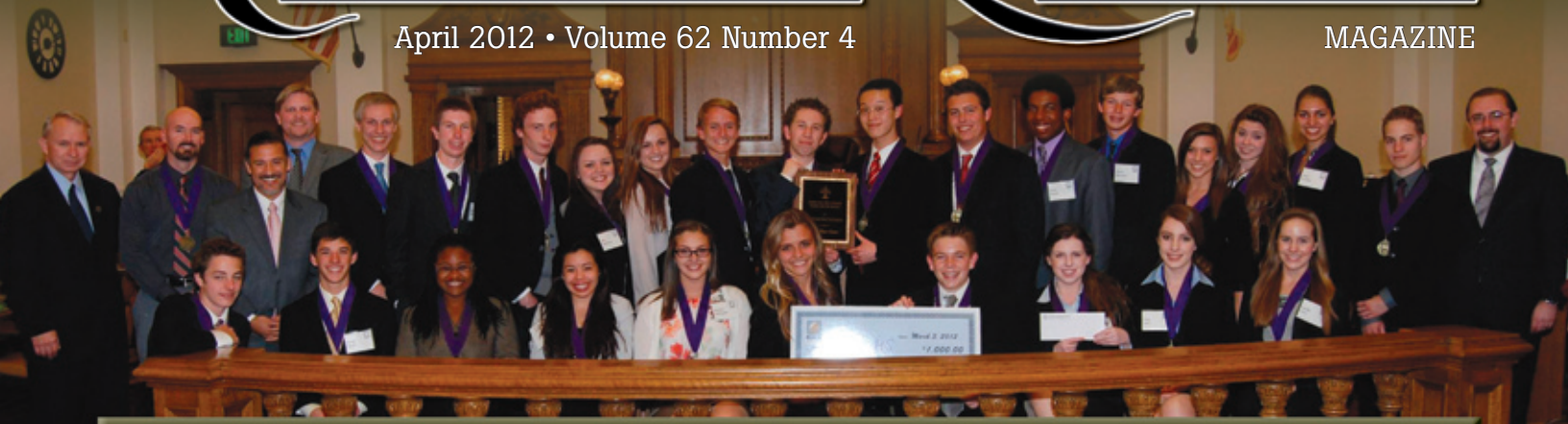
RIVERSIDE LAWYER

April 2012 • Volume 62 Number 4 MAGAZINE



1st Place • Riverside Poly High School

2nd Place • Murrieta Valley High School (Team A)

Xavier College Preparatory • 3rd Place • King High School

2012 Mock Trial Winners

The official publication of the Riverside County Bar Association

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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 our members, our communities and our legal system.

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

APRIL

4 **Bar Publications Committee Meeting**
RCBA Boardroom – Noon

10 **PSLC Board of Directors Meeting**
RCBA Boardroom – Noon

RCBA Board of Directors Meeting
RCBA – 5:00 p.m.

Landlord/Tenant Section
Cask 'n Cleaver, Riverside, 6:00 p.m.
"Landlord Tenant Law Update"
Speaker: Paul Goodwin
MCLE

18 **Estate Planning, Probate & Elder Law Section**
RCBA John Gabbert Gallery – Noon – 1:15 p.m.

Federal Bar Association
George E. Brown, Jr., Federal Court House, 3d Floor – Noon
"Federal Civil Practice Seminar"
Speakers: Judge Virginia A. Phillips, Judge Philip S. Gutierrez, and Chief Magistrate Judge Suzanne H. Segal

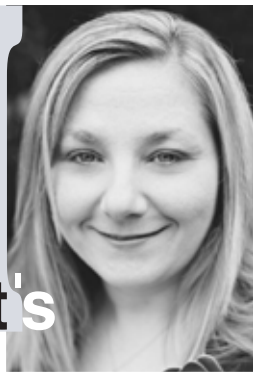
Joint Meeting of the Barristers & Appellate Law Section
Appellate Law with Justice Codrington and Justice Hollenhorst
Mario's Place (Back Patio) – 5:30 – 7:30 p.m.
MCLE

20 **General Membership Meeting**
RCBA Gabbert Gallery – Noon
"Science & Settlement"
Speaker: Justice Thomas Hollenhorst
There will also be an ADR Recognition Ceremony
For all court-connected Mediators & Arbitrators
MCLE

24 **Business Law Section**
RCBA Gabbert Gallery – Noon
"Fundamentals of Business Valuation"
Speaker: Kelly Allen, CPA, CVA, CFF, MST
Lunch will be provided
Please RSVP by April 20
MCLE

27 **RCBA 31st Annual Good Citizenship Awards**
Riverside Historic Courthouse – Dept. 1 – 1:00 p.m.

President's Message



by Robyn A. Lewis

In April 2004, I contributed an article to the *Riverside Lawyer*, in which I related the following story:

On a Saturday morning in 1992, observers in a courtroom filled to capacity watched anxiously as two local high school teams competed in a mock trial competition. Arlington High School's defense team was up against Polytechnic High School's prosecution team. The crowd was on the edge of its seats as the two teams competed for victory. As the competition came to end, one stellar member of the defense team smiled to himself as he thought of the job that he and his team had done against Poly – the infamous team that seemed to sweep county competitions every year. He just knew that his team had unseated the expected winner.

As the courtroom administrator collected the score sheets from the judging attorneys, the crowd barely drew a breath in anticipation. That is, everyone but this one defense attorney from Arlington. No sweaty palms or racing heart for him. He leaned back in his chair to accept the sweet words of victory, then heard the judge say the unthinkable – Poly had won the competition.

Devastated, this young man wondered what had gone wrong. As he scratched his head in disbelief, his coach approached him and informed him of a fact so devastating that it was actually worse to hear than the news of the loss itself. Arlington had lost to Poly by a mere point. One single point, and Poly advanced in the round while the kids from Arlington went home.

It was at that moment that the young man vowed to avenge this loss . . . .

It seemed like only moments later in time as the young man entered the courthouse for the first round of competition – although this time, he was not a competing student but a coach. He recognized judges who had once judged him as a student and whom he now appeared before as an attorney. He saw attorneys he once knew as coaches but now knew as colleagues. As he looked for his team in the crowd, he noticed a group of well-dressed, confident students walking in unison with their coaches by their side. He knew in an instant it was the Poly team and he suddenly saw a light at the end of the tunnel. His revenge on Poly would finally be realized if only his team could unseat his nemesis in competition!

Because the scores were not announced until the day following the competition, the young man sat around at his office to hear if his years of waiting were finally over. When he was informed that Santiago had lost the round, he learned that once again Poly had taken it from him. However, it strangely did not tear him apart, as he realized that the experience of participating in the program and getting to know the kids was worth more than the shallow thrill any victory could have brought him.

The young man in the story is my husband, attorney Jon Lewis. He and I had the privilege of coaching Mock Trial at Santiago High School in Corona for several years, and I promise you, the story was real! When he was in high school, Jon had the honor of being coached by Steve Harmon and had an amazing experience (except, of course, his defeat by Poly!). It was one of the reasons why he ultimately decided to become an attorney.

It was Jon who convinced me to join him in coaching Mock Trial, and we wound up at Santiago High School. Being a coach was truly one of the most rewarding things that I have done since becoming an attorney. I would be lying if I did not acknowledge that it was time-consuming and grueling at times. But we had such a fantastic time with our students and were so proud of their accomplishments, win or lose. To this day, we still keep in touch with many of our former students, some of whom have passed the bar this year and are now beginning their own practice of law.

As President of the Riverside County Bar Association, one of my duties was to attend the annual awards ceremony for the Riverside County Mock Trial program and to address the participants. I was reminded of the story I told about Jon in the previous *Riverside Lawyer* and read it to them during the ceremony. When you are in the throes of competition and you have spent months and months preparing for competition and you learn that you did not advance to the Elite Eight

or the final round, it can be devastating for students and teacher and attorney coaches alike. I wanted to remind everyone that, while not everyone can win, they can take this experience with them for the rest of their lives, as Jon did.

Another one of my duties as President, which I considered to be a privilege, was to be one of the scorers of the final round. This year, the two final teams were Poly High School and Murrieta Valley High School. I was amazed at the level of skill and preparation that each team demonstrated.

Ultimately, Poly was the winning team, and to them, I wish my sincere congratulations and best wishes as they go to the statewide competition. But as I stood in front of Department One of the Riverside Superior Court as the winner was announced, I recognized the look of devastation on the faces of the students and coaches from Murrieta Valley. Jon and I both know and understand their pain. I only hope that they remember the thrill that they experienced while competing and the joy that they felt when they were practicing late nights with their team and that they, along with every other team in the competition, realize that they are all winners and that they will have their experiences in Mock Trial for a lifetime.

Robyn Lewis, president of the Riverside County Bar Association, is with the firm of J. Lewis and Associates.

Barristers President's Message

by Scott H. Talkov

Democratizing the Barristers

Some have said that democracy is two wolves and a lamb voting on what to have for lunch. Putting aside the comical views, democracy in its many forms has risen to become the most virtuous system of governance since philosophers such as Aristotle contrasted democracy – rule by the many – with oligarchy – rule by the few – and monarchy – rule by one. Indeed, the virtues of democracy are so apparent to Americans that many members of our armed forces have made the ultimate sacrifice to implement this system of self-governance in other countries and to protect our ability to self-govern in our country.

Nonlawyers often view lawyers as the ultimate protectors of our democratic system. When the question of which votes in the 2000 Presidential election would be counted or discarded, Americans turned to lawyers to argue and lawyers on the bench to decide.

Upon joining the Barristers Board in 2010, I did not think it was unusual to find a provision in the Barristers bylaws calling for an annual election of the board. However, I was surprised that I somehow ended up on that board without a vote of the membership. I quickly learned that, for many years, the Barristers Board had interpreted an unusual provision allowing the board to fill mid-year "vacancies" as allowing the existing board members to choose every new board member. The bylaws also created a lock-step system, ensuring that every board member would move up through the ranks, no matter his or her level of interest or performance, upon being selected for the board. The combination of these provisions meant that membership on the board was highly sought-after and obtained only by a talented few who, usually, had ingratiated themselves with the current board.

As I wondered whether the increase in positive feedback from my fellow Barristers was related to the absolute discretion I would soon be able to utilize to elect our next board member (and thus, our eventual president), I also began to wonder why my judgment to select the next board member would be any better than another Barrister's judgment. As flattering as it was to think that I might have some greater insight into the future of the organization merely because the current leadership selected me for the board, the democratic ideals that I stand for suggested that the members collectively would have a better insight into their future than I ever could. Rather than conclude that the potential candidates for the board were better or worse than one another, I found that each offered a different vision for the organization.

To implement a democratic system, I sought to amend the bylaws to provide for an annual election of the entire board, similar to what was intended by the bylaws. To seek the support of my fellow Barristers, I convened a meeting of the board members to discuss possible language for a proposed amendment. I was surprised to find that not all members wanted to change the existing system, with some seeking to create a more limited democracy and maintain portions of the lock-step system. Eventually, we arrived at a document that included suggestions from all of the board members, but eliminated the lock-step system. Ultimately, the proposed amendment was adopted by unanimous consent at the next Barristers meeting.

The unique opportunity to serve as a board member allowed me to understand the differing values that leaders place on a democratic system of governance and the process that occurs when parties seek to implement changes that they believe will strengthen a long-standing organization. I believe these changes have done just that, as membership in Barristers is up dramatically this year, with present and potential board members creating a collegial, spirited and active Barristers. Indeed, the January celebration of the 50th Anniversary of Barristers brought out a distinguished panel of former Barristers and a crowd of 80 attorneys, with many commenting that Barristers meetings were not as well-attended in previous years. Most importantly, every Barrister can call the organization his or her own, as each member had an active role in selecting or becoming the leadership.

I would encourage all young attorneys to seek a position on our newly democratized board. Any RCBA member in the first seven years of practice or under the age of 37 may run for office, with attendance at at least two prior Barristers meetings required to vote. Keep an eye out for more information about our fledgling democracy. With any luck, we won't need intervention by the United States armed forces.

Scott Talkov is the 2011-12 President of Barristers as well as an attorney with Reid & Hellyer, where he practices real estate and business litigation.

My Mock Trial Experience

by Chad Firetag

In 1994, Arlington High School won the National Mock Trial Championship in Chicago, Illinois. It was a tremendous experience that I will never forget, but now, almost 20 years later, when I look back on that experience, it's not the championship that I remember most, but the journey that all of us took together as a team.

I was part of a group of students who knew nothing about the law or how to craft an argument. Most of us had no experience in debate or any similar activity. Like many who participate in Mock Trial, I found the idea of standing in front of a judge to be terrifying.

My introduction to Mock Trial began very simply: I heard about it when I was sitting in World History from my teacher coach. Her description of Mock Trial was brief, but altogether very intriguing. She told us that the program was more than just standing and arguing a fictional case. It was about team-building, dedication and building self-confidence. After she spoke, my friends and I all surmised very quickly that this wasn't just an after-school program; it was something that could be very special for each of us.

I had one problem: I hated public speaking. I remember once, before I joined Mock Trial, having to give an oral presentation in English class. I am not sure anyone actually heard me, between my knees striking the podium in trepidation and my quavering voice eking out tiny mouse-like squeals that resembled a book report. When I finally got through the tryout, to my great surprise, I somehow made the team.

As an aside, I owe everything I know about public speaking to my friend, coach and mentor Steven Harmon. I remember speaking in front of my team in the school library, squeaking out monotone versions of an argument I had so inartfully crafted earlier in the day. Rather than give up, Steve must have seen something in me, because he had me start over again . . . and again . . . and again. He taught me how to project without yelling, how to enunciate without sounding pompous, and how to grab someone's attention with a simple pause. It was exciting, stimulating and altogether very difficult, but he worked with each one of us until we got it right.

But Mock Trial to me was much more than just a primer for toastmasters. We as a team grew close to one another, and it was unlike anything I had ever done before. When one of us struggled to understand a legal principle, we all struggled. When one of us succeeded, we all succeeded.

To my knowledge, not one of us came from a family of lawyers. For that matter, before I met Steve, I had never even spoken to a lawyer. Some of my teammates had never even left California before. The year we won the National Championship, the finals were held in Chicago, a city that I had never been to before. I will never forget standing with my friends in a high-rise building overlooking the city. I will never forget meeting other students from states like Mississippi, Rhode Island and Pennsylvania. These were things that I could never have expected to experience being just a kid from Riverside.

Now that I am an attorney, I have had the pleasure of acting as an attorney coach and an attorney scorer for the competition. Obviously, not every team will win the National Championship. But who cares? If Mock Trial was just about winning, then we would have all simply missed the point. It is not about the championships or the accolades – it is about those intangible qualities like hard work, dedication and perseverance that last much longer than a championship. I see those same qualities in the participants nearly 20 years later.

But what is striking is that the participants of today all look and act just like we did: they laugh together, hug one another and huddle together, just like we did. The things that make me smile when I think about Mock Trial are the friendships that I made, the confidence that I gained, and the opportunity to experience things that I never would have been able to do before.

I still keep in touch with a lot of my friends from Mock Trial. (Heck, I even married one of them.) It's funny when I think of where we all ended up: some of us turned out to be lawyers, engineers, police officers, and, actually, even a few professional poker players. But no matter where we ended up, to me, Mock Trial is and always will be more than just a national championship; it is about the relationships and the people I met along the way, which have made me the person I am today.

Chad Firetag is currently serving on the RCBA Board of Directors as the CFO, and practices criminal defense law with the firm of Grech & Firetag in Riverside.

Remember Our Name

by Jennifer Taylor

Say my name. All hush as the Mock Trial official descends the mezzanine level of the courtroom atrium. She leans over the wooden balcony, a half-sheet of white paper held out for all to see. Her mouth opens to speak, but she pauses to double-check the words she's about to say, knowing their importance. A hundred pairs of anxious eyes bore into her from the crowd below. It's like we're all on the Titanic, with only four remaining spots in the last lifeboat, but there are eight of us . . . we all know it: half will survive; half will not. *Say my name, please* . . .

My name is *Centennial*. Yes, the name known for high school football, basketball, wrestling, and every imaginable sport, also has a Mock Trial team. The core 15 of us – with me as both a teacher coach and attorney coach – have waited for the past four years in a row to hear our name "Centennial" called from that balcony. Sometimes we win; sometimes we lose. But always we understand the huge honor of being an Elite Eight finalist, especially out of 30 teams in what most consider the toughest Mock Trial county in California.

Wish someone had mentioned that "toughest" part before I decided to start up a team. Mock Trial is easily one of the hardest things I've ever done in my life. I say this even though I graduated from law school summa cum laude, passed both the California and infamous patent bar exams, etc., etc. So okay, really, *high school* mock trial as one of the hardest things? Absolutely. Ever go up against Poly? Or any number of schools I could spout off in our county? I still have my notes from that first Poly trial five years ago; written all over, in half a dozen places, are variations of: "Did I ever learn this in law school?"

Thank you, Riverside County Mock Trial teams, for teaching me how to be a better attorney. Those "foundation" and "lack of personal knowledge" objections that they like to raise (all the time, by the way) . . . well, I think that I must have dozed off during that part of Evidence class; but, I assure you, I know the difference between them now. And, that party-admission hearsay exception that can only be used by the prosecution, not the defense – I know that one now, too, after a mishap that cost us the entire trial my first year. That bit about the non-hearsay purpose of "effect on the listener" . . . overly used to get the detective's testimony in . . . got it. How about "speculation" versus "creation of material fact" (one I could not find anywhere in a law book for the longest time, until I figured out that it's not even a real-life objection)? Yeah, guys, I finally figured it all out. Took me about five years to do it, but I thank you, just the same.

And how do all our teams in this county have such serene and calm coaches? Nothing appears to ever faze them; but I'm quite the opposite, more like one of those wildly pacing types of coaches that you see in basketball – except that I'm constrained to sit on a bench the whole trial and not move; it's excruciatingly difficult, sometimes, during a trial. I'm ashamed to admit that I'm the one who stood up during my first year of coaching and unconsciously started to blurt out, "No-o-o-o!" as a student attorney started arguing the prosecution's case . . . when we were supposed to be defense. I covered my mouth with my hand just in time, though not according to the bailiff. Fun times that first year.

And I've kept coming back for more these past five years. Not just to win, but to honor two very important people whom I credit with saving my life 20 years ago: Ms. Jan Ebey and Dr. Donna St. George, both coaches of my high school mock trial team, who turned me from a bad kid into a good kid.

I know I was "bad" because everyone told me so. Typical of foster kids, I got labeled a "runaway" for trying to find my family; I did this in three states. Quite an accomplishment. So was getting a "C" – instead of worse – in a class, or even showing up. By junior high, I'd been paddled by principals more times than I can count on both hands. And back in those days, they liked to paddle in front of audiences, so I mastered the art of never flinching, never crying . . . and never liking school. I got paddled one time because I picked the school's flowers in front of the administration building, but never for things like cheating or fighting. Mostly, I was "bad" for not doing what I should have been doing – following the rules. By the end of first grade alone, I'd gone to 11 different schools – none of which I wanted to be at. I might arrive on the school bus, but not enter the building; instead, I'd climb the tallest tree I could and watch cars go by, daydreaming. I argued that I was technically still at school, a lawyer-in-the-making even then.

All that my daydreaming got me, besides a bruised behind, was the label of "stupid" kid on top of the "bad." And that's how Ms. Ebey and Dr. St. George inherited me. I instantly liked both of them – they made me feel safe

Back four: Samantha Drevdahl, Charles Thomas, Matthew Mansat, Adam Johnson
Front four: Brittany Heath, Jennifer Taylor, Michelle Flores, Alexander Chin

Tyler Andrews
1993 - 2012

and loved. When I left school, I often would stay out until dark, and usually decide to sleep in a closet. It was safer that way to avoid the drugs, the loud parties, and certain people. What got me through so many nights was knowing that Ms. Ebey and Dr. St. George would be there in the morning, waiting for me at school.

Every Friday, guaranteed, and many times during the week, Ms. Ebey and/or Dr. St. George would take our team out to a real restaurant and let us order whatever we wanted. And, as everyone would leave, I would very discreetly try to wrap up other people's leftovers, because I knew I would need them. For years, I thought I was so clever about it, but then recently Ms. Ebey told me that she knew. She knew everything. But let me tell you, she never cut me any slack. She set the bar so high that I thought I would never reach it.

Yet somehow, Ms. Ebey and Dr. St. George turned an extremely shy kid who had no self-confidence into the "Most Outstanding" Mock Trial Attorney of the Year – the equivalent of our county's top prosecution and defense blue ribbon attorney award. How did they do that? They are walking miracles. And my personal saviors. I was right on track to drop out of school, and so much worse. I would have been some statistic; but instead, I now get to call myself a Mock Trial coach, just like them. Few understand or "get" why I devote so much energy to coaching, and I rarely bother to explain.

But today, I do. I share my story because one of my Mock Trial kids – Tyler Andrews – asked me multiple times to share with him the story of how I came to be a Mock Trial coach, but I never did; and now, much worse, Tyler's own unique story will never be told, because it is left unfinished. Today we lost him in a terrible car accident. We are all in a state of shock. My Mock Trial captain cannot be gone. Just last year, at this very same time, we heard our name called by that lady on that balcony: "*Centennial*!"

Tyler was right there, the ever-faithful team captain. He immediately gave me a hug, so excited that we had earned one of those coveted spots, and he said, "They called our name, right?"

"Yes"; I shook my head, still trying to make sure myself that our name was called.

Tyler held up his arms in a shout of victory: "*Centennial*! Remember our name!"

Remember our name. What I wouldn't give to hear Tyler say those words again, even for just one more time. *Remember our name, please . . .*

Jennifer Taylor teaches AP history at Centennial High School. She has been the Mock Trial Teacher and Attorney coach with the Centennial team for 5 years.

Palo Verde Valley High School 2012

by Bruce E. Todd

The Mock Trial competition in Riverside County presents unique challenges for all of the participating high schools. Possibly none of them, however, encounter as many difficulties as those faced by Palo Verde Valley High School in Blythe.

The school is located on the eastern fringe of the county, just a couple of miles from the Arizona border. Many of the students are from lower-income blue collar families; their parents work the nearby farms and/or provide the staffing for the two local correctional facilities. Unlike in the city, the students from this rural area often have to travel great distances just to attend school. And, of course, those who participate in the Mock Trial competition encounter lengthy trips to the courthouses in Indio and Riverside where the county competitions are held.

Dennis Hackworth has been involved in coaching the team for the past three years. He is an inactive California attorney who has been engaged in teaching since 1996. He has been an English teacher at Palo Verde Valley High School for the past five years. During the time he has been involved in coaching Mock Trial at the school, Hackworth has observed at first hand the challenges of running the Mock Trial squad.

"To begin with, we generally can't have team meetings," said Hackworth. "For many of the kids, Mock Trial is one of four or five activities in which they participate. They are often not available for team meetings. Also, a lot of them live a long way away, so it is hard to practice with them."

Hackworth said that it is not uncommon that the first time that the entire team is together is at the first competition. Thus, he tries to determine the interests and the strengths and weaknesses of each competitor, and then he meets individually with each of them. He starts working with the students in October, when he receives the materials for the competition. He currently does not have any assistant coaches to aid him.

"It's a struggle," he emphasized. "We just do it piecemeal. The first competition is the first time that they all come together."

Hackworth notes that the school used to have a class for Mock Trial, for which the students would receive credit. The class has been dropped from the curriculum due to budgetary cutbacks.

"Due to the lack of teachers, we don't have an elective class for Mock Trial, like other schools," he commented. "We have 15-20 real smart kids on the team, but it is hard without a class."

Another challenge facing the school's Mock Trial team is the rural nature of Blythe and the surrounding area.

"Many of the kids' families are working class," he said. 'We don't have a lot of funding. Many of the parents can't afford to travel to the competition to watch their kids."

Speaking of travel, the school undoubtedly has the biggest disadvantage of all of the teams in the competition. Each school in the competition is guaranteed participation in the first four rounds. For Palo Verde Valley High School, the first round is at the Indio courthouse; the next three rounds are at the courthouse in Riverside.

"For the round in Indio (which is on a school night), the competition ends around 8 p.m., and we get back home around 11 p.m.," said Hackworth. "We use school district vans, and it usually takes two vans to get the team to the competition."

The trip to the Saturday competition in Riverside presents even more difficult hurdles.

"We leave at 4:30 a.m., and we are sometimes just walking in the door at 9 a.m., when the competition is set to begin," he said. "We usually stop in Beaumont so that the kids can change into their court clothes."

Hackworth noted that, since many of the students hail from lower income families, most of them don't have typical "court" clothes.

"Perception plays a part of it," he commented. "I can think of only one kid on our team who has a suit. We don't always look like lawyers."

He estimated that the school has been participating in the Mock Trial competition since approximately 2000. During that time, he does not believe that the team has ever qualified for the final "Elite Eight" teams. He believes that the highest that the team has ever placed is approximately 16th place. He isn't sure how many of the school's participants have eventually enrolled in law school, but he is aware of at least one former "blue ribbon" winner who is planning to pursue a law degree.

"Through the years, we have had some kids achieve individual blue ribbons," he said. "It has just been harder recently without having the Mock Trial class available at school."

He is hopeful that, someday, the budget and staffing will be available so that the Mock Trial class can return to the school's curriculum.

"We have to create an atmosphere of success, and that success will breed success," he envisions. "It will be good for future Mock Trial teams and the school itself."

Postscript

The above article was written prior to the start of this year's Mock Trial competition. As it turned out, the trials and tribulations continued for the team, as they finished 0-4 and were eliminated from further competition.

As an example of the travel hardships faced by the team, two of the team members did not arrive at the bus by 5:30 a.m., when it had to leave for the 9 a.m. start of the fourth session of competition in Riverside. After waiting 15 minutes, the bus eventually had to depart for the long early-morning haul to Riverside. Luckily, another team member who wasn't scheduled to compete that day was rousted from her bed and was able to join the team on its journey. The team didn't arrive until 9:15 a.m., but still was able to engage in a spirited competition with its opponent before losing by just percentage points.

Hackworth would like to thank his team members, including Melissa Blansett, Cecelia Camacho, Alexandra Dye, Pedro Espinoza, Daniel Hawkins, Julia George, Dazanique Kidd, Jake Klingensmith, Cody Krisell, Noelle McMillin, Amanda Phipps, Kelsie Riddle, Jessica Salinas, Kelly Stewart, Arianna Tribby, Marisol Varela and Sharon Ware.

Members of the Palo Verde Valley High School Prosecution team. From L-R: Dennis Hackworth (teacher coach), Amanda Phipps, Noelle McMillin, Daniel Hawkins, Melissa Blansett, Alexandra Dye, Sharon Ware, Pedro Espinoza, Kelsie Riddle, and Arianna Tribby.

Although the team was winless, Hackworth commented, "They are having a good time and are talking about recruiting for next year. We [do] a lot of role-switching as students get sick, work on competing activities, and have unforeseen emergencies."

"I am looking forward to next year, and so are my returning team members," he said.

Hackworth emphasized, "The important thing is that they enjoy the competition and have fun."

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

Riverside Yearly Journal

APRIL, 2012
VOL. 62 NO. 4

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Supreme Court Set to Decide Split Among Jurisdictions in "DUI on a Horse" Cases

The California Supreme Court is gearing up to decide whether Vehicle Code sections 23152 et seq. apply to those on horses or other biological conveyances. *People v. O'Malley*, when it is heard next month, will finally settle this issue, which is subject to a dispute among jurisdictions, as well as some novel related issues.

Courts of Appeal in the Second and Third Districts have consistently held that persons may be convicted of driving under the influence (DUI) even if riding horses or similar modes of transport. (See *Watkins v. Superior Court* (1999) 12 Cal.App.5th 128 [Watkins riding on a mule prior to arrest]; *Stravinsky v. Superior Court* (2005) 99 Cal.App.6th 248 [Stravinsky cited for DUI after being pulled over while riding an ostrich].)

Courts of Appeal in the Fourth and Fifth Districts, however, have followed the *Landers* rule. Mr. Landers was held to be not guilty of violations of section 23152, subdivision (a) and section 23153, subdivision (b), despite being in an accident involving multiple pedestrians and an automobile while having a blood alcohol content of 0.18%. Mr. Landers was riding "piggyback" home from the bar on a friend's back when his friend, or "conveyance," failed to look both ways before crossing the street.

In the case to be heard by the Supreme Court next month, the appellant, Kelly O'Malley, argues that she should not be found guilty of DUI, citing the *Landers* line of

cases. Ms. O'Malley was arrested shortly after leaving the Dirty Saddle Saloon. As she rode her horse home, local authorities became alerted to Ms. O'Malley's erratic behavior and pulled her and her horse over. At both the trial and appellate court levels, Ms. O'Malley maintained that, while she was admittedly intoxicated, *she* was not the one "driving" home. She and her horse Andy had spent many nights at the Dirty Saddle, and Andy knew his way home. Thus far, Ms. O'Malley has been unsuccessful in arguing that Andy was the one driving on the evening she was arrested. It will be interesting to see how the Supreme Court receives this argument and whether it agrees that she was not actually driving for purposes of the applicable Vehicle Code sections.

Probably most interesting, though, is that the court will also be hearing argument regarding the legality of Andy the horse's simultaneous arrest for DUI on the night in question. At the time of Ms. O'Malley's arrest, police became suspicious of Andy's sobriety when they noted that his breath smelled of alcohol and that his eyes were watery. Furthermore, Andy was noted to have slow, slurred neighing. The arresting officer testified that Andy performed miserably on field sobriety tests, citing a complete failure by Andy to stand on one leg for *any* period of time, let alone the requested ten seconds. Andy's performance was equally poor when asked to walk in a straight line, heel to toe, and, when asked to lean his head back and touch his nose with his right hand, the horse ignored the officer and ate some grass that was on the roadside. Andy's attorney mounted multiple and varied defenses, including claims that the horse was physically unable to perform some of the requested tests and that the breathalyzer gave false readings because it was not designed for use with equines. On appeal, Andy's attorney also argued that the trial court erroneously allowed the jury to hear the officer's account that, shortly after arrest, Andy fled the scene, jumping over a fence and running across a field. The horse's attorney is also expected to argue, once again, that the jury improperly inferred guilt from Andy's decision not to testify on his own behalf, invoking his Fifth Amendment right against self-incrimination. Last, the court will be determining whether the DUI charge was proper or whether a charge for public drunkenness would have been more appropriate.

Whichever way the Supreme Court decides, it will be a relief to attorneys throughout California simply to have consistency on these important issues.

The Monetary Value of an Attorney and New Rules to Be Implemented in Riverside County

Every attorney knows, or should know, that, pursuant to the California Rules of Professional Conduct, he or she shall not charge or collect unconscionable or unreasonable fees.

In order to assure that every attorney in Riverside County is able to effectively follow such rule, Riverside County will pioneer a new requirement. Each attorney shall, during any and all working hours, wear on his or her person a badge with an identifying bar code. This mandatory bar code shall be accessible to any potential client for scanning by any smartphone. The Riverside County courts must have available in the clerk's office a court-provided smartphone for those potential clients who do not have a scanning application on their phones.

Any attorney with unreasonable fees advertised pursuant to the bar code shall be subject to disciplinary action. Prices shall be determined based upon experience, reputation, and other relevant factors. Scanning of the bar code will also show whether contingent fees are charged, what the standard hourly fees are, and what retainers can be collected. However, as circumstances may differ, it is not required that every detail as to fees be provided pursuant to the scanning of the bar code. More information may be provided at the initial consultation.

Attorneys' prices can be updated to reflect their values based upon successful trials, negotiations, and recommendations. The new rule will also necessitate that an attorney provide a client with a 20% discount from the standard fees immediately following an unsuccessful trial. Failure to do so shall be considered the charging of unreasonable fees.

The Riverside Commission on Attorney Values will conduct a yearly review of all attorneys who have appeared at least once in the Riverside courts as to the reasonableness of their fees. Attorneys have the right to appeal the Commission's value determinations. In order to present a viable case, the appeal must include at least ten positive Facebook or other social network recommendations from past clients.

This new requirement will give potential clients peace of mind in determining the value of their attorneys. If this process works smoothly in Riverside County, other counties may follow in its path. Eventually, this requirement may become effective for all California attorneys and may lead to amendments to the California Rules of Professional Conduct, detailing the attorney "price tag" bar code requirements so that a potential client can go about ascertaining the value of his or her attorney.

The best time to obtain an attorney will be on April 1 of each year, as there will be a mandatory 50%-off discount. Happy April Fools!

Ham Sandwich Convicted After Lengthy Indictment, Trial

by Ryan Whitebread

NEW YORK, NY – Former New York Court of Appeals Judge Sol Wachtler was famous for saying that any prosecutor who wanted to could "indict a ham sandwich," but it was Deputy U.S. Attorney Annie Reysick who took that argument to its logical conclusion by procuring a guilty verdict in the case of *U.S. v. Ham Sandwich on Whole Wheat* this week in the Southern District of New York. The sandwich in question, produced at Coleman's Deli on Avenue Q, was indicted by a federal grand jury for violating the Racketeer Influenced and Corrupt Organizations Act, or RICO, back in March 2007.

The entire prosecution, which also included plea agreements for the sandwich's accomplices – coleslaw, potato salad, matzoh ball soup and an éclair – comes at a cost to taxpayers of $250 billion. Asked to justify the expense, Ms. Reysick responded, "I was just looking to give my intern some busy work, so I had him draft this sample RICO complaint, and it accidentally ended up getting forwarded to the clerk's office. I was impressed that this student from the University of Southern California was so effective at drafting a federal complaint that stuck. After that, I had to faithfully execute my duties as a prosecutor. In my defense, I did attempt to negotiate a plea deal with the defendant in good faith, but he would not settle for anything less than three years. Under our office's sentencing guidelines, my hands were tied. Honestly, I thought this would be a stain on my win-loss record, but I breathed a big sigh of relief when I saw a rabbi, an imam and a Catholic priest walk into the jury box that Friday afternoon."

Despite the defendant's repeated insistence that the prosecutor's conduct in this case was not kosher, an appeal has yet to be filed.

Punch Card Computer Prevails in Age Discrimination Suit

by Erasmus B. Dragen

SACRAMENTO, CA – A jury in a Sacramento County Superior Court handed down a whopping $40 million award for lost wages and punitive damages in an age discrimination case brought by a 42-year-old punch card computer. The plaintiff's attorney, employment lawyer Anita Job, was pleased with the outcome. "It broke my heart to see all these old pieces of equipment labeled as 'dinosaurs' and dismissed by their employers like so much garbage; I felt it important to stand up for their rights. The trouble was finding a perfect test case, where the computer's lack of speed and poor memory would not disqualify him from employment under a bone fide occupational qualification standard. When Punchy came to me with his story, I knew we had a winner.

The case, *Punch-o-Matic LX240 v. Department of Motor Vehicles*, has generated a lot of new business for Ms. Job. "I already have a line of Speak 'n' Spells looking to get hired by local school districts. It is my hope that, with this line of cases, we can render the word 'obsolete' obsolete."

Poetic Justice

"To continue civil cases the judge holds all aces;
but it's a different ball game in criminal cases."
Brown v. State (Ga. Ct. App. 1975) 216 S.E.2d 356, 356-357.)

EVANS, Judge.

The D. A. was ready
His case was red-hot.
Defendant was present,
His witness was not.[1]

He prayed one day's delay
From His honor the judge.
But his plea was not granted
The Court would not budge.[2]

So the jury was empaneled
All twelve good and true
But without his main witness
What could the twelve do?[3]

The jury went out
To consider his case
And then they returned
The defendant to face.

"What verdict, Mr. Foreman?"
The learned judge inquired.
"Guilty, your honor."
On Brown's face – no smile.

"Stand up" said the judge,
Then quickly announced
"Seven years at hard labor"
Thus his sentence pronounced.

"This trial was not fair,"
The defendant then sobbed.
"With my main witness absent
I've simply been robbed."

"I want a new trial –
State has not fairly won."
"New trial denied,"
Said Judge Dunbar Harrison.

"If you still say I'm wrong,"
The able judge did then say
"Why not appeal to Atlanta?
Let those Appeals Judges earn part of their pay."

"I will appeal, sir" –
Which he proceeded to do – "
They can't treat me worse
Than I've been treated by you."

So the case has reached us –
And now we must decide
Was the guilty verdict legal –
Or should we set it aside?

Justice and fairness
Must prevail at all times;
This is ably discussed
In a case without rhyme.[4]

The law of this State
Does guard every right
Of those charged with crime
Fairness always in sight.

To continue civil cases
The judge holds all aces.
But it's a different ball-game
In criminal cases.[5]

Was one day's delay
Too much to expect?
Could the State refuse it
With all due respect?

Did Justice applaud
Or shed bitter tears
When this news from Savannah
First fell on her ears?

We've considered this case
Through the night – through the day.
As Judge Harrison said,
"We must earn our poor pay."

This case was once tried –
But should now be rehearsed
And tried one more time.
This case is reversed.

Judgment reversed.

DEEN, P. J., and TOLZ, J., concur.

1 See Wheat v. Fraker, 107 Ga.App. 318, 130 S.E.2d 251, for precedent in writing an opinion in rhyme.

2 I profoundly apologize to Judge Sol Clark, of this Court, for invading the field of innovation and departure from normalcy in writing opinions; especially in the copious use of footnotes.

3 This opinion is placed in rhyme because approximately one year ago, in Savannah at a very convivial celebration, the distinguished Judge Dunbar Harrison, Senior Judge of Chatham Superior Courts, arose and addressed those assembled, and demanded that if Judge Randall Evans, Jr. ever again was so presumptuous as to reverse one of his decisions, that the opinion be written in poetry. I readily admit I am unable to comply, because I am not a poet, and the language used, at best, is mere doggerel. I have done my best but my limited ability just did not permit the writing of a great poem. It was no easy task to write the opinion in rhyme.

4 See Murphy v. State, 132 Ga.App. 654-658, 209 S.E.2d 101, wherein a well-written and well-reasoned opinion discusses the reasons why a denial of motion to continue in a criminal case was erroneous and subject to reversal.

5 See Hobbs v. State, 8 Ga.App. 53, 54, 68 S.E. 515, is demonstrated that a motion to continue in a criminal case must not be judged with the same meticulous severity as in civil cases.

New Mexico Passes Ballot Initiative Overturning Laws of Gravity

by Constance Lee Fallon

SANTA FE, NM – Members of the Super PAC "New Mexicans Against Newton's Draconian Laws," comprised entirely of coyotes, were celebrating this evening as the state became the first to overturn the laws of gravity, which had required that objects be attracted to each other at a constant rate of acceleration. The Super PAC, funded entirely by the ACME Corporation, drafted the ballot measure and spearheaded the campaign to ensure its passage. The group's spokesman, Mr. Wile E. Coyote, issued a statement after an opposition group of scientists at Los Alamos Labs conceded defeat. "We want to recognize our opponents for putting up a strong fight and making this a tough campaign, but the people of New Mexico have spoken, and they have said they do not want the rate of constant downward acceleration dictated to them by some 17th-century scientist. We recognize that this will be an adjustment at first, and that we may have some disoriented burrowing rabbits making wrong turns in Albuquerque, but ultimately it will be a safer state for roadrunner hunters."

Upon learning that the roadrunner, as the official state bird of New Mexico, was protected by statute, many crestfallen members of the coyote Super PAC ascended from the bottom of the ravine in which they were celebrating before smashing into a rocky overhang.

In a related story, a school board in Topeka, Kansas has modified its curriculum to replace Newton's Laws of Gravity with Intelligent Falling Theory.

Riverside Poly High School and Department of Child Support Services Host Inaugural "Scared Abstinent" Program

by Sela Johnson

RIVERSIDE, CA – Administrators at Riverside Poly High School – concerned about the glamorization of teenage pregnancy on reality television shows like *16 and Pregnant* and *Teen Mom* – have coordinated with the county Department of Child Support Services to offer students a cold dose of hard reality by introducing them to the terrors of the child support system that most unwed parents have to deal with. According to school administrator Chastity Lockney, "We really wanted to find the most unpleasant part of single parenthood, so we had to find something far removed from the cute little babies and hit these kids where it would hurt the most – their pocketbooks."

Students were escorted through several different aspects of the child support system, including intake interviews delving into intimate details of their home life and finances, sitting with caseworkers to determine guideline child support rates, and sitting with child support attorneys to go through enforcement and collection options, including job search orders, contempt citations and judgment debtor examinations. But before going through all that, they were exposed to the grueling two-to-four hour wait that most child support litigants experience before their case is even called. One student, Oliver Klozoff, described the experience: "I had to wait all that time with crappy TV shows and magazines older than my teachers just to be told that I have to give over one quarter of my paycheck to my baby mama? Oh, hell to the no!" Students were also given the opportunity to budget childrearing on just $300 a month – the typical rate for an absentee other parent who earns minimum wage full-time.

To drive home the "Scared Abstinent" part of the program, students were then given a comprehensive sex education class, including various methods of contraception and their relative failure rates. Most students, after careful cost-benefit analysis, decided that its failure rate of zero percent made abstinence the best choice for them.

At the end of the day's activities, Chief Deputy Child Support Attorney Ed McCue related, "It may be that this program is so effective that it could put us out of a job, but as long as the divorce rate is still around 50 percent, we'll still see vindictive spouses putting their exes through our wringer, so I'm not too worried."

Letters to the Editor

Dear Editor:

I was wondering if you know whether I will be receiving a pro rata rebate of my membership dues now that the Riverside County Bar Association is shutting down. While I fully appreciate that the costs of operating the organization were overwhelming and that the RCBA's budget continued to shrink during these troubled financial times, I feel that I should be entitled to reimbursement of my unused fees. Please let me know where I can submit my request for my reimbursement.

All my best,
Jon Dough

Dear Editor:

I wanted to spread the word that I have filed a personal injury lawsuit related to the juvenile activities of some members of the Riverside legal community. My wife and I were recently dining at a local restaurant when I was suddenly, and without provocation, pelted by several dinner rolls. The force of the impact to my forehead caused a serious whiplash injury. My wife's hair was also unceremoniously covered with lettuce, tomatoes and dressing when some prankster decided to "toss" a salad. After speaking with the waiter, I was informed that the participants in this despicable behavior were engaged in some sort "food fight" as part of a group known as the Riverside Barristers Association. Well, we don't know how others feel, but my wife Bertha and I believe that these childish activities must cease so that paying customers can enjoy their meals in peace. If we are able to determine the identities of these merrymakers, we plan on initiating disbarment proceedings.

Cleaver and Bertha Cask

Dear Editor:

Thank you for publishing the recent article about how, once again, San Bernardino is attempting to "rip off" Riverside. As many people are aware, San Bernardino is in the process of constructing a new courthouse. I understand from your article that construction is just underway. What I can't believe, however, is that those copycats in San Bernardino plan to erect a courthouse that looks exactly like Riverside's downtown Historic Courthouse. Can't those ne'er-do-wells come up with their own design? Are they planning on hanging a painting of our own beloved "Woody" Rich inside the front entrance of the building to complete the charade? Might as well throw in a statue of Enos Reid near the entrance to Department 1! No wonder San Bernardino is always a day late and a courthouse behind.

John W. South

Dear Editor:

I was glad to hear that our state legislature has finally come to its senses and barred all forms of settlement conferences and mediation hearings. Under this new section of the Code of Civil Procedure, all disputes that have resulted in the filing of a civil complaint after January 1, 2013 must proceed through trial. They can no longer be resolved by settlement, whether formal or informal. They cannot be dismissed voluntarily or resolved before trial (such as by way of a motion for summary judgment). It is finally time to "put up or shut up" before choosing to file a lawsuit. I for one am pleased that we have chosen to go to this "mano a mano" system of justice. Attorneys will finally earn their pay – no "quitters" allowed!

A.D. Are

2012 Mock Trial

by John Wahlin

Students from 29 schools throughout Riverside County competed in the 2012 Mock Trial competition. This year's case involved a trial for murder and a pretrial motion relating to the constitutionality of a gun control statute. This year's finalists were Murrieta Valley High School and Riverside Poly High School. In the championship round, with both teams competing in their seventh trial of the competition, Poly's prosecution prevailed over Murrieta's defense. This was Poly's 13th county championship.

All of the participating teams competed in the first four rounds of the competition. Several rounds were closely contested, with 11 teams finishing with won-lost records of 3-1 or 4-0. Since only eight teams could go on to the single elimination tournament (the Elite Eight), the eight 4-0 teams and 3-1 teams with the highest point totals qualified for the Elite Eight.

In the first round of the Elite Eight, the winners were Poly over Woodcrest Christian High School of Riverside, King High School of Riverside over Centennial High School of Corona, Murrieta Valley Team A over Indio High School, and Xavier College Preparatory of Palm Desert over Santiago High School of Corona. In the semifinal round, Poly defeated King and Murrieta prevailed over Xavier. While seven of the teams were past qualifiers, Xavier was a newcomer, in only its second year of competition.

Once again, Justice Thomas Hollenhorst of the Fourth District Court of Appeal presided over the championship round. The scorers were Presiding Judge Sherrill Ellsworth, Judge Gloria Trask, District Attorney Paul Zellerbach, Public Defender Gary Windom and RCBA President Robyn Lewis. After ruling that the gun control law in question did not violate the federal Constitution, Justice Hollenhorst heard the evidence and found the defendant, who had allegedly murdered to preserve her substantial inheritance, guilty as charged.

The Mock Trial program draws on a major volunteer commitment by the local bar and the Superior Court, in conjunction with the Riverside County Office of Education. While judges and attorney scorers comprise a significant share of the volunteer effort, the greatest commitment of time comes from the attorney coaches. These men and women devote several hours of their time each week, not only on weekdays, but often on weekends. Unfortunately, not all teams are successful in recruiting attorney coaches. Any attorneys who can give their time to assist teams in their preparation for the competition, even if only on an ad hoc basis, should contact the RCBA or Tracey Rivas with the RCOE.

John Wahlin, Chair of the RCBA Mock Trial Steering Committee, is with the firm of Best Best & Krieger, LLP.

Riverside County Assistant Public Defender Chris Oliver with Outstanding Defense Attorney Matthew Dos Santos from Santiago High School.

Riverside County District Attorney Paul Zellerbach with Outstanding Prosecution Attorney Caroline Canseco from Indio High School.

Issues Arising Under California Medical Marijuana Laws

by DW Duke

On November 5, 1996, California voters approved Prop. 215 (the California Compassionate Use Act), which went into effect on November 6, 1996 as Health & Safety Code section 11362.5. Prop. 215 decriminalized marijuana cultivation, possession and use when the user has obtained an oral or written recommendation from a licensed California physician that marijuana would have a medical benefit if used by the holder of the recommendation. In order to qualify for such a recommendation, the patient has to suffer from a debilitating illness. The statute provided a list of conditions that would constitute a debilitating illness, but the list was not all-inclusive. The list included arthritis, cachexia, cancer, chronic pain, HIV or AIDS, epilepsy, migraine and multiple sclerosis. It is important to recognize that the statute does not provide reciprocity to persons who live in other states that have medical marijuana statutes. Thus, a person with a recommendation from another state cannot come to California and lawfully use marijuana without obtaining a recommendation by a physician here.

Under the original act, there was no limit on the amount of marijuana a person could possess; however, in October 2003, Senate Bill 420 was passed, which placed limits on the amount. It became effective on January 1, 2004 as Health and Safety Code sections 11362.7-11362.83. These statutes placed guidelines on the cultivation and possession of marijuana. Qualified patients, or their caregivers, may possess up to eight ounces of dried marijuana, six mature plants, or eight immature plants. However, a patient may possess a greater amount, if deemed beneficial by his physician. In addition, cities and counties may authorize possession of a greater amount than allowed by state law, if they choose to do so.

An important feature of SB 420 is that medical marijuana dispensaries are implicitly authorized, in that qualified patients and caregivers with valid identification cards will not be criminally prosecuted on the sole basis that they have formed collectives for the purpose of cultivation of marijuana for medicinal purposes. This provision, of course, does not authorize tax evasion, cultivation for non-medical purposes, or other illegal acts of which many dispensaries are now being accused.

SB 420 also authorizes the State of California to establish a medical marijuana registry and to issue cards to qualified patients. If a patient is detained for possession, he or she can present this card, from which the officer can immediately verify that the cardholder has a recommendation from a licensed physician. Possession of the card is voluntary, and a qualified patient is not prohibited from using marijuana if he or she does not possess this card. Its purpose is to demonstrate quickly that one is using marijuana lawfully. This card is issued at the county level, and its issuance is kept confidential.

Initially, one of the most common questions arising under the new law was whether landlords were required to lease apartments to tenants who used marijuana on the recommendation of a physician. The concern was that landlords would be sued for violating state and federal disability laws if they prohibited tenants from using marijuana on a physician's recommendation. While a variety of opinions were provided by attorneys, the most common response was that, although legal for medical purposes in California, marijuana remains a Class I Controlled Substance under federal law, and thus has no legitimate medical purpose under federal law. A landlord has the right to prevent a crime from occurring on his or her property, which includes crimes under federal law. Thus, a landlord could legitimately prohibit a tenant from possessing or using marijuana on his or her property, notwithstanding the fact that the tenant is using the marijuana on the recommendation of a physician. As time passed, more common questions concerned the operation of dispensaries and the meaning of the term "collectives for cultivation of marijuana for medicinal purposes."

In order to provide guidance for lawful use of medical marijuana, in August 2008, Governor Jerry Brown, who was the state attorney-general at the time, issued "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use." The guidelines were intended "to (1) ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets, (2) help law enforcement agencies perform their duties effectively and in accordance with California law, and (3) help patients and primary caregivers understand how they may cultivate, transport, possess, and use medical marijuana under California law." Despite the stated objectives of the guidelines, law enforcement agencies, collectives, physicians and patients remained uncertain of

the permissible scope of cultivation, distribution and use of medical marijuana.

Conflict Between State and Federal Law

After the passage of SB 420, medical marijuana dispensaries began to open throughout California. Initially, there was some hesitation, but as attorneys began to interpret the statutes as authorizing the operation of dispensaries, the practice became widespread, to the extent that dispensaries became fairly commonplace. At the time of running for election, then-candidate Barack Obama made the statement that he would not interfere with state medical marijuana statutes. However, on October 19, 2009, United States Deputy Attorney General David Ogden issued a memorandum to selected U.S. Attorneys wherein he stressed the commitment of the Department of Justice to enforcing the Controlled Substances Act in all states and asserted that marijuana distribution in the United States is the single largest source of revenue for Mexican cartels. Nonetheless, Ogden assured the recipients of the memorandum that federal resources would not be focused on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana. Despite this assurance, the memorandum created uncertainty concerning the position the federal government would take with respect to medical marijuana.

In the summer of 2011, the Department of Justice launched an assault on California medical marijuana dispensaries by issuing letters notifying the operators of dispensaries that they would be prosecuted criminally for violating federal drug laws. They were also warned of prosecution for violation of United States tax laws. At the same time, the Department of Justice launched another assault that is of tremendous concern to the real estate profession. That attack was a letter campaign directed toward landlords who had leased premises to individuals operating a dispensary. The letters stated, among other things, that allowing the dispensaries to operate on the owner's premises was a violation of 21 U.S.C. § 856(a), and further that "violation of the federal law . . . is a felony crime, and carries with it a penalty of up to 40 years in prison when operating within a prohibited distance of a school. An owner of real property with knowledge or reason to know of illegal drug sales on real property that he owns or controls may have his interest in the property forfeited without compensation."

Many have asked, how is it that the federal government is permitted to enter the State of California and enforce drug laws that appear to interfere directly with California state medical marijuana laws? Doesn't the Tenth Amendment to the U.S. Constitution preclude the government from interfering with state medical laws? And further, did not *Griswold v. Connecticut* (1965) 381 U.S. 497, the landmark U.S. Supreme Court right of privacy case, clearly establish that there is a privileged privacy relationship between a patient and his or her physician? Did not the *Griswold* case further establish that if there exists a commodity, in that case contraceptives, that falls within the prescription or recommendation zone between a physician and his patient, the government must recognize and not interfere with that privacy right in the absence of a compelling governmental interest? If these things are true, then how is the federal government able to close down medical marijuana dispensaries, if they are operating within the guidelines of state medical laws?

Wickard v. Filburn (1942) 317 U.S. 111 was a case that dealt with the Agricultural Adjustment Act of 1938, wherein Congress sought to regulate the amount of wheat introduced into interstate commerce by private farmers. Filburn sold a portion of his wheat crop and used the rest for his own consumption. The amount of wheat Filburn sold, when combined with the wheat Filburn produced for his own consumption, exceeded the amount he was permitted to produce. The U.S. Supreme Court held that Congressional authority to control interstate commerce, in that case the supply of wheat, permits Congress to limit the amount of wheat a farmer could produce, even for his own consumption. Relying on *Wickard v. Filburn*, the U.S. Supreme Court in *Gonzalez v. Raich* (2005) 545 U.S. 1 held that the authority of Congress to regulate interstate commerce includes the authority to regulate the production of medical marijuana, even where it is lawful under state law.

Marijuana is a Class I drug under the federal Controlled Substances Act; thus, in the view of the federal government, it has no medicinal value. Congress has provided that states are free to regulate controlled substances, provided the regulation does not conflict with the federal Controlled Substances Act. According to an opinion of the California Attorney-General, issued in August 2008, there is no conflict between California's Compassionate Use Act and the federal government's Controlled Substances Act. California law simply provides that qualified users cannot be prosecuted for possession and use of medical marijuana under state law. It does not prohibit the federal government from prosecuting under the Controlled Substances Act.

In light of the action recently taken by the U.S. Department of Justice, uncertainty regarding the rights of citizens to cultivate and use medical marijuana has increased. For this reason, Kamala Harris, the Attorney-General of the State of California, issued a letter on December 21, 2011 calling for the California Legislature to establish clear rules governing access to medical

marijuana. Until the Legislature follows the recommendation of Attorney-General Harris and clearly sets forth rules governing this issue, Californians will remain uncertain of their rights and duties under state law with respect to medical marijuana cultivation and use. Furthermore, even efforts by the California Legislature to address this issue will not resolve the ambiguities that exist under federal law when applied in the context of the Compassionate Use Act. Unless medical marijuana is reclassified under the Controlled Substances Act, Californians who use or cultivate medical marijuana will be uncertain about the risk of prosecution by the Department of Justice, notwithstanding the assurance of Deputy Attorney General Ogden and others that the federal government will not focus its resources on prosecution of patients who are in clear compliance with California's Compassionate Use Act.

DW Duke is the managing attorney of the Inland Empire office of Spile, Siegal, Leff & Goor, LLP and the president of the Institute for Children's Aid.

Ten DUI Myths – Not an April Fool

by Rosanne Faul and Tracy C. Miller

Conversations with friends over drinks or at dinner parties often lead to questions for the lawyers at the table, such as, "Isn't it better if I refuse to give a blood or breath sample so the police don't have evidence against me to charge me with DUI?" or "I've heard that I must receive notice of DUI checkpoints before they take place, is that true?"

Questions such as these seem straightforward, and one would presume common-sense answers. However, it is important to understand the intricate "language" that surrounds driving under the influence (DUI) issues and laws. Since DUI involves scientific evidence, the law supporting strategies and defenses to a DUI case is not as straightforward as one may assume.

Many different answers may be correct in a given situation, depending on the circumstances, strategies and legal defenses a particular attorney may use for a given fact pattern; however, some myths to avoid are the following:

1. **I feel fine, so I must be okay to drive.** Unfortunately, the first thing affected when drinking alcohol is judgment (physical issues such as walking and talking occur much later). Thus, it is not wise for one to rely on "feelings" before deciding whether or not one is legally able to drive.

2. **The DMV chart says I can have one drink per hour and then I can drive.** The term "drink" is misleading. The definition of "drink" by Department of Motor Vehicles (DMV) standards is a twelve-ounce beer, a four-ounce glass of wine, or a mixed drink containing one ounce of alcohol. Unless one is carefully measuring the amount of alcohol and the timing of these drinks, one should not attempt to guess as to compliance with the DMV chart. Also, the police may make a DUI arrest when a person is below a blood alcohol level of .08%, but "impaired" (a subjective standard).

3. **If I don't take a test, they won't have any evidence to use against me**. Although sometimes this may be true, the "refusal" legislation works against a person who refuses to take a blood or breath test in two ways: (1) The refusal to take a test may be used by the prosecution in court to show a conscience of guilt; and (2) the DMV will suspend the person's driver's license for one year on a first offense and longer for a repeat offender (without the ability to apply for a work permit), unless a legal defense exists. In addition, the police may take a forced blood draw. Regardless of the blood alcohol level, the DMV may still suspend one's driver's license for one year or longer.

4. **The DMV will give me a license for work.** For a first offense, unless the DMV administrative per se hearing is won, there is a mandatory 30-day license suspension before the person may apply for a work permit. For a second offense, there is a mandatory 90-day suspension. For each subsequent DUI administrative per se action, the suspension period is longer.

5. **Telling the police "I drank an hour or two ago" is better than saying "I just finished my last drink."** In a borderline case, it is much better to be honest, as that honesty may put you under a .08% blood alcohol level at the time of actual driving (the law). The science of alcohol absorption means that the alcohol that was just ingested may still have been in the stomach and intestines, instead of the bloodstream, when the driving occurred. When a test is eventually administered (30 to 40 minutes after the driving), the alcohol at that point would be in the bloodstream, giving a higher reading than at the time of actual driving. In a close case (e.g., .08% to .10% blood alcohol levels), if the person tells the police they just finished their drink, the probability of being under a .08% blood alcohol level at the time of driving is greater. It is illegal to drive with a .08% or higher blood alcohol level.

6. **If my car came with dark tint or without a front license plate, the police cannot stop me and cannot investigate me for DUI.** Unfortunately, even if a vehicle is purchased with front side window tint or without a front plate, the police may stop the vehicle for a "fix-it ticket." During this innocuous type of stop, if the police detect the odor of an alcoholic beverage, a DUI investigation will likely ensue. These types of "fix-it tickets" are not commonly enforced at 10 a.m., but at 10 p.m., the chance of a police stop with a potential DUI investigation dramatically increases.

7. **The police must give me *Miranda* warnings if they arrest me, and then I can ask for an attorney before choosing whether to take a blood or a breath test**. Since everyone who has a California driver's license

has agreed to give a breath or a blood sample as a condition of obtaining that license, the courts have found that advising a person of *Miranda* rights is not appropriate in DUI cases. A *Miranda* warning would give the person the option of remaining silent or asking for an attorney, neither of which is allowed prior to the administration of an alcohol test.

8. **Since my doctor prescribed these medications to me, my ability to drive must not be impaired and I am not subject to arrest.** Although the prosecution must be able to prove impairment, the finding of impairment is usually done by a police officer. This officer most likely does not have any medical training as to the prescription or any knowledge of the person's medical history. Commonly, once the police find that the person is taking medication, the person is arrested for DUI. When an individual has a marijuana prescription, the person may obviously possess and use certain amounts of marijuana; however, this does not allow the person to ingest marijuana to the point where the person is impaired for driving purposes. In these types of cases, no quantitative level is used for impairment, such as the .08% in an alcohol case. Rather, the prosecution uses the subjective observations of the police officer in determining the filing of charges.

9. **I must receive notice of a DUI checkpoint before it takes place.** There are limited notice requirements concerning DUI checkpoints. A law enforcement agency conducting a sobriety checkpoint program must only provide advance notice of the checkpoint's general location to the public within a minimum of 48 hours of the checkpoint operation, and only two hours' advance notice of the checkpoint's specific location. These notices are generally published in local newspapers in the "legal notices" section. However, the courts have determined that this is only one factor in determining the legality of the checkpoint and is not mandatory. One may locate checkpoints online as well; however, the "app" technology on smart phones has been the subject of controversy.

10. **A DUI conviction "drops off" my record after seven years.** The seven-year rule regarding prior DUI convictions was amended in 2008, and it is expected that the legislature will continue to extend the priorability time table. If a person receives a DUI in the future, he or she will be subject to the current state of the law at that time. Accordingly, the seven-year "drop off" myth is untrue in two aspects. First, under the current law, a DUI conviction is considered as a prior if a second DUI arrest is incurred within 10 years of the prior arrest. Second, a DUI conviction may be expunged or dismissed, on motion, by the court of conviction, so long as the defendant has completed all terms of probation and incurred no new offenses. With a specialized motion, a DUI conviction may be expunged/dismissed even before one's probation ends. However, this motion does not result in dismissal of the case for priorability purposes.

Thinking about strategies pertaining to drinking and driving before, during and after an arrest is important. There exist no definite answers to most questions, nor a specific blueprint as to how one should or should not act during the course of the DUI process, as every case and every absorption rate is different. However, obtaining education about the process and learning the "language" of DUI by consulting with a skilled DUI attorney may significantly mitigate one's exposure and provide success in many cases.

It is wise to address a DUI matter as one would prepare for a trip to a foreign country – learn and understand the language. Otherwise, walking into a courtroom or the DMV without understanding the legal process of DUI is akin to entering a foreign country without understanding its language or culture, therefore making travel throughout that country difficult. Don't be fooled in April or any other month when it comes to DUIs.

Rosanne Faul and Tracy Miller are criminal defense DUI solo practitioners. Rosanne (rfaul@defendingyou.net) owns her own law firm and has been practicing exclusively in the criminal defense field for over 16 years. Tracy (tracymiller@tmillerlaw.com) is a former Riverside deputy district attorney, owns her own law firm, and is an affiliate attorney at Montage Legal Group.

Judicial Profile: Commissioner Walter Harrison Kubelun

by Donna Thierbach

Commissioner Walter Kubelun grew up in Agoura Hills, California. His parents are retired now, but his father was a loan consultant and his mother a school psychologist. So how did this Ventura County native with no lawyers in the family end up in Riverside practicing law?

Commissioner Walter Harrison Kubelun

After Commissioner Kubelun graduated from California State University, Northridge, he worked as a claims representative for Travelers Insurance. In that position, he worked with attorneys and began to develop an interest in the practice of law. However, he left and became a sales representative for Johnson & Johnson. His sales area included Riverside, so later, when he accepted a job here, he was familiar with Riverside County.

But back to the story. Johnson & Johnson encouraged continuing education, which made Commissioner Kubelun realize that, rather than return to school to earn an MBA, he would prefer to attend law school and pursue a legal career. So he quit work (which he could do because at that time he was single, footloose and fancy-free), applied for student loans, and attended the University of San Diego School of Law full-time. When he graduated from law school, his goal was to be a child advocate. However, those jobs were few and far between, and he had student loans to repay, so he went into civil practice, specializing in medical malpractice with a large law firm in Los Angeles (Bonne, Bridges, Mueller, O'Keefe & Nichols). He was there several years and then went to a small general practice firm for a few years. He then went to another large firm (LaFollette, Johnson, DeHaas, Fesler & Ames). That firm handled medical malpractice, construction defects and general liability, so he could expand his horizons. Although the hours were pretty grueling (the dreaded billable hours), he managed to keep his Saturday mornings free for beach volleyball.

Commissioner Kubelun left the law firm in 2000 when he accepted a job with the Riverside County District Attorney's office. A good friend from law school (Angel Bermudez, who later became a judge) was working at the office at that time and told him about an opening. Commissioner Kubelun saw it as an opportunity to do more trials, and he could finally afford the cut in pay, as his student loans were paid down. Of course, he would also have to move away from the beach, so no more beach volleyball. At the district attorney's office, his assignments included preliminary hearings, misdemeanor trials, Drug Court, domestic violence court, grand theft auto, and the Special Prosecutions Section, which prosecuted fraud cases.

Commissioner Kubelun's career plan had been to do civil for eight years, then criminal prosecution for eight years, and then to evaluate his future. However, in 2007, he saw a posting for a commissioner opening. After discussing it with his wife, he decided it was a great opportunity and submitted an application. He began his new position as commissioner on May 29, 2007. At times, he misses trial work, especially cross-examination, but he really enjoys being a commissioner and the aspect of being neutral.

Commissioner Kubelun's first assignment was for 18 months in misdemeanors arraignments, which also required him occasionally to cover preliminary hearing, Drug Court and vertical calendar department (VCD) calendars. He found the assignment very enjoyable and a good transition into his duties as a commissioner. Of course, the needs of the court require commissioners to be versatile and flexible, as demonstrated by his next assignment — the foreign territory of family law.

Commissioner Kubelun has now been assigned to family law for the past three years. Family law is a challenge, and he works hard to ensure each party has an opportunity to be heard. He especially enjoys Family Law Drug Court, because it is rewarding to see individuals make a commitment to better their lives and their parenting skills for their children. He said it is a good program with a good success rate. He

also found participating in Adoption Day a very gratifying experience.

Outside of the courtroom, for the past 25 years, Commissioner Kubelun has been involved in Camp Ronald McDonald for Good Times, a program for children with cancer. He enjoys working with children and finds it very rewarding. Camp duties include directing, specialist or cabin counselor. Over the years, he has performed all of these duties. Most recently, he was a specialist on the climbing tower, where children are harnessed in so they can safely climb a 75-foot tower called the courage course. This activity helps give the children courage to face their fears.

Commissioner Kubelun has also been involved in the "Every 15 Minutes" driving under the influence (DUI) program for the past ten years. The program rotates through the Riverside high schools and is a week-long activity that features a mock DUI accident and concludes with a court sentencing. He initially played the prosecutor role while at the district attorney's office, but has since taken over the bench officer role.

Commissioner Kubelun is married and has a five-year old son, so all his free time revolves around family. His wife is a full-time mother, and they enjoy hiking, traveling (his son has already been on three cruises), and assisting in all his son's activities. Commissioner Kubelun is looking forward to coaching his son's t-ball team this season. Batter up!

Donna Thierbach, a member of the Bar Publications Committee, is retired Chief Deputy of the Riverside County Probation Department.

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lisa@riversidecountybar.com

SHERRI R. CARTER
Court Executive Officer

Executive Office
4050 Main Street
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Telephone 951-777-3163
Fax 951-777-3164

Superior Court of California
County of Riverside

Date: March 12, 2012

To: District Attorney, Public Defender, Probation, Department of Public Social Services, County Counsel, Juvenile Defense Panel, CASA and other Interested Parties

Re: **Consolidated Desert Juvenile Calendars**

As provided by notice to all agencies dated February 14, 2012, the desert juvenile departments (240/241) will be consolidated effective Monday, April 2, 2012, and all juvenile cases will be heard by Judge Charles E. Stafford. To accommodate this consolidation, the calendars have been reconfigured as follows:

	Monday	Tuesday	Wednesday	Thursday	Friday
8:00 a.m.	Dependency	Delinquency	Dependency	Delinquency	Dependency
8:30 a.m.	All Detentions	All Detentions	All Detentions	All Detentions	All Detentions
1:30 p.m.	All Contested Matters	All Contested Matters	All Contested Matters	All Contested Matters	All Contested Matters

The court's decision to consolidate the desert juvenile departments comes as a result of a stable reduction in filings. In these economic times, it is essential to create efficiencies to realize cost savings and these changes will be closely monitored.

Truancy and Safe Schools Courts. Effective April 2, 2012, this calendar will be heard in the Annex Court, Department 1D following the same Thursday and Friday schedules allocated for the three school districts. Effective immediately, citations issued for those calendars must indicate the hearing location to be Department 1D, 46-200 Oasis Street, Indio, California.

If you have any questions regarding these changes, please contact Carrie Snuggs, Family Law & Juvenile Director at (951) 777-3533 or via email at Carrie.Snuggs@riverside.courts.ca.gov.

Classified Ads

Office in Rancho Mirage
Nice, large, window office w/ optional secretarial space. Partial law library, conference room, lounge, phone system, built-in cabinets, copier/fax privileges, part-time reception, other amenities. Near Palm Springs & Indio Courts. Thomas A. Grossman, PLC (Desert ADR), (760) 324-3800.

l,000 sq.ft. Office Suite Available
Single story building at 4298 Orange St (corner l3th & Orange), downtown Riverside, 2-3 block walk to ALL COURTS. Front door parking, 3 offices, secretary and reception areas plus large conference room. Water, gas and trash included. Contact Owner 951-505-4888 or 951-784-0500.

For Sale
21,357 sq ft Corporate Office Building. High image with upgrades. Minutes to downtown Riverside. 2 story, elevator served. Owner user/investment. Excellent location & visibility. Please contact Jeff Nauta, United Real Estate Group, (714) 612-0944.

Wanted
Volunteer attorneys to train to assist in fighting the "big bank" mortgage companies and their co-conspirators. Make a difference, if not money. Grant writing and public service experience a plus. Please call (951) 347-7707.

Office Suite – RCBA Building
642 sq. ft., 4129 Main Street, downtown Riverside. Next to Family Law Court, across the street from Hall of Justice and Historic Courthouse. Contact Sue Burns at the RCBA, (951) 682-1015.

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@riverside-countybar.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 April 30, 2012.

Valerie D. Escalante – Best Best & Krieger LLP, Ontario

Christopher M. Heikaus Weaver – Heikaus Weaver LLP, Riverside

Kristen A. Holstrom-Fiebiger – Holstrom Sissung Marks & Anderson APLC, Corona

Chris A. Johnson – Single Oak Law Offices APC, Temecula

George G. Lerew – Law Student, Colton

Brett McMurdo – Law Student, Davis

Prakash ("Pete") Patel (A) – Affiliate Member, Corona

Michael Wakshull (A) – Q9 Consulting Inc., Temecula

Renewal:

Noreen T. Fontaine – Law Office of Noreen T. Fontai ne, Corona

(A) = Designates Affiliate Member

Volunteers Needed

Experienced Family Law and Criminal Law Attorneys are needed to volunteer their services as arbitrators on the RCBA Fee Arbitration Program.

If you are a member of the RCBA and can help, or for more info, please contact Lisa at (951) 682-1015 or feearb@riversidecountybar.com.

Riverside County LAWYER

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