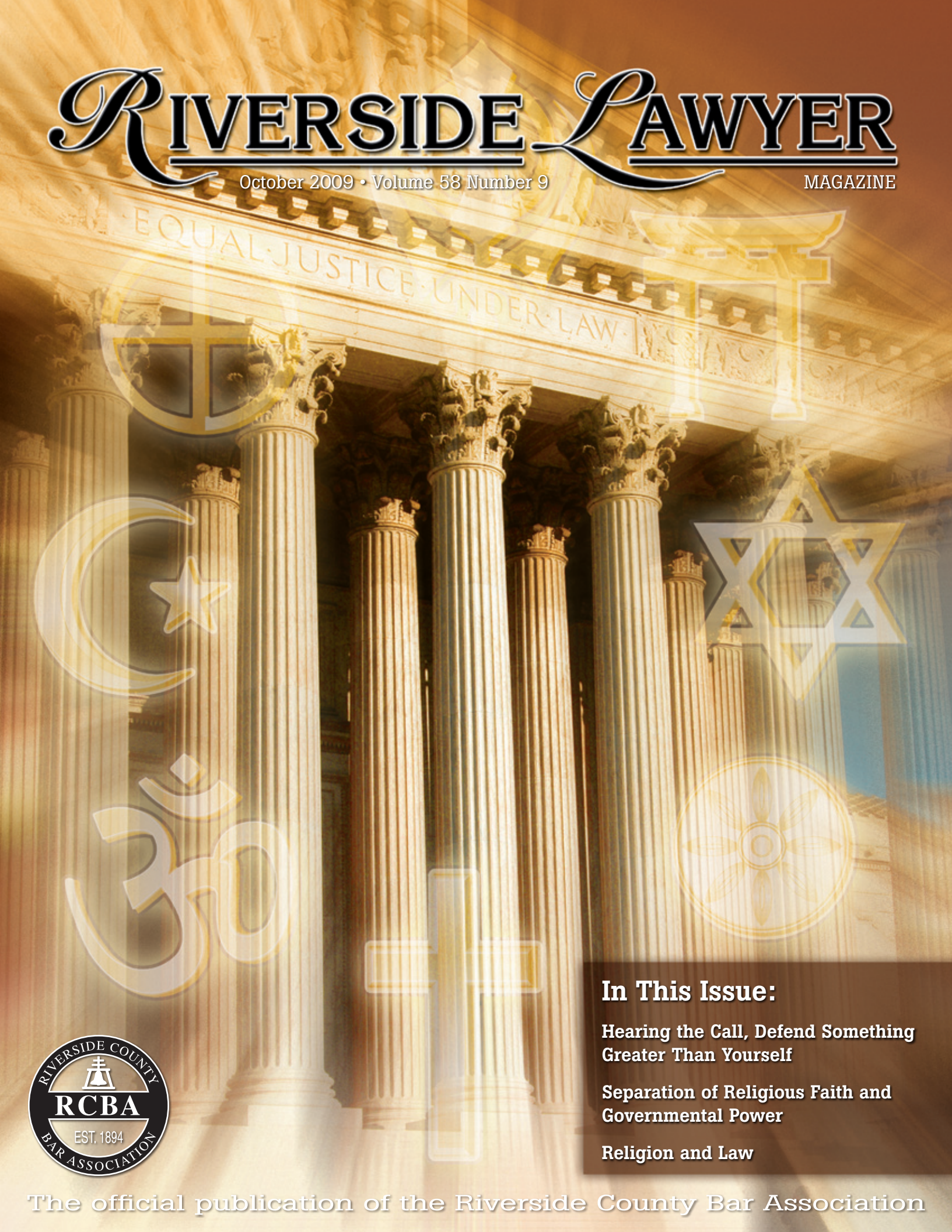
RIVERSIDE LAWYER

October 2009 • Volume 58 Number 9

MAGAZINE



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RIVERSIDE COUNTY RCBA EST. 1894 BAR ASSOCIATION

The official publication of the Riverside County Bar Association


GREAT
LAWYERS
leave their mark
on history.
This is Alan Blackman, Deputy City Attorney for
Los Angeles and Class of 2001 graduate.
Read Alan's story at
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RIVERSIDE LAWYER MAGAZINE

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Mission Statement

Established in 1894

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

RCBA Mission Statement

The mission of the Riverside County Bar Association is to:

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

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

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

Membership Benefits

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

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

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

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

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

MBNA Platinum Plus MasterCard, and optional insurance programs.

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

Riverside Lawyer is published 11 times per year by the Riverside County Bar Association (RCBA) and is distributed to RCBA members, Riverside County judges and administrative officers of the court, community leaders and others interested in the advancement of law and justice. Advertising and announcements are due by the 6th day of the month preceding publications (e.g., October 6 for the November issue). Articles are due no later than 45 days preceding publication. All articles are subject to editing. RCBA members receive a subscription automatically. Annual subscriptions are $25.00 and single copies are $3.50.

Submission of articles and photographs to Riverside Lawyer will be deemed to be authorization and license by the author to publish the material in Riverside Lawyer.

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

Calendar

OCTOBER

12 **Holiday (Columbus Day)**

13 **PSLC Board**
RCBA – Noon

13 **Joint RCBA/SBCBA Landlord-Tenant Law Section**
Nena's Restaurant, SBdno. – 6:00 p.m.
"Ethics in Unlawful Detainer Cases"
Speaker: Darrell Moore, ICLS
(MCLE: 1 hr Ethics)
RSVP/Info: Contact Barry O'Connor, 951 689-9644 or udlaw2@aol.com

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

14 **Barristers Association**
Citrus City Grille at the Riverside Plaza – 6:00 p.m.
"How in the World Can You Practice Law? – How to Overcome Bias in the Legal Profession"
Speaker: Brian Unitt, Esq.
(MCLE: 1 hr Bias)

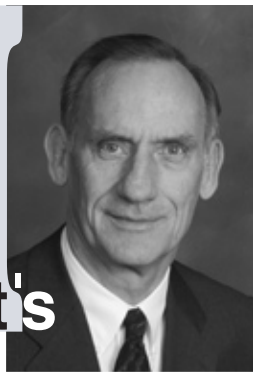
15 **Immigration Law Section**
RCBA 3rd Floor – Noon
"Immigration Arrested My Client, Now What?"
Speakers: Mr. Joe Rosas & Aggie Norregard, Esq.
(MCLE: 1 hr General)

16 **General Membership Meeting Joint with PSLC**
RCBA 3rd Floor – Noon
"What's the Supreme Court Up To Now? – A look at the current term of the Supreme Court of the United States"
Speakers: Professors Charles Doskow and Tiffany Graham, University of La Verne
(MCLE)

21 **Estate Planning, Probate & Elder Law Section**
RCBA 3rd Floor – Noon
"The Use of Probate Referees in Non-Probate Cases"
Speaker: William Scott, Probate Referee
(MCLE)

22 **Solo & Small Firm Section**
RCBA 3rd Floor – Noon
"Racial, Gender and Religious Bias of Riverside County Jurors"
Speaker: David Cannon, Jury Research Institute
(MCLE: 1 hr Bias)

President's Message



by Harry J. Histen, III

This month's magazine theme is *The Impact of Religion on the Law*. I planned to discuss stressors on the court system, so I'll address them jointly, because I believe the two are analogous in important ways. I'm concerned that we are attempting to solve the wrong problems – that we burden the courts with issues that should be addressed elsewhere.

We tend to enact laws declaring immoral behavior unlawful and leave law enforcement and the court system to enforce them and ultimately to house offenders. I address only the efficacy of such laws. Are they enforceable (and at a reasonable cost)? Thoreau observed: "There are a thousand hacking at the branches of evil, to one who is striking at the root."

It appears to me that in enacting the Trial Court Funding Act, a lot of good and hopeful people mistakenly put a band-aid on the real problem. The Act had no realistic prospect for success. Counties could not afford courts, so they moved responsibility for them to the state with no idea how the state would pay the bills. Study leads me to the January 31, 2005 *California Budget Report*. The report, like serial murder, is fascinating. It describes the virtually unworkable results of the 1849 and 1879 Constitutional Conventions and subsequent ballot propositions and legislation demonstrating that Californians have never trusted each other. We don't trust each other now. On top of that, "a full complement of judges" is not a campaign barn-burner. We are not going to get more money any time soon! The caseload has to be drastically reduced.

The relationship between law on one hand and religion, morality and ethics on the other began to become clearer in a light moment. There is a comedy show during which a comedian wonders whether the scriptural proscription against eating pork should continue now that we have "Saran Wrap and refrigeration." He speculates that ancient elders, recognizing the need to save people from themselves, came up with a plan: "Tell 'em God says you can't eat it."

Our economic crisis provides the opportunity to revisit the effectiveness of our laws. The public will likely be far more receptive than it has been historically. It will be more open to the idea that elimination of unworkable and sometimes harmful programs may yield even greater long-range budgetary benefits than recasting June 30th as July 1st. Regardless, we have a duty to give the voters the facts.

Human nature is quite predictable overall. The task of law and policy-makers is made difficult because people inevitably modify their behavior to take advantage of or avoid the impact of changes. The law of unintended consequences does not mean that we cannot anticipate behavioral adjustments.

Far too often, when a political position cannot be supported with fact, reason or experience, a proponent will resort to a "faith-based" argument. The proponent will feel justified in so doing because he or she is convinced of the righteousness of the cause. The maneuver is not new. Benjamin Franklin advised: "The way to see by faith is to shut the eye of reason."

The boundaries of propriety between religious influence and government are breached when the proponent goes further and solicits the clergy to mobilize the faithful – a call to clergy to cause members of the flock to call and urge their representative to do his or her moral duty. First, however, the politician will generally inform the clergy as to precisely what that moral duty is.

Religious training can be of substantial benefit. Nonetheless, the societal benefit of religion on the law should come indirectly from leaders who may have developed their character, at least in part, from religious training. We so wish that the nature of people was better that we tend to create new programs or enact new laws that can succeed only if that nature improves significantly. We choose vision over reality.

I offer two examples as illustrative:

First: Greed exists! Though there is ample blame to go around for our economic disaster, the continuing policy requiring that loans be made to people without the means to pay them back and then guaranteeing the payments necessarily requires the removal of greed and self-interest from society for the policy to succeed. An economist stated that blaming

an economic disaster on greed is no different than blaming a plane crash on gravity. Gravity and greed have always been, and always will be, with us. "Experience must be our only guide. Reason may mislead us," said John Dickinson.

Second: People always have and always will get stoned. I know of no evidence demonstrating that drug laws and their enforcement have made the slightest difference whatsoever in the number or percentage of individuals using drugs. Progress is claimed by reference to major arrests and confiscations. However, those successes seem to have merely caused the affected cartel inconvenience and some lineup changes. The cost of such wishful thinking is enormous in enforcement, trial and punishment alone. What of the lost income and lost tax revenue due to incarceration? Corruption? Court congestion?

Like a ship in rough seas, we must jettison that which is not essential. What can we in Riverside County do? Quit hacking at Thoreau's tree limbs? Get the issues on the table. Demand proof that is directly related to the objectives. Just say no?

We can and should practice what our respective faiths teach. Yet we should proscribe only those acts that would cause injury to another. Consider: The same book of the bible that counseled against eating certain foods also counseled against "man laying with man." Then the book followed with several paragraphs laying out the correct means of buying, selling and treating one's slaves! Who decides which parts to adopt, if any? It's a reference book. Jefferson warned: "The legitimate powers of government extend to such acts only as injurious to others." It is particularly so where the only basis for discrimination (or decision-making) is a vague religious precept or vision.

What if there were an absence of religious impact? Shortly after the Civil War, Mark Twain was employed by a Sacramento newspaper and assigned to Hawaii. He marveled at the happiness of the indigenous people. As missionaries arrived, he lamented for: "the multitudes that have gone to their graves on this beautiful island and never knew there was a hell."

God bless.

Hearing the Call, Defend Something Greater Than Yourself

by Richard D. Ackerman

When asked to write an article on religious liberties, I originally thought I would give an update on First Amendment jurisprudence and maybe throw in a couple of quips about the direction the courts have taken on religious freedom. Instead, I find myself struck by the awe of our professional calling under the Constitution. I think about the current state of our moral and financial economies as a nation. Moreover, I think of the political philosophy of Eric Voegelin and his view of what it means to seek the higher order in life and the law.

The solemn oath we have taken as officers of the court is a serious oath to defend the Constitution and all that it stands for. In my view, the Constitution came from and stands for something much greater than ourselves. Indeed, when we think only of ourselves, that's about all we get. We must always be willing to think of and be willing to defend something greater than ourselves.

The need to defend free speech, religious freedom, and the right to assemble has never been more critical. We live in a society where values have become relativistic, where morality is centered on individual "needs," and where economic viability is the test for one's societal worth. Sadly, the First Amendment often finds itself protected only by those who have a certain political view of what it means, and the regular absence of a counter-position is misread as victory or consensus. We also forget that relativism is but a subtle form of anarchy. Yet, fortunately, the objectivity of the Constitution provides a societal solace not found in many other parts of the world.

Moreover, much of the "defense" of the First Amendment has resulted in the conclusion that anything of divinity has no place in public discourse. Religion, faith, and a sense of wanting to restore order have been morphed into a negative, even reviled, position in contemporary jurisprudence. It should not be so. We all ought to self-examine the purpose of being legal professionals and must strive to zealously defend the First Amendment as though the very progress of humanity depended on our advocacy. Indeed, we can only progress when we seek a higher order beyond our present lot in life. But for the idea of something greater than and outside ourselves, we would have no need or desire for progress as humans. We often forget that the difference between human evolution and natural evolution is that human evolution is generally self-directed. You must know that we can define the parameters of a bright and recovering future. We as lawyers can help define the justice necessary for America's recovery.

In the case of the American justice system, our higher order is reflected in the language of the Constitution. In this vein, the trier of fact's pull toward the higher order can only be had through a tension existing between the conduct that gave rise to the litigation and the law which applies when a given state of events is proved. Each side has a story to tell, both sides are presented, and, from the tension between the sides, comes "justice." The concept of a living justice is a purely noetic experience. Equally, justice must always be reflective of a higher calling toward Reason.

Reason, in the classical sense, is not to be taken as referring to "reason" as mere logic or logical constructs. Instead, Reason is a human experiential event, an ever-present "constituent of humanity" and a "source of order in the psyche of man."[1] With an air of sincere hope, Eric Voegelin saw Man as being able to actually experience and articulate divinity. This experience is one that comes from the illumination and presencing of both: (a) the disorder which constitutes man's limited spatio-temporal material existence, and (b) that which causes man to be a questioning being containing the divine within him. Please do not confuse the term "divine" with purely theological connotations. Think of it as more of the essence of what makes Man different from a common animal.

Voegelin's representation of Reason is used here as a paradigm for the workings of a Constitutional jurisprudence. In this vein, all of us called to the profession of law must defend the cornerstone of our higher order, which is the First Amendment. It must also be known that when we fail to defend it, we deny human progress, we deny the opportunity for diversity of thought, and we kill the very spirit of our system of justice.

Historically, it must be acknowledged that the development of the Constitution could not have been anything but a manifestation of America's pull toward the Divine and was reflective of the experience of Reason. The Constitution was not meant to be a mere recital of ideas and concepts that *might* prove useful in the governance of human affairs in the 18th century and beyond.

1 Ellis Sandoz, ed., *The Collected Works of Eric Voegelin* (Baton Rouge, LA: Louisiana State University Press, 1990) vol. 1, p. 265.

Presently, it seems that America is in a pull toward the passions of socio-economic existence and we have voluntarily lost sight of the Divinity in us. Our present pull toward the darker elements of American humanity amounts to an outright rejection of the Divinity that inspired the Declaration of Independence and the Constitution.

In my view, the inspiration for the Constitution was an identifiable experience of reality and the "cognitively luminous force" (to quote Voegelin) that allowed resistance to the tyranny and disorder of English rule and allowed the founding of a vibrant new democracy. By reflection on the experience that gave rise to the articulations set forth in the Constitution, Americans came to have a guiding force by which they could direct the higher voice of Reason through their unique cultural experiences. This force was a force within them and a force that defined/created them.

Voegelin's notion of Reason is founded on the essential claim that "experiences create concepts." In the case of the Constitution, the American experience of the 18th century created powerful political concepts. The human experience of the time, however, was only a medium through which the Constitution could come to be a representation of the higher order, giving rise to its possibility as a living documentation of human contact with higher/divine order.

The Constitution, as an instrument of communication, is an accounting of the transcendent experience that the Founders had. It was/is an account of that which they believed to be "God-given" or divinely given. The Constitution contains reflections of the metaxy between Man and the Divine that existed long before the American Revolution and that could not have prevented the split between America and Great Britain. The adoption of the Constitution certainly did *not* serve to completely disentangle men from their passions, enslavement of other human beings, or the need for a physical revolution.

The ever-present, but oft-hidden, force that allows the human psyche to resist disorder is called "Nous." Each of us has Nous within us; we participate in the Nous of our times. Nous is reflective of a movement toward higher order. However, as suggested above, the noetic movement toward higher order is countered by a natural human pull toward our primitive passions and the matter that makes for our finite human existence in time and space. According to Voegelin, this creates a tension (i.e., metaxy) between the passions and higher order. As such, we are in a state of existential unrest and do damage to ourselves by failing to recognize the divinity in our human purpose.

Humbly, however, we are to recognize that Man is not self-created nor is Man a self-sufficient being who carries within him/her the ultimate meaning of the universe. Rather, humanity is left with questions about the "ultimate ground" of reality. Our experience is taken to be from the position of being an interrogator of reality. Our ability to articulate perceived answers to our own interrogatories becomes our greatest and most respectable endeavor. This work is most reflective of that which makes us what we are. This ability to articulate with regard to the "process of questioning" allows us to hint at, reflect on and share with others our experience of the "ultimate ground" for our existence, which, again, is in us and which created us.

It is our questioning that is, in and of itself, reflective of our pull toward that which created us. We know not why we question; yet we do know that we are compelled to question. The First Amendment provides a guaranty that we might be able to engage in higher Reason even when we fail to desire the sanctity of our freedoms. By defending that which serves as the force behind our inherent desire to question, we are thinking about the arche of our humanity. A necessary mode of tension is created between the higher order and our struggle to attain it.

When in good health, our modes of tension can take the forms of hope, faith, love and trust. This includes faith, hope and trust in our fellow man, whether he be Christian, Buddhist, Muslim, atheist, or simply questioning. Moreover, the theophanic events of hoping and believing are not dependent on race, creed, religion, ethnicity or gender. Justice is the mode of tension in the noetic-Constitutional experience.

The initial appeal to our divine nature in the development of the Constitution of the United States finds itself in the following language from the Declaration of Independence:

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."[2] The phrase "self-evident" detectably takes on a sense of having truths and knowledge of the divine arise from within ourselves and yet also directly arise from that which allows us to be or that which created the ability for us to see these truths as self-evident.

In fact, the serious disorder of the age was reflected in America's claims about the conduct of Great Britain. In point, America claimed that Great Britain was acting against the public good, engaging in invasions of rights, obstructing the administration of justice, plundering and ravaging, burning towns, destroying lives, completing "works of death, desolation and tyranny," and being "deaf to the voice of justice."

Assuming these things to be true, with a view toward our own times, it certainly appears that early America did not continue to remain in the apeironic depths of its then-extant position in the continuum of human time and space. there were no more house-burnings, trials by church and state, or obvious acts of tyranny following the

2 The Declaration of Independence, par. 2.

divine encounter of America. Nor was She limited by any belief that man cannot aspire to the divine.

This Nous of the 18th century was again manifest in the language of the Constitution itself. To wit, the following was stated on September 17, 1787:

"We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."[3]

The Constitution would then become that "supreme law of the land."[4] The articulations contained therein would now become the "persuasive force" that would, in Voegelin's terms, illuminate America's existence for its citizens and the world as a whole. The Constitution was now an articulated unit of meaning, having arisen from the metaxy of man's human experience and that which caused him to believe that there was a higher order outside of his epistemological footing at the time. Justice would now take place at a new and ongoing politico-metaxy existing at the junction of the Constitution and the conduct of our daily human affairs.

On December 15, 1791, the United States further exhibited its tension toward the ground of its existence by ratifying the Bill of Rights.[5] Among these fundamental rights, and first mentioned, was the right to free speech.[6] This particular right is an ultimate reflection of the experiential phenomena described by Voegelin, in that it secured the right of persons to articulate their experiences as questioning human beings. Again, we must remember Voegelin's claim that our movements toward the divine ground can *only* be had through articulation of our experiences. The First Amendment affirms man's questioning nature, and so he becomes temporarily vindicated from the disorder and tyranny that had begun to stifle his questioning existence. America's pursuit of that which was claimed to be "God-given" would then be further vindi-

3 United States Constitution, Preamble.
4 United States Constitution, Article VI, § 2.
5 United States Constitution, Amendments I-X.
6 United States Constitution, Amendment I.

cated by enactment of the remaining nine Amendments to the Constitution.

Assuredly it seems that the right to be secure in our persons and property, the right to trial by a group of our peers and the separation of church and state bolster our ability to seek the ultimate ground of our existence on an individual level.

Nonetheless, Voegelin, in his discussion of the Greek experience of Reason, warns us that humans can find themselves distanced from the Nous and Reason when these things are viewed as something wholly abstract and distanced from the realm of the direct human experience of consciously facing off with reality. We begin to develop a certain psychopathology when we lose our openness and desire to pursue the divine. Modern America is exhibiting near-terminal pathology relative to the Constitution as higher order given by the divine within us. This is a pathology that is manifest by a disrespect for the value of human life, political party agendas (outside a beneficial conservative/liberal politico-metaxy), and the fears of a society governed by fiscal economies.

As mentioned above, Reason comes about through an interactive experience wherein man and his arche are mutual participants at the metaxy between them. The mutuality of the experience makes for healthy existence. When we focus away from the ground, we become philosophically ill.

That which created us is taken to be as much a part of our existence as the human experience of existence itself and thus plays a central role in our healthy consciousness. Undeniably, it seems that consciousness comes into being, that complete consciousness is the prerequisite to experience and that experience of reality is the medium by which we come to acknowledge our consciousness.

We must also realize that we cannot simply reason ourselves out of the horrors of our time. It must be recognized that "reason" (with a small "r") is only a tool by which we can come to interpret the material world around us. It does nothing to bring our attention to that which allows or which created our "reason" in the first place. Focuses on "reason" are only focuses on human interpretation of the world and not on that which is in the world, per se.

Thus, it seems that a philosophical ascent to that which is the higher cause or source is much more in line with the ultimate goal of experiencing mankind as something more than mere matter clashing with other matter in the world of conscious reality. The philosophical ascent is the one that soars on the wings of the tension between that which caused us to be and that which we are. All the while, we must maintain an openness to that which compels us to be questioning beings. "Reason," as an epochal historical event, is to be taken in an ontological sense and is a process happening in the whole of reality and, when recognized, assists us in rising above the disorder of our material conduct.

Matter, in a sense, becomes a constant: Our interactive and questioning nature, when acknowledged, activated and defended, allows for variables and choices beyond what merely "is."

Our human be-ing becomes a state of interactive questioning, in the sense of "What might be, besides that which is before me?" Thus, we are moved forward in our be-ing. The First Amendment promotes this process. A passive view of reality would not allow us our individuality or perceived acknowledgment of God-given rights or the Divine or Reason. Denial of the right to question denies our fundamental humanity. Further, the process of questioning is the very eventing of the human consciousness and defines our humanity.

When we solely focus on the mere "matter" of experience or the tools that are used to interpret the matter, we are at most existing at an experiential standstill. A focus on logic, mere sense data, language, passions and scientific method calls us only into the present and past. Questioning is a bridge to the future. Our willingness to defend all questioning provides the necessary materials for this bridge. Although the material necessary to effectuate and answer is within the world, the questioning comes first and is a humanly conscious event beyond the realm of matter.

Again, the Constitution provides an articulation of the structure of government and the relationship of the People to Government. The Constitution wasn't meant to be temporary and, quite properly, I believe, we have not treated it as such. The Constitution is a reflection of what America should be. Unfortunately, it is not necessarily a reflection of who Americans are today.

In order to have a truly free society, there must be a mutual participation between us and the spirit of the Constitution. We must recognize the divine nature of others. When officers of court or everyday citizens reject the divine order reflected in them, we become ill as Constitutionally created, inspired, and driven citizens. Notwithstanding, we should not remain in offense at another's rejection of Constitutionality, but must seek the production of faith, hope, love and respect by placing ourselves back into a state of unrest at the metaxy of our daily conduct and the Constitution.

There are such things as justice, love and equity in the world by virtue of our interactive role in the whole of reality. We come to recognize that there are such things because we engage in conduct and interaction that are subsumed under words like "justice." It is in the experiences of life that we find justice and, as lawyers, the Constitution reaffirms our daily purpose. Listen to the call of your profession and defend something higher than yourselves.

Richard D. Ackerman is managing partner of the law firm Ackerman Cowles & Associates in Murrieta.

Separation of Religious Faith and Governmental Power

by Joseph Peter Myers

In many societies, a discussion of there being a distinction between "religion and the law" might evoke little more than confusion. The explanation, interpretation or analysis of those fundamental principles of conduct that all human beings within a group ought to follow would assume that the principles would be identical. The foundations of law would generally be considered to be based solely upon religious belief, practice and, perhaps, a document central to the faith, one deemed written by, or copied from, the words of a supreme deity. Although identical in origin, the principles or their application might well be subject to debate, but their bases would be the same. The Islamic concept of the Caliphate, for example, is a society whose governmental and religious structure are the same, and the law that governs life on earth and the power of the ruler have the same source. The Caliph's obligation is to protect the religious principles found in the Q'uran as well as the security of the people. And the Caliph rules because Allah has granted the authority to him.

We need not travel in space or time to the Golden Age of Islam to find that fundamental emotional and intellectual position. In our country, there is a large, and I believe growing, number of people who share the same view – that our laws, at least those which affect "moral" behavior, are entirely derivative from the Bible, a book written by God, providing complete guidance to society. While there seems great inconsistency between Old and New Testaments, various translations, and the versions of the Bible applicable to various Jewish and Christian sects, the belief in its divine origins and power over secular life is firm. In essence, religious beliefs are not only necessary and identical to legal principles, those legal principles – and any defined "morality" – cannot exist independent of religion. (Oddly, immorality can.)

Although weakened by historic events – Magna Carta, the tiff between Henry VIII and the Pope, and divers others – George III enjoyed very much the same position as an ancient Roman emperor or Islamic king. God had granted him power over the State and the Christian faith, at least the version practiced in England. The American Revolution was, therefore, not merely a movement to establish a new nation or to renew the practice of democracy; it was a direct assault on the concept of unity between religious and secular authority. Whether or not the Founders "believed in God" (and there is endless argument whether or not they did), most were firm in determining that the form of government they were founding should not establish or promote any religion. They understood the dangers, the divisions and the evils that would ensue if they chose a particular religion and granted it secular powers. The Colonies were, after all, populated by many people who had fled state-sanctioned religion and the laws it endorsed, and who had fought (and most had lost) the battles between various established churches, either to free themselves from the beliefs of others or to establish some place where they could impose their own version of faith on others. The end result was a uniquely American principle – perhaps the most important, and surely the most unique for the time – that the institutions of government and religion ought to be kept separate. While government would not have the power to destroy a religious institution or its practices, neither would it have the power to establish one.

In our world, there may be some idyllic spots in which religion and government are one and peace and joy abound; they are outnumbered, mightily, by those places in which governmentally imposed religion (or, in the bad old Stalinist/Maoist days, non-religion) has been the cause of immense human suffering. And when religious faiths collide, the result is generally the same. Consider the conflict between Catholics and Protestants in Ireland (surely incited in large part by the suppression – by governmental fiat – of the former at the hands of the latter, even though both groups were Christian), or the conflicts between Hindus and Moslems at the end of British control of India, leading to millions of deaths and the creation of separate states.

Consider the bloody division of Islam between Sunni and Shi'a. Someone should have, before a leader sent our nation to war in Iraq – yet that leader was one who paid only lip service to the separation of the practice of faith and the exercise of governmental power. Apparently, George W. Bush believed in the literal words of the Book of Revelation: that Gog and Magog, the nations under Satan's rule, were at work in the Middle East. His religious belief and that of his supporters rather clearly guided his exercise of governmental power (along with the creation of all sorts of creative legal principles, definitions and

memoranda). Many in the Arab world call us the "Great Satan"; it does not help to have leaders who have the same convictions about them and are willing to divert our resources to the battle. At the heart of the problem is whether a particular religion demands that its adherents not only distinguish between co-believers and non-believers, but that they, with governmental authority, treat them differently – and usually, worse. The treatment of the stranger may shift when that stranger is deemed an infidel and therefore an enemy. Within a society with multiple peoples, with varying fundamental belief systems, intolerance of an "enemy" within may be a powerful source of self-destruction.

Whatever the situation in other lands, it is certain that our country is not one in which the fundamental nature of law, government or religion is agreed upon by all. And the freedom for that lack of agreement is guaranteed. Yet, even as our country has become more and more diverse – in ethnicity, language, wealth and religion – it has become ever more difficult to prevent the passage of laws and the exercise of governmental power based purely on religious dogma. The political power wielded by various organized religious groups has created an atmosphere in which religious neutrality is virtually impossible. Although they are the clearest institutional beneficiaries of the First Amendment, many of those same groups seek – I would suggest demand – that governments at all levels establish religious principles as civil or criminal laws, laws that will govern the behavior of everyone, including the determination of how groups deemed unworthy may not enjoy fundamental freedoms. Prohibiting adults from engaging in consensual sexual conduct, prohibiting gays from marrying, restricting access to education or employment on the basis of race – all of these are reflections of the effect of governmental enforcement of religious belief.

Many of our politicians, either because they are deeply committed to a particular religious belief, or simply to gain the support of those who are, flock to abandon the principle of separation that has kept us relatively safe with our countrymen. Churches of many denominations and their leaders line up for the dole. President Obama's "faith-based" initiatives and programs are even more "blessed" with the largesse of government funds than those established by George W. Bush. Certainly those funds provide the public with valuable services and benefits. But they also provide churches directly with the means to establish their religious beliefs – something that would have seemed virtually impossible a generation or two ago.

I believe that it is the growth of such governmental "faith-based" programs that represents the greatest current threat to the Establishment Clause. It is not the occasional cross or menorah or nativity scene on public land. (These and other instances of suspect relationships between religion and government are usually defended as having completely secular purposes, thus trivializing the deep meaning of those symbols to those for whom they represent ultimate truth). Far worse is the willingness of our government to adopt and enforce laws, civil and criminal, that are based upon the demands of religious leaders and the concept of human behavior – and human rights – that a particular church or sect espouses, not only for those who follow it, but for everyone else.

We are at risk of losing, by deterioration, one of the great social principles upon which our nation was founded – separation of religious faith and governmental power. Just as we ought to fight the erosion of our individual rights and liberties, we ought to restrain the attempts by religious believers to convert our law to the form that they find most pleasing in their gods' eyes.

Joseph Peter Myers is a sole practitioner in Riverside.

Religion and Law

by Richard Brent Reed

Religion has always instructed the law. The Western legal tradition began in Mesopotamia, when the sun god Utu handed down 57 laws to the Sumerian King Ur-Nammu around 2100 B.C.[1] "Then did Ur-Nammu the mighty warrior, king of Ur, king of Sumer and Akkad, by the might of Nanna, lord of the city, and in accordance with the true word of Utu, establish equity in the land."

Here are the first four laws:

1. If a man commits a murder, that man must be killed.
2. If a man commits a robbery, he will be killed.
3. If a man commits a kidnapping, he is to be imprisoned and pay 15 shekels of silver.
4. If a slave marries a slave and that slave is set free, he does not leave the household.[2]

Had Abraham been in Sumeria when the Babylonians took over, he might have lived under the Code of Hammurabi. King Hammurabi received the law from the Babylonian sun god Shamash around 1760 B.C. The 282 laws in the Code of Hammurabi, as it came to be called, spelled out the rules of conduct for ancient Babylonians. Two of the first four read as follows:

- If anyone brings an accusation of any crime before the elders and does not prove what he has charged, he shall, if a capital offense is charged, be put to death.
- If a builder builds a house for someone and does not construct it properly, and the house which he built falls in and kills its owner, then that builder shall be put to death.[3]

When Abraham's grandson Jacob found his way into Egypt, he encountered a land that was ruled by Maat, the goddess of order and justice, who wore a feather in her headdress against which she would weigh the iniquity of the accused in her scales. A few centuries later, while leaving Egypt, Jacob's descendant Moses would receive the Decalogue from God on Mount Sinai, which, among other things, disfavors the giving of false testimony and codifies a six-day work week.[4]

In 450 B.C., the Romans promulgated the Twelve Tables.[5] Some of those laws were more practical than others:

- One who seeks the testimony from an absent person should wail before his doorway every third day.
- A person who admits to owing money or has been adjudged to owe money must be given 30 days to pay.
- If a father sells his son into slavery three times, the son shall be free of his father.[6]

Vestiges of Roman law can still be found in our modern legal practices:

- The scales of justice come to us from the Egyptians through the Romans.
- When convicted of a crime, a Roman citizen had the right to appeal his case and have it heard by Caesar, as did the Apostle Paul in the book of Acts.
- Before there was a Bible to swear upon, a Roman would swear to tell the truth by raising his right hand and placing his left hand on the body part that was most sacred to him and, in that immodest pose, "testify".

In the first century, Christianity in Rome was regarded as a minor sect of Judaism. Though rigorously persecuted at first, Christians began to be accepted by other Romans. Roman citizens had long understood that their courts could not be trusted and that their pagan judges were easily bought, so, in civil disputes, the Romans increasingly sought out an adjudicator who had taken a vow of honesty and thought he would go to hell for lying:[7] they hired a Christian. Because of Christianity's high ethical standard, Romans soon realized that Christians could be trusted, not only with civil suits, but with government, as well.

Christianity, with its Ten Commandments, eventually, became the state religion in the Roman Empire and remained so until the Reformation. In 1520 A.D.,[8] a radical Augustinian monk named Martin Luther suggested the doctrine of "the priesthood of the believer," declaring that the Christian is his own priest, has direct access to God, may work out his own salvation with fear and trembling, and, therefore, under

1 The Sumerians, primarily interested in regulating their economy, had a 13-day work week. The Hebrew patriarch Abraham left the city of Ur around 1900 B.C., perhaps preferring the six-day work week that would, later, become the standard.

2 In other words, there is freedom, and then there is *freedom*.

3 Punitive damages.

4 The Ten Words of the Law, as they are called, or the Ten Commandments, are differently numbered in various Jewish and Christian traditions, but there seem always to be ten.

5 This code was treated more like a series of suggestions than laws, to be interpreted by priests as a living document, as it were. The Roman republic survived nearly four hundred years under this constitutional approach before it was supplanted by a series of despotic generals and emperors.

6 After all, what father would sell his son *three* times?

7 "Thou shalt not bear false witness against thy neighbor" – the Ninth Commandment.

8 "A.D." is an abbreviation for the Latin phrase "Anno Domini," which means "in the year of our Lord."

Christ, has a sort of spiritual sovereignty. This new theological populism caught on in many European countries and found its way to the New World when the Pilgrims landed at Plymouth Rock.

If a man can determine his own spiritual destiny, why not his political destiny, as well? Does the king have the divine right to rule, or do citizens have the divine right to rule themselves? During the Enlightenment, beginning in the mid-1600s, these questions led to the political doctrine of "popular sovereignty," where citizens make their own laws and governments rule by the consent of the governed.[9] The causal connection between America's religious tradition and America's form of government is eloquently set forth in the Declaration of Independence, written on or about July 4, 1776, which states, in pertinent part:

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed . . . ."

Thus, Enlightenment thinkers like John Locke, Thomas Hobbes, and Jean-Jacques Rousseau had replaced the Divine Right of Kings doctrine with the Divine Right of Commoners theory. That theory still operates today in our political system, more or less.

The many examples of religion's impact on the law include the scales of justice, the all-seeing eye on the dollar bill, the continued use of the swearing-in Bible in some jurisdictions, and the fact that courts are closed on Sunday. And, if one is still tempted to dismiss religion's influence on the law, just remember that every complaint and petition ends in a prayer.

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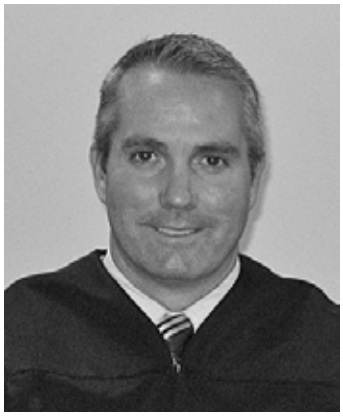
9 Nowadays, even judges are elected, and those who are appointed are appointed by officials who have been elected.

Judicial Profile: Hon. Kelly L. Hansen

by L. Alexandra Fong

How does a bodysurfer end up a judge in the Inland Empire?



Hon. Kelly L. Hansen

Judge Kelly Hansen was born and raised in Utah. He attended Brigham Young University on a leadership scholarship, graduating with a bachelor's degree in International Relations, with a minor in Spanish. During college, he took an 18-month sabbatical to be a missionary in Bolivia for his church. He attended law school at the Brigham Young University (J. Reuben Clark) School of Law.

During his second year of law school, he interned with the Utah Attorney General's office in its civil litigation division. He was asked by the criminal division to conduct research on a Miranda issue and discovered he enjoyed criminal law. Although he originally intended to live in South America and practice civil law at a large multinational corporation or law firm after finishing law school, he realized after completing the research memorandum that he had found his calling.

During his second year of law school, he also began to look for internships with various district attorney's offices. When he was unable to locate any positions in Utah, he decided to look west so he could be closer to the ocean. He took out a map of California and looked for counties close to the ocean. He sent résumés to almost every county on the California coast. He was ultimately hired as an intern at the San Diego County District Attorney's office and completed his first jury trial – a DUI case – before returning to complete law school.

After graduating from law school in 1991, he returned to San Diego as a post-bar clerk. Due to a hiring freeze, he was not able to be hired as a deputy district attorney until April 1992. He remained with the San Diego County District Attorney's office until June 2002, when he decided to move to Riverside County and work for the Riverside County District Attorney's office.

Why would anyone choose to move from a city with cool ocean breezes to Riverside, especially in the hot summer? The answer is simple. Brad Snell, now a commissioner for the Riverside Superior Court, convinced him. At that time in 2002, Commissioner Snell was working for the District Attorney's office in Riverside. [1]

From June 2002 to December 2005, Judge Hansen was a deputy district attorney. In January 2006, he was promoted to supervising deputy district attorney. In January 2007, he was promoted to chief deputy district attorney. During his tenure with the Riverside County District Attorney's office, he handled child abuse cases. It was during this time, after much soul-searching and coming to terms with the fact that he would no longer be an advocate, that he decided to apply to become a judge. He believes that becoming a judge is a natural progression for an attorney. One of the reasons he applied to become a judge was because he had "strong support from the bench" and "support from both sides of the bar."

In March 2009, while he was sitting in a courtroom and watching an attorney he supervised during closing argument, he received a telephone call from a restricted number. He answered the call in the hallway and was notified by Sharon Majors-Lewis, the judicial appointments secretary for Governor Arnold Schwarzenegger, that he had been appointed to the bench.[2]

On April 2, 2009, Judge Hansen was sworn in as a judge and immediately assigned to a criminal trial department at the Riverside Hall of Justice. Approximately six weeks later, he was assigned to the Southwest Justice Center, in the criminal division, where he handles out-of-custody defendants charged with misdemeanors and felonies. His enrobement ceremony occurred on May 29, 2009 at the Riverside Historic Courthouse.[3]

As part of his training for his role as a judicial officer, Judge Hansen has completed the New Judge Orientation Program and a criminal law overview, and he attended the B.E. Witkin Judicial College of California in August.[4]

During his free time, he enjoys body surfing, boogie boarding, and swimming. He also enjoys spending time with his children, who compete in a local swim club.

L. Alexandra Fong, a member of the Bar Publications Committee, is a deputy county counsel for the County of Riverside.

Photograph courtesy of Anna Deckert, deputy county counsel for the County of Riverside.

1 Judge Hansen met Commissioner Snell when they were studying to take the California Bar Exam.

2 One either receives a telephone call congratulating one on appointment to the bench or is left in limbo. There is no letter advising one of the unsuccessful application process.

3 Upon being appointed to the bench, the presiding judge gave him a recommendation and a website address for purchasing his robes.

4 This training is required by California Rules of Court, rule 10.462.

Opposing Counsel: Richard D. Ackerman

by Kirsten Birkedal Shea

When local attorney Richard Ackerman takes the bench as a judge pro tem in the Riverside Juvenile Court, he often looks into the eyes of the young person standing before him and sees himself, once upon a time. It was about 25 years ago when Richard was standing in the same place as the juvenile offender before him. Luckily for Richard, his experience with the juvenile court system changed his life – for the better.

Richard D. Ackerman

Richard and his younger brother were raised in Orange County by a single mother. Richard said his mother did the best she could at caring for her two sons, despite suffering from blindness and mental illness. Richard took on the role of caregiver for his mother and also helped raise his younger brother.

It was during this difficult time that Richard took comfort in reading. Even as a young boy, Richard particularly liked reading law books. In fact, Richard found a legal bookstore, Pacific Law Books, near his home. Often he would go to the store and scrounge through the dumpster to locate and read the old law books that were discarded by the company. Richard enjoyed reading about the law because it was based on rules and reason. This was something that he felt he missed in his own life, which was often unpredictable.

Around the age of 16, Richard got into a little trouble with the law. He states, "I got involved in things that I shouldn't have." But it was during this time that a positive influence entered his life – his assigned probation officer, Sandy Swallow. It was Ms. Swallow who provided him with an opportunity to turn his life around. She influenced him to pursue an education and finish high school, as well as consider college.

Richard states that "during a troubled teen's life, the best you can do for him or her is provide them an open door of opportunity, and it is ultimately up to them to walk through it. You also have to help them see that they have the ability to walk through that door." In his own case, Richard decided to walk through the open door provided to him by Ms. Swallow.

Richard got his first taste of the law while working as a janitor at a law firm in Orange County. One day at work, he noticed an attorney who had a remarkably nice pen. Richard briefly considered stealing the pen. But then something happened inside of him that made him realize that he had another option: he could work for the pen. Richard realized at this point that his life perspective had changed, and he thereafter dedicated himself to gaining more experience in the legal field and working towards attending law school some day.

In 1994, Richard graduated from law school at Western State University. He went on to complete several years of post-graduate studies in philosophy at California State University at Long Beach, as well as to study theology at Azusa Pacific University.

After graduating, he worked at Cifarelli & Cifarelli in Santa Ana, where he practiced medical malpractice defense and consumer law. He also received exposure to complex litigation in representing a managed care group. Eventually, he decided to open his own firm in Orange County.

It was around this time that Richard met his wife, Stefanie. Soon afterwards, Richard and his wife moved to Corona to start their family. Now they have four children – Hanna, age 10, Abigail, age 8, Thomas, age 6 and Timothy, age 4. Richard also moved his law practice in 1999 to the Inland Empire, because he enjoyed the collegial atmosphere of the legal community.

From 2001 to 2003, Richard took some time away from his practice to work at a non-profit legal organization called the U.S. Justice Foundation. As a lead litigator for the organization, Richard had the opportunity to work on many high-profile cases involving complex constitutional issues. Richard fondly recalls that he was often a guest on television news shows, including "The O'Reilly Factor."

Currently, Richard is managing partner of Ackerman Cowles & Associates, based in Murrieta. His practice is focused mainly on appellate law and business litigation. One of his current high-profile cases involves representing 85 plaintiff investors suing defendants Stonewood Pacific Wealth and its owner/manager, James Duncan, for fraud and intentional misrepresentation regarding the management of their investment funds.

A big part of Richard's life is giving back to the community. For example, Richard serves as a judge pro tem in the Riverside courts, including the Juvenile Court. He also serves as a volunteer – and was just recently invited to serve as a board member – with the Public Service Law Corporation. For fun, he acts as a boxing judge and referee with USA Boxing. This year, Richard is the head of the CLE Committee of the Riverside County Bar Association and is looking forward to the opportunity to provide local lawyers with innovative legal education programs, including classes necessary to satisfy California State Bar legal specialization requirements.

Richard also serves as President of the Mount San Jacinto College Foundation, which provides over $3 million in scholarships and educational endowments. He enjoys his role on this foundation because it provides educational scholarships to underprivileged children. For Richard, this is his way of giving back to society and providing a child with an open door to opportunities, like the one he was given many years ago.

Richard Ackerman can be reached at Ackerman Cowles & Associates, 29975 Technology Dr., Suite 101, Murrieta, CA 92563, at (951) 308-6454, or at www.inlandvalleyattorneys.com.

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23rd Annual FBI Special Agents Memorial Service

by United States District Judge Stephen G. Larson

The following speech was delivered by United States District Judge Stephen G. Larson at the 23rd Annual Federal Bureau of Investigation Special Agents Memorial Service held in Los Angeles on May 20, 2009.

Director Hernandez, distinguished guests, members and friends of the Federal Bureau of Investigation, thank you for inviting me to share in this, the 23rd Annual FBI Special Agents Memorial Service.

One of the greatest privileges of my professional life has been the honor, these past 18 years, of working with the Federal Bureau of Investigation, for nine years as a federal prosecutor and for nine years now as a federal judge. During that time, I have learned much about the men and women who serve our country in the Bureau – I have learned about their professionalism, their dedication, their courage in the field and in the courtroom. I have learned firsthand that "Fidelity, Bravery, and Integrity" are not mere words, but a commitment, a way of life. Some of the men and women who have had the greatest influence on me, not only professionally but personally, have been special agents of the FBI.

When I was freshly assigned to the Organized Crime Strike Force as a young Assistant U.S. Attorney, one of the first FBI agents that I worked with was Chuck Jones. He was assigned for years in Los Angeles before being transferred to Palm Springs and then to Flagstaff, where he is now retired. We prosecuted several organized crime cases together, and when I think back on those formative years of my career, I can't think of anyone who had a greater impact on the prosecutor I was and the judge that I am. Chuck taught me, through his example, to be patient, to be thorough, to not just double-check but triple-check; he taught me the value of personal humility and professional deliberation both in law enforcement and in life. Even more importantly, he taught me the importance of respect and integrity. He was an agent, like so many of his colleagues in the Bureau, like so many gathered here today, who engenders admiration and exudes trustworthiness. . .

Judge Larson delivering keynote address during FBI memorial

. . . When I think of the many other agents with whom I have had the privilege to work, from my first bank robbery case to the wiretap that I signed in my chambers Monday morning, what stands out in my mind is the consistency, the consistency of professionalism, the consistency of dedication, the consistency of competency, and the consistency of courage. As with just about anything in life, there are exceptions, but the exceptions, as painful as they may be, underscore the rule.

For me such a phenomenon requires some sort of explanation – why is it so? I think part of the answer is that being an FBI agent -- and I think this is also true for many of the law enforcement professionals gathered here today – being an FBI agent is not simply a job, a means of support, or even a profession. Being a special agent is a calling, it is a vocation. . .

Today we remember those men and women who, having been called to this very special vocation and having answered that call, with all the dangers and challenges that such an answer involves, have been further called to make the ultimate sacrifice. Sadly, this year we find ourselves adding to the roll call of those who have died. We remember Special Agent Sang T. Jun of the FBI office in El Paso, Texas, the husband of Special Agent Kay Lee Kennedy, who died in October of last year as a result of an illness developed while participating in SWAT tryouts the week before he was to receive the Director's Award and the Attorney General's Award for excellence in furthering the interest of United States National Security; we remember Special Agent Samuel Hicks of the FBI office in Pittsburgh, Pennsylvania, who was fatally wounded in November of last year while executing a federal search warrant during a drug raid outside of Pittsburgh, leaving behind a wife and two-year-old son; and we remember Special Agent Paul M. Sorce of the FBI office in Detroit, Michigan, who died in March of this year in a serious automobile accident while carrying out his duties, leaving behind four young children.

So here we gather, as we have for each of the last 23 years; we gather to remember, to honor, to reflect on those members of the Bureau who have died in the line of duty. We read the names, we listen to music, we lay a wreath, we remember the dead. But we do something more. We gather here not only in remembrance, but in rededication. This service is not only an expression of solidarity, it is a profession of faith.

Words, fleeting words, often prove inadequate to express our most profound truths, the realities that inform and give meaning and purpose to our lives. When describing the how and what of the physical world, the language of science and technology provides us with a seemingly endless array of terms and paradigms to express and explore and demonstrate and test this amazing world and the seemingly endless universe in which we find ourselves. That same science and technology is a critical component in the professional work of

law enforcement. From crime laboratories to crime scenes, from testing to testimony, the language and method of science – with its precision, its objectivity, its demonstrability – is both an indispensible implement and a critical safeguard in the service of justice.

But it only takes us so far. When describing the why and "for what purpose" of our lives and the challenges of this world, including the deaths of these agents, mere words are inadequate. From time immemorial – in every civilization, in every culture, in every gathering of peoples – we humans have found that these existential questions can only be addressed through the insights of our imagination, our irrepressible sense of the spiritual, and our opening up to the possibilities of the divine; words give way to the sublime language of music, and poetry, and ritual. Our senses this morning are enlivened through the sound of music and the firing of rifles, the scent of flowers and the gentle touch of a warm embrace; all this in a dedicated effort both to experience and to express, as best we humans can, those transcendent truths that without question animate our most profound acts of charity and sacrifice and love. To do so, we must set aside time, as we do today, to reflect on the truths and the values that we hold most dear, to contemplate the Source of those truths and values, the very same truths and values for which these brave men and women that we remember today have given all that they have to give.

So what is this faith that we profess? We affirm, we reaffirm, our dedication to the ideals of our nation, one conceived in liberty and dedicated to the proposition that all are created equal, that each of us is endowed by our Creator with certain unalienable rights, that among these are the right to life, liberty and the pursuit of happiness; we affirm our dedication to the ideals of the noble vocation of law enforcement that serves as a safeguard against the twin terrors that threaten any political, civilized society, that is, that protects against all forms of tyranny, on the one hand, and anarchy, on the other; we affirm our dedication to the ideals of the Federal Bureau of Investigation, of a commitment to fidelity, to bravery, to integrity; we affirm our belief, expressed in the sacrifice freely assumed by those we remember today, that there is something more important in life than merely existing – that there is a duty to serve, that there is a duty to give of oneself, that we are called to love one another, even when that love requires sacrifice. All of our great stories reflect this theme – from John Steinbeck's The Grapes of Wrath to George Lucas' Star Wars. What some consider the Greatest Story Ever Told puts it this way: "No one has greater love than this, to lay down one's life for one's friends." Those who have died in the line of duty demonstrate to us – those they leave behind – that such an understanding is not mere words; their death gives life to this belief, this belief that there is something more important, something more meaningful, and I dare say, something more permanent than our mere physical existence. Certainty faith cannot offer; empirical verification of physical facts requires science. That is as it must be, and it is good that it is. But faith offers hope; indeed, as one prolific writer of letters once remarked, it is the substance of things hoped for. It is a hope that, in the end, good conquers evil, that justice prevails over injustice, and in some mysterious way that we cannot understand but only hope to believe, that life conquers death.

Such a faith in goodness, and in justice, and in the triumph of life itself is hard, it is challenging. It is not easy for anyone, least of all those in the profession of law enforcement. . . . The prevalence of evil in our world, of injustice, of suffering, and of death is well known

Assistant Director in Charge of the FBI Salvador Hernandez and Judge Larson laying a wreath at the FBI Memorial

to the men and women in the service of law enforcement and, relatedly, by your brothers and sisters in the military, some of whom join us in this memorial service this morning. Far more likely than discovering solace in our faith is experiencing despair in our cynicism. I do understand. It is a burden that all of us involved in the struggle for justice share. That is why these moments of remembrance are so important – you must consciously set aside time to remember, to cause yourself to reflect on what you believe, why you do what you do, to renew your vocation and your commitment – all of us must let the strains of the music and the stillness of the silence reinspire our determination, in the face of seemingly overwhelming odds, to fight the good fight, to finish the race, to keep the faith. . . .

I have long thought that those involved in law enforcement understand irony better than most. You cannot help but recognize that things are not always as they seem, and sometimes just the opposite; that there are thin lines that can be easily blurred and conveniently crossed; that truth may be found more readily in paradox than appearances. Mindful of this, I ask your indulgence to let me conclude with a prayer that captures irony and paradox as well as any, a prayer often mistakenly attributed to Saint Francis of Assisi, but in fact the work of an anonymous early 20th century Frenchman, ironically written on the eve of the First World War:

Lord, make me an instrument of Your peace;
where there is hatred, let me sow love;
where there is injury, pardon;
where there is doubt, faith;
where there is despair, hope;
where there is darkness, light;
and where there is sadness, joy.
O Divine Master,
grant that I may not so much seek to be consoled as to console;
to be understood, as to understand;
to be loved, as to love;
for it is in giving that we receive,
it is in pardoning that we are pardoned,
and it is in dying that we are born to Eternal Life.

The History of Halloween

by Bruce E. Todd

When I was a youth, I was fascinated by monster movies. I am talking the B- (perhaps C-) quality black and white pot boilers such as *The Crawling Eye, Attack of the Crab Monsters, Beast of Hollow Mountain* and *Monster from Green Hell*. Later, I graduated to more sophisticated thrillers such as Bela Lugosi's *Dracula*, Lon Chaney's *The Wolf Man* and Boris Karloff's *Frankenstein*.

I loved to stay up late at night (after 10 p.m.) watching horror movie hosts such as Vampira, Moona Lisa, Madam Cadaver and Jeepers Creepers. Later, I moved on to Seymour (host of "Fright Night"). The lovely Elvira eventually took commercialization of the horror movie host to a completely new level.

If there were spooks, demons, goblins, ghosts, creatures, invisible men and/or things from outer space, I was there to watch them. This fascination with things that go bump in the night also caused me to adopt Halloween as my favorite holiday – which it still is today. I mean, what could be better than dressing up in some ghoul costume so that one could walk miles through the local neighborhood in search of free – yes, free – candy? In those days, my neighborhood buddies (also adorned in scary costumes) and I would carry pillow cases as our collection containers as we traveled from house to house. Sometimes, we would return home to drop off a fully loaded sack so that we could then roam about in search of more treats. What were our parents thinking in those days?

Sure, there were unsubstantiated rumors about poisoned candy and razor blades buried in candied apples, but this did not stop us in our quest to collect enough treats to last for an entire year (no matter that much of it was usually stale by late November). We scoured the neighborhood amongst the other young ghouls and goblins from other households who were on the same mission.

These days, my seven-year-old daughter has developed an undying interest in Halloween. I guess that I have created my own Halloween monster. She loves to watch black and white creature features, and she looks forward all year to the night when she can roam the local neighborhood in search of candy and treats (of course, unlike my friends and I, who were left to our own devices, my daughter, in this day and age, is accompanied by either my wife or me).

So just what is it about Halloween that causes a morbid interest in ghouls, ghosts, goblins, graveyards and the other world? And where did this holiday come from in the first place?

History tells us that the origins of Halloween date back over 2,000 years, to when the Celts, who in lived Ireland, Great Britain and northern France, celebrated the festival of Samhain (pronounced sow-in) on November 1. This day marked the end of summer and the harvest and the beginning of the dark, cold winter. It was a time that was often associated with human death. Celts believed that, on the night before the new year, the boundary between the worlds of the living and the dead became blurred. They began celebrating Samhain on the night of October 31, when it was believed that the ghosts of the dead returned to earth.

The Celts thought that the otherworldly spirits assisted the Druids (Celtic priests) to predict the future. These prophecies were a source of comfort and direction during the long dark winter. In celebration of Samhain, the Druids built huge bonfires where the people gathered to burn crops and animals as sacrifice to the Celtic deities. It is believed that these fires would also attract insects, which would then attract bats to the area. Celts often wore costumes, usually consisting of animal heads and skins, as part of the celebration.

The custom of trick or treating is said to have several origins. During Samhain, the Druids believed, the dead would play tricks upon mankind and cause fear, panic, sickness, death and destruction. To appease the dead, the people would give food to the Druids as they visited their homes.

There was also a European custom called souling. On November 2 (All Souls' Day), early Christians would walk from village to village begging for "soul cakes" made out of square pieces of bread with currants. The more soul cakes the beggars would receive, the more prayers they would promise to say on behalf of the dead relatives of the donors. It was believed during this time that the dead remained in limbo for a time after death and that prayers could expedite a soul's passage into heaven.

The term Halloween is an abridgment of All Hallows' Eve, which precedes All Hallows' Day (All Saints' Day).

Some of the imagery of Halloween also has historical origins. Skeletons, for example, were placed on window sills by the ancient Celts to depict the departed.

The witch is, of course, an important symbol of Halloween. The name comes from the Saxon "wicca," meaning wise one. Some witches rode on horseback, but poor witches often went on foot and carried a broom or a pole to aid in vaulting over streams. Thus, we now have the modern association between the witch and her broom.

The name Jack-o'-lantern is allegedly traced back to the Irish legend of Stringy Jack, who was a greedy, gambling, hard-drinking old farmer. He tricked the devil into climbing a tree and trapped him by carving a cross in the trunk. In revenge, the devil placed a curse on Jack, condemning him to wander the earth forever with the only light he had: a candle inside of a hollowed turnip.

The Irish Potato Famine caused many people to immigrate to North America. These immigrants brought their tradition of Jack-o'-lanterns, but turnips were not so readily available, so they started using pumpkins (a fruit – not a vegetable!) for their carvings. The pumpkin is probably now considered the most popular symbol of Halloween.

When the Roman Empire absorbed the Celts, they adopted many rituals of Roman origin. Among them was the worship of Pomona, who is the goddess of the harvest. Apples are the sacred fruit of Pomona, and many games involving the apple (such as bobbing for apples) entered into the Samhain celebrations.

Today, Halloween is, somewhat regrettably, an extremely commercialized holiday. Last year, for example, consumers spent over five billion dollars on Halloween costumes, accessories and decorations. Pillow cases have been replaced by extravagant cauldrons, skulls and Jack-o'-lanterns as the means for collecting Halloween loot.

Still, this has not dimmed my spirit. I will be there to give you a happy haunt if you stop by my home on All Hallows' Eve. In the meantime, I have to run, as I still need to conjure up a costume for this year. Happy Haunts to all of you!

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

Korematsu v. United States – Oral Argument Reenactment

by Hirbod Rashidi

On August 13, 2009, to mark the 65th anniversary of *Korematsu v. United States*, 323 U.S. 214 (1944), the Fourth Appellate District, Division Two, of the Court of Appeal (in Riverside) hosted a reenactment of the oral argument in that infamous case, followed by the reading of a summary of the decision by the justices of the same court. The event marked the inaugural of the "Justice John C. Gabbert Historic Oral Argument Series."

Representing Fred Korematsu was Dean Erwin Chemerinsky of the UC Irvine School of Law. And Dean John C. Eastman of Chapman University School of Law represented the United States.

As the two learned counsel were entering the courtroom, according to Presiding Justice Manuel Ramirez, Chemerinsky told Eastman "I think you are going to win this one." Eastman agreed. However, without missing a beat, Chemerinsky observed "[then again] maybe they'll get it right this time." Unfortunately, the script had already been written.

Korematsu, of course, deals with one of the most shameful episodes in our history, when thousands of Japanese-Americans were rounded up and sent to internment camps out of fear that their loyalty to the Emperor of Japan might lead to acts of sabotage on the west coast of the United States. Fred Korematsu refused to report to his assigned relocation camp and was subsequently convicted for violating that order. Represented by the ACLU, he fought the conviction all the way up to the United States Supreme Court. In a 6-3 decision, the justices affirmed his conviction.

Appropriately, before starting his "opening argument," Chemerinsky started by paying homage to Judge Robert Takasugi, a 35-year veteran of the federal bench, who passed away recently after a long battle with cancer. Coincidently, his memorial service was being held on the same afternoon as this event, in Los Angeles. At the age of 11, Takasugi, along with the rest of his family, had been relocated to Tule Lake. According to news reports, his father actually died there. I was hoping Takasugi would at least be mentioned, and Chemerinsky (a fixture of the Los Angeles legal community himself) did a great job in the small amount of time he was given.

Both Chemerinsky and Eastman presented their cases with a degree of levity to a very live bench (the justices were joined by retired Justice John C. Gabbert, who had just turned 100), which made for an interesting afternoon.

(left to right) George Maeda, Karen Korematsu-Haigh, Dean John C. Eastman, Dean Erwin Chemerinsky, Judge Ben T. Kayashima

(back row, left to right) Justice Bart Gaut, Justice Tom Hollenhorst, Presiding Justice Manuel Ramirez, Justice John Gabbert (Ret.), Justice Doug Miller; (front row) Justice Jeffrey King, Justice Betty Richli, Justice Art McKinster

The reading of the decision (including Justice Robert Jackson's famous dissent) was followed by some personal histories from Karen Korematsu-Haigh – the daughter of Fred Korematsu – and Judge Ben T. Kayashima of the San Bernardino Superior Court, who had been interned near Parker, Arizona, in 1942. It was interesting to learn that Karen Korematsu did not know of her father's legacy until a civics course in high school.

Chemerinsky and Eastman took to the podium again towards the end of the program in a section captioned "*Korematsu* to *Hamdi* – Historical Perspective." Chemerinsky, of course, had to take the opportunity to once again use his soapbox to rail against all of the policies of George Bush, including Guantanamo Bay and the treatment of its detainees; he is representing one such detainee. I, more than most, especially being an Iranian-American living in the post-9/11 United States, fear that we may not have

learned from our past mistakes (*Korematsu* is technically still good law!). Nevertheless, I cannot disagree with Eastman's concluding remarks that our "constitution is not a suicide pact" and that although our laws don't change during wartime, our definition of "reasonableness" does (hence affecting civil liberties).

In his final remarks, Justice Ramirez likewise paid his respects to Judge Takasugi – the "first Japanese-American named to the federal bench" – and thanked him for his 35 years of judicial service to the United States. In short, this was a great event, and I cannot wait to see what the "Second Justice John G. Gabbert Historic Oral Argument Series" has in store for us.

Hirbod Rashidi is an attorney. He also teaches law, through extension, at UC Riverside and UCLA. Views expressed are his alone. He can be reached at hirbodrashidi@hotmail.com.

Photographs by Michael J. Elderman. If you would like to see more pictures from this event, or to purchase any, please contact Mr. Elderman at (951) 682-0834 or (951) 318-3467; email mjelderman@earthlink.net.

What Are You Looking for During Jury Selection?

by David Cannon, Ph.D.

My last article in the *Riverside Lawyer*, May 2009, focused on how to approach jurors so as to get them to open up and disclose their experiences, attitudes, and opinions during the voir dire process. Well, they are opening up, so now what?

Jurors take their beliefs and life experiences with them as they enter the jury box, and these help filter (1) how they view and process evidence, (2) the meaningfulness of evidence, and (3) what stands out to them as important and honest. Research shows that attitudes and experiences have the most impact on how a case is perceived by a juror. While personality characteristics and demographics also have an impact, attitudes and experiences that are closely related to the case are the most predictive of how a juror will view that case. Focus groups, web surveys, or mock trials can readily help an attorney identify the attitudes and experiences that are the most predictive, but what if you don't have the time or money for those tools? How can you identify which experiences and attitudes are important to your case? I have included some recommendations based on the example narrative below. Try reading through the example, and then try the exercise on one of your cases to learn how to spot attitudes and experiences that might be important.

Example Narrative:

The plaintiff, a 65-year old man, filed a lawsuit against a former friend and employer, who he said had verbally promised him lifetime employment, provided that he continued to be a successful salesperson for the company. He accepted the position and moved from Chicago to California. He worked for years as a successful salesperson for the company. New, younger management came along, and the plaintiff did not get along well with the new management. The company fired him, even though he continued to be the most successful salesperson, so the plaintiff is suing for age discrimination and breach of contract. The defendant argues that it let the plaintiff go because the company was no longer financially viable as it was being operated, and it could no longer afford to keep its highest paid salesperson on staff under the salary and conditions he demanded. The defendant argues that there was absolutely no verbal or written guarantee of lifetime employment.

What attitudes and experiences are important?

Employment cases are an interesting lot because (1) almost all of the jurors have some kind of work experience, and (2) the cases sometimes unfold like a soap opera. Jurors relate to these kinds of cases and find them to be very interesting. (Because these cases can be a he-said/she-said situation, juror attitudes and experiences can be all the more important.) However, regardless of the case type, I suggest using the following techniques for any kind of case you have. Start by writing out a summary of the case; jot down the key arguments and themes for each side. After reviewing the summary and arguments, ask yourself about the kinds of experiences and attitudes you think would be helpful to know about a potential juror. Write these down, and they will form an outline for voir dire.

The following are a just a few general areas that would be relevant for this case: employment history and satisfaction; attitudes about employers; business attitudes; contract experiences and attitudes; experiences with broken promises; attitudes about fulfilling a promise; and experiences and attitudes about discrimination, among others. As you begin to think about questions for these topic areas, you may think of additional areas to add to your outline. You will also likely begin thinking about the kinds of jurors you want and the kinds you don't want.

Once you have outlined some of the general areas of interest, start getting more specific. For example, we listed business attitudes as one of our general areas of interest, so we could develop some questions based on that topic. We could start more broadly. "Raise your hand if you think businesses are as ethical today as they were during your parent's generation." We could also be more specific, addressing business relationships with friends. "Has anyone here ever done business with a personal friend? What was that experience like? Who believes people should never conduct business with a friend? Why or why not?"

Think about what you really want to know about someone before he or she serves on your jury. If you represent the defendant, you would certainly want to screen for people who have had negative experiences with, or who have negative attitudes about, employers. You don't want someone who feels that a lifetime employment guarantee sounds like a legitimate promise that would be made by an employer to a prospective employee. You would want to know who had felt discriminated against (for age as well as for other reasons.)

What else do you need to look for in jurors?

Understanding juror attitudes and experiences is only one part of the picture. You also need to understand the impact that a person would have on the jury. The most important characteristic to understand is leadership. We don't want to waste a strike on someone with undesirable attitudes if that person is not going to have an impact on deliberations. Research shows that about 25% of a jury consists of very active individuals who have a significant impact on driving the verdict. Another 50% participate but are less influential. The remaining 25% either do not participate at all or participate at a minimum. Those who are very low in leadership may have strong opinions, but they don't usually share them. They tend

to go with the momentum of the other, more active participants on the jury. So look for leadership qualities. Look for involvement in community activities, education, outspokenness, and managerial/supervisory experiences to better understand how much leadership that person is likely to exert once on the jury. In addition, consider other personality characteristics of a juror that could have an impact. For example, is this a divisive person? Unusual? Social?

Consider using the techniques listed above on your next case. This will help give you a framework to rely upon during voir dire so you can use the time you have to really open the venire up about the beliefs and experiences that matter to your case.

David Cannon, Ph.D., is a trial consultant for JRI in the greater Los Angeles area. Please feel free to contact him with any questions at dcannon@jri-inc.com or at (310) 927-5879.

BENCH TO BAR

Proposed Revised Local Rules for Superior Court of California, County of Riverside — **To review the revised rules listed below, please visit the court website at http://riverside.courts.ca.gov/localrules/localind.htm.**

I. Pursuant to California Rule of Court 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 a number of rules dealing with alternative dispute resolution contained within Title 4 of the court's local rules be created, amended, or repealed, to be effective January 1, 2010.

Comments should be submitted by 5:00 p.m. on Monday, November 2, 2009.

II. Pursuant to California Rule of Court 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 amended, to be effective January 1, 2010:

Local Rule 1.0015 – Designation of Branch

Local Rule 6.0101 – Pleadings and Papers

Local Rule 7.0250 – Appearance in Misdemeanor Proceedings by Counsel / Own Recognizance Release

Local Rule 7.0255 – Request to Add a Case Onto Calendar

Local Rule 12.0081 – Filing Caregiver Information and De Facto Parent Statement Forms

Comments should be submitted by 5:00 p.m. on Friday, October 16, 2009.

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

Classified Ads

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 – Colton

Office spaces and executive style suites available in the Cooley Ranch area of Colton. 100 sf. to 2,174 sf. Centrally located among Riverside, San Bernardino and Rancho Cucamonga courts. Rates as low as $270.00 per month. Class A management. Please call Ray at (909) 824-5700.

Independent Contractor Paralegal

22 years experience in Plaintiff and Defense. Services include preparation of discovery and court documents, review and summarization of records and other projects as may be discussed. All work completed from my home office. Stephanie Michalik, (951) 735-3165 or smichalik@ca.rr.com

CPA Forensic Accountant, Howard E. Friedman

Business Valuations, Cash Flow, Separate vs. Community Property Tracing. Court-Appointed Expert, Receiver, Special Master. Call 909-889-8819, Fax 909-889-2409; 454 N. Arrowhead Avenue, San Bernardino, CA 92401.

Office Furniture/Law Books

Filing cabinets, great shape, $50 small, $70 large; 2 secretary desks, 1 right-return, 1 left-return, good shape, $75 each; Cal Reporters approx. 230 volumes, #117-286 and Cal Reporter 2nd #1-60, great wall decorations, $200. Contact James Ybarrondo at (951) 925-6666.

Seeking Deputy City Attorney – Utilities

The City of Anaheim seeks an Attorney with responsible experience in the utilities industry, particularly in negotiating, interpreting & drafting complex agreements; laws & regulations involving bulk power purchases, transmission and distribution rights, & water issues. Municipal government experience is highly desirable, as is knowledge of public contracting, & environmental regulations. Candidates must be licensed to practice law in the State of California. For more information please visit the Human Resource Department for Job Opportunities at http://www.anaheim.net.

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 Charlene or Lisa at the RCBA office, (951) 682-1015 or rcba@riversidecountybar.com.

Membership

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective October 30, 2009.

Sofia H. Ahmed (S) – Law Student, Upland

Pietro E. Canestrelli – Reid & Hellyer, Temecula

Danielle Dube (S) – Law Student, Glendora

Emma Enriquez – Gresham, Savage, et al, Riverside

Benjamin Falcioni (S) – Pomona

Marc E. Grossman – Law Office of Marc E. Grossman, Upland

Michael J. Kowalski – Reid & Hellyer, Riverside

Nicholas N. Kraushaar – Sole Practitioner, La Quinta

Shannon Shafron Perez (S) – Law Student, Riverside

Tammy R. Pettinato (A) – University of La Verne College of Law, Ontario

Juan A. Phillips (S) – Lawyer Assistance Group, Fullerton

Lauren A. Ponsford – Heggeness Sweet Simington & Patrico APC, Riverside

Viktros Andris (Andre) Rekte – Girardi & Keese, San Bernardino

Scott H. Talkov (S) – Reid & Hellyer, Riverside

Curtis Wright (S) – Law Student, Fontana

Renewals:

Sheldon E. Lee – Wallin & Klarich, Riverside

Dana M. Smith – Office of the County Counsel, Riverside

(A) - Designates Affiliate Member
(S) - Designates Student Member

Riverside County LAWYER

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