

# RIVERSIDE LAWYER

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MAGAZINE

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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), Riverside Legal Aid, Fee Arbitration, Client Relations, Dispute Resolution Service (DRS), Barristers, Leo A. Deegan Inn of Court, Mock Trial, State Bar Conference of Delegates, Bridging the Gap, and the RCBA - Riverside Superior Court New Attorney Academy.

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, 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.

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

*The material printed in the 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

## JANUARY

- 9 Joint Meeting of the Civil Litigation Section and Barristers**  
Noon – 1:15 p.m.  
RCBA Gabbert Gallery  
Topic: “Bias in the Legal Community: Who We Are v. Who We Think We Are”  
Speaker: Casey Johnson  
MCLE – 1 hr Bias credit
- 10 Criminal Law Section**  
Noon – 1:15 p.m.  
RCBA Gabbert Gallery  
Topic: “Jury Selection”  
Speakers: Darryl Exum  
MCLE
- 12 MCLE Marathon**  
An opportunity to get 4 hours of MCLE credits in Competence, Bias and Legal Ethics)  
9:50 a.m. – 2:45 p.m.  
RCBA Gabbert Gallery  
RCBA Members - \$25 (includes lunch)  
Non-Members - \$95 (includes lunch)
- 16 Family Law Section Meeting**  
Noon – 1:15 p.m.  
RCBA Gabbert Gallery  
Topic: “Beyond Today: What Your Affluent Clients Need to Know About Money and Investment”  
Speaker: Paul Theil  
MCLE
- 17 Estate Planning, Probate & Elder Law Section**  
Noon – 1:00 p.m.  
RCBA Gabbert Gallery  
Topic: “The Tax Cut and Jobs Acts: Its Immediate Impact on Estate Tax and Planning, and Significant Tax Planning Available for Individuals for 2018”  
Speaker: Paul Shimoff  
MCLE
- 18 RCBA’s Dispute Resolution Service presents an Elimination of Bias MCLE**  
Noon – 1:30 p.m.  
RCBA Gabbert Gallery  
Topic: “The Seven Deadly Dilemmas of Diversity”  
Speaker: Dr. Carlos Cortes  
DRS Mediators – Free, Non-Mediators - \$30  
Lunch will be served
- 19 General Membership Meeting**  
Noon – 1:15 p.m.  
RCBA Gabbert Gallery

## FEBRUARY

- 9 Bridging the Gap**  
8:00 a.m. – 5:00 p.m.  
RCBA Gabbert Gallery

### EVENTS SUBJECT TO CHANGE.

For the latest calendar information please visit the RCBA’s website at [riversidecountybar.com](http://riversidecountybar.com)





## President's Message

by L. Alexandra Fong

This month's issue focuses on law enforcement and we have a variety of articles to read on this topic. What is law enforcement? The dictionary defines law enforcement as "the department of people who enforce laws, investigate crimes, and make arrests."<sup>1</sup> The Bureau of Justice Statistics (BJS) describes law enforcement as "individuals and agencies responsible for enforcing laws and maintaining public order and public safety." Law enforcement includes the prevention, detection, and investigation of crime, and the apprehension and detection of individuals suspected of law violation.<sup>2</sup>

Many of us have encountered law enforcement at one point or another in our lives – whether it is as a result of a vehicle accident, a victim of a crime, or due to our careers. I have encountered law enforcement in all three instances.

BJS, a component of the Office of Justice Programs in the United States Department of Justice, gathers information regarding contacts with law enforcement and is our country's primary source for criminal justice statistics. Its mission is to collect, analyze, publish, and disseminate information on crime, criminal offenders, victims of crime, and the operation of justice systems at all levels of government. These data are critical to federal, state, and local policymakers in combating crime and ensuring that justice is both efficient and evenhanded.<sup>3</sup> Depending on the topic, data collection by BJS can occur yearly or every four years.

In May 2017, BJS released the results of a 10-year study concerning police response to

domestic violence from 2006 to 2015. Police were notified in 56% of the 1.3 million nonfatal domestic violence victimizations that occurred each year. These victimizations were committed by intimate partners, immediate family members, or other relatives and included both serious violence (rape or sexual assault, robbery) and aggravated assault. Victims reported the incidents to police 76% of the time, with the other 24% of reports coming from another person. Police responded within 10 minutes of notification 64% of the time and took a report at the scene 78% of the time. The perpetrator was arrested or charged in 39% of the reported victimizations and when a serious injury occurred and a criminal complaint was signed, the perpetrator was arrested or charged 89% of the time. Interestingly, both men and women had similar numbers of victimization in known victim-perpetrator pairings, both for simple assault and serious violence.<sup>4</sup>

Unfortunately, there have been nearly 600,000 unreported nonfatal domestic violence victimizations each year between 2006 and 2015. These incidents go unreported for various reasons, ranging from the personal nature of the incident to fear of reprisal. The full report is available to be read here: <https://www.bjs.gov/content/pub/pdf/prdv0615.pdf>

The California Department of Justice – via its Criminal Justice Statistics Center (CJSC) – also keeps statistical data concerning crime within the Golden State. The role of the CJSC is to collect, analyze, and report statistical data that provide valid measures of crime and the criminal justice process, examine these data on an ongoing basis to better describe crime and the criminal justice system, and promote the responsible presentation and use of crime statistics.

The most recent data it has is from 2016 and the report contains information concerning reported crimes, arrests, dispositions of adult felony arrests, adult probation, criminal justice personnel, citizens' complaints against peace officers, domestic violence related calls for assistance, and law enforcement officers killed or assaulted.<sup>5</sup>

In 2016, the following crime rates increased measured per 100,000 people: homicides, violent crimes, motor vehicle theft, and arson. However, in the same year, the crime rates decreased in the following: property crimes, robbery and burglary, and larceny.

Arrests of adults and juveniles also decreased in 2016. Almost 67% of arrests resulted in a criminal conviction, with jail and probation being the most frequent sentence given to adult offenders. While the number of prosecution, public defense, and law enforcement personnel all increased, the number of probation personnel decreased. The total number of reported citizens' complaints against peace officers increased. Unfortunately, the total number of law enforcement officers assaulted in the line of duty increased.

On a final note, I want to again extend an invitation to all RCBA members to attend our monthly Board meetings, typically held on the third Wednesday of the month. If you are interested, please contact (951) 682-1015 and let Executive Director Charlene Nelson know that you will be attending.

*L. Alexandra Fong is a deputy county counsel for the County of Riverside, handling juvenile dependency cases. She is also president-elect of the Leo A. Deegan Inn of Court.*



1 <https://www.merriam-webster.com/dictionary/law%20enforcement>

2 [https://www.bjs.gov/index.cfm?ty=tp&tid=7#terms\\_def](https://www.bjs.gov/index.cfm?ty=tp&tid=7#terms_def)

3 <https://www.bjs.gov/index.cfm?ty=abu>

4 [https://www.bjs.gov/content/pub/pdf/prdv0615\\_sum.pdf](https://www.bjs.gov/content/pub/pdf/prdv0615_sum.pdf)

5 <https://openjustice.doj.ca.gov/downloads/pdfs/cd16.pdf>

# SOCIAL MEDIA INVESTIGATIONS: DON'T MISS THE BOAT

by Joseph Jones

## Why SMI

The internet has become so pervasive in our society that it has changed the way we do almost everything. As of mid-2017, Facebook had approximately 2.1 billion monthly users, Instagram had approximately 800 million monthly users, and Twitter had approximately 330 million monthly users. Those are just three of the top social media (SM) platforms, and that does not take into account LinkedIn, Pinterest, Snapchat, Flickr, YouTube, Reddit, and an endless list of other SM platforms that people are using. With SM usage this high, chances are also high that the parties involved in your case are on SM. And even if they are not on SM, someone close to them most likely is using SM, which means that photos and other information about a subject may still be available online, even if they do not personally have any SM accounts.

## Locating Content

The problem with a Google search is that Google gives you everything it can regarding your search terms and will return several hundred thousand (or more) results for most searches. Knowing how to cut through the garbage and find exactly what you are looking for is an important tool when conducting a SM investigation (SMI). While there are many ways to go about this, an efficient way to narrow your search and pinpoint useful

information is to utilize Boolean search logic (similar to what you use when conducting legal research).

Depending on the platform, SM can have a similar problem because people often use aliases when setting up their profiles, so it can be difficult using standard search methods to locate accounts. If you're having a hard time locating your subject's account, try using their nickname, or locating an account for a known friend or relative, and then backtrack your way to their account. If you keep running into roadblocks due to privacy settings on someone's account, keep in mind that they have no control of the privacy settings for content posted on their friend's pages or photos. While the process of finding this type of information is too complicated (and proprietary) to outline here; keep in mind that just because someone sets their SM accounts to private does not mean that a significant amount of information about them cannot be legally obtained online.

## Use as Evidence

If there is one thing that you should take away from this article, it should be that anything obtained via a SMI is evidence and should be treated as such. Think in terms of establishing foundation, authentication, and chain of custody. To establish foundation, the person collecting the information should be tracking when and how they found the content and it should be someone who would be able to testify if need be. To authenticate, the content needs to be forensically preserved and the metadata for the content, whether it be a webpage or a SM post, needs to be extracted. Metadata is the HTML code behind the information. While there are a variety of pieces of information that can be extracted, the most important is the MD5 or SHA Hash value, which is essentially a digital fingerprint.

*Please note that a screen print from Facebook should NOT BE ALLOWED AS EVIDENCE. Though some are still getting away with this, screen prints can be picked apart very quickly if challenged.*

## Legal Issues

In some respects, the world of SMIs is somewhat like the Wild West, in that there is much yet that has not been explored or maybe it has been explored, but is not yet widely known. That being said, there is quite a bit of information that is out there and we have done a significant amount of research to compile case law and case summaries for cases relevant to SMI.

In addition to the authentication issues outlined already, the courts have almost universally found that anything posted to SM, regardless of the privacy settings is fair game and that people do not have an expectation of privacy once they put information online. Several bar associations have published opinions that sending a "friend request" to a litigant represented by an attorney constitutes ex-parte communication; however it is of interest to note that to date, no cases have been found where evidence has been excluded when obtained through such a friend request.

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## Conclusion

SMIs are no longer an up-and-coming source of information for legal cases; they are here and they are thriving. Some legal publications have gone as far as to say that if you are not doing SMIs on your cases, you could be committing malpractice. And although there could be debate about that statement, there is no question it's a valuable tool for almost any case type.

For more information on this subject you can utilize the following resources:

<https://www.boscolegal.org/social-media-investigations-the-facts/>

<https://www.boscolegal.org/case-law-relevant-social-media-investigations/>

*Joseph Jones is a licensed private investigator and the vice president of Bosco Legal Services, Inc. Joseph is a Certified Social Media Intelligence Expert, has degrees in Social & Behavior Sciences and Psychology, and holds multiple certifications in Open Source and Cyber Intelligence. He is a court recognized expert and has received specialized training from the military, various law enforcement agencies, and the nation's top private intelligence firms. When he's not tracking down bad guys or helping law firms and insurance companies uncover the truth, he enjoys spending time with his beautiful wife and 4 active children.*



## MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective January 30, 2018.

**Robert Owen Barton** – Law Office of Robert O. Barton, Torrance

**Regina Ann Casey** – Casey Mediation LLC, Palm Desert

**Ryan Gallant** – Law Office of Kyle A. Patrick, Riverside

**Alfred W. Gerisch** – Gerisch Law, La Quinta

**Edward T. Hackney** – Solo Practitioner, La Quinta

**Jennifer Jank (A)** – Divorce Nest, Desert Hot Springs

**Danielle D. Maland** – Office of the County Counsel, Riverside

**Caitlin A. Marrows** – Law Student, Moreno Valley

**Edward W. O'Connell** – Law Office of Edward W. O'Connell, Lake Elsinore

**Thomas Y. Oh** – Office of the County Counsel, Riverside

**Joshua Osborn** – Solo Practitioner, Temecula

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# WHEN THE PATHS OF THE FOURTH AMENDMENT AND CHILD WELFARE INTERSECT

by Jamila T. Purnell

“Every man’s house is his castle” was a maxim much celebrated in England, as was demonstrated in *Semayne’s Case*, decided in 1603.<sup>1</sup> *Semayne’s Case* recognized the right of the homeowner to defend his house against unlawful entry even by the King’s agents, but at the same time recognized the authority of the appropriate officers to break and enter upon notice in order to arrest or to execute the King’s process.

In 1789, this principle ultimately revealed itself when James Madison, the “Father of the Constitution,” wrote the Fourth Amendment<sup>2</sup> in response to the abuse of the writ of assistance issued by the British government.<sup>3</sup> Much has changed since the Fourth Amendment’s ratification in 1791. Most commonly, the Fourth Amendment is utilized in the criminal law arena and most are familiar with the phrase “search and seizure.” In the context of juvenile dependency cases, the actions of a county’s Department of Child Protective Services (CPS) and the Fourth Amendment cross paths, and in some ways, the manner in which they intersect is not obvious.

In 1999, the Ninth Circuit Court of Appeals decision in *Calabretta v. Floyd*<sup>4</sup> examined the Fourth Amendment and clarified that search warrants are required for law enforcement officers to enter a home in child welfare investigations in the absence of consent or exigent circumstances. In 2009, the Ninth Circuit Court of Appeals in *Greene v. Camreta*<sup>5</sup> attempted to further clarify Fourth Amendment issues. However, on appeal, the United States Supreme Court vacated the Ninth Circuit Court of Appeal’s decision as it pertained to the Fourth Amendment, leaving many at a loss and questioning how government agencies should shape their policies.<sup>6</sup>

Once a child welfare investigation is in progress, the question that ultimately arises is whether a law enforcement officer or social worker has authority to place a

child into protective custody. Exigent circumstances, a phrase often used in conjunction with warrants in the juvenile dependency context, exist for law enforcement officers when circumstances exist in which a peace officer has reasonable cause to believe that a child is a person described by Welfare and Institutions Code section 300 and the child has an immediate need for medical care, or the child is in immediate danger of physical or sexual abuse, or the physical environment or the fact that the child is left unattended poses an immediate threat to the child’s health or safety.<sup>7</sup> As it relates to social workers, exigent circumstances exist in circumstances in which a social worker has reasonable cause to believe the child is a person described by Welfare and Institutions Code section 300, subdivision (b) or (g), and the child has an immediate need for medical care, or the child is in immediate danger of physical or sexual abuse, or the physical environment poses an immediate threat to the child’s health or safety.<sup>8</sup>

For child welfare cases involving the absence of exigent circumstances, child welfare professionals and agencies have developed protocols, policies, and procedures to protect families’ constitutional rights. One procedure that is continuously reshaped and restructured pertains to protective custody warrants. A juvenile court protective custody warrant is a written order by a judge directing a law enforcement officer to place a child temporarily into protective custody due to suspected abuse or neglect and deliver the child into the custody of CPS. Effective January 1, 2018, the protocols surrounding protective custody warrants will once again be reshaped due to the passing of Assembly Bill (AB) 1401.

AB 1401, introduced by Assemblymember Brian Maienschein, sought to refine authority for a court to issue a warrant allowing a child to be taken into temporary protective custody under specified circumstances, including when there is a substantial danger to the safety or physical health of a minor. AB 1401 modified current law and permits social workers, when there is a substantial danger to the safety or health of a child, to seek a court order to temporarily remove a child from a home without filing a petition.<sup>9</sup> This modification was urgently

1 Justia US Law. Retrieved from <https://law.justia.com/constitution/us/amendment-04/01-search-and-seizure.html>.

2 “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const. amend. IV.

3 The Fourth Amendment was ratified on December 15, 1791.

4 *Calibretta v. Floyd* (9th Cir. 1999) 189 F.3d 808.

5 *Greene v. Camreta* (9th Cir. 2009) 588 F.3d 1011.

6 *Camreta v. Greene* (2011) 563 U.S. 692.

7 California Welfare and Institutions Code section 305.

8 California Welfare and Institutions Code section 306.

9 Existing law authorizes a juvenile court to order removal of a child from his or her home when a petition is filed simultaneously



needed as “some courts will issue warrants without a petition because they believe that authority is inherent in their judicial powers to protect the interests of minors.”<sup>10</sup>

“Social workers are sometimes the first line of defense for children experiencing abuse or neglect at home,” said Maienschein. “This legislation would serve as an additional tool for both social workers and the court to protect vulnerable children and reduce the reliance on exigent circumstances.”<sup>11</sup> Furthermore, “Assembly Bill 1401 would provide a direct path for the court to make a decision on temporary removal in certain circumstances. Additionally, if the court ordered the temporary removal of a child under this bill, the social worker would be obligated to file a petition or return the child to the parent’s home within 48 hours as required by preexisting statutory authority.”<sup>12</sup>

or if exigent circumstances exist.

10 Tavaglione, John. “To The Honorable Scott Wiener; Chair, Senate Human Services Committee.” 6 June. 2017.

11 GovBuddy (2017). *Assemblymember Brian Maienschein’s Juvenile Protective Custody Warrant Legislation Approved by Assembly* [Press release]. Retrieved from <https://www.govbuddy.com/directory/press/CA/assemblymember-brian-maienscheins-juvenile-protective-custody-warrant-legislation-approved-by-assembly/44556/>.

12 GovBuddy (2017). *Assemblymember Brian Maienschein’s Juvenile Protective Custody Warrant Legislation Approved by Assembly* [Press release]. Retrieved from <https://www.govbuddy.com/directory/press/CA/assemblymember-brian-maienscheins-juvenile-protective-custody-warrant-legislation-approved-by-assembly/44556/>.

AB 1401 modified Welfare and Institutions Code section 340, which only authorized a protective custody warrant to issue after the filing of a petition pursuant to Welfare and Institutions Code section 300. Effective January 1, 2018, Welfare and Institutions Code section 340 authorizes the court to issue a protective custody warrant without the filing of a petition in juvenile court if the court finds probable cause to support all of the following:

- (1) The child is a person described in Section 300;
- (2) There is a substantial danger to the safety or to the physical or emotional health of the child;
- (3) There are no reasonable means to protect the child’s safety or physical health without removal.

While AB 1401 will not likely be the last piece of legislation to contribute towards the reshaping of protocols, policies, and procedures in child welfare, it is a great step towards providing an additional tool for social workers to protect defenseless and endangered children.

*Jamila T. Purnell is a deputy county counsel for the County of Riverside.*



[juvenile-protective-custody-warrant-legislation-approved-by-assembly/44556/](https://www.govbuddy.com/directory/press/CA/assemblymember-brian-maienscheins-juvenile-protective-custody-warrant-legislation-approved-by-assembly/44556/)

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# BODY CAMERAS MAY NOT BE AN EFFECTIVE METHOD TO ENSURE GOOD POLICE-CITIZEN RELATIONS

by Mohammad Tehrani

## I. Introduction

“Hands up. Don’t shoot,” was the slogan chanted by protesters nationally in response to the August 9, 2014 killing of unarmed, six-foot four and three-hundred pound teenager Michael Brown, who was black.<sup>1</sup> Brown was shot by Ferguson, Missouri police officer, Darren Wilson, who was white. To say that the facts surrounding the shooting are disputed is an understatement. Some witnesses described Wilson, himself six-foot four and over two-hundred pounds, standing above a pleading Brown prostrated on knees.<sup>2</sup> Wilson claimed that Brown attacked Wilson, grabbed Wilson’s gun and attempted to shoot him with it.<sup>3</sup>

No charges were filed against Wilson.<sup>4</sup> Still one month after the grand jury proceedings concluded against Wilson, the Los Angeles police department mandated body cameras for police officers.<sup>5</sup> A few days later, the United States Department of Justice announced a \$20 million pilot program to support body-worn cameras by police (BWC Program) in an effort to improve the police-citizen relationship.<sup>6</sup>

Nearly three years later, questions remain as to whether body cameras work and whether body camera footage should be publicly available.

1 Nick Wright, “Hands Up, Don’t Shoot Is Bigger than Ferguson and Bigger than the Rams,” *VICE Sports*, December 2, 2014, [https://sports.vice.com/en\\_us/article/jpz933/hands-up-dont-shoot-is-bigger-than-ferguson-and-bigger-than-the-rams](https://sports.vice.com/en_us/article/jpz933/hands-up-dont-shoot-is-bigger-than-ferguson-and-bigger-than-the-rams).

2 Josh Levs, “One Challenge for Ferguson Grand Jury: Some Witnesses’ Credibility,” *CNN*, December 14, 2014, <http://www.cnn.com/2014/12/14/justice/ferguson-witnesses-credibility/index.html>.

3 *Documents Describe Ferguson Officer’s Version of Fatal Shooting*, *CBS News*, November 25, 2014, <https://www.cbsnews.com/news/documents-describe-ferguson-officers-version-of-fatal-shooting/>.

4 Timothy M. Phelps & Michael Muskal, “Federal Report Largely Backs Darren Wilson in Ferguson Police Shooting Case,” *Los Angeles Times*, March 18, 2015, <http://www.latimes.com/nation/la-na-darren-wilson-not-charged-20150304-story.html>.

5 Daniel Wood, “Los Angeles Police Adopt Body Cameras: How Big A Deal?,” *The Christian Science Monitor*, April 29, 2015, <https://www.csmonitor.com/USA/Justice/2015/0429/Los-Angeles-police-adopt-body-cameras-How-big-a-deal>.

6 “Justice Department Announces \$20 Million in Funding to Support Body-Worn Camera Pilot Program,” Department of Justice Office of Public Affairs, May 1, 2015, <https://www.justice.gov/opa/pr/justice-department-announces-20-million-funding-support-body-worn-camera-pilot-program>.

## II. Do Body Cameras Work?

The factual discrepancies in Michael Brown’s shooting may have been resolved by body cameras. However, the impact of body cameras in most situations is inconclusive. A twelve month 2012-2013 study of the Rialto police department supported this conclusion. Public complaints against the Rialto police department fell 88% in the year following the study, and officers’ use of force fell by 60%. The study also found that police officers who were not wearing cameras were twice as likely to use force as those who were.<sup>7</sup>

But even the author of the Rialto study cautions that the sample size was too small to generalize.<sup>8</sup> Critics noted the ineffectiveness of the video footage in the July 17, 2014 death of Eric Garner. Cell phone video captured Garner’s encounter with New York policemen, who placed Garner in a chokehold in violation of NYPD guidelines and did not release him despite either the footage, the witnesses, or Garner repeating eleven times that he could not breathe.<sup>9</sup> Garner was pronounced dead an hour later.<sup>10</sup> The video was widely viewed. But just like in Ferguson, the police officers also did not face charges. Rather than improving the citizen-police relationship, the video footage likely inflamed it.<sup>11</sup>

A 2015-2016 study on the effect of body cameras in Washington, D.C., concluded that body cameras did not impact police behavior. One argument for this result is

7 Rory Carroll, “California Police Use of Body Cameras Cuts Violence and Complaints,” *The Guardian*, November 4, 2013, <https://www.theguardian.com/world/2013/nov/04/california-police-body-cameras-cuts-violence-complaints-rialto>.

8 Uri Friedman, “Do Police Cameras Actually Work?,” *The Guardian*, December 3, 2014, <https://www.theatlantic.com/international/archive/2014/12/do-police-body-cameras-work-ferguson/383323/>.

9 Eversley, Melanie (December 3, 2014). “Lawyer: Cop in chokehold case won’t be charged”. *USA Today*. Retrieved December 3, 2014. Melanie Eversley & Mike James, “No Charges in NYC Chokehold Death; Federal Inquiry Launched,” *USA Today*, December 3, 2014, <https://www.usatoday.com/story/news/nation/2014/12/03/chokehold-grand-jury/19804577/>.

10 James Queally, “Man’s Death After Apparent Chokehold by NYPD Officer to be Probed,” *Los Angeles Times*, July 18, 2014, <http://www.latimes.com/nation/nationnow/la-na-nn-nypd-choking-death-20140718-story.html>.

11 “Sharpton To Officers In Eric Garner Case: ‘When Does Your Morality Kick In?’ ” *CBS News*, July 23, 2014, <http://newyork.cbslocal.com/2014/07/23/funeral-for-staten-island-man-who-died-in-police-custody/>.

that police officers acted properly prior to the introduction of body cameras. Others contend that Washington, D.C.'s police department's practices were already elevated because of active federal oversight, hiring, and training imposed during the decade preceding the study.<sup>12</sup>

### III. Should Footage Be Shown to the Public?

Although a goal of body cameras was to promote transparency in an effort to strengthen the police-citizen relationship, state evidence laws have limited the availability of body camera footage. Currently, police officer's personnel files, including body camera footage, is public in twelve states, available on a limited basis in fifteen states, and confidential in twenty-three states.<sup>13</sup>

California Penal Code section 832.7, provides that all law enforcement personnel records are confidential. Police personnel records may be obtained in California only through a Pitchess motion, codified in California Evidence Code sections 1043-1045. This requires the movant to show three elements: (1) a pending civil or criminal case; (2) a showing of the requested documents' materiality; and (3) a reasonable belief that the agency actually has the requested documents. Once these have been shown, the trial court then examines the requested documents in camera to determine if the documents should be released. Even then, the footage would not be publicly available – it would be limited to that specific case.

California Assembly Bill (AB) 748 sought to change that. It would have required the public disclosure of body camera footage that “relates to a matter of public concern because it depicts an incident involving a peace officer's use of force.” But the California legislature decided against voting for AB 748 this year.<sup>14</sup>

### IV. Conclusion

The recent killings of unarmed citizens by police officers have inflamed tensions between the public and law enforcement. These events have even launched social campaigns and counter-campaigns such as Black Lives Matter<sup>15</sup> and Blue Lives Matter. It is important to heal this relationship.

<sup>12</sup> Nell Greenfieldboyce, “Body Cam Study Shows No Effect on Police Use of Force or Citizen Complaints,” NPR, October 20, 2017, <https://www.npr.org/sections/thetwo-way/2017/10/20/558832090/body-cam-study-shows-no-effect-on-police-use-of-force-or-citizen-complaints>.

<sup>13</sup> Robert Lewis, Noah Veltman, & Xander Landem, “Is Police Misconduct a Secret in Your State?,” WNYC News, October 15, 2017, <http://www.wnyc.org/story/police-misconduct-records/>.

<sup>14</sup> Liam Dillon, “California Police Body Camera Transparency Bill is Shelved for the Year,” *Los Angeles Times*, September 5, 2017, <http://www.latimes.com/politics/essential/la-pol-ca-essential-politics-updates-california-police-body-camera-1504642915-htlstory.html>.

<sup>15</sup> Josh Hafner, “How Michael Brown's Death, Two Years Ago,

Whether body cameras can help foster trust between police and citizens is unclear. While it would address the improbably divergent testimony in the Michael Brown case, studies on its effectiveness are inconclusive. Further, some state laws, including California, restrict access to body camera footage so wholly that we may never see whether or not they can be effective. Additionally, the costs of buying, updating, maintaining, storing, repairing, and viewing body camera footage grows as more surveillance is demanded. Moreover, some level of discomfort inevitably will arise if the general population is under constant video surveillance. So while legislatures should address the deterioration in trust between citizens and law enforcement, body cameras may not be the answer.

The answer may be increased oversight, training, policies, and hiring practices. In Washington, D.C., the effect of body cameras was negligible. This was largely attributed to a police force that was well-trained and had clear policies and procedures. This may be a less costly, more effective, way to prevent tragedies and to improve police-citizen relations.

*Mohammad Tehrani is an employee of the United States Department of Justice as a trial attorney in the Riverside Office of the United States Trustee Program (USTP). The views expressed in the article belong solely to the author, and do not represent in any way the views of the United States Trustee, the USTP, or the United States Department of Justice.*



Pushed #BlackLivesMatter Into a Movement,” *USA Today*, August 8, 2016, <https://www.usatoday.com/story/news/nation-now/2016/08/08/how-michael-browns-death-two-years-ago-pushed-blacklivesmatter-into-movement/88424366/>

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# OPPOSING COUNSEL: JENNIFER LYNCH

by *Melissa Cushman*

With no lawyers in her family on either side, Jennifer Lynch did not originally set out to become an attorney. Born in Iowa and raised in the Bay Area, she went to college at San Francisco State University and majored in geography, where she was drawn to coursework in urban history, historic preservation, and city planning. She then attended the University of California, Irvine, for her masters in urban and regional planning and started her post-college career as a land use planner. Thinking her career would be in historic preservation



*Jennifer Lynch*

and community outreach, Jennifer was surprised to find her real interest was in entitlement – helping clients marshal together all the permits and approvals they needed to bring their projects to fruition. As a planner, Jennifer performed land use and environmental consulting work for several years, first for RBF Consulting (now Michael Baker International) in Orange County and then for LSA Associates in the San Francisco Bay Area. Over the years, Jennifer worked with a number of lawyers in the land use and California Environmental Quality Act (CEQA) realm. Observing the integral role those lawyers had in shepherding projects along, she went back to school, this time to University of California Hastings College of Law. In 2012, she graduated with her Juris Doctor and passed the bar.

Knowing she wanted to work in municipal, land use and environmental law, Jennifer interviewed with multiple firms during the on-campus interviewing process, including Best Best & Krieger LLP (BBK). After her second year in law school, she worked at BBK as a summer associate, splitting time between the Riverside and Ontario offices. During that summer, she performed work for multiple practice groups, including the municipal law group and the environmental and natural resources (ENR) group. With her planning background and experience with CEQA in particular, she was a perfect fit for the ENR department, where she continues to work today. Her job in ENR entails a variety of different types of work, including reviewing Environmental Impact Reports (EIRs) and other CEQA documents; defending public agency and developer clients in CEQA litigation; and advising clients in land use, zoning, affordable housing, and similar areas. Of these

various tasks, she says that her favorite is reviewing EIRs because her background in planning and science gives her the capability to parse the technical reports and connect the dots between the data, the analyses, and the conclusions in the environmental reports.

Jennifer is still splitting her time between two offices at BBK, although now it is the Irvine and Riverside offices. She currently enjoys living in Anaheim with her husband Ryan, who she met on the first day of her first planning internship at

RBF Consulting.

Despite her busy schedule as an associate at a law firm, Jennifer finds time for outside interests as well. She especially enjoys local history and vintage buildings. These interests led her to purchase (and start learning how to fix up) a 1927 mission-style home in Anaheim. They also led her to become a docent at the Mission Inn, which required eight months of classes. Related to that role, she recently helped host a symposium at the Mission Inn for the Inland Empire Section of the American Planning Association (APA), where Mission Inn docents and others came to talk to planners and consultants about the citrus industry, the history of the Mission Inn, how downtown Riverside came to be, and other local historical topics of interest. Currently, Jennifer is a director-at-large of the Riverside County Bar Association and is a member of the publications committee. She also enjoys craft beer, including brewing her own. However, she has had to put that interest aside for a little while, since she is expecting a baby girl at the end of January 2018. In accordance with her interests in local history, the baby's nursery is even being decorated with a "vintage California" theme, with decorations including historic maps, vintage Disney posters, and, of course, depictions of oranges and other citrus fruit.

If you need any legal assistance in the CEQA or land use context, Jennifer can be reached at (949) 263-6580 or [Jennifer.Lynch@bbklaw.com](mailto:Jennifer.Lynch@bbklaw.com).

*Melissa Cushman is a deputy county counsel with the County of Riverside, who is a friend of Jennifer's and also specializes in land use and CEQA.*





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# SHERLOCK HOLMES IN MINNESOTA AND BEYOND

by Abram S. Feuerstein

“Killed Holmes,” Sir Arthur Conan Doyle wrote in his diary.<sup>1</sup> And, so the creator of Sherlock Holmes thought he had. The money and fame from the Holmes’ stories had enabled Conan Doyle to live well and achieve international fame, but he resented the limelight that both bathed his fictional detective and obscured his other literary efforts – mostly forgettable historical novels. Thus, in the 1893 story, “The Final Problem,” Conan Doyle sent Holmes and his nemesis, Professor Moriarty, plunging over a cascading Reichenbach Falls in Switzerland while they locked arms in a mutual death embrace. A contented Conan Doyle later told a friend:

“I have had such an overdose of (Holmes) that I feel towards him as I do towards *pate de fois gras*, of which I once ate too much, so that the name of it gives me a sickly feeling to this day.”<sup>2</sup>

Holmes’ death, however, proved short-lived; superheroes or maybe one should say, super sleuths are not killed off so easily. In one of the earliest bursts of fandom, the public demanded Holmes’ return. After Conan Doyle purportedly had eradicated Holmes, some 20,000 readers of *The Strand Magazine*, where the stories appeared, cancelled their subscriptions.<sup>3</sup> They wrote angry letters to Conan Doyle. There were some reports of Londoners who—in mourning—wore black armbands or black silk hat ribbons.<sup>4</sup> In 1899, Conan Doyle brought Holmes back in a stage play performed widely in the United States and England.<sup>5</sup> But pressure mounted; the public wanted more Holmes.

## Holmes Returns

So in 1901, as if by magic, eight years after his alleged watery death, Holmes returned in a novel, *The Hound of the Baskervilles*. Published in installments in *The Strand*,

which saw its circulation surge,<sup>6</sup> Conan Doyle simply side-stepped the problem of Holmes’ demise, claiming that the story was from Dr. Watson’s early case files.<sup>7</sup>

Conan Doyle continued to write Holmes’ stories until 1927, three years before his own death. By then Holmes, the obsessive, puzzle-solving, consulting detective was well on his way to becoming the most popular fictional character in all of literature. In time, the Holmes and Watson characters outgrew their Victorian world, seemingly becoming more real than actual historical figures. Indeed, each year people from around the world continue to write to Holmes, at his London fictional address of 221B Baker Street, seeking his problem solving help,<sup>8</sup> even as tourists flock to Baker Street to see Holmes’ flat. There, they hope to catch a glimpse, if not of Holmes, than maybe of Mrs. Hudson, his landlady. Sherlock Holmes clubs and societies—the best known of which is the Baker Street Irregulars (“BSI”)<sup>9</sup>—continue to thrive. And, authors each year craft new Holmes’ stories and books, and production studios feature new Holmes movies and television shows.

Added to this are the piles of Holmes memorabilia, certainly, but libraries of serious scholarship, too, with Sherlockians harvesting Conan Doyle’s original canon of 56 stories and 4 novels, for clues about all things Holmes.<sup>10</sup>

<sup>6</sup> *Id.*

<sup>7</sup> It was not until 1903, when an American publisher paid Conan Doyle \$5,000 for a new Holmes story, “The Adventure of the Empty House” (*Symons*, p. 15), that readers learned that Holmes, supposedly using the martial art of Bartitsu (“baritsu” in the story) survived the encounter with Moriarty while managing to toss his evil counterpart over the falls.

<sup>8</sup> For some interesting information about the history and handling of mail being sent to 221B Baker Street, see Karl Smallwood, “Today I Found Out: Sherlock Holmes’ Mail,” July 8, 2015, located at <http://www.todayifoundout.com/index.php/2015/07/sherlock-holmes-mail>.

<sup>9</sup> The society is named for a group of characters, mostly street boys, who appeared in various Holmes stories and whom Holmes paid for assistance on some of his investigations. See generally, [https://en.wikipedia.org/wiki/Baker\\_Street\\_Irregulars](https://en.wikipedia.org/wiki/Baker_Street_Irregulars). The BSI website, which features the *Baker Street Journal*, is located at: <http://www.bakerstreetjournal.com/home.html>.

<sup>10</sup> Holmes aficionados engage in what is known as “the game,” attempting to resolve inconsistencies in Conan Doyle’s stories or supplement information about Holmes, Watson, and other characters. As one source observes, “(t)he Game is played seriously, but is played best when it avoid pomposity.” See “Discovering Sherlock Holmes – A Community Reading Project from Stanford University” [no date or author identified], located at [http://sherlockholmes.stanford.edu/print\\_biography.html](http://sherlockholmes.stanford.edu/print_biography.html).

<sup>1</sup> Jennifer Keishin Armstrong, “How Sherlock Holmes Changed the World,” BBC Culture, January 6, 2016, located at <http://www.bbc.com/culture/story/20160106-how-sherlock-holmes-changed-the-world>.

<sup>2</sup> See Julian Symons, *Conan Doyle: Portrait of an Artist*, p. 15 (Mysterious Press 1979) (hereafter, “*Symons*”). Symons was a distinguished writer, crime novelist, and critic, and his short Conan Doyle biography is extremely readable and well-illustrated.

<sup>3</sup> Armstrong, “How Sherlock Holmes Changed the World.”

<sup>4</sup> *Id.*; see also, Charles McGrath, “What Makes Sherlock Holmes the Supersleuth?,” *The New York Times*, May 20, 2005, located at <http://www.nytimes.com/2005/05/20/books/what-makes-sherlock-holmes-the-supersleuth.html>.

<sup>5</sup> See Ruth Rendell, “A Most Serious and Extraordinary Problem,” *The Guardian*, September 12, 2008, located at <https://www.theguardian.com/books/2008/sep/13/arthurconandoyle.crime>.

## On the Trail of Sherlock Holmes

In my own life, the Sherlock Holmes stories have been a source of great reading pleasure. The books were among the first I devoured after a brief, early teen, comic book phase, and I return to them from time to time whenever I feel like visiting an old friend.<sup>11</sup> I have enjoyed old radio programs—mostly from the 1940s—featuring the detective in “new adventures.” At one time these programs were difficult to find; now the large body of radio programs, written by talented and clever authors in their own right, can be located easily through internet searches. Seeing the outpouring of new Holmes movies and television programs, and comparing their merits to the old Basil Rathbone/Nigel Bruce films, is fun.

As with most Holmes fans, on my own travels to London, a visit to 221B Baker Street was obligatory – not quite up there with the Westminster Abbey, St. Paul’s Cathedral, or the British Museum, but close. It turns out, though, that if you are looking, Holmes is everywhere. On a recent Minneapolis business trip, I learned of the Sherlock Holmes Collections at the University of Minnesota Libraries, self-described as “the world’s largest gathering of material related to Sherlock Holmes and his creator.”<sup>12</sup> The Collections consists of over 60,000 items and traces “the transformation of the Holmes character from the printed page to a cultural icon.”<sup>13</sup> The Collections includes first editions of Conan Doyle’s work (the “sacred texts” to Sherlockians), Holmes stories by other writers (including Mark Twain, Stephen King, A. A. Milne, and Isaac Asimov), writings on the other stories, scrapbooks, performing arts materials, and tons of Holmes artifacts.

Although most of the material in the Collections is not available to be viewed on a general tour, the Collections’

11 Of note, reading the complete Sherlock Holmes stories and novel takes about 50-60 hours.

12 See <https://www.lib.umn.edu/holmes/about-collections>.

13 *Id.*



*Holmes books and artifacts from the author’s personal collection.*

curator, Timothy J. Johnson, cannot be more accessible or encouraging of visits by the public. “I have the best gig in the world,” Johnson told me as he shared his enthusiasm for his work. He and the Collections’ staff have grown accustomed to “drop ins,” who are people like me who seek a tangible connection to Holmes, a fictional character.

I noticed that a bookshelf in Johnson’s office was home to the same Holmes desk sculpture that I owned— a bust of Holmes wearing a deerstalker cap and holding a calabash pipe, the foundry-cast figure of the detective appearing above the words, “Problem Solvers.” I located mine at a garage sale in the Central Valley. I commented about the bust. “Well, if you want to see something really special, here, let me show you,” Johnson said. At that point he produced a pristine copy of the 1887 edition of *Beeton’s Christmas Annual*, which printed the first Sherlock Holmes story, “A Study in Scarlet,” after it had been rejected by other publishers.<sup>14</sup> Conan Doyle had sold “A Study in Scarlet” outright for the puny price of 25 pounds in 1886, with the publisher

14 Charlotte Montague, *Creating Sherlock Holmes: The Remarkable Store of Sir Arthur Conan Doyle*, p. 44 (Chartwell Books 2017) (hereafter, “Montague”).



*London tourists flock to 221B Baker Street to view Holmes’ flat.*



*Signage posted outside the curator’s office of the Sherlock Holmes Collections.*



*A Peanuts character in Holmes garb greets visitors to the Sherlock Holmes Collections.*

advising him that they “could not publish it (that) year as the market is flooded at present by cheap fiction.”<sup>15</sup> In 2007, a copy of *Beeton's* 1887 sold for \$156,000 at Sotheby's.<sup>16</sup> I held the magazine in my hands, with a feeling of awe, but also guilt that I was not wearing gloves. The Collections owns several copies.

## Holmes and Law Enforcement

In addition to the pure enjoyment of reading the Holmes stories, one notices in re-reading Holmes that the all-time master of detectives used very modern crime-solving techniques. This is particularly odd given that Conan Doyle did not base the original character on a detective or other law enforcement official. Instead, as a medical student at Edinburgh University, Conan Doyle was inspired by one of his teachers, Dr. Joseph Bell.<sup>17</sup> Bell had refined his observational skills to the point that allegedly he could tell from a person's face whether he or she was a drinker, or even describe a person's occupation by examining his or her hand.<sup>18</sup> Dr. Bell frequently assisted the police in their investigations. He even wore a deerstalker hat.<sup>19</sup>

Imbuing the Holmes character with Dr. Bell's observational abilities, Conan Doyle in Holmes arguably created the “father” of scientific crime detection. The framework for Holmes is the detective's ability to “reason backwards,” using the powers of deduction that made him, in Conan Doyle's words, “the most perfect reasoning and observing machine that the world has seen.”<sup>20</sup> He then employed investigative methods that largely were unknown in Victorian times, but today are commonly used in modern investigative and forensic sciences. For instance, Holmes demonstrated his knowledge of fingerprints in several stories years before Scotland Yard investigators reviewed crime scenes for latent prints.<sup>21</sup> In another story, Holmes is able to solve a mystery by identifying the typewriter used in drafting a letter. He remarks:

“It is a curious thing . . . that a typewriter has really quite as much individuality as a man's handwriting. Unless they are quite new, no two of them write exactly alike. Some letters get more worn than others and some wear only on one side. . . .”<sup>22</sup>

15 *Id.*; see also Symons, p. 13.

16 See <http://www.bestofsherlock.com/beetons-christmas-annual.htm>.

17 Symons, p. 19; *Montague*, p. 31.

18 *Id.*

19 *Montague*, p. 31.

20 McGrath, “What Makes Sherlock Holmes the Supersleuth.”

21 See “Sherlock Holmes: Pioneer in Forensic Science,” written by The Editors of *Encyclopedia Britannica*, located at <https://www.britannica.com/topic/Sherlock-Holmes-Pioneer-in-Forensic-Science-1976713>; see also, Stanton O. Berg, “Sherlock Holmes: Father of Scientific Crime and Detection,” 61 *J. Crim. L. Criminology & Police Sci.* 446 (1970) (hereafter, “*Berg*”).

22 The story, “A Case of Identity,” is collected in the *Adventures of*

The sloppy handwriting of a will in “The Norwood Builder” enables Holmes to ascertain that the document had been written on a train—and not just an ordinary train, but an express train traveling from London's suburbs.<sup>23</sup> Several stories demonstrate Holmes' abilities to decipher coded messages, including “The Dancing Men” in which Holmes, who professes to have written a “trifling monograph” upon the subject of secret writings based upon his familiarity with 160 distinct cyphers, solves the crime by building on his understanding that the most common letter in the English language is the letter “e.”<sup>24</sup>

Footprints figure prominently in several Holmes stories. In *The Sign of Four*, Holmes hands Watson yet another of his monographs “upon the tracing of footsteps, with some remarks upon the uses of plaster of paris as a preserver of impresses.” The analysis of ballistics<sup>25</sup> and blood takes place in other stories. Indeed, in Holmes' very first appearance in the Conan Doyle stories, Dr. Watson encounters the detective carrying out experiments relating to blood stains in a chemical laboratory. Holmes exclaims:

“ ‘I've found it! I've found it,’ he shouted to my companion, running towards us with a test-tube in his hand, ‘I have found a re-agent which is precipitated by haemoglobin, and by nothing else. . . . Why, man it is the most practical medico-legal discovery for years. Don't you see that it gives us an infallible test for blood stains?’ ”<sup>26</sup>

Preserving a crime scene for Holmes was of vital importance, and in the stories Holmes hopes that the police and others have not trampled over evidence. He wants the opportunity to examine the landscape for even the smallest of clues, such as cigar or cigarette ashes. In an age when nearly everyone smoked, it seems that Holmes even had authored a monograph which enumerated a hundred and forty forms of cigar, cigarette, and pipe tobacco, replete “with coloured plates illustrating the difference in the ash.”<sup>27</sup> “I flatter myself that I can distinguish at a glance the ash of any known brand,” Holmes brags in “A Study in Scarlet.”

With Holmes' scientific methods of criminal investigation, Conan Doyle was ahead of his time resulting in the stories—and Holmes himself—retaining a relevancy they otherwise would not have.

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### *Sherlock Holmes.*

23 “The Adventure of the Norwood Builder,” was a story published in *The Return of Sherlock Holmes*.

24 “The Adventure of the Dancing Men” is a story collected in *The Return of Sherlock Holmes*.

25 See *Berg*, p. 452.

26 The quotation is from *A Study in Scarlet*; see also, *Berg*, p. 449.

27 See *Berg*, p. 450. The quotation is from *The Sign of Four*.



## Conan Doyle and Spiritualism

Notwithstanding his medical background and his interest in science, for much of his adult life Conan Doyle had a fascination with spiritualism. Through 21st Century eyes, people may have difficulty understanding the quasi-religious world of mediums, séances, and the “other” world. But spiritualism had grown steadily in importance to Conan Doyle and he wrote that by 1918, towards the end of World War I, it had “come to absorb the whole energy of my life.”<sup>28</sup> During his last 14 years, as one writer has observed, Conan Doyle became “the St. Paul of spiritualism.”<sup>29</sup> Drawing crowds because of his fame as the author of the Holmes’ stories, he mounted lecture platforms around the world to preach the gospel. He and magician Harry Houdini became good friends but then famously sparred over their views of spiritualism.<sup>30</sup> In 1922, Conan Doyle penned a book entitled, *The Coming of the Fairies*, in which he defended the truthfulness of the accounts by two young girls of fairies, known as the Cottingley Fairies, which lived in the woods near their home.<sup>31</sup> The two girls took well-publicized photos of the purported fairies which, when viewed today, look like

28 *Montague*, p. 138.

29 Michael Dirda, “However Improbable: The Spiritualist Convictions of Sir Arthur Conan Doyle,” *The Weekly Standard*, July 31, 2017, p. 35 (hereafter, “*Dirda*”).

30 *Montague*, pp. 144-47; *Dirda*, p. 35

31 *Symons*, pp. 113-115; *Dirda*, p. 35.

obvious fakes.<sup>32</sup> In a 1997 movie, *FairyTale: A True Story*, which is loosely based on the girls, they are visited by Conan Doyle, who is played by Peter O’Toole.<sup>33</sup>

Conan Doyle’s reputation may have suffered because of his book about the Cottingley Fairies if not his spiritualism beliefs in general. In asking what Sherlock Holmes would have said about Conan Doyle’s beliefs, one biographer suggests that the detective would say that “there are no limits to human credulity.”<sup>34</sup> In the end, however, although Sherlock Holmes’ creator could not solve life’s ultimate mysteries, the enduring character of Sherlock Holmes is at least some evidence of an afterlife of sorts.

*Abram S. Feuerstein is employed by the United States Department of Justice as an Assistant United States Trustee in the Riverside Office of the United States Trustee Program (USTP). The mission of the USTP is to protect the integrity of the nation’s bankruptcy system and laws. The views expressed in the article belong solely to the author, and do not represent in any way the views of the United States Trustee, the USTP, or the United States Department of Justice. The photographs accompanying the article were taken by the author in using a cell phone camera.*



32 Nearly 70 years later one of the “girls” admitted that the photos had been a hoax, *Dirda*, p. 35, apparently staged with paper cut-outs and hatpins. *Montague*, p. 144.

33 See [https://en.wikipedia.org/wiki/FairyTale:\\_A\\_True\\_Story](https://en.wikipedia.org/wiki/FairyTale:_A_True_Story).

34 *Symons*, p. 118.



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# THE 27TH ANNUAL RED MASS

by Jacqueline Carey-Wilson

Judges, lawyers, and public officials of many faiths and their families participated in the 27th Annual Red Mass, which was held on October 3, 2017, at Our Lady of the Rosary Cathedral in San Bernardino. The Red Mass is celebrated each year to invoke God's blessing and guidance in the administration of justice. The mass is held in October to coincide with the opening of the annual term of the United States Supreme Court in Washington, D.C.

During the opening procession of the mass, Mitchell Norton carried a banner depicting the Holy Spirit, the Scales of Justice, and the Ten Commandments, symbolizing the impartiality of justice and how all must work toward the fair and equal administration of the law, without corruption, avarice, prejudice, or favor. Martha Forrester processed into the church with a vase of 32 red roses in memory of those members of the Inland Empire legal community family who passed away in the last year and three additional red roses for Linda Maynes, Helen Rodriguez, and Louise Biddle, members of the Red Mass Steering Committee who passed away in previous years. The Red Mass was dedicated to the 58 victims who lost their lives in the Las Vegas shooting on October 1.



*Judge John Pacheco presenting the Saint Thomas More Award to Judge Larry Balderrama*

The chief celebrant and homilist was the Very Reverend Rafael Partida, the Episcopal Vicar of the Diocese of San Bernardino. Rabbi Hillel Cohn, Rabbi Emeritus of the Congregation Emanu El in San Bernardino, read a passage from the Old Testament. Pastor Gilda Roddy of Loma Linda Seventh Day Adventist Church read a passage from the New Testament. Elizabeth McDonough Barry and Jacqueline Carey-Wilson offered the Prayers of the Faithful, which included remembrances of individuals from the legal community who passed away during

the last year. The Balderrama family presented the gifts during the offertory procession and Barbara Keough led the music during the mass. At the conclusion of the mass, blessings on the legal community present were offered by Reverend Partida, Rabbi Cohn, Pastor Roddy, Franklin Adams from the Church of Jesus Christ of Latter-day Saints, and Dr. Siraj Mowjood who represented the local Muslim faith community.

At the reception immediately following the mass, Judge John Pacheco presented Judge Lorenzo Rafael Balderrama with the Saint Thomas More Award and Jacqueline Carey-Wilson presented the first Saint Mother Teresa of Calcutta Award to Deacon F. Michael Jelley.



*Mitchell Norton carrying the Red Mass banner into the church.*



*Martha Forrester carrying the roses during the opening procession of the mass.*



*Jacqueline Carey-Wilson presenting the Saint Mother Teresa of Calcutta Award to Deacon Michael Jelley.*



*l-r: Kevin Dorse, Jimmy Gutierrez, and Presiding Justice Manuel Ramirez*



*l-r: Dr. Siraj Mowjood, Pastor Gilda Roddy, Rev. Rafael Partida, Franklin Adams, and Rabbi Hillel Cohn*



*The Balderrama family presenting the gifts during the mass.*

## Honorable Lorenzo Rafael Balderrama is the 2017 Recipient of the Saint Thomas More Award

Judge Lorenzo “Larry” Balderrama was born in 1953 in Los Angeles, the second son of Enrique and Celia, who would eventually have a family of two boys and two girls. Celia was a homemaker and Enrique was a small business owner who, over time, owned and managed a grocery store, three motels, a caramel corn shop and a check cashing business. The children would work alongside their parents in those businesses.

Judge Balderrama was raised in the faith and attended Roman Catholic schools through the twelfth grade in Los Angeles and Orange counties. At Daniel Murphy High School, he was on the swim team and in the Mission Club which helped to provide recreational activities for disadvantaged youth. He graduated from Harvard University cum laude in 1975, majoring in English Literature. While at Harvard, he was a parishioner of St. Paul’s Catholic Church and participated in a program that provided sports activities to developmentally disabled adults through the Boston area YMCA.

Judge Balderrama graduated from Western State University Law School in 1981 with a Juris Doctor

degree and began working as a deputy district attorney in the San Bernardino County District Attorney’s Office in early 1982. In April 2010, Judge Balderrama was appointed by Governor Arnold Schwarzenegger to the San Bernardino County Superior Court. Since 2014, he has been assigned to the civil commitment court for the county, which includes mentally disordered offenders and Developmentally Disabled Commitments. From 2015 to 2016, he was also assigned to the Department of Behavioral Health Calendar at Arrowhead Regional Medical Center, which included involuntary medication orders and conservatorships for the mentally disabled.

While still a deputy district attorney, Judge Balderrama lived in the cities of San Bernardino and Upland and was a parishioner of St. Anne’s and St. Joseph’s parishes respectively. In 1988, he married his wife Ann and they eventually settled in their present home in Redlands in 1991. Since that time, Judge Balderrama and his wife have been parishioners of the Holy Name of Jesus and have raised their four daughters in the Catholic faith. Over the years Judge Balderrama has been involved in variety of activities at the Holy Name of Jesus including serving as a lector during mass, president of the parish council, and participating in ministry fairs and prayer meetings.



*Nancy Munoz Bigelow, Darrell Moore, and Dianne Woodcroft*



*David, Ginger, and Dwight Werner*



*The Balderrama Family*

In presenting the award, Judge John Pacheco gave the following remarks:

*Every year this award goes to someone in the legal community who gives hope to those in need, is kind, is generous in spirit, and overall is an exemplary human being. In sitting down with Larry yesterday, it became exceedingly clear that Judge Balderamma exceeds in all of these four categories.*

*As a young adolescent he had first-hand experience of witnessing his own nieces go through mental and physical deterioration and becoming developmentally disabled. I believe this impacted Larry and left him with an affinity for those less fortunate and in need.*

*In high school, he participated in the Mission Club helping those less fortunate. In college he worked with the disadvantaged and developmentally disabled.*

*As a lawyer with the District Attorney's office, he excelled in the crimes against children assignment. As a judge, he has developed a passion for developmentally and mentally disabled persons. He is currently working on an assignment involving those mentally incompetent to stand trial.*

*Larry, not only are you kind and generous in spirit, but you have always been and will continue to be an exemplary human being. I am so honored and fortunate to be your colleague and to present you with this year's St. Thomas More Award.*

After receiving the award, Judge Balderrama gave the following remarks:

*The question that I propose tonight is what might Thomas More tell us about practicing our faith and practicing law in our time?*

*The Man for All Seasons might tell us to enjoy life and have some fun. He had a sense of humor and his pastimes, and he enjoyed his family and his friends. He loved his profession and was grateful for his success.*

*More, the writer, would most likely tell us to be intellectually alive and curious, both inside and outside the law. There are few professions that are as intellectually challenging as the law itself. However, it is also that rare calling that litigates the issues in so many other fields, such as psychology, medicine, politics, economics, sociology, the sciences and many others. The legal field is*




Michelle Lauron, Dennis and Kathy Christy, Michael Ferman, and Tiffany Hidalgo



Joelle Lee Nicol, Juli M. Roberts, Anita Oshaben, and Kyle Wooldridge



Rev. Rafael Partida, Jackie Jelley, Deacon Michael Jelley, and Jacqueline Carey-Wilson



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*indeed a fertile one that is always engaged in the wide range of human activities.*

*More, the lawyer, might tell us to work hard for those we represent, but always within the ethics of our profession. More himself considered becoming a monk before he became a lawyer. He may have considered the practice of the law similar to the priesthood.*

*In both vocations, there is the professional assistance to those in need. In both, there exists that confidential relationship which is recognized for its privileged communications. Also, both law and religion provide a foundation of knowledge, tradition, scholarship, and practice that goes back to ancient times.*

*Thomas More, the judge, might advise counsel to follow Christ's direction in Matthew's gospel, to settle the matter quickly with your adversary who is taking you to court, or you may suffer more undesirable consequences. However, if the case must be tried, to do so with honesty, integrity, civility and courtesy.*

*Ours is indeed a very special profession. In recent times the whole idea of lawyers, judges and courts have come under attack from the highest levels of society and government. Such criticism ignores the fact that the courtroom trial is a great engine for truth in our society, and because of that, it is an important place for the settlement of difficult disputes, and making our democracy work.*

*While it may be popular to campaign generally for law and order and other generic values to the populace as a whole, it is quite another matter when the issue comes down to a single case or a single life before you. On a case by case basis, we may have to show courage in defense of our system of justice and the rule of law, and we may look to St. Thomas More for inspiration and guidance.*

*Finally, Thomas More, the man, would tell us to pray often. He wrote this prayer in prison, just before his execution:*

Almighty God, teach me to do your will. Take my right hand and lead me in the right path... Lord, give me patience in tribulation and grace in everything to conform my will to yours...the things good Lord that I pray for, give me thy grace to labor for.

*More often prayed that his will be aligned to God's will. God may not ask for the ultimate sacrifice that More suffered for his faith. However, every day presents lawyers and judges opportunities for doing good, or at least improving a bad situation. In Utopia More wrote that: You must not abandon the ship in a storm because you cannot control the winds. What you cannot turn to good, you must make as little bad as possible.*

*During tonight's mass, we honored the memory of fellow judges and lawyers who practiced the law and followed their consciences to the best of their ability. Eventually all of us will join them on that list.*

*Renewed by the celebration of tonight's Red Mass, which annually coincides with the beginning of the United States Supreme Court annual term, let us also commit ourselves to the ideals that St. Thomas More represents in the practice of law and the practice of faith. If we but try to follow him, at the end of our legal careers and at the end of our spiritual journeys here on earth, we might be privileged to say what Thomas More said on the scaffold a moment before his death: I die the King's good servant, and God's first.*

*Thank you all very much.*

## **Deacon F. Michael Jelley is the Recipient of the First Saint Mother Teresa of Calcutta Award**

This year, the Red Mass Steering Committee created the Saint Mother Teresa of Calcutta Award to present to an attorney, judge, or any other member of the legal community or to an individual that has made contributions to the legal community who gives hope to those in need, is kind and generous in spirit, and is an overall exemplary human being. Deacon Michael Jelley is the first recipient of this very special award. I was honored to be selected to present the award to Deacon Jelley.

When I was preparing to present the award, I learned a little more about Saint Mother Teresa and about Deacon Jelley and was inspired by their devotion and joy in serving our Lord. What was most amazing to me were how many similarities there were between the two.

Both their stories began overseas. Saint Mother Teresa was born in Macedonia in 1912 and Deacon Jelley was born in Zambia in 1940. Both ended up leaving their birth country. Saint Mother Teresa served Jesus in Calcutta, India and Deacon Jelley serves Jesus in Southern California.

Both had a change of paths in their lives. After her final vows in 1932, Saint Mother Teresa travelled to Calcutta, India to teach at Saint Mary's, an all-girls school. Saint Mother Teresa taught at the school for 20 years and became the principal. On September 10, 1946, during a train ride, Saint Mother Teresa received her call and Jesus revealed his pain at the neglect of the poor, his sorrow at their ignorance of him, and his longing for their love. Jesus asked Saint Mother Teresa to establish a religious community, Missionaries of Charity, dedicated to the service of the poorest of the poor.

After two years of discernment, she left the Sisters of Loreto and began to work with the poor of Calcutta.

By the early 1960's, Saint Mother Teresa opened up houses in other parts of India and now there are houses on all continents. In order to respond better to the physical and spiritual needs of the poor, Saint Mother Teresa also founded: the Missionaries of Charity Brothers, the contemplative brothers and sisters, the Lay Missionaries of Charity, and the Corpus Christi Movement for priests. By 1997, the sisters numbered 4,000 members and established 610 foundations in 123 countries. Saint Mother Teresa was quoted as saying: "Do not worry about the numbers. Help one person at a time and always start with the person nearest you."

I found that Deacon Jelley has done just that in his life. Unlike Saint Mother Teresa, he was not called at the young age of twelve. He entered the church as an adult. In fact, the only reason that he began to attend mass was that he wanted to date Jackie, his future wife. At the time, Deacon Jelley had been laid off from the Los Angeles Times, so he was unemployed, broke, and near homeless. Deacon Jelley was inspired by Jackie's faith and calls her his guiding light. Deacon Jelley began taking religious education to be baptized in the church. After his baptism, he wanted to share this gift of faith with others, so he and Jackie began teaching the religious education for adults and did so for 20 years. In 2007, the Jelleys were awarded the Pro Ecclesia et Pontifice Gold Medal by Pope Benedict XVI for their service to the Universal Church and the Pope.

Deacon Jelley studied and was ordained a permanent deacon by Bishop Gerald R. Barnes in June 1999, and served at Our Lady of the Rosary Cathedral until June 2015, when he was granted retired deacon status at the age of 75. Even though he is retired, Deacon Jelley remains a member of Bishop Barnes' senior staff, the diocesan curia, and is the director and vice chancellor of the Office of Ecclesial Services.

Deacon Jelley selects deacons and works with them during the seven to eight years of formation. He also works with the seminarians and has created U-Tube videos

on giving homilies. Deacon Jelley instructs ministers in the church on cultural competency, which is critical in a diocese with 93 parishes, 1.7 million Catholics, and 144 different languages spoken in the home. For the last ten years, Deacon Jelley has been on the Red Mass Steering Committee and instrumental in coordinating the mass and dinner. Last Spring, Deacon Jelley spearheaded the first Church-Clergy Conference, inviting faith leaders in the community to learn about the various processes in the legal system that affect their members.

Saint Mother Teresa and Deacon Jelley are both inspired by Saint Theresa of Lisieux—the little flower, in her loving pursuit of holiness in ordinary life. On the award is the inscription from Saint Mother Teresa: ***The fruit of faith is love. The fruit of love is service. The fruit of service is peace.***

On behalf of the Red Mass Steering Committee, I was honored to present the first Saint Mother Teresa of Calcutta Award to Deacon Michael Jelley in gratitude for his extraordinary service and devotion to church, community, and justice.

*Jacqueline Carey-Wilson is a deputy county counsel with San Bernardino County, co-chair of the Red Mass Steering Committee, and past president of the Riverside County Bar Association and the Inland Empire Chapter of the Federal Bar Association.*

*Photos courtesy of Jacqueline Carey-Wilson.*



## We Remember Them

Members of our legal community family who were remembered at the Red Mass: *Ngo Van An, Lorna Badger, David Brown, John Peter Carey, Edward Joel Carlson, Richard Barry Cohen, Thomas Cox, Dennis Fabozzi, Micheal Fortino, Stanley E. Fry, Dana Gardner, Angela Gomez, Frances Ophelia Gregory Hardy, Joseph Humildad, Lewis Jacobsen, Judge E. Michael Kaiser, Eileen Kane, Patricia Messinger, Carolyn Pearce, Jerold Louis Perry, Judge Brian D. Saunders, Shoshana Anne Simon, Ronald G. Skipper, Richard Smolin, Linda Stanton, Bobbi Taylor, Judge Robert J. Timlin, Mark Ward, Judge Douglas Weathers, Judge Kenneth George Ziebarth, and Donald Zimmerman.*

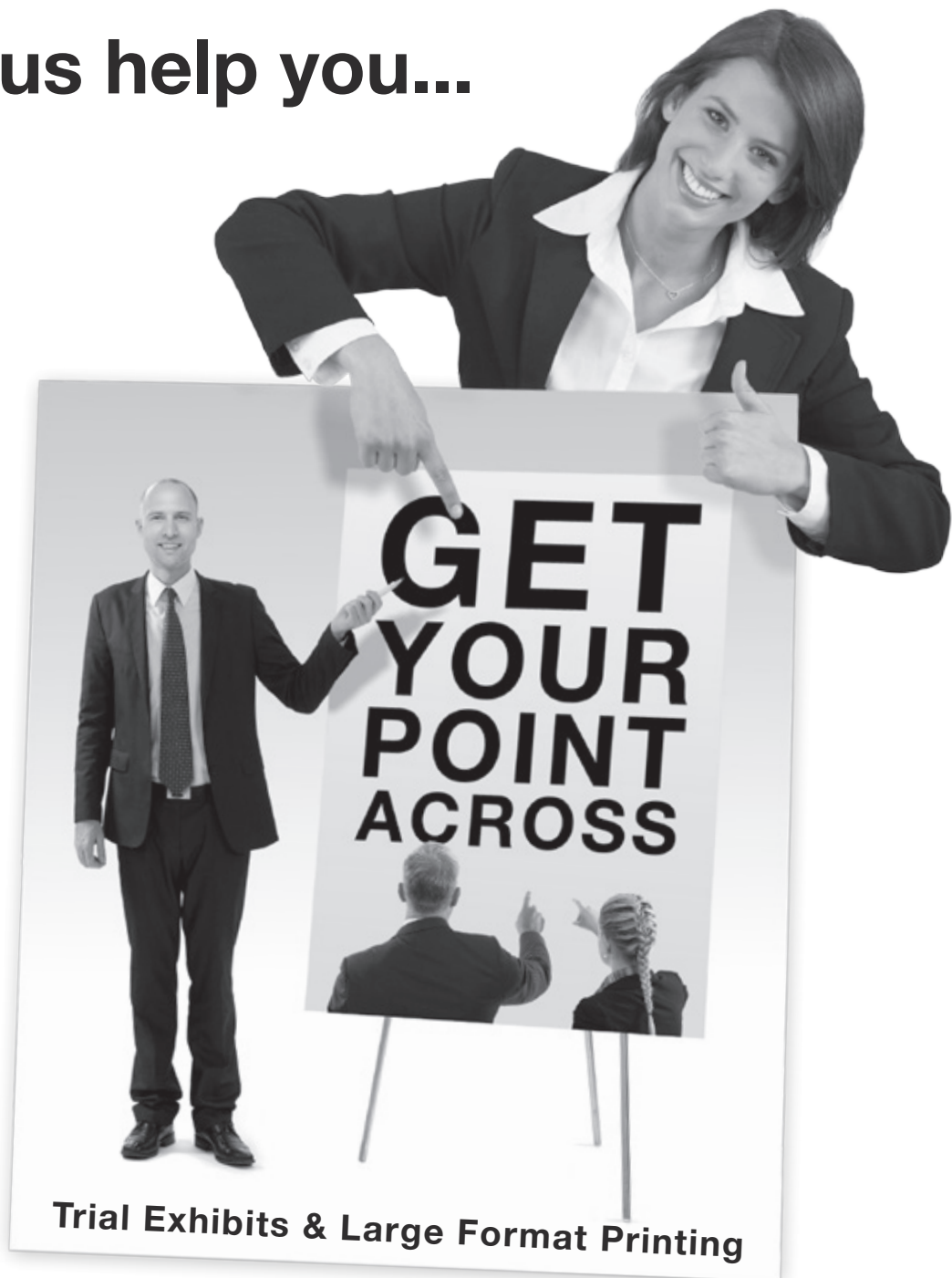


Please also pray for the members of Red Mass Steering Committee who passed away: *Louise Biddle, Linda Maynes, Helen Rodriguez.*



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# JUDICIAL PROFILE: JUDGE KIRA KLATCHKO

by Mary Gilstrap

The newest judge appointed to the bench to serve at the Larson Justice Center in Indio is well-known appellate law specialist Kira Klatchko. One of the youngest judges ever named to the Riverside Superior Court, Judge Klatchko's appointment in December of 2016 filled the vacancy created by the retirement of Judge Christian Thierbach.

Judge Klatchko is no stranger to the members of the Riverside County Bar Association, having served on its board of directors for years, culminating in her presidency in 2015-2016. She also chaired the RCBA Appellate Law Section for several terms. She was a volunteer mediator at the Fourth Appellate District, Division Two, and also conducted private mediations through the Riverside County Superior Court's Civil Mediation Panel.

Appeals, however, were not Judge Klatchko's first exposure to the law. Both her parents, Philip and Linda Klatchko, have operated their law firm Klatchko & Klatchko for more than 40 years, and Judge Klatchko remembers updating law books at their offices when she was only 9-years-old. Judge Klatchko re-joined her parents' practice after graduating from UC Davis School of Law, and her first court appearance was made while practicing with them, a memory she cherishes. She then joined Best Best & Krieger LLP as an associate, where she ultimately formed and chaired the firm's appellate group. She was made a partner at Best Best & Krieger in 2013. In 2015, she was recruited by Lewis, Brisbois, Bisgaard and Smith LLP where she became a partner and the firm's vice chair of their national appellate group. A year or so later, she got the call from Governor Jerry Brown's office regarding her Superior Court appointment. Not surprisingly, she was working on an appellate brief at the time, and after a private moment of celebration, went back to researching and writing on security clearance issues.

That's just her work history. While practicing full time as an attorney, she was also a contributing editor to the Matthew Bender Practice Guide on California Civil Appeals and Writs, a contributing author for the ABA Appellate Practice Compendium; served on the State Bar's Standing Committee on Appellate Courts for six years, eventually chairing that committee, and also served on the ABA Council of Appellate Lawyers Board of



Judge Kira Klatchko

Directors and Pro Bono Committee. She was named on multiple occasions to the list of SuperLawyers in appellate law.

While the list of Judge Klatchko's achievements is impressive, her success has not affected her self-deprecating humor, sense of humility, or her continued pursuit of community service, which is one of her long-time passions. While Judge Klatchko loved being a lawyer, being a judge means that she can continue to make a real difference in people's lives in a different way, she said, particularly in

Family Law, her current assignment, where a great percentage of the litigations are self-represented. "You get to talk to them as human beings," Judge Klatchko said, who tries to keep a calm atmosphere in her courtroom in an area of law that can be somewhat volatile.

Judge Klatchko described herself as a "one day at a time" kind of person when it comes to career planning. She said that appeals were so fascinating to her because she was exposed to all facets of the law. She had no thought of leaving private practice until she was approached by several colleagues who suggested she should consider applying for a judicial position. She thought about it for quite a while because she was reluctant to leave her practice, which offered her the "pure challenge of solving puzzles for people." Judge Klatchko still misses her appellate practice. "I loved both writing and arguing," she said. "Oral argument was wonderful – it was one of the best things to do as a lawyer." Judge Klatchko was not intimidated by argument at the appellate level, even as a young practitioner. "Oral argument is really just a good conversation with someone about a case," she said with a smile.

Judge Klatchko currently sits in Department 3M at the Larson Justice Center, where she presides with the help of her courtroom assistant Bernice Pulido, her court reporter Maritza Castro, and Riverside County Sheriff's Deputy John Cleary. She handles all types of family law matters, including parentage actions, restraining orders and dissolutions.

Despite her appointment to the bench, Judge Klatchko has not given up her interest in appeals. She still goes to educational seminars on appellate issues because she remains interested in that area of law, and she misses

her constant contacts with other appellate practitioners, whom she described as a “tight knit group.”

Judge Klatchko plays tennis, loves to cook and enjoys musical performances and traveling, particularly on vacations with no cell phones. She still serves on the board of Angel View, a non-profit serving children and adults with disabilities, where she has been a director from 2007, and she has previously served as a director for the Desert Foundation of Academics and the OperaArts, in addition to coaching mock trials at the high school level. Her community service garnered her an Athena Award from the City of Palm Springs.

In addition to her Juris Doctor from UC Davis, Judge Klatchko has a B.A. in political science from University of California, Berkeley, where she accelerated her studies and graduated in three years, as well as an MBA from the Executive Management Program at the Peter F. Drucker and Masatoshi Ito School of Management at Claremont Graduate University.

*Mary E. Gilstrap is a partner of the law firm of Roemer & Harnik LLP and a past president of the Desert Bar Association.*



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