

RIVERSIDE LAWYER

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MAGAZINE

In This Issue:

Efforts to Address the Real Estate Foreclosure Crisis in Riverside County

Federal Public Defender's Mentoring Program

Cowtown Lawyers

Hittin' Hard Times

In Memoriam: The Hon. Timothy J. Heaslet

Slow Death of a Mortuary

Krieger Award Nominations Sought



The official publication of the Riverside County Bar Association

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RIVERSIDE LAWYER

MAGAZINE

C O N T E N T S

Columns:

- 3 **President's Message** by E. Aurora Hughes
4 **From the County Law Library** by Gayle E. Webb
6 **Litigation Update** by Mark A. Mellor

Features:

- 8 ... **Efforts to Address the Real Estate Foreclosure Crisis in Riverside County**
by Haviva Shane
12 **Federal Public Defender's Mentoring Program**
by the Honorable Oswald Parada
14 **Cowtown Lawyers**
by Bruce E. Todd
16 **Hittin' Hard Times**
by Steven L. Harmon
18 **In Memoriam: The Hon. Timothy J. Heaslet**
by James Teixeira
20 **Slow Death of a Mortuary**
by Bruce E. Todd
22 **Krieger Award Nominations Sought**
by Commissioner John Vineyard

Departments:

- Calendar 2
Bench to Bar 24
Classified Ads 24

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

MARCH

20 General Membership Meeting

RCBA 3rd Floor – 12 p.m. to 1:15 p.m.

“Ethics Jeopardy: Top Ten Professional Responsibility Traps for the Unwary”

Speaker: Robert A. Hawley, Dept. Exec Dir, State Bar

(MCLE: 0.75 Ethics)

20-22 State Mock Trial Competitions

Hall of Justice and Historic Courthouse, Riverside

25 Estate Planning, Probate, Trust Law Section

RCBA 3rd Floor – 12 p.m. to 1:15 p.m.

(MCLE)

31 Holiday – Cesar Chavez Day

(RCBA offices Closed)

APRIL

1 Bar Publications Committee

RCBA – Noon

8 Barristers

Cask 'n Cleaver – 6:00 p.m.

(MCLE)

SAVE THE DATE:

June 3, 6:00 p.m. — Wortz Distinguished Speakers Series with Prof. Laurie Levinson



NOTICE RCBA Members

Have you moved? Has your telephone, fax or email changed?

Please contact the RCBA office at (951) 682-1015

or
rcba@riversidecountybar.com
with any changes.





President's Message

by E. Aurora Hughes

We've all heard the saying, "March comes in like a lion and goes out like a lamb." It appears that this March will do the same for the Riverside County Bar Association. We had high hopes that we would be well into our education of the public concerning the role of the judiciary and the constraints put upon judges in pending cases, as well as the role of attorneys in dealing with decisions that they are not happy with. Unfortunately, we are having difficulty finding forums in which to present our talking points.

While several ideas have been discussed, none have yet been implemented. Also, I have not had discussions with possible forums. I had to endure a second hospitalization in mid-February, from which I am having difficulty recovering. It is my hope that the first two weeks of March will bring a flurry of activity, that we will aggressively pursue public forums, and that the end of March will bring fulfillment of these forums. If not, April is always another month.

In February, we had the Mock Trial Competition, culminating in the finals and awards on March 7, 2009. Each year, it is surprising how the students seem to get better and better and are so enthusiastic about the Mock Trial Competition. It is also disappointing that each year, the Planning Committee has to beg for scoring attorneys to assist in this program. Having scored the Mock Trial Competition for a number of years, I have seen the caliber of the student participants increase. The confidence that

these young people show and the passion that they demonstrate in arguing their respective positions is an example for all of us practicing law. They show that they have worked hard on understanding the facts, studying the law and preparing their arguments. If they are disappointed with the judge's ruling, they take it like professionals, and are not deterred from their selected course. Next year, when the Planning Committee announces that it is in need of scoring attorneys, please take the time to volunteer. You will find this an uplifting experience. If you volunteer each year, you may have the opportunity to watch a youngster grow in the ability to speak and think on his or her feet.

During the first two months of 2009, I have noted that the attorney fee arbitration program is not running as smoothly as we would like. Those attorneys who have signed up as arbitrators for the program are simply too few. We have also found that attorneys who have taken on the arbitration of fee cases are now returning those cases, for various reasons, which in turn causes a backlog to such a degree that it is now taking almost six months before an arbitrator is assigned. It is my hope that once Charlene comes on board, Charlotte will have more time to devote to the fee arbitrations and that the attorneys who accept these cases as arbitrators will complete them in a timely fashion.

I urge all of you to please attend the general meetings and participate in the programs offered by the Riverside County Bar Association. I urge you all to participate in either a section or a committee; you will see firsthand how the process works, how our volunteer attorneys work to put on our programs, and how rewarding participating in these programs can be. If there are any programs that you, our members, want to see, please be sure to contact the bar association or myself. We have over 1,000 members, and while we are all busy, if we take the time to volunteer as little as two or three hours a month, our bar association can do so much more for our members, for the judiciary, and for the public.



FROM THE COUNTY LAW LIBRARY

by Gayle E. Webb, County Law Library Director

FREE WI_FI connectivity is now available for your daily use inside the downtown Riverside Law Library! The Board of Trustees has contracted with Charter Communications and PC Solutions to bring this convenient new service to you effective February 1, 2009. So bring your laptops, your Blackberries and your other mobile electronic devices, check with the Reference Desk for the current password/key, surf the internet and generally get your work done whenever and wherever you are in the library. We've definitely got the fastest connection in town!

Wireless connectivity is also on the drawing board for our Indio desert branch library, but will have to wait until the county moves us out of the state-owned Larson Justice Center. The county is currently in lease negotiations with Jackson Court LLC, which will build us our very own new desert law library between the Justice Center and Jackson Street on Highway 111. The law library and a small retail building will be the first phase of a much larger development that will later include

a multi-story office building and another, larger retail building. The intention is that grading permits for Phase 1 will be issued no later than May 1, 2009 and the law library will then be ready for occupation within 12-14 months.

You have probably already been bombarded with enticing emails from our Public Services Librarian – Bret Christensen – about our upcoming celebrations during National Library Week (April 13-17, 2009). Of particular interest to some of you may be a one- to two-hour FREE MCLE program on “California Legislative Intent” by Thomas Stallard, president of one of the most successful legislative intent search services in Sacramento. Mr. Stallard has also been in private practice and spent years as a lobbyist for various organizations in Sacramento. Watch our website or our email newsletters or give us a call for a specific date.

As you can see, we are constantly working on improving our service to you!



by Mark A. Mellor

Shareholder must be identified before filing derivative action. Before shareholders may file a derivative action, they must file a demand upon the board of directors; if the directors fail to act, the action may be filed. Under Federal Rule of Civil Procedure 23.1, the demand must be adequate and must disclose the identity of the shareholders who seek to file a derivative action. The Ninth Circuit held that failure to make such a disclosure supports dismissal of the action. (*Potter v. Hughes* (9th Cir.; Oct. 10, 2008) 546 F.3d 1051 [2008 DJDAR 15696], available at www.ca9.uscourts.gov/datastore/opinions/2008/10/09/0656082.pdf.)

Additional pay to Los Angeles Superior Court judges violates California Constitution. Since the 1980s, the County of Los Angeles has paid superior court judges employment benefits in addition to their state salaries. This now amounts to \$46,436 per year. (It has been suggested that the generosity of the Los Angeles Board of Supervisors may be related to the fact that the salaries received by the members of the board are keyed to the salaries of superior court judges.) The court of appeal has ruled that the payment violates article VI, section 19 of the California Constitution, which provides that the Legislature is to “prescribe compensation for judges of courts of record.” (*Sturgeon v. County of Los Angeles* (Oct. 10, 2008) 167 Cal.App.4th 630 [84 Cal.Rptr.3d 242, 2008 DJDAR 15715] [Fourth Dist., Div. 1].)

Funding for services to only female victims of domestic violence violates equal protection. In *Woods v. Horton* (Oct. 14, 2008) 167 Cal.App.4th 658 [84 Cal.Rptr.3d 332, 2008 DJDAR 15763] [Third Dist.], male victims of domestic violence sued to challenge statutes funding programs for services limited to female victims of such violence. The trial court denied their petition, finding that men were not similarly situated because there were a greater number of female victims. The court of appeal reversed. The mere fact that there were more female victims did not provide a compelling state interest in gender classification.

Cross-examination must be permitted in quasi-judicial administrative proceeding. When a rent review board refused to permit claimants to be cross-examined, it violated due process, and the decision must be reversed and remanded. To deny an opponent the right to cross-examine claimants denied it the right to a fair trial.

(*Manufactured Home Communities, Inc. v. County of San Luis Obispo* (Oct. 15, 2008) 167 Cal.App.4th 705 [84 Cal.Rptr.3d 367, 2008 DJDAR 15820] [Second Dist., Div. 6].)

ABA reports: New opportunities for lawyers: The October 17, 2008 weekly newsletter of the ABA reports, “Law firms gearing up to offer advice on the \$700 billion bailout bill hope to help clients – as well as their own bottom lines. [¶] Law firm marketing consultant Peter Zeughauser told the Wall Street Journal (sub. req.) why lawyers are so eager to counsel clients about the bill, known as the Troubled Asset Relief Program. [¶] ‘People are hoping this becomes the Full Employment Act for lawyers,’ he told the newspaper.”

Validity of contract with arbitration clause must be decided by arbitrators. In *Granite Rock Company v. Int’l Brotherhood of Teamsters, Local 287* (9th Cir.; Oct. 22, 2008) 546 F.3d 1169 [2008 DJDAR 16023], available at www.ca9.uscourts.gov/datastore/opinions/2008/10/21/0715040.pdf, the Teamsters, being sued for breach of contract by an employer, denied that the contract on which the action was based was ever executed. The contract contained an arbitration clause. The Ninth Circuit held that the validity of the contract was to be determined, not by the court, but by the arbitrators.

Federal statute preempts claim based on failure to install lap/shoulder belt. Under the relevant Federal Motor Vehicle Safety standard, a manufacturer could install either a lap belt or a lap/shoulder belt in the rear seat center position. A decedent’s heirs sued an automobile manufacturer for wrongful death allegedly resulting from the absence of a shoulder belt in the center of the rear seat. The complaint asserted causes of action for strict products liability, negligence, deceit, and wrongful death. The court of appeal affirmed the trial court’s granting judgment on the pleadings, holding that the federal regulation preempted the state causes of action. (*Williamson v. Mazda Motor of America, Inc.* (Oct. 22, 2008) 167 Cal.App.4th 905 [84 Cal.Rptr.3d 545, 2008 DJDAR 16007] [Fourth Dist., Div. 3].)

Court must permit discovery before ruling on class certification. In *Lee v. Dynamex, Inc.* (Aug. 26, 2008) 166 Cal.App.4th 1325 [83 Cal.Rptr.3d 241, 2008 DJDAR 14599] [Second Dist., Div. 7], a purported class action, the trial court denied plaintiff leave to discover class members’ identities and denied class certification on grounds the

class was not sufficiently ascertainable. The court of appeal reversed, holding that the trial court abused its discretion in denying discovery and should have permitted the discovery before ruling on the certification motion. (See also *Pioneer Electronics (USA) v. Superior Court* (2007) 40 Cal.4th 360 [53 Cal.Rptr.3d 513].)

Supreme Court will decide whether employers must do more than “provide” rest periods. In *Brinker Restaurant Corp. v. Superior Court* (Jul. 22, 2008) 165 Cal.App.4th 25 [80 Cal.Rptr.3d 781, 2008 DJDAR 11267], review granted Oct. 22, 2008, S166350, the Fourth District Court of Appeal held that, although employers may not impede, discourage, or dissuade employees from taking rest and meal periods, they need only provide for them and need not ensure that employees actually take the required times off. Our Supreme Court has granted review. Now, we will have to wait a year or so before we find out how far employers must go in forcing their employees to take rest breaks. (Are we justified in firing an employee who refuses to eat her lunch?)

In derivative action, corporation is only a nominal defendant and cannot defend the action. Where shareholders bring a derivative action on behalf of a corporation, the corporation is a defendant. Nevertheless, the action is filed on behalf of the corporation, not against it. Therefore, the corporation is only a nominal defendant and is not per-

mitted to defend the action filed on its behalf. It was thus improper for the corporate defendant in such an action to demur to the complaint, and the court of appeal reversed the judgment of dismissal following the sustaining of such a demurrer. (*Patrick v. Alacer Corp.* (Oct. 23, 2008) 167 Cal.App.4th 995 [84 Cal.Rptr.3d 642, 2008 DJDAR 16079] [Fourth Dist., Div. 3].)

Party may not appeal from judgment if it accepts a benefit of the judgment. Where a litigant accepts the benefit of a judgment, it cannot thereafter appeal the judgment. In *Satchmed Plaza Owners Assn. v. UWMC Hospital Corp.* (Oct. 23, 2008) 167 Cal.App.4th 1034 [84 Cal.Rptr.3d 585, 2008 DJDAR 16123] [Fourth Dist., Div. 3], plaintiff claimed the right to purchase 22 owned and 12 leased units in a condominium office building. The trial court agreed as to the 22 owned units but denied relief as to the 12 leased units. Plaintiff completed the purchase of the 22 units and then appealed from the judgment with respect to the remaining units. The court of appeal dismissed the appeal. By accepting the benefit of the judgment, plaintiff waived the right to appeal as to the other portion of the judgment.

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



EFFORTS TO ADDRESS THE REAL ESTATE FORECLOSURE CRISIS IN RIVERSIDE COUNTY

by Haviva Shane

It seems like just yesterday that Riverside County was making headlines nationwide as one of the regions at the pinnacle of the housing boom. A Los Angeles Times article written in February 2005, just four short years ago, referred to the growth in new homes and home sales prices in the Inland Southern California region as a "home-selling supernova," but warned that this burning star would eventually cool. Today, news about the financial crisis in Riverside County, including job losses, falling home values and rising foreclosures, is ubiquitous. A recent Washington Post article notes that four of the twenty zip codes in the United States that have the greatest number of homes that are worth less than the mortgages securing them are in Riverside County. This situation makes refinancing an adjustable-rate mortgage impossible for most homeowners, and some either have been forced or have decided to walk away from their homes.

The number of foreclosures is sobering. As of February 2009, there were more than 24,865 foreclosed properties, 15,941 "pre-foreclosure" properties and 8,660 "units at auction" in Riverside County alone. This has led to a glut of available housing, dropping the median home price in the county by approximately 29% from just a little over a year ago.

In an initial attempt to address spiraling foreclosures nationwide, the federal government adopted the "Housing and Economic Recovery Act of 2008" (HERA). HERA is intended, among other things, to strengthen and modernize the regulation of government-sponsored housing enterprises (e.g., Fannie Mae and Freddie Mac), assist families in saving their homes from foreclosure, and create affordable housing opportunities. One of the programs under HERA is the "Neighborhood Stabilization Program" (NSP), which will provide \$3.92 billion in federal funds to state and local governments for emergency assistance with the redevelopment and resale of abandoned and foreclosed homes and residential properties.

The U.S. Department of Housing and Urban Development (HUD) has allocated \$48,567,786 of NSP funds to the County of Riverside, \$11,390,116 to the City of Moreno Valley, \$6,581,916 to the City of Riverside,

\$3,602,842 to the City of Corona and \$2,888,473 to the City of Hemet. Combined with the allocation to San Bernardino County and to cities within San Bernardino County, the direct HUD allocation to the two-county region totals \$133,451,385. HUD also allocated an additional \$145,071,506 of NSP funds to the State of California.

The jurisdictions receiving an NSP allocation from HUD were required to prepare and submit a substantial amendment to their existing Community Development Block Grant program to identify the uses for these funds. Under the NSP guidelines, these dollars can be used only for certain activities, including acquisition of foreclosed properties at a discount, rehabilitation or demolition of abandoned properties, provision of down payment and/or closing cost assistance, and creation of land banks. Further, the funds have to be spent in the areas that have been identified as having the greatest need (i.e., the areas that have the highest number of foreclosures and anticipated foreclosures), and can be used only to assist low- and moderate-income families (families at or below 120% of the area median income).

The substantial amendments submitted by Riverside County and the cities within the county receiving an allocation from HUD have all been approved. These jurisdictions have an 18-month timeline to obligate their NSP funding; thus, implementation of the program will be immediate. The state's Department of Housing and Community Development recently submitted its revised substantial amendment to HUD, which allocates \$2,300,235 to five cities within Riverside County, mainly within the Coachella Valley region.

Housing and redevelopment staff from Riverside and San Bernardino Counties and cities within the counties have been meeting since October 2008 to gear up for NSP implementation and to explore opportunities for regional cooperation. The efforts of this group, informally coined the "Inland Empire NSP Coalition," have gained notice from the National Community Stabilization Trust, a national nonprofit organization that has negotiated beneficial terms and deep discounts on purchase prices with numerous major banking institutions that own property within the region. In addi-

tion, cities within the Coachella Valley region have been engaging in a joint effort to deal with the foreclosures within their subregions. These cooperative efforts may prove crucial in obtaining some portion of the additional \$2 billion in NSP funding to be provided under the stimulus package signed by President Obama on February 17 and to be awarded on a competitive basis to states, local governments and nonprofit entities.

On the heels of signing the stimulus bill, on February 18 President Obama announced a housing plan estimated at \$275 billion, which may benefit some homeowners within Riverside County. The plan's goal is to help seven to nine million homeowners avoid foreclosure by enabling owners who have little or no equity in their homes to refinance their loans through Fannie Mae or Freddie Mac, and providing incentives for banks to modify home loans of owners at risk of or in foreclosure. More specific details regarding the plan are to be released in March.

Other efforts within the Riverside County region to address the foreclosure crisis include stepped-up code enforcement. Some cities have adopted ordinances requiring registration of bank-owned vacant, abandoned or distressed residential properties. Such ordinances generally require payment of a registration fee and set forth property maintenance and security requirements and may impose civil penalties of up to \$1,000 per day for violations. For properties in particularly bad condition, cities may elect to go through the process of having a receiver appointed who will be responsible for property rehabilitation, maintenance and resale.

Finally, various nonprofit organizations are assisting homeowners in the county in avoiding foreclosure. For example, the Fair Housing Council of Riverside County in the City of Riverside and the Coachella Valley Housing Coalition in the City of Indio provide foreclosure mitigation assistance funded through the National Foreclosure Mitigation

Counseling Program, a competitive federal grant administered by NeighborWorks America. However, due to the scope of the current crisis, there is a shortage of help for borrowers and a need for attorneys to get involved with efforts to assist those threatened with a foreclosure. According to the January 2009 edition of the California Bar Journal, ForeclosureInfoCA.org provides information on online MCLE-eligible foreclosure mitigation training and links to volunteer opportunities for attorneys who want to get involved. The February 2009 edition of the California Bar Journal further points to the need for attorneys to provide pro bono legal aid services during this economic crisis, as California legal aid organizations are now facing funding cuts and may have to lay off staff.

Haviva Shane is an associate at the law firm of Best Best & Krieger and provides legal assistance to various municipalities, redevelopment agencies and special districts in the region.



FEDERAL PUBLIC DEFENDER'S MENTORING PROGRAM

by the Honorable Oswald Parada, United States Magistrate Judge, Central District of California

The office of the Federal Public Defender (FPD) has agreed to participate in a mentoring program designed for Eastern Division attorneys who have little or no prior experience in defending federal criminal cases. The program will provide attorneys interested in applying to the Eastern Division Indigent Defense Panel the opportunity to work on cases with a senior Deputy Federal Public Defender (DFPD) and receive training in all aspects of federal criminal procedure.

A. **Training:** Each attorney will attend a mandatory two-day training seminar at the FPD office in Los Angeles. This training will include lectures on bail and detention, post-indictment arraignment, pre-trial discovery and motions, trial, post-trial issues, sentencing, and post-sentencing issues. The attorneys will receive MCLE credit for attending the training seminar.

B. **Case Assignment:** Each attorney will be assigned to work on a case with a senior DFPD with approximately 15 years of experience. The senior DFPD will be appointed counsel and will serve as first chair. The attorney will serve as second chair but will not be appointed. All cases will be assigned early on in the litigation, most likely soon after the indictment. The attorneys will be assigned to cases in Santa Ana or Los Angeles due to the limited number of DFPDs in Riverside.

C. **Responsibilities:** Each attorney will be expected to be present at all court appearances and to participate fully as second chair in all aspects of the case. The allocation of responsibilities will depend on the attorney's level of experience. Each attorney will have the opportunity to draft relevant pleadings, interview potential witnesses under supervision, work with investigators and other support staff, meet with the client, prepare jury instructions, prepare trial exhibit binders, participate in all aspects

of a jury trial, prepare sentencing pleadings, and participate at the sentencing hearing. The attorneys are not expected to follow the cases on appeal.

D. **Follow-Up Training:** Each attorney will be required to attend periodic trial skills workshops at the FPD office. These workshops will be participatory and may include attendance at court appearances in other cases. The attorneys will receive MCLE credit for their participation in these workshops. In addition, the FPD office will sponsor specific workshops for panel attorneys on topics such as applications for expert and other services, appropriate billing practices (including preparation of vouchers), ethical concerns in criminal cases (including joint defense agreements), client relations, and setting up a technologically and time-efficient office.

E. **Monitoring:** Throughout the course of the program, a supervising DFPD will be available to address any questions or concerns that may arise. Each attorney and DFPD will submit periodic written updates on the status of the program to the supervising DFPD. A comprehensive review of both the case status and the mentor program will be conducted periodically, which will consist of written evaluations from each attorney and DFPD and a meeting with the supervising DFPD. At the end of the case, final written evaluations will be submitted and a final case review meeting with the supervising DFPD will take place. All evaluation materials will then be forwarded to FPD Sean Kennedy for a determination of the attorney's eligibility for the Eastern Division Panel and a recommendation, which will be forwarded to the Criminal Justice Act Committee.

F. **Recruitment:** Notice of the mentoring program will be made through the bar associations located in the Eastern Division.

If you are interested in participating in this program or would like additional information, please contact Magistrate Judge Oswald Parada at (951) 328-4430.



COWTOWN LAWYERS

by Bruce E. Todd

Dodge City and Its Attorneys, 1876-1886

By C. Robert Haywood

University of Oklahoma Press

ISBN: 0-8061-2146-7

Over the years, there have been a plethora of books and articles written about the famous, and sometimes infamous, lawmen and outlaws whose colorful history graced the expansion of the American West. The careers of such noted lawmen as James Butler “Wild Bill” Hickok, Wyatt Earp, Pat Garrett and Bat Masterson have been well documented, as have the nefarious exploits of such outlaws as Jesse James, Billy the Kid and Butch Cassidy.

There has been little written, however, about the frontier lawyers who plied their trade in the expanding American West. In his book “Cowtown Lawyers,” C. Robert Haywood paints a fascinating picture of crime and justice in early Dodge City, Kansas. The book focuses on the years 1876-1886, when, by Haywood’s account, 27 lawyers worked at various times in the noted cowtown. Haywood’s work particularly concentrates on the careers of the cattle town’s two most famous lawyers: Mike Sutton and Harry Gryden.

History tells us that the “wicked little city” was first marked as a town site when George M. Hoover began operating a watering hole from the tailgate of his wagon on June 17, 1872. The railroad arrived shortly thereafter, in September of the same year.

In its early days, Dodge City was primarily home to numerous wild and wooly buffalo hunters. Hoover, the man who started it all, reported that 15 killings occurred in the town’s first year, but subsequent historians have placed a more accurate number at about 25-30.

Nearby cattle towns, in hopes of casting their own venues in a brighter light, often referred to Dodge City as a den of iniquity. For example, the Hays Sentinel published a piece stating that: “Dodge is a fast town The employment of many citizens is gambling, her virtue is prostitution and her beverage is whiskey Here rowdiness has taken its most aggravated form Seventeen saloons furnish inspiration and many people have become inspired Every facility is afforded for the exercise of conviviality and no restriction is placed on licentiousness.”

Into this environment came the prairie lawyers who were to shape the laws and the justice system of a burgeoning nation. The primary types of crime on the dockets in

the 1880’s included drunkenness, disorderly conduct, petty larceny and vagrancy. Prostitution and gambling were legal and were often taxed to produce revenue for the town.

In its early years, Dodge City’s court docket was always heavy with civil cases – outnumbering criminal cases by a six-to-one margin. Criminal cases, however, would, just as today, be given priority over civil cases. Civil cases were generally not covered by the local press, while criminal cases, as is common today, often received front-page exposure.

By Haywood’s account, little is known about the formal training of many of the lawyers who appeared in Dodge City courts. He has determined that at least five of them read law in Dodge City offices as a means of passing the Kansas bar.

There appears to have been much laxity in the requirements to be able practice law. Haywood recounts the story of a prospective attorney whose only question from the bar examiners was, “Are you ready and willing to set ‘em up?” The examiners marched him to the nearest saloon and then reported back to the court that the candidate had already been admitted to “one bar” to their personal knowledge and that he had shown reasonable familiarity with the procedures there.

The aforementioned Mike Sutton was undoubtedly the heavyweight of the Dodge City legal practitioners. Haywood has determined that Sutton was the only lawyer who practiced law in the city during the entire 10 years between 1876 and 1886. Haywood stresses that a lawyer’s reputation in early Dodge City was often based upon handling sensational cases and utilizing a silver-tongued delivery. Sutton did both.

Sutton often turned the courtroom into his personal theater. Cases he handled were often played to courtrooms crowded with curious spectators and involved soiled doves from the bordellos, sex-related crimes and notable Dodge City characters such as Mysterious Dave Mather. Periodically, Sutton would cross the boundaries of proper behavior in the courtroom. On at least one occasion, Bat Masterson had to restrain the fiery Sutton in the courtroom as he exchanged blows with the aforementioned Harry Gryden.

Gryden, for his part, also handled sensational cases, but frequently the types of clients whom he represented cast him as being on the wrong side of the law. He was

also partial to the lures of the saloon and was occasionally absent from a scheduled court appearance. He died in Dodge City on August 29, 1884.

Whether absorbed as a history lesson on our expanding nation or merely enjoyed for the colorful tales of its participants, Haywood's book will prove to be an interesting and insightful account of cowtown justice in the American West.

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



HITTIN' HARD TIMES

by Steven L. Harmon

If business is good for you and your firm; if your practice is generating the kind of income you think it should; or if income-related issues aren't keeping you up at night, then stop reading right now. The rest of this will only depress you, or you will have no idea what I am talking about and you'll be bored to death.

But for the rest of us, here goes: Business is bad! The pressures of knowing the law and making the right decisions for our clients are great enough, but that kind of pressure is what we expect as lawyers. What we haven't expected is that we would be overwhelmed with such severe financial pressures in our practices, causing us such grief, stress and bewilderment. For many of us, these pressures are building daily and we are already wondering how long we can keep it going.

So what are we doing about it? We're lying.

Have you ever noticed what great liars lawyers are – to each other? Lawyers usually greet each other by asking, "How are things going?" or "How's business?" When is the last time you heard someone respond, "Well not so good – business is really bad and I'm under such tremendous financial pressure"? We fight so hard to maintain an image of success, fearing if the truth were told, we would be diminished personally and perhaps our business would be hurt further if people knew we were having troubles. So we lie and say, "Everything is great. How about you?" The answer back: "Couldn't be better."

And so it goes. The image is protected but the heart is saddened. An opportunity for an honest, helpful moment is lost. Both lawyers walk away feeling inadequate compared with their "successful" colleague.

The reality is that most of us are struggling financially in our practices. In my 23 years as a lawyer, I have never seen and heard it so bad for so many. Big firms are downsizing. Small firms are not expanding. Sole practitioners are taking cases out of their area of specialty, because they cannot afford to let a dollar walk out the door. Many in private practice are trying to get hired by public entities (district attorney, public defender, county counsel, city attorney) in order to get a steady paycheck. Others are quietly exploring other employment options outside of law. The common denominator is that what has worked for us in the past is no longer working.

What worries me is that these financial hardships are taking a great toll on us – on our health, on our self-esteem, on our families and on our clients. The pressures we are under are overwhelming, but we are masters of denial and we are underestimating their impact on us. The toll taken on us increases daily, with interest compounded.

Money problems force large firms to cut back on staff and associates, causing more pressure on remaining partners and associates to work harder and do more. Dissension between partners arises as money pressures lead to finger-pointing as to who is or is not pulling their own weight. In smaller firms, the concept of "all for one and one for all," which brought you together in the first place, gives way to picky scrutiny about individual income production levels and scaled partnership disbursements. In an atmosphere like this, growth is almost impossible.

Money problems also cause us, ultimately, to hurt our clients. There are more of us competing for fewer dollars. When you're struggling to win the business of a client or maintain a client's business and you desperately need that money, it is easier to overpromise the client, overwork the case for the billing, threaten and be disrespectful to opposing counsel and even to the court so you look good to the client, and take cases you have no business taking.

But what can we do about it?

I really don't know. I wish this article was a "how to" article instead of a "how bad is it" article.

So why even bring this subject up? Well, I think it's about time we start to talk about it. Maybe by sharing some of the troubles we are having we can find new answers. Maybe by being honest with each other we can relieve some of the terrible stress we are feeling. Maybe if we understand we're all in the same boat we can be a little nicer to each other. Maybe we could end up liking our work more and doing a better job for our clients.

Steve Harmon, a past president of the RCBA, is a criminal law attorney with Harmon & Harmon in Riverside. This article first appeared in the Riverside County Lawyer, February 1996.



IN MEMORIAM: THE HON. TIMOTHY J. HEASLET (RET.)

by James Teixeira

The Honorable Timothy J. Heaslet was, without a doubt, one of the best friends I have ever had in my life, and his passing brings back a myriad of thoughts and feelings that will never be forgotten by this individual.

I will never forget how I met Tim. I was new to Riverside, and the only way for a newcomer to survive was to dabble in domestic relations matters. I had been contacted by his ex-wife, and I was unsure whether to take her case, as I was a member of RITLA, handling conflict matters in the criminal courts where Judge Heaslet was sitting, and there was no conflict panel at the time.

My knees were really shaking when I asked him in open court for a chambers conference, which he granted. I explained the situation to him and he gave me assurances my representation would have no effect whatsoever on any criminal matter on which I might appear before his Honor. I walked out of there feeling as though I had met a man of genuine quality, sincerity and honesty.

Thank my guardian angel, the Heaslets reunited and I closed out my file. When the Mrs. showed up at my office again some time later, I told her that Tim and I had become such close friends it would be a conflict for me to pursue her cause.

In fact, we became such great friends I felt as if Tim were my criminal law legal mentor. I sat as judge pro tem more times than I could count, and when there were issues I was uncertain about, I would simply take the matter under submission and present the problem to the Honorable Judge, who seemed to always come up with the logical conclusion. The benefits of his wisdom will never be forgotten. My criminal law career has been simplified by saying to myself, "What would Tim do in this situation?"

Over the next 20-plus years in which I appeared in front of Judge Heaslet, he never once showed any favoritism to me due to our close relationship, and even chastised me in open court on one occasion for my conduct.

As our friendship grew, there were many gatherings amongst his family and mine, which included dinners,



*Judge Timothy J. Heaslet
July 19, 1944 to November 21, 2008*

trips to Disneyland, Easter egg hunts and many, many more unforgettable times together, especially at his beach house. He became known to my children as Uncle Tim.

However, the most fantastic memories I will have of my dear friend will be the numerous fishing trips we took together out of San Diego. We would spend six days in Mexican waters fishing for yellowtail, albacore, and blue, yellow and big-eye tuna. The magic word to hear on those trips was, "Hook up!" We knew the big ones were close, and we

brought plenty of them back to shore. The greatest part of the trip: no court, no papers, no clients, just no work. Tim said it best, "The worst day fishing is better than the best day working."

One other fishing trip we took together was to Costa Rica in search of the mammoth tarpon fish. After traveling up the Rio Colorado, where years before the Contras and Sandinistas had been fighting one another, and passing through two hours of bewildering jungle environment, we were finally fishing in Lake Nicaragua, where we caught a variety of fish only to be eaten that night by my great buddy and myself. I love you, Tim, save a place in that fishing yacht in the sky.

Another tremendous friend of mine and Tim's, Judge Ronald Taylor, has summed it up best with his very thoughtful remarks: "Tim was a wonderful human being with a multifaceted personality. He had a huge intellect along with a tremendous sense of humor. He was well-respected within the legal community for his judicial demeanor and long service on the bench. He had a great zest for life, second to none. Toward the end of his life his positive philosophical outlook was quite inspirational to his circle of friends and family. He will be sorely missed."

Those of us who knew this Master should consider ourselves fortunate, and those who did not know him should ask the long-time attorneys and judges to give you their perspective on the Honorable Timothy J. Heaslet.

James Teixeira is a criminal law attorney in Riverside.



SLOW DEATH OF A MORTUARY

by Bruce E. Todd

In our March 2007 issue, we presented the story behind the historic M.H. Simons Undertaking Chapel, which is located adjacent to the equally historic Riverside County Courthouse. As was noted in that article, this wonderful edifice, at the corner of 11th and Orange, had served as the county mortuary for many years before it was utilized as a courtroom from 1982 to 1991.

The Honorable Victor Miceli, retired, kindly provided much of the information for the article about the colorful legend of this structure. He should know, since he presided for several years over what was then known as Department 10 in the building. The mysterious “Gloria Ramirez autopsy case” and the equally strange “Dora Kent severed head case” both took place in Department 10. There was also the time when trial jurors had to be evacuated from the building after being overcome by formaldehyde fumes from an embalming procedure that was taking place in the adjacent room (then the morgue portion of the building).

Judge Miceli mused at the time of the article that there was a possibility that this grand dame might be renovated so that it could be used as a jury assembly room.

As a couple of years have passed since that article, contact was recently made with Tim Miller to determine the current fate of the old morgue. Miller is the Assistant Director of Facilities Management for the County of Riverside.

Unfortunately, Miller’s comments about the fate of the building do not bode well for those history buffs who might be hoping for a return to glory for the ivy-shrouded edifice, which has been designated as Riverside Cultural Heritage Board Landmark No. 80.

Miller explained that the county court buildings were transferred to state ownership in October 2001 as part of S.B. 1732. The state apparently did not want the old mortuary building as part of the transfer, because of anticipated high maintenance expenses. Thus, the building remained under the ownership of the county.

Miller indicated that the Administrative Office of the Courts (AOC), local court representatives and state and county officials all discussed the status of the building as part of the transfer process. “It was looked at by some as a benefit and by some as a liability,” said Miller. “No one could agree on what to do with it.”

He further indicated that, given these current difficult economic times, no one has stepped forward with the

capital to renovate the building. “You would have to do a full rehab – it would be expensive to preserve the historic interior elements of it,” he said. “It would cost less if someone wanted to just preserve the exterior walls and gut the interior of the building. The mechanical system and duct work would all need to be replaced.”

Currently, the building is just languishing, with nothing planned for it. As Miller noted, “We trim the ivy and the lawn, but that’s about it. We’ll continue to maintain it until someone comes along with a plan to use it in a cost-effective way.” Unfortunately for this historic landmark, which was designed by noted local architect G. Stanley Wilson, there are no such plans in the immediate future.

“You almost have to have a champion for these projects to get something done,” lamented Miller. “So far, that hasn’t happened.”

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



19th ANNUAL RED MASS

Tuesday, April 28, 2009, at 6:00 p.m.

Our Lady of the Rosary Cathedral
2525 North Arrowhead Avenue, San Bernardino

The entire legal community and persons of all faiths are invited to attend the 19th Annual Red Mass on April 28 at 6:00 p.m., at Our Lady of the Rosary Cathedral in the City of San Bernardino. A dinner reception in the parish hall, hosted by the Steering Committee, will follow the Mass. The 2009 Saint Thomas More Award will be given to retired Commissioner Martin Swanson at the reception.

The Red Mass is an opportunity for members of the legal community and their families to invoke God’s blessing and guidance in the administration of justice. All who are involved in the judicial system, including judges, lawyers, court personnel, court security officers, legal support staff, and peace officers, are invited to attend the Red Mass.

For further info, please contact Jacqueline Carey-Wilson at (909) 387-4334 or Mitchell Norton at (909) 387-5444.

KRIEGER AWARD NOMINATIONS SOUGHT

by *Commissioner John Vineyard*

In 1974, the RCBA established a Meritorious Service Award to recognize those lawyers or judges who have, over their lifetimes, accumulated outstanding records of community service. The award, later named for James A. Krieger, has since been presented to James Wortz, Eugene Best, Arthur Swarner, Arthur Littleworth, Justice James Ward, Fred Ryneal, John Babbage, Patrick Maloy, Ray Sullivan, Justice John Gabbert, Jane Carney, Judge Victor Miceli, Justice Manuel Ramirez, Kathleen Gonzales and Terry Bridges.

The award is not presented every year. Instead, it is given only when the extraordinary accomplishments of particularly deserving individuals come to the attention of the award committee.

The award committee is now soliciting nominations for the award. Those eligible to be considered for the award must be (1) lawyers, inactive lawyers, judicial officers, or former judicial officers (2) who are currently practicing or sitting in Riverside County or have in the past practiced or sat in Riverside County, and (3) who, over their lifetime, have accumulated an outstanding record of community service or community achievement. That service may be limited to the legal community, but must not be limited to the RCBA.

Current members of the RCBA Board of Directors are not eligible, nor are the current members of the award committee.

If you would like to have anyone considered for this most prestigious of RCBA awards, please submit a nomination to the RCBA office not later than April 13, 2009. The nomination should be in writing and should contain, at a minimum, the name of the nominee and a description of his or her record of community service and other accomplishments. The identities of both the nominees and their nominators shall remain strictly confidential.

Commissioner John Vineyard is the chair of the Krieger Meritorious Service Award Committee and a past president of the RCBA.



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Office Space – Riverside

Office space available in the Tower Professional Building located on the corner of 13th and Lime Street in downtown Riverside. We are within walking distance to all courts. All day parking is available. Building has receptionist. Please call Rochelle @ 951 686-3547 or email towerpm@sbcglobal.net. Residential services available also.

Professional Office Space

4446 Central Avenue in Riverside. Building currently offers 3 offices, optional conference room, reception area, and a bullpen area excellent for several workstations and/or filing. Also includes kitchen, 1 bathroom and a detached garage excellent for storage. Call Marilyn at (951) 689-7053 to schedule appointment.

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2305 Chicago Avenue, Suite B, Riverside. Includes 2 executive offices, 1 large conference room, large bullpen area to accommodate 4 to 5 workstations, filing or storage room and/or secretarial workspace. Please call Debbi to schedule an appointment at (951) 240-6283.

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3 story red brick Victorian building. 2 conference rooms/library, elevator, copy machine, receptionist area for meet and greet, 2 blocks from the court, plenty street and lot parking, kitchen. Call Judie (714) 547-1234.

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Conference Rooms Available

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

BENCH TO BAR

Proposed New and Revised Local Rules for Riverside County Superior Court

Pursuant to California Rules of Court, Rule 10.613(g)(1), which states in part, "...the court must distribute each proposed rule for comment at least 45 days before it is adopted," the court proposes that the following Local Rules be adopted or amended, to be effective July 1, 2009:

Local Rule 1.0015 – Designation of Branch - *to be amended*

Local Rule 4.0032 – Grievance Procedure - *to be repealed*

Local Rule 4.0033 – Alternative Dispute Resolution Complaint Procedures - *new*

Local Rule 9.2500 – Executive Committee - *to be amended*

To review these rules, please visit the court website at www.riverside.courts.ca.gov/localrules/localind.htm

Please direct any comments regarding these rules to the Court Executive Office, 4050 Main Street, Riverside, CA 92501, or email them to courtwebassistance@riverside.courts.ca.gov

Comments should be received by 5:00 p.m. on Friday, April 3, 2008. Thank you.



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