and to vent over their troubles, to share their passion for the practice or in some cases perhaps to express concern over their choice of professions. Barristers should be, has been in the past and will be again a place to experience camaraderie with those who sympathize with your successes and your failures (as trivial as I hope the latter may be). Barristers should be, to borrow a phrase, a place where everybody knows your name.

Thanks again to everyone who came out on Wednesday night. It was a pleasure meeting all of you, and I look forward to seeing you and your friends in this year and the next.

*Charles P. Boylston, Barristers President, is with the law firm of Geoffrey H. Hopper & Associates in Redlands.*





# FIVE YEARS AND STILL GROWING! — THE RCBA ELVES PROGRAM

*by Brian C. Percy*

Would you like to experience the true joy of giving during the holiday season by helping out a local family in need? You and your family are invited to come join your fellow members and participate in the RCBA Elves Program this holiday season.

For the past five years, the Elves Program has assisted families who, due to their financial circumstances, have had a difficult time providing anything more than the bare essentials to their children. Once again, the Elves Program's goal is to give local families a Christmas they could only dream about.

Back in 2002, we were able to assist six families, which included seventeen children and seven adults, living in some of the poorest areas of Riverside County. With the ever-increasing support of the RCBA and its members, this program has grown steadily over the years. Last Christmas, we more than tripled the number of families served (21) and nearly tripled the number of individuals served (65 kids and 32 adults). We delivered holiday joy to individuals in Banning, Corona, Hemet, Moreno Valley, Perris, Riverside, San Jacinto and a number of unincorporated areas scattered throughout western Riverside County. The positive feedback from the Elves and the families served was overwhelming. This year, our goal is to try to assist between 25 and 30 families.

Depending upon your time, talents, and interests, we have four Elf categories for you and your family to participate in:

**Shopping Elves:** On Monday, December 17, at our appointed time, the Shopping Elves will meet at the Big Kmart on Alessandro in Riverside. You will receive a Christmas "wish list" from the children of your adopted families. Your job is simple: Fill your basket with as many gifts as possible within the dollar amount allotted that night.

In the past, our Shopping Elves have made this a family affair. The family of the RCBA's members are great at assisting in the determination of what the "cool" gifts are. This is a great way to experience the joy of giving to the less fortunate.

**Wrapping Elves:** After the Shopping Elves finish their job, the Wrapping Elves meet in the RCBA's board room on December 18 & 19 to wrap the gifts purchased. Wrapping Elves must ensure that all the gifts are tagged and assembled by family for easy pick-up and distribution by the Delivery Elves. Excellent wrapping and organizational skills are welcome, but not required. The camaraderie generated by the wrapping teams each evening will get even the biggest grinch into the holiday spirit. Their motto is: "The more the merrier!"

**Delivery Elves:** If you are looking for a warm holiday glow inside and out, this is it! Depending on the total number of families we are able to adopt, teams of from two to four Delivery Elves will personally deliver the wrapped gifts to our adopted families. The deliveries will be made over the course of a few days before Christmas. To accommodate the Delivery Elves' personal schedules while efficiently distributing the gifts to the varied household locations, Elves may be assigned to deliver to more than one family.

While the delivery of the gifts to the families is potentially time-consuming, many members have expressed that it was by far one of the most rewarding experiences. When signing up, please tell us if you will be willing to drive and, if so, the type of vehicle you have. This will allow us to match the number and size of gifts to the storage area available in your vehicle.

**Money Elves:** We need you! The Money Elves provide the services necessary for the shopping, wrapping and delivery to the many families throughout the county. Sending in your check by December 1 will help us identify the number of families we can help, but donations will be accepted until December 21. Obviously, the more money raised, the greater the number of families we can help and the greater the number of wishes our Shopping Elves can fulfill.

This year, we are off to a wonderful start in fundraising, thanks to the very generous \$500 donations each by your immediate past Bar president David Bristow and past president John Vineyard. Please make your checks payable to the RCBA and put the words "The Elves Program"

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in the memo section of the check. We thank you in advance for your holiday generosity.

To become a Shopping, Wrapping, Delivery or Money Elf, please phone your pledge to the RCBA at (951) 682-1015 or email your name and desired Elf designation(s) to one of the following: Charlotte Butt (charlotte@riversidecountybar.com), Lisa Yang (lisa@riversidecountybar.com), me at bpearcy@bpearcyaw.com or my assistant Veronica Reynoso (vreynoso@bpearcyaw.com). By contacting us via email, you will help us notify and update each of you via email on a timely basis.

To those who have participated in the past, "Thank you." And to those who join us for the first time this year, we look forward to meeting you. Don't forget to: "Tell a friend!"

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*Brian Pearcy, a past president of the RCBA, is chair of The Elves Program.*



# THE RCBA: A SHORT HISTORY

by Bruce E. Todd

As I have had the honor of being a member of the Riverside County Bar Association for the past 25 years, it doesn't seem that long ago that the bar association celebrated its 100th anniversary. In actuality, however, it was 13 years ago that this grand event occurred. Since the theme of this month's issue is about the bar association, I thought some of our readers might be interested in a recap of some of the history of the RCBA.

In 1893, when Riverside County was formed, some of the pioneering local attorneys included John G. North (considered the founder of Riverside), Lafayette Gill, John F. Crow, William J. McIntyre, J.A. Gibson, Wilfred M. Peck, George Skinner and John Anderson.

Some of these attorneys eventually decided to hold a meeting at the courthouse in February of 1894 for the express purpose of forming a local bar association. The courthouse at that time was located in the old Tetley Hotel. Upon the motion of A.L. Bartlett, it was unanimously decided to form what would be called the Riverside County Bar Association.

The initial officers included A.A. Adair, president; Robert Duncan, vice president; William F. Peck, secretary; James Mills, treasurer; and John E. Crewe, D.A. Givens and A.L. Bartlett, executive committee.

Around this same time, the first county convention was held in the Loring Building to elect county officials. J.S. Noyes was elected as judge and the aforementioned John Anderson was voted in as the district attorney.

John G. Gabbert, our noted former judge, currently holds the distinction of having the oldest "active" bar number among Riverside attorneys. Justice Gabbert was admitted to the bar in October of 1934 and holds bar number 14,465 (for trivia buffs, bar number 1 was assigned to William Harrison Waste, who was admitted in 1894).

In an article entitled "Life in Cow County," which Justice Gabbert penned in 1994, he lovingly described the practice of law in "the old days." He was appointed to the bench in 1949 when a third department was created for the superior court. He has a recollection of his interactions in the 1950s with judges from Los Angeles County, who then referred to Riverside County as "cow county." Frankly, I suspect that this still occurs among attorneys from Los Angeles and Orange Counties. His article describes how, when working for the D.A.'s office in about 1937, he prosecuted some trials from the Anza Justice Court. The actual trials were held in the living room of the ranch

home of Judge James Wellman, who was also an old-time cattleman. Many of the jurors rode up to the home on horseback, with Winchester rifles on their saddles.

Although Justice Gabbert has an old bar number, the distinction of the oldest bar number for a Riverside County attorney apparently belongs to the late Alexander William Staples, who was admitted in 1923 and who was assigned bar number 342. The other "triple digit" bar numbers among Riverside County attorneys belong to the following lawyers: Willard Tilden Bender (363), Forrest S. MacFarland (476), Mart Coles (507), Daniel Ely Farr (547), Leonard Joseph Defani (952), Walter S. Clayton (953), Frank Launtz Miller (954), Charles Walter Davison (955) and William Ollie Mackey (989). For the local bar's 100th anniversary in 1994, Defani, Gabbert and 15 other Riverside County lawyers were honored by the RCBA for their 50 years of membership in the state bar.

The first woman who is believed to have practiced law in Riverside County was Mary McFarland Hall, who was graduated from law school in 1934 and was admitted in October of that same year. She was the daughter of Chauncey L. Hall, who was a prominent water law attorney. Ms. McFarland Hall, who practiced in Riverside for many years, passed away in 1989.

The Riverside County Barristers Association, which is essentially both an educational and social organization for younger lawyers, was founded in 1962. Horace Coil served as the group's president. Since that time, a host of now-prominent Riverside County attorneys have held that honor. Periodically, the group will feature "old timers' night" at one of its monthly meetings.

I found it quite interesting that the local bar association is actually many years older than the California State Bar, which was not launched until 1927. Frankly, I found it somewhat mystifying how some attorneys (such as the aforementioned William Harrison Waste) were apparently assigned bar numbers prior to the existence of the state bar, and no one to whom I spoke seemed to have an answer to my inquiry about this. Perhaps this will have to be the subject of a future article!

Author's Note: Mr. Todd would like to express his sincere gratitude to RCBA Executive Director Charlotte Butt for her invaluable assistance with this article.

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



# INNS OF COURT

by Robyn A. Lewis

The Leo A. Deegan Inn of Court kicked off its 2007-2008 season at the Mission Inn on September 12, 2007.

For those of you unfamiliar with the Leo A. Deegan Inn, it is the local chapter of the American Inns of Court, which is an organization designed to “improve the skills, professionalism and ethics of the bench and bar.”

Each inn is comprised of judges and lawyers of different levels of expertise and from different areas of practice. There are 64 members in total. Membership is through an application process, which generally takes place from June until August each year. Every member of the Leo A. Deegan Inn of Court is required to be a member in good standing of the Riverside County Bar Association.

The members are divided into teams of eight, each of which is led by a judicial officer. Each team has two attorney members of significant experience, known as “Attorney Masters.” There are also two “Barrister” members, who are attorneys with intermediate experience, and three “Associate” attorney members, who are newer members of the bar.

The inn meets on a monthly basis. At each meeting, a different team puts on a presentation regarding various legal topics.

This year, the Executive Board of the Leo A. Deegan Inn of Court, which is chaired by its President, the Honorable Bernard Schwartz of the Riverside Superior Court, made some notable changes to the structure of its programming. Each team has been assigned a legendary judge or attorney from the Riverside legal community and a topic that suits that particular judge or attorney’s own area of expertise. Such legends include attorneys David Moore, Art Littleworth, Virginia Blumenthal, Grover Trask and members of the bench Justice John Gabbert (retired), Senior District Judge Robert Timlin (Central District of California), Judge E. Michael Kaiser (retired) and Judge Victor Miceli (retired).

The Board also voted to bestow two awards at the end of the year on a notable attorney and a notable judicial officer from the Riverside legal

community. The “Attorney of the Year” award has been named in honor of Terry Bridges of Reid & Hellyer. The “Jurist of the Year” award has been named in honor of Judge Elwood “Woody” Rich. Members of the inn will have the opportunity to nominate candidates for these awards during the course of the Inns year and the awards will be given at the end of the Inns season.

There are also two other awards that are given to inn members. A perpetual trophy was instituted, to be awarded to a team for the best presentation. An award in honor of the late Louise Biddle is also given to an inn member who exemplifies the goals of the inn. Prior recipients include Robyn Lewis and Jenna Acuff.

At the September 12th meeting, Terry Bridges spoke to the inn members and asked them to remember its namesake, Leo A. Deegan. Judge Deegan first came to Riverside in 1946 as a deputy in the district attorney’s office. He was an assistant district attorney when he was appointed as the county’s first public defender in 1948. Judge Deegan served as chief deputy county counsel and went on to accept the position of city attorney for the City of Riverside in 1958.

He was appointed to the bench in 1959 by then-Governor Edmund Brown, where he served until his retirement in 1975. The Riverside chapter of the Inns was named after him when it was first organized in 1985. Terry Bridges explained that Judge Deegan personified excellence in professionalism, ethics, civility and legal skills.



Judge Schwartz recognizing Past President of Inns  
Paul Grech



Terry Bridges

Robyn A. Lewis, a member of the Bar Publications Committee, is with the Law Offices of Harlan B. Kistler. She is also Co-Chair of Membership for the Leo A. Deegan Inn of Court.



# JUDICIAL PROFILE: JUDGE JOHN MONTEROSSO

by Donna Thierbach

I continue to be amazed by the various paths taken to practicing law in Riverside County. Judge Monterosso is proof of what I have always suspected – once we lure people to Riverside County, they stay! Judge Monterosso grew up in the small town of Novato, which is just outside San Francisco. His grandparents were Sicilian immigrants. His father was in the insurance industry, and his mother was a stay-at-home mom, though she later worked for the school district. There were no lawyers in the family; in fact he was the first person in his family to get an advanced degree. (His siblings are no slouches – his older sister teaches at San Francisco State University, and his younger brother is an airline pilot!)

So how did Judge Monterosso end up an attorney, and now a judge, in Riverside County? After he received his bachelor's degree from the University of San Francisco, he had a few ideas of what he wanted to do. These included joining the Foreign Service, teaching or going to law school. There were no jobs in the Foreign Service, so that left teaching or law school. As he waited to hear about a teaching opportunity, he decided to enroll in the University of San Francisco School of Law. He found he really enjoyed law school, so he decided to stay. He developed a real interest in criminal law, but at that time there were no clerkship programs with the district attorney's office, so he clerked for civil law firms. This served to confirm what he already suspected – that he wanted to be a prosecutor. During his last year of law school, he had the good fortune to clerk for the late Justice Broussard.

So how was Judge Monterosso lured to Riverside? As he approached graduation, both Riverside and San Bernardino were interviewing on his campus for deputy district attorneys. Although he had never been to either county, and did not even know where they were, he decided to interview for both. Riverside offered him a position the same day. He did not immediately accept, because he wanted to learn a little bit about the county. In October or November, he flew to Riverside. It was an absolutely beautiful day. The skies were clear and the weather was perfect, especially when compared to the dreary rainy weather in San Francisco. He was single and had really no



Judge Monterosso with daughters Allie (20) and Julia (8), son Nico (11), and wife Barney

reason not to move, so he accepted. It turned out to be a good decision. He remained with the district attorney's office for the next 17 years. He said he could not have asked for a better job. In addition to the usual rotations in the district attorney's office, his assignments included the Domestic Violence Unit, the Sexual Assault and Child Abuse Unit, and the Gang Unit.

Did I say single? That did not last long after moving to Riverside. One day after court, the court staff invited him into Judge Morgan's chambers for cake. That was when he met Judge Morgan's clerk, the future Mrs. Monterosso. Judge Monterosso and his wife Barney have now been married 13 years. Judge Monterosso said his wife is amazing. She works five hours a day for the school district, volunteers in both their children's classrooms, is involved in several PTA projects and church projects, and is the team soccer mom. He says that, by doing all she does, she allows him to do his job.

Judge Monterosso said his hobbies mostly consist of his children's activities. He used to enjoy running, and he competed in four marathons. However, when he ran his last marathon in 2001, he was in trial. As a result, he could not train properly, so he decided it just was not fun anymore. Now, his children seem to play every sport, so they have only five or six free weekends a year! On those rare weekends, his family enjoys fishing at local lakes. Also, he is a 49er and Giants fan and enjoys golfing. He said he has enjoyed sports his entire life. He played baseball in high school and his first year of college. In college and law school, he had a job umpiring high school games and was a middle school baseball coach.

Judge Monterosso is currently assigned to the general preliminary hearing calendar at the Southwest Justice Center. He said each day the calendar has around 200 cases, but no one complains and everyone works really hard to get it done. He said that previously, he had only his perspective as a district attorney. As a judge, he is really impressed and has a new appreciation for how hard everyone in the judicial system works. He said being a judge is interesting and fun and he learns something new every day.



# RIVERSIDE COUNTY LAW ALLIANCE REMEMBERS TWO WOMEN OF DISTINCTION

At Riverside County Law Alliance (RCLA), our mission statement reminds us to support the RCBA and to foster “friendships among the families of lawyers.” We also promote the legal community through educational and philanthropic means. Through the past 52 years, this group has been faithful to its mission in all of these aspects. For example, over the last 37 years, our Court Tour Program (for sixth-grade students) has reached out to the community by teaching 40,000 students the value and importance of a strong legal system.

It gives the members of RCLA great honor to offer a remembrance of two ladies who epitomized that commitment and much more. They both were early members who made lasting friendships and fostered the goal of supporting the Riverside community in all ways possible. Each was married to an outstanding judge. They both were intelligent, vital members of the Riverside community. Present member Doris Morton has contributed a wonderful portrait of Lorna Rich (Charter Member, RCLA). Also, the family of Virginia Hews (Past President, RCLA) has written a loving tribute on her behalf. Both women were very involved over many years in Law Alliance.

## In Memoriam – Virginia H. Hews

Virginia Ann Harrison Hews of Riverside died March 23, 2007 following the impacts of a seizure. She was 78 years old.

Mrs. Hews (Ginny) was born on January 9, 1929, to Colonel Roger and Ruth Bowling Harrison in Honolulu, Hawaii.

After growing up in many parts of the country as an “Army brat,” she lived in San Francisco and Lodi, California during her teenage years. She graduated with a bachelor’s degree in education from Stanford University, where she met her husband, John Hayden Hews (Jake), whom she married in 1951. She taught elementary school while her husband served as a Marine in the Korean War. Ginny and Jake settled in Riverside in 1956, after he finished law school. Jake practiced law with his father, Hayden, and later served as a judge for the Riverside County Superior



Court and as a justice for the Fourth District Court of Appeals.

Ginny Hews was active in Riverside civic and voluntary affairs while raising her four daughters. She taught special education at Riverside Polytechnic High School for several years. She was active in the Junior League of Riverside, the Lawyers’ Wives of Riverside County (now the Riverside County Law Alliance), and the National Charity League. She volunteered for CASA, a nonprofit organization of advocates for abused, neglected and abandoned children in the juvenile court system, and gave court tours at the Riverside County courthouse. She was known for her wit and wisdom, her culinary and musical gifts, and her strong values about education. She was a loving and caring mother, a supportive wife and daughter, and a woman who had many lifelong friends.

Her husband preceded her in death 18 years ago. She is survived by her children, Beth Jewell and her husband Gary, of Colorado Springs, Colorado; Julie Hews-Everett and her husband Charles Everett, of Bainbridge Island, Washington; Melinda Hews and her husband David Hallock, of Bellevue, Washington; and Jennifer Hews and Louis Craughan, of County Clare, Ireland; as well as by eleven grandchildren and four great-grandchildren. She will be greatly missed by her family and friends and remembered for her love and her contributions to many causes that supported less-advantaged children and their families.

## In Memoriam – Lorna Rich

We all know that life is a journey, and one of the best travelers I’ve known was Lorna Rich, wife of retired superior court judge and current mediator Woody Rich. I met Lorna in 1955 when Lawyers’ Wives of Riverside County was organized.

At that time, we started the third Monday bridge group of eight, which is still active. Lorna was an excellent bridge player as well as a marvelous addition to the book group. When the Court Tour – Program was inaugurated, she com-



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piled the training manual used to train the ladies who worked on this project, which is as meaningful today as it was some 30 years ago. Lorna held several different board positions as well in Lawyers' Wives, now called Riverside County Law Alliance.

Lorna was very involved in community activities. She served many years in the Women's Club, in her church, and in her sons' activities. She was Administrator-Registrar of Woody's Citrus Belt Law School until she retired in 1977.

Lorna grew up during the Depression and survived the attack on Pearl Harbor. After her marriage to Woody, in 1948, they raised four fine boys. They loved to travel, visiting many interesting places. She became quite involved in genealogy, which resulted in compilations of the ancestral history of several family members, which were published.

There will only ever be one Lorna. She was smart, witty, kind, and fun to be with; a good cook, a good wife, a good mother, a good friend, and beyond measure, a good traveler through life.

Since Lorna left us, a little more sunshine has gone from our lives. Until we meet again, dear friend, you will be truly missed.



# INSTALLATION DINNER (SEPTEMBER 20, 2007—MISSION



*Judge Woody Rich, Ret.*



*Tina Brister, Katherine Phillips, David Werner, Aileen Banellis*



*Teresa Rhyne, Cindy Roth, Richard Roth*



*Immediate Past President David Bristow (right) with his wife Kristen Bristow and Judge Sharon Waters (left)*



*Sandy Simmons, Larry Maloney*



*Ken Minesinger, Michael DesJardins, Eric Panitz*



*Donna Burke, Judge Craig Riemer, Judy Riemer, Judy Poohar*



*Judge Carol Codrington and District Attorney Rod Pacheco*



*Bryant Villagran, Jorge Alvarado and Public Defender Gary Windom*



*Paul Grech*



*Terry Bridges, recipient of the James Krieger Meritorious Service Award, and Steve Harmon, Master of Ceremonies*



*President Daniel Hantman and his beloved companion Marcia Gilman*





Judge Ronald Taylor (Ret.), Deborah Watson Taylor, Linda Heaslet, Judge Timothy Heaslet (Ret.)



Judge Roger Luebs, Ken MacVey



25 years or more members of RCBA: Gilbert Gutierrez, Judge Robert Spitzer, Richard Roth, Larry Maloney, Irene Morales, Jane Carney, Richard Anderson, Judge Robert Taylor



Dan Hantman and Justice John Gabbert (Ret.)



RCBA Presidents: (back row) Steve Harmon, Brian Pearcy, Jim Heiting, Dan Hantman; (middle row) Judge Steve Cunnison, Justice John Gabbert, John Vineyard, Judge Craig Riemer, Justice Bart Gaut, Terry Bridges; (front row) Theresa Han Savage, Boyd Briskin, Mary Ellen Daniels, Jane Carney, Justice Jim Ward, David Bristow, Diane Roth



Presiding Judge Richard Fields, Dan Hantman



Nancy Bigelow, Darrell Moore, Kathleen McCarthy, Forrest Wright, Lalo Castellanos, Irene Morales

Photographs by Michael J. Elderman.



# THE COMPELLING NEED FOR A CIVIL MASTER TRIAL CALENDAR SYSTEM

*by Judge Woody Rich, Ret.*

## History

For over 50 years, all the large superior courts of California used a civil master trial calendar system to handle the trials of their civil cases. Law and motion matters were handled in departments designated exclusively for that function. They developed considerable expertise in the law.

The Riverside Superior Court in the 1980s was one of those courts. All the civil cases were set for trial each Monday at 8:30 a.m. on the Master Trial Calendar, which was handled by the Master Calendar judge (MC judge) in the courtroom designated for that purpose. The MC judge called the calendar, inquiring whether counsel were ready for trial, and ruled on any motions for continuance. The MC judge always knew which trial departments did not have a trial in progress and thus were available for assignment. In general, the MC Judge assigned the cases longest on the trial calendar to the trial departments first, unless there were preference cases.

After the MC judge had filled the trial departments with assigned cases, he or she gave all the remaining unassigned cases new trial dates within the next three to six months and notified the parties that they were subject to being called back if a trial department became available on Tuesday or Wednesday. The cases on the Master Trial Calendar were always numerous enough that every week there would be some unassigned cases remaining. After completing the assignment of cases, the MC judge kept a case for trial if he or she did not have one in progress.

When a case was assigned to a department, the assigned judge took it up immediately, because there wasn't any morning law and motion calendar to handle.

Some judges offered to participate in last-ditch settlement conferences, in which the judge talked separately with counsel, provided they agreed, on or off the record, that there would be no objection to that judge presiding at trial. Attorneys always agreed to this. If the case settled, the judge notified the MC judge, who sent another case, or if counsel on the remaining cases had departed, had the court attendant call back a particular case by telephone.

This system worked superbly in Riverside well into the 1980s. The only time that a trial department was without a trial in progress was on the rare occasion when a depart-

ment would request no assignments for a certain period of time so that a judge could work on decisions in non-jury submitted cases.

The only courts where a Master Civil Trial Calendar did not work as well were those that trailed cases for weeks and months and then tried to call in the trailing cases for trial. It was always difficult, because often counsel was in another trial or away on vacation, or expert witnesses were not available, or a party or other witnesses were on vacation or unavailable for myriad reasons. No case was to be trailed longer than three days beyond the trial date. Anything beyond that was to be a trial date, not a trailing status.

## Drawbacks of the Civil Individual Calendars System

With the advent of fast-track in the court system, almost all of the large courts, including Riverside, shifted to a Civil Individual Calendars system. Now when a civil action is filed, the case is assigned to a particular judge on a random basis for all purposes, including trial. It is possible to have a Civil Master Trial Calendar system and still have the departments handle their own law and motion, but this is not effective for a number of reasons.

When a trial judge does a morning law and motion session each morning before starting the trial, one to one and a half hours of trial time is lost each day. This causes trials to take more days, which results in more attorney fees, jury fees and court reporter fees. It also delays the return of jurors to their regular employment.

Despite having research attorneys, judges are often hurried, trying to find time to do their law and motion work. Some judges do not want a civil department assignment simply because of this burden. The shortening of the length of trials alone is adequate recompense for having specialized law and motion departments. This has proven to be an inefficient and unproductive system.

In the Individual Calendars system, each judge is independent of all others and is his or her own boss. In Los Angeles Central, for example, there are 60 civil judges; therefore, there are 60 individual bosses and 60 small pools of cases. Each judge determines how many cases in his or her department are set for trial on Monday of

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each week, without regard to the number the other judges set for themselves. They set varying numbers. Enough trials need to be set so that after the attrition of settlements, continuances and the like, there remains at least one case for the judge to hear, and some judges set fewer cases than others. Those who set the least number for trial frequently are left with no case to try that week, because settlements have wiped out whatever trials the judge had set.

About half of the judges are without trials to hear each week because they did not set enough cases for trial. Anyone can walk down the corridors of the civil trial departments in Los Angeles Central, Orange County and San Diego County and observe this.

It is unfair to the civil litigants who are continually clamoring for trials and to the taxpaying public.

### **The Civil Master Calendar System Is More Efficient**

The MC judge, in contrast, serves as manager for the team of judges. On a daily basis, assignments are made and the workload is distributed. Time is not wasted on individual

law and motion calendaring. Trials begin promptly each morning, a prospect that should be welcomed by all parties, especially judges, who see their role as working for the good of the team and the system. But most importantly, the current system, which has resulted in empty courtrooms, would have been disassembled. The efficiency of the Civil Master Calendar system distributes cases out of a large, never-emptying pool of civil cases, rather than each judge having his or her own small supply of cases. Judges never run out of cases available for trial when they are distributed from a large central pool. This perpetual supply provides far better judicial service to the public.

While the increased emphasis on mediation has produced more settlements, this only reduces the large backlog of cases, not the large quantity of cases currently seeking a trial each week. And this will not happen as long as judges are free to set as few cases as they wish.

## Evidence of the Decline in Productivity

Because not enough cases are set for trial under the Civil Individual Calendars system there has been a large decrease in the superior court's productivity in the area of civil jury trials. Compare the numbers from 1993-94 with those from 2004-05. There was a large decrease in the number of civil jury trials in the superior courts in 04-05 compared to 11 years earlier. The only reasonable explanation is the shift to the inefficient Civil Individual Calendars System. Many civil trial judges, because they are their own bosses, are spending much more time in chambers because they prefer to, not because they need to. This results in much less time in the courtroom, which results in a much lower productivity. This would not be possible under the management of a Master Calendar judge. There is a dire need to return to the Civil Master Trial Calendar system managed by the Master Calendar judge.

Statewide Jury Trial Productivity (58 Superior Courts)			
<i>Year</i>	<i>Number of Civil Jury Trials</i>	<i>Number of Criminal Jury Trials</i>	<i>Number of Authorized Judicial Officers</i>
1993-94	3744	5451	939
2004-05	1564 <u>561</u> limited civil 2125	4652 felony <u>3275</u> misdemeanor 7927	1916

Notice that the number of civil jury trials declined almost 50 percent, despite the doubling of the number of judicial officers and despite the fact that there are a large number of civil litigants continually clamoring for trials that they are not getting. The Civil Individual Calendars system is an utter failure that needs to be replaced.

Jury trials are by far the largest consumer of judicial time in the superior courts. The following charts show the number of jury trials in the Orange County and San Diego County Superior Courts.

Orange County – Jury Trials per Fiscal Year, 1990s						
<i>Year</i>	<i>Criminal</i>	<i>PI/PD/WD</i>	<i>All Other</i>	<i>Total Civil</i>	<i>Judges*</i>	<i>JPEs**</i>
91-92	360	182	92	274	71	81.2
92-93	330	295	157	452	71	99.4
93-94	273	243	170	413	75	99.0

\* Judges = Judicial Positions

\*\* JPEs = Actual number of judicial officers, including assigned retired judges

Orange County – Jury Trials per Fiscal Year, 2000s								
<i>Year</i>	<i>Felony</i>	<i>Mis'deam</i>	<i>PI/PD/WD</i>	<i>Civil Unlimit</i>	<i>Civil Limit</i>	<i>Total Civil</i>	<i>Judges</i>	<i>JPEs</i>
02-03	141	118	140	93	69	302	143	151.8
03-04	**	**	107	112	58	277	143	152.6
04-05	**	**	70	95	33	198	143	158.6

\*\* = Failed to Report to AOC

San Diego County – Jury Trials per Fiscal Year, 1990s						
<i>Year</i>	<i>Criminal</i>	<i>PI/PD/WD</i>	<i>All Other</i>	<i>Total Civil</i>	<i>Judges</i>	<i>JPEs</i>
91-92	452	395	369	764	77	93.4
92-93	498	275	242	517	77	84.5
93-94	400	224	245	469	77	84.5

San Diego County – Jury Trials per Fiscal Year, 2000s								
<i>Year</i>	<i>Felony</i>	<i>Mis'deam</i>	<i>PI/ PD/WD</i>	<i>Civil Unlimit</i>	<i>Civil Limit</i>	<i>Total Civil</i>	<i>Judges</i>	<i>JPEs</i>
02-03	350	391	168	119	40	327	154	160.3
03-04	224	289	143	127	27	297	154	163.3
04-05	229	264	91	87	18	196	154	163.7

In 1992, the number of judicial officers in Orange was 71 and in San Diego was 77. In the past few years, these counties have had 143 and 154 judicial officers respectively. But look at the number of civil jury trials held and we see that in 2004-05 Orange handled 198 and San

Diego handled only 196. This means that each court was handling half the number of civil jury trials despite having twice as many judicial officers as ten years ago.



# THE 2007 CONFERENCE OF DELEGATES

by Michael L. Bazzo

The sounds of Scottish bagpipes filled the room as the Sacramento Bar Association made its grand entrance, followed by the Orange County Bar Association, which tossed bubble-makers, pop guns, and toys to the excited audience. One by one, the colorfully dressed dancing delegations made their way into the packed convention center to the cheers of onlookers. So began the Parade of Delegations and the 2007 Conference of Delegates of California Bar Associations.

Each year, the California State Bar Conference of Delegates assembles more than 500 delegates from participating bar associations hailing from all corners of the state, from San Diego to the Oregon border. Delegates, individually or as a delegation, draft resolutions to change California law. Proposed resolutions cover a wide range of issues in many fields of law. With more than 100 resolutions on tap, delegates busily analyze and debate the resolutions in passionate oral argument that can, at times, become very lively. The resolutions are then voted on by the delegates; those passed by the conference are prioritized by the conference board and either placed with the lobbyist or returned to the sponsoring bar organization for lobbying with the coordination and assistance of the conference board.

This year, we proudly announce that one of our own Riverside Delegation members drafted Resolution 11.05.07, which proposed to amend Probate Code sections 1202 and 6402.5 to allow children of a predeceased spouse to inherit property attributed to that spouse in certain circumstances. Currently, if a decedent dies with issue, all of the estate goes to the decedent's children, including property acquired from a predeceased spouse. This occurs even if the predeceased spouse's children are still living. The resolution sponsored by the delegation makes the intestate distribution of that part of a decedent's estate acquired from the predeceased spouse the same whether or not the decedent leaves issue. This effectively eliminates the disinheritance of the predeceased spouse's children by virtue of the fact that the parent's surviving spouse left children. The resolution received broad support and was passed! Now, the Riverside Delegation will proceed with the task of moving the resolution forward for lobbying with the state legislature.

Participating in the Conference of Delegates not only promotes improvements in the California system of justice to serve the changing needs of society, it helps to educate the delegates concerning all areas of the law, including those areas in which they do not typically practice. Though our Riverside Delegation is small, we have a voice in the proposed changes to the laws of this state. We have fun, too!

If you're interested in joining the Riverside County Bar Association Delegation to the State Bar Conference of Delegates, we'd love to have you. Please contact me through the RCBA office. Next year's conference will be held in Monterey, California, on September 25-28, 2008.

*Michael L. Bazzo is Co-Editor of the Riverside Lawyer magazine and Chair of the Riverside County Bar Association Delegation to the State Bar Conference of Delegates.*



*Photographs courtesy of Richard Reed*



*Jim Heiting*



*Judge Craig Riemer*



*Inside the Conference of Delegates*



*RCBA table at the Conference of Delegates (middle table)*

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# JANE GOODALL

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*by Richard Brent Reed*

One of the highlights of the 2007 State Bar Convention was the luncheon honoring Dr. Jane Goodall, famous for studying chimpanzee social behavior in the latter half of the 20th century. The jacket of her book *Harvest for Hope* accurately describes Dr. Goodall as the “renowned scientist who fundamentally changed the way we view primates and our relationship with the animal kingdom” and as founder of the Jane Goodall Institute. The purpose of her institute is to promote the welfare of chimpanzees and other great apes by educating the humans who share Tanzania with them to use the jungle wisely by improving agricultural techniques. The hunting of apes as “bushmeat” has caused a decline in the chimpanzee population. Chimpanzees and humans, according to Dr. Goodall, share several characteristics: tool-making, emotions, and DNA.

As the audience sat in rapt attention, Dr. Goodall peppered her lecture with ape imitations, illustrating the diverse sonic and body-language vocabularies of primates: “I’m here”; “I want food”; “Leave him alone.” She filled the banquet hall with her eerily authentic ape calls. Chimpanzees not only communicate with each other, but form family ties and even bonds between families, politely deferring to the authority of their elders. Tasty termites may be plucked from an earthen nest by the simian adaptation of a twig into a larva ladle. And, it seems, chim-

panzees are so genetically close to humans that their blood, in a pinch, can be used in transfusions. The downside to sharing bits of DNA, however, is that many diseases are freely transferable from ape to human. Consequently, consumption of chimpanzee meat can be fatal, not only to the hunted animal, but to the human end-user and beyond, through the dietary transmission of epidemic viruses.

The focus of Dr. Goodall’s speech shifted quickly to the impact of meat consumption and animal agriculture on the rest of the planet. As she states in *Harvest for Hope*, it requires 26,400 gallons of water to produce two pounds of beef, and a “facility with 40,000 hogs creates as much sewage as 160,000 people – nearly half the population of Omaha.” All too familiar with Africa’s hunger and privation, Dr. Goodall gently chastised Americans for being not only wasteful, but overly self-indulgent in our conspicuous consumption. She urged us to reform our diets, to be more environmentally friendly, and to scale back our frenetic, resource-consuming activities. By way of example, she pointed out to the audience that the puff pastry served at the luncheon was, in fact, vegetarian. She analogized her plea to that of a delegation of Greenland Eskimos addressing the United Nations: “Our ice is melting. What will it take to melt your hearts?”

At the end of Goodall’s speech, the audience of over 800 attorneys and judges rose to its feet in applause. After the conclusion of the event, many in attendance sauntered into the lobby to purchase one or more of her books, while the waiters and busboys spirited away the dishes: large dinner plates still covered with untouched broccoli and the waffled debris of dissected pastry shells, fruitlessly picked through in a search for meat and abandoned to plastic garbage bags on their way to the local landfill.

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



by Michael Grant

For many people, retirement means golf, fishing and generally just “kicking back.” That may come eventually to Don Inskeep and his wife, Claudia, as Don retires a second time from a legal career, but for the first two years of retirement, the Inskeeps will continue a hectic but very different pace as missionaries for the Church of Jesus Christ of Latter-Day Saints, serving in London, England. More about that later.



Don and Claudia Inskeep

Don came to Riverside in 1970 following undergraduate work at UCLA and a law degree from Boalt Hall in 1969. With a major in economics and a minor in accounting, Don looked forward to a career as a tax attorney, but wanted to begin with some trial experience. He was hired by then-District Attorney Byron Morton just two weeks before he and Claudia were to be married. After the poverty of law school, and with his wedding to Claudia only two weeks away, the \$12,000 per year salary seemed almost luxurious.

Don's first day as a new deputy DA was spent watching a trial from just behind the counsel table. Recalling that day, Don said, “I thought to myself, ‘They are actually paying me to do this!’ I was so excited I was tingling!” After two years, Don was asked to become the legal advisor for a countywide drug enforcement team, which sounded interesting – so he put his career as a tax attorney on hold for a year. Next, he was assigned to head a felony trial panel for an additional year, at the conclusion of which he was offered the position of chief deputy to District Attorney Grover Trask. By this time, the tax attorney had given way to the prosecutor.

The district attorney's office in 1970 was housed in the basement and first-floor offices of the old courthouse. There were 24 attorneys in Riverside and fewer than 50 in the entire county. While with the district attorney's office, Don participated in over 50 jury trials and argued sentencing in thousands of felony cases. He developed the Riverside County career criminal prosecution program, created the first treatment program for defendants in domestic violence cases in the county, and developed the Riverside County Check Prosecution/Restitution program, which has returned over \$5 million to victims. Over the course of his 24 years as deputy and chief deputy DA, Don supervised the hiring of many of those who remain in the office today, including most of the supervisors.

Former Riverside County District Attorney Grover Trask describes Don as “a class act.” “Don was part of the foundation that developed the Riverside County District Attorney's office into one of the top district attorney offices in California. He was part of my close circle of decision-makers. I have great admiration for Don, for his intelligence and quality of work and for the professional atmosphere he helped to establish in the office.” Since retiring from the district attorney's office in 1999, Don has spent the last eight years in a private criminal defense practice.

During their 37 years in Riverside, Don and Claudia have been members and leaders of many professional and service organizations. Don has been a member or committee chair of the State and Riverside County Bar Associations, the California District Attorneys Assn., the National College of District Attorneys and the California Office of Criminal Justice Planning, and has served with committees appointed by the California Attorney General. He has served on boards and committees of ADV (formerly the Riverside County Coalition for Alternatives to Domestic Violence), the Boy Scouts, AYSO, Little League, United Way and Kiwanis. Claudia has worked as a registered nurse, has volunteered with the Boy Scouts and the PTA, and is a past president of both the National Charity League and Riverside County Law Alliance. She will “retire” from the Law Alliance's court tour program this year after 34 years of service. In addition to all of this, Don and Claudia have each held high leadership positions in their local LDS Church congregations.

Based on service to the community by all family members, Don, Claudia and their children (James, Becky, Brad, Mark and Stephanie) were selected as “Family of the Year” in 1993 by the Riverside Family Services Association. As they travel to London, the Inskeeps will leave behind a family that has now grown to include a son-in-law, three daughters-in-law and eight grandchildren.

As the Inskeeps considered retirement and missionary service, they had no idea where they would be asked to serve. “It could have been here in the United States or almost anywhere in the world.” Before graduating from UCLA, Don had served from 1961 to 1964 as a Mormon missionary in Argentina, and with his language skills still strong, a Spanish-speaking assignment was a possibility.



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But as they opened the letter from authorities in Salt Lake City and learned that they had been asked to spend two years in London, they were thrilled. This is not an “all expense paid” vacation – they will be responsible for their own living expenses. They don’t know all the details of what their missionary service will entail, but do know that they will be involved in family history/genealogy work – which seems like a fit, since each of their families traces its roots to the British Isles, including (on Don’s side) a small village in England named Inskeep.

One thing seems certain. When Don and Claudia return to Riverside in two years, it is likely that their retirement will, as has been the case through all of Don’s legal career, include a strong element of service to the Riverside community.

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*Michael Grant is a Partner in the law firm of Best Best & Krieger LLP, in the firm’s Riverside office. Mr. Grant specializes in transactional real estate work – representing buyers, sellers, landlords, tenants and developers of real property.*



# EIGHT WEEKS IN THE BOX, PART III

by *Donn Dimichele*

*(Part three of a four-part series)*

## **6. Inquiring Minds Want to Know, Part 2 – Juror Questions**

As is the case with note-taking, letting jurors submit questions for witnesses traditionally has been viewed with disfavor by the legal system but is now gaining acceptance. The California Rules of Court now provide that a judge “should” let jurors submit written questions for witnesses. The ABA Principles make the same recommendation for civil cases, but leave to the courts’ discretion whether to permit questions in criminal cases, advising judges to consider in exercising their discretion “the historic reasons why courts in a number of jurisdictions have discouraged juror questions and the experience in those jurisdictions that have allowed it.”

In my experience, most judges will allow questions if jurors ask for permission to submit them, but they may not affirmatively advise jurors that they are permitted to submit questions. Based on my experience as a juror, I recommend the Rules of Court require judges to allow questions, and also to inform jurors of their right to ask them. As I have said, our case involved long and complex expert testimony, and the lawyers did not always ask questions that seemed to me to be important. Our judge permitted us to submit questions and I did so often, perhaps 20 times over the eight weeks.

All of my questions were asked, so presumably the court and the lawyers considered them at least arguably relevant. In addition, some of the jurors mentioned in deliberations that they found the questions helpful, and one of the lawyers made the same comment after the verdict. For my part, though it was frustrating not to be able to ask follow-up questions when witnesses gave incomplete or unresponsive answers, I still felt more a part of the process for having been allowed to participate more actively in the trial.

On a more fundamental level, it seems incongruous to summon jurors for the stated purpose of serving as “judges of the facts” and yet preclude them from asking questions they believe are important in fulfilling that function. A judge presiding over a trial may question witnesses, and if jurors are to act as judges they should have the same prerogative.

Moreover, as with note-taking, if research data are any indication, juror questions do not deserve their historical bad rap. The authors of the study of note-taking referred to earlier in this article also studied juror questions. They concluded that: (1) although jurors do not know the rules of evidence, they nonetheless ask appropriate questions; (2) juror questioning promotes juror understanding of the facts and issues; (3) jurors do not overemphasize their own questions and answers at the expense of other evidence; and (4) juror questions do not have a prejudicial effect on the trial.

I have one additional suggestion. Though we were allowed to hand our questions to the bailiff while the witnesses were testifying, to avoid disruption the bailiff sometimes did not pass them up to the judge until the next break. Therefore, I suggest that if a witness’s testimony ends before it is time for the break, the court not excuse the witness without checking to be sure the bailiff is not holding any additional juror questions.

## **7. Battle of the Ph.D.s, CVs, and DVDs, Part 1 – A Case for Court-Appointed Experts**

By far, my biggest disappointment with my jury service was how little guidance the numerous expert witnesses provided in understanding the facts and deciding the issues. Though all of the experts relied on the same physical evidence and scientific principles, they reached irreconcilable conclusions, the plaintiff’s experts asserting that he was injured because the roof crushed excessively and the defense experts that the injury would have occurred even if the roof had crushed less, or not at all.

Probably because the experts’ analyses were flatly incompatible, there was little interest among my fellow jurors in discussing whose methodology and conclusions were more technically sound. Instead, the determination of credibility seemed to be based more on personal factors, such as the experts’ communication skills and poise while testifying, than on the substantive merits of their opinions.

It occurred to me then that it would have benefited the process to have a court-appointed expert testify, not necessarily to state a conclusion on the liability issue, but at least to give the jury some background in the underlying science and help us assess whether the methodologies the

parties' experts used were valid. With that background, I believe the jury would have felt more comfortable evaluating the substance of the experts' conclusions.

The Evidence Code authorizes a trial court to appoint one or more experts "to investigate, to render a report as may be ordered by the court, and to testify as an expert at the trial of the action . . . ." However, at least in my experience, California courts rarely use this procedure, and the same seems to be true of the federal courts. A 1999 report sponsored by the American Association for the Advancement of Science (AAAS) noted that although Rule 706 of the Federal Rules of Civil Procedure gave judges the power to appoint impartial expert witnesses, "they rarely used it, perhaps in deference to tradition and perhaps to avoid usurping a jury's fact-finding prerogatives."

This apparent reluctance to use appointed experts is surprising, given the fact that "a variety of scientific, medical, and legal commentators endorse the use of court-appointed experts to assist judges and juries make better-informed decisions." And judges themselves recognize the shortcomings of party-retained experts. A 2000 report published by the Federal Judicial Center stated that judges surveyed about their experience with expert testimony in civil cases responded that the most frequent problem with expert testimony was "experts who 'abandon objectivity and become advocates for the side that hired them.'"

In 2005, California Chief Justice Ronald George established the Judicial Council Science and the Law Steering Committee (Committee) to evaluate the needs of the courts in dealing with science and technology issues. The Committee issued reports to the Judicial Council in 2006 and 2007. Its recommendations consisted mostly of ideas for educating judges to make them more conversant in science. Unfortunately, in my view, the reports said little about ways to enhance jurors' understanding of scientific testimony, through the use of court-appointed experts or otherwise. In fact, the Committee reported that roundtable groups consisting of judges, lawyers, and scientists "expressed general satisfaction with the current statutes and practice governing the selection and qualification of experts," and it rejected a policy that judges should appoint experts from a list maintained by institutes of higher learning or national academic societies.

The Committee's failure to give greater consideration to ways of making expert testimony more helpful to jurors seems ironic, because roundtable group members plainly recognized the shortcomings of the current system of "dueling experts" as a means for deciding scientific questions. When group members were asked to rank the statement, "The traditional adversary system is effective for resolving complex science disputes" on a scale from -5 ("strongly disagree") to +5 ("strongly agree"), their average

response was .7, about midway between a neutral response (0) and a response of "slightly agree" (1).

While as noted above federal judges reportedly have not made very frequent use of their power to appoint experts, the federal bench seems at least in principle to have endorsed the idea of independent experts. This may be partly because of the federal judiciary's involvement in the CASE (Court Appointed Scientific Experts) project, a service of the AAAS designed to assist the judiciary in "locating highly qualified independent scientific and technical experts to serve as independent experts." The project began recommending court-appointed experts in 2001 and originally was limited to federal courts. Although it was expanded in 2004 to include state courts, all but one of the 16 courts to which it has recommended experts are federal courts. Apparently, no California state court has used the service.

I would like to see California state courts make more frequent use of court-appointed experts, at least on a limited basis, in cases with a lot of complex expert testimony such as the one in which I served. If independent experts simply provided background to assist the jury in evaluating the parties' experts' testimony, and if the parties were allowed to depose and examine the independent experts, I don't think any party could legitimately claim prejudice, and the benefit to the jury in understanding the evidence likely would be considerable.

*Part IV will be published in the December issue of Riverside Lawyer magazine.*

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<sup>1</sup> Cal. Rules of Court, rule 2.1033.

<sup>2</sup> American Bar Association Principles for Juries & Jury Trials (2005), Principle 13.C.

<sup>3</sup> See CALJIC No. 17.41.

<sup>4</sup> Penrod & Heuer, Tweaking Commonsense: Assessing Aids to Jury Decision Making (1997) 3 Psychology, Public Policy, and Law 280.

<sup>5</sup> Evid. Code, § 730.

<sup>6</sup> Bromley, Science and the Law, American Association for the Advancement of Science, Science and Technology Policy Yearbook (1999) Ch. 10, "Possibilities for Future Improvements," available at <http://www.aaas.org/spp/yearbook/chap10.htm>.

<sup>7</sup> See, e.g., Worthington, et al., Hindsight Bias, Daubert, and the Silicone Breast Implant Litigation: Making the Case for Court-Appointed Experts in Complex Medical and Scientific Litigation (2002) 8 Psychology, Public Policy, and Law 154, 173 (citations omitted).

<sup>8</sup> Johnson, et al., Expert Testimony in Federal Civil Trials: A Preliminary Analysis (Federal Judicial Center 2000) 5, available at [http://www.fjc.gov/public/pdf.nsf/lookup/exptesti.pdf/\\$file/exptesti.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/exptesti.pdf/$file/exptesti.pdf).

<sup>9</sup> Science and the Law Steering Committee, Final Recommendation

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# MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective November 30, 2007.

**Angelica A. Arias** – Varner & Brandt LLP, Riverside

**Robert Bentley (S)** – Law Student, Desert Hot Springs

**Martin C. Fontes** – Sole Practitioner, Riverside

**Synthia M. Gunzel** – Office of the County Counsel, Riverside

**William C. Holzwarth** – Law Office of William C. Holzwarth, San Bernardino

**Marvin H. Weiss** – Sole Practitioner, Palm Desert

## Eight Weeks In The Box (continued from page 26)

on Science and the Law Policies (February 7, 2007), available at <http://www.courtinfo.ca.gov/jc/documents/reports/022307item11.pdf>; Judicial Branch Education: Recommendation for Judicial Education on Science and Technology (January 10, 2006).

<sup>10</sup> Science and the Law Steering Committee, Final Recommendation on Science and the Law Policies, supra, at pp. 32-33.

<sup>11</sup> Science and the Law Steering Committee, Final Recommendation on Science and the Law Policies, supra, at p. 30.

<sup>12</sup> CASE Project website, Main Page, available at <http://www.aaas.org/spp/case/case.htm>.

<sup>13</sup> CASE Project website, CASE Experience page, available at <http://www.aaas.org/spp/case/experience.htm>.